

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON WEDNESDAY, 7TH FEBRUARY 2018 - DAY 56

56

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

GWEN MALONE STENOGRAPHY
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1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 7TH
2 FEBRUARY 2018:

3
4 CHAIRMAN: I would like to apologise for being late, I
5 am sorry for discommoding people. But it was work. 14:45

6 MR. MCGUINNESS: Chairman, this afternoon we have two
7 further witnesses and the first of those is Ms. Marion
8 Mannion, please.

9
10 MS. MARION MANNION, HAVING BEEN SWORN, WAS DIRECTLY 14:45
11 EXAMINED BY MR. MCGUINNESS:

12 MR. MCGUINNESS: Ms. Mannion's statement is to be found
13 in volume 9 of the Tribunal papers, at page 5045.

14 1 Q. Ms. Mannion, I will be asking you to look at a few
15 small number of documents and you have the choice of 14:46
16 either taking out the volume or consulting them on
17 screen. I think you are probably familiar with your
18 own statement and your own notes. And could I just ask
19 you this: I think you were appointed a special adviser
20 to Minister Fitzgerald, who at the time was Minister 14:46
21 for Children and Youth Affairs in April 2011?

22 A. That's correct.

23 2 Q. And as I understand it, a special adviser isn't, as it
24 were, a normal part of the ordinary Civil Service, is
25 that right? 14:46

26 A. That's correct.

27 3 Q. And I think there were reforms, as such, brought in a
28 number of years ago to provide a degree of transparency
29 to the appointments and the Minister has to state

1 reasons and outline the expertise of a person that they
2 wish to employ as a special adviser, isn't that
3 correct?

4 A. That's correct, yes.

5 4 Q. And the Minister obviously complied with that as far as 14:47
6 you were concerned. And I think you travelled with her
7 when she went to the Department of Justice in May 2014?

8 A. That's correct.

9 5 Q. And correct me if I am wrong, a special adviser, they
10 are normally politically aligned with the Minister? 14:47

11 A. Yes.

12 6 Q. And you, like Mr. Lavelle, would have been a member of
13 the Fine Gael party?

14 A. That's correct.

15 7 Q. And I suppose an ally of the Minister in political 14:47
16 terms?

17 A. Yes.

18 8 Q. And you I think were -- it's fair to regard you as the
19 senior of the two at that point in time, Mr. Lavelle
20 had been part-time for a while? 14:47

21 A. That's right.

22 9 Q. You were full-time from the beginning?

23 A. I was full-time.

24 10 Q. And when did you cease to be special adviser?

25 A. On 29th of November 2017. 14:47

26 11 Q. Just last year. Okay. So you had served almost
27 six-and-a-half years then with the Minister?

28 A. That's correct.

29 12 Q. And I don't want to use it as a pejorative term, but

1 you presumably have responsibility for, as it were,
2 advising the Minister on all sorts of sensitive
3 political issues of the day, whatever they were?

4 A. Yeah. Well, giving her my opinion.

5 13 Q. Giving your opinion. 14:48

6 A. Yes.

7 14 Q. Yes. And I suppose for those who haven't seen a
8 political special adviser at work, they put in very
9 long hours?

10 A. Yes, sir. 14:48

11 15 Q. And that would be, I am sure, true of your contribution
12 to Ms. Fitzgerald, would that be right?

13 A. Yes. Your day started early and finished late.

14 16 Q. And you would be obviously going to and from the Dáil
15 and the ministerial office in Government Buildings? 14:48

16 A. That's correct.

17 17 Q. And the departmental offices as well?

18 A. That's right.

19 18 Q. Wherever they are situate. And you'd travel a lot with
20 the Minister? 14:48

21 A. I did most of the travelling with her.

22 19 Q. Pardon?

23 A. I did most travelling with her.

24 20 Q. And you would be accompanying her to meetings?

25 A. To most of them. Not all, but most. 14:48

26 21 Q. Not all. Obviously there would be some constituency
27 meetings and meetings down the country you probably
28 couldn't get to and some international meetings, but
29 essentially a political adviser of your degree of

1 service, you'd be at the Minister's side, as it were, a
2 lot of the time, isn't that right?

3 A. Yes, most of it.

4 22 Q. And you'd have a lot of interplay with departmental
5 officials -- 14:49

6 A. Yes.

7 23 Q. -- in whatever Department your Minister would be in?

8 A. Yeah, different levels at different departments.

9 24 Q. Yes. And would it be fair to say you would see
10 everything that would come across her desk? 14:49

11 A. No. I wouldn't see everything, no.

12 25 Q. Well, what would you not see, as it were? Do you know
13 what you don't see?

14 A. Well, I don't know what I don't see, no, but I -- I
15 would only be sent -- we were copied on a lot of 14:49
16 emails.

17 26 Q. Yes.

18 A. By -- you know, that were of relevance, but there would
19 be security side of it I wouldn't see. There was
20 elements of confidentiality, migration cases, I 14:49
21 wouldn't necessarily see those. There would be parole
22 cases, I wouldn't see those.

23 27 Q. All of the statutory sort of decision-making --

24 A. Yeah.

25 28 Q. -- you would have no direct input? 14:50

26 A. Anything of high, you know, confidentiality I wouldn't
27 see.

28 29 Q. Outside, outside of that you would probably see an
29 awful lot of what went on?

1 A. Yeah, whatever the private secretary would send to me.

2 30 Q. Yes.

3 A. Yeah.

4 31 Q. And were there any hard and fast rules about what the
5 private secretary would or should send to you? 14:50

6 A. No.

7 32 Q. No.

8 A. No. Other than the confidentiality side of it.

9 33 Q. Yes. And I think you have told us in your statement
10 that you had a particular interest or responsibility 14:50
11 for ensuring the legislative programme was adhered to
12 and progressed in a timely manner?

13 A. Yeah. There would have been Government priorities for
14 the legislation.

15 34 Q. Yes. 14:50

16 A. Both in the programme for Government and priorities
17 that they would have. It would be my job to try and
18 ensure that the officials were working to the timetable
19 that the Minister had set or the Government had set for
20 it, so I would have to liaise with the Taoiseach's 14:51
21 Department, with the Chief Whip's office and with the
22 Department itself to make sure that we had the
23 legislation going through the Dáil and the senate in
24 Oireachtas, in a timely manner.

25 35 Q. Yes. And obviously the Department were obviously 14:51
26 driving a lot of the legislation relevant to the
27 Minister's agenda?

28 A. Yes.

29 36 Q. You'd also be concerned with obs on other departments'

1 memoranda, etcetera, isn't that right?

2 A. Yes. Mr. Lavelle dealt with the obs more than I did,
3 but if there was anything that he needed to discuss
4 with me he would have.

5 37 Q. Yes. And I think you were also responsible for the 14:51
6 Tánaiste's diary, the coordination of that, and you
7 managed the Tánaiste's staff?

8 A. Yeah. Most of, if not all invitations that came into
9 the Department for the Tánaiste would come to me.

10 38 Q. Yes. 14:51
11 A. And then I would discuss or, you know, go through it
12 and see what was relevant or not relevant for her.

13 39 Q. And I suppose in French terms, you would be regarded as
14 the chef to cabinet to the Minister.

15 A. Yes. 14:52

16 40 Q. And you have mentioned obviously the ministerial agenda
17 and progressing it both on the legislative side, but
18 obviously at the time you transferred to Justice with
19 the Minister you were filling a vacancy that had been
20 occupied by Mr. Shatter? 14:52

21 A. That's correct.

22 41 Q. And presumably you were well familiar in broad terms
23 and in political terms about what had brought about
24 Mr. Shatter's resignation?

25 A. Yes, in broad terms. 14:52

26 42 Q. And no doubt these things that happened to a Minister
27 as it happened to your Minister later, they are sort of
28 difficult and can be painful for all concerned, but
29 certainly Minister Fitzgerald took over the Department

1 of Justice and presumably you would have been concerned
2 to see that she didn't meet the fate that Mr. Shatter
3 met --

4 A. Absolutely.

5 43 Q. -- through any mishap or otherwise or misstep or 14:53
6 mission?

7 A. Yes, that's correct.

8 44 Q. So in that context, can I ask you, did you make
9 yourself familiar with the Guerin Report?

10 A. I did, yes. 14:53

11 45 Q. Okay. And were you familiar then with the
12 establishment of the Cabinet Justice Committee?

13 A. Yes, I was.

14 46 Q. And were you familiar in broad terms with the operation
15 of what came to be called the IRM? 14:53

16 A. I was, yes.

17 47 Q. Yes.

18 A. Yes.

19 48 Q. And presumably you were aware that the Government
20 having accepted the terms of reference, or the 14:53
21 recommendations of the Guerin Report, that there would
22 be terms of reference laid down for a commission of
23 investigation?

24 A. That's correct, yes, I was.

25 49 Q. And I'm sure you didn't have any responsibility for 14:54
26 drafting the terms but were you concerned with what
27 would go into the terms of reference or how they would
28 be dealt with?

29 A. No, I wasn't involved at all with the terms of

1 reference.

2 50 Q. Okay. Well, did you know there was any possible
3 overlap between what might be examined by the IRM and
4 what might be considered to be included in the terms of
5 reference? 14:54

6 A. No, I only subsequently found that out.

7 51 Q. Okay.

8 A. The terms of reference for the O'Higgins Commission, it
9 was done primarily between the Minister and the senior
10 staff. 14:54

11 52 Q. Yes.

12 A. We weren't -- I didn't have a role in it --

13 53 Q. Yes.

14 A. -- as such.

15 54 Q. Yes. But obviously, I take it that you became aware 14:54
16 that your Minister would be instrumental in driving the
17 process forward by settling the terms of reference,
18 proposing them to Minister Howlin for approval in terms
19 of public expenditure --

20 A. Yeah. 14:55

21 55 Q. -- and then progressing them through Government?

22 A. Yes. I was aware in broad terms of it going on and an
23 odd discussion here and there about it, but it was --
24 it was very legalistic in what they were doing and I
25 didn't have any experience of it, so it was more or 14:55
26 less guided by the officials.

27 56 Q. Yes.

28 A. It was just the principle of getting it established I
29 would have been more involved with than to make sure

1 that it was done, because it was a commitment to do it.

2 57 Q. And had you attended the meeting that the Minister had
3 with Sergeant McCabe?

4 A. No, I did not.

5 58 Q. And did you receive any briefing from her about that? 14:55

6 A. No. I was there the day the meeting was held, I met
7 Sergeant McCabe and his wife, but I had no briefing
8 afterwards --

9 59 Q. Yes.

10 A. -- about the meeting. Except the Minister had a 14:55
11 briefing conversation with me about it, where she
12 discussed that it was a very long and thorough meeting.

13 60 Q. Yes. And did she convey any impression of Sergeant
14 McCabe to you?

15 A. No. She said it was a very productive meeting and that 14:55
16 she felt that Sergeant McCabe and his wife and family
17 had been through quite an ordeal.

18 61 Q. Yes. And presumably you took it that she would be
19 concerned not to have any ordeal prolonged or added to
20 in any way? 14:56

21 A. Oh, absolutely. She was very firm and always had been
22 that it needed to be resolved, whatever the issues
23 were, they needed to be resolved.

24 62 Q. Yes. And presumably you didn't envisage them, as it
25 were, being resolved in any way by the Commission of 14:56
26 Investigation, were they to be resolved outside the
27 Commission or --

28 A. No, I think as time went on we knew it would require a
29 forum where it could be resolved --

1 63 Q. Yes.

2 A. -- with safety, for everybody concerned.

3 64 Q. Yes. And were you involved with the development of the
4 protected disclosure procedures --

5 A. No. 14:56

6 65 Q. -- within the Department that the Minister referred to
7 in her own statement to the Tribunal?

8 A. No, I wasn't. The protected disclosures was dealt with
9 by an official in the Department.

10 66 Q. Okay. But what was the Minister's approach then to 14:57
11 Sergeant McCabe in general as you describe it at this
12 point in time, at the end of 2014?

13 A. I think she was extremely sympathetic towards Sergeant
14 McCabe and his wife, Lorraine. She found the
15 meeting -- as I said, you know, she learned quite a bit 14:57
16 from it, she said, and she was very anxious that the
17 matter should be dealt with in a forum where it could
18 be dealt with properly, as opposed to one side saying
19 one side and another side saying another, that it
20 needed a forum for it to be dealt with. 14:57

21 67 Q. Yes.

22 A. And she was very anxious for it to be done.

23 68 Q. Were you copied in on some or all of the emails that
24 came in from Sergeant McCabe directly to the Minister's
25 office? 14:57

26 A. No.

27 69 Q. You don't recall seeing any of those?

28 A. No. Nothing, no.

29 70 Q. And do you recall seeing any letters that issued to

1 Sergeant McCabe or issued to the Commissioner in
2 respect of Sergeant McCabe from your Minister?

3 A. Yes. I saw one letter where she had requested the
4 Commissioner to outline what exactly was being done to
5 assist Sergeant McCabe with some of the complaints he 14:58
6 was making and what was being done.

7 71 Q. Yes, yes. Is that, are you referring to the letter in
8 February 2015 or March 2015?

9 A. I couldn't be sure of the dates.

10 72 Q. A lengthy letter anyway? 14:58

11 A. A lengthy letter, yes.

12 73 Q. All right. I think the Tribunal has seen that,
13 obviously. But the terms of reference obviously were
14 laid before the Dáil, you presumably saw them, having
15 been on the Cabinet agenda -- 14:58

16 A. Yes.

17 74 Q. -- and the decision being taken, etcetera, is that
18 right?

19 A. That's correct.

20 75 Q. And the Commission was then established by the 14:58
21 Government, by order on the 3rd February. You were all
22 familiar with that?

23 A. Yes, that's right.

24 76 Q. Okay. Well, you see, you say in your statement now:
25 14:58
26 "From once the O'Higgins Commission of Investigation
27 was established and commenced its work in 2015, the
28 position adopted by Minister Fitzgerald and her staff
29 was that until the Commission completed its work it

1 would not be appropriate for the Minister to interfere
2 or comment on any matter before the Commission until it
3 had completed its deliberations."
4

5 Now, I suppose there's two different points in time 14:59
6 there, there is obviously the establishment and then
7 the commencement of its work. Does this reflect some
8 process of deliberation that you were involved in?

9 A. It is a position that we had taken from the very start
10 of her ministry in Children, that if there was 14:59
11 something legal, something in a legal forum that we
12 didn't comment on it while it was there. It was an
13 understanding we had of a work practice that we always
14 practiced. We never commented on court cases or
15 anything to do with that. And, on the Commission we 14:59
16 would never have commented. We -- I can't say we sat
17 down and made a decision that we weren't going to do
18 this, it was a practice that we had established, and
19 from once the first query would come in we would take
20 the position that we wouldn't be answering anything to 15:00
21 do with the Commission while it was doing its work.

22 77 Q. Yes.

23 A. Because we felt politically that was the wrong thing to
24 do.

25 78 Q. Yes. But when was this sort of view taken? 15:00

26 A. I can't give you a date, I can only tell you it was a
27 firmly held view we always had.

28 79 Q. Yes. Is it documented in any way that you know
29 yourself?

1 A. No, no. It would be -- we'd meet as her advisers and
2 herself, and we would have items maybe on the agenda to
3 talk about and, you know, that would be one of them,
4 but the Commission -- it may have come up in that
5 context. It was just something that I have always 15:00
6 known, it's always been something that we didn't do.

7 80 Q. Yes. Well, obviously there is a certain logic to it;
8 if you consign a task to some statutory body you let it
9 get on with it?

10 A. Yes. Well, we didn't comment on the Fennelly 15:00
11 Commission when it was going on. We would have been
12 asked to. We didn't. We just didn't comment.

13 81 Q. Yes. But did you know that the Department was going to
14 be represented at some stage in the O'Higgins
15 Commission? 15:01

16 A. No.

17 82 Q. Okay.

18 A. No.

19 83 Q. I mean, you must have taken it, presumably, from one of
20 the terms of reference that the question as to what the 15:01
21 Department had done in relation to Sergeant McCabe's
22 complaints would be under scrutiny?

23 A. My approach, my own personal approach to the Commission
24 was that it was the Commission set up to deal with
25 Sergeant Maurice McCabe. I am a political adviser; I 15:01
26 didn't see any role for me in the O'Higgins Commission
27 or anything the Department had to do with it. It was
28 separate. I considered it to be separate.

29 84 Q. Yes. I am not suggesting any role for you in the

1 Commission or -- there was a role for the Minister in
2 terms of the Department, you'd accept that?

3 A. Yes.

4 85 Q. Okay. But in terms of managing the Minister's, as it
5 were, political safety and footwork and so forth, you'd 15:01
6 be concerned presumably to ensure that nothing went
7 astray which might damage the Minister?

8 A. Absolutely.

9 86 Q. And in that context, can I ask you to look at this
10 email of the 15th May 2015. It's to be seen at page 15:02
11 745 of our booklet, in volume 1, or it will appear on
12 screen in a moment if you want to wait. volume 1B, if
13 you have that there, page 745. You recall getting
14 that?

15 A. I do. 15:02

16 87 Q. Yes.

17 A. Yes.

18 88 Q. And in what circumstances did you get it?

