

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON TUESDAY, 5TH JUNE 2018 - DAY 85

85

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following to be a
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action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 5TH JUNE
2 2018:

3
4 CHAIRMAN: Just a couple of things I need to say.
5 First of all, I am sorry I was a few minutes late. One 10:06
6 of the reasons is that apparently I was to sit in the
7 Court of Appeal -- I was to sit in the Court of Appeal
8 tomorrow, and on Wednesday, but the sittings have been
9 cancelled due to a lack of judicial resources so I am
10 now free to sit here. So it's possible to rejig 10:07
11 witnesses, we will have a look during the day and see
12 what can be done, but I would prefer to get through as
13 much of this as I possibly can given that I don't have
14 to be elsewhere because I can't be elsewhere because
15 unfortunately there is no judge to sit with me in the 10:07
16 Court of Appeal. So, that is the situation this
17 morning.

18
19 There we go.

20 MR. MARRINAN: The first witness this morning, sir, is 10:07
21 Michael Clifford, please.

22
23 MR. MICHAEL CLIFFORD, HAVING BEEN SWORN, WAS DIRECTLY
24 EXAMINED BY MR. MARRINAN:

- 25 10:08
26 1 Q. MR. MARRINAN: Now, you are a journalist by profession
27 and would you just give an outline of your career to
28 date, please.
29 A. Yes. I studied engineering in UCC and then a few years

1 later I went back and did a course in DCU, journalism.
2 I began as a sub-editor in The Star newspaper, I worked
3 for Independent Newspapers and Ireland on Sunday, now a
4 defunct newspaper, as a business reporter and a general
5 reporter. From 2000 to 2011 I worked in the Sunday 10:08
6 Tribune, until it closed, as a reporter/columnist.
7 Since then, I have worked for the Irish Examiner. I
8 wrote a column for the Sunday Times for a couple of
9 years, but mainly I work for the Irish Examiner and I
10 was appointed special correspondent to the Irish 10:08
11 Examiner I think in 2013. And it's a general brief; I
12 cover, a lot of stuff, a generalist you could call me
13 basically in terms of any type of a lack of speciality.
14 2 Q. I think you also do a certain amount of broadcasting
15 work as a panelist on radio and television, is that 10:09
16 right?
17 A. Yes, I have done a bit of that. And for a period I
18 stepped in as the replacement for Vincent Browne in
19 his -- the late night show he did have on TV3 and a
20 small bit of presenting, that kind of stuff. 10:09
21 3 Q. I am not sure there is a replacement for Vincent
22 Browne.
23 A. That's a very good point.
24 4 Q. But in any event, I think you are also the author of a
25 book, The Maurice McCabe Story, A Force for Justice, is 10:09
26 that right?
27 A. Yes, that is true. It's published last year.
28 5 Q. So you have taken a great deal of interest in relation
29 to all matters touching on Maurice McCabe and his

1 plight as a whistleblower. When did you start getting
2 interested in the story?

3 A. I think it was about May 2013, just after the
4 publication of the O'Mahony report into the penalty
5 points issue. 10:10

6 6 Q. And it's something you have pursued as an investigative
7 journalist ever since, isn't that right?

8 A. Yeah. Investigative journalist is a very big term, but
9 I certainly pursued it and I think it's fair to say I
10 have broken some stories in relation to it and I have 10:10
11 commented a fair bit on it.

12 7 Q. Now, you had an interview with the Tribunal
13 investigators on the 18th December, the first interview
14 you had with them, it starts at page 4099 of the
15 material, and you were asked at page 4102 in relation 10:10
16 to whether or not you had been negatively briefed by
17 anybody in relation to Maurice McCabe, and I suppose
18 the expression being negatively briefed is an
19 unfortunate one, but had you heard any rumours in
20 relation to Maurice McCabe -- 10:11

21 A. Yes, Chairman.

22 8 Q. -- in association with any sexual offence or offences
23 in the past?

24 A. Yes. There were three particular incidents I remember
25 from 2014. I believe the first one was early in 10:11
26 2014 -- if you want me to go through them,
27 Mr. Murrinan?

28 9 Q. Yes, if you would please.

29 A. Yeah. The first one was in early 2014, I was in a

1 conversation with an individual whom I would classify
2 as a source, on the basis of previous interaction with
3 him, and we spoke about the Gardaí and then I mentioned
4 something to the effect about Maurice McCabe, there's a
5 lot to that story, a lot more than has come out, and he 10:11
6 said words to the effect that there is an issue there,
7 and I asked him what the issue was and he said there
8 had been an allegation of child sexual abuse. He got
9 this, he told me, locally in Cavan. He said the
10 general feeling was that he wasn't guilty or 10:12
11 responsible for the allegation, that there wasn't any
12 foundation to it, but, the way he put it is, that is
13 still there, it's still hanging over him. And that was
14 the first time that I had heard anything of that
15 nature. 10:12

16 10 Q. I think this wasn't a member of An Garda Síochána?
17 A. No, it wasn't a member of An Garda Síochána, no.

18 11 Q. So it's not of any great interest to the Tribunal,
19 other than being the first occasion when you heard
20 something negative about Sergeant McCabe. What was the 10:12
21 second occasion?

22 A. Yeah, the second occasion was an individual whom is a
23 source. What I can say about him is he is somebody who
24 is very familiar with politics and on the basis of my
25 own conversations with him he has a friendship at the 10:12
26 very least with a senior garda. And I would emphasise
27 that the individual is not any of the senior Gardaí who
28 are the focus of the Tribunal's work.

29 12 Q. That is helpful, thank you.

1 A. Yeah. Now, I don't know for a fact that this came
2 from -- sorry, just to put it in context. By then I
3 had checked out, after the initial conversation about
4 this issue I satisfied myself completely that it was
5 without foundation and there was also a suspicion that 10:13
6 it was being used to attack Sergeant McCabe on the
7 basis of what he was bringing forward. So that was my
8 state of knowledge when the second interaction occurred
9 with this gentleman. He came on the phone, I was
10 talking about other issues and -- well actually, I am 10:13
11 not 100 percent positive whether he rang me
12 specifically to convey this or whether it occurred in
13 broader conversation, but he said words to the effect,
14 you know your man McCabe is a kiddie fiddler.

15 13 Q. Yes. 10:14

16 A. I explained to him that I had heard that, I had checked
17 it out, there was no truth to it. He sounded sceptical
18 in my response. The only connection there, and as I
19 say I don't know this but this would just be a
20 suspicion on a previous occasion, that particular 10:14
21 individual had relayed to me about a friend of his, a
22 senior garda who had described myself in disparaging
23 terms and on that basis I assumed, rightly or wrongly,
24 that this is where it was coming from when he mentioned
25 it to me about Sergeant McCabe. 10:14

26 14 Q. Well, you say you believed this conversation took place
27 in the first part of, early in 2015, is that right?

28 A. 2014, I think.

29 15 Q. All right. Just to be clear in relation to this, if

1 you'd just look -- could we have page 4103 up on the
2 screen? If you go four lines down there:

3
4 "The second occasion I heard it from an individual,
5 somebody who would be familiar with politics and to a 10:15
6 certain extent senior personnel in the Gardaí. In the
7 course of this conversation, and from recollection, the
8 conversation was not specifically to do with Sergeant
9 McCabe. He said something to the effect 'you know your
10 man McCabe is supposed to be a kiddie fiddler'. That 10:15
11 conversation was to the best of my recollection in the
12 first half of 2015."

13 A. I see it there. Now, I can't be sure about that. What
14 I can say to you is that I know the third occasion
15 chronologically was after that with Tim Vaughan and I 10:15
16 may have got my dates wrong there, I think it may have
17 been earlier than 2015.

18 16 Q. Okay, all right. You know what the terms of reference
19 are of the Tribunal and you know what we are examining
20 now in relation to the protected disclosures that were 10:15
21 made by Sergeant Maurice McCabe and Superintendent
22 Taylor in relation to a smear campaign. You are aware
23 of some of the difficulties that the Tribunal is
24 experiencing in getting journalists to answer
25 questions? 10:16

26 A. I am, yes.

27 17 Q. You are aware of that. These are obviously two
28 individuals that you have classified as being sources.
29 The Tribunal isn't interested in looking at information

1 that isn't of assistance to it in its ultimate task,
2 but are you satisfied to advise the Tribunal that
3 neither of these two persons that you classify as
4 sources, that the -- to reveal their identity, are you
5 satisfied that it wouldn't assist the Tribunal in any
6 way whatsoever in its task? 10:16

7 A. I am.

8 18 Q. Yes.

9 A. To the extent that neither were Gardaí and whereas in
10 one case I may suspect but that that's, you know -- I
11 am satisfied -- yes. 10:16

12 19 Q. You know, we are happy to act on that and to receive
13 the information in that form, as long as it doesn't
14 touch on the core of the issue that the Tribunal is
15 examining in relation to whether or not Superintendent 10:17
16 Taylor was briefing journalists negatively about
17 Sergeant McCabe.

18
19 Then the third occasion was with your editor at the
20 time, Mr. Tim Vaughan, is that right? 10:17

21 A. That's right, Tim Vaughan rang me. Again, I think I
22 may have -- my recollection may not -- may have put it
23 later than what it actually was, I think it may have
24 been 2014. He rang me and he said -- he sounded
25 slightly, not alarmed but slightly urgent and he said 10:17
26 that had it come to him, somebody had suggested to him
27 that Maurice McCabe was involved in these issues and I
28 reassured him, I said Tim, I have come across it,
29 there's no truth to it, I think it's actually being

1 used against the man, and that was it. And to the best
2 of my knowledge he accepted my explanation entirely and
3 certainly didn't affect work that the Irish Examiner
4 did thereafter on this story.

5 20 Q. And when do you believe this conversation took place? 10:18
6 A. I had initially put it at 2015, it may well be earlier.
7 My recollection of dates aren't great and I think it
8 may well have been in 2014. Probably the second half
9 of 2014, perhaps.

10 21 Q. And were they the only three occasions on which you 10:18
11 heard anything negative?
12 A. They were the only three occasions until the whole
13 issue became widespread, which, February '17 I suppose.
14 Largely, yes, they were the only three occasions any --

15 22 Q. You didn't hear a whisper from other journalists? 10:18
16 A. There might have been something. I can't specify a
17 journalist who said anything, but there is no doubt
18 about it, it was in the ether with journalists who were
19 associated with the story. I can't tell you of any
20 instance where anybody said anything. I didn't have 10:19
21 that many conversations with journalists; I work from
22 home in that regard, I didn't have that many
23 conversations with journalists about it. Those are the
24 only three specific occasions that stand out for me in
25 terms of somebody specifically saying anything in that 10:19
26 line to me.

27 23 Q. And other than that, you merely had a sense that it was
28 out there in the ether, is that right?
29 A. At perhaps -- not at that time but perhaps in 2016, for

1 instance, I would definitely have had a sense it was
2 out there.

3 24 Q. And having heard this from three different sources, did
4 you confront Sergeant McCabe with it?

5 A. Well, I'll put it this way to you: On the first 10:19
6 occasion after I heard it, I was floored, because I had
7 been following the story, it didn't seem to be getting
8 much traction in the media in general and then out of
9 the blue this thing comes along. I then made inquiries
10 about it, I made inquiries in Cavan. I made -- I 10:20
11 satisfied myself as to the veracity of what the story
12 was. I also became aware that Sergeant McCabe's legal
13 team were aware of this issue and to be honest with you
14 I found that very reassuring, to the extent that
15 Mr. McDowell, for instance, is a public figure and the 10:20
16 idea that he would have been involved or allowed
17 himself to be used in any way to run an agenda by
18 somebody who had these kind of issues in their
19 background, was beyond any sort of belief as far as I
20 could see. But I also satisfied myself as to what 10:20
21 actually happened; I did not know the detail that has
22 emerged here in the Tribunal but the general gist of
23 that to a large extent, I satisfied myself that that
24 was the case.

25 25 Q. Okay. And the Tribunal discovered that there was an 10:20
26 interaction between Gerald Kean, solicitor, and
27 Commissioner Callinan in January and into early
28 February of 2014. Were you aware of that?

29 A. I wasn't aware of the interaction. I have a

1 recollection of hearing Gerald Kean on that programme
2 but I wasn't aware of any interaction between him and
3 the Commissioner.

4 26 Q. And also an anonymous letter that it was believed may
5 not be accurate, but it was believed had been sent to 10:21
6 the Independent newspapers; were you aware of the
7 existence of the anonymous letter?

8 A. No, no.

9 27 Q. I think that you were able to assist the Tribunal in
10 that regard by pointing the Tribunal to a broadcast by 10:21
11 Katie Hannon on RTÉ that indicated that perhaps RTÉ had
12 been sent the anonymous letter?

13 A. That was my recollection.

14 28 Q. Yes. And that was very helpful and was pursued by the
15 Tribunal and shown to be correct. I think you also had 10:22
16 some interaction with Mr. McGuinness, the TD, but that
17 conversation that you had with him was in the early
18 part of last year, isn't that right?

19 A. That's correct, yeah. It was in relation to the book.

20 29 Q. And there was no information there that could be of 10:22
21 assistance to the Tribunal?

22 A. No. Anything that passed between us there, I think he
23 stated all publicly, it was basically an interview for
24 this book I was doing and anything that happened there
25 would either be in that or I think the whole gist of it 10:22
26 he has given in evidence here.

27 30 Q. And you subsequently, in 2016, met Superintendent
28 Taylor?

29 A. That's correct.

1 31 Q. Will you tell us the circumstances in which you came to
2 meet Superintendent Taylor in 2016?

3 CHAIRMAN: Mr. Murrinan, the date of publication of the
4 book is what?

5 A. Chairman, September last year, 13th September '17 -- or 10:23
6 15th September.

7 CHAIRMAN: All right. So you met Superintendent Taylor
8 first, I just wanted to --

9 MR. MARRINAN: Yes, 2016.

10 A. It was literally 12 months before that, that I met 10:23
11 Superintendent Taylor, yes.

12 32 Q. When was the first occasion you met him?

13 A. Well, I got a phone call out of the blue from David
14 Taylor, I would place it at late May/early June at the
15 latest. I had mentioned him in comments or an analysis 10:23
16 piece I had written about the issues that were arising

17 in the Gardaí. This was in the aftermath of the
18 publication of the O'Higgins Report and the story that
19 the Examiner broke in relation to that and everything
20 that flowed from it, I had written a piece in relation 10:23
21 to the Gardaí and what was going on. In the body of

22 that piece, I made some mention, and it was just on the
23 basis of talking to people, that it appeared that
24 whatever way the Commissioner was handling this was in
25 sharp contrast to how the issue around Superintendent 10:23
26 Taylor and the leaking of the names of his children had

27 been handled and that he had been suspended, something
28 to that effect. I had never met Dave Taylor prior to
29 that, my only interaction with the Garda Press Officer

1 was officially through the Press Office rather than
2 through him. I had no interest in meeting him, to be
3 honest with you, or anything, but that was just using a
4 device as a comparison for instance within the piece I
5 was writing. I got a phone call, I remember it because 10:24
6 I was in my mother's house in Cork, and it must have
7 been a Saturday evening. He said 'Dave Taylor here',
8 for a couple of seconds I couldn't place him, then he
9 said 'thanks for the mention in the piece' and then I
10 realised who I was talking to. And we had a bit of a 10:24
11 conversation, he made some comments about Nóirín
12 O'Sullivan and the difficulties she was having at the
13 time and how, in his opinion, she wasn't very good for
14 the Gardaí or whatever. And he also made comments
15 about Sergeant McCabe, and he said what Maurice was 10:24
16 going through, and he referenced him twice I think as
17 Maurice, which I found -- I thought it was amusing or
18 ironic, the right words, because as far as I was
19 concerned he had been Garda HQ, which had, I believed,
20 a very hostile attitude towards Maurice McCabe and now 10:25
21 he was speaking about him in these terms, but that was
22 the nature of it. And anyway, that phone call didn't
23 last too long and he suggested going for a cup of
24 coffee sometime and I said grand, and I left it at
25 that. And to be honest with you I wasn't at that point 10:25
26 that interested in meeting him for a cup of coffee and
27 I just left it at that on a cordial basis.

28 33 Q. And then the next time that you met him?

29 A. The next time, I initially told the Tribunal I thought

1 it may have been June, July or August, September, on
2 the basis of superintendent's recollection and I think
3 other stuff that has come out, I'm pretty convinced now
4 it was late August/early September. I have a number of
5 reasons for believing that, most principally because 10:25
6 the second time I met him I know was three or four
7 weeks after that and that was definitely the first
8 weekend of October '16. So I would put it at late
9 August at the earliest or possibly early September.

10 34 Q. All right. And what were the circumstances in which 10:26
11 you came to meet him?

12 A. I can't definitively say to you whether I rang him or
13 he rang me. I remember parts of the conversation but I
14 can't say who initiated the call. I became aware in
15 that late summer that he had met -- that Michelle 10:26
16 Taylor had met Maurice McCabe and that may have piqued
17 interest and I may have said well, I wonder what is
18 going on here and rang him, I am not sure. He
19 suggested here, I think, that it was in relation to the
20 book I was writing, I doubt that very much because I 10:26
21 don't think I would have cold-called somebody like Dave
22 Taylor, despite having one conversation with him, and
23 asked him to give me background for my book, I'd find
24 that -- or he may have rang me. I can't definitively
25 say who initiated that contact. 10:26

26 35 Q. All right. And did you meet with him?

27 A. Yeah, out of that, I do remember -- he doesn't live too
28 far from me, I do remember suggesting a well-known
29 coffee shop or another venue, and he said no, the way

1 things were with him he'd prefer to meet privately and
2 he suggested I come to his home. And I did, and
3 however many days later I met him and his wife in his
4 home.

5 36 Q. All right. And at that point in time he was suspended 10:27
6 and there was an inquiry into him, isn't that right?

7 A. That's correct, yes.

8 37 Q. Were you aware of that?

9 A. I was. I was aware of that. And he made me very
10 quickly aware of the circumstances he was then in. 10:27

11 38 Q. Well, as best you can, can you recount to us what
12 conversation that you had with him in his home?

13 A. Well, Chairman, there was really two prongs to it. One
14 was the scenario he had found himself in, it had a
15 massive impact on his family, on himself, on his 10:27
16 career. They were obviously in reduced circumstances

17 both financially and emotionally, I would suggest, or
18 certainly that is the way it was portrayed to me and I
19 have no reason to question how genuine that portrayal
20 was. He spoke about having worked all his life and 10:28
21 then finding himself looking at the four walls and the

22 impact it was having on him. And on a human level, you
23 walk into somebody's house and you are confronted with
24 this, your immediate instinct I think is one of
25 sympathy, irrespective of how he may have arrived at 10:28
26 that position. But that was the initial phase of the

27 conversation. And then he got into how he had arrived
28 there. And the central character in that was Nóirín
29 O'Sullivan. He spoke of -- he spoke of his time in the

1 Press Office. One thing he said was when he arrived in
2 the Press Office or certainly soon after, they were
3 obsessed in H -- I'm not sure whether he said they in
4 HQ or the Commissioner of the day was obsessed with
5 Maurice McCabe and what Maurice McCabe was doing in 10:29
6 terms of the issues he was highlighting. He suggested
7 that he didn't have a great working relationship with
8 Nóirín O'Sullivan. He said that at one point himself
9 and Martin Callinan suspected she was leaking to the
10 media, you know, in the form that I think is more 10:29
11 familiar to political or business world of one person
12 briefing against another. I have absolutely no basis
13 to believe any of this is true, I'm only relating what
14 he told me. And that was the nature of their
15 relationship until the day Martin Callinan resigned in 10:29
16 March 2014. And he put huge emphasis on what happened
17 that day; Mr. Callinan was gone in the morning and
18 later that evening a letter was passed, I believe, to
19 Mr. Reynolds in RTÉ which effectively vindicated
20 Mr. Callinan, former Commissioner Callinan in terms of 10:30
21 this issue that had arisen about the taping in Garda
22 stations. He placed -- he says he was asked to do that
23 by Martin Callinan, even though Martin Callinan had
24 just resigned that morning, he placed huge emphasis on
25 Nóirín O'Sullivan's reaction to him doing that. He 10:30
26 said that -- he said she was very annoyed, to put it at
27 its mildest, but his big thing that was her position
28 was that he was now working for her as she was
29 Commissioner and he shouldn't have been doing something

1 for Martin Callinan. That is the way he framed
2 whatever happened there but he certainly gave the
3 emphasis that that signalled a rapid deterioration in
4 any relationship he had with N6oir6in O'Sullivan, by his
5 account.

10:30

6 39 Q. Okay. And did he move on to talk or discuss with you
7 the campaign against Sergeant McCabe?

8 A. Well, to tell you the truth, he didn't dwell on that
9 and I nearly got the impression that he preferred not
10 to speak about that because he preferred to concentrate 10:31
11 on what he saw himself as being a victim in, which was
12 after that, his arrest, his suspension, he went into
13 some detail in that, his belief that those who showed
14 any sympathy or liking towards him were ostracised,
15 etcetera, all of that, and he went into some detail 10:31
16 about his arrest. In terms of the campaign against
17 Maurice McCabe, the only things -- he spoke in a
18 general way about it, but the general gist of it was
19 that Martin Callinan would send him a text or a message
20 and that -- which would be derogatory towards Sergeant 10:31
21 McCabe in one form or another, and he passed this on, I
22 believe he said to other senior officers and to the
23 media. I cannot tell you 100 percent that he said he
24 texted the media or spoke to them verbally. I
25 understand that he said he told me he only spoke 10:31
26 verbally, I have no recollection of that. But I can't
27 be 100 percent of that. But what I am absolutely sure
28 of, in terms of that conversation, is the centrality of
29 these text messages, because his thesis, if you want to

1 call it that, was that the whole investigation,
2 suspension of him from his job was associated with the
3 fact that then Commissioner O'Sullivan wanted to get
4 her hands on his phone because that was what you might
5 call the smoking gun in terms of anything to link her 10:32
6 to the type of attitudes there was to Maurice McCabe
7 back in '13 and '14, and he effectively blamed his
8 demise as such on that issue, and he put forward the
9 case that it was all linked to the Commissioner,
10 through her husband, who was on the investigation team, 10:32
11 he described it at the time as heading it up, getting
12 her hands on that phone to effectively destroy any
13 evidence linking her to this campaign that he says was
14 going on.

15 40 Q. Now, I will come back to that in a moment. Did he also 10:33
16 mention the creation of an intelligence file?

17 A. I don't think he said that to me on that occasion. I
18 okayed that with him the second time I went up to him.
19 I went to check that with him. From my recollection,
20 I'm not 100 percent sure whether he went into the 10:33
21 intelligence file at that point.

22 41 Q. Okay.

23 A. I okayed that with him on the second occasion I met
24 him, definitely.

25 42 Q. And when was the next occasion that you met him 10:33
26 face-to-face?

27 A. The next occasion was about -- well, it was the first
28 weekend in October 2016.

29 43 Q. Yes.

1 A. I had got word that a protected disclosure had gone in.
2 To be honest with you, I was taken aback. Because when
3 I left him on the first occasion, the idea that a
4 protected disclosure emanating from him -- it never
5 even crossed my mind, principally because it would 10:33
6 involve incriminating himself, but I never thought for
7 a second -- not for the first time I was taken aback
8 when I had heard this disclosure had been made. I
9 definitely rang him on this occasion and said there was
10 a couple of things I wanted to checked with him. And I 10:34
11 called up to the house again and he was there again
12 with his wife and I asked him, I said just a couple of
13 things I wanted to check. One, were the text messages
14 part of this campaign? He said, yes. Had an
15 intelligence file been created on Maurice McCabe in HQ? 10:34
16 He said, yes. And had somebody been appointed to
17 monitor Maurice McCabe's activity on Pulse? And he
18 confirmed that as well.

19 44 Q. And as best you can, obviously the issue of text
20 messages was a matter that you were going to seek 10:34
21 clarification on, to what extent did he clarify the
22 issue of the text messages? well, first of all, what
23 issue did you need clarification on in respect of the
24 text messages?

25 A. The fact that text messages were used in this campaign 10:35
26 and that by extension, I thought, would -- if that were
27 the case, there would be evidence there as in text
28 messages from phones. That is why I thought that
29 was important.

1 45 Q. And you have told us that you believed that the phone
2 that had been seized from him during the course of the
3 investigation, you got the impression that he was
4 indicating to you that that might reveal some evidence
5 that would support -- 10:35

6 A. Oh, he was very clear about that.

7 46 Q. -- his case?

8 A. That was, in his mind the purpose of seizing the
9 phones. That the phones -- I mean, obviously the
10 Tribunal has learned since that, as I understand it, it 10:35
11 wasn't the phones from that period that were seized but
12 he certainly told me they were the phones that were
13 seized. The text messages, it was just confirmation on
14 the basis that that was the case because there would be
15 presumably some evidence of that then. But as I say, 10:35
16 that had been a central theme of his when I met him
17 first on the basis that effectively these phones were
18 the key to everything.

19 47 Q. Okay. And in terms of when you finished your meeting
20 with him, what was the clear impression that you were 10:36
21 left with in respect of the text messages and who the
22 text messages were sent to and what they concerned?

23 A. Are you talking about the first meeting or the second
24 meeting?

25 48 Q. The second meeting. 10:36

26 A. Well, the impression I got was that these text messages
27 were sent, as I understood it, to senior officers or
28 senior management rather than one individual. I wasn't
29 100 percent sure on that. Neither was I 100 percent

1 sure that they were sent to journalists. But the
2 emphasis that was put on them was that these text
3 messages contain effectively statements, language,
4 whatever, that shows that this campaign he was claiming
5 was run was being run and, therefore, people who would 10:36
6 have been informed had knowledge of it. That was the
7 general gist of where I interpreted him as coming from
8 with the whole issue around text messages. As I say, I
9 can't say definitively that he said he sent texts to
10 journalists but he most definitely said that he sent 10:37
11 texts of this nature to Nóirín O'Sullivan and, my
12 recollection, to senior management in the Gardaí.

13 49 Q. Well, you see, you probably will be aware of the fact
14 that Superintendent Taylor denies that he was
15 indicating that he was sending or had told you that he 10:37
16 was sending text messages in relation to this issue,
17 but what he is saying is that he was sending text
18 messages to Nóirín O'Sullivan, the Deputy Commissioner,
19 and to the Commissioner Martin Callinan at the time,
20 merely updating them in relation to issues concerning 10:37
21 Maurice McCabe; in other words, that his name might be
22 mentioned in a radio programme or might have appear in
23 a newspaper article and that he would immediately
24 update them by sending fairly innocuous texts just
25 advising them of the up-to-date position in relation to 10:38
26 Maurice McCabe, and, therefore, Maurice McCabe was a
27 focus of attention, and that's what he has now told the
28 Tribunal. You are aware of that?

29 A. I am aware of that.

1 50 Q. Was that the -- did you get a flavour of that being the
2 case, that he was making to you at the time?

3 A. I got a flavour of that being one element of it, to the
4 extent that he even said to me something along the
5 lines of, that I was mentioned in some of these, 10:38
6 Clifford is on the radio, or whatever, would be that
7 kind of update you are talking about, but I most
8 certainly got the impression that that was only one
9 element of it, that it wasn't that alone. And again,
10 back to the central tenet, as I saw it, of what he was 10:38
11 saying, which was this business that the evidence, the
12 smoking gun or whatever you want to call it was on
13 these phones and it certainly wouldn't make sense to me
14 that the character of that kind of thing, updating the
15 McCabe stories on the radio or being written about or 10:39
16 whatever of that nature, that certainly wouldn't
17 indicate a smoking gun, so I was most certainly under
18 the impression that it was far broader than that.

19 CHAIRMAN: Sorry, Mr. Marrinan, the expression smoking
20 gun, obviously it's a thing that sticks in my mind but 10:39
21 I am wondering was that used in your conversation --

22 A. Chairman --

23 CHAIRMAN: -- or is that your interpretation of it?

24 A. -- sorry, I have no recollection of him using that
25 phrase. He may well have, but that is my 10:39
26 interpretation. What it amounts to, was most
27 definitely the case, as in, these phones had the
28 evidence of what had gone on previously.

29 51 Q. MR. MARRINAN: So, I mean, you wrote a book in relation

1 to the Maurice McCabe story, and this formed part of it
2 and there was a focus at page 323 of your book, but I
3 think that before the book was published you had cause
4 to contact Superintendent Taylor in relation to a
5 chapter that you had written on this, covering this
6 issue, isn't that right? 10:40

7 A. Yes, I mean, specifically in the course of that book
8 there are a number of instances where there are private
9 meetings and I endeavoured in every case to get as much
10 an account or a view of those meetings and one of those 10:40
11 was the meeting between Maurice McCabe and
12 Superintendent Taylor, and I -- that formed one of the
13 chapters. I also, just because Mr. Taylor appeared to
14 enter the story at that stage, I had some biographical
15 detail of him in that chapter and I, in that chapter 10:40
16 there is, it's related a version of the meeting between
17 Superintendent Taylor and Maurice McCabe and there is a
18 reference in that to the texts.

19 52 Q. So when was it that you had your conversation with him
20 about this? 10:41

21 A. I told the investigators, because I initially thought
22 and this again goes back to dates, I appear to be
23 atrocious with dates, but I told them initially it was
24 February '17 and when I went and got the email it was
25 actually May '17. I rang him, I said, you know, I am 10:41
26 doing this book, there's one part I want to check with
27 you and could I bang this on to you. He gave me an
28 email address and he told me to send it on there and I
29 did and he got back to me within days, at the very most

1 a week.

2 53 Q. And your understanding was that he was going to check
3 the accuracy of what you had sent to him, is that
4 right?

5 A. I specifically said in the email could you check this 10:41
6 particularly for factual accuracy.

7 54 Q. If we could just have page 6617 up on the screen,
8 please. This is from you to David Taylor:
9

10 "Dave 10:42
11 This is the chapter I was telling you about, where you
12 enter the McCabe story. See what you think,
13 particularly in terms of factual accuracy.
14 Thanks, talk soon."
15 10:42

16 And then an attachment there, if we scroll to page
17 6618, we see the interaction:
18

19 "McCabe rang the doorbell. Within seconds Michelle
20 Taylor appeared. They had already met twice and now 10:42
21 greeted each other with smiles."
22

23 And it goes on then to talk about the encounter between
24 Maurice McCabe, Michelle Taylor and her husband David
25 Taylor for the first time, isn't that right? 10:43

26 A. Yes.

27 55 Q. And then you go on in the next paragraph:
28
29 "Anybody reading Dave Taylor's CV would have had him

1 down as a man destined for big things. "

2

3 You then point out that he is a native of Tipperary.

4 And then it goes on to deal with some personal details

5 in relation to his background, isn't that right?

10:43

6 A. Correct, yeah.

7 56 Q. And if we then scroll down to the following page, 6619.

8 And then we will see there in the second paragraph, if

9 you just scroll down please:

10

10:43

11 "On the evening Callinan retired, Taylor passed to an

12 RTÉ reporter a letter which has become a focus of

13 controversy. It showed that, contrary to media

14 speculation, the Commissioner had informed the

15 Department of Justice about the recordings in Garda

10:43

16 station, the item which had prompted Callinan's

17 retirement. "

18

19 That was a matter you discussed with Taylor, isn't that

20 right?

10:44

21 A. Yes, that was -- as I said, the narrative he set out,

22 that was a big thing in it.

23 57 Q. Yes. You then go on down:

24

25 "Within weeks, Taylor was moved out of the Press

10:44

26 Office. He wasn't totally surprised but he was

27 disappointed that the move wasn't accompanied with what

28 he had regarded as the requisite promotion, instead he

29 was shifted to traffic management. "

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Again, did that reflect the conversation that you had had with Superintendent Taylor?

A. It did, Mr. Marrinan. He made a point of telling me that every other super who had been in the Press Office on leaving it had been promoted to chief super. 10:44

58 Q. Yes. And then if we scroll down, there is a quotation there:

"Sensitive information regarding child T entered the media inappropriately on the morning of October 23rd (2013). On the balance of probabilities the information in question came from someone with the Gardaí." 10:44

And that is a quote from the Children's Ombudsman, isn't that right? And then if we just go over the next page, 6620, second line: 10:45

"Taylor was suspended from duty in April 2015 when chief super came to him and confiscated his phones and laptop. This move ensured that any information retained on the devices was now in possession of Headquarters." 10:45

Again, that is on the basis of your conversation with him, is it? 10:45

A. That's correct. And there is a name missing there and that is because this is the draft, it's chief super --

1 59 Q. Yes. Well, it is only obviously a draft. And then, if
2 we scroll down just 6620, the paragraph:

3
4 "However, context is required. Taylor has always
5 denied being the source of the leak, but on the 10:46
6 assumption that he was the prime suspect there are
7 mitigating factors. The culture at the Gardaí/medi a
8 interface, developed over decades, ensured that
9 informal contacts between the Press Office and certain
10 crime correspondents were routine." 10:46

11
12 And then you go on at page 6621, paragraph starting:

13
14 "By June 2016 Taylor's life had been completely
15 transformed. He was on reduced pay and his family's 10:46
16 standard of living suffered as a result at a time when
17 his two daughters were going through second and
18 third-level education."

19
20 Again, that seems to reflect the discussion or part of 10:46
21 the discussion that you had with him in relation to the
22 impact that his suspension was having on his life,
23 isn't that right?

24 A. Absolutely, yes.

25 60 Q. And then if we then go over the page to 6622, and the 10:47
26 last paragraph down:

27
28 "There are a number of strands to the campaign, he told
29 the incredulous McCabe. The most basic was the

1 conveyance of hundreds, if not thousands, of text
2 messages to media and Garda personnel, casting McCabe
3 in a dark light. Journalists were briefed that McCabe
4 was a person who had a record of sexually abusing
5 children. Excuses were invented as to why there was no 10:47
6 official record of these crimes or allegations. Taylor
7 was prepared to believe anything that was passed to him
8 in relation to McCabe. He didn't question its origins
9 or veracity. Many within his circle believed the worst
10 of this Cavan-based cop, who would not leave him 10:48
11 alone."

