

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON THURSDAY, 7TH JUNE 2018 - DAY 87

87

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following to be a
verbatim transcript of
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in the above-named
action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 7TH JUNE
2 2018:

3
4 MR. MCGUINNESS: Chairman, the first witness we have
5 today is a Mr. Conor O'Donnell, but I should just say 10:03
6 to those in the hall here today, Mr. Reynolds had been
7 scheduled to give evidence today and he has been put
8 back until next week so we won't be taking
9 Mr. Reynolds's evidence. I think there are other
10 parties here who may wish to announce their presence. 10:03

11 MR. LEONARD: May it please you, Chairman. Patrick
12 Leonard, I appear with Mark Dunne, instructed by David
13 Phelan of Hayes Solicitors on behalf of Conor Lally.

14 MR. MCGUINNESS: Very good. If we start then with the
15 evidence of Mr. Conor O'Donnell. His statement is to 10:04
16 be found in volume 14 at page 3760.

17
18 MR. CONOR O'DONNELL, HAVING BEEN SWORN, WAS DIRECTLY
19 EXAMINED BY MR. MCGUINNESS:

20 1 Q. MR. MCGUINNESS: Mr. O'Donnell, could you just outline 10:04
21 to the Chairman what position you currently hold.

22 A. I am editor of the Irish Mail on Sunday.

23 2 Q. And that's based in Dublin here, is that correct?

24 A. That's based in Dublin, yeah.

25 3 Q. And I think you started in journalism approximately 25 10:05
26 years ago, is that correct?

27 A. That's correct. I started in the Kerryman newspaper as
28 a reporter, I moved to the sub-editor and then chief
29 sub. After a few years I moved to the Irish Examiner

1 in Cork where I was again a sub-editor, and eventually
2 became chief sub -- or night editor, my apologies.
3 After nine years in Cork, I then moved to London, where
4 I worked for the Daily Telegraph for a number of years
5 as a sub-editor, before eventually moving back to 10:05
6 Dublin to work for the Irish Daily Mail as a night
7 editor, eventually editor and for the past five years,
8 I have been editor of The Mail on Sunday.

9 4 Q. Yes. And would you just explain to the Tribunal, in
10 your position as editor, and I'm talking about the time 10:05
11 from when you joined the Daily Mail, from 2013 onwards,
12 what reporters were working under you?

13 A. About seven to eight reporters.

14 5 Q. Yes.

15 A. Varying from crime correspondent to investigations 10:06
16 editor to political editor and various duty reporters
17 covering whatever we felt would need to be covered for
18 a particular week.

19 6 Q. Yes. And did you have a dedicated crime correspondent
20 at that time? 10:06

21 A. Yes. Debbie McCann has been our dedicated crime
22 correspondent since the time that I took over as editor
23 five years ago.

24 7 Q. And did you have a separate security correspondent or
25 anything of that nature? 10:06

26 A. No, we did not. No. We are a very small outfit so we
27 wouldn't be able to afford that sort of luxury.

28 8 Q. I think you met with the Tribunal's investigators and
29 you were furnished with the terms of reference which

1 you presumably were familiar with at that point?

2 A. Yes.

3 9 Q. And you were referred to term of reference [a], which
4 related to Superintendent Taylor's protected disclosure
5 and I think you confirmed to the investigators that 10:07
6 you'd never spoken with Superintendent Taylor or former
7 Commissioner Callinan or former Deputy Commissioner
8 Nóirín O'Sullivan, and you've never been negatively
9 briefed against Sergeant McCabe by any of those
10 individuals? 10:07

11 A. That's correct.

12 10 Q. Okay. And you have no difficulty confirming that as
13 editor?

14 A. No difficulty confirming that.

15 11 Q. And have you any knowledge as to whether any of your 10:07
16 reporters were negatively briefed by any of those three
17 individuals in the sense outlined in the terms of
18 reference?

19 A. I have no knowledge.

20 12 Q. Now, I think you were given an opportunity to read a 10:07
21 statement made by Ms. Alison O'Reilly?

22 A. Yes.

23 13 Q. And I think she was at the time, and still is, I think,
24 an employee of the Mail, is that correct?

25 A. She is an employee. She used to work for the Mail on 10:08
26 Sunday, she now works for the Irish Daily Mail, but she
27 is still an employee of the company.

28 14 Q. Yes. And an issue arose about the approach made by
29 Ms. Debbie McCann to the D family --

1 A. Yes.

2 15 Q. And I think you were involved in --

3 A. Yes.

4 16 Q. -- and had some knowledge of that, is that correct?

5 A. Would you like me to outline the circumstances? 10:08

6 17 Q. Yes, please.

7 A. Robert Cox, the news editor of the paper, came into my

8 office early 2014 to inform me that Debbie McCann had

9 some information on Maurice McCabe, an allegation of a

10 sexual nature, sexual impropriety involving a young 10:08

11 girl, and he wanted to know and Debbie wanted to know

12 if she could go to see if we could get an interview

13 with the young woman involved, I agreed to that.

14 18 Q. Yes. And?

15 A. And she then went to interview the woman. She called 10:08

16 to the house, she spoke to the mother, they were not

17 willing to discuss the matter. Debbie left the house,

18 drove to a petrol station shortly after, as is our

19 standard procedure, if we send to the door, the

20 reporter is always required to ring the news editor 10:09

21 immediately after, she rang Robert Cox to say that she

22 had spoken to the mother and they are not willing to do

23 anything. He told me this, and I said, fine. And

24 Robert Cox had understood that to mean we will do no

25 more on this and we never did. And shortly after that 10:09

26 Debbie McCann went on maternity leave.

27 19 Q. Can I just ask you a few questions about that

28 narrative? Firstly, are you in a position to place a

29 date on when this discussion took place in relation to

1 the visit?

2 A. Honestly, no. We think it's sometime around late
3 February/March 2014.

4 20 Q. Now --

5 A. But we don't have a specific time on that. 10:10
6 Unfortunately.

7 21 Q. I just want to be clear about a number of things. Was
8 it Mr. Cox who came to you with this proposal?

9 A. Mr. Cox came to me with this proposal. Our procedure
10 is that reporters report to the news editor. 10:10

11 22 Q. Yes.

12 A. And the news editor then reports to me if he has -- if
13 a reporter suggested they have a story they feel it
14 would be worth pursuing he will furnish me with those
15 details and I will make a decision on whether or not we 10:10
16 will pursue that story or not.

17 23 Q. Well, is this something that is considered in a, sort
18 of, daily conference or a weekly conference or --

19 A. On a Tuesday, which is the beginning of our week, we
20 work Tuesday to Saturday, there is a reporters' 10:10
21 conference whereby the news editor is present with all
22 of the reporters, I am not present at that, and they
23 will suggest ideas for the paper the following week, or
24 longer term investigations.

25 24 Q. Yes. 10:10

26 A. After that meeting, later on Robert Cox will come to me
27 with a brief outline of what was discussed during
28 conference. And we'll have a discussion about what I'm
29 interested in or not interested in and then he will

1 report back to the reporters about what to pursue or
2 not to pursue.

3 25 Q. Can I just break that down a little? Is there any
4 reason to believe that the proposal that Ms. McCann
5 made was discussed at such a reporters' conference with 10:11
6 the news editor or do you know whether it was the
7 subject of a separate discussion that Ms. McCann had?

8 A. I'm not aware it was discussed at the reporters'
9 conference.

10 26 Q. You can't exclude that, then? 10:11

11 A. I can't exclude that.

12 27 Q. Yes.

13 A. But what I can tell you is that, what I was aware of is
14 that Debbie McCann came to Robert Cox, that would be
15 quite normal. 10:11

16 28 Q. Yes.

17 A. The only reporters' conference is on a Tuesday, and
18 then as the week goes on, reporters, the news editor is
19 in contact with the reporters, some occasions six times
20 a day, sometimes not at all. But always looking for 10:12
21 updates on what story they are looking on. Sometimes
22 reporters ring to say I have got a news story that
23 wasn't available to me at Tuesday on conference. So
24 there is constant dialogue between the news editor and
25 the reporters and if there is any necessary update, the 10:12
26 news editor would bring it to my attention.

27 29 Q. Well, can I just ask you a few questions, I'm anxious
28 to get as much detail as possible. You never spoke to
29 Ms. McCann about the story, is that correct?

1 A. That's correct.

2 30 Q. Okay. And may the Tribunal take it that you believe
3 that Mr. Cox spoke to you about the story on the day
4 that Debbie spoke to him about the story?

5 A. That's correct. 10:12

6 31 Q. Would that be correct?

7 A. I'd almost -- I can't say for certain, but I would say
8 almost certainly, that would be standard procedure.

9 32 Q. Now, was anything put down in writing?

10 A. No. It was -- she furnished him with information 10:12
11 regarding an allegation. This actually happens quite
12 regularly. It's the very early stages of anything that
13 we'd ever do in terms of committing to writing a story.
14 So at that stage we would never really write anything
15 down, we would have a discuss about what we would do 10:13
16 and then proceed based on the information that we have.

17 33 Q. What I'm anxious to know is: what information did
18 Mr. Cox give you about the story as was retailed to him
19 or relayed to him by Ms. McCann. First of all, was
20 Sergeant McCabe clearly identified? 10:13

21 A. Sergeant McCabe was identified, yes.

22 34 Q. Yes. And was the family of the girl identified?

23 A. In terms of name?

24 35 Q. Yes.

25 A. No. 10:13

26 36 Q. So you weren't aware of any name as such?

27 A. No, I was -- the family of Ms. D was -- the girl at the
28 centre of the allegation, that's the extent of the
29 information that I had.

1 37 Q. Yes. But it was presented to you without the name of
2 the girl or the family, is that right?
3 A. That's correct.

4 38 Q. Either forename or surname?
5 A. That's correct. Neither. 10:14

6 39 Q. Okay. So you didn't know who they were?
7 A. I did not.

8 40 Q. No. And was there any information which suggested that
9 the girl, the girl's father was a serving guard or had
10 been a serving guard? 10:14

11 A. I cannot recall that, actually. I'm not sure. I'm not
12 sure if that information was provided to me at the
13 time.

14 41 Q. Was there any phrase used such as, you know, 'a
15 colleague's daughter' or 'another member's daughter'? 10:14

16 A. No. No. It wasn't -- I can tell you the conversation
17 was brief, because -- in the early remove it really
18 is -- it's a question of the news editor looking for my
19 say -- my -- well, allowing me to give him the
20 go-ahead. 10:15

21 42 Q. Yes.
22 A. And if there is whatever detail we may glean at a later
23 stage, then we would have a lengthier conversation.
24 But at that stage he really wanted me to say, proceed.

25 43 Q. Yes. Well, in terms of the allegation, was there any 10:15
26 detail concerning the allegation relayed to you?
27 A. No.

28 44 Q. Okay. And what was the angle or what was the pitch put
29 to you in terms of trying to make the story or stand it

1 up?

2 A. well, it wasn't a question of making a story. Being a
3 Sunday paper, we do longer term projects. We do deal
4 with a lot of whistleblowers, with do a lot of
5 investigations, when information is provided to us, 10:15
6 when a whistleblower provides that information I think
7 it's a very, very early stage before we ever get to
8 committing to even agreeing to write a story. At that
9 stage, an allegation was brought to my attention.

10 45 Q. Yes. 10:15

11 A. I felt it was worth pursuing. And what would have come
12 of that, I don't know, but you don't know until you
13 send --

14 46 Q. Yes.

15 A. What happened is we sent. Nothing came of it. We did 10:16
16 nothing more on it and we never discussed it again.

17 47 Q. But I am just concerned to see what the interest of the
18 paper was and your interest as editor in sending a
19 journalist or authorising one of your journalists to go
20 up. Presumably you knew Sergeant McCabe was a 10:16
21 whistleblower?

22 A. Yes. Sergeant McCabe was a man certainly in the news,
23 in the headlines at that stage, because I know that he
24 was -- I think the 'disgusting' remark was made in
25 January. We know, I am confident that this allegation 10:16
26 was brought to our attention much later on from that.
27 So I certainly knew he was at the time. And I just
28 felt it our duty if an allegation was there, that we
29 had a duty to investigate it.

1 48 Q. Yes.

2 A. And we did. And nothing came of it and we printed
3 nothing.

4 49 Q. Yes. No, I understand that part of your evidence. But
5 was it that you thought there was a story concerning 10:17
6 the motivation of the whistleblower or what was -- what
7 was the public interest, as it were?

8 A. It could have been. I didn't really invest much
9 consideration to it, other than that it was, we felt,
10 because an allegation was there, it was worth pursuing. 10:17
11 And what came of that meeting, if it ever had took
12 place, with Ms. D or the family, then we'll have a
13 lengthier discussion about what we could do with that.
14 By sending to Ms. D's house, we may not necessarily
15 have got an interview, we may have had a discussion 10:17
16 with the family, we may have learned information that
17 we weren't previously aware of it, we may have gleaned
18 information that was not in the public domain that
19 might have given us a better understanding of what the
20 controversy was about in relation to McCabe in, terms 10:17
21 of the broader story, what was going on above -- in the
22 Garda station and otherwise. That's a -- it may sound
23 crude but it's a scoping exercise. We go up, we talk,
24 see what we can get and then we decide later on, it's
25 never a commitment to writing a story. 10:18

26 50 Q. Is that a common practice; to send a reporter to a
27 possible victim of a sexual assault to get them to try
28 and talk about the perpetrator?

29 A. It's not a common practice, no, but I mean every story

1 is different, every person's story is different, so
2 there may be occasion whereby you feel that a victim in
3 any circumstances, where the crime of any nature, they
4 may be prepared to talk. We will approach it very
5 delicately, you'll try to find out people who know them 10:18
6 first, try to know family members, and occasionally we
7 will send to the door and we will try to do as
8 sensitively as you can. Sometimes we write a letter to
9 the family involved. So, yes, we'll have done that,
10 yes. 10:19

11 51 Q. And in this case, was it relayed to you where Ms. D
12 lived?

13 A. Was it relayed to me?

14 52 Q. Yes.

15 A. No. I had a general idea, I suppose -- I was told it 10:19
16 was Cavan.

17 53 Q. Okay. You were told that?

18 A. Yes.

19 54 Q. Yes. But presumably you must have believed that
20 Ms. McCann knew the address and the family name? 10:19

21 A. Yes, I knew that she knew -- I knew that she knew the
22 address. I presume she knew the family name. But I
23 didn't ask that at the time, I didn't need to know
24 that.

25 55 Q. Okay. And was there any reference made by Mr. Cox to 10:19
26 the age of the girl or whether this was believed to be
27 ongoing abuse or past historic abuse?

28 A. I believe that it was that she was underage at the time
29 of the alleged offence.

1 56 Q. Was there --
2 A. There was no age expressed.
3 57 Q. Well, was it expressed to you in terms of being a child
4 or a young girl or can you recollect?
5 A. A young girl, is my memory. 10:20
6 58 Q. And no specifics of the abuse relayed to you?
7 A. No, no.
8 59 Q. Okay. Was there any mention of how the guards or
9 whether the guards had investigated the matter?
10 A. Yes, it was relayed to me that there was -- that the 10:20
11 Gardaí had investigated it.
12 60 Q. And was there anything said to you about the outcome of
13 the investigation or --
14 A. I believe that it was indicated, which it turns out
15 that the DPP determined that there was no case to 10:20
16 answer.
17 61 Q. Yes. But do you recall being told that explicitly by
18 Mr. Cox?
19 A. Yes.
20 62 Q. Okay. Well, in that instance, it might be asked, well, 10:20
21 what was your interest then in trying to get an
22 interview, if you knew that the matter had been
23 investigated and nothing had come of it as far as the
24 Gardaí were concerned?
25 A. Well, sometimes victims of a crime, if the DPP 10:21
26 determines that there is no case to answer, victims of
27 crimes do sometimes feel aggrieved and they do
28 sometimes want to talk about it.
29 63 Q. Yes.

1 A. As I said, we don't -- I mean, I wouldn't know -- I
2 wouldn't have known it then what we could have got. We
3 could have got an interview, and as I said, we may have
4 just gleaned information from the family that might
5 have been germane to the motivation of McCabe, we might 10:21
6 have learned more about what was going on above in that
7 district, Garda district where there was a lot of
8 trouble.

9 64 Q. Yes. You referred to the issue there of how people
10 react, victims react when there has been an 10:21
11 investigation perhaps and no prosecution. Was it
12 conveyed to you that it was believed that the girl was
13 unhappy with the investigation or that there were
14 issues arising from that?

15 A. That information was not conveyed to me at the time. 10:22

16 65 Q. Was there any issue the investigation, the fact of it
17 had been recorded on the Gardaí's Pulse system?

18 A. That was not discussed.

19 66 Q. And there was some discussion about sending a
20 photographer, I think, is that right? 10:22

21 A. That was not -- that conversation was not with me, I
22 saw that in the statement but that conversation was not
23 with me, so it wasn't a matter discussed. I
24 generally -- the reason why it was probably not
25 discussed with me, I am not a family of silhouette 10:22
26 photographs. So the news editor would have known that
27 would not have been probably a good idea to suggest.

28 67 Q. But certainly the news editor, that is something that a
29 news editor would and could and in this case did

1 consider?

2 A. He may have considered it.

3 68 Q. Well, are you unaware that it was considered?

4 A. Yes, I'm unaware. At that time I was unaware that it
5 had been considered, if it was considered. I don't 10:22
6 know that it was considered.

7 69 Q. Pardon?

8 A. I don't know that it was considered. It wasn't
9 conveyed to me that it was considered.

10 70 Q. You see, you were asked by the investigators about 10:23
11 this, and at page 3765, at line 77, you say:

12

13 "Debbie went to try to meet Ms. D. She travelled by
14 herself. In Alison's statement to the Tribunal, there
15 was a discussion that Debbie might take a photographer 10:23
16 with her to take a silhouette photograph. We decided
17 not send a photographer. As Ms. D would never be
18 identified in any story, there would be little point in
19 sending a photographer."

20 10:23

21 Do you recall saying that?

22 A. I recall saying that to the Tribunal, yes.

23 71 Q. Okay. Well, that seems to be clear on the point that
24 you were involved in and made a decision not to send a
25 photographer? 10:23

26 A. Yes, that does sound like I was involved in the
27 conversation. My recollection is that I was not -- did
28 not have a discussion about sending a photographer.
29 Obviously I said that to the Tribunal, but right now --

1 72 Q. Pardon?
2 A. I do not recall having a conversation about sending a
3 photographer. I would not like to have sent a
4 photographer. Perhaps I did have a conversation about
5 sending a photographer. 10:24
6 73 Q. Yes. I mean, I can go into the details and we can look
7 at the original of the statement, but you signed every
8 page of that statement?
9 A. Yes.
10 74 Q. And do you dispute that you said that -- 10:24
11 A. I don't dispute -- I don't dispute that I said that.
12 75 Q. -- "we decided"? And will you agree the statement was
13 read over to you?
14 A. That's correct.
15 76 Q. Okay. And our investigators normally give an option to 10:24
16 allow a party taking -- or giving a statement to
17 consent to the audio recording of it, did you agree to
18 that? I think you did consent to it?
19 A. I consented to that.
20 77 Q. Okay. I'm just concerned, do you stand by what you 10:24
21 said or is it your evidence now that you had no part
22 in --
23 A. No, I stand by what I said in my statement. Sorry,
24 I've clearly misremembered, the expression --
25 78 Q. All right. And having ruled out, obviously, a 10:25
26 photographer because of this concern about silhouettes
27 or the little value in silhouettes, and you say in the
28 next line:
29

1 "As Ms. D would never be identified in any story there
2 was little point in sending a photographer."

3
4 what did you see the point of the story would be in
5 authorising Ms. McCann to go up? 10:25

6 A. As I said, there is a potential that you may learn more
7 about the controversy up in that -- regarding McCabe.
8 She may have agreed to do an interview. She may have
9 decided to waive anonymity at a later stage, in which
10 case we would take photographs and not a silhouette, 10:26
11 once she was of age. But they are all things we would
12 consider at a later stage. At the first remove was
13 the question of getting up there, agreeing to Debbie to
14 interview the woman, seeing if she could get an
15 interview with the woman and then determining later on 10:26
16 what we could do with that. We may not have got
17 anything. It wouldn't be uncommon for us to send on a
18 story without a guarantee you are going to get a story,
19 which is the nature of Sunday newspapers.

20 79 Q. Yes. Can I just ask you a couple of questions about 10:26
21 the timing. It is certainly your belief that Mr. Cox
22 spoke to you on the day that Ms. McCann had spoken to
23 him?

24 A. Yes.

25 80 Q. And he came to you that evening, perhaps, or afternoon? 10:26

26 A. I would say afternoon.

27 81 Q. And you agreed to allow her to go, and that is standard
28 procedure in your paper?

29 A. That is standard procedure, yes.

1 82 Q. And is that so that you will know what is being done on
2 behalf of the paper, is it, or what stories might be in
3 the fire, as it were?
4 A. Yes, it will be first off so I am aware of what was
5 happening in terms of stories. And also, it is just 10:27
6 standard procedure that we will discuss and I will sign
7 off on most decisions that are made in terms of
8 sending.
9 83 Q. And what's your best recollection of when Ms. McCann
10 went relative to when you had made your decision, did 10:27
11 she go the next day?
12 A. I believe it was the next day.
13 84 Q. And was there any urgency about her getting up there or
14 going the next day?
15 A. I don't recall there was any urgency. There would not 10:27
16 have been any urgency in a story like that because it
17 wasn't vital that we get that story that day to get
18 into the paper. Something as complicated as that, you
19 are very unlikely to be able to turn that around very
20 quickly, so it would be -- we would consider that a 10:27
21 longer term project. And whatever we got, if we
22 decided there was a story, that we could have written,
23 we then obviously would have to go to Sergeant McCabe
24 on that.
25 85 Q. Yes. 10:28
26 A. Which takes its time as well. So there would be no
27 rush on that story. It's a story of a very sensitive
28 nature so it needs careful consideration and it needs
29 time to nurture the story and obviously make sure

1 everything is correct.

2 86 Q. well, obviously you did regard Sergeant McCabe as a
3 very topical issue --

4 A. Yes.

5 87 Q. -- generating a lot of publicity? 10:28

6 A. Yes.

7 88 Q. And was that a factor in your decision to send
8 Ms. McCann up?

9 A. Yes. Because he was in the news, this was an
10 allegation regarding somebody who was in the news, so 10:28
11 he was somebody of value, shall we say.

12 89 Q. Yes. And was it conveyed to you that there could be a
13 lot of interest in the story, there is potentially a
14 big story?

15 A. well there would have been interest in the story, yes. 10:29

16 90 Q. And may I take it that you would have considered that
17 there might be other papers similarly interested in the
18 story?

19 A. Perhaps, yes. I'm sure they would have, yeah.

20 91 Q. And was there any indication given to you that there 10:29
21 were, in fact, other reporters considering following up
22 this story?

23 A. No, no, no indication of that.

24 92 Q. But was it pitched to you on the basis that this could
25 be or would be an exclusive story? 10:29

26 A. No, it wasn't pitched in that way.

27 93 Q. Okay. Mr. Cox, is he still an employee of the paper?

28 A. He is, yes.

29 94 Q. And where is he based now?

1 A. He is based in the office in Dublin.

2 95 Q. In Dublin?

3 A. In Dublin, yes.

4 96 Q. Okay. So he is available to give evidence if required?

5 A. He is, yes. 10:29

6 97 Q. Did you discuss this with anyone else in the paper then
7 at the time?

8 A. No.

9 98 Q. So you didn't discuss this with Mr. Hamilton,
10 Mr. Sebastian Hamilton? 10:30

11 A. No.

12 99 Q. And on the day, you believe that Ms. McCann phoned
13 Mr. Cox after the visit, is that correct?

14 A. That's correct.

15 100 Q. And when did Mr. Cox tell you of the outcome of the
16 visit? 10:30

17 A. My understanding, very shortly after the phone call
18 with Ms. McCann, he would have come in to me pretty
19 much straight away.

20 101 Q. But do you think on the same day? 10:30

21 A. Yes.

22 102 Q. Okay. And would that be normal?

23 A. That would be normal.

24 103 Q. All right. Okay. Now, Ms. McCann originally told the
25 Tribunal that she believed the visit might have been
26 perhaps on the 14th February or perhaps the 21st
27 February. Have you any knowledge of that? 10:30

28 A. Can you repeat that?

29 104 Q. Of when the visit might have been?

1 A. No, I don't, unfortunately. I think late February,
2 early March.

3 105 Q. And at a later stage, she seemed to believe that those
4 two dates that she'd given might be doubtful, because
5 she referred to an article she had written concerning a 10:31
6 welfare claimant in Longford on the 22nd February?

7 A. Yes.

8 106 Q. Was that a story that you had authorised also?

9 A. The story in Longford?

10 107 Q. Yes. 10:31

11 A. I would have, yes. Yes.

12 108 Q. Okay. And I mean, Longford isn't, or certainly parts
13 of Longford aren't very far away from Cavan; is it
14 possible that you authorised the story in and around
15 the same time? 10:31

16 A. I don't recall but it's possible, yes.

17 109 Q. would it be common for a journalist to keep notes in
18 relation to a task such as you had authorised?

19 A. I don't know, I don't -- I don't have much dealings
20 with the reporters in terms of their day-to-day 10:32
21 business. What notes you would expect them to keep is
22 when they do go to the door, for example, and they do
23 -- sorry, if they engage with an individual of
24 interest, then they have -- they interview them or have
25 a brief conversation with them, I expect that there is 10:32
26 notes of that. But in relation to the efforts to talk
27 to Ms. D, nothing came of that, so, I suspect that is
28 why there are no actual notes.

29 110 Q. well, did you see that something did come of it via

1 another reporter?

2 A. I saw that, yes.

3 111 Q. At the time?

4 A. Well, that was obviously later, was that correct?

5 112 Q. Well, I am talking about in April 2014, did you notice 10:32
6 in April 2014 that a reporter had got a story from
7 Ms. D?

8 A. I did notice that, yes.

9 113 Q. And was there any bit of regret, well, look, that is
10 the story I could have got and published? 10:33

11 A. No. No, because we made an effort to get the story, we
12 made an effort to interview the girl, and they weren't
13 willing to do so, so that was it.

14 114 Q. And do you know who Ms. McCann got the story from?

15 A. I do not. 10:33

16 115 Q. Did you ever inquire?

17 A. No. I never -- I have never asked Debbie McCann
18 for her sources.

19 116 Q. And are your reporters issued with calling cards,
20 visiting cards or -- 10:33

21 A. They have business cards, yes.

22 117 Q. Business cards. At the time, had they?

23 A. Yes, they would do. They still do.

24 118 Q. They still do. And in relation to Mr. Hamilton, what
25 position was he in at the time? 10:33

26 A. Mr. Hamilton?

27 119 Q. Yes.

28 A. He was group editor of Associated Newspapers.

29 120 Q. And I think you've told the Tribunal investigators that

1 you have no other knowledge or evidence yourself in
2 relation to any of the other terms of reference, is
3 that right?

4 A. That's correct.

5 121 Q. But were you aware of rumours circulating in relation 10:34
6 to Sergeant McCabe yourself at the time?

