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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE  
ON FRIDAY, 2ND FEBRUARY 2018 - DAY 54

54

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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SERVICES

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1 THE HEARING RESUMED ON FRIDAY, 2ND FEBRUARY 2018,  
2 AS FOLLOWS:

3  
4 MR. JOHN BARRETT CONTINUED TO BE DIRECTLY EXAMINED BY  
5 MR. MCGUINNESS:

10:01

6 MR. MCGUINNESS: Mr. Barrett, please.

7 CHAIRMAN: Mr. Barrett, I think you have circulated a  
8 whole load of stuff. Thank you for your efforts  
9 yesterday.

10 A. Thank you, Judge.

10:05

11 MR. DIGNAM: Chairman, just before Mr. McGuinness  
12 starts, we have obviously been handed this material, I  
13 don't think it's an impediment to matters proceeding  
14 now but in the event that any issues arises I may have  
15 to seek a short period of time.

10:05

16 1 Q. MR. MCGUINNESS: Mr. Barrett, good morning. Yesterday,  
17 you told the Tribunal that you recall or you believe  
18 that this remark was made on the 13th May 2015?

19 A. Yes.

20 2 Q. And the Chairman was inquiring how you had come to that  
21 view at this point in time and by reference to what  
22 material. And you undertook yesterday to go and source  
23 the material and bring it down, and you arrived early  
24 this morning and the material has now been circulated.  
25 And could I just ask you then to, as it were, talk us  
26 through that?

10:05

10:06

27 MR. ROGERS: Excuse me, Chairperson, this is John  
28 Rogers.

29 CHAIRMAN: I am sorry, Mr. Rogers. You were sitting

1 over there yesterday.

2 MR. ROGERS: We haven't had any material circulated to  
3 us. It may be apprehended that we had.

4 CHAIRMAN: Yes. Well, what would you like?

5 MR. ROGERS: Well, we just haven't seen this material, 10:06  
6 that is the difficulty that I have.

7 CHAIRMAN: Mr. Rogers, if you need time, I think the  
8 right thing to do is, let's go through what Mr. Barrett  
9 has to say and if you feel you need time to look at  
10 this material at the end of Mr. McGuinness going 10:06  
11 through it as carefully as possible, then of course I  
12 will give you time.

13 MR. ROGERS: Yes. I just wanted it to be known that we  
14 have had no sight of this at all. That's all.

15 CHAIRMAN: Well -- 10:07

16 MR. ROGERS: At this point I feel at a little  
17 disadvantage because I don't know what is about to be  
18 spoken about.

19 CHAIRMAN: What is your ideal scenario, Mr. Rogers?

20 MR. ROGERS: Simply that it be given to us perhaps now, 10:07  
21 if we could be furnished with a hard copy.

22 CHAIRMAN: Are we in a position to do that, I wonder?  
23 Is there very much of it, Ms. Leader?

24 MR. ROGERS: I don't want to detain anybody, but  
25 unfortunately it's the first we have seen -- 10:07

26 CHAIRMAN: I think the right thing for me to do is to  
27 rise for ten minutes to give you a chance to look at  
28 it.

29 MR. ROGERS: Thank you.

1 THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED

2 AS FOLLOWS:

3  
4 MR. MCGUINNESS: Apologies, Chairman, for taking more  
5 than ten minutes but various documents had to be  
6 redacted of personal contact details and other issues. 10:45

7 3 Q. Mr. Barrett, do you have a copy of the documents that  
8 have been circulated?

9 A. No.

10 4 Q. No. Are they in the book in front of you, perhaps? 10:46

11 A. Which book?

12 5 Q. Volume 9. If you could turn to what should be page  
13 4948, towards the back. And do you have those?

14 A. Yes.

15 6 Q. And we will get them up on screen now. This seems to  
16 be a coloured coded document, is that right? 10:46

17 A. That's correct.

18 7 Q. And that is compiled by you, is that correct?

19 A. Yes.

20 8 Q. All right. And when did you compile this, if I may  
21 ask? 10:47

22 A. In the last two weeks, as I explained yesterday.

23 9 Q. All right. Okay. And did you compile it for the  
24 purpose of enabling you to recall the date or just for  
25 a general narrative? 10:47

26 A. General narrative.

27 10 Q. All right. And it starts in January 2014 and goes  
28 through different dates. Turning to page 4957, you  
29 have an entry there, is that right, for May 13th?

1 A. Yes.

2 11 Q. All right. And what colour is that in the original?  
3 Is that purple denoting a meeting?

4 A. I couldn't tell you. If it is -- yes, purple is  
5 meeting. 10:48

6 12 Q. Yes.

7 A. I have an index or a key at the head of this.

8 13 Q. Yes. At the top. Thank you. What you have recorded  
9 there is:  
10  
11 "At the conclusion of a meeting in Mr. Dunne's office  
12 he asked me to stay back and we discussed a number of  
13 items. As I got up to leave he mentioned in relation  
14 to Sergeant McCabe "we're going after him in the  
15 Commission". I responded crossly that you must out of 10:48  
16 your mind."  
17  
18 And then you record:  
19  
20 "This statement was at odds with all the intensive and 10:48  
21 aligned efforts I was involved in to address the  
22 concerns of Sergeant McCabe and to improve the climate  
23 for speaking out and to end harassment and bullying."  
24  
25 And that is your own comment, made not to Mr. Dunne but 10:48  
26 just as an observation?

27 A. It's an observation of -- this is a chronology created  
28 in the last couple of weeks. That is my memory of  
29 roughly what the discussion related to.



1 14 Q. Okay.

2 A. Yes.

3 15 Q. So this question then, was it at that time of the  
4 compilation of this chronology that you had then  
5 pinpointed the 13th May? 10:49

6 A. I tried to explain this yesterday, sir.

7 16 Q. Yes.

8 A. What I did was, I took my diary, which I think I also  
9 included last evening, and I tried to determine what  
10 date this meeting took place on. 10:49

11 17 Q. Okay.

12 A. And it's 13th May 2015.

13 18 Q. Okay. You have included your desk -- is it your desk  
14 diary there?

15 A. Desk diary. 10:49

16 19 Q. Which commences at page 4960?

17 A. Yes.

18 20 Q. And obviously that starts in January, it's a month per  
19 page. And going on to, 4965 is the month of May.

20 A. Yes. 10:49

21 21 Q. And the third column across includes the 13th May. And  
22 it doesn't seem to show any meeting with the  
23 Commissioner or with Mr. Dunne?

24 A. The only residual material that sits in that electronic  
25 diary are those meetings which are recurring. And so, 10:50  
26 for that reason I had to try and use email, as I sought  
27 to explain yesterday, to reconstruct the events of that  
28 week.

29 22 Q. All right. So you wouldn't -- is it your practice then

1 not to include meetings other than recurring meetings?  
2 A. No. And for that reason, sir, I explained -- there is  
3 a copy of 2016, which is still intact, at least there  
4 was this morning, there is an example of how the diary  
5 would normally look. I'm not sure what page that is 10:50  
6 on.

7 23 Q. Well, we will come to all of them in due course, but  
8 this is the electronic diary and for good or ill there  
9 is no meeting at all scheduled with anyone on this  
10 version? 10:51

11 A. Correct.

12 24 Q. Okay. And then you've also helpfully provided, I  
13 think, a typed version of various texts to and from  
14 Sergeant McCabe?

15 A. Correct. 10:51

16 25 Q. All right. And as of the 13th May -- there is no, I  
17 think, text to or from him on the 13th of May 2015.  
18 There are some in the succeeding days; the following  
19 day, the week after. Obviously these texts weren't  
20 intended to be a record of any meetings that you had or 10:51  
21 they don't relate to meetings with the Commissioner or  
22 Mr. Dunne?

23 A. No, no. They are simply a record of all my texts to  
24 and from Sergeant McCabe.

25 26 Q. Yes. And am I correct in saying that there is no 10:52  
26 mention of the remark or the significance of the remark  
27 referred to in the texts?

28 A. No, there isn't. And as I explained yesterday, I  
29 didn't understand the significance myself until after

1 the fact.

2 27 Q. Yes. There are obviously texts relating to some of the  
3 meetings that you had arranged with Sergeant McCabe,  
4 including, for instance, I think you went down at the  
5 end of May 2016 to visit him on 31st May? 10:52

6 A. That's correct.

7 28 Q. And I think we may see minutes of that, but am I  
8 correct in saying that the minutes don't appear to  
9 include any reference to any such remark?

10 A. The minutes of what? 10:52

11 29 Q. Of your meeting with Sergeant McCabe.

12 A. On the 31st May?

13 30 Q. Yes.

14 A. There was the 31st May 2016?

15 31 Q. Yes. But what was being discussed, inter alia, was his 10:52  
16 position vis-à-vis all of the fallout, as it were,  
17 after the publication of the report, isn't that right?

18 A. The meeting on the 31st May was his invitation to me to  
19 visit him at his home to discuss the fallout of the  
20 publication of the report and the announcement in the 10:53  
21 Dáil made by John McGuinness of a meeting he says he  
22 had with the former Commissioner.

23 32 Q. Yes. And perhaps we'd just look at the first page of  
24 that. That is at page 3066. It's volume 5 of the  
25 books, if you want to look at a paper copy. I think 10:53  
26 you can probably identify that as a copy of your  
27 minutes?

28 A. Sir, can you just advise me the page number again  
29 please?

1 33 Q. It's at the bottom of page 3066, the last paragraph,  
2 for instance.

3 A. Yes.

4 34 Q. And there is some discussion obviously there of how  
5 Sergeant McCabe was feeling and how he'd reacted and he 10:54  
6 was recording -- you have recorded there:  
7  
8 "Still shocked at the treatment he received from Colm  
9 Smyth SC on instructions of the Commissioner. Made it  
10 clear to the Commission that the instructions to 10:54  
11 challenge his integrity and motivation."  
12  
13 And then he expresses his hopes there and you inquire  
14 as to what approach he had anticipated. And the  
15 discussion goes over the page then in relation to that. 10:54  
16 A. It does.

17 35 Q. And it deals at length then with the issue of the  
18 remark or the comments which had been revealed by  
19 Mr. McGuinness, TD, isn't that right?

20 A. That's correct. 10:55

21 36 Q. And it goes back to deal with, there is a passing  
22 reference to the O'Higgins Commission again on page  
23 3070, and in fact it's probably -- yes, you seem to be  
24 explaining your position vis-á-vis the Commission here  
25 and what you had been reading about? 10:55  
26 A. Yes.

27 37 Q. And that goes then over the next few paragraphs. There  
28 doesn't appear to be any explicit reference to the  
29 remark made by Mr. Dunne to you at this point?

1 A. There wasn't.

2 38 Q. There wasn't. Okay. Was there any reason at that  
3 point in time?

4 A. I think, Mr. McGuinness, let me explain. The remark  
5 that was made by Mr. Dunne was my boss, he was filling 10:56  
6 me in on what I understood to be a decision.

7 39 Q. Okay.

8 A. I am dealing here with Sergeant McCabe, essentially  
9 being a listening ear and documenting the meeting, as  
10 he presented it to me. 10:56

11 40 Q. All right. Okay. I think you had a subsequent meeting  
12 with him again in August of 2016, on the 23rd August?

13 A. That's correct.

14 41 Q. And you documented that and you did a report in  
15 relation to that. And we can look at that again if you 10:56  
16 wish. There is obviously discussion again of many  
17 different matters, but the issue of the remark made by  
18 Mr. Dunne, I don't think is covered in that, am I right  
19 about that?

20 A. Guide me to the papers please, and I will -- 10:57

21 42 Q. It starts at page 4246.

22 A. Volume?

23 43 Q. I am sorry, it's volume 8. And obviously it's  
24 appropriate to point out, you set out the purpose of  
25 the meeting there at the heading of the memo. You are 10:57  
26 probably familiar with this. And I think on this  
27 occasion you read over the minutes of your meeting of  
28 the 31st to Sergeant McCabe and his wife?

29 A. That's correct. Because of their seriousness and the

1 significant issues he revealed to me at that meeting.

2 44 Q. Yes. And there is some reference to the O'Higgins  
3 Commission at the bottom of page 4248. And there is  
4 some passing reference at the bottom of page 4251 as  
5 well, but am I correct in saying the issue of the 10:58  
6 remark made to you wasn't discussed?

7 A. No, it wasn't.

8 45 Q. All right. Going back to your documents provided this  
9 morning, after the text messages that you have  
10 included, helpfully, there is another type of document 10:59  
11 referred to. It starts at page 4977, if I am not  
12 mistaken. It's in volume 9 that we have been looking  
13 at originally.

14 A. Yes.

15 CHAIRMAN: Mr. McGuinness, as a matter of fact I had 10:59  
16 inquired earlier on in relation to litigation, and I  
17 know there's three pieces of litigation. Was there a  
18 fourth piece of litigation as well, such as mentioned?

19 MR. MCDOWELL: Yes, Judge, there is.

20 CHAIRMAN: And the judicial review of the O'Higgins 10:59  
21 Commission?

22 MR. MCDOWELL: No, it's not a judicial review case,  
23 it's a general case. It's plenary proceedings.

24 CHAIRMAN: Kind of a bullying type thing?

25 MR. MCDOWELL: Damages. 11:00

26 CHAIRMAN: A bullying type case?

27 MR. MCDOWELL: Yes, everything Superintendent  
28 Callinan -- or former Commissioner Callinan,  
29 everything.

1 CHAIRMAN: Yes. I understand. That is probably a  
2 misunderstanding there at the end of that paragraph.

3 46 Q. MR. MCGUINNESS: Mr. Barrett, could you just help us by  
4 identifying -- I am sorry.

5 MR. MCDOWELL: My solicitor just asked me to make it 11:00  
6 clear that the only judicial review that is in  
7 existence is a dispute as to the fees payable under the  
8 Commissions of Investigation Act.

9 CHAIRMAN: well --

10 MR. MCDOWELL: It's a lawyers' dispute. 11:00

11 CHAIRMAN: No, no, I understand that. That is pretty  
12 irrelevant. But it's just, at the end of that there is  
13 a reference to Sergeant McCabe saying that his lawyers  
14 had commenced a judicial review against the O'Higgins  
15 Commission. But it does say that, Mr. McDowell. 11:00

16 MR. MCDOWELL: I think that is an infelicitous  
17 misdescription of that.

18 CHAIRMAN: Was there any proceedings started when the  
19 draft report was circulated?

20 MR. MCDOWELL: No. 11:01

21 CHAIRMAN: Okay.

22 47 Q. MR. MCGUINNESS: Sorry --

23 A. The page, Mr. McGuinness?

24 48 Q. Yes, I was asking you to look at page 4977.

25 A. 4977, yes. 11:01

26 49 Q. Yes. And could you just identify this type of document  
27 that we are looking at, these are retrieved emails?

28 A. These are retrieved emails, yes.

29 50 Q. And I think they obviously cover some of this period,

1 and there is some then in relation to the 13th May on  
2 page 4981. And it seems to be one from you to a  
3 Mr. Collins about a case conference?

4 A. Correct.

5 51 Q. Obviously that appears to be later in the evening. 11:02  
6 There is one from to you Fiona -- well, cc'ed to Fiona  
7 Broderick about another case conference, again that is  
8 later that day. Are there any of relevance that you'd  
9 like to draw our attention to?

10 A. What I am seeking to do is to position my week, so I 11:02  
11 can now explain to you what I did on each of the days  
12 of the week courtesy of these emails and the review I  
13 did of various documents. These are what I was asked  
14 to do as I understand it, yesterday, by the judge.

15 52 Q. Yes. 11:02

16 A. On the Monday, the 11th, I had a review of a case in  
17 the Distillery Building in Church Street.

18 53 Q. All right.

19 A. On Tuesday I had a series of meetings in the Department  
20 of Justice with officials of the Department of Justice 11:03  
21 relating to the unwinding of FEMPI legislation. On  
22 Wednesday I was in the office, that is the 13th May.  
23 On 14th, I was at a briefing delivered by the  
24 Department of Finance in the offices of the Department  
25 of Justice, in the atrium of the Department of Justice. 11:03  
26 On the day following, the Friday, I was all day in the  
27 Garda College.

28 54 Q. Yes.

29 A. On the Thursday evening, I drove to Adare, County



1 Limerick. On the Friday evening, I drove from the  
2 Garda College to Dublin, and on the Saturday, with the  
3 Commissioner, I was at the memorial service for An  
4 Garda Síochána.

5 55 Q. Here in the Castle? 11:03

6 A. Here in the Castle.

7 56 Q. Yes. So is it a process of exclusion that has led you  
8 to --

9 A. I didn't in any way mean to be obscure or to aggravate  
10 the Chairman, but yesterday I used the word triangulate 11:04  
11 because this has been a process of reconstruction.

12 57 Q. No, I understand that.

13 CHAIRMAN: Mr. Barrett, I am not aggravated in any way.

14 A. Excuse me, sir.

15 CHAIRMAN: You did send in your statement very early 11:04  
16 on, I appreciate that very much and thank you. The  
17 only difficulty is that there is no date mentioned in  
18 it, but you did mention a date yesterday. And it  
19 happens to be a very --

20 A. Significant date. 11:04

21 CHAIRMAN: -- significant and important date.

22 A. Can I say --

23 CHAIRMAN: So the obvious question that arose in my  
24 mind was: why that date as opposed to any other and  
25 why was it chosen? I don't want to engage in dialogue 11:04  
26 with you, Mr. McGuinness is asking questions.

27 A. And I do want to apologise if I caused any frustration  
28 for you yesterday. I was simply seeking --

29 CHAIRMAN: I think we should stop using words like

1 cornucopia, frustration, aggravation. Let's just carry  
2 on with the case.

3 A. Okay.

4 58 Q. MR. MCGUINNESS: No, I mean, we are anxious obviously  
5 to understand the basis of your belief for the 13th. 11:05  
6 But I don't know if you -- you probably didn't hear all  
7 of the Commissioner's evidence in this regard.  
8 Ms. Leader closely examined her because there was an  
9 issue about obviously when or at what stage she had  
10 given her instructions, and in the course of her 11:05  
11 evidence on day 45, at page 111, going on to page 112,  
12 she told the Tribunal that she had gone for a very  
13 important security briefing to London on the 13th,  
14 early in the morning, and had come back later on that  
15 evening. And we had, thereafter, obviously in 11:05  
16 preparation for -- well, we had previously circulated  
17 her diary from the 14th onwards because we had seen  
18 that she was diaried to the out of the country and she  
19 said she was out of the country. We have now  
20 circulated her diary entry for the 13th, and that 11:06  
21 should be at page 4989 there.

22 A. I can make no comment about that.

23 59 Q. Yes. It's just that it would appear that she could not  
24 have been at a meeting then with you on 13th, that's  
25 the sort of conclusion I'm putting to you. 11:06

26 A. Yes, that is -- there is a conflict.

27 60 Q. All right. Okay. And we have been provided with  
28 Mr. Dunne's diary, desk diary, for that day, and it  
29 seems to be blank, that is at page 4993. I am not sure

1 if you want to see that on the screen or -- and it just  
2 records, you know, something the Officers Club, it  
3 appears to be half past tennish. Can I ask you, what  
4 is your recollection of the time of the meeting?

5 A. I understand the time of the meeting was in the 11:07  
6 evening, close to the end of the day.

7 61 Q. All right. And just in terms of the time at which you  
8 first attributed significance to the remark?

9 A. Probably about, in the two weeks following the issues  
10 that arose in O'Higgins. 11:07

11 62 Q. Okay. And apart from -- is it Chief Superintendent  
12 McLoughlin or Superintendent McLoughlin?

13 A. It's chief superintendent.

14 63 Q. And when do you recall first mentioned the matter to  
15 him? 11:07

16 A. Several weeks later. Chief Superintendent McLoughlin  
17 can give evidence on this, and you know, that is my  
18 recollection.

19 64 Q. would you answer any other questions perhaps, thank  
20 you, Mr. Barrett. 11:08

21 MR. McDOWELL: Mr. Barrett --

22 MR. ROGERS: Chairman, it would be my view that perhaps  
23 Mr. Dignam should examine at this point.

24 CHAIRMAN: Your reason for thinking that, Mr. Rogers?  
25 Your reason for saying that, Mr. Rogers, is? 11:08

26 MR. ROGERS: well, I am just concerned who is going to  
27 examine last. That is the first question.

28 CHAIRMAN: well, it's definitely going to be you  
29 because you are counsel for the witness, and obviously

1 Mr. McGuinness has a right of re-examination. Is that  
2 all right?

3 MR. ROGERS: well, it does seem to me that, having  
4 regard to the fact that there is a live conflict in  
5 which Mr. Dignam has indicated an interest, that 11:08  
6 perhaps at this point it would be fairer were that  
7 issue to be dealt with now.

8 CHAIRMAN: All right. Thank you, Mr. Rogers. I think  
9 the right thing to do is Mr. McDowell has always  
10 examined second. I don't see any reason to change 11:09  
11 that. As regards the rule that we have been following,  
12 vis-á-vis a person who is represented before the  
13 Tribunal, which is Mr. Barrett, he is represented by  
14 you, you get to examine last and if there's any  
15 questions in clear-up they will follow from 11:09  
16 Mr. McGuinness, but that is a genuine re-examination in  
17 relation to points that have become unclear. So it's  
18 Mr. McDowell, Mr. Dignam, Mr. Barrett -- sorry,  
19 Mr. Dignam, Mr. Rogers, and I don't think the  
20 Department of Justice has any questions. Yes. So that 11:09  
21 is it. Thank you.

22

23 THE WITNESS WAS CROSS-EXAMINED BY MR. MCDOWELL:

24 65 Q. MR. MCDOWELL: Good morning, Mr. Barrett. I just want  
25 to ask you about a few dates, if you would. Your 11:10  
26 statement to this Tribunal was furnished on the 27th --  
27 or was signed by you on 27th April of last year, is  
28 that right?

29 A. That's correct.

1 66 Q. And thereafter -- at that time it appears that you did  
2 not put a date on the particular meeting?  
3 A. That's correct.

4 67 Q. At any point thereafter until yesterday were you asked  
5 by any investigator or written to asking you to 11:10  
6 particularise the date?  
7 A. No, sir.

8 68 Q. I see. But I presume that, in preparation for your  
9 evidence, you attempted to put a date on it, is that  
10 right? 11:11  
11 A. That's correct.

12 69 Q. And can I ask you, in respect of your -- there are a  
13 number of issues I want to deal with. Firstly, whether  
14 or not this exchange took place between yourself and  
15 Mr. Dunne at all, in other words -- 11:11  
16 A. It did, sir.

17 70 Q. -- and the second question is, I want to deal with the  
18 question of its timing. Now, going to the first  
19 question, when you made this statement, was this a  
20 vague or a clear recollection which you had? 11:11  
21 A. It is a very clear recollection of a statement being  
22 made by my boss to me.

23 71 Q. Yes. And just on that subject, you called him your  
24 boss, so just so that I can follow this, he is a  
25 civilian now -- both of you are civilians, isn't that 11:12  
26 right?  
27 A. Yes. When we served together in the organisation, both  
28 of us were civilians.

29 72 Q. I see. And he no longer -- he has gone to CIE or

1            somewhere else has he?

2            A.    And I think he has retired from CIE now.

3    73    Q.    I see. And you remain in your position in An Garda  
4            Síochána?

5            A.    I do. 11:12

6    74    Q.    I see. And you say you have a clear recollection of  
7            this. What impression did it make on you at the time  
8            when he made this remark to you?

9            A.    It jarred with the work that essentially had been  
10            underway for three months, in my office, to try and 11:13  
11            build a bridge, create a new engagement with Sergeant  
12            McCabe. The work was, I felt at that point, in May,  
13            beginning to show dividends and results. I was  
14            therefore surprised that this was being shared with me.

15    75    Q.    I see. Now, I think you have given two slightly 11:13  
16            different versions of your reaction to it; one which  
17            was 'you must be joking' and with an expletive in the  
18            middle of it, so can I take it that it was 'you must be  
19            f-ing joking' is what you said or something like that?

20            A.    Yes, sir. 11:13

21    76    Q.    And the alternative in the papers that you gave to  
22            Mr. McGuinness for this morning was, something along  
23            the lines 'Are you out of your mind?'.

24            A.    Yeah, it was of that order.

25    77    Q.    It was of that form. But you were expressing 11:14  
26            disbelief, is that right?

27            A.    I was.

28    78    Q.    And disagreement?

29            A.    Concern.

1 79 Q. Concern. Now, we have been through all of the  
2 questions that were put to you, you made no note of  
3 this at the time and you made no diary entry about it  
4 or whatever, contemporary diary entry?  
5 A. No, I did not. 11:14  
6 80 Q. But lest it be said that it was an invention, you did  
7 tell the Chairman, or Mr. McGuinness yesterday, that  
8 you had mentioned this remark made by Mr. Dunne to you  
9 to, is it, Chief Superintendent Tony McLoughlin?  
10 A. Yes. 11:15  
11 81 Q. What relationship had he to you in relation to your  
12 work and Sergeant McCabe?  
13 A. Chief Superintendent Tony McLoughlin is the Head of  
14 Garda HR, he is on my senior staff. He is also  
15 intimately involved as a protected disclosures manager 11:15  
16 in the organisation. He wouldn't have been appointed  
17 to that role at that time. He is the equality officer  
18 for the organisation. He is very familiar with the  
19 dealings of the organisation with individual cases of  
20 prominence. So he would have been aware of Sergeant 11:15  
21 McCabe's case and several others.  
22 82 Q. I see. Now, you told, I think the Chairman or  
23 Mr. McGuinness yesterday, that you had recently checked  
24 with Chief Superintendent McLoughlin and that he had  
25 confirmed that you had told him about this incident at 11:16  
26 some stage in the past?  
27 A. Yes.  
28 83 Q. And you said that it was in recent days that he had  
29 given you this confirmation, is that right?

1 A. Yes, in advance of seeking to assist the Tribunal, I  
2 spoke to Tony McLoughlin.

3 84 Q. Yes. And I just want to inquire from you, can you  
4 recollect, was there any specificity as to the timing,  
5 either rough or exact, at which you told him about this 11:16  
6 incident?

7 A. No, I can't recall. I can't recall with specificity.

8 85 Q. Yes. But what you do know is that you did mention it  
9 to him prior to -- was it post or prior to making a  
10 statement for this Tribunal? 11:17

11 A. I would say it's on or about that time. I don't have,  
12 I don't have a recollection on that.

13 86 Q. I see.

14 A. Can I just further say, and this is proving to be  
15 considerable disadvantage to me, I anticipated that I 11:17  
16 would be invited to meet with the Tribunal and go  
17 through materials and hence truthfully, the statement  
18 was very much an outline, as we gave it. I understand  
19 the facility to meet with personnel from the Tribunal  
20 was by and large the process used. We anticipated it, 11:17  
21 but it didn't happen.

22 87 Q. Yes. Well, it appears that it does happen with some  
23 people and it doesn't happen with other people, but I  
24 don't think anything is to be --

25 A. Well, I think it would have guided our specificity, 11:17  
26 Mr. McDowell.

27 88 Q. Nothing is to be inferred from the fact that that is  
28 the case. But as you said earlier, you have never been  
29 asked about it until you were sitting in the witness



1 box, is that right?

2 A. The issues of the dates were not an issue of any great  
3 substance, I sought to bring as much as I could to  
4 specificity to the Tribunal with the work I did over  
5 the last number of weeks. 11:18

6 89 Q. Yes. Now, going back to whatever conversation you had  
7 with Chief Superintendent McLoughlin, can you indicate  
8 to the Tribunal now was that conversation with him  
9 independent of the fact that you were going to testify  
10 here, the first conversation, the first time you 11:18  
11 mentioned it to him, or was it part of your  
12 preparation?

13 A. No, no, I think it would have been following the event  
14 and it would have been a bit like the matter was shared  
15 with me, it would have been a passing reference. 11:19

16 90 Q. Yes. But I mean, it wasn't 'I am about to tell the  
17 Tribunal this'?

18 A. No.

19 91 Q. 'I am now telling you this', it wasn't that kind of  
20 transaction? 11:19

21 A. No, no.

22 CHAIRMAN: Mr. McDowell, I don't think that could be  
23 the case. I mean, it was several weeks after the  
24 remark is made on the 13th -- or 14th of May, 2015, the  
25 Tribunal, I suppose, was like a child yet to be even 11:19  
26 conceived.

27 MR. MCDOWELL: Yes. We are into O'Higgins Commission  
28 territory, we are not into Disclosures Tribunal.

29 CHAIRMAN: Nowhere close, yes. I mean, that only

1 becomes a possibility as of January 2017.

2 MR. McDOWELL: well, that is exactly the point I am  
3 trying to get at.

4 92 Q. Was it, do you think, sometime roughly contemporary to  
5 the O'Higgins Commission? 11:19

6 A. I would imagine O'Higgins was in session at that point.

7 93 Q. I see. And by that time, the significance of what  
8 Mr. Dunne had said to you would have been slightly more  
9 obvious?

10 A. Slightly more obvious. 11:20

11 94 Q. Yes. well, can I ask you one other question, this is  
12 on the issue as to whether these remarks were made to  
13 you at all or whether they are -- you are just  
14 completely mistaken about them or inventing them.  
15 Firstly, had you any reason to implicate Mr. Dunne in 11:20  
16 such a transaction?

17 A. None. My relationship with Cyril was, we frequently  
18 engaged on things, it was open. I think there are  
19 other matters on the public record which demonstrate  
20 the degree to which we collaborated. The reality is, I 11:20  
21 expected Mr. Dunne not to say as he said in his  
22 statement, and I think his statement was delivered  
23 several months after mine.

24 95 Q. Yes.

25 A. So I think I only became aware of his not recollecting 11:21  
26 any of this, somewhere around the 19th December, when I  
27 received first documents from the Tribunal.

28 96 Q. I see. So I am just trying to deal with the  
29 possibility that the pair of you were at loggerheads or

1 in some unpleasant relationship that you just wanted to  
2 plant this alleged remark on him as a kind of a getting  
3 back at him thing, is there any element --

4 A. For absolutely no reason. Cyril Dunne was responsible  
5 for hiring me into this organisation. In the course of 11:21  
6 the interviews that I went through at the top level  
7 Government appointments he, amongst others, asked me  
8 about my ability to deal with conflict and --  
9 conflictual situations and difficult employees. He  
10 asked me about conciliation processes, my time at the 11:22  
11 FUE in dealing with industrial employee relations.  
12 This was all part of the selection process that he sat  
13 on both boards of, the top level Government  
14 appointments system that hired me into An Garda  
15 Síochána. 11:22

16 97 Q. Yes. Now, can I move on to the second question, and  
17 that is assuming for the purpose of my questioning you  
18 that your recollection is correct and that Mr. Dunne  
19 did make these statements to you as to the date on  
20 which it could have happened, firstly I would like you 11:22  
21 to deal with the possibility that these remarks by  
22 Mr. Dunne were made at a later point when the Tribunal  
23 was up and running and he was merely telling you they  
24 are going after McCabe. I mean, that is one  
25 possibility. Sorry, at the Commission, rather. 11:23

26 A. Can I make this point?

27 98 Q. I just want you to deal with that possibility because,  
28 assuming that you are not -- we have to deal with all  
29 of this logically.

1 A. Sure.

2 99 Q. Assuming that this is not an invention on your part and  
3 that this remark was made to you, for the purpose of my  
4 question, the question that naturally would arise:  
5 Could Mr. Dunne have said this to you innocently just 11:23  
6 describing what he understood to be already well in  
7 train at the Commission?

8 A. I don't believe so, because it was as the Commission --  
9 first of all, I must make the point, the Commission, in  
10 my world, did not overlap. I had no engagement with 11:23  
11 the preparation for the Commission, the O'Higgins  
12 Commission, at all. My understanding of what was going  
13 on down there came from conversations and meetings with  
14 people who were engaged with the thing. And so, my  
15 triangulation was, I am clear in my mind that there was 11:24  
16 about one week between the remarks that were made, and  
17 it was a passing remark, and what then I learned had  
18 transpired in the O'Higgins Commission.

19 100 Q. So that's the point I am trying to get clarity on. You  
20 are saying that you are clear in your mind that this 11:24  
21 preceded your subsequent knowledge that a dispute had  
22 arisen --

23 A. That is my clear recollection.

24 101 Q. I see. So it just occurred to me as a possibility that  
25 it might be said or it might be thought, well, if you 11:24  
26 were to be believed and Mr. Dunne is to be believed,  
27 maybe he was merely casually telling you things have  
28 gone off the rails at the O'Higgins Commission, they  
29 are going after Maurice McCabe, or something like that?

1 A. I don't believe so.

2 102 Q. I see.

3 CHAIRMAN: I am just a bit puzzled, Mr. McDowell, in  
4 relation to this. I mean, if the O'Higgins Commission  
5 is subject to section 11 of the Commissions of Inquiry 11:25  
6 Act 2004, how is there any conversation happening in  
7 relation to Human Resources in Garda Headquarters about  
8 the details of the Commission?

9 103 Q. MR. MCDOWELL: I will come to that. When did you first  
10 become aware that there had been a -- you had become 11:25  
11 aware that there had been a dispute as to the approach  
12 being taken to Sergeant McCabe at the Commission?

13 A. I would say it was certainly in conversation within two  
14 weeks of the commencement of the Commission. That  
15 would be my recollection. 11:25

16 104 Q. For instance, were you at any stage alerted to Sergeant  
17 McCabe's deep unhappiness that led to his resignation  
18 of his position as head of the --

19 A. Traffic unit.

20 105 Q. -- Mullingar traffic corps? 11:26

21 A. Yes, I was. And I think there is correspondence to  
22 that effect in the chronology. I would have been  
23 alerted to the decision that he took. There were a  
24 number of issues he raised at the meeting of the 25th  
25 February, when I met him for the first occasion which 11:26  
26 had occurred on the 21st February, the night he went  
27 home from duty, and a preceding event where two guards  
28 in his unit were reassigned without his consent, both  
29 of those items were dealt with in the minute of the

1 25th February. And my attention to the issues at the  
2 Mullingar station was heightened by all of the various  
3 histories that I was becoming aware of as I read myself  
4 into this. So when those issues happened they would  
5 have been brought to my attention. 11:26

6 106 Q. Yes. Because I mean, we know that on Monday the 18th  
7 he sought a meeting in the evening time --

8 A. He did.

9 107 Q. -- with his local superior down there?  
10 A. Superintendent Alan Murray. 11:27

11 108 Q. And effectively handed in his badge as head of the  
12 local traffic corps, is that right?

13 A. Yes, and Alan Murray --

14 109 Q. How soon after that would you have been aware that that  
15 had happened? 11:27

16 A. I would imagine it happened in a couple of days or even  
17 hours, because Alan Murray is a very proactive  
18 superintendent. I have found him to be a very  
19 important ally in the work that I was doing, and he and  
20 I would have spoken frequently through this period. So 11:27  
21 it would be pretty immediately. You know, certainly  
22 not later than 24, 48 hours that I would have been  
23 aware of the situation.

24 110 Q. It had been impressed on him that Sergeant McCabe was  
25 not to be bullied or harassed at work, is that right? 11:27

26 A. And he was as assiduous about that, as was Chief  
27 Superintendent Lorraine Wheatley, both of whom had  
28 helped the process that I was seeking to advance.

29 111 Q. And he reports up the line on the 18th --

1 A. Yes, he does.

2 112 Q. -- May 2015 that Sergeant McCabe has done this and has  
3 indicated he is confidence bound not to say why  
4 effectively, is that right?

5 A. Yes. And I subsequently received a direction also from 11:28  
6 the Commissioner's office to engage around this  
7 particular area. Superintendent Frank Walsh writes to  
8 me, I believe, an email in that regard.

