

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 TUESDAY, 12TH JUNE 2018 - DAY 90

90

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Services certify the  
following to be a  
verbatim transcript of  
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action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 12TH JUNE  
2 2018:

3  
4 MS. LEADER: The first witness today, sir, is Mr. Juno  
5 McEnroe. Mr. McEnroe's interview with the Tribunal  
6 investigators is in volume 19 at page 5142 of the  
7 materials.

10:10

8  
9 MR. JUNO McENROE, HAVING BEEN SWORN, WAS DIRECTLY  
10 EXAMINED BY MS. LEADER:

10:10

11 1 Q. MS. LEADER: Mr. McEnroe, I think you are a journalist  
12 and you work with the Irish Examiner, is that correct?

13 A. That is.

14 2 Q. And you cover political matters at the moment, is that  
15 right?

10:10

16 A. I do.

17 3 Q. And if you could outline your career path to that  
18 position, please.

19 A. After finishing my primary degree in Italian and  
20 English and coediting a college newspaper I then went  
21 to do a Master's in Journalism in Dublin City  
22 University. I then freelanced for Ireland on Sunday as  
23 well as The Sunday Times for a number of years, as well  
24 as working as a news reader in Independent Network  
25 News. I then went and joined the Irish Examiner  
26 full-time I think in around the year 2003, and from  
27 therein I covered general news, went on to become a  
28 senior news reporter, that included covering foreign  
29 affairs as well as crime. I then was promoted to the

10:11

10:11



1 position of political reporter, by the then editor, in  
2 2011, and joined the politics team full-time in  
3 Leinster House. I was later promoted to political  
4 correspondent in 2014 and I remain therein working in  
5 Leinster House as a political correspondent.

10:11

6 4 Q. Okay. Now, I think shortly after this Tribunal was set  
7 up you received a letter from the Tribunal dated 15th  
8 March 2017?

9 A. That's correct.

10 5 Q. And if that could be brought up on screen, please, it's  
11 at page 5163 of the materials. The hard copy is in  
12 volume 19 if it suits you better. That letter set out,  
13 and I am just going to summarise it in very general  
14 terms, that the Tribunal was writing to you, how it was  
15 established and the terms of reference were enclosed  
16 with that letter. And reference was also made to the  
17 opening statement of the Chairman of the Tribunal when  
18 he called for everybody that had information in  
19 relation to the terms of reference, to pass that  
20 information on to the Tribunal, isn't that right?

10:12

10:12

10:12

21 A. That's correct.

22 6 Q. And you are familiar with that letter and what it sets  
23 out?

24 A. I am in the main, yes.

25 7 Q. Yes. And it specifically said that if you wanted to  
26 assert any privilege over any of the information, this  
27 should be brought to the Tribunal's attention. Now, I  
28 think you replied -- or a reply was sent to that letter  
29 on your behalf on the 28th March 2017?

10:13

1 A. Yes.

2 8 Q. That's right. And if that could be brought up, please,  
3 at page 5169 of the materials. Now, if would you first  
4 of all confirm that letter was sent to the Tribunal on  
5 your instructions? 10:13

6 A. It was sent on my behalf, yes.

7 9 Q. Yes. And it's dated the 24th March 2017, isn't that  
8 correct?

9 A. It is.

10 10 Q. And if I could read out what that letter says: 10:13

11

12 "We act on behalf of the Irish Examiner Newspaper."

13

14 And prior to that, your name appeared in reference to  
15 that particular letter, at the very beginning of the 10:14

16 letter, do you see that there?

17 A. Yes.

18 11 Q. On the screen:

19

20 "We refer to your letter dated 15th March 2017 to Juno 10:14

21 McEnroe of our client, in which you have asked

22 Mr. McEnroe in the event that he has certain relevant

23 information identified in your letter to submit a

24 statement no later than today the 24th March 2017.

25 Please note Mr. McEnroe believes that he does not have 10:14

26 any information relevant to the terms of reference of

27 the Tribunal."

28 A. That's correct.

29 12 Q. Does that remain the situation, Mr. McEnroe?

1 A. Chairman, to clarify, that letter that was sent on my  
2 behalf, I sought advice at the time and I would now  
3 like to clarify it was incorrect. I should have  
4 possibly had a letter sent that would have said that I  
5 would be claiming privilege, as was sought in the 10:15  
6 opening letter from the Tribunal, and said that I would  
7 not be confirming or denying that I'd any information  
8 that was relevant to the Tribunal.

9 13 Q. All right. Well, if I could just go back on that, so,  
10 Mr. McEnroe. You appreciate that is significantly 10:15  
11 different than what the letter says, what you have just  
12 said?

13 A. All I can say is that the letter is incorrect and was  
14 sent in error. I had sought advice, we were close to a  
15 deadline to send the letter in, and I regret that it 10:15  
16 was sent in that manner.

17 14 Q. Okay. What do you think the letter meant when it was  
18 sent:  
19

20 "Please note that Mr. McEnroe believes that he does not 10:15  
21 have any information relevant to the terms of reference  
22 of the Tribunal."  
23

24 What do you think that means?

25 A. Well, I've tried to think about this obviously, and one 10:15  
26 point is to go back to that opening letter that you  
27 read there.

28 15 Q. Yes.  
29 A. It does suggest that submissions in relation to

1 privilege may be dealt with at a later period or are  
2 heard or will be considered and it talks about any  
3 communications of an open kind should be addressed to  
4 the Tribunal. At the time in all honesty, I sought  
5 advice and a reply was drafted in my name and returned 10:16  
6 as such that I didn't believe I had any information  
7 relevant to the terms of the Tribunal. It's my  
8 position that that was incorrect at the time, Chairman.

9 16 Q. Right. Are you aware of what the terms of reference of  
10 the Tribunal set out? 10:16

11 A. I am.

12 17 Q. Yes. And were you aware when this letter was sent what  
13 the terms of reference of the Tribunal were?

14 A. I was.

15 18 Q. So I suppose words have meaning, and it would appear 10:16  
16 that that letter that was sent on your behalf on the  
17 24th March, is very clear, that you have no information  
18 relevant to the terms of reference, so it would seem to  
19 be, on one interpretation of it, the direct opposite of  
20 what you're saying should have been relayed to the 10:17  
21 Tribunal?

22 A. At the time, and after the advice I sought, it was what  
23 I believed, which is what it states. I'd like to  
24 correct the record on that, though.

25 19 Q. Right. well, do you remember being interviewed by the 10:17  
26 Tribunal investigators?

27 A. I do, indeed, Ms. Leader.

28 20 Q. All right. And that was relatively recently, isn't  
29 that correct?

1 A. It is.

2 21 Q. Yes. And I think the date of that interview was the  
3 13th April 2014, so it was almost a year after the  
4 initial letter was sent?

5 A. That's correct. 10:18

6 22 Q. And I think in the meantime, a lot had happened, isn't  
7 that correct, insofar as waivers had been furnished by  
8 two former commissioners and Superintendent David  
9 Taylor, and there had been other correspondence  
10 exchanged between the Tribunal and your solicitors, 10:18  
11 isn't that right?

12 A. I believe so, yes.

13 23 Q. Right. Okay. And if I could turn to page 5144 of the  
14 materials. And if we go to line 33 of that interview.

15 A. Yes. 10:18

16 24 Q. You see the investigators say to you:  
17  
18 "I have been provided with a copy of correspondence  
19 sent on my behalf to the Disclosures Tribunal from  
20 Ronan Daly Jermyn Solicitors dated 24/3/2017, one page. 10:19  
21 A copy of this correspondence, one page in total, has  
22 been exhibited as JM2, signed and dated by all persons  
23 present."  
24  
25 You see that? 10:19

26 A. I do.

27 25 Q. And JM2 would appear to be that letter which I've  
28 already referred you to --

29 A. Mm-hmm.

1 26 Q. -- which is at page 5169 of the materials. If that  
2 could be just shown, Mr. Kavanagh, please. All right.  
3 So that's the letter confirming -- sorry, that's JM2,  
4 5169. Yes. It's just, my 5169 doesn't appear to be  
5 corresponding to the one that's up on the screen. It's 10:20  
6 the same, sorry, my screen seems to be different. So  
7 that's the letter:

8  
9 "We refer to your letter dated 15th March 2017 to Juno  
10 McEnroe and he believes he has no relevant 10:20  
11 information."

12  
13 Is that correct?

14 A. That is the answer I gave, yes.

15 27 Q. Yes. And you have confirmed to our investigators at 10:20  
16 5144, if we can just go back to that:

17  
18 "I confirm the content of this correspondence JM2 is  
19 correct."

20  
21 Do you see that? 10:21

22 A. I do, indeed.

23 28 Q. So why, if you are now saying that it's incorrect, why  
24 didn't you take the opportunity to correct it at that  
25 stage? 10:21

26 A. I, in all probability, should have taken the  
27 opportunity there. During the investigation I may not  
28 have looked at that letter properly, that they were  
29 showing me, the previous correspondence. I obviously

1 was there with the Tribunal investigators to try and  
2 answer questions. Since that initial reply, and when  
3 actually sitting with the investigators, we had  
4 received further correspondence saying they looked  
5 forward to our cooperation. At the time I suppose, and 10:21  
6 I have looked at that statement that I gave there, to  
7 confirm the contents of this matter is correct --

8 29 Q. Yes.

9 A. -- I suppose if I was prompted and asked is that still  
10 your position, Chairman, I may probably have gone, 10:21  
11 well, actually, no. But the matter is as it is and I  
12 do regret the error of the initial reply, Chairman.

13 30 Q. Okay. You appreciate that at the best of times people  
14 are entitled to rely on what has been set out in  
15 writing and confirmed in a formal interview with 10:22  
16 investigators who are appointed pursuant to statute and  
17 have certain statutory powers, that people are entitled  
18 to rely on the results of those interviews and what has  
19 been confirmed in writing?

20 A. I do. 10:22

21 31 Q. Yes. And you were legally advised to a considerable  
22 extent, and had been since the previous March 2017,  
23 isn't that right?

24 A. That is the case.

25 32 Q. Yes. And the matter of privilege had always been put 10:22  
26 out there from the very beginning indeed by the  
27 Tribunal, isn't that correct?

28 A. It was.

29 33 Q. Yes. So I wonder, are you in any way able to assist

1 further and tell us how we have come to this situation  
2 whereby, today, you are saying -- and in fairness,  
3 Mr. Quinn did advocate a certain position when  
4 Superintendent Taylor was giving evidence, but how has  
5 it come to this, I'm asking you, Mr. McEnroe, as to -- 10:23

6 A. It was a rushed judgement. At the time we were dealing  
7 with a deadline. There had been correspondence which  
8 was accidentally going to Cork. That was only  
9 clarified in November, that is a minor element of it.  
10 But I hadn't reflected back on the original first 10:23  
11 reply, and as things proceeded with the Tribunal, which  
12 included other correspondence coming in from April, and  
13 included coming to the investigators and included  
14 dealing with them, it completely slipped my mind,  
15 Chairman, that that opening statement had been sent on 10:24  
16 my behalf, which was one sentence, which at the time  
17 said I believe, and I do regret it and it's an error.

18 34 Q. All right. Well, maybe we'll look at some other  
19 answers you gave to the Tribunal investigators. If we  
20 could look at page 5152 of the materials, please. You 10:24  
21 see at line 163:

22  
23 "I have been asked whether I'm aware and whether I have  
24 any evidence of any attempt made by former Commissioner  
25 Callinan and/or former Commissioner Nóirín O'Sullivan 10:24  
26 or any other senior member of An Garda Síochána to  
27 discredit Sergeant Maurice McCabe by reference to an  
28 allegation of criminal misconduct made against him, and  
29 if so, I have been asked to provide details and all



1 attendant circumstances."

2

3 So you were asked there about your awareness about a

4 campaign, isn't that right?

5 A. Yes. And specifically the issue of criminal misconduct 10:25

6 or allegations of that sort.

7 35 Q. Yes, yes. By reference to an allegation of criminal

8 misconduct, yes.

9 A. Yes.

10 36 Q. And your answer there is: 10:25

11

12 "No, I am not"

13 A. Yes.

14 37 Q. And I wonder if you could explain what that answer

15 means now. 10:25

16 A. I was asked in relation to the Commissioner and the

17 former Commissioner and any other senior member of an

18 Gardaí, if there had been reference to or any knowledge

19 of an allegation of criminal misconduct and that is my

20 position; that I have no evidence of any of those 10:25

21 individuals spreading any information of that kind, and

22 that's my position.

23 38 Q. Okay. Well, if I could ask you, so, Mr. McEnroe, what

24 do you mean by "evidence"?

25 A. In relation to any allegation of criminal misconduct. 10:25

26 39 Q. Yes. But when you say "evidence", what do you mean by

27 that?

28 A. I have no knowledge.

29 40 Q. You have no knowledge. All right. And so, you are

1 saying you have no knowledge of any attempt made by  
2 former Commissioner Martin Callinan, is that correct,  
3 and former Commissioner Nóirín O'Sullivan, okay, or any  
4 other senior member of An Garda Síochána? Do you  
5 regard a superintendent as a senior member of An Garda 10:26  
6 Síochána?

7 A. No. And in that particular question, to be specific, I  
8 did not regard that as relating to a position of a  
9 superintendent, I regarded that to relate to the two  
10 positions that are identified. 10:26

11 41 Q. Okay.

12 A. Just to be very clear on that, Chairman.

13 42 Q. All right. So, a senior member of An Garda Síochána,  
14 as far as you are concerned, at that time, was a  
15 commissioner? 10:26

16 A. In that question, yes.

17 43 Q. Only in that question?

18 A. Well, I can only answer that question --

19 44 Q. Well, I'm asking you now, as of now --

20 A. In the question that was asked there, that was being 10:27  
21 asked about, a Commissioner or former Commissioner or  
22 any other senior member, I took that question to refer  
23 to ranks of that kind.

24 45 Q. Of commissioner rank?

25 A. Yes. 10:27

26 46 Q. Okay.

27 A. Or assistant commissioner.

28 47 Q. Or assistant commissioner?

29 A. Yes.

1 48 Q. Okay. Does it say anything there in the question  
2 specifically in relation to any assistant commissioner?  
3 A. No.

4 49 Q. So you were reading into it assistant commissioner, you  
5 were taking it that the investigators were asking about 10:27  
6 commissioners, and you decided yourself - I'm just  
7 trying to figure this out, Mr. McEnroe - that continue  
8 didn't refer to anybody else, is that correct?  
9 A. I decided based on the positions that were highlighted  
10 in that question, and I took that to refer to people of 10:27  
11 those rank.

12 50 Q. All right.  
13 A. And it specifically, as well, said by reference to an  
14 allegation of criminal misconduct.

15 51 Q. So what do you regard as an allegation of criminal 10:28  
16 misconduct?  
17 A. I regard it that, being the allegation that had been  
18 alleged against Sergeant Maurice McCabe.

19 52 Q. Okay. Were you familiar that particular allegation?  
20 A. When? 10:28  
21 53 Q. Well, when you were asked about this in the interview?  
22 A. Yes, I was.

23 54 Q. Yes. I mean, presumably you'd read the opening  
24 statement --  
25 A. Yes. 10:28

26 55 Q. -- and you followed it to some extent in July of last  
27 year?  
28 A. Yes. I was familiar with that, yes.

29 56 Q. Okay. So the Tribunal can't exclude, and I'm just

1 saying by reference to that answer, that you have some  
2 knowledge of some other member of the Garda Síochána,  
3 leaving out commissioners or assistant commissioners,  
4 attempting to discredit Sergeant Maurice McCabe by  
5 reference to an allegation of criminal misconduct made 10:28  
6 against him?

7 A. Can you say that again, please.

8 57 Q. The Tribunal, by reference to that question, can't  
9 exclude that you have some knowledge of somebody other  
10 than a commissioner or an assistant commissioner 10:29  
11 referring to an allegation of criminal misconduct?

12 A. I don't really understand, sorry, could you --

13 58 Q. All right. We'll start again. Can the Tribunal  
14 exclude the possibility, by reference to that question,  
15 that you do have some information that a senior member 10:29  
16 of An Garda Síochána, leaving out commissioners or  
17 assistant commissioners from that, attempted to  
18 discredit Sergeant McCabe by reference to an allegation  
19 of criminal misconduct?

20 A. I don't -- I mean, Ms. Leader, I don't have any 10:29  
21 information in relation to anybody of that rank.

22 59 Q. Of what rank?

23 A. Of the rank of commissioner or assistant commissioner,  
24 referring anything in relation to an allegation of  
25 criminal misconduct -- 10:30

26 60 Q. Yes.

27 A. -- to me.

28 61 Q. So that means the Tribunal can't exclude that you have  
29 some information of an attempt made by some other

1 member of An Garda Síochána to discredit Sergeant  
2 McCabe by reference to an allegation of criminal  
3 misconduct?

4 A. No, I wouldn't take that to be the case.

5 62 Q. But you are not telling us, is that the position? 10:30

6 A. It's not that I'm not telling you, it's not the  
7 position.

8 63 Q. Well, do you?

9 A. Do I?

10 64 Q. Have any evidence of any attempt made by any senior 10:30  
11 member of An Garda Síochána -- and I include  
12 superintendents there, all right?

13 A. Mm-hmm.

14 65 Q. -- of any attempt to discredit Sergeant Maurice McCabe 10:31  
15 by reference to an allegation of criminal misconduct  
16 made against him?

17 A. Chairman, to be clear, that question I did not regard  
18 to pertain to Superintendent Taylor.

19 66 Q. Yes. But I am now asking you, do you have any 10:31  
20 information of any attempt made by Superintendent  
21 Taylor in particular to discredit Sergeant Maurice  
22 McCabe by reference to an allegation of criminal  
23 misconduct made against him; I am now asking you that?

24 A. Chairman, in relation to Superintendent Taylor, I  
25 cannot -- I cannot answer questions in relation to 10:31  
26 that, for fear of maybe disclosing information that  
27 could be relating to a source.

28 67 Q. And you do --

29 A. Or sources.

1 68 Q. Or sources. well, why didn't you simply say that when  
2 you were asked by the Tribunal investigators, that you  
3 weren't including Superintendent Taylor in that answer?  
4 A. Ms. Leader, there's a series of questions in this  
5 investigation -- or sorry, from the investigators here, 10:32  
6 I endeavoured to answer these in as candid and clear a  
7 way as possible.  
8 69 Q. Yes.  
9 A. And if I didn't elaborate on some points, that's what  
10 I'm here to do. 10:32  
11 70 Q. All right. So you are saying it was another mistake,  
12 omission --  
13 A. No, I am not.  
14 71 Q. -- oversight?  
15 A. The answer that I gave in relation to that question 10:32  
16 remains the answer.  
17 72 Q. So you thought about that question when you were asked?  
18 A. I thought about every question when I was asked.  
19 73 Q. Yes. So it wasn't an error, the answer you gave?  
20 A. No. 10:33  
21 74 Q. Was it a calculated answer?  
22 A. What do you mean by "calculated answer"?  
23 75 Q. It was a thought-through answer, Mr. McEnroe, is that  
24 correct?  
25 A. Like every answer, you would think through every 10:33  
26 answer, you would try and answer, so, yes.  
27 76 Q. Okay. Now, the next questions you were asked were:  
28  
29 "Were you informed by a journalist or any other person

1 of any matters referred to in the questions above? If  
2 so, I have been asked to provide details and all  
3 attendant circumstances."

4  
5 And you answer: 10:33

6  
7 "A. I was not informed by any journalist of any  
8 matters referred to in the question above."

9  
10 That remains the position? 10:33

11 A. That is my position, yes.

12 77 Q. And I think, if we could turn to page 5161 of the  
13 materials, line 310. You were asked:

14  
15 "Whether you were ever briefed negatively by any 10:34  
16 journalist or other media personnel in relation to  
17 Sergeant Maurice McCabe. If so, I have been asked to  
18 provide all attendant circumstances and the details of  
19 what was said."

20 10:34  
21 And you answer:

22  
23 "No, I was not"

24 A. That's correct.

25 78 Q. If I could ask you what do you mean by negative 10:34  
26 briefing when you answered that question?

27 A. Being briefed negatively by another journalist about an  
28 individual?

29 79 Q. Yes. Well, in relation to Sergeant Maurice McCabe

1 specifically?

2 A. Was anybody giving me -- the question I understand to  
3 be was, would any journalist or had any journalist  
4 given me information that would attack Sergeant  
5 McCabe's character, discredit his character or in 10:35  
6 relation to the allegations of sexual assault which had  
7 been levelled wrongly against the sergeant.

8 80 Q. Okay. Thank you. And the next question you were asked  
9 was:

10  
11 "I've been asked if I was ever briefed negatively by 10:35  
12 any politician, member of Government, in relation to  
13 Sergeant Maurice McCabe."

14  
15 And you were asked to provide all attendant 10:35  
16 circumstances and the details of what was said. And  
17 you said:

18  
19 "No, I was not."  
20 10:35

21 That remains the position, is that correct?

22 A. It does.

23 81 Q. All right. Now, so, as matters stand, we have excluded  
24 former Commissioner Callinan, former Commissioner  
25 O'Sullivan, any other journalist, any politician or 10:35  
26 members of Government, from briefing you negatively in  
27 relation to Sergeant Maurice McCabe?

28 A. If we go back to that question which you are referring  
29 to in relation to Martin Callinan, in relation to



1           Nóirín O'Sullivan, the question relates to in reference  
2           to an allegation of a criminal nature.

3    82   Q.    Yes.

4           A.    I answered no to that.

5    83   Q.    Okay. 10:36

6           A.    You are asking me a different question now.

7    84   Q.    All right. Okay. So when you referred to an  
8           allegation of a criminal nature, do you regard an  
9           allegation of a criminal nature being one which the DPP  
10          has classified as not constituting a crime? 10:36

11          A.    Do I regard that as not being a crime?

12   85   Q.    Do you regard that as an allegation not as a criminal  
13          nature?

14          A.    I regard that -- it was an allegation that was looked  
15          into by the DPP and there was nothing found there, yes. 10:36

16   86   Q.    Okay. And do you regard that as an allegation of a  
17          criminal nature?

18          A.    Well, it was, yes, at the time.

19   87   Q.    At what time?

20          A.    In relation to Sergeant Maurice McCabe, when that 10:36  
21          was -- when the accusation was looked into and there  
22          was nothing found, it wasn't found to be true.

23   88   Q.    Yes. But I'm specifically asking you about April 2018  
24          when you were asked that question.

25          A.    Yes. 10:37

26   89   Q.    Okay. So what I'm asking you now is: In April 2018,  
27          did you regard the allegation made by Ms. D as an  
28          allegation of criminal misconduct?  
29          A.    Of alleged criminal misconduct, yes.

1 90 Q. Yes.

2 A. Yes.

3 91 Q. In 2018?

4 A. Yes.

5 92 Q. Okay. So can the Tribunal take it that former 10:37  
6 Commissioner Callinan, former Commissioner O'Sullivan  
7 did not in any way draw your attention to the  
8 allegation of criminal misconduct and I am specifically  
9 referring here to the allegation made by Ms. D --

10 A. Yes, you can. Yes, you can. 10:37

11 93 Q. The Tribunal can take that to be the case?

12 A. Yes, it can be.

13 94 Q. But insofar as any other guard in the country, except  
14 any other person who may have held the position of  
15 commissioner or assistant commissioner, you are not 10:38  
16 answering that question?

17 A. I would not like to answer a question that could in any  
18 way, shape or form possibly lead to questions about who  
19 was a source or not a source. But I'd like to make,  
20 just to clarify the issue because I think I know what 10:38  
21 Ms. Leader is trying to ask, and this might explain it:  
22 In relation to the allegations that were against --  
23 that were alleged against Sergeant McCabe of a sexual  
24 nature, Chairman, I was not aware of those allegations  
25 until a much later stage. 10:38

26 95 Q. All right. Well --

27 A. So, the point being, nobody could have told me these  
28 because I didn't know them.

29 96 Q. Okay. That's of considerable help.

1 A. I'm sorry, yeah, do you understand why I have been  
2 trying to -- yeah.

3 97 Q. Well, you -- we'll just --

4 A. I wasn't asked, so -- but I'm just trying to answer  
5 your questions. 10:39

6 98 Q. When did you find out about them? When you say a much  
7 later stage --

8 A. Yeah.

9 99 Q. -- was it after July 2014?

10 A. Yes. 10:39

11 100 Q. Okay. All right. Now, you understand that  
12 Superintendent Taylor has said he briefed you  
13 negatively about Sergeant McCabe when he was Garda  
14 Press Officer?

15 A. I understand that. 10:39

16 101 Q. And you have seen that Superintendent Taylor has waived  
17 any privilege he has in relation to providing that  
18 information to anybody, including you?

19 A. He has.

20 102 Q. Yes. And you'll also -- I don't know if you are 10:39  
21 exactly aware of what he has said in evidence before  
22 the Tribunal in relation to people coming forward and  
23 helping the Tribunal --

24 A. Yes, I am aware of that.

25 103 Q. -- in that regard. I think he specifically said it was 10:40  
26 his hope that people would come to the Tribunal and  
27 tell the Tribunal about any negative briefing he may  
28 have engaged in?

29 A. He did.

1 104 Q. All right. Now, in relation to you, in particular,  
2 what Superintendent Taylor says is at page 141 of day  
3 74. We can hand you a hard copy.  
4 A. I am happy to look on screen, it's fine. Just bring me  
5 through it if there is -- 10:41  
6 105 Q. Yes. What Mr. McGuinness says is:  
7  
8 "Okay, Mr. McEnroe from the Irish Examiner in Volume 19  
9 at page 5152, Mr. McEnroe is asked --"  
10 A. Do you mind, sorry, until it comes up on screen. 10:41  
11 106 Q. Sorry, I beg your pardon.  
12 A. Yes.  
13 107 Q. "'I have been asked whether I have any information or  
14 evidence about an orchestrated campaign directed by  
15 senior officers of An Garda Síochána to discredit 10:41  
16 Sergeant Maurice McCabe by spreading rumours about his  
17 personal, professional life. And if so, I have been  
18 asked to provide the details and all attendant  
19 circumstances and to detail from where this was  
20 emanating from.' And he says 'no'. So he is referring 10:41  
21 other questions then back to that previous statement  
22 there, he seems to be saying that he has no information  
23 or evidence about an orchestrated campaign."  
24  
25 That's counsel for the Tribunal setting out what you 10:42  
26 seemed to be saying at that stage.  
27 A. Mm-hmm.  
28 108 Q. "Are you clear that you briefed him negatively?"  
29

1 And what Superintendent Taylor said is:

2  
3 "Q. Yes?

4 A So the question, he would not know about that part of  
5 the question, but he'd know that I had briefed him in  
6 relation to the motivation of Sergeant McCabe.

7 Q. You are drawing that distinction there from the  
8 answer?

9 A. Well, the answer suggests that he knew about this  
10 campaign and had been orchestrated, he would not know  
11 about that campaign, he would just know that I was  
12 briefing him on behalf of An Garda Síochána. The  
13 mechanics of how that briefing came about he would not  
14 know or any other journalist would not know."

15  
16 And what Superintendent Taylor says:

17  
18 "Ah, yeah, but sure he is talking about the Garda Press  
19 Officer --"

20  
21 The question is:

22  
23 "Q. But he is talking about the Garda Press Officer.

24 A. That's right, but he wouldn't know the mechanics of  
25 it."

26  
27 But you are saying that never happened, he didn't brief  
28 you, Superintendent Taylor, when he was Garda Press  
29 Officer, which was up to July 2014?

1 A. Chairman, I would choose not to answer the questions in  
2 relation to that.

3 109 Q. All right. You are saying, I suppose, you didn't know  
4 about it?

5 CHAIRMAN: I am sorry to interrupt, Mr. McEnroe, but 10:43  
6 you know, on the one hand, you write to me on the 28th  
7 March 2018 and you say Mr. McEnroe believes he doesn't  
8 have any information relevant to the terms of

9 reference. You met with the Tribunal investigators on  
10 the 13th April 2018 and you say: "I confirm the 10:43  
11 contents of the correspondence as being correct."

12 You've also said to me this morning, I was never  
13 briefed negatively by a politician or a journalist or  
14 Nóirín O'Sullivan or Maurice McCabe. You've also said  
15 to me this morning, I only found out about any 10:44  
16 allegation about Maurice McCabe after July 2014.

17 Now it follows as night indeed follows day, that that  
18 means that you were not briefed negatively by  
19 Superintendent David Taylor while he was Garda Press  
20 Officer. He left office, by the way, on 10th June 10:44  
21 2014. You are specifically saying he couldn't have  
22 briefed me because I didn't know about it until after  
23 that time. Now, that is what you have told me this  
24 morning.

25 A. It's not, Chairman. 10:44

26 CHAIRMAN: What do you mean it's not?

27 A. What I said to Ms. Leader was in relation to the  
28 allegation of a sexual nature, I did not become aware  
29 of that until after that period you have mentioned. I

1 did not say that Mr. Taylor did not brief me. And I  
2 did not confirm or deny anything of that nature. I was  
3 asked the question by the Tribunal investigators in  
4 relation to that allegation of a sexual misconduct.  
5 And that's the answer I gave, and that's in relation to 10:45  
6 the timeframe that you said there. So I'm afraid I  
7 have to disagree with that.

8 CHAIRMAN: I am not sure as to what you are disagreeing  
9 with. In fact, I don't know what you are saying now.  
10 Maybe you'd actually speak plainly and maybe you'd just 10:45  
11 tell us did you become aware of an allegation of sexual  
12 misconduct against Sergeant McCabe at any time while  
13 David Taylor was Garda Press Officer in the 23 months  
14 ending on 10th June 2014.

15 A. No, I did not, Chairman. 10:45

16 CHAIRMAN: well then, he couldn't have negatively  
17 briefed you, could he?

18 A. I'd rather not discuss any conversations I might have  
19 had with a source or sources.

20 CHAIRMAN: And David Taylor was a source? 10:45

21 A. I'd rather not discuss conversations I may have had  
22 with sources, Chairman, and I am trying to answer  
23 questions but I cannot go further than that.

24 CHAIRMAN: It seems to me you are not trying to answer  
25 questions at all. It seems to me that you are actually 10:46  
26 playing games, Mr. McEnroe.

27 A. I reject that.

28 CHAIRMAN: Let's just be quite blunt about it. I mean,  
29 I have a letter from you saying I have no information,

1 I have confirmation of that letter to my investigators  
2 saying, I have no information. And now, it seems you  
3 are parsing and analysing every question and you are  
4 saying, well, because that particular word is there, I  
5 can give a particular answer. Now, you have actually  
6 sworn to tell the truth --

10:46

7 A. Yes.

8 CHAIRMAN: -- the whole truth, and nothing but the  
9 truth. The whole truth means there was no such thing  
10 as mental reservations, there is no such thing as  
11 parsing and analysing, when you are asked a question  
12 you actually give the information on it. Now, I am  
13 taking you as saying, as indeed I noted you as saying  
14 when the correspondence came in, that you were never  
15 briefed because you said you had no information on the  
16 terms of reference. You are telling me this morning  
17 that you only found out about any allegation about  
18 Maurice McCabe after July 2014, that means, to me, that  
19 you couldn't have been negatively briefed by David  
20 Taylor or indeed any other garda. That is what it  
21 means. I'm taking it as meaning that. Now, if you  
22 want to tell me that it means something different well  
23 I am not prepared to sit here while you play games with  
24 me. But maybe you had just tell me what you actually  
25 do mean.

10:46

10:46

10:47

10:47

26 A. Chairman, I'm trying to be as helpful as I can to the  
27 Tribunal. If I may answer, Chairman --

28 CHAIRMAN: Sorry, Mr. McEnroe, I actually don't think  
29 you are being helpful at all. Anyone who writes in a



1 letter to the Tribunal saying I have no information  
2 relevant to the terms of reference, and then says I  
3 parse and analyse that as meaning something different,  
4 oh by the way, it was a mistake, oh by the way, I  
5 regret it, oh by the way, I regret my answers to the 10:47  
6 investigators on the 13th April 2018, is not being  
7 helpful. So don't tell me you are being helpful. You  
8 are not. That's the blunt and plain reality of it.  
9 MR. QUINN: Chairman, I do think that involves a  
10 significant pre-judgment because by describing the 10:48  
11 witness as being unhelpful you are making a judgement  
12 on the evidence he is giving today and it is, in fact,  
13 the witness's evidence that he is explaining what he  
14 had done in the past and you can take the view that  
15 what he did in the past was unhelpful and we can have a 10:48  
16 row in due course about what all those letters meant,  
17 but I don't see how you can fairly conclude at this  
18 juncture that he's being unhelpful today, not least  
19 when the witness has said and apologised for a mistake  
20 and an error he made in a letter last year. 10:48  
21 CHAIRMAN: All right.  
22 MR. QUINN: Unless, Chair, your statement --  
23 CHAIRMAN: Mr. Quinn, you are sitting here, now maybe  
24 you'd summarise what your client has told me in  
25 evidence this morning vis-à-vis the central issue which 10:48  
26 the Tribunal is now conducting an investigation into,  
27 which is: whether or not there was any briefing in  
28 from Garda Headquarters, any briefing from David Taylor  
29 in relation to Maurice McCabe and any allegation of

1 sexual abuse, up to the 10th June 2014. Maybe you'd  
2 summarise now what he has said, because you have  
3 listening to the same evidence as I have.

4 MR. QUINN: well, Chair, I am not sure it's the time to  
5 do that, but -- 10:49

6 CHAIRMAN: All right. You are saying you won't?

7 MR. QUINN: No, Chairman, I am replying --

8 CHAIRMAN: well, I think it is the time to do so,  
9 Mr. Quinn.

10 MR. QUINN: well, Chairman, I do think it's necessary 10:49  
11 then because we haven't been present for all of the  
12 Tribunal, I do think it is necessary, and I am  
13 conscious of what paragraph [a] of the terms of  
14 reference, is it the case that this Tribunal has  
15 decided that negative briefing has a particular limited 10:49  
16 meaning?

17 CHAIRMAN: All right. We are going to continue with  
18 the cross-examination.

19 MR. QUINN: I am sorry, Chair --

20 CHAIRMAN: Mr. Quinn, that is not helpful at all. 10:49

21 MR. QUINN: well, Chair, in fairness to the witness and  
22 the interventions that you have made as Chair, and you  
23 did ask me for a submission, and this is partly one, it  
24 does seem to me those interventions by you, Chair --

25 CHAIRMAN: I didn't. Actually, Mr. Quinn, I didn't ask 10:49  
26 you for submissions. I asked you to summarise what  
27 your client has said this morning and you declined to  
28 do so and you said it's not the time to do it. Now, I  
29 have summarised what I think he has said, and again,

1 let's see whether my understanding, which is, because I  
2 didn't know about any allegation of sexual abuse,  
3 alleged by anyone against Maurice McCabe prior to July  
4 2014, I couldn't have been negatively briefed by David  
5 Taylor. It follows as night follows day. 10:50

6 MR. QUINN: well, he didn't say that.

7 A. Chairman, I did not say that.

8 MR. QUINN: He did not say that, Chair.

9 A. And I am happy to go back through the transcript if you  
10 want. 10:50

11 CHAIRMAN: Ms. Leader, I am going to leave it to you.

12 110 Q. MS. LEADER: All right. Now, I think your position is  
13 that you did not know anything about an allegation of  
14 sexual misconduct made against Sergeant Maurice McCabe  
15 prior to July 2014? 10:50

16 A. That's correct, Ms. Leader, yes.

17 111 Q. All right. And if I could just go back to what  
18 Superintendent Taylor is saying he briefed you about  
19 when he gave evidence to the Tribunal. All right?  
20 Now, it's at page 144 of the transcript of day 74, if 10:51  
21 that could be -- and if we could go to line 13 of that.  
22 The Chairman asks Superintendent Taylor:  
23  
24 "Can you remember what you did say to Juno McEnroe?"  
25 10:51  
26 And this is what David Taylor says:  
27  
28 "Just in relation to that, the motivation, that  
29 Sergeant McCabe had been investigated back in 2006 in

1 relation to a sexual matter, that it had gone to the  
2 DPP, directed no prosecution and this was the  
3 motivation of his revenge in bringing all these matters  
4 to the public arena."

5  
6 okay. what do you say in relation to what  
7 Superintendent Taylor is saying there?

8 A. I'm not willing to discuss a conversation with sources.

9 112 Q. Okay. Was Superintendent Taylor a source of yours?

10 A. I'm not willing to confirm or deny that. 10:52

11 113 Q. Okay. Now, what Superintendent Taylor continues to say  
12 in relation to your reaction to him saying that to you  
13 is:

14  
15 "They don't give a reaction, didn't give a reaction, he 10:52  
16 just took it as information that I was passing on to  
17 him."

18  
19 Now, if we could just leave Superintendent Taylor out  
20 of this for a minute. 10:52

21 A. Sure.

22 114 Q. If anybody had said that to you prior to July 2014,  
23 anybody at all, would you have not reacted to it?

24 A. No, I would have reacted to it.

25 115 Q. What would you have done if anybody had said that? 10:52

26 A. I would have been shocked and I would have probably  
27 sought to check up on the issue or to question the  
28 matter.

29 116 Q. Okay. And when you say you would have sought to

1 question the matter, would you have questioned it there  
2 and then or would you have let it sit for a while and  
3 questioned it amongst other people?

