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MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
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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 FRIDAY, 15TH JUNE 2018 - DAY 93

93

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

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1 THE HEARING RESUMED, AS FOLLOWS, ON FRIDAY, 15TH JUNE,
2 2018:

3
4 MS. LEADER: Mr. Reynolds, please.

5
6 MR. PAUL REYNOLDS CONTINUED TO BE CROSS-EXAMINED BY
7 MR. MCDOWELL:

8 MR. MCDOWELL: Chairman, yesterday Mr. Whelan made an
9 intervention on behalf of the Gardaí -- they are not
10 here.

11 CHAIRMAN: There is no Garda here at all?

12 MR. MCDOWELL: I will continue anyway, Chairman. I was
13 going to say --

14 CHAIRMAN: No, no, we will wait, Mr. McDowell. It
15 could have been that there was some kind of an incident
16 such as mentioned in the context of Dowra, but I doubt
17 it. No, don't worry about it. You are fine.

18 MR. MCGUINNESS: Chairman, might I just say I have
19 received some information that the Garda legal team
20 will be another five minutes.

21 CHAIRMAN: Okay. Well, why don't we all just wait. I
22 understood, Mr. McGuinness, there was a colleague of
23 mine in the High Court who later went to the Supreme
24 Court, no names will be mentioned, who when sitting in
25 Galway and was told that the parties needed time to
26 consider the settlement of a case, simply sat there
27 until such time as such settlement was effected. But I
28 don't think I am going to do that. So I will go.

1 THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED

2 AS FOLLOWS:

3
4 CHAIRMAN: Just one other thing vis-à-vis the week
5 after next, I understand certain inquiries are being 10:14
6 made including down in the courts to see if we can find
7 some place to sit. So, Mr. McDowell.

8 MR. McDOWELL: Yes, Chairman, yesterday Mr. Whelan
9 intervened and said that it might shorten matters if
10 Sergeant McCabe were to indicate whether he was 10:14
11 withdrawing the suggestion that Commissioner O'Sullivan
12 had orchestrated the RTÉ coverage. Sergeant McCabe
13 isn't in a position to withdraw anything; he has
14 faithfully reported to the Tribunal what he was told by
15 Mr. Barrett and it's up to this Tribunal to ascertain 10:15
16 whether his account of what Mr. Barrett told him is
17 correct or whether it's not, but he is not withdrawing
18 his testimony as to what he was told by Mr. Barrett.

19 CHAIRMAN: I think that's right, Mr. McDowell, and I
20 also think this is like habeas corpus: Once I am 10:15
21 required to investigate something I just have to do it,
22 it doesn't matter what anybody says. But of course,
23 you know, if it turns out that it is being said now,
24 well, I was misheard, misunderstood, never said that at
25 all, well that does obviously make a difference. But 10:15
26 let's see where the thing shakes up, and I think
27 everybody knows because the relevant statements have
28 been circulated.

29 1 Q. MR. McDOWELL: Mr. Reynolds, could I ask you to look at

1 page 5905 again, please, which is page 8 of your May
2 2016 notebook. Have you got that there? In
3 typewritten form.

4 A. Yeah.

5 2 Q. And maybe I should just remind you that it corresponds 10:16
6 to page 5931, which is the manuscript version of that
7 page in the notebook?

8 A. Sorry, what am I looking at here?

9 3 Q. You are looking at typewritten version.

10 A. What is at the top of the page? Page 8, "not 10:17
11 exaggerated".

12 4 Q. Page 8, "not exaggerated". Yes. And could I ask you
13 whether those notes are notes of a conversation with
14 somebody or are they your own notes as an aide-memoire
15 as you were going through the report? 10:17

16 A. Can we just scroll down them a little bit more, please?

17 5 Q. Yes.

18 A. Yeah, they look to me like they could be an
19 aide-memoire, an initial outline.

20 6 Q. I see. And you'll see that after item 9, I take it, 10:17
21 there is a numeral of some kind on the left, but
22 there's "truthful to the Commission in his evidence -
23 he lied to a senior officer (lied)"?

24 A. Yeah.

25 7 Q. Can you just indicate was that your reflection on what 10:18
26 you were reading or was that somebody saying that to
27 you?

28 A. No, I think that would be my reflection on what I was
29 reading, on what I had read.

1 8 Q. So you decided, having read the relevant paragraph in
2 the O'Higgins Commission report which referred to an
3 untruth which he had uttered in order to shake
4 Superintendent Clancy out of complacency, you decided
5 to put in the term "lied", is that right? 10:18

6 A. Yeah, yeah, that was my decision, as I said. And I can
7 give you the reasons for it again if you want but I
8 gave them to you yesterday.

9 9 Q. No, we have gone through all of the catechism and the
10 dictionary. I am just curious that this was your term 10:19
11 and you decided to use it, unprompted by anyone else,
12 is that right?

13 A. Yes, no, I used the word "lie".

14 10 Q. I see. And on the next page, page 9, you have "false
15 report to super, reported to GSOC, hadn't" and then the 10:19
16 phrase "found false report untruth"?

17 A. Yeah.

18 11 Q. That refers to the same thing again, does it?

19 A. Yeah, it looks like it, doesn't it.

20 12 Q. So this was a matter of some considerable concern to 10:20
21 you that sergeant -- in terms of your analysis of the
22 report, you've made two separate notes now of that
23 incident, is that right?

24 A. Ah, yeah, yeah, yeah, I saw it as a significant issue,
25 all right. 10:20

26 13 Q. I see. Now, could I ask you, did you ever think, in
27 conducting your analysis and your editorial analysis,
28 to deal with issues such as the amount of occasions
29 where Sergeant McCabe's evidence was preferred to that

1 of people who had given evidence to the Tribunal
2 implicating Sergeant McCabe -- or sorry, the
3 Commission, implicating Sergeant McCabe in the
4 incidents of which he was complaining?

5 A. Ah, yeah, I did consider, like, I considered the 10:20
6 positive aspects as well as the negative, I think that
7 is reflected in the research.

8 14 Q. No, but you didn't, you never said that on many
9 occasions the Tribunal -- sorry, the Commission had to
10 deal with issues where Sergeant McCabe had to give 10:21
11 evidence contrary to that of other Garda witnesses and
12 that on each and every occasion Sergeant McCabe's
13 evidence was accepted and preferred over the
14 contradictory statements of his colleagues?

15 A. No, you are correct. Like, I mean, there's many 10:21
16 occasions in the report, as I said it's 360 pages, I
17 mean, I looked at it in the round and I tried to
18 reflect as much as I could the balance of it, you know,
19 the positive, the not so positive it, the issues.

20 15 Q. But by zeroing in on the untruth paragraph, and 10:21
21 Mr. Gillane has told us that you read that out in your
22 radio interview, by zeroing in on that and by never
23 referring to the fact that Sergeant McCabe, his
24 evidence had been preferred to the contradictory
25 evidence of other Gardaí, you were giving the 10:21
26 impression, surely, that he was an unreliable person?

27 A. Ah, no, no, I wasn't, because I was very conscious and
28 very determined to put in the part in the report where
29 he was never less than truthful in his evidence, and I

1 would have thought that that reflected what you are
2 saying there, you know.

3 16 Q. But it didn't deal with the fact that he had had to
4 contradict other Garda witnesses on a number of quite
5 serious matters? 10:22

6 A. Ah, well, it mightn't have gone into the specifics but
7 I think the judge's finding that he was never less than
8 truthful in his evidence to the Commission, I think you
9 know, that does cover it.

10 17 Q. I see. well, could I ask you to look at page 5481, 10:22
11 please. You might find it easier, by the way, if you
12 took out volume 21 and looked at it in the flesh, so to
13 speak, because these things rolling past you on the
14 screen are a bit difficult to follow.

15 A. What page am I looking for? 10:23

16 18 Q. 5481.

17 A. Okay.

18 19 Q. It appears at the bottom of the page that you had sent
19 Ray Burke, Kevin Bakhurst and Hilary McGouran a
20 proposed text for your piece on Monday's one o'clock 10:23
21 news, is that right?

22 A. Yeah, I think this is in reference to the News at One,
23 yeah.

24 20 Q. Your proposed text was going to start with the phrase,
25 which is on page 5482, start with the sentence: 10:24
26
27 "The O'Higgins Commission says the whistleblower,
28 Sergeant Maurice McCabe, did not withdraw an allegation
29 of corruption against the former Garda Commissioner

1 Martin Callinan, despite being invited to do so."

2 A. Mm-hmm.

3 21 Q. And as I see it, Mr. Burke says:

4

5 "I think we can avoid any accusation of bias if you 10:24

6 started by saying --"

7

8 This is at paragraph 2 on his reply to you.

9

10 "-- that the O'Higgins Commission has said that former 10:24

11 Garda Commissioner Martin Callinan is entitled to have

12 his reputation vindicated and that allegations made

13 against him by whistleblower Sergeant Maurice McCabe

14 were unfounded and deeply hurtful.

15 A. Yeah. 10:24

16 22 Q. And he then puts in:

17

18 "I think a lead-in like that above does not put the

19 boot into McCabe straight away."

20 A. Mmm. 10:25

21 23 Q. Now, I know that you have said that this correspondence

22 was a frank editorial interchange of ideas.

23 A. Raw, robust.

24 24 Q. Not intended to --

25 A. Casual. 10:25

26 25 Q. Yes. Not intended to be poured over by lawyers at a

27 later stage.

28 A. Yes.

29 26 Q. But I do have to suggest to you that, even allowing for

1 that, the underlying feeling is that your piece was
2 putting the boot into Sergeant McCabe?

3 A. Ah, no, no, I mean, I mean, everybody would have their
4 own opinion on the pieces anyway and they are entitled
5 to have that, of course I accept that. And you know, 10:25
6 as I said yesterday, nobody seems to have been happy
7 with it and so be it. But really, I mean, as I said as
8 well, you have to look at this email in the context of
9 the previous emails and our overriding concern was to
10 make sure that we were fair to everybody, to all 10:26
11 parties, and that we were impartial. And while I did
12 see it, I saw it as a very significant finding, not
13 only the fact that Mr. Justice Kevin O'Higgins had
14 found that the Garda Commissioner or the former Garda
15 Commissioner was not corrupt, but I also thought it was 10:26
16 significant that Sergeant McCabe did not withdraw that,
17 and it was the only case where he didn't withdraw it,
18 so he was -- it appeared to me that he could possibly
19 still be maintaining that and I actually thought that
20 was very significant. And yeah, as you can appreciate 10:26
21 it's all part of the editorial process where other
22 people come in with other ideas and look at it with
23 fresh eyes and clearly Ray Burke looked at this and
24 said yeah, I see your point, but really we have to be
25 very, very careful, we are reporting on the facts of 10:26
26 what Mr. Justice Kevin O'Higgins found, but really, we
27 have to be so careful so that we are not seen, not only
28 that we are biased against Sergeant McCabe, but we have
29 to be seen not to be biased, and if there is any

1 possibility of a perception like that emerging, we have
2 to make sure we have taken steps to avoid that, and to
3 show that. And I think that is what that shows there.

4 27 Q. Yes. Well, that email is, as I understand it, sent to
5 you at nearly half past nine on the -- 10:27

6 A. Sunday night.

7 28 Q. -- evening of the Sunday night?

8 A. Yeah, yeah.

9 29 Q. Would you tell me, was it before or after that that you
10 contacted -- made contact with Sergeant McCabe or 10:27
11 attempted to make contact with Sergeant McCabe by
12 telephone?

13 A. I think there is a time on my note in one of those
14 handwritten notes, isn't there? I think it was
15 possibly after it, but if you -- 10:27

16 30 Q. Yes.

17 A. If you can put up that, I think it was 9:55 but I stand
18 to be corrected. I think it was 9:55.

19 31 Q. Yes.

20 A. I can look through the hard copy, I have in my bag if 10:27
21 you like.

22 32 Q. And what did you --

23 A. I think it was after that.

24 33 Q. What did you intend to do in a phone call with Sergeant
25 McCabe at that stage when your texts had all been 10:28
26 written?

27 A. I was going to present the text to him and ask him what
28 his response was.

29 34 Q. At ten o'clock on a Sunday night you were going to

1 present him with your written texts --

2 A. Yes.

3 35 Q. -- and ask him for comment, is that right?

4 A. Yes, yeah, yeah, I was going to give him an opportunity
5 to respond. I mean, I would have been aware that he 10:28
6 would have had the reports anyway.

7 36 Q. He was a serving member of An Garda Síochána?

8 A. He was, yeah.

9 37 Q. Yes. He was under a duty of confidentiality to the
10 O'Higgins Commission, isn't that right? 10:28

11 A. But he was also a serving member of the Garda Síochána
12 she who had issued press releases and had given
13 interviews to journalists.

14 38 Q. You were inviting him to assist you in breaching the
15 confidentiality of the Commission, that was your 10:28
16 intention?

17 A. Ah, no, no. No, no. No, not at all. I mean, I don't
18 think the final report -- sight of the report is a
19 breach of -- I think it's my duty to present him and
20 say look, this is what we are doing tomorrow, I want 10:29
21 you to be aware of it and if we have got anything wrong
22 and any mistakes in it please tell us and we will stop
23 now.

24 39 Q. So you were expecting him at ten o'clock on a Sunday
25 night to start going through your proposed texts which 10:29
26 you had embargoed for 8:00am the following morning?

27 A. Yeah, well, I mean, I wasn't going to send him all my
28 emails or everything, but I was going to read out -- as
29 you know yourself there is a seven o'clock report and

1 an eight o'clock report, so I was proposing to read,
2 you know, the minute or minute and a half of the, say,
3 seven o'clock report and an eight o'clock report, which
4 is both the same. So I could read that to him first
5 and see what his reaction would be, and if he chose to 10:29
6 comment on that then I could have given him further
7 details in relation to the question and answer in
8 relation to what the Commission had found in relation
9 to his actions with regarding the eight criminal
10 investigations. And then, as you rightly point out, 10:30
11 you see on that email from the News at One, that is
12 embargoed until one o'clock, I mean, that isn't even
13 the finished product, because when we finished Morning
14 Ireland we then looked at this and with fresh eyes on
15 that in the morning, we looked at it again and I 10:30
16 imagine there were further changes to the News at One
17 before it was actually broadcast. So there was plenty
18 of time for that. So ten o'clock on a Sunday night, it
19 wouldn't have taken too long to get a reaction from
20 Sergeant McCabe. 10:30

21 40 Q. You see, I am suggesting to you that this is entirely
22 fanciful and that you were simply going through the
23 motions.

24 A. But why would I go through the motions?

25 41 Q. That you had no intention of varying the script which 10:30
26 had been so carefully editorialised and so carefully
27 prepared in question-and-answer form?

28 A. Ah, no. Like, I mean, look, I'd worked on this and I
29 had read it and I knew, if anybody was familiar with

1 it, Sergeant McCabe was most familiar with it. I mean,
2 he had lived it for years. So you put it to him. I
3 mean, if there was anything wrong or anything
4 objectionable or anything that could be questioned, I
5 mean, he was in a position to do so. 10:31

6 42 Q. So is your position a bit like former Commissioner
7 Callinan, that he was given an opportunity to have
8 input into your broadcasts but failed to avail of the
9 opportunity?

10 A. I am not sure if I would use the word failed. He 10:31
11 didn't. I mean, that is his choice and his right. I
12 mean, as in the previous broadcast, he had -- I mean,
13 all I can do to people when I'm writing about them or
14 broadcasting is give them the opportunity. I want to
15 hear their side of the story. That is my -- I have a 10:31
16 statutory obligation to hear from all parties and to be
17 as fair -- be fair and impartial. And I have to put it
18 to people.

19 CHAIRMAN: I am right in thinking, amn't I, that there
20 was a phone call, a message was left but there was no 10:31
21 reply and it was 10:00pm on the Sunday, which is about
22 -- well, that is about nine hours before the first
23 broadcast.

24 A. That's correct. And I mean, we had received solicitors
25 letters from Sergeant McCabe before, so if there was 10:32
26 any problem I would have no doubt that we would have
27 heard from the lawyers, you know. And if there was a
28 difficulty, I'm sure we could have stopped it, like,
29 you know.

1 43 Q. MR. McDOWELL: was he to consult his solicitor at ten
2 o'clock on a Sunday evening?
3 A. Ah, no -- I mean, that is open to him, that is open to
4 anybody, whatever. I mean, he was -- nine hours
5 beforehand I made sure that he was aware that this was 10:32
6 going to happen.

7 44 Q. I see. Now, can I suggest to you that, again that you
8 were simply going through the motions, that you didn't
9 intend to have any significant input from him, and
10 secondly, can I suggest to you that you were putting 10:32
11 him in a wholly embarrassing position, that if he did
12 comment and you published that fact, that he would be
13 implicated in breaching the confidentiality of the
14 O'Higgins Commission?

15 A. Ah, no, no, no, Mr. McDowell. I mean, that never 10:32
16 crossed my mind.

17 45 Q. well, would you have said Sergeant McCabe denies all of
18 this?

19 A. I would hear what he had got to say first. I didn't
20 know what he was going to say. 10:33

21 46 Q. would you --

22 A. He could have told me that is all wrong, you are
23 completely wrong. He could have said you haven't --
24 you have got the wrong report, I have got another copy
25 of it here, it says this, he could have said anything 10:33
26 to me.

27 47 Q. I see. well --

28 A. I mean, I could put a situation to you, imagine if he
29 said to me well actually, you are completely wrong

1 there, 10.86 isn't in the final version, you have got a
2 previous draft, I would have been rightly snookered.

3 48 Q. I see. I am suggesting to you, just to close off on
4 this, that approaching Sergeant McCabe at that stage by
5 a telephone message was just simply going through the 10:33
6 motions of pretending that you were being evenhanded in
7 dealing with your sources?

8 A. This is too serious for pretence, Mr. McDowell. I have
9 a statutory responsibility. RTÉ is the only
10 organisation in this country broadcasting -- or the 10:34
11 only news organisation in this country that is
12 regulated by statute, and I have a statutory
13 responsibility to report in a fair and impartial
14 manner. And I had to contact Sergeant McCabe.

15 49 Q. Well, if you had to report in a fair and impartial 10:34
16 manner, why did you not mention the fact that Sergeant
17 McCabe's evidence had been preferred by the O'Higgins
18 Commission on all of the areas where he was in conflict
19 with other Gardaí?

20 A. Well, as I explained to you, I mean, I dealt with his 10:34
21 evidence, the Commission's overall finding was that he
22 was never less than truthful.

23 50 Q. And I'm suggesting to you that you omitted the fact
24 that his evidence was preferred to that of other Gardaí
25 who gave evidence against him to the O'Higgins 10:34
26 Commission on numerous occasions in the report?

27 A. No. I wrote these reports very, very conscious to be
28 fair and balanced.

29 51 Q. Just to remind you, issues such as whether he was

1 involved in letting Jerry McGrath out on bail, whether
2 he was involved in the loss of a computer, whether he
3 allowed the man who assaulted the young girl out on
4 bail after 20 minutes interrogation, things like that
5 where -- whether he was the person who told Mary Lynch 10:35
6 that she needn't bother attending court, all of those
7 incidents were where other Gardaí testified against him
8 and where the Commission said that his version was
9 correct.

10 A. I went through each of the individual cases and where 10:35
11 the judge found that he was to be praised, I quoted
12 directly from the report and praised him.

13 52 Q. I see.

14 A. And where the judge said he was to be criticised, I
15 quoted the criticisms directly from the report. 10:36

16 53 Q. And you see, you did an analysis about how many times
17 Superintendent Clancy had been mentioned and how many
18 times Sergeant McCabe's allegations against him had
19 been found to be unsubstantiated, and you counted them
20 all up, isn't that right? I think, was it 17 or 19 10:36
21 times? 19 times? Sixteen, 17 or 19 times, whichever,
22 you counted them all up?

23 A. Mmm.

24 54 Q. But you never once counted up the occasions on which
25 Sergeant McCabe had had to defend himself against 10:36
26 evidence of other Gardaí and where his evidence had
27 been preferred to theirs?

28 A. Mr. McDowell, there is 360 pages in that report, I have
29 no doubt that you can cherry-pick, you can go right

1 through it and pick out all the bits I missed and I
2 will accept exactly what you are saying, but if you ask
3 me if those reports on RTÉ gave a fair, accurate,
4 impartial and balanced account of the report, I think
5 any fair-minded person will say to you that they did. 10:37

6 55 Q. In fact, I am just quoting from the transcript just so
7 that we will be clear about it, you said:
8
9 "It states at least 19 times that Sergeant McCabe's
10 complaints against Superintendent Clancy were 10:37
11 inaccurate, unreasonable, incorrect, manifestly
12 unfounded or not supported by the facts."
13 A. Yeah, but sure, that is a fact in the report.

14 56 Q. So you were adding them up?
15 A. But that is a fact in the report, isn't it? I mean, I 10:37
16 was going through the report, yeah. As I said, I
17 didn't write the report. I reported on the report.

18 57 Q. I see. Did you hear Mr. Philip Boucher-Hayes'
19 broadcast on the Drive Time programme?
20 A. I didn't. I was preparing for the six o'clock news. 10:37

21 58 Q. Did you hear it afterwards?
22 A. I don't think I did. No, I didn't listen back to it.
23 I was preparing for the nine o'clock news. There was,
24 a solicitor's letter came in from Sergeant McCabe.

25 59 Q. Was the day before yesterday the first time you heard 10:38
26 that programme?
27 A. The day before yesterday?

28 60 Q. Yes.
29 CHAIRMAN: In other words, when we played it hear.

1 61 Q. MR. McDOWELL: when it was played here.

2 A. Oh, yeah, yeah. I think it was, yeah.

3 62 Q. That was the first time you heard it?

4 A. I think it was, yeah.

5 63 Q. And did it not strike you as you heard it that it was 10:38
6 far more balanced and fair than the picture you
7 presented?

8 A. Well look, if you want to tell me that Philip
9 Boucher-Hayes is a far better reporter than me I am not
10 going to disagree with you. 10:38

11 64 Q. I didn't suggest that to you and I wouldn't be that
12 offensive to you. What I was suggesting to you: That
13 his analysis and his reportage on the O'Higgins
14 Commissioner Callinan report was far more balanced and
15 fair than your output that day? 10:38

16 A. You are perfectly entitled to your opinion,
17 Mr. McDowell, and everybody is entitled to their
18 opinion.

19 65 Q. So you didn't share that opinion?

20 A. Well, I can't have an opinion on this. I mean, I just 10:39
21 put the work out as it is and people can take from it
22 what they will.

23 66 Q. I see. Did I understand your evidence to be that on
24 the day of the Public Accounts Committee hearing at
25 which Mr. Callinan used the term 'disgusting' that you 10:39
26 met him in the cloakroom or the bathroom, the washrooms
27 in Leinster House, is that right?

28 A. Yes, I passed by him, yeah, in passing.

29 67 Q. Yes.

1 A. Mmm.

2 68 Q. And did you have a conversation?

3 A. Not a conversation.

4 69 Q. Or telepathic --

5 A. I beg your pardon? 10:39

6 70 Q. Did you have a conversation with him or it was
7 telepathy?

8 CHAIRMAN: No, I think the evidence was that - I mean,
9 we are all human beings - apparently one or either of
10 them was urinating, the other was passing by or going 10:40
11 to the urinal or whatever, and the person who I
12 understood was Commissioner Callinan who was at the
13 urinal shook his head as if to say I have made an eejit
14 out of myself.

15 MR. McDOWELL: I don't think urinals were mentioned in 10:40
16 the evidence.

17 CHAIRMAN: well, I mean, what else are people doing in
18 toilets? I mean --

19 71 Q. MR. McDOWELL: But he said:
20
21 "I met him in the bathroom outside, I was washing my
22 hands and he said to me --"
23
24 And you were asked:
25
26 "Q. And this is where? In the Public Accounts
27 Commi ttee?
28 A. This is in the Public Accounts Commi ttee. And he
29 said, he shook hi s head and knew he shoul dn' t have said

1 the word disgusting. "

2

3 And you said later on:

4

5 "Yeah, it was just sort of a -- you know, he just knew, 10:40
6 he knew he shouldn't have done it."

7

8 So that's your -- his body language suggested that to
9 you, is that what you are saying, not anything he said
10 or you said? 10:40

11 A. It was a combination of both, yeah. I mean, I don't
12 have the exact words but I knew exactly, he just shook
13 his head, you know, just disgusting, you know, I knew
14 what he meant.

15 CHAIRMAN: But he didn't say anything? 10:41

16 A. I mean, he said anything, well, I shouldn't have said
17 it, you know that sort of thing, I shouldn't have said
18 it. I mean, I don't have the exact memory of it, but I
19 knew exactly, it was just a fleeting moment but...

20 72 Q. MR. McDOWELL: And you know that he was passed a note 10:41
21 asking him to explain it or to withdraw it from one of
22 his colleagues?

23 A. Well, I heard that, yeah.

24 73 Q. He didn't. And we know that the following day, he went
25 to visit -- or he went to visit the car park in west 10:41
26 Dublin and spoke to Deputy McGuinness, you are aware of
27 that?

28 A. But sure, I don't know anything about any of that. I
29 mean, I only know what is in the public domain.

1 74 Q. I see. And I am suggesting to you that he seems to
2 have had a different attitude on the subject in
3 whatever remarks he made in his dealings with you than
4 he did with anybody else?
5 A. Sure, I don't know that. 10:42
6 75 Q. It does suggest, though, that he was on close terms and
7 in a position to trust you not to go and say the
8 Commissioner shook his head after the meeting and told
9 me -- led me to believe that he regretted using the
10 term? 10:42
11 A. It's just a human moment, really, you know. It doesn't
12 suggest anything.
13 76 Q. But you never broadcast that?
14 A. I did.
15 77 Q. At the time? 10:42
16 A. On the day he retired.
17 78 Q. That he had regretted it?
18 A. Yes.
19 79 Q. I see. And do I understand that your relationship was
20 such that he could tell you all of that and rely on you 10:43
21 to back him up on the date of his retirement?
22 A. Sorry, repeat that again.
23 80 Q. I am suggesting to you that this suggests that he had a
24 relationship with you of friendship?
25 A. I wouldn't agree with that. 10:43
26 81 Q. You wouldn't agree with that?
27 A. No, I wouldn't agree with that. I think we are all
28 human, Mr. McDowell, you know.
29 82 Q. And you are aware -- well, you exchanged an email with

1 him on the date of his retirement, isn't that right?

2 A. No.

3 83 Q. Or sorry, a text message, are you saying that wasn't
4 you?

5 A. Sorry, can you show me what you are talking about. You 10:43
6 said an email --

7 84 Q. I thought Ms. Leader showed you a text message the
8 other day?

9 A. Two days after his retirement.

10 85 Q. Two days after his retirement. I see. And on the 22nd 10:44
11 March, before his retirement, somebody sent him a text
12 message saying:
13
14 "Reynolds would help out if an interview arose
15 somewhere." 10:44
16
17 That suggests that you were supportive --

18 A. But sure, I can't be responsible - I told you that
19 yesterday - I can't be responsible what other people
20 say or don't say or think or don't think. Sure I don't 10:44
21 know who that is or what that is about.

22 86 Q. You see, I am suggesting to you to you that nobody
23 would send that text to the Commissioner if they didn't
24 believe you would help out with an interview?

25 A. But sure who was that? 10:44

26 CHAIRMAN: well, I mean, Mr. Reynolds, I appreciate it
27 can be hard to, I suppose, chaff, but it's not really a
28 question of debating. If it is the case that you would
29 remember you would have been in contact with him later

1 or you would have suggested, and it could be completely
2 on a human level, feeling sorry for someone who has
3 lost their job, offered to put his side of the story or
4 do some kind of an interview, then you must know that,
5 and if Mr. McDowell asks the question you really have 10:45
6 to tell me.

7 A. But sure, I have answered that yesterday, and I have
8 accepted that.

9 CHAIRMAN: what is the answer?

10 A. which? In relation to the text? 10:45

11 CHAIRMAN: No, it's in relation to, I suppose, the
12 events surrounding the text. In other words --

13 A. The text was two days after he retired.

14 CHAIRMAN: No, I know that.

15 A. I am sorry, I am not clear on what you are looking for. 10:45

16 CHAIRMAN: It's really what was going through your mind
17 in relation to this.

18 A. After he retired, is it?

19 CHAIRMAN: Yes.

20 A. what was going through my mind two days after he 10:45
21 retired was, wouldn't it be great to get an interview
22 with the former Garda Commissioner, wouldn't that be
23 some scoop.

24 87 Q. MR. McDOWELL: well, I am suggesting to you that before
25 he retired somebody sent a text -- well, perhaps we'd 10:45
26 better look at it. It's at page 4615, volume 17. And
27 somebody sends a text, do you see it there?

28 A. I do, yes.

29 88 Q. At item 18 on that page, somebody sends the

1 Commissioner a text on that day, in the evening time,
2 saying:

3
4 "Yeah, just thinking so much pressure being exerted
5 from Labour riding on Varadkar's opener." 10:46

6
7 That is presumably, though we don't know it, to deal
8 with the distinguished rather than disgusting thing.

9
10 "Hope Kenny can control the PAC on Tuesday, and you 10:46
11 would need a plan B if needed in a hurry. I mean, what
12 you were putting together yesterday. Similarly if you
13 were door-stepped or at an official function. Reynolds
14 would help out if an interview arose somewhere. Just
15 thoughts and not recommendations." 10:47

16 CHAIRMAN: This by the way, is two days before he
17 resigned?

18 MR. McDOWELL: Yes, exactly.

19 89 Q. So there's somebody saying to the Commissioner that you
20 would help out with a helpful interview or a piece? 10:47

21 A. Well, no, no, I would be very interested in speaking to
22 him at that time on the record on camera. And, as I
23 said, my record speaks for itself, I'd have a few very
24 interesting questions to ask him, I have no doubt about
25 that. As I said to you before, I mean it's a lazy 10:47
26 assumption and it's not fair and not true.

27 90 Q. It's the phrase "help out", I mean if the Commissioner
28 was in trouble at the time and beset by crises of
29 different kinds, he was being told by some adviser that

1 you would help out with an interview?

2 A. I would certainly interview the Commissioner and I
3 would certainly have some very interesting questions
4 for him. And I would have at that time, as I do -- as
5 I have had with all commissioners and as hopefully I 10:48
6 will continue to do so in the future.

7 91 Q. Yesterday, the various updated versions of your news
8 story on the 24th February 2014 were circulated, and it
9 would appear that at a quarter to five in the
10 afternoon, you updated your piece to say that: 10:48
11

12 "The Commissioner has said he wrote to the
13 whistleblower Sergeant Maurice McCabe 14 months ago and
14 told him to cooperate with the investigation into
15 allegations that penalty points had been cancelled." 10:48

16 A. That's correct.

17 92 Q. And that, you say, as I understand your evidence, that
18 version of your text was discussed with Superintendent
19 Taylor, is that right?

20 A. Sorry, can I have a copy of the documents as well, is 10:49
21 that possible?

22 93 Q. I am sure it is.

23 A. So we are all on the same page.

24 94 Q. Yes, I think that is fair you should have it. I was
25 given it while I was cross-examining you. 10:49
26 [HANDLED TO THE WITNESS]

27 A. Thank you very much. Now, you are talking about "the
28 Garda Commissioner said he wrote to the whistleblower
29 Sergeant Maurice McCabe 14 months ago"?

1 95 Q. Yes.

2 A. Yeah.

3 96 Q. And that had been put to Superintendent Taylor?

4 A. Yeah.

5 97 Q. And he had come back to you and said yes, that's 10:49
6 correct, is that right?

7 A. Yes. Well, look, I said to him what is the position or
8 what is -- something along the lines, what's Garda
9 Headquarters -- what is the Commissioner's position on
10 this, like? Clearly he wrote it on the 14th of 10:49
11 December 2012, is he still of the view that that he
12 didn't cooperate? Yes, he said he wrote to him. There
13 it is.

14 98 Q. Yes. Now, could I ask you just, at this stage as I
15 understand your evidence yesterday, you didn't have the 10:50
16 direction in front of you?

17 A. I had had sight of the direction on which I based the
18 first report.

19 99 Q. Yes. But you didn't actually have it in front of you
20 or in your possession, isn't that right? 10:50

21 A. Well, look, I had sight of it, that is as far as I am
22 prepared to go.

23 100 Q. Somebody it shown it to you, is that right?

24 A. Well --

25 101 Q. And you hadn't kept a copy because you didn't discover 10:50
26 this document to the Tribunal, is that right?

27 A. My evidence is I had sight of it, I mean --

28 102 Q. Yes, but I am asking you: Somebody had shown it to you
29 and you hadn't kept a copy, is that right?

1 A. Well, I haven't got a copy now and I hadn't got a copy
2 when the Tribunal was set up.

3 103 Q. Did you keep a copy?

4 A. As I said to you, it wasn't a particularly big story.

5 104 Q. Did you keep a copy of it? 10:50

6 A. How do you mean did I keep a copy of it? If I had had
7 a copy when the Tribunal was being set up I would have
8 submitted it, like we submitted all our notes and all
9 our references.

10 105 Q. Sorry, I just want to understand; is this a case that 10:51
11 somebody showed it to you and you went off to write
12 your story, or is it a case that somebody gave it to
13 you and you had it in front of you when you wrote the
14 story?

15 A. I am only prepared to say that I had sight of it, 10:51
16 Mr. McDowell. I am not prepared to go into the
17 provenance of the news gathering --

18 CHAIRMAN: No, I appreciate that, Mr. Reynolds, and I'm
19 certainly not going to make a ruling that you have to
20 because you do have a privilege in relation to this, 10:51
21 but it doesn't infringe your privilege to say -- look,
22 I presume you are a careful journalist and I presume
23 that, no more than myself, when I'm writing something I
24 check and recheck and therefore Mr. McDowell's question
25 is: Did you have it in front of you when you were 10:51
26 writing it out?

27 A. Yeah, but who showed it to you and was he sitting
28 beside you, and you know, was he a tall fella or a
29 small fella, was it male or female, you know what I

1 mean. I mean, it's clear that --

2 CHAIRMAN: Mr. Reynolds, you know, the level of
3 suspiciousness, I don't actually share it, and I know
4 where the point needs to be cut off. It's a very
5 simple question and it's simply whether or not you 10:52
6 actually had a copy, that's all. So in other words,
7 when you were writing this out, did you have a copy in
8 front of you? Did you cross-check it? That is not
9 going to reveal anybody as your source, at all, under
10 any circumstances, whatever about reading nods and 10:52
11 winks in a toilet, this is very, very far from it.

12 A. That's -- as I say, that is just a human moment.

13 106 Q. MR. McDOWELL: Could you answer the question? Did you
14 have a copy of the Commissioner's direction in your
15 possession when you wrote the story? 10:52

16 A. I was looking at a copy of it when I wrote the first
17 draft, the first report.

18 107 Q. I see. And where did you see a direction to cooperate
19 with the investigation being carried out by Assistant
20 Commissioner John O'Mahony? 10:53

21 A. "If you have any further concerns, and without
22 prejudice to your rights under the confidential
23 reporting mechanism, such matters can be brought to the
24 attention of Assistant Commissioner John O'Mahony."