19 A. It was sent by email to me on a Friday evening. I
20 couldn't swear when I read it, it was probably Friday 15:03
21 night or Saturday, I would have -- we were at an event
22 on Friday night so possibly on Friday night, Saturday
23 morning.

24 89 Q. Yes. And would it be unusual for the private secretary
25 to send you on an email in the evening or you to read 15:03
26 it in the evening or on the Saturday?

27 A. Absolutely not, no. I could get emails any time.

28 90 Q. Yes. And presumably from the point of view of our own
29 practice and, as it were, dedication to the service of

1 the Minister, she'd expect you to be aware and up to
2 date of issues like this, if it was sent on to you?

3 A. Yes.

4 91 Q. Yes.

5 A. She would have expected me -- 15:03

6 92 Q. You might have to discuss it with her.

7 A. I don't know, I can't answer that.

8 93 Q. Yes. But in terms of matters that you are being copied
9 into and which go to the Minister as well, you would
10 expect that she might expect that you'd have a 15:03
11 familiarity with it if she wished to discuss it with
12 you?

13 A. Yeah. well, she would see it was copied to me so she
14 would be aware that I had it.

15 94 Q. Yes. And did you, just looking at the sentence there 15:04
16 beginning "Richard":
17
18 "Richard wanted to let me know that counsel for the
19 Garda Siochana had raised as an issue in the hearings
20 an allegation made against Sergeant McCabe which was 15:04
21 one of the cases examined by the IRM."
22

23 Now, presumably, did you know that that allegation had
24 been examined by the IRM and it hadn't been included in
25 the terms of reference? 15:04

26 A. No, I didn't.

27 95 Q. You didn't know that?

28 A. No.

29 96 Q. Okay. So that didn't strike you as odd, that this was

1 being raised?

2 A. I didn't know about -- we weren't familiar with the
3 individual cases in the IRM.

4 97 Q. Yes.

5 A. So we had no knowledge of the individual cases. 15:04

6 98 Q. Well, I wonder could I just ask you about that. I
7 mean, your former -- the former Minister, your still
8 political colleague, Mr. Shatter, he had raised this
9 issue about an allegation relating to Sergeant McCabe,
10 everyone understood, in the Dáil in June of 2014, isn't 15:05
11 that right, about being included?

12 A. I have no memory of that.

13 99 Q. You have no memory of that?

14 A. I'm sorry, no, no.

15 100 Q. Well, I'm just wondering, in terms of you having come 15:05
16 in and your Minister having come in fresh into the
17 Department, and you have the former Minister outside, I
18 don't say making noise in any pejorative way but
19 voicing his view on an issue now within your Minister's
20 remit, you have no recollection of that? 15:05

21 A. No.

22 101 Q. Yes. You did liaise obviously with all the Minister's
23 Oireachtas issues, isn't that right?

24 A. I did, yes.

25 102 Q. Yes. And you had access to her Oireachtas email? 15:05

26 A. No. I had no access to it.

27 103 Q. You didn't have?

28 A. I didn't have access to her Oireachtas email. The
29 constituency staff had. I had no access to it. But

1 they would send me in the -- the staff would send me in
2 emails if I needed them from the Oireachtas email. But
3 I had no direct access.

4 104 Q. Yes. But you certainly managed them?

5 A. The staff, yes. 15:06

6 105 Q. Yes. I mean, had you some other position in Fine Gael
7 that enabled you to manage her constituency staff?

8 A. Well, I met the Minister through constituency work.

9 106 Q. Yes.

10 A. As a constituency member. 15:06

11 107 Q. Yes.

12 A. So...

13 108 Q. But I mean, presumably there is no, presumably, strict
14 relationship of superior or otherwise, but you did
15 manage them in the constituency and when they worked in 15:06
16 the office in the Oireachtas, isn't that right?

17 A. Yes, they spent most of their time in the constituency
18 office, one of them spent one day a week in the
19 Oireachtas, in the Dáil.

20 109 Q. Obviously there is an allowance for an office in the 15:07
21 constituency as well, but they are maintained in the
22 Houses as well, isn't that right?

23 A. That's right, yes.

24 110 Q. So --

25 A. Just to clarify that: we wouldn't have an office in 15:07
26 the Oireachtas, as such, for our constituency staff
27 because she was a Minister. So we would have
28 ministerial offices where one of the girls would have
29 come in there to us.

1 111 Q. Yes, yes. And no doubt --
2 A. Not like ordinary TDs.
3 112 Q. -- a generous size to accommodate everyone who might be
4 advising the Minister?
5 A. Yes. 15:07
6 113 Q. And the next paragraph down, which raises the issue of
7 motivation, and I note in your statement that you have
8 said that:
9
10 "The rest of the contents were presumptions made about 15:07
11 this by the author."
12
13 But did that not ring alarm bells for you in the
14 context of what you knew about your own Minister's
15 position, vis-á-vis Sergeant McCabe, that there could 15:08
16 be an attack on his motivation?
17 A. No, it didn't. To be very honest, it didn't. I wasn't
18 concerned with the email. I read it. I noted that
19 there was no action to be taken by the Minister, /that
20 would be the first thing I would notice in any email; 15:08
21 what action needed to be taken, if any, from any email
22 that came in. And secondly, I saw it as -- I saw it as
23 a dispute or an argument or whatever, legal argument
24 that appeared in the Commission between two sides and
25 there -- and the rest of the email was presumptions 15:08
26 made on behalf of the author. That is how I read it.
27 I wasn't concerned about it. It didn't strike me as --
28 you know, that is just the way I read it.
29 114 Q. We have obviously heard -- and I don't know how closely

1 you have been following some of the evidence, but you
2 have probably been following it closely?

3 A. Some of it, yes.

4 115 Q. Yes. And we have heard that Mr. O'Leary -- whom you
5 obviously knew and you were meeting throughout your 15:09
6 working weeks?

7 A. That's correct, yes.

8 116 Q. -- Mr. O'Leary spoke with Mr. Flahive before
9 Mr. Flahive sent this email, and did you know that
10 Mr. O'Leary had spoken to the Commissioner? 15:09

11 A. No.

12 117 Q. No. Did Mr. Flahive ever tell that you that
13 Mr. O'Leary discussed with Mr. Flahive the
14 Commissioner's call?

15 A. No. 15:09

16 118 Q. And just in terms of what you did with the information
17 you had received here and obviously read, did you speak
18 to anyone about this?

19 A. No, nobody.

20 119 Q. It's just, it appears to be a curiosity, and maybe it's 15:09
21 obviously entirely accidental, eleven people got this
22 email and nobody seems to have discussed it with anyone
23 else who got it, and obviously not with the Minister,
24 is that your understanding, certainly?

25 A. That is my understanding of it, but the curiosity 15:10
26 factor of it, I -- you know, I -- in the context of
27 that email and the context of the following week, we
28 were in the week of the Marriage Referendum, the final
29 week of it, we were extremely busy, I don't believe I

1 was in the office on the Monday, I think I was out in
2 the constituency office because we had canvassing to
3 organise, and I know that I had no conversation with
4 anybody about it. If the context was different and I
5 was in the office on a Monday morning like we normally 15:10
6 would be and having a conversation it may have come up
7 in conversation, but I had no conversation.

8 120 Q. Yes, yes.
9 A. Again, down to the fact that there was no action to be
10 taken. 15:10

11 121 Q. Yes. I am not suggesting there was either a collective
12 vow of silence or an individual vow of silence taken
13 about it, but you heard no discussion of it at all?
14 A. None whatsoever.

15 122 Q. And the other obvious thing is, nobody appears to have 15:11
16 remembered it after the establishment of the Tribunal,
17 before it came to light otherwise than by disclosure to
18 the Tribunal.
19 A. Yes.

20 123 Q. Did you recall this at the time the Tribunal was 15:11
21 established and started its work from February onwards?
22 A. Not until I saw it.

23 124 Q. Okay. And nobody else appears to have remembered it
24 either but that's obviously not a matter for you, but
25 you didn't discuss it with anyone from February 2017 15:11
26 until November 2017?
27 A. February 2017?

28 125 Q. Yes.
29 A. No.

1 126 Q. From the establishment of the Tribunal until its
2 disclosure?

3 A. No.

4 127 Q. No.

5 A. No. 15:11

6 128 Q. The notes that you've helpfully made available and in
7 handwritten form, you obviously made those notes
8 available to the Minister, the former Minister,
9 Ms. Fitzgerald. Can you recollect when you did that?

10 A. In January of this year. 15:12

11 129 Q. In January of this year.

12 A. Yes.

13 130 Q. Just passing on to another date. I think you have seen
14 some discussion of an email that took place or was sent
15 in July 2015 relating to an RTÉ inquiry, and I think 15:12
16 you were quite involved in that?

17 A. Yes.

18 131 Q. Could we look at that, at page 2012.

19 A. What volume?

20 132 Q. I beg your pardon. That is volume 3. And this email, 15:12
21 do you recollect getting that, this email?

22 A. Yes, I got it on a Saturday evening.

23 133 Q. And obviously it's from Mr. O'Leary to the Minister?

24 A. That's right.

25 134 Q. And then it comes to you as well? 15:13

26 A. Yeah.

27 135 Q. And did you ever speak to Mr. O'Leary about the Garda
28 Commissioner's phone call to him?

29 A. Never.

1 136 Q. Okay. It's obviously, he is putting it in the context
2 of the Commissioner's call, which I presume for the
3 moment he was relaying accurately that she was relaying
4 to him that there was a query about an aggressive
5 stance. You saw that obviously from the from the first 15:14
6 paragraph?

7 A. Mm-hmm.

8 137 Q. Okay. And did you discuss that with the Minister?

9 A. No.

10 138 Q. And you say in your statement that you would have been 15:14
11 alert to any information coming in that might be needed
12 for the programme?

13 A. That's correct.

14 139 Q. And this was information coming in that might have been
15 needed for the programme, isn't that right? 15:14

16 A. Yeah, I am assuming that is how we got it.

17 140 Q. Yes. And in that context, would it not be normal then
18 for you to speak to the Minister? Because Mr. O'Leary
19 is sort of headlining, you know, this is what the
20 Minister might say; did you not have any discussion 15:14
21 with the Minister about that?

22 A. I'm sure it's quite possible that I had a conversation
23 with her around the fact that Ken's email had come
24 through and I had seen it, but that I wasn't bothered
25 about it, because I had already told the programme, as 15:15
26 I would have if they had said that they were going to
27 raise the Commission, that we wouldn't be commenting on
28 it.

29 141 Q. Well, that's what I am wondering. You spoke to people

1 within RTÉ about the matter, isn't that right?

2 A. I spoke with -- about the programme.

3 142 Q. About the programme?

4 A. About the content of the programme.

5 143 Q. And when did you do that? 15:15

6 A. Well, I can't be specific, but whenever we had agreed
7 that she was going to go on the programme, which could
8 have been the Thursday, Friday of that week, I'm not
9 sure when it was agreed that she was going to do the
10 programme. But whenever it was agreed, we would have 15:15
11 agreed the topics and my practice would have been on
12 the Sunday morning of the programme, or the morning of
13 the programme, whatever programme it would be, I would
14 make contact again with the programme to make sure we
15 were still on the agenda that we had set with them or 15:15
16 in case some breaking news had happened the night
17 before or whatever, that we needed to get briefings
18 for. That would be my general practice. I can't sit
19 here and swear that I did that that morning but it
20 would be very unusual for me not to do it. 15:16

21 144 Q. Yes. That would be your practice?

22 A. That would be my practice.

23 145 Q. And I mean, put it this way: You wouldn't want your
24 Minister in the hot seat having something sprung on her
25 without notice -- 15:16

26 A. Absolutely not.

27 146 Q. -- or opportunity to consider it?

28 A. And it was part of your job when she was doing media,
29 that you checked.

1 147 Q. And would you go out to RTÉ with her --
2 A. Yes.
3 148 Q. -- to accompany her on these occasions?
4 A. Yes.
5 149 Q. And on this occasion? 15:16
6 A. I did.
7 150 Q. Yes. And you must have obviously understood from the
8 email chain that this had come as an inquiry from
9 RTÉ --
10 A. That's right. 15:16
11 151 Q. -- to the guards in the first instance --
12 A. Yeah.
13 152 Q. -- and then passed on to you --
14 A. Yeah.
15 153 Q. -- isn't that right? 15:16
16 A. That's right.
17 154 Q. And I mean, you didn't discuss it with Mr. Lavelle?
18 A. No, I didn't.
19 155 Q. Okay.
20 A. No. 15:16
21 156 Q. But you seem to have taken the trouble to twice confirm
22 with RTÉ that this wasn't on the agenda, is that right?
23 A. Yes.
24 157 Q. Okay.
25 A. If RTÉ had raised it with me -- and I have to put in 15:17
26 the ifs because it's quite a while ago, I can't
27 remember and there have been a lot of conversations
28 with a lot of television programmes, I can't remember
29 whether I did, but I know from my own practice that I

1 would have -- if they had brought up that they wanted
2 to ask a question about the Commission I would have
3 said no, we wouldn't be answering any questions on the
4 Commission while it was sitting, that was our policy,
5 that was our stance and we wouldn't be changing it. It 15:17
6 wouldn't stop them asking, but that was our position.

7 158 Q. But obviously in the context where this comes in on the
8 Saturday night, you know the Minister is going on --

9 A. Yeah.

10 159 Q. -- you have, as it were, fixed the agenda as you 15:17
11 believe it --

12 A. Yeah.

13 160 Q. -- was going to be for the Sunday --

14 A. Yeah.

15 161 Q. -- and I mean, I take it you would have had to satisfy 15:17
16 yourself that the Minister had seen this and that, you
17 know, the existing position about not discussing the
18 Commission -- she wasn't going to be thrown by it?

19 A. Yeah, what I would always do, after I spoke with them
20 on the morning of the programme, I would ring her and 15:18
21 tell her that I had confirmed the topics and if she had
22 asked -- and we may have said, you know, there is
23 nothing about the Commission or I have told them you
24 won't be answering anything on the Commission. I can't
25 say whether I said that or not, it's too long ago for 15:18
26 me to remember.

27 162 Q. Yes. But in the context where you have, as it were,
28 twice confirmed with RTÉ about what would be on the
29 topics, it would seem more likely perhaps would you

1 agree, that you would have told the Minister, look,
2 this inquiry about the Commission isn't going to be
3 raised?

4 A. I'm sure I did, yes, if I have had that conversation.

5 163 Q. I mean, did you have any discussion about what was 15:18
6 happening at the Commission then if there was --

7 A. No.

8 164 Q. The Commissioner -- I mean, the Commissioner was
9 phoning Mr. O'Leary on a Saturday night about this
10 issue of, as he would seem to have recorded her talking 15:19
11 about, aggressive stance of questioning?

12 A. I'm not aware of the phone call between Mr. O'Leary and
13 the Commissioner on the Saturday night or that that was
14 why the email was sent to the Minister. I assumed the
15 email was sent to her because a query had come in to 15:19
16 the Garda Press Office that week and this was probably
17 just a briefing document in case anything came up.
18 Mr. O'Leary would be very efficient at sending
19 documents to the Minister if he felt that she was going
20 to be asked a question. 15:19

21 165 Q. Okay. Can I move on then to 2016. Obviously the
22 Commission went about its work and the report came to
23 the Minister and was published in May of 2016, and I
24 think you are aware of that. And would it be fair to
25 say that it was fairly clear immediately that there was 15:20
26 some controversy about it, parts of it?

27 A. From -- from getting it or from leaks that appeared?

28 166 Q. Well, about its publication immediately and, as it
29 were, the spin that people were putting on it, was

1 there --

2 A. Yeah, I think -- I think it became clear that it wasn't
3 as clear-cut a conclusion as maybe we had expected or
4 hoped.

5 167 Q. Yes. And what sort of clear-cut conclusion were -- 15:20

6 A. Well, I can't tell you that, but I think the leaks is
7 what would have led us to believe that it was -- it
8 didn't seem to meet with anybody's satisfaction.

9 168 Q. Yes. Well, you appear to have been the recipient of an
10 email, perhaps we'd look at, it's at volume 8, page 15:20
11 4305. Again, this is from Mr. O'Leary, you appear to
12 be getting it on the --

13 A. Sorry, what was the page?

14 169 Q. 4305. And it comes from Mr. O'Leary, it seems to be a
15 response with perhaps some suggestions to the Tánaiste 15:21
16 as to what view might be taken, and there is reference
17 there obviously in the middle of that main paragraph to
18 the question of motivation. Do you recall seeing that
19 email?

20 A. I don't, no. 15:22

21 170 Q. Okay. It may jog your memory if you go to page 4307,
22 where, in brackets, there are sort of reference to what
23 the Minister might say, perhaps, in relation to calls
24 for the Commissioner to make a statement:
25 15:22
26 "It's entirely for the Commissioner... that she feels
27 in a position... make any further comment..."
28
29 Does that help you recollect whether you saw that?

