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

HELD IN DUBLIN CASTLE
ON TUESDAY, 8TH MAY 2018 - DAY 70

70

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

GWEN MALONE STENOGRAPHY
SERVICES

APPEARANCES

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

REGISTRAR: MR. PETER KAVANAGH

FOR THE TRIBUNAL: MR. DIARMAID MCGUINNESS SC
MR. PATRICK MARRINAN SC
MS. KATHLEEN LEADER BL
MS. ELIZABETH MULLAN, SOLICITOR

FOR SGT. McCABE: MR. MICHAEL McDOWELL SC
MR. PAUL McGARRY SC
MR. BREFFNI GORDON BL
INSTRUCTED BY: SEAN COSTELLO & COMPANY
HALIDAY HOUSE
32 ARRAN QUAY
DUBLIN 7

FOR THE COMMISSIONER: MR. SHANE MURPHY SC
MR. MÍCHEÁL P. O'HIGGINS SC
MR. CONOR DIGNAM SC
MR. NOEL WHELAN BL
MR. DONAL MCGUINNESS BL
MR. JOHN FITZGERALD BL
INSTRUCTED BY: MS. ALISON MORRISSEY
MS. EMMA GRIFFIN
CHIEF STATE SOLICITOR'S OFFICE
OSMOND HOUSE
LITTLE SHIP STREET
DUBLIN 8

FOR SUPT. TAYLOR: MR. MICHAEL O'HIGGINS
MS. TARA BURNS SC
MR. JOHN FERRY BL
INSTRUCTED BY: MR. CARTHAGE CONLON
M. E. HANAOE SOLICITORS
SUNLIGHT CHAMBERS
21 PARLIAMENT STREET
DUBLIN 2

FOR ALISON O'REILLY:
INSTRUCTED BY: MR. FÍONÁN Ó MUIRCHEARTAIGH BL
AUGUSTUS CULLEN LAW SOLICITORS
18 BOW STREET
SMITHFIELD
DUBLIN 7

FOR RTÉ:
INSTRUCTED BY: MR. RONAN KENNEDY BL
PATRICIA HARRINGTON, RTÉ

FOR INDEPENDENT NEWS
AND MEDIA
& PAUL WILLIAMS:

INSTRUCTED BY:

MR. ROSSA FANNING SC
MR. JOHN FREEMAN BL
FANNING & KELLY SOLICITORS
HATCH HALL
HATCH STREET LOWER
SAINT KEVIN'S
DUBLIN 2

FOR MICHAEL O' TOOLE:

MR. KIERAN KELLY
FANNING & KELLY SOLICITORS
HATCH HALL
HATCH STREET LOWER
SAINT KEVIN'S
DUBLIN 2

FOR ASSOCIATED NEWSPAPERS
LIMITED, DEBBIE McCANN,
SEBASTIAN HAMILTON
& CONOR O' DONNELL

INSTRUCTED BY:

MR. MICHAEL KEELEY
DMG MEDIA IRELAND

FOR TIMES NEWSPAPERS LIMITED
& NEWS GROUP NEWSPAPERS
LIMITED:

MR. SIMON McALEESE
SIMON McALEESE SOLICITORS
CUNNINGHAM HOUSE
FRANCIS STREET
MERCHANTS QUAY
DUBLIN 8

FOR THE IRISH EXAMINER,
JUNO McENROE,
DANIEL McCONNELL
& CORMAC O' KEEFFE:

MR. DARRYL BRODERICK
RONAN DALY JERMYN SOLICITORS
THE EXCHANGE
GEORGE'S DOCK
IFSC
DUBLIN 1

FOR THE IRISH TIMES
DESIGNATED ACTIVITY
COMPANY, THE IRISH
TIMES TRUST & CONOR LALLY:

MR. DAVID PHELAN
HAYES SOLICITORS
LAVERY HOUSE
2 EARLSFORT TERRACE
DUBLIN 2

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 8TH MAY
2 2018:

3
4 MR. MARRINAN: Sir, the first witness this morning is
5 Shane Lenehan, please. 10:00

6
7 MR. SHANE LENEHAN, HAVING BEEN SWORN, WAS DIRECTLY
8 EXAMINED BY MR. MARRINAN:

9 1 Q. MR. MARRINAN: Now, Mr. Lenehan, I think that you were
10 a civilian member attached to the Press Office until
11 2015, is that right? 10:01

12 A. Correct, yes.

13 2 Q. And I think that you have made two statements, I think
14 the first statement is to be found at volume 9 at page
15 2412, and that was to the Clerkin investigation, isn't
16 that right? 10:01

17 A. That's correct, yeah.

18 3 Q. And you were subsequently interviewed by the Tribunal
19 investigators on the 14th August of 2017, and that's in
20 volume 11 at page 2772 -- 10:01

21 A. That's correct.

22 4 Q. -- if you need to refer to it at any stage.

23 A. Okay.

24 5 Q. Now, when did you join the Press Office?

25 A. I began working in the Garda Press Office in August
26 2013. 10:02

27 6 Q. Yes. And who was the Press Officer at that time?

28 A. Superintendent David Taylor was the Press Officer.

29 7 Q. And where had you worked prior to that?

1 A. I worked as a civilian call taker in Garda Command and
2 Control in the Communications Centre in Harcourt
3 Square, Dublin 2. I worked there from March 2011 until
4 August 2013, I transferred to the Press Office
5 following a successful competition. 10:02

6 8 Q. And what was your role in the Press Office?

7 A. I was the civilian clerical officer, mainly I was call
8 taker in the news desk, also some clerical and
9 administrative duties as well.

10 9 Q. And when you say call taker in the news desk, what does 10:02
11 that involve?

12 A. So, answering media and public queries on the hunting
13 lines that people -- that the media would have to ring
14 into the news desk, so for media queries as such.

15 10 Q. So you had direct contact with journalists, is that 10:03
16 right?

17 A. Correct, yes.

18 11 Q. And at the time you said Superintendent Taylor was
19 there, I think Inspector John Ferris --

20 A. He was the inspector -- Inspector Ferris was the Deputy 10:03
21 Press Officer, correct.

22 12 Q. And other staff, how many other staff do you recall
23 were there at the time?

24 A. Okay. The Director of Communications was Andrew
25 McLindon; there were seven sergeants, they were on a 10:03
26 roster basis, between two and four maybe would be on
27 duty on any given day; there was one HEO and also,
28 there was I think four COs, including myself, clerical
29 officers, COs.

1 13 Q. And can you tell the Chairman what the atmosphere was
2 like? what was the working atmosphere in the Press
3 Office like?
4 A. The working atmosphere was fine, Chair. Like, in what
5 way do you mean? 10:04
6 14 Q. Just generally, it was a good working atmosphere?
7 A. Yeah, it was fine. In many places I worked in my
8 career -- no, it was fine, there was no issue with it.
9 I never found any trouble or tension, Chair. So yeah,
10 it was fine. 10:04
11 15 Q. And in terms of your observation of other staff, in
12 particular Superintendent Taylor, did he appear to have
13 any interaction with the Commissioner?
14 A. In our office, no, the Commissioner would not -- never
15 be in our office really, but I presume day-to-day, yes, 10:04
16 he would have been with him in maybe the Commissioner's
17 office regularly. He would call him regularly. So I
18 believe he was with him most days, quite often, yes.
19 16 Q. And do you recall what sort of relationship that you
20 thought that they had at the time? 10:04
21 A. Well, I would believe, the talk in the office, kind of
22 gossip, maybe, was that they were close friends outside
23 of the job and that they had a good working
24 relationship in the job obviously as well.
25 17 Q. Yes. And what about their wives, their respective 10:05
26 wives?
27 A. Yeah, I was led to believe that their wives were even
28 close friends. I don't know is that true but I was led
29 to believe that, also. So outside of work they were

1 quite close, their families were friends; that is what
2 I was led to believe in the office but I have no basis
3 to believe that as fact. But it was gossip or -- I
4 suppose gossip is the best way of putting it, Chair.

5 18 Q. And in terms of Superintendent Taylor's relationship 10:05
6 with Deputy Commissioner Nóirín O'Sullivan?

7 A. I was led to believe -- I was led to believe they were
8 not so close a working relationship and maybe close
9 personal relationship.

10 19 Q. All right. would you mind just moving back a little 10:05
11 bit from the microphone. We are complaining about
12 people being too far away. We are just getting a bit
13 of feedback from it.

14 A. Yeah. No, I was led to believe they had not so close a
15 working relationship and personal relationship, but 10:06
16 again, that is hearsay and gossip. Former Commissioner
17 O'Sullivan, again, would not be in our office, ever
18 really, on a daily basis. Superintendent Taylor would
19 go to the Commissioner's office more so.

20 20 Q. And what about Superintendent Taylor's interaction, as 10:06
21 far as could you determine, with Mr. McLindon?

22 A. I don't know how the personal relationship but the
23 working relationship, it was just that, a working
24 relationship, it seemed fine to me. They worked well
25 together, it seems, they worked fine. There was no 10:06
26 constant interaction but it was fine interaction, I
27 believe.

28 21 Q. Now, Superintendent Taylor I think remained as Garda
29 Press Officer until the end of May of 2014, isn't that

1 right?

2 A. Yeah, I forget the exact time-lines but that sounds
3 right.

4 22 Q. And he left, you remained on, is that right?

5 A. Correct. I remained in the Garda Press Office until 10:07
6 May '15, so the end of May '15, beginning my new role
7 in the start of June '16, the bank holiday weekend, so
8 whatever Friday into the Tuesday was the end of my job
9 and the start of the new one.

10 23 Q. Now I think the Tribunal investigators drew your 10:07
11 attention to the terms of reference that the Tribunal
12 is looking into, isn't that right?

13 A. Yes. Yes, Chair.

14 24 Q. And in particular, a statement made by Superintendent 10:07
15 Taylor to the effect of: "I can confirm that there was
16 a campaign at the highest level in An Garda Síochána
17 involving the then-Commissioner Martin Callinan and
18 then-Deputy Commissioner, now Commissioner, Nóirín
19 O'Sullivan to discredit Maurice McCabe."

20 10:07
21 Did you see any evidence of that in the Press Office?

22 A. I did not see any evidence of that.

23 25 Q. He goes on to say, and again this is at page 2779 of
24 your interview:

25 10:08
26 "I recall being instructed or directed to contact the
27 media to brief them on the particular line the
28 Commissioner had instructed, namely to brief negatively
29 against Sergeant McCabe, in particular I recall that I

1 was to brief the media that Sergeant McCabe was
2 motivated by maliciousness and revenge. I was also to
3 encourage media to write negatively about Sergeant
4 McCabe that his complaints had no substance and that
5 the Garda had fully investigated his complaints and 10:08
6 found no substance to his allegation. In essence, I
7 was to brief that Sergeant McCabe was driven by
8 agendas."

9
10 Did you receive any instructions from Superintendent 10:08
11 Taylor in your interactions with journalists to spread
12 that kind of rumour to the journalists?

13 A. I did not receive any instruction from Superintendent
14 Taylor, or anybody, to spread that kind of a rumour or
15 anything like that. 10:09

16 26 Q. Were you -- obviously, the Sergeant McCabe story was
17 quite prominent in 2014, certainly, isn't that right?

18 A. Yes.

19 27 Q. And it was a matter, I'm sure, that you had a lot of
20 queries coming into the Press Office in relation to, is 10:09
21 that right?

22 A. I believe so. I can't recall specifically but I
23 imagine we would have got quite a lot, yeah.

24 28 Q. Did you get any feedback from the journalists who were
25 phoning in inquiring about Sergeant McCabe and perhaps 10:09
26 issues surrounding Sergeant McCabe, that there was some
27 undercurrent which reflected the rumour that we are
28 looking into?

29 A. Not that I recall or remember. I suppose I must

1 mention that when queries would come in mentioning any
2 named individuals, especially named members of An Garda
3 Síochána, we would somewhat rebut the query, saying we
4 can't discuss cases involving any named individual,
5 that would be the standard line and the standard 10:10
6 response to any queries. We don't want to -- we
7 wouldn't want to kind of implicate an investigation or
8 implicate anyone in case it is fictitious, in case it
9 is an allegation or in case they do anything -- we only
10 want to deal with facts, where possible, in the Press 10:10
11 Office.

12 29 Q. I suppose that as a civilian member of the Press
13 Office, you became fairly in tune to what was going on
14 in An Garda Síochána at the time?

15 A. Somewhat, I believe, yeah. 10:10

16 30 Q. Yes. Did you hear any rumours about Sergeant McCabe
17 and a sexual assault?

18 A. I never heard that. The only time I heard that is
19 after I had left and through watching the news, reading
20 papers myself. So it wasn't in my time in the Press 10:11
21 Office at all.

22 31 Q. Not in the tea room or the canteen?

23 A. Not at all, not one bit.

24 32 Q. And this was during a period of time that Sergeant
25 McCabe's name would have been on people's lips, as it 10:11
26 were, because of the interest that the media had in
27 relation to him and the matters that were coming into
28 the public domain?

29 A. That's correct, yeah.

1 33 Q. Yes. Just in relation to two other matters, if I could
2 just deal with them. The Tribunal is aware of the fact
3 that in late February or early March of 2014, Eavan
4 Murray of the Irish Sun Newspaper and Ms. Debbie McCann
5 of the Irish Daily Mail both travelled to the home of 10:12
6 Ms. D to try and get a story from Ms. D. Did either of
7 those journalists contact the Press Office prior to
8 that trip, that you are aware of?
9 A. Could you name the two again, Eavan Murray and who?
10 34 Q. Eavan Murray and Ms. Debbie McCann? 10:12
11 A. Eavan Murray would regularly ring the Press Office for
12 various different stories. Debbie McCann may have, she
13 wasn't a regular caller to the Press Office, about the
14 Ms. D. Again Ms. D, I only heard of the Ms. D in the
15 last few months when the sexual assault allegations 10:12
16 became apparent in the media, in the mainstream media
17 the last few months. During my time in the Press
18 Office the sexual assault allegations, the Ms. D and
19 all those stories, were never in my knowledge in my
20 time in the Press Office -- never in my knowledge, 10:13
21 should I say.
22 MR. MARRINAN: would you answer any questions, please.
23 MR. McDOWELL: No questions.
24
25 THE WITNESS WAS EXAMINED BY MR. WHELAN: 10:13
26 35 Q. MR. WHELAN: I appear for an An Garda Síochána. Just
27 you said that you had been led to believe that the
28 Callinans and the Taylors were close or their wives
29 were close and their families may have had

1 relationships outside of work, by whom were you led to
2 believe that?

3 A. I can't recall, sorry, Chair. I can't recall. It was
4 gossip or just chitchat in the office. Many people
5 would be in that office on a regular basis, just people 10:13
6 would chat in the tea room or whatever, Chair, so I
7 can't fully recall.

8 36 Q. Could you have got that impression from Superintendent
9 Taylor?

10 A. No, not necessarily. It wouldn't be something I would 10:13
11 talk to him about.

12 37 Q. Okay.

13 A. It's just I kind of --

14 38 Q. It's an impression you picked up?

15 A. Impression, correct. It's not something I sat on and 10:14
16 took and said that is definite, that is fact. It's
17 just something I thought heard and I thought it
18 somewhat appropriate when I gave my statement.

19 39 Q. And I am not sure much turns on it but for
20 completeness, Mr. Callinan instructs that although he 10:14
21 had a close professional relationship obviously with
22 Mr. Taylor and at the relevant times that they
23 personally got on well, their families did not
24 socialise or did not know each other well, but as you
25 say that was just an impression you had picked up? 10:14

26 A. That's correct. If it's not the case, it's not the
27 case, and I will accept I am incorrect. It was an
28 impression, that is all.

29 40 Q. And again, Mr. Marrinan has taken you through it, but

1 you can confirm that you were not aware of any campaign
2 to discredit Sergeant McCabe?

3 A. That is fully correct. I was aware of no campaign to
4 discredit Sergeant McCabe or anybody in the
5 organisation.

10:15

6 MR. WHELAN: Thank you, Mr. Lenehan.

7 A. Thank you.

8

9 THE WITNESS THEN WITHDREW

10

10:15

11 MR. MARRINAN: The next witness is Mr. Gerard Kavanagh,
12 please.

13

14 MR. GERARD KAVANAGH, HAVING BEEN SWORN, WAS DIRECTLY
15 EXAMINED BY MR. MARRINAN:

10:15

16 41 Q. MR. MARRINAN: Now, I think, Mr. Kavanagh, that you
17 were, you are a civilian or you were a civilian member
18 of the Press Office?

19 A. That's right.

20 42 Q. Are you still in the Press Office?

10:15

21 A. No. I currently work in the Department of
22 Communications, Climate Action and Environment.

23 43 Q. Right. And when did you join the Press Office?

24 A. In February 2008.

25 44 Q. 2008. And when did you leave there?

10:16

26 A. Last October.

27 45 Q. Last October?

28 A. Of '17.

29 46 Q. I think that you were interviewed by the Tribunal

1 investigators on the 15th August last year, and your
2 statement is to be found at page 2786. If you need to
3 refer to it, it's in volume 11, but I don't think that
4 you will need to refer to it. What was your role in
5 the Garda Press Office? 10:16

6 A. Clerical officer, much like the previous, Shane, my
7 ex-colleague, we worked on the news desk, we answered
8 the phone, we answered emails or we certainly moved
9 emails along and we did social media, website admin,
10 that kind of thing as well. 10:16

11 47 Q. And like Mr. Lenehan, did you have direct access to
12 journalists, were you dealing with them on a day-to-day
13 basis?

14 A. Yes.

15 48 Q. And you were receiving queries from them, were you? 10:17

16 A. That's right.

17 49 Q. Right. And did you get to know the various journalists
18 who were in regular contact with the Garda Press
19 Office?

20 A. Not in any particular manner. I mean, in a 10:17
21 professional way you would have had a relationship with
22 most of them.

23 50 Q. Now, I think that for a two-year period, up until the
24 end of May of 2014, Superintendent Taylor was the Garda
25 Press Officer, isn't that right? 10:17

26 A. That's right.

27 51 Q. And how did you get on with him?

28 A. A professional working relationship, is how I would
29 describe it.

1 52 Q. And what was the general mood and atmosphere in the
2 Press Office when he was Press Officer?
3 A. It was fine.
4 53 Q. And in terms of Mr. McLindon, I think that he joined in
5 2013, is that right? 10:18
6 A. That's right.
7 54 Q. And how did you interact with him?
8 A. Again, very professional, that's how it went.
9 55 Q. Did you have any dealings with the Garda Commissioner
10 at all? 10:18
11 A. Not directly.
12 56 Q. Not directly?
13 A. No.
14 57 Q. And what about Superintendent Taylor, can you
15 categorise his relationship with the Commissioner? 10:18
16 A. Well, I would be aware in his role as Press Officer he
17 would have a certain interaction with the Commissioner
18 and the Commissioner's office but other than that, I
19 wouldn't be --
20 58 Q. You wouldn't notice -- 10:18
21 A. No, I wouldn't know.
22 59 Q. You didn't notice anything exceptional, is that right?
23 A. No, no.
24 60 Q. And again, I mean, you have heard the evidence of the
25 last witness in relation to Sergeant McCabe and the 10:18
26 fact that he was in the public eye at that time in
27 2014, you recall that?
28 A. I do.
29 61 Q. And I'm sure you also experienced a lot of queries

1 coming in, in relation to Sergeant McCabe from the
2 press?

3 A. None that I can specifically remember. I can't talk
4 generally about it. I mean, it certainly was in the
5 news, of course. 10:19

6 62 Q. Were you aware of any of the rumours about Sergeant
7 McCabe and --

8 A. No.

9 63 Q. Had you heard that he'd been investigated in relation
10 to a sexual assault? 10:19

11 A. Not until I heard it in the media.

12 64 Q. Alleged sexual assault. No? There was no talk in the
13 Press Office at all about Sergeant McCabe and his
14 background, no?

15 A. Not that I can recollect. 10:19

16 65 Q. Right. In particular, the Tribunal is concerned about
17 a visit that was made by Eavan Murray and Debbie McCann
18 to the home of Ms. D in either late February or early
19 March of 2014. Do you recall any inquiries being made
20 by those two journalists in relation to -- 10:19

21 A. No.

22 66 Q. -- Sergeant McCabe or Mr. D?

23 A. Ms. D, no.

24 67 Q. Ms. D, sorry?

25 A. No. 10:20

26 68 Q. The Tribunal investigators drew your attention to the
27 terms of reference --

28 CHAIRMAN: Sorry, Mr. Marrinan, a couple of times
29 people have referred to a rank in relation to the D

1 family and I don't think you should worry about it, but
2 I think the journalists will be aware that the Tribunal
3 ruling is that they can't refer to ranks, because it
4 just narrows down the field to a very, very few
5 individuals. So it is a colleague in the Gardaí, so it 10:20
6 could be a superintendent, it could be anything. There
7 you go. Not to worry.

8 MR. MARRINAN: Thank you, sir.

9 69 Q. I think that in terms of the Tribunal's term of
10 references, that the investigators drew your attention 10:21
11 to them, isn't that right?

12 A. Yes.

13 70 Q. And in particular, in relation to a protected
14 disclosure that had been made by Superintendent Taylor
15 to the effect that he had been instructed by the Garda 10:21
16 Commissioner to alert journalists to background
17 information in relation to Sergeant McCabe and his
18 motivation for coming forward as he did in relation to
19 a number of issues, including the penalty points issue,
20 you are aware of that? 10:21

21 A. Mm-hmm.

22 71 Q. Did you get any inkling at all of that in the Garda
23 Press Office whilst you were there?

24 A. Before it became common knowledge or before it was in
25 the media? 10:21

26 72 Q. No, in 2013 and 2014 when Superintendent Taylor was
27 there?

28 A. No.

29 73 Q. Did he ever tell you to speak poorly of Sergeant McCabe

1 to journalists?

2 A. No.

3 74 Q. Did he ever tell you that he had been told by the Garda
4 Commissioner --

5 A. No. 10:22

6 75 Q. -- to spread a rumour about Sergeant McCabe?

7 A. No.

8 76 Q. Was there any discussion at all between you and
9 Superintendent Taylor about Sergeant McCabe?

10 A. No. 10:22

11 MR. MARRINAN: No. Thank you very much. Would you
12 answer any questions, please.

13 MR. McDOWELL: No questions.

14 MS. BURNS: No questions.

15 MR. MÍCHEÁL O' HIGGINS: No questions, Chairman. 10:22

16

17 THE WITNESS THEN WITHDREW

18

19 MR. MARRINAN: The next witness is Brenda O'Grady,
20 please. 10:22

21

22 MS. BRENDA O' GRADY, HAVING BEEN SWORN, WAS DIRECTLY
23 EXAMINED BY MR. MARRINAN:

24 77 Q. MR. MARRINAN: Now, I think you are a member of the
25 Press Office, is that right? 10:23

26 A. I am, yes.

27 78 Q. And you are a civilian member, is that right?

28 A. I am, yes.

29 79 Q. When did you join the Press Office?

1 A. In 2007.

2 80 Q. 2007. And you remain there up until the present time?

3 A. I do. But a year later, in 2008, I moved as PA to the
4 Director of Communications, so I am not in the news
5 desk end of Press Office, I don't deal with 10:23
6 journalists, just the admin.

7 81 Q. And I think that you made a statement to the Clerkin
8 investigation, it's page 2402, isn't that right?

9 A. That's right.

10 82 Q. And you were also interviewed by our investigators on 10:23
11 the 15th August of last year, and your statement is at
12 page 2798 of the materials. During your time in the
13 Press Office when Superintendent Taylor was there, and
14 I think that is from 2012 to 2014 --

15 A. Yes. 10:24

16 83 Q. -- can you help us with the general mood and atmosphere
17 and working relationship that you had in the first
18 instance with Superintendent Taylor?

19 A. I got on fine with Superintendent Taylor, as I had done
20 with all my two previous superintendents. I did 10:24
21 whatever they asked, I was --

22 84 Q. And how did he get on with other staff members, that
23 you could see?

24 A. Em, sometimes he could come across a little bit abrupt.
25 He -- it's hard to put it into words, but he -- he had 10:24
26 good working relationships with most people.

27 85 Q. With most people?

28 A. Yeah.

29 86 Q. But not all?

1 A. Not all.

2 87 Q. All right. And as far as you could see, what sort of
3 working relationship did he have with the Garda
4 Commissioner?

5 A. I would -- he worked with him like the previous two 10:25
6 Press Officers, he would have gone into meetings with
7 him but I would never have seen them together.

8 88 Q. All right. Did you have any interaction yourself with
9 the Garda Commissioner?

10 A. Never. 10:25

11 89 Q. Or the Deputy Garda Commissioner, Nóirín O'Sullivan?

12 A. No, no, I had --

13 90 Q. Okay. And in terms of Sergeant McCabe, again you will
14 have heard from the last two witnesses that the
15 Tribunal is concerned to know was there any talk in the 10:25
16 Garda Press Office in relation to Sergeant McCabe?

17 A. I had never heard of it until it went into the media,
18 but I would never have been dealing with press queries
19 anyway --

20 91 Q. Right. 10:25

21 A. -- so from my end of things, I hadn't heard of it.

22 92 Q. But there was no discussion or gossip or anything of
23 that nature in relation to Sergeant McCabe --

24 A. Not that I ever heard, no.

25 93 Q. -- during 2013 and 2014? 10:25

26 A. Never, never, until -- no.

27 94 Q. I think the Tribunal investigators drew your attention
28 to the terms of reference of the Tribunal, isn't that
29 right?

1 A. They did, yes.

2 95 Q. And in particular, to two protected disclosures -- or a
3 protected disclosure that had been made by
4 Superintendent Taylor?

5 A. They did, yes. 10:26

6 96 Q. And I think that they are recited in your statement at
7 page 2804, and I will just refer to them again:
8
9 "I can confirm there was a campaign at the highest
10 level in An Garda Síochána involving the Commissioner 10:26
11 Martin Callinan and the then Deputy Commissioner,
12 now Commissioner, Nóirín O'Sullivan to discredit
13 Sergeant McCabe."
14
15 Did you see any evidence of that in the Press Office? 10:26

16 A. Never, never.

17 97 Q. Did Superintendent Taylor ever say anything negative
18 about Sergeant McCabe --

19 A. Not to me.

20 98 Q. -- to you? 10:27

21 A. No.

22 99 Q. Were you reasonably friendly with Superintendent
23 Taylor?

24 A. I would have been reasonably friendly, yes, I would
25 have a good working relationship. 10:27

26 100 Q. And do you recall when he left --

27 A. I do, indeed.

28 101 Q. -- the Press Office? Just before we come to that, the
29 Tribunal is concerned to inquire into the circumstances

1 in which Ms. Eavan Murray of the Irish Sun and
2 Ms. Debbie McCann of the Irish Daily Mail visited the
3 home of Ms. D in late February or early March of 2014.
4 Was there any query raised with you by those two
5 journalists in relation to information concerning 10:27
6 Ms. D?

7 A. Never, no. I hadn't ever heard of either of them.

8 102 Q. Yes. And do you recall the circumstances in which
9 Superintendent Taylor came to leave the Press Office?

10 A. Yes. 10:28

11 103 Q. What were those?

12 A. He just came in and he said that he was going to be
13 transferred to the Traffic very shortly.

14 104 Q. And how did he feel about it?

15 A. I don't -- I don't think he was happy. I think he 10:28
16 suspected he was going to be transferred at some stage
17 but not that quickly.

18 105 Q. And after he left the Press Office, did he say anything
19 to you about, she was then, Acting Commissioner Nóirín
20 O'Sullivan? 10:28

21 A. He wouldn't have been happy. He rang me once or twice
22 afterwards and he was just concerned that he had been
23 transferred so quickly.

24 106 Q. But did he say anything as to the reason why he had
25 been transferred? 10:29

26 A. No, no, and I don't -- I had never heard why he was
27 transferred. But I think he thought he was doing a
28 good job as Press Officer.

29 107 Q. I mean, was he annoyed that he had been transferred?

1 A. Yes, I would have got that impression, yes.

2 108 Q. You refer in your statement at page 2402, if we could
3 just have it up on the screen, just this is a statement
4 that you made on the 28th May of 2015 to Sergeant Brian
5 Kavanagh, who was working with the Clerkin 10:29
6 investigation, there you see just six lines down, this
7 is:
8
9 "I remember in June 2014 --"
10 10:29
11 Sorry
12
13 "I worked with Superintendent David Taylor from July
14 2012 until he went to Traffic in June 2014. I remember
15 in June 2014 he was not too happy about moving." 10:30
16 MR. WHELAN: Sorry, Mr. MARRINAN, the witness isn't
17 following it on the screen. It is in Volume 9.
18 A. I have it here. Which page was it on?
19 109 Q. MR. MARRINAN: You have your own copy. Sorry, if we
20 could have it up on the screen, please? 10:30
21 A. Sorry, which page is it on?
22 110 Q. Page 2402, it's at the commencement of your statement.
23 MR. WHELAN: On the witness's own copy will be the
24 first page.
25 A. Sorry, repeat -- sorry. 10:30
26 111 Q. MR. MARRINAN: I am just waiting for the screen so that
27 everybody can see it. It's coming.
28
29 "I worked with Superintendent David Taylor from July

1 2012 until he went to Traffic in July 2014. I remember
2 in June 2014 he was not too happy about moving from the
3 Press Office."

4

5 Do you see that?

10:31

6 A. Yes.

7 112 Q. Is that right?

8 A. That's correct.

9 113 Q. "He phoned me about twice in June 2014. He was giving
10 out about Commissioner Nóirín O'Sullivan."

10:31

11

12 Is that right?

13 A. That's correct, yes.

14 114 Q. "He was having a rant."

15 A. He was just giving out about her and about the whole
16 fact that he had been transferred and that he didn't
17 deserve it, that -- I think he thought it was kind of a
18 demotion to have gone to Traffic as opposed to the
19 Press Office.

10:31

20 115 Q. Then you go on to say:

10:31

21

22 "I didn't want to have this conversation as I believed
23 these phone calls may be recorded and I ignored all his
24 calls after that to my private phone."

25

10:31

26 Is that right?

27 A. Yes, yes.

28 116 Q. why did you think that the conversations might be --

29 A. when I came to the depot in 1984 I just assumed every

1 conversation was recorded, you ring up a bank and they
2 record it so I just...

3 117 Q. Right. Now, do you recall Superintendent Taylor
4 contacting you on 7th January of 2015 looking for all
5 the phone numbers of the journalists of which there 10:32
6 were between -- 600 from the Spotlight system?

7 A. I recall that, yes.

8 118 Q. Do you recall that?

9 A. I do, yes, yes.

10 119 Q. At that time he was working in Traffic, is that right? 10:32
11 A. That is correct.

12 120 Q. Did he say why he wanted the contact numbers of the
13 journalists?

14 A. He just said he had lost -- his phone had been taken
15 from him and he didn't have any of the contact numbers 10:32
16 any more.

