

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON WEDNESDAY, 6TH JUNE 2018 - DAY 86

86

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Services certify the
following to be a
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in the above-named
action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 6TH JUNE
2 2018:

3
4 MR. MCGUINNESS: Chairman, the first witness this
5 morning is Superintendent John Ferris, who's being
6 recalled.

10:02

7
8 SUPERINTENDENT JOHN FERRIS, HAVING BEEN SWORN, WAS
9 DIRECTLY EXAMINED BY MR. MCGUINNESS AS FOLLOWS:

10
11 1 Q. MR. MCGUINNESS: Chairman, Superintendent Ferris'
12 statement in the Clerkin inquiry is at volume 9, page
13 24124. His statement to the Tribunal is at volume 12,
14 3132 - that's dated 21st February 2018. And a third
15 statement, dated 30th April 2018, is in volume 25 at
16 page 6640. And, Chairman, he gave evidence originally
17 on day 68 and he's being recalled to deal with a small
18 number of queries that passed through the Press Office
19 while he was there that are relevant?

10:02

10:03

20
21 (To witness) Superintendent Ferris, on the previous
22 occasion you weren't asked a number of questions about
23 interactions with journalists, but in your statement to
24 the Tribunal of February you provided details of a
25 search that you had conducted in your e-mail box and in
26 documents available to you.

10:03

10:03

27 A. That's correct.

28 2 Q. And you included all of those as appendices to your
29 statement?

1 A. That's correct.

2 3 Q. I just want to ask you about a few of those. Perhaps
3 you'd take up Volume 12, if you wouldn't mind? And if
4 you go to page 3135. This relates to an e-mail query
5 sent in by Mr. John Mooney on 7th October 2016, and if 10:04
6 you go to the bottom of 3135, it concerns three issues
7 that he's looking for information or answers on; one
8 relates to Templemore, the other relates to Athlone and
9 the other is whistleblowers in particular. But at the
10 bottom of 3136, he says: 10:04

11
12 "We are publishing a feature length piece on issues
13 surrounding the force also. In this regard, I need to
14 ask the following questions of the Commissioner:
15 10:05

16 1. What sort of relationship does she maintain with her
17 senior officers?

18
19 2. Is the operation and effective running of the force
20 hampered or affected in any way by personality issues 10:05
21 and problems at Commissioner rank?

22
23 3. Has the Commissioner ever asked her management team
24 if she has their full confidence?"
25 10:05

26 Now, I think these were sent on to you by Mr. McLindon,
27 isn't that correct?

28 A. Yes.

29 4 Q. And at that time the protected disclosures of two

1 whistleblowers had been discussed on the radio by
2 Deputy Daly and Mr. Clifford and had been the subject
3 matter of some speeches in the Dáil as well at this
4 time in October, do you recall that?

5 A. Yes, I do. There was a lot of media commentary on it 10:05
6 at the time.

7 5 Q. Yes. And Mr. McLindon seems to set out a reply there
8 at the top of page 3135. Is that the reply that
9 issued?

10 A. I assume it was, Chairman. I'm not sure for definite, 10:06
11 but normally that's the way it would work, that we'd
12 feed it up the line and somebody along the line would
13 come up with an answer and it would be provided to John
14 Mooney.

15 6 Q. Yes. Had you dealt yourself with Mr. Mooney on a 10:06
16 number of occasions?

17 A. Yes.

18 7 Q. And is this a normal sort of format for an inquiry made
19 by him?

20 A. Yes, it would be, yeah. Typically it'd be a Friday 10:06
21 evening, and he sent in his queries on a Friday evening
22 typically, and they would be answered.

23 8 Q. Yes. Now, this isn't a question related to Mr. Mooney,
24 but the Tribunal has heard evidence from Mr. Williams
25 that he raised queries directly with Superintendent 10:06
26 Taylor about the D investigation; are you aware of that
27 evidence?

28 A. I'm aware of the evidence. But I wasn't aware of it
29 prior to that.

1 9 Q. Well, that's what I'm wondering. Was that ever
2 mentioned to you by Superintendent Taylor?
3 A. No.
4 10 Q. Did you ever have any discussion with Mr. Williams
5 about that at any stage? 10:07
6 A. No.
7 11 Q. Did Mr. Williams ever raise the issue with you?
8 A. No. No, I don't think so. I think -- no.
9 12 Q. Okay. If we could go to page 3142. This is a query
10 again from Mr. Mooney, directly to you, in December 10:07
11 2016. And at the top of the page it says:
12
13 "Dear John, I need to submit the following to the
14 Commissioner concerning the protected disclosures made
15 by Dave Taylor. I am sending these to your personal 10:08
16 e-mail for obvious reasons."
17
18 Now, could I just stop there? Is that your Garda
19 e-mail that he's referring to?
20 A. Yes. 10:08
21 13 Q. Okay. So that's what he's describing as your personal
22 e-mail, is that right?
23 A. Yes. As opposed to the section mailbox, which would be
24 the Press Office.
25 14 Q. Yes. Is there any reason why he's doing that for 10:08
26 obvious reasons? What do you take that to mean?
27 A. Well, on occasions, because they'd invariably come in
28 late and in order to get a response, I normally would
29 get an e-mail, I get an e-mail like that, I assume it

1 was to make me aware of it, to ensure he got a response
2 to the e-mail.

3 15 Q. Yes. In the substance of it, he says:

4
5 "We spent some time examining the allegations made and 10:08
6 need to put the following to the Commissioner:

7
8 We have been told that the Commission was told about a
9 series of text messages sent from Dave Taylor to the
10 Commissioner which suggested that a journalist was 10:09
11 interviewing a woman who had made an allegation against
12 Sergeant McCabe. The matter had at this stage already
13 been investigated and the DPP had instructed there was
14 insufficient evidence to prosecute. I don't wish to
15 outline the nature of the allegation to protect 10:09
16 Sergeant McCabe's reputation. I understand the
17 Commissioner replied to one specific text using the
18 word 'Perfect'. Can you clarify in this case?

19
20 2. I understand the Commissioner has told Mr. Justice 10:09
21 O'Neill that she tended not to read text messages and
22 often replied without reading them properly. Can you
23 clarify if this is the case?

24
25 3. I have also been told the Commissioner, in her 10:09
26 statement to Justice O'Neill, spoke about how she was
27 bullied in the force. Can you clarify if this is the
28 case?

29

1 4. The Commissioner publicly stated she had no
2 knowledge of any such smear campaign against McCabe and
3 would never have supported this type of behaviour. I
4 have to ask if she wishes to amend her previous
5 statements on this matter? 10:09
6
7 Again, John, can I take this opportunity to say that I
8 approach such matters in an impartial manner. If you
9 or anyone else wishes to provide clarification on the
10 above, could you contact me about the same." 10:10
11
12 And that's from Mr. Mooney on 16th December. Now, on
13 the previous occasion when you gave evidence, you told
14 the Tribunal that you weren't aware of the protected
15 disclosures of Superintendent Taylor in October when he 10:10
16 had made them, is that right?
17 A. That's correct, yeah.
18 16 Q. And had you any conversation about them or about his
19 intention to make them before he made them in
20 September? 10:10
21 A. No.
22 17 Q. Okay. And had you any conversation with him after
23 October and between December about the content of
24 Superintendent Taylor's protected disclosures?
25 A. With Superintendent Taylor you mean, the conversation? 10:10
26 18 Q. Yes, with Superintendent Taylor.
27 A. No.
28 19 Q. Okay. Had you been briefed about them in any way by
29 the Commissioner or on behalf of the Commissioner?

1 A. No.

2 20 Q. And presumably you weren't privy to any correspondence
3 that Commissioner O'Sullivan sent to Mr. Justice
4 O'Neill?

5 A. No. 10:11

6 21 Q. Okay. Well, it would appear that somebody had briefed
7 Mr. Mooney about the content; presumably you drew that
8 inference yourself?

9 A. Yes. You know, the media, John Mooney has lots of
10 sources and invariably when he comes with e-mails like 10:11
11 this, he has the information, he's not asking you, he's
12 almost digging you to confirm what it's about.

13 22 Q. All right. Well, what I want to ask you is: Did you
14 submit these queries to the Commissioner? Because it
15 would appear that Mr. McLindon was off duty. 10:11

16 A. Once it would come in like that, about a media query
17 speaking to -- seeking a response from the
18 Commissioner, it would go to the Commissioner's office.
19 I think this one went to Andrew McLindon. Just because
20 he was off, he might've still dealt with it. But it 10:12
21 would go to the Commissioner's office.

22 23 Q. Well, do you recollect getting any instructions back to
23 furnish any particular reply to Mr. Mooney?

24 A. I don't recollect. But it would, depending on when the
25 response would be provided back down the line, it might 10:12
26 be provided after-hours and it would go to, it would be
27 the sergeant in the Press Office who would deliver, who
28 would e-mail it to John Mooney.

29 24 Q. Okay. So you don't recall what reply may have been

1 sent at this juncture?

2 A. No.

3 25 Q. Just going back slightly earlier in time, there was a
4 request from Mr. Williams to the Press Office. If one
5 looks at page 3146, there's a request sent in by e-mail 10:12
6 from Mr. Williams dated 28th April 2016 at 15:55, for
7 the attention of John Ferris - that's you obviously.
8

9 "Gerry Murphy suggested I e-mail you at this address
10 with some issues I would like clarity on from the 10:13
11 Commissioner. I'm a guest on the Late Late Show
12 tomorrow night to basically discuss whether An Garda
13 Síochána is fit for purpose and how effectively it's
14 being managed. I'm also being asked to describe the
15 current state of connectivity, or lack of it, between 10:13
16 senior management in Phoenix Park and frontline Gardaí.
17 To this end, perhaps you could respond to the following
18 matters which are relevant to this discussion."
19

20 Now, just before we go on to look at those, would this 10:13
21 be a normal form of briefing in response to an inquiry,
22 for a journalist to look for guidance before they went
23 on to a popular television show?

24 A. It happens from time to time. Now, I wouldn't have, I
25 wouldn't have a lot of occasions where Paul Williams 10:14
26 would've sent in looking for it --

27 26 Q. Pardon?

28 A. I wouldn't recall a lot of occasions when Paul Williams
29 sent in an e-mail like this. But it does happen from

1 time to time.

2 27 Q. All right. And had you yourself spoken to Mr. Williams
3 or briefed him on various matters in the course of
4 normal press queries?

5 A. No. Apart from a rural crime meeting that he was 10:14
6 talking about down the country, it's the last time I
7 spoke with Paul Williams.

8 28 Q. Pardon?

9 A. A rural crime meeting that Paul Williams was having
10 down the country I think was the last time I spoke with 10:14
11 Paul Williams.

12 29 Q. All right. Anyway, on page 3147 his queries are set
13 out there. And in the third last sentence of that he
14 says:
15
16 "What is the current state of relations between the 10:14
17 Commissioner or deputies and the rest of senior Garda
18 management team? There are a number of other issues
19 that I may raise which are highly controversial, but
20 for which I do not need any response from the Garda 10:15
21 management.
22

23 John, if you want to give me a ring for further clarity
24 regarding the above then feel free to ring. You have
25 my number. Regards, Paul Williams." 10:15
26

27 Now, do you recall ringing Mr. Williams?

28 A. No, I don't believe -- I don't recall ringing him.

29 30 Q. Okay. Well, it's just he seems to be putting you on

1 notice that he could be dealing with some highly
2 controversial matters there. would you not have
3 thought it immediately prudent to ring him, find out
4 what he may be referring to?

5 A. well, based on what he was sending, as I said, it would 10:15
6 be sent to the Commissioner's office. So that's
7 what --

8 31 Q. Pardon?

9 A. It would be sent to the Commissioner's office.

10 32 Q. Yes. 10:15

11 A. And it would be -- there they would deal with it. And
12 if they felt there was clarification sought, there
13 might be information. That might be why it was brought
14 down to me, to get clarification. But on this occasion
15 I just said 'Send it to the Commissioner's office'. 10:15
16 There was a lot in the e-mail.

17 33 Q. So you didn't ring him? You didn't find out what the
18 highly controversial things might be?

19 A. No.

20 34 Q. You weren't in a position then to tell the 10:16
21 Commissioner --

22 A. No.

23 35 Q. -- 'This is coming down the tracks'?

24 A. well, the e-mail would've been informing the
25 Commissioner of what was coming. 10:16

26 36 Q. Okay. well, I mean, I'm not, obviously, contradicting
27 you; you do appear to have sent it to the
28 Commissioner's office.

29 A. Yes.

1 37 Q. And you instructed a sergeant to send it to the
2 Commissioner's office and Deputy Commissioner
3 Operations for their consideration. And who was the
4 Deputy Commissioner of Operations at that time?
5 A. John Twomey. 10:16
6 38 Q. Pardon?
7 A. John Twomey.
8 39 Q. John Twomey. And sergeant Flanagan sent that on, if
9 you look at page, at the bottom it's page 3145. And
10 you appear to have been sent, the following day, 10:17
11 something from Mr. Ruane, is that right? If we look at
12 the middle of page 3145.
13 A. That's correct.
14 40 Q. Okay. Well, I won't necessarily go into that. But
15 going back to page 3144, there seems to have been a 10:17
16 further e-mail from Mr. Ruane. But were you ever
17 instructed to or did you issue any reply to
18 Mr. Williams through the Press Office?
19 A. On recall. I think there was a reply provided by Ken
20 Ruane that was forwarded on to Mr. Williams. 10:17
21 41 Q. A legal reply? Was it drafted --
22 A. Well, there was a reply.
23 42 Q. A reply?
24 A. A reply that he drafted, as far as I'm aware.
25 43 Q. So you wouldn't be aware, would you, or would you be 10:17
26 kept abreast by the Commissioner or the Deputy
27 Commissioner if they'd spoken to Mr. Williams?
28 A. No, not necessarily.
29 44 Q. Now, if one goes to page 3153, at the bottom of page

1 3153 this appears to be a repeat of Mr. Mooney's
2 queries originally sent in October -- I'm sorry,
3 December 2016, which is sent again. But this time
4 there appears to be a reply at the top of page 3153.
5 Do you recall whether you sought the Commissioner's
6 instructions on the reply? It's stated, just the
7 response is:

10:19

8
9 "It is not appropriate for An Garda Síochána to comment
10 on matters subject to investigation by the Commission.
11 The Commissioner's position remains as publicly stated
12 on many occasions: She was not aware of any such
13 campaign and would condemn any such campaign."

10:19

14
15 Was that a standard reply?

10:19

16 A. Yes. Yes, it would have been a relatively standard
17 reply.

18 45 Q. We've seen a form of that, obviously, arising out her
19 press statements following the matter in October 2016,
20 but was there any further discussion that you're aware
21 of with the Commissioner about the content of
22 Mr. Mooney's queries?

10:19

23 A. No. Again on recall, it would appear that Andrew
24 McLindon provided that response and that's what we
25 would've provided.

10:19

26 46 Q. Could I ask you to look at page 3162? Again this is a
27 query from Mr. Mooney in April 2016, at the bottom of
28 page 3162, and it relates to an issue about whether a
29 member of the force had made a complaint about being

1 secretly recorded by Sergeant McCabe while on duty.
2 And I think you'd provided a draft response suggesting
3 that you respond by saying:

4
5 "We do not comment on internal Garda disciplinary
6 matters." 10:20

7
8 And superintendent Walsh, the Commissioner's private
9 secretary, seems to have suggested amending that
10 slightly. Did you have any discussions with 10:20
11 Superintendent Walsh about what the Commissioner should
12 reply?

13 A. No, it would've been all dealt with by e-mail.

14 47 Q. Pardon?

15 A. It would've been dealt with by e-mail. They would've 10:20
16 sent in the query and the response came back that way.
17 And once the response would come back that way, that
18 would be the response that would issue.

19 48 Q. Okay. On page 3164 - it's in May 2016 - Ms. Libreri
20 from RTÉ seems to have sent in a query to the Press 10:21
21 Office, at the bottom of page 3164, asking:

22
23 "Whether anyone would be available to discuss or
24 provide a statement in relation to John McGuinness'
25 claim that he had met with former Commissioner 10:21
26 Callinan, who attempted to undermine the credibility of
27 Sergeant Maurice McCabe before his appearance before
28 the Public Accounts Committee in January 2014.
29 Mr. McGuinness also said he believed the current

1 Commissioner had questions to ask in this regard. If
2 there's any response, I'll be glad to include it in a
3 package for the Six-One News."
4

5 And there was a response then issued by Garda, is it 10:21
6 Sergeant Keown?

7 A. Sergeant Séan McSeon.

8 49 Q. Séan McSeon. Did you have any dealings with that
9 response, or did you seek any instructions from the
10 Commissioner's office about what Commissioner Callinan 10:22
11 may have said?

12 A. I don't recall having any interaction with that, but --
13 I don't recall that specific one. Well, that's the
14 response, I assume, that was issued to --

15 50 Q. Okay. But was there any discussion in the Press Office 10:22
16 about, well, what had Commissioner Callinan said to
17 Deputy McGuinness?

18 A. Not so far as -- we would be focused on the response.
19 And you weren't going to start debating in the
20 responses as to what was or wasn't said. 10:22

21 51 Q. Okay. All right. So the response that issued there
22 was without any inquiry being made by anyone in the
23 Press Office, is that right?

24 A. I can't know the specifics of it, but I assume that
25 Séan McSeon would have cleared it with either Andrew 10:23
26 McLindon or someone else.

27 52 Q. Just going back to Mr. Mooney and a further inquiry
28 that he made in relation to the Commissioner's text
29 messages, if you go to page 3167. And he seems to be

1 replying to an e-mail of yours, because he says:

2

3 "Dear John, thank you for your e-mail. I need to
4 respond to it in a formal manner, as there is an
5 implied threat of litigation against the Sunday Times. 10:24
6 I would like to take the opportunity to emphasise that
7 the issue is one which passes the public interest
8 criteria, given the issues involved.

9

10 With respect to the response furnished, I need to ask 10:24
11 again if the Commissioner replied to a text using the
12 word 'Perfect' when alerted to a journalist
13 investigating claims against Sergeant McCabe and if she
14 did so, why did she use that word?"

15

10:24

16 Then goes on to deal with different matters, and he
17 says:

18

19 "In accordance with the Defamation Act, I need to make
20 every effort to seek comment from you on behalf of the 10:24
21 Commissioner. I may have further questions to put to
22 you and would be grateful if you could respond quickly
23 and accept phone calls today and tomorrow."

24

25 Do you recall getting that text? 10:24

26 A. I do, yeah.

27 53 Q. And did you take any phone calls from him at that
28 stage?

29 A. I don't think so, no.

1 54 Q. All right. You seem to have forwarded that on to
2 Mr. McLindon, is that correct? If we look at the
3 bottom of 3166. Is the e-mail at the bottom from you?
4 A. Yes.
5 55 Q. If we just scroll down. 10:25
6 A. Yes.
7 56 Q. To the bottom of the page.
8 A. Yes, 3166, yeah.
9 57 Q. Okay. So you're suggesting to Mr. McLindon:
10 10:25
11 "Give us a call on this. Suggest we do not act
12 further."
13
14 Is that correct?
15 A. Yes. 10:25
16 58 Q. And he replies, suggesting that you also send on the
17 additional query to Marie Broderick, if you haven't
18 already. And I think she was the private secretary to
19 the Commissioner at that at that point --
20 A. That's correct. 10:25
21 59 Q. -- isn't that correct?
22 A. That's correct, yes.
23 60 Q. And you then sent that on to her, isn't that correct?
24 A. That's correct, yeah.
25 61 Q. Then at the top of the page, she said to you, 17th 10:25
26 December 2016, 11:07:
27
28 "John, I'm checking with the Commissioner. Marie."
29

1 Did she come back to you and tell you what the
2 Commissioner had said about the texts?

3 A. On recall, I think she did and confirmed --

4 62 Q. Pardon?

5 A. On recall, I think she confirmed to go with the answer 10:26
6 that was suggested by Andrew McLindon. I couldn't be
7 certain of that, but on recall, I think that's what was
8 the feedback.

9 63 Q. Okay. Well, it's just you don't seem to have
10 discovered any e-mail, any further e-mail back from 10:26
11 Marie Broderick at that point in time.

12 A. No, it probably wasn't an e-mail.

13 64 Q. Well, was she in the habit of ringing you with the
14 Commissioner's instructions then?

15 A. Well, it would happen on occasions, depending on 10:26
16 timeline to set --

17 65 Q. Yeah. Well --

18 A. Like, it wouldn't have regular; it could happen.

19 66 Q. Have you a memory of this or not?

20 A. On recall -- I don't have a clear memory of it, but on 10:26
21 recall, I think word came back that the Commissioner
22 was happy with the response that was suggested.

23 67 Q. Okay. You're fairly clear now in your recollection of
24 that, is that right?

25 A. Yeah. 10:27

26 68 Q. Okay. I've asked you previously about Mr. Clifford's
27 radio broadcasts and also Deputy Daly, but did you deal
28 with the query from Mr. Lally about Mr. McGuinness'
29 statement at page 3232? An e-mail query came in from

1 Mr. Lally on 29th May 2016, and it says:

2
3 "Hi folks, hope all is well. John McGuinness TD was on
4 the radio earlier outlining a meeting he had with
5 former Commissioner Martin Callinan around the time of 10:28
6 the Public Accounts Committee which Mr. McGuinness was
7 chairing at the time and was preparing to bring
8 Sergeant McCabe in as a witness. McGuinness said that
9 Martin Callinan effectively warned him off McCabe. He
10 made comments in the Dáil as well on Thursday (see 10:28
11 below). I've highlighted the relevant sections. There
12 is a few comments arising from what he said in the Dáil
13 and on radio:

14
15 1. John McGuinness has called on the current 10:28
16 Commissioner to issue a statement clarifying what
17 efforts were made by senior officers to discredit
18 McCabe at the time he was a whistleblower. Is there
19 any comment on that?

20 10:28
21 2. He is also calling for clarity around a note that
22 was passed from the current Commissioner to the former
23 Commissioner before he, Mr. Callinan, used the word
24 'disgusting' at the Public Accounts Committee. I must
25 admit this is new to me, but seeing as McGuinness had 10:29
26 said it, we are looking for comment on that. Does
27 Commissioner want to comment on that or clarify it in
28 any way?"
29

1 Now, we needn't open the text of Deputy McGuinness'
2 speech in the Dáil, it's been referred to previously in
3 evidence, but did you deal with that query?
4 A. I don't recall actually dealing with it. I know Jim
5 Molloy sent it down to me. 10:29
6 69 Q. Well, just look at the top of the page at 3232. Was
7 that sent to you by JM?
8 A. Yeah, Jim Molloy.
9 70 Q. That's Jim Molloy?
10 A. He would be sergeant in the office. 10:29
11 71 Q. He's a sergeant sending it up to you?
12 A. Yeah.
13 72 Q. So this is the first occasion when it's been publicly
14 revealed that former Commissioner Callinan was alleged
15 to have said vile things about Sergeant McCabe in the 10:30
16 car park meeting. Did you get instructions to issue
17 some reply to Mr. Lally?
18 A. It would've been forwarded to Andrew McLindon. I
19 wouldn't have made a call on it myself anyway.
20 73 Q. Pardon? 10:30
21 A. I wouldn't have made a call on it myself. So it
22 would've went up the line.
23 74 Q. All right. There doesn't seem to be a record of it
24 being sent up by you.
25 A. No, but -- 10:30
26 75 Q. From your search of your own e-mail address.
27 A. No. But it would be --
28 76 Q. Do you think you sent it up?
29 A. No, it probably would've come -- it was sent up the

1 line from the Press Office. It came in to the Press
2 Office, so it would've been probably sent via the Press
3 Office.

4 77 Q. Okay. But did you get any instructions as to issue any
5 particular reply? 10:30

6 A. Judge, this would've been a standard media query, it
7 would've been dealt with as a standard media query and
8 it would've went up the line for a response.

9 CHAIRMAN: Yes, I know. But if you add everything that
10 Mr. McGuinness is asking you together, Superintendent 10:31

11 Ferris, I mean, we all know that when things happen in
12 any office that if they're extraordinary, people tend
13 to talk about them. And this is about as extraordinary
14 as you would get. And I suppose I'm wondering, you
15 know, what responses were coming in, what were the 10:31
16 reactions of people to, on any level, must be pretty
17 astonishing revelations, like a meeting in a car park,
18 very nasty things being said, allegedly, about Sergeant
19 McCabe, the media zeroing in like, you know, birds
20 overhead and asking very pertinent and direct questions 10:31
21 about bullying, about this, about Sergeant McCabe,
22 about texts?

23
24 I mean, to say the least of it, it must've created some
25 kind of a stir. Now, I don't know whether you kind of 10:32
26 kept out of these things, but it's hard to know, given
27 your level of seniority, how you could, you know?
28 Especially as at that stage Superintendent Taylor was
29 no longer there. That's basically the point

1 of Mr. McGuinness' overall.

2 A. Yeah, there would've been a very brief conversation,
3 probably with me and Jim Molloy, in respect of it, but
4 it would've been in the context of, there would've been
5 an element of surprise, as you say, in terms of what 10:32
6 was coming out, but it would've been in the context of
7 'Let it up the line and see what they're saying about
8 it'. Do you know what I mean? Something of that
9 nature, really it would've never been dealt with at our
10 level. 10:32

11 CHAIRMAN: In other words, what you seem to be saying
12 is 'Right, this is a hospital pass, so let's pass it to
13 the people who are paid at that grade to deal with it'.
14 But is that right, and you got no feedback? I mean, is
15 that what you're telling me? 10:32

16 A. Well, no, they would've -- no, that's not what I'm
17 saying. I'm saying that the nature of that query
18 would've meant it would've went to the Commissioner's
19 office and there would've been a response provided in
20 that space. 10:33

21 CHAIRMAN: Yes, but in a working environment, I
22 suppose, where people are treated, nowadays the
23 buzzword is "inclusive" - I mean, like all of these
24 words, it becomes nonsensical after a time - but in a
25 working environment where people are treated as part of 10:33
26 a team, what Mr. McGuinness is basically asking about
27 is the interaction you had in consequence of it. Okay,
28 the hospital pass went up the line, but then what? I
29 suppose, Mr. McGuinness, would it be fair to say that?

1 MR. McGUI NNESS: Yes.

2 CHAIRMAN: That's the whole point of it. If you
3 wouldn't mind just listening to Mr. McGuinness then on
4 that basis.

5 78 Q. MR. McGUI NNESS: You see, you did receive a second 10:33
6 query, again from another journalist in the Irish
7 Times, in relation to the same subject, slightly after
8 Mr. Lally's one. If we could go to page 3237. And
9 this is sent in by Niamh Lyons. In the middle of the
10 page, 3237, it says: 10:34

11
12 "Hi, just hoping I can get a response to this today if
13 possi bl e. "

14
15 Then there's another extract from Deputy McGuinness. 10:34
16 And then it says:

17
18 "He followed up on these remarks today on RTÉ' s This
19 Week programme and called for the current Garda
20 Commi ssi oner to cl arify whether she knew about this 10:34
21 meeting and whether there were other efforts made to
22 di scredi t Maurice McCabe. Does the Commi ssi oner wi sh
23 to cl arify ei ther of these poi nts? Many thanks,
24 Niamh. "

25 10:34
26 She appears to be a political editor of the Ireland
27 edition of the Times. I'm sorry, I may have said
28 Sunday times -- I may have said Irish Times. The
29 Times. So you're alerted to this by sergeant Molloy

1 again --

2 A. Yes.

3 79 Q. -- two minutes after the earlier e-mail from Mr. Lally
4 has been brought to your attention --

5 A. Yeah. 10:35

6 80 Q. -- at the top of the page there, 3237:

7

8 "John, second query."

9 A. Yes.

10 81 Q. So does that help you recall how it was dealt with? 10:35

11 A. I don't recall exactly how it was dealt with, but I
12 know that it would've -- because of the nature of the
13 queries, it would've went up the line for a decision to
14 be made on what the response was to be. You know, if
15 media queries come in, they're calling on the 10:35
16 Commissioner to respond specifically. Obviously those
17 queries have to go to the Commissioner, or the
18 Commissioner's representative.

19 82 Q. Okay. So you're not in a position to cast any further
20 light on it? 10:35

21 A. No. The query came in via the Press Office and I would
22 imagine it would've been answered via the Press Office.
23 You know, I can't say that for certain, but normally
24 that's the way it would happen; if it came in via the
25 Press Office, it should've been answered by the Press 10:36
26 Office.

27 83 Q. Okay. well, just going back in time and going to page
28 3235, this is a query which came in from the Business
29 Post, the Sunday Business Post from a Nicola Cooke. It

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says:

"Penalty points intro at PAC. I have some queries in relation to Commissioner Callinan's recent request for information provided by whistleblowers around penalty points quashing to be returned to him/the Gardaí. Why was the request made? Does the information contain Pulse records? Why was the same request not made of TDs Clare Daly and Mick Wallace when they revealed the whistleblowers had given them information 12 months ago? Why hasn't that request been made since of these deputies if this is data protection issue?"

10:36

10:36

John McGuinness has told me that he is going to keep the information regardless, as he can do so legally. It just depends on how it is treated. I take it there is nothing the guards could do in that case?

10:36

Are the Gardaí aware of what information is in the box which PAC have and is this information considered any more sensitive than that already in the public domain?

10:37

Both Clare Daly and John McGuinness claim that the whistleblower is still working in the force and is being intimidated, that (a) he hadn't been able to work the full scope of his job and (b) both he and his colleague have had their homes visited and cars stopped, they were also brought into an office and told they should not be making this information public. Are

10:37

1 Garda management aware of these claims and have they
2 been investigated, or is this behaviour they think is
3 acceptable on behalf of the force?
4

5 Are the Gardaí cooperating with GSOC on the penalty 10:37
6 points investigation or not and to what extent, if so?
7 Will the Commissioner be appearing in front of the PAC
8 in late January when the issue will be discussed?
9

10 I would like a reply to these by 4:30 a.m. I can take 10:37
11 a call re them either."
12

13 Was that brought to your attention?

14 A. Yeah, I was aware of it, yeah.

15 84 Q. And had you followed the publication, the story that 10:38
16 had occurred about Commissioner Callinan's points being
17 terminated when it was published back in April 2013?

18 A. Yeah, I was aware of it from the media.

19 85 Q. Pardon?

20 A. I was aware of it from the media coverage. 10:38

21 86 Q. From the media. But were you aware of it from
22 Superintendent Taylor? Did he talk to you about that?

23 A. No.

24 87 Q. You weren't aware that he had met executives from the 10:38
25 INM about the so-called doorstepping?

26 A. No, I wasn't aware.

27 CHAIRMAN: well, you were upstairs at this stage, I
28 presume, your desk having been dismantled. Were you
29 getting on in any way with Superintendent Taylor after

1 that time?

2 A. I was. I was dealing with him professionally if I
3 was -- what I was asked to do, I dealt with. We did
4 lots of things together, press briefings and things
5 like that. That was professionally what you were 10:39
6 required to do.

7 88 Q. MR. McGUINNESS: well, do you know whether Commissioner
8 Callinan had written to both the newspapers and the PAC
9 to get documents back from them, including the Pulse
10 records? 10:39

11 A. I wouldn't have been aware of that, no.

12 89 Q. Okay. So you weren't in a position to deal with the
13 query, but it appears to have resulted in some advice
14 sent to you from Mr. McLindon that you were copied on,
15 if one looks at the top of page 3235, is that correct? 10:39

16 A. Yes.

17 90 Q. But just looking at the top, there's a claim for legal
18 professional privilege there.

19 A. Yeah.

20 91 Q. Can you say did a response ever issue about this issue 10:39
21 concerning the penalty points or the Commissioner and
22 his trying to get records back?

23 A. I don't have knowledge of exactly what response was
24 given at all to that.

25 92 Q. Okay. Had you any knowledge as to how the Commissioner 10:40
26 had reacted to the issue relating to his own personal
27 points at the time?

28 A. No. Other than what was in the media at the time.

29 93 Q. Okay.

1 A. It wasn't discussed in my presence.

2 94 Q. Okay. Ms. O'Doherty has complained, in a sense, that
3 she had been told or instructed by her employers just
4 to deal with Superintendent Taylor and that she'd
5 furnished a list of queries to Superintendent Taylor 10:40
6 about the Commissioner's penalty points; did you ever
7 see any response that was issued to her?

8 A. No, I don't recall any. I don't recall being aware of
9 any response provided to her.

10 95 Q. You never spoke to Mr. Doherty about the issue 10:40
11 yourself, did you?

12 A. No.

13 MR. McGUINESS: Thank you. Could you answer any
14 questions anyone else might have.

15 10:40

16 THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL AS
17 FOLLOWS:

18

19 96 Q. MR. McDOWELL: Superintendent Ferris, could I ask you,
20 on recalling now - and I presume you heard the evidence 10:41
21 of sergeant Molloy, or you've seen it - would you like
22 to reconsider whether there was, there were rumours
23 circulating about Sergeant McCabe in Garda
24 Headquarters?

25 A. The last day I was here I indicated that there was a 10:41
26 rumour about Sergeant McCabe. Is that what you're
27 referring to?

28 97 Q. What was that rumour?

29 A. That there was an allegation of some sexual assault and

1 there was a DPP's direction not to prosecute.

2 98 Q. I see. And that was a rumour discussed in Garda
3 Headquarters?

4 A. It was a rumour I was aware of.

5 99 Q. Sergeant Molloy said, he said the following, he said -- 10:41
6 he was asked:

7

8 "But every witness so far" - by Mr. Marrinan, I think -
9 "has told us, and I think you're the last witness from
10 the Press Office, has said it was never discussed." 10:42
11

12 And he said:

13

14 "Yeah, discussed in the sense that I would hear from
15 other staff. Let's put it this way, I was clear if 10:42
16 there was a side to be taken in this, which side David
17 Taylor was on, and it wasn't on Maurice McCabe's side
18 let's put it that way."

19

20 Were you ever aware of an attitude of that kind on the 10:42
21 part of David Taylor to Sergeant McCabe?

22 A. No.

23 CHAIRMAN: Yes, Mr. McDowell, you're perfectly right
24 about that and it seems that the important bit of it
25 was, it wasn't in relation to the sex assault issue, it 10:42
26 was because he was speaking out and there was a very
27 strong view being taken, according to Sergeant Molloy,
28 by David Taylor that he was, let's say, uncomfortable
29 and uncomplimentary about Maurice McCabe and

1 journalists and politicians who seemed to be, if you
2 like, on his side. That's the point.

