

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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CHAIRMAN OF DIVISION (P): MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF APPEAL

HELD IN DUBLIN CASTLE
ON FRIDAY, 14TH FEBRUARY 2020 - DAY 139

139

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

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1 THE HEARING RESUMED AS FOLLOWS, ON FRIDAY, 14TH
2 FEBRUARY 2020:

3
4 CHAIRMAN: Now, good morning, Commissioner.

5 THE WITNESS: Good morning. 10:32

6 CHAIRMAN: Now, Mr. Kelly.

7
8 FORMER ACTING COMMISSIONER DONAL Ó CUALÁIN, WAS
9 CROSS-EXAMINED BY MR. KELLY, AS FOLLOWS:

10
11 1 Q. MR. KELLY: Good morning. 10:32

12 A. Good morning.

13 2 Q. I just want to begin, if I can, with an overview. When
14 you're appointed, as I've understood your evidence
15 yesterday, your first task was to appoint officers to
16 assist you in carrying out the investigation, is that
17 right? 10:33

18 A. That's correct, Chairman.

19 3 Q. And you quite rightly told us that you told
20 Superintendent Mulcahy, because he was your most senior
21 detective responsible for all serious crime across the
22 region? 10:33

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

24 4 Q. And likewise for Inspector Coppinger?

25 A. That's correct, he would have been the detective
26 inspector in the Galway division, which is a smaller
27 unit in the region. 10:33

28 5 Q. Okay. These were officers who already had a very
29 substantial workload?

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

2 6 Q. And they were conducting this on top of their day job,
3 as it were?

4 A. Well, it became part of their day job, Chairman, yes.

5 7 Q. They weren't taking off other work to devote themselves 10:34
6 entirely to this, were they?

7 A. Well, I didn't have it in my gift at the time to take
8 everybody off anything. Crime happens, you know, and
9 we have to deal with it and we apportion teams. The
10 job that Detective Superintendent Mulcahy would have 10:34
11 really was to make sure that he had sufficient
12 resources across the region to deal at the front line
13 with issues that needed investigation. He was managing
14 the resource across the region in the context of all of
15 the investigations that were ongoing at that time. 10:34

16 8 Q. Yes. So the object, as I had understood you when you
17 were giving evidence yesterday, was that you were
18 trying to spread the load across the region as well?

19 A. Yes. I wanted to pick the highest quality team while
20 spreading the load, yes, across the region and 10:34
21 picking -- you know, spreading it into the different
22 divisions, so that any one chief wasn't taking the lion
23 's share of the responsibility. In other words, that
24 -- because of the people I was taking from the regions,
25 they were the people that would have been almost 10:35
26 full-time, the only time they would be taken away would
27 be if they had to attend court or a trial that they
28 were committed to previously.

29 9 Q. I think you said yesterday also that given the

1 importance that An Garda Síochána placed upon
2 encouraging confidential reporters, getting people to
3 stand up, as you put it, call out or shout out
4 wrongdoing, that was of great importance to the
5 organisation, wasn't it? 10:35

6 A. Of course it was, yes.

7 10 Q. And remains so?

8 A. Absolutely, yes.

9 11 Q. Yes. It's for that reason that when such complaints or
10 such matters arise, the object from a national point of 10:35
11 view, I take it, is to spread it across the -- the task
12 of investigating it across the nation?

13 A. That's correct. So, if I take example of, let's say,
14 my own region, when I was in charge of a region, if
15 some item of that nature came up in a particular 10:36
16 division, where, say, the local chief or the local
17 supers were too close to the matter to investigate it,
18 I would go to some other division to appoint someone to
19 investigate that matter. And I would also make sure
20 that -- like, if there were a few of those matters, 10:36
21 like discipline investigations, etcetera, going on at
22 the same time, that I spread that as well as I could
23 across, so that everyone was getting a fair share of
24 the work.

25 12 Q. Yes. I suppose also when allocating it you would 10:36
26 think, I want to have outsiders investigate this?

27 A. Yes. As objective as possible a team of people as you
28 could find.

29 13 Q. Because otherwise if you had local people, as I

1 understand it, it would be like marking your own
2 homework?

3 A. Well, the primary objective in an appointment scenario
4 is to get the most -- you know, people that haven't any
5 dealings with the individual that you're dealing with, 10:37
6 if they're a member of An Garda Síochána.

7 14 Q. And from your perspective, can I just ask, would it not
8 be better if there were within An Garda Síochána a
9 dedicated team or unit that dealt with these matters?

10 A. Well that has been discussed in the context of an 10:37
11 Internal Affairs type set up. We have an Internal
12 Affairs in An Garda Síochána, whether there should be a
13 dedicated team that would be sent around the country.
14 It was mooted. But I think it hadn't been considered
15 to this point, that it would work in the context of -- 10:37
16 we have centralised specialist detective units here in
17 Dublin, who are sought at times when, say, if -- and I
18 will give an example of the western Region, if we had a
19 few crimes happening around the same time, where our
20 own resources weren't sufficient to meet the immediate 10:38
21 demands of an investigative process, we would seek the
22 assistance of that unit, say the National Bureau of
23 Criminal Investigation. And they would deploy for a
24 period of time a number of people to assist. So we're
25 looking at having something similar, and it is being 10:38
26 talked about.

27 15 Q. Yes.

28 A. But again, that would be a group, and the reality is
29 you would never have a group large enough in a central

1 situation that you could deploy right around the
2 country for all that happens. So an alternative to
3 that, which works very well for us, is to go to the
4 neighbouring region or to the neighbouring division and
5 get a team from there. Because at the end of the day, 10:38
6 it's from the same pool we're going to draw the
7 resources anyway.

8 16 Q. So it has been -- thought has been given to having a
9 specialist internal affairs investigation unit?

10 A. Yes. That works in other police services that wouldn't 10:38
11 have the same, say, number of police in their service,
12 where there are much smaller units and where it would
13 be much easier to get around. Say, for example, I know
14 across the water, where they work along nearly shires,
15 they would have a police service in a local authority 10:39
16 type set up. It's much easier in that scenario,
17 geographically and on the basis of numbers, to have a
18 dedicated unit assigned. Looking at this country, we
19 have one national police service, you know, and that
20 means that the numbers are far greater. 10:39

21 17 Q. What are the numbers?

22 A. The numbers of An Garda Síochána ?

23 18 Q. Yes.

24 A. Well, when I retired there were upwards of 14,500 sworn
25 officers. That is probably over 15,000 at this 10:39
26 juncture. It was the Government's intention to take it
27 up to 16,000. I think that was the number. But in
28 addition to all the sworn members, we had had a
29 significant influx of civilian support staff as well

1 over the past few years. So I would say at this stage
2 An Garda Síochána would probably have in around 17,000
3 personnel.

4 19 Q. So it's not that much smaller than, for example, than
5 the metropolitan police? 10:40

6 A. That's correct. But when you take the metropolitan
7 police, they are working in a square mile. It's a
8 relatively small area compared to what -- when you take
9 it that we have the whole island to cover in this
10 country. 10:40

11 20 Q. Eight and a half million people?

12 A. Yes.

13 21 Q. Split over all the London boroughs?

14 A. Yes.

15 22 Q. When you came to consider suspension and you have 10:40
16 giving your evidence about that, you made the point
17 that it was up to local management to suspend under the
18 regulations. That's right, isn't it?

19 A. That's correct, Chairman, yeah.

20 23 Q. Yes. But because this was a confidential reporter and 10:40
21 concerned local management, that rather throws up a bit
22 of a lacuna, doesn't it?

23 A. Yeah. I hoped to clarify that yesterday. It did
24 present a unique set of circumstances for me being
25 appointed as the investigator. And it would for any 10:41
26 garda being appointed, any member, in that context.

27 24 Q. Yes. Because on the one hand you're investigating
28 this, you are the person who has got all the
29 information, all the relevant information?

1 A. Yes.

2 25 Q. At that stage local management don't?

3 A. Exactly.

4 26 Q. So there's clearly a lacuna?

5 A. Yes. But I stepped in and filled that lacuna. I felt 10:41

6 it was my duty to ensure that all aspects in the normal

7 course of any investigation, whatever would be

8 considered, had to be considered here, always with the

9 thought in mind that I had to protect the confidential

10 reporter's, you know -- 10:42

11 27 Q. And what I am saying, taking the abstract of the

12 complaint, one can easily imagine a complaint about

13 local management or concerning local management, you

14 couldn't go to them and say well, A is complaining

15 about B, will you now make a suspension if you had a 10:42

16 duty to deal with it all confidentially and investigate

17 it?

18 A. There's two matters there. The confidentiality

19 overrides everything.

20 28 Q. Yes. 10:42

21 A. Who the complaint is made against is a separate matter.

22 If the complaint is made against local management, of

23 course, yes.

24 29 Q. It's a simple point. It's you that has all the

25 relevant information? 10:42

26 A. Why he.

27 30 Q. Local management don't, yet the key to suspension lies

28 with local management?

29 A. Yeah. I don't have all the relevant information,

1 Chairman. I have information in relation to the
2 seriousness of the charges and I hopefully, over the
3 course of my investigation, would gather evidence. The
4 strength of the evidence, that part. I know that. I
5 don't have the other pieces, which reside with local
6 management. And my objective was to ensure that those
7 pieces of information were brought together, so that an
8 informed decision could be made.

