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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON THURSDAY, 21ST JUNE 2018 - DAY 94

94

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 THURSDAY, 21ST JUNE
2 2018:

3
4 MR. MCGUINNESS: Chairman, you may recall on Friday it
5 hadn't proved possible to finish Mr. Barrett's 10:03
6 evidence, I had concluded my direct examination of him,
7 and he's now being recalled for the purpose of
8 cross-examination. And just to remind my colleagues,
9 his statement is to be found in Volume 24, at page
10 6395. Mr. Barrett, please. 10:03

11
12 MR. JOHN BARRETT WAS CROSS-EXAMINED BY MR. McDOWELL:

13 1 Q. MR. McDOWELL: Mr. Barrett, Michael McDowell is my name
14 and I am one of the counsel appearing for Sergeant
15 McCabe. I want to ask you some questions about a 10:04
16 meeting you had in the McCabes' home in May of 2016.

17 A. Yes.

18 2 Q. And I want to put to you Sergeant McCabe's account of a
19 particular aspect of the conversation that took place
20 that day. And that is that, in the course of the 10:04
21 discussion about why Sergeant McCabe was off work, his
22 reaction to the broadcasts of Mr. Mooney and
23 Mr. Reynolds was discussed, and that he was saying what
24 an effect they had had on him and that you said to him
25 and to -- to him and to his wife that the briefing 10:04
26 given to RTÉ and to Mr. Mooney would have come from the
27 front block or block 1, referring to the Commissioner's
28 office?

29 A. No, I didn't. I have no recollection of ever saying

1 that. My recollection of the meeting is recalled, I
2 think, in a lengthy minute which I wrote that evening.

3 3 Q. Yes.

4 A. And the focus of the meeting was very much around the
5 revelations that had been made public by Deputy 10:05
6 McGuinness.

7 4 Q. What I am putting to you is, I mean, I think that you
8 were a senior member of the Garda organisation,
9 although a civilian, I think you were at assistant
10 commissioner rank, is that right? 10:05

11 A. Equivalent, yes.

12 5 Q. And his clear recollection is that you stated to him
13 that the briefing for these publications and broadcasts
14 came from the front block or block 1 and that you were
15 referring to the Commissioner's office when you said 10:06
16 that?

17 A. No, that is not correct, sir. It's not recounted in
18 the minute that I took of the meeting, it's not
19 recounted in the statement that I gave to the Tribunal,
20 and it's not in my recollection. 10:06

21 6 Q. Yeah. Well, the point is, I mean, I note that you've
22 said and I mean, I take your point that it's not in
23 your minute, but this was a person of assistant
24 commissioner rank, of assistant commissioner rank,
25 indicating to Sergeant McCabe that the broadcasts about 10:06
26 which he was complaining had emanated from the
27 Commissioner's office, so I'm suggesting to that you
28 that it wouldn't have been something that you would
29 have minuted if you had said something like that to

1 him. I mean, why would you have minuted in a record of
2 the meeting, which presumably you might want to show to
3 somebody else, why would you minute an accusation that
4 the Commissioner's office was responsible for these
5 broadcasts? 10:07

6 A. The minute is full and complete. The reference to the
7 minute being full and complete is evidence to the
8 second minute of the August meeting. And the August
9 meeting was where I asked very deliberately both
10 Sergeant McCabe, his wife, Lorraine, and myself to 10:07
11 initial the document as being full and complete.

12 7 Q. Well, I'm talking about -- I'm suggesting to you that
13 it would have been very strange indeed had you minuted
14 your own accusation against the Commissioner in a
15 minute which might or might not come to her attention 10:07
16 at a later stage?

17 A. All the documents that I created were to come to the
18 Commissioner's attention, only on the basis of approval
19 from Sergeant McCabe and his wife, if she was involved
20 in the meetings. 10:08

21 8 Q. Yes, indeed.

22 A. And that was the protocol we had established and that
23 was very clearly the situation. But if you read the
24 minutes, Mr. McDowell, you will see that if there was
25 criticism, and there was on other occasions, of other 10:08
26 people not party to the meeting it was faithfully
27 recorded.

28 9 Q. Yes. But the point I am making is that it is -- and I
29 am just making this point to you, that it is

1 unreasonable to make the point that an accusation of
2 this kind would, if it had been made, be recorded in a
3 minute which might be shown to the Commissioner
4 herself, that is the point I'm making to you?

