

A P P E A R A N C E S

The Sole Member:

His Honour Judge Peter Smithwick

For the Tribunal:

Mrs. Mary Lavery, SC
Mr. Justin Dillon, SC
Mr. Dara Hayes, BL
Mr. Fintan Valentine, BL

Instructed by:

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For the Commissioner of
An Garda Siochana:

Mr. Diarmuid McGuinness, SC
Mr. Michael Durack, SC
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For Freddie Scappaticci:

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For Breen Family:

Mr. John McBurney

For Buchanan Family/
Heather Currie:

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For the PSNI:

Mark Robinson, BL

NOTICE:

A WORD INDEX IS PROVIDED AT THE BACK OF THIS TRANSCRIPT.
THIS IS A USEFUL INDEXING SYSTEM, WHICH ALLOWS YOU TO QUICKLY SEE
THE WORDS USED IN THE TRANSCRIPT, WHERE THEY OCCUR AND HOW OFTEN.

EXAMPLE: - DOYLE [2] 30:28 45:17

THE WORD "DOYLE" OCCURS TWICE
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I N D E X

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1 THE TRIBUNAL RESUMED ON THE 19TH OF APRIL, 2013, AT 11 A.M.

2 AS FOLLOWS:

3

4 DETECTIVE CHIEF SUPERINTENDENT PETER KIRWAN RETURNED TO THE

5 WITNESS-BOX.

6

7 CHAIRMAN: Well, Mrs. Laverty, do you -- there is one thing

8 I wanted to take up with the Chief Superintendent before he

9 resumes. Forgive me for not having got this right when you

10 gave evidence about it. I think there were two or maybe

11 three pieces of intelligence that you did feel satisfied

12 about amongst the 17, or so, that were submitted by the

13 PSNI, am I right in that? You had doubts about a lot of

14 the intelligence, and I have taken a careful note about

15 that, but there were some pieces of intelligence that you

16 did find reasonably satisfactory?

17 A. No, there was two or three items, Chairman, that were --

18 subsequently we got some additional information in terms of

19 a name or, in one piece, more than one name, but the

20 essential elements that I alluded to in my evidence were

21 missing from them. It didn't bring it up to a satisfactory

22 level at all. It did enhance it from the précis stage. In

23 other words, that I got some additional information, and I

24 think, in all cases, you probably had received that

25 information as well.

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27 CHAIRMAN: Yes. What numbers? If you could give me those

28 numbers.

29 A. I will. Item number 9, Chairman, you will be aware, and we

30 discussed it in my evidence.

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CHAIRMAN: Yes.

A. That's the name, the senior PIRA Army Council member directly involved. That name was given. Item number 10, Chairman, again there was names provided in relation to that intervention.

CHAIRMAN: Yes.

A. And that, to my knowledge, now, Chairman, is, I think that's the extent of the extra information.

CHAIRMAN: Yes, I thought it was that. But anyway, thanks very much for clearing that up. Well, now, is Ms. Fitzgerald going to...

MS. FITZGERALD: Sorry, Chairman, on behalf of my client, I have no questions for Mr. Kirwan.

CHAIRMAN: Very good. And who else? Somebody else reserved their position too.

MRS. LAVERTY: Mr. Flanagan was reserving his position to today.

MS. FITZGERALD: I clarified my position, that I have no questions for Mr. Kirwan.

CHAIRMAN: Nobody else has any questions?

MRS. LAVERTY: There wouldn't appear to be, except --

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CHAIRMAN: Well, Mr. Durack, do you have any questions?

MR. DURACK: Not at this stage. As I said, sir, it is only a question if something arises in the course of what Mr. Robinson raises that needs to be clarified, but I don't anticipate there should be anything.

CHAIRMAN: Unless something arises from that. And likewise, Mrs. Lavery, you will be winding up.

MRS. LAVERTY: Indeed.

CHAIRMAN: It remains then, Mr. Robinson has the field now.

1 DETECTIVE CHIEF SUPERINTENDENT PETER KIRWAN WAS

2 CROSS-EXAMINED BY MR. ROBINSON AS FOLLOWS:

3

4 MR. ROBINSON: I am obliged, sir.

5 1 Q. Detective Chief Superintendent Kirwan, if I may start with
6 the task the Judge has, and you will agree that the Judge
7 has to assess the evidence given by witnesses before him?

8 A. It's difficult for me to give -- I am not to sure if the
9 mic is on -- I am not entirely sure, Judge, it is
10 appropriate for me to define your task, but my
11 interpretation of your task is not alone to judge the
12 evidence before you, but a lot of material, Judge, because
13 we are dealing with -- I suppose it's not a conventional
14 court case here where all the material will be able to be
15 put into evidence. There is a lot of material that you
16 will have to decide on, on probability. So, I think that
17 you are probably, certainly from the garda point of view, a
18 lot -- a lot of material has been supplied both at your
19 investigation stage of the Tribunal and throughout the
20 hearings, that gives you, I suppose, some context for the
21 information that's maybe subsequently given in evidence.
22 So, I think it probably extends - that's my own view on it
23 - maybe outside the realm of evidence that is given here.
24 But that's my --

25 2 Q. Mr. Kirwan, you will agree that when approaching this task,
26 we have to weigh up who a witness is, the background of
27 that witness, the motivations of that witness and the
28 context of the evidence? These are general questions; they
29 are not trick questions. Would you agree with that?

30 A. I would agree in terms of anything that is presented to you

1 here, Judge, that you will have to weigh up all the
2 considerations, yes.

3 Q. Now, if we move directly to Assistant Chief Constable Drew
4 Harris. Do you accept that he is a professional officer of
5 the highest standard?

6 A. Absolutely, Judge, I said that, and I reiterate it today;
7 he is a person that I would have the highest regard for,
8 and I have interacted with him on a number of operations,
9 and absolutely 100 percent agree.

10 Q. He is also a man of complete integrity?

11 A. A man of complete integrity.

12 Q. And we learned from his evidence that he has a very
13 demanding portfolio, is an abbreviated way to say it?

14 A. A very demanding portfolio.

15 Q. And on Day 24, page 9, he explained part of his role from
16 line 21. He was responsible to the Chief Constable for all
17 matters of intelligence, all matters in respect of homicide
18 investigation; he has major responsibilities in respect of
19 what's known as legacy matters; and he would work closely
20 with the Historical Enquiries Team, who are investigating
21 Troubles-related deaths, and they have some 3,260 deaths to
22 investigate. He further stated that he was also
23 responsible for all non-terrorist murders that happened
24 during the Troubles and all other murders which have
25 happened since 1998, and that totals 747 murders. And
26 that's not in dispute?

27 A. That's not in dispute. And in my current capacity, my
28 department interacts with the PSNI on some of those legacy
29 issues where there is a cross-border dimension to it, so I
30 am very familiar with the Historical Enquiries Unit and the

1 significant workload that is associated with that.

2 7 Q. He is also responsible for the interface with the various
3 security services and also heavily involved in cross-border
4 policing, would you accept that?

5 A. Yes, I would accept that.

6 8 Q. He is involved in partnership working with An Garda
7 Siochana, the Serious Organised Crime Agency, HMRC and the
8 Revenue Commissioners, in combating organised crime and
9 terrorism?

10 A. Absolutely accept that, Chairman, yeah.

11 9 Q. And it is correct that that has led to a number of
12 successful operations on both sides of the border?

13 A. Yeah, the exchange of intelligence both ways has
14 contributed to many successes on both sides of the border.

15 10 Q. Some additional points, Mr. Kirwan. I am instructed that
16 Mr. Harris is also an expert in dealing with critical
17 incidents, covert policing and managing the demands of
18 multiple major crime investigations. Would you accept
19 that?

20 A. I don't dispute his expertise in that regard either, Judge.

21 11 Q. I am also instructed that, in February 2013, he was
22 selected as a high-level expert to CRIM - C-R-I- M, a
23 European Parliamentary Committee reporting on organised
24 crime and corruption. You have no reason to doubt my
25 instructions?

26 A. No, I am very aware of that as well, Chairman. I am also
27 aware that in February of this year, he addressed that, and
28 it's on the open sources, and I think that the keynote
29 message that he gave to that organised crime group, in the
30 context of what we are dealing with today here, is

1 important, and he spoke about intelligence and advocating
2 the increased sharing of intelligence, and he said that
3 intelligence is not a -- "*is a commodity, one which is only*
4 *useful when shared; the gathering of intelligence is not,*
5 *and should not be, an end in itself, but, rather, it should*
6 *lead to criminal justice being served in terms of tackling*
7 *the perpetrators of organised crime."* So, I am well aware
8 of his involvement in that organisation, yes.

9 12 Q. And can I address then, since you raised the point, the
10 issue of the sharing, that is a policing matter between
11 forces, as Mrs. Lavery said on the last occasion. The
12 Judge here doesn't assist in that; that is a policing
13 matter, would you accept that?

14 A. Well, it's a policing, and, I mean, there is more
15 stakeholders involved in Northern Ireland. It also
16 involves the Security Service in Northern Ireland,
17 Chairman. But in terms of -- but at all stages during my
18 evidence, I indicated that the interaction between the
19 services in the North, the police and security services and
20 the Tribunal, that's a matter completely remote from me and
21 I have no legitimate interest or concerns to voice in that
22 regard. My issue is with the interaction between the
23 police forces and the Security Service in the North and the
24 fact that their information that we received is information
25 that was dealt with here in a public setting and I could
26 read about it in the paper the next day. That's my issue,
27 in summary.

28 13 Q. Yes. Mr. Kirwan, these are easy questions and these are
29 not trick questions; I am simply establishing ACC Harris's
30 expertise.

1 A. Oh, yeah. And any of my contributions are not, you know, I
2 don't interpret them as trick questions. I just want to be
3 clear and frank in relation to just exactly what my
4 perspective is, and if it's -- I certainly don't interpret
5 them as trick questions.

6 14 Q. And further, in relation to the CRIM, the European
7 Parliament Committee --

8 A. Yes.

9 15 Q. -- ACC Harris has given evidence to that Committee in
10 Brussels, and seeks to act as a subject matter expert on
11 intelligence for the Committee?

12 A. Yes, that is my understanding, yes.

13 16 Q. This would involve the assessment of papers and
14 recommendations from an operational policing perspective?

15 A. Yeah, well I don't -- I'm not aware of the full extent of
16 the mandate that he has in that regard.

17 17 Q. Might I venture to suggest that, and I hope my instructions
18 are not incorrect, and if I am told that by my client, that
19 we can assume that is true because it can be verified?

20 A. Oh, yes, I am not disputing it at all.

21 18 Q. And furthermore, he ensures that the PSNI contribute to the
22 European Commission's FP7 work in respect of citizens'
23 safety and security across Europe?

24 A. Yes, I don't dispute that, yes. I don't have any
25 information on it, but I don't dispute it.

26 19 Q. And he certainly, sir, the PSNI can condense this
27 information into correspondence and send it to you for the
28 files. And under ACC Harris's direction, the PSNI have
29 been involved in 14 projects so far, and the PSNI is the
30 first law enforcement end user to be selected as the

1 project coordinator, and this is in respect of an
2 improvised explosive device prevention project. Again,
3 that is not controversial, is it?

4 A. No, it is not controversial. My understanding, because I
5 have dealt with some of these issues in a European setting
6 myself, I have experts from Ireland going out to give
7 presentations at the last meeting that I chaired in Europe.
8 The FP7 project, Chairman, just in terms of a very broad
9 brush strokes' overview of it, is an interface between
10 industry and research and development, and for the end
11 users, who would be the police and security agencies.
12 Basically, Europe are saying we have funding available for
13 research and development projects. We would encourage the
14 end users, which would be the police and security agencies,
15 to identify what they consider to be projects that will
16 enhance public security, to join up or corroborate with
17 business and to submit a business case for funding in that
18 regard. And I am aware that the PSNI have significant
19 involvement in some of that area.

20 20 Q. Yes. And whilst we -- we continue with this information.
21 Now, he also briefs senior politicians, both locally and
22 nationally, and briefs diplomats from other countries?

23 A. OK, Chairman, yes.

24 21 Q. He is told, or my instructions are that he has experience
25 in dealing with organisational change, having served
26 through the transition of the Force after the terrorist
27 ceasefires of '94, then again with the implementation of
28 the Patten reforms; a programme of work that lasted for
29 eight years. In particular, the Patten reforms were very
30 demanding, in that these were ambitious in creating a new

1 identity and beginning for policing. He played an
2 important leadership role during these years by leading
3 change while continuing to set out the vision of the end
4 State and the benefits for society and policing. Again,
5 that is not controversial?

6 A. Not controversial.

7 22 Q. And he received an OBE in June 2010?

8 A. Yes, I am aware of that, too, Chairman.

9 23 Q. It is also correct that he has a Master's from the
10 Institute of Criminology at Cambridge University?

11 A. I accept that, Chairman.

12 24 Q. He has a Higher National Certificate in Police Studies
13 also, and he has attended further courses: In 2004, he
14 attended the Strategic Command course; in 2005, Gold
15 Commander Firearms Incidents course; 2006, Gold Commander
16 Public Order, 2006; Leadership in International
17 Counter-terrorism in 2006; the Gold Commander Critical
18 Firearms Incident in 2009; and the FBI National Executive
19 Institute in 2010.

20 A. Yes, I don't dispute that. The Leadership in
21 Counter-Terrorism course, I would have met Drew Harris on
22 that as well. I attended that as well.

23 25 Q. And if I can just stay with the Europe issue. The Europol
24 training you mentioned in your evidence, is it correct that
25 the Europol methodology was developed from NCIS in England,
26 along with the Kent police and the RUC?

27 A. I think, certainly I am aware that there was an input
28 there. The nature and the extent of that input, I am not
29 aware of.

30 26 Q. I suggest to you that the RUC methodology and the NCIS

1 methodology resulted in -- or was adopted by Europol?

2 A. Yes, I accept -- if that's what your instructions are, I
3 don't have any reason to dispute that, Chairman.

4 27 Q. And it is also correct that the Garda Síochána have visited
5 the North and received training from the PSNI in
6 intelligence handling and gathering?

7 A. I think that we would have interacted with many agencies,
8 Chairman, in developing best practice, and certainly we
9 would have interacted with the Police Service of Northern
10 Ireland in that regard, also.

11 28 Q. And am I correct in saying that An Garda Síochána have
12 received training from the PSNI?

13 A. Yes, we would have. I wouldn't have the details here with
14 me in terms of -- I would like to see the details of that.
15 I mean, we participate in joint projects, in joint training
16 schemes. A lot of the training in intervention, in
17 intelligence, we certainly would be interacting on a
18 significant level with a lot of outside agencies other than
19 the PSNI. I'm sure that, over the years, we have sent
20 people on training with the PSNI. I know that the
21 Leadership in Counter-Terrorism course, for instance, that
22 I attended myself, and a lot of the senior -- is organised,
23 well, part-organised by the PSNI, so, yes, we would have
24 interaction with the PSNI in relation to training.

25 29 Q. And if I go back to my first point, that the Judge has to
26 look at the person that is giving evidence, the background,
27 and you accept that ACC Drew Harris is an expert in his
28 field?

29 A. I completely accept, Judge, that Drew Harris is an expert
30 in all of the areas that have been described there, and in

1 terms of him giving evidence in relation to his first-hand
2 knowledge of any aspect of that, I have no difficulty with
3 it. I think that it needs to be qualified a bit, and we'll
4 probably get into it in more detail, in relation to the
5 extent and nature of the evidence that he gave in regard to
6 that knowledge. That is probably the central point. But
7 in terms of Drew Harris's expertise, his knowledge, his
8 experience, his learning, I have no dispute about that.

9 30 Q. We can also agree, Mr. Kirwan, that he has engaged
10 voluntarily with the Tribunal, and there is no dispute that
11 he has been striving to assist the Tribunal?

12 A. Yes, he has engaged with the Tribunal voluntarily, but I
13 mean, Judge, I think we need to keep perspective on this.
14 The issue that you are asked to investigate is an issue of
15 collusion involving the murder of two of the most senior
16 PSNI -- or RUC officers, and, in that regard, I would
17 expect nothing different than voluntarily engagement to the
18 highest degree.

19 31 Q. And the second limb of my question was about ACC Harris
20 striving to cooperate with the Tribunal. You would accept
21 that?

22 A. Well, I think that that's probably where we part ways, in
23 some respect.

24 32 Q. I just want to be clear, you are saying you don't believe
25 that ACC Harris has been striving to cooperate with the
26 Tribunal?

27 A. If I just finish what I was saying.

28
29 CHAIRMAN: I think you will have to let the witness answer
30 the question in his own way.

1 A. And at all stages in the last one-and-a-half days, I've
2 strived to be very measured in what I say, but in relation
3 to striving to cooperate, I mean, most of my evidence over
4 the last day-and-a-half involved what I would consider to
5 be significant omissions. Now, the reason for them
6 omissions is for some other party to explain. But I am
7 saying, for me, there are glaring omissions in relation to
8 some aspects of the information submitted. Now, and I
9 don't want to repeat myself, but where you get one sentence
10 in relation to collusion that spans 30 years, I find that
11 is completely inadequate. There may be very good reason
12 why it cannot be put into the public domain. I certainly
13 feel that, without some advancement, some elaboration on
14 that, I respectfully suggest that the Chairman is put at a
15 considerable disadvantage, he is put at a disadvantage in
16 interpreting that information. By extension, I believe,
17 and I respectfully suggest, that you are doubly put at a
18 disadvantage because you don't have our input into
19 information that touches on this jurisdiction. So, for
20 somebody to -- if it is suggested that that is the extent
21 to which the cooperation can go, then it needs to be
22 explained why that barrier or that firewall is at that
23 point. So, that is the qualification. I don't think that
24 it was possible to answer that question in a 'yes' or 'no'
25 answer, because it wouldn't have explained where I am
26 coming from. But that's my view.

27 33 Q. MR. ROBINSON: Mr. Kirwan, I just want to be clear, because
28 what you are suggesting is that ACC Harris has not strived
29 to cooperate with this Tribunal?

30 A. No, what I have suggested, Chairman, is that, and we've

1 been, now, one-and-a-half days outlining it; I produced a
2 51-page statement, which Mr. Robinson has for over a week.
3 I think it's pretty clear. I tried to outline it, and one
4 of the challenges I had was outlining it in as factual,
5 common language as possible, setting out, first of all, the
6 foundations and then going into the analysis proper and
7 itemising what I consider to be the deficiencies in that.
8 I'm not saying that that amounts to non-cooperation with
9 this Tribunal; I am saying that, in the absence of
10 significant elaboration, yeah, that you, in my view, are
11 put at a significant disadvantage. Yesterday, in my
12 evidence, I tried to negotiate -- or the day before -- a
13 very sensitive three items of intelligence, and I'd say my
14 transcript runs to about four pages. I could have said "I
15 can neither confirm nor deny that I have that information",
16 and that's, you know -- and we would have ended up with
17 very little elaboration on it. So, again, that's probably
18 the extent of how I can answer that question.

19 34 Q. Was it correct -- is it not correct, Mr. Kirwan, that the
20 Judge has to look at what has taken place? ACC Harris has
21 come down voluntarily and given sworn evidence from his
22 expert position that this intelligence is accurate and
23 reliable. That's stage one. That is what the Judge has
24 been presented with. Stage Two -- I haven't finished
25 yet -- Stage Two is that précis have been put into the
26 public domain, and the Judge then has to look at how to be
27 satisfied in relation to those précis, if he can, but your
28 exercise has simply been an assessment of the précis. And
29 you can see that your exercise has been an assessment of a
30 précis before the Tribunal?

1 A. Well, sorry, Chairman. Mr. Chairman, to my knowledge, that
2 is all that is on the table, is the précis. And to my
3 knowledge, that is a very simplistic summary of what has
4 happened. I mean, what has happened is, that a very tragic
5 event has happened in 1989. I have seen no evidence of
6 intelligence in the immediate aftermath of that incident,
7 or for --

8 35 Q. Mr. Kirwan, that is another matter.

9 A. -- or for the 10 years after that, Chairman. And almost
10 20 years after the event, we have an avalanche of
11 information, or sometimes classed as intelligence, dealing
12 with a historic event, and I am saying that a number of --
13 for somebody to come down, and again I outlined, for
14 somebody, irrespective of who that person is, whether it is
15 a Sergeant or whether it is an Assistant Chief Constable or
16 whether it is the Chief Constable, to say, "I'm saying that
17 is accurate and reliable, and that is all I am saying about
18 it," that, for me, is deficient, and there is no other way
19 of saying it, and it leaves you at a distinct disadvantage.

20
21 CHAIRMAN: You are saying that the information given to you
22 is too sparse, you should have had more information, and
23 you think that I am disabled or slightly -- it weakens the
24 effect of the evidence I have been given because it would
25 be stronger if I had more information, is that so?

26 A. Well, I think it might be stronger or it might be weaker,
27 but it would certainly help you to have an informed view on
28 it.

