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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 THURSDAY, 8TH FEBRUARY 2018 - DAY 57

57

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 8TH  
2 FEBRUARY 2018:

3  
4 MR. MCGUINNESS: If Mr. Dunne could come back to the  
5 witness-box, please. 10:01

6  
7 MR. CYRIL DUNNE CONTINUED TO BE CROSS-EXAMINED BY  
8 MR. ROGERS:

9 1 Q. MR. ROGERS: Mr. Dunne, you were, throughout your  
10 career really very intimately involved in corporate  
11 affairs, isn't that right? 10:02

12 A. Yes, I was. Particularly latterly in my career.

13 2 Q. Yeah. And when you say latterly, you are talking about  
14 your time in An Garda Síochána?

15 A. I was particularly thinking of my private sector  
16 career, to be honest. 10:02

17 3 Q. Right. I noted yesterday when you were answering  
18 Mr. McGuinness, that he asked you rather globally about  
19 your various private sector engagements.

20 A. Correct. 10:02

21 4 Q. And it looks as though your career really started in  
22 the banking sector?

23 A. That's correct.

24 5 Q. And where you had sort of IT responsibilities?

25 A. It started with systems development. 10:03

26 6 Q. Yeah. And there is a passage in your statement at  
27 2972, where you describe how you had been with AIB for  
28 nine years, and then you moved to Permanent, now  
29 Permanent Trustee Savings Bank?

1 A. Which volume is that, sorry, Mr. Rogers?  
2 7 Q. It might be volume 5, I think.  
3 A. Sorry, I beg your pardon. Yes, I have that.  
4 8 Q. Do you see there 2972?  
5 A. Yes. 10:03  
6 9 Q. And you describe how you were with them, that is  
7 Permanent, for five years, Head of Systems Development?  
8 A. Yes.  
9 10 Q. And then you sort of took a diversion into a firm that  
10 we never hear of now, Power Supermarkets, sort of a -- 10:04  
11 for the older people, they might remember Power  
12 Supermarkets.  
13 A. So, it was a different industry --  
14 11 Q. Yeah?  
15 A. -- but similar role. So Power Supermarkets was the 10:04  
16 holding company at that point in time for a supermarket  
17 market chain Quinnsworth, Crazy Prices, Lifestyle  
18 Sports and Leisure. So it was a very significant  
19 business in Ireland at the time. We got to a turnover  
20 of about a billion in Ireland. 10:04  
21 12 Q. Yeah. And your role there?  
22 A. My role there, I was Executive Director. So on the  
23 board of that group holding company, so with the  
24 subsidiaries under me. And my specific role was change  
25 management and particularly driven by IT. 10:04  
26 13 Q. I see.  
27 A. So we were -- to use the jargon, we were replatforming,  
28 both operationally and technologically the whole of the  
29 business, so that we could position it for the future.

1 And that was my responsibility.

2 14 Q. Right. And that company became sort of caught into the  
3 Tesco Group, isn't that right?

4 A. Well, caught into -- we actually positively decided,  
5 there was a subgroup of the board, so not the whole 10:05  
6 board, which worked on, at the time, preparing for an  
7 IPO of that business. It was at a time when  
8 competitively, again to be euphemistic about it, we saw  
9 that we were going to have the guns of one of the big  
10 supermarket chains in the UK moving into Ireland. The 10:05  
11 question that we had strategically was: Do we take on  
12 those guns, in other words join with them, or do we  
13 allow them to be trained on us? Our decision was that  
14 we would sell to Tesco.

15 15 Q. Yes. Whatever way -- 10:06

16 MR. MCGUINNESS: Chairman, I wonder about the relevance  
17 of this, subject to your views.

18 CHAIRMAN: Mr. McGuinness, I think we are clearly going  
19 somewhere and I am happy to let it proceed.

20 16 Q. MR. ROGERS: I mean, this is quite different from IT 10:06  
21 change, this is big commercial stuff you are now  
22 involved in?

23 A. Absolutely. I mean, I was involved at a strategic  
24 level in the organisation, correct.

25 17 Q. Yes. And what I'm trying to see if I am right, really 10:06  
26 you did become quite heavily involved in what one might  
27 describe as corporate and directorial senior  
28 management?

29 A. Absolutely. I mean, I would say for the last 20 to 25

1 years of my private sector career I worked at executive  
2 board level and indeed non-executive level, and in my  
3 final role, I was chief executive of a bank and chaired  
4 two other banks, one in Ireland and one in Luxembourg.  
5 Now my role in that one unfortunately was actually 10:07  
6 shutting it down. This was back in 2007/2008, where I  
7 was asked specifically to take on that role. So yes, I  
8 have got a very significant background at board level.

9 18 Q. Yes. Well, you have alluded to something now that is a  
10 little bit later, because the way your resumé goes, you 10:07  
11 went from Tesco to Bank of Ireland --

12 A. Correct, I did.

13 19 Q. -- isn't that right? And the way you put it is, you  
14 were approached to go there?

15 A. That's correct, I was. 10:07

16 20 Q. So are you saying that you were headhunted, as it were?

17 A. Yes, I was.

18 21 Q. And was that by Anderson Consulting?

19 A. No. That was directly from Bank of Ireland.

20 22 Q. I see. And you were then with Bank of Ireland for I 10:08  
21 think seven years?

22 A. Seven years, yeah.

23 23 Q. Yes. And then the way you put it in your statement,  
24 what you said in your statement is you were approached  
25 by Hypo Real Estate? 10:08

26 A. Correct. Let me just check that now. Did I say I was  
27 approached by them?

28 24 Q. Yes, you do. The bottom of 2972.

29 A. Yes, sorry, that is correct. So let me explain



1 exactly, if that's what is needed, as to what went on  
2 there. My particular skill set was in large scale  
3 change management, that was my skill set. The last  
4 role that I had taken on in Bank of Ireland was a  
5 significant restructuring of that group. We took what 10:08  
6 were 28 business units, each with their own back office  
7 functions and we consolidated them into what we called  
8 a manufacturing division and took out, from memory,  
9 about 200 million out of the cost base. So I was very  
10 heavily involved in restructuring banks, that was my 10:09  
11 background. What was going on at that point in time,  
12 and this is not particularly public knowledge, but it's  
13 long enough ago that I can talk about it; there were  
14 discussions going on between Hypo Real Estate Bank and  
15 Depfa Bank Plc with regard to effectively a merger, but 10:09  
16 it would be positioned as a takeover of Depfa Bank Plc  
17 by Hypo Real Estate. I was approached to take on the  
18 role at executive board level, first of all in Depfa  
19 Bank, with a view that if and when -- and there was no  
20 certainty that it would actually happen, that if and 10:10  
21 when the acquisition happened, that I would move to  
22 Hypo Real Estate Bank and that I would take on the role  
23 of bringing those two organisations together.

24 25 Q. You see --

25 A. So, that's -- 10:10

26 26 Q. So it's quite clear that as a matter of sequence, when  
27 you left Bank of Ireland you were approached, you say  
28 in your statement, by Hypo Real Estate, but in fact you  
29 went to Depfa Bank?

1 A. That is actually correct, yeah.

2 27 Q. So what it says in the statement is incorrect?

3 A. That's right, yeah.

4 28 Q. Well, let's be clear: It is incorrect. What you told  
5 the inquirers of you is incorrect. In fact, you went 10:11  
6 directly to Depfa Bank in April 2007.

7 A. That's correct. I went to Depfa in April 2007 and then  
8 in October that consolidation happened.

9 29 Q. I will come to that. What I am anxious to establish is  
10 that when you say in your statement that you were 10:11  
11 approached by Hypo Real Estate, in fact it is the case  
12 that you were approached by Depfa Bank because that is  
13 where you went?

14 A. That is actually true. That is actually true.

15 30 Q. What I am saying is true? 10:11

16 A. What you are saying is true.

17 31 Q. Yeah.

18 A. Yeah.

19 32 Q. And isn't it the case that in fact you became the Chief  
20 Operating Officer of Depfa Bank? 10:11

21 A. That was the original appointment, yes.

22 33 Q. That was your first appointment?

23 A. That was my first appointment.

24 34 Q. Yes. And in fact, we don't really need to get into an  
25 awful lot of the banking engagements that ensued, but 10:12  
26 isn't it the case that Depfa was in serious trouble and  
27 in May 2007 they made a debt issuance in respect of  
28 which you were one of the signatories, as a  
29 non-executive director of Depfa Bank?

1 A. I think you may be mixing up Depfa Bank and Depfa ACS  
2 Bank. So Depfa ACS Bank is a subsidiary of Depfa Bank,  
3 of which I was a director.

4 35 Q. Right. But it's within the Depfa group, is that right?  
5 A. Yeah, it is within the Depfa group. And that was the 10:12  
6 function of Depfa ACS Bank; was to issue what were  
7 called covered bonds. So yes, in the normal course of  
8 its business there would be regular issuance of  
9 securities.

10 36 Q. Yeah. You see, in fact, the Hypo Real Estate 10:13  
11 engagement with Depfa didn't mature until the  
12 acquisition of Depfa was agreed in late July 2007,  
13 isn't that right?

14 A. That would be around about right, yeah.

15 37 Q. Yeah. And in fact, you were the actual Acting CEO of 10:13  
16 Depfa Bank from September '08 to December '10, isn't  
17 that right?

18 A. So I can explain what went on there? So, in August of  
19 2008, when I was Chief Operating Officer at that point  
20 in time on the board of Hypo Real Estate Group, which 10:14  
21 by then owned Depfa Bank, we had an issue -- sorry,  
22 Depfa Bank had an issue with the Regulator and the  
23 specific issue was, I don't need to go into it, but the  
24 then CEO --

25 38 Q. I am not asking you to get into it. If you feel it's 10:14  
26 necessary, fine.

27 A. Well, I originally didn't feel it necessary, so in my  
28 statement I didn't see how this related to the  
29 Commission but I want to make sure that I answer all of

1 your questions.

2 39 Q. The concern I have is --

3 A. So if you would let me finish that, then. So, I was --

4 so the then-Chief Executive of Depfa Bank in August

5 2008 left the business because there was a significant 10:14

6 issue. I was asked in August of 2008 to take over that

7 role as Chief Executive of Depfa Bank and to basically

8 sort it out, for want of a better term. One of the

9 biggest issues that I identified at that point in time

10 was the relationship between Depfa Bank and its 10:15

11 executive, and the Regulator in Dublin, which I

12 immediately went on to try and fix. Subsequent to that

13 then, not very long afterwards, there was implosion in

14 banking markets, both in Ireland and across the world,

15 in effect. Depfa Bank and Hypo Real Estate Bank were 10:15

16 badly affected by that, and Hypo Real Estate was, to

17 all intents and purposes, nationalised by the German

18 Government. Now, I was asked at that point -- sorry,

19 the other thing I need to say here is that there was

20 significant difference of view between the German 10:16

21 Government and the Irish Government as to who -- and

22 the German Regulator and the Irish Regulator as to who

23 was responsible for the support of Depfa Bank and

24 Hypo -- sorry, specifically Depfa Bank. Hypo Real

25 Estate was clearly German Government. I was asked to 10:16

26 take up -- sorry, there were two directors of Hypo Real

27 Estate Bank who were asked to remain after that

28 implosion; I was one, there was one other, who was

29 American. And all the other directors exited the bank

1 at that stage. This was when it was in German  
2 Government control. I was asked to continue my role in  
3 Depfa Bank as CEO and I had two main mandates: One was  
4 to manage the relationship between the German  
5 regulators and the Irish regulators and indeed the 10:16  
6 Irish Government and German Government so that  
7 relations didn't break down. That was one mandate.  
8 The second mandate was actually to all intents and  
9 purposes shut down Depfa Bank. So, I proceeded to shut  
10 down offices all across the world. We exited a large 10:17  
11 number of the staff of Depfa Bank and that was my  
12 mandate, which I pursued for about three years. So  
13 that would have -- so that was the situation. My role  
14 then in Depfa Bank -- sorry, I suppose the focus of  
15 Depfa Bank then changed. The decision was by German 10:17  
16 Government. It changed so that we were looking to sell  
17 it to see what value could be got from Depfa Bank by  
18 sale rather than through winding it down over a long  
19 period. At that point, I had no background in capital  
20 markets and in that particular type of transaction. At 10:18  
21 that point, we put in a CEO and it was important from  
22 the markets' point of view that we do that, put in a  
23 CEO into Depfa Bank Tom Glynn, who was the other  
24 director who had been asked to stay on back in 2008,  
25 2009. He had a capital markets background and he took 10:18  
26 it forward to try and position for sale. I continued  
27 with what would be called the Chief Operating Officer  
28 type role, which was again shutting down and taking  
29 cost out of Depfa Bank. That is the totality.

1 40 Q. So you reverted to the role of Chief Operating Officer  
2 in January 2011, I think, and continued in that role  
3 until your resignation as a director on 31st December  
4 2012?

5 A. That's correct. My contract was finished at that point 10:18  
6 in time and I decided not to renew it.

7 41 Q. Really how all this arises is, I was asking you about  
8 your role in the corporate world, and you had set it  
9 out for the Tribunal in your statement in your answers  
10 to their questions. "I have been asked to provide --" 10:19  
11 You say at 17 on page 2972:

12

13 "I have been asked to provide a brief background to  
14 myself in respect of my career to date and particularly  
15 detailing my career in An Garda Síochána." 10:19  
16

17 But in that resumé, although you have spent some few  
18 minutes here now describing the very significant  
19 contribution you made to Depfa Bank in the period 2007  
20 to 2012, in fact it's not mentioned in your statement. 10:19

21 A. Again, if you take the question: "I have been asked to  
22 provide a brief background to myself in respect of my  
23 career to date and particularly detailing my career in  
24 An Garda Síochána."

25 42 Q. Yes. I just find it -- 10:19

26 A. And that is what I did. And I certainly at that point  
27 in time wouldn't have thought that the Disclosures  
28 Tribunal was particularly concerned about Depfa Bank.

29 43 Q. No. But you didn't -- Depfa Bank was your employer for

1 five years and you didn't mention it, isn't that right?

2 A. For -- I was part of the -- so again, let me go back --

3 44 Q. Depfa Bank was your employer. That seems to be a  
4 simple question.

5 A. For four months -- sorry, for six months. So take it 10:20  
6 from April of 2007 to October 2007. But, as you said  
7 yourself, in July the agreement had been made, informal  
8 agreement that the takeover was to happen.

9 45 Q. But you weren't employed at that point by Hypo Real  
10 Estate? 10:20

11 A. That is what I said. I said that I was employed by  
12 Depfa Bank from April until October 2007. In October,  
13 the acquisition happened, and I was employed by Hypo  
14 Real Estate group. That is what happened. So that was  
15 the situation. It then back in -- at the end of 2009. 10:21

16 46 Q. Can I suggest to you it was only until September 2008  
17 that you were employed by Hypo Real Estate?

18 A. September 2008 -- No, that is not correct. It was  
19 actually, I think, the end of -- and this is the formal  
20 position, I think the end of 2009, was my memory of it. 10:21  
21 Because I think that was the point when I came back to  
22 Depfa Bank. So I am trying to get this clear in my  
23 mind. It's ten years ago, just on the dates. So '07 I  
24 was six months with Depfa. 2007. So, yeah, then to  
25 the end of 2008, that is correct. 10:22

26 47 Q. Thank you.

27 A. So, I beg your pardon. So to the end of 2008. And I  
28 actually stepped down from the board --

29 48 Q. Of what?

1 A. -- of Hypo Real Estate Bank at that point in time, and  
2 that is correct. And then I came back to Ireland --  
3 sorry, I had been in Ireland since August of 2008 as  
4 Chief Executive of Depfa Bank, but employed by Hypo  
5 Real Estate at that point in time. I stepped down from 10:22  
6 the board of Hypo Real Estate at the end of 2008, and  
7 my sole focus, because the world had imploded, my sole  
8 focus was on Depfa Bank as CEO.

9 49 Q. By whom you were employed for the next three-and-a-half  
10 years? 10:23

11 A. Correct. Absolutely. Yeah.

12 50 Q. Exactly. And we wouldn't have known that and the  
13 investigators here weren't told that, isn't that right,  
14 by you?

15 A. Well, that's correct. Again, I go back: "I have been 10:23  
16 asked to provide a brief background to myself in  
17 respect of my career to date and particularly detailing  
18 my career in An Garda Síochána." I had no sense that  
19 the Tribunal was interested in my career in Depfa Bank  
20 and the banking situation at the time. 10:23

21 51 Q. But you had a very significant contribution in Depfa?  
22 A. Absolutely.

23 52 Q. Isn't that right?  
24 A. Absolutely.

25 53 Q. And it must have been a massive segment of your past 10:23  
26 experience, recent past experience --

27 A. Oh, yeah, absolutely.

28 54 Q. -- to report and record for the Tribunal so that they  
29 would know where you had come from?



1 A. Well, again --

2 55 Q. Isn't that right?

3 A. I go back to what I was asked, right.

4 56 Q. I see.

5 A. I was asked to be brief, right. And I was asked to 10:23

6 focus particularly on An Garda Síochána. That is what

7 I did.

8 57 Q. Yeah. And I mean, when you say that you were

9 approached by Hypo Real Estate, the reality is that you

10 were approached in 2007 by Depfa? 10:24

11 A. Correct, it was actually -- yes, that is correct.

12 58 Q. Yes. Now, I just want to ask you a couple of questions

13 about yesterday, if you don't mind.

14 A. Not at all.

15 59 Q. Because I noted that you, on a couple of occasions, 10:24

16 yesterday, at question 517 --

17 A. Is there a copy of --

18 CHAIRMAN: We are getting you one now.

19 MR. ROGERS: It will come up now.

20 CHAIRMAN: Yes, we are getting it for you. If you 10:25

21 wouldn't mind hanging on a minute, Mr. Rogers. It's

22 only down the corridor, as I say, and we will get the

23 paper copy.

24 MR. ROGERS: I will move on to something else for the

25 minute, Judge. 10:25

26 CHAIRMAN: If you like.

27 MR. ROGERS: I will try to do that.

28 60 Q. We will leave that for a minute, Mr. Dunne, if you

29 don't mind, until we get organised. I just want to ask

1           you something about yesterday in relation to the  
2           meetings and I just want to be clear. I want you to  
3           understand, Mr. Dunne, I am not challenging you about  
4           this.

5           A.    No. 10:25

6    61   Q.    I think there may be an error, but I am not sure, and I  
7           can't find it out, are you sure there were four  
8           meetings on the 25th? Could it that be there were  
9           three meetings on the 25th and one on the 26th, early  
10          on the 26th? 10:26

11          A.    I'm not aware of any meeting on the 26th.

12    62   Q.    Yeah?

13          A.    But I do know that there were four meetings -- sorry, I  
14          need to be very specific. I do know that there were  
15          three meetings, because those were the three I was at, 10:26  
16          and I'm told that there was a fourth meeting, which was  
17          with Sergeant McCabe, which I absolutely accept, to be  
18          clear, I can't -- I wasn't at it.

19    63   Q.    Yes. Just to see if I can clear this up. I wonder  
20          could we put up page 4871 for a moment. Mr. Dunne, 10:26  
21          this document is the transcript, the transcribing of  
22          Mr. Ruane's note.

23          A.    What page is it? I beg your pardon.

24    64   Q.    4871.

25          A.    Volume 9. 10:27

26    65   Q.    Just look at that for a second.

27          A.    Yes, I have 4871.

28    66   Q.    If you just, if you just look at it for a minute so to  
29          familiarise yourself with it because I suspect, and I

1 don't mean any challenge to you, I suspect that it was  
2 by reference to this document that you concluded that  
3 there was a meeting early on the morning of the 25th,  
4 earlier in the day on the 25th. If you just look at it  
5 for a moment. You see there the Commissioner, 10:27  
6 yourself, Mr. McLoughlin, Mr. Ruane - I don't know who  
7 MM is - Frank Walsh and Mr. Twomey, Commissioner  
8 Twomey. Do you see those --  
9 A. I do.  
10 67 Q. -- listed. If we go down through it very quickly, I 10:28  
11 will bring you to a point which is four lines from the  
12 bottom of the page please. Do you see the word "Comm"  
13 arrow "Decision 8:30pm last night, need a point  
14 quickly"? Do you see that?  
15 A. I do see that, yes. 10:28  
16 68 Q. I want to suggest to you that that suggests to a reader  
17 who was possibly a little bit sceptical about the date  
18 on the top of the memo, do you see "25" to is on the  
19 top, if you were doubtful about that, that possibly  
20 Mr. Ruane wrote 25 instead of 26, one could read this 10:28  
21 memo as, in fact, indicating that the Commissioner had  
22 convened a meeting the morning after the long evening  
23 meeting when you were talking about Mr. Barrett on the  
24 phone, and that she -- in this, she refers to that  
25 meeting: 10:29  
26  
27 "Decision 8:30 p.m. last night, need to appoint  
28 quickly."  
29

1 That would seem to refer to the matters that were  
2 referred to in the meeting of the evening of the 25th  
3 wherein it was decided to introduce various, what I  
4 will call mediative agents such as Mr. Mulvey,  
5 Mr. Kerr, I think there is a Mr. McGahon or McMahon as 10:29  
6 well. I just want to -- could it be, Mr. Dunne, that  
7 in fact this meeting was on the following day? Because  
8 my client wasn't at the meeting that you describe and  
9 he wasn't at this meeting either. You say it was on  
10 the -- you thought it was on the 25th. I am just 10:30  
11 suggesting to you that perhaps there were not four on  
12 the 25th, perhaps there were three, and that on the  
13 following day, the 26th, there was a review on the  
14 morning when the Commissioner sought -- if one goes  
15 through this note, you will see you were there, if you 10:30  
16 just look up -- go down five lines from the top of it,  
17 four lines from the top of it it:

18  
19 "Commissioner, JB and BOB meeting. Issues raised."

20 10:30

21 Do you see that?

22 A. On page 48 --

23 69 Q. This is 4871. Three lines down from the top:

24  
25 "Commissioner" arrow "JB and BOB meeting. Issues 10:30  
26 raised: Position not to engage on PD, HRM take any  
27 concerns seriously, appoint an independent person and  
28 work with us, independent panel or person."

29

1           That seems to suggest that, in fact, the meeting  
2           between Mr. Barrett and Mr. McCabe had happened with  
3           Mr. Barry O'Brien, isn't that right?

4           A.    I don't see any reference there to the meeting with  
5           Mr. McCabe. 10:31

6    70    Q.    No, but if you look at it, Barry O'Brien and John  
7           Barrett, the only other meeting they had together was  
8           with Mr. McCabe, and the Commissioner refers to issues  
9           raised, and it's in the past tense. So it can only  
10          have been the meeting that was yesterday, the 25th. I 10:31  
11          am suggesting that to you.

12          A.    That is not my -- that is not my recollection.

13    71    Q.    All right. Well, so you are saying then that -- I  
14          entirely respect that, Mr. Dunne, I want you to  
15          understand this, I am just trying to make sure that we 10:32  
16          all have it right.

17          A.    Sure.

18    72    Q.    It does look like, when you look at the bottom of the  
19          page when there is a reference to the "decision of  
20          8:30pm last night, need appoint quickly" that is the 10:32  
21          Commissioner actually referring to something that  
22          happened the day before, isn't that right?

23          A.    Yeah, absolutely. It's referring to the day before.

24    73    Q.    Yes. And if you go over the page then at the top of  
25          the page, you will see the Commissioner makes an 10:32  
26          intervention in three lines and then there is yourself:  
27  
28          "CAO: Denied last night. Appoint somebody."  
29

1 Do you see that?

2 A. I do.

3 74 Q. "Someone. JB and Mr. McCabe. Email."  
4

5 We don't know what that is, but that seems to refer to 10:32  
6 last night as well, doesn't it?

7 A. That does, yeah. It refers to the previous night.

8 75 Q. Yeah. And then if you go down the page a little --  
9 well, if we look at it from the bottom up, if you go up  
10 to the indent where there is a reference to the 10:33  
11 Commissioner, with an arrow:  
12

13 "JB touch base. Holding response Minister."  
14

15 Do you see all of that? 10:33

16 A. I do.

17 76 Q. And that would seem to contemplate that the section 41  
18 response would be possibly held or delayed a little.  
19 There is no point being made about that except that it  
20 would appear to be a review meeting, isn't that right? 10:33

21 A. I'm -- I don't -- I don't particularly take that from  
22 it, but --

23 77 Q. I see.

24 A. -- if you could elaborate.

25 78 Q. Yes. If we go to the next page, please, 4873. If you 10:33  
26 look at the very end of that, we see the reference  
27 there to -- six lines down from the end of that, there  
28 is a reference to the Commissioner, Mr. Kerr, James  
29 Doherty. Then yourself:

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"Action and ratifying 8:30pm decision. who is available and interested?"

The Commissioner says. And then there is a list of names, including possibly a retired judge or an SC.

10:34

"Must ensure safe and harmonious place of work for Mr. McCabe."

10:34

I simply suggest to you that that seems to be open to the construction that in fact the meetings were three on the 25th and one early on the 26th. Are you unsure?

A. I'm not, actually.

79 Q. I see.

10:35

A. I am not, actually. Sorry, I beg your pardon, in your reading of it and what you have taken out, you could construct that. That is not my recollection is really what I am saying.