12
13 So if we just go back to the beginning - "There were a
14 number of strands to the campaign, he told the
15 incredulous McCabe. The most basic was the conveyance 10:48
16 of hundreds, if not thousands, of text messages to
17 media and Garda personnel casting McCabe in a dark
18 light." - that would tend to suggest that you got that
19 information either from Sergeant McCabe, is there a
20 possibility you got that from Sergeant McCabe? 10:48

21 A. Well, what I can say to you, Mr. Marrinan, is, I got
22 that information certainly between -- I established
23 that was said between them at the meeting.

24 61 Q. All right. But in any event, this is what was given to
25 Superintendent Taylor to correct if he so wished, isn't 10:49
26 that right?

27 A. Correct.

28 62 Q. Just, obviously there is a line there:
29

1 "Journalists were briefed that McCabe was a person who
2 had a record of sexually abusing children."

3
4 It's in the plural. Was that your understanding at the
5 time?

10:49

6 A. That was my understanding.

7 63 Q. Right. And then if we go over to page 6623 --

8 A. Sorry, just beyond that, it wasn't just for him -- it
9 was literally, I was hoping that if I had got anything
10 wrong factually, particularly in relation to anything
11 that was attributed to Superintendent Taylor, I was
12 relying on him to point it out to me, whether I was --

10:49

13 64 Q. Absolutely. If you just go over to page 6623 then.
14 The top:

15
16 "He told McCabe that an intelligence file had been
17 created on McCabe in Garda HQ. The file was kept under
18 a Christian name which coincided with the name of the
19 offspring of a senior officer."

10:49

20
21 And then if we go to page 6624, the top there we see:

22
23 "They met at Taylor's home the day after that. McCabe
24 asked him again about some of the detail related to the
25 text messages. Then he informed Taylor that he was
26 obliged to make a protected disclosure on the matter."

10:50

27
28 And then if we go over to page 6625, and there is the
29 end of the portion. Was that the entire chapter that

1 you sent him, do you recall?

2 A. I don't recall, to be honest with you. It was
3 certainly --

4 65 Q. It's the portion that concerns Superintendent Taylor?

5 A. Absolutely. If there is another piece to that chapter 10:50
6 it would have nothing to do with Superintendent Taylor.

7 66 Q. And all of that, with the exception of one portion,
8 made its way into your book, isn't that right?

9 A. That's correct. When I passed it to Superintendent
10 Taylor, I asked him to have a look at it, when he came 10:51
11 back to me he said there was just one issue and that
12 was that in relation to the investigation into leaking
13 of the names of the children, that he was not
14 interviewed by the Children's Ombudsman. I went and
15 checked that out as best I could and I was able to 10:51
16 confirm that that was the case, so I had no problem
17 inserting that in terms of the only change that he
18 requested me to make.

19 67 Q. So that was the only correction and it was done at his
20 behest in relation to the draft that is set out between 10:51
21 6618 and 6625, is that right?

22 A. Correct.

23 68 Q. Did he ever, even after publication of the book, ever
24 at any time contact you with a view to correcting the
25 text of the book? 10:52

26 A. No, absolutely not.

27 69 Q. Now, obviously the Tribunal investigators went through
28 a number of other matters with you, in particular the
29 terms of reference of the Tribunal, and you are

1 familiar with them. Have you any other information
2 that you have to offer the Tribunal from a fairly
3 unique stance where you have written a book on Sergeant
4 McCabe, you have done a lot of investigative work as
5 well as the work that we have done at the Tribunal, is 10:52
6 there any other information that you think might be of
7 assistance to the workings of the Tribunal that you
8 haven't alluded to in your interviews with the
9 investigators or your evidence here today?

10 A. There is nothing comes to mind, Mr. Marrinan, to the 10:52
11 extent that I have first-hand information of anything
12 in relation to any campaign or alleged campaign against
13 Sergeant McCabe. In that regard, no. As you say I
14 have written a lot about it, I have -- I have, analysed
15 might be too sophisticated a term but I have certainly 10:53
16 commented on it, but I don't recall that there is
17 anything of first-hand knowledge that I could give you
18 to assist you in that regard.

19 MR. MARRINAN: Okay. would you answer any questions,
20 please. 10:53

21
22 MR. GORDON: No questions, Chairman.

23
24 THE WITNESS WAS CROSS-EXAMINED BY MR. MICHAEL
25 O' HIGGINS: 10:53

26 70 Q. MR. MICHAEL O' HIGGINS: Mr. Clifford, Michael
27 O'Higgins, I am counsel on behalf of Superintendent
28 Taylor, and I have some questions to put to you. I am
29 not going to be very long, and if you don't mind, I am

1 going to use your statements to the Tribunal just as a
2 bit of a roadmap in terms of those questions. Really,
3 the purpose and effect of the questions is to put my
4 client's case to you.

10:54

5
6 You made your first statement on the 18th December,
7 isn't that so?

8 A. That's correct.

9 71 Q. 2017?

10 A. 2017.

10:54

11 72 Q. And would it help you if I ask for your statement to go
12 on screen or if you wanted to just follow --

13 A. If you don't mind.

14 73 Q. Or perhaps if the hard copy is available to you there,
15 it's page 4102, volume -- I will just give you the
16 volume number in a moment now. Yes, it's on screen
17 there. And if I could ask you to go to page 4104.

10:54

18 A. Yes, Mr. O'Higgins.

19 74 Q. And just there are three points of contact: There is a
20 telephone call and two face-to-face meetings, isn't
21 that right?

10:55

22 A. That's correct.

23 75 Q. And if I could just direct your attention to line 81,
24 which deals with the telephone call, you say:

10:55

25
26 "He did not say anything negative about Sergeant
27 McCabe, nor did he give any credence to the allegations
28 against him."
29

1 Isn't that so?

2 A. Correct.

3 76 Q. And that is an agreed position between my client and
4 yourself?

5 A. Yes. 10:55

6 77 Q. And if I could ask you to go on then to page 4108.

7 A. Yes.

8 78 Q. And line 150:

9

10 "Q. I have been asked to detail any information in my 10:55
11 knowledge relating to any campaign to smear Sergeant
12 Maurice McCabe related to any other person, body or
13 office holder referred to in terms of reference [h]."

14

15 Isn't that so? 10:56

16 A. Yeah.

17 79 Q. And you replied:

18

19 "The only thing in my knowledge --"

20 10:56

21 And I presume "my knowledge" refers to the campaign.

22

23 "The only thing in my knowledge is what I became aware
24 of in late September 2016 in respect to what was
25 contained in Superintendent Taylor's protected 10:56
26 disclosure."

27

28 Isn't that so?

29 A. Correct.

1 80 Q. Now, I read that to mean that when you're giving your
2 answer to this question, in your initial statement, you
3 are saying that the first time you learned of a
4 campaign was post protected disclosure?
5 A. Well, if that's the case then, Mr. O'Higgins, maybe I 10:56
6 didn't phrase it very well. Because that is true to
7 the extent that it's the first time it's on paper, so
8 to speak.
9 81 Q. Yes.
10 A. But that is -- and certainly it's not the impression I 10:57
11 wanted to convey, because I believe elsewhere in that
12 statement, I think I did say that there was a reference
13 to it --
14 82 Q. There is --
15 A. -- in the initial meeting. 10:57
16 83 Q. -- and I hope that what is on the face of it an
17 inconsistency can be reconciled, and perhaps it can.
18 But for the present, in any event, when asked about
19 your knowledge relating to the campaign, your initial
20 response, and I won't try and describe it as anything 10:57
21 other than that, was that your knowledge emerged at the
22 time or after the protected disclosure --
23 A. Yeah, sorry, Mr. O'Higgins, just in terms of the way --
24 and I'm not nitpicking with you but the first time I
25 became aware was in late September in respect to what 10:57
26 was contained in Superintendent Taylor's disclosure.
27 84 Q. Yes.
28 A. I certainly didn't intend it, and I think an
29 interpretation could be taken from it, that that wasn't

1 necessarily saying what was actually in the disclosure,
2 it was around that time I became aware of it and all of
3 these events did occur in September 2016.

4 85 Q. If I could ask you to go over to the next page, which
5 is 40010 [sic]:

10:58

6
7 "I have been asked if I have any information or
8 evidence about an orchestrated campaign directed by
9 senior officers of the Garda Síochána to discredit
10 Sergeant McCabe by spreading rumours about his
11 professional and personal life other than what I have
12 detailed above.

10:58

13 A. No.

14
15 I have been advised that Sergeant McCabe stated in his
16 statement to the Disclosures Tribunal that I met with
17 Superintendent Taylor in September 2016, the following
18 is what Sergeant McCabe stated:

10:58

19 Then in September got --"

20 A. I am a bit lost as to where you are, Mr. O'Higgins.

10:58

21 86 Q. Sorry, 4110. I am on line 8, just at the bottom of the
22 page. Do you see that?

23 A. Yes, I do, yes.

24 87 Q. The following is what Sergeant McCabe stated:

25
26 "Then in September 2016 I got another call off Mick
27 Clifford. He stated he was after having an interview
28 with Dave Taylor, David Taylor, for an hour. He said
29 to me that he, Superintendent Taylor, isn't suspended

10:59

1 in relation to the Roma children, he is suspended for
2 information he knows about you, meaning me."

3

4 Do you see that?

5 A. Yeah.

10:59

6 88 Q. You say that Maurice McCabe's recollection in relation
7 to the conversation that you had with Superintendent
8 Taylor is correct, isn't that right?

9 A. That's correct.

10 89 Q. Except you wouldn't describe it as an interview?

10:59

11 A. I wouldn't describe it as an interview, and I wouldn't
12 describe it as me stating it as fact, but this is -- I
13 was, in terms of Maurice McCabe's statement, this is
14 what I was relating to him, the substance of what I was
15 relating to him.

11:00

16 90 Q. And I think elsewhere you, in a subsequent follow-up
17 communication with the Tribunal investigators you came
18 across a note that wasn't contemporaneous but compiled
19 shortly after meeting Superintendent Taylor?

20 A. That's correct.

11:00

21 91 Q. And although the document is undated, my impression was
22 that related to the first meeting, is that right?

23 A. I'm nearly sure it would have related to the first
24 meeting, yeah.

25 92 Q. All right. And I think just to be clear, you had
26 produced a notebook at that meeting, but Superintendent
27 Taylor asked that you did not keep notes because it
28 wasn't for publication?

11:00

29 A. Correct.

1 93 Q. "I got the impression that he attributed his plight in
2 respect of his arrest and suspension to his knowledge
3 of the campaign, which he said was conducted through
4 him against Sergeant McCabe and specifically the
5 allegation that Nóirín O'Sullivan was at least aware of 11:00
6 it. That was the gist of the conversation with him.
7 And I did mention it when I subsequently spoke to
8 Sergeant McCabe."
9
10 I infer from that, that is simply your impression of 11:01
11 what was said; you were extrapolating from things said
12 that is what he was meaning, is that so?
13 A. Yeah, I mean, perhaps it was more direct than that
14 because specific things he did say -- maybe in stating
15 that was my impression maybe I was understating it 11:01
16 perhaps, because he specifically did make mention of
17 this importance of the centrality of the phones.
18 94 Q. I mean, he did feel hard done by, there is no question?
19 A. Oh, absolutely, yes.
20 95 Q. And he was, I think you have given us a description, he 11:01
21 was very low, he was on the floor, and he was, for want
22 of a better description, in a vulnerable description?
23 A. Excuse me?
24 96 Q. He was in a vulnerable position?
25 A. I think you could say that, yes. 11:01
26 97 Q. But in any event, you relayed that impression and you
27 went on to say:
28
29 "The only knowledge I had of that campaign was what was

1 in David Taylor's protected disclosure. There was
2 nothing more than that. It was quite a general
3 conversation I had with Superintendent Taylor."

4 A. Correct.

5 98 Q. And I think you said today when Mr. Marrinan was asking 11:02
6 you about it, that your impression was he didn't really
7 want to talk about that, he wanted to talk about his
8 own circumstances?

9 A. Exactly. In that vein, the general conversation was in
10 relation to the smear campaign. 11:02

11 99 Q. Now, I will put my client's version of events of that a
12 little later, but just to -- because I think the proper
13 place to put it it is when his version that he gave to
14 the Tribunal investigators is being put to you and your
15 response, but could I just say in general terms, 11:02
16 because I don't want to appear to be simply
17 cross-examining you without cross-referencing where
18 Superintendent Taylor fits in, in all of this. He says
19 that he would -- he would have discussed -- he
20 unquestionably discussed Sergeant McCabe with you and 11:03
21 he accepts he would have said things about Sergeant
22 McCabe in general terms, but not in specifics.

23 A. And excuse me, Mr. O'Higgins, are you suggesting that
24 within that the specifics, being any alleged smear
25 campaign, he is saying that that wasn't discussed? 11:03

26 100 Q. Yes. That there weren't specifics. In other words, as
27 you say it, the knowledge of the campaign was gained
28 later and you were engaged in a general conversation?

29 A. Yeah. My distinct recollection of that is that he did

1 tell me about his plight but he connected his plight to
2 the fact that there had been a smear campaign against
3 Maurice McCabe. The details of such a campaign was a
4 general conversation where he mentioned the texts and,
5 as I said, he appeared to be uncomfortable going into 11:04
6 too much detail, because let's face it what he was
7 talking about was being involved in something pretty
8 unsavoury, to put it at its mildest.

9 101 Q. If I was to put it this way: He might not have given
10 you specifics but he left you with a clear impression 11:04
11 in your mind that Sergeant McCabe had been spoken ill
12 of with regard to his previous 2006 investigation?

13 A. Yes. When he was in the Garda Press Office. Well,
14 more than spoken ill about, as I say, and it's my
15 words, this analogy of the smoking gun being the 11:04
16 phones.

17 102 Q. And just going overleaf then to the next page, at 4112,
18 line 213:

19
20 "I have been asked if I was informed by Superintendent 11:05
21 David Taylor that he was instructed, directed by the
22 former Garda Martin Callinan and/or then Deputy
23 Commissioner Nóirín O'Sullivan to contact the media to
24 brief the media negatively against Sergeant McCabe. If
25 so, I have been asked to provide details. 11:05
26

27 In general terms, and as described in my answer above,
28 he did confirm this."
29

1 So, may I take it then a specifics were not adverted
2 to?

3 A. Specifics that I can remember in terms of any
4 intelligence file, the content -- yes, specifics were
5 not adverted to other than this business of the texts. 11:05
6 And the reason that specific was adverted to was
7 because, again, back to this thesis about the phones.

8 103 Q. If I could ask you to go overleaf to the next page,
9 4113, line 230:

10 11:05

11 "Q. I have been referred to my book, A Force for
12 Justice, the Maurice McCabe Story and in particular to
13 the last paragraph on page 323:

14 'There were a number of strands to the campaign, he
15 told the incredulous McCabe. The most basic was the 11:06
16 conveyance of hundreds, if not thousands, of text
17 messages to media and Garda personnel casting McCabe in
18 a bad light.'

19
20 In respect of this section I have been asked what my 11:06
21 source for this information was and whether
22 Superintendent David Taylor ever confirmed this
23 information to me. If so, I have been asked to provide
24 details and all attendant circumstances.

25 11:06

26 A source told me about the conversation between Maurice
27 McCabe and Superintendent Taylor."

28

29 So I take it that my client is not the source of the

1 conversation?

2 A. Certainly, but on the basis that I sent it to him for
3 verification, you can take that, yeah.

4 104 Q. Well, subject to that.

5 A. Yeah. 11:07

6 105 Q. But I am talking about really at the first meeting.

7 A. Yeah.

8 106 Q. "I established what had occurred in that conversation
9 through sources. I was able to confirm the content of
10 the conversation. I don't recall specifically if 11:07
11 Superintendent Taylor said to me about hundreds and
12 thousands of text messages being sent. However, the
13 character of what he said to me would be very much
14 along those lines. This was also subsequently
15 reflected in the protected disclosures." 11:07
16

17 So again, the texts come up in more detail in your
18 second statement, but again, in your first statement
19 it's in fairly non-specific terms?

20 A. Correct. And the reason for that being that I was 11:07
21 contacted by the investigators prior to the second
22 statement here and asked specifically about the texts,
23 and as far as they were concerned the texts had taken
24 on a major significance.

25 107 Q. Okay. And if I could go to your second statement now, 11:07
26 and I'm sorry, this will take a little bit of time, but
27 there is a long chunk that was put to you and if I
28 could just run through it with you. It commences at
29 page 4879, volume 18.

1 A. Sorry, 4879?

2 108 Q. 4879.

3 A. Sorry, yes.

4 109 Q. And just before I take you through the extended passage
5 or passages, you, when you are making your statements 11:08
6 to the investigators you are basing your answers almost
7 exclusively on your recollection, isn't that right?

8 A. That's correct. The note that you referred to, that
9 the investigators asked me to check -- I think actually
10 it was for a note related to the email he sent me, but 11:09
11 in doing that, I discovered this other note that I
12 immediately sent on to the investigators.

13 110 Q. Which I think you described as accurate but in no way
14 comprehensive?

15 A. I would say that is fair enough, yeah, yeah. 11:09

16 111 Q. And in fairness to you, and there is no criticism
17 implied or otherwise, you had actually forgotten making
18 the note?

19 A. I had forgotten completely. As I say, I only
20 discovered it when asked they asked me. 11:09

21 112 Q. And as part of your work you talked to a lot of people,
22 isn't that right?

23 A. Correct.

24 113 Q. And you frequently might talk to people on a rolling
25 basis? 11:09

26 A. Correct.

27 114 Q. As a story unfolds. And sometimes, looking back on it,
28 it can be hard to know what was said in which
29 particular conversation?

1 A. That's fair enough, yes, that is reasonable.

2 115 Q. And that is just human memory particularly?

3 A. Yeah.

4 116 Q. But in any event, the quotation begins with the same
5 quotation from the book about: 11:10
6
7 "...the most basic was the conveyance of hundreds, if
8 not thousands, of text messages to the media and Garda
9 personnel casting McCabe in a bad light.'

10 11:10

11 In respect of this section, I have been asked what my
12 source for this information was and whether
13 Superintendent David Taylor ever confirmed the
14 information to me. If so, I have been asked to provide
15 details and all attendant circumstances." 11:10
16
17 And just to orientate you, you are being recounted what
18 was being put to Superintendent Taylor in his Tribunal
19 investigators' interview.

20 A. Correct. 11:10

21 117 Q. "A. A source told me about the conversation."
22
23 That is just what I read previously. And it goes on:
24
25 "In respect of the above I --" 11:11
26
27 That is Superintendent Taylor.
28
29 "-- have been asked whether the content of the above

1 extract, as attributed to me by Mr. Clifford, is
2 accurate and if not I have been asked to detail what is
3 inaccurate."

4
5 And Superintendent Taylor replied:

11:11

6
7 "I had a conversation with Michael Clifford, before I
8 met Maurice McCabe. This was late summer. I told
9 Michael Clifford about the campaign to negatively brief
10 journalists about Maurice McCabe. I told him I was to
11 brief journalists negatively against Sergeant McCabe in
12 respect of the Ms. D allegation on the instructions of
13 Martin Callinan and that this was always done
14 verbally."

11:11

15
16 I am just going to pause there for a moment before we
17 go on to the texts. In the course of his evidence
18 before the Tribunal, Superintendent Taylor said he
19 hadn't discussed specifics with regard to any smear
20 campaign and hadn't confirmed that there was a smear
21 campaign in his first discussion with you, do you
22 follow me?

11:11

23 A. I do.

24 118 Q. But I should say, just by reference to the note that
25 has surfaced -- and if you could just give me one
26 second, just to find it. The top line on your note,
27 which is a typed note -- you had made handwritten
28 notes, I think?

11:12

11:12

29 A. It's pretty -- the spell check I think was on strike

1 that day, Mr. O'Higgins.

2 119 Q. We won't worry about that. We are all guilty of that.

3 Sometimes when the spell check comes up, one wonders

4 why. But in any event, that is the typed version of an

5 original handwritten note, is that right? 11:13

6 A. No.

7 120 Q. You just typed --

8 A. I just typed this into my --

9 121 Q. So, Dave Taylor, a few interesting things -- sorry,

10 this is page 6628: 11:13

11

12 "Dave Taylor, a few interesting things - DT definitely

13 spread rumours - only following orders."

14

15 That's your near same day record, in any event? 11:13

16 A. Of what Superintendent Taylor said to me?

17 122 Q. Yes.

18 A. Yeah.

19 123 Q. And having put that to him, mindful of the fact that

20 that is not a contemporaneous but a record made very 11:13

21 closely after the conversation, he is not in a position

22 to dispute it, is his instruction. So I'm not

23 disputing that if you are saying that's correct.

24 A. Oh, yeah, yeah.

25 124 Q. Coming on then to read on: 11:13

26

27 "In relation to the reference to texts in the above

28 extract, I would have told him there would have been

29 texts in respect to updates or briefings as per my

1 protected disclosure. I never discussed my
2 meetings --"

3

4 Sorry, first of all, do you understand what he is
5 saying there?

11:14

6 A. Yes. He is distinguishing between texts updating
7 personnel, senior personnel about the story and the
8 media, whatever, as opposed to texts disparaging or
9 whatever towards Maurice McCabe.

10 125 Q. The primary difference would be one is after the event 11:14
11 internal and up ward; the other one is prior to the
12 event, and is an attempt to, by text we are talking, to
13 influence how something is reported, that is the
14 primary distinction, practical distinction, isn't that
15 right?

11:14

16 A. Yeah. whether it's prior to the event or not I am not
17 sure, but certainly there is -- the distinction to my
18 mind is one is basically updating in --

19 126 Q. In terms of what has already happened?

20 A. -- in terms of what's going on or if something is going 11:15
21 to go on TV tonight or whatever, it's just updating the
22 media; the other is the specifics of any campaign.

23 127 Q. I understand, it couldn't be forward pointing. But
24 it's updates.

25 A. Yeah, yeah.

11:15

26 128 Q. And we will return to that because the texts are dealt
27 with a little bit more in your statement.

28

29 "I never subsequently discussed my meetings with

1 Maurice McCabe on the various dates with Mr. Clifford."

2

3

Is he right or wrong about that?

4

A. He is correct.

5

129 Q. He is correct, yeah.

11:15

6

7

"I am not the source referred to in the above extract."

8

9

And I think that is true. And if we go on then:

10

11:15

11

"In respect of the foregoing extract, I have been asked whether I agree with Superintendent Taylor's account of his discussion with me and the date he says this occurred, late summer. If not, I have been asked to provide details and all attendant circumstances of what I recall of my meetings with Superintendent Taylor.

11:15

12

13

14

15

16

17

18

A. I had a notion it was earlier but I do not have an issue saying it was around the time late summer. My first contact was in May. Certainly later in the summer when I met him. In relation to the meeting, my recollection is that Superintendent Taylor placed a lot of emphasis on text messages being part of the issues around Sergeant McCabe, particularly in relation to communication with the senior management of Gardaí and in contacting journalists."

11:16

19

20

21

22

23

24

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26

11:16

27

28

Now, I want to make clear that up to the line "within the senior member of Gardaí ", and again, just to be

29

1 clear, we are talking about text message communication,
2 not communication, generally I mean, with regard to
3 text messages there was emphasis on text messages but
4 it was only with regard to internally and upward. In
5 other words, he did not say to you, and I think you 11:16
6 said this morning earlier you weren't sure about this,
7 but he did not say to you that he had put anything in a
8 text to a journalist about Maurice McCabe and briefing
9 negatively and the 2006 allegation.

10 A. Yes, I'm not -- 11:17

11 130 Q. First of all, do you understand the distinction I am
12 making?

13 A. I do, and I am -- I can't say definitively that he said
14 he texted journalists. But also, I have no
15 recollection of saying that he only exclusively 11:17
16 verbally briefed journalists. The other thing there,
17 Mr. O'Higgins, is, in terms of the communication within
18 senior management, I mean, as I understand it, there is
19 a conflict there between me and Superintendent Taylor
20 to the extent that he is saying these were updates as 11:17
21 we spoke about, whereas the impression I had is they
22 were incriminating to the effect that they referenced
23 Maurice McCabe.

24 131 Q. I don't doubt that, and I will return to that in due
25 course. But just so that you are clear what I am 11:17
26 putting: Yes, there was emphasis on text messages but
27 the emphasis [at internally and upward and not outward
28 to journalists, but I will develop that in a moment I
29 hope.

1
2 "One issue I certainly recall at one point is he
3 certainly mentioned to me (Reilly) that I featured
4 myself in a number of texts. And elaborating he said,
5 for instance, if I was talking about the McCabe story 11:18
6 on the radio he would have circulated that amongst
7 senior Garda management with comment."

8
9 Now, insofar as that is any significance, it's
10 consistent with the internal texting. 11:18

11
12 "I don't recall specifically what he said but he was
13 paying a lot of emphasis on text messages. That was
14 the impression that I got. I have a recollection of
15 Superintendent Taylor saying that he would reference 11:18
16 the sexual abuse allegations and communications by text
17 with journalists."

18
19 Now, a couple of things. First of all, on my
20 instructions that did not occur. Secondly, you are 11:18
21 saying there in your statement you have a recollection,
22 but this morning you are saying you are not sure.

23 A. Yeah, I can't be definitive about it. I mean, as I
24 say, all I can be definitive about is that I have no
25 recollection of him saying that it was always 11:19
26 exclusively verbally he briefed journalists. And the
27 emphasis on the text messages and, as I understood it,
28 the incriminating element to the text messages, whereas
29 those were sent to senior management by his account,

1 I'm not 100 percent sure that they were sent to
2 journalists but there was such an emphasis on it and
3 there was an emphasis on the briefing of journalists
4 that perhaps it is quite possible that I am not 100
5 percent sure on that. 11:19

6 132 Q. Could I put it like this: I know logic isn't the
7 answer to everything, but the purpose of briefing a
8 journalist about bad things, alleged bad things, even
9 alleged bad things that are actually untrue to
10 journalists, is for the purposes of hoping to influence 11:19
11 how the journalist will approach the story?

12 A. Yeah.

13 133 Q. And it's done on an unattributed or off-the-record
14 basis. And in that way, there is let accountability.

15 A. Absolutely. 11:20

16 134 Q. If you actually put that in a text, it would seem to
17 defeat all of those purposes, isn't that right?

18 A. That's correct. with the proviso that it would depend
19 on how close your relationship might have been with a
20 particular journalist, but in general terms I would 11:20
21 accept that.

22 135 Q. You would be handing up a very, very significant
23 hostage to fortune?

24 A. Certainly if you did not have a very close relationship
25 with that particular journalist. 11:20

26 136 Q. "I have no specific recollection of Superintendent
27 Taylor saying that former Commissioner Callinan
28 scripted specific texts and that he passed them on, but
29 I do recall him saying that often former Commissioner

1 Martin Callinan would contact him and then he would
2 contact journalists to brief negatively about Sergeant
3 McCabe in relation to the allegation made by --"
4

5 Sorry.

11:21

6
7 "-- in relation to the allegation made him by Ms. D."
8

9 I think there is a word missing there. Just to be
10 clear, on my client's instructions there is not, and
11 never was, any question of him saying to you or anybody
12 else that Commissioner Callinan composed a text and
13 sent it on to him simply as a conduit.

11:21

14 A. I think my only reason for referencing that,
15 Mr. O'Higgins, was it arose previously. I mean, the
16 investigators contacted me about this text issue when
17 it arose in hearings there and my recollection is that,
18 I can't remember whether it was Sergeant McCabe, that
19 arose in some capacity and whether prompted by the
20 investigators or not, I don't know, but I am just
21 making the point that I have no recollection of this
22 business of a script being effectively copied and sent
23 on to me.

11:21

11:21

24 137 Q. I mean, bearing in mind the issues which have been
25 teased out during the course of this Tribunal, have
26 been teased out sometimes over statements of 20 or 30
27 pages, which have the benefit both prior to the taking
28 of the statement and subsequent to the taking of the
29 statement, to check everything off a variety of

11:22

1 different sources, it's very time-consuming and it's a
2 very valuable exercise. You, on the other hand, were
3 coming in, and I don't mean this in a deprecating way,
4 scratching the surface with regard to an awful lot of
5 things that were simmering below the surface and trying 11:22
6 to make sense of them, isn't that right?

7 A. You could interpret it that way, yeah.

8 138 Q. And not just you, but also the person who was
9 articulating it and the possibility for things being
10 taken up slightly wrong or half right or half wrong, is 11:22
11 quite significant, isn't that so?

12 A. Up to a point. I mean, I would suggest that I was
13 fairly across things here but this encounter with
14 Superintendent Taylor was something completely new to
15 me and what he was presenting and, as I say, on his 11:23
16 request I didn't take notes, so it's possible that my
17 recollection is not 100 percent. The one thing I can
18 say, with certainty, in general terms, and not in
19 specific terms, is that this issue over the texts was
20 noted on the basis of the phones, phones confiscated, 11:23
21 smoking gun, my words, etcetera, that the thesis was
22 central to what he was saying to me.

23 139 Q. I understand exactly what you are saying.

24

25 "I don't recall whether Superintendent Taylor used 11:23
26 Ms. D's name when speaking about this, but I do recall
27 him saying that we --"

28

29 That is superintendent and his wife

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-- believed the allegation."

That is, that there was something -- what did it mean by "believed the allegation"?

11:24

A. Well, at one point in the conversation I have a recollection of Michelle Taylor saying we believed it, when David Taylor was explaining this about the briefing, again whether it was texting or briefing journalists or spreading the word, if you want to put it that way, she made some comment to the effect of we believed it, we believed that this was true, that what her husband was engaged in was the allegation that there was substance to it or whatever, that was what she conveyed to me.

11:24

11:24

140 Q. Thank you for that. Overleaf then, and I don't have very much more to go:

"I met Superintendent Taylor on a second occasion in very early October 2016. Again he was with his wife. I met him. I do recall asking him about text messages being part of the campaign against Sergeant McCabe, who was one of three or four specific things I wanted to ask him about. He confirmed that text messages were part of the campaign against Sergeant McCabe."

11:24

11:25

But again that is specified in fairly broad terms, isn't that right?

A. That's correct.

1 141 Q. "My overall impression, and my first meeting in
2 particular being the crucial one, the superintendent
3 did put the emphasis on text messages and I said, in
4 mentioning me in referencing things that were going on,
5 for example, Clifford's on the radio, etcetera --" 11:25
6
7 You go on then to add of your own volition:
8
9 "-- which is of a different character to briefing,
10 reminding or emphasising in texts to journalists about 11:25
11 the sexual abuse allegations against Sergeant McCabe."
12
13 And you acknowledge that to the investigators.
14 A. That's correct, it's a different character, yeah.
15 142 Q. "But I do recall him stating that references to the 11:25
16 sexual abuse allegations against Sergeant McCabe were
17 frequently made in texts by him."
18
19 Now, you have my client's response to that; that that
20 didn't occur. Could I simply add that whatever about 11:26
21 hoping that you might have a particularly strong
22 relationship with one journalist, if you were doing it
23 frequently the chances of a journalist retaining that
24 and making reference to it increases, isn't that right?
25 A. That is fair enough, yeah. 11:26
26 143 Q. And also be it said, not just simply gratuitously
27 repeating it but under law or under some under
28 obligation would be obliged to disclose it, isn't that
29 right?

1 A. That's correct.

2 144 Q. "In this regard I dispute what Superintendent Taylor
3 has stated he stated to me in this context as
4 referenced above and as follows: 'I told him I was to
5 brief journalists against Sergeant McCabe in respect of 11:26
6 the Ms. D allegation on the instructions of Martin
7 Callinan. This was always done verbally.' From my
8 recollection superintendent did not always tell me this
9 was done verbally. I am operating on the basis of my
10 recollection as I did not take notes." 11:27

11
12 And I am working on the basis that you are giving your
13 evidence here, and from our perspective there is no
14 doubt about this, honestly and to the best of your
15 recollection, but recollection is and can be fallible, 11:27
16 isn't that so?

17 A. That's correct, in terms of detail, yeah.

18 145 Q. "The second meeting with Superintendent Taylor I asked
19 about the texts being part of the campaign against
20 Sergeant McCabe along with other strands specifically." 11:27

21
22 You are giving a list here.

23
24 "The creation of an intelligence file." 11:27

25
26 And it's accepted that my client did make reference to
27 the possible existence of a file. It's what he
28 believed. He accepts now that was incorrect, but he
29 accepts he did have that conversation with you. He

1 takes issue with the suggestion that he confirmed that
2 there was a deployment of a member to monitor Sergeant
3 McCabe's Pulse activity, but you have a different view
4 on that.

5 A. I do. And I reference that in the story I wrote 11:28
6 because again, it was a specific in terms of any
7 alleged campaign.

8 146 Q. And you just go on to say you were doing that on the
9 basis of following up on the protected disclosures.
10 And just to be clear, my client didn't tell you what 11:28
11 was in his protected disclosures?

12 A. That's correct. I asked him for various details that
13 he confirmed, but I didn't have sight of his specific
14 protected disclosures.

15 147 Q. And he didn't tell you what was in it, he didn't 11:28
16 volunteer what was in it?

17 A. Beyond confirming those details --

18 148 Q. Those details.

19 A. -- no.

20 149 Q. And a couple of things I just want to ask you in 11:28
21 generic terms. You would have cause, as a journalist,
22 where people would impart to you their involvement in
23 an event and they would complain to you that they were
24 hard done by, that arises frequently?

25 A. Oh, absolutely. 11:29

26 150 Q. And I'm talking here incidentally in generic terms and
27 I am talking about circumstances where you would have
28 no doubt that the bona fides of the people voicing the
29 complaint was not at issue, do you follow me?