1 A. Yeah, yeah. I am not sure what question you are asking
2 me.

3 171 Q. Well, do you remember getting it and reading it?
4 A. The final paragraph seems familiar to me. I can say
5 that. 15:23

6 172 Q. Yes.
7 A. But I can't --

8 173 Q. Yes. It was followed up a day or so later, just it may
9 help you sort of follow the sequence of it, at page
10 4308. This at the bottom of the page here, this is 15:23
11 from Mr. Forsyth in which he is sending to the
12 Minister's private secretary a note for the Tánaiste
13 for Leaders' Questions and I think you have noted in
14 your diary that the Taoiseach was away and the Tánaiste
15 was taking questions, isn't that right? 15:23

16 A. That's right, yes.

17 174 Q. But in the interim you had attended a meeting with the
18 Tánaiste and the Commissioner on the 16th, isn't that
19 correct?

20 A. That's correct. That was a Monday. 15:24

21 175 Q. Yes. And do you recall seeing the briefing note that
22 the Department had prepared for that?

23 A. No.

24 176 Q. Okay. Perhaps just, in case it refreshes your memory,
25 if we could go to page 4803, which is in volume 9. 15:24
26 It's sort of a -- I am sorry if you don't have it there
27 yet.

28 A. Yes.

29 177 Q. Do you recall seeing that?

1 A. No. I wouldn't get the briefing document, the Minister
2 would get it directly. And we didn't get copies of
3 them.

4 178 Q. Okay. And is that not something that you'd expect or
5 be expected by the Minister to be familiar with going 15:25
6 into such a meeting with the Commissioner?

7 A. Sorry, what would she be familiar with?

8 179 Q. The briefing document.

9 A. It's, generally they were handed to her maybe ten
10 minutes before a meeting. 15:25

11 180 Q. Okay. The meeting is referred to in your handwritten
12 notes, obviously, and I'm not going to go into any
13 particular concerns, but do you recall whether the
14 issue of the Commissioner's legal strategy being
15 discussed at that meeting? 15:26

16 A. No.

17 181 Q. No. Okay. Well, it appears to have been discussed at
18 a meeting on the 18th with the Secretary General and
19 Mr. O'Leary, is that right?

20 A. Is that in relation to the email the Commissioner had 15:26
21 sent through --

22 182 Q. Yes?

23 A. -- to -- yes, there was a meeting to be held between
24 them. I wasn't at that meeting.

25 183 Q. Well, perhaps I have misunderstood your notes. But 15:26
26 first of all, can I ask you, did you see the
27 Commissioner's email to the Minister?

28 A. Yes.

29 184 Q. Yes. And perhaps we'd just look at those. They are at

1 A. That's right.

2 193 Q. -- is that correct? And does this reflect a meeting
3 that you had with Noel Waters and Ken O'Leary?

4 A. It reflects a meeting was held, whether I was at that
5 meeting -- I don't believe I was at it. The nature of 15:29
6 my note would say to me I wasn't. And the discussion,
7 I don't have any memory of any discussion with Noel,
8 Ken and the Minister on the email from the
9 Commissioner.

10 194 Q. Well, this has been provided to us as your typewritten 15:30
11 notes from you and your diary, isn't that correct?

12 A. That's correct. From my notebook, yes.

13 195 Q. Yes. So I just want to be clear, the heading there
14 "18/5/16", would that not appear that you must have
15 been present at a meeting with these gentlemen? 15:30

16 A. No. My reading of my note is that a meeting was held
17 with Noel and Ken -- a meeting was to be had with Noel
18 and Ken to discuss the Commissioner's email.

19 196 Q. Pardon?

20 A. To discuss the Commissioner's email. 15:30

21 197 Q. Well, are you saying this is a meeting to be held in
22 the future?

23 A. No, no, on that day.

24 198 Q. Yes. So were you at that meeting?

25 A. My recollection is I wasn't. 15:30

26 199 Q. Okay. How did you come to make these notes?

27 A. Because that was a time when I was noting a lot of
28 stuff about the O'Higgins Commission. I would just --
29 I would be inclined to make notes. I also wrote on it

1 that the email was forwarded to Noel and the time it
2 was forwarded to him at.

3 200 Q. Yes.

4 A. To me, it's an aide-memoire for myself that it was
5 happening. 15:31

6 201 Q. But, you see, who was telling you about this meeting?

7 A. Oh, I probably talked to the Tánaiste and explained to
8 her that this email had come in. I probably alerted
9 her to the email that had come in, and she probably
10 said that -- probably need to talk to Noel and Ken 15:31
11 about it, make sure it's sent to Noel.

12 202 Q. Had she not told you earlier that she had received it
13 that morning?

14 A. No, no.

15 203 Q. No. 15:31

16 A. Not from memory. My memory of it is that I heard from
17 the constituency office that it had come in and they
18 wanted to know how to proceed with it.

19 204 Q. And you got them and you read them, is that right?

20 A. I got it and I read it briefly. 15:31

21 205 Q. Yes. And your Minister had been, as it were, on her
22 feet that day in the House?

23 A. That's right, yeah.

24 206 Q. And she had received Attorney's advice and had you seen
25 the Attorney's advice, I am not asking you to comment 15:31
26 on it?

27 A. No, I hadn't, no.

28 207 Q. Did you know that she had received Attorney's advice on
29 the matter?

1 A. No, I didn't. I wasn't aware of it.

2 208 Q. And this note here, you have Mr. Waters' email address
3 there, is that right?

4 A. Yes, I think so.

5 209 Q. Okay. 15:32

6 A. I don't have it in front of me.

7 210 Q. Pardon? And does this record what you did, email sent
8 to Noel at approximately 16:15 on 18th of May --

9 A. No, it's just a note.

10 211 Q. Pardon? 15:32

11 A. No, it's just a note in my book that the email was sent
12 to him.

13 212 Q. Well, you see, who told you that?

14 A. I suspect it was the constituency office told me.

15 213 Q. Yes. Well, after Christmas we received correspondence 15:32
16 from the Chief State Solicitor with emails from
17 Ms. Fitzgerald's Oireachtas account, which purport to
18 show that the emails were sent to "nawaters" at 16:11
19 and 12 that day. But does this represent your
20 understanding that the emails were sent to Mr. Waters 15:33
21 at his correct address or not?

22 A. I assumed they were sent to his correct address.

23 214 Q. Okay. Right. Well --

24 A. If it's helpful can I just say, if I sent an email to
25 Mr. Waters on the Justice system it just comes up 15:33
26 automatically. On the Oireachtas system it wouldn't
27 have come up automatically. So the girls would have
28 been sending the email to that address to an address
29 they thought existed, so that may be the error, I don't

1 know.

2 215 Q. But I want to be clear about this: This doesn't
3 represent information that you only received from the
4 Oireachtas office, does it? I mean, you were telling
5 us earlier it represented information that you had got 15:34
6 from the Tánaiste about a meeting that she had?

7 A. No, I'm saying it's a note I wrote in my diary, in my
8 notebook that a meeting was being held.

9 216 Q. That a meeting was being held?

10 A. Being held, there was to be a meeting with Noel and Ken 15:34
11 and the Minister.

12 217 Q. There was to be a meeting?

13 A. There was a meeting held with them.

14 218 Q. On the 18th?

15 A. On the 18th. 15:34

16 219 Q. And they discussed the Commissioner's advice?

17 A. That's correct. The email that had come in.

18 220 Q. Yes. So as of the 18th, Mr. Waters, to your
19 understanding, Mr. O'Leary, to your understanding, the
20 Minister and you, had all read the Commissioner's legal 15:34
21 advice that had been sent?

22 A. Yes, that would be -- I accept that.

23 221 Q. Okay. So, you knew, he knew, she knew, and you all
24 knew, about the Minister's advice about her
25 instructions at the Commission, and is there any reason 15:35
26 why you couldn't have made a statement about that to
27 the Tribunal before this year?

28 A. My understanding of that is the advice that the
29 Tánaiste had received was that she couldn't.

1 222 Q. I beg your pardon?
2 A. That the Tánaiste had received advice from the Attorney
3 that she couldn't.
4 223 Q. When was that? Because you told me a minute ago you
5 weren't aware of the Attorney's advice? 15:35
6 A. No, but subsequently -- at that day I wasn't aware, but
7 subsequently. I know that the Tánaiste had gone into
8 the House and she had told us that she had got advice
9 to say she couldn't disclose.
10 224 Q. Yes. Now, that is what she put on the record of the 15:35
11 House, implicitly, is that right?
12 A. That's right, yeah.
13 225 Q. Okay. But I think it's correct to say that it wasn't,
14 as it were, either revealed or disclosed that she had
15 been sent the Commissioner's advice, isn't that right? 15:35
16 A. I can't remember, but -- I can't honestly remember
17 that.
18 226 Q. And forgetting about what the Minister told the House
19 on the 18th, my question to you is: When this Tribunal
20 was established, looking into what the Commissioner had 15:36
21 done or not done or allegedly done at the O'Higgins
22 Commission, did you not feel it appropriate to say, in
23 fact, well, I'm one of the persons who is privy to the
24 advice, as is the Minister, and as is Mr. Waters and
25 Mr. O'Leary, and I had better tell the Tribunal about 15:36
26 it? That is what I am just asking you about at the
27 moment.
28 A. No, it didn't.
29 227 Q. Well, you did attend a meeting on the 19th, isn't that

1 correct?

2 A. 19th May.

3 228 Q. Okay. And had you seen the letter that the Minister
4 wrote to the Commissioner on the 19th in relation to
5 the matter? 15:37

6 A. No, I hadn't.

7 229 Q. Okay.

8 A. No.

9 230 Q. Well, perhaps we could look at page 4930, down at the
10 bottom there. Do you have that in front of you, 15:37
11 Ms. Mannion?

12 A. Yes, 4930.

13 231 Q. And I think you record who is at the meeting. This is
14 then an actual record of yours of a meeting?

15 A. Yes. 15:37

16 232 Q. Yes. And it's a meeting that happened on the 19th May,
17 is that right?

18 A. That's correct.

19 233 Q. Not to happen on any other day?

20 A. No. 15:37

21 234 Q. And, meeting with Nóirín O'Sullivan, John Twomey, he
22 was the Deputy Commissioner or acting Deputy
23 Commissioner at that stage, is that right?

24 A. That's correct.

25 235 Q. And Mr. O'Leary is there, Mr. Waters, Mr. O'Callaghan 15:38
26 and the Minister, is that right?

27 A. That's correct.

28 236 Q. Okay. And you set out in your note there in sort of
29 headline bullet-points, and in short, did the Minister

1 seek an account from the Commissioner as to what her
2 approach had been at the Commission to Sergeant McCabe?

3 A. Yeah, yeah.

4 237 Q. And what did the Commissioner say about what she had
5 done? 15:38

6 A. At the meeting -- I only have recollection from my
7 notes.

8 238 Q. Yes. Okay. Well, was the Minister concerned, as you
9 appeared to have noted at the top of page 4933, to know
10 whether the Commissioner had been doing or allegedly 15:39
11 doing one thing in public and another thing in private?

12 A. It was one of the accusations that had been made
13 against her, so a Minister asked her about it.

14 239 Q. And what the Commissioner say to the best of your
15 recollection? 15:39

16 A. She denied it.

17 240 Q. Well, what did she say she had been doing at the
18 Commission?

19 A. I think I have made a note of it. Like, she said that
20 she didn't assert at any stage that Sergeant McCabe had 15:39
21 acted out of malice.

22 241 Q. Well, did she say that she had been questioning his
23 motivation?

24 A. No, she didn't.

25 242 Q. Okay. She never said that to the Minister? 15:39

26 A. No.

27 243 Q. Could I ask you to look at page 4336 of our papers?
28 It's in volume 8. This is an email -- 4336 -- which
29 you appear to have been copied on. Do you see that,

1 Ms. Mannion?

2 A. I do, yes.

3 244 Q. On the 26th May 2016. It's from Mr. O'Leary to a
4 Mr. Lynch in Justice and it's copied to a number of
5 people, and it's in relation to what had happened at 15:40
6 the Commission. Do you recall receiving that email?

7 A. No, I don't.

8 245 Q. Well, what I just want to ask you about is this: You
9 had seen the previous Minister, as it were, toppled by
10 events which one way or another related to Sergeant 15:41
11 McCabe and obviously you wouldn't have wished your
12 Minister to end up the same way, and I am just
13 wondering, did you consider going to Mr. Lavelle or the
14 Minister, or both of them, and saying, look, do you
15 remember what happened in May 2016 when the 15:41
16 Commissioner gave us her legal advice about her
17 strategy, we discussed it with all the departmental
18 officials and we had better tell the Tribunal about it?
19 Did you consider doing that?

20 A. Em, no. Mr. Lavelle wouldn't have been there -- 15:42

21 246 Q. Okay.

22 A. -- in 2016.

23 247 Q. All right. Let's leave Mr. Lavelle out about it. Did
24 you actually speak with Minister Fitzgerald in 2017
25 about letting the Tribunal know that you were all privy 15:42
26 to the Commissioner's approach at the Tribunal, at the
27 Commission?

28 A. No.

29 248 Q. No.

1 A. No. I wouldn't have. I assumed that any documents
2 that were relevant that we would have received and got
3 would have been sent to the Tribunal by the Department.

4 249 Q. Okay. Well, did you not perhaps think of saying to the
5 Minister, look, I remember this issue about the 15:42
6 Oireachtas, your Oireachtas email, do you remember the
7 Commissioner sent in her legal advice and maybe you
8 should go through your Oireachtas email and ensure that
9 the Tribunal gets that?

10 A. But the legal advice came in after the O'Higgins 15:43
11 Commission was completed.

12 250 Q. Well, it still informed everyone, to a certain degree,
13 what the Commissioner had been doing and the basis upon
14 which she had been doing it, isn't that correct?

15 A. It did at the time. 15:43

16 251 Q. Yes.

17 A. But the accusation was that the Minister knew in '15 or
18 should have involved herself in it in 2015, while it
19 was ongoing.

20 252 Q. I am not sure whether that is a political accusation 15:43
21 you are talking about, but I am just concerned about
22 the work of the Tribunal in 2017. And obviously the
23 Tribunal is aware that the Minister, as it were, did
24 lose her position over matters connected with this, but
25 did you not consider whether it was appropriate to say 15:44
26 to the Minister, and decide for yourself, look, we had
27 better tell the Tribunal about these matters because
28 they are relevant to what the Tribunal wants to
29 consider viz learning about the Commissioner's

1 approach?

2 A. No, I didn't.

3 253 Q. You didn't. Thank you, Ms. Mannion.

4 CHAIRMAN: Do you have any questions, Mr. McDowell?

5 MR. MCDOWELL: Sorry, Judge, I didn't realise we were 15:44
6 finished.

7

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

9 254 Q. MR. MCDOWELL: Just, could I ask you very briefly to go 15:44
10 to page 4930 again, please? And could I bring your
11 attention to paragraph 2 there, which is -- has a
12 heading "Mary Lynch". Do you see that?

13 A. Yes.

14 255 Q. And underneath it is a statement:

15

16 "'McCabe told an untruth.' Report published." 15:45

17

18 Do you see that?

19 A. Yes.

20 256 Q. Can you assist the Tribunal as to what that was a 15:45
21 reference to?

22 A. For it to be accurate, I can't. I know that I'd had
23 contact with Mary Lynch and we were in the process of
24 organising a meeting with her.

25 257 Q. You see, I have got to suggest to you that the "'McCabe 15:46
26 told an untruth'" - in inverted commas - "Report
27 Published" probably refers to a leak of the O'Higgins
28 Report to RTÉ in which Paul Reynolds told the nation
29 that Maurice McCabe had told an untruth. Do you recall

1 on that occasion and that the Minister was discussing
2 that with the Commissioner?

3 A. I have no recollection of that.

4 CHAIRMAN: Just, it may help to fill in, Mr. McDowell,
5 there was an entire day of talk about the contents, RTÉ 15:48
6 has seen a copy type thing, you know the way it goes,
7 and that was on the 6th. And there was about two
8 television broadcasts and three or four radio
9 broadcasts, that was one line that came up on one
10 occasion. And then, the official publication then I 15:48
11 think was not until the 11th, so it was a five-day gap.
12 MR. MCDOWELL: Yes.

13 A. Okay. I can remember the controversy around reporting
14 going out about the O'Higgins Commission. I can't
15 relate it to this. I just -- these -- where did 15:48
16 this -- these are notes I had in a notebook, but I
17 just --

18 263 Q. It does appear that that was being discussed between
19 the Minister and the Commissioner?

20 A. Are these minutes of the meeting? 15:48

21 264 Q. Well, this is your document, as far as I understand.
22 Is it? Maybe I am operating under a misapprehension.
23 I thought these were your notes?

24 A. They are the typed version, sorry, they are not -- they
25 are not my handwritten -- 15:49

26 265 Q. I am not challenging you in any way, I am just asking
27 you: It does appear that this topic came up for
28 discussion between the Minister and the Commissioner as
29 to the leaking of the report to Mr. Reynolds?

1 A. It could have. And I don't know why it's under Mary
2 Lynch, I don't know. I have no memory of why I wrote
3 those.

4 266 Q. Well, I think we know from other documents that Mary
5 Lynch had told the Minister, was it, or the
6 Commissioner, that she was alleging that a number of
7 senior Gardaí had told untruths at the Tribunal?

15:49

8 A. That's correct, yeah.

9 267 Q. Was that discussed between the Minister and the
10 Commissioner?

15:50

11 CHAIRMAN: Can you just help me who Mary Lynch is,
12 please?

13 MR. McDOWELL: Sorry, Mary Lynch was the lady who was
14 driving the taxi and she was the subject of a terrible
15 assault, do you remember, where her hair was pulled
16 out?