5 A. I fundamentally disagree with that and the record will 10:08
6 show there is criticism of the Commissioner in the
7 various documents as it was appropriately and
8 faithfully recorded.

9 10 Q. And I'm also putting to you, Mr. Barrett, that the
10 reference to block 1 or the front block was language 10:09
11 which Sergeant McCabe would not have used because he
12 did not know that terminology for the Commissioner's
13 office?

14 A. I have never used the term block 1. Front block is
15 what I used. I mean, in the documents that I have been 10:09
16 shown by the investigation team, I think it uses block
17 1. I refer to it and my office refers to it as the
18 front block.

19 11 Q. Well, you appreciate that I have to put these points to
20 you. 10:09

21 A. Of course.

22 12 Q. And I'm suggesting to you that, contrary to your
23 recollection and regardless of what was or was not
24 minuted, that Sergeant McCabe clearly understood from
25 what you were saying that the broadcasts about which he 10:09
26 was making complaint had been instigated and inspired
27 by the Commissioner's office?

28 A. I understand that's the position you are putting to me.
29 I am saying I have no recollection of that. It is not

1 documented in any of the documents that I have created.
2 And truthfully, it doesn't accord with any of my memory
3 of the meeting, which was very focused, truthfully on
4 my shock at what was revealed to me on foot of the
5 inquiries I made on foot of Mr. McGuinness' 10:10
6 revelations.

7 MR. McDOWELL: Thank you, Mr. Barrett.
8

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

10 13 Q. MR. DIGNAM: Mr. Barrett, I just have a few very brief 10:10
11 questions for you, my name is Conor Dignam, I
12 cross-examined you in an earlier module. I appear for
13 An Garda Síochána and in particular for former
14 Commissioner Callinan and former Commissioner
15 O'Sullivan. I just have a couple of questions for you 10:10
16 and I will be very brief. I think in relation to your
17 position in respect of the allegation that you told
18 Sergeant McCabe that briefing material had emanated
19 from block 1, in other words from the Commissioner's
20 office, I think you said on day 93, the last day you 10:11
21 were here, day 93 at page 211, line 10 -- sorry, line
22 5, an excerpt from Sergeant McCabe's statement was read
23 to you and he confirmed in that excerpt that he was
24 referring to you as the impeccable authority who had
25 given him this authority, and he said that: 10:11

26
27 "He told me --"

28
29 Sergeant McCabe.

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-- and Lorraine that it would have come from block 1 at the front, Nóirín O'Sullivan's office, what is your evidence in relation to that?"

10:11

And your answer on line 10 was:

"A. I didn't make such a remark is the clarity of it."

Is that your position?

10:11

A. That is my position.

14 Q. That remains your position. And I think if I'm right, and correct in my understanding, your evidence is that, A, you didn't make the remark and that if you had made it, it would be reflected in the extremely detailed notes that you have prepared, and memos that you have prepared of several meetings that you had with Sergeant McCabe, isn't that right?

10:12

A. That's correct.

15 Q. Yes. I think I may have described you previously as an assiduous notetaker; your memos of meetings are extremely detailed, they contain -- well, they contain sensitive detail of the surrounding circumstances of the meeting and indeed what was said at meetings by the various parties in attendance, isn't that right?

10:12

A. I believe you said that.

16 Q. Yes. And I think the Tribunal has your note, they can examine the level of detail. Do I take it, Mr. Barrett, that you didn't -- your position is that

1 you didn't say that at any stage to Sergeant McCabe?

2 A. I did not say that, to my recollection, at any stage to
3 Sergeant McCabe.

4 17 Q. Yes. And I take it that that includes at a meeting
5 that you had with Sergeant McCabe in Mullingar on the 10:12
6 3rd October 2016, is that right?

7 A. I have, I have reviewed the minute I have taken of that
8 meeting and my notes make no reference.

9 18 Q. Yes. And in relation to that meeting, that was on the
10 3rd October, we now know that Sergeant McCabe met 10:13
11 Deputies Daly and Wallace and indeed Superintendent
12 Taylor later on that same day and into the evening,
13 were you aware that Sergeant McCabe was meeting those
14 various parties?

15 A. No, I didn't have any awareness of those. I think if 10:13
16 you read my note, the meeting in the 3rd October in
17 Mullingar is quite clear.