17 121 Q. And did you print off a list for him?

18 A. I did, yes.

19 122 Q. And did you drop it into the gate in the Garda depot?

20 A. No. I printed it off and then I thought about it. 10:32
21 When he rang me I just printed it off, as a
22 superintendent I did what I was told, and it was only
23 when I was thinking about it afterwards and I thought,
24 this is -- I shouldn't be giving out these, it's a
25 Spotlight system, it's a Press Office system and I 10:33
26 shouldn't be giving out. So I said it to my inspector,
27 John Ferris, then.

28 123 Q. Did you think there was something wrong in giving the
29 list of names to Superintendent Taylor?

1 A. Well, to anybody, anybody outside the Press Office I
2 would have thought it was, in hindsight.

3 124 Q. So you considered this to be an inappropriate request?
4 A. Yes.

5 125 Q. And you went to Inspector Ferris and you advised him of 10:33
6 your concerns, is that right?
7 A. That's correct.

8 126 Q. And then did you have further contact then with
9 Superintendent Taylor?
10 A. He would have called me probably once or twice after 10:33
11 that, yes.

12 127 Q. I think that you received a number of text messages
13 from him, is that right?
14 A. That is correct, yes.

15 128 Q. And in May of 2015, I think that he suggested that you 10:34
16 would meet for coffee one day?
17 A. That's correct.

18 129 Q. Is that right? I think that you agreed to but you had
19 no intention of meeting him, is that right?
20 A. That's correct, yeah. 10:34

21 130 Q. Am I getting the correct impression from reading your
22 statement, that you were sort of being plagued by
23 Superintendent Taylor?
24 A. Certainly not plagued, no, no, but I -- you have a
25 working relationship with somebody and then they leave 10:34
26 the office and you don't have as much interaction then
27 with them. I had never been asked to meet a
28 superintendent before who had left the office.

29 131 Q. Now, I think that, and we heard from Inspector Ferris

1 last Friday, I think it was, in relation to this, that
2 there are press clippings which are copies of
3 newspapers that are collected every morning, isn't that
4 right?

5 A. That's correct. 10:35

6 132 Q. And they are scanned into the computer and then emailed
7 out to about 40 Gardaí of senior rank, usually of chief
8 superintendent and above, is that right?

9 A. That's correct.

10 133 Q. The Garda Press Officer also gets a copy of the press 10:35
11 clippings. I think that when Superintendent Taylor
12 moved from the Press Office, he was taken off the list,
13 isn't that right?

14 A. That is correct, yes.

15 134 Q. And I think that he managed somehow or another to get 10:35
16 back on the list, and then was taken off again and then
17 he contacted you and asked to be put back on the list,
18 is that right?

19 A. That's correct, yes.

20 135 Q. And did you put him back on the list? 10:35

21 A. I did.

22 136 Q. Did he ask you then who had originally taken him off
23 the list?

24 A. He had wondered who it was. which you couldn't tell
25 from the system who deletes or inputs the information. 10:36

26 137 Q. And then after you put him on the list, was he taken
27 off the list yet again?

28 A. He was, yes, yes.

29 CHAIRMAN: So is that three times on and off?

1 MR. MARRINAN: Yes.

2 A. Yes.

3 138 Q. And I think that that is the extent of the dealings
4 that you had with Superintendent Taylor --

5 A. Yes, that was the end. 10:36

6 139 Q. -- after he left the Press Office, isn't that right?
7 would you answer any questions, please.

8 MR. McDOWELL: No questions.

9

10 THE WITNESS WAS CROSS-EXAMINED BY MS. BURNS: 10:36

11 140 Q. MS. BURNS: My name is Tara Burns and I appear on
12 behalf of Superintendent Taylor. Just a short
13 question: In relation to that last portion of your
14 evidence regarding the press clippings and putting
15 Superintendent Taylor back on the distribution list, I 10:37
16 think in your statement that you provided to the
17 Clerkin investigation, I think that you set out, it's
18 at page 2404, volume 9 of the Tribunal material, that
19 "He told me in a text that as the Traffic
20 superintendent he needed to be on that list" and then 10:37
21 you go on to say "And I agreed as road deaths were so
22 topical", I take it that was the correct at the time if
23 it's in your statement?

24 A. That's right.

25 141 Q. So, he did say that to you in a text in terms of what 10:37
26 he wanted?

27 A. Yes.

28 142 Q. Thank you very much.

29

1 THE WITNESS WAS EXAMINED BY MR. WHELAN:

- 2 143 Q. MR. WHELAN: A couple of questions. Firstly that last
3 point, did he say anything in the text to you about
4 needing the press clippings for his thesis?
5 A. Never, never mentioned. 10:37
- 6 144 Q. You were aware that he was doing a part-time thesis in
7 Communications up in DCU?
8 A. I was, yes.
- 9 145 Q. Was he in the habit of doing his own typing or were you
10 as his personal assistant doing his typing generally? 10:38
11 A. I did a lot of his typing, yes.
- 12 146 Q. Okay. As I understand it, you were not in the general
13 Press Office as it were --
14 A. No.
- 15 147 Q. -- where the sergeants and other civilians were 10:38
16 staffing the phones and taking calls from journalists
17 or making inquiries of members of the force, isn't that
18 correct?
19 A. That's correct, I was in the back office.
- 20 148 Q. You were in a separate office where you had previously 10:38
21 been personal assistant to the previous Director of
22 Communications and then you were personal assistant to
23 Mr. Taylor and then you were personal assistant to
24 Superintendent Taylor and Mr. McLindon when
25 Mr. McLindon took up the role of Director of 10:38
26 Communications, isn't that correct?
27 A. That's correct, yes.
- 28 149 Q. I think in fact you had the office to yourself until
29 such time as Inspector Ferris was transferred up there,

1 as we heard about last week, isn't that correct?

2 A. That's correct, yes.

3 150 Q. I think then you were contacted by Superintendent
4 Taylor and asked for the database of the contact
5 details of the journalists that the Press Office held, 10:39
6 isn't that correct?

7 A. That's correct.

8 151 Q. This was presumably in the form of some kind of Excel
9 sheet or word document --

10 A. Yes. 10:39

11 152 Q. -- contained the names and mobile phone numbers and
12 contact emails for about 600 press that the Press
13 Office regularly communicated with, isn't that correct?

14 A. That's correct, yes.

15 153 Q. And he said to you he needed those because his phone 10:39
16 had been confiscated and he had lost contacts?

17 A. That's correct.

18 154 Q. And did he inquire of you for any specific phone
19 numbers or any individual phone numbers or did he just
20 ask for the general full list? 10:39

21 A. Just the general full list.

22 155 Q. And he being a superintendent, you sought to comply
23 with that by printing off this document?

24 A. That's correct.

25 156 Q. With a number of pages presumably? 10:39

26 A. Yes, it was a big list.

27 157 Q. And the original arrangement was that you would leave
28 it for him at the front desk at the Phoenix Park
29 Headquarters?

1 A. That's correct.

2 158 Q. And you had second thoughts about it, you had
3 misgivings?

4 A. When I thought about it.

5 159 Q. And ultimately Inspector Ferris, as he then was, took 10:40
6 the view that that list should not go outside the Press
7 Office, isn't that correct?

8 A. That's correct.

9 160 Q. I think he told us last week that there had been an
10 issue about a journalist's details being out there and 10:40
11 a journalist had raised a data protection query about
12 information wrongly being given out, but there was a
13 particular consciousness not to generally circulate
14 that information --

15 A. That's correct, yes. 10:40

16 161 Q. -- isn't that correct?

17 A. Yes.

18 162 Q. If we turn then to June of 2014, you had worked closely
19 with Mr. Taylor and then he was moved or got word that
20 he was to be moved to Traffic in Dublin Castle, isn't 10:40
21 that correct?

22 A. That is correct.

23 163 Q. He was clearly unhappy with that to you, isn't that
24 correct?

25 A. That's correct. 10:40

26 164 Q. I think you told the Clerkin inquiry, as we have heard,
27 that he phoned you twice in June and he was giving out
28 about the Commissioner, Nóirín O'Sullivan, isn't that
29 correct?

1 A. Yes.

2 165 Q. I think you said, you told the Clerkin investigation
3 that he said he shouldn't have been moved, "that she
4 didn't have her facts right", did you appreciate then
5 or have you any view now on what he meant by that 10:41
6 phrase "she didn't have her facts right"?

7 A. I can't recall now exactly what he meant by it, but I
8 know when I was giving it to the Clerkin investigation
9 I could remember all the details he said.

10 166 Q. You went on to say he was having a rant about 10:41
11 Commissioner O'Sullivan?

12 A. And the move and just being generally unhappy.

13 167 Q. The move. Thank you very much, Ms. O'Grady.

14 A. Thank you.

15 10:41

16 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

17 168 Q. CHAIRMAN: I just want to detain you for a minute, and
18 please excuse me. Look, anyone who has worked in an
19 office atmosphere knows about office politics and how
20 people are up and down and manoeuvring and forming 10:41
21 alliances and all that kind of thing, and in a way it's
22 all very silly and I can understand that. Equally,
23 Ms. O'Grady, I would ask you to understand, I am in a
24 position where somebody is making a really, really
25 serious allegation. 10:42

26 A. I understand, Chair.

27 169 Q. CHAIRMAN: Yes. And I have to make a call on it one
28 way or another, after having listened to everything and
29 inquired as carefully as I possibly can, it's only

1 fair. But the person making the allegation essentially
2 is David Taylor.

3 A. Yes.

4 170 Q. CHAIRMAN: And I really need to get a sense of how he
5 felt about two people. First of all, his boss who was 10:42
6 there, that is to say Commissioner Callinan. And I
7 mean, I know you are saying, well, it's rumour or
8 whatever, but I think people in an office probably know
9 a great deal more about what is going on, usually
10 pretty accurately, than people outside it. It's not a 10:42
11 question of witnessing, so I mean were they close or --

12 A. Commissioner Callinan?

13 171 Q. CHAIRMAN: Yes.

14 A. I would have thought so, yes.

15 172 Q. CHAIRMAN: Yes. But you know the way that you can see 10:42
16 that people are -- it's not just a working
17 relationship, but they actually get along together and
18 there is nothing wrong with that. How would you try
19 and characterise it, if you can?

20 A. I actually never saw them together except on 10:43
21 television, but he went to every function with
22 Commissioner Callinan, which not every other Press
23 Officer would have gone to them all. Any time I saw
24 them together, they appeared to have a good
25 relationship. I wouldn't know about any -- 10:43

26 173 Q. CHAIRMAN: Yes, but earlier on in your evidence you
27 said it was kind of, well, you'd seen two other press
28 officers in your time and you didn't put it higher than
29 that, but I take it from your answers you are putting

1 bitterness kind of tends to do things to people but
2 maybe sometimes it doesn't and you can hold your
3 objectivity being bitter at the same time?
4 A. I think bitter would sum it up properly, yes.
5 178 Q. CHAIRMAN: And did you think bitter and illogical? 10:45
6 A. No.
7 179 Q. CHAIRMAN: He couldn't see any reason for it or what
8 was the whole point of it all?
9 A. I just -- it's very hard to quantify it because I think
10 he thought it was a downward step, he thought it was 10:45
11 merely a demotion and if he had been transferred some
12 place else it mightn't have been as bad. I do think he
13 enjoyed his time as Press Officer and he thought it was
14 an insult to him to be going to Traffic.
15 180 Q. CHAIRMAN: And did he think it was Nóirín O'Sullivan 10:45
16 who was dishing out this insult?
17 A. I gathered that, yes, that he took it as her,
18 personally from her.
19 181 Q. CHAIRMAN: Yes. And it may be silly in a job to take a
20 thing personally. I mean, a Garda Commissioner has the 10:46
21 right to put people where they think they will do a
22 good job or put in their own people. Was it your
23 experience in the past that when Garda Commissioners
24 changed there was a change of Press Officer as well,
25 kind of a new approach? 10:46
26 A. Yes. I would always have thought that they kind of --
27 they would need to have a good working relationship
28 with the Press Officer, because they are in such close
29 contact throughout every single week and through all

1 the serious issues. So, they have all -- a
2 Commissioner seems to go and then the Press Officer
3 would change quite shortly afterwards. I have only
4 been there for four or five of them.

5 182 Q. CHAIRMAN: But that was the pattern you observed? 10:46
6 A. Yes.

7 183 Q. CHAIRMAN: So there was nothing in effect to be bitter
8 about?
9 A. That's -- yes.

10 184 Q. CHAIRMAN: That is how you would see it? 10:47
11 A. That is how I would see it.

12 185 Q. CHAIRMAN: And Traffic is of course very important?
13 A. A vital role in this day and age, yes.

14 186 Q. CHAIRMAN: I mean, you are talking there about road
15 traffic deaths and you took that as a plausible reason 10:47
16 for knowing journalists' contacts, etcetera?
17 A. Yes. And to want to go on the press clippings list,
18 yes.

19 187 Q. CHAIRMAN: And was there some remark made to the effect
20 Nóirín O'Sullivan, she got it wrong or something to 10:47
21 that effect?
22 A. Yes. And I can't quite recall it now but I just think
23 he felt that he was being shafted for some reason that
24 she had perceived.

25 188 Q. CHAIRMAN: And the last thing I wanted to ask you 10:47
26 about, Mr. Marrinan has gone through it in great detail
27 but I am just trying to put it together, and you are
28 saying you know the way young people use the word
29 stalking in a very jokey kind of a way nowadays?

1 A. Yes.

2 189 Q. CHAIRMAN: Like, if you meet someone twice over the
3 course of a week, one will say to the other 'oh, you
4 are stalking me'. But I didn't get the impression that
5 that the various phone calls you got, the invitation to 10:48
6 coffee, etcetera, amounted to anything close to the
7 proper use of that word, stalking?

8 A. Oh, definitely not.

9 190 Q. CHAIRMAN: Yes. But if you add them all together how
10 many about were there? 10:48

11 A. Oh, there was only six or seven in about a year. Oh,
12 no, no, it would -- it would have been very little.

13 191 Q. CHAIRMAN: well, I understand better. Thank you very
14 much.

15 A. Thank you, Chair. 10:48

16

17 THE WITNESS THEN WITHDREW

18

19 MR. MARRINAN: Antoinette Phillips, please.

20 10:48

21 MS. ANTOINETTE PHILLIPS, HAVING BEEN SWORN, WAS
22 DIRECTLY EXAMINED BY MR. MARRINAN:

23 192 Q. MR. MARRINAN: I think, Ms. Phillips, you were
24 interviewed by the Tribunal investigators on the 16th
25 August of last year, and your statement is to be found 10:49
26 at page 2811, but I think we can deal with matters
27 fairly quickly.

28 A. Okay, yeah.

29 193 Q. I think that you joined the Press Office as a civilian

1 member in January of 2007, is that right?

2 A. That's correct.

3 194 Q. And you worked there up until late July of 2013, is
4 that right?

5 A. That's correct, yes. 10:49

6 195 Q. However, I think on the day that Superintendent Taylor
7 started working in the Press Office in July of 2012,
8 you went on maternity leave, isn't that right?

9 A. Yeah, I had an emergency, I had to go to hospital.

10 196 Q. And you didn't return until April 2013, and you were 10:50
11 there only for a matter of four months until you left?

12 A. Yes, I transferred then to Blanchardstown.

13 197 Q. So at that stage, the Director of Communications,
14 Andrew McLindon, wasn't even there, is that right?

15 A. No. 10:50

16 198 Q. And you effectively were there at a period of time that
17 isn't of huge interest to the Tribunal in its
18 investigation. However, did you hear any rumours about
19 Sergeant McCabe during your time in the --

20 A. Not at all, no. 10:50

21 199 Q. -- the Garda Press Office. Not at all?

22 A. Nothing at all about Sergeant McCabe.

23 200 Q. And your role was purely administrative, is that right?

24 A. Admin, yeah.

25 201 Q. Right. Okay. Thank you very much. 10:50

26 A. Thank you.

27 202 Q. Would you answer any questions.

28 MR. McDOWELL: No questions.

29 MS. BURNS: No questions.

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THE WITNESS THEN WITHDREW

MR. MARRINAN: Chrissie Fitzpatrick, please.

10:51

MS. CHRISSE FITZPATRICK, HAVING BEEN SWORN, WAS
DIRECTLY EXAMINED BY MR. MARRINAN:

203 Q. MR. MARRINAN: I think you were a civilian member of
the Garda Press Office, is that right?

A. Yes.

10:51

204 Q. And you joined the Press Office on the 9th December of
2013?

A. That's correct.

205 Q. After a fairly long career in the civil service. I
think that you were interviewed by our investigators on
the 16th August last year, and your statement is to be
found at page 2823, and you were also interviewed by
Sergeant Brian Kavanagh, who took a statement from you
on 28th May of 2015 in relation to the Clerkin
investigation, and that's to be found at volume 9 at
page 2406, which I will come to in due course. What
was your role in the Press Office when you were there?

10:52

10:52

A. I came into work on the news desk as a clerical officer
and my role involved answering phone calls to
journalists, collating the press clippings in the early
shifts and distributing them, dealing with various
reports and different things in the office but mostly
answering phone calls to journalists, gathering
information for press releases and working on

10:52

1 newspapers.

2 206 Q. So that was a similar role to Mr. Kavanagh and
3 Mr. Lenehan, who have given evidence this morning, is
4 that right?

5 A. Gerry and Shane and myself were the three civilians 10:53
6 that worked the roster in the news desk at the time I
7 was there. We covered from 7:00 in the morning until
8 7:00 in the evening Monday to Friday and 9:00 to 5:00
9 Saturday and Sunday. So the shifts were split between
10 us, we crossed over and covered those hours between us 10:53
11 and supported the sergeants on duty.

12 207 Q. And do you remember in particular in late 2013 into
13 2014, up until Superintendent Taylor left at the end of
14 May in 2014, was there any talk in relation to Sergeant
15 McCabe in the Press Office? 10:53

16 A. No, I was never aware of any conversation about
17 Sergeant McCabe. I was aware of the penalty points
18 inquiry and the Public Accounts Committee, but not
19 particularly anything personal about Sergeant McCabe or
20 anything. 10:54

21 208 Q. Did you hear any rumours circulating about a prior
22 investigation in relation to an alleged sexual assault
23 going back many years?

24 A. No. I heard about it when it came out in the news and
25 I was as shocked as everybody else to read it on the 10:54
26 papers. I hadn't heard about it prior to that.

27 209 Q. The Tribunal investigators drew your attention to the
28 terms of reference of the Tribunal, isn't that right?

29 A. Yes.

1 210 Q. And in particular to a protected disclosure that had
2 been made by Superintendent Taylor?
3 A. Yes.

4 211 Q. Where he alleges that he was instructed by former
5 Commissioner Callinan and to a lesser extent 10:54
6 Commissioner O'Sullivan to brief the media negatively
7 about Sergeant McCabe. Were you aware of anything of
8 that nature during your period of time in the Press
9 Office?
10 A. Never. When we came into work in the morning we dealt 10:55
11 with the issues of the day. A news event story
12 happened and it was like firefighting, the calls came
13 fast and hard, the emails came. You were constantly
14 dealing with a daily news story, you weren't kind of
15 discussing historical os -- it never came up in 10:55
16 conversation or was never discussed. Your day-to-day
17 work dealt with work of the day mostly and the next day
18 was a new day and it continued that way forever.

19 212 Q. Well, did Superintendent Taylor at any time tell you to
20 perhaps drop into conversation with journalists this 10:55
21 rumour about Sergeant McCabe?
22 A. Never.

23 213 Q. No. Initially when you were in the Press Office, you
24 found Superintendent Taylor difficult to get on with,
25 isn't that right, but subsequently you became quite 10:55
26 friendly with him?
27 A. I found his style of management unusual.

28 214 Q. In what way?
29 A. The Press Office worked with seven sergeants and three

1 civilians and our direct line manager was the sergeant
2 on duty or the sergeant you were paired with, and
3 Superintendent Taylor would be two levels above us,
4 above all that level, and there was an inspector
5 between him, but he had a lot of hands-on input or he 10:56
6 liked to check up and see who was in, see were you at
7 your desk, he liked to know what you were doing and
8 where you were. He had a very keen eye to know who was
9 in the office and he was very aware of who was on duty
10 and off duty at all times. He kind of monitored things 10:56
11 very closely. Once I got used to his ways I didn't
12 have an issue and I found it easy to understand what he
13 looked for and it wasn't difficult.

14 215 Q. And how did he appear to get on as far as you could
15 tell with the Commissioner? 10:56

16 A. I had never seen him directly with the Commissioner.
17 The Commissioner's office is in the block beside us.
18 The Commissioner wouldn't be in our office. Dave
19 Taylor would have gone to the Commissioner. But, he
20 seemed to go everywhere with him. My understanding was 10:56
21 they were close and when the Commissioner resigned
22 Superintendent Taylor took it very personally and was
23 very shocked. I was on duty the morning that the
24 Commissioner resigned and I would be just surmising
25 from what I saw and what I observed that they were 10:57
26 close, but it wasn't from anything he said or anything
27 he did, but it was an assumption I made on what I
28 observed in my time there.

29 216 Q. What about the Deputy Commissioner Nóirín O'Sullivan,

1 could you --

2 A. I wasn't aware of her when she was Deputy Commissioner.
3 After Superintendent Taylor was moved from the Press
4 Office to Dublin Castle, I knew he was upset about that
5 and he blamed Andrew McLindon and he blamed 10:57
6 Commissioner O'Sullivan in my books for his transfer.
7 He felt he was shafted and that he shouldn't have been
8 moved to Dublin Castle, that people were promoted out
9 of the Press Office and he wasn't and he didn't
10 consider Dublin Castle a promotion. And I sympathised 10:57
11 with him because he had put his heart and soul into his
12 job, he loved being Press Officer and he felt he was
13 doing a good job.

14 217 Q. Was he angry about being moved out of the Press Office?

15 A. I'd say hurt and angry, yes. 10:57

16 218 Q. And did he appear afterwards to be bitter?

17 A. Angry, bitter, hurt, whatever you want to call it, he
18 wasn't happy about the move, he didn't take it well.

19 219 Q. And was that anger and bitterness, was it directed
20 towards then deputy -- or then Acting Commissioner 10:58
21 O'Sullivan?

22 A. My understanding, Andrew McLindon and Commissioner
23 O'Sullivan he blamed for his move.

24 220 Q. And during his time when he was acting as Press
25 Officer, how did he get on with -- that you could 10:58
26 ascertain, how did he get on with Mr. McLindon?

27 A. I wouldn't have seen them together much. Like, Andrew
28 McLindon was downstairs and he kind of dealt with stuff
29 on a strategic level. Generally we reported to the

1 sergeants. We worked in the news desk office and there
2 we stayed and there we worked out of, so our most
3 immediate contact was with the sergeants.
4 Superintendent Taylor came to the office. Andrew
5 wouldn't have come that often. So I wouldn't have 10:58
6 observed their relationship a lot. Afterwards, from
7 the texts I got, I knew that he blamed Andrew, but I
8 don't know what the relationship was when I was in the
9 office. I assumed it was fine because I didn't know
10 any different. 10:59

11 221 Q. I think that the Tribunal investigators drew your
12 attention to the fact that Eavan Murray of the Irish
13 Sun and Debbie McCann of the Irish Daily Mail, who were
14 two journalists, had visited the home of Ms. D in late
15 February of 2014 or early March of the same year. Did 10:59
16 they make any inquiries of you in relation to Ms. D and
17 where she lived?

18 A. No.

19 222 Q. Now, I think that, as I said, you were interviewed as
20 part of the Clerkin investigation, and your 11:00
21 relationship with Superintendent Taylor and you set
22 that out at page 2406 of your statement. I think that
23 Superintendent Taylor had requested of you to be put
24 back on the list of -- no, he hadn't?

25 A. No, that wasn't within my -- I was news desk, I 11:00
26 answered questions, I disseminated press clippings but
27 I wasn't part of putting them on and off.

28 223 Q. Oh, you weren't?

29 A. I would have sent them out by email. So when it didn't

1 work or whatever I would be aware of who didn't get
2 their clippings or did, and I would be aware of who was
3 on the list and who was off it but I had no -- unless I
4 was told to put them on or put them off it, I wouldn't
5 have done it. Inspector Ferris managed that. 11:00

6 224 Q. And I think that a number of -- you kept in fairly
7 regular contact with him, isn't that right, after he
8 left the Press Office?

9 A. I was concerned about him, he took it very badly that
10 he was going. He was out sick for a few weeks after he 11:01
11 left and he just seemed to be very taken aback, I felt
12 sorry for him.

13 225 Q. And I think a number of text messages were put to you,
14 and if we just look at page 2407. Sorry, we can go
15 into 2408. You see there was one put to you that was 11:01
16 sent on 9th June of 2014:

17
18 "Chrissie, take care. Don't let the Press Office slip
19 back into old ways. Dave."

20 11:01

21 And then there is another one at 11:05pm:

22
23 "Keep the secret line open. Be careful of the
24 director."

25 11:02

26 And signed off "Dave". And then you responded:

27
28 "Will do, ever discreet."

29

1 Is that right? It would appear that he was still
2 interested in the workings of the Press Office, is that
3 right?

4 A. He seemed to be very interested and he seemed to
5 measure the success of the Press Office by how many 11:02
6 press releases went out every day and he observed when
7 the numbers were down and he felt the Press Office was
8 failing in its duty if it wasn't getting a volume of
9 press releases out. It was his kind of metric for
10 success of the Press Office and he seemed to be 11:02
11 interested in these things even after he left.

12 226 Q. And then at 6:12pm on the 23rd June:
13
14 "Mags knocked me off the press releases."

15 A. Yes. 11:02

16 227 Q. "What is new?" Mags being who?
17 A. Sergeant Flanagan, Sergeant Margaret Flanagan.

18 228 Q. And there is another message there at 6:29pm:
19
20 "Glad to be away from the impending car crash by her 11:03
21 and especially the rodent Andy, but really miss the
22 team. Keep in touch. Dave."

23 A. Mm-hmm.

24 229 Q. So he is speaking very poorly of Mr. McLindon, who is
25 clearly the Andy, isn't that right? 11:03

26 A. Yes.

27 230 Q. And he is referring to an "impending car crash by her",
28 I think in the context of the text messages you took
29 that to be a reference to --

1 A. Commissioner O'Sullivan.

2 231 Q. -- to Commissioner O'Sullivan, as she then was?

3 A. These were the people I believe he blamed for his

4 transfer to Dublin Castle.

5 232 Q. I think that he remained in contact with you, and on 11:03

6 occasions did he ask you about any particular incidents

7 that were happening?

8 A. On a few occasions after he had left the Press Office

9 he would text and ask for details of incidents that

10 were unfolding in the news. 11:04

11 233 Q. Did he tell you why he wanted the information?

12 A. No. He didn't explain himself, he just asked and

13 wanted details.

14 234 Q. I think these incidents weren't Traffic incidents,

15 isn't that right? 11:04

16 A. No, certainly not.

17 235 Q. And at the time, he was Head of Traffic?

18 A. Traffic, yeah.

19 MR. MARRINAN: would you answer any questions, please.

20 MR. McDOWELL: No questions. 11:04

21

22 THE WITNESS WAS CROSS-EXAMINED BY MS. BURNS:

23 236 Q. MS. BURNS: Good morning, I just have a few short

24 questions. I am Tara Burns and I appear on behalf of

25 Superintendent Taylor. Just in relation to your 11:04

26 initial interaction with Superintendent Taylor, I think

27 the way that you described it in the interview that you

28 gave to the Tribunal investigators was that you didn't

29 warm to him at first, is that correct?

1 A. When I met the first day I went to the Press Office,
2 yeah. I explained to him that I needed to see the
3 roster to arrange my child care and I explained my
4 personal situation and he kind of dismissed me. He
5 said, we need people who work him. And I thought I am 11:05
6 a worker. I said, do you get your lunch breaks, do you
7 finish your duty on time? He said, yeah. I said,
8 fine. So...

9 237 Q. It's also clear from the statements that you have given
10 that you did ultimately have a good relationship with 11:05
11 him and you got on well with him, is that correct?

12 A. Yes.

13 238 Q. I think you have described that in the statements that
14 you have provided to both Chief Superintendent Clerkin
15 and the Tribunal investigators? 11:05

16 A. Yeah. I would be a worker and he appreciated that and
17 I was useful and did a lot of work and I didn't take
18 him too seriously. He took himself very seriously, and
19 I take it -- you know...

20 MS. BURNS: Thank you very much. 11:05

21

22 THE WITNESS WAS EXAMINED BY MR. MÍCHEÁL O' HIGGINS:

23 239 Q. MR. MÍCHEÁL O' HIGGINS: Just one or two questions on
24 behalf of An Garda Síochána. Superintendent Taylor's
25 term as Press Officer I think came to an end in June of 11:05
26 2014, isn't that so?

27 A. Mm-hmm.

28 240 Q. And I think you have indicated that subsequent to that
29 period Superintendent Taylor, so far as you could tell,

1 continued to have an interest in --

2 CHAIRMAN: I think it was the end of May 2014, 31st May
3 2014, officially anyway, according to the terms of
4 reference. Is there another month?

5 MR. MÍCHEÁL O' HIGGINS: My understanding of matters, 11:06
6 Chairman, is that Superintendent Taylor indicates that
7 he was notified by Nóirín O'Sullivan in May that he was
8 to be moved. I had understood that it formally didn't
9 come to an end until June.

10 CHAIRMAN: Yes. You could well be right. I mean, 11:06
11 there could have been some kind of an interregnum or a
12 hand-over or something like that, but the term of
13 reference says 1 July 2012 to 31 May 2014. But I
14 suppose I am concerned about something different, which
15 is: was there any besmirching of Sergeant McCabe 11:06
16 during that time? So the date is obviously a little
17 bit flexible.

18 MR. MÍCHEÁL O' HIGGINS: May it please you, Chairman.

19 241 Q. So you have mentioned that you were aware broadly
20 speaking that he continued to maintain an interest in 11:07
21 matters of Press Office, if I could put it that way?

22 A. Yes.

23 242 Q. And you were aware of that from conversations and also,
24 I think, from text messages, would that be fair?

25 A. He tended to contact me by text on my own personal 11:07
26 phone.

27 243 Q. Right. And he obviously regarded you as somebody with
28 whom -- from his point view of view, with whom he had a
29 reasonable relationship and you fairly indicated you

1 were sympathetic towards him --

2 A. Very, yes.

3 244 Q. -- regarding his departure from the Press Office?

4 A. Yes.

5 245 Q. Now, you have been brought through some of the text 11:07
6 messages that were mentioned in your statement provided
7 to the Clerkin investigation, isn't that so?

8 A. Yes.

9 246 Q. And those are at page 2408, Ms. Fitzpatrick, of the 11:08
10 materials. Can I just ask you about one other matter?
11 Mr. Marrinan has largely already dealt with these, but
12 do you see halfway down page 2408 there is a reference
13 to, I think there is somewhat -- there is a remark in
14 relation to Nóirín O'Sullivan that was not
15 complimentary, isn't that right? 11:08

16 A. Yes.

17 247 Q. And then after that you say you didn't want to get
18 involved in that kind of talk, and that was your
19 position?