7 A. The expression that has been going around is that there
8 were rumours in the ether, but I would have no
9 recollection of anybody coming to me saying allegations
10 are being made against Sergeant McCabe. 10:34

11 122 Q. Yes. As a matter of practice, do you go out and about
12 as editor?

13 A. As a matter of practice, I absolutely do not. I am
14 very much office-based. I'm not one who spends a lot
15 of time in the company of politicians or other 10:35
16 journalists. I very much tend to take the belief that
17 I let the paper speak for itself and I just concentrate
18 on editing the paper from the office.

19 123 Q. You don't go chasing stories yourself?

20 A. No, I do not. 10:35

21 124 Q. Or seeking interviews?

22 A. No, I do not.

23 125 Q. Or touching base with those in public life?

24 A. No, not at all. I know very few people in public life,
25 in terms of politicians that is. 10:35

26 126 Q. And Gardaí?

27 A. That's a style of editorship that I adhere to.

28 127 Q. And do you have contacts within the Gardaí?

29 A. No, I do not.

1 128 Q. Have you approached the Press Office on any occasion?
2 A. Never once.

3 129 Q. And what had you heard in the ether, can you recollect?
4 A. That there was -- that there was more -- the
5 expression, there was more to the McCabe story than met 10:35
6 the eye. It was that type of low level of insinuation,
7 of innuendo, but I heard very little of that, to be
8 quite frank.

9 130 Q. Yes. And are you in a position to say when you first
10 heard that or recall hearing it at any particular point 10:36
11 in time?

12 A. No, no, I don't.

13 131 Q. And is this something you heard other than from
14 Ms. McCann or did you hear if from Ms. McCann?

15 A. I never heard it from Ms. McCann. 10:36

16 132 Q. You have never spoken to her about this, have you?
17 A. No, I didn't, no, not in relation to the allegations --
18 sorry, the rumours. Obviously when this story was
19 brought to my attention, then I was clearly made aware
20 of an allegation. Prior to that, it was murmurings, 10:36
21 shall we say, but no specifics. I'm afraid I really
22 have no specifics on it.

23 133 Q. And you didn't consider, did you, whether there was
24 some other way into the story after hearing back
25 through Mr. Cox from what had happened? 10:36

26 A. Absolutely not, no. Once we had made an effort to talk
27 to Ms. D and that came to nothing, I decided that was
28 the end of that, and in fact, shortly afterwards,
29 Debbie McCann went on maternity leave. There was far

1 bigger stories happening in relation to malpractice
2 within the Gardaí and we had to focus on those and we
3 continued to do so, and we continued to cover the
4 McCabe story, writing numerous stories that were very
5 positive, positive towards McCabe. 10:37

6 134 Q. And I think you confirmed to our investigators that you
7 never either had sight of the Garda investigation file
8 or a copy of it or nor were you aware of any journalist
9 who had sight or possession of the file, is that right?

10 A. That's correct. 10:37

11 MR. McGUI NNESS: Thank you. Perhaps you'd answer any
12 other questions.

13

14 THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL:

15 135 Q. MR. McDOWELL: Briefly, Michael McDowell is my name and 10:37
16 I am one of the counsel appearing for Sergeant McCabe.
17 When you were originally informed that Ms. McCann was
18 interested in this story, am I to understand that you
19 had no idea about the identity of Ms. D?

20 A. I had no idea about the identity of Ms. D at that 10:38
21 stage.

22 136 Q. And at that stage, did you understand that she did know
23 the identity of Ms. D?

24 A. I understood that she did, yes.

25 137 Q. And did you ask any questions in relation to her means 10:38
26 of knowledge?

27 A. No, I did not.

28 138 Q. You understood the situation to be that she had never
29 spoken to Ms. D at this stage, is that right?

1 A. That's my understanding.

2 139 Q. But that somebody, somewhere, had told her the identity
3 of this person to whom she proposed to make a visit, is
4 that right?

5 A. That would be the case, yes. 10:39

6 140 Q. And in your editorial role, did you not consider it
7 reasonable to inquire as to her means of knowledge?

8 A. No, not at that early remove.

9 141 Q. Well, when it came to discussing whether a photographer
10 would accompany her, you knew that this story was 10:39
11 maturing into something which could develop into
12 something --

13 A. Well, I wouldn't think it would be maturing. I would
14 think it was a very long way from ever becoming a
15 story. 10:39

16 142 Q. Yes, but if you were sending a photographer there, or
17 you were thinking about sending a photographer there or
18 debating the issue, put it that way, at that stage
19 surely you must have been concerned at the possible
20 legal implications of publishing such a story? 10:39

21 A. That was always a consideration. I mean, there would
22 be little point in sending if there wasn't the
23 possibility a story at some stage could be written, but
24 as I did say earlier there's also, part of our
25 consideration was that we may merely have learned some 10:40
26 information that might have been useful at a later
27 stage regarding the controversy involving the Gardaí in
28 that part of the country.

29 143 Q. You see, I'm wondering why you wouldn't, in your role

1 as editor, and bearing in mind the legal implications
2 of publishing a such a story, ask Ms. McCann as to
3 whether -- as to why she believed she knew the identity
4 of the person and on what basis she was going to
5 doorstep this person?

10:40

6 A. If information like that is brought to my attention, I
7 merely give the okay. We had a brief conversation -- I
8 had a brief conversation with Robert Cox about how much
9 he claimed he knew from talking to Debbie McCann, and
10 just on that information, I thought it was -- I thought
11 it was worth sending, just to see what was behind the
12 allegation, on the off-chance you may get an interview.
13 You may not get an interview you but you may glean
14 information that may be useful at a later point. I
15 didn't commit much to it at that point.

10:41

10:41

16 144 Q. Let's take this in stages. There's two things. There
17 is first of all, the idea of the door-stepping a woman
18 and putting it to her that she had been the victim of a
19 sexual assault, so that's the first thing you have to
20 think about, isn't it?

10:41

21 A. Yes.

22 145 Q. Because you had no means of knowing whether this
23 allegation was true or false, isn't that right?

24 A. That's correct.

25 146 Q. So you are sending out a reporter to ask somebody, who
26 she has never met before, whether she was the victim of
27 a sexual assault, is that right?

10:41

28 A. That's correct.

29 147 Q. And just in those circumstances, can you indicate,

1 before you would authorise a reporter to do that, to a
2 perfect stranger, would you not -- would you and
3 Mr. Cox not inquire why do you think this woman was
4 assaulted and on what basis are you suggesting that she
5 should be door-stepped? 10:42

6 A. Well, she -- I was satisfied that she had -- the
7 information she had -- the information she had was --
8 she was comfortable with the information she had. I
9 didn't interrogate it any further. I was quite happy
10 to send. Any discussions we would have about the 10:42
11 nature of the interview or what we may have gleaned
12 would be had at a later stage.

13 148 Q. Well, this was a very substantial intrusion into
14 somebody's privacy, as you understood it?

15 A. Yes. I have -- 10:42

16 149 Q. Sorry, go ahead.

17 A. I'd have confidence in Debbie McCann as a senior crime
18 reporter of ours, to actually -- to do the right job,
19 to go up there with sensitivity, get what she could and
20 then we would have a discussion later on in terms of 10:43
21 what she had secured.

22 150 Q. But we have only got to the point where she says she
23 believes that she knows the identity of a person who
24 had been sexually assaulted by Sergeant McCabe, isn't
25 that right? 10:43

26 A. Yes.

27 151 Q. She had no details of the sexual assault, had she?

28 A. I'm not entirely sure. I only base my decision to send
29 based on what Robert Cox told me.

1 152 Q. You see, the point I'm asking you is: Could this have
2 been a rape case or could it have been on the scale of
3 things, at the very other end of the spectrum, I will
4 use the term, a groping case; you had no idea of the
5 nature of the offence that Ms. McCann suspected had 10:44
6 been committed, is that right?

7 A. That's correct.

8 153 Q. So it could have been entirely trivial?

9 A. It could have been, yes.

10 154 Q. And yet you were going to send a reporter to doorstep a 10:44
11 person, to inquire as to the -- as to whether she had
12 been sexually assaulted, and as to the seriousness of
13 the assault, is that right?

14 A. That's correct.

15 155 Q. And I come back to the question. Why didn't you 10:44
16 inquire of a reporter who was going to intrude into a
17 woman's privacy, as to the reliability and the
18 substance of the information on which she was going to
19 act in this way?

20 A. Because I would have confidence that Debbie McCann's 10:45
21 source would be good and she wouldn't come lightly with
22 a story like that unless she was confident that her
23 source was strong in this matter. And I'd confidence
24 in sending her based on what she told Robert Cox.

25 156 Q. But did you know what she told Robert Cox? 10:45
26 A. No, I do not. All I have -- all I had was the --
27 Robert Cox, what Robert Cox told me Debbie told him.

28 157 Q. And what did he tell you about her -- the nature of the
29 information she had and its source?

1 A. That a young girl had made an accusation against Garda
2 McCabe a number of years ago, that it had been
3 investigated by the DPP and the DPP determined there
4 wasn't sufficient a case to answer, that's as much as I
5 knew. But I felt that allegation was worth exploring, 10:46
6 not with the commitment to writing a story, just seeing
7 what it is that we could ascertain.

8 158 Q. I see.

9 A. There may have been an interview, there may not have
10 been an interview granted, we may have got nowhere, as 10:46
11 the case was, or we may, as I say, may have gleaned
12 information that hitherto we were not aware of in
13 relation to the Garda McCabe scandal. That, to me, was
14 worth pursuing. As it turns out, nothing came of it.

15 159 Q. Yes. 10:46

16 A. We did not print anything. We moved on, we never
17 discussed it again.

18 160 Q. Well, you see, the point that I'm putting to you is
19 that in sending a reporter to confront Ms. D with this
20 information, that was a serious step in itself, was it 10:47
21 not?

22 A. It was a serious step, but we -- that wouldn't be
23 uncommon, we do that regularly. This is nothing out of
24 the ordinary, from the nature of the stories that we
25 write, we do a lot of investigative reporting. And 10:47
26 sometimes we are provided with information from a
27 source or from a whistleblower that might not have a
28 huge amount of detail but we will commit at the
29 earliest remove to examining what we have, try to

1 explore it further, get more information, get more
2 documentation, whatever we can to see if there is any
3 substance to the story, if there is a story, before
4 ever committing to writing a story.

5 161 Q. And did you assume that Ms. McCann's information, which 10:47
6 you had confidence in, came from a Garda source?

7 A. I don't know -- I don't know what -- I don't know -- I
8 don't know who her sourcing was on that.

9 162 Q. No, I'm asking you did you assume that?
10 A. I don't recall what I assumed. I'm not sure if I 10:48
11 assumed anything.

12 163 Q. Well, let's take -- let's look at the possibilities.
13 You had no reason to believe that Ms. D or her family
14 was the source of this information, isn't that right?

15 A. That's right. 10:48

16 164 Q. So it had to come from somebody other than the alleged
17 victim of this sexual assault?

18 A. Yes, as a crime correspondent, it is most likely that
19 the sourcing came from Gardaí, a Garda source.

20 165 Q. That is the point. 10:49
21 A. Sorry, I accept that.

22 166 Q. Because who else would know about the DPP's directions
23 and things like that? So you believed that Ms. McCann
24 had information from An Garda Síochána to this effect,
25 is that right? 10:49

26 A. It's possible.

27 167 Q. No, it's more than possible, it's probable, isn't it?
28 You have just agreed it's probable.

29 A. It's likely, yes.

1 MR. McDOWELL: Yes. Thank you.

2 MR. MICHAEL O' HIGGINS: No questions.

3

4 THE WITNESS WAS CROSS-EXAMINED BY MR. GILLANE:

5 168 Q. MR. GILLANE: Can I just ask you one question, please? 10:49

6 I think, Mr. O'Donnell, the Tribunal investigators also
7 asked you your opinion, given your background as a
8 newspaper editor, on the effect of waiver of privilege
9 in relation to revealing sources, isn't that right.

10 A. Sorry, can you repeat that? 10:50

11 169 Q. Sorry, I hope the microphone is picking my voice up. I
12 think the Tribunal investigators asked you, having
13 regard to your background as a newspaper editor, what
14 your view was or your opinion was in relation to a
15 waiver when that comes to the revelation of sources, is 10:50
16 that right?

17 A. Yes.

18 170 Q. And I think you expressed the view that you didn't
19 think that that set of circumstances released a
20 journalist from their obligation not to reveal sources, 10:50
21 is that right?

22 A. That's correct.

23 MR. GILLANE: Thanks very much.

24

25

26

27

28

29

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

- 2 171 Q. MR. DOYLE: Mr. O'Donnell, Declan Doyle is my name. I
3 appear on behalf of Alison O'Reilly. Just a couple of
4 things. I respectfully adopt a lot of the questions
5 that Mr. McDowell asked you, but you said something 10:50
6 there in your direct evidence in response to
7 Mr. McDowell, as a crime correspondent it is most
8 likely that the source was a garda, and can I just ask
9 you a couple of general questions before asking you a
10 couple of specific things. would you like to amplify 10:51
11 that statement a bit; what does that mean?
12 A. what specifically?
13 172 Q. As a crime correspondent, I would accept that the most
14 likely source was the Gardaí, is that a general
15 statement of affairs? 10:51
16 A. I think that would be fair to say. I think crime
17 correspondents, they have a great deal of contacts
18 within the Garda Síochána, as in politicians -- or
19 sorry, political editors would have a great deal of
20 their contacts would be politicians. 10:51
21 173 Q. It's where crime correspondents get most of their
22 material, isn't it?
23 A. In a lot of instances, yes.
24 174 Q. I mean, you turn on the television every night and you
25 hear one line of inquiry being followed is A B, C and 10:51
26 so on?
27 A. Yes.
28 175 Q. So it is, if you like, if it's not the victims of
29 crime, it is the prosecutors of crime, where crime

1 correspondents, A, get their material, and B, if you
2 like, try to stand up the stories, isn't that right?

3 A. A lot of the times, yes, there are exceptions
4 obviously. There are interested groups, victims'
5 groups that sometimes come to reporters saying that 10:52
6 they feel that the story should be highlighted or this
7 issue should be highlighted.

8 176 Q. And in the present case, Mr. Cox came to you, he was
9 the news editor and you were the -- what was your title
10 at the time, sorry? 10:52

11 A. Editor.

12 177 Q. Editor. And did you take this pitch for a story or the
13 search for a story to Mr. Sebastian Hamilton or did you
14 make the final decision on it?

15 A. I made the final decision on it. 10:52

16 178 Q. And would that be regular; you wouldn't involve the
17 group editor?

18 A. No. I am responsible for the editorial output. I have
19 full responsibility for the editorial output in The
20 Mail on Sunday, so I don't really have discussions, I 10:53
21 don't have many discussions with Sebastian Hamilton
22 regarding what goes into the Sunday paper.

23 179 Q. I don't want to go over ground already done by
24 Mr. McDowell, but whatever was given to you or pitched
25 to you by Mr. Cox it was sufficient to permit the very 10:53
26 serious steps outlined by Mr. McDowell, isn't that
27 right?

28 A. By sending a reporter?

29 180 Q. Yes.

1 A. The information I had was -- I felt was sufficient
2 enough to send.

3 181 Q. And the likely source for that information was the
4 guards, isn't that right?

5 A. The likely source of that was likely to be the guards, 10:53
6 yes.

7 182 Q. And I don't have the precise words from the transcript
8 here, but you said that Maurice McCabe, yes, he was in
9 the news, he was on the headlines, you agreed with
10 Mr. McGuinness when he, I think, used the word 10:54
11 'topical', Garda whistleblowers and the quashing of
12 penalty points, this was a big story around February,
13 March, April, 2014, wasn't it?

14 A. That's correct.

15 183 Q. It was a national story and the biggest part of that 10:54
16 story was Maurice McCabe, isn't that right?

17 A. That's correct.

18 184 Q. So the potential undermining of Maurice McCabe's story
19 and his credibility, would have been a very explosive
20 story, isn't that right? 10:54

21 A. Depending on what story you wrote.

22 185 Q. Well, a Garda whistleblower is a paedophile, would that
23 have been an explosive, sensational story?

24 A. Well, I do not know, I cannot say that could have been
25 a story or that would have been the story, because we 10:54
26 never did a story.

27 186 Q. No, I know you didn't, but the story that you were
28 investigating was a story to the effect that Maurice
29 McCabe either was or had been accused of or something,

1 or was being investigated for serious sexual crime,
2 isn't that right?

3 A. Well, you see -

4 187 Q. That was the story that was pitched at you?

5 A. No, it wasn't. The story pitched at me was there was 10:55
6 an allegation in relation to McCabe and that a young
7 woman had made this allegation. That is what was
8 there.

9 188 Q. An allegation of what it?

10 A. But it doesn't mean we would have been in a position to 10:55
11 get a story or that story over the line.

12 189 Q. Sorry, the potential story, I don't want to split hairs
13 with you, the potential story being pitched at you by
14 Robert Cox from Debbie McCann was that Maurice McCabe,
15 there are allegations of sexual crime against Maurice 10:55
16 McCabe, isn't that right?

17 A. That is what was pitched, yes.

18 190 Q. And it was pitched at you with a sufficient level of
19 seriousness for you to permit a reporter to go off and
20 commit these -- sorry, commit, is a bad word -- to go 10:55
21 and potentially invade a delicate woman's privacy,
22 isn't that right?

23 A. We felt it was worth sending --

24 CHAIRMAN: Just for the record, by the way, he never
25 said crimes, he said sexual impropriety, I am referring 10:56
26 to the plural.

27 MR. DOYLE: Thank you, Chairman.

28 191 Q. Sexual impropriety, I take it you would accept an
29 allegation of sexual impropriety from the whistleblower

1 Maurice McCabe, that is also a big story or potentially
2 a big story, isn't that right?

3 A. If that was a story that ever came to fruition, but I
4 didn't commit to writing a story, I didn't commit to --
5 I didn't frame in my head what story it is that I 10:56
6 wanted. I mean -- and I use that expression again, and
7 it was -- it's a bit crude but it was a scoping
8 exercise: Let's go up, let's see what we can glean,
9 let's see what we can learn, we may never be able to
10 get the story over the line. The DPP determined there 10:57
11 was no case to answer, we may not have been able to get
12 it over the line. We could have put all of this to
13 Sergeant McCabe but what Sergeant McCabe could come
14 back with could have ended that story. We may not have
15 ever got a story over the line regarding that, even if 10:57
16 she spoke to us. We committed -- that's just --

17 192 Q. I appreciate, I am not seeking to undermine that in any
18 way; I am just, I suppose, trying to get you to accept
19 that this was at least the germ of or the potential for
20 a very big story, if it all came to fruition, would you 10:57
21 accept that much?

22 A. That would be fair.

23 193 Q. And you sent the journalist up. And when she came
24 back -- I am just trying to get to the bottom of, you
25 said we did investigate; well, did you really? 10:57

26 A. Well, we did.

27 194 Q. You sent one journalist who had the door slammed in her
28 face --

29 A. Yes.

1 195 Q. -- and then you dropped the story, a potentially very
2 big story. Tell us a bit about that decision.

3 A. If the person, the only person who can stand up the
4 allegation, could give details of an allegation, if
5 that person is not prepared to talk, as far as I am 10:58
6 concerned that is the end of the story. There is
7 nothing more -- we would have difficulty getting that
8 story over the line anyway. If the girl or the family
9 are not willing to engage, that is the end of that
10 story. We left it at that and never discussed it 10:58
11 again.

12 196 Q. Just never pursued it again?

13 A. Never pursued it again.

14 197 Q. Even as the whole Maurice McCabe story became even
15 bigger and bigger? 10:58

16 A. Correct.

17 198 Q. You never thought about revisiting that story?

18 A. Absolutely not, sincerely, absolutely not. There was
19 the story -- the story escalated further from the point
20 where we were discussing Ms. D to an astonishing -- 10:58

21 199 Q. Was it ever -- did it never come back to you, to your
22 desk via Debbie McCann or Robert Cox?

23 A. No, it did not. And it's important to say that Debbie
24 went on maternity leave very shortly after that. But
25 no, it never came up for discussion again. 10:59

26 200 Q. And does it surprise you that in May of that year, when
27 Ms. McCann was out on maternity leave, she was sending
28 texts to my client describing a seriously fucked up
29 woman at the centre of all of this, does that surprise

1 you?
2 CHAIRMAN: I am putting inverted commas around that.
3 MR. DOYLE: I beg your pardon, I tried to put inverted
4 commas. I can read the precise text to you.
5 CHAIRMAN: I know it, but I am not sure it's necessary 10:59
6 to --
7 201 Q. MR. DOYLE: what I am saying is that, I am asking you
8 whether it surprises you, you having put this story to
9 bed, that the principal journalist, the crime
10 correspondent, is still clearly very exercised by the 10:59
11 store?
12 A. Well, I don't know that she was. I mean, I haven't --
13 I have seen one text but I haven't seen it in context.
14 And also, this was a text that a woman sent when she is
15 on maternity leave, it's her -- 11:00
16 202 Q. But you are not doubting her position --
17 A. She wasn't having a conversation as part of her working
18 week, her working life. This was a time when she was
19 on maternity leave. In the context of those texts.
20 203 Q. Are you in any doubt about what the position of your 11:00
21 crime correspondent was in relation to this story?
22 A. You'd have to be clear about that.
23 204 Q. That she had described the praise of Maurice McCabe as
24 gross, the praise in the Guerin Report, that she had
25 described in text messages to her colleague, Alison 11:00
26 O'Reilly, as a seriously messed up, effed up woman, she
27 had used the term disgusting in relation to all this,
28 her position was still, apparently, and we will ask her
29 about this tomorrow, very much along the lines of,

1 there is a victim in the middle of all of this and here
2 is Maurice McCabe getting all this praise; was that
3 ever communicated to you as editor?

4 A. That was never communicated to me. And she wasn't
5 texting me when she was on maternity leave. So, I 11:01
6 mean, obviously this language, emotive language you are
7 using, this aggressive language you are talking about
8 in relation to the texts that she sent, to the best of
9 my knowledge that is all at a time when she was on
10 maternity leave, not in her role as a crime 11:01
11 correspondent for the paper. It certainly gave no
12 indication to me of any position or attitude towards
13 McCabe. I don't deal with that anyway. Sorry, I mean
14 there was no occasion whereby she ever raised any of
15 that, no indication of her attitude towards McCabe to 11:01
16 me.

17 205 Q. And if you like, her story having been shut down or
18 never having made it to the paper --

19 A. No, sorry, it wasn't shut down. She asked to be sent
20 to investigate with the intention of talking to Ms. D, 11:02
21 as all communication as you have seen is her talking
22 about talking to Ms. D. She was unable to talk to
23 Ms. D, that was the end of it. That was the end of the
24 story. We never pursued it. We never published a
25 thing about it. We never came back to it again. 11:02

26 206 Q. Yes. Lest it come up in any other circumstance, I
27 better ask you if you'd like to comment that, on the
28 fact that Ms. O'Reilly gave evidence to the Tribunal
29 that Debbie McCann told her in very clear and quite

1 graphic terms, A, of a conversation that took place
2 between Debbie McCann and Ms. D, and B, the state that
3 Ms. D was in during that conversation and so on, were
4 you -- had you any awareness of that?

5 A. No. 11:02

6 207 Q. And have you any comment to make about that?

7 CHAIRMAN: Even if he does have a comment to make,
8 Mr. Doyle, I am going to ignore it. He never heard it
9 and that's fine. That is not to doubt either Debbie
10 McCann or Ms. O'Reilly, but it's not going to help me. 11:03

11 MR. DOYLE: Thank you, Chairman. I was only -- in the
12 event.

13 CHAIRMAN: what comment would he make -- and of course
14 I accept the principal that you have put forward,
15 Mr. Doyle, that it is a big story if the public find 11:03
16 out that those who are their Gods have feet of clay.

17 MR. DOYLE: Thank you, Chairman.

18 208 Q. Just one other thing, Mr. O'Donnell. Again, do you
19 have anything to confirm dates? I think you said you
20 didn't, isn't that right? 11:03

21 A. That's correct.

22 209 Q. Lest it arises, Ms. O'Reilly's position is that she was
23 not in Cavan on the same date as Ms. McCann, that she
24 attended Cavan I think a week later, she thinks the
25 28th February, which was certainly a week after the 11:03
26 attendance by Debbie McCann; you have no knowledge one
27 way or the other about that, is that right?

28 A. I wish I had. I am afraid I don't. We have searched
29 records, we cannot find specific date unfortunately.

1 CHAIRMAN: And Mr. Doyle, I must say I am a wee bit
2 puzzled about that, I am just looking for your help on
3 this. Because I mean I am not sure that it matters. I
4 mean, they clearly didn't travel up in a convey or in
5 the same car and one split off and walked to one place 11:04
6 and the other to the other. Why could it ever platter?
7 And besides, I don't think I am ever going to sort out
8 the particular date in my head.

9 MR. DOYLE: I think only insofar as it was put to
10 Ms. O'Reilly by the Daily Mail that she was wrong about 11:04
11 this, thereby rendering her evidence less credible.

12 CHAIRMAN: Well, yes, that can be a technique, that a
13 small and irrelevant detail is supposed to explode a
14 witness's testimony but sometimes that is impressive
15 and sometimes you are better off just ignoring it. 11:04

16 MR. DOYLE: Thank you.

17 CHAIRMAN: Thank you. Did you have any questions,
18 Mr. Dignam?

19 MR. DIGNAM: I just have two areas that I wanted to ask
20 Mr. O'Donnell about. 11:05

21
22 THE WITNESS WAS CROSS-EXAMINED BY MR. DIGNAM:

23 210 Q. MR. DIGNAM: Mr. O'Donnell, my name is Conor Dignam. I
24 appear on behalf of An Garda Síochána and I just have
25 two areas that I want to cover very briefly with you. 11:05
26 The first is, under questioning by Mr. McDowell you
27 accepted that it was likely that Ms. McCann's source
28 was a Garda source, and I think then you were
29 questioned in similar terms by, or along similar lines

1 by Mr. Doyle, but Mr. Doyle put it in terms that you
2 had accepted that it was likely that the source was the
3 guards. Now, to the extent that it was being
4 suggested, and I don't think this was being suggested,
5 but to the extent that it may have been suggested by 11:05
6 Mr. Doyle, that it was the guards as in An Garda
7 Síochána corporately, that was a source, is that what
8 you are accepting or merely that it was a source from
9 within An Garda Síochána?

10 A. A source within An Garda Síochána. 11:06

11 211 Q. Now, can I just ask to you look at page 3774 --
12 CHAIRMAN: Yes, I mean, I am not sure, is it the kind
13 of company law theory, the controlling mind of the
14 company? No, he never said that, and you are right to
15 point that out. 11:06

16 MR. DIGNAM: I just wanted to clarify that.
17 CHAIRMAN: Yes. It was someone within, someone wearing
18 a blue uniform.