1 A. Yes. To the extent that in their belief, in their mind
2 they were hard done by and that they were --

3 151 Q. Yes. In other words, there are people who will tell
4 you things that just simply aren't true, you disregard
5 those, or there are people who are telling you things 11:29
6 that mightn't check out, but it doesn't necessarily
7 mean that they were lying to you, isn't that so?

8 A. That's correct.

9 152 Q. Can I ask you, in the latter circumstances where people
10 make, for want of a better description, a complaint to 11:29
11 you about how they have been -- how they are -- how
12 they have been dealt with badly, is it common that they
13 would frequently say if you go and check out this or
14 that it will validate me, and that you do go and check
15 it out and it doesn't validate them? 11:30

16 A. I'd have to say that there are people who say if you go
17 and check this out it will validate me, proactively
18 without me suggesting it, and in those terms it tends
19 to validate them.

20 153 Q. Yes. But equally, are there not instances where it 11:30
21 doesn't validate them?

22 A. Oh, there are, absolutely. Someone will say check it
23 out --

24 154 Q. And you would be satisfied in those circumstances it's
25 less an attempt to lead you up the garden path and more 11:30
26 their own subjective assessment of their own
27 circumstances?

28 A. Yeah, sometimes, Mr. O'Higgins, it's a tough one
29 because, believe me, you get all sorts in that regard,

1 but there is no hard and fast rule in that regard, I'd
2 suggest.

3 155 Q. I suppose what I am getting at is, sometimes when
4 people cite other sources in their own mind they have
5 given them a value far in excess of what they deserve? 11:31

6 A. That is true, yes, yes.

7 156 Q. And in terms of showing material prior to publication,
8 that doesn't routinely happen, I imagine, but it can
9 happen?

10 A. A very -- extremely rarely, if I can't recall, in terms 11:31
11 of daily newspaper publication.

12 157 Q. Because it's happening so quickly, for one thing?

13 A. Yeah, and as well because, you know, there's an issue
14 over neutrality in terms of what you are reporting and
15 that sort of thing. 11:31

16 158 Q. Would it be then that it has only been your experience
17 that you would have a small reference sample for people
18 you'd ask to look at stuff?

19 A. Are you talking about asking -- as an example of me
20 something Superintendent Taylor about the chapter in 11:31
21 the book, that kind of thing?

22 159 Q. Yes.

23 A. That would be very, very rare, yeah.

24 160 Q. I mean, if it is only -- if you have only a small
25 reference sample you may not be able -- 11:32

26 A. Well, I can recall one instance and that was because of
27 sensitivity, because somebody was bereaved and their
28 family came to me and it was an extremely sensitive
29 situation and she wanted to see it before I published

1 it, and on the basis of all the circumstances I went
2 against my natural professionalism, or whatever you
3 want to call it, and let her have a look at it. That
4 would be extremely rare.

5 161 Q. You may not be able to answer this, if it happens so 11:32
6 rarely, but I mean, is it the case that some people
7 scrutinise every dot and comma and some people read it
8 quickly and say that is fine?

9 A. I think anybody who is involved in a story would be far
10 more towards the dot and comma and would be far 11:32
11 quicker, not in a negative way but more in a point of
12 information way of pointing out to you where you've got
13 even a small detail, for example, even like the
14 spelling of a surname or something of that nature,
15 wrong. 11:33

16 162 Q. Well, could I say certainly I respect and understand
17 the logic of your observation, but I mean, as
18 Mr. Marrinan pointed out, the word "children" appeared
19 in the text and that does not seem to have been
20 suggested before. 11:33

21 A. I'm sorry, I am not with you.

22 163 Q. Mr. Marrinan pointed up an extract from the text which
23 referred to him briefing negatively against Sergeant
24 McCabe on the basis he had sexually abused children?

25 A. Oh, sorry, the plural, children, yeah. 11:33

26 164 Q. That doesn't seem to have been picked up?

27 A. No, it doesn't.

28 165 Q. Just the final thing, you mentioned that someone had
29 first drawn to your attention about stories and --

1 CHAIRMAN: well, just to add to that, Mr. O'Higgins,
2 there's journalists who were briefed that Maurice
3 McCabe was a person who had a record of sexually
4 abusing children and then there is a reference to
5 records and Garda files. So, that is a clear plural. 11:33

6 166 Q. MR. MICHAEL O' HIGGINS: The individual whom you had the
7 conversation in which Sergeant McCabe was referred to
8 as a kiddie fiddler, do you know did that person get
9 their information from within An Garda Síochána?

10 A. No, I -- all I can tell you there is, on the basis of 11:34
11 what he previously told me about that individual I
12 assumed it came from there. I also know that the same
13 person, within the last year, speaking to him, I
14 couldn't remember the name of that senior garda because
15 it wasn't significant to me at the time when I ran it 11:34
16 by him, and he laughed and said you're not getting that
17 out of me, or something to that effect. But I was not
18 told specifically that it came from that individual,
19 that acquaintance of this person.

20 MR. MICHAEL O' HIGGINS: Thank you very much, 11:34
21 Mr. Clifford.

22 MR. QUINN: Chairman, I am for Mr. Clifford and if I
23 can, if I could just reserve my position until the end.

24 CHAIRMAN: Of course you can, yes.

25 MR. QUINN: I have nothing at the moment, though. 11:35

26 CHAIRMAN: Mr. Dignam?

27 MR. DIGNAM: Chairman, I have a number of questions for
28 Mr. Clifford.

29

1 THE WITNESS WAS CROSS-EXAMINED BY MR. DIGNAM:

- 2 167 Q. MR. DIGNAM: Mr. Clifford, my name is Conor Dignam, and
3 I appear on behalf of An Garda Síochána, including
4 Ms. O'Sullivan and former Commissioner Callinan. If I
5 could just ask you firstly, Mr. Clifford, you make it 11:35
6 clear in your two interviews with the investigators for
7 the Tribunal and indeed I think you repeated it today
8 in your evidence, that you were never briefed
9 negatively or indeed given any negative information
10 about Sergeant McCabe by any member of An Garda 11:35
11 Síochána, is that correct?
12 A. Correct, yeah.
13 168 Q. Yes. If I could just ask you to look at page 4108.
14 A. Looking at it on the screen or --
15 169 Q. And line 146. I think you can probably read it on the 11:35
16 screen, Mr. Clifford. I don't think there is any
17 controversy between us on this.
18 A. Okay.
19 170 Q. Line 146, you were asked by the investigator in your
20 first interview with them in December 2017, you were 11:36
21 asked to detail any contact as may have been had by you
22 directly with Gardaí of whatever rank as to the
23 character, real or supposed, of Sergeant Maurice
24 McCabe, and the detail and provenance thereof, and your
25 answer is "no". Can I take it from that that you had 11:36
26 no contact of that form or nature with members of An
27 Garda Síochána?
28 A. Correct.
29 171 Q. On page 4110 you were asked whether you had any

1 information in relation to an orchestrated campaign,
2 and again, I think you answer that you have no such
3 information, from your direct knowledge. On page --
4 sorry?

5 A. Correct, yes. 11:37

6 172 Q. Page 4112, you were specifically asked at the bottom of
7 that page, line 218, the investigators put it to that
8 you for:

9

10 "For the avoidance of doubt, and in the interests of 11:37
11 clarity, I have been asked whether former Commissioner
12 Martin Callinan, former Commissioner Nóirín O'Sullivan
13 or any other Garda member ever spoke to [you] and
14 negatively briefed [you] in respect to Sergeant Maurice
15 McCabe." 11:37

16

17 And you answer "no".

18 A. Correct.

19 173 Q. That remains your position, isn't that right?

20 A. Yes. 11:37

21 174 Q. Yes. And in fact, you very fairly express some
22 surprise that nothing like this had ever occurred, on
23 page 4118, at the bottom of that page, you say that:

24

25 "Looking back on it, I am very surprised that I was not 11:37
26 contacted by David Taylor or anyone in the media at
27 that time, because in my experience if you are writing
28 anything negative about any organisation people may
29 reach out to try and soften what has been written. in

1 retrospect, I am surprised that did not happen."

2 A. Yes, Mr. Dignam.

3 175 Q. Yes.

4 A. And I wasn't referring there that I wasn't contacted in
5 order to be briefed negatively about Sergeant McCabe in 11:38
6 relation to any of these issues, but merely it was my
7 experience in terms of dealing -- I know, for instance,
8 in one instance in the business world and in the
9 political world, when you are writing, when you make
10 contact with the official Press Office, often you get a 11:38
11 phone call saying, listen, a cup of coffee, I just want
12 to give you a bit of background in relation to that and
13 that is what I was referring.

14 176 Q. Yes. And that didn't occur?

15 A. No. 11:38

16 177 Q. No. Now, I think you described yourself in response to
17 some of Mr. Marrinan's questions as a generalist, you
18 cover all sorts of stories and all sorts of topics for
19 the Examiner and indeed for your other publications?

20 A. That's correct. 11:38

21 178 Q. I think it is fair to say that you have been very
22 involved in stories about Sergeant McCabe and the
23 penalty points issues and indeed the controversies that
24 have given rise to this Tribunal, isn't that fair to
25 say? 11:39

26 A. That's correct. And that came out of a situation over
27 the years whereby I was involved in writing stories
28 about the Gardaí coming from you might call a different
29 angle than the news of the day or the security

1 correspondents and perhaps that is how I ended up in
2 this.

3 179 Q. Yes. And indeed you have continued your interest in
4 the story and you have continued to broadcast,
5 etcetera, and contribute to discussions of the Tribunal 11:39
6 indeed during the course of the Tribunal?

7 A. Correct, yes.

8 180 Q. Yes. And I think in that vein, you were in fact the
9 first person -- you in fact broke the story of the
10 protected disclosures having been made, isn't that 11:39
11 right?

12 A. That's correct.

13 181 Q. And you didn't name the protected disclosers but you
14 broke the fact of two protected disclosures having been
15 made? 11:39

16 A. That's correct.

17 182 Q. And I think you describe them as having been made by
18 senior officers in An Garda Síochána. And that led to,
19 in fact, I think three articles in the Examiner --
20 three items in the Examiner on the 4th October; a front 11:39
21 page article, an editorial and I think an analysis
22 piece by yourself, isn't that right?

23 A. Yes.

24 183 Q. Yes. And can I take it that you had an input into the
25 editorial that was written in the paper on that day? 11:40

26 A. I honestly cannot tell you that. Occasionally the
27 editorial writer contacts me. I can't say definitively
28 whether he did on that occasion. I wouldn't be
29 surprised if he didn't because I would have been very

1 busy that day. But I can't be definitive on that.

2 184 Q. Fair enough. In fact, I am not sure the Tribunal has
3 those articles and we had some difficulty in obtaining
4 them but we have eventually found them on-line this
5 morning, but can I ask you, did Superintendent Taylor 11:40
6 ever contact you after the publication of those
7 articles to say that anything stated in them was wrong?
8 A. I was in contact with him but he never stated that
9 anything was wrong in any of them.

10 CHAIRMAN: Sorry, Mr. Dignam, you have seen the 11:40
11 articles, I haven't, but is there something significant
12 in them that I ought to know about?
13 MR. DIGNAM: I was going to ask, just put some small
14 piece to Mr. Clifford.
15 CHAIRMAN: That is fine. 11:41
16 MR. DIGNAM: I am afraid, Chairman, I haven't got a
17 printed copy because we literally found them as the
18 evidence was being heard. We can arrange to have
19 copies made, or indeed Mr. Clifford's team may have
20 copies. 11:41
21 CHAIRMAN: It's fine to listen, thanks.

22 185 Q. MR. DIGNAM: In the analysis piece, Mr. Clifford, you
23 say that:
24
25 "Today's revelations in the Irish Examiner about two 11:41
26 protected disclosures alleging the maltreatment of a
27 whistleblower suggests that little has changed."
28
29 And that follows on from a discussion in the preceding

1 paragraphs of the culture within An Garda Síochána.

2 A. Yeah --

3 186 Q. And you say then:

4

5 "The disclosures allege that there was a concerted 11:41

6 campaign amongst senior management in the force to

7 destroy the character of a whistleblower. There were

8 different strands to the alleged campaign, including

9 the dissemination of text messages containing

10 falsehoods about the officer in question, briefing of 11:42

11 elements of the media and even the creation of an

12 intelligence file on the officer."

13

14 Now, Superintendent Taylor didn't take issue with any

15 of the contents of that paragraph, is that right? 11:42

16 A. No.

17 187 Q. Yes. And now, you describe the contents of the

18 protected disclosures as revelations elsewhere in the

19 newspaper, and you draw from these revelations that

20 nothing has changed in An Garda Síochána. Now -- 11:42

21 A. Sorry, I can't remember specifically but I would

22 imagine that would be the general gist of it, yeah.

23 188 Q. Can I ask you, had you seen the two protected

24 disclosures when you wrote those articles in the paper

25 on the 4th October? 11:42

26 CHAIRMAN: of which year was that?

27 MR. DIGNAM: Sorry, of 2016.

28 A. Yeah, I might have a difficulty there, Mr. Dignam, in

29 terms of sources and that, in terms of identifying or

1 potentially identifying sources in terms of answering
2 that specifically.

3 189 Q. Okay. Well, you have told us that -- I think you have
4 told us that Superintendent Taylor didn't give you the
5 protected disclosure? 11:43

6 A. Correct.

7 190 Q. Okay. But you don't feel in a position to say whether
8 anybody else gave you those protected disclosures?

9 A. I don't, no.

10 191 Q. Sorry? 11:43

11 A. I don't feel in a position to say that exactly on the
12 basis of identifying people, sources.

13 192 Q. Okay. Now, what checks did you do to confirm the truth
14 or otherwise of the contents of what was contained in
15 the protected disclosures, whether you saw them or not? 11:43

16 A. You are saying the allegations effectively that were in
17 the disclosures?

18 193 Q. Yes.

19 A. What did I do to check them?

20 194 Q. Yes. 11:43

21 A. Well, put it this way: I made some phone calls after
22 my first meeting with Superintendent Taylor, and in one
23 of those calls I was able to establish that his
24 narrative about how he had been suspended and all had
25 some sympathy in some sections of An Garda Síochána, 11:44
26 and I'd have to say presumably no more than myself, and
27 a lot of us, those sections were not fully au fait with
28 the exact details of what Superintendent Taylor's
29 involved in, but the actual allegations, the substance

1 you are talking about is this alleged smear campaign.

2 195 Q. Yes.

3 A. And you are asking what did I do to check whether that

4 had occurred. There was very little I could do in that

5 regard. In terms of publishing that and feeling 11:44

6 justified in publishing it, there are a couple of

7 things in that regard that I would say: First of all,

8 this is -- in publishing that, it's a process whereby

9 it goes through the editorial hierarchy inside in the

10 Examiner, which backed up my decision that this was in 11:44

11 the public interest and that this should have been

12 published. Then you are talking about the substance of

13 the issue. In the first instance, this was

14 unprecedented. You had a superintendent in An Garda

15 Síochána nominally of good standing, was making a 11:45

16 protected disclosure about what was occurring within

17 the force. That of itself was completely

18 unprecedented. Equally so, who he was incriminating in

19 there. In the first instance he was incriminating

20 himself. I don't know even since the protected 11:45

21 disclosure or anything of that nature has come in, have

22 we ever had a scenario whereby somebody making it was

23 incriminating and incriminating himself to the extent

24 that he was admitting that he was involved in a smear

25 campaign to effectively brand Sergeant McCabe as a 11:45

26 paedophile and to do so for no other than to ingratiate

27 himself to his boss or further his career. That is

28 that element of it. The second element: The other

29 person he incriminated was former Commissioner

1 Callinan, somebody with whom he had a very good
2 relationship, whom he looked up to and whom he regarded
3 as something of a mentor.

4 CHAIRMAN: I am sorry, I beg your pardon for
5 interrupting you, but I don't understand your answer, 11:45
6 that David Taylor was doing it to ingratiate himself
7 and further his career, I'm not sure -- are you saying
8 that?

9 A. Sorry --

10 CHAIRMAN: I just don't understand what you are saying. 11:46

11 A. Sorry, what I am saying is, in terms of the context --
12 in terms of the decision to publish the protected
13 disclosure, it was unprecedented.

14 CHAIRMAN: To publish where?

15 A. To publish it in the -- to publish that a protected 11:46
16 disclosure had been made.

17 CHAIRMAN: All right.

18 A. It was unprecedented in terms of the individual who was
19 making it, and in terms of what he was admitting within
20 it, that he had done himself. And -- are you with me? 11:46

21 CHAIRMAN: I do, I get you.

22 A. And the substance of that involved him admitting that
23 he was involved in, I think what anybody would describe
24 as lowest kind of behaviour, and his reasoning for
25 doing that was no more than it would further his 11:46
26 career. He wasn't personally motivated to brand
27 Sergeant McCabe in this regard, he wasn't doing it from
28 a -- any other reason other than --

29 CHAIRMAN: Sure. But he told me he was following

1 orders and indeed in the note which you made of your
2 first conversation with him you also note that as well.

3 A. But he also, and he said this to me and I believe he
4 said in his statement, it was done in a manner that
5 suggested there was no smoke without fire, which would 11:47
6 suggest was beyond any -- you could reduce to following
7 orders. That is the only reason I reference that,
8 sorry.

9 CHAIRMAN: So did he say no smoke without fire when you
10 met him? 11:47

11 A. Oh, he said that it was done -- I can't remember was it
12 the first or second meeting, but he said words to the
13 effect that in spreading this -- and as I say, he
14 didn't want to concentrate -- he said, you know, he'd
15 tell the lads and, you know, okay, it was a -- the 11:47
16 allegation was deemed no prosecution, but said in a way
17 there's no smoke without fire. That kind of a way.

18 CHAIRMAN: Right. Okay. No, it's just, you have him
19 noted only following --

20 A. Sorry, that's my only reason for suggesting about his 11:48
21 motivation.

22 196 Q. MR. DIGNAM: Mr. Clifford, I don't think there is any
23 disagreement between us that the fact of a protected
24 disclosure of this nature being made by a serving
25 superintendent in An Garda Síochána and indeed by a 11:48
26 serving sergeant, albeit the sergeant was based on what
27 Superintendent Taylor had told him, was significant,
28 and was newsworthy. What I'm asking you about is
29 whether you took any steps at all to check the truth of

1 the allegations contained in the protected disclosures
2 or contained in what you were told by either Sergeant
3 McCabe or by Superintendent Taylor in your
4 conversations with them?

5 A. No, I wasn't in a position to do so, Mr. Dignam. It 11:48
6 would have involved, for example, approaching Nóirín
7 O'Sullivan and Martin Callinan and asking them were
8 they involved in a campaign. I was reporting the
9 lodgement of this protected disclosure.

10 197 Q. Yes. You see, what you describe -- sorry, what the 11:48
11 paper describes them as, in the editorial, and I
12 appreciate that you don't remember whether you had any
13 input into this, is revelations. So, something was
14 being revealed. Now, I have to put it to you that that
15 puts it's higher than simply allegations are being made 11:49
16 by somebody. The newspaper is revealing wrongdoing by
17 former Commissioner O'Sullivan and former Commissioner
18 Callinan in their edition of the 4th October, and you
19 hadn't checked or taken any steps to check what
20 Commissioner O'Sullivan or indeed former Commissioner 11:49
21 has to say about it.

22 MR. QUINN: Chairman, if Mr. Dignam is going to pursue
23 a line that in some way Mr. Clifford or the paper was
24 actually saying that what was in these protected
25 disclosures was true, then the full editorial and the 11:49
26 full articles should be given to the witness, because I
27 don't think they reflect the tenor of what is being put
28 by Mr. Dignam.

29 CHAIRMAN: Yes, but it's a fair point to make.

1 Apparently the point being made is that the word used
2 was a revelation. So I take a revelation to mean that
3 you are digging and you uncover, I don't know what, an
4 ancient gold chalice or something like that or that
5 somebody comes forward and something that we don't know 11:50
6 before is revealed as the truth. So that's what I take
7 that to mean, Mr. Quinn. But I also understand that
8 paper doesn't refuse ink and that quite often to get
9 across a point or to show how serious things are people
10 use hyperbole. So, I mean, if there is a point on 11:50
11 that. There clearly is a point, Mr. Dignam, you can
12 pursue it I think.

13 MR. DIGNAM: Perhaps, rather than opening up all of the
14 articles, and obviously Mr. Quinn can do that in
15 re-examination if he wishes, the paragraph in which the 11:50
16 word revelation is used is two paragraphs down in the
17 editorial, and it states:

18
19 "Today's revelations about an organised campaign driven
20 by senior Garda management to undermine a whistleblower 11:50
21 does not strengthen the hand of the force and will
22 weaken any support for industrial action Gardaí might
23 consider."

24
25 And that was in the context of there being talk of 11:50
26 industrial action.

27 A. Yeah, I didn't write that editorial.

28 198 Q. Okay.

29 A. "Revelation" was used, and I take your point. To me

1 the revelation was that this disclosure had gone in
2 rather than the content of the disclosure.

3 199 Q. Okay. Rather than a revelation about an organised
4 campaign, it's the revelation that somebody had put a
5 protected disclosure in -- 11:51

6 A. Exactly.

7 200 Q. If I could just ask you then to deal with your
8 conversations with Superintendent Taylor over the
9 course of the summer/autumn of 2016. You had two
10 meetings with Superintendent Taylor, is that correct? 11:51

11 A. That's correct.

12 201 Q. And you had a phone call in the early summer, about
13 early June, and then a meeting with him in, you think,
14 late August?

15 A. Or early September. 11:51

16 202 Q. Or early September. And then a further meeting on the
17 first weekend --

18 A. -- of October.

19 203 Q. Yes. In the day or two before this article actually
20 appeared? 11:51

21 A. Correct.

22 204 Q. Yes. And in the first meeting, you say that that came
23 about because you heard that Mrs. Taylor, Michelle
24 Taylor, had met Sergeant McCabe and I think you said
25 that that may have piqued your interest? 11:52

26 A. I that is a possibility. I genuinely cannot remember
27 and I can't remember even whether I initiated the phone
28 call but looking back on it that is a possibility, and
29 equally the idea that I would have rang him about the

1 fact that I was writing a book, I would find difficult
2 to accept on the basis of, if I was ringing somebody I
3 knew well -- you know, this was a guy who was hostile
4 to me as far as I was concerned, prior to one
5 conversation, I doubt very much I would have 11:52
6 cold-called him and said give me a hand with this book.
7 205 Q. And if this was the case that you had heard that
8 Mrs. Taylor had met Sergeant McCabe, where would you
9 have heard that from?
10 A. I would have heard it from sources. 11:52
11 206 Q. And you don't feel able to disclose who would have told
12 you that?
13 A. No.
14 207 Q. Now, at the first meeting, which was the meeting in
15 either early -- sorry, late August or early September, 11:52
16 Mr. Quinn on your behalf put it to Mrs. Taylor on day
17 76 that:
18
19 "At that meeting Superintendent Taylor effectively laid
20 out a case that he believed that the criminal 11:53
21 investigation against him was motivated by the
22 then-Commissioner, Nóirín O'Sullivan, wanting to get
23 her hands on her husband's mobile phones."
24
25 That is your memory of it, is that right? 11:53
26 A. And that is what I have related today, I believe.
27 208 Q. Yes. And it was also put that -- it was put by
28 Mr. Quinn on your behalf that you recollect
29 Superintendent Taylor pointing out that the

1 Commissioner, Commissioner O'Sullivan's husband was
2 part of the team investigating him?

3 A. Correct.

4 209 Q. And we know that to be, as a matter of fact, correct.
5 And that:

11:53

6
7 "Mr. Clifford recalls Superintendent Taylor saying that
8 the reason she wanted to get his phones, i.e.
9 Superintendent Taylor's phones, was your husband was
10 explaining that on his phones was evidence that would
11 link Commissioner O'Sullivan to the smear campaign."

11:53

12
13 And I think that has been your evidence today also,
14 isn't that right?

15 A. Correct.

11:54

16 210 Q. Yes. And you are quite clear that that was the tenor
17 or the substance of the conversation that you had with
18 Superintendent Taylor when you met him in late August
19 possibly early September?

20 A. Yes. He effectively made a case or presented a thesis,
21 if you want to put it that way. I also, and again this
22 is only my speculation, on the basis it was done, it
23 was either practised or else he had done a similar
24 exercise with people prior to me. That was my
25 impression.

11:54

11:54

26 211 Q. Yes. That he had already discussed this with people
27 prior to you?

28 A. If I could put it this way: The presentation of that
29 case, the manner in which it was done, it struck me

1 that he had either practiced this or he had made a
2 similar presentation to perhaps other journalists,
3 perhaps other people, I don't know, that was an
4 impression that I came away with from that.

5 CHAIRMAN: What you are saying is, it wasn't improvised 11:54
6 out, it seems to be a presentation like you would get a
7 presentation like slides or whatever?

8 A. Yeah. Well, obviously, Chairman, not as professional
9 as that, but just in terms of the general tenor. For
10 example, there was some paperwork there, it was on the 11:55
11 coffee table, and you know, small stacks at right
12 angles, as would you, you know, and just the whole
13 thrust of what he was saying, as I say, it wasn't
14 something that struck me as being presented
15 simultaneously or off the top of his head kind of 11:55
16 thing.

17 212 Q. MR. DIGNAM: And on page 210 of the transcript it was
18 put to Mrs. Taylor by Mr. Quinn:

19
20 "During this meeting --" 11:55

21
22 That is the first meeting.

23
24 "-- your husband put a big emphasis on how, in his
25 view, the texts were key to everything and that he had 11:55
26 used texts to blacken Sergeant McCabe's name and the
27 texts on his phone would show who was in the loop,
28 namely Commissioner O'Sullivan. "

29

1 I think that has been the tenor of your evidence this
2 morning also?

3 A. Correct.

4 213 Q. I think you say in your interview with the
5 investigators that your recollection is that a lot of 11:55
6 emphasis was placed on the text messages?

7 A. And that is because emphasis was placed on the phones.

8 214 Q. Yes. Now, you describe this morning, you say that the
9 central character in this discussion was Nóirín
10 O'Sullivan, and you then went on to discuss, and I'm 11:56
11 sorry, Mr. Clifford, I don't know whether I have mixed
12 up the first and second meeting but you then said that
13 he didn't dwell, that Superintendent Taylor didn't
14 dwell on his campaign?

15 A. That was the first meeting. 11:56

16 215 Q. That was the first meeting. And you say that he spoke
17 in a general way about the campaign, you said that you
18 were told by Superintendent Taylor that Mr. Callinan
19 would send him a text and he would pass it on to other
20 senior members and the media. You very fairly said 11:56
21 that you can't say that Superintendent Taylor said it
22 was by text, but simply that it was passed on, and you
23 then described his central thesis, I think is the
24 phrase that you used, was that Ms. O'Sullivan wanted to
25 get her hands on the phone to secure that evidence, so 11:56
26 to speak?

27 A. Correct.

28 216 Q. Yes. And you referred to him referring to the
29 appointment of Jim McGowan as part of that plot, is

1 that right?

2 A. Correct, to the extent that, yes, he was on the
3 investigation team to be the one to take control of
4 these phones.

5 217 Q. Yes. And you then moved on to the second meeting, 11:57
6 which happened very early in October, that first
7 weekend in October, immediately prior to the articles
8 in the newspaper, and you say that you contacted him at
9 that stage because you had three or four things that
10 you wanted to check with him. Yes. And they were put 11:57
11 to Mrs. Taylor by Mr. Quinn also. But if I could first
12 ask you: what were the three or four things that you
13 wanted to check with him?

14 A. The three things, three anyway, was the texts, the
15 creation of an intelligence file and the deployment of 11:58
16 a member to monitor his active on Pulse.

17 218 Q. And do I understand you correctly to say that it wasn't
18 Superintendent Taylor who had told you about those
19 things in the first instance?

20 A. Yes, those were issues I wanted to check with him, that 11:58
21 this formed part of his narrative, whether he
22 specifically referenced them in the disclosure or not
23 but that this formed part of his case that he was
24 putting in the disclosure.

25 219 Q. Yes. You had been told those by somebody else and you 11:58
26 wanted to confirm those with Superintendent Taylor, is
27 that right?

28 A. I had acquired the information elsewhere.

29 220 Q. Okay. And you feel unable to tell us who gave you that

1 information?

2 A. Exactly.

3 221 Q. All right. Now --

4 CHAIRMAN: Am I wrong in assuming it's Maurice McCabe?

5 A. Well, I'll put it this way to you, Chairman: I don't 11:58

6 feel in a position to name anybody on the basis that

7 one thing can lead to another and identify people.

8 CHAIRMAN: Again, no, I appreciate that. But you will

9 appreciate as well that I listened here to a great deal

10 of stuff that was irrelevant or nonsensical, and that 11:59

11 is the case in every court case, you can narrow a court

12 case of 50 days down to perhaps ten hours of evidence

13 that actually really, really matters. So that is what

14 I meant in that regard. So you are not confirming or

15 denying it's Maurice McCabe, you don't feel you can? 11:59

16 A. I don't feel in a position to do so.

17 222 Q. MR. DIGNAM: Now, and again, I think you are clear that

18 the emphasis that was being placed on -- that an

19 emphasis was placed on the role of text messages in

20 that campaign, in that second conversation also? 11:59

21 A. Sorry --

22 223 Q. There was an emphasis --

23 A. Well, he confirmed that texts formed part of this

24 campaign.

25 224 Q. Yes. Now, you have heard, and I know you have been 11:59

26 following, I'm sure, the Tribunal in a personal and

27 professional capacity, but you have heard the --

28 Superintendent Taylor's account that the only role text

29 messages played was in him telling former Commissioner

1 Callinan and former Commissioner O'Sullivan when there
2 was an item in the media about Sergeant McCabe?

3 A. Correct, yeah.

4 225 Q. Now, was the emphasis that Superintendent Taylor placed
5 on the role of text messages as benign as that in the 12:00
6 conversation that you had with him?

7 A. No, Mr. Dignam, because basic logic, for that to be the
8 case then there would be no great revelation, no great
9 emphasis on the phones. And as I say, this idea of the
10 phones being confiscated was central to what he was 12:00
11 saying and therefore there would have to be something
12 incriminating on the phones by extension.

13 226 Q. Now, can I just move to the chapter of the book, we
14 know, and I won't delay on this, Mr. Clifford, we know
15 that you asked Superintendent Taylor to fact-check for 12:01
16 want of a better phrase, and I use that in shorthand,
17 the section or the chapter from your book, and that he
18 had it for up to a week, you think it came back fairly
19 promptly?

20 A. Pretty promptly, yes. 12:01

21 227 Q. And you sent that to him in May of --

22 A. 2017.

23 228 Q. -- 2017, yes. And I am just going to refer you to a
24 couple of specific sections or sentences in that
25 extract. At the bottom of page 6619, right at the 12:01
26 bottom of the page, going over on to 6620, it's stated
27 that:
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29 "She --"

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Meaning, Ms. O'Sullivan.

-- appointed her husband, Detective Superintendent Jim McGowan, to head up the investigation. " 12:02

And just below that, three lines below that, it's stated:

"This move ensures that any information retained on the devices was now in the possession of Headquarters. " 12:02

On 6622, it's stated clearly, towards the bottom of the page, that:

"There were a number of strands to the campaign, he told the incredulous McCabe. The most basic was the conveyance of hundreds, if not thousands, of text messages to media and Garda personnel casting McCabe in a dark light. Journalists were briefed that McCabe was a person who had a record of sexually abusing children, excuses were invented as to why there was no official record of these crimes or allegations. " 12:02

And there is also reference, on page 6623, to Superintendent Taylor telling Sergeant McCabe that: 12:02

"An intelligence file had been created on McCabe in Garda HQ. The file was kept under a Christian name

1 which coincided with the name of the offspring of a
2 senior officer. An intelligence file is only created
3 if the subject is suspected of serious crime, usually
4 involving violence, yet HQ, according to Taylor, sought
5 fit to place McCabe in such company. " 12:03

6
7 Now, I think you are probably aware from following the
8 Tribunal that, in fact, Superintendent Taylor is not
9 making any of those allegations now, are you aware of?

10 A. I am aware of that, yes. 12:03

11 229 Q. But when you sent him this section of the book you were
12 relying on information that you had, and I am not going
13 to ask you just at the moment where you got that
14 information but you were relying on information that
15 you had, you clearly sent this to the Superintendent 12:03
16 Taylor and he did not at any stage come back to you to
17 say any of those items or statements are incorrect?

18 A. Correct.

19 230 Q. Yes. Now, in relation to the investigation into him,
20 on page 6620, you write just on the third paragraph,
21 you write: 12:04

22
23 "As per procedure, he was held in a cell and had
24 various personal effects removed from him for the
25 period of his detention. " 12:04

26
27 And you correctly identify that that is per procedure.
28 But do I take it from that, that Superintendent Taylor
29 was taking issue with having been placed in a cell and

1 having personal effects removed from him?

2 A. He did take issue with that to the extent that he
3 described it in a way that he believed to be
4 humiliating and he also suggested that one individual
5 in particular who was present in the station that day 12:05
6 who showed him some understanding or compassion, or
7 whatever you want to call it, was subsequently, I don't
8 know was it demoted or transferred, but he -- it
9 obviously had a major impact on him and he certainly
10 felt he could have been treated in a better way in that 12:05
11 regard, I think that's definitely the case.

12 231 Q. Yes. And over the page on 6621, halfway down the page,
13 you write:
14
15 "Those colleagues who were investigating him with what 12:05
16 Taylor considered excessive zeal were, as he had once
17 been himself, only following orders."
18
19 And I take it that the description of the investigating
20 members conducting themselves with excessive zeal came 12:05
21 from Superintendent Taylor?

22 A. Absolutely.

23 232 Q. And you have heard his position in relation to that and
24 the position he now takes in relation to that, during
25 the course of the Tribunal? 12:05

26 A. I have.

27 233 Q. And he didn't correct either of those statements?