25 108 Q. "If you have any further concerns"? 10:53

26 A. Yeah.

27 109 Q. That was not a direction to cooperate with --

28 A. That is a paragraph within a sentence -- that is a
29 sentence within a paragraph which is encompassed in a

1 direction which relates to the cancellation of fixed
2 charge notices.

3 110 Q. And he was told -- he was told to desist first of all?
4 A. Yes, the direction was desist --

5 111 Q. Yes. 10:53
6 A. -- and if you have any further concerns, bring them.

7 112 Q. If you have any further concerns what?
8 A. Yes, bring them to Assistant Commissioner John
9 O'Mahony.

10 113 Q. It doesn't say bring them, it says what? 10:53
11 A. "Such matters can be brought to the attention".

12 114 Q. "Can be brought"?
13 A. Yes.

14 115 Q. "If you have further concerns". Now, I'm suggesting to
15 you that it was a complete distortion of that paragraph 10:54
16 to say that he was directed to cooperate with Assistant
17 Commissioner O'Mahony's investigation.

18 A. Well, Mr. McDowell, as I said to you yesterday, I'm a
19 journalist. You know, I work in the English language,
20 I don't work in a particularly -- in a parliamentary 10:54
21 version of it or in a formalised version of it. My job
22 is to explain things to people, in a clear, concise
23 manner. And yes, this was a formal direction, written
24 in a particular form of legalistic or disciplinary
25 language, but my job is to translate that into a form 10:54
26 of words that most people will understand. The common
27 parlance. And that is what I did.

28 116 Q. You see, the point is that it had been stated in public
29 that Sergeant McCabe had not cooperated with this

1 inquiry.

2 A. What are you referring to?

3 117 Q. It had been stated in public.

4 A. But what are you referring to? Who stated it?

5 118 Q. In the Dáil. 10:55

6 A. This is Minister Shatter, is it?

7 119 Q. Yeah.

8 CHAIRMAN: Yes, it's --

9 A. Yeah, I thought he said he refused to cooperate.

10 CHAIRMAN: Just hang on a minute, if you wouldn't mind. 10:55

11 I think it's possibly best to put it this way: That

12 the Garda line was that he was directed to cooperate

13 but wouldn't. In other words, he was hiding his head

14 in the sand. And the implication of that is, that here

15 is a man who moans about everything but when it comes 10:55

16 to actually putting up the evidence and actually

17 sitting down and working out what's right and what's

18 wrong he is elsewhere.

19 A. Yeah.

20 CHAIRMAN: So that, if you like, is the Garda line. 10:55

21 And Mr. McDowell's questions are directed to saying,

22 weren't you following the Garda line? Now, I am not

23 saying it's the Garda line, I am saying that it is a

24 line of cross-examination that has been pursued over

25 the course of weeks. Do you understand that? 10:55

26 A. Well, okay --

27 CHAIRMAN: That is the question. Mr. McDowell, am I

28 correct in that?

29 MR. McDOWELL: That's correct.

1 A. Clearly I was following the Garda line in that report
2 because the Gardaí gave me the official line on the
3 record, which I put on the record. I was also seeking
4 the Maurice McCabe line, which he wasn't prepared to
5 give me, and he had -- he had clearly decided or 10:56
6 somebody had decided that it was going to Prime Time,
7 which was on at half ten that night. And so, Sergeant
8 McCabe was prepared to allow this, which you are
9 telling me is highly offensive and so unjust and yet he
10 was prepared to allow this to remain for six-and-a-half 10:56
11 hours without any alternative view.

12 120 Q. I see. So, could I ask you to -- you have your 16:45
13 version of your story there, is that right?

14 A. That's correct.

15 121 Q. And could I ask you to go to the second page of it and 10:56
16 about five paragraphs down you will see, this is a
17 quotation from Minister Rabbitte:
18
19 "Mr. Rabbitte said he was not in a position to draw
20 conclusions on recent allegations and whether Minister 10:57
21 Shatter should apologise to Sergeant McCabe."

22 A. Yeah. I didn't write that. I only wrote -- if I can
23 explain how this works. I was explaining about the RTÉ
24 copy system yesterday where information comes in from
25 all different journalists in different parts of the 10:57
26 organisation. So the political stuff was all written
27 by political journalists. And it's all into the system
28 and the online editor tagged it on or when a new line
29 comes in, it goes up the top. And it sort of keeps

1 developing or changing throughout the day. So I didn't
2 write any of the political copy. That came from our
3 political units.

4 122 Q. I see. well, somebody else then was aware of the fact
5 that Minister Shatter had represented Sergeant McCabe 10:57
6 publicly as failing or refusing to cooperate with the
7 O'Mahony --

8 A. Well, somebody else was writing that stuff for the
9 system. As you can see as well, I mean, "Sinn Féin's
10 Pádraig MacLochlai n n", you know "Fi anna Fáil 's Mí cheál 10:58
11 Martin", all these, you can see at the moment "read
12 Mí cheál Lehane's blog", he was obviously inputting into
13 the whole thing as well.

14 123 Q. You see the point I am putting to you is that this was
15 a matter of public controversy and you waded in by 10:58
16 saying that the Garda Commissioner -- firstly without
17 contacting Superintendent Taylor, you asserted that the
18 Garda Commissioner had issued a direction to Sergeant
19 McCabe to cooperate with the investigation?

20 A. Yeah. 10:58

21 124 Q. That wasn't true?

22 A. But it is true, yeah. That's my view on it. I mean,
23 as I explained yesterday, that's it. That is a
24 direction. I mean, the Gardaí are a disciplined
25 organisation. I mean -- 10:58

26 125 Q. I see. well, I don't think I can put it much further
27 than that. That is your view of the English language.
28 CHAIRMAN: Look, I think the point being made by
29 Mr. McDowell and indeed I think I explained it

1 yesterday, but just let's have another go to see where
2 we get. I see a very different situation emerging, if
3 someone says 'if you wish to eat any further meals you
4 may go to the canteen' as opposed to saying 'you will
5 eat all further meals in the canteen'. 10:59

6 A. Yeah.

7 CHAIRMAN: So one is an option and the other is a
8 direction. You can't go anywhere else.

9 A. But my point --

10 CHAIRMAN: So as I understand it, the report seems to 10:59
11 say, now I'm again I am only asking a question. The
12 report seems to say you actually go to the O'Mahony
13 investigation and you tell them what you know. And on
14 the other hand, the document seems to say, you
15 definitely stop accessing Pulse, that's at an end, but 10:59
16 in the event that you have got something else that you
17 need to tell anybody about Pulse or fixed charge
18 penalty notices well then the place to go is O'Mahony,
19 not to the newspapers, not to your lawyers, not to
20 anybody else. That's what Mr. McDowell is putting to 11:00
21 you.

22 A. Okay.

23 CHAIRMAN: And what he is saying is, the way it comes
24 over in your report is, not as an option --

25 A. Yes. 11:00

26 CHAIRMAN: -- but as a direct order.

27 A. Yes.

28 CHAIRMAN: Such as 'turn up tomorrow --

29 A. Yes.

1 CHAIRMAN: -- and wear your full uniform'.
2 A. Okay.
3 CHAIRMAN: That is what he is explaining.
4 A. Can I explain that?
5 CHAIRMAN: Yeah. No, but I am leaving it between you 11:00
6 and Mr. McDowell.
7 A. The point there is, and my position on that is, is that
8 the Garda Commissioner first of all, in a ranking
9 organisation, in a disciplined force, does not give
10 sergeants options when he sends them a piece of paper 11:00
11 with the word "direction" at the top of it. That is
12 the first thing. Secondly, this direction was read out
13 three times to Sergeant McCabe in full by his line
14 manager, his chief superintendent, in Mullingar Garda
15 Station, and three more times the chief superintendent 11:01
16 said to him, this is a direction. That's six times
17 that Sergeant McCabe has been informed that this is a
18 direction. Now, this is not my opinion, I am not
19 taking a view on this, I'm just citing these facts as
20 to why I see that as a direction. I don't have an 11:01
21 opinion on it at all.
22 126 Q. MR. McDOWELL: well of course, you are now giving
23 evidence based on the transcript of what happened in
24 Mullingar as supplied to Prime Time by Sergeant McCabe,
25 isn't that right? 11:01
26 A. But that is in the transcript, yeah.
27 127 Q. Yes. And I'm suggesting to you that the direction was
28 to desist from accessing Pulse or communicating its
29 contents to any third parties.

1 A. My position is --

2 128 Q. Sorry, do you accept that?

3 A. Sorry, no. No, my position is I think it's perfectly
4 legitimate and it was perfectly legitimate for me to
5 report this as a direction, as stated on the document. 11:02

6 129 Q. And I'm suggesting to you that he was being directed
7 not to access Pulse or to communicate its contents to
8 third parties and he was informed that if he had any
9 further concerns he could bring them to the attention
10 of Commissioner O'Mahony? 11:02

11 A. Well, as recently as two weeks ago the former Garda
12 Commissioner gave evidence here at this Tribunal and he
13 said the full paragraph was a direction.

14 130 Q. Now, you know that Minister Shatter apologised to
15 Sergeant McCabe on the record of Dáil Éireann for 11:02
16 suggesting that he had failed to cooperate?

17 A. No, I think he said for saying that he refused to
18 cooperate.

19 131 Q. And you draw a distinction between those two?

20 A. I do, I do, I do, yeah, very much so. I never said he 11:03
21 refused to cooperate.

22 132 Q. But you did say it was a disciplined organisation?

23 A. Yes, I said he didn't cooperate.

24 133 Q. He didn't cooperate?

25 A. Yeah. 11:03

26 134 Q. You are saying he didn't refuse to cooperate?

27 A. I'm saying -- I am saying I didn't say he refused to
28 cooperate.

29 135 Q. You are just saying he didn't cooperate?

1 A. Exactly.

2 136 Q. And I have got to suggest to you that that is untrue
3 and indicates a deep prejudice against Sergeant McCabe?
4 A. No. It indicates the way I have behaved throughout all
5 of this work and the way I consistently behave; that I 11:03
6 report the facts.

7 137 Q. That was the next point. I am going to suggest to that
8 you that it is indicative of the way you behaved
9 throughout all of the matters that you have been giving
10 testimony about? 11:04

11 A. I reported the facts, impartially.

12 138 Q. And I just want to -- one last thing I just want to ask
13 you about. You have given evidence that on no occasion
14 did Commissioner Callinan discuss Sergeant McCabe in a
15 negative way with you? 11:04

16 A. Yes.

17 139 Q. You said that yesterday?

18 A. Yes.

19 140 Q. Did you ever discuss Sergeant McCabe with former
20 Commissioner Callinan at all, negative or positive or 11:04
21 neutral?

22 A. I would have -- no, I would have reported on his public
23 comments, any on-the-record conversations I can't
24 really go into. But as I said, I was never negatively
25 briefed by anyone -- 11:04

26 141 Q. Sorry, I'm just asking a question: Is it the case that
27 you ever spoke to Commissioner Callinan about Sergeant
28 McCabe --

29 A. I am telling you I can't -- I have conversations with

1 people all the time.

2 CHAIRMAN: well, it strikes me, Mr. Reynolds, that in
3 the event that you didn't talk about Sergeant McCabe,
4 you wouldn't be doing your job.

5 A. Yeah, but -- 11:05

6 CHAIRMAN: It was a very big thing.

7 A. But you have to respect my position. I mean --

8 CHAIRMAN: We are not at the stage yet where we have to
9 look at that.

10 A. Okay. 11:05

11 CHAIRMAN: We really aren't. I mean, I doubt --
12 Commissioner Callinan wasn't asked that question, but I
13 very much doubt that he would say no, we never
14 discussed Sergeant McCabe. I mean, it would be quite
15 ridiculous, it would be the elephant in the room, 11:05
16 literally. Well, not literally, but metaphorically.
17 So I'm sure you did discuss Sergeant McCabe, at least I
18 can't conceive of how you couldn't have.

19 A. Well look, I mean --

20 CHAIRMAN: So the next question after that is: Did he 11:05
21 tell you he was a child abuser? So maybe you can
22 help --

23 A. Never. And that is the point.

24 CHAIRMAN: Or anything of that variety?

25 A. That is the heart of the matter. And that goes right 11:06
26 across the board. And I have given that evidence and
27 that's the truth.

28 142 Q. MR. McDOWELL: You used the phrase yesterday that --

29 A. I thought that was the last question.

1 143 Q. Sorry no, it's not that easy. If you'd answered it
2 differently it might have been the last question.

3 A. You are telling me.

4 144 Q. You used the phrase yesterday that you weren't briefed
5 in a negative way or there was no negative discussion 11:06
6 on a number of occasions. Did you discuss the D
7 allegation with the Commissioner at any point in time?

8 A. Never.

9 145 Q. Did you discuss the investigation or the DPP's
10 directions in respect of the D allegation -- 11:07

11 A. No.

12 146 Q. -- with the Commissioner at any time?

13 A. No.

14 147 Q. Did you discuss them with any senior Garda officers at
15 any time? 11:07

16 A. I have to say to you what I said in relation to this
17 allegation: That I heard there was an allegation, I
18 heard it was investigated, I heard a file had gone to
19 the DPP, and I heard there was no prosecution, and that
20 was the end of it. 11:07

21 148 Q. I see.

22 A. But I had to find that out, so I had to have a
23 conversation to find that out. And I cannot tell you
24 the source or the provenance of that conversation.
25 Only to say that I was satisfied and I satisfied myself 11:07
26 there was nothing in it.

27 149 Q. I just wanted to ask you about the coverage of the
28 O'Higgins Report that you broadcast. Did you ever deal
29 with the fact that the O'Higgins Report was critical of

1 the Byrne/McGinn report in many respects?

2 A. As I said, I mean you can cherry-pick the bits that you
3 believe that I missed and, you know, we can be here all
4 night with you picking bits out of the report, all I
5 can say is -- 11:08

6 CHAIRMAN: Mr. Reynolds, seriously, we will go through
7 it quicker if -- don't worry about having an argument
8 or disputing things with Mr. McDowell. He is actually
9 entitled to ask these questions and that are
10 substantial differences where I suppose you might say 11:09
11 O'Higgins is tougher than Byrne/McGinn. I mean, I know
12 that, I think you know that as well.

13 A. I don't think I went into the details -- I don't think
14 I went into the details of the Byrne/McGinn because I
15 think it would have been too complicated, you know. 11:09

16 CHAIRMAN: well then, that's the answer.

17 A. Okay, all right.

18 150 Q. MR. McDOWELL: You see, Sergeant McCabe is anxious to
19 point out that there are many, many things in the
20 O'Higgins Report which were favourable to him and 11:09
21 upheld his side of the argument, which simply never saw
22 the light of day in your reportage and did see the late
23 of day in the Philip Boucher-Hayes programme that was
24 broadcast after yours?

25 A. Mmm, yeah. 11:09

26 151 Q. You would accept that is true?

27 A. Well, I mean, I accept if Sergeant McCabe was happier
28 with Philip Boucher-Hayes' reports than he was with
29 mine, that's fair enough.

1 152 Q. And I have got to suggest to you that your reportage
2 was based on discussions with Gardaí of various ranks,
3 people who'd provided you with the report and that you
4 were taking the line that the report was bad news for
5 Sergeant McCabe and that it was fair to put the boot 11:10
6 into him?

7 A. No, I reject that. I reject that totally and I think
8 the emails show that. We were very, very conscious we
9 needed to be fair to Sergeant McCabe.

10 MR. McDOWELL: I see. Thank you, Mr. Reynolds. 11:10

11 CHAIRMAN: Mr. McDowell, just before we leave this,
12 would you mind just clarifying, I did write a down
13 before, but I have hundreds of pages of notes at this
14 point and it's going to take me a wee while to find it,
15 is this the subject of litigation, the actual report? 11:10

16 MR. McDOWELL: Not that I know of.

17 CHAIRMAN: Right, okay.

18 A. No, there was -- I think there was a solicitor's letter
19 but I don't think there was any follow-through.

20 MR. McDOWELL: The solicitor's letter was sent on the 11:11
21 day of the broadcast but I think the time has well
22 passed for litigation.

23 CHAIRMAN: No, no, no, I appreciate that but sometimes
24 these things, people can either delay them or they can
25 time take to get to court. 11:11

26 MR. McDOWELL: No, no. Mr. Reynolds' reportage is not
27 the subject of litigation.

28 CHAIRMAN: Was there something else then that was?

29 MR. McDOWELL: Yes, the Chief Superintendent Rooney

1 letter and the Gerald Kean interview.

2 CHAIRMAN: well, the Gerald Kean interview, that's
3 finished.

4 MR. McDOWELL: Yeah, that is finished.

5 CHAIRMAN: And the Chief Superintendent Rooney letter, 11:11
6 that is a claim against the State I presume.

7 MR. McDOWELL: Yes. Not against RTÉ.

8 CHAIRMAN: And there is a claim in relation to general
9 bullying, harassment, tort type thing.

10 MR. McDOWELL: There is no claim against RTÉ. 11:11

11 CHAIRMAN: All right. No, fine. Just so as I know.
12 Thank you. So Mr. Ferry.

13

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

15 153 Q. MR. FERRY: Good morning, Mr. Reynolds, my name is John 11:12
16 Ferry and I am one of the lawyers that is representing
17 Superintendent David Taylor. And I think we find
18 ourselves now at a stage in the Tribunal where you are
19 perhaps the sole remaining journalist of those that are
20 listed by my client as being those who he briefed. 11:12
21 Now, there is perhaps one other journalist, but in
22 relation to the list, I think you may be the last
23 member from that list, and in relation to my client, he
24 finds himself as a current serving officer
25 superintendent in charge of a specialist unit here in 11:12
26 Dublin, and he finds himself in a position where he has
27 said that he was directed by Martin Callinan to
28 negatively brief journalists, and Ms. Leader brought
29 you through what that entailed. And I just want to

1 just recap on your evidence, because it appears to me
2 that you have been very clear in saying that you were
3 not negatively briefed. My client says that you were
4 negatively briefed, so there is a large gulf between
5 our two positions. So, first of all, I think that you 11:13
6 opened your evidence by saying that you became aware of
7 the allegation in relation to Sergeant McCabe in 2013
8 and that is similar to the evidence of some other
9 people that have given evidence here, including
10 journalists. And my client says that it was from the 11:13
11 middle of 2013 up until the retirement of Commissioner
12 Callinan that he was engaged in the process of
13 negatively briefing journalists. So I just wanted to
14 bring you to that time when you heard that, because
15 like a few other journalists, and I have questioned 11:14
16 them on similar lines, whoever your source was in
17 relation to the first mention of an allegation against
18 Sergeant McCabe, they seem to speak in very precise,
19 almost legal terms. And in fact, you have referred to
20 it today and on the first day of your evidence, that 11:14
21 you were given four facts, isn't that correct? And you
22 said fact one was there was an allegation, and then
23 you said, child abuse; fact two was there had been an
24 investigation; fact three was it was a file to the DPP;
25 and fact four was that there was no prosecution. Now, 11:14
26 other journalists have given evidence and they have
27 said things such as that that was why he fell out with
28 Garda management and that was the start of it, things
29 like that and I put it to them they have been given a

1 rider on the end of it. But it seems to have been very
2 specific to you and it seems to have stopped exactly at
3 that point, that was the end of it. Once you heard
4 there was no prosecution, that was the end of it, is
5 that what you are saying? 11:15

6 A. That's correct.

7 154 Q. Yeah. And you said in your evidence that "that's it,
8 once I heard no prosecution, nothing to do with me as a
9 reporter". Now, I would submit to you, Mr. Reynolds,
10 that in your position where you are probably the most 11:15
11 high profile reporter because of your role with RTÉ, in
12 relation to Garda matters, that that was a staggering
13 set of facts to be given in 2013, because you've
14 already said that in your evidence, I think, you said
15 when you first heard that rumour that it was in the 11:15
16 context of the penalty points issue when this emerged,
17 is that correct?

18 A. Yeah, it probably would have been around that time
19 anyway, yeah.

20 155 Q. So you would have been fully aware that An Garda 11:16
21 Síochana and in particular the senior line of
22 management was having to explain or going to have to
23 explain the actions of the force as a result of issues
24 brought to their attention by a serving sergeant, isn't
25 that correct? 11:16

26 A. Yeah, they had been investigated by Assistant
27 Commissioner O'Mahony, yeah.

28 156 Q. Yes. So you were aware of that, and in your position
29 that you have, your association with An Garda Síochána

1 and with policing and justice, I'm putting it to you
2 that it was an absolutely huge and extraordinary set of
3 facts to then be presented with at the same time as
4 hearing about the penalty points issue?

5 A. No. 11:16

6 157 Q. That a serving sergeant, who just happened to be the
7 sergeant that may be holding the management to account,
8 had these allegations made against him?

9 A. No, I don't -- I don't see it that way.

10 158 Q. Because I would put it to that you if it was any person 11:17
11 in the State that you heard that about, you'd be
12 saying, God that is a terrible story, what is this
13 about, etcetera? But to think that it was about the
14 same man that was behind the penalty points issue and
15 you'd heard it in the context of the penalty points 11:17
16 issue, I put it to you it was an extraordinary piece of
17 information to receive?

18 A. No, I wouldn't accept that. I hear -- I have heard
19 things like that about Gardaí before, I have heard them
20 about doctors, politicians, teachers, all people from 11:17
21 all sorts of society and, you know, I would tend to
22 hear information in the context of big stories anyway
23 because the sort of stories I do tend to be kind of big
24 stories, you know, murders, major drug seizures, major
25 criminal stories, major political events in relation to 11:17
26 the crime and justice system. So not particularly, no.

27 159 Q. Well, that's what I mean; I mean, you are the newsman
28 in this country. I mean, that is your job. I mean,
29 people have jobs. That is your job: You are the front

1 of RTÉ in this country in relation to crime and
2 policing, etcetera, okay? So I appreciate you are not
3 going to sit and blow your own trumpet but I mean, that
4 is your job, isn't that correct?

5 A. I am the crime correspondent for RTÉ, I report on 11:18
6 criminal justice issues.

7 160 Q. In your position, I put it to you it is completely
8 unrealistic that you would say that was the end of it
9 and you wouldn't make any further queries or the person
10 talking to you wouldn't say anything further about the 11:18
11 serving sergeant that an allegation of child sexual
12 abuse had been made against him?

13 A. No, no. No, I mean, as I said, I hear that stuff all
14 the time. And there was a clear end on this. As I
15 said already, there was no process, there had been no 11:18
16 arrest, there was nothing, you know -- you could see
17 there was nothing in it, you know.

18 161 Q. So you have a situation where the journalist that is
19 normally in front of Garda Headquarters, normally in
20 front of the Department of Justice or normally standing 11:19
21 in front of a murder scene tent on the six o'clock
22 news, he is told that the actual sergeant who is
23 raising the penalty points issue that the Garda
24 Commissioner is held answerable to has been accused of
25 child sexual abuse in the past -- 11:19

26 A. Has -- sorry, has been --

27 162 Q. -- and the journalist says that is the end, no further
28 inquiries?

29 A. No, no. He has been exonerated. And that there is

1 nothing in it. There was nothing in it, so...

2 163 Q. It's a bit like, I don't know if you ever saw the Naked
3 Gun movies and Lieutenant Drebin is standing in front
4 of the fireworks factory that has just gone on fire and
5 he is giving a press conference to the media and saying 11:19
6 move along folks, nothing to see here while the entire
7 fireworks factory is exploding in the sky behind them.

8 A. You should work in television.

9 MR. GILLANE: Chairman, while colourful, it is still
10 the same question now asked about ten times. 11:20

11 CHAIRMAN: No, he is entitled to ask the question and
12 putting the question in a colourful manner is very
13 helpful. So I didn't actually remember that scene
14 but I must go back and in the course of my work --

15 A. Who is Frank Drebin? 11:20

16 CHAIRMAN: -- I will try and see the film again.

17 MR. FERRY: Lieutenant Frank Drebin he was in the
18 police squad.

19 CHAIRMAN: I do know about all of that, yes. Maybe,
20 look, the point is this: That there is a big story and 11:20
21 there is a big story and what this is being analogised
22 to is nothing to see here, but there is a firework
23 factory literally going up in a blaze with multiple
24 explosions behind you. In other words, whatever you
25 say about hearing something about someone, this is an 11:20
26 enormous story because it's Sergeant McCabe and it may
27 explain that his allegations are motivated by
28 bitterness. That's the point you are making Mr. Ferry,
29 isn't it?

1 MR. FERRY: Yes.

2 CHAIRMAN: All right. Well then, I think you really
3 have to deal with it on that basis.

4 A. Okay. I mean, look, it wasn't that way at the time.
5 You know, the penalty points report was coming out, you 11:21
6 hear this allegation and there is nothing in it, fine.
7 There was no big -- to use your analogy, you know, the
8 penalty points at the time wasn't a huge fire in 2013,
9 it sort of -- all of these things developed, developed,
10 developed, kept going, you know, you hear this man has 11:21
11 been exonerated in the middle of it and that is it,
12 gone, nothing to do with it. As you said yourself,
13 nothing to see here, move on. But you know, all -- you
14 know, this has only been incremental, I mean, this has
15 only become bigger and bigger when we have various 11:21
16 people losing their jobs and then we suddenly have a
17 commission of investigation and now here we are today
18 with a tribunal of inquiry. You know, but five years
19 ago --

20 164 Q. MR. FERRY: well, you might be forming part of my 11:21
21 submissions there, Mr. Reynolds, because that will be
22 something I will be coming back to; that people who are
23 involved in a smear campaign never envisage a tribunal
24 several years in the future.

25 A. But sure, I -- 11:22

26 165 Q. That is the whole purpose.

27 A. As far as I am concerned, there was no smear campaign.

28 166 Q. Exactly.

29 A. It didn't exist.

1 167 Q. And again just I will recap because I have said it to
2 other journalists: Superintendent Taylor was the Press
3 Officer, he was the senior officer and he was being
4 directed by Martin Callinan, but he wasn't holding
5 court or a press conference outside a murder scene and 11:22
6 saying, hear ye, hear ye, I want to brief you, it was
7 being done in a very, very subtle way. And it was,
8 when the Maurice McCabe story was in high profile he
9 dropped it into conversations.

10 A. It wasn't. Sorry, I will have to stop you there. It 11:22
11 actually wasn't. I was at those murder scenes, I was
12 at those press conferences, never at any time did
13 Superintendent Taylor, and he may be the most brilliant
14 spook in the world and I may be the most stupid person
15 in the world, the most gullible person that didn't even 11:23
16 realise he was being taken for a patsy, but the reality
17 is it didn't happen. He didn't come over -- there was
18 no backhanded talk, there was no reference to this
19 exoneration at all. Superintendent Taylor's evidence
20 doesn't stack up, it doesn't make sense to me. 11:23

21 168 Q. That is exactly the point. But yet you have got the
22 four facts that he was instructed to give to people and
23 he was also instructed to brief that because of that,
24 Sergeant McCabe had a motivation against the guards?

25 A. But you see, that is precisely the point in answer to 11:23
26 your question.

27 169 Q. Last week --

28 A. I never -- can I just -- I never heard those riders.

29 170 Q. Yes. Yes. Well, I will move on from this now.

1 A. And this didn't happen.

2 171 Q. I would submit to that you in your position and I have
3 already outlined the significance of the story,
4 etcetera, and the timing of it. It was a time when
5 Maurice McCabe would have been high profile because you 11:24
6 said you heard it in the context of the penalty points
7 I am saying that would have been contactually one of
8 the times when Superintendent Taylor and yourself would
9 be talking about Maurice McCabe. Are you saying that
10 you never had a conversation with Superintendent Taylor 11:24
11 about Maurice McCabe?

12 A. It didn't happen.

13 172 Q. Yeah. Well, did you ever have a conversation with him
14 about Sergeant Maurice McCabe?

15 A. I did, on the record, yes. 11:24

16 173 Q. On the record. So first of all, I say that -- that, I
17 would submit, just isn't -- it doesn't add up. We will
18 move on from that.

19 A. Sorry, it does add up.

20 174 Q. You also said that it was the story, the allegation 11:24
21 about Maurice McCabe was circulating, you said in the
22 media, Gardaí and political circles, is that correct?

23 A. Yeah.

24 175 Q. Now, I put it to you that is your entire world; you
25 work for the media, you report on the Gardaí, and you 11:25
26 are also reporting around government buildings and
27 officials. So, in other words, your entire world in
28 2013, the story of Maurice McCabe and the allegation of
29 sexual assault was circulating?

1 A. No, I didn't say -- can I correct you? I didn't say it
2 was circulating, I said it was known. I knew about it
3 and I knew other people, similar senior correspondents
4 who I worked closely with, like Conor Lally and Michael
5 O'Toole, I knew they knew about it because we are all 11:25
6 in the same business. I mean we all, as I said we
7 congregate, we all know a lot of things about the crime
8 and justice system, but nobody shares it.

9 176 Q. Yes.

10 A. It doesn't circulate. We don't tell each other what we 11:25
11 know about various stories because we all work
12 independently. That is the way journalism works.
13 There was no circulation.

14 177 Q. Yes. But in Ireland and in the Gardaí and I'm sure in
15 journalism, people rarely have conversations with 11:26
16 somebody who tells them that the subject of the
17 conversation is a serving sergeant and has been accused
18 of child sexual abuse and there was a file to the DPP
19 and there is no prosecution and it stops at that?

20 A. But sure, we weren't having this conversation about 11:26
21 those -- once we knew the facts in relation to it, at
22 least once I knew the facts in relation to it, that was
23 the end of it.

24 178 Q. Yes. For example, Mr. Lally has given evidence that
25 that was the reason why he fell out with management and 11:26
26 that was the start of it. So he had a rider on the end
27 of it which indicated --

28 A. That is Mr. Lally's evidence.

29 179 Q. Yes. But that was the evidence last week from

1 journalists, that there was a rider to what they had
2 heard. But yourself and I think Mr. Williams was
3 similar on Monday, they just had bear details and it
4 stopped and they didn't think anything -- you didn't
5 think anything further of it once you heard there was
6 no prosecution, that was the end of it? 11:26

7 A. Yeah, but you see, that's the allegation from
8 Superintendent Taylor, that there were riders, and I'm
9 telling you there weren't riders. I never heard these
10 riders. 11:27

11 180 Q. Yes. Now, you also said you are clear that you weren't
12 negatively briefed and then you went on and gave
13 information of how it didn't make sense and it just
14 didn't happen. And you indicated at, I think it's at
15 pages 145 of Wednesday's evidence, day 91, you were 11:27
16 just explaining to the judge of how it couldn't happen.
17 And again, on my instructions I will be putting to you
18 that it's quite easy to happen. You explained to the
19 Chairperson, to the Tribunal, in answer to Ms. Leader,
20 when she outlined to you what superintendent was doing 11:27
21 in relation to negative briefing, that it constituted
22 telling people about the D allegation and linking it
23 into Sergeant McCabe's motivation and making complaints
24 in relation to low Garda standards and penalty points.
25 And she asked you what do you say about that and then 11:28
26 you go on and you gave a breakdown of what happened,
27 and you said:

28
29 "Well, that didn't happen. And anybody who knows

1 reporters, working in the field, knows that that, you
2 know, couldn't happen the way it's explained there."

3
4 And then you give an example to the Chairman, you said:

5
6 "I go to murder scenes, they are busy places. I arrive
7 with a camera crew or a satellite van. I get at the
8 scene. I have to find out what is going on, what
9 happened, what are the details. I'm moving around, I'm
10 trying to identify if there are any eyewitnesses. I'm
11 trying to -- we're trying to, you know, for everything,
12 to try and find parking for the satellite van and
13 trying to find location for a live view."

14
15 CHAIRMAN: I get the point, Mr. Ferry. And indeed I
16 heard it, but I think the point that you are making to
17 Mr. Reynolds is this: That indeed one can be terribly,
18 terribly busy but there is a bit of downtime? Isn't
19 that the point you are making, Mr. Ferry?

20 MR. FERRY: Yes

21 CHAIRMAN: That when you have done your report you
22 relax and people may be there and you may have a
23 further chat.

24 181 Q. MR. FERRY: Yeah. I mean, crime scenes, and
25 Superintendent Taylor has said that he spoke to you
26 directly, and crime scenes I would submit are not
27 chaotic places, there may be some chaos around
28 journalists trying to get a story out quickly but the
29 Garda Press Officer is never there at the time of it

1 the murder, hopefully, and by the time he arrives, it's
2 usually a very settled situation and the account that
3 he gives is given after the police have obtained a lot
4 of information. And I put it to you while you said it
5 was a chaotic scene or chaotic places, and you may just 11:29
6 have been saying that in the course of your evidence,
7 but that is not the case at scenes when the Garda Press
8 Officer attends. So there would be ample opportunities
9 to talk and I think you even said, you spoke about
10 yourself and journalists shooting the breeze. I mean, 11:30
11 I would submit that murder scenes and crime scenes
12 there can be an awful lot of hanging around at them
13 waiting on officials to arrive and people to arrive,
14 and that would also go for the Press Officer and the
15 investigating officers, journalists have to spend 11:30
16 sometime a lot of time before the police are ready to
17 talk to them. So it's not fair or not always the case
18 to say to the Chairperson that crime scenes are chaotic
19 places where you wouldn't have time to talk to
20 somebody. 11:30

21 A. Well, my experience is that when I arrive at the scene
22 and when -- what you are saying, for example, is so
23 let's take your scenario then and when Superintendent
24 Taylor arrives, as I explained, he arrives into a
25 huddle, there is a huddle of microphones there, so 11:30
26 there is a collection of journalists and some are on
27 the list and some are not on the list. So for him to
28 begin this negative briefing, as I said, he has to
29 select the ones who are on the list and they have to be

1 briefed and he has to ensure that the other don't know
2 anything about it. And of course the ones that are on
3 the list have been named, myself, Conor Lally and Mick
4 O'Toole, who would know each other quite well. I mean,
5 the idea that Dave Taylor was arriving in full blue, in 11:31
6 the uniform ready to give us the latest appeal about
7 this horrific murder or whatever, that the three of us
8 would be saying, oh, other here comes Dave now, I
9 wonder what news he has got in relation to Maurice
10 McCabe this week, I wonder is he going to tell us the 11:31
11 story that he has been telling us for ages; the idea
12 that this wouldn't become almost like a joke, that he
13 was going to repeat the same mantra that he had been
14 repeating, that none of us would have said to each
15 other that Dave was actually perpetrating this line and 11:31
16 that we wouldn't have said to each other well, did he
17 say this to you, why did he say this to you, why do you
18 think he is saying this; the idea that even if Dave had
19 been saying this to us that I wouldn't have said to him
20 what are you talking about, this guy has been 11:31
21 exonerated, why are you telling me this, what is going
22 on, what is this about, is there something else; the
23 idea that when the press conference is finished, that
24 is the time I am busiest, that is when I have the
25 superintendents interview, when it must be put on radio 11:32
26 and it must be put television, and when I have to cut a
27 television package, when we have to go live, I don't
28 have time to talk to anybody after that.
29 CHAIRMAN: I honestly get that. And we are in a stage

1 now where we are not having questions and answers but
2 more like speeches. I think the point you are making
3 is, okay, you are busy. But Mr. Reynolds, I must say,
4 over many, many years I have heard people saying I
5 couldn't have committed the crime because of whatever. 11:32
6 And it's very unconvincing. On the other hand, you are
7 saying, look, if something like that had been said to
8 me, the first thing I would have done was I would have
9 started talking to my colleagues about this and what is
10 this line and why is it being promulgated, that seems 11:32
11 to be your answer.