4 A. What do you mean "there and then", sorry?

5 117 Q. Immediately, on the spot. 10:53

6 A. Well, I mean, that would be something of significance  
7 and I would have endeavoured to, you know, get  
8 information on it, as you do as a journalist. I would  
9 have tried to seek out sources or talk to people or --  
10 I mean, the story of Sergeant McCabe and the story of 10:53  
11 penalty points was a massive story for the Irish  
12 Examiner. We were leading the coverage and that's what  
13 I would have done. I would have done the standard  
14 thing I suppose journalists would have done.

15 118 Q. All right. Now, if we could turn to the next page, 10:53  
16 page 145, and in your position, in your particular  
17 case, Superintendent Taylor nails down an approximate  
18 time as to when --

19 A. Sorry, what line is this?

20 119 Q. It's from, I think if we start at line 16 at page 145. 10:54

21 A. Thank you.

22 120 Q. And Superintendent Taylor's answer, but he actually  
23 provides an approximate time for when he says he told  
24 you of the allegation of sexual misconduct against  
25 Sergeant McCabe. So he says, about you in particular: 10:54  
26  
27 "Mr. McEnroe, unlike the other journalist, is a  
28 political journalist, had been formally a crime  
29 journalist so his contact with me in relation to that

1 briefing would be around the time of the Commissioner's  
2 appearance before a Dáil -- before a Dáil Committee."

3  
4 He bases you in Dublin. And what Superintendent Taylor  
5 says at line 29, he said: 10:55

6  
7 "I don't recall meeting him. I remember talking to him  
8 on the phone."

9  
10 And the line 6 he says: 10:55

11  
12 "Well, as I said, he is a political reporter so the  
13 correlation with my briefing would correspond with when  
14 the Commissioner and senior officers would be appearing  
15 before the Dáil committee or entering into the 10:55  
16 political world."

17  
18 So on your case, Superintendent Taylor says he  
19 negatively briefed you in the sense that he drew your  
20 attention to an allegation of criminal misconduct made 10:55  
21 against Sergeant McCabe around the time the  
22 Commissioner and senior officers were appearing before  
23 the committees, which would be January 2014, and this  
24 would have been on the phone. Do you want to say  
25 anything in response to that particular evidence given 10:55  
26 by Superintendent Taylor?

27 A. I'm aware of the evidence Superintendent Taylor has  
28 given and my position is, Chairman, I cannot go into  
29 discussions about sources and that remains my position.

1 CHAIRMAN: Just leaving aside any discussion in  
2 relation to sources, I mean, is it still the position  
3 that you only found out about any allegation about  
4 Maurice McCabe having been involved, allegedly, in any  
5 criminal activity, allegedly, apparently, something to 10:56  
6 do with an allegation of sexual abuse, after 10th June  
7 2014?

8 A. It is. It is my position.

9 CHAIRMAN: well then, you couldn't have been negatively  
10 briefed then by Superintendent Taylor. You couldn't 10:56  
11 have been.

12 A. I'm not confirming or denying that, Chairman.

13 CHAIRMAN: what am I supposed to do? I am going to sit  
14 here and -- are you parsing words now or are you  
15 actually saying what I think you have said, which it 10:56  
16 seems to me is pretty clear? Given that you only found  
17 out that there was anything to do with any allegation  
18 of criminal misconduct against Sergeant Maurice McCabe  
19 after the 10th June 2014, that excludes obviously not  
20 just any commissioner, any deputy commissioner, any 10:57  
21 assistant commissioner, any chief superintendent, any  
22 superintendent, any member of the garda, but every  
23 human being on earth?

24 A. It's a matter of fact that I was not aware of those  
25 very serious allegations against Sergeant McCabe until 10:57  
26 a much later period.

27 CHAIRMAN: All right. well, that's fine. And that,  
28 therefore, means you don't have any evidence relevant  
29 to the terms of reference. That therefore means that

1           you were not one of the people encouraged to write  
2           negatively, you were not one of the people that a  
3           chilling effect was sent out to by anybody in An Garda  
4           Síochána.

5           A.    On that question, Chairman, I would not like to go into 10:57  
6           detail on that because it could pertain to information  
7           from sources.

8           CHAIRMAN:  No, I know, but I mean, sometimes --

9           A.    On that specific question, Chairman.

10          CHAIRMAN:  But if you weren't aware of the allegation, 10:58  
11          and I don't mean the nuts and bolts of the allegation,  
12          I don't mean the Garda file, I don't mean the actual  
13          statement made by the young lady in question, I mean  
14          the general allegation the same way as we hear about an  
15          allegation that someone has been arrested in relation 10:58  
16          to a particular murder or that someone is supposed to  
17          have been involved in a drug deal, I mean the general  
18          allegation; you only heard of that general allegation  
19          after 10th June 2014.

20          A.    Yes, at a much later period. 10:58

21          CHAIRMAN:  Yes.  So therefore you couldn't have been  
22          negatively briefed by anybody.

23          A.    Is that a question?

24          CHAIRMAN:  It is a question, yes.

25          A.    I am not denying or confirming that I was negatively 10:58  
26          briefed, Chairman.  I am not denying or confirming  
27          that.

28          CHAIRMAN:  well, it seems to me you have denied it.

29          A.    That's not the case.



1 CHAIRMAN: But if I'm wrong in what I'm saying, you had  
2 better tell me.

3 A. Chairman, it remains my position that I did not find  
4 out about the very serious and unfounded allegations  
5 against Sergeant McCabe till a much later period, as we 10:59  
6 have discussed. In relation to specific questions  
7 about negative briefing, I have said that I would not  
8 like to, and I cannot, go into detail, so I'd like to  
9 claim journalistic privilege, protection of sources for  
10 my career. 10:59

11 121 Q. MS. LEADER: Okay. Is it the case, Mr. McEnroe, that  
12 anybody warned you off Sergeant McCabe prior to -- and  
13 I'm saying anybody here, not a guard or a journalist or  
14 a politician, is it the case that nobody warned you off  
15 Sergeant McCabe prior to July 2014? 10:59

16 A. I know that other journalists in the Tribunal have been  
17 asked this question in terms of when they became aware  
18 of, you know, a complaint or an allegation, and I have  
19 tried to think about this. I do specifically remember  
20 the day or I think it was an evening that Sergeant 11:00  
21 McCabe came to Leinster House, it was an unprecedented  
22 moment for the sergeant to go to that committee. And  
23 there was a lot of attention around his appearance, and  
24 I remember saying his face for the first time, from the  
25 photographs. I wasn't actually covering that period of 11:00  
26 committee hearings. I would have been very active  
27 around the Public Accounts Committee, I would have been  
28 very active around everything in Leinster House as we  
29 always are, in the political team, but I do remember at

1 that period and that juncture, and this was more  
2 gossip, prattle, that somebody raised a question-mark  
3 or a doubt around Sergeant McCabe.

4 122 Q. Okay.

5 A. I then endeavoured to look into that and I was 11:01  
6 satisfied as things went forward that he was a credible  
7 person. I don't know if that answers -- does that  
8 answer your question?

9 123 Q. Okay. I think it brings us some way, Mr. McEnroe?

10 A. Sorry, if I can be of help -- 11:01

11 124 Q. So when you say that people raised a doubt about  
12 Sergeant McCabe, was that doubt about his motivation in  
13 bringing questions in relation to policing to public  
14 attention?

15 A. No, there was -- and it is difficult to recall, I have 11:01  
16 to be honest, you know, as a journalist, specifically  
17 as a political journalist you will hear a lot of gossip  
18 and claims, sometimes, it depends on what you are  
19 doing, though, and what you are covering, and I've  
20 tried to recall, and I don't remember specifics that 11:01  
21 might have been suggested to me or were put to me. I  
22 just remember there was a question-mark raised, you  
23 know, whether -- is he a trustworthy person, or  
24 something along those lines, and I cannot be specific.  
25 I didn't take those suggestions very seriously because 11:02  
26 they weren't coming to me in a briefing sense, they  
27 were coming, as I say, from gossip or from  
28 tittle-tattle or something that was just put out there  
29 or a side comment. But I did actually go and speak to

1 people who would have met Sergeant McCabe and also  
2 people who knew Sergeant McCabe, and I satisfied myself  
3 that there didn't seem to be something to be concerned  
4 about.

5 125 Q. So can the Tribunal take it from January 2014 to at 11:02  
6 least July 2014, you tried to find out whether there  
7 was anything about Sergeant McCabe that wasn't  
8 trustworthy or suggested that he wasn't trustworthy,  
9 and you heard nothing?

10 A. No, it wasn't an endeavour, it wasn't something that I, 11:03  
11 you know, sought long and hard to do.

12 126 Q. Yes.

13 A. In the main, when I was reporting on the issues, I  
14 wasn't writing about the character of Sergeant McCabe;  
15 I was writing about the process, I was writing about 11:03  
16 the Committee hearings, the fallout politically,  
17 threats of a general election, Ministers -- or a  
18 Minister resigning, you know.

19 127 Q. Yes.

20 A. And the process. I wouldn't have been looking at the 11:03  
21 character of Maurice McCabe. So, as I say, it would  
22 have been a type of checks and balance, if you want, as  
23 a journalist, but not something I went out of way. It  
24 was a few conversations I had with a few people just to  
25 check in on something. Mick Clifford from the Irish 11:03  
26 Examiner was taking the lead, if you want, in relation  
27 to Maurice McCabe as an individual.

28 128 Q. Yes.

29 A. The political team were dealing with the world of the

1 House and the work of the committees and that was my  
2 focus. I very rarely wrote about anything to do with  
3 Sergeant McCabe or his character.

4 129 Q. well, the Tribunal has your articles during the  
5 relevant period and that would appear to be the case, 11:04  
6 and you are aware they have been circulated --

7 A. Of course, yes.

8 130 Q. -- in volume 24. Now, Superintendent Taylor has  
9 identified himself as a senior garda source in two of  
10 your articles, you'll be aware of that from his 11:04  
11 evidence before the Tribunal?

12 A. I think so, yes.

13 131 Q. And they are articles on the 27th January 2014, if that  
14 be just for identification purposes brought up, 6512 of  
15 the materials. There is an article written by you, the 11:04  
16 headline is:

17  
18 "Serious flaws in legislation for Garda  
19 whistle blowers."  
20 11:05

21 You see that article, you are familiar with that?

22 A. I can but the text is quite blurry.

23 132 Q. No, no, that's correct.

24 A. If it's here in hard copy it might be better.

25 133 Q. It's volume 24, yes. 11:05

26 A. Thank you. What page?

27 134 Q. 6512.

28 A. Right.

29 135 Q. Yes. And if you look at the last paragraph of that

1 article, Superintendent Taylor has said:  
2  
3 "He is the senior garda source who said there does  
4 not --"  
5 11:05  
6 Sorry, I am having difficulty reading it.  
7 A. I can read it if you want.  
8 136 Q. Yes.  
9  
10 "-- there does not -- he does not approve that the PAC 11:06  
11 is the place for Gardaí members to deal with widespread  
12 allegations but there may be some wiggle room to deal  
13 with that."  
14  
15 You see that? 11:06  
16 A. I do, yeah.  
17 137 Q. And Superintendent Taylor has specifically nominated  
18 himself as the senior garda source for that piece of  
19 information. And if I could turn to page 6527 of the  
20 materials, which is an article written by you on the 11:06  
21 24th February 2014 --  
22 A. Mm-hmm.  
23 138 Q. -- and you see it's an article with the heading:  
24  
25 "Shatter to stand over handling of whistle blowers 11:06  
26 complaints."  
27 A. Yes.  
28 139 Q. And in the third-last paragraph, it begins:  
29

1 "A senior Garda source claimed another letter on  
2 December from Garda Commissioner Martin Callinan  
3 directed Sergeant McCabe to cooperate with the force's  
4 penalty points inquiry. This will be used to justify  
5 Mr. Shatter's claims last year that Sergeant McCabe  
6 refused to cooperate with the inquiry."

11:07

7  
8 Superintendent Taylor has identified himself as the  
9 source of that information, publicly, while giving  
10 evidence.

11:07

11 A. Mm-hmm.

12 140 Q. And he has also, as I have referred to earlier, waived  
13 any privilege he may have over anything relating to the  
14 terms of reference of the Tribunal, and publicly asked  
15 people to cooperate. So in light of all of that,  
16 Mr. McEnroe, I wonder, can you confirm whether  
17 Superintendent Taylor in particular drew your attention  
18 to an allegation of criminal misconduct made against  
19 Sergeant McCabe while you were covering the PAC  
20 inquiry?

11:07

21 A. Chairman, I cannot discuss identity of sources behind  
22 articles or anything to do with sources.

23 CHAIRMAN: Yes, no, Ms. Leader, if I could just  
24 intervene for a moment. I don't have any doubt that  
25 journalistic privilege does arise in relation to the  
26 articles you wrote about the PAC and where you say a  
27 senior garda told me the following blah-blah-blah.

11:08

28 A. It says sources, as far as I am aware.

29 CHAIRMAN: Yes, no, fine. Excuse me if I get the

1           wording slightly wrong, but I think I am just trying to  
2           think in a broad picture. He has waived his privilege  
3           in relation to that, you don't want to confirm it. But  
4           it looks very much like as if it is, and even though  
5           you say you are not at liberty to confirm it, I am           11:08  
6           going to take it that in fact unless there is evidence  
7           to contradict it, that he was one of your sources in  
8           relation to that quote. Now, you don't have to confirm  
9           it or deny it, it doesn't matter, that is neither here  
10          nor there, but the question Ms. Leader put to you is           11:08  
11         premised on this. Here's two articles where a senior  
12         Garda source or senior Garda sources are quoted, and  
13         what Superintendent Taylor is saying is this: That  
14         because I was talking to you, Juno McEnroe, and because  
15         I was the source of information I was a trusted person           11:09  
16         and because this was the ideal opportunity, as  
17         Ms. Leader has put to you, the appearance before the  
18         PAC in January 2014, this was the ideal opportunity to  
19         slip this thing in and that's when I did slip it in.  
20         Now, unless I'm incorrect, you're saying, well an issue           11:09  
21         arose in consequence of a conversation with another  
22         journalist, the issue being is there something that's  
23         motivating this person beyond the public good.  
24         A.     Sorry, can you say that again?  
25             CHAIRMAN:    what you are saying is, in a conversation           11:09  
26             with somebody, perhaps another journalist --  
27         A.     No, I never said a journalist.  
28             CHAIRMAN:    Okay. In a conversation with somebody --  
29         A.     Yes.

1 CHAIRMAN: -- in around January 2014, you were the  
2 subject of a conversation where the comment was raised  
3 perhaps this man is not as genuine as he seems, and you  
4 then went and looked into that.

5 A. Yes. 11:10

6 CHAIRMAN: Now, I don't know whether that involved  
7 looking into the allegation of Ms. D or any allegation  
8 of sexual misconduct.

9 A. It didn't because I wasn't aware of that until a much  
10 later period. 11:10

11 CHAIRMAN: All right. well that's fine. So  
12 Ms. Leader, that seems to be the answer.

13 MS. LEADER: Yes.

14 A. Chairman, just to be clear, and I don't mean to cut  
15 across from what you are saying, but you have said you 11:10  
16 have made up your mind in relation to David Taylor's  
17 claims to the Tribunal. I am not confirming or denying  
18 anything in relation to sources. It was also very much  
19 in the public domain the position of the Commissioner  
20 at the time in that piece. 11:11

21 CHAIRMAN: No, I get you --

22 A. He had maintained on the record in the Public Accounts  
23 Committee that he had in his own words directed. So  
24 that was very much in the public domain.

25 CHAIRMAN: No, I do understand. Because none of that 11:11  
26 comes as a surprise in the context of the evidence I  
27 have heard.

28 A. I would also like to make the Tribunal aware, I am sure  
29 they are, but maybe for others as well, while that



1 piece does, if you want, pertain to maybe the position  
2 the Commissioner had, there is also another piece on  
3 the same day in the same newspaper that calls the  
4 former Minister Alan Shatter to apologise over those  
5 same claims of apparently non-cooperation. 11:11

6 CHAIRMAN: I am sure you took a very balanced view of  
7 all --

8 A. This is the point. There is a balanced --

9 CHAIRMAN: Let's be clear, Mr. McEnroe, nobody is  
10 saying you are a Garda patsy or anything like that, 11:11  
11 nobody is saying because you took a quote that puts you  
12 too close to --

13 A. I understand.

14 CHAIRMAN: Nobody is saying that.

15 A. I just wanted to put that on the record. 11:11

16 CHAIRMAN: I am not saying that either. All right.  
17 What you are saying to Ms. Leader is, look, I only  
18 found out about the sexual allegation later than that.  
19 So Ms. Leader, there we are.

20 141 Q. MS. LEADER: Just in relation to, just to finish off, 11:12  
21 Mr. McEnroe, as Superintendent Taylor says it was over  
22 the phone that this briefing occurred, I think a  
23 section of Superintendent Taylor's phone records were  
24 shown to you by the Tribunal investigators.

25 A. Yes. 11:12

26 142 Q. Which recall calls made by David Taylor to you, and I  
27 just want to show that to you at page 5186 of the  
28 materials, which should come up on screen just shortly.

29 A. Is it the same volume?

1 143 Q. No, I beg your pardon. Volume 19. But it's on screen  
2 in front of you.

3 A. Okay, sorry, thanks.

4 144 Q. So if we go to the relevant period, January 2014, we  
5 see a text on the 27th January 2014 and a call lasting 11:13  
6 one minute 44 seconds on the 27th January 2014, and  
7 then there are a whole series of calls in February,  
8 eight in all. And I just want to ask you, do you think  
9 they were calls that David Taylor could have been  
10 talking to you in relation to Sergeant McCabe, the 11:13  
11 allegation of criminal misconduct and drawing your  
12 attention to it?

13 A. Chairman, I've tried to be helpful to the Tribunal, I  
14 confirmed my phone number when I was asked by  
15 investigators, but I cannot go into discussing possible 11:13  
16 calls from my phone or to my phone or communications,  
17 because I'd like to claim privilege on the matter. I  
18 am not willing to go into details, you know. So that's  
19 the position there.

20 145 Q. But I suppose, it's my duty as well to put what 11:14  
21 Superintendent Taylor says.

22 A. Naturally.

23 146 Q. You understand.

24 A. Yes.

25 MS. LEADER: If you'd answer any questions. 11:14  
26  
27  
28  
29

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

2 147 Q. MR. MCGARRY: Just a couple of matters. Paul McGarry  
3 is my name. I am one of the lawyers representing  
4 Sergeant McCabe. Can I ask you, you said earlier that  
5 there were issues about Sergeant McCabe in the form of 11:14  
6 gossip circulating around that time, early 2014. Were  
7 you aware of issues surrounding Sergeant McCabe,  
8 rumours we have heard mention of here before, about  
9 Sergeant McCabe and what he was up to and his  
10 motivation? 11:14

11 A. No, I wasn't. And I don't think I said gossip  
12 circulating, it would have been something that was said  
13 to me, and I consider prattle. You know, I do remember  
14 specifically when it happened as well and it was that  
15 night Sergeant McCabe was coming into the Dáil, there 11:15  
16 was a lot of discussion around him, and I do remember  
17 somebody dropping a question, is there a question-mark  
18 there or maybe there was something he wasn't to be  
19 trusted.

20 148 Q. In your answers earlier you said that you weren't -- 11:15  
21 you didn't become aware of the allegation of sexual  
22 misconduct until after Superintendent Taylor left the  
23 Press Office?

24 A. Hmm.

25 149 Q. Then you refused to answer questions with regard to any 11:15  
26 other information that may have been given to you by  
27 Superintendent Taylor or other people surrounding  
28 Sergeant McCabe. Is your very specific confirmation in  
29 relation to the allegation of sexual misconduct, to be

1 taken as a confirmation or at least that the Tribunal  
2 can't rule out the possibility that you were given  
3 information by people in relation to other issues  
4 surrounding Sergeant McCabe?

5 A. Sorry, could you just repeat the last part of that? 11:16

6 150 Q. Did you receive any briefing or any information from  
7 anybody else about Sergeant McCabe other than in  
8 relation to the sexual misconduct, criminal misconduct  
9 allegation?

10 A. I'd like to not go into that in detail if I did or 11:16  
11 didn't because then it could narrow down possibilities  
12 if it comes to, well --

13 CHAIRMAN: Mr. McGarry, I am kind of wondering what  
14 else is there.

15 A. Who told you what. 11:16

16 MR. MCGARRY: It's just Chairman, the witness has very  
17 specifically limited what he says he was aware or not  
18 aware of to the allegation of criminal misconduct,  
19 which is in term of reference [b]. Term of reference  
20 [a] is wider, it doesn't refer to criminal misconduct, 11:17  
21 it simply refers to briefing that Sergeant McCabe was  
22 motivated by malice and revenge, that his complaints  
23 had no substance, that they had been investigated,  
24 there was no substance to them, that he was driven by  
25 agendas. But it's not limited to the allegation of 11:17  
26 sexual or criminal misconduct. So the question I'm  
27 asking is: You seem to be limiting your confirmation  
28 of what you knew about -- or that you didn't know until  
29 after Superintendent Taylor left the Press Office, to

1 the question of criminal misconduct, but you are not  
2 answering or not prepared to answer questions about  
3 whether there was anything else that might be  
4 comprehended by term of reference [a], for example, of  
5 which you were made aware, prior to when Superintendent 11:17  
6 Taylor left the Press Office, is that a correct  
7 summation?

8 A. It's not that I am limiting, I am just being very  
9 specific about that allegation, that very serious  
10 allegation at the time. 11:18

11 MR. MCGARRY: Thank you.

12  
13 THE WITNESS WAS CROSS-EXAMINED BY MR. FERRY:

14 151 Q. MR. FERRY: Hello, Mr. McEnroe, my name is John Ferry  
15 and I appear for Superintendent David Taylor. And in 11:18  
16 relation to your evidence, am I right in saying that  
17 you've referred to the timeline of Sergeant McCabe's  
18 appearance before the PAC as being unprecedented?

19 A. I believe so, yeah. I believe it strikes my memory at  
20 the time that it was a very significant moment. In 11:18  
21 Leinster House you may have people of senior rank who  
22 would have been gardaí appearing before committee, but  
23 I don't remember somebody coming in, in a private  
24 nature or private meeting as such. It was quite a big  
25 moment. 11:19

26 152 Q. Yes. And prior to his attendance, had you been present  
27 for the attendance of the Commissioner?

28 A. No, I wasn't.

29 153 Q. Okay. And in relation to that timeline, prior to that

1 period, I think was it the 30th of January that  
2 Sergeant McCabe came into the Dáil?

3 A. The 29th, I believe.

4 154 Q. Maybe I am wrong in that. But prior to that, had you a  
5 relationship with the Garda Press Officer? Were you 11:19  
6 somebody that was --

7 A. Superintendent Taylor?

8 155 Q. Yes.

9 A. I had a professional relationship with Superintendent  
10 Taylor and others in the Press Office, yes. 11:19

11 156 Q. Yes.

12 A. That would have been the position for, you know, a  
13 decade or whatever beyond.

14 157 Q. Yes. And in relation to his evidence, his evidence is  
15 that he was given instructions by the former 11:19  
16 Commissioner Callinan and that that included to  
17 negatively brief journalists, and the essence was that  
18 Sergeant McCabe was driven by revenge and that this was  
19 his motive. So can I ask you, at that time in Dáil  
20 Éireann, were you aware of information relating to the 11:20  
21 motive of Sergeant McCabe?

22 A. No.

23 158 Q. In relation to Sergeant McCabe --

24 A. The alleged motive, no.

25 159 Q. But in relation to his motivation for bringing matters 11:20  
26 to the public attention, so in other words --

27 A. I wasn't, Mr. Ferry.

28 160 Q. Yes. Now, Superintendent Taylor has said that the  
29 method by which he negatively briefed was that it was

1 done on an opportunistic basis; that if Sergeant McCabe  
2 was high profile at particular times in the media, that  
3 he would take any opportunity -- well, if an  
4 opportunity presented itself in the course of a  
5 conversation with a journalist, that he would take that 11:21  
6 opportunity to drop it into the conversation about  
7 Sergeant McCabe and that there was a back-story to him  
8 and that he was motivated by revenge against the  
9 Gardaí. And I put it to you that you are one of the  
10 journalists that he instructs me that he was providing 11:21  
11 that briefing to. Now, when I say briefing, one of the  
12 things here is the context; I mean, he is not saying  
13 that he was expressly saying I'm now briefing you on  
14 behalf of the Commissioner, he was just dropping it  
15 into conversations and this terminology of a briefing 11:21  
16 is a handle that has been given to it by Superintendent  
17 Taylor in an overall context. But I have to put it to  
18 you that he was one of the journalists that he was  
19 referring negatively in relation to Sergeant McCabe.

20 A. Mm-hmm. 11:21

21 161 Q. And I am putting it to you now that he was doing that  
22 in relation to you, Mr. McEnroe.

23 A. Chairman, I cannot put the position further. I am not  
24 in a position to go into discussions with sources.

25 CHAIRMAN: Yes. Look, there may be a worry here, and I 11:22  
26 think insofar as that is motivating things, I think I'd  
27 need to just try and dissolve any such worry. I have  
28 no interest, for instance, in relation to anything to  
29 do with the Clerkin investigation which uncovered

1 numerous cases where, and it is now admitted, David  
2 Taylor was passing on information to people, to the  
3 potential prejudice of several major investigations,  
4 and putting things out in public in relation to people  
5 who have had crimes committed against them for no 11:22  
6 better reason than people were well-known, I have no  
7 problems of journalists asking questions of people.  
8 Obviously those who are tasked with running a police  
9 force are sworn to uphold the law have standards  
10 themselves to maintain, so they may not be able to 11:23  
11 answer your questions. So he breached that and I have  
12 no problem, I don't want to inquire into that, I have  
13 no interest in any of that.

14 A. I understand.

15 CHAIRMAN: I have no interest in how close you were, 11:23  
16 it's only whether or not, and the two things seem to me  
17 to be inseparable, you were being told up to the 10th  
18 June 2014 something to the effect that, look, there was  
19 an investigation into this fellow, a colleague's  
20 daughter or somebody made an allegation against him and 11:23  
21 since then he's turned and he is bitter or any  
22 particular component of that. That is the only thing  
23 I'm interested in. Now, it seems to me you can't  
24 really separate the allegation from the investigation  
25 from what is alleged to be his bitterness or his 11:23  
26 ill-motivation. But as I understand your evidence, and  
27 I don't mean to cut across you, Mr. Ferry, in this  
28 respect, you only learned about that much after  
29 Superintendent Taylor had left the Press Office.



1 A. Yes.

2 CHAIRMAN: So, well, I'm reaching a conclusion on that  
3 basis.

4 A. Chairman, I know you have your job to do and the  
5 Tribunal and does and I am trying to be helpful but I 11:24  
6 equally have a job to do myself, and as a journalist,  
7 sources are the bread and butter of our industry. Day  
8 in, day out, we rely on the information of people from  
9 different sectors, from lawyers, to gardaí, to  
10 diplomats, to politicians and if we don't have those 11:24  
11 sources, generally speaking it's much more difficult to  
12 get stories. So I cannot answer Mr. Ferry's question.

13 CHAIRMAN: well, Mr. Ferry, your question seems to be  
14 more general than the specific question that the  
15 Tribunal is trying to look into, that is the reason I 11:24  
16 intervened. Just to make it clear that I am actually  
17 not interested in anything else.

18 MR. FERRY: well, my question relates to the whole  
19 issue of negative briefing in relation to Sergeant  
20 McCabe. In other words, that I'm asking Mr. McEnroe 11:25  
21 was he aware of or was he being informed that there was  
22 a back-story to Sergeant McCabe and that his motivation  
23 for bringing these matters into the public attention  
24 was related to an issue in his past, that's what I am  
25 referring to, Chairman. That it's not, it's not only 11:25  
26 limited to the sexual allegation, that there was  
27 negative briefing in relation to him having a  
28 motivation of revenge against An Garda Síochána,  
29 Chairman.

1 CHAIRMAN: Yes. No, if you want to put a question, but  
2 it seems to me you can't separate one from the other.  
3 MR. FERRY: Yes.  
4 CHAIRMAN: I mean, I can't separate one from the other.  
5 MS. LEADER: I wonder is page 5 helpful to anybody? 11:26  
6 It's the actual protected disclosure -- sorry,  
7 Chairman, protected disclosure of Superintendent  
8 Taylor.  
9 CHAIRMAN: Yes. You are absolutely right, Ms. Leader,  
10 thank you for drawing that to our attention. 11:26  
11 MS. LEADER: The paragraph starting "I recall..."  
12 CHAIRMAN: I don't know whether you read that before,  
13 Mr. McEnroe? But that is the actual protected  
14 disclosure.  
15 A. I have read the terms I think which referred to this, 11:26  
16 yes.  
17 CHAIRMAN: If you want to just take a moment to just  
18 read that.  
19 A. I am aware of the detail, yes.  
20 162 Q. MR. FERRY: But in relation to that, Mr. McEnroe, my 11:26  
21 instructions are that journalists were being briefed  
22 negatively and that it was that Sergeant McCabe was  
23 motivated by revenge against the Gardaí and that was  
24 put forward as a reason for him bringing matters into  
25 the public arena. Now, at this particular time, it is 11:27  
26 an unprecedented time, and a sergeant is due to appear  
27 before the Public Accounts Committee --  
28 A. Hmm.  
29 163 Q. -- can I ask you, were you aware of a negative

1 reference of that nature in relation to Sergeant  
2 McCabe?

3 A. No, I wasn't.

4 164 Q. And at that time, in January 2014, when reference was  
5 made to Sergeant McCabe, was any other reference made 11:27  
6 in relation to an issue that he had with An Garda  
7 Síochána?

8 A. Can you repeat that, sorry?

9 165 Q. At that time, in January 2014 --

10 A. Yeah. 11:28

11 166 Q. -- when a reference was made to you about Sergeant  
12 McCabe, did it also include an additional piece of  
13 information relating to his motivation?

14 A. No.

15 167 Q. That he was motivated by revenge against the Gardaí? 11:28

16 A. Rumour or gossip, call it what you will, was very  
17 minimal, it was a question-mark.

18 168 Q. Yes.

19 A. Maybe doubts. There was no detail that was passed to  
20 me in that kind of, as I have described it, prattle. 11:28

21 169 Q. Can I ask you, when you say question-mark --

22 A. Yeah.

23 170 Q. -- what are you referring to there? Like, did people  
24 say there is a question-mark about this guy or did  
25 they -- 11:28

26 A. I suppose Sergeant McCabe was, you know, kind of a  
27 David and Goliath moment and he was going up against  
28 the top brass, as the term that has been used in the  
29 Tribunal. So some people were talking about, you know,

1           how will this pan out? And it was in the context of  
2           that that it was said to me, maybe there was -- maybe  
3           there was a question-mark about him. But I'm not a  
4           journalist who would frequent in groups that would  
5           gossip and I wouldn't particularly keep an ear out for 11:29  
6           something like that.

7 171 Q.    Yes. But in relation to that aspect that maybe there  
8           is a question-mark about him, are you saying that was  
9           the sum total of it? Like, was there any other  
10          fleshing out by what was meant by the question-mark? 11:29

11          A.    No. Only that he might not be trustworthy, as I have  
12          already said. And that is all that I can remember.

13 172 Q.    Yes. But nobody was saying why he wouldn't be  
14          trustworthy?

15          A.    No. 11:29

16 173 Q.    And as I say, Superintendent Taylor's evidence has been  
17          that he availed of opportunities to drop it into the  
18          conversation with journalists and, as I say, I put it  
19          to you that you are one of the journalists that he  
20          negatively briefed in relation to Sergeant McCabe, that 11:29  
21          he was motivated by revenge against the Gardaí?

22          A.    And the same answer applies, Mr. Ferry.

23          MR. FERRY: Thank you, Mr. McEnroe.

24          MR. QUINN: Chair, if I can just reserve my position  
25          until the end. 11:30

26          CHAIRMAN: Of course, Mr. Quinn. Mr. Ó Muircheartaigh?

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

MR. Ó MUIRCHEARTAIGH: Thank you, Chairman. Just one or two questions --

CHAIRMAN: And maybe be so kind as to introduce yourself.

11:30

MR. Ó MUIRCHEARTAIGH: Sorry. Fíonán Ó Muircheartaigh is my name and I am counsel for Alison O'Reilly.

174 Q. Just one or two questions about the journalistic

privilege that is being claimed here, and its implications for the information before the Tribunal.

11:30

It seems you are suggesting that there is a right to professional privilege even in circumstances where the source has asked that the information he has given you should be disclosed to a tribunal set up by the Oireachtas, is that your position?

11:30

A. It may be the case that somebody who claims to be a source waives privilege, but that's not my position. As a journalist, I don't believe that that puts an onus on a reporter to waive their right to privilege.

11:31

175 Q. Now, sorry, I don't understand the phrase "claims to be a source". What David Taylor is asking, as I understand it, is not that something should be disclosed that isn't a fact; he's asking that what he told you should be disclosed to a public inquiry. Now, on what basis do you think you can stand in the way of this man vindicating the truth or otherwise of what he claims he told you?

11:31

A. Could you put the question another way, I am not really

1           sure what you are asking me.

2   176   Q.    what I'm asking is, this is not about claims or  
3           otherwise, David Taylor has simply asked, would you  
4           reveal to the Tribunal what he told you, and what I'm  
5           trying to understand is, how journalistic privilege can 11:32  
6           apply to something, say, I tell you and I tell you you  
7           can tell that to anybody, and now we have a statutory  
8           tribunal set up, it's been here for nearly 100 days,  
9           and I don't see on what basis you can say you shouldn't  
10          tell the Tribunal what David Taylor told you. How does 11:32  
11          it prejudice journalistic reporting?

12          A.   There's sufficient debate out there to suggest why the  
13          protection of sources are important for our industry.  
14          I don't know if it's the right place for me to engage  
15          in that discussion here. I know it's a matter the 11:32  
16          Chairman will consider in the coming days. For me as a  
17          journalist on a very practical basis, and the words  
18          chilling have been used before, the chilling effect of  
19          disclosing what somebody says to you in confidence, in  
20          my belief, can have detrimental effects or at least 11:33  
21          very negative effects possibly on the future of  
22          someone's career. We engage all the time with people  
23          who want to share material with us, by phone, by  
24          letter, in person, sometimes through third parties.  
25          The point is, to answer your question, if somebody 11:33  
26          claims to be a source and waives their privilege you do  
27          not know the reasons behind why they may do that.  
28          Nonetheless, even if you did know the reasons, it is  
29          our responsibility to protect our sources and it is our

1 right to waive that privilege and, in my personal  
2 belief, and I do not speak for all reporters, and I do  
3 not want to, in advance of the discussion that the  
4 Chairman will have maybe, try and put some line down on  
5 this, I believe that's the most responsible position to 11:34  
6 have as a journalist.

7 177 Q. I put it to you that the contrary is the case.  
8 A. Sorry, I can't hear you.

9 178 Q. I take it -- I put it to you that the contrary, exactly  
10 the opposite is the case; if somebody gives you -- 11:34  
11 A. That may be your position, it's not mine.

12 179 Q. I am about to ask you a question.  
13 A. Sorry.

14 180 Q. That the opposite is the case; if journalists depend on  
15 the confidentiality of off-the-record briefings or 11:34  
16 whatever --  
17 A. Sure.

18 181 Q. -- it's entirely reasonable that they shouldn't be  
19 required to disclose that, but if circumstances put  
20 that person who gave you that information in a 11:34  
21 situation where he needs witness of what it was, surely  
22 you have a duty to him and surely any other  
23 off-the-record source will know that if they go to you  
24 and they find themselves in a similar bind as David  
25 Taylor, that you are not somebody they can rely on to 11:35  
26 tell the truth about what they said.

27 A. I cannot go further than what I have told you. That's  
28 my position.

29 CHAIRMAN: I suppose Mr. Ó Muirheartaigh is putting an

1 argument to you, and the argument I think runs  
2 as follows: Let's suppose, and this is a very extreme  
3 example, but just let's suppose we came to lunchtime,  
4 let's suppose you met me out in the courtyard and let's  
5 suppose I said, in answer to a question how is the 11:35  
6 Tribunal going, and I said something to the effect that  
7 well the Tribunal is going fine and we ought to be  
8 finished in a week, you can quote me on that, clearly,  
9 no problem. But if I said, well, the Tribunal may well  
10 be finished in a week but I'm still worried as to 11:36  
11 whether it's ever going to finish at all, you'd better  
12 not quote me on that, but that evening I ring you up  
13 and say by the way, you can quote me on that; what's to  
14 stop you putting that quote into the newspaper for the  
15 next morning's Irish Examiner? I think that's 11:36  
16 basically what Mr. Ó Muircheartaigh is asking you.

17 A. Yes.

18 CHAIRMAN: And I think the whole point is, that a  
19 person can withdraw a comment as being off the record  
20 and make it on the record. Here of course, if any of 11:36  
21 this ever happened, there is a big gap, it's a number  
22 of years, but in terms of the actual principle of the  
23 matter it's not really any different to the example  
24 that is given, that is the question that I think you  
25 are being asked. 11:36

26 A. I know, but it still is the same answer that I have  
27 Chairman; that I believe it is the right of the  
28 journalist to maintain that privilege above the right  
29 of the person who may waive it, even if it is



1 circumstances you may describe there.

