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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 MONDAY, 21ST MAY 2018 - DAY 79

79

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON MONDAY, 21ST MAY
2 2018:

3
4 MR. MARTIN CALLINAN CONTINUED TO BE EXAMINED BY
5 MR. MARRINAN AS FOLLOWS:

09:56

6 MR. MARRINAN: Mr. Callinan, please.

7 1 Q. Now, I think on Friday, Mr. Callinan, we were dealing
8 with the build-up to the Public Accounts Committee
9 meeting on 23rd January of 2014, and would you agree
10 with me that it appears that the motivation of the
11 whistleblowers was touched upon, certainly during the
12 course of the pre-PAC meetings that you had with other
13 senior Gardaí?

10:03

14 A. Well, according to the note, there is a mention in the
15 note about motivation so I am assuming somebody had
16 mentioned it at some point, but I don't have that
17 recall.

10:03

18 2 Q. And it does appear that there was some reference to the
19 2006 allegation of sexual assault made against Sergeant
20 McCabe, isn't that right?

10:03

21 A. I saw that mentioned again in the note, Chairman, yes.

22 3 Q. Do you recall Mr. McLindon suggesting to you, and I
23 think Chief Superintendent Healy supported him in this
24 regard, that perhaps in the opening statement to the
25 PAC that you might say something positive about the two
26 whistleblowers?

10:04

27 A. I saw that note, Chairman, but I don't actually recall.

28 4 Q. Well, he says that you declined to accept his
29 suggestion and also chief Superintendent Healy's

1 suggestion, do you recall that?

2 A. No, I don't recall that, Chairman, but I do recall in
3 my evidence to the Public Accounts Committee indicating
4 my strong support for whistleblowers, you know, that
5 was my position. 10:04

6 5 Q. Well, that was in a general way, but this was going to
7 be a specific reference to the two whistleblowers who
8 had come forward in relation to the fixed charge
9 penalty notices. Did you not think that this was
10 perhaps an opportune moment to say something positive 10:05
11 about the two whistleblowers who no doubt have provided
12 some sort of public service by coming forward?

13 A. Well, Chairman, I think the fact that I referred to
14 whistleblowers generally, I mean, my view was, if
15 somebody witnesses wrongdoing or wishes to report 10:05
16 wrongdoing that they should be strongly supported, and
17 that was the point I was making, Chairman. I do accept
18 that I didn't make a specific reference to either of
19 the two whistleblowers that were known at that time,
20 but, I mean, my point was always that if someone wants 10:05
21 to report wrongdoing, they are perfectly entitled to do
22 so and that I would support that and I wouldn't allow
23 any form of intimidation or bullying or anything else
24 of that nature to take place. That was my position,
25 Chairman. 10:06

26 6 Q. And we know your position in relation to the idea that
27 a serving member of An Garda Síochána would give
28 evidence to the PAC, and we dealt with this on Friday
29 insofar as you had taken advice from the Attorney

1 General's office in relation to the matter and that you
2 had contacted Mr. Billy Hawkes in relation to the
3 matter and you had set out your stall very clearly to
4 the Public Accounts Committee in the correspondence
5 that we opened on Friday, isn't that right? 10:06

6 A. That's correct, Chairman, yes.

7 7 Q. And the matter was receiving quite a lot of media
8 attention, isn't that right?

9 A. It was, Chairman, yes.

10 8 Q. And it was to a very large extent you stating your very 10:06
11 firm position in relation to the idea of a serving
12 member giving evidence before the PAC and the PAC
13 asserting its right to call the evidence, isn't that
14 right?

15 A. Correct, Chairman, yes. 10:07

16 9 Q. And there didn't seem, on the eve of the PAC, on the
17 22nd January, to be much room for either side changing
18 their view in relation to it, isn't that right?

19 A. I accept that is the situation, Chairman, yes.

20 10 Q. I mean, you both appeared to be quite entrenched in 10:07
21 very opposing views on the same topic, isn't that
22 right?

23 A. I don't think there was any doubt whatsoever about
24 that, Chairman.

25 11 Q. And you had spoken to Brian Purcell, the Secretary 10:07
26 General, in relation to the matter, had you?

27 A. I had, Chairman, yes.

28 12 Q. And would you just tell us what you said to
29 Mr. Purcell?

1 A. In respect of?

2 13 Q. The PAC meeting. What conversations had you had with
3 Mr. Purcell prior to the meeting.

4 A. Prior to?

5 14 Q. Yes. 10:08

6 A. I'm not sure that there was any great detail in any of
7 the conversations, apart from the awareness, of course,
8 that I was appearing before the Public Accounts
9 Committee and he was aware of my position, certainly,
10 and he was aware of the fact that I had taken advices 10:08
11 in relation to the volume of materials that had been
12 disclosed to the Public Accounts Committee, and he was
13 aware of my views that that shouldn't have happened and
14 the efforts I was making to try and retrieve those
15 documents, so he was aware of all of that. 10:08

16 15 Q. Well, had you thrashed the matter out with him? Had
17 you discussed it with him, as to find out his views in
18 relation to the matter?

19 A. I don't think there was any discussion in relation to
20 how I would feel about doing my business and he 10:09
21 wouldn't cross that line, so to speak. But he had
22 similar views in relation to the materials that were
23 being passed on without my permission, to third
24 parties.

25 16 Q. So you'd both have been singing from the same 10:09
26 hymn-sheet in that regard, is that right?

27 A. In that respect, yes, Chairman.

28 17 Q. It's just that if we could have page 1686 up on the
29 screen, this is just a series of text messages that

1 were sent between you and he, it's probably just as
2 easy to look at the screen in relation to this. It's
3 just the top one there. It says "Brian". That is
4 actually a reference to Brian Purcell himself.

10:10

5
6 "The clerk of the PAC was not available --"

7
8 This is sent to you on the 22nd January 2014 at 18:54.

9
10 "The clerk of the PAC was not available but I spoke to
11 another official of the PAC who was also dealing with
12 the issue. He confirmed that the whistleblower will
13 not be there tomorrow."

10:10

14
15 And then the next response is from you, Commissioner
16 Callinan, 22/1/2014 at 18:54:

10:10

17
18 "Thanks, Brian."

19
20 Do you see that?

10:10

21 A. Yes.

22 18 Q. Had you asked him to ascertain from the clerk of the
23 PAC what the position was in relation to Sergeant
24 McCabe?

25 A. Yeah, there had been certainly a suggestion that
26 Sergeant McCabe would appear co-terminus with my
27 appearance, Chairman, and we certainly had a
28 discussion. Whether or not I specifically asked him to
29 conduct that inquiry, I cannot be certain, but it's

10:10

1 highly possible I did. I wouldn't rule it in or out.

2 19 Q. All right. So, in any event, you travelled to Dáil
3 Éireann on the 23rd, isn't that right?

4 A. Correct, Chairman, yes.

5 20 Q. And do you recall meeting John Deasy in the first 10:11
6 instance?

7 A. I do, Chairman, yes.

8 21 Q. Will you just tell us what your account of that meeting
9 is?

10 A. I spoke to him very briefly. It wasn't a lengthy 10:11
11 conversation, Chairman, and he indicated to me the
12 areas that he was going to question me on. He spoke
13 about the service of summonses, he spoke about the
14 registration of company cars, and he spoke about the
15 interaction between the Courts Services, An Garda 10:12
16 Síochána and other particular departments in the
17 context of providing a more efficient way of collecting
18 fines, and he also asked me whether -- what my views
19 were in relation to whistleblowers appearing before the
20 Public Accounts Committee. So I thanked him for the 10:12
21 information and I indicated to him that you have my
22 views in relation to the whistleblowers, the last point
23 he had mentioned, in that I had written on two separate
24 occasions pointing out my views in relation to that
25 particular topic. And I also mentioned, of course, 10:13
26 that it is the case that not all of the allegations of
27 Sergeant McCabe turned out to be correct and cautioned
28 about the inaccuracies of some of the information and
29 that the Committee, I was aware, had Mr. O'Mahony's

1 report in front of them to assist them in that
2 capacity.

3 22 Q. Where did this conversation take place?
4 A. It was -- there is a coffee dock just on the right
5 before you go down the stairs. I think, Chairman, you 10:13
6 visited the area; it's literally before you go down to
7 the steps to the lobby in front of the Committee rooms.
8 It is a very -- relatively short distance, possibly
9 from here to the end of the room. That type of
10 distance, I think, maybe less. 10:13

11 23 Q. And was there anybody else present?
12 A. Well, there were a number of colleagues in the
13 vicinity. Whether or not they overheard the
14 conversation, I'm not entirely sure.

15 24 Q. Well, do you believe they were in earshot? 10:14
16 A. I suspect they probably were not.

17 25 Q. You know that Mr. Deasy has an entirely different
18 version of this conversation, isn't that right?
19 A. I do, Chairman, yes.

20 26 Q. And if we just go, in the first instance, to page 1470 10:14
21 of the materials.
22 A. Thank you, Chairman.

23 27 Q. This is a recording of a conversation he had on Prime
24 Time, I think it was, on 14th February 2017, where he
25 is being interviewed by Miriam O'Callaghan and you see 10:15
26 there Mr. Deasy at that point in time said:
27
28 "Before the meeting I was approached by a very seni or
29 guard and he proceeded to make some very derogatory

1 comments about Maurice McCabe. The nature of which
2 were, you know, Maurice McCabe couldn't be believed and
3 couldn't be trusted on anything. They were very, very
4 derogatory. It was, you know, a serious attack and
5 very strongly worded." 10:15

6
7 Do you see that?

8 A. I do, Chairman, yes.

9 28 Q. If we then go to what he said to our Tribunal
10 investigators at page 1491, please. At the bottom of 10:15
11 that page he says:

12
13 "The former Commissioner was attending a PAC meeting
14 and the Commissioner and several other senior Gardaí
15 were in the coffee dock, one floor above the Committee 10:16
16 room. I spoke to Martin Callinan in the coffee dock
17 standing in an informal manner and the former
18 Commissioner made reference to Maurice McCabe as
19 someone who could not be believed or trusted. It was a
20 very quick conversation after saying hello, and that is 10:16
21 my recollection. I did not reply to the comment. The
22 reason being I was surprised at it. One element I have
23 thought about since, it was whether there was anyone
24 else in earshot and I can't say if there was anyone
25 else in earshot of the former Commissioner." 10:16

26
27 He then gave evidence on day 63. I will just produce
28 the transcript for you there. And if we just examine
29 what he then said in evidence when he came to give

1 evidence to the Tribunal. If you go to page 204.

2 A. Thank you, Chairman.

3 29 Q. You see there, line 9:

4

5 "Q. And you identified in your statement to the
6 Tribunal, given on the 10th March, that he was that
7 senior guard?

8 A. Correct.

9 Q. And could you just describe how he approached you?"

10

11 His answer was:

12

13 "A. The guards were already in the coffee dock and I
14 was on my way to Committee, I stopped off to get a
15 coffee, and he was standing, I believe, with Nóirín
16 O'Sullivan, former Commissioner, and --

17 Q. Had you met him before?

18 A. Yeah, I had, maybe once, you know, once or twice.
19 But I knew Nóirín better, former Commissioner
20 O'Sullivan. She tapped him on the arm and I think he
21 just turned around and put his hand out."

22

23 Do you see that?

24 A. I do, Chairman, yes.

25 30 Q. So, do you recall whether that was the way your
26 interaction with him commenced?

10:18

27 A. Yes, I would agree with that, Chairman.

28 31 Q. And then if you turn to page 206, and then if you go to
29 line 13:

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"The only part I do remember is him saying that Maurice McCabe was not to be believed or trusted with anything, and the reason I think I remember that is because it surprised me, I have to say."

10:19

Do you see there?

A. I see that, Chairman, yes.

32 Q. His account is at total variance with your account of what transpired, isn't that right?

10:19

A. It is, Chairman.

33 Q. I mean, in the first instance, he is saying that you mentioned Maurice McCabe by name, not by reference to him being one of the whistleblowers, isn't that right?

A. I see that, Chairman, yes.

10:19

34 Q. And that you were indicating a personal comment about Maurice McCabe, that he wasn't somebody who could be trusted, isn't that right?

A. I see that, Chairman, yes.

35 Q. And it seems to have had quite an impact on Mr. Deasy at the time. If we could just go to page 225 of the transcript. And if you go to line 23.

10:19

A. Thank you, Chairman, yes.

36 Q. "I don't know if I can give my subjective view with regard to what -- I couldn't believe that a serving Commissioner would say that about a serving officer. You know, someone was asking, well, me, what did he say, was it derogatory, was it very derogatory, as you have described it. My own grandfather was a garda

10:20

1 sergeant and I think that if a serving Commissioner had
2 said something about, you know, my grandfather in those
3 terms, I would definitely think of it being utterly
4 derogatory, yes. I couldn't believe it and it took my
5 breath away, I have to say. So does that answer your
6 question?" 10:21

7
8 If you'd also turnover two pages, then, at page 227 of
9 the material, of the transcript, his answer to a
10 question is: 10:21

11
12 "No, there is more to it than that."

13
14 This is in relation to whether or not McCabe was
15 someone who could be believed or trusted. 10:21

16
17 "No, there is more to it than that. Basically you have
18 to, and I think I have got to fill this in in a small
19 bit, fair enough, hopefully you will follow me,
20 Chairman. Maybe I should say this: In my opinion, I
21 mean, and I was one of the people maybe to the
22 forefront with regard to not hearing Maurice McCabe's
23 evidence at that point, and then, when the Commissioner
24 said what he said to me, I was very, very surprised.
25 My opinion, my opinion, is this: That they had lost
26 the narrative by the time they came into the Public
27 Accounts Committee on that Thursday, and they had lost
28 control of the events and the decision had already
29 really been made within the Committee to allow Maurice

1 McCabe come in and I think they knew it, and it was
2 kind of a last gasp to actually prevent him from
3 challenging their authority directly."
4

5 Do you see there? 10:22

6 A. I see that, Chairman, yes.

7 37 Q. That is a fairly forceful view that he has expressed
8 there, not only of the interaction that he says that he
9 had with you, but also the background to it, do you
10 understand? 10:22

11 A. Yes, Chairman.

12 38 Q. And what do you say in answer to that?

13 A. Well, I say, Chairman, that the words he is using in
14 relation to my comments about not being trusted or that
15 he couldn't be trusted on anything, they are not words 10:23
16 that I used, nor are they words that I would use about
17 any member of An Garda Síochána. If that was the
18 situation, Chairman, I would have been obliged to act.
19 I mean, this is a member of An Garda Síochána who would
20 be giving evidence in court, who would be dealing with 10:23
21 the public and would be expected to be a person who
22 could be trusted. So, I mean, that is the broad naked
23 reality here. And in addition to the commentary of
24 Mr. Deasy, where he expressed the opinion and
25 indicating that his grandfather was a member of the 10:23
26 Garda Síochána and he would have been very, very
27 saddened by a Commissioner of the day using that kind
28 of -- I can assure you I would be in the exact same
29 position if I said those things, but I certainly did

1 not say them, nor would I ever say those things about a
2 member of An Garda Síochána. So I cannot agree in any
3 way, shape or form that that opinion is correct. I
4 mean, it did strike me, looking at the materials, this
5 is a man who had possession of that information for 10:24
6 quite some time and didn't choose to act on it and I
7 would have thought that that is something that should
8 have happened. He also says that he thought that he
9 had a conversation with Mr. McGuinness in or around
10 March -- in around the time of the Tusla allegations, 10:24
11 Chairman, and he thought that the characterisation of
12 the conversation he had with Mr. McGuinness was very
13 similar to the type of conversation that I had with him
14 back on the 23rd January '14. Now, I thought that was
15 extraordinary, because on the 26th May '16 10:25
16 Mr. McGuinness is in the Dáil and he is talking about
17 the exact same type of scenario that I had indicated to
18 him that Sergeant McCabe couldn't be trusted and he
19 spoke about vile allegations, but there was no
20 reference to vile allegations in the previous 10:25
21 conversation he had with Mr. McGuinness, and, you know,
22 I would have thought that was the time for Mr. Deasy to
23 raise the issue in the Dáil - 'Well, I actually I heard
24 the Commissioner speaking in those terms as well' - and
25 that didn't happen. 10:25

26 39 Q. And what is the Chairman to read into that?
27 A. Well, I'm only giving you the view of the material that
28 I had read, Chairman, and I can only indicate to you
29 I'm here to tell the truth and I certainly did not use

1 those words expressed by Deputy Deasy.

2 40 Q. well, Deputy Deasy said that he had met you, met you I
3 think once prior to meeting you on this occasion. Is
4 there anything in the background between you and he
5 that we should know about in terms of providing a 10:26
6 motive for him to distort the conversation that he says
7 that he has with you?

8 A. I'm not aware, Chairman, of any reason that he would
9 have to say things about me that I hadn't said, but it
10 is the case that there has been interaction between 10:26
11 Mr. Deasy and Mr. McGuinness.

12 41 Q. Are you suggesting that there might be some political
13 advantage to be had by Mr. Deasy in distorting the
14 conversation that he says that he had with you?

15 A. I cannot say that, Chairman, I cannot say that, but I 10:27
16 have read the materials that have been put in front of
17 me.

18 42 Q. In any sense where he says that he was of the view that
19 perhaps the Gardaí had lost control of the events and
20 the decision had already been made within the Committee 10:27
21 to allow Maurice McCabe come in and that he thinks that
22 you knew it and it was a kind of last gasp to actually
23 prevent him from challenging their authority directly,
24 there is no sense of that, is there?

25 A. No, Chairman. We hadn't lost control of the situation. 10:27
26 The media were reporting what they were reporting, we
27 had no control over that, but the situation was, the
28 fixed charge penalty notice system was working and was
29 working well to a very large degree. Sergeant McCabe

1 and others brought about serious weaknesses in the
2 system that were corrected, but I think on Friday I
3 mentioned the fact that the attrition rate within the
4 time band of complaints that Sergeant McCabe had been
5 complaining about, it was 4.55% of an attrition rate, 10:28
6 and that reduced to 2.57% in relation to prosecutorial
7 discretion. So the system otherwise was working away;
8 effective or no, it was working. So we hadn't lost
9 control of the situation, Mr. Marrinan, as you are
10 suggesting. 10:28

11 43 Q. It's not -- I'm not suggesting it, it was a comment
12 that was made by Mr. Deasy.

13 A. Thank you for that correction, Mr. Marrinan, I fully
14 accept that.

15 44 Q. Now, had you met with Mr. McCarthy just before that or 10:29
16 did you meet with Mr. McCarthy immediately after
17 meeting Mr. Deasy?

18 A. I think it was just afterwards.

19 45 Q. It was just after, the impression that I had formed.
20 And you know that he, too, is making an allegation that 10:29
21 you spoke about Maurice McCabe and in a manner which
22 would suggest that you were trying to blacken Maurice
23 McCabe's reputation. You are aware of that?

24 A. I'm aware of that, Chairman, yes.

25 46 Q. If we could just have page 1507 on the screen, please. 10:29
26 This, Mr. Callinan, is in volume 6 of the material.

27 A. I am obliged, Chairman.

28 47 Q. This is the statement that he made to the Tribunal.

29 A. I beg your pardon, could I get the page number again,

1 sorry?

2 48 Q. 1570. This was made shortly after the Chairperson's
3 opening remarks after the establishment of the
4 Tribunal, and you will see there in paragraph 22, he
5 says: 10:30

6

7 "In the lobby outside the Committee meeting room I met
8 Commissioner Callinan and we spoke briefly. No one
9 else was a party to the conversation which lasted
10 probably not more than about five minutes." 10:31

11 A. Yes.

12 49 Q. Do you agree with those comments that he made there?

13 A. We actually met at the top of the stairs, Chairman, and
14 we walked down to that area that Mr. McCarthy is
15 speaking about. Other than that, I absolutely agree 10:31
16 with what is there, yes.

17 50 Q. "I had previously had no direct personal communication
18 or conversation with Commissioner Callinan about my
19 report."

20 10:31

21 Is that right?

22 A. That is correct, Chairman, yes.

23 51 Q. "I do not recall any conversation beyond normal social
24 greetings on the day with other senior Garda
25 personnel." 10:31

26

27 You didn't see him speaking with other senior
28 personnel, did you, other perhaps than greeting --

29 A. No, Chairman. No. But I think that would be normal,

1 out of courtesy maybe just saying hello or whatever.

2 52 Q. He says:

3

4 "Early in his conversation with me Commissioner
5 Callinan referred to Sergeant McCabe by name."

10:32

6 A. I did, Chairman, yes.

7 53 Q. Mr. Deasy has said that you spoke about Maurice
8 McCabe -- well obviously, the whistleblower by name,
9 and we have here Mr. McCarthy saying that you spoke
10 about the whistleblower by name. Is that correct?

10:32

11 A. That's correct, Chairman, yes. I mean, it was -- it
12 was widely known at this particular point that Sergeant
13 McCabe was coming in to give evidence the following
14 week, so there was no secret about any of this.

15 54 Q. "-- and made statements to the effect that Sergeant
16 McCabe was not to be trusted, that he had questions to
17 answer and that there were allegations of sexual
18 offences against him."

10:32

19

20 Do you see that?

10:32

21 A. I see that, Chairman, yes.

22 55 Q. Is there any truth in that?

23 A. No, Chairman. The facts as I outlined the conversation
24 in my statement, they are the facts. That is what
25 happened. It is correct to say that I did speak about
26 Sergeant McCabe. That was in the context of what he
27 had spoken to me about, i.e. the audit that he had just
28 carried out, and he had indicated how he had got a file
29 from a whistleblower that prompted that audit and in

10:33

1 fairness, I was the person that indicated that some of
2 the allegations made by Sergeant McCabe turned out to
3 be questionable in that some of them proved to be
4 incorrect. I did say that, I have no difficulty at all
5 in saying that, but it was as a result of the remark 10:33
6 that he had made that it was the file that he had got
7 from the whistleblower that prompted his audit, the
8 audit that we were down to answer to.

9 56 Q. Well, I mean, you will appreciate that we have here the
10 Comptroller & Auditor General making a statement to the 10:34
11 Tribunal, indicating, in the clearest possible terms,
12 that you were saying to him that Sergeant McCabe was
13 somebody not to be trusted, that he had questions to
14 answer, and that there were allegations of sexual
15 offences against him, and there is no room for error 10:34
16 here in terms of the conversation that you were having
17 with him, is there?

18 A. Well, I can only recall what my conversation with the
19 Comptroller & Auditor General was on the occasion. I
20 have never had occasion to cross swords with the 10:35
21 Comptroller & Auditor General, he is a very fine person
22 and we get on very well together, at least I believed
23 we did, and, you know, indicating that the man had
24 questions to answer and he couldn't be trusted, could
25 possibly have been an interpretation he took from me 10:35
26 indicating that not everything he had said was correct,
27 that he had questions to answer. I don't know. That
28 is the only explanation I can proffer for that
29 particular portion of the sentence. And the balance of

1 the sentence, that there were allegations of sexual
2 offences against him, well certainly I was not aware of
3 any new, fresh allegations in relation to Sergeant
4 Maurice McCabe. My understanding was the only
5 allegation that was made against Sergeant McCabe was 10:35
6 the allegation in 2006, that it had been investigated
7 and the DPP had adjudicated on it and that was the end
8 of the matter.

9 57 Q. Of course the suggestion could be made that you were at
10 that stage exaggerating the complaint or complaints 10:36
11 that had been made against Sergeant McCabe?

12 A. Well, I don't know where that suggestion could arise or
13 where it could have come from, because, you know, in
14 deference to Sergeant McCabe who was coming in the
15 following week to give evidence, if he had the view 10:36
16 that there was still an outstanding allegation of a
17 sexual assault nature of any description against
18 Maurice McCabe, then I think I had a duty to set the
19 record straight. I mean, I do see where the
20 Comptroller & Auditor General mentioned that he had 10:36
21 been following the sergeant's story in the newspapers
22 and he makes reference, I think, later on to the fact
23 that he thought what I was speaking about was the
24 missing computer in a paedophile case in Cavan, but
25 that matter had been dealt with substantially before 10:37
26 our conversation. And, in fact, just three days
27 earlier, there was a significant piece in The Examiner,
28 I believe, where it indicated that Sergeant McCabe was
29 exonerated from any wrongdoing and that was three days

1 before we had this conversation. So concluding that
2 this -- these words that I am alleged to have uttered
3 may well have been associated with that particular
4 investigation, I couldn't understand that piece. I do
5 think, I genuinely do think that there was some kind of 10:37
6 misunderstanding in relation to his interpretation of
7 what was said on the day.

8 58 Q. We will go through it then. Paragraph 3 refers to
9 allegations, that is in the plural obviously, of sexual
10 offences, again plural against him. 10:38

11
12 "I responded to the effect that my report was not an
13 investigation of any of the whistleblowers' allegations
14 and it was based on an analysis of random samples of
15 fixed charge notice cases extracted by my office's 10:38
16 examination team from Garda records, and that my
17 findings were not affected or influenced by the
18 whistleblowers' motives."

19
20 Did he say that to you? 10:38

21 A. The only recollection I have of Mr. McCarthy's comments
22 in that respect was that he had received the file in, I
23 think, August '12, if I am not mistaken, and that
24 prompted, that prompted his audit. I don't actually
25 recall him indicating that he didn't go into what he 10:38
26 had received from what I believed to be Sergeant
27 Maurice McCabe. I don't believe whether or not he had
28 indicated some of those allegations were part of the
29 audit, I just don't know.

1 59 Q. Yeah, but what he is doing here is, he is dismissing
2 the notion that he should be influenced in any way by
3 the character or personality or motive of the
4 whistleblowers. And he is setting out his stall very
5 clearly there, where he responds, he says, to what you 10:39
6 said about Maurice McCabe by saying that he was not
7 affected or influenced by the whistleblowers' motives,
8 and I'm asking you do you recall him saying that to
9 you?

10 A. I don't have a specific recollection, but I wouldn't 10:39
11 dismiss it out of hand. Certainly not, Chairman. I
12 mean, Mr. McCarthy is a man who is -- who has my
13 respect and the respect of everybody else, I'm quite
14 sure, but all I'm suggesting is, on this particular
15 point in relation to me indicating to him that there 10:40
16 were other allegations of a sexual nature, sexual
17 offences against him, all I'm suggesting here is that
18 he is mistaken in terms of the interpretation of what
19 was said on that occasion. That is all I'm doing.

20 60 Q. He then says: 10:40
21
22 "I did not probe the nature of the alleged sexual
23 offences to which he had referred, and he did not
24 provide any further information in that regard."
25
26 Is that right? 10:40

27 A. Well of course it's right, because I didn't say that
28 Sergeant McCabe was being investigated for alleged
29 sexual offences in the first instance.

1 61 Q. "I did not acknowledge Sergeant McCabe as being the
2 whistleblower who had contacted my office."

3

4 Is that right?

5 A. No, he -- to be fair, he did not speak about Sergeant 10:40
6 McCabe, I was the one that introduced Sergeant McCabe.

7 62 Q. "The Commissioner and I then spoke about some of the
8 report content, including about a case pointed out in
9 the report where the fixed charge notice issued for a
10 detective speeding offence was cancelled after the 10:41
11 motorist petitioned on Garda Síochána on the basis that
12 he was hurrying back to his farm because bees were
13 attacking livestock."