29

30 CHAIRMAN: It would be clearer?

1 A. And it would be clearer. I think that's what it is. I'm
2 not saying that -- I think that, in this case here, you
3 might have strands. You see, if any event happens today,
4 you will get a whole range of diverse strands, sometimes
5 complimentary strands, sometimes contradictory strands, and
6 the person -- the work of the analyst is to separate the
7 chaff from the wheat and see what exactly are we dealing
8 with thereafter, because I am certainly not clear, after
9 looking at the 21 or 22 strands of Mr. McConville's,
10 Mr. McComb's, Mr. Harris's together, what is exactly the
11 picture that the PSNI says happens, and that is where I am
12 coming from. So, for somebody to say that the calibre of
13 person delivering the message is the overriding
14 consideration in analysing intelligence or information,
15 that, for me, is completely wrong. And, you know, I have
16 this conversation with my own senior officers around the
17 country; just because a Chief Superintendent rings me up
18 and says something happens, the first thing I say to him
19 is, "What is the basis of this? Let me see it logically
20 outlined." I am stopping short of saying, I am not asking
21 the PSNI or the British Security Service to tell me the
22 source of the information, but I deal with this on a daily
23 basis, I have been dealing with it for the last 13 years,
24 and you can imagine if the shoe was on the other foot here,
25 if we were suggesting that an RUC officer in the North had
26 compromised an operation and that we were not elaborating
27 on that information, I think I would find it very, very
28 hard to sit here and defend that position. I am
29 comfortable defending the position that I am in here, but I
30 would certainly feel very uncomfortable defending a

1 position where I couldn't -- and I am separating the two,
2 Chairman, here. I mean, the interaction between the
3 services and yourself is one ship; the interaction between
4 the services and me is primarily what I am talking about,
5 and I'm severely disadvantaged. And I am saying from my
6 point of view, that I cannot interpret what is in them.
7 And I have outlined, in as graphic a detail as I can, the
8 reasons for that, and I think that's logical, and I
9 think -- and if there is any aspect of it that, and I am
10 sure I will be challenged on it, I am quite happy to
11 explain it.

12 36 Q. MR. ROBINSON: At no stage, Mr. Kirwan, did I say that the
13 overriding consideration was the person giving the
14 evidence. But what the Judge is faced with is your
15 exercise where you have simply assessed précis, compared
16 and contrasted, in my respectful submission, sharply with
17 ACC Harris's position. ACC Harris has had sight of the
18 underlining material; he is in charge of the underlining
19 material. You can see the difference. Setting aside the
20 sharing issue, and you're convinced about that, but looking
21 at what is before the Judge, the Judge has to decide
22 between the evidence from ACC Harris, who had access to the
23 raw material, reviewed it, has given sworn evidence that it
24 has been through the procedures, contrast it only with your
25 assessment of the précis. You can see the Judge's
26 position?

27 A. Judge -- Chairman, it is self-evident that all I could do
28 was analyse the précis, and in many cases it was a single
29 sentence. And I said during my evidence that, and I didn't
30 want to be pedantic about it, but in some of the cases I

1 had to start relying on a word, what does a word mean? In
2 many cases in an intelligence report, I would be analysing
3 a paragraph or two paragraphs and deciding what they mean
4 because the product would be much more informative. But
5 I'll go back to what, you know -- I mean, ACC Harris is an
6 expert, and he is an expert at Europe, and he is advocating
7 in Europe, as recently as February, the sharing of
8 intelligence and that the collecting of intelligence is not
9 an end in itself; it is the sharing of intelligence. Now,
10 the sharing of intelligence in this particular instance
11 here is absent, and we can be here for a week, you know.
12 That fact -- that fact is not --

13 37 Q. Mr. Kirwan, that's subject to your answer. I am trying to
14 ask --

15
16 CHAIRMAN: Please allow the witness to answer. He is
17 making a point that he thinks the intelligence should have
18 been shared with his Force, the Garda Síochána. That's the
19 point I think he is making.

20
21 MR. ROBINSON: Yes, I accept the point he is making, but
22 what I am trying to separate, sir, is, the sharing issue is
23 a policing issue. What I am directing these questions
24 towards is what you, sir, have before you. Because the
25 sharing issue is not really a matter for the Tribunal, but
26 the evidence before you is. And I am simply highlighting
27 the difference between an informed assessment compared to
28 an ill-informed assessment. And that will be a matter for
29 you, sir, to balance who to -- what evidence you can attach
30 weight to.

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CHAIRMAN: Yes.

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MR. ROBINSON: That is my point. The issue about sharing, this witness repeatedly moves to that position. I'm not addressing that point. That may be a gripe that he has, it may be an issue. That is a policing matter. I am not in any way taking away from it, but what I am simply doing is differentiating that from the task of this Tribunal and looking at the evidence that is before you.

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CHAIRMAN: Well, what he is saying, in essence, is that to comment on the value of that intelligence, he feels it should be more detailed and should be of greater detail.

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MR. ROBINSON: Yes.

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CHAIRMAN: Yes.

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A. And just to address the last point. I mean, if the point that Mr. Robinson is making is that there is an informed assessment versus ill-informed, and I presume that he is saying that my assessment is the ill-informed one, there is a very good reason for that and that's because of the lack of sharing. I would also -- I take his point completely that there is a separation of issues here. There is the relationship between you, Chairman, the Tribunal, and the services in the North, and then there is the arrangements between the police, the guards and the security services in the North. But I would respectfully submit that there is an overlap there, and I have already said that. First of

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1 all, and I don't -- you, as Chair, can comment, very
2 rightly, in relation to the disadvantage you are at. But I
3 would submit that there is an overlap there; that, without
4 having our input into this, that it cannot be fully
5 informed. If it touches on a subject matter in this
6 jurisdiction, the Garda Síochána are the best equipped to
7 deal with and give an informed judgement and give an
8 informed assessment in relation to that. And I can give
9 numerous examples where somebody is trying to assess
10 something remotely. I am talking about an agency that's
11 trying to interpret something that happens in Dublin or a
12 meeting that happens in Dublin yesterday. Well, we are the
13 best-placed and we have the best resources to interpret
14 that and to give an informed judgement on it. And without
15 that, it is not an informed judgement, in my view.

16
17 38 Q. MR. ROBINSON: Now, we have established that Drew Harris is
18 the expert, an expert. Let's look to the evidence that he
19 actually gave, about how this information was dealt with,
20 because that, again, is evidence before this Tribunal.
21 And, in my respectful submission, it is evidence that the
22 Judge can place weight in.

23
24 At page 18 of Day 124, line 23, Drew Harris said:

25 *"I viewed that piece of information in rough and raw form*
26 *and, as a result, identified that I thought that it would*
27 *be of use, obviously, to the Tribunal. And then, as a*
28 *result of that, work began in respect of how that might be*
29 *shared and what other information was available to the*
30 *Police Service and Security Service at that time, and this*

1 was a joint effort."

2

3 Now, let's look at the context of the précis that have been
4 put before the Tribunal. ACC Harris has said that these
5 are précis of intelligence received and they are live and
6 of the moment. You accept that?

7 A. Live and of the moment, Chairman, is, you know, I would
8 consider live and of the moment, you know, we deal with
9 ongoing operations that are dynamic and fluid, and they
10 have, sometimes, the currency of a day, sometimes the
11 currency of a few hours, sometimes the currency of a week
12 or a month. That's my interpretation -- until I heard this
13 explanation of "live and of the moment". Live and of the
14 moment, in the context of Drew Harris's information,
15 extends to five years, to my understanding, and certainly,
16 before this, I wouldn't have interpreted "live and of the
17 moment" as extending to that period of time. I do accept
18 that, you know, timing in relation to intelligence matters,
19 there are sensitivities attaching, but I'm just qualifying
20 my understanding of "live and of the moment," Chairman.

21 39 Q. And ACC Harris, you would agree, is no doubt aware of the
22 sensitivities regarding the timing of intelligence?

23 A. Absolutely, Chairman.

24 40 Q. And it is correct that if - I believe you give an example
25 similar to this - but if you received intelligence one day
26 and acted upon it the next, somebody could identify where
27 that intelligence came from?

28 A. I think that's the example I gave, Chairman, yes.

29 41 Q. And no doubt ACC Harris would be very acutely aware of
30 those issues?

1 A. Yes, Chairman.

2 42 Q. And the reason précis are put before the Tribunal, one of
3 the reasons, is to sanitise the information to ensure
4 source protection. That is not controversial, is it?

5 A. The -- my understanding of the reasoning for the précis,
6 Chairman, it was agreed between all the parties at the
7 outset of the Tribunal, was to put information into a
8 format that would be useful for public consumption, you
9 know, that wouldn't betray any of -- and that you could,
10 that all parties could have at least some aspect of the
11 information that was discussed in public.

12 43 Q. So, the short answer is yes, it is to protect, one of the
13 reasons is to protect the source?

14 A. One of the reasons, Chairman.

15 44 Q. Yes. For the sake of the stenographer, please address your
16 mind to the questions so we get through this.

17 A. Chairman, I will address the questions in, you know, in as
18 fair, objective way as I can. Sometimes, it is not
19 possible to give a 'yes' or 'no' answer to these because it
20 misses the context and is potentially misleading. I do
21 apologise. And if at any stage -- at no stage am I
22 elaborating on an answer to avoid the question. I will
23 address the question. But I think it would be wrong for me
24 just to give a simple 'yes' or 'no' answer, because it is a
25 complicated subject.

26

27 CHAIRMAN: Some answers you can't just give a 'yes' or
28 'no'; you have to give a reasoned reply.

29

30 45 Q. MR. ROBINSON: We will move, Mr. Kirwan, to fair and

1 objective at a later stage. But moving on, Drew Harris
2 then said, it is question 32 on Day 124, he was asked by
3 counsel to the Tribunal: *"And I presume that you had to*
4 *seek some corroboration or you can't -- you have to see if*
5 *it is worth passing that information on to the Tribunal,*
6 *whether there is similar information around or whether it*
7 *is just a once-off conversation. I presume you had to*
8 *investigate all of that prior to presenting further*
9 *evidence to the Tribunal?"*

10 And ACC Harris said: *"Well, yes, and it is the subject of*
11 *further analysis and that analysis in terms of what the*
12 *source might have been, what are the secondary sources in*
13 *behind that, how well are they -- you know, how valid is*
14 *their opinion or comment, and actually just a view on the*
15 *overall reliability of this. In effect, is this just idle*
16 *gossip, circular reporting and something which we feel we*
17 *would have doubts about?"*

18
19 Then he said at line 10 on page 20: *"But we have been*
20 *through a process in respect of this and can stand over it*
21 *as being accurate and reliable."*

22 You accept that Drew Harris said that?

23 A. I accept Drew Harris said that, Chairman, yes.

24 46 Q. And furthermore, at line 17, on the issue of accurate and
25 reliable and how that was defined, he said:

26 *"Well, in terms of an explanation of this, we are*
27 *convinced, through further work, that the information as*
28 *conveyed to us has been accurately conveyed to us, and it*
29 *is reliable both in terms of the context and how it was*
30 *obtained and the means by which it was obtained and from*

1 whom it was obtained as well. So there is an element of
2 judgement, which is based on experience and hindsight, in
3 terms of previous reporting, and also, then, an analysis of
4 the actual situation itself which arose in terms of
5 providing the raw material."

6 And you accept that Drew Harris said that?

7 A. I accept Drew Harris said that.

8 47 Q. At page 23, it is question 42, and this was a question
9 about five previous pieces of intelligence:

10 "Q. I am trying to work out if this was -- these five
11 pieces of intelligence have been elaborated on in relation
12 to the intelligence that you are bringing today."

13 And ACC Harris replied: "No, all this intelligence in
14 effect stands alone. There isn't a linear relationship
15 between these five and the next 12 pieces of information
16 and there is not a chronology order in respect of things.
17 In respect of the overall 17 pieces, some of that material
18 I observed as raw material, and then, which then instigated
19 further searches of the databases but also then other
20 material was retrieved as a result of separate searches
21 altogether completely unconnected to the work of the
22 Tribunal, but were found and then were thought to be of use
23 to the Tribunal."

24 And he then comments, "So there is a mixture of material
25 there and we have gone to considerable pains to get to a
26 position of being able to share it, whilst meeting all of
27 our very heavy responsibilities in respect of the
28 management of it."

29

30 Now, one of your complaints is the lack of detail, but it

1 is clear that one of the reasons it is in précis form, and
2 there isn't more detail, is because this intelligence is
3 recent and it had to be made safe. That's the PSNI's
4 position. Would you accept that or reject that?

5 A. My commentary, Chairman, and my statement was probably from
6 the perspective of the sharing arrangements with the Garda,
7 and I pointed out at length that I saw no reason why, based
8 on common practice that had evolved over the last 30 years
9 where the sharing arrangements with the Garda Security
10 Department should be restricted to a précis format. So I
11 see no logic being advanced in relation to a reason that it
12 couldn't be shared with us. Certainly, source protection
13 issues, the timing of it, we are dealing with sensitive
14 information on a daily basis. Why is the -- why are these
15 particular strands of information, why is there a different
16 format being used to share that information with us? So my
17 perspective has to be from the sharing with the Garda, and
18 that I am left in a position where I have to look at the
19 précis only in terms of interpreting it. I accept
20 completely that the précis has to be in a way that
21 camouflages any sensitivity or camouflages any -- even the
22 remotest chance that the identity of the source would be
23 betrayed within it. We have done that in relation to our
24 précis. We have shared the précis with you. You have
25 your -- your staff have acted as oversight in ensuring that
26 the précis that the guards produced was reflective of the
27 raw intelligence. We made the raw intelligence available.
28 So, that's where I am coming from in relation to any of the
29 commentary that I gave. But I do accept that a précis for
30 public consumption has to have built within it, you know,

1 it has to be obscure. But I don't want that to be confused
2 as an excuse that -- for not sharing a substantial amount
3 of detail with a sister security or police agency.

4 48 Q. Now, Mr. Kirwan, again, that's the sharing issue, but what
5 I am focusing on is the evidence before the Judge, and the
6 PSNI were obliged to put this information before the
7 Tribunal, this intelligence before the Tribunal, and it had
8 to be safe. That's the point. The reason there is more
9 detail is to ensure the safety and the protection of
10 sources, be they human, be they electronic, they must be
11 protected, and that -- in your own evidence, you said that
12 was the paramount consideration, is the protection of the
13 source. Is that correct?

14 A. Oh, yeah, I agree completely, Chairman, that it is
15 paramount, but -- and I don't want to be having to come
16 back with a repeat of my answer every time, because it
17 would be very convenient for Mr. Robinson to say "I am
18 confining you, Chief Superintendent, to talking about the
19 précis that is in the Tribunal, that's made available to
20 the Tribunal." That doesn't address the question of why it
21 hasn't been shared with us in a more elaborate way.

22 49 Q. And that, again, is the sharing issue, it is a policing
23 issue?

24 A. They are completely overlapped, as far as I am concerned,
25 Chairman.

26 50 Q. In your mind, they may be, but for the purposes of the
27 Tribunal, the Tribunal must deal with the evidence before
28 it and its private investigations, all of those matters you
29 mentioned earlier, the Tribunal must deal with the evidence
30 before it now. These précis were formulated to ensure

1 source protection, and, before they got to that stage, ACC
2 Harris gave further evidence, page 28 of Day 124, where it
3 was suggested at question 61, this by counsel to the
4 Tribunal: *"So this could well be an echo of one of the
5 previous items in the five?"*

6 And the answer was: *"Except that we are careful to avoid
7 circular reporting in terms of how matters are expressed
8 and going back into the raw material, to make sure that, in
9 effect, we are not getting an echo from, be it media
10 reporting or other conversation in respect of the Tribunal.
11 So that test has been applied."*

12

13 So, the Judge -- the Tribunal has been given sworn evidence
14 from ACC Harris that the assessment has involved ruling
15 out, or as best they can, circular reporting, and the
16 information has been processed and is intelligence. You
17 would accept that that evidence has been given?

18 A. That's one aspect of evidence that has been given. If you
19 go to page 26, Chairman, I mean, ACC Harris states that he
20 could neither confirm nor deny the existence of further
21 information in relation to a strand there, and that's
22 repeated in a number of areas. So, you have evidence, as
23 Mr. Robinson said, in that particular area, but you also
24 have evidence where there is -- the evidence is that it
25 would neither be confirmed nor denied whether there was
26 other strands of reporting touching on that particular
27 area. So, that, for me, raises the question: is there
28 other reporting there that corroborates or that
29 contradicts? So, I think that the item that Mr. Robinson
30 highlighted, the item of evidence, has to be seen in the

1 overall context of the evidence given by ACC Harris.

2 51 Q. So, let me just be very, very clear; are you challenging
3 the use of the 'NCND', the neither confirm nor deny,
4 principle, by ACC Harris?

5 A. If somebody asked me, Chairman, today, is there -- is Joe
6 Bloggs a source to the gardaí, I would rightly say I can
7 neither confirm nor deny that, because by confirming it,
8 obviously, leaves that person in great danger. By denying
9 it and not denying it in a future case, I stand to
10 undermine the system. However, using a "neither confirm
11 nor deny" to say whether or not you have other strands of
12 information, as general as that, I certainly think, you
13 know, I remain to be convinced that there is a need for it
14 in that area. Using the "neither confirm nor deny" to say
15 that I will neither confirm nor deny whether I know the
16 senior PIRA officer who is alleged to be receiving
17 information from the guards, I cannot see the logic of
18 that. We are stopping short of actually saying "can you
19 name him?" And the position we are in in relation to the
20 Garda service is that it is the only foothold in a lot of
21 the strands where we could conceivably have any chance of
22 progressing that investigation. So, I think the "neither
23 confirm nor deny" concept needs to be put and needs to be
24 restricted for where it's absolutely necessary, and in some
25 of the usage of it, I certainly didn't -- I didn't think
26 that we had reached a firewall where it was necessary to
27 actually hit that button, for want of a better phrase.
28 That, you know, normally it's at the point of confirming
29 identity or getting into an area where it's very sensitive.
30 As I said earlier, I gave evidence here and I have tried to

1 negotiate around a very sensitive issue and I am very
2 keenly aware of the nuances involved, and at no stage did I
3 say "I can neither confirm nor deny that," and I gave as
4 explicit an outline as I could in the circumstances. So, I
5 think "neither confirm nor deny" needs to be put in
6 perspective.

7 52 Q. Well, on the "neither confirm nor deny" point, further back
8 up the page, at page 26 that I've referred to, question 53
9 relates to the second piece of information, and counsel for
10 the Tribunal asked: *"I should ask you in relation to this
11 particular piece of information and the other 12 pieces,
12 how do you rate those pieces of intelligence?"*

13 *Answer: Well, again --*

14 *Question: Assess them?*

15 *Answer: We have been through a process in terms of both
16 protecting them but also in terms of the analysis of them,
17 and, again, we would say that those are accurate and
18 reliable."*

19 The second piece is then read out, and the question states:
20 *"Now, do you have any further information about this
21 particular piece of intelligence?"*

22 The answer is: *"I am in a position I can neither confirm
23 nor deny the existence of further information in respect of
24 strand two."*

25
26 Now, that is evidence that Drew Harris gave. He has been
27 through a process to protect the information. He has been
28 through a process to ensure that the evidence could go into
29 the public domain. Are you suggesting that ACC Harris is
30 failing to cooperate with the Tribunal by utilising the

1 'NCND' principle?

2 A. That is a judgement that is best left to the Tribunal,
3 Chairman. In terms of information, there is -- okay, you
4 have mentioned there that ACC Harris applied a principle to
5 protect the information. I think there is an overriding
6 responsibility to make the information as explicit as
7 possible, as well, in making it possible for you, Chairman,
8 to have a more informed view of the information and the
9 context of that information. Surely it would be, I think
10 the regime you have in place for dealing with sensitive
11 information, we certainly have found it sufficient to meet
12 our needs and to deal with all the sensitivities, and we
13 have done that over a long period, and I think that that --
14 certainly, my view on it is that that should have been
15 explored in this case, too.

16 53 Q. Now, the reality is that ACC Harris is giving evidence, or
17 has given evidence from the perspective of knowing what the
18 material is, the underlying material. Do you see the
19 difficulty in your commentary on the précis, is that he
20 knows the underlying material, he has engaged in a process
21 to make it safe to put before the Tribunal, and the Judge
22 is then faced with looking at or weighing his evidence
23 against your evidence, which I know you complain that you
24 don't have the detail, but looking at it from an evidential
25 balancing perspective, it's -- the Judge is perfectly
26 entitled to say, "Well, I'm hearing sworn evidence from an
27 expert that these are précis, they are accurate and
28 reliable," and he can say, "I am satisfied, on the basis of
29 the background of this witness, compared to" -- and this is
30 no criticism -- "but compared to an assessment of the

1 précis alone." You can see that balancing exercise, yes?

2 A. I can also, Chairman, feel that you, it would be open to
3 your judgement to say, well, this -- to take account of the
4 fact that this was not shared with the guards in any
5 meaningful way, and that if we take it at face value, that
6 some of the strands of information suggest a betrayal by
7 officers, either serving or retired, of confidential
8 information to an unlawful organisation. Now, for me, that
9 is an extremely serious issue to get to the bottom of, and
10 for both the services to have a shared view on, because to
11 put it at its highest, we have to consider is there an
12 ongoing threat that we are hampered to deal with because of
13 the lack of information? So, I think it's open to you,
14 Chairman, to have a judgement, well if it hasn't been
15 shared with the guards, you know, it obviously hasn't been
16 considered to be of that utmost importance to deal with in
17 an urgent fashion, because, I mean, I am at a loss to
18 explain why it hasn't been shared in a meaningful way with
19 me.