80 Q. I see. Okay. I will come back to those meetings in a minute. I think you now have the transcript of yesterday, do you? If you look at page 105, you will see 517 on that page. I think you are being asked questions here by me, and if you just look at 517, you see:

10:35

10:36

"What I don't understand is if you didn't have the level of recollection how it was you were able to say that Mr. Barrett may have been wrong or how is it you

1 are able to say now that Mr. Barrett may have been  
2 wrong about those who were present at the meeting?"

3  
4 And then you answer:

5  
6 "Because I knew that I was never in a position to be 10:36  
7 briefing Mr. Barrett on a broad range that would give  
8 the Tribunal insight into the manner in which Sergeant  
9 McCabe and the issues that had been raised by him were  
10 perceived in Garda Headquarters at that time. So I was 10:36  
11 very specific in my mind that I was not briefing and I  
12 think that that has been borne out. So think of my  
13 position when these are presented to me."

14  
15 And this is the bit that I just want you to have regard 10:36  
16 to. The transcript seems to be spinning now. We are  
17 on page 105 of the transcript. Have you got it there  
18 now in your hand?

19 A. Yes, I have.

20 81 Q. Mr. Quinn tells me that perhaps we have the wrong day 10:37  
21 up, that that is the -- we want 56. So I will just  
22 continue reading what is next in the passage. You say:

23  
24 "And I think that has been borne out. So think of my  
25 position when these are presented to me. I have been 10:37  
26 presented with a claim that I have said that we are  
27 going after him in the Commission. Okay. I read this  
28 part of the statement which was presented to me and I  
29 read it -- I read into that, that that would be



1 indicating that I was, as I would call it, a directing  
2 mind in this whole thing and that the directing mind  
3 was going after Maurice McCabe in the Commission. And  
4 that was far from the truth. Okay. And that is why I  
5 said what I did, and it was in an effort to help the  
6 Tribunal to see all what was going on." 10:38

7  
8 Okay. If you will just hold that in your mind for a  
9 moment, and if you wouldn't mind just going then to  
10 page 108, and if you look at 528. I had asked you a 10:38  
11 question in 527:

12  
13 "There was no reason for you to be reserved, withdrawn,  
14 careful that it would contaminate your answer in  
15 respect of that meeting." 10:39

16  
17 And you said:

18  
19 "Oh, I was very concerned. Yeah." 10:39

20  
21 I said:

22  
23 "Yeah."

24  
25 And you respond then: 10:39

26  
27 "Right. And the reason, and the reason I was concerned  
28 was because in one of the paragraphs that I was shown  
29 Mr. Barrett said that Cyril Dunne said "we are going

1 after him in the Commission". So that very much drew  
2 me into or represented me as directing things and  
3 calling it as to what should happen. So that was one  
4 statement. And this one that we are talking about now,  
5 what worried me or concerned me about what was being 10:39  
6 said here, and that was misleading, was that myself and  
7 the Commissioner had briefed a series of named officers  
8 as to what was going on. Because if you take those two  
9 together, it also said, you know, this particular one  
10 says that I am directing or have a level of knowledge 10:40  
11 of what is going on that I simply did not have. That  
12 was my concern when I read it."

13  
14 Now, I just want to -- frankly, the significance of the  
15 word "directing" didn't occur to me when you were 10:40  
16 speaking yesterday, and it does seem, Mr. Dunne, that  
17 you were concerned, yesterday, to explain yourself in  
18 terms of what I will call your concern, agitation,  
19 about what was said by Mr. Barrett because of the word  
20 or what is implied by the idea that you might be "a 10:40  
21 directing mind in this whole thing" or that what he  
22 said you said implied that you were directing things  
23 and calling it, or that you were directing. Am I right  
24 that in fact your response to Mr. Barrett, and what he  
25 said, arose from that concern that it might be 10:41  
26 represented that you were a directing mind in respect  
27 of what was going on or might -- sorry, might go on at  
28 the O'Higgins Commission?

29 A. That was one of my concerns, absolutely.

1 82 Q. Yeah?  
2 A. And the reason for that is because I had nothing other  
3 than what I could say, I had no documentation, I had no  
4 access to anything, and I clearly read this as saying  
5 two things: One was that Sergeant McCabe was going to 10:42  
6 be going -- gone after at the Commission, that was one;  
7 and secondly, that the "we" implied clearly or  
8 insinuated that I was involved in that. And the  
9 briefing point was where I was concerned -- why was I  
10 concerned about the use of the word briefing? It was 10:42  
11 because that that gave an impression that I was, with  
12 the Commissioner, actually directing, quote-unquote,  
13 what was going on. So yes, I was absolutely concerned  
14 about that.

15 83 Q. Yes. 10:42  
16 A. But I was also -- and I said this yesterday: I was  
17 particularly concerned as well that the Tribunal would  
18 be given the same impression as I was given. And I  
19 frankly couldn't understand the level of specificity on  
20 the one side, or in part, of each of the extracts that 10:43  
21 I was shown, and then the complete vagueness in other  
22 parts. And I just couldn't understand what was going  
23 on, and that's why I said it. --

24 84 Q. Yes. You were concerned that --  
25 A. Absolutely. 10:43

26 85 Q. -- that you were being represented as having a  
27 directing role, isn't that right?  
28 A. Absolutely.

29 86 Q. And that really is the burden of what you said

1           yesterday; that you were concerned about that?

2       A.    I said two things yesterday, I think. I said --

3           because you asked me was my concern solely for myself,

4           and I won't quote it but I will go to it now in a

5           moment, to the detriment of the understanding of the       10:43

6           Commission -- of the Tribunal, I beg your pardon. And

7           if I could go on, maybe, because I do have concerns, so

8           if we go on -- yes. So, what you were putting to me

9           yesterday, Mr. Rogers, was that -- and I am at 529 on

10          109, so I am in the same conversation. You put to me:       10:44

11

12          "The Tribunal wouldn't have known anything about those

13          meetings if we had, or if there had been no disclosure

14          by Mr. Barrett of the detail of the meetings in the

15          course of his evidence. You told the Tribunal nothing       10:44

16          about the meetings of the 25th February."

17

18          was what you said. And I agreed with you in the

19          statement. And then if you go on, I think I was asked,

20          if I can find it, there was a statement where -- yes,       10:44

21          at 534, I say:

22

23          "I have been asked whether I recall that meeting,

24          right, as referred to by Mr. John Barrett. That was

25          what I was asked. And I said no. However, I went on       10:45

26          to say in my response, which I believe was helpful to

27          the Tribunal that actually one of the attendees that

28          Mr. Barrett said was there would have detailed notes.

29          The Tribunal then got these notes."

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I will go on to the next bit in a moment.

CHAIRMAN: No. If we can just perhaps try and focus on an issue, because I actually was here yesterday and I'm listening to all of it. So --

10:45

A. Can I put one sentence?

CHAIRMAN: If you wish, please.

A. I now know, because I went back and looked at just the

documentation of the Tribunal, and what was put to me was that the Tribunal would not have known other than

10:45

by the intervention of the solicitor of Mr. Barrett, would not have known about those meetings and those notes. I believe that is incorrect. Because on the

12th Mr. Ruane gave evidence to those meetings. In that evidence Mr. Marrinan asked him did he have any

10:46

notes, he said he did. Mr. Marrinan asked him to provide those notes, he said he would. In the letter

then on the 17th from Noble Solicitors to the Tribunal, Noble Solicitors actually refer back to the evidence of Mr. Ruane and back to the notes. So the contention

10:46

that the Tribunal would not have known other than through --

CHAIRMAN: I actually appreciate the point you are making and I realised it was incorrect at the time when the question was put but I didn't want to interrupt.

10:46

A. I beg your pardon.

MR. ROGERS: well, I wonder, I think there was a letter from Noble Solicitors on the 5th January -- 5th January, raising the question of Mr. Ruane's notes.

1 CHAIRMAN: Sure. But we heard all of Mr. Ruane's  
2 evidence.  
3 MR. ROGERS: Yes.  
4 CHAIRMAN: Including the meetings, etcetera.  
5 MR. ROGERS: I think the point is that the notes which 10:47  
6 referred to the meeting of the 25th February, meetings  
7 of 25th February arose from questions raised by Noble  
8 Solicitors.  
9 CHAIRMAN: It may be that I'm asked to sort that out,  
10 but I am determined I am not going to sort it out. I 10:47  
11 have got enough to sort out myself. It's just one  
12 thing that does worry me, though, is going back to what  
13 the core allegation against Mr. Dunne is, that he was  
14 asked to remain after a meeting and that he said we are  
15 going after Maurice McCabe, that is how it was put here 10:47  
16 in the Commission, and that Mr. Barrett turned and  
17 said, you must be joking, and Mr. Barrett's observation  
18 in evidence was:  
19  
20 "It seemed odd in the context of the work we had done. 10:47  
21 I didn't understand it until after the fact. I find it  
22 shocking in the context of the cottage industry that  
23 was around seeking to improve the working conditions in  
24 Mullingar. I went and checked the terms of reference  
25 of the O'Higgins Commission. Cyril Dunne sat at the 10:48  
26 apex of the organisation with three others and must  
27 have discussed it, meaning the O'Higgins Commission,  
28 even though he had no responsibility."  
29

1           That is the allegation against Mr. Dunne. It's a very  
2           serious allegation.

3   87   Q.   MR. ROGERS: You see, yesterday, you gave evidence in  
4           respect of the meetings on the 25th, isn't that right?  
5           A.   That's correct. 10:48

6   88   Q.   And those meetings, one of them was a meeting which  
7           occurred in your office about lunchtime on the 25th and  
8           it was a meeting with the Commissioner, Chief  
9           Superintendent Barry O'Brien, as he then was, I think  
10          he was Chief Superintendent then, is that right? 10:49

11          A.   That's correct.

12   89   Q.   And then Mr. Barrett. So there were four people there.  
13          And in that meeting, all of which of -- these meetings  
14          were all happening in the context of the urgent emails  
15          that had been received by various office-holders, 10:49  
16          ministers, An Taoiseach, the Commissioner, from  
17          Sergeant McCabe, isn't that right?

18          A.   That's correct.

19   90   Q.   And Mr. Barrett says that at that meeting he was  
20          briefed about how he would find Sergeant McCabe, do you 10:49  
21          recall that?

22          A.   I do.

23   91   Q.   Yeah.

24          A.   I do.

25   92   Q.   And -- 10:49

26          A.   But not by me.

27   93   Q.   No. No. But you were there?

28          A.   Oh, yes, absolutely.

29   94   Q.   Yeah. And I think there was an expectation that

1 Mr. McCabe would come to the meeting that day with his  
2 solicitor?

3 A. I don't particularly recall that, but I accept that.

4 95 Q. Yeah. And do you recall Mr. Barrett being warned that  
5 he would be recorded? 10:50

6 A. I don't know -- I don't know whether it would have been  
7 in the context of a warning, but certainly I was aware  
8 that there were meetings with Sergeant McCabe at the  
9 time which for very good reason he was recording. So I  
10 don't particularly recollect it but I can absolutely 10:51  
11 imagine that it would be something that would be said.

12 96 Q. Yes. And do you recall that it was stated that when  
13 issues would be raised respecting his recent complaints  
14 he would become evasive or fidgety?

15 A. I don't actually recall that. 10:51

16 97 Q. Now, the meeting occurred between Sergeant McCabe and  
17 the two other officers and Mr. Barrett --

18 CHAIRMAN: I am sorry, Mr. Rogers, I don't mean to  
19 interrupt unnecessarily. I am just, I suppose, words  
20 kind of jump out at me and fidgety and evasive, I don't 10:51  
21 think I have heard that before and I am wondering where  
22 it comes from, if anywhere. That if he was asked about  
23 recent matters he was involved in he would become  
24 fidgety and evasive, I am just wondering, where is  
25 that? where does that come from? I mean, none of -- 10:52  
26 who was at the meeting who could make that report?  
27 Mr. McGuinness, am I getting something wrong?

28 MR. MCGUINNESS: I think there may be a passing  
29 reference to it in one of the notes.



1 CHAIRMAN: Okay. Well then, thank you for correcting  
2 me. Sorry for interrupting, Mr. Rogers.

3 MR. ROGERS: Thank you.

4 98 Q. We know that the meeting then ensued with Sergeant  
5 McCabe and the chief superintendent. It was a much 10:52  
6 longer meeting than people expected, isn't that right?  
7 A. I don't personally remember an expectation about it --  
8 at the length of the meeting. But I do accept the  
9 evidence that has been given, which was that there was  
10 an expectation that it was going to be an hour and that 10:52  
11 it lasted almost three hours.

12 99 Q. Yes.  
13 A. Which I would have taken as a good sign, actually.

14 100 Q. Yes. And I mean, the purpose here, let's be clear  
15 about what the purpose was, and this is -- I'm seeking 10:53  
16 to direct this to the issue that the Chairperson has  
17 just raised. The purpose here was to form an  
18 engagement with Sergeant McCabe, isn't that right?  
19 A. Correct.

20 101 Q. At the very -- which was directed from the very highest 10:53  
21 levels of An Garda Síochána?  
22 A. From the -- I now know that, yes, that the  
23 Commissioner, or Acting Commissioner at the time, had  
24 personally written to Mr. Barrett, so, yes, that's  
25 correct. 10:53

26 102 Q. Yes. And we've seen the letter that was written,  
27 directing this engagement, isn't that right?  
28 A. Yeah.

29 103 Q. It was a letter which was clearly seen by the

1 Commissioner as being necessary and of enormous  
2 significance?

3 A. I believe it was seen as being necessary and of  
4 enormous significance by just about everybody. But  
5 yes, absolutely by the Commissioner. 10:54

6 104 Q. Yes. This is 3013, dated 23rd February 2015. It's  
7 from Superintendent Frank Walsh.

8 A. Sorry, I beg your pardon, which volume is that --  
9 sorry, I have it. 3013?

10 105 Q. Yes. 10:54

11 A. Yes, I have it here.

12 106 Q. Yes. So with this was attached certain email  
13 correspondence from Sergeant McCabe, isn't that right?

14 A. It's referring to email correspondence from Sergeant  
15 McCabe, yes, dated 22nd February. 10:55

16 107 Q. And that was actually attached?

17 A. Sorry, I missed that last point? I beg your pardon.

18 108 Q. That the correspondence was actually attached? I think  
19 it's a fact that it was. It says in the first  
20 sentence: 10:55

21

22 "I am directed by the Commissioner to forward the  
23 attached email."

24 A. Yes, yes. Obviously it was.

25 109 Q. And then it says: 10:55

26

27 "As discussed, you should liaise with Assistant  
28 Commissioner Fanning and Chief Superintendent O'Brien  
29 and thereafter contact should be made with Sergeant

1 McCabe to arrange a face-to-face meeting. At the  
2 meeting at this office on 12th February last the only  
3 issue raised by Sergeant McCabe was in relation to not  
4 being able to appear before a named district judge  
5 while his solicitor, Mr. Costello, referred to a toxic 10:55  
6 work environment, ongoing harassment and lack of action  
7 by local Garda management. He also asked whether the  
8 people Maurice had identified were going to be  
9 interviewed. Sergeant McCabe should be asked to  
10 identify the exact issues, incidents, personnel which 10:56  
11 led him to him leaving work on Saturday night last and  
12 whether these were brought to the attention of the  
13 local management team in Mullingar. Please arrange and  
14 provide an update to this office today to facilitate an  
15 update for the Department who are also in receipt of 10:56  
16 correspondence from Sergeant McCabe."

17  
18 So it's quite clear that, I suggest to you, that it  
19 would not normally be the case that a Commissioner of  
20 An Garda Síochána, the Commissioner of An Garda 10:56  
21 Síochána, would be engaged in what I would call the  
22 micromanagement of events happening in a particular  
23 Garda station which were of the nature of disputes  
24 between individual Gardaí who might be assigned to this  
25 or that, isn't that right? That would be most unusual? 10:56

26 A. That would be most unusual.

27 110 Q. Yes. And it's quite clear that this had been elevated  
28 on to a level of management, departmental and  
29 ministerial interest, that the Commissioner was

1 concerned to ensure that there was direct intervention  
2 with Sergeant McCabe on foot of her direction, isn't  
3 that right?

4 A. Absolutely.

5 111 Q. So this was a major step now, and the meeting that you 10:57  
6 were involved with Mr. Barrett and Mr. O'Brien and the  
7 Commissioner, was a meeting which was the lead-on from  
8 this letter, this direction to Mr. Barrett?

9 A. It was after that, yes.

10 112 Q. Yes. 10:57

11 A. Yes. I wasn't specifically aware of this particular  
12 letter at that point in time.

13 113 Q. Yes. But you knew the general background.

14 A. Oh yeah.

15 114 Q. Mr. McCabe had, from 2014, become -- from January 2014, 10:58  
16 had become a noted figure in the public domain who was  
17 in dispute with An Garda Síochána?

18 A. Oh, absolutely.

19 115 Q. Yeah. So I mean, we know the content of the meeting  
20 because you have received -- I wonder could we put up 10:58  
21 3019, please. You received the report of John Barrett  
22 in respect of the meeting that he and Chief  
23 Superintendent O'Brien had with Mr. McCabe, isn't that  
24 right?

25 A. Correct. 10:58

26 116 Q. And have you read this recently?

27 A. Yes.

28 117 Q. Right. Well, we have all read it here, and it is a  
29 long, detailed, resumé of the two-and-a-half hours

1 meeting and it seems to indicate a level of engagement  
2 with Sergeant McCabe was achieved, isn't that right?

3 A. Absolutely. I read it as extraordinarily positive at  
4 the time. And still do.

5 118 Q. Yes. And it was a most useful event, carried out by 10:59  
6 the Chief Superintendent and Mr. Barrett, which seemed  
7 to involve some commitment on the part of Sergeant  
8 McCabe, on the one hand, to desist from intermittent or  
9 ongoing communication to officers at all ranks and  
10 levels of organisation and a commitment on the part of 10:59  
11 An Garda Síochána, voiced through Mr. Barrett, to  
12 engage with Mr. McCabe, Sergeant McCabe, in a  
13 meaningful way?

14 A. Correct.

15 119 Q. Isn't that right? 11:00

16 A. That is absolutely right and I thought it actually a  
17 very positive step at the time.

18 120 Q. Yes. And I think we are all agreed about that, that  
19 that was a major hurdle crossed, an achievement?

20 A. Yes. 11:00

21 121 Q. Okay. Now, it would appear to have been so good that  
22 ye all convened later in the day, sometime about 6:40,  
23 we know from Mr. Ken Ruane's note, and there was a  
24 protracted meeting, which we have gone through here in  
25 the past, you have read it recently, I take it, the 11:00  
26 note of the meeting, will we call it a sort of a  
27 plenary meeting, to which Mr. Barrett called in and  
28 which went on until nearly half eight or so that night?

29 A. That's correct, yeah. It was particularly to debrief

1 from Chief Superintendent O'Brien and from Mr. Barrett  
2 as to what had gone on at the meeting, how that meeting  
3 had gone, which turned out to be, as we see, very, very  
4 positive, and what other steps we might take on the  
5 back of that. 11:01

6 122 Q. Yes. And the steps that were going to be taken were  
7 really discussed in some detail at the meeting of the  
8 evening on the phone and in the Commissioner's  
9 conference room. It was a detailed meeting, and it  
10 embarked upon touching on and discussing individually 11:01  
11 measures that might be taken in respect of improving  
12 the relationship between An Garda Síochána and Sergeant  
13 McCabe, isn't that right?

14 A. I think so.

15 123 Q. That is the general drift of it? 11:01

16 A. I think that is the general drift. Maybe if you could  
17 remind me where the notes of the meeting are.

18 124 Q. If you go to 4860.

19 A. 4860?

20 125 Q. Yes. 11:02

21 A. Yes, I have that.

22 126 Q. Now, I know you wanted to see it. Is there anything in  
23 it that you want to draw attention to?

24 A. No, not particularly. I thought you were going to ask  
25 me particular questions, that is why I -- 11:02

26 127 Q. I know. You agree generally with what I have just said  
27 about it, about this meeting?

28 A. That it was a debrief from --

29 128 Q. Yes.

1 A. -- the earlier meeting and it was --

2 129 Q. Yes. But in essence -- sorry, in reality, it's more  
3 than that, than a debrief, because doesn't something  
4 come across in it very powerfully, and that is this:  
5 That the Commissioner was deeply committed to finding a 11:03  
6 resolution?

7 A. Oh, absolutely.

8 130 Q. Yeah?

9 A. Yes. And others, actually. But led very much -- very  
10 much led by the Commissioner. 11:03

11 131 Q. The most important person in the room was the  
12 Commissioner, she had directed this move to -- that  
13 Barrett and O'Brien would meet McCabe, isn't that  
14 right?

15 A. Correct, yes. 11:03

16 132 Q. And we are dealing now with the outcome of that.

17 A. Yes.

18 133 Q. So she had the fruits of that step?

19 A. Yes.

20 134 Q. And she was moving on from that, isn't that correct? 11:03

21 A. Correct, yeah.

22 135 Q. Yes.

23 A. Yeah, yeah.

24 136 Q. And I just want to put it to you, I mean it's no  
25 mistake on her part and it couldn't be in any way 11:03  
26 second-thoughted that you were in the room as the Chief  
27 Administration Officer?

28 A. Mm-hmm.

29 137 Q. I mean, this was of singular importance to you as the

1 Chief Administration Officer?

2 A. At that point in time, in terms of my role and my  
3 brief, it didn't encompass actually dealing with the  
4 specific issues. Was I concerned? Absolutely, with  
5 the generality of it. My view, but -- and I think I 11:04  
6 said it yesterday, it is only a view. My view as to  
7 why I was engaged at this point in time, because this  
8 was my first engagement around the issues raised by  
9 Sergeant McCabe, my view is that the Commissioner,  
10 because she often did this, brought me in to bring an 11:04  
11 alternative perspective if one needed to be brought.  
12 And again, I think I said yesterday that the style that  
13 we had between us was a style that she was trying to  
14 develop across the whole of the organisation, and that  
15 would be one where it was a challenging and questioning 11:05  
16 style. That is why I believe I was brought into this,  
17 particularly when I was -- and this was actually in the  
18 earlier meeting, I would say the only concern I had was  
19 that there was group think going on, and that group  
20 think was, well, what we need to do is find somewhere 11:05  
21 different for Sergeant McCabe, and I wasn't comfortable  
22 with that or just accepting that, but I actually  
23 challenged it earlier, I actually said -- my point of  
24 view was that the issues that had been identified by --  
25 sorry, I hate to say the issues with Maurice McCabe, 11:06  
26 because that is not what I mean. Maurice McCabe's  
27 issues may not be resolved simply by finding somewhere  
28 different for him to work, right. And I put that  
29 challenge to make sure that that wasn't what we were



1 defaulting into. It was clear to me from the response  
2 to that, by the way, that that had been considered,  
3 right, and I remember particularly Chief Superintendent  
4 O'Brien at the time was saying, you know, if we don't  
5 have somewhere for him to work, it could be seen -- 11:06  
6 because I was thinking would we agree with him, and I  
7 do say agree, agree with him that he might stay at  
8 home, okay, and Chief Superintendent O'Brien, who  
9 had obviously thought about it said, from my  
10 recollection, that that would give an indication that 11:06  
11 Sergeant McCabe was running away and we didn't want to  
12 have that. That was my recollection of it.

13 138 Q. Yeah.

14 A. It's a long --

15 139 Q. It might help you there if you look at 4863. 11:07

16 A. 4863. Yes.

17 140 Q. You are caught there at about 15 lines from the bottom:  
18  
19 "CAO: Insolvable problem. Normalised versus McCabe  
20 interpretation. 11:07  
21 1. waved magic wand... part reform.  
22 2. Always investigation will not change dynamic,  
23 problem our employee."  
24  
25 And then another point is made by you: 11:07  
26  
27 "1. Somewhere else for him.  
28 2. Search, he has more problems.  
29 In agree McCabe, stay at home.

1 If he sought: at home while we solve issue."  
2  
3 And then Chief Superintendent O'Brien is recorded:  
4  
5 "People go out sick as running cover. I have to go 11:08  
6 home. No place to put this guy. Surely we have a  
7 place for X to go."  
8  
9 And then you and the Commissioner come into it and the  
10 Commissioner expressed concern about the paid leave 11:08  
11 precedent. Something about forcing him out. I suppose  
12 the difficulty with that.  
13  
14 "If what MCC is saying "endemic culture and behaviour  
15 issues". Points of contact, no faith and trust." 11:08  
16  
17 And those words that are there, you have put it quite  
18 differently, but it's catching the same issue, isn't  
19 it?  
20 A. Yes. 11:09  
21 141 Q. This question of taking him off the pitch, as it were,  
22 or putting him somewhere else, isn't the solution, is  
23 what you are saying you were saying and the  
24 Commissioner as well?  
25 A. what I said was that that was my challenge. 11:09  
26 142 Q. what?  
27 A. what I said was that that was my challenge.  
28 143 Q. I see.  
29 A. Because I was concerned, because in my experience in

1 these types of situations, what can happen is that the  
2 objective becomes fluffy - I can't think of a better  
3 word - it becomes unclear, and I was afraid to make  
4 sure that we hadn't just come to a point where  
5 everybody was actually trying to find a different place 11:09  
6 for Sergeant McCabe. That was not the problem, right.  
7 The problem was that Sergeant McCabe was in a situation  
8 which was absolutely unsustainable. I had also felt  
9 that, in looking at what had been going on that there  
10 was a level of volatility. And what I mean by that is 11:10  
11 that Sergeant McCabe, we would find for a period that  
12 actually there was a positive role for him, but that it  
13 would become an issue again for him like this, for  
14 example, this had blown up. In my view, that was  
15 probably stress-related. My sense at the time was that 11:10  
16 Sergeant McCabe must be under a serious amount of  
17 stress. And again, in this context here, I wasn't sure  
18 that even finding the right job for him, for a period,  
19 would make it any less stressful for him, that there  
20 would come a point where he would find it untenable 11:10  
21 again and that is what I was trying to get to.