28 A. No.

29 CHAIRMAN: I am not sure he has changed his mind,

1 Mr. Dignam. In fact, he hasn't changed his mind on
2 that.

3 MR. DIGNAM: I thought, and I stand to be corrected
4 here, I thought he had said that he was no longer
5 asserting that the individuals who interviewed him at
6 least were oppressive or --

12:06

7 CHAIRMAN: well, that is different. What he said was,
8 he should never have been arrested, there was no need
9 to arrest him. And if you are arrested, I know the
10 reason you take off people's belts and laces and things
11 like that is because of the risk of suicide, which
12 unfortunately is high in those circumstances.

12:06

13 234 Q. MR. DIGNAM: Now, on 4111 --

14 CHAIRMAN: I mean, it's a general principle, that is
15 what I mean, not in his specific case.

12:06

16 MR. DIGNAM: Yes.

17 235 Q. On 4111, Mr. Clifford, you say, and I think you have
18 said -- you have given evidence to this effect this
19 morning, you say that, on line 196:

20

12:06

21 "I got the impression that he" -- meaning
22 Superintendent Taylor -- "attributed his plight in
23 respect of his arrest and suspension to his knowledge
24 of the campaign which he said was conducted through him
25 against Sergeant McCabe and specifically the allegation
26 that Nóirín O'Sullivan was at least aware of it. That
27 was the gist of the conversation with him and I did
28 mention it when I subsequently spoke to Sergeant
29 Maurice McCabe."

12:07

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So that is the impression you got, am I right, from what was said by Superintendent Taylor, is that correct?

A. Yeah, it is -- I am probably, on reflection, under-stating it when I use the word "impression", because, you know, as I stated in terms of the specifics of what he said, he was pretty explicit in laying out that case. 12:07

236 Q. Yes. Now, you refer in your -- in the extract from your book, and I think also in your interviews with the investigators, to Superintendent Taylor telling you that he was being investigated for the leaking of the Roma children information? 12:07

A. Correct. 12:07

237 Q. Yes. Did Superintendent Taylor ever tell you that, in fact, he was also and had also been investigated for a multitude of leaking incidents?

A. No.

238 Q. No. So the only awareness that you had of what was at the root of this or what was at the heart of this investigation was one leaking incident of the Roma children's information? 12:08

A. And I certainly believe that was -- I believe that, and I believe it was a widespread believe, to be honest. 12:08

239 Q. Yes. And, in fairness, I think in your evidence this morning you -- or just a few moments ago, you referred to your view of the proportionality of the investigation and indeed others' views of the

1 proportionality of the investigation may well have been
2 based on their belief that it was one incident --

3 A. As far as I could determine, that was the case, yeah.

4 240 Q. Yes. And can I take it from that that your view of
5 things may have been somewhat different if you had been 12:08
6 aware of all of the facts in relation to the
7 investigation?

8 A. My view of the animus that Superintendent Taylor
9 appeared to have for Nóirín O'Sullivan would have
10 certainly been in a different light, Mr. Dignam. It 12:09
11 would not have affected, in my opinion, and I can only
12 speculate at this remove, the decision, certainly from
13 my point of view, whatever about my editor's, to pursue
14 the publication of the story that that protected
15 disclosure was made. 12:09

16 241 Q. And if I could just come back to that then, the fact
17 that you were aware of the level of animus that
18 Superintendent Taylor had towards Ms. O'Sullivan,
19 because I think that had been made clear to you by
20 Superintendent Taylor in both the first and second 12:09
21 meeting, did that not cause you any concern in
22 publishing the article -- or, sorry, in giving the
23 articles to the newspaper to be published on the 4th
24 October?

25 A. It certainly gave me pause for thought, but you have to 12:09
26 put this into context; in many instances that I would
27 come across and many instances of any nature for -- the
28 most obvious example is a tribunal, that, fortunately,
29 Chairman, I don't think you will be heading for the

1 record of 13 years, but the Planning Tribunal -- the
2 Planning Tribunal, as I think we are aware, began over
3 a grudge an individual had for his employer not
4 providing a pension. That is the nature of these
5 things. Now, absolutely, I took that into account, but 12:10
6 as I was saying to you before, I balanced that against
7 both the substance of the allegation in terms of my
8 knowledge over the previous three or four years, both
9 the fact that it was self-incriminating and that it was
10 also incriminating somebody to whom Mr. Taylor 12:10
11 obviously looked up to. All scenarios like that in
12 terms of publication, some sort of a balance has to be
13 reached between suppressing information - and I was in
14 possession of that information - and the fairness to
15 everybody involved, and, in my opinion, that was 12:10
16 achieved. It wasn't just desirable to publish it, but
17 it was necessary to publish it.

18 242 Q. And I think you will accept, I take it, that the
19 revelation that was made in those articles caused a
20 storm of controversy during the course of that week, is 12:11
21 that --

22 A. It certainly did, Mr. Dignam, but I will also have to
23 add to that, I'm afraid, that is not my responsibility.

24 243 Q. I was simply asking you was that -- would you accept
25 that that started a storm of controversy, not about 12:11
26 your article but about the contents of your article, or
27 what was reported in your article?

28 A. When you say 'storm of controversy', there was
29 definitely a reaction to the story, absolutely, yeah.

1 A large reaction, yes.

2 244 Q. And, in fact, you had a story on the front page of the
3 Examiner the following Saturday where you quoted Deputy
4 wallace, where the headline said "Garda boss will be
5 gone in weeks", and I think in the course of the 12:11
6 article you quoted Deputy wallace saying Commissioner
7 O'sullivan would be gone by Christmas?

8 A. I don't recall that, but I will take your word for it,
9 yeah.

10 245 Q. Now, can I just ask you why did you not write this 12:11
11 story when you had the first meeting with
12 Superintendent Taylor?

13 A. Oh, when I walked away from that meeting, as far as I
14 was concerned, this thing, most likely, certainly in
15 the short-term, would never see the light of day. For 12:12
16 that to happen, Mr. Taylor would have had to
17 incriminate himself. For it also to happen there would
18 be potential legal problems all over the place. And
19 let me put it this way to you: Perhaps if I had been
20 more on the ball, I would have gone in there and 12:12
21 recorded the conversation, but even if I had done that,
22 I doubt very much if my newspaper would have published
23 a story, even if I pushed it, on that basis, because it
24 would just be replete with dangers.

25 246 Q. I think part of your explanation was that 12:12
26 Superintendent Taylor had also said it was not for
27 publication, is that right?

28 A. Oh, absolutely, yeah, yeah. But even if I disregarded
29 that, is what I am saying.

1 247 Q. And can I then ask you, did you get a release, for want
2 of a better word, from Superintendent Taylor, before
3 the articles were published in the paper on the 4th
4 October, that it was now for publication?

5 A. No, it didn't work like that at all. I approached 12:13
6 Superintendent Taylor and he didn't sound surprised
7 that I had knowledge of this and he agreed to meet me,
8 and, in the course of that conversation, he -- this is
9 in the second meeting -- he said something to the
10 effect of, I don't mind you getting this story, sure 12:13
11 you are covering the McCabe stuff, or whatever. Now,
12 that didn't mean a thing to me, one way or the other.
13 As far as I was concerned, I was going ahead with it.
14 And it would certainly seem -- he certainly did not at
15 any point there say, 'I would prefer if you didn't 12:13
16 cover it' or 'I'm releasing you to that extent', to
17 covering the -- reporting on it.

18 248 Q. And I take it, I think, and correct me if I am wrong,
19 that you believed that the protected disclosures going
20 in gave you clearance to publish the articles without 12:13
21 checking with Superintendent Taylor that it was now for
22 publication, is that fair?

23 A. Yes, what I checked with Superintendent Taylor were
24 specifics that I understood to be in the protected
25 disclosure. As a newsworthy event, as an event in 12:14
26 which there is public interest, this was unprecedented.

27 249 Q. Yes. Now, just turning then - and I am almost
28 finished, Mr. Clifford - but turning to the
29 conversation, to Superintendent Taylor's conversations

1 with Sergeant McCabe on the 20th September and to the
2 21st September 2016, as I understand it there were
3 three individuals party to those conversations: there
4 was Mr. Taylor, Mrs. Taylor and -- Superintendent
5 Taylor, Mrs. Taylor and Sergeant McCabe. If I could 12:14
6 just ask you to look at page 4113 of your interview.
7 CHAIRMAN: well, sorry, Mr. Dignam, we are talking here
8 about the meeting in the house?
9 MR. DIGNAM: Yes, Chairman.
10 CHAIRMAN: And the meeting the following day in the 12:14
11 house, specifically between the Taylors and Maurice
12 McCabe?
13 MR. DIGNAM: Yes, Chairman.
14 CHAIRMAN: All right. Okay.
15 250 Q. MR. DIGNAM: so, Mr. Clifford, at the bottom of page 12:15
16 4113, you are asked about your book and you are then
17 asked what your source for the information contained in
18 the quote - I don't need to go over it again -
19 immediately above it is. And you say that:
20
21 "A source told me about the conversation between 12:15
22 Maurice McCabe and Superintendent Taylor."
23
24 That is the meeting on the 20th September. And do I
25 take it from the way that that is couched that you 12:15
26 don't feel able to tell us who the source, who told you
27 about the conversation between Sergeant McCabe and
28 Superintendent Taylor was?
29 A. Correct.

1 251 Q. Yes. Can I take it that it was not Superintendent
2 Taylor?

3 A. I just -- I don't want -- I wouldn't go any further
4 than just saying I wouldn't talk about it, Mr. Dignam,
5 just on the basis -- as far as I know, I'm the only 12:15
6 person coming in here speaking in any detail about any
7 interaction with David Taylor on the basis he has
8 waived privilege. That is a precarious road to go down
9 on the basis of identifying other sources, so I don't
10 want to go any further than that. 12:16

11 252 Q. Now, you then go on to say:

12
13 "I established what occurred in that conversation
14 through sources."

15 12:16

16 And --

17 CHAIRMAN: I mean, at the end of the day, you know,
18 Mr. Dignam, again it's a question of where we go on
19 this, and I appreciate where you are coming from and
20 the skill with which you are doing this, but, look, I 12:16
21 am not asked in the terms of reference to comment on
22 the media, whether the media did a good or bad job or
23 whether paper will refuse ink, whether there should be
24 higher standards in journalism. I mean, people can
25 form their own view on that, and if they don't like 12:16
26 what they read in a paper, they can stop buying it, or
27 if they don't like what they hear on any particular
28 form of media, they can just, you know, turn somewhere
29 else.

1 MR. DIGNAM: Yes, Chairman, I am not going to push the
2 point. I simply wanted to get Mr. Clifford's answers
3 and I am not going to dig any deeper or --
4 CHAIRMAN: No, I know, but, I mean, at the end of the
5 day, what was said in the room, if you like, is between 12:17
6 Michelle Taylor and David Taylor and Maurice McCabe and
7 the various reports of that. I'm not going to be
8 helped, one way or the other, by anything else. And
9 vis-á-vis Mr. Clifford and David Taylor and the waiving
10 of privilege, I understand where Mr. Clifford is coming 12:17
11 from in that regard, but, you know, again it's a
12 question of where are the side alleys in this and
13 should -- if a hare runs down there, should I follow
14 for the purpose of seeing if there is anything there.
15 I would prefer to stick with what I am supposed to do. 12:17
16 But you have a point to make, but maybe you would move
17 and make the point.
18 MR. DIGNAM: Yes. May it please you, Chairman.
19 253 Q. I take it, Mr. Clifford, I just want to formally ask
20 you the question, that you -- that you don't feel able, 12:17
21 because of journalistic privilege, to disclose who told
22 you what -- how you established or who told you what to
23 allow you establish what had occurred in the
24 conversation between Superintendent Taylor, Mrs. Taylor
25 and Sergeant McCabe? 12:18
26 A. Correct.
27 254 Q. Yes.
28 CHAIRMAN: But again, even -- suppose it were the case
29 that I was to say, well, that is something that doesn't

1 attract journalistic privilege, first of all I would
2 have to explore that as to the facts and circumstances,
3 but secondly, I presume David Taylor and Michelle
4 Taylor spoke to other people, I presume Maurice McCabe
5 spoke to other people, I presume he got advice. The 12:18
6 circumstances under which information stays confined is
7 extremely rare. And this is more like an inkblot, to
8 be quite frank; it lands on the page and it spreads
9 out. You know, it's not going to help me, because, at
10 the end of the day, the primary evidence, instead of 12:18
11 the dúirt bean liom go ndúirt bean léi (go ndúirt bean
12 eile) rud éigin, is the three people in the room and
13 what was written down in consequence of it. So that is
14 the reason I am not following it, Mr. Dignam. If you
15 want to press it, I will certainly look at it. 12:19
16 MR. DIGNAM: No, Chairman. I just wanted to ask
17 those questions to Mr. Clifford.
18 255 Q. Now, Mr. Clifford, then just turning to the -- page
19 4109 of your interview, you deal with the RTÉ
20 broadcasts on the 9th March -- of May. 12:19
21 A. Hmm.
22 256 Q. And you -- you express your opinion in relation to
23 those, and no doubt that RTÉ and Mr. Reynolds will deal
24 with that when Mr. Reynolds comes to give evidence, but
25 you say, and I'd ask you to confirm that this is 12:19
26 correct, that you had seen a leaked copy of the
27 O'Higgins Report prior to the broadcasts on the 9th
28 May, is that right?
29 A. That's correct.

1 257 Q. Yes. And then on page 4105 you deal with the Tusla
2 notification, which was the subject of the RTÉ Prime
3 Time programme on -- in February 2017, and you say that
4 you were aware of an -- of an issue in Tusla in respect
5 to Sergeant McCabe for a period of time before that 12:20
6 became public knowledge, is that right?

7 A. It first became public knowledge in the Irish Examiner,
8 Mr. Dignam, that afternoon. That's correct.

9 258 Q. Yes. And --

10 CHAIRMAN: So - I am sorry for interrupting, 12:20
11 Mr. Dignam - so the cascade, if you like, of
12 controversy in relation to this matter was, you knew it
13 first in some way or other, and then the Irish Examiner
14 published it and then there was the Prime Time
15 programme, is that correct? 12:21

16 A. Well, Chairman, I don't know when Prime Time became
17 aware of it, but the publication of it --

18 CHAIRMAN: No, what I meant, when the Prime
19 Time programme out?

20 A. The Prime Time programme occurred that evening and it 12:21
21 was in the Examiner that afternoon.

22 CHAIRMAN: Sure. But again, I am not seeking to find
23 out who knew what and in what order, it's just that
24 seemed to be the way the public controversy, if you
25 like, hit the public consciousness. 12:21

26 A. Correct.

27 259 Q. MR. DIGNAM: And can I just ask you to confirm what you
28 then say on page 4106, that you weren't briefed by
29 anyone in An Garda Síochána in relation to this issue,

1 as you describe it, in Tusla?

2 A. Correct, yes.

3 260 Q. Yes. And then just a final point, Mr. Clifford, and
4 it's a small point, but you say that you weren't aware
5 how Garda Wilson got the nickname which has been 12:21
6 discussed over the course of the last period of time,
7 is that right?

8 A. I feel very left out in that regard, Mr. Dignam.
9 MR. DIGNAM: Thank you, Mr. Clifford.

10 CHAIRMAN: Mr. Quinn, was there anything you wanted to 12:22
11 ask?

12 MR. QUINN: Just very briefly, Chair, one or two
13 questions.

14

15 MR. CLIFFORD WAS EXAMINED BY MR. QUINN: 12:22
16

17 261 Q. MR. QUINN: Mr. Clifford, you have been asked a few
18 questions about what was published in the Examiner on
19 4th October 2016 by Mr. Dignam, on behalf of the two
20 former commissioners. And I just want to ask you, but 12:22
21 in this context say that both the solicitor for the
22 newspaper and the editor at the time have both given
23 instructions that no complaint was made about your
24 articles or the editorial by anyone after their
25 publication; can I ask you were you aware of anyone 12:22
26 making any complaint about what you published in the
27 newspaper on the 4th October?

28 A. No, my -- there was no complaint whatsoever that I am
29 aware of at all, Mr. Quinn.

1 262 Q. And I think it was suggested to you, perhaps in a
2 critical way, that, you know, you should have checked
3 what you'd published before you published it, and
4 presumably the implication was you should have checked
5 it maybe with the former commissioners. You see a copy 12:22
6 of the article you wrote, which is on the front page
7 there, and if I can just ask you some short questions
8 about it, you will see the headline "Senior Gardaí
9 'tried to destroy' source" --

10 CHAIRMAN: That is the page, isn't it, Mr. Quinn? 12:23

11 MR. QUINN: Yes, yes, Chairman.

12 CHAIRMAN: All right.

13 263 Q. MR. QUINN: And it's the article over on the left-hand
14 column, you see that there, Mr. Clifford? I know it is
15 quite small print. 12:23

16 A. Yes.

17 264 Q. But you'll see there "'tried to destroy'" is in quotes.
18 And in the context of both the headline and the context
19 of the article, what is -- what was your -- what do you
20 understand was being intended to be conveyed by putting 12:23
21 that in quotes?

22 A. Oh, the fact that that was an allegation, that was not
23 stating as a fact that senior Gardaí tried to destroy
24 source --

25 265 Q. Yes. And I think as one looks down through the article 12:23
26 there is reference to allegations, claims and the
27 raising of concerns and, for example, I think five
28 paragraphs down it says:
29

1 "The disclosures were made in the Department of Justice
2 within the last week."

3
4 I think you have explained in your answer to Mr. Dignam
5 in some detail why this was an unprecedented set of 12:24
6 circumstances and why, in your view, this was a
7 newsworthy story, and I won't ask you to go over that
8 again. But it then continues:

9
10 "And will raise fresh questions about the treatment of 12:24
11 whistleblowers within the force."

12
13 And then you continue:

14
15 "In particular, the seniority of the officers making 12:24
16 the claims and the fact that one of them is admitting
17 his own culpability will give rise to fresh concerns as
18 to how those within the force -- how those who came
19 forward are dealt with."

20 12:24
21 And again, can you say do you believe there was
22 anything in what you were writing that was stating that
23 this was true?

24 A. No, my belief, and it's -- hopefully it's conveyed very
25 properly there, was that this was an allegation that 12:24
26 was being made, but the weight of the allegation was
27 pretty heavy on the basis that the person making it and
28 what the allegation was in the context of much had gone
29 over the previous years.

1 CHAIRMAN: Yes, it's the old principle; if you make an
2 allegation against yourself, incriminating yourself,
3 it's more likely to be true than if you are allegedly
4 incriminating somebody else.

5 A. Absolutely. And as well --

12:25

6 CHAIRMAN: well, that actually used to be the law in
7 this country in relation to confessions, but there you
8 go. Now, everything the accused positively says about
9 himself goes before the jury and the accused never
10 gives evidence, so there we go.

12:25

11 266 Q. MR. QUINN: And just finally, Mr. Clifford, if either
12 former commissioner considered that what you were
13 saying was actually that these claims were true,
14 neither of them made any complaint to you or the paper
15 after this publication?

12:25

16 A. Absolutely none.

17 MR. QUINN: Thank you, Mr. Clifford.

18 CHAIRMAN: Is there anything, Mr. Murrinan?

19 MR. MARRINAN: I have no further questions.

20

12:25

21 MR. CLIFFORD WAS QUESTIONED BY THE CHAIRMAN:

22

23 CHAIRMAN: Mr. Clifford, I have no issue with anything
24 that you did, and, in any event, I have no -- I have no
25 power to report on it, one way or the other. It may be
26 that something in relation to the articles concerning
27 Maurice McCabe as an unnamed individual may call for
28 some comment, but yours certainly don't. So thank you
29 for your assistance. You had a very limited

12:25

1 relationship with David Taylor, as I understand it?
2 A. Correct, up to that point. He was in touch with me
3 sometimes after that, but it was a limited
4 relationship, yeah.

5 267 Q. CHAIRMAN: well, I mean, he wasn't a person you were 12:26
6 turning to in the course of your work kind of again and
7 again in relation to trying to verify a particular
8 point or chase up a story or perhaps ask him 'Is there
9 anyone I could talk to, do you think, in the civilian
10 world with a view to verifying things?'

11 A. No, Chairman. People in the position of Mr. Taylor, in 12:26
12 terms of the way I do my work anyway, they are there to
13 put out a particular line, and from an organisational
14 point of view, I prefer to get the official line rather
15 than being briefed or drawn into that milieu, or 12:26
16 whatever, whereby there is back and forth, and that
17 sort of thing. I had no -- when I met him that day in
18 the house, he vaguely looked familiar and, beyond that,
19 I hadn't encountered him prior to that.

20 268 Q. CHAIRMAN: well, you'd probably seen him on the 12:27
21 television because he did pieces to camera --

22 A. That was why he looked vaguely familiar, I think, yeah.

23 269 Q. CHAIRMAN: well, I mean, it's been spoken of here
24 indeed on a number of occasions, but most particularly
25 by Professor Kenny, in relation to the danger of 12:27
26 getting too close to your source.

27 A. Correct.

28 270 Q. CHAIRMAN: I mean, feeling that you have an obligation
29 to them as opposed to simply, and it may sound callous,

1 but using the information that they give you with a
2 view to informing the public.

3 A. That there is a danger of getting too close?

4 271 Q. CHAIRMAN: Yes.

5 A. I mean, that always applies, it's always something you 12:27
6 have to be vigilant about.

7 272 Q. CHAIRMAN: Yes. And is that something you are aware
8 of? I mean, you said you are in a very difficult
9 position here, being the only journalist - that's what
10 you said; now I don't know if that is the case - to 12:28
11 have had interactions with David Taylor and to take at
12 his word his -- what he said in the witness-box about
13 waiving privilege and to take at his word the form of
14 waiver which he voluntarily put forward.

15 A. I am not following you, Chairman. 12:28

16 273 Q. CHAIRMAN: I wasn't quite sure, that is why I am asking
17 you the question, because I wasn't following you.

18 A. Sorry. Sorry, what is the question? Excuse me.

19 274 Q. CHAIRMAN: Your interaction with him seems to have been
20 so limited that you have never at any stage asked 12:28
21 yourself the question, do I have any obligation to this
22 person beyond the fact that he has waived privilege?

23 A. Oh, I would agree with you. I mean, look, my attitude
24 to Superintendent Taylor was, basically, because of his
25 circumstances and according to his allegations, he 12:28
26 changed his approach to what may have been perpetrated
27 on Sergeant McCabe, or certainly in terms of the
28 attitude there was towards him, but equally, as I say,
29 when I initially encountered him, there is a human

1 element of sympathy, but, at the same time, I would be
2 perfectly aware that had he not encountered his own
3 difficulties, he would have been perfectly happy to go
4 along his merry way doing whatever was required of him,
5 and I don't mean to be callous in saying that but that 12:29
6 would be my general attitude towards him, and, as a
7 result, I would have kept a certain distance, and I
8 would be very conscious of that.

9 275 Q. CHAIRMAN: Yes. Well, whatever epiphany there was, if
10 there was one, occurred by reason of him getting 12:29
11 himself into trouble in other matters.

12 A. Well, it's not for me -- I will say this: On the
13 second meeting, I think again it may have been Michelle
14 Taylor mentioned a spiritual person, because I remember
15 that phrase, and sorry to impose it, but that is just 12:29
16 the specific phrase, I am not attributing any -- I am
17 not sitting here saying I believed he had an epiphany.
18 I didn't. But as I say, if he hadn't encountered his
19 problems, I doubt very much any of us would be here.

20 276 Q. CHAIRMAN: Yes. Well, they were indicating that 12:30
21 particular thing at the time, yes. All right.
22 The source in relation to the intelligence file, I
23 mean, you were asked about that, but again, my
24 obligation, it seems to me, looking at the terms of
25 reference, is to look at all electronic and paper files 12:30
26 relating to Sergeant McCabe in Garda Headquarters and
27 to consider any material relevant to the main terms of
28 reference, which obviously involve besmirching his
29 character. So I'm not interested -- I have had people

1 examine, and indeed I have examined myself, the
2 relevant files, and there aren't any, but the person
3 who was telling you that was -- I mean, telling you
4 that as a fact, was --

5 A. Well, the origin of that was David Taylor. 12:30

6 277 Q. CHAIRMAN: Yes. And apart from that, you may well have
7 looked to other sources or to other people to see if
8 you could check that out in any way.

9 A. Correct, correct, but he was -- he was the origin of
10 that, as he was with the other issue about monitoring 12:31
11 Pulse.

12 278 Q. CHAIRMAN: And the name that is being used is Oisín,
13 and there is a Garda computer system up in Headquarters
14 and it is called Oisín and it is related to
15 intelligence matters, and I don't want to burden 12:31
16 myself, obviously, by knowing anything more than does
17 it have anything to do with Sergeant McCabe, which it
18 doesn't, but where was Oisín coming from?

19 A. Oisín was coming from -- I won't name the specific
20 senior officer. He is a well-known senior officer. 12:31

21 279 Q. CHAIRMAN: No, but it doesn't matter.

22 A. No, but this is where he explained to me. He suggested
23 that on the basis that this was being done against
24 Sergeant McCabe, a grandchild of this individual was
25 given the name, and there was an inference there that 12:31
26 the individual himself would have been part of creating
27 this sort of thing.

28 280 Q. CHAIRMAN: It wasn't anything to do with coming back
29 from Tír na nÓg, then, which is the most obvious

1 thing --

2 A. That realm of fantasy -- that was one realm of fantasy
3 that wasn't entered into.

4 281 Q. CHAIRMAN: well, it's a bit more than fantasy, but
5 there you go. I wanted to ask you as well - there is 12:32
6 just two other matters - about this thing of
7 relationship between Martin Callinan and Nóirín
8 O'Sullivan. Now, you had mentioned to me - and it did
9 come as something new, as quite obviously late in the
10 Tribunal and it's -- no criticism is intended at all, 12:32
11 Mr. Clifford, in that regard - he told you that, well,
12 up in Headquarters or in the Commissioner's office, and
13 you couldn't really say was it one or the other, but
14 I'm tending towards the Commissioner's office, there
15 was an obsession with Maurice McCabe, and then you 12:32
16 added that the Commissioner and Nóirín O'Sullivan did
17 not have a good relationship, you added that as him
18 telling you that. Now, what are we talking about here?
19 Are we talking about after the release of the letter to
20 do with taping of conversations in Garda stations or 12:33
21 are we talking about the fact that they, as can happen,
22 two people are working side by side and they can't
23 stand each other and they don't trust each other, or
24 what are we talking about? what was he saying to you?

25 A. In terms of where it came from, Chairman, that note, as 12:33
26 I said, that I asked -- the investigators asked me did
27 I discover, that is what brought it back to me
28 specifically and it is in that note and that is why I
29 referenced it. My recollection of that and why it led

1 me to read the note, I wouldn't say -- I wouldn't
2 characterise it as they weren't able to stand each
3 other, but David Taylor certainly gave me the
4 impression that they did not have any kind of a close
5 working relationship. He also gave an example by his 12:33
6 account of how Ms. O'Sullivan was very secretive
7 compared -- in her dealings with the Commissioner, and
8 he gave the impression, you could nearly say that
9 himself and the Commissioner, Mr. Callinan, were at one
10 and Ms. O'Sullivan was removed somewhat from them. 12:34
11 That is the impression he gave again. And this was in
12 the early part of his narrative about when he was Press
13 Officer.

14 282 Q. CHAIRMAN: well, was he, did you get the impression,
15 making much of himself? Because, again, I mean, we 12:34
16 have heard a lot of evidence, and as I -- I remember
17 you being here for practically the whole of this
18 Tribunal, almost as dutifully as I have been, but as
19 you will remember, Andrew McLindon was sidelined, which
20 must have been deeply, deeply frustrating for him. 12:34
21 Were you getting the impression that in some way David
22 Taylor and Martin Callinan had some kind of a folie à
23 deu, perhaps it was, or perhaps some kind of a close
24 relationship whereby others were being excluded from
25 what was going on, or what are we talking about? 12:34

26 A. well, he didn't go into that kind of detail to suggest
27 anyone was excluded, but he certainly gave the
28 impression that he was very close professionally with
29 Martin Callinan, and again, the note, and I had

1 forgotten this, at one stage he suggested that Nóirín
2 O'Sullivan, that they thought -- sorry, that himself
3 and Martin Callinan were under the impression or they
4 thought that Nóirín O'Sullivan was leaking stuff to the
5 media, effectively briefing the deputy commissioner, 12:35
6 effectively briefing against the Commissioner. Again,
7 this is -- he didn't give an example of that, or
8 anything, but he threw that in, and, as I say, I only
9 recall that because that is from the
10 near-contemporaneous note I had. 12:35

11 283 Q. CHAIRMAN: Yes. Well, was he trying to give you the
12 impression that Garda Headquarters was some a kind of a
13 viper pit where everyone was against everybody else and
14 trying to destroy the other?

15 A. He wouldn't have to give me that impression, Chairman, 12:35
16 I'd say I probably had that impression myself,
17 but there was an element of that there.

18 284 Q. CHAIRMAN: All right. Well, can we just turn to the
19 note, if you wouldn't mind, it's 6628, and would you
20 mind just telling me where there is any reference to 12:35
21 that, because it's not obvious to me. This is your
22 note, what you typed up on your PC.

23 A. Sorry, yeah, the reference down there:
24
25 "MC and DT suspected she was releasing info to us how 12:36
26 divided they were going back a number of years."

27 285 Q. CHAIRMAN: That is it, yes. So that is what that
28 means?

29 A. Yes, that is my --

1 286 Q. CHAIRMAN: I don't get -- in a way, I don't get this,
2 and on a human level I am finding this hard to
3 understand, Mr. Clifford, that everything seems to be
4 about PR and what the newspapers are saying, as opposed
5 to what you are doing yourself, in reality. 12:36

6 A. Oh, I think that theme runs through the whole
7 situation, to be quite honest with you.

8 287 Q. CHAIRMAN: Okay. The last thing that I wanted to ask
9 you about was, obviously I have a list of people who
10 were never briefed, people who said -- who were said to 12:36
11 have been briefed by David Taylor and people who were
12 added in late, and then people whom he never briefed at
13 all, and you come under the category, according to him,
14 of people that he would never brief at all because he
15 didn't trust you and nor did he trust Katie Hannon. 12:37
16 Now, I don't know whether you and Katie Hannon worked
17 closely; you are obviously entitled to do that --

18 A. No, no, I wouldn't say that at all.

19 288 Q. CHAIRMAN: I am sure you got on well?

20 A. Oh, yeah, I get on very well with her. She is an 12:37
21 excellent reporter and a lovely person.

22 289 Q. CHAIRMAN: So it would seem, and this is just my
23 impression, that if he had -- if it be the case that
24 controversy in Garda Headquarters in relation to
25 Maurice McCabe, let us say, let us take it as a given, 12:37
26 started sometime around mid-2013, as I have been told,
27 if the specific issue as to whether Maurice McCabe was
28 to give evidence before the Public Accounts Committee
29 was live November, certainly very strongly live in

1 December, and became very, very -- became red hot in
2 January 2014, I'm finding it hard to understand what
3 you could possibly have been writing about or what you
4 could possibly have been saying so that when it came to
5 the smear campaign conducted by David Taylor, he 12:38
6 decided to exclude you and Katie Hannon way back in
7 2013; I don't know whether you were writing articles at
8 that time?

9 A. I was. Like, there is a couple of things. I had
10 previously written stuff that HQ and the Gardaí may not 12:38
11 have been happy about in relation to other individuals,
12 nothing to do with whistle-blowing, just in relation to
13 individual Gardaí who found themselves in a bad
14 situation, and management were perhaps to blame, and
15 various stuff like that in relation to, for example, 12:38
16 the stuff -- your man in west Cork --

17 CHAIRMAN: Anyway, don't worry about it.

18 A. Sorry, what I'm saying is, I may have had a certain
19 reputation.

20 CHAIRMAN: In other words, you were a thorn in their 12:39
21 side, is what you are saying?

22 A. Oh, I wouldn't go that far, but I may have had a
23 certain reputation.

24 CHAIRMAN: what is less than a thorn in the side?

25 A. A bit of an irritant. But in any event, I was writing 12:39
26 stories in October/November. The whole issue around
27 the stuff going to the Public Accounts Committee, I had
28 written stories in relation to that, in relation to the
29 Commissioner and the Data Commissioner getting on to

1 the Public Accounts Committee. The Commissioner
2 himself referenced, in one of the pieces you had here,
3 about he'd read something in the Examiner. I had been
4 writing those stories. I had also written some
5 comment/analysis pieces about how the O'Mahony report, 12:39
6 to my mind, and from what -- the evidence I could see,
7 was effectively a whitewash. So that kind of stuff
8 presumably contributed to that.

9 290 Q. CHAIRMAN: All right, yes. So you had very definitely
10 made your position known? 12:39

11 A. I made my position clear, that I wasn't toeing any
12 line. And to be fair, Chairman, I think you may have
13 described it - I know it wasn't in a derogatory
14 fashion - about pinning colours to the mast. The only
15 mast I was pinning my colours to was one of facts, and, 12:39
16 once you followed that, that was the nature of things.

17 291 Q. CHAIRMAN: So if we -- the O'Mahony report comes out on
18 15th May 2013, and that certainly was a point at which
19 you made your feelings on the matter known, so we are
20 well into 2013 and coming towards the very midpoint of 12:40
21 it.

22 A. Yes, I think that's -- would be around, yes.

23 292 Q. CHAIRMAN: And would Ms. Hannon, to your knowledge,
24 have been in a somewhat similar position?

25 A. I think it may have been later, later that year or 12:40
26 early in '14, but -- I think, but myself and Katie had
27 no interaction in relation to the story at that stage,
28 whatsoever.