14

15 Do you recall that? 10:41

16 A. Yes, I do, Chairman.

17 63 Q. "He explained that the cancellation was reasonable
18 because the speeding motorist, a civilian, frequently
19 assisted An Garda Síochána in a particular way that was
20 material benefit to the force." 10:41

21

22 Is that right?

23 A. That's correct, Chairman, with one slight addition or
24 amendment: Mention here that he was of particular --
25 in a particular way he was of assistance to the Garda 10:41
26 Síochána in a material way, the man was engaged on a
27 voluntary basis with mountain rescue, cave rescue and I
28 think the phrase I used to the Comptroller & Auditor
29 General on that occasion was, he was engaged in God's

1 own work when he was assisting An Garda Síochána and
2 the community. So it wasn't just of -- of course it
3 was assisting An Garda Síochána because we work for the
4 community but there was a wider connotation, as well,
5 he was actually assisting the public in the type of 10:42
6 work he was doing, and he got a call to go back, from
7 his wife. That is -- the rest of that is correct.

8 64 Q. He then gave evidence and if you could just be given a
9 copy of day 65 of the transcript?

10 A. Chairman, could I just refer to chapter 26, if that's 10:42
11 appropriate?

12 65 Q. Paragraph 26, yes.

13 A. Yes.

14 66 Q. Yes. No, this was actually put to Mr. McCarthy, but
15 anyway, certainly point out -- 10:43

16 A. Sorry, if it has been dealt with, that's fine, yeah.

17 67 Q. No, no, no, feel free to point it out.

18 A. Sorry, Chairman, it was just that the Comptroller &
19 Auditor General did mention during the course of the
20 evidence that he was listening to down at the Public 10:43
21 Accounts Committee, the latter half of that paragraph
22 26, he says, he concluded -- this is in the context of
23 our earlier conversation, he "concluded that his
24 statement to me referred to the alleged involvement of
25 Sergeant McCabe in the loss of a computer in a 10:43
26 paedophile case in Cavan-Monaghan of which I was
27 previously aware." So that is what he had concluded.
28 And, you know, it is the case that that matter had been
29 dealt with at that point in time. So that is why, as I

1 had said earlier, I believed that there was some sort
2 of mix-up or mistake in the context of what his
3 conclusions were.

4 68 Q. But I understood your case to be that there was no
5 reference at all to a sexual assault?

10:44

6 A. No, apart from indicating that there had been in 2006
7 and that the matter was investigated and the DPP had
8 directed no prosecution, I said that to Mr. McCarthy.
9 There is no question about that. I certainly did --

10 69 Q. In what context did that arise?

10:44

11 A. It arose in the context of him indicating that he had
12 heard a story or a rumour that Sergeant McCabe was
13 being investigated over an allegation of a sexual
14 nature.

15 70 Q. I thought you had agreed with the sentence that I read
16 out where he said that he had not referred to Sergeant
17 McCabe as being the whistleblower?

10:44

18 A. I'm not with you there.

19 71 Q. I read out a statement where he said that he had not
20 referred to Sergeant McCabe as being the whistleblower?

10:45

21 A. I beg your pardon, of course, yes. No, correct, he did
22 not say that. I was the one that raised Sergeant
23 McCabe's name and I was of the clear understanding that
24 we were both aware that the brief that he had got from
25 the whistleblower was the brief from Sergeant McCabe.
26 That was my clear understanding and I thought it was
27 his as well.

10:45

28 72 Q. So your evidence is that he brought this reference to
29 sexual assault to the table, as it were, is that it?

1 A. Yeah, he had said he had indicated that he had heard a
2 rumour or a story that Sergeant McCabe was being
3 investigated over an allegation of a sexual nature and
4 I corrected the record as I thought, Chairman, by
5 indicating that that was several years ago and that a 10:46
6 file had been sent to the DPP, who directed no
7 prosecution. I thought that was the correct course of
8 action to take because, to be fair to Sergeant McCabe,
9 he was going to appear before that committee in a
10 couple of days' time. 10:46

11 73 Q. If we turn to page 18 of the transcript of day 65.
12 Line 16:

13
14 "My recollection is that we were apart from both
15 groups, so my colleagues were not party to the 10:46
16 conversation, the colleagues with Commissioner Callinan
17 were not party to the conversation. We began just with
18 a sort of formal -- normal greetings but very quickly
19 the Commissioner raised Sergeant McCabe's name in the
20 conversation, along the lines that Sergeant McCabe is 10:46
21 not to be trusted, that he had questions to answer and
22 that there were sexual offence allegations against him.

23 Q. Were you surprised by this?

24 A. I was surprised certainly. My immediate concern
25 was Sergeant McCabe's name being raised in the 10:47
26 conversation because, as far as I was concerned, that
27 was not a name that we had shared with the Garda
28 Síochána at any stage during the examination and I had
29 already, on occasion, in a Public Accounts, resisted

1 revealing who the whistleblower was."

2

3 So he has followed up his statement with evidence to
4 the Chairman along the same lines. He then goes on to
5 say, at line 9:

10:47

6

7 "My immediate response was that the whistleblower --
8 that I hadn't relied at all on the whistleblower
9 information, so there was no aspect of the report that
10 depended on the character effectively of any
11 whistleblower."

10:47

12

13 You know, this is following on, he says, from you
14 putting Maurice McCabe down, but you say that that is
15 incorrect?

10:48

16 A. I agree that Mr. McCarthy did not mention Sergeant
17 McCabe by name. I was the person that brought his name
18 up in the context of the file that he alleged -- or
19 that he says he got from the whistleblower. I was in
20 no doubt it was Sergeant McCabe was the person he was
21 speaking about.

10:48

22 74 Q. Then if you go over the page at page 19 of the
23 transcript, at line 15:

24

25 "Q. In terms of the suggestion that there were
26 allegations of a sexual offences against him your
27 recollection is, is it, that it was plural?

10:48

28 A. Yes, yes, sexual offences is my recollection of it
29 and that they were, they were allegations as opposed to

1 past allegations that had been investigated. Yes, my
2 recollection, that it was tied very closely to, that he
3 has questions to answer. "

4
5 Again, you say that that is incorrect, is that right? 10:49

6 A. Well, I had never said that Sergeant McCabe had sexual
7 offences against him, because, as far as I was
8 concerned, the only allegation that I had known about
9 was the 2006 allegation and that has long since been
10 dealt with. 10:49

11 75 Q. If you go to page 36 of the transcript, please. This
12 is his initial response to the case that you were
13 making. He says:

14
15 "Q. Yes, and Mr. Callinan's account of that 10:50
16 conversation will be again, as you have seen from the
17 statement, that he didn't raise the question of sexual
18 allegations but that you said to him that you had heard
19 rumours about Sergeant McCabe being investigated over
20 an allegation of a sexual nature, that is 10:50
21 Mr. Callinan's account.

22 A. And that is incorrect. I didn't raise Sergeant
23 McCabe's name, I was on guard not to do that.

24 Q. Sorry, no --

25 A. And I didn't raise any question of allegations of 10:50
26 sexual offences.

27 Q. I didn't mean to suggest that you raised Sergeant
28 McCabe's name.

29 A. No, I didn't."

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If we then go on to page 42 of the transcript, and --
or page 41. This is again the statement, it's at page
693, your statement to the Tribunal:

10:51

"But then there is a second limb to it because he
says --"

This is you.

10:51

-- that you didn't elaborate or specify what the
rumours were that you had heard, but he then goes on to
say at page 693 in his statement that he made to the
Tribunal --"

10:51

And this is a quotation from your statement:

"I didn't, I indicated to Mr. McCarthy that it was
several years ago and that the Director of Public
Prosecutions directed no prosecution."

10:51

And his answer is:

A. I don't recall anything of that nature being said.
Q. Well, he is asserting that he is linking this
rumour that you introduced into the conversation to an
actual investigation that had occurred, one presumes,
in 2006, that resulted in --

10:52

A. I don't believe that those points were made in the

1 conversati on. "

2

3 And he then goes on to say at line 13:

4

5 "And I was certainly not aware of any allegation from 10:52
6 2006 or the involvement of the Director of Public
7 Prosecutions. The sense I had was, that it was a
8 matter currently being investigated. "

9

10 So there you are. I mean, you are completely opposed 10:52
11 to the account given by Mr. McCarthy, isn't that right?

12 A. Well, I think substantially the meeting did take place,
13 the conversation took place, but I disagree with the
14 content in regard to what is now alleged that I said
15 Sergeant McCabe had sexual offences against him. That 10:53
16 was never my understanding. It was absolutely contrary
17 to my understanding at the time. As far as I am aware,
18 the only allegation against Sergeant McCabe was the
19 2006 allegation and there was nothing, no allegation of
20 any impropriety of any description against Sergeant 10:53
21 McCabe at that particular time. And that's the point
22 of difference there.

23 76 Q. You then attended the meeting and on Friday we went
24 through some of the transcript, and then the meeting
25 broke up. Had you felt under pressure during the 10:53
26 course of the meeting?

27 A. Well, not particularly, Chairman, but, I mean, it is
28 the case that the Public Accounts Committee is a forum
29 where there will be tensions, of course there will be

1 tensions, there is always tensions between the
2 Committee and the person who is answering the
3 questions, i.e. the accounting officer, and that is
4 myself, so of course to that agree you could say there
5 are certain pressures. But I mean, if you weren't able 10:54
6 to withstand those type of pressures, as I said on
7 Friday, there wouldn't be much point in coming into
8 work.

9 77 Q. So you concluded giving evidence then, and you had an
10 interaction with Mr. McGuinness, isn't that right? 10:54

11 A. Yes, Chairman.

12 78 Q. If we could just go to page 1419, it's in volume 6 of
13 the material. This is the original statement that was
14 made by Mr. McGuinness on the 28th March 2017 to the
15 Tribunal. 10:55

16 A. Thank you.

17 79 Q. You will see there at paragraph 6 he says:

18
19 "At the conclusion of the hearing on the 23rd January
20 2014, as was my usual practice when Chairman of the 10:55
21 Committee, I approached Mr. Callinan to thank him for
22 attending the Committee. Mr. Callinan was with
23 Ms. Nóirín O'Sullivan and David Taylor and he said to
24 me 'this man fiddles with children, this is
25 outrageous'. I took the reference to 'this man' to 10:55
26 refer to Mr. McCabe."

27
28 If you just bear with me for one moment.

29 A. Yes, Chairman.

1 80 Q. Yes, if we could have page 2165 up on the screen,
2 please. It's in volume 8.

3 A. Thank you.

4 81 Q. I am sorry, if you go to -- yes, this is an interview
5 with the Tribunal investigators, and if I could just
6 refer you to the top of the page there:

10:57

7
8 "In this particular case I did exactly as I would
9 normally do and in the course of that I came down to
10 where Commissioner Callinan was and he was in the flow
11 of conversation about former Garda John Wilson.

10:57

12 Commissioner Callinan was relating a story about how
13 John Wilson was called with other Gardaí to a
14 disturbance in Grafton Street involving horses. John
15 Wilson got to Grafton Street, Commissioner Callinan in
16 his own words said he, John Wilson, pulled the knackers
17 off the horse, he confiscated the horse, mounted the
18 horse and rode it back to the barracks where he tied it
19 to the railings and the other fellow fiddles with kids
20 and that is the type of f-ing headbangers I'm dealing
21 with. That was said in a very loose group of people, I
22 recall Nóirín O'Sullivan was in that group and Dave
23 Taylor was there as well."

10:58

10:58

24
25 will you just give us your account of that -- of what
26 transpired after the PAC?

10:58

27 A. Yes, Chairman. Mr. McGuinness is correct when he said
28 that he'd normally -- he normally comes down to thank
29 the witnesses who have given evidence, at least that

1 has been my experience, and this occasion was no
2 different; he did approach me to thank me for coming
3 down and he said it was a long day and you will be glad
4 you are finished, and I asked the question would Garda
5 John Wilson be called to give evidence, former Garda 10:59
6 John Wilson be called to give evidence and he replied
7 "you must be joking, sure he's an f-ing header". That
8 is what I said in my statement, and that is the correct
9 version of events, and no other version, and certainly
10 not the version of events that has just been read out 10:59
11 to me.

12 82 Q. You know that Superintendent Taylor has also now said
13 that he overheard this reference to "kiddie fiddler",
14 you appreciate that?

15 A. I do, Chairman, yes. I never heard the expression 11:00
16 before.

17 83 Q. You were apparently aware of some story or reference to
18 John Wilson having a nickname, I know you told us on
19 Friday that you thought it was a darts player, Jockey
20 Wilson, is that right? 11:00

21 A. Well, you know, it was a point of humour, I suppose,
22 and I do agree with you that there is no semblance in
23 the appearance of both individuals, but, you know, the
24 reality is, there was a world champion, John Jockey
25 Wilson, and, you know, I had associated his name, his 11:01
26 nickname, with that person. You know, Garda John
27 Wilson was in Pearse Street at a period when I was
28 serving there as a sergeant, a relatively short period
29 of time, but the reality is, we didn't have that much

1 contact, you know, he was on a different unit,
2 etcetera, and there was, I don't know, maybe 130 or 140
3 Gardaí there, you know, so I can't help with how he was
4 christened it but I was certainly aware that that was
5 the nickname, Jockey Wilson. 11:01

6 84 Q. So what you are telling the Chairman is that you were
7 aware of the fact that John Wilson had a nickname,
8 Jockey Wilson?

9 A. Yes.

10 85 Q. But that you were unaware of how he had been given that 11:02
11 name?

12 A. Yes, Chairman.

13 86 Q. Is that right?

14 A. Yes, Chairman.

15 87 Q. And what was this connection with a darts player, what 11:02
16 was the link between --

17 A. It was just an assumption, an assumption on my behalf,
18 Chairman, nothing further than that.

19 88 Q. Well, I mean, the only thing that they seemed to have
20 in common is a surname, is that right? 11:02

21 A. Yes.

22 89 Q. But is there anything else that would lead you to
23 conclude that it referred to --

24 A. As I said, Chairman, that was an assumption on my part.
25 I didn't read anything particularly into it, one way or 11:02
26 another.

27 90 Q. No, but why did you make that assumption? What is the
28 basis of it?

29 A. It's just -- just that there did exist --

1 91 Q. Two people called wilson?
2 A. Jockey wilson was the nickname of the dart player, the
3 world champion --
4 92 Q. Yes.
5 A. -- in that period. And Garda John wilson happened to 11:03
6 have the nickname Jockey wilson as well, so --
7 93 Q. But was there anything else in the personal
8 characteristic that would lead you to believe that he
9 had been given a nickname after an overweight darts
10 player? 11:03
11 A. Not that I'm aware of, Chairman, no.
12 94 Q. And in any event, you are saying that you hadn't heard
13 this story about how he had actually got his name;
14 namely, his involvement in seizing a horse from members
15 of the travelling community? 11:03
16 A. No, I'm not aware of that story.
17 95 Q. And riding it back to Pearse Street Garda Station?
18 A. No, Chairman.
19 96 Q. Apparently that is what happened. That, in itself,
20 would be a somewhat unusual event; to have a garda 11:04
21 riding a horse down Grafton Street and all the way to
22 Pearse Street Garda Station, isn't it?
23 A. I'm not aware of the story. If that is what happened
24 that is what happened. I am certainly not going to --
25 97 Q. Well, if it did happen isn't it the type of story that 11:04
26 would gain currency and I am sure there would be some
27 exaggerations placed on it in Pearse Street Garda
28 Station amongst the Gardaí there. Are you surprised
29 you never heard the story as the sergeant there?

1 A. In Garda circles, Chairman, there are many, many
2 stories about many, many individuals. If this was one
3 of them I accept that that is the case, of course I do.
4 But I don't accept that I heard it, that's all I can
5 tell the Tribunal.

11:04

6 98 Q. If you could be just given day 62, the transcript.
7 Clearly, you would be very quick to point out,
8 Mr. Callinan, and correctly so, that Mr. McGuinness has
9 given two different accounts in relation to the same
10 incident; one where he refers to the fact that you
11 immediately said to him afterwards that Maurice McCabe
12 was a kiddie fiddler, and then his account that he
13 later introduced into the equation, namely that Maurice
14 McCabe was -- it was said of him that he was a kiddie
15 fiddler but in the context of a story being told in
16 relation to John Wilson.

11:05

11:05

17 A. There are a couple of different versions, Chairman.
18 Superintendent Taylor was the person that introduced
19 the words "kiddie fiddler". What Mr. McGuinness
20 initially introduced was the fact that I had indicated
21 "this man fiddles with children, this is outrageous", a
22 reference he took to be Sergeant McCabe. And then I
23 think prior to me making my statement and indicating
24 that I had asked the question of him, he responded to
25 the investigators by introducing John Wilson in a
26 completely different capacity, that hadn't been
27 mentioned previously, apart from the question and the
28 answer that I had got. That was the sequence of
29 events, as far as I'm aware.

11:06

11:06

1 99 Q. He goes on, he gives evidence then at the Tribunal on
2 day 62 at page 35, at line 20 there you will see:
3
4 "Well, after the meeting we would go and pass some
5 pleasantries, thank them for attending the meeting, for 11:07
6 their evidence and so on. On that particular day, as I
7 have stated, as I approached the Garda Commissioner he
8 immediately went into a story or telling me about an
9 incident involving John Wilson, where there was a
10 difficulty in Grafton Street and I think it was the 11:07
11 police were called to that. John Wilson was one of the
12 individual gardaí that attended at that incident and in
13 the Commissioner's words, he pulled the knacker off the
14 horse because it involved horses and individuals, he
15 got on the horse himself, rode it back to the barracks 11:07
16 and tied it to the railings of the barracks, and the
17 other fella fiddles with kids, they are the kind of
18 f-ing headbangers I'm dealing with. Excuse me,
19 Chairman, but that is what was said."
20 11:07
21 So that was his evidence in relation to the matter.
22 But I mean, here again we have Mr. McGuinness, who is
23 suggesting that you made derogatory comments about
24 Sergeant McCabe immediately after the PAC meeting, in
25 the context, and we have to place this in context, you 11:08
26 appreciate that, Mr. Callinan --
27 A. Absolutely, Chairman, yes.
28 100 Q. -- where apparently completely independently, John
29 Deasy is saying that he met you and you spoke poorly of

1 Maurice McCabe, Séamus McCarthy says that you referred
2 to allegations of sexual assaults, and then
3 Mr. McGuinness, apparently independently, is saying
4 that immediately after the meeting, again there is this
5 blackening of Sergeant McCabe's name, isn't that right? 11:09

6 A. That's the evidence that those three individuals have
7 given, Chairman. I have provided my evidence to the
8 Tribunal. There is a great degree of variation in
9 relation to the accounts that we have given, but it is
10 the case, and I pointed this out to the investigators 11:09
11 at the time, that if it's being interpreted that by me
12 indicating that some of the allegations that were made
13 by Sergeant McCabe were questionable, in that they
14 turned out to be untrue or incorrect, if that is the
15 interpretation that some of those individuals are 11:09
16 placing on my words, it is an incorrect interpretation.
17 I never said Sergeant McCabe is not to be trusted or
18 that he had questions to answer. I was careful in what
19 I had said. And just, if I may, Chairman, revert back
20 to the text that has just been written -- or, I beg 11:10
21 your pardon, read out to me, that is not the language
22 that I would engage in with anybody, and it's certainly
23 not the type of language I would engage with when I'm
24 speaking about colleagues, or former colleagues, to the
25 Chairman of the Public Accounts Committee. Absolutely 11:10
26 not.

27 101 Q. Well, it's said within a very short period of time of
28 you, in public, using the word 'disgusting', which
29 Mr. McLindon, who was there at the time, said that he

1 was shocked, surprised and very concerned by your use
2 of that word. Now, we put it in its proper context on
3 Friday, I think that's fair to say?

4 A. You did, Chairman, yes.

5 102 Q. But even in that context, I think that you agree that 11:11
6 it's a very strong word to use and in the circumstances
7 probably was inappropriate, isn't that right?

8 A. Well, I'm not going that far, Chairman. I mean, I was
9 asked a direct question and, as you rightly say,
10 Mr. Marrinan, you adverted to this on Friday; I was 11:11
11 asked the question, it was a very strong term to use,
12 and I agreed it was a very strong term, but only in the
13 context -- and context is extremely important in all of
14 the things we are discussing here, only in the context
15 in the manner in which the whistleblowers were bringing 11:12
16 these matters to the table. It was the manner in which
17 they were doing so that I objected to. I had no
18 difficulty whatsoever about them reporting wrongdoing.
19 That is my strong position, it was my strong position
20 and I have never resiled from that fact. And I think 11:12
21 I'd be somewhat hypocritical to come in here and change
22 my mind at this remove, Chairman. It just wouldn't be
23 credible, as far as I am concerned. I had a strong
24 view and I was quite prepared, Chairman, to give that
25 view, rightly or wrongly. That is not for me to 11:12
26 decide. But that is my position.

27 103 Q. Well, I mean, you felt so strongly about it that when
28 Mr. McLindon made proposals to you immediately
29 afterwards, along with Superintendent Taylor, according

1 to his evidence, that there should be some sort of
2 clarification or apology in relation to the use of the
3 word 'disgusting' that you weren't for turning, you
4 weren't going to change your view in relation to it so
5 strongly, you felt at the time, isn't that right? 11:13

6 A. Well, you see, the position at that time was, certain
7 elements of the media were building on this story and I
8 took the view, again rightly or wrongly, that by trying
9 to justify or water down what I had said, would be
10 somewhat hypocritical and would certainly add fuel to 11:13
11 the fire rather than having the desired effect that
12 Mr. McLindon felt it would have. That was a view I
13 had, I can't change that.

14 104 Q. So I mean, looking at this objectively, we have
15 Mr. Deasy indicating that you said something that was 11:14
16 inappropriate about Sergeant McCabe, followed by
17 Mr. McCarthy; we have the 'disgusting' remark that you
18 made; Nóirín O'Sullivan says that she passed you a note
19 at the time because obviously she was concerned about
20 it, that it was inappropriate; Mr. McLindon responded 11:14
21 by being concerned about it; and then Mr. McGuinness
22 says that immediately after that, at the conclusion of
23 the meeting, you again made an adverse comment against
24 Sergeant McCabe and indeed the other whistleblower,
25 Mr. Wilson. What have you to say to the suggestion 11:14
26 that that builds up a fairly firm picture that you were
27 quite hostile at the time towards Sergeant McCabe?

28 A. No, I don't agree, Chairman. That is not the case.
29 You know, Mr. McGuinness has been out on the public

1 airwaves and has said many, many things. I recall
2 listening to the News at One on the 29th May when he
3 spoke about the fact that he didn't take any notes of
4 the conversation that we had in the car park on the
5 24th January '14, and I have already explained the 11:15
6 circumstances that led to that particular meeting, that
7 it wasn't a clandestine meeting. But that is a fact.
8 He announced to the nation on the airwaves that he
9 didn't take any notes yet he has produced notes here in
10 a subsequent statement that he produced to the 11:15
11 Tribunal. In that selfsame interview he also mentioned
12 that he spoke to Sergeant McCabe both before and after
13 he had met him, and it was put to him again on the 9th
14 October, on that particular programme, that he was --
15 he had been on the programme some months earlier and 11:16
16 the interviewer put to it to him squarely that -- went
17 through the sequence of events in relation to what he
18 had said and he had indicated that he had spoken to
19 Sergeant McCabe both before and after his meeting with
20 me and the interviewer put it to him, and what did 11:16
21 Sergeant McCabe say, what was his reaction in relation
22 to what I had said? And he said he wasn't shocked, he
23 wasn't surprised, he had heard it all before. And yet
24 we have a situation where Sergeant McCabe indicates to
25 the Tribunal in his statement that he was rocked to the 11:16
26 core when he had heard what Mr. McGuinness has said.
27 So Mr. McGuinness has said quite a few things that
28 weren't correct, as far as I'm concerned, and I'm 100
29 percent clear in my mind, Chairman, that I never, in

1 any way, shape or form, spoke about Sergeant Maurice
2 McCabe in a derogatory fashion at all when we had our
3 conversation on the 24th January '14. And I have set
4 out in detail in my statements to the Tribunal what
5 occurred at that particular meeting. It was not a
6 clandestine meeting. 11:17

7 105 Q. Well, I asked you this on Friday, I think, it's
8 probably the right time to ask you the same question
9 again; we have these accounts from Mr. Boucher-Hayes,
10 we have the -- that you are at odds with -- we have an 11:18
11 account from Mr. Deasy that you are at odds with, and
12 from Séamus McCarthy that you are at odds with and
13 Mr. McGuinness that you are at odds with, and to a
14 lesser extent, but nevertheless it is there, in
15 relation to Mr. Kean, that you are at odds with, and we 11:18
16 have this remark that you made during the course of the
17 PAC meeting, this 'disgusting' remark. Have you -- I
18 am sure you have thought about this. Have you thought
19 of any reason as to why all these people are lining up
20 against you in this regard? 11:18

21 A. I don't know if that is the case, that they are lining
22 up against me, but all I can do, Chairman, is to
23 provide to this Tribunal the evidence that I have in
24 relation to my interactions with each of these
25 individuals. It is the case, in the context of what 11:19
26 the Tribunal is investigating and the terms of
27 reference, it is the case that the conversation with
28 the Deputy John Deasy and Mr. McGuinness and the
29 Comptroller & Auditor General, were conversations that

1 I had had in the context of the meeting and before the
2 meeting, with the exception of the meeting the
3 following day with Mr. McGuinness in the car park. And
4 that was designed for one purpose and one purpose only,
5 and that was to get his views as to whether or not the 11:19
6 proposals that he had spoken about the day before at
7 the end of that meeting, whether or not they would be
8 acceptable to him as reasonable steps to take to avoid
9 Sergeant McCabe appearing before the Committee. That
10 was my sole purpose in meeting him. There was no other 11:20
11 clandestine reason. And it was an open meeting, as far
12 as I was concerned. Mr. McGuinness had indicated that
13 he was in a hurry back to Kilkenny and, for
14 convenience, I was the person that suggested we would
15 meet at that car park. 11:20

16 106 Q. Yes, I am going to come to that in a minute,
17 Mr. Callinan, and I am dealing -- just leaving that
18 aside for the moment, I am dealing with the fact that
19 we have two of them politicians, well-known
20 politicians, well-respected politicians, we have a 11:20
21 well-respected broadcaster and journalist, we have a
22 respected solicitor, and we have the Comptroller &
23 Auditor General, who, they all appear to be independent
24 of each other, don't they? There doesn't seem to be a
25 link between any of them? 11:21

26 A. Well, it is the case that Mr. Deasy and Mr. McGuinness
27 are members of the -- or were, certainly, members of
28 the Public Accounts Committee at that particular period
29 we are speaking about.

1 107 Q. With very much opposing views as to whether or not
2 Sergeant McCabe would give evidence. But I'm talking
3 about, can you establish any link between any of those
4 individuals?

5 A. Well, I mean, there is a certain amount of commonality 11:21
6 in relation to the business that they are doing on a
7 very regular basis down at the Public Accounts
8 Committee, and they interact with one another. I mean,
9 it would be nonsensical to suggest, for instance, that
10 there wasn't some form of discussion about Sergeant 11:21
11 McCabe appearing before the Public Accounts Committee.
12 So that level of discussion at least had to go on.
13 Beyond that, I don't know what was spoken about, and I
14 cannot make any allegations against the individuals you
15 have spoken about. All I can do is give you an account 11:22
16 of the conversations and the interactions that I had
17 with those individuals. That is as far as I can go.
18 Clearly, Mr. McGuinness took grave exception to the
19 fact that I was challenging the Public Accounts
20 Committee in the context of Sergeant McCabe appearing 11:22
21 before it.