2 182 Q. MR. Ó MUIRCHEARTAIGH: Now, one last question I'd like  
3 to ask you in that regard: would you accept that  
4 journalistic privilege is not a right that can be  
5 exercised in isolation from other rights? 11:37

6 A. If it upholds the public interest, the interest of the  
7 public, I think it is an important right, but each case  
8 was probably decided differently, maybe.

9 183 Q. I put it to you that this Tribunal has been set up by  
10 parliament to investigate the manner in which the 11:37  
11 Gardaí, the thin blue line that protects the citizen  
12 from anarchy, is being run. And that the Tribunal and  
13 parliament is entitled to answers that don't prejudice  
14 your sources, that that is the kind of balance that has  
15 to be struck. Have you given any consideration to the 11:37  
16 accountability --

17 A. I have given a lot --

18 184 Q. Sorry, to the accountability of the agencies within the  
19 State, including journalists, to tell the truth to a  
20 tribunal set up by the Oireachtas? 11:38

21 A. Chairman, I have given huge amounts of consideration to  
22 the Tribunal not giving the error that I made  
23 initially, not forgetting that, but I believe while the  
24 point is made, the Tribunal is here to try and find out  
25 the matters in its remit, it was set up by the 11:38  
26 parliament, I equally believe important matters in this  
27 State and the arms in the State that operate, one of  
28 them that is important is the fourth estate. And the  
29 fourth estate must be protected and given rights to

1 carry out its duties, otherwise -- that is my position,  
2 anyway.

3 185 Q. And a final question, and it is really the final  
4 question: Looking back at what you were told and what  
5 you can't share with us --

11:39

6 A. Yes.

7 186 Q. -- do you believe or do you accept now that there was a  
8 process where Maurice McCabe was being set up in or  
9 around the beginning of 2014?

10 A. That's not for me to answer. And I did not have  
11 information at the time pertaining to the very serious  
12 allegation of sexual misconduct, as I have said.

11:39

13 187 Q. So are you telling the Tribunal that the contacts you  
14 had with whoever you had them in the Gardaí at that  
15 time, that they in no way cast any aspersions on the  
16 character or behaviour of Maurice McCabe?

11:39

17 A. I'm not saying that, I'm --

18 188 Q. Well, I put it to you that if you are not saying it,  
19 you are in effect colluding with whatever went on at  
20 that time.

11:40

21 A. I reject remarks like that.

22 MR. QUINN: Chairman, this is the fourth final question  
23 from Mr. Ó Muircheartaigh. I had understood he was  
24 acting to for the journalist Alison O'Reilly and he is  
25 adopting a somewhat roving approach to his line of  
26 questions. But I do think it has strayed now beyond  
27 the acceptable range of questions that would seem to  
28 arise on behalf of his client and he is engaging in  
29 somewhat of a personal debate with the witness, which

11:40

1 doesn't seem to me to be the way to conduct the  
2 privilege of cross-examination in these circumstances.  
3 CHAIRMAN: well, in any event, Mr. McEnroe I think has  
4 rejected the situation, the premise you have put. I  
5 don't know, it's a bit like whatever a person desires 11:40  
6 to get published is advertising, whatever he wants to  
7 keep out of the newspaper is news. We all know the  
8 relevant adage. But you don't take yourself as having  
9 been taken for a patsy by anyone in the Garda Síochána  
10 up to the 10th June 2014? 11:40

11 A. I'm not willing to discuss sources or information that  
12 may or may not have been passed to me, but I would  
13 reject any suggestion that I colluded.

14 CHAIRMAN: All right. well, I will try and work out  
15 the puzzle later on. So -- 11:41

16

17 THE WITNESS WAS CROSS-EXAMINED BY MR. WHELAN:

18 189 Q. MR. WHELAN: Just a couple of brief questions.  
19 Mr. McEnroe, I think for the period 2010, 2011, 2012,  
20 2013 and 2014 - Noel Whelan, I act for An Garda 11:41  
21 Síochána and I have some questions on behalf of former  
22 Commissioners Callinan and O'Sullivan - were you based  
23 in Leinster House?

24 A. I was, Mr. Whelan.

25 190 Q. For all of that time? 11:41

26 A. Yes.

27 191 Q. You were in the political correspondents room I think,  
28 which for some of that period was in Leinster House and  
29 is now adjacent to it or thereabouts?

1 A. Yes, the old offices have been knocked down but it was  
2 across the road but I would have been in and out of  
3 Leinster House.

4 192 Q. You were working beat is the corridors of Leinster  
5 House, if I put it that way? 11:41

6 A. Yes.

7 193 Q. And the evidence has been given by some deputies that  
8 they never heard any rumours of this type until much  
9 later about Sergeant Maurice McCabe?

10 A. Yes. 11:42

11 194 Q. The evidence has been given by other deputies that they  
12 did hear these rumours and this type. The evidence has  
13 been given by some crime correspondents that they first  
14 heard evidence of this, the type -- evidence of rumours  
15 of the type or allegations of the type which the 11:42  
16 Tribunal is dealing with as early as 2011, 2012. Am I  
17 correct in understanding your position is that you said  
18 you didn't hear allegations of the type about any  
19 criminal activity alleged against Maurice McCabe until  
20 July 2014, did you say? 11:42

21 A. I didn't give the period or a date.

22 CHAIRMAN: You simply said much later than that.

23 195 Q. MR. WHELAN: Much later than -- not before July 2014, I  
24 think was --

25 A. Not before. 11:42

26 196 Q. Was the date you gave?

27 A. It wasn't before that period, no.

28 197 Q. It wasn't before that period. Okay. As the judge has  
29 pointed out, Superintendent Taylor was out of the Press

1 Office on the 10th June. And am I to understand it  
2 however, you have a recollection of a question-mark  
3 being planted in your mind --

4 A. Yes.

5 198 Q. -- by somebody in Leinster House on the night that 11:43  
6 Maurice McCabe appeared?

7 A. Yes. That is quite specific, so that is to the point,  
8 Mr. Whelan. That would be the case.

9 199 Q. And that is consistent with a characterisation given, I  
10 think, here last week by the crime correspondent 11:43  
11 Michael O'Toole, that in many ways much of this was a  
12 political story and in the political media rather than  
13 the security or policing realm?

14 A. It depends. I mean, some events in Leinster House are  
15 covered by both types of journalists, both types of 11:43  
16 journalists would have taken a strong interest.

17 200 Q. The question-mark that was in your mind, are you saying  
18 that was from a colleague?

19 A. No, I can't recall.

20 201 Q. You can't recall? 11:43

21 A. And it wasn't somebody who sat me down --

22 202 Q. Exactly.

23 A. -- and had a discussion. It was something quite curt,  
24 but gossipy in nature.

25 203 Q. But, and again, it's in the widest -- I don't seek to 11:43  
26 encroach upon or minimise the pool of sources, or  
27 potential sources, but am I correct in inferring then  
28 that that was somebody from the political Leinster  
29 House realm rather than An Garda Síochána?

1 A. I don't know. I mean, I have tried to think about  
2 this, it's an obvious question, I just know it happened  
3 probably that evening when Sergeant McCabe was coming  
4 in because everybody was talking about that moment.  
5 And I do just remember crystallising it as being around 11:44  
6 then. And I believe it was probably in and around  
7 Leinster House for obvious reasons.

8 204 Q. It's probably correct to say you spent your life living  
9 in the Leinster House world rather than any policing or  
10 Garda world at that stage, in those years? 11:44

11 A. Yes, I spent most of my life in Leinster House.

12 MR. WHELAN: Yes. Thank you very much, Mr. McEnroe.

13 CHAIRMAN: Did you want to ask any questions,  
14 Mr. Quinn?

15 MR. QUINN: No, Chair. 11:45

16

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

18 205 Q. MS. LEADER: Just in relation to the question-mark you  
19 heard in relation to Sergeant McCabe in January 2014,  
20 could that be categorised as that his complaints had 11:45  
21 been investigated and there was no substance to his  
22 allegations? was it anything like that?

23 A. No, I think it would have been pertaining -- well, it  
24 might have been. It might have been. But it wasn't --  
25 it didn't detract from the work that we did covering 11:45  
26 the Committee.

27 206 Q. I am not suggesting in any way that it did. So it  
28 wasn't -- the reason I'm asking you is, what  
29 Superintendent Taylor says is he was encouraged to

1 brief the media to write negatively about Sergeant  
2 McCabe, that his complaints had no substance at all, so  
3 that question-mark, was it that his complaints had no  
4 substance at all?

5 A. No. 11:46

6 207 Q. All right. And that the Gardaí had fully investigated  
7 his complaints and found no substance to his  
8 allegations, was that what the question-mark was in  
9 2014?

10 A. No, there was no detail given to me like that, but I 11:46  
11 suppose, as I said to Mr. Ferry, the general thrust of  
12 things was this, that was a David and Goliath  
13 moment and if there was gossip around, a question-mark  
14 around the sergeant, it may have been to suggest, you  
15 know, what's the information he's bringing, you know, 11:46  
16 to the force or against the force, or against -- sorry,  
17 the operation of the penalty points system.

18 208 Q. And finally, what Superintendent Taylor says "In  
19 essence, I was to brief that Sergeant McCabe was driven  
20 by agendas", so that question-mark, did it relate in 11:46  
21 any way to his motivation?

22 A. No, no.

23 MS. LEADER: All right. Thanks very much.

24

25 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN: 11:46

26 209 Q. CHAIRMAN: All right. Thanks, Mr. McEnroe. There was  
27 just one or two things that might remain. As I  
28 understand it the remark insofar as you can remember  
29 it, somewhere in or around Leinster House or the

1 complex was to the effect that he might not be  
2 trustworthy, that is about it really.

3 A. Yes.

4 210 Q. CHAIRMAN: And we are talking then about Commissioner  
5 Callinan's appearance and then later on, on the 11:47  
6 Thursday, that is to say Maurice McCabe's appearance?

7 A. Yes.

8 211 Q. CHAIRMAN: Now, that wasn't broadcast but I take it  
9 journalists were present for that?

10 A. For? 11:47

11 212 Q. CHAIRMAN: For Maurice McCabe giving evidence before  
12 the PAC?

13 A. Were they in Leinster House?

14 213 Q. CHAIRMAN: well, as I understand, I have been there, I  
15 have had a look, there is a press gallery? 11:47

16 A. Oh yeah. I didn't cover that hearing itself but I mean  
17 the Committee rooms are only a few steps away from the  
18 general confines of Leinster House. So there was a  
19 large media presence and political presence that  
20 evening, yes. 11:47

21 214 Q. CHAIRMAN: The other thing is this: It's perfectly  
22 legitimate for you to be in contact with Superintendent  
23 Taylor and I'm not going to ask about that.

24 A. Yes.

25 215 Q. CHAIRMAN: And there were many occasions, as I 11:47  
26 understand it, from the time this story surfaced and  
27 became a matter of national interest, whereby the world  
28 of policing and the world of politics were in collision  
29 or potentially in collision. I take it that, in those



1 circumstances, it was perfectly legitimate for you to  
2 talk to him about any of those issues?

3 A. The contact with Superintendent David Taylor would have  
4 been probably infrequent, not very often. There would  
5 have been other press officers I would have been in 11:48  
6 contact with, it would be the case that if something  
7 arose over an incident or a protest or maybe even the  
8 process around somebody appearing before a committee  
9 like that event, like the PAC hearing, I may have been  
10 in touch with Superintendent Taylor but it was around 11:48  
11 the process, Chairman.

12 216 Q. CHAIRMAN: Yes. No, I understand. And there is  
13 absolutely nothing wrong with that and I don't want to  
14 ask you any questions about that. Now, it's just  
15 vis-à-vis the answers vis-à-vis whether there is, in 11:49  
16 fact, a mystery here, I can't leave that uncertainty  
17 there without making sure that I actually understand  
18 what you are saying. So, I don't want to you talk  
19 about your sources, I don't want to go into anything to  
20 do with Clerkin but what you are saying is that 11:49  
21 anything to do with any serious allegation, any  
22 allegation about Maurice McCabe, you didn't hear it  
23 while he was active in the Press Office, that is up to  
24 the 10th June of 2014?

25 A. That is my position, and it was actually much later 11:49  
26 than that.

27 217 Q. CHAIRMAN: And that is what I was going to ask you,  
28 was: When, in fact, are we talking about? Because I  
29 mean everybody knew about an awful lot of stuff, let's

1 say, from the Prime Time programme of February 2017?

2 A. Yes.

3 218 Q. CHAIRMAN: which seemed to lead directly to the setting  
4 up of this Tribunal or certainly was part of the  
5 impetus of it. Are we talking as late as that? 11:50

6 A. No, I don't believe so. But probably not too far shy  
7 of that and I have tried to think about when it was; I  
8 believe it could have been in around the O'Higgins  
9 Commission, when material was emerging from then, or at  
10 least after that going closer to the time around the 11:50  
11 Tusla scandal. And it may be the case of, you know,  
12 well, why I wasn't aware of that. The reality is,  
13 things can move on very quickly in Leinster House, as  
14 can be seen from the material that I wrote. In the  
15 main it was about the process, it was about the 11:50  
16 political elements around the ministers and inquiries.  
17 I very, very rarely, if at all, wrote about Sergeant  
18 McCabe's character. And when it came to that matter,  
19 Mick Clifford from the Irish Examiner took the lead on  
20 that. 11:51

21 219 Q. CHAIRMAN: Yes.

22 A. So I didn't have an interest, if you want.

23 220 Q. CHAIRMAN: No, in that context, I mean I have a list  
24 here of people who were never briefed, people who were  
25 added to the list later on, etcetera, and from the 11:51  
26 point of view of common sense, it makes it probable  
27 that the reason that Michael Clifford and Katie Hannon  
28 were not briefed was because they had a position on  
29 Maurice McCabe. Now, as I understand it, you had no

1 position on Maurice McCabe, good, bad or indifferent,  
2 save to say that in terms of writing about the  
3 political aspects of this there was something to be  
4 written about and it was perhaps going in a particular  
5 way or had gone in a particular way, is that right? 11:51

6 A. Not entirely. I mean, when that bit of gossip was put  
7 there to me that maybe there was a question-mark there,  
8 I did, as I have explained, go to people who knew  
9 Sergeant McCabe or who had met Sergeant McCabe, and  
10 after putting a few questions to them, I was happy 11:52  
11 that, you know, the information, that he was revealing  
12 the information that he was bringing to the attention  
13 of the Committee, the whole scandal around the penalty  
14 points, that there was credence and there was reason to  
15 take his concerns seriously. So in that instance, that 11:52  
16 would suggest that maybe I suppose did take a position  
17 on him.

18 221 Q. CHAIRMAN: Yes. But the other end of things, the other  
19 polarity is that perhaps people become close to  
20 somebody and they trust them not to -- well, revealing 11:52  
21 a source is one thing, that is not going to happen,  
22 they trust them to take the information on board from  
23 them as being correct, because there is a degree of  
24 closeness between the person giving the information and  
25 the person receiving the information. Did you ever 11:53  
26 find yourself on close terms with Superintendent  
27 Taylor?

28 A. No. I would have had infrequent contact with him, as I  
29 have said, and my relationship would have been purely

1 professional.

2 222 Q. CHAIRMAN: well, I am not going to blame anybody else  
3 in the Garda Press Office in the event that any of this  
4 was happening but was it the case that you were closer  
5 to somebody else in the Garda Press Office, that you 11:53  
6 happened to get the same person, you happened to know a  
7 particular person in there?

8 A. I wouldn't have distinguished too much, Chairman, to be  
9 honest with you. I mean, I probably would have had  
10 more frequent contact obviously because Superintendent 11:53  
11 Taylor was the head of the Press Office, but I would  
12 have dealt with Jim Molloy, I would have dealt with  
13 John Ferris, I would have dealt with Damien Hogan,  
14 those are members of the Press Office who preceded  
15 Superintendent Taylor. And, as I said, I was involved 11:53  
16 in crime journalism before my time in politics, so it  
17 was only natural those conversations continued with  
18 those individuals.

19 223 Q. CHAIRMAN: was there any talk in journalistic circles  
20 as to what kind of a Press Officer David was; like he 11:54  
21 was a breath of fresh air or that he was perhaps going  
22 too far in relation to what he might say or that if you  
23 wanted to know anything, he was the one to go to?

24 A. No, not that I recall.

25 224 Q. CHAIRMAN: All right. Thank you very much. 11:54  
26 A. Thank you.

27 MS. LEADER: Subject to being recalled, you are free to  
28 go.  
29

1 THE WITNESS THEN WITHDREW

2

3 MR. MARRINAN: The next witness, sir, is Cormac  
4 O'keeffe, please.

5

11:54

6 MR. CORMAC O'KEEFFE, HAVING BEEN SWORN, WAS DIRECTLY  
7 EXAMINED BY MR. MARRINAN:

8 225 Q. MR. MARRINAN: Now, Mr. O'keeffe, you are a journalist  
9 with the Irish Examiner, isn't that right?

10 A. That's correct.

11:55

11 226 Q. And would you just tell the Chairman about your career  
12 to date in journalism, please?

13 A. In the mid-1990s I started my Master's in DCU in  
14 journalism. I would have worked in college journalism  
15 before then, and the Big Issue magazine. Graduated in  
16 1997, after which I worked as a freelancer in RTÉ and  
17 in various newspapers and magazines, initially covering  
18 the drugs area in particular. And then in 2000 I  
19 started in the Irish Examiner. 2001, I was staff  
20 there, and gradually over time my area expanded, I  
21 suppose, from the drugs area to include crime, policing  
22 and the justice area. The area was quite broad, it  
23 wasn't just covering crime, as such; I have covered in  
24 detail the workings of Garda oversight bodies and  
25 inspection bodies, I would have covered their reports  
26 quite extensively and I would have covered all aspects  
27 of the various Garda policing controversies and crises  
28 over those years, actually the only exception being the  
29 Maurice McCabe one, my work in that was more tangential

11:55

11:55

11:56

1 compared to work -- it was led primarily by Mick  
2 Clifford. So, my work there wouldn't have been as -- I  
3 wouldn't have done as much work in that area as the  
4 other areas.

5 227 Q. Now, I think that you had an interview with the 11:56  
6 Tribunal investigators on the 9th April of 2018, and  
7 the interview is at page 4978 of the material. And I  
8 think that in the first instance, you were written to  
9 by the Tribunal in a letter at page 5001, dated 21st  
10 April of 2017, isn't that right? And along with other 11:57  
11 journalists, and we are familiar with this already and  
12 I don't need to go through it with you, but you were  
13 asked a number of questions by the Tribunal, isn't that  
14 right?

15 A. Yes. 11:57

16 228 Q. And this is in the context of you being nominated by  
17 Superintendent Taylor as being a person who he had  
18 briefed negatively in respect of Maurice McCabe, you  
19 are aware of that?

20 A. I am aware of that, yes. 11:57

21 229 Q. A response to the Tribunal letter is at page 5005 of  
22 the material. And just:

23

24 "In order to allow us to take instructions we require  
25 clarification in relation to the following. 11:58

26

27 In your correspondence to the above-named you have  
28 stated that you have received confirmation from  
29 Commissioner Nóirín O'Sullivan and former Commissioner

1 Martin Callinan and on behalf of Superintendent David  
2 Taylor that they do not claim any privilege in the  
3 instance identified in your correspondence. In order  
4 that we fully understand this purported waiver of  
5 privilege you might furnish us with any correspondence 11:58  
6 setting out the confirmations provided."

7  
8 Now, I think that that in fact was subsequently done,  
9 isn't that right, and you received the waiver of former  
10 Commissioner Martin Callinan, which is at page 5011 of 11:59  
11 the material, and then the waiver of former  
12 Commissioner Nóirín O'Sullivan, which is at 5012, and  
13 the waiver of Superintendent David Taylor, which is at  
14 5013. In relation to all those waivers, have you any  
15 reason to believe other than that they were given 11:59  
16 voluntarily to the Tribunal?

17 A. You are asking me do I have any reason to believe?

18 230 Q. Yes. That they were given other than voluntarily to  
19 the Tribunal.

20 A. I don't have any reason to believe, no. 11:59

21 231 Q. Well, do you believe that they were given voluntarily  
22 to the Tribunal?

23 A. Well, I don't know.

24 232 Q. Hmm? Have you any reason to doubt --

25 A. No, I don't reason to doubt. 11:59

26 233 Q. -- that these are genuine waivers that are given by  
27 Nóirín O'Sullivan, Martin Callinan and David Taylor?

28 A. Do I have any reason to doubt, no, I don't.

29 234 Q. You don't. All right. I think then the position is

1 that you were interviewed by the Tribunal  
2 investigators, and we'll go through that in due course,  
3 but largely you refused to answer the questions based  
4 on a claim of privilege that you have in relation to  
5 your interactions with Superintendent Taylor, is that 12:00  
6 right?

7 A. That's correct.

8 235 Q. Could we just first of all go back to your knowledge of  
9 Sergeant McCabe and rumours that may or may not have  
10 been circulating about him in 2013/2014. Did you hear 12:00  
11 any rumours in 2013 or 2014 about Sergeant McCabe's  
12 character?

13 A. Em, I am unable to say, to comment on anything that may  
14 or may not identify a source, in relation to gossip or  
15 half-gossip that might have been circulating if that is 12:01  
16 your question?

17 236 Q. No, I am asking you a very simple question, I am not  
18 asking you to reveal a source. I am asking as to your  
19 state of knowledge in 2013/2014 in relation to Sergeant  
20 McCabe, and I asked you had you heard anything in 12:01  
21 relation to the character of Sergeant McCabe?

22 A. I'm not in a position, I am unable to comment on  
23 anything that may or may not identify a source.

24 237 Q. And how could that possibly identify --

25 CHAIRMAN: If I could just intervene for a moment. It 12:02  
26 seems that there is a certain fear of a trapdoor that  
27 if you are led into a particular position on the stage  
28 the trapdoor is going to open and lo and behold you go  
29 in and you find yourself stuck or you find yourself



1 doing something contrary to your principles, whether  
2 the principles have validity in law is a different  
3 matter, but Mr. Marrinan is not a sneaky kind of person  
4 and he is not trying to ask you a sneaky question.  
5 Lots and lots of people have been asked what did they 12:02  
6 know about Sergeant McCabe in 2013 and 2014, what  
7 rumours were circulating and we have had a lot of  
8 answers in relation to that and a lot of people have  
9 actually said look, I actually don't know where that  
10 was coming from. But before we get to the point of 12:02  
11 saying whether you do or do not know, all Mr. Marrinan  
12 was asking you about is, what was the level of your  
13 understanding in relation to whether this was a genuine  
14 fellow acting for absolutely genuine reasons or whether  
15 he was a bitter little man, to use the Jack Charlton 12:02  
16 phrase, or whether he was the kind of guy who really  
17 was just out to cause mischief. So that is what  
18 Mr. Marrinan is asking you at that point. Am I right  
19 in thinking that, Mr. Marrinan, it's nothing more than  
20 that at this particular moment? If we get to a 12:03  
21 different moment, particular moment well then let's  
22 deal with the moment when we get to that particular  
23 moment.

24 A. Can I just ask, Chair, are you asking me what my view  
25 was at the time, is it? 12:03

26 CHAIRMAN: No, I don't think Mr. Marrinan asked you  
27 that at all. He was asking were you hearing things  
28 about Sergeant McCabe, that is all, in the same way as  
29 you'd hear things, for instance, about anyone who is in

1 the public eye. That is the height of it now, at the  
2 moment, and if it goes any further to that, well of  
3 course we will debate whatever you want to debate at  
4 that moment.

5 A. Sure. Anything that I may have heard, that may have 12:03  
6 come from a source, I am unable to go into because it  
7 may or may not identify a source. If you are asking me  
8 about gossip that may have been circulating, I can  
9 possibly answer the questions on that.

10 238 Q. MR. MARRINAN: well, had you heard any gossip in 12:04  
11 relation to Sergeant McCabe and an investigation in  
12 relation to a sexual assault in 2013 or in 2014?

13 A. I have been trying to recollect exactly what I heard  
14 and indeed when I heard it. I don't want to mislead  
15 the Tribunal, I don't know when exactly I would have 12:04  
16 heard various things. I came to this story I think  
17 relatively late. It would have been -- I think my  
18 first story that is in the -- what was circulated, was  
19 towards the end of February 2014. So that would have  
20 been when I would have started covering it. So 12:04  
21 whatever I might have heard in terms of half snatches  
22 of conversation or bits of gossip that may have been  
23 circulating, it would have, I would imagine, have been  
24 February, March, April, May of 2014.

25 239 Q. And what did you hear? 12:05

26 A. It's very hard to be certain what I heard or trying to  
27 remember what I heard because I don't remember clearly  
28 what I heard. I do remember an allegation of sexual  
29 abuse being mentioned, I think when I initially heard

1 that there was no reference to a child, the first  
2 reference I think was in relation to a sexual  
3 allegation generally.

4 240 Q. And you believe this may have been as late as February  
5 2014, from 2014 to April 2014? 12:05

6 A. I think so. Now, it is possible that I may have heard  
7 it in 2013, but I really didn't start covering this  
8 story until February -- I think it was February 2014,  
9 after the whole PAC thing and it kind of, I suppose,  
10 came within my area a bit because, as I said, I wasn't 12:06  
11 covering the story.

12 241 Q. Did you hear this only once?

13 A. Em, no, I think I heard it more than once.

14 242 Q. Did you hear it from other journalists?

15 A. It would have been from other journalists, yes. 12:06

16 243 Q. Did you hear it from anybody else other than other  
17 journalists?

18 A. As I said, I am unable to comment on anything that may  
19 or may not identify a source.

20 CHAIRMAN: Yes. well, for the moment let's not go to 12:06  
21 identifying a source. Many people have said, for  
22 instance, and Mr. Marrinan please excuse me for  
23 interrupting here but I think it's necessary for me, if  
24 possible, to calm the waters. Many people have said,  
25 look, when I heard it, I contacted some sources and 12:07  
26 checked it out. Now, if you did that, you don't have  
27 to tell me what sources you contacted to check it out,  
28 but maybe you'd just help insofar as you can for the  
29 moment in relation to what Mr. Marrinan is asking you

1 about, hearing it a number of times and what you may  
2 have done in relation to it, without mentioning  
3 sources.

4 A. Yeah, I was trying to recollect what I did on the back  
5 of hearing initially the allegation. As far as I can 12:07  
6 remember, my reaction initially was to be very cautious  
7 about this snatch of information that I heard, and in  
8 terms of what I did afterwards, I am not actually 100  
9 percent clear what steps I took or when I took it. But  
10 I certainly -- if not sceptical, I was certainly very 12:07  
11 cautious about this information or what on earth I  
12 could do with it.

13 244 Q. MR. MARRINAN: Can I come back, because this really  
14 doesn't have any meaning at the moment. I asked a  
15 question in relation to, had you heard anything in 12:08  
16 relation to an allegation of sexual assault against  
17 Sergeant McCabe, and you indicated eventually that you  
18 had heard a rumour. I asked you whether you'd heard it  
19 more than once and you said that you had heard it more  
20 than once, and I asked you whether you had heard it 12:08  
21 from journalists, other journalists, and you said that  
22 you had, and then I asked you had you heard it from  
23 people other than journalists, all right? And then you  
24 made a claim of privilege in relation to answering a  
25 fairly innocuous question that I don't see could lead 12:08  
26 to the identification of a source. Now, could you  
27 explain how it could possibly lead to the  
28 identification of a source to confirm to the Tribunal  
29 that you had heard this rumour from somebody other than

1 a journalist.

2 A. well, if you say -- if you rule out a journalist then  
3 you are narrowing down what are the other possibilities  
4 as to where you heard it from. So, for example, it may  
5 lead to an obvious interpretation that you heard it 12:09  
6 from a guard, which in turn leads to an obvious  
7 interpretation that you heard it --

8 CHAIRMAN: No, I couldn't do that, I mean --

9 A. But that is my concern.

10 CHAIRMAN: well, for the moment don't be concerned 12:09  
11 because if I tell you I am going to leap to a  
12 conclusion I will tell you I am leaping to that  
13 conclusion. At the moment, I am not.

14 A. I would like to assist you more, Chair, but I feel, I  
15 believe that by narrowing down the other options of 12:09  
16 sources, that I may, at some stage, breach my  
17 obligation to protect sources.

18 CHAIRMAN: All right. Mr. Marrinan, please forgive me  
19 for interrupting but, you know, I believe there's about  
20 five million people in the country, that is to say 12:10  
21 south and west of the border, and if you take out  
22 12,000 of them, and there aren't 12,000 journalists,  
23 let's suppose there's a thousand journalists, really  
24 and truly, that is getting me nowhere. And you feel  
25 kind of we are inquiring, well, of course we are 12:10  
26 inquiring, but we are not at the point where you are  
27 anything close to revealing a source. Really and  
28 seriously, Mr. O'Keefe, you are not. Unless I'm  
29 missing something totally, and I am off the wall in my

1 thinking. So I am going to leave it back to  
2 Mr. Marrinan, just let's see what we are going.

3 245 Q. MR. MARRINAN: well, look, I am going to press you, are  
4 you going to answer the question?

5 A. It's not that I don't want to answer the question for 12:11  
6 the Tribunal. To me, the Tribunal has a very specific  
7 terms of reference, that it is trying to get to the  
8 bottom of it. My fear is that by answering the general  
9 question, I will, if not directly, I will indirectly be  
10 answering the more specific questions, and I can't do 12:11  
11 that.

12 246 Q. By broadening the net, as it were, as to the source of  
13 the rumour to anybody in the Irish population who  
14 wasn't a journalist, are you seriously suggesting that  
15 to the Tribunal? 12:11

16 A. Well, I am not suggesting what you just said, no, I am  
17 not suggesting that.

18 247 Q. All right. Just in relation to the source that the  
19 Tribunal is interested in, that's Superintendent  
20 Taylor. You had dealings with Superintendent Taylor in 12:11  
21 2013, 2014?

22 A. Yes, he was the Garda Press Officer.

23 248 Q. And I think that the Tribunal investigators showed you  
24 a chart with communications between Superintendent  
25 Taylor and yourself, it's at page 5019 of the 12:12  
26 materials. And I think that you acknowledge the number  
27 that had been phoned by Superintendent Taylor as being  
28 your number, but you raised an objection in relation to  
29 the Tribunal having come into possession and the manner

1           which the Tribunal came into possession of that  
2           material, isn't that right?

3           A.    You said I raised an objection, is it?

4   249   Q.    Yes.

5           A.    Well, I believe I confirmed my number. 12:12

6   250   Q.    Yes.

7           A.    Yes. I think what we did was, it was with the rider  
8           that the legal team make a submission.

9   251   Q.    Yes.

10          A.    Is what I understand I said. 12:12

11          CHAIRMAN: well that's perfectly fine, yes.

12   252   Q.    MR. MARRINAN: You then went on I think at page 5983 of  
13          the material, and you said at line 84:

14

15          "I wish to provide the following statement in relation 12:13  
16          to the terms of reference of the Tribunal and the  
17          questions that I may be asked here today. I am  
18          attending this meeting at the request of the solicitor  
19          to the Tribunal. My attendance is voluntary. I  
20          appreciate that it is the duty of the Tribunal to 12:13  
21          gather all evidence and information which is relevant  
22          to its terms of reference. I am happy to cooperate  
23          with the Tribunal and I am in attendance today to  
24          assist the Tribunal in its investigations. I have  
25          reviewed the materials supplied to me by the Tribunal, 12:13  
26          including the waivers signed by Superintendent David  
27          Taylor, former Commissioner Martin Callinan and former  
28          Commissioner Nóirín O'Sullivan. I note that the issue  
29          of what is known as journalistic privilege may well

1 arise for consideration by the Tribunal in the next  
2 phase of its public hearings and I reserve the right to  
3 make submissions in this regard at the appropriate  
4 time. While I am here to assist the Tribunal I believe  
5 that I cannot answer any questions that may reveal a 12:14  
6 confidential source or that might have the tendency to  
7 reveal a confidential source on account of the  
8 obligations I have towards my sources in my capacity as  
9 a journalist. I reserve the right to refer to this  
10 statement when answering any questions put to me by the 12:14  
11 Tribunal investigators."

12  
13 And I think that in relation to all the questions that  
14 are set out at page 4985, 4986 and 4987 and 4988 of the  
15 memo of interview with you, you adopted that stance, 12:14  
16 isn't that right?

17 A. Yeah, my screen -- it wasn't coming up on my screen but  
18 I take it as read what you said. It was coming up  
19 intermittently.

20 253 Q. Sorry, sorry. So that is your position in relation to 12:15  
21 it. Are you happy from observing the business of the  
22 Tribunal that the Tribunal isn't interested in trying  
23 to ascertain any other sources other than  
24 Superintendent Taylor?

25 A. Yes, I am. That is probably why I agreed to supplying 12:15  
26 my mobile phone number.

27 254 Q. Yes. So you are happy that the waiver was voluntary,  
28 you are happy that the Tribunal isn't trying to delve  
29 into any other sources that you may or may not have.



1 So what we are really dealing with is an assertion made  
2 by Superintendent Taylor that he briefed you negatively  
3 in relation to Sergeant Maurice McCabe and drew your  
4 attention to the fact that he had other motives and  
5 agendas and that historically he had a child sexual 12:16  
6 abuse allegation. You are declining to answer the  
7 question as to whether or not that is true, is that  
8 right?

9 A. That's correct, for reasons of journalistic privilege,  
10 yes. 12:16

11 255 Q. In terms of Nóirín O'Sullivan, were you ever briefed  
12 negatively about Sergeant McCabe by Nóirín O'Sullivan?

13 A. My same response applies.

14 256 Q. And by Martin Callinan?

15 A. The same again. 12:16

16 257 Q. The same response?

17 A. Yes.

18 258 Q. In terms of Superintendent Taylor, what is the basis of  
19 your claim of privilege in relation to him? what  
20 relationship did you have with him at the time? 12:17

21 A. Just kind of two separate questions there, I think.

22 259 Q. Well, what relationship did you have with him at the  
23 time?

24 A. I had a purely professional relationship with  
25 Superintendent Taylor. He was the Garda Press Officer. 12:17  
26 We would have been in regular contact.

27 260 Q. As Garda Press Officer and journalist?

28 A. Yes, I mean -- no, not as anything else.

29 261 Q. Yes. So in those terms, did he speak on the record and

1 off the record to you?

2 A. I can't comment on any off-the-record conversations I  
3 have with anybody, not just with Superintendent Taylor,  
4 but with anyone. But your other part of your question  
5 is did I have on the record conversations with him, 12:17  
6 yes, of course I did.

7 262 Q. And in terms of Superintendent Taylor's waiver, your  
8 claim of privilege isn't to protect a source in this  
9 instance, isn't that right?

10 A. Well, my claim of privilege applies to protection of 12:18  
11 sources.

12 263 Q. Well, you are not protecting the identity of a source,  
13 sure you are not?

14 A. Well, journalistic privilege has a couple of aspects to  
15 it. The first aspect is not saying anything that may 12:18  
16 identify who a source is or who is not a source. That  
17 is one aspect of it.

18 264 Q. Well, first of all, take that aspect of it, and we'll  
19 talk hypothetically, we will leave Superintendent  
20 Taylor out of it, right? Where the identity of the 12:18  
21 source is known, all right, you confirming the identity  
22 of the source doesn't reveal the identity of the  
23 source, obviously, isn't that right?

24 A. Well, from my perspective, I can't comment on anything  
25 that will confirm if somebody is or is not a source. 12:19

26 265 Q. All right. So it's not in relation to revealing the  
27 identity of a source, it's whether you are confirming  
28 that somebody is or is not a source?

29 A. Sorry, could you ask that question again?

1 266 Q. You are not revealing the identity of a source, what  
2 you are objecting to is confirming the identity of a  
3 source?  
4 A. I'm not a 100 percent clear as to what exactly you are  
5 asking. 12:19  
6 267 Q. Well, obviously if a journalist is pressed in relation  
7 to who their source was for particular information, a  
8 journalist is going to resist that and claim  
9 journalistic privilege, and they are going to do that  
10 in circumstances, for a variety of reasons, but 12:19  
11 primarily to protect the source against further  
12 inquiries or whatever, or perhaps prosecution, I don't  
13 know. But that's obviously one of the instances where  
14 journalistic privilege would arise. It doesn't arise  
15 in circumstances where the source has come forward and 12:20  
16 said I am the source of information, isn't that right?  
17 A. You could have a situations where you have an alleged  
18 source.  
19 268 Q. Sorry, I don't understand.  
20 A. The source may allege he was the source, or she, for 12:20  
21 that matter.  
22 269 Q. Yes.  
23 A. It's the journalist's privilege to -- or actually, it's  
24 the -- it's an obligation on the journalist to protect  
25 the identity of who is or is not a source. 12:20  
26 270 Q. So fundamentally, you regard this as being the  
27 journalist's privilege?  
28 A. Well, it's an obligation on the journalist. The other  
29 part of privilege is to ensure that there is a free

1 flow of information from sources to journalists, that  
2 is another key part of what -- what is known as  
3 journalistic privilege is.

4 271 Q. So therefore, it's an absolute rule?  
5 A. I don't think there is any absolute rules in life, as 12:21  
6 legal people know.