9 113 Q. Yes. Now, taking that as a time that you, I presume,  
10 became either clearly aware or vaguely aware that 11:28  
11 something that displeased Sergeant McCabe was happening  
12 at the O'Higgins Commission, now can you tell this  
13 Tribunal whether the interchange between yourself and  
14 Mr. Dunne took place before that or after that?

15 A. It took place before that. 11:29

16 114 Q. I see. That is all I want to ask you about. Thank  
17 you.

18

19 THE WITNESS WAS CROSS-EXAMINED BY MR. DIGNAM:

20 115 Q. MR. DIGNAM: Mr. Barrett, my name is Conor Dignam and I 11:29  
21 appear on behalf of Garda Síochána, including Mr. Dunne  
22 and Ms. O'Sullivan, the former Commissioner, with whom  
23 you worked. The position you hold, Mr. Barrett, is  
24 Executive Director of Human Resources and I think you  
25 have already described Mr. Dunne as your boss or your 11:29  
26 former boss. He was the Chief Administrative Officer I  
27 think is his formal title, is that correct?

28 A. That's correct.

29 116 Q. And the reporting line was that you reported directly

1 to Mr. Dunne?

2 A. Yes.

3 117 Q. He was also a civilian, I think?

4 A. Yes.

5 118 Q. Yes. And you obviously overlapped for a period of 11:29  
6 time, I think Mr. Dunne was in, worked for An Garda  
7 Síochána or in An Garda Síochána for approximately  
8 two-and-a-half years, is that right?

9 A. Yes.

10 119 Q. I think he was from April 2013 to the end of 2015, so 11:30  
11 he was there for a relatively short period?

12 A. Yeah, two years and nine months.

13 120 Q. Yes. You outlined to Mr. McGuinness yesterday morning  
14 what the duties of the Executive Director of Human  
15 Resources are and you described in broad terms, and I 11:30  
16 don't need to go into the detail of that, but you  
17 mentioned you are responsible for approximately 16,000  
18 staff or human resources?

19 A. That is the scale of the organisation.

20 121 Q. Yes. And could you tell us what the staffing of the 11:30  
21 Executive Director of Human Resources section or  
22 Department consists of?

23 A. My direct office or the totality?

24 122 Q. Perhaps if you start with the totality and then your  
25 direct office. 11:30

26 A. My direct office would be no more than five people at  
27 present, but the sections that report into me are the  
28 Human Resource Management, it's called HRM for An Garda  
29 Síochána, we have a civilian directorate of HR which



1 also looks after all the back office activity for  
2 womb-to-tomb, from recruitment, selection,  
3 appointments, appointment sections, transfers, the  
4 issues of bullying and harassment, the issues of  
5 general employee management in conflictual situations, 11:31  
6 advice to managers across the country in the various  
7 divisions, and the training college, An Garda Síochána  
8 training college and all the formation, where there's  
9 professional continuous development and all of those  
10 related matters under the PD banner, people 11:31  
11 development.

12 123 Q. And I think you mentioned approximately five people in  
13 your direct office?

14 A. That would be my direct staff and then I would have a  
15 group of seven that report to me directly, these would 11:31  
16 be seven senior people.

17 124 Q. And Chief Superintendent McLoughlin who you have  
18 mentioned, you described him as being part of your  
19 senior staff.

20 A. Yes. 11:32

21 125 Q. Was he one of the five --

22 A. No, no. The office and the senior staff are different  
23 groups. He would head up an arm of the organisation.

24 126 Q. And would you work closely with Chief Superintendent  
25 McLoughlin? 11:32

26 A. Yes.

27 127 Q. He is a person you'd rely on, you'd have regular  
28 interactions?

29 A. I rely on all of my staff.

1 128 Q. Yes. And Chief Superintendent McLoughlin included?  
2 A. Yes.

3 129 Q. I think your background, and I don't want to go into it  
4 in detail, you had worked for a number of large  
5 multinational corporations or companies before you came 11:32  
6 to join An Garda Síochána, the organisation, is that  
7 right?

8 A. Yes. I worked for primarily American corporations,  
9 both in the US and in Europe. I lived for a time in  
10 California, silicone valley, doing merges and 11:32  
11 acquisitions. I ran the European arm of Merck  
12 Millipore out of Strasbourg. I joined Applied  
13 Materials outside Grenoble in France, first in the  
14 European arm and then moved to the US. Before that,  
15 the European, Middle East and Africa organisation of 11:33  
16 Lucent Technologies.

17 130 Q. Yes.  
18 A. And before that all the way back to a seminal period in  
19 the Federated Union of Employers, now IBEC.

20 131 Q. You have extensive experience, not all in human 11:33  
21 resources but in vary does --  
22 A. Business related.

23 132 Q. Yes. Now, I think in February 2015 you were asked by  
24 Commissioner O'Sullivan to liaise directly with  
25 Sergeant McCabe about workplace issues? 11:33  
26 A. On the 23rd February.

27 133 Q. 23rd February. Yes. And I think she has described it  
28 as asking you to liaise directly with Sergeant McCabe  
29 to address any issues that were continuing to cause

1 concern to him, and then in her interview with the  
2 investigators for the Tribunal on page 3080 -- I  
3 haven't got the volume number, Mr. Barrett. Volume 5.  
4 3080. It's page 27 of former Commissioner O'Sullivan's  
5 interview notes. And you will see right at the bottom 11:34  
6 of that page, the last sentence on the page,  
7 Mr. Barrett, Ms. O'Sullivan says that:

8  
9 "Mr. Barrett in his capacity as Executive Director HR  
10 PD was tasked to ensure that all HR and welfare 11:34  
11 supports were being provided to Sergeant McCabe and  
12 that any gaps in those supports were addressed in  
13 respect of Sergeant McCabe and his family. In  
14 addition, Mr. Barrett was to oversee and coordinate a  
15 review of the organisation's HR policies and practices 11:35  
16 by Mr. Tony Kerr SC. This included a range of seminars  
17 to be conducted with an external HR expert, Mr. Gerard  
18 McMahon. Furthermore, I requested that a workplace  
19 mediation expert would be identified and made available  
20 to provide mediation if required by Sergeant McCabe and 11:35  
21 this person was identified, Mr. Kieran Mulvey.  
22 Mr. Barrett was also tasked at one stage to meet with  
23 Sergeant McCabe to identify what HR actions needed to  
24 be put in place to comprehensively address Sergeant  
25 McCabe's concerns." 11:35

26  
27 Is that --

28 A. I am looking at 3080 in file 5, but that is not what it  
29 says.

1 134 Q. Sorry, I gave you the beginning of the interview,  
2 sorry, it's on page 27 of that statement. I am sorry,  
3 Chairman, I am working off a different paper copy so  
4 the pagination is slightly different.

5 A. This is all higgledy-piggledy here now. 11:36

6 MR. McDOWELL: Chairman, on some of the copies there  
7 are pages missing from Nóirín O'Sullivan's interview.

8 A. Yeah. This begins on page 1 and skips after page 4 --  
9 page 3 it skips to page 48.

10 135 Q. MR. DIGNAM: Yes. It may well have been that other 11:36  
11 issues dealing with other modules are dealt with on  
12 those pages. Just bear with me for one minute.

13 A. I don't disagree with what you say.

14 136 Q. Mr. Barrett, I just want to ask you, does that 11:36  
15 encompass what you were asked to do by the former  
16 Commissioner?

17 A. As I understood it, and the brief was more than as  
18 outlined, my understanding is that Sergeant McCabe had  
19 made a protected disclosure in or about August 2014 and  
20 that I should therefore be conscious of the fact that 11:37  
21 he had the protection of the 2014 Act.

22 137 Q. Yes, because you say in your statement that you were  
23 appointed, how you put it was that you were appointed  
24 to act as interlocutor/principal point of contact under  
25 the Protected Disclosures Act 2014 for Sergeant Maurice 11:37  
26 McCabe?

27 A. Being mindful of the obligations in the Act is the  
28 issue.

29 138 Q. As far as you are putting it now, you were reminded or

1 asked to be mindful of the Act?

2 A. Yes.

3 139 Q. Now, I think at that point you had joined the  
4 organisation in the autumn of 2014, isn't that correct?

5 A. October 3rd? 11:37

6 140 Q. Yes. And this was in February 2015. So you were a  
7 person who had come into the organisation with very  
8 extensive business experience in different countries  
9 around the world and in different large organisations.  
10 You were new to the organisation at that stage and you 11:38  
11 were asked to carry out this important task. Is it  
12 fair to say, Mr. Barrett, that it couldn't be said  
13 about you that you were an insider or a person enmeshed  
14 in any culture of the institution or organisation of An  
15 Garda Síochána? 11:38

16 A. I think anybody coming from the outside would obviously  
17 bring with them where they have been and be free of the  
18 internal culture if they hadn't been there before.

19 141 Q. Yes. And you were asked by the Commissioner with that  
20 background to carry out this important task. I think 11:38  
21 you have also and I don't want to dwell on it,  
22 Mr. Barrett, you have also in your evidence explained  
23 the different things that were going on from February  
24 2015 if not before, onwards, and that included the  
25 appointment of Chief Superintendent O'Brien, Barry 11:38  
26 O'Brien, on the nomination of Sergeant McCabe. The  
27 background to that, Mr. Barrett, is that the former  
28 Commissioner asked Sergeant McCabe if he'd like to  
29 nominate somebody who could deal with his concerns and

1 Sergeant McCabe himself nominated Chief Superintendent  
2 O'Brien, isn't that right?

3 A. I understand there were 14 open issues that Chief  
4 Superintendent O'Brien was specifically asked to  
5 address and it was on the nomination of Sergeant 11:39  
6 McCabe.

7 142 Q. Yes. And I think you have already said that you had a  
8 meeting with Sergeant McCabe on 25th February at the  
9 Shangan Building in Garda Headquarters with Chief  
10 Superintendent O'Brien? 11:39

11 A. Yes.

12 143 Q. Yes. Now, can I take it that when you were asked to  
13 carry out this assignment or this job of work by the  
14 former Commissioner, that you applied yourself with  
15 diligence and professionalism that one would expect you 11:39  
16 to bring to the task?

17 A. I would hope so, yes.

18 144 Q. You certainly seemed to have, if I may say,  
19 Mr. Barrett, based on the documentation, come to it  
20 with energy. You met Sergeant McCabe I think almost 11:40  
21 immediately, you were appointed on 23rd of February and  
22 you met him on 25th February, isn't that right?

23 A. Yeah, I spoke to him on 24th for the first time on the  
24 telephone.

25 145 Q. Yes. And having met him then, you were in close 11:40  
26 telephone and text contact with him, pretty much from  
27 then on, according to your own chronology?

28 A. No. There are three spikes of clusters of activity,  
29 but there are periods where there is not a lot of

1 contact over a period of months.

2 146 Q. Yes. There is a fairer way to put it; that you were in  
3 intermittent contact?

4 A. Yes, I was the person I think that Sergeant McCabe  
5 would come to in -- and that was the bridge that was 11:40  
6 established in this earlier period.

7 147 Q. Yes. And you met him, as well as in the Shangan  
8 Building you met him in his home on, is it I think  
9 three separate occasions?

10 A. I met him in all 12 times: I met him three times in 11:41  
11 2015, I met him six times in 2016 and I met him three  
12 times in 2017.

13 148 Q. And I think you provided memos of those meetings?

14 A. Not all of them.

15 149 Q. No? 11:41

16 A. Some of them were quite social and just, I would say of  
17 a welfare focus, wherein activity was continuing. But  
18 I took the time to consider how I should respond when  
19 particularly serious matters were revealed to me, and  
20 my role was to ensure that they were documented such 11:41  
21 that, and I required Sergeant McCabe's willingness on  
22 this, to report using those notes.

23 150 Q. Yes. And you have provided memos of your meetings, at  
24 least of the 25th February 2015, 31st May 2016 and the  
25 23rd August 2016, and I might come back to those in 11:42  
26 just a few minutes?

27 A. And the meeting of the 7th February 2017.

28 151 Q. Yes. That's right. Now, obviously we have seen those  
29 memos and they are in the core booklets, and I think

1           it's fair to say that they are very detailed  
2           comprehensive conveying of information, recording of  
3           what happened at those meetings, or those occasions,  
4           and conveying the detail of those meetings to the  
5           authorities, to the Garda authorities. would you agree 11:42  
6           that they are very detailed?

7           A.    Yes, they are not casual notes.

8   152   Q.    Yes. The meeting of the 25th February 2015, which is  
9           the first time you personally met Sergeant McCabe, is  
10          at page 3019? 11:43

11          A.    Of the volume?

12   153   Q.    Of volume --

13          A.    3019. Okay.

14   154   Q.    It's volume 5, Mr. Barrett.

15          A.    Volume 5. 11:43

16   155   Q.    And you will see, Mr. Barrett, and I think you will  
17          acknowledge that, as I say, that is a careful  
18          methodical record of the meeting. It starts with -- in  
19          fact, it starts with the introductions that are made at  
20          the very beginning of the meeting, and then goes into 11:43  
21          the details of what was discussed between you and what  
22          occurred at that meeting, and gives a full picture of  
23          your engagement on that occasion between Sergeant  
24          McCabe, Chief Superintendent O'Brien and yourself, is  
25          that fair? 11:44

26          A.    Yeah, it was a two and three quarter hour meeting, I  
27          think.

28   156   Q.    And then similarly, on the 31st May 2016, you met  
29          Sergeant McCabe at his home, and in fact his family, at



1 his home in -- at his home, is that right?

2 A. That's correct.

3 157 Q. Yes. And the memo of that meeting or the minute of  
4 that meeting is at 3066, it should be in the same  
5 booklet. And again, that is a very detailed note or 11:44  
6 minute or record of the meeting that you had with  
7 Sergeant McCabe, it goes into close detail of what was  
8 discussed and what you were told by Sergeant McCabe, is  
9 that a fair description?

10 A. Yes, it is. And on both occasions I think the 11:45  
11 commonality in both meetings was, they were of  
12 heightened interest at that time. I was quite alarmed,  
13 as you can see from what I wrote of that meeting of the  
14 31st of May, the meeting on the 26th -- on 25th  
15 February was effectively taking place on foot of a 11:45  
16 ministerial letter to the Commissioner seeking an  
17 urgent response in relation to certain matters, and I  
18 had a direction from Superintendent Frank Walsh as to  
19 the two issues in particular that I should deal with  
20 Sergeant McCabe concerning, on February 25th. 11:45

21 158 Q. Yes. And I will come back to the contents of the  
22 minutes in just a few moments, Mr. Barrett. But that  
23 being the purpose of your visit, you faithfully record  
24 in great detail the discussions and in fact you record  
25 what I might describe as surrounding circumstances or 11:46  
26 narrative details of your meeting, you describe the  
27 location of the house, you describe how Sergeant McCabe  
28 presented on the day, you describe where you sat in the  
29 house when you were having your meeting, you describe

1 what you had to eat and in fact are very complimentary  
2 on what you had to eat. So there is an incredible  
3 amount of detail in that in that statement -- in that  
4 minute, isn't that right?

5 A. The welfare obligation that I carried, just to put this 11:46  
6 in some context, was to be concerned for Sergeant  
7 McCabe's welfare, and the minute was in effect a  
8 statement about how I found him. He was the one that  
9 tendered the invitation for me to come and visit his  
10 house, he was the one that introduced me to his 11:47  
11 children, four of the five children were introduced to  
12 me. It was a pleasant occasion with a very real  
13 underlining set of circumstances, hence the detail.

14 159 Q. Now, could I then ask you just to turn to your 11:47  
15 statement to the Tribunal, Mr. Barrett, which is at  
16 page 2967. And the relevant paragraph, as you know, is  
17 at page 2969. Now, this was made, as I say, in April  
18 2017 and the Tribunal had been established some months  
19 before that, I think the Chairman's opening statement  
20 had been made almost two months before that statement 11:48  
21 was made, and you, I presume, appreciated the  
22 importance of the work of the Tribunal and presumably  
23 you appreciated the importance of and the significance  
24 of any information that might be given to the Tribunal,  
25 is that fair? 11:48

26 A. That's fair.

27 160 Q. Yes. And in your statement in relation to this  
28 particular issue, you say:  
29

1 "Prior to the commencement of the O'Higgins Commission  
2 hearings, at the conclusion of a meeting in the office  
3 of the Chief Administrative Officer, Cyril Dunne,  
4 Mr. Dunne asked me to remain in his office after the  
5 other attendees had left and with reference to Sergeant 11:48  
6 Maurice McCabe said 'we're going after him in the  
7 Commission". My role as interlocutor principal point  
8 of contact with Sergeant McCabe was well-established at  
9 this stage and I indicated my shock and dismay that  
10 such an approach would be taken in the O'Higgins 11:49  
11 Commission."

12  
13 And you then go on in subparagraph (ii) to say:

14  
15 "I was not present at any of the modules of the 11:49  
16 O'Higgins Commission, but I gained some insights from  
17 Sergeant McCabe and other participants from the media  
18 coverage. As matters unfolded in the autumn of 2016  
19 the collage of scenarios became clearer to me. I  
20 believe the work of the Tribunal may benefit from 11:49  
21 understanding the connection between these events."

22  
23 And that is the extent of what you said when you were  
24 providing information that had been requested by the  
25 Tribunal in its public statement, that is the extent of 11:49  
26 what you informed the Tribunal of when you made that  
27 statement in April 2017, isn't that right?

28 A. As I explained to Mr. McDowell, we fully expected to be  
29 invited and deposed by the Tribunal in all of the

1 detail, that was the understanding I got from my legal  
2 people, and that was the -- we were essentially  
3 advising the Tribunal under the various headings of  
4 matters that we were aware of.

5 161 Q. Now, I don't want to ask you about your legal advice, 11:50  
6 Mr. Barrett, but it's common case, and I don't think  
7 there is any debate about this, Mr. Barrett, but you  
8 don't give the date for the alleged meeting in that  
9 statement, isn't that right?

10 A. That's correct. 11:50

11 162 Q. Okay. Do you accept that it would have been helpful to  
12 the Tribunal and indeed to the parties against whom you  
13 were making a very serious allegation, to have known  
14 when you were alleging that statement was made by  
15 Mr. Dunne? 11:50

16 A. I do.

17 163 Q. Yes. And why then, were you content to wait for the  
18 Tribunal to come and ask you for further information?  
19 why didn't you, bearing in mind that you appreciated  
20 that it would have been helpful to have provided the 11:50  
21 information, why didn't you simply provide it?

22 A. Quite frankly, and I have dealt with this on a number  
23 of occasions, we perhaps, with the benefit of  
24 hindsight, should have written a much more detailed  
25 statement. The view that was given to me was the 11:50  
26 Tribunal will come and seek us to meet and we didn't --  
27 that didn't happen. The first engagement was the 19th  
28 December when we received some papers from this  
29 Tribunal.

1 164 Q. Yes. Now, I think you are a student of the law,  
2 Mr. Barrett, I think you mentioned in one of your  
3 documents; do you understand the need for a person who  
4 is answering an allegation to know precisely what is  
5 being alleged against them? 11:51

6 A. Of course.

7 165 Q. Yes. And with that in mind, leaving aside your  
8 expectation that the Tribunal might come looking to you  
9 for further information, do you not think that it would  
10 have been fair to have given Mr. Dunne the opportunity 11:51  
11 to know when he is alleged to have made this statement?

12 A. I think that the statement could have been more  
13 complete certainly. I had expected Mr. Dunne to recall  
14 the discussion and that his statement would verify what  
15 it is that I said months earlier. 11:51

16 166 Q. Now, you were asked the question yesterday by  
17 Mr. McGuinness why the date wasn't in your statement,  
18 and your answer, which is at page 190 of yesterday's  
19 transcript -- I am not sure that it's in that booklet,  
20 Mr. Barrett. 11:52

21 A. [SAME HANDED] Thank you.

22 167 Q. You said at page 190 that:  
23  
24 "I am doing this having looked at the chronology of  
25 correspondence that I hold, I am doing this from 11:52  
26 looking at diary entries."  
27  
28 Okay. And I am sure you recall then that at almost the  
29 conclusion of the day's business I asked that those

1 documents might be provided by you to the Tribunal and  
2 then to us. And that led to an exchange and some  
3 supplemental questions being asked by Mr. McGuinness.  
4 And at page 200, so ten pages after you had made that  
5 statement, you say:

11:53

6  
7 "I looked at a series of emails."

8  
9 And later that page you say:

10  
11 "I went and examined what was in my email archive."  
12

11:53

13 Then, three pages later, on page 203, you say:

14  
15 "I have an email which talks about the meeting that I  
16 had with the Commissioner and Mr. Dunne."  
17

11:53

18 Two pages later again, page 205, you say, in response  
19 to questions being asked by the Chair:

20  
21 "That's the email that triangulates to that  
22 discussion."  
23

11:53

24 And then the resting place of that dialogue is on page  
25 208, I think, where you say:

11:54

26  
27 "I have a single email to the point."  
28

29 So, you go from page 190 where you say that it's based

1 on a chronology of correspondence and diary entries,  
2 and review of diary entries, through having a series of  
3 emails to the resting place, 18 pages later on 208, to  
4 you having a single email to the point. Now, can I ask  
5 you, Mr. Barrett, why didn't you simply say when you 11:54  
6 were asked how you placed the date for the meeting,  
7 that you had a single email which led you to that  
8 conclusion?

9 A. I am going to say that I was genuinely concerned about  
10 the focus on the date rather than the content of the 11:55  
11 discussion. And I was somewhat taken aback by that,  
12 and I tried to facilitate the Tribunal with the work I  
13 did overnight. I think there is an email in there that  
14 refers to a conversation with the Commissioner, Cyril  
15 and I think it's the evening of the 12th. And I think 11:55  
16 that from my triangulation of it, I believe the meeting  
17 took place on the 13th. For me, I am in absolutely no  
18 doubt that this was sent to me, it was sent to me in  
19 advance of the Tribunal commencing. I appreciate that  
20 there is a requirement to consider the period of time 11:55  
21 between when this was sent to me and when the Tribunal  
22 commenced. I am offering you my best evidence and I am  
23 speaking truthfully and on oath.

24 168 Q. Now, Mr. Barrett, let's be clear, you said that it was  
25 on the 13th May? 11:56

26 A. Yes.

27 169 Q. And you confirmed that in your evidence yesterday?

28 A. Yes.

29 170 Q. You were examined by Mr. McDowell and he put other

1 possibilities to you and you in fact rejected those  
2 possibilities?

3 A. I did.

4 171 Q. Yes. So this conversation, if it happened at all, the  
5 statement, if it was made at all, happened on 13th May? 11:56

6 A. I believe that to be the case, yes.

7 172 Q. Now, in fact, your answers to the questions yesterday  
8 of how you placed the date didn't answer the primary  
9 question, which is why it wasn't in your statement, and  
10 as I understand your evidence on that point, it wasn't 11:56  
11 in your statement because you were expecting the  
12 Tribunal to come looking to you for information based  
13 on your statement, is that fair?

14 A. That's correct.

15 173 Q. Yes. Now, do you accept that to the extent that you 11:56  
16 have done some work which causes you to believe that  
17 this statement was made to you on the 13th May 2015,  
18 that that work could have been done before you made  
19 your statement?

20 A. It could, it could very well have been. 11:57

21 174 Q. Yes. Now, your solicitor wrote to this Tribunal on  
22 17th January 2018, setting out your interactions with  
23 and about Sergeant McCabe and that is on page 4356 of  
24 the booklets. Now, obviously this letter was written  
25 on instructions, and it begins, it's addressed to the 11:57  
26 solicitor for the Tribunal:

27

28 "Further to your email this evening, we note it is  
29 currently anticipated that our client will give



1 evidence to the Tribunal next Tuesday, 23rd January  
2 2018. We are cognisant of both the Chairman's comments  
3 on 8th January 2018 concerning the sheer volume of  
4 paperwork received by the Tribunal and of our client's  
5 limited role in assisting the Tribunal in this module. 11:58  
6 With this in mind, we believe it may be of assistance  
7 to the Tribunal if we outline the scope of our client's  
8 dealings with Sergeant McCabe during the relevant  
9 period, along with the documentation which our client  
10 believes is relevant." 11:58

11  
12 Now, this was written ten days after the commencement  
13 of this module. You will recall, I am sure, I think  
14 you were in fact present, Mr. Barrett, the Tribunal sat  
15 on the 8th of January and due to the necessity to 11:58  
16 gather documents there was then a short break until the  
17 Friday of that week, and this letter then came into the  
18 Tribunal, it seems, on the 18th January, which I think  
19 is the Wednesday, but it may have been the Tuesday.  
20 Sorry, 18th is a Thursday, Mr. Barrett. Now, if I 11:59  
21 could just direct your attention to that third  
22 paragraph:

23  
24 "With this in mind, we believe it may be of assistance  
25 to the Tribunal if we outline the scope of our client's 11:59  
26 dealings with Sergeant McCabe during the relevant  
27 period, along with the documentation which our client  
28 believes is relevant."  
29

1 This letter was written eight months after you had made  
2 your statement, without a date, to the Tribunal. Your  
3 explanation for not putting the date in your statement  
4 was you assumed the Tribunal would be coming back to  
5 you looking for information. Eight months have now 11:59  
6 passed, the Tribunal haven't come to you looking for  
7 information, and you send this in.

8 A. That's correct.

9 175 Q. Yes. Now, you then set out bullet-points 1 to 10. Do  
10 you accept, Mr. Barrett, that there is not one 11:59  
11 reference in that document to the conversation which  
12 you alleged took place on the 13th May 2015?

13 A. That's correct.

14 176 Q. Yes. Why not?

15 A. I thought that the statement that we furnished in April 12:00  
16 would have been adequate in that respect because it  
17 makes clear that there was a conversation. And I also  
18 only discovered as of the 20th December that that  
19 conversation was denied.

20 177 Q. Well, let's just take that in sequence. You have 12:00  
21 already accepted in evidence that your statement -- and  
22 you have explained why, and I will come back to that,  
23 but you have already accepted in evidence that your  
24 statement was inadequate from the point of view of  
25 giving all the relevant information to the Tribunal and 12:00  
26 from the point of view of fairness to Mr. Dunne, you  
27 have already accepted that in your evidence?

28 A. On the basis that Mr. Dunne denied what it is that  
29 transpired between us.

1 178 Q. Yes.

2 A. And I sat here on the day of the opening statement was  
3 made and it was clear to me that there was a request  
4 for anybody who had something to say to the Tribunal to  
5 make themselves known, and that is what we were doing 12:00  
6 in our April statement, as I understood it.

7 179 Q. Yes. So, let's take your second point then,  
8 Mr. Barrett. You say that it only occurred to you that  
9 it would be necessary to give a date when Mr. Dunne  
10 denied the allegation that you are making against him, 12:01  
11 which was on the 20th December you become aware of it,  
12 is that right?

13 A. Let me go back and try and be clear around this.  
14 Genuinely we were indicating the areas of information  
15 that we had at our disposal for the benefit of the 12:01  
16 Tribunal in the April statement, in the expectation  
17 that we would meet with personnel from the Tribunal or  
18 investigators from the Tribunal and be directed as to  
19 what it is and how it is we could be most helpful.  
20 That did not happen. The first engagement beyond that 12:01  
21 was a receipt of a clip disk with some three-and-a-half  
22 thousand pages on 19 December.

23 180 Q. Yes. That is what I was asking you about. So you knew  
24 shortly after the 19th December, because I would  
25 imagine that the first thing you looked for when you 12:01  
26 opened the USB key was, what Mr. Dunne has to say about  
27 what I have said about him? You see, you have had from  
28 shortly after 19th of December to become aware that  
29 Mr. Dunne is absolutely denying that he said this to

1 you, and a month later, 17th January, you send in a  
2 letter which doesn't deal with it at all. It still  
3 doesn't give the date of the alleged meeting. In fact  
4 doesn't refer to it at all. What is your explanation  
5 for that, Mr. Barrett? 12:02

6 A. I don't have anything to say other than that which I  
7 said to you already. We had indicated the areas, we  
8 had put our hands up and said this meeting took place.  
9 I am on oath and I am saying that the meeting -- the  
10 reference at that meeting did take place, and that this 12:02  
11 was information shared with me en passant by Mr. Dunne,  
12 and that the relevance of the matter became clear to me  
13 after the fact. And we didn't reference it in the  
14 letter that you pointed to, that is true.

15 181 Q. So the relevance of the material became known to you 12:03  
16 after the fact and I will come back to that, but just  
17 you did appreciate the significance of it by the 17th  
18 April 2017, didn't you?

19 A. Yes, absolutely.

20 182 Q. And certainly by the 17th -- sorry, by 19th December 12:03  
21 2017?

22 A. By the time the events had played themselves out in  
23 full and this was going to be a point of conflict,  
24 certainly I understood the significance of it. This is  
25 the ugly truth, these matters were put to me, I noted 12:03  
26 them, I didn't note them formally, it was part of a  
27 discussion. And this is my testimony.

28 183 Q. Yes. You noted them in your head, isn't that right?  
29 A. Yes.

1 184 Q. Yes. Now you said yesterday that the people who were  
2 at the meeting, after which this alleged had been said,  
3 were the former Commissioner Ms. O'Sullivan, Mr. Dunne  
4 and yourself?

5 A. That's correct. 12:03

6 185 Q. Yes. Now, can you explain to me why you say in your  
7 statement that this conversation happened after the  
8 other attendees, plural, had left?

9 A. It is perfectly normal in circumstances that I have  
10 worked in all my life that somebody would say, look, 12:04  
11 can you stay back for a second, we need to talk about  
12 one or two items. This was an item mentioned to me in  
13 passing, as I was leaving Mr. Dunne's office. I noted  
14 it purely on the basis that the three preceding months  
15 had been fully engaged in building a very different 12:04  
16 kind of engagement with Sergeant McCabe, and this  
17 seemed to jar with it. That was the basis of my first  
18 response to him.

19 186 Q. That is not the question I asked you, Mr. Barrett. I  
20 asked you why you used the plural for attendees when in 12:04  
21 your evidence yesterday you identified one other  
22 attendee, Ms. O'Sullivan?

23 A. There were three.

24 187 Q. Yourself, Mr. Dunne and --

25 A. And the Commissioner. 12:04

26 188 Q. -- the Commissioner. What you say in your statement is  
27 that "Mr. Dunne asked me to remain in his office after  
28 the other attendees" plural?

29 A. I can't account for that in the general scheme of

1 things --

2 189 Q. How can you not account for it, it's your statement?

3 A. It's my statement and I accept there may be an "S" that  
4 is unintended, but the matter we were discussing was a  
5 serious matter pertaining to a senior employee and 12:05  
6 litigation threatened therefrom.

7 190 Q. Now, you made this statement appreciating the  
8 significance of the work of the Tribunal and  
9 appreciating the effect that findings made by a  
10 tribunal of inquiry can have on people's lives and 12:05  
11 careers and reputations?

12 A. Yes.

13 191 Q. Yes. And you are telling us that you simply said  
14 attendees without really meaning there was more than  
15 one other attendee, is that right? 12:05

16 A. That's correct.

17 192 Q. Did you take any care about this statement?

18 A. Of course I did.

19 193 Q. Now, when you made this statement, why didn't you  
20 simply say Mr. Dunne asked me to remain in his office 12:06  
21 after Ms. O'Sullivan, the Commissioner, had left? why  
22 the vague reference to other attendees or, even taking  
23 it in the singular, other attendee?

24 A. I can't account for the confusion you are pointing to.  
25 Truthfully, I didn't ever anticipate that this issue of 12:06  
26 the actual timing of the statement would in effect  
27 overshadow what was said to me. It was said to me by  
28 Mr. Dunne, it was clearly in my memory from reason of  
29 its impact, and the syntax or statement is written, I

1 am sorry, I didn't catch that. I really am --

2 194 Q. Mr. McGuinness questioned you earlier on, Mr. Barrett,  
3 Ms. O'Sullivan was, in fact in London on 13th May --

4 A. That's right.

5 195 Q. -- 2015? 12:07

6 A. That is her diary entry, yes.

7 196 Q. Sorry, are you doubting that she was in London that  
8 day?

9 A. I am not doubting that she is in London, if that is  
10 what her diary says. The confusion -- I believe this 12:07  
11 was the 13th, I met with, by my own notes I met with  
12 Ms. O'Sullivan and Cyril Dunne on the night of the 12th  
13 also.

14 197 Q. Mr. Barrett --

15 A. And I have said I believe and I have triangulated this 12:07  
16 to be 13th of May, to the best of my ability.

17 198 Q. And we are dealing with it on the basis that it was  
18 allegedly the 13th?

19 A. Yes, yes.

20 199 Q. Ms. O'Sullivan not only gave her diary entry, but in 12:07  
21 fact she gave evidence, and has told this Tribunal that  
22 she was in London that day.

23 A. And I appreciate the confusion that was pointed out by  
24 Mr. McGuinness.

25 200 Q. Well, that is not confusion, Mr. Barrett. You say a 12:07  
26 meeting took place on 13th May that Ms. O'Sullivan  
27 couldn't have been at. That is not confusion,  
28 Mr. Barrett.

29 A. I understand the conflict.

1 201 Q. Now, you say in your statement that your role as point  
2 of contact with Sergeant McCabe was well-known or  
3 established at that point. Have you any comment or any  
4 view to give, and you may not have, Mr. Barrett, why  
5 Mr. Dunne would have said this to you, being the point 12:08  
6 of contact with Sergeant McCabe?

7 A. Mr. Dunne was fully involved in the preparation of what  
8 became the section 41 document. He would have been  
9 attending meetings with me in relation to the  
10 appointment of Kieran Mulvey. He would have been fully 12:08  
11 aware of the matters in relation to Tony Kerr and his  
12 review of the policies and procedures. He would have  
13 been involved in a series of meetings which I think are  
14 evidenced from documents produced by Ken Ruane and  
15 others, where he is at meetings. He was at the post 12:08  
16 meeting briefing of the 25th February. There are  
17 meetings which he attended, clearly involved in the  
18 work that we were doing between February and May 2015,  
19 pertaining to Sergeant McCabe.

20 202 Q. You have told us about what you thought when he told 12:09  
21 you this, and you have described it in different terms,  
22 although probably not a huge amount between the  
23 descriptions, but you say in your statement that you  
24 were dismayed and shocked, you have said in evidence to  
25 the Tribunal that you thought it was odd, and you 12:09  
26 contextualised that by saying that there was a lot of  
27 work going on in the human resource/employment front  
28 and you thought it was odd that this would be said or  
29 done. You also say on page 206 of yesterday's



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transcript:

"My belief is based on how I reacted to it. It was a visceral reaction."

12:10

And that is, I think you will accept, a very vivid description?

A. 206? Visceral, surprised, shocked, it jarred with me I think is the word. That is I word I used.

203 Q. That is another account you gave. And you also said in your recent documents which you just handed in this morning at page 4957, you said that you said to Mr. Dunne 'You must be out of your mind'.

12:10

A. Yes.

204 Q. And I think you also gave evidence that you said you must be joking?

12:10

A. Yeah, yeah. It was a passing -- it was a passing exchange between us and it was all thematically consistent. I felt this was extraordinary.

205 Q. Now. I will come on to the explanation in just a moment, Mr. Barrett, but just to confirm, you didn't protest or raise this with anybody at that time, isn't that right?

12:10

A. No, I didn't. And as I said yesterday, the only action that I took following this was, I re-examined the terms of reference of O'Higgins and I could not reconcile the two. It was as much as I did about it, and equally, on the record, I think it is my regret, that if -- if this could have been relived I would have done it much more

12:11

1           formally and protested formally.