12 A. Well, it is just an example.

13 CHAIRMAN: I know, but --

14 A. It would have been known amongst us and then it would
15 have popped up as an issue amongst us. 11:33

16 CHAIRMAN: I see the point you are making, Mr. Ferry.

17 182 Q. MR. FERRY: It's not a big point anyway. I am just
18 making the point that you went into great detail about
19 how chaotic the scenes are and you couldn't talk to
20 Dave Taylor, and I am just saying we all know the 11:33
21 reality of scenes that you attend at.

22 CHAIRMAN: All right. Well, Mr. Ferry, you can take it
23 as a fact that I would find it hard to accept that
24 although people are very busy, I know people are very
25 busy, and in my extended family there is one person who 11:33
26 claims to be working 19 hours a day, I know that the
27 plain reality of it is that there is always a bit of
28 time to talk to somebody, otherwise things being very
29 inhuman. But the point you are making --

1 A. It didn't happen.

2 CHAIRMAN: -- is that it didn't happen. And secondly,
3 if it did happen you would have queried it. And then
4 thirdly, you are saying --

5 A. It would have circulated itself. 11:33

6 CHAIRMAN: -- if it was something that was being done
7 among people whom you know you certainly would have
8 talked about it and why was it happening.

9 A. Exactly. We would have been aware of it and it would
10 either have become a serious issue or it would have
11 become a joke. 11:33

12 183 Q. MR. FERRY: But I mean, I am just saying like, David
13 Taylor, I don't think you -- I think in your statement
14 anyway you say that there was no big difference between
15 him and the previous press officers, but he attended 11:34
16 the scenes and I think you said that he would usually
17 give the press briefing on his own without the senior
18 investigating officer. So I am just saying he was a
19 man that you knew and I am sure there were occasions
20 when you had a chat or you had a chat about something 11:34
21 before you went live on air, would you accept that?

22 CHAIRMAN: I think I would accept that. I think I
23 would accept that there is always an opportunity -- I'm
24 not impressed by the point, oh, we couldn't possibly,
25 far too busy. 11:34

26 A. No, no. Don't get me wrong, I mean, there may have
27 been a conversation but, like, I mean, it would have
28 been a conversation about what is going on. The idea
29 that Superintendent Taylor would just introduce this,

1 you know, completely irrelevant point of conversation.
2 CHAIRMAN: But that is a different point.
3 A. Yeah.
4 CHAIRMAN: I do --
5 A. And that is the point I make. The fact that this would 11:34
6 come out of the blue --
7 CHAIRMAN: I see that point, Mr. Reynolds. I am going
8 to take it as a fact that people attending at a crime
9 scene with Gardaí, they have an opportunity to chat.
10 That is just it. 11:35
11 184 Q. MR. FERRY: And in relation to you saying that you were
12 never briefed and it couldn't have happened and didn't
13 happen, well, I mean, you were the man that was briefed
14 by Superintendent Taylor in relation to the O'Mahony
15 report and the issue of whether Sergeant McCabe 11:35
16 cooperated or not?
17 A. Well, it actually wasn't a brief, it was an
18 on-the-record statement.
19 185 Q. Yes. But you see, I appreciate what you are saying and
20 this Tribunal is about a number of people, but my 11:35
21 client is, as you used yourself, you were talking about
22 yesterday about separating the goat from the sheep, but
23 my client kind of is the goat separated from the sheep
24 because he was a member of the senior management
25 personnel and now he is out on his own making these 11:35
26 claims. But when you are saying you weren't briefed,
27 Superintendent Taylor right from the outset has said
28 that one example was the report of Assistant
29 Commissioner John O'Mahony into allegations made by

1 Sergeant McCabe and that he was instructed by the
2 Commissioner to brief the media that Sergeant McCabe
3 had refused to cooperate with Assistant Commissioner
4 O'Mahony, and Superintendent Taylor says that he later
5 found out that this was untrue. So, he says that is an 11:36
6 example of even he was being used to get a briefing out
7 to journalists on behalf of Martin Callinan that he
8 later found out was untrue and I am simply saying you
9 were the conduit for that.

10 A. Yeah, but you see, that is exactly the point, you see. 11:36
11 Because if he had briefed me that Sergeant McCabe had
12 refused to cooperate I would have written that down and
13 said is that an official statement from Garda
14 Headquarters? The Garda Commissioner is saying that
15 Sergeant McCabe refused to cooperate? And that's what 11:36
16 I would have put into that report. I wouldn't have put
17 in the report that the Garda Commissioner has said that
18 he didn't cooperate, I would have said, oh, you mean
19 these guys are supporting the Minister? So that is not
20 only the Minister for Justice is saying the sergeant 11:37
21 refused to cooperate, it's also the Garda Commissioner.
22 But I didn't do that because it wasn't said to me.

23 186 Q. But it was Superintendent Taylor who gave you that
24 information about the direction to cooperate and that
25 was I think -- 11:37

26 A. No, he gave me an on-the-record statement from Garda
27 Headquarters.

28 187 Q. Yes. Which Superintendent Taylor says turned out later
29 to be untrue.

1 A. No, he didn't. He said the distinction is again -- the
2 distinction is between a refusal to cooperate and did
3 not cooperate.

4 188 Q. Yes.

5 A. And it's an important distinction. 11:37

6 189 Q. But he gave it directly to you as opposed to any other
7 journalist on that day?

8 A. I presume he would have given it to any journalist who
9 asked for it. I think the newspapers reported it as
10 well, as far as I know. 11:37

11 190 Q. Yes.

12 A. I think at least one did.

13 191 Q. He also gave you the story of the resignation of
14 Commissioner Callinan on the morning of his
15 resignation? 11:38

16 A. The retirement, yeah.

17 192 Q. Oh, sorry, the retirement. So he did select you in
18 relation to the retirement?

19 A. Pardon?

20 193 Q. You were selected? 11:38

21 A. Yeah, well, he rang me up and he said the Garda
22 Commissioner is retiring.

23 CHAIRMAN: I think the point that is being made to you,
24 Mr. Reynolds, is this: That you are being targeted for
25 preferential treatment in terms of certain stories, now 11:38
26 whether you accept that or not, that is the point that
27 is being made to you, and that in consequence it's
28 likely that you would be targeted as well for this
29 particular very unpleasant story.

1 A. I don't think that one truth validates a lie.

2 194 Q. MR. FERRY: Yeah. And later that day, Superintendent
3 Taylor says that he was directed by the Commissioner to
4 get the Bandon Garda station tapes document to you and
5 that he met you and gave you the letter on the evening 11:39
6 of the retirement?

7 A. That, Chairman, I am claiming privilege on.

8 CHAIRMAN: well, I mean, that is the evidence that I
9 have, and if you want to contradict it, it's fine.
10 Now, what one makes of it is a different matter 11:39
11 entirely and it's evidence on the record from
12 Superintendent Taylor after all.

13 A. well, I can't comment on the source of that document.

14 CHAIRMAN: well, all right. Where does this leave us?
15 Superintendent Taylor is saying that the letter was 11:39
16 passed over, it was passed to you, but by the way, you
17 would be a natural person to send that to, and you are
18 saying I can't comment. And then Mr. Ferry is making
19 the point, if he gives you this letter, if you get this
20 kind of preferential feeding of information you are 11:39
21 very likely to get preferential feeding of the
22 information or be trusted with the information that,
23 for instance, Sergeant McCabe was a paedophile. And
24 again I am not saying he was a paedophile, I am saying
25 that was the allegation. 11:39

26 A. I never heard that, Chairman. Never heard that.

27 CHAIRMAN: All right.

28 195 Q. MR. FERRY: Now, there is a dispute on the evidence
29 with former Commissioner Callinan in relation to that

1 detail. I think his counsel will probably come back to
2 that, but I think he disputes what Superintendent
3 Taylor says in relation to that aspect, but
4 Superintendent Taylor is clear that he was briefing on
5 that day, on two occasions, to get the word out to you 11:40
6 that he was retiring, and in the evening, briefed to
7 get on to Paul and get the letter to Paul. And that
8 you were met outside Garda Headquarters and the letter
9 was given to you.

10 CHAIRMAN: All right. But again, I don't need to go 11:40
11 into that but I think if you like, Mr. Ferry, take this
12 as being the position. The evidence is there, it's
13 uncontradicted. Now, the rider to the question which
14 is, therefore, isn't it very likely that would you also
15 have been told about Sergeant McCabe, is really the 11:40
16 issue you need to deal with.

17 A. Well, as I said to you, one truth doesn't justify a lie
18 and the point I am making --

19 CHAIRMAN: I am finding it hard to get my head around
20 that. So, what is the answer? 11:41

21 A. Just because one person tells something that is
22 truthful, that doesn't mean they are telling the truth
23 in relation to everything. And my point is, and I was
24 never negatively briefed by Superintendent Taylor.

25 196 Q. MR. FERRY: No, I appreciate -- 11:41
26 A. It didn't happen.

27 197 Q. I appreciate that is your evidence and that is what
28 journalists are saying, but from Superintendent
29 Taylor's position and the evidence before the Tribunal,

1 and I put it that you are in a similar vein, everything
2 that you heard about Sergeant McCabe was negative.
3 Right from the outset, the first thing you heard about
4 this man was that he was accused of sexual assault of a
5 child. So, like all other journalists that have given 11:41
6 evidence here and have addressed this issue, there was
7 a seed planted in your head --

8 A. Sorry, I don't mean to be argumentative and certainly I
9 don't mean to interrupt you, but that is not true.
10 It's not true that everything I heard about Sergeant 11:41
11 McCabe was negative. I heard positive as well. I have
12 told you that. So...

13 198 Q. Okay. Well, you have those three instances anyway of
14 the O'Mahony direction to cooperate, the decision to
15 resign -- or retire, and the Bandon tapes letter, that 11:42
16 they were all directly from Martin Callinan through
17 Superintendent Taylor to you?

18 A. I'm not accepting that.

19 199 Q. And just to finish off, Mr. Reynolds, Superintendent 11:42
20 Taylor had a long career before he ever became the
21 Press Officer and he now finds himself that he is the,
22 like you said yesterday, the goat separated from the
23 sheep, but up until a certain stage in his career after
24 leaving the Press Office, he was from the same pool as
25 all the senior officers; he was a detective almost all 11:43
26 his career, in and out of Special Branch on promotion,
27 and while there was talk about his qualifications and
28 qualifications of other press officers, I think the
29 reality is that the guards all joined the force at the

1 one level.

2 CHAIRMAN: No, I do get the point, but the point you
3 are making, Mr. Ferry, is that you would have both been
4 well-known to each other, is that the point? For
5 professional reasons? 11:43

6 MR. FERRY: Yes, but also he was similar to other press
7 officers and that there was nothing untoward about him
8 while he was the Press Officer and that he was doing
9 his role in accordance with the Commissioner's
10 instructions as far as journalists were aware, would 11:43
11 that be fair to say?

12 A. First of all, I didn't know him at all before he joined
13 the Press Office. I only met him when he was appointed
14 to the Press Office. And secondly, I don't know
15 anything and it didn't happen, what he says. It didn't 11:43
16 happen.

17 200 Q. Yes.

18 A. The things he says that he said, didn't happen.

19 201 Q. Yes. But Superintendent Taylor has said that he
20 believed what he was told by his Commissioner, and you 11:44
21 have spoken this morning for somebody who is not a
22 member of the guards, of how the Commissioner in a
23 ranking organisation, in a disciplined force does not
24 give sergeants options when he sends them a direction,
25 I thought it was a very informed statement from 11:44
26 somebody who is not a member of An Garda Síochána.

27 A. Yes, but I have no evidence or information in relation
28 to any direction that Superintendent Taylor alleges was
29 given to him by former Commissioner Callinan in

1 relation to this matter.

2 202 Q. No. But you're somebody who is not a garda and you are
3 of the firm belief, according to your evidence this
4 morning, that the Commissioner in a ranking
5 organisation, in a disciplined force, does not give 11:45
6 sergeants options when he sends them a direction.

7 CHAIRMAN: I see the point now, Mr. Ferry.

8 203 Q. MR. FERRY: what I am saying to you is, can you imagine
9 being, actually being a member of An Garda Síochána who
10 has been long time serving and who has been promoted on 11:45
11 three occasions and finds himself on a one-to-one basis
12 as a superintendent right beside the serving
13 Commissioner --

14 MR. GILLANE: Chairman, I don't know if this is fair.

15 CHAIRMAN: I think, it may help if I just put the 11:45
16 question like this, Mr. Gillane, it may solve things.
17 You have taken the view that the Garda Síochána is a
18 disciplined organisation, you have taken the view
19 people obey orders. well, the evidence here has been
20 is David Taylor was given an order go and caluminate 11:45
21 this person who is causing a great deal of trouble and
22 making a great deal of fuss about road traffic fixed
23 penalty notices. Therefore, it's highly likely that he
24 did it and did it to you. Is that fair, Mr. Ferry?

25 MR. FERRY: Yes. 11:46

26 CHAIRMAN: So what do you say to that question by
27 Mr. Ferry?

28 A. He didn't. It didn't happen.

29 204 Q. MR. FERRY: And the reason for that is that he believed

1 what his Commissioner was telling him, and he has said
2 that there was a campaign to discredit Sergeant McCabe.
3 But what he was doing may only have been one strand of
4 that campaign, and there has been evidence here before
5 the Tribunal of other officers being asked to do 11:46
6 different things in relation to different aspects
7 involving Sergeant McCabe. And I'm putting it to you
8 that you were one of the journalists that was
9 negatively briefed by Superintendent Taylor and the
10 reason for that is you were the most trusted journalist 11:46
11 of them all.

12 A. I was not negatively briefed by Superintendent Taylor
13 about Sergeant McCabe. It didn't happen.

14 MR. FERRY: Thank you, Mr. Reynolds.

15 CHAIRMAN: Thanks, Mr. Ferry. Was there any other 11:47
16 questions, Mr. Ó Muirheartaigh? Mr. Lehane? No.

17 MR. Ó MUIRCHEARTAIGH: Thank you, Chairman. I just
18 have one or two questions because I think there is a
19 certain amount --

20 A. Could I take two minutes, do you mind? 11:47
21 CHAIRMAN: Yes, you can.

22 [THE WITNESS STOOD DOWN]

23 I will stay here, if it's not too long. Can I just
24 ask, this morning, we have who else and it's just
25 things are -- it's nearly 12:00 now? 11:47
26 MS. LEADER: Ms. O'Grady is the next witness, sir.

27 CHAIRMAN: And she is not very long, I understand?

28 MS. LEADER: I don't think so.

29 MR. MCGUINNESS: we also have Mr. --

1 CHAIRMAN: -- Barrett.

2 MR. McGUINESS: Fionnan Sheahan and we have Mr. Burke
3 from RTÉ and also Mr. Conor O'Callaghan from Three.

4 CHAIRMAN: I would ask people to compress things
5 insofar as they possibly can. There has been a lot of 11:48
6 focus and detail, which is very helpful. Really, I
7 think we should start compressing things.

8 MR. McDOWELL: Could I just say that in many cases I
9 would have no objection to the witnesses being asked if
10 they have made a statement, if they stand over it 11:48
11 rather than put through it all.

12 CHAIRMAN: I appreciate that, that intervention,
13 Mr. McDowell, but I think as I understand the duty on a
14 tribunal, we have to really ask all the relevant
15 questions so that does tend to take time. But we can 11:48
16 compress it as much as we can.

17

18 [THE WITNESS RETURNED TO THE WITNESS BOX]

19

20 CHAIRMAN: So I think Mr. Ó Muircheartaigh, you had a 11:52
21 number of questions?

22

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

24 205 Q. MR. Ó MUIRCHEARTAIGH: Thank you very much, Chairman.
25 Fíonán Ó Muircheartaigh is my name, Mr. Reynolds, and I 11:53
26 represent Alison O'Reilly. I am having difficulty and
27 I am sure you might be having difficulty too with the
28 phrase "negatively briefed". And really, it's not
29 entirely clear that everybody understands the phrase in

1 the same way. would it be fair to ask you what you
2 understand by the phrase "negatively briefed"?

3 A. well, I presume it refers to making derogatory
4 comments, poisonous comments about Sergeant Maurice
5 McCabe on a consistent, persistent regular basis, as 11:53
6 part of some kind of orchestrated campaign.

7 206 Q. well, I think I agree with that, it certainly would
8 include that. But I think part of the difficulty here
9 is that it could include other things as well, and, for
10 example, if somebody went to the Garda Press Office on 11:54
11 the record and said some honourable citizen like
12 Mr. McDowell, maybe I shouldn't choose Mr. McDowell,
13 but of an impeccable record, went and said you know
14 that man was attacking children, small children, and
15 can you confirm there was a complaint about him, and 11:54
16 the Gardaí came back and said, oh, yes, there was a
17 complaint about him. And then you asked another
18 question, well, did anything come of the complaint?
19 And they came back and said, well you know, the DPP
20 said there wasn't really -- they couldn't prosecute the 11:54
21 case. would you accept that the Garda Press Office,
22 however inadvertently, would have given information
23 about that ordinary decent citizen which they weren't
24 really entitled to?

25 CHAIRMAN: In other words, imagine someone who was in 11:55
26 the news or just imagine someone who is not in the
27 news, let's say a judge somewhere in the west of
28 Ireland, and a story comes to your attention that in
29 the past there has been some allegations against that

1 person, you rang the Garda Press Office and the Garda
2 Press Office says yes, that is true, but the DPP ruled
3 that whatever happened was, let us say, only someone
4 tickling a child and it was certainly nothing to do
5 with a sexual assault -- 11:55

6 A. And this didn't appear on the record at all?
7 CHAIRMAN: well, it would appear on a record somewhere.

8 A. I know that. But I mean, public record.
9 CHAIRMAN: we are getting off the point, again,
10 Mr. Reynolds. The point Mr. Ó Muirheartaigh is asking 11:55
11 you, in the event an allegation is made, you hear about
12 it, it's about citizen A who is a good upstanding
13 citizen, the allegation is that there was child sexual
14 abuse somewhere in the background, you check it out
15 officially with the Gardaí and they say yes, a 11:56
16 complaint was made but the DPP ruled even if you take
17 the complaint at its height it didn't amount to sexual
18 abuse, or an assault, isn't that the point you are
19 making?

20 MR. Ó MUIRCHEARTAIGH: That is the point I am making. 11:56

21 A. So an official check through the proper channels.
22 CHAIRMAN: Yes. would you regard that as anything like
23 negative briefing?

24 A. well, you wouldn't get that information officially.
25 CHAIRMAN: But I mean, let's not dodge the question. 11:56

26 A. No, I am actually trying --
27 CHAIRMAN: well, if you got it unofficially?

28 A. If you got it unofficially, yeah, that there was no
29 case to answer? Like, I did? Yeah, no, I don't regard

1 that as negative briefing because the person was
2 exonerated.

3 207 Q. MR. Ó MUIRCHEARTAIGH: well, the next thing I'd come to
4 and it's just a development of that, really, is that in
5 relation to the briefing you got before the O'Higgins 11:57
6 Report was leaked to you, you were doing research and
7 you got an insight into where this report was going,
8 and I think in your discussion with Mr. McDowell, I
9 think would you accept that the perspective that comes
10 from that note is that in relation to these very 11:57
11 serious eight or nine complaints about murder and rape
12 and all these other things, that the point that comes
13 out in that briefing is that, you know, junior gardaí,
14 unsupervised gardaí, all very unfortunate, but insofar
15 as they are true, you know, no responsibility attaches 11:57
16 to those in authority in relation to this matter, isn't
17 that what the notes sort of suggest?

18 A. These are the initial handwritten notes you are talking
19 about or is this the full notes, the emails, are you
20 just talking about the initial hand -- 11:58

21 208 Q. The nine pages of notes that have been typed out.

22 A. Yeah, those are my handwritten ones, yes, just to be
23 clear. I think there was a reference to poor
24 supervision in that, so it wasn't necessarily all about
25 junior stuff, it was about supervision and management 11:58
26 as well and senior gardaí, so -- and as I said, this
27 was the start, the initial -- these were the initial
28 notes. So I don't -- in short, no, I wouldn't accept
29 what you are saying.

1 209 Q. Yes. Because I think it might be helpful to you and
2 indeed to the Tribunal to consider what negatively
3 briefed means and to the effect of these kind of
4 contacts. Now, you didn't identify who they were, but
5 the number of people who'd access to this report was 11:58
6 very, very limited, and it just seems to me that when
7 you are saying you were never negatively briefed, you
8 know, you may not have fully considered the effect of
9 what must have been quite a lengthy meeting going
10 through 360 pages or whatever it was, of the report, 11:59
11 and going through these cases and getting a particular
12 perspective on it?

13 CHAIRMAN: In other words, were you influenced by what
14 you had heard, is that the point? No smoke without
15 fire type thing, Mr. Ó Muircheartaigh, is it? 11:59

16 MR. Ó MUIRCHEARTAIGH: Yes. And you know, the
17 information we have forms part of the intellectual
18 information on which we base our reports. I mean, we
19 do our research and we have got detailed information
20 from one perspective and then the report comes out, and 11:59
21 you know, I would take the view -- I mean, I fully
22 accept that the report is very conscientious and every
23 effort has been made to be balanced, but I put it to
24 you that it does reflect the orientation that was given
25 prior to you ever seeing the report? 12:00

26 A. As I said yesterday, I wanted to see the report, that's
27 what I wanted, and that's what I based my reports on.

28 210 Q. You see, the last question is: Around about this time,
29 there were still journalists going around who either

1 believed or had been told that Sergeant McCabe was a
2 paedophile; were you aware of that?

3 A. No. Never heard that.

4 211 Q. But you told us you had discussions with David Taylor
5 on the record about Maurice McCabe? 12:00

6 A. which I published.

7 212 Q. Tell me, when you have a discussion with a press
8 officer about any issue and he speaks to you on the
9 record about any issue, is it normal or is it possible
10 or is it likely that the Press Officer will say, now 12:01
11 that's for the record and now I will just tell you a
12 few other things? Does that happen?

13 A. There are conversations between a press officer and a
14 journalist and not all conversations are published. I
15 mean it's quite common practice in other jurisdictions, 12:01
16 in the PSNI, for example, or the British Police Forces
17 will issue press releases and the press information on
18 the record stuff, is on the -- is on the first page.
19 And then underneath it says "for guidance only" and
20 then they give a little bit of background. So that's 12:01
21 common practice among press officers all over the
22 world.

23 213 Q. So you had discussions with David Taylor about Maurice
24 McCabe?

25 A. Yes. 12:01

26 214 Q. And were those discussions subsequent to the time when
27 you learned that there were just four things: There
28 was a complaint, it was referred to the DPP, the DPP
29 reverted and said there was nothing to it? Did you

1 ever discuss -- did the topic of Maurice McCabe ever
2 come up after you ascertained those four points?
3 A. Yes. Those on-the-record comments were after I
4 ascertained those four points and I'd satisfied myself
5 there was nothing in it. 12:02

6 215 Q. And there were no off-the-record conversations?
7 A. There was no off-the-record conversations in relation
8 to paedophilia or sexual assault or anything like that.
9 216 Q. That wasn't the question I asked. Were there any
10 off-the-record conversations about Maurice McCabe after 12:02
11 you learned the four basic facts?
12 A. No, there was on-the-record conversations. But not
13 all -- not all the conversation was put into the
14 broadcast but it was generally along the same lines.
15 what you see in the reports is what the general tenor 12:02
16 or tone of the conversation was.
17 217 Q. Thank you, Mr. Reynolds.
18 CHAIRMAN: Mr. whelan, did you want to make a
19 submission or make an indication as to -- you'll
20 appreciate you said there is two major things here. 12:03
21
22 THE WITNESS WAS CROSS-EXAMINED BY MR. WHELAN:
23 218 Q. MR. WHELAN: There are two major things, judge, and
24 Mr. Reynolds, firstly Noel whelan, I appear for An
25 Garda Síochána and I have questions in particular on 12:03
26 behalf former Commissioner Callinan and former
27 Commissioner O'Sullivan. And I will have to take a
28 little bit of time, judge. Ultimately our clients are
29 persons who are the subject of the two central terms of

1 reference in which Mr. Reynolds is giving evidence.
2 CHAIRMAN: I appreciate that, Mr. Whelan. It's been
3 a -- well, I am going to say nothing. But we are
4 really, really, really, really crawling, and well, yes,
5 I am a human being and there is a limit to my patience, 12:03
6 yes, and I appreciate there's so many parties
7 represented we have to go through so much. But the
8 witness says Martin Callinan never briefed me, Nóirín
9 O'Sullivan never briefed me, David Taylor never briefed
10 me. As regards anything to do with Garda Headquarters, 12:04
11 his evidence is extremely definite: No, I got the
12 reports, I am not saying where I got the reports from.
13 But as to the specific term of reference, and as to the
14 specific allegation in it, which is that Nóirín
15 O'Sullivan used briefing material in Garda Headquarters 12:04
16 in order to brand Sergeant McCabe a liar and
17 irresponsible, that is completely refuted because what
18 he says is, I got the report, I talked to a number of
19 people, but the report was what I wrote in relation to
20 my reports, that is what I based it on. That is his 12:04
21 evidence. How does one make that better from the point
22 of view of An Garda Síochána?
23 MR. WHELAN: well, I think, I am conscious that we are
24 going to have to deal with some of this in terms of
25 submissions, it's necessary for us to lay the basis for 12:05
26 doing that in the terms of evidence. This is the only
27 substantial witness on term of reference [k].
28 CHAIRMAN: Mr. Whelan, I am not trying to stop you.
29 Please understand that. I am not trying to say in any

1 way that anyone on behalf of An Garda Síochána or
2 anyone else has done anything less than a fully
3 conscientious and fully proper job. Please understand
4 that. Now please do ask the questions in as concise a
5 manner as you can, given that I think I have summarised 12:05
6 things insofar as I can be helpful to you in a way that
7 indicates my thinking at the moment.

8 MR. WHELAN: And I appreciate that, and on the central
9 factual issues that touch on particularly allegation
10 [k] that is of considerable assistance. 12:05

11 219 Q. Can I start with a couple of things? Can we deal
12 firstly with the suggestion, one of the reasons you are
13 here is because you are named as one of the nine, plus
14 two, that David Taylor has named as somebody he
15 negatively briefed, if we use that phrase, about 12:06
16 Sergeant McCabe. And you are the latest in a series of
17 those persons who has said you weren't so negatively
18 briefed. Can I ask you, at the time that the story
19 broke on the 4th October 2016, about protected
20 disclosures having been made by, I think the story 12:06
21 broke in the Examiner on 4th October 2016, it was Clare
22 Daly had an interview on Morning Ireland on 5th October
23 2016, Deputy Daly, that night it became a major
24 political controversy, and I think on the 5th or 6th,
25 it seems, in the media, the fact that the protected 12:06
26 disclosees were Superintendent Taylor and Sergeant
27 McCabe was revealed. At that point, your state of
28 knowledge, as I understand it from you, was that
29 sometime in 2013 you had heard the generalised

1 suggestion about Sergeant McCabe having been the
2 subject of an allegation of child sexual abuse, is that
3 correct?

4 A. Yeah.

5 220 Q. Is that right?

12:07

6 A. Yeah.

7 221 Q. You had made your own inquiries and established that he
8 had been exonerated of that allegation in the form of
9 the Director of Public Prosecutions not taking -- not
10 proceeding with charges, isn't that correct?

12:07

11 A. Yeah.

12 222 Q. Okay. And just pause there for a second on the last
13 line of questioning. It would be wrong to say,
14 wouldn't it, that any conversation that you or anybody
15 had about the Mrs. D allegation was in the form of a
16 negative smear in that the conversations you had with
17 the people who said no, the Director directed there was
18 nothing to that, the Director directed no prosecution
19 was, as it were, more a J-cloth than it smear in that
20 it was clearing away the suggestion that he had done
21 something wrong, isn't that correct?

12:07

12:07

22 A. Yeah. I mean, can I just clarify something as well. I
23 know, Chairman, you referred to calumny and detractor
24 yesterday and the detractor narrates what he thinks and
25 I was thinking about this overnight. I mean, the
26 narrator in the case, the people who talked to me about
27 this, you know, they are not talking about child abuse,
28 they were talking about police procedures and
29 investigation in reference to the note. You know, they

12:07

1 weren't talking -- there wasn't any -- I got no detail
2 in relation to the alleged allegation. I just got
3 detail -- just got the fact that there was an
4 allegation.

5 223 Q. If I take you back to that week in October 2016 then, 12:08
6 you knew, as far as you were concerned, there had been
7 no campaign to smear Maurice McCabe by David Taylor,
8 isn't that correct?

9 A. Yes.

10 224 Q. At this stage you hadn't been named, Superintendent 12:08
11 Taylor didn't name any journalist until many, many
12 months later, but were you asked for your view? I
13 mean, Mr. O'Toole told us, Michael O'Toole told us in
14 evidence sometimes the generalist in his organisation
15 or political reporters in an organisation would come to 12:08
16 the crime specialist and say was there anything to
17 this. Were you asked by RTÉ whether on your
18 information there was anything to this suggestion that
19 David Taylor had run a smear campaign?

20 A. Yeah, I don't know if I was asked but I would certainly 12:08
21 have told people like Ray Burke, you know, this didn't
22 happen. I mean, I hadn't seen any evidence for this.

23 225 Q. And that may or may not have fed into their
24 interpretation of how to run the story, as it were, in
25 the widest sense? 12:09

26 A. And you know, with the other journalists, the likes of
27 Conor Lally and Mick O'Toole, would have said do you
28 know anything about this? And none of us knew anything
29 about it.

1 226 Q. Let me ask you a question akin to that put by
2 Mr. Marrinan yesterday to Mr. Stephen Rae, which is:
3 If he had, if David Taylor had said such things to you
4 which suggested that Sergeant McCabe had been the
5 subject of an allegation or had been guilty of child 12:09
6 abuse, what would your reaction have been, apart from
7 talking among your friends or colleagues?
8 A. If he said he had been guilty?
9 227 Q. If he said to you that Maurice McCabe had abused
10 children, what your reaction have been, if he openly 12:09
11 smeared him to you?
12 A. Where is the evidence? Where is the conviction? Where
13 is the proof?
14 228 Q. And if you had established that there was no evidence
15 to that, either from those queries, would the fact that 12:10
16 the official Garda Press Officer had openly smeared a
17 whistleblower to you, be of itself a newsworthy story?
18 A. Yeah, it would be an outrage.
19 229 Q. An outrage. And what would you do with that outrage,
20 you now have a story in your own ears that the Garda 12:10
21 Press Officer has said or suggested that the prominent
22 whistleblower had been guilty of --
23 A. Well, I would have to substantiate it and stand it up.
24 230 Q. Okay.
25 A. And prove it. But if I could. And if it was on the 12:10
26 record, it's a story.
27 231 Q. It's a story. And you put it into that structured
28 editorial process we have seen that applied to --
29 A. Yes.

1 232 Q. -- at one stage, eight or nine different editors who
2 were involved, but you'd get into, with Mr. Burke or
3 others, into one, is it true, and two, if it's not
4 true, the fact that it's being spread is a big story?
5 A. Yes. 12:11

6 233 Q. Absolutely?
7 A. Yes.

8 234 Q. No hesitation on that?
9 A. No.

10 235 Q. And at first, it would have to be handled very 12:11
11 carefully in how it was subsequently reported and
12 presented but out of all of the organisations RTÉ has
13 both the resources and patterns, as it were, and
14 structures within which to do that, isn't that correct?
15 A. Yes. 12:11

16 236 Q. What if the Garda Press Officer had said to that you
17 Maurice McCabe had psychiatric and psychological
18 problems and had been guilty of the most heinous --
19 guilty of horrendous and grave wrongs, and you
20 interpreted that to mean that he might have been guilty 12:11
21 of sexual assault or rape, what would your response --
22 A. Well, if he said he was guilty of anything, the first
23 thing I'd ask for is the conviction.

24 237 Q. Okay. I am sorry, maybe I am being loose with the word
25 of the guilty. If he had suggested to you that he had 12:11
26 done these things?
27 CHAIRMAN: And perhaps just to clarify, Mr. Reynolds,
28 just for fear again, we are talking --
29 A. Hypothetically.

1 CHAIRMAN: -- at tangents. An awful lot of things
2 never reach court, such as, for instance, rape cases or
3 child sex abuse cases, and we all know that. So if
4 people are telling you on a confidential basis, and
5 this is what Mr. Whelan is saying, that someone had 12:12
6 done things in the past, it's not just a question of
7 getting the record of the Central Criminal Court or the
8 Circuit Criminal Court. The plain reality of it is,
9 gardaí can be in the know and know things and be able
10 to tell you things and say, well, didn't get to court 12:12
11 but it actually happened. Isn't that the point you are
12 making, Mr. Whelan.
13 MR. WHELAN: That is the point I am making.
14 A. Yeah, but it's a big jump, you know. You'd need the
15 evidence for that. 12:12
16 238 Q. MR. WHELAN: But if you had established that it was not
17 accurate to suggest that the whistleblower had
18 committed a sexual assault in the past, then the fact
19 that somebody officially was spreading that rumour,
20 would be of itself a news story, isn't that correct? 12:12
21 A. It would -- you'd certainly know about it among the
22 journalists and, you know, you'd be thinking what is
23 going on with this guy.
24 239 Q. And what if the Commissioner himself had used those
25 kind of phrases to you about a whistleblower? 12:13
26 A. Ah, well, then you have got a story, haven't you?
27 240 Q. You have got a massive story potentially, isn't that
28 correct?
29 A. Yes, yes.

1 241 Q. And if you had the additional colour that it had been
2 done in the corridors of RTÉ itself, wouldn't that make
3 it a significant story? wouldn't that add to the
4 colour of it?

5 A. You would want a lot of proof, like, you know. 12:13

6 242 Q. Yes. You would have the proof of your own ears.

7 A. Well, that might not be enough.

8 CHAIRMAN: But I think you are getting the wrong end of
9 the stick. It's not that there was sex abuse in the
10 past. What if the story becomes the calumny itself? 12:13
11 That is the point being made to you. And again, I
12 don't want to interrupt you, Mr. Whelan. But you
13 didn't seem to understand that.

14 A. People -- you know, people, in the past, have tried to
15 spin me stuff and I have believed they have tried to do 12:13
16 it for malicious reasons, and you lose all trust with
17 them, you stay away from them and you never go near
18 them again, and you can't make a story out of it, but
19 you have seen what they are trying to do.

20 243 Q. But if the Garda Commissioner had said something to you 12:14
21 that was calumnious of a whistleblower, that was
22 defamatory and damaging of a whistleblower, of the most
23 serious type, because it suggests that the
24 whistleblower had committed sexual assault, then that
25 was a news story that would go into your process, isn't 12:14
26 that correct?

27 A. Well, I mean, it could be a news story. You know, it
28 depends, you know, what was said, if you had witnesses,
29 if you could substantiate it, if you could stand it up,

1 you know, all that sort of stuff.