18 19 Q. Thank you. And did Sergeant McCabe, I take it from
19 that because it's not recorded in your minute, that
20 Sergeant McCabe didn't tell you at that stage that he 10:13
21 had made a protected disclosure?

22 A. I don't believe so. I think the minute makes no
23 reference whatsoever to that. I was primarily
24 concerned on the 3rd of October with matters that had
25 emerged in the media on a This Week programme which 10:13
26 made reference to me having broken protocol.

27 MR. DIGNAM: Yes. Thank you, Mr. Barrett.

28

29 MR. MCGILLICUDDY: Chairman, unless there is any other

1 parties that wish, I just want to deal with a
2 chronology of matters. It will be quite brief.

3
4 THE WITNESS WAS EXAMINED BY MR. MCGILLICUDDY:

5 20 Q. MR. MCGILLICUDDY: Mr. Barrett, I think from the 10:14
6 chronology of the documentation which you have provided
7 which starts at page 6436 in the papers, you held a
8 total of 12 meetings with Sergeant McCabe, isn't that
9 correct?

10 A. That's correct. 10:14

11 21 Q. And just for the purposes of assisting the Chairman so
12 that there is a full chronology of those, the first of
13 those meetings was on the 25th February 2015, and
14 that's at page 3019 of the Tribunal papers. The second
15 meeting was on the 24th March 2015. The third meeting 10:14
16 was on the 20th July 2015. Now, the next set of
17 meetings then occurred in 2016, so the next meeting
18 occurred on 31st May 2016, and that is the meeting
19 which is minuted at page 6411 of the Tribunal's papers.
20 And the copy of that note which was signed by Sergeant 10:15
21 McCabe is at page 6425 of the Tribunal papers. And I
22 think, Mr. Barrett, from your evidence and from your
23 statement, the signing of that took place on the 23rd
24 August 2015, is that correct?

25 A. That's correct. 10:15

26 22 Q. And if I can just briefly ask for page, I think it's at
27 page 1167 of the papers -- sorry, it's on that as well.
28 But just the clearest copy of that. And just in
29 relation to that, the second and the third paragraphs

1 on that page where it's outlined:

2
3 "Before reading the typescript I explained clearly that
4 I dutifully reported the substance of the matters
5 relayed to me at that meeting on May 31st to both 10:16
6 Superintendent John Keegan and Deputy commissioner
7 Dónall Ó Cualáin in separate oral briefings."

8
9 And that's what you outlined in that minute, isn't that
10 correct, that paragraph? 10:16

11 A. That's correct.

12 23 Q. And then in the following paragraph it's outlined:

13
14 "I read my minute both to Maurice and Lorraine together
15 as I sat at the kitchen table, I read it from start to 10:16
16 finish slowly and without interruption. At the
17 conclusion there was silence and Maurice and Lorraine
18 looked at each other for a long moment, Maurice spoke
19 first and he said the minute was excellent and it had
20 captured all that we had discussed and the order in 10:16
21 which we had discussed it. Lorraine it was a powerful
22 reminder of what March, April and May were like for the
23 entire family and I'd captured the discussion very
24 well."

25 10:16
26 And I think at that juncture it's outlined that there
27 was two references in the document that they wished to
28 have amended and you agreed to that and you noted that
29 in your minute, is that correct?

1 A. That's correct.

2 24 Q. The memorandum for the 23rd of August meeting, that's
3 found at page 6417 of the Tribunal papers, and you
4 returned to the McCabe household then on the 25th
5 August 2016, where that was noted and signed -- or 10:17
6 initialled by Mr. McCabe, is that correct?

7 A. That's correct.

8 25 Q. The next meetings then occurred on the 3rd October
9 2016, and that's been referenced and that is at page
10 7709 of the Tribunal papers, and that was the meeting, 10:17
11 it took place on that date and you then met again with
12 Maurice McCabe on the 5th October 2016, where further
13 details which were incorporated in that minute are
14 contained, is that correct?

15 A. That's correct. 10:18

16 26 Q. And I think during the course of that meeting, at page
17 7711 on the second paragraph, I think there is a
18 reference there on the second paragraph that the
19 sergeant reminded you:
20 10:18

21 "...of the view expressed by him and his wife in
22 previous discussions with respect to conspiracy at the
23 O'Higgins Commission and his counsel threatened legal
24 proceedings for material between the transcripts of the
25 Commission's proceedings and the draft report 10:18
26 circulated to the parties."