20 A. Yeah. 11:08

21 248 Q. And you say in your statement on 27th June 2014 Dave
22 Taylor sent you a text:
23
24 "Chrissie, can you text me some particulars about the
25 Bray incident? Do not let herself know." 11:08
26
27 And he signed off "Dave".

28 A. Yes.

29 249 Q. "Herself" in that is who?

1 A. Sergeant Flanagan.

2 250 Q. Margaret Flanagan?

3 A. Mm-hmm.

4 251 Q. Right. And I think Sergeant Flanagan was the only
5 female sergeant in the Press Office, isn't that the 11:09
6 position?

7 A. That's right. And I was the only female civilian.

8 252 Q. And you were the only civilian member yourself.

9 CHAIRMAN: well, how does Mrs. O'Grady come into it
10 then? was she not there as well? Mrs. O'Grady wasn't 11:09
11 there in your time?

12 A. The news desk was the front office where we dealt with
13 journalists and there was seven sergeants and three
14 civilians, Brenda worked in the back office with John
15 Ferris. Different -- yeah. 11:09

16 CHAIRMAN: I understand. Thank you.

17 253 Q. MR. MÍCHEÁL O' HIGGINS: And if we could have page 24 --
18 well, sorry, before we move on page 2408, I think you
19 indicate in your statement as well, Ms. Fitzpatrick,
20 that at the bottom of page 2407 in fact it is, you were 11:09
21 brought through a text exchange with him where you had
22 wished him well and you say that, you said in the text
23 "sleep well" because you were aware he wasn't sleeping,
24 isn't that so?

25 A. Yes. 11:10

26 254 Q. I think it was the position he wasn't sleeping because
27 he had taken it badly since he had been moved out of
28 the Press Office?

29 A. That was my understanding of the situation; he had

1 taken it very personally and he was very upset about
2 it.

3 255 Q. Yes.

4 A. Distressed.

5 256 Q. And then, if we could move to page 2409, the final page 11:10
6 of your statement, I think you took certain advice
7 from - towards the bottom of your statement - Sergeant
8 Jim Molloy at one point and you mention this in your
9 statement, as to what to do when Dave Taylor phoned you
10 looking for information? 11:10

11 A. Well, yes. He wasn't the Press Officer any longer and
12 I felt it was inappropriate to ask. But then again, I
13 checked with the sergeant I was working with that day,
14 I said what do I do when this happens, because to me it
15 was uncomfortable to -- in Superintendent Taylor's role 11:11
16 as Press Officer he was entitled to all the
17 information, I didn't really know what the situation
18 was when he wasn't Press Officer any more.

19 257 Q. And that was something that made you uncomfortable?

20 A. It did. 11:11

21 258 Q. Thanks very much.

22

23 MR. MARRINAN: Thank you.

24

25 THE WITNESS THEN WITHDREW 11:11

26

27 MR. MARRINAN: Mr. Ciaran Wren, please.

28

29 MR. CIARAN WREN, HAVING BEEN SWORN, WAS DIRECTLY

1 EXAMINED BY MR. MARRINAN:

2 259 Q. MR. MARRINAN: Now, I think, Mr. Wren, you were a
3 civilian member of the Garda Press Office, is that
4 right?

5 A. That's right, yes. 11:12

6 260 Q. I think you joined An Garda Síochána in 2007 as a
7 clerical officer?

8 A. That's correct.

9 261 Q. Is that right? And you initially worked in the Grange
10 Garda Station and then you moved to the Garda Press 11:12
11 Office in August of 2007, is that right?

12 A. Kill O' The Grange, yes.

13 262 Q. But I think that you moved in August of 2007 to the
14 Garda Press Office?

15 A. Sounds correct, yeah. 11:12

16 263 Q. Yes. And I think you were there until 2017 --

17 A. Yes.

18 264 Q. -- is that right? Now, you had an interview with the
19 Tribunal investigators on the 21st September of 2017,
20 and your statement is at page 2851, and you were also 11:12
21 interviewed by Sergeant Brian Kavanagh, who took a
22 statement from you on the 5th of June of 2015 as part
23 of the Clerkin investigation, isn't that right?

24 A. Yeah.

25 265 Q. And that is at page 2400. What was your role in the 11:13
26 Press Office?

27 A. I would have started as, on the news desk, taking calls
28 from members of the media and the public, from the
29 public. I then would have moved into a slightly

1 different role, kind of composing background material
2 for senior officers.

3 266 Q. If you wouldn't mind just drawing the microphone a
4 little bit closer. When did you change roles?

5 A. It would have been after Superintendent Taylor came 11:13
6 into the Press Office, I couldn't remember the exact
7 date.

8 267 Q. And obviously you had worked under a number of Press
9 officers, is that right?

10 A. That's correct. 11:14

11 268 Q. And how would you characterise the working environment
12 under Superintendent Taylor?

13 A. It was -- when he first started it was slightly
14 different to what had gone before and that caused a
15 certain level of tension within the office, but that 11:14
16 then settled down and there was a normal office in the
17 main.

18 269 Q. In what way was it different?

19 A. He came in with different ways of doing things, he was
20 very particular about time keeping and matters like 11:14
21 that.

22 270 Q. Right. And how would you characterise his working
23 relationship, as far as you could see, with
24 Commissioner Callinan?

25 A. As far as I could see, it was a professional working 11:15
26 relationship.

27 271 Q. Yes. Was there any closeness there that you could see?

28 A. Not particularly.

29 272 Q. Not particularly. And what about Deputy Commissioner

1 Nóirín O'Sullivan?

2 A. From what I can recall again, it was a professional
3 working relationship.

4 273 Q. And with the Director of Communications, with
5 Mr. McLindon? 11:15

6 A. The same.

7 274 Q. The same. The Sergeant McCabe story was very much in
8 the media in early 2014, isn't that right?

9 A. I couldn't -- I can't recall dates, but, yes, I assume
10 so. 11:15

11 275 Q. But do you recall him being in the media on a regular
12 basis?

13 A. Being in the media, yes, yes.

14 276 Q. Was there any talk in the Press Office about Sergeant
15 McCabe's background? 11:15

16 A. No.

17 277 Q. You know that the Tribunal investigators drew your
18 attention to the terms of reference of the Tribunal,
19 isn't that right?

20 A. Yes. 11:16

21 278 Q. I think that you had nothing to offer the investigators
22 in regard to the terms of reference, any knowledge that
23 you had, isn't that right?

24 A. No.

25 279 Q. And in particular in relation to Superintendent 11:16
26 Taylor's protected disclosure, you know that we are
27 looking into whether or not he was briefed by or told
28 by Commissioner Callinan to brief journalists
29 negatively about Sergeant McCabe. Were you aware of

1 that at all in your time in the Press Office?

2 A. No, I wasn't.

3 280 Q. Did you hear any talk about it?

4 A. No.

5 281 Q. Did Superintendent Taylor at any time indicate to you 11:16
6 that if you got an opportunity to talk to journalists,
7 that perhaps you should drop in a comment about his
8 background?

9 A. No.

10 282 Q. You weren't aware of Sergeant McCabe's background at 11:16
11 all, is that right?

12 A. No.

13 283 Q. In particular, the Tribunal is concerned to look into a
14 visit by Ms. Eavan Murray and Ms. Debbie McCann, two
15 journalists, to the home of Ms. D, and I think the 11:17
16 investigators asked you about that, isn't that right?

17 A. Yes.

18 284 Q. And whether there was any contact between those
19 journalists and yourself to ascertain any background
20 information or the address of Ms. D, isn't that right? 11:17

21 A. Yes.

22 285 Q. Were either of them in contact with you?

23 A. No.

24 286 Q. Now, I think that after Superintendent Taylor left the
25 Press Office, you were in fairly regular contact with 11:18
26 him, isn't that right?

27 A. Yes. Yes.

28 287 Q. How did he take being moved from the Press Office?

29 A. Not well, he wasn't happy with the move.

1 288 Q. He was moved to Traffic, is that right?
2 A. That's right, yeah.

3 289 Q. Did he still maintain an interest in the workings of
4 the Press Office?
5 A. He would have, yes. 11:18

6 290 Q. And will you just tell us a little bit about that, if
7 you can.
8 A. He would have made contact and asked about how various
9 people were getting on and matters like that.

10 MR. MARRINAN: Right. would you answer any questions, 11:18
11 please.
12 MR. McDOWELL: No questions.
13

14 THE WITNESS WAS CROSS-EXAMINED BY MS. BURNS:

15 291 Q. MS. BURNS: Mr. Wren, my name is Tara Burns, and I 11:18
16 appear on behalf of Superintendent Taylor, just a few
17 short questions. I think that at the time that
18 Superintendent Taylor became Press Officer, I think
19 that you already had a transfer request in to move from
20 the Press Office? 11:19
21 A. That's correct, yes.

22 292 Q. And I think that as it happened, that transfer
23 application didn't proceed but Superintendent Taylor
24 helped you with that, is that correct?
25 A. He did, yes. 11:19

26 293 Q. Now, I think that in fairness, you describe in your
27 interview with the Tribunal investigators that
28 initially yourself and Superintendent Taylor didn't see
29 eye to eye?

1 A. Yeah, that would be correct, yes.

2 294 Q. However, I think you also set out that once that
3 transfer didn't take place, that Superintendent Taylor
4 then decided to alter your role and your working
5 pattern and that from then on relations were good 11:19
6 between you and you had a good working relationship?

7 A. Yeah, that would be fair, yeah.

8 295 Q. Thank you very much.

9

10 CHAIRMAN: Sorry, Mr. Ó Muircheartaigh? 11:20

11

12 THE WITNESS WAS CROSS-EXAMINED BY MR. Ó MUIRCHEARTAIGH:

13 296 Q. MR. Ó MUIRCHEARTAIGH: Just two questions for you.

14 CHAIRMAN: If you wouldn't mind introducing yourself to
15 the witness please and who you are appearing for so he 11:20
16 knows.

17 MR. Ó MUIRCHEARTAIGH: Of course.

18 CHAIRMAN: In other words, from where are these
19 questions coming from, is the knowledge he needs.

20 MR. Ó MUIRCHEARTAIGH: Thank you, Chairman. I am Finan 11:20
21 Ó Muircheartaigh and I represent Alison O'Reilly, a
22 journalist with the Irish Mail.

23 297 Q. I understand you took questions from journalists and
24 you provided background material later to help the
25 responses to journalists' queries. The question I'd 11:20
26 like to ask you is: Did you ever field any questions
27 about Sergeant McCabe? Did any journalist --

28 A. No.

29 298 Q. Did you pick up the phone and hear a question about

1 Sergeant McCabe?
2 A. No.
3 299 Q. And did you speak to any member -- did any member of
4 the Press Office ever speak to you and say, today I got
5 a question about Sergeant McCabe, do you know anything 11:21
6 about it?
7 A. I have no recollection of any conversation concerning
8 Sergeant McCabe in the Press Office at all.
9 300 Q. Thanks very much.
10 11:21
11 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL
12 O' HIGGINS:
13 301 Q. MR. MÍCHEÁL O' HIGGINS: Mr. wren, just a few questions.
14 Mícheál O'Higgins on behalf of An Garda Síochána. You
15 have indicated to Mr. Marrinan that you provided a 11:21
16 statement to the Clerkin investigation, isn't that so?
17 And do you have that there in front of you? Page 2400
18 in the materials. In fact, on page 2401 you detail a
19 number of contacts, I think, that Superintendent Taylor
20 had with you at a point in time after he had left the 11:21
21 Press Office, do you see that there in the second line
22 down?
23 A. Yeah.
24 302 Q. And I think you indicate in your statement that you
25 kept in contact with Superintendent Taylor perhaps 11:22
26 about once or twice a month, would that be about right?
27 A. Approximately, yes.
28 303 Q. Right. And I think do you have any -- do you have any
29 recollection of this, I think you were brought through

1 a number of texts or phone contacts from phone records,
2 do you remember that?

3 A. Yes.

4 304 Q. And you were asked, for instance, if you'd any memory
5 of a tiger kidnapping in Malahide, in a news story 11:22
6 about a tiger kidnapping in Malahide?

7 A. Yes.

8 305 Q. Do you remember being asked about that?

9 A. In the -- as part of the investigation?

10 306 Q. Yes. 11:22

11 A. Yes, yes.

12 307 Q. Yes.

13 CHAIRMAN: This was happening 2015, thereabouts, was
14 that right?

15 MR. MÍCHEÁL O' HIGGINS: well, the relevant text -- 11:22
16 relevant phone records, Chairman, related to a call
17 from David Taylor on 25th September 2014.

18 CHAIRMAN: Yes. So it was a couple of months after.

19 MR. MÍCHEÁL O' HIGGINS: Yes, after he had left.

20 308 Q. So do you recall any request from Superintendent Taylor 11:23
21 or any contact from him that pertained to a tiger
22 kidnapping in Malahide in and around that period?

23 A. I don't recall.

24 309 Q. All right. I think, do you see on page 2401 there, you
25 were asked about phone records, about the second half 11:23
26 of that page, phone records from 10th November 2014 and
27 text messages between yourself and David Taylor, do you
28 see that?

29 A. Yes.

1 310 Q. And I think you were asked, there is a reference in
2 your statement to a particular text message at 12:24,
3 and you had given a reply "Cancel that person until you
4 hear from me a little bit later" and you also sent a
5 text at 12:41 "Good to go". 11:24
6 A. Yes.
7 311 Q. I think you were asked to what do those various
8 contacts relate. Do you have a memory of that at all?
9 A. No.
10 312 Q. So by being shown the records it didn't jog for you the 11:24
11 particular matters to which those contacts related?
12 A. No.
13 313 Q. All right. And I think you were also asked about a
14 message at 12:04 on the 10th November 2014, again this
15 was a text message about a stolen laptop that was sent 11:24
16 between David Taylor and another person. Do you recall
17 being asked about that?
18 A. Yes.
19 314 Q. Can you assist us with what that relates to?
20 A. No. 11:24
21 315 Q. You have no memory of that?
22 A. It, a stolen laptop meant nothing to me, when I was
23 asked in the investigations. It still doesn't.
24 316 Q. All right. Thanks very much indeed. 11:24
25
26 CHAIRMAN: So, sorry, Mr. Marrinan, did you have any
27 other questions?
28 MR. MARRINAN: No.
29

1 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN

- 2 317 Q. CHAIRMAN: So your contacts with Superintendent Taylor
3 after you left, I suppose when someone leaves an
4 office, I mean, it's like one of those situations where
5 someone goes away but nonetheless they stay in touch 11:25
6 for a while, and you may be talking about more or less
7 the same things as you would have been talking about
8 when he was in the Press Office and that would, I
9 suppose, seem pretty natural to you?
- 10 A. To a degree. I suppose as a superintendent who was 11:25
11 very hands-on in his role in the Press Office, when he
12 left to maintain an interest.
- 13 318 Q. CHAIRMAN: Yes. But what I understood was, it was
14 discovered that you had a particular talent for writing
15 briefings for -- 11:25
- 16 A. Well, I would have started early drafts of --
- 17 319 Q. CHAIRMAN: of stuff.
- 18 A. -- of material, yes.
- 19 320 Q. CHAIRMAN: And then, they would have been refined later
20 on, but you would have put stuff together. 11:26
- 21 A. Yes.
- 22 321 Q. CHAIRMAN: So was he ringing you up about cases, what
23 is happening in such-and-such a case?
- 24 A. I can't recall specifically, in terms of what he was
25 ringing, but he would have rung asking about how things 11:26
26 were in general and occasionally would have asked about
27 specific matters, yes.
- 28 CHAIRMAN: That is grand. Thank you.
- 29

1 THE WITNESS THEN WITHDREW

2

3 MR. MARRINAN: Sergeant Margaret Flanagan, please.

4

5 SERGEANT MARGARET FLANAGAN, HAVING BEEN SWORN, WAS

11:26

6 DIRECTLY EXAMINED BY MR. MARRINAN:

7 322 Q. MR. MARRINAN: I think, Sergeant Flanagan, you have
8 been working in the Press Office since July of 2007, is
9 that right?

10 A. That's correct.

11:27

11 323 Q. And you provided a relatively short statement to the
12 Tribunal which is at page 2867 of the material and it's
13 dated the 9th November of 2017. What was your role and
14 function in the Press Office?

15 A. When I went in, in June/July 2007, we would have had a
16 superintendent there, Kevin Donoghue, and there was
17 sergeants up in the main Press Office, which is the
18 office my colleagues have described, the front office
19 as such, answering phone queries, dealing with emails,
20 media queries, and day-to-day running of the office.

11:27

11:27

21 324 Q. Right. And I suppose in the ten years up until when
22 you made your statement to the Tribunal, were there any
23 changes in the Press Office that could you see?

24 A. Very much so. Well, a number of changes: Kevin
25 Donoghue would have been my first superintendent, then
26 he was replaced by -- sorry, the Director of
27 Communications was appointed, Sinéad McSweeney came in,
28 then Kevin moved on, he was appointed to chief
29 superintendent and John Gilligan came in, he was

11:28

1 superintendent. will I keep going with all the
2 changes?

3 325 Q. well, I am more not just talking about the changes in
4 personnel but perhaps the change in the working
5 environment. 11:28

6 A. Very much so, yeah. There would have been, initially
7 when I first joined we would have had a clipboard --
8 John Ferris would have gave that in his evidence, a
9 clipboard in relation to what stories of the day, what
10 was being said and what was the line we were to take. 11:28
11 Then Spotlight came into the office and the lines are
12 on Spotlight in relation to dealing with media queries.

13 326 Q. And I think Superintendent Taylor came in --
14 A. He arrived.

15 327 Q. -- as Press Officer in July of 2012, is that right? 11:29
16 A. If that's the date, yes.

17 328 Q. And how did you relate to Superintendent Taylor?
18 A. He wouldn't really have engaged with me, Superintendent
19 Taylor wouldn't have.

20 329 Q. why was that? 11:29
21 A. He didn't like me from the day he landed, I suppose
22 would have been the vibe of the office.

23 330 Q. All right. So you didn't really have any sort of
24 working relationship with him?
25 A. Professional -- well, I kept it as professional as 11:29
26 possible. I went in, did my work and went home.

27 331 Q. All right. was this a difficult time for you in the
28 Press Office?
29 A. Very, very difficult.

1 332 Q. Well, I suppose then you were probably glad that he got
2 transferred in late May of 2014?
3 A. Well --
4 333 Q. But you remained on?
5 A. I did. 11:29
6 334 Q. Just dealing with our terms of reference. You are
7 aware of the Tribunal's terms of reference?
8 A. Yes.
9 335 Q. And you are aware of the Sergeant McCabe controversy?
10 A. Yes. 11:30
11 336 Q. And how it developed in late 2013, into 2014, is that
12 right?
13 A. That's correct, yes.
14 337 Q. I suppose, first of all, were there any rumours or
15 discussions in the Press Office about Sergeant McCabe 11:30
16 and his background?
17 A. No, not -- no, I mean, the office, the working of the
18 office upstairs was, it was like a fire brigade action,
19 we dealt with daily media queries, constantly moving,
20 revolving, stories. We are the national Press Office, 11:30
21 so we were dealing with stories all around the country,
22 murders, fatal road traffic collisions, and it was --
23 you were kept busy from the time you started your tour
24 of duty until the time you finished your tour of duty.
25 So there would have been very -- like, of course if 11:30
26 Sergeant McCabe's name was in the media we would have
27 got media queries about it, but the media didn't really
28 ask very much at our level.
29 338 Q. All right.

1 A. We wouldn't have been asked much.

2 339 Q. But was there talk within the Press Office about
3 Sergeant McCabe?

4 A. Not that I can remember, no.

5 340 Q. When did you first hear about the allegation of sexual 11:31
6 assault?

7 A. When it broke in the media.

8 341 Q. When it broke in the media?

9 A. Yes.

10 342 Q. So there was no discussion in the Press Office that you 11:31
11 were aware of?

12 A. No, he was only -- like, of course he would have been
13 the -- the name would have been mentioned, he was a
14 member of An Garda Síochána, he had, I suppose, broken
15 and gone and said what he was saying, but after that, 11:31
16 it wasn't really discussed.

17 343 Q. All right. And you are aware of the protected
18 disclosure that has been made by Superintendent
19 Taylor --

20 A. I am. 11:31

21 344 Q. -- is that right? And the allegation that he is making
22 against former Commissioner Callinan and also against
23 former Commissioner O'Sullivan?

24 A. I am, yes.

25 345 Q. Did Superintendent Taylor at any time say to you that 11:31
26 you were to say something negative to the media about
27 Sergeant McCabe?

28 A. No, no, he never -- like I said, he didn't engage with
29 me.

1 346 Q. Did you hear any whisperings or talk at all in the
2 Press Office in 2013 and 2014 in relation to briefing
3 the media negatively about Sergeant McCabe?
4 A. No. 11:32

5 347 Q. Had you a good working relationship with your other
6 colleagues in the Press Office?
7 A. Yes, that is, I suppose, the -- the support I was
8 getting from my colleagues is the reason I stayed.

9 348 Q. Well, would you have expected if there had have been a
10 campaign of that nature against Sergeant McCabe, to
11 spread -- 11:32
12 A. I am sorry I don't --

13 349 Q. If there had have been a campaign of the nature as
14 described by Superintendent Taylor against Sergeant
15 McCabe, do you think you would have picked up on it or 11:33
16 would you have expected to pick up on something like
17 that in the Press Office if there was a campaign of
18 that nature?
19 A. Yes, there would have been discussion, chitchat,
20 kitchen talk, tea talk, absolutely, I would think. 11:33

21 350 Q. So we know in February, late February/early March of
22 2014 that Eavan Murray and Debbie McCann went to the
23 home of Ms. D, was there any inquiry made of you by
24 them as to the background of Ms. D or her address?
25 A. No. 11:33

26 351 Q. Did you hear anything about that at the time?
27 A. The first wording of Ms. D was in the newspaper.

28 352 Q. I was going to ask you about that. Do you recall the
29 story about Ms. D breaking in the newspaper and

1 articles, four articles by Paul Williams in April of
2 2014?

3 A. No. Again, those journalists, they would not have
4 liaised much with the Garda Press Office. Paul
5 Williams, I have never spoken to him in the Press 11:34
6 Office. Eavan Murray, again I would never have had any
7 dealings with Eavan Murray. And Debbie McCann, oddly
8 she would phone, but again, not very much.

9 353 Q. Right. And when Superintendent Taylor left, it's
10 apparently in late June but he was notified that he was 11:34
11 going in -- at the end of May, did you have any contact
12 with him thereafter?

13 A. No.

14 MR. MARRINAN: No. Right. would you answer any
15 questions, please. 11:34
16

17 MR. McDOWELL: No questions.

18 MS. BURNS: No questions, Chairman.

19

20 THE WITNESS WAS EXAMINED BY MR. WHELAN: 11:34

21 354 Q. MR. WHELAN: Sergeant, can I just ask you a couple of
22 questions in terms of their context? Firstly, there
23 were four sergeants working in the Press Office, isn't
24 that correct?

25 A. Seven. 11:34

26 355 Q. Seven sergeants, sorry, seven sergeants because of
27 course there was a shift system?

28 A. Exactly.

29 356 Q. And am I correct in saying that on any given shift up

1 in the Press Office room itself there would be a
2 sergeant leading the team, is that correct?

3 A. Correct, yes.

4 357 Q. There were no officers of Garda rank in the Press
5 Office, that role had been civilianised and -- 11:35

6 A. That's correct.

7 358 Q. -- that clerical assistants from the main Civil Service
8 were recruited to that function, isn't that correct?

9 A. That's correct.

10 359 Q. And we have heard from those, some of those today, 11:35
11 isn't that correct? So the sergeant, the uniformed
12 sergeant oversaw, as it were, the civilian personnel
13 who were manning the calls in the general Press Office
14 room, isn't that correct?

15 A. That would have been the normal run-of-the-mill -- 11:35

16 360 Q. Okay.

17 A. -- of the office but it sort of slightly changed when
18 Superintendent Dave Taylor was in charge, he would have
19 taken control of everything really.

20 361 Q. And quite apart and just to assist the Chairman, 11:35
21 perhaps clarity, quite apart from those civilians of
22 clerical officer grade who were in the general Press
23 Office, Ms. O'Grady was a clerical officer grade but
24 she was assigned to be personal assistant and support
25 to Superintendent Taylor and Mr. McLindon ultimately, 11:35
26 isn't that correct?

27 A. That would be correct, she would be more in a
28 administration role in the back office, not dealing
29 with media.

1 362 Q. In a separate room?
2 A. Completely.
3 363 Q. Can I just ask you another matter then for context:
4 You were there since 2011, when you came to the Press
5 Office Kevin Donoghue, who was of superintendent rank, 11:36
6 was the Press Officer, isn't that correct?
7 A. That's correct.
8 364 Q. And he was promoted out of the Press Office I think to
9 Crime and Security and became a chief superintendent on
10 his leaving the Press Office, isn't that correct? 11:36
11 A. That's correct, yes.
12 365 Q. And then I think John Gilligan, who was a
13 superintendent, most recently in Mayo, became the Press
14 Officer, again at superintendent rank, isn't that
15 correct? 11:36
16 A. That's correct. And the newly appointed Director of
17 Communications came in between Kevin and John.
18 366 Q. Okay. But in terms of John Gilligan, he also was
19 promoted out of the Press Office to the rank of chief
20 superintendent to another -- 11:36
21 A. L&P, Liaison and Protection.
22 367 Q. Which is another sensitive high profile role in
23 Headquarters?
24 A. Yes.
25 368 Q. Or perhaps more correctly a low profile role but a 11:37
26 significant one in Headquarters, is that correct?
27 A. Correct.
28 MR. WHELAN: Thank you very much.
29

1 CHAIRMAN: No questions, Mr. Marrinan?

2

3 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN

4 369 Q. CHAIRMAN: Sergeant Flanagan, I don't know whether this 11:37
5 was just a kind of a personal animosity that sprung up
6 against you for absolutely no reason at all, I mean it
7 it can happen, I think everybody realises that; but was
8 there something else in it? I mean --

9 A. Not that I am aware of, Mr. Chair. I mean, I did my 11:37
10 work the same as every other sergeant in the office.
11 But the -- I don't know, the dislike, whatever the word
12 you'd like to use, was nearly from the day he landed.
13 Is that what you mean, Chair?

14 370 Q. CHAIRMAN: I don't really know, I am just trying to 11:37
15 understand it, because you know, calls afterwards,
16 etcetera, you may feel yourself fortunate now --

17 A. No, absolutely --

18 371 Q. CHAIRMAN: -- that you didn't get calls or you weren't
19 used as a sounding board after he left?

20 A. Chairman, he didn't engage with me when I was there, so 11:38
21 he would have hardly engaged with me after. And the
22 reference in other people's statements in relation to
23 me, her, and -- I don't need to go on.

24 372 Q. CHAIRMAN: No, no, I saw that, and clearly that can't 11:38
25 be pleasant for you. But there you go.

26 A. And Chair, these were civilian members of staff telling
27 me that the superintendent is on the phone, I was the
28 sergeant that would have been in the office, this is
29 civilian members of staff saying that's the super on

1 the phone but he has told me not to say he was on,
2 which would have been --

3 373 Q. CHAIRMAN: well, it's hurtful.

4 A. Yes.

5 374 Q. CHAIRMAN: No, I understand that. I mean, I don't know 11:38
6 how things started off, I mean, sometimes one can make
7 a joke perhaps and people can take it wrong. I know my
8 late sister once told a pilot, she was an air steward,
9 that he was only a glorified bus driver, but I mean, he
10 laughed. He laughed. So was there anything like 11:39
11 that --

12 A. I have no reason to know why, I have no factual -- I
13 don't know. I mean, you know, people -- the lads, the
14 boys in the office -- sorry, my fellow colleagues, the
15 sergeants, would have -- it was quite obvious that we 11:39
16 did not engage or he did not engage. I tried to -- I
17 did my work as best I could, and no more than when you
18 are going through a storm like that, it's only when the
19 storm is over you realise --

20 375 Q. CHAIRMAN: How bad it was? 11:39

21 A. -- how bad it is.

22 376 Q. CHAIRMAN: Was it a question of pomposity or him
23 thinking I am more important than everybody else? And
24 again, please don't let me put words in your mouth, I
25 am only trying to understand if that is a bad 11:39
26 suggestion it is a bad suggestion.

27 A. Yeah. His role of management was very different to
28 what had been previously with Kevin and John, the
29 previous two superintendents. I suppose control would

1 have been a word I would have used for him.

2 377 Q. CHAIRMAN: Yes.

3 A. And again, I was the rank of sergeant, always aware I

4 was the rank of sergeant, so if I got a direction I

5 followed a direction and that is what we do in An Garda 11:40

6 Síochána. And a superintendent, as somebody said

7 earlier, was two ranks above me, so you do what you are

8 told and you don't question, which I didn't, but I

9 don't know, then the boys used to say I was the only --

10 you know, the female sergeant, I think it was banter, I 11:40

11 think --

12 378 Q. CHAIRMAN: But you didn't think there was misogyny?

13 You couldn't figure it out?

14 A. No.

15 379 Q. CHAIRMAN: There it was. So the other thing is, I know 11:40

16 Mr. Marrinan mentioned this to you, but it is a thing

17 that I remain puzzled about. So, look, from time to

18 time, Gardaí being human, will get involved in things

19 that they shouldn't, like circumstances where it is

20 reasonable to suppose at least that they may have 11:41

21 committed a criminal offence. Now, on the other hand,

22 people can just make allegations, such as let's say a

23 sergeant arrests someone outside a pub and there is the

24 usual thing of, if the person who is being arrested

25 tries to bash the sergeant and the sergeant defends 11:41

26 himself or takes out his baton, there may be an

27 allegation of assault against the sergeant which would

28 be completely wrong, so these things did occur, and

29 sometimes - it doesn't happen very often - but gardaí

1 end up actually in the criminal courts as an accused.
2 So that is unusual. But what I tend to wonder about
3 is, when the Paul Williams articles came out, the first
4 two were about, the woman the in Cavan-Monaghan
5 district alleges that her allegation of sexual assault 11:42
6 against a garda member was not properly investigated.
7 I would have thought there would be a lot of chat about
8 that in the Press Office, that it would get on to
9 Spotlight, that you'd get a direction, that it would
10 have caused a stir because it doesn't happen very 11:42
11 often. And then the other aspect of it is, gardaí
12 pride themselves, whether it's one of their own who are
13 accused or whether it is a non-garda who is accused,
14 that they do the same job, and here is an allegation
15 that there was some kind of favouritism. And I am very 11:42
16 puzzled about the lack of any resonance in the Press
17 Office about that. Can you help on that at all?