20
21 CHAIRMAN: Well, the point of disagreement between you,
22 Mr. Robinson, is perfectly plain, is it not? You are
23 saying, on behalf of the PSNI, that they -- in their
24 judgement, they have given a précis that is the furthest
25 they can go, and that they are not required to go any
26 further, and that that is the evidence before me. The
27 Chief Superintendent is saying, in effect, that, really,
28 the guards should have been given more information by the
29 PSNI so that they could form their judgement as to whether
30 the précis was, the précis were accurate or not. And, of

1 course, then it is a matter of submission by both parties
2 to submit to me the weight that I should attach to the
3 evidence I actually have. And you are saying there is
4 considerable weight; Chief Superintendent Kirwan is saying
5 that weight is diminished by the lack of background
6 information given to him so that he could form a judgement
7 on it. Your two positions are fairly obvious. They are
8 quite starkly opposed, but there they are, and it will
9 be --

10
11 MR. ROBINSON: Yes.

12
13 CHAIRMAN: In the end, it will be up to me to make up my
14 mind on the evidence that I have before me. Is that not a
15 good summary?

16
17 MR. ROBINSON: That is correct, sir. And added to that,
18 sir, is, not only simply is it an assessment of précis, but
19 it is the evidence you have heard from ACC Harris about the
20 processes that the PSNI/BSS went through to produce it, so
21 you can attach weight not only to the expertise of ACC
22 Harris has, but the voluntary nature of his attendance, the
23 fact that this is a unique position. Current
24 investigations have produced this intelligence. The
25 inherent risks, and I will move to that very briefly, sir,
26 the inherent risks in producing anything into the public
27 domain arising out of live --

28
29 CHAIRMAN: Yes. That does not appear to be a bone of
30 contention between you. I think both the Garda Síochána

1 and the PSNI are agreed about how intelligence should be
2 dealt with so that the details of it are not put in the
3 public domain, and they are shielded by the précis process
4 from being abused. And that's clear, clearly understood
5 between you. And clearly there is a matter of disagreement
6 about how far you should go in revealing it to the Garda
7 Síochána.

8
9 MR. ROBINSON: It's important in relation to the statement
10 that Chief Superintendent Kirwan put before the Tribunal,
11 because at the end of paragraph 2.22.21 he says: *"In the*
12 *absence of significant additional elaboration and*
13 *explanation, the reporting lacks credibility both*
14 *individually and collectively."*

15
16 And what this exercise is, sir, is to demonstrate the stark
17 difference between an informed opinion from ACC Harris and
18 a critique of précis by An Garda Síochána, which undermines
19 that conclusion in Mr. Kirwan's report. And that's the
20 path we are on at the moment, sir, is to show that that
21 conclusion doesn't hold water because it is based on sand;
22 the foundations are in sand, sir, because he has not had
23 sight of the raw material. That's the thrust of this
24 cross-examination. That is where we are getting to,
25 because not only has ACC Harris presented the précis, but
26 he has explained and he has been cross-examined on the
27 processes. So, you sir, can actually say I am satisfied
28 that these précis reflect the underlying material because I
29 have heard from ACC Harris, I have looked at the précis.

30

1 CHAIRMAN: You have made that point very clear. The Chief
2 Superintendent, on the other hand, is giving his opinion
3 that the absence of greater detail to the Garda Síochána to
4 check lessens the impact of the evidence, and you both have
5 made the point very well, and I am sure you will emphasise
6 it in your submissions.

7

8 MR. ROBINSON: I am obliged, sir. I will continue.

9 54 Q. At question 92 on page 30 of Day 124: *"Now, I think that*
10 *you have indicated your assessment of this intelligence as*
11 *being accurate and reliable, is that correct?*

12 *Answer: That's correct, yes.*

13 *Question: Yes, and you are happy to bring it to the*
14 *Chairman of the Tribunal on the basis that it's worth*
15 *looking at?*

16 *Answer: Yes, and we are very conscious that we don't want*
17 *to bring material which is, in effect, Willow the Wisp or*
18 *is misleading or is just -- information we have a*
19 *significant doubt in respect of. We wanted to be sure that*
20 *we were bringing material which was of value to yourself."*

21

22 And you accept, Mr. Kirwan, that evidence was given by ACC
23 Harris?

24 A. Yes, and elaborated on at page 92 in cross-examination,
25 which is relevant.

26 55 Q. Yes. Well, we are going to come to that.

27 A. Yes.

28 56 Q. So that I want to underpin what evidence the Tribunal has
29 or the assessment of the evidence or the intelligence.

30 Now, question 94, in response to question 94: *"We have, in*

1 *effect, shared the essence. We have endeavoured to conceal*
2 *it as far as we can in terms of not specifying the number*
3 *of sources or the timescale, other than to say it is of the*
4 *moment and live intelligence, but all this does carry a*
5 *risk, and we have had to balance that risk against our*
6 *desire to assist and also, obviously, that this information*
7 *would be dealt with in a responsible manner because we*
8 *don't know what is suspected in respect of our operations*
9 *and where this then would assist, in effect, terrorist*
10 *groups in reporting our actions or, indeed, the actions of*
11 *An Garda Síochána."*

12
13 So, in that answer, Chief Superintendent Kirwan, there is a
14 recognition of the dangers and the factors coming into why
15 this intelligence was put in précis form. You would accept
16 that?

17 A. Yes, and one of the dangers was hampering PSNI ongoing
18 operations or hampering Garda actions. Now, in my view, my
19 worry in relation to Garda actions is, you know, the
20 non-sharing of that with me is hampering my ability to deal
21 with it, and that's, in my respectful opinion, far
22 outweighs the consideration that he is applying to the
23 guards in relation to when he says that it might hamper
24 Garda actions by disclosing any more. Certainly, by not
25 disclosing it to us, in my view it's hampering my ability
26 to deal with it.

27 57 Q. And on page 39, line 15, ACC Harris was asked again about
28 the boundaries; could the boundaries be pushed for more
29 information to be obtained. And he said: "*Well, we have*
30 *ensured that all systems have been thoroughly, and I*

1 *personally have reviewed all of the material.*" So, the
2 judge has sworn evidence that ACC Harris has reviewed the
3 material. And furthermore at page 56, line 21, sorry, line
4 19: *"We have been very careful in respect of intelligence*
5 *briefing documents, and leading on from that in the form of*
6 *words I can stand over the description of this as being*
7 *accurate and reliable, but we will not be applying, in*
8 *effect, a numerical value to these."*

9
10 Then it continues, he was asked whether or not the material
11 had been graded, and he said, yes, it had been graded. And
12 you would accept that the grading of information would be
13 part of the PSNI procedure?

14 A. Sorry, I thought you were still quoting, sorry.

15 58 Q. Would you accept that the grading of information is part of
16 the PSNI procedure?

17 A. That's correct, yes.

18 59 Q. Further questions on page 61, ACC Harris refers to the
19 experience of what has been produced, hindsight and what
20 has actually occurred, whether the information is
21 plausible, is credible. And at line 10 on page 62: *"In*
22 *effect, it is all part of the analysis. There is*
23 *cross-referencing of that information against various*
24 *individuals and what else might be known."* And question
25 202: *"But do you know, I mean in your assessment do you*
26 *know the identity of the sources here when it has been*
27 *evaluated?*

28 *Answer: The actual original source?*

29 *Question: Yes."* And ACC Harris said "Yes." So, he
30 actually knows the sources of the information. So, again,

1 the Chairman has sworn evidence from ACC Harris that he
2 knows the source, he has looked at the raw material and he
3 has put it in the safest form he can for the Tribunal's
4 purposes. And also then line 24, 25, 26, well question 24,
5 sorry 204: *"And you can say is it single-source reporting
6 or is it sort of informer-type reporting without talking
7 about any particular piece?"*

8 *Answer: As I have said and I want to reiterate, that this
9 is in respect of multiple sources and across all the
10 intelligence-gathering that we are able to do, and so I
11 wouldn't want to comment on whether it is single-source or
12 what type of source it is either."*

13

14 Continue then on page 66: *"When in terms of evaluating a
15 piece of information such as this, number one, how do you
16 certify it is accurate and reliable when you have got other
17 pieces of intelligence that contradict it?"*

18 *Answer: Well, intelligence is taken as a single, as a
19 strand, it stands on its own. Other information,
20 intelligence comes in from other angles which may provide a
21 somewhat different angle to it and that is the nature of
22 the intelligence in terms of trying to see the best way
23 through it. But we, in looking at this, are sure in
24 respect of the methods that we have applied to this and
25 that it is accurate and reliable in our analysis of it."*

26

27 So, ACC Harris is saying that contradictions in
28 intelligence have been considered. You would accept that?

29 A. Sorry, can you just point out what line that was again or
30 what page it was, please?

1 60 Q. It is page 67, the start of page 66, line 29, and continued
2 until line 6 of page 67.

3 A. Yeah, my commentary, sorry, if I am invited to comment on
4 that, my commentary on that, and it probably came out in my
5 evidence, that it seemed that the accurate and reliable
6 tag, that it limited the evaluation and analysis of the
7 information to being satisfied with the source and the
8 reporting mechanism and that it -- he goes on to say that
9 it was consistent with the general knowledge of *PIRA modus*
10 *operandi*, and I don't think that he said that there was any
11 comparison or contrast with other strands. So, in my view
12 there, you know, and throughout my evidence I said that
13 there wasn't evidence that it was considered against facts
14 established at the time or the immediate aftermath, because
15 we have to remember that this is information coming in at,
16 in a time quite remote from the actual occurrence itself,
17 so I am just cautioning now that is my observation on that.

18 61 Q. But ACC Harris has said that the intelligence strands stand
19 alone?

20 A. Well, my interpretation of intelligence is that what you
21 have is, you have strands of information which are
22 standalone, and when you get diverse reporting, you have
23 different strands of information, and that, in trying to
24 make sense of that information, that you develop
25 intelligence out of it. It doesn't immediately, I would
26 like it explained further in terms of what exactly
27 standalone intelligence strands are, it doesn't immediately
28 convey to me, although it is probably -- he had something
29 else in mind, but I am not convinced on that particular
30 aspect, Chairman.

1 62 Q. Sorry, you are not convinced that ACC Harris is of the view
2 that the information or the intelligence stands alone?

3 A. No, I am not convinced that the, that all the methodology
4 that would be required to reach the title of accurate and
5 reliable has been applied to that particular area there.
6 I'm not convinced from what I have seen.

7 63 Q. So, despite the sworn evidence of the Head of Intelligence,
8 of ACC Drew Harris, that this intelligence has been put
9 through the processes, you still don't accept that?

10 A. I have seen evidence where Assistant Commissioner Harris
11 has been asked the question did you consider this
12 information against the murder investigation at the time?
13 That's for one example. A second example: Were you aware
14 or have you seen the investigation conducted by the RUC
15 into the allegations in Toby Harnden's book and Kevin
16 Myers' article? He indicated he hadn't seen that. So, I
17 am highlighting them, too, and there are others, where in
18 my view there are other considerations that were pertinent
19 to reaching an informed evaluation, and I saw evidence that
20 them considerations were not applied. That's what I am
21 saying.

22 64 Q. And it is certainly open when these issues were put to ACC
23 Harris, what he didn't do was say I must go off and
24 re-evaluate that. That's correct, he didn't say that?

25 A. No, but what he say in some cases was that, and in terms of
26 asking did they know the identity of the IRA man who was
27 supposed to have received information, he did say I can
28 neither confirm nor deny that, so....

29 65 Q. Let's take it step-by-step. He was cross-examined that he
30 didn't refer to the original investigation, but

1 notwithstanding that, he still stood over the assessment,
2 and this is a man who is an expert in intelligence. There
3 is an inference there, is there not, that he has taken a
4 view that this intelligence, once it has been through the
5 processes, it remains accurate and reliable. In fact, the
6 judge in this Tribunal can take from it that
7 notwithstanding previous investigations, this information
8 has been reviewed, checked, processed, and the Head of
9 Intelligence of the PSNI has given sworn evidence that it
10 is accurate and reliable. So, the judge can take it that
11 great weight is attached to this intelligence. That's one
12 option for the Judge.

13 A. That's one option, Chairman, for you. A second option is,
14 you can interpret that the process was deficient because
15 there was certain elements excluded, including a
16 consideration of the facts established at the time. And,
17 because of the significant time-span, I think that's a
18 crucial element as to what was established at or near the
19 time, and especially when you are talking about a gap of 10
20 to 15 years before this new significant information is
21 received. So, I agree that that's one option for the
22 Chairman, but certainly, Chairman, you could take another
23 view; that not all -- that the process was lacking some
24 elements.

25 66 Q. On the time point, Chief Superintendent, question 231 was
26 put to ACC Harris: *"And you are aware in a sense reporting*
27 *on views or information exchanged or whatever in some way*
28 *by people who are looking back 23 years into the past who*
29 *may have had no personal knowledge of any of the actions,*
30 *isn't that right?"* That encapsulates or touches upon your

1 time point has been put. You are receiving information
2 about an incident 23 years ago. And what ACC Harris has
3 replied is: *"Well, yes, that is correct, it is 23 years*
4 *ago. I don't view it as correct that they have limited*
5 *knowledge or no personal knowledge."*

6

7 So, again, from that response, ACC Harris has provided an
8 answer that shows that the source or wherever the
9 information came from, the intelligence came from, did not
10 have limited knowledge, and you would agree that that would
11 go some way to assist the Judge in attaching weight to the
12 intelligence?

13 A. Yes, Judge, in terms of the source and ACC Harris saying
14 that that source had knowledge or some knowledge of the
15 event, we are still talking about a significant time-line,
16 and for me the critical item here is what was the
17 intelligence picture; how were we getting such an avalanche
18 of reporting 20 years after the event and there seems to be
19 a complete absence of any informed reporting at or after
20 the event. So, that for me needs to be a consideration,
21 but I don't want to labour it past that, Chairman.

22

23 CHAIRMAN: Yes.

24

25 67 Q. MR. ROBINSON: But even touching on that point about what
26 was obtained at the time, touching on that point, and
27 you're raising the consideration that there is an avalanche
28 at this stage. The intelligence picture is never complete.
29 If it was, everyone would be rounded up and that would be
30 game over, isn't that correct?

1 A. The intelligence picture is never complete, Chairman,
2 that's correct, but I think both myself and ACC Harris
3 agree on one thing; that as the -- in the immediate
4 aftermath of an event is the time period where it's, I
5 think, generally recognised that the most fruitful,
6 informative and pertinent information is derived in that
7 critical time period. That time period may be, depending
8 on the significance of the event, may be a week, a month,
9 certainly six months. After that, certainly my experience
10 has been that it begins to peter off, to a period where
11 you are getting very, very little information. I have to
12 see it as amazing that 20 years after the event we have
13 reporting from diverse sources, you know, okay, albeit that
14 there is commentary maybe generated because of the holding
15 of the Tribunal, but to get such a significant volume of
16 material is, for me, rare in the extreme.

17 68 Q. Well, if we take the point that evidence or intelligence
18 has arisen in recent times, you may be amazed by it, that
19 doesn't mean that it's false, i.e. that it was produced by
20 the PSNI, we can rule that out. Do you accept from ACC
21 Harris that this is intelligence recently received? He has
22 given sworn evidence, so I don't believe there should be
23 any controversy about that.

24 A. Oh, no, the first part of your question, do I believe that
25 it is recently received; well, I mean, the evidence has
26 been given that it's received at various stages, some parts
27 of it were received within the last 12 months, some parts
28 of it were received in the currency of the Tribunal, I
29 think there was a time-span of maybe five years putting it.
30 But in terms of your reference to is it possible that it's

1 false and misleading; I mean if I don't consider that
2 information coming in has the potential to be false and
3 misleading, I wouldn't be doing my job. Of course it has
4 the possibility of being false and misleading, and it's
5 even more important because of the unique aspects to the
6 receipt of this information that a very critical analysis
7 and all aspects associated with that evaluation, you know,
8 is tested in the most robust way possible. So, you know, I
9 again not wishing to labour the point, there are elements
10 that I see are missing from that analysis.

11 69 Q. Now, turning to the time point. Yes, intelligence can
12 arise in the immediate aftermath of an event and die down.
13 That is accepted. But intelligence can be generated when
14 the pot is stirred, and what I mean by that is, we have
15 this Tribunal. It's being reported every day it sits. And
16 the reality is there are implications for those that are
17 involved, because this Tribunal may come across evidence
18 that could lead to investigations, it could lead to
19 prosecutions, and those involved have every right to be
20 concerned about this Tribunal. So, you can see the
21 situation where intelligence can be obtained, people talk
22 about it, people want to sort out who may say what, all
23 these different factors. That explains why it has come now
24 rather than immediately after the event. That's the logic
25 in this case, is it not? That's why it is recent. And you
26 may be amazed by it, but as they say, we are where we are,
27 it has come in because of this Tribunal.

28 A. Yeah. Chairman, yeah, I am not amazed at commentary, far
29 from it, in fact, you know, the commentary is explainable.
30 It's, it's separating what, whether the commentary is

1 normal interaction, is it ill-informed, is it gossip, is it
2 interpreting some part of the evidence that was given last
3 week at the Tribunal as fact and repeating it next week in
4 a pub, and then you get this circular reporting. And I do
5 realise that ACC Harris has said that they have guarded
6 against that.

7

8 In terms of people being concerned about it and the
9 possibilities that the Tribunal would find something that
10 would generate an investigation in a particular direction,
11 I accept that. But I also have to view that against the
12 fact that the IRA, the ex-IRA people engaged with your own
13 staff and in terms -- and produced a statement. That is a
14 matter, as the man said, as to whether -- the weight that
15 needs to be attached to that is a matter for you,
16 Mr. Chairman. But the commentary is quite explainable.
17 It's the -- what I am amazed at is the volume of accurate
18 and reliable information from diverse sources on diverse
19 subjects after the event. That's what I am amazed at, and
20 I haven't, you know, I would say this without precedent, in
21 my view.

22 70 Q. Just to touch upon what I would describe as the motivation
23 point, where you say that PIRA, it co-operated with the
24 Tribunal. Just a little thought experiment. If they had
25 produced a statement and said, yes, we did use a member of
26 An Garda Síochána, or, yes, we used several members, surely
27 that would trigger a fresh investigation?

28 A. Well --

29 71 Q. I hope the answer to that is "yes"?

30 A. The answer to that is -- yeah, it depends, Judge, on

1 what -- you know, I think --

2

3 CHAIRMAN: It's hypothetical; they didn't say that in their
4 statement.

5

6 MR. ROBINSON: Sorry, sir?

7

8 CHAIRMAN: That's hypothetical because they didn't.

9

10 MR. ROBINSON: It's hypothetical but it goes to the
11 motivation of why they would produce a statement that said
12 we didn't need any assistance. That ends your Tribunal,
13 sir. But if they came along and said, yes, we used several
14 members of An Garda Síochána, the natural and logical
15 consequence is an investigation. The State would be
16 obliged to investigate that. They'd re-open everything.
17 And it would involve criminal investigations into everyone
18 present at the station, and that may result in
19 prosecutions. So, on the point that Mr. Kirwan states
20 that, oh, well, PIRA have assisted you or talked to you,
21 sir, my point is there is a self-interest there, there is a
22 motivation to retain --

23

24 CHAIRMAN: Well, clearly, clearly, there is, and I am sure
25 you will be making that point very strongly in your
26 submissions, but I don't think it is necessary to press the
27 point on the Chief Superintendent any further, I think.

28

29 72 Q. MR. ROBINSON: Now, if I can turn back to ACC Harris's
30 evidence. Give me a brief moment. He further states on

1 page 78 that: *"The PSNI/BSS, we were very careful in*
2 *assembling this material and making it available to the*
3 *Tribunal, that we would do our very best in terms of*
4 *getting material to the Tribunal which was accurate and*
5 *reliable as opposed to just, in effect, circular reporting*
6 *or idle gossip or bar-room talk."*

7
8 The Judge has further evidence that idle gossip has been
9 ruled out through this process?

10 A. Sorry, can I ask you which question is that?

11 73 Q. That was in response to question 272 on page 78.

12 A. Okay, thank you.

13 74 Q. And in relation to the contradiction or suggested
14 contradiction with other pieces of intelligence, line 17.
15 This is line 17 of page 78, sorry 79: *"But do you not see*
16 *a fundamental problem in certifying that all is accurate*
17 *and reliable without really expressed regard to other*
18 *pieces of evidence or even pieces of testimony?*

19 *Answer: Well, that is our assessment based on the*
20 *intelligence that has been analysed and worked through" --*
21 *and I wish to stress this part -- "and that's our best*
22 *assessment of it. We, and I understand that it contradicts*
23 *other information before the Tribunal, and I would suggest*
24 *that it needn't necessarily be to the detriment of the*
25 *information that we have provided."*

26
27 Now, that response, the Judge is fully entitled to take
28 from that response that great weight was attached to the
29 intelligence and the assessment of it. So, notwithstanding
30 contradictory pieces of evidence, notwithstanding any facts

1 established from an earlier investigation, notwithstanding
2 those facts, the assessment of this intelligence and the
3 view of ACC Harris, the PSNI is that it remains accurate
4 and reliable. And again, the Judge can take great weight,
5 one of the options is that the Judge can take great weight
6 from that answer.