29 293 Q. CHAIRMAN: But it may that be she wasn't writing about

1 Maurice McCabe specifically, but, like you, had views
2 on various other things?

3 A. Quite possibly, yeah. I mean, neither of us are
4 dedicated security or crime correspondents.

5 CHAIRMAN: Yes. Well, I am not saying there is
6 anything wrong about that, quite the contrary; I mean,
7 you had your point of view and you had -- you wrote
8 about it in consequence. All right. Thank you very
9 much. We will take an hour.

12:41

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12:41

11 THE HEARING ADJOURNED FOR LUNCH

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1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 MS. LEADER: Mr. John Burke, please. I just don't see
4 RTÉ's legal team or Mr. Burke in the room, sir.

5 MR. MARRINAN: We have another witness, sir, that we
6 could call. 13:41

7 CHAIRMAN: Yes.

8 MR. MARRINAN: Mr. Tim Vaughan, please.

9
10 MR. TIM VAUGHAN, HAVING BEEN SWORN, WAS DIRECTLY
11 EXAMINED BY MR. MARRINAN: 13:41

12
13 MR. MARRINAN: Mr. Vaughan's statement is to be found
14 at page 4079 of the materials, sir.

15 294 Q. Mr. Vaughan, you're no longer in journalism, isn't that
16 right? 13:41

17 A. That's correct.

18 295 Q. Would you just tell us briefly about your career in
19 journalism, over what period of time it spanned and who
20 you were working with and in what capacity? 13:42

21 A. I started in with The Kerryman in 1987, and in 1991 I
22 was asked to join the then-Cork Examiner, and in 1995 I
23 was appointed deputy editor and in 2001 I was appointed
24 editor, until September 2016.

25 296 Q. And I think that you were interviewed by our
26 investigators on the 28th November 2017 and they went
27 through the terms of reference of the Tribunal with
28 you, term of reference by term of reference, isn't that
29 right? 13:42

1 A. That's correct.

2 297 Q. And I think that you had no information to offer to the
3 Tribunal except for in relation to hearing rumours in
4 relation to Sergeant Maurice McCabe. I think the first
5 rumour that you heard was, you overheard a conversation 13:43
6 on a train, is that right?

7 A. Yeah. I heard -- I was on a train from Dublin to Cork,
8 and I just overheard snippets of a conversation that
9 was taking place in the aisle next to me. And the two
10 gentlemen, they had -- reading newspapers, and the 13:43
11 subject, I just heard McCabe's -- the name 'McCabe',
12 and one of the guys didn't seem to be too enamoured of
13 Sergeant McCabe, and there was a reference -- I just
14 heard a reference to 'abuse' or 'abused', and that's
15 all I heard. 13:44

16 298 Q. Can you help us in relation to the timeframe for this,
17 when it was?

18 A. It was in 2014, but I am not one -- I am pretty bad, I
19 used to be bad anyway at keeping diaries and things
20 like that, so I couldn't really say with certainty, but 13:44
21 I think it probably was towards the latter half of
22 2014, but I couldn't swear on that.

23 299 Q. And I think that that was the first time that you had
24 heard anything negative said about Sergeant Maurice
25 McCabe? 13:44

26 A. It was. I didn't take much notice of it. I just -- it
27 just, you know, sat in the back of my mind.

28 300 Q. At that time you were editor of the Examiner, isn't
29 that right?

1 A. Yes, yes.

2 301 Q. And I think that you had upwards of 30 reporters who
3 were working under you?

4 A. That would be about it, yeah.

5 302 Q. Yes. And I think that none of those had brought you 13:45
6 any stories in relation --

7 A. No, I heard nothing and --

8 303 Q. -- to Sergeant McCabe?

9 A. No, nothing at all. I'm based in Cork and, you know,
10 didn't socialise much in Dublin media circles at all, 13:45
11 came here on business meetings, so I wouldn't have been
12 mixing in that milieu too often.

13 304 Q. Now, I think that after overhearing the conversation on
14 the train, I think the next was that you heard
15 something from a colleague that you knew in the media, 13:45
16 is that right?

17 A. Yeah. I suppose the context, I would -- as editor, I
18 would have lots of trusted contacts, contacts outside
19 the media and within the media, and I got a call, I had
20 a conversation with one who -- I would always have one 13:46
21 or two who would keep me in mind if there was something
22 of interest or of help to the Examiner, and I was
23 having what was a general conversation with this source
24 and we spoke about lots of issues and he mentioned
25 that, did I know that there were rumours circulating in 13:46
26 Dublin media circles about Maurice McCabe, and I
27 hadn't.

28 305 Q. And I think he specifically mentioned it in the context
29 of a sexual abuse issue?

1 A. Sexual abuse.

2 306 Q. Yes.

3 A. Yes, exactly. But that was it, that was the limit of
4 it. He didn't have any further detail, there was no
5 detail like, that came out subsequently, none of the 13:46
6 sordid details that had come before the Tribunal. That
7 was it. There was no mention of children, or anything
8 like that. I didn't think he took it seriously. I
9 didn't take it very seriously, but I decided, I suppose
10 I was concerned enough that I would check it out with 13:47
11 Mick, who had led the coverage right through from the
12 very start.

13 307 Q. That is Mick Clifford?

14 A. Mick Clifford, yes.

15 308 Q. Yes. And so did you have a conversation with him? 13:47

16 A. Yeah. I rang Mick, I'm not sure was it straightaway or
17 how long later, but it would have been fairly quickly.
18 Mick immediately said, look, he had been aware of it,
19 he checked it out, and we had a brief conversation on
20 that, but Mick was emphatic that there was nothing to 13:48
21 it. We didn't get into any detail about any further
22 detail of rumours that were going round. Once I had
23 that assurance from Mick, I was happy with that.

24 309 Q. And I think there was some direction that the DPP had
25 directed the matter -- 13:48

26 A. That is my recollection.

27 310 Q. -- of the sexual assault allegation?

28 A. That is my recollection.

29 311 Q. And I think that you continued on then in the Examiner

1 up until 2016, was it?

2 A. Yeah.

3 312 Q. Now, I think that the investigators in particular were
4 asking you in relation to any negative briefings that
5 you may have ever received from Superintendent Taylor, 13:48
6 and you were in a position to confirm that you didn't
7 receive any negative briefing from Superintendent
8 Taylor, isn't that right?

9 A. No, I didn't get a briefing from anybody, negative or
10 positive. 13:49

11 313 Q. Had you ever met Superintendent Taylor?

12 A. No, I never met him.

13 314 Q. Encountered him as the Garda Press Officer?

14 A. No, I had no dealings whatsoever.

15 315 Q. And I think that they also asked you about any negative 13:49
16 briefings that you may have received from Commissioner
17 Martin Callinan?

18 A. No.

19 316 Q. Did you ever receive anything?

20 A. No, never met him, never spoke to the man. 13:49

21 317 Q. Or Deputy Commissioner Nóirín O'Sullivan --

22 A. No.

23 318 Q. -- during that period of time. And then, just finally,
24 there's one matter if you could deal with, and this is
25 in relation to your time in the media and your 13:49
26 experience as an editor and also as a journalist.

27 CHAIRMAN: Mr. Marrinan, just before you go on to that,
28 maybe I'm getting things mixed up, but I thought there
29 was three and, so far, I have written down two. So the

1 first one was the thing on the train and the second was
2 the source who knows about Dublin media to say, 'Did
3 you know about Maurice McCabe and sexual abuse
4 allegation which is circulating up here?' But I
5 thought there was a third one as well. 13:50

6 MR. MARRINAN: No, I think that is it, isn't it, the
7 two instances?

8 A. No, only two, yeah.

9 CHAIRMAN: well, somebody said three. I beg your
10 pardon, but anyway, there it is. 13:50

11 319 Q. MR. MARRINAN: You overheard the conversation on the
12 train between two individuals?

13 A. Yes, that's correct, yeah.

14 320 Q. And then subsequently you had a meeting with -- or you
15 met a colleague -- 13:50

16 A. It was a phone conversation.

17 321 Q. Yes. And that was an informal conversation, but as a
18 result of that you were prompted to go to Mick
19 Clifford?

20 A. Well, because it was a second mention. 13:50

21 322 Q. Yes.

22 A. But at the same time, I didn't take it seriously
23 because I considered Sergeant McCabe to be a man of
24 integrity, and, with any whistleblowers, there's
25 almost -- well, I would have assumed, that would be -- 13:50
26 that some people somewhere would try to impugn his
27 integrity, but I had no -- absolutely no evidence of
28 that. But that is what happens with whistleblowers.
29 But the person that I spoke to had nothing to do with

1 the, let's call it the McCabe story, neither
2 commissioned, wrote or edited any story, and didn't
3 know where the rumours were emanating from, and they
4 were the only two occasions where I heard it, until
5 much later on, when it, you know, became further into
6 circulation. 13:51

7 323 Q. At page 4093, if we could have that up on the screen,
8 this is a -- if we could scroll down, when it does come
9 up on the screen, to the bottom of the page. Yes, it's
10 a question by our investigators: 13:52

11
12 "I have been asked to offer an opinion, given my
13 background as a newspaper editor, in relation to the
14 following: I have been asked whether, in my view, it
15 is appropriate for journalists, broadcasters personnel, 13:52
16 media personnel, to invoke journalistic privilege over
17 their contact and thereby not cooperate with the
18 Tribunal of Inquiry where their contact/witness has:
19 (a) waived journalistic privilege;
20 (b) declared before the said Tribunal that it is their 13:52
21 wish and expectation that all such journalists come
22 forward to assist the Tribunal in their inquiries, in
23 circumstances where the said journalist's contact
24 witness is central to the examination of the terms of
25 reference of the Tribunal." 13:52

26
27 And just give us your view in relation to that, please.

28 A. I can see from one point of view that it might be --
29 that when somebody waives their protection, that, you

1 know, it should be okay for the journalist to
2 acknowledge that they are the source, but I think
3 that's a very dangerous path to go down. There are
4 consequences, or there can be unforeseen consequences
5 of going down that path. I think protecting your
6 sources is at the heart of journalism, and even if
7 somebody describes themselves as the source, once you
8 start pulling on that thread, it can quickly unravel
9 and you have no way of knowing where it is going. For
10 example, I think I said in my statement that you
11 wouldn't know if somebody who admitted they were the
12 source was operating under duress, or if they were one
13 source and admitting -- and the journalist admitting
14 that they were a source could reveal a second source,
15 and a person might incorrectly claim to be a source so
16 that the actual source might be identified by process
17 of elimination. So there are a number of dangers to
18 pursuing that.

13:53

13:54

13:54

19 324 Q. Yes. Well, presumably if you exclude those dangers as
20 a possibility -- if we could just look at your answer
21 to the question at page 4094 that was posed by the
22 investigators, you say:

13:54

23
24 "It is an unusual one for me, in that I am no longer an
25 editor."

13:54

26
27 But have you a huge amount of experience in that role
28 and indeed as a journalist.

29

1 "If I was, I might have a different opinion.
2 Journalistic privilege is something that will be
3 decided by the courts and the Tribunal in due course.
4 Speaking as somebody who is no longer an editor, while
5 I would personally never reveal a source and I would go 13:55
6 to any lengths to protect a source, which goes to the
7 very heart of journalism, in this case journalist
8 colleagues may disagree. But if the source waives
9 their privilege, I see the merit in the view that
10 privilege then no longer exists." 13:55

11
12 That was the view that you expressed to our
13 investigators. And then you go on to say:

14
15 "But I can see a potential difficulty in the general 13:55
16 sense if, for example, you do not know what pressure
17 might be put to bear on the witness to waive their
18 privilege. As such, it is not always black and white.
19 It is tricky for that reason. I have never before come
20 across this set of circumstances." 13:55

21
22 And every situation is unique. But, I mean, if the
23 circumstances are such that you can be quite satisfied
24 that the source has not been put under any pressure to
25 reveal that they are, in fact, a source, do you 13:56
26 understand?

27 A. Mm-hmm.

28 325 Q. And in circumstances where, in fact, the source has
29 acted voluntarily at all times, and very obviously so,

1 because is he the person who has brought it into the
2 public gaze, as it were, under no pressure whatsoever,
3 and in circumstances where he has had a relationship,
4 as a source, with individual journalists, and he is now
5 calling in aid the journalist to establish a case that 13:56
6 he is making, do you understand?

7 A. Yes.

8 326 Q. So if you can exclude the possibility of opening up
9 other avenues to identifying other sources, where could
10 the danger possibly exist in terms of undermining the 13:57
11 privilege in those circumstances?

12 A. If you are a journalist who would decide to reveal the
13 source, whether the source chooses to or not, then it
14 has the potential to cause problems down the line in
15 relation to future contacts who might decide not to 13:57
16 approach you with stories in the public interest.

17 327 Q. Well, you see, it would have the potential, if it was
18 an absolute exclusion of naming a source under any
19 circumstance, it may actually dissuade people from
20 coming forward as a source if they thought that 13:57
21 ultimately the journalist was going to deny or not
22 answer any questions where the source may need the
23 journalist to establish a particular fact; do you see
24 the danger there?

25 A. I hear what you say -- 13:58

26 328 Q. Yes.

27 A. -- but I don't agree with it.

28 MR. MARRINAN: Okay. Would you answer any questions,
29 please.

1 CHAIRMAN: I am just wondering, just before we go on to
2 any other questions, may I just ask a supplemental on
3 that, I know it is unusual for me to jump in at this
4 particular point, but I grew up watching the watergate
5 hearing, so that, I suppose, puts a particular age on 13:58
6 me; I am sure you probably watched them as well?
7 A. Yeah, well --
8 CHAIRMAN: You did, I'm sure you did, yes. And, you
9 know, Bernstein and Woodward, and all the rest of it,
10 did great work and are justifiably heroes in the 13:58
11 journalism world and in the wider world. But I
12 understand that the person who was the source has been
13 revealed now.
14 A. The --
15 CHAIRMAN: I'm not, I hope, living in kind of an 13:59
16 isolated cloud or tower somewhere, am I?
17 A. David Taylor has revealed himself to be the source.
18 CHAIRMAN: Yes. well, I mean, what privilege is
19 possibly attaching to him now then? I mean, it's been
20 widely discussed, we have acres and acres of newspaper 13:59
21 around the world talking about this individual. We all
22 know the name. So where is the journalistic privilege
23 on that? And indeed I think Woodward and Bernstein
24 were interviewed and confirmed it, isn't that right?
25 A. That, I'm not sure of. 13:59
26 CHAIRMAN: well, I think that is the case, if you look
27 it up. I mean, what are we talking about here?
28 A. well, I suppose that's for the Tribunal to decide.
29 CHAIRMAN: No, I know that. But, I mean, you know,

1 there are situations where, for instance, look, we've
2 had this thing of source coming up, I can't reveal the
3 source, I have always dealt with it up to this point on
4 the basis that, look, this isn't essential to decide
5 what I am trying to decide, and, as I said, you know, 14:00
6 in a fifty-day case there may be ten hours of extremely
7 relevant evidence, or five hours of extremely relevant
8 evidence; every senior barrister in the Law Library
9 will tell every junior barrister that when they come
10 in, that things will hinge on five minutes of evidence, 14:00
11 or whatever. Okay, we know that. But this is
12 important. Here is a man who comes forward, people are
13 accusing him of complete perjury on the basis of having
14 a grudge against Nóirín O'Sullivan, of being in a
15 sticky wicket and setting out effectively to use his 14:00
16 situation and jump on the Maurice McCabe bandwagon to
17 destroy Nóirín O'Sullivan, with a view to concealing
18 his own nefarious activities. I mean, that is one of
19 the scenarios. There are other scenarios. So how can
20 it possibly be the case that a journalist is entitled 14:01
21 in those circumstances to say, 'Oh, yes, you did
22 contact me and I hear your plea in public to say would
23 you please say if I am the source in what I have said'?
24 A. well, it isn't the source's right to erode the
25 journalist's right to protect their source. 14:01
26 CHAIRMAN: I wasn't ever suggesting it. Nor is it
27 indeed the client's right to erode the right to have
28 client's communications with lawyers for the purpose of
29 getting legal advice eroded. That is certainly the

1 case. I'm not sure in the Woodward and Bernstein
2 example here, what people are so worried about here,
3 unless, of course, things are much worse or there is
4 some kind of a side agreement. I can appreciate your
5 point, Mr. Vaughan, very easily when it comes to, this 14:01
6 is a thread that is dangerous to unravel, so if you
7 unravel it and you reveal another source, you can't do
8 that, I understand that, I'm not saying whether it is
9 right or wrong, but I do understand that very much.
10 If - indeed, the European Court of Human Rights have 14:02
11 spoken about - if you reveal a journalistic
12 methodology, which is, for instance, and this is a
13 bizarre example, that you had some kind of a listening
14 device in Garda Headquarters and that was revealed, I
15 mean that, again, would preclude you from revealing a 14:02
16 source. But here is a man saying, I have done
17 something really disreputable, I contacted A, B, C and
18 D, I am the source in relation to that, and I would
19 like you, please, A, B, C and D to come forward and
20 confirm on oath in a public hearing that indeed it was 14:02
21 me who did those things. Where is the journalistic
22 privilege? I don't get it.

23 A. As I said, Chairman, that would be for the Tribunal to
24 decide, but if you -- if the journalist is seen to have
25 their right to protect their sources eroded in any 14:02
26 fashion, then I think it has longer term consequences
27 for others.

28 CHAIRMAN: But, I mean, who is eroding it?

29 A. The source.

1 CHAIRMAN: Source. Well, in the Woodward and Bernstein
2 example, do you think that erodes - source protection,
3 for them to be talking about that, for the person in
4 question to have come forward and said, 'Yes, I was
5 Deep Throat' and 'Yes, I am the source of the articles 14:03
6 that appeared', which exposed the then-president of the
7 United States in a not very favourable fashion? I
8 can't see a -- I can't see that that bulwark is in any
9 way breached or dissolved or even threatened. Can you?
10 A. I think we have to disagree. 14:03
11 CHAIRMAN: Fine. I'm happy to disagree with people,
12 but you have to give me a reason for disagreeing. What
13 is the reason? Just take the Woodward and Bernstein
14 example, were they in the wrong? I mean, having done
15 such huge credit to journalism, are we saying that 14:04
16 somehow they are now anti-heroes, having been heroes?
17 What is the reason? I am grasping around trying to
18 fathom what it is. I am very willing to listen.
19 A. I wouldn't -- I would not, myself, if I had a source
20 who was claiming or revealing that he was the source, I 14:04
21 would not reveal that he was.
22 CHAIRMAN: And if the net result of that was he was
23 going to be called a malicious perjurer and he was
24 actually asking for your help, it'd be the same?
25 A. I think you've got to -- I would -- it would be a 14:04
26 difficult situation, but I think you've got to uphold
27 the integrity of -- I don't think you can pick and
28 choose in these matters.
29 CHAIRMAN: Nobody is picking and choosing, no more than

1 Woodward and Bernstein picked and chose. Maybe we have
2 discussed it enough. But, I mean, is it possible that
3 the reason has to be in those circumstances that there
4 is some kind of a side agreement between the source
5 that it's only -- I'm only going to go so far and you 14:05
6 can't say any more, or that the relationship has become
7 too close so that it is no longer based on privilege,
8 it is no longer based on journalistic ethics, but is
9 based effectively on a relationship with the person who
10 has outed himself as the source? 14:05

11 A. Sorry, I don't get your point there, Chairman.

12 CHAIRMAN: well, I'm struggling on this one. Thanks
13 for your help.

14 MR. McDOWELL: Chairman, I have no questions.

15 MR. MICHAEL O' HIGGINS: Similarly, no questions. 14:06

16 MR. GILLANE: No questions.

17 CHAIRMAN: I would have thought this touches you,
18 Mr. Gillane, particularly in relation to the opinion
19 that was expressed. You have no questions?

20 MR. GILLANE: well, I attempted -- sorry, Judge, last 14:06
21 Friday I was attempting with Professor Kenny just to
22 establish that there are these differences in opinion
23 on this topic amongst experienced members of the
24 profession, and the witness has said no more than I
25 think what I put to Professor Kenny, so I don't feel 14:06
26 the need to put further questions to the witness.

27 CHAIRMAN: All right.

28 MR. GILLANE: Thank you for the opportunity.

29 CHAIRMAN: You don't need to thank me for the

1 opportunity. You're absolutely entitled to the
2 opportunity under the rules in Haughey. For instance,
3 could a journalist say 'I'm not going to confirm
4 whether or not this is my phone number'?

5 A. If they were being asked in what circumstances? 14:07

6 CHAIRMAN: 'Here's a list of contacts, for instance,
7 between the Garda Commissioner and unknown persons,
8 would you confirm if your phone number appears on this
9 list'?

10 A. I've never had a problem with saying -- telling 14:07
11 somebody --

12 CHAIRMAN: Yes. Well, you might be surprised to know
13 that there are some people in this room who do.
14 Anyway, we will carry on.

15 MR. QUINN: Chair, I appear for Mr. Vaughan. If I may, 14:07
16 I might just reserve my position until the end.

17 CHAIRMAN: Yes.

18 MR. DIGNAM: Chairman, I just have one question.
19

20 MR. VAUGHAN WAS CROSS-EXAMINED BY MR. DIGNAM: 14:07

21 329 Q. MR. DIGNAM: Mr. Vaughan, my name is Conor Dignam. I
22 appear on behalf of An Garda Síochána, and I just
23 wanted to clarify one thing with you. Mr. Quinn put it
24 to Mr. Clifford, who had obviously reported to you,
25 that no complaints were made in relation to the 14:07
26 articles that had appeared in the Examiner on the 4th
27 October, I think you're familiar with those articles?

28 A. Yes.

29 330 Q. Do you recall the then-Commissioner, Ms. O'Sullivan,

1 issuing a public statement the day following those
2 articles denying any wrongdoing as alleged in the
3 protected disclosures which are the subject --

4 A. This is the October 2016?

5 331 Q. Yes, yes.

14:08

6 A. I finished as editor on the 30th September 2016.

7 332 Q. All right. Thank you, Mr. Vaughan.

8 MR. Ó MUI RCHEARTAIGH: I have no questions, Chairman.

9 CHAIRMAN: Thank you.

10 MR. QUINN: Chairman, I might just ask one or two
11 questions of Mr. Vaughan.

14:08

12 CHAIRMAN: Yes.

13

14 MR. VAUGHAN WAS EXAMINED BY MR. QUINN:

15

14:08

16 333 Q. MR. QUINN: Perhaps following up on one or two of the
17 questions, Mr. Vaughan, that Mr. Marrinan and the Chair
18 were asking you, and I think they were perhaps of a
19 general nature, drawing on your experience in the field
20 of journalism and particularly as an editor for I think
21 something approximating 15 years or so. Can I just ask
22 you in general terms, would it be your experience that
23 journalists who bring stories to the paper would have
24 generally more than one source?

14:08

25 A. It's a standard -- it would be a standard rule in the
26 Examiner, two sources, or in some situations where one
27 journalist would have documentary evidence which would
28 be stood up.

14:09

29 334 Q. Can I ask you that again. Just in general terms,

1 perhaps if a journalist was asked to confirm that a
2 person was a source and if they were then asked to
3 indicate what that person was a source of in terms of
4 material, is that the kind of thing that could
5 conceivably put in jeopardy the identity of a second
6 source? 14:09

7 A. Yes.

8 CHAIRMAN: But that is not the situation here. Nobody
9 is saying that here, Mr. Quinn. There's not the
10 slightest piece of evidence that that could possibly be 14:10
11 so here. And in relation to other things where it is
12 possible that the source was otherwise, I haven't
13 pursued the matter, so it's a hypothetical, but it's a
14 hypothetical that is not occurring in this instance.
15 If somebody wants to tell me that, I will listen very 14:10
16 carefully, but at the moment it's just not on the
17 evidence.

18 335 Q. MR. QUINN: And, Mr. Vaughan, can I also ask you that
19 if a person who claims to be a source happens not to be
20 a source, is it conceivable that, in fact, by 14:10
21 confirming that somebody is not a source, the
22 journalist could, either wittingly or unwittingly,
23 potentially jeopardise the identity of a person who was
24 a source?

25 A. Correct, yes. 14:10

26 336 Q. And I think you said, in response to one of the
27 questions from the Chair, something akin to the fact
28 that the privilege was not therefore -- it wasn't held
29 by the source, but was a privilege I think held by the

1 journalist, can you just elaborate on what you mean by
2 that?

3 A. The privilege doesn't attach to the source; it's
4 society's interest in free communication of news and
5 opinions that the privilege attaches to. It attaches 14:11
6 to the journalist, so it's not in the gift of the
7 source.

8 337 Q. And I think just in relation to the Woodward and
9 Bernstein scenario, without getting into the detail of
10 that, Mr. Felt who was identified as the source was 14:11
11 identified some 30 years after the relevant events?

12 CHAIRMAN: Why does that help? What is the difference
13 between 30 minutes and 30 years? I know it is Mark
14 Felt, and I know as well that Woodward and Bernstein
15 confirmed that he was the source. 14:12

16 338 Q. MR. QUINN: Do you think there is a relevance,
17 Mr. Vaughan, to whether it is 30 minutes after the
18 event or 30 years?

19 A. Well, I think anything that is live has a more marked
20 piquancy and is something, really looking back with the 14:12
21 perspective of 30, 40 years, I think it changes how
22 people view things.

23 CHAIRMAN: Should I come back in 30 years then and ask
24 these questions?

25 A. I mightn't be around. 14:12

26 CHAIRMAN: And you would be happy, in 30 years' time,
27 that I would know things that -- like people's phone
28 numbers, for instance, that they are now concealing
29 from me?

1 A. As I said, Chairman, I've no issue whatsoever about
2 giving my phone number out, and if other people take a
3 different view, you know, that's their position, but
4 it's not my position.

5 CHAIRMAN: It may not or may not be, but the law is 14:13
6 this: The People (Director of Public Prosecutions) v.
7 JT, it says, perhaps in old-fashioned language, the law
8 is entitled to the evidence of every man - man and
9 woman, obviously - and if people have a reason not to
10 give it, well they have to come up with a reason not to 14:13
11 give it. I'm sorry, are you finished, Mr. Quinn?

12 MR. QUINN: Sorry, Chair, just two more questions.

13 339 Q. I think as a newspaper editor you will be familiar with
14 the rule that, in fact, an awful lot of highly
15 confidential public records are, as it happens, only 14:13
16 lawfully made available after the 30 years passage of
17 time. Do you have any sense as to why that is?

18 A. To protect, you know, the reputations of living, of
19 people while they are still alive.

20 340 Q. And then, just finally, one of the answers you gave, I 14:14
21 think, to one of the questions that was put to you was
22 that, even leaving aside the specific circumstances of
23 any case, if a journalist were to confirm the identity
24 of a source in a particular case, this could have
25 adverse knock-on consequences, perhaps you meant to 14:14
26 that journalist in terms of their future dealings; can
27 you just elaborate on what you meant by that?

28 A. Could you repeat that, please?

29 341 Q. I think in answer to one of the questions you were

1 asked, you indicated that if a journalist were, either
2 in a specific case or generally, to have a practice of
3 confirming that somebody was a source when that person
4 came forward and waived privilege, that this could have
5 knock-on consequences for the journalist, I think, in 14:14
6 terms of their attractiveness as a potential repository
7 of information in the future. Could you explain what
8 you meant by that?

9 A. Well, I think, you know, certain journalists have, and
10 Mick Clifford would be one, that people would trust, 14:15
11 and trust with their lives, really, in the knowledge
12 that he wouldn't reveal sources. And I think once you
13 go down that road of selectively confirming that
14 somebody was a source, then I think that would -- it is
15 my view that that would have a detrimental knock-on 14:15
16 effect in terms of people trusting that journalist
17 going forward.

18 CHAIRMAN: So it is the chilling effect, is what you
19 are saying?

20 A. Yes. 14:15

21 CHAIRMAN: Yes. No, I am familiar with that, and that
22 is obviously very important.

23 MR. QUINN: I have no more questions, Chairman.

24 MR. MARRINAN: Nothing, sir.

25
26 MR. VAUGHAN WAS THEN QUESTIONED BY THE CHAIRMAN:
27

28 342 Q. CHAIRMAN: Just the situation, taking a view, and you
29 are saying you can't even reveal that so-and-so wasn't

1 a source, maybe you would just tell me now whether I
2 was in the wrong in relation to a situation that
3 occurred quite a number of years ago, and I am bound by
4 legal professional privilege, and I have always taken
5 it very, very, very seriously, never talk about 14:16
6 clients' affairs. So, in the Law Library, people
7 talking about one of the financial scandals that had
8 occurred, let us say, in the last, I am going back up
9 to 40 years, and saying so-and-so has such an account,
10 let us say - and I am disguising the facts here - and I 14:16
11 said no, because the list is actually in my office, I'm
12 asked to do an opinion in relation to a particular
13 aspect and I can tell you that person's name is not on
14 that list. So was I breaching privilege? I mean,
15 rather than let vicious rumours circulate, was I doing 14:16
16 the wrong thing? I mean, because that is what you just
17 told Mr. Quinn.

18 A. I am not sure if we are comparing like with like.
19 CHAIRMAN: why? why aren't we comparing like with
20 like? 14:17

21 A. Em...

22 343 Q. CHAIRMAN: The vicious rumours, by the way, then
23 stopped dead in their tracks. Perhaps would have
24 reached the newspapers, causing trouble to that
25 individual, which would have been completely 14:17
26 unwarranted, perhaps resulting in a libel action and
27 all that that involves, which I personally think is
28 ludicrously expensive and with extraordinarily high
29 damages, quite often completely unjustifiable in the

1 context of what people need to do to earn even small
2 amounts of money to buy a car or anything important
3 like that. Are you telling me I did the wrong thing?
4 Not to personalise it. A person in that situation that
5 I was in did the wrong thing. That person is not such 14:18
6 a financial cheat, as people are now saying at this
7 table, by way of merely discussing a rumour as opposed
8 to being malicious about it. What is wrong about that?
9 A. I think you're still breaching client confidentiality.
10 344 Q. CHAIRMAN: How? Where is the client confidentiality? 14:18
11 The person -- the point was, the person in question
12 wasn't my client because the person's name was not on
13 the list of financial cheats that I was doing
14 particularly opinion in relation to. Let's say it can
15 have implications for a lot of different things, like 14:19
16 income tax or extradition, etcetera, why am I breaching
17 client confidentiality by saying no, that is not the
18 person in question? Why am I not doing the right thing
19 and saying that this rumour has to stop here and there?
20 If he was my client or she was my client and I said 14:19
21 nothing, well that is a different thing, I couldn't
22 possibly reveal that the person was seeking advice in
23 relation to a matter.
24 A. Well, if you go back to the issue of the journalistic
25 privilege and in relation to sources, I just have to go 14:19
26 back and repeat what I said already.
27 CHAIRMAN: Okay. Well, thank you for your assistance,
28 Mr. Vaughan.
29 MR. MARRINAN: Thank you.

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THE WITNESS THEN WITHDREW

MR. MARRINAN: The next witness, sir, is Mr. Frank Greany, please.

14:20

MR. FRANK GREANY, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED BY MR. MARRINAN:

14:20

MR. MARRINAN: Thank you for coming, Mr. Greany. You're here to give evidence very briefly in relation to any interactions you may or may not have with Superintendent Taylor in terms of Superintendent Taylor's protected disclosure, and the reason that you were nominated by the Tribunal as a journalist who may have information to give is that your name featured in the Clerkin investigation as being somebody who Superintendent Taylor was in contact with by telephone. You're a journalist by profession, isn't that right? And who were you working with in 2014/2015?

14:20

14:21

A. I was working as a crime correspondent with 98FM from May 2013 until November 2015, when I took up my current role --

345 Q. Yes.

14:21

A. -- which is a courts correspondent with Newstalk and Today FM.

346 Q. Right. Okay. And I think that, unfortunately, letters went astray; you were written to by the Tribunal in

1 your old position with 98FM, and that's not your fault
2 in relation to it, but you were asked a series of
3 questions by the Tribunal, and the questions are set
4 out at page 4131. Your answers to them are set out at
5 4135, but they just -- that includes your telephone
6 number, and we will just go through the questions that
7 you were asked, in the first instance, at 4131. I
8 think that the questions that you were asked was:

14:22

9
10 "1. Can you confirm your mobile phone number."

14:22

11
12 which you did. And then you were asked was it the
13 mobile number that you had used from July 2012 to
14 February 2017, and you indicated that it was. You were
15 asked:

14:22

16
17 "Were you briefed negatively about Sergeant Maurice
18 McCabe by anyone? If so, by whom?"

19
20 And your answer to that was "no", that you weren't
21 briefed negatively by anyone in relation to Sergeant
22 McCabe.

14:22

23
24 "Have you any information or evidence about an
25 orchestrated campaign directed by senior officers of An
26 Garda Síochána to discredit Sergeant Maurice McCabe by
27 spreading rumours about his professional and personal
28 life?"

14:22

1 And again you answered "no" to that question, isn't
2 that right?

3 A. That's correct.

4 347 Q. Number 5:

5 14:23

6 "Were you contacted by Superintendent David Taylor in
7 relation to Sergeant Maurice McCabe?"

8
9 Your answer to that was "no".

10 14:23

11 "Were you briefed negatively by Superintendent David
12 Taylor in relation to Sergeant Maurice McCabe?"

13
14 You answered "no".

15 14:23

16 "Were you briefed negatively by Superintendent David
17 Taylor in relation to Sergeant Maurice McCabe to the
18 effect that his complaints had no substance?"

19
20 And you answered "no" to that.

14:23

21
22 "Were you briefed negatively by Superintendent Taylor
23 in relation to Sergeant McCabe to the effect that the
24 Gardaí had fully investigated complaints and had found
25 no substance to his allegations that he was driven by
26 agendas?" 14:23

27
28 Again, you answered "no" in relation to that.

29

1 "Was your attention drawn by Superintendent Taylor to
2 an allegation or suggestion of criminal misconduct made
3 against Sergeant Maurice McCabe in any respect?"