10:43

9 31 Q. Would it not be better to suspend early so that you
10 remove all possibility of the person under
11 investigation influencing others or that sort of thing?

10:43

12 A. Suspension has to be made when it's justified, when it
13 can be supported and backed up with information
14 provided by both the investigating team in this matter
15 and also local management. And when that bar is
16 reached, that is when it is justified to suspend
17 somebody. It cannot be done on the basis of whether or
18 not it's going to suit the investigative process.
19 That's one of the considerations given.

10:43

20 32 Q. With respect, I suggest to you, it can be done. One of
21 the justifications for suspension in any employment
22 context, may be, well, look, these allegations have
23 been made, we need time to investigate, it would be
24 best if you didn't come in at the present and that's to
25 avoid contamination, influencing people
26 directly/indirectly?

10:44

27 A. Well all relevant matters were considered, Chairman, in
28 this regard, by both myself and my team and by local
29 management. And it wasn't considered that it was

1 warranted at the early stages of the investigation.

2 33 Q. Now, you got the billing records, if I call that up,
3 please, it's at volume 38, page 10869 I think. Do you
4 see there at the top of the page?

5 A. Yes. 10:45

6 34 Q. "As part of this investigation it has come to your
7 attention that on 9th September 2010 the then sergeant
8 in charge of community policing (Sergeant Haran) whose
9 area of policing responsibility included [blank] caused
10 a report to be forwarded to the then district officer 10:45
11 in Athlone (superintendent Aidan Glacken), which
12 expressed concern surrounding an alleged relationship
13 between Ms. B and Garda A.

14

15 He outlined in his report that the source of his 10:45
16 information was emanating from local community
17 activists."

18

19 And so on.

20 10:45

21 "The investigation has identified..."

22

23 On it goes. I won't read the whole thing out because
24 we're familiar with it. But the upshot of that was
25 that during the course of that Superintendent Glacken 10:45
26 had obtained the billing records of Garda A's phone,
27 isn't that right?

28 A. That's correct, Chairman.

29 35 Q. That came into your possession in 2015, isn't that

1 right?

2 A. That's correct, Chairman.

3 36 Q. I think it was what, about May 2015?

4 A. Well, that's when the analysis was completed, Chairman.

5 I am not sure exactly when the actual exhibit became 10:46

6 part of our exhibits, but it would have been previous,

7 it would have been before that.

8 37 Q. I will just go down the page and see what -- if we

9 pause there, Mr. Kavanagh.

10 10:46

11 "During our investigation Garda Barry White [sic], who

12 is a qualified telephone liaison officer, analysed the

13 billing."

14

15 So at some point, in the early part of 2015, the 10:46

16 billing records were analysed.

17 A. That's correct, Chairman.

18 38 Q. They hadn't, to your knowledge, been analysed before?

19 A. No. Well not by my team.

20 39 Q. Yes. Otherwise there would be no point of you, if they 10:47

21 had been and you had been given those, you would be

22 able to see --

23 A. No, we had a record, Chairman, of course we'd have to

24 analyse them ourselves because the purpose of our

25 investigation could have been different from the 10:47

26 purpose for which they were originally taken. So we

27 had a record and that needed to be analysed and that's

28 what was done.

29 40 Q. But I imagine if they had been analysed, that this

1 might be noted by Superintendent Glacken or on his
2 behalf, this Tribunal would have been provided with
3 that analysis?

4 A. Oh, I am sure --

5 41 Q. Yes. 10:47

6 A. Yes, I --

7 42 Q. Well I haven't seen them.

8 A. In relation to -- well that was a matter that was
9 outside the remit of my investigation.

10 43 Q. I am not criticising you for it. 10:47

11 A. Yeah.

12 44 Q. I am merely drawing attention to the fact. So you
13 analyse these, they are analysed and that provides what
14 turns out to be credible and substantial evidence of
15 inordinate contacts between A and B? 10:47

16 A. That's correct, Chairman.

17 45 Q. Yes. At the start of the investigation Nick Keogh was
18 anxious to point out that the phone, the State phone
19 and the need to obtain it, that's right, isn't it?

20 A. That's correct. 10:48

21 46 Q. At that time, since these are the events we have just
22 been speaking about, we're back in 2010, the phone was
23 taken, it was examined, but it was said that the
24 records held only went back two years. Do you remember
25 that? 10:48

26 A. That's the case in all telephone records, yes.

27 47 Q. Yes. But that's the text messages and so on, the
28 billing records, you agreed yesterday with
29 Mr. Marrinan, are held for six years?

1 A. I don't know. You are stating that as a fact, I'm not
2 sure. I know that two-year exists, because it was
3 always an issue in serious investigations.

4 48 Q. The point I am making is, had those records that were
5 obtained in early in 2015, been obtained in June or 10:49
6 July of 2014, that material would have been available
7 then?

8 A. What material?

9 49 Q. The billing records.

10 A. If they were looked for when? 10:49

11 50 Q. Back after you were appointed, at an early stage?

12 A. But all records that were relevant to my investigation
13 were all sought. In relation to all the phones that we
14 took into our possession. They were all analysed.
15 Applications were made in relation to all the phones. 10:49

16 51 Q. But that was in respect, as I understand it, that we've
17 just covered, the billing records were available back
18 in 2014, as a fact?

19 A. This was a matter for the investigation team and as far
20 as I'm concerned they pursued all avenues of enquiry in 10:49
21 relation to all telephonic records that were available.

22 52 Q. You were taken yesterday through the Charter and you
23 fairly pointed out that there was a duty on all members
24 of An Garda Síochána to report any criminal or suspect
25 activity, is that right? 10:50

26 A. That's right, Chairman.

27 53 Q. So there's not only a positive duty on them but the
28 organisation encourages them to report?

29 A. That's correct, Chairman.

1 54 Q. Yes. And that's also the introduction of the charter,
2 as you pointed out yesterday, the reporter should do so
3 without fear or victimisation or reprisal?
4 A. Yeah, that's correct, Chairman.
5 55 Q. As you yourself very fairly said, it takes a lot of 10:50
6 courage to shout it out?
7 A. Yes, Chairman, yes.
8 56 Q. The corollary of that, is that there is a duty on the
9 organisation to fully, fairly and promptly investigate?
10 A. Of course, Chairman, yes. 10:51
11 57 Q. Yes. And the confidential reporter should not,
12 according to the charter, feel that he is being
13 harassed or victimised. You have already agreed that.
14 So I take it you view would be that it was not helpful
15 to the investigation or to Nicholas Keogh that as you 10:51
16 investigate it, local management were pursuing him over
17 a variety of matters, such as the Olivia O'Neill
18 matter, the McHugh matter, entries on Pulse?
19 A. Well there were certain matters that I had to attend
20 to, having been appointed by the Commissioner. That 10:51
21 didn't relieve local management of their duty to manage
22 their districts or divisions, as it were. And I
23 couldn't interfere with that. Local management have to
24 manage, that is what they are paid to do. And in that
25 context I was given a specific task, which I took on, 10:52
26 and I interpreted that in a way to ensure that because
27 of the unique circumstances of the way in which the
28 confidential reporter had made, it came in under the
29 confidential reporter, therefore I was duty bound to

1 protect him, his welfare, in the context of my
2 investigation. However, I could not issue any edicts
3 to local management around how they did their work in
4 the context of managing the divisional district.

5 58 Q. You were asked yesterday, local management tried to get 10:52
6 you to investigate these matters and you responded,
7 quite logically, look, I'm investigating complaints
8 made by Nicholas Keogh, not complaints made against
9 him.

10 A. Yes, Chairman. 10:53

11 59 Q. I have got that right, haven't I?

12 A. Yes, you have.

13 60 Q. Yes. So, when these complaints were made against him,
14 he was making it clear to you, wasn't he, that he felt
15 harassed by this? 10:53

16 A. He was expressing concerns.

17 61 Q. We will turn up page 10832?

18 A. He wrote in with a list of concerns that he had. And
19 they were all addressed, as was any concerns that Garda
20 Keogh brought to my team. 10:53

21 62 Q. I think it's 38, 10832.

22 A. Sorry, 10832?

23 63 Q. Look, rather than do that --

24 A. I have it here. I have the right file.

25 64 Q. This is a letter which comes from -- it's dated 12th 10:54
26 December 2014, it's from Detective Superintendent
27 Mulcahy and it is sent to you, is that right? Have you
28 got it?

29 A. I have, yes. Yes, it is addressed to me, yeah.

1 65 Q. Yes.

2 A. Yeah.

3 66 Q. And it's about Nicholas Keogh?

4 A. Yes.

5 67 Q. 11th December 2014 met by Detective Superintendent 10:54
6 Mulcahy and Inspector Coppinger.
7

8 "The confidential reporter stated he had no issues with
9 this investigation and was content with how it was
10 being progressed. Investigating gardaí highlighted and 10:54
11 showed an article to him from the Daily Mirror, in
12 which the reporter indicated that the matters
13 highlighted concerned separate issues. He further
14 informed gardaí that he felt he is being harassed by
15 senior management at Mullingar due to the following 10:55
16 reasons:
17 (a) A Pulse check he had previously done on the Pulse
18 system;
19 (b) Intelligence he had placed on the Pulse system;
20 (c) Two alleged complaints by Ms. Olivia O'Neill and 10:55
21 Mr. Liam McHugh. "
22

23 So there he was saying in terms saying, well look, I am
24 feeling harassed by this. Can you see it from his
25 perspective, that he did feel harassed? 10:55

26 A. Yes, I can, and I can see that he took some action in
27 that regard. He had brought it to the attention of
28 GSOC in the context of making a complaint there.

