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

HELD IN DUBLIN CASTLE
ON FRIDAY, 1ST JUNE 2018 - DAY 84

84

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1 THE HEARING RESUMED AS FOLLOWS ON FRIDAY, 1ST JUNE 2018

2
3 CHAIRMAN: Ladies and Gentlemen, just before we begin
4 today, I think there are two things that I need to
5 mention - they're interrelated. Firstly, those who are 10:06
6 following the website will be aware of witness lists
7 and the future course of the Tribunal, which, with the
8 assistance of counsel and solicitor and the legal team,
9 we are attempting to keep to as best we can, both from
10 the point of view of predictability and from the point 10:06
11 of what lawyers in the old days used to call finis
12 litium; in other words, bringing this matter to an end.

13
14 Now, let us suppose that the Tribunal has not
15 discovered something, has not made an inquiry which it 10:07
16 ought to have made, has not identified a witness who
17 potentially might be of assistance to the Tribunal,
18 well, the parties are here and, in the event that there
19 is something like that which, despite our best efforts,
20 we may have overlooked, I'll invite the parties to 10:07
21 write or to approach counsel in that regard.

22
23 It is to be appreciated, of course, that there are many
24 people with issues and problems out in the general
25 community, and indeed many of them have written to me 10:07
26 and some of the things they have written are
27 heart-rending and very difficult to read and I've
28 sympathy for those people. But it has to be borne in
29 mind in making this request of the parties and the

1 wider public through the newspapers who are present and
2 the media that I'm bound by terms of reference and
3 I can't move outside of those. So if there is
4 anything, just please draw it to our attention.

10:08

5
6 The second matter is this, that the legal system exists
7 to serve the country, it is not a question of dodging
8 and weaving and using legal rules for one's own
9 benefit, or indeed for the purpose of sheer mischief.
10 As I said yesterday, we actually own this country and
11 we have a responsibility to it to do our best. Now,
12 given that the Oireachtas has tasked this Tribunal to
13 come up with answers in relation to matters which are
14 serious and are of public moment, it seems to me that
15 it is not a question of law, it is a question of right
16 and wrong and there is a patriotic duty on any person
17 in the country who knows anything which may assist this
18 Tribunal to come forward.

10:08

10:08

19
20 Of course, I called for that as of February of 2017,
21 but it's necessary to reiterate that call, because the
22 Tribunal is coming to an end and it would not be good
23 enough for people, out of sheer mischief or perhaps out
24 of a fear of consequences, to say 'I'm not going to
25 come forward and tell the Tribunal what I know'. If
26 there are people out there who know about what is
27 relevant to our work, would you please come forward and
28 tell us what you know? There is a patriotic duty in
29 that regard and I put it no further than that. So

10:08

10:09

1 we'll continue on.

2 MR. MARRINAN: Alison O'Reilly, please.

3

4 MS. ALISON O'REILLY WAS CROSS-EXAMINED BY MR. MOHAN AS
5 FOLLOWS:

10:09

6

7 1 Q. MR. MOHAN: Good morning, Ms. O'Reilly, Hugh Mohan here
8 and I want to revisit a number of matters that were
9 raised at the close of yesterday's proceedings. And
10 just maybe if I can do it in this order; firstly,
11 Mr. Chairman, the texts that were included in
12 Ms. O'Reilly's statement are in fact the exchanges that
13 did take place between Ms. O'Reilly and Ms. McCann, so
14 there was no issue on that, they are Ms. McCann's
15 texts. So I'm trying, Mr. Chairman, to make sure that
16 I go through each of the points that you raised and
17 I've an answer to them.

10:10

10:10

18

19 I'm going to get to the various issues that were
20 raised, but, Ms. O'Reilly, I want to put this to you,
21 and we had this exchange yesterday and I appreciate
22 that -- no one is here wishing to trip anybody up on a
23 timeline, and you are saying that yourself, that you
24 sometimes get a little confused about the timeline. It
25 seems from my instructions and from now reconfirming
26 this with Ms. McCann that the issue of Sergeant McCabe
27 and the allegations about Sergeant McCabe really came
28 into focus in January, mid to late January through to
29 February, March and April of 2014. would you broadly

10:10

10:10

1 agree with that?

2 A. The issues they raised?

3 2 Q. Sorry, the issue, the question of Sergeant McCabe and
4 the allegation of sexual misconduct. That seems to be
5 the timeframe at which it came to the fore. 10:11

6 A. No, I remember it from the year before.

7 3 Q. You remember it from the year before?

8 A. Yes.

9 4 Q. And in what context do you remember from the year
10 before? 10:11

11 A. Well, just - again I'm only going on memory - I just
12 remember having a cup of tea with Debbie in the kitchen
13 in the Mail and it was, I just think that somebody had
14 got their penalty points quashed, I don't know, maybe a
15 Senator or something, or something -- you know, a few 10:11
16 people had got their penalty points quashed. And
17 Debbie had raised her concerns that she had hers
18 quashed.

19 5 Q. Sorry, quite correct. And I was going to say that that
20 was some time before, the penalty points, and again 10:11
21 I don't want to be dogmatic, but that was certainly in
22 2013, early to mid-2013. And I want to put to you what
23 Ms. McCann says about what you said in that regard.

24 A. Okay.

25 6 Q. She says that she did raise the issue of penalty 10:12
26 points, she raised it at a conference sometime in
27 mid-2013, she says that she herself had received
28 penalty points for doing approximately five kilometres
29 over the speed limit and that she had been caught by,

1 as it were, one of those vans, in other words she
2 received an automated speeding fine in the post. She
3 had written to the local superintendent - she didn't
4 call in any favour, either from any guard she might've
5 known or certainly not from her father - and she wrote 10:12
6 to the superintendent in charge, saying that she was,
7 broadly, at least that she was just a little bit over
8 and that if she had been stopped by a guard, that guard
9 would likely have used his discretion to not have done
10 and awarded her penalty points and she'd heard no more 10:12
11 than about it. She said that at a conference at which
12 you attended and at which I think there were a number
13 of other journalists who would've attended - this was
14 on the issue covering the penalty points issue; do you
15 remember that? 10:13

16 A. I don't, Chairman. And I recall that in my statement
17 to the Tribunal I explained that Debbie said she had
18 written to her local superintendent and had asked for
19 them to be quashed. But I have a clear recollection of
20 a personal conversation we had in the kitchen and -- 10:13

21 7 Q. She absolutely denies that. She said she said it at
22 the conference and it had nothing whatsoever got to do
23 with the allegations of sexual misconduct against
24 Sergeant McCabe, because they in fact came, as I say,
25 much later. 10:13

26 A. Sorry, could you repeat the last bit?

27 8 Q. Yes, sorry. You tied that in, in your testimony, with
28 her conversation about penalty points and Sergeant
29 McCabe, you said that yesterday.

1 A. Yes, that's correct.

2 9 Q. I'm saying to you there were two -- she had a
3 conversation at a conference, which you attended, about
4 penalty points when Sergeant McCabe's issue wasn't even
5 in the public domain. 10:13

6 A. Sergeant McCabe was in the public domain in 2013.

7 10 Q. Well, certainly --

8 A. As far as I remember.

9 11 Q. Sorry, not to the extent that we know he was laterally.
10 In any event, the point I'm making to you is that 10:14
11 Sergeant McCabe's issue was never raised and the
12 penalty points was a separate issue which was, as it
13 were, hitting the headlines in 2013?

14 A. Chairman, this is the first time I'm hearing this.
15 I have never -- I mean, Debbie was asked all of these 10:14
16 things. I have sat down with the investigators from
17 the beginning. She has never said this before. This
18 is news to me. And I've said set out my position very
19 clearly a long time ago.

20 12 Q. That's her testimony and that's what she will give. 10:14

21 A. Okay. Well, I stand by what I said yesterday,
22 Chairman. And I told the Tribunal that last year.

23 13 Q. Likewise, you raised the issue about the Roma children
24 and we know that was, as it were, October of 2013. She
25 recalls a conversation she had with you on the 10:14
26 telephone and you referred, I think, to a colleague,
27 Niall Donald. I think Niall Donald is more than a
28 colleague, is that correct?

29 A. Yes.

1 14 Q. who is he?
2 A. He's -- professional and personal relationship with
3 him.
4 15 Q. You're in a personal relationship with him?
5 A. Correct. 10:14
6 16 Q. Yes. And she recalls that's the person to whom you
7 spoke when you told us you spoke, in your direct
8 evidence, about getting advice; is that correct?
9 A. Getting advice?
10 17 Q. You referred to him, I think, in your direct evidence 10:15
11 and in your statement as a journalistic colleague to
12 whom you spoke about how you would take advice?
13 A. No, I didn't say I took advice from him. I said that
14 I had just run the idea past him. He had heard a
15 little bit about him. I kind of had to give him the 10:15
16 details. And he just said 'Look, just be way of it'.
17 18 Q. Tell us --
18 A. And I made it very clear to the Tribunal that I don't
19 need anybody to tell tell me how I feel.
20 19 Q. Okay. Tell me, Niall Donald, who is he and what does 10:15
21 he do and where does he work?
22 A. He's a journalist in Independent News and Media.
23 20 Q. I see. And you're in a personal relationship with him,
24 is that correct?
25 A. Yes, I've just said that, yes. 10:15
26 21 Q. Thank you. She remembers a conversation on the phone
27 about the Roma children where you put the phone on
28 speaker and you were with Niall Donald and you were
29 discussing the Roma children and that happened way --

1 I was read out parts of Debbie McCann's statement when
2 the investigators came to my house and she never said
3 any of his. This is all new to me.

4 27 Q. And --

5 A. I explicitly remember a phone call with Debbie McCann 10:17
6 where it got very, very heated and that was when she
7 told me that Dave Taylor had told her this girl was in
8 a bad way.

9 28 Q. And she will categorically deny that she ever said to
10 you that David Taylor told her anything. 10:17

11 A. Well, this is news to me. And I stand by what I said,
12 Chairman.

13 29 Q. I want to be clear that she will say at that stage you
14 were in fact not just colleagues, but you were friends
15 at that point in time; isn't that correct? 10:17

16 A. That's correct. And I said that yesterday.

17 30 Q. She will say that when this issue, from Commissioner
18 Callinan's appearance at the Public Accounts Committee,
19 which as we know was late January 2014, that the issue
20 of what was or was not behind his comments, the 10:18
21 "disgusting" comments, that journalists in every
22 newsroom were discussing the issue and no less you had
23 discussed it with Debbie McCann and Debbie McCann had
24 discussed it with you, and she discussed it with you
25 from January, February, March. And we know the 10:18
26 timeline is that she went out on maternity leave on
27 March 22nd and you were deputised to stand in for her,
28 isn't that correct?

29 A. Well, not really, no. I just probably just would've

1 covered crime. I wasn't specifically asked to --

2 31 Q. Sorry, you're overlapping; you were to do some stories
3 that she was involved in. I don't want to nitpick on
4 it, but you were --

5 A. I suppose so, yeah. 10:18

6 32 Q. Yeah. And so she had discussions with you. And she
7 certainly did have discussions with you over the
8 allegations about Sergeant McCabe, absolutely she did.

9 A. Yes.

10 33 Q. But this idea that she was negatively briefing, in some 10:18
11 way demonic about him, being categorical about him being
12 a child abuser is simply incorrect.

13 A. Sorry, I never said she briefed me. I said --

14 34 Q. Sorry, the phrase I'm using is that she was negatively
15 briefing against Sergeant McCabe. That's maybe my 10:19
16 phrase, but I think that's a phrase that was used maybe
17 by the Tribunal. But take it at as my phrase.

18 CHAIRMAN: Sorry, Mr. Mohan, I know you haven't been
19 here for everything, and that's clearly not your fault
20 and obviously I'm glad to see you here, but the issue 10:19
21 did arise in relation to, for instance, Sergeant
22 Kennedy, who was driving one of the politicians who's
23 given evidence and if it's a question of simply
24 discussing a matter, that's different to negative
25 briefing. 10:19

26 MR. MOHAN: Sorry? I missed that.

27 CHAIRMAN: I think there's a difference between
28 discussing a matter, in other words discussing a
29 rumour, discussing around the rumour, as opposed to

1 being the author of the rumour or riding the rumour for
2 a malicious purpose. And I wasn't, certainly, taking
3 from the evidence that I have heard in the course of
4 the last two days from Ms. O'Reilly that there was some
5 kind of malicious intent --

10:20

6 MR. MOHAN: Sorry --

7 CHAIRMAN: -- that there was a point of view there was
8 information certainly, but not negative briefing as
9 such. I didn't take that from it.

10 35 Q. MR. MOHAN: well, I'm grateful for your comments. And
11 maybe Ms. O'Reilly was going to say the same thing, in
12 fairness. (To witness) Again I put it and I want to
13 make it clear that when Ms. McCann does give evidence,
14 she will, of course, say that you had discussions
15 around this issue with her throughout those points,
16 because you were (a) friendly at that time and (b) had
17 a professional relationship in the sense that she was
18 going to go out on maternity leave and you were to
19 overlap - and I'm using that word in its most general
20 sense - with the some of the stories she was working
21 on; isn't that correct?

10:20

10:20

10:20

22 A. I was never asked to cover for Debbie McCann, Chairman.
23 In fact I clearly recall two other female journalists
24 being discussed and coming in and covering crime
25 stories while Debbie McCann was off and it never
26 materialised. But I was never specifically asked. But
27 certainly I've told the Tribunal I was interested in
28 crime. I'm not a crime correspondent.

10:21

29 CHAIRMAN: All right, and I'm don't want to interrupt,

1 Mr. Mohan, but I'm going to take it that if somebody
2 goes out who's kind of important in the paper and
3 there's somebody there who's experienced, the
4 inevitable thing will be you'll be doing some of their
5 work or perhaps following up on some of their leads and 10:21
6 that kind of thing.

7 A. Yeah, that's true. I just --

8 CHAIRMAN: All right. Well, let's leave it at that.
9 We'll just accept that as a given.

10 A. Yeah, that's true, yeah. That's okay, yeah. 10:21

11 36 Q. MR. MOHAN: And we'll leave it at that. And in that
12 context, both of you definitely did have discussions
13 about the sexual allegations surrounding Sergeant
14 McCabe and both of you discussed them on, she can't
15 recall how many occasions, but off and on, there is no 10:21
16 doubt about that?

17 A. No, there's no doubt about that, no.

18 37 Q. But what she does take issue with is some of the
19 specifics that you've said, that she would've said in
20 categorical terms that Sergeant McCabe is a child abuser. 10:21
21 She never said that in those terms. And it's - again
22 my words - portraying her as somebody who is this
23 categorical or demonic in her belief that that was so.
24 That was never the way she had discussed it with you.

25 CHAIRMAN: Sorry, Mr. Mohan, I don't know why we're 10:22
26 introducing the devil into this. I mean, what's
27 demonic about having a point of view? I mean, honestly
28 --

29 MR. MOHAN: I'll rephrase it.

1 CHAIRMAN: -- I don't think the word is necessary.

2 MR. MOHAN: well, may I rephrase it?

3 CHAIRMAN: well, of course you can, yes.

4 38 Q. MR. MOHAN: sorry, that she was as adamant as you're 10:22
5 portraying her being, if you will, outside of the
6 argument, she certainly discussed it with you; that's
7 what I want to put to you.

8 A. She discussed it with me for a very long time and she
9 used very derogatory terms when she was describing him.

10 39 Q. And I think I've already put to you that she did not 10:22
11 say to you that David Taylor had told her that. She
12 did not say to you that her father confirmed the story
13 she's adamant.

14 A. She didn't say what about Dave Taylor?

15 40 Q. Sorry, you gave evidence yesterday that she told you 10:22
16 that David Taylor had told her the story about Sergeant
17 McCabe. She says that didn't happen.

18 A. She said Dave Taylor told her the girl was in a bad
19 way.

20 41 Q. Yeah, she says that didn't happen. 10:23

21 A. As I said, Chairman, I stand over everything that I've
22 said. And Debbie McCann has had my statement for the
23 last year and this is the first I'm hearing of
24 anything. The investigators came to my house and they
25 said she disputed some of the things I said. But she 10:23
26 never actually laid them out step by step, whereas
27 I have. And she's had my statement for a long time.

28 42 Q. well, in fact I'm doing this because it's necessary for
29 the administration of justice that I do this, so I'm

1 giving you an opportunity to comment and that's why I'm
2 doing this.

3 A. To comment on which bit, sorry?

4 43 Q. To comment on what Ms. McCann is going to say on these
5 specific issues.

10:23

6 A. I stand over everything I said yesterday, Chairman.

7 MR. MARRINAN: I'm sorry to interrupt, Sir, but I think
8 it is important, because the witness has said on five
9 occasions now that this is the first time that she has
10 heard about this, and it appears to me that the witness
11 is at a disadvantage as the procedure the Tribunal
12 clearly set out in the interpretation of the terms of
13 reference, and this should all be reduced to writing by
14 Debbie McCann and the witness should be given an
15 opportunity to consider it before she continues to give
16 her evidence in relation to it and to respond
17 accordingly.

10:23

10:24

18
19 It is very helpful that Mr. Mohan is putting his
20 client's case and is now engaging in the facts. These
21 have been well known, as the witness has pointed out,
22 to the parties before the Tribunal for a considerable
23 period of time. And it's really not unfair that it's
24 introduced at this juncture. I'm not blaming
25 Mr. Mohan, it's done as a result of a prompt yesterday
26 in relation to it, to be given the opportunity to put
27 his client's case. But in case there's been some sort
28 of a misunderstanding up until now, I think that it is
29 only fair that Mr. Mohan should be invited to get his

10:24

10:24

1 client to submit a statement dealing with these matters
2 to the Tribunal.

3 CHAIRMAN: Mr. Marrinan, I agree with you. But there's
4 a "but" - and as my wife says, the "but" is the
5 important part of the sentence - I really would like 10:25
6 Ms. O'Reilly to finish. But I think, Mr. Mohan, you
7 should reduce your client's instructions in this regard
8 to writing and just send them into the Tribunal. Now,
9 in the event that you feel at a disadvantage in simply
10 answering these questions now on the hoof, of course 10:25
11 I'll follow that. But do you feel at a disadvantage?

12 A. No, I stand over everything I said. I would just like
13 to clarify one tiny little thing in relation to Niall
14 Donald. The conversation that I had with Debbie McCann
15 I recall was quite late in the evening. I don't live 10:25
16 with Niall Donald, I live alone with my children.

17 CHAIRMAN: No, no, no, I --

18 A. He wouldn't have been there is my point.

19 CHAIRMAN: All right. Well, there's a speakerphone o
20 people can be in and out of people's houses. 10:26

21 A. Okay, sure.

22 CHAIRMAN: So I understand that. Now, we're at the
23 point -- in any event, you understand Debbie McCann
24 denies that she had heard -- I'm sorry, I'm just, and
25 Mr. Marrinan is absolutely correct in this respect, 10:26
26 because it's easy now to get lost. Yes, the thing
27 about David Taylor told her the girl was in a bad way,
28 that's denied. And then the question of the name and
29 address I presume is coming up now. So if we just

1 carry on.

2 44 Q. MR. MOHAN: So, Chairman, I will continue with
3 cross-examination, but forward an updated statement to
4 the Tribunal.

5 CHAIRMAN: Yes. And you'll get that. In the event 10:26
6 that you want to come back and comment on it, you'll be
7 given that opportunity.

8 A. Sure.

9 45 Q. MR. MOHAN: May it please you, Chairman. (To witness)
10 Sorry, I'm going to continue, Ms. O'Reilly. Now we get 10:27
11 to the issue of the trip to Ms. D or Ms. D's house.
12 Ms. McCann will say that you may very well have known
13 and she doesn't dispute that you would've know that she
14 was going to make that trip, as it would've been an
15 issue that was being discussed, either at a conference 10:27
16 or in the newsroom. So she doesn't take issue with
17 that. She would take issue with the fact that you
18 might've known the details of it and I'm not sure
19 whether you did know the details of it, because the
20 specific details would've been only kept between her 10:27
21 and Mr. Robert Cox, the news editor. Would you dispute
22 that?

23 A. Oh, absolutely. No, she told me directly.

24 46 Q. She told you she was making a trip in a general sense,
25 is that correct? 10:27

26 A. She told me she was making a trip and then she told me
27 that -- the details of the meeting with Ms. D when she
28 came back.

29 47 Q. Oh, sorry, I'm going to get to when she came back, and

1 I know what you've said in that regard. But she says
2 -- I think you gave evidence yesterday that there was a
3 discussion at the back of the newsroom. She has no
4 recollection of that whatsoever. She will say she
5 wouldn't deny you might have been aware of the trip 10:28
6 taking place, but that it had been discussed at that
7 level at the back of the newsroom, she doubts that.
8 But maybe the import of that is all the same.

9
10 She'll say that she received information from a number 10:28
11 of sources, kept that detail to herself, had got
12 permission from Robert Cox to go up to see, to, as it
13 were, hopefully get an interview and her account or her
14 recollection of what happened tallies in almost every
15 respect with what we know Ms. D says in that regard. 10:28
16 And I just want to go over that with you.

17 A. Mm hmm.

18 48 Q. She arrived at about one o'clock. She knocked on the
19 door. Ms. D came out. She introduced herself. She
20 was pregnant at the time. She gave her business card. 10:28
21 She explained who she was and that she was a journalist
22 and for who she worked. She recalls Mrs. D being
23 somewhat upset because at that time the one o'clock
24 news was on and there was a story about Sergeant McCabe
25 and she said that that had upset her. There was a 10:29
26 conversation about that which lasted about two or
27 three minutes. She said 'would you like to speak? We
28 can do a story'. She said 'I really need to think
29 about that'. And there it ended and she left. The

1 conversation, she says, at most five minutes but
2 probably only two to three minutes. And she got into
3 her car, she drove to a nearby filling station, got out
4 of the car, rang two people, Val Hanley, a reporter,
5 Robert Cox, who we know was the news editor and told 10:29
6 both of them that the story was, as matters stood, a
7 no-go. Both of them -- or, sorry, certainly Robert Cox
8 is certainly in a position to give evidence to this
9 Tribunal to confirm that. And then she returned to
10 Dublin. But in the course of that conversation Robert 10:29
11 Cox had told her that on the same day - this is her
12 recollection - you had gone up to see John Wilson. Do
13 you remember --

14 A. The same day?

15 49 Q. She recalls being told by Robert Cox 'Oh, by the way', 10:30
16 that you were travelling to talk to John Wilson at that
17 time.

18 A. As I said, Chairman, I don't know who went up first or
19 on what days, I don't dispute that. And again, I'm not
20 privy to the conversations that Debbie McCann had with 10:30
21 Robert Cox or Valerie Hanley, I can only tell you what
22 she told me. And I stand over what she told me. And
23 again I just want to reiterate this is the very first
24 time I've ever heard this.

25 50 Q. According to you, she told you that she conducted an 10:30
26 interview indoors with Ms. D in that house; is that
27 correct?

28 A. That's correct.

29 51 Q. And you gave an account of, according to your -- the

1 version that Ms. McCann told you, that Ms. D was
2 clutching herself and giving an account of the sexual
3 misconduct, as it were, in the terms that you've
4 outlined?

5 A. That's correct, yes. 10:30

6 52 Q. She categorically and absolutely denies that she ever
7 told you that. Because we all know now it never
8 happened - I think you agree now that never happened?

9 A. Oh, I've said it doesn't look like it did happen. But
10 -- 10:31

11 53 Q. Sorry, it doesn't look like it did happen?

12 A. I agreed that yesterday in the Tribunal.

13 54 Q. Yeah, but it doesn't look like it did happen or do you
14 accept it did not happen?

15 A. No, I accept what Debbie McCann told me, Chairman. 10:31
16 This is the first time I've heard this story. Debbie
17 McCann has had my statement, which outlines exactly
18 what I've said about Ms. D in the statement, she's had
19 it for the last year and that is my clear recollection
20 of that conversation. 10:31

21 55 Q. Ms. O'Reilly, I'm asking you a different question. Do
22 you now accept that Debbie McCann did not meet Ms. D on
23 that occasion?

24 A. As I said yesterday, she either wasn't telling the
25 truth then or she's not telling the truth now. But it 10:31
26 looks like she --

27 CHAIRMAN: All right. Well, we can kind of get perhaps
28 confused on this. It's very often the case that
29 counsel will ask a question, something to the following

1 effect: 'You say you met my client at a particular
2 place, but my client has an air ticket and was
3 somewhere else'. So that's the kind of thing you're
4 being asked. I think it's up to me to accept, but the
5 evidence seems to indicate that Debbie McCann didn't 10:32
6 get into the house and didn't have --

7 A. Hmm.

8 CHAIRMAN: -- have any conversation with Ms. D, but
9 with Mrs. D on the doorstep over a very short period of
10 time. And I have evidence of that from Mrs. D. 10:32

11 A. Yes.

12 CHAIRMAN: So what counsel is now putting to you is,
13 given that that seems to be the case - and that does
14 seem certainly to be the case --

15 A. Yes. 10:32

16 CHAIRMAN: -- you couldn't probably have had the
17 conversation with Debbie McCann that you're recounting.
18 That's the question.

19 A. Oh, no, I definitely had the conversation.

20 56 Q. MR. MOHAN: And I just want to follow that through in 10:32
21 your testimony. According to you, Debbie McCann is
22 annoyed and upset that her that story is not being, as
23 it were, followed, isn't that correct?

24 A. That's what she said, yes.

25 57 Q. Yeah. And not only -- she didn't give up the first 10:32
26 time, she tried on a number of occasions and as
27 I understand it - and I'm paraphrasing your testimony,
28 we can go over it - that Robert Cox was happy enough to
29 run with it, Conor McDonald -- O'Donnell was happy

1 enough to run with it and only Sebastian Hamilton, who
2 I think is the overall editor, at the last hurdle said
3 'No, that's not running'?

4 A. That's what she told me, yes.

5 58 Q. That's what she told you? So let's just work that out. 10:33
6 So we now know that that didn't happen. We now know
7 that the journalist who you were then friendly with,
8 Ms. McCann, was pushing to have included for
9 publication and had convinced her news editor and Irish
10 editor and that newspaper was going to run with a fake 10:33
11 story about meeting Ms. D and Mrs. D, a story we know
12 now couldn't have happened, simply fake and that she
13 had gone to all these lengths and only at the very last
14 hurdle the overall editor had called a halt to it that
15 this story would have been published? 10:33

16 A. Again, Chairman, I can only tell you what Debbie McCann
17 told me. I wasn't there for any conversations,
18 I didn't see any story, I didn't watch her writing one
19 up, I wasn't there for conversations with Robert or
20 Conor or Sebastian. No story ever appeared. 10:34

21 59 Q. If that fake story had appeared, or if it was even as
22 close to appearing as you suggest, it would've closed
23 the newspaper, and rightly so; isn't that correct?

24 A. But we send in stories all the time that don't run.
25 I don't know. 10:34

26 60 Q. No, no, this is very different. We now know it didn't
27 happen. So you're saying that this clever journalist
28 who you had seemingly had respect for, was a hard
29 working professional journalist?

1 A. Correct.

2 61 Q. All of that. Who seems to have been somebody who was
3 particularly concerned to get facts right, would you
4 agree with that?

5 A. Absolutely. 10:34

6 62 Q. To the point of being sleepless about stories being
7 published that she couldn't stand over and make sure
8 she had the facts right, is that the type of
9 journalist?

10 A. I didn't say she was sleepless. She -- 10:34

11 63 Q. Well, I'm portraying her in this way and this is the
12 evidence she will give, that she is absolutely
13 particular about what she publishes. Would you agree
14 with that?

15 A. Well, I don't follow her work religiously. But yes, 10:35
16 she's a good reporter.

17 64 Q. A good reporter and a professional reporter?

18 A. She's a good professional report --

19 65 Q. Takes her job seriously?

20 A. She does. 10:35

21 66 Q. Would hate to publish something that would be fake?

22 A. Well, she wouldn't have published it, her editor
23 would've published it.

24 67 Q. Sorry, her byline on a published story that turned out
25 to be an utter fake? 10:35

26 A. But we have so many stories we're working on that come
27 and go and don't go in and do go in. I'm not keeping
28 account of what Debbie McCann did or didn't write.
29 I wasn't there. All I can do is tell you what she

1 said. And I stand over what she said, I've a very
2 clear recollection. And there is absolutely nobody
3 else who told me that story.

4 68 Q. Sorry, Ms. O'Reilly, I'm putting a number of questions
5 to you that, if you're right, if she told you that, 10:35
6 therefore she was trying to get published and had
7 convinced her line managers to publish a story which
8 she knew to be fake. That's the import of what you're
9 saying.

10 A. Again, I can only tell you what she said. And this is 10:35
11 all news to me. I never -- Debbie's never said any of
12 this before. This is --

13 69 Q. Well, she will deny not only that Robert Cox and all of
14 those people I mentioned, Conor McDonnell, Sebastian
15 Hamilton, are aghast as what you're suggesting. 10:36

16 A. Well, that's fine.

17 70 Q. You see, the alternative is that she never said it to
18 you and that you're making that up.

19 A. Chairman, I'm not making it up. It's very specific and
20 very detailed. And that is exactly what I remember and 10:36
21 that is what I told Tribunal. And I told them this
22 last year. Debbie had a whole year to tell the
23 Tribunal this version of events that I'm just hearing
24 this morning for the first time.

25 71 Q. All of the material that you've included in that had 10:36
26 been published by the time your statement had gone to
27 the Tribunal.

28 A. Pardon?

29 CHAIRMAN: I'm sorry, I don't follow.

1 MR. MOHAN: Soy, the material, the detail of,
2 I suppose, Ms. D and maybe, I suppose, the personal
3 material contained in those descriptions had already
4 appeared, I think, in the Conor Lally story in --
5 CHAIRMAN: Sorry, no, I understand, Mr. Mohan. So just 10:37
6 to clarify --
7 MR. MOHAN: Sorry.
8 CHAIRMAN: -- what's being put to you is that you've
9 made this up on the basis of material that's publically
10 available, such as, for instance, the tribunal papers. 10:37
11 A. I didn't, Chairman.
12 CHAIRMAN: Yes, all right.
13 72 Q. MR. MOHAN: I also want to put to you that she never at
14 any stage had said to you that, I think the phrase you
15 used was "getting it from my pal Nóirín", she never 10:37
16 said that to you.
17 A. She did.
18 73 Q. And again I'm -- she will challenge and she's annoyed
19 at the suggestion that she was pushing to get this put
20 in the paper, that she was somehow obsessed with 10:37
21 running this particular line - and that's, I suppose,
22 my characterisation of your testimony. She was
23 investigating a story, following a line, it had been
24 stopped, but she was doing no more or no less than a
25 that a good reporter would do. 10:38
26 A. Chairman, I can only tell you what she said again. I'm
27 sorry to sound like a broken record, but I've said all
28 this to the tribunal in the past year and this is the
29 first time that Debbie McCann has denied these

1 specific -- she's denied specifics here and I've not
2 heard them before.

3 74 Q. And I think --

4 A. And really, to be honest, like I don't expect anybody
5 in the Mail on Sunday to support me. I'm up here on my 10:38
6 own. So to be honest with you, you know, this is all
7 news to me that's just been landed this morning. I'm
8 happy to answer the questions, but I stand over
9 everything I say. It took me a long time to come
10 forward in the situation that I was in. But I stand 10:38
11 over everything I said yesterday.

12 75 Q. Yes, but I'm suggesting you've motives which are
13 ulterior. And I put them to you yesterday.

14 A. Chairman, I'm just telling the Tribunal the truth. I'm
15 very honest and open about the fact that I have issues 10:39
16 with my employers. But, like, that's some story to
17 make up, isn't it?

18 76 Q. Sorry, you're not open about the issues with your
19 employers. Nowhere in your statement to the Tribunal,
20 nor to Mr. Howlin, nor to anybody else had you made it 10:39
21 explicitly clear that you had these issues with your
22 employers.

23 A. I told Brendan Howlin I had issues with my employers, I
24 told the Tribunal yesterday he was aware of it.

25 77 Q. He was aware of it. You didn't tell him. 10:39

26 A. I absolutely told Brendan Howlin. And it's all over
27 the internet, Chairman, it's in all the national
28 newspapers, it's on-line, it's thee. I mean, just
29 Google my name and it comes up.

1 78 Q. You see, Ms. McCann takes exception to the to phrase
2 used yesterday, and it may have been used by
3 Mr. Marrinan in the context of what was being put
4 forward, that she spun yarns. That was the phrase
5 used. Ms. McCann takes huge exception to that. At no 10:39
6 stage did she spin yarns.
7 A. I can't remember saying spin yarns.
8 79 Q. But that was put -- when this type of information was
9 being put to you about her attending at the D
10 household, for want of a better word, about some 10:40
11 reporters exaggerate, some don't, some spin yarns.
12 Ms. McCann, when she takes the stand, will take grave
13 exception to that. She is a hard working professional
14 reporter whose integrity is very much intact.
15 A. And she's entitled to say that. But again, she has not 10:40
16 said this before, she's not said any of what was said
17 this morning. And to be honest with you, you know, she
18 pitched that story because she was interested in it.
19 She was went after that story because she was
20 interested in it. She didn't like Maurice McCabe. 10:40
21 80 Q. Sorry, there is no difficulty pitching a story or
22 following it. She did that. It was never published,
23 because it didn't stand up. That's how professional
24 hard working reporters work. There's a big difference
25 to that and to you coming in and saying that she was 10:40
26 telling you things that we all know now never happened,
27 because I'm suggesting she never said --
28 A. I utterly refute everything that you're saying and
29 I stand over every single word I said yesterday. And

1 as I said, Debbie McCann had a whole year to lay out
2 these specific responses that she's now putting before
3 me on the day I'm giving evidence.
4 MR. MOHAN: Thank you. I think they're all of the
5 issues that you asked me to deal with, Chairman. 10:41
6 CHAIRMAN: There's just one missing.
7 MR. MOHAN: Sorry.
8 CHAIRMAN: "Debbie McCann told me she'd gotten the name
9 and address of the person abused from someone high up
10 in the Gardaí. She said she'd got it from David 10:41
11 Taylor, she'd heard it from Nóirín O'Sullivan".
12
13 So I think those two things are important. But I mean,
14 if there are --
15 MR. MOHAN: No, no, for the record, Ms. McCann 10:41
16 absolutely denies that.
17 CHAIRMAN: No, no, sorry, Mr. Mohan, I mean, you said,
18 you know, she got information from a number of sources,
19 I did note you as saying that, on the basis of Debbie
20 McCann's story -- 10:41
21 MR. MOHAN: well --
22 CHAIRMAN: Just give me a second, if you wouldn't mind.
23 MR. MOHAN: Sorry.
24 CHAIRMAN: But I mean, if that is indeed the case, so
25 she says she didn't say that, I'm not asking her to 10:41
26 reveal the name of any source apart from Nóirín
27 O'Sullivan, who has waived any privilege in that regard
28 or David Taylor, who has explicitly and on oath in the
29 witness box waived any privilege that he may have.

1 MR. MOHAN: Sorry, Mr. Chairman, you're quite correct.
2 And for the record, Ms. McCann denies that she said
3 that.
4 CHAIRMAN: All right.
5 MR. MOHAN: Thank you. 10:42
6 CHAIRMAN: what do you say to that.
7 A. She got the information from somewhere, Chairman.
8 I can tell you what she told me. And again
9 I completely and utterly refute what Debbie McCann is
10 alleging today. And she had a long time to come up 10:42
11 with those answers, but she's just put them before me
12 today. And I have answered them as honestly as I can,
13 Chairman.
14 MR. MOHAN: Thank you.
15 CHAIRMAN: Thank you, Mr. Mohan. Did you have any 10:42
16 questions, Mr. Doyle? Oh, sorry, the Garda
17 Commissioner --
18 MR. DOYLE: I understand Mr. O'Higgins is going to ask
19 her a few questions.
20 MR. KELLY: Sorry, Chairman, Kieran Kelly, for the D 10:42
21 family.
22 CHAIRMAN: Oh, I beg your pardon, Mr. Kelly.
23 MR. KELLY: Sorry, I just have a few short questions.
24 For Ms. O'Reilly.
25 CHAIRMAN: And just if you wouldn't mind introducing 10:42
26 yourself?
27
28 THE WITNESS, WAS CROSS-EXAMINED BY MR. KELLY AS
29 FOLLOWS:

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81 Q. MR. KELLY: Yes, I'm Kieran Kelly, you know me.

A. Yes, I do.

82 Q. I'm here for the D family and I just have just a few short questions for you.

10:43

A. Yes. Yes.

83 Q. Obviously there's a central issue here is the conversation that Debbie McCann did or didn't have with you. I'm just going to ask you about the D family's interaction. The Chairman has already said to you that Mrs. D has said she only had a very brief encounter with Debbie McCann at her door back in 2014. And that's her position. And she said that she told Debbie McCann, at page 136 of the transcript of July 17th last: "'We're not speaking to anybody' and that was all the dealings I had with her." Do you accept that was her evidence?

10:43

10:43

A. I do accept that, yes. Yes.

84 Q. And Mr. D, at page 62 of the very same day, he said that -- he repeated what his wife had said, that out of the blue Debbie McCann called and "asked if we would be willing to speak to her" and Mrs. D said that she now politely declined. Do you accept that was the evidence she gave?