19 MR. DIGNAM: Yes. And I think that was the way the
20 question was put by Mr. McDowell. 11:06

21 CHAIRMAN: Yes. That's fine.

22 212 Q. MR. DIGNAM: If I could just ask you to look at page
23 3774, Mr. O'Donnell. This is your interview with the
24 investigators --

25 A. Yes. 11:06

26 213 Q. -- on behalf of the Tribunal. And you are asked a
27 question at 225 which is right at the beginning of
28 that -- at the top of that page, that:
29

1 "I have been asked in the context of my position as a
2 newspaper editor that when a journalist pitches a story
3 that may be damaging to an individual's reputation what
4 checks and balances are carried out through the
5 reporting line from the journalist to deputy editor, 11:06
6 editor, etcetera, to ensure the accuracy and integrity
7 of any such published article."
8

9 And you give an answer there. If you wouldn't mind
10 just explaining to the Tribunal what the system is or 11:07
11 what checks and balances are in place.

12 A. Well, first off, if a reporter comes to a news editor
13 with a story, he will provide the news editor with
14 certain details, then the news editor -- that could be
15 a conference or that could be later on in the week. 11:07
16 The news editor then will come to me with a brief
17 outline of what that story may be and we will have a
18 shorter discussion about what potentially we could do
19 with that story. That depends. Sometimes it's a
20 question of just go ahead. It may be a story that 11:07
21 there is not a lot of detail, there is no guarantee
22 that it will end up being a story, but we will -- I
23 will commit to pursuing it longer term projects. So,
24 longer term pitch. Sometimes the stories are more
25 fully formed so then we will have a discussion about 11:07
26 how we could actually develop that story. Once we send
27 to -- send to -- to interview somebody, we will --
28 well, if a whistleblower, for example, comes to us with
29 information, we talk about sourcing and we talk about

1 whistleblowers, I mean for me the source -- a source or
2 a whistleblower is not the end all and be all. It is
3 only very much the beginning of any investigation. So
4 it's a lengthy process and sometimes it can take weeks.
5 And on one occasion 18 months we worked on one 11:08
6 investigation before we ever got it over the line.
7 That involves a whistleblower providing us with
8 information, us testing, stress-testing the information
9 they provide to us. If a whistleblower makes
10 accusations against a company or individual, we try to 11:08
11 examine the individual or company involved, to see if
12 there is any potential -- is there veracity to what the
13 allegation they are making. We will insist on
14 documentation. So, the more documentation you can
15 have, the better. The more -- it's obviously far 11:09
16 easier to prove an allegation if you have documentation
17 to back up the accusation being made by the
18 whistleblower. And then all through this process we
19 have an in-house lawyer who we will involve at various
20 stages in seeing what lines we could pursuing, seeing 11:09
21 what lines that might be legally problematic down the
22 line. And then finally, and as important as anything
23 else, any allegation that we have, information that we
24 have that may be detrimental to an individual or
25 organisation we take it very serious, we go to the 11:09
26 individual or organisation, we go to great lengths to
27 do so. If we cannot get that person, if we decide to
28 publish this week and we cannot get the individual or
29 the organisation we will hold, and we will hold and we

1 will hold until we are satisfied that we have afforded
2 the person who is accused every opportunity to provide
3 a response. The benefit of a response is that they can
4 pinpoint things that are wrong in the -- in some of the
5 documentation provided, assertions you have made, they 11:10
6 may actually then change tack in that you may be
7 provided with an interview, they may come forward and
8 say, or indeed come clean, and tell you their story,
9 which changes the dynamic of the story that you started
10 at the outset. And that is a process. It is not the 11:10
11 same for every story, but the lengthy or longer term
12 projects that would be the process. But everything has
13 to be stress-tested, you have to prove it's true, get
14 documents, make sure it's fact, make sure it can be
15 proven. 11:10

16 214 Q. Yes. As I understand your evidence, and as I
17 understood your statement in which you have explained
18 that process to the Tribunal at an earlier stage, I
19 think once your story gets to a certain level of
20 maturity, you describe it in your statement as: 11:11

21
22 "Once we have established as many facts as we can to
23 verify the story the next and most critical stage is to
24 put the allegations to the individuals involved. If it
25 is an allegation of a serious nature that is being made 11:11
26 against an individual they have a right and we have a
27 duty to put that allegation to him or her, so that he
28 or she has an opportunity to confirm or deny that
29 allegation."

1 A. Yes.

2 215 Q. And you have explained what the outcome of that process
3 could be and would you confirm that you consider that
4 to be a critical stage in the development and the
5 prepublication of the story? 11:11

6 A. Absolutely vital.

7 216 Q. And I take it that, I think as you have described it,
8 sometimes the person against whom the allegations are
9 being made will give you further detail or will, as you
10 put it, come clean, or presumably will sometimes simply 11:11
11 say that is wrong but you then put that denial on the
12 record in your article, is that right?

13 A. Yes, the benefit of going to somebody sometimes -- I
14 mean, a few years ago we went and found somebody,
15 searched for him in the south of France and confronted 11:11
16 him with a number of allegations and he asked us to
17 step into a coffee shop next door and sat down for two
18 hours and told us his full story, which changed the
19 story that we had.

20 217 Q. And can I take it on that that you considered that it's 11:12
21 important for your article to have, even if it is only
22 a bare denial, that it's important to have in the
23 article or in the story --

24 A. Yes.

25 218 Q. -- together with the allegation or the reporting of the 11:12
26 allegation, the denial in the same story?

27 A. Well, if somebody -- if a serious accusation is made
28 against an individual they are entitled for that
29 information to be put to them and for them to respond.

1 So, yes, absolutely.

2 CHAIRMAN: It's enshrined in legislation now, isn't it,
3 Mr. Dignam, because of the Reynolds v. Sunday Times
4 case. And that led to cases here and also led to I
5 think the libel act, I can't remember what the year 11:12
6 was, 2010, or something like that. But that is the
7 public interest defence, the same as you are entitled
8 to say to someone coming into your house, even though
9 it's wrong, by the way there is somebody who is making
10 the dinner who may well steal your wallet. 11:13

11 219 Q. MR. DIGNAM: And can I take it, Mr. O'Donnell, you have
12 been in the Kerryman, the Examiner, the Daily
13 Telegraph, I think you said, and now with The Mail on
14 Sunday --

15 A. Yes. 11:13

16 220 Q. -- can I take it that the process, it may differ in
17 detail but that the general process, and particularly
18 at that stage of putting the allegations to the person
19 against whom allegations are being made and are going
20 to be reported in the newspaper, is not an unusual one? 11:13

21 A. What is not unusual?

22 221 Q. It's not unusual that you would put -- give the person
23 the subject of the allegations?

24 A. There are no exceptions.

25 MR. DIGNAM: Thank you, Mr. O'Donnell. 11:13

26 CHAIRMAN: Mr. Dignam, I am just a wee bit puzzled and
27 forgive me for being puzzled but you might help me on
28 this. What am I to take potentially out of this? I
29 mean, I know newspapers are supposed to do this, and

1 indeed I have Reynolds v. Sunday Times and one of the
2 things it says is, look, if the story is so urgent that
3 it really in the public interest has to go out the next
4 day there may be an excuse for not contacting the
5 person, but that is a fence I find hard to jump. But 11:14
6 let's suppose there is this and I am familiar with the
7 parameters of it, what am I to take from it vis-á-vis
8 the Gardaí?

9 MR. DIGNAM: I think one of the -- obviously the
10 Tribunal has been established to investigate what 11:14
11 happened, and part of what happened is, how stories
12 gained traction and became big news items and, in fact,
13 how a certain narrative became established in the
14 public mind.

15 CHAIRMAN: Yes. 11:14

16 MR. DIGNAM: It would be obviously a matter for
17 submissions and a matter for the Tribunal to decide how
18 relevant certain issues are, but we have put questions
19 to certain journalists about whether you carried out
20 certain checks, whether you put certain matters to 11:14
21 senior members of An Garda Síochána, such as, for
22 example, the former Commissioner Nóirín O'Sullivan, and
23 the evidence has been that they weren't put.

24 CHAIRMAN: No, I understand. Yes. But then what is
25 the idea? And I'm sorry, if I can try and grasp this 11:15
26 now, it may help. Is the idea that the rumours were
27 there in any event and had nothing to do with the
28 Gardaí and had nothing to do with David Taylor and that
29 the rumours were -- that is A. And a completely

1 separately B, that the rumours were so lacking in
2 credibility that there were no point in putting it to
3 those who were, on the David Taylor case, supposed to
4 be the author of them or supporting them?

5 MR. DIGNAM: well, my question is more directed towards 11:15
6 how particularly -- I don't want to personalise this or
7 individualise this to any particular publication or
8 journalist at this stage, but how from early October in
9 particular of 2014 -- '16, rather, it became an
10 accepted fact that Mrs. O'Sullivan had done what -- had 11:15
11 been involved in the smear campaign without that ever
12 having been put to her, in order to have her denial in
13 place at the very outset of the controversy. And the
14 same comment applies to former Commissioner Callinan,
15 where Superintendent Taylor's story was published at 11:16
16 the very beginning without him being given an
17 opportunity to say that what Superintendent Taylor was
18 alleging was utterly wrong.

19 CHAIRMAN: No, I see your point, Mr. Dignam. Look, it
20 may be that it calls for a submission, I don't know, 11:16
21 but the next thing is: Am I doing a report on the
22 media like a Leveson over in England? I am not sure
23 that I am.

24 MR. DIGNAM: I suppose to maybe put it in one phrase,
25 Chairman, I think you asked in the context of an 11:16
26 earlier module why are we here or how we came to be
27 here, and I think these questions are direct towards
28 that.

29 CHAIRMAN: That's fine. It's a legitimate case to

1 make. Thank you. I am not saying I agree with it.

2 MR. MCGUINNESS: I have nothing further for
3 Mr. O'Donnell.

4 MR. KEALEY: Chairman, Michael Kealey, I have no
5 questions. 11:17

6 CHAIRMAN: Yes. Who are you for in this instance
7 Mr. Kealey?

8 MR. KEALEY: I am for Mr. O'Donnell, the solicitor for
9 Mr. O'Donnell, the witness.

10 11:17

11 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

12 222 Q. CHAIRMAN: Oh, yes, all right. Thank you Mr. Kealey.
13 Mr. O'Donnell, I don't want to engage in an endless
14 puzzle about Woodward and Bernstein and Mark Felt and
15 all that kind of thing and 30 years or not 30 years, 11:17
16 and all the rest of it. I can appreciate very much, if
17 I can just put a few questions to you this way, that
18 even though a source, for instance, says, look, I am
19 the source, I am the sole source, if the journalist
20 knows, for instance, that he is a source but there is 11:17
21 somebody else as well and to say the source is going to
22 reveal that person or is going to reveal an important
23 journalistic methodology of getting information, that
24 that may not be enough. I can appreciate that very
25 much. Now, whether it's valid or not, I can appreciate 11:17
26 that that can be an issue.

27 A. Okay.

28 223 Q. CHAIRMAN: Yes. Just moving then to, many people said
29 in relation to the Watergate matter that it wasn't just

1 Mr. Felt but it was a number of people and like people
2 used to say about Homer, it's not one poet, it's
3 several people and he has been amalgamated into one, if
4 it were the case that there were several people by
5 identifying a particular source and it leading to those 11:18
6 people, again waiver would tend not to have much
7 effect, is that the kind of territory we are in here?
8 A. I'd agree, yes.
9 224 Q. CHAIRMAN: Yes.
10 A. Identification you are talking about. 11:18
11 225 Q. CHAIRMAN: Yes, indeed it is. So you are talking about
12 those two things. But if it is, as -- let's take it
13 for a fact that if it is the source alone and nobody
14 else and there is nothing else to be revealed and there
15 is no journalistic methodology to be revealed, does 11:18
16 accepting where the source has said publicly look, I
17 need the journalist whom I spoke to come forward and
18 talk to me, whom I talked to and spread this rumour to,
19 to support that, otherwise I will be branded a liar in
20 public, does that scenario -- 11:19
21 A. I believe that is a matter for themselves. I think we
22 have to cleave to the principle of source protection.
23 I think there are grave risks with a dilution of that
24 principle.
25 226 Q. CHAIRMAN: And if there is no risk in an individual 11:19
26 case?
27 A. I don't think there can be exceptions, because that in
28 itself is a dilution of the principle.
29 227 Q. CHAIRMAN: Sure. Did Woodward and Bernstein get it

1 wrong?

2 A. I would think that is a matter for themselves. I am
3 not going to sit here and criticise Woodward and
4 Bernstein. I mean, I will never in my lifetime to be
5 honest achieve what they have done in terms of their 11:19
6 contribution to democracy and to the journalistic
7 canon, but that is a matter for themselves.

8 228 Q. CHAIRMAN: So, if you do a really good deed you can do
9 a few bad deeds as well, is that the idea? I am not
10 sure I am getting the drift. 11:20

11 A. Well, maybe you might be a judge of that later on.

12 229 Q. CHAIRMAN: Yes. And then, you have confirmed to us,
13 look, David Taylor didn't speak to me and never spoke
14 to Nóirín O'Sullivan or Martin Callinan. It may be
15 that you have been in their presence or said hello to 11:20
16 you on occasion but they never certainly spoke to you
17 about Maurice McCabe?

18 A. Never.

19 230 Q. CHAIRMAN: And I take it that from that journalistic
20 privilege doesn't apply, where you are saying, look, it 11:20
21 didn't happen?

22 A. I have never met them -- yeah, doesn't apply, doesn't
23 apply, they are not people I have met.

24 231 Q. CHAIRMAN: No, but I mean, if you say well, I had
25 regular meetings with, let us say, A, who is one of, 11:20
26 let's say, 12,000 potential sources, but that person
27 was not my source, that is not a breach of journalistic
28 privilege?

29 A. Well again, there's potential for identification. I

1 mean, obviously if the number is great then it's less
2 likely, but then what is the cut-off point?

3 232 Q. CHAIRMAN: well, there has to be a cut-off point. I
4 agree with you. And as you say, it may be part of the
5 jigsaw that eventually ends to identification. The 11:21
6 example I have given is the board of directors where
7 there are 12 people on the board of directors, there is
8 a leak and all of them are required to sign a waiver
9 but one of them doesn't, so the suspicion immediately
10 focuses in that direction. I can see how there are 11:21
11 serious problems vis-à-vis the freedom of the media and
12 their duty to inquire in that regard, but simply
13 saying, no, it wasn't one out of a very large number of
14 persons, that doesn't seem to engage privilege.

15 A. well, again, it's the risk of the dilution of the -- a 11:21
16 violability of that time-honoured principle of
17 journalistic privilege.

18 233 Q. CHAIRMAN: Sure, yes. No, I appreciate that. Yes.
19 And I get where you are coming from, and thank you,
20 Mr. O'Donnell. 11:21
21 MR. McGUI NNESS: Thank you.

22
23 THE WITNESS THEN WITHDREW

24
25 CHAIRMAN: So that is an hour and 20 minutes for 11:22
26 Mr. O'Donnell.

27 MS. LEADER: The next witness, sir, is Mr. Sebastian
28 Hamilton. His interview with the Tribunal
29 investigators is volume 14, beginning at page 3778.

1 MR. SEBASTIAN HAMILTON, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MS. LEADER:

3 234 Q. MS. LEADER: Mr. Hamilton, I understand that you are a
4 group editor in the Irish Daily Mail, is that correct?

5 A. Yes.

11:23

6 235 Q. Could you outline your career path to that position,
7 please?

8 A. I began my career in journalism with The Sunday Times
9 in 1993, covering mostly politics. I covered politics.

10 Then for the Scotsman Group, from 1997, for three years 11:23

11 I became a news executive with them. In 2002 I joined
12 the Sunday Telegraph as a news executive. I joined The

13 Mail on Sunday as news editor in 2003. In 2006 I was
14 appointed assistant editor of the Irish Daily Mail

15 based in Dublin. I became editor of the Irish Daily 11:24

16 Mail in 2008/9-ish. And in 2013 I became group editor.
17 That role specifically involves me being editor of the

18 Irish Daily Mail with editorial responsibility for the
19 Irish Daily Mail but not the Irish Mail on Sunday,

20 which has its own editor, but I have managerial and 11:24

21 strategic responsibility for both the titles within the
22 company, and I'm a director of the company, the
23 publishing company, DMG Media Ireland.

24 236 Q. And I think you also told the Tribunal investigators
25 that you were an editor of the Irish Mail on Sunday 11:24
26 from July 2012 to January 2013?

27 A. Yes. So that was the last six months of my period as
28 editor of the Irish Mail on Sunday.

29 237 Q. Okay. Now, the Irish Mail on Sunday and Irish Daily

1 Mail are part of the same group, is that correct?

2 A. Correct, yes.

3 238 Q. And as I understand it, the two newspapers report to
4 different editors, is that correct?

5 A. Correct, yes. 11:25

6 239 Q. And the editors, one of them is Mr. O'Donnell, the last
7 witness?

8 A. Yes.

9 240 Q. Yes. So he has editorial responsibility for the Mail
10 on Sunday? 11:25

11 A. Absolutely.

12 241 Q. And you have editorial responsibility for the Irish
13 Daily Mail?

14 A. Correct, yes.

15 242 Q. And that means you, the editor decides what stories
16 appear in the newspaper ultimately? 11:25

17 A. Exactly, yeah.

18 243 Q. Now, you have also some responsibility for the Mail on
19 Sunday, is that correct?

20 A. As I said, on a broader managerial level, so in terms
21 of setting annual budgets across the group, in terms of
22 codes of conduct for journalists across the group. We
23 have a group-wide journalistic code of conduct. And I
24 report to the board of DMG Media Ireland on the
25 financial performance of both the titles. But I'm
26 editorially responsible only for the daily paper. 11:26

27 244 Q. Okay. And is there any occasion, leaving aside this
28 case, that you can think of when an editor for the Mail
29 on Sunday might speak to you in relation to the running

1 of a story in The Mail on Sunday, any occasion at all?
2 A. Well, there are occasions because we share some
3 resources, we have a shared features department. So
4 feature writers from that department write features
5 that could appear in either title. And we discuss 11:26
6 those. We have a seven-day sports department, so there
7 might be discussions about that. And there are
8 instances where, on a particular story, we will share
9 resources, an example would be the death of the -- the
10 murder of Jason Corbett in America by his wife Molly 11:27
11 Martins; we as a group sent one journalist to cover
12 that story, who wrote articles for both papers and
13 occasionally there would be a discussion between myself
14 and Mr. O'Donnell of which item might best appear in
15 which title. But if you are asking about a scenario 11:27
16 where the editor of the Irish Mail on Sunday would come
17 to me to seek approval in any way for material that he
18 wanted to publish in the Irish Mail on Sunday, there is
19 absolutely no requirement for that to happen. It's
20 open to anyone in the organisation to come to me to 11:28
21 seek my advice, but to be honest, you know, we trust
22 our editors to do their job and they do their jobs
23 exceptionally well and that would -- I can't off the
24 top of my head think of an instance where that would
25 have happened in -- certainly in the time I have been 11:28
26 in this role.

27 245 Q. So in the hypothetical situation where an editor of The
28 Mail on Sunday might speak to you about a story, would
29 it in any way reflect the importance of that story?

1 Say, for example, the example you gave us in relation
2 to the murder in America, that is an unusual story, or
3 a big story, and that is an example you gave us --
4 A. Yeah.
5 246 Q. -- of discussing the matter with another editor, so I 11:29
6 wonder would it in any way suggest that the story was
7 an exceptional one in any way or a more sensitive one
8 than normal?
9 A. To be honest --
10 247 Q. Hypothetical example. 11:29
11 A. -- I just think that is a very hypothetical example.
12 With the Jason Corbett story essentially it wasn't the
13 sensitivity of the story so much as simply making
14 editorial judgements about which angle or which piece
15 of information or which story would be best for which 11:29
16 title on a particular day. So you are making editorial
17 judgements about, you know, what is going to appeal to
18 readers most in a particular way. It's not a
19 reflection in any way, really, of the kind of delicacy
20 or sensitivity of a story, and beyond that, I think it 11:29
21 is a hypothetical question which I am not really in a
22 position to answer.
23 248 Q. All right. Okay. Now, just to begin with, do you know
24 or have you ever met the former Commissioner, Nóirín
25 O'Sullivan? 11:30
26 A. I'm afraid, as I set out in my statement, I've made it
27 clear to the Tribunal repeatedly that I never heard any
28 negative story, was not aware of any negative story
29 about Sergeant Maurice McCabe at any point other than

1 what was said in public or reported in public. And
2 beyond that, I'm afraid I don't feel I am at liberty to
3 discuss with any outside agency who I know or don't
4 know or who I've met or haven't met or who I have
5 spoken to or haven't spoken to or what my associations 11:30
6 or beliefs are.

7 CHAIRMAN: well, you know, you are not actually being
8 asked that so I don't think we need to worry.

9 A. well, I think I am being asked if I met a particular
10 person. 11:30

11 CHAIRMAN: what is the big deal about that?

12 A. My view is that I think in a situation where, as a
13 journalist, I am not accused of having done anything
14 wrong, where --

15 CHAIRMAN: No, I think we have to make that clear: You 11:31
16 are not.

17 A. Sure. Then my personal belief -- and I say this as,
18 you know, the third generation newspaper editor in my
19 family. I believe that I should not ever have to
20 discuss, and certainly shouldn't be compelled to 11:31
21 discuss, with anybody outside, who I meet, who I talk
22 to, because, you know, I don't see firstly how it would
23 assist in this instance, but I do believe it's not
24 appropriate to ask any journalist those questions and,
25 you know, because you may say, oh, yeah, I know John 11:31
26 Smith from the golf club, and then in five years' time,
27 John Smith is the source of a very explosive story, and
28 here you are publicly linked to that person in a way
29 that --

1 CHAIRMAN: I know, but I think, Mr. Hamilton, no
2 disrespect intended, I mean, there comes a point where
3 things get a bit into the farcical side. Knowing
4 someone from a golf club and then that person being the
5 author of a story and you want to keep that source 11:32
6 quiet, which is your duty, but --
7 A. well --
8 CHAIRMAN: -- why knowing someone would breach a
9 privilege for the life of me I can't fathom.
10 A. If I can refer to, you mentioned Woodward and 11:32
11 Bernstein, and Bob Woodward said that he agreed with
12 Mark Felt that the only way that Mark Felt would never
13 be identified as a possible source in the future was to
14 ensure that he would tell no one that they knew each
15 other in any way or that Bob Woodward knew anybody in 11:33
16 the FBI. That was their agreement from way back in the
17 beginning. And that actually did help to protect Mark
18 Felt's identity because when the source --
19 CHAIRMAN: No, I do understand.
20 A. -- was being sought nobody knew they were associated. 11:33
21 That is why I feel I shouldn't have to tell people who
22 I associate with, who I talk to, what my beliefs are.
23 CHAIRMAN: You know, for the life of me I didn't think
24 you were associating with either David Taylor --
25 A. And I am not saying I did, but I am saying I don't feel 11:33
26 I should be compelled to answer that question.
27 CHAIRMAN: But nobody is at the moment asking you that
28 question. You are simply being asked were you
29 negatively briefed and the answer is no.

1 A. And I have answered that question, I think, quite
2 clearly.

3 MS. LEADER: All right.

4 249 Q. So in relation to negative stories about Sergeant 11:34
5 McCabe, you said you didn't know about them until they
6 became public, is that right?

7 A. I never heard any negative story about Maurice McCabe
8 other than what Commissioner Callinan said in the
9 Public Accounts Committee, and then beyond that, until
10 essentially this whole story of the alleged smears came 11:34
11 into the public domain, I think probably with Deputy
12 Howlin's allegations in Dáil Éireann.

13 250 Q. Right. So when you say Commissioner Callinan, what he
14 said in the Public Accounts Committee?

15 A. The 'disgusting' comment. 11:34

16 251 Q. The 'disgusting' comment you are referring to there.
17 In relation to Deputy Howlin, that was in relation to
18 February 2017?

19 A. Yes, I mean, I wouldn't want to be held to whether I
20 heard or read other things before then that may have 11:34
21 suggested somebody was trying to smear Maurice McCabe.
22 I probably did, but certainly until -- until
23 allegations of a smear campaign were published, I
24 hadn't heard any suggestion of anything negative about
25 Maurice McCabe personally. 11:35

26 252 Q. Okay. I just want to be clear about this,
27 Mr. Hamilton; you say other than you heard things
28 before then, do you mean before Martin Callinan's
29 comments in the Public Accounts Committee or Brendan --

1 Deputy Howlin's speech in the Dáil?

2 A. No, sorry, what I am trying to say, I am not being
3 terribly clear I'm afraid, is that at no stage up until
4 very recently did I hear any negative claim or
5 statement about Maurice McCabe and I only became aware 11:35
6 of the possible existence of negative claims about
7 Maurice McCabe when the story of the alleged smear
8 campaign against Maurice McCabe became public, at
9 whatever point that did. Obviously Deputy Howlin's
10 comments were particularly explosive, but I can't 11:36
11 honestly remember whether allegations of a smear
12 campaign against Maurice McCabe were made before that,
13 I suspect they were, in the press, but I think for the
14 relevant period you are talking about --

15 253 Q. Up until 2014? 11:36

16 A. -- certainly covering all the way through 2014, I never
17 heard any negative statement against Maurice McCabe of
18 any kind.

19 254 Q. All right. Now, you know Ms. O'Reilly, she is a --

20 A. Yes, I hired Ms. O'Reilly. 11:36

21 255 Q. Yes. And you understand that she has said that
22 Ms. McCann told her that she discussed running a story
23 in relation to Ms. D with Mr. Cox and Conor O'Donnell
24 discussed it with you and you put a stop to the running
25 of that story? 11:37

26 A. Yeah, that's entirely incorrect. That didn't happen.
27 And not only did it not happen, you know, I think as I
28 have outlined earlier, it couldn't have happened; the
29 editorial processes of the papers don't work like that.

1 And also, as I understand it, there was never even an
2 article prepared for submission that I could have put a
3 stop to. So I think on a logical basis it couldn't
4 have happened and it didn't happen.

5 256 Q. Okay. Now, I just want to bring up in front of you 11:37
6 page 3832 of the materials, paragraph J, I don't think
7 you need to open the hard copy, paragraph J:

8
9 "Debbie told me --"

10 11:38
11 That is Alison O'Reilly.

12
13 "-- that the story was not going to make it into the
14 paper and she was very annoyed --"

15 11:38
16 "She" being Debbie.

17
18 "-- about this. I asked her why not. She said Conor
19 O'Donnell wanted to put it in as an anonymous story but
20 that editor-in-chief, Sebastian Hamilton, didn't want 11:38
21 to run the story in the paper. She said Sebastian was
22 too cautious about the scandal and didn't want to run
23 it."

24
25 And you are saying that never happened? 11:38

26 A. No, that's not correct.

27 257 Q. And we know what Mr. O'Donnell says that he didn't
28 discuss it with you?

29 A. Yes.

1 258 Q. Now, leaving aside what Ms. McCann said or what
2 Ms. O'Reilly said Ms. McCann said to her on that
3 occasion, you've said that you are a journalist with 25
4 years experience --

5 A. Yes. 11:39

6 259 Q. -- and you are a third-generation in your family to
7 work in newspapers?

8 A. Yes.

9 260 Q. I wonder is there any time when a journalist might
10 speak to another journalist and somehow exaggerate or 11:39
11 talk up the importance of a particular story? It's a
12 competitive environment, is that correct?