29 68 Q. What did you do about it to alleviate it, to try and

1 address his feeling of harassment?
2 A. All I could do, through Detective Superintendent
3 Mulcahy, was to ensure that the supports that are
4 available within An Garda Síochána were put at his
5 disposal. And it was up to -- of course it's a 10:56
6 voluntary scheme, you're not obliged to engage with it,
7 if you don't want to. But it is a very professional
8 service that we have. That is where I would have
9 ensured that at all times and at all opportunities,
10 that Garda Keogh was reminded of those supports that 10:56
11 were available.
12 69 Q. Welfare services.
13 A. The Garda welfare services.
14 70 Q. Yes. If we just look at that last paragraph, the
15 second last paragraph on that document: 10:56
16
17 "The confidential reporter was reassured by
18 investigating gardaí as to its determination to
19 effectively investigate his allegations, that he will
20 be treated with dignity and respect and informed if he 10:56
21 feels that he is being harassed to report the matter
22 immediately."
23
24 Do you see that?
25 A. I do, Chairman, yes. 10:57
26 71 Q. Can you see how from Garda Keogh's perspective, given
27 that he already was reporting harassment, that that
28 particular reassurance might ring a little hollow?
29 A. Well, he had also reported that he had taken action in

1 relation to this matter in the context of going to a
2 statutory body with his complaint. And on that basis,
3 all I could do or my team could do, in my belief, is to
4 ensure that he continued to get the support in an
5 environment where he could make those decisions and 10:57
6 where he felt if anything additional happened in
7 relation to that, that he could come back to us for
8 further advice or go back to GSOC or wherever he needed
9 to go and that advice would be made available to him.

10 72 Q. And what would that advice be? 10:57

11 A. That if he felt he was being harassed, that he needed
12 to put it on paper and report it. I couldn't
13 investigate any harassment being alleged by Garda
14 Keogh, it had to go through a separate process within
15 An Garda Síochána. 10:58

16 73 Q. But all I am asking is, the issue of whether from the
17 perspective of the investigation it wasn't helpful to
18 have this going on with Nick Keogh, and the way he was
19 reacting to it?

20 A. It would be better if it wasn't there, of course, yes. 10:58

21 74 Q. Your advice essentially on those matters to local
22 management was, well, look, get an external person to
23 investigate this, wasn't it?

24 A. That was in relation to the Olivia O'Neill and Liam
25 McHugh. 10:58

26 75 Q. Yes.

27 A. Yes.

28 76 Q. And for what it's worth, that was what you saw as
29 sensible advice, you gave it to them?

1 A. Yes.

2 77 Q. And there was nothing more you could do?

3 A. No. It was outside my control.

4 78 Q. It's the decision to interview Garda A I want to turn
5 to now just briefly. Superintendent Mulcahy met Garda 10:59
6 A on the 24th April at Oranmore. Were you present
7 when --

8 A. No, I wasn't.

9 79 Q. -- Superintendent Mulcahy gave his evidence?

10 A. Oh I was, yes. 10:59

11 80 Q. Right, okay. I can take it then quite shortly. They
12 met on that occasion, he had by then prepared a list of
13 allegations and he handed those to Garda A. Do you
14 remember that?

15 A. I do, yes, Chairman. 10:59

16 81 Q. No doubt you would have been told at the time as well?

17 A. I was aware that was happening, yes.

18 82 Q. He wanted time to consider them and he was given time
19 to consider them, that's right, isn't it?

20 A. That's correct. 11:00

21 83 Q. He was allowed to consider them up until 16th June
22 2015, roughly about six weeks?

23 A. I think, Chairman, that the detective superintendent
24 explained that some of that delay was due to the
25 solicitor involved. 11:00

26 84 Q. Yes. When they did meet on that occasion, A turned up
27 with his solicitor again, produced the document with
28 its own legal caution on it and handed it in, signed
29 it, isn't that right?

1 A. That's correct, Chairman.

2 85 Q. Yes. And it was then called off until 24th June 2015,
3 when Garda A and the solicitor attended for an
4 interview?

5 A. I haven't the record in front of me. I take it that 11:00
6 that's correct, Chairman, yes.

7 86 Q. What I am curious about, is that not all a little
8 unusual in course of investigating quite serious
9 allegations? You have the allegations, you have
10 invited a person to come in to interview them and you 11:01
11 gave them six weeks or so to go off and have a think
12 about it, come back and don't actually get to interview
13 them until the 24th June.

14 A. I think this was explained in detail by the SIO, who
15 was Detective Superintendent Mulcahy, who was in charge 11:01
16 of the running of this investigation in the context of
17 the day-to-day management of what needed to be done.
18 He was the person who had, as I said yesterday, his
19 finger on the pulse of the investigation in the context
20 of what was going on on the ground, the quality of 11:01
21 information available to him at any given time. I
22 would have been briefed, but the detailed information
23 remained with the team in the context of any decisions
24 being made about, you know, interviewing of people or
25 whatever, as it was. 11:02
26

27 So on that basis this was an approach which I was happy
28 to agree with in the context of -- because I would have
29 been informed about it, because of the complexity again

1 of the investigation and the circumstances that
2 Detective Superintendent Mulcahy found himself in, that
3 this was the best approach. And that's the approach he
4 took.

5 87 Q. I am suggesting to you that it was preferential 11:02
6 treatment that was being given to Garda A, it isn't the
7 sort of treatment that would have been given then in
8 2015 to someone who is not a member of An Garda
9 Síochána against whom similar serious allegations were
10 being made? 11:02

11 A. I don't accept that, Chairman. There was no suggestion
12 at any stage that anyone got favourable treatment in
13 the context of any aspect of our investigation. My
14 overall approach from the word go was to ensure that
15 people were treated fairly across the board, everyone 11:03
16 involved, let it be witnesses, the confidential
17 reporter himself had rights and also the people that
18 were being investigated had rights. So they had to be
19 considered. So it was an approach that was based on
20 fairness. 11:03

21 88 Q. It was very fair towards Garda A. I am merely putting
22 that the same degree of fairness would not be extended
23 to a lay person in a similar position?

24 A. I don't agree with that, Chairman.

25 89 Q. I see. Now, back in September 2014 your team had asked 11:03
26 Nicholas Keogh to consent to his statement going to
27 Human Resources?

28 A. Yes.

29 90 Q. That was at a time when Human Resources I think were

1 being asked -- you were exploring the idea of
2 suspension, is that right?

3 A. Yes. I was -- I had briefed them, having first done
4 some research all around the area of suspension, having
5 heard Garda Keogh's concerns and having then consulted 11:04
6 with local management so that a fuller picture could be
7 presented and then having gone to HR with a submission
8 for consideration.

9 91 Q. Yes. If I had understood what you were saying
10 yesterday, very sensibly it was, that, look, at an 11:04
11 early stage I did consider an investigation and I made
12 enquiries with Human Resources and so on, to see how
13 the land lay, as it were, get their advice, their
14 input, is that right?

15 A. That's correct. 11:04

16 92 Q. When you did, Human Resources said, well, get him to
17 consent to showing us his statement, and he wasn't
18 prepared to do that?

19 A. Well they just made a request for it, they didn't say,
20 you know -- 11:05

21 93 Q. No.

22 A. -- they needed it.

23 94 Q. They made a request, it was put to Nicholas Keogh and
24 he didn't give his consent?

25 A. Yeah. 11:05

26 95 Q. Yes. Back again then after, time moves on, we come to
27 21st May 2015, you made a report to Human Resources.
28 It's at volume 14, page 3993.

29 A. Yes, Chairman.

1 96 Q. Yes. I think 21st May 2015, isn't it. Do you have the
2 page, it's 3993?
3 A. Yes, I see it. The 21st May.

4 97 Q. Yeah. And that's a report to Human Resources, John
5 Barrett, is that right? 11:06
6 A. Yes, this was to the executive director of Human
7 Resources.

8 98 Q. Yes. "I am asking for consideration be given to his
9 operational status."
10 Is that right? 11:06
11
12 A. That's correct.

13 99 Q. That's over the next page.
14 A. Yes.

15 100 Q. You had said yesterday that you did not believe that 11:06
16 Nicholas Keogh not giving permission to disclose his
17 statement had an impact one way or another on the
18 decision to suspend, is that right?

19 A. I do.

20 101 Q. So why bother asking him at all in September 2014 about 11:06
21 giving his consent?

22 A. It was a request coming from the HR department. We
23 merely passed it on to Garda Keogh. He gave his
24 response. We then considered it ourselves, based on
25 the information we had, which I felt I had all the 11:07
26 information, I had his statement, I had all of the
27 issues that were on the table. And in joining that
28 part with what the local management had to say, I was
29 of the view then that his suspension wasn't warranted.

