

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON TUESDAY, 10TH APRIL 2018 - DAY 63

63

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

GWEN MALONE STENOGRAPHY
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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 10TH APRIL
2 2018:

3
4 CHAIRMAN: I don't know if I am expected to say
5 something. well, I could say lean ar aghaidh, maybe
6 that would help.

7 MR. MÍCHEÁL O'HIGGINS: Go raibh maith agat.

8
9 MR. JOHN MCGUINNESS CONTINUED TO BE CROSS-EXAMINED BY
10 MR. MÍCHEÁL O'HIGGINS:

11 1 Q. MR. MÍCHEÁL O'HIGGINS: Deputy McGuinness, I was asking
12 you yesterday when we broke up about the notebook that
13 you made -- I wonder would Mr. Marrinan mind moving
14 slightly to the left, would that be all right, thank
15 you. So you can see me now? 09:32

16 A. You can see me.

17 2 Q. You didn't make the note in the car park you have told
18 us, isn't that right?

19 A. Yes.

20 3 Q. But you told us yesterday you made the note because you 09:32
21 were so concerned at what you had heard, the
22 Commissioner had just passed on vile allegations, isn't
23 that right?

24 A. Yes.

25 4 Q. And your purpose in making the note was to ensure you 09:32
26 had a correct version of the meeting, of the
27 conversation at the meeting?

28 A. No, it was to highlight the issues that were addressed
29 at the meeting, so that I wouldn't lose sight of the

1 main points that were made to me.

2 5 Q. So it wasn't to have a correct version of it, was it
3 not?

4 A. Well, obviously from the note, it's not a full note of
5 the meeting, it's simply a note of the important points 09:33
6 that would have caused me concern that I wanted to
7 reflect on.

8 6 Q. Was your purpose not -- amongst your purposes, was it
9 not obvious it was also the purpose of having a correct
10 record of what was said? 09:33

11 A. If I was to have a correct record, I would have written
12 out everything that was said by each party and I didn't
13 do that. But what I did do was, I took a note for my
14 own purposes to reflect on what had been said in the
15 particular instances of the main points that were made. 09:33

16 7 Q. So are did you --

17 A. And it's by no means a reflection on all of the
18 meeting.

19 8 Q. Are you distancing yourself from my characterisation
20 that you were anxious to get a correct record of what 09:33
21 was said?

22 A. I am not distancing myself from anything. I am simply
23 making it clear to you that the purpose in taking the
24 note was out of concern that I might have forgotten the
25 particular points that I needed to address over the 09:34
26 weekend and the points that concerned me most.

27 9 Q. And I take it you had a purpose that if you had to come
28 back, if you ever had to raise the issue of this
29 conversation again you would have an accurate record?

1 A. No, that wasn't the purpose. I never envisaged that I
2 would be before a tribunal talking about a note in my
3 constituency book. So, therefore, it was for the
4 purpose of my consideration of the matters that I had
5 to address that were of deep concern to me and that 09:34
6 needed to be addressed in the context of the hearings
7 of the Public Accounts Committee.

8 10 Q. Did it not occur to you that this was potentially an
9 important note that you might need to rely on at some
10 point in the future? 09:34

11 A. No, I didn't. I didn't look at it that way on that
12 day. What I did have to rely on was the accuracy of
13 what was said to me in relation to the particular
14 points that were made and that I would have to address
15 these points in terms of considering them over that 09:35
16 weekend.

17 11 Q. So it never occurred to you that you might need it
18 again?

19 A. It never occurred to me that I would need the note
20 again, it never occurred to me that I would be before a 09:35
21 tribunal, it was simply a spur of the moment out of
22 deep concern from what I had heard.

23 12 Q. But isn't it your position that what was said to you at
24 this meeting disturbed you and caused you great
25 concern? 09:35

26 A. Yes, it did.

27 13 Q. And isn't it your position that what was said to you on
28 your case at this meeting was really quite improper, it
29 was improper for the Commissioner to have made these

1 vile allegations to you about a serving member of An
2 Garda Síochána and it was quite improper that he would
3 seek in doing that to undermine the business of a Dáil
4 committee, that was your position, isn't that right?

5 A. That's correct.

09:36

6 14 Q. Right. That being so, I'm suggesting to you that it
7 would have occurred to you that you may need to refer
8 to the note again?

9 A. My purpose in taking the note was so that I would
10 highlight the particular points that I needed to
11 consider because I had been at the centre of this
12 controversy because of my position as Chairman of the
13 Public Accounts Committee and I was deeply concerned by
14 what was said to me by the Commissioner. It put me in
15 a position where I believed for a moment that I could
16 possibly be completely wrong about this and wrong about
17 Maurice McCabe, and that I may have difficulties now in
18 relation to the information that was available to the
19 Public Accounts Committee. So I took a note of the
20 main points that were made, not for the intention of
21 using them elsewhere, not for the intention or for any
22 other purpose other than being able to reflect upon and
23 remind myself of the main points that were made to me.

09:36

09:36

09:37

24 15 Q. I was looking --

25 A. And over that weekend I used that note to consider each
26 and every point that was made.

09:37

27 16 Q. You used the note?

28 A. Obviously I looked at it and went through it and
29 satisfied myself.

1 17 Q. So you came back to the note over that weekend?
2 A. That was the purpose of the note.
3 18 Q. And when did you next come back to the note?
4 A. The matter then was dealt with, as you know, through
5 the Public Accounts Committee, that note remained in 09:37
6 that book, the book was finished in September of the
7 same year and I didn't come back to the note again
8 until I was asked for information and it caused me to
9 search my diaries, my phones, whatever elsewhere I
10 could get information. 09:38
11 19 Q. All right. We might come back to that issue in due
12 course. I see from the transcript yesterday that you
13 indicated that the note was written, actually written
14 -- and I am quoting here, "actually written out of fear
15 that I might forget some of the accusations that were 09:38
16 being made". You now seem to be saying that that
17 wasn't a reason for making the note?
18 A. Let me repeat again: I wrote the note because of the
19 accusations that were made. It is a note that is
20 short, it wasn't intended for any other purpose but to 09:38
21 remind myself of what was said, and there is no change
22 in my position as to the note and the purpose of the
23 note.
24 20 Q. You were disturbed at the time you have told us, so I
25 suggest to you the natural thing to do would have been 09:39
26 to write the note out straight away before you left the
27 car park?
28 A. Well, when you are asked to meet the Commissioner and
29 it turns out that you have the meeting in the front

1 seat in my own car in the car park and you are told the
2 things that I was told, your first instinct when the
3 meeting ends is to get the hell out of there. All I
4 wanted to do was get out, find space for myself and
5 reconcile some of the things that I have heard directly 09:39
6 from the Commissioner and relate it then in my head to
7 what I had already known and to what I had already
8 believed. And the purpose of the note, once again, was
9 to remind myself of what was said at the meeting, for
10 no other purpose. 09:39

11 21 Q. The Commissioner's car had left so there was nothing to
12 prevent you making the note?

13 A. But why would I make the note? I was already deeply
14 upset over this. I wasn't quite sure what to do. I
15 wanted to reflect on this and I did so and when I felt 09:40
16 that I required to take that note, I stopped and took
17 the note. It's a choice that you make. And I believe
18 I made the correct choice in listening, taking it in,
19 attempting to analyse it, in a fearful state of mind,
20 and then I decided I'd write down the number of things 09:40
21 that concerned me not from the meeting, but things that
22 I had to address arising from what was said.

23 22 Q. We are agreed, aren't we, that you didn't go into the
24 hotel in your state of upset to get a cup of coffee and
25 then to write the note there, are we agreed about that? 09:40

26 A. I had had a long day, I had had a meeting with the
27 Commissioner which I didn't expect, I am not a coffee
28 drinker, I don't waste my time. I like to be accurate
29 and --

1 23 Q. We will come back to that.

2 A. And you can come back to it if you wish -- and I like
3 to ensure that what I had heard, that I had written it
4 down in a way that I understood. It was for no other
5 use and for no other purpose. I did not expect that a 09:41
6 copy of that note would be needed in the future.

7 24 Q. Did you make a note of the conversation that took
8 place, you say, the day before at the PAC?

9 A. No, I didn't.

10 25 Q. At the end of the PAC meeting? 09:41

11 A. I didn't meeting, Mr. O'Higgins, isn't it? I didn't,
12 Chairman, because that meeting and what was said, you
13 have meetings, these things are said after meetings,
14 conversations happen. That conversation happened. I
15 did not take a note of it, but then again, neither did 09:42
16 I take a note of any other piece of tittle-tattle or
17 gossip that I had heard around the house.

18 26 Q. When you made this note following the car park meeting,
19 you didn't include a note of a conversation from the
20 day before? 09:42

21 A. No, I didn't.

22 27 Q. But I suggest to you the same logic would apply surely,
23 you would be concerned to ensure you had a correct
24 record of what had been said?

25 A. No, there was a difference here, in that what was said 09:42
26 to me was said directly after the meeting. I had
27 really no interest at that stage only in one topic, and
28 that was the penalty points issue and the evidence that
29 had been put before us. The next day was a different

1 matter altogether, it was a meeting arranged by the
2 Commissioner. So I can take it, Chairman, that things
3 are often said in the heat of the moment or arising
4 after a meeting in a point where people are upset,
5 perhaps, over what they have said or over what other 09:43
6 people might have said. So, here was a Commissioner
7 making a decision away from that meeting, requesting a
8 meeting with me, that is entirely different.

9 28 Q. But you see, Deputy McGuinness, on your case, you
10 agreed to meet the Commissioner and you chose to do so 09:43
11 alone without any official or colleague with you in
12 circumstances where, on your case, the Commissioner had
13 already made a disgraceful remark about Sergeant
14 McCabe, namely he was a child abuser, the words you
15 used were kiddie fiddler, he had already done that on 09:43
16 your case, why in heavens were you now agreeing to meet
17 the man?

18 A. If the Commissioner rang you, would you be inclined to
19 meet him? I met the Commissioner out of respect for
20 the Gardaí and respect for his position, and I met the 09:44
21 Commissioner because he had something important to
22 impart to me. I had met Maurice McCabe, John Wilson
23 and numerous other whistleblowers which are noted in my
24 diary that is referred to, Mr. Chairman. Those
25 meetings are noted, in the same way as other meetings. 09:44
26 I met them on my own. I brought no entourage with me,
27 I brought no officials with me. This was a matter
28 between me and the person that I was meeting.

29 29 Q. You see, absent from your description so far, Deputy

1 McGuinness, I suggest to you, is that either at the PAC
2 on the 23rd or in the car park meeting on the 24th is
3 there any suggestion from you that there was disharmony
4 between you and the Commissioner on either occasion
5 when he made these disgraceful remarks to which you say 09:45
6 you took objection?

7 A. There was no disharmony between the Commissioner and I.

8 30 Q. Isn't that my point; there should have been if your
9 account is true?

10 A. Well, I don't know -- you know, I don't get upset that 09:45
11 easily. So what happened at the meeting on the 23rd
12 happened, and what was said after the meeting was said,
13 and it was said perhaps at the end -- well, not
14 perhaps, it was said in fact at the end of a long
15 meeting in which a lot of, you know -- a lot transacted 09:45
16 during the course of that meeting. So, when I met the
17 Commissioner Callinan the following day there was no
18 disharmony between us. I don't see -- I don't fall out
19 with people over what they might say or do. I have to
20 make a judgement call as to what I will say or do on 09:46
21 foot of what I hear.

22 31 Q. But you see on your case, the man was passing on vile
23 allegations, part of which were directed at undermining
24 the very work, the very important work that your
25 Committee does, and he was going into greater detail, 09:46
26 you say, in relation to vile allegations, and I am
27 suggesting to you if that occurred, you would have
28 taken him to task and told him to stop?

29 A. He was expressing his opinion. I was suggesting to

1 him, as I have always done, and what I did the previous
2 day, that he should meet with Mr. McCabe and discuss
3 the issues that were being raised and come to a
4 conclusion in the interest of harmony within the Garda
5 force and in the interest of the health and well-being 09:46
6 of the McCabe family. So the meeting in the hotel off
7 the Naas Road was something that he arranged, I agreed
8 to and the discussion took place. When he laid this
9 information before me, I was quite shocked and I wasn't
10 in a position to take on the Commissioner, as it were, 09:47
11 by probing him and by questioning his authority. He
12 gave me that information out of a position of
13 authority. He gave me that information as if he knew
14 for a fact that that was the position, and that is what
15 caused me the concern and that is what caused me the 09:47
16 worry and the fear in driving home that day.

17 32 Q. So after this meeting did you go to Sergeant McCabe and
18 convey to him what the Commissioner had said?

19 A. No, I didn't.

20 33 Q. Are you clear on that? 09:48

21 A. I conveyed to Sergeant McCabe after the meeting, long
22 after the meeting. The first thing to do was I
23 considered what was being said. I had to decide
24 whether or not to believe, one, the Commissioner, or
25 two, Sergeant McCabe. And on the basis of the work of 09:48
26 the Public Accounts Committee and what it was doing, I
27 had decided that that work was highly important and
28 should proceed, and that any intervention by me to
29 introduce the meeting or the other gossip and so on

1 that was going on, would serve the purpose of
2 preventing the meeting from proceeding.

3 34 Q. I am just a little bit unclear in your response. Did
4 you or did you not inform Sergeant McCabe after the car
5 park meeting? 09:49

6 A. Not immediately, no.

7 35 Q. When did you?

8 A. I'm not quite sure of that date.

9 36 Q. Well, give us the ballpark.

10 A. No, I won't. 09:49

11 37 Q. Why not?

12 A. Because I don't do ballpark. I would like to be
13 specific in relation to the question that you are
14 asking me because I think it's a relevant question.

15 CHAIRMAN: Mr. McGuinness, if you don't mind, I am 09:49
16 certainly not going to hold you to, for instance, if
17 you say, look, I have a vague recollection that it was
18 the summer or whatever, I appreciate that, but that is
19 all that counsel is asking you for.

20 A. Okay. Well, Mr. Chairman -- 09:49

21 CHAIRMAN: I don't think it's a trick question as such.
22 It's just, when do you think, and if you can help you
23 can help and if you can't you can't, and that doesn't
24 mean you are lying if you can't.

25 A. Okay. I will help by this reply: I had questioned 09:49
26 Maurice McCabe on the issues before, the general issues
27 of gossip and rumour within Leinster House, and he made
28 it clear to me that he -- that none of this was true,
29 that he had heard it somewhat before or partially he

1 had heard some of it before.

2 38 Q. MR. MÍCHEÁL O'HIGGINS: When was this?

3 A. And that satisfied me. That was during the course of

4 the lead-up to the meeting on the -- was it the 30th

5 March -- or 30th, when Sergeant McCabe appeared before 09:50

6 the Public Accounts Committee.

7 39 Q. Of what year? Sorry, I don't mean to cut you off. Of

8 what year are we talking about?

9 A. We are talking about the appearance of Sergeant McCabe

10 before the Public Accounts Committee, which was in -- 09:50

11 wasn't it 2014?

12 CHAIRMAN: Yes. Yesterday the date given was towards

13 the end of 2013. And again, that is, to use your

14 phrase, a ballpark kind of a date, but a vague kind of

15 date, yes. 09:51

16 A. No, no, no --

17 40 Q. MR. MÍCHEÁL O'HIGGINS: Well, Deputy McGuinness, he

18 only appeared once, didn't he?

19 A. He appeared just once, yeah. 30th of March.

20 41 Q. Well, is that right? Was it not -- was it not the 09:51

21 Thursday after Commissioner Callinan appeared?

22 A. Well, I met Mr. -- that was the 23rd.

23 CHAIRMAN: I think we may be getting our dates slightly

24 mixed up. You are being asked about two things I

25 suppose. Firstly, the point seems to be the focus on 09:51

26 the coincidence between the meeting in the car park

27 with Commissioner Callinan and any meeting you then had

28 with Maurice McCabe, and then the other date you are

29 being asked about is when you were considering calling

1 Maurice McCabe before the Public Accounts Committee and
2 the conditions that might be necessary to ensure that
3 that went off fairly and lawfully, you had met him, as
4 I understand it, in late 2013, so it may be that you
5 and counsel are at cross-purposes. Which date are you 09:51
6 asking about, Mr. O'Higgins?
7 MR. MÍCHÉAL O'HIGGINS: Just following Judge
8 Charleton's lead there. First of all, I was asking
9 you when -- you say prior to the car park meeting you
10 had put the allegations of sexual abuse to Maurice 09:52
11 McCabe, and I am simply asking you, when was that?
12 A. In the course of the end of 2013.
13 42 Q. Right.
14 A. Leading into the hearings.
15 43 Q. Right. And you have told us that subsequent to the car 09:52
16 park, or have you, you also put them to him?
17 A. Yes. After the car park meeting?
18 44 Q. Yes.
19 A. I informed Maurice McCabe of what had been said.
20 45 Q. And when was that? 09:52
21 A. I don't have a date for that, but it was soon after
22 the -- I know that I met him on the -- in May -- I
23 think the speech -- just one second, there might be a
24 guideline for me. The 26th May 2016 was when I
25 revealed in the Dáil the meeting that I attended with 09:52
26 Commissioner Callinan, and either -- around that time,
27 around that date, I would have told Sergeant Maurice
28 McCabe of the detail of the meeting.
29 46 Q. And how are you able to time locate that?

1 A. On the basis of the Dáil debate.

2 47 Q. So did you tell him before or after the Dáil debate?

3 A. I am not quite sure whether I flagged him that I was
4 going to say it or whether I told him afterwards. My
5 recollection is that I may have met him afterwards, but 09:53
6 I did tell him the detail.

7 48 Q. After the Dáil debate?

8 A. Yes.

9 49 Q. Was this so that if he was hearing it from the Dáil
10 debate or from publicity surrounding the Dáil debate, 09:53
11 he might be distressed and you wanted to tell him in
12 person, is that the reason?

13 A. Yes.

14 50 Q. So would you not have done that before the Dáil debate?

15 A. The manner in which the Dáil debate occurred arose from 09:53
16 the O'Higgins Report, I think.

17 51 Q. Do you know my question?

18 A. I am coming to it, yes.

19 52 Q. My question is: If your purpose was to alleviate or
20 prevent distress for the man, would you not have told 09:54
21 him prior to disclosing it in the Dáil?

22 A. I may -- I said to you that the Dáil debate was on 26th
23 of May --

24 53 Q. I have that.

25 A. -- and that I may have told him before or after that. 09:54

26 54 Q. Well, which is it?

27 A. I am not quite sure. But he was told of the
28 Commissioner's -- of the meeting with the Commissioner
29 at that time.

1 55 Q. You have told us the reason why you did it and I am
2 suggesting to you the logic of that reason would have
3 necessitated you telling him before the Dáil debate?
4 A. No, the logic of it is that he required an explanation,
5 I felt, and I gave him the explanation, because I had 09:54
6 not repeated the full content of that meeting to
7 Sergeant McCabe since I had met the Commissioner, which
8 was back in January of 2014.

9 56 Q. You see, you are aware, aren't you, that you have given
10 contradictory accounts in relation to this very 09:55
11 question? Are you?
12 A. No.

13 57 Q. And in despatches you have indicated that you didn't
14 tell Sergeant McCabe about the conversation in the car
15 park, and you gave as a reason because the allegations 09:55
16 were so vile and disturbing?
17 A. Yes.

18 58 Q. Does that ring a bell for you?
19 A. It does, yeah.

20 59 Q. So you didn't tell Sergeant McCabe -- 09:55
21 A. At the time of the car park meeting, I did not tell
22 Maurice McCabe.

23 60 Q. But would the vileness and the disturbingness, if that
24 is a word, of the allegations not endure such that you
25 would continue not to tell him? 09:55
26 A. Roughly in February of 2014 it was becoming clear that
27 Maurice McCabe and his family were not in a position to
28 take much more of this and I decided that what was said
29 to me in that car park by the Commissioner was wrong,

1 that it was there being told to me to serve the purpose
2 of ensuring that the Public Accounts Committee hearing
3 would not go ahead and, therefore, I decided that I
4 would not relate that story at that time to Maurice
5 McCabe. I had witnessed this man since I first came 09:56
6 across him in 2011 being destroyed year on year, and
7 when someone tells you a story or tells you what is a
8 fact to them as vile as what I was told, it was even
9 difficult for me to repeat it. And on the 26th May the
10 reason I repeated this and read into the record of the 09:57
11 House a circular which was sent to the district officer
12 in the Cavan-Monaghan division in relation to how well
13 they had all conducted themselves, I had to correct
14 what I believed was a wrong and I made it clear that
15 from the highest level, that Maurice McCabe was being 09:57
16 damaged by what I considered to be an attempt to smear
17 his name and to discredit him. So following the
18 meeting in the car park and around the date of the 26th
19 May, I'm sure that I would have advised in a factual
20 way what Commissioner Callinan had said, because in the 09:58
21 Dáil debate I referred to it. I didn't go into detail.
22 I described the remarks as vile, and I wanted Sergeant
23 McCabe to know what those remarks were.

24 61 Q. And to enable you do that, doubtless you consulted your
25 contemporaneous note? 09:58

26 A. I didn't consult anything.

27 62 Q. Sorry, this was two years and four months later from
28 the meeting in the car park, isn't that right --

29 A. That's right.

1 63 Q. -- when you went to the Dáil? Are you saying you gave
2 your speech on the blind?
3 A. Yes.
4 64 Q. would that be your normal practice?
5 A. Yes. 09:59
6 65 Q. To give a speech on the blind?
7 A. Yes. I don't use notes. I had been living this from
8 2011. I had been Chairman of the Public Accounts
9 Committee. I had been at the coalface of the
10 investigation. I had gone out of my way to assist 09:59
11 Maurice McCabe bring forward the issues that he wanted
12 to address, so I was pretty clear on the big ticket
13 items in all of that controversy.
14 66 Q. And one of the big ticket items was this somewhat
15 incendiary conversation you say you had in the car 09:59
16 park?
17 A. That I did have in the car park, yes.
18 67 Q. And you referenced expressly that conversation in your
19 Dáil speech, correct?
20 A. Correct. 10:00
21 68 Q. And what I want to know is, because that was your plan
22 and intention, wouldn't it have been a natural and
23 appropriate step to take to consult your
24 contemporaneous note of that conversation, considering
25 now we are talking about something that occurred two 10:00
26 years and four months before your Dáil speech?
27 A. When I read my Dáil speech and the transcript of that
28 speech, I referred to the car park meeting in a general
29 way. I didn't go into detail of the exact remarks that

1 were made.

2 69 Q. We will come back to that, but what I want to know
3 is --

4 A. No, I am telling you now.

5 70 Q. Sergeant McCabe -- 10:00

6 A. And I didn't have a note of that going in and I think
7 the transcript of that debate, you can deduct from it
8 that there wasn't a note.

9 71 Q. But you told us you were anxious to ensure that
10 whatever you told Sergeant McCabe was going to be 10:01
11 correct, isn't that right?

12 A. That's right.

13 72 Q. Right. That, surely, even on your logic, whatever
14 about the Dáil debate, that would have necessitated
15 you, two years and four months after the conversation, 10:01
16 that would have necessitated you consulting the note
17 for your discussion with Sergeant McCabe, surely?

18 A. I didn't require the note.

19 73 Q. Are you serious?

20 A. I am very serious, yes. 10:01

21 74 Q. So you were able to remember what was said by the
22 Commissioner in a situation where, on your case, you
23 were upset and disturbed by it and it had happened two
24 years and four months earlier and you were anxious to
25 ensure that what you said to the man was correct, you 10:02
26 chose not to consult the note, is that your evidence?

27 A. That's correct. I didn't have to consult the note,
28 Mr. O'Higgins, and Chairman. I was living all of this
29 right through. I had addressed the issues that were of

1 concern to me in the context of the examination at the
2 Public Accounts Committee, and I had done so
3 meticulously, so as not to mislead anyone. And when it
4 came to the evening of the 26th May 2016, with all of
5 that was going on in terms of the report and the Dáil 10:02
6 debate, I recalled generally what was stated by the
7 Commissioner in that Dáil debate by way of reference to
8 show that at the highest level within the force there
9 was attempts being made to discredit Garda Maurice
10 McCabe. So I didn't need a note to remind me of that. 10:03

11 75 Q. Did you know about your note in May 2016?
12 A. I never thought of the note in 2016, quite frankly.
13 The note was there and I came across that note in the
14 search of paperwork for the Tribunal.

15 76 Q. Yes. We will come back to that. Would you mind, 10:03
16 Deputy McGuinness, I hope you don't mind us and I will
17 be careful with it, would you mind if I had a quick
18 look at your notebook just for a moment, your notebook
19 you have present there?

20 A. The Tribunal have it, I think. 10:03

21 77 Q. I think it's on your desk there?
22 A. Sorry, yes.

23 78 Q. Would you mind opening it up at the relevant page?
24 A. Yes.

25 79 Q. And I won't -- you might just pass it down, would you 10:04
26 mind, just for a moment, and I will be careful not to
27 look at material that has nothing --

28 A. You can't avoid looking at material that has nothing to
29 do with the Tribunal, but I don't mind you looking at

1 it.

2 80 Q. Thank you. (Handed to counsel)

3 A. There is also a lot of data there in relation to my
4 constituents, which I am sure you will ignore.

5 81 Q. I will. And do you have a copy there of your -- of the 10:04
6 note so you can help the Tribunal with any questions I
7 have for you from the original. It's on the screen,
8 actually, but it's --

9 A. Sorry? I see it here on the screen.

10 CHAIRMAN: Let's have a reference, if we could have 10:05
11 that, please.

12 MR. MARRINAN: Page 1422.

13 CHAIRMAN: Yes, that is what I thought. If you want to
14 talk down 1422.

15 A. volume? 10:05

16 CHAIRMAN: volume 6, isn't it? I think we had it in a
17 different iteration before, but 1422 will do fine.

18 A. Yes.

19 82 Q. MR. MÍCHEÁL O'HIGGINS: Now, I am interested in the
20 position and sequencing of the note, Deputy McGuinness, 10:05
21 I will just hold it up so you can know what I am
22 talking about. It's an A4 notebook and on the
23 left-hand page there is written the note which you say
24 you took of the car park meeting, isn't that right?

25 A. Yes. 10:05

26 83 Q. It's in the bottom corner of the left-hand side of the
27 notebook, isn't that right?

28 A. Yes.

29 84 Q. And it is located on the left-hand side to the left of

1 an entry carrying the date the 25th January 2014 --

2 A. Yes.

3 85 Q. -- which is on the right-hand side, is that right?

4 A. Yes.

5 86 Q. Yes. Can you assist us as to why it appears to be, the 10:06
6 notes that you have taken on the left appear to be
7 squeezed into a tight space so much so that in order to
8 fit it in you have had to write it sideways?

9 A. I didn't write it sideways to fit it in. I wrote it
10 sideways because I was writing it on the passenger seat 10:06
11 of the car like that.

12 87 Q. But it appears to be, you'd agree with me, it appears
13 to be somewhat squeezed in?

14 A. No, there is plenty of room for it, I fitted everything
15 into it, that I wanted to fit in. 10:06

16 88 Q. But you see -- do you mind if I look over the next
17 page?

18 A. No, no, no, go ahead.

19 89 Q. There is a fully available blank white page a page over
20 where you could have written that, isn't that right? 10:07

21 A. That's correct.

22 90 Q. It wasn't necessary unless, for instance, the
23 right-hand side was already occupied with wording, it
24 wasn't necessary to write it into the tight restricted
25 spot that you did choose, is that right? 10:07

26 A. That was the page on the day. As you look at that
27 diary, there is no mystery about it. On the right-hand
28 side are lists of constituents and their complaints.

29 91 Q. I have that.

1 A. On the left-hand side are random notes. I don't mind
2 telling you that, you know, on that particular day I
3 reference an individual about a canvass, I reference
4 another individual about dog food for my German
5 shepherds, I reference another individual about 10:08
6 returning a phone call, I have numbered each and every
7 one of them down along, and then at the end reaching
8 across, as the thoughts came to me, I just scribbled
9 them down. I never considered it to be a note of a
10 meeting. I considered it to be the, I suppose the main 10:08
11 points that I had to address from the meeting. So the
12 main points that I had to address from the meeting was,
13 and I will read them out:
14
15 "Sexual abuse. True or false. Individuals and their 10:08
16 family -- and family. True or false."
17
18 It relates to sexual abuse.
19
20 "Don't trust him. Story not credible. Investigations 10:08
21 ongoing. He is not reliable. Trouble for PAC."
22
23 They were the main issues that I had to address. Now,
24 I didn't write down in that note, for example, that I
25 had put it to the Commissioner that he should meet with 10:09
26 Sergeant Maurice McCabe and deal with the issues that
27 he had discussed with me. I didn't write down the
28 other matters that we had talked about generally. So
29 these were issues that I had to address. So it's not a

1 note, a full report of a meeting verbatim. It's just a
2 note for me to reconcile in my head what had been said
3 so that I could sit at home and address these issues,
4 in the knowledge that I already had from Sergeant
5 Maurice McCabe

10:09

6 CHAIRMAN: I do understand that, Deputy. I suppose the
7 point of the question is: Why squeeze it into that
8 particular corner? It's in a particular context, it
9 might help if you said what was written first, what was
10 written second. And then the other thing is this: I
11 am not understanding this but I am familiar with a
12 September to September diary because obviously in the
13 law world we used to use such a thing, I certainly did,
14 is there a date on that page at all?

10:10

15 A. There is a date on the page aside from -- the 25th,
16 that was the day after, of the first '14. You can see
17 it on the right hand side.

10:10

18 CHAIRMAN: And was the date previous, was that
19 chockablock, was it? I mean, the day -- you are
20 writing it on the date appropriate, the day after --

10:10

21 A. No, these are scribbled notes on the left hand side of
22 that page then.

23 CHAIRMAN: But what date refers to that? Because it's
24 blacked out in my copy, I can't see it.

25 A. What date is on that -- there is no date on that page.
26 It's the 25th is the date that is dictating the
27 whereabouts of this in the diary.

10:10

28 CHAIRMAN: I am sorry for not following that, but I
29 don't follow it.

1 A. Can I have the diary?
2 CHAIRMAN: Sorry, Mr. O'Higgins, please, you ask
3 questions, I can address that at the end as
4 appropriate.

5 92 Q. MR. MÍCHEÁL O'HIGGINS: The Chairman has moved to the 10:11
6 nub of it. You didn't put any date on your note, did
7 you?
8 CHAIRMAN: Well, I am sorry, I just don't know if this
9 is a thing that you date or it's just one of these open
10 diaries where you write a date on. 10:11
11 A. It's not a diary, it's an open book.
12 CHAIRMAN: It's just your ordinary notebook.

13 A. Your ordinary notebook. It doesn't run from any
14 particular date. This one actually started on the
15 20/12/2013 and it ended on the 6/9/2014. 10:11
16 CHAIRMAN: All right.

17 A. And on that particular day -- sorry, the following day
18 then would have been the 25th, yes, so that is -- the
19 following day is the 25th, and on that day I would have
20 had a clinic and these are all matters from that 10:12
21 clinic. So the previous day, the 24th, I had my random
22 notes. That is how I follow my diary.

23 93 Q. MR. MÍCHEÁL O'HIGGINS: Did you date this important
24 entry?
25 A. No, the entry is not dated. It comes before the 25th 10:12
26 on that page.
27 CHAIRMAN: Yes.

28 A. And that is how it occurred.
29 CHAIRMAN: Unfortunately, I suppose what the public and

1 the media are looking at it is a completely blanked out
2 right-hand page, but just for the purpose of
3 information, the right-hand page says "25th", isn't it,
4 "January '14" and underneath that there is a "40" and
5 then there is a whole load of references to 10:12
6 regulations, issues about constituencies, and I am
7 paying no attention to those whatsoever.

8 A. Yes.

9 CHAIRMAN: So you are getting the date by reference to
10 the fact that the blanked out date on the right-hand 10:12
11 side of what is on the screen is headed "25/1/14"?

12 A. Yes.

13 CHAIRMAN: Yes.

14 94 Q. MR. MÍCHEÁL O'HIGGINS: Would it not have been easier,
15 Deputy McGuinness, to rest the book on the steering 10:13
16 wheel as you were making a note rather than trying to
17 do it with the book on the passenger seat?

18 A. I sat in the car and I reflected on what was said and
19 as a point would come to me that I felt was important,
20 I'd write it into this book. 10:13

21 95 Q. So this process of reflection and writing was made more
22 easier, was it, by you leaning over to your left rather
23 than putting the book on the steering wheel?

24 A. I was quite happy to do it that way. This is the way
25 it was done, Mr. O'Higgins, there is no mystery to it 10:13
26 and it wasn't a planned event. It wasn't me writing a
27 complete narrative of what happened at the meeting. It
28 was me sitting in the disturbed state thinking about
29 what had happened and what had been said and then

1 randomly writing down a note of what I needed to
2 address. What concerned me most, and I wrote it down.
3 I don't take notes of meetings, I don't take long, you
4 know, notes of every detail of a meeting that I attend.
5 So, I had attended many meetings with others and the 10:14
6 same thing applies. You know, without showing you the
7 name, because it's another whistleblower, you have the
8 random -- you have the constituency details on one
9 side, you have the other details on this side, they are
10 marked with a chain bracket because they are different 10:14
11 than anything else that is in the book. And the same
12 would apply in other cases. For example, this one
13 here, I just stuck in the note. So I don't do it on
14 the basis that at some stage in the future I am
15 actually going to need this, I could be in the 10:15
16 Tribunal. I don't think myself like that. It's a
17 reminder. It serves as a purpose of managing my
18 constituency queries and it serves as a reminder to
19 return telephone calls or other matters, but you can
20 see, and you are welcome to look at it in this book, 10:15
21 the way other details -- there is another one in
22 relation to the Public Accounts Committee, you see
23 where it's all ticked, all done, but you see this side
24 here - sorry, Chairman - where it's marked again with a
25 chain bracket. Again, if I was flicking through that 10:15
26 book and I wanted to find something and I'd see a chain
27 bracket, I would know it was different than my
28 constituency work, I would stop and look at it and I
29 would remind myself of it. And again, in relation to

1 those notes, they are general notes, they are not
2 specific details of things that might have happened.
3 There is another note here where I just put it into a
4 square. So it may not be the most professional or
5 efficient but it has managed to get me elected over the 10:16
6 last 21 years.

7 96 Q. When did you apply the blue tick beside the number 6 on
8 the left-hand side?

9 A. Of that date?

10 97 Q. Beside the entry. 10:16

11 A. I don't know that, because the practice has been --
12 CHAIRMAN: Counsel is asking you about -- I am just
13 seeing the book from here to there and there is what I
14 would call a marker and you have marked loads of it AND
15 put circles around it and ticks and all the rest of it, 10:16
16 and counsel is simply asking you when you did that or
17 why do you do that, your methodology?

18 A. On this side I tick it when the job is complete, so I
19 may go further on in the course of my work, I may go
20 back to this because it's not completed until later 10:17
21 date, I would tick that. If I was putting away the
22 diary, I might go through the diary again to ensure
23 everything is completed, and in instances where they
24 don't refer to the constituency work, I mark them in a
25 different way. So when did I put the mark on these 10:17
26 things, I can't tell you because they don't follow a
27 sequence.

28 98 Q. MR. MÍCHEÁL O'HIGGINS: But sorry, the markings with
29 the blue pen or the blue marker, there is a tick beside

1 item 6 and there is also a half circle, just hold it up
2 there for a moment so people know what we are talking
3 about, so the Chairman can see it, would you mind just
4 face it towards the Chairman so he sees what I am
5 talking about, right, do you see there surrounding the 10:17
6 upper part of this significant note, there is a
7 semi-circle with the blue felt tip marker, are we
8 agreed about that?

9 A. Yes.

10 99 Q. Within that semi-circle there is a blue tick beside a 10:17
11 number 6?

12 A. Yes.

13 100 Q. The same marker?

14 A. Yes.

15 101 Q. When did you make those markings? 10:18

16 A. I would have no idea. Because the manner in which this
17 is -- this diary is used, is on the basis of completing
18 work which may not be completed on the date that it was
19 written and at the end of the diary when it's
20 completed, as you can see here, when it's complete, 10:18
21 there, for example, is another two notes relevant to
22 public accounts, it's just the tick going through it, I
23 would go back over that diary at the end of its life
24 and I would just look at everything to ensure, one, did
25 I do everything relevant to my constituency work, and 10:18
26 two, if there was something in there other than
27 constituency work, would I mark it. When I would mark
28 it, I don't know. It's a random thing. It's not done
29 in the most professional of ways, but for me and my

1 job, this works.

2 102 Q. You recall I had asked you when did you come back to
3 the note and I think you indicated for the purposes of
4 giving your statement to the Tribunal, is that right?

5 A. Yes. 10:19

6 103 Q. Right. That is why I'm asking you when you made the
7 blue mark beside the note?

8 A. Oh, I see. I can't tell you that, but when you say
9 come back to the note, I take from that question, come
10 back to the note in the context of an examination of 10:19
11 its content. So, an examination of the content of that
12 note didn't happen until I had -- when did I come back
13 to the note in the context of the marker and how it's
14 marked out, I can't tell you that.

15 104 Q. Deputy, you referenced the Dáil speech you gave in May 10:19
16 2016 --

17 A. Yes.

18 105 Q. -- is that right? That Dáil speech, you'd agree with
19 me, generated a considerable amount of headlines and
20 publicity? 10:20

21 A. Now this may surprise you but I don't read much about
22 what I say or do. I had a particular experience,
23 Mr. Chairman, during my political career which caused
24 me to question whether it was good or bad to read what
25 was in the media, so I find my life much easier if I 10:20
26 just don't bother.

27 CHAIRMAN: All right. Let's take it as a given that it
28 was an important speech, let's take it as a given that
29 the media took an interest and then go on from there.