3 100 Q. MR. McDOWELL: Mr. Marrinan asked sergeant Molloy:

4
5 "Can you just expand on that a little bit?" 10:43

6
7 And sergeant Molloy said:

8
9 "My difficulty is I can't point to a particular day and
10 time and say Superintendent Taylor said this, and 10:43
11 therefore, I just want to be careful."

12
13 And Mr. Marrinan said:

14
15 "It's an impression that you had." 10:43

16
17 And he said:

18
19 "It's that, married with the fact that other staff
20 members would tell me something that was said as well, 10:43
21 possibly by Superintendent Taylor, not in the sense
22 they were repeating the gossip, but in the sense 'Guess
23 what he said'. It would be uncomplimentary about
24 Maurice McCabe, it would be uncomplimentary about any
25 journalist who was writing in favour of Maurice McCabe 10:43
26 and it wouldn't be very complimentary about any members
27 of the Oireachtas who were taking Maurice McCabe's
28 side."
29

1 Does any of that ring any bells in your mind?

2 A. No, I wasn't privy to Superintendent Taylor's comments
3 on that.

4 101 Q. Well, I mean, you had daily contact with Sergeant
5 Molloy, isn't that right? 10:44

6 A. Absolutely, yeah.

7 102 Q. And can you account for the fact that he had this
8 strong impression of what David Taylor was saying and
9 exhibiting as an attitude and you had no idea that this
10 attitude was present in David Taylor's mind? 10:44

11 A. Well, I didn't get it. I mean, I was in the back
12 office, Sergeant Molloy operates in the front office
13 and Dave Taylor, superintendent, was downstairs at the
14 time.

15 103 Q. So are you saying that you were more distant from 10:44
16 Superintendent Taylor than Sergeant Molloy was at the
17 time?

18 A. Possibly. Because as I say, I kept my relationship
19 professional with him.

20 104 Q. I see. Sorry, could you just elaborate on that for a 10:44
21 second?

22 A. As I outlined the last time, I found him difficult. I
23 dealt with him professionally, but if I didn't have to
24 deal with him, I didn't deal with him.

25 105 Q. I see. Now, could I ask you in relation to volume 12, 10:45
26 page 3136? At the bottom of the page your attention
27 was drawn to the passage which reads:
28
29 "We are publishing a feature length piece on the issues

1 surrounding the force. In this regard I need to ask
2 the following questions of the Commissioner:
3
4 1. What sort of relationship does she maintain with her
5 senior officers? 10:46
6
7 2. Is the operation and effective running of the force
8 hampered or affected in any way by personality issues
9 and problems at Commissioner rank?
10 10:46
11 3. Has the Commissioner ever asked her management team
12 if she has their full confidence?"
13
14 Could I ask you in relation to that query by John
15 Mooney, were you aware of media comment to the effect 10:46
16 that the Commissioner, that there was dissatisfaction
17 with the Commissioner at a high level within An Garda
18 Síochána - that's Commissioner O'Sullivan?
19 A. Yes, there was some media commentary on that.
20 106 Q. And I take it that that was something which was of 10:46
21 importance to the Gardaí as a media story, that there
22 was some kind of a turmoil going on at top level in the
23 Gardaí?
24 A. Yes.
25 107 Q. And am I to understand that no answer was given, no 10:46
26 substantial answer was given to Mr. Mooney in respect
27 of that query, is that right?
28 A. The way it works, Chair, is the media will ask lots of
29 questions, they may not get an answer to any or all of

1 them. That's the way it works. But the media do their
2 thing and ask questions.

3 108 Q. Well, I mean, I fully understand that; if you don't
4 want to answer a question, just blank it and answer a
5 different question that they put to you, you don't have 10:47
6 to deal with everything they raise, isn't that right?

7 A. That's correct.

8 109 Q. Well, could I ask you in relation to page 3146, or 3147
9 in particular? Paul Williams was asking a similar type
10 of question. He said: 10:47
11

12 "What is the current state" - This is the third last
13 paragraph of his e-mail to you - "of relations between
14 the Commissioner, her deputies and the rest of the
15 senior Garda management team?" 10:48
16

17 That's the same issue. And again no substantive
18 response was given to that, is that what you say?

19 CHAIRMAN: And who's "John" in this instance,
20 Mr. McDowell? 10:48
21

22 MR. McDOWELL: I think it's Mr. Ferris.

23 CHAIRMAN: Yes, I suppose.

24 110 Q. MR. McDOWELL: I think it's you, isn't it? That was
25 the --

26 CHAIRMAN: It's John Ferris, yes. Yes, all right. 10:48

27 111 Q. MR. McDOWELL: I'm sorry, I didn't make that clear?
28 A. Again, because of the nature of it, it would've been an
29 agreed answer and that's the answer that would've went
 out. That's the way it works.

1 112 Q. Could I ask you to go to page 3176? There's an e-mail
2 there from Amy Rose Harte to you, and she says:
3
4 "Hi, John. Did up this list as promised in case
5 they're needed at all." 10:49
6
7 And that's dated 6th October. But first of all, who's
8 Amy Rose Harte?
9 A. She was a consultant who was working in the Press
10 Office at the time. 10:49
11 113 Q. And what was her status in the Press Office?
12 A. She was providing expertise in terms of the Press
13 Office communications at the time.
14 114 Q. And did you ask her to draw up a list of nasty
15 questions, which is on the next page, headed "Nasty 10:49
16 Questions"?
17 CHAIRMAN: These are questions that are nasty and going
18 to be asked of the Commissioner, as opposed --
19 MR. McDOWELL: Exactly. By nasty people obviously.
20 I'm not suggesting that they were nasty questions 10:50
21 subjectively from Ms. Harte.
22 A. As part of preparation --
23 115 Q. MR. McDOWELL: Did you ask her to draw that list up?
24 A. I'm not sure who asked her, but it possibly was me that
25 asked her. But I know it would've been -- Chair, what 10:50
26 we do on occasions, if the Commissioner is going out to
27 deal with the media or Public Accounts Committee, you
28 plan and you basically try to preempt, guess what the
29 media are going to ask in advance. It's what you do.

1 116 Q. I see. And could I bring you to the seventh bullet
2 point among the nasty questions:
3
4 "If you didn't sanction it, what knowledge do you have
5 that a smear campaign was being waged by senior Gardaí 10:50
6 against whistleblowers and why did you ignore it?"
7
8 That was a curve ball question which Ms. Harte
9 prepared, isn't that right?
10 A. Yes. 10:51
11 117 Q. Then the next one was:
12
13 "Have you spoken to your colleagues at senior
14 management level about the issues involved?"
15 10:51
16 Again that's on the same theme of relations at top
17 management, is that right?
18 A. Yes.
19 CHAIRMAN: This is kind of a notice for particulars.
20 118 Q. MR. McDOWELL: Yes, I suppose so. (To witness) well, I 10:51
21 think it's a prompt of points that the Commissioner
22 could be doorstepped on and she should be prepared to
23 answer, is that right?
24 A. Absolutely. Absolutely. And I would normally --
25 that's why would you'd monitor the media, to see the 10:51
26 media coverage.
27 119 Q. Going back to the previous page, do you think that you
28 had asked Ms. Harte to prepare this list on that
29 occasion?

1 A. Say again.

2 120 Q. Going back to page 3176.

3 A. It was either me or possibly Andrew McLindon. I'm not
4 sure which of us would've looked for it, but it
5 would've been -- it's what we did at the time. 10:51

6 121 Q. But it looks more likely that it was you, because it's:
7
8 "Hi John. Did up this list as promised in case they're
9 needed at all. AR."

10 A. Yeah, well, it possibly was. As I say, it would've 10:52
11 been routine for us when we're preparing for that sort
12 of thing that you would draft a list of questions,
13 possible questions.

14 122 Q. You see, the reason I'm asking you that is that it does
15 suggest that in the Press Office, not at the 10:52
16 Commissioner level or Mr. McLindon level, people were
17 thinking about these issues and preparing curve ball
18 questions for the Commissioner to consider. So that
19 the Press Office wasn't just simply an ATM machine just
20 issuing formal bland statements to people in the media, 10:52
21 it was also thinking about the media implications of
22 some of the current issues that were there, isn't that
23 right?

24 A. That's correct, yes.

25 123 Q. And for that to happen, there would have to be some 10:52
26 discussion in the Press Office on those issues; you
27 weren't all keeping silent among yourselves about the
28 issues that were facing the force at the time, isn't
29 that right?

1 A. But you monitor the media, you see what was happening
2 at the particular point in time. And when it came to,
3 as I said, public events were the media were going out
4 and the Commissioner was going out, basically we
5 collectively combined our thoughts in terms of possible 10:53
6 questions. That's the way it was. So it wasn't as if
7 you needed the top ten questions, it was basically Amy
8 wrote through in that list and if I had additional
9 ones, I threw them in and that was part of the
10 preparation. 10:53

11 124 Q. So could I ask you then in relation to page 3232,
12 there's somebody writing to you and putting in "JM"
13 underneath it:
14
15 "John, one of two such queries." 10:54
16
17 Is that Jim Molloy?
18 A. That's Jim Molloy, yes.

19 125 Q. And he's sending you on a query from Conor Lally of the
20 Irish Times, isn't that right? 10:54
21 A. That's right, yeah.

22 126 Q. And he's asking -- he's connecting the 'disgusting'
23 remark with the McGuinness statement in the Dáil about
24 vile allegations and asking for a response.
25 A. Yeah. 10:54

26 127 Q. That's what he is doing.
27 A. Yeah. That's a media query for us, you know.

28 128 Q. Yes. And it's addressed to the Press Office. "Hi
29 folks" I think is what's there.

1 A. Yeah.

2 129 Q. So here's Conor Lally - he's the Irish Times crime and
3 security correspondent, is that right?

4 A. That's right, yeah.

5 130 Q. And he is asking for a response in relation to the 10:55
6 possible connection between the use of the word
7 'disgusting' and the vile allegations statement
8 attributed to John McGuinness -- or by John McGuinness
9 to former Commissioner Callinan. What was the Press
10 Office attitude in response to such queries? 10:55

11 A. Well, it would've, as I say, it would've been -- at the
12 time you would've tried to avoid commenting on anything
13 that was being said in the Dáil, because it wasn't
14 helpful to advance our position.

15 131 Q. And would it be fair to say that the attitude in the 10:56
16 Press Office was to close it down as an issue and not
17 to respond?

18 A. It would've been -- a conservative response would've
19 been provided most of the time.

20 132 Q. Well, I mean -- 10:56

21 A. That would've been the view that the media would take
22 to what we were doing.

23 133 Q. -- you've probably heard the phrase "playing handball
24 against a haystack" - you know, no response. Is that
25 really what you were doing in respect of all of these 10:56
26 queries?

27 A. Well, it depends on the particular query, it's very
28 hard to generalise. But most of the time the media
29 would take the view we were being upfront and

1 elaborating on it. Looking after the good name of the
2 Garda organisation as best we could, it may not have
3 been beneficial at that time to go out and add to the
4 conversation.

5 134 Q. But we can be reasonably certain that all of those 10:56
6 queries that were getting little or no response were
7 being fed up the line to the Commissioner at the time,
8 is that right?

9 A. That's correct, yeah.

10 MR. McDOWELL: Thanks very much. 10:57

11 A. Any of the queries of that nature would have been going
12 to the Commissioner's office at the time.

13 MR. McDOWELL: Thanks, Superintendent Ferris.

14 MR. FERRY: No questions.

15 CHAIRMAN: Mr. Ó Muircheartaigh, any questions? 10:57

16 MR. Ó MUI RCHEARTAIGH: No.

17
18 THE WITNESS WAS CROSS-EXAMINED BY MR MÍCHEÁL O' HIGGINS
19 AS FOLLOWS:

20 10:57
21 135 Q. MR. MÍCHEÁL O' HIGGINS: Just one matter, Superintendent
22 Ferris. You were asked by Mr. McDowell about the
23 document headed "Nasty Questions" on page 3177, it may
24 be helpful just to give some context to the timeline in
25 which that appears. Do you see there the page before, 10:57
26 page 3176, there's a cover letter from Amy Rose Harte,
27 a cover e-mail from Amy Rose Harte to yourself and it's
28 dated 6th October 2016?

29 A. Yes.

1 136 Q. Do you see that? And that seems to contain the list of
2 questions set out on page 3177?

3 A. Yes.

4 137 Q. Just in terms of the timeline, I think it's the case
5 that on 3rd October 2016 Superintendent Taylor and 10:58
6 Mrs. Taylor had met Mick Wallace TD and Clare Daly TD
7 at the Taylor household and there then followed -- this
8 is after the protected disclosures had been provided to
9 the Minister. And I think it's the case that there
10 were a number of -- on 4th October 2016 the Irish 10:58
11 Examiner broke the story concerning the making of the
12 protected disclosures, isn't that the position?

13 A. I think -- maybe so. I don't know the exact timeline
14 on that part of it, but --

15 138 Q. Right. Just, in other words, this document that 10:59
16 Mr. McDowell was asking you about appears to have been
17 prepared around the time that it was necessary for the
18 Commissioner, as she saw it, to issue, take the unusual
19 step of issuing a press release on 5th October, the day
20 Clare Daly had gone on Morning Ireland and called for 10:59
21 her resignation, amongst others.

22 A. I can't say exactly why the questions were put
23 together, but I would imagine it was in advance of a
24 media event that the Commissioner would've been going
25 to. 10:59

26 139 Q. Yes.

27 A. It wouldn't have been -- that's normally why you would
28 compile these sort of lists of questions. It would be
29 in advance of either Public Accounts Committee or a

1 media event.

2 140 Q. To prepare for possible questions?

3 A. Yes.

4 MR. MÍCHEÁL O' HIGGINS: Thank you.

5

6 THE WITNESS WAS RE-EXAMINED BY MR. MCGUINNESS AS

7 FOLLOWS:

8

9 141 Q. MR. MCGUINNESS: Superintendent Ferris, just one
10 matter. When you were here on day 68, you told us
11 about having got a copy of the O'Higgins final report. 10:59

12 A. That's right.

13 142 Q. On April 25th I think you put it at?

14 A. Yes.

15 143 Q. Is that right? And you said you secured it in your
16 office and nobody was given access to it? 11:00

17 A. That's correct.

18 144 Q. And you drew attention to, obviously, the draft sort of
19 statement you referred to at page 3248 - we don't have
20 to look at it. But how long did the draft report, or 11:00
21 the final report stay in your office?

22 A. It remains in my office.

23 145 Q. It remains in your office? You never gave it back to
24 Superintendent Walsh?

25 A. No. 11:00

26 146 Q. And is it still there today?

27 A. It is, yeah.

28 147 Q. But the Tribunal, last week, was told something for the
29 officers time by an RTÉ journalist, Mr. Boucher-Hayes;

1 on day 84 when he was asked did he cover the O'Higgins
2 report when it was issued, the story about it, he said:
3
4 "Yes, I did a report. I had a leaked copy of the
5 O'Higgins Commission report. I did a report on 9th May 11:01
6 and I did one, I think, two weeks earlier in March, at
7 the end of March on Drivetime."
8
9 Now, did it come to the attention of the Press Office
10 that Mr. Boucher-Hayes had done a piece on the 11:01
11 O'Higgins report at the end of March on Drivetime?
12 A. Well, at the time there was a bit of media coverage on
13 it. I couldn't recall exactly on it.
14 148 Q. Well, obviously you may not be familiar with the
15 process by which a Commission of Inquiry publishes and 11:01
16 prepares the report, but the Chairman, Mr. Justice
17 O'Higgins, he circulates a provisional draft report to
18 interested parties who comment on it.
19 A. Yes.
20 149 Q. Were you aware of that? 11:02
21 A. Oh, I was aware of that, yes.
22 150 Q. Now, had that provisional draft report ever come to the
23 Press Office?
24 A. No.
25 151 Q. Okay. Had you ever seen that? 11:02
26 A. No.
27 152 Q. And I think you are aware that process --
28 A. That's correct.
29 153 Q. -- was in being, isn't that right?

1 A. Yes.

2 154 Q. And had you participated in any way in that process?

3 A. No.

4 155 Q. And were you kept abreast of that process by any
5 person, Superintendent Taylor or anyone? 11:02

6 A. No.

7 156 Q. No. He was gone, of course.

8 A. Yeah.

9 157 Q. But Superintendent Moran, no?

10 A. No. 11:02

11 158 Q. And you never received a copy of the final report until
12 25th April?

13 A. That's correct.

14 159 Q. But in your discussions with Superintendent Walsh from
15 the Commissioner's office, the Commissioner's private 11:02
16 secretary, was there any discussion with him about
17 briefing the press about the outcome of the O'Higgins
18 report?

19 A. No. Insofar as there was, there was a brief
20 conversation about our response, what our holding 11:03
21 statement would be in that. So that was a conversation
22 we had.

23 160 Q. But would there be not be -- would it be the practice
24 to sort of have an informal briefing of members of the
25 press about the Commissioner's reaction to the report, 11:03
26 comments on the report, sort of a HQ view on the
27 report?

28 A. Sorry, just to clarify, you mean an informal meeting
29 with the media?

1 161 Q. Yeah, or some selected members of the media.

2 A. No.

3 162 Q. Did you ever see Mr. Boucher-Hayes up in Garda
4 Headquarters?

5 A. No.

11:03

6 163 Q. And around this time Mr. Reynolds - he's obviously a
7 well known RTÉ reporter - had you seen him up around
8 headquarters?

9 A. He would be in headquarters occasionally. I don't
10 recall him being up around that time.

11:04

11 MR. McGUI NNESS: Okay. Thank you.

12 CHAIRMAN: Thanks very much superintendent Ferris.

13 MS. LEADER: The next witness, Sir, is Mr. John
14 O'Mahony. His interview with the Tribunal

15 investigators and various statements are in volume 26,
16 beginning at page 7129 of the materials.

11:04

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1 MR. JOHN O'MAHONY, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MS. LEADER AS FOLLOWS:

3

4 164 Q. MS. LEADER: Mr. O'Mahony, I think you retired from An
5 Garda Síochána sometime last year at the rank of 11:05
6 Assistant Commissioner?

7 A. That's correct, Chairman. On 20th June 2016 I retired.

8 165 Q. And if you could --

9 A. Or 2017, sorry.

10 166 Q. If you could outline to the Tribunal your career path 11:05
11 that got you to that position, please.

12 A. I joined An Garda Síochána in June of 1977. So I
13 started off as a guard in Donnybrook Garda Station,
14 went into detective branch pretty soon afterwards, in
15 1982 went to the Central Detective Unit as a Detective 11:05
16 Garda. Was promoted in 1986 and went to Cabinteely

17 Garda Station first of all and then to Tallaght Garda
18 Station. Worked as a community sergeant in Tallaght,
19 was promoted again to the rank -- or, sorry, returned
20 to the Central Detective Unit in 1990, I think, roughly 11:06
21 1990/early '91 maybe and was there until 1996, when I

22 was promoted to the rank of Inspector and went to Bray
23 Garda station for a while. Returned to the Central
24 Detective Unit in 1997 - that was then, the name had
25 been changed to the National Bureau of Criminal 11:06
26 Investigation, it had a national remit at that stage -

27 and worked there as a Detective Inspector until
28 promotion to the rank of Detective Superintendent in
29 2001. Then promotion. Stayed in the National Bureau

1 of Criminal Investigation. In 2006 was promoted to the
2 rank of Chief Superintendent. Worked in the area
3 office, the Dublin metropolitan regional office as it's
4 now known. And then in September 2006 I took up the
5 position as Chief Bureau Officer in the Criminal Assets 11:07
6 Bureau. Promoted in 2009. And in October 2009 took
7 responsibility for the western region and was there
8 until returned to the crime and security in, I think it
9 was April/May of 2011. And I retired from that
10 position. I would also have had temporary positions in 11:07
11 the, covering for vacancies in the National Traffic
12 Bureau and the southern region and the northern region
13 in my last year of service.

14 167 Q. And I think it's fair to say, Mr. O'Mahony, throughout
15 your career you have been involved in a number of very, 11:07
16 if I could term it this way, serious criminal
17 investigations, is that correct?

18 A. That is correct. Mostly I would've been in detective
19 branch from 1982 on, on and off, with small breaks in
20 between. 11:08

21 168 Q. And you told the investigators in your interview with
22 them that from October 2009, which I think is the time
23 you were made Assistant Commissioner, to your
24 retirement, you were part of the senior management team
25 of An Garda Síochána? 11:08

26 A. That's correct, yes.

27 169 Q. And if you could just, first of all, explain to the
28 Tribunal what the senior management team is?

29 A. Well, the senior management team consisted obviously of

1 the Commissioner, the two Deputy Commissioners, the
2 civilian which was, I think, the Chief Administration
3 Officer, then there was a number of Assistant
4 Commissioners and a number of civilian members who
5 would also have held the rank at the same level as
6 Assistant Commissioner. 11:09

7 170 Q. And what was the purpose of the senior management team?

8 A. I suppose the senior management team worked directly to
9 the Commissioner, indeed to the two Deputy
10 Commissioners and met on a monthly basis and I suppose 11:09
11 covering the overall strategy for the organisation. I
12 represented my section on that management team and, I
13 suppose, fought for finances, reported to the
14 Commissioner, resources, that sort of -- that's how the
15 structure worked. 11:09

16 171 Q. And I also think during that time period you served
17 under three different Commissioners, those being
18 Fachtna Murray, Martin Callinan and Nóirín O'Sullivan,
19 is that right?

20 A. That's correct. 11:09

21 172 Q. Now, if I could first of all deal with your
22 relationship with former Commissioner Callinan. I
23 think you knew him fairly well and worked with him on
24 and off during your career, is that right?

25 A. I would, Chairman. I first got to know former 11:10
26 Commissioner Callinan in 1982 when I went to the
27 Central Detective Unit. Subsequently I worked with him
28 on a number of occasions in, obviously, complex
29 investigations. All of that, he would have been my

1 boss, basically, and I respected that position. I
2 admired him as a hard worker and very exacting and
3 wanting to do everything to a very, very high standard
4 and professional standard. So I had a good working
5 relationship with him. Over the years I would also 11:10
6 have developed a personal relationship with him, which
7 remains strong to this day. And the personal
8 relationship and the professional relationship,
9 obviously they were distinct and there were boundaries
10 between them, which I hope I always respected. 11:11

11 173 Q. And is there any sense that he might have regarded you
12 as somebody to bounce ideas off, considering how long
13 you had worked together or as a confidante in any way?

14 A. Certainly bounced ideas off of, yes. We would've had
15 many discussions around that, yes, in relation to 11:11
16 operational issues.

17 174 Q. And as a confidante of sorts, did you, or would you
18 regard yourself as somebody he could turn to if he was
19 under a large amount of stress or particularly
20 frustrated with anything that he had to deal with at 11:11
21 any time or under particular pressure?

22 A. Yeah, I would hope so. But Mr. Callinan, I think as
23 anybody who knows him, is a very, very resilient person
24 and remained resilient until his retirement.

25 175 Q. Now, if I could deal with how you knew former 11:12
26 Commissioner O'Sullivan?

27 A. Again I would've known former Commissioner Nóirín
28 O'Sullivan for a long number of years. While I
29 wouldn't, obviously, have known her as well as former

1 Commissioner Callinan, I knew of her work and the good
2 work that she was doing and I certainly admired that
3 work. I didn't have a personal friendship with her.
4 But when she was Commissioner, I would hope again that
5 I had a good working relationship with her at that
6 time.

11:12

7 176 Q. Did you know Superintendent David Taylor?

8 A. I did, yes. Again, I knew probably of
9 Superintendent David Taylor for a long time. But the
10 first time I would've had any opportunity, I suppose,
11 to see his work first hand was when I was appointed
12 Assistant Commissioner in Crime and Security and he was
13 a Detective Inspector in the Liaison and Protection
14 section of Crime, which I had overall responsibility
15 for. I certainly wouldn't have been meeting him on a
16 day-to-day basis, but from time to time. And nothing
17 was ever brought, untoward was ever brought to my
18 attention in relation to the work he was carrying out
19 there.

11:13

11:13

20 CHAIRMAN: Ms. Leader, could I just ask a question,
21 because it's something I've been a wee bit confused
22 about and I didn't ask it before. Liaison and
23 Protection, is that witness protection we're talking
24 about?

11:13

25 A. It's included in witness protection. There's a wider
26 brief, Chairman. Liaison and Protection, I suppose the
27 protection side of Liaison and Protection would include
28 witness protection, yes, amongst many other things.

11:13

29 CHAIRMAN: Did he replace John O'Brien, no?

1 A. He would've been at a different level to John O'Brien.
2 John O'Brien was the Chief Superintendent --
3 CHAIRMAN: Right.
4 A. -- in Liaison and Protection.
5 CHAIRMAN: Okay. 11:14
6 177 Q. MS. LEADER: Did former Commissioner Callinan discuss
7 with you at any time Superintendent Taylor's move to
8 the Press Office?
9 A. No, I wasn't aware of the appointment prior to,
10 obviously, seeing it in a bulletin. 11:14
11 178 Q. Did you have any dealings with Superintendent Taylor
12 while he was Press Officer?
13 A. I can't remember any specific dealings, but I would
14 imagine that I would've have had dealings with him,
15 probably mostly by telephone in relation to -- and 11:14
16 those dealings would've obviously been in relation to
17 issues that arose or that would arise from time to time
18 and media queries in relation to my relevant section.
19 179 Q. And that was Crime and Security?
20 A. Crime and Security. And indeed it could also relate to 11:14
21 queries that arose in relation to the penalty points
22 investigation, because I was doing that investigation
23 at the time that Superintendent Taylor was Press
24 Officer.
25 180 Q. Right. Now, I think sometime in October 2012 you 11:15
26 received a letter from former Commissioner Callinan in
27 relation to the ticket fixing, as it was then called,
28 is that correct?
29 A. That's correct, yes.

1 181 Q. And I wonder if page 7176 could be brought up on screen
2 in front of you please. It's in volume 26 if you'd
3 prefer a hard copy.
4 A. I would, yes.
5 182 Q. It's actually a very faded copy on screen. 11:15
6 A. Can you repeat the page?
7 183 Q. 7176.
8 A. Yes.
9 184 Q. And that's a letter addressed to you as Assistant
10 Commissioner in Crime and Security, it's re allegations 11:16
11 of ticket fixing and what it says is "to see attached
12 correspondence". And I think that correspondence is
13 correspondence from the Department of Justice?
14 A. Yes.
15 185 Q. And in particular Mr. Purcell, is that correct? 11:16
16 A. Yes.
17 186 Q. What it says is:
18
19 "You are hereby appointed to conduct an examination of
20 the attached correspondence with a view to providing a 11:16
21 preliminary and urgent report for the Minister for
22 Justice and Equality in the context of the matters
23 outlined within the correspondence."
24 A. Yes.
25 187 Q. And it's signed Martin Callinan, Commissioner of An 11:16
26 Garda Síochána, dated 31st October 2012.
27 A. Yes.
28 188 Q. And had you discussed that appointment with the
29 then-Commissioner prior to getting the letter or

1 immediately afterwards?

2 A. No, not prior to. But immediately afterwards, yes.

3 189 Q. All right. And did you understand it to be a very
4 urgent or particularly urgent matter or a particularly
5 sensitive, or all of those things? 11:17

6 A. All of those things, yes. And obviously I also
7 would've had sight of the letter from Mr. Purcell.

8 190 Q. Okay. Now, I don't want to review your investigation,
9 but it does have some relevance to matters that
10 happened thereafter. But I think in essence, you were 11:17
11 supplied with two lists in relation to ticket fixing?

12 A. Yes.

13 191 Q. And you were charged with investigating those two
14 lists, is that correct?

15 A. That is correct. My examination obviously, again it 11:17
16 was a preliminary examination and I was given initially
17 a three-month timeframe, which was extended up to
18 another month or so. And I suppose it was threefold
19 really: Looking at the criminal allegations that were
20 made and see was there any substance to those; looking 11:18
21 at potential disciplinary issues; and also looking at
22 systems and failures and, if there were systems
23 failures, making recommendation as to what should be
24 done about them.

25 192 Q. Okay. And were you given a carte blanche by the former 11:18
26 Commissioner to investigate this and an unlimited or
27 limited budget, or what did you understand?

28 A. I would love to think that there were unlimited budgets
29 in An Garda Síochána --

1 193 Q. Yes.

2 A. -- at that time. The reality was that there weren't.

3 But yeah, I was given sufficient resources to do that.

4 And I think the nature of the allegations, the

5 seriousness of those allegations, the seriousness for 11:18

6 the organisation and also the seriousness of them for

7 senior officers, it meant that the investigation

8 obviously had to have senior officers for the most part

9 on that examination. And I had, I suppose which would

10 be unusual, was to have an Assistant Commissioner, I 11:19

11 suppose, first and foremost doing it and then five

12 Chief Superintendents and a considerable number of

13 Superintendents working on it as well. I think it

14 would show the seriousness that the allegations were

15 taken. 11:19

16 194 Q. And was that because, amongst other things, that you

17 were investigating allegations made against officers of

18 a --

19 A. Of a senior level, yes.

20 195 Q. -- of a senior level? 11:19

21 A. Superintendent and Inspector level.

22 196 Q. And were these people taken from throughout the

23 organisation?

24 A. Yes.

25 197 Q. Yes? 11:19

26 A. It would've been widespread. Because the allegations

27 covered all parts of the country really and they

28 would've been taken from Cork, Dublin, Galway, northern

29 region, midlands, just basically around the country.

1 198 Q. I wonder would you explain to the Tribunal the
2 operational name given to this and how it was given
3 please?
4 A. The operational name, it was Operation Squeeze. Again
5 I suppose there is a HQ directive, I think which you've 11:20
6 had sight of, in relation to -- and it's a standard
7 operating procedure and it really is administrative and
8 it is to, I suppose, to identify where queries have
9 come from and to, I suppose, put it in a box with a
10 name on it, really, that all of the inquiries around 11:20
11 Operation Squeeze would be in that if there was to be
12 searches later on or looking for a specific document or
13 indeed why a query was made to Crime and Security or
14 whatever, the basis of that query was around that
15 examination. 11:21
16
17 And indeed all, I suppose, inquiries of a large scale
18 are provided with a name. The name is given actually
19 by one of the sections that I was responsible for at
20 the time, which would be the National Criminal 11:21
21 Intelligence Unit. And they provide the name and the
22 name is given, it's the next name available when it
23 comes up, when somebody requests it.
24 CHAIRMAN: So it's like naming hurricane, is that it?
25 A. Absolutely, yes. 11:21
26 199 Q. MS. LEADER: So when you started your investigation,
27 you didn't know who was making the allegations?
28 A. Not initially, no.
29 200 Q. And when did you figure out who was making the

1 allegations?

2 A. I suppose not -- I suppose around -- we did a
3 preliminary report, first of all, for the Minister,
4 because he was looking for obviously an urgent report
5 because of the seriousness of it. We concentrated -- I 11:21
6 think the more serious allegations were obviously
7 around people who had, who it was alleged that they had
8 received -- that they had tickets cancelled and
9 subsequently they had gone on to either be killed in
10 accidents or be responsible for accidents in which 11:22
11 people were killed.

12

13 There was nine of those such incidences. And on a
14 cursory check of the Pulse system, it was found that a
15 member, a sergeant in Mullingar had checked on all nine 11:22
16 of those. So that obviously was the first area where I
17 thought or believed that it may be, that Sergeant
18 McCabe may be involved in the -- as one of the authors
19 or an author of the two documents that I had. Also --

20 CHAIRMAN: Sorry, I beg your pardon, I'm sorry for 11:22
21 interrupting, but before you go on, were there in fact
22 nine cases where people had tickets cancelled --

23 A. Yes.

24 CHAIRMAN: -- and then they either killed themselves in
25 a road accident -- 11:23

26 A. Yes.

27 CHAIRMAN: -- or they killed somebody else? All right.

28 A. Yes. Yes. Well, sorry, that was the allegation. It
29 didn't actually -- when the examination was done with

1 all of the information that we had, it wasn't
2 necessarily as, you know, that was the situation. And
3 I can give you an example if you require it, Chairman.
4

5 Okay, one of the allegations was just around a person 11:23
6 who had been caught for speeding. And as you know,
7 there's, I think it's 52, I could be wrong about this,
8 but something around 58 days of a period of grace
9 before people pay the fine, so obviously it remains
10 open on the system there. Unfortunately, the person 11:23
11 who was the recipient of that fixed charge notice was
12 subsequently killed in a traffic accident within that
13 period of time. A parent who was cleaning out the
14 young person's room afterwards found the fixed charge
15 notice, contacted Thurles and the ticket was obviously 11:24
16 cancelled because the person was deceased at that
17 stage. And there were different reasons, technical
18 reasons for another one off hand that I can remember.
19 And those are the, they were the reasons that were
20 given. 11:24

21 201 Q. MS. LEADER: So you were saying that you did begin to
22 suspect the identity of the person?

23 A. Yeah, sorry, there were other reasons as well.
24 Obviously, 8th December I became aware from the
25 Commissioner that another person - do I name the 11:25
26 person?

27 202 Q. Well, another whistleblower?

28 A. Another whistleblower had been confronted in Cavan
29 Garda Station and was printing off material which

1 obviously wasn't directly relevant to my examination -
2 this was on 8th December - printing off material, had
3 referenced the fact that he was doing that with
4 Sergeant McCabe and that they were doing it under the
5 whistleblowers charter. And obviously, subsequent to 11:25
6 that then, the letters that were sent by Commissioner
7 Callinan to both Sergeant McCabe and the other
8 whistleblower, they were -- I was made aware of those,
9 of those letters.

10 203 Q. Those letters were, if you would -- which letters were 11:25
11 you referring to?

12 A. Sorry, the two letters, there were two letters sent to
13 both whistleblowers around at that time and a direction
14 to -- the first letter was a direction to cease
15 accessing personal information and passing it on, and 11:26
16 then also inviting the whistleblowers to engage with my
17 investigation if they had any concerns.

18 204 Q. They're the December letters?

19 A. The December letters, yes. Yeah, I was aware of that.
20 There was other reasons I was also aware of the 11:26
21 identity of the whistleblowers. And I can outline
22 those if you wish. There was other --

23 CHAIRMAN: 14th December 2012. And you were aware by
24 that stage?

25 A. I had a strong suspicion at that stage or believed -- 11:26
26 CHAIRMAN: Yes. And somebody in headquarters also
27 knew, because they sent them the letters.

28 A. Oh, well, sorry, but it wasn't directly to -- I think
29 it's important for me to say --

1 CHAIRMAN: Yes.

2 A. -- that while it was in relation, the letter was sent
3 in relation to letters, or to information that was
4 being accessed on 8th December 2012 and obviously
5 wasn't directly related to my, to the examination that 11:27
6 I was doing. But very, very similar obviously in modus
7 operandi.