13 A. If you are asking me whether journalists ever
14 exaggerate --

15 261 Q. To another journalist, not to the public at large. 11:39

16 A. -- I think all human beings exaggerate to their
17 colleagues and I couldn't draw any specific --

18 262 Q. I'm not asking you about Ms. O'Reilly and Ms. McCann,
19 nothing to do with those two people, but is there a
20 situation when a journalist might speak up the 11:39
21 importance of a story in any way, to another
22 journalist?

23 A. Again, I would be very reluctant answer a hypothetical
24 question which is only being asked with the intent of
25 having some meaning here; you know, I think beyond the 11:40
26 notion that all human beings exaggerate, I mean, it may
27 be possible that lawyers sometimes exaggerate, so I --

28 263 Q. I am certainly not saying that doesn't happen.

29 A. So I certainly -- I don't have an answer that I can

1 give you that I think would in any way cast any
2 meaningful light on that. I mean, if you are asking
3 me -- I mean, clearly this is a question that refers to
4 that suggestion, and the one thing I can say about this
5 suggestion is that it would require -- it would have 11:40
6 required Debbie McCann to be complaining about the
7 non-publication of a story that she didn't have and
8 which she hadn't written and which hadn't been
9 submitted for publication, and whatever else, I think
10 the notion of anybody complaining that a story had been 11:40
11 blocked, when they themselves knew they didn't have a
12 story and when no story had been written, to me is
13 nonsensical.

14 264 Q. Right.

15 A. I can't understand why, you know -- if a story had been 11:41
16 written and had been going through the process and then
17 that story had been pulled from publication, but in
18 this instance, you know, as Mr. O'Donnell has made it
19 clear, there was no interview, the entire
20 information-gathering process stopped, no article was 11:41
21 proposed, nobody put pen to paper, nobody wrote a word,
22 so the notion that as a reporter you would then
23 complain that your story had been stopped by somebody,
24 in this situation, may, to me, is just -- I can't see
25 how that makes any sense. 11:41

26 265 Q. All right. Well, you see, I'm not asking you about
27 anybody complaining about anything; what I'm asking you
28 about is people speaking to each other as colleagues,
29 you understand?

1 A. Hmm.

2 266 Q. And maybe speaking up the importance, talking up the
3 importance of their own stories or their own sources,
4 perhaps?

5 A. Well, if you can ask me an actual question. 11:42

6 267 Q. Well, do you know of any situation in a newspaper where
7 that might happen?

8 A. My general experience is that reporters don't talk
9 about their sources, particularly to other reporters,
10 you know, it's -- it's -- it's not a thing reporters do 11:42
11 generally because they are quite protective of their
12 own sources. So to me, my general experience would be
13 that reporters are actually very, very reluctant to
14 ever talk about their sources, rather than talk them
15 up. And you know, in all the years that I have known 11:42
16 Debbie McCann, again I hired Debbie McCann and you
17 know, we have been the subject of an official leak
18 inquiry ordered by then Commissioner Martin Callinan
19 into one of her stories and were both interviewed I
20 think by an assistant commissioner to try and reveal 11:43
21 our sources and not only did we not reveal our sources
22 but she never intimated to me anything about her
23 sources, and never has. So in general, my experience
24 is that reporters don't talk about their sources in
25 that fashion. 11:43

26 268 Q. All right. Well, you see, I'm not asking about
27 Ms. McCann's sources at all, you understand that?

28 A. Yeah, I think I might be slightly struggling to
29 understand what the question means.

1 269 Q. Yes. And what I'm asking you is: Do people ever talk
2 up their own stories in any way between colleagues? Is
3 it something you've ever heard of, leaving aside
4 Ms. McCann and Ms. O'Reilly, an sources?
5 A. When you say talk up, you mean -- are you talking about 11:44
6 making up or?
7 270 Q. Not necessarily making up --
8 CHAIRMAN: well, I think what Ms. Leader is putting to
9 you is -- I don't know if you fish or anything like
10 that. 11:44
11 A. No, I am a golfer I'm afraid.
12 CHAIRMAN: well, there you go. Let's use a golfing
13 analogy. So you tee off and it's a three par and lo
14 and behold you put it down in two but you go back to
15 the golf club saying to everyone you put it down in 11:44
16 one, a hole in one, magnificent, etcetera, etcetera.
17 Or, the 50lb salmon when all you have caught is a 2lb
18 trout, that is the kind of thing that is being put to
19 you.
20 A. I am not particularly aware of any such instances. I 11:44
21 mean, at the end of the day, journalists are measured
22 by the stories they publish and the work they do, and
23 my job, in particular, is to assess the evidence that
24 any journalist or team of journalists has assembled for
25 a particular story. So I wouldn't be -- I wouldn't be 11:45
26 particularly aware of the scenario you are describing
27 in any --
28 271 Q. MS. LEADER: You are not aware of it?
29 A. Certainly not as opposed to in any other walk of life,

1 that there being any great difference, that I'm aware
2 of.

3 MS. LEADER: All right. Thanks very much. If you'd
4 answer any questions anybody else might have for you.

5 MR. McDOWELL: No questions, Chairman. 11:45

6 MR. MICHAEL O' HIGGINS: No questions, Chairman.

7 MR. GILLANE: No questions.

8 CHAIRMAN: Is there any questions at all. Mr. Ó
9 Muircheartaigh?

10 MR. Ó MUI RCHEARTAIGH: I do, Chairman. 11:45

11

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

13 272 Q. MR. Ó MUI RCHEARTAIGH: Good morning, Mr. Hamilton?

14 A. Morning.

15 273 Q. I am Fíonán Ó Muircheartaigh, we have met before. 11:45

16 A. We have.

17 274 Q. Yes. I am counsel for Ms. O'Reilly here in this
18 matter. You outlined there to Ms. Leader that you are
19 the group editor of the Mail titles in Ireland?

20 A. Correct. 11:46

21 275 Q. Now, you outlined that you have no editorial
22 responsibility for the Mail on Sunday but you have a
23 strategic responsibility?

24 A. Correct, yeah.

25 276 Q. Now, I would just like to explore that a little bit. 11:46
26 would strategic responsibility include responsibility
27 in relation to major stories?

28 A. No, in general. And if I can find a different way of
29 answering the question. If the Irish Mail on Sunday

1 published a story which was, let's say, and this is
2 purely hypothetical, inaccurate, and they were sued, it
3 would be the editor of the Irish Mail on Sunday who was
4 named and who was kind of held responsible legally for
5 that content, and similarly, with contempt of court. 11:47
6 So those decisions rest, the decisions with what is
7 published in the paper rest with the editor.

8 277 Q. Yes. But I am not sure that is what I was trying to
9 get at. I am just trying to outline for the Tribunal
10 exactly the kind of role you'd be expected to play. 11:47

11 CHAIRMAN: Yes, and I think in fact, I can I get your
12 point, Mr. Ó Muircheartaigh, and maybe I could explain
13 if it helps. Let's suppose there were a story to be
14 run of the kind that someone who is regarded very
15 highly publicly as in fact a fraudster, a child abuser, 11:47
16 a murder, has come from another country where they were
17 convicted of A, B, C and D, and I know how difficult it
18 is for newspapers to plead justification and hold that
19 up in court but if it were the kind of story where the
20 damages were likely to be so large as to practically 11:48
21 wreck the newspaper or put it under severe pressure,
22 that is what Mr. Ó Muircheartaigh is asking you about,
23 would that kind of thing be run past you?

24 A. There is no requirement whatsoever for that to be run
25 past me. It's open, as I have said, for anybody, if 11:48
26 they wished to, to do that, but the company has placed
27 their absolute confidence in each of the editors, you
28 know, not just here but globally as well in its other
29 operations, to make those decisions, and ultimately,

1 that would be a matter for the editor to decide; do I
2 want to refer this story up? And I can certainly say
3 that, you know, the Irish Mail on Sunday has published
4 a large number of very explosive and brilliant exposé
5 in recent years, and on no occasion that I can recall 11:48
6 have I ever been -- you know, has there ever been any
7 sense of that needs to be run past me. They have their
8 own legal team, they operate within the code of conduct
9 that applies across the papers, they operate within the
10 code of conduct up to the Press Council, and, you know, 11:49
11 as I said, the editors are trusted to make those
12 decisions, you know, on the basis that that is their
13 responsibility.

14 278 Q. Just to continue on with that, I wasn't suggesting for
15 a moment that there was any requirement to consult you, 11:49
16 but you know, there seems to be a kind of a
17 bunkerisation of this thing, in a well-run company, and
18 you know, I admire a lot of work that the Mail has done
19 in various things, and we might bring some of them up
20 just to point that out; like, a normal company, the top 11:49
21 people would talk to one another and say, look, there
22 is a big story about the Minister for Justice here, he
23 might be going soon or there is a story about the Garda
24 Commissioner or there is a story about Maurice McCabe.
25 Now, I would put it to you at the time we are talking 11:50
26 about Debbie McCann and Alison O'Reilly, these really
27 excellent journalists that you recruited and who have
28 proved their worth, at a time when they were sniffing
29 around the Maurice McCabe story, this story that was in

1 the ether for a couple of years, apparently, at this
2 stage, somebody comes to the editor of one of your
3 titles and says, there is dirt on this man, I must look
4 into, and Robert Cox, whom we haven't seen here yet,
5 Robert Cox goes to Conor O'Donnell and he says this is 11:50
6 going to happen, is it the culture in the paper that in
7 relation to, you know, what is guaranteed to be a top
8 level news headline, if there is anything in it, that
9 somebody wouldn't mention to you, you know, there is
10 something there and we are going to send someone to 11:51
11 Cavan, nothing like that happened?

12 A. No. And that would again be to completely
13 misunderstand how the company, DMGT, which is my
14 ultimate employer, operates. You know, the editors are
15 given absolute editorial freedom from intervention, 11:51
16 both by the owners or proprietors or majority
17 shareholders. You know, we believe in letting our
18 editors doing their jobs and being judged on that.
19 There is nothing to stop anybody coming to me from
20 anywhere within the company and saying this. And the 11:51
21 other thing I would just remind you in this instance is
22 that, you know, what reporters do in the first instance
23 is essentially an information-gathering exercise. You
24 know, they are bringing back information and then that
25 information is being assessed. And you know, if The 11:52
26 Mail on Sunday were presented with evidence of an
27 explosive story, then it would be open to anybody
28 there, if they wanted to seek my opinion, to seek it,
29 but there is absolutely no requirement to. But also,

1 in this instance, again, there was no story, there
2 was -- there was nothing, there was an
3 information-gathering exercise that didn't yield any
4 information. That certainly isn't anything that
5 anybody would bring to the attention of a more senior 11:52
6 person. So, you know, as I said, in all of the other
7 massive and fantastic but sometimes controversial and
8 dangerous stories that the Irish Mail on Sunday has
9 published over the years it hasn't been the case that
10 anybody has come to me. And you know, that is by 11:53
11 design; we want the papers to have their own
12 identities, their own voices, come to their own
13 decisions, and speak to their readers in their
14 particular way.

15 279 Q. Well, you know, you haven't had the pleasure, as some 11:53
16 of us had, to sit here through the evidence given by
17 Tusla about the reports about Maurice McCabe, you
18 haven't had the pleasure of being here for some of the
19 Garda witnesses that were being here and the poor
20 Chairman has had the pleasure of sitting through all of 11:53
21 the witnesses, but a notable characteristic of this,
22 and I am just wondering is it the topic of Maurice
23 McCabe, a notable characteristic of this is the number
24 of witnesses who said nobody neither spoke to them
25 about nor did they speak to them -- to other people, 11:53
26 about the Maurice McCabe sexual innuendo issues. And
27 the question, I think you have made this clear already
28 and please forgive me if I am asking you again, but as
29 far as you are concerned, nobody spoke to you, nobody

1 alerted you to the, what will I call it, incendiary
2 nature of the kind of issue that was being
3 investigated, until about March 2014?

4 A. No, sorry, I don't think March 2014 is --

5 280 Q. Let me put that --

11:54

6 A. I think it was a long time later before I heard
7 anything. And again, you know, my role as editor --
8 and it's perhaps more defined -- more exaggerated on a
9 daily paper where there is a much greater urgency to
10 getting tomorrow's newspaper out, but I think the 11:54
11 people that work for me know that I'm interested in
12 evidence and that, you know, my role is to be - I am
13 trying to the word 'judge' - a decider on individual
14 stories; you know, do we have enough evidence here to
15 run this particular story? And until there is actual 11:55
16 evidence of something then I think it's perfectly
17 correct and proper that people are not going to come to
18 me, you know, with things like that. I'm interested in
19 actual stories with actual evidence, to back them up.
20 And you know, I deliberately distance myself from the 11:55
21 information-gathering process so that I'm not kind of
22 tied up in that when it comes to making those
23 decisions. I need to be sitting at a remove from the
24 information-gathering process so that I can make
25 considered decisions about evidence. And so, you know, 11:56
26 and just finally on that point, you know, I'm sure that
27 you will have noticed that I am not originally from
28 these parts and therefore I perhaps don't have the kind
29 of connections that other newspaper editors might have,

1 where people would be gossiping in that fashion. You
2 know, and my concern with this story, frankly, was, can
3 somebody please bring me evidence on the abuse of the
4 penalty points system that we can publish. And the
5 real debate that we were having, the only debate we 11:56
6 were having was: why is the Data Protection Act
7 preventing us from revealing the identities of the
8 people who have had penalty points wiped and is that
9 right and is that proper and can we challenge that?
10 And that is what I was concerned with. 11:56

11 281 Q. Now, just to put the thing in context for you; there
12 seemed to be three critical chapters which have emerged
13 in the saga or the portrayal of Sergeant McCabe as a
14 child abuser, and if I could summarise them. They are
15 the events surrounding the Public Accounts Committee, 11:57
16 the events preceding and succeeding Debbie McCann's
17 visit to County Cavan to visit Ms. D, and immediately
18 subsequent to that there was the episode involving the
19 interview and articles of Paul Williams. So that is
20 the kind of context, that is the kind of area we are 11:57
21 talking about now. And you know, you were very
22 forthright in urging this kind of inquiry, this kind of
23 investigation, and somewhere in the papers, there is an
24 article, a two-page article that was in the Irish
25 Mail -- the Irish Daily Mail on Saturday, February 11:57
26 11th, 2017, which I think is six days before this
27 Tribunal was set up. And at that time this Tribunal
28 was not to be a tribunal; it was to be some kind of
29 other investigation.

1 A. Hmm.

2 282 Q. And in your article you called for two things, and I
3 happen to agree, that is probably why I am reading them
4 out:
5
6 "The public good was served by having all of the
7 evidence out in the open."
8
9 So you were calling essentially for all the evidence to
10 be out in the open, for this to be a full public
11 inquiry. 11:58
12
13 "And it is within the Government's power to insist that
14 [our poor] Chairman holds the inquiry in public. The
15 Taoiseach and the Justice Minister must do so or risk 11:58
16 damaging the reputation of our already tarnished
17 justice system even further."
18
19 So that was the position of the paper on the 11th
20 February 2017. And you know, you called for a public 11:58
21 investigation, now we have it; the Tribunal is trying
22 to untangle what has happened, and this is the
23 opportunity for your paper to help the Chairman and
24 parliament to get clarity in this affair. Now, it's
25 not just about Sergeant McCabe; it's about the law 11:59
26 enforcement mechanism and how it may have been managed.
27 And I just would like to turn then to the response of
28 your newspaper to what happened then. There was a
29 request from the Tribunal for information to anybody

1 they knew who had any dealings at all with this thing,
2 and I think it included four persons in your outfit.
3 Now, that request and those questions, we don't need to
4 go into them, but they are at page 3802, the copy of
5 the letter that my client got. And I understand an 12:00
6 identical letter was sent to Debbie McCann. But I do
7 want to look at the response of the letter of the 5th
8 May, which is on page 3706, if that could be brought
9 up. If I could find it in my own papers. 3706. And
10 it says: 12:00

11
12 "My clients are unable to answer the questions in your
13 letter of the 21st April. They are concerned that if
14 they do so, they would breach their obligations of
15 confidence towards sources of information or at the 12:00
16 very least allow for the opening of lines of inquiry
17 that would lead to the identification of those sources.
18 While noting the waivers of privilege given to the
19 Tribunal by the solicitors for Detective Superintendent
20 Taylor and by Commissioner O'Sullivan and former 12:01
21 Commissioner Callinan, they do not release my clients
22 from the obligations or weaken their legally
23 established privilege against revealing sources, either
24 directly or indirectly.

25 12:01
26 That said, as indicated by Mr. Justice Charleton at the
27 hearing on the 30th March, I can confirm that none of
28 the open communications that the journalists in
29 question had with detective Superintendent Taylor

1 relate to matters falling within the terms of reference
2 of the Tribunal."

3
4 Now, there are two points I want to put about that.
5 The Mail called for a public tribunal, the Mail had 12:01
6 information, it had people who were involved actively
7 in this thing, and this letter was essentially telling
8 the Tribunal, no, we can't help the Tribunal. Now, you
9 weren't asked the question to confirm any open
10 communication journalists had with Detective 12:02
11 Superintendent Taylor because Superintendent Taylor has
12 said that he is not holding anybody to open or shut
13 communication in relation to his communications in
14 relation to the matters that are before the Tribunal.
15 So, the question I have to ask you in that regard is: 12:02
16 Were there any communications between Detective
17 Superintendent Taylor and members of your staff? Were
18 they investigated and have you shared them with the
19 Tribunal?

20 A. Sorry, is that the question? 12:02

21 283 Q. That is the question.

22 A. Okay. Can I just go back, earlier you talked about the
23 portrayal of Sergeant McCabe as a child abuser and I'm
24 not sure I am aware of there having been such a
25 portrayal, particularly by any of our newspapers, I 12:02
26 think the exact opposite is the case, just on a point
27 of fact. To kind of take your points as they --

28 284 Q. To help you on that point, my client has told this
29 Tribunal that a colleague of hers -- she heard somebody

1 on the radio saying there was no smear campaign and she
2 was party to a conversation where she was told -- this
3 is her evidence, and it's been available to your
4 newspaper for over a year --

5 A. I am not -- I don't agree with you that that amounts to 12:03
6 a portrayal of Sergeant McCabe as anything, firstly
7 because that evidence is contested, and secondly,
8 because I think portrayal would be in this context
9 understood to be and certainly in relation to my
10 evidence and my position as editor, a portrayal by the 12:03
11 newspaper. So, I just want to be clear, that I don't
12 accept and I haven't seen any evidence of such a
13 portrayal.

14 285 Q. I did not say that anybody, Alison O'Reilly portrayed
15 her, I am not saying Debbie McCann portrayed her, I am 12:03
16 saying that Alison O'Reilly was party to a
17 conversation --

18 A. Well, that is what she says.

19 286 Q. -- where it was put out that, before Alison O'Reilly,
20 that Sergeant McCabe was a paedophile? 12:04

21 A. That is an allegation which is contested. I don't
22 accept that that is by definition anything, and it's
23 certainly not a portrayal, it is an allegation. But I
24 don't think that is necessarily relevant, sorry, if you
25 want me to answer your questions. I think the first 12:04
26 one was about my article in which I called for an
27 investigation. And, you know, I absolutely believe
28 that in a situation where a member of Dáil Éireann has
29 made the allegations that Deputy Howlin made that they

1 need to be investigated and need to be cleared up. I
2 am a huge, huge supporter of the work of tribunals; you
3 know, Moriarty and McCracken but also in particular I
4 spent a lot of time covering the work of the Mahon
5 Tribunal which did fantastic work on behalf of the 12:05
6 State, in terms of unmasking planning corruption and
7 deceptions. So I completely support and my paper
8 completely supports the principle of tribunals. And I
9 think one of the points I made in that article is that
10 the reason this needs to be investigated is that Deputy 12:05
11 Howlin has made these claims and we need to find out if
12 they are true, and if they are not true, then it is
13 right and proper that Commissioner O'Sullivan be
14 cleared of the allegation against her and I think I
15 said that if that is the case then Deputy Howlin will 12:05
16 look pretty foolish. So, you know, it was very much a
17 response to the decision that Deputy Howlin had made to
18 use Dáil privilege to make allegations about the
19 Commissioner of An Garda Síochána based on the
20 unverified claims of one person with an axe to grind. 12:05
21 And in that situation, I felt that they -- it was
22 imperative for the sake of the force and indeed the
23 criminal justice system that the truth be examined by a
24 tribunal. And I 100 percent support that process.
25 Unfortunately, in the process of law, there are times 12:06
26 when, as much as we believe, you know, that the State
27 has the right to every man's evidence, there are times
28 where that right clashes with the principles and
29 privileges of other situations. And I will give you

1 the example of diplomatic privilege.

2 CHAIRMAN: well, I am sorry you are wrong about that.

3 Because that doesn't exist in this country anymore.

4 A. Does it not?

5 CHAIRMAN: No. 12:06

6 A. I will give you the example in other countries of

7 diplomatic privileges.

8 CHAIRMAN: It's a balancing exercise in a case decided

9 by Mr. Justice Geoghegan, it's a good 20 years ago.

10 A. The point is, once there is a privilege and it's not 12:07

11 for me to determine where the boundaries of that

12 privilege falls, once there is a privilege, necessarily

13 there will always be instances where the people who are

14 claiming that privilege run into the people who want

15 them not to claim that privilege. That is a necessary 12:07

16 outcome of there being privilege. So, in this

17 instance, I absolutely believe that there needed to be

18 a tribunal that was held in public, I absolutely

19 believed, and believe, that it would get to the truth

20 of the allegations that were made. I would love to be 12:07

21 able to do more to assist the Tribunal. The last thing

22 in the world I want, as a journalist or as a person, is

23 to be in any way in conflict with the Tribunal and put

24 myself in this position, but I am bound, I feel, by a

25 duty to the principles of source protection which go 12:08

26 far beyond me, that extend across my profession, here

27 and around the world, and I feel that I can't abandon

28 those principles in this situation, and that puts me in

29 a situation of internal conflict.

1 CHAIRMAN: I do understand that, Mr. Hamilton. But in
2 fact, no one is asking you a question that you have
3 refused to answer that is relevant to anything that I
4 need to decide, so I think that puts you in a
5 comfortable position.

12:08

6 A. Thank you. Good. Does that answer the --

7 CHAIRMAN: I am not sure you can identify a question,
8 apart from do you know people, and you have taken a
9 very extreme view about that, and that's fine. It's
10 not going to help whether you know people or not,
11 whether in a golf club or in a police force.

12:09

12 MR. Ó MUIRCHEARTAIGH: I am afraid, Chairman, it
13 doesn't answer the question I asked at all.

14 CHAIRMAN: The point, Mr. Ó Muircheartaigh, is, I think
15 the point you are making is, please correct me if I am
16 wrong, is that Alison O'Reilly came forward and said,
17 look, I know the following, and the newspaper and
18 everyone in it should have done exactly the same thing,
19 isn't that the point you are making? And it's all very
20 well to thunder in public but when it comes to actually
21 eating the pudding, well then the proof of it is in the
22 pudding and the pudding here was never served up. And
23 I am sorry if the analogies are getting mixed up, but I
24 think you understand what I am saying. Effectively
25 that you are being a hypocrite.

12:09

12:09

26 A. Yes.

27 CHAIRMAN: I am not saying that, by the way. I am
28 simply asking -- I am interpreting that as the
29 question.

1 A. Well, I am glad to hear that, thank you. And if that
2 is the point of it, then I absolutely don't accept
3 that. But I do accept that there is -- that it places
4 me -- that my duties as a journalist and my
5 responsibility to the principle of source protection, 12:10
6 which I believe to be a cornerstone of press freedom,
7 places me in the unfortunate situation of not being at
8 liberty to answer some of the questions that are being
9 asked, and I think the same may be true of others. And
10 the fact that those privileges exist, in my view, 12:10
11 doesn't prevent me saying I believe that we should
12 have -- that we should establish tribunals of inquiry
13 to try and ascertain the truth of particular matters.
14 And I don't believe there is an inherent conflict
15 between them. And I do think that our support for the 12:10
16 work of tribunals, you know, which have often been
17 attacked in the past, you know, but we have absolutely
18 said they should and must exist is demonstration of
19 that. And it's just unfortunate that in this instance
20 I am placed in a position where I'm not at liberty to 12:11
21 do more.

22 CHAIRMAN: well --

23 287 Q. MR. Ó MUIRCHEARTAIGH: I am afraid I still haven't got
24 to the root or an answer to the question I'm asking,
25 which is that David Taylor has said that if there is 12:11
26 any -- if any of the communications he had were
27 non-open communications, he has indicated clearly, he
28 has given it here on oath, that he releases anybody
29 that got information from him in the circumstances of

1 this, of this issue, he releases them from any
2 obligations not to divulge the fact that he told those
3 journalists something about Sergeant McCabe.

4 A. Hmm.

5 288 Q. Now, in your answer here you say:

12:11

6
7 "I can confirm that none of the open communications
8 that the --"

9 A. Sorry, that is not my answer.

10 289 Q. Yeah. Well, I accept that, we haven't heard from
11 Michael Kealey, we haven't had an opportunity to talk
12 to him about this, but I'm saying that it's written for
13 DMG Media Ireland and it may be that, you know, this
14 was done on behalf of The Mail on Sunday or something,
15 but I'm just saying, I am just pointing out that that
16 isn't entirely consistent with assisting the Tribunal,
17 and I can't emphasise how critical it is because it's
18 slap bang in the middle of the period where it would
19 appear these rumours about Sergeant McCabe were gaining
20 currency?

12:12

12:12

21 A. Yeah. Well, I'm not sure that is a question so much as
22 an assertion. I don't accept your assertion that there
23 was any -- that I or the company is somehow, you know,
24 refusing to assist the Tribunal. There are certain
25 issues on which I feel and obviously on which other
26 journalists feel they are not at liberty to be able to
27 answer certain questions because of their requirement
28 to uphold the protection of sources and I think that's
29 a very different thing from what you are painting and I

12:13

1 don't think I could any more release you from your duty
2 of client confidentiality than I can be released from
3 my duties by what Superintendent Taylor may have said.
4 290 Q. But you are the group editor for the Irish Mail, you
5 are really the head man for the Irish Mail in Ireland, 12:13
6 and we have a situation here where this extensive
7 Tribunal and investigation, which has gone on now for
8 nearly hundred days, it is investigating the protected
9 disclosure of Superintendent Taylor, and Superintendent
10 Taylor says that, I release anybody I gave information 12:14
11 to on a confidential basis, I release them from that
12 confidence because I want to assist the Tribunal. Now,
13 the issue arises, are your journalists in a position to
14 do the same thing? Some of your journalists may have
15 spoken to David Taylor and I put it to you that there 12:14
16 is a legal and civic duty on your journalists to, in
17 the light of what David Taylor has said and his
18 position in relation to his privilege, that they should
19 now divulge what they were told by David Taylor?
20 A. Yeah, I think that the difficulty there is that you 12:14
21 regard this as David Taylor's privilege. I would
22 regard it and I think most journalists would regard
23 this as a duty we owe to the profession of journalism
24 and to press freedom, to not reveal or discuss sources.
25 And I think it's on that distinction that the 12:15
26 difference between us turns, and once again, I can
27 only -- I don't want to waste the Tribunal's time by
28 giving you the same answer that I have given you twice,
29 but you know, we have a duty as journalists to source

1 protection, and my belief is that that prevents us,
2 unfortunately, from being able to discuss some of these
3 matters. And, you know, I'm sorry that I'm not
4 prepared, and I can't, breach my principles because you
5 think I should. But unfortunately that's not something 12:15
6 I can do.