1 I mean, I suppose if you are asked the question were
2 you doing it for the purpose of self-glorification on a
3 false basis, well then we will get to that when we get
4 to that, but you are not at the moment being asked
5 that. 10:20

6 A. I am surprised at that.

7 CHAIRMAN: What?

8 A. I would be surprised about that.

9 CHAIRMAN: Well, I am not asking you that question.

10 A. Okay. 10:20

11 CHAIRMAN: I am not suggesting it at all, so...

12 106 Q. MR. MÍCHEÁL O'HIGGINS: You gave a number of
13 interviews, did you not, and you went on the radio and
14 there was a lot of public interest in what you said in
15 the Dáil? 10:21

16 A. I gave interviews and I went on the radio, yes.

17 107 Q. I'm suggesting to you that before going on the radio,
18 it would have been natural and logical to consult your
19 note?

20 A. You see, Mr. O'Higgins, when it's in your head and when 10:21
21 you have lived through it, as I take every event in my
22 life, I'm not going to complicate my life further by
23 having to revert to notes every time I do something,
24 and it wasn't necessary for me to do it. I had said
25 what I said in the Dáil. That record stood, or stands, 10:21
26 as a reference point, and that's the essence of my
27 position and my work in politics, or how I do that
28 work.

29 108 Q. You knew -- you were able to recall yesterday that you

1 pulled into a truck stop, you were able to summon that
2 up from your memory, isn't that right?

3 A. Yes.

4 109 Q. Do you recall giving an interview within a few days of
5 your Dáil speech about the car park conversation with 10:22
6 Richard Crowley on RTÉ, a programme called This week on
7 a Sunday?

8 A. Yes. Well, you made that available late last night, I
9 think.

10 110 Q. Yes. It was actually to ensure that you had what I was 10:22
11 going to be asking you questions about and you were
12 provided with those materials, is that right?

13 A. I was, this morning, yes.

14 111 Q. Pardon me?

15 A. Yes, I have them this morning. 10:22

16 112 Q. And when were you told about them?

17 A. Oh, last night.

18 113 Q. Yes. And you are aware, aren't you, that Richard
19 Crowley in this interview, on the 29th May 2016, which
20 is some three days after your Dáil speech, specifically 10:23
21 asked you if you had made a note of the car park
22 conversation and you confirmed that you had not?

23 A. Yes.

24 114 Q. Are we agreed about that?

25 A. Well now, I'd like to get to the actual transcript of 10:23
26 the interview. Was that the 9th October?

27 115 Q. No, that was the 29th May 2016.

28 A. Okay.

29 116 Q. We will come to the October one in due course.

1 A. So the 29th May, yes. What page is that on?

2 117 Q. And I think this is up on the screen there, the cover
3 sheet for the RTÉ This Week programme, 29th May 2016?

4 A. Yes.

5 118 Q. And on page 2 the presenter, Mr. Crowley, is 10:24
6 introducing the programme and is referencing, on page
7 3, if we go to the top of page 3, he is quoting -- or
8 the programme quotes from a part of your Dáil speech,
9 isn't that right?

10 A. Yes. 10:24

11 119 Q. And then towards the bottom of that page we have
12 Richard Crowley, just they have it there on screen --

13 A. Yes.

14 120 Q. -- indicates "Fianna Fail TD and former Public Accounts
15 Committee Chairman, John McGuinness, speaking in the 10:24
16 Dáil on Thursday. Last night speaking from his home in
17 Kilkenny Deputy McGuinness told us more about how that
18 secret meeting came about."

19 A. Yes.

20 121 Q. Just pause there, we will come back there to the notion 10:24
21 it was secret in due course, but we might just stay
22 with the transcript for a moment. And perhaps if we
23 might go to -- while just looking at that, can I ask
24 you this: In terms of the allegations that you say
25 Commissioner Callinan uttered in the car, were they new 10:25
26 allegations or were they allegations you had heard
27 before?

28 A. As I said previously, the allegations of sexual abuse
29 were ones that we had heard before.

1 122 Q. They were ones you heard before?
2 A. Yeah.

3 123 Q. So there was nothing new in what was being said?
4 A. Oh, no, there was a lot new in what was being said in
5 terms of the other matters, but in terms of the 10:26
6 accusations or the -- I suppose, the gossip in Leinster
7 House in relation to sexual abuse, these were not new.
8 The detail was different.

9 124 Q. I beg your pardon?
10 A. The detail was new. 10:26

11 125 Q. Well, look, if there was new detail they are new
12 allegations surely?
13 A. No, they are not, they are the same allegations.

14 126 Q. So is it your position that what you say was relayed to
15 you by Commissioner Callinan in the car park meeting 10:26
16 was one and the same of the subject matter that you had
17 already heard previously?
18 A. With the -- yes, in relation to the matters of sexual
19 abuse, but then he spoke about the family members, he
20 spoke about the file that was there and so on, and that 10:27
21 was different. I was never made aware that there was a
22 file against Sergeant McCabe or that there would be
23 prosecutions imminently in relation to this, so these
24 are matters that were not known to me.

25 127 Q. But in terms of the actual matters alleged by way of 10:27
26 sexual abuse, they were not new?
27 A. They were not new, no.

28 128 Q. And what about this business about family and nieces --
29 A. Yes.

1 129 Q. -- is that not new?
2 A. Oh, that is new, yes.
3 130 Q. So --
4 A. The general accusation and gossip around sexual abuse
5 and Maurice McCabe was not new. It's a matter that I 10:27
6 had addressed with him from 2011 to '13, nearer to '13,
7 where he had denied it. What was new and disturbing
8 was the fact that it was being suggested to me that
9 there was a file, a live file, and that the prosecution
10 in relation to this was ongoing, and the fact that the 10:28
11 sexual abuse involved family members, that extended
12 completely the description, if you like, of what was
13 happening and it came directly from the Commissioner as
14 a fact. So to that extent, all of that was different,
15 very different. 10:28
16 131 Q. So there were new allegations being relayed to you in
17 the car?
18 A. Sorry? That question?
19 132 Q. You are telling us, therefore, aren't you, if I am
20 understanding what you are saying, what was relayed to 10:29
21 you in the car were in fact new allegations?
22 A. Yes.
23 133 Q. Right. So insofar as you may have earlier indicated
24 they weren't new --
25 A. The allegations around sexual abuse, these were not 10:29
26 new. These were part of the gossip and the story
27 around Leinster House.
28 134 Q. Well, tell us about that. What had you heard before
29 the car park meeting?

1 A. The same as I had heard -- before the car park meeting,
2 we were dealing with Sergeant Maurice McCabe and a lot
3 of what was being said about Sergeant Maurice McCabe
4 was that he had issues around sexual abuse and these
5 were matters that I had asked Sergeant Maurice McCabe 10:30
6 about. What was new in terms of the car park was the
7 fact that the Commissioner indicated that a file was
8 being prepared and, as I said yesterday, presumably for
9 prosecution. The Commissioner was confirming this so,
10 therefore, it was no longer a rumour, it was no longer 10:30
11 a piece of tittle-tattle or gossip, it was something
12 that was being presented as fact. That was entirely
13 different. And for matters to be, I suppose, there in
14 the form of gossip and tittle-tattle is quite
15 different. Quite, quite different. 10:30

16 135 Q. You have used, if you don't mind me commenting a rather
17 general term, there were issues, abuse issues that you
18 had heard from the rumours; what had you heard and what
19 did you hear from Sergeant McCabe when you say you put
20 them to him prior to -- at the end of 2013? 10:31

21 A. That he had sexually abused someone.

22 136 Q. You put that to him?

23 A. And I asked Sergeant McCabe during the course of the
24 consideration of matters leading up to the Public
25 Accounts Committee about these rumours and he 10:31
26 categorically denied those rumours.

27 137 Q. Was that the extent of the information you asked him to
28 confront?

29 A. Yes.

1 138 Q. That he had sexually abused someone?
2 A. Yes.
3 139 Q. Is that it?
4 A. Yes.
5 140 Q. Who was the someone that you were asking him about? I 10:31
6 don't mean the name, I mean his relation with the
7 someone or did he know the someone?
8 A. I wasn't -- I didn't mention a name.
9 141 Q. No. Tell us what the rumours had said that you had
10 heard -- 10:32
11 A. The rumours had said that Sergeant Maurice McCabe had
12 abused people, that he had sexually abused people.
13 142 Q. People?
14 A. Yes.
15 143 Q. People? 10:32
16 A. Yes. That was the general comment throughout Leinster
17 House.
18 144 Q. Right.
19 A. And I required, then, at a stage to ask Sergeant McCabe
20 was this true or not. He told me he was aware of the 10:32
21 rumours and he told me they were completely untrue.
22 145 Q. And what else did he tell you?
23 A. In relation to what?
24 146 Q. He presumably gave you a degree of detail --
25 A. I wasn't interested in detail, Mr. O'Higgins. I was 10:32
26 interested in whether the man that I was believing in
27 and that was informing me in relation to a hearing of
28 the Public Accounts Committee, had sexually abused
29 someone or not, according to the gossip. He was asked

1 and he answered, and I accepted that answer. So there
2 was no need for me to probe into any of this gossip, no
3 need at all.

4 147 Q. So you weren't interested in hearing any detail from
5 him or giving any detail to him, is that your evidence? 10:33

6 A. I gave him the detail of the rumour of sexual abuse.

7 148 Q. And what detail did you give to him?

8 A. That he sexually abused people.

9 149 Q. That is not detail, that is just one line. What detail
10 did you give him? 10:33

11 A. I think that is detail enough for me, quite frankly. I
12 find the whole thing absolutely disgusting that, these
13 rumours were circulating in Leinster House, without any
14 foundation whatsoever, and then I directly asked the
15 man central to these rumours were they true or false. 10:33

16 I felt that I needed to know and I wanted to know. But
17 it was sufficient for me to hear it directly from him
18 that they were absolutely false, because I had always
19 believed that he was an honourable individual being
20 dealt with improperly by the State and what I was 10:34

21 concerned about was, that if these rumours were correct
22 or if I didn't even ask about these rumours, it would
23 have been wrong of me. And I felt embarrassed and
24 upset to have to ask Sergeant Maurice McCabe about his
25 family affairs, about his -- the affairs that were 10:34

26 before us in the context of rumours, when in fact the
27 Public Accounts Committee wasn't dealing with that; we
28 were dealing with something entirely different. We
29 were dealing with a matter that was the subject of a

1 report of the Comptroller & Auditor General, not
2 anything to do with Maurice McCabe and his character,
3 because, remember, we already had the evidence to prove
4 that he was reporting a serious wrongdoing in the
5 State. 10:35

6 150 Q. Deputy McGuinness, you have told us that your purpose
7 in going to Sergeant McCabe at the end of 2013 was to
8 convey to him the rumours you had heard about him, that
9 was presumably out of fairness and to satisfy yourself?

10 A. That is what I said. 10:35

11 151 Q. Right. In order to be fair to him, I suggest to you
12 you needed to have some degree of detail so you would
13 be imparting as much information as possible to the man
14 who was suffering from this?

15 A. The man that was suffering from this was Sergeant 10:35
16 Maurice McCabe.

17 152 Q. Well, we have that.

18 A. The man that was suffering from this was Sergeant
19 Maurice McCabe, and he knew about the rumours, so there
20 is no need for me to tell him about the rumours bar 10:35
21 that I had heard them.

22 153 Q. And he presumably told you, look, not only am I telling
23 you that was looked into but I can tell you that the
24 DPP looked into it and cleared me?

25 A. I didn't ask him that. I didn't press him on it. All 10:36
26 I wanted to know from him was that the rumours were not
27 true, they were just that, rumours.

28 154 Q. But surely the rumour mill had that detail, there had
29 been an investigation?

1 A. Well, Mr. O'Higgins, I just deal with facts and the
2 fact of the matter is, there was a rumour. The fact of
3 the matter is, I had to get a response because I wanted
4 to ensure that what I was embarking upon was -- in the
5 company of Sergeant McCabe, was someone that I can 10:36
6 trust and someone that would -- someone that needed to
7 perhaps explain in relation to the rumours, whether
8 they were true or false and I did that, I asked him and
9 he said no.

10 155 Q. Deputy McGuinness, it's a simple: Did the rumour mill 10:37
11 have it that there had been an investigation?

12 A. That's not how I heard it. The rumour mill in the
13 context of what was being said about Maurice McCabe was
14 that he had sexually abused people and that he was a
15 paedophile. That was what was being said generally 10:37
16 about Sergeant Maurice McCabe.

17 156 Q. And are you seriously suggesting to the Tribunal that
18 Sergeant McCabe didn't tell you the outcome of the
19 investigation?

20 A. Seriously. 10:37

21 157 Q. Did he?

22 A. I am seriously telling the Tribunal that he didn't tell
23 me about the outcome of an investigation.

24 158 Q. You see, this Tribunal has -- and you wouldn't have
25 been here in fairness to you, but at earlier phases of 10:37
26 this Tribunal, the Tribunal has heard about perhaps
27 understandable lengths Sergeant McCabe went to to
28 ensure that relevant people were aware, fully aware,
29 not only that the DPP had directed no prosecution but

1 why the DPP had directed no prosecution; he was anxious
2 that, if you like, the world would know that?
3 CHAIRMAN: Well, that has been disputed, Mr. O'Higgins,
4 and you will appreciate I have been told I have made an
5 error in that respect, I think Ms. Leader has been told 10:38
6 she has made an error in that respect. Now, I will
7 sort that out when I come to think about this in due
8 course. But what seems to be between us is that I had
9 taken the view that the reason for asking for the
10 circulation of the DPP's letter was that it would 10:38
11 counteract, I suppose, the Rooney letter of the 4th
12 July 2011, but secondly, the other thing, given that
13 there was, and there's two different views of this as
14 well, either a confrontation or merely staring in
15 Bailieboro District Court, and again there's two 10:39
16 different views of this, did Ms. D actually chase him
17 through Bailieboro, which is a public fuss, or was it
18 the case that he saw her and went upstairs in the Garda
19 station. Two diametrically opposed views have been
20 given of this. But as I understand the position of 10:39
21 Maurice McCabe, is that his request to Superintendent
22 Rooney for which he was to make out a business case was
23 that given that he had had the detail from the State
24 solicitor, that the letter itself from the DPP should
25 go to the D family and that that might calm them down 10:39
26 in the context of the incidents I have spoken about,
27 again which there are, I am reiterating, diametrically
28 opposed views as to what happened. So I mean, I don't
29 think it was the world at large because that would have

1 made things worse, but it was certainly at least two
2 families, his and the D family, and perhaps more widely
3 than that, I don't know.

4 MR. MÍCHEÁL O'HIGGINS: Thank you, Chairman, that puts
5 context on it.

10:40

6 159 Q. If I could then rephrase my question to you, Deputy
7 McGuinness: In circumstances where you were, if you
8 like, directly confronting Sergeant McCabe with this
9 rumour and asking for his position on it, I'm
10 suggesting to you it would have been a logical and
11 natural thing for him to say, look, there was an
12 investigation but the DPP decided not to bring a
13 prosecution for reasons X, Y and Z, all right, that
14 would have been a natural thing for him to relay to
15 you, would you agree with that?

10:40

10:40

16 A. I don't know what is natural for Sergeant McCabe, so
17 you will have to ask Sergeant McCabe that question. I
18 can only relay to you in truth what I have been -- what
19 I know.

20 160 Q. We were looking at the Richard Crowley interview you
21 gave and on page 5, towards the bottom, on line 26,
22 Mr. Crowley asks a specific question, he says:

10:40

23
24 "Just to be clear on this, there was nothing that the
25 Commissioner told you at that meeting that you hadn't
26 heard before and that you hadn't satisfied yourself was
27 untrue."

10:41

28
29 Do you see that there?

1 A. Yes.

2 161 Q. And you are recorded as answering:

3

4 "I had heard all of this before and I had satisfied

5 myself to the extent that I had already asked Sergeant 10:41

6 McCabe about these matters and he dealt with each of

7 the issues that I spoke to him about in detail."

8

9 In detail is what you said.

10 A. Yes. 10:42

11 162 Q. "And I believed him." So do you want to revisit your

12 answer in relation to detail?

13 A. No, I don't.

14 163 Q. I see.

15 A. I have given you the detail. 10:42

16 164 Q. And do you see on line 12 Mr. Crowley asked you a

17 specific question, it's further down the same page.

18 Mr. Crowley, line 12:

19

20 "Just in terms of the meeting, did you record it or 10:42

21 take notes or write out notes later of that meeting?"

22

23 And you responded:

24

25 "No, no, I did not." 10:42

26 A. And I did not. I did not record it and I did not write

27 out the full notes of the meeting. What was written,

28 as I told you before, were the points that I had to

29 address and what Mr. Crowley here was getting at in the

1 context of the interview was the detailed exchange
2 between Mr. Callinan and I. Did I write out a note in
3 length about that, that was how I took that question,
4 and the answer to that question is, no, I did not take
5 a full note of the meeting.

10:43

6 165 Q. Are you seeing something that I am not seeing? The
7 question that was asked of you was:

8
9 "In terms of the meeting, did you record it or take
10 notes or write out notes later of that meeting?"

10:43

11
12 And you said "No".

13 A. Yes. You see, Mr. O'Higgins, what you are attempting
14 to do here is to provide me with a single line from
15 Mr. Crowley's interview and not allowing those that are
16 listening to us having this exchange read through all
17 of the interview, but it is clear that Mr. Crowley
18 wanted detail of what transpired between Mr. Callinan
19 and I, and I did not take that kind of note during the
20 meeting or after the meeting. Neither -- and I would
21 refer you to his first question, which was did I record
22 it. That is a clear signal, I think, that he wanted
23 the precise detail. There was no precise detail of the
24 exchange between both of us written down. There was
25 simply the four or five points of a note to myself.
26 Mr. Crowley wasn't asking me about anything short or
27 sweet. He was asking me for the long format of the
28 transcript of the meeting and there is none.

10:43

10:44

10:44

29 166 Q. So you are standing over, are you, as correct, the

1 answer you gave to Richard Crowley in that interview?
2 A. The answer that I gave to Mr. Crowley in the interview
3 is as I have explained to you and in context. What
4 Mr. Crowley was looking for was almost a transcript of
5 the meeting. He referred to a tape-recording that 10:45
6 would be detail, detail. He then went on to say: "Did
7 you take notes or write out notes later?" I didn't
8 write out notes of the meeting later in its full
9 format. I took four or five points which I had to
10 address for myself. 10:45
11 167 Q. Deputy McGuinness, you were given this overnight. You
12 see, I thought your answer was going to be I just
13 forgot, but you are saying --
14 A. But sure, why should I tell you that? I didn't forget,
15 I am telling you exactly what happened. 10:45
16 168 Q. You didn't forget?
17 A. You are choosing to ignore the content of the
18 interview, you are choosing to ignore the fact that
19 generally speaking when you are being interviewed they
20 are not interested in short snappy notes, they are 10:46
21 interested in the full detail. I didn't have the full
22 detail. I didn't write down the full detail. I never
23 claimed to write down the full detail. I claim to
24 write down four or five points for my own interest and
25 consideration. So it's not unusual that I would have 10:46
26 said to him, no, I don't have a recording of the
27 meeting and I don't have a transcript of the meeting.
28 169 Q. Did you deliberately answer Mr. Crowley's question and
29 withhold from him that you had made a note, perhaps not

1 a full note but a note of the meeting, was that
2 something you intended --

3 A. Deliberately?

4 170 Q. To withhold that information?

5 A. No, I didn't, no, no. 10:46

6 171 Q. But why didn't you simply say I am not going to go into
7 the detail of it but I took a note?

8 A. You see, that is what I said on the day. I have given
9 you the reason why I said it. I have explained the
10 reasoning behind it. I don't know what else you want 10:47
11 me to say. But there isn't anything else for me to
12 say. And as I told you earlier on, I rely in general
13 throughout these interviews on the information that I
14 have in a general way, and I present it as such and
15 that is what I had done right throughout that 10:47
16 interview. And I see no difference whatsoever in the
17 position or the answer that I gave then in relation to
18 a transcript type of document, a recording of the
19 meeting. There was none. There is none. Surely,
20 Mr. O'Higgins, based on the note in this diary, based 10:48
21 on that note, which you have read, and in your
22 experience, is that a note of the transcript of a
23 meeting that lasted 20 minutes to half an hour?

24 172 Q. So can we take it, Deputy McGuinness, that when you
25 were having this interview, you -- this isn't the case 10:48
26 that you had forgotten about the note; you remembered
27 the note during the course of this interview?

28 A. I didn't even think about the note because the question
29 wasn't -- the question that he was asking was about the

1 detailed transcript of a meeting. He wasn't saying
2 that in words, but when he mentioned tape-recording and
3 notes, I'm simply saying to you --

4 173 Q. Where does it say tape record?
5 A. It says here recording of the meeting. I think. 10:48

6 174 Q. "Did you record it --"
7 A. Did I record it.

8 175 Q. "-- or take notes or write out notes later of that
9 meeting?" Where does it say tape-recording?
10 A. It doesn't say tape in the transcript. 10:49

11 176 Q. Where does it say full notes?
12 A. It doesn't say full notes, Mr. O'Higgins. But the fact
13 of the matter is, recorded, to me, in the course of the
14 interview, was, in my mind at that time, the suggestion
15 that it would have been recorded on tape. The 10:49
16 recording in relation to the notes and take notes for
17 me means take considerable detailed notes. There was
18 no notes, there was no recording. And when I said to
19 you earlier on in my answer about recording I was
20 referring to what I believed to be in Mr. Crowley's 10:49
21 mind, which was tape-recording, but maybe that is a
22 question you should ask Mr. Crowley.

23 177 Q. Do you see there on line 20 you are recorded as
24 saying -- I don't want to rob it of its context,
25 Mr. Crowley asked you on line 16: 10:50
26

27 "We haven't heard from the Commissioner, I don't know
28 if we will hear from the Commissioner on this but I
29 suppose people might say it could be your word against

1 his."

2 A. Yes.

3 178 Q. You see, I'm suggesting to you that that is a skilled
4 presenter who is conducting an interview, who has
5 received information of your position that you didn't 10:50
6 take a note or write out a note of the meeting, on foot
7 of that information being received by him he is saying
8 to you, look, people might say it's your word against
9 his because you don't have a note, do you understand?

10 CHAIRMAN: Well, that might be so, but God knows we 10:50
11 have had every kind of note in this Tribunal which has
12 been challenged by everybody in multiple ways, so it
13 actually doesn't make a difference. It seems to me the
14 only thing you can do is to record everybody as you go
15 along. Like those things that bicycles have on their 10:51
16 helmets which shows their route, so they can look at
17 it, I don't know, and feel good about themselves on
18 their computer later on. Anyway, I am sorry,
19 Mr. O'Higgins, your question I think is, that anyone
20 would take the plain reality of the answer of Deputy 10:51
21 McGuinness as being no, there is no note, as opposed to
22 no, I didn't transcribe it or I didn't sit down and
23 fully write out every single thing we talked about from
24 memory and certainly whether it's a mobile phone that
25 you can switch to record, I don't think I can do that 10:51
26 on my mobile phone, not that I would be bothered, you
27 didn't do any such thing, that was the sense of your
28 answer.

29 A. That was the thrust of the question and that was the

1 thrust of my answer.

2 179 Q. MR. MÍCHEÁL O'HIGGINS: Do you want to answer the
3 Chair's question?

4 A. Which is, sorry, Mr. Chairman?

5 CHAIRMAN: Which is, what do you think, you say in my 10:52
6 head I didn't think of the note, what was the import do
7 you think of the answer you actually gave as it appears
8 on the page?

9 A. Well, on the -- during the interview, it was -- and
10 following the sequence of questions and the answers 10:52
11 that were given, it was clear that Mr. Crowley was
12 looking for a detailed note of the meeting. Now, had I
13 answered 'oh, yes, I have a detailed note' I am quite
14 that people would have got quite a bit of fun out of
15 the short note that was there, in a half hour meeting. 10:52
16 So I didn't think that have note. And it didn't enter
17 my mind because what Mr. Crowley was after was a
18 recording. Now, you questioned tape-recording, was it
19 a recording on paper. That was a recording of the
20 meeting. No, I didn't record the meeting on paper in 10:52
21 its detail.

22 180 Q. All right. Could we move down to the bottom of the
23 page down and Mr. Crowley asked you a separate
24 question, the bottom of page 6:

25
26 "Did you tell sergeant McCabe about this meeting on the 10:53
27 Naas Road and tell him about what was said?"

28
29 And you are recorded as answering:

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"No, I did not because what was related to me was so vile and disturbing that I did not want to relate it to Sergeant McCabe and I had heard it before."

10:53

Do you see that?

A. Yes. He was speaking about the meeting on the Naas Road and had I told him immediately after that and the answer was no.

181 Q. No, the question he asked was:

10:53

"Did you tell Sergeant McCabe about this meeting on the Naas Road and tell him about what was said?"

He didn't time-restrict the question.

10:53

A. He didn't time-restrict the question, but in the course of the interview that is what we were referring to: We were referring to the meeting on the date that it happened, the note on the date that it happened and then did I go and tell Sergeant Maurice McCabe after it had happened, after it had happened on the date that it happened. And the answer to that question is, no, I didn't. Now, to go through the interview, you are being interviewed and you are taking from the person carrying out the interview the questions that you believe he is asking, as you understand him to be asking, and because of the fact that previous to this we were discussing all of the relevance of this meeting, the answer to the question was that, no, I

10:54

10:54

1 didn't tell him. And, as I said to you earlier on, I
2 had asked him previously but that was not about the
3 meeting with Mr. Callinan.

4 182 Q. In line 7 he asked:
5
6 "Did Martin Callinan swear you to secrecy on this? Did
7 he say this all off the record?"
8
9 And you responded by saying:
10
11 "No, no, no, I am not sworn to secrecy. Obviously I am
12 not, I have raised it now."
13
14 And then Mr. Crowley asked you --
15 A. Sorry, what page are you on now? 10:55
16 183 Q. We are still on page 7.
17 A. 7, yes.
18 184 Q. Mr. Crowley asked you:
19
20 "Sure. And did you tell anybody else about the meeting 10:55
21 or the content of the meeting subsequently?"
22
23 And you responded "No", isn't that right?
24 A. Yes.
25 185 Q. And he asked at line 14: 10:55
26
27 "You didn't tell your party leader?"
28 A. Yes.
29 186 Q. It says Michael Martin, I think it should be "Micheál

1 Martin, about this"?

2 A. Yes.

3 187 Q. And your answer was:

4

5 "No, no, I don't believe I did, no." 10:55

6 A. Yes.

7 188 Q. And this is an interview where you are being asked that

8 specific question on the 29th May 2016?

9 A. Yes.

10 189 Q. And you go on then and you actually give a reason as to 10:56

11 why you didn't tell your party leader, because in line

12 17 Mr. Crowley asked you:

13

14 "Do you think you should have?"

15 10:56

16 And you gave the following response:

17

18 "No. Because, firstly, it was a matter between me and

19 Maurice McCabe as to how he was bringing forward the

20 evidence and what he was doing, and secondly, you know, 10:56

21 when you do something like this the political

22 establishment is against you and all sorts of rumours

23 and allegations are made against individuals, that's

24 the nature of this and what happens within the State.

25 So, you know, I heard what the Commissioner had to say, 10:56

26 I have heard what others have had to say and my

27 judgment call was that there was no need to pursue this

28 except directly to Maurice McCabe."

29

1 Do you see that there?

2 A. Yes.

3 190 Q. So you gave not only -- not only did you say that you
4 believed you hadn't told your party leader, but
5 actually you went to the trouble of giving a reason as 10:57
6 to why that was so?

7 A. Yes.

8 191 Q. And you have been provided with the full interview, but
9 I think if we move to page 10, you were asked the
10 question by Mr. Crowley on line 26 towards the bottom 10:57
11 of page 10:

12

13 "Do you regret not bringing this information into the
14 public domain earlier? It's a very pertinent important
15 piece of information about how a senior garda attempted 10:57
16 to influence you in relation to the credibility of a
17 key witness?"

18 A. Yes.

19 192 Q. And you responded:

20 10:57

21 "This in my opinion is the first opportunity when after
22 the O'Higgins Report, when all of this is now being
23 talked about in terms of Dáil debates and in terms of
24 further investigations and clarifications that are
25 necessary, I think it is necessary to put on the public 10:58
26 record the fact that this was being said at the highest
27 level. This is my proof that it was being said and I
28 believe it now needs to be clarified."
29

1 And that is the answer you gave.

2 A. Yes.

3 193 Q. And Mr. Crowley asked you on line 11:

4

5 "And you don't think it would have been more useful to 10:58
6 do it earlier in the proceedings, to let people know
7 that the most senior garda in the country was having a
8 secret meeting with the Public Accounts Committee
9 Chairman?"

10

10:58

11 You gave us a reason in line 16:

12

13 "I am not sure whether it would have been more useful
14 at that time because given the efforts that were being
15 made it might have actually caused the prevention of 10:58
16 that meeting of the Public Accounts Committee and I
17 wasn't prepared to allow that to happen given that the
18 evidence that I had received from Maurice McCabe and
19 given the documentation that was before the Public
20 Accounts Committee, I could not jeopardise the 10:58
21 possibility of that meeting being halted at any stage
22 and I was proven or have been proven and so has Maurice
23 McCabe been proven to be correct in that assumption."

24

25 So you appear to be giving a reason there, Deputy 10:59
26 McGuinness, that the reason you didn't tell -- you
27 didn't come forward publicly with this car park
28 incendiary conversation at the time was because it
29 might have actually caused the prevention of Maurice

1 McCabe giving evidence before the PAC, is that right?

2 A. Yeah.

3 194 Q. And was that the reason you didn't disclose it?

4 A. Yes.

5 195 Q. Are we not agreed that Maurice McCabe gave his evidence 10:59
6 before the PAC on the Thursday after Martin Callinan
7 gave his evidence before the PAC?

8 A. Are we what?

9 196 Q. That Maurice McCabe gave his evidence some number of
10 days after Commissioner Callinan had? 11:00

11 A. 30th of March I think, was it?

12 197 Q. No, it was the Thursday, the following, the 24th --
13 following the 23rd?

14 A. No, the 24th was the day that I met with the
15 Commissioner. The 23rd was the day of another meeting. 11:00
16 And the 30th, I think, was the day that --

17 198 Q. It was the 30th of January, wasn't it?

18 A. Yeah.

19 199 Q. Right. The meeting -- my client, Martin Callinan, gave
20 his evidence before the PAC on the 23rd, agreed, of 11:00
21 January?

22 A. No, he didn't. The Commissioner came before that
23 meeting -- oh, yes, to give his evidence, of course, in
24 relation to the Comptroller & Auditor General's report.

25 200 Q. Yes. 11:01

26 A. Yes, sorry, yes.

27 201 Q. All right. And the car park meeting was the next day?

28 A. Yes.

29 202 Q. The 24th?

1 A. Yes.

2 203 Q. And six days after the car park meeting, Sergeant
3 McCabe appeared before the PAC in private session?

4 A. Yes, yes.

5 204 Q. Right. So that necessity, that justification for not 11:01
6 making public the car park conversation came to an end
7 on the 30th January, after Sergeant McCabe has given
8 his evidence?

9 A. Yes, you could say that, yes.

10 205 Q. Well, what do you say to that? Isn't that logical? 11:01

11 A. Oh, yeah. Prior to Sergeant McCabe giving evidence, I
12 felt that it was important to stay focused on the issue
13 at hand, so the car park meeting, to my mind, while it
14 was trying to discredit Maurice McCabe, there was no
15 need for that to interfere with the work of the Public 11:02
16 Accounts Committee. So you are asking me then after
17 that it might have been, I think is your question, to
18 make it public, and I didn't think it correct to make
19 it public because, again, a lot of what was being said
20 at that meeting was incorrect, it was wrong, and I was 11:02
21 not going to allow myself to be used by Commissioner
22 Callinan to spread the type of rumour and information
23 that I was given.

24 206 Q. On your case, Commissioner Callinan had made
25 disgraceful remarks about Sergeant McCabe and had done 11:03
26 so for the purpose of undermining the PAC?

27 A. Yes.

28 207 Q. And the important work it does, isn't that right?

29 A. That's correct, yes.

1 208 Q. And I'm suggesting to you if we just step back for a
2 moment and look at the wider political landscape at
3 that time, in terms of current affairs --

4 A. Yes.

5 209 Q. -- I'm suggesting to you it would have been politically 11:03
6 opportune and appropriate for you to report the car
7 park conversation at any number of points after the car
8 park meeting on the 24th January 2014?

9 A. Yeah, but I chose not to do that because I didn't see
10 the relevance of putting that into the public domain at 11:04
11 that time, because while you set the date of the
12 meeting and Sergeant Maurice McCabe's appearance before
13 that meeting at the 30th, that didn't end the -- that
14 didn't end the treatment of Maurice McCabe and didn't
15 end his case and his hearing. There was lots of other 11:04
16 matters that were going on. So had I intervened at
17 that stage with this story and this report of the
18 meeting, I felt that it would further complicate all of
19 those issues and simply almost give truth to the
20 rumours that were being circulated, because the matters 11:04
21 being dealt with by Maurice McCabe didn't start and
22 finish with just the penalty points, so it would have
23 been, I think, a bit reckless of me to add all of this
24 unproven material to the mix in terms of the public
25 perception of Sergeant McCabe, and the reason I raised 11:05
26 it much later, on the 26th May 2016, was because of the
27 O'Higgins Report and because matters were continuing in
28 relation to those rumours and the attempts within the
29 force to discredit Maurice McCabe. And quite frankly,

1 I had enough of that, so I decided at that juncture to
2 mention this in my Dáil contribution of the 26th May.

3 210 Q. Let's bring it close to the car park time and let's
4 look at the political controversies that arose at that
5 time. January 2014, after then-Commissioner Callinan 11:06
6 makes his PAC appearance, there is, and I am going to
7 use neutral language here, there was a fallout or
8 publicity surrounding his use of the adjective
9 disgusting, all right, and you'd agree with me that the
10 airwaves were reasonably full with politicians offering 11:06
11 views on that and Commissioner Callinan and An Garda
12 Síochána came under a degree of pressure, is that fair?

13 A. Yes, there was public --

14 211 Q. Do you recall that?

15 A. Yes, there was commentary on it, yes. 11:07

16 212 Q. Right. And that's one thing. But way more politically
17 potentially explosive or certainly something that would
18 have greater political, I suggest to you, impact, would
19 be you bringing out in public the fact of this
20 disgraceful conduct in the car park which you accuse 11:07
21 Martin Callinan of, libeling, attributing -- accusing
22 sexual abuse to a serving guard for the purpose of
23 undermining the work of the PAC, that was potentially
24 significant politically, isn't that right?

25 A. Yes, yes, you could say that. 11:08

26 213 Q. You didn't avail of the opportunity in January 2014 in
27 the fallout from the adjective disgusting, nor did you
28 raise it in February 2014 when Sergeant McCabe met
29 Micheál Martin, isn't that right?

1 A. Sorry, repeat that there.

2 214 Q. Nor did you raise it in the context of your party
3 leader meeting with Sergeant McCabe in February 2014,
4 isn't that right?

5 A. I'm not sure of the meeting with Sergeant Maurice 11:08
6 McCabe and Micheál Martin.

7 215 Q. Well, do you recall on the 19th February 2014, Micheál
8 Martin, in my recollection, passed a dossier to the
9 Taoiseach, Enda Kenny, then Taoiseach --

10 A. Yes. 11:08

11 216 Q. -- of documents and information that had been passed to
12 him by Sergeant McCabe?

13 A. Yes.

14 217 Q. Right. In order to do that he had to meet him, isn't
15 that right? You don't remember that, no? 11:08

16 A. Why would I remember it? I wasn't at the meeting.

17 218 Q. Sorry, are you aware that Sergeant McCabe -- I don't
18 intend this as a quiz, Deputy McGuinness, but just are
19 you aware --

20 A. I am aware that Micheál Martin had received some form 11:09
21 of dossier, or as you call it, and that he had
22 presented that to the Taoiseach at the time.

23 219 Q. Right.

24 A. I also remember, Mr. Chairman, that Micheál Martin
25 raised that matter in the Dáil, I think, around that 11:09
26 time.

27 220 Q. Yes. So there was a degree of publicity --

28 A. There was a degree of publicity around that.

29 221 Q. Yes.

1 A. And because of the nature of that publicity, I, at that
2 time, following a meeting with Micheál Martin,
3 mentioned to him that I had met the Commissioner and
4 that certain matters -- or that he had made allegations
5 about Sergeant Maurice McCabe. So -- 11:10

6 222 Q. And was he shocked?

7 A. Well, I gave him that information, I think I should
8 explain that in my role as Chairman of the Public
9 Accounts Committee and in fairness to the party leader,
10 Micheál Martin, he insisted on a separation of 11:10
11 interest; in other words, you are Chairman of the
12 Public Accounts Committee, it's a cross-party committee
13 and what you do is what you do, I don't want any
14 involvement in it, you behave as you do. So I would
15 never have been reporting, as it were, to Micheál 11:10
16 Martin on the matters that were before PAC and
17 certainly didn't report to him in relation to Maurice
18 McCabe, but because of the fact that Micheál Martin
19 raised this matter in the Dáil - and he covers this in
20 a letter to the Tribunal, I understand - at the end of 11:11
21 a meeting I mentioned to him about the meeting and I
22 didn't recollect that until I actually saw the letter.

23 223 Q. Deputy McGuinness, this was hardly an issue that would
24 be dealt with in a throwaway remark at the end. This
25 was explosive potentially, surely? 11:11

26 A. Oh, no, it wasn't a throwaway remark. It was a piece
27 of information given to a party leader who had been
28 brave enough to raise the issue and in order to give
29 him some comfort around what he may or may not hear in

1 the future, I wanted him to understand, but because of
2 the unwritten policy of not being involved with Public
3 Accounts Committee from his perspective, I felt that
4 this one-line explanation would suffice.