7 272 Q. Well, what are the exceptions then to it?  
8 A. I think it has -- I mean, it may be dealt with in legal  
9 submissions, but it has -- when it has come up in the  
10 European Court of Human Rights and elsewhere, the judge 12:21  
11 is tasked with balancing rights. From my understanding  
12 of it, they balance the journalistic -- the right of  
13 journalistic privilege with the right of acting in the  
14 public good or, the Chair probably knows better than I,  
15 obviously there is -- like in everything in life, there 12:21  
16 is a balance of rights.

17 CHAIRMAN: Yes.

18 273 Q. MR. MARRINAN: Yes, indeed, but I am coming back to the  
19 claim of privilege in the first instance. And when is  
20 it not an absolute rule? When can it be proper for a 12:22  
21 journalist to reveal the identity of a source?  
22 A. Well, ultimately that is the Chair's --

23 274 Q. No, but you have to have a position in relation to it  
24 because you have adopted a position here.

25 A. Well, that is my position, yes. 12:22

26 275 Q. Yes. But you have adopted that position in  
27 circumstances where the sources, if they be sources,  
28 and all three of them have given a waiver in relation  
29 to any journalistic privilege that should arise, and

1 you have still seen fit in those circumstances to make  
2 a claim of journalistic privilege. So I think it's  
3 reasonable for me to ask you, in what circumstances  
4 would it be permissible or proper for you not to make a  
5 claim of privilege in relation to communications that 12:23  
6 you had with the source?

7 A. I'm not sure what circumstances might apply for that to  
8 arise. I don't know, is my honest answer.

9 276 Q. Well, can you envisage circumstances? I mean, you must  
10 have thought about it, this goes to the root of your 12:23  
11 profession.

12 A. I don't know what circumstances could justify it. My  
13 obligation is to protect, not just current sources, but  
14 also people who might want to come forward in the  
15 future and provide confidential information. That is 12:23  
16 an essential part of journalistic privilege; is that  
17 flow of information into the future.

18 277 Q. So it would appear, I mean it does appear that on your  
19 approach to it, that it is an absolute rule because you  
20 can't envisage any circumstances where you would break 12:23  
21 the rule?

22 MR. QUINN: I think, Chair, that is an unfair question,  
23 the witness hasn't said that, and he is being asked a  
24 hypothetical question I can't see how it rises. He has  
25 said he is satisfied in this situation his position is 12:24  
26 as stated. I don't see how it's fair to explore  
27 hypotheticals that aren't relevant to this.

28 CHAIRMAN: Hypotheticals, Mr. Quinn, I think are very  
29 much relevant to this because it's attempting to tease

1 out where we stand and why we stand there and what are  
2 the facts and circumstances that are particular to  
3 this. And I think I need to know more. I mean, there  
4 is no circumstance on earth where people simply say  
5 privilege and the court says, fine. If you take even 12:24  
6 lawyers' privilege, there is a distinction drawn by the  
7 courts between legal assistance, such as drafting a  
8 contract on somebody, and legal advice, which is  
9 different, where you go to a lawyer and say, I murdered  
10 so-and-so, now the police are coming to talk to me or 12:24  
11 unfortunately in the course of an operation I have  
12 picked the wrong medicine and the old person on the  
13 operating theatre died, and I was very tired, now the  
14 police are coming to talk to me, what is your advice in  
15 relation to cooperating? Should I say that? And what 12:25  
16 could my potential liability be? So in the first  
17 instance, drafting a contract doesn't apply at all, and  
18 in the second instance, it does, for the benefit of  
19 society. So that is what Mr. Marrinan is trying to  
20 tease out. And I actually think I need to know as much 12:25  
21 as I can about this before I make a ruling so it I  
22 think it would be helpful if Mr. Marrinan continued.

23 278 Q. MR. MARRINAN: It does appear that, on your approach to  
24 it, you are approaching this as though it was an  
25 absolute rule? 12:25

26 A. Well, that's your interpretation of it.

27 279 Q. Well, I am asking you, are you approaching this on the  
28 basis that it's an absolute rule?

29 A. I don't see it that way. I am putting forward -- I see

1 this as my obligation to protect sources and not reveal  
2 who they may or may not be. It has been a feature of  
3 the Becker and Goodwin judgments before, that the  
4 free-flow of information to journalists is fundamental  
5 to press freedom and it's fundamental to how I operate 12:26  
6 as a journalist. Any action of a journalist that is  
7 seen, that is seen to confirm the identity of a source,  
8 I think it has -- the phrase has been used, a chilling  
9 effect, it certainly has unforeseen consequences and I  
10 cannot see anything other than very serious 12:26  
11 consequences to the flow of information to journalists  
12 if they are seen in whatever the circumstances are to  
13 confirm the identity of a source.

14 280 Q. Well, if we apply it to this particular case with  
15 Superintendent Taylor, he is making this claim, he is 12:26  
16 calling on you as being a person that he says that he  
17 had imparted information to, to confirm that he did  
18 that. He is in jeopardy, being condemned as a liar  
19 unless people support him in this regard. I mean, in  
20 that situation, would you not feel under an obligation 12:27  
21 to him, and we'll go back to the hypothetical  
22 situation, but apply those set of circumstances to it,  
23 would you not feel under an obligation to your source  
24 or are you just happy to abandon a source in those  
25 circumstances? 12:27

26 A. I don't think -- I can't -- I am unable to answer the  
27 specific question --

28 281 Q. Yes.

29 A. -- in relation to the specific person.

1 282 Q. Sorry, it's not a trick question.

2 A. Previously, when I have been here, the Chair has

3 referred to this as not a black and white issue. I can

4 only put forward what I see as my obligation in this

5 area, and it is not for any personal reason, I 12:28

6 personally have nothing to hide, I did nothing wrong,

7 but it's the principle that is at stake. That this is

8 a principle of not doing anything that jeopardises that

9 crucial function that the press fulfil, and that is the

10 free-flow of information from sources that is given in 12:28

11 confidence and that is not to be interpreted as

12 confirming whether Superintendent Taylor is or is not a

13 source.

14 283 Q. But you see, there could be a perfectly valid argument

15 that free-flow of information would dry up in 12:28

16 circumstances where the word would go out to potential

17 sources that they are going to be abandoned by the

18 journalist, there is a possibility that that could

19 occur.

20 A. You could make that argument. My belief is that if a 12:29

21 journalist is seen, seen as confirming who a source is,

22 that has most definitely a chilling effect, and that

23 will have, or could have, serious implications for the

24 flow of information.

25 284 Q. Even in circumstances where the journalist is calling 12:29

26 for the -- the source is calling for the journalist to

27 come to his aid?

28 A. Privilege is not that, I suppose, of the source. The

29 source can waive their privilege, it is still the



1 journalist's obligation not to be seen to confirm the  
2 identity of who a source is or who a source is not.

3 285 Q. And do you explain that to a source at the outset?  
4 A. You mean, do I sit down at the beginning with a source  
5 and explain that? No, I haven't. I think it's 12:30  
6 generally understood when a course speaks to you it is  
7 in confidence.

8 286 Q. How do you know that?  
9 A. Well, through practice, I have been a journalist for  
10 however many years, 20-odd years, that is the clear 12:30  
11 understanding when you speak to somebody in confidence  
12 and that's their understanding, that do you not breach  
13 that. You do not betray that trust.

14 287 Q. So in any event, Mr. O'Keefe, your position is that  
15 you are going to refuse to answer any questions on the 12:30  
16 basis of journalistic privilege, that I ask you in  
17 relation to former Commissioner Nóirín O'Sullivan,  
18 former Commissioner Martin Callinan and also  
19 Superintendent David Taylor, is that right?

20 A. That's correct, yes. 12:31

21 288 Q. And it in fact those further, because even if I ask you  
22 as to whether or not you got information from a member  
23 of An Garda Síochána, you are not going to answer that  
24 question either, is that right?

25 A. I feel it is the same predicament that applies. I 12:31  
26 don't feel that I can answer those questions.

27 289 Q. And indeed, it extends even further because if I ask  
28 you the question about anybody other than a fellow  
29 journalist, you have refused to answer that question

1 also?

2 A. You said other than a fellow journalist, is it?

3 290 Q. Yes.

4 A. Yes, if they were a source, yes.

5 MR. MARRINAN: I think the rest of it is for legal  
6 argument. Thank you very much.

12:31

7 A. Thank you.

8 CHAIRMAN: Do you want to ask any questions?

9 MR. MCGARRY: I don't have any questions, Chairman.

10

12:31

11 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

12 291 Q. CHAIRMAN: Look, Mr. O'Keefe, the situation I am in is

13 that there has been an occasion and it's in the very

14 recent past where a submission has been made to me by a

15 party to the effect that if someone is saying I refuse  
16 to deny that Superintendent Taylor briefed me

12:31

17 negatively, I am going to be asked in the future when

18 this thing comes to an end, perhaps next week, perhaps

19 the weeks after, I don't know, perhaps next year,

20 perhaps in ten years' time, I have no idea, an

12:32

21 inference; in other words, they will put up to me if

22 the person refuses to answer the question that clearly

23 means they were negatively briefly. Now, you are

24 worried about traps, you are worried legitimately it

25 seems to me about your profession, and I have to

12:32

26 respect that, of course I respect that, but even when

27 it comes to the question of did Martin Callinan

28 personally approach you and say to you this man is a

29 child abuser, namely Maurice McCabe, you are actually

1 refusing to answer that. I mean, let me ask you this  
2 question: Did you ever speak to Martin Callinan when  
3 he was Commissioner of An Garda Síochána?

4 A. Did I ever speak to him? I can't recollect. He -- I  
5 would have spoke to him very, very rarely. 12:33

6 292 Q. CHAIRMAN: Yeah. well, from the fact that you can  
7 hardly recollect it, it seems to me that if he did come  
8 to you and say Maurice McCabe is a serial sex abuser  
9 who has ruined the lives of several young women, that  
10 that would certainly jump out in your mind on me asking 12:33  
11 you that question, wouldn't it?

12 A. But see, I have to be consistent in --

13 293 Q. CHAIRMAN: I know, but there is a degree to which  
14 people are consistent, for instance, in relation to  
15 matters like ideology and religion and sometimes it is 12:33  
16 actually farcical and ludicrous, and I am not saying  
17 that you are in that position. I mean, there comes a  
18 point at which something is just plain contrary to  
19 reason and commonsense. Now, you say to me, I hardly  
20 ever spoke to Martin Callinan, and I presume that what 12:33  
21 you are saying there is that you may have met him at a  
22 function or you may have been down in Cork in relation  
23 to commemorating one of the Gardaí who died in the  
24 course of duty or something like that, and he shook  
25 your hand and said hello and you exchanged 12:34  
26 pleasantries, I take it that that is what you are  
27 saying to me? That means, by the way, he is not a  
28 source.

29 A. I am sorry, Chair, I just have to go back to my basic

1 position: I can't say anything that may or may not  
2 identify who a source is. I am not trying to be  
3 unreasonable.

4 294 Q. CHAIRMAN: Look at it this way: Let's suppose it  
5 helped Martin Callinan for me to know that you, the 12:34  
6 kind of person with whom he might confide what he  
7 thought about Maurice McCabe, did not confide what he  
8 thought he knew about Maurice McCabe, that would at  
9 least be some evidence of some kind. You are saying I  
10 hardly ever spoke to him. Would I be wrong to take the 12:35  
11 inference from that -- do you know what an inference  
12 is? In other words, you have a fact, you have another  
13 fact, and that leads you to conclude a third fact, even  
14 though the person doesn't actually explicitly say the  
15 fact. Would I be wrong to infer that Martin Callinan 12:35  
16 never said anything to you about Maurice McCabe, good,  
17 bad or indifferent?

18 A. But, Chair, the danger is, if you confirm somebody is  
19 not a source, okay, you are narrowing down who may be a  
20 source. 12:35

21 295 Q. CHAIRMAN: Well, I can see your point. I have referred  
22 to this on a number of occasions in the past, but I am  
23 going to refer to it again, Mr. O'Keefe, because I  
24 think it's an important that we have a dialogue, that  
25 we try and tease things out as much as position, but 12:35  
26 the submissions, whatever they may be, will ultimately  
27 remain to me. In the past in this country we have had  
28 financial scandals about people having particularly  
29 kinds of deposits, about people, for instance, having

1 money offshore, and when I was working as a criminal  
2 barrister, I suppose I was well-known to know kind of  
3 arcane knowledge about things like extradition, the  
4 relationship of the tax acts to criminal law, etcetera,  
5 etcetera. But I happened to hear a rumour in relation 12:36  
6 to a person that I knew, that he was someone who had  
7 one of these, let's just call it a toxic account, and  
8 on one occasion in the Law Library in the coffee room,  
9 that rumour was repeated. Now, I happened to have a  
10 list of the people who had these accounts in my room, 12:36  
11 and it happened to be a situation where I was being  
12 asked to give advice in relation to, I won't say what,  
13 but it was something in relation to criminal law,  
14 applicability, taxation, extradition, that kind of very  
15 broad area, I don't think I am telling you anything 12:36  
16 now, the person in question wasn't on the list, he  
17 wasn't one of the people who had the toxic deposits,  
18 and I just said, well, I have the list in my office, by  
19 the way, and the person is not on it. The rumours then  
20 absolutely ceased. As I said before to other people, 12:37  
21 they could have got as far as the newspapers, it could  
22 have caused terrible trouble to this person. I was  
23 telling the truth. Other people have said, oh you  
24 broke professional confidence - well, I didn't because  
25 the person in question wasn't actually a client of 12:37  
26 mine, but I knew horrible things were being said about  
27 him. In the event that his name or her name was  
28 actually on the list, if I had said anything to confirm  
29 that, I would definitely have been breaching

1 professional confidence and I don't know personally in  
2 terms of my own conscience I would have ever got over  
3 that. So maybe you'd tell me in relation to saying to  
4 people, look, that rumour that is being spread among  
5 four or five people sitting having a cup of coffee in 12:37  
6 the morning, is actually completely incorrect, was I  
7 wrong to do that?

8 A. Well, I wouldn't make that judgement of you, but I  
9 suppose if another solicitor came to you and asked you  
10 the same question, and you also confirmed no, your 12:38  
11 client is not on the list, what if a third comes to you  
12 and asks you the same question, and that client is on  
13 the list, well then what do you say?

14 296 Q. CHAIRMAN: well, I think there is a point at which you  
15 have to say, look, enough questions have been asked. 12:38  
16 But I think the situation that was happening there was  
17 akin to a fire starting on the side of a hill which was  
18 definitely going to spread, given the weather  
19 conditions and which could have led to disastrous  
20 consequences. Now, there is no way I would have ever 12:38  
21 confirmed that somebody was on the list. Okay, maybe  
22 the people who might be well enough off to have, let us  
23 say, a toxic account or whatever in this country, might  
24 amount to 10,000 or 20,000, I agree with you, there is  
25 a point where you say I can't give you any more 12:38  
26 information than that, but stopping the rumour in its  
27 tracks was the right thing to do. I felt it was. Was  
28 I wrong?

29 A. Well, in my mind you have set a precedent, you have

1 answered somebody's question when they asked you.

2 297 Q. CHAIRMAN: No, they didn't, I actually volunteered it.

3 A. Oh you volunteered it? Okay.

4 298 Q. CHAIRMAN: Absolutely.

5 A. Well, if you heard that the rumour was spread, okay, if 12:39

6 it wasn't X then it could be Y, and the solicitor of Y

7 approaches you and said is my client on the list and

8 the client is on the list and you don't answer that

9 question.

10 299 Q. CHAIRMAN: Well, in those circumstances my duty is 12:39

11 absolutely and perfectly clear. I don't give anyone

12 any information in relation to either who my clients

13 are or what they are asking me about.

14 A. I am not sure if I am following you clearly. But I

15 think you initially confirmed somebody wasn't on the 12:39

16 list.

17 300 Q. CHAIRMAN: Yes.

18 A. Well then, what do you do in a situation if you were

19 approached by the solicitor of a client or whoever, and

20 that person is on the list, well then what do you say? 12:39

21 301 Q. CHAIRMAN: Well, I wasn't prosecuting, I was actually

22 acting for all of these people so that would never

23 happen. I was acting, if you like, for the alleged

24 miscreants, so none of their solicitors were going to

25 approach me and ask is so-and-so's name is on the list 12:40

26 because they know whose name is on the list because

27 they are instructing me and they are asking me whatever

28 the legal position is about whatever it is, toxic

29 accounts, wherever they may be.

1 A. Maybe I have lost the exact train of thought or what  
2 you are proposing to me.

3 302 Q. CHAIRMAN: What I am putting to you is this, and I am  
4 not trying to personalise this, it's not about me, it's  
5 about a situation, I just thought it may be helpful, it 12:40  
6 may not. A lot of people have said to me I am telling  
7 you for a fact that Nóirín O'Sullivan never briefed me  
8 and we never had a word at all about Maurice McCabe, a  
9 lot of people have said that. And they are  
10 journalists. You feel you can't? 12:40

11 A. I can't answer for other journalists.

12 303 Q. CHAIRMAN: I am entitled to ask you about questions on  
13 the record, amn't I?

14 A. Yes.

15 304 Q. CHAIRMAN: All right. Well, is it on the record that 12:41  
16 you ever met Nóirín O'Sullivan?

17 A. Yes, I would have met her, yes.

18 305 Q. CHAIRMAN: And have you ever spoken to her on the  
19 phone?

20 A. On the record, I have never spoken to her on the phone. 12:41  
21 Not that I can recall, anyway.

22 306 Q. CHAIRMAN: Well, I mean on-the-record or  
23 off-the-record, it's a simple question, have you ever  
24 spoken to her on the phone?

25 A. I know, but you asked me about official dealings. 12:41

26 307 Q. CHAIRMAN: Well, you were about to say no, and if you  
27 played back the tape you said "mmm" and then you  
28 thought about it twice, and you seem to be back to your  
29 ideologic position.



1 A. Well, I would suggest it's a principled position.  
2 Ideological might have connotations to it. But this is  
3 a practical principled position and it's one that is  
4 recognised, as you know, in the courts. It's not  
5 something that I am making up. 12:41

6 308 Q. CHAIRMAN: No, I know. And probably, I am not helping  
7 by calling it by that word. But if we go back to a  
8 situation then, let's go back to Martin Callinan, am I  
9 allowed to ask you when did you ever meet Martin  
10 Callinan? 12:42

11 A. When did I ever meet him?

12 309 Q. CHAIRMAN: Yes.

13 A. I think I met him on the stairs once going up to some  
14 event, that was it. I think that was before he was  
15 Commissioner. 12:42

16 310 Q. CHAIRMAN: Yes. And when he was Commissioner, did you  
17 ever meet him on the stairs or off the stairs or  
18 anywhere?

19 A. I would have met him, yes.

20 311 Q. CHAIRMAN: And I take it that that was in the context  
21 of his official duties. 12:42

22 A. Correct.

23 312 Q. CHAIRMAN: Kind of ceremonial type duties.

24 A. Well, I mean, it could be an official Garda briefing  
25 about some operation, I am not sure. It would be an  
26 official event, yes. 12:42

27 313 Q. CHAIRMAN: All right. Well, okay. That's fine. I am  
28 inferring from that that he never briefed you  
29 negatively about Maurice McCabe. I am taking that.

1           You can tell me if I am wrong.

2           A.    Chair, I can't really add to what I have said. I'm not  
3           trying to be awkward.

4 314 Q.    CHAIRMAN:  Similarly Nóirín O'Sullivan, did you ever  
5           meet Nóirín O'Sullivan? 12:43

6           A.    Yes, of course I have met her, yes.

7 315 Q.    CHAIRMAN:  Yes.  And were your relations with her just  
8           the ordinary relations of on the record relations?

9           A.    They would be standard professional relations with a  
10          Commissioner, yes. 12:43

11 316 Q.    CHAIRMAN:  And she is not trying to slip you anything  
12          about Maurice McCabe, I take it?

13          A.    See, you are being specific to individuals.  My  
14          position regarding anyone who may, and I stress this,  
15          or may or may not be a source, I can't comment on. 12:43

16 317 Q.    CHAIRMAN:  All right.  And when it comes to David  
17          Taylor, did you have interactions with him?  I know you  
18          have written extensively on the whole issue of crime --

19          A.    Yes.

20 318 Q.    CHAIRMAN:  -- and law reform.  So presumably you would 12:43  
21          have had conversations with him?

22          A.    He was the official Garda spokesman and I was the crime  
23          correspondent so, yes, I would have regularly have had  
24          dealings with him.

25 319 Q.    CHAIRMAN:  Yes.  well, the number of contacts is not as 12:43  
26          great as indeed the number that many others would have  
27          had.  But that's not a reflection on you and it's not  
28          in any way an indication that you weren't trying to do  
29          your job, which I am absolutely certain you are.  And

1           then when we come then to this, it seems that anything  
2           to do with Maurice McCabe you, in accordance with what  
3           I have written down as you answering Mr. Marrinan, you  
4           came to this story very late and began to write about  
5           him perhaps in February 2014 there or thereabouts. 12:44

6           A.    Yes, I believe so.

7   320   Q.    CHAIRMAN:  Do you have any recollection of the date of  
8           the first article?

9           A.    I think it was 20 something, I think it was in relation  
10          to, it could be the dossier, I'm not entirely sure. 12:44

11   321   Q.    CHAIRMAN:  The dossier going from Micheál Martin to the  
12          Taoiseach?

13          A.    Yes, and getting a reaction from the Garda management.

14   322   Q.    CHAIRMAN:  Yes.  No, I understand that.  And then more  
15          than once, in or around that time, do you think it was 12:44  
16          after you published that article you heard something to  
17          the effect that there was generally a sexual allegation  
18          and then it was something to do with a child, do you  
19          think it was after that article, are we going into  
20          march, in other words? 12:45

21          A.    I don't know for sure.  All I know is my coverage was  
22          started I think the 20-odd of February, and then there  
23          was a lot of articles around then, I did a lot of  
24          articles around the Garda Inspectorate report and then  
25          a lot of articles around the Guerin Report which was I 12:45  
26          think in May, so I'm just estimating that it would be  
27          February, March, April, May time.

28   323   Q.    CHAIRMAN:  Yeah.  Well, you know when Martin Callinan  
29          resigned, don't you?

1 A. I think it was March, was it?

2 324 Q. CHAIRMAN: Hmm. So if I can just try and give you an  
3 exact date. It was the 24th March 2014.

4 A. Okay.

5 325 Q. CHAIRMAN: Do you think you heard this rumour prior to 12:45  
6 him resigning on the 24th March 2014?

7 A. Chair, I can't be exact. I don't know. I don't know.

8 326 Q. CHAIRMAN: And I take it when you heard the rumour your  
9 reaction was, as you have told me, or you have told  
10 Mr. Marrinan, to be very cautious, that you were 12:46  
11 sceptical and I am not asking you what sources you  
12 checked it out with but did you check it out?

13 A. I did but I can't give you an indication as to when or  
14 what exact steps I took or --

15 327 Q. CHAIRMAN: And again I am not asking you. But did you? 12:46  
16 A. Yeah. At some level I did over a period of time, I  
17 would imagine, yes.

18 328 Q. CHAIRMAN: One of the places you could have gone was,  
19 you could have asked Mr. Clifford do you know about  
20 this thing and what do you say about it? There would 12:46  
21 be nothing wrong with that. And I don't think you  
22 would be telling me anything that would come as news to  
23 me in the event that you did.

24 A. Yes, I actually don't know if I checked it with Mick at  
25 the time. 12:46

26 329 Q. CHAIRMAN: And I am not asking you who you checked it  
27 with but do you remember who you checked it with?

28 A. Not clearly in terms of the various people I might have  
29 checked it with.

1 330 Q. CHAIRMAN: Yes. So you checked it with basically  
2 anyone who you thought might have information. And --  
3 A. Well, somebody that, in my trust maybe, you know.  
4 331 Q. CHAIRMAN: Yes, no. Did you come to a point where you  
5 said to yourself, well, there is something serious in 12:47  
6 the background or did you come to a point where you  
7 said to yourself, my reaction to be very cautious was  
8 correct and my reaction to be sceptical was correct?  
9 A. You know, I am obviously looking back at that time but  
10 I believe my position from the start was, this is not 12:47  
11 something I am going to follow.  
12 332 Q. CHAIRMAN: Right. Well, I have heard reasons why  
13 journalists don't follow things and they all seem to me  
14 to be very sensible reasons, such as, for instance,  
15 look, there was an investigation, be it by social 12:47  
16 services or Gardaí, and you can't publish allegations  
17 where, at the end of the day, the DPP says look, if  
18 this happened, it didn't even amount to an assault,  
19 never mind a sexual assault.  
20 A. I mean, it's the worst or one of the worst conceivable 12:48  
21 allegations you could make against somebody, and what  
22 do you with it? Am I going to ring the person and put  
23 it to them? Am I going to circulate it amongst various  
24 people I might check it with, and then they go, hold  
25 on, this is Cormac O'Keefe, he is checking out the 12:48  
26 story and this is what he said to me? So, from the  
27 get-go, you know, it's not necessarily that I sat down  
28 and made a formal decision about it, but my instinct  
29 from the start was, this is not something I am going to

1 pursue.

2 333 Q. CHAIRMAN: Yes. And that instinct was confirmed. How  
3 long did it take you to check things out?

4 A. Well, given how hectic that period was between  
5 February, March, April and May when the Guerin Report 12:48  
6 was out, I'm pretty sure that it would have been in  
7 that time period.

8 334 Q. CHAIRMAN: So are we talking about pretty much later on  
9 then? The 6th May 2014 is the Seán Guerin Report,  
10 critical of the previous Garda handling of the matter. 12:49

11 A. Yes.

12 335 Q. CHAIRMAN: So would it have been after that time?

13 A. No, I would imagine it's between that period of  
14 February and May, but I mean, I can't be absolutely  
15 sure. 12:49

16 336 Q. CHAIRMAN: Right. Well, the evidence that I have, and  
17 at the moment I have no reason to doubt it, but  
18 anything that I say is subject to hearing things, I am  
19 not here making ex cathedra statements, the evidence  
20 that I have from David Taylor is that as soon as 12:49  
21 Commissioner Callinan resigned, 24th March 2014, that  
22 was the end of any campaign that he alleges that he was  
23 running. For various reasons, that was the end. One  
24 of the things he said, he was never in the  
25 Commissioner's office again. That has been 12:49  
26 contradicted; apparently he was there once, according  
27 to questions put by the Gardaí. Secondly, a new issue  
28 had arisen then which was important which was the  
29 taping of people in police stations, that blew up on

1 the day of his resignation. And then thirdly,  
2 basically, the Commissioner having gone, there would be  
3 no point of any kind whatsoever to the campaign. So do  
4 you think you checked it out prior to Commissioner  
5 Callinan resigning on 24th March 2014? 12:50

6 A. Well, that would tend to make sense, but I can't  
7 confirm that for sure, but that -- it --

8 337 Q. CHAIRMAN: Yes, because --  
9 A. -- seems reasonable.

10 338 Q. CHAIRMAN: Yes. If I'm wrong, and I may be wrong, that 12:50  
11 does tend to narrow the window, because you start  
12 writing about it on the 20th February 2014, you hear a  
13 rumour, and you really only have a window of -- you  
14 actually have a window of four weeks and four days  
15 within which anyone could come and brief you negatively 12:50  
16 about Sergeant McCabe.

17 A. Well, that is the time period, but that is if I am  
18 accurate in when I said these --

19 339 Q. CHAIRMAN: Well, I presume you are reasonably accurate. 12:51  
20 Yes, so there it is. So I take it that you are taking  
21 a view different to what other journalists have said,  
22 that if you know a negative different to the view that  
23 I took in relation to a particular scandal, the name is  
24 on the top of my tongue and I am not going to mention  
25 it, you take the view that you can't actually confirm a 12:51  
26 denial that this never happened to me?

27 A. Sorry, I think I followed you, but could you just  
28 repeat it?

29 340 Q. CHAIRMAN: Yes. In other words, you are taking the

1 view that you can't actually say this never happened to  
2 me?

3 A. Well, that is -- certainly, in my evidence, I haven't  
4 said that, no.

5 CHAIRMAN: No. But, I mean, David Taylor is saying 12:51  
6 that he came to you and said, you want to be careful  
7 about this fellow because you know there is an  
8 allegation about him in the past and he is embittered  
9 in consequence of the investigation, on the phone,  
10 whether it happened face-to-face, what the surrounding 12:52  
11 details are. Can I just ask you a question: what  
12 would you have done in the event that someone said that  
13 to you? would you have regarded it as a story worth  
14 following up, first of all - and this is hypothetical -  
15 would you have regarded it as a story worth following 12:52  
16 up, such as Garda management are out to get Maurice  
17 McCabe? Or secondly, would you have actually said  
18 anything as a journalist such as, what do you mean,  
19 what are the details?

20 A. Well, you are asking a hypothetical situation, is it? 12:52

21 341 Q. CHAIRMAN: well, it is very much a hypothetical  
22 situation, but it's really almost to do with instinct.  
23 You know, if --

24 A. I mentioned instinct earlier when I heard the  
25 half-gossip. I think I would be -- I would be 12:52  
26 sceptical from the outset, particularly given the  
27 nature of such allegations. That would be, I think, my  
28 starting point at least.

29 342 Q. CHAIRMAN: Yes. But as I understand it, there are some



1 circumstances in life where, to use the phrase, 'I was  
2 literally lost for words' might actually be  
3 appropriate. would this be a situation where you'd,  
4 you feel, be lost for words, or would you actually  
5 engage in a dialogue with a person? 12:53

6 A. Speaking hypothetically, of course, I think if  
7 information like that was given to you, you wouldn't be  
8 human if you weren't struck by it, I mean, given the  
9 nature of the information. And yes, given you are a  
10 journalist, even though you are sceptical, your 12:53  
11 instinct is there, but obviously your professional  
12 training is to ask questions, that is what we do, and  
13 we are told stuff all the time, and contrary to what,  
14 maybe, certain people believe, we don't necessarily go  
15 along with everything we are told. 12:54

16 343 Q. CHAIRMAN: No, I can fully understand that. And while  
17 I do understand paper doesn't refuse ink, I mean, you  
18 say something to an inquiring mind, I suspect you would  
19 get an inquiry back?

20 A. well, that would be natural and that probably would be 12:54  
21 the beginning of the work that you would do.

22 344 Q. CHAIRMAN: If that had happened, and again we are  
23 speaking purely hypothetically, would it be the case  
24 that you'd speak to Mick Clifford? would it be the  
25 case that you would have said to yourself, look, there 12:54  
26 is a story here, the story not being Maurice McCabe but  
27 the denigration of Maurice McCabe, a story worth  
28 following up, in other words a story worth pursuing,  
29 not the story is he a child abuser, is he not a child

1 abuser, and you were sceptical about that, but what in  
2 heaven's name is the Garda Press Office doing  
3 denigrating someone who they are, as the Garda Press  
4 Office is, to represent; in other words, would you see  
5 this as a story?

12:54

6 A. I don't want to annoy you, but can you just ask me the  
7 question again?

8 345 Q. CHAIRMAN: Yes. No, no, no, there is no problem asking  
9 the question again. Let's suppose we have a situation  
10 where the Garda Press Office is, on the QT, telling you  
11 something about an officer in the Garda to the effect  
12 that the person is, let's say, a serial sex abuser and  
13 a number of women have made complaints but none of them  
14 were prepared to go to court or even to a Garda  
15 discipline hearing, in those circumstances would you  
16 regard that as a story? One story, of course, is that  
17 this is true, that this person has no respect for women  
18 and is a lothario of a particularly obnoxious kind, but  
19 if he is not a lothario of a particularly obnoxious  
20 kind, why are Garda sources saying this to me? There  
21 is two potential stories there, in other words.

12:55

12:55

12:56

22 A. Hmm. Like, in relation to information you are given, I  
23 suppose you have to assess it. I suppose, at the end  
24 of the day, you are a journalist, so at the forefront  
25 of your mind is always: is there something that can be  
26 published out of this? Okay. So -- and you have  
27 massive demands on your time. So if -- it's hard to  
28 give a definitive answer, I suppose, to that question,  
29 but that is one aspect that would be to the forefront

12:56

1 of your mind: is this something that can be remotely  
2 publishable?

3 346 Q. CHAIRMAN: And then the other question may be: Is this  
4 one of these great untold stories, like the wealth of  
5 the former Taoiseach, Charlie Haughey, that didn't get 12:56  
6 published until a tribunal had to look into it? In  
7 other words, the story that is floating around, why is  
8 the story floating around? would that be another?

9 A. Well, I mean, I can refer you back to, I mean, to the  
10 McCabe issue. My colleague, Mick Clifford, was leading 12:57  
11 this issue and he was exploring all of these avenues  
12 and more.

13 347 Q. CHAIRMAN: Okay. And in the event that that had  
14 happened, would you have gone to Mick Clifford and  
15 said, look, this is worth investigating, I wonder why 12:57  
16 this may be said? And again speaking hypothetically.

17 A. Well, that would certainly make sense, to do that.

18 CHAIRMAN: All right. Okay. I understand.

19 A. Yes.

20 CHAIRMAN: So I'm -- I don't have any further 12:57  
21 questions, unless anyone has any questions they wish to  
22 ask? You are entitled to explore the matter if you  
23 wish. Mr. McGarry?

24 MR. MCGARRY: No, thank you, Chairman.

25

26 THE WITNESS WAS CROSS-EXAMINED BY MR. FERRY:

27

28 348 Q. MR. FERRY: well, just on Superintendent Taylor's  
29 behalf, I have just formally put it to you that my

1 instructions are that you were a journalist that was  
2 negatively briefed in early 2014 by Superintendent  
3 Taylor and that you were briefed in relation to  
4 Sergeant Maurice McCabe, that he was motivated by  
5 maliciousness and revenge against the Gardaí and that 12:58  
6 he was driven by agendas, and that related to a  
7 previous allegation that had been investigated in  
8 relation to him, so I am formally putting that to you  
9 on behalf of my client.

10 A. Yes. I'm unable to say anything that may or may not 12:58  
11 identify a source.

12 MR. FERRY: Thank you.

13 MR. KENNEDY: No questions.

14 CHAIRMAN: No questions, yes. Mr. Quinn, you are at  
15 the end, if you wish to ask questions at the end. 12:59

16 MR. FITZGERALD: Sorry, Chairman. Mr. O'Keefe, John  
17 Fitzgerald --

18 CHAIRMAN: Mr. Ó Muircheartaigh, did you want to ask  
19 any questions?

20 MR. Ó MUIRCHEARTAIGH: No questions, Chairman. 12:59

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

23  
24 349 Q. MR. FITZGERALD: Sorry, Mr. O'Keefe. You were asked  
25 earlier on by Mr. Murrinan about the potential 12:59  
26 unfairness to Superintendent Taylor of you maintaining  
27 your privilege in circumstances where, if you answered  
28 a question, it might, in fact, be to his benefit for  
29 you to answer it. I act on behalf of An Garda

1 Síochána. I suppose specifically for the purpose of  
2 this question, I act on behalf of former Commissioner  
3 O'Sullivan and Callinan. In circumstances where you  
4 won't say one way or the other whether they briefed you  
5 negatively against Sergeant McCabe, do you understand 12:59  
6 the unfairness to them of you refusing to answer that  
7 question?

8 A. If I can answer it hypothetically, unfortunately. I  
9 can understand, hypothetically, that argument, but you  
10 -- if you have a position where you can't say anything 13:00  
11 that may or may not identify a source, you can't  
12 cherry-pick how you answer that question, if that makes  
13 sense, so it has to be consistent as to all the parties  
14 concerned, because you are narrowing it down otherwise  
15 if you do so. 13:00

16 350 Q. Well, Mr. O'Keefe, I am not going to debate the law  
17 with you, I think that will come perhaps with Mr. Quinn  
18 on your behalf in due course, but we seem to be back to  
19 the absolute position that you won't disclose or that  
20 you won't answer that question in any circumstances. 13:00  
21 Now, what we will be saying in our submissions is that  
22 your refusal to do so is very, very unfair to our  
23 clients, and I'm simply affording you the opportunity  
24 to respond to that.

25 A. I can understand what you are saying, but I am -- I 13:01  
26 feel I am unable to add to what my position is.

27 CHAIRMAN: I think it may be appropriate that I say  
28 something here. Given that what I have been told in  
29 relation to the relationship between Mr. O'Keefe, as a

1 journalist, and Nóirín O'Sullivan and Martin Callinan,  
2 I regard it as not conceivable that there was any such  
3 communication on the state of evidence as it now exists  
4 in this particular instance.

5 MR. FITZGERALD: Thank you, Chairman. I have no  
6 further questions. 13:01

7 CHAIRMAN: Now, maybe I am wrong, maybe there will be a  
8 submission to the contrary, I don't know. Well,  
9 Mr. McGarry, would you like to make a submission to the  
10 contrary? I am not saying you should do it now. Is 13:01  
11 that one of the things that you'd contemplate?

12 MR. MCGARRY: Well, we are contemplating making a  
13 submission about -- at the end of this particular  
14 module, about all of the evidence that has been given,  
15 but I am not going to make that submission just at this 13:02  
16 particular moment in time. It's not a submission  
17 necessarily limited or a submission on the issue of  
18 privilege per se, it's more a submission as to what the  
19 Tribunal should -- or what conclusions the Tribunal  
20 ought to draw from the totality of the evidence, but 13:02  
21 I'm not -- I don't think I should make a submission in  
22 relation to the specifics of this particular -- that  
23 particular answer in this particular case.