1 102 Q. Can I move on to just another matter? It was clear at
2 some points during this that Nicholas Keogh believed
3 his phone was unsafe, I think you're aware of that?
4 A. I am, Chairman, yes.
5 103 Q. Yesterday you told Mr. Marrinan, when you were giving 11:07
6 your evidence, that you had a conversation with Nick
7 Keogh on 27th May 2015, you spoke to him by phone, is
8 that right?
9 A. I spoke to him by phone on numerous occasions,
10 Chairman. 11:07
11 104 Q. Yes.
12 A. Yeah.
13 105 Q. And he was telling you at that time, if my note of what
14 you said is right, that the office was humming?
15 A. He said what? 11:08
16 106 Q. That the office was humming, the station was humming?
17 Maybe I have got it wrong. It's not central, but
18 anyway.
19 A. Is this what Garda Keogh said?
20 107 Q. As reported by you. 11:08
21 A. The office was humming?
22 108 Q. Yes.
23 A. I don't know what he means by that.
24 109 Q. I presume busy, talk, a lot of stuff going on?
25 A. Which office? 11:08
26 110 Q. I imagine Athlone. Don't worry.
27 A. I don't understand the context of that.
28 111 Q. He wanted movement in the case and your view was, as I
29 understood it, that if Nick Keogh wanted to go into the

1 meat of the case you would encourage him to do so but
2 we would want to get a full account.

3 CHAIRMAN: No, sorry, he said Garda A into public
4 office, humming, I walked out. It wasn't that the
5 office was humming. It was Garda A who was humming. 11:08

6 MR. KELLY: well that's my inability to read my own
7 handwriting.

8 CHAIRMAN: That's all right. There is one reference to
9 humming, according to the index, and it's an entry
10 13258, 27th May, where Garda Keogh said, noted in his 11:09
11 diary:

12

13 "Garda A into public office. Humming. I walked out."
14

15 And then he says, it says here: 11:09

16

17 "I spoke with AC to say I wanted movement on the case."
18

19 MR. KELLY: Yes.

20 112 Q. CHAIRMAN: So he wanted movement on the case. 11:09
21 A. Yes.

22 113 Q. MR. KELLY: Yes. You wanted to encourage him -- you
23 wanted to get a full account?

24 A. Yes.

25 114 Q. But you didn't want to do it by phone? 11:09
26 A. You're talking about the initial phone call?

27 115 Q. Yes.
28 A. Of course, that goes back to the initial phone call.

29 116 Q. Yes.

1 A. where I merely rang to introduce myself.

2 117 Q. Yes.

3 A. I had already written to him. I managed to get a phone
4 number for him. I rang him, I told him who I was, I
5 told him what the terms of my appoint were. It was 11:09
6 clear to me -- I have seen this before with people who
7 have made complaints, let it be discipline or -- they
8 are anxious to start the process.

9 118 Q. That's right.

10 A. They want to start talking about it. 11:10

11 119 Q. Yes.

12 A. And I think Garda Keogh gave an indication when I
13 talked about the affidavit, that I had read it, that
14 there were other issues and I said fine, we need to sit
15 down and talk about that. 11:10

16 120 Q. Yes.

17 A. That was my --

18 121 Q. I imagine from experience, someone is really concerned
19 about something, you're investigating --

20 A. Yes. 11:10

21 122 Q. -- they want to get it out.

22 A. Yes.

23 123 Q. They want to tell you.

24 A. Yes.

25 124 Q. Get it all out as soon as possible. And you're 11:10
26 investigating, you're saying, well hang on, you know,
27 we need to get a full account, you have to meet
28 face-to-face with him, get a full statement and so on.
29 Am I right so far?

1 A. You are, indeed.

2 125 Q. Yeah.

3 A. Yes.

4 126 Q. And you say to him, look, just hang on, we can't go
5 into it on the phone? 11:10

6 A. Well, when you consider --

7 127 Q. Meaning, look, I don't want to spend two hours on the
8 phone, I've got to do it properly, meet face to face?

9 A. When you consider how long it took in the end.

10 128 Q. Yes. 11:11

11 A. How long it took to get all of the account down, it
12 would have been ludicrous to try to do that over the
13 phone. I wouldn't have done it. That wouldn't be the
14 right way to do that. You need the person sitting down
15 in front of you. 11:11

16 129 Q. What I am suggesting to you is, it at all conceivable
17 that Nick Keogh could misunderstand that to mean, my
18 phone is not safe?

19 A. I can't get inside Garda Keogh's head. I don't how he
20 is going to interpret anything. I was merely trying to 11:11
21 facilitate Garda Keogh at that juncture and get his
22 account as soon as possible.

23 130 Q. Yes. Can I just turn to the commencement of the
24 interviews at Athlone? After Nick Keogh voiced his
25 concern about that, you did in fact decide to speak to 11:11
26 -- or have the interviews conducted, if possible, away
27 from Athlone Garda Station, elsewhere, in a hotel or
28 whatever?

29 A. Correct, Chairman.

1 131 Q. You took on board his concern.
2 A. I did, indeed, Chairman.
3 132 Q. You also heard what Sergeant Haran had said in his
4 evidence. I think you were here?
5 A. Yes, I wasn't here for it, but I'm aware of it, yes. 11:12
6 133 Q. Yes. I won't read it all out again, but it was quite
7 clear that he thought it was an appalling idea to ever
8 conduct them there in the first place, that's right,
9 isn't it?
10 A. He's entitled to that view, yes. 11:12
11 134 Q. He was the sergeant on the ground.
12 A. That's right.
13 135 Q. Aware of what was going on in the station.
14 A. I would hope so, that he would know what is going on,
15 yes. 11:12
16 136 Q. If we can just turn towards the end of your
17 investigation, the report to the DPP. After you had
18 had the billing records analysed and came up with those
19 inordinate number of contacts between A and B, that
20 provided, amongst other things, fair grounds that 11:13
21 reasonable suspension existed?
22 A. That's correct, Chairman.
23 137 Q. Is the way you put it, is that right?
24 A. Yes.
25 138 Q. And went through, but had you a problem, in that other 11:13
26 witnesses really weren't prepared to cooperate or help?
27 A. That's correct, Chairman, yes.
28 139 Q. Yes. And that led to the recommendation in the report
29 that we all have seen. You were just recognising it?

1 A. I wasn't a recommendation, Chairman. It was --
2 140 Q. It was a view?
3 A. It was a view, a statement made, yes.
4 141 Q. Yes. No doubt any prosecutor would give due weight to
5 the view of the investigating officers' report? 11:14
6 A. Yes, I am sure they do, yes.
7 142 Q. What I am trying to work out is, when was Garda A
8 actually suspended?
9 A. Oh, I think it was --
10 CHAIRMAN: 15th October 2015. 11:14
11 MR. KELLY: Well I wonder about that, Chairman. And
12 the reason I wonder, is just, I had understood that to
13 be the date on which he was taken out of plain clothes
14 into uniform.
15 CHAIRMAN: That was earlier. 11:14
16 MR. KELLY: Was it? Was that the 10th.
17 CHAIRMAN: I think that was the 10th October. I am
18 speaking, that bit from memory, but my chronology says
19 the 15th. Let me just check it. But before that, a
20 few days before that, a short few days before that, the 11:14
21 evidence is he was taken out of circulation, he was put
22 back in uniform and he was confined to barracks, so to
23 speak. He was confined to the station. Now that part
24 may be wrong but -- and if I have the date wrong,
25 please correct me. I'm sorry, did I say 15th? The 11:15
26 14th October 2015. As I say, a few days earlier,
27 somewhat less than a week, but I may be wrong about
28 that, he was brought back to uniform and station duty.
29 MR. KELLY: Yes.

1 CHAIRMAN: That seems to be the process.

2 A. One of my notes, Chairman, makes reference to a phone
3 call from, first of all Declan Mulcahy to
4 Superintendent Murray, to pass on the advice of HR in
5 relation to their responsibility for the suspension and 11:15
6 the call came back saying, yes, we are already aware.
7 That morning. That's my note. So that date might be
8 -- confirm what date we're talking about.

9 MR. KELLY: Right.

10 MR. MARRINAN: Sorry, Chairman, the date is the 14th, 11:16
11 you are correct. And it was from 6:30pm on the 14th.

12 CHAIRMAN: On the 14th.

13 MR. MARRINAN: Yes.

14 CHAIRMAN: And prior to that, Mr. Marrinan, am I right
15 in saying that a few days before that he was changed 11:16
16 from, I don't want to use a normative term --

17 MR. KELLY: He was put into uniform.

18 CHAIRMAN: -- he was brought out of plain clothes into
19 uniform, and we know the significance of that, and was
20 confined to station duty. 11:16

21 MR. MARRINAN: That was the 10th October.

22 CHAIRMAN: The 10th October, there we are.

23 MR. KELLY: You don't have a reference, do you,
24 Patrick, for the 14th October? Because I think I have
25 seen somewhere in the papers -- 11:16

26 MR. MURPHY: Chairman, if it's of assistance, I think
27 it's page 2341.

28 CHAIRMAN: 2341, what do we see there?

29 MR. MURPHY: A memorandum which indicates details in

1 relation to his suspension on the 14th October.
2 CHAIRMAN: This is Superintendent Murray, is that
3 right?
4 MR. MURPHY: I believe so, Chairman.
5 MR. KELLY: Perhaps if we call that up. 11:17
6 CHAIRMAN: 2341, okay.
7 MR. MURPHY: Chairman, I think it reflects the
8 notification to Garda A, makes reference to control of
9 his firearm.
10 CHAIRMAN: Yes. 11:17
11 MR. MURPHY: And also references to keys, welfare.
12 CHAIRMAN: That's right, and phone.
13 MR. MURPHY: And then organising a lift home for him,
14 talking to his wife, an indication that there was an
15 offer of welfare if he wanted and a notification to the 11:17
16 chief superintendent.
17 CHAIRMAN: Yes. And I think we may find notes at an
18 earlier stage on the 10th, that he was ordered to serve
19 in uniform rather than plain clothes.
20 MR. KELLY: I think that's right. 11:18
21 CHAIRMAN: Broadly speaking.
22 MR. KELLY: That's right, the reason I'm asking --
23 CHAIRMAN: No, no, thanks very much.
24 MR. KELLY: I want to get it right. I think there is
25 also somewhere in the papers, the actual official 11:18
26 documents that were handed to him, and that's really
27 the reference I'm chasing down. But look I'm not --
28 MR. MARRINAN: That's at volume 39, 11055.
29 CHAIRMAN: Thank you very much. 11055. we'll get

1 there, Mr. Kelly.