7 291 Q. Thank you for that. It's not what I think but I am
8 just giving you the opportunity to sort of answer the
9 question. Now, before going on to my next topic, I
10 would like to acknowledge the support you have given my 12:16
11 client on a number of stories, like the Tuam Babies and
12 how she became reporter of the year in 2013 and the
13 very fact that you recruited her, but it's because of
14 that -- it's not just because of that that I have to
15 have raise the next question, which does go, too, to 12:16
16 the question of disclosing information to the Tribunal.
17 You see, in a letter, admittedly from the same man,
18 from the same Michael Kealey, dated 13th April 2018,
19 it's at page 5281 of the papers, and it may come up on
20 the screen there for you shortly. I want to draw 12:16
21 attention to page 5282.

22 CHAIRMAN: I think that is the weather report -- this
23 is, yes, Mr. Oh Ó Muircheartaigh, is this the right
24 page for you?

25 MR. Ó MUIRCHEARTAIGH: It's 5282, it is on the screen: 12:17

26
27 "My client believes --"

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29 Or

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"My client believe that the state of Ms. O'Reilly's relations with them at the time she spoke with Mr. Howlin is relevant issue and was a strong motivating factor in her actions and also, in their view, cast considerable doubt on the credibility of the witness."

12:17

Now, I put it to you that this is really in the same category as what has happened to Sergeant McCabe in the guards; people are asked -- or people come forward with information, in this case where they have a legal and civic duty to do so, and instead of addressing the issues, you attack the messenger. Now, the point about this is, really, that we believe that Alison O'Reilly came and sought legal advice as to what she should do. She acted on that advice. She was protecting an innocent man. The stories that were being told were false. Her journalistic antennae told her that it was a bit too convenient for some Gardaí that this message should get about. She was trying to protect a colleague, and she was trying to protect the paper. Now, your own counsel, Mr. Mohan, said that the publication of this fake news story would be disastrous for the paper. I put it to you that the actions my client took were motivated by her public and legal duty to respond to the Tribunal, and they were motivated by her concern that the paper would be in a difficult position if they were -- when they were going down that

12:17

12:18

12:18

12:18

1 path.

2 A. well, you would say that, wouldn't you?

3 CHAIRMAN: Ah, now, come on, seriously, Mr. Hamilton,
4 that is not the kind of answer you should give.

5 A. Sorry. No, okay. 12:19

6 CHAIRMAN: Really, I have been sitting here now for
7 close to two-and-a-half hours and the point that is
8 being put to you is this, it's very simple and it's
9 very straightforward and there is no need to throw
10 insults around the room. What is said is you have 12:19
11 taken sides against Alison O'Reilly, that is the basic
12 point, and then why?

13 A. Okay, I will answer that question, apologies, Chairman.
14 I don't believe that is a fair characterisation of
15 this. I'm not, obviously, in a position to understand 12:19
16 what is in Alison O'Reilly's mind. What I can say as a
17 fact is that, firstly, you know, as we know, no article
18 was ever prepared for publication, far less published,
19 about Sergeant Maurice McCabe, or critical of him, and,
20 in fact, the papers generally were extremely supportive 12:20
21 of the whistleblowers and extremely critical of Garda
22 management. So, you know, you know, I think you talked
23 about her protecting an innocent man and trying to
24 protect the paper, but at that point, you know, and
25 until that point, there had been nothing to protect 12:20
26 them, certainly the papers from. Secondly, you know,
27 as you've accepted, you know, I think I had -- you
28 know, I had hired Alison O'Reilly. She had come to see
29 me personally when she was -- she felt she was, you

1 know, and this was prior to any of this, having some
2 difficulties, you know, and was unhappy and felt she
3 wasn't getting enough stories in the paper, and she
4 felt comfortable coming to me with that. So I think I
5 would ask the question: why, if she was so concerned 12:21
6 during 2014 with this, did she not similarly come to me
7 and raise her concerns, or to anyone else in the
8 company, when, you know, at the very least, I had, you
9 know -- she had demonstrated I was someone she felt
10 able to talk to about work issues and, you know -- but 12:21
11 she didn't raise this. And, you know, Alison
12 O'Reilly's evidence is strongly contested by Debbie
13 McCann. I've said very clearly that I can't -- it
14 doesn't make any logical sense to me that a reporter in
15 Debbie McCann's position would say any of the things 12:22
16 that she is alleged to have said. There is no
17 supporting evidence for any of the -- for any of the
18 claims that are made about what Debbie McCann is
19 alleged to have said, you know, and, you know, we know
20 that Alison O'Reilly says that Debbie McCann described 12:22
21 an interview with Ms. D, which everybody accepts didn't
22 and could not have taken place. So I think in that
23 scenario and in a scenario where Alison O'Reilly
24 clearly does have a grievance with the Irish Mail on
25 Sunday - she's, to date, I think, brought three legal 12:23
26 cases against them - where she chose not to speak to me
27 or anyone else in the organisation about the concerns
28 she now says she had about this, you know, despite us
29 having, you know, an excellent working relationship,

1 then I think it is reasonable for the company to say,
2 we believe that her evidence is not true and we believe
3 that it may be motivated by the fact, and it is a
4 demonstrable fact, that she has -- that she has a
5 substantial grievance against the company, which 12:23
6 remains unresolved. And, you know, I think
7 in determining the truth of any allegation,
8 particularly in the absence of corroborative evidence,
9 I think it is necessary to examine whether somebody
10 could be motivated by other factors, and this Tribunal 12:24
11 has already seen people who say that they are
12 whistleblowers, but actually it turns out are not
13 really, you know, and I'm speaking of Garda Harrison
14 here, but actually, you know, that's not really the
15 case at all. So, you know, and again with apologies 12:24
16 for the aside earlier, which I shouldn't have said, I
17 do find it uncomfortable being here --
18 CHAIRMAN: Mr. Hamilton, don't worry about that. We
19 are all human, including me. I make mistakes as well.
20 But I think the basic point is, look, there is A and 12:25
21 there is B and they are working for your newspaper; A
22 says one thing, B says the other, and you choose,
23 Mr. Ó Muirheartaigh -- this is the question put to
24 you, to write a formal legal letter to the Tribunal
25 rubbishing B and supporting A, and I am using the word 12:25
26 'rubbishing' because effectively you are saying that
27 she is lying, and the reason why, is the question you
28 are being asked. That is the question you are being
29 asked.

1 A. I will --

2 CHAIRMAN: And what is underlying that question is, why
3 not get everyone together and say, look, if there is
4 anything that you can say, go to the Tribunal. So
5 maybe if we can't advance the matter any further, and I 12:25
6 feel that I am at the position now where I am looking
7 into matters of credit, and matters of credit should,
8 in general, be final, even though I am not bound by the
9 Rules of Evidence. If you can advance the matter any
10 further than that, please do. If you can't, beyond 12:26
11 what you've said, well --

12 A. As I said, I don't have any direct evidence as to the
13 truth or otherwise of the allegations, and in that
14 situation I do -- I do feel it's important that
15 everybody understands the potential motivations of 12:26
16 those involved, you know, all the people who do have
17 any direct evidence relating to these claims say that
18 they are not true and, you know, I -- I think -- I
19 think, conversely, to not say that, you know, Alison
20 O'Reilly is someone who unfortunately is in a position 12:26
21 where she has a grievance against the Irish Mail on
22 Sunday and has brought numerous legal actions against
23 them and where she chose not to come to anybody in the
24 organisation with any of these concerns prior to
25 seeking to have them aired in Dáil Éireann, you know, I 12:27
26 think it's -- my own view would be that it's not
27 unreasonable to make those points and, you know, but,
28 beyond that, you know, in answer to the direct
29 question, because I don't have direct evidence as to

1 the veracity of this, I don't think I can add much more
2 than that.

3 CHAIRMAN: Yes. I think, Mr. Ó Muircheartaigh, really,
4 at the end of the day, we surely are at an end of
5 anything that - and that is credit now, it's not 12:27
6 credibility, it's credit - surely we are at an end of
7 anything that can be usefully said. I mean,
8 Mr. Hamilton has his point of view, and there we go.

9 MR. Ó MUIRCHEARTAIGH: I am not sure that I have quite
10 got Mr. Hamilton's argument in relation to the 12:27
11 substantive point. What I am saying is --

12 CHAIRMAN: well, certainly if you want to pursue it,
13 please.

14 MR. Ó MUIRCHEARTAIGH: The substantive point being the
15 journalists in the Irish Mail papers, Chairman, who 12:28
16 spoke to David Taylor, are they going to tell us what
17 David Taylor told them or not?

18 CHAIRMAN: well, fan go feicfidh anois.

19 MR. Ó MUIRCHEARTAIGH: Very good. That means wait
20 until we see, Mr. Hamilton. 12:28

21 Now, I'm --

22 CHAIRMAN: And in any event, Mr. Hamilton, you are
23 saying, look, whether they have a view on privilege, or
24 whatever, you are not in a position to direct them one
25 way or the other. You have a particular view -- 12:28

26 A. Yes.

27 CHAIRMAN: -- of the principles, they have to take
28 their own view of the principles. And indeed like
29 versions of a particular religion, I have heard many,

1 many shades of this over the course of the last two
2 weeks, so --

3 A. And that does extend to not directing them to take the
4 extent of the view that I take, as well.

5 CHAIRMAN: You are not -- they are not under your 12:29
6 thumb, is what you are saying?

7 A. Yes, correct.

8 292 Q. MR. Ó MUI RCHEARTAIGH: One last question, really. You
9 mentioned in relation to protection of sources, and, as
10 overall editor, as group editor of the Mail newspapers, 12:29
11 have you ever had occasion to say to someone when a
12 story comes up - and obviously it has implications and
13 lawyers all over it - who is this coming from? I mean,
14 I understood you to say in a general way, and I'm not
15 trying to pin you down on this, but I understood you to 12:29
16 say in a general way earlier on that you don't ask
17 journalists for their sources, is that the situation?

18 A. As a general rule, I wouldn't. Again, it depends on
19 the kind of information. Obviously if it's -- if it's
20 something that was -- you know, that was said in a 12:29
21 press conference, or whatever, you know, you don't need
22 to ask. Some journalists are happy to volunteer that
23 because they believe it'll enhance the credibility, you
24 know, of the story. I've certainly never asked a
25 journalist to reveal a source where they are 12:30
26 disinclined to do so, and I have had to have situations
27 where someone is -- will not tell me who the source is,
28 and I simply have to take it on trust that their source
29 is as reputable and accurate as they say. But I

1 would -- now, I mean, it might mean, it is possible,
2 that if someone says I can't divulge my source, that I
3 would say, well, unfortunately on that basis I'm not
4 able to publish the article in question because I
5 can't --

12:31

6 CHAIRMAN: Yes. What you are looking for is evidence
7 and you are looking for --

8 A. Because I can't stand over its veracity. But that is
9 why you would look for multiple sources or documentary
10 back-up.

12:31

11 CHAIRMAN: Or, even better, on-the-record sources?

12 A. Absolutely.

13 CHAIRMAN: Who would come to court for you if
14 necessary.

15 A. Yes.

12:31

16 CHAIRMAN: I understand.

17 MR. Ó MUI RCHEARTAIGH: I have no further questions.

18 CHAIRMAN: Thank you, Mr. Ó Muircheartaigh. Was there
19 anything for the Garda Síochána?

20 MR. DIGNAM: No questions.

12:31

21 MR. KEALEY: I appear for Mr. Hamilton. I have no
22 questions.

23

24 THE WITNESS WAS RE-EXAMINED BY MS. LEADER:

25

12:31

26 293 Q. MS. LEADER: I just want to go over the chronology a
27 little bit, Mr. Hamilton. I think the solicitor on
28 behalf of the Group wrote to the Tribunal on the 13th
29 March 2017, and that letter can be seen at 3749 of the

1 materials. You may be familiar with it already. And
2 it refers to the opening statement of the Chairman. He
3 introduces himself as the solicitor, and then he said:
4
5 "Journalists employed by my clients and for whom I also 12:32
6 act may have information which falls within the terms
7 of reference of the Tribunal."
8
9 And then it goes on to refer to obligations to sources,
10 et cetera. Were you aware of that letter, in general 12:32
11 terms? Maybe not specifically what --
12 A. I probably must have been. I don't have any particular
13 recollection of it. I think there would have been
14 discussions of the broad nature of a response, but it
15 certainly falls within what I would -- what I 12:32
16 understood our general broad position to be.
17 294 Q. Okay. And that was in relation to the position in
18 relation to the Tribunal, am I correct in saying that?
19 A. As I'm reading this letter, yeah, that is how it
20 appears to me. 12:33
21 295 Q. And were you also aware at that time that, in or around
22 March 2017, that the Tribunal was writing to four
23 journalists in your Group?
24 A. I -- I would suspect I was. Again, I don't have a
25 detailed recollection, but I'm -- I would be -- and, 12:33
26 sorry, which four would they be, can you remind me?
27 296 Q. They are Ms. O'Reilly, obviously, and Ms. McCann.
28 A. Yes.
29 297 Q. And there were two other journalists as well.

1 MR. KEALEY: If I can assist the Tribunal, those were
2 Jennifer Bray and Ali Bracken.
3 MS. LEADER: Yes. Thank you.
4 298 Q. Ms. Bray and Ali Bracken.
5 A. Right. 12:33
6 299 Q. Were you aware of that?
7 A. Yes, I must have been made aware of that.
8 300 Q. So, first of all, the Tribunal wrote on the 15th March
9 to the individual journalists, asking, in a very
10 general way, could you ever tell us if you know 12:34
11 something in relation to the terms of reference?
12 A. Mm-hmm.
13 301 Q. You were aware of that?
14 A. I mean, again, I have no recollection whatsoever of it,
15 but I must have been aware that that was happening, 12:34
16 that it would be practice for -- and were you writing
17 to Michael Kealey at that point? were the letters
18 addressed --
19 302 Q. Well, Mr. Kealey was responding on their behalf.
20 A. So I would have been made aware that communications had 12:34
21 been received, yeah.
22 303 Q. And then on the 21st April 2017, there was a very
23 detailed letter sent to each of those individual
24 journalists, asking a series of questions.
25 A. Okay. 12:34
26 304 Q. Were you aware of that?
27 A. Again, not specifically, but I've no doubt there is an
28 email somewhere that informs me of that.
29 305 Q. Okay. And the reply to that very detailed letter --

1 there was no reply. And there was, as I understand
2 it - Mr. Keeley, I'm sure, will correct me - there was
3 a reminder to that letter sent to each of the
4 individual journalists on the 2nd May 2017.

5 A. Okay.

12:35

6 306 Q. All right. And then there was a reply sent to that
7 reminder and the letter in April 2017, setting out, on
8 behalf of each of the journalists, and it sets out at
9 page 3724 of the materials, that Mr. Kealey's clients,
10 the four named journalists, were unable to answer the
11 questions set out in the letters of the 21st April, and
12 that's in line with the approach that was being taken
13 by the Group at that time, isn't that right?

12:35

14 CHAIRMAN: what is the date of that particular letter,
15 Ms. Leader?

12:35

16 MS. LEADER: 5th May 2017.

17 CHAIRMAN: Yes.

18 MS. LEADER: Yes.

19 307 Q. And I am, in particular, referring to the third
20 paragraph of that letter. You see there --

12:35

21 A. Yeah. "My clients are unable..."

22 308 Q. "... are unable to answer the questions in your letters
23 of the 21st April. They are concerned that, if they
24 did so, they would breach their obligations of
25 confidence towards sources of information or, at the
26 very least, allow for the opening of lines of inquiry
27 that would lead to the identification of those sources.
28 They note the waivers and they say they do not release
29 my clients from their obligations or weaken their

12:36

1 legally-established privilege against revealing
2 sources, either directly or indirectly."

3

4 Do you see that?

5 A. Yes.

12:36

6 309 Q. And that is in line with your approach --

7 A. Yeah.

8 310 Q. -- in your evidence today. And was that a matter that
9 was discussed amongst you or was generally, that was
10 the general approach?

12:36

11 A. I think we would have had -- I mean, again, I wasn't
12 fully aware that we were going to be going through
13 these documents or I would have tried to kind of go
14 back and get more information. I think we would have
15 had general discussions from the beginning and I would
16 have expressed my view, you know, which I think is
17 clear, on my interpretation of privilege, and, you
18 know, but the -- the detailed responses would have been
19 handled by Mr. Kealey.

12:37

20 311 Q. All right. But are we in agreement that that letter is
21 at one with your general approach --

12:37

22 A. Yes.

23 312 Q. -- to privilege?

24 A. Yes, yes.

25 313 Q. Okay. All right. And at that stage, and still, you
26 express a support for the work of tribunals and --

12:37

27 A. Yes.

28 314 Q. -- you'd written the letter that was opened -- or the
29 article, I beg your pardon, that was opened to you by

1 Mr. Ó Muircheartaigh?

2 A. Yeah, yeah.

3 315 Q. You see, then we wrote to -- the Tribunal, I should
4 say, wrote to Ms. McCann on the 24th May 2017, and that
5 will come up on page 3726 of the materials, and this is 12:38
6 going to be a long question now, I'm sorry,
7 Mr. Hamilton, referring to the work of the Tribunal,
8 noting the responses of the letters, the 5th May
9 letter, which I have just set out to you, and the
10 Tribunal enclosed a copy of the letter sent by Deputy 12:38
11 Howlin to the Tribunal --

12 A. Yeah.

13 316 Q. -- and asked for a response. All right? Was that
14 brought to your attention?

15 A. Yes. 12:38

16 317 Q. All right. And we'll look at what Deputy Howlin has to
17 say in relation to the matter. It's at page 1692 of
18 the materials. And if we go down to the fifth
19 paragraph down -- or the fourth, we will start with
20 that: 12:39
21

22 "Ms. O'Reilly worked, as I already knew, in the office
23 of The Mail on Sunday. She informed me that The Mail
24 on Sunday crime correspondent, Debbie McCann, had
25 ongoing communications with Garda Commissioner 12:39
26 O'Sullivan during 2013 and '14. Ms. O'Reilly said that
27 Ms. McCann told her that the Commissioner had given
28 information to her claiming serious sexual misconduct
29 on the part of Sergeant McCabe. It involved a girl in

1 Cavan whom it was alleged had been abused by Sergeant
2 McCabe. "

3
4 And then there is a reference to what appeared in the
5 text message thereafter. And she said: 12:39

6
7 "These matters were being discussed generally in the
8 office of The Mail on Sunday. "

9
10 All right? 12:39

11 A. Mm-hmm.

12 318 Q. You were aware of that?

13 A. Of that letter, yes.

14 319 Q. Letter, yes. So was there discussion about it, about
15 the attitude? 12:40

16 A. Sorry, about the attitude?

17 320 Q. In relation to the claiming of privilege, and so forth?

18 A. Sorry, was there a discussion of --

19 321 Q. Amongst yourselves about that letter?

20 A. About the letter from Brendan Howlin, yes. 12:40

21 322 Q. Yes. All right. Now, Mr. Kealey replied to that
22 letter on 3727, on the 30th May 2017, and what he says
23 is:

24
25 "Your letter and the enclosed material from Mr. Howlin 12:40
26 gave rise to a number of matters of significance upon
27 which I need to take detailed instructions before a
28 response can be finalised. I will be unable to do so
29 within the time frame", he explains.

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And then there is another letter on the 2nd June, again to Ms. McCann, if you see it, it's at page 3728 of the materials. So now at that stage we have Mr. Howlin putting information before the Tribunal that Ms. McCann had some information in relation to the terms of reference. And in this letter, which is the 2nd June 2017:

"So the Tribunal would be grateful" -- again addressed to Ms. McCann.

"The Tribunal has been informed that you attended at the house of a young lady in County Cavan, who is being referred to in the Tribunal as Ms. D and who originally made an allegation of assault against Sergeant McCabe. The Tribunal would be grateful if you could furnish it with a statement relevant to the circumstances which led you to the making said -- to making the said approach and particularly whether this was at the suggestion or direction of any person and, in particular, and also, whether it involved in any way of any persons named in the Tribunal's terms of reference."

You see that letter?

A. Mm-hmm.

323 Q. Was that discussed?

A. I don't have any particular recollection of that

1 letter. Sorry, what is the date of that letter again?
2 324 Q. I think it's the 2nd June. It's at the bottom of the
3 page, which is on screen in front of you.
4 A. I mean, I'm --
5 325 Q. It brings the information a little bit further? 12:42
6 A. Sure. No, I mean, it's just in terms of asking me
7 questions about my knowledge of particular letters, you
8 know, there will be things like holidays and being
9 away, where, you know, not having had a chance to look
10 back at any of this, I'm kind of only going to be able 12:42
11 to say, yes, I'm sure an email went around, but I
12 certainly don't recall a particular discussion of that
13 letter, but that is not to say there wasn't one. It's
14 just that kind of -- with this coming slightly from
15 left field for me, I genuinely can't recall. You know, 12:43
16 I am happy to go away and see if I can shed any more
17 light on it, but I don't remember that particular
18 letter and the discussion around it.
19 326 Q. Maybe if I can ask you a more generalised question.
20 Were you aware that information was coming to the 12:43
21 Tribunal from people other than your office, and we
22 will leave Ms. O'Reilly out of it just for the minute,
23 implicating, and I don't mean that in a bad way, one of
24 your journalists in having knowledge in relation to the
25 terms of reference? You must have been -- 12:43
26 A. I was definitely made aware at some point that Gemma
27 O'Doherty had made a statement which suggested that
28 Debbie McCann had said something negative or was saying
29 something negative about Sergeant McCabe, but my

1 understanding at the time was that it was apparent from
2 her statement that this was a -- that that was
3 secondhand information.

4 327 Q. All right.

5 A. And that, you know, we had no way of knowing where it 12:44
6 had originated, or indeed whether it had originated
7 with Alison O'Reilly and was the same claim simply
8 circulating around houses.

9 328 Q. And that is linked in, I suppose, to the letter from
10 the Tribunal in relation to Mr. Howlin's statement, 12:44
11 because both were sent at the same time, isn't that
12 right?

13 A. Okay.

14 329 Q. Well, I'll go back and show it to you.

15 A. I mean, I am sure they arrived within a similar time 12:44
16 frame. I'm not sure --

17 330 Q. They were enclosed in the same letter.

18 A. Okay.

19 331 Q. All right. And when Ms. McCann was interviewed by the
20 Tribunal investigators, which I think was in July 2017, 12:45
21 with the information the Tribunal had, she was able to
22 answer questions in relation to her trip to Cavan, if I
23 can put it that way.

24 A. Hmm.

25 332 Q. So in view of all of that, do you think that's -- there 12:45
26 was a drip-feed of information to the Tribunal from
27 Mr. Howlin -- or maybe if I could rephrase that. The
28 Tribunal got information from Mr. Howlin, from the Ds,
29 in relation to Ms. McCann's involvement in the story,

1 put it that way, and then asked Ms. McCann about it,
2 and she told us about it. But does that in any way --
3 is that consistent with cooperating with the Tribunal
4 and being, once people are asked about, do you have any
5 information?, not putting it forward but simply leaving 12:46
6 the Tribunal find it out in another way and then
7 dealing with it?

8 A. My slight difficulty with that is that because I
9 wasn't, and never kind of had been, involved with, and
10 wasn't aware of at the time the approaches to -- or the 12:46
11 approach that was made to Ms. D, and I'm not certain --
12 I'm not certain at what point I ever became aware that
13 Debbie McCann had made an approach to Ms. D, and I
14 can't remember at this remove, you know, certainly
15 without going back, whether that formed any part of any 12:46
16 of the discussions I had been involved in, I don't know
17 whether -- to be honest, I am not -- I genuinely don't
18 feel I could say that I was -- that I can recall being
19 privy to the thinking behind that approach. Certainly,
20 you know, from the beginning, there was a concern, and 12:47
21 it was a concern I felt particularly keenly, that, you
22 know, we must protect our sources of information and we
23 must protect our rights to protect our sources of
24 information, and whether I would have -- whether I
25 would, A, have known at that point the details of the 12:47
26 visit to Ms. D, whether I would have been able to make
27 a determination as to whether or not that did or didn't
28 fall within the terms of reference, whether I would
29 have been able to decide, if it did fall within the

1 terms of reference, whether or not it was a thing that
2 was covered by -- that was covered by privilege, you
3 know, I'm -- I will be honest and say, you know, I
4 don't recall having that level of discussion about
5 those things and certainly -- certainly, my principal 12:48
6 concern, and bear in mind I was coming at this as
7 someone who, you know, who had never heard the Maurice
8 McCabe thing, who hadn't published anything negative in
9 any way, you know, I didn't particularly feel that, you
10 know, that I or the Mail were in any way kind of 12:48
11 implicated in anything. My principal concern was
12 establishing and defending the principle of source
13 protection. You know, I know Michael Kealey had
14 individual conversations with individuals as well,
15 which I wouldn't have been party to, so I'm just -- I 12:49
16 am not sure I can give you a particularly helpful
17 answer in terms of kind of why that unfolded the way it
18 did. You know, I think at all times, you know, we were
19 very conscious of not breaching and defending the
20 principle of privilege, and that was my ultimate 12:49
21 consideration, and I --
22 333 Q. well, I suppose, Mr. Hamilton, at the end of the day,
23 Ms. McCann told us, and this was in July of last year,
24 that she had been up to the D household --
25 A. Yeah. 12:50
26 334 Q. -- had met Mrs. D and hadn't had an interview with
27 Ms. D, and she felt comfortable in telling us that,
28 while at the same time claiming journalistic privilege
29 and not saying anything about her sources.

1 A. Mm-hmm.

2 335 Q. Okay. And that's -- and that was in July of last year.
3 And what I'm wondering is, was a decision made at any
4 time with regard to the Tribunal, to say, okay, we are
5 going to claim journalistic privilege, we are not going 12:50
6 to tell the Tribunal anything about any of our
7 journalists knowing anything about the D story until
8 such time as we see what other information the Tribunal
9 gets?

10 A. I'm certainly not aware of any decision in those terms 12:50
11 having been taken at all, and, I mean, the one thing I
12 would say in relation to that question is, as I have
13 already said, I don't impose my slightly absolutist
14 view of journalistic privilege on anybody working
15 there, and, you know, and therefore I'm not -- you 12:51
16 know, I think the fact that Debbie McCann felt
17 comfortable talking about having approached Ms. D's
18 house, I can't say it's a hypothetical, but I certainly
19 instinctively would personally in that situation
20 perhaps have been concerned that even going there might 12:51
21 have been a breach of privilege, I don't know because
22 I'm not in that situation, but certainly I'm not aware
23 of a decision of the type that you are referring to.

24 336 Q. And just while taking absolutely no side in all of
25 this, it would appear that, on one view of things, that 12:51
26 Ms. O'Reilly, who is the one journalist who offered
27 information to the Tribunal as to the Mail's running of
28 a story or attempt to run a story or looking for
29 information in relation to Ms. D, put it that way, she

1 seems to have been left out in the cold?