7 A. Chairman, I have ACC Harris's transcript here, and I am
8 reading it, and just a note that I left for myself as I was
9 reading this particular aspect, and I will read it out:
10 *"While it has been argued by ACC Harris that even though*
11 *some aspects of the material is contradicted by other*
12 *evidence or reporting, he does suggest that this fact does*
13 *not necessarily impact onto the detriment of the*
14 *information."* And I have summarised that *"I do not agree."*
15 I mean, I think if there's contradictory strands in
16 relation to reporting, let's put them up there and explain,
17 you know, have a comparative analysis in relation to why we
18 are going for this instead of the other. And in the
19 previous page there was a reference where, you know, he
20 said in relation to it, it's line 17, page 78: *"It doesn't*
21 *actually fit with the picture of that actual attack."* But,
22 yet, the tag of "reliable" and "accurate" is still being --
23 *"We still assess it as being accurate and reliable, but it*
24 *does not gel with everything which has been hitherto said."*
25 So there are contradictions there. And if we are
26 supporting one theory over another, or if there is a
27 contradiction, I think that the logic behind the assessment
28 needs to be explained further. That's my point.

29 75 Q. But implied in that response is that ACC Harris places
30 great weight in the intelligence that has been assessed,

1 the recent intelligence that has been assessed; he clearly
2 places great weight in his expert view? You may disagree
3 with his assessment, that is the evidence before the
4 Tribunal. That's correct?

5 A. Yes, the evidence before the Tribunal is that he continues
6 to support the "accurate" and "reliable" in that particular
7 case, even in the face of contradictory material.

8 76 Q. And one of your concerns as well, is it not, the proper
9 assessment procedure has taken into account mischievous
10 information or ill-informed information, that's one of your
11 concerns, is that correct?

12 A. That is one of the concerns.

13 77 Q. And we have then at page 80, I will go back to page 79,
14 question 274: *"You see, one way of regarding this, and it
15 is a matter for the Chairman, is that this is comment,
16 retrospective comment that you have picked up in some way,
17 shape or form from people who may or may not have any
18 personal knowledge at all and you are simply reporting on
19 comment which may be completely uninformed and
20 mischievous?"*

21
22 And the response, and again the Judge can look and assess
23 this when he is balancing the evidence, the response:
24 *"Well, I think it's neither mischievous. Our view of this
25 information, that it isn't actually ill-informed. If we
26 thought it was either ill-informed, mischievous, then the
27 process of actually the analysis of it then would show
28 that, and we have been careful not to produce material
29 which we think is mischievous or speculation, ill-informed
30 or idle gossip. "*

1

2

So, here the Judge, again, has the benefit of sworn

3

evidence that that concern has been examined and the

4

intelligence has been assessed in that way. Is it still

5

your view that you are still not happy with that?

6

A. Yes, that's still my view of it, Chairman. Chairman, I

7

suppose I said yesterday there that you had the unusual

8

benefit, and it's very unusual in the context of

9

intelligence, where you have got sworn evidence in relation

10

to one strand of reporting, and that's where it was alleged

11

that retired officer Jim Lane in Dundalk had made

12

disparaging remarks or remarks of concern about a named

13

Garda, and that fed its way into the system and was shared

14

with yourself. And retired Officer Lane was recalled, and

15

he completely contradicted that. So, again, I am not

16

judging as to where -- certainly it is a matter for you to

17

decide what weight to attach to both sets, but in my view,

18

certainly that seriously impacts on the "accurate" and

19

"reliable" tag that was reported in relation to the or

20

attached to that strand of information. And bearing in

21

mind that that was the only one that we were able to test

22

or that you were able to test to a significant degree, it

23

leaves me, it leaves my doubts in relation to the other

24

parts, you know, they still remain.

25

78 Q. So, your evidence is that despite the sworn evidence from

26

ACC Harris, this was assessed, as we have been through

27

already this morning, regarding circular reporting,

28

ill-informed opinion, you are still of the view that

29

something was missing from the analysis?

30

A. Again, by sworn evidence of ACC Harris, he indicated, and I

1 am not going to repeat it verbatim in relation to, that he
2 did not consider some of the facts established at the time
3 from the investigations that were conducted. In my view,
4 that was a significant factor, and in my view that adds to
5 my concern. So, that sworn evidence is also given. But it
6 is a matter, Chairman, it is a matter, Chairman, for you at
7 the end of the day to judge the weight to be attached to
8 it.

9 79 Q. You see, it is difficult to reconcile how when we come to
10 the end of this exercise you haven't given any credence to
11 anything put before the Judge by the PSNI, you do realise
12 that? Each and every piece you say lacks credibility;
13 every single piece put before this Judge by the PSNI you
14 give no credence to?

15 A. Chairman, I, again at the risk of repeating myself, I would
16 have been in a much better position to comment in a much
17 more informed way if I was given material that I could work
18 with. I was given, in many cases, a sentence. Ironically
19 the statement that the Tribunal provided to me and the
20 material in relation to coming from your interaction with
21 the IRA ran to 20 pages or 21 pages, or whatever. So, I
22 was able to able to give substantially more traction, if
23 you like, or informed comment in relation to that, be it,
24 you know, at least it was possible to recommend some degree
25 of testing there. There is a limited amount of informed
26 comment you can bring to one sentence, and when that
27 sentence incorporates words like "traditionally" or "would
28 have", I mean how can I speak favourably in relation to
29 that or come down with a conclusive answer in a favourable
30 way? I mean, that's why I am constrained in relation to my

1 commentary.

2 80 Q. And you say your assessment was objective, isn't that
3 correct?

4 A. Yes.

5 81 Q. And objective would involve looking at both sides?

6 A. Yes.

7 82 Q. And tell me, if all of the intelligence that came from the
8 PSNI said there was no Garda collusion, would you tell this
9 Tribunal that all it lacks is credibility individually and
10 collectively?

11 A. Chairman, if I got -- sorry --

12

13 CHAIRMAN: Well, that's hypothetical, isn't it,
14 Mr. Robinson?

15

16 MR. ROBINSON: But it goes towards the objective nature. I
17 use that term loosely. If this was an objective assessment
18 of the intelligence, it should have been "I don't have the
19 underlying material. We have an expert saying that it is
20 accurate and reliable and I can't comment." But what we do
21 have is a self-interested witness who doesn't give anything
22 any credence. And the way to test the objectivity is to
23 run a thought experiment, sir, about what if the
24 information was reversed, it should be examined in the same
25 way. And I am asking this witness, if all of these précis
26 said there was no collusion, would we still be presented
27 with the line that I read out earlier, "*without*
28 *elaboration*", "*In the absence of significant additional*
29 *elaboration and explanation, the reporting lacks*
30 *credibility both individually and collectively*"?

1 83 Q. Would we still have that conclusion, Detective Chief
2 Superintendent?

3 A. Chairman, the first comment I make is that I resent that I
4 am being portrayed here as a self-interested witness. I am
5 here because the Tribunal asked me to comment on three
6 particular strands. When I was given that job, I
7 approached it on the basis that I was going to be here, and
8 to fit into position I applied a lot of time and energy
9 into doing that. I first of all set out what the
10 methodology that's commonly used in information-gathering.
11 I produced a 51-page statement in relation to that because
12 it got so complicated in terms of just following the
13 structure of it and putting it into some manageable format
14 that I felt at the latter end that it was necessary to put
15 it into a statement. I'm not self-interested. I'm putting
16 it out there in relation to, and it is up for scrutiny. If
17 there is any particular aspect that Mr. Robinson wants to
18 challenge me on, let him feel free to do so. I haven't
19 made my disparaging remarks about any of the PSNI officers
20 involved. To put me up as a self-interested witness, I
21 dispute that. I resent it. And, in terms of his
22 hypothetical question in relation to the intelligence
23 indicating no Garda collusion, I'd still put that up to the
24 same level of scrutiny that I am applying to this. We
25 spoke yesterday about Owen Corrigan. One of the strands of
26 intelligence or information indicated that Owen Corrigan
27 was not involved. I made the commentary that that needed
28 to be robustly challenged in the same way as every other
29 challenge, you know. So, just because it excluded a member
30 of the guards from collusion didn't mean that we were

1 accepting it at face value.

2 84 Q. Let's go back to the question. If the intelligence had
3 been positive for An Garda Síochána, would you have
4 included that significant additional elaboration and
5 explanation was required, otherwise the reporting lacked
6 credibility?

7 A. Chairman, I thought I answered that question.

8 85 Q. No, you haven't answered the question. Would it have been
9 different?

10 A. I thought I answered the question by saying that if the
11 information from the PSNI had suggested no Garda collusion,
12 I would have said let's see what exactly is the information
13 and what are the standards or what are the considerations
14 that have been applied to it? I would have used the same
15 methodology and logic as I have used there.

16 86 Q. Well, let's just take Item 1 that you have referred to at
17 paragraph 2.10: "*PIRA traditionally obtained extremely*
18 *good intelligence from Dundalk Garda Station.*" Just that
19 one sentence there, we will take that as an example. What
20 if that read "PIRA never obtained intelligence from Dundalk
21 Garda Station" or "traditionally never obtained"?

22

23 CHAIRMAN: That's a hypothetical question, Mr. Robinson.
24 Is there any point in giving hypothetical questions about
25 non-existent intelligence? Does it get you any further?

26

27 MR. ROBINSON: Yes, sir, it does because it assists your
28 analysis of this statement, because this statement, and we
29 will go through this after lunch, in one respect --

30

1 CHAIRMAN: No, I think we don't have limitless time to
2 labour the point too far. I mean, you really will have to
3 come to the point. If you have got questions about
4 hypothetical points that have never been raised, I am sure
5 you can deal with them exhaustively in your submission
6 eventually. But I don't think we can just go on endlessly
7 hour after hour going through hypothetical questions. You
8 are not getting anywhere in doing so.

9

10 MR. ROBINSON: Well, sir, well, sir, with respect, you are
11 faced with a witness who has criticised the method of how
12 intelligence was put before this Tribunal, and we see that
13 piece-by-piece this witness has sought to undermine and
14 challenge different elements of the précis. Now, not at
15 any stage does he give the PSNI any credence.

16

17 CHAIRMAN: But he doesn't have to. I mean, the PSNI, the
18 PSNI witnesses gave their evidence very clearly and very
19 concisely, and it is up to me to decide whether to believe
20 them or whether to believe the Garda criticism of them. I
21 have to make up my mind on that.

22

23 MR. ROBINSON: Yes.

24

25 CHAIRMAN: But I don't think that -- well, I don't think we
26 are getting anywhere on this, really.

27

28 MR. ROBINSON: Well, the context, sir. I do ask your
29 indulgence. The context is this: This witness was, I made
30 the point about self-interested, because if he actually

1 agreed with any of the intelligence, the précis or how it
2 was obtained, it undermines the previous work undertaken by
3 not only himself in 2000, but other Garda officers. So,
4 that's the self-interest point.

5
6 Secondly, we look at a contrast between how he has looked
7 at the précis provided by PSNI, contrast it with how he has
8 examined the PIRA statement. And that is a significant
9 issue, sir, that you need to look at to understand exactly
10 the evidence from this witness. And I will come to that.

11
12 I am moving on from his statement to his assessment of the
13 PIRA statement. And it is clear that -- he mentioned
14 earlier about being fair and objective, and through my
15 questioning, sir, I intend to demonstrate that his
16 statement is neither fair nor objective. And it,
17 unfortunately, involves going through the detail of how he
18 has treated different pieces of information on the one hand
19 provided by the PSNI and on the other side provided by
20 PIRA, because that goes to how much weight you can attach
21 to the statement, because this statement makes outlandish
22 criticism of the processes that were put in place. It not
23 only renders single pieces of strands that have been
24 assessed, on sworn evidence assessed as reliable and
25 accurate, but not only single pieces but all of them
26 collectively. Now, to reach a stage where you can
27 collectively say, "No, disregard everything," and then we
28 move to the PIRA statement and we will see how this witness
29 deals with contradictions with earlier information. We
30 will see how this witness deals with the factual disputes,

1 and we can contrast the language used in relation to both
2 sections of his statement. And, in my respectful
3 submission, sir, these are essential exercises to
4 demonstrate that no weight can be attached to this
5 statement because it is self-serving. It is not fair and
6 it is not objective. And that is why I have had to labour
7 the detail on not only the expertise of Drew Harris, but
8 how this witness has analysed the précis put before this
9 Tribunal.

10
11 And I realise the hour, sir, but in a nutshell, no credence
12 is given to any piece of intelligence provided by the PSNI.
13 At all. But, on the other hand, we have factual disputes
14 or factual conflicts in the evidence before the Tribunal,
15 sir, and rather than say, "Oh, sir, you can't rely on this,
16 this is too vague, we need further elaboration," this
17 witness actually states, "Well, they may have provided
18 wrong details, but that is a matter for you, Judge." And
19 there is a clear rationale. Because An Garda Síochána
20 don't wish any finding to be made by this Tribunal as
21 adverse, and that is why I say this is self-serving
22 evidence, and that this is why it requires very close
23 investigation because it is subtly done in the papers.

24
25 CHAIRMAN: Very good. Thank you.

26
27 MR. ROBINSON: I wonder, sir, given the time, if we come
28 back at ten to two?

29
30 CHAIRMAN: Why can't we move on?

1

2

MR. ROBINSON: Certainly, that is fine, sir. Give me brief

3

moment, sir.

4

87 Q. Now, in relation to Item 1, this is paragraph 2.10 of your

5

statement, Detective Chief Superintendent: "*PIRA*

6

traditionally obtained extremely good intelligence from

7

Dundalk Garda Station." Now, you have had no sight of the

8

raw material, no sight of the underlying material and yet

9

what you try to do is point out words and give the most

10

negative connotation. So, paragraph 2.10.1: "*A phrase*

11

such as 'traditionally' indicates to me a possible lack of

12

specific knowledge on the subject on the part of the

13

source." How exactly is it just a lack of specific

14

knowledge? Surely an objective assessment would be or it

15

could have been an actual detailed knowledge of how

16

intelligence was obtained from the Garda Station in

17

Dundalk. You have taken the negative aspect, and that is

18

the only thing you refer to. So, can you explain that,

19

please?

20

A. I can explain it very clearly, Judge. In relation to -- if

21

I had been given some more information, I would have been

22

able to analyse that information and come to you with a

23

more informed comment. I explained earlier that in this

24

particular case it is reduced to two sentences.

25

Traditionally or in a substantial intelligence document, I

26

would be commenting in a much more exhaustive way in

27

relation to different strands that would be in an

28

intelligence document. I'm reduced to words purely because

29

I have only have two sentences to deal with it. Now, to

30

deal with the word "traditionally"; if somebody was coming

1 from an informed perspective, I would expect that the IRA
2 person, or whoever is alleged to have said this, is saying
3 that if we could reduce it even to a decade, it would be
4 something, if we could reduce it to a year, but in the
5 common exchange of information that we have, it would
6 normally be if a person is reporting from first-hand
7 knowledge that during 1999 the guards were leaking from
8 Dundalk because -- and such a person in the IRA had a
9 Garda, something like that. It's non-tangible. So, I have
10 to talk about the word "traditionally" because it indicates
11 that it is something going on for a long period of time,
12 and it doesn't give me any specifics. So, I am talking
13 about a possible lack of specific knowledge. I am
14 highlighting that to you, Judge, from my perspective as a
15 consideration that you might wish to consider. That's the
16 context of why I'm saying it. And it is up to you,
17 Chairman, to decide whether that point has merit or whether
18 Mr. Robinson's point has merit.

19 88 Q. An objective report, Detective Chief Superintendent, would
20 have said "I can't comment on this because I haven't seen
21 the raw material. It could show detailed knowledge, it may
22 show a lack of knowledge." But what you have opted for is
23 the negative, is that not correct?

24 A. Well, quite obviously there is no specific detail in it, so
25 I don't have any specific detail to comment in the
26 positive.

27 89 Q. Exactly. You have -- this is my point. You had a choice
28 to comment either positively or negatively, and you have
29 opted for the negative interpretation?

30 A. You see, what Mr. Robinson is conveniently avoiding here is

1 that the PSNI had a choice. The PSNI had a choice to give
2 the Garda Síochána an explicit account of this information,
3 and despite several reminders, they choose not to do that.
4 Now, that is the kernel of the reasoning why I am so
5 constrained in relation to what I am able to say. So, to
6 just highlight some commentary that I have come up with and
7 to try and prove that that is biased or self-serving or
8 whatever else, as I say, we can be here for a week. The
9 bottom line will be at the end of that week that you have
10 not shared with us information that would have allowed me
11 to make a more informed comment, and that deserves an
12 explanation.

13 90 Q. Is that your motivation for being negative throughout this
14 section?

15 A. No, that's the reason why I cannot comment.

16 91 Q. I am asking you for an explanation as to why you opted for
17 the negative option rather than a neutral option? And you
18 go back to the sharing point. Is it your motivation
19 because it wasn't, more detail wasn't shared, you are going
20 to put in a negative connotation? Is that your answer?
21 Because that appears to be what it is.

22 A. What I have said to you, Chairman, both in the statement
23 and in evidence, is that it indicates a possible lack of
24 specific knowledge on the subject matter. It is a matter
25 for you, Chairman, to decide whether that comment has merit
26 or not.

27 92 Q. Why did you go for the negative option rather than the
28 positive option and maintain that this is an objective
29 report?

30 A. Chairman, I explained that I am severely constrained in

1 relation to what material I had to work on, so I was
2 reduced to highlighting sentences in the two, or words in
3 the sentences that I thought were relevant for
4 consideration.

5 93 Q. And you say, then, or you focus on it implying that
6 information was obtained over a long period of time, and
7 you say, well, that was not supported by intelligence
8 received from PSNI or BSS. But it is correct that there
9 may have been a gap in the intelligence picture?

10 A. Well, it is an incredible gap, you know.

11 94 Q. Well, I mean, that is why we are all here. But you have to
12 acknowledge that there may have been a gap, but you don't
13 acknowledge that in your statement. An objective report
14 would acknowledge maybe it was missed. Do you agree with
15 that or disagree with it?

16 A. No, I go back to my point, Chairman, and again I'm
17 constrained in relation to what I can say. That's all the
18 material I had to work on. That position could have been
19 easily remedied. If that information had been shared in a
20 more meaningful way with me, it would have left me in a
21 position to give a more elaborate, informed, transparent
22 analysis to yourself. I am constrained. That's the same
23 in respect of the other 19 items.

24 95 Q. So, is it your evidence that you are constrained by the
25 detail, and that's why you go for the negative option?

26 A. I don't, I don't at all accept that I go for a negative
27 option. I highlight a particular word or a nuance or a
28 sentence, and I have explained throughout the report why I
29 do that if the language I feel is unusual. For instance,
30 you know, throughout the report we talk about Sinn Fein,

1 IRA, we talk about the fact that this information came from
2 the monitoring of dissident activity, and I make the point
3 that, well, we need to be careful in relation to that
4 because -- and I give the background of the breakaway and
5 that kind of thing. So, I have highlighted what I consider
6 to be relevant issues for your consideration which were
7 completely absent when that evidence was given to you. And
8 I am here because I was asked to be here. I have given my
9 judgement in relation to each aspect of it and I stand over
10 that judgement.

11 96 Q. I will move on to Item 2: *"Kevin Fulton is understood"* -
12 this is paragraph 2.11: *"Kevin Fulton is understood to*
13 *have received information regarding the murders of Chief*
14 *Superintendent Breen and Superintendent Buchanan from a*
15 *PIRA member linked to a senior PIRA figure."*

16
17 Paragraph 2.11.1 you label it as *"Vague and virtually*
18 *impossible to make any meaningful assessment. There is no*
19 *specific time period."* Those are your initial criticisms.
20 Is that correct?

21 A. That's my commentary, yes.

22 97 Q. Then you, rather than simply saying that's a matter for the
23 Judge to assess whether or not that is correct, you then
24 raise the credibility issue of the person named in that
25 précis?

26 A. That's correct.

27 98 Q. Why did you do that rather than just say "It's up to you,
28 Judge"? You throw in a little bit of doubt; you planted a
29 seed that, well, that précis contains a name and the
30 reliability of that name may be in question. Why did you

1 put that in?

2 A. I put that in, Judge, simply because I thought it was
3 important for you to consider that. What I didn't put in,
4 but what I should have put in as well as that was another
5 factor, in that from 2003 and the Judge Cory report, Kevin
6 Fulton was in the public domain as having received
7 information in relation to that. And I think that that was
8 something that the PSNI should have put in there. *"Kevin
9 Fulton is understood to have received information regarding
10 the murders of Chief Superintendent Breen and Buchanan from
11 a PIRA member linked to a senior PIRA member."* I mean, any
12 reasonable person would say what does that mean? I mean,
13 to me it is meaningless without some elaboration.

14 99 Q. Is that not where you should stop --

15 A. It is the context -- no, it is not where I should stop.

16 100 Q. -- and then move to the next part?