2 MR. KELLY: Yes.

3 CHAIRMAN: Now, there we are.

4 143 Q. MR. KELLY: I don't want to detain you over this. By
5 stage a report had gone in? 11:18

6 A. Yeah, this matter, this wasn't anything to do with me.

7 144 Q. I know that.

8 A. Yes.

9 145 Q. That's why I don't want to detain you on it.

10 A. Yes. 11:18

11 146 Q. But I just want to ask you a couple of questions about
12 your report to the DPP, which is volume 39, I think
13 it's 11076.

14 CHAIRMAN: 11?

15 MR. KELLY: 11076. 11:19

16 CHAIRMAN: Thanks very much, I'm sorry for being dim.
17 I just didn't hear it exactly. 11076, yes.

18 147 Q. MR. KELLY: You're familiar with this, it's your
19 report?

20 A. It is. 11:19

21 148 Q. It's two volumes.

22 A. I forget the number of volumes. There was several
23 volumes, yes.

24 149 Q. But just, the chronology, by June, 18th June 2014
25 Nicholas Keogh's statement had been completed? 11:19

26 A. Yes.

27 150 Q. These events that you were investigating went back to
28 2009?

29 A. Yes, if I can recall, yes.

1 151 Q. If you like, a breakthrough came when they were
2 examined, got the phone billing records examined, which
3 showed the 1,672 contacts within quite a short period?
4 A. That's correct, Chairman.
5 152 Q. In that you record what was found in the storeroom in 11:20
6 Athlone, search, nothing found. Then Sergeant Haran is
7 reporting about the inappropriate relationship. The
8 call data from Garda A's phone. You found, in short,
9 that quite a number of the allegations were plausible
10 and had substance? 11:20
11 A. Yes, Chairman.
12 153 Q. Throughout this, if I can ask you this, were you of the
13 view that Garda Keogh was genuinely trying to call out
14 what he saw as wrongdoing?
15 A. I was, Chairman, yes. 11:20
16 154 Q. And in doing that, that he was honest?
17 A. Absolutely, yes.
18 155 Q. And you found him, on the whole to be, having done
19 this, anxious, worried, as you might well expect?
20 A. Exactly, Chairman. I would have expected he was. 11:21
21 156 Q. And you never thought that here's a man who is just
22 simply making it all up to stick somebody else in the
23 frame?
24 A. I never had that though, no.
25 157 Q. I am very much obliged, chief superintendent, thank you 11:21
26 very much.
27 CHAIRMAN: Thanks very much.
28 MR. KELLY: Commissioner, I should say.
29

1 END OF EXAMINATION

2
3 CHAIRMAN: Thanks very much, Mr. Kelly. Mr. Murphy.
4

5 11:21

6
7 FORMER ACTING COMMISSIONER DONAL Ó CUALÁIN, WAS
8 CROSS--EXAMINED BY MR. MURPHY, AS FOLLOWS:
9

10 158 Q. MR. MURPHY: Thank you, Chairman. Commissioner, I 11:21
11 think you have been asked a number of questions in
12 relation to your communications with Garda Keogh, and
13 in particular I think the last questions related to
14 your view of him giving you his complaints in relation
15 to the matters that were under investigation by you. I 11:21
16 think in relation to those matters, that is to say in
17 relation to Garda A, your view was what he said to you
18 was plausible and serious and had to be followed
19 through and investigated?

20 A. Absolutely, yes. 11:22

21 159 Q. I think in the context of your report to the DPP, I
22 wonder if on the screen we could please bring up page
23 11142, volume 39. Can I just draw your attention to
24 paragraph 16? This is the conclusion part of your
25 report to the DPP. 11:22

26 A. Paragraph 16?

27 160 Q. It is dated 24th November 2015, and that date is to be
28 seen on page 11144. But just focusing on 11142. Can I
29 ask you to confirm, you say at 16.1:

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"A number of the allegations made by the reporter are plausible and have substance."

A. Yes, Chairman,,

161 Q. I think then at paragraph 16.2 and 16.3 you summarise the evidence that you have managed to collate up to that date? 11:23

A. That's correct, Chairman.

162 Q. I think the phrase you use in paragraph 16.2 is that the evidence at that stage is circumstantial, is that correct? 11:23

A. That's correct, Chairman.

163 Q. I think you've emphasised in your answers to Mr. Kelly that you were following an evidence-based investigation and seeking to find evidence at every stage, is that the case? 11:23

A. That is what you do in an investigation, you follow the evidence, yes.

164 Q. And can I ask you just for the record to confirm to the Chairman that all of this evidence was meant to be submitted to the Director of Public Prosecutions for an independent assessment by that office? 11:23

A. That's what happens in the normal course, yes, Chairman.

165 Q. And I think in paragraph 16.2 you say: 11:23

"The circumstantial evidence may fall short of what is required to bring a criminal prosecution."

A. Yes.

1 166 Q. Just to help the Chairman understand that position, was
2 that because, despite your very best efforts and those
3 of your team, that two civilian witnesses who you had
4 tried to get to testify would not cooperate?
5 A. That was my view at the time. 11:24
6 167 Q. Is it the case that absent their participation on a
7 voluntary basis, there wasn't any direct evidence to
8 support the allegations made by Garda Keogh?
9 A. That is the case, Chairman.
10 168 Q. Insofar as the investigation is concerned, is it the 11:24
11 case that -- if we turn to page 11143. In the second
12 last paragraph, you say:
13
14 "The Garda investigation file, together with appendices
15 is now forwarded for favour of directions in relation 11:24
16 to the possible acts of criminality."
17 A. Yes, Chairman.
18 169 Q. And again for the public record, does that confirm that
19 you were waiting for directions from an independent
20 office, the DPP, to decide whether there was sufficient 11:24
21 evidence to prosecute or not?
22 A. That's correct, Chairman.
23 170 Q. Just coming back to what you said in relation to Garda
24 Keogh concerning those allegations, that he cooperated
25 with you, he was truthful with you. 11:25
26 A. Yes.
27 171 Q. He assisted new every possible way and you followed up
28 those investigations very seriously, would that been
29 your evidence?

1 A. Yes, Chairman, it is.

2 172 Q. Can I just ask you about a number of other
3 communications that you would not have been aware of at
4 the time. For example, if I could ask you to be shown
5 page 13299. And, registrar, if I can ask you please to 11:25
6 move the screen slightly to the left so we can see it.
7 Thank you. Could I just draw your attention please to
8 the top right-hand side of the page? Do you see this?

9 A. Yes, Chairman, I do.

10 173 Q. This is Garda Keogh's diary. It's 19th February 2015. 11:25
11 And he says:

12

13 "It is very much me versus AGS. Donal Ó Cualáin is
14 along with Detective Superintendent Mulcahy attempting
15 to cover up [blank] who is a former member of the 11:26
16 force..."

17

18 who I think is present.

19

20 "...was right!" 11:26
21

22 when did you first see that?

23 A. I saw it during this process, Chairman.

24 174 Q. Of this Tribunal?

25 A. Yes. 11:26

26 175 Q. So in 2015, in February, while you were investigating
27 all these matters, leading to your report of November
28 2015, did Garda Keogh ever say to you, to your face, or
29 to your team, that you were responsible for attempting

1 to cover up wrongdoing?

2 A. No such comment was ever made to my team.

3 176 Q. In the months which passed on after that, did he make
4 any such comment to you, up to November 2015?

5 A. No. Not at any time during my investigation, Chairman. 11:26

6 177 Q. I think it's also clear from that entry that Garda
7 Keogh was talking to other people about his experience
8 and his complaints, isn't that right, without naming
9 names?

10 A. That appears to be the case. 11:26

11 178 Q. So in that particular entry, that particular person is
12 named, but you also I think are now aware that there
13 are other people who Garda Keogh was speaking to as
14 well, is that right?

15 A. That's correct, Chairman, yes. 11:27

16 179 Q. You're aware that he was talking to Deputy Ming
17 Flanagan?

18 A. Absolutely, yes.

19 180 Q. You were aware that he was talking to Deputy Clare
20 Daly? 11:27

21 A. Yes, I am, Chairman.

22 181 Q. You are aware that he was talking to Deputy Mick
23 Wallace?