2 244 Q. All of which are the likes of things you would engage
3 with exploring with the likes of Mr. Burke and others,
4 isn't that correct?

5 A. Oh, well, if you were beginning on the news process, 12:14
6 yeah.

7 245 Q. Yes. Can I ask you then, if we just turn briefly then
8 to the date of the 24th February 2014, when you -- when
9 an on-line story by you about Maurice McCabe's
10 cooperation, or otherwise, with the O'Mahony inquiry 12:14
11 into penalty points. Now, as I understand it, you said
12 that at 2:28 that day an on-line story written by you
13 but processed through the central desk, and presumably
14 the on-line editor, went up on-line, isn't that
15 correct? 12:15

16 A. Yes.

17 246 Q. And the effect of that story, and we have seen it in
18 its various iterations, the effect of that story was
19 that a direction had been given to Maurice McCabe to
20 give whatever information he may wish to give around 12:15
21 penalty points to the O'Mahony inquiry, isn't that
22 correct?

23 A. That was the -- well, not the effect. That was what I
24 reported.

25 247 Q. That is what you reported, okay. But the only aspect 12:15
26 that's, I suggest, relevant to this inquiry is whether,
27 in coming to the view that he was given that direction,
28 you made your own mind up on that on foot of sight of
29 the direction or somebody darkly spun that

1 interpretation to you?

2 A. Nobody darkly spun that interpretation. I made -- I
3 wrote that story on the basis of sight of the direction
4 and in my knowledge of crime, security and disciplined
5 forces. 12:15

6 248 Q. Now, did I understand you to say that, as it happens,
7 none of the editors of the big programmes for the
8 afternoon on television or radio were interested in it
9 as being a big story?

10 A. That's correct. 12:16

11 249 Q. And by default it went up on-line only perhaps then in
12 those circumstances?

13 A. That's correct.

14 250 Q. They are offered it about two or half two?

15 A. Yes. 12:16

16 251 Q. They don't take it up?

17 A. Yeah.

18 252 Q. It goes up on-line. And did I understand you to say it
19 also featured in the news headlines then at 3 and 4 and
20 5 o'clock? 12:16

21 A. No, I don't think it did. I think it only featured at
22 5 o'clock in the headlines.

23 253 Q. In the radio news headlines?

24 A. Yes.

25 254 Q. But that at a point -- 12:16

26 A. Not necessarily -- sorry, not the headlines. Just the
27 bulletin.

28 255 Q. In the bulletin. Okay. So, I suppose, what I mean is,
29 the bulletin at 5 o'clock is a short bulletin, so it's

1 just in the radio news bulletins itself. And it did
2 not appear at all on television, isn't that correct?

3 A. No.

4 256 Q. So an editorial view had been taken that at that stage
5 it was a relatively small story, isn't that correct? 12:16

6 A. Yes.

7 257 Q. Now, is that, in part, perhaps shaped by the fact that
8 the Commissioner himself had outlined the fact that
9 this direction had been made in his evidence to the
10 Public Accounts Committee itself a couple of weeks 12:16
11 earlier? He had told the Public Accounts Committee,
12 and this Tribunal has the transcript of the Public
13 Accounts Committee, I don't need to take you to it, but
14 he had told the Public Accounts Committee that a
15 direction had been given on -- he named the date, was 12:17
16 it the 14th December, whatever year, 2012, to desist
17 from Pulse, to desist from circulating anything from
18 Pulse to any other persons, and that in that direction
19 also was the fact that any further information he had
20 was to give to Assistant Commissioner O'Mahony. Were 12:17
21 you aware that that had been -- happened at the Public
22 Accounts Committee?

23 A. Well, I was aware that happened in the Public Accounts
24 Committee all right, but I don't -- I mean, I don't
25 know why the editors made their decisions, various 12:17
26 decisions not to follow up on it.

27 258 Q. Like all journalists, every day others take a different
28 view of a story than you?

29 A. Yeah. Every journalist thinks they have got the

1 headline story and it's...

2 259 Q. Now, the Chairman heard that dispute between you and
3 Mr. McDowell as to whether that -- the approach you
4 made, if I use that phrase, to Sergeant McCabe for
5 comment, was before or after the story went up on-line. 12:17

6 A. Yes.

7 260 Q. But in any case, you didn't seek to make an approach to
8 Sergeant McCabe before it went up or some little time
9 after it went up on-line, is that correct?

10 A. Sorry, I did, you mean, I did. 12:18

11 261 Q. You did. You said before it went up, you think.

12 A. No, I can't be 100 percent sure, to be honest with you.
13 I believe I would have, you know, but I can't.

14 262 Q. And whatever comment or observation you'd have got from
15 Sergeant McCabe, if you had got any, would then have 12:18
16 been inserted into the text on-line, is that correct?

17 A. That's correct.

18 263 Q. And the fact then that it stayed up on-line from half
19 two, half three, half four, half five, half six, half
20 seven, half eight, until half nine, without any comment 12:18
21 or interpretation from Maurice McCabe, was because he
22 hadn't given you one, isn't that correct?

23 A. That's correct.

24 264 Q. And you had left a message, presumably, asking him to
25 ring you back? 12:18

26 A. I am not sure if I left a message, but I was trying to
27 contact him.

28 265 Q. And then when you ultimately spoke to him, he was
29 clearly very aware of the story and he had, as it were,

1 as is his right, made a decision that he would deal
2 with Ms. Hannon in Prime Time rather than giving you a
3 response, isn't that correct?

4 A. Yes. 12:19

5 266 Q. And then - and I don't know if you had a chance to see 12:19
6 it, taking up Mr. Gillane's offer to the Tribunal and
7 all of us a couple of days ago, that all of this stuff
8 is on-line - Prime Time that night, even though this
9 story didn't feature at all in the news bulletins on
10 television, Prime Time that night led with Sergeant 12:19
11 McCabe's view or correction, as he would see it, of the
12 interpretation suggested that he had been directed to
13 cooperate with the O'Mahony inquiry, isn't that
14 correct?

15 A. Yes. 12:19

16 267 Q. And you, I don't know if you saw --

17 A. Sorry, I beg your pardon. I did see Prime Time. I am
18 not sure if they led with it, but I will take your word
19 for it.

20 268 Q. And we can point -- lead you to the on-line site -- 12:19
21 location, if need be. But they led with that story,
22 and it took the form, you may recall, of a one-to-one
23 interview piece between Miriam O'Callaghan, who was
24 presenting the programme, and Katie Hannon, who was the
25 journalist, isn't that correct? Do you recall that? 12:19

26 A. I don't recall it, but I do recall getting the
27 information. That is where I got my information for my
28 subsequent updating of my news stories.

29 269 Q. Now, interestingly, and again the words are in many

1 ways, perhaps, firstly, closely aligned or
2 interchangeable, but you took a view that he was
3 directed to cooperate with the O'Mahony inquiry, and
4 that, in part, is shaped, as I understood your evidence
5 to be, from a knowledge and experience in policing that 12:20
6 the word 'direction' has a particular meaning?

7 A. Yes.

8 270 Q. And the Chairman knows that the direction was one given
9 by a super or chief superintendent, one of his
10 superiors, where the officer has to come in and it's 12:20
11 read out to him and he is talked through it, as it
12 were, and its implications, isn't that correct?

13 A. That's correct.

14 271 Q. Okay. And it is your interpretation, having sight of
15 it, was that that direction extended to the last 12:20
16 paragraph, which was about the O'Mahony inquiry, isn't
17 that correct?

18 A. That's correct.

19 272 Q. Sergeant McCabe takes issue with that, and anybody
20 reading that can take an alternative view that the last 12:20
21 paragraph was, to use the Chairman's word, an
22 indication that he could give information to the
23 O'Mahony inquiry and that the direction was the
24 top-half of a desisting from Pulse, but that is about
25 words, isn't that correct? 12:21

26 A. That's correct.

27 273 Q. Ms. O'Callaghan, that night, in presenting the
28 programme, introduced the piece by saying that sources
29 in --

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"Garda sources earlier today suggested that Maurice McCabe had been instructed to cooperate with the O' Mahony inquiry."

12:21

And that's an understandable substitution of the word "instruction" to the word "direction" because "instruction" is one it's understood more generally, I think that would be fair to say, isn't it?

A. Yeah.

12:21

274 Q. The only difference, and again you may not recall it precisely, but the only difference between Ms. Hannon's account and your account, because Ms. Hannon's piece begins with playing the clip, actually, where the Garda Commissioner, Callinan himself, spoke about that direction at the Public Accounts Committee, he -- it starts with Ms. Hannon introducing that and it being played. And then Ms. O'Callaghan's subsequent questions asks Ms. Hannon: what do we understand was Maurice McCabe's interpretation of that piece of paper or direction as it related to the O'Mahony inquiry? And Ms. Hannon outlines that he undertook it to be -- you know, certainly her response was that it wasn't -- he didn't take it to be a direction, that is the issue he was taking. That is the only substantial difference between what was on Prime Time, albeit given live Prime Time television coverage, and what was in your on-line piece, would that be correct to say?

12:21

12:21

12:22

A. Well, I mean, I am not going to dispute it.

1 275 Q. But the point being that if at any point that afternoon
2 you had been given the interpretation by Sergeant
3 McCabe that he didn't take that last paragraph to be a
4 direction, you'd have incorporated that into your
5 piece, isn't that correct? 12:22

6 A. Most definitely.

7 276 Q. And the important point again in term of reference --
8 this is, as I am trying to understand it, relevant to
9 the terms of reference in this inquiry because it's
10 suggested it was some spin or smear from the gardaí 12:22
11 which caused you to interpret it as a direction. You
12 are very clear that, having read the direction
13 yourself, you came to a view that he was directed on
14 the O'Mahony investigation also, is that correct?

15 A. That's correct. 12:23

16 277 Q. Okay. Can I turn then to the last area I want -- well,
17 sorry, just before I do that. I mentioned earlier
18 about the risk that any conversation about the D case
19 is viewed as a besmirching of Sergeant McCabe, and I am
20 hoping now I have the numbers of the pages right. 12:23
21 Could we look at 5905, I think is the relevant note
22 where there is this talk about the manager down the
23 corridor conducting the investigation. I am sorry if I
24 am wrong, but 5905.

25 MS. LEADER: It's 5910. 12:23

26 278 Q. MR. WHELAN: It's 5910. Sorry, that is my second note.
27 Thank you. 5910. The bottom of that page, if I recall
28 correctly. Now, you are jotting down in a notebook -
29 and this is a typed version, you've the handwritten

1 version in your notebook, you know - two members of An
2 Garda Síochána "working in the same station", isn't
3 that correct? Sorry, you are looking for the hard
4 copy. Let me tell you, it's page 5910.

5 A. I have it now. Sorry. 12:24

6 279 Q. volume 22, 5910. Bottom of the page, there is
7 reference there --

8 A. "Boss down the corridor asked to investigate it." Is
9 that what you are talking about?

10 280 Q. Exactly, that is it. And I think the Chairman 12:24
11 explained -- emphasised yesterday that the purpose of
12 the Tribunal team is to put to you all -- the
13 interpretations that might, in a sense, be seen to link
14 that to an attempt to undermine the reputation of
15 Sergeant McCabe. 12:24

16 A. Okay.

17 281 Q. So in saying that to you, it wasn't that the Tribunal
18 itself is taking a view.

19 A. Okay.

20 282 Q. It's saying, listen, can you tell us what your view on 12:24
21 whether this --

22 A. Yeah.

23 283 Q. Now, the concern about the fact that the "boss down the
24 corridor", whether figuratively or literally, was
25 instructed to conduct the investigation into the Ms. D 12:25
26 allegation, could be an issue from three perspectives
27 for the people involved, I put it to you. Firstly, and
28 as was put to you yesterday, for Sergeant McCabe it
29 could be a concern that he was -- had the added burden

1 of having local people looking into this sensitive
2 matter, a local police officer, somebody who might be
3 characterised as his boss, and that would be an
4 additional difficult dimension for him. That is one
5 interpretation, isn't that correct? And that is one 12:25
6 that was put to you yesterday. A second one is that,
7 and I may be wrong but I understand this was part of
8 the concerns raised by Ms. D, is that it was being kept
9 in the local area and the local person was
10 investigating it and that that was inappropriate 12:25
11 because it might be suggesting an attempt to not
12 adequately investigate it or dampen it down. And the
13 third possible interpretation is that it was unfair to
14 the person or people who were asked to investigate it
15 locally, to ask them to, as it were, investigate 12:26
16 something that was so sensitive as between two
17 colleagues. And I don't know if --
18 A. You see, I know nothing about any of that, and I never
19 viewed any of those as a possible option. As I
20 explained yesterday, the person that was telling me 12:26
21 that, he or she, I never viewed them as a detractor
22 because they never talked about the actual --
23 284 Q. Investigation?
24 A. -- abuse case. They were talking about police
25 procedures and they were talking about the way it 12:26
26 should have been done and the lessons that could have
27 been learned and, if you like, this was such an
28 incident in the Bailieboro area that it was nearly part
29 of the corporate memory.

1 285 Q. Yes.

2 A. And that people weren't actually talking about the
3 incident itself but they were talking about the
4 lessons --

5 286 Q. Okay. 12:27

6 A. -- that could be learned from it, that this should have
7 been an investigation outside the division.

8 287 Q. And it should have been an investigation outside of the
9 division, in fairness to the officers who were
10 investigating it, in fairness to the complainant who 12:27
11 might have a sense that it was being kept within the
12 division and in fairness to Sergeant McCabe who
13 didn't -- wouldn't -- would have preferred perhaps not
14 to have had local people asking him --

15 A. That is an analysis we didn't get into and that was 12:27
16 never put to me.

17 288 Q. Can I ask you then to look at - again, I have a list of
18 numbers here, I hope this is the right page - 5924 is
19 the handwritten copy of your notes.

20 A. Okay. 12:27

21 289 Q. Now, I just pause there for a second. I am looking for
22 that note where there is reference to large numbers of
23 sergeants coming and going. But there is an indent
24 just at the top of the page, and I am a terrible
25 handwriter myself, but you tell us, the second indent 12:27
26 down or the third indent down, just read those two
27 sentences for us --

28 A. Sorry, which one are you talking about now?

29 290 Q. The one about guards -- "sergeants coming and going".

1 A. Sorry, "investigated locally - wrong"?

2 291 Q. No.

3 A. I am on 5924?

4 292 Q. It's on the screen in front of you.

5 A. Okay, I have it here. 12:28

6 293 Q. Now, read your handwriting there where it talks about
7 sergeants coming and going. Am I right?

8 A. I don't see "sergeants coming and going".

9 294 Q. 5924.

10 CHAIRMAN: We see "sergeant in charge". 12:28

11 A. I see "sergeant in charge", yes.

12 295 Q. MR. WHELAN: "Sergeant in charge".

13 A. "Complaint case against him, investigated locally,
14 mistake, wrong, Superintendent Clancy."

15 296 Q. Go up two lines. Sorry. Thank you, registrar. 12:28

16 A. "Wanted out of a kip".

17 297 Q. There it is.

18 A. Oh, sorry. Yes, I beg your pardon, yes.

19 "Accelerated recruitment - probationers - lot of
20 sergeants coming and going." 12:28

21 298 Q. Now, but it's "- probationers" and then "- a lot of
22 sergeants coming and going" and then "wanted out of a
23 kip", is that right?

24 A. Yes.

25 299 Q. Okay. And again, because the Tribunal has to do this, 12:28
26 an interpretation was put -- a suggestion was made to
27 you yesterday that that could be interpreted to suggest
28 that Sergeant McCabe wanted out of the division because
29 it was a kip; that is one possibility, isn't it?

1 A. Yeah.

2 300 Q. But I am putting to you that, allowing for the flow, it
3 says:
4
5 "Likely to be that the reason there was such a high 12:29
6 turnover of sergeants" --
7 A. Because lots of sergeants were coming and going and
8 they wanted out of the kip.
9 301 Q. They wanted out because to them it was a kip?
10 A. Yeah. 12:29
11 302 Q. And it's a while since I've read --
12 A. Well, I think it was a conversation about, you know,
13 failings in Bailieboro, and we did see that as well at
14 superintendent level. In the Garda Síochána for a long
15 time, there was a superintendent would be appointed 12:29
16 from Dublin -- would be promoted and he would be
17 promoted to Bailieboro and he would there for six
18 months or four months and he was gone again, and that
19 happened for a number of years.
20 303 Q. In fact, it's a long time since I have read the 12:29
21 O'Higgins Report, and indeed since you have, I suspect,
22 but there was talk in the O'Higgins Report about the
23 high turnover of sergeants, isn't that correct?
24 CHAIRMAN: That was a point made by Mr. Justice Morris
25 very forcefully. 12:29
26 MR. WHELAN: Yes, in Donegal at the time.
27 CHAIRMAN: Yes, absolutely. And one notes that Chief
28 Superintendent McGinn has been there for ages, which is
29 a good thing.

1 304 Q. MR. WHELAN: So I suppose my general point is that we
2 can look at any of your individual notes, and you
3 yourself have cautioned of the risk of all of us
4 sitting here, whatever our varying degrees of
5 intelligence, trying to interpret what you were jotting 12:30
6 down at the time, but those two notes, for example, are
7 open to alternative interpretations, isn't that
8 correct?

9 A. Yes, I will accept that.

10 305 Q. Let me come then to the central point. And could I ask 12:30
11 to see the protected disclosure 244, which is the
12 protected disclosure of Sergeant McCabe. Now, as you
13 will have been aware -- now, the second paragraph
14 begins:

15
16 "I am currently on work-related stress due to --" 12:30

17
18 And he says the Garda Commissioner's treatment of him.

19
20 "-- and false evidence produced at the O' Higgins 12:30
21 Commission. "

22
23 That is a subject of a separate module, as he describes
24 it, as an attempt to set him up, and we are not going
25 to deal with that today. But the third item there is, 12:30
26 effectively he says is:

27
28 "I am currently on work-related stress due to a
29 disgraceful series of broadcasts on RTÉ on the 9th May

1 2016 purporting to leak an account of the unpublished
2 O'Higgins Commission report in which I was branded as a
3 liar and irresponsible."

4
5 Now, the point has been made by Mr. McDowell this 12:31
6 morning that, in terms of this allegation, Sergeant
7 McCabe was doing no more than repeating what was said
8 to him by Mr. John Barrett, and my clients don't have a
9 view on it, the Tribunal itself will deal with a
10 conflict of evidence, but Mr. Barrett says he said no 12:31
11 such thing to Sergeant McCabe. But the point here,
12 that the suggestion that the series of broadcasts was
13 disgraceful, is not coming from John Barrett, it's
14 coming from Sergeant McCabe, and the suggestion that
15 the series of reports branded him a liar and 12:31
16 irresponsible, is not coming from John Barrett, it's
17 coming from Sergeant McCabe. And when we look at the
18 terms of reference, but the allegation as worded there
19 is personally targeted at my client. It says that
20 she -- sorry, we will read the next sentence, actually. 12:32
21 He says, next sentence:

22
23 "I am now satisfied on impeccable authority that those
24 RTÉ broadcasts were planned and orchestrated by the
25 Commissioner, Nóirín O'Sullivan, personally using 12:32
26 briefing material prepared at Garda Headquarters."

27
28 Now, it's a damn fair allegation - we would say
29 conspiracy theory - to suggest that the

1 then-Commissioner was planning and orchestrating an RTÉ
2 report and that she was doing it in a way that that
3 report would end up branding him a liar and
4 irresponsible and making a disgraceful series of
5 reports, that is a damn serious allegation against the 12:32
6 Garda Commissioner. It's, of course, collaterally, a
7 significant maligning of your journalistic work on the
8 day.

9 A. Yes, yes.

10 306 Q. And nobody has actually, I have noticed, suggested to 12:32
11 you, apart from Ms. Leader obviously, but nobody else
12 has suggested to you that you were influenced or shaped
13 by anything Nóirín O'Sullivan did or any briefing
14 document she prepared, isn't that correct?

15 A. Nobody -- no, nobody has suggested this -- well, it's 12:33
16 suggested there.

17 307 Q. Yes. It's suggested there it's very serious?

18 A. And it's not true.

19 308 Q. And I can understand why you were anxious to emphasise
20 that. My client says it's untrue as well. And just 12:33
21 for completeness, the Tribunal has had access to, I
22 think Mr. Marrinan put it, thousands and thousands of
23 documents from Garda Headquarters, and there is no
24 briefing document or anything that could characterise
25 it either. And the suggestion, if I recall correctly, 12:33
26 wasn't even put to Ms. O'Sullivan by anybody apart from
27 the Tribunal. So whether he heard it from John Barrett
28 or not, whether he heard it from somebody else or
29 whether it is something he arrived at himself, the

1 conspiracy theory that Nóirín O'Sullivan planned and
2 directed the series of radio reports broadcast on that
3 day, is untrue, isn't that correct?
4 A. I was not involved in any conspiracy. That is clearly
5 untrue. 12:33
6 309 Q. Can I ask then the next one, which is, the Tribunal has
7 taken the appropriate and broad interpretation of those
8 series of broadcasts to include the broadcast, two
9 other broadcasts which were not by you, one was Keelin
10 Shanley's conversational piece or debate piece on the 12:34
11 programme with the man who unfortunately lost his wife
12 in the murder arising from -- we won't get into the
13 details.
14 A. Lorcan Roche-Kelly.
15 310 Q. And I think an interview with the journalist Michael 12:34
16 Clifford. You indicated yesterday that you had given
17 your working -- your document to Conor Kavanagh, who
18 was editing that programme?
19 A. Producer, yes.
20 311 Q. By way of background? 12:34
21 A. Email, yeah.
22 312 Q. For his piece?
23 A. Yeah.
24 313 Q. By way of background for his presentation?
25 A. Yeah. 12:34
26 314 Q. Okay. Did you provide similar information or documents
27 to Today at Five for Mr. Boucher-Hayes' piece?
28 A. No, but they would have been available in the RTÉ
29 system and they were put on-line as well, so I think

1 they would -- they would have got them.

2 315 Q. That said, I should emphasise, and it's clear from the
3 wording of his piece, as we heard it the day before
4 yesterday, that when he was giving evidence,
5 Mr. Boucher-Hayes was anxious to emphasise that he had 12:35
6 his own leaked copy of the O'Higgins Report, that he
7 had his own leaked -- you didn't share your copy of the
8 O'Higgins Report, or copies, or any of them, with
9 Mr. Boucher-Hayes?

10 A. No. 12:35

11 316 Q. Okay. Can I then turn briefly to the term of reference
12 (k), and I know it will take the registrar a moment to
13 bring it up off the website. But my general point is
14 this, and that we'll look at the terms of the terms of
15 reference in a second by comparison to that allegation 12:35
16 made by Sergeant McCabe. But let's be clear on this:
17 From the minute the broadcast -- the story went up at
18 line on 8 o'clock on the morning of the 9th May --

19 A. Sorry, which term of reference are you talking about?

20 317 Q. I am going to look at (k) in a second. 12:35

21 A. So which one?

22 318 Q. We will look -- it's in front of you now. (k), is it?

23 A. Okay.

24 319 Q. Now, this is, shall I say, and this of course is done
25 by the members of Dáil Éireann and Seanad Éireann, and 12:35
26 the terms of reference are framed by them, obviously,
27 not by Sergeant McCabe, it bears a resemblance, albeit
28 a toning-down, as it were, but for the terms of the
29 question -- of this Tribunal, as to why are we here,

1 why are we here for these two days looking at your
2 broadcast on the 9th May, the terms of reference sent
3 to the Chairman by the Oireachtas were:

4
5 "To investigate whether Commissioner O'Sullivan, using 12:36
6 briefing material prepared in Garda Headquarters,
7 influenced or attempted to influence --"

8
9 which is a toning-down from the planning and
10 orchestrating. 12:36

11
12 "-- broadcasts on the 9th May 2016 purporting to be a
13 leaked account of the unpublished O'Higgins Report. "

14
15 Now, that word "purporting to be", which is in both the 12:36
16 allegation and in the terms of reference --

17 A. Yeah.

18 320 Q. -- I take it you take that as a maligning as well --

19 A. Well, it's clearly --

20 321 Q. -- to suggest you were claiming to have it and 12:36
21 you haven't got it?

22 A. Exactly, the evidence is that I had it.

23 322 Q. All us lawyers understand what the word "purported"
24 means in that sense. But then it goes on to say:

25 12:36
26 "In which Sergeant McCabe was branded a liar and
27 irresponsible. "

28
29 It actually, on one reading, doesn't ask the Chairman

1 to establish whether the report brands him a liar and
2 irresponsible; it almost takes it as a given, coming
3 from the Oireachtas, that your work on those two days
4 did brand him a liar and irresponsible. Now, again,
5 it's a matter for the Chairman, but we all heard the 12:37
6 reports. You have explained the careful way in which
7 the word "lied" or "lie" was used. But the point I am
8 making to you is, the Oireachtas sent forward a task to
9 this inquiry to inquire into those reports, almost
10 working on the presumption that it was a lie and 12:37
11 irresponsible. And that brings us back to the day of
12 the 9th May itself, because shortly after 8 o'clock it
13 is very clear that Sergeant McCabe regarded your
14 reporting as wrong and irresponsible, isn't that
15 correct? 12:37

16 A. That's correct.

17 323 Q. In fact, by the -- by half twelve, or so, that
18 afternoon -- that morning, in that morning into
19 afternoon, with the benefit of legal advice, he had
20 grown to characterise it as a gross defamation, isn't 12:37
21 that correct?

22 A. That's correct.

23 324 Q. And therefore, he was unhappy with your report on the
24 day itself, isn't that correct?

25 A. That's correct. 12:38

26 325 Q. Now, that is elevated to a conspiracy theory about my
27 clients' involvement, he says on -- placing reliance on
28 something told to him by Mr. Barrett, but, of itself,
29 it reflects the fact of a, as it were, a broadcasting

1 complaint about the quality of your broadcast, isn't
2 that correct?

3 A. Well, it's both a broadcasting and a legal complaint.
4 326 Q. Which I suppose raises the next question. The Chairman
5 has clarified that it didn't give rise to legal 12:38
6 proceedings. Did it give rise to any complaint to the
7 Broadcasting Complaints Commission?

8 A. Not that I am aware of.

9 327 Q. I suppose that's clear you would be aware of because
10 you would get the chance to reply to the Broadcasting 12:38
11 Complaints Commission, isn't that correct?

12 A. That's correct.

13 328 Q. Instead, your only chance you get to reply to
14 that allegation bandied around the Dáil at the time of
15 the referring of these references and put by the Dáil 12:38
16 and Seanad into these terms of reference, is in what I
17 suspect at this stage as being a tiring series of two
18 or three days for you here at the Tribunal, isn't that
19 correct?

20 A. That's correct. 12:38

21 MR. WHELAN: I just want to make sure I haven't left
22 anything out. Thank you very much Mr. Reynolds.

23 CHAIRMAN: Yes. Was there anything that needs to be
24 cleared up, Ms. Leader?

25 MS. LEADER: Unless Mr. Gillane... 12:39

26 CHAIRMAN: Yes, Mr. Gillane, was there anything you
27 wanted --

28 MR. GILLANE: Yes, could I maybe just take three
29 minutes just to clarify a few things with Mr. Reynolds.

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THE WITNESS WAS THEN EXAMINED BY GILLANE:

329 Q. MR. GILLANE: Mr. Reynolds, firstly just in relation to the typed notes that have been put up on screen, these are your notes that you were taking, I think, in April and May 2016. I think you've -- you can confirm that these are effectively scraps of conversations that you are having with people, is that right? 12:39

A. Yes. As I've said, notes, jots, bits and bobs, streams of consciousness. 12:39

330 Q. In addition, insofar as you were looking at documents there, they are notes of what might appear to be relevant which subsequently might not be relevant?

A. Yes. 12:39

331 Q. That insofar as you are taking notes during the course of a conversation, you're trying to keep the conversation going, and the fact that you write something down doesn't mean you are approbating what's being said or indicating that it's true, false or otherwise? 12:39

A. No, that's true. And just can I -- because there was an issue made about it yesterday where -- in relation to where I wrote "attempted murder". I was thinking about that last night and I went back and checked it; actually, it should have said "poisoning and attempted poisoning". That is what in the report. So I could have written down the word "murder" by mistake because I was thinking of the chapter in relation to the murder 12:40

1 of Sylvia Roche-Kelly.

2 332 Q. And these are notes that you discovered to the
3 Tribunal. And occasionally people speak metaphorically
4 about notes on the back of an envelope; I think, in
5 fact, one of your notes literally is on the back of an 12:40
6 envelope?

7 A. Yes.

8 333 Q. Now, I think the position is that at this time when you
9 were doing this work, as I understand it, Ray Burke,
10 the news editor, had, in fact, charged you and asked 12:40
11 you to get out there and see whether you could, in
12 fact, get your hands on the report?

13 A. Yes, I think we were of one mind anyway because, you
14 know, we wanted to know what was in this report.

15 334 Q. Yes. And I think contrary to the suggestion that was 12:40
16 made some months ago by Mr. McDowell when the phrase
17 "exclusive" was used, in fact, on the contrary, RTÉ was
18 behind the curve to a certain extent because this
19 report was being discussed by other media
20 organisations? 12:40

21 A. Yeah, that is true. But, I mean, I would argue --
22 look, I think we were the most comprehensive. We
23 mightn't have been the first.

24 335 Q. Yes.

25 A. I mean, I think people can make up their own mind. If 12:41
26 you look at the other reports, they seem to be
27 selective. They didn't -- nobody had reported the
28 detail of the criminal investigations.

29 336 Q. Yes. I mean, that included, for example, an interview

1 with Mr. Mooney on the radio where there was a
2 suggestion that Sergeant McCabe was rubbished?

3 A. Yes.

4 337 Q. And it also appeared to be a report that was featuring
5 in other mainstream newspapers? 12:41

6 A. It was on RTÉ before I did it.

7 338 Q. Now, you are satisfied, and I am not going to labour
8 this point and Mr. Whelan has been over it, that Nóirín
9 O'Sullivan had no hand, act or part in a single
10 syllable you uttered on those broadcasts on the 9th 12:41
11 May?

12 A. I am satisfied, totally.

13 339 Q. And you are absolutely satisfied that you were never
14 directed by Superintendent Taylor that Sergeant McCabe
15 was motivated by malice arising out of this underlying 12:41
16 complaint?

17 A. Never.

18 340 Q. Now, in relation to the February report - I will deal
19 with this briefly - the February report in relation to
20 the cooperation issue, now, firstly, that is a report 12:41
21 that isn't in the terms of reference but nonetheless is
22 a relevant matter for the Tribunal to consider. In
23 respect of that, can I just ask you the following: The
24 context of that report on the direction was that, in
25 the background, Mr. Shatter had in the Dáil said the 12:42
26 whistleblowers had failed to cooperate, and I think the
27 then-Commissioner had given evidence to the PAC that
28 the whistleblowers had ample opportunities to come
29 forward, isn't that right?

1 A. That's correct.

2 341 Q. I think there had been significant public discussion in
3 relation to the direction to desist from using Pulse,
4 isn't that right?

5 A. That's correct. 12:42

6 342 Q. This question of cooperation or non-cooperation, such
7 as it was, for good or ill, lingered, however, as a
8 newsworthy issue, as far as you were concerned?

9 A. It hadn't been resolved.

10 343 Q. When you had sight of the direction, you composed the 12:42
11 piece you've described. That never made it to
12 television but became an on-line story?

13 A. That's correct.

14 344 Q. Now, it's been specifically put to you in the context
15 of the 9th May report, that in terms of your statutory 12:42
16 obligation to get replies from people, that you were
17 going through the motions, that you'd no intention of
18 varying your script, and that effectively seeking a
19 response from Sergeant McCabe was somehow fraudulent in
20 one sense. Now, in the context of this specific 12:43
21 report, I just want to put particular emphasis on what
22 you did here. As soon as you heard that Sergeant
23 McCabe was disputing the report -- or the
24 interpretation of the direction, I think as early as
25 quarter past nine that night you amended your story to 12:43
26 reflect that, even though Sergeant McCabe hadn't yet
27 even made a response to you?

28 A. That's correct, seventeen minutes past nine.

29 345 Q. And, in fact, even though Sergeant McCabe hadn't yet

1 made any response to you, you not only amended the
2 story, you amended the headline, and the headline on
3 the story at that stage, before Prime Time even went on
4 air, is: "McCabe disputes cooperate claim". And it
5 then says: "Whistleblower Sergeant Maurice McCabe is 12:43
6 understood tonight to be disputing the Garda
7 Commissioner's statement", as already indicated, isn't
8 that right?

9 A. That's correct.

10 346 Q. And that by the time Sergeant McCabe's account was then 12:43
11 subsequently broadcast on Prime Time, the story was
12 then amended by you again to include chapter and verse
13 of everything Sergeant McCabe was now saying about that
14 direction?

15 A. At a quarter to midnight. 12:44

16 347 Q. And that was the story then that remained on-line in
17 that context, giving a full voice to what he was
18 saying, isn't that right?

19 A. That is the story we carried on from then on.

20 348 Q. Now, can I ask you this in relation to the use of the 12:44
21 phrase "branding Sergeant McCabe a liar and
22 irresponsible". You never at any point in any
23 broadcast anywhere used the word "irresponsible" in
24 connection with Sergeant McCabe, isn't that right?

25 A. Never. 12:44

26 349 Q. Similarly, you never called him a liar, let alone
27 branded him a liar. You referred to a single instance
28 of what you described as a lie, and I think you can
29 confirm that you indicated explicitly in the broadcast

1 that Judge O'Higgins had referred to that as an
2 untruth?

3 A. That's correct.

4 350 Q. And that you also, in that context, said that Sergeant
5 McCabe's concern in relation to that matter was 12:44
6 understandable and, in the context of this, the report
7 had referred to his concern as genuine and commendable?

8 A. That's correct.

9 351 Q. Now, you referred to it yesterday just briefly, but did
10 I understand you to say that in the course of a given 12:45
11 year you might do 200 television news broadcasts?

12 A. 200 television news broadcasts plus on-line. I mean,
13 for example, the 24th February didn't make TV.

14 352 Q. Yes. So in the context of any given year, possibly 200
15 television broadcasts in the crime and justice area, is 12:45
16 that right?

17 A. That's correct.

18 353 Q. In terms of radio, would it be a similar total?

19 A. Yes.

20 354 Q. So we are talking of over 800, even over 1,000 12:45
21 broadcasts, radio and television, on-line, in the crime
22 and justice area over the course of the four-year
23 period --

24 CHAIRMAN: well, I am not sure how 200 and 200 make
25 800, Mr. Gillane. Sorry, I am not trying to be smart. 12:45
26 But let's suppose he is terribly busy or even working
27 19 hours a day, but I will take that as a given.