17 A. I think, Judge, that it's within my mandate to say to you
18 that, look at, we must consider in the absence when we have
19 evidence given here and when that witness says "I can
20 neither confirm nor deny that there is any other aspect to
21 that," well then in the absence of that evidence I must
22 say, well, we must consider whether it is Fulton himself
23 that's associated at some point in that information,
24 whether he is the originator of it or whatever else? We
25 also must consider that from 2003, to my knowledge, it was
26 in the public domain that Kevin Fulton made a statement to
27 the -- from the 9th of September, 2003, accompanied by a
28 friend, delivered to Judge Cory a statement which read as
29 follows: *"In 1979 I enlisted"* - it's a short statement,
30 Judge, if you would allow me to, if you think it is

1 relevant?

2

3 CHAIRMAN: Yes.

4 A. It is very brief.

5

6 *"In 1979 I enlisted in the British Army. Within months of*
7 *my posting I was recruited by a British intelligence agency*
8 *to act as an agent. In this capacity I became a member of*
9 *the Provisional IRA. On one occasion in the late 1980s I*
10 *was with my senior IRA commander and another individual in*
11 *my car. I knew the other individual to be Garda B. I was*
12 *introduced to Garda B. I knew that Garda B was stationed*
13 *in Dundalk, was passing information to the Provisional IRA.*
14 *I was in Dundalk on the day of the ambush of Superintendent*
15 *Buchanan and Chief Superintendent Breen. I am aware that*
16 *after the ambush took place my senior IRA commander was*
17 *told by a member of PIRA that Garda B had telephoned to the*
18 *Provisional IRA to tell them that Officers Breen and*
19 *Buchanan were at Dundalk Station.*

20

21 *"I should add that I know nothing about the murders of Lord*
22 *and Lady Gibson."*

23

24 Now, anybody looking up the Internet could have said Kevin
25 Fulton is understood to have received information regarding
26 the murder of Chief Superintendent Breen and Buchanan from
27 a PIRA member linked to a senior PIRA member by reading
28 that. Now, I think it is relevant to highlight to you,
29 Chairman, whether to say that was in the public domain and
30 have we considered, have the PSNI considered that that

1 could have influenced that strand of reporting? Because it
2 is almost a mirror image of it or a synopsis of it.

3 101 Q. Just to go back to the actual paragraphs of your statement.

4 Paragraph 2.11.1: *"This information here is vague and I*
5 *find it virtually impossible to make any meaningful*
6 *assessment."* And I will bring you to this issue later, but
7 when the PIRA statement is vague, you don't mention
8 anything about it being virtually impossible to maintain a
9 meaningful assessment, in fact that type of criticism is
10 non-existent in your assessment of the PIRA statement, and
11 when you refer there to there is no specific time period,
12 again you set out to undermine the précis. When PIRA
13 provided their statement and provided no specific time
14 periods, for example, surveillance, sightings, very general
15 detail, you again don't mention anything about being unable
16 to assess it, in fact you don't criticise that at all. Are
17 you aware of that?

18 A. I think it's been a pretty simplistic summary of the PIRA
19 statement versus this.

20 102 Q. I will take you to that later on.

21 A. Just to finish on that point, Chairman. If we take the
22 logic of the simplistic formula, all this information will
23 have originated in some shape or form with the IRA, be it
24 dissidents or Provisionals or whatever. What you have,
25 Chairman, is engagement with parties, interlocutors that
26 certainly claim to be primary sources, and it is a matter
27 for you obviously to judge, you know, what degree of
28 knowledge and weight to be attached to what they say. If
29 we take it that for me, I or the guards weren't a party to
30 any of the information that is portrayed here. I got one

1 strand from the PSNI and I got another strand from
2 yourselves; both of them strands have their origins in the
3 IRA. In one, the strand that was delivered to me by the
4 Tribunal, I have 20 pages that I can mull over in relation
5 to the IRA statement. I have 20 strands of information
6 from the PSNI which amount to no more than probably two or
7 three sentences at the most in any one case. I had
8 sufficiently more scope for making commentary on the 20
9 pages. And the lack of detail, Mr. Robinson seems to be
10 forgetting about the very precise detail that was given in
11 relation to the alleged sighting in 1988, the use of 12 The
12 Crescent, very tangible things that at least provided some
13 foothold for your investigations and for my analysis.
14 That's the contrast. So, if there is more commentary, and
15 he has highlighted and will probably go into it in more
16 detail, I don't accept that I treated the IRA statement, I
17 urged caution, even in my evidence I think I urged caution
18 in relation to accepting anything at face value, and that
19 it needed to be tested to the greatest extent possible.

20
21 MR. ROBINSON: I wonder, sir, if it is a convenient time?

22
23 CHAIRMAN: Well, I think we might rise now until
24 two o'clock.

25
26 **THE TRIBUNAL THEN ADJOURNED FOR LUNCH.**

1 THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

2

3 DETECTIVE CHIEF SUPERINTENDENT PETER KIRWAN CONTINUED TO BE

4 EXAMINED BY MR. ROBINSON AS FOLLOWS:

5

6 CHAIRMAN: Would you like to continue, Mr. Robinson.

7

8 MR. ROBINSON: I am obliged, sir. Thank you.

9 103 Q. Now, Detective Chief Superintendent, before the break we
10 were looking at the second item going from paragraph 2.11
11 in your statement --

12 A. Yes.

13 104 Q. -- regarding Kevin Fulton.

14 A. Yes, Chairman.

15 105 Q. And at paragraph 2.11.3 you essentially make the point
16 that, "*Without further elaboration, it was meaningless in*
17 *its current form and potentially misleading.*" Do you see
18 that?

19 A. Yes, I do, Chairman, yes.

20 106 Q. So, for this item, you are saying lack of detail, takes
21 away any meaning whatsoever, and it actually goes beyond
22 the meaning, it goes into potentially misleading?

23 A. Yes.

24 107 Q. I can let you know that you, when you go through the PIRA
25 statement, at no stage label any lack of additional
26 background information or elaboration as rendering the
27 statement meaningless or potentially misleading.

28 A. OK.

29 108 Q. Do you accept that?

30 A. Yeah, I have to look at it, but I take your word. If the

1 word "misleading" is not in my analysis of the IRA
2 statement, so be it.

3 109 Q. Item 3 in reference to 'Mooch' Blair -

4 A. Yes, Chairman.

5 110 Q. -- you raised the point that, in paragraph 2.12.1:

6 "Again, I am at a loss in attempting to give any meaningful
7 assessment to this strand." And your first point is that
8 it's in potential conflict with another strand?

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

10 111 Q. And you raise that point to, I suggest, raise a question
11 over this strand?

12 A. Any point I raised, Chairman, was to bring to your notice
13 matters that I felt was relevant for you to consider and
14 probably no more, no less than that. And in relation to
15 different words, when I analyse 20 items and I am
16 commenting on sentences, you know, there is, rather than
17 repeating the same word every time, I probably end up using
18 a word that I wouldn't normally use but the word
19 "misleading," I stand over it, I stand over every
20 description that I have in relation to the different
21 strands.

22 112 Q. That is fair enough, Detective Chief Superintendent,
23 because that actually assists the point I am making. Now,
24 we move on to paragraph 2.12.2. And you draw on a
25 particular word and that is the word "confirmed"?

26 A. That's correct, Chairman.

27 113 Q. And in the précis it's stated that "*Blair also confirmed* -
28 that is 'Mooch' Blair - "*also confirmed that there was a*
29 *Garda spy involved.*" Now, without any knowledge of the
30 underlying material, you go to the word "confirmed"?

1 A. That's correct, Chairman.

2 114 Q. And you say that is very strong?

3 A. Correct.

4 115 Q. And you questioned its use?

5 A. I wondered about its use, Chairman.

6 116 Q. And what you do then is introduce "*I would question the use*
7 *of the word 'confirmed' as attributed to Mr. Blair in this*
8 *item and I wonder if it is secondary language used by a*
9 *third party, a source or a police or security officer.*"

10 A. Mm-hmm.

11 117 Q. And of course, if you could establish it was a third party,
12 that dilutes the meaning of "confirmed", does it not?

13 A. No, I think, Chairman, what my thinking was there, in 36
14 years I have spoken to a lot of people, I have spoken to a
15 number of suspects, and I cannot recall one instance where
16 a person would say to me "I confirm that so-and-so did this
17 job." It would be more ordinary day-to-day language. What
18 I am saying here is the further we go away from the actual,
19 the original language and the more obscure it is, the
20 harder it is to interpret, and what I am questioning here
21 is, what exactly does the word "confirm" mean? Are we
22 saying that Mr. Blair used the word "confirm" or is it a
23 summary, either of a sub-source, a person that heard him
24 uttering something; or is it, alternatively, a synopsis by
25 an intelligence analyst or a handler or whatever else? I
26 am merely drawing to your attention that this is a
27 consideration that I think is relevant, no more, no less.

28

29 CHAIRMAN: Yes, it's relevant to every piece of

30 intelligence?

1 A. Yes, yes.

2

3 CHAIRMAN: Yes.

4

5 118 Q. MR. ROBINSON: Yes, but you see, what you have suddenly
6 done in that paragraph is questioned the word
7 "confirmation" and the word "confirmed". Now, your first
8 example was that you'd never had a conversation with
9 someone who said "I confirm" X or Y. I am paraphrasing
10 what you said. That's not what the précis actually states.
11 It doesn't quote Blair as saying "I confirm that there was
12 a Garda spy." So, your first point goes nowhere. But what
13 you do is, try and introduce another layer into this précis
14 by introducing the possible use of that word by a source or
15 a police or security officer. And you can see how that, a
16 deduction could diminish the value of the word "confirm"
17 within the précis?

18 A. Judge, Chairman, at the -- and I am endeavouring to keep it
19 as brief as I can and not to repeat what I said before; I
20 am constrained in what I have, the material I have, to
21 actually turn my focus or attention to words because of the
22 brevity of the material, and I think that any reasonable
23 person would say that the point in terms of "confirmed" is
24 relevant. That is my analysis or that is my view on it.
25 Mr. Robinson holds another view, and I am quite happy for
26 you to adjudicate on which has any -- whether it has any
27 relevance or not. If it's considered that it has no
28 relevance, so be it.

29 119 Q. And paragraph 2.12.3, you actually refer to the evidence of
30 'Mooch' Blair?

1 A. Yes.

2 120 Q. Day 59, and page 16, question 75, he replied that, he said
3 that: *"No Garda ever assisted him and he did not know of*
4 *any Garda assisting anyone."*

5 A. That's correct.

6 121 Q. You put that into the mix to say, well look, 'Mooch' Blair
7 said that, that might actually undermine that précis?

8 A. I was cross-examined on that I think yesterday, and it
9 mightn't be immediately obvious there, but certainly what
10 was in my mind when I was making that point was that if
11 that material had been released before 'Mooch' Blair had
12 given evidence, that that is the point I was making there,
13 rather than saying that because 'Mooch' Blair said it, it
14 has some credence. I am just merely saying that he said it
15 in evidence. And I think the material was released after
16 he said that.

17 122 Q. Well, it looks as if that is in some way indicative that
18 'Mooch' Blair did not receive help, because you don't
19 mention that 'Mooch' Blair also said he would never betray
20 a comrade?

21 A. That's right, yes, we went into that yesterday. And my
22 explanation in relation to that was, that my statement ran
23 to 51 pages. If I started putting in another
24 page-and-a-half of commentary from 'Mooch' Blair or
25 whatever else, it would have ran to 200 pages, so I
26 basically illustrated a point there. I mean, it's up to
27 the Chairman to decide if it has relevance or not.

28 123 Q. But you see what my point is, you have put in, the only
29 snippets that you have put are items to undermine the
30 actual précis or attempts to undermine the précis, whereas

1 you said this was fair and objective, and a fair and
2 objective view would have been, I only have the précis, I
3 don't have the underlying material, I can't comment, but
4 you have taken the course to try and put in things to
5 undermine the précis, do you see that?

6 A. No, I don't see that.

7 124 Q. You don't see that? You don't accept that that is unfair?

8 A. I don't accept -- again, I started off at the very start of
9 my statement outlining the disadvantage I was at, that
10 disadvantage was maintained throughout the 20 or so -- or
11 the 12 items in this particular case here, and I was forced
12 to comment on a very restricted form of words. And if that
13 commentary on a restricted form of words concentrated on
14 words and if Mr. Robinson's interpretation of that is that
15 it is to his disadvantage, so be it, I will leave it up to
16 the Chair to decide.

17 125 Q. But you see in relation to that point, you say you are at a
18 loss of attempting to give any meaningful assessment
19 because there is a conflict, but there is a conflict of
20 evidence in relation to PIRA's statement, and rather than
21 say I am at a loss in attempting to give any meaningful
22 assessment, what you actually say is, it's actually a
23 matter for you, Judge. So, can you see the difference in
24 the treatment of the PSNI précis and your treatment of the
25 PIRA statement?

26 A. No, I can't. I think that -- in terms of the PIRA
27 statement, I was as fulsome in my evaluation and analysis
28 as I could be and I am sure we will go through that, and I
29 don't accept that there was different standards used, you
30 know; I think there was the same professional standard

1 applied to it, and I am quite happy to go through each
2 strand and defend that position.

3 126 Q. And just to move from that point. The phrase that you were
4 at a loss in attempting to give any meaningful assessment,
5 you never used that once in your assessment of the PIRA
6 statement?

7 A. If that is the case, I accept that, yes.

8 127 Q. Now, item 4, and that's: *"During 2011 a senior south*
9 *Armagh PIRA member confided to an associate their personal*
10 *fears concerning the ongoing Smithwick Tribunal,*
11 *particularly that the AGS personnel that were previously*
12 *under PIRA's control would potentially highlight the level*
13 *of cooperation previously provided."*

14

15 Now, the first thing you do is start talking about whether
16 or not it could be an echo, isn't that right? You are
17 again trying to dilute this, rather than saying
18 objectively, I can't comment on this. The first thing you
19 say is: *"Well, we need to be careful to avoid circular*
20 *reporting and to ensure that we do not hear an echo from*
21 *media coverage."* But you have already had the benefit of
22 ACC Harris's evidence that there was no circular reporting?

23 A. Chairman, the first thing I did in relation to each of
24 these strands, each individual strand, was I picked up the
25 transcript of ACC Harris, because it was the only extra
26 clue or the extra material that I had to, that could add in
27 any shape or form to what I had in the few sentences in
28 front of me, and what I did in this particular case was to
29 summarise what I saw was ACC Harris's contribution in
30 relation to that. And what I did say, yes, I did mention

1 that he had indicated in evidence that he was being careful
2 to avoid circular reporting or to ensure that it wasn't an
3 echo of commentary that he was hearing, but I ended up by
4 saying that he would neither confirm -- he wouldn't confirm
5 whether or not the reporting came from different sources.
6 I'm just saying that, you know. And it's unusual in the
7 context why would you not say it's coming from one source,
8 if it's coming from two sources? It might add to your
9 advantage in weighing up the strength of it. That is
10 basically what I am saying.

11 128 Q. Your next paragraph refers to the cross-examination of ACC
12 Harris.

13 A. Yes.

14 129 Q. And he said that he would neither confirm nor deny the
15 identity of the associate referred to.

16 A. Yes.

17 130 Q. Fine. You then state: *"I must consider the possibility
18 that neither the senior member of PIRA nor the associate
19 are known to the PSNI."*

20 A. That is the logical conclusion I draw from it.

21 131 Q. That is one of the ones you could have drawn from it. You
22 have said they may have been known, but you don't go for
23 the positive; you go for the negative, because it leads on
24 to your next sentence: *"This raises the possibility that
25 the origin of this information is from a third party"?*

26 A. Yes.

27 132 Q. And again what you are doing is introducing a distancing
28 which undermines or plants a seed to undermine the weight
29 of this précis?

30 A. Chairman, in my view this could easily have been remedied

1 by answering yes, I do know the source. I do know the
2 senior IRA member. I am not clear how that will in any way
3 affect security, maybe it would, but I'd like to hear how
4 it would. The bottom line is that all these issues could
5 be advanced, and if the PSNI are interested in giving me
6 the details, or more elaborate details, I certainly would
7 be able to advance it, and I think that - we are going to
8 go through the whole 12 items, so be it - that even at this
9 stage, that should be considered, because I certainly
10 cannot comment any further than I am commenting there in
11 the absence of more meaningful information.

12 133 Q. Well, you see, Detective Chief Superintendent, again that
13 is the policing issue; I am talking about the evidence
14 before the Judge. And you have put in a statement that
15 introduces items to undermine the précis, and what I am
16 doing is demonstrating your choice of language and how much
17 importance you attach to vagueness and elaboration between
18 précis that were put in and the PIRA statement. That is
19 the exercise we are engaged in at the moment. Now, you
20 say, oh, if it had been shared, that would have made things
21 different. I am asking you is it your evidence then, if
22 information had been shared, you wouldn't have gone for the
23 negative, because that is the option you have taken; you
24 have introduced this distancing point?

25 A. If my -- if the material had been shared, Judge, it
26 might -- my commentary in each individual case would
27 obviously be dependent on the information that was shared
28 with me. In some cases I could be in complete agreement
29 with the PSNI position. In other cases I might have said
30 well this is in complete conflict with our analysis of the

1 situation, because in another section, ACC Harris refused
2 to confirm or deny whether the source of the information
3 was in this jurisdiction. Now, I demonstrated yesterday, I
4 think, that certainly in one case we can bring informed
5 comment to a person living in this jurisdiction and I have
6 raised that as a relevant point and I raised it as a
7 relevant point throughout a lot of these, and there is a
8 lot of repeat features in relation to my analysis of this
9 material, simply because vagueness, lack of detail and
10 object security is a common theme throughout the strands.

11 134 Q. Yes, it is, on your report, and you labelled it "*Vague in*
12 *the extreme, and it is not possible to offer any useful*
13 *evaluation as to its worth without a substantial*
14 *elaboration as to content and context.*" Now, I can tell
15 you in your assessment of the PIRA statement, when it is
16 vague or fails to elaborate, you at no stage say it's vague
17 in the extreme and it's not possible to offer any useful
18 evaluation. You put it to the Judge. Can you see the
19 difference in the treatment between the two, between the
20 précis and the PIRA statement, can you see it now?

21 A. Chairman, I see a difference, I see a distinct difference
22 between the detail that was available to me. I said
23 earlier, both -- all the material emanates in some shape or
24 fashion, its originates back with the IRA, and if you like,
25 the guards weren't a party to collecting either strands.
26 The Tribunal was the conduit in giving us the IRA
27 statement, the PSNI are the conduit in giving us these
28 précis. I had substantially more detail, there was two
29 particular aspects, number 12 The Crescent and the sighting
30 of Inspector Day. That, for me, took up I think the

1 majority of my analysis. I explained in evidence, either
2 yesterday or the day before, that when it came to the
3 actual, and I said in evidence yesterday, that I did
4 believe that there was conflict in relation to the way the
5 IRA described how the actual operation was conducted, and I
6 did say that the forensic analysis of that was best left to
7 yourself because you had heard evidence over a prolonged
8 period of time in relation to how that was conducted. But
9 I did accept that it was, did seem to be in conflict with
10 the established facts at the time.

11 135 Q. Now, moving on, Detective Chief Superintendent Kirwan.
12 Item 5, *"In late 2011" - redacted name - "commented that to*
13 *his knowledge, AGS Sergeant Owen Corrigan had no time for*
14 *the IRA but was a gangster who was out for money."* Now,
15 the first thing you say about that is, *"There is no detail*
16 *given as to the circumstances in which the named person is*
17 *alleged to have made these comments or what relationship*
18 *the source had with this person."* So, you are attacking
19 the detail on that?

20 A. Well, Chairman, I was asked early before lunch a
21 hypothetical question: If the IRA had said the guards
22 wasn't involved. Here is probably the closest in the
23 strands of information where it's saying that Owen Corrigan
24 wasn't involved. And I am merely saying --

25 136 Q. Well, actually, that is incorrect. And if you read it *"had*
26 *no time for the IRA but was a gangster who was out for*
27 *money."* That does not rule out that he provided
28 information to PIRA for money.

29 MR. O'CALLAGHAN: Sorry to interrupt Mr. Robinson's
30 debating society cross-examination. What he is not

1 entitled to do is to interpret this intelligence for his
2 own point of view. The language is unambiguous, it says
3 that "*An Garda Sergeant Owen Corrigan had no time for the*
4 *IRA.*" Now, it's not for Mr. Robinson to give you evidence
5 about that piece of intelligence, sir. If he wants to put
6 a particular slant on it, he should call back ACC Harris to
7 give evidence in respect of it. But I object to him
8 putting that and he never mentioned that to my client
9 Mr. Corrigan.

10
11 MR. ROBINSON: Well, first of all, the language is
12 ambiguous, but what I was correcting was Mr. Kirwan's
13 evidence that it stated he was not involved. That is my
14 point.

15
16 MR. O'CALLAGHAN: This is supposed to be accurate and
17 reliable intelligence, that is what Mr. Robinson has been
18 telling us for the past three hours. How can he now
19 suggest that part of it isn't accurate and reliable?

20
21 MR. ROBINSON: First of all I am not, what I am saying is
22 that is the précis that is before this Tribunal. And,
23 "*Owen Corrigan had no time for the IRA,*" that may be on an
24 ideological basis, we don't know.