10:43

A. Again I can only just tell you what Debbie told me, that's all.

10:44

85 Q. Then your counsel, Mr. Ó Muircheartaigh on the day, he, at page 108, asked Mr. D:

1 "Did you have give an interview to Debbie McCann at
2 that time?" And he said:

3
4 "No, I didn't. No, I didn't give an interview."

10:44

5
6 Then your counsel asked Mr. D:

7
8 "Did she call at your house on any occasion that you
9 know of?" And he said: "Not that I remember. I think
10 she just called to the door and Mrs. D more or less
11 said we weren't going to talk to a journalist about it
12 at that stage."

10:44

13
14 And then he's asked: "Did any other member of your
15 family give an interview to Debbie McCann?"

10:44

16
17 And he said:

18
19 "Not that I am aware of, no."

20
21 And that was his evidence. Do you accept that?

10:44

22 A. I do, yes.

23 86 Q. And then Ms. D herself gave evidence first on that day
24 and she said at page 53 of the transcript, she was
25 asked about contacts with journalists:

10:44

26
27 "Can I ask you to confirm, am I correct in my
28 understanding you were not interviewed by a journalist
29 called Debbie McCann?"

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And she answered:

"I never met Debbie McCann. "

10:45

And then on page 11 there's one other matter I think she is asked where, in late January 2014 she's asked:

"There were certain journalists trying to make contact with you. "

10:45

This is according to documentation which has been put in to the Tribunal. And she's asked:

"Do you remember that at all?"

10:45

And Ms. D said:

"At that time I was down in the southeast, as I said, for return to college and I got a couple of calls from my mum and dad to say that they had a couple of reporters who had called to the house and actually called to our doorstep. I wasn't there obviously for that but my parents did inform me. "

10:45

10:45

So Ms. D wasn't at the family home in that area at the time - we're not naming the town.

A. Yes.

87 Q. She was in the southeast. So she couldn't have been

1 there at the time that Debbie McCann called. Do you
2 accept that?

3 A. I do, yes. And again I just reiterate, this is only
4 what Debbie McCann told me.

5 88 Q. Yes. And one matter arises, you gave evidence of this 10:46
6 yesterday and it's in your statement at page 3832; you
7 say:

8
9 "Debbie" - this is Debbie McCann - "told me there was
10 no Pulse number for the case and it was a cover-up." 10:46

11
12 And then you put in your statement that she was still
13 in touch with the woman she met.

14 A. That's correct. That's what she said. I had certainly
15 felt from speaking to her that they had formed some 10:46
16 sort of a relationship, just from speaking to Debbie.
17 But just to say to you, like, I have had no
18 interactions with the D family, I don't know who they
19 are, I don't know where they live, I don't know
20 anything about them, I don't know their names. 10:46

21 89 Q. Well, you see, that was never put to Ms. D by your
22 counsel last year.

23 CHAIRMAN: No, but I think, Mr. Kelly, there's a
24 difference and I think it seems to be this, and I used
25 yesterday the fishing analogy of the fisherman who says 10:46
26 'I caught a 50 pound salmon'. I mean, they may not
27 have caught anything, a minnow, whatever. I understand
28 that. Those are the facts on the ground. There's no
29 dispute about the facts on the ground and you very

1 accurately put everything, indeed I think the only
2 thing that's missing is that I think that the reporter
3 at the door said to Mrs. D 'I know you've been through
4 a hard time'. But that's just a very peripheral
5 detail, it's the kind of conversation that emerges.

10:47

6
7 I don't think the witness is challenging in any way
8 anything that the D family say about these encounters,
9 but she's simply recounting a conversation that someone
10 else told her about it. So in other words, we're
11 moving from the realm of hearsay evidence to original
12 evidence, its importance that it was said.

10:47

13 MR. KELLY: Yes, Chairman. The point is this --

14 CHAIRMAN: And perhaps there is a fact also included in
15 what was said. No, but I see what you're doing,
16 Mr. Kelly, and I've no problem with it, but I don't
17 think Ms. O'Reilly is in any way challenging the
18 veracity of any account given by the D family.

10:47

19 MR. KELLY: well, your counsel never asked Ms D last
20 year if Debbie McCann remained in phone contact with
21 Ms. D. And what I'm saying to you very clearly is
22 Ms. D says she never had any phone contact with Debbie
23 McCann at all.

10:47

24 A. Okay.

25 90 Q. Okay. Do you accept that?

10:48

26 A. Yes. Yes, I do.

27 MR. KELLY: That was the point, Chairman.

28 A. Again, I can only just tell you what she told me,
29 that's it.

1 CHAIRMAN: No, and I do understand the difference
2 between what someone tells you and whether things
3 actually happened that people tell you. No, I
4 understand that. Maybe others don't, but I think I do.

5 MR. KELLY: Thank you, Chairman. Thank you, 10:48
6 Ms. O'Reilly.

7 A. Thank you.

8

9 THE WITNESS WAS CROSS-EXAMINED BY MR MÍCHEÁL O' HIGGINS
10 AS FOLLOWS: 10:48

11

12 MR. MÍCHEÁL O' HIGGINS: Ms. O'Reilly, my name is
13 Michael O'Higgins and --

14 CHAIRMAN: And again, I'm sorry, Mr. O'Higgins, in the
15 event that -- I'm going to go back to the 50 pound 10:48
16 salmon; maybe some people in the room actually do
17 fishing, fishermen boast about catching something.

18 That doesn't necessarily mean they caught anything. So
19 I don't see Ms. O'Reilly as saying anything directly
20 against the Gardaí, I see her as recounting a 10:48
21 conversation.

22 MR. MÍCHEÁL O' HIGGINS: Yes.

23 CHAIRMAN: I don't see her as saying 'well, I was in
24 contact with Nóirín O'Sullivan and she told me the
25 following' or 'she gave me the following'. She's not 10:48
26 saying that at all. She's saying somebody else said
27 that to me. Now, that may be important, I may be act
28 on it, I may not, but --

29 MR. MÍCHEÁL O' HIGGINS: I'm obliged, Chairman --

1 CHAIRMAN: -- it's important that it was said and it
2 may be that within hearsay evidence there's something
3 that the Tribunal can act on, but I'd have to analyse
4 all the evidence before doing so.

5 MR. MÍCHEÁL O' HIGGINS: Yes. And, Chairman, if I may 10:49
6 say, it is my intention, for that reason, to, as it
7 were, stay out of any dispute between this witness and
8 Ms. McCann as to what was or was not said, but just to
9 put the accounts, I suppose for the record really, it's
10 really a book-keeping exercise in relation to my two 10:49
11 accounts.

12 CHAIRMAN: I'm sorry for being amused, M. O'Higgins,
13 but the record and this mysterious thing that people
14 keep referring to, I have two visions; one is the
15 National Archives and the second is my own brain. 10:49
16 Honestly, I'm listening to absolutely everything
17 everybody says, whatever the record is. But you feel
18 --

19 MR. MÍCHEÁL O' HIGGINS: I'll work on that basis.

20 CHAIRMAN: Yes. Well, you feel you need to put things. 10:49
21 Please do.

22 91 Q. MR. MÍCHEÁL O' HIGGINS: And I'll endeavour to do it
23 with dispatch. (To witness) So just, you're clear on
24 that, Ms. O'Reilly --

25 A. Yes. 10:49

26 92 Q. -- I'm going to be staying out of the dispute, as it
27 were, between yourself and Debbie McCann as to what was
28 or was not said.

29 A. Okay.

1 93 Q. So the two parties for whom I'm principally asking
2 questions of you is former Commissioner Nóirín
3 O'Sullivan --
4 A. Yes.
5 94 Q. -- and now retired superintendent John McCann, Debbie 10:50
6 McCann's father.
7 A. Yes.
8 95 Q. All right. And you -- can I just start then with John
9 McCann? I just want to mention this to you so you're
10 clear on it; his position in relation to the question 10:50
11 as to whether he shared any information with his
12 daughter concerning Ms. D or the investigation, the
13 matters pertaining to the investigation is to be found
14 on page 7407 of the materials, and I'll just very
15 briefly mention it and it ask for your comment on it. 10:50
16 A. Okay.
17 96 Q. And he's asked there on page - well, it's page 3274 of
18 the old materials, but I think it's 7407 of this
19 module's materials - and he's asked in line 116 whether
20 he facilitated contact between Ms. D and his daughter, 10:51
21 Debbie McCann and a crime correspondent with the Irish
22 Mail on Sunday. And he's asked the reason why he
23 facilitated such contact and all attendant
24 circumstances. And he says:
25
26 "No, I did not. I have no idea who Ms. D is, other
27 than what I have read in the newspapers in the recent
28 past."
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And then he's asked:

"I have been asked to detail any contacts I had with Debbie McCann relating to Ms. D, Sergeant Maurice McCabe and/or the current Commissioner Nóirín O'Sullivan, what was discussed because the type of contacts I had with my daughter in this regard, i.e. face to face, telephone, e-mail et cetera."

10:51

And he responded in this interview as follows:

"I never spoke to my daughter about Ms. D. No more than any other father speaking to his daughter about current affairs, the ongoing controversies in An Garda Síochána would have been discussed, but any discussions relating to Maurice McCabe or any parties asked of me or the ongoing controversies took place after my retirement. These were informal chats. I had no knowledge or involvement in any of the investigations and as such had no firsthand knowledge other than what I read in the newspapers or gleaned from TV and radio. As I say, these were informal chats."

10:51

10:52

10:52

And that was his position. Now, in relation to the --

CHAIRMAN: But are you inviting a response?

MR. MÍCHEÁL O'HIGGINS: Just in relation to that --

10:52

CHAIRMAN: Sorry, Mr. O'Higgins, are you inviting a response?

MR. MÍCHEÁL O'HIGGINS: If I could --

CHAIRMAN: So you've no additional or extra information

1 about superintendent McCann, you possibly have never
2 even met the man in your life?

3 A. I don't even know what he looks like. I've never met
4 him.

5 97 Q. MR. MÍCHEÁL O' HIGGINS: Just to fill out that 10:52
6 factually, in the same statement, retired
7 Superintendent McCann indicates that he retired on 28th
8 July 2013. All right? So to just to factor that in to
9 what he says. Then the second person who is the
10 subject potentially of the disputed conversation you 10:53
11 had with Debbie McCann is, of course, Nóirín
12 O'Sullivan.

13 A. Yes.

14 98 Q. And if you don't mind, I just want to mention to you
15 what her position on this on these matters is. 10:53

16 A. Yes.

17 99 Q. And she -- I think perhaps the best place to locate her
18 position in relation to the crisp issue as to the
19 disputed conversation is on page 804 of the materials.
20 And she's asked towards the bottom of page 804 at line 10:53
21 146 the following question:

22
23 "I have been asked whether I gave any other information
24 to Ms. McCann off the record and asked her not to quote
25 me. If so, I have been asked to provide details and 10:53
26 all attendant circumstances."

27

28 And she replied:

29

1 "I can confirm that I did not give any other
2 information relevant to the terms of reference to Ms.
3 McCann off the regard record and I asked her not to
4 quote me."

10:54

5
6 Then this next question perhaps is a little bit more
7 germane. She's asked the following:

8
9 "I have been asked whether I gave information to
10 Ms. McCann in relation to Ms. D, her family and/or the 10:54
11 allegations she made against Sergeant McCabe in 2006
12 and, further, whether I ever provided with her with any
13 information in relation to referral received by An
14 Garda Síochána from Tusla on 2nd May 2014 containing
15 the incorrect allegation against Sergeant McCabe. If 10:54
16 so, I have been asked to provide details and all
17 attendant circumstances."

18
19 And what Nóirín O'Sullivan says, Ms. O'Reilly, is the
20 following:

10:54

21
22 "I can confirm that I never gave any information to
23 Ms. McCann relating to the matters stated above."

24
25 So you're clear on her position?

10:54

26 A. Yes, I am.

27 100 Q. She indicates she gave her no such information.

28 A. And again I can just only tell you what Debbie told me.
29 I didn't have any consideration with Nóirín O'Sullivan,

1 I don't know Nóirín O'Sullivan -- well, obviously I
2 know of her.

3 101 Q. Yes.

4 A. But I wouldn't have a --

5 102 Q. I understand. 10:54

6 A. Yeah.

7 103 Q. All right. well, can I ask you then - and you'll be
8 glad to hear I'm coming towards the end of my questions
9 to you - can I ask you then in relation to your own
10 statement as to what you say Debbie McCann said to you? 10:55

11 A. Yes.

12 104 Q. Could I ask you to look at your own statement on page
13 3830, which is your statement made to the Tribunal on
14 7th June 2017? Do you see that there on screen?

15 A. Yes. 10:55

16 105 Q. And you say in this that --

17 A. Excuse me, sorry, do you mind just scrolling down a
18 little bit, if you don't mind?

19 106 Q. Yeah, so just if we stop it there. So just pick it up
20 from the top. It says: 10:55

21

22 "Towards the end of the 2013 and early 2014 my
23 colleague with the Irish Mail on Sunday Debbie McCann
24 told me that the Garda whistleblower Sergeant Maurice
25 McCabe, who had lifted the lid on the penalty points 10:55
26 scandal, was a child abuser. She told me that Sergeant
27 McCabe and John Wilson had caused a lot of trouble
28 within the Gardaí for doing what they did. I asked her
29 what she meant when she said he was a child abuser."

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And then you say the following:

"Debbie said all of the Gardaí knew he was involved in abusing a girl, who is now an adult, and that there had been a big cover-up within the Gardaí about it because he was a Sergeant and a friend of the girl's father who is also a Garda." 10:56

Now, can I just ask you about that? 10:56

A. Yes.

107 Q. Is it your position that an important aspect of what was said to you by Debbie McCann as to the alleged smear campaign was that there had been a Garda cover-up of the Ms. D allegation and that there had been a cover-up because the subject of the investigation, Sergeant McCabe, was a guard himself? 10:56

A. Yes, that's what I understood it to be.

108 Q. Right. You see, the point --

A. But again I don't have any independent verification of that, or either that all the Gardaí knew. 10:57

109 Q. Well, I suppose the point I want to ask you to deal with is, that being the case, because that was an important strand of what you say was said to you by Debbie McCann -- 10:57

A. Mm hmm.

110 Q. -- it would make little sense, I'm suggesting to you, that Nóirín O'Sullivan the Commissioner of Garda Síochána then, could've been the source for that

1 alleged information, because it's not consistent with
2 the facts as they were known to Nóirín O'Sullivan and
3 it's an account that's unfavourable to Garda Síochána.
4 A. Mm hmm.
5 111 Q. Do you see the point I'm making? 10:57
6 A. Mm hmm.
7 112 Q. It's an account of a cover-up?
8 A. Yes.
9 113 Q. Which obviously is -- and it's an account of a cover-up
10 in which the beneficiary of the cover-up, if we play it 10:57
11 through, was Sergeant McCabe himself.
12 A. Mm hmm.
13 114 Q. And the point I wish to make to you is that that would
14 be completely inconsistent with any suggestion that
15 Sergeant McCabe, for instance, was motivated to get 10:58
16 revenge against the Gardaí, because in fact he had been
17 the beneficiary of any such cover-up?
18 A. I think what she meant -- well, certainly what
19 I understood from the conversation was that it was
20 covered up because he was a Sergeant and it was sort of 10:58
21 not something that you'd want in the public domain.
22 And secondly, she had said to me that Maurice McCabe
23 had a falling out with his superiors and as a result of
24 that, he started doing all the whistleblowing stuff.
25 115 Q. The other thing I wish to suggest to you is that that 10:58
26 account of the alleged smear campaign is also at odds
27 with other accounts of the alleged smear campaign, for
28 instance the account put across by Superintendent Dave
29 Taylor on his case. Do you understand the point I'm

1 making?

2 A. I do. And again, I don't know Dave Taylor, but I can
3 only tell you what Debbie McCann told me, and I've
4 recalled those conversations to the very best of my
5 knowledge. 10:59

6 116 Q. All right. Can I just, finally, just one more
7 question, if I may?

8 A. Yes.

9 117 Q. Could I ask you to deal with a telephone conversation,
10 as I understand it, that you had with a representative 10:59
11 of the Tribunal itself? And would you mind turning then
12 to page 3807 of the materials. If we could just -- so
13 just to set it in context for you, this is an
14 attendance - if we hold it there for a moment - an
15 attendance of 30th May 2017 of, as I understand it, a 10:59
16 phone call that you placed to a representative of the
17 Tribunal itself. And it says:

18

19 "Alison had called and left her number for me to
20 contact her" - and the number is given - "I called her, 11:00
21 left message. She phoned back. She got her letter
22 yesterday. "

23

24 And there's a reference then to Michael Keeley that
25 needn't trouble us. And then it says in the next 11:00
26 paragraph:

27

28 "She wants to clarify what is in the Brendan Howlin
29 statement, she says it's not correct"?

1 A. Sorry, I -- oh, yes. Yes.

2 118 Q. Do you have that there?

3 A. Yes.

4 119 Q. And just this next aspect is what I want to canvas with
5 you: 11:00
6
7 "She did hear rumours, but from other journalists, not
8 the Gardaí. "
9
10 And that's something you told -- 11:00
11 A. Yes.

12 120 Q. -- a representative of the Tribunal?

13 A. Yes. Journalist it should be. And I didn't have
14 several meetings with Michael Keeley.
15 11:00
16 "She has been to Michael Keeley several times to give
17 him information. "
18
19 No, I only met Michael Keeley once.

20 121 Q. And you're confirming there you did not hear rumours 11:01
21 from the Gardaí?

22 A. Absolutely not.

23 MR. MÍCHEÁL O' HIGGINS: Thanks very much.

24 CHAIRMAN: Yes, just from the point of view of this
25 mysterious record which we're all hearing about - and 11:01
26 it's not just you, Mr. O'Higgins - I've had two Garda
27 investigations that are certainly central to this: One
28 is the investigation in relation to D allegation and
29 I think I've said before, and I'm saying it now, it was

1 clearly a first class investigation; the second one was
2 the Clerkin investigation in relation to David Taylor,
3 and again that seems to me to be an absolutely first
4 class investigation. So I have no notion in my head
5 and I'm not steering in any way towards any notion that 11:01
6 anyone was covering anything up, apart, of course, from
7 what we're dealing with, which is the central smear
8 allegation issue.

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

10 CHAIRMAN: So just to make that clear. So, Mr. Doyle. 11:01

11
12 THE WITNESS WAS RE-EXAMINED BY MR. DOYLE AS FOLLOWS:

13
14 122 Q. MR. DOYLE: Just a very few things arising out of your
15 evidence and your cross-examination, Ms. O'Reilly -- 11:01
16 I'm Declan Doyle and I'm appearing for Ms. O'Reilly, as
17 the Tribunal knows. Can I just clear up with you some
18 dates which may be of assistance to the Tribunal
19 arising out of things that were put to you yesterday
20 about your motivation in giving evidence to the 11:02
21 Tribunal? The incident in Buncrana which give rise to
22 the report which give rise to your action against your
23 employers, the issue -- the tragedy in Buncrana, as
24 I understand it, happened in March 2016, isn't that
25 right? 11:02

26 A. Yes.

27 123 Q. The events followed then, you are still in dispute and
28 are suing the Daily Mail both for defamation and for
29 the damages for negligence giving rise to injuries,

1 isn't that so?

2 A. Yes.

3 124 Q. There was a grievance procedure in October of 2016,
4 isn't that right?

5 A. An internal grievance, yes. 11:02

6 125 Q. Yeah. That ended up in the Labour Court in January
7 2017, isn't that right?

8 A. Hmm, it went to the work Relations Commission and the
9 Mail blocked it and then it went to the Labour Court
10 and the Mail blocked it in January. 11:03

11 126 Q. Yes. And the proceedings which you have issued against
12 the Daily Mail I think were issued in the defamation
13 action in March or April 2017, isn't that right?

14 A. That's correct.

15 127 Q. And the proceedings claiming damages for the injuries 11:03
16 which you sustained were issued, having gone through
17 the Injuries Board procedure, those proceedings were
18 issued in September or October of 2017, isn't that
19 right?

20 A. That's correct. 11:03

21 128 Q. Your statement to the Tribunal, which is at 3830/1/2
22 and those pages, that statement was made by you on
23 7th June 2017, isn't that right?

24 A. That's correct.

25 129 Q. You then met the Tribunal's investigators on 11:03
26 12th October 2017, does that sound right.

27 A. Sounds right, yes.

28 130 Q. And it was at that meeting that the statement of Debbie
29 McCann was put to you and you were asked for your

1 comments about Ms. McCann's statement at that time;
2 isn't that right?

3 A. Hmm. The full statement wasn't put to me, just, I
4 think, as far as I can remember, maybe three small
5 sections of her statement. And we asked why and we 11:04
6 were told it was because she had only referred to me in
7 those three or four small paragraphs and that's why we
8 weren't receiving the full copy of the statement.

9 131 Q. Yes. Well, those --

10 A. But I eventually saw it, yeah. 11:04

11 132 Q. -- those statements are all before the Tribunal.

12 A. Yes.

13 133 Q. And I don't intend to go over them now. Just three
14 other brief matters. It, I think, was being suggested
15 to you yesterday that the paper didn't run with your 11:05
16 story about Maurice McCabe and the paper didn't run
17 with Debbie McCann's story about Ms. D for kind of the
18 same reasons.

19 A. Mm hmm.

20 134 Q. I think it was being suggested to you that, well, you 11:05
21 pitch a story and if it stands up or if the editors
22 like it, the paper will run with it, but that neither
23 your story about Maurice McCabe nor Ms. McCann's story
24 about Ms. D were run by the paper and I think it was
25 being suggested to you that, largely for the same 11:05
26 reasons, that these things happen in a newspaper. Am
27 I right in saying that your story about Maurice McCabe
28 could never have got off the ground, because Maurice
29 McCabe flatly refused to cooperate in any such story?

1 A. Well, I actually didn't arrange to go and meet Maurice
2 McCabe or door-knock him, it just emerged from a
3 meeting I had with John Wilson and I had been given
4 permission to go to that. And then, as I said, you
5 have to make decisions on the ground and I knew I was 11:06
6 dealing with a sergeant, I knew I was in safe hands, so
7 I went to his house. And from there, as a journalist,
8 you ask yourself sometimes --

9 135 Q. I'm not -- I'm sorry for interrupting, but I'm not
10 asking you about that. But there really was no story 11:06
11 about Maurice --

12 A. No, there was no story.

13 136 Q. You didn't pitch a story about Maurice McCabe --

14 A. No, no.

15 137 Q. -- and the paper decided not to run with it? 11:06

16 A. No, I didn't expect to meet him, I just met him by
17 chance. And when I had him there for those few
18 minutes, I put a journalist's question to him. But
19 nothing emerged from it, there was no --

20 138 Q. So there was no story? 11:06

21 A. There was no plan, no.

22 139 Q. And it's not right to say that there's a similarity
23 between --

24 A. No. Completely different.

25 140 Q. -- a pattern between those two things? All right. 11:07
26 Another thing that was put to you yesterday was that
27 you were lying to the Tribunal and lied to your
28 employers -- sorry, that you couldn't be believed
29 before this tribunal because you had lied to your

1 employers in your interaction with Michael Keeley, the
2 solicitor for the Mail, isn't that right?

3 A. Correct.

4 141 Q. And in support of that contention, a document was
5 circulated which was an attendance of 5th April 2017 of 11:07
6 Michael Keeley the solicitor, an attendance which he
7 did of his meeting with you in the Conrad Hotel. Do
8 you remember that?

9 A. Yes.

10 142 Q. Do you have that document in front of you? 11:07

11 A. Not yet, no.

12 143 Q. Sorry, it was circulated yesterday and it wasn't part
13 of the Tribunal papers.

14 CHAIRMAN: No, it was, it was actually read out to you
15 yesterday. 11:07

16 A. Yes, it was, yes.

17 CHAIRMAN: So we've been through the thing.

18 A. Yes.

19 MR. DOYLE: Yes.

20 CHAIRMAN: I think it's in our papers now, isn't it, at 11:08
21 page -- it's the very, very end --

22 MR. DOYLE: It was added yesterday I think.

23 CHAIRMAN: -- of the last book? If you want to get
24 anything on the system, just give us a page number. Do
25 we have a page number? We've been through the Michael 11:08
26 Keeley thing yesterday, so there's no --

27 MR. DOYLE: I don't have a page number for that
28 document yesterday.

29 CHAIRMAN: All right. Well, well, give you a page

1 number.

2 144 Q. MR. DOYLE: 7514. And down at the bottom, the very
3 last paragraph, which is a one-sentence paragraph:
4
5 "She did not speak with Brendan Howlin and was not his 11:08
6 source before his Dáil statements about Sergeant McCabe
7 on 8th February 2017."
8
9 And that was put to you in support of the contention
10 that you were a liar. It was mentioned that you had 11:09
11 also made a memo of that meeting with Michael Keeley,
12 and that memo is in the Tribunal papers at page 3863
13 and 3864. Could I ask that to be brought up on the
14 system? And that's a memo, it's two months later, isn't
15 that right. 11:09

16 A. Well, I wrote my notes immediately afterwards. So the
17 handwritten notes are with Gus. And I telephoned him
18 and then he asked me to type them up and I typed them
19 up.

20 145 Q. Yes. Could I just take you down through that? I'm 11:09
21 trying to do this as quickly as I possibly can. It's
22 agreed that you met Michael Keeley in the Conrad Hotel,
23 isn't that right?

24 A. Correct.

25 146 Q. And that meeting was to do what? 11:10
26 A. It was to discuss the disclosures Tribunal and,
27 I think, letters we had received from the Chairman.

28 147 Q. Yes. I suppose the bits at issue are, if you go down
29 about half way down the page:

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"He asked me did I meet, contact or interview Sergeant Maurice McCabe and discuss the rumours with him. I said yes. I told him Sergeant Maurice McCabe seemed distressed."

11:10

Do you have that in front of you, Ms. O'Reilly?

A. Yes, I have, yes.

148 Q. "I told Michael I felt sorry for Sergeant McCabe. He immediately stopped writing, put his pen down and looked at me. I felt I wasn't supposed to make those comments or Michael didn't want to hear them. Michael then said 'You know, no one comes out of a tribunal looking okay, even if they're trying to be the good guy'. I felt slightly threatened by his remarks, regretted telling him I felt sorry for Sergeant McCabe, I said 'I don't want to be in a Tribunal Michael' and Michael said 'Good'."

11:10

11:10

Can you go over the page then and get to the piece where you record, four paragraphs down, but the second paragraph is only one line:

11:10

"Before we left, Michael Kealey said 'One more thing. Brendan Howlin stood up in the Dáil and said a journalist told him they had direct information regarding Nóirín O'Sullivan telling a journalist that Maurice McCabe was involved in sexual misconduct. Were you his source?'"

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You have recorded there:

"I said no, because I don't believe I was and also because I did not tell Deputy Howlin that I had direct information about Nóirín O'Sullivan speaking to a reporter. I have clarified this to the Tribunal and Brendan Howlin clarified it in the aftermath of his Dáil statement."

11:11
11:11

And you telephoned your solicitor the following day to raise your concerns about your meeting with Michael Keeley. Insofar as they're not expressed in that document, what were those concerns, Ms. O'Reilly?

A. I just felt I was being told not to speak to the Tribunal. And I didn't feel that was right. And I suppose later on in the e-mails, the exchange that I had with Michael Keeley, it says in those e-mails 'Michael' - I'm paraphrasing now, because I don't have them in front of me - but I do say in those e-mails, in follow-up to this 'Michael, I'll tell you everything now'. And he never responded'.

11:11
11:12

I just felt I was told not to speak to the Tribunal and I felt threatened. You know, like, I've been made redundant three times as a journalist, I have a mortgage and children, it's quite a frightening experience, because it's a tough enough industry as it is, so it's twice as hard if you don't have a hard and

11:12

1 I just felt really, really worried.

2 149 Q. All right, the last thing I wanted to raise with you
3 then, if you look at your statement at 3832 in the
4 Tribunal papers, it's a small matter but I think it may
5 have been suggested to you this morning that Debbie 11:13
6 McCann will deny that she said "It was my pal Nóirín"
7 and so on. My recollection was that it was you who
8 used the term, if you like, "your pal Nóirín" and it's
9 at the bottom of that page --

10 CHAIRMAN: Yes, the question put, as I remember, 11:13
11 Mr. Doyle, was 'Was that your pal Nóirín?' - that was
12 you - to which the answer was --

13 A. To me.

14 CHAIRMAN: -- in the affirmative in some way. Yes.
15 'Are you getting this from your pal Nóirín' and she 11:13
16 said yes.

17 A. Yes.

18 150 Q. MR. DOYLE: Yes. So insofar as Ms. McCann denies that
19 she ever came up with the term "pal", that was your
20 characterisation? 11:13

21 A. I know I said that, it was me that said that.

22 151 Q. And where did that characterisation, "your pal Nóirín",
23 where did that come from?

24 A. I suppose it was just an expression. As I said
25 I always felt that Debbie was very impressed by Nóirín 11:14
26 O'Sullivan and that's her right to be and so it was a
27 bit sort of "your pal Nóirín". That was all really,
28 nothing to it really.

29 MR. DOYLE: Thank you. I don't have any further

1 questions for Ms. O'Reilly.

2 MR. MARRINAN: I have no further questions.

3 CHAIRMAN: All right. Thank you very much for coming,
4 Ms. O'Reilly.

5 THE WITNESS: Thank you. 11:14

6 MR. MCGUINNESS: The next witness, Chairman, is
7 Ms. Justine McCarthy.

8 MR. DOYLE: Before Ms. McCarthy comes up, Chairman,
9 I'll take on board what the Tribunal said this morning
10 about coming back and then if necessary, I know 11:14
11 Ms. O'Reilly said in the witness box, no, she wants to
12 deal with matters today, but can we have liberty to
13 community with the Tribunal?

14 CHAIRMAN: well no of course. That goes without
15 saying, you don't have to ask me, Mr. Doyle. And if 11:15
16 you want to be back for Debbie McCann's evidence, it is
17 your entitlement to do so. I can't force people to
18 take up Haughey rights, they are just there, and you
19 take your own course.

20 MR. DOYLE: Thanks, Chairman. 11:15

21 CHAIRMAN: Thank you very much for being here.
22

23 MS. JUSTINE MCCARTHY, HAVING BEEN SWORN, WAS DIRECTLY
24 EXAMINED BY MR. MCGUINNESS AS FOLLOWS:
25 11:15
26

27 MR. MCGUINNESS: Ms. McCarthy's statement --

28 MR. KENNEDY: I wonder, Chairman, just before the
29 witness commences -- sorry, Chairman.

1 CHAIRMAN: There you are. Yes?
2 MR. KENNEDY: I should perhaps formally identify
3 myself. Brian Kennedy appearing on behalf of
4 Ms. McCarthy instructed by Paula Mullooly of A&L
5 Goodbody solicitors. 11:15
6 CHAIRMAN: Yes. Well thank you, Mr. Kennedy for being
7 here.
8 MR. MCGUINNESS: Chairman, for the benefit of everyone
9 here Ms. McCarthy's statement is contained in volume 18
10 at page 4857. Ms. McCarthy, I'll be referring you to a 11:15
11 very small number of documents and if you wish to
12 consult them in a paper form they are all in the
13 volumes on your left-hand side or if you want to see
14 them on screen or both you are welcome to do so.
15 A. Thank you. 11:16
16 152 Q. You have been with journalist since 1979; isn't that
17 right?
18 A. Yes, I have.
19 153 Q. And I think your present position is as a senior writer
20 with the Sunday Times? 11:16
21 A. That's correct.
22 154 Q. The Irish edition, based in Dublin?
23 A. That's correct.
24 155 Q. And I think you write as a columnist and as a political
25 reporter? 11:16
26 A. That's correct.
27 156 Q. I think during the period that the Tribunal is
28 primarily concerned with from July 2012 to May 2014 you
29 were a columnist and general reporter in the newsroom?

1 A. That's correct.

2 157 Q. You report to both the editor and the news desk editor
3 and also to the associate editor as a columnist; is
4 that right?

5 A. Yes, that's correct. 11:17

6 158 Q. Do you have a lot of contact with crime reporters,
7 security reporters in your own paper?

8 A. In my own group?

9 159 Q. In your own group, yes.

10 A. Not generally, no. I'm based in Leinster House for 11:17
11 most of the week. So I have a lot of contact with
12 other political reporters.

13 160 Q. Yes, okay. Now, I think in February of 2017 you wrote
14 an article that was published in the Sunday Times on
15 12th February of 2017 and it was, I think, had the 11:17
16 heading: "Name and shame the rumour-mongers who
17 slurred Maurice McCabe."
18
19 I am sure you recall writing that?

20 A. Yes, I do. 11:17

21 161 Q. That's contained in our papers in volume 27, page 7145,
22 and if you could just look at that for a few minutes.
23 I think in the first paragraph you draw attention to an
24 article which was written by Mr. Williams which you
25 were obviously conscious of at the time, I take it? 11:18
26 A. Yes.

27 162 Q. And in the second paragraph you appear to be saying
28 that anyone who read that recognised Sergeant McCabe as
29 the person being referred to, that is anyone who was

1 covering issues of Garda reporting on misconduct et
2 cetera?

3 A. Yes. I said any journalist who was contemplating it
4 would have recognised him.

5 163 Q. Yes. Then you say: "For we had been warned to treat 11:18
6 McCabe with the utmost suspicion. Generally, it was
7 crime reporters who received the warning from their
8 Garda sources, and relayed a tread-carefully SOS to
9 non-crime beat colleagues, who get shorter shrift from
10 the Garda press office." 11:19
11

12 Now, I think just to clarify your own position, I think
13 you made it clear in your answer to the questionnaire
14 sent by the Tribunal and to the Tribunal investigators
15 that you were never negatively briefed by 11:19
16 Superintendent David Taylor?

17 A. No, I wasn't.

18 164 Q. In any of the senses set out in the terms of reference?
19 A. No.

20 165 Q. And I think you also confirmed you were never 11:19
21 negatively briefed by either former Commissioner
22 Callinan or former Commissioner O'Sullivan in those
23 terms either?

24 A. No, I was not.

25 166 Q. And in fact you were helpful enough to also exclude the 11:19
26 fact that you were never negatively briefed by any
27 guard about Sergeant McCabe?

28 A. That's correct.

29 167 Q. I think you did point out to the investigators in the

1 course of your interview that you had in fact received
2 a positive briefing in favour of Sergeant McCabe from a
3 member of Garda Síochána?

4 A. Yes, a guard I spoke on the record spoke very
5 positively about Maurice McCabe. 11:20

6 168 Q. Yes. Just this passage here now in the second
7 paragraph, you were writing about, commencing:
8
9 "Generally it was crime reporters would receive the
10 warning." 11:20

11
12 Is that something you were informed of by journalists
13 within your own paper or other crime reporters?

14 A. I was writing this in an opinion column.

15 169 Q. Yes. 11:20

16 A. So I wasn't stating that, I suppose, as a fact. This
17 was my impression --

18 170 Q. Yes.
19 A. -- knowing how the system works.

20 171 Q. Yes. Obviously at that time in time, you refer to 11:20
21 Superintendent David Taylor in the next sentence, you
22 were obviously aware that he had come out as the former
23 head of the Press Office claiming to have done this?

24 A. Yes, I was.

25 172 Q. Just I suppose from the point of view of completeness, 11:20
26 you yourself have no evidence of his campaign in that
27 regard in any direct sense?

28 A. No. To my knowledge I have never had any dealings with
29 him at all.

1 173 Q. Yes. You draw attention anyway in the next number of
2 paragraphs to the timing of the publication of
3 Mr. Williams' article, his second article then and
4 third article. At the end of that first page, at the
5 bottom of 7415, you are asking: 11:21
6
7 "Is it a coincidence in timing that this is happening
8 at the same time that we now know that Tusla had opened
9 the file relating to Sergeant McCabe's children in
10 particular in relation to that error." 11:21
11
12 You are raising the issue there as to whether it's a
13 coincidence?
14 A. Yes, that's right.
15 174 Q. Obviously that's something that the Chairman has been 11:22
16 considering at length?
17 A. Yes.
18 175 Q. I take it you - this is something you also confirmed to
19 the Tribunal investigators - you had no knowledge or
20 information relating to the Tusla file or the erroneous 11:22
21 error that had been made in relation to that?
22 A. No. When it was reported by Katie Hannon in RTÉ was
23 the first I had heard of it.
24 176 Q. Yes, and that's the Prime Time programme in
25 February 2017? 11:22
26 A. That's right.
27 177 Q. On the second page of the article you draw attention to
28 a number of other features there relating to Ms. D,
29 wondering why she would have been in contact with the

1 crime writer and how he got in touch with her et
2 cetera, and you had no information on that yourself --
3 A. No, I didn't.
4 178 Q. -- at that time. You have probably followed the
5 evidence of the Tribunal to some degree in relation to 11:22
6 that?
7 A. As best I can.
8 179 Q. Yes. You also put it in context, but in the third last
9 paragraph, having referred to Mr. Williams' article and
10 Mr. Reynolds' broadcast, you say: 11:23
11
12 "None of this is to impute wrongdoing by Williams,
13 Reynolds or their colleagues. Journalists rely on
14 contacts for information, protecting source's anonymity
15 is a cherished principle of the trade, but in this case 11:23
16 trust was demolished in the relationship between some
17 journalists and their sources. The debt is cancelled.
18 Even in media outlets that refrain from reporting the
19 spurious claims, the campaign to vilify McCabe exerted
20 a chilling effect and is partly the reason this 11:23
21 controversy has gone on for years.
22
23 Apart from the anguish this caused the sergeant, his
24 wife and their children, the relentless denigration of
25 McCabe put the safety of Irish citizens at risk by 11:23
26 deferring urgent examination of what is rotten in the
27 country's law enforcement. That is not to mention how
28 such vicious campaign has accelerated the
29 disintegration of public morality.