22 144 Q. Yes.

23 A. And I believe, I can't say it, I haven't discussed it  
24 with her, but I believe that it was that type of  
25 challenge that the Commissioner wanted me to bring. 11:11  
26 Because that is the type of relationship that we had.  
27 And it was the type of challenging relationship that we  
28 wanted to instill into the organisation, which the  
29 organisation found difficult to digest at that point;

1 found it very strange, found it very strange that I  
2 would challenge the Commissioner, right, and but it was  
3 something that was very, very important to us. That is  
4 all.

5 145 Q. Are you seeking to convey, and I am not challenging you 11:11  
6 on this, are you seeking to convey that in these notes  
7 there is an indication of you challenging the  
8 Commissioner to take the type of thinking that you are  
9 suggesting?

10 A. I was clearly here, and this is my absolute 11:11  
11 recollection, what I was trying to do was challenge the  
12 debate around, well, what is the right job for Maurice  
13 McCabe or the right position for Maurice McCabe. That  
14 was what I was concerned, that we drifted into that as  
15 being the problem. I didn't see it necessarily that 11:12  
16 that was the problem that needed to be resolved. I saw  
17 it as something much bigger than that, and that by just  
18 doing that we could have in X months' time have had  
19 another issue --

20 146 Q. Yeah? 11:12

21 A. -- for Sergeant Maurice McCabe, that we wouldn't  
22 actually have moved it on.

23 147 Q. If you look at 4864 there for a minute. There is an  
24 intervention in the very middle of the page there you  
25 will see "JB", Mr. Barrett? 11:12

26 A. Yes.

27 148 Q. "McCabe, loads of engagement, not dealing substance  
28 issues." Do you see that?

29 A. Yes.

1 149 Q. Is that really what you are talking about; that there  
2 could be lots of engagement but we are not really  
3 dealing with the substance of it?  
4 A. Not actually, no. No. It was more that from Maurice  
5 McCabe's -- I am actually just reading that. It 11:13  
6 probably does actually say the same type of thing.  
7 Yeah, it probably does.

8 150 Q. Yes. I suggest to you it does, and that I want to  
9 suggest to you this: That in fact yourself and  
10 Mr. Barrett -- arising from the meeting that had ensued 11:13  
11 with Mr. McCabe on the 25th, yourself and Mr. Barrett  
12 were very much concurring in a view about all of this?  
13 A. Oh, I think there was a general concurrence. So that  
14 meeting in the evening when we were debriefed after the  
15 meeting with Maurice McCabe, we would have taken it as 11:13  
16 very, very positive and a very positive engagement,  
17 absolutely. And Mr. Barrett would have, I think, taken  
18 it that way, I took it way, I believe the Commissioner  
19 took it that way, so it was seen as positive.

20 151 Q. Yeah. And I don't want to get caught up in the detail 11:14  
21 of what is in these pages here, but it's quite clear  
22 that strategies involving the engagement of third  
23 parties such as Mr. Mulvey, Mr. Kerr and a Mr. McMahon,  
24 all of these strategies were being discussed in the  
25 course of the evening of the meeting with Mr. McCabe? 11:14  
26 A. Absolutely, yeah.

27 152 Q. Yes. And could I just suggest to you that  
28 Mr. Barrett's reportage or brief to the meeting by  
29 telephone was that, in fact, he and Chief

1 Superintendent O'Brien had an engagement with Sergeant  
2 McCabe which was quite different from what he, Barrett,  
3 had expected, that in fact it became a much more  
4 positive engagement by Sergeant McCabe?

5 A. Oh, I think -- I think that's right. And I think 11:15  
6 everybody felt that this was a very, very positive  
7 engagement. So we took a lot of comfort, actually, I  
8 would have said, that evening, having heard the  
9 debrief.

10 153 Q. Yes. So if we just look at 4867, at the top of the 11:15  
11 page you seem to be making a specific suggestion about  
12 engaging McCabe with future deployment, "Start  
13 tomorrow. Tony McLoughlin can engage"; is that right?

14 A. That's correct, yeah.

15 154 Q. And what would that have meant? 11:16

16 A. So that was about, from my recollection, Chief  
17 Superintendent McLoughlin engaging with Sergeant  
18 Maurice McCabe, and Chief Superintendent McLoughlin  
19 engaging from that following day, that is the "starting  
20 tomorrow", with Sergeant McCabe about what his -- what 11:16  
21 future role would work for him. That was my  
22 understanding.

23 155 Q. And that was, in fact, a very big step because Sergeant  
24 McCabe now was in a sense being asked to opt into a  
25 discussion which was, in a sense, open-ended as regards 11:16  
26 his role, isn't that right?

27 A. Yes, that's right.

28 156 Q. And I think that it would have been clear at this stage  
29 that Sergeant McCabe in a sense was yearning for some

1 engagement, in the sense that he had been involved with  
2 this Garda Síochána Professional Standards Unit review  
3 of the penalty points problem, isn't that right?

4 A. That's correct.

5 157 Q. And he had had significant personal satisfaction out of 11:17  
6 doing that work, isn't that right?

7 A. That's correct.

8 158 Q. So it wasn't as though he was an unproven entity; this  
9 fellow was somebody who could be worked with and would  
10 engage in something that engaged him, isn't that right? 11:17

11 A. That's correct.

12 159 Q. So if you just go on then, please, to the next page,  
13 6868 -- 4868. And you will see there there is a block  
14 in the bottom half of the page where the Commissioner  
15 says to Mr. McLoughlin and Mr. O'Brien to contact him 11:17  
16 and then there is a discussion about who the  
17 individuals would be and those names are there, do you  
18 see those names, Ultan, Cassells, Mulvey, McLoone,  
19 those names, these are the third parties, isn't that  
20 right? 11:18

21 A. That's correct.

22 160 Q. And then if you look at the bottom of the page, there  
23 is "CAO" and you are going through a number of indents  
24 there, making points about particular persons that  
25 would be useful on policies and procedures, isn't that 11:18  
26 right?

27 A. I think that's correct, yeah.

28 161 Q. Yes. And I just want to remind you, do you remember  
29 when I asked you earlier about the meeting that I

1 suggested might have been on the following day, this  
2 seems to be the decision being made at 8:30 on the  
3 25th, this section here, the lower half of this page,  
4 indeed all of this page and the previous page about  
5 Mr. McLoughlin -- Chief Superintendent McLoughlin 11:19  
6 engaging, all of that appears to be decision-making  
7 about how to proceed and then the following -- I  
8 suggest to you that what we spoke about earlier sort of  
9 fits into that context as an event that happened  
10 afterwards? 11:19

11 A. I actually don't agree. Sorry, I think you could take  
12 that, you could take that just simply from this page.  
13 However, my understanding was that there was engagement  
14 and discussions, particularly around Tony Kerr, which  
15 had gone on significantly before that, before my 11:19  
16 involvement at all. Remember, I only came in on the  
17 25th. That actually these had been discussions that  
18 had been going on for quite a period of time. So it's  
19 not that there was a decision on that evening, for  
20 example, to engage Tony Kerr, right. There was a 11:19  
21 discussion, I remember, about -- I would have had a  
22 concern to make sure that whenever we went back to  
23 Sergeant McCabe, that if we were going back with an  
24 individual who was going to engage directly with him  
25 from externally that, one, we had the agreement of that 11:20  
26 individual, right, so that we could actually put it not  
27 as a possibility to Sergeant McCabe -- sorry, not as  
28 something that we may or may not be able to deliver on  
29 but something that we knew that we would be able to



1 deliver on. And that is what that was about at that  
2 point.

3 CHAIRMAN: Mr. Dunne, it's fine. I do understand all  
4 of those things.

5 162 Q. MR. ROGERS: In March of 2015, the --

11:20

6 CHAIRMAN: Mr. Rogers, forgive me for thinking it's  
7 February, now we are going into March, I am not sure  
8 how this is feeding into the central question that, as  
9 Mr. Barrett said, that the dark truth, and I am using  
10 his phrase, is what he alleges Mr. Dunne, but I mean,  
11 you have to take your own course.

11:21

12 MR. ROGERS: Yes. If you will allow me, Chairman.

13 CHAIRMAN: I will of course.

14 MR. ROGERS: I won't be long more but I would like to  
15 just finish this, as I think I should.

11:21

16 CHAIRMAN: Well, if you feel that, I think you should  
17 carry on. I am happy with that, Mr. Rogers, yes.

18 MR. ROGERS: Very good. Yes, very good.

19 163 Q. The issue of engaging Mr. Mulvey became a little bit  
20 complex or controversial. There was discussion about  
21 expanding the terms of reference that might be given to  
22 him, isn't that right? That arose from an intervention  
23 by the Department. We have seen this here before, I  
24 don't want to have to open it up.

11:22

25 A. No, no. So after this meeting, so after the 25th, I am  
26 not sure exactly when, but fairly close to it, and I  
27 was not involved in this, there was a discussion, I  
28 think it was led by acting Deputy Commissioner Twomey  
29 at the time, Mr. Barrett, I think Chief Superintendent

11:22

1           McLoughlin as well, and it was all about who -- from my  
2           memory, it was about who was the right person to  
3           engage, and then moved on also to terms of reference.  
4           And I have seen a series of emails around that. And I  
5           was brought back into that because Mr. Flahive, from 11:22  
6           the Department, in a reply, right, put my name into the  
7           chain of reply recipients, and he raised the question  
8           as to whether we should have a broader engagement from  
9           the person who was to deal directly with Sergeant  
10          McCabe versus the engagement that had been identified 11:23  
11          for Mr. Kerr to take on, which was more a policy  
12          review. I was asked my view on that, and there  
13          were terms of reference, I think there was both a broad  
14          and a narrow, that they were referred to. The broad  
15          meaning that the individual who would engage with 11:23  
16          Maurice McCabe would also look at the policies and  
17          procedures. My view was that that was not the way to  
18          go, that we should separate the two, and that, as it  
19          was, Mr. Kerr, who had already been decided on I think  
20          quite a time before that, well before the 25th, should 11:24  
21          look at the policies and procedures and we should focus  
22          whoever -- Kieran Mulvey was the eventual decision,  
23          focus Kieran Mulvey on the direct engagement with  
24          Maurice McCabe. That was the discussion.

25 164 Q. Yes. Now, could I ask you for a moment just to look at 11:24  
26                 3719, please.

27           A. Sorry, it's a different volume. Yes, I have that.

28 165 Q. And if you just tell us, can you identify that? This  
29                 is an email from Mr. Barrett to Mr. Ruane of the 17th

1 March, after 10:00pm in the evening, and I just want to  
2 draw your attention to the fourth indent in it:

3  
4 "The terms of reference for the involvement of  
5 Mr. Kieran Mulvey have received much consideration over 11:25  
6 recent days. On Friday Cyril Dunne and I agreed a  
7 final format which incorporated the views expressed by  
8 Michael Flahive and these have been forwarded to the  
9 Commissioner's office by Cyril to complete the section  
10 41 paperwork and comprehensive update to the Minister." 11:25  
11

12 Do you see that?

13 A. I see that, yes.

14 166 Q. Yes. So I mean, you were involved in this question of  
15 the terms of reference for Mr. Mulvey? 11:25

16 A. Absolutely.

17 167 Q. But more than that: You were actually involved in the  
18 completion of what I would call the return to the  
19 Minister on foot of her questions or seeking of  
20 reportage in respect of Sergeant McCabe, isn't that 11:26  
21 right?

22 A. That is actually not correct. What -- if you read what  
23 is there, "I agreed a final format which incorporated  
24 the views expressed by Michael Flahive and these have  
25 been forwarded to the --" So, those views -- sorry, the 11:26  
26 final terms of reference, "-- have been forwarded to  
27 the Commissioner's office by Cyril --" I can't  
28 actually confirm that I did that, but that is what it  
29 says. "-- by Cyril, to complete this section 41

1 paperwork and comprehensive update to the Minister."  
2 Now it wasn't that I was doing section 41 paperwork or  
3 comprehensive update to the Minister, I wasn't involved  
4 in that. I did, reading this, send on the final terms  
5 of reference that had been agreed, to the 11:26  
6 Commissioner's office. So that's what I read into  
7 that. What I can't actually say is that I actually did  
8 that. I don't know if I did.

9 168 Q. Well, are you sure you didn't do the section 41  
10 paperwork? 11:27

11 A. Absolutely.

12 169 Q. You are very definitive about that?

13 A. Absolutely. Absolutely.

14 170 Q. Well, I mean, in your role as Chief Administration  
15 Officer, would it not be part of your function -- 11:27

16 A. No.

17 171 Q. -- to be a participant in that?

18 A. No.

19 172 Q. I see.

20 A. No. It was very much something that was within the 11:27  
21 office of the Commissioner. So, you know, a section 41  
22 return to the Minister is a very significant  
23 intervention that was done within the Commissioner's  
24 office.

25 173 Q. Yes. But the CAO is the like of, say, a company 11:27  
26 secretary in a more commercial organisation?

27 A. Not at all. There is nothing in my role that actually  
28 relates to that.

29 174 Q. I see. So, are you telling the Chairperson then that

1           you would have nothing to do with a section 41 report  
2           to the Commissioner?

3           A.    That is what I am saying, yeah.  Absolutely.  Unless  
4           there was some specific input that was required from  
5           me, but in the preparation of section 41s, absolutely   11:28  
6           not.

7  175   Q.    But this particular section 41 --

8           A.    No.

9  176   Q.    -- just a second.  This particular section 41 letter  
10          concerned a human resources matter related to Sergeant   11:28  
11          McCabe, isn't that right?

12          A.    That's correct.

13  177   Q.    And human resources was directly within the ambit of  
14          your responsibility?

15          A.    As I explained yesterday, elements of human resources   11:28  
16          were in direct ambit of my responsibility, other  
17          elements, which were anything to do with policing, were  
18          not.  And I think, again, if you see there, because you  
19          brought us through it earlier, the direction from the  
20          Commissioner directly to the executive -- or director   11:29  
21          of HR about the engagement.  If there was line  
22          accountability through the CAO office what would have  
23          happened would have been that the Commissioner would  
24          have directed me or the CAO to actually make something  
25          happen.  So you have got to understand that all of   11:29  
26          this --

27          CHAIRMAN:  I actually do understand your evidence.  I  
28          do understand.

29  178   Q.    MR. ROGERS:  So your evidence is that although you

1 were, as CAO, the accountable officer for the function  
2 of human resources within An Garda Síochána, you would  
3 have no role in the preparation of a letter of this  
4 type which related significantly to a major human  
5 resources issue that arose in respect of a particular 11:30  
6 garda?

7 A. Absolutely right, that is what I am saying. But what I  
8 need to make clear to you again is that I had  
9 responsibility for some elements of human resources.  
10 The executive director had responsibility for all of 11:30  
11 those elements but some of those reporting lines of  
12 executive director went in different directions. And  
13 this did not come to me. It was not in my responsible.

14 179 Q. What didn't come to you?

15 A. Sorry. 11:30

16 180 Q. What didn't come to you?

17 A. Anything to do with policing and anything to do with  
18 what was either protected disclosures, what was then  
19 confidential recipients, anything like that did not  
20 come to the office of the CAO. So it's not actually 11:30  
21 about me as an individual, it's through the office of  
22 the CAO.

23 181 Q. Yes. So --

24 A. I mean --

25 182 Q. Is it the case then -- 11:31  
26 CHAIRMAN: Honestly --

27 183 Q. MR. ROGERS: -- that you did not have a role in the  
28 matters that were the subject --  
29 CHAIRMAN: Sorry, sincerely, I am not actually really

1 interested in the internal working of Headquarters. I  
2 mean, the allegation against you is that you sat on the  
3 apex of the organisation, you accept that you are one  
4 of the four key people at the very top.

5 A. Absolutely. 11:31

6 CHAIRMAN: Your responsibilities went a particular way.

7 A. Yeah.

8 CHAIRMAN: Yes. That is as much as needs to be said.

9 184 Q. MR. ROGERS: Could I just ask you to look at your  
10 statement at 2974? 11:31

11 A. I have 2974.

12 185 Q. Thank you. Do you see 53 there?

13 A. 53, yes.

14 186 Q. You answered the question wherein you were asked to  
15 characterise your relationship "both professionally and 11:32  
16 personal, with the following parties, Commissioner  
17 Callinan, Commissioner O'Sullivan and superintendent  
18 Taylor", and what you say in respect of Commissioner  
19 Callinan is:

20 11:32

21 "I had a working relationship with the former  
22 Commissioner Callinan but it was not a close working  
23 relationship. I had no relationship with the former  
24 Commissioner Callinan outside work at all."

25 11:33

26 And you then go on to say that you had a different  
27 working relationship with Commissioner O'Sullivan,  
28 isn't that right?

29 A. That's correct.

1 187 Q. And if you look at 2978, you say something the like  
2 again at 117?  
3 A. 117, yes.  
4 188 Q. Do you see that? You were asked about conversations  
5 with Commissioner Callinan and there is a reference to 11:33  
6 the meeting on the 23rd of January '14 at the PAC. Do  
7 you see that?  
8 A. I see that.  
9 189 Q. And you say:  
10  
11 "No, not that I recall at all. My relationship with 11:33  
12 the former Commissioner Callinan would not have been  
13 one where I would have had one-to-one conversations of  
14 that nature."  
15  
16 Now, that seems a strange thing to have said. Do you 11:34  
17 see, you were being asked about whether you had any  
18 conversation with him in the context of the PAC  
19 meeting.  
20 CHAIRMAN: I appreciate, Mr. Rogers, that the purpose 11:34  
21 of these questions was to see whether anybody with whom  
22 we were interacting had any information in relation to  
23 what might be called the core questions when they arise  
24 in modules A, B, C and D.  
25 MR. ROGERS: Yes. 11:34  
26 CHAIRMAN: And that is the reason for it. And I think  
27 you will find that in terms of statements that a lot of  
28 other people were asked similar questions, not really  
29 by way of a tick the box exercise, but just by way of



1 let's see and also of course, you may not be aware but  
2 the Tribunal has written many, many dozens of letters  
3 to people asking questions in and around that area and  
4 the investigators have interviewed a number of people  
5 in and around that area again, but it's a different 11:35  
6 thing entirely, unless there is something here you feel  
7 is significant.

8 MR. ROGERS: No, it's just, and I will be quick with  
9 this, Judge.

10 190 Q. You seem to be saying in the sentence at 117, 118, that 11:35  
11 your relationship with Commissioner Callinan was not  
12 one where you would have a one-to-one conversations  
13 with him, that seems strange, do you agree with me?

14 A. If I can try and paint it for you.

15 191 Q. Why would it be you would not have one-to-one 11:35  
16 conversations with your superior Commissioner?

17 A. Of that nature, right. So, that's what I said. I  
18 didn't say that I wouldn't have one-to-one  
19 conversations with the Commissioner. I said one-to-one  
20 conversations of that nature, which were around his use 11:36  
21 of the word "disgusting" in reference to Garda  
22 whistleblowers. I mean, that is a very -- that  
23 requires a level of relationship which is deeper than I  
24 would have had with Commissioner Callinan at the time.  
25 Now, the reason for that, and there is nothing sinister 11:36  
26 about my relationship, it was a very professional  
27 relationship with Mr. Callinan, was that his focus, I  
28 would say, was much more on operational policing,  
29 right. That is where his focus in his role as

1 Commissioner was. And as I said earlier, I had no  
2 involvement in operational policing. So actually, our  
3 paths wouldn't have crossed very much and that was  
4 because of the, let's call it, agenda that he would  
5 have seen as being the most important. The Deputy 11:36  
6 Commissioner at the time, which was Nóirín O'Sullivan,  
7 and subsequently as Commissioner, her focus in terms of  
8 what she saw as being really, really important, was  
9 much more -- not so much on the operational policing,  
10 it was on cultural change, reform, and particularly 11:37  
11 what's now been launched as the modernization and  
12 renewal programme. And we would have -- so we would  
13 have had just much, much more engagement because that  
14 is what I would have spent a lot of my time on. That  
15 is the only reason for -- 11:37

16 192 Q. Yes. You make that point very pointedly at 2980, where  
17 you are discussing Commissioner O'Sullivan's approach.  
18 Do you see 146: "She was scrupulous in making sure he  
19 was supported."

20 A. Yes. 11:37

21 193 Q. "Went to a lot of effort, both specifically with him  
22 and also generally." And she made sure that --  
23  
24 "She was very conscious at the same time actually of  
25 making sure that it was not focused on Sergeant McCabe, 11:37  
26 very conscious not to isolate him?"  
27  
28 And then in the last sentence at the bottom of page  
29 there you say:

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"It would have been different to the demeanour earlier under a different Commissioner where the consciousness of dealing with the personal challenges for people involved was less in focus."

11:38

That seems to capture what you have just said?

A. Yes, it's slightly different. I think it goes more to personal style rather than mandate or agenda. They would have very different personal styles, the two commissioners.

11:38

194 Q. Well, does one get the impression that you were more improving of the Commissioner O'Sullivan?

A. No, I had a closer relationship -- remember now -- or former Commissioner O'Sullivan and myself were peers for quite a period of time and you develop a peer-to-peer relationship, which then obviously moved on to a different relationship, when she was Commissioner. I never had a peer-to-peer relationship with Commissioner Callinan, I was always subordinate, so it creates a different dynamic.

11:38

195 Q. Right.

A. But there is nothing sinister in it.

196 Q. But your position to the Chairman is that in May of 2015, the way you put it yesterday was that you weren't conscious of the Commission at all.

11:39

A. That's correct.

197 Q. Well, that seems a very unlikely mental condition to have, given what was going on. This was a commission

1 looking at the predicament of An Garda Síochána in  
2 respect of allegations made by Sergeant McCabe, isn't  
3 that right?

4 A. That's correct, but in private.

5 198 Q. Sorry? 11:40

6 A. That is correct, but in private. So the Commission, by  
7 definition, was private.

8 199 Q. Yes, but you knew -- you must have known the terms of  
9 reference of that Commission?

10 A. Oh, yeah, absolutely. 11:40

11 200 Q. And you must have known the extent to which Sergeant  
12 McCabe was involved in it?

13 A. Absolutely. And the terms of reference were all  
14 focused on policing matters and how policing matters  
15 had been dealt with, and I had no involvement at all in 11:40  
16 the organisation with policing matters. That was my --

17 201 Q. Are you contending that in fact you weren't conscious  
18 of the O'Higgins Commission?

19 A. And what was going on in it, no, I wasn't.

20 202 Q. Well, it's a pretty global thing to say, Mr. Dunne, 11:41  
21 that I wasn't conscious of this Commission.

22 A. The O'Higgins Commission was going on in private, so  
23 there was -- you know, there was no discussion about it  
24 in the organisation. There were two things that were  
25 happening, as I now understand it: One was that there 11:41  
26 was engagement with individuals who were going to be  
27 appearing at the Commission with legal counsel, okay.  
28 I understand that. I wasn't involved in that at all,  
29 okay. The second thing, as I now understand it, was

1 that -- sorry, I understood then that Chief  
2 Superintendent Healy was at the Commission all of the  
3 time, I did understand that. I now understand that the  
4 transcripts of the Commission were being provided on a  
5 daily basis but not to me, and I wasn't conscious that 11:42  
6 they were being provided to anybody at that point in  
7 time. So, that is the reality of it.

8 203 Q. So notwithstanding that the Commission was to be  
9 concerned with the investigation of complaints by  
10 Sergeant McCabe which were complaints which were 11:43  
11 ongoing and which were part of his general frustration  
12 over the previous 18 months/two years, and of which  
13 everybody had become conscious and particularly by  
14 reason of the meeting on the 25th February, you, quite  
15 literally, didn't engage at all, is what you are 11:43  
16 saying?

17 A. So first of all, the meeting on the 25th February had  
18 no relationship and did not discuss at all any of the  
19 elements of the O'Higgins Commission.

20 204 Q. No, but it was a meeting that arose out of Sergeant 11:43  
21 McCabe's general and overall frustration, isn't that  
22 right?

23 A. That is correct. But as I understand it, the O'Higgins  
24 Commission was focused on looking at specific cases,  
25 which were policing cases, and how they were handled. 11:43  
26 That is my understanding of it. And I had no  
27 engagement or involvement in that. That's the fact of  
28 it. Where I would have expected to be engaged, had I  
29 still been with the organisation, was on the

1 implementation of recommendations coming out of it, if  
2 any of them fell into my area and generally, indeed.  
3 But the workings of the Commission, the -- you know, I  
4 couldn't even tell you what, you know, what is the  
5 right investigative process. I just simply don't know, 11:44  
6 Chairman. So I had nothing to contribute.

7 205 Q. Could I just ask you to look at, now, finally, at 2985  
8 of your statement.