24 A. I am, Chairman, yes.

25 182 Q. I wonder if you could please be shown 13373, please. 11:27
26 This is an entry for January 2018. Garda Keogh records
27 his view that:
28
29 "Entering the fourth year of this shit things turned

1 slowly, new allies, D Taylor, F Fanning and J Barrett.
2 Donee Ó Cualáin won't tell us who is carrying out
3 disciplinary investigation but I understand it's the
4 bridesmaid. "

11:27

6 Just pausing there for a moment, did you know in the
7 course of your investigation that Garda Keogh was
8 talking to David Taylor, the former Press Officer of An
9 Garda Síochána?

10 A. I was not aware of that, Chairman, no.

11:28

11 183 Q. Did you know that during the course of your
12 investigation at any stage he was talking or receiving
13 support from Mr. Barrett?

14 A. That doesn't surprise me, given the role that
15 Mr. Barrett had in the organisation.

11:28

16 184 Q. I see.

17 A. So...

18 185 Q. And in relation to Assistant Commissioner Fanning?

19 A. Again, he held that role for some time and he may have
20 had some responsibility for a region where the
21 confidential reporter was working, yes.

11:28

22 186 Q. Can I ask you then to be shown, please, page 10931.

23 This is a letter that was referred to in the evidence
24 of Detective Superintendent Mulcahy and I think in the
25 questions asked on behalf of the Tribunal. It's a
26 letter addressed to DPP Claire Loftus and it's cc'd to
27 Frances Fitzgerald, who was Minister for Justice at the
28 time. It's 26th July 2016?

11:29

29 A. Yes, Judge, I have that.

1 CHAIRMAN: The 26th July?
2 MR. MURPHY: of July 2015, yes. So again coming back
3 to the earlier reference to the DPP, this is several
4 months before your file goes to the DPP for
5 consideration. 11:29
6 A. That appears to be the case, Chairman, yes.
7 187 Q. When did you see this for the first time?
8 A. During this process as well, Chairman.
9 188 Q. When you say this process, you mean this Tribunal.
10 A. The Tribunal, yes. 11:29
11 189 Q. So isn't it the case therefore that in 2015 and until
12 2019 you weren't aware that this letter had been
13 written?
14 A. No.
15 190 Q. By Garda Keogh? 11:29
16 A. No, Chairman, I was not aware.
17 191 Q. Behind your back but sent to the DPP?
18 A. I was not aware, Chairman, no.
19 192 Q. This is a letter which details various complaints which
20 you've dealt with in the course of your evidence, but 11:30
21 can I ask you just first of all to turn to page 10930?
22 A. Yes, Chairman.
23 193 Q. Can I ask you to look please at paragraph 4?
24 A. Point 4 or paragraph 4?
25 194 Q. Point 4? 11:30
26 A. Yes.
27 195 Q. At point 4 there is reference to taking statements from
28 gardaí in Athlone Garda Station?
29 A. Yes.

1 196 Q. And a complaint that the suspect did not leave the
2 Garda station while the investigation team were
3 present?
4 A. I can see that, Chairman, yes.
5 197 Q. Do you see that? 11:30
6 A. Yes.
7 198 Q. Then there is a specific allegation, and I quote:
8
9 "He (Garda A) was able to see every person who was
10 called in to make statements and in a position to 11:30
11 eyeball members of An Garda Síochána. I believe this
12 was deliberately facilitated in an effort to suppress
13 honest statements being made by way of informal
14 intimidation."
15 A. I totally reject that, Chairman. 11:30
16 199 Q. Well, apart from totally rejecting that, did Garda
17 Keogh say that to you in 2015?
18 A. No.
19 200 Q. Did he say that to you in 2014, when he advised you
20 that he felt it was inappropriate to have people being 11:31
21 interviewed in the station?
22 A. He told us about his concerns, but never made that
23 comment, that he felt it was deliberately facilitating
24 -- to suppress honest statements being made.
25 201 Q. Just pausing for a moment, you are a very experienced 11:31
26 member of An Garda Síochána, you're now retired, but
27 how seriously will a Garda Síochána take an allegation
28 that a member of the force would deliberately suppress
29 honest statements being made by witnesses by way of

1 informal intimidation?

2 A. It is one of the most serious allegations you could
3 make against a member of An Garda Síochána, whose bread
4 and butter is investigate, they're there to investigate
5 and if that's being alleged against them it means 11:31
6 allegedly, you know, they shouldn't be in the Garda
7 Síochána, if that's the way they approach their work.

8 202 Q. In effect it's an allegation, is it not, of attempting
9 to pervert the course of justice?

10 A. Yes, it is. 11:31

11 203 Q. Do you accept or reject that allegation?

12 A. I totally reject it as a suggestion, yes.

13 204 Q. If I could ask you please just to turn to page 10931,
14 and the last paragraph, please. There I think Garda
15 Keogh says: 11:32
16

17 "I do not want to be dismissive of every part of the
18 Garda investigation. I do believe if Detective
19 Superintendent Mulcahy and Detective Inspector
20 Coppinger were investigating the case without the 11:32
21 interference of senior management, this could have been
22 a very different investigation."
23

24 Do you see that?

25 A. I can see that, Chairman. 11:32

26 205 Q. Can I ask you, did you interfere with the operation of
27 the investigation in an effort to cover things up by
28 directing Detective Superintendent Mulcahy and
29 Detective Inspector Coppinger to do things that would

1 cover up or suppress the truth?

2 A. I did not, Chairman.

3 206 Q. Again, in terms of that complaint, at any stage in the
4 course of the conduct of the investigation did Garda
5 Keogh say to you or communicate to you the allegation 11:33
6 that if it was not for your intervention this
7 investigation would have been a perfect investigation?

8 A. That was never said to me, Chairman.

9 207 Q. And were you also aware during the same period of time
10 that Garda Keogh openly expressed appreciation to 11:33
11 Detective Superintendent Mulcahy and Inspector
12 Coppinger for their work?

13 A. That was a common thread in all of the correspondence,
14 yes.

15 208 Q. I wonder if you could be shown, please, document 10832. 11:33
16 CHAIRMAN: This is the 12th December letter by
17 Detective Superintendent Mulcahy?
18 MR. MURPHY: Yes.
19 CHAIRMAN: Reporting concerns of Garda Keogh.
20 MR. MURPHY: Yes. 11:34
21 CHAIRMAN: Yes.

22 209 Q. If I ask you to scroll down, registrar. Now, I think
23 you have been asked questions about this document. In
24 the last paragraph, it says:
25
26 "The confidential reporter was reassured by
27 investigating gardaí as to its determination to
28 effectively investigate his allegations, that he would
29 be treated with dignity and respect and informed if he

1 feels that he is being harassed to report the matter
2 immediately. "

3
4 Can I ask you to confirm to the Chairman, does that
5 reflect your view that issues in relation to any
6 alleged harassment were to be dealt with by a party
7 other than yourself?

11:34

8 A. That was the case, as he had already been done,
9 obviously. But myself or my team would have no issue
10 with being a conduit for raising those matters in the
11 proper --

11:34

12 210 Q. Insofar as this documentation is concerned, does that
13 fit into the pattern of communication you would have
14 had with him throughout that time?

15 A. It does, Chairman, yes.

11:35

16 211 Q. I wonder if you could please be shown document 10905.
17 Sorry, registrar, could I ask you to just scroll to the
18 bottom. Thank you. This is a letter of 29th May 2015.
19 It's written by the Secretary General, acting, of the
20 Department of Justice, to the Commissioner of An Garda
21 Síochána, raising matters concerning issues raised by
22 Deputy Mick Wallace concerning a Garda whistleblower
23 during Parliamentary Questions on the 26th May.
24 Insofar as you were concerned, was that brought to your
25 attention at the time?

11:35

11:35

26 A. It was. I would have been aware of that, yes.

27 212 Q. So was it unusual for you to find yourself in a
28 position where a criminal investigation that you were
29 conducting in 2015 was subject to ball by ball

1 commentary by members of the Oireachtas?
2 CHAIRMAN: Do we know what Deputy Wallace actually
3 said? Do we have that conveniently?
4 MR. MURPHY: Not conveniently, Chairman.
5 CHAIRMAN: That's all right, forget it. That is not 11:36
6 important.
7 213 Q. MR. MURPHY: In general terms, I think you're aware of
8 the fact that there was criticism of Garda management
9 at local level and elsewhere by Mr. Wallace at that
10 time? 11:36
11 A. I wasn't unduly worried about this. I was aware that
12 all confidential reporters had a number of avenues they
13 could pursue in the context of making a complaint.
14 214 Q. Yes.
15 A. And it wasn't for me to make judgment on where any 11:36
16 confidential reporter went. I was focused on my own
17 business in the context of what I was assigned to do.
18 215 Q. Can I ask you just also to deal with one other point as
19 well, which is: Did you become aware at any stage that
20 Garda Keogh had expressed views, for example, to 11:37
21 Detective Superintendent Mulcahy, when he telephoned
22 him, that he was going to take down the Commissioner of
23 An Garda Síochána?
24 A. I was aware, Detective Superintendent Mulcahy would
25 have informed me of conversations he had had with Garda 11:37
26 Keogh maybe late at night or getting texts, etcetera.
27 Again, I just -- my response to those allegations or
28 statements were to ensure that we offer the welfare
29 this man requires, that was my response to that.