25
26 MR. O'CALLAGHAN: It's not for him to give evidence, sir,
27 and I object to him trying to put the knife into my client
28 in this way. If he wants to call evidence in respect of
29 this intelligence, let him put ACC Harris back in the box,
30 and he should remember that Mr. McComb, when he was giving

1 evidence, stated that yes, he could understand why my
2 client felt a sense of grievance against the PSNI for
3 holding back this documentation, and I think he went so far
4 as to say he could understand that my client was deserving
5 an apology.

6
7 MR. ROBINSON: Sir, I make this point, I was not giving
8 evidence, I was correcting this witness who said that this
9 précis said that Owen Corrigan was not involved. It said
10 "*had no time for the IRA.*" So, that is the first point. I
11 was not giving evidence. Secondly, I was surprised when I
12 read the transcript that Mr. O'Callaghan is not -- has not
13 questioned this witness further, because if this witness's
14 evidence is to be accepted and the précis are to be
15 disposed of or a lack of weight attached to them, that may
16 indeed remove the suggestion that a fourth guard, not
17 associated with the Tribunal, could melt away in your
18 findings, sir. So, that is perhaps a matter for another
19 day. But I was not giving evidence and I am entitled to
20 correct this witness on his interpretation of this précis.

21
22 CHAIRMAN: Yes, I think, yes, you have done that. I think,
23 Mr. O'Callaghan, I can read what that sentence is as well
24 as the next person and I think I know what it -- I think I
25 can understand it, and of course you are right to stand up
26 for your client.

27
28 MR. O'CALLAGHAN: Thank you, Chairman.

29 137 Q. MR. ROBINSON: Now, Item 6: "*Senior PIRA figure had*
30 *several AGS officers passing information to PIRA, officers*

1 *of a more senior position than Owen Corrigan.*" Now, again,
2 you focus on the lack of elaboration in paragraph 2.15.2,
3 and you say: *"Because of the lack of elaboration, it does*
4 *not even meet the lowest threshold. It is extraordinarily*
5 *vague and general and it's completely devoid of clarity.*
6 *It lacks the basic specifics that one would expect if a*
7 *source is speaking from first-hand knowledge."*

8

9 Now, in the PIRA statement, there is a lack of detail.
10 Clarity was sought from the Tribunal on a number of issues,
11 and that clarity was not forthcoming. There is general
12 talk about things like elaborate surveillance and general
13 periods of time, spring, summer, issues like that, but at
14 no stage do you say that that vagueness is extraordinarily
15 vague and devoid of clarity. And this is a statement
16 apparently from people involved in the operation itself.
17 Now, do you accept that you have -- you haven't criticised
18 vagueness or the lack of elaboration in the PIRA documents?

19 A. Chairman, can I just say, for me, this is probably one of
20 the most serious allegations that can be levelled against a
21 police service; that there is officers passing information
22 to an unlawful organisation. I can think of no agency, and
23 I have been involved in this for the last 30 years, 25
24 years, I can think of no agency that will find it
25 acceptable that that information containing those
26 allegations would be condensed into one sentence and for
27 that agency to think that the recipient agency would find
28 that adequate to meet their requirements. I certainly
29 would not stand over sending that to -- to an outside
30 agency, be it in Europe or beyond, if I had an indication

1 that police officers from another agency or security
2 service were passing information and betraying their
3 organisation. I think it deserves much more commentary,
4 much more elaboration. We are completely disadvantaged,
5 the Commissioner is disadvantaged. I respectfully suggest
6 you are disadvantaged. And at the end of the day, no
7 progress is being made in moving this forward and giving it
8 the proper attention that it deserves. That is where I am
9 coming from there. And to add to that, in his evidence ACC
10 Harris would neither confirm or deny the identity of the
11 IRA man. And in some -- some strands of intelligence, the
12 opportunity for a foothold in dealing with it are very
13 restricted. The only foothold that I could identify there
14 would be that if the IRA person was identified, we would be
15 able to look at a file and see if there was anything that
16 gelled with that information, but we are left in a vacuum,
17 we are left at a complete disadvantage. That is where I am
18 coming from.

19
20 In relation to the IRA statement, I'll defend the -- my
21 wording and my analysis of the IRA statement when we come
22 to that.

23 138 Q. Well, just for when we do reach there, you never attacked
24 vagueness in the PIRA statement with any language as strong
25 as you attacked vagueness from the PSNI documentation?

26 A. Well, the conduit, as I say, the fulsome of the document,
27 there was 20 pages, I think there was either three or four
28 different strands of reporting from the IRA statement in
29 their interaction with the Tribunal counsel, and if I
30 didn't use that language, I will look at the language I

1 used in a minute, I certainly, the same standards were
2 applied to both the analysis of the IRA statement and the
3 analysis of the précis.

4 139 Q. Now, 2.16, the précis regarding the murder of Lord Justice
5 Gibson: *"In relation to the murder of Lord Justice Gibson,*
6 *a senior member of PIRA has since revealed that the*
7 *information which led to the PIRA operation emanated from*
8 *the AGS."* And what you say in paragraph 2.16.2 is: *"I am*
9 *concerned at the lack of evidence and that the basic*
10 *considerations associated with evaluation of information*
11 *have been applied in relation to this strand of reporting."*

12 A. Mm-hmm.

13 140 Q. Now, we have heard sworn evidence that these strands have
14 been assessed by PSNI and BSS, so where exactly do you draw
15 the fact that basic considerations associated with
16 evaluation of information have not been applied to this?

17 A. I am talking particularly, again we are talking about one
18 sentence here, but in particular, I am talking about
19 established facts at the time; that the investigations into
20 the murders or the investigations into the allegations of
21 collusion which were 13 years later, did not in any way,
22 shape or form allude to any collusion by the guards, so
23 that in the immediate aftermath of this incident and for 13
24 years thereafter, there was no evidence of Garda collusion.
25 And I am quite certain that, but I will check it, that ACC
26 Harris confirmed that he hadn't looked at that.

27 141 Q. And again, as we went over this earlier, he didn't change
28 his view that it was active and reliable despite any
29 factual findings or investigation in the past, that is
30 correct?

1 A. Well, if he hadn't considered them I don't know how he come
2 to an informed view.

3 142 Q. Well, it was put to him he never thought I need to go back
4 and check that; he was still giving evidence this was
5 material was accurate and reliable. That goes to show the
6 weight that he attached to this information?

7 A. Well, it goes to show the lack of a consideration of a
8 potential. You are saying that he did that without
9 consulting the facts established at the time. My view is,
10 they should have been consulted.

11 143 Q. That is a matter for the Judge, certainly.

12 A. Yes.

13 144 Q. But what you have done is put in something that undermines
14 the processes reaching that précis, further in that
15 paragraph on 2.16.2 you also refer to the letter in 2000
16 from Deputy Chief Constable Colin Cramphorn stating: "*No
17 evidence exists nor can any documentation be located which
18 evidences Garda collusion with subversives.*" And you say
19 that rules out consideration of Garda collusion. Now, that
20 was at that time in 2000. The evidence before the Tribunal
21 is that this strand has come in recently. So, the fact
22 that you have put in this is, again, another attempt to
23 dilute the précis by saying, well, look, that is the
24 précis, that may be there but, look, they didn't find any
25 in the past and they confirmed it in writing in 2000. But
26 really, there is sworn evidence that this is accurate and
27 reliable, so the Judge can take away from that whatever
28 happened in the past, whatever was known or not known in
29 the past, this is assessed presently as accurate and
30 reliable?

1 A. And that accurate or reliable tag was arrived at before
2 without consultation with or consideration of what I
3 considered to be relevant material. That is the point I am
4 making.

5 145 Q. And again it's for the Judge to decide whether or not that
6 really affects any weight?

7 A. It is, Chairman, yes.

8 146 Q. Now, you then refer to two précis from An Garda Síochána,
9 Document 236 and 542, set out at paragraph 2.16.4, and at
10 2.16.5 you refer to Judge Cory's assessment, basically that
11 this couldn't be relied on because of double hearsay?

12 A. No, I gave extensive evidence of this. Now -- and at the
13 start of my evidence yesterday, Chairman, I did outline
14 that there are significant sensitivities in this context,
15 so again, I will try to negotiate them without actually
16 looking to go into private session. But I did mention
17 Judge Cory, Chairman, yes.

18 147 Q. But the aspect that you referred, the aspect that you have,
19 I believe, quoted in part in your paragraph 2.16.5 for all
20 the reasons not to rely upon it, for example: *"It would
21 not be safe to rely upon it in the absence of some other
22 evidence to confirm the claim. No documents or evidence
23 that would support it. In relation to the source, he
24 commented that without any suggestion of any personal
25 knowledge of the issue and possible inference that speaker
26 was merely boasting or attempting to elevate his status."*
27 So you have put into that paragraph doubts expressed by
28 Judge Cory, and again, it's a negative, because you are
29 trying to undermine the veracity of the précis?

30 A. Chairman, maybe, I don't know if Mr. Robinson had got a

1 chance to study the transcript of my evidence yesterday in
2 relation to this particular aspect, but I went into some
3 detail in confirming that I was completely satisfied that
4 the source in this case, source was reliable, but had no
5 first-hand knowledge of the matters being reported on,
6 neither had the person who told the source any first-hand
7 knowledge, so that is just to give some context to the use
8 of the word "double hearsay." This was thirdhand
9 information. It was also single-source reporting, it
10 wasn't corroborated by any other means. I also indicated
11 that I was completely satisfied that while the source was
12 reliable, the source was reliable in the particular context
13 in a geographical area and in an area of particular
14 activity. And I couldn't go into any more detail than that
15 in relation to it. But I was, and I am saying in evidence,
16 that the source had no knowledge of the persons involved or
17 the circumstances surrounding it, so we are talking here
18 about information that never reached the standard, what we
19 would call intelligence. And, in terms of objectivity, I
20 put it in here because I thought it was appropriate to put
21 in here; it was evidence, if you like, or information that
22 highlighted a contrary view, so that is why it's in there.
23 But I think that it needs to be considered in them terms.
24 And I did allude to Judge Cory's report and his
25 conclusions, which were as Mr. Robinson read out there; he
26 did say it couldn't be ignored but it wasn't supported by
27 any other strands of reporting, and he did say that the
28 intelligence-gathering of the IRA, coupled with the
29 openness of the Gibsons' travel, may very well have been a
30 factor. And he didn't find it persuasive in the context of

1 saying that there was collusion. That was the context of
2 my contribution under that heading.

3 148 Q. Yes, you have put in a paragraph that demonstrates that,
4 look, somebody else didn't attach any weight to this,
5 whereas in reality, an objective report would have said I
6 haven't had sight of the underlying material, it's up to
7 the Judge?

8 A. I think if I was, you know not to labour the point,
9 Chairman, I have given, to my view, a pretty elaborate
10 explanation in relation to that. If I was to use the
11 template of or the yardstick of the PSNI précis, I would
12 simply say I can neither confirm nor deny if I know the
13 person who said it or where it came from or anything else.
14 And we would be none the wiser. I think we are in a more
15 informed position, me having given that in evidence and by
16 also referring back to Judge Cory, who, independently,
17 looked at the material, all the material, as have you,
18 Chairman, looked at the material surrounding this, and I
19 think you are in a much more informed view now with my
20 contribution rather than just relying on the précis on its
21 own, and that's my...

22 149 Q. Now, moving on, the précis at 2.17: "*Sinn Fein/PIRA*
23 *members remain concerned that the Smithwick Tribunal*
24 *continues to disclose possible damaging information. Sinn*
25 *Fein/PIRA remains concerned that the specific details*
26 *relating to the murder of Tom Oliver may be disclosed.*"
27 Now, you engage then in discussion of the term Sinn
28 Fein/PIRA. You then go over and refer to media reporting
29 in 2.17.4. But in 2.17.5, you again say that "*It requires*
30 *significant elaboration to enable the proper evaluation and*

1 *guard against the possibility of an inaccurate or erroneous*
2 *assessment."*

3

4 So, again, with this piece you are looking to say lack of
5 elaboration undermines an assessment?

6 A. Confusing terminology also confuses the potential --
7 potentially confuses the interpretation, and I am saying,
8 and I did it in three or four paragraphs, that the term
9 "Sinn Fein/PIRA," I was -- I would hazard a guess that I
10 haven't seen that term used in the last ten years in
11 communications that I have received. And I am saying, it's
12 the first thing, it may not be the first thing that jumps
13 out at somebody else, it's the first thing that jumps out
14 at me looking at that, what is meant by that? And I say
15 the fact that Sinn Fein are thrown in there, is there a
16 possibility that the concern is on the political side
17 rather than the ex-military side? And I go on to elaborate
18 on that, and I say is it possible that that political
19 sensitivity, that it's in the context of the potential
20 negative impact that would accrue to the party in that
21 particular area? That is the context of my commentary.
22 And in the context of my commentary, it's terminology that
23 I don't understand and, yes, I do at the end say that it
24 requires further elaboration, but I have supported that by
25 four previous paragraphs.

26 150 Q. And what you do in those paragraphs is suggest there is of
27 a, that perhaps there is more of a political concern rather
28 than a military concern because if it was a military
29 concern that would relate directly to allegations of
30 collusion?

1 A. Why is the term "Sinn Fein" incorporated in the précis?
2 And I am basically saying that that raises for me a
3 possibility. And if I had got a more explicit account of
4 that, that commentary might be completely different. I am
5 dealing with what I have, two sentences.

6 151 Q. Yes, but what you could have said is the use of that term
7 is possibly historic, no one knows, it may be this, that,
8 but what you do is emphasise on the political concern
9 rather than the military concern?

10 A. I said the phrase is not in common usage. That is my
11 experience. The phrase is not in common usage. And I am
12 saying who has assembled this phrase? Is it coming from
13 the source? Is it coming from the analysis? Is it
14 incorporated into the précis? And why is Sinn Fein there?
15 And I have highlighted that the fact that Sinn Fein is
16 there, one must give consideration to the possibility that
17 it's a political sensitivity rather than a military -- and
18 that's really, without labouring the point, that's where I
19 stand on that.

20 152 Q. And 2.19 is your request for further elaboration, but it's
21 correct a name was provided, is that correct?

22 A. That's correct.

23 153 Q. And have you taken any proactive steps using that
24 information?

25 A. Now, Mr. Robinson knows full well that we wrote back to him
26 to clarify this and a number of other points, and we
27 explained in great detail - and he has the correspondence
28 available to him - why we were being restricted in relation
29 to what we could do and inform our operational people. I
30 spoke directly to a senior officer in relation to this

1 particular aspect. I know that one of the names that had
2 been mentioned to us has since deceased. So the -- our
3 ability to move this forward to where we would consider an
4 acceptable level is completely restricted and hampered by
5 the lack of detail and the lack of response to the queries
6 that we have raised. And they are the -- there the matter
7 rests.

8 154 Q. And 2.20, this is the next précis regarding "*Intelligence*
9 *suggests that Owen Corrigan engaged in corrupt activity*
10 *targeting criminals and was motivated by greed. The*
11 *intelligence also suggests that he did provide sensitive*
12 *information to PIRA and that he did so for reasons of*
13 *self-preservation."* And as counsel for the Tribunal
14 pointed out, in your response in 2.20.1, you refer to a
15 reliable source saying that he was questioned regarding
16 Garda sources in Dundalk, but you don't refer to the fact
17 that AGS rejected any potential civil claim?

18 A. Yes, well, just to deal with the first thing first. I
19 mean, my reference to the Garda, to 2006 information there,
20 is really in support or possible support or potential that
21 it could give an interpretation of the reasons for
22 self-preservation. That is the context of that. So, in
23 other words, it may very well support that, that aspect of
24 it. No, that is where my commentary ended on that.

25 155 Q. And when you refer to the self-preservation, are you
26 referring to the time that he was abducted?

27 A. Yes.

28 156 Q. And another interpretation or an objective, an objective
29 observation could have been well, he was there for 13 years
30 as the head Detective Sergeant in an area controlled by

1 PIRA and he had to provide information for
2 self-preservation. That is another interpretation,
3 possible interpretation?

4 A. I wouldn't say that the Dundalk area or district was
5 controlled by PIRA, and I wouldn't accept that
6 interpretation.

7 157 Q. Well, that is a matter for --

8 A. It's a matter for the Chairman, yes.

9 158 Q. -- for the Judge. 2.21: *"Senior PIRA member revealed*
10 *that he was responsible for the murder of John McAnulty."*

11 A. Yes.

12 159 Q. And again, you query the issue about where the murder took
13 place. Is that your only comment on that précis?

14 A. That is my only comment on that précis, yes.

15 160 Q. Now, moving into your summary and conclusions, paragraph
16 2.22.1. You have claimed that this was an objective task
17 carried out in as professional and objective manner as
18 possible, yes?

19 A. Yes, I think that we are probably at -- as the Chairman
20 said earlier, we are at -- in dispute over that.

21 161 Q. Yes. And looking at the information in, paragraph 2.22.2
22 you say that: *"The strands are diverse in terms of*
23 *content, often general in nature and devoid of detail,*
24 *embodied in a formula of words that in several instances*
25 *presents difficulty and confusion in understanding the*
26 *essence of what is being conveyed. The difficulty is*
27 *further exacerbated by the fact that some of the items are*
28 *contradictory of others, yet the PSNI have continued to*
29 *assert that they are accurate and reliable."*

30 Now, you then go into the timing, and we have addressed

1 that earlier today. *"Engagement with the Tribunal by*
2 *ex-PIRA members re reference to surveillance."* Now, if I
3 can just touch upon the issue of motivation for the PIRA
4 statement. PIRA's statement on a number of occasions
5 states that it will not compromise its comrades. That's
6 correct?

7 A. Yes, that's correct, and I alluded to that in evidence
8 yesterday, yes.

9 162 Q. Yes. And that is a significant factor when putting factors
10 towards the Judge as to how he weighs matters up before
11 him, isn't that correct?

12 A. That is correct.

13 163 Q. But you don't mention that in your paragraph 2.22.6
14 regarding engagement with the Tribunal?

15 A. Yes, I think I go into it in more detail in relation to the
16 commentary on the IRA statement. I also mentioned it in my
17 evidence yesterday, that I felt that at some stages I got a
18 sense that at some stages in the interaction between your
19 Tribunal legal team, Chairman, and the IRA interlocutors,
20 that they were tetchy and that there was a demarcation line
21 where they certainly didn't want to go any further than,
22 and I am thinking specifically about when the actual
23 details of how the operation was carried out, the shooting
24 was carried out, and also in relation to the theft of the
25 van the previous weekend, I thought that they were actually
26 defensive in that regard, and from my memory I think they
27 may have actually made a reference to the fact that one of
28 their comrades might have been compromised or something
29 along them lines.

30 164 Q. Now, paragraph 2.22.7, last sentence: *"I believe that in*

1 *many instances persons presenting evidence have applied the*
2 *term mistakenly or inappropriately; this is the term*
3 *'intelligence' as opposed to 'information'. Thus giving an*
4 *artificial or falsely elevated status to assertions which*
5 *may be no more than rumour, ill-informed comment or*
6 *repetition of media reports."*

7

8 Now, I want to focus on the word "persons." I take it you
9 don't mean the PSNI witnesses that are presenting the
10 *précis*, or do you?

11 A. Yes, I do, yes.

12 165 Q. So you are saying that both Roy McComb and ACC Harris have
13 applied the term "intelligence" mistakenly or
14 inappropriately?

15 A. Yes, that is the whole essence of where we are at in the
16 whole -- it's the whole kernel of the debate here,
17 Chairman, is how appropriate is it -- I mentioned earlier
18 about Kevin Fulton and the information in relation to Kevin
19 Fulton, I forget the actual terminology, but Kevin Fulton
20 is reported to have received some information. I mean,
21 what is missing in relation to that is, that could have
22 been read in the papers from 2003 onwards. I wouldn't
23 regard that as intelligence; I would regard that as an item
24 of reporting that needs significant qualification, and in
25 that qualification, it would need to be reported on that it
26 needs to be borne in mind that this has been in the public
27 domain since 2003, and not to be putting it forward as
28 intelligence in 2011 or '12 or '13. That is the context in
29 which I am saying. So, what I am saying is, that I don't
30 think that that, and just to give one example, deserves the

1 tag "intelligence", I think it needs substantial
2 qualification, and I think it needs to be pointed out the
3 context in which it has already been circulated in the
4 public domain, and there is nothing in the précis, to
5 my view, that is any more substantial than what is
6 contained in the statement he made to Judge Cory in 2003.
7 That is the context of what I am saying.

8 166 Q. Let's go back to the question. You have said that
9 persons -- let's take ACC Harris, we have established his
10 credentials, we have established he is an expert in his
11 field, but you are saying that he has applied the term
12 "intelligence" mistakenly; that is your evidence?

13 A. My evidence is that in a number of cases, and I have
14 demonstrated in my statement, that the word "intelligence"
15 is inappropriately used, and that the problem with that is
16 that it gives it an elevated status, and I highlight Kevin
17 Fulton as one that, for me, demonstrates that probably to
18 the fullest degree.

19 167 Q. So because the précis mentions Kevin Fulton, you are saying
20 Drew Harris has applied the term "intelligence" mistakenly?
21 I want to be clear because this is for the Judge to decide
22 whether or not he accepts that view or accepts the fact
23 that Drew knows the raw material as an expert, just
24 contrasting that for you?