15:50

17 CHAIRMAN: Yes, I do, I do remember.

18 MR. McDOWELL: And she was lucky enough to survive
19 because she was talking to her husband on the phone.

20 CHAIRMAN: Yes. No, I remember her. But I am tending
21 to wonder what the link is between -- I thought Mary
22 Lynch perhaps was an official or perhaps someone who
23 was a journalist. I know there is a Mary Lynch.

15:50

24 MR. McDOWELL: Yeah, there are many Mary Lynches, I am
25 sure, Judge. No, this is the lady, Judge, who was
26 driving the taxi and the man who later went on to
27 murder somebody, assaulted her, hijacked her and
28 brought her to a country lane and pulled her hair out
29 and tried to seize the keys.

15:50

1 CHAIRMAN: Yes. I can remember it. It was a horrible
2 thing. But I am just tending to worry, so this is not
3 about the media or -- I just don't know how the context
4 comes in.

5 268 Q. MR. MCDOWELL: That is the point. I know notes aren't 15:51
6 perfect and people just put down headings as they go,
7 but could I just ask you to look at page 4825, to see
8 if this jogs your memory? There is, halfway down page
9 4825 there is a paragraph:

10 15:51
11 "Commissioner said she had spoken to Mary Lynch, one of
12 the victims from Bailieboro, who alleged that five
13 senior officers perjured themselves at Commission of
14 Investigation."

15 15:52
16 Does any of that --

17 A. Yeah, I mean, I know -- I can explain the context of
18 Mary Lynch. Mary Lynch rang me. I don't know how she
19 got my number but rang me very early one morning,
20 around the time of this report, she was extremely upset 15:52
21 and agitated and wanted to speak to the Commissioner
22 and to the Minister right there and then and wanted --
23 I won't say the names, but wanted certain Gardaí sacked
24 on the spot.

25 269 Q. I see. 15:52

26 A. And certain things done. She was very, very upset.
27 She asked if she could speak with the Minister and talk
28 to the Minister and talk to the Commissioner. I told
29 her it wasn't within my gift for her to talk to the

1 Commissioner, but that I would definitely talk to the
2 Minister for her and try and arrange for them to meet,
3 and that did subsequently happen. That is the context
4 of Mary Lynch.

5 270 Q. So that, when that appears as a heading on page 4930 -- 15:52
6 A. I suspect it was that I -- it came up in discussion
7 because the -- and I think it was probably after this
8 meeting that the Tánaiste was meeting with Mary Lynch.

9 271 Q. I see.
10 A. And she may have been just trying to get the views from 15:53
11 the Commissioner.

12 272 Q. I see. But it just, and I am just now, I am not making
13 any adverse comment on you at all, you will appreciate
14 that, Ms. Mannion, but it does appear that there was a
15 discussion between the Commissioner and the Minister 15:53
16 about the leaked report to RTÉ and the slant that was
17 put on the report, including the emphasis that Sergeant
18 McCabe was supposed to have told an untruth?

19 A. And I can honestly say to you I don't know why I wrote
20 that. You know, I wrote it for a reason but I can't 15:53
21 tell you what it was.

22 273 Q. And the next line is:
23
24 "Legislation on Commissions of Investigation Act.
25
26 'What are exceptions?'" 15:53

27 A. Yes, I can't remember. I mean, it was probably
28 relevant at the time.

29 274 Q. I see.

1 A. And I may have just been writing it as a note to myself
2 saying, if there was a discussion going on about it I
3 may have thought I wonder what the exceptions are. I
4 would be inclined to do something like that as well at
5 a meeting. These are not minutes, these are my own 15:54
6 personal notes of a meeting, so they are meandering my
7 thoughts, a lot of them.

8 275 Q. I see. I can't put it any further than that. Thanks
9 very much, Ms. Mannion.

10 CHAIRMAN: Mr. Murphy? 15:54

11 MR. MURPHY: Chairman, I have no questions.

12 MR. MCCANN: I have four questions, Chairman, for
13 Ms. Mannion.

14

15 THE WITNESS WAS EXAMINED BY MR. MCCANN: 15:54

16 276 Q. MR. MCCANN: Ms. Mannion, you've served now as a
17 special adviser in three departments: The Department
18 of Children and Youth affairs first, then Justice and
19 Equality second and then most recently Business
20 Innovation and Enterprise. Could you assist the 15:54
21 Chairman in comparing the relative volume of material
22 that would have come across the Minister's desk at
23 those different departments?

24 A. Children and Business, we weren't that long in business
25 but Children and Business would be about equal, I would 15:55
26 say. Although Children was a new department we were
27 setting up, so it was slightly busier. But the
28 Department of Justice was beyond any of them, it was
29 three, four times busier. And the seriousness of

1 everything in it, you know, everything nearly that
2 crossed your desk was, you know, had -- was pretty
3 serious.

4 277 Q. Yes. And in terms of pressure in these different
5 departments, how would you describe that to the
6 Chairman, as between the departments? 15:55

7 A. The pressure in the Department of Justice way out-ceeded
8 any other department that we were in.

9 278 Q. And finally, we have seen the emails going out late at
10 night on Saturday nights with Mr. O'Leary and the 15:55
11 Minister and then late Friday evenings for the emails
12 in May 2015. How would you describe -- I think it was
13 Mr. O'Leary and Mr. Waters you would have been working
14 mainly with, how would you describe them as civil
15 servants? 15:56

16 A. I found them particularly helpful. I found them
17 particularly efficient. Mr. O'Leary was very, very
18 good at writing scripts for the Minister and very
19 professional in everything they did. I found them
20 extremely helpful. 15:56

21 MR. MCCANN: And Mr. McGuinness may have some questions
22 for you or the Chairman may have some questions for
23 you. Thank you very much.

24

25 THE WITNESS WAS RE-EXAMINED BY MR. MCGUINNESS: 15:56

26 279 Q. MR. MCGUINNESS: Just to clarify one thing,
27 Ms. Mannion, and to thank you for your statement. With
28 reference to this meeting of the 18th May that I have
29 asked you about and your note, you do say:

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"A copy of my note of this meeting is attached. I have no recollection of attending this meeting and the manner of my notes of same suggest to me I was merely noting the receipt of the email and that a meeting was arranged between Mr. Waters, Mr. O'Leary and the Minister." 15:57

And you seem to be relatively clear that you didn't attend the meeting and you have described that in terms of your notes for that purpose. 15:57

A. Yes. Because it wouldn't be unusual for me not to attend a meeting with Mr. Waters and Mr. O'Leary in relation to matters dealing with the Commissioner or with the Gardaí, for security and whatever. So -- 15:57

280 Q. Okay.

A. And I may not have been available.

MR. MCGUINNESS: Indeed. Thank you, Ms. Mannion.

THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN: 15:57

281 Q. CHAIRMAN: Ms. Mannion, I don't know, and I don't want to be kind of trying to read the rules or read the tea leaves as used to be the case when I was a kid, but you didn't bring your notebook with you, did you?

A. I have it, yeah. 15:57

282 Q. CHAIRMAN: would you mind just letting me have a look at it, and if you just open it at the relevant page that we have been referring to, please. [SAME HANDED TO CHAIRMAN] I am not sure that is it and I don't want

1 to look at anything I am not entitled to look at. It's
2 the one where it says "Mary Lynch", if you wouldn't
3 mind finding that page. [SAME RETURNED TO WITNESS]
4 A. Oh, that is a different. [SAME HANDED TO CHAIRMAN].
5 283 Q. CHAIRMAN: It could be me, but I am sorry, I literally 15:59
6 can't find where there is any reference to Mary Lynch
7 on that page at all. [SAME RETURNED TO WITNESS]
8 Great. Thank you. [SAME HANDED TO CHAIRMAN] Oh, yes,
9 yes. No, I get you. Mary Lynch in fact on the actual
10 text, anyone can see it, it's just an arrow, you are 16:00
11 presumably saying to yourself, the arrow presumably
12 means I have got to take action on that or something
13 like that.
14 A. Yes.
15 284 Q. CHAIRMAN: And then any reference to this comes way 16:00
16 down, and you have not put inverted commas but you have
17 said "'McCabe told an untruth' - report published", and
18 then "Legislation, what are the exceptions?" so I think
19 I understand. But as you know, what happened to the
20 unfortunate Ms. Lynch was the person who later 16:01
21 murdered the lady attacked her savagely. Is it
22 possible you're mixing that up with the case of Mr. R,
23 who was in a particular public house in Bailieboro and
24 two people assaulted him and he ended up on the floor
25 covered in blood? It was a similar type of thing and 16:01
26 the injured party made a statement withdrawing his
27 complaint when he didn't want to, some months after,
28 and the Garda investigation was criticised by
29 Mr. Justice O'Higgins as being pretty shy of the mark.

1 A. It could be. I honestly can't say, Chairman.

2 285 Q. CHAIRMAN: Because the reference there was to -- the
3 reference to an untruth was a reference to Sergeant
4 McCabe, and this was the finding of Mr. Justice
5 O'Higgins, telling I think Superintendent Clancy that 16:02
6 there had been a complaint to GSOC while he knew there
7 wasn't a complaint to GSOC. The Tribunal simply said
8 that was in consequence of a genuine and commendable
9 concern, it's unacceptable to furnish false information
10 in a report. Is it possible you were maybe mixing the 16:02
11 two pretty -- what they had in common was they were
12 both savage assault cases, but were you maybe mixing
13 the two of them up?

14 A. I don't think so, to be honest. I think I was only
15 dealing with Mary Lynch. 16:02

16 286 Q. CHAIRMAN: And then anything to do with this, obviously
17 it's way detached --

18 A. Yeah.

19 CHAIRMAN: I don't want to ask you any more questions
20 and thank you very much. 16:02

21

22 THE WITNESS THEN WITHDREW

23

24 MR. MCGUINNESS: Chairman, the next witness is a
25 Mr. Cyril Dunne. 16:03
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MR. CYRIL DUNNE, HAVING BEEN SWORN, WAS DIRECTLY
EXAMINED BY MR. MCGUINNESS:

MR. MCGUINNESS: Mr. Dunne's statement is to be found at volume 5, page 2971 of our documents.

287 Q. Mr. Dunne, I think you are actually retired now, is that correct?

16:03

A. I am.

288 Q. And I think you started out working with Allied Irish Banks, you specialised in systems development, you moved from there to the Irish Permanent Building Society and I think you were head of systems development there in 1990 you joined Power Supermarkets and was appointed to the board. That was taken over by Tesco's and remained with Tesco's. You were then approached by the Bank of Ireland and became their chief information officer and group transport information officer for seven years. I think you were approached by a German real estate company and you joined their board for a number of years. And in April 2013 you applied for a job as chief administrative officer in An Garda Síochána and you took up that position at that time?

16:03

16:04

16:04

A. Correct.

289 Q. And could you outline just briefly your responsibility as such and where you fitted into the organisation?

1 A. In An Garda Síochána?

2 290 Q. Yes.

3 A. So I was Chief Administrative Officer, as you said. I
4 was the equivalent, not in rank, I won't use the word
5 rank, of the Deputy Commissioner because I was not 16:05
6 sworn, so I had no policing powers.

7 291 Q. Yes.

8 A. But in terms of position within the organisation, I was
9 the equivalent of a Deputy Commissioner, so reporting
10 to the Commissioner of the day. 16:05

11 292 Q. Yes. And --

12 A. Sorry, my accountabilities then, sorry.

13 293 Q. Your particular duties and responsibilities?

14 A. Yes. So I was accountable for a number of functions,
15 all non-policing. So that was IT, finance, 16:05
16 procurement, HR.

17 294 Q. And we have heard reference to a number of persons who
18 worked in HR. Did Chief Superintendent McLoughlin
19 report to you?

20 A. No. 16:05

21 295 Q. Did Mr. Barrett, Mr. John Barrett?

22 A. Mr. John Barrett reported to me. Sorry, just to
23 qualify that a little bit.

24 296 Q. Yes.

25 A. So Chief Superintendent McLoughlin, when I first 16:06
26 joined, had just been made, appointed as a Chief
27 Superintendent to the rank, but was -- his role at that
28 point, which he had taken on as a superintendent, was
29 to manage the office of the Chief Administrative

1 officer, so for a couple of months he actually reported
2 to me before he took up a chief superintendent role,
3 which was back in HR, at which point he reported to an
4 assistant commissioner for HR, who held the equivalent
5 position that Mr. Barrett then subsequently took over, 16:06
6 if that makes sense.

7 297 Q. All right. But in terms of the running of An Garda
8 Síochána at that high level, am I correct in
9 understanding that obviously the Commissioner is head
10 of the force, with the Deputy Commissioner, but you 16:06
11 would be part of the executive board as the Chief
12 Administrative Officer?

13 A. Correct. There were four roles which were identified
14 as the executive, as we called it. So, the
15 Commissioner obviously, the Chief Administrative 16:07
16 Officer role, the Policing Operations Deputy
17 Commissioner and then a deputy commissioner for
18 Strategy and Change Management.

19 298 Q. Yes.

20 A. And that was the executive. 16:07

21 299 Q. Yes. And how many other civilian executive directors
22 were there?

23 A. Now, the executive director is a different level.

24 300 Q. Is it?

25 A. So that would be the equivalent of an assistant 16:07
26 commissioner, whereas my role was equivalent of a
27 deputy commissioner. So executive director level,
28 there would have been - bear with me now - one in IT,
29 moved to a position where there was one in HR, there

1 had been an assistant commissioner, there was one in
2 finance, the chief medical officer, I believe that was
3 it.

4 301 Q. Yes. Obviously you had no role in relation to
5 operational matters as such? 16:08

6 A. No, none at all.

7 302 Q. What role did you have in relation to HR in terms of
8 responsibility for it overall or supervision of it or
9 knowledge of it?

10 A. So HR was actually -- and again, if I just put the 16:08
11 context. So there was an assistant commissioner who
12 was -- when I started, who was responsible for HR.

13 303 Q. Yes. That was Fintan Fanning, was it?

14 A. Correct. Assistant Commissioner Fintan Fanning. For
15 the areas of the HR responsibility, for his 16:08
16 responsibilities, he reported for anything which was
17 non-policing to me.

18 304 Q. Yes.

19 A. And he reported for anything that was policing-related
20 to the Deputy Commissioner, Strategy and Change 16:08
21 Management. So if I can give you an example. Part of
22 the responsibility of HR - and I know this is
23 complicated, but - is Garda professional services, is
24 part of the responsibility of HR would be Internal
25 Affairs, so discipline of sworn officers. 16:09

26 305 Q. Old B Branch as we all knew it?

27 A. Correct. It was felt at the time that it was important
28 that, at a deputy commissioner level that those
29 responsibilities were held by a sworn officer. So,

1 Assistant Commissioner Fanning reported to a sworn
2 officer for those roles. For other roles he reported
3 to me. That continued when Mr. Barrett took over. So
4 he had responsibility for all of HR, but reported in
5 some contexts to me as Chief Administrative Officer and 16:09
6 in some contexts to the Deputy Strategy and Change
7 Management.

8 306 Q. Yes. And I think Commissioner O'Sullivan, she had
9 formerly occupied the position of Assistant
10 Commissioner HRM? 16:10

11 A. For a short period, I believe. Well before my time.

12 307 Q. Essentially then in terms of Mr. Barrett's position, he
13 had taken over, as it were, the HRM side of it, leaving
14 aside the discipline issues, which remained --

15 A. He actually -- 16:10

16 308 Q. -- with the Assistant Commissioner, is that right?

17 A. No, in fact not. Mr. Barrett had responsibility for
18 all of those elements. So, including discipline and
19 including professional standards. Although he reported
20 in that context to a deputy commissioner instead of to 16:10
21 me.

22 309 Q. Yes.

23 A. I understand that that may have changed subsequently to
24 my leaving, but that was the case at the time.

25 310 Q. Okay. And just I suppose to complicate matters 16:10
26 further, in terms of protected disclosures, obviously
27 there had been the old Confidential Recipient, under
28 the 2005 Act there were regulations, and in 2007, about
29 confidential reporters and then there was the Protected

1 Disclosures Act but at the time we are talking of, from
2 2014 onwards, where did the responsibility in relation
3 to protected disclosures, dealing with matters related
4 to that and members who had made one, where did that
5 stand in the line of responsibility and in the line of 16:11
6 reporting upwards?

7 A. I believe in the line of responsibility, it was within
8 HR and there was, a protected disclosures manager was
9 appointed within HR and that the line of reporting was
10 again up through the Deputy Commissioner and to the 16:11
11 Commissioner.

12 311 Q. Yes. And had you any role in that?

13 A. No.

14 312 Q. Okay. And just in terms of Sergeant McCabe, had you
15 ever met Sergeant McCabe at the time we are talking 16:11
16 about?

17 A. No, no. Nor since.

18 313 Q. And had you any, as it were, executive responsibility
19 for dealing with Sergeant McCabe in any --

20 A. No. 16:12

21 314 Q. -- capacity?