2 206 Q.    Yes.  So having looked at the terms of reference, you  
3           having concluded that you couldn't see where it fit in,  
4           you then did nothing --

5           A.    Correct. 12:11

6 207 Q.    -- about it.  Yes.  Now, you didn't tell anybody about  
7           it until you say that you told Chief Superintendent  
8           McLoughlin, isn't that right?

9           A.    That's correct.  So let me try and contextualise the  
10          number of things that were going on in the ether at 12:11  
11          that point in time.  The agenda is fully loaded, I am  
12          not engaged with the preparation for O'Higgins.  My  
13          obligations are to Sergeant McCabe, as delegated by the  
14          Commissioner to me, and I am focused on that.  I see no  
15          reason whatsoever to change my engagement with Sergeant 12:12  
16          McCabe, and that continues, albeit, you know, he is  
17          then very involved in the O'Higgins Commission and  
18          there is a lull, as you will see in the chronology,  
19          effectively, between -- there are texts and there are  
20          some phone calls, but there isn't a lot of activity 12:12  
21          until 2016.

22 208 Q.    Yes.  In fact, it's interesting that you mention the  
23          texts, etcetera, Mr. Barrett.  Because on 14th May, the  
24          day after this comment is alleged to have been made to  
25          you, at 9:22 you text Sergeant McCabe to say: "M --" 12:12  
26          sorry.

27          A.    Yeah, this is in relation to his allowance.

28 209 Q.    On page 4957.  It's there on the screen if you are  
29          comfortable watching it on the screen.  You say in a

1 text to Sergeant McCabe:

2

3 "M, I just approved the set of expenses you sent into  
4 GPSU for the work done on the SPCF report."

5

12:13

6 And that is the Professional Standards Unit and the  
7 Penalty Points Report.

8

9 "Chief Ward will confirm on our behalf and you will be  
10 paid shortly. By the way, I owe you lunch and it's  
11 about time we made a plan. J."

12:14

12 A. Yes.

13 210 Q. And then Sergeant McCabe I think replies at 9:45, and  
14 he says, and these are the documents that you have  
15 handed in Mr. Barrett, says:

12:14

16

17 "Thanks very much, John. I really appreciate that.  
18 The O'Higgins Commission starts this morning with oral  
19 evidence so under pressure for the last month giving  
20 documents. I haven't forgotten about you. Will buzz  
21 you next week. Thanks again."

12:14

22

23 And then on -- yes, so on the 14th May, you are not  
24 divorced from the O'Higgins Commission going on, in  
25 fact you are in contact with --

12:14

26 A. Correct.

27 211 Q. Yes. And you are telling us that, in that context, the  
28 significance of what is alleged to have been said to  
29 you on the 13th went over your head, is that right?

1 A. You must understand that conversations between a boss  
2 and somebody in my role, I had to maintain a very well  
3 Chinese wall in the way that my interaction with  
4 Sergeant McCabe was focused on his welfare and the  
5 concerns for that that the organisation needed to 12:15  
6 express, and any matters said around that topic were,  
7 if they were shared with me like the conversation with  
8 Cyril Dunne, that's where it would remain. And it's  
9 not in my habit to go and have conversations with other  
10 people about what it is that my boss says to me unless 12:15  
11 it's a matter of general discussion. That is common  
12 courtesy. And so, Sergeant McCabe is the subject of  
13 this particular matter, there is an issue outstanding  
14 pertaining to expenses, I send him a text and that is  
15 how he responded. There is nothing further to be read 12:15  
16 into that.

17 212 Q. Mr. Barrett, I wasn't asking you whether you were  
18 conversing with Sergeant McCabe about it; I am simply  
19 putting it to you that you gave an explanation that  
20 other things were going on, it's a busy job, it's a big 12:15  
21 job, other things were going on so you weren't really  
22 thinking about the O'Higgins Commission, but in fact on  
23 the day that the O'Higgins Commission started its  
24 sittings, you are in touch with Sergeant McCabe so you  
25 know it's going on? 12:16

26 A. Of course I do, of course I do, it's the backdrop --  
27 the O'Higgins Commission, as I said, I think I used the  
28 term cottage industry, there was a tremendous amount of  
29 activity in Garda Headquarters in the period February

1 to May prior to the commencement, that I was aware of  
2 but not involved in, plus the activity that I was  
3 leading myself.

4 213 Q. You said in your evidence yesterday at page 198 that in  
5 the week of 14th of May -- you say that:

12:16

6  
7 "In the week of the 14th May I am asked to re-engage  
8 and effectively ensure that from a welfare perspective  
9 particularly --"

10 12:16

11 I think is how you put it. I will just get the full  
12 quote for you now, Mr. Barrett. 198. So, it begins,  
13 the passage begins on line 13, Mr. Barrett, where you  
14 are asked:

15 12:17

16 "In terms of the Commission, did you have some  
17 interaction with Sergeant McCabe after Superintendent  
18 Murray's report came on the 19th May? Did you see that  
19 report?

20 A. Yeah, the chronology is clear. I'm asked to  
21 reengage with Sergeant McCabe in a piece of  
22 correspondence from Superintendent Frank Walsh who was  
23 the Commissioner's secretary --

24 Q. Yes?

25 A. -- on or about 14th or 15th May. It's in that week  
26 I think, Mr. McGuinness. And so, I'm asked to reengage  
27 and effectively ensure that from a welfare perspective  
28 particularly --

29 Q. Yes?

1 A. -- that Sergeant McCabe is contacted, and I do  
2 that."

3  
4 So you are asked to reengage, as you put it, with  
5 Sergeant McCabe, but in fact your work with and around 12:17  
6 Sergeant McCabe had been going on from at least  
7 February 2015, isn't it?

8 A. It ran for 25 months, up to the 9th March 2017.

9 214 Q. Yes. And that when you are asked to reengage, I think  
10 that was in response to a specific issue which had 12:18  
11 arisen, which I will come to in just a moment, but in  
12 fact engagement was ongoing intermittently as you have  
13 described it in your evidence?

14 A. Yes.

15 215 Q. Yes. Now, you have accepted in your evidence that you 12:18  
16 have no note of -- that you didn't make any note of  
17 this conversation, and you accepted in your evidence  
18 yesterday on page -- that that is completely at odds  
19 with your normal conduct or style, I think on page 200,  
20 you say: 12:18

21  
22 "I am genuinely disappointed in myself that I didn't  
23 make a more detail note of it. It's not how I  
24 generally conduct myself."

25 12:18  
26 Now, firstly, when you refer to not making a more  
27 detailed note and your regret about not doing so, in  
28 fact you didn't make any note at all.

29 A. Correct. And just to demonstrate the normal course, I

1 amended -- as I dealt with other issues, perhaps the  
2 Garda College being a clear one, it began in the same  
3 month, in May of '15, my notes I think in that regard  
4 are chronological and clear, and that is why I said  
5 what I said, I was sorry I didn't make a note. I 12:19  
6 didn't.

7 216 Q. I presume you have either been in attendance at the  
8 Tribunal or following the transcripts. Are you aware  
9 that all of the evidence that has been given to the  
10 Tribunal is to the effect that there was no discussion 12:19  
11 or decision as to the approach to be taken in the  
12 O'Higgins Commission until May and in fact until the  
13 week of the 11 th/12th May onwards, are you aware of  
14 that?

15 A. Yes. 12:19

16 217 Q. Yes. And in fact, the evidence is that no decision was  
17 made as to an approach or the approach to be taken in  
18 O'Higgins until the 14th May?

19 A. I have read that.

20 218 Q. Now, can I then just come back, and I will do this 12:20  
21 relatively quickly, Mr. Barrett, could I just come back  
22 to your memos or minutes of your meetings with Sergeant  
23 McCabe. If I could ask you to look firstly at the one  
24 of the 31st May 2016, which is at page 3066. So this  
25 is a meeting, Mr. Barrett, I think in Sergeant McCabe's 12:21  
26 family home, and it's headed:

27  
28 "Part of the regular round of contact to review welfare  
29 and issues arising following the revelations in the

1 media of the statements made by Mr. John McGuinness,  
2 TD, concerning the TD's meeting with the then-Garda  
3 Commissioner Martin Callinan on January 24, 2014, six  
4 days before Sergeant McCabe was scheduled to give  
5 evidence to the PAC." 12:21

6  
7 And that issue is discussed at the meeting, but there  
8 is also a discussion around the approach that was  
9 adopted in the O'Higgins Commission, isn't that right?

10 A. This is Sergeant McCabe informing me, yes? 12:22

11 219 Q. Yes. And on page 5 of that statement -- or of that  
12 minute, 3070, you say:

13  
14 "I explained that I could not make any worthwhile  
15 comment on the events as I did not know of any of that 12:22  
16 until I read the media reports. I explained that,  
17 though it may seem odd given my office, I was not  
18 involved in the preparation or decision-making with  
19 respect to the O'Higgins Commission at any stage. I  
20 did give a certain amount of support to the then-chief 12:22  
21 in GPSU, Seán Ward, who was charged with gathering and  
22 submitting documentation for the Commission, but other  
23 than that I was an outsider to the process."

24  
25 Now, was that not an opportunity to either say to 12:22  
26 Sergeant McCabe: in fact, I had a conversation where I  
27 was told in advance that we were going to go after you  
28 at the Commission, or, if you didn't want to say it or  
29 feel that it was appropriate to say it to Sergeant



1 McCabe, to go back to the Garda authorities and say,  
2 Sergeant McCabe is extremely upset about what happened  
3 in the O'Higgins Commission and, in fact, I think he is  
4 correct to be because I was told this before the  
5 O'Higgins Commission even started to sit?

12:23

6 A. It would have been highly inappropriate for me to make  
7 such remarks to Sergeant McCabe. My minute couldn't be  
8 clearer. It is just that point, that is illustrated by  
9 those six lines. I am reporting what it is that  
10 Sergeant McCabe said of the O'Higgins Commission, I  
11 think in the clearest possible terms. And it is  
12 perfectly plain to those who would have been the  
13 recipients of that minute, including Cyril Dunne, as to  
14 what his perspective was. Also, respect for my boss in  
15 the Chinese wall, I did not breach it. It would be  
16 inappropriate for me to do so. But the minute is  
17 carefully written for the purposes of conveying his  
18 perspective.

12:23

12:23

19 220 Q. Sorry, Mr. Barrett, how on earth would it have been  
20 inappropriate for you to tell your immediate line boss  
21 something that he himself said or to report to his boss  
22 that this had been said?

12:24

23 A. I reported precisely what it was that I had responded  
24 to Sergeant McCabe, as the Commissioner's interlocutor,  
25 and made clear to him I was an external party to the  
26 preparations for O'Higgins. And the rest of the  
27 minute, and you have referred to it repeatedly, deals  
28 with Sergeant McCabe's view of how it is he was being  
29 treated at the O'Higgins Report -- at the O'Higgins

12:24

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Commission.

221 Q. Yes, it does also contain your view in the final paragraph on that page where you express -- you restate your commitment to cultural change and the healing of wounds, and then you go on to say that:

12:24

"I express my revulsion at the matters revealed to them by Mr. McGuinness."

That is Deputy McGuinness.

12:25

A. Absolutely.

222 Q. Yes. So you are not averse to expressing an opinion in the minute?

A. So let's be very clear about the central tenet and what that minute is primarily about, and you refer to it yourself in the purpose. Part of a regular round of contacts but primarily dealing with the statement made by John McGuinness, TD, in the House concerning the meeting that he says he had with the former Garda Commissioner Martin Callinan. I must point out all of the allegations that Sergeant -- that John McGuinness made, were unknown to me in their fine detail until such time as I attended the home of Lorraine and Maurice McCabe. I found this a shocking meeting and I found the matters revealed in the course of that meeting, when I inquired what lay behind the use of the term "vile allegation" -- "vile allegations", when it was explained to me, I found it horrific." As I left the McCabe household that night, I drove to the village

12:25

12:25

12:25

1           closest by. I telephoned the deputy commissioner of  
2           strategy and change management, Donal Ó Cualáin, now  
3           Acting Commissioner. I didn't get him. I rang his  
4           superintendent -- office chief of staff and I made an  
5           appointment to see him when I got back from Donegal. I 12:26  
6           felt this was an extraordinary meeting and one that  
7           really was focused on those allegations. This will  
8           remain with me for the rest of my life, frankly.

9   223   Q.   So it being an extraordinary meeting and the level of  
10        upset and hurt that you describe Sergeant McCabe and 12:26  
11        his family experiencing and feeling, didn't cause you  
12        to believe that you should inform your authorities that  
13        you had been told immediately before the O'Higgins  
14        Commission that we are going to go after him in the  
15        Commission, despite all of that? 12:26

16        A.   No, because this minute, this minute went to Mr. Cyril  
17        Dunne, it went to the Commissioner of the organisation.  
18        To the best of my knowledge, it went to the Minister  
19        for Justice under a Section 41 cover.

20   224   Q.   Yes. And your other memo then of 23rd August 2016, at 12:27  
21        page 4246.

22        A.   Volume 8?

23   225   Q.   Page 6 of that minute. You have a discussion, I don't  
24        want to go into the contents of the discussion,  
25        Mr. Barrett, but you had a discussion about Sergeant 12:27  
26        McCabe not returning to work under the current  
27        Commissioner, and you quote, you quote him as being  
28        told that, in their view -- him saying that, in their  
29        view, he risked being got at if he returned to work.

1 So you were being told then in August 2016 that  
2 Sergeant McCabe is being advised that he shouldn't go  
3 back to work because he would be got at by the  
4 Commissioner, and she is the person who you have said  
5 was with Mr. Dunne immediately before you were told by 12:28  
6 Mr. Dunne that a decision had been made to go after  
7 Sergeant McCabe?

8 A. Please guide me to the paragraph to which you refer.

9 226 Q. Yes. I would prefer not to go into the contents,  
10 Mr. Barrett, but if you look at the first -- the second 12:28  
11 full paragraph -- sorry, maybe I will begin at the top  
12 of the page.

13 A. 4246?

14 227 Q. 4246, and page 6 of that, so 4231, I think.

15 A. Okay. 12:29

16 228 Q. It's on the screen there. 4251, sorry, Mr. Barrett.

17 A. Can you put the matter to me again, please?

18 229 Q. You will see that the contents of the first three  
19 paragraphs in particular, there is a discussion of the  
20 advice that Sergeant McCabe has received about whether 12:29  
21 or not to return to work, and he appears to be advised  
22 that he shouldn't return to work because he would be  
23 got at by the then-Commissioner, Ms. O'Sullivan, and  
24 you record that in detail. Ms. O'Sullivan is the  
25 person who is with Mr. Dunne at the meeting immediately 12:30  
26 after which you are told of a decision, as you have put  
27 it, to go after Sergeant McCabe at the Commission.  
28 Now, you didn't refer to that in your minute, you  
29 didn't bring that up the line, you didn't bring it to

1 anybody, to say that Sergeant McCabe believes that he  
2 will be got at if he returns to work, he is laying that  
3 at the door of the current Commissioner and, do you  
4 know what, I believe there is good reason for that  
5 because she was involved in making a decision to go 12:30  
6 after him at the Commission; you didn't record it at  
7 all at that point?

8 A. You are absolutely right I didn't. These are  
9 quotations from Sergeant McCabe, and he can give direct  
10 evidence on it himself. If you go back to my minute of 12:30  
11 the 25th February, 25th February, now, this is even I  
12 think 25th February 2015, it's before O'Higgins, it's  
13 before any of this. Sergeant McCabe, in that minute,  
14 is recorded as saying to both Barry O'Brien and myself  
15 that he regretted making a statement in support of 12:31  
16 Commissioner O'Sullivan on her appointment and that he  
17 had, you know, regrets about those concerns. I cannot  
18 mediate the views that he expressed to me. I can  
19 record them, and that is all I did. These minutes are  
20 a faithful recording. And Sergeant McCabe himself can 12:31  
21 give evidence on the content of the conversation.

22 230 Q. Was that the limit of the job that you were assigned to  
23 do in this regard, to record Sergeant McCabe's comments  
24 and concerns?

25 A. No, absolutely not. And you yourself, as I understood 12:31  
26 the question earlier, made reference to the fact that  
27 considerable progress was being achieved in realigning  
28 Sergeant McCabe with the organisation in the period  
29 February to May 2015. I asked Sergeant McCabe, on the

1 very first occasion I met with him, to desist from  
2 writing to the Minister, the Taoiseach and the  
3 Commissioner, that we should do our business out of the  
4 glare of the media. He honoured that. Progress was  
5 made. And part of that progress is built on 12:32  
6 authenticity, it's built on faithful recording of  
7 matters discussed. It is about not gilding the lily.  
8 It's about using his voice in records of meetings.

9 231 Q. Yes. And simply conveying that, you didn't add to  
10 it -- 12:32

11 A. No.

12 232 Q. -- and you didn't say: and actually, I think there is  
13 some substance to that, for the following reason?

14 A. No.

15 233 Q. No. 12:32

16 A. And I didn't know that there was any dispute between  
17 Cyril Dunne and myself until such time as I read  
18 Mr. Dunne's statement, which is only a matter of months  
19 ago.

20 234 Q. Now, I just want to cover, I think, two other areas 12:32  
21 with you, Mr. Barrett. Just bear with me for one  
22 moment. Your evidence has been that you didn't  
23 appreciate the significance of what was said to you by  
24 Mr. Dunne at the time; that's correct, isn't it?

25 A. When it was said to me? 12:33

26 235 Q. Yes.

27 A. Yes.

28 236 Q. You didn't appreciate the significance when it was said  
29 to you?

1 A. I didn't appreciate the significance when it was said  
2 to me.

3 237 Q. Yet you describe yourself as having a visceral reaction  
4 to it.

5 A. Yes. 12:33

6 238 Q. Now, I have to put it to you that one only has a  
7 visceral reaction to something which is significant and  
8 the significance of which you appreciate?

9 A. Yes. It was at odds, it jarred with the work that I  
10 had spent three months doing in which I felt real and 12:33  
11 substantial progress was being made.

12 239 Q. Now, I think you then said in your evidence, and you  
13 may correct me if I am wrong, Mr. Barrett, that you  
14 realised the significance of it about two weeks later?

15 A. Yes. 12:33

16 240 Q. But you did nothing about it at that stage?

17 A. Correct. It was -- again, let me explain: The terms  
18 of reference and the secrecy under which the Commission  
19 of Inquiry was progressing was known to me in a general  
20 sense and that there were whispers in and around the 12:33  
21 organisation that there had been an adjournment for  
22 some period of time in O'Higgins for reasons which  
23 related to a recording or something like that. That  
24 did not sound to me as the way the Commission intended  
25 to proceed or it was intended to proceed. That is the 12:34  
26 beginnings of my knowledge.

27 MR. DIGNAM: Sorry, Mr. Barrett, just bear with me for  
28 one moment. Sorry, Chairman.

29 A. Can I request a bio break for five minutes, if that is

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not unreasonable?

MR. MCGUINNESS: Perhaps it's a good time to break for lunch, Chairman.

MR. DIGNAM: I will be less than five minutes, Chairman, when I am finished, but I just can't put my hand on a particular document.

12:35

CHAIRMAN: Let's do that. It's twenty five to. So twenty five to two.

THE HEARING ADJOURNED FOR LUNCH

12:35



1                   THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2

3 241 Q. MR. DIGNAM: Mr. Barrett, I'm sorry, I just couldn't  
4 put my hands on a particular document that I wanted to  
5 explore with you before lunch. If I could ask for 4205 13:43  
6 to be put up on the screen. I was bringing you to this  
7 document, Mr. Barrett, in the context of your evidence  
8 that you didn't appreciate the significance of the  
9 remark that was -- that's alleged to have been made by  
10 Mr. Dunne until a couple of weeks later. Now, this, I 13:44  
11 think, raises an issue that you're familiar with and  
12 that the Chairman has heard evidence about, which is  
13 Sergeant McCabe's resignation or stepping down from  
14 sergeant in charge of the traffic corps in Mullingar,  
15 which I think was communicated on the 18th May. And 13:44  
16 there's an email there from Sergeant McCabe to you of  
17 the 26th May 2015, where he says that he "really  
18 enjoyed the position and the work but that didn't last  
19 too long. I was forced to quit the position as a  
20 result of Commissioner O'Sullivan and I can't comment 13:45  
21 any further on that."

22

23 I think that not being able to comment is a reference  
24 to the Commission of Investigation and the  
25 confidentiality thereof. But Sergeant McCabe says that 13:45  
26 his stepping down is as a result of Commissioner  
27 O'Sullivan. Now, you then email -- forwarded that  
28 email to former Commissioner O'Sullivan on the same  
29 day, and you say:

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"N, I got this from Maurice earlier. I plan to call him tonight if I can and give you a full update in the morning. Best regards, J."

13:45

Now, this is the Commissioner -- sorry, this is the sergeant who you have been asked to ensure that he's obtaining all the necessary supports, etcetera.

A. Yeah.

242 Q. From February 2015, and then, on your evidence, asked to re-engage in or around the 17th/18th May 2015. You then get this email from him on the 26th May, and you forward it to the Commissioner, who you address as "N" in the email. Now, firstly, there's no sense of alarm or concern in that email, and there's obviously no reference to a belief on your part that anybody is going after Sergeant McCabe in the Commission. Could you explain why that is the case?

13:45

13:46

A. The succession of issues that were dealt with in relation to Maurice McCabe, this is just one such another. He had stepped down. My view was, I will talk to him and I will find out what this is about. That is purely what it is intended to communicate and to brief the Commissioner that this information had been received by me. That's the intention that was in my mind.

13:46

13:47

243 Q. It's quite, this isn't a criticism, it's quite an informal email. It's not addressed to Commissioner, Ms. O'Sullivan, it's not even addressed to Nóirín.

1           It's "N". would you accept that it's an informal way  
2           of addressing --

3           A.    It is an informal and it's from my Garda telephone and  
4           it's obviously something that I felt was important,  
5           because I think the forward time is not that dissimilar 13:47  
6           from the receipt time. It's in the same day. So what  
7           I wanted to do was bring it to her attention and say,  
8           look, I'll call him tonight.

9   244   Q.    Yes. But this is the Commissioner who you believe, on  
10          the basis of a conversation which you say took place on 13:47  
11          the 13th, has decided to go after Sergeant McCabe, the  
12          very person who, in the first email we looked at, is  
13          saying that he can no longer work in the traffic corps  
14          because of that Commissioner, and you're then  
15          addressing an email in very informal, friendly terms, 13:48  
16          I'd say, to that Commissioner, without any reference  
17          to --

18          A.    Yes.

19   245   Q.    -- to that conversation or the statement made  
20          by Mr. Dunne. 13:48

21          A.    Post - and this is the piece that I think is absolutely  
22          critical to this - post the discussion with Cyril  
23          Dunne, I continued to work faithfully to the  
24          instructions the Commissioner gave me in February, and  
25          I continued to do that. And this is just one such 13:48  
26          example of, we have an issue to deal with here, I'm  
27          going to give him a call and see what I can -- the  
28          matter of the discussion with Cyril Dunne grew in  
29          hindsight.

1 246 Q. I appreciate that --

2 A. That's the point.

3 247 Q. -- but what you said is that you realised the  
4 significance about two weeks later?

5 A. Yes. 13:48

6 248 Q. That is two weeks after 13th May?

7 A. Yes.

8 249 Q. This is the 26th May.

9 A. It is.

10 250 Q. And this is the Commissioner, who you have information, 13:48  
11 which causes you to believe that she, amongst others,  
12 has made a decision to go after Sergeant McCabe. And I  
13 have to put it to you, Mr. Barrett, that this email is  
14 completely inconsistent with that account.

15 A. I disagree. 13:49

16 251 Q. You disagree?

17 A. I disagree. It's simply in the scheme of me continuing  
18 to do what it is that I was asked to do and I'm saying  
19 I'm going to deal with this issue, much like I dealt  
20 with all of the media-related issues, all of the issues 13:49  
21 in relation to pay, all of the issues in relation to  
22 concerns that Sergeant McCabe was voicing.

23 252 Q. So did you not see this as an opportunity to say N, or  
24 Nóirín, or Commissioner, got this from Sergeant McCabe,  
25 I need to talk to you about a serious issue? 13:49

26 A. The assumption that I worked on was very clearly that  
27 on the basis of the reaction I gave to Cyril Dunne, it  
28 was clear that I felt, whatever was the suggestion, and  
29 I didn't understand the suggestion, and I have made

1 that clear, was something that was going to be  
2 injurious to this process. I continued my process.  
3 This is an example of the degree to which I had  
4 fidelity into that process. I was continuing to work  
5 on any and all issues that Sergeant McCabe raised. 13:50

6 253 Q. Well, is that quite correct, Mr. Barrett? I mean, you  
7 say you worked on any and all issues?

8 A. Yes.

9 254 Q. But here you have information to say that a member who  
10 you say you had reason to believe was being gone after 13:50  
11 at the Commission, just evaporates into the ether. You  
12 never raise it with anybody, you never deal with it,  
13 you never grapple with it, as Human Resources Executive  
14 Director. How is that dealing with that issue?

15 A. The issue that we are now seeing, in the light of the 13:50  
16 Tribunal and the Commission and all of the various  
17 other things at that point in time, was a statement as  
18 I left the office of Cyril Dunne where he said to me,  
19 "we're going after him at the Commission". I placed no  
20 weight on it at the time, I didn't actually understand 13:50  
21 it, but it jarred with the work that I was doing, and  
22 continued to do, as is evidenced by this email.

23 255 Q. Yes. I don't want to go over old ground, Mr. Barrett,  
24 but you've now said twice in the last minute or so that  
25 you didn't understand Mr. Dunne's comment and yet you 13:50  
26 described your reaction as jarring?

27 A. Yes.

28 256 Q. Having a visceral reaction?

29 A. Yes.

1 257 Q. Being one of shock and dismay. I have to put it to you  
2 that they are not the reactions of somebody who doesn't  
3 understand what they have just been told.

4 A. It was out of character in keeping with the actions we  
5 were proceeding with, that was the basis -- perhaps I'm 13:51  
6 not describing it appropriately, but that is exactly  
7 how I felt about it when the comment was made. I  
8 looked at the terms of reference, as I said, of the  
9 Commission of inquiry. It didn't seem to me how that  
10 could arise. I felt the issues that Maurice was going 13:51  
11 to articulate to the Tribunal in relation to  
12 Cavan-Monaghan were going to be addressed there. And I  
13 simply proceeded with the work that I was given in  
14 February.

15 258 Q. Correct me if I am wrong, Mr. Barrett, I think you said 13:51  
16 before lunch that one of the reasons you didn't mention  
17 it to anybody was Chinese walls, Mr. Dunne was your  
18 boss and you didn't think it appropriate to say it to  
19 anybody. Now --

20 A. The Chinese walls context is to Sergeant McCabe at the 13:51  
21 time when I was dealing with him on those other issues.  
22 I think you were referencing at the time my minute of  
23 the 31st May, or one of those occasions --

24 259 Q. Yes.

25 A. -- they were specific instances where I wrote, when 13:52  
26 it's about the matters, if you like, of the time.

27 260 Q. I think, in fact, I asked you both questions,  
28 Mr. Barrett: whether (a) you had told Sergeant McCabe  
29 or whether you considered it inappropriate that you

1 would tell him, and you addressed that, but I'd also  
2 asked you had you told anybody else, and it was in  
3 response to those questions that you referred to  
4 Chinese walls?

5 A. Yes.

13:52

6 261 Q. And I think I specifically asked you did you tell  
7 anybody in authority, and you said no, and I think it  
8 was in that context that you mentioned Chinese walls.  
9 Now, we know now that -- from your evidence, though not  
10 from your statement, that, in fact, you say that you  
11 told Chief Superintendent McLoughlin?

13:52

12 A. Some time later I think I did. That's my -- to the  
13 best of my ability.

14 262 Q. And some time later -- on page 20 of today's  
15 transcript, you said that you spoke to Chief  
16 Superintendent McLoughlin in or around April 2017; in  
17 other words, in around the time of making your  
18 statement, but I think you then clarified it to say  
19 that it was several weeks after the statement had been  
20 made to you in May '15. And you also said in response  
21 to a question I think from the Chairman, possibly  
22 Mr. McDowell, that you spoke to Chief Superintendent  
23 McLoughlin when the O'Higgins Commission was in  
24 session. Now, which is it, Mr. Barrett?

13:52

25 A. Okay. This is a lot less clear for me, simply because  
26 my conversations with Tony McLoughlin would have ranged  
27 over a whole series of issues. I believe I mentioned  
28 it to him in the period of the sitting of the  
29 Commission, which I think ran for about six months.

13:53

13:53

1 That's the best of my recollection, and I may be wrong  
2 about that, but that is the best of my recollection.  
3 And it would be in the context of his role, as I said,  
4 as somebody else who was dealing with protected  
5 disclosures and various other people like that. 13:53

6 263 Q. Now, you mentioned for the first time Chief  
7 Superintendent McLoughlin in this context whilst you  
8 were giving evidence yesterday, and the Tribunal asked  
9 Chief Superintendent McLoughlin to meet the Tribunal's  
10 investigators to be interviewed this morning, and he 13:54  
11 attended to be interviewed at, I think, 9:15, and that  
12 interview took place. We have been circulated with the  
13 record, the statement taken by those investigators, and  
14 that's at page 4994 of the booklet.

15 A. 4994. Of this booklet? 13:54

16 264 Q. And on page 4 of that, which is page 4997.

17 A. I'm sorry, I don't have that.

18 265 Q. I'm sorry.

19 A. Okay. It's on the screen.

20 266 Q. And on page 4 of that, which is page 4997, it begins 13:54  
21 with a quote from your statement in which you refer to  
22 this statement being made, or this comment being made  
23 by Mr. Dunne. And Chief Superintendent McLoughlin, who  
24 I think you've said you worked very closely with and  
25 have a good working relationship with, says: 13:55  
26

27 "I have also been provided with a document containing  
28 transcript extracts of the evidence given by Mr. John  
29 Barrett at the Disclosures Tribunal on 1st February,



1 two pages in total. This two-page document has been  
2 exhibited as part of my statement. I have also been  
3 provided with access to a printed copy of the evidence  
4 of Mr. Barrett at the Disclosures Tribunal while making  
5 this statement. I have had an opportunity to read 13:55  
6 transcript extracts of the evidence given by Mr. John  
7 Barrett at the Disclosures Tribunal. Given the above,  
8 I have been asked whether Mr. John Barrett ever told me  
9 that Mr. Cyril Dunne said to him the following 'we are  
10 going after him', Sergeant Maurice McCabe, 'in the 13:56  
11 Commission'. If so, I have been asked to provide  
12 details of what was said to me by Mr. Barrett and to  
13 detail all the attendant circumstances, including date,  
14 time, location and who else was present.

15  
16 Answer: The first thing I would say is that last  
17 Friday, 26th January 2008, I had a missed call from  
18 Mr. John Barrett at 9:27 hours. I was at a meeting so  
19 I could not take the call. I note that I also received  
20 a text from John at 9:28 hours that read 'T, can you 13:56  
21 give me a call. J'. I had meetings all that morning.  
22 I did not have an opportunity to get back to him. I  
23 then got a call from John at 12 :39 hours. My  
24 colleague picked up it and said to me 'You need to get  
25 on to John'. I think it was about 13:30 hours when I 13:56  
26 got to him. John was putting his papers together. He  
27 was on his way out the door to meet his counsel. John  
28 showed me his file he put together in respect to his  
29 evidence for the Tribunal. I was anxious to meet John

1 before he gave evidence and I had not had the  
2 opportunity. The reason was, I had an entry in my  
3 journal following a one-to-one meeting I had with John  
4 about Sergeant McCabe and he may not have been aware I  
5 had taken notes. This meeting was on the 18th January 13:57  
6 2017. The time of the note was 16:30 hours. I briefly  
7 mentioned this to him from the perspective that if it  
8 came up in the Tribunal, we had not had the opportunity  
9 yet to discuss my note. I have already provided this  
10 note to the Tribunal, to the Garda -- Tribunal liaison 13:57  
11 office. John spoke about his evidence and all the work  
12 he had put into it. He then said, 'Do you recall me  
13 saying to you about a meeting I had with Cyril Dunne  
14 about the strategy that is being embarked upon?'  
15 This did not come as a surprise to me as I said to 13:57  
16 John, 'You mentioned it to me before Christmas' 2017.  
17 And I told him I had no recollection of him saying it  
18 to me before then. If John had sat me down at that  
19 time and formalised this in a meeting between us, the  
20 chances are I would have taken notes, but I have no 13:57  
21 note of any such conversation. The conversation I had  
22 with John on the 26th January 2008 was casual, as he  
23 was on his way out the door for a meeting with his  
24 counsel and, as such, I did not make a note of this  
25 conversation. Both conversations in respect of this 13:58  
26 matter took place just between the two of us. The  
27 first conversation was, as I said, before Christmas  
28 2017. It could have been November or December. I  
29 don't have an exact date."

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And he then deals with whether he has any -- whether he personally has any notes. And then on page 5000, the statement goes on to say:

13:58

"In respect of the above, I have been asked whether I spoke to Mr. Barrett in the last number of days as purported by him and specifically whether I confirmed to him that he had told me previously about his purported meeting with Mr. Cyril Dunne and what was alleged to have been said by Mr. Dunne as detailed above. If so, I have been asked to provide details of what was said and to detail all the attendant circumstances of the said conversation, including, date, time, location and who else was present.

13:58

13:59

A. I refer to my previous answers. Just to emphasise, I did not raise the matter with John. He raised it with me. That was last Friday, 26th January 2018.

13:59

Q. I have been asked whether I made a contemporaneous note or any record whatsoever, however made or however stored in this conversation with Mr. John Barrett in recent days before he gave his evidence on 1st February and, if so, I have been asked to provide same to the Disclosures Tribunal.

13:59

A. No.

1 Q. I've again been referred to the exhibit AM1 and  
2 I've been asked whether Mr. Barrett's evidence is  
3 accurate in respect of his account of his alleged  
4 interactions with me.

5  
6 A. It is inaccurate that I raised it with him on the  
7 26th January 2018. I can state there was a  
8 conversation on the 26th January 2018, as I have  
9 outlined above. From the evidence of John Barrett  
10 yesterday, it appears that he may be saying that he  
11 said this to me sooner than November/December 2017.  
12 However, I have no recollection of it being said to me  
13 by John Barrett prior to November/December 2017.

14  
15 Q. I have been asked whether I can explain  
16 Mr. Barrett's assertion during his evidence to the  
17 Disclosures Tribunal on 1st February 2018 that he told  
18 me about his alleged conversation with Mr. Cyril Dunne  
19 on 13th May 2015, some time after that date and that he  
20 confirmed this with me in recent days or whether I can  
21 explain the variance between our accounts.

22  
23 A. I can't explain the variance. There is nothing  
24 further I can add, other than what I have stated above.

25  
26 Q. I have been asked whether I have any other  
27 information and/or evidence in my knowledge relating to  
28 terms of reference (e) which may assist the Disclosures  
29 Tribunal.

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A. No. Only to reinforce the comment that John has given in his evidence in that there was a lot of support put in place to ameliorate the situation for Sergeant Maurice McCabe in respect of his workplace environment. I can also state that neither Cyril Dunne nor any other member of An Garda Síochána ever said to me that there was a strategy being embarked upon in the O'Higgins Commission against Sergeant McCabe, apart from what I have outlined above."

14:00

14:00

Now, in your evidence yesterday, Mr. Barrett, you said that Chief Superintendent McLoughlin had verified, is the word you used, to you in recent times, and I don't want to go into a specific time in that, but in recent times, that you had said to him at an earlier stage that Mr. Dunne had made the particular comment to you.

14:01

A. I would -- I would have a lot of credence in the statement you've just read to me, with the addition that I had clear recollection of having a discussion with the superintendent in the currency of the O'Higgins tribunal. I had a conversation with him as he describes. It is not -- it is not the clearest part of my recollection, and I willfully acknowledge that.