27

28 Is that correct?

29 A. That's correct.

1 27 Q. And they also at that stage made a request to you for
2 copies of the minutes of the meetings of the 31st May
3 and the 23rd August, is that correct?
4 A. That's correct.

5 28 Q. There was a further meeting which took place then with 10:18
6 Sergeant McCabe on the 8th December 2016, and then in
7 2017 there was a meeting held with Sergeant McCabe on
8 the 7th February 2017 and that is referenced at page
9 6441 of the Tribunal papers. And there was a review of
10 that -- there was of a further meeting held with 10:19
11 Sergeant McCabe on the 9th February 2017, to review
12 that minute of the meeting of the 7th February, and the
13 last meeting then with Sergeant McCabe was on the 9th
14 March 2017, is that correct?
15 A. That's correct. 10:19

16 29 Q. And I think you have set them out in the chronology in
17 that regard. And I just for final reference, I think
18 the October meetings, one of those meetings, I think
19 the meeting of the 5th October 2016, that occurred at
20 the McCabe household, is that correct? 10:19
21 A. That's correct.

22 30 Q. And I think in relation to the practice of minuting or
23 initialling meetings, at page 6433 of your chronology,
24 I think in the third or fourth reference down, there is
25 reference there to the 10th March 2015. And yes, just 10:20
26 there, I think you have outlined in that that you had
27 provided a minute of an earlier meeting to your
28 superiors in An Garda Síochána but you then noted there
29 it became an agreed practice later for the minutes to

1 be initialled by Sergeant McCabe as an agreed procedure
2 that you had with Sergeant McCabe, is that correct?
3 A. Yeah, it's the case that the most major revelations
4 were all minuted and signed or initialled, some of the
5 subsequent meetings which were of less importance 10:21
6 aren't put through that process. I referred to the --
7 in the meeting of the -- in minute of the meeting of
8 the 3rd and 5th October I make it clear that there was
9 a protocol where I was, with the approval of Sergeant
10 McCabe, providing the Commissioner with visibility on 10:21
11 the minutes of the meetings.
12 MR. MCGILLICUDDY: Thank you, Mr. Barrett.
13
14 THE WITNESS WAS RE-EXAMINED BY MR. MCGUINNESS:
15 31 Q. MR. MCGUINNESS: Mr. Barrett, just one final matter. 10:21
16 Mr. McDowell included in his questions to you a
17 reference to broadcasts by Mr. Mooney. Now, did
18 Sergeant McCabe ever complain to you of a broadcast
19 made by Mr. Mooney?
20 A. No, not specifically. 10:21
21 32 Q. Or Mr. Boucher-Hayes?
22 A. No.
23 33 Q. All right. Thank you.
24 A. It was not part of the discussion.
25 10:21
26 THE WITNESS THEN WITHDREW
27
28 MR. MARRINAN: Niamh O'Connor, please. Her statement
29 is to be found in Volume 28 at page 7761, sir.

1 MR. MCGILLICUDDY: Chairman, just before Ms. O'Connor
2 is called, on behalf of Mr. Barrett and my solicitor we
3 are going to withdraw at this stage and I hope that
4 that is appropriate and thank you, Chairman.

5 10:22

6 MS. NIAMH O'CONNOR, HAVING BEEN SWORN, WAS DIRECTLY
7 EXAMINED BY MR. MARRINAN:

8 34 Q. MR. MARRINAN: Ms. O'Connor, could you just advise the
9 Chairman what role you held in December 2013, in RTÉ.

10 A. I was commissioning editor of factual documentaries.

10:22

11 35 Q. And I think in that capacity, you were involved on the
12 17th December 2013 in greeting the Garda Commissioner
13 at about 6:00pm when he was to arrive to give -- to
14 appear on the Crimecall programme, is that right?

15 A. That's right.

10:23

16 36 Q. Now, you had already earlier on heard of a dispute that
17 had arisen in relation to the content of that
18 programme, isn't that right?

19 A. That's right.

20 37 Q. And we don't need to go into that, but it involved
21 Philip Boucher-Hayes and other staff in RTÉ engaged in
22 conversation with representatives of An Garda Síochána,
23 including people from the Press Office, is that right?

24 A. That's right.

10:23

25 38 Q. And it concerned questions that it was proposed would
26 be asked of the Garda Commissioner during the course of
27 an interview with him?