24 CHAIRMAN: Well, there was a submission made by  
25 Mr. McDowell last week that, in consequence of an 13:02  
26 answer given, that he would ask me to draw an  
27 inference. Are you asking me to draw an inference in  
28 relation to Commissioner Callinan or Commissioner  
29 O'Sullivan?

1 MR. MCGARRY: well, Chairman, I think where witnesses  
2 provide evidence that is very, very specific and very  
3 deliberate and carefully specific about certain things,  
4 which is categoric, which confirms certain things, such  
5 as the first witness this morning saying, in relation 13:03  
6 to a very specific thing and a specific point in time,  
7 that he became aware of or was not aware of prior to,  
8 and then refuses to answer other questions about other  
9 issues, we will be making a submission to the effect  
10 that the Tribunal is entitled to infer that it is 13:03  
11 possible, or at least it is possible on the balance of  
12 probabilities, that that witness was briefed or was in  
13 receipt of information, particularly where there is  
14 other evidence to the effect that that is the case, if  
15 that other evidence comes from Superintendent Taylor or 13:03  
16 from other journalists or from other sources, that may  
17 well be the case, but in this particular --  
18 CHAIRMAN: There isn't any other evidence. This is an  
19 instance, there is Mr. O'Keefe and there is  
20 Superintendent Taylor. That is it. There is nothing 13:03  
21 else.  
22 MR. MCGARRY: Yes. I accept that, in this particular  
23 case, that may well not be the case.  
24 CHAIRMAN: Okay. All right. So where do we stand? Is  
25 there any other questions? 13:04  
26 MR. FITZGERALD: Sorry, no further questions.  
27 CHAIRMAN: Mr. MARRINAN, do you want to ask any further  
28 questions?  
29 MR. MARRINAN: Does Mr. Quinn want to ask any

1 questions?

2 MR. QUINN: No, Chair. Thank you.

3

4 THE WITNESS WAS RE-EXAMINED BY MR. MARRINAN:

5

13:04

6 351 Q. MR. MARRINAN: Just, this may be difficult for you to  
7 answer, I don't know, but do you believe that you have  
8 any information that would impact on the workings of  
9 the Tribunal but you feel constrained to assist the  
10 Tribunal because of the strictures of journalistic  
11 privilege?

13:04

12 A. If I understand your question correctly, I don't see  
13 how I can answer that question without it contradicting  
14 my previous answers.

15 352 Q. Well, I wonder whether you would be. I mean, this  
16 isn't going to reveal a source or tend to reveal a  
17 source. I am just talking in the round in terms of the  
18 workings of the Tribunal. You see, the problem we have  
19 is this: that a number of journalists initially  
20 claimed journalistic privilege and then abandoned that  
21 claim recently, in circumstances where it turned out  
22 that, in fact, they had no information to offer the  
23 Tribunal at all in relation to the issues before the  
24 Tribunal. Do you understand?

13:05

13:05

25 A. Yes.

13:05

26 353 Q. So it would appear, and indeed one of them I think  
27 accepted, that the claim of privilege was made on a  
28 point of principle, do you understand? So I don't know  
29 whether you fall into that category as somebody who is



1 making a claim of privilege on a point of principle  
2 because you can't envisage any exceptions to the rule,  
3 or whether you are doing so in circumstances where  
4 there is a genuine reason why you are not doing it; in  
5 other words, that you don't want to give evidence to 13:06  
6 the Tribunal that might be relevant but could identify  
7 a source?

8 A. That is quite a lot to take in.

9 354 Q. Yes. Well, I know it is, but you'll understand where I  
10 am coming from? 13:06

11 A. Of course I do. I completely appreciate the Tribunal's  
12 task in this. Yes, my position is one of principle, as  
13 I have said, and I would like to say again, I have -- I  
14 have done nothing wrong here.

15 355 Q. Yes. 13:06

16 A. I have written nothing wrong. I never proposed doing  
17 anything. But my overriding obligation is not to do  
18 anything that could endanger the flow of information  
19 from sources, either now or in the future, to  
20 journalists, and that -- I -- you mentioned a 13:07  
21 constraint; it's my obligation.

22 356 Q. Yes. But come back to the question that I asked you.

23 A. Sorry.

24 357 Q. I mean, do you believe that you have information that  
25 would impact on the workings of the Tribunal but you 13:07  
26 feel obliged to claim journalistic privilege?

27 A. I do feel obliged to claim journalistic privilege.

28 358 Q. But in circumstances where otherwise you would have  
29 information to give to the Tribunal?

1 A. I feel I am unable to answer that question because my  
2 obligation is to protect journalistic privilege.

3 359 Q. Well, can we exclude the possibility that you are  
4 claiming journalistic privilege just simply out of a  
5 point of principle, regardless of the circumstances in 13:08  
6 which you find yourself here giving evidence to the  
7 Tribunal?

8 A. I am not crystal clear on what you are asking me.

9 360 Q. Can we exclude the possibility that you are merely, as  
10 a matter of course, claiming journalistic privilege 13:08  
11 here today?

12 A. I think it certainly would be fair to say that I am not  
13 coming up here to do something out of a matter of  
14 course. I have considered this at some length, I have  
15 attended the Tribunal as well. This is a considered, 13:08  
16 and I would admit, it's a considered position I have  
17 taken and it's an obligation, it's an obligation on  
18 journalists to protect sources.

19 MR. MARRINAN: Thank you very much.

20 13:09

21 THE WITNESS WAS THEN QUESTIONED FURTHER BY THE  
22 CHAIRMAN:  
23

24 361 Q. CHAIRMAN: If I could just follow up, and I know we are  
25 way over time, Mr. Marrinan. One of the things that 13:09  
26 has been, I'd say the right word to use is disturbing  
27 me, is the whole notion that a journalist would come  
28 here and claim privilege and say, oh, I am not  
29 answering any of those questions, but are absolutely

1 free, tomorrow morning, in whatever newspaper you care  
2 to mention, to write an article, yes, I was approached,  
3 and then, without naming your sources, just set out the  
4 fact that various members of the Gardaí came to you and  
5 said nasty things about Maurice McCabe. I mean, it 13:10  
6 seems absurd, it seems absolutely and utterly absurd  
7 that I'm sitting here trying to find stuff out and you  
8 are absolutely and completely at liberty to write such  
9 an article in the newspaper tomorrow, if you have any  
10 information to that effect, but you are not going to 13:10  
11 tell me.

12 A. I have no intention of writing such an article.

13 362 Q. CHAIRMAN: well, do you have the material to write such  
14 an article?

15 A. Regarding revealing sources, absolutely not. 13:10

16 363 Q. CHAIRMAN: No, not revealing sources, but even  
17 saying -- look, you know, I have been reading  
18 newspapers all my life, and indeed it's what I do at my  
19 lunch hour, is I read a newspaper, and I read several  
20 at the weekend so I very much enjoy newspapers and I 13:10  
21 respect those who are writing in them. But, I mean, do  
22 you actually have any information which would enable  
23 you to write a story saying, oh, I was approached or  
24 somebody told me something about Maurice McCabe? That  
25 is what Mr. Marrinan was asking you. 13:11

26 A. I am unable and I would not say or write anything that  
27 I believe could and would identify sources.

28 364 Q. CHAIRMAN: No, I appreciate that, and we take that as  
29 an absolute given, we take that as an absolute given,

1 as a bulwark which is never to be passed, taking that  
2 for the moment. But could you, in fact, write an  
3 article to the effect that people who you will not name  
4 approached you and told you things about Maurice  
5 McCabe, could you write such an article truthfully? 13:11

6 A. But this inquiry is set up for a very specific purpose  
7 with very specific named people in mind.

8 365 Q. CHAIRMAN: well, perhaps other unnamed people?

9 A. well, --

10 366 Q. CHAIRMAN: You see, the problem is, you would be 13:11  
11 entitled to write that article tomorrow, or let's say  
12 the Tribunal report comes out in October and let's  
13 suppose it exonerates everybody and then you know this  
14 but you are going to say, well, now is my chance to  
15 write this article, and then you write the article and 13:12  
16 it says that I got things wrong, and I am only a human  
17 being, after all, I can't do anything more than assess  
18 what is there, I am not writing a work of fiction, but  
19 in the event that it was a question of completely  
20 exonerating the Gardaí of ever wishing to undermine the 13:12  
21 messenger, namely Maurice McCabe, would you ever be in  
22 a position where you could write such an article and  
23 say, well, the messenger was undermined to me by  
24 members of the Gardaí?

25 A. I don't see how a situation would arise where I could 13:12  
26 do anything like that that I would see now as  
27 potentially be revealing a source.

28 367 Q. CHAIRMAN: Again, and this is a bit like a crossword  
29 puzzle the whole morning really, it's trying to work

1 out what people are actually trying to say to me. What  
2 you seem to be saying to me is that in the event that  
3 you were to write such an article, then it would be  
4 clear that the persons named in the terms of reference  
5 would somehow be implicated, is that what you -- 13:13

6 A. Sorry, Chair, that wasn't what I meant.

7 368 Q. CHAIRMAN: well, maybe you'd help me as to what you  
8 actually did mean.

9 A. That I couldn't envisage writing any such piece that  
10 you are suggesting. 13:13

11 369 Q. CHAIRMAN: And does that mean you actually don't have  
12 any information to that effect? Without revealing any  
13 sources, does it mean - that is what Mr. Marrinan asked  
14 you - that you don't actually have any information to  
15 the effect that there was any kind of attempt, 13:13  
16 anywhere, by any garda, to say that Maurice McCabe was  
17 not the person he was cracked up to be but, in fact,  
18 had an allegation against him in the past that there  
19 might be some validity to, or anything of that variety?

20 A. Well, I suppose that is the fundamental issue for me, 13:14  
21 is that I believe that by -- that I can't say anything  
22 that may reveal who a source is or who is not. That is  
23 my position.

24 370 Q. CHAIRMAN: I know that. But, I mean, could you ever  
25 write an article to the effect that the Tribunal got it 13:14  
26 wrong, in the event that the Tribunal exonerated the  
27 Garda?

28 A. I'd have to ask you to ask me that question again,  
29 sorry, Chair.

1 371 Q. CHAIRMAN: Could you ever write an article, if the  
2 Tribunal exonerated the Garda from ever trying to  
3 undermine the character of Maurice McCabe, saying,  
4 well, the Tribunal got it wrong because I know to the  
5 contrary? You would be absolutely entitled, as a 13:14  
6 journalist, to write such an article, by the way.  
7 A. No, I couldn't see myself writing such an article.  
8 CHAIRMAN: All right. Well, again, I will think very  
9 carefully about everything you have said. So it's  
10 now -- what time is it? It's well after a quarter past 13:14  
11 one, so we will take a break for an hour. Thank you.  
12

13 THE HEARING THEN ADJOURNED FOR LUNCH  
14  
15  
16  
17  
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19  
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23  
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25  
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28  
29

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2  
3 MS. LEADER: The next witness, sir, is Mr. Daniel  
4 McConnell. His interview with the Tribunal  
5 investigators is in volume 19, page 5188 of the  
6 materials. 14:19

7  
8 MR. DANIEL McCONNELL, HAVING BEEN SWORN, WAS DIRECTLY  
9 EXAMINED BY MS LEADER:

10  
11 372 Q. MS. LEADER: Mr. McConnell, I think you're the  
12 political editor of the Irish Examiner? 14:19

13 A. That's correct.

14 373 Q. And prior to November 2015 I think you were the group  
15 political correspondent with Irish News and Media, is  
16 that correct? 14:19

17 A. That's one of a number of group political  
18 correspondents with INM, yes.

19 374 Q. And if you could, in brief, outline your career as a  
20 journalist to date. 14:20

21 A. Sure. I graduated from UCD with a BA in 2000, upon  
22 which I became the editor of the college newspaper. I  
23 then went on to do a journalism master's in DCU, out of  
24 which I did a placement with The Sunday Times. I then  
25 freelanced for The Sunday Times for a number of years,  
26 working on some of their major data projects, like the  
27 school league tables, the good hospitals guide, the  
28 rich list, etcetera. And then I freelanced for a year  
29 with the Irish Times, and then I subsequently moved to 14:20

1 the Sunday Independent, where I worked in total for  
2 about nine years, and then I moved to the Irish  
3 Examiner in late 2015.

4 375 Q. Now, I think for the relevant period that the Tribunal  
5 is looking at, you were with Irish News and Media? 14:20

6 A. Independent News & Media.

7 376 Q. Independent News & Media?

8 A. Yes.

9 377 Q. And I think you wrote some articles in connection with  
10 the penalty points matter and in particular the Public 14:21  
11 Accounts Committee and the Sergeant McCabe --  
12 allegations that Sergeant McCabe was making and the  
13 cooperation issue, is that right?

14 A. That's correct.

15 378 Q. And I think those articles, as far as I can see, were 14:21  
16 written on the 2nd February 2014; the 6th February,  
17 possibly, 2014; and two articles on the 24th February?

18 A. They're not in front of me, but if you say so, I take  
19 your word for it.

20 379 Q. As far as I can see. 14:21

21 A. I take your word for it.

22 380 Q. You have seen them in the materials?

23 A. I have, I have seen them in the materials, yes.

24 381 Q. So you were generally interested, I think it is fair to  
25 say, in Sergeant-McCabe-related matters? 14:21

26 A. I would qualify that a bit.

27 382 Q. Yes.

28 A. My day job, essentially I covered the political -- or  
29 the Public Accounts Committee weekly for both the



1 Sunday Independent and later for the Irish Independent,  
2 so that was my bread and butter beat, if you know what  
3 I mean. It was only when Maurice McCabe became  
4 relevant to the Public Accounts Committee that I became  
5 involved in reporting on him as a figure. And then 14:22  
6 obviously the -- there was obviously a lot of  
7 controversy about the bringing of Maurice McCabe before  
8 the Public Accounts Committee, the circumstances of  
9 that, and obviously the very controversial meeting with  
10 the then-Commissioner Martin Callinan. You know, I 14:22  
11 would have reported on all of those matters.

12 383 Q. Now, I think in common with the last witness, your  
13 stance in relation to answering questions in relation  
14 to the terms of reference the Tribunal, which you are  
15 familiar with, I take it -- 14:22

16 A. I am familiar, yes.

17 384 Q. -- is that you cannot answer any question that might  
18 reveal a confidential source or that might have the  
19 tendency to reveal a confidential source on account of  
20 the obligation that you think you have towards your 14:22  
21 sources in your capacity as a journalist?

22 A. That's correct.

23 385 Q. Is that right?

24 A. That's correct.

25 386 Q. And that is what you told our investigators when you 14:22  
26 were interviewed in relation to the matter?

27 A. That is correct.

28 387 Q. And I think it is fair to say that your answers to the  
29 various questions put by the Tribunal investigators

1 refer back to that statement and you share them in  
2 common with the last witness?

3 A. Yes. Myself and Mr. O'Keefe, you know, I think would  
4 be very -- would have very similar views in relation to  
5 the principle of journalistic privilege, the protection 14:23  
6 of sources and the protection of not only those but the  
7 gathering of information, and the statement I gave to  
8 the Tribunal investigators reflected that and it's my  
9 position here today.

10 388 Q. All right. Now, you've been following the Tribunal 14:23  
11 proceedings, is that correct?

12 A. I have, indeed.

13 389 Q. All right. And you understand that Superintendent  
14 David Taylor has named you as a journalist that he  
15 briefed negatively in relation to Sergeant Maurice 14:23  
16 McCabe?

17 A. I am aware of that, yes.

18 390 Q. Okay. And in relation to the negative briefing, that  
19 would be drawing journalists' attention to an  
20 allegation of criminal misconduct against Sergeant 14:23  
21 McCabe?

22 A. Mm-hmm.

23 391 Q. You understand that?

24 A. I understand.

25 392 Q. All right. And in relation to what he says 14:24  
26 specifically in relation to you, if we could have page  
27 149 of Day 74 up on the screen, please. You can be  
28 given a hard copy, if it's more convenient.

29 A. No, it's up on the screen now.

1 393 Q. So what he says is:

2

3

"All right. We have statements --"

4

5

And he refers to your statement, Daniel McConnell, in

14:24

6

relation to -- he is asked about those statements,

7

okay?

8

A. Yes.

9

394 Q. And what Superintendent Taylor says:

10

14:24

11

"I have signed my waiver. I would encourage anybody to

12

come forward. I want to assist and encourage anybody

13

to assist in establishing the truth, Mr. Chair."

14

15

And do you have any reason to believe that the waiver

14:24

16

was anything but voluntary with regard to

17

Superintendent Taylor?

18

A. I have no information as to that it was anything other

19

than voluntary.

20

395 Q. Okay. So do you accept that it was a voluntary waiver,

14:25

21

so?

22

A. Well, on the face of it, yes, but I have no information

23

otherwise, so --

24

396 Q. All right. Okay. And if we could turn to page 163 of

25

that transcript. Maybe we will start on page 162. He

14:25

26

is referring -- Superintendent Taylor is referring to

27

his -- at the very bottom of the page, at line 26:

28

29

"Mr. McConnell from the Irish Examiner, again you were

1 provided with the record of your telephone and text  
2 contacts to him, isn't that right?

3 A. Yes."

4  
5 And then it transpired that he wasn't, and he is asked: 14:25

6  
7 "So to be clear then, how did you brief Mr. McConnell,  
8 or did you brief him negatively?"

9  
10 Superintendent Taylor is asked. And what 14:26

11 Superintendent Taylor says:

12  
13 "I spoke to him on the landline and we'd have spoken  
14 when he rang me. I spoke to him by phone. Daniel  
15 McConnell is a respected journalist who deals with the 14:26  
16 political world that would have been around the PAC and  
17 in relation to the penalty points and how they were  
18 coming before the PAC and the Dáil committees."

19  
20 And then he is asked: 14:26

21  
22 "Are you fairly clear then that it was over the phone?"

23 A. Yes."

24  
25 And then he is asked: 14:26

26  
27 "Are you placing it in or around the time of the PAC  
28 hearings?"

29 A. Yes.

1 Q. Did you do this once or more than once with him?  
2 Was it a concerted effort on your part?"  
3

4 And Superintendent Taylor says:

5  
6 "It could have been a couple of engagements."  
7

8 So what it would appear that Superintendent Taylor was  
9 saying is that he briefed you negatively in relation to  
10 Sergeant McCabe, that happened around the time of the  
11 Public Accounts Committee hearings, it would have been  
12 over the phone and it would have been a couple of  
13 times. What is your response to that?

14 A. Well, in line with my statement, I can neither confirm  
15 nor deny that that happened, for reasons of  
16 journalistic privilege.

17 397 Q. All right. Now, I wonder if I turn to the beginning of  
18 Superintendent Taylor's evidence in relation to the  
19 matter. If I could turn to page 19 -- sorry, of Day  
20 74. What he is saying is, he did this negative  
21 briefing, okay, which he says he negatively briefed you  
22 in relation to the matter, at the behest of former  
23 Commissioner Callinan. And Superintendent Taylor is  
24 asked at the time he was given the instruction by  
25 Commissioner Callinan, and if I could specifically  
26 refer to line 14 of that page of the transcript:

27  
28 "Was it your view at that point in time as to any  
29 wrongdoing that the Commissioner had done or that you

1 had done on his behalf? Were you of the view that he  
2 had done any wrong?

3 A. I wasn't aware of any wrongdoing by him."  
4

5 So Superintendent Taylor is saying at the time of the 14:28  
6 negative briefing and at the time of the instruction,  
7 he wasn't aware of any wrongdoing in relation to the  
8 negative briefing, that he had respect for Commissioner  
9 Callinan at the time. But later on when he left the  
10 guards, he realised -- and when I say left, when he was 14:28  
11 suspended from duty - he still is a serving  
12 superintendent - he subsequently realised that it was  
13 wrong. Do you understand what Superintendent Taylor is  
14 saying?

15 A. I follow the -- yes, I follow the evidence. 14:29

16 398 Q. You will see it at page 20, it would be at the very top  
17 of the page:

18  
19 "Did you regard it as wrong?

20 A. At the time this was happening, no, but I 14:29  
21 subsequently did realise."

22  
23 All right?

24 A. Mm-hmm.

25 399 Q. So what I am asking you, Mr. McConnell, is, in view of 14:29  
26 the fact that Superintendent Taylor has waived  
27 privilege, has asked people to come forward, he said he  
28 has done something wrong in relation to the briefing of  
29 journalists negatively in relation to Sergeant McCabe,

1 does that in any way change your attitude to answering  
2 the question?

3 A. No, because I feel as compelled as Mr. O'Keefe did in  
4 relation to our sources and protection of sources and  
5 also to the wider principle of gathering of  
6 information. I'm not in a position, I'm afraid, to  
7 either confirm or deny details in relation to that  
8 matter.

14:29

9 400 Q. You see what I really want to ask you, Mr. McConnell,  
10 is: what exactly are you protecting? We know  
11 Superintendent Taylor's identity, we know that he has  
12 admitted he was doing wrong at the time, he has come  
13 out publicly and said that in his evidence to the  
14 Tribunal, and he is saying, specifically, on a number  
15 of occasions, over the phone, that he negatively  
16 briefed you in relation to Sergeant McCabe?

14:29

14:30

17 A. Mm-hmm.

18 401 Q. So my question to you is: what are you protecting?

19 A. I'm protecting the principle and also the position that  
20 I have as a journalist who deals with confidential  
21 matters on a daily basis and dealing with people on a  
22 confidential basis every day, that I am just not in a  
23 position, because I'm compelled by an obligation I have  
24 to protect my own sources and to protect the people who  
25 I deal with, to get into any sort of discussion around  
26 information that either has or has not or may or may  
27 not have come my way. I'm just not in a position to do  
28 so.

14:30

14:30

29 402 Q. All right. So you're saying you're compelled by an

1 obligation you have to protect your sources, okay?

2 A. And also to the principle of the gathering of  
3 information.

4 403 Q. And the principle of gathering of information?

5 A. Yeah. 14:30

6 404 Q. So in relation to the protection of sources, we know  
7 Superintendent Taylor doesn't need protection because  
8 he has come out and said he was a source. Okay, so we  
9 can eliminate that from the equation. Do you  
10 understand what I am saying to you? 14:31

11 A. I understand where you are going with this, Ms Leader.  
12 My position will not change, I'm afraid.

13 CHAIRMAN: No, but if you wouldn't mind just answering  
14 the question. Do we eliminate the possibility that  
15 Superintendent Taylor actually needs any protection? 14:31

16 A. I'm not going to get into a discussion which may or may  
17 not narrow down people, Mr. Chairman. I just don't  
18 think that I can do that as a witness.

19 405 Q. MS. LEADER: well, could you explain to me how that  
20 would narrow anybody down? 14:31

21 A. Well, I mean, if you start saying, in relation to that  
22 person, can we -- do they need protection or not, and  
23 if I say no, they don't, then you move on to another  
24 person and then by a process of elimination --

25 406 Q. All right, we will leave Superintendent Taylor out of 14:31  
26 the equation.

27 A. Mm-hmm.

28 407 Q. Source X gives you information?

29 A. Mm-hmm.



1 408 Q. Unnamed source in relation to something totally --  
2 A. We are speaking hypothetically here.

3 409 Q. Totally unconnected to the Tribunal, hypothetical?  
4 A. Yes.

5 410 Q. Source X says: I was doing something wrong when I gave 14:32  
6 you that information, I am telling you now that I was  
7 doing something wrong, I am waiving any protection, any  
8 privilege in relation to the giving of that  
9 information, all right?

10 A. Mm-hmm. 14:32

11 411 Q. And not only that, but I am waiving it publicly and I  
12 am saying all of this publicly, which is being reported  
13 on a daily basis publicly.

14 A. Mm-hmm.

15 412 Q. So does that source need any protection then, source X, 14:32  
16 leave Superintendent Taylor out of it?

17 A. Sure. But I come from a position, Ms. Leader, which is  
18 different.

19 413 Q. No, I'm not asking you where you come from. I'm asking  
20 you does that source need protection? 14:32

21 A. I'm asking from a journalist's point of view, the  
22 person as a journalist who holds the privilege, it is  
23 therefore my obligation to the principle of  
24 journalistic privilege that I would not be in a  
25 position, even if a source, in my view, moved -- or a 14:32  
26 perceived source or an alleged source moved to say --  
27 to waive that privilege, I would not be in a position,  
28 I feel, compelled by the obligation that I have to do  
29 my job, to start getting into a conversation that you

1 are seeking to bring me into.

2 414 Q. All right. I will ask you one more time. Does source  
3 X need any protection in those circumstances?

4 A. Yes, I think source X would need protection, on the  
5 basis that there are many unintended consequences as to 14:33  
6 how people might ask a question, where a question is  
7 coming from, and also the potential motivations of  
8 other people, that may seem irrelevant at a particular  
9 time but could become relevant at a later point in  
10 date -- or a later point in time. 14:33

11 415 Q. If that source is one of a group of people of 12,000,  
12 do you think that source needs protection? There are  
13 12,000-plus Gardaí in this country.

14 A. I'm just not willing to get into a position,  
15 Ms. Leader, to start talking about or getting into a 14:34  
16 process of identifying people. I would like to be  
17 helpful to the Tribunal. I have done a lot of work in  
18 terms of meeting with investigators, providing my  
19 mobile phone number, studying the evidence at play. I  
20 would -- am genuinely, Chairman, seeking to be helpful 14:34  
21 to the Tribunal. I just, however, feel compelled to  
22 not get into a position where I feel a source of mine  
23 or a root of information could therefore be  
24 identifiable, I'm afraid I feel compelled I cannot do  
25 that. 14:34

26 416 Q. Now, if we get into the free flow of information, all  
27 right?

28 A. Mm-hmm.

29 417 Q. So you say, by identifying a source, it may inhibit the

1 free flow of information, all right?

2 A. Mm-hmm.

3 418 Q. So in the example that I've given to you, source X is  
4 asking for the journalist's cooperation in aiding his  
5 evidence -- 14:34

6 A. Mm-hmm.

7 419 Q. -- and aiding what he is saying. In those  
8 circumstances, it would be corroborative evidence?

9 A. Mm-hmm.

10 420 Q. You understand that? 14:35

11 A. I understand.

12 421 Q. All right. And source X, if the journalist chooses not  
13 to give information so as to protect the free flow of  
14 information, all right --

15 A. Mm-hmm. 14:35

16 422 Q. -- do you think that would encourage other people to  
17 come forward and give information if they thought, when  
18 they needed the journalist's help, that they were not  
19 given that help?

20 A. I'm sorry, Ms. Leader, there were a number of 14:35  
21 subclauses to your question. Could you clarify it  
22 exactly, please?

23 423 Q. Yes, that is fine. I will repeat it.

24 A. Thank you.

25 424 Q. Source X is asking for the journalist's help. 14:35  
26 A. Yes.

27 425 Q. He is publicly asking for the journalist's help. Okay.  
28 The journalist says, no, I'm not going to answer that  
29 question, good, bad indifferent, in any way at all.

1 A. Mm-hmm.

2 426 Q. All right. So, in those circumstances, source X is not  
3 being helped, isn't that correct?

4 A. I would -- yeah.

5 427 Q. Yes. So how does that help the free flow of 14:35  
6 information if people publicly think, when they need  
7 the journalist's help, all right, you follow me so  
8 far --

9 A. I follow you so far, yes.

10 428 Q. -- that help won't be forthcoming? If you could answer 14:36  
11 that question.

12 A. Because I think that is balanced against what I would  
13 see is a very real chilling effect, that if, say,  
14 someone gave me information two or three years ago or  
15 four years ago, and I find myself in a place like a 14:36  
16 tribunal of inquiry and I am being put under pressure  
17 to reveal where information came from, they'd never  
18 speak to me ever again, other people would never speak  
19 to me again, because the conclusion would be that  
20 Daniel O'Connell is someone, when pressure is brought 14:36  
21 to bear, would sing like a canary. I, unfortunately,  
22 am not someone who will sing like a canary. I am  
23 someone who will protect my sources and someone who  
24 believes in the principle of journalistic privilege,  
25 and I do so not to frustrate the work of a tribunal of 14:36  
26 inquiry, but I do so because I think there are  
27 competing -- you know, there is a balance of rights and  
28 issues at play here.

29 429 Q. Okay, that is your answer?

1 A. That is my answer.

2 430 Q. That is grand. So in relation to identifying sources,  
3 we have identified the source of the information, you  
4 understand that; he has given evidence here before the  
5 Tribunal?

14:37

6 A. Well, Superintendent Taylor claims he was the source.

7 431 Q. Yes.

8 A. Yes, I understand that.

9 432 Q. So in relation to forcing anybody to identifying any  
10 sources, the only question the Tribunal is asking is:  
11 Did Superintendent Taylor, not did any other person,  
12 give you -- any other person -- give you information in  
13 relation to a campaign with regard to Sergeant McCabe,  
14 you understand that?

14:37

15 A. I understand that. My answer is --

14:37

16 433 Q. So there is no question, I'm suggesting to you, of  
17 forcing anybody to reveal any sources except the  
18 information which is already before the Tribunal?

19 A. But you make it sound very simple, Ms. Leader, but from  
20 a journalist's point of view, it is far more  
21 complicated than that, and I think the obligations that  
22 I'm under as a journalist to protect my sources and  
23 also to protect the free flow of information and the  
24 information-gathering process that I and my colleagues  
25 go through, I'm afraid, in my view, trumps the interest  
26 that you are trying to pursue here, and therefore, I'm  
27 not in a position to get into a discussion as to who or  
28 who didn't brief me, or whether I was or wasn't  
29 briefed. I'm just not in a position to do that,

14:37

14:38

1           regrettably.

2 434 Q.    Okay.  And when you say it trumps all other things, one  
3           of those things is confidence in policing in this  
4           country?  All right.

5           A.    Sorry, is that a question, Ms. Leader?  Because I would 14:38  
6           like to give you --

7 435 Q.    Sorry, I thought you said yes?

8           A.    Yes.  Sorry, my answer is yes on that.  Thank you.

9 436 Q.    Just, I want to ask you a few questions in relation to  
10          the allegation of criminal misconduct made against 14:38  
11          Sergeant McCabe.

12          A.    Okay.

13 437 Q.    Did you know about Paul Williams interviewing Ms. D?

14          A.    I didn't, no.

15 438 Q.    And you were part of the Independent group at that 14:38  
16          time?

17          A.    I was.  But again, as I said to you previously, my  
18          attention was on political matters.  And newsrooms  
19          often work in silos, that, you know, you may even be  
20          sitting beside a journalist on the desk next to you and 14:39  
21          have no idea what they are working on.  And in relation  
22          to the Ms. D, the first I knew about it was when I saw  
23          it in the newspaper.

24 439 Q.    And that was on the 12th April 2014?

25          A.    That's correct.  Correct, yeah. 14:39

26 440 Q.    All right.  And I totally understand how you'd know one  
27          thing and another person would know another thing.  But  
28          as I understand the statement from Mr. Mallon - now, I  
29          may be misinterpreting that - that it was no secret in

1 Independent Newspapers, the Ms. D allegation; was that  
2 post the Paul Williams article?

3 A. That would be a matter I'm sure you'd have to ask  
4 Mr. Mallon, from my point of view, because I was  
5 primarily based in Leinster House. The sort of normal 14:39  
6 gossip that may have been prevalent around 'Talbot  
7 Towers', as it is colloquially known, I may not have  
8 been aware of, because, as I said, most of my time was  
9 up in Leinster House.

10 441 Q. Prior to the Paul Williams article, did you know about 14:40  
11 the Ms. D allegation?

12 A. I had heard, particularly in the run-up to the PAC  
13 meeting, I had certainly heard, I think I describe it  
14 in my statement as journalistic chatter. There was  
15 certainly a lot of chat around. And there was a 14:40  
16 conflation of issues because there was a lot of  
17 criticism of the PAC at the time for essentially going  
18 beyond its remit; you know, that it shouldn't really be  
19 bringing Maurice McCabe in before it, but there was  
20 vague, and I'm talking very low level sort of 14:40  
21 suggestions, you know, attacking the integrity of  
22 Maurice McCabe, nothing that I could ever really put my  
23 finger on, nothing that I could ever be specific about,  
24 but certainly there were -- as I say, it was  
25 journalistic chatter. 14:40

26 442 Q. Okay. So prior to the Paul Williams article, your  
27 knowledge of the Ms. D allegation came from  
28 journalistic chatter?

29 A. I'm very much in the sort of political realm, but

1 again, it was very low level, inconsequential, in my  
2 view, and certainly something that I never either  
3 investigated, looked at, because it wasn't within my  
4 remit to do so.

5 443 Q. Okay. And was that your first knowledge of the Ms. D 14:41  
6 allegation?

7 A. Well, again, it was so vague at that stage, I had no  
8 idea, really, as to what it was.

9 444 Q. Okay.

10 A. All I can say is that my focus very much was on -- 14:41  
11 there was a huge internal battle within the PAC as to  
12 whether Maurice McCabe should be brought before it.  
13 That is where my focus was on.

14 445 Q. I see.

15 A. Not really on these extraneous matters. 14:41

16 446 Q. I understand, yes. So insofar as there were extraneous  
17 matters being chattered about --

18 A. Yes.

19 447 Q. -- if I can put it that way --

20 A. Yes. 14:41

21 448 Q. -- that was from other journalists, am I correct, in  
22 saying that?

23 A. Yeah, I mean, I characterise it as journalistic  
24 chatter, and that's certainly -- again, but trying to  
25 remember who exactly -- I've racked my brain on this, I 14:41  
26 really just cannot remember.

27 449 Q. And that was January 2014.

28 A. I vividly remember it was in around the time of the PAC  
29 meeting, yes.



1 450 Q. Okay. And you'd heard nothing before that?  
2 A. No, absolutely not.

3 451 Q. Okay. And did you take any steps to investigate that?  
4 A. No, because it was -- I took the view that it was  
5 inconsequential, and also, as well, the questions being 14:42  
6 asked politically was, was he a credible witness for  
7 the PAC in terms of the penalty points issue.

8 452 Q. Yes.  
9 A. It was as to his bona fides, as to, you know, were the  
10 issues that he was raising credible, and that is what I 14:42  
11 was interested in. Like, the other stuff I just didn't  
12 really pay any attention to at all.

13 453 Q. Did you hear it again before the Paul Williams article  
14 on the 12th April 2014?  
15 A. No. 14:42

16 454 Q. And did you hear it up to July 2014 post-publication of  
17 the Paul Williams article?  
18 A. Not that I can remember, no.

19 455 Q. And did you know Ms. D and Sergeant McCabe? Were they  
20 relevant persons that Mr. Williams was writing about in 14:43  
21 April 2014?  
22 A. I think I made a natural assumption without actually  
23 checking it, without actually making a -- I never  
24 actively investigated it, but I certainly would have,  
25 when reading it, because the article itself was written 14:43  
26 somewhat cryptically --

27 456 Q. Yes.  
28 A. -- you know, in terms, in order to protect the  
29 identities of people. One would assume that the people

1 involved were -- you know, that Maurice McCabe  
2 certainly was one of the people involved.

3 457 Q. Okay. So am I taking it that the following instances  
4 are when your attention was drawn to an allegation of  
5 criminal conduct made against Sergeant McCabe: 14:43  
6 chatterings from other journalists you think in January  
7 2014?

8 A. Mm-hmm.

9 458 Q. The publication of the Paul Williams article in April  
10 2014? 14:43

11 A. Mm-hmm.

12 459 Q. And no other occasion up to July 2014?

13 A. Not that I can remember, no. And again, as I said, it  
14 wasn't in my direct line of reporting, so it wasn't  
15 something that really I was, you know, vastly or 14:44  
16 massively interested in or following.

17 460 Q. Okay. In relation to your knowledge of the former  
18 commissioners, do you know former Commissioner  
19 Callinan?

20 A. I have never met Martin Callinan. 14:44

21 461 Q. In relation to former Commissioner O'Sullivan?

22 A. I met her a small number of occasions and they were  
23 primarily walking in and walking out of Oireachtas  
24 committees, a shake of the hands, that would be it  
25 really. 14:44

26 462 Q. All right. Were some of those times in January 2014  
27 going in and out of the Public Accounts Committee?

28 A. Possibly. I just can't be specific, but probably,  
29 yeah.

1 463 Q. You can't pin it down?  
2 A. No, I can't pin it down, because they were --  
3 literally, because the guards were in and out so  
4 often --  
5 464 Q. Yes. 14:44  
6 A. -- it is very hard to be specific.  
7 465 Q. Okay. Beyond saying 'hello' to the former  
8 Commissioner, did you have any conversation with her?  
9 A. I just don't want to get into that sort of  
10 conversation, Ms. Leader, because, again, we're getting 14:45  
11 into the difficulty of identifying sources about  
12 conversations. Primarily, I will say, to be helpful to  
13 the Tribunal, no. I mean, like, they were not -- they  
14 didn't stray beyond being, you know, chitchat.  
15 466 Q. Would you go so far as to say they were meet-and-greet 14:45  
16 situations?  
17 A. Yeah. And again, I think, vividly, one instance I  
18 think with Ms. O'Sullivan, there were a number of  
19 journalists, and I think one remarked that, you know,  
20 she was clearly trying to put best foot forward for the 14:45  
21 force. She, I think, was Acting Commissioner at this  
22 stage.  
23 467 Q. It would have been March 20 --  
24 A. Yes, so it was post-March 2014.  
25 468 Q. Yes. 14:45  
26 A. And she was very much a case of 'hello, nice to meet  
27 you', sort of thing, whereas -- but that was, I think,  
28 the extent of it, really.  
29 469 Q. Right. And in relation to Superintendent David Taylor,

1 do you know Superintendent David Taylor?