9 A. 2985. Yes.

10 206 Q. And this is where you are asked to deal with what 11:45  
11 Mr. Barrett says occurred at the encounter with you  
12 when he says -- he said you said "we are going after  
13 him in the Commission". And you say there that in  
14 response:

15  
16 "I have no recollection of meeting with John Barrett." 11:45  
17

18 That is just one sentence. Is that intended to be  
19 referable to the issue of when this event occurred?

20 A. It's referable to what was put to me in Mr. Barrett's 11:45  
21 statement. That is what it's referencing. And if I  
22 can just point to that, right, where he says -- I will  
23 quote:

24  
25 "Mr. Dunne asked me to remain in his office after the 11:45  
26 other attendees had left and with reference to Sergeant  
27 Maurice McCabe."

28  
29 I definitively know and I had no basis of saying that

1 we are going after him in the Commission. I am also  
2 conscious that that now is a different position now in  
3 terms of what the meeting was, because it's now a  
4 meeting between myself and the Commissioner and Maurice  
5 McCabe rather than myself and other attendees. At the 11:46  
6 time I read this as likely being a meeting of my  
7 management team. So that's -- and I had no  
8 recollection of that meeting and I certainly was able  
9 to say that I never said we are going after him at the  
10 Commission. I understand now, though, that it's 11:46  
11 different, it's a meeting with the Commissioner and  
12 myself.

13 207 Q. Well, earlier you had said you were not aware that  
14 Mr. Barrett had been appointed interlocutor, isn't that  
15 right? 11:47

16 A. That's correct.

17 208 Q. Well, did you have a complete loss of recollection of  
18 his role arising from the direction of the Commissioner  
19 on the 23rd February?

20 A. I wasn't aware of the direction of the Commissioner on 11:47  
21 23rd February.

22 209 Q. I see.

23 A. But again, if I can go back --

24 210 Q. You knew --

25 A. -- because you brought this up earlier. 11:47

26 211 Q. Yeah?

27 A. There was a letter which went from the office of the  
28 Commissioner direct to Mr. Barrett, didn't involve me.

29 212 Q. Yes.

1 A. Right. And that would not be unusual, because I didn't  
2 have line responsibility for the particular HR issue.  
3 So I wasn't aware of that letter. I read this as some  
4 kind of formal appointment. I wasn't aware of it.

5 213 Q. But you knew that Mr. Barrett was the person who had 11:48  
6 engaged in this new way with Mr. McCabe on the 25th  
7 February?

8 A. Absolutely. And I also knew -- I also knew that Chief  
9 Superintendent McLoughlin had continued to meet with  
10 him, that Chief Superintendent O'Brien had continued to 11:48  
11 meet with him, so I had no sense of -- sorry, to be  
12 clear, I was aware that Mr. Barrett was meeting with  
13 him and that it was positive, but this context of being  
14 appointed as an interlocutor was new to me.

15 214 Q. Well, are you saying that Mr. Barrett misunderstood his 11:48  
16 role?

17 A. No, no, I am saying that I didn't -- I didn't relate to  
18 what Mr. Barrett was saying, that, you know, he was  
19 the -- he had been appointed as an interlocutor and a  
20 principal point of contact. That is all I am saying. 11:49

21 215 Q. So when you made this statement, you didn't actually  
22 know of the letter of the 23rd February --

23 A. Correct.

24 216 Q. -- engaging Mr. Barrett?

25 A. Correct. 11:49

26 217 Q. And thereby it may well be that if Mr. Barrett was so  
27 appointed, as is clear he was, when he had this  
28 encounter with you on what he says was in mid-May, his  
29 view of his position would have been that he had a



1 specific role with Mr. McCabe, isn't that right?

2 A. That's correct.

3 218 Q. Yeah.

4 A. But I am just thinking, actually, though, that my  
5 memory is that that appointment was the 23rd. 11:50

6 219 Q. Sorry?

7 A. My memory, and maybe it could be checked, was that that  
8 appointment letter was the 23rd of --

9 220 Q. Of February?

10 A. -- of February, sorry, I beg your pardon. 11:50

11 221 Q. Yes.

12 A. Yes.

13 222 Q. But if Mr. Barrett had that role, and had you said  
14 something like we are going after Maurice McCabe in the  
15 Commission, his reaction to it would not be unexpected 11:50  
16 if it was a reaction of surprise and anxiety?

17 A. I would expect that to be the case. But that was never  
18 said to us, so we are in the hypothetical here.

19 223 Q. Yes. But you see, John Barrett says that when you said  
20 to him we are going after Maurice McCabe in the 11:51  
21 Commission, his response was immediate and one of  
22 saying you must be joking.

23 A. Reading -- and I only know the response, but there have  
24 been a number of different responses that Mr. Barrett  
25 has said that he has given. 11:51

26 224 Q. Yes.

27 A. So that is one of them.

28 225 Q. Yes. But it wouldn't be a surprising response, having  
29 regard to the role he had been designated?

1 A. No, no, no.

2 226 Q. No.

3 A. And not even -- but to be clear, not even in relation  
4 to the role; I mean, in relation to all of the  
5 discussions and everything that was going on, it would 11:51  
6 have been shocking, I would have thought, if that had  
7 been said. And not just Mr. Barrett, I think anybody  
8 else who was involved in, for example, those meetings  
9 around the 25th February would have been absolutely  
10 shocked. 11:52

11 227 Q. You see, I just want to suggest to you, Mr. Dunne,  
12 first of all, that Mr. Barrett's recollection and his  
13 description of this is clear. You deny it, isn't that  
14 right?

15 A. I absolutely deny it, yes. 11:52

16 228 Q. Yes. And I suggest to you that your evidence yesterday  
17 where you evinced a concern about being seen as a  
18 directing mind, I suggest to you betrays a concern on  
19 your part which might cause to you deny it?

20 A. I don't follow that. 11:52

21 229 Q. Okay. Are you sure you don't follow it?

22 A. If could you put it to me again.

23 230 Q. Yes. Yesterday, and I went through this with you  
24 earlier, I pointed to the use of the word directing or  
25 directed -- 11:53

26 A. Yes.

27 231 Q. -- in certain answers you gave yesterday?

28 A. Yes.

29 232 Q. And I'm suggesting to you that those words betray on

1 your part a concern not to be seen to be intimately  
2 involved as a director directing action against --  
3 A. Sergeant McCabe.  
4 233 Q. -- Sergeant McCabe in the Commission.  
5 A. And that is absolutely right. Because when I read the 11:53  
6 two elements or the two extracts from the statement  
7 that were put to me, that was the impression that was  
8 left with me, was that -- was two things, right. One  
9 was that I had said we -- so, including me, we are  
10 going after him in the Commission. So that I was 11:53  
11 somehow involved in going after Sergeant McCabe. That  
12 was not the case. And in the other statement, as well,  
13 it was talking about briefings that I had given. So  
14 that was my concern, about me, right, and I did say to  
15 you yesterday, I think, that, yeah, I was concerned 11:54  
16 about myself.  
17 234 Q. Yes.  
18 A. But I was also concerned about making sure that the  
19 truth will out. And that was the approach that I took,  
20 which was to try -- remembering that I had no 11:54  
21 documentation, I still haven't, I have nothing, and it  
22 would have ended up in a situation where Mr. Barrett  
23 was saying one thing, Mr. Dunne was saying something  
24 else, right. And that was -- I was very wary. I was  
25 very, very wary. 11:54  
26 235 Q. Well, you see, what I want to suggest to you is that  
27 really your statement to the investigators revealed  
28 that, in that in answering the investigators' questions  
29 you sought to distance yourself, even from the meetings

1 of the 25th February?

2 A. But there was nothing -- there was nothing put to me  
3 about the 25th February. I mean, if I can go back to  
4 what was actually put to me, it didn't talk about --

5 236 Q. I think we went through that yesterday. 11:55

6 A. We did. But if you want to bring it up again and  
7 challenge me about it, I want to give a response.

8 237 Q. I simply want to put to you that really your statement  
9 to the investigators betrays a determination to  
10 distance yourself from virtually anything to do with 11:55  
11 discussion about Maurice McCabe?

12 A. But that is the fact.

13 238 Q. It isn't a fact.

14 A. It is a fact.

15 239 Q. You had substantial discussion about Maurice McCabe and 11:55  
16 intensive discussion about him.

17 A. Not with regard to the Commission. If I had felt  
18 that -- if we can just separate out that meeting of  
19 the -- or meetings on 25th of February and the  
20 engagement with Sergeant McCabe, now, in those 11:55  
21 meetings. If I had felt that that was something that  
22 was what this Tribunal was focused on, I probably would  
23 have tried to go back and put together a statement  
24 myself, but my understanding was that the focus was on  
25 the Commission of Investigation, okay. Now, I didn't 11:56  
26 relate the meetings of the 25th February at that point  
27 in time with the Commission of Investigation. They  
28 were totally different, in my mind. So, yes, you know,  
29 I wanted to make sure that it was clear that I was

1 distant. No dispute about that. Because I was. But I  
2 was faced with a very grave allegation. By the way,  
3 most of which in its detail has changed, other than I  
4 said that "We are going after him in the Commission".  
5 That is my reading of it. So if you take the 11:57  
6 statement, the extracts of the statement that were put  
7 to me and the evidence that has been given an awful lot  
8 of the detail has changed. And that was my concern  
9 about myself, that I wouldn't be -- that I was being  
10 accused, for want of a better word, which I knew to be 11:57  
11 false. And secondly, as I said to you yesterday, I  
12 wanted to make sure that I could get as much  
13 information which was documentary-based provided to the  
14 Commission, so I particularly -- sorry, to the  
15 Tribunal, I beg your pardon -- I particularly mentioned 11:57  
16 that the notes of Ken Ruane would give documentary  
17 evidence rather than something I would say or somebody  
18 else would say. That was my thinking.  
19 MR. ROGERS: No questions.  
20 CHAIRMAN: You are finished, yes, thank you. Was there 11:58  
21 any other questions?  
22 MR. DIGNAM: I just have a few questions that I would  
23 like to ask Mr. Dunne, Chairman.  
24 CHAIRMAN: There's no questions from Justice or --  
25 MR. MCCANN: No. 11:58  
26 CHAIRMAN: I don't mean that as an abstract concept.  
27 MR. MCCANN: Yes.  
28 CHAIRMAN: I of course mean the Department.  
29

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THE WITNESS WAS EXAMINED BY MR. DIGNAM:

240 Q. MR. DIGNAM: Mr. Dunne, I just want to ask you a few questions and I am going to focus on the allegation that has been made against you, and I want to do so in the context of a suggestion that was floated by Mr. Rogers towards the end of yesterday. Firstly, if I could ask you to look at your own statement on page 2985 of the booklets. 11:58

A. Yes, I have that. 11:58

241 Q. And the reason I am asking you to look at that page, Mr. Dunne, is that the allegation which is made against you in relation to this module is quoted and it's quoted as being:

"Prior to the announcement --" 11:59

Sorry.

-- commencement of the O'Higgins Commission hearings, at the conclusion of a meeting in the office of the Chief Administration Officer, Cyril Dunne, Mr. Dunne asked me to remain in his office after the other attendees had left and with reference to Sergeant Maurice McCabe said quote "We are going after him in the Commission". My role as interlocutor/principal point of contact with Sergeant McCabe was well-established at this stage and I indicated my shock and dismay that such an approach would be taken in the 11:59

1 O'Higgins Commission."  
2  
3 Now, that's the allegation that was made against you by  
4 Mr. Barrett. And one of the concerns which you have  
5 had, which you have just discussed with Mr. Rogers, was 11:59  
6 that it was suggested, as you understood it, by the use  
7 of the word "we" that you were part of a plan or a  
8 decision to go after Sergeant McCabe in the Commission.  
9 I think you have probably been keeping a close eye on  
10 the evidence that has been given, and in particular 12:00  
11 given by Mr. Barrett, and on day 53, page 195 -- [SAME  
12 HANDED]  
13 A. Sorry, what is the reference?  
14 242 Q. Day 53, page 195.  
15 A. Yes, I have that. 12:00  
16 CHAIRMAN: Can you give us a moment, Mr. Dignam, so we  
17 can get it here for everybody. Thanks.  
18 MR. DIGNAM: Certainly, Chairman.  
19 243 Q. You see at question 70 -- sorry, yes, question 702,  
20 this is Mr. McGuinness questioning Mr. Barrett, and he 12:02  
21 says to Mr. Barrett:  
22  
23 "You seem to have characterised the remark --"  
24  
25 And that is the remark allegedly made by you. 12:02  
26  
27 "-- as being a decision that was being conveyed to you,  
28 but did Mr. Dunne ever say anything to that effect?"  
29

1 Mr. Barrett answers:

2

3

"I took it to be, you know, we're going after him in the Commission to be a decision. And I didn't understand the import of it until some time later."

6

7

And then the Chairman intervenes:

8

9

"I beg your pardon, Mr. McGuinness, again a decision by who?"

10

12:02

11

12

And Mr. Barrett says:

13

14

"Well, it would be the executive of the organisation would make a decision of that order."

15

12:02

16

17

Now, you are a member of the executive of the organisation, isn't that correct?

18

19

A. That's correct.

20

244

Q. There are four members?

12:02

21

A. Four, yes.

22

245

Q. Now do you interpret that answer to be that a decision was made by the executive, four-person executive of which you are a member, to be to go after Sergeant McCabe?

23

24

25

12:02

26

A. That is how I interpreted that.

27

246

Q. And does that cause you concern?

28

A. Absolutely.

29

247

Q. Yes. Now, am I correct in saying that when you



1 received the statement by Mr. Barrett containing the  
2 allegation and up until last Friday when Mr. Barrett  
3 first started giving evidence, that all you knew about  
4 the context and the surrounding circumstances in which  
5 this was alleged to have been said was: One, that it 12:03  
6 happened in your office; two, that it happened after a  
7 meeting about something else entirely; three, there  
8 were other attendees, plural; and four, and I suppose  
9 this is a known/unknown, the date of it was unknown  
10 because it was unstated in the statement. Does that 12:03  
11 summarise the state of your knowledge up to the  
12 commencement of the evidence by Mr. Barrett last  
13 Friday?

14 A. That is absolutely correct.

15 248 Q. Yes. And that was three weeks into the evidence of the 12:03  
16 Tribunal, two-and-a-half weeks I think into the  
17 evidence.

18 A. Sorry?

19 249 Q. That was approximately two-and-a-half weeks into  
20 hearing evidence in this module. 12:04

21 A. Yes.

22 250 Q. And is it fair to say then that you now know that, in  
23 fact, there were not other attendees in addition to you  
24 and Mr. Barrett, but in fact one other attendee.

25 A. That's correct. 12:04

26 251 Q. Ms. O'Sullivan.

27 A. That's correct.

28 252 Q. The second thing which you now know was that it was at  
29 the tail end of a meeting on another topic entirely, is

1           how it was now put in the evidence, so it wasn't a  
2           casual encounter. You also now know, am I right in  
3           saying, that Mr. Barrett is saying that the meeting  
4           happened on the 13th May 2015, is that your state of  
5           knowledge now? 12:04

6           A.     Just, it is correct, but I don't know the topic that it  
7           was -- I know it was supposedly another topic but I  
8           don't know what that topic was supposed to be.

9   253   Q.     Yes.

10          A.     Everything else is correct. 12:05

11   254   Q.     Now, I don't propose to laboriously bring you or the  
12          Tribunal -- the Tribunal has already has the transcript  
13          in all of the evidence, I don't propose to bring you  
14          through the transcripts where Mr. Barrett identifies  
15          the meeting as happening on the 13th of May and this 12:05  
16          remark being made in that context, but if I could ask  
17          you to look at day 54, page 47 [SAME HANDED].

18          A.     I have that.

19   255   Q.     And you'll see Mr. Barrett gives an answer in  
20          explaining the date, etcetera, of the meeting and how 12:05  
21          he fixed it as having happened on the 13th May, he  
22          says -- sorry, I will wait for the transcript. Page  
23          47, Mr. Kavanagh. And this answer is in response to a  
24          series of questions that I had been asking Mr. Barrett  
25          about fixing the date of the meeting and what led him 12:06  
26          to that conclusion. And he answers:

27

28                "I am going to say that I was genuinely concerned about  
29                the focus on the date rather than the content of the

1 discussion and I was somewhat taken aback by that and I  
2 tried to facilitate the Tribunal with the work I did  
3 overnight. I think there is an email in there that  
4 refers to a conversation with the Commissioner, Cyril  
5 and I think it's the evening of the 12th." 12:07

6  
7 Now, we will come back to that in a moment, just in  
8 light of what Mr. Rogers had to say yesterday.

9 Mr. Barrett goes on to say:

10  
11 "And I think that from my triangulation of it I believe  
12 the meeting took place on the 13th." 12:07

13  
14 So Mr. Barrett uses the conversation which he says took  
15 place on the 12th to identify that the meeting, and 12:07  
16 therefore the remark made by you, happened on 13th of  
17 May. And he goes on to say:

18  
19 "And I think that from my triangulation of it, I  
20 believe the meeting took place on the 13th. For me, I  
21 am in absolutely no doubt that this was sent to me, it  
22 was sent to me in advance of the Tribunal commencing.  
23 I appreciate that there is a requirement to consider  
24 the period of time between when this was sent to me and  
25 when the Tribunal commenced. I am offering you my best  
26 evidence and I am speaking truthfully..."

27  
28 And I say:  
29

1 "Now, Mr. Barrett, let's be clear, you said that it was  
2 on the 13th May."

3  
4 And he answers:

5  
6 "Yes."

7  
8 I say:

9  
10 "And you confirmed that in your evidence yesterday." 12:08

11  
12 And he says:

13  
14 "Yes."

15  
16 And there is then a series of questions and I am not 12:08

17 going to laboriously bring you through all of the  
18 sections in the various transcripts where the 13th May  
19 is identified by Mr. Barrett as the day in question.  
20 But I just ask you to keep that transcript open for the 12:08  
21 moment, that section of the transcript open for the  
22 moment. Now, late yesterday, Mr. Rogers raised a  
23 possibility in the face of that evidence that the  
24 meeting -- or that the remark -- the meeting and  
25 therefore the remark, may have happened on another day, 12:08  
26 possibly the 11th, 12th of May. And if I could just  
27 ask you to look at one other transcript, which is day  
28 56, page 98 [SAME HANDED].

29 A. Yes, I have that.

1 256 Q. And what Mr. Rogers says is that:

2

3 "And he has told the Tribunal that, certainly when he  
4 commenced giving his evidence he said that he believed  
5 it was on the 11th, 12th, 13th of May that he had had  
6 this encounter with you in your room wherein you said  
7 that quote "we are going after him in the Commission".  
8 Now I just want to suggest to you that it's quite clear  
9 that Mr. Barrett certainly on the 12th May 2015, in the  
10 evening of that day, had the opportunity to have heard  
11 you to say the words that he says you said. Do you  
12 agree with me that that opportunity arose?"

13

14 And I will come back to that question of the  
15 opportunity in just a moment. But that is the way  
16 Mr. Rogers said yesterday that in fact Mr. Barrett  
17 believed that the meeting may have happened on the  
18 11th, 12th, 13th of May. Now, I am sorry to be  
19 throwing transcripts at you, Mr. Dunne. If you could  
20 look at day 54, page 16.

12:10

12:10

21 A. 54. Page?

22 257 Q. 16.

23 A. 16. I have that.

24 258 Q. Yes. And Mr. Barrett, in response to questioning by  
25 Mr. McDowell, where Mr. McDowell is raising the  
26 possibility with him that he could be wrong about the  
27 date and maybe it happened at a different time, and  
28 it's that is rejected by Mr. Barrett, but in this  
29 particular section, page 16, he says, Mr. Barrett says:

12:11

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

12:11

Q. Yes.

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

Q. All right."

12:11

And he makes no reference to the meeting possibly taking place on the 11th. He goes on to say:

"A. On Tuesday I had a series of meetings in the Department of Justice with officials of the Department of Justice relating to the unwinding of FEMPI legislation. On Wednesday I was in the office, that is the 13th May. On 14th, I was at a briefing delivered by the Department of Finance in the offices of the Department of Justice, in the atrium of the Department of Justice. On the day following, the Friday, I was all day in the Garda College.

...

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

Now, are you aware -- that is the only section that I see that Mr. Rogers could have been referring to

1 Mr. Barrett as having said the meeting possibly taking  
2 place on the 11th, 12th, 13th. Are you aware of any of  
3 the other parts of the transcripts where that was  
4 raised as a possibility by Mr. Barrett?

5 A. I don't think I am, no. 12:12

6 CHAIRMAN: Well, I noted the question and I said to  
7 myself, there isn't actually a statement to that  
8 effect. But there it is. We all make mistakes. It's  
9 not a problem.

10 MR. DIGNAM: And I am not levelling this as a 12:12  
11 criticism.

12 CHAIRMAN: No, I appreciate what you are doing,  
13 Mr. Dignam.

14 259 Q. MR. DIGNAM: Now, it's a matter for the -- sorry, if I  
15 could just ask you, as I understand it, Mr. Dunne, the 12:13  
16 suggestion that is now being made, that the meeting may  
17 have taken place on -- and therefore you making the  
18 statement, may have taken place on 12th of May, not the  
19 13th as stated by Mr. Barrett, there's I think two  
20 elements to that. One is, two emails that were sent by 12:13  
21 Mr. Barrett and secondly, a presumption which is being  
22 made by Mr. Barrett. And if I could ask you to turn to  
23 4985.

24 A. Yes, I have that.

25 260 Q. Now, the first of those emails at the bottom of the 12:13  
26 page is an email from Mr. Barrett to a number of  
27 people, including you, and I think the Commissioner's  
28 office, isn't that right?

29 A. That's correct.

1 261 Q. Sent at 23:30 on the night of the 12th May. And I am  
2 not going to read the whole email, Mr. Barrett, but  
3 what Mr. -- sorry, Mr. Dunne, what Mr. Barrett says is:  
4

5 "Dear Mr. Banks

12:14

6 Following our meeting this evening I spoke with the  
7 Commissioner as promised."  
8

9 Now, that clearly suggests that Mr. Barrett had a  
10 conversation with the Commissioner on the night -- on  
11 the evening of the 12th May.

12:14

12 A. That's correct.

13 262 Q. Yes. And above that is an email from Mr. Barrett to --  
14 addressed to you -- a number of people, but including  
15 you and the Commissioner. And on the second paragraph,  
16 he says:

12:14

17  
18 "As I said last night."  
19

20 Okay.

12:15

21 A. Yes.

22 263 Q. Now, again, that refers to a conversation. We don't  
23 know precisely with whom, but it does seem to connect  
24 with the first email which I opened to you which refers  
25 to him speaking with the Commissioner, is that the way  
26 would you read that?

12:15

27 A. Yes, that is how I would read that.

28 264 Q. Now they are the two emails that have been identified  
29 by Mr. Barrett as, with this triangulation exercise,



1 identifying the 13th May as the date of the meeting  
2 but, if I understand what Mr. Rogers was asking you  
3 yesterday correctly, they are being suggested as  
4 suggestive of the meeting taking place on the night of  
5 the 12th May?

12:15

6 A. Yeah.

7 265 Q. And the second element of that, it seems, the  
8 presumption made by Mr. Barrett, if you look at day 55,  
9 page 71 --

10 A. I have that.

12:16

11 266 Q. -- you see right towards the bottom of the page,  
12 Mr. Barrett is asked:

13

14 "And if neither the Commissioner went back to the  
15 Headquarters on the night of the 13th, when she  
16 returned and if Mr. Dunne is correct in saying that he  
17 was away at a sporting meeting, it would appear that  
18 neither of them were there on the night or evening of  
19 the 13th, but they were there on the 12th, is that  
20 right?"

12:17

12:17

21

22 And Mr. Barrett answers:

23

24 "I said I met with them, so I presume "As I said last  
25 night" I think it refers to a meeting."

12:17

26

27 So, it seems that the height of what is being suggested  
28 is that there is a possibility that there was a meeting  
29 on the night of the 12th, but Mr. Barrett hasn't said

1 that there was a meeting with you and the Commissioner  
2 on the night of the 12th, simply that he presumes  
3 because he refers to speaking to somebody that there  
4 was in fact a meeting, but he doesn't give any such  
5 evidence of any such meeting taking place. Now, you 12:17  
6 were asked yesterday don't those emails show that there  
7 was an opportunity on the night of the 12th for you to  
8 have made the comment that you did, and you answered  
9 yes. I think that follows if there was a conversation  
10 with you at all -- and that is not clear, but if there 12:18  
11 was a conversation with you then there was a  
12 possibility that you could have said something, and  
13 that you could have made this remark. I have to put it  
14 to you and do you agree, Mr. Dunne, that it is also  
15 open to understand those emails to the effect that 12:18  
16 there wasn't a meeting but there was a conversation,  
17 perhaps on the telephone, isn't it open to that  
18 interpretation?  
19 A. I think it is. Yes.  
20 267 Q. And is it open to the interpretation that Mr. Barrett 12:18  
21 spoke with the Commissioner but not to you?  
22 A. Absolutely.  
23 268 Q. And if I could just then ask you to look again at day  
24 54, page 47. And this is the section that I asked you  
25 to keep open, Mr. Dunne. You see halfway through 12:19  
26 Mr. Barrett's answer, he says:  
27  
28 "I think there is an email in there --"  
29

1 which I take it to refer to the emails I have just  
2 opened.

3  
4 "-- That refers to a conversation with the  
5 Commissioner, Cyril, and I think it's the evening of 12:19  
6 the 12th."