22 108 Q. So just turning to the meeting in the car park. You
23 decided that you would -- you wanted to have a private
24 meeting with Mr. McGuinness, is that right?

25 A. I decided that I would make contact with him based on 11:22
26 the suggestion that he had made at the end of the
27 Public Accounts Committee on the 23rd January '14,
28 where he adverted to -- in similar words, that if there
29 was an issue between an employer and an employee, that

1 efforts would be made to resolve those issues. I took
2 that to be a suggestion that I should directly involve
3 myself in trying to resolve the issues of Sergeant
4 McCabe. And that is why I had asked to have two drafts
5 prepared setting out how I would propose to deal with 11:23
6 Sergeant McCabe's complaints other than him appearing
7 in front of the Public Accounts Committee. And that
8 was the context of the meeting and the reason why I
9 needed to see Mr. McGuinness urgently on the basis that
10 this meeting was scheduled for the following week. 11:23

11 109 Q. Was there any particular reason why you didn't write to
12 the Committee enclosing your -- the draft of the letter
13 that you had written?

14 A. It was just the fact that the time constraints in
15 invoking that process, I may not have got a reply in 11:24
16 time.

17 110 Q. Although no date had been set at that stage in relation
18 to Sergeant McCabe giving evidence, isn't that right?

19 A. No, no, he was due in on the following Thursday, the
20 Thursday after I appeared. 11:24

21 111 Q. That is the --

22 A. The 30th.

23 112 Q. That was the 30th. So you had from the Thursday to the
24 following Thursday, is that right?

25 A. Yes, the 24th effectively. 11:25

26 113 Q. I think the PAC had announced that they were sitting on
27 the Tuesday to resolve the issue. Did you consider
28 that perhaps it would be more prudent to write to the
29 Committee saying that you were going to attempt to

1 engage with Sergeant McCabe?

2 A. Yes, my reason for meeting with Mr. McGuinness in such
3 a hurried fashion was that I needed to get a sense of
4 whether or not that approach might -- they might find
5 that or get a sense at least of whether or not it would 11:25
6 be reasonable or appropriate to take up his suggestion
7 effectively from the day before and try and deal with
8 his issues.

9 114 Q. But in any event, you contact -- sorry, I was just
10 looking for it there, your letter that you had drafted 11:26
11 is at page 677, is the letter to Deputy McGuinness,
12 isn't that right?

13 A. Yes.

14 115 Q. And this was never sent, it's a draft, as we see there,
15 to be inserted on Commissioner's headed note-paper? 11:26

16 A. That's correct.

17 116 Q. That was never done, isn't that right?

18 A. Correct, Chairman, yes.

19 117 Q. And this is a draft that you produced for the Tribunal,
20 from material that was available at the time. And it's 11:26
21 headed "Invitation to Sergeant McCabe to meet and make
22 a full disclosure." Is that right? And there you see,
23 you say:

24

25 "Dear Deputy McGuinness 11:27
26 Firstly, I wish to thank the Committee for affording me
27 the opportunity yesterday, the 23rd January 2014, to
28 address Chapter 7 of the Comptroller & Auditor
29 General's Report and ancillary matters that arose

1 therefrom."

2

3

You see there?

4

5

And then you go on to say:

11:27

6

7

"I now wish to address the specific issue of your intention to call Sergeant Maurice McCabe before the Committee of Public Accounts on, as I understand it,

10

Thursday next, 30th January 2013. I have this evening 11:27

11

taken legal advice on this issue, in an effort to avoid

12

having to exercise those legal rights would be obliged

13

if the Committee would consider the following proposal

14

as outlined."

15

11:27

16

It just seems to be an error there that I just don't

17

really understand. You point out "firstly, I wish to

18

thank the Committee for affording me yesterday the 23rd

19

January" which would suggest that the draft was done on

20

24th, which is the Friday, is that right?

11:28

21

A. That's correct, Chairman, yes.

22 118

Q. And you say that you prepared this before the meeting with Mr. McGuinness, is that right?

23

24

A. Well, I didn't prepare it, but it was prepared for me, yes.

25

11:28

26 119

Q. And then you see there in the second paragraph:

27

28

"I have this evening taken legal advice on this issue

29

in an effort to avoid having to exercise those legal

1 rights. "

2

3 How did that arise? That would send to suggest that

4 this was written on the evening of the 24th?

5 A. No, no, the 23rd, the 23rd. 11:28

6 120 Q. The first paragraph:

7

8 "Firstly, I wish to thank the Committee for affording

9 me the opportunity yesterday, the 23rd January --"

10 A. Yes, that it would have been posted the following day, 11:29

11 if it was agreeable to Mr. McGuinness that I could deal

12 with those issues.

13 121 Q. I thought this was a draft that you were proposing to

14 send?

15 A. It was, Chairman, yes, on the basis that I would have 11:29

16 got some traction from the Chairman that it was

17 reasonable to send it, it was reasonable for the

18 Committee to consider it --

19 122 Q. Well, in any event, we have here in the first paragraph

20 you are referring to, thanking the Committee for the 11:29

21 opportunity the previous day, and then in the second

22 paragraph you are referring to taking legal advice the

23 following day, on the evening of the following day,

24 perhaps it's just simply an error that was made.

25 A. Sorry, now, do you mind if I just have a look at that? 11:30

26 123 Q. I will just go on to the next line.

27 A. Sorry.

28 124 Q. "As I indicated to the Committee today --" So, I mean,

29 can you give any explanation as to why there is an

1 inconsistency there again?

2 A. My belief is that this letter was prepared on the 23rd
3 and I had it on the 24th and I sought a meeting with
4 Mr. McGuinness on that basis, that these were the
5 proposals that I had intended to put to him. 11:30

6 125 Q. All right. You will see that there is -- there seems
7 to be an error there?

8 A. I think -- if my memory serves me correctly, I think
9 possibly around seven o'clock or so in the evening of
10 the 23rd, the day I had been down giving evidence to 11:31
11 the Committee, that I had received this draft, so
12 effectively it would have been the following day before
13 I would have an opportunity to deal with it and before
14 sending it off, I decided I would make contact with
15 Mr. McGuinness with a view to putting the proposals to 11:31
16 see if he would agree that they would be appropriate in
17 the first place, and if -- obviously he didn't go for
18 that. He just didn't. He was firmly of the view that
19 Sergeant McCabe was going to be invited in and that was
20 his position. So the letter, in effect, became 11:31
21 redundant at that point.

22 126 Q. Well, it's perhaps easy enough to resolve. When did
23 you take the legal advice? Was it on the Thursday
24 evening?

25 A. That evening, yes. 11:32

26 127 Q. On the Thursday evening, that is the 23rd?

27 A. Yes, yes, Chairman, yes.

28 128 Q. Now, you then go on down:
29

1 "However, for the avoidance of any doubt I have now
2 formally written to Sergeant McCabe with the following
3 proposal."

4
5 You actually hadn't written to him; you had done a 11:32
6 draft of a letter for Sergeant McCabe, is that right?

7 A. Yes. This is what the intention was. There was a
8 draft --

9 129 Q. You set out three bullet-points there, three
10 paragraphs: 11:32

11
12 "1. I will appoint a chief superintendent of his
13 preference to meet him and discuss any issue he wishes
14 to raise and direct that chief superintendent to report
15 directly to me in relation to any issues that require 11:32
16 further investigation.

17
18 2. If Sergeant McCabe fails to nominate a chief
19 superintendent, I will nominate a chief superintendent
20 to meet him and discuss any issues he wishes to raise 11:33
21 and direct that chief superintendent to report directly
22 to me in relation to any issues that require further
23 investigation.

24
25 3. I will ensure that Sergeant McCabe is continued to 11:33
26 be afforded all rights and protections which a
27 confidential reporter would be entitled to under the
28 relevant regulations and will ensure him that he will
29 not be subject to any harassment, penalisation or any

1 other action as a result of any issues that he wishes
2 to outline at such a meeting."

3
4 Then you say:

5
6 "In respect of your proposal to call Sergeant McCabe
7 before the Committee of Public Accounts on Thursday
8 next, 30th January, I reiterate that I have grave
9 concerns about the legal precedent that would be
10 created and more importantly, impact of such a meeting 11:33
11 on the management of An Garda Síochána, which is a
12 disciplined and structured force. My concern is all
13 the greater as it is not evident to me how a particular
14 member may be in a position to answer questions for
15 which I, as accounting officer, am responsible, 11:34
16 questions arising from the report of the Comptroller &
17 Auditor General.

18
19 In the light of my proposals outlined above, I would
20 formally request that the Committee of Public Accounts 11:34
21 would postpone its decision to invite Sergeant McCabe
22 to attend before you. I will be more than happy to
23 return to you at a future date and update the Committee
24 on the outcome and developments that occur from such a
25 meeting. 11:34

26
27 Finally, I wish to again indicate my support for the
28 excellent and important work with the Committee of
29 Public Accounts carries out on behalf of all citizens

1 of this State."

2
3 So, in any event, you made contact with Mr. McGuinness
4 and we have the phone records of your contact with him.
5 I don't think a great deal turns on it. And we also 11:34
6 have the evidence in relation to you having to attend
7 in Dundalk as well and I don't see any need to go into
8 any aspect of that, but is there any issue that you'd
9 like to raise yourself in relation to it? We have the
10 evidence. 11:35

11 A. You have the evidence, Chairman, and there is a
12 conflict in relation to Superintendent Taylor's
13 chronology of what happened on the occasion. And it is
14 the case that he is saying that the press conference
15 was put back for an hour-and-a-half for me to go and 11:35
16 meet Mr. McGuinness. That is not correct. The press
17 conference went ahead shortly after three o'clock that
18 day. When I had finished the press conference, I met
19 with Mr. McGuinness and then I returned for a memorial
20 mass that evening. 11:36

21 130 Q. Now, I think it's perhaps important to point out from
22 your point of view that there was -- you threw out the
23 idea of meeting Mr. McGuinness to a number of senior
24 officers who were present, isn't that right?

25 A. I don't have a particular recollection of that. I 11:36
26 certainly told Superintendent Taylor that I was going
27 to meet him. I have no recollection of -- it's
28 possible, I don't know.

29 131 Q. I understood there were a number of senior Gardaí

1 present in a room and that you had asked those that
2 were assembled there that, did they think it was a good
3 idea that would you go and meet with Deputy John
4 McGuinness, you don't recall that?

5 A. I don't recall that, no. I have read that evidence but 11:36
6 I don't recall that. It's quite possible it happened,
7 I don't know.

8 132 Q. Yes. But in any event, we know that you phoned
9 Mr. McGuinness, we know that you were anxious to meet
10 with him on a one-to-one basis, and we also know that 11:37
11 you were in Dundalk and that Deputy McGuinness would be
12 travelling to his home in Kilkenny and that you both
13 agreed that it would be suitable to meet at the hotel.
14 Now, was it at the hotel or in the hotel car park that
15 you anticipated that you would be meeting 11:37
16 Mr. McGuinness?

17 A. I had suggested we'd meet at the car park, simply to
18 expedite his journey home, Chairman, because he had
19 indicated to me that he was under time pressure and he
20 said -- I had suggested maybe we'd meet at some 11:37
21 suitable location on the outskirts of Dublin to
22 facilitate his journey home and he had asked me well,
23 where do you suggest? So I had, for convenience,
24 mentioned the then Bewley's Hotel at Newlands Cross and
25 I would see him in the car park there so as not to 11:38
26 delay him. There was nothing more sinister or unusual
27 apart from that.

28 133 Q. So it was always anticipated that you would sit into
29 the car and speak to him in the car, is that right?

1 A. Certainly. Or he could have sat into my car. It
2 didn't really make much difference to me.

3 134 Q. He arrived in the car park. You were with your driver
4 and parked some distance away from him, is that right?

5 A. That's correct, Chairman, yes. 11:38

6 135 Q. And you were there before he arrived?

7 A. We had arrived just shortly before he arrived, yes.

8 136 Q. You were keeping an eye out for him and you saw him
9 drive into the car park?

10 A. Yes, Chairman. 11:38

11 137 Q. And then you got out of the car and walked some
12 distance. How far was it, about 50 metres, 75 metres?

13 A. Less I would say, less.

14 138 Q. To his car and you got into the passenger seat, is that
15 right? 11:39

16 A. As I approached Mr. McGuinness's car, Chairman, he had
17 some papers on the front passenger seat which he moved
18 into the back seat and I took that to be an indication
19 to sit in to the car and that is what I did.

20 139 Q. Did you have the draft letters with you? 11:39

21 A. No. I had come straight from Dundalk.

22 140 Q. But why wouldn't you have had the draft letters?

23 A. I just didn't have them with me, but I knew what they
24 contained and obviously I was putting the proposal that
25 I intended to operate to Mr. McGuinness. It was as 11:39
26 simple as that.

27 141 Q. You had made the arrangement to meet Mr. McGuinness or
28 you had contacted him prior to going to Dundalk, isn't
29 that right?

1 A. I had -- I had left a message with him the previous
2 evening and I made contact with him, I think somewhere
3 in the region of a quarter to three or so that day, on
4 the 24th, and I think my -- the other recollection I
5 have of the phone contact was somewhere around quarter 11:40
6 to five or so in the evening, before I actually met
7 him. I met him around the five o'clock mark.

8 142 Q. So in any event, I will just read you what
9 Mr. McGuinness says in relation to this, it's day 62,
10 9th April, at page 60. Mr. McGuinness says: 11:40

11
12 "I arrived in the car park as arranged and I presumed
13 that we were going to meet in the hotel, so when I saw
14 the Commissioner approach I was in the process of
15 getting out of the car, but he in turn went around 11:40
16 quickly to the passenger side of my car and sat in.
17 And then he immediately got into the conversation to do
18 with the Maurice McCabe and the issues. I suggested to
19 him at the beginning of this conversation, as I did the
20 day before, like any other employer, that perhaps the 11:41
21 best way out of this were for him to talk directly to
22 Sergeant McCabe and to determine what exactly the
23 issues were and resolve it in that way without it
24 having, you know, go into the public realm and him
25 dealing, trying to deal with it in that way." 11:41

26
27 Is that how the conversation commenced?

28 A. No, certainly not. He did, as I have said, Chairman,
29 make reference to the issue of trying to resolve the

1 problems the day before at the close, or towards the
2 close of the meeting with the Public Accounts
3 Committee.

4 143 Q. well, here we have him saying that he was following it
5 up, this was the kick-off of the conversation, that he 11:42
6 was reiterating what he had said the day before. But
7 in any event, he goes on to say:
8

9 "It was at that stage that he said to me that, no, it
10 had gone beyond all of that and that there was issues 11:42
11 to do with Maurice McCabe and his behaviour and he
12 said -- he suggested that there was, he had sexually
13 abused his family and an individual."
14

15 Do you see that? 11:42

16 A. I see that, Chairman, yes.

17 144 Q. And what do you say to that?

18 A. That is absolutely false, Chairman. I never, under any
19 circumstances, said anything of that nature.

20 145 Q. He then goes on to say that he was -- you said that: 11:42
21
22 "-- he was not to be trusted and that I had made a
23 grave error in relation to the Public Accounts
24 Committee and the hearings because of this, and that I
25 would find myself in serious trouble." 11:42

26 A. That is completely and utterly false, Chairman.

27 146 Q. "I said that there were some rumours that I had already
28 heard and I said we all know what goes on in relation
29 to these matters and they were just in fact rumours."

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Do you recall him saying that?

A. He did indicate that he had heard rumours about Sergeant McCabe in the sense that he seemed to be aware of the investigation underlying the allegation. He told me that. He brought it to my attention, in the course of the conversation, that he was aware that Sergeant McCabe had been investigated over matters of a sexual nature. 11:43

147 Q. "And he said to me no, that there was a file there and that action would be taken against Sergeant Maurice McCabe. He gave me the impression that would be the case and that I had, as I have said, made a grave error and that, you know, because of all this, he was not reliable and, therefore, the Public Accounts Committee would find itself and me in serious trouble." 11:43

what do you say to that?

A. I say it's absolutely untrue, Chairman.

148 Q. Then line 19: 11:44

"He gave me to believe that there was an investigation ongoing in relation to the allegations and that they were at an advanced stage and I immediately presumed from that that Sergeant McCabe would be charged with something or another." 11:44

A. Totally untrue, Chairman, and would be contrary to any facts that I had within my knowledge at the time. Absolutely untrue. I wasn't aware of any investigation

1 or any inquiries at all in relation to Sergeant Maurice
2 McCabe.

3 149 Q. Well, you see, in a way this could be said to mirror
4 what Séamus McCarthy was saying in relation to what he
5 had had in the plural, allegations of sexual abuse, but 11:45
6 that the matter was ongoing and under investigation?

7 A. Well, you see, what Mr. McGuinness said to me was that
8 he was aware that Sergeant McCabe had been the subject
9 of a criminal allegation of a sexual nature, he was
10 already aware of that prior to our meeting, and he went 11:45
11 on to ask me about why Sergeant McCabe was making all
12 of these complaints. Was it because of the file that
13 went to the DPP? So it's quite clear to me, prior to
14 our meeting, that Mr. McGuinness was quite aware that
15 Sergeant McCabe had been investigated - not a shadow of 11:46
16 a doubt about that in my mind - and all he was speaking
17 about was an allegation. There was no reference to
18 allegations in any way, shape or form.

19 150 Q. If you go to page 76.

20 A. I don't have the transcript. 11:46

21 151 Q. Oh, sorry, do you not? I thought I had given it to
22 you. Day 62. Is that not it there?

23 A. I beg your pardon, I am sorry, I am asleep at the wheel
24 here. Sorry, Chairman. Page?

25 152 Q. 76. 11:46

26 A. Thank you, Chairman.

27 153 Q. Your case was put to him on page 76, in particular a
28 quotation from a passage:
29

1 "' I travelled from Dundalk to the meeting with Deputy
2 McGuinness, the meeting lasted for roughly 15, 20
3 minutes. Much of the discussion related to the
4 concerns I had in respect of data protection issues and
5 my role as accounting officer. '

11:47

6
7 Do you recall him mentioning that?

8 A. No. "

9
10 Then a further quotation from your statement is put:

11:47

11
12 "' I sought to emphasise to Deputy McGuinness that I
13 could not see how the Public Accounts Committee could
14 deal with the material without the members of the
15 public concerned being identified. '

11:47

16
17 Was there such a discussion about that?

18 A. No, there wasn't. All of these matters had been
19 dealt with previously in correspondence by the
20 Committee. "

11:47

21
22 Do you see that?

23 A. I do, Chairman, yes.

24 154 Q. And then over the page, the line 2:

25
26 "From Commissioner Callinan to the Committee and from
27 the Committee on legal advice back to the Commissioner
28 Callinan. So these are matters that were already dealt
29 with. "

11:47

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You see, he is countering the proposition being put forward by you that there was some discussion in relation to that aspect of the hearing.

A. No, that is not correct, Chairman, because what I had said to him, and what I have been saying all along, both in the letters and the evidence I had given at the Public Accounts Committee and at that meeting, was that I couldn't see, under any circumstances, how Sergeant McCabe could raise the issues he was raising, without making reference to personal and sensitive details contained in the documents that had unlawfully, in my view, been disclosed. 11:48

155 Q. Well, perhaps, at this stage perhaps you could go through and just give us your evidence in relation to how you say the conversation went with Deputy John McGuinness. 11:48

A. We met. As I outlined, Chairman, at the car park of Bewley's Hotel. I sat into the car on the basis that Mr. McGuinness had moved papers from the passenger seat. I sat in there, and we began to engage in the conversation. He knew I had been in Dundalk. He inquired about the particular family, he inquired about the Garda family, he inquired about the community, he inquired about cooperation we were getting in the context of that particular investigation. And so, he was aware of all that. And then he asked the question, why was it that Sergeant McCabe was raising all of these issues? was it because of the file that went to 11:49

1 the Director of Public Prosecutions? The DPP, I think
2 was the term he used. And I looked at him with some
3 surprise and he indicated to me that he knew all about
4 the criminal investigation underlying the allegation.
5 And as I said in my statement, that was not something 11:50
6 that was prompted by me or something that was raised in
7 response to a question that I had raised. I simply
8 replied by saying to Mr. McGuinness that if he was
9 aware of the file that went to the DPP he must be aware
10 of the directions and he indicated that he knew all 11:50
11 about the investigation. And that was pretty much the
12 extent of the conversation in relation to that matter.
13 I didn't at any point in the conversation try to
14 undermine the working of the Public Accounts Committee
15 or speak in derogatory terms of Sergeant McCabe, nor 11:51
16 would I. And I then put my proposals to him, what I
17 had intended to do. I write to himself, as the
18 Chairman, and also to the sergeant, and outlining the
19 steps, what I was proposing within the draft letter
20 that had been read out earlier, and to see would that 11:51
21 be acceptable. And he had said, we are definitely
22 calling Sergeant McCabe next week, there was no
23 question about that. So that made the letter in that
24 regard redundant, and I did impress upon him in the
25 context of the conversation that I could not see how 11:51
26 these matters could be dealt with without members of
27 the public being raised and their particular details,
28 and that is what partly -- partly what I was
29 complaining about in relation to Sergeant McCabe's

1 appearance before the Public Accounts Committee. I
2 didn't believe it was the correct forum, Chairman. It
3 wasn't the case that I had any objection to Sergeant
4 McCabe raising any complaints he wanted to make
5 around -- about wrongdoing. That wasn't the issue, 11:52
6 that wasn't on my mind at all. My issue was that they
7 should be raised at the appropriate forum. And I
8 believe I have been entirely consistent from the moment
9 I heard about the materials that were given to the
10 Public Accounts Committee, through the exchange of 11:52
11 correspondence, through my evidence at the Public
12 Appointments Committee and indeed with my meeting with
13 John McGuinness at the car park, I was entirely
14 consistent at all times. And none of that conversation
15 and none of that correspondence at any point in time 11:52
16 spoke to Sergeant McCabe in derogatory terms.

17 156 Q. So I am just not entirely clear as to the purpose of
18 meeting with Mr. McGuinness in the car park, if we just
19 go back to that.

20 A. Yes. 11:53

21 157 Q. And what was to be achieved by you. The Public
22 Accounts Committee was a fairly strong committee, isn't
23 that right?

24 A. Correct, Chairman, yes.

25 158 Q. There are a lot of very prominent politicians and we 11:53
26 can see that from fairly robust questioning of you by
27 them at the Public Accounts Committee meeting on the
28 23rd January. What was the point in singling out the
29 Chairman to talk to him in the manner in which you did?

1 A. Well, I think we had dealt, or at least I thought I had
2 dealt substantially with most of the issues that I had
3 raised in the exchange of correspondence and indeed at
4 the evidence I had given at the Public Accounts
5 Committee, but based on what the Chairman had said at 11:54
6 the end of that meeting, there was an opportunity, I
7 felt, to try and deal with this matter without Sergeant
8 McCabe appearing in front of that committee. Now, this
9 was Friday, you had the weekend and then on Thursday
10 Sergeant McCabe was scheduled to attend. And at that 11:54
11 particular juncture, Chairman, it wasn't decided
12 whether the meeting would be in public or private, and
13 I was exhorting on Mr. McGuinness that I didn't feel
14 these matters could be dealt with without raising
15 personal details of members of the public. So, that 11:55
16 was the sense of urgency in getting a sense of whether
17 or not this would be a runner, so to speak; the steps I
18 was taking to try and resolve the issues. And if it
19 was the case that that wasn't to be, well, then, I just
20 had to abandon those letters and either take action 11:55
21 through the courts or let things happen. The one thing
22 I did say to Mr. McGuinness prior to leaving, he makes
23 reference that I put my hand in his hand, or whatever
24 terminology he used, that didn't happen, but I shook
25 hands with the man and I said would you please keep me 11:55
26 informed whether or not it's going to be in public or
27 private because I knew there was going to be a meeting
28 on the Tuesday. And that would have been a key element
29 of me making my mind up as to whether or not I should

1 take the matter further in a legal capacity. That is
2 pretty much the summation of the meeting.

3 159 Q. Well, you appreciate that he is giving a completely
4 different account, and he is suggesting that, and the
5 only inference one could draw from his account is that 11:56
6 you were trying to warn him and the Committee off
7 calling Sergeant McCabe as a witness?

8 A. Well, I don't think there can be any doubt that I was
9 opposed to Sergeant McCabe giving evidence, for the
10 reasons that I have specified, Chairman. No other 11:56
11 reason.

12 160 Q. Well, you see, nothing else had worked up until that
13 stage, isn't that right, keeping him out of the
14 witness-box?

15 A. Yes, I hadn't -- I hadn't made any attempt to try to 11:56
16 keep Sergeant McCabe out, other than voicing my
17 objection that I didn't believe it was the appropriate
18 way to go about dealing with these matters.

19 161 Q. Well, you had entered into extensive correspondence
20 with the Public Accounts Committee? 11:57

21 A. I did. In relation to the materials that they had been
22 given, because they were handed over, I'm the data
23 protection officer for the Garda organisation.

24 162 Q. Yes. And also with the office of the Attorney General
25 and you have discussed it with Mr. Brian Purcell as 11:57
26 well, isn't that right?

27 A. That's correct, Chairman, yes.

28 163 Q. And he was following your evidence at the Public
29 Accounts Committee meeting and we know that he texted

1 you, telling you that it was a particularly good job
2 under fire, or whatever, I can't remember what it was
3 that he said, isn't that right?

4 A. That's correct, Chairman, I have seen the text.

5 164 Q. And we know from the text messages that there was some 11:57
6 communication between you and he in relation to whether
7 or not Sergeant McCabe was going to be giving evidence
8 or was going to be in attendance on the 23rd January,
9 and we also know that you advised him prior to going to
10 the meeting with John McGuinness that you were going to 11:58
11 the meeting, isn't that right?

12 A. Yes, that is so, Chairman, yes.

13 165 Q. And we have seen the texts, you have seen it in the
14 papers, there is no need to open it to you at this
15 juncture, from him to you asking you how it had gone, 11:58
16 and I think then did you subsequently ring him and tell
17 him how it had gone?

18 A. I believe I did, Chairman, yes.

19 166 Q. Okay. So none of your efforts had borne any fruit in
20 relation to the issue of whether or not Sergeant McCabe 11:58
21 would be giving evidence, as of the close of business
22 on the 23rd January. I mean, if one accepts
23 Mr. McGuinness's account, it would appear to be a last
24 ditch effort by you to try and turn the Committee
25 against Sergeant McCabe and that that might resolve the 11:59
26 issue favourably as far as you were concerned, do you
27 understand?

28 A. I absolutely understand, Chairman, yes, but I would
29 find it rather unusual that here is an opportunity when

1 I am appearing in front of the Committee, for them to
2 put those issues to me and that was the never the case.
3 I mean, Mr. Deasy, I see in his interview with the
4 investigators, said that he assumed what I was trying
5 to do was to, I suppose, in some way or another 11:59
6 indicate that Sergeant McCabe wasn't to be believed on
7 these matters. I mean, if that's the case, surely it
8 would have been put to me. I mean, these, as you said,
9 are experienced politicians. They wouldn't go behind
10 the door about putting something like that to you if 11:59
11 that was the case, and if I had said that, which I
12 didn't say. But I found that quite extraordinary.