22 A. No.

23 315 Q. Okay. And what was your familiarity with the issues
24 raised by Sergeant McCabe and where they stood at the
25 end of 2014? 16:12

26 A. I would have had no sight of the issues at that point,
27 at the end of 2014.

28 316 Q. Okay. In 2015, we have obviously been provided with
29 minutes of meetings from the Head of Legal Affairs,

1 Mr. Ken Ruane, who would have presumably been advising
2 across the board in relation to issues, but do you
3 recollect being at a meeting in February 2015 which
4 seems to have been exclusively devoted to issues
5 relating to Sergeant McCabe and his workplace issues 16:12
6 and bullying and harassment issues and obviously
7 management issues as well?

8 A. Yeah, I do. And there are actually a series of
9 meetings that I was at. They were all on the same day,
10 which was the 25th February. So there was a series of 16:13
11 meetings that I was asked to attend.

12 317 Q. Yes. And they appear to have gone over a number of
13 hours, obviously, and you have seen Mr. Ruane's notes
14 of those. But you are recorded as contributing and
15 making some significant contributions to the meeting, 16:13
16 and I think you raised the issue of mediators,
17 Mr. Mulvey or Mr. Cassells, perhaps, being involved,
18 and a variety of different approaches that might be
19 considered, but what was, as it were, the upshot of
20 that meeting, if I could ask you to express it in 16:13
21 whatever way you think appropriate?

22 A. So there was -- so again, if I just put the context of
23 the day.

24 318 Q. Yes.

25 A. Because you are right, there was a lot of time spent on 16:13
26 that day. It started from a point where Sergeant
27 McCabe had actually written with serious concerns to
28 both the Commissioner and the Minister, and I
29 understand actually that the Minister may have either

1 called or written to the Commissioner seeking, you
2 know, a formal response as to what was happening.

3 319 Q. Yes. We have seen, as it were, sort of a missive sent
4 by the Commissioner in the middle of the day which was
5 in fact reciting that Sergeant McCabe was meeting with 16:14
6 Mr. Barrett as she was writing, as it were?

7 A. Okay. So, that was the context of the day. I was
8 asked by the Commissioner to sit in on the first
9 meeting.

10 320 Q. Yes. 16:14

11 A. Which was in the morning, and there were -- there was
12 quite a broad attendance at that meeting. So the
13 Commissioner was there, Ken Ruane was there, Chief
14 Superintendent Barry O'Brien was there, who had -- who
15 had been involved with Sergeant McCabe. Chief 16:15
16 Superintendent McLoughlin was there.

17 321 Q. Yes.

18 A. So there were -- so it was a big meeting.

19 322 Q. Yes.

20 A. It was focused on what the supports were that were in 16:15
21 place for Sergeant McCabe at that point, because my
22 understanding was that the -- the Tánaiste particularly
23 wanted to understand that from the Commissioner.

24 323 Q. Yes?

25 A. And also, any supports that we believed that we should 16:15
26 be putting additional in place to support Sergeant
27 McCabe. And that was the -- you know, there was a lot
28 of discussion around that.

29 324 Q. Yes.

1 A. My understanding -- I was asked -- that was the first
2 engagement I had with the problems that Sergeant McCabe
3 was having.

4 325 Q. Yes.

5 A. I believe -- though this is a belief, I can't say it is 16:15
6 a fact. I believe I was asked to sit in on that
7 meeting so that I could give what I would call an
8 independent perspective. That was very much part of
9 the type of relationship that I would have had with the
10 Commissioner, where if she was looking for an 16:16
11 alternative point of view that she would often use me
12 in that context.

13 326 Q. Yes.

14 A. Because I had a very different background to hers.

15 327 Q. Yes. 16:16

16 A. So that was the context of that morning meeting.

17 328 Q. I see.

18 A. There was then a second meeting, because Mr. Barrett
19 was not at that morning meeting. There was a second
20 meeting because -- and this was a short meeting, 16:16
21 because Mr. Barrett was due to meet with Sergeant
22 McCabe that afternoon.

23 329 Q. Yes. Were you present at that second meeting?

24 A. Yes, I was. There were four of us at that second
25 meeting, it was a short meeting, and the purpose of 16:16
26 that was to brief Mr. Barrett, one, on what had gone on
27 in the morning because he wasn't at that meeting, and
28 secondly, and this was particularly valuable to have
29 Chief Superintendent O'Brien there, to give him some

1 sense of the man. So Chief Superintendent O'Brien and
2 the Commissioner - and it happened in my office - went
3 through a short briefing prior to the meeting that John
4 Barrett and Chief Superintendent O'Brien had with
5 Sergeant McCabe that afternoon. So that was the second 16:17
6 meeting.

7 330 Q. Yes.

8 A. The third meeting was actually the meeting with
9 Sergeant McCabe.

10 331 Q. Yes. 16:17

11 A. And that was -- I had no involvement in that one. And
12 then finally, there was a meeting which was late that
13 evening -- well, sorry, about 6:30, if I remember
14 rightly, around about, where we reconvened and there
15 was again a broad number of people, I think this was in 16:17
16 the Commissioner's conference room.

17 332 Q. Yes.

18 A. Mr. Barrett phoned in.

19 333 Q. Yes.

20 A. And that was to take and get a briefing from 16:18
21 Mr. Barrett and from Chief Superintendent O'Brien as to
22 the meeting with Sergeant McCabe and how it had gone.

23 334 Q. Yes.

24 A. Sorry for the long description on that, Chairman, but
25 that is the sequence. 16:18

26 335 Q. And we have heard obviously Mr. Barrett referred to
27 that and Mr. Ruane's notes seem to indicated it started
28 at 6:41pm. Did you have notes taken by yourself at any
29 of the meetings or make notes subsequently yourself of

1 any of the meetings?

2 A. I honestly can't remember that specifically, and I
3 would expect that there were -- that I would have taken
4 some notes, I would expect I did. But I honestly don't
5 know and I don't have any documentation from my time in 16:18
6 An Garda Síochána. So if there was anything there it
7 would be in the office of the Chief Administrative
8 Officer, but I --

9 336 Q. Okay. In any event, was there any discussion at any of
10 the meetings about whether any supports were directed 16:19
11 to or necessary for the forthcoming Commission of
12 Investigation or did it all relate to the concerns that
13 had been raised and perhaps echoed or amplified by the
14 Tánaiste to know what the existing supports were?

15 A. There was no mention of the Commission at all at those 16:19
16 meetings. It was purely focused on the supports. And
17 particularly on getting ourselves in -- getting An
18 Garda Síochána in a position where we could respond to
19 the Minister with specifics as to what the supports had
20 been and were to be. 16:19

21 337 Q. The Commission obviously had already been established
22 as of the 3rd February, as a matter of law, as it were,
23 it was, I suppose, trying to get a corporeal existence
24 and get going. Had you any involvement in or knowledge
25 of the Commissioner's strategy or approach to Sergeant 16:20
26 McCabe and how she would deal with his issues at the
27 Commission?

28 A. Not in the context of the Commission, I had no
29 involvement in it at all and that goes back to -- if

1 meetings which, I won't say chaired but the most senior
2 member of An Garda Síochána there was Deputy Twomey, to
3 look at implementing some of the decisions that had
4 been made around supports. So particularly, for
5 example, the engagement of Mr. Mulvey or the potential 16:22
6 engagement of Mr. Mulvey, what the terms of reference
7 for that might be, and that was -- So I had, if you
8 like, stepped out at that point. I was brought back
9 into it.

10 343 Q. Yes. 16:22

11 A. I was brought back into it then because I remember --
12 and I actually got this from the chain of emails that
13 was supplied to the Tribunal, when there was a
14 discussion around the terms of reference, there was a
15 chain of emails which included Mr. Flahive in the 16:22
16 Department at that point, and he put my name into --
17 you know, into a -- sorry, he included me into the
18 email chain --

19 344 Q. Yes, yes?

20 A. -- for a particular question around the breadth of the 16:22
21 terms of reference that Mr. Mulvey should have as
22 against the terms of reference that Mr. Tony Kerr
23 should have and what the balance should be between
24 those.

25 345 Q. And you have obviously seen the one relating to 16:23
26 Mr. Barrett, Mr. Richard Barrett and whether it should
27 be broader --

28 A. Correct.

29 346 Q. -- and wider and be assigned to different people. But

1 were you aware or had you seen any of the responses
2 that the Commissioner had sent to the Commissioner,
3 either in response to the February concerns or a more
4 comprehensive letter of the 20th March that the
5 Commissioner sent to the -- 16:23

6 A. No.

7 347 Q. -- to the Minister?

8 A. No, I don't.

9 348 Q. But were you kept up to date then as to the efforts to
10 involve Mr. Mulvey and/or Mr. Kerr? 16:23

11 A. I got -- I got a certainly briefings during that time
12 and I remember I got a fairly comprehensive -- and
13 sorry, I got minutes of the meetings that had happened
14 around the 25th, and the meetings that happened with
15 Sergeant McCabe at the time, and I got a fairly -- I 16:24
16 would describe it as a state of the nation update, I
17 remember, in the middle of March from Mr. Barrett, as
18 to where everything stood. And that was the -- so yes,
19 I was kept up to date up to that point.

20 349 Q. Were you conscious of learning when the Commission 16:24
21 would commence its public hearings?

22 A. No, I was -- I wasn't, I wasn't focused or conscious of
23 the Commission at all, actually.

24 350 Q. But at any executive board meetings, did you hear any
25 discussion between the Commissioner and the Deputy 16:24
26 Commissioner as to the general approach --

27 A. No.

28 351 Q. -- that the Commissioner would take?

29 A. No. The approach to be taken at the Commission was not

1 a topic that the executive discussed as an executive.
2 I could imagine that if there were one-to-one
3 discussions, I could well imagine, but it wasn't a
4 topic that was discussed in a committee for want of a
5 better way.

16:25

6 352 Q. I suppose apart from any formal business of the
7 executive board, in your dealings with the
8 Commissioner, I mean, did she make you aware that she
9 was sort of very glad to have the Commission
10 established so that everything could be thrashed out
11 within the Commission and everyone's claims examined
12 and what her attitude was towards those?

16:25

13 A. I don't remember specific conversations with her, but I
14 would have been conscious -- so somewhere, but I didn't
15 have particular conversations with her about it.

16:25

16 353 Q. All right. Obviously you were approached by the
17 Tribunal's investigators following a suggestion that
18 Mr. Barrett had made in a statement and that you made a
19 particular remark, but can I ask you: what was your
20 work practice at this time that I am speaking of now,
21 in May? would you be in the office late at night?

16:26

22 A. I could be, yes, and particularly if there were
23 particular items going on and if I needed to talk to
24 the Commissioner, I very often would be talking to the
25 Commissioner in the evening.

16:26

26 354 Q. I mean, these jobs are, they are never 9:00 to 5:00
27 jobs at all?

28 A. No.

29 355 Q. You are effectively required to be there to get the job

1 done as late as possible if need be?

2 A. Yeah.

3 356 Q. At all sorts of hours of the day and night?

4 A. Yeah. And there would have been -- it was, at that
5 particular point in time as well it was very much all 16:27
6 hands on deck. At the senior levels within the
7 organisation there were more roles than appointments,
8 if I could put it that way.

9 357 Q. Yes. Could I ask you to take up volume 9 at page 4985?
10 These are some documents kindly made available to us by 16:27
11 Mr. Barrett, which you have probably seen. And at the
12 bottom of this page --

13 A. Yes.

14 358 Q. -- it seems to be an email, at the very bottom of that
15 this page, from Mr. Barrett in response to Mr. Banks of 16:27
16 the Department of Justice, it's circulated to you,
17 amongst others, as a copy recipient. It seems quite
18 late at night there, 23:30 on the 12th May 2015. That
19 seems to be dealing with an issue that you were all
20 required to be dealing with, is that correct? Do you 16:28
21 see that?

22 A. Yes, I do. I am just -- that's correct. And if I can
23 just -- if I can narrow it a little bit for you in
24 terms of, save us all dealing with it. So Fiona
25 Broderick is Mr. Barrett's secretary, or assistant. 16:28
26 And John F Walsh is the Commissioner's --

27 359 Q. Frank Walsh, private secretary.

28 A. Ye. So it was addressed in effect to the Commissioner
29 and to me. Now, also, again this would have -- it's

1 addressed actually to the office of the Commissioner,
2 just in the terms of the way the protocol operates.

3 360 Q. Yes.

4 A. So this would be going, because it's addressed to
5 Commissioner as distinct from at the time Nóirín 16:29
6 O'Sullivan, it actually goes to Frank Walsh, who files,
7 and I would imagine probably brought it to the
8 attention of the Commissioner as well.

9 361 Q. Yes. So that seems to be responded to by Mr. Banks, to
10 Mr. Barrett in the email above that, the following 16:29
11 evening at sort of 11 minutes to six and then cc'd to
12 you. Do you recall being in the office that day and
13 getting that, on the 13th?

14 A. At 11 minutes to six. No, I don't.

15 CHAIRMAN: Could I just ask one question, 16:29
16 Mr. McGuinness, just one thing that has been puzzling
17 me about these late emails. If one was using a device
18 for the purpose of sending emails but not in the office
19 does that appear on the email or does it just look like
20 as if it's come from the general email account which 16:30
21 could be the office or the device?

22 A. It can vary, Chairman. I would suggest that if it was
23 an iPhone, it would show sent from my iPhone or from my
24 iPad. If it were a portable PC, which we used --
25 CHAIRMAN: Where you have a dongle attached. 16:30

26 A. Correct. Typically in An Garda Síochána that would be
27 docked. You could lift it out. It can come from --
28 and if you send it off that machine, it could come from
29 anywhere.

1 CHAIRMAN: So your ordinary computer you'd carry around
2 in your shoulder bag or whatever with a dongle for
3 security would just link into the Garda system --
4 A. Correct.
5 CHAIRMAN: -- and send it as if you were in the office? 16:30
6 A. Correct.
7 CHAIRMAN: Okay. Thanks.
8 362 Q. MR. MCGUINNESS: But I was just asking you, Mr. Dunne,
9 sorry, do you recall getting the email or being in the
10 office when you got that reply or were copied in on the 16:31
11 reply from Mr. Banks in justice?
12 A. Not specifically in the context of that email, no.
13 363 Q. Okay. There is an email then above that from
14 Mr. Barrett and it seems to be directly to you and the
15 Commissioner, and the content perhaps isn't terribly 16:31
16 important except maybe the second paragraph might be
17 relevant:
18
19 "As I said last night --"
20
21 Do you recall having a conversation with Mr. Barrett
22 and the Commissioner the previous evening, on the 12th? 16:31
23 A. I don't recall specifically that it was on the 12th,
24 that date doesn't mean -- didn't mean anything to me.
25 364 Q. Yes. 16:31
26 A. But yes, I recall this issue. Yes, I do.
27 365 Q. But I suppose there is this question: Do you actually
28 recall having a conversation in person with the
29 Commissioner and Mr. Dunne [sic] on the 12th --

1 A. No.

2 366 Q. -- in his office or in your office?

3 A. No, not specifically.

4 367 Q. Okay. Do you recall having a conversation with the
5 Commissioner and Mr. Dunne on the 13th of May [sic]? 16:32

6 A. I am sorry, Commissioner and Mr. Barrett.

7 368 Q. I beg your pardon.

8 A. So on the 13th, no. No, I don't.

9 369 Q. Is there any way of establishing where you were on the
10 evening of the 12th or the evening of the 13th or do 16:32
11 you know where you were?

12 A. Not on the evening of the 12th. But I do know where I
13 was on the evening of the 13th.

14 370 Q. And how do you know that?

15 A. Because I was copied -- I have been copied on all of 16:32
16 the documents that have been supplied to the Tribunal.

17 371 Q. Yes.

18 A. And one document that was supplied was a copy of my
19 diary of the 13th October. I am talking now
20 specifically of the evening. 16:33

21 372 Q. Yes.

22 A. And in that --

23 CHAIRMAN: Sorry, are we mixing up weeks and months?
24 Are we talking about May still?

25 MR. MCGUINNESS: May. 16:33

26 A. I do beg your pardon. So on the 13th May, I was -- so
27 the diary entry is the 13th May, and I was copied on
28 that. There was reference in that to a private
29 meeting, in fact, that I had that evening, which was

1 down in County Wicklow, and I know I was in County
2 Wicklow that evening. I know that I left at about
3 six o'clock that evening.

4 373 Q. From HQ, is it?
5 A. From HQ. I went home. Because this wasn't a formal 16:33
6 meeting and I needed, one, to eat and, two, to change
7 my clothes. And I actually then independently was able
8 to corroborate that. It's a golf club, actually, it
9 was a golf club meeting, I was able to corroborate
10 that. 16:34

11 374 Q. But you have your own recollection of it, as it were;
12 is it unreconstructed or unaided by this diary entry
13 or --
14 A. It was triggered by the diary entry.

15 375 Q. Triggered by the diary entry? 16:34
16 A. Yes.

17 376 Q. And just, in terms of the 12th then, have you any
18 recollection of where you were on the 12th, on the
19 evening the 12th?
20 A. I don't, particularly, no. 16:34

21 377 Q. Or what time you might have left?
22 A. No. And I have nothing to trigger it.

23 378 Q. Okay. Well, at page 2985 of our Tribunal documents --
24 A. What volume is that?

25 379 Q. It's in volume 5. 16:34
26 A. Yes.