7  
8 Now, is that open to the interpretation, in your view,  
9 that it was a telephone conversation or may have been a  
10 telephone conversation rather than a meeting? 12:19

11 A. It does, yeah. And it doesn't necessarily -- I am only  
12 just reading this, it doesn't necessarily -- sorry, I  
13 think it's saying that it was a conversation with the  
14 Commissioner and with me.

15 269 Q. Yes. 12:20

16 A. I am not reading it that it says at the same time. But  
17 that is the best that I can do.

18 270 Q. Now, the evidence from Mr. Barrett was to the effect  
19 that he was at a Department -- at a meeting or series  
20 of meetings I think in the Department of Justice on the 12:20  
21 12th May?

22 A. Mm-hmm.

23 271 Q. Were you at those sessions or meetings?

24 A. No.

25 272 Q. No. Now, the emails which Mr. Barrett has produced as 12:20  
26 being the basis for him identifying the 13th of May as  
27 being the date of the conversation and you allegedly  
28 making this remark, contain -- on page 4979 and 4980,  
29 they contain a series of emails back and forth between

1 I think the Department and Mr. Barrett and a number of  
2 other recipients, including you, in relation to -- and  
3 they start at the bottom of page 4980, in fact. There  
4 is a meeting, Mr. Banks of the Department of Justice  
5 and Equality says that:

12:21

6  
7 "I can now confirm that the initial discussions on the  
8 above matter --"

9  
10 which is the unwinding the FEMPI measures.

12:21

11  
12 "-- involving yourselves are scheduled for 4:30pm next  
13 Tuesday, 12th of May 2015 in the atrium at 51  
14 St. Stephen's Green. I would also like to invite to  
15 you a general briefing session on the fiscal situation  
16 to be provided by the Department of Justice on a  
17 different day."

12:22

18  
19 And there is then a further email immediately above  
20 that from Mr. Banks:

12:22

21  
22 "Hi All

23 Further to my email below, I would be grateful if you  
24 could be present at 51 St. Stephen's Green for 4:00pm  
25 tomorrow, Tuesday, 12th May. For security reasons and  
26 access to the building it is critically important that  
27 the names of those attending the meeting are provided  
28 to --"

12:22

1 A named person

2

3 "-- in advance and the contact details are provided  
4 below."

5

12:22

6 So I think that logically refers to the meeting which  
7 is fixed for 4:30 in the atrium in the Department of  
8 Justice. And then, if you go immediately above that  
9 there is a further email from Mr. Banks on the 11th  
10 asking Mr. Barrett to let him know in the morning who  
11 will be attending on the management side from An Garda  
12 Síochána, and then a reply from Mr. Barrett on page  
13 4979 saying that:

12:22

14

15 "I will be there from 1:45 --"

12:23

16

17 This is on 12th of May.

18

19 "I will be there from 1:45 and Chief McLoughlin will be  
20 there with me for 4:00pm."

12:23

21

22 And I think Mr. Barrett has given evidence that he was  
23 in the Department of Justice at those meetings on that  
24 day, and I think there for 4:00pm for the meeting to  
25 start at 4:30.

12:23

26

27 Now, would you agree that that suggests that  
28 Mr. Barrett was engaged at briefing sessions and  
29 meetings in the Department of Justice on the afternoon

1 of the 12th May?

2 A. Yes, it does. And what it suggests to me is that, and  
3 this is based just on my reading of the -- of the  
4 people receiving the various emails, so they are  
5 actually -- they are the associations, the Garda 12:23  
6 associations, so GRA, Garda Representative Association,  
7 the Garda sergeants and inspectors, the superintendents  
8 and the chief superintendents, so it's an industrial  
9 relations meeting --

10 273 Q. Yes. 12:24

11 A. -- with outside -- with members of An Garda Síochána,  
12 but outsiders really.

13 274 Q. Everybody will understand the -- everybody's desire to  
14 unwind the FEMPI legislation.

15 A. Yes. 12:24

16 275 Q. Are you saying that there would have been quite a  
17 number of people at that meeting?

18 A. Yes, yes.

19 276 Q. And have you any idea from your experience how long  
20 that type of briefing session or meeting would last? 12:24

21 A. Well, unless it broke down, which is always a  
22 possibility, it would tend to go on for an extended  
23 period of time.

24 277 Q. Yes. Now --

25 A. But I can't say -- 12:24

26 278 Q. You can't say.

27 A. -- on this particular meeting.

28 279 Q. Now, just for completeness' sake, Mr. Dunne, and just  
29 to avoid any suggestion that you are focusing on a

1 particular day, can I ask you -- you have been very  
2 clear to the various people who have questioned you.  
3 You say this meeting and conversation, and therefore  
4 the remark by you, didn't take place on the 13th May?

5 A. Correct.

12:25

6 280 Q. Yes. Did it take place on the 12th May?

7 A. The remark, no, it didn't.

8 281 Q. Did it take place on the 11th May?

9 A. No, it didn't.

10 282 Q. Did it ever take place?

12:25

11 A. No.

12 283 Q. And how can you be so sure of that?

13 A. Because I was not in a position to -- first of all, I  
14 wasn't involved -- I didn't know what was going on in  
15 the Commission. I wasn't involved in the strategy. I  
16 am not even convinced that there was a particular  
17 strategy prior to the 12th or 13th May, and that is  
18 based on my understanding of what has gone on in this  
19 room. I had no engagement, no involvement. There had  
20 been no discussions at the executive. I had no basis  
21 on which to say it.

12:26

12:26

22 MR. DIGNAM: Yes. Okay. Thank you, Mr. Dunne.

23

24 THE WITNESS WAS RE-EXAMINED BY MR. MCGUINNESS:

25

12:26

26 284 Q. MR. MCGUINNESS: Mr. Dunne, yesterday, Mr. Rogers was  
27 asking you about your answer on page 2987 of your  
28 statement to the investigators, and perhaps we could  
29 bring that up. But the question being put to you by

1 the investigators was:

2  
3 "I have been asked whether I attended any other of the  
4 Garda senior management team preparatory meetings in  
5 advance of the O'Higgins Commission of Investigation." 12:26

6  
7 So it was directed to your state of knowledge in  
8 advance of the Commission commencing, you understand  
9 that?

10 A. Correct. 12:27

11 285 Q. And your answer was:

12  
13 "I didn't know there were any such meetings. Certainly  
14 it was never an agenda item at the Garda senior  
15 management meetings. My memory is that those centrally 12:27  
16 involved were the Garda Commissioner and Chief  
17 Superintendent Fergus Healy. I do not recall being at  
18 any such meeting. I certainly had an understanding  
19 that the approach was to be putting questions, going  
20 back to the duty of care. The approach was not one of 12:27  
21 taking everything that was presented and letting it  
22 lie. As such, there would have been questions put. I  
23 must have been on the periphery of these matters to  
24 know this. However, I cannot recall any specific  
25 meeting that I attended in this matter." 12:27

26  
27 Now, what I wanted to ask you is this: Firstly, had  
28 you any knowledge of how the Garda Síochána had  
29 approached other commissions that may have been in



1 being, after you came into office in April '13?

2 A. I was aware of the Fennelly Commission and -- yes, so I  
3 was aware of that.

4 286 Q. Yes. Were you aware of how that was operating or --  
5 A. Yes, I was aware of how it was operating because I was 12:28  
6 actually a witness. I appeared in front of Justice  
7 Fennelly.

8 287 Q. Yes. And you gave evidence, and was there  
9 cross-examination from other parties present or was it  
10 a one-to-one? 12:28

11 A. It was -- it wasn't one-to-one, in that Mr. Justice  
12 Fennelly was there in the chair, and it was -- I would  
13 describe it as the equivalent of the Tribunal team  
14 here, was putting the questions.

15 288 Q. Yes. He had counsel engaged on his behalf. But were 12:28  
16 there any other parties --

17 A. No.

18 289 Q. Any other parties present or any cross-examination?  
19 A. No.

20 290 Q. Okay. So certainly your understanding, your peripheral 12:28  
21 understanding of envisaging the putting of questions  
22 here, didn't come from that?

23 A. No, it didn't.

24 291 Q. No.  
25 A. No. 12:29

26 292 Q. Okay. Now, the second issue then is, the Judge in  
27 charge of the O'Higgins Commission, Judge O'Higgins,  
28 wrote to the Commissioner on the 24th February  
29 outlining how he intended to proceed and providing the

1 rules of procedure and setting out a time, an  
2 indicative sort of timescale for certain matters. Did  
3 you become aware of how Judge O'Higgins intended to  
4 operate?

5 A. No. 12:29

6 293 Q. Did you get that letter or those rules of procedure?

7 A. No, I didn't.

8 294 Q. Okay. Mr. Ruane, Head of Legal Affairs at the time,  
9 and who has given evidence, he gave evidence of writing  
10 a letter, a case, as it were, in relation to the 12:29

11 representation of An Garda Síochána at the O'Higgins  
12 Commission, and he was suggesting that there were  
13 corporate and reputational issues at stake and he  
14 suggested that the Commissioner would need to be  
15 represented separately from the Department and 12:30  
16 recommended that nominations of counsel be sought,  
17 et cetera. Were you aware of that proposal?

18 A. No, I wasn't.

19 295 Q. All right. Well, it went to Deputy Commissioner Kenny,  
20 and he sent a minute on to the Commissioner on the 7th 12:30  
21 April, endorsing the recommendation. Would something  
22 like that, or did that, in fact, come before the  
23 executive body?

24 A. No, no, it didn't.

25 296 Q. Okay. 12:30

26 A. No.

27 297 Q. So those sort of issues about -- obviously, deputy  
28 commissioner -- Deputy Acting Commissioner Kenny  
29 envisaged that that would be a charge on the Garda

1           vote, as it were; it would come out of Garda resources?

2           A.    I would --

3 298 Q.    Would that be something that you would be involved in  
4           considering?

5           A.    No. No, the approval for spends was not done through    12:31  
6           the CAO office or indeed the finance function within  
7           the CAO office.

8 299 Q.    Yes.

9           A.    The approval was within the operating unit.

10 300 Q.    Yes. And the issue of protecting the, as it were,           12:31  
11           either the corporate reputation -- reputational issues  
12           for the Commissioner, did you have any discussion with  
13           Mr. Ruane or with the Commissioner about doing that?

14           A.    No.

15 301 Q.    Okay. The exclusion then of any, as it were, residual           12:31  
16           knowledge about how the Commission would operate from  
17           not be [sic] familiar with the rules and not having  
18           discussed it with Mr. Ruane, how is it that you had  
19           this peripheral knowledge of how An Garda Síochána were  
20           going to approach matters at the Commission?           12:32

21           A.    I think, as I was saying yesterday, my own -- I have  
22           racked my brains about this. The only possibility that  
23           I can see is that it was actually later, so that my  
24           timing is wrong, because, as I explained, there was a  
25           superintendent who had been running my office and had           12:32  
26           since moved to another office, was to be interviewed in  
27           the -- sorry, by the -- in the Commission.

28 302 Q.    Yes.

29           A.    Was to give evidence in the Commission. He was

1 preparing for that, actually, in my office, and he  
2 would have been there a number of days and over a  
3 number of days, and I can only believe that that is  
4 where I picked that up, because he was there preparing  
5 and looking to arrange things with his own counsel. 12:32

6 303 Q. All right. But his answer seems to envisage what was  
7 going to happen, and you seem to have contemplated, in  
8 your answer to the investigators, that certainly there  
9 would be challenge to parties' or witnesses' evidence,  
10 embracing presumably Sergeant McCabe? 12:33

11 A. That was my understanding. And again, I would have  
12 had, and this is why I said about the duty of care, I  
13 had a general understanding, not to do with the -- not  
14 to do with the Commission, but the Commissioner, on a  
15 regular basis, would talk about her duty of care to 12:33  
16 everybody in the organisation. That is where I think I  
17 picked it up.

18 304 Q. Yes. And prior to receiving Mr. Barrett's statement  
19 and being questioned about it by the investigators, did  
20 anyone at any stage in Garda HQ or did Mr. Barrett ever 12:33  
21 suggest to you from May 2015 until November 2017 that  
22 you had made this remark or that it was being  
23 attributed to you in some circumstance?

24 A. No, it came as a complete surprise to me.

25 MR. MCGUINNESS: Thank you, Mr. Dunne. 12:34

26  
27 MR. CYRIL DUNNE WAS QUESTIONED BY THE CHAIRMAN:

28  
29 CHAIRMAN: Just two things I wanted to ask you about.

1 A. Yes.

2 305 Q. CHAIRMAN: This bank that has been referred to, I  
3 didn't, in fact, pick up the spelling from what was --  
4 A. DEPFA, D-E-P-F A.

5 306 Q. CHAIRMAN: And is there something kind of sinister 12:34  
6 about that bank?  
7 A. Sinister --

8 307 Q. CHAIRMAN: I don't mean to denigrate anybody. Is there  
9 something, in other words, that one could be worried  
10 about in relation to that bank? 12:34  
11 A. Not at this point in time. It was a significant  
12 failure of a bank in the financial crisis. If it had  
13 been for the account of Ireland, it would have been  
14 probably bigger than the combination of AIB and Bank of  
15 Ireland in terms of impact. 12:35

16 308 Q. CHAIRMAN: So we are talking about more than 30  
17 billion?  
18 A. It had a balance sheet of, from memory, about -- from  
19 memory, about 200 billion.

20 309 Q. CHAIRMAN: Is that in the negative? 12:35  
21 A. That was the balance sheet. The particular issue --

22 310 Q. CHAIRMAN: The deficit?  
23 A. The particular issue was liquidity.

24 311 Q. CHAIRMAN: Yes. No, it's just I hadn't come across --  
25 I sat in the Commercial Court for five years and that 12:35  
26 is one bank I hadn't come across.  
27 A. Right.

28 312 Q. CHAIRMAN: Do you speak German?  
29 A. No, I don't.

1 313 Q. CHAIRMAN: I was just wondering how the Germans would  
2 ask you to do a job which would be based in Germany?

3 A. The working language was English --

4 314 Q. CHAIRMAN: Okay.

5 A. -- in Germany. It was in Munich.

12:35

6 315 Q. CHAIRMAN: Where they speak German. But that is the  
7 way it was. All right. Thank you very much.

8

9 THE WITNESS THEN WITHDREW

10

12:36

11 MR. MARRINAN: Sir, the next witness is Chief  
12 Superintendent Anthony McLoughlin, please.

13 CHAIRMAN: The plan today, by the way, is to break at a  
14 quarter to and to come back at quarter past, not 1:00,  
15 2:00.

12:36

16 MR. MCDOWELL: Chairman, could I just inquire, because  
17 I made a commitment for tomorrow reasonably confident  
18 that today would be the last day of the hearing, could  
19 I have any intimation from anybody as to whether the  
20 recall of Mr. Waters and Mr. O'Leary is likely to be a  
21 lengthy matter.

12:36

22 CHAIRMAN: Well, what I said yesterday I hope is going  
23 to be true, Mr. McDowell. Surely it's going to be very  
24 quick.

25 MR. MCDOWELL: That is what I would have --

12:36

26 CHAIRMAN: Yes. I don't see a great deal to be asked.

27 MR. MCDOWELL: I don't want to break commitments that I  
28 have made to other third parties, Judge.

29 CHAIRMAN: No, no, and I understand. Look, if

1 necessary, Mr. Barnes can speak to the stenographers at  
2 lunchtime and we will see what we can do about sitting  
3 late, if necessary. Yesterday it was nearly 6 o'clock,  
4 by the way.

5 MR. MCDOWELL: In that context, could I just indicate 12:37  
6 that, at least on my client's part, he has no objection  
7 to Chief Superintendent McLoughlin being led to  
8 whatever the relevant bits are.

9 CHAIRMAN: well, I would be a wee bit worried about the  
10 particular bits that are actually of importance. 12:37

11 MR. MCDOWELL: No, just to those bits. That's all I am  
12 saying, Judge.

13 CHAIRMAN: Yes, well, he can be led up to those bits  
14 certainly. But I have a serious worry about the  
15 particular issues that are now very much in question. 12:37  
16 So, sorry, Mr. Murrinan, so we might get started. We  
17 have seven minutes.

18 MR. MARRINAN: Chief Superintendent McLoughlin, please.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

1 CHIEF SUPERINTENDENT ANTHONY MCLOUGHLIN, HAVING BEEN  
2 SWORN, WAS DIRECTLY EXAMINED BY MR. MARRINAN:  
3

4 316 Q. MR. MARRINAN: I think, Chief Superintendent, you are  
5 attached to the Human Resources and People Development 12:38  
6 section of An Garda Síochána?

7 A. That's correct.

8 317 Q. And how long have you been so attached?

9 A. I was there initially as a superintendent and I went  
10 back in 2013 as a chief superintendent. 12:38

11 318 Q. And I think you were -- your line manager was Mr. John  
12 Barrett, is that correct?

13 A. Yes, that's correct.

14 319 Q. From what year?

15 A. From the time he joined the organisation, which I think 12:38  
16 was in, was it the latter end of '14.

17 320 Q. So in 2015 there was a meeting on the 23rd February of  
18 2015 that we have heard about. Were you present at  
19 that meeting?

20 A. I believe I was, but I would like to see the -- if I 12:39  
21 could, please.

22 321 Q. Yes, well you can take it that you were, but I am just  
23 going to ask you because I want to move this along, you  
24 are here to deal with a discrete issue.

25 A. Yes, no problem. 12:39

26 322 Q. But just in terms of the general background. I am not  
27 going to into the details of the meeting. But were you  
28 familiar with the efforts that were being made in  
29 relation to Sergeant McCabe?



1 A. Yes, I was, and I was a party to that.

2 323 Q. And those were human resource issues and that is why  
3 you were involved?

4 A. Yes, primarily, and I also have responsibility for a  
5 confidential service that we operate as well and that 12:39  
6 was part of the support mechanisms that was put in  
7 place.

8 324 Q. Now, if I could come to the discrete issue on which you  
9 are being called. Were you aware prior to the  
10 commencement of the O'Higgins Commission of any 12:39  
11 strategy that was being adopted in relation to Sergeant  
12 Maurice McCabe?

13 A. No.

14 325 Q. Were you present at any meetings up until the 14th May  
15 of 2015 when it commenced, were you present at any 12:40  
16 meetings where a strategy in relation to how Sergeant  
17 Maurice McCabe would be approached at the Commission?

18 A. Absolutely not.

19 326 Q. Did you hear any talk from any quarter at all in Garda  
20 Headquarters in relation to a stance that was being 12:40  
21 adopted in relation to Sergeant McCabe?

22 A. No.

23 327 Q. In 2015, at any point in time did Mr. John Barrett come  
24 to you and indicate to you that he had a conversation  
25 with Cyril Dunne that had shocked him in relation to 12:40  
26 the Commissioner going after or "we" going after  
27 Sergeant McCabe at the O'Higgins Commission?

28 A. I have no memory of that conversation.

29 328 Q. Well, is it something that you would remember?

1 A. Most probably. It would depend on the context of how  
2 it was mentioned, but probably would, given the context  
3 of it and the seriousness of it, but some of it would  
4 depend on how it was said, where it was said as well,  
5 but I don't have a memory of it and I have no note of 12:41  
6 it and I have no recollection of it, I'm afraid.

7 329 Q. Well, you know this has become an issue at the  
8 Tribunal, don't you?

9 A. Yes.

10 330 Q. And I'm sure you have thought about it? 12:41

11 A. I have, long and hard.

12 331 Q. Yes. And I am sure you appreciate the significance of  
13 this?

14 A. Absolutely.

15 332 Q. And effectively, when he was giving evidence, 12:41  
16 Mr. Barrett indicated, and we will come to the exact  
17 words that he used shortly, but he indicated to the  
18 Chairman that this was something that he had mentioned  
19 to you, namely his conversation with Cyril Dunne in May  
20 of 2015, that it was something that he had mentioned to 12:42  
21 you some six weeks or two months afterwards?

22 A. I was aware -- I am aware that that is what  
23 Mr. Barrett's evidence was, yes.

24 333 Q. Yes. And you appreciate in the overall context of the  
25 term of reference that the Tribunal is looking into, 12:42  
26 the significance of a remark like that indicating that  
27 a decision had been made to go after Sergeant McCabe at  
28 the O'Higgins Commission, isn't that right?

29 A. Yes.

1 334 Q. So surely this would be a matter that would stick out  
2 in your mind if it had, in fact, been said to you and  
3 Mr. Barrett had expressed his shock at the stance being  
4 taken by the organisation to Sergeant McCabe?  
5 A. Yes, most probably, yes. 12:42  
6 335 Q. Well, can we exclude the possibility that it was said  
7 to you then?  
8 A. Well, all I can -- my evidence is that I have no  
9 memory. I do not remember Mr. Barrett saying that to  
10 me. 12:42  
11 336 Q. Yes. But you expect to have a memory of it had it been  
12 said?  
13 A. In all possibility, yes.  
14 337 Q. Was it said in 2016, do you have a recollection of  
15 anything being said to you by Mr. Barrett? 12:43  
16 A. No, no.  
17 338 Q. And then we come to December of 2017.  
18 A. Yes.  
19 339 Q. Do you have a recollection of this issue coming to  
20 light? 12:43  
21 A. Yes, I do.  
22 340 Q. Will you tell us about that?  
23 A. I don't have the times or the dates, but it was raised  
24 with me by Mr. Barrett in a kind -- in a conversation  
25 that we were having, and he just simply asked me did I 12:43  
26 remember him saying remarks associated with a meeting  
27 with Mr. Dunne, and I said, "no, John, I don't".  
28 341 Q. Was that the end of the conversation?  
29 A. Yes.

1 342 Q. So he broached the topic, did he?  
2 A. Yes.

3 343 Q. And he introduced it into conversation?  
4 A. Yes.

5 344 Q. And was referring back to a conversation that he 12:43  
6 allegedly had with Mr. Cyril Dunne in 2015?  
7 A. And with me as well, yes.

8 345 Q. In circumstances where you appreciated the significance  
9 of this conversation because it had come into the  
10 public domain, is that right? 12:44  
11 A. Yes, yes.

12 346 Q. So you were then aware of the significance of this  
13 conversation that was -- allegedly took place between  
14 yourself and Mr. Barrett --  
15 A. Yes. 12:44

16 347 Q. -- in 2015?  
17 A. Yes.

18 348 Q. Is that right?  
19 A. Yes.

20 349 Q. You had no recall of it? 12:44  
21 A. No.

22 350 Q. And you indicated to him that you had no recall of it,  
23 is that right?  
24 A. Yes, yes.

25 351 Q. So when was the next that you heard of it? 12:44  
26 A. The next was the 26th January last, a few days ago --  
27 or a few weeks ago. I had a missed call from John -  
28 it's in my statement - I think it was around 9:00,  
29 9:30, or thereabouts, on the -- I think it was a Friday

1 morning, and then I had a text message that I missed as  
2 well, and I was halfway through a meeting when I picked  
3 up on both. And then before the meeting finished --  
4 generally when I am at meetings, and in this case I was  
5 at a meeting with the representative bodies looking at 12:45  
6 an IR issue with them, I don't answer my phone, but  
7 later on in the meeting, closer to lunchtime, the phone  
8 rang again, and it was John's number, and a colleague  
9 of mine took it and she indicated to me that I needed  
10 to go down and visit Mr. Barrett's office as quickly as 12:45  
11 I could. So once the meeting finished, I went down to  
12 John's office, and I think, I am not sure of the time,  
13 I think it was about half one by the time I got down to  
14 him, and John was preparing to leave the office. He  
15 had shown me his files and the things that he had put 12:45  
16 together in preparation for a visit to his counsel, and  
17 he raised it again with me there about did I recall a  
18 conversation he had with me, and I said, "no, John, the  
19 only conversation -- "

20 352 Q. At that time, was he asking you did you recall the 12:45  
21 conversation that you had had allegedly in May or  
22 June --

23 A. No.

24 353 Q. -- of 2015, or was it the conversation that you had had 12:46  
25 with him in the December gone, December 2017?

26 A. I assumed it was his reference to the earlier  
27 conversation he thought he had, and I just replied,  
28 "No, I don't, John. As I said to you in  
29 November/December, I don't recall or remember having

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that conversation."

354 Q. Yes. Now, if we could have page 5012 --

CHAIRMAN: I think it is probably the right time to  
break.

12:46

THE HEARING ADJOURNED FOR LUNCH

1                   THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2  
3                   MR. MARRINAN: Chief Superintendent McLoughlin, please.

4 355 Q. Chief Superintendent, you appreciate the reason that  
5                   you're here is to deal with this discrete issue?                   14:16

6                   A. Yeah.

7 356 Q. And it arose on day 53 of the hearing. If we could  
8                   have page 5012 on the screen, please. This is an  
9                   extract from the hearings that was read to you by our  
10                  investigators, all right?                   14:16

11                  A. Yeah.

12 357 Q. I'm just going to go through it.

13                  A. I'm waiting for it to come up.

14                  CHAIRMAN: You will find it in volume 9.

15                  MR. MARRINAN: You should have it on the screen. Yes.           14:16

16  
17                  "Chairman: Did you talk to anyone about it at the  
18                  time?"

19  
20                  This is a reference to the conversation with Cyril           14:16  
21                  Dunne.

22  
23                  "A. I didn't.

24                  CHAIRMAN: At the time?

25                  A. At the time, no, I didn't. I talked to people           14:17  
26                  subsequently about it, but not at the time.