13 167 Q. Mr. McGuinness has a note in his diary, it's in volume
14 8 there at page 2205, a note of what he says transpired
15 at the meeting, which is at total variance with your 12:00
16 account. But have you anything to say about the note
17 in his diary? Have you any observations that you wish
18 to make in relation to it?

19 A. I mean, I have heard -- I have heard -- sorry, I have
20 read, I beg your pardon, I have read the evidence of 12:00
21 Mr. McGuinness in that context, and, you know, I have a
22 view, for what it's worth. Certainly, what is written
23 down here doesn't in any way, shape or form represent
24 the conversation that I had with Mr. McGuinness in the
25 car park of Bewley's Hotel, as it was at that time, on 12:01
26 the 24th January 2014. It absolutely does not
27 represent what was said. And I did have to think
28 strongly about whether or not I would go further, but I
29 don't propose to, other than to say that I have heard

1 what the man said on the public airwaves about not
2 making notes and the question was, did you take any
3 notes then or later? Because I'm aware that
4 Mr. McGuinness, in his evidence to this Tribunal, has
5 indicated that he pulled in on the way home to make 12:01
6 these notes, but I -- I just -- I cannot accept that
7 that note is an accurate note. That is all I have to
8 say in relation to it. I thought there was an element
9 of fuzziness around the way it was made, for such a
10 serious matter. And, as I say, what he had 12:02
11 subsequently said at that same programme, the News at
12 One, in October, on 9th October, differed greatly from
13 what he had said on 29th May of that year. So I mean,
14 that's -- that's my view of Mr. McGuinness, and all I
15 can do, Chairman, is give you my version of the 12:02
16 conversation. I can't put it any stronger.

17 168 Q. And once again, similar to the conversation that you
18 had with Mr. Boucher-Hayes, I suggest to you that they
19 can't be reconciled, the two accounts; I mean, there is
20 no room for misinterpretation of what was said here, is 12:02
21 there?

22 A. Well, certainly in relation to Mr. John McGuinness,
23 Chairman, these are outrageously serious allegations
24 made against me, and I cannot for the life of me
25 understand why they were being made, other than to say 12:03
26 to the Tribunal, they are not true in any way, shape or
27 form. They are simply not true. They are falsehoods.

28 169 Q. At the end of the day I think that Mr. McCabe ended up
29 giving evidence in private, isn't that right?

1 A. He did, Chairman, yes.

2 170 Q. Just in relation to those, you know, alleged
3 conversations that you had with Mr. Deasy and
4 Mr. McCarthy and then with Mr. McGuinness on 23rd and
5 then in the car park on the 24th, is there anything 12:04
6 that you'd like to add in your evidence in relation to
7 those conversations or any aspect of it that you think
8 that I may have left out that would be favourable to
9 your version of events? Just feel free to say so.

10 A. Well, Chairman, all I can do is tell you, you have my 12:04
11 evidence, you have it before you. I have endorsed what
12 I have said with the investigators. I am very clear in
13 the recollections I had. It's a matter of regret that
14 it has come to this, but that's the way it is. I am
15 not in the position of, as I said, on Friday, doing 12:04
16 down Sergeant McCabe, nor would I have had the time to
17 do so, as I said on Friday. That is not where I'm
18 coming from. And as far as I am concerned, the
19 sergeant was quite entitled to make any allegations
20 that he wished and my job was to ensure that those 12:05
21 matters were investigated properly. Other than that,
22 the interactions that I had with my accusers, as
23 outlined, I can only give you my version, and it, you
24 know, it is, I accept -- I accept it's at variance with
25 what the other parties are saying - some but, not all - 12:05
26 but on the critical points, I cannot move from my
27 position. I'm telling the truth, I am here to tell the
28 truth and that is it, as far as I am concerned.

29 171 Q. If we could just then move on to Superintendent Taylor

1 and his protected disclosure. I think on Friday, I
2 asked you why you had appointed Superintendent Taylor
3 as Press Officer and what qualities that you thought he
4 might bring to his role as Press Officer, and I think
5 that you accepted that he had no formal qualifications 12:06
6 to be Press Officer, is that right?

7 A. That's correct, Chairman, yes.

8 172 Q. And he had no training when he took up the role as
9 Press Officer, and I think we heard from him that he
10 had a 40-minute stint with Carr Communications and some 12:06
11 advice that they would have offered him in that role,
12 and that he would be guided by the Garda Code in many
13 respects, is that right?

14 A. Yes, Chairman.

15 173 Q. And that you had a close working relationship with him. 12:06
16 I suppose the issue of Sergeant McCabe was to the fore,
17 if not to the fore, was very prominent at the time as
18 being of concern to you, is that right?

19 A. Yes, absolutely.

20 174 Q. And you would have wanted to be updated -- as 12:07
21 Superintendent Taylor had suggested, you would want to
22 be updated on any developments on that front as far as
23 Sergeant McCabe and indeed Garda John Wilson would have
24 been concerned?

25 A. Yes, I would have regarded that as being importance to 12:07
26 me, that I would be aware of what was going on, because
27 that was his job, to keep me informed.

28 175 Q. So in terms of texting you or emailing you or
29 otherwise, in relation to updates of the latest

1 developments in the media in respect of Sergeant
2 McCabe, there wouldn't have been anything unusual in
3 that?

4 A. No, Superintendent Taylor was a very strong texter. We
5 got hundreds and hundreds of texts from him about 12:08
6 operational matters, about updates, as Mr. Marrinan has
7 outlined, but on an operational basis.

8 176 Q. So, a part of his brief, of necessity, would have been
9 to keep you, as the Commissioner, abreast of any
10 developments in the media in respect of Sergeant 12:08
11 McCabe, isn't that right?

12 A. Yes, that would be a fair representation, Chairman,
13 yes.

14 177 Q. And where necessary, to respond to any of the issues
15 that may have arisen if it was deemed necessary either 12:08
16 by him or after, in consultation with you, to respond
17 on your behalf in the media, isn't that right?

18 A. Agreed, Chairman, yes.

19 178 Q. So, you know that in his protected disclosure, he has
20 referred to these large number of communications 12:09
21 between you and he and also Deputy Commissioner Nóirín
22 O'Sullivan, isn't that right?

23 A. Yes, Chairman.

24 179 Q. And was she kept in the loop, as far as you were
25 concerned, in relation to updating? 12:09

26 A. I suspect that was the case, Chairman, yes.

27 180 Q. So as far as you are concerned, there is absolutely
28 nothing sinister in any of that aspect of
29 Superintendent Taylor's protected disclosure?

1 A. No, that was his job, Chairman.

2 181 Q. Right. Now, if we could just go to page 5 of the
3 materials, this is in Volume 1.

4 A. Thank you, Chairman.

5 182 Q. And we will deal with the third paragraph down there. 12:10

6
7 "I recall being instructed or directed to contact the
8 media to brief them on the particular line the
9 Commissioner had instructed; namely, to brief
10 negatively against Sergeant McCabe. In particular I 12:10
11 recall that I was to brief the media that Sergeant
12 McCabe was motivated by maliciousness and revenge. I
13 was also to encourage media to write negatively about
14 Sergeant McCabe, that his complaints had no substance,
15 that the Garda had fully investigated his complaints 12:10
16 and found no substance to his allegations. In essence,
17 I was to brief that Sergeant McCabe was driven by
18 agendas."

19
20 I suppose, if you break this down in terms of what he's 12:11
21 alleging there, I mean, a lot of that, as far as you
22 were concerned, or some of it as far as you were
23 concerned, was factually correct, isn't that right? I
24 mean, as far as you were concerned, his complaints had
25 been investigated within An Garda Síochána, isn't that 12:11
26 right?

27 A. Well, it's absolutely not the case, Chairman, that he
28 was briefed by me to brief the media that he was
29 motivated by maliciousness and revenge.

1 183 Q. Yeah, no, but I mean, could you have said to
2 Superintendent Taylor, look, you know, when you get a
3 chance with the media will you remind them that
4 Assistant Commissioner O'Mahony has looked into a lot
5 of these investigations and found most of them to be 12:12
6 unfounded, would you remind them that Assistant
7 Commissioner Derek Byrne similarly has examined a lot
8 of these issues and a lot of them and the more serious
9 ones were found to be incorrect; I mean, was that not a
10 line that would have been quite legitimately taken? 12:12
11 A. Well, there was no specificity. I mean, the bottom
12 line here is if there was an issue around or a question
13 either about either the Byrne/McGinn report or indeed
14 about Mr. O'Mahony's report, if they could be dealt
15 with they would be dealt with, that was plainly the 12:12
16 case up to --

17 184 Q. What I am asking you, was there anything wrong with
18 that? I mean, this was the Garda view of things at the
19 time. These matters had been investigated, they had
20 been resolved, a lot of the complaints, according to 12:13
21 Byrne and McGinn, I think, about a third of Sergeant
22 McCabe's complaints had been upheld and, as we
23 discussed in relation to Assistant Commissioner
24 O'Mahony, you know, sort of 85% of the complaints
25 hadn't been upheld. So, I mean, was there anything 12:13
26 wrong with saying to Superintendent Taylor, look, the
27 media are interested in this issue? They were, weren't
28 they?

29 A. Well, certainly, I'm sure queries would have arisen in

1 the context of all of those matters that you have just
2 raised.

3 185 Q. I mean, and the issue didn't appear to be going away,
4 isn't that right?

5 A. No, it was a continuing story, yes. 12:13

6 186 Q. It became more prominent as the Public Accounts
7 Committee meeting was looming on the 23rd January,
8 isn't that right?

9 A. Well, certainly in relation to the penalty points
10 issue. 12:14

11 187 Q. Yes?

12 A. The fixed charge notice system.

13 188 Q. Yes.

14 A. Yes, there were a lot of articles written around that
15 time in relation to the complaints of Sergeant McCabe,
16 yes. 12:14

17 189 Q. And would it not have been entirely legitimate for you
18 to say to Superintendent Taylor, look, you know, we are
19 losing the battle here in the media and on the public
20 airwaves, get out there and remind them that it's not a
21 one-sided story? 12:14

22 A. No, that's -- that's not the case. That is not the
23 case. It's not a question of a battle. You deal in
24 the facts that are presented to you at the time.

25 190 Q. Well, give them the facts then and say, look, will you
26 remind them, because this is your job to remind them,
27 of these matters, these are factual issues, they are
28 factual matters, go out there and remind the
29 journalists that these matters have been investigated,

1 that the guards have spent months looking, and in one
2 instance years, looking into these matters, would that
3 not have been legitimate?

4 A. I don't think there is any question or doubt that that
5 would be the case and that the media would be aware of 12:15
6 those matters. That is a given. I don't think there
7 is any issue at all in relation to any of that.

8 191 Q. And would there be anything wrong with Superintendent
9 Taylor reminding them that that was so, whenever he got
10 the opportunity? 12:15

11 A. Well, that would be -- I mean, it's a hypothetical
12 question but I am presuming if there was an issue
13 raised or a question raised in relation to any one of
14 those matters, that the superintendent would have dealt
15 with them if he could or would revert to me if there 12:15
16 was issues that were complicated or needed direction or
17 clarification, that he could approach me.

18 192 Q. As far as you could see, did Superintendent Taylor
19 appear to have a close working relationship with
20 journalists? 12:16

21 A. I would have thought he had a professional relationship
22 with them. That is what I hoped would be the situation
23 and that is what every Press Officer is obliged to
24 have; is a professional working relationship with the
25 media. That is his job, after all, he is 12:16
26 interacting --

27 193 Q. That is not really what I am asking. I am asking you
28 do you think he had a close relationship with a number
29 of journalists?

1 A. Well, you know, you have to separate what you now know
2 versus what you knew at the time the superintendent was
3 the Press Officer.

4 194 Q. Well, that is what I am asking you about, as far as you
5 were concerned, observing him as the Press Officer and 12:16
6 in your interactions on a daily basis with him, did he
7 appear to be quite close to a number of journalists?

8 A. No, not particularly, no. I knew he would have
9 obviously had a relationship with the media, that was
10 his job, but beyond that, I didn't have any either 12:17
11 knowledge or belief or expectation that he would
12 engage, for instance, in relation to some of the
13 materials that I have been reading about, that he had
14 that type of engagement with any of the individuals in
15 the media concerned. 12:17

16 195 Q. We know that in late February and early March, that
17 Superintendent Taylor became aware that Debbie McCann
18 was going to go and visit Ms. D?

19 A. Yes.

20 196 Q. And did he advise you of that at the time? 12:17

21 A. No, he did not.

22 197 Q. Does it surprise you that he didn't advise you of that
23 at the time?

24 A. I don't know. I don't know whether --

25 198 Q. Would that not have been a matter that you would have 12:18
26 been interested in?

27 A. Most, most queries in and around Sergeant McCabe were
28 brought to my attention, I think that is reasonable.

29 199 Q. And so, would that not have been a matter that you

1 would have been interested in?

2 A. Of course, of course.

3 200 Q. And wouldn't it be the most natural thing in the world
4 if Superintendent Taylor was advised of that
5 significant development, that he would have told you? 12:18

6 A. The expectation would have been that he would have told
7 me, but of course --

8 201 Q. Can you think of any reason why he didn't tell you?

9 A. No.

10 202 Q. Because I'm just suggesting to you that in the normal
11 run of things, that that would be something that you
12 would need to be updated on? 12:18

13 A. I would accept that, yes.

14 203 Q. You see, on one basis, the resurfacing of the Ms. D
15 allegation, in whatever form it would take, could be
16 very damaging to Sergeant McCabe's reputation, isn't
17 that right? 12:19

18 A. I suppose that would depend on what was being said or
19 what was alleged.

20 204 Q. Or it could be regarded as something, a development
21 that was very convenient for senior management. Also,
22 it had the potential to reflect badly on senior
23 management that this issue was coming back into the
24 public domain. 12:19

25 A. Well, the fact that, as I have read, that the complaint
26 would seem to be that it wasn't properly investigated,
27 of course that would be a concern. 12:19

28 205 Q. Well, also that it was perhaps a convenient time for
29 this development to take place?

1 A. If you believe in the theory that there was a campaign
2 to do down Sergeant McCabe, you could certainly see why
3 that view would be taken, but that is not the case.

4 206 Q. Certainly it could raise a suspicion --

5 A. Agreed. 12:20

6 207 Q. -- that the Gardaí had been instrumental in some way in
7 this?

8 A. Agreed, Chairman.

9 208 Q. And we know that Superintendent Taylor discussed Ms. D
10 with Debbie McCann and told her apparently, according 12:20
11 to Alison O'Reilly in a conversation that she had with
12 Debbie McCann, that Ms. D was in a bad way. So we know
13 that after her visit to the Ms. D household and Mrs. D
14 turning her away at the door, that she contacted
15 Superintendent Taylor to say that her visit had been 12:21
16 unsuccessful. Are you surprised that you weren't
17 updated in relation to all of that?

18 A. I am actually, yes. Yes, I am.

19 209 Q. All right. Well then, we know that the next person to
20 visit was Eavan Murray, who is also a journalist, and 12:21
21 that she advised Superintendent Taylor that she was
22 going to visit with Ms. D, and one assumes that
23 Superintendent Taylor, in his discussions with her,
24 probably advised her that the Debbie McCann had been
25 there unsuccessfully but perhaps we don't know that, 12:21
26 but did Superintendent Taylor advise you that Eavan
27 Murray was going up --

28 A. No, Chairman.

29 210 Q. -- to try and get a story?

1 A. No, Chairman.

2 211 Q. And afterwards, she was in communication with him and
3 she wasn't successful either. Were you updated on
4 that?

5 A. No, Chairman. 12:22

6 212 Q. Detective superintendent John O'Reilly, do you know
7 him?

8 A. I do, Chairman, yes.

9 213 Q. Do you know him well?

10 A. I would have a professional working relationship with 12:22
11 him, yes. He is detective super on the border at the
12 minute, but I knew him for a number of years through
13 various investigations. I think in fact he was in
14 Pearse Street during my period. He was actually.

15 214 Q. Had you been in contact with him at all in or around 12:22
16 about March of 2014?

17 A. No. No.

18 215 Q. Because he suggests or recommends that he can contact
19 Paul Williams on behalf of Mr. D. Were you not aware
20 when Superintendent Taylor says that he was contacted 12:23
21 by Paul Williams on Saturday the 8th March?

22 A. No, no, Chairman.

23 216 Q. The fact that Paul Williams, who is a well-known
24 journalist, would have contacted Superintendent Taylor
25 and advised him that he was in the home of Ms. D, you 12:23
26 would have been interested to know that, wouldn't you?

27 A. I would certainly, Chairman, yes.

28 217 Q. And in the normal course of events, if it happened that
29 Paul Williams did contact Superintendent Taylor on

1 Saturday the 8th March, you would have expected him to
2 update you and keep you abreast of developments in that
3 regard?

4 A. I certainly would, Chairman, yes.

5 218 Q. There was -- do you recall at this remove anything that 12:24
6 transpired from a policing perspective that was of
7 particular interest on the evening of the 8th March of
8 2014?

9 A. No, Chairman. I would be getting, and I'm sure the
10 Deputy Commissioner as well, Nóirín O'Sullivan at that 12:24
11 time, would have been getting fairly regular updates
12 about incidents, operational matters that were
13 occurring. So I mean, that was one of certainly
14 thousands of text messages that I would have received
15 over the period I was Commissioner. 12:24

16 219 Q. Well, you see, we have the telephone records and you
17 have seen them from that time --

18 A. I have, Chairman.

19 220 Q. -- that suggest that Superintendent Taylor did, in
20 fact, text you on the Sunday night, the 8th March, you 12:25
21 saw that?

22 A. I saw that and I certainly wouldn't dispute it,
23 absolutely not.

24 221 Q. Saturday, sorry. Saturday night, the 8th of March.

25 A. Was it Saturday? whatever date. I wouldn't dispute 12:25
26 that, of course not.

27 222 Q. And that he also texted Nóirín O'Sullivan at the same
28 time and there was communication then immediately
29 afterwards between Superintendent Taylor and Debbie

1 McCann, and that Andrew McLindon was also contacted in
2 or around about that time. You don't have any
3 recollection what that could have been?

4 A. No, Chairman.

5 223 Q. So, in any event, when was the first time that you 12:25
6 became aware that Paul Williams was in or had been --
7 interviewed Ms. D?

8 A. I read the articles in the newspapers, Chairman. I
9 think in or around the 12th April, was it? Sometime --
10 I had retired at that time when I saw the articles. 12:26

11 224 Q. Whatever about Saturday night, the 8th March, Paul
12 Williams says that he phoned Superintendent Taylor, I
13 think it was on the Monday or the Tuesday the following
14 week, to make an inquiry through the Press Office in
15 relation to matters concerning the investigation in 12:26
16 circumstances where, quite clearly, he was showing an
17 interest in the Ms. D investigation. Are you surprised
18 that Superintendent Taylor didn't update you in
19 relation to that aspect of it?

20 A. I am, Chairman, yes. 12:27

21 225 Q. I mean, what ought to have been the response from An
22 Garda Síochána at that time?

23 A. In relation to Mr. Williams?

24 226 Q. Yes, and his queries.

25 A. Well, it wouldn't be the case that we would get 12:27
26 involved in answering individual queries in relation --
27 and certainly not to something as sensitive as that.

28 227 Q. Was it wholly improper for Superintendent Taylor to
29 give information to Paul Williams in relation to that

1 investigation of Sergeant McCabe?

2 A. It would generally be the situation that you wouldn't
3 make a comment about individual cases. That would be a
4 fairly standard reply, Chairman, in relation to queries
5 from the press.

12:27

6 228 Q. And is that something that the press would be aware of
7 themselves?

8 A. Generally speaking, but, you know, I've read the
9 evidence, and I certainly agree with the proposition
10 that a journalist is quite entitled to ask the
11 questions. Whether you answer them is another day's
12 work, but they have a job to do and you certainly
13 couldn't hold it against them to ask those type of
14 questions.

12:28

15

12:28

16 THE HEARING ADJOURNED FOR LUNCH.

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1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 229 Q. MR. MARRINAN: If we could just now continue on at page
4 5 of Superintendent Taylor's protected disclosure of
5 the 30th September 2016. We dealt with the third 13:32
6 paragraph there, and we move on to the fourth
7 paragraph.

8
9 "I was also directed to draw journalists' attention to
10 the complaint of a sexual assault made against Sergeant 13:33
11 McCabe and that this was the root cause of his agenda
12 revenge against the gardaí. I recall a telephone call
13 with the journalist Paul Williams where he informed me
14 that he was in the house of the person who had made the
15 complaint against Sergeant McCabe with a view to 13:33
16 interviewing her. I informed both the Commissioner and
17 Deputy Commissioner of this. No article was ever
18 published. I spoke to various journalists on foot of
19 the instructions as given to me by the Garda
20 Commissioner to encourage them to write negatively 13:33
21 about Sergeant McCabe and to brief against him."

22
23 You deny all that, is that right?

24 A. That's correct Chairman, yes.

25 230 Q. Then we go on to the next paragraph: 13:33

26
27 "One particular example was the report of Assistant
28 Commissioner John O'Mahony into the allegations made by
29 Sergeant McCabe. I was instructed by the Commissioner

1 to brief the media that Sergeant McCabe had refused to
2 cooperate with Assistant Commissioner O' Mahony. I
3 later found out that this was untrue."
4

5 Remember before lunch I was asking you about that and 13:34
6 whether or not there was a possibility that, perhaps
7 legitimately, that you would use Superintendent Taylor
8 to assert that fact as you saw it to be, but you denied
9 that, is that right?

10 A. No, I never asked him to do that on my behalf. No, 13:34
11 Chairman.

12 231 Q. You see, if we could just have page 3038 up on the
13 screen, please. This is a statement that was made by
14 Sergeant McCabe on Monday, 24th February 2014, in
15 response to an item of news: 13:35
16

17 "My attention has been drawn by members of the media
18 today to a statement or press release that appears to
19 have been released to the media earlier today in
20 relation to me. The unheaded statement or --" 13:35
21

22 It's volume 11.

23 A. I beg your pardon.

24 232 Q. 3038.

25 A. Thank you. Thanks, Chairman. 3? 13:35

26 233 Q. 3038.

27 A. Thank you. Thank you, Chairman.

28 234 Q. I will just go over it again:
29

1 "My attention has been drawn by members of the media
2 today to a statement or press release that appears to
3 have been released to the media earlier today in
4 relation to me. The unheaded statement or press
5 release is, I regret to say, both gravely misleading 13:36
6 and false. It suggests that the Garda Commissioner
7 wrote to me 14 months ago and told me to cooperate with
8 the investigation into the allegation the penalty
9 points have been cancelled. It claims that the
10 Commissioner issued a direction to me to cooperate with 13:36
11 the investigation being carried out by the assistant
12 commissioner and directing me to bring any information
13 or concerns I had to the inquiry team."

14
15 It goes on to state: 13:36

16
17 "The Garda Síochána is a disciplined force and that
18 members are required to comply with directions issued
19 by the Commissioner, implying that I wrongly failed to
20 comply with the Commissioner's direction to cooperate. 13:36
21 The statement further suggests that I did not comply
22 with the Commissioner's direction during a period when
23 I was on sick leave and that I did not contact the
24 assistant commissioner until April 2013, by which time
25 the investigation had been completed." 13:37

26
27 And then he goes on to set out his stall, but we're not
28 really concerned about the rights and wrongs of that.
29 But here we are, on the 24th February of 2014, at the

1 height of this controversy and a statement was issued,
2 apparently, to the media.

3 A. I haven't seen that statement. I don't know what it's
4 about. I looked for it and I couldn't find it.

5 235 Q. Yes, well, it apparently was broadcast, and this is 13:37
6 Sergeant McCabe's response to it, and it appears to be
7 perhaps coming through Superintendent Taylor, which one
8 would expect if he was the Press Officer?

9 A. Chairman, I looked for that statement and I can't find
10 it anywhere, so I haven't seen it in the papers. 13:37

11 236 Q. Well, I think you can take it that Sergeant McCabe is
12 responding to an issue that has been put into the
13 public domain and has been, as a result of that,
14 pressed into issuing a statement himself.

15 A. Yes. All I can say to that, Chairman, is, I haven't 13:38
16 seen that statement and I don't know what it's about.

17 237 Q. Well, you see, it may, and I don't know, it may reflect
18 in relation to this matter that is raised by
19 Superintendent Taylor in his protected disclosure,
20 where one particular example was the report of 13:38
21 Assistant Commissioner John O'Mahony into the
22 allegations made by Sergeant McCabe:

23
24 "I was instructed by the Commissioner to brief the
25 media that Sergeant McCabe had refused to cooperate 13:38
26 with the Assistant Commissioner O'Mahony. "

27
28 And that was broadcast at 2:00pm on RTÉ by the
29 journalist Paul Reynolds.

1 A. I'm not aware of that, Chairman.

2 238 Q. All right. But anyway, you're denying that you were
3 giving any instructions at all to Superintendent Taylor
4 to put any spin on any issue and to put it out there
5 with the media in the hope that Sergeant McCabe may be 13:39
6 seen in a bad light, is that right?

7 A. Correct, Chairman, yes.

8 239 Q. Then if we just turn to page 8 of the protected
9 disclosure, and we see the second paragraph there,
10 "Throughout 2013/2014..." 13:39
11 Superintendent Taylor hasn't actually put an exact date
12 on this, but it seems to have been in the early summer
13 of 2013, or the summer of 2013, it is not quite clear
14 which, that he says that he was instructed by you to
15 brief the media negatively about Sergeant McCabe. He 13:40
16 says here:

17
18 "Throughout 2013/2014, any information or update that I
19 received from the media or any source was passed on by
20 me to both the Commissioner and Deputy Commissioner 13:40
21 Níóirín O'Sullivan for their attention."
22

23 You agree that that is so in respect of you and
24 probably so in respect of Deputy Commissioner
25 O'Sullivan, is that right? 13:40

26 A. I would think, generally speaking, that is the case,
27 yeah. I mean, it's clear from what I have read now and
28 seen, I wasn't briefed about everything, but that's his
29 job and that's what he would do --

1 240 Q. Yes.

2 A. -- was brief as best he could, and that's what he was
3 supposed to do.

4 241 Q. "This included a significant number of updates or
5 information regarding Sergeant McCabe. On many 13:41
6 occasions they would acknowledge receipt of these text
7 messages. The Commissioner often replied by saying
8 'thanks Davy' or 'thanks D'. Deputy Commissioner
9 O'Sullivan often acknowledged receipt of text messages
10 by the use of the word 'thanks' or 'perfect'. I cannot 13:41
11 specify any particular instances."
12

13 well, you know, that is just a normal response that one
14 gets to text messages. I'm sure you're not quarrelling
15 with any of that, is that right? 13:41

16 A. No. That would be correct, Chairman, yes.

17 242 Q. But what you do, and appears somewhat odd in the
18 context of the protected disclosure and what we now
19 know, rather late in the day, that he, Superintendent
20 Taylor, had extensive interaction with two journalists 13:41
21 who sought out Ms. D to do a story at a time when they
22 didn't know that Ms. D was in the slightest bit
23 interested in giving a story, but he didn't update you
24 in relation to that?

25 A. No, Chairman. 13:42

26 243 Q. Even though you would have expected him to do so in the
27 normal course of events?

28 A. I would, Chairman. Correct, Chairman, yes.

29 244 Q. And then he goes on to say:

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"I can confirm that a huge number of interactions took place between myself, the Commissioner and Deputy Commissioner O'Sullivan by way of text message."