1 216 Q. Is it the case that side by side with your detailed
2 investigation with your team, these collateral
3 communications were taking place between Garda Keogh
4 and the department --

5 A. Yes, I'm aware.

11:37

6 217 Q. -- the DPP, TDs anybody else?

7 A. I was aware of some of them but not all of them.

8 218 Q. Yes. Could I ask you please to be shown document
9 12877? This is a letter of 16th May of 2016.

10 A. Yes, Chairman.

11:38

11 219 Q. This again is addressed by Garda Keogh to the Minister
12 for Justice. And the heading is:

13

14 "My complaint of corrupt (criminal activity by a Garda
15 colleague based in Athlone Garda Station..."

11:38

16

17 CHAIRMAN: I think that means "complaint".

18 MR. MURPHY: Yes, Chairman.

19 CHAIRMAN: I think it's a misprint.

20 MR. MURPHY: Yes.

11:38

21 CHAIRMAN: "My complaint of corrupt" -- yes, exactly.

22 MR. MURPHY: Yes. And then after the opening address,
23 he says:

24

25 "Further to my letter of 26th July 2015 (also
26 attached), on 2/10/2015 I made a protected disclosure
27 to GSOC regarding a flawed criminal investigation into
28 a conspiracy to supply heroin involving a member of An
29 Garda Síochána in contravention of section 21 of the

11:38

1 Misuse of Drugs Act, which I believe was no more than a
2 deliberate and unmitigated cover up by Deputy
3 Commissioner Ó Cualáin. I believe this investigation
4 was similar to the internal Garda investigations into
5 Garda misconduct in the 1990s, which was later exposed 11:39
6 by the Morris Tribunal."
7

8 when did you first become aware of this letter?

9 A. Again, I'm not clear on this, Chairman, it may be
10 during this Tribunal again that this -- 11:39

11 220 Q. But at the time in 2016, were you aware of this?

12 A. No, I wasn't aware of contents of that nature, no.

13 221 Q. In terms of the allegation that you were engaged in a
14 deliberate and unmitigated coverup, what do you have to
15 say about that? 11:39

16 A. I totally reject that.

17 222 Q. And in relation to the insinuation that what you did
18 was as bad as what had taken place in Donegal, as so
19 found by the Morris Tribunal, what do you have to say
20 about that? 11:39

21 A. Look it, I have said that I reject it as a statement,
22 so whatever it's compared, it doesn't make sense to me.

23 223 Q. Could I ask you please to turn forward to page 12880?
24 I think there you will see, at the end of the same
25 letter, Garda Keogh says: 11:40
26

27 "I acknowledged that Detective Superintendent Mulcahy
28 offered to go through the findings with me. However, I
29 declined as I believe the Garda investigation was

1 to Garda HQ to meet the chief medical officer once
2 again. "

3

4 Do you see that?

5 A. Yes, I do.

11:41

6 229 Q. In terms of your concern for Garda Keogh's welfare, is
7 it the case that you attempted to look after him as
8 best you could in the course of your investigation?

9 A. At all times, as I said from the beginning, his welfare
10 was paramount in this matter. I think my team went way
11 above and beyond, you know, what would be expected in
12 the context of an organisation that had a formal
13 process and procedure in place for people who needed
14 welfare and in the context that he didn't -- I accept
15 that at the early stages, you know, he did obviously
16 lean on, I would say, Detective Superintendent Mulcahy
17 at certain times during that process and spoke to him a
18 lot. And Detective Superintendent Mulcahy was
19 available for those interactions.

11:42

20 MR. KELLY: Chairman, I just point out, because it has
21 been brought to my attention, that Garda Keogh did in
22 fact acknowledge that the acting commissioner had
23 offered to go through his report with him.

11:42

24 CHAIRMAN: Yes.

25 MR. KELLY: That's an observation.

11:42

26 CHAIRMAN: I thought he acknowledged -- the detective
27 superintendent --

28 MR. KELLY: Chief Mulcahy.

29 CHAIRMAN: He did. He did agree that he offered to go

1 through.

2 MR. MURPHY: Yes. But then the reason he gave for not
3 taking that offer, on this evidence, that the
4 investigation was flawed when in fact at the time --

5 CHAIRMAN: From the beginning. And we have the 11:43
6 evidence of the detective superintendent and Mr. Murphy
7 is drawing the distinction in the evidence between, I
8 don't want you to go through it because it was flawed
9 from the start, or, I don't want you to go through it
10 because I'm going drinking. 11:43

11 MR. MURPHY: Yes.

12 230 Q. CHAIRMAN: That is the evidence as I recall it. That's
13 the difference in the evidence. There it is. Anyway,
14 he never told you it was flawed from the start.

15 A. No, Chairman, he didn't. 11:43

16 CHAIRMAN: No.

17 231 Q. MR. MURPHY: Sorry, Chairman. I wonder if we could
18 please have document 10895. Chairman, this is probably
19 not for witness but more for you, Chairman, insofar as
20 you raised the issue. This I believe is the extract 11:44
21 from the Dáil, the contribution by Deputy Mick Wallace.

22 CHAIRMAN: Oh yes.

23 MR. MURPHY: For the record, for the Tribunal's
24 assistance, it's page 10895 to 10898.

25 CHAIRMAN: Thank you very much. 11:44

26 MR. MURPHY: They're two different dates and they are
27 germane to the points which have been put to the
28 witness.

29 CHAIRMAN: Yes. This was the letter written by

1 Mr. waters to the Commissioner looking for a response
2 and the only thing was at that time I couldn't recall
3 that specific reference by Mr. wallace.

4 MR. MURPHY: Yes.

5 CHAIRMAN: Although I am aware of some of the
6 references, I can't be sure that I am aware of them
7 all.

11:44

8 MR. MURPHY: But Chairman this is an example or
9 examples of the collateral communications about which
10 we make complaint in the course of this process as
11 well.

11:44

12 CHAIRMAN: Indeed, yes.

13 232 Q. MR. MURPHY: Assistant commissioner also just --
14 Chairman, also just for the record, Mr. McGuinness has
15 just researched this and identified, in answer to your
16 question earlier on concerning the 9th October and
17 suspension of Garda A. Or, the 10th October. Page
18 4006. Can I ask you, assistant commissioner, is this
19 an extract from your diary?

11:45

20 A. Yes, that's a typed version of my diary entry, yes.

11:45

21 233 Q. I think for Saturday, the 10th October, it says:

22

23 "Sent e-mail from FF re suspension etcetera in
24 Athlone."

25

11:45

26 Is that right?

27 A. That's correct, yes.

28 234 Q. And then:

29

1 "19:06 Declan Mulcahy advises that he had spoken with o
2 P Murray and that A be put back into uniform this
3 morning. Examination of items seized to be given
4 priority."
5
6 Is that right? 11:45
7 A. That's correct. It was a separate matter, that was to
8 do with the two warrants that had been --
9 235 Q. CHAIRMAN: Did you make all your notes in Irish, and
10 have you just translated them for our benefit? 11:46
11 A. That's correct, Chairman.
12 236 Q. CHAIRMAN: Okay, thank you. Sorry.
13 A. Not at all.
14 237 Q. CHAIRMAN: I'm just curious.
15 A. Not all of them, Chairman, but there was a time when I 11:46
16 wrote most of my notes, depending on what way I was
17 thinking at the time, I wrote as I thought.
18 CHAIRMAN: Okay.
19 238 Q. MR. MURPHY: Just to complete that point, could we
20 please have page 4002. This is an e-mail I think, in 11:46
21 the middle of the page, from Assistant Commissioner
22 Fanning, 8th October 2015.
23 A. Yes.
24 239 Q. It's indicating discipline investigation:
25
26 "Please see the attached link."
27
28 It goes on to say:
29

1 "The question of Garda A's current employment calls for
2 urgent consideration. I will thank you to link this
3 with previous correspondence to give urgent
4 consideration to suspension. I can arrange for
5 attendance at a meeting as soon as possible." 11:46
6
7 And encloses a full formal report in hard copy.
8 A. Yes.
9 240 Q. Again just in simple terms, does that reflect the
10 structural assessment of the suspension point? 11:47
11 A. It does.
12 241 Q. With HR and all the other departments?
13 A. Yes. And while I'm an addressee on this matter, that
14 was on the basis of the position I held in headquarters
15 at that time, not again as my role in the 11:47
16 investigation.
17 242 Q. CHAIRMAN: Yes. Essentially it's going to Commissioner
18 Twomey, is that right?
19 A. Yes. It's going to Commissioner Twomey, to myself and
20 to Mr. Barrett. At that time, I suppose 11:47
21 responsibilities across headquarters would have been
22 divided up, I think at that stage Mr. Barrett would
23 have come under the control of the chief administrative
24 officer.
25 243 Q. CHAIRMAN: I see. 11:47
26 A. But it was to ensure that we were all aware of what was
27 happening.
28 244 Q. CHAIRMAN: Yes.
29 MR. MURPHY: Yes.

1 CHAIRMAN: And it was coming to the crunch obviously at
2 this point.

3 A. Yes.

4 245 Q. CHAIRMAN: Because it comes, we have the 10th and we
5 have the 14th? 11:47

6 246 Q. MR. MURPHY: I think you have been asked a lot of
7 questions over the last day about whether you had
8 responsibility for organising the suspension of Garda
9 A. Does this letter help you to reaffirm your
10 position? 11:48

11 A. Yes.

12 247 Q. That this was a decision involving input from a number
13 of different sources, in particular HR and local
14 management?