8 205 Q. MS. LEADER: well, when you were beginning to suspect
9 that it was Sergeant McCabe who was making the
10 complaints about the ticket fixing, did you discuss 11:27
11 that matter with Commissioner Callinan?

12 A. Absolutely, yes. And indeed the report, the
13 preliminary report that I sent in November 2012 refers
14 to that, to my findings in relation to the nine fatal
15 accidents and names Sergeant McCabe in that preliminary 11:27
16 report.

17 206 Q. And were you aware at that time that assistant
18 commissioner Byrne was investigating -- was undergoing
19 an investigation in relation to complaints in relation
20 to policing in Cavan-Monaghan? 11:28

21 A. I was aware that there had been. And I don't think --

22 207 Q. It was past tense?

23 A. I think it was past tense, yes.

24 208 Q. All right.

25 A. I'm not, again, not one hundred percent sure, but I 11:28
26 think it was past tense.

27 209 Q. So did you in any way seek to find out any information
28 about Sergeant McCabe at that stage, considering he was
29 the person making the complaints that you were now

1 charged to investigate or find out more about, if we
2 use a less neutral --

3 A. I was aware of the rumour that was circulating and
4 purely as a rumour and I didn't take any other notice
5 of it. I would take, obviously, anybody that makes a 11:28
6 complaint, I would take their complaint at face value
7 and investigate that complaint as thoroughly as I
8 possibly can. And that's the way I proceeded with my
9 examination.

10 210 Q. You say you were aware of the rumour; is that the 11:29
11 rumour about --

12 A. The rumour about the 2006 allegation, yes.

13 211 Q. Okay. What were you aware of about it?

14 A. I was aware of the fact that a complaint had been made,
15 that the complaint had been investigated, a complaint 11:29
16 of sexual assault had been made, the complaint had been
17 investigated and the DPP had directed no prosecution.

18 212 Q. Did you know anything else about the complainant?

19 A. No. At that stage no.

20 213 Q. Did you know her father was a guard? 11:29
21 A. Not at that stage no.

22 214 Q. When did you find out about that?

23 A. Probably around the time of the articles in the papers
24 around the -- I suppose the Paul Williams articles, is
25 it? Around that. 11:29

26 215 Q. That's 2014?

27 A. Yeah.

28 216 Q. Just it would seem curious, Mr. O'Mahony, that you
29 didn't at any stage seek to find out more information

1 about Sergeant McCabe from, for instance, Chief
2 Superintendent McGinn or Assistant Commissioner Byrne,
3 considering that they had spent a lot of time
4 investigating other complaints made.

5 A. I suppose I would've made -- it may seem curious, but 11:30
6 certainly my method of carrying out investigations is
7 that I took them out and that I carried out my
8 investigations on the face value of the allegations
9 that I had made and worked from there.

10 217 Q. Okay. And I'm just asking you this, but was there any 11:30
11 sense of 'Oh, here we go again, those two' -- 'that
12 troublemaker making even more trouble for the guards'?

13 A. No. Nobody --

14 218 Q. 'And wasting my time' or anything of that nature?

15 A. That certainly wasn't my view and I know it wasn't 11:30
16 Commissioner Callinan's view or it wasn't Deputy
17 Commissioner O'Sullivan's view. And I think the nature
18 of the investigation, the resources that were put into
19 it would tell you that.

20 219 Q. Well, I suppose you can, I suppose, explain the 11:31
21 resources and the nature of the investigation when you
22 consider that the impetus for this investigation came
23 from the Minister for Justice, isn't that right?

24 A. Absolutely, yes.

25 220 Q. Yes. 11:31
26 A. Yeah.

27 221 Q. So one would think in normal circumstances if the
28 Minister is asking about something, it's given a high
29 level of priority?

1 A. That's correct, yes. But I think as I've said
2 initially, it was also of great concern to, obviously,
3 the senior management in An Garda Síochána, the nature
4 of the allegations and the people being -- obviously if
5 we had an issue around senior management and if there 11:31
6 was a number of them corrupt, that would be a very,
7 very serious issue for the Garda Síochána anyway.

8 222 Q. Okay. So just in relation to the issue of interviewing
9 Sergeant McCabe - leaving out the December letters now,
10 just for the minute - what was your thought process in 11:32
11 relation to whether you should or shouldn't seek to
12 advance matters with regard to interviewing the
13 complainants?

14 A. I have set out in detail in my statements to the
15 Tribunal my thought process, Chairman. I suppose the 11:32
16 bottom line is that while I wasn't told directly - and
17 I'm aware now of the former Minister for Justice's
18 evidence to the Tribunal - I wasn't told in as direct
19 as terms as that, but there was a strong sense that
20 there was protections around the people, or the person 11:32
21 who had made those allegations that I was investigating
22 and I certainly, I proceeded, I suppose the rules
23 basically under the confidential reporting of
24 malpractice and corruption and those regulations, the
25 2007 regulations and I set out to at all times to 11:33
26 protect the identity of the whistleblowers and to deal
27 with them as anonymous complaints.

28
29 I would have also seen, obviously, the criteria around

1 where I could, if I needed to, where I could go to the
2 Minister, or to the Commissioner, I suppose, more
3 appropriately, if I was having difficulties with my
4 examination. But the reality is that that issue didn't
5 arise, because at all times I felt that I actually had 11:33
6 in my possession and I was able to obtain more
7 information than had been provided by the anonymous
8 authors in this instance. And I just felt that I was
9 precluded from interviewing these two people because of
10 that, because of those regulations. 11:34

11 223 Q. Okay. So is it fair to say you made a conscious
12 decision to proceed on your investigation without
13 contacting the complainants?

14 A. Absolutely, yes. And I didn't formally know who the
15 whistleblowers were until a telephone conversation that 11:34
16 I had with Sergeant McCabe on 23rd April, and that was
17 after my report had gone to the Minister and it had
18 become public knowledge that the Minister had that
19 report.

20 224 Q. Okay. 11:34

21 CHAIRMAN: 23rd April --

22 A. 23rd April of 2013 --

23 CHAIRMAN: -- 2013.

24 A. -- Judge, yes. Or Chairman.

25 225 Q. MS. LEADER: And am I correct in saying the reason you 11:35
26 made that decision was because of confidentiality
27 concerns relating to the identity of the complainants?

28 A. That's correct, yes.

29 226 Q. And do you think if you thought there was something

1 missing in your investigation, do you think you
2 would've made efforts to formally contact the
3 whistleblowers?

4 A. Absolutely, through the process. It would be my
5 natural instinct anyway as an investigator to go to the 11:35
6 source of the information. I was of the firm belief
7 that I was precluded from doing that in this instance.
8 And obviously I was also aware of the invite that had
9 gone out to both whistleblowers to engage and they
10 hadn't engaged. So that's the bottom line really, I 11:35
11 think, in relation to my situation.

12 227 Q. Okay. And in relation to your thought process in not
13 engaging with the whistleblowers, if I could use that
14 term, that was never made public until now, is that
15 correct? 11:36

16 A. No, I have never ever discussed it with anybody outside
17 of my own team. And that has been my position at all
18 times.

19 228 Q. Okay. Did you discuss it with Commissioner Callinan?
20 A. Yes, Commissioner Callinan would've been aware of the 11:36
21 process that I was undertaking, yes.

22 229 Q. All right. So in relation to the letters, if we call
23 them that for a minute, of 14th December 2012, that's
24 the direction given to Sergeant McCabe --

25 A. Yes. 11:36

26 230 Q. -- in relation to the matter, had you discussed that
27 step in the procedure with Commissioner Callinan?

28 A. Prior to him sending it?

29 231 Q. Yes.

1 A. No.

2 232 Q. At all?

3 A. No.

4 233 Q. Or had you discussed it with the superintendent down in
5 Mullingar? 11:37

6 A. No.

7 234 Q. So when did you find out about it?

8 A. I was provided with a report from Commissioner
9 Callinan, I think, some time later in December.

10 235 Q. All right. If we can just look at that. It's at page 11:37
11 3033 of the documentation. It's in volume 11, I beg
12 your pardon. 3033.

13 A. Yes.

14 236 Q. You see, first of all, even though it is here in
15 written format, you understand, as I understand 11:38
16 matters, that the actual written text wasn't provided
17 to Sergeant McCabe, it was simply read to him by one of
18 his superiors?

19 A. That's my understanding as well.

20 237 Q. Yes. And it's here headed: 11:38
21
22 "Correspondence from Commissioner."
23
24 And it is headed:
25 11:38
26 "Direction to desist searching Pulse and dissemination
27 to a third party of sensitive personal data regarding
28 cancellation of fixed charge notices."
29

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And it says:

"The Commissioner understands that you have been searching and printing out from Pulse documents that contain sensitive personal data regarding cancellation of the fixed charge notices. The Commissioner further understands that it is your intention to provide a third party with that documentation. 11:38

It is noted that sensitive personal data in relation to fixed charge cancellation have already appeared to the public domain. 11:38

The Commissioner has sought the advices of the Attorney General and has consulted with the Data Protection Commissioner in respect of this matter." 11:39

Were you aware of that?

A. I am aware of it now. I can't say I was aware of it prior to our -- 11:39

238 Q. December 2012?

A. 2012, yes, I would have been. This document was provided to me in December 2012.

239 Q. Yes. well, I suppose what I am asking you: Separately from this document informing you, did you know that Commissioner Callinan had sought the advices of the Attorney and notified the Data Protection Commissioner in relation to the provision of records? 11:39

A. I don't recall knowing about it. Again I wouldn't have

1 been directly involved in the process here, what
2 happened in Cavan.

3 240 Q. "You are aware there is a power set out in the Garda
4 Policy Procedure and Guidelines for cancelling those
5 fixed charge notices in certain instances in such
6 circumstances.

11:39

7
8 Having consulted with the above mentioned authority the
9 Commissioner is satisfied that your continued access of
10 Pulse data and disclosure of such it and personal data
11 to a third party is likely to be in breach of the Data
12 Protection Act and other legislation as well as being
13 prejudicial to the current investigation being
14 undertaken by Assistant Commissioner John O' Mahony. "

11:40

15
16 Do you see that?

11:40

17 A. I do, yes.

18 241 Q. Were you ever asked would it be prejudicial to your
19 investigation before this went out?

20 A. I don't believe so.

11:40

21 242 Q. Do you think you would agree with that or would you
22 disagree?

23 A. Well, any disclosure obviously of information would
24 impact on any investigation that I was doing and
25 obviously there is a right way and a wrong way of doing
26 it as far as I'm concerned, and I would have imagined
27 that to come within An Garda Síochána, to provide that
28 information was the correct way of doing it.

11:40

29 243 Q. Okay. So you were of the same view of Commissioner

1 Callinan?

2 A. I certainly would be, yes, in relation to it.

3 244 Q. The provision of information?

4 A. The provision of the accessing obviously of personal
5 information, the fact that personal information was 11:41
6 appearing in the public domain.

7 245 Q. Just in relation to it being prejudicial to your
8 investigation --

9 A. Yeah.

10 246 Q. -- as I understand it, the reason you don't leak 11:41
11 materials that is the subject of an ongoing Garda
12 investigation is that it would mean that maybe
13 witnesses' cooperation with that investigation could be
14 compromised in some way, is that right?

15 A. That is very correct, and I suppose in relation to, as 11:41
16 an organisation, obviously it is very important for An
17 Garda Síochána to collect information and to collect I
18 suppose private information, sensitive information and
19 if we are seen to be, as an organisation that that is
20 being disclosed in public it obviously is prejudicial 11:41
21 to the work that we do in An Garda Síochána, not just
22 from an investigation perspective but from the trust of
23 the community at large.

24 247 Q. Or maybe people wouldn't be inclined to cooperate with
25 an investigation, is that another reason? 11:42

26 A. That obviously is a concern as well, Chairman.

27 248 Q. Now as I understand it, your investigation was based on
28 records in the Pulse system and underlying records in
29 the system which were more comprehensive than the Pulse

1 system?

2 A. Yes.

3 249 Q. So it didn't really matter to your investigation, and
4 I'm talking about your investigation now,
5 Mr. O'Mahony --

11:42

6 A. Yes.

7 250 Q. -- that other investigation was being given to TDs, is
8 that fair enough?

9 A. You always depend on the trust of the public at large
10 to actually -- and if it was a case that I had to go to 11:42
11 a member of the public obviously in relation to getting
12 information it may very well be that that would be
13 prejudicial to that investigation and I would be very
14 conscious of that.

15 251 Q. All right. Then the direction is as follows:

11:42

16
17 "The Commissioner is now directing you to desist from
18 the practice of accessing Pulse or disclosing to third
19 parties sensitive personal data regarding the
20 cancellation of fixed charge notices by members of An 11:43
21 Garda Síochána. If you have any further concerns and
22 without prejudice of your rights under the confidential
23 reporting mechanism, such matters can be brought to the
24 attention of Assistant Commissioner John O'Mahony,
25 Crime and Security, who will fully investigate those 11:43
26 matters."

27

28 That is the end of the direction.

29 A. That's correct, yes.

1 252 Q. So it would appear to be a very firm direction given to
2 Sergeant McCabe that he shouldn't be giving these
3 documents over, that they were prejudicing your
4 investigation and that if he has any further concerns
5 such matters could be brought to your attention? 11:43

6 A. That is correct, yes. That is my understanding of it,
7 yes.

8 253 Q. Yes. And I suppose it's the opposite of asking
9 somebody to go in and actually give a statement to you.
10 It's not very encouraging, I'd suggest to you. It's 11:44
11 more: You're doing something wrong, you shouldn't be
12 doing it and could you ever go to Assistant
13 Commissioner O'Mahony otherwise.

14 A. Well, I wouldn't --

15 254 Q. That is the tone of that. 11:44

16 A. Yeah.

17 255 Q. It could be taken as that, I'm suggesting to you.
18 A. Potentially. But I certainly didn't see it -- don't
19 see it from that perspective.

20 256 Q. All right. 11:44

21 A. Yeah.

22 257 Q. Okay. Do you think you'd have said things differently
23 to Sergeant McCabe had you been organising a direction
24 to him in any way?

25 A. Well, I note that Commissioner Callinan obviously had 11:44
26 received advices from the Attorney General and from the
27 Data Protection Commissioner in relation to this and I
28 think the direction is certainly necessary in relation
29 to the first part of it in relation to the accessing

1 and the passing on of that documentation. So no, I
2 think I would be very much -- maybe the language might
3 have been somewhat different. But I don't know. I
4 haven't given it any thought. I was quite satisfied
5 with that letter.

11:45

6 258 Q. All right.

7 CHAIRMAN: You weren't drafting it or anything of that
8 kind yourself?

9 A. No.

10 CHAIRMAN: well, you were told about it?

11:45

11 A. Yes.

12 259 Q. MS. LEADER: Did you discuss it, when it was brought to
13 your attention, with former Commissioner Callinan?

14 A. I can't recall any specific discussion about it, but I
15 certainly was aware and it was discussed on numerous
16 occasions around the concerns that Commissioner
17 Callinan had, and very serious concerns that
18 Commissioner Callinan had around the accessing of
19 personal information and personal data and then the
20 subsequent appearance of that in media, in various
21 media circles.

11:45

11:46

22 260 Q. And in any of those discussions with former
23 Commissioner Callinan was it suggested in any way,
24 look, we've asked Sergeant McCabe now, that box is
25 ticked, by way of that direction of December 2012?

11:46

26 A. I don't believe at any stage there was a box-ticking
27 exercise. I think it was a very serious letter that
28 obviously had been given a lot of conversation and a
29 lot of advice had been sought in relation to it. And

1 certainly I don't believe it was a box-ticking
2 exercise.

3 261 Q. All right. Separately from that, we have -- I think,
4 thereafter that was repeated to Sergeant McCabe some
5 time at the end of March, after he returned from a 11:47
6 period off sick, is that correct? There was a
7 separate --

8 A. Yeah, I think there was a separate letter that went to
9 Sergeant McCabe and to the other whistleblower, also in
10 December but for reasons it hadn't been actually -- the 11:47
11 direction hadn't been given to Sergeant McCabe until he
12 returned from sick leave. That is my understanding of
13 it. I wasn't directly involved in that, but that is my
14 understanding.

15 262 Q. Okay. So then we have, on the 10th January 2013 we 11:47
16 have you sending Chief Superintendent Kennedy out to
17 the McCabes?

18 A. Yes.

19 263 Q. If you turn to page 6319 of the materials?

20 A. Of the same volume? 11:47

21 264 Q. It's volume 24.

22 A. Page?

23 265 Q. 6319.

24 A. Yes.

25 266 Q. So you receive an email from Derek Byrne, who was the 11:48
26 assistant commissioner, on the 9th January 2013:
27
28 "Subject: Contact
29

1 John
2 A number of phone calls were received at my office over
3 the past few days from a Mr. Bernard McCabe looking to
4 speak to me.
5
6 Moments ago I made contact with Mr. McCabe who reported
7 that he is an uncle of the whistleblower, his words --"
8
9 Did you understand that to be an uncle of Sergeant
10 Maurice McCabe? 11:48
11 A. Yes.
12 267 Q. Immediately?
13 A. Yes.
14 268 Q. "-- and that he has a lot of information about him and
15 wishes to meet with a member of AGS to pass on the 11:48
16 information.
17
18 I informed Mr. McCabe that I was not the appropriate
19 person to speak to him as you had been appointed by the
20 Commissioner to investigate issues raised by the 11:49
21 whistleblower."
22
23 So it would appear from that, that Assistant
24 Commissioner Byrne was well aware that you were
25 investigating more complaints made by Sergeant McCabe. 11:49
26 A. Yes.
27 269 Q. This was in January.
28 A. That would have been widely known in the organisation,
29 yes.

1 270 Q. okay. And you hadn't discussed the matters with him
2 heretofore, had you?
3 A. with?
4 271 Q. with, sorry, Assistant Commissioner Byrne?
5 A. No. 11:49
6 272 Q. "I informed Mr. McCabe that I would pass his details to
7 you and that you would arrange contact with him. He is
8 contactable at --"
9
10 And Assistant Commissioner Byrne signs off on the 11:49
11 email.
12 A. Yes.
13 273 Q. Did you speak with to Assistant Commissioner Byrne
14 afterwards, afterwards receiving that email?
15 A. I don't believe so, no. No, no. 11:49
16 274 Q. well, you see here the way he refers to "a number of
17 phone calls were received at my office" --
18 A. Yes.
19 275 Q. -- did you wonder at any stage what those phone calls
20 were about? 11:50
21 A. well, it's in the body of, obviously these -- I would
22 say that probably -- well, sorry, my feeling is that
23 the phone calls were received but he didn't get to
24 speak to Assistant Commissioner Byrne and that he
25 eventually got to speak him just prior to him emailing 11:50
26 me.
27 276 Q. All right. Then you action that the next day?
28 A. That's correct, yes.
29 277 Q. So you write to, I think it was Chief Superintendent

1 Kennedy, is that correct?

2 A. Yes. Detective Chief Superintendent Padraig Kennedy.

3 278 Q. Was he a member of the Operation Squeeze investigation
4 at that stage?

5 A. He was, yes. He was, yes. He was one of the chief 11:50
6 superintendents that was involved in that
7 investigation, yes.

8 279 Q. You say:

9

10 "Padraig 11:51
11 Further to our telephone conversation this AM please
12 find attached from AC Byrne. You should make contact
13 with Mr. McCabe and listen to what he has to offer.
14 Report in due course.
15 Regards 11:51
16 John O'Mahony, Assistant Commissioner."

17 A. Yeah, I presume that is -- that's correct, yes.

18 280 Q. Yes. So you refer to a conversation, what were you
19 talking to Chief Superintendent Kennedy about that
20 morning? 11:51

21 A. I can't remember the specifics of the conversation, but
22 obviously it was around being told or being asked by
23 Derek Byrne in relation to doing this and to see Chief
24 Superintendent Kennedy's availability to do the job.

25 281 Q. All right. But it would suggest that - and I am just 11:51
26 putting this out there, Mr. O'Mahony - all the
27 information you had was contained in Derek Byrne's
28 email, isn't that right?

29 A. That's correct, yes.

1 282 Q. And then you phoned Chief Superintendent Kennedy and
2 have a conversation with him, but what I am asking you
3 is: why, if everything is in the email already and he
4 is part of your team in Operation Squeeze --
5 A. Yes. 11:52

6 283 Q. -- and he must have known that Sergeant McCabe was the
7 whistleblower, if it was widely known at that stage?
8 A. I don't think it was widely known, but I think that it
9 may be very well that Padraig Kennedy would have known
10 that we would suspected Mr. McCabe. 11:52

11 284 Q. I actually thought you said it was widely known in the
12 organisation at that stage?
13 A. That I was carrying out an investigation. It certainly
14 wasn't widely known that -- as I've said for reasons
15 already, that it wasn't discussed outside of the 11:52
16 organisation by any member of the investigation around
17 Sergeant McCabe.

18 285 Q. Sorry, if I could just be clear on that. So it was
19 widely known within the organisation, is that what you
20 are saying? 11:53
21 A. No. The question I think that you asked me,
22 Ms. Leader, is around that Derek Byrne was aware that I
23 was carrying out this investigation.

24 286 Q. Into the whistleblower.
25 A. Into the whistleblower. 11:53

26 287 Q. Yes.
27 A. That was widely -- that it was known there that I was
28 carrying out that investigation.

29 288 Q. And I don't want to be too picky about this, but as I

1 understood it, that Mr. McCabe was an uncle of the
2 whistleblower and the whistleblower was Sergeant
3 McCabe?

4 A. Yes.

5 289 Q. And Mr. Byrne obviously knew that? 11:53

6 A. Yes, yeah. I would accept that AC Byrne obviously knew
7 who Bernard McCabe was and who the whistleblower was.

8 290 Q. And that Sergeant McCabe therefore --

9 A. Yes.

10 291 Q. -- was the whistleblower in your investigation? 11:53

11 A. Absolutely, yes, I would accept that, as a senior
12 officer in the job. But I suppose widely known in the
13 organisation --

14 292 Q. Okay.

15 A. -- my answer to that was really around everybody knew 11:53
16 that I was carrying out that investigation.

17 293 Q. So, you send Chief Superintendent Kennedy down to make
18 contact with Mr. McCabe in relation to that?

19 A. That's correct, yes.

20 294 Q. Okay. So, what I am asking you is: why pick such a 11:54
21 senior officer to speak to a civilian in relation to
22 matters concerning Sergeant McCabe and in particular
23 that he has a lot of information about him, being the
24 whistleblower, when you weren't interested -- I don't
25 mean that in a bad way, but you had dismissed the 11:54
26 possibility or the -- you had considered it totally
27 appropriate to proceed with your investigation and not
28 speaking to Sergeant McCabe, for reasons which you set
29 out very transparently to the Tribunal, and here you

1 are then sending one of your team down to find out
2 information about the whistleblower. So I'm wondering
3 what was the thought process in that?

4 A. The thought process was that Mr. McCabe senior, I
5 suppose for the want of a better word, had contacted An 11:55
6 Garda Síochána, had made contact, had said that he had
7 information in his possession, that he wanted to impart
8 that information to An Garda Síochána, and having
9 considered the matter I felt that Chief Superintendent
10 Kennedy, he was part of my team, I'd worked with him 11:55
11 for a long time, I trust him, in relation to carrying
12 the work out in a professional manner and in a discreet
13 manner which I would have considered very important,
14 seeing that it was a family member that was being
15 visited, and we went down there with an open mind, in 11:55
16 relation to what the information was. It could have
17 been anything in relation to --

18 295 Q. I don't think anybody is doubting how suitable Chief
19 Superintendent Kennedy is for that particular exercise,
20 but I suppose what I am really asking you is: why not 11:56
21 email Assistant Commissioner Byrne back and say, look,
22 Derek, I have actually thought about this and I have
23 decided that I am not going to pursue the matter of
24 speaking to Sergeant McCabe or seeking to formally know
25 his identity, so in all of those circumstances I think 11:56
26 it is probably a bit better if you ask somebody else to
27 interview Mr. Bernard McCabe?

28 A. Potentially again, but I didn't, and I considered the
29 issue and I thought it was appropriate and perfectly

1 appropriate to do that. There was no ulterior motive
2 for doing that. It was purely a person had made a call
3 to us. I was conducting an investigation, and I went
4 with an open mind. And I think the way we dealt with
5 it and the confidentiality and the discretion that was 11:57
6 shown in relation to it I think will bear that out. It
7 was disclosed to us or disclosed to this Tribunal
8 purely on the basis that it was there, that it could be
9 described as a negative briefing, I didn't think it
10 was, we had dealt with it very, very discreetly, nobody 11:57
11 knew about it and it hadn't become in any way public
12 knowledge. So, I think that shows the manner in which
13 we approached it and certainly there was no ulterior
14 motives in sending a senior officer or sending anybody
15 indeed. It wasn't to discredit Mr. McCabe. In fact, 11:57
16 our inquiries would show that far from discrediting
17 Mr. McCabe that there was absolutely no evidence to
18 suggest anything.

19 296 Q. well, I suppose another way and another question I'm
20 going to ask you about this is: You were investigating 11:58
21 ticket fixing at that stage, all right --

22 A. Yes.

23 297 Q. -- and nowhere in Assistant Commissioner Byrne's email
24 to you is there any suggestion, as far as I can see,
25 that Bernard McCabe had any information in relation to 11:58
26 ticket fixing or road traffic matters, which operation
27 Squeeze was about?

28 A. Yes, that's correct.

29 298 Q. If you understand?

1 A. That's correct, yes, but --

2 299 Q. So why not, I suppose, say to Assistant Commissioner
3 Byrne, listen, I'm the assistant commissioner in charge
4 of Crime and Security, responsible for keeping people
5 safe in their beds at night, and I also have this 11:59
6 Operation Squeeze matter to deal with, so please could
7 you refer this down to somebody of a more suitable
8 rank, instead of diverting more resources into the
9 matter?

10 A. I can see where you are coming from on this, but 11:59
11 obviously from time to time in investigations, and
12 actually quite regularly in investigations,
13 particularly investigations that are high profile, high
14 profile in the media, we receive letters, phone calls,
15 from people who believe that they have information in 11:59
16 relation to it and we go to -- as a matter of rule, we
17 go to those people and we interview them. If they have
18 nothing to offer, they have nothing to offer.

19 300 Q. All right. Now the actual memos of the conversation
20 aren't circulated in the Tribunal materials, but it is 11:59
21 apparent from them that there were two interviews with
22 Bernard McCabe, one in January 2012 which is a typo, I
23 think it should be 2013?

24 A. That's right, yes.

25 301 Q. And that's where Chief Superintendent Kennedy went down 12:00
26 to Mr. McCabe accompanied by superintendent George
27 Kyne, is that correct?

28 A. That's correct, yes.

29 302 Q. And then there was a second meeting with, as I

1 understand it, in June 2013, whereby Mr. Kyne went down
2 again and Detective Garda Séan O'Brien?

3 A. That is correct, yes.

4 303 Q. Do you know both of those individuals?

5 A. I do, yes. I have worked with both of them for a 12:00
6 considerable number of years, yes.

7 304 Q. All right. In any event, some fairly wild matters, if
8 I can categorise them that way, were discussed during
9 those two interviews, is that correct?

10 A. That's correct, yes. 12:00

11 305 Q. Were those matters reported back to you?

12 A. Chief superintendent Kennedy would have reported the
13 initial meeting to me and he subsequently reported the
14 second meeting and the result of their inquiries in
15 relation to that. 12:01

16 CHAIRMAN: So, they actually followed up on the stuff
17 to see was there anything --

18 A. Not everything, Chairman, because some of it was just
19 not -- it was real family matters, and we weren't going
20 there. But there were some issues that needed 12:01
21 following up. There was, from the initial meeting
22 there was --

23 CHAIRMAN: You don't need to go into it.

24 A. Yes.

25 CHAIRMAN: I don't think it helps anyone -- 12:01

26 A. Yeah.

27 CHAIRMAN: -- because, as Ms. Leader said, they are
28 wild.

29 A. Absolutely. And again, I suppose, the belief was from

1 an early stage, was that this was a waste of time
2 really, you know. But that's what we have to do it.
3 There's a lot of situations where we are confronted
4 with situations where we are sent on wild goose chases
5 or whatever, and that is part of the investigation 12:02
6 process.

7 CHAIRMAN: Yes. Well, there were no geese here, but
8 there were other animals certainly.

9 306 Q. MS. LEADER: I think it was, Detective Garda O'Brien
10 headed the memo Operation Squeeze, is that right? 12:02

11 A. That's correct, yes.

12 307 Q. But in reality it had nothing to do with --
13 A. It never became part of Operation Squeeze as soon as
14 Chief Superintendent Kennedy reported back to me after
15 the first meeting, that it wasn't relevant to our 12:02
16 investigation. That was the end of the story. I think
17 the heading was purely an administrative -- for
18 administrative purposes.

19 308 Q. Now, I think in or around the same time as you received
20 the email from former Assistant Commissioner Byrne you 12:02
21 were involved in the preparation for the Public
22 Accounts Committee matters, is that right?

23 A. That's correct, yes.

24 309 Q. I think you attended at a number of meetings in
25 relation to that in preparation for it? 12:03

26 A. Yes.

27 310 Q. Presumably because you were the person who investigated
28 the matter and would have had all the relevant
29 information at his finger tips?

1 A. Yes, that's correct, yes.

2 311 Q. At those meetings did you ever hear of any discussion
3 in relation to the, what we call the D allegation?
4 A. I don't recall any discussion in relation to the D
5 allegation. Certainly if there was any detailed 12:03
6 discussion I think I would have, I would have
7 remembered it. But the focus for me on that, at those
8 meetings, the preparatory meetings, was obviously to
9 brief the Commissioner in relation to my investigation
10 and the findings of my investigation and how it 12:03
11 compared to the Comptroller and Auditor General's
12 investigation, and obviously to allow him to formulate
13 an opening statement and then to answer any questions
14 subsequently on my investigation. So that was the sole
15 focus of my contribution to those meetings. 12:04

16 312 Q. By that stage had it come to your attention that the
17 person who made the complaint of indecent assault was
18 the daughter of a guard?
19 A. I don't believe so, no.

20 313 Q. I don't think you were at the meeting on the 21st 12:04
21 January when there is documentary evidence there to
22 suggest that the D allegation was raised in the
23 preparatory PAC matters?
24 A. Yes.

25 314 Q. Is that -- 12:04
26 A. That was brought to my attention by the investigators
27 when I was interviewed. I think subsequently having,
28 through the transcripts here having seen the nature
29 some of the subjects that were in that document that's

1 my first time knowing anything about those, about some
2 of those issues.

3 315 Q. Okay. So it may be that meeting was more to deal with
4 the actual whistleblowers themselves as opposed to the
5 nuts and bolts of the fixed charge penalty notice 12:05
6 system?

7 A. I can't say again. Obviously the meeting was around
8 the preparation. Certainly we're talking about two
9 days before the PAC meeting. So I would imagine the
10 main item on the agenda again was finalising the 12:05
11 opening statement and preparing for any subsequent
12 questions.

13 316 Q. Okay. Presumably if your expertise was needed at that
14 meeting you'd have been at it?

15 A. Well, it may be that I had other, I had other duties. 12:05
16 I wasn't just involved in the penalty points
17 investigation, at that stage I had to mind the house as
18 well and do the work from, the day-to-day work from
19 Crime and Security.

20 317 Q. All right. If I could turn to Chief Superintendent 12:06
21 McPartlin's typed notes of the meeting of the 9th
22 January 2014, at page 1221, volume 5, it will also come
23 up on screen.

24 A. Yes.

25 318 Q. That is a meeting that you are recorded as having 12:06
26 attended.

27 A. Yes.

28 319 Q. And if you just see at page 1221 of the materials the
29 starting there, "No interview by JOM."

1 A. That's right.

2 320 Q. If you see that. "A and D docs", I don't know if you
3 can help me there?

4 A. That probably should be -- well, again I'm surmising
5 here it could be A and B. We would have called the 12:07
6 documents A and B.

7 321 Q. All right. The directions?

8 A. I'm only again surmising there, signed anonymous. No
9 sorry, they're the two documents that I received for
10 the examination. 12:07

11 CHAIRMAN: Sorry, what are we talking about there,
12 Ms. Leader?

13 MS. LEADER: I think they are the two lists you
14 received from the --

15 A. Yeah. 12:07

16 322 Q. -- the Garda Commissioner when you were appointed in
17 October 2012 --

18 A. From the Commissioner, yeah.

19 323 Q. -- which formed the basis of your investigation?

20 A. Yes. 12:07

21 CHAIRMAN: This is a list of the Pulse cancellations.
22 MS. LEADER: Yes, I think so.

23 CHAIRMAN: Sorry, the fixed charge cancellation.

24 A. Yes, and I'm quite happy that that is, and they would
25 have been known as A and B, so I presume that may be a 12:08
26 typo there.

27 324 Q. MS. LEADER: Just for the assistance of the Chairman we
28 will look at a sample of the first one, it's page 7177,
29 and you needn't take it out, if it could be shown on

1 screen. You see list 1, that is list 1, ticket fixing
2 and the list continues, massive loss of revenue to the
3 State, detailing what exactly you were appointed to
4 investigate, do you think they're the lists that A and
5 B documents? 12:08

6 A. Yes.

7 CHAIRMAN: This is --

8 A. I feel that that is what --

9 CHAIRMAN: This is what came from those making the
10 confidential report? 12:08

11 A. Yes.

12 CHAIRMAN: I see. All right. I get you now.

13 MS. LEADER: Via the Department of Justice, is that
14 right?

15 CHAIRMAN: Yes. 12:08

16 325 Q. MS. LEADER: Is that correct? So "A and D docs
17 unsigned anonymous, examined on that basis".

18 A. Yes.

19 326 Q. So, it is repeating your evidence here as set out?

20 A. Yes. 12:09

21 327 Q. Do you think this is Superintendent McPartlin recording
22 what you were adding?

23 A. I would imagine that it was my contribution to the
24 meetings.

25 328 Q. All right. "Because of nature was suspicious who it
26 was." 12:09

27 A. Absolutely, yeah.

28 329 Q. And was that because of the nature of the complaints?

29 CHAIRMAN: We're back to 1221 now I think, aren't we?

1 MS. LEADER: Yes, sorry.

2 CHAIRMAN: That is okay.

3 MS. LEADER: 1221, sorry Mr. Kavanagh.

4 330 Q. "Because of nature was suspicious of who it was."

5 A. Yeah. 12:09

6 331 Q. Do you think you were suspicious from the very

7 beginning?