14:01

267 Q. Yes. Well --

14:01

A. And nothing in the note of that recent conversation I can argue with.

268 Q. Yes. Well, that is very fair, Mr. Barrett. There's two limbs to that, I suppose: One is, you say that you

1 had a clear recollection of saying it to Mr. McLoughlin  
2 initially, whenever that was. Chief Superintendent  
3 McLoughlin says he has no memory of that.

4 A. I understand.

5 269 Q. And you also said, you said in your evidence, and this 14:02  
6 is about more recent times, you said in your evidence  
7 that Chief Superintendent McLoughlin had verified the  
8 conversation --

9 A. I will accept it --

10 270 Q. -- and he says no. 14:02

11 A. Yeah, the verification is that there was a conversation  
12 and that he has described it there. I'm not seeking to  
13 dispute that, and I do apologise for misleading the  
14 Tribunal yesterday in that regard. I had very many  
15 conversations with Chief Superintendent Tony 14:02  
16 McLoughlin. I regard him highly.

17 CHAIRMAN: I'm sorry to interrupt, but that is not the  
18 point. The point is, you told me yesterday that you  
19 said to Chief Superintendent McLoughlin, at some stage  
20 after the conversation, look, I've just had this 14:02  
21 conversation with Cyril Dunne or within the last  
22 several weeks --

23 A. Yes.

24 CHAIRMAN: -- is how you put it.

25 A. That was my recollection, sir. 14:02

26 CHAIRMAN: You also said that he came to you very  
27 recently and reminded you of that conversation. Now,  
28 he's denying both things.

29 A. Yes.

1 CHAIRMAN: You're not being asked as to whether you had  
2 a conversation with Chief Superintendent McLoughlin,  
3 you clearly did on many occasions, about everything  
4 from, I suppose, work to rugby to Gaelic football.  
5 That is not the point. So it's just that that I am 14:03  
6 interested in.

7 271 Q. MR. DIGNAM: Yes. The Chairman has identified a repeat  
8 of your evidence, Mr. Barrett. You said two things  
9 about Chief Superintendent McLoughlin -- amongst what  
10 you said about Chief Superintendent McLoughlin were two 14:03  
11 things. One was that he had verified that you had said  
12 to him at an earlier stage that Mr. Dunne had said this  
13 to you. Okay. But you also said, and it was quite a  
14 striking comment, that Chief Superintendent McLoughlin  
15 came to you to give you that verification. 14:03

16 A. Okay. The discussion that I clearly did have with Tony  
17 McLoughlin was in the summer, in the currency of the  
18 O'Higgins tribunal. That is my recollection. It's not  
19 reflected in the note you've put on screen. And if I  
20 was to consider the text as taken from Tony this 14:04  
21 morning, I would accept that, that conversation to take  
22 place. As to whether he came to me or I came to him,  
23 clearly I went to him. And I did send him a text, as  
24 you have read, and that is correct.

25 272 Q. So do I take it then that you accept Chief 14:04  
26 Superintendent McLoughlin's evidence that he didn't  
27 verify to you?

28 A. Yes, I do.

29 CHAIRMAN: If that is the case today, why did you tell

1 me something different yesterday?

2 A. Because, quite frankly, that was my recollection. The  
3 best evidence I gave you yesterday was of my  
4 recollection. I do have a very clear recollection of a  
5 discussion with Chief Superintendent McLoughlin in the 14:04  
6 currency of the Tribunal. Again, Chairman, as to  
7 whether I have a note, I don't. And so this would  
8 be --

9 CHAIRMAN: No, that is not the question. You said to  
10 me yesterday -- 14:05

11 A. I understand that.

12 CHAIRMAN: -- that you had that conversation verifying  
13 that you had told --

14 A. Yes. And I shouldn't have used the word "verifying".  
15 I accept that. 14:05

16 CHAIRMAN: I don't think you used the word "verifying",  
17 either way.

18 A. Well, I've just been --

19 CHAIRMAN: I am using the word "verifying" as making  
20 something out to be true. Now, you told me yesterday 14:05  
21 that you made something out to be true, which was that  
22 you'd spoken to Chief Superintendent McLoughlin in the  
23 last number of weeks, that he had come to you and that  
24 he had reminded you that you had had a conversation  
25 with him some time previously, which you're identifying 14:05  
26 as some time during the currency of the O'Higgins  
27 Commission.

28 A. Yes.

29 CHAIRMAN: which lasted up until April 2016, from the



1 3rd February 2015. The conversation that you allege  
2 took place was with Cyril Dunne and you say it was on  
3 the 13th May 2015. And you say that he actually came  
4 to you to say you reported that conversation from Cyril  
5 Dunne to me. Now, I appreciate that, for all I know, 14:06  
6 you may be very good friends with Chief Superintendent  
7 McLoughlin, you don't want to disagree with him, but  
8 I'm in the unfortunate position where --

9 A. I understand.

10 CHAIRMAN: -- where I have two people telling me 14:06  
11 diametrically opposed things, and you seem to be  
12 telling me now something completely different to what  
13 you told me yesterday.

14 A. I do apologise.

15 CHAIRMAN: Don't worry about the apologies. The 14:06  
16 apology doesn't matter. What I actually want to know  
17 is what happened? What do you say happened now?

18 A. I accept Tony McLoughlin's version that I came to him.  
19 And the verification issue, I went to him to put this  
20 to him, as to whether or not -- that's the import of my 14:06  
21 text. I was seeking to clarify what it is that he  
22 said. If I misled the Tribunal yesterday, I do  
23 apologise.

24 CHAIRMAN: Well, what are you saying now?

25 A. I'm saying that the Chief Superintendent is correct in 14:07  
26 his summary of the dialogue between us in the recent  
27 weeks.

28 CHAIRMAN: And about never speaking to you about Cyril  
29 Dunne during the currency?

1 A. I hold firmly to the view that there was a conversation  
2 in the currency of the Tribunal, and that was, you  
3 know, again, something that is in my recollection, but  
4 clearly Tony disagrees with me.

5 CHAIRMAN: But how could you get those two things so 14:07  
6 wrong?

7 A. Well --

8 CHAIRMAN: I mean, just look at it, if you wouldn't  
9 mind, at the moment, that yesterday you had a clear  
10 recollection of Chief Superintendent McLoughlin coming 14:07  
11 to you and reminding you: you told me some time ago  
12 that you had had a conversation with Cyril Dunne and  
13 that he had said, "we are going after Maurice McCabe in  
14 the O'Higgins Commission"; secondly, that you actually  
15 had a conversation with Chief Superintendent McLoughlin 14:08  
16 in or around several weeks of that conversation  
17 allegedly happening on the 15th May and telling Tony  
18 McLoughlin: "I've just had a conversation in the last  
19 while with Cyril Dunne to say that --"

20 A. I have a clear -- 14:08

21 CHAIRMAN: Sorry, just wait.

22 A. Sorry.

23 CHAIRMAN: "-- just to say that we are going after  
24 Maurice McCabe at the Commission." But, I mean, how  
25 can you get those two things -- well, if you were 14:08  
26 sitting in my place, Mr. Barrett, what would you  
27 believe? How do you explain it or reconcile it on a  
28 human level? That is all I am asking you.

29 A. The reality, sir, is that this conversation, the

1 original conversation between Cyril Dunne and I took  
2 place much as I described it. The reality of the  
3 discussion thereafter was, I did not, until several  
4 weeks after, understand -- the import of that  
5 conversation became clear to me as I understand what 14:09  
6 transpired in the O'Higgins Commission in the two or  
7 three weeks thereafter. In the period of weeks or --  
8 thereafter, I have a real clear understanding that I  
9 did speak to Chief Superintendent Tony McLoughlin, and  
10 he doesn't have any recollection of it, clearly, from 14:09  
11 his notes as presented, and that I sought to verify  
12 that with him in discussions in the last number of  
13 weeks as I prepared to come and give evidence to assist  
14 the Tribunal, and I'm at odds with Tony's report, but I  
15 will accept Tony's report as it is much more current 14:09  
16 and recent and dated than mine.

17 CHAIRMAN: I don't think, Mr. Barrett, it's a question  
18 of accepting somebody's report. I mean, if you know  
19 there is a door behind you and somebody else reports  
20 that is an absolutely solid wall, you may well like the 14:09  
21 person who is making the report that it is a solid  
22 wall, but you are still obliged to tell the truth.  
23 Now, what is the truth about this?

24 A. The truth of this matter is that in and around 13th  
25 June -- of May 2015, in a conversation in Cyril Dunne's 14:10  
26 office, as I was about to leave, he mentioned to me  
27 "we're going after him in the Commission". And I  
28 expressed surprise at that particular statement and I  
29 responded to it in an immediate way. I proceeded

1 thereafter to make no note and to make no further  
2 comment on the matter. And in the two weeks there  
3 following, it was clear to me that there was some  
4 connection potentially between what was then happening  
5 in O'Higgins and what that might be, but it wasn't at 14:10  
6 all clear to me at that point in time. Over the  
7 succeeding weeks, I believe I had that conversation I  
8 described with Tony McLoughlin, which he denies, and I  
9 sought, in the weeks coming up to this sitting of the  
10 Tribunal where I was being called to give evidence, I 14:11  
11 sought to talk with Tony McLoughlin. And if I misled  
12 the Tribunal, I do apologise, and I clearly did because  
13 you've presented the transcripts to me. But the  
14 conversation with Mr. Dunne is a reality.

15 CHAIRMAN: I don't want to interrupt Mr. Dignam, and my 14:11  
16 hope every day is to remain silent for the entire day,  
17 and I can't sometimes. But I did put the scenario to  
18 you, he's saying one thing, you're saying the other.  
19 If you know one thing to be true, you can't reduce  
20 things to a basis of mere belief or you can't say I now 14:11  
21 accept somebody else 's report. If, for instance, you  
22 know that there is a door behind you and they are  
23 saying no, it's a solid wall, that's -- I have to  
24 report on reality, not on people's beliefs. So I think  
25 I'm going to leave it at that and let Mr. Dignam 14:11  
26 continue.

27 MR. DIGNAM: Thank you, Chairman.

28 273 Q. Mr. Barrett, just to make clear, you're saying that you  
29 have a very clear recollection of a conversation which

1 happened some time around June 2015, this is the  
2 conversation with Chief Superintendent McLoughlin,  
3 where you say you told him that Mr. Dunne had said to  
4 you "we're going to go after him in the Commission",  
5 but you accept now that you got it completely wrong 14:12  
6 about a conversation which you had with Chief  
7 Superintendent McLoughlin in the last couple of months.  
8 I think Chief Superintendent McLoughlin refers to a  
9 period November/December onwards, that is what you  
10 accept, is that right? 14:12

11 A. Yes, that is what I accepted.

12 274 Q. Now, could I just debunk this vagueness, Mr. Barrett,  
13 where you've fallen back, in response to the questions  
14 being asked by the Chairman, to saying that the  
15 conversation happened in or around the 13th May 2015. 14:12  
16 You were provided with two opportunities this morning  
17 while Mr. McDowell was asking you questions and while I  
18 was asking you questions, to say whether it might have  
19 been another day, and you have pinned it on the 13th  
20 May, and, in response to the question I asked you, you 14:13  
21 say that is the day the conversation took place or it  
22 didn't take place; is that right?

23 A. That's correct, yes. And I was with the Commissioner  
24 and Cyril Dunne on the night of the 12th, and I believe  
25 the conversation was on the 13th, and you've shown me a 14:13  
26 diary which says it couldn't take place on the 13th.

27 275 Q. And Mr. McGuinness has shown you in sworn evidence that  
28 it couldn't have taken place that day because  
29 Ms. O'Sullivan was out of the country.

1 A. She was out of the country.

2 276 Q. It's not just a diary entry, Mr. Barrett. You  
3 attempted to rely solely on it being a diary entry --

4 A. No, I wasn't seeking to be obtuse.

5 277 Q. Now, just a couple of matters of fact, Mr. Barrett. 14:13  
6 You said in your evidence this morning at page 22, in  
7 relation to your relationship with Mr. Dunne, that you  
8 frequently engaged on things, it was an open  
9 relationship. I think there are other matters on the  
10 public record which demonstrate the degree to which you 14:14  
11 collaborated. And I have no reason to suggest to you  
12 that you hadn't got a close working relationship and  
13 collaborated on a lot of things. Is it correct to say,  
14 Mr. Barrett, that there are also matters on the public  
15 record on which you disagreed? 14:14

16 A. We did come to disagree on some things, yeah.

17 278 Q. In public, isn't that right, in a public forum?

18 A. In public and after the fact in relation to matters  
19 that we were dealing with, which happened after this  
20 particular set of events. 14:14

21 279 Q. And, in fact, what you had said about Mr. Dunne was, in  
22 fact, shown to be incorrect, isn't that right?

23 A. What did I say about Mr. Dunne?

24 280 Q. You had suggested that he hadn't provided information  
25 to an audit committee, and in fact it turned out that 14:14  
26 he had, isn't that right?

27 A. That's not correct.

28 281 Q. So what did you disagree about?

29 A. We disagreed about the approach in making public

1 certain matters of financial irregularity at the Garda  
2 College.

3 282 Q. Now, just for completeness' sake, Mr. Barrett, I think  
4 you're aware, and you have touched on it in your own  
5 evidence, in fairness, Mr. Dunne denies that he said 14:15  
6 this to you and says that he had no basis for saying  
7 that?

8 A. Yes, I understand that.

9 283 Q. You've seen the statement. I want to put that to you.  
10 Ms. O'Sullivan, who you say was at the meeting, but you 14:15  
11 go further than that, because you've said, if not in  
12 words then by implication, that she made the decision  
13 to go after --

14 A. I haven't said that.

15 284 Q. Sorry, who made the decision, sorry? 14:15

16 A. I would suspect the "we" there reflected the executive,  
17 perhaps, in the organisation. It didn't get specified.  
18 But "we" is a collective.

19 285 Q. Okay. So the extent of your belief is that you would  
20 imagine that that was the case? 14:15

21 A. No. But he didn't say I made the decision. It was  
22 "we".

23 286 Q. Well, in any event, I'm sure you've heard the evidence?

24 A. And the "we" could have been a collective involving me  
25 as well. 14:15

26 287 Q. So you've heard the evidence. Ms. O'Sullivan has  
27 denied --

28 A. I understand.

29 288 Q. -- that there was any decision to go after or to attack

1 Sergeant McCabe.

2 A. I understand that.

3 289 Q. And you've heard that she, in fact, wasn't in the  
4 country. So you came yesterday, Mr. Barrett, on the  
5 basis of a statement which you gave in April 2017, and 14:16  
6 you gave further information which was significant, and  
7 one piece of information which was quite startling, I  
8 have to say to you, was that this meeting happened on  
9 the 13th May, which, as you know, because you have  
10 watched the Tribunal carefully, is a significant date. 14:16  
11 That was the first time you told us that date. But  
12 it's also a significant date in the chronology that  
13 this Tribunal is investigating. Do you appreciate  
14 that?

15 A. I think the entire week is significant in the history 14:16  
16 of the Tribunal, yes.

17 290 Q. Now, if I could just try and summarise, Mr. Barrett,  
18 and I will conclude with this and I want to get your  
19 comment on this. You're an experienced, mature,  
20 independent professional. You have vast business 14:17  
21 experience in a variety of different types of companies  
22 in different areas of the world. You have shown  
23 yourself, and in fact in one of your comments in your  
24 evidence I think pride yourself on being a detailed  
25 note-taker and conveyor of information. Your memos of 14:17  
26 your meetings with Sergeant McCabe give full  
27 information about the discussions that you have with  
28 Sergeant McCabe, they recite narrative details or  
29 surrounding circumstances, such as comments on the



1 light as you're departing Sergeant McCabe's home, such  
2 as the apple tart that you were fortunate enough to  
3 enjoy on your visits, and the condition in which you  
4 found Sergeant McCabe, which is why you were there in  
5 your welfare role. A statement is made to you, which 14:18  
6 you say happened on the 13th May, which is directed at,  
7 and which means, that something is going to be done to  
8 or with an employee, and you're responsible for the  
9 employees as the human resources director, which is  
10 significant, even if only in the context of the work 14:18  
11 that you've been doing for a few months before that,  
12 but you don't note it and you don't report it, despite  
13 your detailed note-taking on other occasions. When, on  
14 your evidence, when its significance becomes apparent  
15 to you in the couple of weeks after that, you don't 14:18  
16 note it and you don't report it. You then make a  
17 statement to this Tribunal and you don't tell the  
18 Tribunal when the comment by Mr. Dunne is alleged to  
19 have been made and you don't tell the Tribunal either  
20 in April 2017, and we've heard your explanation for 14:19  
21 that, but, more importantly, you don't tell the  
22 Tribunal when your solicitor writes in on the 17th  
23 January 2018, eight months after you made your original  
24 statement. You then tell the Tribunal when you come to  
25 give evidence that it was, in fact, on a day, 13th May, 14:19  
26 when the Commissioner, who you say was at a meeting  
27 with you on that day, wasn't even in the country, the  
28 meeting with Ms. O'Sullivan couldn't have happened, and  
29 that's at a time when some of the evidence has already

1           been heard. The Tribunal has already been sitting for  
2           three or four days at that stage. And the one person  
3           who you identify as (a) you telling about what  
4           Mr. Dunne has had to say and (b) as you say, verified  
5           to you that you had that conversation with him, (a) 14:20  
6           doesn't remember that you told him in the first place  
7           and (b) denies that he verified to you that you had  
8           that conversation in the first place. So that seems to  
9           me to be a summary of your evidence, Mr. Barrett. Now,  
10          I have to put it to you that what emerges from that is 14:20  
11          that the comment by Mr. Dunne simply couldn't have been  
12          made by him when you suggest it was made, or at all,  
13          and that you're wrong in saying that he made it?  
14          A. Can I say this: I'm here for one reason and one reason  
15          only, and that is to tell the truth as I know it. The 14:20  
16          details of when this comment was made to me was  
17          something that I had to triangulate or to go back and  
18          try and place at a point in time. I've placed it at a  
19          point in time on 13th May, and the comment I have said  
20          took place on that date, and, as you said, I've been 14:20  
21          given an opportunity not to hold with it. I was with  
22          the Commissioner and Cyril Dunne on the evening of the  
23          12th. And I very much regret not saying "on or about",  
24          because I do agree with you, my specificity, and my  
25          specificity is a real issue. However, that comment was 14:21  
26          made, I responded to it, and simply noted it. It  
27          wasn't a subject of a meeting. It was a comment en  
28          passant, the importance of which became clear to me  
29          later. That is my evidence. And I am seeking to make

1 it plain and clear. I accept the points that you're  
2 making, I accept that Tony's version of events in  
3 relation to the most recent set of comments, he has no  
4 memory of the discussion that took place probably in  
5 the months after the commencement of O'Higgins, and 14:21  
6 that is his memory and he can give evidence on that.  
7 I'm in no doubt, and I want to make this abundantly  
8 clear, and I do it for reasons to assist the Tribunal,  
9 I am in no doubt that this was said to me, and I make  
10 the point purely for the record. And, Mr. Dignam, I 14:22  
11 accept the skill of your cross-examination, I respect  
12 the points that you raise, but the reality is, the  
13 comment was made, and I'm giving evidence of it despite  
14 the difficulties of context that you point to.

15 291 Q. Yes. Mr. Barrett, just to conclude, there's no reason 14:22  
16 to regret not saying "in or around" or "on or around",  
17 because, in fact, you do say that several times. But  
18 then on page 200 of your transcript yesterday --

19 A. Yes.

20 292 Q. -- you say it was on that date. 14:22  
21 A. Yes.

22 293 Q. Under cross-examination by Mr. McDowell and under  
23 cross-examination by me, you have said it was the 13th  
24 May.

25 A. I understand that, I understand that. And I do want 14:22  
26 the matters to be dealt with in the context of my  
27 statement of April, which made clear that this  
28 statement was made to me, and it was.  
29 MR. DIGNAM: Thank you, Mr. Barrett.

1 MR. JOHN BARRETT WAS EXAMINED BY MR. ROGERS:

2  
3 294 Q. MR. ROGERS: Good afternoon, Mr. Barrett. A number of  
4 propositions have been put to you shortly -- a short  
5 time ago by Mr. Dignam, and one of them is that the 14:23  
6 Commissioner couldn't have been here on the 13th May.  
7 Now, we would appear to have two contradictory  
8 statements in that regard; one is that, this morning,  
9 you were furnished with extracts from the  
10 Commissioner's diary which appeared to show that she 14:23  
11 left London at 17:35pm, 4989, which would allow her to  
12 be in Dublin by half past six that day and which would  
13 probably allow her to be in Garda HQ by 7pm that day.  
14 In answering Mr. Dignam, have you considered that  
15 matter? 14:24

16 A. Yes, I have. And many of the emails that I've referred  
17 to and offered the Tribunal this morning in the  
18 overnight request that was made, are written well after  
19 that hour. There are emails written at eight o'clock,  
20 nine o'clock. So it's not unheard of to have people in 14:24  
21 the organisation --

22 295 Q. Yes.

23 A. Truthfully, I work long hours, I could have easily  
24 been, you know, at my desk in around the organisation  
25 long beyond that. 14:24

26 296 Q. I wonder could 4985 be put up, please. Do you see that  
27 email dated 13th May? It hasn't come up yet. Thank  
28 you. I'm looking for an email from John Barrett, on  
29 4985, to the Commissioner and Cyril Dunne on 13th May

1 2015 at nine minutes past seven. Mr. McGillicuddy  
2 thinks it's higher up the page. The other way, please.  
3 To the top of the page. Now, do you see that,  
4 Mr. Barrett?

5 A. I do indeed, sir. 14:26

6 297 Q. Is that your email?

7 A. It is.

8 298 Q. It's addressed to the Commissioner and Cyril Dunne?

9 A. It is.

10 299 Q. Copies to Mr. Walsh, that's Frank Walsh, is it? 14:26

11 A. It is.

12 300 Q. Fiona Broderick. Is that the day you mention?

13 A. That is the day I mention, yeah.

14 301 Q. Is it possible there was a discussion between you and  
15 Mr. Dunne later that day? 14:26

16 A. It is possible indeed.

17 302 Q. Is that the day that you believe that you heard from  
18 Mr. Dunne the words that are in controversy?

19 A. Yes, I think it is. This is a rather illegible copy  
20 and I just want to make certain that I can see. 14:27

21 Perhaps I could have a hard copy of that.

22 MR. MCGUINNESS: Volume 9.

23 A. Oh, it's in the volume, is it? Volume 9. And page  
24 number?

25 MR. ROGERS: 4985. 14:27

26 A. 4985. Yes.

27 303 Q. I think that that arose out of a discussion with a  
28 Mr. Banks in the Department on the previous day, the  
29 12th May, concerning promotions, isn't that right?

1 A. That's correct.

2 304 Q. And it appears that you were seeking to communicate  
3 with Mr. Dunne and the Commissioner that evening of the  
4 13th at five past seven?

5 A. Yes. 14:28

6 305 Q. So the Commissioner's counsel has put it to you that  
7 she wasn't in the country that evening. It appears  
8 from her diary that she left London at 17:35, and you  
9 have been, I suppose, cross-examined vigorously, is the  
10 way we might describe it, to the effect that you must 14:29  
11 be wrong about the date, but yet it appears possible  
12 that the Commissioner was actually in the country, is  
13 that correct?

14 A. That's correct.

15 306 Q. Mr. Barrett, do you have the sense that you may have 14:29  
16 been cross-examined on a false premise?

17 MR. DIGNAM: Chairman, I was very careful to put it to  
18 Mr. Barrett that, in fact, Ms. O'Sullivan wasn't in the  
19 country that day. I didn't say at any stage she wasn't  
20 there in the evening, so there is no false premise. 14:29  
21 But I would also draw your attention to page 15 of the  
22 transcript where Mr. Barrett said that the time of the  
23 meeting, "I understand the time of the meeting was in  
24 the evening", but he went on to say "close to the end  
25 of the day". Now, if he's going to suggest that "close 14:29  
26 to the end of the day" is up to midnight at some stage,  
27 then he could have said that in his evidence-in-chief.  
28 I should also say, Chairman, that our instructions are,  
29 to the extent that that will be suggested,

1 Ms. O'Sullivan will say that she wasn't in Garda  
2 Headquarters that evening.

3 MR. ROGERS: Well, with respect, My Friend  
4 cross-examined on the basis that the Commissioner was  
5 not in the country and he relied on a transcript to 14:30  
6 cross-examine my witness on that basis, and I am  
7 suggesting a cross-examination was conducted here on a  
8 false premise. And I am not asking My Friend, I am  
9 asking Mr. Barrett to deal with that. Can he help  
10 whether the Commissioner was there that night or not. 14:30

11 CHAIRMAN: Okay. Well, one of the things I have been  
12 looking for is as to whether there is any reply to  
13 that, and I know that, on some devices, such as the  
14 device you might carry in your pocket, it says on it,  
15 if you are replying from that device, sent from my 14:30  
16 something, my iPad, whatever. Now, there doesn't seem  
17 to be a reply to that. Secondly, I'm actually very  
18 familiar with flights to London, for personal reasons  
19 that I'm not going to go into, and I know that Ryanair  
20 have this very, very irritating trumpet call, having 14:31  
21 announced the time of the flight to be about 20 minutes  
22 longer than it actually takes, and then you arrive and  
23 you have to listen to this thing and then it takes you,  
24 and again I'm very familiar with this, waiting for  
25 people, 20 minutes to half an hour to get to the 14:31  
26 outside. So let's suppose the very best, an hour and  
27 ten minutes, plus 20 minutes, plus certainly half an  
28 hour, if you have a car, to get to Garda Headquarters.  
29 It is possible, but it makes it a good half an hour

1 later. Now, vis-à-vis words that are being bandied  
2 around here, I'm afraid I'm reminded of a cantata by  
3 Pablo Casals, which contains the words for the United  
4 Nations delegates "beware of words for with words we  
5 lie". I think we have to be very careful of our words. 14:32  
6 I don't want the ultimate nightmare scenario to be  
7 emerging here that there was some unfairness to  
8 somebody. Of course none of this can be leaked because  
9 it's all in public. But, if necessary, I will put the  
10 whole audio -- 14:32  
11 MR. ROGERS: Sorry?  
12 CHAIRMAN: If necessary, I will put the whole audio in  
13 the public domain, if necessary. I don't believe there  
14 was any (a) vigorous cross-examination, if that is  
15 regarded as a pejorative word, I don't think it is, I 14:32  
16 think there was a proper cross-examination, and I don't  
17 think that there has been a cross-examination on a  
18 false premise either. It would help me if people just  
19 deal with the facts instead of perhaps making comments  
20 at each other. 14:32  
21 MR. ROGERS: Judge, My Friend did very clearly state  
22 that Ms. O'Sullivan was not in the country, and relied  
23 on a transcript to that effect. Day 45.  
24 CHAIRMAN: Mr. Rogers, there's nothing wrong with what  
25 you say, there's nothing wrong with the line you have 14:33  
26 taken. Please don't take me as saying that. There's  
27 nothing wrong with it. Ms. O'Sullivan could indeed  
28 have been here.  
29 MR. ROGERS: Sorry?



1 CHAIRMAN: But it was -- the evidence that I have so  
2 far is that the conversation took place towards close  
3 of business. Now, if it really is in or around half  
4 past seven, eight o'clock in the evening, and  
5 Mr. Dunne, the Commissioner and Mr. Barrett are there 14:33  
6 together, it might be odd, might be unusual. It might  
7 be more memorable for that reason, I don't know. But  
8 again, I try to look for externals that will help me,  
9 and I don't see any reply from the Commissioner "sent  
10 from my iPad", or a reply from the Commissioner which 14:33  
11 indicates that it wasn't sent from her iPad or her  
12 device, or whatever it is. But, Mr. Rogers, the  
13 questions you are asking me are helping me, so I think  
14 we should carry on with it, if you don't mind.

15 MR. ROGERS: I'm delighted. 14:34

16 307 Q. I just want to ask you something about the discussion  
17 you've just had about Mr. McLoughlin, Chief  
18 Superintendent McLoughlin. I think it's clear from  
19 your evidence that, notwithstanding the discussion  
20 between yourself and Mr. Dignam this afternoon, you 14:34  
21 believe yourself that had you a conversation with Chief  
22 Superintendent McLoughlin some time about the time of  
23 the O'Higgins Commission regarding the statement you  
24 say Mr. Dunne made, is that correct?

25 A. That's correct, in the currency of the O'Higgins 14:34  
26 Commission, while it was sitting.

27 308 Q. So is the Chairman to take it that that is your belief,  
28 that you had such a discussion with Chief  
29 Superintendent McLoughlin?

1 A. That is my belief.

2 309 Q. Yes.

3 A. That is my belief.

4 310 Q. Is it the case that you are in a close working  
5 relationship with Chief Superintendent Tony McLoughlin? 14:35

6 A. Yes. He's a member of my senior staff.

7 311 Q. Is your working relationship with him such that you  
8 wouldn't wish in any circumstance to be in dispute with  
9 him?

10 A. I regard him highly, yes. I would not like to be in 14:35  
11 dispute with Tony McLoughlin. I regard him very  
12 highly. His integrity is of the highest order.

13 312 Q. I just want to check something, if I may, with the  
14 record. Could we have page 4988, please. Mr. Barrett,  
15 do you see line 62 there? 14:36

16 A. Yes.

17 313 Q. "The reason was I had an entry in my journal following  
18 a one-to-one meeting I had with John about Sergeant  
19 McCabe and he may not have been aware I had taken  
20 notes. This was a meeting on the 18th January 2017 at 14:37  
21 4:30pm."

22

23 Do you see that?

24 A. I do.

25 314 Q. Do you recall that meeting? 14:37

26 A. Yes, I do. I recall that meeting.

27 315 Q. Did Chief Superintendent McLoughlin discuss it with  
28 you?

29 A. Discuss what, specifically?

1 316 Q. Did he discuss that meeting with you when you raised  
2 the issue of his possible memory of a discussion you  
3 had before? Did he discuss that with you on that  
4 occasion recently?

5 A. We discussed the approach that I was taking to the 14:37  
6 gathering of my materials, simply because I couldn't  
7 put a date specifically on it, and it was a  
8 conversation around I'm working through these issues,  
9 as I've described earlier to various counsel.

10 317 Q. Yes. 14:38

11 A. And that was the context for me talking to Tony on that  
12 date.

13 318 Q. The impression one has from this statement of Chief  
14 Superintendent McLoughlin is that the discussion you  
15 had with one another that day was very brief, both of 14:38  
16 you seemed to be going in different directions; you  
17 were going, apparently, to meet your counsel?

18 A. Yes. It was brief.

19 319 Q. And is this the -- this is a recent discussion. Is  
20 this a discussion in January this year? 14:38

21 A. It is.

22 320 Q. Right. It's Friday 26th January, is that correct?  
23 A. If you tell me it's a Friday, yeah, it is.

24 321 Q. Yes. Do you have any difficulty with the date of the  
25 18th January 2017, which is in line 64? 14:39

26 A. I have no -- I'll need to understand what day the 18th  
27 January was. I tend to remember more clearly based on  
28 the days than dates.

29 CHAIRMAN: It can't be 2017, January 2017. I'm sorry

1 for interrupting, Mr. Rogers, but --  
2 MR. ROGERS: Not at all.  
3 CHAIRMAN: -- it has quite often happened that people,  
4 including myself, have given the wrong year for  
5 something. 14:39  
6 MR. ROGERS: Yeah.  
7 CHAIRMAN: We're talking about this year, I presume?  
8 MR. ROGERS: Well, candidly I'm not clear about that,  
9 because I have had no previous knowledge of this  
10 meeting. There's something incongruous about that 14:40  
11 date.  
12 CHAIRMAN: No, but let's say, as a matter of logic,  
13 someone is on the way to the Tribunal, they can't be  
14 before 17th February 2017.  
15 MR. ROGERS: Exactly. 14:40  
16 CHAIRMAN: So if this says January 2017, we're still  
17 early enough in the year when people haven't got used  
18 to 2018, so let's assume that it's this year. I  
19 presume you think it was this year as well,  
20 Mr. Barrett? 14:40  
21 A. It makes no sense otherwise.  
22 322 Q. MR. ROGERS: But if that is the case, what's the  
23 significance of the note Mr. McLoughlin had composed?  
24 A. I had no sight of this note, and, in my memory of any  
25 discussion I had with Tony at this time, I didn't see 14:40  
26 him take a note as we proceeded. So perhaps it's a  
27 note written subsequently, I don't know.  
28 323 Q. Okay. Well, if we look at the bottom of this page,  
29 4998, it does appear that Mr. McLoughlin agrees with

1           your evidence that you had a conversation together  
2           before Christmas?

3           A.    Yes.

4  324   Q.    Is that right?

5           A.    That's correct. 14:41

6  325   Q.    And the difference between ye is in the final line of  
7           4998 where Mr. McLoughlin says that he has no  
8           recollection of you saying Mr. Dunne's comment to him  
9           before that, that's the difference between ye?

10          A.    That's the essence of the difference between us, 14:41  
11          exactly.

12  326   Q.    And that's all?

13          A.    That's all.

14  327   Q.    So quite apart from any difference between what you  
15          might have said here today and yesterday, that's the 14:41  
16          essence of the difference between you and  
17          Mr. McLoughlin?

18          A.    That's correct.

19  328   Q.    Now, you made your statement to the Tribunal on 27th  
20          April 2017, isn't that right? 14:42

21          A.    That's correct.

22  329   Q.    And Mr. Dunne made his statement to the Tribunal in  
23          what appears to have been a question-and-answer, very  
24          formal engagement between him and the Tribunal on the  
25          2nd November 2017, is that right? 14:43

26          A.    That's correct. I think he met with Tribunal  
27          officials. we didn't.

28  330   Q.    So nobody knew what was the position of Mr. Dunne in  
29          respect of what you said he had said in 2015, at least

1           until the 2nd November last?

2           A.    That would appear to be the case, yeah.

3 331 Q.    And the first you knew about it was on the 19th  
4           December, or thereabouts?

5           A.    Or thereabouts, yeah. 14:43

6 332 Q.    And I think we already know that nobody alerted you  
7           that they were anxious to know from you the date of the  
8           interview you had with Mr. Dunne --

9           A.    No.

10 333 Q.    -- notwithstanding the fact that Mr. Dunne said in his 14:44  
11           statement that he didn't know the occasion of it, isn't  
12           that right?

13           A.    That's correct.

14 334 Q.    Now, your solicitor's letter of the 17th January 2018,  
15           which I think is very plain on its face, it's a letter 14:44  
16           which, in the third paragraph, states:

17

18           "with this in mind we believe it may be of assistance  
19           to the Tribunal if we outline the scope of our client's  
20           'dealings with Sergeant McCabe during the relevant 14:45  
21           period along with the documentation which our client  
22           believes is relevant'."

23

24           That is what your letter, your solicitor's letter was  
25           about? 14:45

26           A.    Correct, that is exactly it.

27 335 Q.    Now, I think that your solicitor's letter of the 17th  
28           January, in effect was designed to advise the Tribunal  
29           of something that you have referred to as a cottage

1 industry?

2 A. That's correct.

3 336 Q. Yes. And although you use that sort of language  
4 sometimes, Mr. Barrett, that's not to suggest in any  
5 way that you see this as a lighthearted matter? 14:46

6 A. Absolutely not. There was a tremendous amount of  
7 determined effort by a number of people to ensure that  
8 the organisation's response to Sergeant McCabe was  
9 visibly different, qualitatively and quantitatively.

10 337 Q. Well, we know that the Commissioner chose you to be 14:46  
11 what you have called yourself, an interlocutor, with  
12 Sergeant McCabe?