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Journalists, even if inadvertently, facilitated it by not properly interrogating the false rumours against McCabe. There is an onus on us now to correct the record. We can start by dispensing with the shield of protecting our sources. Why protect a source on whom you cannot rely to tell the truth? Those of us who know the identities of the rumour-mongers have a duty to the Charleton Commission and name those names. The journalist's first obligation is to the truth." 11:24

And obviously there, you have put it in terms of the first person plural, but you are writing this on your own behalf, as it were, reflecting your own opinion in the matter? 11:24

A. That's correct.

180 Q. I mean you're not necessarily reflecting the position of the Sunday Times as an organisation or other journalists in the Sunday Times?

A. No, it's entirely my own opinion. 11:24

181 Q. Yes. Just to focus on a number of parts of that, if we way. You refer there to: "The relentless denigration of McCabe put the safety of Irish citizens at risk by deterring urgent examination of what is rotten in the country's law enforcement." 11:25

I take it you would agree that this identifies a significant public interest in the current law being enforced in terms of its rules and regulations and

1 practices in relation to road safety matters?

2 A. This story?

3 182 Q. Yes.

4 A. I thought it was a huge public interest story, yes.

5 183 Q. Yes. You obviously, it would seem, linked the campaign 11:25
6 to denigrate him in some way to, as it were, lessen the
7 effect of the exposure of that or downplay its
8 importance?

9 A. As I watched it unfold. Yes, I believe that to be the
10 case. 11:25

11 184 Q. So if there was a concerted effort from the very top of
12 Garda Síochána to do that, you would see a great public
13 interest no doubt in exposing that and stopping it?

14 A. That's what we do as journalists.

15 185 Q. Yes. And the truth coming out about that? 11:26

16 A. Yes.

17 186 Q. You also mention what you appear to identify as another
18 significant issue there, the disintegration of public
19 morality, what had you got in mind specifically when
20 you are including that phrase in the article? 11:26

21 A. I suppose what I was talking about was the use of State
22 agencies to undermine a whistleblower who was trying to
23 put into the public domain information that was in the
24 public interest.

25 187 Q. Yes. May I take it that if you look at one side of it, 11:26
26 if that had happened and it was possible to do that,
27 that would be an astonishing subversion of democracy,
28 to put it at its highest, but of control of the police
29 force, exercising power over journalists and allowing a

1 campaign of besmirchment to succeed?

2 A. It would be deplorable.

3 188 Q. Yes. Would you degree, therefore, that there is a
4 significant public interest in determining whether in
5 fact such a campaign had existed, who was involved in 11:27
6 it, the extent of it and the extent of its reach into
7 the media?

8 A. I have no doubt that that is essential.

9 189 Q. Now, you refer to the issue of journalists protecting 11:28
10 our sources and why protect a source on whom you cannot
11 rely to tell the truth. You seem to have foreseen the
12 clarion call of the Chairman to ask people to come
13 forward and identify parties who were involved in that
14 and presumably you still support that effort on the
15 part of the Chairman to discover the truth of what was 11:28
16 being said to whom and in what circumstances?

17 A. I certainly do, yes.

18 190 Q. You helpfully replied to the questionnaire furnished to 11:28
19 you by the Tribunal relating to the terms of reference,
20 and I'm not going to go through that, it's at page
21 4874, but you did touch on the issue of journalists
22 sources and the necessity to protect them in your
23 letter to the Tribunal of 5th December 2017 and if we
24 could just look at that, it's at page 4873.

25 11:28
26 In the middle paragraph there you say: "My view on
27 journalists obligations to protect sources is that it
28 is a fundamental value designed to facilitate the
29 emergence of information which is in the public

1 interest. However, I believe that the obligation."

2

3

Is that fails or falls?

4

A. Falls.

5

191 Q. "Falls if a journalist's source knowingly conveys false 11:29

6

information for the purpose of damaging somebody's

7

reputation. In those circumstances I believe it's a

8

journalist's duty to expose that wrongdoing. This

9

doesn't prevent the difficulty of course of

10

ascertaining the source's intentions and knowledge 11:29

11

about the veracity or lack of it of the information

12

conveyed."

13

14

As I understand that what you are seeking to convey is

15

that a journalist when he receives information from a 11:29

16

source, he obviously has to evaluate that, but he

17

cannot necessarily know at the time whether the source

18

is deliberately misleading him and knows that what is

19

being conveyed is false?

20

A. That's correct, yes. 11:30

21

192 Q. Obviously we're in a position now and the Chairman is

22

in a position, the public is in a position to see and

23

has heard Superintendent Taylor's evidence and

24

statements, but I take it that you are aware that,

25

first of all, Superintendent Taylor has waived any 11:30

26

possible assertion of privilege on his part as being a

27

source of information?

28

A. I have read that.

29

193 Q. Presumably you understand that he is saying he was in

1 fact being deliberately tasked with the job of
2 besmirching Sergeant McCabe and doing so on the basis
3 of a reliance of an allegation of sexual assault that
4 was false?

5 A. I am aware he said that, yes.

11:30

6 194 Q. Does that affect your view of the issue of the
7 journalist duty to expose that wrongdoing. Because, if
8 that analysis is correct, would you agree that it's now
9 known that Superintendent Taylor was deliberately doing
10 that with this malign intent?

11:31

11 A. Well, he has said he was deliberately doing it.

12 195 Q. Yes.

13 A. We don't know. It would appear that he has said that
14 he put out false information at one stage. So any
15 journalist will have to decide at which stage was he
16 giving false information and at which stage is he
17 giving true and correct information.

11:31

18 196 Q. Yes. I think, just from your point of view, you
19 confirmed to the Tribunal that you were told about the
20 allegation, that is the 2006 allegation, by another
21 journalist?

11:31

22 A. Yes.

23 197 Q. And I think you have -- obviously the Tribunal question
24 that was asked of you was in terms of were you briefed
25 by anyone and you said 'yes, by a journalist'. I think
26 you clarified that in your interview with the
27 investigators that you wouldn't really use the term
28 'briefed' because nobody was trying to persuade you to
29 do anything in relation to Sergeant McCabe, but you

11:32

1 were told of it by another journalist?

2 A. Yes, that's correct.

3 198 Q. And from the point of view of dealing with that issue
4 of a source, you don't know where that other journalist
5 got that information? 11:32

6 A. No, I don't.

7 199 Q. You don't. And you are not in a position to assist the
8 Tribunal as to where that journalist may or might have
9 got that, you just don't know?

10 A. No, I didn't ask the journalist. 11:32

11 200 Q. It didn't arise in your discussion?

12 A. No.

13 201 Q. But can I ask you just a couple of questions about the
14 timing of that. Can you recollect when you were told
15 that? 11:32

16 A. In my interview with the Tribunal team I said I thought
17 it was 2013. Since then I have checked back to see
18 when I wrote my first story relating to the whole Garda
19 whistleblower's issue.

20 202 Q. Yes. 11:33

21 A. And it was in March 2013 I wrote about the profiling of
22 a Traveller baby on the Pulse system in March 2013 and
23 it was after I wrote that story.

24 203 Q. Yes.

25 A. Sometime after I wrote that. 11:33

26 204 Q. Yes, shortly afterwards.

27 A. I think it was around late 2013.

28 205 Q. Yes. Just in relation to that Pulse, the story about
29 the Pulse entries relating to Traveller children, it

1 would seem that that was on one view broken by
2 Ms. O'Doherty who had written about it in --

3 A. She wrote it a year later, yes.

4 206 Q. She wrote it a year later?

5 A. Yes. 11:33

6 207 Q. But you had written in 2013 about it?

7 A. Yes.

8 208 Q. It would seem that you weren't intent on writing a
9 story about Sergeant McCabe at the time and you didn't
10 make any note of what the other journalist told you 11:33
11 about the details?

12 A. I didn't need to make a note because I was stopped in
13 my tracks by what he told me. I was horrified. I have
14 written a huge amount over the past two decades about
15 child sexual abuse, I would nearly say it was my 11:34
16 specialist subject, and the idea that this man had been
17 accused of sexually abusing a child utterly shocked me.

18 209 Q. Yes. Can you recall the terms in which it was
19 described to you?

20 A. I can't remember the specific words that were said to 11:34
21 me, but the impression I came away from the
22 conversation with was that Sergeant McCabe had been
23 accused of sexually abusing a child and that the issue
24 had not been concluded.

25 210 Q. Yes. So it was your understanding that it wasn't 11:35
26 something that had necessarily, from the information
27 you had, that had been investigated to conclusion?

28 A. My impression was that it had not been investigated to
29 conclusion.

1 211 Q. And I don't think the parties were identified to you at
2 that point?

3 A. No, I didn't know the name.

4 212 Q. You didn't know them yourself?

5 A. No. 11:35

6 213 Q. I think you had ordinary dealings with the Press Office
7 yourself and you were never negatively briefed by
8 anyone in the Press Office in relation to Sergeant
9 McCabe?

10 A. No. 11:35

11 214 Q. You do refer at page 4863 to a rumour about the car,
12 the so-called car park meeting, and if we could just
13 look at line 102 at page 4863. You say:
14

15 "The only thing I was aware of was that there was a 11:36
16 rumour going around that Commissioner Callinan had made
17 certain allegations against Sergeant Maurice McCabe to
18 John McGuinness TD at a meeting at the Red Cow.
19 I believe other journalists were also aware of these
20 rumours about this meeting about what was said. 11:36
21 I attempt to ascertain if the rumours were true but
22 I failed."

23

24 Now, can you assist us in trying to place when you
25 heard that rumour? 11:36

26 A. I believe it was in late 2016.

27 215 Q. Late 2016?

28 A. Yes.

29 216 Q. Okay. So would it have been after Deputy McGuinness

1 had referred to it in the Dáil that he had met him?

2 A. I'm not sure. Do you know when Deputy McGuinness?

3 217 Q. Yes, that was in May 2016.

4 A. It would have been after that.

5 218 Q. It would have been after that, okay. 11:36

6 A. Yes.

7 219 Q. So there was a public revelation of the fact, was there
8 a lot of mystery about what was precisely said?

9 A. Yes, there was.

10 220 Q. Did you attempt to ascertain from Deputy McGuinness as 11:37
11 to what was said to your recollection?

12 A. I attempted to ascertain by speaking to a contact and
13 I failed to establish that it was true.

14 221 Q. All right, okay. Now, at page 4864, line 118, you told
15 our investigations that when you were originally told 11:37
16 about the allegation you made your own enquiries and
17 you appear to have been able to learn that there had
18 been a Garda investigation, a file had gone to the DPP
19 and that there was no prosecution and that you had made
20 these enquiries in 2013. 11:37

21 A. (WITNESS NODS)

22 222 Q. Was that relatively quickly after you had learned of
23 this from another journalist?

24 A. It was, I would say, within days.

25 223 Q. Yes. 11:38

26 A. Can I just say the reason why --

27 224 Q. Yes.

28 A. -- my source was able to satisfy me, in covering child
29 sexual abuse stories over the years, I am aware, I have

1 interviewed survivors of abuse whose abusers have not
2 been prosecuted where decisions were made by the DPP
3 that perhaps, because of the time lapse or a lack of
4 evidence, that there would be no prosecution.

5 225 Q. Yes. 11:38

6 A. So it was that I was told that not only had the DPP
7 decided not to prosecute but the DPP had said no
8 offence had been disclosed. That satisfied, was one of
9 the reasons that I felt satisfied in my mind that the
10 information that I had been given was not true. 11:39

11 226 Q. Yes. But can I ask you this: The information that you
12 received, it wasn't accompanied in any sense by a
13 negative briefing about Sergeant McCabe, that this was
14 a reason that had given him, it had given him a
15 grievance in some respect or that he was motivated to 11:39
16 make all of his whistleblowing allegations because of
17 something connected with it?

18 A. You mean by the journalist?

19 227 Q. Yes. No, the link at the time here, when you made your
20 enquiries there was no, was it accompanied by any 11:39
21 negative briefing of Sergeant McCabe?

22 A. No.

23 228 Q. No.

24 A. No.

25 229 Q. And it wasn't being linked to his whistleblowing in any 11:39
26 way, in your mind anyway?

27 A. The fact that this was being said about him?

28 230 Q. Yes.

29 A. Hmm --

1 231 Q. Well, when you checked it, that's really what I am just
2 focussing on.

3 A. All right. No.

4 232 Q. Do you see the sentence is --

5 A. In that conversation, no, there was no link made. 11:39

6 233 Q. There was no link. There was no attempt to besmirch?

7 A. By the person I spoke to?

8 234 Q. Yes.

9 A. No, no.

10 MR. McGUINESS: All right. That's just what I was 11:40
11 anxious to determine. Would you answer any further
12 questions, Ms. McCarthy, that anyone else may have.

13 A. Thank you.

14 MR. McDOWELL: No questions, Chairman.

15

11:40

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

18

19 MR. DIGNAM: I just have a few questions, Chairman,
20 Ms. McCarthy. My name is Conor Dignam, I appear on 11:40
21 behalf of Garda Síochána and I just have - including
22 former Commissioner Callinan and former Commissioner
23 O'Sullivan - and I just have a few brief questions just
24 to deal with your opinion piece in the Sunday Times and
25 then I will focus on what you say in your interview to 11:40
26 the Tribunal in asking you some questions.

27

28 235 Q. But that article, as I understand it, was written on or
29 was in the paper on 12th February 2017?

1 A. (WITNESS NODS)

2 236 Q. Would you accept that it was a particularly fraught
3 time from a political and public controversy point of
4 view in relation to the penalty points issue and indeed
5 Sergeant McCabe and indeed former Commissioner Callinan 11:41
6 -- O'Sullivan?

7 A. I wouldn't disagree with that at all.

8 237 Q. There had been Deputy Howlin's contribution to the Dáil
9 on 8th February, there had been a series of radio
10 broadcasts, newspaper articles et cetera and then the 11:41
11 Prime Time programme had made its revelations about the
12 Tusla notification?

13 A. (WITNESS NODS)

14 238 Q. So it was a highly politicised, highly controversial
15 period of time and you wrote your opinion piece in that 11:41
16 context, is that fair?

17 A. That's right, yes.

18 239 Q. And, just to clarify, it is an opinion piece, it's not
19 intended as reportage or an article containing
20 assertions of fact but an opinion piece; is that right? 11:41

21 A. Yes, that's right.

22 240 Q. In relation to your correct categorisation of, if this
23 type of campaign was going on, it would be highly
24 significant to the workings of the institutions of the
25 State et cetera; does it surprise you that we have 11:42
26 heard evidence from a number of people that they became
27 aware that this type of briefing or smear campaign was
28 going on but they did nothing about it, and by that
29 I mean politicians and some journalists?

1 A. I'm not surprised by that, but I wouldn't 100% agree
2 with that.

3 241 Q. Yes. I suppose the point I'm getting at is that you
4 have some journalists and some politicians who, on
5 their account of things, were either told that one or 11:42
6 both of the former commissioners were conducting a
7 smear campaign against Sergeant McCabe by alleging
8 various things against him but including this
9 no-smoke-without-fire concept in relation to the sexual
10 abuse allegations and, on one journalist's account and 11:43
11 two politicians' accounts, this allegation was made to
12 them directly by former Commissioner Callinan, but they
13 didn't pursue that either as a political matter or from
14 a journalist point of view as a story, does that
15 surprise you? 11:43

16 A. No. No, that doesn't surprise me to write a story like
17 that would have been extremely hard and it would have
18 been very hard to find an organisation that would have
19 published it. That's the first thing.

20 11:43
21 The second thing is that, just because journalists
22 didn't write this story, doesn't mean that they didn't
23 disseminate the information.

24 242 Q. I appreciate that. But the evidence which has yet to
25 be heard but from what we know from statements given to 11:44
26 the Tribunal is that this information was simply
27 received and nothing further was done. I take it your
28 point about the difficulties of publishing a story like
29 that, the difficulties of proving facts et cetera, but

1 presumably a journalist, and particularly an
2 investigative journalist's modus operandi and objective
3 is to dig out difficult stories and to hold power to
4 account as we have heard over the last couple of days,
5 but no such steps were taken to even investigate the 11:44
6 story that the Commissioner was involved in or
7 participating in or conducting a smear campaign?

8 A. The first time I heard of a campaign was in relation to
9 what David Taylor said.

10 243 Q. Could I be clear, this isn't a criticism directed at 11:44
11 you, Ms. McCarthy?

12 A. No, I understand that. No, I am just trying to explain
13 that before the Taylor claim of a campaign I wouldn't
14 have thought of a campaign in my head. But there
15 certainly were people spreading this story about 11:45
16 Maurice McCabe.

17 244 Q. Yes. There was a rumour going around?

18 A. Yes.

19 245 Q. Now if I could then just turn to your statement. You
20 have already dealt with Mr. McGuinness in relation to 11:45
21 hearing the allegation or the rumour from a journalist
22 colleague?

23 A. (WITNESS NODS)

24 246 Q. And you then, on page 4859, on line 37 you describe
25 what the allegation you heard at that initial stage was 11:45
26 and that's where you describe it as, your understanding
27 was that it was unresolved, the investigation was
28 unresolved?

29 A. (WITNESS NODS)

1 247 Q. And then on a later page, page 4864, you indicate that
2 you made some enquiries with a source and that they
3 gave, brought some further clarification or clarity to
4 the position and the Tribunal has that.

11:46

5
6 But if I could just ask you to turn to page 4863 where
7 you deal with hearing of the rumour going around that
8 Commissioner Callinan had made certain allegations
9 against Sergeant Maurice McCabe to John McGuinness TD
10 at a meeting at the Red Cow which for shorthand has
11 become known as the car park meeting.

11:46

12
13 You told Mr. McGuinness that you heard that rumour in
14 late 2016; is that right?

15 A. Yes, that's right.

11:46

16 248 Q. Yes. Now, I'm not sure whether you are able to track
17 back that far, but in fact Deputy McGuinness had
18 disclosed having had this meeting and he described vile
19 allegations as having been made by former Commissioner
20 Callinan in that meeting on 29th May 2016 on the floor
21 of the Dáil, and I think you are based in Leinster
22 House; isn't that right?

11:47

23 A. That's right.

24 249 Q. Yes. He also then gave or was on at least two radio
25 programmes over the course of 2016 very shortly after
26 this Dáil speech and then in October 2016 also referred
27 to that car park and these allegations being made by
28 former Commissioner Callinan; were you aware of
29 Deputy McGuinness' Dáil speech and/or his radio

11:47

1 contributions?

2 A. I would have been aware of the Dáil speech at the time.

3 250 Q. Yes. I am just curious about why you describe them
4 then in your interview as a rumour going around, if
5 Deputy McGuinness had said this in the Dáil why 11:47
6 describe it as a rumour?

7 A. The rumour was a specific word --

8 251 Q. Okay.

9 A. -- that Mr. Callinan was reputed to have used in that
10 conversation. 11:48

11 252 Q. Okay. So it went further than what Deputy McGuinness
12 said, okay.

13 A. Yes.

14 253 Q. Now, how did you become aware of that rumour?

15 A. A contact told me about it. 11:48

16 254 Q. Now, you then say that you attempted to ascertain if
17 the rumour was true but I failed, could you tell us
18 what steps to ascertain if that rumour was true?

19 A. Well, there were two people purportedly involved in
20 that conversation, so, you know -- 11:48

21 255 Q. Yes. Well, could I ask you then to look at page 4867
22 of your statement or of your interview, please. You
23 are asked by the interviewer:

24

25 "I have been asked to detail any contact as may have 11:48
26 been had by me directly with Gardaí of whatever rank as
27 to the character, real or supposed, of Sergeant Maurice
28 McCabe and the detail and provenance thereof.

29 A. One Garda spoke to me about Sergeant McCabe's

1 character in which the guard spoke of Sergeant McCabe
2 in a very positive manner. "
3
4 Now can I take it from that that the person you had a
5 conversation with about the car park meeting was not a 11:49
6 Garda?
7 A. I am not going to answer that.
8 256 Q. Now if I just put, my instructions are that
9 Commissioner Callinan never had, former Commissioner
10 Callinan never had a conversation with you about his 11:49
11 meeting in the car park, I just have to put that to you
12 formally?
13 A. No, he didn't.
14 257 Q. Now -- just bear with me for a moment.
15 A. Okay. 11:49
16 258 Q. Just for clarity sake and for completeness sake,
17 I think Mr. McGuinness has already asked you, but on
18 page 4863, line 89 to 95, you are asked, and I am going
19 to summarise rather than bringing you through it, but
20 you are asked whether Superintendent Taylor ever spoke 11:50
21 to you and negatively briefed you and whether former
22 Commissioner Callinan or former Commissioner O'Sullivan
23 or any Garda member ever spoke to you or negatively
24 briefed you in relation to Sergeant McCabe and you
25 answer no to both of those questions; isn't that right? 11:50
26 A. That's correct.
27 MR. DIGNAM: Thank you.
28 MR. MCGUINNESS: Just one matter.
29 MR. KENNEDY: I should say, sorry, Chairman, I have no

1 questions for the witness.

2 CHAIRMAN: Yes, all right. Yes, I see you,
3 Mr. Kennedy. Thanks.

4

5 THE WITNESS WAS RE-EXAMINED BY MR. McGUI NNESS AS
6 FOLLOWS:

11:50

7

8 259 Q. MR. McGUI NNESS: Just one further matter, Ms. McCarthy.
9 In your interview with the investigators your attention
10 was obviously drawn to the different waivers that had
11 been executed by, respectively, Superintendent Taylor,
12 Commissioner Callinan and former Commissioner
13 O'sullivan, and you were asked obviously about the
14 issue of source protection. You said, inter alia,
15 that:

11:50

11:51

16

17 "No journalist should ever lightly dispense with the
18 protection of a source, it's a core principle of
19 journalism to protect sources to allow information in
20 the public interest to enter the public domain."

11:51

21

22 But you went on to say but if that is abused by
23 somebody maliciously disseminating untrue information
24 then in your opinion that confidentiality falls, and
25 that is your view then?

11:51

26

A. It is my view, yes.

27

MR. McGUI NNESS: All right. Thank you very much.

28

CHAIRMAN: Right. Thank you very much, Ms. McCarthy.

29

THE WITNESS: Thank you.

1 MS. LEADER: The next witness, sir, is Mr. Colum Kenny.
2 His statement appears in volume 15 beginning at page
3 3866 of the materials.

4
5 MR. COLUM KENNY, HAVING BEEN SWORN, WAS DIRECTLY 11:51
6 EXAMINED BY MS. LEADER AS FOLLOWS:

7
8 260 Q. MS. LEADER: Mr. Kenny, you are a journalist of long
9 experience and I wonder could you outline to the
10 Tribunal both your experience as a journalist, your 11:52
11 academic qualifications and any institutes that you are
12 attached to, please?

13 A. I have been a journalist for many years. I was
14 employed full-time with RTÉ television as a reporter
15 and presenter of radio and television programmes in the 11:53
16 1970s into the 1980s. I was then recruited by Dublin
17 City University to help set up the State's first
18 university level journalism programme and
19 communications programme there. The university
20 encourages staff to be involved, so I have continued to 11:53
21 work as a journalist writing for national newspapers,
22 doing further work for RTÉ. The national newspapers
23 I have worked for and written for have included the
24 Sunday Press, the Sunday Independent, the Irish Times
25 and others. I have also done some work for newspapers 11:53
26 abroad and I have written extensively in academia -- in
27 academic journals and elsewhere about journalism and am
28 other matters. I have set up and taught courses in
29 broadcasting policy and practice, journalism, media law

1 and other communication courses in Dublin City
2 University.

3
4 I have also been a member of the Broadcasting Authority
5 of Ireland for two periods and have been on the 11:54
6 broadcasting compliance committee that decides on
7 complaints about balance and fairness.

8 261 Q. All right. Now, you are being called as a witness to
9 this Tribunal both as a witness to fact and also to
10 give the Tribunal the benefit of your expertise over 11:54
11 many years, and I wonder could we start with the
12 evidence as to expertise in journalism in matters of
13 this nature. So you set that out very helpfully in a
14 statement that you provided to the Tribunal which
15 begins at page 3900 of the materials and you set out 11:54
16 your qualifications, 3900.

17 A. Yes.

18 262 Q. To begin with. You first of all say at paragraph 4 of
19 that statement, you make an observation in relation to
20 the doctrine of sources and I wonder could you tell the 11:55
21 Tribunal now about that please?

22 A. Well, the doctrine of sources in my opinion is the
23 first principle of journalism.

24 263 Q. Yes.

25 A. It's an ethical obligation to persons with whom 11:55
26 journalists are in contact. First and foremost it's
27 about giving one's word and keeping one's word in
28 appropriate circumstances and cultivating sedulously
29 sources that may be valuable in the public good and may

1 be necessary to quote anonymously or otherwise when
2 writing articles or making programmes.

3 264 Q. All right. I think you then continue on in your
4 statement to say that a number of matters arise for
5 consideration in respect to the doctrine of sources and 11:56
6 you break those down to different categories, and that
7 appears at paragraph 10. The first thing you look at
8 is the definition of a journalist and you set that out,
9 and I wonder could you explain to the Tribunal for
10 present purposes what you regard as the definition of a 11:56
11 journalist?

12 A. Well, I suppose the easiest way perhaps to do that is
13 to say that journalist certainly include those people
14 who work for the media and write stories of a factual
15 nature that are intended to impart information of 11:56
16 public interest. Questions arise around the edge of
17 what constitutes a journalist essentially in the
18 context of the internet, I suppose, nowadays.

19
20 But I think, in relation to the national newspapers and 11:56
21 licensed broadcasters in Ireland, there could be little
22 question as to the fact that people who work for the
23 news and feature programmes of those may be considered
24 journalists. I think more difficult questions can
25 arise for courts in relation to a person perhaps 11:57
26 writing a blog online and claiming privilege, as to
27 whether or not they may be a journalist. Professional
28 journalists may baulk as the notion of such people
29 describing themselves as journalists, but I don't think

1 that this is really something that arises in respect to
2 anything that I have said in my statement. I think
3 we're talking here about a very clear area of national
4 media. I think in that context journalists are those
5 people who would normally wish to belong to an
6 organisation such as the National Union of Journalists.

11:57

7 265 Q. All right. Now, if we can go on to what a source is,
8 Mr. Kenny, and maybe you would give the Tribunal the
9 benefit of your thoughts on that, please. It starts at
10 page 3903 of your statement, it might be of assistance
11 to you.

11:58

12 A. Well, I would say in the first instance that a source
13 has to be the source of a story, and the basis of the
14 relationship between a journalist and their source has
15 to be an understanding or even an undertaking in the
16 context of there being a real possibility of writing a
17 story based on the information provided. If a person
18 is offering without agreement information that is
19 unlikely ever to be the basis of a story, either
20 because it's highly defamatory or for any other reason,
21 then I think there has to be a question as to whether
22 such a person is a source to begin with.

11:58

11:58

23
24 Sources are complex. Sources have to be worked by
25 journalists and that's why there are beats where there
26 are specialist correspondents because media hope that
27 by cultivating sources, in the best possible sense
28 about getting to know people, getting to understand
29 them, that they would be more open with information.

11:59

1 And that's perfectly reasonable and it's important that
2 we have specialist correspondents in the media. There
3 aren't enough of them in my view.
4

5 I mean part of the problem at the moment - I want to 11:59
6 make clear that I am not attacking the media in any
7 way, I regard myself as part of the media in many
8 respects, and the media is under a lot of pressure at
9 the moment of different kinds and there aren't enough
10 specialist journalists being employed. So I have no 11:59
11 problem with the specialist journalists, be they
12 political correspondents, security correspondents,
13 agriculture correspondents. But I think every
14 journalist knows that there is also a danger to that
15 relationship, that you get captured by your sources, 12:00
16 that you get too close to them and when you get close
17 and dependent on them well it's very hard to bite the
18 hand that feeds you, and either conscious or
19 unconsciously you may slip into a relationship that's
20 either psychologically dependent or professionally 12:00
21 dependent on getting sources.
22

23 So a good editor sees that and when it comes to a
24 stories, I think, such as the Sergeant Maurice McCabe
25 story, a good editor should be conscious of that fact 12:00
26 and be prepared to put journalists working on that
27 story who may not be too close to the Gardaí, for
28 example, in this instance.

29 266 Q. All right. In relation to on the record and off the

1 record sources, do you regard the Garda Press Office as
2 a source?

3 A. It certainly is a source, yes.

4 267 Q. Do you regard it as a confidential source?

5 A. I don't. I think the Garda Press Office wouldn't 12:00
6 generally be giving you that kind of confidential
7 information. In my limited experience, I'm not a
8 specialist correspondent, but over the years at various
9 times and in various ways I have had to go to the
10 Gardaí for information in relation to stories. I am 12:01
11 very conscious of the fact that that is a difficult
12 situation because the Gardaí are people who are
13 frequently in possession of information that nobody
14 else has.

15 12:01
16 I had a very early lesson in that myself at the time of
17 the heavy gang and all the Sallins train robbery affair
18 when I was doing a story for RTE and I was given a
19 briefing by Garda in respect of somebody who I was
20 talking to and they told me that this person, I didn't 12:01
21 this and I didn't know that about them and I should
22 know they had been arrested and they had been found
23 with this and that and the other.

24
25 That has a tremendous chilling effect because you are 12:01
26 not going to be able to use it because it's said off
27 the record and, at the same time, you can't ignore it.
28 I mean professionally you are hardly likely to proceed
29 unabashed in the knowledge that senior Gardaí or other

1 Gardaí have given you that kind of information.

2

3 So the Garda are a particularly useful source on
4 occasion but also one that has its own peculiarities
5 because of its special access to information that
6 nobody else is likely to have.

12:02

7 268 Q. All right. If I could just go back on that for a
8 minute. So, as I understand your last answer, at least
9 in part, there are two streams of information coming
10 from the guards; is that correct?

12:02

11 A. Absolutely, well of course. There are individual
12 Gardaí who will talk to you and there is the Garda
13 Press Office.

14 269 Q. And in relation to the Garda Press Office do you in
15 your opinion regard any confidentiality attaching to
16 that particular stream of information?

12:02

17 A. Obviously if somebody says 'this is off the record'
18 then you have to decide whether you agree or not to be
19 briefed. Sometimes it's better not to be in fact for
20 the reason that I have just highlighted, that what you
21 are told off the record can have a certain poisonous or
22 chilling effect. I'm not as experienced as many
23 journalists in dealing with the Garda Press Office. In
24 my experience they generally don't go off the record in
25 any major way, certainly with somebody like myself who
26 would be an occasional journalist contacting them. It
27 tends to be you go to the Garda Press Office for an on
28 the record statement, that's the whole point or perhaps
29 for some guidance of an unofficial nature which

12:02

12:03

1 I wouldn't quite call off the record. It might be
2 helpful advice as to the parameters of a story or
3 something like that, but you don't really expect to get
4 something extremely significant being handed up by the
5 Garda Press Office and at the same time be told 'well 12:03
6 this is off the record, you can't use it'. It doesn't
7 work like that.

8 270 Q. In relation to off the record dealings does that happen
9 with the Garda Press Office or other guards, is there a
10 distinguishing feature in your view in relation to 12:03
11 that?

12 A. Well, there is plenty of guards who talk to the media
13 off the record on a personal basis.

14 271 Q. Yes.

15 A. I think that's -- it goes without saying. It would 12:04
16 then depend on whether or not -- it could be useful
17 information or it could be given for all kinds of other
18 reasons, personal reasons of Gardaí who want to
19 glorify themselves or who want a particular story line
20 to get out there for good, bad or other reasons. It 12:04
21 could be any number of reasons that people give -
22 Gardaí and others - give off the record briefings. So
23 you have to assess every individual case. This happens
24 frequently.

25 272 Q. All right. Now, if we could just turn then to, you 12:04
26 have information, you have got it from a source, what
27 then is your obligation with regard to that
28 information?

29 A. Well, first of all I think you have to be careful

1 before you -- if it appears that a source is likely to
2 have contentious and defamatory information that they
3 want to impart to you confidentially, I think the first
4 thing you have to do is establish if there is agreement
5 between you and the source on two things: First, if 12:05
6 they are giving it to you for a story; and, secondly,
7 if they are giving it for a story, is it likely to be a
8 story that you can write. Why are you taking it
9 otherwise, that information. And I think that's an
10 important first step. 12:05

11
12 So if you take that information then from that source
13 I think there is a strong reason to keep that source
14 confidential normally. You must try and assess whether
15 or not there is a malice involved. I mean if you think 12:05
16 that the source has something in the public good to
17 impart then to sedulously foster that source in the
18 public good seems to me to be acceptable. But the
19 personal journalist is asking themselves all the time
20 what's going on here, is this really about a story that 12:06
21 I want to write and is it telling me something
22 valuable. Now if the source then gives you information
23 that's highly damaging to somebody who is another party
24 to the story, it seems to me absolutely an ethical
25 responsibility on the journalist - and I know some of 12:06
26 my colleagues don't agree with this - whether or not
27 you subsequently write about that story or not, to go
28 to the person involved and to say to them 'look a
29 source has told me that you have engaged in, we will

1 say for the sake of argument, criminal activity'.
2 273 Q. Yes.
3 A. Now there's two reasons for this. First of all, it
4 helps you to assess the source, and, secondly, it helps
5 you to advance the story by assessing the defamed 12:07
6 person's reaction to that story. Now of course it is
7 quite possible that both parties are lying. I mean
8 every journalist is fully aware that, as every lawyer
9 is, that people get into a situation where they will
10 give a version of events that may be incompatible, none 12:07
11 of them may be entirely true, but not to go to the
12 person who is defamed in those situations but somehow
13 to rely on that source either by repeating what they
14 say or, even worse, by writing publically about it
15 seems to me a complete failure of the journalist's 12:07
16 responsibility to the alleged source. I'm not even
17 sure there is a source if it's a defamation, because
18 it's not the source of a story, it's the source of a
19 defamation.
20 274 Q. All right. In relation to deciding whether or not 12:07
21 information given to you by a source is worthy of
22 publication or is to be pursued with a view to
23 publicising it, do you think the journalist has any
24 obligation to try and figure out the motivation of that
25 source? 12:08
26 A. Absolutely. You have an obligation to try and figure
27 out everybody's motivation, including your own, as a
28 journalist. We all have baggage and you would be a
29 very poor journalist if you weren't asking what that

1 person's angle is. I mean it's the most common
2 question probably in newsrooms, what's the angle on the
3 story, and everybody has an angle on a story and
4 I think every journalist should be questioning why they
5 are being given information in a particular set of 12:08
6 circumstances.

7 275 Q. Okay. And in relation to journalists talking amongst
8 other journalists in relation to stories, do you have
9 any views on that and how that should be properly dealt
10 with? 12:08

11 A. Yes, I do. Obviously there is a camaraderie among
12 journalists who work close to one another, so there is
13 a natural inclination to share information and gossip
14 and that's part of the working environment. But
15 I think before you share information that has come to 12:09
16 you from a source that you are saying is confidential,
17 before you share that information I think you do need
18 to ask what's the impact of my sharing this information
19 if it haven't checked it particularly with other
20 journalists. 12:09

21
22 I mean there have been instances we have seen of
23 sources sharing damaging information in the United
24 States, for example, in relation to CIA members; in
25 Britain in relation to the Kelly arms case where the 12:09
26 sharing, I won't say reckless sharing of information
27 about sources, but the excessive sharing of information
28 has arguably led to very serious consequences for
29 people who provided that information. So for that

1 reason alone I think you need to be careful.

2

3 But in respect to something that's potentially
4 defamatory of an individual and where the source might
5 have a motivation other than pure truth, then I think 12:10
6 you have to be especially careful of how you share that
7 information. Now you will obviously want to go to your
8 line management and unfortunately you probably have to
9 engage a lawyer because that's pretty much unavoidable
10 since everything gets legalised these days in the 12:10
11 newspapers and in broadcasting that's in any way
12 substantial, and that's the proper way to approach it.
13 And if you have trusted colleagues that you feel you
14 need to talk to, I see nothing wrong with that.

15

12:10

16 But I think while it may be tempting and it may be
17 understandable that people sometimes repeat such
18 rumours beyond that, I think it's certainly not
19 desirable.

20 276 Q. All right. Now, I wonder could you speak to the 12:11
21 Tribunal about dealing with or distinguishing between
22 sources, in particular bona fide sources and malicious
23 sources?