2 A. I -- again, I wouldn't take that characterisation
3 because that -- that has to be based on the assumption
4 that what Alison O'Reilly is saying is true and that
5 her motivation is not to -- is not influenced by the 12:52
6 very clear grievance that she has with the Irish Mail
7 on Sunday, and, you know --

8 CHAIRMAN: You know, Mr. Hamilton, you can have a
9 grievance with somebody and still tell the truth.

10 A. Oh, absolutely, and I do understand that. Again, I 12:52
11 can --

12 CHAIRMAN: I mean, there is plenty of people I don't
13 like, but I always try and do the right thing. It's a
14 big jump.

15 A. And in our business we learn that -- 12:53

16 CHAIRMAN: And it's an even bigger jump to actually put
17 it down on paper and say this is wrong and this is the
18 reason and this person is lying, it really is, and I'm
19 not sure you realise that.

20 A. No, I think perhaps -- 12:53

21 CHAIRMAN: But what Ms. Leader is actually asking you
22 about now is, this Tribunal was established on the 17th
23 February 2017, I opened the Tribunal on the 27th
24 February 2017 and it took until July '17 for anything
25 to come out of your newspaper, anything at all, while, 12:53
26 at the same time, you are thundering in your editorials
27 about how important tribunals are, so what is the
28 reason, if there is a reason, if you can speak to that?
29 Perhaps you can, perhaps you know nothing. But so many

1 times I have heard in this Tribunal: I know nothing, I
2 don't remember anything. I mean, you could be the one
3 telling the truth, I don't know.

4 A. Yeah. All I can say is that, from the beginning, you
5 know, I was deeply concerned about any potential 12:54
6 breaches of what I considered to be the position on
7 journalistic privilege, which I know goes further than
8 some others, and that that was -- that that position is
9 held absolutely not in defiance of or in any wish to
10 not cooperate with the Tribunal at all, you know; that 12:54
11 the thundering is, and always has been, and I think,
12 you know, I have a body of evidence of work supporting
13 tribunals that shows that it's not just thundering, but
14 then in a situation like this I find myself, despite
15 that support, placed in a very difficult situation and 12:54
16 an uncomfortable situation where, you know, someone
17 who, as I say, who I hired, who I worked extremely well
18 with, who did great journalism, you know, made
19 allegations that she'd never brought to me, that she'd
20 never thought to say to me that there is an issue. 12:55

21 CHAIRMAN: We are going back to Ms. O'Reilly now, and
22 it's not really about Ms. O'Reilly; it's actually about
23 what the newspaper knew and it's about the attitude in
24 relation to tribunals of sitting on your hands, leaving
25 me sitting here in this Castle away from my other work 12:55
26 and saying, well, as Ms. Leader said to you, let's see
27 if they actually have any information; other than that,
28 we are telling them nothing. And that's an attitude,
29 if that is the attitude, and I don't know, I'm clearly

1 not putting that to you as an accusation, it's not a
2 thing I have made my mind up, but we have certainly
3 come across it in other places, and so why isn't it the
4 case here?

5 A. My only answer to that can be that that, as I have 12:55
6 said, if there was any -- if there was any, you know,
7 perception of a failure to give information, from my
8 perspective the only possible reason for that could be
9 a belief that journalistic privilege, you know, and the
10 freedom to protect our sources, was potentially -- was 12:56
11 potentially at risk, and also, you know, again, I
12 think, and this is often the case with the stories that
13 we investigate, often things, you know, take longer
14 perhaps than they should, for just the simple human
15 reasons that we are all running around with a small 12:56
16 staff of people trying to do what we do, and, you know,
17 we don't have teams of people to deal with this, and
18 obviously that necessarily means that again --

19 CHAIRMAN: I know, but it's really very simple. The
20 fact that someone goes and knocks at somebody's door, 12:57
21 is a fact; the fact that they speak to somebody's
22 mother, is a fact; the fact that you know that, your
23 newspaper knows that, is a fact; the fact that that is
24 nothing to do with journalistic privilege, the fact of
25 being at the door, but nonetheless you choose not to 12:57
26 tell us and it takes you five months to get to the
27 point, when we already know the information, I have to
28 put it to you. So, I mean, it's all very well to say
29 journalistic privilege to journalistic privilege any

1 number of times you wish, but at the moment that
2 doesn't look very impressive to me.

3 A. I mean, just in relation to that point, and again, you
4 know, I'm speaking from a position of not having looked
5 back over this in any great detail, but certainly it 12:57
6 would seem to me that, you know, if I were in that
7 situation, that if I say this is what I did, then the
8 next question is going to be, well, who told you? And
9 that puts me in direct difficulty. And that, you
10 know -- and it's not impossible that other measures 12:58
11 could be taken to try and identify the source of that.
12 So, again, I personally can understand a degree of
13 caution in believing that giving that kind of
14 information might imperil sources.

15 CHAIRMAN: But, unfortunately, according to the 12:58
16 questions put to you by Mr. Ó Muircheartaigh and by
17 Ms. Leader, that is coupled with saying that the person
18 who is attempting to assist the Tribunal is actually
19 lying, that is what you are doing.

20 A. Yes, and it is an unfortunate position, but I can 12:58
21 only --

22 CHAIRMAN: well, I don't know how you are able to make
23 your mind up about something like that, I mean, I
24 really don't. I appreciate there can be business and
25 difficult decisions to be made in life, I appreciate 12:59
26 all of that, but there it is, you have a clear record
27 of not assisting the Tribunal and you also have a clear
28 record, it seems, of saying the person who is assisting
29 the Tribunal is, in fact, in dispute with you and

1 therefore must be lying to the Tribunal.

2 A. I don't think --

3 CHAIRMAN: That is the question put to you by

4 Ms. Leader. You might like to say something about it,

5 I don't know. 12:59

6 A. what I would say is that I would -- I would not make

7 that determination whatsoever based on anything other

8 than what I perceive to be the facts, and in this

9 instance, you know, the things that are being said, you

10 know, where there is corroborative evidence, as far as 12:59

11 I can see it tends to favour the alternative view of

12 events; you know, you have a person who chose not to

13 bring any of these matters to the attention of people

14 she could confide in within the paper. She, you

15 know -- she went to members of Dáil Éireann to have 13:00

16 them -- to have them put out there, without any attempt

17 to bring them to me. All the other people involved say

18 that what she is saying is not true. The things that

19 are being alleged to me run counter to all logic and to

20 the available facts, and it is a fact that there is a 13:00

21 clear grievance there, and, on that basis, in a

22 position where, you know, I think we as an organisation

23 are being -- are being put in this position, my own

24 view is that that is where -- if I were -- you know,

25 for me, looking at it, that is where the evidence would 13:01

26 tend to lead me, that, you know --

27 CHAIRMAN: well, thank you for that opinion, but I am

28 the one who is going to be deciding the facts here.

29 A. I understand that.

1 337 Q. MS. LEADER: Just one final question, Mr. Hamilton.
2 Perhaps the core piece of evidence Ms. O'Reilly says is
3 that Ms. McCann went and interviewed Ms. D, isn't that
4 right? That is the core fact?

5 A. Well, I think the core fact is the allegation that 13:01
6 Nóirín O'Sullivan personally briefed her in a negative
7 way about Maurice McCabe. That is the allegation that
8 Brendan Howlin made publicly. That is the explosive
9 allegation that turned, you know, this inquiry into a
10 -- the inquiry into a tribunal. And, you know, my own 13:01
11 view is that what happened is that a core of facts,
12 which are that Debbie McCann did visit Ms. D and didn't
13 get a story, that Debbie McCann and Alison O'Reilly did
14 discuss the McCabe case and perhaps took slightly
15 different views of it, I think those are all facts, and 13:02
16 that once you then throw into those facts the explosive
17 allegation that it was Nóirín O'Sullivan personally who
18 did it, that's what turned Alison O'Reilly's
19 information from the ordinary, can I -- you know,
20 goings-on, you know, in a newsroom, that have been 13:02
21 replicated in other newsrooms, into something much more
22 dynamite; it was the adding of Nóirín O'Sullivan's name
23 and David Taylor's name that turned that narrative into
24 something explosive, that is, you know -- that has
25 resulted in this. 13:02

26 338 Q. And the fact, I suppose, that Ms. McCann tried to
27 interview Ms. D or called to the D household, was never
28 something that was shared with the Tribunal by
29 Ms. McCann or any of your other journalists, with the

1 exception of Ms. O'Reilly, until such time as the
2 Tribunal found it out in another way?

3 A. Yes, that's correct, but again, I'm not sure I would --
4 clearly, I wouldn't have placed the same interpretation
5 on that, you know, and clearly that is the -- you know, 13:03
6 a central fact in the narrative, but, as I said, I
7 think the thing that turned a thing that -- that was
8 otherwise, you know, part of the newsroom process into
9 something much bigger, was throwing in those couple of
10 names, you know, and that, to me, ultimately, is at the 13:03
11 core of it.

12 MS. LEADER: Thank you very much.

13 CHAIRMAN: All right. Thank you very much for being
14 here, Mr. Hamilton.

15 THE HEARING THEN ADJOURNED FOR LUNCH 13:04

16

17 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

18 MR. MARRINAN: Sir, the next witness is Conor Lally.

19

20 MR. CONOR LALLY, HAVING BEEN SWORN, WAS DIRECTLY 14:13
21 EXAMINED BY MR. MARRINAN:

22

23 339 Q. MR. MARRINAN: I think that you are the security and
24 crime editor with the Irish Times newspaper, isn't that
25 right? 14:14

26 A. That's correct, Chairman.

27 340 Q. And would you just give the Chairman a brief history of
28 your career to date in journalism?

29 A. I would have left college, UCD, in 1996. I went to

1 work pretty much straightaway with the Sunday Tribune,
2 was there for three years; would have went to the
3 Evening Herald then for a year, from 1999 to 2000; then
4 went to Australia for a couple of years, worked on a
5 newspaper out there; and came back to Ireland midway 14:14
6 through 2002, and I have worked with the Irish Times
7 ever since.

8 341 Q. And I think that you're aware of the circumstances
9 where the Tribunal wrote out to you seeking information
10 in relation to your relationship with 14:14
11 Superintendent David Taylor?

12 A. Yes.

13 342 Q. I think you met with the Tribunal investigators on the
14 6th April of this year, and your interview with the
15 investigators is to be found at page 4894 of the 14:15
16 material, which is Volume 18. Now, I think that when
17 you met with the investigators, the investigators
18 highlighted a number of documents to you, which I don't
19 intend to open because we're all familiar with them at
20 this juncture, but they appear on page 4899 of the 14:15
21 material, and it's a waiver signed by former
22 Commissioner Martin Callinan, a waiver signed by
23 Commissioner Nóirín O'Sullivan, a waiver signed by
24 Superintendent Taylor and then also an extract from a
25 statement of Superintendent Taylor which deals with you 14:15
26 in particular and asking you to assist the Tribunal in
27 relation to claims that he has made in respect of you
28 and then see an extract from page 7 of Sergeant Maurice
29 McCabe's statement to the Tribunal where he calls upon

1 journalists to cooperate with the Tribunal to try and
2 get to the truth. There is also an abstract of an
3 analysis conducted by the Disclosures Tribunal of
4 mobile billing records, and I think that you're in a
5 position where you wish to claim journalistic privilege 14:16
6 in relation to your own mobile number, is that right?

7 A. That's correct.

8 343 Q. And I think that you state to the Tribunal
9 investigators at page 4900:

10
14:16
11 "I'm declining to answer that on the basis of
12 journalistic privilege. I am concerned if I answer
13 that question it may compromise sources and breach
14 journalistic privilege."
15

16 Now, I think that the Tribunal investigators then
17 turned to the issues in terms of asking you a number of
18 questions that naturally arise out of Superintendent
19 Taylor's protected disclosure and his subsequent
20 letters to the Tribunal and his list initially of nine 14:17
21 journalists who he claims that he briefed negatively in
22 respect of Sergeant Maurice McCabe, you're aware of
23 that?

24 A. I am.

25 344 Q. So it's in that context, I think, you brought a 14:17
26 pre-prepared statement to the interview which set out
27 your position, is that right?

28 A. That's correct.

29 345 Q. And I think that you expressed, correct me if I am

1 wrong in relation to this, but I think that you
2 expressed your concern in relation to answering
3 questions directly in relation to your relationship
4 with Superintendent Taylor because you felt that that
5 would infringe on some relationship you may or may not 14:18
6 have had with him as a source, is that right?

7 A. That's right. I felt if I began to, you know, answer
8 questions on particular conversations I did or did not
9 have with particular people, I would be getting into,
10 you know, revealing who sources were and weren't. But 14:18
11 I did give a very general statement to the Tribunal to
12 say that no Garda member, past or present, had ever
13 briefed me negatively about Sergeant McCabe.

14 346 Q. Well, whilst it's a general statement, it's said in the
15 particular context of the questions that were being 14:18
16 posed to you by our investigators, isn't that right?

17 A. That's right.

18 347 Q. And it appears at page 4972 of the material, and I'll
19 just go through the entirety of it, if you don't mind?

20 A. Yes. 14:19

21 348 Q. We will just read it into the transcript.

22
23 "I was extremely surprised to see from the opening
24 statement of counsel to the Tribunal that my name was
25 given by Superintendent Dave Taylor as a journalist to 14:19
26 whom he had given a negative briefing about Sergeant
27 Maurice McCabe."

28
29 And does that adequately express your position in

1 relation to hearing the opening statement made by
2 counsel?

3 A. It does. I was very surprised to hear the opening
4 statement.

5 349 Q. Was that the first time that you were alerted to the 14:19
6 fact that Superintendent Taylor had identified you as
7 somebody that he had briefed negatively?

8 A. Yeah, as far as I can recall, the opening statement of
9 the Tribunal was the first time, yeah.

10 350 Q. You go on to say: 14:19

11
12 "I have reviewed the statements of Superintendent Dave
13 Taylor furnished to me by the Tribunal with the
14 Tribunal's letter of March 12th, 2018. I note that
15 Superintendent Taylor makes just one specific reference 14:19
16 to a conversation in which he claims to have spoken
17 negatively to me about Sergeant McCabe in the context
18 of the O'Mahony report on penalty points."

19
20 And I think there you're making the point that 14:20
21 Superintendent Taylor, in his protected disclosure or
22 subsequent statements or indeed his evidence before the
23 Tribunal, hasn't identified any particular occasion on
24 which he says that he briefed you negatively, is that
25 the point that you are wishing to make there? 14:20

26 A. That is the point, yeah.

27 351 Q. You then go on to say:

28
29 "Throughout all my time as a crime correspondent and

1 crime and security editor, I have taken great care to
2 ensure that I did not become too close to An Garda
3 Síochána or indeed anyone else, so as to preserve the
4 independence and integrity of my reporting. That is a
5 cornerstone on which the Irish Times newspaper bases 14:20
6 its journalism, in support of a free and open democracy
7 and has been key to my approach as a journalist."
8

9 And then we come to two paragraphs that you refer to
10 continuously throughout your interview with the 14:21
11 investigators in answer to specific questions
12 concerning your interaction with Superintendent Taylor
13 and whether or not you had been briefed negatively by
14 him, but also equally refer to your interaction, if
15 any, with Deputy Commissioner Nóirín O'Sullivan and 14:21
16 Commissioner Martin Callinan, isn't that right?

17 A. That's right.

18 352 Q. You say:

19
20 "In general terms, I can say that I have not at any 14:21
21 time had any discussion with any member of An Garda
22 Síochána, past or present, which I regarded as an
23 attempt to engage in negative briefing about Sergeant
24 McCabe or in any way undermine or denigrate his
25 character." 14:21
26

27 Now, that remains your position, is that right?

28 A. That is my position.

29 353 Q. You then go on to say:

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"I am in a position to confirm that no member of An Garda Síochána, past or present, ever spoke to me about allegations of criminal misconduct, whether sexual abuse or anything of the like, about Sergeant McCabe." 14:22

And that remains your position?

A. That's right.

354 Q. You then go on to point out:

"You will appreciate that I am not in a position to comment in any way upon discussions I may or may not have had with Superintendent Taylor or anyone else, where I am precluded from doing so by virtue of my obligations to observe journalistic privilege. I can, however, say in a general sense that, in working as a crime correspondent, it is quite usual to speak to all of the interested parties in relation to a specific issue for the purposes of fact-gathering and for the interested parties to give me their perspective or understanding of a particular issue, which can differ from the account or perspective of another party. That is the normal part of the fact-gathering process as a journalist and is not something I or any of my journalistic colleagues regard as untoward. It is for me as a reasonable, responsible journalist to reflect the differing perspectives of all parties gathered over the course of this process either in the same piece of journalism or in a body of work on the same issue over 14:22 14:23

1 time."

2

3 Now, the last paragraph, you state:

4

5 "I do not believe there is any other information I have 14:23
6 which is relevant to the Tribunal's terms of
7 reference..."

8

9 Is that the position?

10 A. That's the position. 14:23

11 355 Q. "... or of assistance to the Tribunal in that regard.
12 It may nevertheless be the case that there are
13 questions you will ask me which give rise to a concern
14 on my part that I would infringe journalistic privilege
15 to answer them. Where that arises, I will rely on 14:24
16 journalistic privilege and decline to answer the
17 question. In doing so, I will mean no disrespect to
18 the Tribunal or its work. As I have said, I believe I
19 have, in any event, addressed above the extent of the
20 information I can give relevant to the Tribunal and its 14:24
21 terms of reference."

22

23 And that remains your position in relation to it?

24 A. That remains my position, yeah.

25 356 Q. And you obviously gave that statement a lot of thought 14:24
26 before you provided it to the Tribunal?

27 A. I did. I mean, obviously the Tribunal process is one
28 that I respect a lot and I take seriously, but I also
29 take my work as a journalist quite seriously as well,

1 so I really try to come up with a way of protecting
2 sources but also trying to aid the Tribunal's work, and
3 I am hopeful that this statement has achieved those
4 goals.

5 357 Q. And obviously because your counsel engaged with 14:25
6 Superintendent Taylor when he was giving evidence on
7 your behalf, it places you in conflict with
8 Superintendent Taylor and the evidence he has given?

9 A. Well, I mean, I suppose as my statement says, I mean, I
10 heard Superintendent Taylor's evidence and, as my 14:25
11 statement to the Tribunal has said, you know, I wasn't
12 briefed negatively in any way by any member of the
13 Garda. It's very hard for me to answer in relation to
14 specific Garda members without going into areas of
15 sources, but certainly no member of the Garda ever, I 14:25
16 mean past or present, ever negatively briefed me about
17 Sergeant McCabe.

18 358 Q. Now, I think that you wrote an article, it's at 4973 --
19 sorry, it's not. Yes, 4973, dated February 20th, 2017.
20 14:26
21 "'When can I get on with my life?', woman at centre of
22 McCabe case."

23
24 I think that you have also indicated that you weren't
25 influenced or nobody put you up to writing that article 14:26
26 on -- effectively, Ms. D, isn't that right?

27 A. That's right. I mean, the idea for the article came up
28 within the newsroom in the Irish Times and it was
29 organised completely independently of anybody in An

1 Garda Síochána or anything like that.

2 359 Q. All right. Well, having dealt with the specifics of
3 what you have to say and, you know, the Tribunal is
4 taking the stance that, in terms of the information
5 that you have given certainly for the moment, that 14:27
6 perhaps addresses some of the issues that we are
7 concerned about. But in a general way in terms of
8 rumours that may or may not have been circulating in
9 journalistic circles from 2010 up until 2014, can you
10 assist the Tribunal in that regard? Did you hear 14:27
11 anything?

12 A. Well, I did hear about it, yeah. I mean, I would
13 have -- I mean, I would have heard that there was an
14 historical complaint made against Sergeant McCabe, and
15 I would have heard about this, I think, in about 2011 14:27
16 and possibly even in 2010.

17 360 Q. And was this from colleagues?

18 A. It is so long ago now and Sergeant McCabe wasn't the
19 well-known person then that he is now. I mean, I
20 hadn't begun really writing about the cancellation of 14:28
21 penalty points, or anything, at that stage. So I
22 actually genuinely can't recall who told me about this,
23 but I do recall from the first time that I heard about
24 it, it was put to me that there was an allegation made
25 against him, that it was investigated by the guards, 14:28
26 that the guards recommended to the DPP that there be no
27 prosecution, and that there was no prosecution. And I
28 think the person who first told me used a phrase like,
29 you know, the case was, quote-unquote, completely

1 thrown out by the DPP. So even from the outset it was
2 very, very clear to me that this had gone absolutely
3 nowhere. And from my recollection, even the person who
4 told me, it was kind of in the context of, you know,
5 Sergeant McCabe fell out with An Garda Síochána and 14:29
6 this appears to have been the start of it all. But
7 there was nobody trying to drive home a point that he
8 was a bad guy or you had to be wary of him, or anything
9 like that. From my recollection, the kind of telling
10 of this particular story was an explainer for how he 14:29
11 fell out with Garda management, basically.

12 361 Q. So you think that was in 2011?

13 A. It could have been earlier.

14 362 Q. It could have been earlier?

15 A. Yeah. 14:29

16 363 Q. And it wasn't certainly, as far as you were concerned,
17 part of any Garda smear campaign against Maurice
18 McCabe?

19 A. Definitely not.

20 364 Q. And having been familiar then with the rumour, if we 14:29
21 can put it that way, did it resurface at all again in
22 2013 or 2014, that you recall?

23 A. Yeah, I mean, I remember -- I mean, strangely, when I
24 first heard it, I would have regarded it as a rumour,
25 but, I mean, looking back now, what I was told was 14:30
26 true, I mean there was a complaint, there was an
27 inquiry, the case was completely thrown out.

28 365 Q. Yes.

29 A. So, strangely, while I regarded it as a rumour at the

1 time, it actually turned out to be accurate.

2 366 Q. Yes.

3 A. And then I suppose I didn't hear about it again for a
4 long time and then it would have resurfaced again
5 generally. I mean, it was definitely doing the rounds 14:30
6 in journalism circles, and so on.

7 367 Q. when?

8 A. I suppose 2013 and 2014, I would think. I mean, you
9 know, I can't be one hundred percent.

10 368 Q. when you say doing the rounds in journalistic 14:30
11 circles --

12 A. Yeah.

13 369 Q. -- I mean, was it doing the rounds on the basis of --
14 the factual basis on which you are saying; namely,
15 look, there was an investigation, if anybody hears 14:30
16 about this be alert to the fact that it was looked at
17 by the DPP and they directed no prosecution, in
18 circumstances where the facts didn't disclose, even at
19 its height, a criminal offence. So, I mean, was it in
20 that context that you heard it or was it in the context 14:31
21 of something that was being said negatively about
22 Maurice McCabe?

23 A. Well, I mean, you know, I suppose I can only speak from
24 my own experience really, but certainly my own
25 experience was that nobody ever came to me to try and 14:31
26 convince me that this was true or that Sergeant McCabe
27 had, you know, done anything wrong or broken any laws,
28 or anything like that. When I say it was doing the
29 rounds, I just am aware that some other people were

1 aware of the same information I was.

2 370 Q. well, I suppose if they did come to you on that basis,
3 you could have dismissed them fairly quickly, having
4 looked into it yourself in 2011?

5 A. Yeah, I mean, I think would I have looked into it in 14:31
6 2011. I don't really have any particular memory of
7 checking this out as a kind of story. I mean, the way
8 it was told to me, it kind of had a start, a middle and
9 an end, and there was nothing you could do with the
10 information or that you would want to do with the 14:32
11 information. An allegation had been made, he had been
12 exonerated, there wasn't a huge amount to be done.

13 371 Q. Did you get any sense or flavour from what was
14 happening in 2013 into 2014, that there was some effort
15 by An Garda Síochána, and I will use that in the broad 14:32
16 sense, but there was some effort to do down Maurice
17 McCabe by putting a rumour out there about his past?

18 A. I mean, I didn't get that sense. I think, though, I
19 mean, the journalism that I was doing at the time would
20 have been quite favourable to him, so it is quite 14:33
21 possible people in the guards just didn't regard me as
22 a person that you would go to and try to convince of
23 anything.

24 372 Q. And no other journalists came up to you at the time and
25 perhaps suggested that this might be happening? 14:33

26 A. No, they didn't.

27 MR. MARRINAN: would you answer any questions, please.
28
29

1 MR. LALLY WAS CROSS-EXAMINED BY MR. McDOWELL:

2 373 Q. MR. McDOWELL: Mr. Lally, Michael McDowell is my name,
3 and I'm representing Sergeant McCabe here. As I
4 understand what you're saying, you say you heard a
5 rumour, which you now believe was factually correct, 14:33
6 about Sergeant McCabe as far back as 2011, or possibly
7 even earlier, to the effect that an allegation had been
8 made that he had sexually abused a girl but had been
9 thrown out by the DPP, is that right?

10 A. It's very hard to put a specific time-line on it. I 14:34
11 will say that I recall writing about penalty points in
12 2012, and by the time I wrote about penalty points in
13 2012 I had known about it quite some time at that
14 stage. I feel I knew about it for about a year or
15 possibly more at that point, but it is hard to put a 14:34
16 very specific time on it.

17 374 Q. Well, when you use the word 'thrown out' by the
18 Director of Public Prosecutions, are you implying that
19 there was no substance to this complaint, that that is
20 what you understood as far back as 2011? 14:34

21 A. That it wasn't entertained in any way, that is what I
22 understood.

23 375 Q. That it wasn't entertained?

24 A. Well, that there was an inquiry into it and it didn't
25 go anywhere. 14:34

26 376 Q. Well, did you know or did you at that time know that a
27 file had been sent to the Director of Public
28 Prosecutions arising out of this allegation?

29 A. Oh, I did, yeah.

1 377 Q. And can I take it from that that you knew that the
2 Director of Public Prosecutions had said that there was
3 no offence disclosed, and that's what you mean by
4 'thrown out'?

5 A. Yeah, that's right.

14:35

6 378 Q. And am I to take it then that in all of your writing
7 thereafter, as regards Sergeant McCabe, in your own
8 head you took the view that he had been exonerated by a
9 police inquiry which had gone to the Director of Public
10 Prosecutions?

14:35

11 A. Yes.

12 379 Q. And does it follow from all of that, that nobody was
13 suggesting to you that there was something wrong with
14 that inquiry or that it was in any way unfair to the
15 complainant?

14:36

16 A. I mean, when I interviewed the complainant, I mean, I
17 think she -- you know, she may have said that, when I
18 interviewed her. But certainly I would have
19 interviewed her in 2017.

20 380 Q. Yes. But I am talking about, at the time your view was
21 that there was no substance to this and there was no
22 impropriety in the investigation which we now know was
23 carried out by Superintendent Cunningham, isn't that
24 right?

14:36

25 A. I didn't get any sense that there was impropriety in
26 the investigation, no. Nobody came to me with that
27 information, no.

14:36

28 381 Q. I see. And can I then ask you to elaborate for a bit
29 on this matter surfacing again in 2013/2014. In what

1 sense do you think it surfaced again?

2 A. Yeah, I mean, it's just very hard to pinpoint that. I
3 am just aware that some other journalists that I know
4 knew the same thing I did, and that's --

5 382 Q. Well, can you identify any of those journalists? 14:37

6 A. No, no, I --

7 383 Q. First of all -- maybe I should put it in two ways.