15 A. It does. But I'm taking off my hat then as deputy 11:48
16 commissioner and starting to think as an investigating
17 officer, I did pursue those e-mails and ask if they
18 were being actioned, I wanted to ensure that that was
19 happening.

20 248 Q. Yes. 11:48

21 CHAIRMAN: Just what number is that?

22 MR. MURPHY: That is 4002.

23 CHAIRMAN: Thank you very much, I just couldn't see the
24 -- I can only see three of the digits.

25 249 Q. MR. MURPHY: And finally, assistant commissioner, I 11:48
26 think the underlying allegations which we have gone
27 through, made by Garda Keogh to the Minister, the DPP
28 and to others, was that you had engaged in a
29 systematic, deliberate, in his words, unmitigated

1 coverup and these were the complaints which were made
2 against you which led to the establishment of this
3 Tribunal and the inclusion of this particular complaint
4 before this Tribunal. Can I ask you just for the
5 record to confirm, what is your position in relation to 11:48
6 the allegation that you engaged in a deliberate and
7 unmitigated coverup?

8 A. I totally reject that, Chairman.

9 MR. MURPHY: Thank you.

10 11:49

11 END OF EXAMINATION

12

13 CHAIRMAN: Anybody else? No. Mr. Murrinan.

14

15 FORMER ACTING COMMISSIONER DONAL Ó CUALÁIN, WAS 11:49

16 RE-EXAMINED BY MR. MARRINAN, AS FOLLOWS:

17

18 MR. MARRINAN: I don't want to confuse the matters any
19 further, just in relation to the suspension and the
20 chronology, it may be helpful to you, Chairman, if I 11:49
21 just go through this with the witness.

22 CHAIRMAN: Yes, thank you very much.

23 250 Q. MR. MARRINAN: I think in the first instance Garda A
24 was served with disciplinary papers, isn't that right?

25 A. He would have been, yes. 11:49

26 251 Q. Yes.

27 A. During that year, 2015.

28 252 Q. On the 5th October, Superintendent Pat Murray wrote a
29 report to his Chief Superintendent Wheatley, that's at

1 page 4001.

2 A. Yes.

3 253 Q. He outlines that Garda A had informed him at a recent
4 meeting that he had been served with discipline forms
5 relating to seven allegations of serious breaches of 11:50
6 disciplines against him. Those were the seven that you
7 had recommended, isn't that right?

8 A. That's correct, Chairman.

9 254 Q. which referred to serious issues regarding the
10 performance of his duties in the drugs policing area in 11:50
11 Athlone. He was seeking, that is Superintendent
12 Murray, enquiries to be made to ascertain whether Garda
13 A presents a risk by being left in his present work
14 area in drugs crime, isn't that right?

15 A. Yes. 11:50

16 255 Q. So that was being dealt with at local level.

17 A. Yes.

18 256 Q. CHAIRMAN: That would be one of the criteria in the
19 list of primary and secondary, isn't that right?

20 A. It would have been, Chairman, yes. 11:50

21 257 Q. MR. MARRINAN: Now, I think that the next event is the
22 8th October, that might be relevant, which is a report
23 sent by Superintendent Murray to Chief Superintendent
24 wheatley. That's at page 4005. Now, this concerned
25 additional information which had been received from 11:51
26 Garda John Ryan?

27 A. Yes.

28 258 Q. which had been passed on to Superintendent Murray and
29 he passed it on to Detective Superintendent Mulcahy,

1 isn't that right?

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

3 259 Q. And that, as it were, made the matter more serious?

4 A. It did, yes.

5 260 Q. Now, in the meantime, I think that on the 9th October, 11:51
6 as a result of having received that information, you
7 contacted and spoke to Superintendent Matt Nyland in
8 Internal Affairs, isn't that right?

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

10 261 Q. That concerned the suspension of Garda A and you were 11:51
11 advised by Superintendent Nyland that that was a matter
12 for local management, isn't that right?

13 A. That's correct, Chairman.

14 262 Q. Now, I think that you have a diary entry at page 11363,
15 where you received a phone call from Detective 11:52
16 Superintendent Mulcahy, who advised you that he had
17 spoken to Superintendent Pat Murray and that Garda A
18 had been put back in uniform that morning. And then
19 the examination of items that had been seized during
20 the course of a search of Garda A's house were to be 11:52
21 given priority, isn't that right?

22 A. Yes. That was the content of that phone call, yes.

23 263 Q. So at that moment in time the state of play was that
24 Garda A had been put back in uniform, or had been put
25 back in uniform and effectively taken out of the drugs 11:52
26 unit, but that was because of the concerns that
27 Superintendent Murray had in relation to him being
28 disciplined?

29 A. Yes.

1 264 Q. Yes.

2 A. There's a graduated response to suspension and some
3 options would be to revert people to uniform rather
4 than fully suspending them, or bringing them inside
5 into, I suppose, you know, office work, which doesn't 11:53
6 expose them to the public, and then there's suspension,
7 of course, yes.

8 265 Q. I think if we have 11036. This is a direction made on
9 the 12th October by Superintendent Pat Murray to
10 Sergeant Keane, who was the sergeant in charge in 11:53
11 Athlone:

12

13 "Garda A will return to uniform duties and will be
14 employed full-time as member in charge."
15 11:53

16 So he's put in the public office, isn't that right?

17 A. Member in charge is not the public office.

18 266 Q. Oh.

19 A. It's in charge of the station, it's a back room
20 function essentially. 11:53

21 267 Q. CHAIRMAN: Yes.

22 A. It's managing the station.

23 268 Q. CHAIRMAN: Is that the same as member in charge in,
24 let's say, a custody situation?

25 A. I assume this is sergeant in charge of the station. 11:54
26 we're talking about --

27 269 Q. CHAIRMAN: Do you know what I mean?

28 A. Oh no, section 4 --

29 270 Q. CHAIRMAN: Under section 4, somebody comes in -- isn't

1 it section 4?
2 MR. MARRINAN: Yes, it is section 4.
3 271 Q. CHAIRMAN: I am a bit rusty on the process. Somebody
4 comes in, is arrested and brought in, the arresting
5 member has to talk to the member in charge, isn't that 11:54
6 right?
7 A. Talking about Garda A, so member in charge, he was a
8 garda, therefore that member in charge must refer to
9 the section 4 scenario.
10 272 Q. CHAIRMAN: Yes. 11:54
11 A. That he would be behind closed doors.
12 273 Q. MR. MARRINAN: Yes.
13 A. Dealing with prisoners and --
14 CHAIRMAN: I see. Yes.
15 274 Q. MR. MARRINAN: Now, in the meantime I think Chief 11:54
16 Superintendent wheatley had written to Chief
17 Superintendent ward recommending the suspension of
18 Garda A. So it was dealt with at local level and that
19 is a letter on the 14th October and it's at page 11048.
20 11048, yes. And then the next event that occurred that 11:55
21 was of significance is that Chief Superintendent ward,
22 on the 14th October, contacted AC Twomey and informed
23 him of the views of Chief Superintendent wheatley. And
24 having considered the matter, Assistant Commissioner
25 Twomey suspended Garda A at 6:30pm on 14th October 11:55
26 2015, from that time until 1st November 2015. I think
27 that form 1.A. 7114 is at page 11055. That's the order
28 suspending. Then the final matter is that Garda Keogh
29 became aware of it, because he has a diary entry on the

1 14th October, at page 1333 he notes:

2

3

"Garda Keogh suspended from 9:00pm."

4

5

CHAIRMAN: I think you are missing a digit there,
because Garda Keogh's diary entries have five digits,
if I recall.

11:56

6

7

8

MR. MARRINAN: Yes, I beg your pardon, it is 13333.

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CHAIRMAN: Four 3s.

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MR. MARRINAN: Thank you, Chairman, four 3s. Those are
the only matters.

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END OF EXAMINATION

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CHAIRMAN: Thank you very much, everybody. Thank you
very much, commissioner.

11:56

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THE WITNESS: Thank you, Chairman.

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CHAIRMAN: You are free to go. You are finished, thank
you very much for your evidence.

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MR. MARRINAN: He will be returning in the final module
that we will be dealing with.

11:57

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CHAIRMAN: In relation to the promotion issue.

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MR. MARRINAN: Yes.

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CHAIRMAN: Yes, sorry, subject to that, I should have
said, we will be asking you to come back to us. But
for the moment and for this phase, thank you very much,
indeed. You can make your way out.

11:57

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THE WITNESS THEN WITHDREW

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CHAIRMAN: we don't have any more witnesses, is that right, for today.

MR. MARRINAN: No, we progressed much more speedily --

CHAIRMAN: It's no problem. We try to steer a course between facilitating witnesses by not having them here unnecessarily and as Mr. Kelly said yesterday, leaving the matter overnight often shortens the cross-examination, but that's a matter for counsel, and issues may develop that are unanticipated and that need to be followed up, so it's very difficult to put a particular estimate on it. It is no criticism of anybody and it gives us an opportunity to do some backroom work. So there is no problem there. We will resume then on Monday. Thank you very much.

THE HEARING THEN ADJOURNED UNTIL MONDAY, 17TH FEBRUARY 2020 AT 10:30AM

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