24 A. There's no simple answer to that. You have to use your 12:11
25 instinct as a journalist to try and assess whether
26 somebody is a good source. Obviously there's the old
27 question in whose interest is this information which
28 you can ask yourself. I think all you can do at the
29 end of the day, you have to try and write an article

1 that is accurate so you are going to have to do fact
2 checking. So if the source is not giving you facts
3 then it's of a certain limited value in directing you
4 in a particular direction, but I think the best
5 safeguard is cross checking. If you are told something 12:12
6 by a source then you check it where you can. If that
7 source tells you something about an individual then the
8 easiest way to check that - or at least to test it,
9 I should say, because as I say going to the person who
10 is defamed doesn't necessarily gets the truth, it gets 12:12
11 another point of view - but at least by going to that
12 person and putting it to them that this is being said
13 about them it's likely to advance the story to some
14 extent.

15 277 Q. All right. Now, you have been here for the evidence of 12:12
16 Ms. McCarthy who, as I understand it, expressed the
17 view that malicious sources shouldn't be protected and
18 I don't know if you have anything to say in relation to
19 that, whether you agree with it or not?

20 A. I certainly think the journalist has a substantial 12:12
21 responsibility to ask in the first instance is the
22 information I am being given likely to be usable as a
23 story. Because if there's no story likely to come out
24 of the information that's being proffered or if it's
25 proffered without being sought I think that really is a 12:13
26 very difficult situation for the journalist because
27 what are they doing listening to malicious information
28 about a party to a story if that information is in no
29 way valuable to them.

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But it is possible that a malicious person could give you information that was relevant about somebody. They could tell you the truth even though they were malicious.

12:13

278 Q.

Yes.

A.

So it depends on the particular set of circumstances, were they telling you the truth I think would be an important issue here. Because even if they were malicious, if they were telling you the truth and it was in the public good to use that information, then perhaps that information could be used. But if a malicious person is giving you information which is misleading, a half truth, out of date or false, then I think the ethical responsibility to that person, particularly where you have not given them an undertaking in advance in respect to the proffered information but where they have just volunteered it of their own accord in a context where you may have a relation to them more generally for confidential information but not in respect of a particular alleged criminal act. I do think there is a limit there realistically. I would be afraid that journalists who invoke privilege in respect to every circumstance will undermine the doctrine of privilege both in law and in relation of journalistic ethics.

12:13

12:14

12:14

12:14

The Society of Professional Journalists, for example, the very old United States organisation of professional

1 journalists has elaborated this complexity perhaps a
2 little bit more, with more nuance than has the NUJ
3 itself, although the NUJ itself, I am a member of the
4 NUJ and I stand by its ethical position on this. But
5 I think it needs greater elaboration perhaps than has 12:15
6 been sometimes given in the past. And when you tease
7 it out I think it's not black and white because if we
8 try to claim privilege for everything in every single
9 circumstances, regardless of whether or not we are
10 protecting someone who is doing wrong or protecting a 12:15
11 story, then I think we bring the doctrine of privilege
12 into disrepute.

13
14 In a case where the source is doing wrong, is
15 committing a civil or criminal wrong by giving 12:15
16 information that's inaccurate or misleading, we are not
17 then protecting a story, we're not protecting the
18 source of a story, we're protecting the wrongdoing
19 itself. I think there should be a distinction between
20 those two things. 12:15

21
22 I go back to what I said earlier which is based on a
23 Canadian doctrine articulated in a case involving the
24 National Post and earlier, that a confidential source
25 may be sedulously fostered in the public good, and 12:16
26 that's the important thing; was this information in the
27 public good, did the journalist have a relationship of
28 trust based on a clear understanding that the
29 information provided was to be the basis of a story in

1 the public good or was this story being provided being
2 provided maliciously, was the information being
3 provided maliciously or otherwise for ulterior motives
4 that had nothing to do with establishing the truth in
5 the public good. These aren't easy questions to answer 12:16
6 by the way, people may have different ideas.

7
8 I mean if a Garda tells you something about a person
9 such as the case I mentioned earlier, in the Sallins
10 train robbery, may think he is acting in the public 12:16
11 good. I mean whether or not the information is
12 verifiable. They may believe that they are putting you
13 straight in a manner of speaking. So these aren't
14 simple, but I'm also saying that they are not black and
15 white. You cannot simply claim every source should be 12:16
16 protected, malicious or otherwise, in every single
17 situation regardless of whether you are protecting the
18 wrongdoing or protecting a story.

19 279 Q. Right, thanks. Now, if we could just look at the
20 situation where a particular source waives any 12:17
21 confidentiality in relation to providing information to
22 a journalist, do you have any opinion in relation to
23 retaining a privilege over that in a journalist -- from
24 the journalist point of view?

25 A. Unless one feels there is some reasonable grounds for 12:17
26 believing that a person has come under undue influence
27 or unfair pressure of some kind or improper pressure to
28 waive that privilege, I can't see how any relationship
29 of privilege remains if the source themselves is saying

1 they don't want it to remain, particularly if it may be
2 in that source's interest for you to confirm that they
3 have given you some information. There might be
4 theoretically a situation in which to do that might
5 expose a third party identity as a source of other 12:18
6 information and that might be a separate set of
7 circumstances.

8
9 But unless you can clearly articulate a real and
10 present danger that you are somehow exposing either the 12:18
11 source themselves or a third party who you don't want
12 to identify to identification, then I don't see any
13 reason why you wouldn't be willing to confirm what that
14 source now wants you to confirm.

15 280 Q. Okay. And if we could just bring that maybe two steps 12:18
16 further. If a source has said that they spread a story
17 about somebody which wasn't the truth or which was
18 spread in an effort to malign somebody, even though at
19 the time they thought they were doing the right thing
20 but now actually recognises that it was wrong and 12:19
21 waives any confidentiality in relation to spreading
22 that story, do you believe there are any circumstances
23 where a journalist can correctly claim privilege over
24 receiving that information?

25 A. If there are I cannot see them. 12:19

26 281 Q. All right. Now, if we can just go back in relation to
27 identifying a group source, do you have any thoughts on
28 that, or the group that a particular source emanates
29 from?

1 A. In a situation where you are still trying to protect a
2 genuine source?

3 282 Q. Yes.

4 A. Well, if there was a very small group obviously of five
5 people and you said it wasn't A, B, C and D you have 12:19
6 identified source E. So, yes, in a very specific set
7 of circumstances then it might be necessary to decline
8 to identify the source in that set of circumstances
9 where by doing so it exposed or, sorry, by ruling out
10 somebody as a source I should say. 12:20

11 283 Q. Yes.

12 A. That could expose a genuine source. So there could be
13 an issue there, yes. But in a very large group of
14 people, like if I said a teacher told me and then you
15 asked me a question, I said 'well it wasn't teacher 12:20
16 Mary Murphy', well there is thousands of teachers so
17 that doesn't really identify the other people. It
18 would to be in a very specific set of circumstances
19 that that would arise in my opinion.

20 284 Q. All right. Now, there's one thing I should have asked 12:20
21 you in respect of a waiver of any confidentiality,
22 there has been a relatively recent case in the European
23 Court of Justice which says that the waiver of
24 confidentiality by a source isn't determinative of a
25 journalist claiming privilege, it's just one of the 12:20
26 factors, do you have anything to say in relation to
27 that or does it change your opinion in any way as you
28 have provided it to the Tribunal?

29 A. If by that is meant that where a source waives

1 privilege that may not be the only factor.

2 285 Q. Yes.

3 A. Then I agree with it, it may not be the only factor.
4 As I have already said there may be circumstances in
5 which the sources come under pressure or where to agree 12:21
6 with the source is somehow to expose someone else if
7 the source has other reasons to waive that privilege.
8 So again it has to be looked at in the round and
9 I would agree with that.

10 286 Q. All right. Now I think you have put forward in your 12:21
11 statement to the Tribunal how important it is to have a
12 strong media, maybe you would like to articulate that
13 here now?

14 A. Oh, yeah, I think the media is in an extremely besieged
15 situation at the moment with cutbacks of all kinds, and 12:22
16 some of this is not visible because it's below the
17 surface. Papers are striving to survive with less
18 staff, younger staff, less experienced staff, staff
19 expected to do far more stories, turn over stuff.
20 Newspapers, broadcasters and so on with competition 12:22
21 from fake news sources, from sources on the internet
22 that don't subscribe to the same kind of journalistic
23 principles that the NUJ articulates, people are under a
24 lot of pressure.

25 12:22
26 There is defamation laws in Ireland where the punitive
27 damages are crippling. We need a very strong media, we
28 need it more than ever. We see scandal after scandal
29 in Ireland from the Gardaí to the health service, right

1 through this society, we need people who are able to
2 tell the truth and to allow us to make informed
3 decisions and I think it's extremely difficult. So
4 journalists are working under a lot of pressure and
5 nothing I am saying here today is critical of the media 12:22
6 in general in Ireland. I think we have generally a
7 very good media in Ireland both at the national, at the
8 tabloid level and in the local and national
9 broadcasting area. That doesn't mean I wouldn't be
10 critical of particular journalists or sets of 12:23
11 journalists in particular circumstances obviously.
12

13 But I certainly think in relation to the Gardaí, the
14 failures in the Maurice McCabe case from my point of
15 view are failures of the State and of Garda management 12:23
16 first and foremost, although I think also he has been
17 let down by elements in the media. But I don't think
18 the media is to blame for what has happened.

19 287 Q. All right. Just for this particular question, leaving
20 out the specific issue of Maurice McCabe, you have 12:23
21 provided a detailed statement to the Tribunal setting
22 out your views as an expert on media and sources and it
23 is available for everybody, but other than going
24 through it line by line I take it you stand by
25 everything in the general sense you say in relation to 12:24
26 journalism and media sources and relationships between
27 sources and the media?

28 A. I do, and I hope it reflects the professional
29 consensus, which I believe it does, in respect of the

1 high standards people aspire to and the NUJ seeks to
2 uphold. I don't believe there is anything exceptional
3 in it. Of course my point is just one point of view,
4 others may disagree with me in respect to aspects of
5 it.

12:24

6 288 Q. Okay. Now, if we turn to the Sergeant McCabe story, if
7 I can label it in that sense. I think since April of
8 2013 you began reporting in relation to the Maurice
9 McCabe story; is that correct?

10 A. That's correct, yes.

12:24

11 289 Q. And I think a list of the articles, you have helpfully
12 set them out in Appendix 1 to your statement which
13 begins at 3910 in reverse date order. I think the
14 first one would seem to be from 7th April 2013; is that
15 correct, and that's at page 3912 of the materials?

12:25

16 A. Yes, I believe so, whatever is there. 7th April.
17 I believe that was the first piece I wrote, correct.

18 290 Q. All right. And it continues on to a list of articles,
19 if I can go through them this way: "Penalty points
20 fiasco, cost 8 million in lost revenue, thousands of
21 motorists had offences set aside." That's the 14th
22 April 2013.

12:25

23
24 The next one in the Sunday Independent, also on that
25 date: "Who guards the Gardaí, who watches the
26 watchmen. Justice Minister Alan Shatter's response to
27 the penalty points scandal is inadequate."

12:25

28
29 Then we have one on 21st April 2013: "Gardaí list

1 grounds for setting aside fixed fines." Sunday
2 Independent, 21st April 2013. And it continues on.

3
4 so the list of articles is there for everybody to see,
5 but I think it's a fair enough categorisation to say 12:26
6 that those articles were questioning of Garda power?

7 A. Of Garda power?

8 291 Q. Of Garda exercise of power, or maybe you would like to
9 correct me on that.

10 A. It might be. I don't want to avoid giving you a yes or 12:26
11 no answer.

12 292 Q. Yes.

13 A. But perhaps I can just elaborate it a little bit.

14 293 Q. Yes.

15 A. I didn't jump into this story deciding one day I wanted 12:26
16 to cover what was happening.

17 294 Q. Yes.

18 A. which at that stage was not much in the public domain.
19 Memory is a funny thing. I mean a lot of time has
20 passed and people forget now how little was then in the 12:27
21 public domain and how close to being shut down the
22 whole story was. I was in DCU working one day, it was
23 during the year, I was very busy with exams and papers
24 and so on, I was also finishing a book for an American
25 publishing house and I got a phone call, and I was 12:27
26 invited to take an interest in this story which I did.
27 I went and made it my business to meet Maurice McCabe
28 and his family and I found the man under intense
29 pressure, really I think feeling besieged and bemused.

1 I very quickly formed the view that here was something
2 that needed to be properly dealt with by proper
3 processes and I couldn't see that these processes were
4 really dealing with it in a way that one might hope.

12:28

5
6 I never intended to cover the substance of the story.
7 The kinds of complaints that were being made, I mean
8 first of all I was not a full-time journalist, I was a
9 professor of communications. I wrote features for the
10 newspapers, but I would hope that other journalists
11 might come on board along the way and investigate some
12 of what was taking place. I mean the stories that were
13 evident there, there was great material for any
14 journalist, in my view. These ranged, as I quickly
15 became aware, from the remarkable story of the
16 confidential recipient to incidentals -- I don't want
17 to take up your time, Judge, I don't know how much of
18 this is -- I mean I saw a man, he had written to the
19 Attorney-General in confidence and had documents sent
20 to the Department.

12:28

12:28

12:29

21
22 The thing that really appalled me was, I mean I was
23 really shocked by the matter of the disciplinary
24 proceedings to which he was being subjected.
25 I couldn't understand. Here was a case which I thought
26 in its right security correspondents should be leaping
27 out. The loss of a sex abuse perpetrator's computer,
28 this was a subject that -- I mean I covered abuse in
29 relation to the Catholic church, I had attended quite a

12:29

1 few bishops' press conferences. I had been involved in
2 reading a report for the Secretariat General of the EU
3 on the use of the black internet by child abusers.
4

5 Here was a case where a priest had been arrested, 12:29
6 charged, convicted and sent to jail and his computer
7 had never been sent in the normal way for forensics to
8 Dublin. Now, years later, when nobody had been
9 disciplined, and McCabe wasn't even involved in the
10 investigating team, he was a sergeant in charge of the 12:29
11 station. Here they were bringing disciplinary
12 proceedings against him and only him and this was
13 dragging on and dragging on.

14
15 He didn't even seem, the odd thing was this didn't even 12:30
16 seem central to him. I saw this and I did a double
17 take on it. He was concerned at that time about just
18 getting some voice, he felt he was going under I think.
19 The penalty points thing seemed to me to be so obvious.
20 I mean when you look back now at what was being said, 12:30
21 what turned out to be the case was actually much more
22 extensive than even what might have appeared to be the
23 case at the time.

24
25 But it seemed to me a simple matter. Here was a story 12:30
26 to write about process, and a lot of what I had written
27 was not directly about power, maybe it was more about
28 power in the Department of Justice because I felt there
29 was a very, very poor exercise of power on the

1 Department of Justice too. But I think I was writing
2 about process. I thought once this got an airing that
3 surely the government would step in and appoint or
4 ensure that procedures were followed that would simply
5 deal with the thing. It wasn't rocket science. We 12:31
6 didn't have to end up here years later with 50 lawyers
7 in the Aberdeen Hall doing this. It could have been
8 dealt with at the time, nipped in the bud and it
9 wasn't. And that was, I am afraid, partly my
10 colleague's fault who in the security correspondent 12:31
11 area didn't seem to have enough zest to take up this
12 story and to run with it in the way I felt it should be
13 run. So I ended up writing maybe 30 stories over the
14 past few years on aspects of this, but never
15 fundamentally about the substance. I wasn't in a 12:31
16 position to check his allegations against other Gardaí,
17 nor did they interest me. This was a matter for, the
18 ins and outs, I mean somebody in this situation would
19 start to complain and you just know I am never going to
20 be able to stand up those stories. Perhaps some other 12:31
21 journalists would, it would have required the kind of
22 internal investigation that eventually took place to do
23 that. And the same with penalty points, I wasn't --
24 but I was hearing enough to know that something very
25 odd was going on, that the penalty point record on 12:31
26 Pulse was being altered and that people -- well we all
27 knew that people could get penalty points fixed, but
28 I mean I think nobody was quite aware of the extent to
29 which it was systematic.

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So that was my principal motivation. I was never in a hurry to stick with the story, but I felt that I should stick with it because I felt Maurice McCabe and his family were in a very difficult position. Here was a man who had been sent in to establish discipline in a local Garda Station and he didn't seem to be getting much thanks for his efforts it seemed to me.

12:32

CHAIRMAN: Right. we'll leave it there for an hour, if you don't mind. Thank you.

12:32

LUNCHEON ADJOURNMENT

12:29

1 THE HEARING RESUMED AS FOLLOWS AFTER THE LUNCHEON
2 ADJOURNMENT

3
4 CHAIRMAN: Sorry, I was delayed.

5 295 Q. MS. LEADER: Mr. Kenny, please. Yes, Mr. Kenny, just 13:40
6 before lunch we were referring to a series of articles
7 you'd written in relation to the whistleblowers'
8 concerns and I think you were supportive of what
9 Sergeant McCabe was trying to do at that time?

10 A. Hmm -- 13:41

11 296 Q. And that would have been obvious from those articles?

12 A. I'm not supportive of participants in stories that
13 I write.

14 297 Q. Yes.

15 A. In fact Sergeant McCabe thanked me a couple of times 13:41
16 for pieces that I write and I cautioned him that
17 I wasn't his friend and there might be writings he
18 wouldn't like. And indeed when I wrote for the first
19 time about the disappearance of the computer in the sex
20 abuse case, I remember being quite concerned at the 13:41
21 impact on him and his family of that publicity.

22 Because there's nothing worse in Ireland I think, is
23 there, than being accused of sex abuse and, by
24 implication, the investigation, as far as I was
25 concerned, of the loss years earlier of that computer 13:42
26 in the sex abuse case, the way it was targeting McCabe
27 could be read by people, the public, as somehow
28 pointing an accusatory finger at him. I remember being
29 so concerned that I pulled over on the way home one

1 evening when I filed a story to alert him to the fact
2 that this story was coming up.

3
4 So I don't think I was being supportive of Sergeant
5 McCabe. I saw his position, I saw the position of his 13:42
6 family who were very supportive of him and of his wife
7 who was very concerned as well and I felt that I would
8 just write stories. I mean, I wasn't doing anything,
9 I was paid to write the stories, it wasn't a charitable
10 act, but I was writing stories that I felt were of 13:42
11 interest to the public and raised serious questions
12 about policing. Not least about the penalty points
13 system, which I did feel, knowing people who have had
14 penalty points and suffered the consequences of that on
15 their insurance and how it can affect people's job 13:42
16 opportunities, I saw these things as something that
17 should be investigated.

18
19 So the articles were really, I suppose, just the normal
20 journalistic exercise of telling a story and in the 13:43
21 process hopefully managing to achieve some resolution
22 of it.

23 298 Q. All right. Now, you've referred to publishing a story
24 about the lost computer and I think you raised the
25 issue with the Garda Press Office and you provided that 13:43
26 exchange to the Tribunal earlier on last year, isn't
27 that right?

28 A. That's right.

29 299 Q. And that appears at page 3893 of the materials.

1 A. Sorry, you'll just have to give me a moment. 3893?

2 300 Q. Yes. It will come up on screen as well, but it might
3 be --

4 A. I wonder is this the right book?

5 301 Q. Volume 15, sorry. 13:44

6 A. Volume?

7 302 Q. 15.

8 A. 16.

9 303 Q. 15, one five.

10 A. Sorry. Okay. 3893? 13:44

11 304 Q. Yes. Just if you scroll down, Mr. Kavanagh.

12 A. That's -- perhaps I'm mishearing, three?

13 305 Q. 3893.

14 A. Okay.

15 306 Q. I think. 13:44

16 A. I have it now, yes, thank you. Sorry about that.

17 307 Q. That's all right. So in March 2013 you sent an e-mail
18 to the Garda Press Office and you set out that: "You
19 were writing an article about a serious matter
20 concerning a sex abuse case and would be grateful for 13:45
21 the following information today and certainly no later
22 than tomorrow morning please."
23

24 Then you set you the circumstances that a computer with
25 a hard drive was seized during a search of a premises, 13:45
26 that Father Molloy subsequently pleaded guilty to
27 charges of defilement of a child and the Diocese of
28 Kilmore has sought the return of that computer, but I
29 am told has been informed that it cannot be found.

1 Then you proceed on to ask a series of questions in
2 order to check whether that story was correct or not:
3 was the computer lost, was there an investigation and
4 so forth, isn't that right?

5 A. Correct. 13:45

6 308 Q. And I think the answer of the Press Office was that
7 they don't comment on individual stories and you
8 pursued it with them a little bit, but no further
9 information was forthcoming, is that correct?

10 A. Correct. 13:46

11 309 Q. And you set out the chain of the e-mails there. Did
12 you have any other interaction with the Press Office in
13 relation to Sergeant McCabe on your memory of matters?

14 A. On this matter?

15 310 Q. On Sergeant McCabe matters generally. 13:46

16 A. Hmm --

17 311 Q. If you can't remember that's fine.

18 A. I can't remember. I mean if there was something that
19 needed to be confirmed or I felt there would be a
20 necessity for the Gardaí to make a statement I would 13:46
21 normally often have sought it, even if I expected an
22 answer that there was nothing to be said.

23 312 Q. All right.

24 A. But sometimes where you know there is nothing to be
25 said there is no point even seeking a comment. 13:46

26 313 Q. All right. The answer you got from the Press Office in
27 relation to the computer query, is that typical of
28 answers you receive from the Press Officer, sometimes
29 is there more information forthcoming?

1 A. I wouldn't regard the Garda Press Office as a
2 tremendous source of information in more controversial
3 kind of circumstances. They're very good for factual
4 information of a certain type, they can be very helpful
5 on occasion in respect of particular matters. 13:47
6 I thought they might have been a little bit more
7 helpful in this instance because the case was long over
8 and done. In fact I think the perpetrator was out of
9 jail, perhaps, even by this stage. And the fact that
10 the computer might have on it information relating to 13:47
11 other victims and other perpetrators I thought was of
12 particular sensitivity, given our appalling history in
13 relation to child sex abuse in Ireland, I thought the
14 Gardaí might have been a little bit more forthcoming,
15 but neither they nor the Director of Public 13:47
16 Prosecutions felt that it was appropriate and that is
17 their prerogative.

18 314 Q. All right. Now, I think in, you've set out in your
19 statement that you've particular concerns in relation
20 to the Garda Inspectorate report on the penalty points 13:47
21 issue and the leaking of that report. Now, you'll
22 appreciate that this Tribunal isn't looking into those
23 publications, but I think they're matters which you
24 were concerned about, is that correct?

25 A. Yes, indeed. Early last year when the terms of 13:48
26 reference of the Tribunal were being set up I wrote to
27 the Minister for Justice, I was concerned that people
28 might think this Tribunal was about getting to the
29 bottom of the McCabe affair, which of course it isn't.

1 It has very specific and in my view has quite narrow
2 terms of reference on one reading. I didn't think
3 I could dislodge that significantly, but I did write to
4 the Minister for Justice and asked that two particular
5 matters be added which I felt were highly relevant. 13:48
6 One was the manner in which Sergeant McCabe was, had
7 disciplinary proceedings taken against him in relation
8 to the matter of the lost computer in which he was not
9 a member of the investigating team, I felt that was
10 very significant in terms of any question of pointing 13:48
11 fingers at him in relation to sex abuse.

12
13 And the other matter was, because they had added a term
14 of reference relating to an RTE report, I couldn't
15 fathom how they could not also look at the way that RTE 13:48
16 reported the Garda Inspectorate report, which I; had
17 felt was out of order, to put it bluntly. Now, RTE has
18 done some very good journalism on this affair, very
19 fair, Prime Time and other programmes have done, and
20 the news at times. So I'm not criticising RTE as a 13:49
21 whole or any particular journalist generally, but
22 I felt on this report, on this matter, RTE had said to
23 the public the night before any other of the media
24 seemed to have access to this report that they had seen
25 the report and they proceeded to present a version of 13:49
26 that report which, in my opinion, is at variance with
27 what other media understood from the report when they
28 got it the next day.

1 The report also contained an unchallenged interview
2 with Alan Shatter, the Minister, and no person from the
3 opposition. There was a complaint, I think, from a
4 Fianna Fáil, if not an informant quoted in the
5 media from Fianna Fáil about the absence of an
6 opposition person. 13:49

7
8 And this report, the Garda Inspectorate report, had not
9 even gone to Cabinet and my understanding, it was only
10 available to a less than a, fewer than a handful of 13:50
11 people in the Department of Justice and the Gardaí.
12 Now, I remember at one stage being part of a team
13 working on a programme about the Irish Hospitals'
14 Sweepstake in RTE, a programme that was suppressed
15 subsequently. The team had in its possession a number 13:50
16 of Cabinet documents relating to the affairs of the
17 Irish Hospitals' Sweepstake that was due to go to
18 Cabinet. I remember we were being warned that we would
19 be prosecuted for breach of the Official Secrets Act.
20 So it's a serious matter and good luck to any 13:50
21 journalist who can get their hands on such a document
22 as far as I am concerned so long as they use it fairly.

23
24 I was not convinced that RTE had seen the whole report.
25 In my judgment RTE had only seen part of the report. 13:50
26 And again that's perfectly legitimate provided the
27 media organisation says 'we saw parts of the report' or
28 'we saw a summary of the report'.
29

1 when I asked RTE to confirm whether or not they had
2 actually seen the whole report, because I believed that
3 was the only reasonable interpretation of their
4 statement on air that they had seen the report, RTE
5 refused to do so, they said they would put their 13:51
6 sources at risk or words to that effect, which I felt
7 was nonsense. They were perfectly capable of saying
8 they had seen the whole report.

9
10 So I felt that it was a clear example of spin, whether 13:51
11 it came from the Department of Justice or the Garda
12 Commissioner, I don't know, or elsewhere. I cannot
13 imagine how it could have, since the people who wrote
14 the report were saying they had only furnished a very
15 limited number of copies, four, if I remember 13:51
16 correctly, to the top brass in justice and the Gardaí.
17 But, wherever it came from, it seemed to me clearly to
18 be spin and to be spin that was very unfavourable to
19 Sergeant McCabe.

20 13:51
21 So I wrote to the Minister last year and suggested that
22 this and, as I say, the other matter relating to the
23 lost computer that has possibly got information on it
24 about other victims and perpetrators of sex abuse, that
25 they be added to the terms of reference of this 13:51
26 Tribunal and I got an acknowledgment from the
27 Department of Justice.

28 315 Q. They are matters you felt strongly about and still feel
29 strongly about?

1 A. Well I feel if you're going to have an inquiry and
2 spend the incredible amount of money that is spent on
3 inquiries like this, I think, even if it is not as
4 broad as I would like to see it, and I would have liked
5 to have seen it broader. My fear was that by focussing 13:52
6 on the Garda Commissioner and the Deputy
7 Garda#Commissioner it would put the Tribunal into a
8 position of apparently, from the public's perspective,
9 being seen to find that there was no whispering
10 campaign against Maurice McCabe of any kind. I felt, 13:52
11 you know, to get a more balanced perspective on what
12 was actually going on it might be better for the
13 Commission if these, for the Inquiry, Commission of
14 Inquiry if these matters had been included and I regret
15 that they weren't included. 13:52

16 316 Q. All right. I think you attended at the Public Accounts
17 Committee hearings in January 2014?

18 A. I attended some of them, yes, that's correct.

19 317 Q. And were you there on 23rd January 2014?

20 A. Is that the date that Mr. Shatter gave? 13:53

21 318 Q. It's the day Commissioner Callinan gave evidence.
22 A. I was certainly there the day Mr. Shatter gave
23 evidence.

24 319 Q. Okay. All right. So in early 2014 there were
25 committee hearings in the Dáil, is that right? 13:53

26 A. That's right, downstairs in the committee rooms, yeah.

27 320 Q. All right. And were they the ones in relation to the
28 penalty points issue?

29 A. I believe that was part of what they were looking at.

1 There was so much going on at that stage, so many
2 questions were being asked at those committees that
3 they were covering a variety of things, but that would
4 have been one of the matters certainly that was being
5 questioned at the time, yes.

13:53

6 321 Q. At the time. I think two journalists told you a matter
7 in relation to Sergeant McCabe that you hadn't heard
8 previously, is that correct?

9 A. That's correct.

10 322 Q. And, first of all, could you tell me what they told
11 you?

13:53

12 A. Well, I approached these journalists because I wanted
13 to sound them out, I was interested in understanding
14 where security correspondents were coming from in
15 relation to the matter of the disappearance of the
16 computer in the sex abuse case and the proceedings
17 being taken against, I felt that this was a clear
18 matter -- I didn't really want, as I say, not being a
19 full time journalist, I didn't really feel, you know,
20 that I could take that matter as far as others might.
21 I approached them to just sound out their views on
22 that. And they responded, I think perhaps they thought
23 me, I was a bit of a naive at large, but they responded
24 by telling me did I not know that McCabe was under
25 investigation for alleged child abuse and that the
26 Gardaí were full of this and that I should talk to
27 Gardaí up there. Basically I felt I was being told to,
28 you know, cop myself on really, that this was a person
29 who shouldn't be taken perhaps at face value.

13:54

13:54

13:54

1 323 Q. All right. Now, if I could go back and just, you say
2 that Sergeant McCabe was under investigation. You're
3 sure that was said at that time?
4 A. It was --
5 324 Q. It was an ongoing matter? 13:55
6 A. I formed the impression from what was said to me that
7 it was an ongoing matter, without a doubt. And
8 certainly nothing was said to me about the fact that
9 this matter had been disposed of years earlier and that
10 there had been a finding which we know of from the 13:55
11 Tribunal that not only had there been no offence, but
12 that the fact that is alleged didn't even constitute an
13 offence. That was not said to me.
14 325 Q. Okay. And then they continued on, it was child sexual
15 abuse, am I correct in that or was it sexual abuse? 13:55
16 A. Yes.
17 326 Q. It was child sexual abuse?
18 A. Yes.
19 327 Q. Were any other details of the child sexual abuse given
20 to you? 13:55
21 A. No, no. I think these people were probably trying to
22 put me straight, you know. Maybe they did it with the
23 best of motives, I don't know. I felt that they were
24 rubbishing his character by what they were doing.
25 I was really shocked. I hadn't heard this perhaps 13:56
26 because I don't move in newsrooms or didn't move in
27 newsrooms at that stage. It came as a bolt out of the
28 blue. The first thing you do, and it's an illustration
29 of the chilling effect of this, is you wonder have you

1 been making a fool of yourself talking to this guy, you
2 know, and writing about it in a way that, you know,
3 hasn't taken on board this information, or that you
4 haven't found out this information yourself.

5 328 Q. Okay. Now, I think the next thing you said that they 13:56
6 said was the Gardaí were full of this. Did they say
7 who in the Gardaí were full of this?

8 A. No.

9 329 Q. Okay. It was as general as?

10 A. It was a general statement. I didn't ask specifics. 13:56

11 330 Q. Okay. And the next thing, as I understand it, is that
12 you should talk to Gardaí up there. Who did you
13 understand you should talk to by that??

14 A. I understood to mean I should talk to people up in the
15 Cavan/Monaghan area. 13:56

16 331 Q. And were any particular names given to you?

17 A. No names were given to me, no. No.

18 332 Q. Yes, all right. And in relation to, you say you felt
19 you were being told to cop on; did you understand that
20 that was to cop on in relation to your coverage of 13:57
21 Sergeant McCabe related matters or the loss of the
22 computer?

23 A. Oh, no, not in relation to the loss of the computer.
24 I think they were talking kind of, they were just
25 putting me right, I think, in relation to a matter that 13:57
26 was in, seemed to be, as it now appears, a lot of
27 people seem to be talking about. I hadn't heard about
28 it at that stage in any, in this way certainly,
29 I hadn't heard about it until they put it to me and

1 I took it very seriously coming from them. They were
2 respected, you know, journalists and have done very
3 good work.

4 333 Q. All right. And I think you've given already a
5 description of those two journalists, that they are
6 security journalists, is that correct? 13:57

7 A. Yes.

8 334 Q. And you say one of them is a broadcast journalist who
9 works for a national broadcaster?

10 A. That's correct. 13:58

11 335 Q. Are you prepared to name those two journalists at this
12 stage?

13 A. I'd rather they named themselves. I don't see why they
14 wouldn't, it was only general information. I don't see
15 this going -- I mean if this was a question of naming 13:58
16 particular people it would be more complicated. But,
17 you know, if people are saying the Gardaí are saying
18 this, then I cannot see how the doctrine of sources
19 even arises at stretch, just to repeat that
20 information. I don't want to embarrass anybody, I mean 13:58
21 I don't see why they wouldn't tell you themselves to be
22 quite honest.

23
24 I notice a lot of people don't want to mention people's
25 names. But it's really, Judge, what's helpful to you. 13:58
26 I mean I don't see any reason why not. I'm not
27 criticising these individuals professionally. I do
28 have certainly criticism of them and some other
29 security correspondents for the way they covered the

1 McCabe case, I don't think they did it well, and that's
2 a matter of opinion, and I think what they said to me
3 had the effect of rubbishing his character, but I don't
4 think they set out to rubbish his character in any
5 general sense.

13:59

6
7 I had a phone call from another security correspondent
8 a few weeks ago asking me to know was I naming names.
9 There's something about this that's unfortunate.
10 I really don't see, you know I think it's in the
11 interests of journalists for journalists to come
12 straight. And if it is the case -- I think in fairness
13 to the security correspondents too, it may well be that
14 these two people say I'm talking through my hat, my
15 recollection is totally false and I have got it all
16 wrong and, like we've heard other people contradicted
17 here perhaps the best thing is to say who they were and
18 give them the opportunity, because I'm not saying they
19 did anything grievously wrong as such. It wasn't a
20 confidential discussion, I mean I wasn't --

13:59

13:59

14:00

21 CHAIRMAN: I appreciate that and I know the distinction
22 that you are making between someone who is perhaps
23 being the victim themselves of something or being
24 credulous and thinking well somebody told me something
25 and I kind of believe it and putting you right in case
26 you are making an idiot out of yourself, and on the
27 other hand what's a bad thing is to maliciously, as
28 I have phrased it, ride a rumour to a conclusion, in
29 other words to destroy someone's character. I mean,

14:00

1 that's -- those are the two things. Now, I have heard
2 so much evidence about these rumours and so many people
3 have said 'well, the rumours were there, I can't really
4 say who the rumours were coming from, it was
5 circulating around Leinster House or it was circulating 14:00
6 in or around Garda circles or whatever'. None of that,
7 I suppose, really helps me very much, apart from
8 showing, I suppose, the currency of this story or
9 stories about Sergeant McCabe.

10
11 what does help me if it leads to the identification of
12 anyone who was talking to anyone in headquarters, that
13 is what would help me. Now, if you like, what you
14 could do is you could perhaps write down the names and
15 we could write to those persons and ask them for their 14:01
16 assistance and it may be, as they say, they have no
17 recollection, it may be that they would rubbish what
18 you would say, I don't know what they will say, but I'm
19 trying to get to the bottom of this. It may come as a
20 surprise to know that we have written so many times to 14:01
21 so many people in the journalistic world, asked
22 numerous questions, had circulars sent out. We have
23 had so many delays, so little in the way of
24 co-operation, apart from missives being sent in about
25 journalistic privilege on an academic basis unrelated 14:01
26 to any facts. My object is to try and test David
27 Taylor's evidence and to see where we stand in relation
28 to it. That is my object fundamentally and any
29 assistance in that regard you feel you can give, do.

1 I don't want to take offence in relation to any claim
2 of privilege you might wish to assert in these
3 circumstances, I'm not sure it arises. But that is one
4 possible way of doing it. We will write and pursue our
5 own inquiries. And there it is. You're not asking me 14:02
6 for a direction at the moment. I mean, it is simply
7 evidence of yet further rumours of people being taken
8 in by this.

9 A. That's very helpful, Judge, I appreciate that very
10 much. I think that's a way forward. Because clearly 14:02
11 in a way my evidence is, I suppose, hearsay, and if you
12 write to these people, if I give you the names in
13 private and you write to them and they deny it all then
14 I suppose it's of very limited value.

15
16 I have to say I mean one of these people in particular 14:02
17 I've written about before, that he had taken on the
18 Minister in relation to the Minister's appointment of
19 the confidential Garda recipient who turned out to be
20 so problematic ultimately and I had written in support 14:03
21 of him against the Minister's attack on him for that.
22 But, you know -- so it's not, I'm not, both of these
23 people are long standing and respectable journalists.

24 CHAIRMAN: well I mean that is a possible way forward
25 and we'd carry out our own investigations, but I think 14:03
26 I need to say to you, so as we are being absolutely
27 honest, is that this Tribunal doesn't do anything
28 private. I mean, all of our documents, people can look
29 at them if they want. Obviously the parties get the

1 documents when they are parties, but in due course they
2 will be put into an archive. I am not trying to do
3 anything secret and we don't have any secret
4 discussions with anybody at any time. But I mean, we
5 could pursue the enquiry and just see where we stand 14:03
6 and it may be they will know something, I don't know.
7

8 But what I am interested in is David Taylor, Martin
9 Callinan and Nóirín O'Sullivan and the terms of
10 reference do require me to look at any other senior 14:04
11 Gardaí there implicated in the, with the wording. So
12 they may know something, they may not, I don't know.