13 A. That's correct.

14 338 Q. And was that a different position from what Chief  
15 Superintendent O'Brien had had? 14:46

16 A. Well, Chief Superintendent O'Brien had dealt with,  
17 there were some 14 issues that he was asked to  
18 investigate in a kind of investigatory manner. The  
19 intention, as I understand it, for my appointment, was  
20 that it wouldn't follow, if you like, an investigatory 14:47  
21 engagement; it would be more holistic, welfare-focused,  
22 under the umbrella of the 2014 Protected Disclosures  
23 Act, Sergeant McCabe having come under the protective  
24 effect of that legislation, and that I should be  
25 concerned for his welfare and his engagement with 14:47  
26 colleagues at work, etcetera.

27 339 Q. Well, I wonder could we just go back to this engagement  
28 of you on the 23rd February, and could you just remind  
29 the Tribunal of the events which had preceded it so

1 that we can get a sense of why this added layer had to  
2 be added to what Chief Superintendent Barry O'Brien was  
3 doing. Am I right that there was a meeting with  
4 Mr. McCabe, Sergeant McCabe and his solicitor and the  
5 Commissioner and Assistant Commissioner Fanning and 14:48  
6 Deputy Commissioner Twomey and Ken Ruane and Chief  
7 Superintendent McLoughlin and Superintendent Frank  
8 Walsh on the 12th February 2015?

9 A. That's correct. And my apologies, I think you're noted  
10 at that meeting. I was unable to attend. 14:48

11 340 Q. Well, that seems an extraordinary panoply of officers  
12 to have at a meeting with a garda sergeant and his  
13 solicitor. What was going on?

14 A. There was extensive correspondence opened by Sergeant  
15 McCabe to a number of officers of State - the 14:49  
16 Taoiseach, the Minister, the Commissioner, concerning  
17 matters that were both workplace-related and matters of  
18 publication which had occurred in September 2014 in the  
19 'Garda Review', and he was expressing the view that the  
20 organisation, I think his solicitor actually summed it 14:49  
21 up rather well and said the response of the  
22 organisation was not sufficient, and these -- I think,  
23 harassment is continuing, is the theme that is visible  
24 in those pieces of correspondence to all those parties.

25 341 Q. Chairman, yesterday, at the end of the business, you 14:49  
26 mentioned the 'Garda Review' material. I don't know  
27 whether the Tribunal has it? I haven't seen this  
28 'Garda Review' material. What was the nature of what  
29 was published on the 23rd September 2014?



1 A. Well, the September edition of the 'Garda Review'  
2 contained two articles, one by the editor of the 'Garda  
3 Review' and the other by the General Secretary of the  
4 Garda association, the --

5 342 Q. GRA?

14:50

6 A. -- GRA, Mr. PJ Stone, and Mr. Hand, who I think was  
7 then the editor. And these articles were found to be  
8 offensive by Sergeant McCabe. He was quite animated  
9 about it and he wrote extensively seeking that this  
10 matter be dealt with.

14:50

11 343 Q. Can you give the Tribunal some indication of what was  
12 the tenor of the article, such that Sergeant McCabe was  
13 bothered?

14 A. Sergeant McCabe was of the view that the articles were  
15 critical of him in light of some of the outputs of the  
16 Guerin Report and that he felt it unfair to the  
17 position that Guerin had taken and that he had sought  
18 to have vindicated on many previous occasions  
19 concerning the activities of the Bailieboro station.  
20 The article was less than sympathetic, in his view, to  
21 his efforts.

14:50

14:50

22 344 Q. And there was a further article then, was there, on the  
23 4th January 2015?

24 A. There was an article on the 4th January, in the early  
25 spring, on ethics generally, but that wouldn't have  
26 been something that he was critical of. He would have  
27 been, I think, more animated about the September  
28 edition with those two articles both published in the  
29 same edition.

14:51

1 345 Q. I see.

2 MR. MCDOWELL: Chairman, it would be a help to me to

3 follow this if we could have a copy of this.

4 CHAIRMAN: Thanks. I did inquire about that and

5 apparently we do have those articles. I don't actually 14:51

6 think I read them apart -- perhaps I glanced at them.

7 But they do exist. If necessary, we can circulate

8 them, but I don't think it is actually crucial to this.

9 MR. MCDOWELL: Just so I can understand them.

10 CHAIRMAN: Sure. Let's take them at their worst. 14:51

11 MR. MCDOWELL: Whatever that is.

12 CHAIRMAN: All right, whatever it is, that Mr. Stone

13 was saying things that were whatever. Now, I'm not

14 saying anything against Mr. Stone, so please don't get

15 me wrong. I'm just saying, that let's suppose that 14:52

16 whatever way they were phrased was something from which

17 one could legitimately take offence, whether it was

18 correct or incorrect.

19 346 Q. MR. ROGERS: I think that Sergeant McCabe interpreted

20 these publications as "ongoing harassment" and that 14:52

21 there is an email of the 9th January 2015 to the

22 Department of Justice and the Commissioner referring to

23 these publications. I think it's 3010. If we could

24 see that. 9th January 2015. There's an acknowledgment

25 there, and it reads -- the email from Maurice McCabe 14:53

26 reads:

27

28 "Still being harassed, victimised, set upon and

29 bullied, yet no one has any solutions. We met the

1           Garda Commissioner last Thursday and I can describe  
2           that meeting as 'ticking the boxes'."  
3  
4           was this part of the background into which you entered?  
5        A.    Yes, this was one stream, as Mr. McGuinness made the        14:53  
6           point this morning, there was one set of grievances  
7           emerging from the publications and from the belief that  
8           nothing was being done on foot of those publications,  
9           and also, the second stream was relating to the work  
10          environment where certain of the station party in        14:53  
11          Mullingar were not treating the sergeant with the  
12          necessary respect and contrary to our Dignity at work  
13          policy.  
14    347   Q.    And if we put up 3002 for a moment, please.  Was there  
15           a meeting on the 15th January again with Sergeant        14:54  
16           McCabe and his solicitor?  
17          A.    Yes.  
18    348   Q.    The Deputy Commissioner Twomey and Chief Superintendent  
19           McLoughlin?  
20          A.    Yes.    14:54  
21    349   Q.    And you see the first indent there:  
22  
23           "The main issue discussed concerned the working  
24           environment that the member finds himself in and his  
25           view of a lack of meaningful local intervention and        14:54  
26           support."  
27          A.    Yes.  
28    350   Q.    "Sergeant McCabe has to attend court before a District  
29           judge against whom he had identified in his previous

1 reports."  
2  
3 I don't think we need to read on. But that is the  
4 tenor of what was going on at the time. And although  
5 there was direct contact between Assistant Commissioner 14:54  
6 Twomey and officers of that level, Chief Superintendent  
7 McLoughlin, in January 2015, when we get to the 12th  
8 February 2015 it was necessary to have a meeting with  
9 the Commissioner  
10 A. That's correct. 14:55  
11 351 Q. And the officers I mentioned earlier, including  
12 Assistant Commissioner Fanning?  
13 A. Correct.  
14 352 Q. Could you just tell us, was Assistant Commissioner  
15 Fanning your predecessor in the office of human 14:55  
16 resources?  
17 A. He was.  
18 353 Q. He was the assistant commissioner charged with your  
19 job?  
20 A. Correct. 14:55  
21 354 Q. So you're the first civilian holding that office?  
22 A. That's correct. It was recommended in the aftermath of  
23 the 2005 Act by the implementation body led by Maurice  
24 Hayes. That report came out in 2007. I began in 2014.  
25 355 Q. Right. And there was an email again on the 19th 14:56  
26 February 2015, at 3010. This is an email to the  
27 Minister for Justice from Sergeant McCabe, and it does  
28 appear as though, at this point, Sergeant McCabe began  
29 to direct himself to officers of State outside An Garda

1 Síochána, isn't that right?

2 A. That's correct.

3 356 Q. And in that email he said he was:

4

5 "Still being harassed, victimised, set upon and 14:56  
6 bullied, yet no one has any solutions. We met the  
7 Garda Commissioner last Thursday and I can describe the  
8 meeting as 'ticking the boxes'."

9

10 Is that right?

14:56

11 A. That's correct.

12 357 Q. So on the 21st I think there was a further email from  
13 him to the Minister for Justice, and that's at 3009. I  
14 wonder could you read that email, because it seems that  
15 this is the immediate background to the Minister 14:57  
16 calling on the Commissioner to make a report to the  
17 Minister, is that right?

18 A. It is. It is part of that general backdrop. It may  
19 not be the last such correspondence, but it's certainly  
20 an influencer leading to that request. 14:57

21 358 Q. Yes.

22 A. "Dear Minister, I refer to previous emails and  
23 complaints. Still being harassed, victimised, set upon  
24 and bullied, yet no one has any solutions. We met with  
25 the Garda Commissioner last Thursday and I can describe 14:57  
26 the meeting as 'ticking the boxes'. It is very unfair.  
27 Maurice McCabe."

28 359 Q. Yes. I think that is the email of the 19th February?

29 A. That's correct.

1 360 Q. Yeah. And I wonder could we just look at the email  
2 then, the next one, 21st February, which is on 3009.  
3 It's just up the page there.  
4 A. Yeah.  
5 361 Q. I think we can get the flavour of it if we perhaps look 14:58  
6 at the last six or seven lines:  
7  
8 "I have rights and employment rights to work in a  
9 stress- and harassment-free environment. Well, I  
10 thought I had, but I was wrong. Maybe that doesn't 14:58  
11 work in Ireland. I really did believe you or the Garda  
12 Commissioner could protect these rights, but I was  
13 wrong again. Anyway, I'll end this email with one  
14 question for you to answer: Do you think it was worth  
15 it, reporting wrongdoing and coming forward?" 14:58  
16  
17 That seemed to carry the implication that his position  
18 as somebody who had made a disclosure had been damaging  
19 to him?  
20 A. That's correct. That is my reading of it. 14:58  
21 362 Q. Right. On the same day, I think there was an email to  
22 the Commissioner, which I won't ask you to look at, but  
23 then on the 22nd he makes an email again to the  
24 Commissioner at three minutes to midnight, about  
25 ongoing harassment. This is at 3012. And this is the 14:59  
26 email in which he indicated he had left his work on the  
27 previous day because of harassment. Do you see that?  
28 A. Yes, sir.  
29 363 Q. This is the 22nd.

1 A. Yes. At 23:57.

2 364 Q. Yes. Now, this is directed to Commissioner O'Sullivan  
3 and he's referring to his family and his employment  
4 rights all being affected as a direct result of  
5 continued harassment, you seem to be unable to stop it. 15:00  
6 All of this seems to suggest that this man perceived  
7 that the organisation was bent on harassing him and  
8 that the officer core of the organisation was unable to  
9 control that. Is that right?

10 A. That's right. That's exactly the tenor of his 15:00  
11 correspondence.

12 365 Q. I think it was in this context that you got an email  
13 from Chief Superintendent Frank Walsh giving you a  
14 direction to make direct contact with Mr. McCabe, is  
15 that right? 15:00

16 A. That's correct.

17 366 Q. I think there's -- first of all, Mr. McCabe, Sergeant  
18 McCabe was told that that was underway, is that right?

19 A. That's right. He received an independent email  
20 advising. 15:01

21 367 Q. Yeah. Now, although that was underway and although the  
22 Department was informed that you had been directed to  
23 engage with Mr. McCabe, I think you had phoned him on  
24 the 24th, is that right?

25 A. That's correct. On foot of Frank Walsh's email, I 15:01  
26 called him on the 24th February and we spoke on the  
27 telephone for a little while.

28 368 Q. Yeah. And notwithstanding that, though, Sergeant  
29 McCabe, on 3017, sent a further email to the

1 Commissioner, is that right? would this have been  
2 before or after your --

3 A. It looks after. It's 23:31.

4 369 Q. Yes, this is again at half eleven in the day -- in the  
5 evening?

15:02

6 A. In the evening.

7 370 Q. And you would have spoken to him by this time, would  
8 you?

9 A. Yes.

10 371 Q. So notwithstanding whatever reassuring voice you had  
11 been able to give him, he's referring to, in the third  
12 paragraph there:

15:02

13  
14 "Today's articles and the statements made by Garda  
15 Stone against me and Minister Fitzgerald are defamatory 15:02  
16 insulting and are evidence that the Garda  
17 Representative Association would resist change by  
18 attacking anyone who reports malpractice or who  
19 highlights the need for cultural change in An Garda  
20 Síochána."

15:02

21  
22 And it goes on. He says in the next line that:

23  
24 "Garda Stone had publicly demonised me for making a  
25 protected disclosure and availing of the Protected  
26 Disclosure Act 2014."

15:02

27  
28 So, notwithstanding your call, it looks like Sergeant  
29 McCabe was grievously upset and a man of action who



1 was, day and night, now communicating with officers in  
2 the guards and officers of State about his plight, is  
3 that right?

4 A. That is correct.

5 372 Q. Yes. So I think then that it was arranged by you that 15:03  
6 there would be a meeting with Sergeant McCabe on the  
7 25th?

8 A. That's right. That was the purpose of my call.

9 373 Q. And I wonder would you just tell us how that meeting  
10 came to happen. What happened before it? 15:03

11 A. There was a briefing meeting in the office of Cyril  
12 Dunne before it on the -- the meeting took place at  
13 2:30, so, shortly before that, Barry O'Brien, the  
14 Commissioner and I and Cyril had a pre-meeting,  
15 wherein -- and it was for my benefit because I had 15:04  
16 never met Sergeant McCabe before this. I was being  
17 given a briefing as to what to expect, how it is that  
18 he might respond to the difficult questions, that the  
19 prospect existed that I may be recorded, that he was  
20 likely to be furtive in his response to difficult 15:04  
21 questions if I was to challenge him, and that the  
22 meeting would likely last no more than 45 minutes to an  
23 hour.

24 374 Q. Now, an essential formal background to this meeting  
25 that we can't ignore, is that, by this stage, the 15:04  
26 Minister had formally written to the Commissioner, is  
27 that right?

28 A. That's right. On the morning of the meeting, and this  
29 may account for the amount of time devoted on the day

1 of the 25th February by the number of senior people  
2 that were clustered around this event, the Minister  
3 wrote I think in very clear terms to the Commissioner  
4 and said that she wanted a response from the  
5 Commissioner on the outstanding matters of concern to  
6 Sergeant McCabe. 15:04

7 375 Q. So there was ministerial concern, and this briefing you  
8 had, you were being briefed in the context of you  
9 having knowledge of that senior departmental and  
10 ministerial concern? 15:05

11 A. Yes. I think that we would have seen the prospect of  
12 this letter coming from a couple of days back, because  
13 of the frequency with which Sergeant McCabe was  
14 corresponding with officers of State. I think the  
15 Taoiseach might have received correspondence, also. 15:05  
16 There was real concern to ensure that we had an  
17 approach in dealing with Sergeant McCabe's issues that  
18 was comprehensive.

19 376 Q. Well, before you went to the meeting with Sergeant  
20 McCabe, did you have any sense of how long it would  
21 last? 15:05

22 A. No, I didn't, quite frankly. I had taken the  
23 Commissioner and Mr. Dunne at their word, that it  
24 probably would last about an hour, and, you know, I had  
25 no idea. In fact, at that meeting I said let's take  
26 him as we find him at the meeting, rather than sort of  
27 preempt how it might turn out. I thought it would  
28 simply be a case of let's see what he's got to say. 15:06

29 377 Q. And was your deal with Sergeant McCabe that the meeting

1 would occur with him unaccompanied? Did you presume  
2 him having a solicitor --

3 A. No, no, the previous meetings that you've referred to  
4 in January, at both those sessions I think he was  
5 accompanied by Mr. Costello, his solicitor. And the 15:06  
6 expectation was that he would be so accompanied at the  
7 meeting on the 25th also, that having had a solicitor  
8 at the two previous meetings, he would again attend  
9 accompanied.

10 378 Q. Well, you met him, and I think we know that the meeting 15:06  
11 lasted two-and-three-quarter hours, or thereabouts?

12 A. Yes, sir.

13 379 Q. And the meeting is recorded in your minute of -- I  
14 think it's a minute prepared some while later, about  
15 the 10th, the following month, was it? 15:07

16 A. Yes, sir.

17 380 Q. And it's number 3019. I just want to get from you,  
18 before I ask you about this, the content of this,  
19 because there are some references in it to the  
20 Commissioner. What did you understand the 15:07  
21 Commissioner's disposition to be in advance of this  
22 meeting and what did you understand the nature of her  
23 instruction to you as to how to deal with Sergeant  
24 McCabe?

25 A. I think the Commissioner was very -- being helpful to 15:07  
26 me in briefing me in that pre-meeting with Cyril Dunne  
27 in Cyril's office, and Barry O'Brien likewise, that  
28 there was a practice, and it was well known, that I  
29 might be recorded, that, you know, Sergeant McCabe may

1 respond in a particular way. I saw that as nothing  
2 being but helpful. In relation to the amount of energy  
3 that was clearly now beginning to be invested in  
4 dealing with all of the various issues, the Barry  
5 O'Brien agenda and others, I was persuaded that there 15:08  
6 was a commitment to do something that was different  
7 than had been done before in seeking to address these  
8 matters. So I was not in any way concerned for the  
9 briefing that I got with respect, you know, let's get  
10 something done here. 15:08

11 381 Q. Right. well, if we just look at the meeting, because  
12 there are some matters I just want to raise with you  
13 about it.

14 A. Sure.

15 382 Q. Who was this minute written for? 15:08

16 A. This is a record of the meeting to report essentially  
17 on what it was in very holistic terms, what took place  
18 at the meeting, what Sergeant McCabe said to Barry and  
19 I. I would have, you know, written a draft of this and  
20 given Barry's side of it to make certain that he'd 15:09  
21 covered all the various elements. It's written for the  
22 record essentially to note what happened over a lengthy  
23 meeting at a point at which clearly the Minister was  
24 beginning to express some real frustration or concern  
25 about our progress. 15:09

26 383 Q. Yeah. well, the meeting seems to have focused at the  
27 outset on the difficulties Sergeant McCabe was having  
28 in Mullingar, isn't that right?

29 A. That's correct.

1 384 Q. And I don't think we need to go through the  
2 particularity of that, but I wanted to draw your  
3 attention to the third paragraph of 3019, and you said:  
4

5 "I needed to understand the specifics and that I was 15:10  
6 working with the Commissioner, Chief Superintendent  
7 O'Brien and others to ensure that any oppression,  
8 perceived or real, in the workplace was unacceptable  
9 and that I was committed to doing what I can in my role  
10 to ensure that the dignity and contribution of all our 15:10  
11 employees was fully respected and reported."  
12

13 Was that your warrant?

14 A. Yes. That was very much what I understood my challenge  
15 to be and that's what I put to Sergeant McCabe. I 15:10  
16 wanted to assure him that there was an alignment of  
17 commitment to getting these things resolved.

18 385 Q. In the next paragraph, there's a reference to Sergeant  
19 McCabe expressing his pleasure at being invited to the  
20 meeting and how he spoke enthusiastically for the need 15:10  
21 for change, which seems to be a theme of this record,  
22 is that right?

23 A. It is. The response from Sergeant McCabe was that many  
24 of the actions he had taken, going right back to the  
25 very beginning of his concerns in Bailieboro, were 15:11  
26 about improving the job, and I think that's captured  
27 somewhere in the minute, and so change is something  
28 that he identified with, and I think we, you know, as  
29 an organisation, perhaps didn't recognise to the degree

1 that Sergeant McCabe wanted recognition for the  
2 contribution that he himself had made to change, and  
3 that's very clearly noted in this minute for purpose.

4 386 Q. Do you see in that paragraph where he expressed  
5 reservations about the Commissioner's commitment and 15:11  
6 his regret that he endorsed her, did you try to turn  
7 him on that?

8 A. My brief was from the Commissioner. These are his  
9 words. I was endorsing the move that the Commissioner  
10 was making. We were moving towards, as I saw it, a 15:11  
11 very changed environment. My appointment was part of  
12 that. So I was very supportive of the idea that we are  
13 all aligned around what needs to be done here for  
14 Sergeant McCabe and for the organisation at large in  
15 making change happen. And I spoke on that, just to 15:12  
16 confirm the point, some time later at the Garda  
17 College, and I think that was a submission that we  
18 included at some remove.

19 387 Q. I will come to that. If you look at the next two  
20 paragraphs, at the foot of the page, 3019 into the 15:12  
21 following page and then the following paragraph, those  
22 are passages in which the sergeant is describing  
23 problems he is having in February, February 11th --

24 A. Yes.

25 388 Q. -- and February 25th of 2015, isn't that right? 15:12  
26 A. That's correct. I was specifically asked to raise  
27 those matters with the sergeant when the letter -- or  
28 the email that I received from Frank Walsh instructed  
29 me to engage. They were matters that occurred

1 actually, it's the 21st rather than the 25th February.  
2 It was a Saturday night in Mullingar station, where  
3 Sergeant McCabe had some issues with comments made by a  
4 colleague, a sergeant, and that resulted in he leaving  
5 work and going home, and that was one of the presenting 15:13  
6 circumstances that were immediate backdrop to this  
7 meeting.

8 389 Q. Yes. There's this very, possibly, hurtful remark, in  
9 the middle of the paragraph, at the top of page 3020,  
10 where it would appear an inspector had said something 15:13  
11 like Sergeant McCabe "was a rash all over this"?

12 A. That's correct.

13 390 Q. Is this one of the matters he complained about?

14 A. It is. And one of the things that struck me about this  
15 was, I put it forcibly to Sergeant McCabe that, you 15:13  
16 know, that, in itself, is not a very hugely offensive  
17 remark in the scheme of things, and what impressed me  
18 was the authenticity of his response to say, well, you  
19 need to consider this in the context of six years of  
20 dealing with like harassment of one form or another, 15:14  
21 and it wasn't demonstrated in furtive behaviour or  
22 withdrawal, he dealt with it in a very thoughtful and  
23 considered way, and it gave me to believe that he was  
24 sincere in all of the approach that he was taking to  
25 the matters that we were just dealing with. 15:14

26 391 Q. Well, the result of that, anyway, was that he had had  
27 to excuse himself from work, isn't that correct?

28 A. That's correct.

29 392 Q. And notwithstanding that, there's an exchange between

1 you and him in the following paragraph, in the fourth  
2 line of it, page 3020. You say:

3  
4 "Notwithstanding his real concerns, they would not  
5 justify both the writing of letters to the Taoiseach, 15:15  
6 the Minister and Commissioner. You advised Sergeant  
7 McCabe that in a career as long as his, that I was  
8 certain that many far more challenging things had been  
9 said about me personally than you are like a rash all  
10 over this. And I could not say that I reacted in a 15:15  
11 manner likened to this. I indicated that he may find  
12 my comments provocative and a pushback, but that I do  
13 see the need to question the proportionality of his  
14 subsequent actions."

15  
16 It looks, from that, that you were fronting up with  
17 Sergeant McCabe in an attempt to bring some  
18 proportionality to his thinking?

19 A. Yes, yes, that's precisely what I was doing. I mean,  
20 the requirement in circumstances like this and I'm 15:15  
21 meeting the sergeant for the first time, was to  
22 challenge the parameters of his actions and responses.  
23 Was he such a delicate violet that he couldn't deal  
24 with these matters in the normal cut and thrust? And I  
25 think his response to that was the first real occasion 15:16  
26 where I was surprised, to be honest, and surprised  
27 positively, that he had the kind of reflective  
28 intuition to be able to say, look, this is a cumulative  
29 effect, and he was persuasive in that regard and I



1 think I note that in the rest of the following  
2 paragraph.

3 393 Q. That's right. And he goes on to say that because of  
4 his having pointed out that somebody locally had six  
5 penalty points cancelled, he had not been forgiven, or 15:16  
6 words to that effect, isn't that right?

7 A. That's right.

8 394 Q. And you went on then to point out the array of senior  
9 personnel that were addressing his issues, isn't that  
10 right? 15:17

11 A. Yes.

12 395 Q. And he seemed to think that the approach that was being  
13 taken was simply 'for effect', window dressing, as it  
14 were, is that right?

15 A. That's what he said. 15:17

16 396 Q. Yes. Now, if you go over the page at 3021, there's a  
17 reference to the GPSU investigation. Could you just  
18 explain to the Chairman what that is?

19 A. Garda Professional Standards Unit is an organisation  
20 which looks at and conducts inspections in various 15:17  
21 parts of the Garda organisation. It was tasked,  
22 somewhere in the middle of 2014, to conduct a review of  
23 certain of the breaches in the penalty points,  
24 cancellations that had been highlighted by the work  
25 done by Sergeant McCabe in the public domain. The work 15:18  
26 was undertaken by GPSU and there was a full review of  
27 many of the data sets that were taken from Pulse by  
28 Sergeant McCabe to prove his thesis or to support his  
29 thesis that this was still continuing. And there had

1           been no fewer than four HQ directives. These are  
2           statements from the apex of the organisation not to  
3           cancel penalty points, under only the most defined of  
4           circumstances. And that is what GPSU were  
5           investigating.

15:18

6           MR. MCGUINNESS: Chairman, I'm sorry to interrupt  
7           Mr. Rogers, but I suppose there's one thing I have to  
8           draw to the Chairman's attention. We do have another  
9           witness here who is departing the country tomorrow for  
10          a six-week period, and I'm not in any way suggesting  
11          that Mr. Rogers should curtail his cross-examination,  
12          but we may have to get to a stage where we would ask  
13          the witness to stand down to deal with the other  
14          witness.

15:19

15          CHAIRMAN: Are you talking about  
16          Superintendent Cunningham?

15:19

17          MR. MCGUINNESS: No, retired Chief Superintendent  
18          Rooney.

19          CHAIRMAN: How long do you anticipate his evidence will  
20          be? Let's please bear in mind that, as I have said  
21          before, if someone has legal professional privilege,  
22          they have legal professional privilege.

15:19

23          MS. LEADER: Yes, sir, I'm taking the former chief  
24          superintendent through his evidence. I think about  
25          half an hour, but I will truncate what -- I won't open  
26          too many documents.

15:19

27          CHAIRMAN: Yes. And do you think you could truncate  
28          that even more? I'm looking at the time now.

29          MS. LEADER: I will try my best. He has to be

1 cross-examined as well, obviously.

2 CHAIRMAN: Mr. McDowell, do you have many questions for  
3 Chief Superintendent Rooney?

4 MR. MCDOWELL: I will have a few questions, but I do  
5 want to make it clear that I will respect what you've 15:19  
6 said about privilege.

7 CHAIRMAN: Yes. I think we all have to, Mr. McDowell.

8 MR. MCDOWELL: I'm not going to attempt any clever  
9 circumvention of that.

10 CHAIRMAN: I think it's probably right, Mr. Rogers, 15:20  
11 you'll be another hour, perhaps, will you?

12 MR. ROGERS: Probably 45 minutes to 50 minutes.

13 CHAIRMAN: Yes. All right. I'm afraid we're going to  
14 have to break, Mr. Barrett, I'm sorry for having to ask  
15 you to come back. You can do it on Monday or Tuesday, 15:20  
16 whichever is more convenient to you. Maybe you will  
17 discuss that with your solicitor and just send a note  
18 to the Tribunal. So I think we should do that now. I  
19 mean, we can't do otherwise.

20 15:20

21 THE WITNESS STOOD DOWN

22

23 MR. MCDOWELL: Chairman, just arising out of that,  
24 Ms. Leader can lead the witness, so to speak, until  
25 somebody says it's excessive, as far as I'm concerned. 15:21

26 CHAIRMAN: Yes. Ms. Leader, I think it's a question  
27 now of, unless --

28 MS. LEADER: Headline events.

29 CHAIRMAN: I think it really is headline events, and if

1 there is headline correspondence, appreciating that I'm  
2 familiar with a great deal of it, and it's, I suppose,  
3 the point of the correspondence as opposed to the  
4 actual text thereof that seems to be important.

5 MS. LEADER: Mr. Colm Rooney, please.

15:21

6  
7 MR. COLM ROONEY, HAVING BEEN SWORN, WAS DIRECTLY  
8 EXAMINED BY MS. LEADER:  
9

10 397 Q. MS. LEADER: Mr. Rooney, you retired from the guards at 15:22  
11 the rank of chief superintendent, is that correct?

12 A. That's correct, Judge, yes.

13 398 Q. And you held the position of chief superintendent in  
14 the Cavan-Monaghan division, as I understand it?

15 A. Yes, I did.

15:22

16 399 Q. When did you take up that position, Chief  
17 Superintendent?

18 A. In 1994.

19 400 Q. And when did you retire?

20 A. I retired in 2011.

15:22

21 401 Q. So, as chief superintendent, you were familiar with the  
22 investigation carried out by Inspector Cunningham into  
23 allegations made by Ms. D concerning Sergeant McCabe?

24 A. Yes, I was.

25 402 Q. And indeed you appointed Chief Superintendent  
26 Cunningham to investigate that allegation?

15:22

27 A. Inspector Cunningham, I did, yes.

28 403 Q. At that time. And you were aware of the directions of  
29 the DPP which issued in 2007, is that correct?

1 A. Yes, I was.

2 404 Q. Now, following on that investigation, you no doubt were  
3 aware of certain incidents which happened between the D  
4 family, and here I'm talking about Mrs. D and Ms. D and  
5 Sergeant McCabe, in 2007? 15:23

6 A. Yes, I was.

7 405 Q. And no doubt you were also aware of Sergeant McCabe's  
8 complaints relating to the D family which were  
9 ultimately made, addressed to Superintendent Clancy on  
10 the 25th February 2008? 15:23

11 A. Yes, I was.

12 406 Q. And you were clear in your head that these complaints  
13 were made in relation to the D family and were  
14 complaints made directed at the D family and certain  
15 issues with regard to Mr. D that Sergeant McCabe had? 15:23

16 A. Yes.

17 407 Q. And I think you in due course, having referred the  
18 matter to the then assistant commissioner in the  
19 northern region, asked Superintendent Cunningham to  
20 investigate those complaints made, is that correct? 15:24

21 A. Yes, I did.

22 408 Q. And those complaints, to be perfectly clear about it,  
23 were to Superintendent Clancy concerning the D family?

24 A. That's correct.

25 409 Q. And in due course, did you become aware of 15:24  
26 Superintendent Cunningham's report that he made  
27 following on a meeting with Sergeant McCabe in August  
28 2008, the report he made in September 2008 in relation  
29 to those complaints?

1 A. Yes, I was, Judge.

2 410 Q. And that report is the report in September 2008  
3 completed by Superintendent Cunningham?

4 A. That's correct.

5 411 Q. Now, separately from those complaints you were no doubt 15:24  
6 also aware that Sergeant McCabe brought certain matters  
7 to the attention of Superintendent Clancy in January of  
8 2008 relating to policing standards, if I can put it  
9 that way, in Bailieboro?

10 A. Yes, I was. I became aware of them much later. I know 15:25  
11 Sergeant McCabe wrote to me from Mullingar while he was  
12 stationed there and he attached a copy of his report of  
13 January 2008 to the correspondence, and that was the  
14 first occasion that I saw that report. When  
15 Superintendent Clancy received that report at the time 15:25  
16 in 2008, he did not forward that to me or he didn't  
17 discuss it with me.

18 412 Q. Okay. Those complaints were subsumed into a much  
19 longer statement dated 28th April 2008, is that  
20 correct, by Sergeant McCabe, in relation to policing 15:25  
21 standards and certain investigations?

22 A. I didn't see that report.

23 413 Q. You didn't see that report?

24 A. I didn't see that.

25 414 Q. I suppose you now know, I suppose, that that report 15:25  
26 formed the basis of the Byrne/McGinn investigation?

27 A. Yes, I do.

28 415 Q. And you're familiar with it?

29 A. Yes, I am.

1 416 Q. And you were familiar with that at the time of the  
2 O'Higgins Commission in 2015?  
3 A. Yes, I was.

4 417 Q. And that was a very separate stream of matters that  
5 Sergeant McCabe was concerned about, is that correct? 15:26  
6 A. That's correct.

7 418 Q. And you were always clear about that?  
8 A. Yes.

9 419 Q. Am I correct about that? Now, that April statement of  
10 2008 formed the basis of the Byrne/McGinn 15:26  
11 investigation, and no doubt you're familiar with that,  
12 as the chief superintendent in the region that  
13 Assistant Commissioner Byrne and Chief Superintendent  
14 McGinn were investigating into?  
15 A. Yes, I was. 15:26

16 420 Q. Now, following on that investigation, reference has  
17 been made to a circular that you sent around various --  
18 to the Gardaí following on the Byrne/McGinn  
19 investigation. You already made a statement to the  
20 Tribunal about that circular. Could you explain how 15:27  
21 that circular came about?  
22 A. The assistant commissioner visited my office on the  
23 24th June 2011. He didn't have an appointment to see  
24 me, but he had business in the station dealing with  
25 other matters, and he dropped into my office and he 15:27  
26 told me --  
27 CHAIRMAN: Because there's a personnel change, maybe  
28 you would tell me the name of the assistant  
29 commissioner you are talking about?

1 A. Assistant Commissioner Derek Byrne.

2 CHAIRMAN: Right. So it's the Byrne/McGinn report, is  
3 that correct?

4 A. Yes, the Byrne/McGinn report. And he called into my  
5 office on the 24th June 2011. As I said, he had no 15:27  
6 prior appointment to see me, he was in the station on  
7 other business, and we had a short meeting in relation  
8 to when he came to see me. He told me that the  
9 allegations that were made against me by Sergeant  
10 McCabe were not upheld by his investigation. And the 15:28  
11 Assistant Commissioner went on to say that his  
12 investigation was now complete and he said his findings  
13 were approved by the Garda Commissioner and he  
14 concluded that there were no criminal conduct  
15 identified on the part of any member of Bailieboro 15:28  
16 district force. He said there was no systematic  
17 failures identified in the management and  
18 administration of Bailieboro district, apart from a  
19 number of minor procedural issues.

20 421 Q. MS. LEADER: And what did you understand those minor 15:28  
21 procedural issues to be, Mr. Rooney?

22 A. Well, my understanding of the minor procedural issues  
23 were that there were a number of disciplinary  
24 investigations carried out in respect of the findings  
25 of Byrne/McGinn. They were of a non-serious nature, 15:29  
26 because under the discipline regulations they can be  
27 either serious or non-serious investigations, and they  
28 were non-serious investigations. So I took it that  
29 what he was saying to me was that the minor issues were



1 the ones that were dealt with under the disciplinary  
2 regulations.

3 422 Q. And I think you also inquired of Assistant Commissioner  
4 Byrne with regard to the guards who worked to you had  
5 cooperated with the investigation? 15:29

6 A. I did, Judge. I asked him if all the guards fully  
7 cooperated with his investigation and he said that that  
8 was never an issue. I also asked him if all the guards  
9 told the full truth in relation to the matters that  
10 were under investigation, and he said absolutely. And 15:29  
11 the reason I asked him those questions, Judge, that  
12 once I became aware that the Byrne/McGinn team were  
13 appointed to conduct an investigation, I made it clear  
14 to the district officer in Bailieboro and to the  
15 representative body in that area that I expected every 15:30  
16 member to fully cooperate with the Byrne/McGinn  
17 investigation and not just to tell the truth but to  
18 tell the full truth, and I made it clear to them that  
19 if it came to my attention that that was not the case,  
20 that it would have serious consequences for the people 15:30  
21 involved, much more so than any findings of  
22 Byrne/McGinn. So I wanted everybody to clearly  
23 understand what my position was, and that's why I asked  
24 the assistant commissioner those questions.

25 423 Q. And I think, having sorted that out, you asked 15:30  
26 Assistant Commissioner Byrne to circulate his findings  
27 to your force, and he gave you his permission to do so?