27                  CHAIRMAN: You mean a year later?

28                  A. Oh, yes.

29                  CHAIRMAN: Two years later?

1 A. weeks and months later. As it became significant.  
2 And no, at the time.

3 CHAIRMAN: What are we talking about?

4 A. My first discussion around this would be probably  
5 in the six weeks or two months after, when the whole 14:17  
6 issue began to emerge in full technicolour.

7 CHAIRMAN: What did you say to who?

8 A. My first correspondence -- correspondent was Chief  
9 Superintendent Tony McLoughlin, who is a member of my  
10 staff. 14:17

11 Q. And you wrote to him?

12 A. No, I didn't write to him. I would have had a  
13 conversation with him about it."

14

15 So if we just stop there. Before lunch, I dealt with 14:18  
16 you --

17 A. Yeah.

18 358 Q. -- your recollection of such a conversation. You have  
19 no recollection --

20 A. I don't, no. 14:18

21 359 Q. -- of such a conversation. And your feeling is that if  
22 you had had such a conversation, that you would recall  
23 it, is that a fair summary of your position?

24 A. Yes.

25 360 Q. If we could then just move further down: 14:18  
26

27 "CHAIRMAN: I'm not talking about that. I'm talking  
28 about telling Chief Superintendent Tony McLoughlin.

29 A. He came to me, sir, and he said that I did raise it



1 with him and I don't know what his date on that is, or  
2 whether he has one.

3 CHAIRMAN: How can he know about raising it?

4 A. Because we talked about --

5 Chairman: -- with you, unless had you previously 14:18  
6 raised it with him?

7 A. Yes. He says I did. And that's how it is that I  
8 am reporting this to you. And I am talking with him in  
9 advance of coming here to give evidence.

10 CHAIRMAN: When? 14:19

11 A. The last number of days. I said, Tony, did I raise  
12 this with you and he said --

13 CHAIRMAN: And he said?

14 A. He said yes, you did.

15 CHAIRMAN: Raised what? 14:19

16 A. The meeting at which Cyril said to me that you know  
17 we're going after him in the Commission, that I had  
18 made reference to that.

19 CHAIRMAN: Right."

20 14:19

21 If can I just bring you up to the line here, in answer  
22 he says:

23

24 "He came to me, sir."

25 14:19

26 That's actually not correct, and I think that he now  
27 accepts your report --

28 A. Yes.

29 361 Q. -- and accepted it the following day on day 54.

1 A. I understand that.

2 362 Q. That your report in relation to the conversation --

3 A. Yeah.

4 363 Q. -- on the 26th January was correct?

5 A. Yes, absolutely. 14:20

6 364 Q. But when he says there "he came to me, sir", that's not

7 correct?

8 A. No.

9 365 Q. "And he said that I did raise it with him."

10 That's not correct either, is it? 14:20

11 A. No.

12 366 Q. And then he says:

13

14 "I don't know what his date on that is or whether he

15 has one." 14:20

16

17 That seems to be referring to the 26th January.

18 A. Yes.

19 367 Q. And then it seems to be an oblique reference to perhaps

20 a conversation that took place earlier and the one that 14:20

21 you referred to --

22 A. Yes.

23 368 Q. -- in November --

24 A. Yes.

25 369 Q. -- or December? 14:20

26 A. Yes.

27 370 Q. Is that right?

28 A. That's correct.

29 371 Q. Well, whether it's either of those two dates, on both

1 dates he raised the issue with you, isn't that right?

2 A. Absolutely.

3 372 Q. And on both dates, not only did he raise the issue with  
4 you, he also told you that you had had this  
5 conversation with him back in 2015, isn't that right? 14:20

6 A. He never mentioned a year.

7 373 Q. The year?

8 A. No. He just mentioned -- he just asked me did I  
9 recollect having a conversation in relation to a  
10 meeting with Cyril. There was no date specific. And I 14:21  
11 repeatedly responded, "no, John, I don't remember  
12 that".

13 374 Q. And that's both dates, whether we're talking about --

14 A. Both dates.

15 375 Q. -- the November/December discussion or the discussion 14:21  
16 on the 26th January, is that right?

17 A. Yes, it was both dates.

18 376 Q. I don't know, Mr. Barrett may have inadvertently given  
19 the impression, but the impression that he gave was  
20 that you could support his contention that this 14:21  
21 conversation took place with Cyril Dunne, because he  
22 had told you about it. You say that that is wrong, is  
23 that right?

24 A. I cannot support that contention. I have no  
25 recollection or memory of that conversation. 14:22

26 377 Q. Just on a general note, were you aware of the fact that  
27 John Barrett was acting as, he describes it, an  
28 interlocutor with Sergeant McCabe?

29 A. I wasn't aware of the use of that word "interlocutor",

1 but I was aware, because obviously John is my boss,  
2 that he was dealing with issues associated with Maurice  
3 and that he had a lot of contact with Maurice and that  
4 he had a lot of -- you know, a lot of work to do in  
5 relation to supporting Maurice. I was aware of that, 14:22  
6 definitely.

7 378 Q. And that work started in 2015?  
8 A. Yes.

9 379 Q. And continued into 2016 and on into 2017, I think,  
10 isn't that right? 14:22  
11 A. Yes, yes.

12 380 Q. And at any time did he discuss with you any problems  
13 that Sergeant McCabe may have had in relation to how he  
14 was dealt with at the Commission of Investigation?  
15 A. No, no. 14:23

16 MR. MARRINAN: Okay. Would you answer any questions,  
17 please.

18 MR. MCDOWELL: No questions for me, Judge.

19 MR. MCCANN: I have no questions either, Chairman.

20 MR. ROGERS: No questions. 14:23  
21 MR. DIGNAM: No questions, Chairman.

22 MR. MARRINAN: Thank you very much, Chief  
23 Superintendent.

24

25 THE WITNESS THEN WITHDREW 14:23  
26

27 MR. MCGUINNESS: Chairman, the next witness is Mr. Noel  
28 Waters, who gave evidence first on the 12th January.  
29

1 MR. NOEL WATERS, HAVING BEEN PREVIOUSLY SWORN, WAS  
2 FURTHER EXAMINED BY MR. MCGUINNESS AS FOLLOWS:  
3

4 MR. ROGERS: Chairman, I propose to withdraw. Thank  
5 you. 14:24

6 381 Q. MR. MCGUINNESS: Mr. Waters, you were here on Friday,  
7 12th January?

8 A. That's correct, yeah.

9 382 Q. And you were sworn to give evidence.

10 A. Correct. 14:24

11 383 Q. And I think you were then away for some period?

12 A. Yes.

13 384 Q. You probably know, but you might just confirm this,  
14 that after your departure, the Department disclosed 77  
15 new documents that had not been previously disclosed to 14:24  
16 the Tribunal. Were you aware of that?

17 A. I was aware that the Department - which, as you know, I  
18 have left - had disclosed some additional documents,  
19 but I wasn't aware of precisely what the number of  
20 those. 14:24

21 385 Q. And obviously you -- I think you left your position,  
22 and you're in retirement now since November of 2017?

23 A. Correct, yes, yes.

24 386 Q. But we didn't have the benefit of those documents when  
25 we were taking your evidence? 14:24

26 A. That's correct, yes.

27 387 Q. And I just wanted to ask you about some few of them,  
28 just to try and assist us in our recollection -- in  
29 your recollection. Could we just look at your

1 statement, though, which is at 3351 of the book. It's  
2 book 6.

3 A. Can you put it on the screen, please?

4 388 Q. Yes.

5 A. Thank you.

14:25

6 389 Q. On the next page -- sorry, 3351, yes. 3351. Now, you  
7 say obviously in your first paragraph, introducing it,  
8 that the information set out refers to the period from  
9 the establishment until its reporting. But obviously  
10 in your second paragraph you go on to say:

14:25

11  
12 "As the Disclosures Tribunal will be aware, shortly  
13 after the publication of the report of the 11th May,  
14 controversy arose following the leaking of an apparent  
15 section of the transcript concerning the alleged legal  
16 strategy of the Garda Commissioner at the Commission.  
17 In preparing materials for responding to parliamentary  
18 questions, Dáil debates, and so forth, in relation to  
19 this matter, there would have been contact between  
20 officials, the Minister and the Garda authorities. It  
21 would have been normal practice and, as indicated,  
22 arose following the completion of the Commission of  
23 Inquiry and publication of its report. Therefore, the  
24 question of any party seeking to influence the legal  
25 strategy in question did not arise."

14:26

14:26

14:26

26  
27 Now, obviously you're referring to that period after  
28 the publication, but did you not think it relevant to  
29 disclose to the Tribunal that you had two meetings with

1 the Commissioner in that period, one on the 16th and  
2 one on the 19th?

3 A. When I provided my statement to the Commission -- or to  
4 the Tribunal, I beg your pardon --

5 390 Q. Yes. 14:26

6 A. -- at the time, I had no knowledge or had no  
7 recollection of those meetings. It was only  
8 subsequently, in fact in recent days, and having been  
9 away, as you said, that those meetings came to my  
10 attention, when I reviewed the evidence of other people 14:27  
11 who were here.

12 391 Q. Yes.

13 A. So the question of me disclosing them at the time was  
14 something that I wasn't in a position to do, as I say,  
15 because I had no recollection of them at that 14:27  
16 particular time.

17 392 Q. Yes. Now, "at that particular time", are you talking  
18 about the time when you made your statement?

19 A. When I made my statement, yes, yes.

20 393 Q. Yes. But when you were Secretary General, when the 14:27  
21 Tribunal was established in February, did you recall  
22 that you had meetings with the Commissioner which  
23 involved a discussion of her strategy at the  
24 Commission?

25 A. No, I didn't at the time either, no. 14:27

26 394 Q. So between February and the time you made your  
27 statement to the Tribunal, which was I think in early  
28 December, did you recollect on any occasion the  
29 controversy which you do refer to here, but which

1 involved the Commissioner, as it were, being called to  
2 account by the Minister?

3 A. No, I didn't.

4 395 Q. Okay. And I'm not going to take you through the  
5 various answers that you gave me, but you did assert on 14:28  
6 a number of occasions that you had no recollection of  
7 certain issues I was putting to you on day 40, 12th  
8 January, when you came here. You probably recall that?

9 A. Yes.

10 396 Q. Yes. So it's just in that context I'm going to ask you 14:28  
11 to comment on a couple of documents that you haven't  
12 been asked to comment on before.

13 A. Mm-hmm.

14 397 Q. And could we look at document, it's 4820. It's in  
15 volume 9. If you would prefer to take the books out. 14:28

16 A. The screen, I think, is -- yes.

17 398 Q. This is an email from you to Ken O'Leary, and which you  
18 see:  
19  
20 "I see the Commissioner is coming in to her --" I 14:29  
21 presume that is the Tánaiste "-- this pm. I will be in  
22 at lunchtime."  
23  
24 And if we go down the screen, you will see that you had  
25 been previously replying to Mr. O'Leary, who had sent 14:29  
26 you, sort of, a text of material, you see it there,  
27 you're commenting on it to Mr. O'Leary there on the  
28 16th May, early in the morning. And then if you go  
29 down further, we can see the original text of



1 Mr. O'Leary. He says -- this is to, obviously -- to  
2 the Tánaiste from Mr. O'Leary. It says:

3  
4 "Chris mentioned you were looking for a note on the  
5 story in the Sunday Independent about tapes introduced 14:29  
6 into evidence at the O'Higgins Commission of Inquiry  
7 disproving the evidence for the Gardaí. What seems to  
8 be happening is that sources are putting out their  
9 version of what happened at the Commission, despite  
10 that being unlawful, knowing full well that people who 14:30  
11 respect the law cannot respond. While it might be idle  
12 to speculate about motivation it would appear to be an  
13 attempt to re-run in public matters dealt with by the  
14 Commission on the basis of partial leaks. I should  
15 mention that I understand that the Commissioner is 14:30  
16 considering whether she could usefully make any further  
17 public comment, but there were obviously clear legal  
18 constraints on what she could say."

19  
20 And then the text of Section 11 is set out, and we 14:30  
21 don't need to go through that. If we go on to the  
22 following page, just here it says:

23  
24 "On the face of it then, it would not be open to us to  
25 ask the Commissioner to disclose any details of what 14:30  
26 happened in relation to evidence at private sessions of  
27 the Commission. In the circumstances, it would seem  
28 the only public response you could make to questions  
29 about these matters is along the lines of the replies

1 we gave on Friday to queries about reports which had  
2 appeared in the Irish Examiner."

3  
4 And I think they were written by Mr. Clifford. You  
5 probably recall that? 14:30

6 A. I do at this stage, yes, yes.

7 399 Q. Yes. And it says:

8  
9 "You are aware there is a prohibition in law on the  
10 disclosure of evidence given in private at the 14:31  
11 Commission. In those circumstances, it would be wholly  
12 inappropriate for you to comment on any partial  
13 disclosure as to what may have occurred. In any event,  
14 you would have no knowledge of the accuracy, or  
15 otherwise, of disclosures made, notwithstanding the 14:31  
16 provisions of the 2004 Act, nor could you properly ask  
17 the Garda Commissioner to inform you about evidence  
18 given in private at the Commission because of the legal  
19 prohibitions that are in place. What you can say is  
20 that Mr. Justice O'Higgins was in a position to hear 14:31  
21 all the evidence. It was entirely a matter for the  
22 Commission, having heard all the evidence, to reach its  
23 own conclusions and deal with whatever matters it  
24 considers appropriate in its report. That is exactly  
25 what the Commission has done and it would not be 14:31  
26 appropriate now for you to seek to go behind the  
27 conclusions he reached and in some way to try to re-run  
28 publicly the Commission's work. (It would be very  
29 strange to suggest an investigation into what evidence

1 was given to a Commission of Investigation).

2 You have expressed hope, the hope that all who are  
3 affected by the report can accept, as you do fully,  
4 that Mr. Justice O'Higgins looked at all the facts  
5 fairly and dispassionately and made every effort to do 14:32  
6 justice to the position of all.

7  
8 while you are not in a position to comment on any  
9 evidence given to the Commission in private, you are  
10 aware that, on publication, the Garda Síochána 14:32  
11 indicated that they accepted the report in full, and of  
12 course that includes all reference to Sergeant McCabe,  
13 including what it said about his having acted in good  
14 faith."

15  
16 It goes down then, and this portion appears to be in  
17 brackets:

18  
19 "It is for the Commissioner to make a statement. It  
20 is, of course, entirely a matter for the Commissioner 14:32  
21 whether she feels she is in a position or considers it  
22 would be appropriate to make any further comment,  
23 though I think, in fairness, we have to recognise the  
24 very legal constraints that everyone is subject to  
25 here." 14:32

26  
27 Now, do you recall getting that email?

28 A. Not at the time.

29 400 Q. All right.

1 A. Not at the time, no.

2 401 Q. Not at the time. And do you recall now getting it?

3 A. Having reviewed it now and having reviewed other

4 evidence, yes. And when I was referring in my

5 statement to ongoing contacts after the publication, 14:33

6 this is the type of thing that I had a sense of what

7 was going on, in the immediate aftermath of the

8 publication and following the leaking, this, as I think

9 I described, to-ing and fro-ing at the time.

10 402 Q. Yes. Well, I mean, did that trigger any memory of the 14:33

11 receipt or the content of the email of the 15th May?

12 A. This is the 15th May 20 --

13 403 Q. 2015.

14 A. No, no, no, no.

15 404 Q. Did it trigger any memory of a conversation with the 14:33

16 Commissioner on the afternoon of the 15th May?

17 A. No, absolutely not. No.

18 405 Q. Well, there was a briefing note prepared by the

19 Department for the Commissioner -- for the meeting with

20 the Commissioner, and could we look at page 4803. It's 14:33

21 quite a lengthy document.

22 A. This is the meeting of the --

23 406 Q. The meeting on the 16th.

24 A. Of May --

25 407 Q. Of May 2016. 14:34

26 A. -- 2016, yes, yes.

27 408 Q. Do you recall seeing that?

28 A. Not at the time when I was giving my evidence, but

29 subsequently in recent days when I was reviewing

1 evidence that was put before here, yes.

2 409 Q. Yes. But have you a recollection of considering that  
3 with the Minister before meeting the Commissioner?  
4 A. No, I don't. I think my -- again, having knowledge of  
5 this now at this stage, on that particular meeting -- 14:34

6 410 Q. Yes.  
7 A. -- I understand that it was actually the day before the  
8 Minister was due to take oral PQs in the Dáil.

9 411 Q. Yes.  
10 A. That, in the normal course, it would be departmental 14:34  
11 practice that if there was something -- you know,  
12 something major, for example, a production of a report,  
13 that the Minister would have a conversation with the  
14 Commissioner or the head of the prison service, or  
15 whatever the issue was. So I think that meeting may 14:34  
16 have been held -- at this remove now, I think it may  
17 have been held in that context and that the Minister  
18 was answering oral PQs the following day.

19 412 Q. Yes. And we have seen some PQs, and a PQ in response  
20 that was prepared for the Minister in relation to a 14:35  
21 question, and we've seen, and I've asked you  
22 previously, about the Minister's contribution at  
23 Leaders' Questions on the 18th May.

24 A. Yes.

25 413 Q. You recall that? 14:35  
26 A. Not specifically, no, not the particular point.

27 414 Q. Yes, yes. But there were calls, am I correct in  
28 saying, for the Commissioner to, as it were, disclose  
29 the legal advice that she got, isn't that right?

1 A. There were calls in the media, certainly. And if I  
2 remember correctly, at this remove there were also  
3 calls in the House.

4 415 Q. Yes.

5 A. In that members of the opposition had said that this 14:35  
6 could be cleared up by the Commissioner disclosing  
7 her -- breaking privilege effectively and disclosing  
8 her legal advice.

9 416 Q. Yes. And Deputy Martin, in particular, I think, gave  
10 the example of he having waived, while Minister, his 14:36  
11 privilege in relation to matters being considered by, I  
12 think, the blood inquiry, if you recall?

13 A. I don't recall that, no.

14 417 Q. It's on the record of the House anyway, for the 18th.  
15 But he, apart from the commentators, raised the issue, 14:36  
16 isn't that right?

17 A. I can't say who precisely it was, other than I knew  
18 that it was raised, yes.

19 418 Q. And it was raised on the 17th, isn't that right, in the  
20 House? 14:36

21 A. I can't get -- I don't have the quite sequence.

22 419 Q. Yes.

23 A. But I take it if you say it is, that it was, yes.

24 420 Q. Well, what I want to ask you is: You didn't seem to  
25 recall, the last time you were here, whether the 14:36  
26 Commissioner raised this issue in the meeting with the  
27 Minister on the 16th May --

28 A. I --

29 421 Q. -- as a way of defending herself?

1 A. I don't believe that she did. I don't believe -- there  
2 may have been some discussion, but that meeting was  
3 primarily, I think, to deal with the issues that were,  
4 in terms of pure -- of bad policing practices in the  
5 Cavan-Monaghan division, the core of the issues that 14:37  
6 were investigated in O'Higgins. So I can't be certain,  
7 but there may have been some marginal discussion, given  
8 that this was an issue in public discourse at that  
9 stage.

10 422 Q. Yes. You seemed uncertain the last time we were here 14:37  
11 about whether the Minister had sought the Attorney's  
12 opinion on the release of the advice?

13 A. That's correct.

14 423 Q. You did make, I think, passing reference to it.

15 A. Yes. 14:37

16 424 Q. But we know that Mr. Forsyth sent the Attorney's  
17 advice, because we have the details of the transmission  
18 of the email relating to that, on the 17th May at  
19 12:03. So it would seem that the Attorney's advice had  
20 been sought and obtained and given to the Minister and 14:37  
21 transmitted by Mr. Forsyth to the Commissioner by 12:03  
22 on the 17th. Did you know that that was happening?

23 A. I can't say that I did. As I said the last day, I  
24 knew -- I had a question in my mind about the Minister  
25 having sought the Attorney's advice, but I now know 14:38  
26 subsequently that she did. But the sequence of events  
27 that you set out there, I wasn't aware of those in  
28 terms of -- and, ordinarily, I wouldn't necessarily  
29 have been aware of that.

1 425 Q. Okay. Well, would you expect to know at the time that  
2 the Minister was considering the clammer for the  
3 Commissioner's advice to be released and seeking the  
4 Attorney's view on it?

5 A. I think, like everybody in the Department, of course, 14:38  
6 yes, we would have been conscious of this, that, as you  
7 put it, the clammer was there. And the Minister's  
8 modus operandi at the time would have been to seek the  
9 advice of the Attorney in difficult issues. That would  
10 have been fairly standard. 14:38

11 426 Q. Yes. Now, there's no note from the Department of the  
12 meeting of the 16th, but Ms. Mannion has provided us  
13 with some of her notes, and I just want to ask about  
14 one two entries in it. If we could go to page 4930.  
15 I'm not sure, have you had time to see these, in 14:39  
16 preparation for today?

17 A. I saw them in the last few days, yes, in the context  
18 of, I think, the Tánaiste's --

19 427 Q. Yes. Perhaps if we just go down close to the bottom of  
20 the page. 14:39

21 A. Sure.

22 428 Q. And it says "18/5 meeting with Noel and Ken."  
23  
24 Now, I know you told us obviously when Minister,  
25 Ms. Fitzgerald disclosed the emails that she apparently 14:39  
26 thought had been sent on to you --

27 A. Mm-hmm.

28 429 Q. -- on the 18th, you said you didn't get them, is that  
29 right?



1 A. Yes. There was an issue, if I remember correctly the  
2 last day, in terms of the incorrect email address being  
3 put to me, yes.

4 430 Q. Yes, yes. And just to have your evidence, was there a  
5 meeting involving yourself and Mr. O'Leary on the 18th, 14:39  
6 either with the Tánaiste or with Ms. Mannion or anyone  
7 else?

8 A. There was a meeting, yes, I do know now, I do remember  
9 now that there was a meeting on the 18th with  
10 Mr. O'Leary and the Tánaiste and myself. I hadn't 14:40  
11 recalled that when I was giving evidence the last  
12 day --

13 431 Q. All right.

14 A. -- here. But I do know now that there was, yes.

15 432 Q. Yes. 14:40

16 A. Yes. This note helped to refresh my memory on that.

17 433 Q. I see. Because we've seen, obviously, that the  
18 Commissioner sought from Chief Superintendent Healy a  
19 copy of the legal advice that had been emailed in 2015  
20 to her, and Chief Superintendent Healy forwarded that 14:40  
21 on to her, on the evening of 17th May 2016. And we've  
22 seen obviously from the Commissioner's recovered emails  
23 from the iPad, that she sent a number of emails to the  
24 Minister on the morning of the 18th, isn't that right?  
25 You saw those on the previous occasion? 14:40

26 A. Yes, in the light of this note here, yes. This has  
27 triggered this, yes. This has refreshed my memory,  
28 yes.

29 434 Q. So the fact that your email address wasn't right or

1 that they didn't come through to you on email, do you  
2 recall discussing the fact that the Commissioner had  
3 sent in the advice and what the Minister was to do with  
4 it?

5 A. Again, in the light of the information I have now, 14:41  
6 which is not what I had, as I say, when I gave  
7 evidence, yes, there was a discussion with the Minister  
8 on that day.

9 435 Q. On the 18th?

10 A. On the 18th. 14:41

11 436 Q. After she had come out of the House?

12 A. I think it was in the afternoon, so I think that was a  
13 Wednesday.

14 437 Q. Yes.

15 A. And ordinarily I think the Minister would be in the 14:41  
16 House in the morning. She was Tánaiste, I think, at  
17 that stage.

18 438 Q. Yes.

19 A. So she would be doing, I think, the order of business  
20 of the House. So I think the likelihood is, it 14:41  
21 probably was the afternoon, I would have thought.

22 439 Q. Yes. Would they normally be taking Leaders' Questions  
23 at 2:30? Am I wrong?

24 A. Depending on the day.

25 440 Q. On the day? 14:42

26 A. Or the order of business, perhaps.

27 441 Q. Yes. Okay. But, I mean, did the Minister make you  
28 aware or did you learn from somebody else that  
29 effectively she was sticking by the Attorney's advice

1 and wasn't going to be publishing the Commissioner's  
2 advice?

3 A. There was a discussion. I can't put my hand on my  
4 heart to say precisely what the Minister or the  
5 Tánaiste said in terms of the Attorney's advice, but it 14:42  
6 was clear from the discussion between Mr. O'Leary, the  
7 Tánaiste and myself that we'd all agreed that this was  
8 a bad idea; this was, as I said before, this was  
9 setting up a very dangerous precedent. And I think, as  
10 well, on reflecting on it now again, our view of it 14:42  
11 would have been that it probably wouldn't have solved  
12 the issue either at the time had this been put into the  
13 public domain, because it would have probably given  
14 rise to further questions in the nature of political  
15 discourse in the country. But in any event, I think we 14:43  
16 were all of the view that publishing this advice wasn't  
17 a good idea.

18 442 Q. Yeah. As a matter of fact, were you consulted in 2017  
19 when the Commissioner actually waived her privilege --

20 A. No, no. 14:43

21 443 Q. -- while you were still Secretary General?

22 A. No, no, and nor would I expected to have been.

23 444 Q. Right. Okay.

24 A. Yeah.

25 445 Q. And to your knowledge, was the Minister at the time 14:43  
26 consulted?

27 A. Em, not to my knowledge. I have no knowledge of that.  
28 But again, I would find that surprising if she was.

29 446 Q. Okay. And I've asked you previously about the letter

1 that was sent to the Commissioner on the 19th, but this  
2 was then followed by a meeting on the 19th, isn't that  
3 correct?