5 224 Q. How do you mean? 11:12

6 A. And that is the way it was.

7 225 Q. I don't follow that.

8 A. That should he be challenged at some date or other in
9 relation to the matter that he raised relevant to
10 Maurice McCabe. I just wanted him to, out of courtesy, 11:12
11 be aware of it. And I think Micheál Martin,
12 Mr. Chairman, has reported that meeting on that
13 remark --

14 226 Q. Oh, yes --

15 A. -- to the Tribunal. 11:12

16 227 Q. Certainly, we will come to that. But I am just
17 interested in you indicating that you gave him one line
18 of information, is that what you said?

19 A. Yes.

20 228 Q. Does that mean that you didn't give him full or 11:12
21 complete information; you restricted it to one line?
22 A. I restricted it to the information that he may have
23 heard in relation to -- or might hear in the future in
24 relation to a meeting with the Commissioner and what
25 transpired at that meeting. I didn't go into detail 11:13
26 because of the fact that Micheál Martin allowed the
27 Public Accounts Committee to function completely
28 independent of the party.

29 229 Q. Sorry, this was a stand-alone issue not related

1 directly to any line of demarcation between PAC and
2 Taoiseach; this was incendiary information that the
3 then-Commissioner had made disgraceful remarks about a
4 serving guard to you in a meeting only attended by you
5 and the Commissioner in a car park, isn't that right? 11:13

6 A. Correct, yes.

7 230 Q. Just, I want to ask you about that. Was he shocked?

8 A. I'm sure he was, yeah.

9 231 Q. He was shocked?

10 A. I'm sure he was. You will have to ask him that now. 11:13

11 232 Q. Well, did you know by his demeanour was he shocked?

12 A. Of course he was shocked.

13 233 Q. He was?

14 A. Yes.

15 234 Q. So his being shocked by it, presumably he asked you 11:14
16 some more questions?

17 A. To my knowledge, he didn't.

18 235 Q. How do you mean to your knowledge, do you not recall
19 it?

20 A. No -- well, I gave him this piece of information to be 11:14
21 helpful and the detail of the meeting I did not go
22 into.

23 236 Q. No, no, but I presume he did, when you relayed this --

24 A. No, he didn't.

25 237 Q. So just give us the run of the conversation. 11:14

26 A. It's outlined in --

27 238 Q. No, no, forget what he says. I want you to tell us
28 what did you say and what did he say in response?

29 A. The meeting -- the meeting occurred, I think -- the

1 meeting happened in his office in Leinster House and it
2 was, I think it was a meeting about some other matters,
3 and I had gone and thanked him for raising the issue on
4 behalf of Sergeant McCabe and then at the end of that
5 meeting, to the best of my recollection, I said to him 11:15
6 that I had met with the Commissioner in a car park and
7 that he had accused Sergeant McCabe of sexual abuse.

8 239 Q. Well --

9 A. Now, you will have to understand, at that time Micheál
10 Martin would have had the dossier because he handed the 11:15
11 dossier to the Taoiseach, that he had raised it
12 publicly in the chamber and that what I was doing was
13 simply clearing the lines in relation to my meeting.
14 I'm sure that he was shocked that the meeting took
15 place in a car park, and how shocked he was in relation 11:15
16 to what the Commissioner related to me about sexual
17 abuse, I don't know, but I'm sure he was.

18 240 Q. Did you make an appointment to see him with this
19 important information?

20 A. No, I went to thank him for raising the matter in the 11:16
21 Dáil, and that was the purpose of why I was there.
22 There was no need to make an appointment. I am on
23 floor 3, he is on floor 4, he is quite an accessible
24 leader.

25 241 Q. Was your purpose to thank him, to call into the office 11:16
26 to thank him for raising the matter in the Dáil or was
27 your purpose to relay this important information about
28 the car park conversation?

29 A. Both.

1 242 Q. Both?
2 A. Yeah, it was to be clear, yes.
3 243 Q. So you had it in your mind to raise this, it wasn't
4 something that happened on the hoof, as it were; you
5 went -- 11:16
6 A. I thanked him and I related to him about the meeting,
7 the fact that I had a meeting.
8 244 Q. So you went in with the purpose of telling him about
9 the car park meeting?
10 A. I went in with the purpose of thanking him for raising 11:16
11 the matter on behalf of Sergeant McCabe and for
12 pursuing it in the Dáil and for accepting the dossier
13 and following it up. And as a -- not a throwaway
14 remark, but as a fact that may be of assistance to him,
15 I told him that I had met the Commissioner. Because 11:17
16 often, more often than not in Leinster House, you know,
17 stories gather legs, so it's better, I always find, to
18 deal on a one-to-one with the person that you want to
19 inform, so if you wanted to meet with someone or inform
20 them properly that they would hear it from you rather 11:17
21 than hear it from some sort of other third, fourth,
22 fifth, sixth party, when then I think that is the best
23 way to do business.
24 245 Q. So I am just a little bit unclear, you might just
25 indicate this one way or the other. Prior to going 11:17
26 into Micheál Martin's office was it your intention to
27 relay to him that the meeting had occurred in the car
28 park?
29 A. My intention was to thank him and to put him on

1 notice --

2 246 Q. I have that point.

3 A. If you let me finish the point, Mr. O'Higgins.

4 247 Q. Was it also your intention --

5 A. My intention was to thank him for raising the matter 11:18

6 and then to put him on notice that the car park meeting

7 had taken place.

8 248 Q. Right. So you had a dual intention in meeting him?

9 A. You could say that, yeah.

10 249 Q. Right. So talk us through, you have thanked him for 11:18

11 raising the matter in relation to Sergeant McCabe and

12 the dossier, is that right?

13 A. Yes, yeah.

14 250 Q. And bring us on to what you said in relation to -- and

15 what he said in relation to the car park meeting. 11:18

16 A. I informed him of the car park meeting, to be aware of

17 it, but I don't think he said anything more about it.

18 251 Q. No, no, what did you say?

19 A. That I had met Commissioner Callinan, that it was in

20 the car park, that he had -- that he had reported to me 11:18

21 that Maurice McCabe had sexually abused -- was involved

22 in sexual abuse. So that was really the extent of it,

23 as far as I can remember. But again, Micheál Martin

24 has covered this by way of letter, I think, to the

25 Tribunal. 11:19

26 252 Q. That is what I am wondering, do you actually remember

27 it or are you reliant upon what he says in his

28 statement?

29 A. I actually didn't remember it.

1 253 Q. Do you now?
2 A. And when I read the correspondence to the Tribunal, I
3 remember it, yeah.
4 254 Q. Yes. Do you remember it now?
5 A. I am after telling you, yes. 11:19
6 255 Q. Just, you seem to be reliant upon what his statement
7 says. I am looking for your recollection.
8 A. His statement was a reminder to me of the fact that the
9 meeting happened.
10 256 Q. Right. In terms of your recollection, Deputy 11:19
11 McGuinness, because it is important, if you don't mind
12 me saying --
13 A. Yes.
14 257 Q. -- I take it when you went into the office you raised
15 it reasonably quickly, it being perhaps even more 11:20
16 important than thanking him?
17 A. No, it was important to acknowledge what he had done.
18 258 Q. Yeah, you did that --
19 A. That was extremely -- no, you ask a question. That was
20 extremely important to me, because few people would 11:20
21 have supported Sergeant Maurice McCabe in the course of
22 all of this, and for the leader of the Opposition to do
23 it was in my opinion significant. And therefore, it
24 was important for me to say to Micheál Martin that I
25 had met the Commissioner in a car park and that he had 11:20
26 accused Maurice McCabe of sexual abuse. That was the
27 extent of it, to my knowledge -- to my memory.
28 259 Q. Were you sitting down?
29 A. I think it was just, I called into the office, I don't

1 believe it was a sit-down chat. To my knowledge, I
2 could be wrong. But it certainly didn't last long.

3 260 Q. To your knowledge, what? Were you sitting down?
4 A. To my knowledge, I -- I don't know whether I was or not
5 to be honest about it. 11:21

6 261 Q. Was he sitting down?
7 A. I have no idea. I remember going in, my presumption
8 would be that he was always very active around the
9 office, you would stand and chat at the door and I
10 think that that is the type of meeting that it was. 11:21
11 The important part of the meeting, for me, was to thank
12 him for his bravery in supporting Maurice McCabe and
13 then out of courtesy, while observing the independence
14 of the Public Accounts Committee, to say to him that I
15 had met the Commissioner and that that is what was 11:21
16 said. Whether I was standing up or sitting down didn't
17 make much of a difference in the context of what was
18 said. And it wasn't a full-blown meeting, to my
19 memory.

20 262 Q. Can you spell out exactly what you told him about the 11:21
21 meeting?
22 A. I have just told you.

23 263 Q. What?
24 A. That I had met the Commissioner in the car park, that
25 we had discussed Maurice McCabe and that he, I think he 11:22
26 made an accusation of sexual abuse, that may have been
27 my words.

28 264 Q. I think --
29 A. And that was the extent of it.

1 265 Q. Did you say I think he may have made an allegation of
2 sexual abuse?

3 A. Ah, no, no, I told Micheál Martin that he had accused
4 Maurice McCabe of sexual abuse.

5 266 Q. I will just read back to you what the stenographer has 11:22
6 noted you said: "That I had met the Commissioner in
7 the car park, that we discussed Maurice McCabe and that
8 he, I think he made an accusation of sexual abuse, that
9 may have been -- that may have been my words."

10 A. To Micheál Martin. 11:23

11 267 Q. That you think he may have made an allegation of sexual
12 abuse?

13 A. Let me be clear, Mr. O'Higgins. I met the
14 Commissioner, I met Micheál Martin, I told him I met
15 the Commissioner, and I told him that the Commissioner 11:23
16 had said that Maurice McCabe was involved in sexual
17 abuse or some words to that effect on that day with
18 Micheál Martin. I do not believe I went into further
19 detail on that because there is a dividing line between
20 the Public Accounts Committee and its independence and 11:23
21 the leader of my own party, and that is how he likes to
22 conduct business and I respect him for that.

23 268 Q. Did he ask you was anybody else there?

24 A. I already told you what was said and what transpired,
25 so that question doesn't apply. You have the answer. 11:23

26 269 Q. Well, can we take it from that that he didn't ask you
27 if anybody else was there?

28 A. I don't believe he did. My memory are of the two
29 important points: My thanks to him for what he just

1 did and the information regarding the meeting. That is
2 what I felt he should know. I don't believe the
3 conversation went into any further detail. But that is
4 my memory of it.

5 270 Q. Did you not tell him about the investigations, 11:24
6 investigations plural?
7 A. Into?

8 271 Q. That you say -- that you have said elsewhere was said
9 to you by Commissioner Callinan?
10 A. No, I didn't, no, no. My recollection is that that is 11:24
11 what I said to Micheál Martin.

12 272 Q. And is it your evidence that you first remembered this
13 meeting when you saw Micheál Martin's statement?
14 A. I actually hadn't remembered that meeting to the point
15 where I think it was a letter to the Tribunal from 11:25
16 Micheál Martin.

17 273 Q. But you see, didn't Micheál Martin make his statement
18 on the 22nd December 2017?
19 A. Yeah.

20 274 Q. And -- 11:25
21 A. I don't know the date, but yes, maybe --

22 275 Q. Right. But prior to that, when you came out with
23 your -- when you made your speech in the Dáil in May
24 2016, didn't you, from different quarters, face a
25 degree of criticism, and I am not going into the rights 11:25
26 or wrongs of it now, but didn't you face a degree of
27 criticism for not coming out publicly previously about
28 the car park meeting?
29 A. Yes.

1 276 Q. And I'm suggesting to you it would have been natural
2 and logical to mention the important detail that you
3 passed it on to your party leader, to deflect or
4 perhaps reduce the criticism?

5 A. I had no intention of deflecting the criticism. I just 11:26
6 take criticism in politics and political life as a
7 given. People have their views and they express them.
8 I don't react to every one of them.

9 277 Q. But sorry, you were getting -- am I agreed about that?
10 Weren't there articles about it, Mary Lou McDonald, 11:26
11 other politicians saying why didn't you come out
12 earlier about this information?

13 A. Possibly, yeah, yeah. There was articles about it, I'm
14 sure, there was public commentary about it, there was
15 individuals that would have said it to me, why didn't I 11:26
16 go to report it to one place or another, but in the
17 course of my conducting politics, that is what I did,
18 and I don't see anything wrong with it.

19 278 Q. But, deputy, weren't you even criticised for not
20 telling your own party? 11:27

21 A. I was criticised for everything, and during the course
22 of the five years of my chairmanship of the Public
23 Accounts Committee, I just took that criticism as I
24 usually do, and I just let it slide. I don't address
25 everything. 11:27

26 279 Q. Apparently you had told your party in the form of your
27 party leader.

28 A. I had told my party leader in terms of the caution that
29 he might need should he be asked from any other source

1 in relation to it. It was no more or no less than
2 that.

3 280 Q. Moving on a little while from that issue, March 2014,
4 the March after the January of the car park meeting,
5 you recall that then-Minister, now Taoiseach,
6 Mr. Varadkar had made a statement, distinguished not
7 disgusting?

11:27

8 A. Yes.

9 281 Q. And again, without going into the rights or wrongs of
10 it or the political manoeuvrings that may or may not
11 have been involved, there was a degree of commentary on
12 politicians getting the right side of the Maurice
13 McCabe debate, I am using colloquial language now; for
14 instance, that remark was said to apply a certain
15 degree of pressure upon then-Commissioner Callinan,
16 isn't that right?

11:28

11:28

17 A. I presume so.

18 282 Q. Yes. So, and a Fine Gael Minister who wasn't a
19 Minister for Justice at the time had perhaps stolen a
20 march on other politicians and had come out with that
21 comment, isn't that right?

11:28

22 A. I would not, you know, describe that remark as stealing
23 the march. I would describe that remark as a remark
24 coming from, as I did at the time, a brave politician,
25 a member of Cabinet, a senior individual within the
26 political system and it was, in my opinion, a break for
27 Maurice McCabe that someone of that stature was brave
28 enough to come out and call it as it was. Now, whether
29 that stole the march on people, I don't know. It

11:29

1 didn't steal the march on me, if that is what you want
2 to describe. It -- because I had been involved, as the
3 Public Accounts Committee members had, in dealing with
4 this issue.

5 283 Q. But you had bigger information which you were keeping 11:30
6 quiet?

7 A. No, I wasn't keeping quiet, Mr. O'Higgins. I hadn't
8 reported on the meeting for all sorts of reasons, and I
9 believe, in hindsight, that those reasons that caused
10 me not to mention this until such time as Sergeant 11:30
11 Maurice McCabe came under further pressure in May of
12 2016, to highlight it then.

13 284 Q. But you see, with Mr. Varadkar --

14 A. And if you are suggesting that that piece of
15 information might have trumped what the Minister had 11:30
16 said, and I would have stolen the march on him, that is
17 not how I do business.

18 285 Q. I am suggesting to you that had you disclosed in the
19 public domain that the then-Commissioner had said what
20 he said in the car park to you, that would indeed, that 11:30
21 would indeed have put other things off centre stage?

22 A. And why would I do that when what was needed at the
23 time was to keep Sergeant Maurice McCabe and the truth
24 at centre stage? And I was glad that Deputy Varadkar
25 kept it at centre stage by calling out the Commissioner 11:31
26 on the use of the word disgusting.

27 CHAIRMAN: Mr. O'Higgins, I see the point that you are
28 making. It may be a good point or a bad point, I will
29 consider it but I think we are getting very political

1 now about this point, as to whether Mr. Varadkar is a
2 good guy or a bad guy obviously I have no view but I
3 would much prefer witnesses not to express a view on
4 it. But you are leading Deputy McGuinness --

5 A. Mr. Chairman, I had to respond.

11:31

6 CHAIRMAN: And that is what I am saying to you, you
7 clearly had to respond so I think the topic -- we
8 should move on from the topic. You clearly had to
9 respond to the question. It's not a criticism.

10 286 Q. MR. MÍCHEÁL O'HIGGINS: Moving on then, Deputy
11 McGuinness and moving on the time-line if we can do
12 this quickly. The O'Higgins Commission started its
13 hearings I think in May of 2015, 14th of May 2015, and
14 I suggest to you that was a further opportunity to make
15 your disclosure about the car park meeting in some
16 form, but you chose not to take that either, are we
17 agreed about that?

11:31

11:32

18 A. We are.

19 287 Q. All right.

20 A. And again, you know, whether I did or didn't, there may
21 have been, I'm sure, other reasons, it may have caused
22 other difficulties, rather, in the context of
23 intervening at that stage, but at the time I didn't
24 even consider it.

11:32

25 288 Q. Yes. Could I ask you to turn over then to another
26 further one of the articles that were provided to you
27 last night, and that is, I think you have mentioned it
28 already, actually, it is the RTÉ This week programme,
29 again with Richard Crowley.

11:32

1 A. What page is that?

2 289 Q. It's of 9th of October 2016. For Mr. Kavanagh's
3 benefit --

4 A. What page is that?

5 290 Q. I will just try and locate it for you now. 11:33

6 CHAIRMAN: It's the sixth one in, whatever it is. So,
7 it must be coming towards the back.

8 291 Q. MR. MÍCHEÁL O'HIGGINS: I have it actually as number 7
9 but I may be mistaken.

10 CHAIRMAN: Yes. So it's the one after you were just 11:33
11 looking at.

12 A. Same interview.

13 CHAIRMAN: It is this typeface if that is the thing you
14 are looking for, it's right at the back. This week
15 programme, Mr. Richard Crowley, that is wrong, it's the 11:33
16 one after that, is it?

17 MR. MÍCHEÁL O'HIGGINS: Yes, Chairman, it's the one
18 after the May 2016 interview, this one took place on
19 9th October 2016. Do you have that, Deputy McGuinness?

20 A. Jonathan Healy? 11:33

21 292 Q. No, no, it's again the This Week programme with Richard
22 Crowley.

23 CHAIRMAN: It's another Richard Crowley one.

24 MR. MÍCHEÁL O'HIGGINS: Yes. It's the second-last --

25 CHAIRMAN: Yes, I have the right one. So it is the 11:34
26 second-last one. So you would need to go, I would say,
27 about ten pages back from the very end of that.

28 A. Yes, I have it here, yes.

29 293 Q. MR. MÍCHEÁL O'HIGGINS: And this is the October after

1 the May of the previous Richard Crowley interview, all
2 right?

3 A. Yes.

4 294 Q. And if we look at page 2, again pretty well following
5 the format of the earlier one, Mr. Crowley says in the 11:34
6 line 5 towards the top:
7
8 "Now, last May on this programme the former Chairman of
9 the Public Accounts Committee --"
10 11:34
11 At this point you are no longer chair of the PAC, does
12 that accord with your recollection?
13 A. Yes.

14 295 Q. "-- John McGuinness revealed details of a secret
15 meeting" is how it is put, and we will come back to 11:34
16 that.
17 CHAIRMAN: I see people believed that it was going to
18 take six weeks, that is a very interesting statement,
19 at the top of page 3. I can see we are now on day 63,
20 so it's a bit more than that. Still there could be 11:35
21 light somewhere, you know. There may be a tunnel. I
22 could be in a tunnel, maybe I will come to a tunnel and
23 then there will be light at the end of the tunnel.
24 MR. McDOWELL: I just point out, the introduction which
25 is being quoted from was not said when Deputy 11:35
26 McGuinness was on air. It was said prior -- the first
27 line, or the last line of that introductory paragraph
28 indicates that Mr. McGuinness was not present when
29 these remarks were made.

1 MR. MÍCHEÁL O'HIGGINS: Yes, that's right. Line 22.
2 And I had that highlighted, so in line 22 it says:
3
4 "A short time ago I spoke to John McGuinness. He says
5 that if this latest inquiry is to succeed it must look 11:35
6 at the treatment of all of the whistleblowers, not just
7 the case of Maurice McCabe."
8
9 Do you see that there, Deputy?
10 A. Yes. 11:36
11 296 Q. Right. So, does this help you -- were you giving this
12 interview but not in studio?
13 A. I presume I wasn't in studio, I don't know.
14 CHAIRMAN: Well, you were in your home in Kilkenny the
15 last time and I think they possibly had recorded it 11:36
16 earlier by telephone.
17 A. I accept -- I don't know where I was.
18 MR. MÍCHEÁL O'HIGGINS: All right.
19 297 Q. And on page 3, halfway down at page 18 you make a
20 reference to your knowledge of what is in the protected 11:36
21 disclosures, do you see that there?
22 A. What line is that?
23 298 Q. Halfway down page 3?
24 CHAIRMAN: It's after the reference to the Tribunal
25 possibly taking two months. 11:36
26 MR. MÍCHEÁL O'HIGGINS: Or three months.
27 CHAIRMAN: Gosh!
28 299 Q. MR. MÍCHEÁL O'HIGGINS: After that, do you see that
29 deputy?

1 A. Yes.

2 300 Q. And you say:

3

4 "It's a matter of weeks and I am saying this because of
5 my knowledge of what is in the protected disclosure." 11:37

6

7 So you had read the protected disclosure at this point,
8 is that right?

9 A. Maybe not read the protected disclosure but certainly
10 was aware of the content of the protected disclosures. 11:37
11 I am talking about generally about whistleblowers here.

12 301 Q. So, are we able to infer from that that you had a
13 knowledge of what was in the protected disclosures?

14 A. Are you reading from line 8? "There are other
15 whistleblowers that I believe need to be considered in 11:37
16 the context of the issues that are being raised."

17 302 Q. Sorry, line 18?

18 A. Line 18?

19 303 Q. On page 3.

20 A. Oh, I am being asked about the length of the Tribunal, 11:37
21 and Mr. Crowley asks it might take two months or three
22 months.

23 304 Q. And you make a reference "I am saying this because of
24 my knowledge of what is in the protected disclosures";
25 what protected disclosures are you referring to there? 11:38

26 A. I was referring to the protected disclosures -- I was
27 referring to the fact that other whistleblowers from
28 the force should be included in the inquiry and that
29 protected disclosures that they had made should be

1 considered. That is the background to that. I hadn't
2 read the protected disclosures but I had read the
3 detail of the protected disclosures of a number of
4 people, I think, and what they might have said.

5 305 Q. Yes. Did you include a Keith Harrison, a Garda Keith 11:38
6 Harrison in that?

7 A. Yes. In terms of the Tribunal?

8 306 Q. Yes.

9 A. Yes.

10 307 Q. You did. All right. And then if we turn to page 6. 11:38
11 A. Yes.

12 308 Q. In line 8 Mr. Crowley, asks:
13
14 "One other question in relation to this: It was in May
15 of this year you were on this programme having spoken 11:39
16 in the Dáil about this secret meeting you had in
17 Bewley's car park, on the Naas Road, with the
18 then-Commissioner or the former Commissioner Martin
19 Callinan, just ahead of Maurice McCabe's appearance at
20 the PAC and you had kept quiet about that meeting for 11:39
21 some time, do you regret now not having spoken out
22 sooner about that meeting given all that's been
23 revealed since then?"

24
25 Do you see that? 11:39

26 A. Yes.

27 309 Q. And you responded:
28
29 "No, as I said at the time, if I had spoken about it at

1 that time it may very well have derailed the Public
2 Accounts Committee hearings. It was a judgment call
3 that I had to make whether or not I was going to
4 believe Maurice McCabe and I had sufficient information
5 about Maurice McCabe and I had put to him the various 11:39
6 allegations that were made against him and I was
7 convinced about the story that he was telling, and I
8 saw the evidence around that story."

9
10 And then Mr. Crowley asked you about the actual 11:39
11 sequence, do you see that, line 27?

12 A. Yes, yes.

13 310 Q. He asked:

14
15 "Can I just check the sequence of events with you 11:40
16 there, John McGuinness? You put those allegations to
17 McCabe prior to the meeting with Callinan or after the
18 meeting with Callinan?"

19
20 And you responded: 11:40

21
22 "Both before and after because in Leinster House rumour
23 was circulating. The gossip mill was in full flow and
24 for anyone that wanted to listen, all of the stories
25 were being put out against Maurice McCabe." 11:40

26
27 Is that reconcilable with what you have told the
28 Tribunal already?

29 A. Of course it is, yes.

1 311 Q. Because he asked you then:

2

3 "And did you tell McCabe that this stuff was coming
4 directly from Martin Callinan?

5

11:40

6 John McGuinness [Line 9]: Yes, he was aware of that
7 and the information in the recent reports of the
8 whistleblower outlines the time-line in relation to
9 that and it confirms that the meeting happened."

10 A. Yes.

11:41

11 312 Q. "Mr. Crowley: And what did McCabe say to you? What
12 was his response when you told him what Martin Callinan
13 was saying about him?"

14

15 And you responded:

11:41

16

17 "I have to say that he wasn't shocked because he had
18 heard it before and he simply confirmed to me that it
19 was nothing but untruths, that there was no basis for
20 the type -- for the allegations that were made."

11:41

21 A. Yeah, what is happening here in relation to this
22 interview is that there is a before and after. As I
23 said to you earlier on, there is a lead in to this up
24 to 2013 and into 2014 -- early 2014. The rumour and
25 gossip through Leinster House was there, I told you
26 this already. I then asked Maurice McCabe, at
27 different junctures than this, if this was true in
28 relation to this and we have had an exchange on this
29 already, and the answer to that was that it was untrue.

11:41

1 Then in relation to the -- in relation to the other
2 matter which was in relation to gossip in that, this
3 was at a time when there was considerable discussion in
4 Leinster House around all of these matters and the
5 gossip, if you like, was being added to. So it was -- 11:42
6 it was -- it was just a fact that that was going on.

7 313 Q. Is there a possibility, Deputy McGuinness, perhaps a
8 reasonable possibility in the circumstances, that you
9 are confused about what you did or didn't say to people
10 at different times? 11:42

11 A. Oh, I have no confusion at all, Mr. O'Higgins. And I
12 have been exact in what I have said to you. Now,
13 whether -- if there is any point of confusion you might
14 just tell me and I will answer it for you. But as far
15 as I am concerned, as I have said to you earlier on, 11:43
16 this dates back to 2011, '12, '13 and '14, and I can
17 remember in general ways and terms how I dealt with
18 Sergeant Maurice McCabe. I can also remember the
19 rumours. So, that is a fact. Those rumours are there.
20 I ignored them. But I always had to check. And one of 11:43
21 the things that I did check was whether these rumours
22 were false or not. Mr. McCabe said no they are not
23 true. In 26th of -- 26th May 2015, when I put the
24 matter on record in the House, that was in -- that was
25 a reaction to the increased efforts that were being 11:44
26 made to discredit Sergeant McCabe.

27 314 Q. When was that?

28 A. So I have no confusion.

29 315 Q. When was that?

1 A. 26th May 2016.

2 316 Q. Yes. 2016.

3 A. Mm-hmm.

4 317 Q. Even in your recital there I suggest to you there
5 appears to be confusion: There is confusion about 11:44
6 whether you made a note or didn't make a note; there is
7 confusion about what you told Sergeant McCabe and when
8 you told Sergeant McCabe.

9 A. Well, can I suggest to you that you are confused,
10 Mr. O'Higgins? 11:44

11 318 Q. I see.

12 A. I am not confused. I am absolutely clear in my
13 evidence. And if there is a particular point that you
14 may be confused about I am more than anxious to clear
15 that confusion before you before I leave this Tribunal 11:44
16 today.

17 319 Q. Would you mind turning over to the next article,
18 please?

19 CHAIRMAN: Again, Deputy McGuinness, you are not
20 familiar with the procedure, I am afraid I am after 30 11:44
21 or whatever years; he may or may not be confused, I
22 doubt he is confused but the point is that he is
23 obliged to put questions to you to show that you are
24 confused and don't worry about trying to convince
25 Mr. O'Higgins - you won't - I am the person who has to 11:45
26 make my mind up and I am entirely neutral as to who is
27 confused and who is not.

28 A. No, I understand that fully, Mr. Chairman, but I am not
29 going to allow Mr. O'Higgins to pull me around the

1 place on minor detail.

2 CHAIRMAN: That is perfectly legitimate --

3 A. I know that is his job.

4 CHAIRMAN: No, it is perfectly legitimate for you

5 equally to make that point. 11:45

6 A. I have a reputation to protect.

7 CHAIRMAN: I appreciate that. And that is why you are

8 represented and that is why you are here.

9 A. Thank you.

10 320 Q. MR. MÍCHEÁL O'HIGGINS: Deputy McGuinness, could I ask 11:45

11 you to turn over to the next article, it's the final

12 one in the bundle?

13 A. Which one is that?

14 321 Q. And it's an excerpt from the Marian Finucane programme 11:45

15 of Sunday, 18th June 2017. It's a more recent date

16 again. And the presenter, in fact, I think was Brendan

17 O'Connor, he was standing in for Marian Finucane, do

18 you have it there?

19 A. I have, indeed.

20 322 Q. And again, the car park meeting was the subject of this 11:46

21 interview, and this isn't as official a transcript but

22 you might feel free to tell the Tribunal if you think

23 it doesn't faithfully reflect what you believe was

24 said. About a third of the way down, BOC, that is

25 Brendan O'Connor says: 11:46

26

27 "You met him in -- you met Martin Callinan in a car

28 park?"

29

1 And you, it seems to say, interrupts and you say:
2
3 "It's known that I did."
4
5 And Mr. O'Connor continued: 11:46
6
7 "And he talked about Maurice McCabe.
8
9 Yeah, that's true."
10 11:46
11 And you said:
12
13 "And that's part of the submission to Charleton."
14
15 A reference to Judge Charleton. 11:46
16
17 "Similarly, it's eh the contention of others
18 including --"
19 CHAIRMAN: I am not going to be insulted,
20 Mr. O'Higgins, don't worry. 11:46
21 MR. MÍCHEÁL O'HIGGINS: And you interrupt -- sorry, he
22 interrupted you:
23
24 "What did he tell you?"
25 11:47
26 And then you reference the Comptroller & Auditor
27 General, that this was -- certain things were said to
28 them by Martin Callinan. And then he interrupts again
29 and says:

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"What did he say to you, because I think a lot of what was being said has come out now so you could, you could just possibly just say it."

11:47

And then you say:

"Well clearly it's, I have informed the Charleton inquiry that we did meet and that it was said to me that he was someone that couldn't be trusted, and that he had questions. McCabe had questions to answer in relation to sexual abuse and so on. Em... and that to be cautious about how we dealt with matters at the Public Accounts Committee. So that detail is out and has been said and has been reported on."

11:47

11:47

And then the interviewer says:

"Okay. So he suggested to you that Maurice McCabe was a paedophile, did he?"

11:47

And you said "Yes" and the interviewer said "Okay" and then you continued:

"And the same was said in another conversation, which I have read in the papers also to do with Dave Taylor and the current Commissioner --"

11:48

Sorry?

1 A. Sorry, where is that on this?
2 323 Q. Over to page 2.
3 A. Yeah, yeah.
4 324 Q. "-- and a meeting of the Public Accounts Committee."
5 And then this next section I am going to ask you about. 11:48
6 And Mr. O'Connor says:
7
8 "But you met the Commissioner in the car park."
9
10 And you say: 11:48
11
12 "Oh, yeah, yeah."
13
14 And the interviewer says:
15 11:48
16 "And he said, this guy is a paedophile we think."
17
18 And you said "Yes". And the interviewer continued:
19
20 "And you shouldn't trust him." 11:48
21
22 And you said "Yeah". And the interviewer continued:
23
24 "Now the eh --"
25 11:48
26 And you said:
27
28 "But that's --"
29

1 And then the interviewer continued:

2

3 "Martin Callinan disputes that account."

4

5 All right? So what I am asking you is, and I 11:49

6 appreciate there is a degree of intervention from

7 Brendan O'Connor, but insofar as words matter, you are

8 accepting the characterisation that you said that

9 Martin Callinan had said this guy is a paedophile?

10 A. Yeah, but I accept that Martin Callinan didn't use that 11:49

11 word. My description of what he accused Sergeant

12 McCabe of could be taken that he was a paedophile. So

13 in this exchange with Brendan O'Connor, it's quite

14 clear that he is trying to get more detail of the

15 meeting and so on. And I am careful about it here 11:49

16 because of -- we are now moving into I think, was it in

17 terms of Charleton, Chairman, and what was going on.

18 325 Q. So you were being careful in your responses?

19 A. I was trying to be.

20 326 Q. And the question he asked was: 11:50

21

22 "And he said --"

23

24 That is Martin Callinan.

25

26 "He said "this guy is a paedophile we think"." 11:50

27

28 And you answered "yes".

29 A. Yes.

1 327 Q. But, in fact, Martin Callinan, even on any version of
2 what you have said, never used the word paedophile, we
3 are agreed about that?

4 A. No, I am accepting that, and I am accepting the fact
5 that what Brendan O'Connor was doing here was drawing 11:50
6 me out in relation to the meeting and what was said,
7 and I was being careful generally. If you relate what
8 was actually said about Maurice McCabe and who he
9 abused, you might accept the description as paedophile.

10 328 Q. Could I ask you to -- 11:51

11 A. But I wasn't going to flesh out with him what was said
12 or what wasn't said. I was conscious of my
13 responsibility here.

14 329 Q. Yes. Could I ask you to -- and this is the final 11:51
15 article we need trouble ourselves with, unless there is
16 anything in particular that you would like to
17 highlight. The fourth item is an interview with Shane
18 Coleman on the Sunday Show on Newstalk radio on the
19 29th May 2016.

20 CHAIRMAN: And that is number what? 11:51

21 MR. MÍCHEÁL O'HIGGINS: And that is number 4, I think,
22 Judge.

23 CHAIRMAN: Is that Newstalk, 29th May, is it?

24 MR. MÍCHEÁL O'HIGGINS: Yes.

25 330 Q. Deputy McGuinness, do you have that? 11:51

26 A. I am searching for it here.

27 CHAIRMAN: The Sunday Show with Jonathan Healy, is that
28 it? Shane Coleman.

29 MR. MÍCHEÁL O'HIGGINS: That's right.

1 CHAIRMAN: So that is what it looks like there.

2 A. Okay.

3 331 Q. MR. MÍCHEÁL O'HIGGINS: So it's Shane Coleman is --

4 CHAIRMAN: It is about ten pages in. Well, 15.

5 A. Jonathan Healy, this one? 11:52

6 332 Q. MR. MÍCHEÁL O'HIGGINS: Jonathan Healy. So the heading

7 at the top, just to help you, is "The Sunday Show with

8 Jonathan Healy (Shane Coleman) Newstalk, 29th May

9 2016".

10 A. Yeah, I have that. 11:52

11 333 Q. It, in fact, is the same day of the first Richard

12 Crowley interview that we have already looked at. Does

13 that help you locate it in time?

14 A. I have it here.

15 334 Q. Yes. So just down the bottom of that first page, four 11:52

16 entries from the bottom Shane Coleman says:

17

18 "You had a meeting in the car park, was it?"

19

20 And you respond: 11:52

21

22 "Yeah, there were certain allegations made against

23 him..."

24

25 And Shane Coleman says: 11:52

26

27 "Did he detail -- and I don't want to you detail them

28 now, but did he detail what those allegations were?"

29

1 And you responded:
2
3 "Oh, it was suggested what the allegations were, yes.
4 And these were not new allegations, these were
5 allegations that I had heard before..." 11:53
6
7 Do you see that there?
8 A. Yes.
9 335 Q. And then over the page then on page 2, and again I am
10 skipping through it just for reasons of despatch, a 11:53
11 third of the way down Shane Coleman asks:
12
13 "I will just ask you about that, and like I understand
14 you don't --"
15 A. Sorry, is this on the same page? 11:53
16 336 Q. Page 2.
17
18 "I will just ask you about that, and like I understand
19 you don't want to go into too much detail of the
20 conversation, did you have a problem with the Garda 11:53
21 Commissioner approaching you, making such comments?
22 The then-Garda Commissioner I should stress."
23
24 And you responded:
25
26 "No, no, because I had had discussions with Maurice
27 McCabe and others in relation to all of this, and in
28 relation to bringing forward the evidence that he had,
29 so I didn't think that it was unusual..."

1 A. We have gone through this before, Mr. O'Higgins. So,
2 in answer to your question again, it's about Maurice
3 McCabe, it's about the rumours from earlier dates, it's
4 about confirmation from Maurice McCabe that the rumours
5 were untrue, and I think that is what he is dealing 11:54
6 with. Did I have a problem in the Garda Commissioner
7 coming and telling me this, I think he is referring
8 there, you know --
9
10 "...I understand... did you have a problem with the 11:54
11 Garda Commissioner approaching you?"
12
13 No, I didn't. Because, as I said to you again earlier
14 on, I had met with other whistleblowers, I had met with
15 other witnesses that come before PAC and out of respect 11:54
16 for the guards and the Garda Commissioner, yes, I did
17 meet him.
18 337 Q. The interviewer asked you:
19
20 "Did you have a problem with the Garda Commissioner 11:55
21 approaching you making such comments?"
22
23 And you answered:
24
25 "No, no, because I had had discussions with Maurice 11:55
26 McCabe and others in relation to all of this..."
27 A. These were the comments about -- the general comments
28 and gossip about sexual abuse. I had cleared that with
29 Maurice McCabe. The Commissioner had now repeated the

1 elements of those stories, and that part of it, I won't
2 say I didn't have a bother with it but in the context
3 of the meeting with the Commissioner, that was
4 different, it was coming at a -- from it -- from a
5 senior person within the force, the most senior 11:55
6 important within the force.

7 338 Q. Deputy McGuinness, how is it reconcilable with the
8 evidence you have given to Judge Charleton that you
9 were shocked, disturbed, outraged by the Commissioner
10 making these extremely serious allegations, it was 11:56
11 improper, looking to derail the work of the PAC, how
12 can you reconcile with the response you have given to
13 the interviewer in this interview you didn't seem to
14 have a problem, how are those two things reconcilable?