27 380 Q. The Tribunal investigators met with you and they asked
28 you about obviously a statement made by Mr. Barrett
29 which they quoted to you, and at the bottom of that

1 page, in answer to the questions there, you say you
2 have no recollection of meeting with John Barrett. I
3 mean, obviously you must have met him in the course of
4 your daily work, perhaps on a daily basis, would that
5 be right? 16:35

6 A. That's correct.

7 381 Q. Yes. But you say:
8
9 "I am certain that I never said "we are going after him
10 in the Commission"." 16:35

11 A. Mm-hmm.

12 382 Q. And is that your evidence on that issue?

13 A. That is absolutely my evidence.

14 383 Q. And it's obviously a quote that is put to you. But
15 what was your understanding of the Commissioner's 16:36
16 approach to Sergeant McCabe in the Commission?

17 A. My understanding was that --

18 384 Q. As of this week now, if you can recollect what your
19 state of mind was.

20 A. No, my understanding at that time was that the 16:36
21 Commissioner was generally very concerned about what I
22 would call duty of care to everybody, so including
23 Sergeant McCabe. I understand that she was very keen
24 to have the Commission establish what the real truth
25 was and that that is what she hoped to get out of the 16:36
26 Commission. I had no particular discussion or view on
27 a legal strategy. I did expect that there would be
28 questioning. That was my --

29 385 Q. Can I just ask you separately about each of those

1 issues in the answer? where or when do you recall
2 acquiring a knowledge that the Commissioner was
3 concerned about, you know, a duty of care to everyone,
4 including Sergeant McCabe?

5 A. Well, that came from the discussions that we had back 16:37
6 in February. So that meeting in February, the
7 Commissioner would have mentioned on numerous times
8 about a duty of care to everybody.

9 386 Q. But obviously in the context of what you have told us,
10 that wasn't in the context of any discussion at that 16:37
11 time about the Commission --

12 A. No.

13 387 Q. -- or what would happen inside the Commission?

14 A. No, no.

15 388 Q. But did you have some other, as it were, source of 16:37
16 knowledge about what her view was in terms of a duty of
17 care to people at the Commission?

18 A. No. no, not particularly.

19 389 Q. Or, establishing the second bit of your answer there:
20 where did you understand that she was very concerned to 16:38
21 establish the truth of what had happened?

22 A. That would have been just what I picked -- what I
23 picked up in being around Garda Headquarters, I think.
24 I don't recall a specific meeting, but that is what I
25 would have -- that was the understanding that I would 16:38
26 have gained.

27 390 Q. And in terms of when or in what circumstances you
28 gained that understanding, are you in a position to
29 help the Tribunal with any more detail?

1 A. I'm not really, and --

2 391 Q. I mean, obviously this sort of remark, it's not
3 conveying a legal strategy?

4 A. No.

5 392 Q. It's conveying, whoever might have said this or just 16:38
6 taking it as writ there, it would seem to indicate a
7 view that, you know, perhaps, putting it at its
8 mildest, he would be treated hostilely or he would be
9 confronted with different matters or maybe his
10 motivation would be questioned; did you have any sense 16:39
11 that the Commissioner had made a decision to challenge
12 Sergeant McCabe's motivation?

13 A. No.

14 393 Q. Or his integrity or his credibility?

15 A. No. 16:39

16 394 Q. Did you have hear those words used in April or May
17 2015?

18 A. No. The opposite, in fact. The impression I would
19 have had was that she was very much supportive.

20 395 Q. I just want to explore the possibility as to whether 16:39
21 you -- you might have said something that was perhaps
22 picked up wrongly. Did you ever express any view about
23 Sergeant McCabe's evidence, it would have to be tested
24 or that he would have a difficult time at the
25 Commission or he would be -- 16:40

26 A. No. I didn't. I didn't. no, I didn't. And I didn't
27 have a particular view around the Commission at all.
28 It was happening around me but it wasn't something that
29 I was particularly engaged in at all. There was no

1 contribution that I could make to it and it just wasn't
2 in my orbit.

3 396 Q. Yes. I mean, the remark that is attributed to you,
4 it's suggesting, as it were, sort of ownership of a
5 position in relation to Sergeant McCabe -- 16:40

6 A. Correct.

7 397 Q. -- an intention to do that, whatever it means; were you
8 part of any sort of decision-making about his position
9 at the Commission --

10 A. No. 16:40

11 398 Q. -- in the context of the previous efforts to support
12 him in his workplace?

13 A. No, no.

14 399 Q. Did you have any conversation with Chief Superintendent
15 Healy? 16:41

16 A. No.

17 400 Q. Did you know Chief Superintendent Healy?

18 A. I did. I would have had very little to do with him --
19 sorry, I had nothing to do with him in the context of
20 the Commission. I would have had very little to do 16:41
21 with him in the context of his normal role, which was
22 crime policy.

23 401 Q. And he appears to have been assisted by Inspector
24 McNamara in preparing for the hearings. Obviously that
25 sub-commission office of Inspector McNamara, that was 16:41
26 up in HQ, wasn't it? Or, did you know?

27 A. I didn't know. I don't know Inspector McNamara.

28 402 Q. Okay. Did you see Chief Superintendent Healy coming or
29 going to the Commissioner in and around this time?

1 A. Not -- not particularly -- no, I didn't. But why I am
2 pausing is because I wouldn't necessarily see him if he
3 was going to the Commissioner, just in terms of the way
4 offices were laid out. But the answer is no.

5 403 Q. Yes. And just, I mean, I suppose some people obviously 16:42
6 know where the Commissioner's office and maybe it's an
7 official secret, but in relation to where it is in the
8 blocks up there, how close are you to her office and
9 Mr. Barrett's office, where are they relative to each
10 other, if I could ask to you describe? 16:42

11 A. If you can picture looking at the gate of the Phoenix
12 Park and there is a block facing you, upstairs, almost
13 opposite the gate is the Commissioner's --

14 404 Q. Maybe don't be any more specific. But relative to the
15 interior layout where are the -- 16:42

16 A. So -- and my office is downstairs from the
17 Commissioner's and offset.

18 405 Q. And Mr. Barrett's office?

19 A. Mr. Barrett's office is in a separate block, which is
20 behind that block that I am talking about. 16:42

21 406 Q. And I think traditionally the deputies are next door to
22 the Commissioner, is that right?

23 A. Traditionally the Deputy Operations is next door to the
24 Commissioner. And the Deputy Strategy Change
25 Management was next door to me. 16:43

26 407 Q. Did you hear any one else saying anything like this? I
27 mean, I understand your evidence to be that you didn't
28 say this, and are you certain you didn't say this?

29 A. I am certain I didn't say it.

1 408 Q. Did you hear anyone else say this?

2 A. No.

3 409 Q. Or anything similar?

4 A. No.

5 MR. MCGUINNESS: Thank you, Mr. Dunne. Would you
6 answer any other questions, perhaps.

7 MR. MCDOWELL: No questions.

8

9 THE WITNESS WAS CROSS-EXAMINED BY MR. ROGERS:

10 410 Q. MR. ROGERS: Mr. Dunne, I am John Rogers, counsel for
11 Mr. Barrett.

12 A. Mr. Rogers.

13 411 Q. Could I just ask you to look at, I think it's the page
14 we were actually on, 2987?

15 A. 2987?

16 412 Q. Yes. It's your statement. Do you see that?

17 A. I have 2987, yes.

18 413 Q. If you look at 261 there, line 261.

19 A. Yes.

20 414 Q. You had been asked about meeting, senior management
21 team meetings preparatory in advance of the O'Higgins
22 Commission, and you said:

23

24 "I don't know that there were any such meetings.

25 Certainly it was never an agenda item at the Garda
26 senior management meetings. My memory is that those

27 centrally involved were the Garda Commissioner and
28 Chief Superintendent Fergus Healy."

29

29

1 So you were quite clear that they were the people who
2 were directly managing the Commission?

3 A. That's correct.

4 415 Q. Yes. And you say then that you do not recall being at
5 any such meeting, isn't that right? 16:45

6 A. That's correct.

7 416 Q. And then you say the following:

8

9 "I certainly had an understanding that the approach was
10 to be putting questions. Going back to the duty of 16:45
11 care --"

12

13 And you have mentioned that earlier in answering
14 Mr. McGuinness and you referred us back, the Chairman
15 back, to the meeting on the 25th February, isn't that 16:45
16 correct?

17 A. That's correct. That is where I would have picked up
18 the concept of the Commissioner's duty of care.

19 417 Q. Yes. But in this passage here, you definitively say
20 that you had an understanding the approach was to be 16:45
21 putting questions, isn't that right?

22 A. That's correct.

23 418 Q. There is no doubt about that, you understood that to be
24 the position?

25 A. Correct. 16:45

26 419 Q. Yes. And then you say:

27

28 "The approach was not one of taking everything that was
29 presented and letting it lie."

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Do you see that?

A. I do.

420 Q. Now, that, I suggest to you, means that if something is said, it would be tested, isn't that correct?

16:46

A. That is my understanding, yeah.

421 Q. Yes. In other words, it might be challenged, the witness might be cross-examined, isn't that right?

A. Certainly they would have been asked questions, yeah.

422 Q. Yes. And in this passage, you are dealing with what you understood what might happen at the O'Higgins Tribunal referable to Sergeant McCabe?

16:46

A. That's correct.

423 Q. Yes. And then the sentence goes on, the passage goes on:

16:46

"As such, there would have been questions put."

And then you say:

"I must have been on the periphery of these matters to know this."

16:47

Do you see that?

A. I do.

16:47

424 Q. So you acknowledge there very clearly that in fact you had some engagement with these matters so as to know that the putting of questions and what might be cross-examination of Sergeant McCabe would ensue?

1 A. That is in the statement, yes.

2 425 Q. Yes. And you are not in any way resiling from that?

3 A. I have thought, I have thought hard about that since
4 this was put to me, and I am not resiling from that,
5 except for timing, because it is difficult to know. 16:47
6 Because I was trying to figure out how I would have
7 known that that was the case, and -- So, I still stand
8 over it. The timing, however, I think is different.
9 Now, why I say that is because there was another much
10 later -- one of the particular modules, which I think 16:48
11 was summer or autumn, where there was somebody who had
12 been in my office, who was to have been a witness in
13 that module and he was preparing, I know, and --
14 actually, in the office beside me, preparing for his
15 evidence to go to the Commission at that point, and 16:48
16 that is the only -- and I would have picked up from
17 that that engagement. Sorry, his presence, I would
18 have picked that up. I can give you more detail on
19 that if you want it, Chairman. He happened to use the
20 office -- sorry, the physical office adjoining my own, 16:48
21 to do his preparation. The reason he did that was
22 because he was meeting with counsel, as I understood
23 it, in the, what is called the Officers' Club, which is
24 another building on the campus, and he had since moved
25 out of the Garda campus. So that was my -- the only 16:49
26 basis that I can think as to how I had picked up that
27 there were going to be questions put. So the timing is
28 different.

29 426 Q. Well, you said none of that at the time of making your

1 statement to the Tribunal's inquirers, isn't that
2 right?

3 A. That's correct. Because this question was put to me, I
4 didn't know -- So this is not a statement where I stood
5 back and put together everything that I knew. In fact, 16:49
6 I didn't know what was going on when I had got the
7 quotes, if you like, from Mr. Barrett.

8 427 Q. But this is a recorded statement?

9 A. Yes.

10 428 Q. Which you have adopted, isn't that right? 16:50

11 A. Well, that's correct, yeah.

12 429 Q. Yes. And if you look at the top of the page, at 256:
13
14 "I have been asked whether I attended any other of the
15 Garda senior management team preparatory meetings in 16:50
16 advance of the O'Higgins Commission of Investigation."
17 A. Yes.

18 430 Q. So, your answer at 261 is in fact an answer related to
19 the question you were asked about meetings in advance,
20 isn't that right? 16:50

21 A. Of the senior management team in preparation, yes.

22 431 Q. Yes. And the answer you gave in respect of the
23 question is the answer that we have just gone through
24 and which appears to say, very plainly, that you
25 understood that, in that context, it was intended to 16:51
26 ask questions?

27 A. I specifically say that I don't recall being at any
28 meeting of the senior management team where there was a
29 discussion about the strategy or what would go on at

1 the Commission, and I stand over that. And then I went
2 on to say, I certainly had an understanding, and I am
3 now saying to you that that understanding, I believe,
4 having asked myself a lot over the last while, came
5 later. But I never said that that understanding had 16:51
6 come from a meeting with senior management. In fact,
7 the opposite.

8 432 Q. I suggest to you, Mr. Dunne, that that is a gloss you
9 are putting on it now?

10 A. Oh, I'm actually looking back now, absolutely looking 16:51
11 back now.

12 433 Q. Yes. But this was a most formal event that you had
13 with the Tribunal's investigators, isn't that right?

14 A. It was the only event I had.

15 434 Q. Yes. And it was done very formally, in that the 16:52
16 questions were formally put?

17 A. Yes.

18 435 Q. Recorded?

19 A. Yeah, they were pre-prepared questions.

20 436 Q. And they were formally answered? 16:52
21 A. Correct.

22 437 Q. And the question that was put to you related to
23 meetings preparatory for the Commission, isn't that
24 right?

25 A. That's correct. I am reading it here, yeah. 16:52

26 438 Q. Isn't it the case that you were given an opportunity to
27 make alterations to this statement at page 2995? Do
28 you recall that?

29 A. Oh, certainly, yeah.

1 439 Q. So you are telling the Tribunal something now which you
2 might have told to the investigators at the time when
3 you read over the statement again?
4 A. Sorry, put that to me again, Mr. Rogers, I beg your
5 pardon. 16:53
6 440 Q. You are telling the Tribunal something now by way of a
7 gloss on what you said at 2987 to the investigators,
8 you are telling the Chairman now something new which
9 you might well have told when you swore this in the
10 investigation process. 16:53
11 A. What I'm telling the Chairman is that I have thought
12 long and hard about how I could have picked anything up
13 and the only way that I believe I could have picked it
14 up was by virtue of the fact that there was a
15 superintendent who was preparing over a period for his 16:54
16 evidence to the O'Higgins Commission, which was later
17 in the year, and that I picked up that understanding
18 there. That is the only basis, because -- and the
19 reason I am saying that is because I absolutely know,
20 and going back to here, I absolutely know that there 16:54
21 was no discussion at senior management level at the
22 time, which was a question I was answering. I am
23 trying to be helpful, and I seem to be causing a
24 problem.
25 441 Q. Well, if we just look at the passage. You made it 16:54
26 quite clear to the investigators that, as part of what
27 you saw as the duty of care there would be asking of
28 questions, isn't that right? And you associated that
29 with what you heard the Commissioner say on 25th of

1 February, isn't that right?

2 A. Correct.

3 442 Q. So this question of the asking of questions and not
4 taking everything and letting it lie, was something
5 that was well-established, that is the impression that 16:55
6 you gave to the investigators, isn't that right? You
7 didn't have to wait until some superintendent came into
8 the office to know that?

9 A. No, I absolutely agree with you, that is the impression
10 that I wanted to get across, and I believe I did get 16:55
11 across. And what I'm saying to you now, is, that I
12 believe that I picked up that -- because I am being
13 asked all of the time, well specifically at what
14 meeting, you know, what date, and the best information
15 I can give you, Mr. Rogers, sorry, Chairman, I beg your 16:55
16 pardon, is that I believe I could have picked it up in
17 that manner through the attendance of a superintendent
18 in my office over a period of time while he was
19 preparing for the Commission. I am also saying to you,
20 and I stand over it, that there were no meetings with 16:56
21 senior management, we didn't discuss it, it wasn't an
22 agenda item of the senior management team, nor did I
23 discuss it particularly with the Commissioner, other
24 than, as I say, I have it there, I mean, I was very
25 conscious that the Commissioner generally was conscious 16:56
26 of her duty of care to everybody, including Sergeant
27 McCabe. That's --

28 443 Q. Are you saying now then that the sentence "I must have
29 been on the periphery of these matters to know this" is

1 something which relates to this event when a
2 superintendent came to your office? Is that what you
3 are saying?

4 A. So, what I am saying is, and going back to this
5 statement: So, I must have been -- so at that point in 16:56
6 time, those words indicated, or I wanted them to
7 indicate, that I didn't know how I had picked it up,
8 okay, so "I must have been on the periphery" I think
9 would get that message across pretty well. What I am
10 saying now is that I haven't been just sitting back not 16:57
11 thinking about this, right, and I have been trying to
12 reconcile in my own mind, well, how could I have picked
13 up that particular impression? And the best
14 recollection that I can give you is that it would have
15 been picked up by the superintendent preparing in my 16:57
16 office for his engagement with the Commission. Yes,
17 with the Commission. That's what I am trying to get
18 across.

19 444 Q. I must suggest to you that you are saying something now
20 for the first time which you haven't said before and it 16:57
21 must have been known to you when you came into the
22 investigators to answer their questions, that it would
23 be important to say clearly where you got the
24 information that is in the passages I have read to you:
25 16:58
26 "I certainly had an understanding the approach was to
27 be putting questions, not one of taking everything that
28 was presented and letting it lie."
29

1 I suggest to you that you didn't explain that at all
2 the first time you had the opportunity to do it and it
3 has taken you till now to tell the Chairman, for the
4 first time, that this is the peripheral event that you
5 rely on to explain it. 16:58

6 A. Well, that is absolutely correct, because I have had no
7 engagement since. So this is the first opportunity
8 that I have had to actually talk about this at all.
9 And I have, absolutely, been thinking hard and long
10 about this in preparation for coming into the Tribunal. 16:59
11 So, yes, I agree.