8 A. This was in January of --

9 332 Q. When you were first appointed in October 2012?

10 A. No. I approached it with an open mind. As I said, I 12:09

11 began to believe then that it was. Obviously having

12 the -- but at an early stage, yes.

13 333 Q. Okay. "December 20 --" maybe that is 12?

14 A. That should be 12, I'd say.

15 334 Q. "JW in Cavan Garda station. Commissioner interviewed 12:10

16 JOM"?

17 A. I don't know what that is.

18 335 Q. "JW told sergeant in charge he was working with MMcC",

19 Maurice McCabe?

20 A. That's correct. 12:10

21 336 Q. "Commissioner instructed both 14/12 and 28/2", is that

22 right?

23 A. That's correct.

24 337 Q. "McCabe went sick at Christmas, Paddy McMEnamin. "

25 Mr. McMEnamin is the chief super or superintendent? 12:10

26 A. He would have been the superintendent, yes.

27 338 Q. So the matter of engagement or cooperation was

28 certainly something that was thought about in January

29 2013 -- '14, sorry I beg your pardon.

1 A. I think -- well, I can only speak for myself in
2 relation to this, but that was the -- I suppose, it was
3 more the manner in why I didn't interview the
4 whistleblowers as to cooperation or engagement.

5 339 Q. Was anybody having second thoughts at that stage as to 12:11
6 whether it was better or worse, it would have been
7 better had you interviewed them, or made attempts to
8 establish via the Department of Justice?

9 A. Not at that stage, no. No.

10 340 Q. Right. I just want to -- 12:11

11 A. Not that I'm aware of. Certainly nobody spoke to me in
12 relation to that.

13 341 Q. All right. And just in relation to the Operation
14 Squeeze matter, this is 2014, I think it was in 2013
15 actually that Assistant Commissioner Byrne had brought 12:11
16 it to your attention in relation to interviewing
17 Bernard McCabe?

18 A. Yeah, that is a year earlier.

19 342 Q. A year earlier?

20 A. During the course of my examination, yes. 12:11

21 343 Q. Now if I can just turn to the phone of the former
22 Commissioner, it can be brought up on screen, you don't
23 need to open the volume, it's page 4615 of the
24 materials, yes. This is a report prepared by the FSNI
25 in relation to the phone of former Commissioner 12:12
26 Callinan and if we can just turn to text 28 which is
27 the 26th March 2014, you see it is there?

28 A. Yes.

29 344 Q. "John, more should have been done by investigation.

1 Minister apologised to whistleblowers and for
2 misleading Dáil on cooperation issue. M. "

3

4 Do you think that was a -- these are retrieved texts,
5 so it doesn't actually show what direction the text is 12:12
6 travelling in, but does that text look at all familiar
7 to you?

8 A. I can't specifically remember that specific text. But
9 maybe if I had the context 26/3, what happened on the
10 36/3, if that is possible, I just don't know now. 12:13

11 345 Q. It's two days after his resignation, I just wanted the
12 correct date. His retirement, I'm sorry. I think
13 former Commissioner Callinan retired on the 24th March
14 2014?

15 A. Okay. It appears to refer, certainly could very well 12:13
16 refer to me. That's, obviously the Minister did
17 apologise to the whistleblowers for misleading the Dáil
18 on the cooperation issue.

19 346 Q. And the investigation was --

20 A. And yeah, that would have been relevant. 12:13

21 347 Q. -- your investigation?

22 A. That would have been relevant to my investigation,
23 yeah. I can't specifically remember it. But that is
24 quite possible, that I am the John there.

25 CHAIRMAN: what he is saying then to you is that you 12:14
26 should have sought them out or something like that?

27 A. I think on that occasion, and maybe that is the day
28 that he did make an announcement in the Dáil, I don't
29 know, if the Minister made an announcement on the

1 apology date, I'm not sure, but that's -- the view at
2 that time was that I think that I could have and I
3 should have interviewed the whistleblowers, that was
4 the -- I think that was the gist of the statement that
5 was made.

12:14

6 348 Q. MS. LEADER: And it seems to be, from this text, that
7 at least at that time former Commissioner Callinan had
8 come around to that view, that more should have been
9 done. It appears just from looking --

10 A. Yeah, I'm not reading it that way, Ms. Leader. I'm
11 saying that he is -- no, see, again I'm assuming that
12 it is me, I don't -- I can't say for definite that it
13 is. But I don't know any other John really that would
14 be getting that message. But my reading it is that he
15 is reporting to me what the Minister has said.

12:14

12:15

16 349 Q. Okay. Well, are you discounting the possibility that
17 here is the former Commissioner who you have described
18 as one of his confidants --

19 A. Yes.

20 350 Q. -- two days after he has retired from the guards, in
21 very controversial circumstances, and maybe looking
22 back and saying look, we could have done things
23 differently?

12:15

24 A. I don't believe so. No. I have never got an
25 indication of that from Commissioner Callinan at any
26 stage.

12:15

27 351 Q. Just while I have the phone here I just wanted to ask
28 you about two more texts. If we can look at text 18,
29 please if you could scroll up, Mr. Kavanagh. I just

1 want to ask you does this look at all familiar to you.
2 It is sent on the 22nd March 2014:

3
4 "Just thinking so much pressure being exerted from
5 Labour, riding on Varadkar's opener, hope Kenny can 12:16
6 control the PAC on Tuesday, you would need a plan B if
7 needed in a hurry, I mean what you putting together
8 yesterday, similarly if you were door-stepped at an
9 official function, Reynolds would help out if an
10 interview arose some time, just thoughts, not 12:16
11 recommendations."

12
13 Has that got to do anything with you, do you think?

14 A. I don't think so, no. No, I am happy it doesn't.

15 352 Q. Okay. If I could look at text 14, which is on the 12:16
16 previous page, 4614, 21st March 2014:

17
18 "Martin, a short time ago I received a call from Nora
19 Owen suggesting that you find a formula of words in
20 order to withdraw the offending term used." 12:17
21

22 which I'm presuming is the 'disgusting' remark. That
23 is my presumption.

24
25 "I said that you were asked for -- I said that ye were 12:17
26 asked for advice and that I didn't expect to, I would
27 say don't apologise. I wonder is she doing someone's
28 bidding? As I said to her, it's all good, very
29 political, I know you will choose your path carefully,

1 good luck, J."

2 A. Yeah.

3 353 Q. Do you think that is you?

4 A. Nothing to do with me.

5 354 Q. You're absolutely certain about that? 12:17

6 A. One hundred percent, yes.

7 CHAIRMAN: So Nora Owen doesn't ring you as a matter

8 of --

9 A. Not as a matter of course.

10 CHAIRMAN: But you have been in contact? 12:18

11 A. I would know Nora Owen.

12 CHAIRMAN: She is obviously a well meaning person.

13 A. Yes.

14 355 Q. MS. LEADER: Now, just dealing with the meeting at the

15 Public Accounts Committee on the 23rd January, you were 12:18

16 in attendance on that day?

17 A. That's correct, yes.

18 356 Q. You were sitting on one side of Commissioner Callinan

19 and former Commissioner O'Sullivan was sitting on the

20 other side? 12:18

21 A. Yes.

22 357 Q. Do you have any memory of the note former Commissioner

23 O'Sullivan says she passed to Commissioner Callinan

24 after the word 'disgusting' was used?

25 A. Yeah, I'm aware of obviously the assertion, but 12:18

26 unfortunately I don't, I don't, Chairman. I would have

27 been sitting at the opposite side of Commissioner

28 Callinan from Deputy Commissioner, at the time, Nóirín

29 O'Sullivan and there were notes, there were a number of

1 notes being passed. So I didn't take any notice or any
2 specific detail as to around what notes, what was on
3 what note.

4 358 Q. Now, in relation to the evidence that the Tribunal has
5 heard and in particular here I'm referring to what 12:19
6 Mr. McCarthy has said to the Tribunal, what
7 Mr. McGuinness has said to the Tribunal, what Deputy
8 Deasy has said to the Tribunal, in relation to,
9 particularly about former Commissioner Callinan's
10 comments in relation to Sergeant McCabe, did you hear 12:19
11 any of those?

12 A. No.

13 359 Q. Okay. Well, the Tribunal has heard evidence from
14 Mr. Boucher-Hayes just last week and it would appear
15 from that evidence, which is disputed by former 12:20
16 Commissioner Callinan, that when there was a
17 discussion/disagreement about how the penalty points
18 issue should be dealt with by RTE, former Commissioner
19 Callinan said to Mr. Boucher-Hayes that Sergeant
20 McCabe, he could tell him the most awful things about 12:20
21 him, and you will also know, be familiar with the
22 evidence given by Mr. McCarthy and Deputy McGuinness;
23 it would appear from that evidence, that the Tribunal
24 has heard, that once penalty points were under the
25 microscope and the allegations of ticket fixing, 12:20
26 Commissioner Callinan's reaction was to speak in very
27 derogatory terms about Sergeant McCabe, the person who
28 made the allegations, okay. And we also have his, and
29 I don't mean this in a bad way, his on the record

1 response as to how the whistleblowers advanced the
2 penalty points complaints to members of the Dáil, okay.
3 So what I am asking you is: was there any sense that
4 in private the former Commissioner was frustrated in
5 any way by what was going on? After all he was running 12:21
6 the police force at the time, and had a lot of very
7 pressing matters to deal with, and he was being asked
8 to account in public in relation to allegations which
9 he thought should be dealt with in another way.

10 A. Yes. No, I never -- Commissioner Callinan never spoke 12:21
11 to me in any derogatory manner around any of the
12 whistleblowers, Maurice McCabe or otherwise. I didn't
13 get a sense of frustration. Indeed, I have seen
14 obviously the assertions or the allegations made by
15 other people. I got no sense of that and to me it 12:22
16 would appear to be out of character with Commissioner
17 Callinan. Some of the words used, don't think they are
18 the type of words that Commissioner Callinan would use.
19 And, as I've said already in my evidence, I think, you
20 know, he remained very, very resilient despite obvious 12:22
21 pressures, and there were pressures obviously much
22 wider than penalty points issues. There was a lot of
23 other pressures around at the time as well, but I think
24 he remained very resilient in relation to that, and
25 very professional. 12:22

26 CHAIRMAN: well, I suppose that is what one might hope
27 for, but we're all subject to doing stupid things from
28 time to time and certainly things crack. And by the
29 way, Commissioner, you know I take the view that people

1 are absolutely entitled to have a view that someone
2 else is a fruit cake or a crack pot, is really ruining
3 my life. I mean, there's nothing wrong with that.

4 A. I appreciate that, I appreciate that, Chairman, but I
5 can only tell you what I saw and I saw first hand in 12:23
6 relation to Commissioner Callinan and I didn't see that
7 frustration or I didn't see that anger. There
8 certainly was concern around the manner in which that
9 private or that personal information was appearing in
10 public and that was his sole concern in relation to 12:23
11 that.

12 360 Q. MS. LEADER: Did Commissioner Callinan speak to you
13 about his meeting with Deputy McGuinness the next day
14 on the 24th January, the car park meeting, as we refer
15 to it? 12:24

16 A. I'm aware of the car park meeting, subsequently. And I
17 was aware subsequently that Commissioner Callinan had
18 met with Deputy McGuinness and I was actually out of
19 the country when that meeting, when that meeting took
20 place, but subsequently I became aware of it. And 12:24
21 certainly there was no indication of the matters that
22 are alleged by Mr. McGuinness.

23 361 Q. When you say subsequently, was it through former
24 Commissioner Callinan you learned of the meeting?

25 A. Oh, yeah, I was aware that there was a meeting and I 12:24
26 was aware that obviously the attempts that were made
27 around Mr. McCabe's appearance, subsequent appearance
28 at the PAC meeting.

29 362 Q. I wonder, do you have any idea of when that was said to

1 you by former Commissioner Callinan?

2 A. I would say pretty soon after. I would have returned
3 obviously to work on the Monday or Tuesday subsequent
4 to it and some time that week I would imagine that I
5 would have been aware of it, yes. As far as I can 12:25
6 remember, that Mr. McCabe was appearing at the PAC
7 meeting that week.

8 363 Q. I think he may have appeared on the following Thursday.

9 A. Potentially, yes. I can't remember off hand, but if
10 you say that I accept it. 12:25

11 364 Q. I think.

12 A. I accept it was within that week, yes.

13 365 Q. What was your impression of what happened at that
14 meeting?

15 A. The? 12:25

16 366 Q. The car park meeting.

17 A. That he had gone to the meeting, that he had -- I
18 actually wasn't aware that it was a car park meeting, I
19 was aware that there was a meeting between
20 Mr. McGuinness and the Commissioner. And that the 12:25
21 issues that I have described, the concerns in relation
22 to Maurice McCabe appearing at the PAC meeting and the
23 potential for, I suppose, information being disclosed,
24 personal information being disclosed.

25 367 Q. Now your report had been published I think it was May 12:26
26 2013, is that right?

27 A. That's correct, yes.

28 368 Q. And you submitted it to the Minister at the end of
29 February or was it March 2013?

1 A. I think it was the end of March 2013.

2 369 Q. The end of March 2013?

3 A. Yes.

4 370 Q. And I think after that you had a conversation with
5 Sergeant McCabe in relation to the matter? 12:26

6 A. That's correct, yes.

7 371 Q. Could you tell the Tribunal about that, please?

8 A. Yes. Sergeant McCabe made contact with my office. I
9 wasn't in the office on the day. I think it was 23rd
10 April of 2013. 12:26

11 372 Q. I think your notes are actually at page 7472, they
12 might assist you.

13 A. I'm quite happy, so far.

14 373 Q. Right.

15 A. I had a conversation with Maurice McCabe subsequently 12:26
16 that evening.

17 374 Q. You returned his calls.

18 A. I recall a call, yes. And he was obviously concerned,
19 he was upset in relation to having not been interviewed
20 in relation to it. I tried to explain to him that my 12:27
21 understanding of the situation and -- just to read them
22 here, and I offered, at that stage, to send somebody to
23 interview him or to talk to him in relation to his
24 concerns.

25 375 Q. You minuted that telephone call? 12:27

26 A. Yes, subsequently, yes.

27 376 Q. All right.

28 CHAIRMAN: And you kind of did it like that, kind of
29 like a script, you had a good enough memory of it.

1 A. Well, I have never intimated that it was a --
2 CHAIRMAN: No, I am not suggesting that it is a --
3 A. That it was --
4 CHAIRMAN: -- phonographic memory type thing.
5 A. No, I wouldn't have a photographic memory, Judge. But 12:28
6 I did my best in relation to it.
7 CHAIRMAN: You did your best.
8 A. The note that is there, I don't think that is my note.
9 MS. LEADER: That is what I was going to ask you.
10 A. Yeah. That is the note of my secretary at the time. 12:28
11 But my note should be attached to that.
12 377 Q. Yes. Did you put him on speaker, is what I am going to
13 ask you?
14 A. No, I didn't. So the secretary was hearing one side of
15 the conversation. 12:28
16 378 Q. Okay.
17 CHAIRMAN: It's a bit odd because there's two sides
18 there, unless your secretary was, whether it is a man
19 or a woman --
20 A. A man, detective sergeant. 12:28
21 CHAIRMAN: -- you had literally your heads together --
22 A. No.
23 CHAIRMAN: -- sandwiching.
24 A. He was sitting at one side of the table. I suppose I
25 should have left the phone on speaker, but I didn't. 12:29
26 CHAIRMAN: Sometimes if you put the phone like that, if
27 it's a good line --
28 A. I appreciate that, but I didn't, yeah, and that was
29 the --

1 CHAIRMAN: So was it kind of holding the phone like
2 this?

3 A. No, I was just holding the phone normally, yeah.

4 379 Q. MS. LEADER: was there any particular reason you
5 minuted the telephone call? 12:29

6 A. Absolutely, yes.

7 380 Q. why was that?

8 A. I suppose, I was aware that more than likely that my
9 conversation had been recorded, from obviously previous
10 issues around Sergeant McCabe. 12:29

11 381 Q. Okay. Were they issues that you discussed with, for
12 instance, Assistant Commissioner Byrne or Chief
13 Superintendent --

14 A. No.

15 382 Q. -- Sheridan or somebody like that? 12:29

16 A. I think I was just aware of them from public knowledge.

17 383 Q. 2013?

18 A. Yes.

19 384 Q. Are you referring there to Mr. Connolly maybe?

20 A. It could be, yeah. I certainly had it, that was my 12:29
21 concern at the time, that they were likely to be, that
22 the conversation was likely to be recorded.

23 385 Q. I am not sure of when it became public knowledge.

24 A. I can't say either, but I'm just giving you what my
25 impression was at the time. I can't say when they 12:30
26 became public.

27 386 Q. Well, I don't think it is any secret at this stage that
28 Sergeant McCabe did record telephone calls.

29 A. Yes, yes.

1 387 Q. But certainly guards who were dealing with Sergeant
2 McCabe during the course of, for instance, Assistant
3 Commissioner Byrne's investigation would have been
4 aware of that, is that right?

5 A. Yeah, and I may very well have been aware of it from 12:30
6 that. But that was my thought process as to why I
7 would note the meeting, yes.

8 CHAIRMAN: will we leave it for an hour and go back to
9 the conversation?

10 MS. LEADER: Yes. 12:30

11 CHAIRMAN: Thank you.

12 THE HEARING THEN ADJOURNED FOR LUNCH

13

14 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH

15 388 Q. MS. LEADER: Mr. O'Mahony, we were dealing with a phone 13:30
16 call you had with Sergeant McCabe on 23rd April 2013,
17 which is recorded in typewriting.

18 A. Yes.

19 389 Q. And you were explaining that you asked a sergeant, your
20 secretary, who is a sergeant in the guards -- 13:30

21 A. Yes.

22 390 Q. -- to transcribe it, and you explained that was because
23 you felt Sergeant McCabe would be recording the call?

24 A. Yes, that there was a potential for that, yeah.

25 391 Q. Yes, a potential for that. And you said you thought 13:30
26 you had heard in public somewhere that Sergeant McCabe
27 recorded calls. But I don't know if you are able to
28 give a specific example of that?

29 A. No, I can't. But I just, as my thought process was

1 that I certainly suspected that the potential for the
2 call to be recorded was there.

3 392 Q. Okay. Well, as far as I know at that time, the
4 Connolly transcript hadn't entered into the public
5 domain until 2014. 13:31

6 A. I'm not aware of that Connolly transcript.

7 393 Q. So it wasn't that --

8 A. No.

9 394 Q. -- knowledge?

10 A. No. 13:31

11 395 Q. And the O'Higgins commission, albeit it was held in
12 private, the matter of tape recording was still to
13 happen in 2013. So I suppose I'm suggesting to you
14 that a likely source of that information was one of
15 your colleagues in the guards. 13:31

16 A. That's very potential, yes, yeah.

17 396 Q. And do you think it was Assistant Commissioner Byrne
18 or --

19 A. I don't believe it was Assistant Commissioner Byrne,
20 but it could have been around his investigation. 13:31

21 397 Q. Okay. Do you think it was Chief Superintendent
22 Sheridan?

23 A. I have -- I honestly can't tell you how I was aware of
24 it. But I certainly was conscious of the fact that
25 calls had been recorded, yes. 13:31

26 398 Q. Okay.

27 CHAIRMAN: There is a bit of an ancient history to this
28 after all, Ms. Leader, as you will remember from the
29 Morris Tribunal.

1 MS. LEADER: Yes.

2 CHAIRMAN: with is quite a long time ago.

3 399 Q. MS. LEADER: I suppose the reason I mentioned Chief
4 Superintendent Sheridan, I think he made a complaint in
5 relation to the recording of calls at some stage, or 13:32
6 meetings, I beg your pardon, meetings.

7 A. He could very well, yes.

8 400 Q. So do you think you discussed it with him at all?

9 A. No, I wouldn't have discussed anything, other than
10 hearing that there was no discussion around taping. 13:32

11 401 Q. All right. So here's the text of the call:

12

13 "Hello, John O'Mahony here. Yes, the assistant
14 commission, you rang earlier on. It is my
15 understanding that last December the Commissioner told 13:32
16 you that you should contact me."

17

18 That is Sergeant McCabe, is that right?

19 A. Yes.

20 402 Q. Saying that. And you say that's: "Not true." Then he 13:32
21 says: "I'm table to talk." Is that right or is that
22 you?

23 A. I can't speak to what it is. It would suggest to me,
24 and what I'm aware of, is that my sergeant at the time
25 had only one side of the conversation and what he could 13:33
26 hear on the phone or not, I don't know. But I wouldn't
27 say he had the whole lot and I think most of that may
28 be my content. But there's another note that I took
29 later on on the day.

1 403 Q. okay. All right. well, maybe we'll -- do you think
2 that's more comprehensive note of the --
3 A. well, it is.
4 404 Q. -- contents?
5 A. Because it doesn't have -- 13:33
6 405 Q. we'll look at that so. So that's at 7474?
7 A. Is it volume 5 as well?
8 406 Q. It's the most recent volume, which is 27 I think.
9 A. Yes.
10 407 Q. "Introduced myself. I referred to call earlier, which 13:34
11 I had missed. He introduced himself as Maurice McCabe
12 who made the original complaints re fixed charge
13 penalties. He wanted to know why he was not
14 interviewed by my investigation team in that regard.
15 He was concerned he hadn't been contacted. He also 13:34
16 referred to me as having had his list of allegations."
17
18 Then in brackets:
19
20 "(First time to be fully aware as to who the author of 13:34
21 the anonymous documents was.)"
22 A. Yes.
23 408 Q. I suppose really that should read first time to receive
24 actual confirmation?
25 A. Yes. 13:34
26 409 Q. You were fairly certain it was Sergeant McCabe at that
27 stage?
28 A. Yes, yeah.
29 410 Q. "I informed him that it was my understanding that I ast

1 December the Commissioner informed him that if he had
2 any concerns in this matter that you should contact me.
3 He stated that this was not true. He went on to say
4 that a chief superintendent told him that he had to
5 contact me first before he could contact anyone else. 13:35
6 I informed him that that was not my understanding of
7 what he had been told. I was not getting into an
8 argument with Mr. McCabe and told him that we would
9 have to agree to differ."

10
11 Then you said to him:

12
13 "As you are aware the report has gone to the Minister,
14 but if you want, I will arrange for you to speak to a
15 member of the investigation team if you have anything 13:35
16 further you wish to offer. Mr. McCabe responded: You
17 have my list of allegations. I stand over them. Tens
18 of thousands of fixed charge penalty notices --"

19
20 Or Sergeant McCabe's, whatever that is. 13:35

21
22 "-- done away with corruptly. He stated he would be
23 concerned if I didn't find the same as what he had
24 found. He didn't want to talk to the investigation
25 team otherwise." 13:35

26 A. That's correct.

27 411 Q. All right. "He went on and talked about the people he
28 had made contact with and provided information to
29 initially, that nobody believed him. I informed him

1 before completing the call that he could contact me at
2 any time and I would arrange for a member of my
3 investigation team to speak with him. I informed him
4 that I had long experience of carrying out inquiries
5 and that I would give him a fair hearing." 13:36

6 A. That's correct, yes.

7 412 Q. Okay. And that's as far as you were concerned. Have
8 you spoken to Sergeant McCabe since then?

9 A. No.

10 413 Q. That was your one conversation with him? 13:36

11 A. That's the one conversation, yes. I would have met him
12 just informally, but not spoken to him.

13 414 Q. Okay. And the handwritten note appears at page 7479 of
14 the materials. Now, I think it's the Gardaí's position
15 that the matter, the word "cooperation" was never 13:36
16 brought into the equation, it was engagement with the
17 O'Mahony investigation, am I correct in saying that?

18 A. Yes, that was my view all along from day one, yes.

19 415 Q. I wonder if we could look at page 7381 of the
20 materials, which I think is also in that volume. And 13:37
21 this is almost a year later, on 24th February 2014.
22 7381.

23 A. Sorry now. Sorry, I have it the wrong way around.
24 7281, yes.

25 416 Q. All right. And you see as I understand this, this is 13:37
26 the text of something RTE put up online on that day in
27 February 2014 in relation to the "cooperation" issue.
28 All right?

29 CHAIRMAN: Yes.

1 417 Q. MS. LEADER: That this is something -- and thereafter
2 there was the broadcast later on in the day as I
3 understand it in or around 5:00pm. Do you see? That's
4 what that document is, along the same lines. And as I
5 understand it, it's Mr. Reynolds who put that together. 13:38
6 You'll see there it says:

7
8 "The Garda Commissioner wrote to the whistleblower,
9 Sergeant Maurice McCabe, 14 months ago and told him to
10 cooperate with the investigation into allegations that 13:38
11 the penalty points had been cancelled. Martin Callinan
12 issued a direction to the Sergeant and on 14th December
13 2012 to cooperate with the investigation being carried
14 out by the Assistant Commissioner John O'Mahony and
15 directing him to bring any information or concerns he 13:38
16 had to the inquiry."

17
18 Then it says:

19
20 "An Garda Síochána is a disciplined force and members 13:39
21 are required to comply with directions issued by the
22 Commissioner. It is understood that Sergeant McCabe
23 may have been on sick leave for a number of months from
24 December 2012 and did not contact the Assistant
25 Commissioner until April of 2013, by which time the 13:39
26 investigation had been completed. Assistant
27 Commissioner O'Mahony told the Public Accounts
28 Committee that he was contacted on April 13th after he
29 had forwarded his investigation report to the Minister

1 for Justice. The Assistant Commissioner said he asked
2 the Sergeant if he had any information for him and
3 offered to sit down with him and give him a fair
4 hearing. The Commissioner also told the Committee last
5 month that Sergeant McCabe has had ample opportunities 13:39
6 to come forward with any complaints.

7
8 Gardaí also say allegations of neglect of duty, which
9 the Taoiseach has described as grave and had been
10 handed to him by the Fianna Fáil leader, Micheál 13:40
11 Martin, had been previously investigated."

12
13 And then there is reference to the Assistant
14 Commissioner Byrne's file and an investigation by GSOC.
15 You will just see there, in relation to the penalty 13:40
16 points issue and the cooperation issue that would
17 appear to be information coming from An Garda Síochána.
18 It refers to your address to the Public Accounts
19 Committee or information given by you and also in
20 relation to the direction Commissioner Callinan gave to 13:40
21 Sergeant McCabe. You'll see that there.

22 A. That is potential. I'm also just conscious of the fact
23 that a lot of what is here would have been talked about
24 at the Public Accounts Committee.

25 418 Q. It directly refers to that. 13:40

26 A. Yes, yeah.

27 419 Q. That you were in the Public Accounts Committee.

28 A. But I haven't seen this document and I am not aware
29 where it is coming from and I certainly haven't seen

1 any of the contents of it.

2 420 Q. As I understand it, this document comes from RTÉ and as
3 I understand it, and I'm sure Mr. Gillane will correct
4 me if I am wrong, it is the text of what was put up
5 online in relation to the cooperation issue on 24th 13:41
6 February 2014, which subsequently formed part of a
7 broadcast later on that day by Mr. Reynolds.

8 A. Okay.

9 421 Q. That's my understanding of the document.

10 A. Okay, yes. 13:41

11 422 Q. So --

12 A. It's certainly not a document that I have any knowledge
13 of prior to this Tribunal.

14 423 Q. All right. Okay. And maybe you weren't listening to
15 the news that day on 24th February when it was actually 13:41
16 broadcast, that's --

17 A. I certainly have no recollection of it, yeah.

18 424 Q. Yes. So --

19 A. And it wouldn't be my view either in relation to what
20 had actually happened. 13:41

21 425 Q. Well, that's what I was asking you. You weren't the
22 source of this information?

23 A. Absolutely not.

24 426 Q. Did you speak to Mr. Reynolds about it?

25 A. Never. 13:42

26 427 Q. And you're happy to answer that question openly to the
27 Tribunal?

28 A. Absolutely, yes.

29 428 Q. Okay. So it isn't your view, but there's a lot of

1 accurate information in that broadcast, is that
2 correct?

3 A. I accept that, yes.

4 429 Q. And in relation to -- do you take issue with anything
5 that's in that document? 13:42

6 A. When you say take issue?

7 430 Q. Do you disagree with anything? I'll just give you --

8 A. Yeah, "I told him to cooperate with the investigation
9 into allegations that penalty points had been
10 cancelled", that's not my understanding of what the 13:42
11 document --

12 431 Q. Okay.

13 A. He was asked if he had any issues that he wished to
14 discuss that he would bring them to a meeting and I
15 would investigate them. 13:42

16 432 Q. All right, okay.

17 A. And the second paragraph indeed as well is the same:
18 "Has issued a direction to the Sergeant to cooperate
19 with the investigation."

20 433 Q. Yes. So it's with the -- 13:42

21 A. The direction was to cease --

22 434 Q. And to speak to you, if he had any --

23 A. Yes. To cease accessing personal information on Pulse
24 and disseminating it. And then the other question was
25 asking him to cooperate if he had any issues, or not to 13:43
26 cooperate, but to contact me if he had any issues.

27 435 Q. And if you could now turn to page 3031 of the
28 materials, which is in volume 11. I'm sorry that there
29 is switching around.

1 A. Three zero?

2 436 Q. Three one, in volume 11.

3 A. Yes, it's a statement of Sergeant Maurice McCabe?

4 437 Q. Yes. And that's his press release, his statement, in
5 answer to the earlier, to the broadcast on RTÉ, the one 13:44
6 that I just brought to your attention, as I understand
7 it, that's what prompted this statement.

8 A. Yes.

9 438 Q. All right. And you'll see his -- he sets out what, in
10 his eyes, happened. He says: 13:44
11
12 "I was never directed by the Commissioner to cooperate
13 with the O'Mahony investigation as alleged."
14
15 And he explains that he was: 13:44
16
17 "-- asked to stay back after duty in Mullingar Garda
18 station to meet with Chief Superintendent Curran. He
19 read out a document."
20 13:44
21 which we have gone through earlier on.
22
23 "A full record of what transpired and it is attached to
24 this statement. As appears from the record, the chief
25 superintendent refused my request to furnish me a copy 13:44
26 of that document. I presume that was in accordance
27 with his superior's instructions. The fact that I was
28 denied a copy of the direction may have encouraged the
29 author of the statement issued today about me to

1 grossly misrepresent the terms of the Commissioner's
2 directions as read out to me and as recorded by me."

3

4 So you see the point, Sergeant McCabe --

5 A. I do, yes.

13:45

6 439 Q. -- is making there?

7 A. Yeah.

8 440 Q. That his view on it was that the statement I read out
9 just after lunch was the Garda view of matters. But
10 you wouldn't have agreed with the first two paragraphs
11 of that?

13:45

12 A. I don't agree with that.

13 441 Q. All right. And he's saying:

14

15 "I was never contacted by anyone conducting the
16 O'Mahony investigation, which completed its report
17 without making any attempt to speak with me or to seek
18 my input or cooperation into its inquiries."

13:45

19

20 And it continues on:

13:45

21

22 "He never withheld any information or cooperation."

23

24 Then he refers to:

25

13:45

26 "-- the report having been completed without making any
27 attempt at all to contact me. I protested at what
28 happened, as the record shows. At that point I was
29 offered a totally meaningless opportunity to speak with

1 Assistant Commissioner O' Mahony. "

2

3

And I'll just finish that off:

4

5

"As a member of An Garda Síochána I have tried to uphold its integrity by complying with my duty and being truthful in my dealings with my superiors and with the public officeholders with whom I had known dealing with in relation to these matters."

13:46

10

13:46

11

Have you seen that before today? Were you familiar with it?

12

13

A. I think it has been already opened in this Tribunal and that's where I would -- yeah.

14

15

442 Q. This is a document from your, the Garda Síochána Press Office on the spotlight system. That's where the Tribunal received it.

13:46

16

17

18

A. From the Garda Síochána?

19

443 Q. Yes, from the spotlight system.

20

A. This document? No, I --

13:46

21

444 Q. This statement by Sergeant McCabe.

22

CHAIRMAN: In other words, it's the Garda Press Office that had it.

23

24

445 Q. MS. LEADER: It's the Garda Press Office. It was appended to, if you go forward --

13:46

25

26

A. Sorry, yes. No, I am not aware of where it was, where it came from and I am not aware of it being in the Garda organisation. But I am aware of it from the Tribunal here.

27

28

29

1 446 Q. From the Tribunal. Were you aware of it before the
2 Tribunal?
3 A. No.
4 447 Q. No. All right. Well, I suppose I was really wondering
5 why, when you were on the phone to Sergeant McCabe the 13:47
6 previous year in 2013, why didn't you explain to him
7 why you didn't interfere view him, as you have
8 explained to us here today?
9 A. I think if I had got the opportunity in relation to the
10 phone call that I would have certainly. And certainly 13:47
11 face-to-face I would have done it with him. I had no
12 reason not to do it, to do that.
13 448 Q. Well, that's exactly the point I suppose, that there
14 was no reason not to do it. And you were returning a
15 call to him. 13:47
16 A. That's right, yes.
17 449 Q. It was under fairly controlled circumstances insofar
18 as --
19 A. Yes.
20 450 Q. -- it was being recorded, and I don't mean tape 13:47
21 recorded at that time, but it was being recorded by a
22 sergeant. And you see the first thing he says -- and
23 just looking at the notes of it:
24
25 "It is my understanding that last December the 13:48
26 Commissioner told you that you should not contact me."
27
28 why not say at that stage, well, I don't believe that,
29 but I actually myself decided not to contact you?

1 A. Yeah, I didn't obviously, but that was, there was no
2 reason for not doing it. Probably if I had more time
3 on the phone with Maurice I certainly would have had
4 that discussion with him.

5 451 Q. Okay. Well, there was no particular rush in that 13:48
6 telephone call conversation, was there? I mean, there
7 was no suggestion of slamming down the line, the phone
8 or anything like that?

9 A. The issue was that I was obviously anxious that if I
10 had the opportunity to talk to him, but you will see at 13:48
11 the end of the conversation where he was maintaining
12 around the allegations that he had made and that he
13 didn't want to speak with us unless those allegations
14 were -- that the allegations that he had made, that I
15 found the same in my investigation. 13:48

16 452 Q. As I understand it, your attitude was at the outset of
17 your investigation that I have the allegations, I have
18 all the information on the Pulse system --

19 A. Yes.

20 453 Q. -- or on whatever other computer system you were 13:49
21 referring to, that I need to investigate these properly
22 and I can interview any person who cancelled a fixed
23 charge penalty notice and none of those people are
24 Sergeant McCabe or the whistleblowers if with deal with
25 it on an anonymous level? 13:49

26 A. Yes.

27 454 Q. That's your thinking about it?