28 A. That's right.

10:23

29 39 Q. So that matter remained unresolved, and in your

1 statement you say that at 6:00pm you went to the RTÉ
2 studios and you spoke to Philip Boucher-Hayes, is that
3 right?

4 A. Yes, that's right.

5 40 Q. And what did you say to Philip Boucher-Hayes at that 10:24
6 stage?

7 A. It was in the context of the production company and who
8 managed the day-to-day programme, and members of the
9 Garda Press Office were in the greenroom still
10 discussing the questions that were to be asked of the 10:24
11 Commissioner, and I suggested at that stage to Philip
12 that when the Commissioner arrived, it would be -- that
13 I suggested that he should talk to him privately. My
14 experience being that sometimes handlers around people
15 or press office make a bigger deal of things than the 10:24
16 actual interviewee, and I thought if Philip spoke to
17 him privately he could give him the context of, you
18 know, the questions that needed to be asked in the
19 interview.

20 41 Q. So when the Garda Commissioner arrived, you greeted 10:24
21 him, is that right?

22 A. Yeah.

23 42 Q. And you had a brief general conversation with him, and
24 he made his way to the studio?

25 A. Yeah. 10:24

26 43 Q. And then at that stage Philip Boucher-Hayes asked for a
27 quick word with him privately, and there doesn't seem
28 to be any dispute as between Garda Commissioner and
29 Philip Boucher-Hayes in that regard. I think you

1 observed them walk to the end of a corridor, and you
2 stayed speaking with production staff and some members
3 of the Garda Press Office?

4 A. That's right.

5 44 Q. So at that stage you were out of earshot of 10:25
6 Commissioner Callinan and Philip Boucher-Hayes, is that
7 right?

8 A. Yes.

9 45 Q. I think after a short few minutes, the Commissioner 10:25
10 indicated that he was ready to go to the studio, and it
11 was indicated to you by Mr. Boucher-Hayes that he would
12 reference some of the issues that faced the Gardaí that
13 year during the course of the interview, is that right?

14 A. That's right.

15 46 Q. I think you followed the Commissioner into the studio 10:25
16 and you stayed there for the duration of the interview.
17 Now, do you recall then in late January or early
18 February meeting with Philip Boucher-Hayes?

19 A. Yes.

20 47 Q. Was that the first occasion on which you met him since 10:26
21 the --

22 A. Yes.

23 48 Q. -- the dispute on the 17th December 2013?

24 A. Yes, yeah.

25 49 Q. And will you just tell us what you recall of the 10:26
26 conversation you had with him?

27 A. So it was the first time I had met him since the
28 programme and during the conversation Philip had said
29 that during the conversation between him and

1 Commissioner Callinan that he had made derogatory
2 remarks regarding Sergeant McCabe in terms that of him
3 having issues, psychological and psychiatric issues.

4 50 Q. Where did this conversation take place, do you recall?
5 A. I don't remember. I would be -- it may have been on 10:26
6 the production day of Crimecall, I don't work in the
7 news cycle, I work in documentaries, so I may not see
8 Philip for months or I may see him on the day of the
9 Crimecall production, so it may have happened in the
10 oasis or somewhere in stage 7 where the programme is 10:26
11 produced.

12 51 Q. And how did this issue arise, do you have any
13 recollection of that?
14 A. I believe it was because we wouldn't have met each
15 other since the -- since the programme that went out on 10:27
16 17th, so it was in that context that we would have
17 spoken about it.

18 52 Q. And you say "in that context", but what was the context
19 in which there was a reference to this issue of
20 psychological and psychiatric issues? Was 10:27
21 Mr. Boucher-Hayes expressing this with some degree of
22 concern that this had been said to him by the Garda
23 Commissioner?
24 A. Well, he had -- he had simply said that did I -- that
25 during -- because we were speaking about the programme 10:27
26 and that he had said to me that while he was speaking
27 to Commissioner Callinan, that he had said these
28 things.

29 MR. MARRINAN: Yes. Okay. Thank you. Would you

1 answer any questions, please.

2 MR. McDOWELL: Chairman, I have no question for this
3 witness, but I do want at the earliest opportunity to
4 just tell the Tribunal the reference to Mr. Mooney in
5 my question was a mistake on my part and my client
6 tells me that that was not discussed.