13 A. Well I doubt if they would have said it to me unless
14 they had heard it from senior Gardaí, but I mean they
15 didn't say who, absolutely not. And again I want to 14:04
16 stress that, insofar as they were trashing Sergeant
17 McCabe's character incidentally, I don't believe that,
18 you know, they were personally motivated in any way to
19 do that, it was my perception of it. I felt put in an
20 awkward position and I immediately took steps to verify 14:04
21 or establish whether or not this was the case and very
22 quickly found out what any security correspondent could
23 find out, which was that, you know, it was not true,
24 that this was something that had been dismissed by the
25 DPP as having, as being baseless and also that it 14:04
26 occurred in very particular circumstances of which the
27 Tribunal is aware.

28
29 So I'm certainly here to assist the Tribunal for the

1 reasons you outlined at the beginning today and
2 I will --

3 CHAIRMAN: well I don't see any reason for a big public
4 fuss about it, but if you wish to simply indicate your
5 recollection, we will follow the matter up. 14:05

6 A. Very good.

7 CHAIRMAN: And we will ask the persons involved where
8 they stand in relation to matters. They may wish to
9 cross-examine you in relation to things, but I am not
10 sure that's going to be necessary. And I do understand 14:05
11 the difference between being effectively the victim of
12 a rumour and actually hearing something and being
13 perhaps credulous about it and on the other hand being
14 a malicious spreader of a rumour. I think there is an
15 a big difference actually. 14:05

16 A. May I say judge, I mean whatever about the specifics of
17 what was said, and I'm quite happy to believe that
18 I have given you a very accurate account, I can tell
19 you one thing: Before that conversation I hadn't heard
20 this and after that conversation I knew it and took 14:05
21 steps immediately to check it out.

22 CHAIRMAN: well you might have been lucky enough to
23 have sources who could tell you what was written to the
24 State solicitor.

25 A. Pardon? 14:06

26 CHAIRMAN: You might have been lucky enough to have a
27 source who would tell you what was written to the State
28 solicitor, I suppose many people didn't.

29 A. Oh, I don't think that would have been too difficult

1 for security correspondent or other serious journalist
2 to have found the information. I got it, had seen a
3 copy of the letter that had been sent to Sergeant
4 McCabe from the DPP or on behalf of the DPP or
5 subsequent to the DPP's decision, I think that would 14:06
6 have been easy.

7 CHAIRMAN: Yes. It's not my line of work, I am being a
8 bit naive maybe. So would you like to carry on,
9 Ms. Leader?

10 336 Q. MS. LEADER: Did you discuss the matter with Sergeant 14:06
11 McCabe after hearing of the allegation of sexual
12 assault

13 A. I did.

14 337 Q. And did he tell you what happened in relation to the D 14:06
15 investigation in 2006, 2007?

16 A. He told me exactly what had happened.

17 338 Q. All right. Did you discuss the matter with either
18 Superintendent Taylor, former Commissioner O'Sullivan
19 or former Commissioner Callinan?

20 A. No. 14:06

21 MS. LEADER: Okay. If you'd answer any questions
22 anybody else might have.

23

24 THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL AS
25 FOLLOWS: 14:07

26

27 MR. McDOWELL: Just one matter. Michael McDowell is my
28 name, I am appearing for Sergeant McCabe. There is
29 just one matter I wanted to ask you, Mr. Kenny.

1 339 Q. There's been discussion here of dealings between
2 journalists and people they're interacting with as
3 falling into two categories: On the record and off the
4 record. And I put it to a previous witness, but
5 I think it may be important to re-emphasise it and 14:07
6 maybe you can tell me whether I'm right or wrong, that
7 off the record can be in various different categories;
8 I mean off the record could be 'it is understood that
9 the Gardaí believe X', and that's off the record, it's
10 not attributed directly to the Gardaí, but it's fairly 14:07
11 clear where it's coming from, that's one category; and
12 another category, which is at the other end of the
13 spectrum is not for publication in any circumstances,
14 sort of deep background information which the source is
15 giving on the absolute understanding that neither the 14:08
16 identity of the source nor the information will be used
17 in the story. Is that a fair summation?
18 A. Yeah, it's fair enough. It isn't always so clear in
19 practice, but that is true, that's how it is, how it
20 may be used. I think there's responsibility on the 14:08
21 journalist to make sure the source understands, which
22 is -- sometimes I think sources are a little bit
23 surprised.
24 340 Q. Yes.
25 A. Because when the phrase 'it is understood' is used it 14:08
26 can half point a finger that they mightn't have
27 expected, but you are correct in the broad outline of
28 what you say, definitely.
29 341 Q. I mean for instance I think it was, I asked

1 Superintendent Taylor this, from memory, it would be a
2 remarkable thing if it had appeared in a newspaper: It
3 is understood that the Gardaí suspect Sergeant McCabe
4 of sexual abuse. That would not be what he would have
5 intended or what one would expect a journalist to
6 publish if they were given such a deep background
7 briefing, is that correct?

14:09

8 A. Yes, I mean anybody circulating that rumour must have
9 known that it was impossible for any journalist to have
10 published it. No lawyer legalling an article would
11 ever have let that. In fact when I first wrote about
12 the child sex abuse computer case - and remember then
13 people didn't - there was a certain attitude of
14 disbelief. Now we know a lot more has happened than we
15 realise, but the lawyers took chunks out of that
16 article because, you know, they were being extremely,
17 and rightly so, cautious. People should understand the
18 extent. And I think the people, if they were
19 circulating rumours like that, knew full well this was
20 never going to see the light of day as a story per se.

14:09

14:09

14:09

21 342 Q. Thank you. I was only trying to emphasise that it's
22 not just simply a binary choice, on the record or off
23 the record, there are degrees of off the record, is
24 that a fair summation of it?

25 A. (Witness Nods) Yes, there are ways of, some people are
26 happy for you to say it's understood, as long as they
27 understand how that's being used. As I say, sometimes
28 to use that without clearly clearing the lines with the
29 source leaves the source feeling a little bit exposed.

14:10

1 But, absolutely, you are right, of course.

2 MR. McDOWELL: Thank you.

3 MS. BURNS: No questions, Chairman. Thank you.

4

5 THE WITNESS WAS CROSS-EXAMINED BY MR. GILLANE AS
6 FOLLOWS:

14:10

7

8 MR. GILLANE: Good afternoon, Mr. Kenny, Sean Gillane
9 is my name. I appear for RTE, Philip Boucher-Hayes,
10 John Burke, Ray Burke and Paul Reynolds.

14:10

11 A. Mm-hmm.

12 343 Q. I have a small number of questions for you and I hope

13 you will bear with me in terms of asking those

14 questions and I just want to divide them up into

15 separate categories, if I can. Firstly, just in

14:10

16 relation to journalism and the question of sources as

17 you treat of it in your statement, it does seem to be,

18 if I can put it this way, more of an art than a

19 science, if I can put it that way. There are a variety

20 of views held by respectable honest people within

14:11

21 journalism on those questions and those views differ

22 from each other. Is that fair to say?

23 A. Well it's not rocket science, certainly. I don't think

24 it's very complicated. I think journalists know full

25 well what a source is and how they should protect it if

14:11

26 they are given, you know if that source has put

27 themselves as hazard in relation to the truth about a

28 certain matter and particularly if they have exposed

29 themselves. So whether it's called an art or a science

1 I think it's fairly clear to most journalists what the
2 ethical position is.

3 344 Q. Well, perhaps my question was inelegant. What I am
4 getting at is that very senior people, experienced
5 people, decent and honest people in your business, 14:11
6 journalism, have very, very different views on the
7 question of how far one should go to protect sources?

8 A. I don't necessarily think so. I think everybody has a
9 view on protecting sources that are legitimate and that
10 are giving you information, you know, that is 14:12
11 sedulously fostered in the public interest, to use the
12 phrase I have cited before from the Canadian law and
13 I think it's a very useful one. I don't think it's
14 that complicated. I think there may be different kinds
15 of sources, I mean, protecting, for instance, an 14:12
16 individual's specific source who has spoken to you as
17 opposed to protecting a broad category. Like there is
18 a big difference between saying 'well the Gardaí told
19 me X, Y or Z and saying that Sergeant X of the Gardaí
20 told me that'. So there you have gradations of 14:12
21 understanding as to what sources in the particular
22 circumstances should be protected.

23 345 Q. All right. Well I will try and be a bit more specific
24 so that we can try and tie this down.

25 A. Sorry. 14:12

26 346 Q. The Tribunal circulates papers amongst the various
27 interested parties running into thousands upon
28 thousands of pages, hundreds of statements and last
29 night in anticipation of your evidence, I don't know if

1 you've seen any of these, I was doing a tot, I was just
2 counting up the number of statements that have been
3 circulated from reputable people in journalistic
4 circles who have views on privilege that appear to be
5 very different from you. I mean, for example, there's 14:13
6 a statement from Gerard O'Regan, I don't know do you
7 know him?

8 A. Mm hmm.

9 347 Q. A respectable individual within the business, who, when
10 asked by the Tribunal investigators about whether 14:13
11 waiver affects privilege, he responded that privilege
12 should be protected in all circumstances. I'm not
13 saying he's right, I am not saying you are wrong, I'm
14 just saying that was a view.

15 A. Well, I'd agree that privilege should be protected in 14:13
16 all kinds of cases, but it begs questions about what is
17 privilege.

18 348 Q. No, no, he says in all circumstances, when specifically
19 asked about the effect of waiver.

20 A. Well privilege should be protected in all 14:13
21 circumstances. But what is privilege and where does it
22 arise?

23 349 Q. No, no. But that view appears, and maybe I have got
24 the wrong end of the stick, to be very different from
25 your view about the effect of waiver on privilege. 14:13
26 Again I am not saying he is right and you are wrong, it
27 appears very different.

28 A. I am not in a position of having read these, I am not
29 legally represented here and I haven't been circulated

1 with these documents.

2 350 Q. And that is fair enough, and I don't want to be unfair
3 to you. But I can also indicate to you Cliff Taylor,
4 I think Frank Fitzgibbon, Stephen Rae, Alan Steenson,
5 Conor O'Donnell, Sebastian Hamilton, they were all 14:14
6 asked this question and they all seemed to have a view.
7 Again as I say they might be wholly wrong, just
8 different from you on that question of the effect of
9 waiver on privilege?

10 A. Well, if it were the case that journalists were being 14:14
11 gossiped to by Gardaí and repeating these defamatory
12 and unfounded accusations against Maurice McCabe and if
13 this was circulating and nobody was doing anything
14 about it, then arguably it had a chilling effect and
15 would help to explain some of the slowness of taking up 14:14
16 aspects of this story and it would put the media, any
17 media people who were involved in that in an awkward
18 position of having to justify why they didn't check
19 them out with Maurice McCabe or anybody else and why
20 they didn't make a story out of the fact that some 14:15
21 people were circulating these rumours. I think that is
22 a story in its own right.

23
24 So, you know, people come to this from different
25 perspectives. They have different perspectives on it 14:15
26 and perfectly legitimate ones too. I mean one may take
27 different views. I understand why the media is slow
28 about seeing judges or anybody else attack journalistic
29 privilege, they see it as the thin end of the wedge and

1 sometimes it is the thin end of the wedge.

2 351 Q. All right.

3 A. May I finish the answer to your question? I mean
4 I have seen in the past, I would have supported I mean
5 the Irish Times in the Mahon case for instance, even 14:15
6 though I mean I think lawyers could not have supported
7 that. But I respect and trust journalists such as
8 Kevin O'Kelly too who have gone to jail to protect
9 their sources regardless of what the law says in
10 particular circumstances. So I would be at one in 14:15
11 general with such people. It all boils down to the
12 specifics and you cannot have an absolute privilege, it
13 brings the whole doctrine of privilege into disrepute
14 in my opinion.

15 352 Q. All right. I couldn't agree more, but within that, if 14:16
16 I can just try and reach a common ground then: You
17 accept that there are legitimately held differences of
18 opinion within the business on these questions,
19 legitimately held?

20 A. As I have explained to you I think everybody agrees 14:16
21 there's privilege. The differences that arise in the
22 specific cases as to whether or not they are ones to
23 which privilege appropriately applies.

24 353 Q. All right. And context, I think you will agree, is
25 everything? 14:16

26 A. Well context of course is always a very relevant
27 factor, yes, absolutely.

28 354 Q. I mean we have seen it here today with our own eyes and
29 heard with our own ears, I think it was Ms. McCarthy

1 this morning refuse to answer a question from
2 Mr. Dignam. You saw that?

3 A. I think I know what you are referring to. I was here,
4 I think, I believe.

5 355 Q. And the question I think from memory was a simple one: 14:16
6 Can you confirm that your source I think wasn't a Garda
7 source, and she said I am not answering that question.

8 A. Well it's not easy I can tell you for --

9 CHAIRMAN: There's another factor involved in this and
10 people actually seem to be missing it, just as God 14:17
11 knows I could be here for another two or three years if
12 I didn't try and keep this thing on the rails. I am
13 not interested in stuff that doesn't help me.

14 MR. GILLANE: No, I appreciate that completely.

15 CHAIRMAN: That is not going to help me, her answer 14:17
16 wasn't going to help me and I am not going to press
17 this issue, if I ever have to press this issue, in
18 relation to stuff that is just yet more nonsense that
19 I am listening to, I am not interested in it. I am
20 here to report on specific things. 14:17

21 MR. GILLANE: Oh, yes, and I hope, I sincerely hope,
22 Chairman, I am not contributing to the nonsense, and
23 I should point out to you, Mr. Kenny, my clients in
24 fact have come forward to attempt to assist the
25 Tribunal. But I am just simply trying to 14:17
26 contextualise.

27 CHAIRMAN: I don't know about that now.

28 MR. GILLANE: Well, sorry, Chairman, I think that --

29 CHAIRMAN: I mean I have a term of reference which

1 requires me to look into whether, for instance, the
2 relevant broadcasts on 9th May 2016 were from
3 Commissioner O'Sullivan or not and privilege has been
4 claimed in relation to that.

5 MR. GILLANE: well --

14:18

6 CHAIRMAN: So I mean I don't know why you say these
7 things as if it's a kind of a general encomium that I
8 am expected to take at face value. Because I don't,
9 I look at specific factors, Mr. Gillane. And I am not
10 saying your client is being unhelpful, can I just add

14:18

11 that before you get upset at what I'm saying and
12 perhaps legitimately upset at what I'm saying. And I'm
13 not saying that RTE hasn't co-operated, I'm not saying
14 that at all. I'm saying that there is such a thing as
15 journalistic privilege and there are circumstances

14:18

16 wherein it may be claimed and if RTE are making a
17 legitimate claim in relation to journalistic privilege
18 well then I'm going to do my best to look at the
19 circumstances and try and make the right ruling.
20 That's it.

14:18

21
22 But I am just not prepared to have a general statement
23 out there to the effect that RTE have told me
24 absolutely everything because they haven't. But they
25 may have a very good reason for not doing so.

14:18

26 MR. GILLANE: And, Chairman, that wasn't what
27 I suggested at all.

28 CHAIRMAN: well I took it up that way and maybe that's
29 my fault. Maybe I grew up speaking a different

1 language, Mr. Gillane.

2 MR. GILLANE: what I was trying to establish,
3 particularly with this witness, is that there are
4 different views. And one extreme that this Tribunal
5 has heard -- 14:19

6 CHAIRMAN: No, Mr. Gillane, I am absolutely happy, you
7 can continue. That's just --

8 MR. GILLANE: I mean at one extreme this Tribunal has
9 had some journalists, for example, refuse to confirm
10 their phone number and said, you know, that's covered 14:19
11 by privilege and at another level people are doing
12 their best to say what they can.

13 CHAIRMAN: How do you know that?

14 MR. GILLANE: Because I have seen some of the material
15 where people have said I am not confirming my phone 14:19
16 number. In any event --

17 CHAIRMAN: You could add to those the people who don't
18 answer letters or spend months answering letters. That
19 could be journalistic privilege too for all I know,
20 Mr. Gillane. 14:19

21 MR. GILLANE: I think my clients have answered every
22 letter that has been sent, whether satisfactorily or
23 not is an issue that you may have views on in due
24 course.

25 CHAIRMAN: No, I don't. 14:19

26 MR. GILLANE: But certainly we have answered, I think,
27 every letter sent to us by the Tribunal.

28 CHAIRMAN: I am not in the business of conferring
29 medals on RTE or anybody else.

1 MR. GILLANE: I haven't asked for one.

2 CHAIRMAN: well I can't give you one, so.

3 356 Q. MR. GILLANE: well, we are on common ground, Chairman. 14:20

4 Mr. Kenny, moving on from that then just, I suppose

5 slightly within the same area. You also gave evidence

6 and in your statement you cover the question of

7 motivation of sources?

8 A. Mm hmm.

9 357 Q. And I think you do accept that a source could in fact 14:20

10 be full of malice, but that the story generated by the

11 source may still be of public interest?

12 A. It's possible.

13 358 Q. I mean, to move away from this sphere, in the political 14:20

14 sphere a Minister may leak that the Minister for

15 Finance next week is going to put a tax on children's

16 shoes, that Minister may simply want the Minister for

17 Finance's job, that might be his motivation but it

18 wouldn't make the story any less newsworthy or in the

19 public interest?

20 A. If it can be stood up as factual it may be useful to a 14:21

21 journalist, of course.

22 359 Q. Now can I also --

23 A. But if there is no basis for it or if there is no

24 possibility that the information will ever be published

25 then it's more problematic. 14:21

26 360 Q. Can I ask you again also about another area you've

27 covered in your evidence which, as Ms. Leader has said,

28 isn't in the terms of reference but you've linked it in

29 a sense to the terms of reference, and that's the Garda

1 Inspectorate report you've referred to?

2 A. (Witness Nods).

3 361 Q. And RTE's coverage of it.

4 A. Mm hmm.

5 362 Q. Now, in terms of trying to sum up what the Inspectorate 14:21
6 report said in a single sentence, which I know is
7 difficult, but would it be fair to say that the
8 Inspectorate report was a vindication of the
9 whistleblower?

10 A. A vindication of? 14:21

11 363 Q. Of the whistleblowers.

12 A. I think it was nuanced, there was different things that
13 it said. It certainly contained some good news for the
14 whistleblowers in that it was clear that some senior
15 members of the Gardaí felt that they had preformed a 14:22
16 valuable function. There was also, I think you'll see
17 from looking at the RTE report to which I referred,
18 some criticism as well. And I think there was, it
19 was -- to write a balanced report you would have to say
20 that overall the whistleblowers welcomed it because 14:22
21 until then I think they had felt under greater pressure
22 than they did after it appeared. But it wasn't,
23 nothing is ever, no source, no party to a story is, or
24 seldom are they ever completely faultless, it's never
25 black and white, is it? 14:22

26 364 Q. I understand, that's very fair. But I'm just trying to
27 deal with it in the context of your criticism. Because
28 the story broadcast at six o'clock on 11th March pushed
29 it further than you in terms of being in favour of the

1 whistleblowers. The actual story finishes with
2 Mr. Reynolds saying that the whistleblowers have been
3 vindicated by the report?

4 A. I think if we want to look at the report I would be
5 happy to talk about it because I think you need to see 14:23
6 it in the whole. But certainly the impression I formed
7 looking at the report was that it was incomplete.
8 I think when you look, when you compare it to the
9 coverage in other media, I think you'll see a different
10 emphasis. And of course RTE is perfectly, RTE News is 14:23
11 perfectly entitled to take its own interpretation. All
12 I asked of RTE was had they seen the whole report? And
13 they couldn't give me an answer apparently in order to
14 protect their source. They were not prepared to say
15 having seen, having said that they saw the report they 14:23
16 were not prepared to confirm that they had seen the
17 whole report. And there was a very significant
18 difference in that.

19 365 Q. I understand that. RTE wouldn't answer your question,
20 as is their entitlement. But, in terms of the report 14:23
21 itself, it contained material from Richard Dobson and
22 Paul Reynolds, it starts as a story by saying that the
23 report is highly critical of An Garda Síochána.
24 Mr. Reynolds suggests that it may indeed be evidence of
25 corruption post O'Mahony and it ends indicating that 14:24
26 the whistleblowers are vindicated. And the follow up
27 story on the same night, and I think you suggested that
28 there wasn't an interview with an opposition TD,
29 contains an interview with Fianna Fail TD Niall

1 Collins, who also repeats in the course of the same
2 broadcast that the whistleblowers have been vindicated.
3 Do you remember that?

4 A. I think Mr. -- I remember RTE covering this story that
5 night. I remember, if I'm not mistaken, Mr. Collins 14:24
6 complained about the report to which I refer. I am not
7 here to bash RTE, RTE did some very good coverage of
8 this story, Prime Time, some on radio, some in the
9 news. It's an organisation that I have a lot of
10 respect for, I am not here to weaken it in any way. 14:24
11 But that particular report seemed to me to be based on
12 a partial reading of the Garda Inspectorate report
13 which was only available to four people I think in the
14 country officially from the Garda Inspectorate, it
15 hadn't gone to Cabinet even. I felt that the way that 14:25
16 RTE presented it was inaccurate. I have made that
17 clear here. I don't feel that it was the report that
18 would have been presented objectively had the whole
19 report been available to RTE. I may be mistaken, maybe
20 they did see the whole report, I couldn't understand 14:25
21 why they couldn't simply say they had if that was the
22 case or how they were protecting sources by not
23 confirming it to me. I tried a number of times writing
24 for the Sunday Independent to get confirmation,
25 I cannot see why they wouldn't have given it to me. 14:25

26 366 Q. All right.

27 A. I say no more than that. I am not making, you know
28 I am not condemning RTE's entire coverage and I am not
29 condemning, I am not analysing. If the Tribunal wants

1 me, I will took today, any other day here with you all
2 at that report in full and we can discuss it, we can
3 discuss the aspects of it that I found. But I don't
4 think really that's going to change anything or add a
5 whit to what I have already said about it. 14:25

6 367 Q. All right. And, just to be clear because I don't want
7 to try the Chairman's patience and I'm going to move on
8 from this.

9 CHAIRMAN: I think I am really, really patient, do you
10 know that? 14:26

11 MR. GILLANE: No, I know that.

12 CHAIRMAN: No, honestly I really do.

13 MR. GILLANE: I know, but even you have limits,
14 Chairman.

15 CHAIRMAN: well do I? 14:26

16 MR. GILLANE: And I don't want to --

17 CHAIRMAN: Like what, the rule in Browne -v- Dunne,
18 that I was banging on about for the last year and a
19 half for instance? Yes, I certainly do have limits on
20 that. 14:26

21 MR. GILLANE: Yes, and what I don't want is the witness
22 to leave and then you to hear a submission from me
23 about a report that I haven't put to the witness.

24 CHAIRMAN: No, no. I think people should forget about
25 my patience and just get on with things. I am a bit 14:26
26 tired of people referring to trying my patience.
27 I have been very patient and I am saying that.

28 MR. GILLANE: Indeed.

29 CHAIRMAN: And that is a ruling of the Tribunal.

1 368 Q. MR. GILLANE: And I am bound by it. Mr. Kenny, I'm
2 going to move on from it, except to say this: That
3 there were four reports over the two days, all of them
4 contained phraseology highly critical of An Garda
5 Síochána, all of them indicating that the 14:26
6 whistleblowers had been vindicated. It contained an
7 interview with Mr. Collins and also in fact contained
8 on the 12th an interview with Mr. Bob Olsen who himself
9 indicated that none of this could have been come about
10 were it not for the whistleblowers' legitimate 14:26
11 complaint.

12 A. What is the question, I am sorry?

13 369 Q. I am just putting it to you that that is a summary of
14 what was actually broadcast, it's there and in terms
15 I am rejecting your criticism of the report as being 14:27
16 unbalanced. I am not expecting you to agree with me?

17 A. Well there is a methodology to content analysis in
18 media. You will forgive me engaging in a little bit of
19 academia but this is not how you do it by picking out a
20 few sentences and saying 'you know, isn't that so?' 14:27
21 You would look at the whole thing. I'd be quite happy
22 to do it. You take a range of days or times and you
23 analyse what's there and you look at the -- you might
24 compare it with what's elsewhere. And then you can --
25 and in the same way, if you got a complaint when I was 14:27
26 on the broadcasting compliance committee you would look
27 at the overall context and the total package. I can't
28 make any meaningful statement on a few sentences
29 selectively chosen. I have made it clear that I felt

1 that the Garda Inspectorate report, the report about
2 the Garda Inspectorate report on RTE was not based on
3 the document, on the full document that RTE said it had
4 seen.

5 CHAIRMAN: Could we perhaps leave it like this: You 14:27
6 have a point of view on that and Mr. Gillane's
7 instructions are to the contrary. He was simply trying
8 to put to you what his instructions are to say that
9 there may be another point of view and it seems you are
10 not going to change your mind, and the other thing 14:28
11 that's not going to happen is I am not going to report
12 on either side of that.

13 MR. GILLANE: Thank you, Chairman, I have no further
14 questions

15 CHAIRMAN: Thank you. Mr. Ó Muircheartaigh, you have 14:28
16 no questions.

17
18 THE WITNESS WAS CROSS-EXAMINED BY MR. WHELAN AS
19 FOLLOWS:

20 14:28
21 370 Q. MR. WHELAN: Mr. Kenny, Noel Whelan, I have some
22 questions on behalf of former Commissioners Callinan
23 and O'Sullivan. I am conscious that at this point the
24 Tribunal, as it were, is moving into a journalistic
25 module, over the next couple of weeks is calling a 14:28
26 range of journalists and it has called you in two
27 capacities, as it were, one on questions of fact which,
28 as the Chairman has just said, seem most or all of
29 which lay outside the terms of reference of the

1 Tribunal, notwithstanding your best efforts. But on
2 the question of, as it were, your expertise on
3 journalism, you have for many decades been a
4 practitioner of journalism, more recently as you said
5 not full time, but you are a practitioner of
6 journalism, isn't that correct? 14:29

7 A. Correct.

8 371 Q. You were at, as it were, the cutting edge of creating
9 the education in journalism out in DCU as a kind of an
10 academia in journalism emerged in this country, isn't
11 that correct? 14:29

12 A. Yes.

13 372 Q. You also have had, to complete the 360 degree
14 perspective, an involvement in the regulation in terms
15 of the Broadcasting Authority and other entities? 14:29

16 A. (Witness Nods).

17 373 Q. In those contexts and with that expertise can I ask you
18 to see if you would agree with me on a number of things
19 which are not purely academic debates and if need be
20 I will apply them to particular issues that are in
21 front of this Tribunal. Can we have a conversation
22 first about sources, and I know you have, Ms. Leader
23 has led you on some of those. There was a presumption
24 from the date of Woodward and Bernstein in Watergate
25 that journalists needed two sources for anything. 14:29
26 That's not strictly true, is it, there are
27 circumstances in which a journalist can rely on one
28 source only, isn't that correct?

29 A. Well in theory, yeah. I suppose you could certainly

1 have a situation where you had one source and you felt
2 it was sufficient to go with it.

3 374 Q. Okay.

4 A. Depending on the story.

5 375 Q. And looking at any source beyond the primary source, 14:30
6 doesn't the journalist have to be careful that the
7 second source is not merely repeating something they
8 have heard from the first source, isn't that correct?

9 A. Absolutely.

10 376 Q. Okay. And again, quite practically for this case, 14:30
11 there is no issue with the fact that David Taylor made
12 a protected disclosure which makes allegations of a
13 smear campaign in which it is said Martin Callinan
14 directed, that Nóirín O'Sullivan knew and/or indulged
15 or permitted. Maurice McCabe accepts that his 14:30
16 protected disclosure is no more than an account of what
17 was given to him by David Taylor. So amn't I correct
18 in seeing that as a primary source and as a secondary
19 source informed by what the primary source told him;
20 isn't that correct? 14:30

21 A. Well based on what you are saying it would appear to be
22 the case, yes.

23 377 Q. Okay. And any journalist getting those, getting word
24 of those two accounts, shall we say, or getting those
25 two accounts, would of course have to have regard at 14:30
26 the second of those accounts, in this case the McCabe
27 one, is no more than a hearsay or repetition of the
28 first account, isn't that correct?

29 A. Correct.

1 378 Q. And any journalist who were to hear that the second
2 source, in this case the McCabe one, had been told a
3 different thing than it seems the Taylor source had
4 said should also in a sense have a greater reservation
5 about what is being said, isn't that correct? 14:31

6 A. Well, yes, of course, if somebody is saying X said
7 something and X was saying well they said something
8 different, then you are going to have a problem.

9 379 Q. You almost have a conflict in part between the sources?
10 A. In part, absolutely. 14:31

11 380 Q. They don't corroborate each other to an extent?
12 A. Correct.

13 381 Q. They conflict each other. Can I ask you then about
14 another recent trend, I don't know to what extent you
15 are familiar with the protected disclosure legislation. 14:31
16 But in the general journalistic discourse there have
17 been a number of protected disclosures made by persons,
18 isn't that correct?

19 A. Yes.

20 382 Q. As an expert in journalism does the fact that somebody 14:31
21 puts an allegation in an envelope addressed to a
22 protected disclosure manager give that allegation any
23 greater weight in journalistic sense?

24 A. Not per se. Of course it depends on whether it's true
25 or not. 14:32

26 383 Q. Is there a risk in the consumption of media coverage
27 that the fact that somebody has become an official
28 protected disclosee or made a protected disclosure
29 might be perceived as, well, there must be something to

1 it if they put it in a protected disclosure?

2 A. I don't think any serious journalist would assume that.

3 384 Q. Okay. I should emphasise there have been two
4 incidences within the realms of this Tribunal, and
5 I emphasise this is not directed to Mr. McCabe, that's 14:32
6 why I am naming the two incidences, namely Garda
7 Harrison and Superintendent Taylor where stuff has been
8 put into protected disclosures, which the court has.
9 Already found in respect of one, Mr. Harrison, the
10 Tribunal has already found in respect of Garda Harrison 14:32
11 was largely inaccurate and in respect of Superintendent
12 Taylor, much of what he has said in his original
13 protected disclosure, it seems, has been withdrawn. So
14 you see the point I am making, that the risk of
15 elevating something to having greater veracity because 14:32
16 it's in a protected disclosure is something journalism
17 needs to be live to, is that correct?

18 A. Absolutely. And I think it's a risk to Sergeant
19 McCabe. If I may say, I've always found from the very
20 outset, he was very reticent, subdued about what he 14:33
21 said, very careful to proceed in a proper fashion, not
22 to give a document in one case that was to go before
23 the Dáil before the Dáil had seen it. He has been
24 through so much and I think it's cruel if at this stage
25 late in the day any activities by other people which 14:33
26 overstate a case rebounds against him. So it's
27 difficult for him as well as for journalists.

28 385 Q. I have to say, I don't disagree at all with anything
29 you have said, and again to emphasise that Sergeant

1 McCabe was always careful to say that what was in his
2 protected disclosure was stuff he had been told by
3 Superintendent Taylor. Can I ask you then, and I read
4 your, the materials you offered to the Tribunal firstly
5 and then the statement you were invited to make with a 14:33
6 personal interest but also in a sense with professional
7 interest in this context. You seemed to be anxious to
8 emphasise that before running with any story maligning
9 or taking any view maligning or bad mouthing Sergeant
10 McCabe journalists need to be careful to check the 14:34
11 facts, isn't that correct?

12 A. Not just running with it, before --

13 386 Q. Accepting it?

14 A. Before entertaining it even as a chilling factor in
15 your own mind. I mean if I was told, you know, you 14:34
16 were a bank robber and I was about to write about you,
17 I would not ignore that, I would want to check out, you
18 know, even if I was not going to write about it, if it
19 was relevant to my coverage of something in which you
20 were involved. 14:34

21 387 Q. I am going to take your word "entertain" which is very
22 useful in this context. Before somebody would
23 entertain a notion of somebody being maligned or bad
24 mouthed to them, the journalist is obliged to look
25 beyond that one source who is doing that, isn't that 14:34
26 correct?

27 A. Well that is my opinion. I have been surprised by a
28 couple of senior journalists disagreeing with me saying
29 that well if I wasn't going to write a story about it,

1 I wasn't going to use it, I didn't need to check it.
2 I don't agree with that point of view.

3 388 Q. Can I take it from your evidence and from the various
4 submissions you have made to the Tribunal that that
5 obligation is even higher when what is being alleged is 14:35
6 particularly defamatory?

7 A. If it constitutes civil or criminal wrongdoing,
8 I certainly believe it's very high.

9 389 Q. And nobody disputes that any suggestion of somebody's
10 involvement in sexual assault on minors or otherwise 14:35
11 would be very defamatory; isn't that correct?

12 A. Could you think of anything worse in the Irish context?

13 390 Q. Yes, indeed, murder and sexual offences are the worst
14 of them. It is also, isn't it, quite defamatory to
15 suggest that a head of police force was engaging in a 14:35
16 smear campaign against a member of that police force?

17 A. It is defamatory to suggest any Garda would be doing
18 it. It appears somebody was doing it, I don't know
19 where it was coming from.

20 391 Q. And to suggest in particular that that person, that it 14:35
21 was being done in a systematic campaign by the Garda
22 force generally under the instruction or direction or
23 tolerance of the Commissioner and Deputy Commissioner,
24 wouldn't that be particularly defamatory of both the
25 force and the individuals if it was established it was 14:36
26 correct?

27 A. I think you would need an anthropologist rather than
28 communications academic to categorise an Irish
29 whispering campaign as to whether or not it is

1 systematic. We all know what a whispering campaign is
2 in Ireland. I am not sure what the right word for it
3 is.

4 392 Q. Well that again, and I don't want to misuse the
5 Tribunal's time, I won't say indulge, impose on the 14:36
6 court's patience, I don't want to misuse the Tribunal's
7 time by engaging in -- but I mean there have been
8 patterns in history where rumours campaigns have gone,
9 surrounded like wildfire?

10 A. Hmm. 14:36

11 393 Q. I think in particular you will remember one relating to
12 the Gorta charity many years ago and even one touching
13 on the X case which concerned a named individual, it
14 became a rumour campaign, which somebody may have lit
15 the fire for, but sometimes they take an oxygen all of 14:36
16 their own and become wildfire rumours, isn't that
17 correct?

18 A. Correct.

19 394 Q. Okay. But in this case the court, the Tribunal was
20 being asked to investigate, this Disclosure Tribunal, a 14:37
21 disclosure that alleged a systematic, coordinated and
22 directed campaign out of An Garda Síochána to undermine
23 the journalistic and political view of Sergeant McCabe
24 in the vilest way. That's what the Tribunal is
25 inquiring into. That allegation is defamatory, isn't 14:37
26 that correct, if established?

27 A. It certainly is, yeah.

28 395 Q. So the high, of course it's not the high end we
29 discussed earlier, but it's at the high end. So when

1 journalism or anybody else receives such an allegation
2 then, as you said earlier, it has to look at the
3 motivation: what's the anger of the person who is
4 making the allegation, isn't that correct?

5 A. Mm hmm. 14:37

6 396 Q. That is the phrase you used, the first thing you say is
7 where is this person coming from?

8 A. Yeah.

9 397 Q. What is their anger?

10 A. Yeah. 14:37

11 398 Q. What might their bitterness be?

12 CHAIRMAN: I think angle.

13 A. Angle.

14 399 Q. MR. WHELAN: Angle, sorry, what is their angle, sorry,
15 okay. But whether they might be bitter, whether they 14:37
16 might be motivated against an employer, whether they
17 might be motivated for other reasons against the person
18 they are making the allegations about, isn't that
19 correct?

20 A. Absolutely, naturally. 14:38

21 400 Q. And in this incidence we now know that Superintendent
22 Taylor was motivated, his angle was, and this is
23 ultimately a matter for the Tribunal to establish, but
24 his motivation or his angle was that he had a
25 bitterness directed towards N6ir6n O'Sullivan. And if 14:38
26 journalism was aware of that fact, that he was unhappy
27 about being investigated and had a sense that
28 investigation was being driven by Ms. O'Sullivan and
29 her husband, shouldn't there have been particular

1 concern about propagating that allegation?

2 A. Yes. Journalists should have made it their business to
3 generate a story about the fact that smears were being
4 circulated and whispering campaign of a defamatory
5 nature about Maurice McCabe and should have tried to 14:38
6 get to the bottom of the source of those whispers,
7 which were being circulated at a time when he also had
8 extraordinary disciplinary proceedings hanging over his
9 head for some 13 months, I think, that were ultimately
10 dropped. The journalists had a very serious obligation 14:39
11 who heard those rumours to not just treat them with
12 caution, but to air them and to address them in my
13 opinion.

14 401 Q. And a similar obligation acquires in respect of rumours
15 made against any other police officer, including the 14:39
16 Garda Commissioner?

17 A. (Witness Nods)

18 402 Q. Or Deputy Commissioner, isn't that correct?

19 A. I'm not sure what --

20 403 Q. The same obligation to test the motive, to examine the 14:39
21 angle?

22 A. In any story you should always ask where is the person
23 coming from, of course, yeah.

24 404 Q. Can I ask you, and if you are not in a position to,
25 then please don't, but can I ask you as a journalistic 14:39
26 expert then to offer a view on the manner in which the
27 stories of Nóirín O'Sullivan have been reported in the
28 last two or three years?