12 445 Q. So when -- you made this statement on sometime, 2nd of
13 November, is that right?

14 A. It was the 2nd November.

15 446 Q. Yeah. And you had Mr. Barrett's statement from when? 16:59

16 A. From about a week before.

17 447 Q. Yeah. And how long was your session with the
18 investigators?

19 A. It was a couple of hours in the afternoon, it would be
20 actually on -- 16:59

21 448 Q. And in fact, in fact, this was the most important issue
22 of that event, wasn't it?

23 A. I think it -- I think it was, yeah.

24 449 Q. Yes. So you had Mr. Barrett's statement a week, you
25 had two hours with the investigators and the specific 17:00
26 event which you give evidence of now relating an event
27 with a superintendent in your office, is something you
28 didn't allude to at a two-hour meeting with the
29 investigators?

1 A. Can I just remind you, though, that there was nothing
2 that was presented to me a week beforehand which told
3 at all about preparatory meetings in advance of the
4 O'Higgins Commission. What it actually said was that
5 there was -- if I can remember or we can go back to the 17:00
6 actual statement from Mr. Barrett or the elements that
7 I was presented with, there were two elements I was
8 presented with. One was talking about a meeting which
9 he believed -- which I was at and a number of others
10 were at, which he believed would paint a picture for 17:01
11 the Tribunal. So that was the first thing that was put
12 to me. And the second thing that was put to me was,
13 the statement which was that he says that I said we are
14 going to go after him at the Commission. That's what
15 was presented to me about a week beforehand. This is a 17:01
16 specific thing about whether there was Garda senior
17 management team preparatory meetings. It's quite
18 different. So was I thinking about preparatory
19 meetings beforehand? No, I wasn't. And, as you
20 rightly point out, this is the first opportunity that I 17:01
21 have had to actually try and help the Tribunal with
22 filling in what was going on at the time.

23 450 Q. Do you have a good recollection of the time you were in
24 the office of CAO? These executive meetings that you
25 mention, you appear to have considered them to be 17:02
26 monthly meetings, isn't that right?

27 A. No, no. They would be -- there was a senior management
28 meeting which was monthly. So the senior management
29 being the executives -- sorry, think of it as the

1 deputy commissioner level, civilian and non-civilian,
2 and the assistant commissioner level, civilian and
3 non-civilian. Those were the senior management
4 meetings and those are monthly. The executive meetings
5 are different and it's a smaller cadre of people; it's 17:02
6 the deputy commissioner level, civilian and
7 non-civilian, and the Commissioner. So it's a meeting
8 of four.

9 451 Q. Were they weekly meetings?

10 A. They would have -- sorry, why am I hesitating? They 17:03
11 were supposed to be weekly meetings. They would very
12 often, because of the exigencies they would very often
13 be postponed and not happen every week.

14 452 Q. They what?

15 A. would have to be postponed. So they wouldn't have 17:03
16 happened every week, even though there was a regular
17 diary entry on a Tuesday morning first thing which had
18 that executive group meeting.

19 453 Q. So the executive meetings could be expected to occur
20 every week, but they might be postponed? 17:03

21 A. Correct, correct.

22 454 Q. You see, I want to suggest to you, Mr. Dunne, that it's
23 really very difficult to accept that the Commission
24 would not be discussed by the executive. You will
25 recall that, in early 2015, a Statutory Instrument 17:04
26 issued setting out the terms of reference of the
27 Commission, isn't that right?

28 A. That is my understanding, yeah.

29 455 Q. Well, isn't that something you would have had to deal

1 with?

2 A. No.

3 456 Q. Why not?

4 A. No, because the way it operated was that there was a
5 sworn officer who was given the responsibility of
6 liaising -- both liaising with the Commission and with
7 ensuring that everything was organised within An Garda
8 Síochána to deal with the Commission. And that
9 typically would be around discovery. So that would be
10 typically what would be required. That was an
11 assistant commissioner who was appointed to do that,
12 initially that was Assistant Commissioner Kenny. That
13 subsequently then went to either Chief Superintendent
14 or Superintendent Ward, I can't remember, and then,
15 finally, was assigned to Chief Superintendent Healy.
16 So that was where the responsibility lay.

17:04

17:05

17:05

17 457 Q. Yes.

18 A. And it wasn't -- and it wasn't -- and again, it's
19 important to understand what my role was; my role was
20 never to do with policing, and the O'Higgins Commission
21 was all about policing. It was all about whether the
22 right approach had been taken to a number of different
23 policing cases. So, no, I wasn't involved.

17:05

24 458 Q. But the executive, which appears to have been the
25 principal decision-making body of An Garda Síochána,
26 and which met weekly in respect of upcoming events and
27 issues of concern for the organisation, I suggest to
28 you that body must have been concerned with how the
29 Commission would be dealt with, how An Garda Síochána

17:06

1 would be represented and present itself there?

2 A. And the answer to that is no. That was --

3 459 Q. So the executive never considered it?

4 A. No. And your supposition that you made where you said
5 you would assume that the executive was the key 17:06
6 decision-making body is actually not correct in the way
7 it operated. And it was one of the things that we were
8 trying to change because, historically, An Garda
9 Síochána was, and to a large extent still is, quite
10 siloed. So what happens is that any item of focus or 17:07
11 particular piece of work would go up through one of
12 those channels, the channel being up through the CAO,
13 Chief Administrative Officer, to the Commissioner, up
14 through the operational side, through the Deputy
15 Operations to the Commissioner or up through Strategy 17:07
16 and Change Management to the Commissioner. And that is
17 the way it operated, which is probably right and
18 effective for policing matters because it's not
19 necessarily correct that others would be considering
20 the approach to operational policing. I, for example, 17:07
21 would have no contribution to make in that context.
22 It's not necessarily the right way to approach it, in
23 my view, for some of the staff functions, and I do
24 believe that it is something that, as part of the
25 modernization and renewal that is going on in the An 17:08
26 Garda Síochána, they are trying to change, but it's
27 deeply engrained culturally at the moment. So the
28 concept of the executive being the decision-making
29 group like a board in a plc, which I would be used to,

1 is not something that is the situation in An Garda
2 Síochána.

3 460 Q. Yes. Well, we know that there was an executive meeting
4 on the 12th May 2015. Are you happy that that is the
5 case? 17:08

6 A. I don't know. Could you point me to --

7 461 Q. If we look at 5016.

8 A. That is in?

9 MR. MCGUINNESS: Volume 9.

10 MR. ROGERS: It may be volume 9. 17:09

11 A. Sorry, thank you.

12 462 Q. Do you see that?

13 A. I see "Executive Board Meeting Commissioner's Office".
14 Is this an extract from the Commissioner's diary?

15 463 Q. It would be appear to be. 17:09

16 A. Okay. That doesn't necessarily say to me that there
17 was, that there was a meeting. It doesn't say there
18 wasn't but it doesn't say there was. And the reason I
19 say that is that the protocol that the Commissioner or
20 rather it was the Commissioner's secretary used was 17:09
21 that for a regular meeting which was scheduled, it
22 would be in the diary. I think I was saying earlier,
23 very often they would be moved, they would be postponed
24 for other reasons, and the protocol that was used was
25 that there would be a "yes" written in on the line if 17:10
26 the Commissioner was going to attend a meeting and I
27 don't see that "yes" here. So I can't say to you that
28 that meeting took place.

29 464 Q. Yes. But you don't know it didn't take place?

1 A. No, no, no.

2 465 Q. Yes.

3 A. And I don't know.

4 466 Q. Well, that was a meeting that was taking place, if it
5 was taking place it was taking place within days of the 17:10
6 commencement of the O'Higgins Commission, isn't that
7 right?

8 A. The O'Higgins Commission was the -- yes, was the 14 --

9 467 Q. The 14th I think.

10 A. Yes, the 14th. 17:10

11 468 Q. And Mr. McGuinness has brought to your attention the
12 email at 4985. Do you see that?

13 A. Yes. Just remind me which particular one. There are a
14 number of them.

15 469 Q. I think if we start at the bottom of the page. 17:11

16 A. Yes.

17 470 Q. There is an email addressed to Mr. Banks.

18 A. Yeah.

19 471 Q. And there can be no doubt that this email was about a
20 very significant proposal, isn't that right? 17:11

21 A. Correct. It was about the setting up of a promotions
22 advisory council, or a meeting of that promotions
23 advisory council.

24 472 Q. Yes. And this is an email of the 12th May, isn't that
25 right? 17:12

26 A. Correct. 12th May at 11:30. Yes.

27 473 Q. Yes. And it recounts Mr. Barrett's meeting with
28 Mr. Banks, do you see that?

29 A. I do.

1 474 Q. And it recounts that:

2

3

"Following our meeting this evening I spoke with the
4 Commissioner as promised."

5

17:12

6

And it would appear that there was a conversation
7 between Mr. Barrett and the Commissioner, if we are to
8 believe this, on the 12th, sometime after the meeting
9 between these two men, isn't that right?

10 A. Absolutely, that is how I read it.

17:12

11 475 Q. Yes. Sorry, if we could just keep it there, please.
12 And you'll see it reads:

13

14

"On foot of your input and with the approval of the
15 Commissioner, I am to advise that it is my intention to
16 convene a meeting of the promotions advisory council
17 with a view to making arrangements for a number of key
18 promotional competitions."

17:13

19

20

So it's quite clear that there was a meeting of some
21 moment between Mr. Barrett, carried out, which led him
22 to have the Commissioner's approval to move these
23 promotions, isn't that right?

17:13

24

A. That is how I read it, yeah.

25

476 Q. And if we look at the reply to look at Mr. Banks, if we
26 just -- if it could be moved, please, slightly.

17:13

27

Mr. Banks then seems to confirm the progress had been
28 made in the matter, they have no difficulty with the
29 proposal, isn't that right?

1 A. Correct.

2 477 Q. And then Mr. Barrett communicates with you and the
3 Commissioner, isn't that right?

4 A. Correct. And I think as I said earlier, it's --

5 478 Q. If we go again, please. 17:14

6 A. As I said earlier, it's probably not important but it's
7 Commissioner's office as distinct from the
8 Commissioner, that would have gone to Frank Walsh.

9 479 Q. Yes. But this is addressed to the Commissioner and
10 Cyril? 17:14

11 A. Yes.

12 480 Q. And he refers to the note confirming the progress on
13 the matter and then he says in the second paragraph "As
14 I said last night." He doesn't say there as I said to
15 the Commissioner last night. 17:15

16 A. No.

17 481 Q. He appears to be addressing both of you, isn't that
18 right?

19 A. Yeah, that is how I would read it.

20 482 Q. Yes. So it's quite clear that Mr. Barrett, in this 17:15
21 minute of the -- or this email of nine minutes past
22 nine on 13th of May, in the evening of the 13th of May,
23 is, I think we can say, definitively recounting that he
24 had a discussion with both you and the Commissioner on
25 the previous evening? 17:15

26 A. That is how I would read it, yes.

27 483 Q. Yes. Now, Mr. Barrett has told the Tribunal, you will
28 have seen the transcript of his evidence, have you?

29 A. Yes, I have.

1 484 Q. And he has told the Tribunal that, certainly when he
2 commenced giving his evidence he said that he believed
3 it was on the 11th, 12th, 13th of May that he had had
4 this encounter with you in your room wherein you said
5 that quote "we are going after him in the Commission". 17:16
6 Now I just want to suggest to you that it's quite clear
7 that Mr. Barrett certainly on the 12th May 2015, in the
8 evening of that day, had the opportunity to have heard
9 you to say the words that he says you said. Do you
10 agree with me that that opportunity arose? 17:16
11 A. That we -- so based on the email that we spoke on the
12 12th, on the evening of the 12th about the competitions
13 to establish a number of panels, yes, I do.
14 485 Q. Yes. When one looks at your statement, Mr. Dunne, it
15 does seem that you're at pains to make it plain that 17:17
16 Mr. Barrett's recounting, as he has done to the
17 Tribunal in his initial statement of what he said
18 occurred, was not an untruth by him, isn't that right?
19 A. Sorry, say that to me again, I beg your pardon. That?
20 486 Q. I think you have sought, in making your statement to 17:18
21 the investigators, to make it plain that it is not your
22 opinion that Mr. Barrett, in making his statement, had
23 sought to make an untruth to the Commission -- to the
24 Tribunal, and I invite you to look at 2986.
25 A. Yes. 17:18
26 487 Q. If you look at line 248.
27 A. Correct, yes, I have it.
28 488 Q. You were specifically asked whether Mr. Barrett had
29 told untruths, isn't that right?

1 A. That's correct.

2 489 Q. And --

3 A. So I was asked -- just to be clear, I was asked was it
4 my opinion that Mr. Barrett had told untruths. And I
5 said I don't want to accuse anybody. It's not 17:18
6 correct -- it is not correct; that being, the statement
7 is not correct. But that telling an untruth implies a
8 premeditation and I cannot say that that is the case.

9 490 Q. Yes.

10 A. So, I couldn't. 17:19

11 491 Q. And you don't move away from that here?

12 A. No, no, I'm not ascribing any motivation to what
13 Mr. Barrett said. I don't know.

14 492 Q. Reading your statement you didn't set out the detail
15 that you have given today in relation to the extensive 17:19
16 meetings that occurred on the 25th February 2015, isn't
17 that right?

18 A. That's correct.

19 493 Q. And would you agree with me that that is a little
20 surprising? 17:20

21 A. No.

22 494 Q. Isn't it the case that Mr. Barrett had alluded to those
23 meetings specifically in his statement?

24 A. No. No. If I can go back. So talking about the --

25 495 Q. If you look at page 2968, please. 17:20

26 A. Well, actually, if I can -- I didn't have a copy at
27 that time of the whole of Mr. Barrett's statement, so I
28 think if you wouldn't mind, I'd prefer to go to my
29 statement, which includes the elements of Mr. Barrett's

1 statement that were presented to me. If that is okay,
2 Chairman.

3 496 Q. What page are you looking at?
4 A. I need to find that. So, page 2979.

5 497 Q. Yes. 17:21
6 A. So, "After my appointment as interlocutor with Sergeant
7 McCabe --" And I won't read it all. So, he says, "I
8 received a briefing in February 2015 from a number of
9 senior staff in An Garda Síochána, including the Acting
10 Commissioner." Etcetera, etcetera, etcetera. Okay. 17:21
11 "The briefing given to me may be of assistance to the
12 Tribunal." Now, I actually couldn't connect that to
13 the specific meetings that, yes, I knew we had on the
14 25th, because I was not -- and this is what he has
15 specifically said, he has specifically said that there 17:22
16 was a briefing given by Commissioner Nóirín O'Sullivan
17 and myself. Now, that is not actually what happened in
18 the meetings on the 25th, right, other than one which I
19 can refer to later on. And my understanding, actually,
20 is that Mr. Barrett has changed his position in 17:22
21 relation to this, is that the briefing that he is now
22 talking about is a meeting which happened in the middle
23 of the day, which was myself, the Commissioner, Chief
24 Superintendent Barry O'Brien and himself, which didn't
25 include any others, which was in an effort to prepare 17:23
26 Mr. Barrett for his first meeting with Sergeant McCabe.
27 So, that's actually what was presented to me, and
28 that's what I responded to.

29 498 Q. But you do agree that there was such a meeting to

1 prepare him for his meeting with Mr. McCabe?

2 A. There were -- in total, if you include his meeting with
3 Mr. McCabe, there were four meetings.

4 499 Q. I know.

5 A. So -- 17:23

6 500 Q. But I am asking you about the meeting that he attended
7 in which he received a briefing.

8 A. Correct, yes, and there was.

9 501 Q. And you described it as somewhat in the earlier part of
10 the day, isn't that right? 17:23

11 A. It was about lunchtime, actually.

12 502 Q. Yes.

13 A. And if I can -- and I didn't associate that particular
14 meeting with this briefing comment that he has made at
15 that point in time. Because what he said here was, 17:23
16 that he believed that that briefing may be of
17 assistance to the Tribunal "in seeking to gain an
18 insight into the manner in which Sergeant McCabe... and
19 the issues that had been raised by him were perceived
20 in Garda Headquarters at that time." Now, my view is 17:24
21 that, yes, absolutely, there were -- there was a
22 meeting on that day which could aid the Tribunal.
23 Absolutely, there was a meeting, and it was the evening
24 meeting where these people were present, but it wasn't
25 a briefing by me and the Commissioner to John Barrett; 17:24
26 it was actually the opposite: It was John Barrett and
27 indeed Chief Superintendent O'Brien briefing me and
28 others as to what had gone on and how Sergeant McCabe
29 was.

1 503 Q. Yes, that is a later meeting.

2 A. That is the later meeting, which had all of these
3 people present that he alluded to.

4 504 Q. That is a later meeting. The fact of it is --

5 A. It now, it now, it now has transpired to be a different 17:24
6 meeting.

7 505 Q. But Mr. Barrett referred in his statement to a briefing
8 that he received:
9
10 "I received a briefing in February 2015." 17:25
11
12 And you alluded to that briefing earlier, didn't you?