10:28

7

8 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL

9 O'HIGGINS:

10 53 Q. MR. MÍCHEÁL O'HIGGINS: Ms. O'Connor, Mr. Mícheál
11 O'Higgins on behalf of An Garda Síochána, and in
12 relation to your evidence on behalf of former
13 Commissioner Callinan. Can I ask you, am I correct in
14 my understanding that subsequent to Philip
15 Boucher-Hayes giving evidence before the Tribunal
16 recently he approached you and discussed an aspect of
17 his evidence, is that correct?

10:28

18 A. He told me he was coming to the Tribunal with his
19 evidence.

20 54 Q. That was in advance of the evidence, was it? It was in
21 advance of him coming to give the evidence?

10:28

22 A. Yeah -- well, no, as in -- I mean, after the
23 conversation I would have known from last year that he
24 was -- that he had given his evidence to the Tribunal.

25 55 Q. Right. But I am talking now about when he actually
26 appeared physically before the Tribunal --

10:29

27 A. Yes.

28 56 Q. -- very recently, last week or two weeks ago now.

29 A. Yeah, yeah.

1 57 Q. Did you speak to him prior to him giving evidence as to
2 what he was going to say or did you --
3 A. No.
4 58 Q. -- have a conversation with him after he gave evidence?
5 A. I hadn't -- I mean, I hadn't spoken to him prior to it. 10:29
6 I knew he was coming in, I knew his evidence but, no.
7 59 Q. But my understanding of matters, from the materials, is
8 that Philip Boucher-Hayes made contact with you and
9 others whom he had mentioned in his evidence --
10 A. Yeah. 10:29
11 60 Q. -- as being persons he maintained he had spoken to --
12 A. Yeah.
13 61 Q. -- about the conversation with Commissioner Callinan at
14 the time of the Crimecall interview?
15 A. Yeah. 10:29
16 62 Q. So is that correct; did he approach you --
17 A. Yes.
18 63 Q. -- and discuss with you what he had said?
19 A. What he was going to say before coming here; well, I
20 would have known previous to that -- 10:30
21 64 Q. No, no.
22 A. I am sorry, I don't understand your question.
23 65 Q. It's probably my question isn't clear enough.
24 A. Okay.
25 66 Q. After Philip Boucher-Hayes gave evidence recently -- 10:30
26 A. Yeah.
27 67 Q. -- on day 84?
28 A. I spoke to him afterwards.
29 68 Q. You spoke to him subsequent to that?

1 A. Yes.

2 69 Q. And when was that?

3 A. I don't know exactly.

4 70 Q. All right. well, this isn't intended to be a catch you
5 out situation. 10:30

6 A. No, no.

7 71 Q. Just recently, he spoke to you about what he had said,
8 did he?

9 A. Yes.

10 72 Q. And he indicated -- and what was his purpose in 10:30
11 discussing that with you?

12 A. Well, because within his evidence he was saying that
13 who he had discussed what Commissioner Callinan had
14 said to him -- with whom he had discussed that and I
15 was one of those people. 10:30

16 73 Q. Yes. And did he relay to you what he had said?

17 A. Here?

18 74 Q. In evidence to the Tribunal, did he tell you what he
19 had said before the Tribunal by way of oral evidence
20 before the Tribunal? 10:31

21 A. Yes.

22 75 Q. Right. And did you happen to get an opportunity to --
23 and this isn't in any sense imputing to you any
24 wrongdoing or anything of that sort, but did you get an
25 opportunity to see his evidence on transcript? 10:31

26 A. Yes, I read it afterwards.

27 76 Q. All right. And did he relay to you his belief that he
28 had spoken to you at the time, sometime subsequent to
29 the Crimecall, reasonably approximate to the Crimecall

1 interview? Did he remind you of that?

2 A. Well, I had -- I mean, he had said it to me after the
3 Crimecall, so I didn't need to be reminded. That was a
4 conversation that happened between us.

5 77 Q. Right. So he didn't remind you of that, he didn't 10:31
6 mention that, or did he?

7 A. No, he said he was coming with his evidence and as part
8 of his evidence he was saying with whom he had spoken
9 to after the Crimecall and I was one of those people.

10 78 Q. Just to be clear now, is that before he gave evidence 10:32
11 or after he gave evidence?

12 A. Well, I mean, it would have been -- I would have known
13 in 2017 that he was coming to give evidence and then I
14 would have spoken to him after he gave evidence a
15 couple of weeks ago. 10:32

16 79 Q. Right. Just taking those things sequentially. How did
17 you know he was coming to give evidence before the
18 Tribunal, how did you know that?