29 A. Well, to be honest --

1 405 Q. In light of what we now know, what you now know?
2 A. It's very hard to find in my heart sympathy, if that's
3 what you are asking given the mess that has been made
4 of this by the Department of Justice, from the Gardaí
5 from the outset and the various subsequent shambles 14:40
6 over drunken driving and other affairs. I think the
7 government deserves a police service fit for purpose,
8 and Maurice McCabe in my view was doing nothing more
9 than as local sergeant would do properly in trying to
10 bring attention to systematic flaws in the system that 14:40
11 should have been corrected long, long ago.
12
13 So I don't have a great deal of interest to be honest,
14 I haven't analysed carefully the coverage of Nóirín
15 O'Sullivan, but she is entitled to due process as much 14:40
16 as Sergeant McCabe is.
17 MR. WHELAN: In journalism as much as elsewhere.
18 CHAIRMAN: Sorry, Mr. Whelan, you will be entitled to
19 make a submission to me to that effect at the end if
20 you want. 14:40
21 MR. WHELAN: Thank you, Judge.
22 CHAIRMAN: I am not sure.
23 MR. WHELAN: I am nearly finished, Chairman.
24 CHAIRMAN: No, no.
25 MR. WHELAN: Sorry. 14:40
26 CHAIRMAN: Okay.
27 MR. WHELAN: what I am saying is, all I am doing is
28 laying the expert evidence basis for what would form
29 the basis of submissions in circumstances --

1 CHAIRMAN: well, look, you can take it as hopefully a
2 reasonable person sitting in this chair, that if people
3 don't ask where people are coming from, what's their
4 angle? or if they ask the question, let's say the
5 matter is concealed, then they may have an excuse. But 14:41
6 if they don't ask is there any truth in this or is it
7 verified elsewhere, for which I think there is no
8 excuse for not looking into those things, then I don't
9 think that's very good kind of journalism. I am not
10 going to be reporting on journalism. I'd kind of 14:41
11 rather avoid it, but if you want to make a submission
12 to me at the end that Nóirín O'Sullivan was very badly
13 treated and that there was a rush to judgment or
14 anything like that, I will certainly listen to it and
15 then see what I am going to do with it. 14:41

16 MR. WHELAN: Thank you, Mr. Chairman. I am just
17 conscious this is the only independent evidence from a
18 practicing journalist in the various organisations you
19 are going to hear from in the next couple of weeks and
20 that's the capacity in which he has been called. 14:41

21 CHAIRMAN: Yes. But it may be that the principle,
22 Mr. whelan, is more important than the actual case that
23 you are referring to. So that if, I thought it was the
24 Washington Post or wherever that didn't publish
25 anything, unless there was two sources. There may be 14:42
26 other papers as well. I did not think that applied in
27 Ireland, but.

28 MR. WHELAN: Thank you, Chairman. Can I touch on --
29 A. By the way there are excellent academics at DIT and DCU

1 who are happy to undertake content analysis,
2 particularly if the Garda Commissioner has a budget for
3 that kind of work they can do it scientifically and
4 I am sure they will form a view as to whether or not
5 Nóirín O'Sullivan was treated fairly. But I have no
6 view on the matter. 14:42

7 406 Q. MR. WHELAN: Can I ask you then a couple of other
8 questions which you may have a view on. In January
9 2013 you say you were told by a couple of journalists
10 in some, outside the committee room, lobby perhaps, was 14:42
11 it, in Leinster House about this story of a sexual
12 allegation against Sergeant Maurice McCabe, isn't that
13 correct?

14 A. Yes.

15 407 Q. You were, as the judge said, in the helpful position 14:42
16 that you could get a source who could confirm very
17 quickly that that wasn't true and that was Sergeant
18 McCabe, is that correct?

19 A. Yes.

20 408 Q. And he was able to show you the letter from the DPP 14:42
21 that made it clear not only was it not being prosecuted
22 for any lack of evidence, it didn't amount to an
23 offence, isn't that correct?

24 A. I was able to satisfy myself on the basis of seeing
25 that letter what the circumstances were and on the 14:43
26 basis of other information.

27 409 Q. Can I take it then that you regard it, because you
28 referenced your conversations with Sergeant McCabe on a
29 number of occasions in your evidence, that you regarded

1 your conversations with Sergeant McCabe as off the
2 record?

3 A. I had a limited number of discussions with Sergeant
4 McCabe, who said he is quite happy to have me talk
5 about them. I was conscious as he was at all stages of 14:43
6 the sensitivity of those discussions and I didn't want
7 to put him into a position of doing anything which
8 might have caused a problem for him and he didn't, in
9 my view, do anything that was inappropriate. In fact
10 he was frustratingly restrained at times. I remember 14:43
11 one particular document I wanted to see that was before
12 the Dáil or was due to be brought before the Dáil by a
13 TD and I would very much like to have seen it and
14 I couldn't get my hands on it and in that respect, yes,
15 there was a certain amount of contact, but I think, you 14:44
16 know, what was striking to me was how restrained he
17 was.

18 410 Q. Again I'm not taking issue with any of that. Can we
19 then, can I just then raise with you two final matters.
20 Journalists, you and I may have a conversation and 14:44
21 I may say to you 'that's off the record'; if a moment
22 arises sometime, because of the passage of time or the
23 circumstances or public controversy, is there
24 circumstances where the journalist could or should go
25 back to their source and say 'can you relieve me of 14:44
26 that privilege now'?

27 A. Well, of course you can always ask.

28 411 Q. You could always ask?

29 A. (Witness Nods)

1 412 Q. And are there times when, let's say, if this Tribunal,
2 in order to have the fullest possible picture of a
3 situation, it has waivers I emphasised from
4 Superintendent Taylor and from both of our clients,
5 former Commissioner Callinan and former Commissioner 14:44
6 O'Sullivan, but if it would assist the Tribunal in
7 establishing facts, particularly where things concern
8 only two persons having a conversation and Mr. Taylor,
9 say, for example, was one of them and the other source
10 is unidentified; are those the kind of circumstances 14:45
11 where journalists should or in your view, could or in
12 your view should go back to the source and say will you
13 relieve me now of the privilege?
14 A. I think the journalist needs to be very careful that
15 they are not putting the source under some kind of 14:45
16 pressure that's unfair. So again it depends on the
17 circumstances. I wouldn't be in a hurry particularly
18 in response to investigations by the State to put
19 pressure on a source to relieve me. But if the source
20 voluntarily does it of their own accord that's a very 14:45
21 different set of circumstances, I think, assuming that
22 there's no reason to believe that the source, her or
23 himself isn't coming under some kind of unfair
24 inducement.
25 413 Q. But given that patriotic obligation which the Chairman 14:45
26 spoke this morning, you'd at least go back to the
27 source and give them the opportunity?
28 A. That's theoretically possible.
29 414 Q. Yes, okay. Can I ask you then one last question. You

1 said in January 2013 that you heard this story from a
2 journalist about sexual assault allegation, if a police
3 officer or a senior police officer had told you that in
4 January 2013, that Maurice McCabe --
5 CHAIRMAN: I think it's January 2014, it has to be 14:46
6 January 14
7 MR. WHELAN: Sorry, excuse me.
8 CHAIRMAN: Because it's in or around the time --
9 MR. WHELAN: It's the PAC meeting
10 CHAIRMAN: I have only focused on one PAC meeting and 14:46
11 I didn't know, but I understand this morning now there
12 were other ones. They could have gone into 2013 for
13 all I know.
14 MR. WHELAN: No, no, it's '14, it is January '14.
15 A. It is early January 2014. I have lost track of all the 14:46
16 meetings.
17 415 Q. MR. WHELAN: I should have corrected that myself. If a
18 police officer had told you what you say a security
19 correspondent told you in January '14, what would your
20 response have been? If a police officer said to you 14:46
21 'you have to be careful with Maurice McCabe, he can't
22 be trusted, he has psychiatric problems or he is a
23 trouble maker or whatever', what would your response to
24 that have been?
25 A. Well I would have wanted to check it out also. 14:46
26 416 Q. But would you have taken steps about the fact that a
27 senior police officer told you that, quite apart from
28 checking out what they said, wouldn't you have been
29 horrified that they said it to you as a journalist?

1 A. Well the first thing I would have probably assumed is
2 that there was possibly some truth in it.

3 417 Q. Yes.

4 A. When I found out that it was misleading and that
5 perhaps there was some historic truth to an incident 14:47
6 rather than to instances or it being continuing,
7 I might have considered writing a story about,
8 depending on the situation - this is very hypothetical,
9 Judge - depending on the circumstances that the Gardaí,
10 that there was rumours, a whispering campaign from 14:47
11 Garda sources. I mean I did hear of someone else who
12 was told by a senior guard who is now deceased about
13 the abuse allegation actually. Like I'm not at liberty
14 to talk about that. But it doesn't really matter where
15 it came from to be quite honest in the sense for me 14:47
16 journalistically. Well it does matter, obviously if it
17 comes from a police source it's more serious. But it's
18 a very significant thing. It's the fact that is
19 crucial: Is this true or is it false? If it's true it
20 may be relevant, it may not be relevant. Even if it 14:48
21 were true it wouldn't necessarily change a thing, the
22 truth of what somebody, a whistleblower was saying, but
23 it would certainly be a factor you would have to bear
24 in mind when dealing with their statements.

25 418 Q. Well if it was untrue and it became apparent to you 14:48
26 then that this senior police officer was maligning in
27 serious and significant terms either the mental health
28 or otherwise of the whistleblower, then that of itself
29 would be a story for you, wouldn't it?

1 A. Absolutely. You would be speaking to an editor
2 immediately, but the problem was to get corroboration
3 of course.

4 419 Q. No, and I think Ms. McCarthy, Justine McCarthy this 14:48
5 morning made the point that it wouldn't be the easiest
6 story to do. But your point is you would go and have a
7 conversation with an editor immediately?

8 A. (Witness Nods).

9 MR. WHELAN: Thank you very much, Doctor Kenny.

10 MR. KELLY: Chairman, sorry, Kieran Kelly for INM. 14:48
11 CHAIRMAN: Oh, you are there, Mr. Kelly, yes.

12

13 THE WITNESS WAS CROSS-EXAMINED BY MR. KELLY AS FOLLOWS:

14

15 MR. KELLY: Just a few questions. Mr. Kenny, hello. 14:49
16 Good afternoon.

17 A. Good afternoon.

18 420 Q. I just have a few questions for you, Mr. Kenny. You
19 have referred to the chilling effect a smear might have
20 on a journalist. 14:49

21 A. Mm hmm.

22 421 Q. Before you submitted your statement, did you do any
23 research on the number of articles that were written
24 concerning Sergeant Maurice McCabe?

25 A. No, I haven't got a count of them. 14:49

26 422 Q. You haven't taken a count of them. Because you see
27 Mr. Thuillier was here one day for Mr. Michael O'Toole
28 of the Star and asked questions of Superintendent David
29 Taylor on that subject, were you here that day?

1 A. No.

2 423 Q. No. Did you read his transcript?

3 A. I haven't read the transcripts.

4 424 Q. You didn't read the transcript. Well on page 199 of
5 the transcript of Day 75 the Chairman actually made an 14:49
6 intervention, and I will quote the Chairman, if he
7 doesn't mind: "Just on that point put by Mr. Thuillier
8 there, obviously the Tribunal has searched through
9 newspapers --"

10 A. Sorry, am I looking at this here, sorry? 14:49

11 CHAIRMAN: No, if you just listen to the question
12 there.

13 MR. KELLY: It is a very short quote.

14 CHAIRMAN: It is, yes.

15 425 Q. MR. KELLY: "As well as everything else and it is very 14:50
16 hard to come across anything negative to Sergeant
17 McCabe, never mind anything about him being embittered
18 in consequence of an investigation which took place all
19 of 14 years previously or there or thereabouts?"

20 14:50

21 That was what the Chairman said to Superintendent
22 Taylor. So the situation is that there was no chilling
23 effect, Mr. Kenny, do you understand?

24 A. Well I don't know. I hear what you are saying.

25 426 Q. Yes, thank you. And just, if you don't mind, on your, 14:50
26 some of the papers you submitted to the Tribunal, you,
27 and they are at 3910, if Mr. Kavanagh might like to get
28 that up.

29 A. 3910?

1 427 Q. Yes.

2 A. I have it, yes.

3 428 Q. To 3912. You are citing a number of articles that you
4 wrote in the Sunday Independent newspaper?

5 A. Yes. 14:50

6 429 Q. And they go from April 2013 to June 2014, I think.

7 A. Yeah.

8 430 Q. And then you have a number of others for other
9 publications, but it is INM I am interested in, is that
10 okay? 14:50

11 A. Yes, there's a number of publications.

12 431 Q. And you have 24 articles in that period of time,
13 Mr. Kenny, on Sergeant Maurice McCabe?

14 A. Right.

15 432 Q. That is what you list there, would you accept that? 14:51

16 A. Yes.

17 433 Q. In that period of time 24 articles, all of which were
18 very positive to Sergeant McCabe and the whistleblowers
19 in general, isn't that right?

20 A. Yes. 14:51

21 434 Q. Yes. So there was no chilling effect on your
22 journalism there or on the INM journalism presented
23 there, was there?

24 A. You're asking a question that's almost impossible to
25 answer. It does per se have a chilling effect to be 14:51
26 told something negative about a party to a story and
27 it's something that has to be taken into account.
28 I actually, as I already made clear, was writing some
29 of this in a sense because I think there weren't enough

1 other people covering the story, and in particular the
2 security correspondents seemed to me to be particularly
3 slow to cover what would be a rather obvious story that
4 presented admittedly difficulties to them. I really
5 don't -- I think there is a non sequitur in what you 14:51
6 are saying. I mean if somebody is maligning an
7 individual and you are writing about them, there is a
8 danger there will be a chilling effect.

9 435 Q. I'm asking you whether 24 articles written by you in
10 the Sunday Independent in that period of time all 14:52
11 supportive of Sergeant McCabe?

12 CHAIRMAN: Yes. I think the question really is were
13 you chilled yourself?

14 A. Well, first of all, I had found out straightaway after
15 I heard this that there was no basis. And, secondly, 14:52
16 I have to say, and I want -- I'm glad to have this
17 opportunity to say actually, in relation to Anne
18 Harris, the editor, and Willie Kealy, the deputy
19 editor, they never retailed to me the gossip that was
20 apparently being sent around elsewhere. I think that 14:52
21 was a very appropriate and proper editorial response.
22 So the only place I had heard it at this level was from
23 the people I have mentioned and I immediately
24 discovered there was no basis for it. Had there been a
25 basis, had I discovered that a whistleblower was still 14:52
26 under investigation for alleged abuses of a child, I am
27 afraid it probably would have affected my perspective
28 on that person in some way. I think we are all human.
29 You would step back a little and say 'hang on a minute,

1 what's going on here, is there some kind of walter
2 Mitty character, is this some kind of a guy with an axe
3 to grind?' And it didn't seem to me that that applied
4 at all. So why would it have had a chilling effect on
5 me? I don't understand, you know, the deduction from 14:53
6 the fact that I wrote about the story and especially in
7 the situation where I was writing partly to encourage,
8 I had hoped - and there were other journalists by the
9 way, I am not suggesting I was the only one, Mick
10 Clifford was writing quite a lot and there were other 14:53
11 people. I am not sitting here saying I was the only
12 person who saw this story, but I am saying that I felt
13 that the seriousness of this story was such that
14 I would have wished at a period that more interest had
15 been taken in it by a number of security -- and there 14:53
16 were security correspondents writing about it too. So
17 I am not making any sweeping generalisations about RTE,
18 about the Independent or about security correspondents.
19 This is a real scenario, a real, you know, real set of
20 circumstances. And they are the facts as far as I am 14:54
21 concerned.

22 436 Q. MR. KELLY: Mr. Philip Ryan, are you familiar with him
23 as a journalist, Philip Ryan, you are familiar with
24 Philip Ryan as a journalist?

25 A. Yes. 14:54

26 437 Q. Did you see any of his articles about Maurice McCabe
27 and the whistleblowers?

28 A. Yes, of course.

29 438 Q. You did. Were they positive?

1 A. I wouldn't categorise them as positive or negative.

2 439 Q. No? Do you remember the article from February 2014
3 that was put to Ms. Harris the other day?

4 A. I think I have mentioned one of his articles here,
5 haven't I? 14:54

6 440 Q. About the confidential recipient?

7 A. Well, it's in the documentation.

8 441 Q. Yes.

9 A. The one I mentioned.

10 442 Q. There is no chilling effect on Mr. Ryan either, was 14:54
11 there?

12 A. I really I have to say I don't know.

13 MR. KELLY: No. Thank you, Chairman.

14 CHAIRMAN: Yes, I think it's fair to say, Mr. Kelly,
15 and we've looked into this as best we can, but when it 14:54
16 comes to scrutinising newspapers, there are a lot of
17 them, there's a lot of -- we're talking about
18 responsible sources on websites such as the journal.ie.

19 etc. and we couldn't find anything where someone was
20 writing and saying Sergeant McCabe even was a person 14:55

21 driven by agendas, never mind -- and it is certainly
22 the case no one ever wrote that he had abused a child
23 and been investigated and as a consequence of that he
24 was a demented bitter person who was making up a whole
25 load of nonsense. So it just doesn't seem to be out 14:55
26 there. I don't think it is and you possibly would be
27 more familiar with the media than I would be. I can't
28 find it. Can you?

29 MR. KELLY: No, I am not aware of it, Chairman

1 CHAIRMAN: All right, fair enough. And that is the
2 point you are making?

3 MR. KELLY: Precisely, Chairman

4 CHAIRMAN: That whatever the chilling effect, it didn't
5 seem to go very deep, is that it? 14:55

6 MR. KELLY: That's correct, Chairman.

7 CHAIRMAN: All right.

8 A. May I say, Chairman, just one thing. Philip Ryan is
9 mentioned. I mention in my statement to the Tribunal
10 an article by Philip Ryan and Jim Cusack, Garda quashed 14:56
11 points, Sunday Independent, 30th December 2012. I'm
12 not claiming that there weren't other journalists
13 writing, of course there were.

14 CHAIRMAN: Oh, no, of course, I imagine so. Did you
15 have any further questions. 14:56

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

19

20 443 Q. MR. LEHANE: Sorry, Chairman, I have one question on 14:56
21 behalf of Ms. Harris just arising out of Mr. Keeley's
22 cross-examination. Good afternoon, Mr. Kenny, my name
23 is Darren Lehane and I am counsel here on behalf of
24 Anne Harris and I just have one question for you.

25

26 would you agree with me that not every bit of gossip
27 that would be floating around a newspaper headquarters
28 would necessarily make it into articles written by the
29 purveyors of that gossip necessarily? 14:56

1 A. No, of course not.

2 MR. LEHANE: Thank you.

3

4 THE WITNESS WAS RE-EXAMINED BY MS. LEADER AS FOLLOWS:

5

14:56

6 444 Q. MS. LEADER: I just want to confirm with you,
7 Mr. Kenny, that you are happy to meet with our
8 investigators so as to identify those two particular
9 journalists?

10 A. Yes, and I'm sorry if it's going to put them to any
11 inconvenience.

14:56

12 CHAIRMAN: No, it's not.

13 A. But, as I say, I don't have anything -- I am not making
14 any judgment about them.

15 CHAIRMAN: The normal procedure in any event, rather
16 than making a big public fuss, is that we take a
17 statement, we send it to them, ask them what they have
18 got to say about it and then consider whether they need
19 to be called in evidence or not. That's the usual
20 thing. But I just wanted to ask you a few things, I am
21 sorry. Ms. Leader went very, very thoroughly -- oh,
22 yes.

14:57

14:57

23 MR. McDOWELL: Chairman?

24 CHAIRMAN: Oh, yes, I beg your pardon.

25 MR. McDOWELL: Chairman, before you ask the question
26 one more question.

14:57

27 CHAIRMAN: All right.

28 MR. McDOWELL: Mr. Whelan put it to Professor Kenny
29 that Sergeant McCabe had shown him the DPP's direction.

1 CHAIRMAN: Yes, I was wondering, I was actually
2 wondering about that.

3 MR. McDOWELL: I just want to clarify that. Sergeant
4 McCabe knew what was in it for the reasons that the
5 Tribunal knows, but certainly has never seen it until 14:57
6 this Tribunal started.

7 MR. WHELAN: I suppose told him what was in it.

8 CHAIRMAN: Yes. He didn't produce the actual letter,
9 'Director of Public Prosecutions, here it is'. Or can
10 you remember? 14:57

11 A. I saw a document, so I can't say which specific
12 document it is, at one point, yes.

13 CHAIRMAN: But, whatever it was, it said it doesn't
14 even amount to a --

15 A. It gave a full account of what had been decided by the 14:58
16 DPP and appeared to come --

17 CHAIRMAN: From somewhere.

18 A. I can clarify that too, it's no problem.

19 CHAIRMAN: No, it's not actually. Again it's one of
20 these details that's not going to assist me one way or 14:58
21 the other. There is so many of them along the way.

22 A. There no difficulty about that by the way, I mean I am
23 absolutely clear.

24 CHAIRMAN: No, no. Again it's, you can say I'm not
25 interested, it sounds as if I am sitting here bored out 14:58
26 of my tree, I'm not. But I just don't think that it's
27 anything that's going to help me one way or the other.

28 A. The document was furnished to the lawyer for the
29 Independent Newspapers, not this Independent Newspaper

1 lawyer, at the time when I was writing about the
2 affair. So it was part of a legalised and assessed
3 process.

4 CHAIRMAN: All right. Well, unless people say that
5 I should look into this, I don't really want to look 14:58
6 into it to tell you the truth. All right, well, there
7 it is, there may be a different of opinion. Look, just
8 a couple of things, if you don't mind.

9
10 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN,
11 AS FOLLOWS: 14:58

12
13 445 Q. Even among journalists, I suppose this is why the child
14 sex abuse thing is so significant, I take it there are
15 people who are taking an ideological viewpoint: Look, 14:59
16 anyone who makes an allegation of sex abuse is always
17 telling the truth, in other words there's no smoke
18 without fire type of thing?

19 A. One is always afraid that people do that.

20 446 Q. CHAIRMAN: Yes, but I mean journalists aren't immune 14:59
21 from the human frailties of the rest of us, I presume?

22 A. Thinking there's no smoke without fire?

23 CHAIRMAN: Yes.

24 A. Of course they're not, just as human as lawyers or
25 anybody else. 14:59

26 447 Q. CHAIRMAN: Yes. We are all probably familiar with the
27 history of societies which drift into dreadful things
28 and one of the characteristics certainly is the amount
29 of deceit that is about?

1 A. Pardon me, Judge?

2 448 Q. CHAIRMAN: The amount of deceit, the amount of lies
3 that are promulgated. People are talking about now at
4 the present time this being a post truth age, which
5 seems to me to be nonsensical. But the question that 14:59
6 I wanted to ask you is, certainly there's a public
7 interest in the truth, but is there any public interest
8 in the promulgation of lies in the media so that people
9 get hysterical about them, engage in witch-hunts or
10 even start to just believe them about people? 15:00

11 A. Certainly not.

12 449 Q. CHAIRMAN: Yes. So even if it were on the basis that
13 things didn't reach the newspapers but that people were
14 talking about people in a negative way and it was
15 untrue, could that ever possibly be in the public 15:00
16 interest?

17 A. I cannot see it, unless it was a very constrained set
18 of circumstances where a journalist was bringing to
19 their line manager an account of information being
20 circulated in order to discuss how they should react to 15:00
21 the fact that that was being circulated. Apart from
22 that, such gossip couldn't be in the public interest
23 I don't think. And it's own only in the public
24 interest in those circumstances insofar as you form a
25 methodology of response to the vile rumour that's 15:00
26 appropriate.

27 450 Q. CHAIRMAN: Yes. well, in the sphere of law certainly
28 we, in terms of writing about the Constitution etc.,
29 there's an awful lot of words spilled over the concept

1 of justice, but I'm not sure there can be any justice
2 without a search for the truth. And, similarly, can
3 there be journalistic privilege in the promulgation of
4 complete and utter lies?

5 A. No, absolutely not. I mean the truth is the central, 15:01
6 should be the central aim of journalism, you tell the
7 truth and shame the devil. If you're not religious you
8 tell the truth and try to ascertain some kind of a
9 context in which the best possible decisions can be
10 made by society on the basis of the known facts. 15:01

11 451 Q. CHAIRMAN: Yeah. One of the things that perhaps might
12 worry a journalist is, in the same way as a person
13 asked to defend someone, let us say, on a murder charge
14 is obliged to get that person's instructions and then
15 to put those instructions to whatever witnesses are 15:01
16 relevant to those instructions; if, say, a defence
17 counsel were to say to themselves 'well I'm going to
18 decide whether they are guilty or not', that would be a
19 breach of professional duty, I presume that journalists
20 are sometimes operating in a similar constraint where 15:02
21 they are saying to themselves 'I can't act as judge and
22 jury and say this was malicious or deceitful by so and
23 so and therefore reveal them as a source, I'd need to
24 have perhaps the clearest possible indication in that
25 regard before reaching any decision on that basis', 15:02
26 would that be fair?

27 A. Very fair.

28 452 Q. CHAIRMAN: Yes. Now, you mentioned, I think, to
29 Ms. Leader, one of the things you said was, look, was

1 there constraints in terms of the waiver of privilege
2 if privilege is waived. I just want to give you an
3 example maybe just to help me clarify that in my own
4 mind. Let's suppose there is a board of directors of
5 12 people and let's suppose that they are 15:02
6 contemplating, I don't know what, a takeover of a
7 cement company or something like that and it's
8 important that that would not get out into the public
9 domain because the consequence of that would be,
10 I suppose, negative to shareholders or negative to 15:03
11 people's interests in either of the companies; in the
12 event that that did get out and was clearly a leak from
13 the board of directors and let us say the managing
14 interest in the company, the person with the biggest
15 shareholding passed around a waiver saying 'I hereby 15:03
16 waive any journalistic privilege that I have as a
17 member of this board of directors in relation to any
18 information published on this company's bid to take
19 over Smedley & Co cement producers, that's the kind of
20 thing you are talking about, is it? Where if you don't 15:03
21 signed you're clearly the source; if you do sign, then
22 you've got a problem, because it's coerced out of you?
23 A. You could be identifying other people.
24 453 Q. CHAIRMAN: well, no. I mean you're signing a waiver,
25 but if you don't sign a waiver, you're in trouble? 15:03
26 A. Oh, yes. well that is the kind of complexity there is,
27 exactly.
28 454 Q. CHAIRMAN: Yes. And if that isn't present or something
29 like that isn't present, a waiver may indeed be a

1 genuine and voluntary waiver?

2 A. It may indeed be genuine and voluntary and I cannot see
3 why in some circumstances having been waived a
4 journalist would need to persist in ostensibly
5 protecting a source that in fact doesn't want to be 15:04
6 protected and may even be damaged in some respects by
7 being protected in that sense.

8 455 Q. CHAIRMAN: And what if there's a side agreement? In
9 other words, what if the source says 'well, I know this
10 has become a matter of public controversy now and 15:04
11 I know that there's going to be whatever kind of a,
12 let's say a court case or something like this about it'
13 but you and I will agree that you'll only go so far and
14 won't tell the full truth in relation to what I said,
15 even though I'm publicly waiving privilege', would a 15:04
16 journalist be bound by such a side agreement?

17 A. I'm sorry I don't...

18 456 Q. CHAIRMAN: Do you get the point? well, let's suppose
19 -- again to try and get a concrete example of it.
20 Let's suppose somebody is murdered and let's suppose 15:05
21 the journalist gets information to the effect that the
22 person who committed the murder was A, Mr. A, and let
23 us suppose that Mr. A comes under pressure just
24 publicly generally whereby, forget about the pressure
25 now, he feels he has to in some way make a public show 15:05
26 of somehow waiving any privilege that may attach to the
27 communication with the journalist, all right?

28 A. Mm hmm.

29 457 Q. CHAIRMAN: Forget that situation.

1 A. Yes.

2 458 Q. CHAIRMAN: And that is communicated to the public at
3 large, communicated to the courts, let us say, but on
4 the side he and the journalist make an agreement that
5 the journalist is not in fact going to tell the full 15:05
6 truth or is going to claim privilege in any event; is
7 that a valid exercise in journalistic privilege?

8 A. It certainly seems a very strange exercise of
9 journalistic privilege, and I cannot see that it would
10 be valid. 15:06

11 459 Q. CHAIRMAN: It sounds outlandish, but in the event that
12 the waiver is for public consumption only, just to make
13 the person look good, but at the same time there's an
14 agreement with the journalist that, notwithstanding the
15 apparent waiver, that the protection of the source will 15:06
16 be maintained, is that a valid exercise in journalistic
17 privilege?

18 A. It doesn't sound to me like it conforms to the rubric
19 of sedulously fostering sources in the public good, it
20 sounds like something undesirable. 15:06

21 460 Q. CHAIRMAN: well it is certainly undesirable, but is it
22 possible under journalistic privilege?

23 A. I cannot see.

24 461 Q. CHAIRMAN: Do you understand what I am saying? You
25 make a public show of making a waiver, but at the same 15:06
26 time you have a side agreement with a journalist that
27 it is only a public show, it means nothing but you are
28 still bound?

29 A. That would be entirely improper if it happened,

1 I think.

2 462 Q. CHAIRMAN: would the journalist though not be bound by
3 it, if they are told 'look I was your source, all
4 right, but I am going to make a public show now of
5 issuing a waiver but you and I know that it means 15:07
6 absolutely nothing, you are still bound as far as I am
7 concerned'?

8 A. I can't -- I'm afraid it's, I am trying to be helpful
9 judge, but to me I'd prefer to comment on a specific
10 example or a specific case because it's very difficult. 15:07
11 I don't fully -- it seems to me what you are suggesting
12 would be completely wrong for the journalist to enter
13 into just on the hypothetical level that you are
14 putting it. I don't see there would be a set of
15 circumstances in which that would be valid if the 15:07
16 journalist was party to the deception of the public in
17 any way.

18 463 Q. CHAIRMAN: Yes. But, you know, you can, in the
19 ordinary and normal circumstances, if Mr. A is the
20 source of, let's say, some very important stories or 15:07
21 whatever, they may turn out to be true, they may turn
22 out to be false, but if Mr. A publicly comes out and
23 says, without any pressure: 'well, in the particular
24 circumstances, because there's public controversy about
25 this, I am waiving any privilege I may have as a 15:08
26 source'?

27 A. Yes.

28 464 Q. CHAIRMAN: But if at the same time he is saying to the
29 journalist 'look, that waiver doesn't apply to you'?

1 A. Yeah.

2 465 Q. CHAIRMAN: Is the journalist bound by that? In other
3 words, is the journalist bound by the public
4 declaration, even a declaration on oath, or are they
5 bound by whatever original agreement they had to 15:08
6 protect the source, which has now ostensibly been
7 waived but not waived vis-à-vis that journalist?

8 A. I think the agreement on sources has to be in good
9 faith and I think that good faith doesn't exist in the
10 circumstances you are outlining there and therefore the 15:08
11 journalist cannot seriously consider this to be, in the
12 circumstances you've outlined, an exercise of
13 journalistic privilege. It's something else and
14 something not very appropriate to be quite honest. It
15 could put the journalist in a very difficult position. 15:08

16 466 Q. CHAIRMAN: Yes, all right.

17 A. But I think that, I don't think that the journalist is
18 bound in those circumstances. If the person is
19 publicly saying that they waive privilege then I think
20 the journalist has to act in the public good and if 15:09
21 it's being said to the public that privilege is waived
22 then the journalist should act as if privilege is
23 waived. It could not be in the public good for the
24 journalist to connive in some way out of deceit.

25 467 Q. CHAIRMAN: well as you say, you go back to the idea 15:09
26 that the public never have an interest in the
27 promulgation of deceit and lies?

28 A. Exactly.

29 468 Q. CHAIRMAN: Just the last thing, and Ms. Leader did go

1 into this and it's called negative information. So
2 several people have said, I mean I have made a list
3 here on the side, and I'm not going to go through it,
4 saying, well, David Taylor is saying that you briefed
5 him negatively and a number of people have said well, 15:09
6 no, sorry, I wasn't. Is there any breach of
7 journalistic privilege in saying, apart from
8 circumstances where the class is so small that by
9 saying, no, I wasn't briefed, you are identifying
10 somebody else or narrowing it down to two or three or 15:10
11 maybe a dozen or two dozen, is there any difficulty in
12 terms of journalistic privilege in saying 'no, that
13 never actually happened, no, I was never briefed'?

14 A. I understand the point that's been made by counsel for
15 RTE that there are different opinions on this, and my 15:10
16 opinion is that if it's so broad, for example in this
17 case to say I heard from Gardaí this vicious rumour,
18 that's never going to identify particular Gardaí, or
19 even to say I heard from senior Gardaí above the rank
20 of sergeant this particular rumour, they are never 15:10
21 going to be identified.

22

23 Now, I understand it may make life uncomfortable for
24 some security correspondents who deal on a daily basis
25 with the guards, but to jump to the conclusion that the 15:10
26 guards are going to cut them off for saying that raises
27 more questions in my mind about the relationship that
28 they have with their sources in the Gardaí than it does
29 about the doctrine of journalistic privilege.

1 CHAIRMAN: Yes. well, thanks very much for your help.

2 A. Thank you.

3 MR. MARRINAN: The next witness is Philip
4 Boucher-Hayes, please.

5 15:11

6 MR. PHILIP BOUCHER-HAYES, HAVING BEEN SWORN, WAS
7 DIRECTLY EXAMINED BY MR. MARRINAN AS FOLLOWS:

8

9 469 Q. MR. MARRINAN: Mr. Boucher-Hayes' statement is to be
10 found at page 5317 of the material, which is in volume 15:11
11 20, and also a supplemental statement at page 5319.
12 Now, I think that you're a journalist and well known
13 broadcaster, isn't that right?

14 A. I have been a journalist for 30 years now, yes.

15 470 Q. would you mind, even though you are well respected and 15:12
16 well known, would you mind just giving a brief outline
17 of your career to the Chairman, please?

18 A. I started writing for regional papers this month 30
19 years ago as it happens. I moved from there to RTE,
20 where I was a radio producer for a number of years, 15:12
21 producing programmes like the Gay Byrne show.

22 I subsequently moved into reporting for programmes like
23 Five Seven Live. I've covered for over a decade or so
24 war zones for RTE, the political beat. I am a
25 generalist though and currently I make documentaries 15:12
26 for television and report on the, mainly on the Drive
27 Time programme on radio and fill in for Joe Duffy on
28 occasions on Liveline.

29 471 Q. And I think on December 17th of 2013 were you

1 presenting, or a presenter on Crimeline?

2 A. I was a co-presenter on Crimecall with Gráinne Seoige.

3 472 Q. Crimecall, sorry. And I think that a disagreement you
4 say arose at a production meeting between members of An
5 Garda Síochána and yourself and your co-presenter, 15:13
6 Gráinne Seoige, is that right?

7 A. Yes, Andrew McLindon, the Director of Communications
8 for An Garda Síochána, arrived at that December 17th
9 production meeting ahead of what was to be a
10 prerecorded interview with then Commissioner Martin 15:13
11 Callinan, which was an annual feature in the programme.
12 Mr. McLindon presented myself and Gráinne, though it
13 was to be Gráinne who was to conduct the interview,
14 presented us with a list of questions, which was,
15 frankly, completely unheard of before. I had never 15:14
16 experienced anything of the kind before. I had
17 certainly experienced people try to influence the
18 direction of an interview, but to so baldly hand a list
19 of questions, some of which were, quite frankly, so far
20 removed from public interest that it was almost 15:14
21 comical. It might not have been the first question,
22 but certainly high up on the list was that he wanted to
23 talk about the changed Garda roster. Both myself and
24 Gráinne suggested to them at the time that (a) these
25 were not items that were of interest to the public, (b) 15:14
26 this was a bit of a presumption giving us questions to
27 can ask him, and (c), most importantly, when there were
28 issues like penalty points, closure of rural Garda
29 stations and his own response to the findings of the

1 report of the Smithwick Tribunal that perhaps these
2 were issues that he would also like to address.

3 473 Q. You refer to Mr. McLindon there; was Superintendent
4 David Taylor also party to the conversation?

5 A. I really wanted to help the Tribunal on this, I have 15:15
6 wracked my brains on it. I cannot say for certainty
7 that David Taylor was there for the entirety of that
8 meeting that day. If he was there for the part at
9 which the row arose, because it became quite febrile,
10 quite heated in the room with a number of Gardaí 15:15
11 shouting at myself and Gráinne, he wasn't one of them.
12 He was silent. He only said to me sometime after that
13 meeting, which I do have a clear recollection, 'you can
14 forget about trying to get the boss to answer questions
15 on penalty points, it's just not going to happen'. 15:15

16 474 Q. Yes. I think that in particular you argued that the
17 allegations about the penalty points that had been
18 raised by Sergeant Maurice McCabe was something that
19 was of enormous public interest and concern and should
20 be addressed by the Commissioner, is that right? 15:16

21 A. I placed equal emphasis at the time on the closure of
22 rural Garda stations and the penalty points as being
23 the two things that in the public mind, when they
24 thought of An Garda Síochána, that December 2013, those
25 were the things that they would want to hear answers 15:16
26 on.