15 A. Very easily, Mr. O'Higgins: The rumours, and I have 11:56
16 dealt with this before with you, the rumours that
17 circulated about Maurice McCabe were horrendous. I had
18 to ask Maurice McCabe at a particular juncture in our
19 dealings were they true or false. All of this was
20 based on gossip, tittle-tattle, stories, that I, by and 11:56
21 large, ignored completely. When the Commissioner asked
22 me to meet, I met out of respect, and I met because I
23 believe in fairness in dealing with all of the
24 witnesses. Needless to say, there was concern there as
25 well that the Commissioner had asked to meet me. What 11:57
26 shocked and disturbed me about that meeting was the
27 fact that now, for the first time, these matters were
28 being related to me directly by the Commissioner. So,
29 over a long period of time, I can understand how these

1 stories and reports would merge and one particular
2 report of a meeting can run into another. But I would
3 ask you to understand that, in dealing with the people
4 that would interview you, those on radio, in particular
5 when you are live on radio, you have to be concerned 11:57
6 about the question you are being asked and what is
7 likely to follow. And when you are answering those
8 questions, it's never a case that, well, I only want to
9 ask you this question and I won't pursue it. You no
10 sooner give that answer than the pursuit begins. So 11:58
11 you have to be extra cautious about what is going on in
12 the context of an interview. In a tribunal like this,
13 you can be far more specific and you can take far more
14 time to explain and reason out your actions, and that's
15 what I am doing here this morning. 11:58

16 339 Q. Is there a more simple explanation, Deputy McGuinness;
17 the reason you are responding to the interviewer that
18 you didn't have a problem with it is because nothing
19 disturbing had been said by Commissioner Callinan?

20 A. When I consider what Mr. Callinan said to me and when I 11:58
21 considered -- consider, as a hardened politician, the
22 fact that I had to pull in off that road and take note
23 of the important points that he was making and when I
24 consider the state of mind that I was in when I was
25 driving home, then I think you will understand that 11:59
26 what I took away from that meeting, of the comments
27 that were directly made to me by the Commissioner, that
28 that deeply disturbed me, and, alongside that, there
29 was the workings of the Public Accounts Committee,

1 which I have told you about before, which concerned me,
2 had I done the wrong thing, had I made the wrong
3 judgement calls, was I wrong about Maurice McCabe after
4 all of those years, and it took me that day and two
5 days more, running these matters through my head, to 12:00
6 decide that, as far as I was concerned, Maurice McCabe
7 was an honourable man whose family had been devastated
8 by the accusations made against him and deserved to be
9 defended. Now, interviews before and after events like
10 this, Mr. Chairman, have to be taken in context. This 12:00
11 Tribunal has to be taken in context, and it gives me
12 the opportunity to explain clearly and in truth what
13 happened. Yes, you can argue on the pinhead of why
14 that word was used and why this word was used and what
15 was said and done in an interview, but you can't take 12:00
16 away from the core issue here which faced me, and that
17 was getting at the truth, allowing someone that had the
18 evidence and the truth to come forward and explain it,
19 and in the context of that and all of the gossip and
20 rumour, I don't know how the man is sitting in this 12:01
21 Tribunal today, and that is my firm belief. And I have
22 done nothing in the course of this other than to try
23 and put before the Tribunal the most accurate -- as
24 accurate as I can, the events and the discussions
25 during that time. And it is true to say that there may 12:01
26 be parts of an interview or parts of commentary that
27 was wrong or forgotten, but I never expected to be
28 here, and I have recorded it as best that I can.
29 340 Q. Do you -- sorry.

1 CHAIRMAN: Sorry, I thought we were coming to an end,
2 but I am not pressing you. we have that --
3 MR. MÍCHEÁL O'HIGGINS: A little bit more. I will try
4 and move it along, Chairman.

5 341 Q. I want to just deal with the car park meeting and this 12:02
6 characterisation that some people - I think you were
7 not, in fairness to you, putting on it as being a
8 secret meeting. You don't -- you don't, as it were,
9 share the view it was a secret meeting, would that be
10 fair? 12:02

11 A. It wasn't a secret meeting.

12 342 Q. No. And I think there were a number of calls between
13 you and then-Commissioner Callinan to arrange, and I
14 think this is common case, to arrange the meeting on
15 the -- earlier that day? 12:03

16 A. Yes.

17 343 Q. Right. And from the Commissioner's point of view, it
18 would appear from the statements of others particularly
19 that he had mentioned to other persons his intention --
20 or the fact that he was proposing to meet you down in 12:03
21 Dublin; he was in Dundalk at the time, and you are
22 aware of that?

23 A. Yes, I am aware of it.

24 344 Q. Yes. And he came in his official Garda car, driven by
25 his official Garda driver, isn't that right? 12:03

26 A. Mm-hmm.

27 345 Q. And you were both - just, I hope these are things not
28 in dispute between us - you were both figures of --
29 both well-known figures, and anybody who happened to

1 have been in the car park that day would have seen,
2 openly, the two of you and possibly recognised the two
3 of you because you are both quite high profile and
4 indeed had been in the news that particular day, isn't
5 that fair? 12:04

6 A. I take that, yeah.

7 346 Q. Yes.

8 CHAIRMAN: Well, that is possible, Mr. O'Higgins, but I
9 don't get recognised on the 15A bus, thanks be to God.

10 A. We were parked against the wall, with the driver facing 12:04
11 the wall, I think it was a wet day, and you'd want to
12 have a fairly long neck to look around the car to see
13 who was in it.

14 CHAIRMAN: The elongated man, maybe.

15 347 Q. MR. MÍCHEÁL O'HIGGINS: And Commissioner Callinan was 12:04
16 in his uniform and also with a coat on, is that right?

17 A. Yes.

18 348 Q. And you and he chose the car park of Bewley's Hotel
19 because it suited you so you'd be on the road home to
20 Kilkenny and it suited him because he didn't have to go 12:04
21 into town. For instance, if he had to go in to meet
22 you in Leinster House, that might have -- would have
23 delayed traffic -- delayed matters?

24 A. I presume so.

25 349 Q. So the location suited the two of you? 12:04

26 A. It suited me, anyway.

27 350 Q. Yes. And both of you, would this be fair, were under
28 time constraints?

29 A. Yes.

1 CHAIRMAN: well, all of that is absolutely reasonable
2 and understandable, I mean, that a convenient location
3 would be chosen and people would have other business to
4 get back to, which I know Commissioner Callinan did. I
5 suppose the car being in the car park, the only thing 12:05
6 that maybe stands out a wee bit, Mr. O'Higgins, is not
7 going into the hotel.

8 MR. MÍCHEÁL O'HIGGINS: Yes.

9 CHAIRMAN: Because I know people in Leinster House,
10 they tend to have meetings in places like Buswells 12:05
11 Hotel, which is across the road, and things like that.
12 Now, if there is anything in that, there could be,
13 there may not be, I don't know.

14 351 Q. MR. MÍCHEÁL O'HIGGINS: Yes. well, we might just deal
15 with that then, Deputy McGuinness. I am suggesting to 12:05
16 you that it was envisaged by both of you that it would
17 be in the car park.

18 A. It certainly wasn't envisaged by me that it would be in
19 the car park. And as I said to you in my evidence
20 earlier on, I was in motion to get out of the car when 12:06
21 it was clear that Commissioner Callinan was coming to
22 the passenger side of my car. I would have presumed
23 that for two, I suppose me as Chairman of the Public
24 Accounts Committee and he as Commissioner, that the
25 appropriate thing to do would have been meet in the -- 12:06
26 go from the car park to the hotel, but I wasn't going
27 to dispute that. He sat into the car and we had our
28 meeting.

29 352 Q. Yes. And it was raining, was it?

1 A. I think it was.

2 353 Q. Yes. And do you remember having a discussion with Seán
3 Fleming, your colleague on the PAC, at any point in
4 relation to the car park meeting?

5 A. No, I can't say I do, no. 12:06

6 354 Q. Well, I might just assist you with that. Seán Fleming
7 recalls that shortly after you had your speech in the
8 Dáil in May 2016, that the reason -- that you told him
9 that the reason you and Commissioner Callinan had the
10 meeting in the car park was because it was raining 12:07
11 heavily at the time and you would both get wet going
12 into the hotel and then coming back out after the
13 discussion and that's why you had it in the car, that
14 is something you told him; does that help you?

15 A. Well, it helps to confirm that it was raining. That is 12:07
16 the only help it is to me. As far as I am concerned,
17 we were getting out of the car -- I was getting out of
18 the car, and the Commissioner, maybe because it was
19 raining, was getting into my car. I don't recall the
20 conversation with Seán Fleming. It may have been -- 12:07

21 355 Q. All right. I don't want to cut you short on it. We
22 might have page 1444 from Book 6 up, please.

23 CHAIRMAN: Was it anything like this: I suppose you
24 don't have to watch Curaçao films to be familiar with
25 rain, we have had certainly a great deal of it, but was 12:08
26 it belting down so much that even to run into the hotel
27 would have left you both drenched, or do you have any
28 recollection of it?

29 A. My memory of it, Mr. Chairman, is that it was raining

1 heavy, and then that is really it.

2 356 Q. MR. MÍCHEÁL O'HIGGINS: All right. Do you see there,
3 Seán Fleming's statement is up on the screen there, and
4 he is asked:

5
6 "Do you have any other information you can offer in
7 this connection? 12:08

8 A. The only other aspect of the matter that John
9 McGuinness, TD, said to me was that the reason they had
10 the meeting in his car in the car park was because it 12:08
11 was raining heavily at the time and they both would
12 have got very wet going into the hotel to have a
13 discussion and then coming back out. I understand the
14 meeting happened in the car because of this reason."

15 A. He understands the meeting happened in the car because 12:09
16 of that reason, and that may very well have been the
17 reason. You asked me in the beginning of this where
18 did I expect to meet, and I would have expected that we
19 would have gone to the hotel. In any event, we didn't
20 go to the hotel. It was raining, we stayed in the car, 12:09
21 we had this conversation.

22 357 Q. You see, he obviously -- Seán Fleming wasn't there; he
23 is relying upon you to -- what you told him.

24 A. Exactly.

25 CHAIRMAN: Well, at the moment, Mr. O'Higgins, you have 12:09
26 explained to me that the rain was belting down. I
27 think Deputy McGuinness agrees with that. I see that
28 as a reasonable reason for not going and ordering tea,
29 and probably if you order tea in the hotel lobby, or

1 whatever, it could take twenty minutes to arrive. I am
2 not commenting on the particular hotel, I am sure they
3 are much better than that.

4 MR. MÍCHEÁL O'HIGGINS: Yes.

5 CHAIRMAN: But it would delay people. So I would take 12:09
6 the legitimate reason as opposed to the sinister
7 reason, if there is one reasonably available.

8 MR. MÍCHEÁL O'HIGGINS: Thank you, Chairman. We will
9 move from that.

10 358 Q. I want to come to the nub of it in relation to the car 12:10
11 park, Deputy McGuinness. Martin Callinan, I suggest to
12 you, when he got into the car, raised concerns about --
13 again raised his concerns around the data protection
14 issue, all right; do you agree or disagree with that?

15 A. I disagree with that. 12:10

16 359 Q. He made the point that he couldn't see how the PAC
17 could discuss the matter with Sergeant McCabe without
18 members of the public being identified, he again made
19 that point.

20 A. I disagree with that, and I point you again to the 12:10
21 correspondence from 2013 and '14 which clearly dealt
22 with that. It brought about a difference of legal
23 opinion from both the Oireachtas and from Mr. Callinan
24 and from Mr. Hawkes. We held our position and the
25 meeting proceeded. 12:10

26 360 Q. I see.

27 A. So therefore, why would I go and discuss all of that
28 again when I was being led by legal opinion and so was
29 he?

1 361 Q. Because Commissioner Callinan was seeking to revisit
2 the issue, as is apparent from the comments he made at
3 the PAC when we look at the transcript. He was not
4 happy with the play-out of the correspondence and he
5 was still agitating, particularly now that he had 12:11
6 learned it had proposed Sergeant McCabe was due to come
7 in the following Thursday.

8 CHAIRMAN: Yes. If I could explain to you, Deputy
9 McGuinness, this part of the cross-examination,
10 essentially Mr. O'Higgins is putting his client's case 12:11
11 to you, what he says, and you are entitled to say no,
12 that is not correct, and if you want to add a reason,
13 it's fine. But that is what it is. It's usually quite
14 quick.

15 A. Thank you very much. It's not correct. 12:11

16 362 Q. MR. MÍCHEÁL O'HIGGINS: And I am suggesting to you that
17 he put a specific proposal to you that involved a
18 request that the PAC would postpone inviting Sergeant
19 McCabe until the Commissioner's suggested process would
20 be allowed play out? 12:11

21 A. That is not correct.

22 363 Q. So he never mentioned any proposal he had, is that your
23 evidence?

24 A. The only proposal that was put to the Commissioner was
25 the one that I had put the previous day, which was -- 12:12
26 would be normal practice in business for the employer
27 to discuss the issues with the employee, and I put that
28 to him again and that is how the -- that is how the
29 conversation started.

1 364 Q. Yes. And Commissioner Callinan - I think we have a
2 degree of, I hope, common ground here - Commissioner
3 Callinan says that on foot of you making that point,
4 and I think you made it at the PAC hearing, isn't that
5 right? 12:12

6 A. That's right.

7 365 Q. You did. On foot of that, he was coming to you with a
8 proposal in relation to that and the proposal was the
9 following: He would appoint a chief superintendent to
10 meet with Sergeant McCabe and, thereafter, to provide a 12:12
11 report to Commissioner Callinan, a report on Sergeant
12 McCabe's concerns about the penalty points issues, all
13 right? And the second part of the proposal was that
14 if -- if Sergeant McCabe wasn't happy with the chief
15 superintendent who Martin Callinan might nominate, that 12:13
16 Sergeant McCabe would nominate his own preferred chief
17 superintendent, all right? Now, did he mention that
18 proposal to you?

19 A. The only proposal mentioned was the one that I put to
20 him at the commencement of our conversation, and then, 12:13
21 arising from that, he said to me, it's gone way beyond
22 that.

23 CHAIRMAN: So you are saying, basically, that there was
24 not that conversation, that there was a mention of
25 employment relations perhaps, but the conversation was 12:13
26 immediately diverted into --

27 A. Why I shouldn't.

28 CHAIRMAN: -- why the man shouldn't be trusted?

29 A. Yes.

1 366 Q. MR. MÍCHEÁL O'HIGGINS: And I am suggesting to you that
2 Sergeant McCabe -- sorry, that it was indicated by
3 Martin Callinan that Sergeant McCabe, under the
4 proposal he was putting to you, would continue to enjoy
5 all rights and protections of a confidential reporter 12:14
6 under the relevant regulations, that was part of the
7 proposal he was anxious to convey to you in person, all
8 right? Do you have any recollection of that?
9 A. And I disagree with that.

10 367 Q. All right. And I am suggesting to you that you are 12:14
11 aware that there has been a draft letter opened up by
12 Mr. Marrinan when questioning you, and that letter was
13 never ultimately sent to you, I think you agreed about
14 that?
15 A. I can't comment on that. 12:14

16 368 Q. Well, sorry, no, I am just asking you to confirm --
17 A. I confirm that I have seen a draft letter in the course
18 of this Tribunal.
19 CHAIRMAN: Well, Mr. O'Higgins' point, I anticipate, is
20 that, as the draft letter wasn't sent, that is what was 12:14
21 discussed in the car, or certainly quite a big chunk of
22 what was in the draft letter that didn't get to you,
23 that is the point.
24 MR. MÍCHEÁL O'HIGGINS: Exactly.

25 369 Q. So, in Dundalk, Martin Callinan arranged to meet you 12:14
26 and it was decided, in terms of his position, where he
27 is lobbying for something or seeking for something to
28 be done from the PAC through you, the Chair, he took
29 the reasonable position, I'm suggesting to you, of

1 coming down to meet with you in person, because it was
2 still live, wasn't it, it was still a live question,
3 yet to be decided by your Committee, whether or not the
4 hearing -- Sergeant McCabe would give his evidence in
5 private or in public, that was -- remained up for 12:15
6 grabs, isn't that right?

7 A. That is a discussion that we had, yes.

8 370 Q. Yes. And, in fact, that was -- it was flagged, wasn't
9 it, to Martin Callinan and his colleagues at the PAC
10 that that was going to happen on the Tuesday when the 12:15
11 PAC would sit to decide that issue, the following
12 Tuesday after the Thursday?

13 A. Yes.

14 371 Q. Are we agreed about that?

15 A. Yeah, yeah. 12:15

16 372 Q. So, contrary to what you have suggested, I am
17 suggesting to you, that everything had been decided and
18 the correspondence had closed out the issues, they
19 hadn't closed out the issues because Martin Callinan
20 was still very much looking for Sergeant McCabe's 12:16
21 attendance to be postponed whilst this process would
22 play out and, as a fall-back position, if you were
23 insistent on calling Sergeant McCabe, that at least it
24 would take place in private, do you understand the
25 point I am making? 12:16

26 A. The matter was not closed out -- sorry, I should say
27 that the matter was closed out to the extent that the
28 only matter to be decided was whether this would be in
29 public session or in private session. The other

1 matters that you refer to had been played out in
2 correspondence between the legal representatives and we
3 had come to our conclusion on that.

4 373 Q. But this proposal --

5 A. Therefore -- sorry? 12:16

6 374 Q. Sorry, I didn't mean to cut across you. This proposal
7 was new, he was coming to you with a fresh proposal?

8 A. It was new if he was proposing it to me, but he didn't
9 propose it to me.

10 375 Q. I see. Well, it will be his evidence that that was his 12:17
11 purpose in meeting you, to convey this proposal,
12 because he was still anxious, if at all possible -- you
13 see, if you accepted the proposal, it might obviate the
14 necessity for Sergeant McCabe to come to give evidence
15 because Sergeant McCabe may ultimately be happy with 12:17
16 and the PAC may be happy with the process whereby the
17 chief superintendent's report would be conveyed to the
18 Commissioner once Sergeant McCabe had been heard and
19 his complaints properly dealt with, and then, if it was
20 necessary, after that, to bring it back before the PAC 12:17
21 at the conclusion of that suggested process, and nobody
22 had rejected that suggestion because Martin Callinan
23 was coming to you with it for the first time, do you
24 understand?

25 A. The normal course of events in practice for such 12:17
26 suggestions and proposals would be for the Commissioner
27 to contact the clerk of the Committee. That is the
28 normal way you do things.

29 CHAIRMAN: All right. So your answer is that that

1 bring that verbal proposition to a meeting. I would
2 have immediately been told --

3 CHAIRMAN: No, I understand.

4 A. -- provide it in writing.

5 CHAIRMAN: It is a matter of argument. But what you
6 say is, look, that didn't happen? 12:19

7 A. Yes.

8 CHAIRMAN: Yes.

9 377 Q. MR. MÍCHEÁL O'HIGGINS: You see, the plan was, I am
10 suggesting to you, that if you received well the 12:19
11 suggestion, the letter would follow. You never got the
12 letter because ultimately it was no longer necessary to
13 send it, he had conveyed everything in it, isn't that
14 right?

15 A. No, you see, Mr. O'Higgins, a decision like that would 12:20
16 only be taken by the Committee itself, and even if I
17 were to be supportive of what he was saying to me, it
18 didn't turn on my decision, and that is why the
19 Commissioner, Mr. Chairman, would be familiar with
20 placing these matters before the clerk. I chair the 12:20
21 meeting, I don't make the decisions.

22 CHAIRMAN: No, I get that. But I think the point
23 Mr. O'Higgins makes, now whether it happened or not,
24 obviously I am going to think about it, but they speak
25 in America about people who are chairs of committees as 12:20
26 being very powerful, and you are very powerful in terms
27 of that particular Committee and that is the reason
28 being put to you why it was floated to you. Your
29 answer to that is, well, it never was floated to me,

1 and secondly, even if I do have influence, well then
2 I'd have to exercise it legitimately.

3 A. Correct.

4 CHAIRMAN: Yes.

5 378 Q. MR. MÍCHEÁL O'HIGGINS: And I am suggesting to you that 12:21
6 it was clear from what you said when this proposal was
7 put that it wasn't going to be accepted, and that
8 obviated the necessity to go down the correspondence
9 road?

10 A. The proposal was never put to me. I didn't reject the 12:21
11 proposal. The proposal was not put in the first place.

12 379 Q. All right.

13 A. And the option was always there for Mr. Callinan to
14 write to the clerk. It's not a situation,
15 Mr. Chairman, that I can take the members of that 12:21
16 Committee for granted. It's a cross-party make-up, and
17 they have often taken issue on the politics or
18 otherwise of a decision. Mr. Callinan would know that
19 quite well. But as I said to you, the proposition was
20 never put. It wasn't for me to decide anyway. And it 12:22
21 was always, before and after, if Mr. Callinan wished to
22 have that letter sent to the clerk of the Committee, to
23 do so, and that didn't happen, and there was time to do
24 it.

25 380 Q. Deputy, just recognising the realities of things, would 12:22
26 you agree with me that if you weren't going to agree
27 with the proposal, if you weren't going to agree with
28 it, that would mean it wasn't going to carry, bluntly?

29 A. But how did he know I wasn't going to agree with it

1 when it wasn't put to me?
2 CHAIRMAN: No, but at the end of the day, that is very
3 starkly the case, Mr. O'Higgins, and you have
4 legitimately, and thank you very much, put your
5 client's case in relation to that. Was there anything 12:22
6 else about the conversation?
7 MR. MÍCHEÁL O'HIGGINS: There was.
8 381 Q. And I am suggesting to you that during the course of
9 the conversation you asked why was Sergeant McCabe
10 raising these issues, and I am suggesting to you that 12:23
11 you, you asked the Commissioner, not the other way
12 around, you asked the Commissioner was it because of
13 the investigation and the file that went to the DPP?
14 A. Quite frankly, Mr. O'Higgins, I couldn't have asked the
15 question, I didn't even know about it. 12:23
16 382 Q. Yes. Even though --
17 A. And remember this: I had already met Maurice McCabe,
18 Sergeant Maurice McCabe.
19 383 Q. How many times?
20 A. A number of times since 2011. I can't tell you right 12:23
21 now offhand. But I met him sufficiently enough to
22 establish for myself the bona fides of his case and the
23 honesty of the man, so I understood his case. While I
24 didn't know anything about the file -- the file was
25 introduced in the conversation by the Commissioner, 12:23
26 presumably to give me the impression that the man would
27 be prosecuted. That is what caused me great concern.
28 384 Q. I just want to put to you the balance of my
29 instructions and you can say if you agree or disagree,

1 all right. Commissioner Callinan, I am suggesting to
2 you, is clear in his instructions that you were aware,
3 because you raised it, that Sergeant McCabe had been
4 the subject of an investigation, and you disagree with
5 that? 12:24

6 A. I disagree with that.

7 385 Q. Mr. Callinan instructs me that he responded that if you
8 knew about the file that went to the DPP, then you knew
9 what the DPP had, in fact, decided?

10 A. Sure how would I know that? 12:24

11 386 Q. All right. And I am suggesting to you that he
12 indicated that to you, that you knew all about it if
13 you were asking that question.

14 A. And that is untrue.

15 387 Q. All right. And I'm suggesting to that you Mr. Callinan 12:24
16 was undoubtedly anxious that you wouldn't call Sergeant
17 McCabe, that is to say he was looking for you to
18 postpone that decision and ultimately he hoped would
19 not call Sergeant McCabe because he felt it wasn't the
20 proper forum, isn't that right? 12:25

21 A. That's right.

22 388 Q. And not only that, but he felt that there was
23 difficulties from the point of view of a disciplined
24 organisation such as An Garda Síochána in the very
25 notion of a serving garda giving evidence about issues 12:25
26 in circumstances where Commissioner Callinan was the
27 accounting person for the purposes of the PAC entire
28 process, he was the accounting person?

29 A. He was -- he is the accounting person, but he didn't go

1 into any detail of that with me.

2 CHAIRMAN: The proposition being put to you in the car,
3 according to Commissioner Callinan's account, was that
4 an individual garda should not be allowed to trump his
5 ultimate superior in terms of accounting, as to the 12:25
6 spending of money or, in this instance, the collection
7 of revenue due to people committing road traffic
8 offences and gaining penalties.

9 A. Well, I don't accept that.

10 CHAIRMAN: Right. 12:26

11 389 Q. MR. MÍCHEÁL O'HIGGINS: And I am suggesting to you
12 that, and the Chairman in due course will have an
13 opportunity to read the transcript, we needn't trawl
14 over it now in the time we have left, but it's apparent
15 from the transcript, I think in more than one section 12:26
16 of it, that Commissioner Callinan, and I think some of
17 the PAC members, perhaps even some of them agreed with
18 it, made this point about the difficulties for a
19 disciplined organisation such as An Garda Síochána of
20 that occurring. 12:26

21 CHAIRMAN: I think it's actually in the correspondence.

22 MR. MÍCHEÁL O'HIGGINS: Yes.

23 CHAIRMAN: Yes. It is there. And it seems to me to be
24 a very reasonable point to make. But you are saying it
25 wasn't made in the car? 12:26

26 A. It wasn't made in the car.

27 390 Q. MR. MÍCHEÁL O'HIGGINS: All right. Can I move then,
28 again for the purpose of putting formally my case,
29 because I think Mr. Marrinan has already done this in

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large measure so we needn't delay things --
CHAIRMAN: Let's just check because -- how long do you
think you will be, Mr. O'Higgins, because it's now half
twelve? And I am sorry, I was trying to get you
finished by lunchtime, but that just may not be
possible.

12:27

THE HEARING ADJOURNED FOR LUNCH.

12:37

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 391 Q. MR. MÍCHEÁL O'HIGGINS: So, Deputy McGuinness, I wonder
4 could we have page 1353 on the screen, please. This is
5 the PAC transcript. I am not proposing to go through 13:31
6 this, because it is there for anybody who needs it, but
7 just one reference I want to ask you to deal with. I
8 think in this section, if I can just find it there, we
9 might just scroll down slightly, do you see there,
10 Deputy McGuinness, it says: 13:31

11
12 "Chairman --"

13
14 which is yourself.

15
16 "-- by way of concluding this part of proceedings I 13:31
17 wish to state that the Committee of Public Accounts
18 last night agreed to engage with one of the
19 whistleblowers because he asked to come before us. We
20 agreed that we would hear his evidence on Thursday 13:31
21 next. I think the Commissioner should be aware of
22 that. The letter to which I referred earlier, the
23 second whistleblower has stated I'm willing to give
24 evidence to your Committee at the earliest
25 opportunity." 13:32

26
27 Just pause there, Deputy McGuinness. Is that a
28 reference to John Wilson?

29 A. I think so, yes.

1 392 Q. Is it the case that John Wilson did or did not give
2 evidence before your Committee?

3 A. No, he did not. Took evidence from Sergeant McCabe.

4 393 Q. John Wilson --

5 A. No, he did not. 13:32

6 394 Q. He did not. And John Wilson was very much involved in
7 raising the allegations and complaints concerning
8 imperfections in the fixed charge penalty notice
9 system, wasn't he?

10 A. He was part of it, but Sergeant McCabe was the central 13:32
11 figure.

12 395 Q. Yes, but he was also very much involved in it, wasn't
13 he?

14 A. I met him once, but Sergeant McCabe was the central
15 figure. 13:33

16 396 Q. I know you have mentioned that.

17 A. I don't know how involved he was beyond that, but he
18 certainly was highlighting issues other than that, too,
19 within the Garda force. And on this particular issue,
20 because of the fact that it was the Comptroller and 13:33
21 Auditor General's report, because of the evidence that
22 we had received directly from Sergeant Maurice McCabe
23 and, at the meeting, had agreed, on the basis of that
24 evidence given by Sergeant Maurice McCabe, that we
25 should hear from him. 13:33

26 397 Q. I see. So did you make a positive decision not to call
27 John Wilson in circumstances where, according -- from
28 my reading of the transcript --

29 A. No, we were only dealing with John -- or, sorry,

1 Sergeant Maurice McCabe. The information came from
2 Sergeant Maurice McCabe.

3 398 Q. Well, do you see what I am drawing to your attention
4 there, you say:
5
6 "In the letter to which I referred earlier, the second
7 whistleblower has stated 'I am willing to give evidence
8 to your Committee at the earliest opportunity'."
9 A. Yes.

10 399 Q. And I think you confirmed that is a reference to John
11 Wilson, is that right? 13:33
12 A. I think it is, yes.

13 400 Q. I mean, you're the Chair, so you must know.
14 A. Yes, it is.

15 401 Q. Right. So the man is offering to give evidence, he has 13:34
16 also been, hadn't he, been the subject of a request, of
17 a command by the Commissioner, as it were, a cease and
18 desist from accessing Pulse and sharing it with third
19 parties. He is centrally involved, I am suggesting to
20 you, and I am just wondering why you didn't call him? 13:34
21 A. Because I had engaged directly with Sergeant Maurice
22 McCabe, who was the source of the evidence that was
23 required to match with the Comptroller and Auditor
24 General's report, and the Committee was dealing solely
25 at that stage with Sergeant Maurice McCabe, dating 13:34
26 back, as I said, to late December, early January.

27 402 Q. And would you agree with me, again it arises from this
28 piece of the transcript, you'd agree with me that this
29 appears to be the first indication you're giving that

1 it's Thursday, so this was Thursday, Thursday the 23rd,
2 it's Thursday the 30th of January 2014 that you were
3 planning to hear the evidence from Sergeant McCabe?
4 A. Yes.
5 403 Q. Right. And that would have been something that the 13:35
6 Commissioner was, you know, concerned about, because it
7 was now seemingly imminent, isn't that right?
8 A. Yes, the 30th.
9 404 Q. All right. Can I move then to the issue of contention 13:35
10 between us concerning that day and that is your
11 attribution to my client of a particular remark, all
12 right, at the end of the PAC meeting? Are you with me?
13 We're agreed, aren't we, that in your first statement,
14 which you made for the first time, the 28th March 2017,
15 there is no reference to John Wilson, good, bad or 13:36
16 indifferent?
17 A. No, there isn't.
18 405 Q. Nor is there any reference to any anecdote about a
19 horse?
20 A. No, there isn't. 13:36
21 406 Q. And am I correct, as well, in your speech to the Dáil
22 on the 26th May 2016, you made no reference to a
23 quotation or the attributing of a remark to
24 Commissioner Callinan on that occasion?
25 A. About what? 13:36
26 407 Q. As to what you say was said, this man fiddles with
27 children?
28 A. Sorry?
29 408 Q. As to what was said as to fiddling with children, on

1 the 23rd, after the PAC meeting?

2 A. No, I described that as a vile remark.

3 409 Q. Pardon?

4 A. I described it in my speech as a vile remark. If you
5 look at the speech I gave, 26th/5th. 13:37

6 410 Q. All right. Well, we might just do that for a moment.
7 I will just try and get up the page reference, sorry.
8 1416, please.

9 A. I refer to:

10

11 "The vile stories that circulated about Garda McCabe,
12 which were promoted by senior officers in the Garda,"
13 and they "were absolutely appalling." 13:37

14 411 Q. Sorry, just Mr. Kavanagh is bringing it up there. So,
15 you say, I think this is the portion on page 1416 where 13:37
16 you are referencing the car park. You say, in the
17 final paragraph on page 1416:

18

19 "I gave an account of when Garda McCabe came before the
20 Committee of Public Accounts. Every effort was made by 13:38
21 those within An Garda Síochána at senior level to
22 discredit Sergeant McCabe, including the outgoing Garda
23 Commissioner, who confided to me in a car park on the
24 Naas Road that he was not to be trusted and there were
25 serious issues in relation to Garda McCabe." 13:38

26

27 Just pause there. You'd agree with me that is confined
28 to a reference to the car park and is not referring to
29 the PAC meeting the day before?

1 A. Yes, it refers to the car park.

2 412 Q. Yes. And then I'm suggesting to you that you somewhat
3 broaden matters and you move from referencing or
4 name-checking the Garda Commissioner, you put it this
5 way, you say: 13:39
6
7 "The vile stories that circulated about Garda McCabe,
8 which were promoted by senior officers in the Garda,
9 were absolutely appalling."

10 A. Yes. 13:39

11 413 Q. And you say:
12
13 "Because they attempted to discredit him, he had to
14 bring forward various pieces of strong, firm evidence
15 to protect his integrity." 13:39
16
17 Can you identify for me anywhere in that passage or in
18 that speech where you referenced the remark you
19 attribute to Commissioner Callinan that you say he made
20 on the 23rd January after the PAC meeting? 13:39

21 A. I didn't.

22 414 Q. Right. So you didn't, in your Dáil speech?

23 A. In the Dáil speech.

24 415 Q. No.

25 A. I was referring in that speech to the, as you say, the 13:39
26 car park.

27 416 Q. I wish to suggest to you that you decided -- well,
28 first of all, just deal with the dates of your
29 statements, please. Your first statement was made on

1 the 28th March 2017, we're agreed about that?

2 A. Yes.

3 417 Q. Your second statement was made exactly a year later, on
4 the 28th March 2018?

5 A. Yeah. 13:40

6 418 Q. Isn't that so?

7 A. Yes.

8 419 Q. By the time -- after you made your statement, my client
9 had provided a statement in which he made reference to
10 a denial of your allegation about his saying fiddling 13:40
11 with children, or words to that effect, all right? And
12 in the course of his statement, he attributed to you a
13 less-than-complimentary remark about John Wilson, do
14 you understand?

15 A. Yes. 13:41

16 420 Q. So I'm suggesting to you that you included the John
17 Wilson detail by way of a reaction to my client
18 bringing up John Wilson in his statement?

19 A. No, it wasn't a -- it was -- I had read the comment
20 that he had made in relation to what he said that I 13:41
21 said about John Wilson.

22 421 Q. Yes.

23 A. And during the discussion with the investigators here,
24 I put the overall commentary in context; in other
25 words, how the matters start, how the conversation 13:41
26 started, what was said, how it led into the remarks
27 that were then made about Garda Maurice McCabe.

28 422 Q. Well, can I ask you about that.

29 A. And the reason for that was because the words used by

1 the Garda Commissioner, that he said that I used --

2 423 Q. Yes. 13:42

3 A. -- were, in fact, the words that he used.

4 424 Q. You see, what he attributed to you, just to refresh 13:42
5 your memory, Deputy McGuinness, Mr. Callinan says that
6 he asked you whether John Wilson would be called, and
7 he says that you said:
8
9 "You must be joking, sure he's a fucking header."

10 A. Correct. But I didn't say that. 13:42

11 425 Q. All right. And that was his position on the matters.

12 A. Yes.

13 426 Q. And you made a reference to context in relation to my 13:42
14 question as to why you didn't mention John Wilson and
15 the story about the horse in your first statement.
16 Would you mind just briefly looking, if Mr. Kavanagh
17 might call up page 2199 of Book 8, which is your
18 statement from March 2017.

19 A. What page is it?

20 427 Q. It's page -- it's Book 8. 13:42

21 A. Yeah.

22 428 Q. And it's page 2199. And if we could scroll down a
23 little bit further and find the final paragraph on that
24 page, paragraph 6.

25 A. Yeah, 2199. 13:43

26 429 Q. Do you see it there on the screen? Look at the hard
27 copy, it would be better. Do you have it?

28 A. Yes.

29 430 Q. So 2199, the last paragraph, paragraph 6 in your

1 numbered paragraphs, this is what you say, and the only
2 thing you say, about the conversation at the end of the
3 PAC meeting, you say:

4
5 "At the conclusion of the hearing on the 23rd January 13:43
6 2014, as my usual practice when Chairman of the
7 Committee, I approached Mr. Callinan to thank him for
8 attending at the Committee. Mr. Callinan was with
9 Ms. Nóirín O'Sullivan and David Taylor and he said to
10 me --" 13:43

11
12 And I am emphasising that.

13
14 " -- he said to me 'this man fiddles with children,
15 this is outrageous'. I took the reference to 'this 13:44
16 man' to refer to Mr. McCabe."

17
18 That is the totality of your description of that
19 conversation in this first statement, is that right?

20 A. Relative to Maurice McCabe. 13:44

21 431 Q. Pardon?

22 A. Relative to Maurice McCabe.

23 432 Q. But, you see --

24 A. Maurice McCabe was the person appearing at the
25 committee. Maurice McCabe was the individual that we 13:44
26 were all talking about and dealing with. And the
27 remarks that I have -- that you have quoted in there
28 and they're contained here in my statement, are the
29 remarks that were relevant to Maurice McCabe. So when

1 I was asked about that, I put it in context to provide
2 the full conversation that the Commissioner and I had,
3 after that meeting.

4 433 Q. Tell us again, please, not the story about the horse,
5 but just tell us again what precisely did he say about 13:44
6 Maurice McCabe, do you say?

7 A. What's in my statement?

8 434 Q. No, no, just tell us, yourself, your own words, what
9 did he say?

10 A. "That this man fiddles with children, this is 13:45
11 outrageous."

12 435 Q. So insofar as your later statement has different
13 wording, this version is to be preferred, is it?

14 A. Which part of it? The later statement is a statement
15 given to the investigators here -- 13:45

16 436 Q. Yes.

17 A. -- in relation to the total conversation that we had.
18 So if I can bring that somewhere on the screen.

19 437 Q. You see, the later statement on page 2165 in relation
20 to Mr. McCabe, on your case, attributed these words to 13:46
21 Martin Callinan, "and the other man fiddles with kids
22 and that is the type of fucking headbangers I'm dealing
23 with." They're different, those two versions are
24 different, you'd agree with me?