18 A. I can't help, but in relation to, you know -- Chair,
19 when we were dealing in the Press Office, you know, you
20 are dealing with everyday queries, and if a story broke 11:42
21 of a guard, I suppose we probably just said, "there is
22 another one", and that is the way it has -- that is the
23 way it was or that is the way it is in the Press
24 Office, because, I mean, I work in the Press Office, I
25 don't read the papers the days I am off, I don't look 11:43
26 at the news, you know, I switch off completely, so when
27 I am in, I do my job and I am media-related and
28 up-to-date stories, but when I am off, that's it. No,
29 I honestly don't remember anything about Ms. D or --

1 380 Q. CHAIRMAN: I suppose she wasn't called Ms. D and she
2 wasn't identified. But, then again, the point made is
3 that if you are a garda in the Cavan-Monaghan division
4 and you heard things, which people obviously would
5 have, then that would be identified as this is coming 11:43
6 into prominence, and if they had reached the conclusion
7 that this is Sergeant McCabe, then maybe the Garda
8 Press Office or Headquarters would have reached that.
9 And then it just doesn't end with the two articles
10 about, you know, a bad investigation; she is to meet 11:43
11 Micheál Martin, then she has met Micheál Martin. So
12 there is four articles in a row, none of them very long
13 or saying terribly much, but, nonetheless, I am puzzled
14 that it doesn't cause any kind of a stir.

15 A. No, I mean, unless there was a line on spotlight, which 11:44
16 I am not aware of, but if there was, I would have given
17 the line out at the time, that this was the line as
18 in -- I mean, if there was nobody named, well, we
19 wouldn't have named on -- we wouldn't comment on named
20 individuals. Journalists would sometimes ask, what do 11:44
21 you think of this or what do you think of that? You
22 just, you know, you just maybe speak to them, but you
23 are not giving your opinion or -- you know, when you
24 join An Garda Síochána, when you join the Garda Press
25 Office, you are always told you are speaking on behalf 11:44
26 of the Commissioner, so it's very much the formal line
27 is what we give when we are on the phone to media and
28 outside agencies.

29 381 Q. CHAIRMAN: Yes. I may be wrong in thinking this, but

1 you regard rules and regulations as very important in a
2 large organisation and following not so much the party
3 line but the line given in not stepping over that mark?

4 A. Absolutely, yes.

5 382 Q. CHAIRMAN: Yes. Because that is what you are there 11:45
6 for?

7 A. As somebody made reference that there was gardaí rank
8 in the Press Office at one stage prior to me coming in,
9 and that is what happened, the gardaí were replaced by
10 the sergeant because the line was not being followed, 11:45
11 the formal line was not being followed, so the
12 Commissioner of the day changed that, all the guards
13 were transferred out and the sergeants, only sergeant
14 rank were brought in.

15 383 Q. CHAIRMAN: And not to say anything against individual 11:45
16 gardaí, but there was more confidence that you would
17 follow that, that is the idea?

18 A. I think that was the idea, yes.

19 CHAIRMAN: Yes. Okay. Well, thank you very much.

20 11:45

21 THE WITNESS THEN WITHDREW

22

23 MS. LEADER: The next witness, sir, is Chief
24 Superintendent Frank Clerkin. His statement is in
25 volume 16, page 4177, and a report he completed is in 11:46
26 volume 9 of the materials.

27 CHAIRMAN: Yes. Just as we are going into that,
28 Ms. Leader, maybe I could ask Mr. O'Higgins, if there
29 was any reference on Spotlight to any of the four Paul

1 williams articles, I know it's not something that would
2 ordinarily be covered by discovery as such, but if you
3 wouldn't mind just having a look and seeing is there
4 anything there.

5 MR. MÍCHEÁL O' HIGGINS: Certainly, Chairman, we will 11:46
6 check that and we will do our best to answer that
7 query.

8 CHAIRMAN: All right. Thank you.
9

10 CHIEF SUPERINTENDENT FRANCIS CLERKIN, HAVING BEEN 11:46
11 SWORN, WAS DIRECTLY EXAMINED BY MS. LEADER:

12
13 384 Q. MS. LEADER: Chief superintendent Clerkin, could you
14 outline to the Tribunal your career in An Garda
15 Síochána to date. 11:47

16 A. Yes, Mr. Chairman, I have been a member of An Garda
17 Síochána since 1978. I spent most of my service in
18 Dublin City Centre on frontline policing. I did spend
19 a number of years up in Donegal. I also spent a number
20 of years in DMR Traffic at superintendent level. I was 11:47
21 promoted to the rank of chief superintendent in 2012,
22 and initially I was sent to Ballymun and took charge of
23 the DMR North division, and in February 2015 I was
24 transferred back into Dublin City Centre, taking charge
25 of DMR South Central division, working from Pearse 11:47
26 Street Garda Station.

27 385 Q. Are you working from Pearse Street Garda Station to
28 this day?

29 A. That's correct.

1 386 Q. Now, I think in or around July 2014, you were appointed
2 to head up a particular investigation, is that correct?
3 A. That's correct, Mr. Chairman, yes.

4 387 Q. Now, that particular investigation stemmed at the
5 outset from a special inquiry which had been conducted 11:48
6 by Ms. Logan, is that correct?
7 A. That's correct, yes.

8 388 Q. And I think generally she was looking at issues arising
9 from the invoking of Section 12 of Childcare Act in
10 respect of two children, one in Tallaght and one in 11:48
11 Athlone?
12 A. That's correct, yes.

13 389 Q. And she came to a particular conclusion at the end of
14 her report, is that correct?
15 A. That's correct, she came to a conclusion that there was 11:48
16 possibly breaches of discipline or breaches of
17 legislation by members of An Garda Síochána in relation
18 to information that got into the media both at Tallaght
19 and at Athlone.

20 390 Q. And I think you have set that out at page 4178 of your 11:48
21 statement. You say:
22
23 "Ms. Logan found that, in respect of an incident
24 involving a child taken into care in Tallaght, Dublin
25 24, on 21st October 2013 and the invoking of Section 12 11:49
26 of the Childcare Act 1991 as amended, that a member of
27 An Garda Síochána disclosed details of the incident and
28 the child involved into the public domain, contrary to
29 Garda policy and legislation. "

1 A. That's correct.

2 391 Q. Now, I think, arising out of that, you were appointed
3 to conduct an investigation into her conclusion?

4 A. That's correct. I was appointed by Assistant
5 Commissioner John Twomey to inquire into it both from a 11:49
6 disciplinary point of view and from a criminal aspect.

7 392 Q. Now, first of all in relation to your appointment and
8 who appointed you, Assistant Commissioner Twomey at
9 that stage was attached to where?

10 A. Assistant Commissioner Twomey was attached to the -- he 11:49
11 was an assistant commissioner for the Dublin area,
12 though I think he was also working in Garda
13 Headquarters at the time, but he was my boss as the AC
14 for the city.

15 393 Q. And he was your line manager? 11:50

16 A. That's correct, yes.

17 394 Q. All right. And did he appoint you by letter or did he
18 phone you up or did he speak to you about your
19 appointment and the remit of the investigation?

20 A. Yeah, he rang me up and told me that he was appointing 11:50
21 me to investigate this, and then a number of days later
22 I received a notification in writing setting out
23 exactly what he had told me on the phone, and basically
24 what he was saying to me on the phone was that he
25 wanted me to investigate this matter both from a 11:50
26 criminal and from a disciplinary point of view.

27 395 Q. Okay. Did he give you any directions in respect of who
28 you'd put on your team, so to speak?

29 A. No, as normal, he wouldn't give me any other directions

1 around that. He just told me I was to investigate it.
2 It was up to me to establish an investigation team to
3 do the -- to carry out that work, and that is what I
4 did.

5 396 Q. All right. And at that time you were in Ballymun, is 11:51
6 that correct?

7 A. At that time I was the chief superintendent in
8 Ballymun, yes.

9 397 Q. Who did you appoint to your team?

10 A. I appointed Detective Superintendent Jim McGowan, I 11:51
11 appointed Inspector Dave Gallagher, I appointed
12 Sergeant Thelma Waters, I appointed Sergeant Brian
13 Kavanagh and Garda Ross Rowan. They were all part of
14 my staff in the DMR North division. Some of them had
15 worked -- were working in Balbriggan station and others 11:51
16 were working in Ballymun. I would have known all of
17 those individuals, having spent -- having worked with
18 them previously or known them previously throughout my
19 career. And when I was selecting Superintendent
20 McGowan, I was conscious that he was a senior 11:51
21 investigator, I was conscious that he was an
22 experienced investigator and I was also conscious that,
23 at a particular point in time, it possibly would be
24 necessary to interview people at superintendent level
25 within An Garda Síochána, so I felt it was important to 11:52
26 have someone working with me at superintendent level.

27 398 Q. All right. And insofar as there is a suggestion that
28 Detective Superintendent McGowan was put on the
29 investigation team by or under the direction of former

1 Commissioner O'Sullivan, what do you have to say to
2 that?

3 A. Well, that is just simply not correct. It was entirely
4 up to me to select who I wanted to. Like, I mean, I
5 could have gone back into town and selected a detective 11:52
6 superintendent from the city centre or I could have
7 indeed -- I had other superintendents working for me in
8 DMR North at the time that I could have selected. I
9 chose not to.

10 399 Q. Okay. Did you have any discussion with former 11:52
11 Commissioner O'Sullivan in relation to the
12 investigation up to that point?

13 A. No, I had no discussion with former Commissioner
14 O'Sullivan at any point around this investigation.

15 400 Q. Okay. Who did you report to? 11:52

16 A. I reported to Assistant Commissioner John Twomey.
17 CHAIRMAN: Ms. Leader, at this point it may be
18 forgotten, but, as I understand it, Jim McGowan and
19 Nóirín O'Sullivan are married to each other, and maybe
20 that should be confirmed by a witness. 11:53
21 MS. LEADER: Yes, maybe.

22 A. Well, they are, yes.
23 CHAIRMAN: All right.

24 401 Q. MS. LEADER: I think have been for a very long time;
25 it's well-known within Garda circles? 11:53

26 A. Well, it's well-known. I personally don't know, but,
27 like, they are married, yes, of course they are.

28 402 Q. Now, first of all, I want to establish with you the
29 methodology of the investigation team. Did you have an

1 incident room in Ballymun?

2 A. Yes, we -- I established an incident room in Santry
3 Garda Station. Superintendent McGowan and I would be
4 setting the strategy for the investigation, whereas
5 Inspector Gallagher and Sergeant Thelma Waters, who 11:53
6 would be an IRC, incident room coordinator, would be
7 doing the day-to-day management of the investigation.
8 Sergeant Kavanagh and Garda Rowan was doing lots of the
9 work in terms of taking statements, and so forth. But
10 it was also part of the strategy that statements would 11:54
11 be shared particularly at the higher levels where they
12 had -- where people had to be interviewed.

13 403 Q. All right. And did you understand that as much
14 resources as were needed were to be put into this
15 investigation, or did you have any understanding with 11:54
16 regard to resourcing the investigation?

17 A. The resourcing of the investigation was entirely a
18 matter for me. As I said, when Assistant Commissioner
19 Twomey gave me the job to do, he didn't give me any
20 instructions other than to carry out the investigation. 11:54
21 How I was going to go about it and the number of
22 resources that I was going to put into it was entirely
23 a matter for me.

24 404 Q. Just finally with regard to the setting up of the
25 investigation, is it any way unusual that an 11:54
26 investigation, a Garda investigation would be set up
27 after a public finding such was made by Ms. Logan?

28 A. No, it would be quite - not common, but that would be
29 the standard format that would happen, that is the way

1 it would arise, an assistant commissioner would appoint
2 usually a chief superintendent to carry out the
3 investigation and it would be up to the chief
4 superintendent to assemble their team and get on with
5 it. 11:55

6 405 Q. Okay. Now, if I could just go to the Tallaght
7 disclosure in relation to that. There was a young
8 child taken into care on the 21st October 2013, isn't
9 that correct?

10 A. That's correct, yes. 11:55

11 406 Q. And thereafter, there was a media publication in
12 respect of that taking into care of that child on the
13 22nd, is that correct?

14 A. At 11:30 a.m. on the 22nd there was an exclusive media
15 story. 11:55

16 407 Q. All right. And in relation to that media story, it
17 hadn't come from the Press Office, is that correct?

18 A. No, it hadn't come from the Press Office, no.

19 408 Q. In authorised --

20 A. It hadn't been authorised. There was a media strategy 11:56
21 around managing the incident from the press, but there
22 was no -- the Press Office didn't release the story,
23 no.

24 409 Q. I see. So I think you and your team set about finding
25 out who had the relevant information at the outset, is 11:56
26 that correct?

27 A. Yeah, that's correct, yeah.

28 410 Q. So you identified a number of parties who had been
29 involved in the taking into care of the child, is that

1 correct?

2 A. That's correct, yes.

3 411 Q. And you also saw that an inspector who was stationed in
4 Tallaght had compiled a patrol report in relation to
5 the taking into care of the child, is that right? 11:56

6 A. That's correct, yes.

7 412 Q. And that's a routine document, as I understand it, that
8 is put together after a Garda operation?

9 A. Yeah, that is normal for a person of inspector rank, to
10 prepare a written report to pass up the line to the 11:56
11 local chief superintendent and to the assistant
12 commissioner of the area. It's normal.

13 413 Q. And it's a report prepared for Garda purposes?

14 A. It's a report prepared for internal use, yes.

15 414 Q. Okay. And I think at an early stage it was observed 11:57
16 that the patrol report and the press coverage of the
17 incident shared certain similarities, is that correct?

18 A. Yes, that's correct. There was certain similarities
19 from the report prepared by the inspector and the
20 exclusive story that was published. 11:57

21 415 Q. All right. So what steps did your investigation team
22 take when you had that information to hand?

23 A. Well, when we had -- once we established that, our next
24 approach was to establish who had possession of the
25 patrol officer's report. We became aware it was 11:57
26 emailed to a number of parties, particularly in the DMR
27 South division and at assistant commissioner level. So
28 our strategy was to interview anybody that had
29 possession of the inspector's report as a witness, to

1 establish what they did with it and who they spoke to
2 around it and if they, in fact, had given it to the
3 media.

4 416 Q. All right. And in the course of those interviews, you
5 interviewed all of those people, but in particular two 11:58
6 people, the district officer in charge of Tallaght, is
7 that correct?

8 A. That's correct.

9 417 Q. And also Superintendent David Taylor?

10 A. That's correct. And they were being interviewed as 11:58
11 witnesses just in the normal course of events.
12 Certainly, we knew that they had -- the media -- they
13 had possession of the inspector's report prior to it
14 becoming a media event; in other words, prior to it
15 being published. 11:58

16 418 Q. Okay. But they weren't the only people interviewed, is
17 that correct?

18 A. Oh, not at all, no, no. Anybody who had possession of
19 it was interviewed. It just happened that they were at
20 superintendent level and it was decided that, by myself 11:59
21 mainly, that Superintendent Taylor, I should interview
22 him myself with the inspector, and indeed the
23 superintendent in Tallaght should be interviewed by
24 Superintendent McGowan. It's important to note that
25 they were interviewed at different times. The 11:59
26 superintendent in Tallaght was interviewed in October,
27 while Superintendent Taylor was interviewed in
28 November.

29 419 Q. Okay. And the superintendent in Tallaght told you that

1 he didn't speak with the media about the investigation
2 and that he advised any member of the media to refer
3 the matter to the Press Office, is that correct?
4 A. That's correct, yes.
5 420 Q. And in relation to Superintendent Taylor, he outlined 11:59
6 to the investigation team that he only became aware of
7 the Tallaght incident once it became a media event, is
8 that correct?
9 A. That's correct, yes.
10 421 Q. Now, the next thing, as I understand it, that your 12:00
11 investigation team did, was get call billing records in
12 respect of people who had the relevant information, is
13 that correct?
14 A. That is correct, yes.
15 422 Q. And that took some time, is that correct? 12:00
16 A. At the time of those statements being taken, the
17 billing records, we had applied for them but they were
18 not available to us. They didn't become available to
19 us until sometime in early or mid-December 2014.
20 423 Q. Right. And those billing records were then analysed by 12:00
21 the appropriate experts, is that correct?
22 A. That's correct, yes.
23 424 Q. And that is a large body of work, is that correct?
24 A. Yes, it takes a good bit of work to do it, yes.
25 425 Q. Now, what the analysis, and correct me if I am wrong 12:00
26 about this, Chief Superintendent, of those billing
27 records showed, was that the district officer in
28 Tallaght had been in touch with Superintendent Taylor
29 around the time of the children being taken into care,

1 and Superintendent Taylor, in or around the same time
2 and interspersed with being in contact with the
3 superintendent in Tallaght, had been in contact with a
4 named journalist, who was the journalist who published
5 the exclusive? 12:01

6 A. That's correct.

7 426 Q. That is a fair summary of what happened?

8 A. Yes, that is correct, yes.

9 427 Q. So what did that lead you to do in your investigation?

10 A. Well, at that stage, I felt I had a difficulty, and 12:01
11 certainly I was disappointed that the superintendent in
12 Tallaght and indeed the superintendent in DMR Traffic,
13 Superintendent Taylor, hadn't told me at the time that
14 they had been in communication around the time the
15 media event was taking place. I decided that what I 12:02
16 needed to do was to secure both mobile phone devices
17 and I went to the court and I secured a warrant under
18 Section 10 of the Criminal Justice Act to search both
19 an office in DMR Dublin Castle Traffic Office, where
20 Superintendent Taylor was, and the district officer's 12:02
21 office in Tallaght. However, I had it in my head that
22 should both these people cooperate with me, my plan of
23 action was to go, accompanied by Detective
24 Superintendent McGowan, to their offices, tell them
25 that I had a difficulty, that I had certain information 12:02
26 in my possession which suggested that they hadn't been
27 forthcoming to me when I interviewed them initially,
28 and ask them for their mobile devices. Should they
29 cooperate with me, I wasn't going to execute the

1 warrant. As it happened, Superintendent Taylor did
2 cooperate with me and he gave me his phone. I then
3 went straight to Tallaght and I engaged with the
4 superintendent in Tallaght in the same fashion and he
5 gave me his phone also. I put those, both phones, 12:03
6 into -- I sealed them and I gave them to Detective
7 Superintendent McGowan. It was then our plan to have
8 those phones analysed for data and to see what
9 information was on the phone. What we had hoped was
10 that we would be able to clearly establish the movement 12:03
11 of the data between the two phones and establish what
12 exactly had occurred there.

13 428 Q. Now, at this stage -- those phones were taken on the
14 18th December 2014, is that right?

15 A. That's correct. 12:03

16 429 Q. And just for the Tribunal references, we tag the David
17 Taylor phone, which was seized on the 18th December
18 2014, with the initials SM3, just if I refer to it.

19 A. Okay, fine.

20 430 Q. Now, I think what -- you were looking back at an event 12:04
21 which had taken place the year before, is that correct?

22 A. Correct, in 2013, yes.

23 431 Q. 2013. So you expected to see communications covering
24 that period of time, is that correct --

25 A. That's correct, yes. 12:04

26 432 Q. -- when you were looking at the David Taylor SM3 phone?

27 A. That's correct, yes.

28 433 Q. And did that turn out to be the case?

29 A. No, it didn't turn out to be the case. It transpired

1 that the phone we had was not the mobile device that
2 Superintendent Taylor had in October 2013. However, we
3 did see lots of other information on that mobile device
4 which caused me alarm and concern.

5 434 Q. All right. And I think that other information on that 12:04
6 phone suggested that Superintendent Taylor had been
7 passing information to journalists other than in an
8 authorised capacity, is that correct?

9 A. That's correct, yes.

10 435 Q. And you found that information because you were looking 12:05
11 at that phone to see was there any information on it
12 relating to the Roma children, is that correct?

13 A. That is absolutely correct, yes.

14 436 Q. Now, I think you subsequently discovered that that 12:05
15 phone had been issued to Superintendent Taylor in or
16 around the 8th or 9th of September 2014, is that
17 correct?

18 A. That's correct, yes.

19 437 Q. Now, insofar as that date is relevant, Chief 12:05
20 Superintendent, it was a date after Superintendent
21 Taylor had been moved from the Press Office?

22 A. That's correct, he had left the Press Office in June of
23 '14.

24 438 Q. Yes. That's correct. Now, on that phone, I think it 12:05
25 was discovered during the analysis that there were 12
26 distinct incidents of disclosure of sensitive
27 information to journalists, is that correct?

28 A. That's correct, yes.

29 439 Q. And those 12 incidents are listed in your report,

1 starting at page 2216.

2 A. That's correct, yes.

3 440 Q. Now, we don't need to go into the individual instances
4 of them, but I think that led you, as I understand it,
5 to doing what with the initial investigation into what 12:06
6 was one distinct disclosure, alleged disclosure of
7 information?

8 A. It was then broadened out to taking into account the
9 new discoveries that we had made.

10 441 Q. All right. And I think a number of steps were taken in 12:06
11 broadening out that investigation?

12 A. That's correct. We looked for and received call data
13 in relation to that particular phone over the period
14 from 2013 right up until December 2015.

15 442 Q. All right. And when you say 'call data', what are you 12:06
16 referring to there?

17 A. Well, the billing would only ever show us outgoing
18 calls from the mobile phone, whereas the call data
19 would give us a greater picture and also would point us
20 towards data movement and would also give us a flavour 12:07
21 of two-way traffic.

22 443 Q. All right. Now, I think it's set out in tabular form
23 the -- a summary of what was discovered on
24 Superintendent Taylor's phone. But on page 2249, there
25 are particular journalists which Superintendent Taylor 12:07
26 has nominated to the Tribunal as people he negatively
27 briefed about Sergeant McCabe. I think the phone
28 numbers of Eavan Murray, Juno McEnroe, John Mooney were
29 on the phone, is that correct?

1 A. They were, Chairman.

2 444 Q. You can confirm?

3 A. I can confirm.

4 445 Q. The 2014 phone?

5 A. That's correct, yes. 12:08

6 446 Q. Now, you also did a breakdown of the percentage of
7 usage per journalist on the phone, is that correct?

8 A. That's correct, yes.

9 447 Q. And that is at page 2250 of the materials, and it also
10 appears in your statement at page 4184 of the 12:08
11 materials.

12 A. That's correct. In relation to Eavan Murray, it was
13 24% of all the contacts were with her, and that
14 amounted to some 2,800 contacts. In relation to John
15 McEnroe [sic], it was -- 12:08

16 448 Q. It was a smaller amount. Juno McEnroe.

17 A. Sorry?

18 449 Q. Juno McEnroe.

19 A. Juno McEnroe, sorry, it just over 1%. And then John
20 Murray [sic] was a slightly higher percentage. 12:08

21 450 Q. Mr. Mooney, is it?

22 A. Mr. Mooney, yes, was a higher percentage. I just can't
23 make it out here.

24 451 Q. 1.6. If it can be scrolled down.

25 A. Yes, 1.6, or 190 contacts. It's important that, on his 12:09
26 mobile phone during that period, we could see that
27 there was over 11,000 contacts with journalists in that
28 short period from September to December 2014.

29 452 Q. All right. Now, I think the next thing the

1 investigation team did was because of the number -- the
2 concentration of usage to Ms. Murray, the investigation
3 team worked backwards and decided to look at the
4 publications she had published --

5 A. That's correct. 12:09

6 453 Q. -- within a set period of time, is that correct?

7 A. That's correct, yes. And we could then clearly see
8 that a number of the publications from Eavan Murray
9 marked as "exclusive", we could link them to at times
10 where there was contact with Superintendent Taylor. 12:10

11 454 Q. All right. So that dealt with that section of the
12 investigation?

13 A. Correct.

14 455 Q. And I think outlined in your report beginning at page
15 2252, separate media articles are identified which -- 12:10
16 and the corresponding contacts with Superintendent
17 Taylor, and that was gone through in your report?

18 A. That's correct, yes.

19 456 Q. Now, I think the investigation then looked at the email
20 archive, is that correct? 12:10

21 A. That's correct, yes.

22 457 Q. Now, as I understand it, Gardaí are given an email
23 address, which is their name @garda.ie, and that email
24 is archived for a period of six years, is that correct?

25 A. That's correct. 12:10

26 458 Q. And I think other disclosures were identified from
27 Superintendent Taylor's email, is that correct?

28 A. Yes, that's correct. We could see that, again with
29 Eavan Murray, he appeared to be passing on press

1 clippings, I think they were referred to earlier in the
2 Tribunal, press clippings that were sent to senior
3 officers, he seemed to be passing them on directly to
4 Eavan Murray's personal account. He also seemed to be
5 using the critical incidents where he was sending them 12:11
6 from his Garda work email to his own private email.

7 459 Q. All right. If you could just explain the significance
8 of the critical incident reports, please, Chief
9 Superintendent?

10 A. Well, the critical incident reports, they are PDF 12:11
11 documents which are sent again to people at
12 superintendent or chief superintendent level and they
13 are national in that they describe incidents of
14 importance that have occurred nationally over a 24-hour
15 period. They are used, obviously, to inform the local 12:11
16 district officer or chief superintendent of what is
17 happening in their areas of responsibility.

18 460 Q. All right. And the significance of those being
19 forwarded and where they were being forwarded to, if
20 you could explain that? 12:12

21 A. Well, like, they were being forwarded by him, can
22 clearly see, to his own private email, we suspected,
23 but we could never establish, we suspected for the
24 purposes of further passing them on to someone outside
25 the Garda organisation. We did get a warrant to search 12:12
26 his email account; how and ever, we discovered that the
27 majority of the information on that was being
28 continuously deleted.

29 461 Q. All right. And that was on his private email?

1 A. His private email, yes.

2 462 Q. Yes. And in relation to the deletion of texts
3 generally, did ye -- did the investigation team
4 establish anything?

5 A. Yes, a pattern that was common, he was -- we would only 12:12
6 get portions of the messages. He seemed to be
7 frequently deleting messages as he went along. I think
8 it's a figure in or around 70% of the messages were, in
9 fact, deleted.

10 463 Q. All right. And so is it true to say or fair to say, 12:13
11 Chief Superintendent, that the investigation developed
12 incrementally as the investigation team found or came
13 across information?

14 A. That's correct.

15 464 Q. Was it ever envisaged at the beginning of the 12:13
16 investigation that matters other than the Logan --
17 matters emanating from the Logan Inquiry would be
18 investigated?

19 A. No, it was -- initially, the Logan Inquiry was what we
20 were investigating. I did at one particular point in 12:13
21 time, when we discovered all of the information on his
22 phone, I had mentioned it to Assistant Commissioner
23 Twomey and it was agreed that I would continue on and
24 just expand out my investigation.

25 465 Q. All right. And I suppose it is -- it would be, I 12:13
26 suppose, remissive of you as -- of you, in directing
27 and leading up an investigation, that other matters of
28 suspected criminality which came to your attention
29 would not be investigated properly?

1 A. Of course I'd have to investigate them properly, but
2 the pattern that was being shown on his -- on his
3 mobile phone and how he was conducting his business,
4 also went, to my mind, to the credibility of the
5 initial investigation that we were conducting into the 12:14
6 disclosure of the information around Emily Logan's
7 report.

8 466 Q. And I don't quite understand you there, Chief
9 Superintendent.

10 A. Well, it showed a pattern of him disclosing 12:14
11 information, so I kind of felt that that also was
12 part -- it lended credibility to what I was looking at
13 initially.

14 467 Q. Thanks.

15 A. So it, in some way, was validating what we were 12:14
16 suspecting.

17 468 Q. Yes. So in relation -- you have outlined the strands
18 of the investigation. And I think there was a
19 particular event then in February 2015 which caused you
20 to take certain action with regard to Superintendent 12:15
21 Taylor, is that correct?

22 A. Yes, it came to my attention through one of my
23 investigators on the investigation team that in --
24 Superintendent Taylor was actively seeking information
25 in relation to a shooting which had subsequently become 12:15
26 fatal, that he was getting people to contact the
27 communications centre in Harcourt Square seeking
28 particular information around it. That information was
29 disclosed to a member of the team by the inspector in

1 charge of communications, who had concerns around it.
2 When this came to my attention, I decided that the best
3 course of action was again to go back to the courts and
4 seek a warrant and obtain the device that
5 Superintendent Taylor had at the time, and that is 12:15
6 exactly what I did, and I went to his office on the
7 19th February, armed with a warrant, and I executed the
8 warrant and took possession of the second mobile phone
9 from him on that date.

10 469 Q. Okay. And I think we are into February 2015 at this 12:16
11 stage?

12 A. Correct, yes.

13 470 Q. All right. And was there an analysis conducted of that
14 phone?

15 A. Yes, that phone was analysed in the similar fashion at 12:16
16 the original one was, yes.

17 CHAIRMAN: what are we calling that particular one,
18 Ms. Leader? SM3 was the other one, wasn't it?

19 MS. LEADER: SM2.

20 CHAIRMAN: So it's going backwards even though it's 12:16
21 going forwards?

22 MS. LEADER: Yes. Just to confuse matters.

23 471 Q. So that phone, which we call SM2, Chief Superintendent
24 Clerkin, had been issued to Superintendent Taylor on
25 the 18th December 2014? 12:16

26 A. That's correct. When I went to his office in December
27 2014 and he handed over his phone to me, I had
28 arranged, as I did with the superintendent in Tallaght,
29 that a replacement phone using the same SIM card would

1 be made available to them.

2 472 Q. All right. And that phone was in use by Superintendent
3 Taylor until the 19th February, the day you seized it
4 with a warrant although you didn't need to rely on the
5 authority of the warrant? 12:17

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

7 473 Q. Now, that phone was analysed again, is that correct?

8 A. That's correct, yes.

9 474 Q. And in relation to the analysis on that phone, it
10 showed that -- certain journalists' phone numbers saved 12:17
11 on the phone, is that correct?

12 A. That's correct, yes.

13 475 Q. And again, Ms. Murray, Mr. McEnroe and Mr. Mooney are
14 amongst the journalists' phone numbers which are saved
15 on the phone, isn't that correct? 12:17

16 A. That's correct, yes.

17 476 Q. And also, it showed that a series of phone calls were
18 made to the journalist who initially published the
19 exclusive in relation to the Tallaght investigation, is
20 that correct? 12:18

21 A. Yes, what it showed was that there had been a series of
22 telephone calls between Superintendent Taylor and the
23 journalist which coincided with all of the interactions
24 I had with Superintendent Taylor both in making the
25 appointment to call to him in Dublin Castle in 12:18
26 November, also in December. And indeed when I took
27 possession of his phone, the first phone call he made
28 afterwards was to the particular journalist, the
29 particular journalist that had released the exclusive

1 article.

2 477 Q. Now, I think there was also a phone call made some
3 short time afterwards to the district officer in
4 Tallaght, is that correct?

5 A. That's correct, yes. 12:19

6 478 Q. All right. So, all of those things being the case,
7 what did this lead you to do in May of 2015?