28 A. Yes.

29 455 Q. So why not just explain when Sergeant McCabe was

1 phoning you all of that and just set out exactly your
2 thinking in relation to it, instead of maybe engage on
3 pointless discussion about a direction that had been
4 given to him the previous, that you weren't a party to?

5 A. I wouldn't have seen it as pointless discussion -- 13:49

6 456 Q. Right, okay.

7 A. -- at the time in relation to the thing. Because the
8 reality was that he had been asked to cooperate with
9 the thing and he hadn't engaged and that was a
10 significant point for me in relation to him, to my 13:50
11 thought process in relation to why I may not have gone
12 to him as well, you know. So.

13 457 Q. Well, as I understood it, it was irrelevant. That's
14 why you came to your conclusion about not speaking to
15 him, but -- 13:50

16 A. To actually speak to him?

17 458 Q. Yes.

18 A. Yeah, and I've outlined that in my statement of 7th
19 April 2017, yes.

20 459 Q. Yes. 13:50

21 A. Yeah.

22 460 Q. All right.

23 A. But having said that, if he had come to me and if he
24 was willing to talk, I certainly would have sat down
25 and talked with him, or had somebody from my team talk 13:50
26 with him. And I made that clear in that conversation.

27 461 Q. Okay. Just in relation to Paul Williams, the
28 journalist, I think you told the investigators that you
29 know Mr. Williams, is that correct?

1 A. Absolutely, yes.

2 462 Q. And is that through your years as a --

3 A. Through my years --

4 463 Q. -- guard?

5 A. -- initially as a member of An Garda Síochána, yeah, 13:51

6 going back to 1996 actually when the Veronica Guerin

7 investigation, and you will recall that he was a

8 witness in that investigation. And that's how I got to

9 know him initially. He is also, we have a mutual

10 friend who, that was another reason as to how I would 13:51

11 know him. And I would also have had obviously

12 professional dealings with him from 2011 on around

13 security issues, day-to-day security issues from that.

14 And that personal relationship was, there was obviously

15 barriers around that in relation to Mr. Williams and 13:51

16 neither of us ever discussed any matters informally or

17 anything like that, that was an agreement between us.

18 Because I couldn't have had that friendship if that was

19 the -- if it was otherwise, if it was to be otherwise.

20 464 Q. Okay. I don't want to get into the detail of matters 13:52

21 in relations to security issues but they were

22 Mr. Williams' security issues, is that correct?

23 A. Oh, absolutely, yes.

24 465 Q. And you say that's from 2011?

25 A. 2011 on, yes. 13:52

26 466 Q. All right. And was that as part of your role in being

27 assistant commissioner?

28 A. As the assistant commissioner, Crime and Security, that

29 was one of my areas of responsibility, yes.

1 467 Q. All right. And do you recall any particular matter in
2 relation to security issues being of concern in
3 February, March or April 2014?
4 A. I can't say that there was, no.
5 468 Q. Okay. And you're certain of that, are you? 13:52
6 A. I just, I am not certain, but I know that there were
7 issues around October of '13, whether they continued or
8 not after that I just can't say.
9 469 Q. And in 2014 you were assistant commissioner in Crime
10 and Security, is that right? 13:53
11 A. I was, yes.
12 470 Q. And would you expect you would have been told about,
13 just on two levels, if there was an organisational
14 concern with regard to Paul Williams' security issues
15 or if Paul Williams, as a friend of yours, had a 13:53
16 security issue problem, would you expect to have heard
17 about it?
18 A. Yes, I would, yes. And just, offhand I can't recall
19 what specific dates, but there was particular, there
20 was a particular, I suppose something happened in 13:53
21 October 2013 which probably continued into 2014, but I
22 just can't recall it now as to the specifics of that or
23 whether I would have spoken to him at that time in
24 relation to it.
25 471 Q. Okay. Now, I think you said to me earlier on this 13:53
26 morning that it was only when the article in relation
27 to Mr. Williams' interview with Ms. D appeared in April
28 of 2014 that you realised it was that Ms. D's father
29 was a guard; am I right in that?

1 A. No, I think you asked me did I know --

2 472 Q. Yes.

3 A. -- the guard. And I wouldn't have known --

4 473 Q. You wouldn't?

5 A. -- who he was. But did I know that he was a guard? 13:54

6 Yeah, I believe that prior to that I would have known

7 that he was a guard. But not a name or anything like

8 that.

9 CHAIRMAN: It's not important, but in fact it was the

10 opposite; you said this morning, you said, yeah, you 13:54

11 knew about the allegation had gone to the DPP but --

12 A. No, I knew about the allegation, yes.

13 CHAIRMAN: As for the father of the alleged victim

14 being a garda, no, you didn't know that and you thought

15 it had come to your attention in or around the time of, 13:54

16 not necessarily through the Paul Williams articles in

17 April '14.

18 A. Yeah, I think that's probably correct, Chairman, yeah.

19 474 Q. MS. LEADER: Did you read the article that Paul

20 Williams wrote? 13:55

21 A. Oh, God. Em...

22 475 Q. Well, there were a number of articles, but say the

23 first one is on 12th April.

24 A. Yeah, I can't --

25 476 Q. 2014. 13:55

26 A. I probably did. I would imagine that I would have read

27 those articles, yeah. But to recall them now, I just

28 can't.

29 477 Q. All right. Did you ask Mr. Williams about them?

1 A. No, absolutely not.

2 478 Q. Was that a rule you had?

3 A. Absolutely, yes, yeah.

4 479 Q. In relation --

5 A. Yeah. 13:55

6 480 Q. Do you know Superintendent O'Reilly?

7 A. I do, yes.

8 481 Q. And curiously, Superintendent O'Reilly says he knows
9 Paul Williams initially through security matters that
10 he had to deal with in relation to Mr. Williams' 13:55
11 personal affairs.

12 A. Yes.

13 482 Q. Did you at any time discuss matters with Superintendent
14 O'Reilly relating to either the Ms. D article, Ms. D or
15 the article Paul Williams had written? 13:56

16 A. No.

17 483 Q. You're satisfied of that?

18 A. 100%, yes. No.

19 484 Q. When did you find out about the Tusla notification?

20 A. The programme on, I think was it January '17, am I 13:56
21 right? Whenever the --

22 485 Q. You were still in the guards at that stage?

23 A. Yeah, I was at home, I was sitting at home, yeah.

24 486 Q. And you were on the senior management team?

25 A. That's right, yes. 13:56

26 487 Q. And were you involved in getting together information
27 in order to answer Sergeant McCabe's questions in
28 February of 2017 --

29 A. No.

1 488 Q. -- in relation to the Tusla notification?
2 A. No.
3 489 Q. And did you discuss it at all with anybody who was
4 involved in it?
5 A. No. I had no dealings at all with the Tusla 13:56
6 investigation.
7 MS. LEADER: If you'd answer any questions anybody else
8 has.
9 A. Thank you.
10
11 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. McDOWELL, AS
12 FOLLOWS: 13:57
13 490 Q. MR. McDOWELL: Thanks, Assistant Commissioner O'Mahony.
14 Michael McDowell is my name and I am one of the counsel
15 representing Sergeant McCabe. At the outset you have 13:57
16 used the phrase here that letters were sent to Sergeant
17 McCabe in December 2014.
18 A. No.
19 491 Q. I just want to put to you that the true situation is
20 that Sergeant McCabe was summoned to a meeting and a 13:57
21 direction was read to him. Is that your understanding?
22 A. Yeah, I think first and foremost it's 2012.
23 492 Q. Sorry, 2012, I beg your pardon.
24 A. Yeah, 2012. I suppose my understanding was that there
25 were letters sent to him, but I'm aware now from the 13:57
26 Tribunal and that that, that these letters were read
27 over to him.
28 493 Q. Well, a direction was read over to him.
29 A. Yes. Sorry, the word maybe should be a direction. My

1 use of letters is --

2 494 Q. And that he asked for a copy of them. You're aware of
3 that?

4 A. I'm aware of that now, yes.

5 495 Q. And he was refused a copy of them, isn't that right? 13:58

6 A. Yes. I've read that, yeah.

7 496 Q. And I won't waste time, but all of this is recorded in
8 a tape recording he had of the meeting --

9 A. Yes.

10 497 Q. -- with the chief superintendent who read him the 13:58
11 directions, isn't that right?

12 A. Yes.

13 498 Q. So going back to what appears on page 7381, if we could
14 have that on the screen again?

15 A. What volume is that again? 13:58

16 499 Q. The statement - "The Garda Commissioner wrote to the
17 whistleblower Sergeant Maurice McCabe 14 months ago and
18 told him to cooperate with the investigations into
19 allegations that penalty points had been cancelled" -
20 that's entirely untrue, isn't it? Every single bit of 13:59
21 that is untrue? A direction was read to him in a
22 station, but it didn't did not tell him to cooperate.

23 A. I have already stated that to Ms. Leader, yes. That's
24 not my understanding of that, of the letter that was
25 sent. 13:59

26 500 Q. And just scrolling back up again there, the second
27 paragraph is incorrect as well:
28
29 "Martin Callinan issued a direction to the Sergeant on

1 14th December 2012 to cooperate with the investigation
2 being carried out by Assistant Commissioner John
3 O'Mahony and directing him to bring any information or
4 concerns he had to the inquiry team."

14:00

6 That's untrue as well.

7 A. Yeah, that's not my understanding of what happened.

8 501 Q. The next paragraph is:

10 "The Garda Síochána is a disciplined force and members
11 are required to comply with directions by the
12 Commissioner."

14:00

14 And that's true.

15 A. Yes.

14:00

16 502 Q. Well, it's supposed to be true. But in any event,
17 isn't that right?

18 A. That's the idea.

19 503 Q. And the next point is that:

21 "He did not contact the Assistant Commissioner until
22 April of 2013, by which time the investigation had been
23 completed."

14:00

25 Now, where did that information come from for that
26 statement to be issued to RTÉ?

14:00

27 A. I cannot say.

28 504 Q. Well, could you -- I mean, put it this way: You are an
29 assistant commissioner intimately involved with the

1 subject of this news item and I'm just wondering how
2 could that possibly have been issued without somebody
3 coming to you and asking you to give them an account of
4 your dealings with Sergeant McCabe?

5 A. I didn't have any dealings with Maurice McCabe in 14:01
6 relation to his sick leave.

7 505 Q. No, but when you did have dealings on the telephone and
8 your sergeant made a note of what you said.

9 A. Yeah, I don't believe that refers to my telephone
10 conversation. 14:01

11 506 Q. Well, "until April of 2013, by which time the
12 investigation had been completed."

13 A. Yeah.

14 507 Q. How did anybody know that he had rung you up in April
15 2013? 14:01

16 A. How did -- I would have spoken at the PAC meeting in
17 relation to that.

18 508 Q. At the PAC meeting?

19 A. Yes.

20 509 Q. I see. And you told the PAC, the Public Accounts 14:01
21 Committee that -- what did you say about Sergeant
22 McCabe?

23 A. At the Public Accounts Committee?

24 510 Q. Yes.

25 A. If I can have the document? I was asked a question by 14:02
26 one of the deputies in relation to --

27 CHAIRMAN: Do your best just to remember, because as
28 we, we know there's five hours of it.

29 A. From memory, I was asked by the, by one of the

1 deputies, one of the members of the PAC committee in
2 relation to Maurice McCabe as to had I interviewed him
3 and I stated that I didn't interview him. And I think
4 I was asked had I spoken to him and I informed the
5 committee that I had spoken to him on the telephone on 14:02
6 23rd April.

7 511 Q. MR. McDOWELL: I see. You see, I think you'd agreed
8 with me that the bits that are there on the screen that
9 we've read out strongly suggest that Sergeant McCabe
10 had been directed to contact you, had failed to do so 14:03
11 due to illness and then only contacted you after you'd
12 completed your functions. Isn't that the impression
13 that that gives?

14 A. That is, yes.

15 512 Q. And in fact that was, as the next paragraph shows: 14:03
16
17 "Assistant Commissioner O'Mahony told the Public
18 Accounts Committee he was contacted on April 13th after
19 he had forwarded his investigation report to the
20 Minister for Justice." 14:03

21
22 Now, if I just stop there.

23 A. Sorry, can I get, what volume is that? Because it's
24 not here.

25 513 Q. Sorry, this is on your screen, it should be on your 14:03
26 screen.

27 CHAIRMAN: It's 7381, so that would bring you to Volume
28 27.

29 A. Yes.

1 514 Q. MR. McDOWELL: Then he says:
2
3 "Assistant Commissioner O'Mahony told the Public
4 Accounts Committee that he was contacted April 13th
5 after he had forwarded his investigation report to the 14:04
6 Minister for Justice. The assistant commissioner said
7 he asked the sergeant if he had any information for him
8 and offered to sit down with him and give him a fair
9 hearing."
10 A. Yes. 14:04
11 515 Q. Well now, did you offer to sit down with him?
12 A. I offered to -- as I've said already, I offered to send
13 somebody from my investigation team to speak with him.
14 516 Q. But that's not correct, that you offered to sit down
15 with him and give him a fair hearing after you'd sent 14:04
16 the report.
17 A. That's obviously an interpretation from whoever wrote
18 that document. I haven't --
19 517 Q. Put it this way --
20 A. I have no knowledge of who wrote that document. 14:05
21 518 Q. -- if whoever put that into the public domain had take
22 answer half a minute to check the facts with you,
23 nothing like that would ever have been published by
24 RTÉ, isn't that right?
25 A. Potentially, yes. 14:05
26 519 Q. And however we read the direction of December 2012, I
27 think you'd agree with me that that report gave a
28 deeply unfavourable impression of Sergeant McCabe?
29 A. This report?

1 520 Q. That news report, yes.

2 A. Yeah. Well, again I'm not aware of the provenance of
3 this.

4 CHAIRMAN: Don't worry, just imagine you are an
5 ordinary person, you are sitting at home and -- 14:05

6 A. If I was reading that, yes.

7 CHAIRMAN: You'd say this is a guy who makes an awful
8 fuss but he doesn't cooperate with his superior
9 officers notwithstanding his directions, yes. That
10 seems to be the tenor of it. 14:06

11 A. That's right, yes.

12 521 Q. MR. McDOWELL: You see the point I am making to you is
13 that it does appear that somebody was spinning a deeply
14 unfavourable story about Sergeant McCabe to RTÉ on that
15 day on 24th February 2014. 14:06

16 A. Potentially, yes.

17 522 Q. Well, I mean, being fair to Mr. Reynolds and assuming
18 that he didn't decide to manufacture this story by
19 himself, it does appear that somebody in An Garda
20 Síochána with some knowledge of the background facts 14:06
21 decided to paint a very poor picture of Sergeant McCabe
22 in order that RTE would misrepresent the situation to
23 the public.

24 A. That is potential, yes.

25 523 Q. It doesn't seem to have any other possible 14:06
26 interpretation, does it?

27 A. I agree with you, yes.

28 CHAIRMAN: Well, there's always the famous quote from
29 Raymond Chandler, Mr. McDowell - "As usual the

1 newspapers came close, about as close as Mars is to
2 venous."

3 MR. McDOWELL: Yes. Well, I'm being fair to
4 Mr. Reynolds on this occasion and thinking that he
5 didn't decide just to spin all the facts himself
6 against the Gardaí, or against Sergeant McCabe. 14:07

7 524 Q. So I have to ask you, at that time when the question of
8 cooperation or non-cooperation was --

9 CHAIRMAN: In other words, sorry, I didn't mean to, I
10 didn't mean to add in that quote, but in any event, 14:07
11 what you are being asked about is, look, Mr. Reynolds,
12 you probably know him, you probably respect him, he is
13 a decent individual --

14 A. Absolutely. Yes.

15 CHAIRMAN: -- we all know that and he tries his best, 14:07
16 so we know he wouldn't make this stuff up. So clearly
17 somebody had to spin this stuff to him. And it's
18 indicative, possibly, of someone in Garda Headquarters
19 or possibly an attitude in Garda Headquarters of taking
20 every possible opportunity to do him down, including, 14:08
21 it only needs a few twists of the facts, you know, to
22 make something that may appear on the surface that's
23 right, that's right, but unfortunately the twisted
24 facts may turn the thing into a totally different
25 complexion. That's the point being made to you. 14:08

26 A. Yes. And I appreciate that, yes.

27 525 Q. MR. McDOWELL: You see, what I was going to also ask
28 you is: At that time the question of whether or not
29 Sergeant McCabe had cooperated with your investigation

1 was a matter of some heightened political sensitivity,
2 it had been raised at the Public Accounts Committee as
3 an issue, isn't that right? We're now on 4th
4 February --

5 A. Yeah.

14:09

6 526 Q. -- and almost a month before the issue had arisen at
7 the Public Accounts Committee.

8 A. 23rd January, yeah.

9 527 Q. And I think Minister Shatter had previously informed
10 the Dáil that Sergeant McCabe hadn't cooperated with
11 the committee, isn't that right?

14:09

12 A. That's correct, yes.

13 528 Q. So I have to suggest to you that it's strange that
14 there was no conversation between yourself,
15 Commissioner Callinan, Mr. McLindon and Superintendent
16 Taylor about what the real facts were and what the true
17 situation was in respect of the non-cooperation
18 allegation.

14:09

19 A. No, I can say that I certainly had no conversation of
20 that nature with anybody.

14:09

21 529 Q. It was a matter of importance to An Garda Síochána.

22 A. It was certainly, it certainly is from what you're
23 saying there in relation to this document. But I'm not
24 aware of this document in relation to its provenance or
25 to its, or when it was issued. I have only become
26 aware of this document very recently.

14:10

27 530 Q. The point that I'm making is that, and I'm putting it
28 to you that it is strange that nobody had a meeting in
29 the Phoenix Park to work out whether the allegation of

1 non-cooperation was true or false before any further
2 ministerial or press releases were issued on the
3 matter.

4 A. I don't think there was any -- I'm not aware of any
5 press release being issued in this matter. 14:10

6 531 Q. I see. Well, you are aware that Minister Shatter
7 had --

8 A. Because certainly --

9 532 Q. -- informed the Dáil that Sergeant McCabe hadn't
10 cooperated, isn't that right? 14:11

11 A. Yeah. It wasn't my view or it wasn't Commissioner
12 Callinan's view that there was non-cooperation.

13 533 Q. I see.

14 A. And I don't ever remember that being mentioned.

15 534 Q. I see. So you are saying that Commissioner Callinan 14:11
16 didn't believe that there was a lack of cooperation
17 between Sergeant McCabe and your investigation?

18 A. I never recall Commissioner Callinan mentioning the
19 word non-cooperation.

20 535 Q. I see. Well now, in relation to the preparatory 14:11
21 meetings for the Public Accounts Committee, did the
22 question of whether or not Sergeant McCabe had had any
23 input into your deliberations arise?

24 A. It did, yes.

25 536 Q. And in what context did it arise? 14:12

26 A. As part of the preparation for the PAC meeting. And
27 I've already gone through it with Ms. Leader this
28 morning.

29 537 Q. So the Commissioner was present when the matter was

1 discussed, is that right?

2 A. Again I assume that he was. I think that he would have
3 been chairing all of those meetings.

4 538 Q. So he would have been aware that there was no question
5 of non-cooperation? 14:12

6 A. I don't think that he was -- that he ever held a view
7 contrary to that.

8 CHAIRMAN: I'm not sure that anybody at the PAC on the
9 Garda side said he never cooperated.

10 MR. McDOWELL: No. I think it was the Minister and the 14:13
11 subsequent RTÉ broadcast that had that spin on it.

12 CHAIRMAN: But do you accept this thing had to come
13 from Garda Headquarters?

14 A. I don't know, because I don't know the provenance of
15 it. 14:13

16 CHAIRMAN: well, none of us do. And we may not be
17 likely to find out either.

18 A. And as I have said there is a potential, but to say
19 that I accept, I don't know.

20 MR. McDOWELL: Just going back to the text from the 14:13
21 former Commissioner Callinan to yourself the day after
22 his resignation, which is in volume 17 at page 4615.

23 A. Yes.

24 539 Q. And this is at item 28. That appears, I think you
25 agreed today, most likely to be Martin Callinan texting 14:14
26 you, perhaps ruefully commenting:
27
28 "More should have been done by investigation. Minister
29 apologised to whistleblowers and for misleading the

1 Dáil on cooperation issue."

2 A. That's correct, yes.

3 540 Q. Have you no recollection of receiving that text?

4 A. I don't recollect actually specifically receiving that
5 text. But it sounds very like something that would 14:14
6 be -- certainly something that would be of relevance to
7 me.

8 541 Q. But this was a man who had 24 hours earlier, or 36
9 hours earlier, announced his resignation, or his
10 retirement from the position of Commissioner and he's 14:14
11 texting you and pointing out that the Minister had
12 apologised to the whistleblowers on that day in the
13 Dáil for misleading them in relation to non
14 co-operation.

15 A. Yes. 14:15

16 542 Q. And does it now, in the cold light of day, look like a
17 recrimination against you or just purely --

18 A. No, I don't believe that.

19 543 Q. -- an expression of that's life?

20 A. I think he was informing me of what the Minister had 14:15
21 said.

22 544 Q. But what's the phrase "more should have been done by
23 investigation"?

24 A. That's probably what -- I think what the -- it's
25 probably a synopsis of what the Minister said. 14:15

26 545 Q. I see. So you think that was purely just delivering
27 you information rather than --

28 A. That's my reading of it, yes.

29 546 Q. -- recriminating with you in any way?

1 A. I don't believe so, no. Because it has never been
2 mentioned in any other -- any encounter I have had with
3 Commissioner Callinan he's never mentioned it. I don't
4 think that's his view.

5 547 Q. Now, I think you've indicated fairly to Ms. Leader just 14:16
6 now that you had a social friendship with Paul
7 Williams, is that right?

8 A. That's correct, yes.

9 548 Q. And none of this is to cast anything in a bad light,
10 but my instructions are that you and he and a group of 14:16
11 others had a sort of an informal arrangement to meet
12 weekly for drinks in the Dublin area and were known to
13 be a fairly regular item, if I could use that phrase.
14 Would that be fair?

15 A. There was never an arrangement to meet weekly. 14:16
16 Mr. Williams lives in the locality of where I live and
17 we would meet on and off. But very rarely was it an
18 organised meeting.

19 549 Q. Well, just for the record, my instructions are that --

20 A. No, I appreciate that. 14:17

21 550 Q. -- that it was a noted --

22 CHAIRMAN: Yes, we don't --

23 551 Q. -- regular occasions?

24 CHAIRMAN: We don't have to mention places or anything.
25 Because there are security concerns I'm sure. 14:17

26 MR. McDOWELL: But in any event --

27 CHAIRMAN: But it wasn't a group of pals, like after
28 work every Friday?

29 A. No.

1 CHAIRMAN: But on occasion, I presume, that would?
2 A. It was on occasion, yes. But nothing --
3 552 Q. MR. McDOWELL: I mean. It wasn't a secret society or
4 anything like that?
5 A. I would hope not, Mr. McDowell. 14:17
6 553 Q. So --
7 CHAIRMAN: I presume it just wasn't the two of you,
8 there were other people?
9 A. Oh no, there would have been other people, yeah.
10 554 Q. MR. McDOWELL: So what I'm asking you is, in the period 14:17
11 up to the publication by Paul Williams of his articles,
12 which was in 2014, Sergeant McCabe's name was on the
13 lips of a lot of people at that time arising out of the
14 Public Accounts Committee, the charge of
15 non-cooperation, Prime Time programmes and the like; 14:18
16 surely Mr. Williams would have, on occasion, discussed
17 informally Sergeant McCabe with you at that time?
18 A. No.
19 555 Q. Well, then when he published his article, the first of
20 his articles, you were in receipt every day, were you 14:18
21 not, of press clippings in your --
22 A. Yes.
23 556 Q. -- your role as Assistant Commissioner --
24 A. Yes.
25 557 Q. -- and I take it that you had no difficulty in 14:19
26 identifying Sergeant McCabe as the unnamed member of An
27 Garda Síochána to whom his first article referred?
28 A. More than likely, yes, I would imagine, yes. I don't
29 -- again I just can't recall the specifics of that

1 article.

2 558 Q. But you do recall there was a series of articles?

3 A. Yes. Well, again I recall one article certainly.

4 559 Q. Yeah. There was a series of articles, escalating to
5 meetings with Mícheál Martin and meetings with the 14:19
6 Taoiseach and complaints to GSOC and the like, isn't
7 that right?

8 A. That's right, yes.

9 560 Q. And this was, this concerned a man who, in relation to
10 whom it had been suggested that he had not cooperated, 14:20
11 publicly suggested that he had not cooperated with your
12 inquiry, your investigation, isn't that right?

13 A. That's right, yes.

14 561 Q. And surely you must have absorbed Mr. Williams'
15 articles and realised their import from the point of 14:20
16 view of Sergeant McCabe and from the point of view of
17 An Garda Síochána?

18 A. I never discussed with Paul Williams any article that
19 he wrote, either about Maurice McCabe or about anybody
20 else. 14:20

21 562 Q. Did you discuss his articles with any other member of
22 An Garda Síochána?

23 A. No.

24 563 Q. So you knew that he was writing articles about Ms. D
25 and about her intention to have the manner in which her 14:21
26 original allegation was investigated reopened, that she
27 was intent on bringing it to the attention of senior
28 political figures, including the leader of the
29 opposition and the Taoiseach and GSOC, and you never

1 discussed that with any other member of An Garda
2 Síochána?

3 A. No.

4 564 Q. Have you a reason for that?

5 A. Sorry? 14:21

6 565 Q. Have you a reason why you wouldn't discuss those
7 articles with anybody else?

8 A. It wasn't my business, the Ms. D allegation had been
9 investigated, my understanding was that it was, that
10 there was nothing in it and I didn't see any reason. 14:21
11 Everybody else had read it as well, I presume.

12 566 Q. Well, if that was your understanding, that there was
13 nothing in the allegation, surely at the very least
14 your reaction to his articles would be this is
15 extremely unfair on Sergeant McCabe? 14:22

16 A. I'm not -- again in relation to it, I think the
17 emphasis of the article was more in relation to the
18 investigation itself and the lack after proper
19 investigation. That's my understanding of it.

20 567 Q. But it was more than that, it was an allegation of 14:22
21 indecent assault and it was an allegation of a cover
22 up.

23 A. But I don't believe that there was any mention of
24 Sergeant McCabe in those articles.

25 568 Q. Exactly. But you knew that they referred -- 14:22

26 A. Yes.

27 569 Q. -- to Sergeant McCabe.

28 A. Mm-hmm.

29 570 Q. And are you saying that it wasn't unfair to Sergeant

1 McCabe because his name wasn't mentioned, is that your
2 point?

3 A. You are asking me the question as to why I wouldn't
4 have discussed it with any other member of the Garda
5 Síochána.

14:23

6 571 Q. No, I was asking you -- I had taken your answer on
7 that. But I was asking you did you not consider that
8 the articles were extremely unfair on Sergeant McCabe,
9 bearing in mind that it was your view that there was
10 nothing in these allegations?

14:23

11 A. Potentially, yes.

12 572 Q. And even still you didn't discuss them with anybody?

13 A. No, I didn't.

14 573 Q. A member of the force being vilified in this way and
15 you as assistant commissioner who had had dealings with
16 him fairly recently and you still didn't discuss what
17 was happening to him with any other member of An Garda
18 Síochána?

14:23

19 A. No, I didn't. I didn't, Chairman.

20 574 Q. Was there any particular reason why you wouldn't?

14:23

21 A. Again, it wasn't -- I didn't think it was my business.
22 I had obviously a very busy portfolio in relation to
23 what I was doing, the day-to-day jobs and additional
24 jobs, and those issues would be dealt with obviously I
25 presume by the Commissioner or by deputy commissioners
26 or by the people who were involved in that
27 investigation.

14:24

28 575 Q. But at the very least, no matter how busy you were, a
29 good social friend of yours was writing these articles

1 about Sergeant McCabe without naming him; did it not
2 occur to you that what he was doing was very unfair?

3 A. I suppose again he is a journalist and there's a lot of
4 articles that I read in the papers and I'm not sure
5 about their fairness or about their authenticity or 14:24
6 whatever. But I didn't discuss it with Mr. Williams,
7 no. That was a rule that we had, we didn't discuss.

8 576 Q. I don't want to spend too much time or get into too
9 much detail in relation to the penalty points issue,
10 but would you agree with me that in large measure, and 14:25
11 with some exceptions, the malpractice identified by
12 Sergeant McCabe existed and required to be addressed at
13 senior level within An Garda Síochána?

14 A. The findings of -- as I've said, in the investigation
15 itself there was very serious allegations of 14:25
16 criminality, of corruption, of the destroying of
17 computer records made against senior members of An
18 Garda Síochána. My findings related -- I didn't find
19 any evidence to suggest that.

20 577 Q. Well, can I -- 14:26

21 A. No, sorry, Mr. McDowell, what I did find was that there
22 was significant non-adherence with certain of the
23 procedures and the processes in relation to that and I
24 found that 13% of those that were examined by me, that
25 the allegations made, 2,198 of them, were outside of 14:26
26 the processes and procedures. I saw fit to recommend
27 that three people be subject of further investigation
28 from a disciplinary process, I saw fit to write to 62
29 senior officers and I also saw fit to make a number of

1 recommendations to improve the processes and procedures
2 that were in place. So certainly that is the situation
3 with it.

4 578 Q. And I don't want to name names gratuitously, but
5 disciplinary action was taken, was it not? 14:27

6 A. Yes.

7 579 Q. Against senior people?

8 A. Against senior people, yes. And there was a need for
9 that, as far as I was concerned.

10 580 Q. And their identity is known to this Tribunal, isn't it? 14:27
11 It's in the documentation I think.

12 A. I presume it is, yes.

13 581 Q. Now, could I ask you, you are aware too that
14 subsequently in 2014, in the summer of 2014, Sergeant
15 McCabe was asked to join the Professional Standards 14:27
16 Unit of An Garda Síochána to assist them with the
17 processes that were necessary to improve the manner in
18 which the fixed charge penalty points system was being
19 operated?

20 A. That's correct, yes. 14:28

21 582 Q. And that was a gesture by Commissioner O'Sullivan,
22 isn't that right?

23 A. Yes.

24 583 Q. And to somebody in Sergeant McCabe's position it was,
25 how would I put it, a public gesture of approbation for 14:28
26 what he had done, is that right?

27 A. Are you quoting?

28 584 Q. No. That by doing this to Sergeant McCabe, by
29 appointing him to this professional standards unit to

1 redress the maladministration of the penalty points
2 system and to assist in the process, it was, I don't
3 want to overexaggerate it, but it was a very
4 considerable gesture on her part on the face of it,
5 isn't that right?

14:28

6 A. I would agree with that, yes. And as well as that,
7 you've asked me the question specifically and in
8 relation to the whistleblowers and obviously I think
9 the very fact that I had to make those recommendations
10 and that those recommendations were taken on board,
11 that obviously I have to acknowledge the coming forward
12 of those whistleblowers. And I don't think either
13 myself or Commissioner Callinan ever had a problem with
14 that.

14:29

15 585 Q. I see. And going back to the inspector's report, the
16 Garda Inspectorate's report was to the effect that it
17 largely upheld Sergeant McCabe's criticisms, isn't that
18 right?

14:29

19 A. To the extent again as I -- the criticisms around the
20 processes and the procedures, certainly, yes. But I
21 don't think they got into any of the allegations
22 themselves.

14:29

23 586 Q. No, but I think the head of the Inspectorate,
24 Mr. Ralston, said publicly that he had met with
25 Sergeant McCabe on a number of occasions leading to the
26 Inspectorate's report and found him to be a credible
27 witness?

14:30

28 A. That's correct, yes, he did.

29 587 Q. Just for the record, I also am instructed to put to you

1 that Sergeant McCabe was not in the business and did
2 not identify public persons for the purpose of having
3 them, their names disclosed in public, in the Dáil or
4 anywhere else.

5 A. Well, whether it happened inadvertently or not, I don't 14:30
6 know, but people were identified in public.

7 588 Q. I see. Now, could I ask you, in relation to your own
8 report, do you feel in retrospect that there was an
9 element of not much to see here about it?

10 A. I don't agree with that. I think the results stand for 14:31
11 themselves. Again at the risk of repeating myself, I
12 have talked about three senior officers, that's a
13 serious -- or a serious recommendation to make, you
14 have three senior officers, 62 people written to,
15 senior officers written to and advised and the 14:31
16 recommendations that were made I think.

17 589 Q. And you see, and this is a recurrent theme perhaps in
18 this Tribunal and in the O'Higgins Commission, you
19 found that there was no evidence of criminal
20 corruption, isn't that right? 14:31

21 A. Of corruption.

22 590 Q. Yes. But I mean, I have to put it to you that if I can
23 ring up a friend of mine in An Garda Síochána and on
24 flimsy grounds have my points cancelled based on my
25 friendship or whatever, that that, while it's not the 14:31
26 criminal offence of corruption, is nonetheless corrupt
27 policing.

28 A. In relation to what you're talking about, the
29 recommendations that I made in relation to -- or some

1 of the recommendations I made are around the importance
2 of tightening up on the decision-making and how the
3 decision-making was made, I think is a recognition of
4 that.

5 591 Q. No, but I mean the point I'm really making, and I don't 14:32
6 want to spend too much time on it, it would be one
7 thing, and it would be a terrible thing, if any member
8 of An Garda Síochána took €300 or €500 in their back
9 pocket and cancelled points. That would be corruption
10 of a criminal type, isn't that right? 14:32

11 A. Yes.

12 592 Q. But I'm suggesting to you that it is also corrupt
13 policing for somebody to ring you have a pal and say
14 would just cancel my points, I was in a hurry that day,
15 or words to that effect. 14:32

16 A. In my investigation, I obviously examined the paperwork
17 around the decision-making process on that and by and
18 large I found that it was done properly and the large
19 amount of it was done properly. There was certainly
20 issues that needed to be addressed and they have been 14:33
21 addressed.

22 593 Q. But you did find officers in some areas cancelling
23 penalty points imposed in totally different areas?

24 A. Absolutely, yes. And that shouldn't have been
25 happening. 14:33

26 594 Q. And that can only have been on the basis that they were
27 doing favours for people when they shouldn't have been,
28 isn't that right?

29 A. I don't -- again I didn't find that.

1 595 Q. Well, surely, when you say it shouldn't have happened
2 that a superintendent in one area cancelled penalty
3 points imposed in another corner of the country, I've
4 got to suggest to you that that was improper behaviour
5 which can only have been explained by a willingness to 14:33
6 do people personal favours.