25 A. The material I have in front of me in relation to Kevin
26 Fulton and others leads me to believe, and based on the
27 material I have available to me, that the -- that material
28 does not deserve the word "intelligence" to be attached to
29 it. That is my evidence.

30 168 Q. And in the same breath you'd say that it was used

1 inappropriately as well? I just want to be clear on what
2 your evidence is; that Drew Harris used the term
3 "intelligence" inappropriately?

4 A. I said yesterday in relation to when I was explaining
5 information and intelligence, the first thing I said was
6 that I have probably used the word "intelligence"
7 inappropriately myself. I certainly went on to say that
8 members of my organisation had used it inappropriately, and
9 I think we had arrived at an example where Superintendent
10 Mick Finnegan had referred to intelligence. When we --
11 when I got the query as to where that intelligence was, it
12 didn't exist, and when it was subjected to
13 cross-examination, it was conceded that what had been
14 termed originally "intelligence" was no more than rumour,
15 gossip and innuendo. So, I first of all qualified that the
16 use of the word "intelligence" in a general sense has been,
17 I hesitate to say the word abused, but inappropriately
18 used, by ourselves, first of all, and then I am saying in
19 this particular case that it either is mistakenly or
20 inappropriately used in some of the strands that have been
21 supplied to me in précis form.

22 169 Q. And you say the result of ACC Harris inappropriately using
23 the word "intelligence" has given an artificial or falsely
24 elevated status to assertions which may be no more than
25 rumour, ill-informed comment or repetition of media
26 reports? I just want to be clear because he knows what he
27 is talking about because he has seen the raw material; you
28 haven't, and I just want to be clear that your criticism is
29 that he has made a mistake and that that has elevated or
30 has given this information an artificial or falsely

1 elevated status, because that is an important point to be
2 clear for the Judge?

3 A. If the term "intelligence" is inappropriately used, the
4 natural consequence of that is that reaches a status that
5 it doesn't deserve and that the material may be based no
6 more than on rumour, ill-informed comment or repetition of
7 media reports, and I highlighted the Kevin Fulton case as
8 demonstrating that. The only -- it's almost a direct
9 mirror image of what was in his statement in 2003. If
10 there is more material that supports that précis, then
11 let's see it and let's hear about it. But in the material
12 that I have to judge, that's my assessment.

13 170 Q. But you are making an assumption that that is simply a
14 repetition of a statement. Could it mean --

15 A. I am putting --

16 171 Q. -- a more general assessment would have been, well, it
17 looks very much like the statement, it could have been the
18 statement or it could have been alternative reporting?

19 A. Well, I would expect in an intelligence assessment to be
20 given a clear undertaking that, look at, we have been
21 conscious of the fact that the contents of this has been in
22 the public domain since 2003, we have considered that and
23 we are completely clear that that has no influence in
24 relation to the current reporting, that that current
25 reporting is stand-alone reporting and it confirms what was
26 said in 2003. But in the absence of any explanation or
27 elaboration, I have to consider is it a possibility that
28 this is further commentary or -- in relation to what was in
29 the public domain since 2003.

30 172 Q. Now, moving on to paragraph 2.22.18, and this is where you

1 say there are contradictory pieces of intelligence, and you
2 bullet-point them in four paragraphs: "1. An unknown
3 female who worked in Dundalk Garda Station passed
4 information to an unknown PIRA man." That was on the day
5 in question. Next: "An unknown Garda officer passed
6 details of the RUC officers' movements." But that strand
7 isn't date-specific?

8 A. Sorry, can you just help me --

9 173 Q. Your paragraph 2.22.18. I am subject to correction, but
10 the second bullet-point: "An unknown Garda officer passed
11 details of the RUC officers' movements," that is not
12 date-specific?

13 A. Yes, I am not -- I haven't got that in front of me now.

14 174 Q. We can verify that or check that on another occasion. But
15 I believe you are being assisted, thank you. Perhaps you
16 can clarify for me as well, Detective Chief Superintendent,
17 that it does refer to a specific date? My information is
18 that it doesn't?

19 A. It's in McComb's evidence on Day 117, I think, page 4,
20 question 5.

21 175 Q. The third bullet-point: "A criminal from the border area
22 was linked to the targeting of the RUC officers"?

23 A. Yes.

24 176 Q. And I don't believe that includes the date, is that
25 correct?

26 A. I cannot say whether it includes a date.

27 177 Q. "A person visiting Dundalk Garda Station on legitimate
28 business recognised the RUC officers and passed details to
29 the PIRA"?

30 A. Yes.

1 178 Q. And you say that these contradictory strands, you say it is
2 a farfetched proposition that they all separately gave
3 information on the day to PIRA, but the précis don't say it
4 all took place on the same day?

5 A. Well, the précis do say that the four people gave
6 information to PIRA.

7 179 Q. Well, yes, but this was a huge operation?

8 A. Yes.

9 180 Q. And we could have had an unknown female in the office
10 indicating that they were on their way down?

11 A. Yes.

12 181 Q. We could have had an unknown Garda officer passing details
13 of movements, either coming into the station, standing on
14 the steps of the station, working at any stage in the
15 station; it may actually have been on a different date
16 because PIRA say they were conducting surveillance?

17 A. Yes.

18 182 Q. *"A criminal from the border area was linked to the*
19 *targeting of the RUC officers."* And from the PIRA
20 statement it appears that this targeting took place over
21 possibly half a year, at least. *"A person visiting Dundalk*
22 *Garda Station on legitimate business recognised the RUC*
23 *officers and passed details to the PIRA."* Now, that,
24 again, it's not clear what exactly happened, but it could
25 have been on another day, it could have been on this day
26 and their presence was noted and passed on. What we can
27 say is that it's a matter for the Judge, it's a matter of
28 intelligence, but what you say is, you link them all to
29 happening on the same day and then you label that as a
30 farfetched proposition?

1 A. Yes.

2 183 Q. And you see, my point here is that when a précis goes in or
3 the précis have gone in, you have tried to undermine them,
4 subtly, but try and challenge the credibility, whereas the
5 detail is incorrect?

6 A. I still say that normally strands of information either
7 support each other and end up as intelligence, or they are
8 in conflict or not supportive, and then there is some --
9 the job of the analyst is to find out which is the strand
10 that stands the greatest test of scrutiny. I don't see in
11 the analysis coming down from the PSNI that these different
12 items were considered. If we are saying that, and if the
13 PSNI position is that all these four parties contributed to
14 passing information, then I find it unusual in the extreme
15 and I find it even more unusual that it's coming at a
16 significant time after the event.

17 184 Q. But again, that is not the point; the point is how you have
18 approached this information, that is my point, because it
19 has been to seek to undermine rather than put objectively,
20 these are the problems with it, it could have been this,
21 could have been that, but you have gone on to say, you have
22 linked them all to the same day which isn't -- again, if I
23 am wrong in that, I will apologise, but it doesn't appear,
24 from what I have been told, there is any link all on the
25 same day, but you have taken that point and you have
26 actually said that's a farfetched proposition?

27 A. That's correct. I haven't the detail in front of me in
28 relation to the individual items.

29 185 Q. Certainly. And I must say, in fairness to you, if I am
30 wrong in that, we can revisit it and correct that. Part 3

1 of your report is your analysis of the PIRA material. Now,
2 can I ask you, when you were asked by the Tribunal to
3 comment, that was as far as the request went? Were you
4 asked to criticise it, were you asked to -- can you assist
5 the Tribunal or assist me in telling me exactly what you
6 were asked to do with the PIRA statement?

7 A. The approach from the Tribunal was in the context of making
8 me available, I think, to all the parties as an expert from
9 the Garda side or as a witness from the Garda side that
10 would comment on ACC Harris's evidence and the IRA
11 statement. I had already, in my evidence, Chairman, but
12 even before that, in 2010, when I was interviewed by the
13 Tribunal's legal team into terms of what evidence,
14 potential evidence I was in a position to give to the
15 Tribunal, I would have alluded to the possibility or the
16 consideration, the -- the necessity to consider alternative
17 possibilities, and I went into some detail in relation to
18 what I considered was the potential for IRA surveillance.
19 I did that well in advance of any expert witness coming
20 here. I did it in ignorance of the fact that the IRA had
21 given some contribution in this regard, and a lot of my
22 commentary here in relation to surveillance, is a
23 repetition of what I delivered in my 2010 contribution, and
24 that, so it's not influenced by the IRA statement; it's
25 something that I said in ignorance of the IRA statement, if
26 that gives -- helps Mr. Robinson.

27 186 Q. Yes, you note in paragraph 3.5 when you met with the
28 Tribunal, you refer to the importance of keeping an open
29 mind?

30 A. Yes.

1 187 Q. I ask you to note that. And of considering possibilities
2 other than collusion. And then you expanded on this theme
3 when you submitted your statement, that is paragraph 3.6?

4 A. Yes.

5 188 Q. Now --

6 A. Can I just explain the context of that, Chairman, just to
7 explain that context. The context of that was that,
8 obviously I was in with the Tribunal and 95 percent of the
9 attention was related to the investigation that had been
10 conducted in 2000 and that, and at the very end of the
11 process, I said, you know, just from my background and
12 that, what I consider, I think we need to also consider
13 alternative possibilities. Now, I am not suggesting for a
14 moment that they were already in the mind of the -- in the
15 minds of the -- of your legal team. And I alluded to
16 surveillance, and I alluded to some of the geographical
17 considerations around Dundalk. I alluded to the capacity
18 of the IRA on that. So, that is the context of that, and
19 it's probably not that clear in cold print there, but that
20 is the context.

21 189 Q. Now, moving to --

22

23 MR. DURACK: Could I just clarify something that maybe a
24 mistake Mr. Robinson may have made rather than leaving it
25 there. In relation to the items of persons visiting the
26 Garda station, et cetera, that they were all related to
27 different days; in fact, certainly, if I could quote from
28 Day 108, page 74, the -- it relates to a person visiting
29 Dundalk Garda Station on legitimate business at the same
30 time as the arrival of Mr. Breen and Mr. Buchanan, which is

1 clearly on the day. And the third one, next one referred
2 to at page 74 on page 108 relates to an unknown female who
3 saw Superintendent Buchanan leaving the barracks.

4

5 MR. ROBINSON: Was the last --

6

7 CHAIRMAN: Was the last day not specified?

8

9 MR. ROBINSON: Was the --

10

11 MR. DURACK: Sorry, I will just finish it off. *"This phone*
12 *call enabled the two officers to be triggered into an*
13 *ambush on the Edenappa Road."*

14

15 MR. ROBINSON: I am obliged to My Friend, and I did qualify
16 that line of cross-examination with -- if the detail is
17 incorrect, I will go back to it. So, we are still left
18 with *"A criminal from the border area was linked to the*
19 *targeting of the RUC officers,"* and that is not
20 date-specific.

21

22 Now, moving on to paragraph 3.14, you talk about the
23 genesis of the operation. And there is a fortuitous
24 sighting in the late spring/early summer of 1988 by an IRA
25 volunteer of an identified RUC detective alighting from the
26 passenger seat of a red Cavalier car, registration number
27 KIB 1204, in the forecourt of Dundalk Garda Station.

28

29 *"The driver of the car, who was not known at the time, and*
30 *RUC detective, who was known as Nigel Day, were observed by*
the IRA volunteer as they both were admitted to working

1 *area of the Garda station."*

2

3 Now, you say, "*I believe that careful consideration of this*
4 *portion of the statement is critical in assessing its*
5 *truthfulness, or otherwise."*

6 In relation to possible corroboration or rebuttal, you then
7 go to talk about Inspector Day's evidence and you talk
8 about him being well-known in the area and travelling to
9 Dundalk, you talk about dates he may have been there and
10 evidence when he was there and the cautionary concern that
11 he had. This runs on from paragraph 3.14.1, all the way
12 through to the mention of the fact that he had a moustache,
13 at 3.14.11.

14

15 Now, an objective assessment, and I will be putting this
16 throughout this exercise, an objective assessment should
17 also have included this may have been a mole that provided
18 this information, or it could have been a mole that
19 provided this information. But what you have done is
20 ignore that possibility and gone straight for corroboration
21 that supports the PIRA version of events. And the lack of
22 detail or elaboration, you don't even mention.

23 A. Yes, Chairman, in my view, I probably draw all the strands
24 together. And by the way, I said at the very outset that
25 careful consideration was critical in assessing its
26 truthworthiness -- truthfulness, or otherwise, and that
27 testing it could either lend to corroboration or rebuttal,
28 but I end up drawing all the strands together. And I said
29 that, in my view, and I said it yesterday, in my view, this
30 item is the most critical item of the IRA statement.

1 Number 12 The Crescent is another aspect, but I think there
2 are probably less opportunities of developing that. And I
3 said that, you know, in my view, that was it possible that
4 an IRA volunteer saw a detective, a known detective,
5 getting out. I found that plausible, it was possible. And
6 I then go on to say that, the desirability to test the
7 statement to the greatest possible degree, and in
8 particular with the dates to which Mr. Day accompanied
9 Superintendent Buchanan on trips to Dundalk, was very
10 necessary. I noted that he had a moustache at the time,
11 proven by evidence, but I didn't see that as being a
12 significant point. But I did point out that if the IRA
13 were being mischievous or seeking to mislead, why introduce
14 an element that they could be caught out on; in other
15 words, if Mr. Day had never accompanied Mr. Buchanan to
16 Dundalk?

17 190 Q. Well, the point is this: contrasting your PIRA statement
18 dealings with the précis dealings, you have put in eleven
19 paragraphs talking about how the PIRA version may be, or
20 potentially may be, corroborated. There are no paragraphs
21 to criticise the lack of detail, there are no paragraphs
22 that say: and to be objective, this information could have
23 been obtained by a mole in the station, because he would
24 have been close enough, or she, to know the name, identify
25 the moustache, notice them alighting from the vehicle in
26 the forecourt of Dundalk Garda Station and also knowing
27 that they were then permitted to the working area of the
28 Garda station. So an objective report would have been:
29 Judge, you can take this two ways: one, it could have been
30 purely by coincidence and surveillance, or the other one,

1 it could have been a mole; it's up to you, Judge. But we
2 have silence and corroboration.

3 A. I think the number of paragraphs, Judge, and the -- the
4 greater number of paragraphs in this particular section is
5 directly related to the greater number of paragraphs of
6 material that I had to consider. I had 20 pages of
7 material to consider in relation to this IRA statement. In
8 many respects, I had one sentence to consider in relation
9 to the précis. And that certainly reflects some of the
10 reasoning behind the elaboration in some aspects here.

11 191 Q. So, I just want to be clear, you are telling the Judge that
12 because you had more to read in the PIRA statement, you
13 wrote more, and my point is that you are corroborating it?

14 A. My point, Judge, is, the more I have to read and consider,
15 the more material that I can subject to analysis, the more
16 commentary I can bring to it. And I am not supporting it;
17 I am giving it objective analysis that you, Chairman, in
18 the final analysis, can adjudicate on.

19 192 Q. Now, you then say, paragraph 3.15.1: "*Commencement of*
20 *surveillance operation and focus on the Cavalier. This*
21 *information was allegedly fed into the IRA structures and*
22 *the IRA decided to mount a surveillance operation around*
23 *Dundalk Garda Station.*" No details about times, dates,
24 number of personnel, anything like that. "*The initial*
25 *surveillance is stated to have been conducted by designated*
26 *personnel, no detailed numbers, who were tasked to walk and*
27 *drive past the Garda station with a view to locating a red*
28 *Cavalier and noting any other Northern-registered car which*
29 *might be sighted there. It is alleged that this exercise*
30 *resulted in the red Cavalier being spotted on a number of*

1 *occasions parked in the same spot in the forecourt of the*
2 *station and would remain there for up to three hours."*

3 Now, you then say, well, look, that is feasible and
4 entirely possible. That is the test you apply to the PIRA
5 statement assertions?

6 A. Mm-hmm.

7 193 Q. You have never addressed that test with any Tribunal --
8 threshold, I might add, to any of the *précis* - was it
9 feasible, was it possible? You have dropped your standard
10 for looking at the PIRA statement.

11 A. The PIRA statement, Chairman, is much clearer in the
12 language, it's less opaque. And I can comment on, this is
13 the outline of what they said they did. Is it possible? I
14 know Dundalk very well, I know Garda station very well.
15 And is it possible to do what they claim they did? Yes, it
16 is possible. And that is what I am saying there. And the
17 incremental nature of it, is it feasible and plausible?
18 Yes, it is. I am saying that from experience and from
19 being on surveillance operations, which we had people under
20 surveillance that were doing surveillance. So I have seen
21 it first hand in terms of what is -- what can be achieved,
22 and I am saying it's both feasible and plausible. In terms
23 of weight to attach to it, that onerous task falls on you,
24 Chairman.

25 194 Q. And also in that paragraph, 3.15, that information also
26 could have come from a Garda mole. The fact that they were
27 sighted outside the station on a number of occasions,
28 parked in the same spot in the forecourt and would remain
29 there for up to three hours, that could have been a guard
30 who watched when they arrived and watched when they left,

1 but you haven't mentioned anything, you haven't mentioned
2 that possibility, and, to be objective, I am suggesting you
3 should have mentioned that possibility. It was a
4 possibility, isn't that correct, that this could have been
5 a guard?

6 A. Yeah, we had a discussion yesterday, Judge, what is
7 possible and what is probable. Is it possible? Yes,
8 everything is possible. It's possible that it was -- you
9 know -- possible, yes. Probable...

10 195 Q. And that is the objective balance that should be in this
11 report, in your statement. And move on to the
12 intensification of operations. *"It is alleged that it was*
13 *then decided to mount a more intense operation which*
14 *continued throughout the summer and winter of 1988 and*
15 *'89."* Now, this is where we then have the number 12 issue.
16 The two pillars of what you said had, or possibly
17 corroborate, are the Day issue, Inspector Day, and number
18 12, The Crescent. Now, what you do is, take the detail
19 from PIRA. Now, what you don't do is moot the possibility,
20 which you have run on this plausible and feasible issue,
21 moot the possibility that, for this operation, they still
22 would have needed somebody in that house on the day of the
23 operation. And what you haven't considered is that number
24 12 The Crescent was only part of the operation. You seem
25 to take PIRA's word that this could be -- this was the only
26 person that we needed to watch the station. Can you see
27 where -- can you see my point? That an objective view
28 would have said: that is what PIRA have said, but, really,
29 it may have been part of the larger operation?

30 A. Yes, that is a matter for you, Chairman, to consider it,

1 with the other material you have.

2 196 Q. But do you see -- even see the difference in your response
3 there, because any disputes about fact you put to the
4 Judge; any disputes about fact or inconsistency from
5 looking at the précis, it's suddenly vague, no meaningful
6 assessment can be given to it, vague in the extreme. You
7 haven't used any of that language in your PIRA statement
8 assessment. Can you see what my point is?

9 A. No, Mr. Robinson, I can't. Chairman --

10 197 Q. Sorry, you can't?

11 A. I cannot, yes, cannot. Chairman, I explained the position
12 I was with the material, so the commentary in relation to
13 that, I think, is reasonable; it's not coming down one way
14 or the other. I said that it needs to be tested to the
15 most exhaustive stage possible for either corroboration or
16 rebuttal by facts. I think that is objective and I think
17 it's -- and I have given my commentary, or my opinion,
18 based on my background and experience.

19 198 Q. But perhaps I will explain my point: You never mentioned
20 the option that this could have been a guard, throughout
21 your whole PIRA assessment, and, on an objective
22 assessment, ought to have done so. Now, we will move on to
23 paragraph 3.17: "*Establishment of pattern of movements.*"
24 You quote from that statement: "*It is alleged that PIRA*
25 *saw a pattern emerging from the surveillance coverage.*"
26 There is -- no detail has been provided. And the next
27 bullet-point:
28 "*The car would appear within days in the aftermath of any*
29 *major incident in the south Armagh border region.*" Point
30 one. Would you accept that that could have come from a

1 guard in the station, because there is an incident and they
2 see this car, but you don't acknowledge that -- sorry, take
3 it a step back: Do you accept that it's a possibility that
4 it could have been -- that information could have been
5 provided by a Garda mole?

6 A. If we are into possibilities, Chairman, I mean, the
7 possibilities in this, it could have been provided from a
8 means other than the PIRA statement, yes.

9 199 Q. But I am using your test of feasible and plausible here, so
10 is it feasible for a guard to have passed this information?

11 A. I think that, you know, we probably haven't devoted an
12 awful lot of time to examining the different possibilities
13 of collusion, and that. What we are looking at here is
14 putting this to a test in terms of, I am giving my opinion
15 from a surveillance background, from an
16 intelligence-gathering background, in terms of whether this
17 proposition being put forward by PIRA interlocutors is in
18 any way plausible or doable. I am sure, Chairman, you'll
19 take it, all the other relevant considerations as well, and
20 I comment from that perspective.

21 200 Q. Let's get back to the question: it is possible that that
22 first bullet-point at 3.17 could have come from a Garda
23 mole?

24 A. A range of possibilities, including that.

25 201 Q. So that is a yes?

26 A. A range of possibilities, including -- yes.

27 202 Q. That is what a possibility is?

28 A. Yes.

29 203 Q. OK. Now, the next bullet-point: *"Monday and Tuesday were*
30 *more regular days for it to be seen. It is also*

1 alleged" -- well, we will start with that point. Again, a
2 Garda mole in the station could have passed that
3 information; it is possible, one of a number of
4 possibilities?