8 A. It led me, in May 2016 [sic], to arrest Superintendent
9 Taylor. I had arranged to meet him at Balbriggan Garda
10 Station, where he -- I had talked to his solicitor 72 12:19
11 hours prior to that and informed him that this was the
12 course of action that I wanted to embark on and that I
13 would be requesting the member-in-charge at Balbriggan
14 to detain him under Section 4 of the Criminal Justice
15 Act 1984 to allow for the proper investigation for the 12:19
16 offences for which he had been arrested, which were
17 breaches of Section 62 of An Garda Síochána Act, and
18 there was various numbers of those breaches which I was
19 investigating at that particular time.

20 479 Q. Chief Superintendent, I should have brought you 12:19
21 through, also in February 2015 a laptop was seized from
22 Superintendent Taylor, is that correct?

23 A. That's correct, yes.

24 480 Q. And that, for the Tribunal purposes, is SM5. And he
25 had this laptop assigned to him for his period in the 12:20
26 Press Office, is that correct?

27 A. That's correct, yes.

28 481 Q. Now, in relation to the arrest of Superintendent
29 Taylor, first of all, it may seem unusual that a chief

1 superintendent is arresting somebody; normally it's a
2 duty performed by somebody of a lesser rank. Could you
3 explain to the Tribunal why that is the case?

4 A. Well, why I arrested him was, it was my investigation.
5 482 Q. Yes. 12:20

6 A. I was leading this investigation. I certainly wasn't
7 going to ask anybody else to do it.

8 483 Q. Yes. And did anything -- did that have anything to do
9 with the senior rank and --

10 A. Well, I suppose it was one consideration, but my 12:21
11 primary consideration was, there was a superintendent
12 going to be arrested and that I was not going to ask
13 anybody of the similar rank to do it. It was my job, I
14 was going to do it.

15 484 Q. Okay. And I think you may have said the arrest took 12:21
16 place in May 2016; in fact, it would appear to be May
17 2015.

18 A. May 2015, yes.
19 CHAIRMAN: Yes, I thought so, yes.

20 485 Q. MS. LEADER: was any consideration given to asking 12:21
21 Superintendent Taylor to explain himself other than
22 from a custody situation?

23 A. Yes, I had considered, you know, would I invite him in
24 for questioning or was there any other alternatives,
25 and I did discuss this with my investigation team, and 12:21
26 I concluded that when I had visited him in November and
27 interviewed him in a kind of a fashion where he was
28 volunteering the information, he simply just didn't
29 provide me with the information that I felt he should

1 have. Secondly, I also felt that we also had a plan
2 around validating information that may -- that he may
3 provide to us. You know, the purpose of the arrest and
4 the questioning was to actually give him an opportunity
5 in a structured fashion to tell us exactly what was 12:22
6 going on. We would also have a number of investigators
7 available at that time to validate what he was going to
8 tell us. How and ever, as it transpired, he didn't
9 tell us anything.

10 486 Q. Yes. I think other than for telling you some personal 12:22
11 details, he -- it was mostly a 'no comment' situation?

12 A. Yes, he confirmed he was the superintendent and he
13 confirmed his mobile phone number and his email
14 address, and after that he went 'no comment' for the
15 duration of the interviews. There was six interviews 12:22
16 in total, and it ran until -- he was extended twice,
17 which brought him to the -- being in custody for up to
18 18 hours.

19 487 Q. Right. And it was a chief superintendent other than
20 yourself -- 12:23

21 A. Well, his initial detention was at sergeant rank and
22 then at the superintendent rank at Balbriggan and
23 finally by the chief superintendent who was in Store
24 Street at the time.

25 488 Q. All right. And in relation to his release from 12:23
26 custody, were any complaints made by him at the end of
27 his period of detention?

28 A. No, there was no complaints. He shook hands with me.
29 I then asked him for his mobile phone which he

1 currently had, and out of reference to him -- deference
2 to him, I agreed that he would surrender that to me the
3 following day, and that is exactly what happened; that
4 an inspector from DMR Traffic, Inspector Woods, brought
5 his official mobile phone and his official Garda 12:23
6 identification card to my office in Pearse Street at
7 the time.

8 489 Q. All right. And that is SM4 for Tribunal purposes. And
9 that phone had been given to him on the 19th February
10 2015? 12:24

11 A. That's correct, yes.

12 490 Q. And as I understand it, no analysis was carried out by
13 the investigation team in relation to that phone, isn't
14 that correct?

15 A. No, no, I carried out no investigation. I put that 12:24
16 phone into a safe in my office which was locked and
17 secured and the key is retained by me.

18 491 Q. All right. Now, in relation to disciplinary matters
19 and Superintendent Taylor's status with the force, can
20 you tell the Tribunal about that from the time of his 12:24
21 arrest.

22 A. At the time of his arrest, he was suspended from duty.
23 As chief superintendent, I have the remit to do that
24 under the regulations for a short period of time. But
25 after his release from custody, I had discussed with 12:24
26 Assistant Commissioner Twomey and his suspension was
27 continued, and here after that, then, was suspended on
28 a three-monthly period from Garda Headquarters at
29 Phoenix Park, a decision made by an assistant

1 commissioner.

2 492 Q. All right. And the reason for his suspension, it may
3 be obvious but --

4 A. His reason for suspension was the allegations of
5 disclosure of information contrary to Section 62 of An 12:25
6 Garda Síochána Act.

7 493 Q. Okay. And in relation to the disciplinary inquiry,
8 what involvement did you have in that?

9 A. Well, there was two aspects to the disciplinary
10 inquiry. When we took his phone initially in December 12:25
11 '14, I did a separate report under a separate cover to
12 the assistant commissioner, asking that a separate
13 appointment be made under the Garda Disciplinary
14 Regulations to examine any aspects which were not of
15 criminal nature, and a second chief superintendent was 12:26
16 appointed to do that. But I had also initiated
17 discipline under the regulations in relation to the
18 disclosure of the information in Tallaght, and that was
19 continued -- that was still live at that particular
20 point in time. 12:26

21 494 Q. Okay. And do you know if they are still live now?

22 A. In February of this year, I was informed by the
23 assistant commissioner for the city to discontinue all
24 discipline matters, or I was to -- now, what happened
25 by the other chief superintendent, I can't be sure, but 12:26
26 I suspect it met with similar fate.

27 495 Q. All right. Now, I think after his release, under your
28 supervision, a file was put together to submit to the
29 DPP, is that correct?

1 A. That's correct, yes.

2 496 Q. And no further substantive investigation took place, is
3 that correct?

4 A. That's correct.

5 497 Q. It was tidying up matters, is that -- 12:26

6 A. Sorry?

7 498 Q. Was it tidying up matters --

8 A. Tidying up matters, yes, yes.

9 499 Q. A matter of tidying up took place after that?

10 CHAIRMAN: Was it February 2018 or was it a different 12:27
11 date? Is that the year --

12 A. The file was submitted in August --

13 CHAIRMAN: Well, it said this year.

14 MS. LEADER: The disciplinary --

15 CHAIRMAN: I know disciplinary. That is what I am 12:27
16 wondering, what was the date? Yes.

17 A. February of 2018 I was informed by the assistant
18 commissioner that all disciplinary matters that I was
19 investigating were to be discontinued.

20 CHAIRMAN: Yes. 12:27

21 500 Q. MS. LEADER: I think they had been paused for a period
22 of time?

23 A. They had been paused at the time. The criminal matter
24 would take preference.

25 501 Q. All right. 12:27

26 CHAIRMAN: Did they give you a reason for that, even
27 out of courtesy?

28 A. No.

29 502 Q. MS. LEADER: Now, I think that file went to the

1 Director of Public Prosecutions on the 4th August 2015?

2 A. That's correct, yes.

3 503 Q. And it recommended that Superintendent Taylor be
4 prosecuted for the -- for the unlawful disclosure of
5 information, is that correct?

12:28

6 A. That's correct, yes.

7 504 Q. Now, most of the information on that file came from
8 call data records, call billing records and information
9 from mobile phones, is that correct?

10 A. That's correct, yes.

12:28

11 505 Q. Now, insofar as there is a suggestion, and I can
12 just -- you may not have seen this document before,
13 it's at page 19 of the materials, it's a letter written
14 on Superintendent Taylor's behalf during the O'Neill
15 Inquiry. You see the second:

12:28

16
17 "It would seem to our client, on foot of the
18 information contained particularly in Chief
19 Superintendent Kirwan's report --"

20
12:28

21 You may not be familiar with that, but --

22 A. No.

23 506 Q. -- he authorised certain data to be released under his
24 powers, isn't that correct, during the investigation?

25 A. That's correct, yes.

12:29

26 507 Q. "-- that he, Superintendent Taylor, has been the
27 subject of a targeted criminal investigation designed
28 in the first instance to access records that would
29 otherwise be unavailable as his unit can only access

1 the data in the context of a criminal investigation, to
2 discredit him and/or conduct an extensive trawl of his
3 records to find any material harmful or prejudicial to
4 our client."

12:29

5
6 And I don't know if you want to take an opportunity to
7 reply to that, as you were the person running the
8 criminal investigation?

9 A. Well, what I would say, I simply don't accept that. As
10 far as I am concerned, all I ever did was follow the
11 evidence that was presented to me and it led me to
12 Superintendent Taylor.

12:29

13 508 Q. Yes. And I suppose was all of that done because
14 initially you had been asked to investigate an incident
15 in Tallaght?

12:30

16 A. All of that was done because that was the job I was
17 given.

18 509 Q. Yes. And was there any motive such as that is
19 suggested in this paragraph here?

20 A. Absolutely not, absolutely not, no.

12:30

21 510 Q. All right. Now --

22 CHAIRMAN: Ms. Leader, I wonder, it's half twelve. Do
23 you want to leave it there or is there something else
24 you wanted to --

25 MS. LEADER: I think I will be about another half an
26 hour with the Chief Superintendent.

12:30

27 CHAIRMAN: Half one then.

28
29 THE HEARING ADJOURNED FOR LUNCH

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2

3 511 Q. MS. LEADER: Chief Superintendent, we were at the stage
4 when a file was going to the Director of Public
5 Prosecutions on the 4th August 2015 and certain
6 recommendations were made by you in that file as to the
7 future progress of matters, is that correct? 13:30

8 A. That's correct, yes.

9 512 Q. Now, I wonder if we can just get page 2321 up on the
10 screen, please. And we will just quickly go through 13:30
11 those recommendations. Halfway down the page,
12 "Recommendations"?

13 A. Perhaps if I can get it off the volume, I'll get it.

14 513 Q. Yes. It's volume 9 in the materials, 2321. So the
15 first recommendation is that Superintendent Taylor be 13:31
16 prosecuted for disclosing information to numerous
17 journalists on dates between 21st October 2013 and the
18 19th February 2015, contrary to Section 62(2) of the
19 Garda Síochána Act 2005.

20 A. That's correct, yes. 13:31

21 514 Q. And then the second recommendation was that he be
22 prosecuted for disclosing personal data possessed by
23 him without the prior authority of the data controller
24 on behalf of whom the data is processed, contrary to
25 Section 21 of the Data Protection Act 1988 as amended? 13:31

26 A. That's correct, yes.

27 515 Q. Finally, there was a third recommendation that, in his
28 office as superintendent in An Garda Síochána, that he
29 did acts in relation to his office and position for the

1 purposes of corruptly obtaining a gift consideration or
2 advantage for himself and Eavan Murray contrary to
3 Section 8 of the Prevention of Corruption (Amendment)
4 Act 2001, in that his actions, by disclosing
5 information to Eavan Murray, meant she had significant 13:32
6 advantage over her colleagues and that her assistance
7 to him with his course work was of considerable
8 advantage to him.

9 A. Yes, that's correct. That's the recommendations that
10 were sent forward. 13:32

11 516 Q. Okay. And they were, in essence, based on your
12 investigation and what it had uncovered, as has been
13 summarised by you here this morning?

14 A. That's correct, yes.

15 517 Q. Now, did you leave anything else influence you in 13:32
16 making those recommendations to the Director of Public
17 Prosecutions, other than the fruits of your
18 investigation as has been referred to you this morning?

19 A. No. There was no other influences on my
20 recommendations. 13:33

21 518 Q. All right. Now, I think matters remained there until
22 the Director of Public Prosecutions directed on the
23 matter on the 13th February 2017, is that correct?

24 A. That's correct, yes.

25 519 Q. And if we get that up on screen, please. It's at page 13:33
26 2653 of the materials, which is volume 10. Sorry,
27 there is an earlier direction, sorry, Superintendent.
28 It's 2576 of the materials.

29 A. Yes.

1 520 Q. Now, that letter is dated the 17th February 2016.
2 A. That's correct, yes.

3 521 Q. It's a letter from a directing officer in the Director
4 of Public Prosecutions in relation to the file you
5 submitted to them the previous August, is that correct? 13:34
6 A. That's correct, yes.

7 522 Q. Now, I just want to go through that with you. It says:
8
9 "Thank you for your letter received on the 11th August
10 2015 enclosing Garda file." 13:34
11
12 Sorry. Then:
13
14 "It concerns the alleged disclosure to various
15 journalists of information obtained by the suspect 13:34
16 during the course of his Garda duties."
17
18 And the suspect there is Superintendent Taylor.

19 A. That's correct, yes.

20 523 Q. "The Gardaí have identified 37 incidents which, in 13:34
21 their view, disclose offences contrary to Section 62 of
22 the Garda Síochána Act 2005."
23
24 Then it sets out section 62:
25 13:35
26 "A person who is or was a member of the Garda Síochána
27 or of its civilian staff or who is or was engaged under
28 contract or other engagement to work with or for the
29 Garda Síochána, shall not disclose, in or outside the

1 State, any information obtained in the course of
2 carrying out duties of that person's office,
3 employment, contract or other arrangement if the person
4 knows the disclosure of that information is likely to
5 have a harmful effect." 13:35

6
7 And then subsection (2) goes on to say when the
8 disclosure doesn't have harmful effect, is that
9 correct?

10 A. That's correct. 13:35

11 524 Q. Unless it corresponds to certain criteria?

12 A. That's correct, yes.

13 525 Q. I don't propose to go through all of that in detail.
14 If we can scroll down to the bottom of page 2577, then
15 it says: 13:36

16
17 "The problems are twofold. In most cases it is not
18 possible to prove that information was disclosed to the
19 press by the suspect. Even in cases where there is an
20 electronic trail of information being disclosed, it is 13:36
21 impossible to establish the harm requirement of Section
22 62 of the Garda Síochána Act 2005.

23
24 While highly suspicious, I do not think that it is
25 possible to prove beyond reasonable doubt that the 13:36
26 suspect disclosed confidential information. Therefore,
27 I direct no prosecution."

28
29 And it is signed by the relevant professional officer.

1 A. That's correct, yes.

2 526 Q. And do you remember getting that direction, Chief
3 Superintendent?

4 A. I do remember getting that in February 2016.

5 527 Q. All right. Thereafter, a query was raised on your 13:36
6 behalf, as I understand it, on the 22nd February 2016
7 in relation to that direction?

8 A. That's correct.

9 528 Q. First of all, if I can just -- that letter is signed by
10 Detective Superintendent James McGowan on your behalf. 13:37
11 I was just wondering if you can explain to the Tribunal
12 how that came about or was there a particular interest
13 displayed by Detective Superintendent McGowan in
14 relation to the matter?

15 A. No. When I received the instructions dated 17th 13:37
16 February 2016, I rang the relevant officer in the DPP
17 and asked had they considered the data protection, and
18 I was saying that I wanted to make a submission
19 relative to that, and they asked that I would do so in
20 writing. As it happened, I was booked to go on 13:37
21 holidays at that particular time, and I got
22 Superintendent McGowan to prepare this report and, to
23 the best of my recollection, he emailed it to me while
24 I was on holidays and I approved it and then he
25 submitted it. 13:37

26 529 Q. He signed it?

27 A. He signed it on my behalf.

28 530 Q. On your behalf. So any impetus for this letter, as I
29 understand it now, comes from you rather than Detective

1 Superintendent McGowan?

2 A. That's correct, yes.

3 531 Q. All right. And essentially, you asked the DPP to
4 reconsider prosecuting Superintendent Taylor for
5 breaches of the Data Disclosure Act and you outlined
6 particular incidents which you wanted them to
7 reconsider as charges contrary to the data disclosure
8 legislation?

13:38

9 CHAIRMAN: Ms. Leader, I just wonder, the page for the
10 letter of the 22nd --

13:38

11 MS. LEADER: 2579. Sorry.

12 CHAIRMAN: 2579. It's just three pages on then from
13 that.

14 MS. LEADER: Yes, it immediately follows it.

15 CHAIRMAN: Yes.

13:38

16 532 Q. MS. LEADER: And you say -- you thank the Director for
17 the letter dated 17th February 2016, you accept that it
18 is very difficult to establish the harm requirement of
19 a section 62 charge, and then you say:

20 13:39

21 "It is respectfully suggested, however, that in the
22 specific incidents highlighted below where there is an
23 electronic trail of information being disclosed,
24 consideration should be given to preferring a charge of
25 disclosing personal data without the prior authority of
26 the Data Controller on behalf of whom the data is
27 processed contrary to Section 21 of the Data Protection
28 Act 1988, as amended."
29

13:39

1 And you go on to outline why they should reconsider the
2 data disclosure head of prosecution in relation to
3 particular incidents.

4 A. That's correct, yes.

5 533 Q. And that letter goes on to page 2580 and thereafter. 13:39
6 If we can summarise matters without going into all of
7 the correspondence, there was an exchange of
8 correspondence between yourself and the DPP and extra
9 information given to the DPP in relation to the
10 disclosure of data by Superintendent Taylor, or alleged 13:40
11 disclosure of data by Superintendent Taylor, and that
12 all cumulated in a final direction being given on the
13 13th February 2017.

14 A. That's correct, yes.

15 534 Q. If we can go to that direction, please. It's the one I 13:40
16 referred to earlier on, page 2653 of the material.
17 It's dated 13th February 2017, and it's addressed to
18 the superintendent in Pearse Street Garda Station, re
19 David Taylor. Officer in charge: Chief Superintendent
20 Francis Clerkin, Pearse Street Garda Station. What it 13:40
21 says is:

22
23 "I refer to the above matter and, in particular, to my
24 direction of the 17th February 2016 wherein the
25 question of a prosecution for offences contrary to 13:41
26 Section 62 of the Garda Síochána Act 2005 was already
27 considered.

28
29 The question of a prosecution for breaches of the Data

1 Protection Act 1988, as amended, has been considered.
2 The advices of senior counsel were sought and I enclose
3 herewith opinion from (redacted) in relation to the
4 matter.

13:41

5
6 The Director agrees with the advices of counsel, and
7 accordingly, for the reasons set out in counsel's
8 advices, there should be no prosecution."

9

10 And that is signed by the relevant directing officer.

13:41

11 A. That's correct, yes.

12 535 Q. Was Superintendent Taylor informed of the outcome of
13 the criminal investigation at that stage?

14 A. He was, through his solicitor, yes.

15 536 Q. You had no one-to-one, face-to-face dealings with him?

13:41

16 A. Not at that time. I had been advised in March '15 that
17 the only communication with Superintendent Taylor
18 should be via his solicitor.

19 537 Q. All right. And I think there had been extensive
20 contact through his solicitor, throughout the course of
21 2016, early 2017?

13:42

22 A. Yes.

23 538 Q. And, in part, the reason for that was, and I may be
24 incorrect in this, was a judicial review was commenced
25 on behalf of Superintendent Taylor which directly
26 concerned the investigation, is that correct?

13:42

27 A. That's correct.

28 539 Q. Now, the judicial review related to a number of matters
29 but it would seem that the central matter was the

1 matter of his phone and the integrity of the exhibits,
2 is that correct?

3 A. That formed part of it, yes.

4 540 Q. Part of it?

5 A. Yes. 13:42

6 541 Q. And essentially Superintendent Taylor, on his behalf it
7 was advanced that because he had received -- or
8 somebody had received a Viber message, is that correct?

9 A. I think the judicial review was slightly different.

10 542 Q. Yes. It contained a reference to that? 13:43

11 A. Yes, it did contain that, but it contained other
12 things, yes.

13 543 Q. So if I can deal with the phone first.

14 A. Yes.

15 544 Q. It suggested that somebody had received a Viber message 13:43
16 which had emanated from Superintendent Taylor's Viber
17 account, is that correct?

18 A. That's correct, yes.

19 545 Q. Yes. And he was advancing the case that because this
20 Viber message had been received, it must have been 13:43
21 received from one of the phones that had been
22 surrendered/seized, to your investigation, therefore
23 there was a question in relation to the integrity of
24 the investigation?

25 A. That's correct, yes. 13:43

26 546 Q. Is that right?

27 A. Correct.

28 547 Q. Now, the other matter that was ventilated in the
29 judicial review proceedings was the matter of leaks

1 from your investigation, is that correct?

2 A. Yes.

3 548 Q. Media leaks?

4 A. And that also formed a separate inquiry.

5 549 Q. A separate inquiry? 13:43

6 A. Yes.

7 550 Q. From --

8 A. It was a separate complaint.

9 551 Q. Yes.

10 A. Both the issue around the viber account and issue 13:44

11 around leaks about the investigation formed part of two

12 separate complaints. One was made through GSOC and one

13 was made in a letter to the Garda Commissioner.

14 552 Q. Okay. And both of those matters were fed into a

15 judicial review application made to the High Court? 13:44

16 A. Correct.

17 553 Q. Where ultimately it was asked that the High Court stop

18 your investigation, is that correct?

19 A. Correct, yes.

20 554 Q. And those judicial review proceedings, were they ever 13:44

21 resolved?

22 A. No. To the best of my knowledge, no. There were a

23 number of sitting dates, but it never got finalised, or

24 progressed.

25 555 Q. And I think also one of the reliefs that was sought by 13:44

26 way of judicial review was a stay on the disciplinary

27 proceedings which had been initiated?

28 A. Correct, yes.

29 556 Q. In relation to the Logan Inquiry?

1 A. Correct.

2 557 Q. Is that correct?

3 CHAIRMAN: Ms. Leader, maybe you will help me on this
4 in terms of experience, but I have never -- I never
5 came across a judicial review to stop a Garda criminal
6 investigation. I don't think I have ever come across
7 that before. 13:45

8 MS. LEADER: well, let's open --

9 CHAIRMAN: I wonder did you come across it?

10 MS. LEADER: No. 13:45

11 A. No. But that was the basis of it.

12 CHAIRMAN: And then the second was to stop the
13 disciplinary inquiry.

14 MS. LEADER: well, I think the first was the
15 disciplinary inquiry and the second relief sought was
16 the Garda investigation. If we could get page 25,
17 which is in volume 1 of the materials, you will see the
18 reliefs, the first one, page 25: 13:45

19
20 "An interlocutory injunction by way of application for
21 judicial review restraining the first-named respondent, 13:45
22 who is the Commissioner, from the taking of any further
23 steps of any kind whatsoever in disciplinary
24 proceedings which are presently pending and concern the
25 applicant and the applicant's legal, personal and
26 constitutional rights." 13:46

27

28 And the second relief is:

29

1 "An interlocutory injunction restraining the
2 first-named respondent from the taking of any further
3 steps in and about an investigation which is being
4 presently carried on and conducted into an alleged
5 breach of Section 62 of the Garda Síochána Act, an 13:46
6 alleged breach of the Data Protection Act 1988 on the
7 part of the applicant."
8

9 Then, if we go on:

10
11 "A mandatory injunction by way of application for 13:46
12 judicial review directing the First-Named Respondent,
13 the Commissioner, to report and to account to the Court
14 for the investigation as it has been so far carried on
15 and conducted and to address, in particular, the 13:46
16 matters complained of in these proceedings."
17

18 Those being the leaks, alleged media leaks, and alleged
19 interference with exhibits

20
21 "And the issues insofar as they relate to the probity 13:47
22 and integrity of the evidence."
23

24 And then, finally:

25
26 "A declaration by way of application for judicial 13:47
27 review that the investigation, as it has been so far
28 carried on and conducted, has amounted to an
29 interference with the applicant's legal, personal and

1 constitutional rights. It has amounted to an
2 interference with evidence and the administration of
3 justice."

4
5 And then:

13:47

6
7 "An order of prohibition restraining the First- and
8 Second-Named Respondent --"

9
10 The Second-Named Respondent being the DPP.

13:47

11
12 "-- from the taking of any further steps until further
13 order of this Honourable Court."

14
15 And I think you swore an affidavit setting out the
16 investigation as you had carried it out in defending
17 these judicial review proceedings, is that correct?

13:47

18 A. That's correct, Mr. Chair.

19 558 Q. But in any event, it never got resolved by the Court;
20 it was put back on a number of occasions, is that
21 correct?

13:48

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

23 559 Q. So an allegation is made that -- and I think it appears
24 most starkly when Superintendent Taylor was interviewed
25 in relation to discrepancies or differences between
26 Sergeant McCabe's protected disclosure and his
27 protected disclosure, that, somehow, Commissioner
28 O'Sullivan was the pusher in relation to the
29 investigation into him, and the pusher being the

13:48

1 recording made on Sergeant McCabe's protected
2 disclosure. I don't know if you would care to comment
3 on that in any way from your point of view?
4 A. Well, Commissioner O'Sullivan was in no way involved in
5 my investigation. I never discussed it with her in any 13:49
6 shape nor form, nor she never in any way tried to
7 interfere with what I was doing. It just didn't arise.
8 560 Q. Did you have a discussion with her about the
9 investigation or report to her about it?
10 A. No, I had no discussion with Commissioner O'Sullivan 13:49
11 about this investigation. My line manager was
12 Assistant Commissioner Twomey. There was a number of
13 reports that I certainly would have submitted to
14 Assistant Commissioner Twomey and I'm sure one or two
15 of those absolutely did make it to the Commissioner's 13:49
16 office, but I had no -- there was no discussion in it,
17 and, at most, I was asked to keep her informed, via the
18 Assistant Commissioner Twomey, of developments.
19 561 Q. All right. Now, Michelle Taylor, and I wonder if page
20 3393 could be brought up on screen, please, from her 13:50
21 point of view, which is one removed from her husband,
22 Superintendent Taylor obviously, it's on volume 13 of
23 the materials, 3393. If we just go to line 133.
24 Sorry, it's 93, not 94, Mr. Kavanagh, it has just gone
25 on too far. The very top of the page, thank you. Yes. 13:50
26 Thanks. Here, Mrs. Taylor, who is being interviewed by
27 the investigators, is talking about a meeting she had
28 and her husband with Sergeant McCabe, and what she says
29 is at line 113:

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"After discussing this, we discussed our own situation --"

That being Superintendent Taylor's situation at the time the protected disclosures were made, which was October 2016.

13:51

-- about day suspension and the fact that Nóirín O'Sullivan was very anxious to get a charge on Dave and we found it quite upsetting that she appointed her husband to lead the investigation team in Dave's case."

13:51

So just in relation to being anxious to get a charge on Superintendent Taylor, this is -- it was a lengthy and detailed investigation and a lot of work went into it, and I suppose, from a human perspective, it's always disappointing to see things stopping at that point. But in relation to being anxious to get a charge on Superintendent Taylor, I wonder could you enlighten the Tribunal about that?

13:51

13:52

- A. Well, it wasn't anxious or it wasn't that our motivation was to get a charge on Dave Taylor. My job was to follow the evidence to establish what happened in relation to the incident in Tallaght initially and also then to look at the other disclosures that were appearing on Dave's mobile device and through his emails, and I simply was following the facts. And my job is to accumulate the facts, submit them to the

13:52

1 Director of Public Prosecutions, who then makes a
2 determination, and that's all I did, and I was not
3 influenced by anybody in relation to that.

4 562 Q. Now, just for the sake of completeness, I think you
5 investigated a separate matter in relation to 13:52
6 Superintendent Taylor and questioned him about it in
7 August of 2015, as I remember?

8 A. That's correct, yes.

9 563 Q. Recommended no prosecution in relation to the matter?
10 A. That is correct, yes, yes. 13:53

11 564 Q. In relation to Superintendent Taylor's suspension, he
12 was suspended from the time he was arrested up until
13 the time final directions were given, is that correct?

14 A. That's correct, yes.

15 565 Q. And that was in February 2017, is that correct? 13:53

16 A. That's correct. And for one point of clarity, I said
17 earlier this morning that that suspension was in
18 relation to breaches of Section 62, that is correct,
19 but it also would have taken into consideration the
20 matters being investigated by Superintendent Murphy, 13:53
21 which were possible breaches of disciplinary
22 regulations.

23 566 Q. All right. In relation to that disciplinary
24 investigation, that was in existence until this year,
25 is that correct? 13:54

26 A. Yes, that's my understanding. I had no real, I wasn't
27 following that, and I didn't have lots of information
28 around what was happening with that investigation, but
29 my understanding is that the decision in February of

1 this year was to discontinue all disciplinary matters.
2 MS. LEADER: If you would answer any questions anybody
3 else might have for you.
4 CHAIRMAN: Yes. Just before we go on, I gave perhaps
5 an over-lengthy, I don't know what you'd call it, 13:54
6 indication as to my preliminary view in relation to
7 matters of credit, and one of the things that I said,
8 and I just want to say it again, just for fear that
9 people have forgotten or that I didn't make myself
10 perfectly clear, I referred back to the O'Higgins 13:54
11 Commission and the ruling made by Mr. Justice O'Higgins
12 that matters of credit beyond what we have heard about
13 here, and specifically if people wanted to go into what
14 we have heard about here, and I'm specifically
15 referring here to the second investigation, that an 13:55
16 application would need to be made to me first before
17 any such question was asked. So I just want that to be
18 clear. I'm not saying that I'm hostile to that, I'm
19 not saying anything about that at all, I'm just saying
20 that it is necessary for me to protect people's rights, 13:55
21 including those who may have been investigated,
22 because, after all, being investigated doesn't mean
23 you're guilty, at all, at all, and the presumption of
24 innocence I regard as a very important thing. So,
25 would people bear that in mind, please? And if there 13:55
26 is any mistake, I will stop you, and I don't mean to be
27 rude in that regard, but if my thinking is unclear,
28 just ask me a question.
29 MR. McDOWELL: I have no questions, Chairman.

1 CHAIRMAN: Thanks.

2

3 CHIEF SUPERINTENDENT CLERKIN WAS CROSS-EXAMINED BY

4 MS. BURNS:

5

13:55

6 567 Q. MS. BURNS: Chief superintendent Clerkin, I just have
7 one issue. In terms of the arrest of
8 Superintendent Taylor and in the course of your
9 evidence, you referred to the fact that he didn't give
10 any information in the course of questioning by him. 13:56
11 Obviously he exercised his right to silence, and I take
12 it that you accept that it was on that basis that he
13 conducted a 'no comment' interview.

14 A. Yes, absolutely, yes.

15 MS. BURNS: Yes. Thank you very much. 13:56

16 CHAIRMAN: There's no questions on behalf of Eavan
17 Murray or Debbie McCann, there hasn't been all day, so
18 I presume that continues to be the case. Yes. All
19 right.