7 A. In the vast majority of incidents, the person who did
8 cancel the points had rang their equivalent member in
9 the area concerned and discussed the issue with them
10 before cancelling them. 14:34

11 596 Q. But even to make that phone call at the behest of some
12 person known to them was improper, surely?

13 A. I don't -- again in my examination I didn't find that,
14 what you're suggesting.

15 597 Q. Well, you see -- 14:34

16 A. That there was a genuine -- that in most cases there
17 was a genuine petition made, which was allowed, and the
18 superintendent exercised their discretion.

19 598 Q. I see. Well, you see, I'm suggesting that saying there
20 was no offence of corruption discovered is a far cry 14:34
21 from saying that there wasn't very serious, how would I
22 put it, subjective and selective cancellation of
23 penalty points on the basis of personal approaches to
24 people who had no function in the matter.

25 A. Again that seemed to be the system that had arisen over 14:35
26 a number of years and it needed to be corrected and it
27 was corrected by the recommendations that I made.

28 599 Q. And I take it you'd agree with me that Sergeant McCabe
29 never suggested that anybody took money for cancelling

1 penalty points?

2 A. I'm not -- absolutely not, no, he didn't. But he
3 talked about widespread corruption. And again, I had
4 to follow the facts, judge, or Chairman, in relation to
5 what I found and the facts, and I stayed with the facts 14:35
6 and they're the facts that I found.

7 600 Q. And again just to finish on this point, that the
8 Comptroller and Auditor General had been very concerned
9 about the implications for public revenues --

10 A. Yes. 14:36

11 601 Q. -- of widespread cancellation of penalty points on an
12 inadequate basis, is that right?

13 A. Yes. And I think the Comptroller and Auditor General's
14 general findings were very similar to the findings that
15 I found in relation to people outside their area of 14:36
16 jurisdiction cancelling points, no corroboration in
17 relation to it and no written records or a lack of
18 written records. And they were the same issues that I
19 found.

20 602 Q. And the point that I would make to you is that, I mean, 14:36
21 regardless of the happy fact that nobody was found to
22 have taken an improper bribe or whatever in any of the
23 cases that you looked at, nonetheless there were five
24 or six million euros worth of penalty point fines
25 effectively lost to the State. 14:36

26 A. Again I can't -- you know, again that's an assumption
27 that can be made. But if the cases were genuine and
28 that people were allowed, there was a system there to
29 allow a petition to be made and if a decision was made

1 by a senior officer in relation to allowing that
2 petition then there was no loss to revenue.

3 603 Q. I see.

4 CHAIRMAN: well, I mean, how desirable is it? That,
5 you know, we're all obliged to, let's say, obey the 14:37
6 speed limit or whatever. You can understand the
7 situation that emerges, for instance, where someone
8 drives their husband to hospital quickly because it's
9 clearly an acute appendix and they just have to get
10 there, but I mean how many of those cases -- I mean, 14:37
11 the vast majority of speeding --

12 A. Yes, and I --

13 CHAIRMAN: One is told on the road when someone does
14 something incredibly rude and incredibly dangerous to
15 say to yourself clearly that person has a medical 14:37
16 emergency, that's to calm yourself down, but that's
17 never the case, is it?

18 A. Yeah, and I certainly found that, Chairman. And they
19 were issues that needed to be addressed and the
20 recommendation there was around making sure that there 14:38
21 was corroboration and if a medical note -- you know,
22 there was a lack of medical notes to be honest with
23 you, people were being taken at their word in relation
24 to it. But now there is a necessity for corroborating
25 documentation if that is, if that's the case. 14:38

26 CHAIRMAN: Yes, even still, it's kind of dangerous for
27 people to have -- well, there has always been a
28 discretion, I suppose, in relation to enforcing the law
29 and warning people, and that's a good thing. But most

1 people get penalty points, they either pay for it or
2 else it's on your licence and it goes, after all, after
3 two years. I don't know if I am completely up to date.
4 A. Three years.
5 CHAIRMAN: Is it three years now? 14:38
6 A. Yeah. I am aware of it personally.
7 CHAIRMAN: All right. well, I think most people would
8 have had one or two. But that's when you, I suppose,
9 learn, isn't it?
10 604 Q. MR. McDOWELL: I don't want to, again, spend too much 14:38
11 time on it, but I do want to put it to you that it was
12 strange indeed that while you couldn't contact Sergeant
13 McCabe as part of your investigation in Operation
14 Squeeze that the head of the Crime and Security section
15 could be requested by you to go and visit his uncle to 14:39
16 see was there anything in his complaints about Sergeant
17 McCabe, his wild complaints about Sergeant McCabe.
18 A. Yes.
19 605 Q. Do you not think now in retrospect that that was a
20 misapplication of Garda time? 14:39
21 A. No. As I've already said, first and foremost the
22 difference between Sergeant McCabe and his uncle,
23 Bernard McCabe, was that he made contact with us, we
24 didn't solicit any contact or look for any information,
25 it was he made contact. He was offering information. 14:40
26 I made a decision to send Chief Superintendent Kennedy
27 to speak with him and to hear what he had to say. And
28 it was on that basis and fully on that basis that that
29 was done.

1 606 Q. And --

2 A. I would have had no problem with going to Sergeant
3 McCabe if he had -- if I didn't feel precluded by the
4 confidential reporting mechanism.

5 607 Q. You see, as I understand it, not merely was one visit 14:40
6 made, but a further follow up visit was made, in the
7 knowledge that the allegations made against Sergeant
8 McCabe were completely without foundation.

9 A. That is correct. There was a second meeting, I think
10 in June of 2013, if I'm correct, and that was as a 14:41
11 result of a further telephone call and other issues
12 were raised at that meeting.

13 608 Q. I see.

14 A. They were subsequently --

15 609 Q. They were equally groundless? 14:41

16 A. And they were equally groundless, yes.

17 610 Q. And the point I'm making to you in relation to that is
18 that, I mean, one of the people at that second meeting
19 was a senior detective involved in a very serious
20 murder investigation in the northeast of Ireland? 14:41

21 A. That is correct. And actually, he's still involved in
22 that murder investigation. And I suppose being in the
23 National Bureau of Criminal Investigation you don't
24 have the luxury of just doing one investigation, you're
25 there to assist and you could be assisting in a number 14:41
26 of investigations at any one time.

27 611 Q. Well --

28 A. In different areas of the country, indeed.

29 612 Q. -- allowing for the explanations you've given, there is

1 one point which seems strange, at least to me, and I'd
2 ask for your explanation of it. If any other sergeant
3 anywhere else in the country had been the subject of
4 allegations of this kind, would the head of the Crime
5 and Security section have descended on him, on the
6 person making the allegations without having the local
7 Gardaí investigate the matter?

14:42

8 A. I think you have to talk about context here and the
9 context was that I was carrying out an investigation
10 into the penalty points examination, Chief
11 Superintendent Kennedy, who was the head of the
12 National Bureau of Criminal Investigation, was part of
13 that investigation team, Mr. McCabe had saw fit to ring
14 the Headquarters of assistant commissioner, I think it
15 was National Support Services at the time, and I felt
16 it appropriate at that stage, because I wanted it, I
17 suppose, done discreetly, professionally and I trusted
18 my chief superintendent who was working with me on the
19 investigation to do that.

14:42

14:42

20 613 Q. You see, I'm suggesting to you that it was wholly
21 extraneous and irrelevant to the operation that you
22 were carrying out, which was to do with penalty points.

14:43

23 A. Yeah, it turned out to be, yes, and I agree with that.
24 But I didn't know that at the time.

25 614 Q. Well, by the time the second interview took place with
26 the senior detective officer it was abundantly clear it
27 had nothing to do with your penalty points
28 investigation.

14:43

29 A. Yeah. Again, he had made contact and the decision was

1 made that people would go to see him. And it wasn't
2 for any reasons as regards taking anything, to dig any
3 dirt on Sergeant McCabe, as has been suggested. It
4 certainly wasn't.

5 615 Q. You see, the point I'm making is this: That it 14:43
6 wouldn't have happened to any other sergeant that such
7 senior officers would have taken an interest in the
8 matter.

9 A. I'm aware of many investigations or many sensitive
10 inquiries where senior officers from Garda Headquarters 14:44
11 would take, would deal with sensitive issues, yeah.

12 616 Q. But I'm suggesting to you the sensitivity here was that
13 Sergeant McCabe was the man who was, into whose
14 allegations you were investigating under Operation
15 Squeeze. That's the only sensitivity. 14:44

16 A. There was no issue around because it was Operation
17 Squeeze or because Sergeant McCabe was making those
18 allegations. Mr. McCabe senior had contacted the
19 Assistant Commissioner Byrne, who passed it on to me.
20 That was purely the only reason that I was sent it. 14:44

21 617 Q. But you were selected by Assistant Commissioner Byrne
22 to process the matter on the basis that you were
23 investigating allegations made by Sergeant McCabe
24 relating to the fixed charge penalties?

25 A. That's right, yes. 14:45

26 618 Q. And this had nothing to do with that?

27 A. Well, I wasn't aware of that at the time.

28 619 Q. Did you think that, well, after the second interview
29 surely it must have been crystal clear that this man

1 was utterly outside the scope of your investigation?
2 A. Absolutely, yes. And as I said, nobody ever, that
3 never became knowledge or public knowledge in relation
4 to the thing, it was dealt with ho discreetly and
5 confidentially. 14:45
6 CHAIRMAN: well, I mean, that's what you would expect
7 for everything one would hope.
8 A. Absolutely. And the way it should be done.
9 CHAIRMAN: well, I mean, I suppose, the point I think
10 Mr. McDowell is making is this: Forget about it being 14:45
11 Sergeant McCabe but it's a high level investigation and
12 it seems to me you were staffed entirely by chief
13 superintendents and --
14 A. Well, not entirely, but certainly the focus was on
15 senior officers, yes. 14:45
16 CHAIRMAN: Presumably you had a few sergeants and
17 Gardaí --
18 A. Yes.
19 CHAIRMAN: -- doing some of the legwork.
20 A. Yeah. 14:45
21 CHAIRMAN: It's just a bit odd to send down a very
22 senior and experienced and decent man like Chief
23 Superintendent Kennedy to interview a man, a simple man
24 sitting in a cottage by a lake, and one tends to wonder
25 what's the great nugget of information that's going to 14:46
26 be found there, he's not a seanchaí.
27 A. No, I appreciate that, yeah. And I accept that it may
28 seem peculiar, but certainly my motives were nothing
29 other than proving or disproving what the person had to

1 say.

2 CHAIRMAN: well, I mean, when you saw the first thing -

3 A. Oh, absolutely. And I said that already.

4 CHAIRMAN: -- how did you react?

5 A. I said it when Chief Superintendent Kennedy spoke to me 14:46

6 in relation to it, I was satisfied it was nothing to do

7 with our investigation in relation to that. But he did

8 want to, there were the two issues around the -- I

9 think there was two drunken driving allegations and

10 they have been referred to here already. He wanted to 14:46

11 continue with those.

12 CHAIRMAN: well, there was lots of stuff, I mean there

13 was cattle and goats.

14 A. Yeah. As I say, it's one of those things and it

15 happens quite regularly in investigations. 14:47

16 CHAIRMAN: well, was it a question of being ultra

17 careful because everyone was complaining about

18 everything, that you had to send down your best?

19 A. No, it wasn't. It was purely, as I have said already

20 it was purely that Chief Superintendent Kennedy is an 14:47

21 experienced investigator, he is discreet, he is

22 confidential and he is professional in his work.

23 CHAIRMAN: No, I know, he's great.

24 A. And that was the reason for that.

25 620 Q. MR. McDOWELL: Lastly and very briefly, could I bring 14:47

26 you to Volume 27, page 7356?

27 CHAIRMAN: what's the date before you go on to that, if

28 you wouldn't mind, Mr. McDowell? what is the date of

29 the RTÉ broadcast on the cooperation issue?

1 MR. McDOWELL: It's 24th February 2014, Judge.

2 CHAIRMAN: Yes, that's right. Thank you.

3 621 Q. MR. McDOWELL: Could I bring you to -- have you got
4 that there? This is a letter sent to Sergeant McCabe
5 by Michael Flahive, an assistant secretary in the
6 Department of Justice. 14:47

7 A. Yes.

8 622 Q. And he's referring to a letter Sergeant McCabe had sent
9 to the office of the Taoiseach in relation to the
10 report that you had furnished. 14:48

11 A. Yes.

12 623 Q. And this is a letter sent to Sergeant McCabe from the
13 Department of Justice on 20th September 2013.

14 A. Yes.

15 624 Q. And if I could bring you to the second page, page 7357,
16 there's a paragraph there: 14:48

17
18 "If you have evidence contradicting the findings of
19 Assistant Commissioner O'Mahony's report, it is your
20 duty as a member of An Garda Síochána to make that 14:48
21 evidence available. It is not acceptable that a member
22 of An Garda Síochána should repeatedly make such
23 allegations, including in particular that lives have
24 been avoidably lost, without providing the evidence
25 which he says he has. By doing so, you are without any 14:48
26 apparent basis in fact undermining confidence in the
27 fixed charge penalty system and the impartiality of the
28 enforcement of law. You should accordingly immediately
29 make available any evidence you may have which

1 contradicts the findings of Assistant Commissioner
2 O'Mahony's report to the Garda Commissioner, the
3 confidential recipient or the Joint Oireachtas
4 Committee on Justice, Defence and Equality which has
5 been considering the report. Alternatively, you should 14:49
6 acknowledge that you have no such evidence."
7

8 Now this is Mr. Flahive saying to Sergeant McCabe that
9 if he has any grounds on which to contest your report,
10 he should bring it to one of a number of people or 14:49
11 bodies, including an Oireachtas committee. Were you
12 aware that such a letter was sent?

13 A. No.

14 625 Q. You weren't aware?

15 A. No. 14:49

16 MR. McDOWELL: Thank you.

17 CHAIRMAN: And what's the date of that particular one?

18 MR. McDOWELL: It is 20th September 2013.

19 CHAIRMAN: Yes. That's after your reports. All right.
20 Thank you. 14:50

21 MR. FERRY: No questions.

22 CHAIRMAN: No questions.

23 MR. GILLANE: No questions.

24 MR. FREEMAN: Chairman, I just have a number of small
25 questions for INM and Paul Williams. 14:50
26
27
28
29

1 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. FREEMAN, AS
2 FOLLOWS:

- 3 626 Q. MR. FREEMAN: Can you see me, Mr. O'Mahony?
4 A. Yes.
5 627 Q. Just a few small questions. Mr. McDowell was asking 14:50
6 you about the articles written in the Irish Independent
7 by Paul Williams in April and May 2014. Do you
8 remember those questions?
9 A. Yes.
10 628 Q. And he asked you if you had ever discussed those with 14:50
11 Mr. Williams --
12 A. That is right.
13 629 Q. -- on any occasion, and you had said that you hadn't
14 done so.
15 A. No. 14:50
16 630 Q. And you didn't discuss it with Mr. Williams. And you
17 referred to the fact that there were other articles you
18 read in papers and you are not sure about their
19 fairness or their authenticity or whatever, but you
20 didn't discuss those with Mr. Williams, isn't that 14:50
21 correct?
22 A. That I didn't?
23 631 Q. You didn't discuss them with Mr. Williams?
24 A. No.
25 632 Q. Very good. Mr. Williams gave evidence before the 14:50
26 Tribunal last July, did you know that?
27 A. I am aware that he has given evidence, yes.
28 633 Q. You weren't here at the time?
29 A. No.

1 634 Q. No. It was actually put to Mr. Williams, the Chairman
2 had clarified a question, it was alleged that he was
3 too close to the Garda Headquarters and that he lacked
4 objectivity and Mr. Williams denied that. Were you
5 aware of that? 14:51

6 A. I'm not specifically, no.

7 635 Q. And he replied that anyone who understood public
8 discourse over the previous four or five years would
9 understand that, he's been very critical of Garda
10 Headquarters over a period of time, isn't that right? 14:51

11 A. That's right, yes.

12 636 Q. And I think you were in Crime and Security back in
13 2014, is that correct?

14 A. That's correct, yes.

15 637 Q. And Mr. McDowell himself actually put to Mr. Williams,
16 that: 14:51

17

18 "In fairness, you have been quite critical of Garda
19 Headquarters in a lot of your commentary."
20 14:51

21 And Mr. Williams was quite critical of Garda
22 Headquarters in his commentary, wasn't he?

23 A. That's correct, yes.

24 638 Q. Did you ever discuss that with him?

25 A. No. 14:51

26 639 Q. And did you ever discuss a story in around 2014 when he
27 was very critical of Garda HQ in relation to a Garda
28 case in Leitrim, did you ever discuss that with him?

29 A. A murder case where?

1 640 Q. A murder case in Leitrim?

2 A. No.

3 MR. FREEMAN: Thank you.

4 CHAIRMAN: All right, that's grand.

5 Mr. Ó Muircheartaigh?

14:52

6 MR. Ó MUI RCHEARTAI GH: No questions.

7 MR. MÍCHEÁL O' HIGGINS: I have some questions,
8 Chairman.

9 CHAIRMAN: Yes.

10

14:52

11 THE WITNESS WAS THEN CROSS-EXAMINED BY MR. MÍCHEÁL
12 O' HIGGINS, AS FOLLOWS:

13 641 Q. MR. MÍCHEÁL O' HIGGINS: Mr. O'Mahony, can I ask you
14 first of all a number of questions in relation to your
15 investigation into the FCPN system, the fixed charge
16 penalty notice system. You have indicated in your
17 evidence that the initial brief that you were given to
18 carry out an investigation required an urgent
19 examination. Could you just explain that? In what way
20 was there an urgency or what way was that conveyed to
21 you?

14:52

14:52

22 A. It's in the -- obviously it's in the, first and
23 foremost it's in the document that Mr. Purcell sent to
24 the Commissioner asking for an urgent investigation.

25 642 Q. Yes.

14:52

26 A. And obviously I would have discussed the issues with
27 Commissioner Callinan and I was conscious of the
28 urgency in relation to carrying out that examination
29 and what my terms of reference were in relation to

1 that.

2 643 Q. Yes. Could I ask you, would you mind having a look at
3 page 7473, which is in Volume 27? And this is - we'll
4 wait for it to come up on screen now - but this is
5 headed "Summary of the conversation recounted 14:53
6 immediately post telephone call."

7 A. Yeah.

8 644 Q. And there's a series of bullet points and the fourth
9 one down, I will be coming back to this document, but
10 in the fourth one down it says: 14:53
11
12 "Sergeant McCabe alleges he had found tens of thousands
13 of fixed charge penalties "done away corruptly". "

14 A. Yes.

15 645 Q. Did that allegation, was that borne out by your 14:54
16 investigation or your experience of looking into these
17 matters?

18 A. No.

19 646 Q. Now, I think it's the case that you have covered some
20 of these matters in your initial statement to the 14:54
21 Tribunal, but before we look at your particular
22 findings, and I will do that reasonably briefly because
23 it's perhaps only of tangential interest to the
24 Chairman in terms of the terms of reference, but --
25 CHAIRMAN: I'm sorry, Mr. O'Higgins, I thought and 14:54
26 maybe I had not heard you saying something, but I am
27 missing, who actually wrote this? What is this?
28 MR. MÍCHEÁL O' HIGGINS: That's, as I understand it,
29 Chairman, is a note or a typed note of the conversation

1 had between the witness and Sergeant McCabe.
2 CHAIRMAN: Is it? When? In 23rd April 2013?
3 MR. MÍCHEÁL O' HIGGINS: Yes.
4 A. Yes. I think it's probably a note again done by my
5 secretary. 14:55
6 CHAIRMAN: It is, okay. All right. So I have seen
7 three different notes now. So, this is yet another
8 one. Right, okay, that's fine, as long as I
9 understand. Thank you.
10 647 Q. MR. MÍCHEÁL O' HIGGINS: Just coming back to your report 14:55
11 itself, I think you've indicated that you assembled a
12 team of some 28 senior and experienced gardaí, together
13 with staff from Garda IT section and the Garda analysis
14 service?
15 A. Yes. 14:55
16 648 Q. And the team, you've told us, comprised of, I think it
17 was five chief superintendents and six superintendents?
18 A. That's right, yes.
19 649 Q. So obviously this was a big deal of an investigation --
20 A. It was, yes. 14:55
21 650 Q. -- that constituted a very significant draw on Garda
22 resources?
23 A. Absolutely, yes.
24 651 Q. And obviously you yourself headed it up?
25 A. Yes. 14:55
26 652 Q. On page, we might just turn to 7168 for a moment
27 please. If we could scroll down to about two-thirds of
28 the way down.
29 A. Seven?

1 653 Q. 7168.
2 A. volume 26, yes.
3 654 Q. It's in, it's at the back of your interview statement
4 in the papers and it's in your initial statement.
5 A. Yes. 14:56
6 655 Q. Sorry, I should have set the context. This is the
7 second page of your statement --
8 A. I see it, Mr. O'Higgins, yeah.
9 656 Q. -- to the Tribunal itself. I will get the date in a
10 moment, it's not appearing at the top. Yes, it's 7th 14:56
11 April 2017. In any event, on the third paragraph down
12 there is a paragraph, if we just scroll down a small
13 bit more, the following is stated:
14
15 "Within the aforementioned 189 allegations there were 14:56
16 17 citing corruption, 15 citing destruction and/or
17 erasing FCPN is, seven citing perversion of the course
18 of justice, ten citing falsification and one citing the
19 offence of deception."
20 14:57
21 And you state that your examination into each of the
22 189 distinct allegations did not find any evidence to
23 suggest any criminality.
24 A. That is correct, yes.
25 657 Q. And you go on to say that you say that your findings in 14:57
26 that regard were borne out by subsequent formal and
27 detailed criminal and disciplinary investigations into
28 terminations which were within the remit of your
29 examination.

1 A. That's correct, yes.

2 658 Q. But am I correct in my understanding, whilst you found
3 no evidence of actual criminality, you did nonetheless
4 find evidence to warrant the commencement of
5 disciplinary investigations, isn't that so? 14:57

6 A. That's correct.

7 659 Q. And you might just briefly touch on those. Can you
8 give a flavour of those and to what, what was alleged
9 in that context?

10 A. Well, I think the -- again it was, the thing was purely 14:57
11 that I didn't have any paper records in relation to 661
12 of the 2189 allegations that I examined and I was
13 unable to make a determination on those and the fact
14 that there wasn't a paper record or any paper record
15 whatsoever, that caused me to recommend the 14:58
16 disciplinary investigations, which were subsequently
17 conducted.

18 660 Q. Yes. And I think in addition to that, with respect to
19 some allegations, they ultimately resulted in files
20 going to the DPP, isn't that so? 14:58

21 A. In relation to the criminality issues, they were
22 separate investigations, separate to my overall
23 investigation in relation to the penalty points. One
24 of them were -- subsequent to my report being
25 completed, Sergeant McCabe made allegations under the - 14:58
26 oh, God - fraud, allegations of fraud, I think there
27 was 17 allegations, or around 16, 17 allegations made
28 which were investigated from a criminal perspective by
29 a then chief superintendent. A file went to the DPP

1 and a number of those allegations were the same
2 allegations as I had dealt with. And the DPP having
3 examined them, didn't find any criminal offences.
4 During the course of my investigation there was also --
5 661 Q. You might just speak slightly closer to the microphone. 14:59
6 A. Yeah. During the course of my allegation [sic] there
7 was also a complaint made by the other whistleblower,
8 and I think again around 20 of those allegations that
9 were part of my investigation were also investigated
10 from a criminal perspective. And again a file to the 15:00
11 DPP and no evidence of criminality.
12 662 Q. Yes.
13 A. So that's what I am saying there.
14 663 Q. Well, coming back then to your report that you did
15 compile, if we scroll, if Mr. Kavanagh might scroll 15:00
16 down slightly further down the same page that we are on
17 currently, you say there, second last paragraph:
18
19 "My findings in respect of some of the allegations
20 merited disciplinary proceedings being taken against 15:00
21 members of An Garda Síochána. However, in many cases
22 the information available to me through Pulse, FCPS and
23 documentary materials sourced by my examination did not
24 accurately reflect what was being alleged."
25 A. That's correct, yes. 15:00
26 664 Q. And that was your conclusion in that respect?
27 A. Yes.
28 665 Q. And you go on to indicate that your findings identified
29 that 198, and that was 13% of terminations examined,

1 were not in accordance, in adherence with Garda
2 administrative policies and procedures.

3 A. That's correct, yes.

4 666 Q. I'm just going to ask you about that. Presumably it's
5 the case that - and perhaps this is an assumption that 15:01
6 people wrongly make - it's not the case, is it, that
7 merely because there is a cancellation that that
8 automatically means there's impropriety?

9 A. No. Well, it's outside the policy and outside policy
10 and procedures, and when I'm talking about some of 15:01
11 those, obviously it was again what we were talking
12 about with Mr. McDowell earlier on was where --

13 667 Q. Again, your voicing is dropping there from the mic?

14 A. Sorry. Where we were talking with Mr. McDowell earlier
15 on was around that people, I suppose, cancelling fixed 15:01
16 charge notices outside of their area of jurisdiction.

17 668 Q. Yes.

18 A. Not giving proper reasons, not citing proper reasons as
19 to why they were made was another reason, from memory.
20 And again, proper paperwork not being maintained as 15:02
21 well in relation to some of those.

22 669 Q. Now, in relation to that, if we go down to the next
23 page, page 7169 and look at the top of it just there,
24 you indicate there that:
25
26 "In this context, 62 individual garda officers received
27 formal advice in writing with regard to breaches of
28 policy."
29 A. Yes.

1 670 Q. And further, that your examination "identified 661
2 terminations conducted by three garda officers that
3 were referred to Assistant Commissioner Internal
4 Affairs to initiate formal disciplinary proceedings."

5 A. That's correct. That's correct, Chairman. 15:02

6 671 Q. Now, can I ask you then to move to -- well, just before
7 you move away from that, in terms of the role of
8 Sergeant McCabe in highlighting these matters which
9 ultimately resulted in your findings of departures from
10 acceptable protocols and recommendations of a 15:02
11 significant tightening up of the FCPN system, what is
12 your view as to the role that Sergeant McCabe played in
13 bringing these matters out into the public domain so
14 that they could be addressed?

15 A. I'm satisfied that, you know, the fact that he had made 15:03
16 those allegations, and I don't think anybody ever had a
17 difficulty with him making those allegations, and they
18 were certainly the recommendations that were put in
19 place as a result of my examination and indeed of the
20 other examinations that took place subsequently were -- 15:03
21 have been implemented and I think we are in a much
22 better position now.

23 CHAIRMAN: No, but, I mean, I am beginning to have a
24 bit of a problem with that now. Because I mean, we all
25 know, just even if we use the words of Paul Reynolds, 15:03
26 the Garda Síochána is a disciplined force, but you have
27 a structure, you have commanding officers, you have
28 people who are above demanding officers, there is a way
29 of getting things done. But the reality was to get to

1 the point where you looked at this, you analysed this
2 stuff, he had to make a gigantic fuss outside the
3 ordinary and normal system. And furthermore, he had to
4 write letters which Mr. Justice O'Higgins has described
5 as being at times exaggerated. So if you are a 15:04
6 policeman, if you are a military man living within that
7 kind of structure I find it hard to know why people who
8 are saying well, our structures have to be adequate, I
9 find it hard to say well, if he has to do things around
10 the structures, he's clearly saying our structures are 15:04
11 bad. And that's something that is not exactly music to
12 the ears of a military style headquarters.

13 A. well, I suppose again in relation --

14 CHAIRMAN: I mean, there's a reality to this thing, you
15 know. 15:04

16 A. Yeah.

17 CHAIRMAN: I mean, there has to be.

18 A. Yeah. The problem in relation to, that I would have
19 seen in relation to it was that there was a way of
20 going about it and that didn't happen. And I mean, to 15:04
21 have that amount of information garnered and to go
22 outside of the organisation, I would have much
23 preferred to see that he would have operated within the
24 organisation and done it there.

25 CHAIRMAN: I know. But, you know, what we're a member 15:05
26 of, how things are done, I know personally from my line
27 of work that tends to affect people personally. They
28 don't just take an objective olympian view of thing,
29 sometimes people get very annoyed. And I can't

1 understand why there wasn't that annoyance in Garda
2 Headquarters among senior management in relation to
3 Sergeant McCabe. That's what I'm being told now.

4 A. Yeah. I think, and I mean again from a professional
5 perspective we carry out other investigations, follow 15:05
6 the facts of the situation and deal with it in that
7 way.

8 CHAIRMAN: I know you do, and absolutely it's clear
9 that there are superb people working within the Gardaí,
10 but that is the point; that surely the pride of the 15:05
11 organisation, the pride which you surely feel in the
12 organisation must have been hurt by this backdoor
13 method, which clearly says you can't organise yourself,
14 you can't solve your own problems, the only way I can
15 do it is by going to people outside the organisation we 15:06
16 all serve.

17 A. Yeah.

18 CHAIRMAN: I would have thought that's very annoying.
19 But apparently I'm told that everyone was utterly
20 sanguine about it. And by the way, you are entitled to 15:06
21 be annoyed. And this is the problem I am facing here,
22 it's a free country.

23 A. I appreciate that.

24 CHAIRMAN: People are entitled to think that somebody
25 else is a fool or an eejit or is a lunatic. You are 15:06
26 absolutely entitled to think that, but I have
27 everybody, according to Garda Headquarters, sitting
28 around in a calm, olympian fashion, you know.

29 A. Again I suppose it was dealt with in a professional

1 manner, there was a certain amount of resilience in
2 relation to it and that was the situation. But I think
3 I have articulated here my issues around how it was
4 done and I don't think there's anybody at a senior
5 level that was happy with that.

15:06

6 672 Q. MR. MÍCHEÁL O' HIGGINS: Can I ask you, Mr. O'Mahony,
7 you've mentioned in your evidence already, I think
8 actually it was this morning, a matter that did concern
9 you, and that was your concern that the identity and
10 confidentiality of the discloser would be maintained.

15:07

11 A. Yes.

12 673 Q. And you've spoken about you having a strong suspicion
13 or belief at some point in time that it was Sergeant
14 McCabe who was the person concerned --

15 A. Yes.

15:07

16 674 Q. -- but you didn't receive that formally?

17 A. No.

18 675 Q. That information formally. Can I ask you first of all,
19 your understanding of the regulation in question, the
20 Statutory Instrument 168/2007, which is the Garda
21 Síochána Confidential Reporting of Corruption and
22 Malpractice Regulations, introduced I think by
23 Mr. McDowell, your understanding, did you have any
24 understanding as to any confidentiality requirement to
25 which that gave rise?

15:07

15:08

26 A. As far as I was concerned I was precluded from going to
27 interview either of the whistleblowers unless I had
28 sufficient, I suppose, reason to do so, I could have
29 gone to the Commissioner or to the Minister.

1 CHAIRMAN: You'd have had to do it through a formal
2 structure.

3 A. Absolutely, yes.

4 CHAIRMAN: But I mean, I was in the same position when
5 this Tribunal began, so... 15:08

6 A. And there were very strict guidelines set out and it's a
7 very, the bar is very high.

8 CHAIRMAN: But do you not think you were being over
9 punctilious in that regard? I mean, that really is the
10 point. And if you were being over punctilious, I 15:08
11 suppose -- Mr. O'Higgins, I am interrupting you now,
12 sorry, I shouldn't -- but if you are being over
13 punctilious is that not evidence that you really didn't
14 want to have anything to do with Sergeant McCabe? I
15 mean, I am trying to put things together that are being 15:08
16 put out there in little bits and pieces and ask you the
17 question straight.

18 A. No, that was not the reason. That wasn't the reason,
19 Chairman. I suppose I was probably between the devil
20 and the deep blue sea really in relation to it. If I 15:09
21 had gone to him and he had been looking and had looked
22 for and had received confidentiality, it may very well
23 have been, I may very well be on the other side of the
24 fence today.

25 676 Q. MR. MÍCHEÁL O' HIGGINS: Just looking at the regulation 15:09
26 itself, it appears to be a requirement in regulation 6
27 that all practicable steps to ensure that the identity
28 of the confidential reporter concerned is not disclosed
29 be taken, except as provided in the 2007 regulations

1 elsewhere.

2 A. That's right, yes.

3 677 Q. And in any event, was that your understanding of the
4 legal position --

5 A. Yes. 15:09

6 678 Q. -- that presented itself for you? You did, you've told
7 us, over time learn and conclude and form the
8 conclusion that in fact it was Sergeant McCabe and
9 another whistleblower as well who had presented the two
10 lists that you were presented with? 15:10

11 A. Yeah, I had a strong belief that they were the two
12 people.

13 679 Q. Yes. Can I ask you now to deal with an issue about
14 which there's been much mention, and that is Sergeant
15 McCabe's complaint, as I understand it, that the report 15:10
16 was completed without any input from him and without
17 his being contacted? Could I just ask you first of all
18 to put a few matters in context? You were aware,
19 weren't you, and you've indicated in your statement
20 already that you were aware of the fact that Sergeant 15:10
21 McCabe had been informed in December of 2012 of the
22 order the then-Commissioner had made to, as it were,
23 cease and desist from printing off the Pulse?

24 A. That's correct, yes.

25 680 Q. And you were aware, weren't you, of the conversation 15:11
26 which had taken place in December 2012 between
27 Superintendent Curran, Mark Curran I think it was, and
28 Sergeant McCabe where that particular order was read
29 over, I think if not three, if not four, possibly five

1 times to Sergeant McCabe?

2 A. At the time I wouldn't have been aware of the fact that
3 it was read over or that it was read over four or five
4 times, but I was aware that the direction and the
5 request had been passed on to Sergeant McCabe. 15:11

6 681 Q. And I think it's the case that, or did you subsequently
7 become aware that as part of that exchange or
8 conversation with Superintendent Curran that a part of
9 the document was read over that indicated if Sergeant
10 McCabe had any further concerns they could be -- he 15:12
11 could take them up with you as part of your
12 investigation?