8 A. Yeah.

9 384 Q. Would you, if you could remember who those journalists
10 are, would you identify them, where are you now? 14:37

11 A. Well, first of all, I can't specifically recall who
12 they are, to be honest with you, but I just do have a
13 recollection that around 2013 or 2014 I remember
14 thinking I'm not the only one who has heard about this.

15 385 Q. And you're talking about other journalists -- 14:37

16 A. Yeah.

17 386 Q. -- to whom you were speaking casually, I suppose, is
18 that right?

19 A. Yeah. I mean, as I said earlier, it was because of
20 what had happened, the complaint had been made, there 14:37
21 was an inquiry into it, it didn't go anywhere, it was a
22 dead piece of information from the off.

23 387 Q. Yes.

24 A. And it wasn't the kind of information you'd be going
25 around having chats with other people about. It was 14:38
26 just -- it just wasn't that kind of information. And
27 when I say it resurfaced again, I just do remember when
28 Sergeant McCabe, you know, when his profile began to
29 really grow in, say, 2013/2014, I suppose towards his

1 appearance at the Public Accounts Committee in early
2 2014, I just have a recollection from that period of
3 thinking to myself I'm not the only one who is aware of
4 this.

5 388 Q. And are we to take it from your evidence that the 14:38
6 persons, the colleagues to whom you spoke in the
7 journalists' profession, also understood that there was
8 no substance to this complaint and that it had been
9 fully investigated at the time?

10 A. Yeah, they seemed to hear the same information I did. 14:38

11 389 Q. And did you ever wonder why it was resurfacing at that
12 point?

13 A. I mean, when I used the word 'resurfacing', I'm simply
14 using it because I can remember thinking at the time,
15 other people knew about it. It's possible that I just 14:39
16 began to talk other journalists more about Sergeant
17 McCabe because, you know, his profile was growing, and
18 maybe in the course of those conversations the
19 historical issue came up. It's very difficult to
20 recall, because these were -- you know, you weren't 14:39
21 going to be writing any stories about this, you weren't
22 taking a note, you know. I just do have a recollection
23 from the time that I wasn't the only person who was
24 aware of this.

25 390 Q. Well, did you ever speak to Superintendent David Taylor 14:39
26 at all about Sergeant McCabe in the course of your
27 journalistic activities?

28 A. Em, well, I find it very hard to answer that question,
29 really, to be honest with you, without getting into

1 sources. I mean, as I say, I have stated as fact from
2 the outset, I'm obviously take the, you know --
3 extending full respect and taking the work of the
4 Tribunal very seriously and trying to help it, and I
5 have clearly set out in my statement that no Garda 14:40
6 member, past or present, ever tried to, you know, brief
7 against him negatively.

8 CHAIRMAN: It may help, Mr. Lally; there's nothing
9 wrong with you speaking to David Taylor.

10 A. Yeah. 14:40

11 CHAIRMAN: There's nothing wrong with you, as a
12 journalist, attempting to find out more than the Garda
13 Press Office should give out to you. That's your job,
14 everybody understands that. But Mr. McDowell's
15 question is: was there even an occasion, and this can 14:40
16 be perfectly legitimate, where Maurice McCabe came up
17 in conversation and you were talking around about that
18 with David Taylor? That is basically all he is asking
19 you, not anything more than that.

20 A. Obviously David Taylor was the head of the Garda Press 14:40
21 Office, so clearly I had contact with him. Em, it
22 sounds bizarre, but I don't remember ever having a
23 conversation with him about Maurice McCabe. I know
24 that does sound strange. But I have no recollection of
25 having a conversation with him about Maurice McCabe. 14:41

26 391 Q. MR. McDOWELL: Put it this way: If you had had a
27 conversation with him, you yourself knew about the
28 Ms. D allegation and you knew there was no substance in
29 it, so there wouldn't have been anything terrible about

1 you saying that to him or him saying something to you
2 about it, would there?

3 A. Well, as far as I'm concerned, nobody in the guards
4 ever spoke to me about the Maurice McCabe -- about that
5 particular allegation, ever. 14:41

6 392 Q. I see. So you're --

7 A. I mean, I mean, I feel if I -- I mean, obviously I
8 can't speak about anybody else's experience, but I feel
9 anybody reading the journalism that I was doing at the
10 time, you would read it, and I think if anybody wanted 14:42
11 to spread a rumour about Sergeant McCabe, I think they
12 would know they'd be in the wrong shop if they came to
13 my door.

14 CHAIRMAN: Yes, but you're not one of the specifically
15 excluded people; that is limited to Michael Clifford 14:42
16 and Katie Hannon as people he would never even have
17 considered briefing, but there you go.

18 A. Yeah.

19 393 Q. MR. McDOWELL: well, the point I'm trying to draw out
20 is: You say you had information that Sergeant McCabe 14:42
21 had been accused of a sexual assault, that there had
22 been an investigation into it, that the file had gone
23 to the Director of Public Prosecutions and that the
24 Director of Public Prosecutions had thrown it out
25 completely, is that right? 14:42

26 A. That's right.

27 394 Q. And you're saying no guard told you that?

28 A. I don't think -- no, no guard did tell me that.

29 395 Q. And can I assume that at that stage -- that, in 2011,

1 you didn't have this from the D family?
2 A. No, I didn't.
3 396 Q. Were you aware of Ms. D's identity at the time?
4 A. In 2011, no, I wouldn't have been. I don't think I
5 was, no. 14:43
6 397 Q. When did you become aware of her identity?
7 A. Oh, God, it would be impossible to say that. I just --
8 398 Q. Well, think now, because you went to see -- you went to
9 visit her, so you must have become aware of her
10 identity at some stage between 2011 and 2017? 14:43
11 A. Yeah. I just couldn't put a date on it. I simply
12 don't know.
13 399 Q. Well, maybe I'll help you.
14 A. Yeah.
15 400 Q. When you had this conference in the Irish Times to 14:43
16 consider whether you should go and interview Ms. D, did
17 you know at the time that you would be able to identify
18 her and locate her?
19 A. Well, I didn't go to a conference in the Irish Times,
20 for a start. I'm not sure where you're getting that 14:44
21 from.
22 401 Q. No, I thought you said that you had a meeting?
23 A. No.
24 CHAIRMAN: No, I was puzzled when you said that,
25 Mr. McDowell. 14:44
26 MR. McDOWELL: Sorry.
27 CHAIRMAN: Mr. Marrinan simply pointed out, look,
28 here's the article, and the information was volunteered
29 that this was done entirely separately, it was a story

1 that came in entirely separately. There was no
2 reference to a meeting.

3 MR. McDOWELL: Sorry, I thought you told us, and maybe
4 I'm wrong, that there was a discussion in the Irish
5 Times and you were asked to go and interview her? 14:44

6 A. No, I didn't say that, no. I said the plan to
7 interview her was made within the newsroom in the Irish
8 Times.

9 402 Q. Sorry, that is what I was driving at. There was a
10 discussion in the newsroom at the Irish Times? 14:44

11 A. Yes.

12 403 Q. And the plan for you to go and interview her was made
13 there?

14 A. Hmm.

15 404 Q. And I'm trying to work out, at that stage you must have 14:44
16 known who you were talking about, because you couldn't
17 just go and interview an abstract person; you must have
18 known that you had information identifying who that
19 person was?

20 A. Well, she wasn't an abstract person, because what had 14:45
21 happened, in fact, was, at that point in 2017, in the
22 days previous, like, in the week previous, Brendan
23 Howlin had got up in the Dáil and he had revealed all
24 of this. Maurice McCabe had issued his own statement
25 on it, outlining the involvement of this woman in what 14:45
26 had happened years earlier, and the whole Tusla episode
27 was also ventilated on Prime Time.

28 405 Q. Yes. Her identity was not --

29 A. It wasn't, no.

1 406 Q. So I'm asking you again to assist the Tribunal by
2 saying, when did you become aware of the identity of
3 Ms. D, and how?
4 A. I have a feeling it was probably the day that we
5 decided we were going to try and interview her. I went 14:45
6 off and found out who she was and where she lived.
7 407 Q. And how could you find that out?
8 A. I found it out through a source. It was very easy to
9 find out. But as I say, as I said earlier, it was a
10 source completely independent of An Garda Síochána. I 14:46
11 mean, at that stage the Maurice McCabe controversy was
12 extremely toxic.
13 408 Q. Yes.
14 A. I made absolutely sure that I didn't even ring any
15 guards on the day that I organised that interview, 14:46
16 because I felt it was possible my phone records could
17 be checked or anything subsequently, so I was extremely
18 careful, and nobody in the guards was even aware that I
19 went up there.
20 409 Q. Sorry, could you repeat all that again, please. Nobody 14:46
21 in the guards was aware that you went to visit Ms. D?
22 A. Yeah.
23 410 Q. Why was that a concern of yours, as to whether there
24 would be awareness of you going there?
25 A. I don't understand what you mean. 14:46
26 411 Q. You've just told the Tribunal that nobody in the
27 Gardaí --
28 A. Mm-hmm.
29 412 Q. -- would be aware that you were going to meet her and

1 that you were careful about your phone communications,
2 to make sure that there would be no evidence of you
3 going to meet her.

4 A. I was.

5 413 Q. And will you just explain why you did that. 14:47

6 A. Well, I wanted -- I wanted it to be absolutely clear
7 that the interview with her was completely independent.

8 414 Q. Sorry.

9 A. And I thought about it very carefully beforehand.

10 415 Q. Let's be clear about this. 14:47

11 A. Yeah.

12 416 Q. Are you suggesting to this Tribunal that, in order to
13 distance your visit to Ms. D from An Garda Síochána,
14 you took steps to use -- not to use your own telephone
15 so that -- mobile phone, so that you couldn't be -- so 14:47
16 that your visit to her could not be checked up on by
17 the Gardaí, is that right?

18 A. No, again, I didn't say that. You're picking me up
19 wrong. What I said was, what I said was -- I didn't
20 say, I didn't say anything about how I contacted her. 14:47
21 What I said was, I made sure I didn't make contact with
22 anybody in the guards on the day that I organised the
23 interview. That's what I said.

24 417 Q. So I just want to understand this --

25 A. Let me explain, let me explain. 14:48

26 418 Q. You didn't want the record to show afterwards that
27 you'd spoken to any garda, is that it?

28 A. Precisely.

29 419 Q. On the day?

1 A. Yeah. About any issue.

2 420 Q. And why was that?

3 A. Because, by 2017, a lot of people had got caught up in
4 this controversy, a lot of people had lost their jobs,
5 and I was watching my step very carefully, that's why. 14:48

6 421 Q. Would you just elaborate. Why would you possibly want
7 to leave no trail that somebody could misinterpret as
8 you acting on Garda information?

9 A. Well, because, as I said to you, the events were
10 extremely toxic. 14:48

11 422 Q. I see.

12 A. And I wanted to make sure -- I wanted to insulate
13 myself from getting caught up in any of that, so I was
14 just extra careful, as I always am. It's not the first
15 time I would have deployed that kind of tactic. 14:49

16 423 Q. And so you wanted the phone record to suggest that you
17 had no contact with the Gardaí on the day you went to
18 visit her?

19 A. It's not that I --

20 424 Q. And therefore, you abstained from having any 14:49
21 communications with any member of An Garda Síochána, is
22 that it?

23 A. That's correct. It's something I have done pretty
24 regularly. When you need to be extra careful, I would
25 just be extra careful. I value my independence very 14:49
26 much. I don't get close to Garda Síochána, I'm not
27 close to Garda Headquarters. And it's by taking steps
28 like this that you show people that you are not close
29 to Garda Headquarters and you can't get, you know,

1 tripped up some way down the road. I mean, we have
2 telephone records at play here at this Tribunal now; it
3 wasn't, you know, too hard to foresee that that could
4 happen. I have been at lots of course cases and lots
5 of, you know, processes where people's phone records 14:50
6 are, you know, produced to show that they have been in
7 contact with person A, B or C around the time that
8 they've organised interviews or they've got stories,
9 and so on, and I just wanted to be absolutely sure,
10 because this issue was really extremely toxic at the 14:50
11 time, I wanted to be absolutely sure I insulated myself
12 from any of that.

13 425 Q. I see.

14 A. It may sound extreme to you, but it is a tactic I have
15 used lots. 14:50

16 426 Q. Well, now, could I ask you, going back to March, April,
17 May of 2014, were you aware that Paul Williams had
18 written a series of articles in the Independent
19 purporting to give accounts of meetings he'd had with
20 Ms. D? 14:50

21 A. I think -- I mean, I'm aware of them now. I don't
22 think I was aware of them at the time that they
23 appeared.

24 427 Q. Well, surely you would keep an eye on what other
25 newspapers were saying in relation to this matter, 14:51
26 especially at the height of the Sergeant McCabe
27 controversy?

28 A. Oh, yeah, of course you would, but, I mean, you
29 wouldn't read everything. I mean, you could be away on

1 holidays, you could be away for a weekend, having a day
2 off, whatever it is, you know.

3 428 Q. well, now, let's be realistic for a second. Paul
4 williams had written a number of articles, escalating
5 the story from an interview with Ms. D, to the matter 14:51
6 being raised with Micheál Martin, to the matter being
7 raised with the Taoiseach, so surely you're not
8 suggesting to this Tribunal that you were unaware of
9 these developments?

10 A. I mean, you know, to be quite honest with you, I don't 14:52
11 exactly hang on every word that Paul williams writes,
12 but, I mean --

13 429 Q. well, you don't have to hang on every word he writes --

14 A. Yeah.

15 430 Q. -- to be aware that he has, by any standards, a very 14:52
16 interesting story concerning a person at the heart of
17 the penalty points issue and that he is escalating it
18 to a point of national importance where files are being
19 handed over to the leader of the opposition and from
20 him to the Taoiseach. Surely, surely you must have 14:52
21 been aware of that?

22 A. I'm actually not sure I was aware that the stories that
23 Paul williams did related to Ms. D. I'm just not sure
24 about that. I'm not sure I knew she was the person at
25 the centre of those articles. 14:53

26 431 Q. well, who did you think he was writing about?

27 A. But, sure, I had no idea.

28 432 Q. And did you wonder who he was writing about?

29 A. I mean, I don't recall reading those stories at the

1 time, to be perfectly honest with you.

2 433 Q. You see, I'm suggesting to you, Mr. Lally, that you
3 must have been aware of those articles, that unless you
4 were in Australia and incommunicado, you must have been
5 aware of these events, because you were writing about 14:53
6 the penalty points issue at the time yourself?

7 A. Sorry, now, I don't mean to be rude or anything, are
8 you asking me about a story about an interview with
9 Ms. D or termination of penalty points? Which one are
10 you asking me about? 14:53

11 434 Q. Yes, I'm asking you about the series of articles which
12 you are now saying that you're not even clear whether
13 you read them, or, if you read them, who they refer to,
14 and I am asking you to do your best to be just to
15 yourself here. Are you seriously saying that you may 14:54
16 not have been aware of those articles at all?

17 A. Okay, if you can just be clear, what series of articles
18 are you talking about? Are you talking about
19 everything that Paul Williams has ever done on the
20 cancellation of penalty points? I'm not clear. 14:54

21 CHAIRMAN: well, maybe it would help if I would
22 explain.

23 A. Yes.

24 CHAIRMAN: As we know, two journalists had gone up,
25 Eavan Murray and Debbie McCann, to try and interview 14:54
26 Ms. D, but that was on, I suppose, a cold basis. That
27 is the information I have at the moment. And that
28 happened perhaps in February, perhaps in March of 2014.
29 But Paul Williams went up, that was in consequence, I

1 am told, of a chief superintendent contacting him at
2 the behest of the family or through an arrangement, and
3 then Paul Williams agreeing, in effect, that he was
4 going to interview her. Now, as I understand it, he
5 went up initially with the idea of writing her story, 14:54
6 which would be her allegation, but it turned into her
7 story, that her complaint against Sergeant McCabe
8 couldn't have been investigated properly, because, if
9 it had, the DPP would have taken a different attitude.
10 So that is one on the 12th April 2014. And it's 14:55
11 followed up by three more - one on the website and two
12 more in the newspapers - indicating, firstly, that
13 she's going to see Micheál Martin, which he
14 facilitated, and then indicating that a file is going
15 to be passed from Micheál Martin on her case to the 14:55
16 Taoiseach. So those were the articles that I'm
17 referring to. Does that make it any clearer?
18 A. And I think it was clear in those articles that this
19 was a woman at the centre of the Maurice McCabe
20 allegations. 14:55
21 CHAIRMAN: well, the thing is this: that of course
22 Cavan and bad policing or inadequate policing was very
23 much a story at the time, but she wasn't identified,
24 Sergeant McCabe wasn't identified, but if you were in
25 the know, particularly if you're in the Cavan-Monaghan 14:55
26 area, you would say, oh, what is this?
27 A. Okay.
28 CHAIRMAN: well, you would have perhaps reached that
29 conclusion, some more quick than others.

1 A. I actually genuinely don't think I did at the time.
2 And then I think I became aware of them later on and
3 then went back and had a look at them when I realised
4 that they did relate to Ms. D. But I have no
5 recollection of being aware at the time when these 14:56
6 appeared, this is Ms. D, this is Maurice McCabe. I
7 just don't remember ever having that thought process.

8 435 Q. MR. McDOWELL: well, let's take it bit by bit then. Do
9 you think you read them at all?

10 A. Em... 14:56

11 436 Q. At the time?

12 A. I mean, it is four ago now, is it?

13 437 Q. Yes, it is.

14 A. I just wouldn't --

15 438 Q. I am asking you now using the best of your 14:56
16 recollection. You've told the Tribunal, Mr. Lally,
17 that in around 2013, early 2014, you realised from
18 conversations with other journalists that you weren't
19 the only person who knew that a complaint had been made
20 against Sergeant McCabe, that a file had gone to the 14:56
21 DPP, and that the DPP had dismissed it, had thrown it
22 out, you've told the Tribunal that, so your memory does
23 work back to 2013, 2014?

24 A. My memory does work back to 2013, yeah.

25 439 Q. And I'm asking you now are you saying that you don't 14:57
26 remember whether you read any of the Paul Williams
27 articles at the time?

28 A. I don't think I did read them at the time, no.

29 CHAIRMAN: Mr. McDowell, it might help you both if we

1 try to get them up on the system.

2 A. Yeah, that might actually help, thank you.

3 CHAIRMAN: I don't know, Mr. Marrinan, I can't remember
4 are they in this set of documents or are they in a
5 different set of documents? Have we re-put them into 14:57
6 this, can you remember?

7 MR. MARRINAN: Sorry, sir.

8 CHAIRMAN: I think it actually would help this process,
9 so let's see if we can get them up.

10 MR. McGUINESS: volume 24, page 6598. 14:57

11 CHAIRMAN: 6598 will give you the one of the 12th
12 April, I think. So this is it. And maybe just read
13 through it:

14

15 "A young woman who was allegedly sexually assaulted as 14:58
16 a child by a serving garda."

17

18 That, I suppose, is the key. That is where the snap
19 comes into the thing.

20 A. Mm-hmm. 14:58

21 CHAIRMAN: Do you want to read it? You can take out
22 the volume if you wish.

23 440 Q. MR. McDOWELL: Put it this way, Mr. Lally: You have
24 been furnished, and so has your solicitor, with papers
25 for this Tribunal, have you? 14:59

26 A. Mm-hmm.

27 441 Q. Have you looked at these? Have you studied the papers
28 that are in volume 24?

29 A. Well, I mean, I didn't realise I was going to come and

1 answer questions about somebody else's journalism, Paul
2 williams' journalism. I am not sure what this has to
3 do with me.

4 CHAIRMAN: Mr. Lally, don't worry about that now for
5 the moment. I appreciate we all take a view, look, 14:59
6 what is important to me and what is not important to
7 me, I understand that. But at the moment, this is a
8 legitimate question Mr. McDowell is asking you. You've
9 had a chance to look through that, in any event?

10 A. Yes. 14:59

11 CHAIRMAN: And you can see what the idea is. It's a
12 broken Garda sign that is the picture, and the whole
13 idea is, so here is a woman who says she was assaulted
14 by a serving garda and of course the Gardaí made a mess
15 of their investigation. That is what is being said in 14:59
16 the article. I am not saying that. That is what is
17 being said in the article.

18 A. Yes.

19 CHAIRMAN: So to what extent do you remember reading it
20 at that time? To what extent is this ringing a bell at 14:59
21 all? That is basically Mr. McDowell's question.

22 A. Yeah. I don't remember reading the story at the time,
23 but I may have read it at the time and I just don't
24 remember.

25 442 Q. MR. McDOWELL: I see. well, you have read them in the 15:00
26 interval, since then?

27 A. Yes, I have read them since then. I went back and -- I
28 had some reason to go back on-line and check what they
29 were.

1 443 Q. Can we agree that, reading them, you have no doubt that
2 this referred to Sergeant McCabe and Ms. D, the
3 allegation that you knew about already?
4 A. I think this is why I went back and read them later on,
5 because somebody pointed it out to me that Paul 15:00
6 Williams had done, you know, a series of articles, and
7 I went back and looked for them on-line and I came
8 across these. So whether I read them at the time and
9 didn't realise they related to Maurice McCabe, I mean,
10 to be perfectly honest, I think if I read this at the 15:00
11 time, I would have known who was at the centre of this
12 story, so it's possible it just slipped by me.
13 444 Q. Well, a number of other witnesses who have admitted
14 reading them at the time, have told the Tribunal that
15 they did understand it was Sergeant McCabe who was 15:01
16 being written about.
17 A. Yeah, I mean, I think --
18 445 Q. And that includes Garda witnesses and others?
19 A. Yes, I mean I certainly do think if I had read the
20 story at the time, I would have known who the people 15:01
21 were at the centre of it.
22 446 Q. But, you see, surely it would have been of significance
23 to you, because you would have known at the time, if
24 what you are saying is true, that this allegation was
25 untrue, had been thrown out and wasn't worthy of 15:01
26 further consideration?
27 A. Yes.
28 447 Q. So I'm suggesting to you, you wouldn't forget reading
29 that Paul Williams was barking up the wrong tree and

1 that he was reviving an allegation which you knew from
2 earlier inquiries was without foundation?

3 A. Well, I suppose there's something slightly new in this
4 story, in that the suggestion that the inquiry wasn't
5 handled properly is new. I mean, I certainly hadn't 15:02
6 come across that before. So this -- the idea that the
7 conclusion that was arrived at was only arrived at
8 because the inquiry wasn't done properly, is included
9 in this particular story here, it appears to me.

10 448 Q. I see. And would that not have struck you at the time: 15:02
11 oh, the account I believed for the last three years,
12 that this man was the subject of an unfounded
13 allegation, may not be right, these allegations may
14 have been much more substantial but improperly
15 investigated, would that not have struck you? 15:02

16 A. Well, look, I'll be honest with you, I'm a journalist
17 23 years, I don't believe everything I read in the
18 papers and I don't believe everything that people tell
19 me.

20 449 Q. Yes. But you don't have to believe everything you read 15:02
21 in the papers?

22 A. Yeah.

23 450 Q. It's that Mr. Williams writes in the same rough
24 territory as you do on crime and security matters?

25 A. Yeah. 15:03

26 451 Q. And here he is coming up with what appears to be a
27 fairly major story, and are you now saying that there
28 was a novel aspect of it and that is that it was
29 raising the possibility that the case you thought had

1 been investigated and thrown out wasn't properly
2 investigated?

3 A. That is what it appears to be raising, yes.

4 452 Q. And I am suggesting to you that if you understood it as
5 having that meaning, it would have stuck in your mind; 15:03
6 you know, what I believe for three years is not true or
7 may not be true?

8 A. Well, I mean, I wouldn't necessarily read the story and
9 believe it to be true. That's the point. I might
10 trust my own information more than somebody else's. 15:03

11 453 Q. So you might have thought that Paul Williams was being
12 misled by the anonymous person he was interviewing, is
13 that right?

14 A. Or I mightn't have thought anything. I can't remember.

15 454 Q. I see. 15:04

16 A. I'm not trying to be difficult. I just cannot remember
17 from the time reading this particular story, I'm sorry,
18 I just can't remember reading it.

19 455 Q. Well, can you remember the matter arising in the Dáil
20 with Micheál Martin asking the Taoiseach about Sergeant 15:04
21 McCabe's dossier? Can you remember any of that?

22 A. I do remember that, yes.

23 456 Q. And can you remember that there was coverage of Micheál
24 Martin handing Sergeant McCabe's complaints over to the
25 Taoiseach? 15:04

26 A. Yeah. I mean, I certainly remember he compiled, you
27 know, certain content in a dossier and handed it over.
28 I do recall that.

29 457 Q. Can you recall that after Minister Shatter had tendered

1 his resignation, he went into Dáil Éireann in June of
2 2014 and asked for the Paul Williams matters to be part
3 of the remit of any statutory inquiry arising from the
4 Guerin Report?

5 A. I mean, I don't have a specific recollection of that 15:05
6 speech in the Dáil, no.

7 458 Q. I see. You see, you've told the Tribunal today that
8 you didn't have to go to the Gardaí to find out who
9 Ms. D was, or where she could be found --

10 A. Yeah. 15:05

11 459 Q. -- in 2017. And you've implied that you had some other
12 source as to her identity at that stage?

13 A. Yes.

14 460 Q. And a non-Garda source, is that right?

15 A. Absolutely. 15:06

16 461 Q. And was it a journalist source?

17 A. Em, no, it was not, and I wouldn't like to say who --
18 you know, I am really reluctant to get drawn into, you
19 know, who it was. There was nothing untoward about it,
20 to be perfectly honest with you. 15:06

21 462 Q. You see, we know that by this stage Paul Williams had
22 conducted an interview with Ms. D and that Debbie
23 McCann had gone to Ms. D's home seeking an interview,
24 so I've got to suggest to you that Ms. D's identity was
25 available to you, if not from the Gardaí, at least from 15:06
26 journalistic sources?

27 A. Okay, you've raised an interesting point there that I
28 would like to answer. You listed off three occasions
29 on which other journalists went to see Ms. D at her

1 home. I think they were in 2014. By the time I went
2 to see her, I wasn't going up there to talk to her
3 about Sergeant McCabe; I was going up there to talk to
4 her -- to get her side of the story about her
5 allegations being, you know, copy and pasted into a 15:07
6 file in error and this leading to a Tusla inquiry into
7 Sergeant McCabe and his family. So the climate in
8 which I was doing that interview was completely
9 different to the attempts to interview her previously.
10 So the idea that, somehow, I am part of a continuum 15:07
11 with those other efforts, is just completely wrong,
12 and, you see, this is precisely why I was very, very
13 careful at the time to make absolutely sure that my
14 sourcing even of her phone number and going up there,
15 was independent of, you know, the guards or anybody 15:08
16 else really, to be honest with you, and I was very,
17 very careful about that. But the climate when I went
18 up there to speak to her was completely different. I
19 wasn't going up there to speak to her about the
20 allegation she made against Sergeant McCabe; I was 15:08
21 going up there to speak to her about Tusla, Brendan
22 Howlin, and so on.

- 23 463 Q. I see. Could I ask you to look at, and this is in
24 volume 24, which you have, I think, in front of you
25 there, could I ask you to look at page 6506. That's an 15:08
26 article that you wrote about the Commissioner defending
27 the force's handling of informants in November 2013.
28 That had nothing to do with whistleblowers, had it?
29 A. Could I scroll down a little? I don't think it had

1 anything to do with whistleblowers, no.