25 A. It's not different. 13:46

26 CHAIRMAN: Well, what you have read out is slightly
27 different as well from, in fact, what the words are.

28 MR. MÍCHEÁL O'HIGGINS: Well, sorry, Chairman, I am
29 reading from the witness's statement on page 2165.

1 CHAIRMAN: Yes. what I was told yesterday was, he took
2 a horse off a, and I'm not going to use the word,
3 member of the Irish traveller community, in Grafton
4 Street, and rode it back, tying it up outside Pearse
5 Street, and the other fella fiddles with kids, these 13:47
6 are the kind of, and I'm not going to use the word,
7 headbangers I am dealing with.

8 438 Q. MR. MÍCHEÁL O'HIGGINS: So is that the totality of what
9 was said?

10 A. Yes. 13:47

11 439 Q. So what was happened to the words "this is outrageous"?
12 A. At the end of the -- to go back again. After I
13 described the conversation involving the anecdote about
14 John Wilson, it followed in to the commentary about
15 Sergeant Maurice McCabe. He then said "this is 13:47
16 outrageous", meaning that, I took from it, that it was
17 outrageous that he was dealing with these things. And
18 then he went on to say the rest.

19 440 Q. Well, do you say it was "and the other fella fiddles
20 with kids, this is outrageous, and that is the type of 13:48
21 fucking headbanger I am dealing with", or is the "this
22 is outrage ous" after "fucking headbangers", which is
23 it?

24 A. He dealt with the John Wilson story, he dealt with the
25 Maurice McCabe story, he said "this is outrageous, and 13:48
26 these are the kind of headbangers I am dealing with".

27 CHAIRMAN: So "this is outrageous" came after the story
28 about the horse?

29 A. Yes. And after the story about -- that's why I have it

1 in here, at the end of the --

2 CHAIRMAN: The fiddling with children?

3 A. Yes.

4 CHAIRMAN: Yes.

5 441 Q. MR. MÍCHEÁL O'HIGGINS: You see, Judge Charleton has 13:48

6 pinpointed on page -- on yesterday's transcript, on

7 page 35, going on to page 36, you were asked to recite

8 again, and you did, what you say were the words

9 attributed. And I am just pointing out to you, you

10 don't appear to have made reference to the "this is 13:49

11 outrageous" aspect at all. what you said was --

12 A. I made reference to it -- sorry.

13 442 Q. I will read it out. It's at page 35 of yesterday's

14 transcript.

15 CHAIRMAN: No, it wasn't mentioned yesterday, you are 13:49

16 absolutely right.

17 MR. MÍCHEÁL O'HIGGINS: All right.

18 443 Q. I am simply suggesting to you that whether it's what

19 you said yesterday, whether it's what is in your first

20 statement, whether it's what is in your second 13:49

21 statement from 2018, you're offering -- you appear to

22 be offering different accounts of what you say was

23 said?

24 A. And you're wrong.

25 444 Q. All right. Can I ask you, I think you've told us you 13:49

26 didn't react to the remark that you claim to have

27 heard?

28 A. After the meeting?

29 445 Q. Yes. It was a pretty stand-out remark, I suggest?

1 A. Yes, it was, yes.

2 446 Q. It was shorter, but as -- somewhat as outrageous as
3 what you claim was said in the car park the next day,
4 it's of a piece with that, would that be right?

5 A. Yes. 13:50

6 447 Q. Right. Did you raise it with the Commissioner at any
7 point that evening or the following day?

8 A. No.

9 448 Q. Do you have any explanation for that?

10 A. I had the conversation, it is as I have stated, and I 13:50
11 did not want to participate in that conversation. I
12 heard it and I left, and that was it.

13 449 Q. You, I think we're agreed, you didn't tell any fellow
14 member of the PAC of that remark?

15 A. No, I didn't, because, again, it was just adding to 13:51
16 rumours and speculation about Sergeant Maurice McCabe.

17 450 Q. And included in the persons you didn't tell was your
18 own party colleague, Séan Fleming, who was on the PAC
19 at the time?

20 A. I didn't tell any member of the PAC. 13:51

21 451 Q. Right. Did you say it to Sergeant McCabe at any point?

22 A. Eh... I don't think so, no.

23 452 Q. What about, had you a meeting with him in May 2016 at
24 the Merrion Hotel, when apparently --

25 A. Well, that had been a date after everything had been 13:52
26 said, so, for clarification, I would have gone through
27 some of the remarks made by Commissioner Callinan in
28 relation to Sergeant Maurice McCabe.

29 453 Q. Well, that's what I am asking you: Did you tell him

1 about the remark you attribute at the end of the PAC?
2 A. I may not have separated out when these remarks were
3 made, and I remind you again that the remarks in terms
4 of Sergeant Maurice McCabe, and the rumours and
5 everything else, were circulating in Leinster House. 13:52
6 This was just further evidence that an effort was being
7 made to destroy the man. And when I repeated anything
8 to Maurice McCabe, I didn't specify dates and times.
9 454 Q. Right, but I had understood you to indicate that, at
10 some point, you thought it was a good idea to relay to 13:52
11 Sergeant McCabe the disgraceful things that the
12 Commissioner had been saying about him?
13 A. Yes, and I did that.
14 455 Q. Right. And we're agreed you didn't -- you didn't, in
15 doing that, mention anything about the 23rd January end 13:53
16 of PAC conversation?
17 A. I may not have had, I may not have had included that as
18 a general comment in anything that I was saying. As I
19 told you already, I did not attribute dates and times
20 to either what I had been hearing in the context of 13:53
21 rumours or what was being said by the Commissioner to
22 affect anything that was being undertaken by the Public
23 Accounts Committee.
24 456 Q. Can I ask you about David Taylor for a moment.
25 A. Yes. 13:53
26 457 Q. What was your first contact with Superintendent Taylor
27 or Superintendent Taylor's wife?
28 CHAIRMAN: You mean by phone or text or anything prior
29 to the January 2017 meeting in the Skylon, is it?

1 A. Yes, it was around the 16th.

2 458 Q. MR. MÍCHEÁL O'HIGGINS: The 16th of?

3 A. Of January '17.

4 459 Q. Of January 2017. So was it telephone contact prior to
5 your meeting -- 13:54

6 A. Yes.

7 460 Q. -- superintendent and Mrs. Taylor. And was the first
8 contact with Mrs. Taylor as opposed to superintendent?

9 A. Yes.

10 461 Q. Right. Did you and Mrs. Taylor have mutual friends, or 13:54
11 what was the connection?

12 A. I'd have no connection.

13 462 Q. Pardon?

14 A. No connection.

15 463 Q. Well, who put ye in touch? 13:54

16 A. Well, I have noted here a telephone number which is
17 Dave Taylor's wife's telephone number and I contacted
18 her on that. Now, whether I was contacted by her and
19 given the number or whether I telephoned her directly,
20 whether she contacted me first or I her first, I'm not 13:55
21 quite sure, but the meeting in the Skylon Hotel took
22 place.

23 464 Q. Is she in Fianna Fáil?

24 A. I have no idea.

25 465 Q. You don't know one way or the other? 13:55

26 A. No, I don't know a lot about the membership of the
27 party, no.

28 466 Q. Pardon?

29 A. I don't know a whole lot of the membership of the party

1 in the context of identifying someone in this room or
2 beyond that might be a member of the party.

3 467 Q. Is that not exactly the sort of detail you might be
4 across, no?

5 A. For what? I don't go around asking people what their 13:55
6 membership of particular parties are.

7 468 Q. All right. Well, did Sergeant McCabe have any role in
8 you making contact or ending up -- it ending up that
9 you made contact with Mrs. Taylor?

10 A. Not that I can remember. But I did have contact with 13:55
11 Mrs. Taylor, I did arrange the meeting.

12 469 Q. Yeah, we know that. And that was in January 2017?

13 A. Yes.

14 470 Q. At the Skylon Hotel, was it?

15 A. Skylon Hotel, yeah. 13:56

16 471 Q. You're aware, aren't you, that Superintendent Taylor's
17 protected disclosure, which is in Book 1, both he and
18 Sergeant McCabe made their protected disclosures to the
19 same protected disclosure manager within the same week;
20 you're, broadly speaking, aware of that, are you? 13:56

21 A. I'm aware that they made a protected disclosure. When
22 they made it, you know, I can't tell you now.

23 472 Q. Just to assist you, Sergeant McCabe, as I read the
24 papers, made his on the 28th September 2016, and
25 Superintendent Taylor made his on the 30th September 13:56
26 2016, right?

27 A. Okay.

28 CHAIRMAN: I thought it was the 26th.

29 MR. MÍCHEÁL O'HIGGINS: Well, Judge, it's on page --

1 sorry, I'm getting those --

2 CHAIRMAN: I mean, I have taken it down as -- it

3 doesn't matter. You're absolutely correct to say they

4 are within days of each other, that is all that

5 matters, but I thought it was Maurice McCabe on the 13:57

6 26th September and then Superintendent Taylor on the

7 30th September.

8 MR. MÍCHEÁL O'HIGGINS: May it please you, Judge.

9 CHAIRMAN: But it doesn't matter.

10 473 Q. MR. MÍCHEÁL O'HIGGINS: Do you see then -- I wonder if 13:57

11 Mr. Kavanagh might bring up page 2 of Book 1.

12 A. Volume 2, is it?

13 474 Q. It's volume 1, Deputy.

14 A. Volume 1, yes. What page?

15 475 Q. Page 6 of that, page 6 of the papers. 13:57

16 A. Yes.

17 476 Q. It starts at the top:

18

19 "Prior to the appearance of the Commissioner."

20 A. Yes. 13:58

21 477 Q. So do you see that there in the first three paragraphs

22 within this protected disclosure, which, as I say,

23 carries the date the 30th September 2016, in the first

24 three paragraphs of this, Superintendent Taylor refers

25 to the PAC meeting that took place on the 23rd January 13:58

26 2014, all right?

27 A. Yes.

28 478 Q. And he says that:

29

1 "Prior to the appearance of the Commissioner at the
2 Dáil Public Accounts Committee (PAC) there were several
3 round-table meetings to discuss strategy and to
4 anticipate and to prepare for lines of
5 questioning/inquiry. Sergeant McCabe featured heavily 13:58
6 in the sense of preparing to respond to allegations
7 which had been made. The Commissioner and Deputy
8 Commissioner O'Sullivan attended these meetings as well
9 as Assistant Commissioner O'Mahony and advisers. I
10 attended at least two of these meetings. I also 13:58
11 travelled with the Commissioner to the hearing that
12 morning and was present when he presented at same, as
13 was Deputy Commissioner O'Sullivan."

14
15 And it says: 13:59

16
17 "After the PAC hearing, which lasted about five hours,
18 we had a discussion amongst ourselves in the communal
19 area outside the Committee rooms in Dáil Éireann. No
20 issue was raised by anybody present to any concern 13:59
21 regarding the use of the word 'disgusting'. We
22 returned to Garda Headquarters and all went back to our
23 respective offices, but I'm aware that the Commissioner
24 and Deputy Commissioner O'Sullivan went to his office.
25 I did not attend that meeting." 13:59

26
27 And then it says:

28
29 "Over the next few days the entire media focus appeared

1 to be on the use by the Commissioner of the word
2 'disgusting'. There was great annoyance and indeed all
3 hell broke loose internally in An Garda Síochána, given
4 the focus on this comment. There was a huge amount of
5 negative commentary on the Commissioner for the use of 13:59
6 the word and corresponding positive media coverage of
7 Sergeant McCabe."

8
9 All right. And what I am going to ask you about that
10 is, does it surprise you that, in this document, does 13:59
11 it surprise you to learn that nowhere in this document
12 does Superintendent Taylor claim to have heard any
13 remark from Commissioner Callinan of he fiddles with
14 children?

15 A. This is Superintendent Taylor's protected disclosure? 14:00

16 479 Q. Yes.

17 A. He hasn't mentioned -- yeah, well --

18 480 Q. Even though he has referred to the meeting?

19 A. But I don't know about that.

20 CHAIRMAN: He doesn't refer anywhere to actually 14:00
21 meeting the deputy, as such. There seems to have
22 been -- I don't know whether -- could I just clarify
23 that, Mr. O'Higgins, if you don't mind. If you give
24 evidence to a Dáil committee, does that take place in
25 the room across the road from Leinster House? 14:00

26 A. No, it takes place in the basement.

27 CHAIRMAN: Of Leinster House?

28 A. Yes.

29 CHAIRMAN: Okay. Because I am completely unfamiliar.

1 If a group are coming to give evidence, do you offer
2 them the facility of a room beforehand?

3 A. No, generally speaking they come to the coffee dock,
4 which is on the next level, and then they come to a
5 lower level, where there is a very large waiting area. 14:01

6 CHAIRMAN: Yes.

7 A. And then they go in and they attend in one of the
8 committee rooms.

9 CHAIRMAN: Yes. But there is no -- in some of the
10 courts, certainly in the -- well, there was a big 14:01
11 commercial case in the Central Criminal Court and the
12 Courts Service was able to offer the parties use of a
13 room each, the use of a room. You don't do that, do
14 you?

15 A. No, that can be the case. There are other meeting 14:01
16 rooms at a higher level.

17 CHAIRMAN: But did you do it on this occasion?

18 A. And there are monitors everywhere.

19 CHAIRMAN: No, I get that. But did you offer the
20 Garda delegation -- 14:01

21 A. No, no, no, that is not my --

22 CHAIRMAN: You can't say?

23 A. I wouldn't ever do that.

24 CHAIRMAN: All right.

25 A. That would be a matter for the clerk in arranging that. 14:01

26 CHAIRMAN: Yes. As to whether he did or not, you don't
27 know?

28 A. Oh, I don't know.

29 CHAIRMAN: Okay. Sorry, you were on the point that

1 there was a reference to --

2 A. Sorry, the area they are speaking about is the --

3 sorry, Chairman, the area I think that they're speaking

4 about is the general area outside of the meeting rooms.

5 That's more or less a public area. 14:02

6 CHAIRMAN: Sorry, the point you were on, Mr. O'Higgins,

7 was, isn't it surprising that David Taylor makes no

8 reference apart from "kiddie fiddler".

9 MR. MÍCHEÁL O'HIGGINS: Makes no reference at all to

10 "kiddie fiddler". 14:02

11 CHAIRMAN: No, it makes reference to "disgusting" but

12 not to "kiddie fiddler".

13 MR. MÍCHEÁL O'HIGGINS: Yes.

14 CHAIRMAN: All right. But "disgusting" was on the open

15 airwaves. But I appreciate the point you are making, 14:02

16 would you like to -- can you help at all?

17 A. I don't know how I can help because I'm not privy to

18 what Superintendent Taylor heard.

19 481 Q. MR. MÍCHEÁL O'HIGGINS: well, if I can ask it this way:

20 Are you or are you not saying that he would have been 14:02

21 close enough to hear it, if it had been said?

22 A. Yes. He was in -- he was there in that company.

23 whether he heard it or not, I don't know.

24 CHAIRMAN: well, we discussed that before,

25 Mr. O'Higgins, and of course you're entitled to examine 14:03

26 it, but the evidence was that, look, there was a

27 hubbub, and the deputy can't say for definite if anyone

28 else overheard anything of what he heard.

29 MR. MÍCHEÁL O'HIGGINS: Yes. But, in fairness, and so

1 that the Tribunal has it clear as well, it does appear
2 in a later interview of Superintendent Taylor, he does
3 say he over hears "fiddles with children" remark.
4 MR. MICHAEL O'HIGGINS: Sorry, Judge, it wasn't an
5 interview; it was a statement made in early March. 14:03
6 MR. MÍCHEÁL O'HIGGINS: A statement made --
7 MR. MICHAEL O'HIGGINS: It's on page 147.
8 MR. MÍCHEÁL O'HIGGINS: On 13th March 2017.
9 MR. MICHAEL O'HIGGINS: 13th March, and it's on 147.
10 MR. MÍCHEÁL O'HIGGINS: That's right. 14:03
11 MR. MICHAEL O'HIGGINS: Not an interview.
12 482 Q. MR. MÍCHEÁL O'HIGGINS: In a statement made by
13 Superintendent Taylor, which you may not be aware of
14 this, but it appears to, in many of the other
15 paragraphs, be somewhat identical to the statement 14:04
16 we're looking at on page 6, but there's an extra
17 paragraph added in which he attributes -- in which he
18 states that he overheard "fiddles with children"
19 remark, all right?
20 A. Yeah. 14:04
21 483 Q. And that statement, as I mention, is dated 13th March,
22 or he appears to have made it on the 13th March 2017,
23 all right?
24 A. Yeah.
25 484 Q. And it was confirmed yesterday by Mr. Michael 14:04
26 O'Higgins, for Superintendent Taylor, that his
27 instructions were that Superintendent Taylor has no
28 recollection of overhearing any story about a horse,
29 you heard that yesterday?

1 A. Yes. I also heard what the other legal representatives
2 said about John Wilson.

3 485 Q. About John Wilson?

4 A. Yes.

5 486 Q. Yes. 14:05

6 CHAIRMAN: We have everything about this horse: 1983,
7 them both serving together, Grafton Street, riding it
8 down. The only thing that is missing is the name of
9 the horse, and I presume it wasn't 'Boomerang', so...

10 MR. MÍCHEÁL O'HIGGINS: Well, there is one other thing 14:05
11 missing, Judge. Commissioner Callinan's position in
12 relation to that, just so you are aware, is that he
13 transferred from Central Detective Unit to Pearse
14 Street in 1986, and he was not stationed, contrary to
15 what was submitted, he was not stationed in Pearse 14:05
16 Street in 1983, as had been stated.

17 A. I didn't state that.

18 487 Q. I didn't say you did. It was stated by another, by
19 counsel.

20 A. Okay. For Mr. Wilson? 14:06

21 488 Q. For Mr. Wilson.

22 CHAIRMAN: I'm sorry, I'm not following that point, and
23 I'm sure it's entirely my fault. What is the point?

24 MR. MÍCHEÁL O'HIGGINS: There was a contribution from
25 Mr. Harty yesterday -- 14:06

26 CHAIRMAN: Yes.

27 MR. MÍCHEÁL O'HIGGINS: -- in relation to the
28 suggestion that my client was stationed in Pearse
29 Street, I think it was suggested, at the time of the --

1 what is seemingly the time of the horse incident.
2 CHAIRMAN: Yes.
3 MR. MÍCHEÁL O'HIGGINS: In point of fact, he was not,
4 on my instructions. I am simply saying that.
5 CHAIRMAN: In Pearse Street? 14:06
6 MR. MÍCHEÁL O'HIGGINS: Yes.
7 CHAIRMAN: He wasn't in the detective branch?
8 MR. MÍCHEÁL O'HIGGINS: He moved from -- transferred to
9 the Central Detective Unit in Pearse Street in 1986 on
10 promotion to the rank of sergeant, I am told. 14:06
11 CHAIRMAN: That's fine.
12 MR. MÍCHEÁL O'HIGGINS: I don't suggest it's a place
13 determined --
14 CHAIRMAN: Mr. O'Higgins, this must be one of the most
15 famous stories from the 1980s about gardaí and their 14:07
16 heroics, so, I mean, wouldn't it have got around?
17 Indeed, I understand, no disrespect, that a middle name
18 appropriate to the activity was then bestowed on John
19 Wilson, 'Jockey', was that not so? Are you seriously
20 telling me you didn't hear about that or wouldn't have 14:07
21 heard about that, or is that part of the instructions?
22 I don't know. And that is no insult to John Wilson.
23 As you know, I have the height of admiration for this
24 escapade.
25 MR. MÍCHEÁL O'HIGGINS: May it please you, Chairman. I 14:07
26 simply thought it was appropriate to, insofar as
27 contrary information had been conveyed, to simply
28 correct the record.
29 CHAIRMAN: No, that is fine. Where was he, in fact, if

1 this indeed was 1983?

2 MR. MÍCHEÁL O'HIGGINS: I must admit I don't have that
3 precisely. I know that -- my instructions are that he
4 transferred --

5 CHAIRMAN: To Pearse Street? 14:08

6 MR. MÍCHEÁL O'HIGGINS: -- to Pearse Street in 1986 to
7 the Central Detective Unit, so I imagine it's possible
8 he was there, but I can check that detail.

9 CHAIRMAN: He was a detective sergeant. But he was
10 presumably serving somewhere -- he could have been 14:08
11 anywhere; he could have been in Cavan, he could have
12 been in the city, I have no idea, Mr. O'Higgins.

13 MR. MÍCHEÁL O'HIGGINS: We can check that.

14 CHAIRMAN: Thanks.

15 489 Q. MR. MÍCHEÁL O'HIGGINS: Now, can I move to a different 14:08
16 area then and we will just quickly now wrap up,
17 Mr. McGuinness, just as best we can. There is a matter
18 dealt with in the papers that have been circulated and
19 it's dealt with at page 1989 and that is --

20 A. Where is this? volume? 14:08

21 490 Q. I will try and find it for you now. And it's not
22 necessary for us to go into people's names in relation
23 to this, because, you know, it's potentially sensitive
24 information I am going to be mentioning. It's in
25 volume 8, just to assist you. 14:09

26 CHAIRMAN: You'd maybe just help us as to what is this
27 on the screen, please, Mr. O'Higgins?

28 MR. MÍCHEÁL O'HIGGINS: Well, at page 1992, Chairman --

29 CHAIRMAN: Yes.

1 MR. MÍCHEÁL O'HIGGINS: -- there is a cover report from
2 Chief Superintendent McPolin, John McPolin, regarding
3 an investigation that he had carried out. And you
4 might deal with this reasonably carefully, Deputy
5 McGuinness. The papers - and we can look at it in 14:10
6 detail if needed, but, just, I want to give you an
7 opportunity to say yes or no to this - the papers
8 appear to indicate that a particular journalist
9 confirmed to this investigating Chief Superintendent,
10 John McPolin, that that journalist had, some time prior 14:10
11 to the 22nd March 2014, obtained from you particular
12 Pulse screenshots and other relevant information
13 relating to two particular children from a traveller
14 family. It's not necessary for you to refer now to the
15 name of the journalist or certainly the names of the 14:11
16 traveller children. And the report appears to indicate
17 that you had been given this information, this
18 material, by Sergeant McCabe, who had accessed certain
19 private data in November and December of 2012 and you
20 passed it on to the journalist, it is said, and GSOC 14:11
21 had to look into this matter, if that helps you.
22 A. They didn't ask me.
23 491 Q. Do you know anything I'm talking about?
24 A. Eh...
25 492 Q. Or is this completely new to you? 14:12
26 A. It's not completely new to me. Neither is the issue,
27 which I won't go into, Mr. Chairman. It doesn't relate
28 to anything to do with Sergeant McCabe.
29 CHAIRMAN: What I understand it is, and it may help to

1 shorten things if I say what my understanding is, and I
2 might get it wrong. Okay. So there was a lady
3 arrested, she was a member of the Irish traveller
4 community, she had two kids with her, but instead of
5 just her name and details being put on Pulse, 14:12
6 apparently, the names and details of the two children
7 were also put on Pulse.

8 A. Yes.

9 CHAIRMAN: And there was some disquiet about that, and,
10 in consequence of that, you obtained from Sergeant 14:12
11 McCabe some screenshots of Pulse with a view to looking
12 into it and considering that. I think that is a fair
13 summary of it, is it, Mr. O'Higgins?

14 MR. MÍCHEÁL O'HIGGINS: Yes. I think it occurred -
15 just one other small detail, Chairman - it occurred in 14:12
16 the context of a particular lady making an application
17 for a passport in the Garda station.

18 CHAIRMAN: Yes. So she wasn't arrested at all. She
19 was just going down and asking for a passport.

20 MR. MÍCHEÁL O'HIGGINS: Yes. 14:13

21 CHAIRMAN: So the usual way.

22 MR. MÍCHEÁL O'HIGGINS: Yes.

23 CHAIRMAN: So she'd managed to get on to Pulse and the
24 two children managed to get on to Pulse, for no reason
25 at all, is that the point? 14:13

26 MR. MÍCHEÁL O'HIGGINS: well, it wasn't -- sorry, going
27 by the GSOC investigation and taking it at face
28 value --

29 CHAIRMAN: Yes.

1 MR. MÍCHEÁL O'HIGGINS: -- the particular gardaí who
2 were involved in the transaction, if I can use that
3 shorthand, were cleared of any wrongdoing.
4 CHAIRMAN: Yes.
5 MR. MÍCHEÁL O'HIGGINS: And it was found that they had 14:13
6 a good reason in relation to the male of the family for
7 retaining the particular -- making a record on Pulse.
8 And there was nothing untoward in that and they were
9 cleared in relation to that, by GSOC --
10 CHAIRMAN: Okay. 14:13
11 MR. MÍCHEÁL O'HIGGINS: -- it would seem.
12 CHAIRMAN: Okay. And did the children's details get on
13 to Pulse?
14 MR. MÍCHEÁL O'HIGGINS: There were separate entries
15 made in relation to the children and that was the 14:13
16 subject of the complaint.
17 CHAIRMAN: And GSOC said that was wrong?
18 MR. MÍCHEÁL O'HIGGINS: I think the report summary, so
19 that I don't misparaphrase it, Chairman, is -- the
20 conclusion is to be found on page 2003, and we 14:14
21 needn't -- I am anxious that the --
22 CHAIRMAN: No, no, I appreciate that, you're coming to
23 a point, but if we have a common understanding we will
24 get to the end of it more easily, perhaps, so...
25 MR. MÍCHEÁL O'HIGGINS: And it is not necessary to put 14:14
26 2004.
27 CHAIRMAN: All right. They said that the particular
28 garda in question shouldn't have created separate
29 records for the children.

1 MR. MÍCHEÁL O'HIGGINS: Yes.

2 CHAIRMAN: And there were nothing to suggest that they
3 were a flight risk or a crime risk, but as regards the
4 dad, that was different.

5 MR. MÍCHEÁL O'HIGGINS: Yes. 14:14

6 CHAIRMAN: Okay.

7 MR. MÍCHEÁL O'HIGGINS: And the conclusion, the
8 penultimate paragraph, it is indicated that the
9 particular journalist informed the investigator that
10 she had obtained the Pulse screenshots and information 14:15
11 from the Chairman of the Public Accounts Committee,
12 Mr. John McGuinness.

13 CHAIRMAN: So that is the point. If you wouldn't mind
14 just -- that is what you are dealing with.

15 A. Can I just say that I'm aware of that issue and it was 14:15
16 described as the profiling of young children on Pulse,
17 children in the travelling community. I do know that I
18 was asked to comment on that story, and I did, because
19 I was aware of it in terms of circulation around
20 Leinster House. As to the Pulse documents, I'm not 14:15
21 aware of that.

22 CHAIRMAN: No, I think the point is --

23 A. Is that it?

24 CHAIRMAN: well, it seems to be, it seems to be the
25 journalist said that her source was you and that you 14:15
26 went to Maurice McCabe, got the screenshots with a
27 view to --

28 A. I don't think -- that's not accurate.

29 CHAIRMAN: Okay.

1 A. If that is what you are asking.

2 493 Q. MR. MÍCHEÁL O'HIGGINS: And it would seem that whatever
3 detail was provided to the journalist wasn't
4 sufficiently redacted because she was enabled to
5 identify the traveller family the subject of the Pulse 14:16
6 records, that was the other relevance of it.

7 A. Well, I mean, I don't know that, except that the
8 journalist in question, without naming the person, is a
9 celebrated investigative journalist and I can imagine
10 she had many sources, so I don't know. 14:16

11 494 Q. Finally, then, Mr. McGuinness, you're aware, of course,
12 and I needn't laboriously say this, you're aware that
13 former Commissioner Callinan denies the attributed
14 quotation of the 23rd January and the incendiary
15 remarks you attributed to him in the car park 14:17
16 conversation on 24th January, you're aware that he has
17 denied that in his statements to the Tribunal?

18 A. I accept that, yes.

19 495 Q. And finally, can I just ask you to confirm, you made
20 your original statement to the Tribunal, you've told 14:17
21 us, in March '17, that was after a point you had spoken
22 to Sergeant McCabe a number of times, isn't that so?

23 A. Sorry, 2017?

24 496 Q. Yes.

25 A. Yes. 14:17

26 497 Q. And it was after Superintendent Taylor, you had met
27 Superintendent Taylor and Michelle Taylor in the Skylon
28 Hotel, isn't that so?

29 A. Correct.

1 498 Q. And it was also subsequent to the Prime Time programme
2 in February 2017 revealing the incorrect Tusla
3 allegation?
4 A. I can't recall the Prime Time programme.
5 499 Q. And this was, again, after a point in time when there 14:17
6 had been contact between Sergeant McCabe and Mr. and
7 Mrs. Taylor in 2016, per Michelle Taylor, isn't that
8 so?
9 A. My statement?
10 500 Q. Yes. 14:18
11 A. Yes, was after that, yeah.
12 MR. MÍCHEÁL O'HIGGINS: Thanks very much.
13 MR. MICHAEL O'HIGGINS: Chairman, just before counsel
14 on behalf of Deputy McGuinness exercises a right to ask
15 any questions, could I ask for the Tribunal's 14:18
16 indulgence to deal with one --
17 CHAIRMAN: Please do, Mr. O'Higgins.
18 MR. MICHAEL O'HIGGINS: -- very, very discrete issue,
19 Judge, and it will be three or four questions.
20 CHAIRMAN: Please do. If you wouldn't just mind 14:18
21 reminding Deputy McGuinness who you are appearing for.
22
23 MR. MCGUINNESS WAS FURTHER CROSS-EXAMINED BY
24 MR. MICHAEL O'HIGGINS:
25 14:18
26 501 Q. MR. MICHAEL O'HIGGINS: I'm Michael O'Higgins, and I'm
27 for Superintendent Taylor. There is just one matter I
28 just want to tease out a little bit with you; two or
29 three questions, I think, is the height of it. When my

1 colleague Mr. -- the other Mr. O'Higgins, he asked you
2 when you met with Sergeant McCabe shortly before, more
3 likely shortly after your Dáil speech, and he asked you
4 did you say to Sergeant McCabe about the "kiddie
5 fiddler" remark, and I don't have a transcript here, 14:19
6 but what I took you down to say from my note was that
7 you may not have, was your comment, and you said that
8 you made some general comments to him about what had
9 been said and you did not attribute dates and times to
10 those comments. First of all, have I summarised you 14:19
11 correctly in that regard?

12 A. I think so, yeah.

13 502 Q. Now, yesterday I asked was it the case that when you
14 made your statement to the Tribunal at the end of March
15 in 2017, was that the first time you had articulated to 14:19
16 any persons your account of the conversation at the
17 close of the PAC meeting, do you remember me asking you
18 that question?

19 A. I do, yeah.

20 503 Q. And you gave me the answer that that was the first 14:20
21 occasion you had articulated it?

22 A. Yes.

23 504 Q. And I'm working on, and concluding from that, and you
24 can tell me whether this is a right or wrong
25 conclusion, that in any conversation you had with 14:20
26 Sergeant Maurice McCabe in which you might have said in
27 general terms that Commissioner Callinan spoke of him
28 in derogatory terms, at no stage did you ever say to
29 Sergeant McCabe at the end of the PAC meeting there was

1 a conversation in which Commissioner Callinan referred
2 to you as a "kiddie fiddler", am I correct in that?

3 A. You are, yes.

4 505 Q. I am correct in that. Thank you.

5 A. Can I just say that in approaching -- in discussing 14:20
6 this with Sergeant McCabe, while it is my -- the way I
7 do business is to ask them directly. As I said to the
8 opening -- in the opening remarks, I found this very
9 difficult to deal with because I was putting this to
10 him, to someone that I believed was innocent, but, 14:21
11 apart from all of that, it was simply the description
12 and the detail I found quite upsetting. So, I mean,
13 that's really all I want to say in relation to it.

14 CHAIRMAN: Sure. Mr. O'Higgins --

15 A. So going into dates and times wasn't something -- 14:21
16 CHAIRMAN: It was a general thing.

17 A. Yes.

18 CHAIRMAN: And that might have amalgamated the two
19 things together for all you know.

20 A. Yes. 14:21
21 CHAIRMAN: Why is that significant, Mr. O'Higgins? I
22 mean, from the point of view of David Taylor or indeed
23 from --

24 MR. MICHAEL O'HIGGINS: It is significant, Chairman,
25 potentially for this reason: that my client gave a 14:21
26 statement to this Tribunal on the 13th March, in which
27 he set out his recollection of what he overheard at
28 that conversation, at the conclusion of the PAC
29 meeting.

1 CHAIRMAN: Right.

2 MR. MICHAEL O'HIGGINS: A question arises as to how he
3 might be privy to that, was it because he was present
4 or was it because someone told him about it, and my
5 line of cross-examination is to close down the 14:22
6 possibility that he could have heard it from some other
7 source. That is all.

8 CHAIRMAN: To have heard it from Deputy McGuinness --

9 MR. MICHAEL O'HIGGINS: Sergeant McCabe, for instance.

10 CHAIRMAN: -- or from Sergeant McCabe. 14:22

11 MR. MICHAEL O'HIGGINS: Yes.

12 CHAIRMAN: No, that is fair enough.

13 MR. MICHAEL O'HIGGINS: And the temporal significance
14 is, that it is disclosed to the Tribunal prior to
15 Deputy McGuinness making his statement, which he says 14:22
16 is the first articulation he made to any person of the
17 conversation.

18 CHAIRMAN: No, that is fair enough. As I understood
19 it, the whole reference to any such alleged allegation
20 was in very vague terms, with a view essentially to 14:22
21 ensuring that Sergeant McCabe's feelings weren't
22 further hurt.

23 MR. MICHAEL O'HIGGINS: Yes.

24 CHAIRMAN: So, Mr. Breen.

25 MR. LEHANE: Sorry, it's Mr. Lehane, Chairman. 14:23

26 CHAIRMAN: Yes, well, that is my mistake, I am sorry.

27

28

29

1 MR. MCGUINNESS WAS EXAMINED BY MR. LEHANE:

2
3 506 Q. MR. LEHANE: Deputy McGuinness, I'm going to ask you
4 some questions arising out of the examination by the
5 various parties today and yesterday in relation to a 14:23
6 number of issues. Those are, the circumstances leading
7 up to the meeting in the car park on the 24th January,
8 the purpose of that meeting, the matters discussed at
9 that meeting and certain related matters.

10
11 So just in relation to the circumstances leading up to
12 that meeting, it is correct that there was an exchange
13 of correspondence between your Committee and the Garda
14 Commissioner in relation to a data protection issue
15 which culminated in that letter of the 17th January 14:23
16 2014 from the clerk of your Committee to Mr. Callinan,
17 isn't that right?

18 A. That's correct.

19 507 Q. And is it correct that, as far as you were concerned,
20 that was the end of the data protection issue for your 14:24
21 Committee?

22 A. Yes, on legal advice.

23 508 Q. And that decision was never challenged legally in the
24 courts by the Garda Commissioner, isn't that right?

25 A. That's correct. 14:24

26 509 Q. If I can turn now to the issue of rumours. You were
27 asked yesterday by counsel for the inquiry, and
28 yesterday by counsel for Mr. Callinan, a number of
29 questions in relation to rumours in Leinster House,

1 isn't that right?

2 A. That's right.

3 510 Q. And you were probed on what the nature of those rumours
4 were, isn't that right?

5 A. Yes. 14:24

6 511 Q. Could I ask for page 1690 to be put up on the screen,
7 please.

8 A. What volume is that?

9 512 Q. I think it's in volume 6. You will see it on the
10 screen. It's a letter. 14:25

11 A. On page 16 --

12 513 Q. -- 90. And that's a letter - do you have it, Deputy
13 McGuinness? If you might look at the screen, it's only
14 one letter.

15 A. Yeah. 14:25

16 514 Q. And that's a letter from Mr. Varadkar, Taoiseach, to
17 the solicitor for the Tribunal, isn't that right?

18 A. Yes.

19 515 Q. And you'll see there in the third paragraph,
20 Mr. Varadkar says: 14:25

21

22 "While I was aware of innuendo and rumours circulating
23 about Sergeant McCabe, I did not believe them to be
24 true and, in any case, they did not take away from the
25 evidence-based case he was making in relation to 14:25
26 penalty points having been squared."

27

28 Isn't that right?

29 A. Yes.

1 516 Q. Did you ever discuss these innuendo or rumours with
2 Mr. Varadkar?
3 A. No, I did not.

4 517 Q. Can I ask the Tribunal to bring up page 1691 on the
5 screen. It is the next page. Yes. And again, do you 14:26
6 have that, Deputy McGuinness?
7 A. I have, indeed.

8 518 Q. And you will see again this is a letter from
9 Mr. Varadkar to the solicitor for the Tribunal, and you
10 will see in the second paragraph he states: 14:26
11
12 "With regard to the innuendo and rumours, I was
13 informed of these by Mr. Noel Brett, then CEO of the
14 Road Safety Authority, which fell under my remit as
15 Minister for Transport, Tourism and Sport. I don't 14:26
16 recall the exact detail of the rumours, but I do recall
17 they related to his character and motivation, that he
18 was untrustworthy and had other grievances unrelated to
19 road safety. I specifically recall a rumour about a
20 computer with evidence of criminality on it being lost 14:26
21 by Sergeant McCabe."
22
23 Is that right?
24 A. That's right.

25 519 Q. That is what the letter says. And you never discussed 14:26
26 that with Mr. Varadkar?
27 A. No.

28 520 Q. Could I ask for page 166 -- sorry, 1665 to be put up on
29 the screen, please. This is a letter, unfortunately

1 it's a three-page letter, but from Mr. Pat Rabbitte to
2 the solicitor for the Tribunal, and have you that in
3 front of you, Mr. McGuinness?

4 A. Yes.

5 521 Q. Can I ask for the second page, 1666, to be put up on 14:27
6 the screen. Is it up? And in the last paragraph on
7 that page --

8 A. Yes.

9 522 Q. -- you will see that Mr. Rabbitte writes:

10

14:27

11 "Some time, I think, in 2014, my encounters in 2007
12 with Maurice McCabe were ventilated in an RTÉ
13 interview. That same evening, in a prearranged meeting
14 with a friend of mine, who is a former garda, he raised
15 with me the content of the interview as it related to 14:27
16 Sergeant McCabe. He said that he was unaware that I
17 had any involvement with Sergeant McCabe, but I thought
18 that I should be aware of what was being said 'on the
19 grapevine'. I took it that he was referring to the
20 Garda grapevine and the matter that he wanted to warn 14:28
21 me about was that there were rumours of alleged child
22 abuse against Sergeant McCabe."