20 MR. MÍCHEÁL O' HIGGINS: May it please you, Chairman.

21

22 CHIEF SUPERINTENDENT CLERKIN WAS CROSS-EXAMINED BY

23 MR. MÍCHEÁL O' HIGGINS:

24

25 568 Q. MR. MÍCHEÁL O' HIGGINS: Chief Superintendent Clerkin, I 13:56
26 have some questions for you on behalf of An Garda
27 Síochána. Can I first of all ask you to deal with the
28 matters, and I will endeavour to do these relatively
29 briefly, to deal with the origins of how you came to be

1 appointed to investigate the incident at Tallaght. And
2 am I correct in my understanding that, broadly
3 speaking, the origins were these: On the 21st October
4 2013 Gardaí attached to Tallaght Garda Station were
5 notified of certain concerns for the welfare of a child 13:57
6 living with a Roma family in the Tallaght area, isn't
7 that right?

8 A. That's correct, yes.

9 569 Q. And my understanding of matters is that the Gardaí
10 concerned having investigated the allegations, certain 13:57
11 allegations, took the decision to remove the child and
12 take the child into Garda care, and they invoked
13 provisions of the Childcare Act of 1991?

14 A. That's correct, yes.

15 570 Q. And I think it's the case that there was significant 13:57
16 international media attention surrounding a child of a
17 similar description that had been removed from a Roma
18 family in Greece approximately around that time?

19 A. Yes.

20 571 Q. And I think, in addition to that, the day after the 13:58
21 Tallaght taking into care, or Garda care, on the 22nd
22 October 2013, Gardaí attached to Athlone Garda station
23 investigated certain reports regarding a child again
24 residing with a Roma family in Athlone this time, isn't
25 that right? 13:58

26 A. That's correct, yes.

27 572 Q. And Garda had certain concerns and they had invoked,
28 again, a provision of the Childcare Act of 1991 and
29 took the decision to take that particular child into

1 Garda custody, isn't that so?

2 A. That's correct, yes.

3 573 Q. And I think that the children's Ombudsman, Emily Logan,
4 carried out an assessment and a report into the systems
5 for ensuring the maintenance of appropriate 13:58
6 confidentiality in relation to the utilisation of the
7 provision of the Childcare Act that allowed a child to
8 be taken into Garda care?

9 A. That's correct, yes.

10 574 Q. And I think, putting it bluntly, Ms. Logan was highly 13:59
11 critical of the release of information into the public
12 domain in relation to the incidents investigated from
13 Athlone and, earlier, Tallaght Garda Station?

14 A. That is correct, yes.

15 575 Q. And I think she was of the view in her report that the 13:59
16 disclosures in respect of certainly the Tallaght
17 investigation may have given rise to a criminal and/or
18 disciplinary offence by a member of An Garda Síochána?

19 A. That's correct, yes.

20 576 Q. And am I correct in my understanding that arising from 13:59
21 that, which was effectively independent criticism, that
22 is to say an independent officer, Emily Logan, and the
23 indication that there was possible criminal and
24 disciplinary wrongdoing, there was a responsibility,
25 was there not, for An Garda Síochána to fully 13:59
26 investigate the matter?

27 A. Yes, of course there was, yes.

28 577 Q. And I think it was in that context that you were tasked
29 by Assistant Commissioner Twomey to carry out a full

1 investigation into potential criminal offences and
2 possibly breaches of discipline arising from the report
3 that had been compiled by Emily Logan?

4 A. That's correct, yes.

5 578 Q. And I think in August of 2014 then, as you have 14:00
6 indicated to Ms. Leader, you set about putting together
7 your investigation team, isn't that so?

8 A. That's correct, yes.

9 579 Q. And just can you give the Tribunal an assessment of the
10 size of the investigation. This was not an 14:00
11 insignificant investigation; it was quite a big deal,
12 isn't that right?

13 A. Yeah. From the outset I could tell that it was going
14 to be a significant investigation. I could also tell
15 that the investigation possibly would be open to 14:00
16 scrutiny from whatever quarter, and I couldn't be
17 actually sure from wherever. So my thinking was that
18 whatever was going to happen, I was going to do this
19 completely correctly and fairly and honestly, and
20 that's what I set about doing when I established my 14:01
21 investigation team.

22 580 Q. Yes. And you've indicated already the members of that
23 team, but am I correct in my understanding, an incident
24 room - the normal steps were taken when a large scale
25 investigation is being undertaken - an incident room 14:01
26 was established to coordinate and record activities
27 associated with the investigation?

28 A. That's correct. And an incident room coordinator was
29 appointed, being Sergeant Thelma Waters.

1 581 Q. I see. And I think you have indicated in your report
2 that some 580 tasks were actioned and 276 witnesses
3 provided statements?
4 A. Yes. A significant piece of work that we had
5 undertaken, yes. 14:01

6 582 Q. And I think you also received technical and specialised
7 support from a number of different agencies within An
8 Garda Síochána?
9 A. That's correct, yes.

10 583 Q. Now, I think your investigation established that on the 14:01
11 21st October 2013, that Inspector Derek Maguire, and
12 there is no criticism whatsoever of him, had compiled
13 and emailed a patrol officer report to relevant
14 personnel within An Garda Síochána, isn't that so?
15 A. That's correct yes. 14:02

16 584 Q. And that was perfectly in line with established
17 internal Garda protocols?
18 A. Absolutely, yes.

19 585 Q. And I think it is the case that a number of articles
20 appeared in the media outlining the details of the 14:02
21 actions that had been taken by the Gardaí surrounding
22 the October incident in Tallaght?
23 A. That's correct, yes.

24 586 Q. And I think it was established that the earliest
25 article relating to the Tallaght incident was published 14:02
26 on the Internet on the morning of the 22nd October 2013
27 as an exclusive?
28 A. That's correct, yes.

29 587 Q. Ms. Leader has been careful not to indicate the name of

1 the journalist, but perhaps you would make it clear, no
2 criticism whatever is made nor wrongdoing suggested of
3 the journalist concerned, isn't that right?
4 A. No, no, the journalist, I'm sure, was just doing his
5 work, doing his job. 14:03
6 588 Q. Yes. And I think it is the case that there were strong
7 similarities between the particular article in one of
8 the Sunday newspapers and the internal Garda patrol
9 officer report that I have mentioned?
10 A. Yes, they were similar. 14:03
11 589 Q. And that gave you, as it were, a point of departure or
12 a lead for you to chase down?
13 A. That pointed me in a certain direction, yes.
14 590 Q. So what did you do on foot of that?
15 A. What we did on foot of having established the article, 14:03
16 we then set about identifying who had possession of the
17 initial report from Inspector Maguire, and, once we
18 identified who had them, we then set about a plan to
19 interview those persons and to see exactly what they
20 had done with the email concerned and asked them 14:03
21 specifically if they had released it to the journalist.
22 We also set about getting the billing records for
23 personnel attached to DMR South division, that was the
24 area covered by this, and for the Garda Press Office.
25 591 Q. Can I ask you this: was any particular suspect 14:04
26 identified at this point of your investigation?
27 A. No, absolutely nobody was -- no. We had no suspect at
28 that particular point in time.
29 592 Q. So what would you say to the suggestion that this

1 particular investigation had, as its immediate and
2 exclusive focus, Superintendent David Taylor?

3 A. No, no. Certainly, Dave Taylor did not become any kind
4 of a person of interest until December, January --
5 December '14 or January '15. He became a person of 14:04
6 interest, first of all, when we discovered that he had
7 been in contact with the district officer in Tallaght
8 and that he had been in contact with the journalist,
9 but he was not a person of interest up until that time.

10 593 Q. Yes. Now, in terms of the persons you interviewed or 14:05
11 took statements from, I think it's the case that each
12 witness was informed of the scope and nature of the
13 investigation?

14 A. That's correct, yes.

15 594 Q. Now, we know that, I think you've already indicated 14:05
16 that, Superintendent Taylor, along with a large number
17 of other members of An Garda Síochána, was asked to
18 provide a statement for the purpose of your
19 investigation?

20 A. That's correct, yes. 14:05

21 595 Q. And I think he provided his statement to chief
22 superintendent -- well, to yourself, Chief
23 Superintendent Clerkin and also to Inspector Dave
24 Gallagher on the 21st November 2014?

25 A. That's correct, yes. 14:05

26 596 Q. I wonder if we could have page 2351 up of the
27 materials, please, which is volume 9. Chief
28 Superintendent, I think what we see there on screen is
29 Superintendent David Taylor's statement to your

1 investigation taken on the 21st November 2014, isn't
2 that right?

3 A. That's correct, yes.

4 597 Q. And I wonder, in fact, if we can go to the next page,
5 page 2352.

14:06

6 A. Yes.

7 598 Q. And you see if we just scroll down a small bit more,
8 underneath the first - thank you, just there - do you
9 see the first blackout there and "J24" is written into
10 the blacked-out mark there?

14:06

11 A. Yes.

12 599 Q. I think after that, the following is stated by
13 Superintendent Taylor -- well, just to give it context,
14 I might read the sentence just before that, including
15 the black mark:

14:07

16
17 "I was further not aware at this time of the email
18 which had been received at the Press Office on the 21st
19 October 2019 from J24 --"

20
21 That is a particular journalist.

14:07

22
23 "-- which formed part of this matter."

24
25 He says then:

14:07

26
27 "I only became aware of this subsequent to events. The
28 first knowledge that I had of this incident at Tallaght
29 on the 22nd October '13 was when it was brought to my

1 attention that it was becoming a news item, that it was
2 attracting media attention. I can't recall the time I
3 became aware of this. I immediately contacted the
4 Commissioner and spoke with him with regard to this
5 incident becoming a media event." 14:07

6
7 Do you see that there?

8 A. Yes.

9 600 Q. Can I ask you, insofar as you were concerned, Chief
10 Superintendent, and from your knowledge of the 14:07
11 investigation, was the statement I have just read out
12 from Superintendent Taylor, was that a factually
13 correct or truthful statement?

14 A. No, as far as I'm concerned it wasn't factual. I was
15 able to establish, one, that he had spoken with the 14:08
16 district officer in Tallaght prior to this becoming a
17 media event, and he also -- the superintendent in
18 Tallaght informed me that he actually sent him a copy
19 of the email. I was also aware that he was in contact
20 with the specific journalist in between conversations 14:08
21 with the superintendent in Tallaght. So as far as I'm
22 concerned, this portion of the statement is not
23 factually correct.

24 601 Q. I see. And did that -- did your awareness of what
25 you've just said, did that have any implications for 14:08
26 the narrowing of the net, so to speak, in terms of your
27 investigation?

28 A. Well, it certainly made me concentrate a little bit
29 more on Superintendent Taylor. Certainly he then

1 became a person of interest to me.

2 602 Q. Yes.

3 CHAIRMAN: Mr. O'Higgins, just to clarify, what you are
4 talking about in relation to the email in relation to
5 the Press Office is the significant incident report 14:09
6 that went to the Press Office, I assume, because this
7 was a significant incident.

8 MR. MÍCHEÁL O' HIGGINS: Yes.

9 CHAIRMAN: And you're also talking about the transfer
10 of the significant incident from the Garda Press Office 14:09
11 email account to Superintendent Taylor's personal email
12 account, is that what you are saying?

13 MR. MÍCHEÁL O' HIGGINS: Yes, Chairman, I'm just going
14 to deal with that in a small bit more detail.

15 CHAIRMAN: Just so as I get the drift. 14:09

16 603 Q. MR. MÍCHEÁL O' HIGGINS: Yes, you might assist the
17 Chairman on that. Elsewhere in his statement,
18 Superintendent Taylor stated that he did not release
19 the information to any persons in the media?

20 A. That's correct. 14:09

21 604 Q. That's the position he maintained?

22 A. Yes.

23 605 Q. Again, can you assist, insofar as you are concerned and
24 from your knowledge of the investigation, was that a
25 correct statement? 14:10

26 A. No. But it doesn't appear to have been correct. From
27 the investigations that I carried out, it would appear
28 that the information was provided to a particular
29 journalist by Superintendent Taylor.

1 606 Q. And why was that a big deal, or was it a big deal?
2 A. Well, it certainly is a big deal because that would
3 tend to suggest that that is where the release of the
4 information came from.

5 607 Q. Yes. I think subsequently you arranged for a search 14:10
6 for official Internet emails pertaining to the
7 investigations in Tallaght to be carried out and
8 collated by the information analysis service and the IT
9 section at Garda Headquarters?

10 A. That's correct, yes. 14:10

11 608 Q. And these related to, again, the dissemination of
12 Inspector Derek Maguire's patrol officer office and
13 relevant emails from the Athlone investigation?

14 A. Correct, yes.

15 609 Q. Now, you told the Tribunal that you organised to obtain 14:11
16 billing information pertaining to relevant official
17 Garda mobile phones?

18 A. That's correct, yes.

19 610 Q. And that was sought from the Telecommunications Section
20 at Garda Headquarters, isn't that so? 14:11

21 A. Correct, correct.

22 611 Q. And I think it's the case that an analysis of these
23 records identified relevant contacts between three
24 relevant individuals, isn't that right?

25 A. Correct, yes. 14:11

26 612 Q. Of whom one was the journalist and another was
27 Superintendent Taylor, isn't that right?

28 A. Correct.

29 613 Q. And that contact that you identified appeared to be at

1 variance with the account that had been provided by
2 Superintendent Taylor?

3 A. That's correct, yes.

4 614 Q. And I think you obtained call records -- or at least
5 you applied for call records under relevant 14:11
6 communications, (Retention of Data) Act 2011
7 legislation?

8 A. That's correct yes.

9 CHAIRMAN: well, what is the variance we're speaking
10 of, Mr. O'Higgins? I'm just not clear what is the 14:12
11 variance we're speaking of?

12 615 Q. MR. MÍCHEÁL O' HIGGINS: Can you assist with that, Chief
13 Superintendent. What were the differences between what
14 you were told by Superintendent Taylor and what you
15 discovered from the records? 14:12

16 A. Well, in the interview with Superintendent Taylor in
17 November, he indicated he had no knowledge of the
18 incident in Tallaght until it became a media event, and
19 my understanding of it being a media event in that
20 there was public articles had been published, whereas, 14:12
21 first of all, the billing records that we analysed in
22 December showed the contact with Superintendent Taylor,
23 the district officer in Tallaght and the journalist
24 concerned. We then went back and interviewed the
25 district officer in Tallaght, who confirmed to us that 14:12
26 he had been speaking to Superintendent Taylor on the
27 night of the incident and that he had provided him with
28 a copy of the patrol officer's report. The patrol
29 officer's report had gone through to the superintendent

1 in Tallaght on his mobile phone, and he told us he
2 provided that to Superintendent Taylor. We then looked
3 at a later stage for the billing data. The billing
4 data then confirmed the contacts, the three-way
5 contact, but it also showed some data movement. Now, 14:13
6 it's important to be fair, that I could never, ever
7 establish or find the email from the superintendent in
8 Tallaght to Superintendent Taylor or from
9 Superintendent Taylor to the journalist concerned.
10 what I could always see was the movement of data. 14:13

11 616 Q. Yes. And also phone calls?
12 A. And phone calls, yes.

13 617 Q. I think subsequently then on the 18th December 2014 you
14 yourself met with Superintendent Taylor at his office
15 in Dublin Castle? 14:14
16 A. That's correct.

17 618 Q. And I think you've already told us you reiterated the
18 parameters of your criminal investigation and you
19 outlined that -- some of the discrepancies that had
20 arisen from an examination of the call and the billing 14:14
21 records?
22 A. That's correct, yes.

23 619 Q. I think you informed him that you required possession
24 of his mobile phone and that was to facilitate an
25 examination of the device as part of the ongoing 14:14
26 investigation?
27 A. That's correct, yes.

28 620 Q. And you fairly pointed out he voluntarily handed over
29 his phone, which obviated the need for you to take any

1 matters further in relation to that?

2 A. That's correct, yes.

3 621 Q. Though you did have a search warrant, but you didn't
4 have to invoke it?

5 A. That's correct, yes. 14:14

6 622 Q. Now, can I ask you, a full examination of the handset
7 was carried out, I think, by Sergeant Niall Duffy,
8 attached to the Electronic Media Examination Unit at
9 Garda Headquarters?

10 A. That's correct. 14:15

11 623 Q. And from analysis of the phone data, just broadly
12 speaking, what was identified or discovered?

13 A. Well, from -- the examination of the phone showed us
14 that Superintendent Taylor was having extensive
15 contacts with a number of journalists. It would appear 14:15
16 from the text messages that we could see that he was
17 being asked to do certain things by journalists and
18 that he was replying to them. We could also see that,
19 as he was going along, he was deleting certain text
20 messages. 14:15

21 624 Q. I see.

22 CHAIRMAN: Do you want to give me, for instance, an
23 example of that, to just make it, I suppose, a live as
24 opposed to a dead fact?

25 625 Q. MR. MÍCHEÁL O' HIGGINS: well, what sort of requests do 14:16
26 you recall were being made of --

27 A. He was asked at one stage if he could get a picture of
28 a man who unfortunately died up in Molesworth Street.

29 626 Q. I think that was a homeless man who --

1 A. The homeless man who died. He was asked could he
2 get --

3 627 Q. Who died, rather poignantly, near Dáil Éireann?

4 A. That's correct, yes.

5 628 Q. And there was a request made, was it, to obtain a 14:16
6 photograph of that unfortunate homeless man?

7 A. That's correct, yes.

8 629 Q. And that was a request made by a journalist?

9 A. A journalist. There was also an incident --

10 630 Q. Well, do you know was that request acceded to? 14:16

11 A. I don't think he was able to do it, no. I don't think
12 he got the photograph, or we could never absolutely
13 establish that he secured a photograph and provided it.
14 We couldn't establish that factually.

15 631 Q. Yes. 14:16

16 A. There was an incident where a soccer player was
17 involved in an incident in Malahide and he was asked
18 could he provide the name of that individual, and he
19 did provide the name.

20 CHAIRMAN: Ms. Burns, can I just say that you're 14:17
21 entitled to go back on any of this, if you wish, just
22 so as you are not worrying about it.

23 632 Q. MR. MÍCHEÁL O' HIGGINS: I don't want to go into the
24 footballer's name, but why was that remotely of
25 news-worthiness? It was a high-profile -- 14:17

26 A. It was a high-profile individual and I suppose it was a
27 salacious piece of information around an incident that
28 had happened out in Malahide.

29 633 Q. Yes. And nobody had made a complaint against the

1 footballer concerned?

2 A. No, no.

3 634 Q. Now, from analysis of the phone data, I think it was
4 established that the mobile phone handset that had been
5 surrendered by Superintendent Taylor, in fact had been 14:17
6 utilised by him between the period September 2014 and
7 December 2014 when it was surrendered, isn't that
8 right?

9 A. That's correct, yes.

10 635 Q. So it would follow, therefore, wouldn't it, that this 14:18
11 was not the physical device used by Superintendent
12 Taylor, for instance, in October 2013?

13 A. No, it wasn't.

14 CHAIRMAN: And, Mr. O'Higgins, again forgive me for
15 interrupting, but it is only for the purpose of 14:18
16 clarification.

17 MR. MÍCHEÁL O' HIGGINS: Yes.

18 CHAIRMAN: We never got that, isn't that right?

19 MR. MÍCHEÁL O' HIGGINS: That is the case. No, that has
20 not been provided. 14:18

21 CHAIRMAN: No. Or if there was two, because they seem
22 to change them every year, perhaps every 18 months, and
23 the particular span here goes close to two years, we
24 have neither.

25 MR. MÍCHEÁL O' HIGGINS: Yes. 14:18

26 CHAIRMAN: If there's two. I am talking about the time
27 as Garda Press Officer.

28 A. There was two mobile phones. We did make inquiries
29 with our telecom section to establish if the phone ever

1 came back on through the live environment, and it never
2 did. That's a phone that he had in October 2013.

3 636 Q. MR. MÍCHEÁL O' HIGGINS: Now, I think it's the case that
4 an examination of the content of text and WhatsApp
5 messages identified a number of incidents of disclosure 14:19
6 of information in the possession of An Garda Síochána
7 to members of the media?

8 A. That's correct, yes.

9 637 Q. And this appeared to suggest a prima facie case of
10 breach of section 62 of the Garda Síochána Act of 2005? 14:19

11 A. Yes.

12 638 Q. Now, I think just by way of locating the matter in the
13 correct time-line, the Chairman asked a question as to
14 when Superintendent Taylor finished up in the Press
15 Office. I think your report indicates that he 14:19
16 commenced his new role as regional traffic
17 superintendent for the DMR region on the 10th June
18 2014, is that right?

19 A. That's correct, yes.

20 639 Q. And it would follow, therefore, that he no longer had 14:20
21 any responsibility for interacting with journalists or
22 the media after that date?

23 A. That's correct, yes.

24 640 Q. From an analysis of the text message contacts that were
25 analysed in the download, I think it's the case that 12 14:20
26 incidents of suspected disclosure information were
27 identified by your investigation?

28 A. That's correct, yes.

29 641 Q. And I think those incidents and disclosures are dealt

1 with at pages 2252 and onwards of the materials, which
2 has your redacted report set out there, isn't that
3 right?

4 A. Correct, yes. 22 --

5 642 Q. Page 2252. I think there is a commencement of an 14:20
6 analysis of different incidents that were -- details of
7 which were disclosed?

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

9 643 Q. And without going through all the succeeding pages, I
10 think there were disclosures relating to a murder of 14:21
11 the 26th October 2014, an assault involving a
12 footballer that you mentioned, a fatal industrial
13 accident in November '14, a fatal road traffic
14 collision in November '14, a shooting the same date,
15 security arrangements for government ministers, 14:21
16 November '14, assaults by staff, alleged assaults by
17 staff at a particular nursing home December '14, the
18 hijacking of a vehicle December '14, a traffic
19 collision near Botanic House in December '14, an
20 incident involving threats to a civilian in December 14:21
21 '14, a fatal collision and also further details
22 relating to incidents in September '14 and January
23 2015, isn't that right?

24 A. That's correct, yes.

25 644 Q. And I think it's the case that numerous potential 14:22
26 witnesses were identified and interviewed in your
27 investigation relating to these relevant incidents and
28 these people assisted the investigation and the matter
29 was ongoing for quite some time, isn't that right?

1 A. That's correct, yes.

2 645 Q. Broadly speaking, what modus operandi on the part of
3 Superintendent Taylor did your investigations disclose,
4 in terms of his contacts with journalists in the period
5 after he left the Press Office? 14:22

6 A. Well, he appeared to continue his contact with certain
7 journalists. He had certainly a lot of contact with
8 one particular journalist - I assume I can say the
9 name?

10 CHAIRMAN: Well, it's now been on the screen for the 14:23
11 last ten minutes, so it wouldn't come as a terrible
12 shock.

13 A. Eavan Murray, he'd had over two thousand --
14 two-and-a-half thousand contacts with that person at
15 various times of the day. We also discovered that he 14:23
16 was continually deleting his text messages as he went
17 along. That's in relation to his mobile device.

18 646 Q. MR. MÍCHEÁL O' HIGGINS: Yes. I think you've indicated
19 in your report that Superintendent Taylor appeared to
20 be in contact with journalists on an almost daily basis 14:23
21 by phone call and text message, and a total of almost
22 38% of all telephone contacts was with identified
23 journalists?

24 A. That's correct, yes.

25 647 Q. And again, this was in a period after he had left the 14:24
26 Press Office?

27 A. That's correct. He was no longer the press officer at
28 that particular time, but he appeared to be acting as a
29 press officer in that period, as far as I could see.

1 CHAIRMAN: Telephone includes text, I presume?
2 MR. MÍCHEÁL O' HIGGINS: Yes.
3 CHAIRMAN: Use of the device?
4 MR. MÍCHEÁL O' HIGGINS: Yes.
5 CHAIRMAN: I'm sorry, I interrupted you, you were 14:24
6 finishing something.
7 A. No, what I was saying was, he appeared from the
8 information that he was disclosing that he was still
9 acting in some capacity as a press officer.
10 648 Q. MR. MÍCHEÁL O' HIGGINS: So he appeared to be running 14:24
11 effectively a parallel press office?
12 A. He was certainly providing a lot of information to
13 particular journalists, yes.
14 649 Q. And I think your report indicates that almost 25% of 14:24
15 overall phone contact was with one specific journalist,
16 namely Eavan Murray?
17 A. That's correct, yes.
18 650 Q. The crime correspondent with the Irish Sun?
19 A. That's correct.
20 651 Q. And I think it was identified that Superintendent 14:25
21 Taylor was a recipient of a critical incident report,
22 which effectively is an email that is circulated every
23 morning, is that right?
24 A. That's correct. We were able to see from -- we looked
25 at his email account and records of his email account, 14:25
26 and we could see that he was getting the critical
27 incident reports and that he was forwarding those
28 critical incident reports to his private email, an
29 Eircom email account. We did secure the warrant for --

1 to look at that account. How and ever, the majority of
2 the information on it was deleted, so we didn't get
3 anything of value from that particular search. We
4 could also see that he was getting the press clippings
5 on a daily basis and he was forwarding them as he was
6 getting them to Eavan Murray. 14:25

7 652 Q. I think it is the case that a critical incident report
8 incorporates a descriptive narrative from Pulse
9 incidents, and the critical incident reports are sent
10 out early in the morning to senior management? 14:26

11 A. The critical incident reports are compiled on a 24-hour
12 basis, and they show details of serious incidents such
13 as murders, shootings, aggravated burglaries, which
14 would have occurred in the previous 24 hours across the
15 country. They are used to inform senior officers of
16 the various happenings in their area and also to
17 provide them with an overview of what is going on. 14:26

18 653 Q. They sometimes contain highly sensitive and operational
19 information, isn't that so?

20 A. That's correct, yes. 14:26

21 654 Q. Maybe this is a question which answers itself, but it's
22 not permissible to disclose critical incident reports,
23 is it?

24 A. No, absolutely not, no.

25 655 Q. An analysis of Superintendent Taylor's email account, I
26 think your report indicates, identified 77 occasions
27 between the 8th May 2014 and the 11th January 2015
28 where he appears to have forwarded a critical incident
29 report to an external private email Eircom address 14:27

1 belonging to himself?

2 A. That's correct, yes.

3 656 Q. As a Chief Superintendent in the Garda Síochána, what
4 was your view of that, that that had been exported to
5 an external email address? 14:27

6 A. Well, I took it extremely seriously. I kind of felt he
7 was compromising the Garda security systems, he was
8 putting out the information into -- outside the Garda
9 organisation. A lot of money is spent in securing the
10 Garda network, and I felt it was outrageous what he was 14:27
11 doing.

12 657 Q. And when his own email Eircom address was examined on
13 foot of a search warrant, did you discover any of the
14 critical incident reports still on the system?

15 A. No, no, no, we couldn't get anything there. We didn't 14:28
16 get anything of any value on that particular account.

17 658 Q. I think it's the case that some 26 articles, many
18 identified as exclusives, and published by Eavan
19 Murray, were considered relevant to your investigation
20 and related to critical incident reports? 14:28

21 A. That's correct.

22 659 Q. And just to give the Chairman a flavour of those,
23 broadly speaking what did they relate to?

24 A. Can I refer to the notes?

25 660 Q. Certainly, yes, without obviously naming any individual 14:28
26 associated. Just to assist you, Chief Superintendent,
27 I might just read out a sampling of the list. You
28 might just confirm if this is correct or not. I think
29 there were critical incident reports relating to the

1 rape of a female associated with the Tinder website?
2 A. That's correct, yes.
3 661 Q. The rape of a female in a taxi?
4 A. Correct.
5 662 Q. A suspicious approach to a child; and I think a tiger 14:29
6 kidnapping incident --
7 A. That's correct, yes.
8 663 Q. -- in north Dublin, isn't that right?
9 A. Correct, yes.
10 664 Q. The burglary of a minister's home? 14:29
11 A. Correct, yes.
12 665 Q. An incident of violent disorder?
13 A. Yes.
14 666 Q. A serious hijacking in Donabate in Dublin?
15 A. Correct, yes. 14:29
16 667 Q. An aggravated burglary incident; a robbery from, I
17 think, a prostitute in south Dublin?
18 A. Correct, yes.
19 668 Q. An aggravated burglary in the Monaghan area, suspicious
20 approach to a child, aggravated burglaries, a robbery, 14:29
21 an escape from custody, and also an incident in north
22 Dublin involving again an aggravated burglary?
23 A. Correct.
24 669 Q. Now, I think it's the case that a number of direct
25 email contacts were -- with specific journalists, other 14:30
26 than Ms. Murray, were considered significant and gave
27 rise to apparent breaches of Section 62 of the Garda
28 Síochána Act 2005?
29 A. That's correct, yes.

1 670 Q. And you've detailed those in your report, isn't that
2 right?

3 A. That's correct, yes.

4 671 Q. And I think it was also established that Superintendent
5 Taylor had received an internal document containing 14:30
6 effectively press clippings by email on a daily basis?

7 A. That's correct, yes.

8 672 Q. And that is something that is only -- An Garda Síochána
9 distributes to a limited number of persons and it is
10 held under licence, isn't that right? 14:30

11 A. Yes, it is held under licence and distributed to people
12 at superintendent or above level, certain
13 superintendents or above, for their information, again
14 to provide them with information of what is going on in
15 their particular areas, and it is provided to An Garda 14:30
16 Síochána under a specific licence.

17 673 Q. Yes. Now, I think it was subsequently discovered by
18 your investigation that Superintendent Taylor on some
19 127 occasions between July of 2014 and December of
20 2014, had forwarded, not to be unduly picking on her, 14:31
21 but had forwarded the press clippings internal document
22 by email to the email account of Eavan Murray, the
23 Irish Sun journalist?

24 A. That's correct, yes.

25 674 Q. And this again occurred at a time when he was not the 14:31
26 Garda press officer?

27 A. He was not the press officer at that time, no.

28 675 Q. And I think then in January 2015 a further operational
29 step was taken by your investigation team when

1 Inspector David Gallagher obtained a search warrant to
2 obtain the content of David Taylor's email Eircom
3 account?

4 A. That's correct, yes.

5 676 Q. I think that was executed on the 23rd January 2015? 14:31

6 A. Correct, yes.

7 677 Q. Similarly, then, Inspector Laura Mangan of the
8 Communications Centre, who had been dealing with an
9 armed incident, and no criticism is made of her, made a
10 report to you or to your investigation, isn't that 14:32
11 right?

12 A. She made a report to the investigation team that
13 Superintendent Taylor or -- and a sergeant on his
14 behalf, was contacting the Communications Room in
15 Harcourt Square seeking information about a particular 14:32
16 armed incident which later transpired to be a fatal
17 shooting.

18 678 Q. And I think as a result of the concerns to which that
19 gave rise, additional billing records were sought for
20 Superintendent Taylor's official mobile phone that he 14:32
21 held from the period December '14 until the 17th
22 February 2015?