2 A. I know of him because I would have had limited dealings  
3 with him dating back to my time when I was chief  
4 reporter with the Sunday Independent. I wouldn't have  
5 just reported on politics, I would have had to do 14:46  
6 everything, pretty much. So there would have been the  
7 odd phone call to confirm a road traffic death, or  
8 something along those lines, something very  
9 perfunctory, and kind of, you know, like something very  
10 run of the mill, so to speak, in terms of Garda 14:46  
11 matters.

12 470 Q. And that is the entire context of all your dealings  
13 with Superintendent Taylor, do you think?

14 A. Yeah. I mean, I would have had very limited dealings  
15 with Dave Taylor, particularly when I moved into 14:46  
16 politics full-time, there would have been no real  
17 reason for me to have a conversation or have  
18 conversations with Dave Taylor.

19 471 Q. And in relation to -- you suggested you would have met  
20 former Commissioner O'Sullivan going in and out of 14:46  
21 Leinster House to various committee meetings. Do you  
22 think at that time you would have met  
23 Superintendent David Taylor going in and out?

24 A. Well, he would have obviously been present. I mean,  
25 usually there's a delegation that would attend. 14:47

26 472 Q. Yes.

27 A. And as the designated Press Officer, he obviously was  
28 always in attendance on such occasions.

29 473 Q. Okay. Do you think you said 'hello' to him or had a

1 conversation with him?

2 A. Again, I mean, we would have known of each --

3 474 Q. Yes.

4 A. We would never have been friends, or anything like  
5 that, but we would have said -- like as you would with 14:47  
6 professional colleagues, you say 'hello', but nothing  
7 more than that.

8 475 Q. All right. Now, if I could just quickly turn to your  
9 phone contacts --

10 A. Yes. 14:47

11 476 Q. -- between Superintendent Taylor's phone and your  
12 phone. It's at page 5226 of the materials. You see  
13 one in early February 2014, one of the second week of  
14 March 2014, one in April and two in May. Do you  
15 consider any of those being around the time of the 14:48  
16 hearings in the Dáil?

17 A. Well, the hearings in the Dáil were late January.

18 477 Q. Yes.

19 A. So -- but again, there was -- like, I think as  
20 Mr. O'Keefe said, I mean, there were numerous Garda 14:48  
21 matters at play at that stage that were kind of  
22 drifting into the political realm.

23 478 Q. Yes.

24 A. Guerin Report, so on and so forth. So I would have  
25 thought -- and you look at the length of the 14:48  
26 conversations, I mean, not one of them, I think, is  
27 longer than two minutes.

28 479 Q. Yes. No --

29 A. I mean, these were, I would say, perfunctory calls to,

1 say, checking logistics of a -- maybe a committee  
2 hearing or, you know, I think much more of a  
3 run-of-the-mill sort of question to Mr. Taylor as the  
4 Press Officer.

5 480 Q. All right.

14:48

6 MS. LEADER: If you would answer any questions.

7

8 THE WITNESS WAS CROSS-EXAMINED BY MR. MCGARRY:

9

10 481 Q. MR. MCGARRY: Mr. McConnell, Paul McGarry is my name.

14:49

11 I am one of the barristers representing Sergeant  
12 McCabe, and I just have one issue for you.

13 A. Sure.

14 482 Q. Superintendent Taylor says that he spoke to you I think  
15 on a couple of occasions, provided you with negative  
16 information or negative briefing about Sergeant McCabe.  
17 In respect of that conversation or those conversations,  
18 you're the only person that can, on one view,  
19 corroborate what he says, but also you're the only  
20 person that can contradict what he says.

14:49

14:49

21 A. Mm-hmm.

22 483 Q. You're not prepared to answer the questions in that  
23 context?

24 A. Mr. McGarry, my position is very clear: I'm not in a  
25 position to say whether he did or didn't.

14:49

26 MR. MCGARRY: Thank you.

27

28 THE WITNESS WAS CROSS-EXAMINED BY MR. FERRY:

29

1 484 Q. MR. FERRY: Good afternoon, Mr. McConnell.  
2 A. Afternoon.  
3 485 Q. My name is John Ferry, and I'm one of the lawyers who  
4 represents Superintendent David Taylor.  
5 A. It's very hard to hear you, Mr. Ferry. Could you speak 14:49  
6 up, please.  
7 486 Q. Sorry. My name is John Ferry, and I'm one of the  
8 lawyers who represents Superintendent David Taylor, the  
9 former Garda Press Officer, and I have heard your  
10 evidence to the Tribunal. Now, my client remains a 14:50  
11 serving officer in An Garda Síochána, and what he has  
12 brought before the Tribunal are matters of the utmost  
13 gravity in relation to the issues that he has raised,  
14 and, in fairness to him, he is the man who has given a  
15 waiver and he has provided whatever assistance was 14:50  
16 asked of him in relation to the investigators, and,  
17 when it was put to him, he has waived any privilege or  
18 any restriction on that material, by issuing that  
19 waiver.  
20 A. Mm-hmm. 14:50  
21 487 Q. And as things stand, he is in a very vulnerable  
22 position in that he has basically put everything that  
23 he knows out there, and he named, when he was asked to  
24 do so, nine journalists, and at this stage most of  
25 them, I think, have appeared before the Tribunal, but 14:51  
26 you are one of them?  
27 A. Mm-hmm, that's correct.  
28 488 Q. And I have to put it to you that Superintendent Taylor  
29 spoke to you in relation to Sergeant McCabe and that

1 was in the course of what he has described as providing  
2 a negative briefing, and that was under the  
3 instructions of his Commissioner at the time. Now,  
4 that's the position, that's -- his evidence has been to  
5 the Tribunal, and, as I say, he is in a very vulnerable 14:51  
6 position.

7 A. Mm-hmm.

8 489 Q. And I suppose, I mean, the Chairman and different  
9 people have tried to flesh this out with journalists,  
10 and we have been listening to them, but, you know, the 14:51  
11 chips are all on the table for Superintendent Taylor  
12 and he has identified nine journalists and you're one  
13 of them. And I put it to you that you were negatively  
14 briefed by him in relation to Sergeant McCabe?

15 A. Mr. Ferry, I will just come back to you and restate my 14:52  
16 position. I am just not in a position to get into  
17 discussing what may or may not have happened to -- that  
18 may or may not reveal a source, because of what I see  
19 as the overriding principle of journalistic privilege.

20 490 Q. Yes. And just for the sake of the record, my 14:52  
21 instructions are that the negative briefing would have  
22 included and been in or around the time of the PAC  
23 hearings that have been discussed and the attendance of  
24 the Gardaí there and in particular Sergeant McCabe,  
25 that would be the timeline that he is referring to in 14:53  
26 relation to speaking to you. So I am putting it to you  
27 that he was speaking to you around the time of the PAC  
28 in early 2014?

29 A. And again, I will just restate my position, Mr. Ferry.



1 491 Q. Yeah, well, I can't put it any further than that.

2 Thank you.

3 A. Thank you.

4 MR. QUINN: No questions, Mr. Chairman.

5 MR. WHELAN: No questions, Mr. Chairman. 14:53

6 CHAIRMAN: You have no questions?

7 MR. WHELAN: No.

8 CHAIRMAN: Did you have any further questions?

9 MS. LEADER: No questions, Chairman.

10

14:53

11 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

12

13 492 Q. CHAIRMAN: I'm just wondering, Mr. McConnell, when did  
14 you first realise that David Taylor had actually  
15 nominated you as being one of the people that he -- 14:53

16 A. When we received the first letter from the Tribunal.

17 493 Q. CHAIRMAN: -- that he propagandised?

18 A. I was first informed by the letter we got from our  
19 legal team, or, you know, whenever the legal  
20 correspondence would have come out. 14:54

21 494 Q. CHAIRMAN: Yes. Well, he wrote us a letter and he  
22 said, look, these are people, and he listed nine  
23 people, but it may seem that, as some of them are  
24 political correspondents, it may be a bit on the  
25 unlikely side. How did you feel when you were  
26 nominated? 14:54

27 A. Certainly a bit taken aback, Chairman, to say the  
28 least.

29 495 Q. CHAIRMAN: Yes.

1 A. But, you know, that was Mr. Taylor's prerogative.

2 496 Q. To do what?

3 A. Hmm?

4 497 Q. CHAIRMAN: It was his prerogative to do what?

5 A. Well, I mean, he felt he wanted to put names out there, 14:54

6 you know. I mean, I'm just not in a position now to

7 either get --

8 498 Q. CHAIRMAN: But it's not his prerogative to put a name

9 out there falsely, is it?

10 A. Possibly, I may have misspoken, but, I mean, that was 14:54

11 his actions, not mine, Mr. Chairman, I suppose is the

12 point I'm making.

13 499 Q. CHAIRMAN: Yes. And this would have caused you a heap

14 of trouble, wouldn't it?

15 A. Well, it certainly -- 14:54

16 500 Q. CHAIRMAN: Including, if not quite sleepless nights,

17 certainly a bit of lost sleep in thinking about the

18 matter, what might happen?

19 A. Well, certainly it would have taken up a lot of time,

20 Chairman, yes, no doubt about it. 14:54

21 501 Q. CHAIRMAN: So how do you feel about that?

22 A. Well, I mean, when you get a letter seeking assistance

23 from a tribunal, you take it seriously, and I have

24 sought to do so and taken it seriously, and balance up

25 the various considerations that are at play. 14:55

26 502 Q. CHAIRMAN: But did he nominate you in the wrong?

27 A. Mr. Chairman, I am afraid, to answer that question, I

28 think I'm getting in the position, and nice try, I

29 might argue, but I'm not going to get into a question

1 of, you know, possibly nominating or not nominating  
2 people, sources who have spoken to me.

3 503 Q. CHAIRMAN: But you heard the discussion that I had with  
4 Mr. O'Keeffe, your colleague?

5 A. I did, I was present, yes. 14:55

6 504 Q. CHAIRMAN: And about, you know, in the past, you're  
7 younger than me, but certainly over the course of the  
8 past 20 or 30 years, we've had any number of financial  
9 scandals.

10 A. Yes. 14:55

11 505 Q. CHAIRMAN: And we have had statements from Taoisigh,  
12 etcetera, about, you know, anything as innocuous as --  
13 there was a time, for instance, if you invested in a  
14 building society in this country, the Revenue could  
15 never look at it, and that was defended by a particular 14:56  
16 ex-Taoiseach who himself became the subject of two  
17 tribunals of inquiry, and you'll be aware of that?

18 A. I was certainly aware of it.

19 506 Q. CHAIRMAN: Yes. And this thing about the rumour flying  
20 around and the person who actually knows the rumour is 14:56  
21 false, just scotching the rumour on the spot --

22 A. Mm-hmm.

23 507 Q. CHAIRMAN: -- is that a wrong thing or a right thing?

24 A. Well, again, I would be very much of the same view.  
25 You know, if you rule out person X and then person Y 14:56  
26 comes, or someone asks, well, is person Y on the list?,  
27 and you remain stony-faced and say, I can't answer it,  
28 then there is a natural inference that that person is  
29 on the list.

1 508 Q. CHAIRMAN: well, I suppose in the context in which I  
2 was speaking, which was a group of lawyers sitting  
3 around a table, they would know that I could never  
4 breach client confidence, they would never ask me that  
5 question, or, if they did, they would know the answer 14:56  
6 they would get, well, saying, look, whatever this  
7 rumour is, you'd better stop because the list is in my  
8 room and the person's name is not on the list, was that  
9 a wrong thing to do?

10 A. Mr. Chairman, I would never seek to say you erred on 14:56  
11 that.

12 509 Q. CHAIRMAN: And it's nothing to do with me. I don't  
13 want to talk about myself for the next half hour, or  
14 whatever it may be.

15 A. I would -- okay, put me in your shoes, would I have 14:57  
16 done the same thing? Probably not, on the basis that  
17 you naturally open the door to further inquiries that  
18 may or may not get very difficult.

19 510 Q. CHAIRMAN: well, they can get as difficult as they  
20 want, but apart from putting me on the rack, I'm not 14:57  
21 going to say anything, that's just it.

22 A. And, Mr. Chairman, that's the position I find myself  
23 in. I'm just not in a position to disclose.

24 511 Q. CHAIRMAN: And if I asked you the question: were  
25 Woodward and Bernstein wrong then -- 14:57  
26 A. In terms of --

27 512 Q. CHAIRMAN: -- or do I have to wait 30 years before that  
28 can happen?

29 A. well, they obviously did it for whatever reasons they

1 chose to do it. But, I mean, I look at each case on an  
2 individual basis, I'm just not satisfied that I would  
3 be doing right by the principle of journalistic  
4 privilege to come in here and start revealing  
5 information if I had it. I'm not saying that I do. 14:57

6 513 Q. CHAIRMAN: Okay.

7 A. But also, as well, that, you know, and I have listened  
8 to lot of your testimony, Chairman, a lot of your  
9 commentary in relation to this, you know, you have  
10 spoken yourself about the chilling effect. I mean, 14:58  
11 that's not an abstract academic sort of --

12 514 Q. CHAIRMAN: I'm kind of sorry that I did, to tell you  
13 the truth, because 'chilling' must be one of the words  
14 now that has appeared most frequently in the  
15 transcript. But I didn't pick it up myself; it's 14:58  
16 actually a leading European Court of Human Rights  
17 journalist.

18 A. Well, I mean, there's the Channel 4 v. Ryanair case and  
19 then's there the Becker v. Norway case, which will  
20 obviously probably be examined. 14:58

21 515 Q. CHAIRMAN: And there are other cases, by the way, where  
22 the European Court of Human Rights said a journalist  
23 was wrong to withhold the information.

24 A. I know.

25 516 Q. CHAIRMAN: which is where it is in relation to a 14:58  
26 terrorist attack. I mean, if it got that bad, would  
27 you be in this position of neither confirming nor  
28 denying, simply not speaking?

29 A. I'm bound by that obligation, Mr. Chairman, and I would

1 have to make any decision in relation to that when  
2 faced with particular circumstances. But at the  
3 moment, I'm just in a position that I cannot get into a  
4 place where I am going to start discussing the  
5 gathering of information or anything that may or may 14:59  
6 not --

7 517 Q. CHAIRMAN: Believe it or not, I actually don't want you  
8 to.

9 A. Okay.

10 518 Q. CHAIRMAN: And I would much prefer if you didn't, and I 14:59  
11 have no interest in it, how you gather your information  
12 or how you do it.

13 A. Okay.

14 519 Q. CHAIRMAN: I'm not inquiring into that. I'm simply 14:59  
15 inquiring into David Taylor. Now, there is a question  
16 that I have to ask you, I suppose, in terms of  
17 fairness, because if I get the thing wrong, well then I  
18 get the thing wrong, and I don't want to get the thing  
19 wrong because this is supposed to be an answer to a  
20 matter of something that has, you know, shaken the 14:59  
21 faith of the Irish people in their police force. But  
22 you said to Ms. Leader, and I just want to confirm  
23 this, please, and what it means; I am very, very well  
24 aware of the fact that asking the same question twice  
25 means, and I am going to do this now, means that the 15:00  
26 witness can change their mind or can come up with some  
27 kind of smart answer which contradicts something that  
28 was clear before, but nonetheless, I have to take that  
29 risk, because this is not about adversarial

1 circumstances, I am actually trying to find where the  
2 truth lies in this. You told Ms. Leader, look, the  
3 first time I heard any rumour about Maurice McCabe was  
4 in the context of the PAC hearings, and what it was was  
5 journalistic chatter, and I take it it was journalistic 15:00  
6 chatter in relation to the rumour we have all been  
7 talking about?

8 A. Not necessarily. I don't -- just on remembering that,  
9 to be helpful to the Tribunal on this, Chairman, I  
10 don't think at that stage it was as specific as what 15:00  
11 has subsequently emerged, but certainly there was stuff  
12 being said that would lead one to -- or, sorry, for the  
13 purpose, I gathered at the time, to attack the  
14 credibility of Maurice McCabe, to say at least put a  
15 question-mark over his bona fides as a witness. You 15:01  
16 know, the whole idea -- the whole question that I was  
17 focused on was whether the PAC was right or wrong to  
18 bring him in, whether they were acting beyond their  
19 remit or not, and the question as to his motivation and  
20 so on and so forth, but it was very vague and again it 15:01  
21 was just unsubstantiated gossip along the corridors, or  
22 so to speak.

23 520 Q. CHAIRMAN: No, I understand that. So was it along the  
24 line that, I wonder are we right to take this fellow as  
25 someone whom we can completely trust, type thing? 15:01

26 A. Well, I remember vividly the day -- the night that the  
27 PAC met, it was downstairs in the committee rooms. I  
28 think you visited them yourself, Chairman, in Leinster  
29 House.

1 521 Q. CHAIRMAN: Yes.

2 A. It was a private meeting of the PAC, so the journalists  
3 were sort of gathering around the lobby waiting for  
4 whether or not Maurice McCabe would comment on the way  
5 out or -- but, more importantly, to get the views of 15:01  
6 the Committee members as to what sort of witness was  
7 he; was he a credible witness? Was he not? And  
8 overwhelmingly, they all came out and said, no, this  
9 guy has got something to say and is a credible witness.

10 522 Q. CHAIRMAN: But then there was some, I suppose, there 15:02  
11 was the negative feedback as well, which was to the  
12 effect, can we trust this person?

13 A. And again at the time because this was the hot  
14 political topic at the time, so pretty much every  
15 conversation you were having along the corridors of 15:02  
16 Leinster House were somewhat related, but there was a  
17 conflation of issues, Chairman. There were government  
18 pressures at the time for the PAC not to bring Maurice  
19 McCabe in because there was a feeling they were acting  
20 beyond their remit. But also, as well, there was the 15:02  
21 side issue as to his credibility, and a part of that,  
22 as I have said, there was a sort of a kind of  
23 journalistic chatter, so to speak, around him, his  
24 standing as a person.

25 523 Q. CHAIRMAN: Yes, but was his standing as a person by 15:02  
26 reason of the fact that he had been accused of  
27 something?

28 A. Again, that was not something that was overt at that  
29 stage.



1 524 Q. CHAIRMAN: Yes.

2 A. Yes.

3 525 Q. CHAIRMAN: So when did it become overt?

4 A. The first time I was really conscious of it was the

5 publication of Mr. Williams' article in the 15:02

6 Independent --

7 526 Q. CHAIRMAN: And that was.

8 A. -- you know, in such explicit terms, because it was at

9 that stage you were joining dots, you know, at that

10 stage, as to who was involved. 15:03

11 527 Q. CHAIRMAN: And did you hear anything else about it up

12 until the time that David Taylor left the Press Office,

13 or Martin Callinan?

14 A. No, because again, as I explained to Ms. Leader, that

15 wasn't really my line of -- area of reporting, so it 15:03

16 wasn't something I was very much focused on.

17 528 Q. CHAIRMAN: Well, you see, by reason of all of that, I'm

18 taking it to be the case that, as you never heard of

19 that on these particular times, you didn't hear of it

20 again, didn't hear of it until David Taylor left, and 15:03

21 indeed we all heard of it after David Taylor left the

22 Press Office and it had been the subject of extensive

23 commentary, that it couldn't possibly be the case that

24 David Taylor negatively briefed you, that is what I am

25 taking out of that. Now, you may wish to say to me, 15:03

26 you know, I can't answer or confirm that, you may wish

27 to say that to me. But I am telling you that is what

28 is in my head, and now is your chance to say whatever

29 you want to say.

1 A. Mr. Chairman, I cannot confirm nor deny.

2 529 Q. CHAIRMAN: I know, but one, two and three adds up and  
3 it makes six. So that is what I am thinking at the  
4 moment.

5 A. Yes. 15:04

6 530 Q. CHAIRMAN: So now is your chance to tell me that it  
7 means seven or I am leaving out a particular part of  
8 the equation.

9 A. Mr. Chairman, I'm just not going to get into a position  
10 where, you know, something I may say may draw you to an 15:04  
11 inference. You're the person in charge to make the  
12 inference, and I will maybe leave that discussion for  
13 you.

14 531 Q. CHAIRMAN: All right. And from what you have told me  
15 as well, I'm assuming when again we may have a -- I 15:04  
16 don't know if people have these kind of conversations  
17 outside the confines of ancient Greek philosophical  
18 discussions, but, you know, I'm inferring from what you  
19 are telling me, and you can tell me whether I am wrong  
20 or not, that in the event that I write an article -- 15:04  
21 sorry, no, I'm not going to write an article, I beg  
22 your pardon, I have only ever done it in academic  
23 journals.

24 A. Might write in the Examiner if you want, Mr. Chairman.

25 532 Q. CHAIRMAN: Sorry, I am getting as confused now as 15:04  
26 perhaps many other people. So in the event that I  
27 write a report - that is my job - saying whatever,  
28 you're not in a position to write an article at the  
29 moment in the newspaper saying, and I know you wouldn't

1 put it this way, the man is an idiot, he got it  
2 completely wrong, because I was approached by several  
3 Gardaí who told me the following at the time we're  
4 talking about, which ends, by the way, effectively it  
5 ends on the evidence that I have heard when Martin 15:05  
6 Callinan resigns, which is the 24th March 2014. It  
7 doesn't even go as far as the 10th June 2014. That's  
8 the evidence that I have. So I don't think you're in a  
9 position to write that article.

10 A. But I think it would be unfathomable, Mr. Chairman, 15:05  
11 that I would write an article that would contradict  
12 anything I've said here. You know, if I had  
13 information to give and I was comfortable to give it to  
14 the Tribunal, I would give it, rather than putting it  
15 into a journalistic article. 15:05

16 533 Q. CHAIRMAN: That seems to me to be an honourable  
17 position, all right. So there it is.

18 A. Thank you, Chairman.

19

20 THE WITNESS THEN WITHDREW 15:05

21

22 MR. McGUINNES: The next witness, sir, is Dearbhail  
23 McDonald, who has made two statements to the Tribunal,  
24 one is in volume 18 at page 4876, and the second one is  
25 in volume 24 at page 6495. 15:06  
26  
27  
28  
29

1 MS. DEARBHAIL L MCDONALD, HAVING BEEN SWORN, WAS DIRECTLY  
2 EXAMINED BY MS. LEADER:

3  
4 534 Q. MS. LEADER: Ms. McDonald, I think you are currently  
5 Group Business Editor with Independent News & Media? 15:06

6 A. Yes.

7 535 Q. And if you would outline your career path, please, to  
8 that position.

9 A. Sure. I studied an LLB in law in Trinity College  
10 Dublin and after a period of study I returned to 15:06  
11 Ireland to do a master's in journalism at Dublin City  
12 University. Thereafter, I joined The Sunday Times

13 newspaper, initially as a freelance journalist, was  
14 later made a staff journalist, held a number of areas  
15 that I covered in that role - religious and social 15:06  
16 affairs, health correspondent, and later I found myself

17 drifting back to what I had studied and essentially  
18 specialised as a legal affairs reporter. I left, I  
19 think, in late 2006, and joined the Irish Independent  
20 as legal affairs correspondent and had a number of 15:07

21 promotions in the time that I have been with INM,  
22 serving as legal affairs correspondent, legal editor,  
23 associate editor, and, for the past two-and-a-half  
24 years or so, have served as Group Business Editor.

25 536 Q. And sometime in March 2014 you were asked to review a 15:07  
26 story that Paul Williams was putting forward, is that  
27 correct?

28 A. Yeah. At that time I was covering the trial of three  
29 former Anglo executives, it was a major trial at the

1 Criminal Courts of Justice, and I recall that March I  
2 was asked by my editor, Stephen Rae, to come in and to  
3 essentially stress-test a story that had been written  
4 by a colleague that they were considering for a  
5 publication, and I was tasked with that by my editor 15:07  
6 and asked to go off and make my own inquiries and to  
7 come back and see was it fit for publication, in my  
8 view, in terms of both being legally and factually  
9 robust.

10 537 Q. And did you know at that time that the article was 15:08  
11 referring to Sergeant Maurice McCabe and Ms. D in her  
12 real name?

13 A. No, no. My knowledge -- as I said, most of my role as  
14 legal editor at that time was concentrated on the CCJ  
15 and on that trial. I was broadly aware, obviously, of 15:08  
16 the succession of Garda controversies. I think that --  
17 I think it was in January when former Garda  
18 Commissioner Martin Callinan appeared, and, regardless  
19 of how his remarks were intended or received, that  
20 'disgusting' remark sort of propelled that story into a 15:08  
21 major political story. As a working journalist, I  
22 could not have been but aware of that, but, as I say,  
23 my role was quite confined at that time. And the first  
24 I became of the allegations, too, in relation that had  
25 been made by the young woman who we now know as Ms. D 15:09  
26 was when I was tasked by Stephen Rae to go off and to  
27 fact-check or to give a view on the proposed  
28 publication.

29 538 Q. All right. And when you were tasked by Mr. Rae to give

1 a view on the publication, did you know it was  
2 referring to Sergeant McCabe?

3 A. No, I did. Yeah, at that stage it was fairly evident  
4 that it was, and I undertook my own inquiries and  
5 reported back to my editor, Stephen Rae, to our group 15:09  
6 head of news, Stephen Mallon, and, as the Tribunal is  
7 aware from my statement, I did compose a memo over  
8 which I've raised confidentiality and privilege,  
9 outlining some of my observations, concerns and the  
10 risks as I perceived them, and that was the end of the 15:09  
11 matter for me.

12 539 Q. All right. So you said in your first statement - and  
13 it can be brought up on screen, 4876, at the very  
14 bottom of the page - that you reviewed the story and  
15 watched a video-recording, or perhaps part thereof, of 15:10  
16 an interview with Ms. D on Friday, the 14th March, in  
17 your offices. And in the next page you said you  
18 believed "Ian Mallon, then group head of news, may have  
19 been there for some part of this process, but otherwise  
20 it was just Stephen Rae and myself." 15:10

21 A. Yeah.

22 540 Q. And you said:  
23  
24 "We had a discussion about the proposed publication in  
25 general and for the purpose of making sure the proposed 15:10  
26 article was legally and factually robust."

27 A. That's correct.

28 541 Q. All right. And aside from watching part of the video,  
29 and your discussions with Mr. Mallon and Mr. Rae, did

1           you make other inquiries about the proposed article?  
2        A.    well, I think, looking back now, essentially I had been  
3           provided with the proposed article and the video. I  
4           had looked at it I think on my own, first of all.  
5   542 Q.    Yes. 15:10  
6        A.    And then - I'm a journalist of over 15 years'  
7           experience now - I took away what I could from that and  
8           did what I was asked, I stress-tested it, I made a  
9           number of inquiries, and, as I say, I came back with  
10          some thoughts and observations on that day. The reason 15:11  
11         why it was March 14th I recall is that was the day that  
12         I wrote the memo and I believe that we had that meeting  
13         on that day. There was a robust discussion about it, I  
14         gave my views, wrote a memo with my notes, and that was  
15         the end of the matter, for me at least. 15:11  
16   543 Q.    So all your work in connection with that article  
17           happened on one day, the 14th March?  
18        A.    No, no, I actually --  
19   544 Q.    Sorry --  
20        A.    I said on or around -- 15:11  
21   545 Q.    Okay.  
22        A.    -- March 14th. The reason why I'm very, very clear  
23           about March 14th in particular is because that is the  
24           day that I wrote my memo. My recollection is that, in  
25           the early part of the week, I had been provided with 15:11  
26           the material and asked to go away off and stress-test  
27           it, and that process in itself of stress-testing other  
28           people's stories, it's a little bit unusual if it is  
29           finally made, but we stress-test each other's stories

1 all of the time, and I think that is good editorial  
2 practice.

3 546 Q. Just in relation to the going away and making your own  
4 inquiries about it, I don't want to ask you about your  
5 sources, but what I'm going to ask you is: Did you 15:12  
6 discuss -- did Superintendent Taylor come to you at any  
7 stage?

8 A. Well, I think if you look at the early part,  
9 Ms. Leader --

10 547 Q. Yes. 15:12

11 A. -- of my statement, I said that I was not briefed  
12 negatively by or on behalf of anyone from An Garda  
13 Síochána, and that would include Superintendent Taylor.  
14 I should have added that I wasn't briefed positively  
15 either, because I wasn't briefed at all by any member 15:12  
16 of An Garda Síochána, by or on their behalf, and that  
17 includes Superintendent Taylor.

18 548 Q. Okay. And that takes care of that side --

19 A. That takes care of that issue.

20 549 Q. Okay. And just in relation to what you've outlined, 15:12  
21 you did your memo in relation to the article. Did you  
22 have any other dealings with --

23 A. No, that was it. It was quite a discrete function,  
24 task that I had been assigned. I did that. I had  
25 no -- I wasn't apprised of anything that happened 15:13  
26 before that, or how it came about, and I had no  
27 interaction thereafter with it. I went back to the CCJ  
28 after that.

29 550 Q. Now, you were also asked at a later stage, and you



1 wrote to the Tribunal in relation to that, about any  
2 knowledge you may or may not have concerning an  
3 anonymous letter or a poison pen letter which was  
4 written concerning Sergeant McCabe, and you know what  
5 that letter is, isn't that correct?

15:13

6 A. Well, I do, since --

7 551 Q. It has been shown to you --

8 A. -- the interactions from the Tribunal. I was quite  
9 surprised to receive that correspondence. It was the  
10 Tribunal through -- or my lawyer, our lawyers, through  
11 the Tribunal, that brought attention to it, and I have  
12 no knowledge of it, no receipt of it, haven't had it in  
13 my possession, did not see it until it was provided by  
14 the Tribunal. And just even in terms of my own general  
15 practice, I do maintain a readers' correspondence file  
16 where it's suitable to hold on to material, and, if I  
17 had received that, I would have brought it to the  
18 attention of the relevant news editor or person that  
19 was working on it. But I certainly, if it had been in  
20 possession, would not have given it away. I have a  
21 practice of retaining important correspondence when I  
22 receive it, including unsolicited and anonymous  
23 correspondence.

15:13

15:14

15:14

24 552 Q. And you checked back on any correspondence?

25 A. I have checked back through all of my correspondence  
26 from that time.

15:14

27 MS. LEADER: If you would answer any questions anybody  
28 else might have for you.

29 A. Thank you.

1 MR. MCGARRY: No questions, sir. Thank you.

2 CHAIRMAN: I just wanted to ask you a question, if I  
3 might, Mr. McGarry. The articles, or one or other or  
4 all of them, from the 14th April 2014 by Paul Williams,  
5 are they the subject of litigation by Sergeant McCabe? 15:14

6 MR. MCGARRY: No, Chairman.

7 CHAIRMAN: They are not. All right. Okay, no, that is  
8 fine.

9 A. Okay. Thank you.

10 CHAIRMAN: No, just hang on. Sorry, there may be more. 15:14  
11 Yes, Mr. Ferry, did you want to ask any questions?

12 MR. FERRY: Just very briefly.

13

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

15 15:15

16 553 Q. MR. FERRY: Hello there, my name is John Ferry. I just  
17 have a couple of queries. You were obviously following  
18 the Anglo trial at that time?

19 A. I was.

20 554 Q. And then you carried out this task on behalf of your 15:15  
21 employer. Just, I appreciate that you said you made  
22 inquiries and you stress-tested, is it a story or  
23 was it the --

24 A. It was the proposed article.

25 555 Q. Yeah. So it was presented to you in a draft format of 15:15  
26 what was intended to be printed?

27 A. Yes.

28 556 Q. And as part of your stress-testing, had you any  
29 information available to you as to any checks that

1 Mr. Williams had carried out?  
2 A. No. And neither before, during or to this day have I  
3 had ever any discussion with Paul about that story, so  
4 I wasn't party to any of his processes in respect of  
5 doing it. I was brought in, I suppose, maybe as an 15:16  
6 independent person within the newsroom who had  
7 extensive experience of both defamation and contempt  
8 and just asked for my view.  
9 MR. FERRY: That is fine. Thanks very much.  
10 MR. KENNEDY: No questions, Mr. Chairman. 15:16  
11 MR. HARTY: Chairman, I have no questions.  
12 CHAIRMAN: Do you want to ask any questions,  
13 Mr. Fanning? You are going to go last, I take it?  
14 MR. FANNING: I would go last and it would only arise  
15 if something else arises. Mr. O'Higgins may have 15:16  
16 questions on behalf of the Garda Commissioner.  
17 CHAIRMAN: Well, Mr. Ó Muircheartaigh is first.  
18  
19 THE WITNESS WAS CROSS-EXAMINED BY MR. Ó MUIRCHEARTAIGH:  
20 15:16  
21 557 Q. MR. Ó MUIRCHEARTAIGH: Just two questions. Fionán  
22 Ó Muircheartaigh is my name, and I appear for Alison  
23 O'Reilly. The video on this interview by Ms. D, were  
24 you shown this as -- did I understand you to say you  
25 were shown this as part of the process of assessing the 15:17  
26 story?  
27 A. It was given to me for the reasons of me assessing it  
28 in the overall context of it, so I viewed it in that  
29 context.

1 558 Q. And you mentioned March 14th, was that the day you  
2 think -- that was the day you wrote the memo; was that  
3 the day you might have seen the video as well?  
4 A. Well, I think that I saw it in the earlier part of the  
5 week and then in my -- just if I look to my statement, 15:17  
6 sorry, it's a little bit further down, in the meeting  
7 that I held with Stephen and possibly with Ian Mallon,  
8 I would have referred to parts of the video for the  
9 purposes of giving my advices and observations.

10 559 Q. And was there anyone -- I think you may have indicated, 15:17  
11 was there anyone with you when you saw the video?  
12 A. Both Stephen and Ian.

13 560 Q. And my last question is: Is it usual for journalists  
14 to have videos of their interviews with sources?  
15 A. Well, we're in a platform-neutral media environment 15:17  
16 where we don't cling on to those distinctions of print  
17 or broadcast any more. It would not be unusual if you  
18 were interviewing someone to have a video or audio of  
19 that, so it would not be entirely unusual to have the  
20 interviews or the background material, whatever it is, 15:18  
21 in a number of different formats.

22 561 Q. When you say it wouldn't be entirely unusual, what does  
23 that mean?  
24 A. Well, it wouldn't be unusual at all. I think in the  
25 past there would have been very, very strict 15:18  
26 delineations between print journalism and broadcast  
27 journalism, but that line hasn't been there for quite  
28 some time, so it would not be unusual if you had  
29 interviewed someone to have it on audio or video. That

1 is just simply the way we operate now.

2 CHAIRMAN: In other words, I think what you are saying  
3 is, if you are reading in the newspaper and you go to  
4 the website, it may be there is going to be a clip  
5 there and you can press play and there would be a clip 15:18  
6 of some kind.

7 A. Yes.

8 CHAIRMAN: But with someone who is anonymous, that  
9 wouldn't happen, but it could be dark in the room,  
10 actors' voice, or whatever, but that enhances, if you 15:19  
11 like, the readability --

12 A. That is very commonplace in broadcast, Mr. Chairman,  
13 for source material, to have voice or other ways of  
14 masking it out. So it wouldn't be unusual for  
15 sensitive material at least. 15:19

16 MR. Ó MUI RCHEARTAIGH: Thank you very much.

17 MS. LEADER: Mr. Fanning?

18 CHAIRMAN: No, I think Mr. O'Higgins has some  
19 questions.

20 15:19

21 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL

22 O' HIGGINS:

23

24 562 Q. MR. MÍCHEÁL O' HIGGINS: Ms. McDonald, Micheál O'Higgins  
25 for An Garda Síochána and formers Commissioners 15:19  
26 Callinan and O'Sullivan. You were, it is clear from  
27 your evidence, you played a role in fact-checking prior  
28 to the publication of Paul Williams' article relating  
29 to his interview with Ms. D?

1 A. Yeah, I suppose, Mr. O'Higgins, a lot of the time when  
2 I am called in, it's actually to assess it from a legal  
3 perspective, even though I'm not a lawyer. But  
4 obviously with extensive experience, a legal affairs  
5 editor, I would sometimes be asked to go in and check 15:20  
6 that that is a task that in itself involves an  
7 assessment of the facts. What I would have been  
8 looking to, as I would with most of my legal stories,  
9 are -- is, you know, if this went to court, what  
10 information we would have, how we would be able to 15:20  
11 stand it up. It was that kind of an assessment and  
12 that was the kind of advices I gave.

13 563 Q. Yes. You weren't present but you may have seen in the,  
14 for instance, cross-examination of the journalist Paul  
15 Williams, last July, there was a degree of criticism 15:20  
16 directed at the fact that his articles were published  
17 at all, having regard to their contents, were you aware  
18 of that?

19 A. I can't speak to that. I wasn't -- I was just  
20 generally aware of it, but I can't speak to the 15:20  
21 particular criticisms today.

22 564 Q. Well, can I ask you this, and I'm trying to deal with  
23 matters at a reasonable level of generality without  
24 getting down into too much specifics, but what would  
25 you say to the suggestion that appears to have been 15:21  
26 made certainly implicitly if not expressly, what would  
27 you say to the suggestion that by your -- looking at  
28 your role in the matter, by your participating in the  
29 process that led to the publication of Paul Williams'

1 articles in April of 2014, following his meeting with  
2 Ms. D in March 2014, what would you say to the  
3 suggestion that you, insofar as you discharged your  
4 role, you participated in a smearing of Sergeant  
5 McCabe?