28 MR. GILLANE: I am saying over the course of four
29 years.

1 355 Q. But my point is this, the question I want to put is
2 that Mr. McDowell put it to you that you exhibited a
3 deep prejudice against Sergeant McCabe?
4 A. That is not correct.
5 356 Q. And -- 12:46
6 A. Not true.
7 357 Q. -- I just want to put to you that it appears that you
8 have been cross-examined on that basis despite the
9 context of however many broadcasts you have made on the
10 basis of one day's news on the 9th May 2016 and an 12:46
11 on-line report in 2014 that never even made it to the
12 television?
13 A. That is true. In the course of 400 television reports,
14 six of them related to Sergeant McCabe.
15 358 Q. And I think -- 12:46
16 A. And they were all based on the record from, as I said,
17 Oireachtas committees or --
18 359 Q. And I think you can confirm that you weren't, in fact,
19 sued nor was RTÉ sued arising out of the allegation
20 that that report was defamatory? 12:46
21 A. No.
22 MR. GILLANE: Thanks very much.
23
24 THE WITNESS WAS RE-EXAMINED BY MS. LEADER:
25 12:46
26 360 Q. MS. LEADER: One thing I wanted to check with you,
27 Mr. Reynolds. Do you have any knowledge of the foxtrot
28 bravo letter other than in the context of this
29 Tribunal, a poison pen letter in relation to Sergeant

1 McCabe?
2 A. I don't know what the foxtrot letter -- is this the --
3 CHAIRMAN: It's the one that was on the screen.
4 A. The same --
5 CHAIRMAN: It says pyjamas, and all the rest of it, and 12:46
6 couch.
7 A. No, no, no. The first time I saw that was when the
8 Tribunal showed it to me.
9 MS. LEADER: Thank you very much.
10 CHAIRMAN: I just wanted to ask you maybe two or three 12:47
11 questions.
12 A. No more hard ones, though.
13
14 THE WITNESS WAS QUESTIONED BY THE CHAIRMAN:
15 12:47
16 361 Q. CHAIRMAN: First of all, the foxtrot bravo letter is a
17 very good example of calumny, isn't it? I don't know
18 if you can help me, Ms. Leader, by giving me a page
19 number and we can put it up on the screen.
20 MS. LEADER: The page number in relation to the D 12:47
21 allegation is 6480.
22 A. Just to say something in relation to that. When Anne
23 Doyle worked in RTÉ, she used to get 50 letters a week
24 from farmers wanting to marry her. When you work in
25 this business, you get all sorts of stuff through the 12:47
26 mail, you get emails, you know, all sorts of poison pen
27 letters.
28 CHAIRMAN: I know. But there is a bit of a difference
29 between a farmer saying I think you are very beautiful

1 and I want to marry you and someone saying what is in
2 this.

3 A. No, but the point I am making is --

4 CHAIRMAN: No, I am not sure it's a great point, and if
5 you let me ask the questions, we will actually get out 12:47
6 of here a lot quicker. So, if you look at it, a young
7 girl, et cetera, et cetera, sleepover, sexually
8 assaulted, the nature of the sexual assault is there,
9 that is calumny. Now, did you hear anything like that
10 about Sergeant McCabe? 12:48

11 A. No.

12 362 Q. CHAIRMAN: The second thing is this: How do you feel
13 about Superintendent Taylor nominating you as one of
14 the people to whom he felt able to broadcast whatever
15 calumny he claims to have been broadcast? 12:48

16 A. You want my personal feelings?

17 363 Q. CHAIRMAN: Yes.

18 A. I resent it. I was shocked by it because I can't
19 understand how he would say that. I don't know why he
20 would say that. And I deeply, deeply resent it. 12:48

21 364 Q. CHAIRMAN: And the other thing that has come up, of
22 course, is that someone who is well-known in the
23 journalist and academic sphere said that you came up to
24 him at a meeting and said, do you know Sergeant McCabe
25 is a paedophile. How do you feel about that? 12:49

26 A. I feel very annoyed about that and I resent that too.

27 CHAIRMAN: Okay. Thanks very much.

28

29 THE WITNESS THEN WITHDREW

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CHAIRMAN: So just in relation to this afternoon, I mean, are we going to get through anything or going to be able to make things maybe a bit more concise and get moving on it?

12:49

MR. MCGUINNESS: Chairman, we are going to do whatever is necessary to get the relevant evidence out, and nothing short of that.

CHAIRMAN: No, I know that. All right. Well, I don't see any reason why we can't sit at half one, then.

12:49

THE HEARING ADJOURNED FOR LUNCH

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 MR. MARRINAN: Claire Grady, please.

4
5 MS. CLAIRE GRADY, HAVING BEEN SWORN, WAS DIRECTLY
6 EXAMINED BY MR. MARRINAN:

13:32

7
8 365 Q. MR. MARRINAN: would you mind just giving the Chairman
9 a brief history of your career in journalism?

10 A. Yes, Chairman. I was a journalist for probably about
11 30 years, most of it with Independent Newspapers. I
12 was a reporter for about half that period of time and I
13 was in what you might call a supervisory position then
14 for the other half of the time, as in I was on the
15 Irish Independent news desk for a few years, I was on
16 the Evening Herald back desk, which was commissioning
17 columnists and things like that, then I became the
18 editor of the Herald for one year and I was the editor
19 then of the Irish Independent also for one year, from
20 August 2013 to August 2014.

13:32

13:32

13:33

21 366 Q. I think that you met with our investigators on the 26th
22 October 2017, and the memo of the interview with you is
23 at page 3577 of the material and goes to 21 pages.

24 A. Mm-hmm.

25 367 Q. But perhaps I could just simply condense it in this
26 way. I think the Tribunal investigators went through
27 the terms of reference of the Tribunal with you?

13:33

28 A. That's correct.

29 368 Q. And asked you whether you had any information to offer

1 in relation to them, and you indicated that you hadn't
2 any information to offer, isn't that right?

3 A. That's correct.

4 369 Q. With the exception of one circumstance, and that arose
5 out of Paul Williams, the journalist, bringing an 13:33
6 article --

7 A. That's correct.

8 370 Q. -- and an interview that he had with Ms. D --

9 A. Yes.

10 371 Q. -- to you as editor, is that right? 13:34

11 A. That's correct.

12 372 Q. And the consideration that was given by you and others,
13 and we heard from Mr. Rae yesterday and we have also
14 heard from Mr. Mallon in that regard.

15 A. Yes. 13:34

16 373 Q. And also from Dearbhail McDonald.

17 A. That's correct.

18 374 Q. And I think a process of many meetings were had to
19 consider whether or not the Independent would run with
20 the story, is that correct? 13:34

21 A. I wasn't involved -- I know Stephen Rae gave evidence
22 that there was six meetings, and I have no reason to
23 dispute that. I wouldn't have been involved in all six
24 meetings. To the best of my recollection, I was
25 involved at an early meeting, when I saw the video and 13:34
26 the story was laid out? And at that time when -- you
27 know, when I heard the story first, it was in no way in
28 a position, I felt, you know, it hadn't reached a
29 position that it could be used without further checks

1 and things like that being done. So Dearbhail McDonald
2 undertook, along with Paul Williams, to firm up the
3 story.

4 375 Q. Yes. The story, we know, was brought to you in around
5 about March of 2014. Prior to that, had you heard 13:35
6 anything in regard to Sergeant McCabe's background?

7 A. No. I certainly hadn't heard any allegation that was
8 covered in that story. I think there would have been
9 chitchat about oh, you know, this man has a grudge, you
10 know, that sort of general thing. But to be honest, at 13:35

11 that particular point I was editor of the Irish
12 Independent for a year, so a lot of the conversations
13 go on and by the time they come to the editor the story
14 kind of has reached fruition or close enough to

15 reaching fruition, so that it's news editors in general 13:36
16 who would be sort of dealing with the reporters and
17 kind of teasing out stories and hearing that sort of
18 thing. And at that particular time in that particular

19 year in the Irish Independent, as I say, there was a
20 lot of changes going on structurally, there was a lot 13:36
21 of issues around the structure of the newspaper, so I
22 wouldn't -- it's not that I hadn't been involved in

23 those sort of, you know, conversations in previous
24 roles in the Independent, you know, where you'd be
25 chatting to reporters and you'd be hearing gossip and 13:36
26 stuff like that, but at that particular time I was less

27 inclined to have the time or the interest in chitchat.

28 376 Q. Right.

29 A. But I absolutely had heard nothing about that

1 allegation, you know what I mean, that was the basis of
2 that story, before it was actually presented to me by
3 Paul Williams.

4 377 Q. There's just one statement that you made to our
5 investigators. It's at page 3585, if that can be
6 brought up on the screen. And if you could scroll
7 halfway down the page, you say:

13:36

8
9 "I am aware that the official Garda line on the
10 whistleblowers at the time was that they were persona
11 non grata."

13:37

12
13 what did you mean by that?

14 A. What I meant by that was that Martin Callinan had gone
15 into PAC in January and had described them as
16 'disgusting'. Now, I know it was sort of -- he rode
17 back from that subsequently. But to my mind, it was a
18 revelation of the thinking of the most senior garda in
19 the land that the whistleblowers were disgusting.

13:37

20 378 Q. And then you go on:

13:37

21
22 "I remember thinking at the time that someone must have
23 drawn Paul Williams' attention to the young woman's
24 story. It seemed to me to be convenient for senior
25 gardaí that the story surfaced at that particular time
26 as it was post Martin Callinan's appearance before the
27 Public Accounts Committee."

13:37

28 A. Yes.

29 379 Q. So it would appear that at that time you were

1 suspicious that perhaps Paul Williams had been given
2 the story by the gardaí, is that what you are
3 suggesting?

4 A. I mean, really what -- I mean, Paul had said, and I
5 have absolutely no reason to dispute him, was that he 13:38
6 was contacted by Ms. D. And I'm trying to remember at
7 the time did I -- you know what I mean, did I know that
8 he was contacted directly. I know he was contacted by
9 Ms. D. I think what I meant was that, Paul is a
10 journalist of many years experience and would have all 13:38
11 sorts of contacts in the guards and even if it was from
12 the point of view that, of what -- I think my frame of
13 mind would have been that a guard would have -- that it
14 was most likely a guard that gave Ms. D Paul Williams'
15 number. I'm not saying that a guard initiated, got the 13:38
16 whole thing rolling. But my initial thing was, I mean,
17 part of my job was being sceptical about stories.

18 380 Q. Yes. No, indeed. And if we go to 3586, the following
19 page of your statement, you say:

20
21 "I was aware that these allegations against Sergeant
22 McCabe were emerging against a background in which
23 senior gardaí, including the Garda Commissioner,
24 considered Sergeant McCabe to be a persona non grata."
25

26 So you have repeated that.
27

28 "I also believed it was quite convenient for the Garda
29 authorities that the story was emerging at this time.

1 However, I believe that the publication of this story
2 in which Sergeant McCabe was not identified would not
3 contribute in any way to impugning his character in the
4 public eye. While a number of gardaí would have known
5 the identity of the garda in the story, there was no 13:39
6 reason that the general public would have."

7
8 So again, I mean, I think you're just merely expressing
9 perhaps an observation at the time --

10 A. Yes. 13:39

11 381 Q. -- that this was very convenient timing for the
12 story --

13 A. Yes.

14 382 Q. -- to come into the newspaper, is that right?

15 A. Yes. 13:40

16 383 Q. But beyond that?

17 A. No, I mean, I'm explaining -- really what I'm saying
18 there is, I'm explaining my initial resistance, shall
19 we say, to the story. It wasn't -- like, it was
20 presented by a very experienced reporter and, you know, 13:40
21 other types of stories you just accept at face value,
22 but this went through an additional process apart from
23 the seriousness of it. It was quite convenient, you
24 know, I thought at the time, that a story that would --
25 if it was written in a particular way, you know, impugn 13:40
26 Sergeant McCabe, that that would sort of fit into what
27 Martin Callinan had said at the PAC.

28 384 Q. But in any event, it having been, I think the
29 expression that has been used here, it having been

1 stress-tested, it was decided to publish the article,
2 and it was published on the 10th April --
3 A. That's correct.
4 385 Q. -- of 2014. Thank you very much. would you answer any
5 questions, please. 13:40
6 A. That's correct.
7 MR. McDOWELL: No questions, Chairman.
8 CHAIRMAN: Sorry, Mr. O'Higgins.
9 MR. MÍCHEÁL O' HIGGINS: No questions, Chairman.
10 CHAIRMAN: Thank you very much. 13:41
11 A. Thank you.
12
13 THE WITNESS THEN WITHDREW
14
15 MR. MCGUINNESS: Mr. Fionnan Sheahan, please. 13:41
16 Mr. Sheahan's statement is to be found at volume 14,
17 page 3651.
18
19 MR. FIONNAN SHEAHAN, HAVING BEEN SWORN, WAS DIRECTLY
20 EXAMINED BY MR. MCGUINNESS: 13:41
21
22 386 Q. MR. MCGUINNESS: Is it Sheahan or Sheahan?
23 [pronunciation]
24 A. Sheahan.
25 387 Q. Thank you. I think you were appointed editor of the 13:41
26 Irish Independent newspaper in 2015, is that correct?
27 A. That's correct, January 2015.
28 388 Q. And you still hold that position?
29 A. I do.

1 389 Q. And prior to that you were the group political editor,
2 which covered the three paper publications, isn't that
3 right?
4 A. Yes, it covered from the summer of 2013 through to
5 December of 2014. I was group political editor of the 13:42
6 INM titles, which encompassed the Irish Independent,
7 the Sunday Independent, independent.ie, the Herald and
8 the Sunday World.
9 390 Q. Yes. Prior to that you were political editor of the
10 Irish Independent? 13:42
11 A. That's correct, from 2007 onwards, up to that period.
12 391 Q. And would you be described then as one of the 'pol
13 cors'?
14 A. That's correct.
15 392 Q. So you spent most of your time in Leinster House or the 13:42
16 environs?
17 A. Yeah, I flitted between Leinster House and I would come
18 over and back to Talbot Street for meetings, but I was
19 predominantly based in Leinster House.
20 393 Q. Yes. In paragraph 7 of your statement to the Tribunal, 13:43
21 you obviously offer the opinion:
22
23 "I did not and never believed that Sergeant McCabe was
24 guilty of any wrongdoing."
25
26 But you say: 13:43
27
28 "I was aware from general discussion in political
29 circles that there was an allegation of this nature

1 against Sergeant McCabe. However, as a political
2 correspondent who is based in Leinster House for over
3 15 years, I have learned not to pay much attention to
4 unfounded gossip."

13:43

6 And you refer only there to "political circles". And
7 can you recollect what you heard, as such?

8 A. Well, I mean, throughout this period -- I mean,
9 Mr. McDowell outlined a series of issues that were
10 raised regarding the Garda whistleblowers in general, 13:43
11 Chairman, across this period. You had -- when the
12 issues around the penalty points were brought forward,
13 they were being dismissed, they were proven to be
14 correct. You then had other issues around wrongdoing
15 or allegations of malpractice in Bailieboro, which were 13:44
16 proven to be well-founded. There were other issues
17 around missing computers, the release of suspects, and
18 so on, and then also the issue which this Tribunal is
19 examining. So, no, I mean, it was basically throughout
20 that period -- in Leinster House, it is a gossip 13:44
21 factory, in effect; you walk across the plinth in
22 Leinster House, you would hear more gossip than in a
23 bingo hall on a Thursday night. That is the nature of
24 it. If you are there long enough, you learn pretty
25 fast that you only pay attention to the stuff that is 13:44
26 actually founded on some basis of reality.

27 394 Q. Yes. I was just trying to elicit from you,
28 Mr. Sheahan, what you heard and then I was going to ask
29 you when you heard it?

1 A. Sure. what I heard generally was that there was
2 suggestions against Maurice McCabe.

3 395 Q. Well, can you be more precise there?

4 A. No, not really, and I beg your forgiveness in this
5 regard. 13:45

6 396 Q. Yes.

7 A. There was all sorts of suggestions that were
8 undermining the credibility of the whistleblowers, but
9 there was nothing that was actually founded in any fact
10 or in anything that you would describe as actual 13:45
11 briefings. I think numerous witnesses have appeared
12 before this Tribunal. John McGuinness probably summed
13 it up; he said if you walked through the corridors of
14 Leinster House, you could hear mutterings about these
15 individuals. 13:45

16 397 Q. But you refer in that paragraph to "an allegation of
17 this nature".

18 A. Mm-hmm.

19 398 Q. Are you referring specifically to an allegation of
20 sexual assault? was that what you were hearing? 13:45

21 A. No, it was that and the other ones.

22 399 Q. Okay.

23 A. So there was a series. I mean --

24 400 Q. Can you help us just in terms of a time when you first
25 heard it or can you recollect that moment or did it 13:45
26 have any impact on you at all?

27 A. I would say it didn't. I would say, because you hear
28 so much in Leinster House, that actually, no, it
29 wouldn't have.

1 401 Q. okay. well, just the way you phrased it there, can I
2 take it that you're excluding having heard it from, as
3 it were, Garda circles?

4 A. Oh, yeah. Absolutely.

5 402 Q. I think just you seem to be quite clear in your
6 statement that you have "never spoken to David Taylor,
7 Martin Callinan or Nóirín O'Sullivan about Sergeant
8 McCabe and none of these have ever briefed me to say
9 anything negative of or concerning Sergeant McCabe or
10 to use my influence to be negative about him."

13:46

13:46

11
12 So would it be a fair summary that you have never been
13 negatively briefed by any member of the Garda Síochána
14 in the terms of reference sense?

15 A. Oh, yeah, I outlined those three names, I suppose, in
16 my statement because they're the three names that are
17 being represented here, but that can apply, yes, across
18 the board. Martin Callinan, I never met. Nóirín
19 O'Sullivan, I met her at an event here in Dublin Castle
20 in 2015, I said hello to her, that was it. David
21 Taylor I would have dealt with; routinely you'd put
22 calls in to Dave Taylor and say, do you have a comment
23 on this? I wouldn't regard David Taylor as anything
24 resembling an off-record, confidential or anonymous
25 source. Those were not my dealings with him.

13:46

13:47

13:47

26 403 Q. All right. Now, can I ask you this: Can you recollect
27 when you first heard of the fact that Sergeant McCabe
28 had been accused of sexual assault, that it had been
29 investigated and the results of that?

1 A. No, Chairman, I'm afraid I can't.

2 404 Q. You can't recall?

3 A. No.

4 405 Q. Mr. Colum Kenny wrote an article in the Sunday
5 Independent on the 2nd March 2014 in which he referred 13:47
6 to Sergeant McCabe by name as having been the subject
7 of a serious accusation which had been investigated and
8 as a result of which there would be no prosecution.
9 would that have come across your desk at the time?

10 A. What's the date? 13:48

11 406 Q. 2nd March 2014.

12 A. No, I mean, Colum Kenny, he's a columnist with the
13 Sunday Independent, or he was at the time.

14 407 Q. Okay. Can I just ask you about something that
15 Mr. Mallon told us. 13:48

16 A. Sure.

17 408 Q. Mr. Mallon, whose statement is in volume 19 at page
18 5314, but he said this in his statement on page 5316,
19 he says:

20 13:48

21 "I can say that almost every journalist working in
22 Independent Newspapers was aware of Sergeant McCabe's
23 identity from the Paul Williams articles and knew that
24 there was an old allegation made against him of sexual
25 assault against a child and that the Director of Public 13:48
26 Prosecutions had ruled there was no case to answer."
27

28 would you agree that that is correct?

29 A. I would say that subsequent to that, to that article in

1 the following weeks, I mean by that stage this issue
2 was also being raised in the Dáil, so it was coming up
3 in different platforms. Micheál Martin raised it some
4 months after that period. So, like, can I precisely
5 say on the day the article was published that everybody 13:49
6 knew - no, I can't say that.

7 409 Q. Yes. No, but, I mean, Mr. Mallon is speaking in terms
8 of the context of Mr. Williams' article, articles,
9 which you must have been familiar with, I take it?

10 A. You're talking about April. 13:49

11 410 Q. Yes.

12 A. April of 2014.

13 411 Q. Yes. But is that statement correct; so that, since
14 then, every journalist would have known about it in
15 Independent Newspapers? 13:49

16 A. I don't know what specific timeframe he's talking about
17 it. I mean, that story was published in April of 2014.

18 412 Q. Yes.

19 A. Following on from that period, yes, it certainly would
20 have been. 13:49

21 413 Q. Had you any hand, act or part in the Paul Williams
22 article and the stress-testing of it, or were you
23 consulted about it at all?

24 A. No, none whatsoever.

25 414 Q. Okay. But you would have presumably become aware of 13:50
26 the fact that the article was in the pipeline and was
27 going to be then published, as it was on the 12th
28 April?

29 A. No, I wouldn't have.

1 415 Q. You wouldn't have been?
2 A. No.
3 416 Q. Okay.
4 A. I mean, if I wasn't -- I wasn't consulted about it, I
5 wasn't involved in it, I had no hand, act or part in 13:50
6 any of these meetings being referred to, I wasn't asked
7 about it at all.
8 417 Q. All right. So you learned of it from the date of
9 publication onwards then, is that it?
10 A. Yes. 13:50
11 418 Q. All right. Okay. Now, a witness, Ms. Anne Harris,
12 made an earlier --
13 A. Sorry, may I just add to the previous question. The
14 point here about, Paul Williams' article is published
15 in April 2014. There was no change in terms of the 13:50
16 coverage coming from me or from my political staff or
17 to the input that is coming from me into how this broad
18 story is covered on foot of that. I mean, you can
19 point to, just a couple of weeks later, the headlines
20 on the front of the Irish Independent, my name is on 13:51
21 it, where it refers to the whistleblowers not being
22 listened to and how reports that were published at that
23 time was vindicating them.
24 419 Q. Yes. No, I can understand why you want to say that.
25 You're independent and you were -- the paper was 13:51
26 publishing what it decided to publish?
27 A. Yes.
28 420 Q. Okay. But did any of the reporters that worked for you
29 or to you come and relate that the Garda Press Officer

1 was conducting a smear campaign?

2 A. No.

3 421 Q. Did you ever yourself see any evidence that
4 Superintendent Taylor was conducting a smear campaign
5 in 2013 or '14?

13:51

6 A. No.

7 422 Q. Ms. Harris gave evidence to the Tribunal, having
8 volunteered an early statement to the Tribunal, and she
9 gave evidence on Day 82. I think you have probably --
10 you obviously have read her statements, you've given
11 your own statements in response?

13:52

12 A. I have.

13 423 Q. And you have read her evidence, I take it?

14 A. Yes, that's correct.

15 424 Q. Well, just to go to the straight to the heart of it,
16 she's described the atmosphere and events of 2013,
17 going into 2014, at page 111 of Day 82, and she goes on
18 to say, line 27:

13:52

19
20 "I make no secret of the fact that we had difficulties
21 at the beginning. I was the editor, nonetheless, and
22 Fionnan Sheahan was the political group editor. I
23 commissioned him to write a great number of articles in
24 that period. Between the end of August and the
25 beginning of October he had five major articles in the
26 Sunday Independent. They would not have been there, I
27 cannot emphasise this enough, they would not have been
28 there had I not commissioned them, and there were also
29 features which he suggested, he had ideas for features,

1 and I commissioned those as well. So I had a very good
2 working relationship with him.

3
4 At the end of the conference, towards the end of
5 September, everybody had left, he'd gone out the door,
6 he turned back, came to the office and said, because
7 the last conversation had been about, at the
8 conference, had been about Sergeant Maurice McCabe and
9 he said he's a paedophile, McCabe's a paedophile. And
10 I was -- I was shocked."

11
12 Now, you will have seen the sequence in which she has
13 described it in her evidence, which you have read, and
14 the context in which it arose. And you seem to have
15 treated what she told the Tribunal as an allegation 13:53
16 against you, but it's not at all clear from her
17 evidence that she ever intended it that way. She was
18 relaying information which she thought you had given to
19 her in terms of this comment. And have you any
20 recollection of saying that -- 13:54

21 A. Sorry, if I may --

22 425 Q. -- to her?

23 A. I took that as an allegation that I was withholding
24 information from this Tribunal, which I regard as a
25 very serious act. 13:54

26 426 Q. Well, I don't want to joust with you over the response
27 of the paper or any of the journalists in your paper.

28 A. But it's not about the paper or the journalists, my
29 paper.

1 427 Q. No.

2 A. That was a personal allegation directed against me.

3 428 Q. Well, you may see it as such?

4 A. Well, I see it as such --

5 429 Q. Yes. 13:54

6 A. -- because not only was it made to this Tribunal but it

7 was made in the Sunday Times not six weeks ago.

8 430 Q. Yes. Well, you see, look at paragraph 7 of your own

9 statement. You didn't volunteer that to the Tribunal

10 until you were invited to respond to Ms. Harris's 13:54

11 statement, isn't that right?

12 A. That's -- are you basically saying that every single

13 person who occupied Leinster House over the period of

14 2013 into 2014 should have made a submission to this

15 Tribunal? 13:54

16 431 Q. Mr. Sheahan, you have made a point in relation to

17 Ms. Harris's statement to the Tribunal, which she made

18 at an early stage, and I'm just pointing out that this

19 information that you had in paragraph 7 wasn't itself

20 volunteered to the Tribunal. 13:55

21 A. I'm saying --

22 432 Q. That's a fact, isn't it?

23 A. No. What I am saying is that there was only unfounded

24 gossip, which has been said numerous times in this

25 Tribunal, that it was circulating around Leinster 13:55

26 House.

27 433 Q. Yes.

28 A. Is there any question about that? I can cite John

29 McGuinness, Micheál Martin, Eoghan Murphy, I can cite

1 people who have appeared on TV and radio who have said
2 it was everywhere.

3 434 Q. Yes. Well, they volunteered statements obviously at an
4 early stage. You also obviously had --

5 A. Sorry, I would challenge your assertion there. I will 13:55
6 refer you to some conversations that I can get you
7 details of on Prime Time on RTÉ. I don't see people
8 who were making statements on programmes like that
9 before this Tribunal. So if every single person who
10 occupied Leinster House heard tittle-tattle and was 13:55
11 coming forward to this Tribunal and saying, I heard
12 tittle-tattle but it -- I have no basis on fact
13 whatsoever, I think you would be snowed under with
14 paperwork here.

15 435 Q. You've obviously given very valuable evidence today 13:56
16 that you saw no evidence of a smear campaign?

17 A. That's correct.

18 436 Q. And you received no briefing from any of the gardaí
19 mentioned in the terms of reference?

20 A. That's right. 13:56

21 437 Q. And you'd agree that is important evidence to have?

22 A. Yes.

23 438 Q. Thank you. Now, what would you like to say about
24 Ms. Harris's assertion, or allegation, as you're
25 categorising it? 13:56

26 A. Well, what I would like to say is that what Ms. Harris
27 accuses me of in terms of what she characterises as
28 warning her off Sergeant McCabe, I would have to say,
29 and I would contend, that I was in fact doing the

1 complete opposite. In the period of the third week in
2 September of 2014, which she specifically cites --

3 439 Q. Yes.

4 A. -- on page 114 of her testimony, which is, I would say,
5 around the third week in September, I commissioned -- I 13:57
6 assigned a reporter to cover the latest allegations
7 around penalty points. There was issues around
8 Bailieboro as well.

9 440 Q. Is that Mr. Ryan?

10 A. That's correct. 13:57

11 441 Q. Yes.

12 A. I put it on the agenda for the Sunday Independent that
13 week, I put it on the news list for the Sunday
14 Independent that week, I put it back on the news list
15 for the Sunday Independent that week when it fell off 13:57
16 at the editorial end. I also updated the Sunday
17 Independent across that week about progress of that. I
18 updated them on exactly who Mr. Ryan was meeting, I
19 updated them on what sources he was in contact with. I
20 updated him on both news and analysis. And everything 13:57
21 I've just said is backed up in its entirety by emails
22 sent by me to Ms. Harris as deputy editor in the Sunday
23 Independent. So I'm not relying upon any flawed
24 recollection or memory here. This is all set out quite
25 cleanly in emails on Tuesday, Wednesday, Thursday and 13:57
26 Friday of the third week of September in 2014.

27 442 Q. Yes. I mean, I haven't suggested that you are relying
28 on flawed recollections. You have drawn the attention
29 of the Tribunal to Mr. Ryan's articles?

1 A. Correct.

2 443 Q. And he did a piece on the new claims that the gardaí
3 were facing and he did an analysis piece?

4 A. Yes, he did a --

5 444 Q. And as I understand it, you're drawing attention to 13:58
6 those as reflective of your attitude to Sergeant
7 McCabe, is that it?

8 A. I'm saying -- well, Mr. Ryan wrote them.

9 445 Q. Yes.

10 A. I'm saying that I specifically commissioned them. I 13:58
11 started him on the road to cover those stories that
12 week, from half past nine on the Tuesday morning, which
13 is when the Sunday Independent begins its work. So I
14 put it on the agenda before there was any meetings held
15 in the Sunday Independent. 13:58

16 446 Q. Yes. No, I understand that, and you've referred to the
17 various emails, etcetera. But just in terms of the
18 timeframe, obviously Ms. Harris, as you will have seen,
19 was cross-examined in terms of trying to pin it down to
20 some date, but may I take it that you agree that there 13:58
21 would have been different editorial meetings at which
22 the subject of what ultimately became the articles was
23 discussed --

24 A. Well, I --

25 447 Q. -- at meetings at which you and she had been present? 13:59

26 A. I would certainly agree with that. I found it quite
27 curious that I am basically -- an accusation is being
28 made against me but there is no actual precise date
29 being offered. It's basically around about the third

1 week in September. So I have gone back through my
2 diaries, my rosters, my news lists, my own emails, and
3 I can give an account of where I was on several of
4 those days.

5 448 Q. Yes. 13:59

6 A. So Ms. Harris went into great detail about how her main
7 editorial conference happened on the Tuesday, when on
8 the Tuesday I was down at the Labour Party conference
9 in Wexford. So I think we can rule me out there. On
10 the Thursday, which is her second big meeting of the 13:59
11 week, there's an email from her deputy editor to me
12 saying he's at that meeting and he has asked me a
13 question about something on that list. So we can rule
14 me out of that one as well. The following Tuesday I
15 can prove quite categorically that I was in that 13:59
16 meeting early but left it to attend another meeting
17 about budget 2015 was coming up. And on the Thursday I
18 was at the Ploughing Championships down in Ratheniska,
19 County Laois. So that pretty much takes me out of the
20 equation for four of the meetings during the period 14:00
21 which Ms. Harris is referring to. Apart from that, I
22 can only refer you to my emails, which show that I was
23 actually advocating positive coverage towards Sergeant
24 McCabe during the very week that she is talking about.

25 449 Q. Yes. But the point I was asking about was that these 14:00
26 are the type of meetings that you and she would
27 normally attend?

28 A. That's correct.

29 450 Q. In the normal course of events. And she has, to the

1 best of her recollection as she sees it, thinks that
2 this happened sometime, you know, from the beginning of
3 September up until possibly the first week in October?
4 A. Okay. If I may piece the timeline together for you
5 there, Chairman. 14:00
6 451 Q. Yes.
7 A. For the first two weeks of September I was in Greece on
8 holidays, so it would have been enormously difficult to
9 have attended a meeting there. I've already told you
10 about the third week in September and the fourth week 14:01
11 in September. That is how I can account for it. I
12 would also point out that Ms. Harris said during her
13 testimony here that what actually turns up in the paper
14 at the end of the week is reflective of what is
15 actually discussed at those editorial conferences. 14:01
16 There is nothing in the Sunday Independent on September
17 28th or October 5th regarding Sergeant Maurice McCabe.
18 There is a story on September 28th regarding the Garda
19 Síochána Ombudsman Commission which was in no way
20 related to the penalty points affairs or Garda McCabe. 14:01
21 On October 5th, I believe Mr. McDowell's column on Alan
22 Shatter's appearance on the Late Late Show is around
23 about the only thing that could be said to be anything
24 to do with this entire issue. So if it was so heavily
25 on the agenda in the fourth and, shall we say, fifth 14:01
26 week of September, why was there nothing in the paper?
27 And secondly, I can provide you from the political news
28 list for that week which shows you there was absolutely
29 nothing on the agenda in that fourth and fifth week of

1 that month. I can point to the third week, I can show
2 you exactly what was being done that week and how it is
3 reflected in the paper at the end of the week because I
4 was directing that, and that was positive coverage
5 towards Sergeant Maurice McCabe. 14:02

6 452 Q. Okay, I understand what are you saying. But are you
7 going as far as saying that you had no contact with her
8 at all at any editorial meeting during the whole of
9 that period?

10 A. No, of course I can't say that. 14:02

11 453 Q. MR. MCGUINNESS: Okay. Thank you very much,
12 Mr. Sheahan. Would you answer any questions anyone
13 else may have.

14 CHAIRMAN: There is just one matter, Mr. McGuinness. I
15 appreciate from the tone of the answers that the
16 allegation is denied? 14:02

17 A. Absolutely. Chairman, you made a point yourself the
18 last day under Mr. Fanning's cross-examination, you
19 were saying to have made the comments, you know, that
20 were was -- what I have a problem with here is (a) I am 14:02
21 not -- I'm (a) denying that I ever made any comments,
22 and (b) I am certainly saying that I did not withhold
23 any information from this Tribunal.

24 MR. MCGUINNESS: Thank you.

25 CHAIRMAN: I think it may be that I am being taken up 14:03
26 wrong, Mr. Sheahan.

27 A. Okay.

28 CHAIRMAN: Because, I mean, I think there is a
29 distinction between discussing something on the basis

1 that one has an interest in knowing about it --

2 A. Sure.

3 CHAIRMAN: -- or an interest in the details. But on
4 the other hand, saying, just for instance, in relation
5 to any particular person, of course your man is an 14:03
6 arsonist, you know that.

7 A. Mm-hmm.

8 CHAIRMAN: That is very different and that is an actual
9 allegation.

10 A. Sure. 14:03

11 CHAIRMAN: And that is what it is claimed that you
12 said.

13 A. Yes.

14 CHAIRMAN: So you treated it as an allegation. I think
15 you're right to treat it as that. 14:03

16 A. I kind of had to. Something was being attributed to me
17 which I not only reject from my own recollection, but,
18 having gone through my own records and the emails that
19 I have, and if I may add a footnote here, it's gmail;
20 it's not any email inside Independent News & Media I'm 14:03
21 referring to here. Just to put that on the record.
22 It's quite important.

23 MR. MCGUINNESS: Your columnist may wish to ask you
24 some questions.

25 MR. McDOWELL: No, the columnist has no questions for
26 you. 14:04

27 A. Okay. Thanks, Mr. McDowell.

28 CHAIRMAN: Yes, Mr. Lehane.

29

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

2 454 Q. MR. LEHANE: Mr. Sheahan, my name is Darren Lehane, and
3 I appear on behalf of Ms. Harris, and I have some
4 questions for you arising out of your evidence.

5 A. Sure.

14:04

6 455 Q. What Ms. Harris has said that you said has been put to
7 you, and just so we are absolutely clear, she says
8 that:

9
10 "At the end of the conference, towards the end of
11 September, everybody had left, he'd gone out the door,
12 he turned back, came to the office and said, because
13 the last conversation had been about, at the
14 conference, had been about Sergeant Maurice McCabe and
15 he said he's a paedophile, McCabe's a paedophile."

16
17 That is what Ms. Harris said you said. And you deny
18 that?

19 A. That's correct. Sorry, Mr. Lehane, if I may, I don't
20 just deny it; I say it is entirely contradictory to my
21 actions in that third week of September, as is
22 evidenced by my continual emails to her deputy editor.