27 475 Q. And I think that the Garda Press Office personnel
28 indicated that there weren't any circumstances under
29 which the Commissioner would address the topic of

1 penalty points, is that right?

2 A. I can't remember if it was specifically John Ferris,
3 I know that Karl Heller was also there, Dermot Nolan
4 and, as I said, David Taylor for at least part of the
5 meeting. which individual said that this wasn't going 15:16
6 to happen, I can't remember, but it was a pretty much
7 united face. The message coming back from Phoenix Park
8 to the production meeting was: Hell will freeze over
9 before Commissioner Callinan answers any questions on
10 Crimecall about penalty points. 15:17

11 476 Q. And that's the way the matter rested. But the show
12 wasn't called off, was it?

13 A. Well, the matter didn't rest quite there. After the
14 meeting, because my colleague, Gráinne Seoige, was a
15 freelancer, she was in a considerably more vulnerable 15:17
16 position than I was as an RTE staff member. She was
17 quite happy for me to take the lead, as it were, in
18 negotiations on this, but we were both ad idem
19 throughout. Our position was if An Garda Síochána's
20 requirement or prerequisite of the Commissioner coming 15:18
21 to give this interview is that we ask the questions
22 that have been scripted for us, we won't be going on
23 air this evening, we will not be presenting the
24 programme. And that was where matters rested at the
25 conclusion of that meeting. 15:18

26 477 Q. What time was that meeting at, do you recall?

27 A. It used to start at nine o'clock in the morning and
28 I think it probably would have concluded 11, 11:30,
29 something like that.

1 478 Q. The next matter you deal with is the Commissioner
2 arriving in RTE?
3 CHAIRMAN: Is it the same day, I wonder, Mr. Murrinan?
4 A. It is, yes.
5 CHAIRMAN: Yes. So it's the morning and the afternoon. 15:18
6 A. It might be helpful to you though, Chairman, to know
7 that in the interim Garda Headquarters was incorrectly
8 informed that myself and Gráinne had agreed to ask the
9 questions that had been supplied to us by somebody on
10 the independent producer, the independent production 15:18
11 company staff, I don't know who. But it was incorrect.
12 So it put us in an invidious situation, it put RTE in
13 an invidious situation in that the Gardaí thought at a
14 very late date before the Commissioner arrived out that
15 the matter had been resolved and smoothed over, when in 15:19
16 fact it hadn't.

17 479 Q. MR. MARRINAN: All right. Well, you have cleared that
18 up because it was an obvious difference between your
19 statement and what's been suggested by former
20 Commissioner Callinan. But as far as the Commissioner 15:19
21 would have been concerned, arriving in RTE the same
22 day, what hour of the evening would he arrive there at?
23 A. To my slightly uncertain recollection, it was a
24 prerecorded item definitely, but it would have been
25 around about six o'clock, let's say tea time, with the 15:19
26 programme due to go on air at 10:30.

27 480 Q. As far as he would have been concerned at that point in
28 time, he would have thought the matter had been ironed
29 out, is that right?

1 A. Well, my answer is informed by having read the
2 transcripts of his evidence to the Tribunal. Certainly
3 on the day and at the time he knew that I wanted to
4 talk to him and he knew that I was uncomfortable to say
5 the least with the state of affairs that had been 15:20
6 presented to us.

7 481 Q. All right. So did you speak to him?

8 A. I did. I was, as Mr. Callinan has said in his own
9 evidence, I was talking to somebody in the corridor
10 outside the studios, who was actually not the make-up 15:20
11 artist that he identified but was actually my boss, the
12 commissioning editor of factual programmes, Niamh
13 O'Connor. And when I saw the Commissioner there I made
14 a beeline for him. A number of Gardaí, some uniformed,
15 actually moved to prevent me from talking to him, but 15:20
16 Niamh O'Connor placed herself between me and them and
17 reminded them gently that I could talk to whoever
18 I wanted to.

19
20 I took the Commissioner aside, I wished him happy 15:21
21 Christmas and a good evening, thanked him for coming
22 out and said that he knew that there was some
23 controversy and I wondered would he give me a few
24 minutes to address it. I set out -- sorry.

25 482 Q. Just before you go on to describe what happened, and 15:21
26 the conversation you had with the Commissioner, I am
27 just trying to get a mood and atmosphere of what your
28 expectation was at the time. I mean you have described
29 a meeting in the morning where there are raised voices

1 and members of An Garda Síochána and the team shouting
2 at yourself and your co-presenter. That's a very
3 hostile environment for you to be in?

4 A. It was very hostile. It was very, very pressurised.
5 I should put on record perhaps that the people who 15:21
6 shouted at me subsequently apologised and realised that
7 they were out of order. But on that evening, it was
8 perhaps a measure of Martin Callinan's reluctance to
9 talk about the penalty points issue that was reflected
10 in the stone wall that myself and Gráinne were greeted 15:22
11 with in trying to make what I thought were very
12 reasonable arguments about the credibility of the
13 interview, the Commissioner's own credibility in coming
14 to RTE, in giving RTE an interview in which he was
15 going to talk about the changes to the Garda roster and 15:22
16 not something like the penalty points.

17 483 Q. Yeah, no, I understand. But again you've given a
18 fairly descriptive account of going to try to talk to
19 the Commissioner and almost being physically prevented
20 from doing so. I mean, was it as bad as that? 15:22

21 A. It was febrile, yes, it was certainly very tense.
22 Because it had just come to everybody's attention again
23 that myself and Gráinne had not made the agreement that
24 was being said that we had made. We had absolutely not
25 promised to knuckle down, as had been suggested, and 15:23
26 just ask the questions that we had been supplied with.
27 We said I'm sorry, we're both journalists, we should be
28 drummed out of our profession if we were to do this.

29 484 Q. So you talk privately with the Commissioner and out of

1 earshot of everybody else?

2 A. Yeah, I moved a little bit further down the corridor.
3 There was certainly quite a number of people present,
4 but none of them would have been able to hear the
5 conversation, because I was deliberately discreet about 15:23
6 it. I figured that I had a job of work to do to
7 persuade the Commissioner, I didn't want to embarrass
8 him publicly, I figured that a discreet chat might be
9 the best way of doing that.

10 485 Q. Would you just take up the narrative from there? 15:23

11 A. Certainly. I set out my stall in the terms I already
12 have. I said if the interview and indeed the
13 Commissioner was to have any credibility then these
14 were issues that really needed to be addressed and that
15 the proposed talking points were of absolutely no 15:24
16 interest and would do neither him nor the programme nor
17 RTE any service. He, his response was to immediately
18 suggest that we were off record, which I neither
19 assented to nor disagreed with. And in spite of the
20 fact that I had not mentioned the names John Wilson or 15:24
21 Maurice McCabe, that was his starting point in
22 responding to these issues.

23
24 He said -- he didn't say very much about John Wilson,
25 I can't remember his exact words but he more or less 15:24
26 dismissed John Wilson with kind of a shake of the hand
27 and then concentrated on Maurice McCabe and said 'this
28 man has issues, he has some well known grievances, well
29 known within An Garda Síochána and there's all kinds of

1 issues there, Philip, that I can't talk to you about;
2 there are psychological, psychiatric issues with this
3 man and there's more that I could tell you, but
4 I won't, there's an awful lot worse that I could tell
5 you, the worst possible kind of things, but we'll just 15:25
6 leave it there'.

7 486 Q. Obviously one doesn't expect you to remember the
8 conversation verbatim, but is that a very close recall
9 of what the Commissioner actually said to you?

10 A. I was so shocked by what I was hearing that, yes, 15:25
11 absolutely. And, as I said, I'm a reporter for 30
12 years, I have been recording, taking notes of
13 conversations and reproducing them.

14 487 Q. He said that McCabe was a troubled individual and that
15 he had a lot of psychological issues and psychiatric? 15:25

16 A. Psychological slash psychiatric issues.

17 488 Q. And that he claimed that McCabe was motivated by a set
18 of grievances against Garda management and that he was
19 famous within An Garda Síochána for this.

20 A. (Witness Nods) 15:26

21 489 Q. And that he warned you that McCabe was not to be
22 trusted and went on to add that there were other things
23 he could tell you about him, horrific things is what
24 you have said in quotation marks in your statement?

25 A. As far as I remember it was actually the most horrific 15:26
26 kind of things, which I didn't believe. I did not
27 believe what I was being told right from the very
28 start. I of course can't determine whether
29 Mr. Callinan believed what he was telling me was

1 actually the truth, but, suffice it to say from my
2 point of view, I didn't believe what I was hearing.
3 I felt that it was a smokescreen that was being erected
4 to deflect attention from the penalty points issue,
5 which he clearly didn't want to answer questions about. 15:27

6 490 Q. When he said horrific things, the worst kind of thing,
7 as is in your statement in quotation marks, what did
8 you think that that could possibly refer to?

9 A. Well, I knew that there was no suggestion of either
10 murder or genocide attached to Maurice McCabe, so my 15:27
11 imagination went to where I presumed it was being
12 directed to an allegation of child sexual abuse or rape
13 perhaps.

14 491 Q. Had you heard that in any other quarters or by way of
15 rumour? 15:27

16 A. Never before.

17 492 Q. How did you regard what the Commissioner was saying to
18 you at the time?

19 A. I didn't. I had no time for it. I just -- my
20 estimation of it was that it was a reluctant 15:27
21 interviewee trying to wriggle out of being held to
22 account on an issue that caused him personal
23 discomfort.

24 493 Q. You go on then to say in your statement: "As our
25 conversation was ending, he added that if there was 15:28
26 anything else I wanted to know about Maurice McCabe or
27 the penalty points issue that I should ask
28 Superintendent Dave Taylor from the Garda Press Office,
29 who was also present that evening."

1 A. For the sake of completeness, Chairman, I should also
2 add that before he said that to me the Commissioner
3 actually agreed with me that presenting the list of
4 questions was a presumption that shouldn't have been
5 made and that he would deal with the issues that I had 15:28
6 brought up as being of concern, but that he would only
7 deal with them in his own way. I thought that that was
8 the graceful position, or moment to withdraw and say
9 'all right, we have agreement, we have some limited
10 form of agreement'. And I thanked him for that, again 15:29
11 wished him Merry Christmas and then he said as a
12 parting shot: 'If there's anything else you want to
13 know about this or any of the other stuff we've been
14 talking about, you can talk to David Taylor over
15 there', who was standing a few feet away in the 15:29
16 corridor.

17 494 Q. And then almost immediately afterwards you say that
18 Superintendent Taylor, you use the expression
19 "button-holed" you?

20 A. Yes. 15:29

21 495 Q. What do you mean by that?

22 A. Everybody was moving behind the Commissioner down
23 towards studio four where the pre-recorded interview
24 was to be conducted. I didn't really have that much
25 interest in watching it, I was going in the other 15:29
26 direction. And as I passed him, David Taylor didn't
27 physically button-hole me, but stopped me and said 'Now
28 do you understand the issues related to Maurice McCabe
29 and the penalty points' -- sorry, 'Do you understand

1 the issue with Maurice McCabe and the penalty points?'
2 496 Q. Are you sure that he made reference to Maurice McCabe
3 and the penalty points?
4 A. Yes. No, I'm absolutely sure of this. And I know that
5 it has become a matter that the Tribunal has had to 15:30
6 give considerable deliberation to. To be clear, it did
7 not mean, in my mind, that he knew the content of
8 myself and the then Commissioner's conversation, only
9 that he knew that the penalty points was the issue that
10 I had been pressing him, David Taylor, the hardest on 15:30
11 during the course of our earlier conversations. So --
12 and he had been telling me that there was no way that
13 Martin Callinan was going to answer questions about
14 penalty points. So insofar as -- the explanation
15 perhaps for what he said lies in that myself and David 15:30
16 Taylor had been talking about penalty points, not about
17 Maurice McCabe beforehand.
18 497 Q. Well, I don't really understand that.
19 A. Sorry.
20 498 Q. Because I know the explanation that you're giving in 15:31
21 relation to it and having considered it, but in those
22 circumstances perhaps one might've expected
23 Superintendent Taylor merely to say 'Now you know what
24 the issue in relation to penalty points is'.
25 A. Perhaps. 15:31
26 499 Q. Or alternatively, that 'Now you know what the position
27 is in relation to John Wilson, Maurice McCabe and
28 penalty points', or alternatively 'Now you know what
29 the position is in respect of the whistleblowers and

1 penalty points'. But your recollection seems quite
2 firm in this regard that he referred to 'Now you know
3 what the position in relation to Maurice McCabe and
4 penalty points is'?

5 A. Yes, I concede your point absolutely. But I did not 15:31
6 feel at that time that that question -- sorry, that
7 statement from him betrayed any intimate knowledge of
8 myself and the Commissioner's conversation, only that
9 he knew in broad brush strokes that myself and the
10 Commissioner would've been talking about penalty 15:32
11 points, and indeed Maurice McCabe as it turns out.

12 500 Q. Well, is it possible, looking back at this in
13 hindsight, that he didn't in fact mention Maurice
14 McCabe at all?

15 A. No, absolutely not. 15:32

16 501 Q. Well, then is it also possible that he overheard the
17 conversation?

18 A. No. Well, he might have very, very good hearing, but I
19 doubt it, because myself and the former Commissioner
20 were stooped very low and in a, I suppose what you 15:32
21 might call hugger mugger type conversation.

22 502 Q. Or is it possible that he knew in advance that the
23 Commissioner was going to say what he said about
24 Maurice McCabe?

25 A. I can't exclude that possibility, but I can't be of any 15:32
26 help to the Tribunal on it.

27 503 Q. But in any event, did you take any action on foot of
28 what had been said to you?

29 A. There and then at that time, no, I didn't. Subsequent

1 to that, I discussed what I had heard with my editors.
2 And we knew that it was a story that was never going to
3 go to air, because even if I managed to establish
4 beyond any doubt whatsoever that the allegations
5 against Maurice McCabe weren't true, I would then never 15:33
6 do a report on them, because to even utter the
7 allegations and to disprove them we would've decided
8 would've had a devastating impact on Maurice McCabe and
9 his family.

10
11 But knowing that it was a zero sum game, I still made
12 contact with Maurice McCabe, I went, I met him, I
13 reluctantly put the allegations to him. He wasn't as
14 shocked as I thought that he might be, because he had
15 obviously heard them before. We talked at some length 15:33
16 about where they might've come from. And although
17 Maurice McCabe wasn't and didn't provide me with any
18 documentary evidence to acquit himself of this
19 allegation, I believed him. I, following just pure gut
20 instinct, nothing else, decided that his rebuttal of 15:34
21 what Martin Callinan was saying was so sincere I would
22 have found it very hard to doubt. But I never, as I
23 said, broadcast anything on it, because it would have
24 been devastating to his family, to his wife to have
25 even issued his denial of it. 15:34

26 504 Q. Okay. So after the conversation, the issue of the
27 allegation, or the suggestions that were being made to
28 you about Maurice McCabe, it was a live issue in your
29 mind and you'd discussed it with your producers, is

1 that right?

2 A. well, on the day it wasn't as live, frankly, as getting
3 the programme on the air. That was the thing that most
4 concerned me, that was really the only thing that
5 concerned me. 15:35

6 505 Q. well, when did you discuss what had been said to you
7 with your producers?

8 A. This is where I have to make the distinction between my
9 job in radio and my job in television. I didn't
10 discuss the allegations with the producers of 15:35
11 Crimecall, I brought them to the attention of my
12 producer in charge in radio in the subsequent days and
13 weeks.

14 506 Q. who is that?

15 A. Mr. Tom Donnelly at the time. 15:35

16 507 Q. And did you discuss with your co presenter, Gráinne
17 Seoige what had been said to you by the Commissioner?

18 A. Only insofar as I said to her before she went to do her
19 interview 'You can ask him the questions now'.
20 Subsequently I said to her 'You're not going to believe 15:35
21 what he said to me'. And I laid it out and she was as
22 shocked and appalled by what she heard as I was.

23 508 Q. And was that after the show had been aired?

24 A. No, it actually wasn't. Because the day had been so
25 stressful to her in particular, I decided not to add to 15:36
26 the burden before we went and did a live show at 10:30.
27 I kept the information to myself until a day or two
28 later.

29 509 Q. Okay. So a couple of days later you share what had

1 been said to you by Commissioner Callinan in relation
2 to Maurice McCabe with Gráinne Seoige and also with
3 Mr. O'Donnell, is that right?

4 A. Donnelly.

5 510 Q. Donnelly, sorry. 15:36

6 A. Tom Donnelly, yes.

7 511 Q. And other than those two, did you share it with anybody
8 else?

9 A. I shared it - I'm afraid I can't help the Tribunal by
10 putting a date on it - I shared it with my 15:37
11 commissioning editor for Crimecall, Niamh O'Connor.

12 512 Q. And sort of in what year would that have been? Was it
13 that year or was it the following year, 2014 or 2015?

14 A. It had probably, time had probably passed on into 15:37
15 January 2014. Because not that long after the
16 programme on 17th December, I took leave around
17 Christmas and I wouldn't have been back in until
18 January.

19 513 Q. All right. And there matters rested until you made a
20 statement to this Tribunal on 13th March of last year, 15:37
21 isn't that right?

22 A. Correct.

23 514 Q. Why did you decide to come forward in relation to this?

24 A. Quite simply, the Tribunal asked. And I knew that I 15:37
25 was in possession of what appeared to be a particularly
26 germane piece of information or evidence to the terms
27 of reference of the Tribunal. I wrestled briefly with
28 whether there was actually an issue of journalistic
29 privilege or confidentiality that I should observe

1 here, but ultimately I decided that Martin Callinan, on
2 the night of December 17th, had not been a source, a
3 journalistic source of information, he had been a
4 reluctant interviewee who did not want to be held to
5 account, and under those circumstances, journalistic 15:38
6 privilege didn't apply in my mind.

7 515 Q. You're aware of the fact that former Commissioner
8 Callinan has given evidence and also provided a
9 statement to the Tribunal. And if we could just have
10 that up on the screen, it's page 695, please. The 15:38
11 introduction doesn't appear to be all that relevant to
12 the meeting, you don't seem to be at odds in relation
13 to it. He says:

14
15 "I met with Philip Boucher-Hayes" - this is in the 15:39
16 fourth paragraph down - "in a corridor at RTÉ on the
17 night of my scheduled appeared on Crimecall. He
18 appeared to me to be upset and disappointed that I
19 would not engage on the two topics mentioned, but
20 particularly the Smithwick report." 15:39

21
22 well, do you recall, was there any discussion in
23 relation to the Smithwick report?

24 A. In fact it was, of the three things that I raised,
25 closure of rural Garda stations, penalty points and the 15:39
26 Smithwick report, it was the one that I was least
27 concerned with holding him to account on in the space
28 of a what was going to be five and a half minute long
29 interview.

1 516 Q. And was your demeanour one of being upset?
2 A. I don't do upset.
3 517 Q. Right. He then goes on to say:
4
5 "He stated" - and this is you - "that he was an 15:40
6 experienced journalist and he felt it was important
7 that I address these issues in the interview. I
8 replied that there would be ample opportunities when I
9 was in public elsewhere to address these matters."
10 15:40
11 Do you recall --
12 A. That was a point that was made on his behalf to me
13 earlier on at our production meeting and by David
14 Taylor. It wasn't made by him to me in the course of
15 that conversation, but yes, it had been made. 15:40
16 518 Q. He goes on in the next paragraph:
17
18 "He asked me if I would be willing to answer questions
19 about the penalty points issue and the two
20 whistleblowers, Sergeant McCabe and John Wilson." 15:40
21 A. I asked him would he be willing to answer questions
22 about the penalty points. I never raised John Wilson
23 or Maurice McCabe's names, he was the first person to
24 do that.
25 519 Q. Well, you see, he's suggesting that you were the first 15:40
26 person to introduce the names of Sergeant McCabe and
27 John Wilson.
28 A. I stand by my evidence.
29 520 Q. He then goes on to say:

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"I indicated that John Wilson had made a complaint against an inspector who had allegedly wrongfully cancelled around 20 fixed charge penalty notices."

15:41

He then goes on to say that this matter was investigated by a chief superintendent, who in turn submitted a file to the Director of Public Prosecutions on his investigation. No prosecution arose in the matter. Do you recall him saying that to you about John Wilson?

15:41

A. As I said to you, I think, already, I'm somewhat unclear what he said about John Wilson, but I know that it was very brief, it certainly wasn't as detailed as that. I was more struck by the non-verbal gesture, the flicking of his hand (INDICATING) when talking about John Wilson and he moved on to Maurice McCabe.

15:41

521 Q. It then continues:

"I further indicated that Sergeant McCabe had submitted a list of allegations around the wrongful cancellation of fixed charge notices against several officers and these allegations were investigated by Assistant Commissioner John O'Mahony, as he was commonly known."

15:42

Do you recall John O'Mahony's name being mentioned?

A. No.

522 Q. "I did not speak" - to quote your statement - "at some length on Sergeant McCabe's character as indicated."

1 A. I stand by my evidence.

2 523 Q. He then goes on to say:

3

4 "I did not state that Sergeant McCabe had a lot of
5 psychological issues and psychiatric issues and was 15:42
6 motivated by a set of grievances against Garda
7 management and that he was famous within An Garda
8 Síochána for this. I did not indicate to Philip
9 Boucher-Hayes that Sergeant McCabe was not to be
10 trusted, nor did I state that there was other things 15:42
11 that I could tell him about, namely horrific things,
12 the worst kind of things. I do not know what Philip
13 Boucher-Hayes is referring to."

14

15 when I was asking him questions when he was here at the 15:43
16 Tribunal, I put it to him that there was no possibility
17 that perhaps people were misinterpreting the
18 conversation. You're at total odds with each other in
19 relation to this conversation, isn't that right?

20 A. I'm afraid so, yes. But my evidence remains unchanged. 15:43

21 524 Q. I think he goes on in the last paragraph to say that
22 the first he heard of this was on 30th May 2017 when he
23 read an article in a newspaper.

24 A. Well, I actually attempted to contact the Garda
25 Commissioner on foot of having talked to Maurice 15:43
26 McCabe, I made strenuous efforts to re-open the
27 conversation about Maurice McCabe with him, including
28 writing to the Chief State solicitor's office in the
29 hope that they would pass on the correspondence, but it

1 was never replied to.

2 525 Q. When did you have your conversation with Sergeant
3 McCabe?

4 A. I can't put a date on it, but I would imagine it was in
5 the summer of 2014. Now, sorry, we had a number of 15:44
6 telephone conversations where I initially contacted him
7 to try and clarify details. Very often, because he was
8 still a serving Sergeant, he wasn't in a position to
9 help me, but he was very friendly, he was very open to
10 talking in general terms. But I travelled to meet him 15:44
11 first, I think, in the summer of 2014, I can't put a
12 date on it I'm afraid.

13 526 Q. And you say you asked him about these allegations, is
14 that right?

15 A. I felt that I owed it to him, to myself, to establish 15:45
16 where this could have come from, was there any truth to
17 it, yes.

18 527 Q. Were you familiar at all with an article that was
19 written by Paul Williams on 12th April 2014?

20 A. No, I actually wasn't, only subsequently. But at the 15:45
21 time that I had met Maurice McCabe, I wasn't, no.

22 528 Q. And the conversation with Maurice McCabe, just give us
23 again the content of that?

24 A. I put it to him what I had heard --

25 529 Q. Exactly what you've told us here today? 15:45

26 A. Well, no, initially I didn't tell him that the
27 allegation had been made by the Garda Commissioner. I
28 thought that that would be quite shocking. I wanted to
29 get his general reaction to the allegation first before

1 I told him that it was coming from the most senior
2 guard in the country. And he rebutted it. He told me
3 the details of -- he didn't have any documents to
4 support any of this, but I remember he told me insofar
5 as he was able to the fact that he had gotten 15:46
6 essentially a clean bill of health from the DPP and
7 that the matter was one that hadn't been pursued, even
8 by his colleagues who were, he felt, aggrieved towards
9 him, it hadn't been pursued any further.

10 530 Q. Okay. And did you in fact report on the Maurice McCabe 15:46
11 story --

12 A. No.

13 531 Q. -- thereafter?

14 A. No, as I said to you already, I didn't report on any of
15 this. To be honest, the sexual abuse allegations were 15:46
16 really very much secondary to what my main interest
17 was, was the ten allegations of malpractice or
18 corruption that were being considered by the O'Higgins
19 Commission, that had been considered by Sean Guerin and
20 penalty points. If you like, the allegation of sexual 15:47
21 abuse informed my judgment on Maurice McCabe's
22 credibility, I wanted to see how he dealt with it, but
23 I had never really much intention, frankly, of
24 reporting it.

25 MR. MARRINAN: Okay, would you answer any questions? 15:47

26 A. Thank you.

27 MR. McDOWELL: I've no questions, Chairman.

28

29 THE WITNESS, WAS CROSS-EXAMINED BY MS. BURNS AS

1 FOLLOWS:

2

3 532 Q. MS. BURNS: Mr. Boucher-Hayes, my name is Tara Burns
4 and I appear on behalf of Superintendent Taylor. Just
5 in relation to your evidence, it's clear that there were 15:47
6 two meetings that day, it was an early morning meeting
7 which, as you've indicated, was at about nine o'clock
8 in the morning?

9 A. Well, there was actually about five or six. But if you
10 mean full meetings, yes, the first meeting was at nine 15:47
11 a.m.

12 533 Q. Sorry, maybe then I've misunderstood. There were two
13 visits by members of An Garda Síochána to RTÉ that day
14 and within that there were five to six meetings, or
15 were there several visits throughout the day? 15:48

16 A. Various members of An Garda Síochána would have been
17 floating around RTÉ during the course of the day - I've
18 already told you Superintendent Karl Heller, John
19 Ferris from the Press Office, David Taylor, Dermot
20 Nolan - and I would have had, maybe "encounters" is a 15:48
21 better term rather than "meetings" with them throughout
22 the course of that day, yes.

23 534 Q. I see. And I think you also referred to Mr. McLindon
24 having been there in the morning time as well --

25 A. Yes. 15:48

26 535 Q. -- is that correct?

27 A. Yes.

28 536 Q. I see. Now, in terms of Superintendent Taylor, his
29 instructions to us are that he didn't attend until

1 later in the day, he wasn't present for the time when
2 the list of questions was provided to you by
3 Mr. McLindon.

4 A. Well, that would explain my uncertain recollection of
5 him being there. Because I certainly don't remember
6 him contributing to the conversation. 15:49

7 537 Q. I see. Now, in relation to the interactions that you
8 have had with the various members from An Garda
9 Síochána that you've referred to, did anybody, in the
10 course of your early interactions during the day, say
11 anything to you along the lines of what you say
12 Mr. Callinan said to you later in the day? 15:49

13 A. Not at all.

14 538 Q. So did Mr. McLindon make any reference to Maurice
15 McCabe having psychological or psychiatric issues? 15:49

16 A. I'm open to correction on this, but I don't remember
17 anybody mentioning either Maurice McCabe or John Wilson
18 by name until I met the Commissioner.

19 539 Q. I see. And in terms of any references to psychiatric
20 problems or psychological issues that Sergeant McCabe
21 had, did anybody mention those to you earlier in the
22 day? 15:49

23 A. None at all.

24 540 Q. Did David Taylor mention those to you when you spoke to
25 him in the course of the day? 15:49

26 A. None at all. My only interaction prior to the
27 Commissioner arriving with David Taylor was him saying
28 to me 'There is no way the boss is going to answer any
29 questions on penalty points, you may as well give up

1 now'.

2 541 Q. I see. Now, in terms of Superintendent Taylor's
3 arrival at RTE, his instructions are that he arrived
4 that evening, but he arrived approximately 30 minutes
5 before the Commissioner. Are you aware of that? 15:50

6 A. Well, I had to have met him at some point.

7 542 Q. Yes, yes. No, and he agrees that he spoke with you in
8 relation to the penalty points issue, I've no dispute
9 in relation to what you've said about that. But his
10 instructions are that he arrived himself and that 15:50
11 Martin Callinan then arrived approximately 30 minutes
12 later, and the reason for that was that he would
13 arrange the protocol in terms of somebody from RTE
14 coming to welcome Martin Callinan. Does that make any
15 sense? 15:50

16 A. If that's his evidence. I have absolutely no -- I
17 can't be of any assistance to the Tribunal on that I'm
18 afraid.

19 543 Q. I see. So then in terms of you meeting Mr. Callinan -
20 you've obviously given your evidence in relation to 15:51
21 that - it seems that you're quite clear that this
22 meeting with Mr. Callinan was held away from other
23 people?

24 A. Correct.

25 544 Q. And you seem to place two reasons for that; firstly, 15:51
26 that you wanted to speak to him in relation to the
27 issue that arose, but you've also stated in your
28 evidence you didn't want to embarrass him in relation
29 to raising this issue?

1 A. I wanted a resolution to the matter and I didn't think
2 that that was going to be achieved by conducting our
3 diplomacy down a loudhailer.

4 545 Q. I see. Now, you have indicated that Superintendent
5 Taylor was somewhere around that vicinity, is that 15:51
6 right?

7 A. Yes, I would say he was within 20 feet of us.

8 546 Q. I see. But your view is that he'd have to have very
9 good hearing to hear what the conversation was?

10 A. It was a noisy corridor, there was a lot of people 15:51
11 coming and going. The entire production staff and
12 Gardaí involved in Crimecall is 40 or 50 people, they
13 were all chatting, it was Christmas, it was,
14 notwithstanding the hostility and the rows from earlier
15 on in the day, the atmosphere was convivial. He 15:52
16 would've had a very hard job making out what we were
17 talking about.

18 547 Q. I see. When you finished your conversation with
19 Mr. Callinan, did you notice whether he spoke to
20 Superintendent Taylor? 15:52

21 A. At any point or straightaway?

22 548 Q. No, immediately afterwards.

23 A. No, my evidence was, you'll remember, that having
24 concluded his conversation with me, Martin Callinan
25 turned and went with the producers and other Gardaí 15:52
26 into the studio and David Taylor was behind him. And
27 that was the point at which Mr. Taylor button-holed me.

28 549 Q. I see. So you think that from what you saw, it's
29 impossible that spoke to Superintendent Taylor before

1 Superintendent Taylor spoke to you?

2 A. It's impossible did you say?

3 550 Q. Impossible from what your recollection of events are.

4 A. For Mr. Taylor to have spoken to Mr. Callinan after our
5 conversation? Yes, it would've been impossible. 15:53

6 551 Q. In relation then to what Superintendent Taylor said to
7 you, your recollection of that is that he raised the
8 penalty points issue and he also spoke of Sergeant
9 McCabe.

10 A. Yes. 15:53

11 552 Q. I see. Superintendent Taylor's recollection of this is
12 that most certainly he referred to mentioning the
13 penalty point issue with you, however he doesn't
14 recollect speaking about Sergeant McCabe in that
15 discussion. 15:53

16 A. 'Do you see the whole problem with McCabe and the
17 penalty points' was what he said to me.

18 553 Q. He accepts that he may have mentioned it, but if he
19 did, he did it in the context of discussing the penalty
20 points issue with you. 15:53

21 A. If that's his evidence, that's his evidence.

22 554 Q. And in terms of what you said, and correct me if I'm
23 wrong, in terms of your recollection of that
24 conversation between yourself and Superintendent
25 Taylor -- 15:53

26 A. It wasn't a conversation.

27 555 Q. A comment by Superintendent Taylor to you. Your view
28 of it seems to be that he was referring to the penalty
29 points issue and the problem with Sergeant McCabe; is

1 that a fair assessment of what you've said?

2 A. He was referring to what had been contentious
3 throughout the course of the day, yes.

4 556 Q. Yes.

5 A. The penalty points issue. 15:54

6 557 Q. Yes.

7 A. But he did mention Maurice McCabe by name.

8 558 Q. I see.

9 A. Did he know specifically at that time that I had been
10 given all of this poisonous toxic information about 15:54
11 Maurice McCabe? I don't know.

12 559 Q. Well, he certainly couldn't have found out there,
13 because as you've indicated, he didn't speak to Martin
14 Callinan after Martin Callinan spoke to you.

15 A. which doesn't exclude the possibility that Martin 15:54
16 Callinan and he had discussed it long before that.

17 560 Q. Of course. But in terms of what in fact happened on
18 the day, certainly it would've been impossible for
19 David Taylor to have heard that from Martin Callinan,
20 in light of how quickly he speaks to you? 15:54

21 A. In that window --

22 561 Q. Yes.

23 A. -- absolutely. But Martin Callinan and David Taylor
24 were talking before I talked to Martin Callinan.

25 562 Q. Yes. Now, in terms of Superintendent Taylor saying 15:55
26 anything further to you, he didn't make any further
27 comment in relation to Sergeant McCabe, is that
28 correct?

29 A. Ever?

1 563 Q. No, at that time when he spoke to you.
2 A. No.
3 564 Q. He didn't make any reference to any sexual
4 allegation --
5 A. No. 15:55
6 565 Q. -- occurring previously?
7 A. He never did actually.
8 566 Q. And in relation to any discussion that you had with
9 Superintendent Taylor at any stage during the day, did
10 he at any stage refer to the fact that Sergeant McCabe 15:55
11 had psychological or psychiatric problems?
12 A. No, he didn't.
13 567 Q. Or that they were the most horrific things that he
14 could tell you about him?
15 A. No he didn't. 15:55
16 MS. BURNS: I see. Thank you very much,
17 Mr. Boucher-Hayes.
18 CHAIRMAN: You wanted to go last, I presume?
19 MR. GILLANE: Yes, if I'm going at all.
20 CHAIRMAN: If there's anything to be asked, yes. 15:56
21 CHAIRMAN: Mr. Ó Muircheartaigh?
22
23 THE WITNESS WAS CROSS-EXAMINED BY MR Ó MUI RCHEARTAIGH
24 AS FOLLOWS:
25 15:56
26 568 Q. MR. Ó MUI RCHEARTAIGH: Just one or two questions about
27 the dates. This interview -- sorry, I'm Fíonán Ó
28 Muircheartaigh and I represent Alison O'Reilly, a
29 journalist with the Irish Mail. The interview was for

1 the Christmas programme, so it was in December 2013?
2 A. 17th December.
3 569 Q. Sorry?
4 A. 17th December.
5 570 Q. 17th December. And then you followed it up later with 15:56
6 Maurice McCabe. Was that -- the question I really
7 wanted to ask, was that before or after the end of
8 February or the beginning of March 2014?
9 A. Oh, after. It was summer time.
10 MR. Ó MUI RCHEARTAIGH: Thank you very much. 15:56
11
12 THE WITNESS, WAS CROSS-EXAMINED BY MR. WHELAN AS
13 FOLLOWS:
14
15 571 Q. MR. WHELAN: Mr. Boucher-Hayes, Noel Whelan. I have 15:56
16 some questions on behalf of former Commissioner Martin
17 Callinan. Can I ask you first to clarify, did you tell
18 Maurice McCabe that the Garda Commissioner had said
19 these things to you?
20 A. Yes. 15:57
21 572 Q. When did you do that?
22 A. Summer of 2014.
23 573 Q. Have you any explanation why you haven't told the
24 Tribunal that before now?
25 A. It's not germane to the terms of reference. 15:57
26 574 Q. It's not germane to the terms of reference?
27 A. No.
28 575 Q. You take a view --
29 A. Well, in terms of my evidence anyway. I mean, my

1 evidence --

2 576 Q. well, no, you take a view, is it, that the fact that
3 you had told Maurice McCabe that the Garda Commissioner
4 himself had badmouthed him to you in these terms was
5 not relevant to the terms of reference? 15:57

6 A. Yes.

7 577 Q. You put in your statement in response to the general
8 call from the Chairman when he opened the Tribunal,
9 isn't that correct?

10 A. Correct. 15:57

11 578 Q. In that statement you said nothing of having discussed
12 the matter with either, Tom Donnelly is it?

13 A. Correct.

14 579 Q. Gráinne Seoige?

15 A. Correct. 15:58

16 580 Q. And you said nothing in that statement of having
17 discussed the matter with Niamh O'Connor.

18 A. There are many other details that I provided to the
19 Tribunal today here which I didn't put in a statement
20 for, frankly, the sake of brevity, Mr. Whelan. 15:58

21 581 Q. Well, I can assure you - and you'll have covered many
22 such tribunals in your extended career, particularly in
23 the news and current affairs realm - that tribunals
24 receive thousands of statements and we find ourselves,
25 thankfully now with the help of technology, but having 15:58
26 to deal with thousands and thousands of documents.
27 Accuracy and thoroughness is the concern of the
28 Tribunal, not brevity.
29

1 Did you discuss with Tom Donnelly whether he would make
2 a statement to this Tribunal?

3 A. No.

4 582 Q. Did you discuss with Gráinne Seoige whether she would
5 make a statement to the Tribunal? 15:58

6 A. No, I didn't.

7 583 Q. Did you discuss with Niamh O'Connor whether she would
8 make a statement to this Tribunal?

9 A. Yes, in brief. But her evidence would have been so
10 tangential. She was in the corridor on the occasion of 15:59
11 the chat with former Commissioner Callinan. She would
12 have had nothing to add.