23

24 And that, and you've read that, you never discussed
25 that matter with Deputy Rabbitte, did you? 14:28

26 A. No, I did not.

27 523 Q. Again, you will agree with me that this documentation
28 is evidence of rumours circulating in Leinster House in
29 relation to --

1 A. As I've said, yes.

2 CHAIRMAN: Mr. Lehane, it may help to say that I am
3 aware that there were such rumours from several
4 statements, and indeed statements from journalists also
5 mention the fact that there were general rumours out 14:28
6 there circulating around.

7 MR. LEHANE: Yes, Chairman.

8 CHAIRMAN: God knows what people are saying about other
9 people, I suppose, but there was a fairly consistent
10 thread that it was this kind of thing - grudges, 14:29
11 investigation, child sex abuse type stuff. And the
12 problem with a rumour, of course, is, it's like a mist,
13 you never get it to crystallise into something that has
14 a shape.

15 MR. LEHANE: Absolutely, Mr. Chairman. And the only 14:29
16 reason I draw attention to these documents is that the
17 issue of rumours was raised yesterday --

18 CHAIRMAN: Yes.

19 MR. LEHANE: -- that Deputy McGuinness was probed on
20 his knowledge of rumours, and just to indicate that 14:29
21 some of the documentary evidence in relation to -- from
22 other members of Dáil Éireann --

23 CHAIRMAN: Yes, there is loads of it, yes.

24 MR. LEHANE: Yes.

25 524 Q. Can I now turn, Deputy McGuinness, to the PAC hearing 14:29
26 itself. You'd agree with me that there were fairly
27 robust exchanges between Committee members and former
28 Commissioner Callinan?

29 A. Yes.

1 525 Q. And in answer to a question from Deputy Shane Ross,
2 former Commissioner Callinan used the word
3 "disgusting", isn't that right?
4 A. Yes.

5 526 Q. Now, we had a lengthy discussion in relation to the use 14:30
6 of that term yesterday.
7 A. Yes.

8 527 Q. And what was your impression of what the Commissioner
9 meant by that term when he used it?
10 A. That he was referring to the whistleblowers and their 14:30
11 activities.

12 528 Q. And what was your impression of the Commissioner's
13 demeanour during the course of the hearing?
14 A. I think he was angry, frustrated with the hearing
15 itself, impatient about its progress, coupled with some 14:30
16 uncertainty.

17 529 Q. Can I now turn, Deputy McGuinness, to the events that
18 occurred after the PAC hearing.
19 A. Yes.

20 530 Q. Now, I don't want to beat the horse story to death, 14:30
21 but, yesterday, comment was passed by counsel for the
22 inquiry that it was of interest that you hadn't
23 mentioned this story in your original statement and
24 that it only came into your -- the statement prepared
25 on foot of the interview with you by the Tribunal 14:31
26 investigators, isn't that right?
27 A. That's right.

28 531 Q. But you did tell the Tribunal in your interview with
29 the investigators about that incident, isn't that

1 right?

2 A. I did.

3 532 Q. Yes. Now, in relation to the comments that you say
4 were expressed by former Commissioner Callinan, in
5 particular the reference to "kiddie fiddler", can I ask 14:31
6 for page - bear with me for a second - 2199 to be
7 brought up on the screen, please. I think this is
8 from -- it's in volume 6, I think, Deputy McGuinness,
9 this is your statement.

10 CHAIRMAN: This is back to paragraph 6. You have seen 14:32
11 it already.

12 MR. LEHANE: And you will see there -- you have it in
13 front of you?

14 A. Yes.

15 533 Q. You'll see, you say in the second sentence: 14:32
16
17 "I approached Mr. Callinan to thank him for attending
18 the Committee. Mr. Callinan was with Ms. Nóirín
19 O'Sullivan and David Taylor and he said to me 'this man
20 fiddles with children, this is outrageous'. I took the 14:32
21 reference to 'this man' to be Mr. McCabe."

22 A. Yes, that's correct.

23 534 Q. And then just in relation to the note of the -- or the
24 statement that was prepared on foot of the interview
25 with the Tribunal investigators, can I ask for page 14:32
26 2165 to be put up on the screen, please. Is it up?

27 A. Yes.

28 535 Q. And you'll see there at line 47 you say that
29 Commissioner Callinan said "and the other fella fiddles

1 with kids, and that is the type of f-ing headbangers I
2 am dealing with". All right?

3 A. Yes.

4 536 Q. Now, would you agree with me that the expression
5 "fiddles with kids" is -- or "fiddles with kids" or 14:33
6 "fiddles with children" is in both statements?

7 A. Yes.

8 537 Q. And just finally on this topic, counsel for
9 Mr. Callinan drew your attention to an interview that
10 was conducted with Brendan O'Connor, confusingly 14:33
11 presenting the Marian Finucane programme on Sunday,
12 18th June 2017, and the reference by Brendan O'Connor
13 to saying "and he said 'this guy is a paedophile, we
14 think'". Do you recall that?

15 A. Yes. 14:33

16 538 Q. Would you agree with me that the expression "kiddie
17 fiddler" or "fiddles with kids", that "paedophile" is
18 another probably more proper way of describing that
19 activity?

20 A. Yes. 14:34

21 539 Q. It was suggested to you, Deputy McGuinness, by counsel
22 for Commissioner Callinan, that you included the detail
23 in relation to John Wilson in your statement as a
24 reaction to Commissioner Callinan bringing it up in his
25 statement. Is that a correct characterisation of why 14:34
26 you included that story in your --

27 A. No, I included that story to give context to how the
28 conversation started, how it led into the remarks about
29 John Wilson and Sergeant Maurice McCabe, and, for

1 accuracy, that is the way I wanted to present it.

2 540 Q. Did you make that up for the purpose of discrediting
3 former Commissioner Callinan?

4 A. No, in hindsight you couldn't make it up.

5 541 Q. I agree with you. Can I ask you, can I turn now to the 14:35
6 meeting in Bewley's Hotel, and in relation to arranging
7 the meeting, I think it's common case that Mr. Callinan
8 asked for the meeting, isn't that right?

9 A. Yes.

10 542 Q. And I think you'd agree with me that it would not be 14:35
11 unusual for a senior politician or a member of the
12 Oireachtas to meet with people off the premises of
13 Leinster House?

14 A. That is not unusual.

15 543 Q. Yes. And in relation to An Garda Síochána, you'd agree 14:35
16 with me that it wouldn't be unusual for senior members
17 of An Garda Síochána to meet with politicians from time
18 to time?

19 A. Sorry, can you put that question again.

20 544 Q. That it wouldn't be unusual for senior members of An 14:35
21 Garda Síochána to meet with politicians from time to
22 time?

23 A. I found it unusual.

24 545 Q. Can I ask for page 1246A to be put up on the screen,
25 please. 14:36

26 CHAIRMAN: Mr. Lehane, Mr. McGuinness says it is
27 unusual.

28 MR. LEHANE: Oh, sorry, it is unusual. But I am
29 bringing him to a document, and this is page 1246A.

1 And this is, Mr. McGuinness, a typewritten note of an
2 internal Garda meeting from the 9th January 2014, and
3 you'll look down the page there and you will see there
4 are a number of points being made. One of them is:

5
6 "Action points: Possibly a briefing with Shane Ross,
7 TD, on station closures, amalgamations, etcetera!"

14:36

8
9 And this again is, you'll agree with me, the suggestion
10 that the gardaí, or members of the gardaí might meet
11 with a senior politician for the purpose of briefing
12 him on something, in this case in relation to station
13 closures?

14:36

14 A. And you're asking me if that's unusual?

15 546 Q. Well, I am just drawing your attention to the document.

14:37

16 CHAIRMAN: It seems that different views have been
17 taken about station closures and station openings.

18 MR. LEHANE: Yes.

19 CHAIRMAN: But what you are asked to comment on is, do
20 politicians meet with members of the gardaí in relation
21 to, I don't know, gathering information about, you
22 know, crime in an area, whether a station is necessary?
23 Anything that is, in other words, a legitimate aspect
24 of public debate?

14:37

25 A. Well, yes, if it's a legitimate aspect of public
26 debate. But there's normally the -- the local council
27 has an arrangement with the guards, the Garda Policing
28 Committee, and, generally speaking, at the Garda
29 Policing Committee matters of this kind would be

14:37

1 discussed and information given at those meetings. I
2 think that's mainly where public representatives get
3 their information from.

4 547 Q. MR. LEHANE: And, Deputy McGuinness, your attention
5 hasn't been drawn to a document from An Garda Síochána 14:38
6 containing a reference to the possibility of a meeting
7 between former Commissioner Callinan and you in
8 Bewley's car park, have you?

9 A. No.

10 548 Q. Just in relation to -- turning to the manner in which 14:38
11 that meeting was arranged --

12 CHAIRMAN: I'm sorry, Mr. Lehane, I am completely
13 missing that point. What is the point there?

14 MR. LEHANE: well, the point is that there is no
15 documentary record, that I am aware of, emanating from 14:38
16 the gardaí --

17 CHAIRMAN: Okay.

18 MR. LEHANE: -- wherein there is a record or an action
19 point in relation to Mr. McGuinness similar to the
20 action point that is there in relation to Deputy Shane 14:38
21 Ross. You know, dash, must meet --

22 CHAIRMAN: You say it's not in the papers?

23 MR. LEHANE: well, that I have seen anyway.

24 CHAIRMAN: Is that correct, Mr. Murrinan?

25 MR. MARRINAN: That is correct. 14:39

26 MR. LEHANE: Yes. Along the lines of must meet Deputy
27 McGuinness to discuss data protection concerns.

28 CHAIRMAN: In other words, like in a schedule of a
29 diary?

1 MR. LEHANE: Yes.

2 CHAIRMAN: Okay. No, I see the point. Thank you.

3 549 Q. MR. LEHANE: So just in relation to the arranging of
4 that meeting, did you know that -- sorry, did former
5 Commissioner Callinan inform you in the phone calls 14:39
6 what the purpose of the meeting was?

7 A. No.

8 550 Q. Okay. Did former Commissioner Callinan ask you to come
9 alone?

10 A. No. 14:39

11 551 Q. Did former Commissioner Callinan indicate that he would
12 be alone?

13 A. No.

14 552 Q. Did former Commissioner Callinan tell you that this was
15 a secret meeting? 14:39

16 A. No.

17 553 Q. Okay. Did you -- and I think your evidence to the
18 Chairman is that you thought that the meeting would
19 actually be in the hotel rather than the car park?

20 A. That was the presumption, yes. 14:40

21 554 Q. And your attention, Deputy McGuinness, has been brought
22 to a statement by your colleague, Séan Fleming, TD,
23 that was provided to the Tribunal on the 13th November
24 2017, isn't that right?

25 A. Yes. 14:40

26 555 Q. And can I ask for page 1444 to be put up on the screen.
27 And you will see there, Deputy McGuinness, the point is
28 4:
29

1 "Do you have any other information you can offer in
2 this connection?

3
4 A. The only other aspect of the matter that John
5 McGuinness, TD, said to me was that the reason they had 14:40
6 the meeting in his car, in the car park, was because it
7 was raining heavily at the time and they both would
8 have got very wet going into the hotel to have a
9 discussion and then coming back out. I understand the
10 meeting happened in the car because of this reason." 14:41

11 A. Yes.

12 556 Q. Would you agree with me that there is nothing in that
13 statement indicating that it was your decision to
14 remain in the car for the purposes of the meeting?

15 A. No, there's nothing in that statement. As I indicated 14:41
16 earlier, I was in the motion of getting out of my car.

17 557 Q. As Chairman of the Public Accounts Committee, and
18 indeed as Chairman of the Committee that you chair now,
19 do you think that there's anything improper about
20 meeting a witness -- 14:41

21 A. No.

22 558 Q. -- outside -- okay. Now, if I can turn to the actual
23 meeting itself. I think the Chairman is clear at this
24 stage what your account of what was said is, so I would
25 like to just deal briefly with your record of the 14:41
26 meeting. Would you agree with me that there's a big
27 difference between making a transcript or taking a
28 detailed note of the meeting, on the one hand, and
29 jotting down a few words as a memo to yourself?

1 A. A significant difference, yes.

2 559 Q. And in relation to your note, did you write that note
3 for the purpose of corroborating or adding to the
4 strength of the evidence that you're giving to this
5 Tribunal today? 14:42

6 A. No.

7 560 Q. Did you --

8 A. I never envisaged that I would be before a tribunal.

9 561 Q. Did you fabricate it by writing on a page in the past
10 to create the impression that it was written at that 14:42
11 time?

12 A. No, I did not.

13 562 Q. Okay.

14 A. It's clear from how it was written --

15 563 Q. In relation to -- 14:42

16 A. -- that it was written on the day.

17 564 Q. Sorry, Deputy McGuinness. In relation to telling
18 people about the meeting, yesterday it was put to you
19 that you didn't really tell anybody about your
20 interaction with Commissioner Callinan, but, of course, 14:43
21 you have given evidence to the Chairman that you told
22 your party leader about it, isn't that right?

23 A. I told him that the meeting had taken place, yes.

24 565 Q. Yes. And did your colleague, Deputy Deasy, tell you
25 back in 2014 that prior to the meeting of the Public 14:43
26 Accounts Committee, that he had spoken to Mr. Callinan
27 and that Mr. Callinan had referred to Sergeant McCabe
28 as somebody who could not be trusted?

29 A. No, not that I recall.

1 CHAIRMAN: Well, nobody is suggesting that, are they,
2 Mr. Lehane?

3 MR. LEHANE: No, Chairman. The only reason I am asking
4 that is that reference was made yesterday by your
5 counsel in relation to the fact that Deputy McGuinness 14:43
6 hadn't told other people about this and there's a
7 Public Accounts Committee composed of a number of
8 different members, and I'm just drawing attention to
9 the fact that he Deputy McGuinness, being the Chairman
10 of the Committee, hadn't heard from another person on 14:44
11 that Committee in relation to the subject matter of the
12 question. That is all.

13 566 Q. In relation then, Deputy McGuinness, to the aftermath
14 of your interactions with Deputy Callinan [sic], again
15 I am just going to ask you a few questions. Are you 14:44
16 here before a Tribunal of Inquiry for the purpose of
17 doing down Mr. Callinan?

18 A. No, I'm not. I actually had a good relationship with
19 Commissioner Callinan during my time as Chairman of the
20 Public Accounts Committee. 14:44

21 567 Q. Have you provided this Tribunal with a truthful version
22 of your interactions with Mr. Callinan?

23 A. Yes, I have.

24 568 Q. Are you part of a conspiracy with others to do down
25 Mr. Callinan? 14:45

26 A. No, I'm not, Mr. Chairman.

27 MR. LEHANE: Very good. Thank you, Mr. Chairman.

28 CHAIRMAN: Thanks, Mr. Lehane. Mr. Marrinan, was there
29 anything else?

1 MR. MARRINAN: Yes, there's just two matters that I
2 would like to deal with with Deputy McGuinness.

3

4 MR. MCGUINNESS WAS RE-EXAMINED BY MR. MARRINAN:

5

14:45

6 569 Q. MR. MARRINAN: Just, in the first instance, if you
7 could deal with the Public Accounts Committee, in the
8 first instance. It seems to have been a very efficient
9 Committee under your chairmanship, is that right?

10 A. I hope that it was. And the members were excellent.
11 It wasn't down to me.

14:45

12 570 Q. I think it is fair to say, without going into the
13 political arena in any shape or form, but it was quite
14 a highly regarded Committee and it was, as I say,
15 regarded as being extremely effective?

14:45

16 A. Yes, the Public Accounts Committee is thought highly
17 of.

18 571 Q. And the personnel on the Committee, I read out names
19 yesterday in relation to all the personnel on the
20 Committee, they're all very experienced politicians,
21 isn't that right?

14:46

22 A. That's correct.

23 572 Q. And all very independently minded and quite vocal on
24 occasions?

25 A. Very much so.

14:46

26 573 Q. Insofar as there's been a suggestion made, and I think
27 the suggestion is being made, that perhaps you, as
28 Chairman, would have been capable of leading them by
29 the nose, I assume that that is not so?

1 A. In the history of the Public Accounts Committee, the
2 chairman is nominated by the Opposition, the leader of
3 the Opposition, and then takes the position of chair.
4 For the first time in the history of the Public
5 Accounts Committee, since its foundation, there was an 14:46
6 election to that position, there was a contest. Shane
7 Ross contested the chairmanship against me. So that
8 will tell you the independence of that Committee.

9 574 Q. Yes. And there was a close working relationship
10 between you, is that right? 14:47

11 A. There would be on issues that were relevant to the
12 Comptroller and Auditor General's report and the
13 achievement of, I suppose, accountability,
14 transparency, matters of governance and spending of
15 public monies. 14:47

16 575 Q. And when it came to the issue of whether or not -- in
17 the first instance, whether or not Maurice McCabe would
18 be called as a witness, were there dissenters to that?

19 A. There was.

20 576 Q. Yes. And are these matters decided by simple majority? 14:47

21 A. By consensus, yes.

22 577 Q. Well --

23 A. So there was worry and concern about, as I said in my
24 evidence previously, that matters might get out of hand
25 in the context of a public meeting and what Maurice 14:47
26 McCabe might say or do in relation to people, members
27 of the force or indeed members of the general public.
28 All of these were thrashed out with the legal in-house
29 representatives, so we arrived at the point where we

1 agreed to have the private session.

2 578 Q. So would it be fair to say that there were people on
3 the Committee who were, in the first instance, opposed
4 to Sergeant McCabe giving evidence at all?

5 A. No, I can't say that. I can just say that there was 14:48
6 concern generally. Whether they were opposed to
7 Sergeant McCabe giving evidence at all, I'm not quite
8 sure, but they certainly wanted to make sure that
9 matters were conducted in a way that was within the
10 remit and that was legally proofed, if you like, by the 14:48
11 legal people in the Oireachtas.

12 579 Q. Well, you have cleared up a matter today in relation to
13 your perception of the meeting that you had on the 24th
14 January, and that this, as far as you were concerned,
15 wasn't a secret meeting, even though you hadn't told 14:49
16 the clerk of the Committee or other Committee members
17 that you were attending the meeting, isn't that right?

18 A. Yes.

19 580 Q. And it's been put to you on behalf of Mr. Callinan that
20 he brought the three matters that I referred to in the 14:49
21 draft letter that I referred to when you were giving
22 your evidence yesterday, that he brought these to the
23 table at the meeting, as it were, and he raised them
24 with you, and you have denied that he did so?

25 A. Yes. 14:49

26 581 Q. Had he done so, was there any reason why you wouldn't
27 have brought that back to the Committee to be discussed
28 and to tell them that you had met with the Commissioner
29 and that these were his proposals?

1 A. Well, first of all, just for clarification, there is a
2 clerk to the Committee, that is a civil servant acting
3 in the interests of the Committee. So there is no
4 researcher, there's no, you know, support, as it were,
5 other than that. We rely on the Comptroller and 14:50
6 Auditor General's report. So in the context of
7 attending meetings with, whether it was Maurice McCabe
8 or John Wilson or indeed the Commissioner or indeed
9 many others that have come before the committee, I
10 would meet them, as Chairman, and I would meet them on 14:50
11 my own, because generally it's just on a point of
12 clarification on how the meeting operates. It's pretty
13 daunting for anyone to appear before a committee of
14 politicians, and so on, without firstly knowing what
15 they are getting into. So your question then is? 14:50

16 582 Q. Well, if, as has been suggested to you, that proposals
17 were brought --

18 A. Sorry, yes.

19 583 Q. -- to the table with you, was there any reason why you
20 wouldn't have alerted your colleagues on the Committee 14:50
21 to those proposals?

22 A. No, I would have pointed the Commissioner to the
23 standard working practice, that his office would
24 contact the clerk with written confirmation of what was
25 required by him, and then, thereafter, the Committee 14:51
26 would have considered that, I'm sure. We consider all
27 of our correspondence prior to meetings. The
28 correspondence, it's either noted or it's put up in
29 terms of the public website for information. Most of

1 it, during the course of those five years, the
2 correspondence was made public. So the Commissioner
3 was well aware of all of that. I couldn't have taken a
4 verbal instruction from the Commissioner, in spite of
5 the fact that that didn't happen, but if it were to 14:51
6 happen, it would have had to happen in writing. Just
7 as much as when Sergeant McCabe wanted to appear before
8 the Committee, that had to be done by way of
9 appropriate correspondence and engagement with the
10 secretariat. 14:51

11 584 Q. Apparently, Sergeant McCabe actually sought time from
12 the Committee to get legal advice --

13 A. He did, yes.

14 585 Q. -- in relation to whether or not he would give evidence
15 to the Committee? 14:52

16 A. Sorry, that he got legal advice?

17 586 Q. Yes.

18 A. I presume that he did, yes.

19 587 Q. Just to come back to what I was asking you there in
20 relation to why you didn't tell the other Committee 14:52
21 members that you had had this meeting with Commissioner
22 Callinan, after the meeting, right? Why didn't you
23 tell them that you'd had the meeting?

24 A. Because the content of what was being said to me by the
25 Commissioner at that time had absolutely nothing really 14:52
26 to do with the substance of the investigation by the
27 Public Accounts Committee.

28 588 Q. And I think you gave evidence yesterday that you didn't
29 want to repeat a rumour again that was already in

1 circulation about Sergeant McCabe?

2 A. Yeah, the letters that have been brought to my
3 attention today, I wasn't aware of those from other
4 members, so it is quite clear, as you, Chairman, have
5 said, it's a mist that doesn't take a form. This was a 14:53
6 pretty thick, heavy mist that hung over Leinster House
7 for quite some time.

8 589 Q. We know that Sergeant McCabe gave evidence in private
9 on 30th January. I think, did you communicate with the
10 Commissioner to advise him -- 14:53

11 A. Yes.

12 590 Q. -- that a decision had been made that Sergeant McCabe's
13 evidence would be heard --

14 A. I think that I may have called him to inform him of
15 that, yes. He was informed of it, anyway, at a 14:53
16 meeting.

17 591 Q. And between the 24th January and the 30th January, did
18 the Committee receive any representations at all from
19 Commissioner Callinan?

20 A. Not that I'm aware of, not that I'm aware of. 14:54

21 592 Q. You referred yesterday to pressure that had been
22 applied to the Committee not to take evidence from
23 Sergeant McCabe other than that what you perceived to
24 be pressure from Commissioner Callinan. I just want to
25 refer you to a series of text messages involving the 14:54
26 Secretary General of the Department of Justice and
27 Equality, Mr. Brian Purcell. They are at page 1686 of
28 the material. This is in volume 6.

29 A. 1686?

1 593 Q. 1686, yes.
2 A. Yes.
3 594 Q. You see there, the first one is, it says "me", that is
4 from Commissioner Callinan, and it's dated 22nd January
5 2014 at nearly five to seven in the evening. It says: 14:55
6
7 "Brian, the clerk of the PAC was not available, but I
8 spoke to another official of the PAC who is also
9 dealing with the issue. She confirmed that the
10 whistleblower will not be there tomorrow." 14:55
11
12 And then the response to that, I think, is from
13 Commissioner Callinan, and it says:
14
15 "Thanks, Brian." 14:55
16
17 So, sorry, that "me" is, in fact, from Brian Purcell,
18 all right? And then on the 23/1/2014, to Commissioner
19 Callinan from Brian Purcell:
20 14:56
21 "Well done. Exceptional performance under fire."
22
23 I think that may be in relation to the evidence that
24 had been given by Martin Callinan. And then we see the
25 24th January of 2014 at nearly quarter to six in the 14:56
26 evening, from Mr. Purcell:
27
28 "Martin, know you are on route to Dundalk. Can you
29 call me, if possible. Just wondering how you got on

1 with J MCG."
2
3 I presume that is John McGuinness. And then it is
4 signed off "Brian". So it is quite clear that
5 Mr. Purcell was being kept up-to-date at that stage in 14:56
6 relation to whatever --
7 A. This is the Secretary General of the Department of
8 Justice.
9 595 Q. Yes.
10 A. An interesting relationship. 14:56
11 596 Q. Yes. Did you receive any communication from
12 Mr. Purcell?
13 A. This is the first time I have seen this, these texts.
14 597 Q. First time you have seen this. Or did you receive any
15 other communications from the Department of Justice to 14:57
16 try and dissuade you from calling Sergeant McCabe to
17 give evidence?
18 A. No, and they'd know better.
19 598 Q. Pardon?
20 A. They would know better. Because the Public Accounts 14:57
21 Committee is an independent Committee and functions in
22 conjunction with the Comptroller and Auditor General.
23 I find these exchange of texts here unusual, and I note
24 there is not a reply from Commissioner Callinan to the
25 last text. 14:57
26 599 Q. Yeah. Well, there's a request for a phone call.
27 Unfortunately, the records that we have don't indicate
28 whether a phone call was, in fact, made?
29 A. It would be interesting to hear the result of that

1 telephone call.

2 CHAIRMAN: Well, I think if you phone from the
3 Department of Justice, what happens is you are actually
4 phoning from a generic number, so we can't say who
5 phoned who at any particular time. 14:57

6 A. Mr. Purcell might enlighten us as to what the
7 Commissioner had to say about that --

8 CHAIRMAN: Sure. Yes.

9 MR. MARRINAN: Thank you very much, Deputy.

10 14:58

11 MR. MCGUINNESS WAS QUESTIONED BY THE CHAIRMAN:

12

13 600 Q. CHAIRMAN: Deputy, I'm entitled to ask you some
14 questions, and I am sure you are relieved to know that
15 I don't really have any, apart from asking, if you 14:58
16 wouldn't mind, and it literally goes in one eye and
17 goes out the other, I would just like to have a look at
18 the famous notebook, if you wouldn't mind, from 2014,
19 if you have it there. Do you have it?

20 A. Certainly, yes. 14:58

21 601 Q. CHAIRMAN: Would you mind if I have a look, please?
22 (Notebook handed to Chairman.)
23 And do you mind if I just flick through it?

24 A. Oh, no, work away.

25 602 Q. CHAIRMAN: Yes. Obviously, as I say, I don't tend to 14:58
26 remember these things. I'm not going to...

27 A. It's interesting to see what you have to do to get
28 elected.

29 603 Q. CHAIRMAN: I beg your pardon?

1 A. It might be interesting for you to see what we have to
2 do to get elected.

3 604 Q. CHAIRMAN: Well, I'm sure you do everything that is
4 legitimate to get elected.

5 A. Only what is legitimate. 14:58

6 605 Q. CHAIRMAN: Well, there's a lot of rumours about lots of
7 people to the contrary, as you know. I don't mean in
8 this country. So, basically, your methodology seems to
9 be you go down to your local shop and you just buy a
10 hard copy and that's your vade mecum. Do you bring 14:59
11 this around with you all the time, is that the idea?

12 A. Yes.

13 606 Q. CHAIRMAN: Like, it goes in the car, it's in the
14 constituency office, it goes into the Dáil. Presumably
15 there would have to have been occasions where you've 14:59
16 left it behind and -- like forgetting your keys, or
17 whatever?

18 A. I might have done that on occasion. But the book is
19 important from the point of view of following up on
20 your constituency notes and taking notes as you go from 14:59
21 either meeting to meeting or in the car as you meet
22 people.

23 607 Q. CHAIRMAN: Yes. You use a range of different pens,
24 which is kind of understandable; they're all biros?

25 A. Sorry? 14:59

26 608 Q. CHAIRMAN: You use biros and you use a range --

27 A. I just use a biro, I use a fountain pen.

28 609 Q. CHAIRMAN: Do you?

29 A. Also.

1 610 Q. CHAIRMAN: Really? what's the --
2 A. It controls my handwriting.

3 611 Q. CHAIRMAN: Perhaps, yes. What is the significance of,
4 I know you have said it already, but it's just odd, if
5 you just take any particular page, the ticks, the 15:00
6 circles?
7 A. The ticks are constituency work that has been
8 completed, on your left-hand page as you look down on
9 it.

10 612 Q. CHAIRMAN: Yes. 15:00
11 A. There isn't a tick on that particular page that you
12 just showed me and that is probably relevant to some
13 other issue.

14 613 Q. CHAIRMAN: Yes.
15 A. And you will see on some of the pages that are marked, 15:00
16 that on those pages they refer to other accounts from
17 whistleblowers and they are marked with, I think,
18 brackets, so that if I were to be flicking through it
19 at any time, I would see the different markings.

20 614 Q. CHAIRMAN: Yes. Is your memory very good? I mean, 15:01
21 it's very hard to remember people's names, phone
22 numbers, what you're supposed to inquire of in relation
23 to on their behalf, etcetera, but, in general, do you
24 have a good memory?
25 A. Oh, I'd remember. 15:01

26 615 Q. CHAIRMAN: What?
27 A. I remember.

28 616 Q. CHAIRMAN: Are you like the world famous politician
29 from America who remembers 50,000 names?

1 A. I remember names and I remember people.

2 617 Q. CHAIRMAN: I think it's 5,000 names.

3 A. I also remember the issues.

4 618 Q. CHAIRMAN: Yes. But in order to make sure you have
5 done it, just the whole point of it is to use this 15:01
6 thing?

7 A. Yes, and to ensure that the 11,900 will remember me the
8 next time.

9 619 Q. CHAIRMAN: Yes. And I am failing to find the right
10 page. Mr. Kavanagh, would you mind? 15:01

11 A. I think it is marked with a green tab.

12 620 Q. CHAIRMAN: Yes, there is a few things marked. Is there
13 any significance to the tabs? I mean, you put them on
14 for the purpose of the Tribunal?

15 A. No, no, I had them on before that because they referred 15:02
16 to matters that were not constituency matters and refer
17 to whistleblowers.

18 621 Q. CHAIRMAN: Okay.

19 A. I think that is what you see.

20 622 Q. CHAIRMAN: I am sorry, Mr. Kavanagh will give it back 15:02
21 to you. Would you mind opening it at the page that
22 everyone has been talking about for the last two days.
23 It's a blue sticker. The other individual who is
24 mentioned there, with a mobile phone number, name John,
25 I won't mention the second name, is that anything to do 15:03
26 with anything? It comes close to the reference to dog
27 food. If you wouldn't mind having a quick look.

28 A. Possibly the supplier's address -- or phone number.
29 It's nothing to do with the note.

1 623 Q. CHAIRMAN: No, it's in a different pen. Just, if you
2 wouldn't mind looking at it. Well, it's a pretty --
3 well, it's not a common name. Do you see actually
4 within the circle, there's a reference to dog food and
5 then -- 15:03

6 A. Oh, yes, yeah.

7 624 Q. CHAIRMAN: And was that --

8 A. It's just a constituency...

9 625 Q. CHAIRMAN: Matter?

10 A. Yeah. 15:03

11 626 Q. CHAIRMAN: And the reference to dog food is there
12 presumably because you keep dogs?

13 A. I do. German Shepherds.

14 627 Q. CHAIRMAN: And you breed them?

15 A. I do, yeah. They keep me sane. 15:04

16 CHAIRMAN: Yes. Well, I won't say anything about that.
17 Thank you, Deputy.

18 MR. MÍCHEÁL O'HIGGINS: Chairman, I wonder could I have
19 legal indulgence, if you don't mind? I omitted to ask
20 two things. 15:04

21 CHAIRMAN: Yes.

22 MR. MÍCHEÁL O'HIGGINS: I will be very -- they are not
23 enormous matters, but just in case they were felt to be
24 important.

25 15:04

26 MR. MCGUINNESS WAS FURTHER CROSS-EXAMINED BY
27 MR. MÍCHEÁL O'HIGGINS:
28

29 628 Q. MR. MÍCHEÁL O'HIGGINS: Can I just mention this, Deputy

1 McGuinness, before you disappear. I had been putting
2 the account of former Commissioner Callinan to you in
3 relation to the car park meeting, and you had given
4 evidence, I think, or certainly in your statement there
5 was a suggestion that, at the end of it, he put, I
6 think you said, his hand on your shoulder or on your
7 arm and made some remark, do you remember that?

15:04

8 A. Yes.

9 629 Q. Right. I just want to suggest to you that, in fact,
10 the sign-off, the end of the meeting, in fact, was my
11 client indicating to you, requesting that you keep him
12 informed on the issue as to whether it's going to be --
13 Sergeant McCabe's evidence will be held in private or
14 in public, and that was the sign-off of the meeting,
15 all right?

15:04

15:05

16 A. No. The sign-off of the meeting was, when he began to
17 exit the passenger side, he reached back in and caught
18 me by the arm and he told me I was in real trouble and
19 so was PAC.

20 630 Q. Just for the record, I want you to be aware he denies
21 that, all right?

15:05

22 A. Fine.

23 631 Q. And the other matter is, I should have mentioned this
24 to you earlier, when he initially got into the car, my
25 client's recollection is, in fact, that you had moved
26 papers from the front passenger seat and put them into
27 the back, which he took to be an indication he should
28 sit into the car. It was his intention to sit into the
29 car, but, in any event, that was his recollection that

15:05

1 is something you did. Do you recall that?

2 A. I do. As he approached the passenger side, the car was
3 full of papers and files, and I simply moved them to
4 the back seat to allow him to sit in, because it was
5 clear that is what he was going to do. 15:06

6 632 Q. All right. Thank you. Then the last thing then is
7 this, and it arises from what you said to Mr. Marrinan
8 there a few moments ago: The reference to certain
9 things not being followed up on to the PAC after this
10 meeting in the car park, and I should have done this 15:06
11 earlier, but would you mind just briefly looking at
12 page 683 of the materials, which does actually have a
13 document that bears on that issue.

14 A. Which volume is that?

15 633 Q. Sorry, it's Volume 2, Deputy McGuinness. 15:06

16 A. Yes. What page?

17 634 Q. Page 683.

18 A. Yeah.

19 635 Q. It's a little bit indistinct on the screen, but what
20 this is, is a press release issued by An Garda Síochána 15:06
21 regarding the Public Accounts Committee, and it was
22 released on -- it was issued on the 29th January 2014,
23 which is the day before Sergeant McCabe was due to give
24 his evidence and it had been announced he was going to
25 give his evidence, because it had been decided on, just 15:07
26 to give you the time line, and you might indicate if
27 you disagree with any of this; the PAC met on Tuesday
28 28th January 2014 and decided that he would give his
29 evidence in private, isn't that correct?

1 A. Yes.

2 636 Q. That was the 28th, it was a Tuesday. That was
3 communicated to my client. And then on Wednesday the
4 29th, An Garda Síochána issued this press release
5 having been now told he was going to give his evidence 15:07
6 in private to their relief, all right. And I just want
7 to direct your attention to it, so you have an
8 opportunity of dealing with it, there's a reference to
9 certain issues in the first three paragraphs and then
10 in the second-last paragraph he says the following: 15:07
11
12 "I am aware that the Public Accounts Committee has
13 decided to invite a serving member of the force before
14 it tomorrow. While I continue to have reservations
15 about this matter, I note that the meeting will be held 15:08
16 in private. I note, too, that it appears to be the
17 intention to confine the questioning of the person
18 concerned and, in particular, that person will not be
19 able to make allegations against his colleagues or
20 members of the public." 15:08
21
22 And then the following is said:
23
24 "Despite my reservations, I believe that in all
25 circumstances it would not be in the public interest 15:08
26 for An Garda Síochána to pursue the question of legal
27 proceedings against an Oireachtas committee. Were such
28 an action to succeed, it would have consequences that
29 extend well beyond the present case. I have every

1 respect for the role of the Public Accounts Committee
2 and have no doubt too that it will act strictly in
3 accordance with the legal advice it has received in
4 dealing with this matter. Ultimately, I believe the
5 investigation that the Minister for Justice, Equality 15:08
6 and Defence has asked the Garda Síochána Ombudsman
7 Commission to undertake is the proper manner in which
8 to investigate the allegation that has been made and
9 the circumstances surrounding it. An Garda Síochána
10 will of course cooperate fully with that investigation 15:09
11 and will learn any lessons that are to be learned when
12 that investigation is concluded. Finally, I wish to
13 thank the Chairman of the Committee, Deputy John
14 McGuinness, for the courtesy he has shown me in dealing
15 with the difficult matter." 15:09

16
17 Do you see that there?

18 A. Yeah.

19 637 Q. And really, the point I'm directing your attention to
20 is that there is reference to the issue of bringing 15:09
21 proceedings against the PAC and this press release is
22 making it clear that it is, however undesirable that
23 might have been, it's been decided not to do that now
24 that it has been indicated to hold Sergeant McCabe's
25 evidence in private. Do you understand the point I'm 15:09
26 making?

27 A. That he wasn't going to contest in court --

28 638 Q. Yes.

29 A. -- the decision that we had made.

1 639 Q. Because his lobbying on the point, his correspondence
2 on the point and his meeting with you in part succeeded
3 and he believes resulted in ultimately the PAC deciding
4 not to call the evidence in public?
5 A. He didn't part succeed with me in anything. It was the 15:10
6 Committee that decided.
7 MR. MÍCHEÁL O'HIGGINS: Thanks very much.
8
9 MR. MCGUINNESS WAS FURTHER QUESTIONED BY THE CHAIRMAN:
10 15:10
11 640 Q. CHAIRMAN: Just by way of a matter of interest, after
12 the meeting in the car park, did you contact
13 Commissioner Callinan, I mean within -- prior to
14 Maurice McCabe giving evidence?
15 A. I think he was told that it would be in private 15:10
16 session.
17 641 Q. CHAIRMAN: He was told by whom, do you think?
18 A. By me.
19 642 Q. CHAIRMAN: You think you rang him?
20 A. I think there was a phone call afterwards, which -- he 15:10
21 asked me -- no, sorry, after the decision was made.
22 643 Q. CHAIRMAN: Yes.
23 A. Because the previous week it had been said that we were
24 hearing this and that we would decide -- next Thursday,
25 and that there would be a decision taken in private or 15:10
26 public session.
27 644 Q. CHAIRMAN: Yes.
28 A. And I think either I or the clerk informed him it was
29 private session.