4 A. That's correct, yes.

5 447 Q. And have you been able to refresh your memory as to the 14:43  
6 circumstances of the meeting of the 19th?

7 A. Again, with the documents which have since been  
8 discovered by the Department in recent days, yes, I've  
9 seen that there was a short note I think done by a  
10 colleague who was at the meeting, and I think 14:44  
11 Ms. Mannion also did a note, from my review of the  
12 Tánaiste's -- former Tánaiste's evidence as well.

13 448 Q. Yes. And did it trigger your recollection of the  
14 actual meeting then?

15 A. Not particularly of the -- well, the fact that the 14:44  
16 meeting took place, yes, but in terms of what actually  
17 happened at the meeting, not -- I don't have a specific  
18 sort of verbatim, put it like that --

19 449 Q. Yes.

20 A. -- a verbatim record in my own mind about what happened 14:44  
21 at the meeting. But I think one sense I have, again  
22 looking back on it now at this stage, is that I think  
23 we were all walking on eggshells in many respects  
24 around this issue, to the extent that we had the issue  
25 of the O'Higgins report and the integrity of that 14:44  
26 process.

27 450 Q. Yes.

28 A. We had the Commissioner and the major issue around -- I  
29 think following on from 'Prime Time' when the Tánaiste

1 had been on and immediately turned to the Government  
2 having confidence in the Commissioner. I think, as  
3 well, from -- at the time, the Government had literally  
4 been in office only about ten days. I think also we  
5 were -- gangland was an issue as well, gangland crime. 14:45  
6 So all these things were swirling around --

7 451 Q. Yes.

8 A. -- and it was uncertain. But that was my sense of the  
9 context of the meeting, rather than, as I say, the  
10 particular issues that -- or the sense of what actually 14:45  
11 happened at the meeting.

12 452 Q. Yes. But it does appear from Ms. Mannion's notes, and  
13 I don't know can you recall this at this stage, that  
14 the Minister seemed to have fairly put it to the  
15 Commissioner as to whether she was, in fact, saying one 14:45  
16 thing in public and treating Sergeant McCabe one way  
17 publicly and doing an entirely different thing in  
18 private, do you recall that?

19 A. I've seen the notes on that. I can't say, hand on  
20 heart, that I recall that conversation having taken 14:46  
21 place at the meeting, but I've seen Ms. Mannion's note  
22 of it and I have no reason to in any way dispute that,  
23 because I would have worked with her for the previous  
24 two years, and, you know, it was never an issue about  
25 accuracy, or anything like that. 14:46

26 453 Q. Yes. Well, Ms. Mannion records the Commissioner  
27 responding to this, obviously talking about the  
28 selected leaks, apparently asserting that she had never  
29 accused or asserted that Sergeant McCabe had acted out

1 of malice, and she said there was a transcript that  
2 referred to that above, and she is recorded as saying  
3 there was complete confusion between malice, integrity  
4 and motivation. Do you recollect any of those matters  
5 being discussed, in broad terms?

14:47

6 A. Again, I can't, hand on heart, say that I have a  
7 recollection of, you know, any words or any  
8 conversations or any sentences being used, but I'm --  
9 in the sense of a verbatim recollection of the meeting,  
10 but I have no reason not to believe that they didn't  
11 happen on foot of Ms. Mannion's note, no reason at all  
12 not to believe that that would have -- that those words  
13 would have been uttered at the meeting.

14:47

14 454 Q. Yes. And Deputy Commissioner Twomey seems to have  
15 joined in the discussion, and do you recall that?

14:47

16 A. Again, on foot of the note of the attendance at the  
17 meeting, Deputy Commissioner Twomey was there as well,  
18 yes, on the day.

19 455 Q. You see, obviously the emails that gave rise to a  
20 political controversy before Christmas, that we're not  
21 concerned with but which dated from May '15, they  
22 weren't disclosed to the Tribunal. And the only person  
23 who asserted that they had any recollection of  
24 receiving them was, in fact, Mr. Flahive, who had sent  
25 it. And he said nobody came to him to look for the  
26 email. He said that he thought, you know, people would  
27 come looking for the email. Are you clear that you  
28 didn't discuss the email of the 15th May with anyone?

14:47

14:48

29 A. I had no recollection, as I said in evidence the last

1 day, of having received that email. I have absolutely  
2 no recollection at all. So the question of me  
3 discussing it wouldn't have arisen --

4 456 Q. Yes.

5 A. -- with anybody.

14:48

6 457 Q. Well, does it follow that you didn't search yourself  
7 for any documents that you thought would be relevant to  
8 this Tribunal?

9 A. No. The context of -- when the political controversy  
10 broke out, as you know at the time, the Tribunal  
11 subsequently wrote to me on foot of any knowledge I  
12 had, and my statement was my response to it. But prior  
13 to that, I hadn't done any search, although we were  
14 answering parliamentary questions or attempting to  
15 answer parliamentary questions in the Department around  
16 that time and we were trying to find some information  
17 that would have been of assistance in answering those  
18 questions. And that's how that email was unearthed, in  
19 fact, on foot of that.

14:48

14:48

20 458 Q. Yes.

14:49

21 A. At the time.

22 459 Q. Well, leaving aside 2015, you had been present at a  
23 meeting with the Commissioner in which she appears to  
24 have explained, and been required, perhaps, to explain  
25 what she was up to at the Commission. And I have  
26 difficulty in understanding why we didn't receive  
27 statements from all concerned, setting out their  
28 knowledge of that when the Tribunal was established or  
29 soon thereafter. Would you like to comment on that?

14:49

1 A. All I can say at this remove is that the terms of  
2 reference of the Tribunal were very broad, you know.  
3 It didn't occur to me, I have to say, it just didn't  
4 occur to me that, you know, that I should have made a  
5 statement at the time, and, look at, if, in hindsight, 14:49  
6 I should have, I do apologise, but it certainly didn't  
7 occur to me that a statement in the context of the very  
8 broad terms of reference, I didn't see that the  
9 Department itself would have had a major impact or  
10 major role in respect of the Tribunal at that time, but 14:50  
11 obviously as things evolved on foot of the controversy  
12 that broke out, it was different.

13 460 Q. Yes. But, I mean, you must -- obviously the drafting  
14 of the terms of reference for the Tribunal happened, as  
15 it were, under your watch as well? 14:50

16 A. Yes.

17 461 Q. And under the Minister's watch?

18 A. That's correct, yes.

19 462 Q. Yes. And obviously one can perhaps say because of the  
20 leaks this issue remained and the provisions of the 14:50  
21 2004 Act restraining sort of people knowing what had  
22 happened at the Commission, they obviously restrained  
23 the Minister and the Commissioner from perhaps  
24 releasing as much information as they might want to  
25 release? 14:50

26 A. That remained the position, yes.

27 463 Q. But in that context then, this term of reference was  
28 put into this Tribunal, and it's just there's obviously  
29 a pool of people who had explanations from the



1 Commissioner as to what her strategy was or what she  
2 had, in broad terms, pursued at the Tribunal, and we  
3 didn't receive statements from anyone until --

4 A. As I say, I can't, I can't -- it never occurred to me  
5 that, you know, that we should have responded. But as 14:51  
6 I say, in the context of the Tribunal coming to me  
7 looking for a statement, I did provide a statement.

8 464 Q. Yes.

9 A. But as I say, at the time it certainly didn't occur.  
10 But there was certainly no question, I can assure you, 14:51  
11 that we were seeking to not -- or conceal anything. We  
12 certainly were not trying do that. There would have  
13 been no reason for us to do that.

14 465 Q. Okay. And just looking at page 3352, just you've a  
15 couple of different paragraphs at the bottom of this, 14:51  
16 it's the second page of your statement.

17 A. Mm-hmm.

18 466 Q. And the third-last paragraph says:  
19  
20 "In relation to the Minister having any knowledge of 14:51  
21 the Commissioner's legal strategy at the Commission, I  
22 have no knowledge beyond the materials set out in the  
23 emails of the 15th May 2015, 4th July 2015."  
24

25 And would you accept that that is perhaps not accurate 14:52  
26 or not strictly accurate in the sense that the Minister  
27 received an account from the Commissioner at this  
28 period we're talking about?

29 A. My statement, as you know, was framed in the context --

1 467 Q. Yes.

2 A. -- of the period where the Commission was live and up  
3 to its publication.

4 468 Q. Yes.

5 A. So my comments were in that context. 14:52

6 469 Q. Yes.

7 A. And as I say, my overall comment then at the start  
8 related to, you know, issues, normal business,  
9 information being exchanged back and forward on  
10 publication of the report. 14:52

11 470 Q. Yes. And in fairness to you, I did draw attention to  
12 your introductory paragraph to your statement?

13 A. Yes.

14 471 Q. And then the second paragraph does go on to discuss the  
15 post-publication events. But would you agree that 14:52  
16 obviously insofar as that relates or was intended to  
17 relate to the period up to the publication of the  
18 report, it just then doesn't deal with the  
19 post-publication period and couldn't be accurately  
20 applied to the post-publication period? 14:53

21 A. Yes, I do. But as I say, the context of my statement  
22 was the pre-publication period.

23 472 Q. Yes. The second-last paragraph, can I just ask you to  
24 sort of explain that to me? I have some difficulty in  
25 following it. It says: 14:53  
26

27 "I had no discussion with the Minister about the legal  
28 strategy adopted by the Commissioner, no more than I  
29 had with the Minister or officials in relation to any

1 legal strategy adopted at the Commission concerning the  
2 issues which were being inquired into by it."  
3 A. What was in my mind --  
4 473 Q. Yes.  
5 A. -- there was that, as you know, colleagues in the 14:53  
6 Department were also before the Commission in respect  
7 of other issues --  
8 474 Q. Yes.  
9 A. -- and I was very conscious of that and I had no  
10 discussions with them, so I wanted to make it clear 14:53  
11 that not alone was I not having conversations with the  
12 Minister, but equally, colleagues who I worked with  
13 every day. I didn't have any conversations, I didn't  
14 know what was happening at the Commission, I didn't  
15 know who was representing them, and I was very clear in 14:54  
16 my mind that this was something that I should not be  
17 going to because of the issues that would be involved  
18 in doing that.  
19 MR. MCGUINNESS: Okay. Thank you, Mr. Waters.  
20 A. Thank you. 14:54  
21 MR. MCDOWELL: No questions.  
22 MR. MCCANN: I have no questions, thank you, Chairman.  
23 MR. DIGNAM: No questions, Chairman.  
24 A. Thank you.  
25  
26 THE WITNESS THEN WITHDREW 14:54  
27  
28 MR. MARRINAN: The next witness, sir, is Ken O'Leary,  
29 please.

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MR. KEN O'LEARY, HAVING BEEN PREVIOUSLY SWORN, WAS  
FURTHER EXAMINED BY MR. MARRINAN:

CHAIRMAN: We can sit late, if necessary, if people want to go over these emails and meetings for another couple of hours. I'm sure you don't, Mr. Marrinan. 14:55

475 Q. MR. MARRINAN: Sorry, Mr. O'Leary, I'm going to be very brief, but there's one matter that has arisen, and it arises out of a number of emails that Mr. McGuinness had referred Noel Waters to there. The first one is at 4820. If we could have that up on the screen, please. You, at that time, had drafted a letter to the Tánaiste. You see it down there at the end? Have you got that? 14:55

A. Yeah, I know about that. 14:56

476 Q. Pardon?

A. I know about that.

477 Q. You were responsible for drafting that?

A. I was, yeah. 14:56

478 Q. Yes. And I think that it had been sent to Noel Waters for his observation, is that right?

A. I'm not sure if it was -- sorry, could you give me the page number again?

479 Q. 4820, sorry, volume 9. 14:56

A. I have it now.

480 Q. Can you follow that?

A. I can, yeah.

481 Q. You see from Noel Waters to yourself on the 16th May,

1 8:33?

2

3

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"The only additional thing I can think of, and it's self-evident, does she want to be put in a position where she could be said to be calling on the Commissioner to break the law? It seems to me that generalities are the only option here."

14:57

Do you see that?

10 A. Yeah, I do.

14:57

11 482 Q. And that's to you. Maybe you didn't run it by  
12 Mr. Waters, but regardless, if you just go up the page  
13 a small bit, you see there from -- again from Noel  
14 waters to you at 9:58:

15

14:57

16

"I see the Commissioner is coming in to her this pm. I will be in at lunchtime."

17

18

19

And then at 10:44 from yourself, I think that's to Mr. Waters, in fact:

20

14:58

21

22

"John OC -- "

23

24

I think that is John O'Callaghan, is that right?

25

A. That's right.

14:58

26

483 Q. " -- argues we might be breaking the law ourselves by asking."

27

28

29

You see there?

1 A. Yeah.

2 484 Q. Was there any sense at the time that perhaps the  
3 Department shouldn't even be discussing what evidence  
4 had been given at the O'Higgins Commission?

5 A. Oh, very much so, and we didn't. Like, we took the 14:58  
6 view that the confidentiality of the Commission  
7 proceedings was absolute and it wouldn't be appropriate  
8 to ask the Commissioner anything that would impinge on  
9 that.

10 485 Q. And, you see, we have the briefing document that you 14:58  
11 prepared on the 16th May, and that's at page 4803.  
12 That's your briefing document for the Commissioner --  
13 for the Minister for a meeting to take place on the  
14 16th May 2016, isn't that right?

15 A. Yeah. 14:59

16 486 Q. And we also then have the minutes of the meeting of the  
17 19th May with the Tánaiste and the Commissioner  
18 meeting. And we also know that Mr. Forsyth had been  
19 involved in getting the Attorney's view in relation to  
20 the Commissioner disclosing her legal advice at the 14:59  
21 Commission, isn't that right?

22 A. Yeah.

23 487 Q. And there seems to have been a very strong argument  
24 adopted against that by the Department, isn't that  
25 right? 15:00

26 A. Very much so.

27 488 Q. Yes. And the Commissioner was -- effectively at that  
28 time was anxious that she should put into the public  
29 domain, in answer to the allegations that were being

1 levelled against her, the advice that she had received  
2 from counsel on the 15th May 2015, isn't that right?

3 A. In fairness, I'm not sure that fully would set out the  
4 position. I think what happened was, at a particular  
5 point that week the Commissioner felt, because of the 15:00  
6 severe criticisms that were being made against her,  
7 that the only answer may be to put the legal advice.

8 489 Q. Yes.

9 A. I don't think there was any enthusiasm on the part of  
10 the Commissioner to do that. 15:00

11 490 Q. Yes. Well, I mean, in the sense of defending herself  
12 as the last resort, as it were. Obviously, nobody  
13 would want to be going into the public domain and  
14 laying out advice.

15 A. I think so. And, I mean, she wrote to the Minister, I 15:01  
16 think, on the morning of the 18th. There were a number  
17 of emails. Now, I think what she said in the emails  
18 was, you may wish to use this. I'm not sure she was  
19 actually advocating it, but putting it on the table as  
20 an option that she'd be happy for the Minister to use. 15:01

21 491 Q. Well, you'll see, you will appreciate that, from an  
22 examination of the documents, that one may think that  
23 there is some sort of a sub-plot here within the  
24 Department, because there is no reference whatsoever in  
25 any of the emails to the fact that the Department had 15:01  
26 been advised of this issue when it arose on the 15th  
27 May of 2015.

28 A. Of which issue on the 15th?

29 492 Q. The issue that arose at the Commission on the 15th May.

1 A. But, I mean, in the 2016 sequence of events, I don't  
2 think anyone was particularly conscious of what had  
3 happened in October 2015.

4 493 Q. No. What had happened, as we know from your evidence,  
5 on the 15th May of 2015, when this matter arose, we 15:02  
6 know that Annmarie Ryan contacted the Attorney  
7 General's office, Mr. Dreelan there, who thought that  
8 it was such a significant development that he should  
9 bring it to the attention, he thought, of the Attorney,  
10 but he contacted Richard Barrett, who thought that it 15:02  
11 was of sufficient importance that he ought to notify  
12 Mr. Flahive, and we know that Mr. Flahive then spoke to  
13 you, and, in the meantime, you had spoken -- or,  
14 earlier on, you had spoken on two occasions with the  
15 Garda Commissioner in relation to this self-same 15:03  
16 issue --

17 A. Mm-hmm.

18 494 Q. -- isn't that right? And yet, here we are a year later  
19 and there isn't any discussion at all in relation to  
20 the fact that this matter had been notified to the 15:03  
21 Department at the time, do you understand?

22 A. Yeah. But what I am saying is, I don't think -- I  
23 certainly wasn't very mindful or conscious at the time  
24 of what happened 12 months previously. The situation  
25 we were in was, Judge O'Higgins had reported on the 15:03  
26 Commission proceedings and we were relying fully on  
27 what Judge O'Higgins said. Like, we weren't carrying  
28 out -- there had been a leak of two or three pages of  
29 transcripts and a particular story. Like, we didn't



1 see ourselves as carrying out, at the time, an  
2 investigation into what the Commissioner did or didn't  
3 do at the Commission. We regarded the O'Higgins Report  
4 as not raising those issues and we certainly didn't  
5 regard the leak or selected leak of parts of it as  
6 warranting us to say to the Commissioner, what exactly  
7 did you do at the Commission of Investigation?

15:04

8 495 Q. So you're completely satisfied that there wasn't,  
9 either by your or anybody else, a sub-plot here of not  
10 referring to the fact that the Department had been  
11 notified of this in 2015?

15:04

12 A. Well, I mean, as I explained before, like, we were  
13 notified of a very, very, very limited piece of  
14 information which related to, in my case, one question  
15 and the reaction to that question. Genuinely, at the  
16 time of the 2016 thing where things were getting  
17 difficult in terms of what had been leaked and the  
18 response to it, I can't recall being particularly  
19 mindful of what happened in 2015.

15:04

20 496 Q. Well, on a one-to-one level, talking to the Garda  
21 Commissioner, which you did frequently, did you remind  
22 her of the call that she had made?

15:05

23 A. I don't think I reminded myself of the call that had  
24 been made, quite frankly. As I say, we had the  
25 O'Higgins Report. Our view was that we had to rely on  
26 the O'Higgins report. There was no basis, although  
27 there was public concern that was being expressed, our  
28 view was Judge O'Higgins had dealt with all these  
29 matters and people should rely on the report. We

15:05

1 weren't, as far as I was concerned, on the basis of a  
2 few minutes of what apparently happened at the  
3 Commission, starting a new investigation as to what  
4 approach the Commissioner had taken.

5 497 Q. And I think that you've already given evidence in 15:06  
6 relation to this, that your primary concern at the time  
7 was to protect the position of the Commissioner who you  
8 felt was being extremely hard done by?

9 A. Well, I mean, our primary concern was, Judge O'Higgins 15:06  
10 had been the person who carried out the Commission. He  
11 had fully reported on it. We felt that was what had to  
12 be relied on. And it was also the case, because of the  
13 various things that followed from the leaking of the  
14 transcripts, that the Commissioner's position was  
15 difficult at the time. And our objective was that we 15:06  
16 didn't want to do anything to undermine the O'Higgins  
17 Commission report and we didn't want to do anything  
18 that undermined the position of the Commissioner  
19 because we didn't think that was warranted in any way.

20 MR. MARRINAN: I fully understand. Thank you very 15:07  
21 much.

22  
23 MR. KEN O'LEARY WAS CROSS-EXAMINED BY MR. MCDOWELL:

24  
25 498 Q. MR. MCDOWELL: Just very briefly, Mr. O'Leary. At this 15:07  
26 time did the Department receive any advice on the  
27 statutory prohibition on the disclosure of evidence set  
28 out in section 11(3) of the Commissions of  
29 Investigation Act?

1 A. I think we did receive some material from the  
2 Attorney's office.

3 499 Q. I mean, I don't want to break privilege or break the  
4 Department's privilege, but I think it's clear from  
5 some of the documents that there was an awareness in 15:07  
6 the Department that the prohibition applied to the  
7 disclosure of evidence given by a witness or the  
8 contents of a document produced by a witness, isn't  
9 that right?

10 A. I mean, I'm in difficulty because I don't know the 15:07  
11 position about privilege and what the AG may have said.  
12 If I can tell you the Department's understanding.

13 500 Q. Yes.

14 A. If that would answer it in a different way without --

15 501 Q. Tell me that, yes. 15:08

16 A. -- causing difficulties. Our understanding was that,  
17 you know, on a literal reading of it, there was an  
18 argument might be made that arguments -- legal argument  
19 wouldn't be covered.

20 502 Q. Yes. 15:08

21 A. But that it was very difficult, in the sense that if a  
22 legal argument related to evidence that had been given  
23 at the Commission, that you might be in difficulty  
24 there.

25 503 Q. Yes. But that clearly would be so, but legal argument 15:08  
26 about evidence that might be given in future at the  
27 Commission was not covered?

28 A. To be honest, I'm not sure how much thought we gave to  
29 that at the time.

1 MR. MCCANN: well, I mean, I wonder how fair it is  
2 to ask this witness legal questions.  
3 MR. MCDOWELL: Sorry, I'm being interrupted.  
4 CHAIRMAN: I am sorry, I didn't hear.  
5 MR. MCCANN: Sorry, I was making a comment, Judge, that 15:09  
6 I was wondering how fair it was to be asking this  
7 witness questions of law.  
8 CHAIRMAN: well, I think it is fair to ask a question  
9 as to what the understanding of the Department was.  
10 MR. MCDOWELL: Yes. 15:09  
11 CHAIRMAN: I mean, the Department can say, well,  
12 Section 11 is utterly untouchable or we'd have to go to  
13 the High Court. I don't think that is going to  
14 trespass on any advice the AG gave. And in the event  
15 that there was advice, well I'm not interested in what 15:09  
16 it was.  
17 504 Q. MR. MCDOWELL: I think the Department was aware of that  
18 as an issue, isn't that a fair way of putting it?  
19 A. As to what exactly was covered by Section 11?  
20 505 Q. 11(3), yes. 15:09  
21 A. We certainly gave some consideration to it at the time.  
22 506 Q. Yes.  
23 A. Now, I have to say we were conscious as well that  
24 whatever the literal meaning of Section 11, that Judge  
25 O'Higgins, I think, clearly in the report, regarded it, 15:09  
26 the proceedings of the Commission as confidential.  
27 507 Q. I see. Could I ask you then in relation to -- and I  
28 just want to tease this out because it may be of  
29 significance and it may be of assistance to this

1 Tribunal. Was any attention given to the proposition  
2 that you could ask the Commissioner what strategy she  
3 was deploying in relation to witnesses, because that  
4 clearly - or, sorry, I won't say that clearly, but  
5 there was a strong argument that that was not caught by 15:10  
6 Section 11(3), what approach you were taking to  
7 witnesses?

8 A. As Mr. Waters was saying at the time, we felt we were  
9 walking on eggshells in relation to this, that we  
10 couldn't ask the Commissioner what happened at the 15:10  
11 Commission.

12 508 Q. Well, just, for instance, and I'm not trying to be  
13 argumentative at all, Mr. O'Leary, going back to the  
14 conversation you had with the Commissioner about what  
15 she might or might not do on the afternoon of the 15th 15:11  
16 May 2014, clearly -- I take it you never thought that  
17 there was a question of infringing the criminal law in  
18 that conversation when she was seeking advice as to the  
19 approach she might take?

20 A. Well, I mean, as I said before, she asked me were there 15:11  
21 any issues to be mindful of.

22 509 Q. Yes.

23 A. And I mentioned issues that I think would apply to most  
24 commissions. So I don't think there was any legal  
25 issue there. 15:11

26 510 Q. And then if we go forward then to whenever it was in  
27 2016, likewise there was no major legal issue, I have  
28 to suggest to you, in asking her about motivation,  
29 credibility, integrity --

1 A. Well, in as much as --

2 511 Q. -- was that part of her strategy or not?

3 A. Certainly we were very careful in relation to the whole  
4 thing. Like, the transcripts that were released, we  
5 would have been uneasy about saying, look, it says this 15:12  
6 and it says that and it says the other, because they  
7 were matters that happened at the Commission itself.  
8 And as I say, we didn't feel at the time that there was  
9 some obligation on the Commissioner to account for the  
10 approach she took, given that the only basis for that 15:12  
11 was what was happening in relation to the leaking of  
12 documents.

13 512 Q. I follow the point you're making, but I am just making  
14 a slightly different point. I have to suggest to you  
15 there was nothing really to stop the Minister, the 15:12  
16 Department, or anybody else, saying, there was nothing  
17 wrong with discussing motivation, integrity and  
18 credibility all getting mixed up, as Ms. Mannion's note  
19 describes the conversation, there is nothing wrong with  
20 that discussion. 15:13

21 A. I don't think there was anything wrong with it, but it  
22 could only take you so far in the sense that I think  
23 it's a bit artificial to say you could divorce all this  
24 from what happened at the Commission.