13:42

I am sure you don't quarrel with that either?

A. No, Chairman.

245 Q. And then he says:

"My phones have been seized and taken from me and are in the custody of An Garda Síochána."

13:42

That's actually not correct insofar as the phones that he would have used to contact you.

13:42

"I understand from the course of my interviews under caution that the phone has been forensically examined."

Again, that is incorrect.

13:43

"And so these text messages should be available on my devices."

well, that couldn't be so, in what we know, because his phone had been returned to him by Inspector Moroney in September 2014. And then he says:

13:43

"I did not delete any text messages sent by me or received by me which involved the Commissioner and

1 Deputy Commissioner O'Sullivan."

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Now, in relation to your phones, if we could perhaps just move on to that briefly. As I understand it, and you can correct me if I am wrong in relation to this, you had a number of phones during the relevant period of time, but there was only one that was effectively, I believe, in use, and that was the one that you handed up to the Fennelly Commission, isn't that right? 13:43

10 A. That's correct, Chairman, yes. 13:44

11 246 Q. I won't go through all the phone numbers and IMEI numbers there; they're set out in the Tribunal's summary of the phones. It's page 494 in volume 17.

12 A. Thank you, Chairman. Yes.

13 247 Q. It's on the previous page. 13:44

14 A. Thank you, Chairman. Yes.

15 248 Q. Just scroll up. I don't intend to go over any of this. But do you accept that that summary is correct --

16 A. I do, Chairman, yes.

17 249 Q. -- that was compiled by the Tribunal. In terms of the phone that you gave to the Fennelly Commission, were you involved in deleting messages from that phone? 13:45

18 A. Well, I'm sure over the period I would have deleted messages to clear for further room or further messages. But if the question is, did I delete anything of significance and importance in relation to the terms of reference of this Tribunal, the answer is no. 13:46

19 250 Q. Okay. If we could just have 4610 up on the screen. It's still volume 17, Mr. Callinan.

1 A. Thank you.

2 251 Q. This is the report of an examination by the Forensic
3 Science Northern Ireland, Elaine Strachan, who has
4 already given evidence in relation to these matters.

5 A. Sorry, 46? 13:46

6 252 Q. 4610.

7 A. 10, I beg your pardon. Thank you.

8 253 Q. And if you just go to page 4612.

9 A. Yes, Chairman.

10 254 Q. They're a list of contacts in your phone memory. If I 13:46
11 could just ask you, you see Diarmuid O'Sullivan there
12 is at number 8 in the list?

13 A. Yes, Chairman.

14 255 Q. I suppose it wouldn't unusual that you would have his
15 number, isn't that right? 13:47

16 A. No, Chairman, it would not be unusual at all for any of
17 those numbers.

18 256 Q. And then you see number 14 is Leo McGinn. Is that
19 Superintendent Leo McGinn?

20 A. That's Superintendent Leo McGinn, yes, Chairman. 13:47

21 257 Q. Did you know him well?

22 A. I would have met him through interactions. I did quite
23 a bit of work up at the border with different
24 operations; we've mentioned the location of victims'
25 remains, we mentioned a number of murder investigations 13:47
26 that I would have conducted up there, and, if I'm not
27 mistaken, he was in charge of the funeral party for the
28 late detective garda.

29 258 Q. And there's two numbers there, 15 and 16, McCann?

1 A. Yes.

2 259 Q. Is that chief superintendent or a superintendent?

3 A. That's Detective Superintendent John McCann, yes.

4 260 Q. He's Debbie McCann's father, is that right?

5 A. He is, Chairman, yes. 13:48

6 261 Q. And then, at number 24, we see Paul Reynolds there,
7 isn't that right?

8 A. That's correct, Chairman, yes.

9 262 Q. And then you have another number there for RTÉ. And at
10 number 30 you have Tom Brady, isn't that right? 13:48

11 A. That's correct, Chairman, yes.

12 263 Q. And then if we just move on to call history/call log,
13 there are ten calls stored in the memory of this phone,
14 all of these are dialled calls to 171, which is
15 voicemail. 13:48

16

17 "No call history information details relevant to the
18 investigations were recovered."

19

20 There were only ten calls and they were all to 171, so 13:48
21 it would probably indicate that the other record of the
22 calls had been deleted from the phone?

23 A. Possibly. I don't know.

24 264 Q. Right. Okay.

25 A. I don't know, Chairman. 13:48

26 265 Q. A short message system, SMS message history. It says:
27

28 "There are 278 SMS messages stored in the memory of
29 this mobile phone handset, including 277 deleted

1 messages. "

2

3

So all the messages were deleted with the exception of
4 the one in the next line:

5

13:49

6

"There is only one SMS message viewable on this mobile
7 phone handset. The deleted SMS messages were recovered
8 with forensic software and hardware and full message
9 details may not have been recovered. "

10

A. Yes.

13:49

11

266 Q. Do you see that?

12

13

"The successive deleted message recovery is subject to
14 the operating systems internal filing system
15 (housekeeping) and phone traffic subsequent to
16 deletion. "

13:49

17

18

So all that was on and recoverable from the phone, as
19 it turned out, were messages that had been deleted.

19

20

And in terms of those messages were -- were

13:50

21

recoverable, only part of the information could be

22

obtained by the forensic examiners, do you understand?

23

A. I do, Chairman, yes.

24

267 Q. And the phone was in the same state as it was handed

25

over to the Fennelly Commission by you, which would

13:50

26

indicate that you had deleted the text messages prior

27

to handing it over to the Fennelly Commission?

28

A. No, that's not true, Chairman. Absolutely not.

29

268 Q. But is there any other --

1 A. No.

2 269 Q. Is there any other explanation for this?

3 A. Well, the messages may have been deleted over a period
4 of time, but I certainly didn't delete -- when I was
5 asked for the phone, I searched for -- I didn't 13:50
6 actually realise I had it, I searched for it. When I
7 found it, I brought it over with the charger to the
8 Fennelly Commission. I never actually switched on the
9 phone or tried to see if it was working. So I
10 certainly didn't -- I certainly didn't delete any 13:51
11 messages.

12 270 Q. Well, only one message hadn't been deleted in the
13 entire history of the phone that was recoverable. I
14 mean, how can you explain that, unless had you, in
15 fact, deleted the messages before you handed it over to 13:51
16 the Fennelly Commission?

17 A. No, I certainly did not do that, Chairman, absolutely
18 not.

19 271 Q. The recoverable messages on your phone are at page
20 4614, and I'm just going to very, very briefly just 13:51
21 refer to them and perhaps highlight them, because there
22 are a number --

23 A. Sorry --

24 272 Q. Pardon?

25 A. I just wonder are we absolutely -- sorry, Chairman -- 13:52
26 are we absolutely certain that that is the position? I
27 see what the sentence says:
28
29 "278 SMS messages stored on the memory of this mobile

1 phone handset, including 277 deleted messages. "

2

3 Are we absolutely certain that that is precisely what
4 it is saying, or is it the case that there are 278
5 messages stored in the memory? 13:52

6 273 Q. well, if you read on:

7

8 "There is only one SMS message viewable on this mobile
9 phone handset. "

10

13:52

11 Do you see that?

12 A. Okay, so that's the reason.

13 274 Q. well, that answers your question, does it?

14 A. Okay.

15 275 Q. Does that answer your question satisfactorily,
16 Mr. Callinan? 13:52

17 A. Yes, I see that. Thank you. Thanks for that
18 clarification.

19 276 Q. So then if we go over to page 4614, we see there that,
20 number one, we don't know who sent this or whether you
21 sent it or whether you received it, but it went through
22 the phone: 13:52

23

24 "Wilson made no report in relation to the rat at his
25 door. " 13:53

26

27 There is a reference to John Wilson. And then, number
28 3, it says:

29

1 "Brian, Ken."
2
3 Now, this would appear to be from you, would that be to
4 Brian Purcell and to Ken O'Leary?
5 A. That's correct, Chairman, yes. 13:53
6 277 Q. Both in the -- the secretary general and the assistant
7 secretary general at the time.
8
9 "About 120 protestors outside Mullingar station."
10 13:53
11 And then you name a number of persons.
12
13 "Politicians who are supporting McCabe."
14
15 And then you sign off with an "M", isn't that right? 13:53
16 A. Yes, that would be my usual --
17 278 Q. This is on the 6th March of 2014. And then the
18 response, and we don't know who it is from:
19
20 "You can judge a man by his friends." 13:53
21
22 And then we have another message there, and I think
23 this may be Superintendent Taylor. Did he have the
24 habit of putting "CR" when he was -- for Commissioner
25 when he was texting you? 13:54
26 A. Not particularly. Not that I can remember
27 specifically.
28 279 Q. All right. Okay. Well, it says:
29

1 "Yes, no hesitation in sticking the knife in."
2
3 And then your response to that, these are on the
4 12th -- or there is a response to it on the 12th March
5 2014: 13:54
6
7 "And he wants to help us."
8
9 Again, that's sent by you. And then the 20th March
10 there's "CR", again I assume that that's to you and 13:54
11 it's Commissioner:
12
13 "Hear 'Jockey' Wilson was admitted to hospital
14 yesterday for urgent surgery on his stomach."
15 13:54
16 And then your response is "Thanks, Dave", and that is
17 immediately afterwards, at 7:56:03, which might suggest
18 that those texts are from Dave Taylor, but in any
19 event...
20 A. Yes. 13:55
21 280 Q. You will see the next one as well tends to suggest
22 that:
23
24 "CR reports a shooting. It is nothing to do with us."
25 13:55
26 But then you respond "Thanks, Dave". And then further
27 down, 14, we have on the 21st March:
28
29 "Martin, a short time ago I received a call from --"

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Again, it's a named former politician.

-- suggesting you find a formula of words in order to withdraw the offending term used. I said that if we were asked for advice and I didn't expect that I would say don't apologise. I wonder if she is doing someone's bidding. Anyway, good luck. " 13:55

He puts "J". And then there is some interaction between you and Ken, at number 15, I think that's Ken Ruane, and that's in relation to the word 'disgusting', and it was still -- it seems to have been of concern as late as the 21st March 2014, and he is giving a definition of it from the Oxford English Dictionary. And you respond "Thanks, Ken" to that. 13:56

Then you can see on the 24th March, again the "CR", which -- Commissioner: 13:56

"Prime Time doing a programme tonight on the current penalty point whistleblower issue."

That's the sort of thing that one might have expected from Dave Taylor, isn't that right? 13:56

A. Correct, Chairman, yes.

281 Q. And then at 28 there, there's one:

"John --"

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This is signed you, so it is sent.

-- more should have been done by investigation.
Min --"

13:56

Presumably, that is the Minister.

-- apologised to whistleblowers and for misleading
Dáil on cooperation issue."

13:57

Was that to John O'Mahony?

A. It's possibly, yes, possibly.

282 Q. And then, finally, over -- the last one, it has been
highlighted previously by Ms. Burns, on behalf of
Superintendent Taylor, in her examination of him,
number 35:

13:57

"Commissioner, I feel sorry for the way you have been
treated. It's despicable. You will always be the boss
to me and I am proud to have served under you and
worked with you. You were inspirational to me. I wish
you and your family all the best for the future, and if
I can do anything to help me, please let me know."

13:57

He obviously thought very highly of you at that period
of time, isn't that right?

A. That appears to be the position from the text.

283 Q. Now, I think over the page then there were a number of

1 emails that were found, I think one of them is from
2 Assistant Commissioner John Twomey, and that was some
3 suggestions in relation to how to withdraw the
4 'disgusting' remark, isn't that right?

5 A. Yes, I see that, Chairman, yes.

13:58

6 284 Q. I think that most of the people who were advising you
7 at the time were advising you to take some action in
8 relation to it, in the form of some form of an apology
9 or withdrawal, isn't that right?

10 A. Yes.

13:58

11 285 Q. Now, I think that the only other phone that could have
12 been of any relevance to the workings of the Tribunal
13 was a phone, in fact, that you had handed back and
14 ended up in the possession of another serving member of
15 An Garda Síochána?

13:58

16 A. Yes, yes.

17 286 Q. And there's no issue in relation to that. Your
18 computer, during the relevant period of time, Chief
19 Superintendent Pat Ryan has dealt with that, and the
20 computer was issued to you in 2011 and you bought it
21 back in 2014 when you were leaving, isn't that right?

13:59

22 A. Correct, Chairman, yes.

23 287 Q. And I think that by purchasing it and taking it away,
24 it was put back to factory settings, but everything
25 that had been stored in it was wiped at that time,
26 isn't that right?

13:59

27 A. That appeared to be the position, Chairman, yes.

28 288 Q. Now, I just asked you yesterday -- this is the final
29 matter, two matters that I wish to ask you about -- I

1 asked you yesterday about 'Operation Squeeze'. Did you
2 have time to reflect on that over the weekend? Did you
3 think about it, whether or not it was something that
4 you were aware of in 2013?

5 A. Of the operation name? 14:00

6 289 Q. Yes.

7 A. No, I didn't know about it at the time.

8 290 Q. Or that Sergeant McCabe's uncle had been visited by
9 senior officers?

10 A. Yes. 14:00

11 291 Q. Were you aware of that?

12 A. No, no, I had indicated that I wasn't aware, and I
13 don't believe I was ever made aware of that fact.

14 292 Q. And then the final matter that I just want to ask you
15 about is at page 1436. These are phone calls on the 14:00
16 25th January of 2014 and a report of same that we have
17 put together. These are phone calls between yourself
18 and Deputy Commissioner Nóirín O'Sullivan. I
19 understand your evidence is that you didn't consult
20 with her before you went to meet John McGuinness in the 14:01
21 car park, isn't that right?

22 A. That's correct, Chairman, yes.

23 293 Q. And that you didn't tell her afterwards that you had
24 met John McGuinness in the car park, is that right?

25 A. That's correct, Chairman, yes. 14:01

26 294 Q. And we can see here a number of phone calls between
27 yourself and the Deputy Commissioner, on the 24th at
28 14:17 onwards, 14:18, 15:34, lasting seven minutes.
29 You were probably on the way at that stage, were you,

1 to meet with John McGuinness, maybe, in the car?

2 A. Yeah, I would suspect I was, yes, Chairman.

3 295 Q. And then a phone call at 17:36 and another phone call
4 from you, it doesn't seem to have got through, it's
5 only 16 seconds, it's probably voicemail, 21:55. 14:02

6 A. I think so, yes.

7 296 Q. But then there's more phone calls there from Nóirín
8 O'Sullivan to you, 15:47, which is probably again on
9 your way to the car park, that lasted three minutes 46
10 seconds, and at 18:36, after you had been in the car 14:02
11 park, 18:37, nine minutes and 37 seconds. Is there any
12 reason why you, first of all, didn't consult with
13 Deputy Commissioner O'Sullivan? I mean, one would have
14 thought that you might have consulted with her and
15 advised her that you were going to take this step and 14:03
16 meet with Deputy McGuinness?

17 A. Yeah. It is the case, Chairman, that Deputy
18 Commissioner O'Sullivan was aware of my concerns, I had
19 expressed them several times, than at the Public
20 Accounts Committee, and she was also aware of the 14:03
21 correspondence between myself and the Public Accounts
22 Committee and she had been copied with copies of the
23 two letters we had discussed earlier on, so she was
24 fully familiar with my view and how I was trying to
25 address matters with the Public Accounts Committee. 14:03
26 Those series of phone calls related to a security
27 matter that we were dealing with at the time. There
28 were a number of, as the record here suggests, there
29 were a number of exchanges between both of us.

1 297 Q. well, regardless of those telephone calls, why didn't
2 you tell her that you had met with John McGuinness in
3 the car park?
4 A. I had no particular reason for either telling her or
5 not telling her. It just didn't arise. We were 14:04
6 dealing with another matter at the time.
7 298 Q. No, but, I mean, subsequently you went on to have to
8 deal with Sergeant McCabe giving evidence --
9 A. Yes.
10 299 Q. -- albeit in private on the 30th. I'm sure that she as 14:04
11 well as you were extremely interested in developments?
12 A. Yes.
13 300 Q. The Committee was meeting on the Tuesday, and you would
14 have been concerned that the evidence was going to be
15 given in public, isn't that right? 14:04
16 A. I would certainly, Chairman, yes.
17 301 Q. I mean, she had attended at the PAC meeting on the
18 23rd. Your recollection is that she returned with you
19 in the car to Garda Headquarters, isn't that right?
20 A. That's correct, Chairman, yes. 14:05
21 302 Q. I mean, do you not see that it seemed quite
22 extraordinary that you wouldn't have told your deputy
23 of this development with John McGuinness and that it
24 bore no fruit, as it turned out?
25 A. I don't know what to say to that, Chairman, but I don't 14:05
26 recall mentioning it to the Deputy Commissioner at the
27 time. I mean, the reality is, I'm the data controller
28 for the organisation, it's my responsibility and my
29 sole responsibility to follow up on these matters and,

1 you know, the same as a deputy commissioner has his or
2 her functions to carry out. We don't necessarily live
3 in one another's pockets. While there would be a very
4 strong, close, professional relationship certainly
5 between us, you know, things happen, matters arise that 14:05
6 are dealt with by us on an individual basis without
7 that transfer -- transference.

8 MR. MARRINAN: Thank you very much. Would you answer
9 any questions that any of the other parties might have.

10 A. Thank you, Chairman. 14:06

11

12 MR. CALLINAN WAS CROSS-EXAMINED BY MR. McDOWELL:

13

14 303 Q. MR. McDOWELL: Good afternoon, Commissioner Callinan.
15 Michael McDowell is my name and I'm acting for Sergeant 14:06
16 McCabe in this matter. I think you were appointed
17 Commissioner on the 28th December 2010, is that right?

18 A. That's correct, Chairman, yes.

19 304 Q. And thereafter you remained Commissioner until your
20 resignation in early 2014, isn't that right? 14:06

21 A. I retired on the 25th March 2014, that's correct,
22 Chairman.

23 305 Q. Could I ask you to go to a document which is in the
24 discovered documents, which is a report on Sergeant
25 Maurice McCabe which is at 7224 in volume 26. 14:07

26 A. Thank you, Chairman.

27 306 Q. You have that. I understood from your earlier
28 testimony that you were unaware of where this document
29 came from?

1 A. Yes, I'm not familiar with it, Chairman, no.

2 307 Q. It appears to be a document which was generated in 2013
3 from which -- on the information that we have been
4 given, and it appears to have been brought to one of
5 the pre-PAC preparation meetings and to be referred to 14:08
6 as having been prepared by the assistant commissioner
7 in relation to HRM, is that right?

8 A. I suppose if I am to hazard a guess, Chairman, I
9 suspect that there's certainly -- it's certainly the
10 case that on the front page, and we see the numbers, 14:08
11 the year, first of all, 1992, 2002, 2006, etcetera,
12 those numbers appear to me to be what we called in
13 those days B Branch, B Branch numbers, as in HRM
14 numbers.

15 308 Q. Yes. 14:09

16 A. Within that section, there are a number of subsections,
17 so discipline, maybe, health and safety, etcetera,
18 etcetera. There are quite a number, and that's what
19 the B numbers appear to reflect. And then moving into
20 the document, there appears to be a log of 14:09
21 correspondence from the Commissioner's office.

22 309 Q. Would it be fair, without asking you to summarise the
23 whole of the document --

24 A. Sorry.

25 310 Q. -- it would appear to be one of a pair of reports, 14:10
26 because the heading says "Reports on Sergeant McCabe
27 and retired Garda John Wilson", isn't that right?

28 A. Yes, I see that, Chairman.

29 311 Q. And I think John Wilson retired -- when did he retire

1 from An Garda Síochána?

2 A. Possibly, maybe '12, was it? I'm not sure, I'm not
3 sure, Chairman. I don't want to mislead the Tribunal.

4 312 Q. Yes. But, I mean, it does appear that it was a
5 document which was generated in the year 2013, from 14:10
6 what we have been told by the forensic analysis of it?

7 A. Okay, okay.

8 313 Q. So accepting that that's the date on which it was all
9 put together, it does appear to be a collation of
10 disciplinary and quasi-disciplinary matters in which 14:10
11 Sergeant McCabe's name appears in the HRM records,
12 isn't that right?

13 A. That's what it appears to be, yes, Chairman.

14 314 Q. And it appears to have been generated at a time when
15 you were Commissioner? 14:11

16 A. I just have to accept what you are saying,
17 Mr. McDowell, because I don't know. But if that's the
18 evidence that the forensic investigators have given to
19 this Tribunal, of course I'd accept that, without
20 reservation, if that is the case. 14:11

21 315 Q. But the first question I want to put to you is: why
22 would a document of this kind, a search of everything
23 that could implicate Sergeant McCabe in anything
24 doubtful, why would such a search have been carried
25 out? 14:11

26 A. I'm not entirely clear, Chairman, unless maybe the
27 assistant commissioner who was attending some of those
28 meetings may have brought this summary with him, I'm
29 just not sure.

1 316 Q. You see, it required a fair amount of work to unearth
2 each of these incidents where Sergeant McCabe's name
3 was mentioned, however tangentially. I mean, this
4 wasn't something you'd do in ten minutes; this must
5 have taken somebody days to put together, this 14:12
6 material.

7 A. I would agree with that, Chairman, yes.

8 317 Q. And if somebody spent days in the year 2013 compiling
9 this list of references to Sergeant McCabe in a
10 disciplinary context, I'm just asking you, who or 14:12
11 why -- who would do that? On whose authority could it
12 have been done? And why would it have been done in the
13 year 2013?

14 A. I'm not in a position to answer that, Chairman, because
15 I don't know. I just don't know. 14:13

16 318 Q. You see --

17 A. I'd gladly give you that information if I had it at any
18 disposal, Chairman.

19 319 Q. You see, you're portraying your view of Sergeant McCabe
20 as a man who's providing a very valuable service to An 14:13
21 Garda Síochána, and that, in relation to penalty
22 points, he had done the State and the gardaí some
23 service by his researches, and yet it appears that
24 somebody spent a lot of time trying to uncover anything
25 discreditable about him? 14:13

26 A. Well, I don't know that that is the case, Chairman.

27 320 Q. Well, let's take a look at the content of this. It
28 goes back to 1992. And the first entry is to the
29 effect that Sergeant McCabe was one of the members who

1 was involved in the denial of a visit by a complainant
2 while he was under arrest and detained in Bailieboro
3 Garda Station, that's what the first three lines seem
4 to suggest, isn't that right?

5 A. Yes, Chairman, I agree.

14:14

6 321 Q. And then it says that Inspector Joseph Sullivan
7 investigated this complaint and determined that the
8 conduct complained of did not constitute a breach of
9 discipline and that no further action was taken. So
10 how was that relevant to anything in 2013?

14:14

11 A. I mean, I would love to be in a position to answer
12 that, Chairman, but I simply don't know. I simply
13 don't know. All I can tell you is, I'm reading what
14 you're reading and I'm not sure why -- what the
15 significance of it is. It appears to me, as I said, to
16 be a summary of materials that was available, incidents
17 recorded in the former B Branch, now HRM.

14:14

18 322 Q. Yes. And then in 2002, ten years after the first
19 incident, there is a record of a complaint on behalf
20 of a -- by a man on behalf of his son, that he had been
21 assaulted by various members of An Garda Síochána, 14:15
22 including Sergeant McCabe, and that he had suffered
23 serious physical and psychological injuries as a
24 result. And it goes on to record that the complaint
25 was deemed inadmissible by the Garda Síochána 14:15
26 complaints board and the matter was not progressed.
27 I've got to suggest to you that it was quite often the
28 case that persons in custody would make allegations
29 that they were assaulted, isn't that right?

1 A. A regular feature, Chairman.

2 323 Q. Especially people who had made voluntary statements,
3 that they would then later provide themselves with
4 cover by making an allegation of assault and make a
5 complaint to the Garda Síochána Complaints Tribunal, as 14:16
6 it was then, isn't that right?

7 A. That's not unusual, Chairman.

8 324 Q. And then we have a similar incident in 2006, but on
9 this occasion the complaint was that criminal
10 proceedings against two sons of the complainant had 14:16
11 been dragged out and that their names had appeared in
12 the media and Sergeant McCabe was the member complained
13 of, is that right?

14 A. That's correct, Chairman, that's what I'm reading.

15 325 Q. And again in 2006, another allegation of delay on the 14:16
16 part of Sergeant McCabe, isn't that right?

17 A. Correct, Chairman, yes.

18 326 Q. And then there's a reference to the Ms. D allegation in
19 the same year, isn't that right?

20 A. That's correct, Chairman, yes. 14:17

21 327 Q. And then we go on to 2007, and Sergeant McCabe's
22 complaints against Superintendent Clancy, isn't that
23 right?

24 A. Yes, Chairman.

25 328 Q. And then there's a complaint by a probationer garda in 14:17
26 Bailieboro, isn't that right?

27 A. Yes, Chairman.

28 329 Q. And then we go on to Sergeant McCabe's complaints which
29 were dealt with in a previous module, about inadequate

1 investigations of offences, and the like, and improper
2 procedures in Bailieboro, isn't that right?

3 A. Correct, Chairman, yes.

4 330 Q. And it goes on to record what happened in relation to
5 the Byrne/McGinn report on page 5 of the report, isn't 14:17
6 that right, towards the middle of page 5?

7 A. That's correct, Chairman, yes.

8 331 Q. And then there's a confidential report in 2008, and
9 this is a report to Mr. Brian McCarthy, the
10 confidential recipient, isn't that right? 14:18

11 A. That's correct, Chairman, yes.

12 332 Q. And a very, very extensive analysis of the
13 correspondence in relation to Sergeant McCabe's
14 allegations which he made to the confidential
15 recipient, isn't that right? 14:18

16 A. Yes, Chairman.

17 333 Q. And then in 2010 there's a reference to a complaint
18 about downloading of wedding photographs, isn't that
19 right?

20 A. Yes, Chairman. 14:18

21 334 Q. And in 2010 there's material relating to a letter
22 received from then Dáil Deputy Charlie Flanagan, isn't
23 that right?

24 A. How far down are you, Mr. McDowell?

25 335 Q. I'm at the bottom of page 10 now. 14:19

26 A. Yes, Chairman.

27 336 Q. And then there's an account of the altercation between
28 Sergeant McCabe and Assistant Commissioner Byrne, isn't
29 that right?

1 A. Correct, Chairman, yes.

2 337 Q. And then, in 2011, there was remarks about somebody
3 threatening to shoot Sergeant McCabe and what happened
4 to a complaint that was lodged in that respect, isn't
5 that right? 14:20

6 A. Yes, Chairman.

7 338 Q. And if we go to page 14, we'll see that Ms. Mary Lynch,
8 who is one of the people involved in the incidents in
9 respect of which Sergeant McCabe made a complaint, had
10 lodged a complaint, and that at that stage Sergeant 14:20
11 McCabe was listed as one of the members being
12 complained against. This is at the bottom of the first
13 paragraph on page 14.

14 A. Correct, Chairman, yes.

15 339 Q. And then we come to a letter from Chief Superintendent 14:20
16 Rooney, to which I will come back in a moment, and
17 that's in 2011, and in 2012 there's more material in
18 relation to Sergeant McCabe and various complaints
19 against Sergeant Clancy. And if I can bring you then
20 to page 17, in August 2012 there's a reference to the 14:21
21 computer matter where Sergeant McCabe featured again,
22 isn't that right?