2 464 Q. In fact, I think it would probably be fairer to you to
3 look at Volume 24, I think it is beside you there,
4 where you can see it in print version?

5 A. Volume 24, yeah. 15:09

6 465 Q. And then can I ask you to go to the following page,
7 6507 -- sorry, a few pages on, 6507, yes. That is an
8 article you wrote on Thursday, 23rd January 2014, about
9 Commissioner Callinan's visit to the Public Accounts
10 Committee? 15:10

11 A. That's right.

12 466 Q. And, in that, he is saying he can't be usurped by his
13 subordinates using the PAC as a platform, is that
14 right?

15 A. That's right. 15:11

16 467 Q. So am I right in thinking that you attended the PAC
17 meeting, or did you watch it on the Internet?

18 A. My recollection is that I was there in person. I can't
19 be a hundred percent sure, but I think I was.

20 468 Q. I see. The next page has a front page from the Irish 15:11
21 Times, this is 6508:
22
23 "Commissioner consults AG on Garda testimony."
24
25 And that's written jointly with two of your colleagues, 15:11
26 is that right?

27 A. That's right.

28 469 Q. So you were -- and that's the 24th January, is that
29 right?

1 A. That is the --

2 470 Q. I think it's in --

3 A. Yeah, Friday 24th January, yeah.

4 471 Q. So you were covering the story very closely, isn't that
5 right? 15:11

6 A. Yeah. There were times when it would be in the news
7 every day and then you might have a long period when
8 there wasn't anything, but I was covering -- I was
9 covering -- I was certainly covering part of it quite
10 closely. 15:12

11 472 Q. And then if I could ask you to go to 6509, which is
12 Saturday, 25th January 2014, you have an article in the
13 middle of that page, saying:
14

15 "Committee split over hearing of Garda whistleblower's 15:12
16 evidence."

17 A. I think Fiach Kelly actually wrote that piece.

18 473 Q. Oh, sorry, I'm wrong. You're right.

19 A. I'm down -- down at the bottom of the page.

20 474 Q. You're at the bottom of the page and you're saying that 15:12
21 Minister Varadkar thought that the whistleblower should
22 be heard, is that right?

23 A. Correct.

24 475 Q. Then could I ask you to look at 6510. And just to be
25 clear, this is an article which you wrote on the 27th 15:12
26 January, saying that:
27

28 "Some politicians are missing the point in Garda
29 inquiry."

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And this was critical of the PAC. And the sub-headline is:

"Expenditure oversight body only muddying the water in an already murky debacle." 15:13

Now, this was your opinion, and you're entitled to your opinion, but you were effectively warning the PAC off further involvement in this matter, isn't that right? 15:13

A. Well, you see, you have left out the last paragraph there, and the last paragraph actually explains what the story is all about, and what the story is about is that the Garda Ombudsman Commission, in my view at the time, based on what I knew at the time, the Garda Ombudsman Commission would be a much better organisation to inquire into this. 15:13

476 Q. Yes.

A. The Sergeant McCabe controversy --

477 Q. Well, better -- 15:13

A. I haven't finished answering the question. The Sergeant McCabe controversy was becoming very political at the time, as it was, and my view, as expressed in this piece, was, you would take some of the air out of that balloon by allowing the Garda Ombudsman inquire into, you know, certain aspects of the controversy. So I wasn't trying to suggest for a moment that there should be no inquiry into all of these things, there certainly should have been, but I was simply suggesting 15:14

1 that the Ombudsman would be a better organ than the
2 Public Accounts Committee, that is all.

3 478 Q. And you make the point that it was -- that members of
4 the Committee -- at the bottom of the second-last
5 paragraph, you say:

15:14

6
7 "If the results suggested widespread abuse of
8 discretion, all of the cases should have been
9 investigated. If not, an independent body would have
10 been seen to give the Garda a clean bill of health.

15:15

11 Before members of the Committee get too indignant about
12 some Gardaí being perhaps too flai thul ach in cancelling
13 penalty points, they should remember that most public
14 representatives run clinics to help constituents secure
15 their entitlements a little faster than everyone else."

15:15

16
17 And then you go on to say that, in your view -- or the
18 gist of the article is that the Ombudsman Commission
19 was a more appropriate forum for the discussion of this
20 than the Public Accounts Committee.

15:15

21 A. Yeah. I mean, based on the information I had at the
22 time, that is the piece I wrote.

23 479 Q. I have got to suggest to you that that neatly coincided
24 with the Commissioner's view that this was not an
25 appropriate or fair process for Sergeant McCabe to give
26 evidence, even in private to?

15:15

27 A. No, I don't -- I wouldn't agree with you there. I
28 think Martin Callinan's view was, he couldn't quite
29 believe that somebody of the rank of sergeant was, you

1 know, kind of putting it up to him so well in public
2 and I think he was outraged at that. Martin Callinan
3 had a completely different theory on all of this than I
4 did. You know, I don't think I share any of Martin
5 Callinan's views on this or anything else, to be quite 15:16
6 frank.

7 480 Q. well, the next page, 6511, shows you co-authoring an
8 article about the government's concerns about the
9 Public Accounts Committee straying into other people's
10 jurisdictions? 15:16

11 A. Mm-hmm.

12 481 Q. And this was in the week, was it not, before Sergeant
13 McCabe was due to give evidence?

14 A. well, Fiach Kelly -- I would imagine Fiach Kelly
15 probably would have written most of that. His name 15:17
16 came first. It's a primarily political story. I would
17 imagine Fiach would have written the majority of that.

18 482 Q. You see, the point I am making to you is, that you were
19 very intently following up on the penalty points issue
20 yourself, isn't that right? 15:17

21 A. I was certainly watching the penalty points story, yes.

22 483 Q. And you were of the view, and you're entitled to your
23 view, that the PAC was not the right place to be
24 considering this matter?

25 A. I mean, I didn't think it had no role at all, but, you 15:17
26 know --

27 484 Q. And I am suggesting to you that, in those
28 circumstances, Sergeant McCabe was a figure, was a
29 person who was figuring substantially in your mind and

1 attention at that time?

2 A. Yeah. I would say that's right. Well, I mean, I'm not
3 sure that he was as a person. I suppose, you know, he
4 put a lot of information in the public domain that was
5 causing a lot of senior people problems, and that is 15:18
6 what I was watching, really. I was watching the
7 fallout rather than Sergeant McCabe as a person, if you
8 like. It was more what was going to happen in, you
9 know, senior Garda management with the government, and
10 so on. 15:18

11 485 Q. I see.

12 A. It was the fallout that I was interested in.

13 486 Q. Yes. And could I ask you then to go forward to
14 February 2014. You were aware, were you not, that
15 there had been a controversy about whether Sergeant 15:18
16 McCabe had or had not been directed to cooperate with
17 the O'Mahony report?

18 A. That's right.

19 487 Q. And that on the 24th February he had issued a statement
20 contradicting an RTÉ report to the effect that he had 15:19
21 been written to, directing him to cooperate with the
22 Commission and failing to do so?

23 A. Yeah, I clearly recall that, yes.

24 488 Q. -- the assistant commissioner and had failed to do so.
25 Now, can I bring you then 6547, three days after the 15:19
26 Prime Time programme you write an article, an analysis
27 article saying:
28
29 "McCabe has suffered bloody nose but there is plenty

1 still to come."

2

3 In what sense did you think that Sergeant McCabe had
4 suffered a bloody nose that week?

5 A. Well, I suppose, I would have to read the article. 15:20

6 489 Q. Please do.

7 A. Yeah. Yeah, I remember the piece at the time now. I
8 think it was Alan Shatter had got up in the Dáil and
9 he'd basically said that, he basically tried to put
10 forward the proposition that Sergeant McCabe's 15:20
11 complaints had been previously investigated. I mean,
12 that was the general, that was the general tone.

13 490 Q. Yes. And you took the view that he had inflicted a
14 bloody nose on Sergeant McCabe in public at that time?

15 A. On that day, yes. But I also wrote stories at the 15:21
16 time --

17 491 Q. This is three days after he had put out a statement
18 rebutting the RTÉ story?

19 A. Yeah. But you see, what --

20 492 Q. In fairness to you, maybe I should bring you back to 15:21
21 6540.

22 A. Yeah, I was just about to bring you back there.

23 493 Q. Because you had written on that subject that "the
24 O'Mahony inquiry presented as an option rather on an
25 order" -- 15:21

26 A. Yeah. So basically what happened there was, basically
27 what happened there was, I think it was RTÉ, I can't
28 quite recall now, RTÉ ran a report basically saying
29 that Maurice McCabe hadn't complied with an order to

1 cooperate with the John O'Mahony inquiry and we did
2 some journalism then in response to that report. I am
3 pretty sure RTÉ broke the story. And of course this is
4 the article here that you've brought me to now, which
5 supports Maurice McCabe's version of accounts. 15:22

6 494 Q. Yes?

7 A. And completely backs his version of accounts. So as
8 you can see -- I mean, it's very easy to go through a
9 person's journalism and pick out one piece here and one
10 piece there and try and put forward a piece -- 15:22

11 495 Q. I'm not trying to be unfair to you at all, Mr. Lally.

12 A. Okay.

13 496 Q. But, what I am suggesting to you is that two or three
14 days later you are saying that McCabe has suffered
15 bloody nose. 15:22

16 A. Yes. But you see, in my journalism I don't pick out
17 the people that I'm going to support and the people
18 that I'm going to attack. I cover the events as they
19 go. And events ebb and flow and there was plenty of
20 ebb and plenty of flow at this particular controversy. 15:23

21 So, over the course of time my journalism reflected
22 that ebb and flow precisely because it was neutral and
23 it was independent, and I reported with neither fear
24 nor favour to anybody.

25 497 Q. I see. 15:23

26 A. We weren't in there -- you know, we weren't in there
27 doing journalism on behalf of everybody. We gave
28 everybody the same treatment.

29 498 Q. I see. Well, it was your view that in that week

1 Sergeant McCabe had suffered a bloody nose, is that
2 right?

3 MR. MARRINAN: Sorry, sir, I don't wish to interrupt
4 Mr. McDowell but I'm going to, because I don't see the
5 relevance of any of this. We're not engaged here in a 15:23
6 review of Mr. Lally's articles or what he was writing
7 about or what views he had or he was fully entitled to
8 express any views that he had. What we are dealing
9 with here is whether or not Superintendent Taylor, the
10 former Commissioner Martin Callinan or indeed Deputy 15:23
11 Commissioner Nóirín O'Sullivan was engaged in a smear
12 campaign against Maurice McCabe, I just don't see that
13 these questions were directed to the issue.

14 CHAIRMAN: Yes, I was wondering, there may be a point,
15 Mr. McDowell. 15:24

16 MR. McDOWELL: I think I was just about to get to the
17 point.

18 CHAIRMAN: No, I appreciate that. But I have been
19 worrying over the last number of days whether this
20 has -- I don't mean to take Lord Justice Leveson's name 15:24
21 in vein, but I am, I really am worrying about where we
22 are going. I mean, journalists take a view and even
23 Mr. Lally doesn't believe everything that he reads in
24 the newspaper, very sensible.

25 A. Apart from the Irish Times. 15:24

26 CHAIRMAN: That includes the letters page then, I
27 suppose.

28 499 Q. MR. McDOWELL: Can I ask you, Mr. Lally, to go back to
29 page 4973 please in volume 18?

1 A. Volume 18.

2 500 Q. This is the article that you say --

3 A. 49 --

4 501 Q. -- 73. This is an article that you wrote based on an
5 interview that you had with Ms. D that we referred to 15:25
6 earlier, is that right?

7 A. That's it.

8 502 Q. Yes. And there are a number of questions I just want
9 to ask you about that. Did you feel it was in any way
10 obligatory on you to check out the facts that she was 15:26
11 alleging in her interview by putting them to anybody
12 else or to Sergeant McCabe in particular?

13 A. What particular allegations?

14 503 Q. Well, any of them. I am just saying --

15 A. Well, you see, I don't see any allegations. 15:26

16 504 Q. Did you feel any obligation to go back to Sergeant
17 McCabe with any of --

18 A. No. I don't see any allegation against Sergeant McCabe
19 here, so that's why we didn't go back to him.

20 505 Q. I see. 15:26

21 CHAIRMAN: I suppose the one that worried me when I
22 read it was Laura Brophy, who is the therapist. I
23 mean, she might have had a different view, which I
24 think the view she expressed to me was, look, once a
25 name was mentioned to me the reality of it is I have a 15:26
26 reporting obligation. I am not criticising Mr. Lally.

27 A. Yeah, yeah. I don't think we named the therapist
28 though, as far as I can recall.

29 CHAIRMAN: No, but I mean, I suppose, again some people

1 would have known, perhaps less in relation to that. -

2 A. I mean, there had been -- there was a lot of
3 information in the public domain at that stage already,
4 not all of the information in this piece was new, you
5 know.

15:27

6 CHAIRMAN: No, no, I appreciate that. I just said it
7 was a concern, that's all.

8 A. Yeah.

9 CHAIRMAN: I didn't have a view. But, Mr. McDowell,
10 you had a point?

15:27

11 506 Q. MR. McDOWELL: Yes. I am just asking you, there are so
12 many things in that article which you didn't check out
13 with anybody before you published it.

14 A. Well, you see --

15 507 Q. I've got to suggest to you that it's an extraordinary
16 article to have published because it's replete with
17 untruths.

15:27

18 A. Oh, I would reject that completely.

19 MR. LEONARD: Sir, I wonder if I could interject, on
20 behalf of --

15:27

21 CHAIRMAN: Sorry, Mr. Leonard, I failed to see you for
22 a minute.

23 MR. LEONARD: Obviously you have to determine as to
24 whether the line of questioning is relevant to the
25 issues you have to look into. I just remind you, sir,
26 that this is an article which is published I think
27 three days after this Tribunal was set up. As I
28 understand, you are looking into matters which are
29 alleged to have happened in the period from the middle

15:28

1 of 2013 through to March 2014. And I just wonder the
2 extent to which matters which took place after the
3 Tribunal was set up can properly be the subject of
4 either cross-examination or inquiry by this Tribunal.
5 CHAIRMAN: well, Mr. Leonard, you may have a point, but 15:28
6 Mr. McDowell was going to make a point and I am not
7 sure what it was, but I mean that could well be
8 correct, but can I bear that in mind and just listen to
9 what the point is Mr. McDowell wishes to make.

10 508 Q. MR. McDOWELL: Firstly, just to put them in context. 15:29
11 Firstly, you repeat an allegation of extreme
12 unprofessionalism against a HSE counsellor.
13 A. The allegation?

14 509 Q. You attribute to Ms. D the suggestion that she was
15 effectively coerced or bullied into making a complaint 15:29
16 to the Gardaí?
17 A. I don't think she says that, I don't think she goes
18 quite that far. I think she says she felt pressured or
19 something.

20 510 Q. Yes. we will look exactly at what she said. 15:29
21 CHAIRMAN: Mr. McDowell, I am actually really pressed
22 for time this afternoon. I mean, if we want to adjourn
23 tomorrow, that is a different matter. I don't want to
24 drag Mr. Lally back. But, I mean, things have really,
25 really dragged on today, that is putting it mildly. 15:29
26 MR. McDOWELL: Judge, I don't want to be too long on
27 this.
28 CHAIRMAN: Yes.

29 511 Q. MR. McDOWELL: But I am suggesting to you, and it's for

1 the Tribunal to be able to make up its own mind on
2 this, but I am putting it to you, that you felt
3 comfortable publishing an accusation of very
4 unprofessional conduct against a HSE counsellor --

5 A. Well, the --

15:30

6 512 Q. -- without checking any of it out with her?

7 A. You see there was a lot of information in the public
8 domain already around that point and some of it came
9 from Maurice McCabe. You know, there was an explosion
10 of information during -- I think in the week or two
11 before this story appeared. So, I am not necessarily
12 sure. You know, I mean this story wasn't published in
13 a vacuum. There was other information there. And in
14 order to answer your question, I would have to go back
15 and remind myself what was already on the public record
16 at the time, so on and so forth. I just can't
17 remember.

15:30

15:30

18 CHAIRMAN: But, Mr. McDowell, I am seriously worried at
19 this point. Let's suppose this was a brilliant
20 article, let's suppose this was a dreadful article, is
21 it going to help me as to whether Martin Callinan and
22 Nóirín O'Sullivan were conspiring with David Taylor to
23 negatively brief the media.

15:31

24 A. I mean, I am very happy to say --

25 CHAIRMAN: I mean, that is the problem that I have.

15:31

26 A. Yeah.

27 CHAIRMAN: And the other thing is this: I have a
28 friend who plays music for a living and his attitude is
29 critics, they build you up and then they cut you down.

1 If you are a news story, unfortunately people will
2 write positive things about you and then probably
3 tomorrow they will write something pretty awful. You
4 know, it's just -- yes.

5 MR. McDOWELL: I appreciate that, Chairman. 15:31

6 CHAIRMAN: Yes.

7 MR. McDOWELL: And I don't propose to push this, my
8 questioning on this article any further.

9 513 Q. But what I do want to put to you is this: That I want
10 to suggest to you that you definitely were aware of the 15:31
11 Paul Williams in 2014?

12 A. At the time they appeared?

13 514 Q. Yes. I am putting that to you.

14 A. Yeah, I mean --

15 515 Q. I'm suggesting that your uncertainty now is contrived. 15:32

16 A. Oh no, it is definitely not contrived. I mean, I feel
17 I wasn't -- I feel the day that that story was
18 published I wasn't aware of it, but I went back, but I
19 just can't remember. It's four and a half -- it's,
20 what, four years ago now. You know, I read a lot of 15:32
21 journalism every day, I just wouldn't remember if I
22 read that particular story that day. I just can't
23 recall.

24 516 Q. I'm suggesting to you that even if you missed one of
25 those stories you had to be aware of at least two or 15:32
26 three of them on the balance of probabilities.

27 A. I think that is a fair point, yes.

28 517 Q. Therefore, I'm suggesting to you that you must have
29 known that Ms. D was interviewed by Mr. Williams in

1 2014?

2 A. Em, you see, again the point I made earlier: I wasn't
3 that concerned about what Ms. D or Paul Williams did
4 back in 2014. There was a new controversy now; Tesla
5 was in the mix, these allegations had been copy and 15:32
6 pasted into a Tesla file, we were into new territory --

7 518 Q. I'm not dealing with your --

8 A. -- what happened with Paul Williams and Ms. D back in
9 2014, completely irrelevant for me.

10 519 Q. I am not -- and I've just told the Chairman I'm not 15:33
11 dealing with your 2017 article. I'm suggesting that in
12 2014 you were well aware of what Paul Williams had
13 done.

14 A. That he had organised meetings with her and stuff?

15 520 Q. -- meetings with Ms. D and had organised meetings with 15:33
16 politicians and the like?

17 A. No, I definitely wasn't aware of that. Like, did he
18 say in his stories in 2014 that he had personally
19 organised those meetings?

20 521 Q. Well, he said she was about to meet these politicians. 15:33
21 A. Sure, that doesn't mean -- that is not the same as
22 saying I have just organised these meetings for --

23 522 Q. Well, then put it this way --

24 A. Her lawyers could have organised them, her parents
25 could have organised them, her local councillor could 15:33
26 have organised them. You're making massive leaps of
27 logic here.

28 523 Q. Well, I'm trying to stick, without making any leaps, to
29 common sense and I'm suggesting to you that you are

1 being disingenuous and dishonest in saying that you
2 were unaware of the gravamen of the articles at the
3 time.

4 A. First of all, I didn't say I was unaware of them. What
5 I said was, I have no specific recollection of reading 15:34
6 them at the time. That is not saying that I was
7 unaware of them. Okay. I obviously keep a very close
8 eye on what the opposition is doing. I certainly would
9 have read some of them at the time. I can't recall
10 which one of these three or four stories I read on the 15:34
11 day, a week later, six months later. I just can't
12 recall. I do agree with your point that I think it is
13 completely unlikely that I was completely unaware of
14 all of them as they appeared in the media. But it
15 certainly wouldn't have been clear to me from those 15:34
16 stories that Paul Williams was the person who organised
17 all the meetings. Sure anybody could have organised
18 those meetings for her.

19 524 Q. I see.

20 A. How would I know Paul Williams did that for her? That 15:34
21 could be, you know, her parish priest, her local GP. I
22 mean, who knows. Her next-door neighbour. Just
23 because somebody who is about to meet somebody --

24 CHAIRMAN: No, honestly, I have the point. Without the
25 hyperbole I honestly have the point. 15:35

26 A. Sorry.

27 CHAIRMAN: Thank you. Oh, there's no problem.

28 525 Q. MR. McDOWELL: And I'm suggesting to you that at the
29 time in 2014 you were paying very, very close attention

1 to Sergeant McCabe, how he was faring in the public
2 domain and the like.

3 A. Oh, I absolutely was, yes.

4 526 Q. I mean, you were writing articles that he had a good
5 week or a bad week as the case may be. 15:35

6 A. Absolutely. Our coverage towards him was extremely
7 favourable.

8 527 Q. And I'm suggesting to you, Mr. Lally, that your
9 testimony that you are uncertain whether you were aware
10 of those Paul Williams articles is contrived and 15:35
11 dishonest.

12 A. I've already addressed that question. I reject that
13 statement on your part.

14 CHAIRMAN: well, that is fair enough. But,
15 Mr. McDowell, how does it ever help me as to -- 15:35

16 MR. McDOWELL: That is as far as I am going to put it
17 now.

18 CHAIRMAN: No, I know. But, I mean, here we are. It's
19 on a tangent. I mean, what we are talking about is
20 mainly what Martin Callinan and Nóirín O'Sullivan knew 15:36
21 or didn't know and whether David Taylor is telling
22 anything close to or approximating to any part of the
23 truth. And this endless discussion about newspapers,
24 well --

25 MR. McDOWELL: Chairman, I am merely trying to 15:36
26 ascertain whether the suggestion in this witness'
27 statement that he never had any discussion about
28 Sergeant McCabe or the background to Sergeant McCabe or
29 the allegations in respect of Ms. D is highly

1 improbable in this context.

2 CHAIRMAN: It could be. And it may be that you're
3 wrong. No, I understand, Mr. McDowell. That is a
4 point that is entitled to be made. And I have no view
5 on it one way or the other at the moment. 15:36

6 A. I don't think I said I had no discussion about Ms. D to
7 anybody ever. I said nobody in the guards negatively
8 briefed me about Maurice McCabe. I think you might be
9 putting words in my mouth there. I'm not sure now.

10 528 Q. MR. McDOWELL: If you discussed Ms. D with members of 15:37
11 An Garda Síochána how could it be otherwise than in a
12 negative context from the point of view of Sergeant
13 McCabe?

14 A. Oh, I don't think I ever spoke to her -- I don't
15 recall -- I certainly have no recollection -- the 15:37
16 allegation was absolutely toxic and I actually think
17 the reason why I may not be able to recall reading the
18 Paul Williams stories at the time is because it is
19 quite possible I read the stories and said I am not
20 going to go near that with a barge pole, I'm not going 15:37
21 to follow up on it, I might have put it away,
22 straightaway. And just for me, that whole allegation
23 was completely out of bounds. The minute you start
24 talking to people about it you are perpetuating and
25 spreading a really nasty rumour about Sergeant McCabe 15:37
26 for which there was no evidence.

27 CHAIRMAN: I appreciate that. And the other problem
28 you'd have is you could be sued --

29 A. Yes.

1 CHAIRMAN: -- and that would be a real, real problem.

2 529 Q. MR. McDOWELL: So I mean in essence what are you saying
3 is that you agree with the testimony given by
4 Mr. O'Toole yesterday that he said:

5
6 "I don't think any journalist in their right mind, once
7 they heard the DPP had not only directed no charges but
8 said, it's whatever the phrase is, it's highly unlikely
9 any offence was disclosed, I don't think any journalist
10 in their right mind would consider writing anything 15:38
11 about this, the issue was dead for me."
12

13 That was your state of mind too, was it?

14 A. At the time, up until Brendan Howlin got onto his feet
15 in the Dáil and that changed the issue somewhat for me. 15:38
16 Actually it changed it quite a bit, actually. Because
17 Brendan Howlin spoke in the Dáil, Maurice McCabe issued
18 a statement, and then Tusla did a big exposé on it --
19 or, pardon me, Prime time did a big exposé on it and
20 then the Tusla controversy in all of this took off and 15:38
21 we were into fresh territory, and that is why we then
22 made the call to go and seek out the woman at the
23 centre of the allegation. We could have interviewed
24 her at any point over the previous five years. We
25 wouldn't have even dreamt of doing that. The reason 15:38
26 why we wanted to interview her in February of 2017 was
27 because the climate had changed completely, the story
28 had changed completely and it wasn't just about the
29 rumour about Sergeant McCabe, it was about Tusla and

1 their error and all of that.

2 CHAIRMAN: I appreciate that.

3 MR. McDOWELL: Thank you.

4 CHAIRMAN: Thank you, Mr. McDowell.

5 MR. FERRY: Chairman -- 15:39

6 CHAIRMAN: Appreciating your only duty is to put the

7 allegation and then that is it, and I know you have no

8 specifics, there may well perhaps be a link of some

9 kind in relation to the dispute about --

10 MR. FERRY: Chairman, I wasn't sure if you said to 15:39

11 Mr. McDowell that you had to rise early and you were

12 going to the morning, or are you continuing on? I do

13 have a few questions, I will be a couple of minutes.

14 CHAIRMAN: I have a life outside this Tribunal. I'm

15 here every single day up to six o'clock, if necessary. 15:39

16 So, if I say I'm going to rise early, that means I'm

17 going to rise early, you know.

18 MR. FERRY: So, I will continue. Good afternoon --

19 CHAIRMAN: well, I mean, maybe you will tell me how

20 long you're going to be, Mr. Ferry. 15:39

21 MR. FERRY: I will be about ten minutes, I think.

22 CHAIRMAN: I'm sorry, I can't stay for ten minutes.

23 And how long are you going to be, Mr. Dignam?

24 MR. McDOWELL: Can I say, Chairman, I hadn't

25 appreciated there was a proposal not to sit until four 15:40

26 o'clock.

27 CHAIRMAN: I have sat much longer than four o'clock

28 every single day, Mr. McDowell.

29 MR. McDOWELL: If I had known it, Chairman, I certainly

1 would have accommodated you.

2 CHAIRMAN: No, Mr. McDowell, you are always very, very
3 concise. I am sorry to have to drag you back tomorrow,
4 I really am. I have longstanding things that I have to
5 do vis-à-vis an education matter, and I just have to go 15:40
6 and do it, that's it. And I have no way of getting out
7 of it. And I am sorry you were detained so long and
8 that you have to come back in the morning. Are you all
9 right for tomorrow?

10 A. Tomorrow is fine, yes, Chairman. 15:40

11 CHAIRMAN: We will get you in at ten o'clock and I hope
12 to get you away by -- if you need me to sit at half
13 past nine, if that is easier.

14 A. No, no, that is fine. Whatever suits.

15 CHAIRMAN: Okay. 15:40

16

17 THE TRIBUNAL THEN ADJOURNED UNTIL FRIDAY, 8TH JUNE 2018
18 AT 10:00AM

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