23 A. Correct, yes.

24 679 Q. And I think analysis was undertaken of that, of those
25 records, and what did they show up? 14:32

26 CHAIRMAN: And when was that? Was that February '15?
27 Presumably it was.

28 MR. MÍCHEÁL O' HIGGINS: Yes, Chairman. So from the
29 18th December '14 until the 17th February 2015.

1 A. Sorry?

2 CHAIRMAN: The step was executed presumably February
3 '15?

4 A. February '15 I secured a warrant and went to Dave
5 Taylor's office and seized the second mobile phone, on 14:33
6 foot of the information provided by Laura Mangan.

7 CHAIRMAN: Yes.

8 680 Q. MR. MÍCHEÁL O' HIGGINS: And then your team analysed
9 that handset?

10 A. It was then analysed in a similar fashion as the first 14:33
11 mobile phone by Sergeant Duffy in the telecoms section.

12 681 Q. Yes. And what did that reveal?

13 A. It revealed a similar pattern to what we had found on
14 the first phone.

15 682 Q. Yes. And I think you also discovered that other 14:33
16 civilian members attached to the Press Office had been
17 approached by Superintendent Taylor to provide him with
18 journalists' contact details?

19 A. Correct, yes.

20 683 Q. And I think you yourself then entered his office, is 14:33
21 that right --

22 A. That's correct.

23 684 Q. -- with a search warrant, and that was on the 19th
24 February 2015?

25 A. That's correct, yes. 14:34

26 685 Q. And you seized his official phone and laptop?

27 A. Correct, yes.

28 686 Q. Of which mention has already been made. And I think
29 you've indicated that the records that were analysed

1 identified that Superintendent Taylor was in contact
2 with the particular journalist who had initially
3 written up the article that was the exclusive arising
4 from the Tallaght incident in October 2013?

5 A. That's correct.

14:34

6 687 Q. Now, you've mentioned already to Ms. Leader that on the
7 28th May 2015 you arrested David Taylor,
8 Superintendent David Taylor?

9 A. That's correct. I met him by appointment at Balbriggan
10 Garda station.

14:35

11 688 Q. And I suppose perhaps it should be said that as a
12 result of what is outlined in your report and as a
13 result of the information that you had at your disposal
14 at that point in time, you were satisfied presumably
15 that there were reasonable grounds to suspect that
16 David Taylor had disclosed information, which he had
17 obtained in the course of his duty as a superintendent
18 in An Garda Síochána, to a number of journalists?

14:35

19 A. Yes, yes.

20 689 Q. And that gave rise to a belief that there was a prima
21 facie breach of section 62 of the Garda Síochána Act,
22 isn't that so?

14:35

23 A. That's correct, yes.

24 690 Q. And I take it that was the basis for the arrest?

25 A. That is the basis for the arrest, yes.

14:35

26 691 Q. I think at the time of his arrest then, was that when
27 his suspension from An Garda Síochána commenced?

28 A. I suspended him just immediately prior to making the
29 arrest.

1 692 Q. Yes. And he was detained under Section 4, is that
2 right, of the Criminal Justice Act?
3 A. He was detained under Section 4 of the Criminal Justice
4 Act 1984, initially for a period of eight hours by the
5 sergeant and then a further period by the 14:36
6 superintendent and then a further period again by chief
7 superintendent.
8 693 Q. Right. You've told the Tribunal that you yourself were
9 not selected by Commissioner Nóirín O'Sullivan to lead
10 this investigation? 14:36
11 A. No, I wasn't, no. Sorry, I have told the Tribunal I
12 was not selected by Nóirín O'Sullivan.
13 694 Q. So you were appointed by Assistant Commissioner Twomey,
14 isn't that right?
15 A. That's correct, yes. 14:36
16 695 Q. Whose decision was it to appoint Superintendent Jim
17 McGowan, that is Nóirín O'Sullivan's husband, to be the
18 officer, effectively second in command of the
19 investigation?
20 A. That was my decision. 14:36
21 696 Q. Right. And I take it you had an acquaintance or a
22 professional acquaintance with Superintendent McGowan
23 going back?
24 A. Yes, I have known Superintendent McGowan for a number
25 of years. I knew him as an experienced investigator. 14:37
26 I knew he had also completed the senior investigators
27 course. He was also my detective superintendent in
28 Ballymun at that particular time.
29 697 Q. So, from your point of view, was he the logical and

1 appropriate man to choose?

2 A. Yes.

3 698 Q. Now, mention has been made already of Superintendent
4 Taylor's judicial review proceedings. Could I ask you
5 to turn to those now, Chief Superintendent. If we 14:37
6 could have up on the screen, please, volume 1 of the
7 materials, page 24, which gives the index of the
8 judicial review proceedings of Superintendent Taylor.
9 Do you have those there?

10 A. Yes. 14:38

11 699 Q. I brought that up on screen just to give -- to enable
12 you talk through the chronology of the judicial review
13 proceedings. Do you see in item 4 there on page 24,
14 Order of Mr. Justice Noonan dated 29th February 2016?

15 A. Yes. 14:38

16 700 Q. I think it's the case that, underneath that, there's an
17 affidavit of Chief Superintendent Francis Clerkin, that
18 is yourself, isn't that right?

19 A. That's correct, yes.

20 701 Q. And that's dated 31st May 2016. And then later on, 14:38
21 item 6, there is an affidavit of David Taylor replying
22 to that, isn't that right?

23 A. Yes.

24 CHAIRMAN: So 29th February 2016 is leave to issue
25 judicial review proceedings, is that right? 14:38

26 MR. MÍCHEÁL O' HIGGINS: Actually, Chairman, it's not.
27 What -- Mr. Justice Noonan directed that leave should
28 be brought on notice.

29 CHAIRMAN: Okay.

1 MR. MÍCHEÁL O' HIGGINS: And in point of fact, leave has
2 never been granted. It was adjourned from time to time
3 at the behest of Superintendent Taylor, is our
4 understanding of matters. So there was to have been an
5 on notice contested leave application which was 14:39
6 repeatedly adjourned by Superintendent Taylor.
7 CHAIRMAN: Right. So technically it never got off the
8 ground, but it was certainly before the High Court.
9 MR. MÍCHEÁL O' HIGGINS: Oh, it was, yes. On a number
10 of occasions. 14:39
11 CHAIRMAN: Yes.
12 MR. MÍCHEÁL O' HIGGINS: And we can get those dates if
13 needs be.
14 CHAIRMAN: No, no, no, thanks, that's fine.
15 702 Q. MR. MÍCHEÁL O' HIGGINS: So just dealing with what is 14:39
16 suggested or alleged in the course of this. I think
17 the Statement of Grounds, which is the grounding
18 document, Chief Superintendent, is to be found at page
19 29, and Ms. Leader has already referred to the reliefs.
20 I wonder could we have up on screen then page 35 of the 14:39
21 materials, and this is paragraph E continuing of the
22 Statement of Grounds and the factual narrative as
23 advanced by Superintendent Taylor and also verified by
24 him on affidavit in the later document. But in
25 paragraph 21 there, if we could scroll down a little 14:40
26 bit, the following allegation is made:
27
28 "Having regard to the applicant's position as a member
29 of An Garda Síochána, his rank, his record of service

1 to the State, his age and family circumstances, the
2 arrest, or any suggestion of it, was made exclusively
3 for the purpose of exerting further and additional
4 pressure and/or was for the purpose of causing
5 embarrassment to the applicant and/or was for the 14:40
6 purpose of inflicting emotional pain and suffering upon
7 the applicant and/or was for the purpose or holding the
8 applicant up to public ridicule and contempt. "
9

10 Do you have any comment to make in relation to those 14:40
11 assertions?

12 A. Well, I would reject that assertion in its entirety.
13 Certainly the reason for the arrest of Superintendent
14 Taylor, from my point of view, was, I wanted to give
15 him an opportunity to account for the various breaches 14:41
16 of Section 62 which is suspected of him. I had at an
17 earlier stage in November interviewed him and he wasn't
18 forthcoming with information to me at that particular
19 time. I also wanted to have the opportunity that
20 whatever Dave would tell me during the course of his 14:41
21 interview, that I would be in a position to have it
22 validated, and I certainly would reject any assertion
23 that I was trying to embarrass him or to cause him any
24 difficulty.

25 703 Q. Yes. If we read on then at paragraph 22, it is stated 14:41
26 that:

27
28 "On Wednesday 27th May 2015, TV3, in their television
29 broadcast Tonight with Vincent Browne, conducted a

1 review of the morning newspapers in their newspaper
2 review segment, and in that regard they discussed the
3 front page of the Irish Examiner dated Thursday, 28th
4 May 2015. The headline appearing on the front page of
5 the Irish Examiner newspaper as reviewed on the night
6 of the 27th May 2015 stated..."

14:42

7
8 And then there is a quotation. Actually, I see it is
9 not on screen. I wonder if we could scroll down a
10 small bit, Mr. Kavanagh.

14:42

11 CHAIRMAN: It's just the next paragraph. If we just go
12 down a wee bit.

13 MR. MÍCHEÁL O' HIGGINS: So we're still on page 35 of
14 the materials.

15 CHAIRMAN: Yes. There's a glitch in the system.

14:42

16 MR. MÍCHEÁL O' HIGGINS: And over then to the next page,
17 please. And then there's - thank you, if you stop
18 there - so there's a reprise of the Irish Examiner
19 newspaper headline, and it reads:

20
21 "Arrest of garda on the -- over alleged Roma case
22 leaks."

14:42

23
24 And within the article, the following passage appeared,
25 and we might just read down -- skip the first two
26 paragraphs and go down to the third paragraph:

14:42

27
28 "The Garda investigation was immediately ordered by the
29 then-interim Commissioner Nóirín O'Sullivan on foot of

1 the report's publication. The investigation team was
2 headed by a chief superintendent and a detective
3 superintendent who interviewed gardaí and examined
4 mobile phones. "

14:43

6 I think you've already indicated this, but insofar as
7 that appears to suggest Nóirín O'Sullivan was
8 instrumental in directing the investigation, headed up
9 by you, into Superintendent Taylor, what would you have
10 to say about that?

14:43

11 A. Well, I had no discussion with Commissioner Nóirín
12 O'Sullivan around this investigation. She never
13 prompted me or in any way interfered with the
14 investigation. The line manager I had relative to this
15 investigation was Assistant Commissioner John Twomey,
16 and, apart from appointing me to do the investigation,
17 he never interfered with it in any other way.

14:43

18 704 Q. Yes. In terms of the arrest, Chief Superintendent,
19 you've indicated, I think, that, presumably out of
20 courtesy, there was notification given to
21 Superintendent Taylor in advance, is that right?

14:44

22 A. Yes, Superintendent Taylor, through his solicitor, was
23 notified, I think it was about 72 hours prior to his
24 arrest.

25 705 Q. Yes. If we can go then to paragraph 24, which is the
26 top of page 37 of the materials, the following
27 assertions are made then, Chief Superintendent, I'm
28 just going to ask you for your view on them, where it
29 is stated in the judicial review papers as follows:

14:44

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"During the course of the applicant's detention, the investigators were tactless, they were unnecessarily autocratic and oppressive and they failed to afford the applicant a reasonable level of courtesy and respect. Throughout the course of these events, including the decision to arrest and detain the applicant, the investigators were heavy-handed. During a period of time between the decision to arrest, the making of the arrest and the detention of the applicant, information was once again leaked whereupon television cameras and crews arrived at Balbriggan Garda station. Thereafter, the arrest and detention received very significant media coverage."

14:44

14:44

14:45

what do you have to say in relation to those suggestions?

- A. Well, first of all, I would say that I would be quite confident no leaking of the information came from anybody involved with my investigation. I am quite confident of that. Certainly there was some TV cameras turned up at Balbriggan on the occasion. How and ever, as I have said, that Superintendent Taylor was aware 72 hours in advance that he was going to be arrested. Just in relation to how he was dealt with, certainly as far as I'm concerned Superintendent Taylor was absolutely extended every courtesy, he was dealt with absolutely properly and correctly in accordance with the treatment of persons in custody regulations and his

14:45

14:45

1 solicitor was present with him throughout the entire
2 detention period. When he was finished and was being
3 released from custody, he shook hands with myself
4 personally and with Inspector Gallagher before he left
5 the station. So I would reject that in its entirety. 14:46

6 CHAIRMAN: Anyway, it's all on tape, isn't it?

7 A. Yes, it's all on tape, correct, yes.

8 CHAIRMAN: So, I mean, it seems like a pretty wild
9 thing to say unless it's true, but you're saying it's
10 not true? 14:46

11 A. Absolutely, I am quite confident, absolutely is not
12 true, and I should say the tapes will validate it.

13 706 Q. MR. MÍCHEÁL O' HIGGINS: If we could have page 39,
14 please, up on screen, which is the legal grounds upon
15 which Superintendent Taylor was seeking the judicial 14:46
16 review reliefs to prohibit the criminal investigation
17 and disciplinary investigation. Do you see those
18 there, Chief Superintendent? Can I just direct your
19 attention to one or two of them. In (i) -- at the end
20 of (i), it's suggested that the investigation has now 14:46
21 been tainted beyond redemption. Do you see that there?

22 A. Yes.

23 707 Q. And in (iv), (v) and (vi) at the bottom of the page, it
24 is stated:

25
26 "There now exists a significant breach of trust and
27 confidence.

28 (v) The investigation is lacking in credibility."
29

1 Do you agree or disagree with that, that your
2 investigation lacked credibility?

3 A. Well, as far as I'm concerned, the investigation I
4 conducted was fair and it was proportionate and it
5 certainly has credibility, and I reject this allegation 14:47
6 made.

7 708 Q. And over the page then to page 40, (vii) and (viii), it
8 is asserted that:

9

10 "The actions and activities --" 14:47
11

12 That is of the investigating team.

13

14 "-- as they have been so far conducted amount to an
15 interference with the administration of justice." 14:47
16

17 In fairness, I think that's a reference to his
18 complaint about the accessing of the Viber platform, if
19 I understand it correctly?

20 A. Yes, yes. Okay. Well, the Viber allegation of 14:47
21 interference was referred to GSOC. The investigation
22 team, and I myself, fully cooperated with GSOC. GSOC
23 discontinued the investigation as some of the witnesses
24 making complaint did not assist them in their
25 investigation. Any evidence that we had in our 14:48
26 possession in terms of mobile phones was properly
27 secured at all times and I certainly again would reject
28 this.

29 CHAIRMAN: Mr. O'Higgins, can I just ask you, and again

1 I'm not trying to stop you, I'm simply seeking
2 information at this point.

3 MR. MÍCHEÁL O' HIGGINS: Yes.

4 CHAIRMAN: How far is this going to go? Because I'm
5 not inquiring into Superintendent Clerkin's 14:48
6 investigation. And all the indications are, and I have
7 read the entire report, is that it was a very thorough
8 investigation and there is nothing to indicate to me
9 that he is anything other than a straightforward and
10 careful investigator. So, so far, you've maybe perhaps 14:48
11 put forward two things: firstly, that it is said
12 through the witness that Superintendent Taylor lied in
13 relation to his initial response as to the Tallaght
14 investigation, and then the second thing that seems to
15 be put forward, and again I am taking no view on this 14:49
16 at all, I'm just saying this seems to be, if you like,
17 on the table, the second thing that you seem to be
18 saying is that wild allegations were made and put
19 before the High Court, but never pursued. So let's
20 suppose both of those things are true, let's suppose 14:49
21 that, and I'm not saying they are, I haven't got a
22 view, but let's suppose they are true, where does that
23 get me? I suppose what you are saying on that is what?

24 MR. MÍCHEÁL O' HIGGINS: well, I think, Chairman, they
25 are relevant to two aspects, to two issues that are 14:49
26 relevant to your deliberations --

27 CHAIRMAN: Yes.

28 MR. MÍCHEÁL O' HIGGINS: -- as Chairman over this
29 Tribunal. One is the, and I suppose this is the stock

1 answer from all counsel asked to identify relevance of
2 any issue, but it's the issue of credit in relation to
3 Superintendent Taylor, and credibility. But more
4 particularly, it goes to the question of
5 Superintendent Taylor's motivation for making what, on 14:50
6 the part of my clients, are felt to be wholly
7 unwarranted allegations, wild allegations, that are
8 mispremised and just significantly unfounded. And to
9 enable you assess his motivation for making the
10 allegations and whether indeed, whether there is a 14:50
11 basis for his having made the allegations, we think
12 it's of assistance to you to put before you, Chairman,
13 factual matters to enable you form a view on whether or
14 not this was a properly-brought investigation, whether
15 it was well-founded. We're not asking you, and at no 14:50
16 point will be asking you, to find that Superintendent
17 Taylor, for instance, was guilty of breaches of section
18 62 of the Garda Síochána Act, that isn't your role, we
19 acknowledge that, but we do respectfully submit that it
20 is highly relevant to your deliberations to assess 14:51
21 whether this was a properly-motivated investigation, in
22 the first part, headed up by Chief Superintendent
23 Clerkin, and secondly, that there was a proper basis
24 for it in fact.

25 CHAIRMAN: All right. 14:51

26 MR. MÍCHEÁL O' HIGGINS: And that is the principle of --

27 CHAIRMAN: well, certainly no question has been put so
28 far, but there is an opportunity in the event that it
29 is desired to be taken, to suggest that Superintendent

1 Clerkin acted anything other than as a careful and
2 well-trained police officer. Vis-à-vis any question of
3 motivation, well certainly the fact which you are
4 apparently relying on is that there was this
5 investigation, there was the suspension, the suspension 14:51
6 continued, and then I don't know what you're saying
7 after that, Mr. O'Higgins, but it may be something to
8 the effect that it was politic from the point of view
9 of the person making the allegation to then make a
10 protected disclosure, which I am expected to look at 14:52
11 the background of all of this and say is not
12 necessarily true. But that is the suggestion you're
13 floating.

14 MR. MÍCHEÁL O' HIGGINS: That is right.

15 CHAIRMAN: No, that is fine. 14:52

16 MR. MÍCHEÁL O' HIGGINS: That is essentially it.

17 CHAIRMAN: I'm not going to stop you, provided we're
18 all agreed that I am -- nothing has suggested to me
19 that Superintendent Clerkin is anything less than
20 honest, anything less than careful, so I'm leaving it 14:52
21 at that for the moment and I am not going to issue any
22 judgment on it beyond that --

23 MR. MÍCHEÁL O' HIGGINS: Yes.

24 CHAIRMAN: -- unless something comes up, but, of
25 course, I could change my mind in the event that it 14:52
26 became relevant, but at the moment I don't see myself
27 as making an inquiry into Superintendent Clerkin, at
28 all, at all.

29 MR. MÍCHEÁL O' HIGGINS: well, I'm obliged, Chairman,

1 and that will shorten matters for me and I will
2 endeavour to move matters along.

3 CHAIRMAN: You go ahead, Mr. O'Higgins, yes.

4 709 Q. MR. MÍCHEÁL O' HIGGINS: Tying it then to matters that
5 the Chairman needs to have inquired into, and the 14:53
6 assistance he needs to get for the purpose of his
7 deliberations, can I ask you now to deal with what your
8 investigation identified in terms of Superintendent
9 Taylor's attitude or disposition towards Nóirín
10 O'Sullivan, former Commissioner Nóirín O'Sullivan. And 14:53
11 I wonder if we could have page 2312 up on screen,
12 please, from volume 9. And I think this is, in fact,
13 page 104 of your own investigation report, just to
14 assist you with that, Superintendent Clerkin. Do you
15 see there in the -- 14:53

16 A. Sorry, page 23?

17 710 Q. So page 2312. It's up on screen at the moment. Do you
18 have that there?

19 A. Yes.

20 711 Q. Okay. And if we could scroll down to the next 14:54
21 paragraph starting "Superintendent David Taylor's phone
22 outlines", just there, yes.

23 A. Yes.

24 712 Q. And do you see there it says, and this is your report:
25 14:54
26 "Superintendent David Taylor's phone outlines text
27 messages detailing his personal dissatisfaction and
28 contempt for the new Garda Commissioner and Press
29 Office senior staff. All of the safeguards that are

1 fundamental to the Garda Press Office are flouted by
2 Superintendent Taylor and the WhatsApp message
3 exchanged from --"
4

5 And a journalist's name is blacked out. 14:54

6
7 "-- to him on the 13th September stating 'busy day and
8 not one call made to the Press Office' compounds that
9 assertion."

10 14:54
11 All right? And can I just ask you, you've used a
12 reasonably strong word there, "his personal
13 dissatisfaction and contempt for the new Garda
14 Commissioner", from what were you basing -- upon what
15 were you basing that view? 14:55

16 A. Well, I'm basing that on some of the text messages that
17 I had read on the phone in connection with Commissioner
18 O'Sullivan and Dave Taylor.

19 713 Q. Yes.

20 CHAIRMAN: I am being slow, but "'busy day and not one
21 call made to the Press Office'", what am I supposed to
22 make of that? Am I missing something between the
23 lines? 14:55

24 MR. MÍCHEÁL O' HIGGINS: well, no, Chairman, it's the
25 way I have introduced it that is not clear, it's not 14:55
26 the witness. I am asking the witness to indicate upon
27 what he based his conclusion that Superintendent Taylor
28 displayed dissatisfaction and actually his word
29 "contempt" for the former Commissioner. It wasn't this

1 particular text that is in the body of the paragraph.
2 A. Yeah, there's other text messages which are possibly
3 not here that I would have seen which would allow me to
4 arrive at that conclusion.

5 714 Q. Thank you. 14:56

6 MS. BURNS: Chairman, if I could interrupt in relation
7 to that. I don't have any knowledge or information in
8 relation to these text messages that are being referred
9 to, and I think Chief Superintendent Clerkin is
10 indicating that possibly they may not be with the 14:56
11 Tribunal, or certainly I haven't seen them. I'm just
12 slightly concerned that --

13 CHAIRMAN: I think we have the entire -- Ms. Leader, I
14 think we have the entire Clerkin Report, which goes
15 down to about 15 volumes, I'm correct in thinking that. 14:56
16 But I think the concentration in the report certainly
17 is in relation to the three potential criminal
18 offences: corruption, release of data and breach of
19 confidentiality and Garda Act.

20 MS. LEADER: Yes. And not the relationship between 14:56
21 Superintendent Taylor or his attitude to former
22 Commissioner O'Sullivan. The three particular phones
23 are in the possession of the Tribunal and it should be
24 apparent that some text messages have been redacted
25 from the distributed material, there are text messages 14:57
26 to particular journalists, and also, it is only some
27 text messages that have been extracted from the phone.
28 There is a complaint made on behalf of some of the
29 particular journalists in relation to the distribution

1 of text messages to them and from them.

2 CHAIRMAN: I will go into that, that will be very
3 shortly, I suppose, but I'm not going to jump the gun
4 and certainly deprive anyone of privilege, if there is
5 such a privilege. But, look, we have had a reference 14:57
6 to a particular man as a rodent today, so is the net
7 result of it that there was disparaging things said
8 about Nóirín O'Sullivan, is that the bottom line on the
9 thing? And, you know, if that is denied, we can dig
10 them up and distribute them, or whatever. But just 14:58
11 let's see what is the actual evidence.

12 MR. MÍCHEÁL O' HIGGINS: Yes, Chairman. That is
13 essentially the suggestion being made, but in
14 fairness --

15 CHAIRMAN: Yes. You know, because these didn't go into 14:58
16 your full reports.

17 A. No.

18 CHAIRMAN: You weren't --

19 A. No, I wasn't investigating them. They weren't forming
20 part of the criminal matters, no. 14:58

21 CHAIRMAN: Yes. But it's a free country, and Mr. A is
22 entitled to hate Ms. B, etcetera, once they don't do
23 anything about it apart from say that person is an
24 awful, whatever you want to say yourself. But is that
25 the kind of thing we're talking about? 14:58

26 A. Well, it's something along those lines.

27 CHAIRMAN: well, it's getting ever more mysterious. Do
28 you want to pursue this, Mr. O'Higgins?

29 MR. MÍCHEÁL O' HIGGINS: Thank you, Chairman, I think

1 that is sufficient. I have no further questions for
2 the witness.

3 CHAIRMAN: well, the net result of it is he didn't like
4 her and was somewhat bitter, would that be right?

5 A. That would appear to be the way, yes.

14:59

6 CHAIRMAN: Okay.

7 MS. LEADER: I don't know if Ms. Burns wants to ask any
8 questions.

9 CHAIRMAN: Do you want to come back, Ms. Burns, in
10 relation to anything?

14:59

11 MS. BURNS: I don't, Chairman. There is just one issue
12 that was raised in relation to the judicial review
13 proceedings, I will clarify this for certain tomorrow,
14 but in terms of the instructions that I received from
15 my solicitor, regarding those proceedings having been
16 adjourned from time to time, Mr. O'Higgins suggested
17 that they were adjourned at the behest of
18 Superintendent Taylor. Mr. Conlon's recollection of it
19 is that there were adjournments, those adjournments
20 were by consent, and some of those adjournments would
21 have been for the purposes of allowing the State to
22 file papers. Clearly, I'm sure we sought to adjourn it
23 as well on occasion, but obviously we just take issue
24 with it always being at the behest of Superintendent
25 Taylor.

14:59

14:59

14:59

26 CHAIRMAN: well, maybe so, yes. All right. well, in
27 effect, there wasn't a judicial review. It was an
28 application for judicial review that was never -- leave
29 was never granted.

1 MS. BURNS: Yes.

2 CHAIRMAN: But the disciplinary proceedings --

3 MS. BURNS: Yes, Chairman, that's correct.

4 CHAIRMAN: -- which related to the two files, for
5 whatever reason, and no reason is given, the Garda 15:00
6 Síochána just decided to discontinue those, and you
7 haven't got any reason to give me, Mr. O'Higgins,
8 today?

9 MR. MÍCHEÁL O' HIGGINS: Sorry, Chairman, in relation to
10 the precise reason as to why the disciplinary matter 15:00
11 was discontinued, I would prefer, Chairman, with your
12 leave, just to get a precise reason for that and I
13 might try -- provide that to you tomorrow.

14 CHAIRMAN: Well, again, you might think as to whether
15 you think I need to know or whether it's within my 15:00
16 terms of reference. I mean, you can equally make a
17 submission to me on that.

18 MR. MÍCHEÁL O' HIGGINS: Yes. May it please you,
19 Chairman.

20 CHAIRMAN: Ms. Burns, you don't want to come back on 15:01
21 that?

22 MS. BURNS: No, Chairman.

23 CHAIRMAN: No. All right. And then, Ms. Leader, was
24 there anything?

25 MS. LEADER: I think Ms. Murray is represented here 15:01
26 now.

27 CHAIRMAN: Yes.

28 MS. LEADER: I don't know if her representative
29 requires to ask the chief superintendent any questions.

1 CHAIRMAN: Is it Mr. Kennedy?
2 MS. LEADER: Mr. McAleese, I think.
3 CHAIRMAN: Sorry, Mr. McAleese, yes, you are there.
4 Thank you.
5 MR. McALEESE: Sorry, Chairman. I wasn't, in fact, 15:01
6 here earlier when Superintendent Clerkin was commencing
7 his evidence, and I gather there were a number of
8 references made to my client at that point. I might
9 review the transcript, if that is okay?
10 CHAIRMAN: Yes, you could do that if you like, 15:01
11 Mr. McAleese. I mean, everyone from the Garda Press
12 Office was asked in relation to whether they knew
13 anything as to how was it the case that Eavan Murray
14 and Debbie McCann visited the home of Ms. D in late
15 February/early March 2014, and they all said they 15:02
16 didn't know anything, so you're in the clear in that
17 respect. There's nothing for you to challenge unless
18 you want to put a positive instruction to say the
19 reason they went was the following. And then in
20 relation to this, it is the predominance of contact and 15:02
21 other evidence which seems to indicate that Eavan
22 Murray was the main source of any leaking which was not
23 in accordance with Garda regulations, coming from not
24 within the Press Office but from outside the Press
25 Office. But certainly if you wish to review the 15:02
26 transcript. And, Superintendent, could you come back
27 tomorrow, is that possible, if you wouldn't mind?
28 A. Yes.
29 CHAIRMAN: So do you want to do that, Mr. McAleese?

1 MR. McALEESE: That is very kind, Chairman. And I
2 don't unnecessarily want to bring Superintendent
3 Clerkkin back tomorrow, but maybe I could contact the
4 Tribunal's solicitor in the morning after I have
5 reviewed the transcript and we could -- I probably
6 won't have anything to add. 15:02

7 CHAIRMAN: well, it may be that you would like to
8 review the rule in Browne v. Dunn and put to the
9 witness anything that is your case, because my
10 obligation is to actually try and find the facts. It's 15:03
11 different to a civil court case where I'm limited by
12 the pleadings and I don't necessarily have to say,
13 apart from saying I don't accept what the plaintiff
14 said, I don't have to say what actually happened, I am
15 here obliged to say what actually happened, insofar as 15:03
16 I humanly can. So I think it would be a good idea for
17 you to review the transcript and the rule in Browne v.
18 Dunn and maybe if you wish to look at the matter in the
19 light of those, the Superintendent will come back
20 tomorrow, certainly. 15:03

21 MR. McALEESE: I'm very obliged to you for the offer,
22 Chairman, and I will certainly take it up, and perhaps
23 I might communicate with the Tribunal's solicitor in
24 the morning just to give some indication of what my
25 intention is. 15:04

26 CHAIRMAN: well, again, it is entirely for you, but the
27 rule in Browne v. Dunn is very, very important in a
28 civil case, in a criminal case, and it is very
29 important here, too. So there it is.

1 MR. McALEESE: Much obliged.

2 CHAIRMAN: Sorry, did you have any further questions,
3 Ms. Leader?

4

5 CHIEF SUPERINTENDENT CLERKIN WAS RE-EXAMINED BY 15:04

6 MS. LEADER:

7

8 715 Q. MS. LEADER: There is one thing I should have asked the
9 Chief Superintendent. If I could have page 245 of the
10 materials, which is in volume 1 up on the screen. It's 15:04
11 an extract from Sergeant McCabe's protected disclosure.
12 He's referring to -- this is Sergeant McCabe in this
13 extract is referring to a meeting he had with
14 Superintendent Taylor and his wife Michelle Taylor, and
15 what Sergeant McCabe says is: 15:05

16

17 "Our meeting lasted over three hours. Superintendent
18 Taylor spoke at great length of how, when he was the
19 Garda Press Officer, he had, in a sustained campaign,
20 destroyed my --" that is Sergeant 15:05
21 McCabe's "-- character and reputation and disseminated
22 false, scurrilous and damaging allegations about me to
23 persons of influence and persons in the media acting on
24 orders and instructions from Garda management. "

25

26 You see it then says:

27

28 "He stated that he was now being targeted --" as is, he
29 was being investigated "-- because he knew too much. "

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And I just wanted to give you the opportunity for your comment on that as the person who was in charge of the investigation into him.