28 A. Yes, he did, Judge.

29 424 Q. And I think arising out of all of that, that circular,

1 if I can call it that, was sent by you on the 4th July  
2 2013, is that correct?

3 A. That is correct, Judge.

4 425 Q. And that circular appears at page 4943 of the  
5 materials. We don't have to open, it will come up in  
6 front of you, Mr. Rooney.

15:31

7 MR. WHELAN: I wonder is it 2011?

8 MS. LEADER: 2011, sorry, yes. Thank you.

9 426 Q. It refers to your meeting with Assistant Commissioner  
10 Byrne on 24th June 2011. So the third paragraph of it  
11 concludes by saying:

15:31

12

13 "I would like to congratulate all members who served in  
14 Bailieboro district during the period in question. In  
15 particular, I wish to thank Sergeant Gavigan, who  
16 provided leadership, enthusiasm and commitment in  
17 steering the station party through the crisis that had  
18 occurred. The findings of the assistant commissioner  
19 vindicated the high standards and professionalism of  
20 the district force in Bailieboro. I appreciate the  
21 manner in which the members of the district  
22 participated in the investigation, were open and  
23 truthful in their account of events surrounding the  
24 allegations. I hope that the members and their  
25 families can now put this difficult period behind them  
26 and continue to serve the public and their colleagues  
27 in an efficient and professional manner."

15:32

15:32

15:32

28

29 And it's "CM Rooney, Chief Superintendent". It's cc'd

1 to the assistant commissioner and to each district  
2 officer in Cavan-Monaghan

3 A. Correct.

4 427 Q. Now, when you were asked by the Tribunal in March 2017  
5 to elaborate on the contents of that letter and how the 15:32  
6 view expressed in that letter was tenable, particularly  
7 in light of the findings of the O'Higgins Commission,  
8 which was subsequently published, you made a number of  
9 observations, if you could explain that to the  
10 Tribunal? 15:33

11 A. Yes, I did. My letter was based on the outcome of the  
12 Byrne/McGinn investigation, and I was naturally very  
13 happy with what the assistant commissioner told me,  
14 that there was no criminal activity taking place in my  
15 area of responsibility, and that was based on what he 15:33  
16 had told me in relation to his investigation. But  
17 clearly when I read the Guerin Report, I saw that that  
18 was somewhat different and indeed the findings of  
19 Mr. Justice O'Higgins was not in line with the  
20 observations that I had made based on the Byrne/McGinn 15:34  
21 report. And in response to the Tribunal in relation to  
22 how that letter was viewed, based on the findings of  
23 Mr. Justice O'Higgins, I indicated that in the light of  
24 the findings of Mr. Justice O'Higgins, the views  
25 expressed in my letter, congratulating all members who 15:34  
26 served in Bailieboro Garda district during the period  
27 in question, was not appropriate. My vindication of  
28 the high standards and professionalism of the district  
29 force in Bailieboro was not warranted in the

1 circumstances.

2 428 Q. And I think you also explained that the letter of the  
3 4th July was not intended as a criticism of Sergeant  
4 McCabe?

5 A. Absolutely. I had no criticism whatever of Sergeant 15:34  
6 McCabe. Sergeant McCabe had left my area for three  
7 years. He was three years gone out of the division.  
8 He wasn't under my management and control. Morale in  
9 Bailieboro district was very low. Indeed throughout  
10 the whole division morale was low. People were very 15:35  
11 worried. The vast majority of the guards in Bailieboro  
12 district were trainee guards, or what we refer to as  
13 probationer guards. Many of them had been subject to  
14 interview by Byrne/McGinn, and they were clearly upset,  
15 and I felt it was my duty to write to them and allay 15:35  
16 their fears in respect of the outcome of the  
17 investigation as conveyed to me. Indeed I felt I had a  
18 duty to correspond with them. I think if I were to  
19 retain what Assistant Commissioner Byrne had told me,  
20 and not share it with people in my area of 15:35  
21 responsibility, I think it would be very wrong of me to  
22 have done that. I think they were entitled to know  
23 what the outcome of the Byrne/McGinn, as relayed to me  
24 by the assistant commissioner.

25 429 Q. And in relation to the changed circumstances post 15:36  
26 O'Higgins and Mr. Guerin's report, is this the case,  
27 Mr. Rooney, that, prior to May 2017 when you made your  
28 statement to the Tribunal explaining how come the  
29 letter of the 4th July came about, you hadn't before

1 that said or expressed to people that your vindication  
2 of the high standards and professionalism of the  
3 district force in Bailieboro was not warranted in the  
4 circumstances?

5 A. No, I didn't, Judge, because I retired very shortly 15:36  
6 after that letter was issued, and obviously I am  
7 retired still, so I had no opportunity to do that,  
8 number one. And number two, I genuinely believed what  
9 I was told in respect of the outcome of the  
10 Byrne/McGinn investigation. 15:37

11 430 Q. So you'll understand that Sergeant McCabe didn't become  
12 aware of this until your statement was circulated a few  
13 days ago to the Tribunal?

14 A. Okay.

15 431 Q. You understand that? 15:37

16 A. Yes, I do.

17 432 Q. Now, if we just come to the O'Higgins Commission and  
18 deal with Module 1 of the O'Higgins Commission, which  
19 was the Lorraine Browne episode.

20 CHAIRMAN: I'm sorry, Ms. Leader, would you just go 15:37  
21 back. What did you just say? Do you have that?

22 MS. LEADER: I think what I was trying to put across --

23 CHAIRMAN: No, I'm sorry, your actual words. It's just  
24 come across somewhat --

25 MS. LEADER: The last question. So you'll understand 15:37  
26 that Sergeant McCabe didn't become aware of this, that  
27 is his statement made in May of this year to the  
28 Tribunal, until your statement was circulated a few  
29 days ago?

1 MR. MCDOWELL: Judge, I think the transcript, Judge --  
2 CHAIRMAN: I'm sorry, you know I have enormous time for  
3 both Ms. Downes and Ms. Kelly, but it has come out as  
4 "aggressive stance", which is a kind of a buzz word.  
5 What did you say? Would you mind just telling us and 15:38  
6 we can get it corrected.

7 433 Q. MS. LEADER: Until your statement was circulated a few  
8 days ago by the Tribunal, that's what I think I said.  
9 Now, if you can turn to the O'Higgins Commissions  
10 itself in May 2015. You explained in a statement that 15:39  
11 you submitted to the Tribunal in January of this year  
12 that you applied to the Garda Commissioner for legal  
13 representation under the umbrella of the Garda  
14 Commissioner's legal team, is that correct?

15 A. That's correct, Judge. 15:39

16 434 Q. And you did that because you had been contacted by Mr.  
17 Justice O'Higgins or his solicitor to indicate that you  
18 would be a witness, is that correct?

19 A. That is correct.

20 435 Q. And then you were contacted by Chief Superintendent 15:39  
21 Fergus Healy to attend a consultation and, as I  
22 understand it, that consultation, which was with  
23 counsel and Ms. Ryan, happened on the 13th May 2015?

24 A. That's correct.

25 436 Q. And -- 15:39

26 CHAIRMAN: That's the Wednesday now, isn't it?  
27 MS. LEADER: That is the Wednesday.  
28 A. The day before the Commission commenced.  
29 CHAIRMAN: It started on the Thursday. Thanks.

1 437 Q. MS. LEADER: Now, you've told us in your statement to  
2 the Tribunal that consultation is a privileged matter,  
3 you've submitted a statement telling us that the  
4 consultation took a form of a question-and-answer  
5 session to elicit information from you touching on the 15:40  
6 various issues surrounding Sergeant McCabe's  
7 complaints. And then you said you made it clear to  
8 counsel at the outset that your primary concern was to  
9 protect your reputation, your reputation at the  
10 Commission. And then you say, in answer to a question, 15:40  
11 you told counsel that you had a meeting with Sergeant  
12 McCabe following the receipt of the direction of the  
13 DPP on the investigation on the allegation of sexual  
14 assault. And you're referring there to the D  
15 allegation? 15:40

16 A. Yes.

17 438 Q. So you're saying that meeting took place in your office  
18 in Monaghan at the request of Sergeant McCabe in 2007,  
19 and it related to an exchange with regard to the DPP's  
20 directions? 15:41

21 A. That is correct, Judge.

22 439 Q. I will paraphrase it that way.  
23 CHAIRMAN: Can we pinpoint the date of that at all?

24 A. No.  
25 MS. LEADER: I don't think we can. 15:41  
26 CHAIRMAN: We can't. No. It's not related to any  
27 particular piece of correspondence?  
28 MS. LEADER: Exactly. There is a dispute, as I  
29 understand it, between -- well, maybe not a dispute.

1 But perhaps, Chief Superintendent Rooney, you're not  
2 able to, with certainty, establish the date of that  
3 meeting?

4 A. No, I'm not, Judge. I was putting forward the view  
5 that, in my view, it happened somewhere around June or 15:41  
6 July, but I couldn't pin down exactly when it happened,  
7 I had no note of when it happened, Judge, but it  
8 certainly took place after the 8th May 2007, when  
9 Superintendent Cunningham had provided the directions  
10 to Sergeant McCabe. 15:41

11 440 Q. And I think Sergeant McCabe thinks it took place  
12 earlier than you place it, put it that way, and he has  
13 a different interpretation of what happened at that  
14 meeting?

15 A. Yes. Sergeant McCabe was of the view that he came to 15:42  
16 see me three weeks after he received the DPP's  
17 directions. We know that he received the -- or that  
18 the State solicitor received the DPP directions on 11th  
19 April 2007, three weeks after that brings him into the  
20 early days of May 2007, and at the Commission Mr. Smyth 15:42  
21 put it to Sergeant McCabe that he was on sick leave  
22 from the 24th April to the 21st May 2007, and the Judge  
23 asked Sergeant McCabe if he came to see me while he was  
24 on sick leave and he said no, he didn't. So the Judge  
25 then asked Sergeant McCabe, well, when did he come to 15:42  
26 see Chief Superintendent Rooney, and his final date was  
27 that he thought it was the day before he went sick,  
28 which was the 23rd.

29 CHAIRMAN: Of April?



1 A. Of April 2007. I can tell the Tribunal he didn't come  
2 to me on the 23rd April because I wasn't in Monaghan  
3 that day.

4 CHAIRMAN: Well, it's in or around. Anyway, the DPP's  
5 letter is dated 5th April 2007. 15:43

6 A. Yes.

7 CHAIRMAN: I'm not sure that it matters a whole lot,  
8 but anyway.

9 441 Q. MS. LEADER: So that is your telling of the  
10 consultation you had on the 13th May with counsel and 15:43  
11 Ms. Ryan?

12 A. That's correct, Judge.

13 442 Q. In very broad terms?

14 A. Yes.

15 443 Q. Now, the Commission started the next day -- 15:43

16 CHAIRMAN: I'm sorry, Ms. Leader, I know this time I'm  
17 slowing you up.

18 MS. LEADER: That is all right.

19 CHAIRMAN: Forgive me for that. But the whole tenor of  
20 the conversation with Sergeant McCabe was about what? 15:44  
21 Getting the DPP letter released? Or was it about  
22 something else or --

23 A. What I was taking from what Sergeant McCabe was saying  
24 to me, that he was dissatisfied with the outcome of the  
25 DPP's directions and that he was coming to me in 15:44  
26 relation to that. Now, as I saw it, what he was doing  
27 was contesting the decision of the Director of Public  
28 Prosecutions, that he was actually looking for  
29 something more than he had got, such as, that he wanted

1 his innocence declared.

2 CHAIRMAN: Again, I don't want to spend time on this,  
3 and there may be room for, I suppose, some confusion,  
4 but, as I understand it, you would have read the DPP's  
5 letter? 15:45

6 A. I would have. I'm not certain that I had seen it,  
7 Judge.

8 CHAIRMAN: Don't worry.

9 A. Yeah.

10 CHAIRMAN: It's as close to an exoneration as anybody 15:45  
11 could get.

12 A. It is, Judge.

13 CHAIRMAN: But it seems that the view taken was, all we  
14 can tell you is, insufficient evidence.

15 A. I would imagine, Judge, that Sergeant McCabe's issue 15:45  
16 was round what he was told by Superintendent Cunningham  
17 rather than what was actually in the letter.

18 CHAIRMAN: And you possibly had spoken to the State  
19 solicitor and possibly the state solicitor had told  
20 you, yes, I told -- 15:45

21 A. Yes.

22 CHAIRMAN: And I don't know whether the State solicitor  
23 told you he also told the other Garda, whose daughter  
24 it was?

25 A. Yes. 15:45

26 CHAIRMAN: Did he?

27 A. No, he didn't tell me that at all.

28 CHAIRMAN: Okay.

29 A. So at my meeting, if you like, I had a deficit of

1 information.

2 CHAIRMAN: All right. It is fine. As long as we know  
3 the general subject matter.

4 A. Yes.

5 CHAIRMAN: Ms. Leader, I'm sorry. 15:45

6 444 Q. MS. LEADER: Now I think you say in your statement that  
7 you didn't instruct anybody to challenge Sergeant  
8 McCabe, is that correct, with regard to motivation?

9 A. That's correct.

10 445 Q. You said that in your statement? 15:46

11 A. Yes.

12 446 Q. Now, we go then to the 14th May 2015, which was day 2  
13 of the O'Higgins Commission, and you were due to give  
14 evidence in that module of the O'Higgins Commission  
15 concerning dealings you had with the probationer guard, 15:46  
16 is that correct, Garda McCarthy?

17 A. That's correct, Judge.

18 447 Q. And you also had a role in the disciplinary process  
19 that followed in relation to the incident on the bus?

20 A. Yes, I had. 15:46

21 448 Q. And his investigation into that matter?

22 A. That's correct.

23 449 Q. And that, very broadly speaking, is what you gave  
24 evidence about to a certain point on the 15th May?

25 A. Yes, Judge. That was my only role that day at the 15:46  
26 Commission, was to deal with the disciplinary  
27 investigation in respect of probationer Garda McCarthy.

28 450 Q. So counsel for the Garda Commissioner then began to ask  
29 you about meeting Sergeant McCabe, the reference being

1 to the meeting with regard to the DPP's directions?  
2 A. That's right.  
3 451 Q. You've told the Tribunal in your statement that you had  
4 a certain reaction to this, and maybe you could tell us  
5 about that. Were you prepared for that line of 15:47  
6 questioning?  
7 A. No, I wasn't. When I was asked the question, I really  
8 didn't understand initially what the question was, and  
9 then I recollected my memory of what the question was  
10 and I endeavoured to deal with it. 15:47  
11 452 Q. And then that followed an intervention by Mr. Gillane,  
12 counsel for the Commission, and the exchange between  
13 Mr. McDowell and Mr. Smyth which led to the phone calls  
14 to Commissioner O'Sullivan on the evening of the 15th?  
15 A. That's correct. 15:48  
16 453 Q. And at the end of the evening of the 15th, the position  
17 was that Sergeant McCabe and his legal team had to be  
18 put on notice of what was going to be said in relation  
19 to the issue of motivation?  
20 A. That is correct. 15:48  
21 454 Q. Did you understand that to be the case?  
22 A. Yes, I did. And from what I took from what was being  
23 said by the Judge, is that the Garda Commissioner was  
24 going to set out in a letter what the issues were.  
25 Initially, I didn't think that that would involve me, 15:48  
26 but, quite clearly, the information I had provided  
27 which led to the instructions of counsel, clearly  
28 involved me, and, as such, I participated.  
29 455 Q. Yes. Now, we know from Mr. MacNamee's evidence to the

1 Tribunal that he took instructions that evening from  
2 you and Superintendent Cunningham. I don't know if  
3 maybe you weren't following Mr. MacNamee's evidence?  
4 A. Yes, I was following Mr. MacNamee's evidence. I don't  
5 share that view. 15:49

6 456 Q. We will pass. You haven't waived your privilege  
7 Mr. Rooney.

8 A. Okay.

9 457 Q. So I refer to it because Mr. MacNamee has referred to  
10 it. On the Saturday evening, it would appear a letter 15:49  
11 was circulated, that's Saturday 16th May, and that  
12 letter eventually turned into the letter of the 18th  
13 May?

14 A. That's correct, Judge.

15 458 Q. Okay. And you're familiar with that letter at this 15:49  
16 stage?

17 A. Yes, I am.

18 459 Q. Yes. Now, did you see it that morning prior to it  
19 being given to Judge O'Higgins?

20 A. No, I didn't, Judge. What happened that morning was 15:50  
21 that the letter was presented to me and as soon as it  
22 was given -- I was told to read it and to sign it, and  
23 as soon as it was given to me, the Judge came out to  
24 start the hearings in the morning. The letter was  
25 taken back from me. Before I handed it back, I 15:50  
26 certified at the end of the letter that I was only  
27 certifying the paragraphs that were relevant to me. In  
28 other words, I wasn't taking responsibility for the  
29 complete document when I hadn't read the final report.

1 460 Q. And we also know from emails circulated to the Tribunal  
2 that Mr. MacNamee, in an email addressed to Ms. Ryan  
3 and Chief Superintendent Healy, which appears at page  
4 762 of the materials, that a draft of the letter was  
5 forwarded to Ms. Ryan and Chief Superintendent Healy, 15:51  
6 which in the second paragraph said:  
7  
8 "It is of the utmost importance that the content be as  
9 factually accurate as possible, such that there are no  
10 misstatements and nothing that cannot be backed up by 15:51  
11 oral or documentary evidence."  
12  
13 You see that there?  
14 A. I do, yes. All I can say in relation to that, Judge,  
15 that any contribution that I had, it was factually 15:51  
16 correct.  
17 461 Q. Now, if we go to the letter of the 18th May, and I am  
18 working from a copy that appears at page 766 of the  
19 materials, which is the unengrossed copy. It's a  
20 fairly lengthy letter, and I don't want to go through 15:51  
21 it in detail, but we just --  
22 CHAIRMAN: Ms. Leader, I'm sorry, I know there's a  
23 couple of versions of this letter, and one of them does  
24 contain a few signatures. I think we received that  
25 more recently than the very earliest. 15:52  
26 MS. LEADER: Yes, it's Superintendent Cunningham's  
27 signature that appears.  
28 CHAIRMAN: We don't have the one that Superintendent  
29 Rooney wrote on, no?

1 MS. LEADER: No. What does appear is a redacted  
2 version at page 775 of the materials. That is the  
3 engrossed letter. Perhaps that can be brought up.  
4 CHAIRMAN: Yes.  
5 MS. LEADER: Just down underneath -- scroll down, 15:52  
6 please. So that would -- the redacted version. And  
7 that corresponds to the same place Superintendent  
8 Cunningham's signature appears on the unredacted. And  
9 there is a -- you will see there two sets of  
10 redactions, first of all on the right of the screen and 15:53  
11 underneath on the left.  
12 A. Yes.  
13 462 Q. Because you have said, Mr. Rooney, that you signed the  
14 letter somewhere, I don't know if you want to indicate  
15 to the Tribunal where you signed that letter, or can 15:53  
16 you remember?  
17 A. I can't remember, Judge.  
18 463 Q. If we could have 4079 of the materials. If that can be  
19 scrolled down, please. That would seem to be -- I  
20 don't know if you can identify that signature? 15:53  
21 A. That's Superintendent Cunningham's.  
22 464 Q. Superintendent Cunningham's signature?  
23 A. Yes.  
24 465 Q. And in relation to the signing off of the letter, you  
25 may not letter this, Mr. Rooney, but did everybody sign 15:54  
26 the same letter or were there copies given  
27 individually, and perhaps there were a number of  
28 signed-off versions of the letter?  
29 A. It was individual letters.

1 466 Q. And insofar as you are saying you signed off on the  
2 letter, if you would explain again what you signed off  
3 to?  
4 A. What I said, exactly the wording I'm not sure, but  
5 basically what I said was that I certify the accuracy 15:54  
6 of the document insofar as the paragraphs are relevant  
7 to me.  
8 467 Q. All right.  
9 A. Or words to that effect.  
10 468 Q. If I can just bring you to paragraph 14 of the letter. 15:54  
11 Thank you. You see it says:  
12  
13 "Sergeant McCabe was unhappy with the outcome of the  
14 decision of the DPP as he believed that the decision  
15 ought to have completely exonerated him rather than 15:55  
16 recording that there was not sufficient evidence to  
17 proceed against him."  
18  
19 You'll understand that Sergeant McCabe's position is  
20 that he was very happy with the DPP's directions 15:55  
21 because he knew that it was as close as one could get  
22 to a complete exoneration.  
23 A. Yes. Sergeant McCabe would have been very happy with  
24 what he was told by the state solicitor, I have no  
25 doubt at all about that. Perhaps he may not have been 15:55  
26 that happy with what he was told at the meeting with  
27 Superintendent Cunningham. And there may be a  
28 divergence between those two accounts.  
29 469 Q. And if we could go to paragraph 16, it would appear to



1 be a paragraph which directly affects you, Mr. Rooney.  
2 It says:

3  
4 "Sergeant McCabe sought an appointment to see Chief  
5 Superintendent Colm Rooney and this was facilitated in 15:56  
6 June/July 2007."

7  
8 There's an uncertainty with regard to that date.

9 A. Yes.

10 470 Q. Is that correct? 15:56

11  
12 "At the meeting Sergeant McCabe expressed anger and  
13 annoyance towards the Director of Public Prosecutions.  
14 He demanded that Chief Superintendent Rooney  
15 communicate with the Director of Public Prosecutions to 15:56  
16 seek a declaration of his innocence from the DPP in  
17 relation to the allegation. Chief Superintendent  
18 Rooney advised Sergeant McCabe of the policy of the  
19 Director, of the DPP in dealing with such issues, a  
20 policy which Sergeant McCabe was himself professionally 15:56  
21 aware of. Chief Superintendent Rooney told Sergeant  
22 McCabe that he could not seek such a declaration on  
23 Sergeant McCabe's behalf from the DPP. Chief  
24 Superintendent Rooney pointed out to Sergeant McCabe  
25 that from his own experience of dealing with criminal 15:56  
26 files to the DPP, he was aware of the DPP's role to  
27 determine if sufficient evidence was available on a  
28 file to direct a prosecution. Chief Superintendent  
29 Rooney advised Sergeant McCabe that it was not the

1 Garda Commissioner's policy that An Garda Síochána  
2 challenge the Director of Public Prosecutions on his  
3 decisions. Chief Superintendent Rooney further pointed  
4 out to Sergeant McCabe that, as a private citizen, it  
5 was open to him to write to the DPP if he so wished to 15:57  
6 seek the declaration he required."

7 A. Yes.

8 471 Q. Were you happy with the contents of that paragraph at  
9 that time?

10 A. Yes, I was, Judge. 15:57

11 472 Q. And I think you were cross-examined subsequently at the  
12 Commission specifically with regard to the contents of  
13 that paragraph?

14 A. Yes, I was.

15 CHAIRMAN: And you remain happy with it? 15:57

16 A. Yes, I do, Judge. That was my understanding of the  
17 meeting that we had at Monaghan station that day.

18 CHAIRMAN: That is fine.

19 473 Q. MS. LEADER: And you now understand, having been  
20 cross-examined in relation to that meeting, that 15:58  
21 Sergeant McCabe's understanding of that meeting is very  
22 different?

23 A. Yes, I do.

24 474 Q. In relation to paragraph 19 of that letter, the  
25 complaints to Superintendent Clancy, turning into 15:58  
26 complaints against Superintendent Clancy, it would  
27 appear from your knowledge of the D investigation and  
28 your dealings with Sergeant McCabe's complaints against  
29 Mr. D, that you must have known that -- did it occur --

1           you were aware of all of that, isn't that correct?

2           A.    Yes, I was, Judge.

3 475 Q.    Can you say anything in relation to the inaccuracy,  
4           misunderstanding, or otherwise, however otherwise it  
5           could be described, in relation to paragraph 19? 15:58

6           A.    Yes, Judge, well there was a number of contributors --  
7           MR. WHELAN: The witness will know that his answer is  
8           within the constraints of privilege. I'm just  
9           conscious that he should be -- that his attention  
10          should be drawn to that, Judge. 15:59

11          MS. LEADER: Yes.

12          MR. WHELAN: And the privilege of others.

13          CHAIRMAN: Yes, fair enough. You'll be aware of that,  
14          Ms. Leader.

15          MS. LEADER: Yes. 15:59

16 476 Q.    But I suppose what I'm suggesting to you, Mr. Rooney,  
17           is, you, at the time in 2015, had knowledge of  
18           Superintendent Cunningham's dealings with Sergeant  
19           McCabe in relation to the D issue?

20          A.    Yes, I had. 15:59

21 477 Q.    And were you clear about them at that time in 2015?

22          A.    Yes, I was.

23 478 Q.    Maybe we will leave it at that. And you were also  
24           aware, I think you've already confirmed in your  
25           evidence, of Superintendent Cunningham's report to you, 15:59  
26           as chief superintendent, in September 2008 in relation  
27           to that meeting in August 2008?

28          A.    Yes, I was, Judge.

29 479 Q.    In any event, when the Commission's proceedings dealt

1 with the issue on day 3, Mr. Justice O'Higgins didn't  
2 allow that letter to be admitted in evidence or dealt  
3 with otherwise, other than to say that Sergeant McCabe  
4 had a grievance of some sort with the guards?  
5 A. That's correct. 16:00  
6 480 Q. And I think on that day you continued your evidence,  
7 and everybody confined -- you and  
8 Superintendent Cunningham confined yourself to that  
9 statement, agreeing with Mr. Smyth that Sergeant McCabe  
10 had a grievance with the guards, Garda management? 16:00  
11 A. Correct, Judge.  
12 481 Q. And thereafter it was issues with regard to the bus  
13 incident, is that correct?  
14 A. Yes.  
15 482 Q. Now, Sergeant McCabe went on to give evidence that day, 16:00  
16 isn't that correct?  
17 A. I'm not sure.  
18 483 Q. You're not sure. Perhaps, I don't know if this would  
19 refresh your memory, Mr. Rooney. Page 785 of the  
20 materials. You'll see the line-up of witnesses for 16:01  
21 that day, Mr. Rooney. So you're the first witness, it  
22 continues on down, and you'll see that Sergeant McCabe  
23 gave evidence starting at page 141 of the materials.  
24 786.  
25 A. I don't have that page. 16:01  
26 484 Q. Yes.  
27 CHAIRMAN: We can take it as a given, if you're on  
28 transcript --  
29 A. Yes.

1 CHAIRMAN: -- it's clearly not your ghost that is  
2 giving evidence.

3 485 Q. MS. LEADER: Were you present when Sergeant McCabe gave  
4 that evidence?

5 A. I don't have any recollection of being present, Judge. 16:02  
6 I was on, from what I recall, restricted entry in the  
7 Commission. I do know I had to leave after giving my  
8 evidence. On day 1 I was -- or on Module 1 I was  
9 allowed to stay in by the Judge, but I'm just not  
10 certain that I was there for the full period of module 16:02  
11 1.

12 CHAIRMAN: Is this the evidence about the Mullingar  
13 meeting, so to speak?

14 MS. LEADER: It is, yes.

15 CHAIRMAN: It is. And you think you weren't there? 16:02

16 A. I don't -- I have no recollection. I'm not certain,  
17 Judge, whether I was actually in the room when that was  
18 debated or not.

19 486 Q. MS. LEADER: Could you have been in the room when it  
20 was debated? 16:03

21 A. Oh, I could well have been, and then again, I may not  
22 have been.

23 487 Q. All right. You would have had an interest in Sergeant  
24 McCabe's evidence, I am correct in saying that?

25 A. I would. Of course I would, Judge. But, I mean, 16:03  
26 whether I was there at a particular time or not, I  
27 cannot honestly say to this Tribunal yes I was there,  
28 because I may not have been. I just can't say.

29 488 Q. And you obviously travelled to Dublin that day to

1 attend to give evidence, isn't that correct?

2 A. I stayed up in Dublin.

3 489 Q. Yes. And would have had an interest in the proceedings  
4 of the O'Higgins Commission generally?

5 A. Oh, of course I would, yes. 16:03

6 490 Q. So do you think it would be more likely than not that  
7 you would have stayed to hear the evidence that  
8 Sergeant McCabe gave? This was the first time he was  
9 giving evidence to the O'Higgins Commission.

10 A. Yes. But, I mean, I'm going to have to speculate, 16:04  
11 Judge, you know, I'm just not certain whether I was  
12 there or not.

13 491 Q. Well, when you were giving evidence, I think you gave  
14 evidence in relation to Sergeant McCabe directing  
15 Ms. Browne towards GSOC, isn't that correct? 16:04

16 A. Yes, I did, yes.

17 492 Q. And you also expressed the view that this was very  
18 unhelpful for subsequent disciplinary investigations,  
19 isn't that right?

20 A. Well, it was my view that it may have interfered with 16:04  
21 the investigation; in other words, if a witness is  
22 approached and subsequently interviewed by an  
23 investigation team, you know, is it an honest account  
24 of what that person is saying, or have they been  
25 influenced by previous contacts. I think that is the 16:05  
26 point that I was making.

27 493 Q. Yes. So I suppose your evidence, and I don't mean to  
28 dismiss it or anything, but it was of a very formal  
29 nature up to that point insofar as you were giving

1 evidence of reviewing Garda McCarthy's notebook, I  
2 think, and also in relation to appointing somebody to  
3 discipline him, is that correct?

4 A. Yes, yes.

5 494 Q. So the contentious part of your evidence, and I think 16:05  
6 you had been cross-examined in relation to it, was the  
7 directing Ms. Browne towards GSOC and the effect that  
8 had on subsequent disciplinary investigations. That  
9 would seem to have been the contentious part of your  
10 evidence? 16:05

11 A. I'm not sure that I actually said that it would impact  
12 on disciplinary investigations. From what I recall,  
13 the point that I was making to the Judge, that  
14 Ms. Browne was obviously a central figure and that if  
15 people had approached her directly, that it may 16:06  
16 influence her when she was later being interviewed in  
17 respect of the investigation. And I think the second  
18 point I was making was that if those officers had a  
19 concern in relation to the issue, that their duty was  
20 to report it and have it properly investigated by the 16:06  
21 authorities, rather than going directly to Mrs. Browne.  
22 That was the point I think I was making.

23 CHAIRMAN: Ms. Leader, I just want to clarify one thing  
24 for myself. What you're referring to here in the  
25 transcript is where Mr. Smyth puts it to Sergeant 16:06  
26 McCabe, I think --

27 MS. LEADER: Yes.

28 CHAIRMAN: -- that in relation to the meeting in  
29 Mullingar, that he had made a complaint about

1 Superintendent Clancy in order to ensure the DPP's  
2 directions would be passed on, whereas, in fact, the  
3 correct situation which emerged with the letter in fact  
4 handed in that day from Superintendent Cunningham and  
5 was later referred to by the Judge was that at that 16:07  
6 meeting Superintendent Cunningham, Sergeant Yvonne  
7 Martin were there and Sergeant McCabe and they were all  
8 agreed that it was a complaint to Superintendent Clancy  
9 with a view to getting the DPP's directions passed on.  
10 MS. LEADER: Yes. 16:07  
11 CHAIRMAN: But Chief Superintendent Rooney was never at  
12 that meeting.  
13 A. No.  
14 MS. LEADER: No, he was never at that meeting.  
15 CHAIRMAN: Yes. So he couldn't know what was 16:07  
16 happening, I presume, apart from getting a report about  
17 it in August.  
18 A. That's correct.  
19 MS. LEADER: Absolutely. And I think Mr. Rooney has  
20 confirmed that he was familiar with what was going on 16:07  
21 and that it was a complaint to Superintendent Clancy.  
22 A. Absolutely.  
23 495 Q. And what I am exploring with Mr. Rooney is whether or  
24 not he was in the room when Sergeant McCabe was  
25 questioned in relation to that? 16:08  
26 A. I cannot honestly say whether I was or not, Judge.  
27 496 Q. All right. And what I am suggesting to you is that it  
28 was very much in your interest to be in the room to  
29 hear what Sergeant McCabe had to say about directing



1 Ms. Browne to GSOC at the time?

2 A. I'm sure the whole seven or eight modules were of  
3 interest to me, Judge. Maybe I was at the toilet,  
4 maybe I was having coffee, I honestly don't know, but I  
5 cannot recall that actual incident. 16:08

6 497 Q. And just to make it clear to you what Mr. Smyth put to  
7 Sergeant McCabe, it's at page 980 of the materials, I  
8 think it appears at its most stark, Mr. Rooney.  
9 Question 735. You will see Mr. Smyth puts to Sergeant  
10 McCabe: 16:09

11  
12 "The only reason will be the evidence of  
13 Superintendent Cunningham. The only reason that you  
14 wrote those lists of complaints for Superintendent  
15 Clancy, do you understand, that you made the complaints 16:09  
16 about Superintendent Clancy, was that you wanted to put  
17 pressure on Superintendent Clancy to get the full  
18 directions from the authority conveyed to you."  
19

20 And the answer is: 16:09

21  
22 "That is absolutely false. Absolutely.  
23 Q. Fair enough."  
24

25 You see that there? 16:09

26 A. Yes.

27 498 Q. And can you remember if you were in the room when that  
28 exchange took place?

29 A. I have no knowledge. I don't remember that, Judge.

1 499 Q. And if you had heard that exchange take place, would  
2 you have reacted to it, do you think?

3 A. I have no idea. One would expect that there were other  
4 people in the room who would have possibly heard it and  
5 maybe reacted. Certainly I would imagine I would have 16:10  
6 brought it to the notice of Chief Superintendent Healy,  
7 if I was actually clear in my mind that there was a  
8 misstatement being put to Sergeant McCabe, I would  
9 certainly have informed Chief Superintendent Healy, who  
10 was there all the time, to correct the record. But I 16:10  
11 don't specifically remember anything like that.

12 500 Q. That is the end of day 3 of the Commission. And I  
13 think on day 4 both yourself and Superintendent  
14 Cunningham were recalled to deal with the evidence that  
15 Sergeant McCabe had given, is that correct? 16:11

16 A. That's correct, Judge.

17 501 Q. And that was at the request of the counsel for the  
18 Commissioner and your counsel, isn't that correct?

19 A. Yes.

20 502 Q. Now, when you were recalled on day 4, you were 16:11  
21 cross-examined with regard to your meeting with  
22 Sergeant McCabe, is that correct?

23 A. That's right.

24 503 Q. And Sergeant McCabe's interpretation of that meeting  
25 was that he was a bit annoyed that Superintendent 16:11  
26 Cunningham hadn't told him about the directions of the  
27 DPP earlier, he was of the view that Sergeant [sic]  
28 Cunningham had sat on the directions, so to speak?  
29 That was --

1 A. Inspector Cunningham.

2 504 Q. Inspector Cunningham at that stage.

3 A. That's what he was saying, Judge, but, you know, I

4 reflected on that at some time, and what Sergeant

5 McCabe was saying, that he had obviously known what the 16:12

6 directions were from the State solicitor.

7 CHAIRMAN: I don't think it is necessary to go into

8 that because I've actually heard evidence on that whole

9 thing.

10 MS. LEADER: Yes. 16:12

11 A. Okay, Judge.

12 CHAIRMAN: Yes. And I know Superintendent Cunningham

13 says, look, I was away, I came back, I had to go to the

14 victim first, I went to him, we arranged a meeting,

15 eventually we met in a hotel, he was accompanied by a 16:12

16 member of the AGSI, and then there is the conversation.

17 A. Yes.

18 MS. LEADER: Yes.

19 CHAIRMAN: But it is not actually important.

20 A. Okay, Judge. 16:12

21 505 Q. MS. LEADER: Sergeant McCabe's version of your

22 particular paragraph of the letter of the 18th May was

23 put to you and teased out in cross-examination, isn't

24 that correct?