4
5 You answered "no" to that.

14:23

6
7 "Was your attention drawn by Superintendent Taylor to
8 an allegation that the root cause of Sergeant Maurice
9 McCabe's agenda was revenge against An Garda Síochána?"

10
11 And again you answered no in relation to that.

14:24

12
13 "Were you informed by Superintendent David Taylor that
14 he was instructed or directed by former Commissioner
15 Callinan and/or then-Deputy Commissioner Nóirín
16 O'Sullivan to contact the media to brief the media
17 negatively against Sergeant Maurice McCabe?"

14:24

18
19 And you answered "no" in relation to that.

20
21 "Are you aware and have you any evidence of any attempt
22 made by former Commissioner Callinan or Commissioner
23 O'Sullivan or any other senior member of An Garda
24 Síochána to discredit Sergeant Maurice McCabe by
25 reference to an allegation of criminal misconduct made
26 against him?"

14:24

27
28 And your answer to that question was "no".

29

1 "Were you informed by a journalist or any other person
2 of any matter referred to in the question above?"

3
4 And your answer to that was "no".

14:24

5
6 "14. Have you any knowledge, information or evidence
7 relating to any of the matters above?"

8
9 Your answer to that was "no".

14:25

10
11 "15. Have you any knowledge, information or evidence
12 relating to any matters within the terms of reference
13 of the Tribunal?"

14
15 And your answer to that was "no".

14:25

16
17 "16. Have you any records, however made, of any
18 communications from/with Superintendent Taylor or
19 former Commissioner Callinan, Commissioner O'Sullivan
20 or any other senior Gardaí relating to any of the above
21 matters?"

14:25

22
23 And your answer to that was also "no". So it would
24 appear that you are a complete stranger to all the
25 allegations that have been made by Superintendent
26 Taylor in his protected disclosure, is that right?

14:25

27 A. Certainly in relation to anything involving Maurice
28 McCabe. We never discussed Maurice McCabe. He never
29 mentioned to me and I never asked him about Maurice

1 McCabe.

2 348 Q. Yes. Well, I was just going to ask you that. In
3 2013/2014 when Superintendent Taylor was the Garda
4 Press Officer, did you have dealings with him?

5 A. Yes, absolutely. As a crime correspondent for 98FM I 14:26
6 would have had professional dealings with him, usually
7 by text or phone call, doorsteps at crime scenes,
8 things like that. I would have spoken to him.

9 349 Q. Was that on a regular basis?

10 A. Em, fairly regular, given my brief and the fact that he 14:26
11 was the superintendent in the Garda Press Office, he
12 was the Garda Press Officer. I would have had
13 relatively regular dealings with him. He would have
14 maybe confirmed details in relation to investigations.
15 If I had a detail that I wanted firmed up, he may 14:26
16 answer me positively or negatively, but it was strictly
17 professional during my time as crime correspondent.

18 350 Q. And when you say 'regular dealings with him', how
19 regular would we be talking about? Once a week or --

20 A. Well, at the time when I was working as a crime 14:26
21 correspondent with 98FM, crime in Dublin was rife, so I
22 would have had -- in relation to serious criminal
23 matters, I would have had -- I wouldn't even put a
24 number on it. Maybe weekly, sometimes it could be a
25 couple of weeks before Dave and I spoke. I would deal 14:27
26 directly with the Garda Press Office.

27 351 Q. Well, that's fairly regular contact with him, and did
28 you get on well with him?

29 A. Yeah, I found him very professional, a very nice man to

1 deal with. I had taken on -- it was my first crime
2 brief, I found him to be exceptionally professional and
3 helpful. You know, not to be a slur on any of his
4 predecessors, but the Garda Press Office would have
5 traditionally been a very difficult office to deal 14:27
6 with. David Taylor was contactable and, you know, if
7 you needed to firm up a detail, he would neither say
8 yea or nay, which was clearly very helpful in my brief.

9 352 Q. And did he mention Sergeant McCabe at all in any
10 conversations that you had with him? 14:27

11 A. No.

12 353 Q. And then he ceased to be Press Officer. And up until
13 the time that he ceased to be Press Officer in June of
14 2014, up until that time, are you saying that he never
15 said anything negative to you at any opportunity that 14:28
16 he had that was negative to Sergeant McCabe?

17 A. He never mentioned Maurice McCabe, whether it was in a
18 negative light or otherwise.

19 354 Q. Right. In terms of other journalists who were working
20 on stories, obviously perhaps at the same time, if 14:28
21 there was some major event, a number of journalists
22 might attend at a crime scene, or whatever, I don't
23 know, but did you have regular contact with other
24 journalists and crime reporters at the time?

25 A. Certainly within my brief, yes, other crime 14:28
26 correspondents. Like you've mentioned, there would be
27 a lot of hanging around at crime scenes as things
28 developed and there would obviously be conversations.
29 I would consider some of them to be personal friends of

1 mine.

2 355 Q. And did any of them ever say to you that they had been
3 briefed negatively by Superintendent Taylor about
4 Sergeant McCabe?

5 A. No, absolutely not. 14:29

6 356 Q. And did you hear any rumours at that stage from other
7 journalists about Sergeant Maurice McCabe and any
8 issues that he may have had --

9 A. No.

10 357 Q. -- in his past? 14:29

11 A. No.

12 MR. MARRINAN: Okay. Thank you very much. would you
13 answer any questions.

14 MR. McDOWELL: No questions, Chairman.

15 MR. MICHAEL O' HIGGINS: No questions. 14:29

16 CHAIRMAN: Is he on your list, Mr. O'Higgins, I am
17 wondering, as someone who you say positively he did
18 brief?

19 MR. MICHAEL O' HIGGINS: No, he is not.

20 CHAIRMAN: He is not. All right. Thank you very much. 14:29

21 MR. MARRINAN: Thank you.

22

23 THE WITNESS THEN WITHDREW

24

25 MS. LEADER: The next witness, sir, is John Burke, 14:29
26 whose statement is at page 5331 of the materials in
27 volume 20.

28

29

1 MR. JOHN BURKE, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MS. LEADER:

- 3
- 4 358 Q. MS. LEADER: Mr. Burke, you're a journalist, and you
5 currently work with RTÉ, is that correct? 14:30
- 6 A. That's correct, yeah.
- 7 359 Q. And you specifically work on the weekly This Week
8 programme, which is broadcast on Sundays, I think, is
9 that right?
- 10 A. That's right, since late 2013. 14:30
- 11 360 Q. Right. And before that I think you worked with the
12 Sunday Business Post, is that right?
- 13 A. That's right, for six years, and the Sunday Tribune
14 then prior to that.
- 15 361 Q. All right. So when did you take up employment with the 14:30
16 Sunday Business Post?
- 17 A. With the Sunday Business Post, 2007.
- 18 362 Q. And what did you do there?
- 19 A. I was the public affairs correspondent, so I would have
20 covered, I suppose, general news but news that fell 14:30
21 kind of I suppose somewhere in between business and
22 politics, and so forth.
- 23 363 Q. And when did you move to RTÉ from the Business Post?
- 24 A. In early 2013, May 2013.
- 25 364 Q. And on taking up employment with RTÉ, what did you do 14:31
26 immediately on changing jobs?
- 27 A. For the first six months I was actually assigned to a
28 desk where they, in effect, train you up on -- I
29 suppose, coming from print, there's a lot you don't

1 know about broadcasts, so I suppose you have to learn
2 how to use various different radio and TV technology,
3 so I was on a desk called the centralised news desk; I
4 would have learned TV there, and so forth, you know,
5 from a technical point of view. And then it was 14:31
6 October/November 2013 when I joined the This Week team.

7 365 Q. Now, in -- when you joined the This Week team, I wonder
8 could you explain a little bit how the team works
9 together and lines of reporting, and so forth?

10 A. Yeah, sure. I suppose it's very much -- it's a very 14:31
11 small team. At that stage it was -- the
12 presenter/editor was Colm Ó Mongáin, then there was a
13 second presenter who we had for half a week, if you
14 will, who joined us from Friday/Saturday onwards, and
15 then there was myself as the reporter. So, invariably, 14:32
16 I suppose I would look for news stories and deal then
17 with Colm, who was the programme editor, and, in
18 effect, run them by him. If he liked them and if he
19 was certain, I could stand them up or otherwise we
20 broadcast them. 14:32

21 366 Q. Now, I think the This Week programme covers a wide
22 variety of matters of fairly topical interest, is that
23 right?

24 A. Absolutely. You could say there's no limits, as such,
25 to the subjects that we would cover. 14:32

26 367 Q. And policing is one of those topics?

27 A. Absolutely. And that's, I suppose, something I would
28 have done more of than other subjects, definitely, yes.

29 368 Q. Now, it also covered, certainly into 2014, matters

1 relating to Sergeant McCabe, is that right?

2 A. That's correct, yes.

3 369 Q. And when did that start; can you put a time on it?

4 A. It's difficult to put an exact time on it, but I think 14:33
5 my own interest in the case arose from very early 2014.
6 As I say, I only joined the programme quite late in the
7 previous year, so it would really have been from around
8 January, I think, 2014, onwards.

9 370 Q. Okay. And you'd been an active reporter in RTÉ on the
10 This Week programme since around October 2014? 14:33

11 A. Yes, exactly.

12 371 Q. All right. Now, do you know Commissioner Callinan?

13 A. Not personally, no.

14 372 Q. Have you ever met him?

15 A. No. 14:33

16 373 Q. Ever spoken to him?

17 A. No.

18 374 Q. What about the then-Deputy Commissioner Nóirín
19 O'Sullivan, do you know her?

20 A. No, I did actually once interview her when she was a 14:33
21 deputy commissioner years ago for a colleague's book,
22 but it was actually a book of photographs by an Irish
23 Independent photographer, Mark Condron, so the
24 interviews had no relationship really to, I suppose,
25 operational duties. 14:34

26 375 Q. And was that your only interaction with the deputy
27 commissioner?

28 A. Yes.

29 376 Q. In relation to David Taylor, Superintendent, do you

1 know him?

2 A. I don't know him well. At that time when he was in the
3 Garda Press Office, I wouldn't have known him
4 personally. He and I suppose other members of the
5 Garda Press Office, such as Andrew McLindon, would have 14:34
6 been people to whom we would have sent queries.
7 Invariably the process by which I suppose I sent
8 queries to the Garda Press Office was, we'd send an
9 email, so we had -- I suppose, or I would send an
10 email, so it was unambiguous precisely what we were 14:34
11 looking for. And invariably the process was they
12 wouldn't reply or they would come back, you know, with
13 a very brief 'no comment'. I don't think we ever got
14 any substantial return or reply from them. But
15 invariably I would either phone and leave a voicemail 14:34
16 with either David Taylor or Andrew McLindon to let them
17 know we had sent the query, because a lot of what we
18 would have done would have been towards the tail-end of
19 the week, so we would have been probably sending a lot
20 of those emails on Saturdays. And just to be sure 14:34
21 there was never any claim that we were sending them to
22 emails that weren't monitored over the weekend, we'd
23 probably leave a voicemail or something just to say 'we
24 sent you an email, query's in', and so forth.

25 377 Q. And if I could just tease that out a little bit, 14:35
26 Mr. Burke.

27 A. Sure.

28 378 Q. When did you first, you think, started dealing with the
29 Garda Press Office?

1 A. I think every journalist has probably dealt with the
2 Garda Press Office, you know, on a constant ongoing
3 basis, but in terms of when I joined the This Week
4 programme, it would have been, you know, whenever I
5 covered Garda stories, from, I suppose, late 2013 14:35
6 onwards. I mean, I think everyone at some point in
7 time would have had reason to send some form of queries
8 to the Garda Press Office if there was any element of a
9 Garda story they were covering before that, so it
10 wouldn't have been a sort of a starting period forever 14:35
11 to have start dealing with the Garda Press Office then,
12 but in terms of the intensity of the current issues
13 that are all in the public domain now, not just this
14 one, but a multitude of other policing-related stories,
15 certainly I think everyone's intensity in terms of 14:36
16 dealing with the Garda Press Office probably increased
17 from 2013/2014 onwards.

18 379 Q. Did you ever at any time seek to introduce yourself to
19 the Garda Press Officer in any kind of formal --

20 A. No. 14:36

21 380 Q. -- or informal way?

22 A. No, no, and I would have always had I suppose a very
23 specific view about press officers or State bodies,
24 such as, you know, Gardaí, HSE. I suppose they're
25 there representing, I suppose, a corporate body, and 14:36
26 I'd always be very wary of, I suppose, back-channel
27 communications, because in some respects you're then
28 permitting I suppose what is a State body to mask what
29 should be, you know, public information, by some sort

1 of back-channel arrangement, which wouldn't necessarily
2 be how I would work, to be honest.

3 381 Q. So you never sought a colleague to introduce you to --
4 A. No.

5 382 Q. -- Superintendent Taylor -- 14:36
6 A. No.

7 383 Q. -- when it looked like you would be covering
8 Garda-related stories on a more frequent basis?
9 A. No, I wouldn't have seen the benefit in that to be
10 quite honest. No. It wouldn't necessarily be how I'd 14:37
11 work.

12 384 Q. All right. So any relationship, and I don't mean that
13 in any sinister way at all, was built up over time, you
14 think, from 2013 --
15 A. That's true. 14:37

16 385 Q. -- with Superintendent Taylor?
17 A. I mean, I think 'relationship' would even be perhaps
18 over-stretching it. As I said, the process was always
19 we would send queries and very specific queries, and I
20 think you may have dealt with even some of them before 14:37
21 previously in the Tribunal --

22 386 Q. Yes.
23 A. -- for which we awaited replies and invariably got
24 none. I wouldn't like to characterise the relationship
25 as a bad one; it was kind of what I expected. I didn't 14:37
26 expect the Garda Press Office to come back and say, you
27 know, you've got us, here's the full reply. Quite the
28 contrary. But certainly my experience would have been
29 that if the Garda Press Office was responding to

1 anybody, they certainly weren't dealing with us as any
2 sort of priority, and, I mean, we got very little
3 information out of them, so I suppose to call it a
4 relationship is maybe slightly even to stretch it.

5 387 Q. Do you consider that the Garda Press Office, and in 14:38
6 particular Superintendent Taylor, was a source of
7 information for you?

8 A. No.

9 388 Q. Was it --

10 A. Other than I should say, obviously, formal replies, you 14:38
11 know, on the record, but certainly not in terms of any
12 off-the-record material, no.

13 389 Q. All right. So did it operate more as a facility
14 whereby you could check stories or run stories by?

15 A. Absolutely. I mean, when you're dealing with, I 14:38
16 suppose, a lot of material that relates in some part to
17 allegations or incomplete material, and you have to
18 realise there's lots of things you hear that you can't
19 subsequently report on, but you still have to try and
20 attempt to, I suppose, check with everyone who may have 14:38
21 information on that. And sometimes that involves just
22 putting queries to the Garda Press Office because you
23 have given them the opportunity to respond. As I said,
24 they often didn't respond, but I suppose that's the
25 facility that they were there for. At least, to give 14:39
26 them an opportunity to come back when we had
27 information that, you know, we could perhaps stand up
28 from another source, but we obviously, out of fairness,
29 had to put to the guards as well.

1 390 Q. Now, I think the investigators showed you certain
2 waivers which have been completed, and I just want to
3 show these to you. They begin at page 5415 of the
4 materials. And I don't think there is a necessity for
5 you to look at the hard copies. 14:39

6 A. No.

7 391 Q. But you will see there that Martin Callinan signed a
8 confirmation confirming that he "doesn't claim and has
9 not claimed any privilege should he be identified as
10 the source of any information, briefing, allegation or 14:40
11 belief communicated to journalists in the print,
12 broadcasting or other media, directly or indirectly
13 relating to Sergeant Maurice McCabe."
14

15 Do you see that? 14:40

16 A. I do indeed.

17 392 Q. And a similar such waiver was signed by the former
18 Commissioner Nóirín O'Sullivan on the 20th April 2017.
19 It appears at page 5416 of the materials. And finally,
20 Superintendent Taylor signed a similar such waiver on 14:40
21 the 28th April 2017. And I think they were shown to
22 you previously, isn't that right?

23 A. Yes, that's correct.

24 393 Q. And I think the investigators also explained to you
25 that it was the wish of Superintendent Taylor that 14:40
26 anybody who had any information in relation to the
27 terms of reference share it with the Tribunal?

28 A. Yes, I understand.

29 394 Q. I don't know if you were following his evidence before

1 the Tribunal, but that was repeated in his evidence.

2 A. I did indeed, yes.

3 395 Q. And you saw that --

4 A. Yes.

5 396 Q. -- when he told the Tribunal of that. Now, I want to 14:41
6 go back just a little bit about on the record and off
7 the record. And you've explained to us your dealings,
8 as I understand it, with the Garda Press Office on the
9 record --

10 A. Yes. 14:41

11 397 Q. -- isn't that right? That would have been mostly by
12 the way of an email communication, but may be a phone
13 call or a text to say there is an email on the way?

14 A. Yes, exactly, yeah. I suppose the reason why I always
15 would have gone for emails, even though it may seem 14:41
16 quite impersonal, is just it rules out any ambiguity in
17 terms of precisely what you wanted to know from
18 somebody in that particular case.

19 398 Q. And I suppose it would have the advantage of the
20 question being there, documented and the answer being 14:41
21 there, documented, should there be any adverse
22 consequences down the line in relation to broadcast?

23 A. Absolutely. Invariably the former, not the latter, I
24 should say. But yes, absolutely.

25 399 Q. And I don't know if the This Week programme goes out 14:42
26 live, does it?

27 A. It does, yes.

28 400 Q. So it would have a particular advantage?

29 A. It would indeed.

1 401 Q. Now, in relation to off-the-record communications, I
2 wonder could you explain to the Tribunal about any
3 off-the-record communications you might have had with
4 the Garda Press Office, if any?

5 A. None, really, to be quite honest. None I can recall. 14:42
6 I mean, I'm not adverse to the notion of it, if there
7 is a very specific need for it. But certainly at any
8 time during Dave Taylor's term there, certainly not at
9 all. And as I said, off the record as an approach
10 towards dealing with State bodies is something I would 14:42
11 always be very wary of because these are, as I would
12 regard them, and no less the organisation I work for
13 myself, state bodies that arguably should be doing
14 their business in public, and there's an argument that
15 where you permit, to a greater degree, a degree of 14:43
16 off-the-record briefing, that you're actually allowing
17 them to almost mask themselves even though they are
18 operating in the public domain, or should be.

19 402 Q. All right. Now, turning specifically to Sergeant
20 McCabe, were you aware, other than in the context of 14:43
21 this Tribunal, that Sergeant McCabe had been
22 investigated in relation to an allegation of sexual
23 assault?

24 A. I was not, no.

25 403 Q. You're absolutely sure about that? 14:43
26 A. Yes, positive.

27 404 Q. Okay. When did you first become aware of that?
28 A. I would say from media reports, actually, whenever they
29 first appeared in the media, so quite late. I mean, it

1 was an aspect to the case that I think I actually
2 wouldn't have particularly taken much interest in
3 unless somebody had briefed me to say this was a
4 significant and substantial piece of information. They
5 didn't. And I suppose -- so I didn't have any 14:43
6 requirement or wasn't in a position to actually need to
7 follow it up, and certainly nobody said it to me in any
8 way that led me to that process.

9 405 Q. Okay. Well, maybe if I could perhaps point to the Paul
10 Williams publications in April 2014. They didn't name 14:44
11 Sergeant McCabe; you're familiar with them, are you?

12 A. Actually since then, I am, yeah, and since they have
13 been raised here. I have to say they passed under the
14 radar for me largely at the time. I wasn't -- perhaps
15 I was working -- and this is, I suppose, a product of 14:44
16 being a programme like This Week: you don't
17 exclusively stay on track with, you know, one
18 particular story. I mean, throughout 2013, 2014, I
19 would I have done an awful lot of stuff on a variety of
20 stories, so -- particularly issues in relation to Irish 14:44
21 Water, which became a very big issue then as well. So
22 I have to say that particular article and its
23 significance passed me by at that time.

24 406 Q. So do you remember reading that article?

25 A. At the time it was published, no, not really, to be 14:45
26 quite honest.

27 407 Q. When do you think you became aware of that? And
28 there's a whole series of articles, are you aware of
29 that now, published --

1 A. Subsequently relating to --
2 408 Q. well, close to that time --
3 A. No.
4 409 Q. -- written by Mr. Williams?
5 A. No, I wouldn't be, to be quite honest. 14:45
6 410 Q. Just the one on the 12th?
7 A. Just the one that's referred to in the --
8 411 Q. Yes. I think it's a version of the same article?
9 A. Okay, okay. That's news to me, indeed.
10 412 Q. When was it brought to your attention? 14:45
11 A. I couldn't say it was ever brought to my attention. I
12 suppose it is the process of this current Tribunal that
13 has actually brought it to my attention, really. I
14 suppose having not noticed it at the time, it's not
15 something that anyone subsequently pointed out to me, I 14:45
16 have to say.
17 413 Q. And in relation to any gossip, or rumours, murmurings
18 you may have heard in RTÉ, did you hear anything in
19 relation to an allegation of sexual assault by Sergeant
20 McCabe? 14:46
21 A. I didn't actually, and I suppose -- no, actually, I
22 didn't. And I suppose to explain how I would work: I
23 suppose the This Week programme is, I suppose, very
24 siloed from the rest of RTÉ, as many programmes within
25 RTÉ are, and there would have been, I suppose, a number 14:46
26 of people within RTÉ at any given time probably working
27 on that story, yet each one of them, myself included,
28 would have been working through a separate editor and,
29 you know, would see themselves as probably not sharing

1 information even themselves within the organisation.
2 That's just the nature of it, where everyone reports to
3 different editors with, I suppose, different broadcast
4 times, and so forth. So, no, it's not a subject I
5 would have been discussing really with any great 14:46
6 frequency or with anyone else in there.

7 414 Q. Now, you understand that Superintendent Taylor has
8 nominated you as one of the journalists that he briefed
9 negatively in relation to Sergeant McCabe?

10 A. I do, indeed. 14:46

11 415 Q. And he repeated that in his evidence here given on the
12 14th May?

13 A. Yes.

14 416 Q. You're familiar with that?

15 A. I am, indeed. 14:47

16 417 Q. And as far as you were concerned, you heard nothing of
17 the sort from Superintendent Taylor?

18 A. It's not even a question of whether I remember
19 anything. I am absolutely certain he didn't. It's not
20 something that would have passed me by. Had he said 14:47
21 anything like that, had somebody like the head of the
22 Garda Press Office made that point to me, I think one
23 of the first things I would have done was attempted to
24 check it out and I'd probably check it out with Maurice
25 McCabe or representatives thereof. The fact I didn't, 14:47
26 I think actually speaks for itself. But absolutely, it
27 didn't happen, and I am mystified as to why my name is
28 included on that list. I would have had very little
29 contact, as an individual, with David Taylor at that

1 time, over that period, other than the very sort of
2 brief and almost formulaic means that I said earlier.
3 418 Q. I wonder could we have page -- just to be specific what
4 Superintendent Taylor says in relation to you,
5 Mr. Burke. 14:48

6 A. Sure.

7 419 Q. It's Day 74, page 135 of the materials. It will come
8 up on the screen. Day 74, Ms. Ní Ghabhann, page 135.
9 You see it? It should be -- so it's put to
10 Superintendent Taylor that his telephone contacts 14:48
11 initiated with you are set out in the materials, and I
12 will come to those in a minute.

13 A. Yes.

14 420 Q. And it's linked in with the --

15 14:49
16 "2013 is the year when it all blew up and you got
17 instruction, as you say, isn't that right?"

18
19 And he refers to the O'Mahony report, the fixed penalty
20 dossier, the naming of people. And what Superintendent 14:49
21 Taylor says then at line 14, referring to you:

22
23 "I spoke to him over the phone on my mobile and also my
24 landline. You don't have my landline, it's not
25 available there at that time." 14:49

26
27 Now, did you phone Superintendent Taylor on his
28 landline or speak to him over the landline?

29 A. I would doubt that very much, no. I would say I only

1 ever dealt with him via his mobile phone. I suspect
2 he's implying there that he rang me from his landline.

3 421 Q. Yes.

4 A. As opposed to me ringing him on his landline.

5 422 Q. Do you think that is possible? 14:49

6 A. Me ringing him or the --

7 423 Q. Him ringing you?

8 A. I have no idea what phone he had in his hand when he
9 would have rang. But I think the impression that is
10 being given there is that there was some form of 14:49
11 regular correspondence and communication. There
12 wouldn't have been. I mean, I think the small number
13 of calls and texts probably, I suppose, illustrate that
14 better than anything else. We wouldn't have been, by
15 any means, regular correspondents. 14:50

16 424 Q. Then he says:

17

18 "I can't pin down the exact date. I can't help you in
19 relation to that, but I would have spoken to him.

20 14:50

21 Q. And you think it was over the phone?"

22

23 And his answer is:

24

25 "Yes, over the phone, yes, because Mr. Burke is a 14:50
26 reporter with News at One on Sunday so he would not be
27 going to scenes like the other reporters."

28

29 You see that? And that's correct, isn't it?

1 A. Oh, that's right, yeah, and I wouldn't -- I suppose I
2 would have no call to go to crime scenes. I'm actually
3 someone who's always worked with Sunday papers; you
4 tend to, I suppose, not have to go out to cover
5 incidents as they occur that might have to be reported, 14:50
6 you know, for the following day, and so forth.

7 425 Q. Because that is the way he distinguishes you from other
8 people?

9 A. Yes.

10 426 Q. And then Mr. McGuinness says to him: 14:50
11
12 "So that is a detail that you think helps you place it
13 certainly over the phone?
14 A. Over the phone, yes."
15
16 And then he says:
17
18 "They've questions and media queries to the Press
19 Office seeking the Commissioner's reply to various
20 matters they were going to raise on the Sunday 14:51
21 programme."
22
23 And that is actually -- you agree with that statement?

24 A. That's correct, yes, absolutely.

25 427 Q. Yes. And then it continues on in relation to the phone 14:51
26 records on it. And then if we could turn to page 137
27 of the materials, he is asked at line 6:
28
29 "Up to from between the 8th and the 14th December, was

1 Mr. Burke involved in any way with the Commissioner's
2 appearance on the Crimecall programme?"

3
4 what he says is:

5
6 "As I said, Mr. Burke is a very respected journalist
7 and I respect him. He was covering the penalty points
8 issue quite extensively at the time and there was a
9 number of programmes, segments of programmes on the
10 News at One."

14:51

14:51

11
12 And were you covering the penalty points?

13 A. Yes, definitely, yeah, we were.

14 428 Q. And did you speak to Superintendent Taylor, and I now
15 say speak as opposed to email him, in relation to the
16 penalty points?

14:52

17 A. I have certainly no recollection of any conversation
18 about the substantive issues, other than literally to
19 ring to say we had either looked for a guest or that,
20 you know, that we had sent them a query.

14:52

21 429 Q. Because, you see, and I'm sure you understand this, but
22 Superintendent Taylor's case is that he was told by
23 Commissioner Callinan to slip a matter into
24 conversations with journalists, and especially around
25 the penalty points controversy, that Sergeant McCabe
26 was motivated by malice and this was because he had
27 been previously investigated --

14:52

28 A. Yes.

29 430 Q. -- by the guards in relation to an allegation of sexual

1 assault and that is why he was bringing up the penalty
2 points and other issues in relation to policing?

3 A. Absolutely. And I'm entirely aware of, I suppose,
4 precisely what he is saying in that regard. I think
5 what's -- the missing piece is the conversations, we 14:53
6 wouldn't have had any. We just didn't have that
7 relationship, as such. It was -- and I suppose we kind
8 of presumed we were a programme that was just coming
9 out once a week, so perhaps we weren't priority to
10 anyone with more pressing and regular needs. But my 14:53
11 dealings with Dave Taylor would have been no different
12 to my dealings with, I suppose, his civilian
13 counterpart, Andrew McLindon. It was literally just to
14 say, any chance of - and this was rare enough, that we
15 looked for either the commissioner or someone else to 14:53
16 come in to us, invariably that was always a no - but it
17 was literally just to say, you know, here's a series of
18 queries that we are sending to you, you know, can you
19 come back to us fairly promptly. That would have been
20 it. There wouldn't have been conversations or 14:53
21 briefings or back and forth in terms of any of the
22 substantial elements of the cases themselves.

23 431 Q. All right. We can look at Superintendent Taylor's
24 contacts with you, and that's at page 5418 of the
25 materials which is in volume 20, but it will come up on 14:54
26 screen, if that suits you better. 5418. So the first
27 one is in January of 2013, and at that time were you
28 working with RTÉ?

29 A. No, actually, I would have been in the Business Post

1 for the first three of those.

2 432 Q. Yes. So there are two in February 2013, and that was a
3 Business Post contact --

4 A. Yes.

5 433 Q. -- is that right? And there's two texts and one call 14:54
6 of very short duration. Do you have any idea what they
7 were about?

8 A. No, I have no idea. Perhaps if you look back to
9 whatever was that particular story of the day, I may
10 have been covering for the Business Post. 14:55

11 434 Q. All right. Then you have contact in April 2013, a
12 call, one minute -- I think, sorry, it's May 2013, it's
13 just -- would you have started in RTÉ at that stage?

14 A. 16th May, yes, I think so. I think I started on the
15 1st May, actually, 2013. 14:55

16 435 Q. And you said at that stage you wouldn't have really
17 been doing much by the way of reporting; you'd have
18 just been trained up, is that right?

19 A. Exactly. But I suppose one of the functions on that
20 CND desk was, I suppose if there was something, you 14:55
21 would be in at 6:00am, for instance, so if something
22 had happened and there weren't the daily reporters in
23 yet, you'd put a call in to see if the Garda Press
24 Office had any particular details. And I see the time
25 of that is actually before 8:00am, so I suspect maybe 14:55
26 it was -- maybe a duty mobile was on, or something like
27 that, I'm not sure. But there would have been calls
28 on, I suppose, something that happened that morning,
29 that somebody would have asked me, I presume, to put a

1 call in.

2 436 Q. This is Superintendent Taylor phoning you at twenty to
3 seven in the morning?

4 A. It's him calling me or me calling him? I'm not certain
5 from there. 14:56

6 437 Q. No, this is Superintendent Taylor's phone bill where
7 these records are from.

8 A. Okay. Then perhaps he's returning a call, I presume,
9 that I would have put in to the Garda Press Office.

10 438 Q. All right. At that hour of the morning it would hardly 14:56
11 have been an introductory call saying, I'm now working
12 for RTÉ?

13 A. No.

14 439 Q. I think that is fair enough?

15 A. No, no, absolutely. And at twenty to seven in the 14:56
16 morning, that CND shift, or the centralised news desk
17 shift, started at 6:00, and invariably you just put in
18 some early calls on whatever was happening that day.

19 440 Q. There was another early call in August - yes, it is a 14:56
20 call - August 2013. Do you think that that would have
21 been at the same time of admission?

22 A. Yes, I would have been on the centralised news desk at
23 that stage.

24 441 Q. And that is Superintendent Taylor phoning you --

25 A. Yes. 14:57

26 442 Q. -- at that stage. Then there are a number of contacts
27 on the 8th December 2013, and you've identified what
28 they were in connection with to our Tribunal
29 investigators?

1 A. Yes. They were all substantially in relation to -- or
2 all in relation to -- I would have done a lot of work
3 at that time, in fact more on the Ian Bailey case, the
4 Sophie Toscan du Plantier case. I actually did a very
5 substantial report for the This Week programme that 14:57
6 weekend, and that is what they would have been about.
7 And I think they would have continued on through the
8 day. You will see there was about five calls --

9 443 Q. Yes.

10 A. -- because I would have done a report then subsequent 14:57
11 to the programme which broadcasts from 1:00pm to 2:00pm
12 for the TV news, and I've a vague recollection that
13 Superintendent Taylor had a difficulty with an image
14 that might have been used in the TV -- that is, I have
15 to say, I can't be certain of that, but I have a vague 14:57
16 recollection there was an issue with the image that was
17 used in the TV broadcast, which is why he may have been
18 calling me up at quarter past six in the evening on
19 that. But that would have been all substantially about
20 that story. 14:58

21 444 Q. Then we have a text on the 14th December 2013, and then
22 a series of calls in March, on the same day, 14th March
23 2014, from Superintendent Taylor to you?

24 A. Yeah. I actually can't recall what they would have
25 been about. It may have been for a story that we 14:58
26 didn't broadcast. One of the difficulties, I suppose,
27 when you're looking back is, you know, the best record
28 you have is actually the stories that you broadcast,
29 but there are many that you put queries into that you

1 just -- you don't. But I suspect the likes of the
2 15-second call may have been a voicemail, or I see
3 there is a 15 and a 25 seconds, so...

4 445 Q. Then on the 5th April there is a text from
5 Superintendent Taylor to you. I think you also 14:58
6 identified what that was in connection with, to the
7 Tribunal investigators?

8 A. Yes, I did. It was, I think, also related to the Ian
9 Bailey case, from my memory.

10 446 Q. Okay. And then there are two texts on the 15th June 14:59
11 2014. Do you think that might have been in relation to
12 his move from the Press Office at that stage?

13 A. I actually -- I am not entirely sure, to be quite
14 honest.

15 447 Q. Do you remember when he moved from the Press Office? 14:59
16 A. I actually don't. It wasn't particularly, I suppose, a
17 point that made any real significance to myself. It
18 wouldn't have changed how I dealt with the Press
19 Office, irrespective of who was there, to be quite
20 honest. 14:59

21 448 Q. Now, if I can just go to the email contact, and I will
22 just go through the index of that, I think it's easier.

23 A. Sure.

24 449 Q. It's at page 5363 of the materials. Now, these are
25 matters which you provided to the Tribunal, having gone 15:00
26 through your email box?

27 A. Yes.

28 450 Q. Is that right?