13 A. I was aware in the late December that the document
14 contained that invite.

15 682 Q. Yes. Well, just I wonder could we for a moment then 15:12
16 ask for page 3035 of the materials to be put up, which
17 is a document the Tribunal has already seen, but is a
18 transcript of, I think, Sergeant McCabe's recording of
19 the conversation between himself and perhaps, I think
20 it may have been chief superintendent, I have called 15:12
21 him a superintendent, Chief Superintendent Mark Curran
22 on this particular occasion. Do you see that there?
23 And in that context then, the reason I'm doing this is
24 just to emphasise the amount of times the document
25 appears to have been read over to him and/or he was 15:13
26 told he could take matters up with you. Do you see the
27 third entry down, it says "chief" --

28 A. Sorry, Mr. O'Higgins, can you give me the number again
29 please? It's volume?

1 683 Q. It's page 3034, I think it's volume 11.
2 CHAIRMAN: Yes, the back of volume 11.
3 MR. MÍCHEÁL O' HIGGINS: Sorry, volume 12, Mr. O'Mahony.
4 Sorry.
5 CHAIRMAN: Is it? It's not, it's 11. 15:13
6 A. 12 or 11?
7 684 Q. MR. MÍCHEÁL O' HIGGINS: 3034 in I'm told volume 11.
8 I'm working off the screen.
9 A. Yes.
10 685 Q. And in the second entry down, commencing "chief", 15:13
11 Superintendent Curran is recorded as saying:
12
13 "I think you need to raise that with Assistant
14 Commissioner O' Mahony. Honestly that might be the way
15 to pursue it." 15:14
16
17 And then in the next entry down he is recorded as
18 saying:
19
20 "The directions on it -- and just to make sure we are 15:14
21 both clear, I'll read it out to you again."
22
23 which would appear to indicate there's already been a
24 reading of it. Then in the next portion, commencing
25 "Maurice", third line down, it reads: 15:14
26
27 "And then reads out the whole lot again."
28
29 which I make go number three. And then two lines down

1 again:
2
3 "Chief: I'll read it --"
4
5 Second line down. 15:14
6
7 "-- I'll read it out one more time so you understand."
8
9 And then it's recorded in italics:
10 15:14
11 "He reads it all out again."
12
13 which perhaps is iteration number, or go number four.
14 A. Hmm.
15 686 Q. And then towards the bottom of the page there's an 15:14
16 entry "Maurice" and it says "I can". And then: "(He
17 reads out the report to me again.)"
18 A. Hmm.
19 687 Q. And then over the page then, fourth entry down, headed
20 starting: 15:15
21
22 "Chief: I can give you an answer. My own personal
23 answer, but I think you should address it with John
24 O' Mahony. The direction is down here that he will deal
25 with your concerns." 15:15
26
27 And then it goes on.
28
29 So it would appear at any rate, judging by this

1 document, which I understand to be Sergeant McCabe's
2 own document, it appears plain that superintendent
3 Curran made it clear to Sergeant McCabe that he, if he
4 had any further concerns they could be raised with you,
5 or at any rate with your investigation.

15:15

6 A. That's correct.

7 688 Q. Did you become aware of that at any point, that there
8 had been this conversation between the Sergeant and
9 Superintendent Curran?

10 A. At the time I was aware that the document sent by
11 Commissioner Callinan had been, that Sergeant McCabe
12 had been made aware of it.

15:16

13 689 Q. Yes. And if we could turn then to page 3033, which is
14 the order itself, that's just before the transcript
15 that we've been looking at, so page 3033. The bottom
16 paragraph of that, if Mr. Kavanagh could scroll down,
17 the heading "The direction is as follows", if we look
18 from the third line down the following point is made:

15:16

19
20 "If you have any --"

15:16

21
22 This now, sorry, is the body of the order itself issued
23 in December 2012.

24
25 "If you have any further concerns and without prejudice
26 of your rights under the confidential reporting
27 mechanism, such matters can be brought to the attention
28 of Assistant Commissioner John O'Mahony."

15:16

1 So I am drawing attention there to the words "without
2 prejudice to the confidential reporting mechanism", was
3 that your understanding?
4 A. Yes.
5 690 Q. That the indication that had been given to Sergeant 15:17
6 McCabe was that he could raise his concerns with you,
7 but not in any sense as a substitution for any rights
8 he enjoyed under the confidential reporting
9 mechanism --
10 A. Yes. 15:17
11 691 Q. -- but in point of fact as a stand alone matter without
12 prejudice to his entitlements under that mechanism?
13 A. Yes.
14 692 Q. Then we have, Mr. O'Mahony, your own discussion with 15:17
15 Sergeant McCabe after you had submitted your report for
16 the attention of the Minister, isn't that right?
17 A. Yes.
18 693 Q. And you've told us about that. Just in terms of the
19 timeline relating to that, I think that was 23rd April
20 2013? 15:17
21 A. Yes.
22 694 Q. Am I correct that your report ultimately wasn't
23 published by the Minister until over two years later,
24 May 2015?
25 CHAIRMAN: No. 15th May 2013 it was published. 15:18
26 A. 2013.
27 695 Q. MR. MÍCHEÁL O' HIGGINS: Sorry, there may be a
28 typographical error there. My apologies, it was a
29 number of weeks later?

1 A. Yes.

2 CHAIRMAN: It was '13, yes.

3 MR. MÍCHEÁL O' HIGGINS: I am obliged.

4 CHAIRMAN: Not to worry.

5 696 Q. MR. MÍCHEÁL O' HIGGINS: But just in relation to that, 15:18
6 was there any -- well, first of all, had you been
7 requested to, or had Sergeant McCabe indicated an
8 anxiety or a desire to provide input at that point and
9 give you his own view of matters or own statement, what
10 steps would you have taken vis-a-vis providing an 15:18
11 addendum to your report?

12 A. As I have stated to him, I offered that I would send
13 somebody to meet with him and to discuss the issues,
14 his concerns and that I would give him a fair hearing.

15 697 Q. Yes. And do you see in your understanding of the 15:19
16 system and the protocols that were followed and you
17 providing a report, would there have been any
18 difficulty in you providing an addendum report to the
19 Minister?

20 A. I don't believe there would have been. And I am 15:19
21 conscious of the Minister, former Minister's evidence
22 to this Tribunal. But my own view certainly would be
23 -- and I wouldn't have offered him --

24 CHAIRMAN: Sorry, I am mystified. Are you referring to
25 Minister Shatter saying what? 15:19

26 A. About, he discussed the report and that he was aware of
27 the conversation of 23rd.

28 CHAIRMAN: Yes.

29 A. And I'm aware of that.

1 CHAIRMAN: Yes, all right. No, no, I'm sorry, I didn't
2 understand.

3 698 Q. MR. MÍCHEÁL O' HIGGINS: I think the point you are
4 making, Mr. Shatter had made a somewhat light
5 criticism, perhaps criticism is over strong, but had 15:20
6 made an observation you perhaps could have written for
7 permission --

8 A. Yes.

9 699 Q. -- effectively --

10 A. Yes. 15:20

11 700 Q. -- or asked for the requirement of confidentiality to
12 be waived perhaps or for consideration to be given to
13 that, and that wasn't something that you did?

14 A. I didn't do it, and I think I've explained it here
15 today as could why I didn't do that; is I didn't 15:20
16 believe that my investigation was in any way impaired
17 by the fact that I didn't, that I wasn't able to
18 interview the whistleblowers.

19 701 Q. Yes. Am I correct in my understanding your
20 investigation involved a case-by-case analysis -- 15:20

21 A. Yes.

22 702 Q. -- of the documents --

23 A. Yes.

24 703 Q. -- relating to each FCPN that was cancelled?

25 A. Yes. 15:20

26 704 Q. You've heard criticism being suggested from, I think,
27 Sergeant McCabe's quarter or perhaps others that it was
28 unreasonable and perhaps unfair that your report was
29 completed without any input from him or without his

1 being contacted. In the light of the matters that we
2 have just gone over, what is your view as to the
3 fairness or reasonableness of that criticism?

4 A. I disagree with it. Obviously I felt at all times that
5 I was precluded from interviewing or from approaching 15:21
6 Sergeant McCabe or the other whistleblower and they
7 choose not to engage with my investigation and I can't
8 put it any further than that.

9 705 Q. Yes. If we go back then to the note that I think your
10 secretary prepared at page 7473, if we look at the last 15:21
11 bullet point, I might just get your reaction to this.
12 So the last bullet point there reads:
13

14 "The conversation was cordial and finished on good
15 terms. It was agreed that Assistant Commissioner 15:22
16 O'Mahony and Sergeant McCabe had each other's contact
17 telephone numbers if he wanted to come back to
18 Assistant Commissioner O'Mahony."

19 A. Yes.

20 706 Q. Does that reflect your recollection of matters? 15:22

21 A. Obviously I had left it open for Sergeant McCabe to
22 come back to me and I think that's probably what the
23 Sergeant is referring to.

24 707 Q. Your voice is dropping there.

25 A. Sorry, I had left it open with Sergeant McCabe to come 15:22
26 back to me if he would and if he wished to, and I think
27 that's probably what's being referred to there.

28 708 Q. And in terms of the note indicating there that you and
29 he and those present for the meeting left things on

1 cordial terms, would you agree or disagree with that?

2 A. Certainly we were -- you know, I had hoped that
3 Sergeant McCabe may come back to me in relation to
4 that.

5 709 Q. Yes. Now, can I ask you then to deal with another 15:23
6 matter, and that is the Bernard McCabe piece or issue,
7 his complaints against his relative? It's been
8 suggested that this was, this episode was availed of by
9 An Garda Síochána to effectively, as I understand it,
10 to dig up dirt on Sergeant Maurice McCabe and this is 15:24
11 evidenced or corroborated by the fact that top brass
12 Gardaí went out and were prepared to listen to the wild
13 allegations that this man was making. Do you regard
14 that as a fair criticism?

15 A. No. It's certainly not. It was never the intention to 15:24
16 dig up any dirt on Sergeant McCabe. That person was
17 interviewed and, I suppose, in accordance with the fact
18 that he had come forward to offer information and it
19 was dealt with discreetly, confidentially and nothing
20 came of it once we were satisfied that it had nothing 15:24
21 and there was no substance to it, it was left alone and
22 that was it. It never became public in any shape or
23 form.

24 710 Q. And what steps -- I mean, was it in your mind, the 15:25
25 necessity to prevent it getting into the public domain?
26 CHAIRMAN: But that's a general observation,
27 Mr. O'Higgins.

28 A. I would always have that in mind.

29 CHAIRMAN: I mean, why else is there any criticism

1 directed towards David Taylor if everything that the
2 Garda does can be phoned to a newspaper man the
3 following night?
4 MR. MÍCHEÁL O' HIGGINS: Yes, it's poorly -- if I may
5 rephrase it, Chairman, it is a poorly worded question. 15:25
6 711 Q. If I could put it this way: was your selection of a
7 senior officer whom you could trust and had particular
8 knowledge of in terms of his ability to be discreet and
9 confidential, --
10 A. Absolutely, yeah. 15:25
11 712 Q. -- was that connected to your desire to ensure that
12 these wild allegations did not go beyond the tightest
13 of circles?
14 A. Well, in selecting Chief Superintendent Kennedy, I
15 wasn't aware that there was going to be any wild 15:26
16 allegations. I didn't know what we were going to find.
17 But certainly Chief Superintendent Kennedy was
18 available to me and I knew that he would deal with the
19 matter in a discreet and a professional manner.
20 713 Q. Yes. And insofar as you are aware, did these wild 15:26
21 allegations seep out as sometimes occurs?
22 A. Absolutely not.
23 CHAIRMAN: From where do these things seep out,
24 Mr. O'Higgins?
25 MR. MÍCHEÁL O' HIGGINS: My question was did they seep 15:26
26 out so far as the witness --
27 CHAIRMAN: But where do they seep out from as sometimes
28 occurs?
29 MR. MÍCHEÁL O' HIGGINS: In this case it would have been

1 from An Garda Síochána, possibly.

2 CHAIRMAN: Yes. They didn't. And in fact it came as a
3 bit of a surprise to me reading them, and everybody
4 else.

5 MR. MÍCHEÁL O' HIGGINS: And we are seeking to deploy 15:26
6 that as armoury for a defence, Chairman.

7 CHAIRMAN: I know, Mr. O'Higgins, exactly. Well, you
8 are doing exactly what you are supposed to do. But I
9 think the real point is not that -- all right, let's
10 take it as a given that Detective Chief Superintendent 15:26
11 Kennedy is highly experienced and very, very good at
12 what he does, I suppose it's sending -- if anything is
13 to be made of this, it's sending someone down to a
14 cottage in the middle of Ireland by a lake to talk to
15 someone about heaven alone knows what in the context of 15:27
16 the fact that he has something to say, and this is how
17 it is communicated, about Maurice McCabe. That's the
18 point.

19 MR. MÍCHEÁL O' HIGGINS: Yes.

20 CHAIRMAN: If there is a point. It may well be no 15:27
21 point. It may well be just another side avenue along
22 the way, Mr. O'Higgins.

23 MR. MÍCHEÁL O' HIGGINS: Well, I suppose here I might be
24 guilty of slipping into submission mode, but in the
25 same way that An Garda Síochána cannot prevent the D 15:27
26 family agitating their position if they decide to do so
27 in the street in Cavan or elsewhere, equally An Garda
28 Síochána cannot prevent relatives who are apparently in
29 dispute with other Garda members, in this case Sergeant

1 McCabe, from venting their personal disputes if they
2 choose ultimately to contact, in this case, senior
3 management within An Garda Síochána, as happened here
4 with Bernard McCabe.

5 CHAIRMAN: Yes, maybe so. Maybe so. And maybe under 15:28
6 normal circumstances the thing to do would be to ring
7 the local inspector or superintendent and say well,
8 where are these people coming from? Is there a
9 background here? But maybe people felt they shouldn't
10 do that because that would be stirring up trouble, I 15:28
11 don't know.

12 MR. MÍCHEÁL O' HIGGINS: Yes

13 714 Q. Just finally then on that issue, Mr. O'Mahony, this
14 inquiry from Bernard McCabe came in, as it were, not at
15 a local level or from a local tier within the 15:28
16 organisation, but rather it came in at the top end --

17 A. Yes.

18 715 Q. -- isn't that so?

19 A. Yes.

20 716 Q. Did that have any impact on how you ultimately chose to 15:28
21 deal with it, it's a matter that I into Garda
22 Headquarters?

23 A. That was part of the consideration obviously that it
24 had come into headquarters.

25 717 Q. Lastly then could I ask you to deal with one matter 15:28
26 which I don't believe was raised but it's proper that I
27 give you an opportunity to mention it? As I understand
28 it Mick Clifford, the journalist, gave evidence to the
29 effect that he had heard from Superintendent Taylor

1 that as part of Superintendent Taylor's series of
2 allegations that there was an intelligence file on a
3 computer in Garda Headquarters on a computer called
4 Oisin and that that name -- I'm paraphrasing here, and
5 that that name somehow was chosen because it was a
6 grandchild of a named Garda member. 15:29

7 A. That's right.

8 718 Q. And I don't think he named him. That is to say
9 Mr. Clifford didn't name the person concerned. But the
10 suggestion elsewhere in the materials was that somehow 15:29
11 that name was selected --

12 CHAIRMAN: I honestly and sincerely don't believe there
13 is a single scintilla to suggest that any of this is
14 true. I can't. I mean, I can sit here for months and
15 kind of be pokerfaced like I don't know what, an 15:30
16 eastern God sitting on a throne, but I mean it's
17 nonsense.

18 MR. MÍCHEÁL O' HIGGINS: well, Chairman, that obviates
19 the necessity for me to even deal with that.

20 CHAIRMAN: I mean, where is the evidence for it in any 15:30
21 event? We are going to go into that in due course, but
22 I don't believe it had ever anything to do with
23 anybody. And Oisin is a legitimate system and I
24 presume it is something to do with people, as indeed
25 used to happen in national schools in the old days, 15:30
26 being familiar with Irish legends. Maybe they don't
27 teach those any more and more's the pity.

28 MR. MÍCHEÁL O' HIGGINS: If I can leave it at this: In
29 the event it were to become relevant --

1 CHAIRMAN: How is it ever going to become relevant?
2 MR. MÍCHEÁL O' HIGGINS: All right. Well then, I won't
3 put the question.
4 CHAIRMAN: I have actually been up and looked at this
5 stuff. And Oisín is a system and it has loads and 15:30
6 loads of stuff about the kind of things that I don't
7 want to know about and feel no entitlement to know
8 about. So, isn't that the case?
9 A. That's right, that's correct, yes.
10 CHAIRMAN: Yes. And whether it's Fionn or Oisín or 15:30
11 Niamh Chinn Ór, that's just a name.
12 MR. MÍCHEÁL O' HIGGINS: Yes.
13 CHAIRMAN: And you had nothing against Sergeant McCabe
14 and you certainly wouldn't name a computer system after
15 an Irish legend in order to somehow do him down. I 15:31
16 just don't see the connection, how could that happen?
17 A. That was nothing to do with the thought process of the
18 naming of it, yeah.
19 CHAIRMAN: Do you have a list of Irish legends you name
20 computer systems after? 15:31
21 A. I think Oisín was just purely, it had been -- I
22 suppose, it was a name that had been given to a project
23 arising out of a presidency in 2004, back at that time,
24 it was something synonymous with An Garda Síochána, and
25 Irish as well. And I was putting an Irish context I 15:31
26 suppose on the system.
27 CHAIRMAN: Yes. And it could last forever, like Oisín,
28 until he unfortunately put his foot on the ground.
29 A. Fell off the rocks, yes.

1 MR. MÍCHEÁL O' HIGGINS: Thanks, Mr. O'Mahony.
2 CHAIRMAN: He fell off a horse actually, which is
3 relevant.
4 A. Fell off a horse onto the rock.
5 MS. LEADER: Nothing arising, sir. 15:32
6 CHAIRMAN: Thank you very much.
7 MR. MARRINAN: The next witness is Michael O'Toole,
8 please.
9
10 MR. MICHAEL O' TOOLE, HAVING BEEN SWORN, WAS EXAMINED BY 15:32
11 MR. MARRINAN:
12 719 Q. MR. MARRINAN: I think that you are an assistant editor
13 and crime correspondent for the Irish Daily Star, is
14 that right?
15 A. Yes, that's correct, Chairman. 15:32
16 720 Q. And would you just give the Chairman a brief history of
17 your career as a journalist and editor?
18 A. I graduated from university in '93, Italian and French,
19 did a postgrad in journalism in Scotland, came back to
20 Northern Ireland, where I'm from, worked there for a 15:33
21 few months. Then in 1997 I came down to Dublin, joined
22 a nascent paper called Ireland on Sunday when it was
23 opening, stayed there for a few months and then was
24 appointed Dublin correspondent for the Irish News, a
25 Belfast newspaper, from October '97 to March 2000. In 15:33
26 March 2000 I joined The Star, where I am today and in
27 January 2002 I was appointed crime correspondent, which
28 is my main job.
29 721 Q. Now, I think that you were interviewed by our

1 investigators on 10th April of this year and your
2 statement is to be found at page 5025, which is in
3 volume 18 of the material. Now, I think when our
4 investigators met with you, I think that in the first
5 instance they drew your attention to a number of 15:34
6 documents. I don't think there's any need to put them
7 up on the screen. The first one was a waiver which had
8 been signed by former Commissioner Martin Callinan in
9 respect of journalistic privilege and that was dated
10 20th April 2017, it's at page 5067 if anybody wishes to 15:34
11 look at it; there's also a waiver signed by
12 Commissioner Nóirín O'Sullivan again in respect of
13 journalistic privilege and provided to the Tribunal on
14 20th April 2017, that's at page 5068 of the material; a
15 waiver signed by Superintendent David Taylor in respect 15:34
16 of journalistic privilege and provided to the
17 Disclosures Tribunal on 28th April 2017. And that's at
18 page 5069 of the material.

19
20 You were also provided with an extract from a statement 15:35
21 made by Superintendent David Taylor to the Disclosures
22 Tribunal and that's dated 22nd September of 2017, and
23 that's at page 5071. If we could just look briefly at
24 that, if we could have that up on the screen.

25 A. Yes. 15:35

26 722 Q. This is in the context of David Taylor naming you as
27 one of a number of journalists that he briefed
28 negatively in respect of Sergeant Maurice McCabe. And
29 you see there the question:

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"I have been asked in the context of my stated position, which is, that I am not asking for any privilege to be exercised, that in respect to Michael O'Toole, is it my expectation and wish that he comes forward and assists the Disclosures Tribunal in providing all details and attendant circumstances of meetings, phone conversation, contacts, etcetera, where I negatively briefed him about Sergeant Maurice McCabe. "

15:36

15:36

And I think that was drawn to your attention, isn't that right?

A. Yes, Chairman.

723 Q. And then an extract from the statement of Sergeant Maurice McCabe to the Disclosures Tribunal dated 6th December 2017 and that's at page 5074 of the material. And if we could just have that briefly up on the screen. Do you see there is a question:

15:36

15:37

"I have been asked in the context of the alleged negative briefing by Sergeant Taylor to journalists against me whether it is my wish and expectation that all such journalists come forward and assist the Disclosures Tribunal in providing all details and attendant circumstances of meetings, phone conversations, contacts, where such negative briefings occurred. "

15:37

1 And his answer is:

2

3

"Yes, it is my wish that they would come forward and assist the Disclosures Tribunal."

4

5

6

Now, you were also shown some other documents and phone records, which I don't intend to go into at this juncture. But in the first instance, you were reporting as a crime correspondent in 2013/2014, is that right?

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15:38

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A. Yes, Chairman.

12

724

Q. And as such, did you have any direct contact, first of all, with the Garda Commissioner at the time, Garda Commissioner Martin Callinan?

13

14

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A. No, I had no relationship with Martin Callinan.

15:38

16

725

Q. And what about Assistant, or the Deputy Commissioner, Nóirín O'Sullivan?

17

18

A. Well, like Commissioner Callinan, I would've been in Deputy Commissioner O'Sullivan's company and then when she became Commissioner at press launches, at briefings. But I wouldn't have any relationship with her at all.

19

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15:38

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Q. Now, I think that in the first instance when you were contacted by the Tribunal, and the correspondence will show this, that an issue and a substantial issue of journalistic privilege arose as far as you were concerned, isn't that right?

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15:38

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A. Yes.

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Q. And you had what you perceived to be legitimate

1 concerns in dealing with direct questions concerning
2 Superintendent Taylor in his role as Garda Press
3 Officer, isn't that right?

4 A. Yes, Chairman.

5 728 Q. And to a large extent, in terms of your interaction 15:39
6 with the investigators and subsequently indeed through
7 your counsel and interaction with Superintendent
8 Taylor, they have, to a large extent, been resolved.
9 In the first instance, you would've had frequent
10 contact with Superintendent Taylor throughout 2013 and 15:39
11 2014 in your role as a journalist reporting on crime,
12 isn't that right?

13 A. Well, Superintendent Taylor was the Garda Press
14 Officer, he was the appointed spokesperson for An Garda
15 Síochána, so I would've -- clearly my job is a crime 15:39
16 reporter, so he would've been a legitimate point of
17 contact.

18 729 Q. And your position in relation to that is that you had
19 an entirely proper and professional relationship with
20 Superintendent Taylor? 15:40

21 A. I had exactly the same relationship with Superintendent
22 Taylor as I've had with the myriad other Press Officers
23 that I've worked with since 1997 when I came to Dublin.

24 730 Q. Yes. Now, if you could just look at page 5029 of the 15:40
25 material, and if you scroll down to line 74. This has
26 to be seen and understood in the context of the
27 material that was being put to you. And you're
28 familiar with the allegation that is made by
29 Superintendent Taylor that he was instructed by the

1 former Commissioner Martin Callinan to brief
2 journalists negatively in relation to Sergeant Maurice
3 McCabe, you're aware of that?

4 A. Yes, Chairman.

5 731 Q. It's become known as a smear campaign. But insofar as 15:41
6 he has actually indicated what he was doing, he said
7 that at any opportunity he would advise named
8 journalists of the fact that Sergeant McCabe had been
9 investigated for a sexual offence and then indicate
10 that nevertheless the file had gone to the Director of 15:41
11 Public Prosecutions and there'd been no prosecution.
12 But that effectively is the smear that he says that he
13 was putting about in 2013 and into 2014. And this is
14 what our investigators were concerned with, and indeed
15 the correspondence that you'd previously received from 15:41
16 the Tribunal.

17
18 You start off in relation to the sentence here at line
19 74:

20 15:42
21 "I'm going to claim journalistic privilege. The
22 principle of journalistic privilege is very important
23 to me. However, I do wish to state that I
24 categorically believe that nobody in any position of
25 authority in An Garda Síochána smeared Maurice McCabe 15:42
26 to me or negatively briefed me about Maurice McCabe. I
27 have no recollection of any smear or negative briefing
28 and I firmly believe that never happened to me from my
29 experience. "

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That remains your position, is that right?

A. Nobody in An Garda Síochána smeared or negatively briefed me about Sergeant McCabe.

732 Q. Yeah. Well, you've advanced a little bit further there. In the statement you're referring to nobody in a position of authority in An Garda Síochána, but you're saying now that nobody in An Garda Síochána briefed you negatively about Sergeant Maurice McCabe?

15:42

A. That's my position, Chairman. Before Superintendent Taylor came to the Press Office and the terms of reference to this, I had heard rumours about Sergeant McCabe. They had come from journalistic sources, non-crime reporters, ordinary journalists shall we say. Because of the nature of my job, ordinary journalists tend to come to crime reporters when they want stuff checked out, they think we hold all the secrets. And to a certain extent, we know more than most crime reporters. And I know that a very experienced journalist with significant access to the political world first raised this with me. Now, as I say, it was well before the terms of reference here, it was probably 2011/2012. He raised it with me and I said 'I don't think there's anything to this'.

15:43

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15:43

Subsequent to that, I checked with a contact I have. It's important to say that this contact would not have been in Garda Headquarters or in the Garda Press Office. I always take the view that the Garda Press

1 Office really is His Master's Voice; you ring the Garda
2 Press Office, they are there, they don't work for
3 journalists, they work for the Commissioner. So
4 obviously if I rang someone in the Garda Headquarters,
5 they would give probably a not independent view of what 15:44
6 was going on.

7
8 So I was lucky enough to have a contact who knows
9 Sergeant McCabe - I can't say who it is, but he spoke
10 very highly of him, he called him Maurice, he said he 15:44
11 had worked with him, said he was a very competent
12 Sergeant, he had done files with him and he explained
13 the background of the investigation and the outcome of
14 the DPP's file. So once I heard that, the matter was
15 dead for me, because there was absolutely no story for 15:44
16 me in this. I don't think any journalist in their
17 right mind, once they hear that the DPP has not only
18 directed no charges, but said it's - whatever the
19 phrase is - it was very unlikely that any offence was
20 disclosed, I don't think any journalist in their right 15:45
21 mind would consider writing anything about this. The
22 issue was dead for me.

23 733 Q. And you think that this was in 2011, before --

24 A. 2011/2012. It was definitely before 2013. I mean,
25 it's such a long time ago. And Sergeant McCabe was in 15:45
26 the news an awful lot before 2013. So -- and I know
27 that Sergeant McCabe was named for the first time by
28 the Sunday Times, I think it was 2010. So it would've
29 been after that, because this other journalist came to

1 me with this rumour.

2 CHAIRMAN: was it 2010?

3 A. I think it was, Chairman, yeah.

4 CHAIRMAN: was it really?

5 MR. MARRINAN: No, I don't think it was as early as -- 15:45

6 CHAIRMAN: It couldn't be that far back.

7 A. I think the Sunday Times named him in 2010. It was

8 John Mooney wrote the story.

9 CHAIRMAN: As what?

10 A. The whistleblower. 15:45

11 CHAIRMAN: well, I mean, at that stage there was --

12 well, I'm not --

13 A. I think it was 2010.

14 CHAIRMAN: I'll just check that, but I'm not sure.

15 734 Q. MR. MARRINAN: Yes, we'll check it, Sir. (To witness) 15:46

16 But in any event, you're saying that before

17 Superintendent Taylor arrived in the Press Office,

18 which was in June of 2012, that you had heard this

19 rumour that was going around --

20 A. Yes. 15:46

21 735 Q. -- in press circles, is that right?

22 A. It was, yeah, significantly before 2013.

23 736 Q. And you went in and you looked into it and you talked

24 to a source about it and they spoke highly of Sergeant

25 McCabe and then contextualised the rumour. But from 15:46

26 2011 up until 2014 was it something that recurred again

27 in media circles to --

28 A. No, I've heard other media witnesses talk about - for

29 example, Anne Harrison of the Sunday Independent saying

1 it was the talk of the corridors; we weren't talking
2 about it in my office. There were very, very, very few
3 conversations about it, maybe two or three. It was
4 not, I wasn't talking to the IT guy about it, this was
5 something -- I'm used to talking about sensitive 15:47
6 issues, so I'm used to talking confidentially with
7 people in my office and outside the office. So it was
8 not, it certainly wasn't on my radar. After I heard
9 about the DPP's directions. The issue was dead for me.
10 737 Q. But in any event, it wasn't something that it's quite 15:47
11 clear from your instructions to your own counsel and
12 the fact that they challenged Superintendent Taylor on
13 his evidence and cross-examined him at the Tribunal on
14 the basis that he had never spoken to you about
15 Sergeant McCabe, is that right? 15:47
16 A. I beg your pardon?
17 738 Q. That he had never spoken to you about Sergeant McCabe?
18 A. Nobody, no guard briefed me about Sergeant McCabe or
19 mentioned or spoke or maligned him or spoke anything
20 about or said anything about the sexual, the indecent 15:48
21 assault allegation, anything. No Garda did.
22 CHAIRMAN: Mr. Marrinan, just with a view to trying to
23 put the date when anything first appeared in public, I
24 mean the reality is that on 6th April '11 was when
25 Mrs. McCabe wrote to Minister Shatter about the Cavan 15:48
26 issues and by that stage you had the Assistant
27 Commissioner Rice review of the Byrne/McGinn
28 investigation, which had reported. But there's not a
29 sniff of anything, I would say, at that stage getting

1 into the public domain.

2 A. well, my recollection was it was 2010, Chairman, and
3 the Sunday Times.

4 CHAIRMAN: well, Mr. Mooney may well tell us in due
5 course. 15:48

6 MR. THULLIER: Chairman, we've located the article. I
7 think it's 24th November 2010.

8 MR. MARRINAN: Oh, there you are.

9 CHAIRMAN: well, that's great. And we'll have a look
10 at it so. Thank you for bringing it to my attention. 15:48

11 739 Q. MR. MARRINAN: So in terms of the work of the Tribunal
12 examining this alleged smear campaign by Superintendent
13 Taylor, you believe that you have absolutely no
14 evidence in relation to the existence prior to a recent
15 conversation which you had, which I'll come to in a 15:49
16 moment and deal with briefly, but you had no evidence
17 to offer the Tribunal in relation to a smear campaign
18 against Sergeant McCabe?

19 A. No, it wasn't a topic I was interested in. There were
20 issues, I obviously took an interest in the whole 15:49
21 issue, but it was about the message, not the messenger.
22 So there was nothing, Chairman, at all.

23 740 Q. Now, I think that recently you've come into possession
24 of some information that the Tribunal is looking into
25 and you'll be providing a very short statement to the 15:49
26 Tribunal dealing with that and I don't propose to deal
27 with that now. All right?

28 A. Okay.

29 MR. MARRINAN: would you answer any questions please?

1 MR. McDOWELL: No questions, Chairman.

2

3 THE WITNESS, WAS CROSS-EXAMINED BY MR. FERRY AS
4 FOLLOWS:

5

15:50

6 741 Q. MR. FERRY: Good morning, Mr. O'Toole. John Ferry,
7 representing Superintendent Taylor.

8 A. I can hear you fine.

9 742 Q. Yeah, that's okay. This thing doesn't seem to be
10 working properly. Just in relation to -- it's working 15:50
11 now. John Ferry for Superintendent Taylor,
12 Mr. O'Toole. In relation to Superintendent Taylor's
13 position, while I appreciate what you've said to
14 Mr. Marrinan, I think that when Superintendent Taylor
15 was before the Tribunal he gave evidence that you were 15:50
16 one of the journalists that he says was negatively
17 briefed by him during his time as the Press Officer.
18 And in the course of his evidence he said that the
19 opportunities that arose, it was on an opportunistic
20 level, that if opportunities arose that it would become 15:51
21 part of the conversation. And he was asked whether or
22 not it was by telephone or whether it was by verbal
23 communications and he indicated that it would've been
24 by either depending on the circumstances.

15:51

25
26 Now, I think that certain telephone records have been
27 made available by Superintendent Taylor and I think
28 you've -- I don't know have you had sight of those
29 records in relation to the telephone?

1 A. Chairman, I'm one of the people who didn't confirm my
2 phone number.

3 743 Q. I think they are, they're at page 5075 in the document
4 that I have been provided with. And they do run from a
5 period in August 2012 right up and to, I think they go 15:51
6 up until June 2014. And the period that the Tribunal's
7 inquiring into is sort of, I think, fair to say in
8 relation to Superintendent Taylor's evidence, is
9 running from the middle of 2013 until the time of
10 superintendent Callinan's resignation, which is in 15:52
11 March 2014. Now, during that period there's an
12 approximately, on a rough guesstimate, there's about
13 240 different telephone contacts according to
14 Superintendent Taylor's records with you. And I put it
15 to you that's quite a significant level of contact that 15:52
16 you had with the superintendent by way of telephone
17 alone.

18 A. Chairman, respectfully, as I said, I haven't confirmed
19 that number. I can't confirm that's my number, I would
20 view that as damaging journalistic privilege and it 15:52
21 would serve to identify sources. For context,
22 Chairman, this is my default position. I've been
23 questioned more than 30 times by Gardaí and members of
24 the Garda Síochána Ombudsman Commission. They always
25 go after my phones. I refuse to engage with anybody in 15:53
26 any State or official aspect about my mobile phone,
27 because I do believe that can identify a source.

28 CHAIRMAN: well, I'm not sure, Mr. O'Toole, we actually
29 need to go into that. But leaving aside whether that's

1 right or that's wrong - and you'll appreciate we're
2 doing our best to try and find things out and we don't
3 want to pry into things that are outside our terms of
4 reference, we just have no interest, I certainly have
5 absolutely no interest whatsoever if it's going to 15:53
6 delay things for one, and secondly, I'm not entitled
7 to. But would it be right to think you might have rung
8 him, or he you, ten times a month? Because that's what
9 it amounts to, because there's 23 months there.

10 A. Chairman, respectfully, I cannot comment on that. I 15:53
11 haven't confirmed my number.

12 CHAIRMAN: All right. well, I mean, he was the Press
13 Officer. I mean, if you were ringing him or he was
14 ringing you --

15 A. I had a relationship, I Had a professional relationship 15:53
16 with Superintendent Taylor similar to and identical to
17 all the other Press Officers.

18 CHAIRMAN: Okay, if it was a bookie's shop I could kind
19 of understand, because it would indicate you were
20 gambling. But your job is to find stuff out. And 15:54
21 talking to the Garda Press Officer, it's hardly
22 sinister.

23 A. I had a professional relationship with him, Chairman.

24 CHAIRMAN: well, all right, fine, you have a
25 professional relationship. But you're told that you 15:54
26 would've been in contact lots of times.