25 A. Yes. 16:12

26 506 Q. In no uncertain terms?

27 A. Yes.

28 507 Q. It was made very clear to you what Sergeant McCabe's

29 view of that meeting was?

1 A. Yes. And from my point of view, Judge, I cannot see  
2 for the life of me how I could have a conversation with  
3 Sergeant McCabe about the failure of Superintendent  
4 Cunningham to inform him about the DPP directions when,  
5 as far as we were concerned, the DPP's directions were 16:13  
6 not issued at all, because Sergeant McCabe was saying  
7 that he came to me before the DPP's directions were --  
8 before he got them from Superintendent Cunningham on  
9 the 8th May.

10 CHAIRMAN: Well, you know, it could be correct, because 16:13  
11 if the state solicitor had read them, which everyone  
12 seems to be agreeing that he did, he --

13 A. Oh, yes, the state solicitor would have read them to  
14 him, say, on or about the 11th, but I would not have  
15 known at that stage that the DPP's directions were 16:13  
16 actually out.

17 CHAIRMAN: It could have been a wee bit earlier then.

18 A. Yes.

19 CHAIRMAN: I really don't think it is important.

20 MS. LEADER: I just wanted to put both sides. 16:13

21 CHAIRMAN: No, you have covered it.

22 MS. LEADER: And finally, in relation to the issue of  
23 the letter of the 18th May, it appears again in a  
24 different format in the submissions submitted on your  
25 behalf and on behalf of the Commissioner at the end of 16:14  
26 Module 1.

27 A. Yes.

28 508 Q. Now, at that stage the error still hadn't been  
29 identified by Mr. Justice O'Higgins, you're aware of

1 that?

2 A. Yes.

3 509 Q. Those submissions were submitted on the 11th June 2015,  
4 and the problem with paragraph 19 of the letter of the  
5 18th May still hadn't come to light, isn't that  
6 correct? 16:14

7 A. That's right. And that paragraph really wasn't my  
8 information or instructions and I could not deal with  
9 that. Any review I had was in respect of paragraphs  
10 that were relevant to me. 16:14

11 510 Q. Okay. So if I just turn to paragraphs 69 and 70 of  
12 those submissions, which are at page 1452 of the  
13 materials, you see paragraph 69:

14

15 "Sergeant McCabe then made a series of complaints 16:15  
16 against other officers in Bailieboro station, including  
17 Superintendent Clancy, against whom he alleged a lack  
18 of support. Chief Superintendent Rooney appointed  
19 Superintendent Cunningham to investigate these  
20 complaints. Superintendent Cunningham attempted to 16:15  
21 meet Sergeant McCabe to discuss the complaints and  
22 finally did so on the 25th August 2008. On this  
23 occasion, Superintendent Cunningham was accompanied by  
24 Sergeant Martin."

25

26 Then it goes into the meeting issue in paragraph 70.  
27 And refers to:

28

29 "It is understood that Superintendent Cunningham and

1 Sergeant Martin will give evidence that Sergeant McCabe  
2 said at the meeting that the complaint which he had  
3 made alleging lack of support as referred to in the  
4 previous paragraph was a bid by him to have the full  
5 DPP directions conveyed to him and to the complaining 16:16  
6 party. This is recorded in a report of the meeting  
7 prepared jointly by Sergeant McCabe and  
8 Superintendent Cunningham -- Sergeant Martin and  
9 Superintendent Cunningham."

10  
11 Were you happy to sign off on those submissions, so to  
12 speak?

13 A. I don't think that I signed off on those submissions,  
14 because I'm not in a position to verify everything  
15 that's in that document, and I can only ensure the 16:16  
16 accuracy of the information that's relevant to me.  
17 It's for everybody to ensure that their own information  
18 is accurate. I couldn't sign off on 72 paragraphs of a  
19 report that clearly I would not have knowledge of.

20 511 Q. All right. But I suppose you are mentioned directly in 16:17  
21 paragraph 69, saying that you appointed  
22 Superintendent Cunningham to investigate these  
23 complaints. Do you see that?

24 A. Yes, I do.

25 512 Q. Yes. And these complaints there would appear to refer 16:17  
26 to complaints against other officers in Bailieboro,  
27 including Superintendent Clancy?

28 A. Yes.

29 513 Q. Do you understand what --

1 A. Yes, I think it's not very well worded, you know, in  
2 relation to it. You could say that the first sentence  
3 is correct, because it's a number of complaints that's  
4 been referred to, probably over a period of time, but I  
5 cannot say. I mean, I wasn't dealing with that issue, 16:17  
6 so I don't think that it would be appropriate for me to  
7 interfere in relation to that when I didn't have all  
8 the information around it.

9 514 Q. And that's your position with regard to --  
10 CHAIRMAN: Yes, Superintendent Cunningham was, in fact, 16:18  
11 reporting on the D issues.  
12 MS. LEADER: Exactly.  
13 CHAIRMAN: As opposed to issues about police standards.

14 A. Exactly, Judge.  
15 CHAIRMAN: It was basically a family-type situation, 16:18  
16 except, unfortunately, both of them were Garda  
17 officers.

18 A. Exactly.

19 515 Q. MS. LEADER: And when the problem with paragraph 19 of  
20 the letter of the 18th May came to light, were you made 16:18  
21 aware of that? It happened in June when the Commission  
22 resumed hearings with regard to Module 1.

23 A. I don't think I was at the Commission at the time. I'm  
24 not certain, but I don't think I was at the Commission  
25 when that arose, but I can't be -- I don't think I was. 16:19  
26 I'm not sure.

27 516 Q. When did you become aware of it?  
28 A. I honestly don't know.

29 517 Q. I suppose if you didn't know -- was any consideration

1 given by you to amending the submissions or instructing  
2 anybody to do that?

3 A. The submissions, as I understand it, didn't come before  
4 the Commission at all. That was actually -- that  
5 document would have been lodged in the Commission. 16:19

6 518 Q. Yes, yes.

7 A. And it wouldn't have been discussed at the Commission  
8 at all.

9 519 Q. That's certainly true, but it was a document that I  
10 suppose was putting your best case forward to the 16:19  
11 Commission, Mr. Rooney?

12 A. Yes. And my best case, Judge, is accurate.

13 520 Q. So am I correct in saying you didn't give any thought  
14 to revisiting the submissions or instructing your  
15 lawyers to do so? 16:20

16 A. Anything I had contributed, as far as I was concerned,  
17 was accurate, and no issue was raised in relation to  
18 anything I did.

19 MS. LEADER: Thanks very much. If you would answer any  
20 questions anybody else might have. 16:20

21 CHAIRMAN: Let's just check, if you don't mind.

22

23 THE HEARING ADJOURNED BRIEFLY AND RESUMED AS FOLLOWS:

24

25 MR. MCGUINNESS: Chairman, I should say that I have 16:30  
26 consulted with Mr. Rogers, and he has obviously  
27 consulted with his client. I am very conscious that  
28 Mr. Barrett has been required to be available and  
29 listed for a number of different days, but Mr. Rogers



1 has confirmed that he's able to continue the evidence  
2 on Monday, and Mr. Rogers is available, so we're going  
3 to schedule him for the continuation of his evidence at  
4 10:00 on Monday morning. And then Superintendent  
5 Cunningham will be called after that. Thank you.

16:31

6 CHAIRMAN: So just maybe it would help if I summarise  
7 the position that we're in. Chief Superintendent  
8 Rooney, now Mr. Rooney, says yes, he did put up the  
9 letter congratulating everybody in relation to their  
10 cooperation with the Byrne/McGinn thing, based on a  
11 meeting with Assistant Commissioner Byrne on the 24th  
12 June 2011. He says that in the light of the Guerin  
13 investigation and the O'Higgins Report, he acknowledges  
14 that he was wrong, and he has apologised. In relation  
15 to, then, the actual Commission and what went wrong in  
16 relation to the Commission, his view is that yes, he  
17 had a meeting with Sergeant McCabe and that it was  
18 about whether or not the DPP's directions could be  
19 released. He did not participate in the August  
20 Mullingar 2008 meeting, which Superintendent Cunningham  
21 however reported to him shortly after the 25th August  
22 2008. So there had to be some degree of familiarity.  
23 That report, of course, was correct to the effect that  
24 the complaints were to Superintendent Clancy in  
25 relation to the DPP direction circulation, not against  
26 Superintendent Clancy. He cannot recall whether he was  
27 there on the Monday. He saw the letter and signed it  
28 as being correct, as in relation to him, specifically,  
29 without caveat. As regards the Tuesday, when the

16:31

16:31

16:32

16:32

1 matter was put, he doesn't know whether he was in the  
2 room, he was on restricted access. As for the  
3 correction then on day 4 when he was recalled, that  
4 correction was then made, but by that stage the Judge  
5 had ruled against the issue. That is a summary of the 16:33  
6 evidence.

7 MS. LEADER: I think correction was given on day 5.

8 MR. MCDOWELL: Judge, there is one thing, Judge, and it  
9 probably will shorten things. The report by  
10 Superintendent Cunningham dated some day in September 16:33  
11 2008 was not handed in on day 4 -- or day 3. It was  
12 produced at a later stage.

13 CHAIRMAN: Maybe. But the evidence I have at the  
14 moment is that it was actually handed in with the  
15 letter -- 16:33

16 MR. MCDOWELL: No, it wasn't.

17 CHAIRMAN: well, somebody is going to have to tell me  
18 that, and not just by nodding and gesticulating. If  
19 that is going to become important, somebody will have  
20 to tell me by evidence. 16:34

21 MR. MCDOWELL: I think, Judge, that if you check the  
22 transcript, the evidence is the contrary, that it  
23 wasn't handed in that day.

24 CHAIRMAN: well, the evidence is it was handed in that  
25 day and that people didn't get a chance to read it, 16:34  
26 specifically those whose name was to the letter. But,  
27 Mr. McDowell, that can all be corrected. Don't worry  
28 about it. That's my understanding of it, but I  
29 actually think I'm right. I don't always think I'm

1 right, but I actually think I'm right on this occasion.

2 MR. MCDOWELL: I know I am not always right, but on  
3 this I think I am right.

4 CHAIRMAN: You could well be, because you were there,  
5 but I think someone is going to have to tell me about 16:34  
6 that if it becomes important. So why don't you -- I'm  
7 inviting you to carry on.

8

9 MR. COLM ROONEY WAS CROSS-EXAMINED BY MR. MCDOWELL:

10 16:34

11 521 Q. MR. MCDOWELL: Chief Superintendent Rooney, thank you  
12 for the apology in respect of the circular letter. I  
13 do suggest to you that you know that Superintendent  
14 Clancy posted it throughout the Garda region, isn't  
15 that right? 16:34

16 A. Well, that's what one would expect him to do in the  
17 normal correspondence, yes.

18 522 Q. And it was generally known in the -- its contents were  
19 generally known and I presume generally accepted, even  
20 though they are now shown to be wrong? 16:35

21 A. Yes, it would have been generally known throughout  
22 Cavan-Monaghan division. That is where it was sent.  
23 At the time it was sent, it was correct insofar as what  
24 I was told.

25 523 Q. Yes. 16:35

26 A. But with what transpired later through Guerin and  
27 Mr. Justice O'Higgins, clearly that was not the case.

28 524 Q. Yes. And I have to suggest to you that, insofar as it  
29 was wrong, not merely -- it didn't just depend on

1 Mr. Guerin's view or Mr. Justice O'Higgins' view, in  
2 fact, you now know that a substantial number of  
3 Sergeant McCabe's complaints were, in fact, upheld  
4 originally by the Byrne/McGinn report, so you were, so  
5 to speak, misled a bit by Assistant Commissioner Byrne, 16:36  
6 if that was the pen picture he gave you of its  
7 findings?

8 A. Well, as I understand, there was 11 of Sergeant  
9 McCabe's complaints out of in the region of 40  
10 complaints that were made to Byrne/McGinn upheld, and 16:36  
11 the ones that were upheld were basically the ones that  
12 were brought before the Commission of Investigation.

13 525 Q. Yes.

14 A. Obviously I don't want to comment, Mr. McDowell, on  
15 what you suggest I was misled. I can only report on 16:36  
16 the set of circumstances that I found myself in.

17 526 Q. Yes, I appreciate that. And I don't want to unravel  
18 your apology in any way, but it would appear that you  
19 were -- the picture that was painted to you of the  
20 Byrne/McGinn report was not accurate? 16:36

21 A. As it transpired, that is correct, Judge.

22 527 Q. And I also have to put it to you that, in March 2009,  
23 Séan Costello, solicitor, of Séan Costello & Company,  
24 on behalf of Sergeant McCabe, had written to you  
25 arising out of an article that appeared in the 16:37  
26 Anglo-Celt, in which you had described the complaints  
27 being investigated by the Byrne/McGinn report as  
28 absolute rubbish?

29 A. You're completely incorrect in what you say,

1 Mr. McDowell. That is not what is in the article. And  
2 I will read to you what is in the article.

3 528 Q. If you would?

4 A. "I recently read reports in the national and local  
5 media in relation to policing in Bailieboro and it was 16:37  
6 absolute rubbish what was in those reports. It was  
7 factually incorrect."

8  
9 And if you look at Sergeant McCabe's statement,  
10 statement G at page 7, he said: 16:37

11  
12 "I am not alleging corruption or criminality by any  
13 member, nor have I any evidence to support the  
14 allegation."

15 16:38  
16 That is there. What was in the local media was very  
17 clear, it was the headlines in the media, in the print  
18 media, that there was corruption and criminality taking  
19 part in Cavan-Monaghan division, and indeed it was  
20 carried on radio and TV stations, and that was 16:38  
21 absolutely incorrect and it was wrong.

22 529 Q. Could I ask you about the letter again, just to bring  
23 you back briefly to the letter which Ms. Leader brought  
24 you to, and that was at paragraph 14, we're at page 774  
25 of the materials, the letter of the 18th May 2015. 16:38  
26 Paragraph 14 says:

27  
28 "Sergeant McCabe was unhappy with the outcome of the  
29 decision of the Director of Public Prosecutions as he

1 believed the decision ought to have completely  
2 exonerated him, rather than recording that there was  
3 not sufficient evidence to proceed against him."  
4

5 Now, that is entirely false, isn't it? That was not  
6 the DPP's determination, and he knew it wasn't. 16:39

7 A. No, well, I can only deal with the paragraphs that  
8 referred to me.

9 530 Q. Yes.

10 A. I didn't provide the information in respect of that and 16:39  
11 that was in relation to communications with my legal  
12 team, and I honestly cannot comment in relation to it.

13 531 Q. Well, I didn't ask you whether you were responsible for  
14 it; I'm just saying do you agree it was absolutely  
15 false? 16:39

16 A. No, I don't, because, if you like, they were two sets  
17 of DPP directions, if you like to describe it that way.  
18 There was the one that Sergeant McCabe had, which is  
19 the factual one in relation to the DPP's direction and  
20 then you had meeting with Superintendent Cunningham 16:40  
21 where clearly Sergeant McCabe probably was not happy  
22 with the information that he got in relation to that.  
23 So you could say there was a diversion of opinion, but  
24 clearly that's not what the full directions of the DPP  
25 said. 16:40

26 532 Q. No. I've got to put it to you it's firmer than that.  
27 It's that the DPP's direction never was based on a  
28 proposition that there was not sufficient evidence to  
29 proceed against him. That was never the basis, on

1           anybody's version.

2           A.   well, he certainly didn't say that he was absolutely  
3           exonerated, either.  The exact words he said, I just  
4           cannot recall the exact words.

5           CHAIRMAN:  It said:  "This did not amount to an  
6           assault" or -- "This did not amount to a sexual assault  
7           or indeed an assault, even if there were no issues as  
8           to credibility."

16:40

9           A.   Okay.

10   533   Q.   MR. MCDOWELL:  Yes.  I have to suggest to you that it  
11           is simply untrue to say that it recorded that there was  
12           not sufficient evidence to proceed against him, that  
13           simply was not true?

16:41

14           A.   That is a fair comment, yes.

15   534   Q.   And paragraph 15 deals with Sergeant McCabe presenting  
16           Superintendent Clancy with a series of operational  
17           issues for his attention, which is stated here:

16:41

18  
19           "which were of a type which would normally have been  
20           dealt with by the sergeant in charge of the station."

16:41

21  
22           And I think, again without saying that that is false,  
23           I've got to suggest to you that that gave a misleading  
24           impression.  He wrote to Superintendent Clancy seeking  
25           his support in dealing with issues which he was  
26           encountering as sergeant in charge of the station, in  
27           relation to discipline and performance?

16:41

28           A.   well, I think, Judge, I'm familiar with that report,  
29           and it was issued in January 2008, and the issues

1 outlined in the bullet-points by Sergeant McCabe was  
2 clearly issues that come solely within the remit of not  
3 just the sergeant in charge of the station but the  
4 first-line supervisors, the unit sergeants. I mean,  
5 what that was dealing with was complaining that guards 16:42  
6 weren't coming to work on time, that they were taking  
7 too long of tea breaks, that they were reading  
8 newspapers when they were working, and it was all very  
9 general day-to-day policing issues.

10 535 Q. Yes. 16:42

11 A. Now, it's beyond me to say that Sergeant McCabe needed  
12 to go to his superintendent to seek assistance to deal  
13 with those issues.

14 536 Q. Well, you see, we do know -- we do know that in the  
15 submission of the 11th June, it's precisely stated that 16:42  
16 he made a complaint of lack of support in these  
17 matters.

18 CHAIRMAN: Well, it's certainly correct to say, in  
19 terms of documents, that on the 28th January '08  
20 Sergeant McCabe wrote to Superintendent Clancy a letter 16:43  
21 and then there was a meeting and it was about  
22 supervision, non-completion of work, and then Pulse  
23 issues as well.

24 MR. MCDOWELL: Yes.

25 CHAIRMAN: So it was Sergeant McCabe bringing to 16:43  
26 Superintendent Clancy.

27 MR. MCDOWELL: And seeking his support, Judge.

28 CHAIRMAN: Well, that would definitely follow from  
29 that.



1 A. Yes.

2 MR. MCDOWELL: Yes.

3 CHAIRMAN: That he would wish that things be done  
4 better.

5 A. Yes. 16:43

6 537 Q. MR. MCDOWELL: And then we have paragraph 16, which, in  
7 fact, is two long paragraphs. Do you accept  
8 responsibility for what's in paragraph 16?

9 A. Well, again, Judge, it's in relation to a consultation  
10 that I had with my legal team, and obviously I don't 16:43  
11 wish to discuss it.

12 538 Q. I see. Well, could I bring you to page 1113, which is  
13 in Book 2B.

14 CHAIRMAN: Maybe it would help, I know you're going  
15 there, but as we're coming there, as it's coming on the 16:43  
16 screen, on your understanding of any meeting you had  
17 with Sergeant McCabe at the time, was he expressing  
18 annoyance or dissatisfaction with the DPP as to the  
19 ruling or else as to the ruling, whether the ruling  
20 couldn't be circulated, or was it annoyance or 16:44  
21 dissatisfaction with the Gardaí that the ruling  
22 couldn't be circulated?

23 A. It was very difficult to be sure exactly what he was  
24 saying, if it was annoyance with the actual decision of  
25 the DPP or if he was annoyed with what Superintendent 16:44  
26 Cunningham was after telling him.

27 CHAIRMAN: You appreciate his case is that it was  
28 annoyance with the fact that the circular -- sorry,  
29 that the letter from the DPP couldn't be circulated to

1 the two parties.

2 A. Yes.

3 CHAIRMAN: That's his case.

4 A. Yes.

5 CHAIRMAN: And do you disagree with it? 16:44

6 A. I wouldn't disagree with it, Judge. That is probably

7 what was in his mind.

8 539 Q. MR. MCDOWELL: And I think when we use the term

9 "circulated", we're actually saying shown to the D

10 family? 16:44

11 A. Yes.

12 CHAIRMAN: And I think it may have gone a bit further

13 than that, in the event that that had happened, but I

14 appreciate that was his aim.

15 A. Yes. 16:45

16 540 Q. MR. MCDOWELL: Now, could I bring you to page 1113 in

17 Book 2B, where you were cross-examined at question 47,

18 line 12. Have you got that in front of you?

19 A. Yes.

20 541 Q. And before we go there, I just want to ask you one 16:45

21 question -- or two questions. You didn't expect the

22 issue of your meeting with Sergeant McCabe to be raised

23 on Friday 15th May, is that right?

24 A. That's correct.

25 542 Q. It came as a surprise to you that counsel brought you 16:45

26 there, is that right?

27 A. Well, it came as a surprise to me that counsel asked me

28 that day in relation to it. But having said that, the

29 Commissioner's counsel were fully entitled to raise

1 issues with me --

2 543 Q. Yes.

3 A. -- from information available to them, and they were  
4 entitled to raise that at any module throughout the  
5 Commission hearing. The point I was making is that I 16:46  
6 wasn't expecting them to raise it that day.

7 544 Q. Yes.

8 A. And why I was putting it in context, Judge, you know,  
9 it was suggested to me that day that the Commissioner  
10 and I were in collusion to bring this matter on to the 16:46  
11 floor of the Commission, and I just wanted to make it  
12 clear that I was not aware that that issue was being  
13 raised with me. So it is to deal with the issue of  
14 collusion between the Commissioner and I, rather than  
15 any other reason, that I was putting it out there. 16:46

16 545 Q. I understand that. The second point is, and I just  
17 want to be clear about this, you did not want yourself  
18 to question Sergeant McCabe's motivation, is that  
19 right?

20 A. No, I did not. No. 16:46

21 546 Q. At any point?

22 A. No.

23 547 Q. I see. Now, on Tuesday 19th May you were  
24 cross-examined as follows:  
25 16:47  
26 "Firstly, Sergeant McCabe says and instructs me that  
27 the meeting he had with you was in May 2007, the  
28 April/May period of 2007, and not in June and July,  
29 that is the first thing, so I want to put that to you."

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And you replied:

"Well, Judge, as I said, I cannot definitively say when the meeting took place. If Sergeant McCabe says it was in May 2007, I certainly have no reason to disagree with Sergeant McCabe." 16:47

A. Sorry, Mr. McDowell, I think you need to put that in context. Judge O'Higgins put it to Sergeant McCabe when that issue was raised, when they became aware that he was on sick leave from 24th April until 25th May, and the Judge asked Sergeant McCabe did you come to see the chief superintendent while you were on sick leave, and Sergeant McCabe said no. 16:47

548 Q. Yes. 16:47

A. So this issue of April/May was blown away by the Judge.

549 Q. I see. We will come back to that in a moment because I want to put what actually was in Sergeant McCabe's diary which was shown to the Commission at the time.

"Secondly, he will say that at that time he knew, and he said this in evidence yesterday, he knew the substance of the DPP's direction." 16:48

And you said: 16:48

"Yes, Judge, I accept that.

Q. And he will say that the only issue that he complained to you about was that this direction having

1           been given to him and he being aware of it only through  
2           the State solicitor, although he never actually --  
3           although he mentioned how he was aware of it to you,  
4           that Inspector Cunningham had sat on it -- "  
5           MR. WHELAN: "Never mentioned". 16:48  
6           MR. McDOWELL: "... never mentioned how he was aware of  
7           it to you, that Inspector Cunningham had sat on it for  
8           three weeks.  
9           A. No, definitely not, Judge. That is not what the  
10          meeting was about." 16:48  
11  
12          And Mr. Justice O'Higgins said:  
13  
14          "Was that mentioned at the meeting?"  
15 16:48  
16          And you said: "Sorry?"  
17  
18          He said:  
19  
20          "Was that mentioned at the meeting?" 16:48  
21  
22          And you said:  
23  
24          "No, well I have absolutely no recollection that it was  
25          a complaint, if you like, from Sergeant McCabe in 16:48  
26          relation to Inspector Cunningham, because if that was  
27          his complaint I would certainly have acted on it...  
28          Right."  
29

1 Now, I then put to you:

2  
3 "I have listened carefully to your evidence today,  
4 Chief Superintendent Rooney, and I note that you  
5 haven't said that at the meeting Sergeant McCabe 16:49  
6 expressed anger and annoyance towards the Director of  
7 Public Prosecutions, that is in the letter we  
8 received."

9  
10 And you answered: 16:49

11  
12 "A. Yes.

13 Q. I have got to suggest to you (a) that he never  
14 expressed annoyance or anger towards the DPP and had no  
15 reason to." 16:49

16  
17 And then you replied:

18  
19 "No, he certainly didn't use those words to me, Judge.  
20 They are my interpretation of what Sergeant McCabe was 16:49  
21 saying to me. From what he was saying to me, I took it  
22 he was angry with the Director of Public Prosecutions  
23 that may not --"

24  
25 And then I interrupted you, possibly rudely, and said: 16:49

26  
27 "Sorry, let's stop for a second there. We were given a  
28 letter yesterday stating that he had sought a meeting  
29 with you in June or July which was facilitated and it

1 can only be on the account you gave to the Chief State  
2 Solicitor: 'At the meeting Sergeant McCabe expressed  
3 anger and annoyance towards the Director of Public  
4 Prosecutions'. Now, either that's true or it's not  
5 true, is it true?"

16:50

6  
7 And you answered:

8  
9 "What I said, Judge, is, he did not use those words to  
10 me. It was my interpretation of the form of the  
11 conversation that he appeared to me to be annoyed with  
12 the Director of Public Prosecutions. That was my  
13 interpretation of what was coming across to me. That  
14 may not be what Sergeant McCabe actually meant."

16:50

15  
16 And Mr. Justice O'Higgins said:

17  
18 "Forget about the words he used. Did he express anger  
19 and annoyance at the DPP or did you just infer that he  
20 was angry?"

16:50

21 A. I would have inferred rather than he actually  
22 saying it, Judge."

23  
24 I went on:

25  
26 "What is more, he denies emphatically that he asked you  
27 or demanded of you that you communicate with the  
28 Director of Public Prosecutions to seek a declaration of  
29 his innocence."

16:50

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You answered:

"Yes, well that was my interpretation of what he was saying to me."

16:50

I said:

"Hold on a second. What did he actually say to you? Because you're drawing inferences from his facial expressions now to say he was angry with the DPP and now you are suggesting that he is seeking a declaration demanding he use the phrase in this letter that he seek -- you seek a declaration of his innocence from the DPP."

16:50

16:51

And you said:

"What he was saying."

16:51

And I said:

"Did you ever use any words along the lines to you --"

I presume that's "he".

16:51

"-- I demand that you write to the DPP and get a declaration of my innocence?"



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And you answered:

"Well, to say that he says I demand, he didn't use that language. What he was saying to me, Judge, was, you can write, and I was saying I cannot do what you are asking me to do, and he said you can do it, I want you to do it. Now, that, to me, is making a demand of me to do something and that is what I was expressing in the report I was writing."

16:51

16:51

And Mr. Justice O'Higgins said:

"I'm having a little bit of difficulty understanding that."

16:51

You said it was your interpretation. I mean, again forget about what words he used. If he wanted you to write to the DPP no matter what way you said it, did he say it, and, if he said it, why was that only --"

16:51

I presume that's "If he didn't say it, why was that only your interpretation?"

And you said:

16:52

"He absolutely asked me to write to the DPP."

And the Judge said:

1 "Why did you say then that that was your interpretation  
2 of he said?

3  
4 A. No, maybe -- I'm sorry, Judge, if I didn't explain  
5 it properly. I'm just quoting what you said it was 16:52  
6 your interpretation of."

7  
8 And you said:

9  
10 "No, he absolutely asked me to write to the DPP, but he 16:52  
11 was further saying to me when I said I cannot write to  
12 the DPP, he was saying yes you can and asking me to do  
13 it. Those are the circumstances in relation to it."

14  
15 And I put it to you: 16:52

16  
17 "I have to suggest to you that that is not the case.  
18 I'm also putting it to you that the words 'seeking a  
19 declaration of his innocence' or words to that effect  
20 were never exchanged between you at this meeting." 16:52

21  
22 And you said:

23  
24 "Absolutely, Judge, he asked me to communicate with the  
25 DPP because he wanted, what I understood from him, the 16:52  
26 DPP to say that he was innocent. It could well be,  
27 Judge, that what he meant was that he wanted the DPP's  
28 directions to show to somebody else's innocence."  
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CHAIRMAN: well, "else his innocence", perhaps.

MR. MCDOWELL: "His innocence". Yes.

"So which is it? I mean, paragraph 16 of this letter is so clear, you say he expressed anger and annoyance towards the DPP. He demanded that you communicate with the DPP. Now you're saying he wanted to be in a position to show the DPP's wording to somebody else. Is that it?"

16:53

16:53

And you said:

"That's what I am saying, Judge. I can only tell you what my interpretation of the meeting I had with Sergeant McCabe was. There's no question about it. He asked me to write to the Director of Public Prosecutions to, if you like, establish his innocence or show his innocence."

16:53

16:53

And you were asked:

"Did he take a record of that meeting?"

CHAIRMAN: well, Mr. McDowell, it is possible to interpret that as saying he wanted the circulation because the circulation would show his innocence.

16:53

MR. MCDOWELL: Yes.

550 Q. So I'm asking you, Chief Superintendent Rooney, at that point, paragraph 16 of your letter appeared to have

1           been seriously erroneous in a number of ways, and  
2           surely that was the -- those were the two paragraphs  
3           that you yourself assumed responsibility for?

4           A.   I don't agree. I don't agree at all, Judge. Sergeant  
5           McCabe and I were very, very friendly over many years, 16:54  
6           and on the day he came to me we were still friends on  
7           that particular day. We had a very good relationship,  
8           that we could talk to each other in a very friendly and  
9           understanding way. And what I was saying that day is  
10          that, at that meeting with Sergeant McCabe, I found him 16:54  
11          in a different mood completely to the Sergeant McCabe  
12          that I knew, and he was challenging me and wanting me  
13          to do something for him that I was not comfortable to  
14          do. And that's where I am expressing the view that  
15          Sergeant McCabe was annoyed and that he wasn't happy. 16:54  
16          It is from my overall general view and understanding  
17          and knowledge of Sergeant McCabe. And the second point  
18          you raise is that I said that he demanded of me, as  
19          though that I was insinuating something. And if you  
20          look at Sergeant McCabe's report of the 25th February 16:55  
21          2008 to his superintendent on the same subject, he  
22          said: I urge you, Superintendent, to write to the  
23          Director of Public Prosecutions. Now, I demand you or  
24          I ask you or I urge you, in my view means the same  
25          thing. In the same way if I was asked to describe what 16:55  
26          took place at the Commission on the 15th May, it would  
27          be quite right of me to describe in a narrative that  
28          people were very angry and upset, even though they  
29          never used those words.

1 551 Q. So, okay. Well, I think we can agree this: that the  
2 absolute high watermark was that he was asking that a  
3 letter be written to the DPP to allow the substance of  
4 his decision to be shown to the D family?  
5 A. Absolutely. 16:56

6 552 Q. And I've got to suggest to you that, in those  
7 circumstances, paragraph 16 is a seriously misleading  
8 and prejudicial set of statements to make about him?  
9 A. Well, I don't want to comment on that, Judge.

10 553 Q. I see. But when you signed off on the letter and said 16:56  
11 you were only taking responsibility for the bits that  
12 you were concerned with, nobody else except yourself  
13 and Sergeant McCabe were at that meeting, isn't that  
14 right?  
15 A. That's correct. 16:56

16 554 Q. So I take it that you were referring to paragraph 16 at  
17 least when you took responsibility for the letter?  
18 A. Well, you also know, Mr. McDowell, that that is a  
19 letter with my legal team that I cannot discuss.

20 555 Q. I mean, I fully understand, and I'm not going to -- I 16:57  
21 have told the Tribunal I'm not going to pry into your  
22 privilege, but I do want you to indicate when you say  
23 you accepted responsibility for the portions of the  
24 letter that you were concerned with, are you saying you  
25 really don't accept responsibility for paragraph 16 at 16:57  
26 all?  
27 A. What I say in the note that I put on the letter, what's  
28 written on that is what I mean, that I accept  
29 responsibility for the accuracy of what I contributed

1 to. Any more than that, I cannot say.

2 CHAIRMAN: I think Chief Superintendent Rooney's  
3 position is, he thinks that paragraph 16 is accurate.  
4 That's what he thinks now.

5 A. Exactly. 16:57

6 CHAIRMAN: And in the event that he's wrong about that,  
7 he's wrong about that. But that's what he says.

8 MR. MCDOWELL: I see.

9 CHAIRMAN: I take a more subtle and a more nuanced  
10 view, which is, the whole thing was about could the DPP 16:58  
11 change his mind, could the senior officers change their  
12 mind in order to allow circulation, because it is as  
13 close as one could ever get in terms of a DPP's ruling  
14 when one has been accused of something.

15 MR. MCDOWELL: He was asking that a request be made of 16:58  
16 the DPP to show the letter.

17 CHAIRMAN: well, that is entirely possible.

18 MR. MCDOWELL: It wasn't the DPP changing his mind.

19 CHAIRMAN: Mr. McDowell, I don't regard it as  
20 unreasonable that Sergeant McCabe would make that case. 16:58  
21 I can understand why he would.

22 556 Q. MR. MCDOWELL: Now, can I then just bring you briefly  
23 to the proposition that Sergeant McCabe had, in or  
24 around this time, presented - this is set out in  
25 paragraph 15 - Superintendent Clancy with a series of 16:58  
26 operational issues in respect of which he was  
27 requesting his support?

28 A. Nothing to do with me.

29 557 Q. Sorry, that had nothing to do with you? But you did

1 know that in March 2008 Sergeant McCabe applied to be  
2 redeployed from his position?

3 A. Yes.

4 558 Q. And this request was granted?

5 A. Yes. 16:59

6 559 Q. And you do know that you directed, subsequent to him  
7 going to Mullingar, that the matters that he had raised  
8 in relation to Mr. D and his difficulties with Mr. D,  
9 you directed that Superintendent Clancy should  
10 investigate those? 16:59

11 A. No, I did not.

12 CHAIRMAN: I thought you said that you did.

13 A. Superintendent Clancy?

14 MR. MCDOWELL: Sorry, Superintendent Cunningham.

15 A. Oh, yes, yes. 16:59

16 CHAIRMAN: Yes, I am sorry, I took Clancy to mean  
17 Cunningham.

18 A. Yes, the letter of the 25th February 2008, yes, that  
19 was sent to me by Superintendent Clancy, and we  
20 referred to it earlier. I sent it to the assistant 16:59  
21 commissioner, with a recommendation that a chief  
22 superintendent be appointed and he sent it back to me  
23 telling me to do it at local level, and I appointed  
24 Superintendent Cunningham, that's correct.

25 560 Q. MR. MCDOWELL: And Superintendent Cunningham comes to 17:00  
26 Sergeant McCabe in August 2008, at Mullingar, and tells  
27 him that he wants to interview him in relation to the  
28 matters he had raised about Mr. D and the problems with  
29 Mr. D at the station, isn't that right?

1 A. Yeah. well, it went out to Superintendent Cunningham  
2 in February 2008.

3 561 Q. Yes?

4 A. And he had it for some time, endeavouring to set up a  
5 meeting with Sergeant McCabe and he was having a lot of 17:00  
6 difficulty getting that meeting set up and eventually  
7 they met in Mullingar to deal with the issue.

8 562 Q. I see. And just so that the Tribunal has a clear  
9 picture of what happened, Sergeant McCabe we know,  
10 because we have a report of that meeting, made it clear 17:00  
11 to Superintendent Cunningham that he didn't wish to  
12 progress that at all any further, that he was now  
13 getting on with the rest of his life in Mullingar and  
14 he didn't wish to go back over that territory at all,  
15 isn't that right? 17:01

16 A. Well, Judge, that was not within the remit of Sergeant  
17 McCabe to decide. Because that report --  
18 CHAIRMAN: And I appreciate, but it's the kind of thing  
19 that's taken into account.