5 A. Same thing, Chairman, yes.

6 204 Q. OK. Next: *"It is also alleged that two other Northern*
7 *cars attracted attention during this period of surveillance*
8 *but that nobody could be linked to the cars and,*
9 *consequently, the IRA decided to concentrate on the red*
10 *Cavalier."* Now, on the point about *"other Northern cars,"*
11 they could have been at the station as well, and it's
12 possible, amongst other possibilities, that a Garda mole
13 could have passed that information to PIRA?

14 A. Same answer, Chairman.

15 205 Q. That is a yes?

16 A. Possibility, including many other possibilities.

17 206 Q. Now, on to sighting of Harry Breen, in 3.18:

18 *"Late summer/early winter in 1988, the Cavalier was sighted*
19 *at Dundalk Garda Station after a break of six to eight*
20 *weeks, during which period there had been no sightings."*

21 Now, again, same question: that could have been passed on
22 by a Garda mole?

23 A. A sighting in Meigh?

24 207 Q. No, the first sentence of paragraph 3.18: *"Late*
25 *summer/early winter in 1988, the Cavalier was sighted at*
26 *Dundalk Garda Station after a break of six to eight weeks,*
27 *during which period there had been no sightings."*

28 A. The possibility is -- again, the same applies.

29 208 Q. So that is a yes. *"Later that day, around 2 or 3 p.m., an*
30 *IRA member who was engaged in surveillance coverage saw the*

1 *Cavalier travelling through Meigh village in south Armagh*
2 *and he recognised Harry Breen as the passenger. Based on*
3 *this sighting and the knowledge that the vehicle had*
4 *earlier been in Dundalk, the IRA were able to assess the*
5 *car must have crossed the border in the Forkhill area."*
6 So there could have been a volunteer in Meigh that spotted
7 this, and I accept that point, but what you have failed to
8 do with this paragraph is identify that the information
9 could have come from a garda, in the first sentence.

10 A. Well, I think the two are inter --

11 209 Q. Interlinked. Right. Now, "*The extension of surveillance*
12 *coverage and establishment of routes taken: It is alleged*
13 *that following the sighting in Meigh, the IRA intensified*
14 *the existing surveillance operations with more frequent*
15 *coverage of Dundalk Garda Station, involving more elaborate*
16 *communication arrangements."* There is no detail there.
17 There is no description of what was done. It's vague.
18 Yes? You said the words "*intensified the existing*
19 *surveillance operations*"; we don't actually know the extent
20 of them and we don't know how they were then intensified,
21 and we don't know what communications they did have to make
22 them more elaborate, so we are talking about vagueness,
23 lack of detail, and, as I mentioned before, you never
24 criticised this statement for being lacking in detail. And
25 the assessment of the routes, it wouldn't take a rocket
26 scientist to work out how many routes there were in and out
27 of Dundalk station?

28 A. I alluded to that.

29 210 Q. In fact, in fairness to you, you say at paragraph 3.19.1,
30 "*I have no useful commentary*". Perhaps there should have

1 been a full stop there. Now --

2 A. Well, I think that the sentence that follows, "*The routes*
3 *which were possible and practical, when travelling from*
4 *Dundalk over the border, are mainly those as highlighted.*
5 *Without specific corroboration, possibly British Army*
6 *records of Superintendent Buchanan's car travelling certain*
7 *routes, it is difficult to give any informed assessment of*
8 *the likely veracity of the details in this section of the*
9 *statement.*" What I am actually saying there is, the routes
10 or -- the routes, everybody knows them, so to say that you
11 travel from Dublin to Belfast on the main road, you know,
12 there were so many -- there were very restricted
13 opportunities, I felt that it didn't lend anything to
14 corroborating the IRA statement. I just felt that the
15 roads, they were the roads, and everybody knew they were
16 the routes, so --

17 211 Q. So essentially the PIRA statement doesn't really add
18 anything to what we generally know about the IRA?

19 A. In this particular case, it didn't.

20 212 Q. Yes. Now, you then have paragraph 3.21: "*It is claimed*
21 *that in the period towards the end of 1988, PIRA moved to a*
22 *military operation.*" There was no detail about that,
23 either?

24 A. That's correct.

25 213 Q. But there is no criticism of that lack of detail.

26 A. But again, Chairman, I am coming back to the point; I mean,
27 in terms of an analyst working on material, I've seen
28 sparser material. I have 20 pages to work on, and I
29 probably highlighted two significant points that I felt
30 were of major consideration, and I -- where I thought there

1 was no useful material to analyse, to put it one way or the
2 other, I commented in that regard, but I had a substantial
3 amount of material to work with, in contrast with the other
4 material.

5 214 Q. Now, you then conclude: "*Despite all of the points that I*
6 *have raised with the PIRA statement about details,*" you
7 then state "*In conclusion, my overall assessment is that*
8 *there are significant persuasive elements included in it.*"

9 A. Yes, Chairman.

10 215 Q. And you say that "*The genesis of the surveillance operation*
11 *could have been applied as outlined.*" You make no
12 criticism whatsoever regarding detail, elaboration. And,
13 in fact, when the Tribunal wrote and sought clarification,
14 no clarification came from PIRA, in relation to a number of
15 the points that were raised, and you don't make any comment
16 about that; you don't criticise PIRA for failing to
17 elaborate?

18 A. Well, I think my understanding, I don't have -- I don't
19 want to refer to it now, but my understanding was, there
20 were probably three or four engagements, and that certainly
21 your legal team followed up with a series of questions,
22 which were sparsely answered in a lot of cases, and then
23 there was a subsequent engagement. So there was, I think,
24 to my memory, four engagements. That is my memory,
25 Chairman.

26 216 Q. Yes. But as you say, there was some sparse replies,
27 failure to elaborate, but you don't comment on that, you
28 don't criticise it. Do you see the difference in the
29 treatment of the PIRA statement as opposed to the précis?

30 A. Well, I think I stayed neutral on that, Chairman. I didn't

1 say this -- for instance, I didn't say these are 20 pages
2 that we got from what purports to be first, primary sources
3 in the IRA. I didn't say that we had 20 pages to work on,
4 as against sentences in the PSNI statement. I highlighted
5 what I considered to be the pertinent areas that required
6 exhaustive exploration, and I left it at that.

7 217 Q. Now, also contained within one of the responses from PIRA
8 is a document dated April 2011-630. The penultimate
9 paragraph: *"We are not going to compromise former comrades
10 and locations."*

11 A. Yes, Chairman.

12 218 Q. You don't make any -- you are performing an objective
13 assessment of this document, but you don't actually set out
14 that they have expressly said they were not compromising
15 comrades?

16 A. I alluded to that in my evidence. No, it's not in my
17 report.

18 219 Q. And we also have to be mindful, and the Judge, I am sure,
19 is mindful of the intelligence on Day 124, page 18, and
20 this was the -- it's at line 5: *"The current Smithwick
21 Tribunal has become a significant issue among leading
22 Republicans. In the course of the current Smithwick
23 Tribunal, members of PIRA are concerned that individuals
24 associated with PIRA's testimony to the Tribunal will lead
25 to other material coming to light. By this, they mean
26 information about past murders and leaks from An Garda
27 Siochana. For these reasons, members of PIRA are anxious
28 that the Tribunal should complete its work as soon as
29 possible. Key PIRA members are aware that some of the
30 testimony to the Tribunal is deliberately false and is*

1 *intended to bring the Tribunal to an early conclusion.*"
2 And an objective assessment, Detective Chief
3 Superintendent, ought to have included caveats about the
4 information; we have anonymous information, we have -- we
5 have unsworn --

6 A. Can I comment on that one?

7 220 Q. -- in the context -- let me finish -- we have anonymous
8 information, unsworn information, and the background is
9 that they are concerned and are putting deliberately -- or
10 they are aware that testimony is deliberately false. You
11 don't mention any of that?

12 A. No, but I mentioned it in evidence yesterday.

13 221 Q. Yes, but that is not in your statement.

14 A. I mentioned, also, that, in the context of that, the term
15 "Republican" is used, which would, for me, take in all
16 factions of dissidents and ex-PIRA. Now, in relation to
17 the concern, a possible interpretation -- yes, "*By this,*
18 *they mean information about past murders and leaks...*"
19 For me, that seems -- from the way it's constructed, that
20 somebody is putting an interpretation into that: by this,
21 it means...

22 And then, for this reason, it follows on from that, which
23 is based on the previous sentence. And if we take it, an
24 alternative, if we take it that the Chairman -- if the
25 Chairman decides that the IRA statement is true, then a
26 possible interpretation of the evidence there, and the
27 false information, is that the people involved in giving
28 evidence of collusion before the Tribunal, are the people
29 giving false information. And this is where the difficulty
30 arises with the lack of detail in the intelligence that you

1 have provided, because it's open to that contrary
2 interpretation, also.

3

4 MR. ROBINSON: Sir, I am obliged. I have no further
5 questions.

6

7 CHAIRMAN: Thank you very much.

8

9 MR. DURACK: I don't think anything has been added. I have
10 nothing further to say.

11

12 CHAIRMAN: That is very nice to hear, thank you.

13

14 MRS. LAVERTY: I just have four very short matters arising
15 out of the evidence that has been heard since I took Chief
16 Superintendent Kirwan.

17

18 **THE WITNESS WAS RE-EXAMINED BY MRS. LAVERTY AS FOLLOWS:**

19

20 222 Q. MRS. LAVERTY: You mentioned in response to someone, or a
21 cross-examination, I think, on Wednesday, that you felt you
22 would have done better or may have drummed up some more
23 leads if you'd had the RUC murder file at the time of the
24 murders, or perhaps subsequently. And I just want to
25 remind you that we got, our first discovery went from the
26 PSNI -- from the PSNI, went to the Garda Commissioner
27 before anyone else, and included in that was the murder --
28 was the investigative -- investigation book, which was
29 HMG20, a policy book, and then the inquest file, which is
30 HMG35. So did you not see those?

1 A. No, I think I am talking about the investigation file, the
2 actual investigation file, Chairman, that would have been a
3 consolidated report dealing with all the investigative
4 strands and ending up with a conclusion, and also, I think
5 that I also made reference to the fact that the report in
6 2000 would have been useful and would have been useful in
7 the context of -- I am not saying that we would be entitled
8 to see it, but certainly the Chairman and the -- it would
9 need to be considered in the context of the
10 recently-acquired intelligence or information.

11 223 Q. Yes. Because from the time that you got all that
12 discovery, actually, we didn't receive any requests saying
13 it was insufficient, from the Garda, so we assumed that you
14 had enough.

15
16 MR. DURACK: We certainly got what we were told we got, but
17 we wrote a number of letters saying that we would like to
18 see the investigation file, which is the file written by
19 the senior investigating officer, reporting on the whole of
20 the investigation and giving -- usually giving indications
21 of what strands they had and information and also where
22 they thought guilt might lie, but generally prepared for
23 internal use, of course.

24
25 MRS. LAVERTY: Yes, I stand corrected if that is not the
26 case, Chairman. Yes, I will come back to that. I may well
27 be wrong in that. If I am, I am sorry.

28 224 Q. Secondly, in the intelligence of the 1st of May,
29 Mr. McComb -- this was referred to yesterday by, I think,
30 Ms. O'Sullivan when she was asking you questions -- at page

1 28 of the 1st of May, Day 95, part of the intelligence
2 given by Chief Superintendent McComb, and it says:
3 "Since the 1970s, a number of AGS and Republic of Ireland
4 Customs officers have provided to PIRA particularly
5 forewarnings of searches and arrests," and, in this
6 connection, Garda Hickey's name has been mentioned, as is
7 that of a redacted person's name?

8 A. Yes.

9 225 Q. And I think you know the redacted person's name, clearly?

10 A. Yes, Chairman, yes.

11 226 Q. Yes. Now, this was last May, so can you tell the Chairman
12 what inquiries you have made and what investigations you
13 have carried out into the possibility of that particular
14 guard, whose name we are not -- we haven't got --

15 A. Yes.

16 227 Q. -- might have been involved?

17 A. The difficulty we ran into there, Chairman, is that the
18 name was common with four other names who are suspects, and
19 we had got no elaboration in relation to that intelligence,
20 so we have been very restricted in what we can do to
21 advance it; that the name is common with a name of which we
22 have files on four persons, if you like.

23 228 Q. But is there a guard of that name?

24 A. Yes, a retired guard for many, many, many years.

25 229 Q. And I take it he is not one of the four suspects?

26 A. No.

27 230 Q. So, and have you carried out any investigations into the
28 retired guard?

29 A. We have, Chairman, we have carried out inquiries in a very
30 restricted format, because we are waiting on more

1 information from the PSNI that would help us to put some
2 context and help us to analyse that in a more meaningful
3 way.

4 231 Q. But this particular piece of information has facilitated
5 you to at least set up an inquiry into that particular
6 retired guard?

7 A. It's absolutely very restricted. "*Since the 1970s,*"
8 Chairman, it's going back 40 years, you know, so in terms
9 of -- it's down to two sentences, again, and that is the --
10 that is the problem we have. In our analysis when we look
11 at this name, it also comes up with -- as I say, I don't
12 want to go into detail in relation to the actual suspects,
13 but it has -- it's a common -- it's common with four other
14 suspects by the same name, suspects in the subversive
15 sense. Well, what I am saying, Chairman, really, the point
16 I am making is that part of the elaboration we want is, are
17 we sure that -- or are the PSNI sure that this information
18 is not being confused with a suspect of the same name. We
19 are looking for more information that would give us some
20 clarity in relation to that and give us a foothold, even if
21 we were to narrow it down to a decade, a year, but over a
22 span of -- since the 1970s is so vague as to render it very
23 difficult for us to have any meaningful foothold to start
24 with.

25
26 CHAIRMAN: Yes.

27 232 Q. MRS. LAVERTY: But can I read it out again to you: "*Since*
28 *the 1970s, a number of An Garda Siochana and Republic of*
29 *Ireland Customs officers have provided to PIRA particularly*
30 *forewarning of searches and arrests,*" and then somebody's

1 name is mentioned, and you know that name?

2 A. Yes.

3 233 Q. Now, that, quite distinctly, says either garda or Customs
4 officer?

5 A. Yes.

6 234 Q. Well, are some of your suspects Customs officers or gardaí?

7 A. No, no.

8 235 Q. And who gave you the name then? Did the PSNI give you the
9 name?

10 A. Oh, the PSNI gave us the name, yes.

11 236 Q. And is that person resident in their jurisdiction or yours?

12 A. No, the person is resident in our jurisdiction. But what I
13 am saying is, the only extra that we have got in relation
14 to that is the name. It falls far short of what we would
15 expect in relation to -- it's in common with the other
16 names that we were given, in the other two strands. This
17 is the only extra dimension that we have here. And we are
18 in the same boat in terms of asking for more information
19 that would help us bring this forward.

20 237 Q. But presumably, if you go back, and you have described in
21 detail the various phases in the investigation stage?

22 A. Yes, yes.

23 238 Q. And you have, for example, from day one, now, you have
24 personnel files, you have surveillance, you have phone
25 records; there are all these sort of inquiries that could
26 be made once you have his name?

27 A. Well, it's -- this is 40 years ago, Judge. The phone
28 records go back, my entitlement to get phone records goes
29 back two years. In terms of -- the responsibility for
30 elaborating on that, the same as the responsibility on

1 elaborating on a number of other strands, rests with the
2 PSNI to give us more meaningful information. I mean, if I
3 gave that to another service, the first thing I would be
4 asked is, "what exactly are you talking about and where do
5 we start?"

6 239 Q. But they have given it to you as being accurate and
7 reliable. Perhaps they haven't got any more information.
8 Is that information sufficient for you to carry on an
9 investigation, without anything more?

10 A. I mean, it's self-explanatory where it is, Chairman. It's
11 since the 1970s, it spans that period of time. It spans a
12 number of AGS members. It spans two agencies. It doesn't
13 confine the numbers, it's so vague and -- you know.

14 240 Q. But it directs at one person, and can he sleep happy in his
15 bed, that, in the absence of any further evidence from the
16 PSNI, that you won't go after him?

17 A. Chairman, I think that, you know, I explained earlier in
18 relation to information, intelligence and something that
19 would give us a reasonable chance of conducting some sort
20 of proper inquiries in which we need some elaboration on
21 that to give us some focus, to give us some meaningful
22 understanding of what exactly is being -- and, by the way,
23 there are several other, you know, there is references to
24 other guards as well, so this just goes to confuse the
25 issue, in my view, in the absence of further elaboration,
26 but we have done some research in it, and there it rests
27 until we get more.

28 241 Q. But in a situation like this which seemed to be the problem
29 that precipitated this Tribunal, have you gone to this
30 person and said, "look, we have information concerning you

1 that we are concerned about, and can you help us?" so that
2 the person is actually on notice of rumours that are
3 circulating about him and possibly can do something about
4 it?

5 A. I think to put somebody on notice before, you know, I think
6 we would be accused of putting the cart before the horse.
7 I mean, what we are doing is, trying to pursue these
8 intelligence elements or this information to a point where
9 it's more meaningful and more explicit. That is the
10 starting point. We have said that at a very high level,
11 and we haven't got a satisfactory response to it. We have,
12 in the meantime, conducted some preliminary investigations
13 that would assist us in having a more informed view.
14 Certainly, I think if we have got some further detail
15 there, we would be certainly in a better position to say,
16 well, look at, yes, we can go in that direction and there
17 is potential avenues of investigation there, but that is
18 probably the summary of where we are at this moment in
19 time.

20 242 Q. And if I could just refer you to paragraph 2.21 of your
21 report: "*Information was passed to An Garda Siochana from*
22 *a reliable source in 2006 which stated that Owen Corrigan*
23 *did not have a part in the murders of Buchanan and Breen.*"

24 A. 28?

25 243 Q. Page 28, in the middle there. And it says the same
26 source -- now, actually, the wording of that - it's
27 document 133, for your own assistance, Chief
28 Superintendent, in the Garda discovery - and the wording of
29 that, I think it's important to cite it because it says
30 "*Intelligence indicating that information regarding the*

1 *movements of C.S. Breen and Superintendent Buchanan was not*
2 *given to the IRA by retired Detective Sergeant Owen*
3 *Corrigan.*" Which is slightly different. The informant is
4 saying information regarding the movements was not given to
5 the IRA by Detective Sergeant Owen Corrigan. Now, this,
6 presumably, was one -- this is one of your own agents?

7 A. Yes, Chairman.

8 244 Q. Yes. And did you go back to that agent and did you go
9 through all the steps that you advised the Chairman to go
10 through when assessing or inquiring into report? For
11 example, is the information within the personal knowledge
12 of the source; did you find out what was the assessment of
13 reliability, you know, et cetera, the long list of
14 criteria?

15 A. Yes, Chairman, my memory of this, Chairman, is that this
16 probably was considered to be of significance in terms of
17 reliability, to the point that the then-Chief
18 Superintendent, I think, delivered it in person to your
19 staff here, so that was done, yes.

20 245 Q. And did you make inquiries as to who might have been
21 passing the movements, details of the movements?

22 A. No, the information was only in the negative; in other
23 words, it was just said that person, Owen Corrigan, did not
24 do that, and --

25 246 Q. And how well was that person assessed; was it a single
26 report?

27 A. That person was well-assessed, Chairman. It was single
28 reporting, but it was first-hand knowledge of the person
29 that delivered it; he was conveying a first-hand account.

30 247 Q. So he was conveying a first-hand account of the

1 conversation, presumably, with somebody else?

2 A. Yes, correct, yes.

3 248 Q. And did he have any other information relevant to the terms
4 of the Tribunal or indeed that was helpful to Owen
5 Corrigan?

6 A. Other information helpful to An Garda Siochana operations
7 generally, but not to the Tribunal.

8 249 Q. Yes. Do you not agree that the wording is rather curious
9 in that it's sort of carefully worded, that it was not
10 given to the IRA by D.S. Corrigan; that sort of suggests
11 that perhaps there was somebody else passing it on?

12 A. No -- yeah, I think that it was probably commenting on
13 Corrigan's name at this stage had been probably into the
14 public domain, and it was commenting on the -- in the
15 negative. I cannot put it beyond that.

16 250 Q. Yes. I think that -- that is all I have to -- by way of
17 redirection. And I will come back in relation to the
18 documents; if I am in error about the correspondence, I
19 will produce it on the next outing, Chairman.

20

21 CHAIRMAN: Well, then, thank you very much, Detective Chief
22 Superintendent. You have been very patient and you have
23 been a long time in the witness-box. I am very grateful to
24 you for everything.

25 A. Thank you, Chairman.

26

27 **THE WITNESS THEN WITHDREW**

28

29 CHAIRMAN: So we can't yet establish the next day that we
30 are going to sit?

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MRS. LAVERTY: Not as yet. We are depending on information from, I think, Mr. Corrigan.

MR. DILLON: Yes, Chairman, you are awaiting a report, first of all, of your own consultant, Professor Graham, and the consultation has been fixed for the 30th of April, so hopefully you will have a report shortly after that, and at that point I think the Tribunal can discuss with Mr. Corrigan's solicitors when it's appropriate for him to come back to conclude his evidence, and then the parties will be notified of that date.

CHAIRMAN: All the parties will be notified at that stage. Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE.

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