1 645 Q. CHAIRMAN: And there's been a couple of dates
2 mentioned, but is the date when Sergeant McCabe gave
3 evidence, in fact, Thursday the 30th?
4 A. Of January?
5 646 Q. CHAIRMAN: Yes. It is? 15:11
6 A. Yes, I'm sure of that.
7 647 Q. CHAIRMAN: And did somebody phone Commissioner Callinan
8 that morning to say --
9 A. I can't tell you that. No, I would imagine that after
10 the meeting on the Tuesday, where the decision was 15:11
11 formally taken --
12 648 Q. CHAIRMAN: Yes.
13 A. -- if that was the date, that after that he would have
14 been informed.
15 649 Q. CHAIRMAN: Do you think you rang? 15:11
16 A. Either I or the clerk would have rang him, yes. I'm
17 sure, I'm reasonably sure of that.
18 650 Q. CHAIRMAN: But you have no recollection of any --
19 A. No, I do know that he was informed.
20 651 Q. CHAIRMAN: Did you have his mobile telephone number? 15:11
21 A. That is how I contacted him.
22 CHAIRMAN: That is fine.
23 A. I had it from the previous -- the meeting for the 24th.
24 CHAIRMAN: All right. Thank you, Deputy McGuinness.
25 That is it. It's been a long couple of days, but there 15:11
26 it is.
27 A. Thanks be to God.
28 MR. MCENROY: Judge, I wonder could I raise a small
29 procedural matter, if possible?

1 CHAIRMAN: Well, can Deputy McGuinness go?
2 MR. MCENROY: Oh, absolutely. I apologise.
3 A. Thank you very much, Mr. Chairman.
4 MR. MCENROY: I hope to give you good news, which is
5 that I have extremely limited representation here. My 15:12
6 role is very minor. I am for Mrs. Taylor. I have been
7 present for Mr. McGuinness. I had intended to ask the
8 permission to leave the Tribunal and only to come back
9 when my client and her husband were giving evidence,
10 for that purpose alone. I was quite surprised that 15:12
11 Mr. McGuinness, for former Commissioner Callinan, made
12 a reference directly to my client. I'm not going to
13 get involved in that today, but if there is any
14 question that former Commissioner Callinan is giving
15 evidence about my client, I would like notice of the 15:12
16 fact to decide whether or not I should reapply to you
17 to come in to be here for that. I want to indicate
18 that I would prefer not to be here.
19 CHAIRMAN: No, no, that is perfectly reasonable. And
20 indeed people are not attending unless it relates to 15:12
21 their client. The sum now, as this has started, that
22 it actually does relate to their client, but, as I say,
23 yours is very peripheral.
24 MR. MCENROY: Absolutely.
25 CHAIRMAN: And so that's fine. And Ms. Ní Gabhann and 15:13
26 Ms. Herlihy will keep an eye on that just to see if you
27 are mentioned in any way.
28 MR. MCENROY: I am very grateful to the Tribunal,
29 especially to the solicitor, and I can say she gave us

1 great help. And with your permission, we will leave,
2 if that is okay?

3 CHAIRMAN: Yes, Ms. Mullan will be informed, and she
4 will give you a call, I am sure, if anything comes up.
5 But if it just something terribly small or petty, you 15:13
6 will appreciate that, I don't know, the colour of
7 somebody's car or whatever, if it's in any way
8 something that would impact on your reputation, yes, we
9 will contact you.

10 MR. MCENROY: Can I just indicate, in her statement at 15:13
11 page 24 and 25, she had already provided an answer to
12 the question Mr. O'Higgins raised, but it will come up
13 in due course when she gives her own evidence.

14 CHAIRMAN: Yes, that is fine.

15 MR. MCENROY: Judge, I am very grateful. Thank you. 15:13

16 CHAIRMAN: Was there something else?

17 A. No, no, am I free to go?

18 CHAIRMAN: Oh, yes, definitely.

19 A. Thank you very much.

20 15:13

21 THE WITNESS THEN WITHDREW

22

23 MS. LEADER: The next witness, sir, is Garda Paul
24 Hynes. His statement is at page 1423, volume 6 of the
25 materials. 15:14

26

27

28

29

1 GARDA PAUL HYNES, HAVING BEEN SWORN, WAS EXAMINED BY
2 MS. LEADER AS FOLLOWS:

3
4 652 Q. MS. LEADER: Garda Hynes, if you would outline your
5 career in An Garda Síochána to date, please? 15:14

6 A. I joined the force on the 28th February 1984, and after
7 my training in Templemore I was stationed in Donnybrook
8 Garda Station, which I stayed for about seven years.
9 Then I moved on to the Traffic Corps, for seven years.
10 Then I moved onto the ministerial pool, based in the 15:15
11 Phoenix Park.

12 CHAIRMAN: So you're here in Dublin Castle?

13 A. I was here in Dublin Castle in the Traffic Corps and
14 then I moved to the Phoenix Park, which would house the
15 ministerial fleet. I was in the pool for about a year 15:15
16 or so, and then -- about maybe a year-and-a-half, and
17 then I took up with then-Minister Brian Cowen, I was
18 seven years as his driver, and I was back into the pool
19 for about a year or so and then I started to drive
20 Commissioner Fachtna Murphy and then Commissioner 15:15
21 Callinan and then Commissioner Nóirín O'Sullivan, and
22 now I'm with Deputy Commissioner Ó Cualáin -- sorry,
23 Interim or Acting Commissioner Ó Cualáin.

24 653 Q. MS. LEADER: And if you would tell us about your tour
25 of duty on the 24th January 2014, please? 15:16

26 A. Yes. On the 24th January 2014 I went to the
27 then-Commissioner Martin Callinan's house and picked
28 him up at about approximately 7:20 and I conveyed him
29 to the Garda HQ. We arrived in Garda HQ in around the

1 eight o'clock mark and he went to his office, and then
2 at approximately 2:15 -- I knew, I conveyed him to
3 Dundalk Garda Station.

4 CHAIRMAN: Yes. Can I just stop you there. Possibly
5 Ms. Leader has mentioned this to you already, but we
6 don't want to upset the family by mentioning any names. 15:16

7 A. I understand, Chairman. There was a press conference,
8 I think, scheduled for that morning in Dundalk, and it
9 was a little bit delayed, but it took place - I think
10 there might have been -- after the press conference, 15:17
11 there might have been a little meeting with the
12 Commissioner and one or two maybe chiefs, or whatever,
13 and then I conveyed him then to Bewley's Hotel in
14 Dublin, in the car park in Dublin, and we -- it took us
15 about an hour and fifteen minutes, or so, to get there. 15:17
16 The traffic was a little bit heavy. As I pulled into
17 the car park, I parked off to the -- as I went through
18 the entrance, there is a railing on the right-hand side
19 of the car park and I faced the car into the railing
20 with the back of the car -- the hotel, the hotel 15:17
21 entrance was behind me. After a short period of time,
22 I noticed the car with Deputy McGuinness arriving into
23 the car park. At that stage, Deputy Commissioner --
24 or, sorry, Deputy McGuinness parked his car behind
25 ours. That was about maybe in another kind of section 15:18
26 of the car park, so his car would be between our car
27 and the entrance to the hotel. At that stage, the
28 then-Commissioner said to me, I'll be back in a few
29 minutes. He left the car, went over to Deputy

1 McGuinness's car and got into the car. The meeting
2 lasted for approximately twenty minutes or so, and then
3 he came back into the car I was driving and said "let's
4 go". We left the car park then and proceeded back
5 towards Dundalk, as there was another -- there was 15:19
6 another thing I had to do in Dundalk on that evening in
7 around the 7:30 mark.

8 654 Q. MS. LEADER: And just in relation to times of your trip
9 back to Dublin to meet Deputy McGuinness, what time do
10 you think you arrived back to Dublin, to Bewley's? 15:19

11 A. I'd say approximately in around the 5:00pm, possibly
12 before, maybe.

13 655 Q. Okay. And insofar as you arrived back to Dundalk, do
14 you have any time in your mind for that?

15 A. Back to Dundalk, we had to be there before half seven, 15:19
16 so in or around quarter past seven, give or take,
17 Chairman.

18 656 Q. And the travelling time between the two locations, do
19 you have any estimate?

20 A. It's always roughly around, depending on traffic, 15:20
21 obviously, between an hour and a quarter or an hour and
22 a half, in or about.

23 657 Q. Now, Garda Hynes, I'm not aware of whether you would
24 know on a day-to-day basis where you'd be conveying a
25 Commissioner to, but as far as you were concerned, was 15:20
26 this a scheduled meeting or a scheduled journey to
27 Dublin on the 24th January?

28 A. A schedule to Bewley's?

29 658 Q. Yes.

1 A. No, it wasn't a scheduled. We get a schedule, if I
2 could explain, Chairman, possibly at the start of the
3 week, where certain meetings or functions are marked in
4 on the diary of the Commissioner and we kind of work
5 off that. But that particular one wasn't on the -- as 15:20
6 far as I'm aware, wasn't on the schedule for that day.

7 659 Q. And do you know when you became aware that you would
8 have to travel back to Dublin from Dundalk?

9 A. As far as I'm aware, I knew we were coming back to
10 Dublin, but I was informed -- to my recollection, I was 15:21
11 informed by the then-Commissioner on the way back to
12 Dublin, I don't know exactly where, but that we had to
13 go to Bewley's Hotel.

14 660 Q. Okay. And when did you know that you had to go back to
15 Dublin? Was it -- were you in Dundalk at that stage or 15:21
16 was it at the beginning of your day's work?

17 A. Em...

18 661 Q. Or can you remember?

19 A. I can't really remember. It's when the press
20 conference was over, and possibly, as I said, there 15:21
21 might have been a meeting for a few minutes after the
22 press conference, but usually we go back to base at
23 that stage, unless we have another function pending in
24 Dundalk, which we didn't have that day.

25 662 Q. Right. And insofar as it's relevant, can you remember 15:21
26 whether it was raining or not when you got back to
27 Dublin and were parked in Bewley's?

28 A. Yeah, I remember it was a showery day and the showers
29 were heavy, but in between it was sunshine. So it was

1 kind of a showery sunshine day.

2 663 Q. And was Commissioner Callinan in his full uniform on
3 that day, or can you remember?

4 A. I think for the press conference he was, but on the way
5 back to Dublin he had put, you know, a jacket, he had 15:22
6 taken off the tunic and the hat and had possibly a
7 dark-coloured jacket. I could be wrong, but I think
8 that's what he had, what he was wearing.

9 664 Q. And insofar as it is suggested by people that it was a
10 secret meeting, from your vantage point in the car park 15:22
11 in Bewley's was there any element of subterfuge about
12 the meeting?

13 A. I don't think so. The car park was quiet. There was
14 people coming and going to the hotel, but from my
15 estimation, I'm not really sure, but I wouldn't put it 15:22
16 down as being a secret meeting.

17 665 Q. Everybody acted totally normally?

18 A. As far as I was concerned, it was just another meeting.

19 666 Q. Did you notice was Commissioner Callinan on the phone
20 at any time on the trips to and from Dublin? 15:23

21 A. I'm a bit hazy on that. There's a possibility he was,
22 but I can't be sure.

23 667 Q. And can you comment in any way who he was on the phone
24 to, if you're not sure or --

25 A. No. 15:23

26 668 Q. Or do you have any recollection at all?

27 A. I have no recollection of -- I have no recollection of
28 whether the phone calls took place, or, if they did
29 take place, who he was on to.

1 669 Q. Did he have any conversation with you in relation to
2 what had transpired between himself and Deputy
3 McGuinness?

4 A. No. The Commissioner was always quiet, he never
5 discussed anything bar, we'll say, sport, or something, 15:23
6 with me in the car. So when he arrived back to the
7 car, it was "let's go", or words to that effect, and,
8 as I said, we made our way back towards Dundalk.

9 670 Q. The day before, he had been in Leinster House. Had you
10 driven him on that day? 15:24

11 A. Yes.

12 671 Q. Did he at any time pass any comment on the day he had
13 spent before the Public Accounts Committee?

14 A. No, as I say, he keeps his own counsel. I just drive,
15 and he keeps his thoughts to himself. 15:24

16 672 Q. All right. Now, you're based in Garda Headquarters, is
17 that correct?

18 A. That's correct.

19 673 Q. Now, a former witness to the Tribunal has suggested
20 that the rumour mill was in full flow in Garda 15:24
21 Headquarters in 2014 - that's Superintendent Frank
22 Walsh - in relation to Sergeant McCabe. Did you hear
23 any of those rumours?

24 A. No, Judge -- sorry, Chairman. I'm usually -- I work an
25 awful lot by myself and I have my own way of doing 15:24
26 things. I don't get involved with chat, either on my
27 week on or on my week off. I just go in and do my
28 work, get away from it, as soon as I can. That's the
29 way I operate. So I don't listen or I don't partake in

1 any chat in relation to rumours or anything like that.
2 I just -- I just don't.

3 674 Q. And were you aware yourself that there had been an
4 allegation made in relation to Sergeant McCabe?
5 A. Only what I -- 15:25

6 675 Q. Of criminal misconduct?
7 A. No, no, I did not.

8 676 Q. No?
9 A. No.

10 677 Q. You weren't aware of that? 15:25
11 A. No, I wasn't aware, no.

12 678 Q. All right. Are you familiar with
13 Superintendent Taylor? Do you know him?
14 A. I know Superintendent Taylor, yes, Dave Taylor.

15 679 Q. And did you have any discussions with 15:25
16 Superintendent Taylor in relation to Sergeant McCabe?
17 A. No, absolutely not.

18 680 Q. And were you privy to my conversations that the former
19 Commissioner may have had with Superintendent Taylor in
20 relation to Sergeant McCabe? 15:26
21 A. No. On a few occasions Superintendent Taylor would
22 have been with us in the car, travelling to, we'll say,
23 functions or press conferences or such, but I can't
24 recall any conversations with that name being
25 mentioned. 15:26

26 MS. LEADER: All right. Thank you very much, Garda
27 Hynes. If you would answer any questions anybody else
28 might have.
29 A. Absolutely, absolutely.

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GARDA HYNES WAS CROSS-EXAMINED BY MS. BURNS:

681 Q. MS. BURNS: Yes, Garda Hynes, on behalf of Superintendent Taylor my name is Tara Burns and I have a few short questions for you. As you began your evidence to Ms. Leader, you referred to the fact that you had a recollection that the conference, the press conference that was to be held was postponed for a period of time? 15:26

A. Yes, for a couple of minutes. That's my recollection now. I mean, the day that was in it, it's four years ago, it was a day like any other day for me, and nothing really stood out on that particular day. So, my times, I used the word "approximately", and I am not one hundred percent sure on the times, but I know there was a slight delay for a couple of minutes. I vaguely remember that. 15:27

682 Q. In fairness to you, your role is obviously to drive the Commissioner -- 15:27

A. Correct.

683 Q. -- and to get him to wherever he needs to be, and I assume whatever he is doing there, you don't really have an interest or a role in relation to that?

A. Well, no, I wouldn't be -- I'd be a little bit away, if you can understand. If he was in the next room, I wouldn't be too far away, that's my job. And if he was moving around, I'd be a bit of a distance away, but not too far away, if you kind of -- it's not -- I wouldn't 15:27

1 be real close protection as such, but I wouldn't be too
2 far away if something happened.

3 684 Q. In terms of the day in question, you have referred to
4 Ms. Leader that, on occasion, Superintendent Taylor
5 would have travelled with you? 15:28

6 A. Correct.

7 685 Q. Can you recollect whether he travelled on that day in
8 question?

9 A. I don't think so. My recollection of that day was that
10 he had gone to Dundalk previous to us. 15:28

11 686 Q. That accords with my instructions, that is what you
12 recollect?

13 A. Yes, that would be my recollection. I'm nearly one
14 hundred percent sure that he wasn't in the car with us
15 travelling up, but he had travelled, obviously, ahead 15:28
16 of us to talk to the press or whatever happens before
17 the press conference.

18 687 Q. That accords with my instructions. Now, in your
19 statement that you provided to the Tribunal, you refer
20 to, in your recollection, and obviously it's a number 15:28
21 of years that you're providing this statement and
22 thinking back on the day in question, the statement was
23 provided on the 26th September 2017, but you refer to
24 collecting Mr. Callinan at about quarter past two with
25 an anticipated time of arrival at Dundalk for half 15:28
26 three?

27 A. That would be the case, yeah.

28 688 Q. That's what you have set out in your statement?

29 A. Yes, in my statement. But as I said, those times now

1 are an approximate.

2 689 Q. I see.

3 A. I wouldn't be one hundred percent sure on exactly the
4 correct time.

5 690 Q. And that is what I wanted to ask you about, because the 15:29
6 information appears to be that the press conference in
7 fact had been scheduled for earlier in the day, not
8 that much earlier, but it had been scheduled for three
9 o'clock. Having informed you of that, does that ring
10 any bells? 15:29

11 A. No.

12 691 Q. I see.

13 A. No, three o'clock, no. well, if we had left in around
14 the two o'clock mark and it was scheduled for three
15 o'clock, maybe that is possibly why the little bit of a 15:29
16 delay was, maybe we could have been late getting there,
17 I'm not sure. As I said, nothing really stands out
18 to --

19 692 Q. Well, I assume in terms of driving from Dublin the plan
20 would have been to have been in time for the press 15:30
21 conference?

22 A. Yes, it would, yeah.

23 693 Q. And certainly Superintendent Taylor has a note in his
24 diary that refers to the conference being scheduled for
25 3:00pm? 15:30

26 A. Yes.

27 694 Q. And Mr. Andrew McLindon, I assume you know who I am
28 speaking about, he refers in his statement to the
29 Tribunal that the conference was to be held at three?

1 A. Yes.

2 695 Q. So is it likely that you would have left Dublin late?

3 A. Late, as in?

4 696 Q. At quarter past two, as you've indicated, to arrive for
5 half three? 15:30

6 A. Possibility we left earlier.

7 697 Q. You may not be right in times at all in relation to
8 this?

9 A. I may not be right on -- I might be -- yes, exactly, I
10 mightn't be exactly right on the time. 15:30

11 698 Q. I suppose to cut to the chase in terms of what my
12 interest is in relation to this --

13 A. Okay.

14 699 Q. -- is that Superintendent Taylor has a recollection of
15 the conference having been postponed prior to you going 15:30
16 to Dublin with the Commissioner and the conference then
17 having taken place after you returned back from Dublin.
18 Do you have any comment to make in relation to that?

19 A. Well, my recollection of us coming back to Dundalk that
20 evening was that we went directly to the place where -- 15:31
21 not back to the station for a press conference. As far
22 as I was aware, the press conference had taken place on
23 that afternoon.

24 700 Q. I see.

25 A. Rather than, what was it, seven o'clock in the evening, 15:31
26 I don't think it -- from my recollection, I don't
27 think -- as I said, it occurred, as far as I was aware,
28 in the afternoon rather than at night. That is my
29 recollection.

1 701 Q. Are you basing that on an assumption that you got back
2 in time for the scheduled requirement of half seven for
3 the event that you had to --

4 A. Yes, as far as I can remember, we went directly back to
5 that location without stopping off at any other 15:31
6 location. That is my recollection.

7 702 Q. Is there a possibility that Superintendent Taylor could
8 be right about this, that there was a press conference
9 and then the event that you attended?

10 A. Well, that is my recollection. 15:32

11 703 Q. I see. Do you recollect going anywhere else in Dundalk
12 that day in relation to the events that you were
13 attending Dundalk for?

14 A. My recollection, again, is that we drove straight to
15 Dundalk Garda Station and that was where we had -- 15:32
16 that's where the event happened, and we left from
17 Dundalk Station. That's my recollection.

18 704 Q. And do you have any recollection of having any
19 interaction with Mrs. Callinan, whether she attended
20 the event that you needed to be back in Dundalk for 15:32
21 half seven?

22 A. There is, there is a possibility -- I'm trying to think
23 now.

24 705 Q. I realise that --

25 A. Yeah. 15:32

26 706 Q. -- it's a long time to think back to.

27 A. As far as I'm aware, Mrs. Callinan was at that function
28 in the evening. Now, whether she travelled with us
29 from Dublin to that function or travelled with somebody

1 else, either is a possibility, and I'm not sure.

2 707 Q. You've no recollection of --

3 A. I don't have a recollection of her being in the car and
4 me travelling back, no. There is a possibility, but
5 I'm hazy on it. As I said, it's four years ago, it's 15:33
6 difficult.

7 MR. BURNS: I see. Thank you very much.

8 A. Thank you.

9 MR. DIGNAM: Chairman, I just have a few brief
10 questions. 15:33
11

12 GARDA HYNES WAS CROSS-EXAMINED BY MR. DIGNAM:

13

14 708 Q. MR. DIGNAM: Garda Hynes, just in relation to your role
15 as Garda driver, you're an official Garda driver for 15:33
16 the Commissioner, isn't that right?

17 A. Correct.

18 709 Q. And as I understand it, and you might correct me if I
19 am wrong for the benefit of the Tribunal, there are two
20 assigned drivers, is that right? 15:33

21 A. Yes.

22 710 Q. And you work week on/week off?

23 A. That's correct.

24 711 Q. So this week just happened to be your week on duty
25 driving the Commissioner, is that right? 15:33

26 A. No, I am actually off this week.

27 712 Q. No, no, sorry, it's the week in question? Sorry.

28 A. The week in question, yes, I was, yes, sorry.

29 713 Q. And in the event that either you or the other assigned

1 driver happened to be on leave, how is that vacancy
2 filled?

3 A. Yeah. Well, the system that we have is that we have
4 two units, two units, and we work week on/week off. So
5 when I'm on the week I was assigned or I would be 15:34
6 assigned to the Commissioner, but there is a pool of
7 about six to eight drivers that fill in for -- if the
8 President's driver was sick or if he was on leave, the
9 people would be drawn from that pool. So there's a
10 pool on either side, on either week, a pool of six on 15:34
11 one week and a pool of six on the other week. And as I
12 said, if people are sick or on leave, the replacement
13 for me would be drawn from that pool.

14 714 Q. But in any event, you were working that week?

15 A. I was working that week, yes. 15:35

16 715 Q. And you brought the Commissioner to Dundalk and back
17 from Dundalk. Just when travelling back from Dundalk
18 to Dublin, did the Commissioner -- I presume the
19 Commissioner told you where you had to go, where he
20 wanted you to go? 15:35

21 A. Yes, yes.

22 716 Q. And did he tell you who he was going to meet there?

23 A. Yes. He told me that he was going to Bewley's Hotel to
24 meet Deputy John McGuinness.

25 717 Q. Now, you described that, I think in response to 15:35
26 Ms. Leader's questions, you described the trip back to
27 Dublin, or specifically the trip to Bewley's Hotel for
28 this meeting as not a scheduled event?

29 A. Correct.

1 718 Q. Am I correct in my understanding that there are times
2 when you travelled out of Dublin, for example, and you
3 may do [inaudible] there, visit local stations, for
4 example, that aren't a scheduled event?
5 A. That would be normal enough if we were in Mayo, or 15:35
6 something like that, or going to the main station in
7 Sligo, there's a possibility we may visit outlying
8 stations, you know, just for a couple of minutes to go
9 in and see the local sergeant or guard or -- that can
10 happen, yeah. 15:36
11 719 Q. So it's not unusual in your working day, particularly
12 where it's a journey outside Dublin, for you to have
13 something that isn't on that written schedule?
14 A. Yeah. It could be, yes, a stop.
15 CHAIRMAN: You wouldn't be kept too long waiting in the 15:36
16 public office, I suppose?
17 A. No, no, Chairman.
18 720 Q. MR. DIGNAM: Just then in relation to your timings, you
19 very fairly in your answers to Ms. Burns said that
20 you're hazy on the timings. Is it fair to say, you 15:36
21 might correct me if I am wrong, Garda Hynes, is it fair
22 to say that you are trying to reconstruct the timings
23 working backwards from when you believe you arrived
24 back in Dundalk?
25 A. Yeah, it would be fair enough to say that because, as I 15:36
26 said, it's difficult to pick out a particular day, you
27 know, four years ago. But I know that, as I said, that
28 function at 7:30 in the evening was a definite. We had
29 to be there and we were there, and I think we were

1 there, as I said, about ten or fifteen minutes
2 beforehand. So kind of working a little bit back from
3 that in relation to times and travel times from Dublin
4 to Dundalk.

5 721 Q. When you were travelling either from Dundalk to Dublin 15:37
6 or back from Dublin to Dundalk, did you listen to the
7 radio?

8 A. Well, the Commissioner, as far as I'm aware, turned the
9 radio on and listened to whatever, RTÉ One or the news
10 or whatever was coming on at four, I think. 15:37

11 722 Q. Well, I think from that qualification, I think you may
12 not be able to answer my next question, Garda Hynes,
13 but do you remember hearing anything of relevance to
14 the events that we're discussing here on the radio?

15 A. No. 15:37

16 723 Q. On either the leg down or the leg back?

17 A. No, I have no recollection.

18 MR. DIGNAM: Thank you, Garda Hynes.

19 CHAIRMAN: Thank you very much.

20 A. Thank you, Chairman. 15:38

21

22 THE WITNESS THEN WITHDREW

23

24 MR. MCGUINNESS: Chairman, the next witness is Mr. John
25 Deasy, Teachta Dála. 15:38

26 CHAIRMAN: Yes. Mr. Deasy is not a long witness, I
27 don't think, Mr. McGuinness?

28 MR. MCGUINNESS: Pardon?

29 CHAIRMAN: He is not a long witness?

1 MR. MCGUINNESS: I wouldn't anticipate.

2 CHAIRMAN: No, no.

3

4 MR. JOHN DEASY, HAVING BEEN SWORN, WAS EXAMINED BY

5 MR. MCGUINNESS:

15:38

6

7 MR. MCGUINNESS: Just for the benefit of my colleagues

8 and you, Chairman, Mr. Deasy made a statement to the

9 Tribunal on 10th March 2017. That is to be found at

10 volume 6, page 1503. And he was also interviewed by

15:39

11 the Tribunal investigators, and his statement to the

12 investigators is to be found at volume 6 at page 1490.

13

14 Mr. Deasy, you probably have a copy of the statements

15 yourself, but I will be asking you some questions about

15:39

16 them and if you wish to refer to any of the other paper

17 volumes in due course --

18 A. I just have my own statement.

19 724 Q. -- you can take the documents from your left if need be

20 or watch any documents on screen.

15:39

21 A. Okay.

22 725 Q. Mr. Deasy, I think you have been a Teachta Dála for a

23 number of years, and in the period we are concerned

24 about, you were a member of the Public Accounts

25 Committee between 2011 and 2016, is that correct?

15:39

26 A. Yes.

27 726 Q. And I think immediately prior to the establishment of

28 the Tribunal you gave an interview to Prime Time which

29 was broadcast on RTÉ on the evening of Tuesday, 14th

1 February 2017, do you recall that?

2 A. Yes.

3 727 Q. And that was broadcast, and RTÉ have provided us with a
4 copy of the broadcast on a DVD, but I'm going to refer
5 you to a transcript of the audio of that broadcast, and 15:40
6 I don't know if you have that, but, if not, it's to be
7 found in volume 6 at page 1456, commencing there. So
8 if you would care to take the volume from your
9 left-hand side, that might assist you.

10 A. What is the reference again? 15:40

11 728 Q. 1456.

12 A. Okay, thanks.

13 729 Q. Now, on the first page of that, at the top, the
14 broadcast showed a very short clip of you doing a piece
15 to camera as an introduction by Miriam O'Callaghan 15:40
16 there, do you see that?

17 A. Yeah, I see the reference, yeah.

18 730 Q. The interview with you, in fact, commences slightly
19 later. If we go to page 1470, I think Ms. Hannon was
20 the interviewer, and your piece starts towards the 15:41
21 bottom of the page there in 1470. Do you see that?

22 A. Yeah.

23 731 Q. And you say in reference to this PAC meeting:
24
25 "Before the meeting, I was approached by a very senior 15:41
26 guard and he proceeded to make some very derogatory
27 comments about Maurice McCabe, the nature of which, you
28 know, were, you know, Maurice McCabe couldn't be
29 believed or couldn't be trusted on anything. They were

1 very, very derogatory. It was, you know, a serious
2 attack and strongly worded. Maurice McCabe was in the
3 Public Accounts Committee the following Thursday and I
4 thought that he was credible and I made that judgment."

15:41

5
6 Just, I think the senior guard you're referring to
7 there was Commissioner Callinan at the time?

8 A. Correct.

9 732 Q. And you identified in your statement to the Tribunal,
10 given on the 10th March, that he was that senior guard?

15:42

11 A. Correct.

12 733 Q. And could you just describe how he approached you?

13 A. The guards were already in the coffee dock and I was on
14 my way to Committee, I stopped off to get a coffee, and
15 he was standing, I believe, with Nóirín O'Sullivan,
16 former Commissioner, and --

15:42

17 734 Q. Had you met him before?

18 A. Yeah, I had, maybe once, you know, once or twice. But
19 I knew Nóirín better, former Commissioner O'Sullivan.
20 She tapped him on the arm and I think he just turned
21 around and put his hand out.

15:42

22 735 Q. Okay. And just, as I understand it, the coffee dock is
23 in the new committee wing on the left side of Leinster
24 House, it's down on the -- you go down one set of
25 stairs into the committee building and it's a public
26 space where there is room to congregate and have a
27 coffee?

15:43

28 A. Yes. It would have been quite normal for the gardaí to
29 assemble there --

1 736 Q. Yes.

2 A. -- before a committee meeting.

3 737 Q. And you hadn't been scheduled to meet him, is that
4 right?

5 A. No, not at all. 15:43

6 738 Q. Or any of them?

7 A. It, very typically, you know, whether it's the
8 Secretary General or whoever, you would meet them
9 before going into the committee rooms - in other words,
10 there or below. 15:43

11 739 Q. Yes. And it's your recollection that Deputy
12 Commissioner tapped him on the --

13 A. Yeah, I think Nóirín O'Sullivan, former Commissioner,
14 she tapped him. I was on my way to them, I suppose I
15 knew former Commissioner O'Sullivan, and I think it was 15:43
16 me approaching them and him turning around and just we
17 shook hands. It was just a meeting like that.

18 740 Q. Yes, yes. And did you introduce yourself or did you
19 need to introduce yourself?

20 A. I think -- my recollection is that Nóirín O'Sullivan 15:44
21 probably introduced me and -- yeah.

22 741 Q. All right. And did you have any conversation with him,
23 the Commissioner, about the issues that you were going
24 to be focusing on?

25 A. Em, I can't really -- it was a very short conversation. 15:44

26 742 Q. Yes.

27 A. I think you need to understand the environment or the
28 room.

29 743 Q. Yes.

1 A. A very public place, very noisy, people milling about.
2 It wasn't a place where -- it wasn't a car park or a
3 corridor. It was a public area. A very short
4 conversation. He turned to me and we spoke. I read
5 his statement and, in that statement, he details issues 15:44
6 that he says we spoke about. I can't remember that, to
7 be very frank.

8 744 Q. Yes.

9 A. They're the nuts and bolts of, I suppose, what the
10 Public Accounts Committee meeting was intended to talk 15:45
11 about or deliberate on.

12 745 Q. Yes.

13 A. The only part that I do remember is him saying that
14 Maurice McCabe was not to be believed or trusted with
15 anything. And the reason I think I remember that is 15:45
16 because it surprised me, I have to say.

17 746 Q. Okay.

18 A. And it stuck in my mind.

19 747 Q. Okay. You've made reference there to Mr. Callinan's
20 statement and he provided a statement to the Tribunal 15:45
21 on the 13th March 2017 in advance of having seen your
22 statement, and perhaps we will just look at what he
23 says about the meeting. It's at page 643 of our
24 volumes, which is in volume 2.

25 A. Okay. 15:45

26 748 Q. It's perhaps open underneath that one.

27 A. Okay.

28 749 Q. And in the middle of that page, 643 --

29 A. Give me the reference again, will you, please.

1 750 Q. Yes. Page 643 in Volume 2. And he says here -- just
2 when you get that.

3 A. Okay.

4 751 Q. He says:

5

15:46

6 "I am aware that Deputy John Deasy, in an interview
7 with Prime Time, RTÉ One, on the 15th February 2017 --"
8 that is perhaps erroneous "-- made mention of a
9 conversation he had with a senior garda in January
10 2014, who told him that Sergeant McCabe was not to be
11 trusted. I recall that prior to my appearance before
12 the Public Accounts Committee on the 23rd January 2014,
13 I spoke with Deputy John Deasy, who was a member of
14 that committee. He indicated that the areas he
15 intended to address with me at the meeting, service of
16 summonses, registration of company cars, interaction
17 with other departments and the Courts Service in the
18 context of a more effective way of collecting fines."

15:46

15:46

19
20 Can I just stop there now. Are those topics that you
21 had taken an interest in in considering the fixed
22 penalty charge notice issue, the collectability of --

15:47

23 A. I really can't remember that exchange and, you know,
24 obviously the investigators asked me this as well.

25 752 Q. Yes.

15:47

26 A. And I don't remember that exchange.

27 753 Q. You don't remember. Okay. All right. It's possible
28 then and you're not contesting it as such?

29 A. I'm not.

1 754 Q. All right. Okay.

2 A. Yeah.

3 755 Q. He says:

4

5 "He also asked me my views on whistleblowers appearing 15:47

6 before the Committee."

7

8 Now, do you recollect asking him that?

9 A. No, but I may have.

10 756 Q. Yes. 15:47

11 A. And I think it is probably something I would have asked

12 him.

13 757 Q. Yes. It was still then a live issue?

14 A. Absolutely, it was very live, yeah.

15 758 Q. And I will come back to that in another context, but 15:47

16 you're not -- you think it is likely you would have

17 asked him that?

18 A. Yeah, yeah.

19 759 Q. Okay.

20 15:48

21 "I indicated to him that you have my views on this

22 subject as I have written to the Committee about it."

23

24 And can I just ask you there, is that something that

25 you recollect -- 15:48

26 A. No.

27 760 Q. -- him saying? Okay. Had you seen any correspondence

28 from the Commissioner to the Committee at that stage,

29 expressing his views on the issue?

1 A. No, I don't remember any such correspondence. It may
2 have been sent to the Committee. But the Committee
3 received plenty of correspondence about a lot of
4 things.

5 761 Q. Yes, yes. 15:48

6 A. And they went to the clerk. They were circulated to
7 the members. But remembering one is --

8 762 Q. Yes. But what was the practice at that time? would
9 you get correspondence which had been addressed to the
10 Committee in advance of meetings or -- 15:48

11 A. Yeah, it would be sent --

12 763 Q. -- on the morning of the Committee --

13 A. Oh, no, before that. It would be sent to the clerk and
14 then the clerk would circulate the papers.

15 764 Q. Yes. But can I take it that you were aware that he had 15:48
16 expressed strong views about the appearance of
17 whistleblowers?

18 A. I'd put it differently. I think that it was common
19 knowledge that the Gardaí at senior levels didn't want
20 the whistleblowers appearing at the Public Accounts 15:49
21 Committee.

22 765 Q. Yes.

23 A. I didn't need to read a letter in that sense.

24 766 Q. Okay. Well, can you take it that -- can the Tribunal
25 take it you were aware of his views about the issue? 15:49

26 A. Yeah, yeah. I think that's fair to say, yeah.

27 767 Q. He then says, continuing the statement:
28
29 "I cautioned on the need to be aware of the correctness

1 of the information being imparted, bearing in mind the
2 inaccuracies of some of the allegations as highlighted
3 in Assistant Commissioner O'Mahony's report that was at
4 the time available to the Committee."

15:49

5
6 Now, he says it in those terms --

7 A. Yeah, I --

8 768 Q. Do you recollect --

9 A. If somebody spoke to me in legalese like that, I would
10 probably remark on it and would have remembered it.

15:50

11 769 Q. Yes.

12 A. I certainly do not remember that being imparted to
13 me --

14 770 Q. Okay.

15 A. -- in those terms.

15:50

16 771 Q. Well, just one factual issue: Do you recollect
17 Assistant Commissioner O'Mahony's report being
18 available to and being in front of the Committee, as it
19 were, in connection with the issue?

20 A. Sure.

15:50

21 772 Q. Yes. And he appears there perhaps to have been drawing
22 attention to possible discrepancies between what the
23 whistleblowers were saying and what the assistant
24 commissioner had found; in other words, that they
25 weren't accurate?

15:50

26 A. Em, yeah. Sorry, can I --

27 773 Q. Yes.

28 A. I think the relevance is, do I remember him saying
29 this, no.

1 774 Q. All right.

2 A. I mean, I think everybody understood that there were
3 difference of opinion between the whistleblowers and
4 Assistant Commissioner O'Mahony's report.

5 775 Q. Yes. 15:50

6 A. If that answers the question.

7 776 Q. Okay. I am just anxious to -- and I know you were
8 asked about it by the investigators; you've no
9 recollection of him saying anything other -- derogatory
10 in any other terms about Sergeant McCabe? 15:51

11 A. No.

12 777 Q. Okay. You've no recollection, therefore, of referring
13 to files or sexual abuse allegations?

14 A. No.

15 778 Q. And how long did you perhaps spend? I know it's a 15:51
16 brief period.

17 A. I'd say less than a minute.

18 779 Q. Less than a minute, all right. But is the height of it
19 then, as you have stated in your statement and to the
20 investigators, was that he simply referred to him as 15:51
21 someone who couldn't be believed or trusted?