20 A. Yes, of course. 17:01  
21 CHAIRMAN: It was, because I have read it.

22 A. Yes, of course.  
23 CHAIRMAN: I understand your position.

24 A. The problem I had, is that within that case that he was  
25 making he had mentioned elements where criminal conduct 17:01  
26 may have taken place in respect of a number of members.  
27 CHAIRMAN: I know that.

28 A. Yes.  
29 CHAIRMAN: But you know, at the end of the day if



1           someone gets a punch in the face in a pub and they say  
2           'oh, so and so did it, but I don't want anything to  
3           happen'.  
4           A.    Yes.  
5           CHAIRMAN: I mean, that will be taken into account.           17:01  
6           Not always, but a lot of the time.  
7           A.    Yes.  
8   563   Q.    MR. MCDOWELL: He didn't want to become the complainant  
9           in a series of further --  
10          A.    Yes, absolutely, that was clearly his view, yes.           17:02  
11   564   Q.    And what happened then was that after he indicated that  
12           to you, at the August meeting, you wrote to him and  
13           said that you wanted to, you still wanted to persist  
14           with this investigation of these matters, isn't that  
15           right?   17:02  
16          A.    Not exactly, Mr. McDowell. I didn't write to Sergeant  
17           McCabe. Superintendent Cunningham reported back to  
18           me --  
19   565   Q.    Sorry, yes, Superintendent Cunningham wrote to him, I'm  
20           sorry, yes.   17:02  
21          A.    No, Superintendent Cunningham wrote to me informing me  
22           of the non-engagement by Sergeant McCabe in relation to  
23           the investigation.  
24   566   Q.    That is the point.  
25          A.    And I directed Superintendent Cunningham to pursue the           17:02  
26           matter. Because it did concern me that there were  
27           allegations of alleged sexual assault within that case  
28           that he was making, in relation to young female guards  
29           and --

1 CHAIRMAN: I know. And I appreciate that.

2 A. Yes.

3 CHAIRMAN: You will appreciate I don't want to --

4 A. Absolutely.

5 CHAIRMAN: And there's the barbecue and there's 17:03

6 people's wives and there's the lot --

7 A. Yes.

8 CHAIRMAN: -- and you know.

9 567 Q. MR. MCDOWELL: But what I'm suggesting to you, Chief 17:03

10 Superintendent Rooney, is that the next thing that

11 happened is that Mr. Costello, Séan Costello, wrote to

12 the Gardaí asking that this should be dropped, that it

13 was putting additional stress on his client and he did

14 not want to persist with this as the complainant in

15 respect of these matters? 17:03

16 A. Yes. As I understand it, Judge, he wrote to

17 Superintendent Cunningham. He didn't write to me.

18 568 Q. Yes. Eventually, amn't I right in saying, that it was 17:03

19 coincidence, and I'm not saying there's anything

20 strange at all, that this matter landed on the desk of

21 the assistant commissioner for human relations at the

22 time who was none other than Nóirín O'Sullivan and she

23 directed that this investigation should be subsumed

24 into the Byrne/McGinn process, isn't that right?

25 A. Well, I would have no knowledge of that at all. I 17:03

26 wasn't actually aware of that.

27 569 Q. It ended at that point.

28 CHAIRMAN: She had Mr. Barrett's job at the time?

29 A. Yes, she would have.

1 MR. MCDOWELL: I think so. So things are somewhat  
2 circular, but these things do happen, Judge.

3 570 Q. So, in any event, at that stage that was the end of the  
4 effort, was it, to interview Sergeant McCabe on that  
5 issue as a discrete separate inquiry? 17:04

6 A. Insofar as I was concerned once Superintendent  
7 Cunningham received the report from Mr. Costelloe, we  
8 didn't pursue that matter any further.

9 571 Q. Could I ask you to look at the submission that was made  
10 on your behalf on 11th June, which is -- 17:04

11 CHAIRMAN: It's 1452.

12 MR. MCDOWELL: 1452. Thank you Judge. Sorry Judge.

13 CHAIRMAN: I think so. It's paragraphs 69 and 70.

14 A. Yes.

15 CHAIRMAN: You have to go on a bit from 1452. It's on 17:05  
16 the screen.

17 MR. MCDOWELL: I need my own copy.

18 MS. LEADER: Volume 2B. It's the last document.

19 572 Q. MR. MCDOWELL: There's just a couple of things I just  
20 want to draw your attention to. At pages 1446 and 1447 17:05  
21 there's a discussion at paragraphs 41 to 43 about the  
22 complaint that had been made against probationer Garda  
23 Ferghal McCarthy and the terms in which it was made.  
24 And you'll see at paragraph 41:  
25  
26 "Chief superintendent Grogan gave evidence that if the  
27 authorisation was intended to relate to only one charge  
28 he would have expressly said so in the letter of  
29 authorisation. The reference to corrupt or improper

1 practice was simply accidentally omitted. Accordingly,  
2 the reference to alleged neglect of duty should not  
3 have been read as limiting the scope of the  
4 investigation. It was not viewed as such by any of the  
5 members of the force involved. Furthermore, it had no 17:07  
6 impact on the conduct of the disciplinary  
7 investigation. A further issue of concern to the  
8 Commission was the combination of the allegations of  
9 acting in a corrupt manner and acting in an improper  
10 manner in the same alleged stated breach of 17:07  
11 discipline."

12  
13 And it is stated:

14  
15 "As noted by the Commission, this practice is 17:07  
16 prohibited by Garda HQ Directive 159/08, paragraph  
17 10.1.3. However, as the Commission also noted,  
18 directive 159/08 postdated the preparation of the form  
19 relating to Garda McCarthy. The corresponding  
20 provision in place at the time was paragraph 10.10.3 of 17:07  
21 the Garda Síochána Code which provided guidance on the  
22 Garda Disciplinary Regulations 1989. However, when the  
23 disciplinary investigation of Garda McCarthy began the  
24 1989 regulations were no longer in force as they had  
25 been replaced by the Garda Disciplinary Regulations 17:08  
26 2007. Accordingly, at the commencement of the  
27 disciplinary investigation there was no directly  
28 relevant guidance in place. It must, however, be  
29 accepted that Chief Superintendent Rooney and Sergeant

1 O'Connell gave evidence that they were not aware of the  
2 to direction to separate the alleged breaches of acting  
3 in a corrupt manner and acting in an improper manner,  
4 both witnesses indicated --"

17:08

5  
6 And you deal with that issue at the time, and it was a  
7 live issue, was it not, at the time that the particular  
8 charge was whatever it is, acting in a corrupt manner  
9 or malpractice or improperly, it was a confusingly  
10 broad term to use and you had some difficulty with it  
11 at the time?

17:08

12 A. I wouldn't say that I had some difficulty with it,  
13 Judge. Clearly it was incorrect. And as I said to the  
14 Judge -- I didn't directly make that out, but I took  
15 responsibility for it, as the person with overall  
16 responsibility in respect of it.

17:09

17 573 Q. Yes.

18 A. The regulation was there, they shouldn't have been put  
19 together and the problem that Mr. Justice O'Higgins had  
20 that the word corruption was being used and he was  
21 anxious to ensure that that didn't, if you like, flow  
22 through the modules or interfere in any way with his  
23 Commission. He was very anxious to get that cleared  
24 out of the way.

17:09

25 574 Q. I only draw that your attention to just make the point  
26 and to lay the foundation for a proposition that that  
27 particular aspect of the Garda Code gave rise to some  
28 difficulty, in that it created the danger that people  
29 would use the term corruption in an inappropriate way?

17:09

1 A. Yes. Yes.

2 575 Q. And in fact just to finish off there, you said:

3

4 "Both witnesses indicated that they'd used the form of  
5 words because it was described as such in the 17:10  
6 regulations, i.e. paragraph 8 of the schedule to the  
7 regulations, rather than because they believed sergeant  
8 McCarthy's conduct should be investigated as being both  
9 corrupt and improper. It is, therefore, unfortunate  
10 that the regulations seem to suggest that the two terms 17:10  
11 should be alleged jointly rather than separately. It  
12 is submitted that this may be a matter which may be  
13 considered by the Minister for Justice and Equality so  
14 that the position could be clarified within the text of  
15 the regulations." 17:10

16

17 I am just making the point that at a later stage and  
18 it's not really for you, that this was not something  
19 which was without difficulty?

20 A. No, it wasn't. I suppose, Judge, if we go back further 17:10  
21 far enough, when I studied for my exams they were one  
22 and the same and later on as a result of court  
23 decisions they were split up. And obviously we didn't  
24 pick it up at the time when this was being dealt with.

25 576 Q. I see. Could I then just bring you to paragraph 62 17:11  
26 onwards in those submissions? By the time the  
27 submissions had been made Mr. Justice O'Higgins said  
28 the most that could be alleged against Sergeant McCabe  
29 was that he had a grievance with An Garda Síochána.

1 CHAIRMAN: Real or perceived.

2 A. Real or perceived, that is what he said.

3 MR. MCDOWELL: Yes.

4 CHAIRMAN: He said he thought that had already been  
5 proved or was already on the evidence. 17:11

6 577 Q. MR. MCDOWELL: Yes. What was set out in those  
7 paragraphs, apart from paragraph 63 was:  
8  
9 "A complaint was made against Sergeant McCabe around  
10 December 2006 which involved a sensitive and serious 17:12  
11 matter."  
12  
13 Then there is a description of the interaction between  
14 Sergeant McCabe and others in respect of the Director  
15 of Public Prosecutions directions, isn't that right, in 17:12  
16 the following paragraphs?  
17 A. Yes. But again, as I said, I really don't want to get  
18 into the discussion of that document.

19 578 Q. I see. I mean, it was put in on your behalf, you know  
20 that? It wasn't just the Commissioner was putting this 17:12  
21 in, this was put in on your behalf as well.

22 A. Yes, I accept that.

23 579 Q. At paragraph 69 to 70 I think Ms. Leader brought you to  
24 it, the charge was repeated again:  
25  
26 "It's understood that Superintendent Cunningham and  
27 Sergeant Martin will give evidence that Sergeant McCabe  
28 said at the meeting that the complaint which he had  
29 made (alleging lack of support as referred to in the

1 preceding paragraph) --"

2  
3 And that is lack of support by Superintendent Clancy.

4  
5 "-- was a bid by him to have the full directions 17:13  
6 conveyed to him and the complaining party. This is  
7 recorded in a report of a meeting prepared jointly by  
8 Sergeant Martin and Superintendent Cunningham."

9  
10 Then it is said: 17:13

11  
12 "It is submitted that these interactions are critical  
13 to the understanding of the behaviour of Sergeant  
14 McCabe and of the responses of the various officers to  
15 his complaints. Prior to this, the complaints he made 17:13  
16 were few in number and adequately dealt with.  
17 Thereafter they multiplied and showed a tendency to  
18 exaggeration, such as in relation to this incident  
19 which was recognised by, among others, Assistant  
20 Commissioner Byrne and Chief Superintendent McGinn." 17:13

21  
22 Now we needn't get into the tiny detail of it, but  
23 Sergeant McCabe had alleged that there was a sexual  
24 assault involved in the Lorraine Brown affair, and this  
25 was regarded as a gross exaggeration in the 17:13  
26 Byrne/McGinn report but Mr. Justice O'Higgins believed  
27 that there was a sexual angle to it.

28 A. Yes, he did, Judge. That was his finding.

29 580 Q. But the suggestion in paragraph 71 is that he



1 exaggerated this, that the reason that he exaggerated  
2 this has to be referred back to -- repeat again:

3  
4 "It is submitted that these interactions are critical  
5 to the understanding of the behaviour of Sergeant  
6 McCabe and of the responses of the various officers to  
7 his complaints. Prior to this the complaints he made  
8 were few in number and adequately dealt with.

17:14

9 Thereafter they multiplied and showed a tendency to  
10 exaggeration, such as in relation to this incident,  
11 which was recognised by among others, Assistant  
12 Commissioner Byrne and Chief Superintendent McGinn."

17:14

13  
14 So the suggestion there clearly is, rightly or wrongly,  
15 and Mr. Justice O'Higgins thought it was wrong, that  
16 the suggestion that this was an incident involving a  
17 sexual assault had to be understood by reference to  
18 Sergeant McCabe's dissatisfaction with how he had been  
19 treated in An Garda Síochána in relation to the DPP's  
20 and Ms. D issue, isn't that right?

17:14

17:15

21 A. Yes. But I mean, I accept that that's what Mr. Justice  
22 O'Higgins clearly said, that he believed it was a  
23 sexual assault. The Byrne/McGinn report didn't hold  
24 that view.

25 581 Q. No?

17:15

26 A. And in the context a sexual assault, it was a very,  
27 very minor issue. Clearly it was one guy just pinching  
28 a lady in the backside, and that's what Mr. Justice  
29 O'Higgins found was a sexual assault. I think if it

1 was debated in other places, I think other judges may  
2 differ with that.

3 582 Q. Well certainly, there were times when in different  
4 jurisdictions it was hardly regarded as a very grave  
5 sexual assault, but I mean Mr. Justice O'Higgins 17:16  
6 thought that it was not untrue to say that this was a  
7 sexual assault?

8 A. He did, Mr. McDowell. But I was afraid you were  
9 conveying the view that it was a very serious sexual  
10 assault that the Byrne/McGinn team were ignoring and I 17:16  
11 think they were entitled to their view which was  
12 reasonable.

13 583 Q. But let's remember Ms. Lorraine Brown actually fled her  
14 bus and hid in the bushes and summoned assistance.  
15 CHAIRMAN: Yes. And so did somebody else. 17:16

16 A. Yes.

17 584 Q. MR. McDOWELL: So I'm not going to, I'm not going to  
18 ask you to put it on a graph of seriousness, but it was  
19 what it was?

20 A. Yes. 17:16

21 585 Q. Then at paragraph 72 it's stated:  
22  
23 "These issues will be relevant to subsequent modules  
24 where they can be considered again. However, in  
25 relation to this specific module it's submitted that 17:16  
26 Sergeant McCabe's disaffection motivated him to contact  
27 Ms. Browne to encourage a complaint to GSOC and to  
28 include it in his brief proving facts pertaining to my  
29 complaint document."

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was that done on your instruction?

A. Well again, you know, I have said, Mr. McDowell, that I don't want to discuss this document in any great detail.

17:17

586 Q. I won't press you on it. But may I infer from that at the very least that this was -- that paragraph was not your idea?

A. Well, you'd be better not to infer, Mr. McDowell. We'll just leave it as it is.

17:17

587 Q. There's one or two other matters I want to put to you. I just want to put a time sequence to you that Sergeant McCabe and his diary, which was handed to the O'Higgins Commission, shows that he got a phone call from the state solicitor on the 11th April 2007 in relation to the D matter, that he met you on the 26th April 2007, that he met Superintendent Cunningham on the matter on the 8th May of 2007. Could that be right?

17:18

A. No. That's incorrect, Mr. McDowell. Sergeant McCabe himself corrected that record at the Commission when the Judge put it to him. That he came to me while he was on sick leave, which clearly he was on the 26th, and Sergeant McCabe accepted that he did not come to me while he was on sick leave. So that is not correct, Mr. McDowell.

17:18

588 Q. Well I suppose it's not going to be the -- those are my instructions.

CHAIRMAN: No, it really isn't important. And indeed, I was a wee bit confused about the delay, the meeting

1 in the hotel, etcetera, and Superintendent Cunningham  
2 being attached to another station and then coming back.

3 A. Yes.

4 CHAIRMAN: And vis-à-vis the sexual element,  
5 Mr. McDowell, I think --

17:19

6 MR. MCDOWELL: Sorry, Judge, I didn't want to  
7 interrupt. I'm trying to finish.

8 CHAIRMAN: According to the statement of Lorraine  
9 Brown; filthy talk, talk about privates, the groping of  
10 two girls. So I'm not sure you can say it wasn't -- it 17:19  
11 was trivial. It wasn't a joke.

12 MR. MCDOWELL: It wasn't a joke at all, Judge, no.

13 CHAIRMAN: No, no. Far, far from it.

14 A. Yes.

15 589 Q. MR. MCDOWELL: On day 14 -- sorry, day 4 rather at page 17:19  
16 8, Mr. Smyth cross-examined you at page 8 of the  
17 transcript for day 4, he said, this is about the DPP's  
18 policy, at question 17:

19

20 "For completeness, could you say what that policy was, 17:20  
21 what you understood it to be?"

22

23 And you answered:

24

25 "I advised Sergeant McCabe of the policy of the DPP in 17:20  
26 relation to dealing with such issues, a policy which I  
27 would have believed that Sergeant McCabe himself was  
28 fully aware of. I told Sergeant McCabe that I could  
29 not seek such a declaration on his behalf from the DPP

1 from the Director of Public Prosecutions.

2 Q. Were you aware at that stage, did he indicate to  
3 you that he had been exonerated by the authority?

4 A. Not to my recollection, Judge, but I cannot say for  
5 certain. 17:20

6 Q. So what was his attitude to your decision not to  
7 contact the DPP?"

8  
9 And Mr. Justice O'Higgins intervened:

10  
11 "Sorry, you must have known, you must have known that  
12 he knew, what would be the point of him looking for a  
13 declaration if he wasn't aware that there was no  
14 prosecution going to happen?" 17:20

15  
16 And your answer was: 17:20

17  
18 "Yes, as I understood it from what he was saying to me,  
19 Judge, was what he wanted the DPP to specifically say  
20 was he was innocent." 17:20

21  
22 And Mr. Justice O'Higgins said.

23  
24 "Yes."

25  
26 And you said: 17:21

27  
28 "Rather than --"

29

1 And Mr. Justice O'Higgins said:

2  
3 "But you were saying you weren't sure whether he was  
4 aware he had been exonerated at that stage, no?

5 A. Oh no, the question was did he discuss with him." 17:21

6  
7 And Mr. Smyth said:

8  
9 "No, no, in actual fact, that is not the question I  
10 asked you." 17:21

11  
12 And you answered:

13  
14 "Sorry.

15 Q. I said, did you know at that stage, lest there be  
16 any doubt this, did you know at that stage that he had  
17 been exonerated?"

18  
19 And you said:

20  
21 "I would imagine I did, Judge, yeah." 17:21

22 A. Yes. And I think the point that I'm making there, that  
23 quite obviously the Director's decision was given to  
24 Sergeant McCabe on the 8th May 2008, but the question  
25 is would I have seen the decision of the DPP or at what 17:21  
26 stage did I see the decision of the DPP. You know, I  
27 may have been told of it as soon as Superintendent  
28 Cunningham got it or it may only come to me in the  
29 course of correspondence, which may be much time later.

1 590 Q. Without getting into a lengthy re-examination of it  
2 again, I've got to suggest to you that that is quite  
3 different from what was implied by paragraph 16 of the  
4 letter?  
5 CHAIRMAN: Well, I do see the difference and I see that 17:22  
6 Chief Superintendent Cunningham is now saying, look, I  
7 will accept that what he wanted was circulation of the  
8 DPP's letter, by whatever means that was to occur, it  
9 might have necessitated writing to the DPP.  
10 MR. MCDOWELL: Yes. 17:22  
11 A. Yes.  
12 CHAIRMAN: It might have necessitated --  
13 MR. MCDOWELL: It was common case, Judge, that Sergeant  
14 McCabe was requesting this witness to write to the DPP.  
15 A. Yes. 17:22  
16 MR. MCDOWELL: This witness was saying no, you can do  
17 it as a private citizen, I'm not doing it, is that  
18 correct?  
19 A. Yes.  
20 CHAIRMAN: Yes. It could be that the problem was there 17:22  
21 were the published guidelines.  
22 MR. MCDOWELL: Yes.  
23 CHAIRMAN: It could be that it could have been done  
24 informally through the state solicitor or something  
25 anyway -- 17:22  
26 MR. MCDOWELL: He was asking that the directions be  
27 shown.  
28 CHAIRMAN: Yes.  
29 MR. MCDOWELL: And you were saying that the DPP's

1 guidelines did not permit it, is that it?

2 A. Yes.

3 CHAIRMAN: Well, it didn't permit the state solicitor  
4 either to read the letter out over the phone, but there  
5 was another member of the Gardaí involved -- well, that 17:23  
6 could have happened too and for all I know it did  
7 happen, I don't know. But anyway, I'm not even sure,  
8 Mr. McDowell, let's suppose it did happen, it'd be kind  
9 of wishful thinking to say it would have calmed things  
10 in the light of everything that happened subsequently. 17:23  
11 It probably wouldn't have, it might have made  
12 everything worse for all I know.

13 591 Q. MR. McDOWELL: Your position, whatever it is, is that  
14 you were saying if he wanted any movement from you, on  
15 this issue, it was not going to come from you, he'd 17:23  
16 have to bring it up with the DPP himself?

17 A. Yes. And as the Judge rightly said, number one, it was  
18 the policy of the Director at that time, it was the  
19 Commissioner's policy and you know I just felt it  
20 wouldn't be appropriate for me to communicate with the 17:23  
21 DPP.

22 CHAIRMAN: I don't even think you can write to the DPP  
23 that, Mr. McDowell. The only exception in the Act is  
24 section 4.

25 MR. McDOWELL: Yes. 17:24

26 CHAIRMAN: Which is about the prosecution or  
27 non-prosecution of someone.

28 MR. McDOWELL: I'm not suggesting that people can't  
29 write to the DPP.



1 CHAIRMAN: well, I don't think you can. But anyway.  
2 Maybe that is a strained interpretation. Section 4 is  
3 the only exception; you cannot communicate with the  
4 DPP, exception, section 4, prosecution or  
5 non-prosecution. 17:24  
6 MR. MCDOWELL: Judge, I should clarify I am being  
7 instructed now that my client's view is that he never  
8 actually -- that that interchange about the DPP just  
9 simply never happened --  
10 CHAIRMAN: All right. 17:24  
11 MR. MCDOWELL: -- with this witness.  
12 CHAIRMAN: Fine. well, that is fine.  
13 MR. MCDOWELL: Thank you.  
14 CHAIRMAN: Did you have any questions?  
15 MR. WHELAN: I wonder if I could impose on the Court 17:24  
16 and stenographer for two questions.  
17 MS. GLEESON: Chairman, I have one or two very short  
18 questions.  
19 MR. WHELAN: Sorry.  
20 CHAIRMAN: Yes, Ms. Gleeson, carry on. 17:24  
21  
22 THE WITNESS WAS THEN CROSS-EXAMINED BY MS. GLEESON:  
23 592 Q. MS. GLEESON: Mr. Rooney, I just wanted to clarify one  
24 or two matters in relation to the submissions. If you  
25 can go to the evidence of Anmarie Ryan before the 17:25  
26 Tribunal which is on day 42, I don't know if the  
27 witness could be given a copy of the transcript, if  
28 there is a hard copy of the transcript available, I  
29 don't have one I'm afraid, I have only a soft copy

1 available [SAME HANDED]. This is day 42, Mr. Rooney.  
2 And it's at page 55. If you can just look at line 8  
3 there. Page 55, line 8.

4 A. Yeah yes.

5 593 Q. This is the evidence of Annmarie Ryan, just discussing 17:25  
6 the submissions. At line 8 the Chairman asked:

7  
8 "Sorry for interrupting, but I take it that point of  
9 sending submissions to Chief Superintendent Healy was  
10 for him to come back to you presumably after having 17:25  
11 checked with anyone who was involved as to whether  
12 these were correct and to say to you yes, you have the  
13 go ahead on that."

14  
15 And Ms. Ryan answered: 17:26

16  
17 "Yes. Initially when we got the submission I recall  
18 speaking to Chief Superintendent Healy. I am acting  
19 for a lot of people here, I suppose just conscious how  
20 are we going to get these agreed so quickly and get 17:26  
21 them before, get them lodged with the Commission.  
22 Counsel advised that they would want all clients to  
23 ensure that they were happy with content of same and  
24 arising out of that it would have been circulated to  
25 all witnesses until final confirmation came that 17:26  
26 submissions were ready to be lodged -- well, not  
27 lodged, but submitted to the Commission.

28 CHAIRMAN: Yes.

29 A. And that was the way all submissions worked

1 throughout it. They may have changed somewhat in the  
2 way we dealt with them, that I probably would have been  
3 sending submissions as it went on directly to clients  
4 but the final drafts would have been all coming back  
5 and always have been recirculated, that would be 17:26  
6 circulated to Chief Superintendent Healy. Timing was a  
7 huge problem in relation to it."

8  
9 And then the Chairman:

10 17:27  
11 "Yes. But the point was that something that is being  
12 sent in on behalf of multiple clients, your expectation  
13 was that advices of counsel were Chief Superintendent  
14 Healy knew nothing was to go in on their behalf unless  
15 it had been checked by them and they were happy 17:27  
16 factually with what was being said on their behalf in  
17 writing in the submission.

18 A. Yes. There is an email on my file in relation to  
19 module 1, the first submissions we are doing from  
20 counsel advising that. I don't know the full content 17:27  
21 of it, but I am aware there is an email from counsel in  
22 relation to that and going forward that is what was  
23 done. That style in respect of all submissions  
24 lodged."

25 17:27  
26 So would you accept, Mr. Rooney, that that is Ms. Ryan  
27 confirming that counsel had asked her to circulate the  
28 submissions to you and for you to review them?

29 A. Yes, Judge. Absolutely.

1 594 Q. And would you accept that that is actually what she did  
2 also?  
3 A. Yes. I do.

4 595 Q. And then I think you also in addition to that spoke to  
5 Fergus Healy about the submissions, would you accept 17:27  
6 that?  
7 A. That I spoke to Fergus Healy?

8 596 Q. That you spoke to Fergus Healy about the submissions.  
9 A. Which submission are we talking about now?

10 597 Q. This is the module 1 submissions. 17:28  
11 A. No, I didn't. No, I didn't.

12 598 Q. Well, if I can just take you then to page 3828, that's  
13 in volume 7, if that can be put up for the witness. Do  
14 you have that note, Mr. Rooney?  
15 A. Yes, I do. 17:29

16 599 Q. I'm going to go through it, it's a short note. It says  
17 11th June 2015. This is Fergus Healy's diary. He  
18 says:  
19  
20 "Spoke to Annmarie Ryan about the draft submission to 17:29  
21 the Commission of Investigation Cavan-Monaghan. She  
22 inquired on the sign off on draft submission. I  
23 advised I sent it to Karl Heller, Catherine Clancy,  
24 Maura Lernihan, Noel Cunningham and Colm Rooney. Spoke  
25 to Colm Rooney and Karl Heller. No further comment." 17:29  
26 A. Yes.

27 600 Q. would you accept that that suggests --  
28 A. Yes. Sorry, I thought you were talking about the  
29 drafts in relation to module 1. This is actually the

1 submission.

2 601 Q. That is a submission.

3 A. I apologise.

4 602 Q. Correct. So you spoke to Fergus Healy and you told him  
5 having received the submissions you had no further 17:29  
6 comment on them?

7 A. No. I actually made a submission in relation to it,  
8 from my knowledge.

9 MR. WHELAN: And the content of that submission, Judge,  
10 would fall within his legal privilege. 17:30

11 A. Yes.

12 CHAIRMAN: Yes. But you engaged with it is the  
13 question --

14 A. Yes.

15 CHAIRMAN: -- that Ms. Gleeson is asking. 17:30

16 A. Yes, I did, Judge.

17 603 Q. MS. GLEESON: In any event, you didn't, as Ms. Leader  
18 has already put it to you, that paragraph 69 of those  
19 submissions which you've been through already, which  
20 contain the mistake in relation to the complaint being 17:30  
21 against Clancy, also included a reference to yourself,  
22 but you didn't identify that mistake either to Fergus  
23 Healy or to any member of your legal team having seen  
24 the submissions?

25 A. I think I have already explained that. That that was 17:30  
26 not my information, it was not my instructions, and if  
27 I was to interfere in anybody else's instructions I  
28 think you would have total confusion. So I stayed to  
29 what was my knowledge and my instructions and I didn't

1 go outside that.

2 604 Q. Thank you Mr. Rooney. No further questions.

3

4 THE WITNESS WAS THEN EXAMINED BY MR. WHELAN:

5 605 Q. MR. WHELAN: Judge, two matters briefly, retired chief 17:31  
6 superintendent. The first is: I think I understood  
7 correctly Mr. McDowell to put to you in his first  
8 question that his report from the Anglo-Celt suggested  
9 that you were critical of the Byrne/McGinn report, but  
10 in fact as you read it, the report, or the report you 17:31  
11 were critical of was previous newspaper reports, is  
12 that correct?

13 A. That's correct.

14 606 Q. Am I correct in understanding your evidence to be that 17:31  
15 those previous newspaper reports, whatever the legal  
16 definitions, used the word corruption in characterising  
17 the various investigations?

18 A. Yes.

19 607 Q. Okay. Can I ask you then, and I am very conscious what 17:31  
20 the Chairman had to say summarising the evidence at the  
21 start of the cross-examination, and I know at this  
22 stage he has indicated he's minded towards a nuanced  
23 view, but there is one important fact that may assist  
24 the context for that nuance. And the chronology it  
25 seems is that in early April 2007 the state solicitor 17:31  
26 got the letter of directions from DPP which directed no  
27 prosecution, on the 11th April he a conversation with  
28 Sergeant Maurice McCabe, on my reading and I'm open to  
29 correction, in which it appears she communicated the

1 full contents of that letter of directions to Sergeant  
2 Maurice McCabe. And then, whenever this meeting was,  
3 whether it was May or June, that by the time he came to  
4 meet you he had the full details of those directions  
5 from the state solicitor we now know, isn't that  
6 correct? 17:32

7 A. That is correct, and did he not discuss them or let me  
8 know that he had them.

9 608 Q. That is the question: At the time you had this  
10 conversation about whatever he was asking you to write 17:32  
11 to the DPP about, and it seems now that he is  
12 suggesting he didn't ask you anything, but at the time  
13 when you were having this conversation, there was that  
14 confusion in understanding at least between you, in  
15 that he had the full directions which could be read as 17:32  
16 something exoneration or very close to an exoneration,  
17 but you didn't know that he had the full directions,  
18 isn't that correct?

19 A. No, I did not.

20 CHAIRMAN: Yes, I see that. I see that point 17:33  
21 Mr. Whelan. But again, unless you were to learn it off  
22 over the phone back like a Yeats poem and then recite  
23 it --

24 MR. WHELAN: I suppose if I put it to the witness and  
25 to you, Judge -- 17:33

26 CHAIRMAN: I know, he a knowledge of that and he didn't  
27 share that, but it's not quite the same thing --  
28 everyone is calling for the written copy here. And you  
29 know, I doubt Sergeant McCabe was any different to

1           that.

2           MR. WHELAN: But it is one thing to tell a person that

3           a prosecution is not proceeding for lack of evidence,

4           which at the time was the standard communication,

5           wasn't it, chief superintendent -- 17:33

6           A. Yes.

7   609   Q. -- that every guard gave to an accused person, isn't

8           that correct?

9           A. Absolutely.

10   610   Q. And in accordance with the DPP's regulation and Garda 17:33

11           policy that was the only communication that could be

12           formally given, isn't that correct?

13           A. The only communication, yes.

14   611   Q. And ultimately, whether it was before or after your

15           meeting, whatever about that dispute, that was the 17:33

16           communication Superintendent Cunningham gave Sergeant

17           McCabe, isn't that correct?

18           A. That's correct.

19   612   Q. It seems he was given more details by the state

20           solicitor, isn't that correct? 17:34

21           A. Oh, much more. He was given the full details as I

22           understand it from the state solicitor.

23   613   Q. But you did not know that when he was having this

24           conversation with you, that is the subject of paragraph

25           16 in the letter? 17:34

26           A. No. I did not know that and neither did I know the

27           conversation that he had with Superintendent

28           Cunningham. In other words, I didn't know how much

29           information Superintendent Cunningham actually shared



1 with him.

2 614 Q. When did you become aware, when did you become aware  
3 that the state solicitor had communicated the content  
4 or full content of the DPP's directions to him? When  
5 did you first become aware of that? 17:34

6 A. At the Commission.

7 615 Q. At the Commission?

8 A. Yes.

9 616 Q. Am I to take it, it was after the key date of the 18th  
10 May? 17:34

11 A. I'm not sure.

12 617 Q. Okay. Because Mr. McDowell in the passage he opened  
13 earlier put it to you that Mr. McCabe would say that he  
14 was aware of the directions but he didn't tell you how  
15 he was or that he had got them from the state 17:34  
16 solicitor?

17 A. Yeah, he certainly didn't tell me.

18 618 Q. And he was saying that to you on the 18th or 19th?

19 A. Yes. And indeed, if he had shared it with me probably  
20 the meeting would have made much more sense. 17:35

21 619 Q. You'd have understood what he was looking for --

22 A. Absolutely.

23 620 Q. -- if it was unclear what he was looking for, if you  
24 knew that he knew the full directions?

25 A. Absolutely. 17:35

26 621 Q. Thank you very much, chief superintendent.

27 CHAIRMAN: Is there anything?

28 MS. LEADER: No, thank you.

29 CHAIRMAN: Thank you very much.

1           A.    Thank you Judge for your assistance.

2

3

THE WITNESS WITHDREW

4

5

CHAIRMAN: We might go off transcript just to discuss the future. I think I would have to congratulate Mr. McDowell; I think, Mr. McDowell, your mimicking of some of the voices on the transcript you read out today has been spot on. So Mr. McGuinness - we don't have to record this, but - would you just please tell us where we are going and we will get an idea, as it is a Friday evening and it is nearly six o'clock.

10

11

12

13

MR. MCGUINNESS: Chairman, we are intending to resume Monday morning at 10:00am to deal with the conclusion of Mr. Barrett's evidence, and then hear evidence from Superintendent Cunningham. And it is intended then to sit again on Wednesday, at 2:00pm, Chairman, I think, isn't that correct?

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CHAIRMAN: Well, I hope it will be 2:00pm but I have to be in the other place in the morning.

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MR. MCGUINNESS: Yes. We are intending then to take the evidence of Ms. Marion Mannion and then Mr. Cyril Dunne. We are giving consideration as to whether it is necessary to recall any other witnesses in the light of some portion of Ms. Fitzgerald's evidence yesterday but no witnesses have yet been listed for that. Thereafter it is intended to, subject to any issue, to take a break until the papers are served for the next module.

CHAIRMAN: I thought we were going to have submissions

1 on the Tusla module, was it, on Tuesday?

2 MR. MCGUINNESS: Yes. On the Tuesday we are going to  
3 schedule the submissions as may be made on the Tusla  
4 module, in relation to the creation of the file of  
5 Tusla. And Sergeant McCabe's evidence is going to be  
6 left over to the commencement of the next module.

7 CHAIRMAN: So that we can hear the entirety of his  
8 evidence rather than calling him twice, yes.

9 MR. MCGUINNESS: Yes, rather than focusing on anything  
10 out of sequence or out of time.

11 CHAIRMAN: Yes. And I can hear submissions then in  
12 relation to this after he completes his evidence.

13 MR. MCGUINNESS: Yes, on this issue, after he gives his  
14 evidence on that.

15 CHAIRMAN: Well, that will be on everything but  
16 obviously any evidence in relation to the concluding  
17 module will be -- sorry, any submissions in relation to  
18 the concluding module will be heard at the end of the  
19 concluding module, but I want to try and get this one  
20 out of the way if possible. All right. That, I think,  
21 helps everybody because we know where we are going on  
22 things. And if it is a recording, we maybe should put  
23 it on the transcript. I am sorry, Ms. Kelly, you have  
24 been very patient.

25  
26 THE HEARING THEN ADJOURNED UNTIL MONDAY, 5TH FEBRUARY  
27 2018 AT 10:00AM

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