14:05

23 456 Q. I will come back to your actions in a second. But
24 just, you're denying saying that?

25 A. Yes, that's correct.

14:05

26 457 Q. Now, you've agreed, I think, in answering
27 Mr. McGuinness's questions, that in your statement at
28 paragraph 7, I think it was, you refer only to gossip
29 about Sergeant McCabe in political circles, you don't

1 say anything about gossip about Sergeant McCabe in
2 media circles?

3 A. Well, I was predominantly based in Leinster House,
4 Mr. Lehane, so, you know, if you heard stuff on the
5 grapevine, it tended to be Leinster House where I heard 14:05
6 it, yeah.

7 458 Q. I know, but you don't say anything there about media
8 circles, and there are a lot of journalists, you'll
9 agree with me, who are based in Leinster House,
10 traipsing the corridors trying to get stories, isn't 14:05
11 that right?

12 A. Yeah, I mean, political circles in Leinster House can
13 encompass TDs, senators, ministers, press officers,
14 advisers, civil servants, staff, journalists, people
15 coming in and out, yes, absolutely. 14:06

16 459 Q. Okay. Well, if that is your definition of political
17 circles, would you agree with me that it would have
18 been useful if you had said political (including media
19 circles), that the allegation was there?

20 A. I don't get you, Mr. Lehane, sorry. 14:06

21 460 Q. Your definition of political circles, as you've given
22 there to the Chairman, is that political circles
23 includes a wide gamut of people that includes
24 journalists. I'm just saying for those of us who
25 aren't privileged enough to operate in those political 14:06
26 circles, that it might have been useful if you had said
27 political circles (and this would include media
28 circles)?

29 A. Chairman, I'm more than happy for Mr. Lehane to expand

1 that definition, fine.

2 461 Q. Okay. And just in relation the evidence of Mr. Mallon
3 which has been put to you, you've had an opportunity to
4 read Mr. Mallon's evidence before the Tribunal, have
5 you? 14:07

6 A. I haven't read it in its entirety, no.

7 462 Q. Well, just in brief, and I think Mr. McGuinness has
8 already said that, Mr. Mallon said that allegations
9 concerning Sergeant McCabe were being discussed in a
10 very open way throughout the Independent News & Media 14:07
11 group of newspapers. You wouldn't disagree with that,
12 would you?

13 A. It depends what timeframe you're talking about.

14 463 Q. After the publication of, for example, the articles by
15 Mr. Williams? 14:07

16 A. Well, the articles by Mr. Williams includes, I presume
17 you're talking about there, the ones about Micheál
18 Martin raising it in the Dáil, is that correct?

19 464 Q. No. Well, let's just break it down.

20 A. There was one article that he wrote in April, does 14:07
21 anybody have the date of the one about it being brought
22 up in the Dáil?

23 465 Q. Well, would you like to assist the Tribunal by telling
24 us, so, when do you say -- what point in time do you
25 say that the allegations concerning Sergeant McCabe 14:07
26 started being discussed in a very open way throughout
27 the Independent News & Media group of newspapers?

28 A. I couldn't help you there. I don't know.

29 466 Q. Well, do you want to try and give us a year?

1 A. 2013 into 2014. I don't know, Mr. Lehane.

2 467 Q. Okay. And when these allegations --

3 A. Mr. Lehane, I'm sorry, let me just assist you here.

4 During my period in Leinster House, there was many,

5 many stories that circulated about people not just 14:08

6 involved in politics but related to it. There was a

7 lot of stories went around. It's impossible to say

8 when they started, where they came from, and so on.

9 They cover a wide range and gamut and a lot of them

10 were quite scandalous and you couldn't even repeat them 14:08

11 here without naming names. But it's impossible to say

12 where a rumour starts.

13 468 Q. But again, you've put a date on it at some point in

14 2013 going into 2014?

15 A. Well, is that not what we're talking about here today? 14:08

16 469 Q. No, no. Now, Mr. Mallon also gave evidence that these

17 matters were being discussed in a very casual way in

18 offices over coffee, in corridors and at the water

19 cooler in the Independent News & Media group of

20 newspapers; would you dispute that evidence? 14:09

21 A. Well, I wouldn't dispute him, nor would I dispute

22 Ms. Harris when she said the matter came up at many

23 editorial conferences and was repeated several times.

24 Now, I wasn't present for those meetings that she is

25 talking about, but it seems that it was widely 14:09

26 discussed inside in Anne Harris's office.

27 470 Q. Now, when you first became aware of these allegations

28 concerning Sergeant McCabe, and I appreciate your

29 evidence that you hear lots of scandalous allegations

1 every day of the week in your job, but when you first
2 became aware of these allegations, did you take a note
3 of it?

4 A. No, Mr. Lehane, I didn't.

5 471 Q. Did you record it in your diary? 14:09

6 A. No, Mr. Lehane.

7 472 Q. Did you send an email to anyone about it?

8 A. No, Mr. Lehane.

9 473 Q. So there is no documentary record there to assist you
10 to pin it down in terms of the date? 14:10

11 A. Mr. Lehane, there is a difference in journalism between
12 hearing about rumour, gossip, innuendo and ephemera and
13 actually receiving something even resembling hard facts
14 or evidence or a briefing. I have national media
15 awards sitting on my desk because I pursued stories as 14:10
16 a journalist which started off with basic hard facts.
17 So I know the difference between gossip, rumour,
18 innuendo and ephemera and actual hard facts that are
19 verifiable and can be chased down and put out there
20 into the national media. 14:10

21 474 Q. I don't think anyone here, and I'm not in particular
22 disputing your accomplishments as a journalist, but
23 again, you didn't take a note of or a record of the
24 first time you heard these allegations, even on the
25 back of an envelope, to assist your further 14:10
26 recollection?

27 A. Mr. Lehane, I'm quite clearly saying to you, nobody
28 briefed me or nobody provided me with any information
29 that I regarded as worth noting or worth pursuing in

1 any regard.

2 475 Q. Okay. But you'd agree with me that allegations
3 concerning Sergeant McCabe were being discussed in a
4 very open way throughout the Independent News & Media
5 group of newspapers and I'm just trying to tie you down 14:11
6 to a date that you've been unable to give me and also
7 to the fact that you didn't take a note or record, just
8 jot down on the back of an envelope or something to
9 yourself saying, listen, this is something I want to
10 inquire into and -- 14:11

11 A. Mr. Lehane, I am sorry, let me just stop you there for
12 one second. I have heard numerous urban myths about
13 people over the years, numerous rumours about
14 wife-beating, philandering, drink-driving, people being
15 involved in all sorts of different scandals. I didn't 14:11
16 take notes of all of those. You could spend your time
17 above in Leinster House chasing around after every red
18 herring if that is what you spent your time doing. I
19 didn't spend my time doing that.

20 476 Q. And you, through your counsel, criticise Ms. Harris for 14:11
21 not being able to pinpoint the precise time at the end
22 of September when she alleges that you made this
23 statement to her, isn't that right?

24 A. She is making a very specific allegation against me, so
25 I think I'm entitled to do that, yes. 14:12

26 477 Q. Just in terms of the specificity of the allegation, the
27 allegation is that you described Sergeant McCabe as a
28 paedophile, is that right?

29 A. That's correct.

1 478 Q. And there's nothing intrinsically wrong with the use of
2 the word "paedophile" to describe somebody of whom
3 these kind of stories are being relayed, is there?
4 A. Mr. Lehane, I don't think that's the kind of language
5 that one uses about individuals, to be quite frank. 14:12
6 479 Q. Well --
7 A. I don't think that is kind of polite conversation.
8 It's a serious allegation to make against somebody.
9 480 Q. Well, it's not polite conversation to describe somebody
10 as committing sexual offences or possible sexual 14:12
11 offences against children, full stop, sure it's not?
12 A. Can you repeat that.
13 481 Q. It's not polite conversation to describe somebody as
14 committing sexual offences against minors, is it?
15 A. No, it's not. But I'm surprised then that as this came 14:12
16 up in many editorial conferences in Ms. Harris's
17 office, that she didn't take a more detailed note of
18 the people who were saying these things to her.
19 482 Q. I'm just concentrating on your problem with the use of
20 the word "paedophile" because you have accepted in your 14:13
21 evidence that allegations concerning Sergeant McCabe
22 and sexual offences against a minor were being
23 discussed in a very open way throughout the Independent
24 News & Media group of newspapers.
25 A. Mr. Lehane -- 14:13
26 483 Q. Let me finish the question.
27 A. Mr. Lehane, these rumours were being discussed
28 everywhere. I mean, if you have been paying attention
29 to the testimony that has been before this Tribunal,

1 you will see most witnesses who get into this box do
2 say that there were rumours out there. I don't think
3 anybody is denying that.

4 CHAIRMAN: well, I think what Mr. Lehane is asking you
5 is this: There's a distinction between saying, look, 14:13
6 there are people talking about this man on the basis
7 that he's a paedophile and, on the other hand, you
8 making a very definite statement to the effect -- well,
9 you're quoted as saying, Maurice McCabe, he's a
10 paedophile, Maurice McCabe is a paedophile. That is 14:13
11 the words that are put into your mouth.

12 A. Yeah.

13 CHAIRMAN: So I think that is what Mr. Lehane is
14 asking.

15 A. And my difficulty here, Chairman, is, I didn't make 14:13
16 such a statement, so he's now asking me to take account
17 of why am I upset about a statement I didn't make.

18 484 Q. MR. LEHANE: I suppose I will put it a different way --
19 A. I mean, if Ms. Harris used some other language, I would
20 be equally offended. I'm saying I didn't make the 14:14
21 statement. I'm saying that the emails and the
22 correspondence between me and her own deputy editor,
23 who was sitting ten feet away from her, categorically
24 show that that was not my mindset at that time.

25 485 Q. Well, let's leave your mindset aside for the moment. 14:14
26 Did you ever participate in any discussions concerning
27 these allegations in Talbot House?

28 A. No, I didn't.

29 486 Q. Did you ever overhear anybody discussing these matters

1 in Talbot House?

2 A. In where?

3 487 Q. In Talbot House or Independent News & Media
4 headquarters?

5 A. No. Obviously, they have been discussed, obviously, in 14:14
6 recent times because there's been matters before this
7 Tribunal and matters have been out there in the public
8 domain, so, I mean, I'm not going to give a blanket
9 'no' to that. But not at the period that Ms. Harris is
10 talking about, no. 14:15

11 488 Q. Well, if you never discussed these matters and you
12 never overheard anybody discussing these matters, how
13 can you have given the evidence you gave to the
14 Chairman that these allegations concerning Sergeant
15 McCabe were being discussed in a very open way 14:15
16 throughout the Independent News & Media group of
17 newspapers?

18 A. I said they were being discussed everywhere,
19 Mr. Lehane.

20 489 Q. But you can't give us any specificity -- 14:15

21 A. No, I can't, Mr. Lehane.

22 490 Q. -- as to when it was said or what was said?

23 A. No, Mr. Lehane, I can't.

24 491 Q. I have to put it to you, Mr. Sheahan, that there would
25 be nothing unusual about somebody who is discussing 14:15
26 these widespread allegations and using the word
27 "paedophile" in the context of those discussions?

28 A. Well, that's your opinion. My opinion would be
29 different.

1 492 Q. And what way should somebody who is discussing these
2 things in a casual way discuss them?

3 A. Sorry, Mr. Lehane, you're basically saying that there
4 was some sort of proof/evidence that this was a
5 statement of fact. That's what Ms. Harris has alleged 14:15
6 here, that it was being stated as a fact.

7 493 Q. A paedophile isn't a legal term, insofar as I know it.
8 A paedophile is a term used to describe a condition for
9 someone who has, I think, an interest in minors. It's
10 not a legal term. And it is common and I think, I 14:16
11 don't see how somebody could contradict this, that that
12 word would be used in common parlance when discussing
13 these kind of allegations, but you disagree with that,
14 Mr. Sheahan.

15 A. I don't have my Collins Dictionary here handy, 14:16
16 Mr. Lehane. I'm saying it's what I would regard as
17 very strong language.

18 494 Q. Now, while we're on the topic of strong language, you,
19 in addition to denying that you used the word
20 "paedophile", have expressed yourself in very trenchant 14:16
21 means as to Ms. Harris's motivation for coming here,
22 isn't that right?

23 A. That's correct.

24 495 Q. And you say that she is motivated, not to put it too
25 finely, out of malice and a grudge against you, isn't 14:17
26 that right?

27 A. Well, Mr. Lehane, I don't know that you read your
28 client's article in the Sunday Business Post, but she
29 basically describes people like me as men who furiously

1 took notes who had big swinging titles, who prevented
2 her from meeting with her staff, who she opposed a
3 managerial structure being put in place and I was an
4 intrinsic part of that. So I don't really think that
5 she looked upon me terribly favourably. Now, the 14:17
6 things that she said here before this Tribunal, they
7 must have been edited out of her article in the Sunday
8 Business Post four weeks ago. I can ring up the editor
9 and ask him would he mind putting them back in.
10 Because she sat before this Tribunal not two weeks ago 14:17
11 and described me as a person with an encyclopaedic
12 knowledge of politics, a latter-day Ted Nealon, a great
13 fella altogether, but that is completely contradictory
14 to what she said about me and colleagues of mine in the
15 Sunday Business Post six weeks ago. So I have no 14:18
16 desire here to get into any sort of mud-slinging. I
17 have to say, I saw Ms. Harris's statement, I saw that
18 she basically prefaced her remarks and her evidence
19 that she was putting forward with her account of the
20 managerial structures in Independent News & Media and 14:18
21 how she was fundamentally opposed to them.
22 496 Q. But just in terms of mud-slinging, you've just
23 threatened, basically, to ring up the editor and ask --
24 of the Sunday Business Post, and ask them to put back
25 in material that Ms. Harris was saying during the 14:18
26 course -- just bear with me for a second --
27 A. I can only assume -- sure.
28 497 Q. -- during the course of your evidence to a Tribunal of
29 Inquiry when somebody is giving evidence that you are

1 in conflict with, you're threatening?

2 A. Mr. Lehane, I can only assume that they edited out her
3 comments about me, because she was more than effusive
4 in her praise of me when she was before this Tribunal,
5 but that is not reflected in her comments that she has 14:18
6 made elsewhere, not just in the Sunday Business Post
7 but in the Sunday Times as well, not -- about a week
8 later.

9 498 Q. So you're saying that Ms. Harris is abusing this
10 Tribunal, established at great cost to the taxpayer, to 14:19
11 ventilate a private grudge against you?

12 A. Yeah, I'm basically saying that. I also think she is
13 quite confused, because she can't actually specify when
14 exactly she claims these comments were made. She says,
15 over the course of her testimony, if you can pull up 14:19
16 page 2 of my own statement there, if that is possible,
17 she talks about the talk going on for well over a year,
18 certain journalists coming into her office, she says
19 varying accounts of the alleged case were heard, she
20 said she heard varying accounts, it was said to her in 14:19
21 the first half of 2013, around May 2013, the statements
22 were made in her office, the editor's office, in my
23 office at editorial meetings, this particular throw-up
24 allegation was repeated several times. She goes on to
25 say that -- when she's giving testimony to this 14:19
26 Tribunal, that there were many editorial conferences
27 where was it was revealed. She also said in her
28 original letter to the Tribunal that two people had
29 made these allegations, then she rows back and said it

1 was only one, then there is another scenario where
2 basically she starts rowing back on what she was saying
3 about another individual. I don't get where exactly
4 her specific and precise account of what was happening
5 here is coming from, but I am saying I don't know what 14:20
6 she is talking about. I can only isolate my comments
7 about Ms. Harris to the third week in September, which
8 she said this -- told this Tribunal these comments were
9 made. And I'm saying, what she is saying is utterly at
10 odds with my behaviour, my actions at that time. 14:20

11 499 Q. So if the members of the Oireachtas, in their wisdom,
12 had decided to set up a public inquiry into, for
13 example, a scandal involving the price-fixing of
14 carrots, for example, and Independent News & Media had
15 run stories about this for a while, you're saying that 14:20
16 Ms. Harris would have been into the carrot tribunal to
17 ventilate a grudge against you, because that's what
18 effectively you're saying here?

19 A. I don't understand the question.

20 500 Q. You're saying that Ms. Harris has come in here, made up 14:21
21 lies about you and told those lies to a sworn tribunal
22 of inquiry, inquiring into very serious allegations
23 arising out of protected disclosures?

24 A. I am saying that she seems to be confused in her
25 account, because I'm looking at the various accounts 14:21
26 that she gave: two letters to the Tribunal, her
27 witness statement to the Tribunal and her testimony
28 here two weeks ago, and it seems to vary quite a lot.

29 501 Q. Is she confused or is she lying? Because there is a

1 difference between the two.

2 A. I don't know, Mr. Lehane. You would have to ask her
3 that.

4 502 Q. Okay. You said, or your counsel in cross-examining
5 Ms. Harris said that her evidence is tainted by 14:21
6 improper motive, that she is a bitter person and that
7 her evidence is borne out of a grudge, and you stand
8 over that, do you?

9 A. Well, Mr. Lehane, her article in the Sunday Business
10 Post four weeks ago says that she was at war with INM. 14:21
11 Her previous article in the Sunday Times a year earlier
12 said that she had numerous battles with INM. Her
13 statement of witness to this Tribunal points out how
14 vehemently opposed she was to the managerial structures
15 that were put in place at the time, and which are still 14:22
16 in place, by the way. So I can only take it that, yes,
17 she is disgruntled about her departure from the
18 company.

19 503 Q. So you stand over that. You're saying that her
20 evidence is tainted by improper motive, she's a bitter 14:22
21 person and that her evidence is borne out of a grudge?
22 Because that is what your counsel was instructed,
23 presumably on your instructions, to put to her?

24 A. Yeah, my counsel was instructed to come in and question
25 Ms. Harris on the allegations that she was making. 14:22

26 504 Q. No, but you're standing over that?

27 A. Yes, I am.

28 505 Q. Okay. And I have to put it to you, Mr. Sheahan, that
29 you did make the statement that Ms. Harris says you

1 made to this Tribunal and that it is your account that,
2 for whatever reason, seems to be borne out of a grudge.
3 what do you say to that?

4 A. I can only repeat as followed: On half past nine on
5 Wednesday the 16th September I sent a letter -- or I 14:23
6 sent an email to Ms. Harris's deputy editor, Willie
7 Kealey. In that, I assigned a reporter to work on
8 Sergeant Maurice McCabe's latest whistleblowing
9 allegations. I did that across that week. I worked on
10 that story. I assigned him. I worked with him. I 14:23
11 constantly updated Ms. Harris's deputy editor across
12 that week. And yet, she is saying that, in that week,
13 I was actually warning her off this story. I don't
14 understand it. It's completely contradictory to my
15 actions, as is outlined in those emails. 14:23

16 506 Q. The Tribunal is fortunate to have had the evidence of
17 Professor Colum Kenny, who gave evidence to the
18 Tribunal that not every bit of gossip that is going
19 around a newsroom or a building in which journalists
20 congregate makes its way into the newspaper; would you 14:23
21 agree with that?

22 A. Oh, no, absolutely not, no. People check out stories
23 and they don't all get in print, that's correct. The
24 libel and defamation laws are such that, very often,
25 what people regard, Chairman, as being perfectly 14:24
26 acceptable stories that they think will stand up, they
27 receive legal advice on them and they basically come to
28 the view that, no, we can't run this.

29 507 Q. So I have to put to you that the Tribunal isn't

1 entitled to draw the conclusion that your evidence must
2 be correct, that you never said this, because your
3 newspaper never published an article that was critical
4 of Sergeant McCabe, it simply doesn't make sense?

5 A. Sorry, what is the question? 14:24

6 508 Q. It's, simply, your evidence is that your account is to
7 be believed because, in a series of newspaper articles,
8 which you have provided to the Tribunal, they're not
9 negative against Sergeant McCabe, isn't that right?
10 You're saying this shows your actions in relation to 14:24
11 Sergeant McCabe over this period?

12 A. Yeah. Not only that, but I would say the news articles
13 you're referring to, I don't know which ones you're
14 referring to, they're positive towards Sergeant McCabe,
15 so I'm not clear where you're coming from there. 14:25

16 509 Q. Well, going back to Mr. Mallon's evidence again, these
17 rumours are flying around Independent News & Media
18 about Sergeant McCabe, Professor Kenny has given
19 evidence that not every bit of gossip or rumour makes
20 its way into a newspaper. So I have to put it to you 14:25
21 that simply because it doesn't appear in print, doesn't
22 mean that, somehow, your account is correct in relation
23 to not using the word "paedophile"?

24 A. The series of emails that I sent to Ms. Harris's deputy
25 editor across that week also didn't appear in print, 14:25
26 yet I am disclosing to him how this story is being
27 covered, I am telling him of the sources that are being
28 contacted, when they are being met, I am actually
29 flagging it when it drops off the radar, because, at

1 the end of the day, it ended up down the back of the
2 paper, and that was Ms. Harris's decision about where
3 to place it. That is entirely contradictory to the
4 notion that I was warning her off.

5 510 Q. Now, when you were furnished with Ms. Harris's 14:26
6 statement, your solicitors wrote a letter to the
7 Tribunal, which I wonder if it could be put up, it's at
8 3648, it's the first page. And you will see there --
9 sorry, 3648. I want to give you a chance to have a
10 look at it first, Mr. Sheahan, before I ask you a 14:26
11 question in relation to it. So if you want to read it
12 and tell me when you have.

13 A. Yeah, next page, please.

14 511 Q. And then the next page.

15 A. Sure, I have had a chance to read it. 14:26

16 512 Q. I don't want to pry into the relations between you and
17 your lawyers, but was that letter written on your
18 instructions?

19 A. It was.

20 513 Q. And staying on the second page there, you will see the 14:27
21 reference in the second-last substantive paragraph:

22
23 "For the record, the statement made by Ms. Harris
24 concerning Mr. Sheahan being false and untrue, is not
25 protected by any form of privilege against defamation 14:27
26 under statute or common law."

27
28 Yes?

29 A. Yes.

1 514 Q. That is what it says. Okay.

2 CHAIRMAN: Mr. Lehane, I'd have my doubts about that.

3 MR. LEHANE: I'm not making any comment on whether or

4 not you would be entitled to maintain an action. I

5 don't think you could maintain an action because 14:27

6 Section 1 of the Tribunals of Inquiry Act speaks very

7 clearly about the privilege that attaches to witnesses.

8 CHAIRMAN: Yes. And then there is qualified privilege

9 as well.

10 MR. LEHANE: Absolutely. 14:27

11 CHAIRMAN: Provided it is not malicious.

12 MR. LEHANE: Yes. Section 17, I think.

13 CHAIRMAN: But deliberately telling a lie is, of

14 course, malicious.

15 MR. LEHANE: Yes. I think it is in section 17 of the 14:27

16 Defamation Act, I can't remember --

17 CHAIRMAN: No, you are right.

18 515 Q. MR. LEHANE: But the point is, Mr. Sheahan, Ms. Harris

19 came voluntarily to this Tribunal, she provided

20 information to the Tribunal, isn't that right? 14:28

21 A. Correct.

22 516 Q. When you were provided with this, and you didn't come

23 voluntarily to the Tribunal and provide them with

24 information, isn't that right?

25 A. Mr. Lehane, I don't believe I had any information that 14:28

26 was worth submitting to this Tribunal.

27 517 Q. Well, in fairness --

28 A. We can go back over -- we have gone through that,

29 paragraph 7.

1 518 Q. In fairness, you have given evidence both in your
2 statement and here that you were aware from general
3 discussions in political and media circles that there
4 were allegations against Sergeant McCabe. Would you
5 agree with me that it is not for you to make a 14:28
6 qualitative assessment as to whether that is
7 information of relevance to the Tribunal; it really
8 would have been a matter for the Tribunal to make that
9 assessment?

10 A. Well, I took that view that, much like many other 14:28
11 people who heard these rumours, that, really, I had
12 nothing of value to contribute to this Tribunal.

13 519 Q. And having not come voluntarily --

14 A. Sorry, Mr. Lehane, if I may just point out: I'm only
15 here today because of what Ms. Harris says that she 14:28
16 claims I said. I'm not here because Superintendent
17 Taylor has named me as a journalist that he briefed.
18 I'm not here today because I was in some way involved
19 with any story in relation to Ms. D and Sergeant
20 McCabe, and so on and so forth. So I'm only here today 14:29
21 because Ms. Harris has made an allegation against me.

22 520 Q. And not having come voluntarily to the Tribunal,
23 Mr. Sheahan, your response, when faced with Ms. Harris'
24 statement, is to threaten to sue Ms. Harris in
25 defamation under statute or common law. That's your 14:29
26 response to Ms. Harris coming voluntarily to this
27 Tribunal, to sue her?

28 A. Mr. Lehane, I think it's quite clear, Ms. Harris was
29 headline-hunting here. I mean, it is quite remarkable,

1 and I'm not alleging anything here about how exactly it
2 came into the public domain, but basically a couple of
3 days after her statement is circulated to witnesses
4 here, it suddenly ends up on the front page of the
5 Sunday Times. It's a remarkable coincidence. 14:30

6 521 Q. Mr. Sheahan, I have to put it to you that Ms. Harris's
7 account is correct, that your responses, both in the
8 letter which you accept was written under your
9 instruction, threatening to sue Ms. Harris, and in your
10 evidence today, shows that, for whatever reason, you 14:30
11 seem to have a serious problem with Ms. Harris and are
12 attacking her in the course of your evidence?

13 A. Mr. Lehane, I'm contradicting directly what Ms. Harris
14 is saying about me. I'm using direct evidence, not
15 flawed memory as in her case, to defend myself, and I 14:30
16 think I'm entitled to do that. If I have a series of
17 emails from myself to her deputy editor setting out
18 what I believe was the correct course of action in
19 terms of advocating a story that was entirely positive
20 towards Maurice McCabe on the Tuesday, Wednesday, 14:31
21 Thursday and Friday of the week where she says I was
22 trying to warn her off, I think I'm entitled to do
23 that.

24 522 Q. And yet you can't remember with any degree of
25 specificity when you heard these allegations day one? 14:31

26 A. That's correct.

27 MR. LEHANE: Yes. Thank you very much.

28
29 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL

1 O' H I G G I N S:

2

3 523 Q. MR. MÍCHEÁL O' H I G G I N S: Mr. Sheahan, Micheál O'Higgins
4 on behalf of An Garda Síochána and the former
5 Commissioners. Now, I'm not going to enter into a
6 dispute you clearly have with Ms. Harris.

14:31

7 A. Sure.

8 524 Q. I'm just going to ask you one question touching on the
9 issue of journalism.

10 A. Sure.

14:31

11 525 Q. And it's this, and this is a hypothetical now, if
12 you'll permit this for a moment: If it had been the
13 case that the Commissioner or Superintendent Taylor or
14 any senior guard had contacted you and besmirched
15 Sergeant McCabe by reference to sexual abuse or some
16 such outrageous allegation, can I take it you would not
17 simply have received that blankly and taken no steps?

14:32

18 A. Are you saying where I would have gone from there?

19 526 Q. What would you have done?

20 A. Yeah, I mean, from there, you would take it, if you
21 were getting it from that senior level that there was
22 some veracity to the allegation, first of all you would
23 ask the individual concerned, you know, do they have
24 any evidence, on what grounds are they making these
25 allegations, what's the timeline, what investigations
26 took place, what happened over that time, why was the
27 person not prosecuted, were they prosecuted, were they
28 convicted, and so on and so forth, you would go down
29 that route.

14:32

1 527 Q. Yes.

2 A. Even at that stage, you mightn't be anywhere near
3 publication, but at least you'd know you would have
4 something. From there, then, you'd go forward and you
5 would seek to check out these allegations, you'd seek 14:33
6 to find was there a court case, is there any
7 documentation, or whatever, that could support such an
8 allegation.

9 528 Q. Yes.

10 A. I think, to be fair, I mean, this Tribunal has actually 14:33
11 shown not everybody who comes forward with information
12 is acting on benign grounds. I mean, I'd look at the
13 first interim report of the Chairman last
14 November/December in that regard. So, I mean, there is
15 a duty of care and there is a duty to you as a reporter 14:33
16 and as an editor to check such matters out for your
17 readers if you are receiving what I would regard as
18 credible information.

19 529 Q. Right. well, can I ask you this then: If you formed
20 the view, having carried out those, what if I may say 14:33
21 appear to be legitimate steps and obvious steps, if,
22 having done that, you formed the view that the
23 Commissioner, if we can proceed with the same example,
24 was wrongfully running down the sergeant and was
25 besmirching him deliberately, wouldn't that itself be a 14:34
26 really quite significant news story for a journalist?

27 A. Yeah, you're saying going in the opposite direction,
28 that if you are basically saying that untrue
29 allegations were being made by somebody in authority

1 against an individual, yeah, I would regard that as --
2 again, you'd have to check it out, you'd have to be
3 able to verify it, you'd have to be able to report on
4 it.

5 530 Q. But it would be a reasonably big or seismic story if 14:34
6 you could prove it occurred and that it was done
7 wrongfully in this fashion?

8 A. I would agree with that, yes.

9 MR. MÍCHEÁL O' HIGGINS: Thank you.

10 MR. McGUI NNESS: Just one further matter. 14:34

11 MR. FREEMAN: Just one or two questions.

12

13 THE WITNESS WAS THEN EXAMINED BY MR. FREEMAN:

14

15 531 Q. MR. FREEMAN: Mr. Lehane, in his questions to you on 14:35
16 behalf of Ms. Harris, I think there was a criticism of
17 you on the basis that you had information of relevance
18 to the terms of reference to the Tribunal --

19 CHAIRMAN: Mr. Freeman, you're actually appearing for
20 this witness, isn't that right? 14:35

21 MR. FREEMAN: Yes, that's correct.

22 CHAIRMAN: Yes. I'm sorry, maybe you will just tell
23 me, because, I'm sorry, I do get mixed up, and also it
24 helps for the transcript reference.

25 MR. FREEMAN: Yes. Sorry, John Freeman for Independent 14:35
26 News & Media.

27 532 Q. Mr. Sheahan, Mr. Lehane, I think, sought to criticise
28 you for not volunteering information which he
29 considered relevant to the terms of reference, and as

1 did Mr. McGuinness, I think, to some extent, and I
2 think your statement to the Tribunal was of the 7th
3 February of this year. Now, did the Tribunal
4 investigators seek to meet with you at any time or for
5 you to prepare a further statement?

14:35

6 A. No, not at all.

7 533 Q. Okay. Thank you.

8 A. Nor was I asked for the emails which are referenced in
9 paragraph 4, which I would say entirely contradict
10 Ms. Harris's account.

14:36

11 CHAIRMAN: But, Mr. Freeman, it has to be appreciated
12 that there's two of them, they have a lot to do. And
13 the other thing is that, generally speaking, the choice
14 that we made is that in the event that someone is
15 working in a literary capacity, and that quite often
16 includes gardaí or writing reports, it's up to them to
17 put the information before the Tribunal. It's only in
18 particular circumstances where I have made a choice to
19 say, look, it's appropriate you go out and interview
20 this person. Now, this wasn't one of those. But it's
21 certainly not in terms of drawing -- no inference can
22 be drawn from a decision by the Tribunal not to have
23 somebody interviewed.

14:36

14:36

24 MR. FREEMAN: No, Chairman.

25 CHAIRMAN: It's logistical and it's also based on other
26 criteria as well. Nothing to do with are you telling
27 the truth or not.

14:36

28 MR. FREEMAN: No, Chairman. But just to the extent
29 that it was suggested that the information in paragraph

1 7 of Mr. Sheahan's statement kind of hinted at further
2 information which ought to have been disclosed, I think
3 it was of some relevance.

4 A. Chairman, if anything -- I welcome the opportunity to
5 appear here today. An allegation has been made against 14:37
6 me; it has not only been made against me before this
7 Tribunal, but it's out there in the public domain.

8 CHAIRMAN: Yes.

9 A. So I welcome the opportunity to present my defence.

10 CHAIRMAN: I understand. Again, Mr. Freeman, there may 14:37
11 be a misunderstanding. There can be circumstances
12 under which hearing gossip may lead to some conclusion.

13 It would seem now, on the basis of the evidence that
14 the Tribunal has before it, that there are hundreds, at
15 least, of people who would have heard some gossip. On 14:37
16 the other hand, what the Tribunal is inquiring into is
17 briefing. Now, people make a choice based on that. I
18 certainly can't say that there's any question of
19 Mr. Sheahan withholding information, merely on the
20 basis that people were talking about something. 14:37

21 That's, I think, a different thing. But in the event
22 that there was something there that could lead to
23 inquiries which could lead to something else, I would
24 certainly like to know about that. It doesn't seem
25 that this is anything of that kind at the moment. 14:38
26

27 THE WITNESS WAS RE-EXAMINED BY MR. McGUI NNESS:

28
29 534 Q. MR. McGUI NNESS: Mr. Sheahan, just a couple of other

1 matters. I think you will have seen and be familiar
2 with the correspondence that issued on behalf of the
3 Tribunal and on your behalf backwards and forwards, and
4 you were, in fact, provided with each relevant
5 statement and given an opportunity to respond to it, 14:38
6 and you did so?

7 A. You mean Ms. Harris' s?

8 535 Q. Yes.

9 A. Yeah, I received, I would say it was the latter stage
10 of last year, Ms. Harris's, her first letter where I'm 14:38
11 not named, her second letter where I am named and then
12 her subsequent statement.

13 536 Q. Yes. And I suspect you wouldn't have needed the
14 prompting of any investigators to provide your own
15 response to that? 14:38

16 A. Certainly not. I mean, my statement was as I issued
17 back to you on the 7th --

18 537 Q. Yes.

19 A. -- of February.

20 538 Q. And can you help me with one further -- 14:39

21 A. Sorry, there was actually -- not just the 7th February,
22 because I consulted with my legal counsel at the time,
23 we issued a fairly rapid response to that invitation at
24 the time and then we fleshed that out.

25 539 Q. Yes. Thank you. One further matter -- 14:39

26 A. If I may, I mean, the reason for the rapid response at
27 the time was, there was a lot of shock amongst me and
28 my colleagues to see my name being presented in this
29 fashion, particularly as, you know, I didn't -- as

1 Ms. Harris points out, I didn't cover this area
2 tremendously extensively. She herself says that in her
3 own testimony. I think I covered as one of the big
4 political stories of the time. But, I mean, we can't
5 turn around now and say that this was the only story 14:39
6 knocking around back in that period. There was, at the
7 end of the day, the economic crisis.

8 540 Q. Yes.

9 A. Matters like Irish water, the stability of the
10 government, they were also massive stories at the time. 14:40

11 541 Q. Yes. I was just going to ask you about this final
12 matter. Sergeant McCabe told Mr. Guerin in the course
13 of a private interview on the 1st April 2014 that he
14 had received, through his counsel, a copy of an
15 anonymous letter which he said had come to his counsel 14:40
16 from the Irish Independent, and I was wondering could
17 you assist us in that regard? There's a copy of it at
18 page 6478 in Volume 24. Now, if we just go back to the
19 first page of that letter, if we see the date at the
20 top, it's dated 26/2/2014, and it's a letter over 14:40
21 several pages, but on page 6480, if we could go there,
22 it's entirely related to Sergeant McCabe and raises a
23 number of diverse allegations, but this is, in a sense,
24 at the heart of the letter here. And did you ever see
25 that letter? 14:41

26 A. No. I first heard about it through our legal team a
27 few weeks back, I think, when the Tribunal wrote about
28 it.