29 A. Yeah.

1 451 Q. The first thing we see is an email from you to David
2 Taylor dated 21st February 2014, and that relates to
3 the 'disgusting' remark and the cooperation of Sergeant
4 McCabe with the O'Mahony inquiry, is that right?
5 A. Em... yeah. 15:00
6 452 Q. It's actually at page 5365 of the materials.
7 A. I presume you're correct, yeah.
8 453 Q. Yes. And you will see there:
9
10 "Dave, please see a number of questions from RTÉ's This 15:00
11 Week for the Garda Commissioner regarding the ongoing
12 Garda whistleblower issue."
13
14 Now, it's quite informal; you call him 'Dave' as
15 opposed to 'superintendent' or -- did you know him at 15:00
16 that stage?
17 A. No. But I suppose that would be -- I mean, I wouldn't
18 address him formally as, you know, 'Dear Superintendent
19 Taylor'. I wouldn't have known him, wouldn't have met
20 him at that point. Dave is no more than, you know, 15:01
21 dear John, as such, you know.
22 454 Q. Do you think you'd have phoned him beforehand to tell
23 him this query was coming in?
24 A. I would say more than likely I would have sent the
25 query and then phoned him or Andrew McLindon - more 15:01
26 likely himself, I suppose, if it was addressed to Dave
27 Taylor, just to say that I'd sent the query.
28 455 Q. Yes. And it relates to the 'disgusting' remark by
29 Commissioner Callinan and it also refers to the

1 cooperation issue:

2

3 "Minister Alan Shatter said in the Dáil that there was
4 no cooperation by the whistleblowers with the O'Mahony
5 internal review. What member of An Garda Síochána told 15:01
6 the Minister/Department of Justice there had been no
7 opportunity by the whistleblowers with the O'Mahony
8 inquiry?"

9

10 Had that piece of information come to you from a source 15:02
11 other than Superintendent Taylor in relation to the
12 cooperation issue I'm asking you about now?

13 A. I suppose that's a question as such --

14 456 Q. Yes.

15 A. That would relate to statements that were made in 15:02
16 public.

17 457 Q. In the Dáil. Well, there is a direct reference here to
18 Minister Shatter?

19 A. Yes. So I suppose that doesn't portray any particular
20 level of knowledge, it's really a question as to -- and 15:02
21 I suppose the purpose of an email like that is, I mean
22 it would be fantasy to suspect that the Garda Press
23 Office is going to reply and say who informed the Garda
24 Commissioner, but you can't fairly report on an issue
25 that relates, I think, to -- here in this case, to 15:02
26 comments by the Minister for Justice and the Garda
27 Commissioner without first at least asking them if they
28 are willing to say who informed the Minister, but --
29 and I suspect in our subsequent report we would have

1 said and we asked if they could inform us who informed
2 the Minister in that case, but, and I suspect, though I
3 haven't even it, I presume there was either no reply or
4 a one-line reply.

5 CHAIRMAN: This is the standard line: so-and-so was 15:03
6 unavailable for comment?

7 A. Absolutely, yes. But you can't not -- you can't
8 proceed, I think, fairly without asking the question.

9 458 Q. MS. LEADER: Yes.

10 A. But I would have had no illusions that anybody was 15:03
11 going to send me an email going, hands up, you've got
12 us, you've asked the question.

13 459 Q. I think the answer appears at 5366 of the materials.
14 And it just doesn't particularly answer the questions,
15 it just sets out what the state of play is in relation 15:03
16 to the fixed charge penalty notices?

17 A. And I should say, just even something that I noticed
18 even in reviewing those emails myself, invariably I
19 think you will find that whilst I would have sent
20 emails to either David Taylor directly or Andrew 15:03
21 McLindon themselves, invariably it was somebody else in
22 the Garda Press Office who would have come back to us
23 as well. So it wasn't necessarily, you know,
24 deliberate or specific contact with either of those
25 individuals, with the belief that they would generate 15:04
26 any better result.

27 460 Q. Yes. Now, the next set of emails are dated 28th
28 February 2014, and again that's at page 5363 of the
29 materials, and it relates to the cooperation issue,

1 again. It's asked in the context of an upcoming RTÉ
2 programme.

3 A. Okay.

4 461 Q. Were you aware of Sergeant McCabe's statement in
5 relation to the cooperation issue with the O'Mahony 15:04
6 inquiry?

7 A. I'd have to see how my question is phrased, to be
8 honest, to remind me, but it's just not popping up on
9 the screen.

10 462 Q. Yes. 5368 of the materials. Were you aware of 15:04
11 Sergeant McCabe's statement in relation to the --

12 A. I would have been, yes, absolutely.

13 463 Q. And that was on the 24th February 2014?

14 A. Yes.

15 464 Q. Right. So it's not referred to there at all, as far as 15:05
16 I can see?

17 A. In the reply from the Garda Press Office or in my
18 question?

19 465 Q. In light of the statements and the statement made by
20 Sergeant Maurice McCabe, that is the reference to 15:05
21 Sergeant McCabe's statement made on the 24th?

22 A. I see. I'm sorry, that page isn't in front of me at
23 the moment.

24 466 Q. Sorry, I beg your pardon. 5368. Do you see that?

25 A. Yeah. 15:06

26 467 Q. And had you spoken to any of your colleagues in RTÉ in
27 relation to the cooperation issue?

28 A. I wouldn't have, no.

29 468 Q. So your information from there is from sources other

1 than other journalists or from the public record, is
2 that right?

3 A. Yes.

4 469 Q. Now, the next set of emails, it's an email from you to
5 David Taylor dated the 20th March, and that relates to 15:06
6 you looking for an interview with the Commissioner, do
7 you remember that one?

8 A. I don't in particular, but, I mean, that would have
9 been something we would have done, I think, perhaps two
10 or three times during the whole process -- 15:07

11 470 Q. Right.

12 A. -- but without any real expectation, I think, of
13 getting one.

14 471 Q. Then there is an email on the 22nd March 2014, which
15 mentions the Séan Guerin Report, do you remember that 15:07
16 one? It's at page 5371 of the materials. You see you
17 say:

18

19 "Good evening, Dave. Can you inform me whether the
20 Séan Guerin SC review has made contact with An Garda 15:07
21 Síochána yet in relation to his review of allegations
22 made by Sergeant Maurice McCabe? Has Mr. Guerin met or
23 interviewed any members of the force regarding this
24 issue. Has any information been sought by Mr. Guerin
25 or sent to him by An Garda Síochána? Can you come back 15:08
26 to me tomorrow morning?"

27

28 I don't think -- and I can't see any reply in relation
29 to that. It may have been that --

1 A. I think there were probably quite a few emails that we
2 may not have got replies to, I think.

3 472 Q. Then in relation to the 4th May, you email the Garda
4 Press Office in relation to a complaint Sergeant McCabe
5 made in relation to bullying against a number of named 15:08
6 and unnamed members of the Gardaí, so it would seem you
7 were keeping a fairly close eye on the story?

8 A. Yes, absolutely. I suppose there was so much
9 happening, certainly I would have, I suppose, had an
10 eye on it, definitely, but, I mean, I suppose it was in 15:09
11 the context of, I suppose, being the sole reporter on a
12 programme and lots of other things happening also. So,
13 I mean, I could probably list half a dozen stories that
14 I was also, I suppose, trying to maintain the same
15 watching brief on. So I suppose at the risk of saying 15:09
16 one dips in and out of stories, and you obviously have
17 to be as well-informed as you can be, it would have
18 been a story I definitely covered for the programme in
19 as much as I could, being the sole reporter on that
20 programme, but it would have been one of a number, 15:09
21 certainly quite a number. I think the big stories,
22 certainly for me around the middle of that year, would
23 certainly have been, I think, Irish Water, because it
24 was an issue we went into, got a lot of detail on. I
25 think in terms of actual Garda controversies 15:09
26 themselves, if you don't mind me putting it that way, I
27 think I probably would have paid more attention to the
28 Ian Bailey case throughout 2014 than probably the whole
29 penalty points issues. But it was certainly one of a

1 number of stories that I would have attempted to keep
2 up to speed on and I suppose would have dipped in and
3 out of in terms of high points, certainly.

4 473 Q. Now, if we could come to your query to the Press Office
5 of the 4th July 2015, and this is actually addressed to 15:10
6 Mr. McLindon. Superintendent Taylor had gone at that
7 stage?

8 A. Okay.

9 474 Q. And it's at page 5376 of the materials. And you say --
10 is it in front -- yes: 15:10
11

12 "RTÉ understands that Sergeant McCabe has contacted
13 Garda Headquarters to request that he be released from
14 the new role heading up the traffic unit at Mullingar.
15 What is your response to this and your understanding of 15:10
16 the circumstances behind Sergeant McCabe's decision?"
17

18 The source of that information, was it Superintendent
19 Taylor?

20 A. Superintendent Taylor wasn't a source for me at any 15:11
21 stage.

22 475 Q. Yes. So it's not. We can take the answer is it's not?
23 A. Yes, absolutely, it's not. But obviously I can't say
24 who it was.

25 476 Q. Yes. I am being careful not to ask you that. 15:11
26 A. Ah, no, I do appreciate that.

27 477 Q. "Secondly and separate to the above, RTÉ's This Week
28 understands that at a recent session of the Justice
29 O'Higgins inquiry, counsel for the Garda Commissioner

1 raised questions over the motivation of Sergeant McCabe
2 for bringing certain matters regarding alleged Garda
3 misconduct to attention. Does this amount to the view
4 of the Garda Commissioner in terms of her view as to
5 why Sergeant McCabe raised these issues in the first
6 instance?" 15:11

7
8 Do you see that question there?

9 A. Yes, indeed.

10 478 Q. Now, as I understand your position is, you had heard 15:11
11 nothing about an allegation of sexual assault at this
12 stage?

13 A. That's true.

14 479 Q. Nothing. And you had heard nothing about Sergeant 15:11
15 McCabe being motivated by revenge on the guards?

16 A. That's true, yes.

17 480 Q. So did you not ask yourself, what's this all about?

18 A. I suppose in the first instance I should say I
19 ultimately didn't have enough information to report on
20 that story. 15:12

21 481 Q. Yes.

22 A. So I suppose you could read that query and suggest it
23 shows that I had, you know, access to full transcripts
24 of the O'Higgins inquiry, which wouldn't have been the
25 case. I suppose I put the information to the Press 15:12
26 Office that I had, but ultimately I couldn't advance my
27 own knowledge of those issues, beyond, I suppose, the
28 full extent of what's posed in the questions. So
29 whilst I see the point you're making, absolutely, I

1 wouldn't have been sufficiently across the background
2 detail in terms of what might have been the alleged
3 malice, or whatever, or questions over Maurice McCabe's
4 motives, so I certainly would have been aware of or
5 would have been informed that this issue in relation to 15:13
6 motivation, and I suppose that was what I saw as the
7 central issue of the story, I suppose, that I was
8 attempting to get at, was this issue of questioning
9 motivation on any level. But no, even at that point I
10 wouldn't have been, I suppose, across the underlying 15:13
11 issues in terms of whether there had been a previous
12 background in relation to any allegations of sexual
13 misconduct, or otherwise.

14 482 Q. Well, can I put the question this way: It doesn't seem
15 that you were that surprised by the issue of motivation 15:13
16 entering into the equation in July 2014?

17 A. In terms of --

18 483 Q. '15, I beg your pardon.

19 A. I wouldn't at all expect that from the question. I
20 suppose the very fact that I put the question about an 15:13
21 issue of motivation being raised would suggest, I
22 suppose, I was surprised and did see it as an issue
23 of -- certainly a very newsworthy issue, if it could be
24 established. I suppose, for me, the issue of
25 motivation was the juxtaposition, if it could be 15:14
26 established, I should say, that Sergeant McCabe's
27 motivation was questioned on any level, given that
28 there were at that time very public pronouncements in
29 support of whistleblowers. So I suppose on that level

1 that is how I viewed the information that I had, which
2 wasn't, by any means, as comprehensive as I would have
3 liked it to have been, and, had it have been, I suppose
4 I would have been able to report on it at the time.

5 484 Q. You see, the Tribunal has heard evidence from a number 15:14
6 of people saying that the rumours were widely
7 circulated, certainly in 2014, and you were a person
8 who is working in the newsroom in the national
9 broadcaster and up to 2015 you don't appear to have
10 heard anything about these rumours, despite the fact 15:14
11 that Superintendent Taylor has said he briefed you
12 about the matter?

13 A. Absolutely. And I suppose (a) he didn't brief me.

14 485 Q. Yes.

15 A. But actually, it wasn't -- I suppose I'm not a person 15:15
16 who engages in discussions on rumours, and I think all
17 I can say is certainly it's not something I would have
18 been aware of, it's not something I would have
19 discussed with others. It is -- just the nature of how
20 I work and how I worked on the programme is that I do 15:15
21 very much work on my own and report to a single editor.
22 There isn't a scenario, and especially when you are
23 working for, I suppose, a weekend programme, you're not
24 in any particular mix of other journalists. And even
25 internally within RTÉ, I wouldn't have discussed that 15:15
26 case, or indeed any other case really, or story, I
27 should say, with my colleagues; they report to
28 different editors. I suppose there's a competitive
29 element to that as well. But even just in terms of any

1 rumours, certainly nobody discussed any rumours with me
2 or anything that that has subsequently emerged in
3 relation to -- and I suppose a lot of those rumours
4 have turned out to be false, which is maybe why people
5 may have not raised them or discussed them with me. I 15:16
6 can't explain.

7 486 Q. Did you feel a bit foolish that maybe you were the last
8 person to hear about all of this, since you were
9 covering the Sergeant McCabe story?

10 A. No, by no means. I mean, I can only speak to my own 15:16
11 account of it. I suspect I am by no means alone in
12 terms of people who didn't hear what, now, people say
13 were rumours. I would dispute -- obviously, I mean, if
14 you are basing any sense that this was widely
15 disseminated on Superintendent Taylor's account, my 15:16
16 only experience of Superintendent Taylor is that he has
17 told the public inquiry that he discussed this with me,
18 and I know for a fact he didn't. So, I mean, that
19 would lead me to question that account.

20 487 Q. Well, I was thinking more of the evidence Alison 15:16
21 O'Reilly has given to the Tribunal or, perhaps, Paul
22 Williams having interviewed Ms. D, or the politicians,
23 such as Mr. McGuinness, in relation to the matter, or
24 maybe Ms. Harris as well, or Mr. Kenny, who all have
25 given evidence and have said that there was a rumour 15:16
26 going around in political circles, and I think that
27 covers journalistic circles, and we've also heard from
28 perhaps Chief Superintendent Walsh that there were
29 rumours in Garda Headquarters at the time. So here we

1 have a journalist looking for stories in relation to a
2 programme which is on in the middle of the day on a
3 Sunday which perhaps many well-informed people listen
4 to and you have heard nothing about it?

5 A. Yes, absolutely. I mean, I can't account for the 15:17
6 evidence given by other people. I can only give you my
7 own genuine account of it. And that is the case,
8 absolutely. I mean, I would caution the extent to
9 which some people might claim to be wise after the fact
10 of whether things were widely known or not. I can only 15:17
11 say nothing was discussed with me, either by
12 colleagues, by other people in journalism or even
13 people who would have been principal characters in this
14 particular issue.

15 488 Q. And we know, of course, that in December 2013, the 15:17
16 Commissioner was speaking in very derogatory terms to
17 one of the RTÉ journalists, Mr. Boucher-Hayes, in
18 relation to Sergeant McCabe?

19 A. Again, the first account I heard of that was when it
20 was actually reported in the Sunday Times, I think 15:18
21 earlier this year. I would have had no knowledge about
22 that whatsoever.

23 489 Q. Mr. Mooney's article?

24 A. Indeed. So even that, I suppose, illustrates a point:
25 I would never have had a -- like, Philip Boucher-Hayes 15:18
26 would be a journalist who would have covered elements
27 of this story also. I would never have had a
28 conversation with Philip about his coverage, nor he
29 with mine, likewise any of my other colleagues in RTÉ.

1 And I don't think that is particularly strange, given
2 that we report to different editors and with the
3 purpose, I suppose, of keeping whatever knowledge we
4 have to ourselves. At times, RTÉ can almost be,
5 understandably, you know, almost like different
6 separate media within themselves where you have
7 different editors who obviously want programmes or want
8 stories reported on their programme and not, you know,
9 going elsewhere beforehand.

15:18

10 490 Q. Well, Mr. Kenny, in an article which he referred us to
11 this morning, dated the Sunday -- it's the Sunday
12 Independent on the 2nd March 2014, openly -- and this
13 can be brought up on screen in front of you, 3881 of
14 the materials. This is Mr. Kenny who gave evidence
15 last Friday. And if we just go to the sixth paragraph
16 down:

15:19

15:19

17
18 "It is understood that McCabe has also been subjected
19 to a serious accusation by a senior garda that was
20 subsequently referred by Gardaí to the DPP, who found
21 no basis on which to pursue the matter."

15:19

22
23 So Mr. Kenny, in 2014, actually wrote about this,
24 having checked the matter out?

25 A. True. I suspect, that was probably one of the very
26 rare instances at that time. Would I be correct in
27 saying a reference was made to it then? It passed me
28 by. I wouldn't be a regular reader of Mr. Kenny.
29 491 Q. Well, other than Mr. Williams' articles?

15:19

1 A. Well, indeed. But I should say, I mean, if there was a
2 degree of innuendo and somebody wasn't named -- I mean,
3 likewise, I wouldn't be a very regular reader of
4 Mr. Williams' articles either.

5 492 Q. We will put aside the regular reader. You're a 15:20
6 journalist in the business of looking for news and at
7 this time you were actually covering the Sergeant
8 McCabe matter --

9 A. Yes.

10 493 Q. -- all through 2014, there was a query went in in 2015. 15:20
11 Mr. Kenny was writing about it openly in 2014.
12 Mr. Williams wrote articles, although not naming
13 Sergeant McCabe. So did you ever at any time maybe
14 refer to Mr. Reynolds, a very experienced journalist in
15 RTÉ in relation to crime matters, and just say, is 15:20
16 there something I'm missing here, or anything of that
17 nature?

18 A. I wouldn't have done and we wouldn't have that, I
19 suppose, working relationship, as such. Paul Reynolds
20 would work, I suppose, very much, I suppose, on a 24/7 15:21
21 basis for, I suppose, covering news as it happens. We
22 would have seen ourselves very much as almost working -
23 I say 'we', I suppose the This Week programme - as
24 almost being like a Sunday newspaper within a
25 broadcaster, in the sense that we reported for one 15:21
26 deadline once a week. It just wouldn't have arose. I
27 suppose we just didn't have that relationship for
28 sharing information, no more than Mr. Boucher-Hayes and
29 myself or Katie Hannon on Prime Time.

1 494 Q. Now, I think this morning was circulated some text
2 messages between yourself and Superintendent Taylor,
3 and that's at page 7522 of the materials. You had seen
4 these already?

5 A. I have indeed, yes. 15:21

6 495 Q. They're on your phone. And you'll see -- so in
7 September 2014 you're contacting Superintendent Taylor
8 in relation to a matter, and you will see at the very
9 first text it is sent on the 14th September 2014?

10 A. I just don't have those yet. 15:22

11 MS. LEADER: Sorry, I beg your pardon.

12 CHAIRMAN: It's 7522, isn't that it?

13 MS. LEADER: 7522. It was just circulated this
14 morning.

15 CHAIRMAN: It is on the system, is it? 15:22

16 MS. LEADER: Sorry.

17 CHAIRMAN: I wonder is it on the system? It's not?

18 MS. LEADER: So it's 7522 of the materials.

19 CHAIRMAN: Just hang on.

20 MS. LEADER: I have an extra sheet. 15:22

21 CHAIRMAN: Mr. Kavanagh, is it on the system?

22 MR. KAVANAGH: It is on the system.

23 CHAIRMAN: It is. If we just wait a second,
24 Ms. Leader.

25 496 Q. MS. LEADER: Now, these are messages that you didn't 15:23
26 object to being circulated in public?

27 A. Yes, absolutely.

28 497 Q. Isn't that correct?

29 A. Yes.

1 498 Q. So if we look at the first text message, these were
2 taken off SIM3, which is the phone Superintendent
3 Taylor had between September and December 2014?
4 A. Okay.

5 499 Q. So you see a text message from you to David Taylor and 15:23
6 it relates to -- you make an apology to him and you say
7 "Ring you tomorrow from a good landline". Do you see
8 that question?
9 A. I do indeed, yeah.

10 500 Q. So was that the norm with regard to communications 15:23
11 between you, ringing from a landline, if you would
12 explain that, please?
13 A. Yes. No --

14 501 Q. Yes.
15 A. I actually had a think about that. I can only presume 15:23
16 it means maybe mobile signal was bad, or something. I
17 mean, it wouldn't relate to anything in particular.
18 This particular period itself was after Superintendent
19 Taylor had left the Press Office.

20 502 Q. Yes. 15:24
21 A. And certainly it is absolutely true to say we had no
22 real engagement or relationship beyond, you know, very
23 formal, as such, sent you a query, and no reply comes
24 back, when he was in the Press Office. When he left, I
25 have a vague recollection that either he contacted me 15:24
26 with I think what would have been best described as
27 unsolicited praise or other stories that I was doing,
28 invariably non-Garda stories, and you will even see
29 that in, I think, one of the texts or two of the texts

1 there.

2 503 Q. Yes.

3 A. And we agreed to meet then. We had never met before

4 that. I think either he or I said we must meet for a

5 coffee. We met at least once, maybe more, maybe twice, 15:24

6 I have a vague recollection we met -- we definitely met

7 in Temple Bar and said we would meet again. I'm not

8 entirely sure if we -- I have a vague recollection we

9 may have met again in Fairview for a coffee or -- I'm

10 not entirely sure if that actually went ahead. But 15:25

11 that would have been the context of it, and it would

12 have been, I have to say, unusual. I even recall

13 getting the text, you see four down, it says:

14

15 "John, great scoop on Hogan. You're good, Dave". 15:25

16 504 Q. That is the 28th September?

17 A. Yes, that would have been absolutely out of character

18 to any sort of messages I would have received from him

19 when he was in the Press Office. And it was quite odd

20 because that was a text about a story that I had done 15:25

21 that day on the Irish Water issue and, you know, the

22 level of knowledge or whatever that the then-Minister

23 for the Environment had on X amount of million they had

24 spent on consultants. So I suppose that was certainly

25 the character of some very brief correspondence I had 15:25

26 from him after he had left the Press Office, where he

27 seemed eager to set up a meeting, we met for a coffee,

28 but nothing ever really came of it, to be quite honest.

29 505 Q. All right. So that is the "great scoop on Hogan", the

1 28th September 2014?

2 A. Yeah.

3 506 Q. Then's some text messages in November 2014?

4 A. Mm-hmm.

5 507 Q. One from you to Superintendent Taylor: 15:26

6

7 "Give you a call in ten minutes, Dave. John."

8

9 So, again --

10 A. I presume that's from a missed call, or something like 15:26

11 that.

12 508 Q. Okay. And then the next day there is a text from you

13 to Superintendent Taylor:

14

15 "Meet today or tomorrow morning, same place as last." 15:26

16

17 That would seem to suggest that you were more than

18 people who had a professional relationship, as has been

19 described by you earlier on?

20 A. Sure, absolutely. Well, at this point he had left the 15:26

21 Garda Press Office. I suppose I had never sought nor

22 had particularly wanted anything more than exactly a

23 formal relationship with him as the head of the Press

24 Office. I suppose when a senior garda who is no longer

25 in the Press Office and is no longer, I suppose, 15:26

26 touting a corporate line, if you will excuse that

27 phrase, has an interest in sitting down and meeting you

28 for a coffee, as a journalist you are going to go along

29 and see if they have anything interesting to say. We

1 may have met a second time, as I say, and I think those
2 texts kind of support it, although I see there's a
3 cancelled meeting as well.

4 509 Q. Yes.

5 A. But, I mean, that was the contexts of those texts, and 15:27
6 I would say they are relatively brief but sum up, I
7 suppose, that relationship. There wouldn't have
8 been -- certainly no particular relationship developed
9 out of it, for lack of a better way of describing it.

10 510 Q. I suppose it wasn't a relationship into the future but 15:27
11 what they reflect as to your past dealings with him --

12 A. Yes.

13 511 Q. -- that those texts might suggest that it was maybe a
14 bit closer than phoning him to say that there's a query
15 going into the Press Office? 15:27

16 A. Sure, I would say they are entirely contrary to the
17 prior relationship, and I would have even marked at the
18 time that they were odd in that sense. I mean, he
19 never would have, I suppose, sent me a text or left a
20 voicemail saying, you know, good story today, John. 15:27
21 That wouldn't have been in any sense how we engaged
22 when he was in the Press Office. So I suppose it
23 marked a change in that regard. And as to what the
24 purpose of it was, I have really no idea, but it led to
25 us meeting for a coffee, and that was about it, really, 15:28
26 as such.

27 512 Q. All right. I just want to turn to your initial
28 statement.

29 CHAIRMAN: Sorry, Ms. Leader, just to clarify this.

1 This particular time, November 2014, it's well prior to
2 his arrest on the 28th May '15 then?

3 MS. LEADER: Yes.

4 CHAIRMAN: Yes.

5 MS. LEADER: It's prior to the first phone being taken 15:28
6 from him. This comes from that first phone, yes.

7 CHAIRMAN: Yes.

8 513 Q. MS. LEADER: Now, it may be me, I don't quite
9 understand this in your statement, but if we could just
10 go to page 5361 of the materials, which is your 15:28
11 statement which you made on the 8th September 2017,
12 last year. And if we go to the second-last paragraph
13 of that, what you say is:

14

15 "I do wish to bring to the Tribunal's attention that I 15:29
16 do have certain information pertaining to the above."

17

18 And "the above" is referring to the negative campaign
19 in relation to Sergeant McCabe.

20 A. Yes. 15:29

21 514 Q. All right.

22

23 "This is not direct information, but is merely an
24 account of a conversation between a confidential source
25 and a third party where I was not present." 15:29

26

27 okay.

28

29 "I wish to assert journalistic privilege in relation to

1 the identity of the source. I hope the Tribunal will
2 respect this claim of privilege. I can say that this
3 source has not waived privilege. I can also say, if it
4 is of assistance in considering this matter, that it is
5 clear from the public work the Tribunal has already 15:29
6 undertaken that the detail of this reported
7 conversation is already known to the Tribunal."

8 A. Yes.

9 515 Q. I'm just slightly mystified by what all of that is
10 about. 15:30

11 A. I can see how you would be. I suppose all I can say by
12 clarity is that it would relate to a conversation that
13 a source of mine would have had with a person who has,
14 I suppose, come to the Tribunal's attention already and
15 it would relate to a conversation they had with that 15:30
16 person. It would only have been thirdhand information
17 really, as such, and it would have been after issues in
18 relation to the allegations of a smear campaign had
19 come into the public domain, in any event.

20 516 Q. Okay. So we will just break that down a little bit. 15:30
21 So it's a conversation between a confidential source,
22 that's your source, and not Superintendent Taylor?

23 A. No, David Taylor was never a source of mine.

24 517 Q. Yes, yes. I just want to be clear about what we are
25 all talking about. 15:30

26 A. Sure.

27 518 Q. And I suppose the same goes to Assistant Commissioner
28 O'Sullivan -- or Deputy Commissioner O'Sullivan at the
29 time and Commissioner Martin Callinan at the time?

1 A. Yes. Although I suppose I would be wary of getting
2 into a process of elimination, but absolutely.

3 519 Q. And they have waived privilege.

4 CHAIRMAN: No, I think those are the three people we
5 are actually interested in. 15:31

6 A. Of course, yes.

7 CHAIRMAN: So, I mean, I appreciate that you may claim
8 a privilege in relation to something, and if the
9 necessity to rule on it comes up, I will rule on it,
10 but -- 15:31

11 A. I don't foresee that, Chairman.

12 CHAIRMAN: Similarly, I don't want to run down these
13 side roads.

14 A. Absolutely.

15 520 Q. MS. LEADER: And then that source told you about a 15:31
16 conversation he or she had with a third party. Do you
17 know who the third party is?

18 A. I do indeed.

19 521 Q. Okay. Was it a guard?

20 A. Again, I'd rather not be drawn any further on the 15:31
21 issue.

22 522 Q. I mean, we will just take it step-by-step for the
23 moment.

24 A. Sure.

25 523 Q. So you'd rather not be drawn, but would you be -- well, 15:31
26 we will leave it at that for the moment.

27 A. I don't think it would aid the Tribunal in any way. It
28 is an issue that has come entirely to your attention
29 already. I wouldn't add anything to it, other

1 than that I had a -- that a source who has had a
2 conversation with somebody who may have been in some
3 knowledge.

4 524 Q. with somebody else?

5 A. But it's nothing more than I think the Tribunal is 15:32
6 already well aware of.

7 CHAIRMAN: All right. well, that is fine. It's not
8 going to add to anything I already know?

9 A. I don't believe so.

10 CHAIRMAN: Okay. 15:32

11 525 Q. MS. LEADER: The detail of this reported conversation
12 is already known to the Tribunal; you're happy of
13 that -- about that?

14 A. Yes.

15 526 Q. And that that person may or may not have or we may have 15:32
16 or may not have chased up that conversation?

17 A. Yes.

18 527 Q. Is that right?

19 A. Yes.

20 528 Q. Was it anything to do with the D allegation or the 15:32
21 allegation of sexual assault against Sergeant McCabe?
22 Or was it an entirely different matter?

23 A. I'd rather really not get drawn any further on that
24 matter, if that is okay.

25 529 Q. Okay. 15:32

26 A. Suffice to say is the Tribunal will be in no sense
27 disadvantaged by me not telling you what I know.

28 530 Q. And just in relation to the time-line for this, as I
29 understand it, your position is you knew nothing about

1 a smear campaign or an allegation of sexual assault
2 which was tied in with Sergeant McCabe, up until at
3 least 2015 when you sent the query into the Garda Press
4 Office?

5 A. Even at that time I wouldn't have been aware. I mean, 15:33
6 the information that I had that led me to ask that
7 question related to the challenge, as I was informed,
8 to Sergeant McCabe's motivation.

9 531 Q. Right.

10 A. I didn't have a detailed understanding of what the 15:33
11 underlying allegation was in terms of why Sergeant
12 McCabe may have, as alleged, any particular reason to
13 feel malicious towards senior management, or otherwise.

14 It struck me that the important aspect of that was in
15 establishing whether that challenge was made, and 15:33
16 whether you could establish the juxtaposition between,
17 as I saw it, whether right or wrong, a public position
18 of support in favour of whistleblowers versus the
19 actual challenge to a whistleblower's, for lack of a
20 better word, motivation in raising issues that led to 15:34
21 an inquiry.

22 532 Q. All right. Now, a poison pen/anonymous letter has come
23 to the Tribunal's attention which the Tribunal knows
24 was sent to RTÉ. Are you familiar with that letter?

25 A. Only since it arose in the proceedings to this 15:34
26 Tribunal. It was never brought to my attention.

27 CHAIRMAN: Was that brought to our attention by RTÉ?

28 MS. LEADER: No.

29 CHAIRMAN: That's what I thought.

1 A. My understanding is, did that go to the Prime Time
2 programme or --
3 MS. LEADER: well, it's certainly where it ended up, in
4 any event.
5 A. It was certainly never brought to my attention. 15:34
6 CHAIRMAN: Sorry, Mr. Gillane, yes, well, you know, you
7 are the one who made the assertion of total cooperation
8 by RTÉ, and there's a number of things, apart from a
9 claim of privilege, which of course may be legitimately
10 made in due course; there's also the phone numbers -- 15:35
11 MR. GILLANE: Judge, can I --
12 CHAIRMAN: And now there's this letter, which is a
13 poison pen letter, which apparently was in RTÉ's
14 possession but they never gave it to the Tribunal. So
15 I mean, I get a bit worried when I hear these things. 15:35
16 I'm not a jury sitting there innocently while counsel
17 put a question to a policemen 'Didn't he refuse to
18 cooperate?' knowing of course he said absolutely
19 nothing.
20 MR. GILLANE: Chairman, can I just try and explain 15:35
21 those things because there are a number of issues
22 involved.
23 CHAIRMAN: Yes.
24 MR. GILLANE: Firstly, there's more than one anonymous
25 letter. RTÉ did bring one anonymous letter, that it 15:35
26 was aware of, to the Tribunal's attention.
27 CHAIRMAN: well, I mean, the duty is to bring
28 everything to the Tribunal's attention. I mean, that's
29 it.

1 MR. GILLANE: I appreciate that.

2 CHAIRMAN: There's no exception to that, Mr. Gillane,
3 you know.

4 MR. GILLANE: As soon as we were made aware of the
5 possible existence of the other letter we chased that 15:35
6 up and then corresponded with your solicitor in
7 relation to what we knew of it. Can I say just in
8 relation to the phone numbers --

9 CHAIRMAN: Yes.

10 MR. GILLANE: -- all of the individuals who I represent 15:35
11 I think have confirmed their phone numbers and did so
12 in early course to the Tribunal. When I was referring
13 to phone numbers that was in relation to somebody else
14 entirely, not a client of mine. And lastly, just
15 because I don't want the Chair to misunderstand me when 15:36
16 I was asking questions of Mr. Kenny on Friday; it
17 wasn't that I was asserting anything even remotely
18 approaching some sense of total cooperation wherein I
19 was entitled to some type of reward, I was merely
20 trying to point out to Mr. Kenny who I thought might be 15:36
21 misunderstanding me that I wasn't advocating some
22 extremist view of privilege and it was at that point I
23 put to him that my clients had attempted to assist the
24 Tribunal. So it wasn't any suggestion that there was
25 some sort of, as I say, encomium that we were worthy of 15:36
26 or anything of that nature.

27 CHAIRMAN: All right. Well, I mean, a horse can
28 attempt a six-foot fence and maybe not get over it,
29 Mr. Gillane. I'm not going to make any comment beyond

1 what I have said.