23 A. Yes, Chairman.

24 340 Q. And it's strange because it says "This matter relates
25 to an exhibit seized as a part of a fraud embezzlement 14:21
26 case under investigation", but we know, in fact, it was
27 a child abuse case, isn't that right?

28 A. That's correct, Chairman. But there was a subsequent
29 query in relation to a fraud matter that was being

1 investigated at the time and an inquiry as to whether
2 or not there might be any records on the computer of a
3 financial nature that might assist with that inquiry.
4 It was a related --

5 341 Q. And at the end of that there is:

14:22

6
7 "On the 5th August 2012, Superintendent Thomas Maguire
8 was appointed under part --" is that "-- 2 of the less
9 serious of the Garda Síochána discipline regulations as
10 amended. The member --" that is Sergeant
11 McCabe "-- was due to attend on the 8th May 2012 for
12 the deciding officer's interview. However, this
13 interview did not proceed as the member was on sick
14 leave at the time. A progress report has been
15 requested from chief superintendent Cavan-Monaghan. "

14:22

14:22

16
17 And then, lastly, there's an account of Sergeant
18 McCabe's sickness record over the previous 12 months,
19 isn't that right?

20 A. That's correct, Chairman, yes.

14:22

21 342 Q. Now, could I ask you why such a document would have
22 been generated in 2013?

23 A. I'm not sure what the answer to that is, whether
24 someone in the B Branch, HRM, or elsewhere, had asked
25 for that document to be brought together, but I just, I
26 cannot answer it, I'm afraid, Mr. McDowell.

14:23

27 343 Q. Well, maybe -- I've just been handed a document which
28 I, in order to save us time, I can read a paragraph of
29 it and see what you make of it.

1 A. Mm-hmm.

2 344 Q. "From an initial review --" this is Detective
3 Superintendent Frank Walsh. He was your private
4 secretary, was he?

5 A. Correct, Chairman, yes.

14:23

6 345 Q. He says:

7

8 "From an initial review of files at the Commissioner's
9 office, I was aware that Sergeant McCabe had made
10 various reports on alleged wrongdoing by members of An
11 Garda Síochána, and in an effort to follow the trail of
12 correspondence I had a chronology created of all file
13 entries with the first entry relating to 3rd December
14 2008."

14:23

15

16 And we have here the first entry, 1992, so I don't know
17 how that all fits together.

18 MR. DIGNAM: Chairman, just, and Mr. McDowell may not
19 be aware of it, but the witness doesn't have a copy of
20 the statement. So just in case of him following the
21 questions that Mr. McDowell is --

14:24

22 MR. McDOWELL: well, I have just been handed it, Judge,
23 so --

24 MR. DIGNAM: I'm not criticising Mr. McDowell. It's
25 just he may have --

14:24

26 MR. McDOWELL: Maybe I will come back to it, because,
27 in fairness to everybody, I want to read it before I
28 start asking questions about it, so we will come back
29 to it, if we may, and the witness might be provided

1 with a copy of it as well.

2 A. Thank you, Chairman.

3 346 Q. But, you see, I am suggesting to you that it has the
4 look -- first of all, this is part of a pair of
5 reports, one of which related to Sergeant McCabe and
6 the other of which related to retired Garda John
7 Wilson. That's fairly clear from its heading, isn't
8 that right?

9 A. That's what the heading says, Chairman, yes.

10 347 Q. And it has the look of a comprehensive document,
11 running back over all HR and disciplinary matters to
12 see when Sergeant McCabe ever featured in what could be
13 thought by anybody to be a discreditable light in the
14 records of An Garda Síochána's HR division, it looks
15 like that, doesn't it?

16 A. That's a reasonable summary, Chairman, yes.

17 348 Q. And I'm just wondering why, in the year 2013, anybody
18 would have put that effort into preparing this
19 compendium of bad news about Sergeant McCabe on paper
20 and for whose information it could have been useful?

21 A. I don't know, Chairman. I cannot answer that question.
22 I don't know. It does appear to be a chronology of
23 incidents that are recorded in HRM, there's no doubt
24 about that, and I think a chronological log also of
25 certainly some of the documentation, if not all of the
26 documentation, to and from the Commissioner's office
27 and other outside agencies, such as the confidential
28 recipient and letters over and back to solicitors as
29 well. It seems to be a combination of quite a few

1 things.

2 349 Q. Yes. And one of the matters mentioned in it is a
3 letter which was - and this is at page 14 - is a letter
4 which was circulated by Chief Superintendent Rooney,
5 isn't that right? 14:27

6 A. Are you referring -- you're referring to 4th July '11?

7 350 Q. Yes.

8 A. Chief Superintendent Rooney letter? Is that the
9 reference?

10 351 Q. Yes. Yes, 4th July 2011. And could I ask you now to 14:27
11 go to Volume 1, page 279, please.

12 A. Thank you, Chairman.

13 352 Q. I will let you familiarise yourself with that letter.
14 I think you've seen it on many occasions though?

15 A. I've seen it in the materials that were distributed to 14:28
16 me, yes.

17 353 Q. well, I think you had dealings with it yourself at a
18 prior stage, isn't that right?

19 A. I think it was Deputy Commissioner Rice dealt with
20 this. 14:28

21 354 Q. well, I think on your instructions I think he dealt
22 with it?

23 A. where is that? I don't see that.

24 355 Q. well, we will come back to that --

25 A. Okay. 14:28

26 356 Q. -- as to how you were involved in the matter. But, I
27 mean --

28 A. well, I don't think --

29 357 Q. -- this was the circular, the famous circular which was

1 issued after the Byrne/McGinn report had come to --
2 nearly to a conclusion, by Sergeant McCabe's chief
3 superintendent for the Cavan-Monaghan division, and
4 former Chief Superintendent Rooney has said that the --
5 has indicated his regret and his apology to Sergeant 14:29
6 McCabe that this letter was ever issued. I think you
7 are familiar enough with all of this?

8 A. I am, I am, Chairman, yes.

9 358 Q. And if I just -- if we just read the first paragraph
10 there: 14:29

11
12 "On the 24th June 2011 I had a meeting with Assistant
13 Commissioner Derek Byrne, National Support Services,
14 Garda Headquarters, Monaghan Garda Station. He
15 informed me that he had completed his investigation 14:29
16 into the complaints made by Sergeant Maurice McCabe.
17 The findings of the investigation were approved by the
18 Garda Commissioner. "

19
20 That is yourself at the time, isn't that right? 14:30

21 A. It is, Chairman, yes.

22 359 Q. "The investigation concluded that there were no
23 systemic failures identified in the management and
24 administration of the Bailieboro Garda district. A
25 number of minor procedural issues were identified. On 14:30
26 further investigation at local level, no evidence was
27 found to substantiate the alleged breach of procedures.
28 The assistant commissioner further concluded that there
29 was no criminal conduct identified on the part of any

1 member of the district force. I would like to
2 congratulate all members who served in Bailieboro
3 district during the period in question. In particular,
4 I wish to thank Sergeant Gavigan, who has provided
5 leadership, enthusiasm and commitment in steering the 14:30
6 station party through the crisis that had occurred.
7 The findings of the assistant commissioner vindicate
8 the high standards and professionalism of the district
9 force in Bailieboro. I appreciate the manner in which
10 the members of the district participated in the 14:30
11 investigation, were open and truthful in their accounts
12 of events surrounding the allegations. I hope that the
13 members and their families can now put this difficult
14 period behind them and continue to serve the public and
15 their colleagues in an efficient and professional 14:31
16 manner. Please inform all concerned."

17
18 Now, you were made aware of that letter because
19 Sergeant McCabe's solicitor's complained about it,
20 isn't that right? 14:31

21 A. I believe that is the case, yes.

22 360 Q. And I have to suggest to you, especially now in the
23 light of former Chief Superintendent Rooney's apology
24 and almost retraction of the letter, that it was a
25 cruel and untruthful put-down of Sergeant McCabe in 14:31
26 front of all the members of the division in which he
27 had served up to the time of his removal to -- his move
28 to Mullingar. It suggested that he had made utterly
29 unfounded allegations which had caused a crisis in his

1 division, isn't that right?

2 A. Well, I certainly wouldn't agree with that letter being
3 sent. It certainly wouldn't reflect the true position
4 in relation to what the Assistant Commissioner Derek
5 Byrne and Chief Superintendent McGinn found. That is 14:32
6 not the case. So I wouldn't -- I wouldn't have
7 supported that particular letter.

8 361 Q. But, you see, if you go to the top of the letter, I see
9 MC41108. Is that a reference to you?

10 A. Monaghan-Cavan division. 14:32

11 362 Q. Sorry, that's Monaghan-Cavan?

12 A. Mm-hmm.

13 363 Q. And did it go to your office, this document?

14 A. My understanding is this was dealt with by the Deputy
15 Commissioner, I think it's Deputy Commissioner Rice, if 14:32
16 I am not mistaken.

17 364 Q. After a complaint was made about it? After a complaint
18 was made?

19 A. I mean, I'd have to see the trail of correspondence,
20 but I don't believe I had dealt with this particular 14:33
21 letter. But I agree that subsequent action by the
22 chief superintendent in making the remarks he made was
23 the correct course of action. That wouldn't be
24 reflective of my position.

25 365 Q. Well, if I bring you to paragraph 14 -- or, sorry, page 14:33
26 14 and 15 of the document we were examining earlier.
27 This is the report on Sergeant McCabe. You will see at
28 the bottom of page 14 there's:
29

1 "4th July 2011, Chief Superintendent Rooney Letter."

2
3 Then there is a reference to Clare Daly, TD, writing to
4 you about the letter; the Acting Commissioner
5 acknowledging Deputy Daly's letter; the Acting 14:33
6 Commissioner instructing Assistant Commissioner Kenny
7 to examine and report with recommendations; Assistant
8 Commissioner Kenny reporting on the 9th August to your
9 office with a report; on the 26th August 2011, the
10 Acting Commissioner writing to Deputy Daly saying that 14:34
11 all matters were investigated and all those involved
12 were notified of the outcome; the 15th November 2011,
13 Séan Costello solicitors writing in relation to the
14 Rooney letter; the 25th November 2011, your office
15 replying to Séan Costello that the matter would be 14:34
16 investigated by Deputy Commissioner Rice; and on the
17 25th November, your office instructing Deputy
18 Commissioner Rice to reply to Mr. Costello and to
19 report developments; and 25th November 2011, your
20 office writing to the Deputy Commissioner Rice, 14:34
21 referring to a meeting in your office to get a report
22 from Assistant Commissioner Ludlow and to draft a reply
23 to Séan Costello; and on the 8th December 2011, Deputy
24 Commissioner Rice responded to the document.

25
26 And I am only putting all of that to you to suggest
27 that not merely was this a cruel and untruthful
28 put-down of Sergeant McCabe, but the fact that it had
29 been circulated in the division was well known at a

1 senior level in An Garda Síochána. And furthermore,
2 that the actions of -- the letter itself was defended
3 in correspondence with Mr. Costello, Sergeant McCabe's
4 solicitor.

5 A. Yes. I think what you've read out, Mr. McDowell, is a 14:35
6 chronological log in and around that period. And my
7 belief is that it's the Deputy Commissioner, that was
8 Acting Commissioner at the time, who had dealt with
9 this letter and had dealt with that correspondence.

10 And then the latter pieces, towards -- that was 14:36
11 July/August period. And then in November onwards it
12 does appear that there was a subsequent letter or
13 series of letters that were over and back in relation
14 to litigation. I'm pretty sure that is the situation,
15 but without looking at the correspondence and examining 14:36
16 the paper trail, but that is my belief.

17 366 Q. You see, what I am putting to you is this: that the
18 letter for which Chief Superintendent Rooney has now
19 apologised had, and was designed to have, the effect of
20 humiliating Sergeant McCabe in front of his fellow 14:36
21 members of the force by ridiculing, in effect, all the
22 complaints he'd made.

23 A. I don't believe it was an appropriate letter to have
24 been sent. That's as far as I can bring it for you.

25 367 Q. Yes, but I think that is fair enough to say that, 14:37
26 because Chief Superintendent Rooney has acknowledged as
27 much now and volunteered such an acknowledgment, indeed
28 to be fair to him. But in respect of the, and I will
29 use the term, the top brass of An Garda Síochána, you

1 were aware that this had happened?

2 A. No, I wasn't, no, no, not at that time, I was not.

3 368 Q. Well, surely you were aware at some stage that this
4 letter had been sent?

5 A. Very much after the event. 14:37

6 369 Q. And did it ever strike you at that stage to say this
7 should never have happened, that man deserves an
8 apology?

9 A. Well, that's not something that I considered at the
10 time, being perfectly honest about it. It was -- it 14:37
11 was something that had happened. It wouldn't have been
12 my view that it should have been sent, either at the
13 time or subsequently. And --

14 370 Q. But, you see, the point that I'm making to you is this:
15 we know about the O'Higgins Commission and we know that 14:38
16 you were exonerated in strong terms from Sergeant
17 McCabe's complaints about you at the O'Higgins
18 Commission?

19 A. And I would think quite rightly, Chairman.

20 371 Q. But we know that. And we know that you -- we know, 14:38
21 would you agree with this proposition, I don't want to
22 put it as an assumption, that if that letter had never
23 been sent, a very different outcome might have taken
24 place in respect of Sergeant McCabe? If he hadn't been
25 humiliated and put down in this way, in this cruel way, 14:38
26 that he might have reacted very differently to events
27 that subsequently transpired?

28 A. Well, that's not a question I can answer, I'm afraid.

29 372 Q. Well, if you were in his position and you were

1 ridiculed for making complaints which were subsequently
2 upheld as valid complaints and a circular of that kind
3 was sent out to the entire division in which you had
4 served, would you not think that you would be motivated
5 either to simply fold your tent and say nothing further 14:39
6 and say there's no point in making complaints about low
7 standards in this organisation, or, secondly, to pursue
8 them vigorously, which is what he did?

9 A. I agree he did pursue them vigorously, and rightly so,
10 where he felt that there was wrongdoing. 14:39

11 373 Q. Yes.

12 A. I have no complaint whatsoever about Sergeant McCabe,
13 as I've said quite a few times in my evidence thus far,
14 no problem in the wide earthly world with Sergeant
15 McCabe making any complaints he saw fit to make. 14:39

16 374 Q. I see. But I have to suggest to you that it is strange
17 that this injustice was left lie for almost six or
18 eight -- seven years, until former Chief Superintendent
19 Rooney retracted it, and Sergeant McCabe was left with
20 the public oblige and shame that he had been portrayed 14:40
21 as a crank, a crank who was making unfounded
22 allegations?

23 A. Well, I think it is the case, Mr. McDowell, that the
24 people in Bailieboro who worked with Sergeant McCabe
25 knew the truth of the matters that he was speaking 14:40
26 about, good and bad, and they knew where the truth lay
27 in relation to the shortcomings, the very serious
28 shortcomings in the investigations that he was
29 highlighting. And it is the case that the assistant

1 commissioner highlighted where those shortcomings were
2 to Sergeant McCabe, and that's a matter of record, and
3 I think subsequently Mr. O'Higgins, who dealt with this
4 matter in great detail, found that that portion of the
5 Byrne/McGinn report in relation to the high level 14:41
6 allegations, if I can use that term, and the more
7 serious of them, that were complained about by Sergeant
8 McCabe, that they were upheld, and we all accept that
9 he didn't get everything right, of course he didn't.
10 But at the end of the day, it is acknowledged that the 14:41
11 elements of the serious allegations that he made were,
12 in fact, upheld by the assistant commissioner in his
13 report.

14 375 Q. Just so that people listening should know, I mean, for
15 a technical reason, the O'Higgins Commission never 14:41
16 dealt with the Rooney letter because it was the subject
17 of live litigation at that time, isn't that right?

18 A. That's my understanding, Chairman, yes.

19 376 Q. Well, anyway, do you see any problem that the Rooney
20 letter remained uncorrected and that somebody close to 14:42
21 the top of An Garda Síochána was compiling the report
22 on Sergeant McCabe's personal disciplinary record, do
23 you see any indication that there was a willingness to
24 find and discover anything discreditable to Sergeant
25 McCabe in 2013? 14:42

26 A. Well, it's certainly not my position, Chairman, that I
27 went after looking -- mining for material such as
28 you've described, in the manner in which you've
29 described it. Certainly I didn't order that to be done

1 or request it to be done. And I'm not sure who
2 actually put the reports together. But I've no memory
3 of either deputies or assistant commissioners getting
4 involved in that type of research. I don't know how it
5 was compiled, but I accept it's there. 14:43

6 377 Q. Could I ask you to go to volume 24, if you would,
7 please, and in particular, when you've got it, to page
8 6318.

9 A. Which page, Mr. McDowell?

10 378 Q. Page 6318. 14:44

11 A. Thank you. Thank you, Chairman. Yes.

12 379 Q. Now, this is a file page which reads:
13
14 "A. Email correspondence dated 10th January 2013, 9:35
15 in the morning, from Assistant Commissioner John 14:44
16 O'Mahony addressed to Detective Chief Superintendent
17 Padraig Kennedy, then of the National Bureau of
18 Criminal Investigation."
19

20 Now, in January 2013, Assistant Commissioner O'Mahony 14:44
21 was, was he not, engaged in, among other things, in
22 what is called 'Operation Squeeze', which was the
23 penalty points investigation, isn't that right?

24 A. He was investigating that, yes.

25 380 Q. And here we have correspondence from him to the head of 14:45
26 the National Bureau of Criminal Investigation,
27 Detective Chief Superintendent Padraig Kennedy?

28 A. Yes, Chairman.

29 381 Q. And would you just explain to the Tribunal what the

1 National Bureau of Criminal Investigation was and what
2 standing in An Garda Síochána its head had at the time?

3 A. The Bureau of Criminal Investigation is largely
4 involved in assisting local units with the -- very
5 serious crime, murders, hijackings, robberies, and, 14:45
6 generally speaking, fairly complicated investigations.
7 Within the Bureau of Criminal Investigation, there were
8 a number of subsets; the domestic violence and sexual
9 assault investigation unit is an example. And I
10 suppose it's a unit that basically deals with antiques 14:46
11 and equities of that nature. There's a combination of
12 different factors, but, largely speaking, it assists
13 local units.

14 382 Q. Would it be fair to say that it is the centralised
15 back-up service for very serious crime which would be 14:46
16 unreasonable to have -- to simply delegate the
17 investigation to local units of the force?

18 A. Well, of course it's the situation that the local
19 units, the local superintendent, is the person
20 ultimately responsible -- 14:46

21 383 Q. Yes.

22 A. -- for whatever particular crime occurs in his or her
23 district. But you're absolutely correct for the rest
24 of the description that you've provided.

25 384 Q. Well, we have, on the next page, 6319, a letter from 14:47
26 Assistant Commissioner Derek Byrne, an email dated 9th
27 January 2013, in the evening time, to John O'Mahony,
28 and it reads:
29

1 "John, a number of phone calls were received at my
2 office over the past few days from a Mr. Bernard McCabe
3 seeking to speak with me. Moments ago I made phone
4 contact with Mr. McCabe, who reported that he is an
5 uncle of the whistleblower, his words, and that he has 14:47
6 a lot of information about him and wishes to meet with
7 a member of An Garda Síochána to pass on the
8 information. I informed Mr. McCabe that I was not the
9 appropriate person to speak to him as you had been
10 appointed by the Commissioner to investigate issues 14:48
11 raised by the whistleblower. I informed Mr. McCabe
12 that I would pass his details to you and that you would
13 arrange contact with him."

14
15 Now, first of all, was John O'Mahony at that stage, as 14:48
16 assistant commissioner, the person appointed to
17 investigate issues raised by the whistleblower?

18 A. In the context of the fixed charge penalty system, yes,
19 that's correct.

20 385 Q. Yes. And Assistant Commissioner O'Mahony writes the 14:48
21 following morning to the head of the National Bureau of
22 Criminal Investigation, Mr. Kennedy, Padraig Kennedy,
23 in the following terms:

24
25 "Padraig, further to our telephone conversation this 14:49
26 morning, please find attached from Assistant
27 Commissioner Byrne, you should make contact with
28 Mr. McCabe and listen to what he has to offer. Report
29 in course."

1 A. Yes.

2 386 Q. First of all, can I ask you, were you alerted by either
3 of these men that they were activating the National
4 Bureau of Criminal Investigation to seek information
5 discreditable to Sergeant McCabe? 14:49

6 A. No, not at that time, but my --

7 387 Q. When did you first become aware of it?

8 A. Sorry, just before, if I may, Mr. McDowell.

9 388 Q. Sorry.

10 A. My sense is that the -- Detective Chief Superintendent 14:49
11 Padraig Kennedy was part of the investigation. I'd be
12 pretty sure that that was the case.

13 389 Q. Of which investigation?

14 A. Assistant Commissioner O'Mahony's investigation.

15 390 Q. This is 'Operation Squeeze'? 14:50

16 A. Yes.

17 391 Q. I see. So the penalty points investigation --

18 A. That's my sense now, as I say. I'm not fully -- but --

19 392 Q. Could that be the case? I mean, could the head of the
20 NBCI be also part of the investigation into the penalty 14:50
21 points matters?

22 A. Well, certainly he could because he's -- as we all
23 know, and as you know in particular, Chief
24 Superintendent Padraig Kennedy is an extremely thorough
25 investigator, and certainly he'd be someone that I 14:50
26 would be targeting to assist me if I got the job that
27 the Assistant Commissioner O'Mahony got at that
28 particular time.

29 393 Q. I see.

1 A. So I'd see no difficulty whatsoever with that.

2 394 Q. Well, if we go to the next page, we'll see a file cover
3 6320:
4
5 "Email correspondence from Detective Chief 14:50
6 Superintendent Padraig Kennedy addressed to Detective
7 Superintendent Kyne, dated 17th May 2013," at nine
8 minutes to nine in the morning.

9 A. Yes.

10 395 Q. And it would appear from what is on the next page that 14:51
11 Padraig Kennedy was directing Detective Superintendent
12 George Kyne to submit a report in relation to a recent
13 meeting which he, Chief Superintendent Kennedy, and
14 Detective Superintendent Kyne had had with Mr. Bernard
15 McCabe? 14:51

16 A. Yes.

17 396 Q. And he says:
18
19 "Dear Superintendent George Kyne."
20 14:51
21 And I stop there to say that George Kyne at this stage,
22 in the first half of 2013, was engaged in the
23 investigation of a very serious crime which brought you
24 to Dundalk on that day, isn't that right?

25 A. Yes, in -- 14:52

26 397 Q. He was, I think you'll find that he was in the first
27 half of 2013?

28 A. You're quite correct, Mr. McDowell, I do recall, yes.

29 398 Q. So this man was being taken off a very serious murder

1 investigation and attending Sergeant McCabe's uncle's
2 home in the company of the head of the National Bureau
3 of Criminal Investigation to hear what Sergeant
4 McCabe's uncle had to say about him, isn't that right?
5 A. Well, that would appear to be the position, yes. 14:52
6 399 Q. I stop there and say, does any of this make you feel
7 uncomfortable?
8 A. Not particularly, no.
9 400 Q. I see. Two very, very senior gardaí with very, very
10 senior functions are going to interview Sergeant 14:53
11 McCabe's uncle as part of 'Operation Squeeze' because
12 he has some information for them which he says is
13 discreditable to Sergeant McCabe; does any of that feel
14 odd to you?
15 A. No, I think this was just a chore that was given to the 14:53
16 chief superintendent to --
17 401 Q. Well, it's hardly a chore of a mundane kind given to
18 some run-of-the-mill member of An Garda Síochána.
19 These are people with very senior positions in the
20 force, spending time to go and visit Sergeant McCabe's 14:53
21 uncle because they think he has something discreditable
22 to say about Sergeant McCabe, isn't that right?
23 A. Well, I don't know that, Mr. McDowell, and you don't
24 know that. But you know that a complaint has been made
25 and there is a request to go and see him, that he has 14:54
26 information, valuable information that he wants to
27 impart.
28 402 Q. Yes.
29 A. And they're going to find out what this is all about.

1 That is what the documents say to me.

2 403 Q. And this is part of 'Operation Squeeze', which is the
3 investigation of the penalty points system, isn't it?

4 A. This is --

5 404 Q. Part of an investigation into the adequacy of the 14:54
6 penalty points system?

7 A. Well, no, this seems to be a separate, a separate
8 matter in the context --

9 405 Q. Well, maybe we will deal with that. If you look at the
10 next item, which is two pages on, Detective 14:54
11 Superintendent Kyne gets a detective garda to prepare a
12 report on the visit to Sergeant McCabe's uncle's house?

13 A. I'm just wondering if that would suggest that it was a
14 detective garda that actually carried out the function
15 on behalf of the chief superintendent. 14:55

16 406 Q. No, it wasn't, because if we come to page 6323.

17 A. Okay.

18 407 Q. And you'll see this is an official Garda communication
19 from the detective superintendent's office and it's --
20 the reference is "Operation Squeeze", so it's not 14:55
21 separate.

22 A. Okay.

23 408 Q. And it states:

24
25 "On the 1st June 2013, accompanied by Detective 14:55
26 Superintendent George Kyne, I met with Fintan and
27 Bernard McCabe, father and son, at their home."
28
29 And they give the address, isn't that right?

1 A. That's correct, Chairman, yes.

2 409 Q. And then it goes on to say that they allege:

3
4 "That two individuals who were arrested for drunk
5 driving, that's Section 49 of the Road Traffic Act, had 14:56
6 their cases withdrawn due to interference by Sergeant
7 McCabe, who is a nephew of Bernard McCabe and first
8 cousin to Fintan. The two individuals named by the
9 McCabes are [blank] and [blank]."

10 A. Yes. 14:56

11 410 Q. "Inquiries were conducted in relation to both of the
12 above individuals on the Garda Pulse system with the
13 assistance of Sergeant Murray, the information analysis
14 service at Garda Headquarters."

15 14:56

16 First of all, can I ask you, who is Sergeant Murray?

17 A. I'm not familiar with him. I'm reading the same as you
18 are reading.

19 411 Q. Yes.

20 A. I don't know him, sorry. 14:56

21 412 Q. Well, anyway, what happens, in the next two paragraphs
22 there's a treatment of the scurrilous allegation
23 against Sergeant McCabe, and the first -- in relation
24 to the first one, they say:

25 14:56

26 "There is a record indicating that the individual was
27 an injured party in a burglary. The only other record
28 on the Pulse systems recites the fact that he has a
29 firearms certificate. There are no records of anything

1 else on the Pulse system. The second person they say
2 was arrested by Garda Eugene Fleming under Section 49.
3 On the 16th June at Kells District Court he was
4 convicted of drunk driving and was fined €250 and
5 disqualified for two years. The matter was 14:57
6 subsequently appealed before Judge Delaney in Trim
7 Circuit Court and the conviction overturned. The court
8 record does not note the reason for the successful
9 appeal. The only member who checked this incident on
10 the Pulse system was the investigating member." 14:57
11

12 So, in other words, this information that these two
13 gentlemen had decided to impart to the senior gardaí
14 was, in fact, utterly bogus, isn't that right?

15 CHAIRMAN: well, Mr. McDowell, I must say, I read all 14:58
16 these documents with an increased state of puzzlement,
17 verging on bemusement, and then tipping over into, I'm
18 not going to say what.