15:21

6 A. I would absolutely and utterly reject it. I believe  
7 that the advices that I gave and the role that I played  
8 actually went to ensure that Mr. McCabe's reputation  
9 was protected. I gave advices, I'm not going to go  
10 into the specific advices that I gave. But the  
11 ultimate decision of an editor is final. And perhaps I  
12 wouldn't -- well, I know I advised against publication.

15:21

13 565 Q. Yes. And in that connection, it is relevant, is it  
14 not, that it would appear Ms. D/the D family had made  
15 efforts to contact Paul Williams?

15:22

16 A. I have no knowledge of any contact between Mr. Williams  
17 and Ms. D or her family.

18 566 Q. All right. Well, I won't ask you any questions in  
19 relation to that. But in relation to your role in the  
20 process, you were, were you not, concerned to ensure  
21 that anything that was published by your newspaper was  
22 factually correct and could be stood over?

15:22

23 A. I wanted to ensure it was factually correct, that it  
24 was legally robust. I gave my advices. Different  
25 editors, different journalists have different opinions  
26 of risk. I think by virtue of the role that I held for  
27 many years, I probably would be very, very cautious in  
28 that regard.

15:22

29 567 Q. Yes. And the story that was ultimately published,

1           you're aware, broadly speaking, of the contents of the  
2           articles that did follow in April/May?

3           A.    I was aware of the one that subsequently appeared in  
4           April. I had no function in relation to this entire  
5           exercise after the March incident, and so literally I   15:23  
6           wasn't asked my opinion again.

7 568 Q.    Right. Well, I just want to ask you again dealing with  
8           matters generally, the story of Ms. D or her -- the  
9           position that was put forward in the article embodying  
10          her complaint, as it were, was, if you like, a   15:23  
11          complaint that is potentially or actually critical of  
12          An Garda Síochána, isn't that right, in that -- I will  
13          finish out the question so you can deal with it -- it  
14          was part of her complaint that An Garda Síochána had  
15          failed to investigate properly her initial complaint   15:23  
16          back at the time of her disclosing the alleged offence?

17          A.    Yes. And, sorry, your specific question in relation to  
18          that is?

19 569 Q.    And my question is: The story, the Ms. D story that  
20          led ultimately to the publication of the article, was a   15:23  
21          story that was, on her case, critical of An Garda  
22          Síochána?

23          A.    Yes. As I understood it, she was critical of aspects  
24          of the investigation.

25 570 Q.    Yes. And lastly, can I ask you, what do you say to the   15:24  
26          suggestion that appears again to have been made  
27          certainly to Paul Williams in last July that there was  
28          a failure to put to Sergeant McCabe to make him aware  
29          of the article and put its contents to him and that



1 that was profoundly unfair?

2 A. I have no knowledge of that because I was brought in  
3 specifically to assess or give my views or opinions, I  
4 have no absolutely no carriage or knowledge of what the  
5 company otherwise did in terms of liaising with 15:24  
6 Mr. McCabe or any of the relevant parties.

7 571 Q. Fine. I indicated that was my last question. Just one  
8 other question. It would appear from a statement of  
9 Maurice McCabe of April of 2018 that in relation to the  
10 anonymous letter about which Ms. Leader asked you, that 15:25  
11 you, in fact, did have a role in relation to the  
12 issuance or the production of that letter and it coming  
13 to the attention of Sergeant McCabe's side of the  
14 house?

15 A. Yeah. And I just have to take issue and disagree with 15:25  
16 that because I am quite emphatic about my knowledge.  
17 The first time I saw or received the letter, had  
18 knowledge of the so-called foxtrot bravo letter, when  
19 it was brought to my attention courtesy of the  
20 Tribunal. 15:25

21 CHAIRMAN: would you mind giving us a reference just  
22 for that.

23 MR. MÍCHEÁL O' HIGGINS: Page 6494.

24 CHAIRMAN: It would help, probably. If we can get that  
25 up on the screen, just to make sure that she knows 15:25  
26 exactly what the thing is. I'm sure you do, but even  
27 still.

28 A. Yeah.

29 CHAIRMAN: So the page is? would you just say it

1 again, please, Mr. O'Higgins.  
2 MR. MÍCHEÁL O' HIGGINS: Page 6494. But I simply want  
3 you to just confirm this, if you might; insofar as it  
4 is contended by Sergeant McCabe that he received that  
5 particular anonymous letter on foot of something you 15:26  
6 did bringing it to the attention of his side of the  
7 house, you're absolutely clear that that is factually  
8 mistaken?  
9 A. Yes. He says, "it was my understanding", namely  
10 Mr. McCabe's understanding at the time, that the 15:26  
11 document had been given to a person. That was -- that  
12 is not the case.  
13 MR. MÍCHEÁL O' HIGGINS: Right. Thank you very much.  
14 A. Okay.  
15 CHAIRMAN: Did you have any questions, Mr. Fanning? 15:26  
16 MR. FANNING: No, nothing arising, Mr. Chairman.  
17 CHAIRMAN: Was there anything arising, Ms. Leader?  
18  
19 THE WITNESS WAS RE-EXAMINED BY MS. LEADER:  
20 15:26  
21 572 Q. MS. LEADER: There was one thing I forgot to ask you.  
22 You didn't discuss the interview or the story with  
23 Mr. Williams himself?  
24 A. No, not at the time, not -- obviously not before and  
25 not up to and including today, I have never discussed 15:27  
26 it with Paul.  
27 573 Q. And in relation to the video, did you ever discuss it  
28 with either Ms. Debbie McCann or Ms. Alison O'Reilly?  
29 A. No, I have never had any discussions with those two

1 persons, or indeed any other colleagues, Ms. Leader.  
2 As I discussed, my function was a very, very discrete  
3 one; I was brought in to assess it, I gave my views,  
4 and that was the end of the matter for me. My  
5 interaction ended on March 14th, 2014.

15:27

6  
7 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

8  
9 574 Q. CHAIRMAN: Yes, there was just one thing that arose,  
10 and I am just recalling Paul Williams' evidence, indeed 15:27  
11 I have the transcript and I have read it, but as I  
12 understood it, he - and again I may be wrong about this  
13 so please correct me in the event that I am wrong - but  
14 he said that the story initially came in terms of a  
15 plan as being here's a woman who was sexually abused by 15:27  
16 Maurice McCabe. In other words, it was, if you like,  
17 what was talked about in other newsrooms as a big Irish  
18 Independent or Sunday Independent exclusive. In other  
19 words, that it was the allegation itself being repeated  
20 in the newspaper as opposed to referred to very, very, 15:28  
21 very tangentially, is, I made a complaint and they  
22 didn't investigate it properly.

23 A. So, sorry, what is the nature of the question,  
24 Mr. Chairman?

25 575 Q. CHAIRMAN: Yes, the nature of the question is, I 15:28  
26 understood you to say that you had issued a negative  
27 opinion that they shouldn't issue an article like that,  
28 that it -- that it morphed, in other words, in  
29 editorial process from being an interview with someone

1 who says that a particular individual had sexually  
2 abused her, into being an article that here is yet  
3 another case from Cavan where someone is saying that  
4 the Gardaí didn't properly investigate their case?  
5 A. Yeah. I can't really speak to what was generally 15:28  
6 happening in the newsroom at that time. I was  
7 concerned with matters in relation to Mr. Whelan,  
8 Mr. McAteer and Mr. FitzPatrick at that time. As I  
9 say, my role on it was very, very discrete. My  
10 knowledge of matters, not much beyond what was 15:28  
11 happening in the papers at that time. And as I say, it  
12 was an important story, and the reason why I know it  
13 was an important story was because I was called in to  
14 give my views on it.

15 576 Q. CHAIRMAN: Yes. But you said you gave advices against 15:29  
16 publication?

17 A. I gave a number of advices, and I would have been of  
18 the view, possibly informed by the fact that I held  
19 legal editor and had quite a lot of experience with  
20 high-risk situations, and I just believed that, in the 15:29  
21 overall picture, that it probably wasn't advisable at  
22 that time.

23 577 Q. CHAIRMAN: Oh, you mean to publish the article as it  
24 appeared as opposed to publish an article, a big  
25 article -- 15:29

26 A. What I believe and what I have said in my statement,  
27 Mr. Chairman, is that I believe that, as part of that  
28 exercise, some of the concerns and observations that I  
29 had raised were addressed when an article was

1 subsequently published.

2 578 Q. CHAIRMAN: Yes, but did the article radically change  
3 from, here's a woman saying Maurice McCabe sexually  
4 abused her into being here's an anonymous woman who  
5 says that she was sexually abused by -- 15:29

6 A. Again, for reasons of confidentiality and privilege, I  
7 don't want to go into the specific advices that I gave,  
8 but certainly there were material changes between the  
9 draft I saw and the article that was ultimately  
10 published. 15:30

11 579 Q. CHAIRMAN: Yes. Well, Paul Williams didn't claim any  
12 kind of privilege, and, look, that is neither here nor  
13 there, but as I understood him to say - and I will  
14 check the transcript, because I'm checking my note  
15 now - it started out certainly as a plan for an article 15:30  
16 about, if it could be stood up, here is a woman who  
17 says that Maurice McCabe sexually abused her, type  
18 thing, into something completely different?

19 A. Again, I can't speak to his -- the journey that he went  
20 on with that story. I can only speak to what I was 15:30  
21 tasked to do, and I gave my advices. Look, I genuinely  
22 don't have any knowledge of how it came about or what  
23 was in his mind at that time. All I know is that I had  
24 a very discrete role.

25 580 Q. CHAIRMAN: No, it just dropped onto your desk, 15:30  
26 basically is the situation?

27 A. I was asked by my editor-in-chief to assist on the  
28 story and carried out a news-gathering task in light of  
29 my duties and my job at that time.

1 581 Q. CHAIRMAN: That is fine. Thank you very much.

2 A. Thank you.

3

4 THE WITNESS THEN WITHDREW

5

15:31

6 MS. LEADER: The next witness, sir, is Mr. Ian Mallon,  
7 whose statement appears in volume 19 at page 5314 of  
8 the materials.

9

10 MR. IAN MALLON, HAVING BEEN SWORN, WAS DIRECTLY

15:31

11 EXAMINED BY MS. LEADER:

12

13 582 Q. MS. LEADER: Mr. Mallon, I think you were appointed  
14 group head of news in INM, Independent News & Media, in  
15 September 2013?

15:32

16 A. That's correct.

17 583 Q. And how long did you hold that post?

18 A. I held that post for one year, and then I was appointed  
19 group head of content, which was an overarching role as  
20 well. It still, you know, covered news, but also  
21 brought in politics, sport, business.

15:32

22 584 Q. And prior to September 2013 were you employed with INM?

23 A. I was. I was the operations editor, as it was called,  
24 with the Irish Independent newspaper.

25 585 Q. Okay. Was that the case in June 2012?

15:32

26 A. In June 2012, no, I was the deputy editor of the  
27 Herald, I think.

28 586 Q. The Herald?

29 A. Yeah. So September 2012, September 2013 with the Irish

1 Independent.

2 587 Q. And the Herald isn't part of the Independent group?

3 A. It is.

4 588 Q. Or is it?

5 A. It is, yes. 15:32

6 589 Q. It is. So it's all part of Irish --

7 A. INM.

8 590 Q. INM. Now, just, first of all, in relation to the  
9 former commissioners and Superintendent David Taylor.  
10 Do you know former Commissioner O'Sullivan? 15:33

11 A. No, I don't.

12 591 Q. And former Commissioner Callinan?

13 A. No.

14 592 Q. And Superintendent David Taylor?

15 A. I knew him only from a telephone relationship where 15:33  
16 sometimes I would have to stress-test stories late at  
17 night that were lead stories or important stories, and  
18 I would ring David Taylor independently. I can't  
19 specifically say when or where, but I would certainly  
20 have had telephone conversations with him, but never 15:33  
21 met him or wasn't familiar with him apart from on the  
22 phone.

23 593 Q. And was that as his role as Garda Press Officer?

24 A. Yes, he was the main person in the Garda Press Office.

25 594 Q. Were they on-the-record telephone conversations? 15:33

26 A. I can't go into -- I don't know -- if a story came to  
27 me and we were going to run it and obviously you would  
28 respect the integrity of the journalist writing the  
29 story, but there's no harm in making an extra check,

1 and on occasion I may have done that, but really on  
2 occasion.

3 595 Q. So all the contacts you had with Superintendent Taylor  
4 were in the context of stories being published the next  
5 day? 15:34

6 A. That's all, yes.

7 596 Q. Right. Okay. Now, when did you first hear an  
8 allegation of sexual assault made against Sergeant  
9 McCabe?

10 A. I don't know specifically, I have no date. 15:34

11 597 Q. All right. Well, you suggest in your statement to the  
12 Tribunal that it was as a result of Mr. Williams?

13 A. Yes, some time in early 2014.

14 598 Q. All right. And how did that come about?

15 A. That would have come about through Paul, through an 15:34  
16 allegation made by an alleged victim of a sexual  
17 assault claiming that there was a Garda impropriety, if  
18 you like, into the investigation, into her case, and  
19 Paul Williams was the reporter who was in contact with  
20 her family. Her family had come to him, I believe. 15:35  
21 And as head of news, I would have been made aware of  
22 it.

23 599 Q. All right. So do I take it from that that the first  
24 time you heard anything in relation to what we refer to  
25 as the Ms. D allegation, was arising out of the Paul 15:35  
26 Williams contact with the Ds?

27 A. It would have certainly been around that time, yes.

28 600 Q. Okay. If we can just look at your statement, it's at  
29 page 5315, it might assist you. You say there, if you



1 look at the paragraph beginning "My first knowledge":  
2  
3 "My first knowledge that any accusation concerning  
4 Sergeant Maurice McCabe having allegedly sexually  
5 assaulted a child was in March 2014." 15:36  
6  
7 Do you think that is right?  
8 A. This is my statement?  
9 601 Q. This is your own statement. Yes.  
10 A. Yes, yes, of course. Sorry, I said earlier 2014, and 15:36  
11 March specifically, obviously.  
12 602 Q. Yes. And you time it as follows:  
13  
14 "Paul Williams, a journalist with Independent  
15 Newspapers, had approached Kevin Doyle, then news 15:36  
16 editor, to arrange an interview with a young woman who  
17 was claiming that she had been sexually assaulted by  
18 Sergeant McCabe. I cannot recall the exact date of my  
19 becoming aware but it was around the time that Paul  
20 Williams conducted an interview with this young lady." 15:36  
21  
22 Do you see that?  
23 A. Yes.  
24 603 Q. So can the Tribunal take it that your knowledge of the  
25 D allegations came about as a result of Paul Williams' 15:36  
26 interview or dealings with the D family?  
27 A. Yes, that's correct, and it would have been just before  
28 that, I guess, because I would have been in contact  
29 with Paul Williams on the day he was going to interview

1 Ms. D.

2 604 Q. On the very day?

3 A. Yeah. So, in other words, rather than say, yes, yes,  
4 that's correct, no, I would have been aware of it  
5 slightly before that. 15:37

6 605 Q. Yes.

7 A. Yes.

8 606 Q. Well, we know, for instance, that Mr. Williams called  
9 to the D family before interviewing Ms. D, a few days  
10 before that, you understand? 15:37

11 A. Yes.

12 607 Q. So he made two trips to the D family. Now, you're  
13 familiar with the evidence of Ms. Harris that she has  
14 given to the Tribunal?

15 A. Yes, I am. 15:37

16 608 Q. She has timed her first knowledge of the D allegation,  
17 she has tied it into an interview or an article that  
18 appeared in the Independent on the 5th May 2013, which  
19 is almost a year before you heard of the D allegation?

20 A. Can you say that date again, please, Ms. Leader. 15:37

21 609 Q. She has tied it in with an article which appeared in  
22 the Independent in May 2013.

23 A. In the Sunday Independent, is that correct?

24 610 Q. I think so.

25 A. Yes, by Philip Ryan, I believe. 15:38

26 611 Q. Yes, that article, yes. Now, had you heard anything  
27 around that time in relation to Sergeant McCabe having  
28 allegedly sexually assaulted anybody?

29 A. I don't think so. Not that far back, no.

1 612 Q. Can you rule it out?  
2 A. I can rule absolutely in the fact that I'm not sure, in  
3 that I just don't know.  
4 613 Q. You just don't know?  
5 A. I wouldn't have thought so. I wouldn't have thought I 15:38  
6 would have been aware of that far back. Well, I mean,  
7 I say that, I only became aware of it in March 2014,  
8 so, I mean, if you want, I will, yes, absolutely rule  
9 it out.  
10 614 Q. I suppose it's not if I want. It's what -- 15:38  
11 A. Yes. Well, I mean, my statement says March 2014, so  
12 that is what I will -- for the record.  
13 615 Q. Okay. You must have been aware, as somebody who has  
14 worked in the newspaper industry for a long time, that  
15 Sergeant McCabe was raising matters in relation to 15:39  
16 standards in policing and these were being aired in  
17 public and a controversy was happening in relation to  
18 the matter?  
19 A. I wasn't aware of too much to do with Sergeant McCabe  
20 or his grievances. I was in overall charge of news 15:39  
21 within the organisation, but I was not liaising with  
22 Gardaí. I would have dealt with our own crime  
23 correspondents, but I was not in a position to pick up  
24 rumour and gossip or whatever has been, you know,  
25 declared about Sergeant McCabe. My only concern -- my 15:39  
26 main concern with this particular story, the D case,  
27 was that a woman was claiming that a Garda  
28 investigation into her case was wrong. And obviously,  
29 as a part of that, I would have known that Sergeant

1 Maurice McCabe was the name being mentioned as the  
2 alleged attacker, if you like - I have to be careful  
3 with my words, obviously - but, you know, as the person  
4 alleged here. But regarding, you know, that he was  
5 somebody who was alleging malpractice in An Garda 15:40  
6 Síochána on a regular basis, I wouldn't have been party  
7 to much of that talk, conversation or knowledge.

8 616 Q. Well, do you think if you'd heard a story or a rumour  
9 or a murmuring that Sergeant McCabe had assaulted a  
10 minor, do you think you would remember it? 15:40

11 A. I remember it in the context of Paul Williams doing the  
12 story, yes, absolutely, one hundred percent, and you  
13 would always remember an allegation, as such, that a  
14 garda sergeant was alleged to have carried out. But I  
15 was also aware of the fact that the most important 15:40  
16 thing for me, because the DPP had decided not to  
17 proceed with the case, that, just, you know, that there  
18 was an allegation that new evidence had come up or that  
19 a new charge was being made about the Garda  
20 investigation itself. 15:41

21 617 Q. Okay. So if we just take it step by step. You say you  
22 were aware in a very general sense that Sergeant McCabe  
23 was a name in public, was a public name, is that  
24 correct?

25 A. I don't think he was publicly named by the Irish 15:41  
26 Independent, Ms. Leader.

27 618 Q. I'm not saying he was, I'm not saying he was.  
28 A. When you say in public, within a newsroom?  
29 619 Q. Within Ireland. Nothing to do with the Independent.

1 A. No, I don't know if he was named publicly before that  
2 time.

3 620 Q. All right. We will say 2014, he would have been --

4 A. I don't know when Sergeant McCabe's name came into the  
5 public ether. 15:41

6 621 Q. You don't know?

7 A. I do know now his name is very public.

8 622 Q. Yes.

9 A. But I don't know when the point was that his name came  
10 into the public ether. 15:41

11 623 Q. All right, all right. So you don't know when his name  
12 became public?

13 A. I don't.

14 624 Q. You don't. You say you would remember the first time  
15 you heard that that a garda sergeant had allegedly 15:41  
16 assaulted a child, is that correct?

17 A. No, I wouldn't remember specifically the date or time,  
18 you know.

19 625 Q. But in or around?

20 A. Yes, yes. 15:42

21 626 Q. We will put them up.

22 A. Sure.

23 627 Q. So do you think you heard that a garda sergeant had  
24 assaulted a child in 2013?

25 A. I don't think so. I don't know. 15:42

26 628 Q. You don't know?

27 A. I don't know.

28 629 Q. You can't explain it as a possibility?

29 A. Well, I wouldn't like to, no, no.

1 630 Q. All right. So when Ms. Harris said she heard that from  
2 one particular freelance journalist and she heard it in  
3 two occasions in May 2013, you can't exclude the  
4 possibility that you may have heard something like that  
5 in 2013? 15:42

6 A. No. Nor can I exclude the possibility that I wasn't at  
7 that meeting.

8 631 Q. But I'm not suggesting you were, I'm not suggesting you  
9 were.

10 A. Yes. 15:42

11 632 Q. I'm not you were in any way. But you may have heard  
12 something in 2013?

13 A. Or I may not. I don't have any recollection.

14 633 Q. You have no recollection of it?

15 A. No. 15:42

16 634 Q. But you would remember the first time you heard  
17 something like that?

18 A. I think so.

19 635 Q. You think so?

20 A. Sorry, of that size, absolutely. 15:43

21 636 Q. And if we fast-forward to March 2014, we know you  
22 heard, via the Paul Williams story, that Sergeant  
23 McCabe had allegedly assaulted Ms. D, is that right?

24 A. Yes.

25 637 Q. It would seem to be the case? 15:43

26 A. Yes.

27 638 Q. Am I correct --

28 A. Yes, you are correct, yes.

29 639 Q. -- in saying that? So -- but you don't know whether or

1 not that was the first time you heard it?

2 A. I'd love to be able to recall the date and specifically  
3 the first time that I -- this is one of many, many  
4 stories that would have been in my in-tray, if you  
5 like, or in my in-box. Yes, a significant story, no 15:43  
6 doubt, but I just have no idea when the first time I  
7 heard it was.

8 640 Q. But you can't specifically link to hearing it for the  
9 first time to Paul Williams bringing the story to your  
10 newsroom? 15:43

11 A. No.

12 641 Q. All right. That is what I was trying to arrive at.

13 A. I would imagine that was the case, but I would say  
14 maybe -- no, I can't.

15 642 Q. All right. Now, could you describe your role in 15:43  
16 bringing that story to print, please?

17 A. My role in any big news story was, as the group news  
18 editor, if you like, I compile a news list. That is  
19 basically the list of all the stories of the day or of  
20 the week, or whatever, and then those stories, then 15:44  
21 it's decided which way they go, would they fit better  
22 on a Sunday or a Saturday or in the Irish Independent  
23 or the Sunday Independent or the Herald, and then it's  
24 up to the individual editor then to make the decision  
25 whether to run the story or not. I would not influence 15:44  
26 them at all.

27 643 Q. And that editor was, at the time?

28 A. Anne Harris in the Sunday Independent and Claire Grady  
29 in the Irish Independent.

1 644 Q. Yes. All right. So you say you wouldn't influence the  
2 editor at all in any way?

3 A. No.

4 645 Q. So what was your role in bringing that story to print?  
5 We have heard from the last witness that you may -- 15:44  
6 that you partook in some of the stress-testing of that  
7 story, all right?

8 A. Say that --

9 646 Q. Ms. McDonald seems to have said that you would have  
10 been present for the stress-testing? 15:45

11 A. Just to be clear, I wasn't party to any of the  
12 stress-testing of that story.

13 647 Q. Yes.

14 A. Ms. McDonald carried out the stress-testing, if you  
15 like. 15:45

16 648 Q. Okay.

17 A. I certainly would have -- I have no recollection of  
18 those meetings, by the way. I may have been in one of  
19 those meetings. I mean, I would have been at a lot of  
20 meetings, and my role generally was to drift in and out 15:45  
21 of various meetings around the building, but if  
22 Ms. McDonald says I was at the meeting, that is fine.

23 649 Q. So what I am trying to get to is asking you to explain  
24 what your role in the whole Paul Williams story was in  
25 particular, besides drifting in and out and knowing 15:45  
26 generally about it?

27 A. My role would have been, I would have been aware that  
28 Paul was -- I mean, obviously Paul Williams was going  
29 to go and interview the alleged victim and --



1 650 Q. Can I stop you there.

2 A. Yes.

3 651 Q. Did you have any role in sanctioning that in any way or  
4 any input?

5 A. Well, I would have approved it, yes. 15:45

6 652 Q. Yes.

7 A. I would have approved a -- before anything becomes a  
8 story, it has to get checked out, it has to be figured  
9 out, people have to be spoken to. Not all stories  
10 where people are interviewed and claims are made are 15:46  
11 carried, but in most cases where there is a genuine  
12 concern or, you know, that there is an allegation made,  
13 one would at least investigate it, and that was the  
14 case with Paul Williams, that he was going to go and  
15 speak at least to this woman, and I think her family as 15:46  
16 well.

17 653 Q. So you had some input into that happening?

18 A. Well, I would have been, I would have been one of a  
19 number of people -- yes, I would.

20 654 Q. And after that? 15:46

21 A. After that, Paul Williams did his interview and  
22 Derbhail then did her stress-test. Derbhail dealt with  
23 Stephen Rae specifically with the results of that  
24 stress-test, and then the decision ultimately then to  
25 carry or to run those stories was made by the editor. 15:46

26 655 Q. Ms. Grady?

27 A. Yes.

28 656 Q. And did you discuss the matter with her at all?

29 A. I have no recollection of discussing the matter with

1 Ms. Grady.

2 657 Q. Do you know the D family?

3 A. I have -- no, I don't, no.

4 658 Q. And in relation to the video, do you remember or not  
5 remember watching that video? 15:47

6 A. I don't remember watching the video. And I have been  
7 out of journalism for two or three years, I'm in a  
8 different business altogether now. I saw the other  
9 statements. If somebody said I was in a meeting where  
10 that video was shown, that is absolutely fine, I've no 15:47  
11 problem with that. I just don't recall it. I have no  
12 recollection of it.

13 659 Q. Okay.

14 A. But that's only - sorry, Ms. Leader - that's only  
15 because, once again, the sheer volume of meetings I 15:47  
16 would have attended, the sheer volume of clips of  
17 videos and all sorts of, you know, content, if you  
18 like, that I would have been across. But there's lots  
19 of things I don't recall from that time, and that just  
20 specifically the viewing of that video. But if 15:47  
21 Ms. McDonald or any other witness says I was there,  
22 that is fine.

23 660 Q. Right. And in relation to, and this may seem a strange  
24 question, but did you at any time discuss that video  
25 with either Ms. Alison O'Reilly or Ms. Debbie McCann? 15:48

26 A. I don't even -- no, I did not.

27 661 Q. Do you know those two people?

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

29 662 Q. All right. Okay. Now, just in relation to that story,

1 I think you said in your statement that after the Paul  
2 Williams story, you think nearly every journalist  
3 working in Independent Newspapers was aware of the  
4 Ms. D matter and the connection with Sergeant McCabe?

5 A. It was a big -- there was a lot -- yes, they would 15:48  
6 have -- it was a big enough story, you know what I  
7 mean. Okay, it didn't appear prominently within the  
8 Irish Independent, because, after all, the checks and  
9 balances and all that had been done, but it was a story  
10 that was being talked about, in the same way as, at the 15:48  
11 time, the Anglo trial was being talked about. I  
12 remember Peaches Geldof died around the same time. Any  
13 number of stories that we would have discussed openly  
14 in a newsroom. It wasn't exclusively discussed by  
15 journalists, you know, I mean, that there was some sort 15:49  
16 of whispering at water coolers talking about this story  
17 specifically, but it would have been discussed in news  
18 meetings and in newsrooms.

19 663 Q. And when you say it was a big story, what do you mean  
20 by that? 15:49

21 A. Well, to me, as somebody who was a news person, if you  
22 like, the allegations that were being made of this  
23 Garda investigation in which a victim is claiming was  
24 mishandled, she was mistreated, that would, of course,  
25 if it had been as alleged, it would have been a big 15:49  
26 story, obviously.

27 664 Q. Okay. Well, I suppose --

28 A. And then obviously the allegation against the sergeant.

29 665 Q. All right. So you're saying if it had been any garda

1 sergeant, leaving Sergeant McCabe out of this, it would  
2 have been a big story, is that right?

3 A. Yes, absolutely.

4 666 Q. I am just asking?

5 A. Yes, of course. 15:49

6 667 Q. So if it was, which it was, an allegation against  
7 Sergeant McCabe, who at that time was in the newspapers  
8 quite a lot being portrayed as a whistleblower and  
9 bringing Garda malpractice into the public, it would  
10 have been more than a big story, it would have been a 15:50  
11 huge ginormous story, it would have been something that  
12 would have changed the game completely with regard to  
13 coverage of Sergeant McCabe, isn't that right?

14 A. Well, that's why I said it was a big story, yes.

15 668 Q. All right. 15:50

16 A. Absolutely, yes.

17 669 Q. would 'explosive' correctly describe the story?

18 A. I don't really -- you know what I mean -- explosive,  
19 well, yes, it would have been. Yes.

20 670 Q. All right. So had -- and I'm not saying it was, but 15:50  
21 had it been published in your newspaper as a story  
22 about a Garda whistleblower who had allegedly assaulted  
23 a minor, it would have been certainly capable of  
24 changing the whole narrative in relation to Sergeant  
25 McCabe, isn't that correct? 15:50

26 A. Yes, that is correct.

27 671 Q. Okay. Was that something that your newspaper gave  
28 thought to prior to publication?

29 A. Just, Ms. Leader, just to be clear, I didn't have a

1 newspaper. I was in charge of a group of newspapers.

2 672 Q. Group, sorry. Correct me whenever, yes.

3 A. No problem. So the question again, please, sorry?

4 673 Q. I've actually forgotten it now.

5 CHAIRMAN: The question was: Given that it could 15:51

6 change the entire narrative and it could go basically

7 to saying people who imagine is a God has got feet of

8 clay, just to use that as a tidy expression, did you

9 give it the level of thought which would accord with

10 the importance of the story? Is it fair to 15:51

11 characterise it that way, Ms. Leader?

12 MS. LEADER: Yes.

13 A. I would have, yes, I would have considered it very

14 heavily, Chairman, yes.

15 674 Q. And that was part of the reason, presumably, the last 15:51

16 witness was called in to carefully stress-test it,

17 isn't it?

18 A. That's correct. And that was the best practice

19 journalistic methodology, if you like, of

20 stress-testing, of what we did at the time or what 15:52

21 Stephen Rae did at the time, was that if there was a

22 very serious story, not just this one, but other

23 examples, say the Anglo tapes, for example, that we

24 would have a number of people stress-testing at all

25 times. That is not to level any mistrust at the 15:52

26 journalist who has brought the story, but it is just to

27 bring in the resources that we had to make sure that it

28 was rock solid, if you like.

29 675 Q. So it was on the level of exclusiveness or

1           explosiveness, it was up there with the Anglo tapes, is  
2           that right, that story?

3           A.    I don't -- if what was being alleged was correct.

4 676 Q.    Yes.

5           A.    And would eventually be found to have been correct,           15:52  
6           absolutely.

7 677 Q.    Yes.

8           A.    Well, I don't know -- you know, on a measurability, if  
9           it was as big as the Anglo, probably not, but, I mean,  
10          it would have been a huge story.   15:52

11 678 Q.    Okay. So what was eventually published, was it that  
12          type of a story or was it a totally different story?

13          A.    I don't know if I saw the original story that Paul  
14          Williams had written. I was out of it at that stage.  
15          This was now the job of the editor of the Irish                       15:53  
16          Independent or the Sunday Independent, or whatever.

17 679 Q.    Which is Ms. O'Grady?

18          A.    Ms. O'Grady.

19 680 Q.    Yes.

20          A.    So I don't know, is the answer. Now, the previous           15:53  
21          witness has said that the story that appeared and the  
22          story that she stress-tested were two different -- were  
23          different, but I don't know that, I'm afraid.

24 681 Q.    So -- and this is a question, it's not a statement in  
25          any way, Mr. Mallon --   15:53

26          A.    Sure.

27 682 Q.    -- so that story was being published so as to show a  
28          totally different side to a garda whistleblower as it  
29          originally was thought about, is that right?

1 A. No, I don't agree with that because McCabe --

2 683 Q. No, that is okay, you don't have to.

3 A. No, Sergeant McCabe was not named in the story.

4 684 Q. Okay.

5 A. So, no. 15:53

6 685 Q. Okay. So taking Sergeant McCabe's name out of the  
7 equation --

8 A. Yes.

9 686 Q. -- took that element of the story away, on your  
10 evidence? 15:54

11 A. Well, absolutely, yes.

12 687 Q. Yes.

13 A. I don't think you could have carried that story, for  
14 many reasons, with Sergeant McCabe's name in it.

15 688 Q. Okay. 15:54

16 A. Because these were allegations at this point. Apart  
17 from, you know, defamatory reasons, or whatever. I  
18 mean, these were allegations, nothing more --

19 689 Q. All right.

20 A. -- of a case that had been dealt with by the DPP. 15:54

21 690 Q. Okay. Now, Ms. Harris, in her evidence, says that she  
22 heard from you on one occasion, and I'm paraphrasing  
23 this, that an allegation of criminal misconduct made  
24 against Sergeant McCabe, interference with a child, I  
25 think she categorises it at, but it may very well be 15:54  
26 that there is no real difference between yourself and  
27 Ms. Harris. You knew about that from the Paul Williams  
28 matter, isn't that correct?

29 A. I think I utterly rejected Ms. Harris's claim on that.

1 691 Q. All right.

2 A. And I think, if I may, Chairman, I think Ms. Harris,  
3 when she sat in this stand almost two weeks ago,  
4 utterly rejected it herself.

5 692 Q. Well, that is what I was -- 15:55

6 A. In that she made her statement, then she went back into  
7 the statement specifically with reference to myself.

8 693 Q. To yourself.

9 A. Did an about-turn, and then finally, up here on the  
10 stand, said that she was wrong about me and used the 15:55  
11 word 'wrong' three more times in her statement on the  
12 stand here. So, no, I don't accept anything that  
13 Ms. Harris said around that.

14 694 Q. All right. Do you think you ever said anything about  
15 Sergeant McCabe in Ms. Harris's company? 15:55

16 A. Absolutely not.

17 695 Q. Okay.

18 A. Sorry, about that, about what she alleged originally?

19 696 Q. No, no, about what she said in the witness-box?

20 A. No, absolutely not. 15:55

21 697 Q. All right. Did you ever speak about the Paul Williams  
22 story with Ms. Harris?

23 A. I have no recollection of speaking to Ms. Harris about  
24 the Paul Williams story, no recollection whatsoever.

25 698 Q. Could you have spoken to her about it? 15:56

26 A. I would have attended regular editorial news meetings  
27 and news conferences with Ms. Harris on a weekly basis,  
28 maybe twice, three times a week. That story was sure  
29 to have come up. I just don't recall it specifically.



1 699 Q. All right. So you think it could have been mentioned  
2 in a meeting that you attended with Ms. Harris?  
3 A. I don't know.  
4 700 Q. You don't know that?  
5 A. I've no recollection. 15:56  
6 701 Q. But you're not ruling out that possibility?  
7 A. I'm not ruling it in either.  
8 702 Q. Well, what are you doing?  
9 A. Well, I don't know, is the answer. I don't know. So,  
10 I'm sorry, I can't rule something in if I am not sure 15:56  
11 of it and I certainly can't rule it out if I am not  
12 sure of it. But in a general, you know, news  
13 conference, all sorts of matters would be discussed.  
14 703 Q. And if I understand it, that while you say that it  
15 wasn't a matter of mutterings around the office in 15:57  
16 relation to Sergeant McCabe, you're happy that  
17 everybody knew about the D allegation, or almost  
18 everybody in your office?  
19 A. Well, I think what I objected to was the term  
20 mutterings and whispers and rumours and gossip and all 15:57  
21 that sort of thing.  
22 704 Q. There was a particular problem with that?  
23 A. But in a newsroom, and a newsroom is very full on when  
24 it comes to conversations about potential stories --  
25 705 Q. Yes. 15:57  
26 A. -- or matters that are in the public ether, or  
27 whatever, journalists don't tend to whisper and gossip  
28 around water coolers or whatever. They have overt  
29 conversations about it. That is not to say that they

1 are judge, jury and executioner, they are just  
2 discussing a story, you know, and that would have been  
3 normal practice for any newsroom, that stories are  
4 discussed, ones that -- part of the whole process, have  
5 you heard about so-and-so, whatever? Is there any 15:57  
6 truth in that or -- yeah.

7 706 Q. So your difficulty, if I can put it that way, with  
8 Ms. Harris's statement, was the language in relation to  
9 the word 'mutterings' and 'gossip', but you don't have  
10 a difficulty in saying that it would have been openly 15:58  
11 known and openly discussed in terms of a story in the  
12 Independent?

13 A. Ms. Leader, my difficulty with Ms. Harris's statement  
14 is that, in her own words, she was wrong. That is my  
15 real difficulty, you know. 15:58

16 707 Q. Well, I suppose it's for the Chairman to decide who is  
17 wrong.

18 A. Yes, but you asked me my difficulty. So that is my  
19 difficulty.

20 708 Q. I thought it was in relation to the language used, the 15:58  
21 mutterings and the --

22 A. Well, that was wrong, too, in my view.

23 709 Q. But --

24 A. Now, she says she -- Ms. Harris said she heard  
25 mutterings and rumours, I can't argue with that, but 15:58  
26 she certainly didn't hear them from me.