22 A. Yes.

23 780 Q. But did you understand that that related to the penalty
24 points issue?

25 A. Em -- 15:51

26 781 Q. Or did it go further in your mind?

27 A. In my mind, it went further. And I suppose maybe I'm
28 putting this together after the fact.

29 782 Q. Yes.

1 A. You know, I might be. I think at that point it was to
2 do with the penalty points issue.

3 783 Q. Okay. Did you think he was trying to influence you
4 adversely in relation to Sergeant McCabe's evidence on
5 the penalty points issue? 15:52

6 A. Yes.

7 784 Q. Okay. There's been reference made obviously to Deputy
8 McGuinness's conversation with the Commissioner after
9 the meeting. You obviously weren't privy to or in
10 proximity to that? 15:52

11 A. No.

12 785 Q. Was there anyone else in proximity, in your
13 recollection, to when the Commissioner was speaking to
14 you at this point?

15 A. The only person I remember being in proximity would 15:52
16 have been former Commissioner O'Sullivan, but I really
17 would not be able to tell you if any part of our
18 conversation was overheard by former Commissioner
19 O'Sullivan.

20 786 Q. Yes, yes. There is, and I'm not criticising your 15:53
21 statement that you gave to the Tribunal, it's welcome
22 to get any information, and the Chairman is still
23 anxious to get all relevant information from parties,
24 but in the transcript, if we could go back to that at
25 page 1471. 15:53

26 A. Okay. This is volume?

27 787 Q. Yes, it's volume 6 that you had open a moment ago.

28 A. Okay. 1471, yeah.

29 788 Q. 1471. You seem to be suggesting in the first part of

1 your interview broadcast on Prime Time that he was
2 saying that Maurice McCabe couldn't be believed or
3 couldn't be trusted on anything. Is that something
4 that rings a bell with you?

5 A. Yeah. I think those words were used, yeah. 15:54

6 789 Q. Okay. And you go on to say there, obviously:

7

8 "They were very, very derogatory. It was, you know, a
9 serious attack and very strongly worded."

10

11 But as I understand your evidence, you're not
12 suggesting he said anything beyond that?

13 A. No, I'm not. 15:54

14 790 Q. All right. The Commissioner was interviewed by the
15 investigators in relation to your statement, and that
16 is contained in volume 2 from page 617 onwards. Could
17 I ask you to go to page 618 in volume 2. 15:54

18 A. Sure. 61 --

19 791 Q. 618.

20 A. Okay. 15:54

21 CHAIRMAN: Sorry, Deputy, at any stage you didn't
22 describe what was said to you as vile, did you? Was
23 that someone else's interpretation?

24 A. I think someone else's. I think derogatory.

25 CHAIRMAN: Derogatory was what you called it. 15:55

26 A. Yeah.

27 CHAIRMAN: All right. Well, that is fine. It's a
28 subtle difference.

29 792 Q. MR. MCGUINNESS: And this is at a stage where

1 Mr. Callinan is being interviewed by the investigators,
2 having been provided with a copy of your statement for
3 the first time, and in his answer at the top of page
4 618 here, he says, line 489:

5
6 "Again, I refer to my original statement, MC1, where I
7 outline my conversation with Deputy John Deasy and
8 where he asked me about my views about whistleblowers
9 appearing before the Committee and I had indicated that
10 the Committee would need to be mindful of the fact that 15:55
11 not all of the allegations that Sergeant McCabe was
12 making was correct as highlighted in the O'Mahony
13 investigation and that the Committee had a copy of that
14 report to rely on."

15
16 It's expressed in slightly different terms there by
17 him, that all of the allegations weren't correct?

18 A. Yeah. I mean, when I --

19 793 Q. Does that phrase ring --

20 A. Not really. I mean, when I finally got a chance to 15:56
21 actually question Sergeant McCabe, I think the first
22 question I asked him, I said how do you square the
23 O'Mahony report with what you're alleging yourself?
24 And, you know, I've always said, and even publicly,
25 that I think maybe Sergeant McCabe didn't get 15:56
26 everything right statistically, analysis-wise, I don't
27 see what the -- you know, there was a big question-mark
28 with regard to -- every member of the Committee, with
29 regard to where the truth lay with regard to the

1 seriousness, the scale of the penalty point issue.

2 794 Q. Yes.

3 A. More importantly for us, I think, was how credible a
4 person was Maurice McCabe. And I think some of us,
5 certainly myself, took a few minutes to make an 15:56
6 analysis and decide that he was genuine and credible.

7 795 Q. Yes. And I think, in fairness, after you had taken his
8 evidence and there was an issue about whether it would
9 be published or not, but you were happy to describe him
10 as having been credible and knowledgeable on the issue? 15:57

11 A. Yeah, I think the journalist went for me probably first
12 after the meeting because I was one of the people who
13 had reservations.

14 796 Q. Yes.

15 A. And I think John McGuinness probably alluded to this; 15:57
16 you know, there were people on the Committee who had
17 reservations about creating a precedent, an important
18 precedent with regard to a serving member of the force
19 coming into the Oireachtas, to the Public Accounts
20 Committee. And we had never really got to the end of 15:57
21 the debate with regard to a private or public meeting.
22 The expectation was that we would have dealt with that
23 on the Thursday morning in a private session. We never
24 got to that point, because my understanding is the
25 clerk informed some of us that Sergeant McCabe himself 15:58
26 would have preferred, or did prefer, to have the
27 meeting in private session for his own legal reasons.

28 797 Q. Are you talking about the Thursday that he actually
29 came to give evidence?

1 A. Yes, yes.

2 798 Q. Yes.

3 A. So with regard to, you know, myself -- sorry, I'm
4 cutting across you.

5 799 Q. Well no, it's interesting, but your colleague, 15:58
6 Mr. Murphy, in his statement to the Tribunal makes
7 reference to you and he did say that you seem to be
8 uncomfortable at the direction the Committee was taking
9 at the stage before you had got to Sergeant McCabe's
10 evidence. But I perhaps ought to just open that 15:58
11 portion of what he had said. It's at page 1452 in
12 volume 6 if you wish to look at the paper version.

13 CHAIRMAN: But I mean, Mr. McGuinness, I'm wondering
14 does it really matter in the sense that it was
15 certainly a point where there could be a legitimate 15:59
16 debate and I think any position taken up on either side
17 would have been based on reasonable sound
18 considerations, it's a matter of balance really.
19 Certainly there couldn't be any comment made by me
20 against anyone who had any such concerns. 15:59

21 MR. MCGUINNESS: Yes. It's really just a question,
22 Chairman, of where matters stood at a particular time,
23 it may be relevant to the rationale for Commissioner
24 Callinan seeking to meet the Chairman.

25 CHAIRMAN: All right. There certainly was a debate and 15:59
26 it was finely balanced. Yes.

27 MR. MCGUINNESS: It's just in that context. I'm not
28 sure, have you got that, deputy?

29 A. Could you give me the reference again.

1 800 Q. I'm sorry, 1452.

2 A. Okay. Yeah.

3 801 Q. And he is answering a question there posed by the
4 Tribunal but he says in the second sentence:

5 16:00

6 "At this time --"

7

8 This is paragraph 5.

9

10 "At this time I was concerned as to the direction the 16:00
11 Committee were taking generally in terms of potentially
12 acting outside of its remit. The concerns were raised
13 publicly by me around the time in relation to another
14 matter."

15 16:00

16 which obviously doesn't concern us.

17

18 "I did not believe that we should be taking evidence
19 from Mr. McCabe and that his was a matter more
20 appropriate to the Justice Committee. At some time it 16:00
21 was made known to us that the Justice Committee would
22 not accommodate a hearing from Sergeant McCabe and I
23 think also that it would not be pursuing the report on
24 the management of the fixed charge notice system
25 completed by the C&AG but I can't be certain of this." 16:00

26

27 He goes on to say on the next page:

28

29 "While this particular issue was unfolding I remember

1 John Deasy being uncomfortable in relation to our
2 investigations into the C&AG's report on the management
3 of fixed charge notice system. What made him
4 uncomfortable I do not know and I did not press him on
5 the matter. I believed at the time we had similar 16:00
6 concerns about the direction the Committee was taking
7 generally and so I honestly cannot say now if his
8 discomfort was anything more than the same concern I
9 felt. But at the time I had no reason to believe it
10 was anything more than that." 16:01

11

12 Perhaps you would --

13 A. Okay, I wasn't uncomfortable with the C&AG's report
14 into the management of the fixed charge notice. Was
15 there some discomfort with regard to the way the 16:01
16 Committee was operating? Over the four years there was
17 a constant discomfort over the way that Committee
18 operated with regard to its remit. There's a pending
19 Supreme Court case, you know, relevant to that
20 particular issue. It certainly was a live issue when 16:01
21 it came to the whistleblowers coming into the
22 Committee. And it had nothing to do with the substance
23 of the fixed notice penalty report by the C&AG. There
24 were political considerations here. Members of the
25 Committee wanted the whistleblowers to come into the 16:01
26 Committee for their own reasons.

27 802 Q. Okay. Can we leave those aside?

28 A. Sure.

29 803 Q. I think you had a concern that the Committee wouldn't

1 be engaging in any sort of judicial findings as against
2 individuals?

3 A. Yes.

4 804 Q. And you were obviously conscious of the Abbeylara
5 decision, I take it? 16:01

6 A. Yeah. Look, I think I said publicly that I didn't
7 think politicians were capable of, you know, making
8 quasi judicial decisions, which is the direction I
9 thought the Committee was headed in.

10 805 Q. Yes? 16:02

11 A. And there was an issue with regard to how to deal with
12 this, whether in public and private, like, I say, which
13 was refer resolved. It was resolved by Sergeant McCabe
14 in the end. So we never really got to the bottom of
15 that. 16:02

16 806 Q. All right. But we have already opened obviously the
17 portion of the transcript of the hearing of the 24th
18 where the Chairman announced the intention to take
19 Sergeant McCabe's evidence?

20 A. Yes. 16:02

21 807 Q. And is it correct that at that stage the issue of
22 public/private as a decision by the Committee hadn't
23 been taken?

24 A. Not at all. No.

25 808 Q. Okay. And you mentioned Sergeant McCabe there, and is 16:02
26 it correct that he indicated whether himself or through
27 his solicitors that he wanted to take legal advice
28 about giving evidence to the Committee?

29 A. Yeah. And I think he let us know what that decision

1 was later in the week, later in the following week.

2 809 Q. And did that enable then the Committee to decide that
3 they should take his evidence and that it was taken in
4 private for that reason?

5 A. I think it goes like this: If we had actually 16:03
6 assembled on the Thursday that Maurice McCabe was meant
7 to come into the Committee and he hadn't had that legal
8 advice, if there had been a vote to let Maurice McCabe
9 come into the Committee in public session it would have
10 been won. So for that reason, his decision or his 16:03
11 desire to come in in public session cut that off at the
12 pass. We never got to have that debate.

13 810 Q. All right. In any event, he gave his evidence in
14 private. You personally found him to be credible. And
15 I think did that persuade you to speak to the Taoiseach 16:03
16 in relation to the matter?

17 A. Two things happened that persuaded me to speak to the
18 Taoiseach. The comment by Commissioner Callinan and
19 the Committee appearance by Sergeant McCabe, in
20 conjunction. And I didn't speak really -- I didn't 16:04
21 speak to anyone. I made my own mind up. And I think
22 after listening to his evidence I felt he was
23 completely genuine, completely credible and on the
24 level. Like I said, I don't think he got everything
25 right, but I thought we were dealing with somebody who 16:04
26 was an honest actor, and who was really just trying to
27 do his job. So some time after that I contacted the
28 Taoiseach of the day and there was a meeting in
29 Government Buildings, there was some representatives

1 from waterford, dealing with waterford issues, I asked
2 to speak to him privately after the meeting and I told
3 him that in my opinion that Sergeant McCabe would be
4 vindicated and that the way this was being dealt with
5 was completely wrong. I'm not sure, at that point 16:04
6 whether Leo Varadkar had weighed in or not.

7 CHAIRMAN: Again, I'm becoming uncomfortable,
8 Mr. McGuinness. I mean, I have got a remit, and you
9 will forgive me, deputy, but I feel you're doing your
10 very best to help us with what you are saying, there 16:05
11 may be issues in relation to whether you're correct or
12 not, I don't know, but going into political matters, I
13 would prefer to stay away.

14 A. That is fine, okay.

15 811 Q. MR. MCGUINNESS: Yes. But in terms of a negative 16:05
16 briefing, apart from what Commissioner Callinan said to
17 you prior to the PAC meeting, had you heard any
18 negative briefing from any member of An Garda Síochána
19 or the Press Officer or any indirect evidence of Garda
20 briefing from journalists? 16:05

21 A. I think Deputy McGuinness alluded to something earlier,
22 in my opinion, 95% plus of what you are hearing in
23 Leinster House is nonsense and gossip. And yes, were
24 there people saying or alluding to things with regard
25 to Maurice McCabe, his character, I believe there were. 16:05
26 If you are asking me to point to a specific line of
27 communication or information I wouldn't be able to tell
28 you that.

29 812 Q. All right. You did say in your Prime Time interview

1 that you spoke to Enda Kenny and you recorded at page
2 1471 as saying:

3
4 "At the meeting I said to him that I believed that
5 Maurice McCabe would be vindicated, that he was being
6 treated extremely badly." 16:06

7
8 But you don't expressly say that you told Enda Kenny
9 about the comment made by the Commissioner, do you
10 recall -- 16:06

11 A. No, I don't think I think.

12 813 Q. -- informing him of the Commissioner's comment?

13 A. No, I don't think I did. You have limited time. I
14 think that is maybe one consideration. I was very
15 matter of fact with Enda Kenny. You know, I was a 16:06
16 colleague of the former Taoiseach's, we were not close
17 politically.

18 814 Q. Yes?

19 A. So I think my discussion with him would have been very
20 matter of fact. I probably wouldn't have got into he 16:06
21 said this or she said that.

22 815 Q. All right. I thought you had said a minute ago that
23 you had informed Enda Kenny of the Commissioner's
24 comment, am I wrong in that?

25 A. I'm not so sure I did. 16:07

26 CHAIRMAN: No, I don't think you did.

27 MR. MCGUINNESS: That is my mistake.

28 CHAIRMAN: And you might forgive me for cutting that
29 off at the pass, I hope for proper reasons.

1 816 Q. MR. MCGUINNESS: Yes. In any event, that's the only
2 matter you have direct evidence of, Commissioner
3 Callinan's comment?
4 CHAIRMAN: You were going to ask I think,
5 Mr. McGuinness, as well about how bad the rumours were 16:07
6 or what the nature of them was.
7 MR. MCGUINNESS: Yes.
8 CHAIRMAN: I suppose everyone else has been asked, it
9 would be no harm to get it out in the --
10 MR. MCGUINNESS: Yes. 16:07
11 817 Q. Well, had you heard of any allegation against Sergeant
12 McCabe in relation to a sexual assault case or a DPP
13 file pending or completed?
14 A. You know, I wish I was more definite about this. I
15 have a vague recollection of somebody saying something 16:07
16 to me and I cannot tell you who it was or what the
17 content of that conversation was. I have a vague
18 recollection, yes.
19 818 Q. Yes. And are you able to place that in time?
20 A. I cannot. 16:08
21 819 Q. All right. Okay. Thank you Mr. Deasy.
22 CHAIRMAN: Is there much contest about this? It's
23 probably only you, Mr. O'Higgins, really.
24 MR. MÍCHEÁL O'HIGGINS: Yes.
25 MR. MICHAEL O'HIGGINS: I have one or two questions. 16:08
26 CHAIRMAN: You do? In relation to
27 Superintendent Taylor? How does he come into it?
28 MR. MICHAEL O'HIGGINS: It's purely down to the
29 conversation that occurred between himself and

1 Commissioner Callinan, nothing -- it's confined to
2 that.

3 CHAIRMAN: No, I appreciate, Mr. O'Higgins, but
4 there's -- I can't see how it impacts in any way.

5 MR. MICHAEL O'HIGGINS: Only insofar as my client has 16:08
6 given a narrative to the Tribunal about the forming of
7 negative briefing.

8 CHAIRMAN: If you want to ask about that, certainly,
9 yeah. Do.

10 MR. MICHAEL O'HIGGINS: It seems to be three questions. 16:08

11 CHAIRMAN: Mr. O'Higgins, I beg your pardon, I didn't
12 see Mr. McDowell.

13 MR. MCDOWELL: I have one question.

14 CHAIRMAN: Please go ahead.

15 16:09

16 WITNESS WAS CROSS-EXAMINED BY MR. MCDOWELL AS FOLLOWS:

17 820 Q. MR. MCDOWELL: Can I bring you to page 1472, Deputy
18 Deasy? I appear for Sergeant McCabe I should point
19 out.

20 A. Yeah. 16:09

21 821 Q. You were asked by Ms. Hannon in this radio interview:

22

23 "Do you believe that the campaign against Maurice
24 McCabe?"

25 16:09

26 Then:

27

28 "The mud has stuck basically politically?"

29

1 And you answered:

2
3 "Massively. I think the campaign against Maurice
4 McCabe was extremely effective in hardening opinions
5 with regard to his character and I think that really is 16:09
6 what we were coming up against. It's only when the
7 inspector's report came out later that month --"

8
9 And I think that is the Garda inspector's report in
10 February on the issue of penalty points. 16:09

11
12 "-- and confirmed pretty much everything he was saying
13 or at least the premise of it, and when Leo Varadkar
14 made his public assertion that their actions were
15 distinguished, and things began to change." 16:09

16
17 Just I want to ask you about your statement, that the
18 mud had stuck basically politically and you said
19 "massively, I think the campaign against Maurice McCabe
20 was extremely effective in hardening opinion with 16:10
21 regard to his character." Do you want to comment on
22 that?

23 A. I don't know if I can give my subjective view with
24 regard to what -- I couldn't believe that a serving
25 Commissioner would say that about a serving officer. 16:10
26 You know, someone was asking well, me what did he say,
27 was it derogatory, was it very derogatory as you
28 described it -- my own grandfather was a garda sergeant
29 and I think that if a serving Commissioner had said

1 something about, you know, my grandfather in those
2 terms I would definitely think of it as being utterly
3 derogatory, yes. I couldn't believe it. And it took
4 my breath away I have to say. So does that answer your
5 question?

16:11

6 MR. McDOWELL: It does, yes, thank.

7 CHAIRMAN: All right Mr. O'Higgins.

8

9 WITNESS WAS CROSS-EXAMINED BY MR. MICHAEL O'HIGGINS AS
10 FOLLOWS:

16:11

11 822 Q. MR. MICHAEL O'HIGGINS: Deputy Deasy, just two or three
12 questions for you. It's really, if you can, you may
13 not at this remove, try and recollect for us -- I
14 appear for Superintendent Taylor, by the way.

15 A. Sure.

16:11

16 823 Q. Michael O'Higgins is my name -- if you could try and
17 remember what the words actually used were, because I
18 do note in your Prime Time interview you described them
19 as very derogatory and also as being very strongly
20 worded and a very serious attack, but yet it's clear
21 you were saying the nature of what he said was he
22 couldn't be believed or trusted on anything, that is a
23 summary. Do the words spring to mind at all, actually
24 used?

16:11

25 A. Those are the words used. Those were the words he
26 used.

16:11

27 824 Q. He can't be believed or trusted on anything?

28 A. Yeah, yeah.

29 825 Q. I mean, again you yourself have used the term

1 subjective assessment, but appraising it objectively if
2 it was communicated to you in terms he wasn't to be
3 believed or trusted on anything, is that what you meant
4 simply by strongly worded? Was it because it was
5 unequivocal or what? 16:12

6 A. No, there's more to it than that. Basically you have
7 to -- and I think I have got to fill this in a small
8 bit, fair enough, hopefully you will allow me Chairman,
9 maybe I should say this. In my opinion, I mean, and I
10 was one of the people maybe to the forefront with 16:12
11 regard to not hearing Maurice McCabe's evidence at that
12 point, and then when the Commissioner said what he said
13 to me I was very, very surprised. My opinion, my
14 opinion is this: That they had lost the narrative by
15 the time they came into the Public Accounts Committee 16:13
16 on that Thursday. And they had lost control of the
17 events and the decision had already really been made
18 within the Committee to allow Maurice McCabe come in.
19 And I think they knew it. And it was kind of a last
20 gasp to actually prevent him from challenging their 16:13
21 authority directly. And I think that is what happened.
22 And that is my opinion. And I think that is when -- I
23 think they actually lost control of their own behaviour
24 in some ways, by actually addressing people like me,
25 Committee members, before the Public Accounts 16:13
26 Committee, I think that is what happened.

27 826 Q. Thank you very much.

28
29 CHAIRMAN: Right, Mr. O'Higgins, do you want to ask --

1 I know there is a contradiction.

2 MR. MÍCHEÁL O'HIGGINS: Well, I had anticipated
3 actually asking no or one question, but I think just
4 arising from the slight change in tempo --

5 CHAIRMAN: I know, there is a change of tempo, but you 16:13
6 know the fact that Mr. Deasy has an opinion, I mean
7 that is fine, it's legitimate, it's grand, but it's not
8 an expert opinion on the growth of crystals.

9 MR. MÍCHEÁL O'HIGGINS: Yes.

10 CHAIRMAN: AND that's the way that it is. I use that 16:14
11 simply by saying the usual exception to the rule in
12 evidence does not apply.

13 MR. MÍCHEÁL O'HIGGINS: Yes.

14 CHAIRMAN: Although it is interesting and helpful.

15 16:14

16 WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL O'HIGGINS AS
17 FOLLOWS:

18 827 Q. MR. MÍCHEÁL O'HIGGINS: Micheál O'Higgins, Deputy
19 Deasy, for certain members of An Garda Síochána and I
20 am asking these questions on behalf of former 16:14
21 Commissioner Martin Callinan.

22 A. Yeah.

23 828 Q. Just for your assistance, I wonder could page 1503 be
24 called up, which is I think your initial statement to
25 the Tribunal and it's dated 10th March 2017 and I think 16:14
26 it's a response to the Chairman's request for, I won't
27 say a call to arms, but his request generally for
28 people to provide any information they might provide?

29 A. Yeah.

1 829 Q. And I think this is a very short statement, it's five
2 lines and then a two-line concluding paragraph, and
3 what you say, what you attribute to Martin Callinan is
4 that he made reference to Sergeant McCabe and then you
5 say:

16:15

6
7 "He referred to Sergeant McCabe as being someone who
8 could not be believed or trusted."

9
10 All right? And you say --

16:15

11 A. Yeah.

12 830 Q. -- "that is my best recollection."

13
14 wouldn't it follow from that, and in fairness to you,
15 you are only giving your best recollection, that is
16 your best recollection of what was said?

16:15

17 A. That is what I believe was said, yes.

18 831 Q. Yes. I don't mean to be nit-picking here, because I
19 appreciate you are giving your best recollection and it
20 is quite a while ago, in your first statement you
21 haven't included the words, for what it is worth you
22 haven't included the words "on anything"?

16:15

23 A. Yeah.

24 832 Q. So it would seem that in your first statement, the
25 height of what you attributed to the former
26 Commissioner was "he was someone who could not be
27 believed or trusted", is that fair?

16:16

28 A. Yeah.

29 833 Q. Right. And in that context I had understood you to not

1 demure or not take issue with the matters that were put
2 to you by Mr. McGuinness for the Tribunal when he
3 brought you through your evidence, that is to say you
4 didn't take tremendous issue with the suggestion made
5 by Martin Callinan that insofar as you formed that view 16:16
6 he was saying someone who could not be believed or
7 trusted, my client was offering -- that was in the
8 context of my client saying there were questions and
9 inaccuracies over his allegations, all right, in
10 relation to the penalty points? 16:16

11 CHAIRMAN: A misconstruction of words.

12 MR. MÍCHEÁL O'HIGGINS: Yes.

13 CHAIRMAN: In other words, that you turned in your
14 mind, and look, it does happen, somebody saying
15 something to the effect that look, there's issues over 16:17
16 your accuracy of what's being put forward in relation
17 to penalty points, loss of revenue and not everything
18 he says is correct, that the question put to you is
19 that you have turned that into this is a man who can't
20 be believed or trusted on anything, so that is the 16:17
21 question by Mr. O'Higgins.

22 MR. MÍCHEÁL O'HIGGINS: Yes.

23 A. Are we asking about believed or trusted and believed or
24 trusted on anything? Is that what we are getting at
25 here? 16:17

26 CHAIRMAN: No, we're not, no, no.

27 A. Or something else?

28 CHAIRMAN: No, what is being put to you is that you
29 misconstrued Commissioner Callinan's statement --

1 A. No, I did not.

2 CHAIRMAN: -- which was, let us say --

3 A. Okay.

4 CHAIRMAN: -- a cool and rational statement to the
5 effect that one has to be careful.

16:17

6 A. I think you've got to go back to what I said with
7 regard to -- you know, I kind of went along with me
8 having asked about the whistleblowers and I certainly
9 would have remembered his response and I think that I
10 didn't misconstrue or mix it up with regard the
11 minutiae of the detail of the issues that he says he
12 referred to me. And I frankly have no memory of that.
13 I am very clear about one thing, that when he says
14 believed or trusted he was referring to Maurice McCabe
15 and his character.

16:17

16:18

16 834 Q. MR. MÍCHEÁL O'HIGGINS: I think you were brought
17 through page 643 which was Martin Callinan's, former
18 Commissioner Callinan's response in substance to your
19 position --

20 A. Yeah.

16:18

21 835 Q. -- as promoted by you on the Prime Time programme on
22 the 15th February 2017. Just so we might do this as
23 quickly as we can, because I appreciate it's late in
24 the day, he acknowledges that he spoke to you, so
25 there's common ground on that; and he said that you
26 indicated a number of areas, in fairness to you, you
27 were tipping him off what you proposed to cover?

16:18

28 A. And I may have. I may have. Yeah.

29 836 Q. So that is potential common ground?

1 A. Yeah.

2 837 Q. You may have, all right. He says that you asked him
3 your views on whistleblowers appearing before the
4 Committee and he indicated that he had made his views
5 known on that, is that fair? 16:19

6 A. Well, that's --

7 838 Q. Might he have said it?

8 A. Well, that is what he is saying. I mean, I don't
9 remember him saying anything other than what I've said
10 in my statement. 16:19

11 839 Q. In fairness you're not disputing it, it may have been
12 said by him --

13 A. Yes.

14 840 Q. -- is that fair?

15 A. I'm not disputing that. 16:19

16 841 Q. Right. You see his position is that he has never made
17 any bones about his fundamental objection to a serving
18 memory going onto the PAC, he respects your position on
19 that and you made it clear I think in the transcript
20 but he has always made clear his position on it. Just 16:19
21 lifting it out of Sergeant McCabe for a moment, just at
22 a level of principle, that was his position. And you
23 agree to differ on that?

24 A. Well, I differ with your interpretation of what he said
25 or how he said it and the import that was intended when 16:20
26 he said what he said.

27 842 Q. Well, I haven't come to that.

28 A. Okay.

29 843 Q. But I'm suggesting to you that -- and I understand you

1 not to be demurring from it, that he indicated you have
2 my views on that, that is to say on serving members
3 coming before the Committee?

4 A. Again, I don't remember him saying that.

5 844 Q. And any reference to his views as to privacy? 16:20

6 A. No.

7 845 Q. All right. And in addition to that, he indicated --
8 sorry, he says by way of response to your position that
9 he cautioned on the need to be aware of the correctness
10 of the information being imparted by Sergeant McCabe? 16:20

11 A. Yeah, I think I have answered this already, I have no
12 recollection of that being said.

13 846 Q. But again, you don't dispute he may have said that?

14 A. I'm not. No.

15 847 Q. Right. 16:21

16 A. No. I certainly don't remember it.

17 848 Q. And if you accepted that may have been said, and I
18 appreciate you're not positively confirming it, you're
19 not disputing it, would you agree with me there's not a
20 million miles between the -- well, it's a matter for 16:21
21 the chair really, but insofar as he is offering the
22 view he accepts he cautioned on the need to be aware of
23 the correctness of the information, it's not a giant
24 leap from that?

25 A. There is a big leap involved here. I mean, it was very 16:21
26 clear to me what he meant by what he said, and referred
27 to Maurice McCabe's character and not what you are
28 referring to or suggesting.

29 849 Q. And where did he use the word character?

1 A. I am using the word character. I'm not saying it's
2 anywhere here.

3 850 Q. You're using the word character?

4 A. Yes. It is my interpretation, yeah.

5 851 Q. Am I correct, he never used the word character? 16:21

6 A. Not that I can remember, no.

7 852 Q. Or certainly that word doesn't appear in any of your
8 statement?

9 A. That is my interpretation, yeah.

10 853 Q. Right. And the conversation from beginning to end 16:22
11 lasted how long?

12 A. Less than a minute in my opinion.

13 854 Q. And I think you acknowledged there was a degree of
14 to-ing and fro-ing in the coffee dock area?

15 A. Yeah, it's a public area, yeah. 16:22

16 855 Q. And a degree of hubbub with noise and so on, would that
17 be fair?

18 A. Yes, there is some noise there, yeah.

19 856 Q. Right. Just one other thing that arose out of somebody
20 else's questions of you: You mentioned this issue as 16:22
21 to the decision, separate question now, Deputy Deasy,
22 the decision to ultimately hold Sergeant McCabe's
23 evidence, take that in private. Insofar as it appeared
24 to have been Deputy McGuinness's evidence that the
25 decision to hold it in private was communicated to 16:22
26 Martin Callinan on the Tuesday, was (a) made on the
27 Tuesday and likely to have been made on the Tuesday
28 either by the clerk or by him, you don't -- had you
29 heard that before?

1 A. Em, no.

2 857 Q. Is it possible, therefore, that that was not a decision
3 taken by the Committee sitting as a unit if you
4 yourself, as a member of the Committee, hadn't heard
5 it? 16:23

6 CHAIRMAN: Well, that was the following Tuesday as I
7 understand it and it was my question to Deputy
8 McGuinness I think, Mr. O'Higgins. I think it was the
9 following Tuesday, the 28th, no?

10 MR. MÍCHEÁL O'HIGGINS: Yes, the 28th before the 16:23
11 Thursday.

12 CHAIRMAN: Yes.

13 MR. MÍCHEÁL O'HIGGINS: The 30th.

14 CHAIRMAN: Which is the 30th.

15 MR. MÍCHEÁL O'HIGGINS: When he gave the evidence. 16:23

16 CHAIRMAN: Yes. So your question is: Do you remember
17 a Committee meeting actually making a formal decision
18 on that, is that right?

19 A. No, there was none.

20 CHAIRMAN: There was none. It was what, a show, people 16:23
21 counting heads and --

22 A. I think Deputy McGuinness alluded to this in his -- I
23 think you might have been asking the question and I was
24 here listening to him, and he talked about after the
25 meeting with former Commissioner Callinan in the car 16:24
26 park, he said the only decision that had to be taken at
27 that point was whether it was going to be in private or
28 in public.

29 858 Q. MR. MÍCHEÁL O'HIGGINS: Well, it's that decision I'm

1 talking about.

2 A. Yes.

3 859 Q. So if that was communicated, if that was made on the
4 28th, the Tuesday, it was a decision made other than by
5 the full Committee, correct? 16:24

6 A. How this worked was, the clerk would have informed
7 members of the Committee, this is how I think it
8 worked, that Maurice McCabe would prefer to come in, in
9 private. I seem to remember a conversation with the
10 clerk and sometimes things, the way I put it to you, 16:24
11 happen naturally, nobody was really looking forward to
12 a fight on Thursday morning with regard to public or
13 private, and when members like myself, who had some
14 reservations were told that this was going to happen in
15 private, we went along with it. And for the reason I 16:24
16 mentioned earlier, if there had been a vote in the
17 Committee for this to have occurred in public we would
18 have lost the vote. So, to actually be assessed of
19 Maurice McCabe's legal concerns and have it relayed to
20 us that he'd prefer it in private, it sorted everything 16:25
21 out and suited everybody.

22 CHAIRMAN: All right. So the fight had gone away.

23 A. Exactly, yeah.

24 860 Q. MR. MÍCHEÁL O'HIGGINS: I had understood John
25 McGuinness, Deputy McGuinness to indicate the decision 16:25
26 was to be made on the Tuesday and was made on the
27 Tuesday and I think he indicated communicated to my
28 client on the Tuesday.

29 CHAIRMAN: There's various bits of evidence on that.

1 A. Yeah.

2 CHAIRMAN: He also said look, there wasn't a formal
3 decision, it was consensus. Now I didn't know what
4 that means. But again, I wasn't going to pursue that.

5 MR. MÍCHEÁL O'HIGGINS: I will leave it. 16:25

6 CHAIRMAN: But he did say either he or the clerk phoned
7 Martin Callinan on his mobile to tell him that.

8 MR. MÍCHEÁL O'HIGGINS: On the Tuesday I think.

9 CHAIRMAN: Yes, I think it was, yes.

10 861 Q. MR. MÍCHEÁL O'HIGGINS: So if that be established, that 16:26
11 it was -- or if that evidence were given, that it was
12 communicated to Martin Callinan on the Tuesday it
13 follows logically, doesn't it, that the decision had
14 been made at that point?

15 A. It does. 16:26

16 862 Q. And you're not aware of any vote taking place to
17 formally make that decision, one way or the other?

18 A. We never got to that point in that week. And I think
19 that it was, maybe it was -- I won't call it a
20 unilateral decision, but it was a decision where 16:26
21 frankly everybody said okay, fine, there's the middle
22 ground. And you know, I don't think -- certainly the
23 way I put it to you is: Nobody objected at that point
24 to Maurice McCabe coming in, in private session.

25 863 Q. Right. well, if it was a unilateral decision it would 16:26
26 have been a decision made unilaterally by John
27 McGuinness?

28 CHAIRMAN: I don't think anybody is saying it's a
29 unilateral --

1 A. No, I don't. I'm not.

2 CHAIRMAN: The evidence so far has been that it was a
3 consensus. I mean, it happens almost organically I
4 suppose.

5 A. The way I put it to you is, if I can answer this: The 16:26
6 clerk would contact someone like myself and, you know,
7 he'd suss me out. He would kind of say, well, this is
8 probably going to end up in private decision, McCabe
9 wants to come in, in private session, it suits him
10 legally, and he took soundings with regard to Committee 16:27
11 members. You know, somebody could have objected to
12 that on the Thursday, but nobody did. We didn't get to
13 that point.

14 864 Q. MR. MÍCHEÁL O'HIGGINS: But I will leave it at this:
15 On the Thursday, the 30th, was it your understanding 16:27
16 the issue remained on the table on the 30th?

17 A. No. The decision was made then to actually bring
18 Maurice McCabe in, in private.

19 865 Q. Right. And had been made?

20 A. Made by osmosis, consensus, however you want to call 16:27
21 it.

22 866 Q. Thank you.

23 A. Yeah.

24 CHAIRMAN: Yes. Do you want to ask any further
25 questions? No. I wouldn't be anticipating that there 16:27
26 is going to be a whole load more questions, Ms. Leader,
27 I think that is it, isn't it? Oh I'm sorry,
28 Mr. McGuinness.
29

1 WITNESS WAS RE-EXAMINED BY MR. MCGUINNESS AS FOLLOWS:

- 2 867 Q. MR. MCGUINNESS: Just one matter. The Irish Times were
3 reporting both on the 28th and the 29th that Garda
4 McCabe had requested it be heard in private, and would
5 you have been aware of that or is it very likely that 16:28
6 you would have been made aware of that?
- 7 A. Yeah. I think the clerk did make us aware of that.
- 8 868 Q. Then just one other matter: You have been asked
9 obviously about the remark made by Commissioner
10 Callinan, but can you say anything about whether Deputy 16:28
11 Commissioner O'Sullivan remained in company with either
12 you or Commissioner Callinan when the remark was made,
13 whether she was in a position to hear it or likely to
14 have heard it?
- 15 A. You know, I will give you the dynamics of the room. He 16:28
16 turned to me and was speaking directly to me, anybody
17 who knew the dynamic of the senior Gardaí at that time,
18 she was always fairly close to the Commissioner. But
19 if you are asking me was she able to hear what was
20 being said in a busy room with his back to her, I doubt 16:28
21 it. Okay.
- 22 869 Q. And is it correct to say that the first time you
23 recorded what was said was in your statement that you
24 gave the Tribunal in 2017 as to what was said?
- 25 A. Say that again, sorry. 16:29
- 26 870 Q. You didn't note it on any earlier occasion than in your
27 statement to the Tribunal in 2017, the remark?
- 28 A. I'm sorry, I'm confused.
- 29 871 Q. Did you make a note of it?

1 CHAIRMAN: In other words, you're being asked did you
2 do anything like, it is -- and again of course this is
3 contested as well, Deputy John McGuinness did pull in
4 at a lay-by and put something in a notebook, it doesn't
5 have to be in a lay-by, for all I know you could have 16:29
6 noted it in your study or --
7 A. Did I make notes? No.
8 CHAIRMAN: All right.
9 872 Q. MR. MCGUINNESS: So the first time you put it in
10 writing then is correct on the 10th March 2017 when you 16:29
11 furnished your statement to the Tribunal?
12 A. The only time I put anything else in writing with
13 regard to this is the email which I sent to the
14 Taoiseach, which followed on from the meeting I had
15 with him. 16:29
16 873 Q. Yes?
17 A. Which I reminded him of what I had said in the meeting
18 to the effect that I thought Maurice McCabe would be
19 vindicated and was being treated badly. That is the
20 only record I believe I ever made of this. 16:30
21 874 Q. Thank you. Thank you, Mr. Deasy.
22 CHAIRMAN: I have no questions thank you very much
23 deputy.
24 A. Thank you.
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THE WITNESS THEN WITHDREW

CHAIRMAN: We can go off transcript.

THE HEARING THEN ADJOURNED UNTIL THURSDAY, 12TH APRIL
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