19 MR. McDOWELL: Yes.

20 CHAIRMAN: But it is clear that maybe a couple of 14:58
21 relations of Sergeant McCabe don't like him very much.

22 MR. McDOWELL: That's right.

23 CHAIRMAN: And are making quite wild allegations
24 ranging from drugs to goats to cattle to activities on
25 the waterways. 14:58

26 MR. McDOWELL: Drug dealing, the lot.

27 CHAIRMAN: well, look, I know, but should we drag them
28 into it? I mean, you know, the gardaí can't help it if
29 some people decide that they're going to go on

1 endlessly about a whole load of very, very unlikely
2 things.

3 MR. McDOWELL: I accept that. But, Judge, with
4 respect, Chairman, that's not the point I'm making.
5 I'm saying --

14:58

6 CHAIRMAN: No. Your point is that very senior gardaí
7 went up to interview these people.

8 MR. McDOWELL: Yes.

9 CHAIRMAN: whereas it would normally be left to
10 whatever garda the station sergeant --

14:59

11 MR. McDOWELL: Yes.

12 CHAIRMAN: -- might indicate would have a free time, an
13 hour to spare.

14 MR. McDOWELL: Yes.

15 CHAIRMAN: well, maybe ten hours to spare to listen to
16 this kind of stuff.

14:59

17 MR. McDOWELL: Yes.

18 413 Q. I'm suggesting to you, Mr. Callinan, that this was --
19 they were taking very seriously what turned out to be
20 completely groundless allegations against Sergeant
21 McCabe in the context of and as part of 'Operation
22 Squeeze'?

14:59

23 A. They were certainly taking and treating the complaint
24 with respect. But I do notice from reading the
25 document you have read out, and I've read it with you,
26 there doesn't appear to be any mention of allegations
27 of wrongful cancellation of fixed charge notices. So
28 I'm assuming that the reference to 'Operation Squeeze'
29 is just an administrative caption to record this in the

14:59

1 same area of correspondence as the assistant
2 commissioner's materials/report and other materials in
3 this area.

4 414 Q. well, I want to put it in a time-line, a time context,
5 if I may, Mr. Callinan, because we know that the 15:00
6 computer disciplinary inquiry against Sergeant McCabe
7 reached a critical point that month. In June of 2013,
8 Sergeant McCabe was informed at an interview on the
9 21st June of 2013 that the matter would not be
10 proceeding further. It was live until that point. 15:00

11 A. Okay.

12 415 Q. And we also know, for instance, that it was two months
13 later, for instance, that a complaint was made to Tusla
14 about Sergeant McCabe, and the other module deals with
15 that. So this was what was happening in 2013: senior 15:01
16 Gardaí were expending their valuable time on dud
17 allegations against Sergeant McCabe.

18 A. well, I mean, I don't know what you expect me to say to
19 that, Mr. McDowell. But, I mean, the reality is,
20 allegations that are made have to be dealt with and, 15:01
21 you know, it is the case here that a detective garda
22 was accompanied by a detective superintendent, who went
23 to the complainant to hear and listen to what he had to
24 say. I don't read anything further into it than that.

25 416 Q. I see. well, can I just finally, before we depart from 15:01
26 this, just bring you to volume 8 at page 1962, please.
27 And this is a letter written by an Assistant
28 Commissioner Michael Finn on the 11th December 2017.
29 This is after you have retired, I should point out to

1 you. But I just want to put to you what's there on
2 page 2 of page 1962:

3
4 "On the 15th December 2016, I was tasked with meeting
5 Mr. Bernard McCabe, uncle of Sergeant McCabe, in 15:02
6 relation to assertions he was making in relation to
7 persons that he alleged had got off with various road
8 traffic offences."

9
10 Now, this is, as I see it, three years after the first 15:03
11 event, another assistant commissioner is being sent out
12 to meet Mr. Bernard McCabe.

13
14 "I was with Bernard McCabe for approximately two
15 hours." 15:03

16
17 I think Mr. Marrinan pointed that out.

18
19 "Bernard McCabe handed me copies of newspaper cuttings
20 in relation to Maurice McCabe and Mr. Shatter. He did 15:03
21 not wish to commit anything to writing. He made
22 assertions that Sergeant McCabe was influential in
23 letting people off with road traffic offences going
24 back 15 years. I subsequently made a memo of my
25 meeting with him. I was of the opinion that Bernard 15:03
26 McCabe has issues with Sergeant McCabe."

27
28 And I'd say that is one of the great understatements of
29 the century.

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"And that he wanted An Garda Síochána to investigate Sergeant McCabe but had no material to support his assertions. I advised Bernard McCabe to contact me again if he had any more specific information or if he wanted to pursue a complaint. I also advised him that he could go to the Garda Síochána Ombudsman Commission. I was satisfied that the information/material I received from Bernard McCabe wouldn't merit proceeding with a formal investigation against Maurice McCabe and I made Bernard McCabe aware of that fact."

15:04

15:04

So it would appear that even three years after the first event, somebody is back listening to this stuff, a senior garda, an assistant commissioner is spending two hours listening to this story yet again, reheated. You see, what I am putting to you, Mr. Callinan, is that, in 2013, with the document that we were examining which brought together everything discreditable against Sergeant McCabe and senior gardaí taking time off their duties but within the overall umbrella of Operation Squeeze, they were wondering could it be that Sergeant McCabe had let people off inappropriately and were interested in hearing if that was the case. And I'm putting it to you that there was an attitude of deep suspicion and a willingness to search the records for anything that could assist in damaging Sergeant McCabe well, certainly not from my perspective, Judge. Absolutely not.

15:04

15:04

15:05

1 417 Q. But you've no explanation as to why that document of
2 all the discreditable information had been assembled in
3 2013?

4 A. Well, I don't know the provenance of the document. I
5 don't know who commissioned it, I don't know who 15:05
6 compiled it, I don't know anything about it, other than
7 reading it at face value, the same as you are here.
8 And if you are suggesting to me that I was, somehow or
9 other, complicit in ordering this document to be drawn
10 together on the basis that I was attempting to do down 15:06
11 Sergeant McCabe, nothing, but nothing, could be further
12 from the truth.

13 418 Q. What I am suggesting to you is that that document
14 appears to have been brought to a meeting prior to the
15 PAC meeting for your information or assistance in 15:06
16 conducting the meeting?

17 A. And that is a possibility. I certainly couldn't say it
18 is not a possibility. But all I can say, Chairman, is
19 that I'm not familiar with the document.

20 419 Q. And the reason I'm doing this, Mr. Callinan, and I 15:06
21 don't want to be unfair to you or be in any sense
22 underhand in my cross-examination of you --

23 A. No, I accept that.

24 420 Q. -- but the point I'm making to you is that this is a
25 million miles away from what you're telling us about 15:07
26 Sergeant McCabe's actions on penalty points being a
27 welcome intervention which was of great public benefit;
28 that in reality what was happening, there was mining
29 for dirt against Sergeant McCabe going on, whether you

1 were -- accepting that you didn't order it to be done,
2 somebody senior in An Garda Síochána is doing it at the
3 time.

4 A. Well, I can't say that, Chairman, and I've no knowledge
5 of it. If your allegation is correct, I cannot say 15:07
6 that I had any knowledge of that happening in An Garda
7 Síochána.

8 421 Q. And what I am suggesting to you is that far from being,
9 as I say, the welcome whistleblower whose revelations
10 in relation to the penalty points system was a welcome 15:07
11 improvement for An Garda Síochána, quite apart from
12 that, there was the whole question of Sergeant McCabe
13 being a troublesome, difficult person, and that the
14 notes of the preparatory meetings deal with the 2006
15 incident and they deal with the question of his 15:08
16 motivation and that these things were discussed prior
17 to the PAC meeting, isn't that so?

18 A. Sorry, no, it's not so. First of all, they're not my
19 words, that he was a troublesome or a difficult
20 individual, you know. I know where that has been said, 15:08
21 but they're not my words, certainly not. And whether
22 or not that document has been brought to a pre-PAC
23 meeting or not, I cannot say because I don't recognise
24 it. It's as simple as that. But I can assure the
25 Tribunal one hundred percent that under no 15:09
26 circumstances did I order any document to be compiled
27 or mined, or whatever other terminology you want to put
28 on it, in an effort to do down Sergeant McCabe. That
29 is not me. And that's not where -- what I represent.

1 422 Q. I see. You will accept that Sergeant McCabe was never
2 told about any of this.

3 A. Sure, I don't even remember it. I don't even remember
4 seeing the document before. So --

5 423 Q. No, but I'm saying in relation to the matters which 15:09
6 were investigated by the team which went to visit his
7 uncle?

8 A. Oh, I see, yeah.

9 424 Q. He was never told about this.

10 A. I'm not familiar with it, so I can't comment on it. 15:09

11 425 Q. Or warned that this was happening?

12 CHAIRMAN: I'm not sure about that. But again, if we
13 go back, Mr. McDowell, to the actual text of the
14 documents, I mean, it's kind of throwing petrol on the,
15 I don't know what, I can't say smoke or fire, or 15:10
16 anything else like that. I mean, clearly they don't
17 get on. And maybe in the background there's some
18 dispute over a field, I mean, but why tell him that
19 he's saying the most, well, frankly, weird things?

20 MR. McDOWELL: well, it is a matter, Judge, for 15:10
21 yourself.

22 CHAIRMAN: Yes.

23 MR. McDOWELL: But, I mean, obviously it is also the
24 case that nobody ever told him about the Tulsa.

25 CHAIRMAN: No, no, I appreciate that. 15:10

26 MR. McDOWELL: He's the man who is always left in the
27 dark.

28 CHAIRMAN: Yes.

29 MR. McDOWELL: And there's a file on Commissioner

1 o'sullivan's desk accusing him of rape, and he's never
2 told about any of this.

3 CHAIRMAN: No, Mr. McDowell, look, you may have a point
4 there. But in relation to his uncle -- and I will
5 think about that point. But in relation to his uncle, 15:11
6 who if I am incorrect in reading the papers, seems to
7 live a very, very short distance away from him, they
8 don't get along at all. I mean, none of this would
9 have come as a surprise. I mean, perhaps the details
10 about the Shannon-erne waterway and cruisers, and all 15:11
11 the rest of it, might have, but I'm not sure it would
12 have helped anyone to tell anybody about this. And, I
13 mean, you know, Gardaí have to listen to a lot of --
14 that's their excuse for not going around in uniform, I
15 believe, nowadays, that every person with a grievance 15:11
16 will come up and air it to them in the street.

17 MR. McDOWELL: All I will say, Judge, is that it is
18 strange that Sergeant McCabe was never told of this
19 matter, which attracted the attention of very senior
20 gardaí, at any point. 15:11

21 CHAIRMAN: well, you may have a point about the very
22 senior gardaí, I don't know. But, I mean, you're
23 saying, anyway, Commissioner, you didn't send up very
24 senior gardaí to talk about the number of cattle that
25 Sergeant McCabe was allegedly keeping in a field, or 15:12
26 anything?

27 A. No, Chairman, I had no knowledge of this particular
28 strand of the inquiry.

29 426 Q. MR. McDOWELL: On a broader question, would you accept

1 the proposition that there were rumours about Sergeant
2 McCabe in currency at Garda Headquarters, as some of
3 the witnesses here have stated?

4 A. As I said the other day, Mr. McDowell, I've absolutely
5 no doubt. I mean, the allegation against Sergeant 15:12
6 McCabe in 2006 was well known up in the locality. I
7 mean, there can't be any doubt about that. It would be
8 crazy to suggest otherwise.

9 427 Q. I see.

10 A. And the organisation is, at the end of the day, while 15:12
11 it's very diverse, very complex, the Garda family, word
12 gets out.

13 428 Q. Yes.

14 A. So I would -- to try and answer your question, I do
15 accept that people might have an inkling or a knowledge 15:13
16 of the 2006 allegation, certainly.

17 429 Q. You see, the reason I'm asking you that is, I mean, I'm
18 not contesting your evidence there at all, but I am
19 suggesting to you that a remarkable number of witnesses
20 have informed the Chairman that they never heard of any 15:13
21 of this, never heard any mention of it at any time,
22 both from the division and from central administration
23 of An Garda Síochána.

24 A. I accept that. But, you know, certain people would
25 hear certain things and, you know, beyond that, I can't 15:13
26 account for what people are saying.

27 430 Q. I see. And I do have to suggest to you that it would
28 be very easy for members of the media to pick up such
29 rumours from the wider Garda family, to use that

1 phrase?

2 A. well, I think we would be somewhat naive, Chairman, if
3 we didn't believe the media have the same type of
4 tentacles that An Garda Síochána have in terms of
5 picking up a story. The level of knowledge and detail 15:14
6 is quite another issue, of course.

7 431 Q. Now, in respect of Superintendent Taylor, we had a
8 number of witnesses who have given evidence here that
9 they never heard of anything discreditable being said
10 about Sergeant McCabe in the Garda Press Office. But 15:14
11 one sergeant, Sergeant Molloy, told Mr. Murrinan, I
12 think, and could I get the transcript of Day 71, page
13 76, before you. Sergeant Molloy, at page 76 of that
14 transcript -- have you got it? It's on screen, I
15 think, it's coming up on screen in front of you. At 15:15
16 line 13, he answered Mr. Murrinan. Mr. Murrinan said:

17
18 "Now, in terms of Sergeant McCabe and what was known in
19 the Press Office, known about him in the Press Office
20 or what may have been discussed in the Press Office 15:16
21 concerning Sergeant McCabe in late 2013 and up to June
22 of 2014, can you help us in that regard?"

23
24 And he said:

25
26 "Well, I can't say that I heard Superintendent Taylor
27 say anything and I can't say who said things, but, I
28 mean, obviously the case would be discussed."
29

1 And Mr. Marrinan said:

2

3

"Well, one would have thought so."

4

5

And he said:

15:16

6

7

"Yeah."

8

9

And Mr. Marrinan said:

10

15:16

11

"But every witness so far has told us, I think, and you're the last witness from the Press Office, has said it was never discussed."

12

13

14

15

And he replied:

15:16

16

17

"Yeah, discussed in the sense that I would hear from the other staff what -- let's put it this way, I was clear, if there was a side to be taken in this, which side Dave Taylor was on, and it wasn't on Maurice McCabe's side, let's put it that way."

18

19

20

15:16

21

22

23

Does that sound credible to you?

24

A. I can't speak to that. That's the man's evidence. So, you know, how could I interfere with that?

15:17

25

26

432 Q. But you were dealing daily with Superintendent Taylor, and are you saying that he never gave you the same impression, that he was hostile to Sergeant McCabe?

27

28

29

A. No, he did not.

1 433 Q. I see. And then Mr. Marrinan says:

2

3

"Can you just expand on that a little bit?"

4

5

And he said:

6

7

"My difficulty is that I can't point to a particular day and time and say Superintendent Taylor said this and therefore I just want to be careful."

9

10

11

So Mr. Marrinan says:

12

13

"It's an impression that you had."

14

15

And he answers:

16

17

"It's that, married with the fact that the other staff members would tell me something that was said as well,

18

19

possibly by Superintendent Taylor or not in the sense

20

that they were repeating the gossip, but in the sense

21

that, guess what he said? It would be uncomplimentary

22

about Maurice McCabe, it would be uncomplimentary about

23

any journalist who was writing in favour of Maurice

24

McCabe and it wouldn't be very complimentary about any

25

members of the Oireachtas who are taking Maurice

26

McCabe's side."

27

28

Now, are you saying that that's news to you, that that

29

would be happening in the Press Office?

1 A. Well, it's certainly not the type of discussion that I
2 had with Superintendent Taylor in the context of my
3 interactions with him.

4 434 Q. Well, to paraphrase Mr. Marrinan, would you just
5 elaborate a little bit on that? 15:18

6 A. Well, you see --

7 435 Q. What was the attitude he demonstrated to you towards
8 Sergeant McCabe?

9 A. Well, he dealt with the press queries as we got them
10 and, as I thought, on a professional basis. But what 15:18
11 I've read since and what I've heard since certainly has
12 surprised me and shocked me --

13 436 Q. I see.

14 A. -- in the context of the type of interaction that I had
15 with Superintendent Taylor. 15:19

16 437 Q. Well, are we to take it then that your position is, and
17 I don't want to distort it in any way, that at no time
18 in your dealings with Superintendent Taylor did you
19 detect any hostility towards Sergeant McCabe?

20 A. That would be a fair assessment, yes. 15:19

21 CHAIRMAN: And it's just, maybe there's something about
22 Sergeant Molloy's evidence that might help in this
23 regard. According to Sergeant Molloy, he said he
24 wasn't mentioning sex assault or sex assaults, or
25 anything like that, around the office; it was because 15:19
26 he was speaking out that he was hostile - in other
27 words, because of the trouble he was causing, that he
28 couldn't stand him, or whatever one might choose to
29 characterise it, or anyone in the Oireachtas supporting

1 him or journalists supporting him. It was the
2 speaking-out problem that was the problem. I think I'm
3 correct in recording that, Mr. McDowell?

4 MR. McDOWELL: Yes.

5 A. I see.

15:20

6 MR. McDOWELL: I think, Judge, at page 78, in fairness,
7 Mr. Marrinan asked him -- well, first of all maybe we
8 should put it in context. Mr. Marrinan, at the bottom
9 of page 77, says:

10

15:20

11 "And what period of time was this?"

12

13 And he says:

14

15 "It's difficult to say. What people must understand
16 is, like others in the office have said, it's busy.
17 When a story gets really big, it's kind of, it's beyond
18 the Press Office, it's happening in another political
19 world. It doesn't really concern us. We're not
20 getting calls every day about Maurice McCabe. It
21 really doesn't impinge on the work of the office. But
22 when certain elements, the PAC for instance, that does
23 create a bit of a fuss in the office, obviously."

15:20

15:20

24

25 Mr. Marrinan said:

15:20

26

27 "All right. Well, prior to the PAC meeting, which was
28 on the 23rd January, prior to that, was Sergeant McCabe
29 discussed in the Press Office or were you getting any

1 feedback in relation to Superintendent Taylor's
2 attitude to Sergeant McCabe?"

3
4 And he said:

5
6 "Prior to the PAC, yeah, probably all the time that
7 Sergeant McCabe's case was on the radar."
8

15:21

9 Question from Mr. Marrinan:

10
11 "Did that have anything to do with the prior allegation
12 that had been made against Sergeant McCabe?"
13

15:21

14 And the answer to that was, and this is where you are
15 correct, Chairman, he said:

15:21

16
17 "No. I mean, I wasn't aware of that. I was vaguely
18 aware of a rumour of a sexual assault and possibly that
19 Maurice McCabe felt that this shouldn't have been on
20 the Pulse system and management weren't taking it off
21 the -- that's the rumour that I heard.
22

15:21

22 Q. And was this in 2013?"
23

24 And he says:

25
26 "A. Well, I can't --

27 Q. -- 2014?

28 A. I would say 2013, but it would be very early 2014
29 if it wasn't. I can't be certain."

15:21

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So I'm just a bit mystified as to why the staff, or one member of the staff of the Press Office at least, would sense this hostility towards Sergeant McCabe, and you, as the person to whom he reported, would never have experienced it.

15:21

A. That's correct, Chairman, yes. But, you see, it's also the case that I've learnt an awful lot about Superintendent Taylor that I didn't know about and a side to him that I certainly didn't know about.

15:22

438 Q. And that's arising out of the Clerkin investigation and the like, is it?

A. It's arisen out of all of the materials that have been supplied to me by the Tribunal, and the evidence that I have read, including Superintendent Taylor's evidence.

15:22

439 Q. Could I ask you now to go to Volume 5, and in particular to page 1289.

A. Thank you, Chairman.

440 Q. This is a manuscript note. It's your handwriting, is it?

15:23

A. It is, Chairman, yes.

441 Q. And there's a series of issues from 1 to 21 there, and following there's four bullet-points, one of which is -- the first one is:

15:23

"Did we investigate 'that that man wants a bullet in the head'?"

Sorry,

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""What that man wants is a bullet in the head'."

CHAIRMAN: And that seems to be in inverted commas.

MR. McDOWELL: In inverted commas, yeah.

CHAIRMAN: Yes.

15:24

Q. MR. McDOWELL: Can you explain why you wrote that out and the conversation that would have led to you writing that out, or was this a memo to yourself?

A. I'm not absolutely sure, but you see on the column here, "questions".

15:24

Q. Yes.

A. So it looks like as if I am asking the question. I'm not sure is this a pre-PAC meeting or is it -- or do we know the provenance --

Q. I think it is a pre-PAC meeting, is it not?

15:24

A. Pardon me?

Q. Is it not a pre-PAC meeting?

A. It may well be, I'm just not clear. I think it is reasonable to assume it is, because it is following on a list of documents where potential questions from PAC and FCPN. They seem to be Mr. McLindon's questions.

15:25

Q. Well, assuming that it's --

A. I assume it is, I assume it is.

Q. Assuming that the next page, 1290, follows on from it, and that may be an assumption, I can't be certain of that, but it certainly -- it seems to deal with the fixed charge penalty notices, isn't that right?

15:25

A. It does, Chairman, yes.

Q. So there you are, you're writing down:

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"Did we investigate 'what that man wants is a bullet in the head'?"

That was one of the issues in the -- raised in the 2013 document that we dealt with earlier, isn't that right, Sergeant McCabe's family's complaint about a death threat? 15:25

A. Maybe. I don't know. We'd have to have a look at it.

449 Q. I think it was. If you just give me two seconds. 15:26

A. It's certainly something, if it's of assistance --

450 Q. I think it's at page 13 of that document.

A. Okay.

451 Q. And this is in volume 26.

A. Okay. 15:26

452 Q. "Alleged threats to Garda [blank] on the 18th January 2011 in The Squealing Pig pub by Garda [blank] to shoot Sergeant McCabe."

That was one of the issues which is comprised in that document by Sergeant McCabe. 15:26

CHAIRMAN: What page is that?

MR. McDOWELL: That is 7236, Judge.

CHAIRMAN: I mean, the phrase "'what that man wants is a bullet in the head'" doesn't actually come from that, does it? 15:26

MR. McDOWELL: I think it does, Judge.

CHAIRMAN: Does it?

MR. McDOWELL: That was the threat.

1 CHAIRMAN: All right. So I'm told.

2 MR. McDOWELL: Subject to correction, I think, that
3 that is the same matter, Judge.

4 CHAIRMAN: And this was The Squealing Pig?

5 MR. McDOWELL: The Squealing Pig, yes, Judge. 15:27

6 A. I think that's correct, yes.

7 453 Q. I think that that's so. So you've asked yourself or
8 set yourself, or maybe this is for you to ask other
9 people, did we investigate that threat or that comment?

10 A. That's a question I've written down, yes. 15:27

11 454 Q. And can you recollect how that could have happened if
12 you weren't going through this document and
13 anticipating what some Dáil deputy might throw at you
14 by way of a curve ball at the PAC meeting?

15 A. Well, just to be clear, now that you've raised it, 15:27
16 Mr. McDowell; Chairman, I think it's very clear from
17 the documentation, the independent documentation that
18 you have, that I had sent to the Public Accounts
19 Committee, that I would not be dealing with any
20 individual cases of any description, and I quoted the 15:27
21 passage where my responsibility lay, and that was to
22 talk about systems and processes, etcetera.

23 455 Q. Yes.

24 A. That I would not engage in personal matters about any
25 individual, and I think that was accepted. 15:28

26 456 Q. But it does appear that you were preparing yourself for
27 awkward or maybe wholly improper questions to be put to
28 you?

29 A. Or could it be just that I was asking the question, you

1 know?

2 457 Q. Then the next bullet-point as I read it now, correct
3 me:
4

5 "How can you say you carry out an investigation without 15:28
6 interviewing whistleblowers?"

7 A. Indeed, indeed.

8 458 Q. Surely that is anticipating that somebody would throw
9 that at you in relation to the O'Mahony report?

10 A. I would accept that, yes, I would accept that, that 15:28
11 that would be a question that perhaps I could have
12 fielded on the day if I was asked, and I've already
13 explained how that would occur based on what the
14 assistant commissioner was asked to report back on, and
15 I think he has actually explained, I know Mr. Marrinan 15:29
16 took us through that section of the evidence where the
17 assistant commissioner actually dealt with the point
18 and how he was approaching the investigation or the
19 inquiry he was doing at the time.

20 459 Q. And then, if I may, the third bullet-point is: 15:29
21

22 "Discipline, what law prevents", is it "me from" --

23 A. That's correct, yes.

24 460 Q. Is that "discussing"?

25 A. "From discussing", yes. 15:29

26 461 Q. And can you explain why you wrote that down in the
27 context of that meeting?

28 A. Not -- you see, these questions may not be particularly
29 for the meeting; they were probably just general

1 questions when I had a body of people in front of me
2 that I was -- matters that were ticking over in my head
3 that I wanted to try and get some sort of a handle on
4 at the time.

5 462 Q. They have the look, do they not, of a document you 15:30
6 wrote before the meeting rather than notes of the
7 meeting, is that correct?

8 A. Well, there's a very wide variety of subjects from 1 to
9 21, em...

10 463 Q. I'm just trying to work out why those issues would have 15:30
11 arisen on that, in any shape or form.

12 A. Yes.

13 464 Q. In those notes.

14 A. Yes. I think it's more likely that these were just 15:30
15 matters in my mind that I was trying to clear up or
16 look for clarification on, not strictly or particularly
17 to speak to them in the context of the Public Accounts
18 Committee.

19 465 Q. And then the next bullet-point seems to say:

20 15:30

21 "What separate investigation Inspector John Burke
22 Finglas (O'Mahony report)?"

23

24 Does that ring any bells with you?

25 A. There's something in the back of my mind about a 15:31
26 separate query or perhaps a newspaper article,
27 something of that nature, around Inspector Burke, and
28 it might have been in that regard. It won't come to
29 me, but there is definitely something in the back of my

1 mind around that area.

2 466 Q. You see, I mean, if one takes the view that those
3 aren't your note of a meeting, but a preparatory note
4 either to assist you with the meeting or to assist you
5 at the PAC, it does seem to suggest that those issues 15:31
6 were present in your mind at that time as issues which
7 could have arisen?

8 A. It's unlikely that I was thinking in those precise
9 terms, but certainly they were on my mind because
10 that's my handwriting and that's my note. 15:32

11 467 Q. And why would you, for instance, going back to the
12 first bullet-point, say, "did we investigate 'what that
13 man wants is a bullet in the head'?" why would you have
14 wondered whether you had investigated that at the time?

15 A. I may simply have been just looking for clarification, 15:32
16 as to whether or not it was investigated, was it
17 investigated properly, what was the outcome, all of
18 those things. This, as far as I recollect, was pub
19 talk, lemonade talk in a pub.

20 468 Q. Yes. Well, the only reason that I'm asking you about 15:32
21 that is not out of curiosity, but to suggest to you
22 that it is quite likely that, at the pre-PAC meetings,
23 Sergeant McCabe was the subject of extensive
24 discussion, his motivation, the 2006 allegation, all of
25 those things, that they were discussed in your 15:33
26 presence?

27 A. Well, I've no clear recollection whatsoever of any
28 discussion on the 2006 allegation being discussed. It
29 may have been mentioned in passing in the context of

1 other allegations, other matters, other incidents
2 connected with Sergeant McCabe, but that's as far as it
3 goes, as far as I'm concerned.

4 469 Q. I see. Now, you've been asked extensively by
5 Mr. Marrinan, and I won't traverse the same territory 15:34
6 because he has done it more expertly than I would do,
7 you have been asked about the Gerard Kean incident and
8 your dealings with Gerard Kean, solicitor. Could I put
9 it to you that that, too, has to be seen in a very
10 tight timeframe, because we're dealing here with 15:34
11 allegations that, in December of 2013, you made certain
12 remarks, which you vigorously deny, to Philip
13 Boucher-Hayes out in the RTÉ studio?