13 A. So what Mr. Barrett has said, because I have it here,
14 okay, was that he received a briefing in February 2015
15 from "a number of senior staff in An Garda Síochána, 17:25
16 including the Acting Commissioner Nóirín O'Sullivan,
17 the then-Chief Administrative Officer, Cyril Dunne".
18 Okay. "Also present were Chief Superintendent Barry
19 O'Brien, Chief Superintendent Tony McLoughlin, Mr. Ken
20 Ruane and others." 17:25

21 506 Q. Yes?

22 A. And what I am saying is, that I couldn't actually
23 reconcile what he was saying there. My response was,
24 was actually quite careful when I heard that, because
25 my response suggested that if there were a meeting that 17:25
26 Mr. Ruane would have detailed notes of that because
27 Mr. Ruane is a solicitor and my experience with him in
28 other circumstances was he kept detailed notes. So in
29 my attempt to help the Tribunal what I suggested was

1 that Mr. Ruane would have those notes. I actually
2 understand, because I have seen them, that those notes
3 were then presented to the Tribunal and that is why we
4 have the detail on those meetings that we now have.

5 507 Q. Well, just to look at that for a moment, if you look at 17:26
6 page 2979, which I think you are reading from --

7 A. Yes.

8 508 Q. -- and if you look at line 137, you say:
9

10 "No. There is not enough detail in what Mr. Barrett 17:26
11 has said for me to know to what meeting he is
12 referring. I am trying to be helpful. One thing
13 Mr. Barrett says is that Ken Ruane was there. In my
14 experience of Ken Ruane he would always take detailed
15 and accurate notes of any such meetings. Also, I was 17:27
16 not aware of Mr. Barrett being appointed an
17 interlocutor as described by him."

18

19 Now, what you were asked about was a briefing of
20 Mr. Barrett, isn't that right? I know you say -- 17:27

21 A. Yes.

22 509 Q. -- that there were people mentioned by Mr. Barrett that
23 weren't at the briefing of him, isn't that right? You
24 say that?

25 A. Yes, I do, yes. 17:27

26 510 Q. Yes. But you did know there was a briefing of
27 Mr. Barrett?

28 A. Oh, yes, I did.

29 511 Q. And why didn't you set out what it comprised?

1 A. Because -- because I didn't -- I was not at that time
2 able to reconcile what was being put here, which, in my
3 view, was linking me to a briefing by the
4 Commissioner -- sorry, by myself and the Commissioner,
5 which was also intimating that I was, for want of a 17:28
6 better term, a controlling mind in this, right, and
7 that the actual meetings that happened on that day
8 would demonstrate that I was, for the first time,
9 getting to hear of the issues around Sergeant McCabe
10 and what he had to deal with. Okay? So that is why I 17:28
11 said it. And that is all.

12 512 Q. But you knew there had been a meeting between the
13 Commissioner, Barry O'Brien and yourself and
14 Mr. Barrett?

15 A. And specifically -- 17:28

16 513 Q. You knew that?

17 A. Oh, I did, yeah.

18 514 Q. Why didn't you say yes, I had a meeting but it didn't
19 include the two people that weren't there?

20 A. Because I actually believed that it would be -- that 17:28
21 that would not give the Tribunal the information or the
22 assistance that it would require, okay, which was what
23 Mr. Barrett was saying at the time. Okay. I actually
24 believe that the other meetings, so the non -- call it
25 the non-briefing meetings were the ones that would give 17:29
26 the Tribunal the sense of what was going on at the
27 time, which I believe they have.

28 515 Q. You see, I want to suggest to you, Mr. Dunne, that at
29 your meeting with the investigators you could well have

1 told them, actually, there were four meetings that day,
2 at one of them Mr. Barrett was briefed about Sergeant
3 McCabe, but you ought to know there were three other
4 meetings?

5 A. But I didn't have that level of recollection at that 17:29
6 point in time.

7 516 Q. Oh! So, is that the real problem, that you didn't have
8 a level of recollection of the meeting at all?

9 A. But I don't -- it's not that I see that I have a
10 problem. 17:29

11 517 Q. You see, what I don't understand is, if you didn't have
12 the level of recollection how it was you were able to
13 say that Mr. Barrett may have been wrong or how is it
14 you are able to say now that Mr. Barrett may have been
15 wrong about those who were present at the meeting? 17:30

16 A. Because I knew that I was never in a position to be
17 briefing Mr. Barrett on a broad range that would give
18 the Tribunal an insight into the manner in which
19 Sergeant McCabe and the issues that had been raised by
20 him were perceived in Garda Headquarters at that time. 17:30
21 So I was very specific in my mind that I was not
22 briefing. And I think that that has been borne out.
23 So, think of my position when these are presented to
24 me; I have been presented with a claim that I have said
25 that we are going after him in the Commission. Okay. 17:30
26 I read this part of the statement which was presented
27 to me, and I read into that, that that would be
28 indicating that I was, as I would call it, a directing
29 mind in this whole thing and that the directing mind

1 was going after Maurice McCabe in the Commission. And
2 that was far from the truth. Okay. And that's why I
3 said what I did. And it was in an effort to help the
4 Tribunal to see all what was going on.

5 518 Q. Look, Mr. Dunne, when you met on the -- on the 2nd of 17:31
6 November, when you met the investigators, you knew
7 there were four meetings on one day about Maurice
8 McCabe?

9 A. I didn't have that level of recollection to be able to
10 say that there were four meetings and here is what went 17:31
11 on in each of them at that point in time.

12 519 Q. Mr. Dunne, I have to suggest to you, it's impossible to
13 believe that you could have forgotten or not have a
14 recollection of such a day, when there was such an
15 intensive consideration of the McCabe issues? 17:32

16 A. Oh, no. Absolutely. But not to be able to -- I was
17 not in a position to be able to say, you know, there
18 were four meetings, here is what went on at each of
19 them. I was not in that position at that point in
20 time. Because it was, as you say, an intense day. It 17:32
21 was all hands on deck, because we were trying to
22 respond to what the Minister was looking for at the
23 time.

24 520 Q. That's right. It was happening in the context of
25 communications from the Minister, isn't that right? 17:32

26 A. That's correct.

27 521 Q. Yeah. And it was seen as critical that this be dealt
28 with that day?

29 A. Yes.

1 522 Q. And there were four meetings through the day?
2 A. There were.

3 523 Q. And you were asked by the investigators about what
4 Mr. Barrett said about a meeting on a date in February?
5 A. Yes. 17:33

6 524 Q. And you didn't advise them that there were four
7 meetings that day?
8 A. Because what I said to you a moment ago, I think,
9 Mr. Rogers, was that I wouldn't have been able to tell
10 you that it was broken down into these sections at that 17:33
11 point in time, that there were four meetings. It was
12 -- to me, it was a day, okay. I'm now in that
13 position, thankfully, right, because of Mr. Ruane's
14 notes particularly, right, which I reckoned would be
15 the case, to be able to be quite clear as to what 17:33
16 happened at what point in time. And I believe that
17 that is a helpful position that the Tribunal is in and
18 because I think that -- what had been presented to the
19 Commission at that point in time about a briefing
20 meeting by Nóirín O'Sullivan and myself to John 17:33
21 Barrett, right, at which a number of others were
22 present, and inferring that the others weren't doing
23 any briefing was giving an incorrect impression to the
24 Tribunal. But did I have any documentation to support
25 that? No, I didn't. So I saw a situation where John 17:34
26 Barrett was saying one thing and Cyril Dunne was saying
27 another thing. He says --

28 525 Q. But the meeting -- the February meeting that -- in
29 which he was briefed, was an entirely separate issue,

1 as set out in Mr. Barrett's statement to the Tribunal,
2 from the other issue, wherein he said that you had told
3 him "we are going after Sergeant McCabe"?
4 A. Oh, it's -- it is separated.
5 526 Q. It was separate? 17:34
6 A. Yeah, absolutely.
7 527 Q. So it shouldn't -- there was no reason for you to be
8 reserved, withdrawn, careful that it would contaminate
9 your answer in respect of that meeting?
10 A. Oh, I was very concerned. 17:35
11 528 Q. Yeah.
12 A. Right. And the reason -- and the reason I was
13 concerned was because in one of the paragraphs that I
14 was shown, Mr. Barrett said that Cyril Dunne said "we
15 are going after him at the Commission". So that very 17:35
16 much drew me into or represented me as directing things
17 and calling it as to what should happen. So that was
18 one statement. And this one that we are talking about
19 now, what worried me or concerned me about what was
20 being said here, and that was misleading, was that 17:35
21 myself and the Commissioner had briefed a series of
22 named officers as to what was going on, because if you
23 take those two together, it also said -- you know, this
24 particular one says that I am directing or have a level
25 of knowledge of what is going on that I simply did not 17:36
26 have. That was my concern when I read it. I had no
27 documentation to support that, and I felt it was
28 misleading the Tribunal, but the best way that I could
29 actually help the Tribunal, I believed, was to -- and

1 it was correct, that I didn't recall the meeting as
2 referred to by Mr. John Barrett. That, I stand over.
3 I also said that -- one thing that Mr. Barrett says is
4 that Ken Ruane was there, right, which he did. I said
5 in my experience, which is true, of Mr. Ruane, he would 17:36
6 take detailed and accurate notes, which he had, which
7 have now been furnished to the Tribunal, which I think
8 actually gives us that whole picture of the day. This
9 far from gives a picture of the day, as presented to
10 me. 17:37

11 529 Q. The Tribunal wouldn't have known anything about those
12 meetings if we had -- if there had been no disclosure
13 by Mr. Barrett of the detail of the meetings in the
14 course of his evidence. You told the Tribunal nothing
15 about the meetings of the 25th February. 17:37

16 A. In the statement?

17 530 Q. You told the Tribunal -- do you agree with me, you told
18 the Tribunal nothing about the four meetings that
19 occurred on the 25th February, and, had it not been
20 brought up here and dealt with in detail in the course 17:37
21 of Mr. Barrett's evidence, you would not have known of
22 them -- the Tribunal would not have known of them.

23 A. I wasn't asked about four meetings.

24 531 Q. No, you weren't. But you were asked about a meeting in
25 February and you -- your answer was, actually, simply, 17:37
26 no.

27 A. No, that is not correct, Mr. Rogers. I was asked
28 about -- I wasn't asked about a meeting in February.
29 What I was asked about was a specific meeting --

1 532 Q. Yes.

2 A. -- with named attendees, right?

3 533 Q. Yes.

4 A. At which I made a briefing with the Commissioner. That
5 is what I was asked about. 17:38

6 534 Q. But instead of --

7 A. I have been asked whether I recall that meeting, right,
8 as referred to by Mr. John Barrett. That is what I was
9 asked. And I said no. However, I went on to say in my
10 response, which I believe was helpful to the Tribunal, 17:38
11 that, actually, one of the attendees that Mr. Barrett
12 said was there would have detailed notes. The Tribunal
13 then got those notes.

14 535 Q. They only got them, Mr. Dunne, in the course of
15 Mr. Barrett's presentation to the Tribunal through his 17:38
16 solicitor.

17 A. I actually -- I am actually not -- I can't confirm
18 that, one way or another.

19 536 Q. You see, the difficulty about it is, Mr. Dunne, that I
20 want to suggest to you that you are presenting that you 17:39
21 are being helpful to the Tribunal, whereas, in fact,
22 perhaps unintentionally, but you did not tell the
23 Tribunal of this sequence of meetings in February 2015
24 of which you knew and which were central to what the
25 Tribunal was concerned about, isn't that right? 17:39

26 A. No, it's not right.

27 537 Q. I suggest to you, Mr. Dunne, that you were concerned
28 about your own situation rather than the general remit
29 of the Tribunal under this particular term of

1 reference?

2 A. No, that is not true, because I actually responded to
3 the questions as they were put. I said to you
4 earlier -- sorry, to the Chairman, or to you,
5 Mr. Rogers, that I wasn't -- I couldn't have, and 17:40
6 didn't, recollect at that point in time the structure
7 of the day, that there were a particular meeting in the
8 morning and this is what was said and who was at it,
9 that there was a meeting at lunchtime and this is what
10 was said and who was at it, and there was a meeting in 17:40
11 the evening and this is what was said and who was at
12 it. Right. I didn't recall that. But I did know,
13 right, that what was put here, I had -- I couldn't
14 align myself with it. Was I concerned about how it was
15 representing my position, absolutely, you know, I was 17:40
16 concerned, you know, because I was being accused in the
17 statement of saying that we are going after Maurice
18 McCabe, which I knew to be untrue. So yes, I had a
19 concern about myself. But not to the detriment of the
20 Tribunal. It was actually the opposite account: it 17:40
21 was to try and bring information to the Tribunal that
22 hadn't been available to it in the segments of the
23 statement that had been made by Mr. Barrett.

24 538 Q. Yes.

25 A. That is what I did. 17:41

26 539 Q. But, Mr. Dunne, the one thing that is absolutely clear
27 from your evidence is that you knew about the meetings,
28 that were quite intensive, on the 25th May 2015 --
29 February 2015, you knew of those meetings, albeit that

1 there may have been a vagueness about your memory at
2 the time, albeit that that may be so, you knew of them;
3 you did nothing to tell the Tribunal of those meetings,
4 isn't that right? Sorry, Mr. Dunne, is that right or
5 not? We are only -- we only know about those meetings 17:42
6 because of events that happened subsequent to your
7 statement to the investigators?

8 A. That's correct, yeah. That is correct. I responded
9 specifically to what was put to me, and what was put to
10 me was not about a series of meetings; what was put to 17:42
11 me was a specific meeting which did not happen, and
12 that specific meeting painted me in a way that was
13 wrong. And I went -- in the statement, I actually said
14 that, again to repeat it, right, Mr. Ruane was there,
15 he would have detailed notes. I had no notes. And I 17:42
16 was --

17 CHAIRMAN: All right. I actually, I think I do -- I do
18 understand your point. It's all right. We are going
19 over the same answer again and again, and I actually
20 understand the answer, and that's fine. Mr. Rogers, 17:42
21 can I just ask you, we have been at it now three
22 hours - you haven't obviously been, but I mean the
23 Tribunal has - and I just want to check, from the point
24 of view of the stenographer, where do you think we are
25 at? And I would also ask whether Mr. Dunne's legal 17:43
26 representatives have any questions.

27 MR. ROGERS: well, maybe everybody is a bit tired now,
28 Judge.

29 CHAIRMAN: well, I don't know if Mr. Dunne is available

1 tomorrow or what the situation is? I know he came in
2 today because of a specific --

3 A. I can make myself available.

4 CHAIRMAN: Do you think you'll be much longer,
5 Mr. Rogers? 17:43

6 MR. ROGERS: well, I think it might be better to leave
7 it over until the morning.

8 CHAIRMAN: Right. If you don't mind. Mr. McGuinness,
9 can I just check, tomorrow, who is -- who have we got?

10 MR. MCGUINNESS: Chairman, we have scheduled four other 17:43
11 witnesses for tomorrow.

12 CHAIRMAN: And they are?

13 MR. MCGUINNESS: It's commencing with the recall of
14 Mr. Waters, who gave evidence on the 12th January.

15 CHAIRMAN: well, that is going to be very short. 17:43

16 MR. MCGUINNESS: And then Mr. O'Leary as well, which
17 would be shortish.

18 CHAIRMAN: well, I would say very short.

19 MR. MCGUINNESS: And then we are intending to take the
20 evidence of Chief Superintendent McLoughlin, and then 17:43
21 the fourth witness is the Deputy Commissioner Twomey,
22 who was Deputy Commissioner from -- Acting Deputy
23 Commissioner from May '14 onwards and who attended
24 these meetings in May 2016 with the Commissioner.

25 CHAIRMAN: Is it possible that we could take Mr. Dunne 17:44
26 followed by Chief Superintendent McLoughlin, just for
27 the convenience of parties?

28 MR. MCGUINNESS: I have no difficulty in doing that.

29 CHAIRMAN: would that suit you, Mr. Rogers?

1 MR. ROGERS: Very good. I am not sure the extent to
2 which I will have to deal with -- I can decide that
3 then.
4 CHAIRMAN: well, it seems only Chief Superintendent
5 McLoughlin, it seems only. 17:44
6 MR. ROGERS: It does.
7 CHAIRMAN: That is the way it looks. You can get away.
8 And then is that a wrap-up?
9 MR. MCGUINNESS: Yes, Chairman.
10 CHAIRMAN: And then just to remind me, if you wouldn't 17:44
11 mind, about submissions in relation to the module on
12 Tusla.
13 MR. MCGUINNESS: well, they are scheduled now for
14 Tuesday next, 13th February.
15 CHAIRMAN: And any submissions on this will be after 17:45
16 Sergeant McCabe gives evidence, when we hope to
17 recommence, which seems to be late February, for the
18 remainder of to the end, as they say.
19 MR. MCGUINNESS: Insofar as it's possible, Chairman.
20 CHAIRMAN: Yes. well, as the song says, keep right on 17:45
21 to the end of the road. Thank you very much for being
22 here tomorrow and sorry we couldn't finish.
23
24 THE HEARING WAS THEN ADJOURNED TO THURSDAY, 8TH
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