2 MR. GILLANE: May it please the Tribunal.

3 CHAIRMAN: And I'm not sure this is a six-foot fence
4 either but anyway, we will find out in due course.

5 533 Q. MS. LEADER: Finally, we have heard from the last 15:36
6 witness, Mr. Vaughan, that he overheard on a train that
7 there was a sexual abuse allegation connected somehow
8 with Sergeant McCabe, and do you in any way feel that
9 maybe you should have known about it having reporting
10 on it at the time and knowing Superintendent Taylor. 15:37

11 A. I don't feel I should. I mean, I suppose the fact that
12 I didn't I suppose illustrates the extent to which he,
13 like many others, you know, didn't bring it to my
14 attention. As I said, you could easily look at a
15 reporter's coverage of a story and think they're going 15:37
16 to be across all manner and every level of detail on
17 it, which is not the case unless I suppose they have
18 the time to deal exclusively with that story sometimes
19 and to the exclusion of everything else. It's not the
20 nature of how I could have worked at the time covering 15:38
21 many other stories. And certainly, I suppose, I can
22 only say that information came to my attention much
23 later. I'm not sure how widely known it was. I would
24 doubt how widely known it was by virtue of the fact
25 that it wasn't brought to my attention. But I would 15:38
26 also not be somebody who -- I would say, and I'm sure
27 all journalists would say this, I attempt, where
28 possible, to deal only in issues and reports that I can
29 verify entirely and wholeheartedly. I wouldn't be

1 somebody who engages, you know, in rumour or idle
2 gossip. It is not something that I think anyone
3 probably would have seen of benefit in bringing to my
4 attention. It certainly wouldn't have been something
5 that I think anyone who would have watched how we 15:38
6 report issues on the This Week programme would have
7 used to any benefit in terms of our reporting. But
8 also, I suspect people may have been reluctant to bring
9 it to our attention had we acted on it in a different
10 way. I don't know. Certainly it wouldn't have been in 15:38
11 any sense reflective of the relationship I had with the
12 Garda Press Office to expect that David Taylor, if he
13 was saying this to other people, I have no idea, he
14 certainly never said it to me.

15 MS. LEADER: If you would answer any questions. 15:39

16 CHAIRMAN: Can I just clarify, Ms. Leader, the poison
17 pen letter that we have been referring to, and we
18 haven't read it out publicly, because it is poisonous,
19 nobody brought it in to you in RTÉ and said here's the
20 latest? 15:39

21 A. No, absolutely not.

22 CHAIRMAN: Yes.

23 A. The first I learned of any poison pen letter was I
24 think maybe referenced in the last few weeks here or
25 days perhaps to the existence of those. No. 15:39

26 CHAIRMAN: And could I just ask one other thing, and
27 Ms. Leader has carefully gone through the fact that
28 when you're writing in the letter which has now, I
29 suppose, become a focus of attention, that that

1 fortunately has passed in July 2015, you weren't aware
2 that there was any of these rumours, I'm just wondering
3 when did you ever become aware that there were any of
4 those rumours.

5 A. I suppose really only when it became reported in the 15:39
6 public domain.

7 CHAIRMAN: So, we're talking about 2017 and the Prime
8 Time programme --

9 A. I suspect, yes.

10 CHAIRMAN: -- and the Irish Examiner and that kind of 15:40
11 thing?

12 A. Yes.

13 CHAIRMAN: That is fine.

14 MS. LEADER: I think just in relation to that poison
15 pen letter, I think Ms. Hannon may have referred to it 15:40
16 in a Prime Time programme, you didn't see that, did
17 you?

18 A. It doesn't ring a bell to be quite honest, no.

19 534 Q. In 2016?

20 A. That one had been sent? 15:40

21 535 Q. Yes.

22 A. No. Obviously she didn't get into any particular
23 detail, I presume that I should remember it.

24 536 Q. I think maybe there were two sentences, perhaps three
25 referred to -- 15:40

26 A. No, I don't.

27 CHAIRMAN: Three from the poison pen letter that got
28 into the broadcast, yes?

29 MS. LEADER: Three that a poison pen letter had been

1 received, I think, was the air of it.

2 A. I should say, newsrooms receive letters from, you know
3 anonymous letters from members of the public all the
4 time, invariably they make -- you know, they don't
5 stick in one's memory.

15:40

6 MS. LEADER: If you would answer any questions.

7 A. Sure.

8

9 THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL AS
10 FOLLOWS:

15:41

11 537 Q. MR. McDOWELL: Mr. Burke, Michael McDowell is my name,
12 I'm one of the counsel for Sergeant McCabe. Can I
13 bring you back to 5361 of your statement to the
14 Tribunal dated 8th September 2017 firstly.

15 A. Yes, I think we're on it.

15:41

16 538 Q. It's the second last paragraph I just want to ask you
17 about. You say:

18

19 "I do wish to bring to the Tribunal's attention that I
20 have certain information pertaining to the above. This
21 is not direct information but is merely an account of
22 conversation between a confidential source and a third
23 party where I was not present. I wish to assert
24 journalistic privilege in relation to the identity of
25 this source. I hope the Tribunal will respect this
26 claim of privilege. I can say that this source has not
27 waived privilege. I can also say if it is of
28 assistance in considering this matter that it is clear
29 from the public work that the Tribunal has already

15:41

15:41

1 undertaken that the detail of this reported
2 conversation is already known to the Tribunal."

3
4 I appreciate your desire to protect your sources, but
5 could you confirm to the Tribunal that there are four 15:42
6 conversations that I believe that we are dealing with
7 and that it must be one of them: One is a conversation
8 with Mr. Philip Boucher-Hayes in December of 2013; the
9 second is a conversation in January 2014 between Martin
10 Callinan and the Comptroller and Auditor General; the 15:42
11 third is two conversations between John McGuinness and
12 Martin Callinan; and the fourth is a conversation
13 between John Deasy and Martin Callinan on the same day
14 as the PAC meeting? Now, are we agreed that we're
15 talking about one of those conversations? 15:43

16 A. I really can't go into any greater detail, I'm sorry.
17 CHAIRMAN: I'm not going to press it. Because I mean I
18 actually didn't think it was any of those,
19 Mr. McDowell. I don't know why you think that. Maybe
20 I'm totally wrong. But I'm not interested in 15:43
21 chasing -- look, if the issue comes and I have to
22 confront it of course I will look at it very, very
23 carefully, but I don't think this is an instance.
24 Again, it's a question of dúirt bean liom go ndúirt
25 bean léi and we don't have either of mná in question 15:43
26 here, so where that's going to get me?

27 A. Again, I would take every effort I could to help. It
28 is certainly something that doesn't disadvantage the
29 Tribunal in not having my account of it, I can assure

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you.
CHAIRMAN: well, fortunately I don't think about these things too deeply, because I could not go asleep tonight now thinking about the enigmatic nature of that statement.

15:44

539 Q. MR. McDOWELL: Maybe I can try one more time on page 5382, and it is also on a different page. This is your email to the Garda Press Office. And you go to some pains in the first paragraph to say that it's a two-parted query and it relates to separate matters involving Garda Sergeant Maurice McCabe. Can you explain why it was that you wanted to emphasise that they were separate matters?

15:44

A. I suppose in some respects they're two separate stories, you could argue, or potentially reported as two separate stories, and it may have been possible, although unlikely, that the Garda Press Office may have confirmed one but not the other. And certainly there are, I know, restrictions in relation to reporting the proceedings of an ongoing inquiry, whereas --

15:44

540 Q. If you go to the first one, it says:

15:45

"RTÉ understands that Sergeant McCabe has contacted Garda Headquarters to request that he be released from the new role heading up the Traffic Unit in Mullingar. What is your response to this and your undertaking of the circumstances behind Sergeant McCabe's decision?"

15:45

Sorry:

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"What is your understanding of the circumstances behind Sergeant McCabe's decision?"

A. I would say it was unlikely but possible at that stage that the Garda Press Office may have confirmed some details of that. As I say, unlikely. But I would have had less certainty that they would deal with the second issue. And I suppose that is why I would have broken it up into two parts. 15:45

541 Q. It is clear that you must have understood that there was a connection between the two, because you were taking out your Occam's razor to separate them --

A. Well, I would say this, if I may: The distinction is that one of those two there is, as I understand it, a barrier from actually responding to it. Had I included them in one general question I may have got the 'we cannot comment on the ongoing work of an inquiry' answer to both of them. But as I said I had no realistic expectation that I would get a reply to either of them. 15:46

542 Q. And the second query you make is:

"Secondly and separate to the above, RTÉ's This Week understands that at a recent session of Justice Kevin O'Higgins' inquiry counsel for the Garda Commissioner raised questions over the motivation of Sergeant McCabe for bringing certain matters regarding Garda misconduct to attention. Does this amount to the view of the 15:46

1 Garda Commissioner in terms of her view as to why
2 Sergeant McCabe raised these issues in the first
3 instance?"

4
5 Are you telling this Tribunal that the information that 15:46
6 gave rise to these queries that you put to the Press
7 Office didn't hint at the 2006 allegation in any shape
8 or form?

9 A. I am, yes.

10 543 Q. I see. Just lastly then could I ask you to go to page 15:46
11 7522? And these are your emails?

12 A. They are text messages, sorry.

13 544 Q. Text messages rather. You said in the first one:
14 "Sorry Dave, got in the door at home and was handed a
15 restless baby, ring you tomorrow from a good landline." 15:47
16 Are you contending that that was due to your desire to
17 have good quality reception?

18 A. Well, I presume it's because I was probably holding a
19 baby at that time and had no interest in having a
20 conversation on the phone. I mean, a good landline I 15:47
21 presume can only refer to what was -- if there was a
22 call that preceded that I don't know, a bad signal.
23 There's no sense in which a good landline, if I was
24 ringing from RTÉ, would be any sort of covert line or
25 anything to that effect, if that is what you mean. I 15:48
26 mean, clearly there are text messages going back and
27 forth there that aren't trying to conceal any
28 interaction. So a good landline there could only mean
29 a better quality line, I presume. I mean --

1 545 Q. well, you're conversant with the phrase 'ring me from a
2 landline', which is usually used by people who are
3 concerned that their conversations might be overheard?
4 A. well, actually invariably --
5 CHAIRMAN: This is the first I have heard of it, 15:48
6 Mr. McDowell.
7 A. -- in broadcasting terms when we conduct --
8 MR. McDOWELL: well, you have heard it now, Chairman.
9 CHAIRMAN: well, I have, yes.
10 A. well actually, Mr. McDowell, I'm sure when you have 15:48
11 done media interviews yourself, journalists would
12 always ask you to speak on a landline rather than a
13 mobile, the signal quality is a lot better.
14 546 Q. MR. McDOWELL: Yes. This was not to do with a
15 mobile -- 15:48
16 A. No, not an interview obviously.
17 547 Q. -- or sorry, an interview?
18 A. You're asking me to recall something that happened four
19 years ago, for which I can't account for a phrase. I
20 can only presume the mobile signal wasn't, you know, 15:48
21 optimum or something like that.
22 CHAIRMAN: You are definitely confirming there was a
23 baby?
24 A. Yes, indeed. There was indeed.
25 MR. McDOWELL: Chairman, my question was serious. 15:49
26 CHAIRMAN: No, no, I appreciate it is serious. I'm not
27 trying to make fun of it, Mr. McDowell.
28 MR. McDOWELL: Many people would understand what I am
29 saying, Chairman.

1 CHAIRMAN: well, I mean, there was of course a famous
2 instance in history, and I'm not going to mention it at
3 all, and indeed wasn't there a newspaper shutdown in
4 Great Britain over that campaign, so...
5 MR. McDOWELL: You've lost me again, Chairman. 15:49
6 CHAIRMAN: No, I don't think I have.
7 MR. McDOWELL: The News of the world.
8 CHAIRMAN: Yes.
9 MR. McDOWELL: Yes.
10 CHAIRMAN: So no, I do understand. I didn't think 15:49
11 though -- there was a problem in the early days in
12 mobile, whereby things perhaps went, you could -- but I
13 mean it happened also on a landline, sometimes you
14 could have a conversation and hear people talking in
15 the background. 15:49
16 MR. McDOWELL: That is the point.
17 CHAIRMAN: But it happens in both mediums.
18 A. I can just say it doesn't in any way relate to I think
19 whatever your suspicion may be, Mr. McDowell.
20 CHAIRMAN: I'm lost there, I don't know what the 15:49
21 suspicion is. Is there a suspicion?
22 A. That it would relate to some --
23 548 Q. MR. McDOWELL: I don't want to speak in riddles. I
24 have got to suggest to you that it was a phrase that,
25 ring me from a landline because it is less likely to be 15:50
26 intercepted in some way.
27 CHAIRMAN: Oh, in other words, that you're going to
28 have some kind of high secret type conversation.
29 MR. McDOWELL: Yes.

1 CHAIRMAN: Okay. I'm very slow to get to that, but I
2 do understand. Okay. I understand.

3 A. That is what I took was your implication. No, that
4 wouldn't be the case.

5 549 Q. MR. McDOWELL: I see. 15:50

6 A. Those type of conversations would have to be occurring
7 for me to mean that and they weren't.

8 550 Q. When we go to the text of the 28th September he sends
9 you a text saying "Great scoop on Hogan, you're good,
10 Dave", that was an unexpected compliment coming from 15:50
11 him in these circumstances?

12 A. Absolutely, yeah. And it would have been, I have to
13 say, uncharacteristic to the relationship we would have
14 had when he was in the Press Office. And in fact there
15 would have been, I think, two or three messages like 15:51
16 that, and they stand out, I think a voicemail I think I
17 remember on one occasion. You know, you don't expect
18 to get a complimentary call or text or whatever, which
19 is unsolicited and out of the blue from somebody you
20 previously dealt with in a different role entirely. 15:51

21 551 Q. That's the point I was going to put to you; that it
22 must have come as a surprise?

23 A. Absolutely.

24 552 Q. What is this man doing ringing or texting me --

25 A. Yes absolutely. 15:51

26 553 Q. -- to compliment me on my work which is nothing to do
27 with him, this is the Irish water story?

28 A. Precisely, yeah.

29 554 Q. I see. And you politely say: "Thanks a million, Dave,

1 much appreciated." Could I put it to you that those
2 exchange of texts are at least consistent with
3 Superintendent Taylor having a reasonably friendly
4 relationship with you?

5 A. I wouldn't. I mean, the tone of the texts are friendly 15:52
6 on both sides, that may relate to a way of dealing
7 professionally with people whom you aren't friends with
8 equally. We wouldn't have been friends. I mean, up to
9 that point or up to a point where we would have met for
10 a coffee, that is referred to in one of those texts, I 15:52
11 would never have met the man before that. So we
12 wouldn't have been then, or since, or in any capacity,
13 friends or friendly beyond being pleasant in, you know,
14 professional dealings, as one would be with everyone.

15 555 Q. Well, could I bring you then to the text that you sent 15:52
16 on the 12th November at quarter to two in the
17 afternoon, it reads: "Meet today or tomorrow morning,
18 same place as last?"

19 A. I see that, yes.

20 556 Q. Why is that so obscure? 15:53

21 A. I don't think it is obscure. We would have met at a
22 coffee shop I think in Temple Bar, so he would have
23 known the place I was referring to and so would I,
24 though I actually couldn't tell you where it was. Just
25 it was roughly in Temple Bar. This is four years 15:53
26 later, or nearly. So I wouldn't necessarily agree that
27 it's obscure, it's literally -- I presume a call
28 preceded it or a suggestion we must meet up again
29 whenever. And that is what that relates to. I

1 couldn't honestly say whether we did meet up for a
2 coffee a second time. I have a vague recollection of
3 some arrangement being made to go for a coffee in
4 Fairview somewhere, but I am not entirely sure that
5 ever took place. 15:54

6 557 Q. well, you see, on the 12th you say -- or sorry, he says
7 to you "tomorrow midday, same location" and you say
8 "perfect", isn't that right?

9 A. Yes.

10 558 Q. And that suggests that you thought you were going to 15:54
11 meet in the same place you previously met, but you
12 weren't going to mention it?

13 A. I don't understand.

14 559 Q. You weren't going to mention the location?

15 A. It was just a coffee shop in Temple Bar. 15:54

16 560 Q. I see.

17 A. I mean --

18 561 Q. Then the following day, an hour before the meeting he
19 sends you a text, is that right, saying "Sorry, John,
20 have to cancel, sorry" and you reply "No problem, Dave, 15:54
21 tomorrow suit?". You were looking to meet with him,
22 isn't that the case?

23 A. Oh yeah, I mean, I would say absolutely in a scenario
24 where a journalist is -- where a senior member of An
25 Garda Síochána offers to meet a journalist for a 15:55
26 coffee, and there are any number of issues both in and
27 not in the public domain that are of interests to
28 journalists that senior Gardaí may have some knowledge
29 of, you're going to meet somebody for a coffee. I

1 wouldn't say there's anything indicated from those that
2 reflects a pressing desire, other than perhaps maybe I
3 was around the day after and not around later in the
4 week. I don't know. I couldn't tell you what day of
5 the week that was. But I mean, you're asking me to 15:55
6 contextualise a text message that was sent three and a
7 half, nearly four years ago. I can't say any more than
8 that reading it back to you.

9 562 Q. I have to suggest to you that it suggests that although
10 he was no longer the press secretary or the Press 15:55
11 Office of An Garda Síochána at the time that he was in
12 communication with you and you were sufficiently
13 interested to want to arrange an alternative meeting
14 when he cancelled it with less than an hour to go?

15 A. I'm not sure what that would indicate that would be 15:55
16 outside of the normal operation of a journalist --

17 563 Q. I see.

18 A. -- eager to meet people who may know anything.

19 564 Q. The last thing I just want to ask you about, Mr. Burke,
20 is this: Were you conscious in 2014, after the 15:56
21 accession of Nóirín O'Sullivan to the position of
22 Acting Commissioner and later her appointment as
23 Commissioner, were you conscious of any negativity
24 towards her in senior Garda circles?

25 A. I would say there was -- I have a vague recollection 15:56
26 that issue may have been reported, but certainly
27 nothing from anything that anybody said to me. But I
28 suppose, not being exclusively somebody who covered
29 crime related matters I wouldn't probably have been

1 dealing with the people who may have had those maybe
2 and may be expressing it. But I've a vague
3 recollection there was issues expressed in newspapers
4 about I suppose, I suppose about dissent in the ranks,
5 I don't know, I think that was maybe a commonly 15:57
6 expressed theme at the time, I'm not entirely sure.

7 565 Q. I'm talking about not merely the ranks --

8 A. Senior rank.

9 566 Q. -- top rank, that people close to her were antagonistic
10 towards her? 15:57

11 A. I wouldn't have any knowledge of any individuals or
12 named individuals or couldn't have named individuals
13 who might have been antagonistic towards her or
14 otherwise, I wouldn't have that level of detail, if
15 that was the case even. 15:57

16 MR. McDOWELL: Thank you.

17 CHAIRMAN: Mr. O'Higgins, I don't know how far you can
18 put this but I'm certainly content if you simply want
19 to put your client's instructions. I mean, we don't
20 have times, dates or places and unless you have been 15:57
21 supplied with them since that --

22 MR. MICHAEL O' HIGGINS: I think I can deal with it,
23 Chairman. I will only be a few minutes.

24 CHAIRMAN: It's entirely up to you how you approach it,
25 I appreciate you have to put a case and the detail so 15:57
26 far is very limited.

27 MR. MICHAEL O' HIGGINS: Yes, and I don't anticipate I
28 will be any length of time.

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THE WITNESS WAS CROSS-EXAMINED BY MR. MICHAEL O'HIGGINS
AS FOLLOWS:

- 567 Q. MR. MICHAEL O'HIGGINS: Good afternoon, Mr. Burke. Michael O'Higgins, counsel on behalf of Superintendent Taylor, I'm not going to be long in asking you questions. Ms. Leader took you through and highlighted telephone and email contact, isn't that so? 15:58
- A. Yes. When Mr. Taylor was in the Press Office.
- 568 Q. Yes. 15:58
- A. That period.
- 569 Q. I'm referring only to the time he was in the Press Office.
- A. Yes, okay.
- 570 Q. I think she mentioned that when Superintendent Taylor gave evidence there was some focus on some calls that occurred between the 8th and the 14th December? 15:58
- A. Yes.
- 571 Q. And Superintendent Taylor said "Mr. Burke is a very respected journalist, he was covering the penalty points issue quite extensively at that time and there was a number of programmes, segments of programmes on the News at One." I presume that's correct? 15:58
- A. Well, yeah, he called our programme the News at One, I presume he means the This Week programme on a Sunday. 15:59
- 572 Q. And when asked would those conversations at that time be related to the penalty points issue he said it may be in relation to the coming up to PAC and coming up to various reports that were coming out at that time,

1 isn't that so?

2 A. That is what he said, yes.

3 573 Q. Is that a reasonable assumption on his part?

4 A. No. Certainly in terms of contact with me, no. I had
5 no conversations with him that went into any detail in 15:59
6 relation to the Garda position or indeed either
7 briefings or otherwise or even factual discussion on
8 it. I never particularly found the Garda Press Office
9 willing to share any information, certainly not with
10 our programme or with myself personally. So we 15:59
11 wouldn't have had those conversations that I think he
12 may be referring to there. And I think you will see,
13 even from that list of calls and texts, all of those
14 calls and texts are very brief, I'm not sure where a
15 conversation of the nature he's implying would have 15:59
16 squeezed in there.

17 574 Q. Yes. I mean, the impression that one gets from your
18 evidence is that the relationship with him was very
19 stiff and stark and formal?

20 A. Well, it was just one-way traffic. I mean, we never 16:00
21 got anything back, even in terms of replies to our
22 queries from the -- well, not never. I should say,
23 invariably we got no comment or no reply.

24 575 Q. Certainly the written replies were the party line, so
25 to speak? 16:00

26 A. Yeah. And there was no verbal communication to take
27 that place. And certainly if there was it would have
28 been reflected in our reporting, but there was none.

29 576 Q. Now Ms. Leader in express terms said you know or are

1 just so that there is no mystery about it: when you
2 met him for coffee post his time in the press release,
3 there was nothing out of the ordinary, they were
4 general conversations about politics and about the
5 general state of An Garda Síochána? 16:02

6 A. Indeed. That's my recollection of it.

7 584 Q. And can I just ask you with regard to the conversation
8 which you want to keep confidential, and I'm not
9 interested in asking about the sources who participated
10 in it were, but can I ask you: Did the conversation 16:02
11 support that there was a campaign to discredit Sergeant
12 McCabe?

13 A. I really can't get into, I think, any greater detail
14 than I've said, other than, you know I can't bring
15 anything additional to the Tribunal's knowledge. 16:02

16 585 Q. And does it follow then that if I ask you if it was
17 capable of supporting you can't comment whether it
18 might have supported Superintendent Taylor's
19 involvement?

20 A. It would have almost, I would say, no relationship to 16:02
21 Superintendent Taylor at all.

22 586 Q. All right.

23 A. I can say that.

24 587 Q. Did I understand you to say that you have informed the
25 Tribunal the detail of the conversation? 16:03

26 A. Oh no. No.

27 588 Q. You haven't?

28 A. No, I haven't.

29 CHAIRMAN: No, no. No, no. Never.

1 MR. MICHAEL O' HIGGINS: Sorry, I took that up wrong.
2 CHAIRMAN: No, no, that is fine, Mr. O'Higgins.
3 MR. MICHAEL O' HIGGINS: Thank you very much.
4 CHAIRMAN: If it was, I mean, I have said this before,
5 we do absolutely everything openly so it would be in 16:03
6 the papers. We couldn't do it any other way. I don't
7 know if any other tribunal has ever tried, but I don't
8 see any --
9 MR. MICHAEL O' HIGGINS: I picked that up incorrectly.
10 CHAIRMAN: Yes. Just to be absolutely clear: 16:03
11 Everything that we know is here. I mean, there may be
12 irrelevant stuff sitting up in boxes upstairs, but that
13 is another question entirely.
14 MR. MICHAEL O' HIGGINS: May it please you, Chairman.
15 CHAIRMAN: Sorry, Mr. Gillane, do you have any 16:03
16 questions? You're going last.
17
18 THE WITNESS WAS CROSS-EXAMINED BY MR. DIGNAM AS
19 FOLLOWS:
20 589 Q. MR. DIGNAM: Mr. Burke, my name is Conor Dignam, I 16:03
21 appear on behalf of An Garda Síochána and in particular
22 I have some questions for you on behalf of former
23 Commissioner Callinan and former Commissioner
24 O'Sullivan. And there are really only two areas that I
25 want to cover very briefly. The first is Ms. Leader 16:03
26 explored with you during the course of her examination
27 your knowledge of rumours that were going around about
28 Sergeant McCabe and you were very clear that you had no
29 knowledge of any such rumours.

1 A. Yes.

2 590 Q. And towards the end of your evidence you explained that
3 you weren't even sure how widely known those rumours
4 were. Now the Tribunal has heard evidence from a
5 number of people and that evidence was to the effect 16:04
6 that there were rumours circulating. But I'm not sure
7 how closely you followed the evidence in the Tribunal,
8 I'm not sure whether you're aware that Minister Eoghan
9 Murphy said he hadn't heard any rumours other than
10 Sergeant McCabe was slightly odd, as he put it in his 16:04
11 evidence; Mr. McCarthy, the Comptroller and Auditor
12 General, said that he hadn't heard any rumours;
13 Minister Shatter I think said the same thing, although
14 he explained that that may be because he was in a
15 slightly more rarified atmosphere of being a Minister 16:04
16 at the time; and indeed the former Minister,
17 Mr. Howlin, who gave evidence just a few days ago, said
18 that he wasn't aware of any rumours until he left
19 Government, which I think was in 2016. Do you have any
20 comment to make in relation to that and how widely 16:05
21 known the rumours were or can you assist us in that
22 regard?

23 CHAIRMAN: You could always say you'd join a very
24 distinguished group of people.

25 A. I think I will go with that, yes. I can only tell you 16:05
26 what I know or didn't know, and I wasn't aware of any
27 rumours.

28 591 Q. MR. DIGNAM: The second issue I wanted to cover with
29 you was, in relation to this original statement and

1 your reference to this conversation, and I appreciate
2 your sensitivities in relation to that, but can I begin
3 by asking you firstly when -- the way you describe it
4 in your statement, which is on page 5361, is that you
5 have certain information pertaining to the above and 16:05
6 it's not direct information but is merely an account of
7 a conversation. Can I ask you when you got that
8 account of whatever that conversation is?

9 A. Yes. It would have been after the issues of a smear
10 campaign, if that is how it could be described, or not 16:06
11 even actually a smear campaign, but any acquisitions
12 being made of a sexual nature against Maurice McCabe
13 were aired in the public domain. So it would have
14 been, I suppose, to put a time on it, it would have
15 been some time during last year. 16:06

16 CHAIRMAN: So, it was post February 2017.

17 A. Oh, it would have been, yes.

18 592 Q. MR. DIGNAM: And is that a conversation in respect of
19 which there has been a dispute about the contents of
20 the conversation before this Tribunal? 16:06

21 A. I really don't want to get into any further detail on
22 it.

23 CHAIRMAN: Mr. Dignam, can I just say, and it is
24 important not just from your point of view but from the
25 point of view of other parties, just because I'm taking 16:06
26 the view, look, I don't need to know about this doesn't
27 mean that if you wish to press this issue and to raise
28 this issue now, I mean you can if you wish.

29 MR. DIGNAM: Yes.

1 CHAIRMAN: But I'm not sure I'm going to gain anything
2 from it, but then again I could be wrong.
3 MR. DIGNAM: Yes.
4 CHAIRMAN: And in the event that you think I am wrong
5 I'm certainly not going to hold it against anybody for 16:07
6 pushing their case. That is what you are there for,
7 you know.
8 MR. DIGNAM: Yes. Just to be clear the timing, the
9 reason I was asking about the timing, Chairman --
10 CHAIRMAN: Yes. 16:07
11 MR. DIGNAM: -- may lead to me wanting to push the
12 point.
13 593 Q. But, in relation to the timing at which you became
14 aware of this conversation or the account of this
15 conversation you're quite clear that that was some time 16:07
16 in the last year, so since 2017, is that right?
17 A. Yes.
18 594 Q. Thank you.
19 CHAIRMAN: All right. So it was, you heard the rumours
20 and sorry, as a media person you followed the media 16:07
21 coverage and then you heard about this. I'm not saying
22 in the next week or anything like that.
23 A. Sure.
24 CHAIRMAN: I mean, you've got an entire year to play
25 with so it's not as if the spies will be zeroing in. 16:07
26 MR. DIGNAM: Sorry, Chairman, if I might ask one
27 further question in relation to that.
28 CHAIRMAN: Yes.
29 595 Q. MR. DIGNAM: Your source, as you describe him or her,

1 is that a person who has made public statements about
2 that conversation?

3 A. I'm sorry, I just can't go into any further detail.

4 596 Q. Well, it's just, this may be important in relation to
5 the question of privilege, because if it is a person 16:08
6 who has made a public statement about the conversation
7 it'd be difficult to see how the privilege still
8 attaches, Mr. Burke.

9 A. I see what you are saying. I still can't say any more,
10 other than it is something, it is a matter that is 16:08
11 entirely known to the Tribunal. I know that doesn't
12 assist you to any greater degree I'm sure, but --

13 597 Q. I'm not sure how much it assists the Tribunal,
14 Mr. Burke.

15 A. Or the Tribunal. 16:08

16 CHAIRMAN: If you want to press the matter you can,
17 Mr. Dignam, but I think, you know, there is a time when
18 you put horse over a big fence - and sorry, I seem to
19 be going back to that analogy a lot - but even still,
20 this may not be it, but I'm here to listen to whatever 16:08
21 anybody has to say. That is the way that it is. If
22 you want to revert to me on it, please do. At the
23 moment, from what I can see, I don't think it is
24 helping anybody. Heaven alone knows, Mr. Murrinan
25 mentioned the other day the rule against 16:09
26 self-corroboration and the exceptions thereto.

27 MR. DIGNAM: Yes.

28 CHAIRMAN: There's some extent to which the Rules of
29 Evidence may not be terribly helpful to finding out the

1 truth, there's some respects in which they are very,
2 very sensible. Testing something by reason of
3 someone's prior inconsistent statement of course has
4 been allowed since the mid 19th Century. We seem to
5 have done a lot of testing of people by reason of the
6 notes they took and their consistency. So, the degree
7 to which I'm helped by that I don't know. But at the
8 moment I don't think that I am. But I'm here to have
9 my mind changed by persuasion if you wish.

16:09

10 MR. DIGNAM: Chairman, I think I pushed it as far as I
11 need to push it.

16:09

12 CHAIRMAN: All right. Well, that is fine.

13 MR. Ó MUIRCHEARTAIGH: I have no questions, Chairman.

14 CHAIRMAN: No questions, Mr. Ó Muircheartaigh. Thank
15 you very much for being here, Mr. Burke.

16:10

16 MR. GILLANE: Sorry, Chair, could I put two or three
17 questions?

18 CHAIRMAN: I beg your pardon. I forgot you were of
19 course appearing for Mr. Burke, thank you.

16:10

20
21 THE WITNESS WAS EXAMINED BY MR. GILLANE AS FOLLOWS:

22 598 Q. MR. GILLANE: Mr. Burke, just you can confirm or you
23 already have confirmed that from the point at which you
24 took up your position in RTÉ Mr. Taylor was already in
25 situ as the Press Officer and between that time and
26 Mr. Taylor's departure you'd never met him physically
27 face-to-face during that period nor before?

16:10

28 A. That's correct.

29 599 Q. In terms of your attempt to get information in relation

1 to programmes that either This week broadcast or were
2 interested in broadcasting I think you have indicated
3 the general mechanism was through emailing the Press
4 Office and that would have been either preceded or
5 followed up with telephone calls to include voicemails 16:10
6 just to confirm that the email had been sent?

7 A. That's correct, invariably followed.

8 600 Q. The upside of sending the email being that there was a
9 clear indication as to what it was you required?

10 A. Absolutely. 16:10

11 601 Q. I think you can also confirm that notwithstanding the
12 fact the emails may have been addressed "Dear Dave" or
13 "Dear John" the replies come in three categories:
14 Firstly, emails to which there is simply no reply;
15 secondly, emails to which there is a sort of 16:11
16 boilerplate or standard reply; and then there are other
17 replies in fact authored by other members of the Press
18 Office, for example, Garda Connaughton and I think
19 Sergeant Frawley, is that correct?

20 A. That's correct. 16:11

21 602 Q. I think you can also confirm that during that period
22 you weren't someone who attended crime scenes or
23 anything of that nature?

24 A. No, never.

25 603 Q. Were you someone who attended press conferences? 16:11

26 A. No. There was no benefit. Working for a Sunday
27 programme it wasn't, I suppose, the type of story that
28 had any benefit for us.

29 604 Q. And do I also understand that in terms of your

1 engagement with Mr. Taylor then after he'd left that
2 office, between mid September 2014 and mid November
3 2014, to put it this way, you were interested to see
4 what might come of that, is that right?

5 A. That's all. And nothing did, I should say.

16:11

6 605 Q. Did anything come of that?

7 A. No.

8 606 Q. Can you just also confirm that you did confirm your
9 phone number to the Tribunal investigators when you
10 were asked?

16:12

11 A. I did indeed.

12 MR. GILLANE: Thanks very much.

13 CHAIRMAN: Yes, you did indeed.

14 A. Thank you.

15 CHAIRMAN: Thank you.

16:12

16

17 THE WITNESS THEN WITHDREW

18

19 CHAIRMAN: we might just go off transcript for a
20 second.

16:12

21

22 THE TRIBUNAL THEN ADJOURNED UNTIL WEDNESDAY, 6TH JUNE
23 2018 AT 10:00AM

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