13 584 Q. Oh, so you didn't tell her what the conversation with
14 Martin Callinan had been?

15 A. Subsequent, yes. 15:59

16 585 Q. Well, when did you tell her?

17 A. I can't put a date on it. But I subsequently told her
18 maybe within a couple of weeks.

19 586 Q. Within a couple of weeks? So therefore, she had
20 evidence of direct relevance to the terms of the 15:59
21 Tribunal?

22 A. I would've considered it hearsay evidence, frankly.

23 587 Q. Well, this Tribunal has heard a lot of hearsay. This
24 Tribunal has heard a lot of evidence from journalists
25 who say other journalists said things to them that 15:59
26 wasn't something they had direct evidence of. Did you
27 discuss with Niamh O'Connor whether she would make a
28 statement to this Tribunal?

29 A. Insofar as I understood the terms of reference of the

1 Tribunal, Chairman, it was that you were looking for
2 evidence of a possible smear campaign or malignant
3 comment coming from members of An Garda Síochána about
4 Maurice McCabe. My list of people that I have
5 subsequently related my conversation with Martin 16:00
6 Callinan to, I didn't think was going to be of any help
7 to the Tribunal. If you would have liked me to have
8 included my wife in there, well, then maybe I should
9 have as well, Mr. Whelan, but it didn't seem to me to
10 be relevant. 16:00

11 588 Q. Well, if we could stay away from the melodramatic and
12 just focus on answering the questions please. Can I
13 ask you why you thought it wasn't relevant to tell the
14 Tribunal that you had told Maurice McCabe?

15 A. Because again it's hearsay. So what? 16:00

16 589 Q. Okay. So you told Maurice McCabe in the summer of
17 2014 --

18 A. It's not evidence of a smear campaign, it is only
19 evidence that I related it.

20 590 Q. You told Maurice McCabe you say now in 2014? 16:00

21 A. Mm hmm.

22 591 Q. So any concern you had about publishing the story, was
23 that abated when you had this conversation with Maurice
24 McCabe?

25 A. As I have already described, yes. 16:01

26 592 Q. And why didn't you --

27 A. No, sorry, hang on a second. Sorry, is your question
28 any concern about publishing the story was abated?

29 593 Q. Yes.

1 A. As I have said to you, from the moment that former
2 Commissioner Callinan started passing on this
3 information to me, I knew that it was something that
4 was never going to be broadcast or published. It
5 was -- it smelled to me, my intuition was that it was a 16:01
6 smokescreen, a deflection. Even if that wasn't the
7 case, it was the kind of allegation that, frankly, you
8 will never be able to prove outside of a court of law.
9 I wasn't going to be able to do that.

10 594 Q. That's the story that Maurice McCabe had been involved 16:01
11 in any sex sexual assault, which everybody knows is
12 completely untrue. That could never --

13 A. So my instinct was right.

14 595 Q. But the dramatic, significant story that a senior guard 16:02
15 was telling journalists that Maurice McCabe had
16 psychiatric or psychological problems and that he had
17 been involved in some horrendous things, that was a
18 significant story in its own right, isn't that correct?

19 A. Well, perhaps you could explain to me where in the
20 terms of reference that appears -- 16:02

21 596 Q. No, no, that's not the question.

22 A. -- because --

23 597 Q. No --

24 A. No, no, because you're asking me why I didn't relate it
25 and I'm telling you I didn't relate it because -- 16:02

26 CHAIRMAN: I think, Mr. Boucher-Hayes, it may help if I
27 explain. I suppose it's a question of somebody says
28 something to you and how do you react? And here the
29 question - and indeed it was canvassed with Prof. Kenny

1 - was if a journalist hears something, sometimes what
2 they are told in itself is a story. That's, I think,
3 the point that's being made by Mr. Whelan.

4 598 Q. MR. WHELAN: Yes. It's not why you didn't tell the
5 Tribunal. If the top cop in the land had told you some 16:02
6 horrendous things or that there were some horrendous
7 things about a serving member of An Garda Síochána,
8 arguably one of the most prominent members of An Garda
9 Síochána, that of itself is a significant story.

10 A. I didn't think it was, in terms of the evidence that I 16:03
11 was going to offer the Tribunal.

12 599 Q. No, in terms of news value. In terms of news value,
13 wasn't it a newsworthy story?

14 A. No, it was not a newsworthy story. Because it wasn't a
15 story, it was an unsubstantiated and, as it turns out, 16:03
16 malicious allegation.

17 600 Q. No, the fact that a malicious and unsubstantiated
18 allegation had been made to your very own ears by the
19 Garda Commissioner himself, that of itself was a
20 newsworthy story. 16:03

21 A. Chairman, day in, day out in what I do I hear malicious
22 and unsubstantiatable allegations in the course of
23 reporting stories, sometimes it's idle tittle tattle or
24 gossip, sometimes it's actively meant to deflect your
25 attention from a story. I don't report those, I don't 16:04
26 pass on that information. I didn't deem it relevant on
27 this occasion to do so.

28 601 Q. So why did you discuss it with your editor?

29 A. I did.

1 602 Q. why did you discuss it with your editor?
2 A. Because it was one of those facts that you stick in
3 your back pocket and you say 'Look at what Martin
4 Callinan is doing to Maurice McCabe; this may yet prove
5 to be relevant at some later point in this developing 16:04
6 dynamic story'.
7 603 Q. Okay. well, let's look at the developing dynamic
8 story, let's look at the developing dynamic story.
9 Apart, as you have set out, from television
10 presentation work that you now do on the documentary or 16:04
11 factual programmes, the meat and veg is the shift you
12 do for Drive Time, either as a reporter or occasional
13 presenter, isn't that correct?
14 A. Correct.
15 604 Q. And that requires you to, as it were, walk the politics 16:04
16 and news of the day brief, isn't that correct?
17 A. I'm a generalist, yes.
18 605 Q. A generalist, yes. But more often than not, it's
19 politics and the related stories that ae the news of
20 the day, particularly when the house is in session? 16:05
21 A. No, actually I would disagree with you.
22 606 Q. Okay. Did you, for PrimeTime, in the day itself or
23 subsequent days when you came back from leave, cover
24 Martin Callinan's appearance at the Public Accounts
25 Committee? It was the occasion when the "disgusting" 16:05
26 remark was used.
27 A. I did, yes.
28 607 Q. You covered that as a reporter?
29 A. Yes.

1 608 Q. And on that day he had said something which was
2 generally interpreted and commented, perhaps by media
3 including yourself, as maligning Maurice McCabe --
4 A. Sorry, I have to offer a correction here, Mr. Whelan;
5 I'm not sure that I reported on the day, but I 16:05
6 certainly did other journalism related to
7 Mr. Callinan's appearance subsequently.

8 609 Q. Yes, that is the way I framed the question. There was
9 an occasion when the general view was taken that the
10 Commissioner had said something maligning or derogatory 16:05
11 of Sergeant McCabe. Do you take this thing you have in
12 your back pocket out then and discuss whether you would
13 publish it?

14 A. Absolutely not. It was an unsubstantiated allegation.

15 610 Q. Did you cover the events of May 2016 when the O'Higgins 16:06
16 Commission report was published and then extracts or
17 selective extracts from the transcript of the O'Higgins
18 Commission were published and then counter-extracts, if
19 we call it that, were published? Do you remember that
20 furore in May 2016? 16:06

21 A. Yes, I did a report - I had a leaked copy of the
22 O'Higgins Commission report - I did a report on May 9th
23 and I did one, I think, two weeks earlier in March, at
24 the end of March on Drive Time.

25 611 Q. And you're very much aware that part of the narrative 16:06
26 in that coverage was that efforts had been made to
27 malign, if I could use that in the broadest sense,
28 Maurice McCabe at the O'Higgins Commission private
29 hearings?

1 A. Yes.

2 612 Q. Did you take this thing you had in your back pocket
3 where somebody, the Commissioner himself, you say, had
4 maligned Maurice McCabe to you, did you take it out and
5 consider whether you would publish it then? 16:07

6 A. It was an active consideration, but again it was an
7 unsubstantiated allegation. It was poisonous.

8 613 Q. With whom did you actively consider it or discuss it
9 then in May of 2016?

10 A. Myself. 16:07

11 614 Q. Sorry?

12 A. Myself.

13 615 Q. You talked to yourself about it? Okay. The next
14 thing -- so you discussed it -- you brought it no
15 further than your own mind, the consideration of 16:07
16 whether 'Actually, look, there's a suggestion now that
17 they were out to get him, I myself, believe it or not,
18 have direct evidence of the top Garda doing this kind
19 of thing, we have a great story here'?

20 A. Yes. No less than you do, Mr. Whelan, in arriving at 16:07
21 what angle of attack you're going to take in
22 cross-examination, you consult with yourself, you
23 consider what your options are. In drafting or drawing
24 up any report as a radio reporter, it's pretty much a
25 solitary activity. So yes, I considered the evidence, 16:08
26 I considered once again, I said 'There is nothing that
27 I can do with any of this', because even to utter a
28 denial from Maurice McCabe is going to be so
29 reputationally ruining of his children and of his wife

1 that I just did not feel comfortable going there at
2 all.

3 616 Q. I can assure you I have the benefit of better minds
4 than mine in the form of Mr. O'Higgins and Mr. Dignam
5 and others so that when issues come that are important 16:08
6 we have others we can discuss them with.

7 A. You're better resourced in the law library than we are
8 in RTÉ.

9 617 Q. Well, let me make this point; Ms. McCarthy made the
10 point this morning that of itself the suggestion that 16:08
11 the Garda Commissioner had badmouthed Maurice McCabe to
12 a journalist would be a difficult story to write, but
13 it seems you took a view it shouldn't be written or
14 published at all, and yet you were keeping it in your
15 back pocket for some purpose, the nature of which is 16:08
16 not clear. Were you keeping it in your back pocket on
17 the offside chance that a Tribunal of inquiry might be
18 set up some day or what?

19 A. Journalists are collectors of information that they
20 keep in their back pockets and publish when the time is 16:09
21 right. Frankly, I didn't want to be here giving my
22 evidence and participating in this story as a witness,
23 I find it rather frustrating that I haven't actually
24 been able to follow through in reporting this story for
25 quite some time now, because as soon as I made a 16:09
26 statement I thought that it would be inappropriate for
27 me to cover it, to cover this Tribunal's proceedings
28 any further and I withdrew from them.

29

1 But if your implication here, Mr. Whelan, where you
2 seem to be going with your line of questioning, is that
3 this allegation is one that I have kept, withheld in my
4 back pocket because it is illusory or because it is not
5 real and I have fabricated it, I reject that 16:10
6 absolutely. I sat on this information because it was
7 of such a highly sensitive and damaging nature that
8 there was nothing that I could do with it.

9 618 Q. And in October 2016 when protected disclosures were
10 made by Mr. Taylor, by Superintendent Taylor and by 16:10
11 Sergeant McCabe and it again became a massive story,
12 did you consider with anybody else deploying the story
13 then?

14 A. I hadn't read Superintendent Taylor's disclosure or
15 Maurice McCabe's. But again, the considerations were 16:10
16 exactly the same; it's a 'Taoiseach, when did you stop
17 beating your wife' kind of scenario, that even if I was
18 able to present the most comprehensive and robust
19 denial of the allegations by Maurice McCabe, there
20 would still be a whiff of smoke or cordite attaching to 16:10
21 it and he could, he could quite easily have sued for
22 defamation.

23 619 Q. Okay. On 8th February Deputy Brendan Howlin walked in
24 the Dáil chamber - and I don't know if you've had a
25 chance to see his evidence yesterday - but he put into 16:11
26 the public domain --

27 A. Under privilege.

28 620 Q. -- and RTÉ and everybody reported it, that the Garda
29 Commissioner, then Nóirín O'Sullivan, had spread this

1 word about Maurice McCabe and that she had made phone
2 calls, in fact similar -- that she had made phone calls
3 to suggest, to journalists to suggest that Maurice
4 McCabe had been involved in serious sexual offences.
5 With whom in RTÉ did you discuss publishing your story 16:11
6 of which you had direct evidence on 8th or 9th February
7 2017?

8 A. As I have never heard any evidence linking Nóirín
9 O'Sullivan to this whole affair or these set of
10 allegations, I didn't consider it. 16:12

11 621 Q. But the fact that the Garda Commissioner might've been
12 involved in - either Garda Commissioner Callinan
13 firstly and then Garda Commissioner O'Sullivan -
14 might've been involved in smearing Sergeant McCabe
15 became big, a massive news story on both occasions. 16:12

16 A. I had evidence, first hand evidence which I have given
17 to the Tribunal of Martin Callinan being linked to
18 attempts to impugn Maurice McCabe's reputation. I had
19 no evidence linking David Taylor or Nóirín O'Sullivan.

20 622 Q. Can we ask to look at your one-page statement at page 16:12
21 5317 of the materials? It'll be on the screen in front
22 of you. You'll be familiar with it. If you look at
23 the fourth paragraph of it, you say:

24
25 "When the Commissioner arrived at RTÉ, I asked to speak 16:12
26 to him alone without any of his advisors present in an
27 attempt to resolve what had become a row that was by
28 that stage at risk of knocking the programme off air."
29

1 Now, when you say you wanted to speak to him without
2 advisors present, why was that?

3 A. I think what I'm doing is putting into more formal
4 language what I said was I'd like to speak to him man
5 to man. 16:13

6 623 Q. And who produced Crimecall?

7 A. COCO Productions.

8 624 Q. And who was the executive producer of the programme?

9 A. Stuart Switzer.

10 625 Q. And who was the producer of the programme? 16:13

11 A. Nuala Carr.

12 626 Q. And were you a producer in any way of the programme?

13 A. No.

14 627 Q. And had any, had -- I'm sorry, there was also a
15 commissioning editor presumably, because it was an 16:13
16 independent production for RTÉ; is that Niamh O'Connor?

17 A. Correct.

18 628 Q. Okay. Did any of those three people seek to engage
19 with the Commissioner on an issue that you say was
20 about to knock the programme off the air? 16:13

21 A. Yes, Niamh O'Connor had and Stuart Switzer and Nuala
22 Carr had been shuttling backwards and forwards, maybe
23 not literally but on the phone, between Phoenix Park
24 and RTÉ all afternoon long.

25 629 Q. But none of them sought to meet with the Commissioner? 16:14

26 A. They did actually, yes.

27 630 Q. Did they meet with the Commissioner?

28 A. I don't know --

29 631 Q. On a one-to-one?

1 A. I don't know if they did.

2 632 Q. Woman to man or man to man?

3 A. I don't know if they did. But they certainly, perhaps
4 via David Taylor or Andrew McLindon, made
5 representations. 16:14

6 633 Q. But did they know you were going to have this
7 individual one-on-one conversation with the
8 Commissioner?

9 A. Yes, I had said to them that I thought that if the
10 Commissioner arrived here and had our position 16:14
11 explained to him, not through the prism of Andrew
12 McLindon or David Taylor, that he might be persuaded
13 and, and indeed he was.

14 634 Q. Well, we'll come back to whether he was or not in a
15 minute. This was minutes before the programme was 16:14
16 broadcast, or that recording was to be made, the
17 interview, is that correct? Was it minutes before the
18 interview was recorded?

19 A. Yeah.

20 635 Q. He was on his way into the studio? 16:15

21 A. No, he was in the corridor meeting with the members of
22 An Garda Síochána who worked on the programme.

23 636 Q. Okay. But he was shortly thereafter going in to do the
24 interview?

25 A. Correct. 16:15

26 637 Q. With Ms. Seoige?

27 A. Correct.

28 638 Q. Can I put it to you that you again are being
29 melodramatic in the suggestion that there was a risk

1 the programme was about to come off air?

2 A. Absolutely no melodrama to it at all. It was one of
3 the more dramatic contretemps that I've been involved
4 in in RTÉ. Because there was absolutely no way I was
5 going to stand in front of a television camera with a 16:15
6 colleague who was being asked to be a puppet for An
7 Garda Síochána.

8 639 Q. Were you affronted by the way that An Garda Síochána
9 staff had approached that that day?

10 A. I think "affronted" is the wrong word. 16:15

11 640 Q. Were you annoyed?

12 A. Yes.

13 641 Q. So were you agitated?

14 A. I don't do agitation.

15 642 Q. You don't do agitation. Okay. This programme is 16:16
16 produced not by the news and current affairs section in
17 RTÉ, isn't that correct?

18 A. Correct.

19 643 Q. It's under the umbrella, is it factual programming?

20 A. Correct. 16:16

21 644 Q. It's broadcast, is it the third Tuesday of the month --
22 Monday of the month?

23 A. I no longer present the programme, I'm not sure when
24 its transmission date is.

25 645 Q. Yes. But at the time? 16:16

26 A. It was the first Tuesday of every month, yes.

27 646 Q. 9:30 -- it was 17th December, so for some reason it had
28 been into the second o third Tuesday --

29 A. It moved around the schedules between 9:30 and 10:30,

1 but --

2 647 Q. Okay. A monthly programme broadcast in prime time at
3 9:30 p.m.?

4 A. (Witness Nods).

5 648 Q. I put it to you there was no way RTÉ was going to leave 16:16
6 a hole in that hour of the schedule on a Monday night,
7 whether because a particular presenter took an issue or
8 not.

9 A. What are you putting to me? I don't understand.

10 649 Q. I'm putting to you that it is melodramatic to suggest 16:16
11 the programme was about to be pulled because you or
12 Gráinne Seoige, together or individually, were not
13 going to present it unless certain questions were asked
14 of Martin Callinan.

15 A. Niamh O'Connor, who was the commissioning editor for 16:17
16 RTÉ, the person who would ultimately have been
17 responsible for whether a broadcast went ahead or not,
18 had myself and Ms. Seoige's back on this issue and I
19 had assured her 'Don't worry, it won't come to it,
20 Niamh, I am absolutely convinced that we' -- 'I'm sure 16:17
21 that we can convince the Commissioner to deal with this
22 and we'll also convince An Garda Síochána that we are
23 not asking a series of pre-scripted questions'.

24 650 Q. So what kind of questions were you insisting would be
25 asked of the Commissioner? 16:17

26 A. I've already detailed that I felt that it was important
27 for the credibility of the Commissioner, RTÉ and the
28 programme that he answer questions in relation to and
29 reassure the public on penalty points, on the closure

1 of rural Garda stations and perhaps, time allowing, the
2 Smithwick Tribunal as well.

3 651 Q. But you didn't get your way on that kind of
4 questioning, isn't that correct?

5 A. What happened was, as you will recall from my earlier 16:18
6 evidence, Mr. Whelan, Mr. Callinan agreed, he said 'Do
7 you know what, I will answer this, but I will answer it
8 in my own way'. What he did when he went on air was to
9 rely on a frankly rather trite acronym, HARP, which
10 stands for honesty, something, something, something, I 16:18
11 can't remember. But --

12 652 Q. Again can we deal with the facts rather than comment?

13 A. Well, I'm giving you the facts. This is what he said
14 in his interview.

15 653 Q. No, no, the word "trite" is comment. Let's deal with 16:18
16 facts. Can I put to you -- let's look at what
17 Ms. Seoige did when she went into the interview. She
18 asked four questions. She asked him, one: "How would
19 you describe the year for An Garda Síochána?" She asked
20 secondly: "What are the biggest challenges facing An 16:18
21 Garda Síochána?" She asked thirdly, she said "It's been
22 a bad year for fatalities on the road" and she asked a
23 question along the lines 'what are you going to do
24 about it?' And her fourth question was: "What's your
25 final message for people watching at home tonight over 16:19
26 the Christmas period?"

27

28 Those were the four questions that she agreed,
29 notwithstanding your discussion with Martin Callinan,

1 to ask him in the studio, isn't that correct?

2 A. I'm not Gráinne Seoige, I didn't ask the questions.
3 Had I been doing the interview, I would've asked
4 different questions.

5 654 Q. No, no, that's not the question. The question is you 16:19
6 were about to walk off the programme that night you
7 said unless tough questions could be asked. Those were
8 the four questions that were asked?

9 A. No, I never said "tough questions", Mr. Whelan, I said 16:19
10 unless issues of public interest were addressed. And
11 he assured me that he was going to address those
12 issues. He didn't.

13 655 Q. The issues addressed the public interest were what the 16:19
14 year was like for An Garda Síochána, what the biggest
15 challenges for An Garda Síochána were, what we were
16 going to do about fatalities on the road and what his
17 final message was over the Christmas period?

18 A. And indeed he also worked in the changes to the Garda
19 roster --

20 656 Q. Indeed. 16:20

21 A. -- in his answers.

22 657 Q. Indeed. So you must still have been affronted,
23 agitated and unhappy after the programme happened?

24 A. As I said already, I don't do agitation. I was annoyed
25 at him though. 16:20

26 CHAIRMAN: But I thought you'd indicated you didn't
27 watch the programme? I may have got that wrong.

28 A. No, sorry, I didn't watch the interview being
29 pre-recorded, I watched it live in transmission.

1 CHAIRMAN: Ah, okay. So was it a number of years --
2 sorry, hours later?
3 A. Hours, yes.
4 CHAIRMAN: Okay.
5 658 Q. MR. WHELAN: was this your first year doing Crimecall? 16:20
6 A. I had started the previous year, September the previous
7 year.
8 659 Q. And had you done the interview with, was it Fachtna
9 Murphy the year before, or had Gráinne done it?
10 A. No, it should've been me. And I can't recall actually 16:20
11 doing it.
12 660 Q. Because I don't know whether you looked at this
13 programme back in the archives, I know you had the
14 opportunity to look at it today, but did you look at
15 the programme back in the archives before you made your 16:21
16 statement?
17 A. No.
18 661 Q. And before you took up the post did you look at any of
19 the previous programmes of Crimecall, before you took
20 up the presenting post? 16:21
21 A. One or two.
22 662 Q. A Christmas one, any of the Christmas ones?
23 A. I can't recall which ones I watched.
24 663 Q. Because I'm putting it to you that that was the nature
25 and type of the interview that was conducted with every 16:21
26 previous Commissioner on every single Christmas
27 occasion of Crimecall.
28 A. That might've been the nature or the type of interview
29 that other people did. It wasn't the one that I was

1 going to do.

2 664 Q. Keelin Shanley, for example, had presented the
3 programme previously, isn't that correct?

4 A. Yes, she did. But hang on a second, Keelin Shanley
5 presented it for a very short period of time and I'm 16:21
6 not sure that she would've been there for one of the
7 Christmas programmes, if indeed they might actually
8 have dropped the Commissioner's interview because it
9 had become, since 2013, such a contentious interview.

10 665 Q. The point I'm making is that you weren't the first 16:21
11 person from the news and current -- who otherwise
12 worked in news and current affairs to present this
13 programme for the independent production company under
14 the factual banner.

15 A. Correct. 16:22

16 666 Q. And that's an important distinction, I put to you. It
17 wasn't a news and current affairs interview, it was to
18 be the seasonal interview, as it were, at the end of
19 the December programme of Crimecall on the public
20 service factual side -- 16:22

21 A. I see what you're saying, Mr. Whelan. But I am a news
22 and current affairs journalist. I can't change what I
23 am just because I'm presenting a programme that comes
24 from a different department.

25 667 Q. Exactly. And that must've been a concern for you when 16:22
26 you took up the position of presenting Crimecall,
27 whether or not it would leave you in any way
28 compromised from your news and current affairs
29 instincts?

1 A. No actually, I was quite satisfied, having discussed
2 this with the producers of the programme, what the
3 limitations of the job were. At the production meeting
4 for this programme we would agree what the operational
5 concerns of An Garda Síochána were and the areas that 16:22
6 they weren't happy about being asked questions about
7 for operational reasons. And for operational reasons,
8 I was happy to abide by their better judgment, if you
9 like. Those were the only editorial limitations that
10 were ever placed on me in presenting that programme, 16:23
11 until 17th December 2013.

12 668 Q. In the second last paragraph, or the seventh paragraph
13 of your statement at page 5317, if we scroll down just
14 from the bottom, you say:

15
16 "He told me that McCabe was a troubled individual."

17
18 It begins with that. You say that he told you he had a
19 lot of psychological issues and psychiatric issues. He
20 claimed, you say, that McCabe was motivated by a set of 16:23
21 grievances. You went on to say:

22
23 "He warned that McCabe was not to be trusted and went
24 on to add that there were other things he could tell me
25 about him, horrific things, the worst kind of things, 16:23
26 but he did not elaborate further."

27
28 You didn't say in that statement, or in the second
29 statement in which you say you set out additional

1 information - and we can look at that in a second - you
2 didn't say in that statement what you interpreted that
3 phrase to mean.

4 A. I have here.

5 669 Q. Exactly. And why didn't you say it before now? 16:24

6 A. Because I didn't think that in my written statement the
7 Tribunal would necessarily be interested in me opining,
8 Chairman, but that you would be interested in the facts
9 as I recalled them.

10 670 Q. Well, the Tribunal may be interested in the fact, and 16:24
11 Martin Callinan indeed made the comment in his
12 evidence, which presumably you had an opportunity to
13 read, that it was strange you left it hanging there and
14 didn't ask any further questions about what he meant by
15 the words. 16:24

16 A. Because I took it as a deflection, a smokescreen. I
17 wasn't going to engage with it. The reason that Martin
18 Callinan might've been surprised that I didn't pursue
19 it was because throughout all of this he wasn't looking
20 at me, he didn't make eye contact at any point, he was 16:24
21 looking down at the ground. Had he, he would have seen
22 the look of disbelief etched across my face. But I
23 wasn't interested in pursuing the fact with him that I
24 didn't believe him, I was only interested in securing
25 agreement on him answering questions about penalty 16:25
26 points etc. on the programme.

27 671 Q. Were you interested in asking him what he meant? Isn't
28 the first basic rule of journalists the follow-up
29 question?

1 A. I think I've just answered that question. As far as I
2 was concerned, this was all rubbish. It was a
3 deflection, it was designed to get me to stop trying to
4 hold him to account on penalty points.

5 672 Q. You've described yourself as a journalist of over 30 16:25
6 years who was good at recall; are you good at recall?

7 A. You're about to try and catch me out.

8 673 Q. Well, no, because you went on to say that you also took
9 good notes.

10 A. No, I didn't say that. 16:25

11 674 Q. Well, we can scroll it back, but you said that you were
12 in the habit of taking notes as a journalist.

13 A. No, I didn't. I absolutely didn't say that. What I
14 said was my job as a journalist means that I have to
15 recall conversations and reproduce them on air. I 16:25
16 don't think that I said --

17 675 Q. No, I think you --

18 A. But anyway, sorry, it was a private conversation that
19 was not an exercise in journalism. I wasn't interested
20 in what he had to say, I was interested in getting 16:26
21 agreement out of him.

22 676 Q. Well, let's explore that. Because you, for the first
23 time today, said that he suggested to you it should be
24 off the record.

25 A. Yes. 16:26

26 677 Q. You didn't say that in your statement either.

27 A. No, I omitted that.

28 678 Q. And you rejected the suggestion it be off the record?

29 A. No, I said - and you can scroll back on this - that I

1 neither assented nor demurred.

2 679 Q. which means the rules of placing it off the record
3 weren't met; in your view it was on the record?

4 A. I was waiting to see what he had to say.

5 680 Q. Okay. well, journalists don't usually wait to see what 16:26
6 somebody says before they decide whether to put it on
7 or off the record.

8 A. How do you know what journalists do?

9 681 Q. well, answer the question. This whole Tribunal is 16:26
10 debating extensively on what journalists do or don't
11 do. In the normal course, are you telling me you let
12 somebody talk after they ask you that something should
13 be on the record before you answer the question,
14 whether it should or should not be on the record?

15 A. Yes, usually I'd say 'Give me a sniff of what it is 16:27
16 that you have to say and we'll decide on what basis we
17 move forward here'.

18 682 Q. So do you accept it was off the record?

19 A. I accept that he said it. I did not treat it as being
20 off-record, because it was not a journalistic -- 16:27

21 683 Q. Sorry, put it the other way around; do you accept it
22 was on the record, he's never accepted it was off the
23 record?

24 A. No, it was a private conversation aimed exclusively at
25 trying to overcome a disagreement. 16:27

26 684 Q. So it was on the record?

27 A. It was neither, Mr. Whelan, on or off-record as far as
28 I was concerned. I accept that he said 'This is all
29 off-record'. I did not agree to that. I saw him as a

1 reluctant interviewee trying to weasel out of answering
2 questions.

3 685 Q. Was it on or off the record?

4 A. I've just told you. It's not a binary, Mr. Whelan,
5 it's not binary issue. It was neither. 16:27

6 686 Q. Well, even Mr. McDowell hasn't come up with a fourth
7 version. It's either on the record or off the record,
8 which was it?

9 A. Okay, if it was to be on the record, it was a
10 conversation that could be broadcast. Obviously, 16:28
11 Mr. Whelan, it was never going to be broadcast. If it
12 was off-record, I would have agreed that with him. I
13 didn't agree it.

14 687 Q. So there was no reason, I'm putting it to you, why you
15 couldn't have broadcast it. You didn't broadcast -- 16:28

16 A. There was every reason. It was a private conversation.

17 688 Q. You didn't broadcast it --

18 A. And it was of no interest to the public.

19 689 Q. And I'm putting it to you that you came, three and a
20 half years is it, later, December 2013 to March 2017, 16:28
21 which is two and a bit -- three and a bit years later
22 to give an account of it to the Tribunal, which was a
23 lot less than the account you've given today and which
24 was inevitably shaped by the fact that the suggestion
25 that the Commissioner had been involved in smearing 16:28
26 Maurice McCabe, including in circumstances of making
27 allegations about sexual assault, was in the public
28 ether and deeply ingrained in the media ether and that
29 therefore, you looked back on a conversation which you

1 have always remained agitated and disappointed about
2 and saw it in a way that wasn't, that it wasn't -- that
3 it didn't -- in a way that wasn't the case at the time.

4 A. Mr. Whelan appears to be trying to suggest, Chairman,
5 that I am motivated by some long held grievance since 16:29
6 17th December 2013 to come here and give my evidence
7 and make this statement today. Let me assure you that
8 is absolutely not the case. I have no earthly reason
9 for either making any of this up or withholding
10 anything until now. In fact it has been to my 16:29
11 detriment offering this information to the Tribunal and
12 it would've been made for a much easier, a much simpler
13 life, I could be sitting down there with my colleagues
14 right now actually observing the proceedings of the
15 Tribunal rather than sitting here. 16:29

16 690 Q. But later events, I'm putting to you, could've infused
17 your view, recollection -- and recollection of that
18 conversation. Because --

19 A. My account as given to the Tribunal of what happened on
20 December 17th is accurate. 16:30

21 691 Q. Because had it been as dramatic in its content then as
22 you now say it is, you would've set about putting it
23 into the journalistic system with a view to publishing
24 it.

25 A. I did. I contacted Maurice McCabe, I met him, I put 16:30
26 the allegations to him. I, before doing so, had an
27 instinct that it was going to be a zero sum game, I was
28 never going to be broadcasting anything in relation to
29 this, but I still pursued it to the nth degree or

1 A. Don't ask me to put a date on it, but yes.

2 697 Q. Well, we're in the business of chronologies here in the
3 Tribunal, so do your best please.

4 A. Ask me to put a date on it, I can't give you an
5 accurate one. 16:32

6 698 Q. When did you talk to Gráinne Seoige about it? That
7 night?

8 A. No. As I said, I didn't want to upset her any more. I
9 might've said 'we'll have a chat tomorrow ' and it was
10 either the tomorrow -- sorry, it was either the day 16:32
11 after or the day after that.

12 699 Q. Is that one conversation only?

13 A. Do you mean have we never discussed it since then?

14 700 Q. Yes.

15 A. No, we would have discussed it on a few occasions. 16:32

16 701 Q. And Niamh O'Connor?

17 A. One or two occasions.

18 702 Q. The first of which was when, roughly?

19 A. Early 2014.

20 703 Q. And the further ones, roughly? 16:32

21 A. Much more recently when I decided to make a statement
22 to the Tribunal.

23 MR. WHELAN: Thank you Mr. Boucher-Hayes. As I say to
24 the court, it may not arise, but depending on what any
25 of those other persons have to say - and there's some 16:33
26 suggestion about a letter written as well - it may be
27 that this witness will have to answer further questions
28 at some stage.

29 CHAIRMAN: Yes, well, we'll talk about that when he's

1 finished.

2 MR. WHELAN: Thank you, Chairman.

3 CHAIRMAN: Was there anything further, Mr. Marrinan?

4 MR. MARRINAN: Yes, just two -- oh, sorry,

5 MR. GILLANE: Sorry, I didn't realise I was next. 16:33

6 CHAIRMAN: Oh, I beg your pardon. No, you are, you're
7 last, which is the position if --

8

9 THE WITNESS WAS RE-EXAMINED BY MR. GILLANE AS FOLLOWS:

10

16:33

11 704 Q. MR. GILLANE: Very briefly, Mr. Boucher-Hayes. Just in
12 relation to the last implicit criticism from
13 Mr. Whelan, which seems to rest on this assumption,
14 it's been suggested to you that if there was any truth
15 to what you were saying about the conversation, as a 16:33
16 journalist you might have run this as an actual
17 published story. And do I understand your evidence to
18 be that the only value to the public that could be
19 placed on a story such as this would necessarily
20 involve identifying Mr. Callinan and identifying 16:33
21 Sergeant McCabe in a context of poisonous toxic wrong
22 allegations?

23 A. Absolutely. And casting a shadow over Maurice McCabe's
24 children and his wife for the rest of their lives.

25 705 Q. And do I understand it then that your assessment in 16:34
26 relation to that at the time involved perhaps
27 concluding that had you run such a story, on a good day
28 you might've bought yourself the biggest defamation
29 case in history and on a bad day you might've destroyed

1 someone in respect of allegations that everyone agrees
2 are untrue?

3 A. I think you can assume that both would've happened,
4 yes.

5 706 Q. And in relation to the broadcast itself, while you are 16:34
6 cut off, you did mention Mr. Callinan's reference to
7 HARP, which he did make on the programme, and in fact
8 he gave evidence of that acronym here; honesty,
9 accountability and various other factors.

10 A. On this occasion your recall it is better than mine, 16:34
11 Mr. Gillane. Thank you.

12 MR. GILLANE: Thanks very much.

13 CHAIRMAN: Honestly, accountability, respect,
14 professionalism. Just so as we all remember it.

15 Thanks. 16:34

16

17 THE WITNESS WAS RE-EXAMINED BY MR. MARRINAN AS FOLLOWS:

18

19 707 Q. MR. MARRINAN: Just two matters. In the normal course 16:35
20 of events, you can't corroborate yourself; in other
21 words, you can't rely on what you've said to other
22 people as supporting your version of events. It only,
23 in a legal sense, becomes admissible in circumstances
24 where it's suggested to you - it's one of the
25 circumstances - where it's suggested to you that this 16:35
26 is a recent fabrication, in other words you've recently
27 made this up and that the event never happened.

28

29 Now, in those circumstances, it would appear that what

1 you've said to your co-presenter, to your producers is
2 relevant. You've no objection to the Tribunal getting
3 statements from them --

4 A. Of course not.

5 708 Q. -- in relation to the private conversations that you 16:35
6 had?

7 A. I can't speak for them, but I've no objection to you
8 asking them.

9 709 Q. Yeah. No, but I mean there's no issue in relation to
10 journalistic privilege or otherwise in relation to the 16:35
11 conversations that you had with other, producers in the
12 first instance and a fellow journalist?

13 A. No, I'm sure they would be happy to support my
14 statement here today.

15 710 Q. The second thing is that in relation to the letter that 16:36
16 you sent to the Chief State solicitor's office, when
17 was that sent?

18 A. Can I come back to the Tribunal with --

19 711 Q. well, yes, I was just wondering whether you still have
20 a copy of it? 16:36

21 A. I will on my computer --

22 712 Q. Very well.

23 A. -- in work.

24 713 Q. well, if you wouldn't mind looking into that and
25 sending it in to the Tribunal? 16:36

26 A. Yes.

27 CHAIRMAN: what was that about, Mr. Marrinan? I'm
28 sorry, I don't understand that at all.

29 MR. MARRINAN: well, in answer to a question that I

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asked --

A. I endeavoured to get in contact with the former Garda Commissioner after I had spoken to Maurice McCabe to put Maurice McCabe's rebuttal or denials to him. The letter itself will be of very little interest to the Tribunal, because it was just a 'Please contact me'. I didn't put any of the allegations in writing.

16:36

CHAIRMAN: So it's a bland letter, if you like?

A. It's a matter of urgent --

714 Q. MR. MARRINAN: Well, of course at that point in time Commissioner Callinan had retired.

16:37

A. Yes. Yes.

715 Q. So the letter was sent to the Chief State Solicitor's office, is that right?

A. I contacted Garda Press Office, I contacted Garda Headquarters, I contacted the Chief State Solicitor's office in an attempt to have the communication passed on, yes.

16:37

MR. MARRINAN: Right. Thank you very much.

A. Thank you.

16:37

CHAIRMAN: Thanks for being here, Mr. Boucher-Hayes.

A. Thank you.

THE HEARING WAS THEN ADJOURNED UNTIL TUESDAY, 5TH JUNE
2018 AT 10:00

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