27 MS. LEADER: If you would answer any questions anybody  
28 else might have.

29 A. Thank you.

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THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL:

710 Q. MR. McDOWELL: Mr. Mallon, you heard Ms. McDonald's evidence that she recalls being at a meeting which was attended inter alia or inter alios by yourself and Stephen Rae on the 14th March, or thereabouts, of 2014, to discuss the Paul Williams story. Do you accept that? 15:58

A. I think I have accepted that, sir, that -- I don't recall it, but if she said that is the case, well then -- I don't recall that meeting. 15:59

711 Q. Yes. And as I understand your evidence, that was to discuss whether or not the story that Mr. Williams was then working on could be published, is that right? 15:59

A. No, that is not correct, sir. If you go back to what I said, what I said was I attended meetings with Ms. McDonald. The final meeting in which she delivered her assessment of her stress-test to Mr. Rae, I was not there. I've already said this. Sorry, you may have missed that, but I wasn't -- 15:59

712 Q. What kind of meeting do you think you attended and what was the purpose of the meeting that you think you may have attended in respect of this story?

A. I think, Chairman, I already said that I hadn't any recollection of meeting in which Ms. McDonald -- sorry, that I would have -- if Ms. McDonald said I attended a meeting along with her and Stephen Rae at the beginning of this to go and stress-test -- 16:00

1 713 Q. You heard her evidence just a few moments ago, did you?  
2 A. Sorry?  
3 714 Q. You heard her evidence here?  
4 A. Yes, I did.  
5 715 Q. Yes. 16:00  
6 A. That there was a number of meetings and that I was  
7 at --  
8 716 Q. Yes. In relation to the Paul Williams article?  
9 A. Yes.  
10 717 Q. And she had been asked to stress test it after it had 16:00  
11 been written, isn't that right?  
12 A. I'm sorry, what is your question?  
13 718 Q. You're very quick to cavil with things, would you  
14 listen carefully. She had been asked to stress test  
15 this article after it had been written and she says she 16:01  
16 attended a meeting with you in that context.  
17 A. As I said, I have no recollection of the meeting. But  
18 I believe that I would have -- I thought she said that  
19 she was asked at a meeting with myself and Stephen Ray  
20 to go and stress test the story. Now if I am wrong on 16:01  
21 that, apologies. But I don't think I am wrong. And as  
22 for the delivery of the stress test I was not -- I have  
23 no knowledge of that.  
24 719 Q. I see. Well, can we go back a few days earlier, you 16:01  
25 did say that you were party to the decision to send  
26 Mr. Williams down to carry out this interview, isn't  
27 that right?  
28 A. I would have been -- yes, I would have been one of the  
29 people who had discussed the matter with Paul Williams,

1           yes.

2 720 Q.    And who else discussed it with Mr. Williams?

3           A.    Well, Fionnuala O'Leary who is the Head of Digital and  
4           who is the person who was asked to commission a  
5           videographer would have been part of that conversation. 16:02  
6           Fionnuala O'Leary's input was that it would be best,  
7           given the sensitivity of the case, that a female  
8           videographer go with Paul at the time, given the  
9           victim.

10 721 Q.   And were you there for that discussion? 16:02

11          A.    I've no recollection of it, but I certainly would have  
12          been part -- I believe I would have been part of it.

13 722 Q.    Did I understand you to give in evidence a short time  
14          ago that you were part of the authorisation of the  
15          visit by Mr. Williams with a video camera person to 16:02  
16          Ms. D's home?

17          A.    That would be correct. I would have been, I would been  
18          aware of that and I would have approved of it. Yes.  
19          You see, sir, this is nothing more than going to  
20          interview a person who is claiming an act or an 16:02  
21          improper investigation in this case against her, that  
22          doesn't mean the story has been published, it means  
23          that we are just going to investigate it further.

24 723 Q.    I fully understand that. So can we take it that as  
25          Ms. Leader has said, that if this story turned out to 16:03  
26          be true it was explosive? It was an important story?

27          A.    Yes.

28 724 Q.    And I take it that as someone occupying the position  
29          which you held at the time, you were interested in the

1 possibility that the newspaper had an important story  
2 about Sergeant McCabe?

3 A. No. I've already said this. I was interested in the  
4 fact that an alleged victim was alleging that an  
5 investigation into her claims was improperly handled. 16:03

6 725 Q. Story. We've gone past that. We know that Sergeant  
7 McCabe --

8 A. Sorry, Mr. McDowell, you have asked me a question, I've  
9 just given you back the answer I can give you as best I  
10 can. You specifically asked about Maurice McCabe. 16:04

11 726 Q. Is that the best you can do?

12 A. And you specifically asked me about Maurice McCabe.

13 CHAIRMAN: No, gentleman, gentleman, there is a  
14 question here which I may or may not be reporting on,  
15 which is how responsible was it to publish the article? 16:04  
16 Because I take it, Mr. McDowell, that is your  
17 particular line here?

18 MR. McDOWELL: Yes.

19 CHAIRMAN: Is that right?

20 MR. McDOWELL: I'm asking the question was he aware of 16:04  
21 the potential importance of this story if it stood up.  
22 That is what I am asking.

23 CHAIRMAN: I think again it may help if I indicate my  
24 thinking. And I think if Ms. Leader was correct to say  
25 that it was explosive, and it's not a word necessarily 16:04  
26 I would use but it's certainly used in the media, if  
27 someone who is a national hero, let us say, even a  
28 swimming coach, and who has had, let's say, great  
29 success with swimming teams turns out to be abusing all

1 of the people or many of the people that he is  
2 coaching, that is a big story, that is an explosive  
3 story. If someone who is regarded highly because they  
4 are saying things about their own employer, namely the  
5 national police force, that are unpleasant but true, 16:05  
6 turns out to be a sex abuser well that is a huge story.  
7 I'm taking that as a given, if you like. So I suspect  
8 that Mr. McDowell's line of question is: If not to  
9 publish that story why elide that story in such a way  
10 that people reading it in the know would come to the 16:05  
11 same conclusion? So, I think that is where this is  
12 going.

13 727 Q. MR. McDOWELL: well, before getting to that question  
14 which I do intend putting to you, Mr. Mallon, I was  
15 going to suggest to you that this was a very 16:05  
16 substantial story in which you must have had an  
17 interest as to whether the newspaper published it or  
18 not?

19 A. Well, as head of news, Mr. McDowell, I would have had  
20 an interest in all stories, whether they were published 16:06  
21 or not. All stories that came across my desk, yes.

22 728 Q. Look, of course you have an interest in all stories  
23 that come across your desk, but I'm suggesting to you  
24 that this, to use the Chairman's phrase, was a huge  
25 story and that therefore you had an elevated interest 16:06  
26 as to whether it would stand up or not and whether the  
27 newspaper could publish it or not. Is there a  
28 difficulty in agreeing with that proposition?

29 A. Yes, there is, sir. I didn't have an elevated interest

1 in this story no more than any other story, whether  
2 that as Anglo Irish or anything that was going on at  
3 the time. I did not have an elevated interest in the  
4 story. I had the same interest that I would have had  
5 in all the stories. Yes, this was a big story. 16:06

6 729 Q. I just want to stop you there. Is that your sworn  
7 testimony to this Tribunal; that you had the same  
8 interest in this story as any other story?

9 A. Well, I mean, we're talking serious, heavy, public  
10 interest stories. I would have had -- yes, I would 16:07  
11 have had an interest in the story, of course. I can't  
12 measure it for you on whether it was more interesting  
13 to me than Anglo or more interesting to me, I think the  
14 Labour Party were in the news at the time, more  
15 interesting than whatever stories were there at the 16:07  
16 time. I remember, I maintained an interest in it.

17 730 Q. And I am suggesting to you, Mr. Mallon, and it's not a  
18 trick question, that because it was a potentially huge  
19 story you had a greater interest in standing it up or  
20 not standing it up and seeing could it be published or 16:07  
21 not?

22 A. I had an interest in seeing if it could be stood up or  
23 not, and if it could be published. Yes.

24 731 Q. And it was greater than the ordinary, because this was,  
25 to use the Chairman's term, a huge story? 16:07

26 A. Well no, not --

27 732 Q. Is there a difficulty with answering that question?

28 A. I've answered it already. And my answer is that I  
29 didn't hold it in any greater or lesser interest than I



1 would have at any big story at the time.

2 733 Q. At least we've got to the point that it's a big story  
3 at this stage.

4 A. I have already acknowledged that. I think the word  
5 used by Ms. Leader was explosive. So I have 16:08  
6 acknowledged that it was a big story.

7 734 Q. And when you learned that Mr. Williams had gone off  
8 with a video camera to conduct an interview, were you  
9 curious as to how he had got on there?

10 A. Not particularly, sir. I spoke to Paul Williams that 16:08  
11 day. I think it was a Saturday.

12 735 Q. Yes.

13 A. He told me everything was in order and he was heading  
14 up and I don't think I had further correspondence with  
15 him that day or indeed the following day. 16:08

16 736 Q. I'm sorry, I'm finding this difficult. He said  
17 everything was in order and he was heading up and you  
18 don't think you had correspondence with him that day or  
19 the following day?

20 A. No, I had a correspondence with him that day before he 16:08  
21 went, but after his meeting with Ms. D and family I'm  
22 not sure I had any conversation with him that night.  
23 In fact, I'm sure I didn't.

24 737 Q. Well, if you didn't talk to him directly, did you ask  
25 his editor by the way, what became of the Paul Williams 16:09  
26 story interview that I authorised the other day?

27 A. This was a story that was so serious with the  
28 allegations being made that it wasn't one that was  
29 going to be run the following day anyway. We would

1 have spoken on --

2 738 Q. I didn't suggest it was going to be run the following  
3 day. I was merely inquiring from you, Mr. Mallon, did  
4 you follow it up with anybody what became of the  
5 interview that you had authorised? 16:09

6 A. I have no recollection of who I followed it up with.  
7 As I said, at the time, and I'm sorry Chairman, it was  
8 a previous career if you like, at the time I had no  
9 great recollections bar when I got my first letter from  
10 the Tribunal here, that to try to go back over, going 16:09  
11 back over diaries, going back over memory banks if you  
12 like, that I had no great recollection of my direct  
13 involvement at the time, beyond helping to organise the  
14 interview and the videographer and speaking to Paul  
15 williams that day. 16:09

16 739 Q. well, I am just asking you, did your interest in this  
17 big story evaporate completely or did you attempt to  
18 remain abreast with whether or not it was going to  
19 yield a publishable article or articles?

20 A. Sir, I don't know, I don't recall any conversations 16:10  
21 with the editor subsequent to that. That conversation  
22 I feel would have probably taken place between the  
23 editor of the title and the group editor.

24 CHAIRMAN: would it be fair to say, Mr. McDowell, that  
25 the subtext is whether or not they had an interest in 16:10  
26 doing down Sergeant McCabe?

27 MR. McDOWELL: No, and that is not the point I am  
28 asking.

29 CHAIRMAN: I am sorry. I beg your pardon for not

1 taking it up correctly.

2 740 Q. MR. McDOWELL: I'm merely just asking what was your  
3 continuing involvement with this story after the  
4 interview was carried out?

5 A. My involvement was peripheral after that. If you could 16:10  
6 even say peripheral. As I say, I explained this  
7 earlier on, sir, what we do is we try and set up, try  
8 and write up news lists on a weekly basis, we put all  
9 the infrastructures in place to see that interviews  
10 have taken place, stories come to pass and see the 16:11  
11 light of day. With that particular story I have no  
12 recollection of any further involvement in it.

13 741 Q. I see. Well, do you think it's probable that you had,  
14 that you were present at a meeting with Stephen Ray and  
15 Ms. Dearbhail McDonald at which its publishability was 16:11  
16 considered?

17 A. As I stated already, I have no recollection of that.  
18 In fact, I'd say I was not at that meeting.

19 CHAIRMAN: You don't seem really to be in a position to  
20 contradict it. It's not as if it's a meeting, you 16:11  
21 know, of contract killers to see who they are going to  
22 see next. It's a perfectly legitimate meeting.

23 A. Oh absolutely, sir. Chairman, I would love to be able  
24 to give you the answer to that, absolutely, but I don't  
25 have any recollection of that. 16:12  
26 CHAIRMAN: Yes.

27 742 Q. MR. McDOWELL: Maybe I will put this way: Did you  
28 ever -- did anybody ever tell you that Ms. D had made a  
29 video recording in which she alleged that she had been

1 sexually abused by Sergeant McCabe?

2 A. A video recording with the Irish Independent?

3 743 Q. Yes.

4 A. Well, of course. Because I've just already indicated  
5 as to my role within the, you know, setting up of that 16:12  
6 interview.

7 744 Q. Yes. But after the event, did anybody say what she had  
8 said about Sergeant McCabe?

9 A. I've no, I don't -- I can't specific a meeting in which  
10 I was -- I obviously found out what she had said but I 16:12  
11 don't know how that was relayed tow me. As I say, once  
12 the story is done, once it is written, once it is  
13 stress tested it is then the duty of the editor of the  
14 title or the newspaper or whatever platform that story  
15 is being carried on, I don't -- I'm not part of that 16:13  
16 process. If I had any hand, act or part in the  
17 publication of that story or the decision as to what  
18 page that story went on, I would happily recount that  
19 to you, sir, but it didn't happen like that, that is  
20 not the way it worked. 16:13

21 745 Q. I'm just wondering, just on a commonsense ordinary  
22 basis, asking myself, whether you were aware that she  
23 had made these accusations in a video recording which  
24 your newspaper was in possession of?

25 A. Of course I would have been aware that she made 16:13  
26 accusations against Sergeant McCabe, yes.

27 746 Q. And who would have told you that?

28 A. That was the whole central point of the interview.  
29 There was two parts to it really. One was a case of

1           impropriety in a case in which she was involved in,  
2           allegations thereof; and the second one was that she  
3           was alleged victim of Sergeant McCabe, yes.

4   747   Q.   But who told you that she had said these things to  
5           camera?

16:13

6           CHAIRMAN:  I thought the evidence was that they  
7           reviewed part of the tape certainly.

8           MR. McDOWELL:  Yes.  Sorry, Judge.  He hasn't said that  
9           he has ever seen the tape, he hasn't said he has ever  
10          discussed the tape with anybody.

16:14

11          CHAIRMAN:  No.  But he's not contradicting it either.

12          MR. McDOWELL:  well, I don't know, Judge, that's for  
13          you to make up your mind on.

14          A.   Maybe I can clear it up.  Because I did say this.

15          Thank you, by the way.  I said I was not aware of  
16          seeing -- I have no recollection of seeing the

16:14

17          videotape.  If somebody said I was in that meeting  
18          looking at the videotape, absolutely, no problem.  I

19          have no problem accepting that.  But I have no

20          recollection of it and of course I've just said to you

16:14

21          I have no recollection of the exact time or point where  
22          somebody told me that Ms. D had made a claim about  
23          Sergeant McCabe.  But yes, I was very much aware of  
24          that.  It's just, I can't pinpoint the exact time, date  
25          or location of that.

16:14

26   748   Q.   MR. McDOWELL:  And just subjectively, just thinking  
27           back to that time, did you form any view as to whether  
28           this allegation was likely to be true or false?

29          A.   I had no idea whether it was true; the allegation of an



1 Mr. Justice Hardiman.

2 MR. MCGARRY: For students. It was expressly stated to  
3 be for law students.

4 CHAIRMAN: Just for fear anyone might not be aware,  
5 because I'm sure great that efforts were taken in that 16:16  
6 regard, it's every Tuesday and Thursday all the way  
7 through June. There's vigorous nodding going on but  
8 that wasn't happening last Thursday.

9 MR. McDOWELL: well, that is Mr. McGarry's department.  
10 I am not chairman of the Bar Council. 16:16

11 CHAIRMAN: Yes, I know. And I am supposed to sit until  
12 four o'clock, which is five hours already. And my head  
13 is frankly spinning as a result of today.

14 MR. McDOWELL: well, if the Tribunal is indicating that  
15 we could resume tomorrow -- 16:16

16 CHAIRMAN: Again, I know. But look, I think of myself  
17 as a courteous person, Mr. McDowell, I am sure you do  
18 as well, and like, if a witness is here I would prefer  
19 to get them finished, and if necessary I will sit on.

20 MR. McDOWELL: All right. I will speed up, Judge. 16:17

21 CHAIRMAN: Yes.

22 752 Q. MR. McDOWELL: Could I ask you to look at page 6376  
23 please? This is statement of Fionnuala O'Leary who is  
24 your digital editor for Independent Newspapers Group,  
25 is that right? 16:17

26 A. That's correct.

27 753 Q. Could I ask you to look at page 6377, the third  
28 paragraph from the top?

29 A. Yes, sir, I see that. Yes.

1 754 Q. which says:

2

3 "Early the following week, I cannot recollect the exact  
4 day, Caoimhe Gaskin uploaded the video. I believe I  
5 watched this on my own and then I watched it in 16:18  
6 conference with Stephen Ray, Group Editor in Chief, Ian  
7 Mallon, Group Head of News and Claire Grady, then  
8 Editor of the Irish Independent. We watched the full  
9 version of video. It was not edited. It was clear to  
10 me there was no possibility that this interview could 16:18  
11 be put online in any shape or form. It was therefore a  
12 matter as far as being editor of independent. ie I would  
13 have no input. The print side would have complete  
14 control over decisions as to publication, editing and  
15 legaling." 16:18

16

17 So that ring a bell with you?

18 A. Sir, as I said, I have no recollection of that meeting  
19 but if Fionnuala O'Leary states that I was at that  
20 meeting -- I have said this a number of times, sir. I 16:18  
21 have no recollection. But if somebody says that I was  
22 at that meeting that is absolutely fine by me.

23 755 Q. She goes further, she says that you watched the entire  
24 video?

25 A. Yes. And once again I will give my same answer. I 16:19  
26 have no recollection. And I have put this in my  
27 statement originally to the Tribunal.

28 756 Q. I see. And you formed no view as to the allegations,  
29 as to whether the allegations that were set out in that



1 video interview were true or false, is that right?

2 A. Sir, how could I set out a view of whether they are  
3 true or false? This was an allegation against  
4 somebody.

5 757 Q. Yes? 16:19

6 A. I mean, somebody makes an allegation you suddenly make  
7 a decision in your own head whether that is true or  
8 false? That is not how I operate or how I could have  
9 operated on an objective basis.

10 758 Q. I suggest to you as an experienced newspaper man and 16:19  
11 editor you would say that has a ring of truth about it  
12 or that looks very suspect, those kind of notions would  
13 occur to you?

14 A. That's absolutely not the case. No. I mean, as a  
15 journalist or as an editor even with responsibility of 16:20  
16 that, one doesn't simply suddenly jump to a conclusion  
17 when an allegation is made.

18 759 Q. I see.

19 A. I mean, that is farfetched to say the least.

20 760 Q. It's farfetched to suggest that you might looking at an 16:20  
21 interview in full ask yourself does this sound true or  
22 false, is that right?

23 A. Looking at an interview, sir, in your own words to jump  
24 to a conclusion to say whether something is fact or  
25 not, absolutely. 16:20

26 761 Q. I see. But we are agreed, and I can shorten matters,  
27 that after this episode involving Mr. Williams many  
28 journalists in INM were aware of this story?

29 A. After publication, sir.

1 762 Q. Yes. After publication of the Williams --  
2 A. Yes.  
3 763 Q. -- story, isn't that right?  
4 A. Yes, absolutely.  
5 764 Q. Was it a secret that there was a video of it? 16:20  
6 A. I would not -- I would say the knowledge that there was  
7 a video piece done was not widely known.  
8 765 Q. I see. And --  
9 A. And sorry just, that is purely on the basis of any  
10 story or whether it is an exclusive story or whether it 16:21  
11 is an allegation or whatever, that certain things are  
12 just kept in a small group in-lodge, if you like, in a  
13 senior group, until a decision is made on whether to  
14 publish or not.  
15 766 Q. I see. Obviously you've completely forgotten the 16:21  
16 video, is that right, at this stage?  
17 A. Sir, I've told you already, I've no recollection of it.  
18 767 Q. I understand, I haven't seen it either, but I  
19 understand that it was filmed on the basis that it  
20 showed the back of Ms. D's head and she was not 16:21  
21 identifiable in it?  
22 A. I have made inquiries about the video and I have been  
23 told the same, yes.  
24 768 Q. I see.  
25 A. In order to try and rack my own head at the time, I did 16:21  
26 ask somebody who would have seen the video what way,  
27 what was the format and they said that you could see  
28 the back of her head and the interviewer over her  
29 shoulder, if you like.

1 769 Q. So it was never intended to identify her at all by this  
2 video, is that right?  
3 CHAIRMAN: well, you could identify somebody by a  
4 voice. But it was filmed from the point of view of the  
5 noddies as opposed to from the point of view of the 16:22  
6 person being interviewed.

7 770 Q. MR. McDOWELL: Yes, yes. well, I have got to suggest  
8 to you that I mean it seems that it was filmed on the  
9 basis that it could be shown to people without  
10 identifying Ms. D? 16:22

11 A. well, I would imagine that would have been the way --  
12 the way it was shot would lead you to believe that,  
13 yes.

14 771 Q. Can I put to you, to cut a long story short, that  
15 Ms. Harris as editor of the Sunday Independent carried 16:22  
16 quite a number of stories that were favourable to  
17 Sergeant McCabe and supportive of his position?

18 A. Yes.

19 772 Q. And can I put it to you that her evidence to the effect  
20 that she put down any discussion suggesting that he 16:22  
21 was, had abused a child, that she put it down as  
22 something she didn't want to hear, that that is true?

23 A. I saw that statement and I've no -- I certainly did not  
24 hear that.

25 773 Q. You didn't ever hear her do that? 16:23  
26 A. No, I never did, absolutely not.

27 774 Q. And can I just finally ask you, what is your position,  
28 do you say you never discussed the williams articles or  
29 the Ms. D allegation with Ms. Harris at all?

1 A. The williams articles, no. Because in the same way  
2 that I did not discuss the Philip Ryan stories in the  
3 Sunday Independent with the editor of the Irish  
4 Independent. My role was an overarching group role.  
5 So things that editors spoke to me or didn't speak to 16:23  
6 me about I wouldn't discuss with other editors.

7 775 Q. And do I take it therefore that on your account you  
8 never spoke to her about Ms. D's allegation against  
9 Sergeant McCabe at all?

10 A. I have no specific recollection of that, no. As I said 16:24  
11 earlier on, I think to Ms. Leader, it may have come up  
12 in news conversations, news conference conversation but  
13 I have no specific knowledge or detail of that.

14 776 Q. Have you any recollection as to her attitude if such a  
15 matter was raised in her company? 16:24

16 A. No. I have never known her to shutdown any  
17 conversation in her news conferences.

18 777 Q. Well, did you ever hear her entertain the possibility  
19 that Sergeant McCabe had sexually abused Ms. D?

20 A. No. I didn't. Once again, I have no recollection of 16:24  
21 any conversation like that.

22 778 Q. And bearing in mind that she was uncertain in the end  
23 as to what language she said you'd used --

24 A. Sorry, I think she was very certain. She used the word  
25 wrong. That was certain. 16:24

26 779 Q. Yes. But she stuck to the point that you did discuss  
27 it with her, isn't that right?

28 A. Just to go back to what Ms. Harris said in her initial  
29 statement, Chairman. She said in her initial statement

1 that I had been part of a whispering campaign or words  
2 to that effect. In her second statement, which she  
3 sent back in to the Tribunal, she said that my  
4 involvement, Ian Mallon involvement, was  
5 disproportionate. And then thirdly, she said that in 16:25  
6 regards to, and I'm sorry to use myself in the third  
7 person here, but Ian Mallon, in regards to Ian Mallon I  
8 was wrong and then she hid under a cloak of freedom of  
9 speech where she said we get things wrong as  
10 journalists and she -- 16:25

11 780 Q. Listen, you're not here to score points against her.  
12 A. I am answering your questions.

13 781 Q. I am putting to you that you did have a discussion with  
14 her about the allegation against Sergeant McCabe?  
15 A. I think I have answered this three times. I said I 16:25  
16 have no recollection of a conversation with her about  
17 Sergeant McCabe. Ever.

18 782 Q. I see.  
19 A. I cannot be clearer on that. If I did have a  
20 conversation with her about Sergeant McCabe, 16:26  
21 Mr. McDowell, I would have no problem in recalling it,  
22 or if I had evidence and I have gone through my diaries  
23 and everything. What harm would that be?

24 783 Q. Exactly. What harm would it be?  
25 A. Yeah. 16:26

26 MR. McDOWELL: Thank you.

27 CHAIRMAN: Does anyone else have any questions at all  
28 really?

29 MR. LEHANE: Yes, Chairman, I appear for Ms. Harris, I

1 have a couple of questions.

2 CHAIRMAN: All right. Well then, maybe you can then  
3 clear up the mystery as to who said what. I am  
4 beginning to wonder do journalists get along with each  
5 other at all. 16:26

6 MR. HARTY: I have a number of questions on behalf of  
7 Ms. O'Doherty.

8 CHAIRMAN: You're going to have to be quick because,  
9 you know, I have been here now for five and a half  
10 hours listening to all of this kind of stuff. 16:26

11 Otherwise we will pull up the stumps and come back  
12 tomorrow but I don't want to do that to Mr. Mallon, no  
13 more than I would want to do it to anybody, so please  
14 just hurry up.

15 MR. LEHANE: Will I go first on behalf of Ms. Harris? 16:26

16 CHAIRMAN: I don't care. Yes, please do Mr. Lehane.

17 MR. LEHANE: Thank you for your courtesy.

18

19 THE WITNESS WAS CROSS-EXAMINED BY MR. LEHANE AS  
20 FOLLOWS: 16:27

21 784 Q. MR. LEHANE: Mr. Mallon, I will start with the  
22 allegations. Sorry I am here on behalf of Ms. Harris.  
23 Your evidence to the Tribunal is that almost every  
24 journalist in the Independent Group was aware of the  
25 fact that there were allegations against Sergeant 16:27  
26 McCabe and that he was associated with the article and  
27 that the DPP had given directions that there was  
28 nothing in those allegations, is that right?

29 A. Sorry, can you pull up my statement there so I can see

1            what you are saying?

2 785 Q.    Ah no, I will break down --

3            A.    No, I need to see it verbatim, because you're saying --

4 786 Q.    I will break it down.

5            A.    Yeah. 16:27

6 787 Q.    Your evidence to the Tribunal is that almost every  
7            journalist in the Independent Group was aware that  
8            there were allegations of sexual assault committed  
9            allegedly by Sergeant McCabe?

10           A.    Yes. 16:28

11 788 Q.    Okay. And you also say that almost every journalist in  
12           the Independent Group was aware that those allegations  
13           or that the DPP had decided not to prosecute in respect  
14           of those allegations, that is your evidence, is it?

15           A.    Yes. 16:28

16 789 Q.    In relation to the DPP's directions, how did you know  
17           that?

18           A.    I was aware of the DPP dropping the original case at  
19           some point. I do not know when that point was.

20 790 Q.    Okay. In fairness to you, you say that these matters 16:28  
21           were being discussed in an open way around the  
22           Independent Group, isn't that right?

23           A.    Well, as I said, I mean there was nothing whispering or  
24           murmuring about any stories in my view when I was  
25           present. 16:28

26 791 Q.    So if somebody was to say that these matters were being  
27           discussed in offices, in corridors over coffee or at  
28           the watercooler you wouldn't disagree with that would  
29           you?

1 A. No, I wouldn't.

2 792 Q. Okay. And were you privy to any of these  
3 conversations?

4 A. No. Not beyond specific professional, you know,  
5 editorial overview. 16:29

6 793 Q. Okay. And was the word kiddie fiddler ever used?

7 A. Pardon?

8 794 Q. Was the word kiddie fiddler ever used?

9 A. It's not a word I like, or a phrase I like, so it  
10 wouldn't be used in front of me. 16:29

11 795 Q. I don't think anyone likes the word kiddie fiddler.

12 A. I'm just telling you, yes, I mean, that is what I said.  
13 I don't like that phrase so I wouldn't certainly have  
14 used it and nor would it have been used in front of me.

15 796 Q. Did you ever overhear anybody using it? 16:29

16 A. No, not at all.

17 797 Q. Was the word paedophile ever used?

18 A. Not that I'm aware of. Certainly not in front of me.

19 798 Q. Would you agree with me that paedophile is a term, it's  
20 not a legal term as such but it's used informally to  
21 refer to persons who commit sexual offences against  
22 children, isn't that right? 16:29

23 A. Yes.

24 799 Q. Would it surprise you if that word was being used in  
25 discussions which were going on all over Independent or  
26 Talbot House in relation to Sergeant McCabe? 16:29

27 A. Would it surprise me?

28 800 Q. Yes.

29 A. Absolutely.



1 801 Q. why?  
2 A. well, grown-ups are supposed to be objective,  
3 journalists are certainly supposed to be objective and  
4 I would never have been of the view that people were  
5 running around saying so and so is a paedophile, 16:30  
6 absolutely not.

7 802 Q. would it surprise you if loose language was being used  
8 by journalist in relation to these allegations --  
9 CHAIRMAN: Mr. Lehane, I'm sorry to interrupt you, but  
10 at the end of the day, how am I going to write in my 16:30  
11 report about any of this stuff?  
12 MR. LEHANE: Sorry, Judge --  
13 CHAIRMAN: How does it impact on my duty to tell the  
14 Oireachtas whether or not there was a campaign against  
15 Sergeant McCabe run from Garda Headquarters? 16:30  
16 MR. LEHANE: Chairman, one of my functions, and I am  
17 very conscious of the time --  
18 CHAIRMAN: Forget about the time, Mr. Lehane, forget  
19 about people complaining about my patience or lack of  
20 patience, forget my courtesy or lack of courtesy, just 16:30  
21 forget about that now for a moment, the question is:  
22 How does this help me reporting to the Oireachtas?  
23 MR. LEHANE: well, Chairman, my client when she was  
24 giving evidence was challenged on certain accounts that  
25 she gave of what transpired and what I am trying to do 16:30  
26 is I am trying to put questions to this witness and  
27 another witness in relation to these matters and one of  
28 those unfortunately is was the word paedophile used in  
29 the context of these discussions. Obviously it's a

1 matter for you, Chairman, when you're writing your  
2 report, I'm simply just trying to ascertain whether or  
3 not the word was used and the witness has given his  
4 evidence.

5 CHAIRMAN: But if it was used it would be perfectly 16:31  
6 proper, Mr. Lehane, to use the word, wouldn't it?

7 MR. LEHANE: well, that is the point, Chairman. That  
8 is the point.

9 CHAIRMAN: Yes. It carries a technical meaning and  
10 there's another word unfortunately which I can't 16:31  
11 remember, which again is derived from Greek, which  
12 carries a technical meaning for those who have a sexual  
13 interest in people who are budding adolescents.

14 MR. LEHANE: That is the point. There would be nothing  
15 unusual. 16:31

16 CHAIRMAN: No, there wouldn't, Mr. Lehane.

17 MR. LEHANE: That is why I am asking this question.  
18 This witness is saying absolutely not, I never heard it  
19 used, I didn't use it. Whereas my client is saying  
20 that that word was used in her presence. That is the 16:31  
21 reason I was asking the question, Chairman.

22 CHAIRMAN: All right. Either way it's not going to  
23 help your client or help Mr. Mallon.

24 MR. LEHANE: Simply. I don't want to say, Chairman,  
25 have I to ask -- because the issue was raised I have 16:32  
26 now asked the questions with Mr. Mallon and I have  
27 finished asking those questions.

28 803 Q. Mr. Mallon, just in relation to, your problem with  
29 Ms. Harris is that you described, it was simply

1 nonsense or unrealistic for her to suggest that there  
2 was a silent muttering campaign ongoing in Independent  
3 Newspapers, isn't that right? That's what you say in  
4 your statement?

5 A. Say that again, sorry, I beg your pardon. 16:32

6 804 Q. You say in your statement that it is simply nonsense  
7 and unrealistic for Ms. Harris to suggest that there  
8 was a silent muttering campaign ongoing where the  
9 allegation was well known to all?

10 A. Yes. 16:32

11 805 Q. And your evidence is that your problem is with the use  
12 of the word muttering campaign or that it was silent?

13 A. Yeah.

14 806 Q. You're not making any suggestion that it is nonsense or  
15 unrealistic for Ms. Harris to suggest that this matter 16:33  
16 was being talked about in a general sense, it's just  
17 the manner in which it was talked about?

18 A. Yes. Sir, I think I may have touched on this already.  
19 Absolutely. Everything can be discussed in general  
20 sense, especially news stories or proposed stories of 16:33  
21 the day. But not in a muttering, sort of, gossipy,  
22 kind of wink-wink sort of way.

23 807 Q. When this Tribunal was set up and when the Tribunal  
24 gave his call for information, did you contact or write  
25 to the Tribunal and indicate that you had overheard or 16:33  
26 were aware that these matters were being discussed in  
27 the newspaper after March 2014?

28 A. No. The Tribunal contacted me.

29 808 Q. Okay. why didn't you do that?

1 A. Because I didn't have -- I don't have any information,  
2 sir.

3 809 Q. Just in relation to what Ms. Harris actually said, and  
4 I will just put to you her evidence to the Tribunal to  
5 give you a chance to comment on it. She says that, and 16:33  
6 this is at page 119 and there's no need to put it on  
7 the screen, that you came in very busy, you came in and  
8 out of meetings, usually to give some message and then  
9 out again. And I think that's your evidence. That you  
10 would dip in and dip out of meetings as required, is 16:34  
11 that right?

12 A. I dipped into and out of many meetings. I've stayed  
13 for the duration of many meetings with Ms. Harris also.

14 810 Q. Yes. And she says that what you said to her was:  
15 16:34  
16 "It wasn't a very big Tuesday conference, it was a  
17 different one to the best of my recollection and he  
18 just said the same sort of thing, he said -- "  
19  
20 And this is you now saying. 16:34  
21  
22 "-- oh you know, we have to bear in mind that he's --  
23 there's more to this than, there's more to Sergeant  
24 McCabe that meets the eye and that's all there was."  
25 16:34  
26 And then she said you said:  
27  
28 "You know about McCabe and children."  
29 A. Sir, once again, and I have said this four times now,

1           once again I will return to when Ms. Harris was sitting  
2           where I am sitting and she conceded absolutely that she  
3           had got it wrong about me. So I mean, yes.

4 811 Q.    Ms. Harris clarified the accounts that she had  
5           previously given and the Chairman can draw his own   16:35  
6           conclusions --

7           A.    Yes, absolutely.

8 812 Q.    -- based on the letters and the evidence that she gave  
9           under oath here. But the point is, would you agree  
10          with me that what she attributes you saying there is a   16:35  
11          fairly mild version of the conversations that on your  
12          account were flying around Independent Group  
13          headquarters at that time?

14          A.    Chairman, that's absolutely incorrect.

15 813 Q.    well, I have to put to you that you did say that.   16:35

16          A.    I didn't.

17          MR. LEHANE: Thank you very much?

18

19          THE WITNESS WAS CROSS-EXAMINED BY MR. HARTY AS FOLLOWS:

20 814 Q.    MR. HARTY: Mr. Mallon, my name is Mark Harty and I am   16:35  
21          counsel for Gemma O'Doherty. I want to bring you  
22          back a year earlier - I am just here - to April 2013,  
23          what was your role at that stage?

24          A.    I was Operations Editor as it was called of the Irish  
25          Independent, which was an operational and editorial   16:35  
26          role.

27 815 Q.    And Ms. O'Doherty was one of the staff journalists --

28          A.    Yes.

29 816 Q.    -- in the Irish Independent at that time?

1 A. Correct.

2 817 Q. Do you recall receiving a phone call in relation to  
3 Ms. O'Doherty appearing at the doorstep of the former  
4 Garda Commissioner Martin Callinan?

5 A. Yes, I do. 16:36

6 818 Q. Who made that call to you?

7 A. I believe the phone call, the call was made to me by  
8 Tom Brady who was a security editor at the time with  
9 the crime and security, I beg your pardon, with the  
10 Irish Independent. 16:36

11 819 Q. Can you recall what was said to you?

12 A. I believe it was Tom Brady, yes.

13 820 Q. Can you recall what he said to you?

14 A. That he -- I don't recall verbatim but the gist of it  
15 was that Gemma O'Doherty had turned up at the house, 16:36  
16 the home of the Garda Commissioner and effectively was  
17 door-stepping the Garda Commissioner as the phrase is  
18 used.

19 821 Q. Do you recall calling Gemma O'Doherty then?

20 A. I rang her immediately. 16:36

21 822 Q. Right?

22 A. And I asked her to desist and please, just move away  
23 from the house, get away from the house and just go  
24 home and we can discuss it the following morning. And  
25 that I just would have said to her that there are 16:37  
26 protocols here and she knew that more than anybody.  
27 And the first I knew that she was door-stepping the  
28 home of the Garda Commissioner was when I got that  
29 phone call. And I would have always been privy to any

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of our reporters making door-steps. Door-steps can essentially be dangerous things when you just suddenly arrive on somebody's door in this case at night and an editor would always have to know about it.

CHAIRMAN: Gentlemen, it's now quarter to five or thereabouts. I'm sorry you have to come back in the morning but you do have to come back in the morning and I think I have sat here long enough. I can't take any more.

16:37

16:37

THE HEARING THEN ADJOURNED UNTIL WEDNESDAY, 13TH JUNE 2018 AT 10:00AM

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