A. Well, the investigation that I carried out was nothing got to do with Maurice McCabe or in any way remotely associated with it. It was purely around disclosure of information to the press in relation to the Tallaght case and then other matters that I discovered on his phone. 15:05

716 Q. And were you aware of any rumours about Sergeant McCabe during the time of your investigation, and I suppose we're now going back to 2014, December 2014, August 2014 time period? 15:06

A. I'm not sure I was personally aware of any rumours, but I certainly was aware that it was in the media and that Maurice McCabe was being discussed across the land, actually, but I was aware in that regard, of course I was. 15:06

717 Q. Okay. And did Superintendent Taylor at any time suggest to you that other than the judicial review proceedings, if I can put them that way, that he was being targeted because he knew too much? 15:06

A. No, absolutely not, no.

MS. LEADER: Thank you very much. 15:06

CHIEF SUPERINTENDENT CLERKIN WAS THEN QUESTIONED BY THE CHAIRMAN:

1 718 Q. CHAIRMAN: I had a few questions, if I might, please,
2 superintendent. Again, this has been gone over, but
3 it's all too easy, unfortunately, for me to put my foot
4 in it and make a mistake, so I would just like your
5 help on something. What is actually stored on Pulse 15:07
6 vis-à-vis communications and does what's stored on
7 Pulse, would it ever cover what we have been talking
8 about here?

9 A. Not on Pulse per se. And I have to preface my replies,
10 I'm not an expert -- 15:07

11 719 Q. CHAIRMAN: Yes.

12 A. -- on Pulse, but my understanding of Pulse, Pulse
13 records objects, persons and things that are associated
14 with Garda organisation, and it also categorises
15 various incidents that Garda attend to, and it's all 15:07
16 stored on Pulse, if that helps.

17 720 Q. CHAIRMAN: Yes. No, it does. But I have been up to
18 Garda Headquarters and the people from the FSNI have
19 been up in Garda Headquarters I think on numerous
20 occasions and looked at the computer systems there. 15:08
21 Now, as I would understand it, and this is where I want
22 to be corrected, please, if I am wrong, that on any one
23 of the, I think there's about five individual computer
24 systems up there, if somebody sends an email or if
25 somebody uploads a document that's relevant to an 15:08
26 investigation or uploads an observation in relation to
27 a crime and security matter, that's just there, that's
28 kept, isn't that right?

29 A. Well, that's my understanding of it, also. Yes.

1 721 Q. CHAIRMAN: Yes. And similarly, if -- again if we can
2 just take you as an example, Chief Superintendent, if
3 somebody sends you an email about something to do with
4 an investigation, again that's there?
5 A. It's retrievable. 15:08
6 722 Q. CHAIRMAN: It would be you @Garda.ie, or whatever the
7 email address is?
8 A. That's correct, yes. It should be retrievable.
9 723 Q. CHAIRMAN: And it's always there?
10 A. Yes. 15:09
11 724 Q. CHAIRMAN: Is there any possible reason why you would
12 take something that is to do with Garda information and
13 actually email it to yourself?
14 A. Me personally?
15 725 Q. CHAIRMAN: Yes, let's suppose you had an email address, 15:09
16 I don't know, fc@hotmail.com or something?
17 A. No, it's not something I ever engaged in or had any
18 reason to do --
19 726 Q. CHAIRMAN: But could there be any reason?
20 A. I'm sure there could be. I certainly didn't do it. 15:09
21 But, you know, I'm sure there could be reasons. I
22 can't just think of one at the moment.
23 727 Q. CHAIRMAN: well, the emails you get on your Garda.ie
24 account?
25 A. Yes. 15:09
26 728 Q. CHAIRMAN: Do you also get them on your personal mobile
27 device which you carry around?
28 A. They come on my personal mobile device but they come to
29 the Garda email.

1 729 Q. CHAIRMAN: Yes.
2 A. Which is separate on the device.
3 730 Q. CHAIRMAN: But you open the relevant thing here --
4 A. You open the relevant app, I'm not technical, but you
5 open it on your machine, that's into to the Garda 15:10
6 network, as such, and is contained in there on my
7 mobile device.
8 731 Q. CHAIRMAN: Yes, all right. But it is not contained or
9 stored anywhere else then apart from potentially on the
10 device, but the device is self-deleting, as I 15:10
11 understand it, once it reaches a certain level of data,
12 and it is also stored on the main Garda servers, is
13 that right?
14 A. It's stored on all of those things, but if I open a
15 word document on my mobile device, I certainly feel if 15:10
16 I wanted to I could save it to the actual device.
17 732 Q. CHAIRMAN: You do?
18 A. And then re-send it using a different email account.
19 733 Q. CHAIRMAN: You could?
20 A. I could. 15:10
21 734 Q. CHAIRMAN: Yes.
22 A. And that would not show up on the Garda network.
23 735 Q. CHAIRMAN: No. So what you do with it when you get it
24 is your own business, no more than if you got, say, a
25 report in hard copy, there's nothing to stop you going 15:10
26 to a photocopier in your home and photocopying it or to
27 the local shop and photocopying it?
28 A. Yeah, yeah, I'd agree with you there.
29 736 Q. CHAIRMAN: I'm not saying you would do that?

1 A. No, no, but it can be done, yes.

2 737 Q. CHAIRMAN: All right. Phone companies, let's say Eir,
3 or whatever, they don't actually store the data that is
4 transmitted, the packets that are transmitted from A to
5 B to C? 15:11

6 A. I'm not sure I'm qualified to answer that question. I
7 think they store it for a particular period of time,
8 but that's all.

9 738 Q. CHAIRMAN: I thought we were talking in that regard
10 about metadata, which is that at a particular time, for 15:11
11 instance, A phoned B using a particular mast for a
12 particular time, phone call terminated, particular
13 mast, particular time A to B?

14 A. It should be able to provide that information up to a
15 particular time. 15:11

16 739 Q. CHAIRMAN: Yes.

17 A. But again, that is not within my area of knowledge.

18 740 Q. CHAIRMAN: No, I appreciate that. It's two years. So
19 texts are not stored in that system, as I understand
20 it? 15:11

21 A. No, texts would be on the device, I would understand.

22 741 Q. CHAIRMAN: Yes. Similarly, emails are not stored on
23 that system?

24 A. No.

25 742 Q. CHAIRMAN: So if you have a personal device and you 15:12
26 email things from, let us say, your official work
27 account to, let's, I'm just using it as an example, a
28 gmail account or any other account --

29 A. Yeah.

1 743 Q. CHAIRMAN: -- you can send that off to somebody else,
2 you can delete on the sent butt on, you can delete on
3 the inbox and there would be no record on your device,
4 is that correct?

5 A. Again, I need to be certain, I'm not an expert on this, 15:12
6 but I would imagine if you opened up your Garda email
7 account and sent it to your gmail, there will be a
8 record of it there. How and ever, if you opened up
9 your Garda account and save the document and then used
10 your gmail account to send the document it won't show 15:12
11 up.

12 744 Q. CHAIRMAN: Yes. And in any event, once you delete it's
13 gone?

14 A. Yes.

15 745 Q. CHAIRMAN: Similarly vis-à-vis texts, there has been 15:12
16 mention of a large number of emails -- sorry, a large
17 number of texts --

18 A. Texts, yes.

19 746 Q. CHAIRMAN: -- to Eavan Murray, the number was given,
20 it's 2,000 for a particular period of three or four 15:13
21 months, which were deleted, there aren't any left. So
22 if you send say a text, and I'm not trying to blame --

23 A. Yeah.

24 747 Q. CHAIRMAN: -- the individual at all, to a particular
25 person and you then delete it, there's no record of 15:13
26 that unless of course the person who gets it keeps
27 it --

28 A. Correct.

29 748 Q. CHAIRMAN: -- and doesn't delete similarly?

1 A. Yeah. It could be received on the device that received
2 it.

3 749 Q. CHAIRMAN: Yes.

4 A. Or could be stored on the device that received it.

5 750 Q. CHAIRMAN: All right. So that is how that is done. 15:13
6 Now the last thing I wanted to ask you about is
7 metadata. As I say, I have read your report, and you
8 were asked about this, but I just want to see if I am
9 correct, and if I am not correct please do tell me so.
10 Insofar as there was, and this is relevant to the whole 15:14
11 issue of were there texts from Garda Headquarters, were
12 they sent to people, was "perfect" put at the end of it
13 by Nóirín O'Sullivan, were they sent to journalists and
14 other prominent persons, as one account of the
15 protected disclosure of David Taylor as reported by 15:14
16 Sergeant McCabe indicates, so the question is directed
17 to that, but the methodology vis-à-vis the contact with
18 the journalist would seem to be from your report
19 journalist A contacts Superintendent Taylor, perhaps
20 there's a query in it, sometimes perhaps there's not, 15:14
21 and that is not followed by a text necessarily giving
22 the information but it seems to be followed by a phone
23 call to someone who might know the information or a
24 text to someone who might know the information followed
25 by the receipt of that information, but that's not 15:15
26 conveyed necessarily by text. Typically the
27 methodology is that Superintendent Taylor makes a
28 telephone call to journalist A, is that --

29 A. That is a fair assessment of what I considered was

1 happening, yes.

2 751 Q. CHAIRMAN: So again, the trail is missing?

3 A. Correct.

4 752 Q. CHAIRMAN: what is there is the query, followed by
5 further queries being made, followed not by anything 15:15
6 that could be kept electronically but an actual phone
7 call?

8 A. Yes.

9 753 Q. CHAIRMAN: And of course unless there's an order by a
10 High Court Judge, and there wasn't as I understand 15:15
11 it --

12 A. No.

13 754 Q. CHAIRMAN: -- in any anything to do with this case --

14 A. No.

15 755 Q. CHAIRMAN: -- nothing is recorded, let's say, in Garda 15:15
16 Headquarters where citizen A is talking to citizen B,
17 whether one of them is a Garda or not?

18 A. No, I don't think so, no.

19 756 Q. CHAIRMAN: well, no.

20 A. No. 15:15

21 757 Q. CHAIRMAN: It's not supposed to happen anyway.

22 A. No.

23 758 Q. CHAIRMAN: All right. And it didn't happen in this
24 case as far as you're aware?

25 A. No. It didn't. No. 15:16

26 759 Q. CHAIRMAN: Thank you very much for your help. Thank
27 you.

28

29 MR. MÍCHEÁL O' HIGGINS: Chairman, I omitted to ask one

1 matter, could I be permitted, and my apologies for
2 leaving it out.

3

4 WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL O' HIGGINS AS
5 FOLLOWS:

15:16

6 760 Q. MR. MÍCHEÁL O' HIGGINS: Chief Superintendent Clerkin,
7 there is one matter I was to cover with you that I
8 forgot to. You were asked by Ms. Leader about certain
9 publicity that was attended on David Taylor's arrest.
10 Was there any publicity associated with the judicial
11 review proceedings brought by Superintendent Taylor to
12 your knowledge?

15:16

13 CHAIRMAN: well, I assume it was a five-page spread,
14 Mr. O'Higgins, unless you're going to tell me to the
15 contrary.

15:16

16 761 Q. MR. MÍCHEÁL O' HIGGINS: Just, it is something that I
17 think Chief Superintendent Clerkin commented on in his
18 report. And you had a view as to whether the media was
19 being manipulated or not.

20 A. well, I would imagine they were being informed about
21 what was going on in the background, yes, not by me or
22 by anybody on my investigation team.

15:17

23 762 Q. Yes. And did you have a view as to whether the media
24 were being manipulated?

25 A. I'm not sure about the word manipulated, I would say
26 they were being kept apprised of what was going on by
27 certain interested parties, yes.

15:17

28 763 Q. Who are not part of your investigation team?

29 A. Correct, yes.

1 MR. MÍCHEÁL O' HIGGINS: Thank you.

2 CHAIRMAN: well again, I'm not sure I can -- unless you
3 want to say, Ms. Burns, we deny or whatever, but am I
4 reporting on that, I don't know.

5 MS. BURNS: well again, Judge, an opinion has been 15:17
6 given that I have no information in relation to. Now
7 if the Garda Commissioner's team want to adduce facts,
8 so be it, but adducing opinion evidence is another
9 matter.

10 CHAIRMAN: well, your client wasn't shy about putting 15:17
11 that on an affidavit before the High Court.

12 MS. BURNS: No. I understand that, Judge, but --

13 CHAIRMAN: His own opinion. So, does he maintain his
14 opinion?

15 MS. BURNS: The problem here, no more than the 15:17
16 situation in relation to text messages, I don't have
17 any information in relation to that, so --

18 CHAIRMAN: All right.

19 MS. BURNS: I assume what Mr. O'Higgins in fact is
20 saying is that Superintendent Taylor manipulated the 15:18
21 press, that isn't actually now said, but I assume that
22 that is the inference that the Garda Commissioner's
23 team wishes the Tribunal to take.

24 CHAIRMAN: Yes.

25 MS. BURNS: I can't engage in that, I don't know what 15:18
26 basis Chief Superintendent Clerkin is basing his
27 opinion on, I haven't been informed of that
28 information.

29 CHAIRMAN: Thank you. That is fine, Ms. Burns. Thank

1 you very much for that. Of course the media can be
2 made the victims of things, the same way as anybody
3 else can be. Right. Thank you.

4
5 THE WITNESS THEN WITHDREW

15:18

6
7 MR. MARRINAN: Detective Sergeant Brian Hanley, please.

8
9 DETECTIVE SERGEANT BRIAN HANLEY, HAVING BEEN SWORN, WAS
10 DIRECTLY EXAMINED BY MR. MARRINAN AS FOLLOWS:

15:19

11 764 Q. MR. MARRINAN: I think, detective sergeant, you are
12 attached to the National Bureau of Criminal
13 Investigation in Harcourt Square, is that right?

14 A. That's correct, Chairman.

15 765 Q. And I think on Thursday, 28th May 2015 you went to
16 Balbriggan Garda Station, where you were aware at
17 7:25am Superintendent Dave Taylor had been arrested by
18 the last witness, Chief Superintendent Clerkin?

15:19

19 A. That's correct.

20 766 Q. I think you and a colleague, Detective Sergeant Colgan,
21 had been deputed to conduct interviews in relation to
22 Superintendent Taylor, isn't that right?

15:19

23 A. That's right, that's correct, along with two other
24 colleagues.

25 767 Q. I think that in relation to the background and what
26 materials that you had before you commenced the
27 interviews, I think that insofar as anything that
28 occurred prior to the 8th or 9th September 2014, you
29 didn't have a report in relation to telephone evidence,

15:19

1 isn't that right?

2 A. Prior to the 8th/9th September 2014, that's correct.

3 768 Q. Yes. In terms of the actual examination of a telephone
4 because Superintendent Taylor's telephone was retained
5 by him for that earlier period of time? 15:20

6 A. That's correct. They had call data records as well
7 that we had.

8 769 Q. Yes. Just to be abundantly clear in relation to this,
9 because it comes a little bit fuzzy and I will bring
10 you through some of the assertions that were made by 15:20
11 Superintendent Taylor subsequent to this, but
12 Superintendent Taylor handed over his old phone to
13 Inspector Moroney who examined it and decided that it
14 wasn't fit for purpose, and that was on the 8th or 9th
15 September 2014. And we know that Inspector Moroney 15:21
16 returned the phone to Superintendent Taylor who
17 retained possession of it thereafter, but it hasn't
18 become available to the Tribunal, do you understand?

19 A. I do.

20 770 Q. Yes. And that was the state of play as far as your 15:21
21 investigation was concerned, isn't that right?

22 A. I wouldn't be fully au fait with the process or the
23 chain in relation to the mobile phones, we came in just
24 at the interviewing processing stage.

25 771 Q. When you went to the interviews your focus was on 15:21
26 telephone data that you had?

27 A. Absolutely.

28 772 Q. And that telephone data had been supplied by the
29 service providers, isn't that right?

1 A. That's correct.

2 773 Q. And it was in the form of billing records?

3 A. That's correct.

4 774 Q. And the billing records showed the calls made, the time
5 the call was made and text messages that were sent, 15:21
6 isn't that right?

7 A. At south side locations, that's correct, yes.

8 775 Q. But didn't have the content of the text messages?

9 A. Not for the period of October 2013, no.

10 776 Q. That is not something that is available. I just want 15:22
11 to refer you to the protected disclosure that was made
12 by Superintendent Taylor. If I could have page 8 up on
13 the screen, please. This protected disclosure related
14 to a timeframe when he was the Garda Press Officer,
15 which he was until the 10th June of 2014, and it reads: 15:22
16

17 "I can confirm that a large number of interactions took
18 place between myself, the Commissioner and Deputy
19 Commissioner O'Sullivan by way of text message. My
20 telephones have been seized and taken from me, are in 15:22
21 the custody of An Garda Síochána."

22

23 His phone hadn't been seized that related to that
24 timeframe, isn't that right?

25 A. No. 15:23

26 777 Q. No.

27

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

1 and so these text messages should be available on my
2 device. "

3

4 That's not accurate, is it?

5 A. No.

15:23

6 778 Q. "I did not delete any text messages sent by me or
7 received by me which involved the Commissioner and
8 Deputy Commissioner O'Sullivan. "

9

10 That paragraph actually has absolutely no meaning in
11 the context in which it is put in there, because his
12 phone was never seized and was never examined and you
13 never put text messages or the content of text
14 messages, isn't that right?

15:23

15 A. For the period of October 2013, 2013, that's correct.

15:23

16 CHAIRMAN: And we never got the phone, that is one of
17 the missing phones, Mr. Marrinan, just to be clear.

18 MR. MARRINAN: That is so.

19 CHAIRMAN: Yes. I think we have lost realtime, have I?
20 Has everybody lost realtime? If we could just see if
21 it could be restored. Why don't you carry on,
22 Mr. Marrinan, in the meantime.

15:24

23 779 Q. MR. MARRINAN: Yes. I think if I can just put up page
24 17 on the screen, please. This was a letter sent on
25 behalf of Superintendent Taylor by his solicitor to
26 Mr. Justice Iarfhlaith O'Neill. If I can scroll down
27 to the -- yes, just to the fourth paragraph:

15:24

28

29 "When reviewing the material it was discovered that the

1 forensic analysis conducted and reported in the report
2 of Sergeant Duffy was conducted on a Nokia Lumia
3 telephone which it appears was issued to our client on
4 or about the 5th September 2014."

15:25

5
6 All right? so that's clear in relation to that. If we
7 just scroll down a bit. Then:

8
9 "With respect to the mobile telephone device which our
10 client had in 2013/2014 it is noted that Superintendent 15:25
11 Flynn confirms it has some issue or fault which
12 necessitated its replacement on the 5th September 2014.
13 Our client attended at Garda Headquarters with his
14 device and presented same for replacement. The said
15 device was connected to a laptop computer by the 15:25
16 relevant member, Inspector Moroney, who proceeded to
17 transfer or migrate data from the old device to the new
18 device and provided the new device to our client. Our
19 client was then offered the old device which had been
20 cleared of all data, wiped. Our client retained that 15:26
21 device. The device became obsolete and was discarded
22 and is therefore no longer available."

23
24 Now we have heard from Inspector Moroney, the data
25 wasn't transferred from the phone to the new phone 15:26
26 other than the address book, do you understand?

27 A. Yes.

28 780 Q. Is that your understanding of the position?

29 A. Yes, I wasn't aware before being here today.

1 781 Q. Then, if we just turn over to page 18:

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"However, our client wishes to alert you to the fact that records are in existence confirming his mobile telephone activity in 2013. In particular, text messages sent and received from his mobile telephone device."

15:26

Insofar as that would suggest that the content of text messages is available that is inaccurate, isn't that right?

15:27

A. Absolutely.

782 Q. "He is in a position to so advise as many such text messages and telephone interactions were put to him in the course of his monitored and recorded and cautioned interviews which took place over the 28th and 29th May."

15:27

Again, insofar as that suggests that the content of text messages were put to him that is also incorrect, isn't that right?

15:27

A. Specifically in relation to October of 2013 that is correct, it is inaccurate. However, in relation to other incidents, as a result of the handsets having been downloaded from December 2014 and from February 2015, there was text messages that were available to question Superintendent Taylor on that.

15:27

783 Q. Then if we go down further on the page at page 18 to the third last paragraph from the end:

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"Furthermore, it is clear from the criminal investigation that ten applications which generated by TLU were the information that was put to our client at interview. There is a mechanism to obtain the text messaging without the relevant mobile telephone device which was utilised to transmit such messages. Therefore, the availability of any device or handset does not inhibit any inquiry assessing the material."

15:28

15:28

That in fact is incorrect as well, isn't that right?

A. To my knowledge, yes.

CHAIRMAN: well, that is technical nonsense, isn't it?

MR. MARRINAN: Yes.

784 Q. Paragraph 2 then, if we can scroll back up to that:

15:28

"In this regard, the writer accompanied our client throughout the interview process and noted that the relevant exhibits which contain the said text messages and telephone/data activity are BH2 and BH5. We understand the initials BH referred to Detective Sergeant Brian Hanley who is one of the interviewing members on the date in question."

15:28

Now insofar as again there's a suggestion the text messages were available and were put to Superintendent Taylor covering the relevant period of time, if we can just have a look then at BH2 and BH5 in the material. In the first instance if we could look

15:29

1 at BH2, which is page at 2720.

2 A. volume 10, is it?

3 785 Q. volume 10. 2720, have you got it there?

4 A. Yes.

5 786 Q. Yes. This was one of the exhibits that you had in the 15:29
6 interview and that you went through with
7 Superintendent Taylor, he had no comment in relation to
8 all these matters, isn't that right?

9 A. That's correct.

10 787 Q. And this is a chart showing call data but there's no 15:30
11 content of any text messages on that document, isn't
12 that right?

13 A. No, there's no content.

14 CHAIRMAN: Mr. Marrinan, can I just stop, it's
15 referable to other evidence we've had. I think you can 15:30
16 tell that there was a text from the metadata, isn't
17 that correct?

18 MR. MARRINAN: Oh yes.

19 CHAIRMAN: But the actual text itself has to be stored
20 on a device otherwise it's gone. 15:30

21 MR. MARRINAN: Yes.

22 CHAIRMAN: So that's the situation. They couldn't have
23 been putting that, they could certainly put the phone
24 records, which is a huge big printout, maybe a foot
25 thick, but you couldn't possibly put the text unless 15:30
26 you had the phone and they don't have the phone and
27 never had the phone.

28 MR. MARRINAN: That's right.

29 CHAIRMAN: Yes. Just so we are clear because this is

1 liable to get very confusing.

2 A. There was no content to the text, Chairman. The fact
3 that a text had been sent was there on the call data
4 records.

5 CHAIRMAN: And that is as much as you can say. 15:31

6 A. That's correct.

7 788 Q. MR. MARRINAN: And then if we go to BH5, please, this
8 was the other one referred to by the solicitor. Again
9 most of this is blanked out but you will see there at
10 BH5 at page 2724, please, of the materials, again this 15:31
11 is a chart that is 25 pages in total there, but again,
12 there's no content or text messages there, isn't that
13 right?

14 A. No, no content.

15 789 Q. This is a chart that is compiled purely from billing 15:31
16 records?

17 A. That's correct, that's correct.

18 CHAIRMAN: well, I think that is obvious from what is
19 on the screen, Mr. Murrinan.

20 MR. MARRINAN: Yes. Thank you very much. would you 15:31
21 answer any questions.

22 MR. McDOWELL: No questions, Chairman.

23 MS. BURNS: No questions.

24

25 WITNESS WAS EXAMINED BY MR. DONAL MCGUINNESS AS 15:32
26 FOLLOWS:

27 790 Q. MR. DONAL MCGUINNESS: Chairman, just a couple of short
28 questions on behalf of An Garda Síochána. Detective
29 sergeant, if I can just ask you to look at page 37,

1 volume 1 on screen please or on the volumes beside you.
2 It might be easier if you pick up the volume beside
3 you. In fact it might be of assistance if I just
4 summarise what I'm going to ask you. It's been
5 suggested that the conduct of the interviews was 15:32
6 autocratic, oppressive and failed to offer reasonable
7 levels of courtesy. Have you anything to say in
8 relation to that allegation? These relate to the
9 interviews that you and Detective Sergeant Colgan
10 conducted. 15:33

11 A. Chairman, I reject the assertions. At all times
12 Superintendent Taylor was dealt with in a professional
13 manner. I was very cognisant of the fact that he was a
14 superintendent in An Garda Síochána. So much so that
15 at the end of the interview process, at, I think it 15:33
16 was, 2:35 when the last interview was conducted
17 Superintendent Taylor shook my hand and shook my
18 colleague's hand in the interview room and thanked us
19 for our professionalism in how we conducted the
20 interview process. 15:33

21 CHAIRMAN: In any event, were that question to arise
22 literally everything is on tape, isn't that correct?

23 A. Correct.

24 791 Q. MR. DONAL MCGUINNESS: Just in relation to the matters 15:33
25 canvassed during the conduct of the interviews, as you
26 already indicated they were from a certain timeframe
27 and a timeframe that was outside the paragraph that
28 Mr. Marrinan is just after referring to, the timeframe
29 Mr. Marrinan is just after referring to.

1 A. Sorry, could you repeat that again, please?

2 792 Q. Just insofar as you were conducting the interview and
3 the timeframe of the matters that you were putting to
4 Superintendent Taylor --

5 A. That's correct. 15:34

6 793 Q. -- the timeframe was in relation to matters after he
7 had left the Press Office, isn't that correct?

8 A. That is correct. Initially one aspect of it was in
9 relation to October 2013 and subsequent to that was
10 after June 2014 when he had left. Other matters were 15:34
11 post-June 2014, that's correct.

12 794 Q. And insofar as you were referencing particular messages
13 or particular information gleaned from the phone, the
14 Nokia Lumia, that phone was in operation between 9th
15 September 2014 and the 18th December 2014? 15:34

16 A. That's correct.

17 795 Q. Now just in relation to some of the matters that were
18 canvassed, if you could just refer to page 2553,
19 please. Now this document is a memorandum of
20 interview, it was taken as a result of your interviews 15:35
21 with Superintendent Taylor, on the 28th May '15?

22 A. Yes, Chairman.

23 796 Q. And there is a reference to a critical incident report
24 on that page, we don't necessarily need to go into the
25 detail of it but it did involve a Minister and some 15:35
26 theft of some equipment?

27 A. That's correct.

28 797 Q. And there was a reference to the fact that
29 Superintendent Taylor received the critical incident

1 report on the 28th September '14 and there was an
2 exclusive published by Eavan Murray on the 29th
3 September 2014 concerning the same incident?

4 A. I think have I have it here, you had the recipient of
5 the critical incident report on 27th September 2014. 15:36

6 798 Q. Sorry, 27th my mistake. And then in relation to, at
7 2554 there is another critical incident report and this
8 refers to a much more serious matter, it concerns an
9 allegation of rape. And again, you put it to
10 Superintendent Taylor matters of concern in connection 15:36
11 with the release of information from that critical
12 incident report, isn't that correct?

13 A. That is correct.

14 799 Q. You also refer page 2555 to 2,900 telephone contacts
15 with Eavan Murray and put the level of contact that he 15:36
16 had apparent from the records that you had received to
17 Superintendent Taylor, isn't that correct?

18 A. That's correct.

19 800 Q. Is it safe to say, detective sergeant, that the type of
20 entries there, the manner in which you put the 15:36
21 information to Superintendent Taylor is consistent all
22 the way through in your memorandum of interview?

23 A. Yes. Yes, Chairman. It is.

24 801 Q. Was there any suggestion of involvement of any other
25 senior Garda officers that you wouldn't have expected 15:37
26 to get involved in the investigation that you were
27 involved in concerning these matters?

28 A. No, Chairman.

29 802 Q. Was there any suggestion by Dave Taylor or

1 Superintendent Taylor of any improper motive in the
2 arrest and the examination by you of him concerning
3 these matters?

4 A. No, Chairman.

5 803 Q. Insofar as you were appointed to this investigation how 15:37
6 did that come about?

7 A. At the time, Chairman, I was a level 3, I was trained
8 within the Garda Síochána interview model to level 3
9 and I suppose more often level 4 interview advisers and
10 level 3 interviewers are being sought for serious 15:38
11 criminal investigations to assist in the interviewing
12 process, and it was to that vein that I was asked to
13 get involved in this situation.

14 804 Q. And how recently had you completed your training in
15 this regard? 15:38

16 A. I completed it in 2010. April 2010.

17 CHAIRMAN: In other words, what you're really being
18 asked, Detective Sergeant Hanley, is, I presume that it
19 wasn't -- Nóirín O'Sullivan didn't ring you up and ask
20 you to do it? 15:38

21 A. No, Chairman.

22 CHAIRMAN: Yes.

23 MR. DONAL MCGUINNESS: Thank you, detective sergeant.

24 MR. MARRINAN: Nobody else? Thank you very much,
25 detective sergeant. 15:38

26

27 THE WITNESS THEN WITHDREW

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29 MR. MARRINAN: The next witness is John Colgan, please.

1 His statement is at page 2703.

2

3 MR. JOHN COLGAN, HAVING BEEN SWORN, WAS DIRECTLY
4 EXAMINED BY MR. MARRINAN:

5 805 Q. MR. MARRINAN: I think you retired from An Garda 15:39
6 Síochána on the 9th January last year, isn't that
7 correct?

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

9 806 Q. But you were present with the last witness as part of
10 an interviewing team on the 28th and 29th May of 2015 15:39
11 involved in interviewing Superintendent Taylor, isn't
12 that right?

13 A. I was, yes.

14 807 Q. And you can confirm everything that the last witness
15 told us in relation to the interviews, isn't that 15:39
16 right?

17 A. I can, Chairman.

18 808 Q. And the observations that he has made, he hasn't been
19 challenged in any way in relation to that, so I'm going
20 to leave it at that and anybody else can ask any 15:39
21 questions.

22 MR. McDOWELL: No questions.

23 MS. BURNS: No questions, Chairman.

24 MR. DONAL McGUINESS: No questions, Chairman.

25 MR. MARRINAN: Thank you very much, Mr. Colgan. 15:40

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27 THE WITNESS THEN WITHDREW

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29 MR. MARRINAN: Sir, that concludes the evidence for

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today.

CHAIRMAN: Yes. Do you want to go through who we have tomorrow then and just where they fit in.

MR. MARRINAN: we have another five or six members of the Press Office who were deferred from last week and we also have perhaps Superintendent Clerkin returning -- apparently he's not available tomorrow, so he won't be recalled if that should arise. we have Superintendent Pat Ryan and Sergeant Declan Monaghan and Garda Doreen O'Brien, and those should be dealt with relatively quickly, sir. 15:40

CHAIRMAN: In the event that Superintendent Clerkin is needed or in the event that any instruction wants to be put to him or given to the Tribunal in relation to matters we will of course recall him because we're sitting continually for the next three or four weeks, so there's plenty of time. 15:41

MR. MARRINAN: Yes.

CHAIRMAN: All right. I have a meeting at 9:00, a judgment to give at 10:00 and hopefully it's not before 10:30, that is tomorrow, thank you. 15:41

THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 9TH MAY
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