29 542 Q. Yes.

1 A. what period are we talking about here?

2 543 Q. well, Sergeant McCabe told Mr. Guerin on the 1st April
3 of 2014 that he had received it in early March.

4 A. Of?

5 544 Q. Of 2014. 14:41

6 A. Right.

7 545 Q. So it seems to be very shortly after the purported
8 date. And I'm just wondering in your capacity as a
9 long-serving journalist and editor, at that stage
10 obviously political editor, did you ever hear of the 14:41
11 Irish Independent having received such a letter?

12 A. No, I didn't. And the first I heard of it was when
13 Mr. Kelly, our solicitor, asked me himself about it a
14 few weeks back when the Tribunal wrote to him. But,
15 you know, I wasn't the editor at the time. As I say, I 14:42
16 was based in Leinster House predominantly.

17 546 Q. Yes.

18 A. I would say we do get a lot of correspondence in the
19 mail. I would have to say in recent weeks in and
20 around the recent referendum, that has intensified, you 14:42
21 would have to say.

22 547 Q. All right. Anyway, you have never seen that before --

23 A. No.

24 548 Q. -- until it came out at the Tribunal?

25 A. No. 14:42

26 MR. McGUI NNESS: Thank you very much, Mr. Sheahan.

27 A. Thank you, Chairman.

28

29 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN:

1

2 549 Q. CHAIRMAN: Mr. Sheahan, it's just I'm sitting here now
3 and this is the fourth direct conflict among
4 journalists, one saying so-and-so said such-and-such to
5 me --

14:42

6 A. Sure.

7 550 Q. CHAIRMAN: -- which is perhaps not indicative of a very
8 sober state of mind on their behalf, and the other
9 person in relation to whom the allegation is made
10 saying, well, that just didn't happen at all. So
11 that's eight witnesses, and there's probably more as
12 well, I would need to go and check my notes. Is there
13 anything in the world of journalism that I'm unaware of
14 that might help me in any way as to why these
15 completely contradictory allegations are flung up?

14:43

14:43

16 Because I have had reference to bitterness, to careers,
17 to jobs, to people leaving their posts. I don't know
18 whether it's down to sick buildings or what it is down
19 to, but is there any way you can assist me on this?

20 A. I can't, Chairman. I mean, all I can do is say this
21 allegation was put to me by the Tribunal. I consulted
22 all of my records, and I'm quite good at taking notes.
23 I send a lot of emails. I have rosters, news lists and
24 so on. I annoy my staff with the amount of
25 correspondence they receive from me. So all I was able
26 to do in my own case was go through my own records. I
27 was more than satisfied, based on my own recollection
28 and the emails that I sent to Ms. Harris's deputy
29 editor in the week that she is saying I was making

14:43

14:43

1 these allegations, that I said no such thing, and, in
2 fact, I was acting in an entirely contrary fashion - in
3 fact, advocating coverage in the Sunday Independent
4 that was positive towards Sergeant McCabe. So I don't
5 know where this has come from. 14:44

6 551 Q. CHAIRMAN: The allegation seems to be put in the
7 context of - well, what I think I'm in a position to
8 consider I ought to infer from it is, if it was true
9 was, you were kind of saying why in heaven's name are
10 you bothering with this fella, he's a paedophile, why 14:44
11 were we following this up, why are we paying any
12 attention to whistleblowers? And maybe you would just
13 help me as to whether there was any such thought on
14 your mind?

15 A. No, Chairman. In fact, if you go back to earlier on 14:45
16 that year, you will find, in the wake of the row over
17 the 'disgusting' comment, I wrote a piece, an analysis
18 piece in the Irish Independent at the time pointing out
19 that this issue was on the radar for about two years at
20 that stage. There were people in Government, the 14:45
21 then-Minister for Transport, Leo Varadkar, who had, in
22 effect, been adopting a contrary line to other people
23 within the government, saying that there was some
24 substance to the issues that were being brought
25 forward. And my point at that time was, if it had been 14:45
26 dealt with properly at that time and it had been paid
27 attention to, that a lot of these subsequent issues
28 would potentially have been avoided. So that was my
29 kind of mindset. You were seeing that the claims that

1 were coming forward were being tested within both the
2 political system in terms of the inquiries that were
3 being set up and were then being found to be accurate.
4 So I don't think it was any question of it being a
5 waste of time. If it was a waste of time, I wouldn't 14:46
6 have assigned a reporter onto that job that week, I
7 wouldn't have been pushing to get coverage into the
8 Sunday Independent, I wouldn't have been putting it
9 back on the agenda when it was falling off. So I'm
10 just at a loss here. 14:46

11 CHAIRMAN: All right. Thank you very much for coming
12 here, Mr. Sheahan.

13 A. Thank you.

14
15 THE WITNESS THEN WITHDREW 14:46

16
17 MR. McGUI NNESS: The next witness is Mr. Conor
18 O'Callaghan. His statement, Chairman, is to be found
19 at volume 27 at page 604, and the correspondence
20 relating to Three Ireland and the telephone issue is to 14:47
21 be found in volume 16 from page 4371 onwards.

22
23 MR. CONOR O'CALLAGHAN, HAVING BEEN SWORN, WAS DIRECTLY
24 EXAMINED BY MR. McGUI NNESS:

25 14:47

26 552 Q. MR. McGUI NNESS: Mr. O'Callaghan, thank you. I think
27 you work for Vilicom Engineering Limited, is that
28 correct?

29 A. Yes, that is correct.

1 553 Q. And you're the head of service delivery there. And
2 you're an electronic engineer who has worked for
3 vilicom for the last 12 years, is that correct?
4 A. That's correct, yes.

5 554 Q. And I think vilicom provide services for Three Ireland 14:47
6 (Hutchison) Limited and Three Ireland Services
7 (Hutchison) Limited, together known as Three Ireland?
8 A. That is correct, yes.

9 555 Q. And you are responsible for assisting Three Ireland in
10 relation to requests which relate to the provision of 14:48
11 data, primarily under the 2011 Data Retention Act,
12 isn't that correct?
13 A. That would be correct, yes.

14 556 Q. Now, in connection with that, I think you became aware
15 of Tribunal correspondence that had been directed to 14:48
16 Three Ireland in respect of a number of different
17 phones, and I think you were consulted by Mr. Creghan,
18 who dealt with the correspondence as such, you were
19 consulted in relation to all of the replies, isn't that
20 correct? 14:48
21 A. That is correct, yes.

22 557 Q. And you reviewed the responses at the time and you have
23 reviewed all the call data retrieved since, isn't that
24 correct?
25 A. Yes, I would. 14:48

26 558 Q. Now, we're not going to go through all of the
27 correspondence, but just to start at the beginning of
28 it and then to ask a few just broad questions to
29 confirm different matters. If we go to page 4371,

1 that's in volume 16. Mr. O'Callaghan, if you care to
2 take the volume out if you find it more convenient to
3 look at the paper version, please do so. This is the
4 first letter written in respect of two of
5 Superintendent Taylor's phones, which was -- and the 14:49
6 Tribunal was anxious to know, if one looks at the third
7 paragraph, for instance, whether any record exists at
8 this point in time as to the substance of any texts
9 sent to or by these phones. You see that?

10 A. I do, yes. 14:49

11 559 Q. And then if we go to the next letter, which related to
12 another two of Superintendent Taylor's phones, at page
13 4373, if we go down to the bottom there, there's a
14 number of queries relating to two of Superintendent
15 Taylor's phones that couldn't be located, and the 14:50
16 queries are set out there and over the page. And I
17 think you will have understood immediately that was an
18 attempt to assess whether the phones were active,
19 whether they could be traced, whether the call records
20 could be provided for those and whether there was any 14:50
21 possibility of recovering texts from those?

22 A. That is correct, yes.

23 560 Q. And that was dealt with by Three in the first response
24 at page 4375. And if we just if we look at the
25 response there, the first paragraph sets out the issue 14:50
26 in relation to texts:

27
28 "Your letters inquire as to the availability of data
29 relating to substance or content of text, SMS messages,

1 sent to or received by all of the above handsets. We
2 regret to inform the Tribunal such data is not
3 available. Three does not retain the content of SMS
4 messages for any longer than is necessary to deliver
5 the messages and, accordingly, has no such data on hand 14:51
6 in respect of any given handset."
7

8 It also goes on to a suggestion about the previous
9 request that had been made. But just in terms of that
10 first issue, as I understand the position, an SMS 14:51
11 message sent from a handset through any network, no
12 record of that is kept by the network on the network or
13 in any form of call data by the telecommunications
14 carrier, is that right?

15 A. That is correct. 14:51

16 CHAIRMAN: That is except for the metadata, I presume,
17 Mr. McGuinness, the fact that a text was sent --

18 MR. MCGUINNESS: The fact --

19 CHAIRMAN: -- which we've had a lot of evidence.

20 A. Just the call data record itself rather than the 14:51
21 contents.

22 CHAIRMAN: And, on that, just if I could just clarify
23 that, you don't -- do you know the way sometimes on
24 your phone you get something like you have used so many
25 megabytes or gigabytes, or whatever, it doesn't record 14:52
26 the length of the text either?

27 A. No.

28 561 Q. MR. MCGUINNESS: In any event, Three wrote back, and we
29 will just look at the letter at page 4377, the Tribunal

1 was asked to provide the billing account numbers, this
2 is at the indented portion:

3
4 "Billing account numbers for each phone, the CTN" --
5 that is the cellular telephone number -- "and IMEIs in 14:52
6 respect of which it is sought to establish the current
7 network status, the IMEI of each handset in respect of
8 which it is sought to establish the last date of
9 activity, the mobile telephone CTN in respect of which
10 it is sought to establish the last date of activity, 14:52
11 precise dates in respect of which the data is sought in
12 respect of each handset mobile number account and the
13 CTNs and IMEIs between which it is sought to ascertain
14 the extent of any contact by either voice call or SMS."
15

16 And I think Three was responded to in that respect by
17 the Tribunal at page 4379. And the position is set out
18 there in relation to billing. I think Three -- just to
19 be clear, Three provide the phones to An Garda Síochána
20 in a large group account, isn't that correct? 14:53

21 A. That's correct. It would have been legacy Three
22 Ireland Services.

23 562 Q. Pardon?

24 A. It would have been Three Ireland Services Limited.

25 563 Q. And they obviously bill An Garda Síochána for those, 14:53
26 and the customer, An Garda Síochána, is entitled to,
27 and did, receive the billing records, isn't that
28 correct?

29 A. That is correct, yes.

1 564 Q. And, in fact, the company retains the billing records
2 for a period of six years from the date of the last
3 year preceding that, isn't that right?
4 A. Yes. It's six years beyond the accounting year in
5 question. 14:54
6 565 Q. Six years beyond the accounting year. And that is for
7 the purpose of compliance with company law, tax acts --
8 A. That is correct.
9 566 Q. -- etcetera, etcetera. But in any event, those were
10 provided to An Garda Síochána in respect of the phones 14:54
11 that are relevant to this inquiry, all the former
12 Commissioners' phones, isn't that correct?
13 A. That is correct, yes.
14 567 Q. And if we see at the next page, 4381, there was an
15 appendix to this which set out Superintendent Flynn's 14:54
16 report relating to all of the handsets that the former
17 Commissioners and Superintendent Taylor had held in the
18 respective periods, isn't that correct?
19 A. That is correct, yes.
20 568 Q. Now, obviously, that letter we have looked at and the 14:55
21 previous letter, the Tribunal were anxious to try and
22 locate any handsets hadn't previously been located by
23 An Garda Síochána or by any of the members concerned.
24 And ultimately, I think, following clarifications that
25 we don't need to go into, a search was done pursuant to 14:55
26 an order of the Tribunal to try and retrieve any data
27 which would show whether any of the phones there were
28 still active or on the network or being paid for by the
29 Garda subscriber account, isn't that correct?

1 A. Yes, Chairman, that is correct.

2 569 Q. And ultimately, pursuant to the order made by the
3 Tribunal, a lot of data was retrieved, and if we could
4 go to page 6641, this summarised the searches that were
5 carried out pursuant to the order, isn't that correct, 14:56
6 and the results of them, and included the documentation
7 relating to the searches?

8 A. That is correct, yes.

9 570 Q. And at that stage there were searches conducted by
10 reference to the IMEI numbers and the CTN - cellular 14:56
11 telephone numbers - in respect of all of those phones
12 that the Tribunal was seeking?

13 A. That is correct, yes.

14 571 Q. And if one goes to page 6643, this is a table setting
15 out the IMEI numbers relating to the phones that were 14:57
16 sought, including variations of those, isn't that
17 correct?

18 A. That is correct, yes.

19 572 Q. And I think no subscriber details were found?

20 A. No. 14:57

21 573 Q. And they were found not to be active on the network?

22 A. Correct.

23 574 Q. There was an issue also raised as to whether some of
24 the handsets had been associated with a different CTN -
25 cellular telephone number - isn't that right? 14:57

26 A. That is correct, yes.

27 575 Q. And a search was done against those to see were they
28 active on the system, isn't that correct?

29 A. That is correct also, yes.

1 576 Q. Some of those were found to be active, and the IMEIs
2 were provided to the Tribunal in respect of those?
3 A. That is correct, yes.

4 577 Q. And those were found to be other phones assigned to
5 other members of An Garda Síochána, as per a response 14:58
6 set out by Superintendent Flynn, which you have seen?
7 A. Absolutely, yes.

8 578 Q. Right. So, in summary, therefore, it hasn't --
9 although the searches have been done, there is no
10 method of establishing the content of any texts through 14:58
11 any searches that can and have been done by Three and
12 verified by you?
13 A. Yes, that is correct.

14 579 Q. And no phones have been enabled to be located through
15 that process either? 14:58
16 A. No.
17 MR. McGUI NNESS: Thank you.

18 CHAIRMAN: So the basic line is, together with the
19 Forensic Service of Northern Ireland, we have done
20 everything we possibly could in terms of retrieving 14:58
21 data?
22 A. Absolutely, yes. Yeah.

23 CHAIRMAN: Is there any issue about that?
24 MR. McGUI NNESS: I don't think so.
25 CHAIRMAN: All right. 14:59
26 MR. McGUI NNESS: If you would answer any questions
27 anyone else may have.
28 MR. McDOWELL: No questions, Chairman.
29 MR. DIGNAM: No questions, Chairman.

1 MR. MCGUINNESS: Thank you very much, Mr. O'Callaghan.

2 CHAIRMAN: Thank you for coming.

3

4 THE WITNESS THEN WITHDREW

5

14:59

6 MR. MCGUINNESS: The next witness, Chairman, is Mr. Ray
7 Burke.

8

9 MR. RAY BURKE, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED
10 BY MR. MCGUINNESS:

14:59

11

12 MR. MCGUINNESS: Mr. Burke's statement is to be found
13 in volume 20 at page 5420.

14 580 Q. Mr. Burke, I think you're employed as a chief news
15 editor of RTÉ news, is that correct?

15:00

16 A. I was until 12 days ago, I retired on age grounds.

17 581 Q. Well, congratulations, if that is appropriate. I think
18 your duties comprised identifying and prioritising
19 stories in the country that you would make a judgement
20 about in respect of coverage, assignment of reporters
21 and correspondence and overseeing the material -- the
22 intake of any material relating to those stories?

15:00

23 A. Yes, every day.

24 582 Q. Yes. You've set out in your statement how that process
25 takes place. I don't intend to take you through that,
26 but you clearly seem to have identified the coverage of
27 the forthcoming O'Higgins report at the time as a
28 significant and important and newsworthy story, is that
29 right?

15:00

1 A. Yes, I did.

2 583 Q. And in terms of covering that, how did you set about
3 deciding to cover that, and who did you assign and what
4 happened?

5 A. I asked Paul Reynolds and I asked all of our political 15:01
6 staff to try to get their hands on the O'Higgins
7 Commission report. I knew that it had been delivered
8 to the Minister for Justice, I think ten days or two
9 weeks before we published our reports on it. I was
10 keen that we get the full report so that we could 15:01
11 publish it.

12 584 Q. Yes.

13 A. As I said in my statement, a couple of stories had
14 appeared in other media outlets with very selected
15 excerpts from it. I wanted to get the whole document 15:01
16 as soon as possible.

17 585 Q. Yes. Did you know whether it had, in fact, been
18 circulated to other parties, apart from the Department
19 at that time, or had been issued for release to other
20 parties? 15:02

21 A. Pardon?

22 586 Q. Did you know whether the report had been issued to
23 parties other than the Department at that time?

24 A. I didn't, no. But it would stand to reason that it
25 would have been delivered to parties other than the 15:02
26 Department.

27 587 Q. Were you in charge then of having your team search for
28 this report and try and get a copy of it?

29 A. I'm the news editor, my job is to get news stories.

1 588 Q. Yes.

2 A. Yes, of course, it was one of several stories that I
3 would have been urging them to pursue at the time.

4 589 Q. And did you get some copies, a copy or some copies of
5 the report? 15:02

6 A. No, I did not.

7 590 Q. Well, did your reporters do that?

8 A. Yes.

9 591 Q. And how many did they get?

10 A. I don't know. 15:02

11 592 Q. You don't know?

12 A. No.

13 593 Q. Did you never ask them?

14 A. I believe Paul Reynolds had one copy.

15 594 Q. Okay. I'm not sure if you heard his evidence 15:03
16 yesterday. I think he was suggesting that he had at
17 least two, if not just two?

18 A. My recollection of what he said yesterday was he had
19 bits of at least two. A chapter from somebody, a
20 chapter from somebody else, was the impression I got 15:03
21 from what he said yesterday.

22 595 Q. All right. Perhaps I've misunderstood --

23 CHAIRMAN: I thought the whole point, Mr. McGuinness, I
24 was thinking the same thing you were thinking.

25 MR. MCGUINNESS: Yes. 15:03

26 CHAIRMAN: Was that he was intent on getting as many
27 copies as possible to make sure that he was actually
28 getting the final version as opposed to a draft version
29 which was --

1 A. I would have been happy if he had one complete copy.

2 596 Q. MR. MCGUINNESS: well, he certainly seems to have been
3 keen to have a second one so that he could verifiably
4 be in a position to be certain that --

5 A. That makes sense from what he said. 15:03

6 597 Q. -- what he was reporting?

7 A. Yes.

8 598 Q. Now, you say in your statement that you were mindful -
9 this is on page 5421 - you were "mindful that crime
10 correspondents are sometimes suspected of reporting 15:04
11 critically on the Garda force or at least the top ranks
12 of the force and I was keen that nothing in Paul's
13 report would be open to a charge of bias in favour of
14 the Garda establishment and therefore bias against the
15 serving garda who had made the allegations that the 15:04
16 O'Higgins Commission was established to investigate."
17

18 And then you say:

19

20 "(The charge of being a cheerleader for the 15:04
21 establishment is not unique to crime reporters. All
22 specialist reporters are subject to the suspicion that,
23 over time, they are captured by the establishment or
24 that they go native in diplomatic word parlance)."
25 15:04

26 So was this your own view or was this the RTÉ view?
27 who established that this should be the view?

28 A. I'm saying it's my view.

29 599 Q. Your view. And who did you suspect would be making

1 this accusation or looking suspiciously on RTÉ reports?
2 A. I think it has appeared in newspapers more than once
3 that Paul Reynolds would write or would publish stories
4 that favoured the Garda establishment. Claire Daly,
5 TD, on our own programme on News at One on May 9th, the 15:05
6 date which is the subject of this term of reference,
7 spoke about people like Paul Reynolds favouring the
8 Garda establishment and therefore disfavouring
9 whistleblowers.

10 600 Q. Yes. 15:05
11 A. It's not unheard of. And as I said, it applies to all
12 specialists correspondents: health correspondents,
13 business correspondents, the agricultural editor, the
14 same danger exists.

15 601 Q. Now, did you read any of the reports yourself? 15:05
16 A. No, I did not.

17 602 Q. So you didn't supervise whether what Mr. Reynolds was
18 including in his draft was accurate itself?
19 A. Correct.

20 603 Q. Okay. You were just relying on him? 15:06
21 A. I say in my statement, I didn't see the report myself,
22 I was relying on Paul.

23 604 Q. Yes. And you do say in your statement at page 5433:
24
25 "I recall Paul Reynolds asking me during one of our 15:06
26 telephone conversations on Friday, May 6th or Saturday,
27 May 7th, if the report's findings that Sergeant McCabe
28 had uttered an untruth could be described as him having
29 told a lie. I replied that a deliberate untruth could

1 be described as a lie. I made an editorial decision to
2 use the word 'lie' in our reports."

3
4 Now, had you seen the paragraph that Mr. Reynolds was,
5 as it were, relying on in relation to that? 15:06

6 A. Not at that point. But I clearly recall sitting at my
7 desk at home and talking to Paul on the telephone and
8 Paul saying to me: It says that he uttered an untruth,
9 can I say that that is a lie, that he lied? I thought
10 about it and I said, Paul, a deliberate untruth is a 15:07
11 lie, you can use the word 'lie'. That was either on
12 Friday night or Saturday morning.

13 605 Q. Okay. So you authorised that, in a sense?

14 A. Correct. And I say that in my statement.

15 606 Q. Yes. And were you concerned that that might be, as it 15:07
16 were, tilting the balance against what Mr. Justice
17 O'Higgins had said, tilting it against Sergeant McCabe
18 a bit unfairly?

19 A. It's simple English. It's a plain word. Both words
20 mean the same thing, actually. 15:07

21 607 Q. Okay.

22 A. But I think Paul said something similar yesterday. Our
23 job, as journalists, is to deliver our stories in
24 simple English. If we don't understand them, the
25 people who are reading and hearing the stories won't 15:08
26 understand them.

27 608 Q. Okay. We have seen that dictionaries were reached for
28 at some stage. Were they reached for at this stage?

29 A. I didn't actually reach for the dictionary when I was

1 talking to Paul on the telephone on Friday night or
2 Saturday morning. I reached for my dictionary on
3 Monday morning when I fielded a phone call from
4 Sergeant McCabe.

5 609 Q. Okay. Well, just before we get to that stage, it would 15:08
6 appear that you obviously were sent a draft of, you
7 know, his principal story, and you sent an email back
8 on the 8th May to him. If we could look at page 5785.
9 Now, this has been copied to a number of people as
10 well, Kevin Bakhurst and Hilary McGouran. But I see 15:08
11 the subject is "O'Higgins 2, News at One". But this
12 appeared to relate to his initial coverage as well, is
13 that right?

14 A. Yes, yes.

15 610 Q. You're saying there: 15:09

16
17 "Very well done. Sorry about delay. Re Kevin's point
18 on the error on paragraph 4, a couple of smallish
19 things."

20
21 And then you say how it should start. And then you 15:09
22 say, number 2:

23
24 "At the News at One piece I think we will avoid any 15:09
25 accusation of bias. If you started by saying the
26 O'Higgins Commission had said that former Commissioner
27 Martin Callinan is entitled to have his reputation
28 vindicated and that the allegations made against him by
29 Garda whistleblower Sergeant Mattie McCabe were

1 unfounded and deeply hurtful. I think a lead-in like
2 that above does not put the boot into McCabe
3 straightaway."

4
5 It seems to be an odd thing to have in an editorial 15:09
6 document, am I wrong about that, or would you normally
7 express a story about putting the boot into somebody?

8 A. I don't know how you would define what is odd in an
9 editorial discussion. We work in a newsroom, we use
10 common, colloquial English. 15:10

11 611 Q. Yes.

12 A. I explained at some length in my statement in two or
13 three paragraphs why I was suggesting to Paul that
14 instead of making his first sentence a charge against
15 Sergeant McCabe, that he, in fact, should make it the 15:10
16 vindication of Martin Callinan, that his sentence
17 should be positive, not negative, that his sentence
18 should go one way and not the other way.

19 612 Q. Okay. Well, it suggests that you clearly had decided
20 that the way he had, in fact, first written it was 15:10
21 putting the boot into Maurice McCabe straightaway and
22 that you're saying don't do it straightaway, put it a
23 bit further down?

24 A. No, no.

25 613 Q. I mean, is there any other interpretation -- 15:10

26 A. No, no, I am saying, Paul, your first sentence is too
27 bald, too bald, I'm not at all saying -- well, I did
28 actually say, yeah, your criticism of Maurice McCabe
29 should be further down, should not be in the first

1 sentence. That is quite obvious, I say that.

2 614 Q. I mean, presumably you had no --

3 A. I also say, by the way, do I not --

4 615 Q. Yes.

5 A. -- that for us to carry a report which did not include 15:11

6 the finding that Maurice McCabe was wrong in this

7 instance, would be an incomplete report.

8 616 Q. Yes.

9 A. would be an inaccurate report.

10 617 Q. No, I can see that point of view. But in terms of 15:11

11 headlining it, as it were, the first bit was to relate

12 to the Commissioner being vindicated is that right?

13 A. We're talking about the 1pm story now?

14 618 Q. The 1pm.

15 A. Yes, yes. 15:11

16 619 Q. Can I just ask you for your involvement? Presumably

17 you don't regard it and you don't get involved in

18 either sourcing documents or taking briefings from

19 outside RTÉ?

20 A. I can do, but -- I can do, yeah, or I could do. 15:12

21 620 Q. Did you receive any briefings from An Garda Síochána in

22 relation to this?

23 A. Never.

24 621 Q. Do you know of any briefings that Mr. Reynolds

25 received -- 15:12

26 A. No.

27 622 Q. -- from gardaí in relation to this?

28 A. No.

29 623 Q. Have you any reason to believe that briefing material

1 was submitted by Commissioner O'Sullivan to
2 Mr. Reynolds, directly or indirectly?

3 A. Absolutely not. Can I give you a two-part answer?

4 624 Q. Yes.

5 A. What we have heard about Nóirín O'Sullivan is that she 15:12
6 is a woman who has disdain for journalists. I think
7 it's a slander on her to say that she would try to
8 influence us. Secondly, more seriously, I think it is
9 a slander on everybody who works with me to say that we
10 would be manipulated or used by anybody to govern our 15:12
11 coverage, to influence our coverage. I think it's an
12 insult.

13 625 Q. The Tribunal has previously heard of Sergeant McCabe
14 phoning in after a programme on the -- an item on the
15 Marian Finucane programme in January of 2014 after 15:13
16 Mr. Kean had made a contribution. Were you aware of
17 that --

18 A. No.

19 626 Q. -- at the time?

20 A. No. I tended not to listen to Radio 1 on a Saturday or 15:13
21 Sunday if I could avoid it at all.

22 627 Q. Okay. But as news editor, was it a story that had come
23 to your attention that Sergeant McCabe was suing RTÉ
24 over what they had broadcast relating to Mr. Kean?

25 A. On the Marian Finucane show? 15:13

26 628 Q. The Marian Finucane show?

27 A. I can't be sure, to be honest.

28 629 Q. Okay. Would that not be something that you'd remember,
29 perhaps?

1 A. If it was brought to my attention, I probably would,
2 but it may not have been brought to my attention in the
3 first place.
4 MR. McGUI NNESS: Okay. would you answer any questions
5 anyone else may have. 15:14
6 A. I will.
7
8 THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL:
9
10 630 Q. MR. McDOWELL: Just briefly, Mr. Burke. This was 15:14
11 clearly an important story in which you took a personal
12 interest, isn't that right?
13 A. I take a personal interest in every story. It was an
14 important story, a very important story.
15 631 Q. Yes. And there's no trick in this. You had sent out 15:14
16 your staff in every direction to see could you get a
17 copy of this report?
18 A. Yes.
19 632 Q. That was your idea?
20 A. Yes, I'm the news editor. 15:14
21 633 Q. Yes.
22 A. I don't want to be -- I didn't want to be reading the
23 contents of the O'Higgins Commission report in a rival
24 publication.
25 634 Q. Yes. I follow that. Sorry, I hope I'm not sounding 15:14
26 aggressive; I'm only just asking some questions for
27 information. So you were the driving force behind RTÉ
28 looking for this report and subsequently dealing with
29 it in your broadcasts, is that right?

1 A. I was probably one of the driving forces. Other
2 editors may have been urging people similarly.

3 635 Q. Well, is there anybody else --

4 A. Prime Time.

5 636 Q. -- who was playing the same role as you? 15:15

6 A. Pardon?

7 637 Q. Is there anybody else who was playing the same role as
8 you in respect of this story?

9 A. Not in the newsroom. But Prime Time may have been
10 pursuing it, the investigations unit may have been 15:15
11 pursuing it, I don't know. But in terms of the
12 newsroom, that's my job.

13 638 Q. I see. Do I take it from what you have just said now
14 that if Prime Time was hunting for it, they weren't
15 going to tell you about it? 15:15

16 A. Probably not.

17 639 Q. And you weren't going to tell them about your efforts
18 to get it either, is that right?

19 A. I didn't have regular contact with Prime Time people.

20 CHAIRMAN: I didn't understand they were rivals. I 15:16
21 don't mean that in any mean way, but --

22 MR. McDOWELL: That is the point.

23 CHAIRMAN: You'd much prefer News to have it than Prime
24 Time to have it, is that the idea?

25 A. No question. 15:16

26 CHAIRMAN: All right.

27 640 Q. MR. McDOWELL: And therefore as between yourself and
28 the daily news and the Sunday news programme was there
29 a bit of rivalry as well?

1 A. what programmes are you talking about?
2 641 Q. The one o'clock programme on the Sunday?
3 A. The This Week programme?
4 642 Q. Yes.
5 A. No, not particularly. That is a newsroom programme. 15:16
6 643 Q. Well, it does appear that there was some debate as to
7 whether Colm, which I assume is Colm Ó Mongáin, was to
8 have access to it --
9 A. Correct.
10 644 Q. -- or whether it was to be kept for the daily news 15:16
11 programme on the following Monday?
12 A. Correct.
13 645 Q. And who was making the decisions on that?
14 A. Paul and I between us decided that it would be better
15 to keep it for Monday and have a proper go at it, 15:17
16 rather than do bits of it on Sunday, bits of it on
17 Monday. If we did bits of it on Sunday we'd be
18 providing it to the Monday morning newspapers. And it
19 would be rushed. And it would deny us the opportunity
20 to use graphics and stuff like that. For those 15:17
21 reasons, plus the reason that you saw yesterday that
22 Paul had other family business on the Saturday.
23 646 Q. Yes.
24 A. And that it was my Saturday as well. We agreed between
25 us, let's do it, let's hold it for Monday, let's not 15:17
26 give a bit of it to This Week programme on Sunday.
27 There was no internal competition in that sense.
28 647 Q. I see. Would the afternoon Drive Time programme that
29 Mr. Boucher-Hayes participates in, would that be a

1 rival programme or part of the same establishment as
2 yourself?

3 A. That would fall more into the rival than the same
4 establishment.

5 648 Q. I see. 15:18

6 A. Sometimes.

7 649 Q. Well, I presume sometimes you collaborate on matters.

8 A. No, I mean --

9 650 Q. It's not daggers drawn presumably?

10 A. No, no. There is quite a degree of cooperation between 15:18
11 the news desk and the Drive Time programme, but in
12 terms of getting a scoop and getting something first,
13 then there's no question. I would want the newsroom to
14 have it before Drive Time.

15 651 Q. Now there's a question which I'm slightly mystified by 15:18
16 and maybe you will help me and the Chairman with. Why
17 with such an important document and a number of copies
18 or at least one complete copy and a number of
19 fragments, in the possession of Paul Reynolds, why
20 wouldn't you cast your eye on it yourself to see 15:19
21 whether the coverage he was proposing was balanced?

22 A. A 360-page report? I have been working with Paul
23 Reynolds day in and day out for 23 years, I trust him.
24 Say the Moriarty Tribunal report is published and it
25 runs to thousands of pages there would be a team of 15:19
26 reporters writing up stories from it, I wouldn't
27 necessarily pour over every paragraph of every volume
28 in the newsroom and double-check with every single
29 reporter did they really say this, did they really say

1 that, can you show me where it says this. I might do
2 that with a rookie reporter. I would be insulting Paul
3 Reynolds if I said, Paul, show me the page where it
4 says this. It would be insulting to Paul and a waste
5 of my time. 15:20

6 652 Q. It's not that there's any suggestion that you wouldn't
7 trust him to be accurate with a quotation. I mean, the
8 question I was putting to you was: why would you not
9 look at the whole report yourself to see is this a fair
10 and balanced approach we're taking? 15:20

11 A. 360 pages, on a Saturday or a Sunday? Do you think
12 I've nothing else to do? I don't mean to be smart.
13 Like, I process maybe 70 stories per day.

14 653 Q. Yes?

15 A. Maybe 30 of them get published, 40 of them don't. I 15:20
16 had other duties to think about. Yes, this was a
17 really, really important story and our coverage of it
18 showed that but could I afford to drop everything on
19 Saturday and Sunday and lock myself away and read 360
20 pages and then satisfy myself that Paul's summation of 15:21
21 those 360 pages was good enough to be published? In
22 the real world that's impractical.

23 654 Q. I see. So am I right in thinking that nobody looked
24 over Paul's shoulder at the report itself in RTÉ at
25 all? 15:21

26 A. That's correct, yeah. Certainly not before Monday
27 morning.

28 655 Q. And therefore --

29 A. I think it is quite possible that during the course of

1 Monday that some of the television editors and possibly
2 some of the TV presenters, maybe Brian Dobson, might
3 have looked at certain pages of the report with Paul.
4 But certainly prior to our publication on Monday
5 morning I don't believe anybody in RTÉ, certainly not 15:21
6 me, none of us looked over Paul's shoulder at the
7 report or what he was writing from it.

8 656 Q. You were conscious at the time of the perception of
9 some people and I presume you think they're mistaken in
10 this, that crime correspondents of newspapers and the 15:22
11 media generally can become captured by their best
12 sources, you were conscious of that perception at the
13 time, isn't that right?

14 A. Yes.

15 657 Q. And in that context did it not occur to you that you 15:22
16 might just take a look at the report yourself to see
17 what impression it would make on you as a layman as
18 well as taking Paul Reynolds' detailed work on it and
19 allowing him to compose the various question-and-answer
20 interviews for himself? 15:22

21 A. No, I didn't think it was necessary.

22 658 Q. And you weren't curious, were you?

23 A. I'm paid to be curious. I was -- I didn't meet the
24 degree of curiousness that you seem to suggest that I
25 should have. 15:23

26 659 Q. Who agreed the idea that there would be a mock
27 interview where the interviewer puts questions to Paul
28 Reynolds and he answers them on a prearranged basis, a
29 fully scripted basis?

1 A. Your question?

2 660 Q. Who came up with that idea, that that is how you
3 would --

4 A. This is normal practice now. And I think it was
5 something that we introduced after the infamous case 15:23
6 involving the BBC, where the scientist who later took
7 his own life provided information to a BBC journalist,
8 the BBC journalist did a live unscripted report on BBC
9 radio about the British government sexing up a report
10 on nuclear weapons in Baghdad or something. 15:24

11 661 Q. Yes?