27 A. When he was the Press Officer he was a point of contact
28 for me, an official point of contact.

29 CHAIRMAN: Yes, of course he was. well, then again I'm

1 finding it hard to see what's so sinister about any of
2 this. I'm sorry, Mr. Ferry, I just interrupted. But
3 let's just take it that's one of the things that's
4 there, whether it's confirmed or not. I'll make my own
5 mind up if it's important. But at the moment it 15:54
6 doesn't seem to be. So --

7 744 Q. MR. FERRY: Yes, well, I just have to formally put it
8 to you that during the course of his evidence
9 Superintendent Taylor said that there would have
10 been -- there could have been briefings over the phone. 15:54
11 And I put it to you that by phone was one of the
12 methods that Superintendent Taylor communicated with
13 you and that he would've negatively briefed you in
14 relation to Sergeant McCabe over the phone on
15 occasions. 15:55

16 A. Again, Chairman, I had a professional relationship with
17 Superintendent Taylor when he was in the Garda Press
18 Office. And I do wish to stress my original point;
19 nobody in the Garda Síochána smeared or negatively
20 briefed me about Maurice McCabe. I can't comment on 15:55
21 these things in front of me, but nobody smeared Maurice
22 McCabe to me.

23 745 Q. Well, in the course of your evidence you said that once
24 you heard the DPP's directions that you viewed the
25 issue as dead. But I think that it's fair to say in 15:55
26 relation to Superintendent Taylor that his briefing was
27 that the motivation behind Sergeant McCabe in relation
28 to what he was bringing forward was in relation to his
29 previous, the case that had been referred to the DPP.

1 So is it the case that you're saying that the issue in
2 relation to the merit of any complaint against him was
3 dead? I mean, are you saying that as far as you were
4 concerned there's no issue in relation to the actual
5 allegation, is that what you say when you say --

15:56

6 A. Chairman, motivation for me, I've heard -- I know some
7 journalists who might be less on the front line than I
8 am have given evidence about source recruitment and why
9 you talk to sources and why sources talk to me. I
10 would like to be very clear, Chairman, I have no
11 interest in the motivation of anybody telling me
12 anything, I'm merely interested in the facts. So if
13 someone, if there's a mythical Inspector who wants to
14 get at his Superintendent because he hasn't got
15 promoted, I have no problem with him telling me, with
16 him contacting me, as long as the information is true.

15:56

15:56

17
18 I am not a moral arbiter. It is my job to get
19 information, check it out and run what we can legally.
20 Lots of people contact me on a daily basis. I do not
21 ever check their motivation. And it would be pretty
22 rum of any journalist, in my opinion, to do that. We
23 are the recipients of the information, we are not the
24 moral gatekeepers for the country.

15:56

25 746 Q. But I'm trying to just point you, Mr. O'Toole, to the
26 distinction that there's a difference between you
27 considering the issue being dead when you heard of the
28 DPP's directions, there's a distinction between that
29 and Superintendent Taylor discussing with you that the

15:57

1 reason why Sergeant McCabe was bringing issues into the
2 media was because he was motivated by his experience in
3 relation to the allegation that had been made. And
4 that's what Superintendent Taylor has been saying, that
5 he was briefing journalists in that manner. 15:57

6 A. I'm going to claim privilege in that. But again to
7 stress, I have no interest in anybody's motivation in
8 telling me anything. People tell me things. I talk to
9 people who perhaps shouldn't be talking to me and are
10 afraid to talk to me. So I never question why, I 15:57
11 question the accuracy of what they say.

12 747 Q. And I've to put it to you that under cross-examination
13 by your counsel Superintendent Taylor confirmed that
14 this issue would come up at times that Sergeant McCabe,
15 that his issue would be topical in the news or the 15:58
16 Sergeant McCabe issue would be the subject of a
17 conversation. So whenever it was topical, that that's
18 when the matter would come up and Superintendent Taylor
19 would discuss the Sergeant McCabe with you.

20 A. Chairman, nobody -- again I wish to claim privilege in 15:58
21 relation to that. But again I stress nobody
22 negatively, nobody in An Garda Síochána negatively
23 briefed or smeared Sergeant McCabe to me.

24 748 Q. And just in addition to the phone conversation --
25 CHAIRMAN: well, sorry, Mr. O'Toole, what you're 15:58
26 claiming privilege on is what you were otherwise
27 discussing with Superintendent Taylor?

28 A. Yes, Chairman.

29 CHAIRMAN: well, that's, as far as I'm concerned, fair

1 enough. But you certainly weren't discussing Sergeant
2 McCabe at any stage?

3 A. Nobody discussed it with me in An Garda Síochána.

4 CHAIRMAN: Right.

5 749 Q. MR. FERRY: And in addition to -- 15:58

6 A. Sorry, Chairman, nobody discussed the allegations or
7 this motivation. The terms of reference, nobody
8 discussed that with me. It just didn't happen. Nobody
9 did.

10 CHAIRMAN: Yes, and you'd recognise the difference 15:59
11 between --

12 A. Well, Chairman, I mean, say a Superintendent or a Chief
13 Superintendent in Garda Síochána started smearing a
14 Sergeant in Garda Síochána to me, it would be pretty
15 newsworthy for me. I remember the day, I remember 15:59
16 speaking to my contact who exculpated or gave me what
17 happened about Sergeant McCabe with the investigation
18 previously, I remember that, that stands out. I think
19 it would stand out if a Superintendent or a Chief or an
20 Inspector said the other way around. 15:59

21 750 Q. MR. FERRY: So are you saying that you never heard the
22 rumours about any of this matter with Sergeant McCabe
23 while you were dealing with the Garda Press Office?

24 A. Em --

25 751 Q. Are you saying that there was never any rumour about 16:00
26 Sergeant McCabe --

27 A. From the Press Office?

28 752 Q. From the Press Office or in relation to your attendance
29 at crime scenes or your discussions on the telephone

1 with members of the Press Office.

2 A. Well, there's a couple of answers to that. Firstly, it
3 is slightly preposterous that anybody would try and
4 brief me at a murder or a crime scene in relation to
5 anyone else. Crime scenes are chaotic; I'm never alone 16:00
6 with any officer, my photographer is with me, there are
7 a multiplicity of people in the room. That, I did not
8 recognise that in any context whatsoever.

9 753 Q. Well, it's just that in the course of the Tribunal's
10 hearings we've some evidence, particularly from a 16:00
11 Sergeant Molloy from the Press Office, who indicated
12 the attitude that Superintendent Taylor had towards
13 Sergeant McCabe and what side of the fence his views
14 were on. So I'm just saying that somebody who had so
15 much communication with Superintendent Taylor, are you 16:00
16 saying that he never mentioned the Sergeant McCabe
17 issue to you in any way?

18 A. Nobody mentioned that to me in that way. And I don't
19 recall speaking with anybody in the Press Office. So
20 say this issue has been going on for a decade, so there 16:01
21 have been maybe 30 or 40 people in the Press Office, so
22 there's not -- you know, I can safely say without
23 identifying anybody in that regard nobody in the press
24 office ever spoke -- I may have put in queries about
25 issues connected to the issue, you know, the penalty 16:01
26 points or, say, the computer with Father Molloy, that
27 sort of thing, specific issues. But nobody in the
28 Press Office maligned, smeared, negatively briefed,
29 mentioned Maurice McCabe to me.

1 754 Q. Just the final thing, Mr. O'Toole; while you've
2 mentioned crime scenes, I think it was also
3 Superintendent Taylor's position in his evidence to the
4 Tribunal that while he spoke to you on the phone a lot,
5 that you were somebody who was, I think he said, quite 16:01
6 prolific at attending at crime scenes and he said that
7 it was more likely that you would've been briefed at
8 the scenes of outrageous. So I appreciate what you've
9 said, but I have to formally put it to you that you
10 were also briefed at crime scenes by Superintendent 16:02
11 Taylor.

12 A. Superintendent Taylor would be correct, I would go to
13 more crime scenes than the vast majority of
14 journalists, I do go all round the country. I was
15 never briefed at a crime scene about Sergeant McCabe. 16:02
16 Chairman, these are chaotic times - you're up against
17 deadlines, you're trying to get as many facts from
18 various sources as you can, you're trying to source
19 photographs, you're trying to liaise with your
20 newsdesk. It's a very, very busy time. You've got 16:02
21 your competition to keep an eye on. So, you know, it's
22 very, very busy, very stressful and there's no time. I
23 certainly don't recognise or remember anybody smearing
24 Sergrgeant McCabe me at any crime scene.

25 MR. FERRY: Thank you Mr. O'Toole. 16:03

26 CHAIRMAN: Mr. Thullier?

27 MR. THULLIER: I don't think we need to ask any
28 questions, Chairman.

29 CHAIRMAN: Yes, Mr. Ó Muircheartaigh?

1 MR. Ó MUI RCHEARTAIGH: No questions.

2

3 THE WITNESS, WAS CROSS-EXAMINED BY MR. WHELAN AS
4 FOLLOWS:

5

6 755 Q. MR. WHELAN: I have a couple of questions briefly,
7 Judge, if my microphone is working. Noel Whelan, I
8 appear for An Garda Síochána and I've questions
9 particularly for former Commissioners Callinan and
10 O'Sullivan. Did I understand you to say that you've
11 been working in Dublin since 1997? 16:03

12 A. Yes, Chairman.

13 756 Q. And on the crime beat, if I use that word, since 2002?

14 A. Well, no, I joined the Star in March 2000. I became
15 crime correspondent in January 2002, but I was working 16:03
16 without the title. And because I worked for a northern
17 paper, I did a lot of security issues at the time, you
18 know, the end of the Troubles, the Good Friday
19 Agreement, so I had built up a certain knowledge and
20 expertise in that field. So it transferred when I 16:03
21 joined the Star.

22 757 Q. Now, you're probably about the same age as myself, so I
23 am loath to call you a veteran, but --

24 A. Oh, I am a veteran.

25 758 Q. -- you're one of the more senior crime correspondents? 16:04

26 A. I'm old.

27 759 Q. A specialist in that area.

28 A. Yeah.

29 760 Q. And that probably is reflected in the fact that you

1 were able to find the first mention of Maurice McCabe
2 in reportage than any of us were and your recollection
3 - the article is available for the Tribunal if required
4 - is 21st November 2010?

5 A. Yes. 16:04

6 761 Q. That he was named as a whistleblower?

7 CHAIRMAN: 24th November?

8 MR. WHELAN: 24th November 2010.

9 A. My friend wrote it. John Mooney and I are friends.

10 762 Q. MR. WHELAN: And he was named in the capacity as being 16:04
11 a whistleblower?

12 A. Yes.

13 763 Q. And then you'll appreciate that in the years that
14 followed, in various circumstances, both officialdom in
15 An Garda Síochána and at times newspapers it seems, 16:04
16 although as a confidential reportee, if that's the
17 right word, within An Garda Síochána and ultimately as
18 a protected disclosee, if that's a word, when that
19 legislation came in, what was being alleged, as it
20 were, by Sergeant McCabe and others was reported, but 16:05
21 everybody had to be careful not to name them.

22 A. Yes.

23 764 Q. Even though you and your colleagues and crime
24 specialists especially knew, as it were, or were able
25 to track the stories and were able to put a name, in 16:05
26 your mind at least if not in discussions with your
27 editors, as to who that whistleblower being referred to
28 there is, is that correct?

29 A. Yes. Yes.

1 765 Q. Okay. And then did I understand you to say that at
2 about 2011 you had heard a rumour?
3 A. A journalist came to me with this asking me what -- you
4 know, I wouldn't have a verbatim record, but it's
5 effectively 'what's the story with this? Have you heard 16:05
6 anything about this?'

7 766 Q. And did I understand you to say that you had
8 independently checked it out yourself?
9 A. Afterwards.

10 767 Q. Okay. And can I ask you whether the checking out of 16:05
11 that was done - and you're not going to tell me your
12 experiences, I appreciate - but was it done at national
13 Garda level, was it done otherwise than in the Gardaí,
14 was it done locally in Cavan-Monaghan?

15 A. No, I mean, I think I've been clear about this; there 16:06
16 was absolutely no point with me making -- in my
17 opinion, there was no point me making inquiries with
18 people who would be associated with Garda Headquarters.
19 I always take the view that anybody associated with
20 Garda Headquarters really is taking his master's voice, 16:06
21 as it were. So I wanted an independent person that I
22 could contact. And it's also very important to realise
23 - perhaps we're forgetting the human aspect of this,
24 Chairman - Gardaí, individual Gardaí would know
25 probably well over a thousand other members of the 16:06
26 force. So I had to be very careful who I contacted and
27 who I asked, because just say I asked somebody and they
28 said 'well, he's one of my best friends. How dare you
29 ask me that?'

1 768 Q. For fear you'd be repeating the allegation or giving
2 the allegations oxygen?
3 A. Yeah, but I also needed someone who would be
4 independent, but also someone who would actually answer
5 the question rather than attacking me for raising an 16:06
6 issue. So, you know, you had to -- it was a balancing
7 act; I had to find someone who I trusted that I could
8 talk to in confidence and wouldn't say 'How dare you
9 ask me that question?' So I found someone, I was lucky.

10 769 Q. Okay. And help me if you can, was that somebody within 16:07
11 or without An Garda Síochána?
12 A. It --
13 CHAIRMAN: well, who, apart from Gardaí, work on files,
14 crime files?
15 MR. WHELAN: well, I suppose -- 16:07
16 CHAIRMAN: well, I suppose you could be in a
17 secretarial or administrative capacity working on a
18 file. But what he said was he worked with him and he
19 was a very hard-working man, they'd worked on files
20 together. 16:07
21 MR. WHELAN: Okay.
22 CHAIRMAN: So my inference is it's a Garda.

23 770 Q. MR. WHELAN: well, then if he worked with him, maybe
24 this answers the question. But I'm not trying to
25 identify, let me be clear with you, let me be explicit, 16:07
26 I'm not trying to get in any way closer to your source
27 at all. It's to illustrate the extent to which the
28 level of information that would debunk the rumour was
29 relatively easily accessible in your field of work. So

1 the person who was able to debunk the rumour for you
2 and establish to your satisfaction that it was not true
3 was somebody in the division or thereabouts?

4 A. Chairman, I never say -- just to explain, and I know
5 where Mr. Whelan is coming from, I never say "Garda 16:08
6 sources" in the paper, because it tends to get me in
7 trouble, because Gardaí come along and say 'we want to
8 know who that guard is'. So I merely say "sources".
9 And to explain that, I had someone with a knowledge of
10 it, I'm not going to say if he was a Garda or a retired 16:08
11 member, but I had someone who I trusted implicitly,
12 I've known that person for a very, very, very long
13 time, someone of the highest integrity - as I said, he
14 called this person Maurice, so there's obviously some
15 sort of personal relationship there. And he gave me 16:08
16 enough, more than enough detail for me to accept that
17 this person knew what was happening. And that was the
18 end of it for me.

19 771 Q. Thank you. And I appreciate, I think the Chairman
20 appreciates that you're making your best efforts to 16:09
21 assist us.

22 A. I'm trying to help, Chairman.

23 CHAIRMAN: No, I think, Mr. Whelan, perhaps the point
24 you're making is this: Look, how difficult was it to
25 debunk the rumour and if Mr. O'Toole could do it 16:09
26 couldn't everybody else do it; isn't that a point
27 you're making?

28 MR. WHELAN: That's the point I'm making.

29 CHAIRMAN: Maybe could you help me on that?

1 772 Q. MR. WHELAN: well, I suppose let me ask you this
2 question, again because --

3 A. I can say this - sorry to interrupt, Mr. whelan - that
4 a lot of -- I obviously have contacts. I have contacts
5 with, most crime reporters would have contact with 16:09
6 people who know what is going on within An Garda
7 Síochána. A lot of non-crime reporters probably would
8 not have been able to get that level of knowledge. So
9 maybe I just got lucky with someone that I knew. So in
10 other words, as I said, I heard it first from a 16:09
11 non-crime journalist. You know, we are asked a lot
12 about issues by non-crime journalists. So I think it
13 probably would've been hard with someone who wouldn't
14 have a crime reporter's contacts and knowledge, shall
15 we say. 16:10

16 773 Q. But in that kind of scenario, the crime correspondent
17 might the go-to person for the generalist or political
18 correspondent to go to and say 'Is there anything to
19 this?'

20 A. Oh, yes. That happens quite lot. I mean, I can give 16:10
21 plenty of examples where ordinary reporters have come
22 to me, people outside journalism come to me, barristers
23 ask me things, solicitors ask me things, people that I
24 know personally, they do believe that we would have a
25 heightened knowledge of things. And, you know, we 16:10
26 probably would, in fairness. We do our job.

27 774 Q. This Tribunal, in part, I suppose, is looking at the
28 nature and spread of a rumour, and I think the Chairman
29 characterised it yesterday as an inkblot, as in a piece

1 of ink hitting a page, it could go in different
2 directions unevenly, it wouldn't necessarily cover the
3 whole page. You now have traced that rumour back to
4 early 2011 when you heard it?

5 A. Yeah. Yeah, I mean, I can't be specific -- 16:10

6 775 Q. A long time ago?

7 A. -- but it was before 2013.

8 776 Q. That you heard it and were able to debunk it?

9 A. Yes.

10 777 Q. Okay. 16:10

11 CHAIRMAN: well, he actually said 2011/2012,
12 Mr. whelan.

13 A. Yes, I don't have a specific timeframe, Chairman.

14 778 Q. MR. WHELAN: Thank you, Chairman. (To witness) And did
15 you come across it, as it were, very often thereafter? 16:11

16 A. No, not from - how can I say this - not from -- from
17 non -- from ordinary journalists shall we say and. And
18 I think I'd be pretty safe, in my knowledge, in saying
19 I would not have heard it from people connected to An
20 Garda Síochána. 16:11

21 779 Q. Okay.

22 A. I just didn't, Chairman. It wasn't --

23 780 Q. And you had managed to debunk it. And in some ways
24 then the question --

25 A. Sorry, no, sorry, I establish the facts. 16:11

26 781 Q. Oh, that's fine.

27 A. I knew that there'd been an investigation, the DPP had
28 said no charges and the DPP had said it's unlikely -
29 whatever the wording is - it's unlikely an offence has

1 been disclosed. So was it a rumour? It was actually
2 the facts that I heard.

3 782 Q. And in fairness, you made the point to us that
4 irrespective of whatever motives the person bringing a
5 story to you might have, your obligation and objective 16:11
6 was to establish the facts?

7 A. Yeah, I think it's pretty poor journalism for anyone to
8 sit and say 'why are you telling me this?' It's just
9 'what are you telling me', not 'why'.

10 783 Q. Can I ask you then, the Tribunal itself has established 16:12
11 that the story did not itself appear, if I put it that
12 way, except in some reportage by Mr. Williams in April
13 of 2013.

14 A. '14 was it?

15 784 Q. 2014. That the actual suggestion of a story relating 16:12
16 directly to the D family, as we've been calling it, was
17 only written by one journalist in one context, and
18 there'd been a couple of other attempts to visit the
19 house which the Tribunal has also dealt with. And you
20 are one of the journalists, if I recall correctly from 16:12
21 the papers, who has gone out of their way in responding
22 to the Tribunal to furnish such articles as you have
23 written about Mr. McCabe --

24 A. Yes.

25 785 Q. -- over the course of the years of these controversies. 16:12
26 It seems, and correct me if I'm wrong, to illustrate to
27 the Tribunal that there was no chilling effect
28 operating on you, that in fact most of the coverage, if
29 not all of the coverage of Sergeant McCabe, with that

1 exception of those articles, was benign shall I say?
2 A. At the very least. And, Chairman, the stories I
3 furnished were stories that mentioned Sergeant McCabe
4 directly. But there was also the issue, say penalty
5 points and that sort of thing. We did plenty of 16:13
6 stories about -- it was mostly, I have to say the
7 penalty points issue for me was largely, I never viewed
8 it as a crime story, it always for me was a political
9 story, because the stories seemed to be emanating from
10 political sources rather than Gardaí. 16:13
11 786 Q. And giving rise to political controversy?
12 A. Well, yeah, I mean, I've a pretty good idea where some
13 of the stories came from and it would not have been
14 Gardaí, it was always political circles, shall we say.
15 So we did plenty of stories - I sat outside one 16:13
16 personality's house for three days trying to get it
17 firmed up. We did not ignore penalty points. So there
18 was no chilling effect in that sense. I couldn't get
19 the personality's -- I couldn't get it over the line,
20 because the personality had sold the car that he was 16:14
21 caught doing the speeding or whatever it was, so we
22 just couldn't get that probative link to get it in the
23 paper.
24 787 Q. But also, if I refer back then to your strong
25 definitive phrase which was the story was dead to you, 16:14
26 if the story was dead to you then somebody uttering it
27 or repeating it to you couldn't operate a chilling
28 effect upon you, because you knew there was no
29 substance to the story?

1 A. Yeah, I mean, I had no interest in it. Sergeant McCabe
2 was declared innocent by the DPP. I mean, what sort of
3 journalist in their right mind would go after this
4 story? Some journalists think, believe it or not some
5 journalists they're Gardaí, some think that they're 16:14
6 solicitors. I'm a journalist, that's my job.

7 788 Q. And one last point then, or a related couple of
8 questions. When the protected disclosure story was
9 broken, Mr. Clifford told us yesterday by himself on
10 4th October 2016 -- 16:14

11 A. Yes.

12 789 Q. -- what was, as a newspaper and you as a crime
13 correspondent, what was your response to that story?

14 A. I was shocked by it. I have to say I was shocked -- by
15 the whole Tusla? Was it Tusla? 16:15

16 790 Q. No, not that. In fairness, that happened the following
17 February in 2018 was the Tusla allegation broke. It
18 was in October 5th of 2016 --

19 A. About the smear campaign?

20 791 Q. -- that the protected disclosures having been made, in 16:15
21 them the allegation from Superintendent Taylor that a
22 smear campaign directed by Martin Callinan and
23 involving, or at least known to Nóirín O'Sullivan had
24 taken place. What was your response to that?

25 A. Well, I was very disappointed in certain aspects of 16:15
26 this, particularly -- this isn't -- we're supposed to
27 take the flack; journalists aren't popular, crime
28 reporters are even less popular, but I have to admit I
29 was vexed by the suggestion that crime reporters,

1 including myself, were used in this smear. I was very
2 disappointed by some of the reportage. I know, look,
3 I'm sure they're all lovely people, but I know there
4 was evidence last week about the Sunday Times piece
5 saying that crime reporters were at the centre of this 16:16
6 briefing. That story rankled with me at the time and
7 it has rankled with me ever since. All she had to do
8 was ring me and ask me or ring any other journalist and
9 we would say 'I wasn't part of any campaign'. I was
10 very, very disappointed, because that came into the 16:16
11 public commentariat.

12 CHAIRMAN: No, I understand. But don't worry, I mean
13 we can all have views on what's written or what's not
14 written, but --

15 A. Yes, but it was stated as fact, Chairman, and it was 16:16
16 accepted.

17 CHAIRMAN: well, we'll see. And I'm the one who's
18 supposed to find the facts. In the meantime, people
19 are free to say what they want.

20 A. No, no, that's fine. But nobody came to came to me and 16:16
21 said 'Michael, were you involved in a smear?' And I
22 would've said no if they had asked.

23 CHAIRMAN: well, you've said it now.

24 A. That's fine.

25 792 Q. MR. WHELAN: And in circumstances where, as you say, 16:16
26 irrespective of the malice that a source might have one
27 way or the other - you instanced an Inspector having a
28 grievance against a Superintendent - you saw your
29 obligation as going to whether the allegation was

1 factually true or not?

2 A. Yeah. I mean, judge me on what I write, what goes in
3 the paper. I'm not naive enough to think that people
4 tell me things because of my magnetic personality, and
5 I don't think any journalist can really think of that. 16:17
6 There are myriad reasons why people tell us things.
7 And we do have a constant - luckily, in my opinion -
8 luckily we have a constant stream of information coming
9 to me and to my other colleagues. We treat everything
10 the same, we check it -- 16:17

11 793 Q. The ultimate --

12 A. -- and we run it.

13 794 Q. The ultimate determination on whether the matters in
14 the protected disclosure are factual or not, of course,
15 is with the Chairman and I don't want to transgress on 16:17
16 that. But in terms of how you treated the story, did
17 you take steps or establish or take a view as to
18 whether the allegation of a smear campaign was accurate
19 or not?

20 A. Oh, I knew it was wrong, because I knew that I hadn't 16:17
21 been smeared. And, you know, my name did come up and I
22 knew it was nonsense.

23 795 Q. And is that why you didn't report that story or give
24 prominence to that that story that the allegation --

25 A. Look, as I said, I think this whole decade long saga 16:17
26 really was a political thing. And, you know, there are
27 50 odd homicides a year, I'm kept very busy with what I
28 consider real crime. So this was not a real -- it's
29 personal issue for me, because I don't like being

1 associated with an alleged or putative smear campaign.
2 But journalistically, it wasn't on my radar really.
3 MR. WHELAN: Thank you for your reflections,
4 Mr. O'Toole.
5 CHAIRMAN: All right. Is that it, Mr. Murrinan? 16:18
6 MR. MARRINAN: There's no further questions?
7 CHAIRMAN: Yes.
8
9 THE WITNESS WAS RE-EXAMINED BY MR. MARRINAN AS FOLLOWS:
10 16:18
11 796 Q. MR. MARRINAN: Just if I could go back over very
12 briefly your position in relation to this. You hear a
13 rumour in around about 2011 --
14 A. Yes.
15 797 Q. -- in relation to Sergeant McCabe? 16:18
16 A. Yes.
17 798 Q. You investigate that yourself. Was it merely just a
18 rumour that you heard in 2011 or was there some
19 evidence that it was in fact at that time a smear
20 campaign against him? 16:19
21 A. Oh, not at all. It was a rumour.
22 799 Q. So it's merely a rumour --
23 A. Yes.
24 800 Q. -- in 2011?
25 A. It was more a question: 'Did you hear about this' or 16:19
26 'Have you heard?' And, Chairman, I do wish to stress,
27 it wasn't said in public, it was a one-on-one private
28 conversation.
29 801 Q. Yes. And I suppose that you looked at it from the

1 point of view of perhaps there was a story there that
2 you could follow, is that right?

3 A. Once I knew what had happened, there was no story in
4 this for me. I would hope that most journalists would
5 be curious enough to check anything out they're told. 16:19

6 802 Q. Well, you --

7 A. Not perhaps with a view to a story, but just 'what is
8 the story here?'

9 803 Q. Well, you probably got a stiff that perhaps there was a
10 story? 16:19

11 A. Yeah.

12 804 Q. But in any event, you were inquisitive to find out what
13 true position was?

14 A. Yes. I did hear Superintendent Taylor's evidence that
15 the people he allegedly smeared showed no response when 16:19
16 this alleged smear happened. I don't recognise any
17 journalist like that and I'm certainly not a journalist
18 who you would say something to and I would, doe-eyed,
19 merely accept it. I ask a lot of questions and I check
20 a lot of things out. 16:20

21 805 Q. So as of 2011, the state of play as far as you were
22 concerned was that there was no story, there was no
23 issue in relation to Sergeant Maurice McCabe, the DPP
24 had examined the case and had directed no prosecutions
25 in circumstances where there was no evidence of any 16:20
26 offence having been committed?

27 A. Yes.

28 806 Q. Is that your position?

29 A. Yeah.

1 807 Q. So then in 2012 we know that Superintendent Taylor
2 became the Press Officer. Was that the first time that
3 you had dealings with him or did you have dealings with
4 him prior to him being the Press Officer?

5 A. I didn't know Superintendent Taylor until he got the 16:20
6 job.

7 808 Q. You didn't know him before that. So he comes in as
8 Press Officer in June of 2012 and you have dealings
9 which are on a purely professional basis of
10 interactions between you and he, both, I presume, over 16:21
11 the phone, by way of e-mail or whatever?

12 A. I haven't confirmed my number. But I was in contact
13 with Superintendent Taylor regularly about issues.

14 809 Q. That's what one might expect. And he's indicated in 16:21
15 evidence that you were frequently at crime scenes and
16 he also attended crime scenes. So you'd have had a
17 fairly continual interaction with him over the period
18 of time that he was in the Press Office, would that be
19 fair to say?

20 A. Yes. As I say, I do go to more crime scenes than most. 16:21

21 810 Q. And there's no point in dancing around this, because it
22 was put very squarely by your own counsel to
23 Superintendent Taylor that you weren't briefed by
24 Superintendent Taylor negatively in respect of Sergeant
25 Maurice McCabe. That's been put on your behalf. So 16:21
26 whatever your position in relation to privilege, I
27 mean, it naturally follows from the statement "No
28 member of An Garda Síochána smeared me." So during
29 that period of time were there any other journalists

1 coming to you, first of all with a rumour about
2 Sergeant McCabe that they may not have heard previously
3 but heard in 2012, 2013 into 2014?

4 A. No.

5 811 Q. No. And if they -- 16:22

6 A. Well, sorry, Chairman, not that I recall.

7 812 Q. Yeah. And if they had, if they had have, you could've
8 put them right?

9 A. Yes, I --

10 813 Q. Yes. So maybe it might've stood out in your mind for 16:22
11 that reason, that you would've put them right in
12 relation to it?

13 A. Yes. And I can say the journalists that I would be
14 close to, other journalists, you know, there are active
15 crime correspondents that I would be particularly 16:22
16 friendly with and we never, this never came up.

17 814 Q. So you're familiar with the list of people that are on
18 Superintendent Taylor's list?

19 A. I am.

20 815 Q. And a lot of those would be crime reporters and you'd 16:23
21 be acquainted with a lot of them, would you?

22 A. I would be closer to some and not others. But yes, I
23 would know them all.

24 816 Q. The second point that you made is that had a
25 superintendent put a story out against Sergeant McCabe 16:23
26 at the time, that would've been a story in itself?

27 A. It would've been a story and it would've been
28 memorable.

29 817 Q. Yes. So there wasn't a story presented to you during

1 this period of time?

2 A. No, never. The issue was dead for me, so --

3 818 Q. And did you consider, or did you hear from any other
4 journalists that there was a smear campaign against
5 Sergeant McCabe, from whatever quarter? 16:23

6 A. No, no, Chairman, never. Nobody said to me, nobody
7 said that they knew anything about a smear campaign.

8 819 Q. So when the protected disclosure was made by
9 Superintendent Taylor in September -- no, it was into
10 early October of 2016; this must have come as a bolt 16:24
11 out of the blue?

12 A. Oh, yeah, it was extremely shocking. And when you're
13 alleged to be part of this, it's obviously very
14 personal.

15 820 Q. Yeah. 16:24

16 A. And I found it very upsetting, I have to say.

17 821 Q. Well, I was going to come to that. I mean, as a group,
18 crime correspondents would take their work extremely
19 seriously and take great pride in the work that they
20 were doing. 16:24

21 A. Yes, Chairman.

22 822 Q. And the whole idea that you would be used by somebody
23 to do down an individual in the circumstances that were
24 being alleged by Superintendent Taylor in his protected
25 disclosure would be actually quite insulting. 16:25

26 A. It is insulting. And, you know, I've been -- this has
27 not been my best, or this Tribunal has not been the
28 best for me; I've been accused being an eejit, I've
29 been accused of not checking things, of merely being a

1 vassal who accepts whatever somebody says to me. I can
2 assure you I'm none of them. I do check things and I
3 am very thorough, because I get the call at half two in
4 the morning if we have a problem. So I try to prevent
5 problems happening. 16:25

6 823 Q. well, I'll have to take you to task, I don't think
7 anybody accused you of being an eejit. I think that
8 the Chairman may have merely made a reference to it
9 when your own counsel --

10 A. well, I'm just saying it wasn't the best day, because, 16:25
11 you know, I'm a fella who --

12 CHAIRMAN: well, I'm sorry, I --

13 A. Ah, no, no, that's fine.

14 CHAIRMAN: I'm taken up as making definitive statements
15 if I ask questions, and I'm not. 16:25

16 A. well, when a Supreme Court judges raises the prospect
17 of me being an eejit, it does have more of a weight --

18 CHAIRMAN: well, it raises the prospect of you not
19 being an eejit.

20 A. well, that's fine. But I was more concerned with the 16:26
21 allegation by Superintendent Taylor that I and others
22 were people who would merely passively receive
23 information like that. I found that deeply offensive.

24 CHAIRMAN: Yes. Yes, like --

25 A. I've been called worse than an eejit. But there is 16:26
26 very little worse than --

27 CHAIRMAN: well, I certainly didn't mean that.

28 A. No, no, that's fine. There is certainly --

29 CHAIRMAN: You're a wax tablet on which anything is

1 written. Of course, the wax tablet doesn't answer
2 back. Admittedly they haven't used wax tablets for
3 some time, nor indeed have I heard the words "vassal"
4 since I studied mediaeval history. But there you go.
5 A. Well, we're all full of surprises. But I did take deep 16:26
6 exception to that I would do that.
7 CHAIRMAN: Mr. Marrinan, is there anything else?
8 824 Q. MR. MARRINAN: well, just finally, I suppose the whole
9 issue of the complication in terms of a crime
10 correspondent who has had interaction with a particular 16:26
11 individual, the whole issue of privilege makes it very
12 difficult then for a crime correspondent to defend him
13 or herself against this sort of suggestion, is that
14 right?
15 A. What do you mean, sorry? 16:27
16 825 Q. I mean perhaps you didn't have the immediate response
17 of protecting yourself. I mean, we have to look at the
18 reality here; you know, in correspondence with the
19 Tribunal since its inception you were claiming
20 journalistic privilege in relation to a lot of these 16:27
21 issues --
22 A. Yes.
23 826 Q. -- and I'm just acknowledging that perhaps the
24 circumstances are such that you might've felt
25 constrained because you had interaction with 16:27
26 Superintendent Taylor, albeit a professional one and
27 albeit he is as the Press Officer.
28 A. It was a bind, it definitely was and it still is. I
29 mean, there's plenty of public commentary about crime

1 correspondents and we very rarely bite back, because
2 the most important thing is, for me the most important
3 thing is to protect a source.

4 827 Q. Yeah.

5 A. These people take significant risks to talk to me. So 16:27
6 if I have to take a kicking to protect them, so be it.

7 CHAIRMAN: I can understand that.

8 MR. MARRINAN: Okay, thank you very much

9 CHAIRMAN: All right then, ten o'clock tomorrow
10 morning. 16:28

11

12 THE HEARING WAS THEN ADJOURNED UNTIL THURSDAY, 7TH JUNE
13 2018 AT 10:00AM

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