25 513 Q. I take your point on that. But the only point I'm 15:13  
26 asking you on, and it's purely the view of the  
27 Department as to how far the Section 11(3) prohibition  
28 actually extended, and I'm suggesting to you, maybe you  
29 don't agree with it, that it was perfectly open to the

1 Minister to say, would you mind telling me generally  
2 what approach did you instruct your counsel to take in  
3 respect of Sergeant McCabe or any other witness?  
4 CHAIRMAN: Suppose she knew, what could she do?  
5 MR. MCDOWELL: Sorry, Judge? 15:13  
6 CHAIRMAN: Could she do anything lawfully?  
7 MR. MCDOWELL: No. But since it was discussed, since  
8 the question of integrity -- I am making the point that  
9 it was discussed on the 16th May and I'm suggesting  
10 that -- 15:14  
11 CHAIRMAN: That was way after the Commission had ended.  
12 MR. MCDOWELL: Yes.  
13 CHAIRMAN: Yes.  
14 MR. MCDOWELL: But I'm suggesting that wasn't a  
15 criminal offence -- 15:14  
16 A. I understand.  
17 514 Q. -- to discuss it or to ask her about it. I'm just  
18 wondering, at what stage -- at what stage did the  
19 Department come to this kind of very strict taboo, we  
20 cannot ask the Commissioner what approach she took to 15:14  
21 her strategy?  
22 A. Well, as I say, we were starting from the basis that we  
23 couldn't ask about what happened at the Commission,  
24 and, like, we were just very careful in relation to the  
25 whole thing. I mean, I can't give you a conclusive, by 15:14  
26 any means, legal view, on how far you can stretch that,  
27 if had you to stretch it.  
28 MR. MCDOWELL: Thank you very much. I think you have  
29 been very fair. I'm not going to push it any further.

1 Thank you.

2 CHAIRMAN: Yes. Is there anybody else? No.

3 MR. MARRINAN: Thank you very much.

4

5 THE WITNESS THEN WITHDREW 15:14

6

7 MR. MCGUINNESS: Chairman, the next witness is Deputy

8 Commissioner Twomey.

9 CHAIRMAN: Yes. Is he going to be long,

10 Mr. McGuinness? 15:15

11 MR. MCGUINNESS: I anticipate not terribly long.

12 CHAIRMAN: Well, what does "not terribly long" mean?

13 I'm sorry, I'm just not feeling well now. I've really

14 had enough at this point. So what do you think?

15 MR. MCGUINNESS: I'm sorry, I'm talking about ten or 15:15

16 fifteen minutes.

17 CHAIRMAN: Great.

18

19 DEPUTY COMMISSIONER JOHN TWOMEY, HAVING BEEN SWORN, WAS

20 DIRECTLY EXAMINED BY MR. MCGUINNESS: 15:15

21

22 515 Q. MR. MCGUINNESS: Deputy Commissioner, I think you were

23 formally appointed as such on the 20th October 2015, is

24 that correct?

25 A. That's correct. 15:15

26 516 Q. And prior to that you had been acting up, as it were,

27 as deputy on a temporary basis since 10th July 2014?

28 A. That's correct.

29 517 Q. And prior to that, had you been an assistant



1 commissioner?

2 A. That's correct.

3 518 Q. And what were your responsibilities at that stage, when  
4 you were an assistant?

5 A. In 2014, I was the assistant commissioner in charge of 15:16  
6 the Dublin metropolitan region. I also had part  
7 responsibility as assistant commissioner for traffic,  
8 and then in July of 2014 I was appointed as the acting  
9 deputy commissioner in an administrative capacity.  
10 There were a number of vacancies. There were no other 15:16  
11 deputy commissioners at that particular time when I was  
12 given the job.

13 CHAIRMAN: If you try and keep your answers as short as  
14 you possibly can.

15 519 Q. MR. MCGUINNESS: Yes. Can I take you to the beginning 15:16  
16 of 2015, just very briefly, and ask you to look at page  
17 4738. It's in volume 9. I think it's a typed copy of  
18 your original notes which you'd provided. And I think  
19 this was a meeting that was called to discuss a recent  
20 email from Sergeant McCabe concerning his treatment by 15:17  
21 GRA and some named persons and lack of support. And  
22 you appear there with Assistant Commissioner Fanning;  
23 Mr. Barrett, who was executive director; and the two  
24 chief superintendents, Chief Superintendent Curran and  
25 McMenamin, is that right? 15:17

26 A. It's Superintendent McMenamin.

27 520 Q. Superintendent McMenamin.

28 A. He was the district officer with responsibility for the  
29 area where Sergeant McCabe was working.

1 521 Q. I'm not going to ask you any detail about it, but there  
2 were a number of issues which were actioned at the  
3 bottom of the page, and perhaps we will just look at  
4 that, under different headings. There's legal action  
5 and HR issues, and it seems like Mr. Barrett was to 15:17  
6 obtain details of those, is that right?  
7 A. That's correct.

8 522 Q. Workplace support, that's Assistant Commissioner  
9 Fanning to deal with that, is that right?  
10 A. That's correct. 15:17

11 523 Q. Ongoing investigations, Assistant Commissioner Fanning.  
12 "GMTB", that seems to be your responsibility. What was  
13 that?  
14 A. That was in relation to the previous inquiries that  
15 were gone for the fixed charged penalty notices. 15:18

16 524 Q. Yes. And the Commissioner's secretary and the  
17 Commissioner's office was next. You were to deal with  
18 that as well?  
19 A. That is correct.

20 525 Q. And the "JOM investigation", what was that? 15:18  
21 A. That's the John O'Mahony investigation.

22 526 Q. Which one?  
23 A. This was done-- that was an original investigation  
24 that was done into the fixed charged penalty notices.

25 527 Q. All right. Okay. In any event, you seem to have 15:18  
26 continued to be assigned by the Commissioner in dealing  
27 with these matters and participating in discussion, is  
28 that correct? If we look at page 4879, you're there  
29 with the Commissioner, Chief Superintendent McLoughlin,

1 Mr. Ruane and the Assistant Commissioner Fintan  
2 Fanning, at page 4870. Do you recall that? 4870.  
3 A. 487-?  
4 528 Q. 4870.  
5 A. That's correct. 15:19  
6 529 Q. You've found that?  
7 A. Yes.  
8 530 Q. A meeting of the 12th of the 2nd.  
9 A. That's correct.  
10 531 Q. And I'm not going to ask you about developments in the 15:19  
11 interim that aren't relevant. But I think you  
12 continued to be involved, and if we look at 4860, you  
13 were at the meeting that includes people there on the  
14 25th, which is the Commissioner, Ken Ruane, Tony  
15 McLoughlin, yourself, Barry O'Brien, Cyril Dunne and 15:19  
16 Frank Walsh. And that was a lengthy meeting to  
17 consider the response, inter alia, to Sergeant McCabe's  
18 issues, isn't that correct?  
19 A. That's correct.  
20 532 Q. And there was a subsequent other meeting that day, if 15:19  
21 we go to 4871, and you appear to be at that meeting as  
22 well later on the 25th, is that correct?  
23 A. That is correct.  
24 533 Q. You seem to have been then, therefore, directly 15:20  
25 involved in the strategy to deal with Sergeant McCabe  
26 insofar as the workplace issues were concerned, is that  
27 right?  
28 A. I was, Judge, involved in ensuring the workplace  
29 supports were put in place for Sergeant McCabe.

1 534 Q. Now, the Tribunal has heard evidence of the  
2 Commissioner's phone call to Mr. O'Leary, the previous  
3 witness, where she was looking for advice on any issues  
4 that she might take into account in her approach to  
5 Sergeant McCabe in the Commission of Inquiry. Did she 15:20  
6 consult with you about her approach to how she would  
7 deal with Sergeant McCabe in that context, in the  
8 Commission?  
9 A. No, Judge, no.

10 535 Q. Were you privy to no discussion with her about how she 15:20  
11 would instruct counsel to deal with it?  
12 A. I had no conversations in relation to that particular  
13 subject.

14 536 Q. Well, had you any knowledge of the intended approach?  
15 A. No. 15:21

16 537 Q. None?  
17 A. None. I had no knowledge.

18 538 Q. Were you not participating at this stage, having been  
19 made deputy, or acting deputy, in the executive board  
20 meetings with the Commissioner? 15:21  
21 A. Em, I was an acting deputy commissioner at the time,  
22 but the executive board, because we weren't formally  
23 appointed, didn't meet as regularly as it did at a  
24 later stage. I think in the context -- at this  
25 particular time in 2015, I was primarily the assistant 15:21  
26 commissioner in charge of Dublin. We had just had a  
27 very serious gangland crime issue in the Regency, and  
28 that was my primary focus. I had no conversations with  
29 the Commissioner about the legal strategy.

1 539 Q. All right. I'm just going to skip very quickly forward  
2 in time to February 2017, because the Tribunal has seen  
3 some emails that came from Ms. Prone to you, which  
4 relate to another issue the Tribunal is concerned with.  
5 But were you dealing with Ms. Prone on the 15:22  
6 Commissioner's behalf when she couldn't?  
7 A. I think there was a number of us that were involved to  
8 try and bring as wide a knowledge and full extent of  
9 the information to the debate and I had some  
10 information in relation to the workplace issues that I 15:22  
11 was involved in. So I was involved in some emails back  
12 and forth.  
13 540 Q. Just one inference that could be drawn is that you  
14 were, as it were, close to the mind and the intention  
15 of the Commissioner dealing with different issues 15:22  
16 connected with Sergeant McCabe, and I'm just not clear  
17 how you wouldn't have knowledge of how she intended to  
18 approach the Commission vis-à-vis Sergeant McCabe?  
19 A. I wasn't involved in any discussions with the  
20 Commissioner about the legal strategy. I was involved 15:23  
21 in the workplace issues. I had become involved with  
22 Sergeant McCabe at an earlier stage, and that was the  
23 reason my involvement continued across into the  
24 workplace issues. But I had no conversations  
25 whatsoever in advance of the legal strategy. 15:23  
26 541 Q. Well, just finally, coming to 2016, the Tribunal has  
27 seen a brief that was prepared relating to the  
28 Commissioner's instructions relative to the Commission,  
29 prepared by Chief Superintendent Healy and I think

1 Inspector MacNamara. Did you see and receive that  
2 brief?

3 A. I don't believe I did, no. I have no recollection of  
4 receiving that.

5 542 Q. Well, what was the purpose then of your attending with 15:23  
6 the Commissioner at meetings with the Minister on 16th  
7 and 19th May?

8 A. I think at one of the meetings they were talking about  
9 the gangland issues, they were also speaking about the  
10 pending industrial relations issue and I was involved 15:23  
11 in both of those. I was also involved in the workplace  
12 support issues and I had also been given responsibility  
13 for the implementation of the recommendations Guerin  
14 Report and subsequently the report from the O'Higgins  
15 Commission. So I was involved in the implementation of 15:24  
16 those recommendations and I was able to give both a  
17 global view on the action that was being taken and some  
18 of the more detailed questions. But I was not involved  
19 in the legal strategy.

20 543 Q. Okay. It's just you have no notes of the meeting of 15:24  
21 the 19th, isn't that correct?

22 A. That is correct. That is correct.

23 544 Q. And is there any reason why you didn't take notes?

24 A. No. It was at a meeting in the Department. And I have  
25 no notes on that. 15:24

26 545 Q. It's just, according to Ms. Mannion's notes you chimed  
27 in on a number of occasions to explain the strategy to  
28 the meeting, including the Minister, is that right?

29 A. I don't believe I chimed in on the strategy. I think I

1 may have chimed in on what might be a more general  
2 observation in relation to a strategy that may be  
3 taken. But not in relation to a specific -- not  
4 specifically in relation to the strategy in this case.  
5 As I say, I had no involvement in this case. 15:25

6 546 Q. So you're just talking generally, is that right?

7 A. That's correct. In relation to that specific instance,  
8 yes.

9 547 Q. You've no knowledge as to how the Commissioner  
10 approached it actually in fact, is that what you are  
11 saying? 15:25

12 A. Em, well, in 2016, there was some information in the  
13 public domain. In 2016 the issue had evolved. So at  
14 that stage I certainly was aware of some of the general  
15 detail. I wasn't specifically aware, I wasn't aware in  
16 advance of the issue in 2015, but I only became aware  
17 generally afterwards, I think through some interaction  
18 that I had with Sergeant McCabe, I think there may be  
19 correspondence following the O'Higgins Commission, but  
20 again I wasn't involved or privy to what happened at  
21 the Tribunal or the legal strategy. 15:26

22 548 Q. Yes. But you went to both of these meetings and did  
23 you know that the Commissioner had sent counsel's  
24 advice to the Minister and there was, I won't say it, a  
25 controversy, but a debate about whether that advice  
26 would be released; were you privy to seeing what the  
27 advice was even? 15:26

28 A. No. I don't believe I have ever seen the advice, even  
29 up to today. As I say, I was aware generally that

1 there were issues raised at the Commission, but I was  
2 not aware of what the specifics was, because I wasn't  
3 privy to the O'Higgins Commission, nor was I privy to  
4 any of the information that was specifically raised.

5 549 Q. Okay. Thank you deputy Commissioner.

15:26

6 MR. MCDOWELL: No questions.

7 MR. MCCANN: No questions.

8 MR. MURPHY: No questions, Chairman.

9 CHAIRMAN: Thank you.

10

15:26

11 THE WITNESS THEN WITHDREW

12

13 CHAIRMAN: Okay. I'm going to take the floor for a  
14 moment. As I understand it now, we're at the end of  
15 this. Sergeant McCabe of course is going to give  
16 evidence, which of course may include something in  
17 relation to his own reaction to the manner in which the  
18 O'Higgins Commission proceeded. It is to be noted,  
19 however, that the Tribunal has searched the transcripts  
20 for use of the word shouting. It occurs on two  
21 occasions. I have indicated what they were; which were  
22 apologies from counsel saying 'I need to shout' or 'I  
23 have to shout because otherwise you won't hear me'.  
24 Other than that, there is no issue of that. And also,  
25 the Tribunal has read or had people read the entire  
26 transcript and has listened to portions of the  
27 transcript, on audio. So I feel that the Tribunal  
28 should be in a good position to know what happened.

15:26

15:27

15:27

29



1 Now, the first thing a judge does when she or he goes  
2 into their room is to say: what do I need to decide in  
3 this case? And it seems to me - and it's subject to  
4 correction or submissions by people, this is put out  
5 with a view to trying to assist as opposed to with a  
6 view to trying to curtail people in any way - that  
7 given the context of the terms of reference there are a  
8 number of questions that I should ask. That doesn't  
9 necessarily mean that I have to report on them and it  
10 doesn't necessarily mean that I have to give an answer  
11 to all of them, but they are certainly questions that  
12 are on my mind at this time.

15:28

15:28

13  
14 Let's bear in mind, first of all, that the Tribunal is  
15 tasked to investigate whether "the false allegations of  
16 sexual abuse or any other unjustified grounds were  
17 inappropriately relied on by Commissioner O'Sullivan to  
18 discredit Sergeant Maurice McCabe at the Commission of  
19 Investigation into certain matters in the  
20 Cavan-Monaghan district under the Chairmanship of  
21 Mr. Justice Kevin O'Higgins." That is what I am  
22 actually asked to do. So, in the light of that, it  
23 seems that reasonably at this point, given that there  
24 is only one small piece of the jigsaw left to fill, and  
25 of course I would pay particular regard to that, I  
26 would need to ask myself the following questions.

15:28

15:29

15:29

27  
28 One: were there false allegations of sexual abuse  
29 relied on by Commissioner Nóirín O'Sullivan to

1 discredit Maurice McCabe at the O'Higgins Commission?  
2 Everyone seems to be agreed that no, that there  
3 weren't.

4  
5 The second question then is: were any unjustified 15:29  
6 grounds relied on inappropriately by Commissioner  
7 Nóirín O'Sullivan to discredit Maurice McCabe at the  
8 Commission? And please note the words "by Commissioner  
9 Nóirín O'Sullivan" - that is what I am required to  
10 report on. 15:30

11  
12 Three: what are the limits appropriately of (a)  
13 cross-examination, (b) cross-examination as to  
14 credibility and (c) cross-examination as to credit?  
15 Now as I understand it, from the textbooks and reading 15:30  
16 the relevant cases, cross-examination consists of the  
17 asking of any questions, including questions that, for  
18 instance, may not even be cross-examination at all,  
19 such as to a witness 'Isn't it the case that...' to  
20 which the answer is obviously yes. Cross-examination 15:30  
21 as to credibility is a question of tests as to a  
22 person's means of knowledge, their recollection,  
23 whether they were wearing their glasses, whether they  
24 had a few drinks, whether they were confused, whether  
25 they were tired, whether they had the flu; in other 15:30  
26 words, the ordinary testing of a witness's evidence as  
27 to weight. Cross-examination as to credit is the third  
28 category, and I'm still on number three in terms of  
29 questions. Cross-examination as to credit is something

1 which involves putting to a witness or eluding to  
2 something that is outside facts in issue but which  
3 undermines the creditworthiness of a witness, such as,  
4 for instance, that the witness had behaved  
5 inappropriately in a completely different setting. A 15:31  
6 classic example being, slept with his best friend's  
7 girlfriend, which has nothing to do with, for instance,  
8 a criminal or civil law, because it is a lawful  
9 activity, but which may make the tribunal of fact think  
10 less of the person and in that context may make the 15:31  
11 tribunal of fact consider that the person is therefore  
12 less worthy of being believed in terms of their  
13 evidence.

14  
15 Now, there is just a matter there that I feel I need to 15:31  
16 mention. I'm not sure the name of the case is Bailey  
17 v. Flood, it possibly is, but I know that there is a  
18 duty on, for instance, this Tribunal, and every  
19 tribunal, to disclose material which potentially has  
20 the ability to undermine credit. And I'd be grateful 15:31  
21 to counsel for the Tribunal, to Mr. McGuinness, if that  
22 is how it is chosen to address me on that issue.  
23 Because it seems to me that if there is a duty on a  
24 tribunal to disclose material, potentially undermining  
25 credit - and I'm not saying credibility, I'm saying 15:32  
26 credit - then there seems to be an entitlement to  
27 deploy it. And if it can be lawfully deployed  
28 therefore the answer to question number two may be in  
29 the negative, if indeed anything like that happened.

1 Right. That's the third issue.

2  
3 Then the fourth issue is: What evidence is there that  
4 the 19th May letter from the Garda Commissioner and  
5 certain represented individuals was (a) a mistake, (b) 15:32  
6 an uncorrected mistake that was allowed to stay in an  
7 inaccurate form due to recklessness or perhaps  
8 inadvertence, or (c) was it deliberate ab initio? And  
9 the second and supplementary question that arises out  
10 of question four, which is actually very important: 15:33  
11 what has this, if anything, to do with Nóirín  
12 O'Sullivan?

13  
14 The fifth question is: Was there any evidence on the  
15 transcript or from waived privilege documents or 15:33  
16 discussions that the Garda Commissioner intended (a) to  
17 challenge credibility in the ordinary way and then  
18 motive in the event that there was a lack of weight  
19 attaching to particular allegations? In other words,  
20 the challenge to credibility in this instance would be, 15:33  
21 on the evidence before me from Mr. Smyth principally is  
22 to challenge: look, what evidence have you got of that?  
23 how do you know the particular fact? and if you don't  
24 know the particular fact, well then, what was your  
25 reason for bringing forward this allegation in the 15:34  
26 light of the fact that you don't have any evidence to  
27 back it up; or, was it on the basis, again of the  
28 transcript, and any other waived documents as to  
29 privilege (b) to challenge the bona fide, mala fides,

1 integrity of Maurice McCabe? So, those seem to be the  
2 two choices.

3  
4 Question number six seems to be this: Is leading  
5 counsel for the Garda Commissioner at the Tribunal 15:34  
6 correct in saying that his acceptance of integrity when  
7 it was put to him by the Judge was a mistake -  
8 something said in the heat of the moment - or was it a  
9 question of the Garda Commissioner saying one thing  
10 publicly, that is to say, supporting Sergeant McCabe 15:34  
11 and then using a strategy of undermining Maurice McCabe  
12 as to his integrity privately at the Commission? Added  
13 into that is the necessity to look, to my mind, at the  
14 actual transcript of the day in question and the  
15 reference to the Commissioner having an unpleasant 15:35  
16 experience should she come down.

17  
18 Seven: Is there any evidence of an aggressive stance  
19 by Garda Commissioner's counsel? I don't see any. And  
20 it was never put to counsel. There's no reference in 15:35  
21 the transcript to shouting, apart from 'will you excuse  
22 me for shouting because I need to keep my voice up, as  
23 the tribunal has said?' And given that the Department  
24 of Justice actually authorised the phrase "aggressive  
25 stance", what finding should I make in relation to that 15:35  
26 since that was not the query in the first instance from  
27 the media?

28  
29 It seems to me the eighth question that arises having

1 heard the evidence is: Is there any evidence of a dark  
2 truth of going after Maurice McCabe at the Commission  
3 which emanates from the apex of the Garda organisation  
4 and is in particular to be ascribed to Nóirín  
5 O'Sullivan?

15:36

6  
7 Question number nine would be: Did the Department and  
8 did the Minister behave lawfully in leaving any  
9 question as to strategy at the Commission to the Garda  
10 Commissioner? And added into that, it seems to me it  
11 is very important to note as to whether the Department  
12 themselves and the Minister were themselves under  
13 investigation by the Commission within the terms of  
14 reference.

15:36

15  
16 Question number ten, to the which the answer it seems  
17 to me is no, immediately: Is there any way in which  
18 the Commission itself did not appropriately handle  
19 matters? It seems to me the Commission handled matters  
20 absolutely perfectly.

15:36

21  
22 Eleven: was there any proper basis to ask the Tribunal  
23 to investigate this particular module or was it  
24 entirely based on leaks and on conjecture?

15:36

25  
26 So those seem to me to be the important questions. Now  
27 as I understand it where we're going, Mr. McGuinness,  
28 maybe you will be so kind as to just fill us in again,  
29 give us an update on that.

1 MR. MCGUINNESS: Thank you, Chairman. Well, Chairman,  
2 submissions in relation to portion of the Tusla module  
3 is next, scheduled for next Tuesday, 13th February.  
4 Subject to concluding that then, Chairman, on the day,  
5 it's intended to adjourn the continuation of evidence 15:37  
6 before the Tribunal until the next phase. And  
7 obviously, Chairman, you'll be aware that the intense  
8 preparations for that are continuing and we will  
9 continue to try and ensure that sufficient material is  
10 available and distributed in sufficient time to give 15:37  
11 proper notice to the parties. It obviously will  
12 commence, as indicated, with the evidence of Sergeant  
13 McCabe, which is intended to be a comprehensive  
14 elucidation of all material matters from Sergeant  
15 McCabe, insofar as it's relevant of course. And after 15:38  
16 that, it's intended to start the technical module,  
17 which will deal with all matters related to technical  
18 examination of devices, etcetera.

19 CHAIRMAN: Before we get to that --

20 MR. MCGUINNESS: Yes. 15:38

21 CHAIRMAN: -- I understood when Sergeant McCabe had  
22 given his evidence, and maybe other people will have  
23 questions for him apart from the Tribunal, and perhaps  
24 his own counsel --

25 MR. MCGUINNESS: Yes. 15:38

26 CHAIRMAN: -- that we were going to have the  
27 submissions on this.

28 MR. MCGUINNESS: Yes.

29 CHAIRMAN: And if people have different questions that

1 they feel I should pose to myself or perhaps consider  
2 answering, they are perfectly at liberty to tell me  
3 that.

4 MR. MCGUINNESS: Yes. I should of course have said  
5 that. That after that, after the conclusion of  
6 Sergeant McCabe's evidence, the opportunity will be  
7 there to make submissions on this phase of it.

15:38

8 CHAIRMAN: Yes.

9 MR. MCGUINNESS: No doubt that will be taken up by the  
10 relevant parties.

15:39

11 CHAIRMAN: And then we envisage then running through to  
12 the end. I mean, I know I'm having this conversation  
13 with you publicly, but we have nothing to hide and it's  
14 appropriate that people should know. We're going to  
15 try to run through to the entire end of the Tribunal  
16 then.

15:39

17 MR. MCGUINNESS: Yes, Chairman. Insofar as possible.  
18 Obviously there will be -- there's obviously times when  
19 the hall isn't available and you, Chairman, will have  
20 some other duties elsewhere, and the Easter holidays  
21 will intervene, but obviously we will publish our  
22 intended schedule and notify parties as soon as we can.  
23 But it is intended to engage in a continuous  
24 examination of all of the remainder of the Tribunal's  
25 work to bring it to conclusion insofar as it can be  
26 done.

15:39

15:39

27 CHAIRMAN: Yes. Thank you very much for that,  
28 Mr. McGuinness. As I understand it, we're in a  
29 position where we have mapped out the rest of where



1 we're going, but obviously the duty on any Tribunal is  
2 to gather documents, to gather evidence and then to  
3 distribute it and that is a mammoth undertaking, even  
4 for this, which was about a thing for which we actually  
5 had the transcript and actually had the audio, we have 15:40  
6 gone to nine volumes and 5,000 pages. I understand for  
7 the next, the volume of documents is not going to be as  
8 bad as for previous things, but under the strictures  
9 that tribunals operate under terms of law - and I'm not  
10 complaining about that, I just abide by it as opposed 15:40  
11 to making any comment on it - we do have the obligation  
12 to distribute and that also includes distributing  
13 anything, as I understand it, that may go to the credit  
14 of a witness of which we're aware. I think I'm right  
15 in thinking the last thing, Mr. McGuinness. 15:40  
16 MR. MCGUINNESS: Yes. Yes, Chairman.  
17 CHAIRMAN: I would appreciate some submissions on that  
18 when we come to the --  
19 MR. MCGUINNESS: At the appropriate time.  
20 CHAIRMAN: Thank you very much. 15:41

21  
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28  
29

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