12 A. And all hell broke loose. The BBC director general had
13 to resign, the journalist had to resign. You'll recall
14 it was a major controversy.

15 CHAIRMAN: Yes, you're talking about Dr. Kelly. 15:24

16 A. Dr. Kelly.

17 CHAIRMAN: Yes.

18 A. As a result of that, the BBC and ourselves introduced a
19 practice where if, for instance, Paul Reynolds was
20 going to be interviewed live on Morning Ireland that 15:24
21 the questions and answers would effectively be scripted
22 in advance.

23 662 Q. MR. McDOWELL: And just for curiosity sake, and just a
24 full picture, does the interviewer get a copy of the
25 answers that he will be getting from Paul Williams -- 15:24
26 sorry, from Paul Reynolds in advance?

27 A. A copy of the questions?

28 663 Q. And the answers?

29 CHAIRMAN: Do you have an idea of what he is going to

1 say?

2 A. Yes, I would say so, yes, yes.

3 664 Q. MR. McDOWELL: So in a sense, although it appears to be
4 a live interview, it's entirely scripted?

5 A. Yes. 15:25

6 665 Q. I see.

7 A. That wouldn't happen with everyone. But that happens
8 with really important ones and it did happen in this
9 instance I'm pretty sure. You could see that that did
10 not happen -- sorry, to interrupt you. You could see 15:25
11 that that did not happen on the TV interviews, for
12 instance, with Paul Reynolds, they were not scripted,
13 they were ex tempore.

14 666 Q. In relation to the amendments that you proposed, it was
15 to avoid any possible perception that there was bias on 15:25
16 the part of RTÉ, is that right?

17 A. That was part of my urging Paul to amend his copy.

18 667 Q. Yes. And when you made your reference to putting the
19 boot in, I think in your statement to this Tribunal you
20 amplified that by saying the following, in your letter 15:26
21 you said:

22

23 "I was conscious that this copy was for a lunchtime
24 report to be published after five hours of broadcasts
25 and online reports in which Sergeant McCabe was going 15:26
26 to be prominently mentioned in what was likely to be
27 the top story of the day from 7:00am. In essence, I
28 was suggesting that the broadcast start with the
29 Commissioner. I was suggesting to Paul not to begin

1 his one o'clock news broadcast and report which he
2 himself would voice with a criticism of Sergeant McCabe
3 that would be an unfair reflection of the overall
4 O'Higgins Commission report."

15:27

6 Now you didn't know, you hadn't seen the overall
7 report, isn't that right?

8 A. Correct.

9 668 Q. But you were conscious that if he started off with the
10 criticism of Sergeant McCabe it would give the
11 impression that he was being unfair or biased?

15:27

12 A. After five hours of our broadcasting and publishing
13 non-stop the first tranche of information from the
14 report.

15 669 Q. And then you said:

15:27

17 "I was --"

18 A. which gave a balanced overview of the report --

19 670 Q. I see.

20 A. -- as we saw it.

15:27

21 CHAIRMAN: But it may be a bad report, Mr. McDowell, it
22 may be that I might have said something different if I
23 was a journalist and I'm not trained in that regard.

24 MR. McDOWELL: But that is not for this Tribunal to
25 second guess. I fully accept that point.

15:27

26 CHAIRMAN: I know. But if it turns out to be utterly
27 viscous, utterly biased, there may be that there is an
28 inference I can draw from it. But that might indeed be
29 against Mr. Reynolds, not against Garda Headquarters.

1 But it is kind of hard to know if it is within the
2 range of what is acceptable, you know the whole legal
3 notion of a measure of appreciation. I mean, one may
4 not like things that are written about one --

5 MR. McDOWELL: Exactly.

15:28

6 CHAIRMAN: -- but that doesn't necessarily raise an
7 inference that people are in a conspiracy.

8 MR. McDOWELL: Exactly, Chairman. I fully accept that
9 point.

10 671 Q. But you said:

15:28

11
12 "I was simply saying to Paul, Paul make Martin Callinan
13 not Maurice McCabe the subject of the first sentence of
14 your report. I wanted the report to start with the
15 Garda Commissioner not the Garda sergeant. A more
16 longwinded version of my football analogy --"

15:28

17
18 This is putting the boot in.

19
20 "-- could have been, Paul, I'm not asking you to avoid
21 tackling Sergeant McCabe, I'm just saying don't do it
22 in the very first minute of the match."

15:28

23
24 That was your attitude, was it; that the script as
25 appeared to you looked as if he was doing a slide
26 tackle in the first minute of the match under the nose
27 of the referee?

15:29

28 A. Yes. You have the proposed script in front of you,
29 don't you?

1 CHAIRMAN: I'm not sure you actually really listened to
2 that question, Mr. Burke.

3 A. Pardon?

4 CHAIRMAN: I'm not sure you actually really listened to
5 that question. It carried stronger resonance than 15:29
6 perhaps you realise.

7 A. Forgive me.

8 CHAIRMAN: That is not a criticism of you. But a slide
9 tackle means taking the ankles out from under a
10 footballer. One sees it happening, it's malicious. 15:29
11 You're not going for the ball, you're going for the
12 person, you're doing it under the eyes of the referee.

13 A. What is my wording?

14 CHAIRMAN: So I think the inference in the question is:
15 was what presented to you so bad that you immediately 15:29
16 came to the conclusion look, Mr. Reynolds is clearly
17 not in favour of Maurice McCabe and I need to change
18 this and tweak it a bit, so even if he thinks that way
19 it doesn't look that way. That is the implication of
20 the question. 15:30

21 A. Not quite. It's also, as I said, for five hours we
22 have been publishing and broadcasting reports on the
23 contents of the O'Higgins Commission report, not all of
24 which reflected well on Maurice McCabe. We're now
25 coming with a new tranche of information drawn from the 15:30
26 O'Higgins Commission report, let's not start it by
27 saying Maurice McCabe got something else wrong. Let's
28 start it by saying Martin Callinan has been exonerated.
29 It's also a basic journalism rule: You don't say 'a

1 man has been arrested by Gardaí', which is passive, you
2 say 'Gardaí have arrested a man', which is not passive.

3 672 Q. MR. McDOWELL: I see. Could I ask you then whether you
4 or your news group made a conscious decision not to
5 give the report Mr. Boucher-Hayes? 15:31

6 A. Absolutely not true. I know nothing about that. I was
7 interested to hear Mr. Boucher-Hayes say here that he
8 had a full copy of the report prior to our publication.
9 I was also interested to hear at this Tribunal the
10 Irish Examiner reporter, Michael Clifford, say that he 15:31
11 had a full copy of the report prior to publication.

12 673 Q. Yes?

13 A. And Mr. Mooney from the Sunday Times say that he had a
14 full copy of it prior to publication.

15 674 Q. Yes? 15:31

16 A. I didn't hear any of them being asked the source.
17 There was some desultory discussion about Mr. Mooney
18 having it in advance of RTÉ. But the other two people,
19 Mr. Boucher-Hayes nor Mr. Clifford was asked one
20 question about the source of the report. 15:31

21 CHAIRMAN: No, and I don't think there's any point in
22 asking that question because it seems to me that
23 there's a very strong argument in favour of
24 journalistic privilege there, isn't there?

25 A. That's wonderful, but Mr. Reynolds was asked repeatedly 15:32
26 for his source.

27 CHAIRMAN: No, I don't think he was. I think he was
28 asked to rule out a particular source which was Garda
29 Headquarters.

1 A. I think a number of attempts were find --
2 CHAIRMAN: And in particular Nóirín O'Sullivan.
3 MR. McDOWELL: He was not asked about a source. He was
4 specifically told, at least by me, that I understood
5 fully that he would not be revealing his source. 15:32
6 CHAIRMAN: I think that is correct. But am I learning
7 anything new at this point?
8 675 Q. MR. McDOWELL: No, you are not. But I am just asking,
9 did you hear Mr. Boucher-Hayes' being broadcast piece
10 here? 15:32
11 A. Yes, I did.
12 676 Q. Did it strike you as more balanced than the material
13 which had gone out earlier in the day?
14 A. I don't agree it was more balanced.
15 CHAIRMAN: well, I'm not going to be awarding 15:32
16 'Journalist of the Tribunal', Mr. McDowell.
17 677 Q. MR. McDOWELL: Now could I ask you --
18 CHAIRMAN: I'm rising, by the way, at four o'clock.
19 MR. McDOWELL: Sorry, one last question.
20 CHAIRMAN: Please. 15:33
21 678 Q. MR. McDOWELL: Could I ask you just simply to indicate
22 why you weren't content to use the term untruth and why
23 you wanted to -- why you personally wanted to use the
24 word lie in the text and advised Mr. Reynolds to do
25 that? 15:33
26 A. It's plainer English. It's simpler English.
27 679 Q. But you hadn't seen the report and you hadn't seen the
28 paragraph from which it came?
29 A. Correct. But Paul had read the paragraph to me, over

1 the phone.

2 680 Q. I see. And you prefer the word lie?

3 A. Yes.

4 681 Q. Could I suggest to you that you must have been aware at
5 the time that you made these editorial decisions that 15:33
6 Sergeant McCabe had instituted proceedings against RTÉ
7 arising out of remarks made by Gerald Kean on the
8 Marian Finucane programme?

9 A. I don't think I was. I've already answered that. But
10 I don't think I was. 15:34

11 MR. McDOWELL: Thank you very much.

12 CHAIRMAN: Is there anything else? was there anything
13 from the Garda side.

14 MR. WHELAN: No questions.

15 CHAIRMAN: Yes. And was there anything you wanted to 15:34
16 follow up on, Mr. Gillane?

17 MR. GILLANE: No, Chairman.

18 CHAIRMAN: Yes.

19

20 WITNESS WAS RE-EXAMINED BY MR. McGUINESS AS FOLLOWS: 15:34

21 682 Q. MR. McGUINESS: Mr. Burke, just one matter. You made
22 reference there to other journalists who have given
23 evidence not being asked about the source of their
24 version of the report, but I think you will understand
25 that terms of reference [k] only relates to the 15:34
26 broadcasts broadcast by RTÉ and it doesn't relate to
27 either publications or other broadcasts relating to
28 other media?

29 A. I understand.

1 683 Q. You will understand that. Thank you.

2 A. Thank you.

3 CHAIRMAN: Mr. McGuinness, the point was? I'm sorry,
4 Mr. Burke got that, I didn't quite understand the
5 point. 15:35

6 MR. MCGUINNESS: There appeared to have been an
7 implicit criticism or rebuke of the Tribunal that we
8 hadn't pursued other journalists about the source --

9 CHAIRMAN: Oh!

10 MR. MCGUINNESS: -- of their copy of the leaked 15:35
11 O'Higgins Commission report and I was simply asking
12 Mr. Burke to reflect and agree that it was only RTÉ who
13 comes within the terms of reference [k].

14 CHAIRMAN: well, it is only. You are absolutely right.

15 MR. MCGUINNESS: Yes. 15:35

16 CHAIRMAN: It is attempted to influence broadcasts on
17 RTÉ on the 9th May 2016. So it is very specific to
18 that. Thank you for reminding me.

19 A. I apologise if I was seen to imply rebuke of the
20 Tribunal. 15:35

21 MR. MCGUINNESS: Not at all. I may have misunderstood
22 you.

23 CHAIRMAN: I'm sure it's only the start of an avalanche
24 which is going to begin as soon as the report comes
25 out. So, don't worry. 15:36

26 MR. MCGUINNESS: Thank you.

27 CHAIRMAN: Thank you.

28 A. Thank you.

29

1 THE WITNESS THEN WITHDREW

2

3 CHAIRMAN: Who usefully can we get through,
4 Mr. McGuinness?

5 MR. MCGUINNESS: We have one witness left.

15:36

6 CHAIRMAN: Yes.

7 MR. MCGUINNESS: One witness left today, Chairman, and
8 I think we will get through him.

9 CHAIRMAN: Yes, I think we will.

10 MR. MCGUINNESS: Mr. John Barrett.

15:36

11 CHAIRMAN: I think so too, yes.

12 MR. MCGILLICUDDY: Chairman, Tony McGillicuddy,
13 representing Mr. Barrett, instructed by John Quinn of
14 Noble Solicitors.

15 CHAIRMAN: Thank you, Mr. McGillicuddy.

15:36

16

17 MR. JOHN BARRETT, HAVING BEEN SWORN, WAS DIRECTLY
18 EXAMINED BY MR. MCGUINNESS AS FOLLOWS:

19 684 Q. MR. MCGUINNESS: Mr. Barrett's statement to the
20 Tribunal investigators is to be found in volume 24 at
21 page 6395. Mr. Barrett, can I ask you to look at page
22 6408, which is a copy of Sergeant McCabe's protected
23 disclosure? And the second paragraph, there's a number
24 of Roman numeral parts in the first paragraph which
25 relate to the reasons why Sergeant McCabe was on work
26 related stress leave. The third one is there,
27 referring to:

15:36

15:37

28

29 "A disgraceful series of broadcasts on RTÉ on the 9th

1 May 2016 purporting to leak an account of the
2 unpublished O'Higgins Commission report in which I was
3 branded as a liar and irresponsible."

4
5 It then goes on to say:

15:37

6
7 "I am now satisfied on impeccable authority that these
8 RTÉ broadcasts were planned and orchestrated by the
9 Commissioner, Nóirín O'Sullivan, personally using
10 briefing material prepared at Garda Headquarters."

15:37

11
12 Now, can I just ask you to address the substance of
13 this. Have you any information that the RTÉ broadcasts
14 which the Tribunal has heard were planned and
15 orchestrated by the Commissioner?

15:38

16 A. No, I don't. I don't have any such information.

17 685 Q. It is suggested that she did it personally, you have no
18 knowledge of that?

19 A. No knowledge of that.

20 686 Q. Okay. It's suggested that she was using briefing
21 material prepared at Garda Headquarters in relation to
22 the report. I think you were aware of the forthcoming
23 O'Higgins report at the time in May of 2016?

15:38

24 A. Yes, I was aware of the O'Higgins process and
25 Commission.

15:38

26 687 Q. Were you involved in any way in the process of the
27 Commissioner preparing for it, either after the final
28 report had been received and subsequent or prior to any
29 statement issued by the Commissioner?

1 A. No. My earlier statement to the Tribunal makes clear I
2 had no engagement bar a very peripheral support for one
3 of my chief superintendents who was gathering material
4 at the very beginning of the formation of the O'Higgins
5 Commission. Chief Superintendent Ward. 15:39

6 688 Q. Yes. The first part of the protected disclosure there
7 that I read to you, related to series of broadcasts in
8 respect of which Sergeant McCabe was branded a liar and
9 irresponsible. Did he complain to you about that at
10 the time? 15:39

11 A. At what time?

12 689 Q. The time of the broadcasts?

13 A. No. I didn't meet him until the 31st May, some three
14 weeks after the broadcast.

15 690 Q. Yes. Did he complain about those broadcasts to you on 15:39
16 the 31st May?

17 A. No. I have no recollection at all of it being a
18 subject of complaint. It's not covered in the minute
19 that I wrote of that meeting.

20 691 Q. Yes. I think you've previously given evidence of this 15:40
21 but just to be clear what you're referring to, at page
22 6411, that commences a six-page minute that you
23 prepared relating to that meeting on the 31st?

24 A. That is correct.

25 692 Q. And correct me if I am wrong, you on the occasion of a 15:40
26 subsequent visit to Sergeant McCabe, on the 23rd
27 August, produced that six-page minute and carefully
28 read it over to himself and his wife Lorraine?

29 A. That is correct.

1 693 Q. And I think, I'm not quite clear for whatever reason,
2 but you were seen to have an accurate record of the
3 minute of the meeting and they actually signed each
4 page of the minute?
5 A. I asked them to initial each page. 15:41
6 694 Q. Yes?
7 A. In that, the matters covered are particularly serious.
8 695 Q. And I think you have produced also each signed page of
9 the minute. So the two versions of it were the
10 unsigned and the signed copy? 15:41
11 A. Yes.
12 696 Q. Now when did you make that minute?
13 A. I made it, I was leaving the McCabe household on the
14 31st May to go to a meeting in Sligo and from there on
15 to Donegal, I made it that night in handwritten form 15:41
16 and I typed it myself thereafter.
17 697 Q. Yes. I don't think I need to go through the minute,
18 but there appears to be no reference to either
19 Mr. Reynolds, RTÉ broadcast or no complaint about a
20 series of broadcasts? 15:41
21 A. No. The minute is rather clear in that the plain
22 subject of the minute was what was revealed to me by
23 Sergeant McCabe in relation to Commissioner Callinan.
24 698 Q. Yes. I think on the occasion of your second visit, the
25 one I referred to earlier there, on the 23rd August, 15:42
26 you also kept a minute of that and that's to be found
27 at page 6417 onwards?
28 CHAIRMAN: I'm sorry, Mr. McGuinness, I beg your
29 pardon, I am just getting a wee bit mixed up. If you

1 wouldn't mind giving me the years as well.

2 MR. MCGUINNESS: This is all in 2016.

3 CHAIRMAN: Yes. Earlier visit, namely August, as
4 compared to May.

5 MR. MCGUINNESS: The 31st May is the first visit -- 15:42

6 CHAIRMAN: Yes.

7 MR. MCGUINNESS: -- and the first minute we referred
8 to --

9 CHAIRMAN: Yes.

10 MR. MCGUINNESS: -- both the signed and unsigned 15:42
11 version.

12 CHAIRMAN: Yes.

13 MR. MCGUINNESS: Then the second visit is later in the
14 year, in the autumn, in August on the 23rd August and
15 that's the occasion when you read over the first minute 15:42
16 and they signed it.

17 A. That's correct.

18 699 Q. But this is then the minute that you actually then
19 subsequently made of that meeting --

20 A. That's correct. 15:43

21 700 Q. -- with them, on that day, isn't that right?

22 A. That's correct.

23 701 Q. And I think that minute is also a subsequently signed
24 minute that is signed by Sergeant McCabe and his wife,
25 Lorraine? 15:43

26 A. That's correct.

27 702 Q. I don't need to, I think, go into the detail of that,
28 but there's no mention or discussion apparent in the
29 minute of Mr. Reynolds, the RTÉ broadcasts of the 9th

1 May or any complaint about them or any suspicion as to
2 who had been involved in any leak from HQ or any leak
3 from HQ at all?

4 A. No. That is a lengthy minute again, sir, it's eight
5 pages, Chairman, and there's no minute -- there's no 15:43
6 mention as you said.

7 703 Q. Yes. Subsequent to that, as we know, Sergeant McCabe
8 made his protected disclosure, I referred you to a
9 portion of that, but that was at the end of September
10 and I think you had two more meetings in the immediate 15:44
11 aftermath of that on Monday, 3rd October and Wednesday,
12 5th October --

13 A. That's correct.

14 704 Q. -- that you provided minutes of --

15 A. That's correct. 15:44

16 705 Q. -- today to the Tribunal. They're to be found at page
17 7709. I think those documents record a minute which
18 relate to a matter that had become controversial
19 because your name had been mentioned in the context of
20 a so-called section 41 report, your name and the 15:44
21 content of the report was being discussed in the media?

22 A. That's correct.

23 706 Q. And you went down to discuss the matter face-to-face
24 with Sergeant McCabe?

25 A. The report was on the This Week programme on Sunday, 15:44
26 September 25th, and it suggested that I had in some way
27 circumvented protocol and used section 41, which is a
28 legal impossibility --

29 707 Q. Yes?

1 A. -- and Clare Daly was interviewed on that programme and
2 the suggestion was that in some way I had circumvented
3 Garda authorities and given to the Minister. So that
4 was not true and I was quite angry about that being
5 reported.

15:45

6 708 Q. We have seen other emails and drafts of statement,
7 etcetera, in the papers, and I am sure you have seen
8 them as well. I think, it was also revealed to you at
9 that stage by Sergeant McCabe about the arrival of the
10 Tusla letter?

15:45

11 A. Yes. He had received a letter in January I think of
12 that year.

13 709 Q. But can you confirm whether on that occasion there was
14 any mention by you or by Sergeant McCabe of the RTÉ
15 broadcasts?

15:45

16 A. No.

17 710 Q. Any complaint about them?

18 A. I asked very specifically on what date I am alleged to
19 have said this --

20 711 Q. Yes?

15:45

21 A. -- and the response, as I understand it, is that it was
22 either the meeting on the 23rd or the meeting of the
23 31st May. I have no recollection whatsoever of dealing
24 with this issue.

25 712 Q. Yes. Perhaps we will just go to what Sergeant McCabe
26 has said about that, because obviously it's important.
27 I think during the course of the Tribunal
28 investigators' interview of you, you were referred
29 to -- it's encapsulated at page 6398 where Sergeant

15:46

1 McCabe was asked to identify the "impeccable authority"
2 referred to in his protected disclosure, and he says at
3 line 52 on page 6398:

4
5 "I am, Sergeant McCabe, am referring to John Barrett, 15:46
6 HRM. He told me and Lorraine that it would have come
7 from block 1 at the front, Nóirín O'Sullivan's office."
8

9 what is your evidence in relation to that?

10 A. I didn't make such a remark, is the clarity of it. I 15:47
11 have no written record despite having taken very
12 considerable records of that and that's not the way I
13 would describe it had I done so in any event.

14 713 Q. Yes. Sergeant McCabe obviously gave evidence in public
15 before the Tribunal and part of his evidence relating 15:47
16 to you, and this issue is quoted on the next page at
17 6399 at line 64 there on that page. It starts:

18
19 "Q. You claim that John Barrett told you that it would
20 have come from block 1 at the front, Nóirín
21 O'Sullivan's office?

22 A. Yes, that's correct.

23 Q. Is that right?

24 A. That's correct, yeah.

25 Q. When did John Barrett say that to you?

26 A. He told us that in our house, me and Lorraine were
27 there when he told us. I would have the date in a
28 diary, but it was -- well, it was obviously after this,
29 after the broadcast. But he said, it would have come

1 from block 1."

2

3 Now, I suppose, there's one thing just to note in
4 passing before I ask you the next question. There's no
5 reference there to material prepared personally by 15:48
6 Nóirín O'Sullivan, but Sergeant McCabe obviously was
7 aware presumably of your visits to his house in May and
8 August and October 2016. Was it when Sergeant McCabe
9 first gave that you discovered that he was in fact
10 referring to you as the impeccable authority? 15:48

11 A. I don't know when I became available -- aware of this
12 to be frank.

13 714 Q. Yes?

14 A. But it was put to me and I have sought to address it
15 with the investigators. 15:48

16 715 Q. Yes. Sergeant McCabe's solicitors, Mr. Costello's
17 firm, at page 7588 make reference to the diary that
18 Sergeant McCabe has and an extract of which was
19 produced. But have you seen this letter --

20 A. Yes. 15:49

21 716 Q. -- on the 23rd April?

22 A. Yes. I saw it in the course of the meeting we had with
23 the Tribunal investigators and I think we reviewed it.
24 I saw the hard copy of it at that point.

25 717 Q. Yes. And just to read it there. It says: 15:49

26

27 "I refer to your letter of the 11th April 2018
28 concerning my client's evidence given on the 5th March
29 2018. My client has checked his 2016 diary and the

1 only entry to a meeting with Mr. John Barrett at his
2 home is for the 23rd August 2016 and I attach a copy of
3 that diary entry.
4

5 My client believed that this was the meeting where 15:49
6 Mr. Barrett made reference to the RTÉ Morning Ireland
7 broadcast. The meeting where Mr. Barrett referred to
8 the RTÉ broadcast was in fact on the 31st May 2016, but
9 is not recorded in his diary. "

10
11 So two slightly perhaps apparently contradictory things 15:50
12 there, on first view of it. It appears to be
13 definitively saying really that this is the occasion
14 when you refer to the broadcast, i.e. being on the 31st
15 May 2016. 15:50

16 A. No. I didn't. I mean, I have no recollection
17 whatsoever of the broadcast or of me making any
18 reference to it. And I will just make the point that
19 the two minutes that we are talking about here are
20 carefully constructed, they are lengthy, I think they 15:50
21 run to somewhere between 220 to 250 lines, they are
22 very focused on the principal issues we discussed on
23 both occasions and on no occasion was this mentioned in
24 any line of those two minutes.

25 CHAIRMAN: All right. 15:51

26 MR. McGUI NNESS: May I just ask you three more
27 questions?

28 A. Surely.

29 718 Q. One is on page 6436, this is part of your, as it were,

1 your own chronology that you prepared and we received
2 an extract from it earlier when you gave evidence
3 before Christmas I think, or was it in the new year,
4 but you've recorded a whole series of interactions with
5 Sergeant McCabe here but this, at the bottom of page 15:51
6 6436, relates to texts --

7 A. Yeah.

8 719 Q. -- that you sent to Sergeant McCabe. And there's one
9 there on May 27th, 2016 which obviously postdates the
10 broadcasts but predates your meeting of the 31st May, 15:51
11 2016. You see that:

12
13 "M, hope you're keeping well in all the hail of media
14 going on at present."

15 A. Mm-hmm. 15:52

16 720 Q. "You and your family have been in my thoughts over the
17 last few weeks. We're long overdue coffee and a catch
18 up. I was out of the loop --"

19
20 I think it should be. 15:52

21
22 "-- for a couple of critical weeks. Tony McLoughlin
23 and Lorraine have been keeping me in the loop, so I'm
24 up to speed now. How are you fixed for chat next week?
25 Let me know and we will make a plan." 15:52

26 A. Yeah.

27 721 Q. Were you conscious of how Mr. Reynolds had reported the
28 matter and RTÉ had reported the matter on the 9th May?

29 A. I wasn't specifically conscious of Mr. Reynolds or of

1 any one broadcast, other than the time and occasion
2 when I met Sergeant McCabe and his wife at his house
3 for first time, 31st May, the Dáil debates on that
4 matter of the O'Higgins Commission report were ongoing.
5 That was the background against it. I think I 15:52
6 referenced that in the minute. The issue was very
7 topical and very visible in the media. So not a
8 specific report.

9 722 Q. Yes. You see on the next page you make reference in
10 your own chronology -- 15:52

11 A. Sure.

12 723 Q. -- to your meeting on the 31st May, page 6437. And
13 there's, I suppose, two sides to it, literally, there.
14 And looking at the entry on the right-hand portion of
15 the page, if you scroll down a small bit there, on the 15:53
16 right-hand side it says, where this is your own
17 description I think:

18
19 "This a seminal meeting and the initial minute of this
20 meeting is self explanatory. It occurs in the 15:53
21 aftermath of the publication of the O'Higgins
22 Commission report. It occurs at the McCabe family home
23 on foot of an invitation. It was at this meeting that
24 I learned of the specifics of the information allegedly
25 shared by former Commissioner Callinan and Deputy John 15:53
26 McGuinness. . . . this meeting and the visible distress
27 which I saw exhibited by Sergeant McCabe to telephone
28 the number of the Deputy Commissioner SCM in the
29 immediate aftermath, did not get him, then called

1 Superintendent John Keegan. We agreed to meet the
2 deputy on my return from Donegal, Thursday morning June
3 2nd, 2015."

4 A. That's correct.

5 724 Q. I'm not going to ask you about the one on the left-hand 15:54
6 side, but obviously you had prepared this chronology in
7 advance of either learning about or being interviewed
8 about Sergeant McCabe's --

9 A. Yes.

10 725 Q. -- assertion? 15:54

11 A. This was from my February appearance before the
12 Tribunal.

13 726 Q. Yes. I mean, one thing strikes me, that in the context
14 where you have referred to the media storm as it
15 were -- 15:54

16 A. Mm-hmm.

17 727 Q. -- where you are going to see him I think for the first
18 time since 9th May, would it not have been logical, in
19 the sense of the most opportune and the earliest moment
20 to be discussing what might have been published about 15:54
21 him?

22 A. The meeting focused very definitively on the answer
23 that was given to me. The moment that I will remember
24 I think probably forever is when I asked what was the
25 vile -- what was behind the word vile that was used by 15:54
26 Deputy McGuinness in his discussion and revelation.
27 And I didn't know what that was going to beget and then
28 Sergeant McCabe and Lorraine outlined to me what it is
29 that was actually alleged. And that's the focus of the

1 minute. That was the focus of the discussion. That
2 was the principal matter. The background to it was
3 simply, and what I'm referring to there, is a certain
4 generally for Sergeant McCabe as I found him. He was
5 clearly exhibiting considerable stress and distress -- 15:55

6 728 Q. Yes?

7 A. -- from the whole issue.

8 CHAIRMAN: All right. Well, it's three minutes to
9 four, Mr. McGuinness.

10 MR. MCGUINNESS: Thank you. 15:55

11 CHAIRMAN: So, that is it?

12 MR. MCGUINNESS: They are all the questions, Chairman,
13 that I want to ask.

14 CHAIRMAN: Well, I think you are, no, absolutely right.
15 We will leave till Thursday, Mr. McDowell. I mean, you 15:55
16 won't have much to ask, I assume, but you certainly
17 have to spend five or ten minutes on it, and that is
18 the reality.

19 MR. McDOWELL: I have to put my client's case to him.
20 On the Browne v. Dunn principle I must do that. 15:55

21 CHAIRMAN: No, I know that. Unless you want to just
22 put the case and we will all go home.

23 MR. McDOWELL: I can do it in five minutes.

24 CHAIRMAN: You might. And there's other questions that
25 need to be asked by the Garda Commissioner's team as 15:56
26 well, I mean, isn't that the plain reality?

27 MR. McDOWELL: It is probably more sensible to put it
28 off until next week.

29 CHAIRMAN: I think it is, Mr. Dignam?

1 MR. DIGNAM: I don't anticipate being very long. I
2 don't know what Mr. McDowell is going to put.
3 CHAIRMAN: I know, but even still. Look, we will leave
4 it until next Thursday.
5 MR. McDOWELL: Thank you, Chairman. 15:56
6 CHAIRMAN: So thank you, Mr. Barrett. I'm afraid you
7 have to come back. Ladies and gentlemen, and
8 Mr. McGuinness in particular, let's just try and go
9 through where we stand now in terms of the future, to
10 use that numinous word. 15:56
11 MR. MCGUINNESS: Chairman, we have prepared for
12 sittings next Thursday and Friday and we have, I think,
13 a number of witnesses lined up for each day and then we
14 are making further inquiries as a result of which it's
15 possible that more statements, very limited number, may 15:57
16 be generated and circulated. And I think the next
17 issue that will arise after Thursday and Friday,
18 whenever the Tribunal can next sit - and it's not quite
19 clear yet, Chairman, when that will be - will be an
20 opportunity for parties who have an interest in the 15:57
21 issue of journalistic privilege and the claims that
22 have been maintained by relevant witnesses to take the
23 opportunity, if they so wish, to make any submission in
24 relation to that.
25 CHAIRMAN: Yes, as to what I ought to do. 15:57
26 MR. MCGUINNESS: As to what they wish you to do or what
27 you ought to do and the basis upon which you ought to
28 do it. So I think the parties are live to that. And
29 I'm sure those that wish to prepare for that have

1 prepared for that.

2 CHAIRMAN: Yes. But that doesn't need to be very long.
3 I mean, in the opening statement which you made,
4 Mr. McGuinness, the relevant principles are set out and
5 we all know what the most recent decision of the 15:58
6 European Court of Human Rights is, so it doesn't need
7 to be long. And I have indicated the points. Is it
8 possible to take that on Thursday or Friday?

9 MR. MCGUINNESS: No, Chairman. There won't be time and
10 we have told -- 15:58

11 CHAIRMAN: I think we finished with journalists now,
12 have we? Apart from the fact that there's some fact
13 checking to be done in relation to some and that I
14 understand is actively being done at the moment.

15 MR. MCGUINNESS: No, Chairman, we have assembled our 15:58
16 list of witnesses for Thursday and Friday --

17 CHAIRMAN: Yes.

18 MR. MCGUINNESS: -- and it won't be possible to squeeze
19 that in. And we have effectively very clearly
20 represented to parties that that won't be dealt with 15:58
21 next Thursday and Friday.

22 CHAIRMAN: well, we could represent that it could be
23 done on Thursday. I mean, are there going to be more
24 journalists?

25 MR. MCGUINNESS: I'm just, Chairman, informing you of 15:58
26 the current position.

27 CHAIRMAN: I know you are, Mr. McGuinness, and I am
28 always grateful for that. But, look, I have
29 difficulties of my own, which is that I have a full

1 schedule from now on and that is a problem.

2 MR. McGUI NNESS: well, I am sure --

3 CHAIRMAN: You know, it really is a problem.

4 MR. McGUI NNESS: -- we will be able to work that --

5 CHAIRMAN: I'm not going to -- if necessary let's sit 15:59
6 in August. If that is what people want, let's do it.
7 Other than that, I think it's a question of squeezing
8 things in when we can and people being concise.
9 Because believe me, I will sit in August.

10 MR. McGUI NNESS: Chairman, I think people do understand 15:59
11 all of the constraints and whatever number of extra
12 sitting days are needed beyond next Friday, I think, I
13 am confident we will be able to fit them in between now
14 and the end of July without any difficulty.

15 CHAIRMAN: Yes. I appreciate that, Mr. McGuinness. 15:59
16 And look, the point of this dialogue is that everybody
17 knows where we stand. I have to dispose of the issue
18 of journalists privilege before I do anything else.
19 That is it. People have to make their mind up as to
20 whether they have a submission to make to me. And I 16:00
21 think that is appropriate when we get to the point
22 where we say well, there are no more journalists, that
23 issue isn't going to arise again. Now I don't need any
24 lengthy written submissions on that, I don't need any
25 lengthy oral submissions, but I would very much 16:00
26 appreciate, Mr. McGuinness, if you and Mr. Marrinan and
27 Ms. Leader would provide me with the kind of guidance
28 that is provided to a trial judge in a criminal trial.
29 In other words, to try and keep me right as to the

1 relevant principles. That would be immensely helpful
2 to me.

3 MR. MCGUINNESS: Yes, Chairman, of course.

4 CHAIRMAN: Then as I understand it, the week after
5 next, it may be that there are three days where we can 16:00
6 sit here, but if it was to facilitate trying to draw
7 this to a close it may be that we can move to the Four
8 Courts, and I'm making inquiries in that regard.
9 Unfortunately I'm away with the Supreme Court Monday
10 and Tuesday, I'm sitting on Wednesday, and then 16:00
11 basically a full schedule is then kicking off. So what
12 do you think is the most helpful thing to do? Again
13 it's better we have this dialogue now because parties
14 need to know.

15 MR. MCGUINNESS: Yes. Well, obviously you, Chairman, 16:01
16 will be very anxious to obtain all of the remaining
17 evidence of relevance from any witnesses that we can --

18 CHAIRMAN: Yes.

19 MR. MCGUINNESS: -- we can procure and we are trying to
20 procure some other ones. I'm not going to discuss that 16:01
21 in any public way.

22 CHAIRMAN: I know.

23 MR. MCGUINNESS: So it has to run to its natural and
24 proper conclusion in that regard.

25 CHAIRMAN: All right. Well, I don't think anyone 16:01
26 should book any holidays for August then on that basis
27 so. We will see how it goes.

28 THE TRIBUNAL THEN ADJOURNED UNTIL THURSDAY, 21ST JUNE
29 2018 AT 10:00AM

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