14 A. Correct.

15 470 Q. And then we come on to a week, which was one which 15:35
16 clearly was one -- a matter of great concern to you,
17 and that was your interaction and the possibility of
18 Sergeant McCabe interacting with the Public Accounts
19 Committee in the last week of January 2014, isn't that
20 right? 15:35

21 A. Yes, Chairman.

22 471 Q. And just to put it all in context, your appearance
23 before the PAC was on the 23rd January, which was a
24 Thursday?

25 A. That's correct, Chairman, yes. 15:35

26 472 Q. And two people, the Comptroller & Auditor General and
27 Deputy McGuinness, the Chairman of the PAC, say that
28 you made derogatory remarks about Sergeant McCabe, and
29 sexual matters, at that meeting, in the immediate

1 A. Absolutely outlandish allegations, Chairman. They are
2 totally untrue, and I reject them in their entirety.

3 478 Q. Well, we'll agree that they are outlandish allegations,
4 but both he and the Comptroller & Auditor General were
5 left with the strong impression that there was a 15:37
6 pending set of investigations which would damage -- be
7 damaging to Sergeant McCabe, and were, together, reason
8 why he should not be trusted?

9 A. Well, I suppose the essential difference between what
10 Mr. McGuinness is alleging and what Mr. McCarthy is 15:38
11 alleging is a general comment in relation to
12 Mr. McCarthy that I'd indicated that there were sexual
13 offences pending or other sexual offences pending,
14 whichever terminology he was indicating, whereas
15 Mr. McGuinness was very clear in the type of very, very 15:38
16 serious and damaging remarks that he claimed I made in
17 respect of Sergeant Maurice McCabe.

18 479 Q. Yes.

19 A. Remarks, as I said earlier, I would not make about any
20 individual. 15:38

21 480 Q. We know that on the following day - that was a Friday,
22 the car-park meeting - on the following day you are
23 speaking by telephone to Gerald Kean, that's the 25th,
24 and on Sunday the 26th he's on the radio talking about
25 Sergeant McCabe in derogatory terms. 15:39

26 A. Well, when you talk about derogatory terms and you talk
27 about the note that I had provided, I think, you know,
28 in the context of the terms of reference of this
29 Tribunal, that there's a fair old distance between the

1 two.

2 481 Q. Oh, indeed there is. I mean, there's no suggestion of
3 sexual predator in anything Mr. Kean said, isn't that
4 right?

5 A. No, no, there's not. 15:39

6 482 Q. But on the other hand, there is a clear -- there is a
7 clear trail of evidence which suggests that you knew he
8 was going on to the Marian Finucane programme and that
9 you engaged in a conversation with him to fill him in
10 on the background to Sergeant McCabe and the O'Mahony 15:40
11 report, isn't that right?

12 A. No, it's not right. That's what Mr. Kean is saying.

13 483 Q. Well, what do you say you discussed with Mr. Kean if it
14 wasn't the O'Mahony report and his failure to cooperate
15 with it? 15:40

16 A. Well, that's slightly different. We certainly did
17 speak about the O'Mahony investigation, there isn't a
18 shadow of a doubt, that's why he was inquiring.

19 484 Q. Yes.

20 A. And if he had stuck -- as I said on Friday, if he had 15:40
21 stuck to the facts as I presented it to him, he might
22 not have found himself in the position that he found
23 himself in. And I think the bullet-points, the few
24 notes that I scribbled down and then corrected myself
25 and said this is inappropriate and that I shouldn't be 15:40
26 doing this, if he had stuck to those points I don't
27 think he'd have found himself in the type of difficulty
28 he found himself in at the time, because there was no
29 mention of Sergeant McCabe being obstructive or

1 anything of that nature.

2 485 Q. Or difficult in any way?

3 A. Correct.

4 486 Q. You see, Mr. Kean clearly was looking for help from you
5 and some inside track information which would assist 15:41
6 him in being a credible contributor to the programme,
7 isn't that right?

8 A. Well, you see, when the documentation arrived, the
9 request to me was, if I wouldn't mind looking at the
10 documentation to see if it was factually correct, and, 15:41
11 as I said, not my finest hour. I started to jot down,
12 in the first person, a couple of points that -- a
13 couple of facts that were already in the public domain
14 and facts that I had put into the public domain. As I
15 say, when I was contacted initially about this matter, 15:42
16 about this correspondence, I could not bring it back to
17 mind, high up or low down, and I was dealing with a
18 fairly difficult period on a personal level; an
19 immediate member of my family was dying at the time and
20 I was at the hospital, so my concentration was focused 15:42
21 on dealing with the letter. And I know, Chairman, in
22 particular, you have advanced the proposition that I
23 spent almost an hour on the phone between my
24 interactions over the two days --

25 CHAIRMAN: I hadn't really advanced any proposition. I 15:42
26 just did a bit of adding, like you'd do in primary
27 school.

28 A. Sorry.

29 CHAIRMAN: It amounts to about 57 minutes or something

1 like that.

2 A. Yes.

3 CHAIRMAN: But I mean, you have said that look, he's a
4 wonderful talker and you were listening to this
5 wonderful musical talking for quite a lot of that time. 15:43

6 A. That's the reality, Chairman. And I have to apologise
7 if the Tribunal is taking the view that I'm somehow or
8 other trying to mislead it in terms of not mentioning
9 it earlier. But I certainly did mention it in my
10 initial statement, that I did contact him on the phone. 15:43
11 But the actual chronological log of the sequence of
12 calls I just couldn't remember them.

13 487 Q. MR. McDOWELL: I mean, can you just reiterate, the
14 notes in the first person that you drafted, were they
15 in advance of the programme or after the programme? 15:43

16 A. Are you talking about Mr. Kean's notes?

17 488 Q. No. You mentioned that you drafted out notes using the
18 first person singular --

19 A. Oh, I beg your pardon, yes.

20 489 Q. -- were they written in advance of the programme or 15:43
21 after the programme?

22 A. No, no. This was when I got the correspondence.

23 490 Q. Yes. So, that was after the programme?

24 A. Oh absolutely, Chairman, yes.

25 491 Q. So, in advance of the programme -- you see, the point 15:44
26 is you said if he'd only stuck to the, and I think what
27 you haven't said is the script --

28 A. No, there was no script.

29 492 Q. -- that, if he'd only stuck to the script there

1 wouldn't have been any problem? That is the gist of
2 it, isn't that what you are saying?

3 A. Precisely, Mr. McDowell.

4 493 Q. And what was the script you were giving him? That is
5 what I want to know. 15:44

6 A. No, no, but -- your words.

7 494 Q. Well, yeah.

8 A. Your words.

9 495 Q. What were the prompts you were giving him, whatever,
10 the account? It is my word, and I'm not putting it 15:44
11 into your mouth.

12 A. Okay. Thank you, thank you. What occurred, Chairman,
13 was that Mr. Kean asked me about the O'Mahony
14 investigation and asked for some pointers in relation
15 to what Mr. O'Mahony had reported on, on the basis that 15:44
16 he was going on the programme and my initial reaction
17 was look it, it's on the internet, go and look at it,
18 you'll see what is there, you can make your own mind
19 up, and he said no, no, I want you to fill me in on
20 some of the bigger ticket items. So I rattled off as 15:45
21 best I could a few of the headlines that we have
22 mentioned here previously, about the timeline, the
23 number of complaints, the fact that 1.46 million
24 tickets had been issued during that period, the fact
25 that 4.55% was the attrition rate that the assistant 15:45
26 commissioner had found in the context of that
27 investigation and that, when that was whittled down
28 further and further examined in terms of prosecutorial
29 discretion that percentage came to 2.57, which, you

1 know, there's a couple of ways of looking at that, but
2 the reality is there were significant weaknesses in the
3 system.

4 496 Q. I see. You say, therefore, you were giving him some
5 factual material which was present in your mind, 15:46
6 probably because you'd had to rehearse this in your own
7 head for the PAC meeting a couple of days earlier,
8 isn't that right?

9 A. Well, I had those facts in -- I had those facts in my
10 head. 15:46

11 497 Q. You made notes, we've just seen the notes that you've
12 noted down.

13 A. Oh, on those? Oh yeah, I didn't have to look up
14 anything for that. No, no.

15 498 Q. So I mean, they were firmly in your head, those notes. 15:46
16 And what you are saying, and I just want to be clear
17 about this is, is that Mr. Kean insofar as he began to
18 say derogatory things about Sergeant McCabe, and
19 Mr. Wilson, that this was his own impression, nothing
20 to do with anything you told him, is that right? 15:46

21 A. As I've already previously given, Chairman, if he had
22 stuck to the responses to the questions that I gave
23 from him and without making his own opinions known on
24 the national airwaves and attaching my endorsement to
25 them, he wouldn't have found himself in that position. 15:47

26 499 Q. Well, can I ask you just, because I think we haven't
27 actually got clarity on it: Did you listen to his
28 performance on the radio, yourself?

29 A. It was some -- it was a little bit while later, yes, I

1 didn't hear it on --

2 500 Q. Did you listen back on RTÉ Player?

3 A. I did subsequently, yes.

4 501 Q. And were you a bit taken aback by the liberties he was
5 taking with Sergeant McCabe's reputation? 15:47

6 A. I think that'd be fair to say, yes.

7 502 Q. And was that before or after he asked you to help him
8 draft his reply to Sergeant McCabe?

9 A. I think it was possibly in between, yes.

10 503 Q. So you knew he had strayed off the narrow path you 15:47
11 envisaged him taking, is that right?

12 A. Yes. I can't be certain now but I think it was before
13 it.

14 504 Q. Then you go to assist him writing a letter to Sergeant
15 McCabe defending his behaviour which you knew to be 15:47
16 wrong?

17 A. No. I wasn't writing any letter to Sergeant McCabe.

18 505 Q. No, you were proposing paragraphs that he could include
19 in a letter to Sergeant McCabe?

20 A. I had started that process, and I had corrected myself 15:48
21 and I have already indicated it wasn't my finest hour.

22 506 Q. Well, how come the letter he sent reflected the
23 paragraphs you composed?

24 A. Well, my understanding is that Superintendent Walsh had
25 brought a note or a typed version of those with him as 15:48
26 an aide memoire and beyond that I cannot comment. I
27 don't know what happened between the parties. But I do
28 absolutely acknowledge that it is almost a verbatim
29 account in various paragraphs. Those four paragraphs

1 are inserted almost word perfect. I do accept that.

2 507 Q. well, I mean, the point is, you see, that we are all
3 agreed now in retrospect that this was inappropriate,
4 but Superintendent Walsh was doing you a favour, was he
5 not, by producing an anonymous typed up version which 15:49
6 couldn't be directly attributed to you?

7 A. well, I mean, I gave no direction that that was to
8 happen, but certainly Superintendent Walsh was aware of
9 my views because he had been watching and listening to
10 what I had said down at the Public Accounts Committee. 15:49

11 CHAIRMAN: Sorry, I mean, we've spent a lot of time on
12 Gerard Kean and all the rest of it, but there's just
13 two points. I mean, I didn't know you had any
14 interaction with Gerard Kean at all, at all until
15 Mr. Murrinan showed me the handwritten note that you 15:49
16 drafted. So nobody told me that. The second point is:
17 Nobody has put to it to Superintendent Walsh that he
18 went off on a frolic of his own carrying an
19 elaborately -- well, you have to go to trouble to type
20 up someone's handwritten notes, and went off to Gerard 15:49
21 Kean, read it out to him and he promptly put
22 effectively exactly the same thing in the letter to
23 Maurice McCabe. So I mean, I don't know what I am
24 supposed to take out of all of this. I mean, the
25 Gerard Kean may not be the most important thing that is 15:50
26 happening around here, but are we really saying that a
27 superintendent working for you hightailed it off out of
28 the office and went to Gerard Kean without your
29 knowledge? what are we saying?

1 A. No, certainly not. I am certainly not. No, no. I
2 mean, I have indicated in my statement to the Tribunal
3 that the conversation that evolved -- I suppose just to
4 go through it very briefly, Chairman, if I may. I
5 received this letter from a courier service marked 15:50
6 "Private and Confidential" and when I opened it, it
7 consisted of a covering letter to ask me to look at the
8 documentation to see if it was factually correct and
9 there was a letter from Sergeant McCabe to Mr. Kean and
10 there was a response that he was proposing to send back 15:51
11 and that was the request; that I would look at that to
12 see if it was factually correct, that he needed to be
13 factually correct. And at the time I took down a blank
14 sheet of paper and I scribbled down four bullet points.
15 That was fairly innocuous as far as I was concerned. 15:51
16 But then, I reflected on what I was doing and said this
17 isn't an appropriate letter to receive. So I stopped.
18 And later on that evening Superintendent Walsh called
19 up with other correspondence that we were dealing with
20 and I showed him the letter and he agreed with me that 15:51
21 it wasn't an appropriate letter to respond to in
22 writing. And he had indicated that Gerard Kean had
23 acted for him previously and that he knew him for a
24 long number of years and that he had offered to go and
25 see him and say, look it, the Commissioner can't get 15:51
26 involved in this, and I had agreed to that on the basis
27 that I knew Superintendent Walsh wouldn't be dragged
28 into a situation where he would be talking about
29 controversial matters. And he was aware, as I say, of

1 what was already there. And I think his evidence to
2 the Tribunal is that he brought this note as an aide
3 memoire. So I was absolutely aware that he was going
4 to see Mr. Kean. There's no question about that,
5 Chairman.

15:52

6 CHAIRMAN: All right. But it doesn't make sense that
7 he goes to Mr. Kean with, as an aide memoire, the piece
8 of correspondence you think was very inappropriate for
9 you to be engaged in. I mean, are you saying that he
10 was going -- look, the phrase "a frolic of his own", it
11 derives from tort law and it means that someone instead
12 of driving the forklift in the warehouse decides to go
13 down and get his shopping instead and knocks someone
14 down along the way. Is that the kind of thing you
15 mean?

15:52

15:52

16 A. No. I accept on face value what happened, Chairman,
17 you know. But I wasn't going to engage in that process
18 and that was the message -- the principal message that
19 the superintendent was bringing. That I couldn't get
20 involved. And I had said to that to Mr. Kean anyway;
21 that I couldn't get involved.

15:53

22 CHAIRMAN: Just to bring it to a half-finished
23 conclusion. You weren't going to get involved, that
24 was the message, but he was going down and he had a
25 typed script of your --

15:53

26 A. Scribbled notes, yes.

27 CHAIRMAN: -- potential response.

28 A. Yes.

29 CHAIRMAN: well, it was very beautifully written out,

1 if I may say so. So, you were thinking about it and it
2 may have been written, indeed, to have been read,
3 because some things that one writes are not written to
4 be read by other people but by oneself.

5 A. Yes. 15:53

6 CHAIRMAN: So, was he going with -- it's not a criminal
7 offence, was he going with your note to inform Gerard
8 Kean that these might be appropriate things to say to
9 Sergeant McCabe?

10 A. Well, certainly he would be equipped with that 15:54
11 knowledge. And if that came up in the conversation
12 that came up in the conversation. I don't know. But I
13 didn't specifically direct that these points would be
14 put to Mr. Kean. They obviously did appear in the
15 letter. There's no question about that. So they were 15:54
16 obviously either discussed or recorded or whatever.
17 And that's as far as I can bring it. Chairman. I
18 accept Superintendent Walsh was doing his best to
19 assist.

20 508 Q. MR. McDOWELL: In any event, what I'm suggesting to you 15:54
21 is: First of all, can you comment on the proposition
22 that Mr. Kean says that you were anxious that he should
23 make no reference to your telephone conversation?

24 A. No, I never said that.

25 509 Q. Would you have been happy if he said 'I was talking to 15:54
26 the Commissioner yesterday and he told me, he gave me
27 the following figures'?

28 A. Well, I think we all know Mr. Kean and, you know,
29 Mr. Kean has his own mind in relation to a lot of these

1 things --

2 510 Q. Yes, but I mean --

3 A. -- and he could very well have -- he could very well

4 have indicated that on the national airwaves and

5 there's absolutely nothing I could have done about it. 15:55

6 Because he would be telling the truth.

7 511 Q. Yes. That's the whole point. I mean, I have to

8 suggest to you that there were no possible

9 circumstances in which you would be happy with a

10 contributor on the Marian Finucane programmes saying 'I 15:55

11 rang up the Commissioner yesterday and I was told these

12 are the facts', I have to suggest to you that it is

13 simply incredible that you would have been relaxed

14 about him saying that on the radio?

15 A. Well, there's nothing I could do about it. Because 15:55

16 that's exactly what had happened.

17 512 Q. But you could say to him 'Please do not mention the

18 fact that we've had this phone conversation, whatever

19 you do, Gerard, leave me out of this'?

20 A. But why would I say that on the basis we were dealing 15:56

21 with matters that were already in the public domain and

22 I had indicated to him, look it, go the internet and

23 look up and get the facts yourself if you want them?

24 So I was n't trying to impart some sort of secret

25 knowledge. 15:56

26 CHAIRMAN: But did he not mention, Mr. McDowell,

27 speaking to the Commissioner? I mean, it's not there

28 explicitly but he said he spoke to 14 Gardaí prior to

29 coming on the programme - that, it seems, turned out to

1 be a cup of tea in the local Garda station --

2 A. That's correct.

3 CHAIRMAN: -- but would that potentially not also have

4 been an untruth in the sense that one of the 14 could

5 have been the Commissioner? 15:56

6 513 Q. MR. McDOWELL: I have got to suggest to you that it

7 would have been very embarrassing for you if he had

8 said well, I rang up the Commissioner said and he told

9 me, he gave me the following figures to put onto the

10 airwaves. 15:56

11 A. No.

12 514 Q. I've got to suggest to you that you certainly hoped he

13 would not do such a thing, at the very least?

14 A. If he was going to do that he was going to do that. He

15 would have been speaking about matters that were 15:56

16 factually correct. So I couldn't have a difficulty

17 with them. That's the point.

18 515 Q. But do you not think it would have been strange to be

19 briefing a contributor to a radio programme who you had

20 met once or twice socially in the past about what to 15:57

21 say in relation to the O'Mahony report?

22 A. But I think it's the case, is it not, that when, be it

23 Gerard Kean or anybody else, gets information from

24 members of An Garda Síochána they don't impart that

25 knowledge on the public airwaves and we know the 15:57

26 difficulty the Chairman has in relation to privilege

27 and media and all that kind of stuff, but it is not

28 generally the case that people who do receive

29 information from the Gardaí would actually go out

1 shouting about it.

2 CHAIRMAN: He's not a journalist though, is he?

3 A. No, Chairman. No. But I'm just using the --

4 CHAIRMAN: He's a kind of amateur journalist.

5 A. Possibly. Possibly, Chairman, yes. 15:58

6 CHAIRMAN: Yes.

7 516 Q. MR. McDOWELL: Could I ask you to go to page 1638 --

8 1368 rather, which I think is in volume 5.

9 A. Thank you, Chairman.

10 CHAIRMAN: Mr. McDowell, I appreciate the days are very 15:58

11 long, it's now five hours.

12 MR. McDOWELL: I'm conscious of that too, Judge.

13 CHAIRMAN: Yes. I'm just wondering, you may have a

14 while to go?

15 MR. McDOWELL: I have a while to go. 15:59

16 CHAIRMAN: Do you want to indicate what you think it

17 is, there or thereabouts?

18 MR. McDOWELL: well, I think it would be fairer to the

19 witness to break until tomorrow.

20 CHAIRMAN: Yes. 15:59

21 MR. McDOWELL: And it may shorten me as well when I've

22 time to organise myself.

23 CHAIRMAN: what do you think tomorrow, an hour or so,

24 or more?

25 MR. McDOWELL: Not exceeding three quarters of an hour, 15:59

26 I'd say.

27 CHAIRMAN: That is fine. Can I get indications just to

28 help you in terms of when you would be finished from

29 other people?

1 A. Obligated, Chairman.

2 CHAIRMAN: Ms. Burns? You may have a few, but lots of
3 stuff has been covered after all.

4 MS. BURNS: Yes, Chairman. I certainly don't
5 anticipate that I will be longer than an hour and I may 15:59
6 well be much shorter.

7 CHAIRMAN: All right.

8 MR. GILLANE: I think maybe five minutes.

9 MR. LEHANE: Yes, Chairman. I wouldn't say I'd be
10 longer than an hour. I wouldn't anticipate being 15:59
11 longer than an hour, Chairman.

12 CHAIRMAN: And is there particular things you feel you
13 need to cover?

14 MR. LEHANE: well, I'm representing Deputy McGuinness
15 and you will recall that Deputy McGuinness was 16:00
16 cross-examined for five and a half hours.

17 CHAIRMAN: No, I appreciate that, but I mean --

18 MR. LEHANE: I may be able to whittle it down having
19 regard to the nature of Mr. Murrinan's examination, but
20 I am anticipating about an hour. 16:00

21 CHAIRMAN: All right. And for the Garda?

22 MR. DIGNAM: Chairman, at the moment I think probably
23 an hour to an hour and a half, but I may be able to
24 shorten that overnight, Chairman.

25 CHAIRMAN: And, Mr. Murrinan, do you think you will 16:00
26 have much in re-examination?

27 MR. MURRINAN: well, at the moment there's only one
28 small issue. So we will see how things go tomorrow.

29 CHAIRMAN: All right. But I mean, ladies and

1 gentlemen, this is getting a bit -- I mean, we've been
2 through literally everything. I mean, do we have to
3 keep the Commissioner here over the next two days to
4 get all this in? We're not in England where they have
5 very strict things or in America where they give people 16:00
6 time limits, I don't want to do that, whether I have
7 the authority or not, I think under the new Rules of
8 the Superior Courts I do, but I am just urging people
9 if they wouldn't mind, please, I mean if we have been
10 through stuff, unless you have got something to add or 16:01
11 you feel that there is a particular angle which is
12 going to persuade me in a particular direction, I just
13 urge people to concentrate on the angle as opposed to
14 going over material we have had already. And that is
15 not to say that anyone is not doing a very good job. 16:01
16 But I think it's unfair to ask the Commissioner to come
17 back for yet another day after tomorrow. I really want
18 to try and finish tomorrow if at all possible. So if
19 people wouldn't mind helping in that regard and just
20 seeing what questions have already been dealt with it 16:01
21 may be that some things will be a wee bit shorter. All
22 right. So, it's some at 10:00. Thank you.

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THE HEARING THEN ADJOURNED UNTIL TUESDAY, 22ND MAY 2018
AT 10:00AM

16:01

	<p>'11 [1] - 118:6 '12 [2] - 25:23, 109:2 '14 [4] - 18:14, 45:5, 46:3, 48:27 '16 [1] - 18:15 'disgusting' [6] - 42:28, 44:3, 44:17, 46:17, 101:12, 103:4 'I [3] - 33:18, 63:1, 63:12 'Jockey' [1] - 100:13 'Operation' [7] - 104:1, 127:22, 130:15, 132:11, 133:2, 136:21, 136:28 'please' [1] - 171:17 'thanks' [2] - 91:8 'thanks' [1] - 91:10 'that' [1] - 151:26 'this' [2] - 35:24, 35:25 'well' [1] - 18:23 'what' [4] - 152:2, 153:2, 153:24, 157:12</p>	<p>1436 [1] - 104:15 1470 [1] - 12:20 1491 [1] - 13:10 14:17 [1] - 104:28 14:18 [1] - 104:28 14th [1] - 12:24 15 [6] - 31:23, 63:2, 94:29, 101:11, 121:26, 138:24 1507 [1] - 20:25 1570 [1] - 21:2 15:34 [1] - 104:28 15:47 [1] - 105:8 15th [2] - 122:12, 138:4 16 [4] - 1:6, 30:12, 94:29, 105:5 1638 [1] - 173:7 1686 [1] - 9:28 16th [1] - 135:3 17 [4] - 1:10, 93:13, 93:29, 114:20 171 [2] - 95:14, 95:20 17:36 [1] - 105:3 17th [1] - 131:7 18 [2] - 2:29, 30:11 18:36 [1] - 105:10 18:37 [1] - 105:11 18:54 [2] - 10:8, 10:16 18th [1] - 153:16 19 [2] - 31:22, 61:20 1921 [1] - 1:10 1962 [2] - 137:26, 138:2 1992 [3] - 108:11, 110:28, 116:16 1st [1] - 133:25</p>	<p>116:14 2010 [3] - 107:17, 113:17, 113:21 2011 [12] - 103:20, 114:2, 114:17, 118:10, 119:12, 122:1, 122:9, 122:12, 122:14, 122:19, 122:23, 153:17 2012 [4] - 114:17, 114:20, 115:7, 115:11 2013 [30] - 51:10, 88:24, 90:13, 104:4, 108:2, 109:5, 110:8, 110:13, 111:10, 115:22, 117:17, 126:25, 127:14, 127:20, 128:27, 131:7, 131:22, 131:27, 133:25, 137:7, 137:9, 137:15, 139:18, 140:3, 145:21, 150:22, 150:28, 153:5, 158:11 2013/2014 [1] - 90:18 2013/2014.. [1] - 90:10 2014 [22] - 1:4, 6:9, 10:8, 35:20, 50:27, 70:26, 82:16, 83:8, 87:14, 88:29, 92:26, 99:17, 100:5, 101:14, 103:21, 104:16, 107:20, 107:21, 145:22, 150:27, 150:28, 158:19 2016 [2] - 86:5, 138:4 2017 [5] - 1:6, 1:10, 12:24, 35:14, 137:28 2018 [3] - 1:18, 6:2, 175:24 204 [1] - 14:1 206 [1] - 14:28 20th [1] - 100:9 21 [3] - 2:25, 151:22, 156:9 2165 [1] - 36:1 21:55 [1] - 105:5 21ST [2] - 1:18, 6:1 21st [3] - 100:27, 101:14, 137:9 22 [1] - 21:4 22/1/2014 [1] - 10:16 2205 [1] - 70:14 225 [1] - 15:21 227 [1] - 16:8 22ND [1] - 175:24 22nd [2] - 8:17, 10:8 23 [1] - 15:22 23rd [22] - 6:9, 11:3,</p>	<p>18:14, 35:19, 48:27, 50:27, 51:18, 52:5, 52:9, 53:2, 53:10, 53:26, 66:28, 69:8, 69:22, 72:4, 77:7, 106:18, 149:28, 158:23, 159:22 24 [2] - 95:6, 127:6 24th [15] - 45:5, 46:3, 49:25, 51:20, 52:4, 53:3, 59:4, 70:26, 72:5, 87:14, 88:29, 101:18, 104:27, 119:12, 159:23 25th [6] - 104:16, 107:21, 122:14, 122:17, 122:19, 160:23 26 [5] - 28:10, 28:12, 28:22, 107:25, 153:14 26th [3] - 18:15, 122:9, 160:24 277 [2] - 95:29, 98:1 278 [3] - 95:28, 97:29, 98:4 279 [1] - 118:11 28 [1] - 101:27 28th [2] - 35:14, 107:17 29th [2] - 45:2, 71:13 2:00pm [1] - 89:28</p>	<p>4612 [1] - 94:8 4614 [2] - 97:20, 98:19 49 [2] - 134:5, 135:2 494 [1] - 93:13 4th [3] - 118:6, 118:10, 122:1</p>
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