19 A. Because he had told me.

20 80 Q. Right. 10:32

21 A. Yeah.

22 81 Q. And when did he do that?

23 A. A number of weeks before he came here.

24 82 Q. Right. He told you that he was going to give evidence
25 and did he mention to you that I am going to mention 10:32
26 you as a person to whom I spoke?

27 A. No.

28 83 Q. So, can we take it from that you were unaware prior
29 to -- well, when did you first learn that you had been

1 identified or nominated as a person --

2 A. After he had given evidence a couple of weeks ago.

3 84 Q. Right. And you learned that from reading the
4 transcript, was it?

5 A. No, I was talking to one of my colleagues who was here 10:33
6 with Philip and then I spoke to Philip afterwards. I
7 am not actually living in the country at the moment, I
8 am living in Munich and we had spoken by phone after
9 that.

10 85 Q. Right. So your conversation with Philip subsequent to 10:33
11 his giving evidence recently was by telephone?

12 A. Yeah.

13 86 Q. Where he -- and the subject came up of his having
14 nominated you as a person to whom he had mentioned the
15 conversation with Commissioner Callinan at the time of 10:33
16 the -- around the time of the Crimecall interview?

17 A. Yes.

18 87 Q. Right. And what did he say in that conversation to you
19 on the phone?

20 A. He said that they may -- the Tribunal may look for a 10:34
21 statement from me and I said that's fine.

22 88 Q. Right.

23 A. It was brief.

24 89 Q. And he was giving you the heads-up on that?

25 A. Yeah, he said that during -- in his evidence, that he 10:34
26 had been asked who he had spoken to about this
27 information, about that conversation, and he had said
28 that I was one of the people he had spoken to.

29 90 Q. Right.

1 A. And that on the back of that, that they may come to me
2 for a statement.

3 91 Q. Yes. In your statement, the extent of what you
4 indicate you recall Philip saying to you was that
5 Philip had said the Commissioner had made derogatory 10:35
6 remarks about Sergeant McCabe?

7 A. Yeah.

8 92 Q. And there was a reference also to his having many
9 issues, including psychological and psychiatric issues?

10 A. Mm-hmm. 10:35

11 93 Q. And are you clear that that was really the full extent
12 of what you believe Philip -- you recall Philip saying
13 to you?

14 A. Yeah.

15 94 Q. No more than that? 10:35

16 A. That's what I remember of the conversation.

17 95 Q. Mr. Marrinan asked a question, and if you don't mind, I
18 might just press you on this because, well bluntly, it
19 doesn't seem to me at any rate that you dealt with the
20 question. You were asked: when Philip Boucher-Hayes 10:35
21 had his conversation with you, which you are dating at
22 late January/early February '14, Mr. Marrinan asked you
23 did he relay these matters in a position where he was
24 indicating he had concern about it, and I just noted
25 you didn't answer that question. So would you mind, 10:36
26 I'm asking the question again: Did he relay those
27 matters with concern?

28 A. Well, I don't know if it was with concern. He relayed
29 those matters to me in terms of this was the

1 conversation that he had had with Commissioner
2 Callinan.

3 96 Q. All right. So can we take it, therefore, that you
4 didn't get any sense of his being alarmed or disturbed?
5 A. Well, it was alarming that a Commissioner would say 10:36
6 these things, so he certainly was surprised that a
7 Commissioner would say this.

8 97 Q. But yet you picked up no sense of his being concerned?
9 A. Concerned, surprised, this was the story that he had
10 relayed to me in terms of the conversation he had. 10:37

11 98 Q. Well, it's relatively straightforward: Did you or did
12 you not pick up a sense that he was concerned?
13 A. Well, I would -- I believe he was concerned for the
14 mere fact that he was telling me this story.

15 99 Q. And notwithstanding you now indicating there was -- you 10:37
16 feel there was concern on his part, there was no
17 probing of the words which he attributed to
18 Commissioner Callinan, was there? No exchange between
19 you and he as to what was said further?
20 A. No. 10:37

21 100 Q. As to what it might have meant?
22 A. No, not from my recollection. He simply had relayed to
23 me the conversation he had had with Commissioner
24 Callinan.

25 101 Q. And no discussion of the context in which these words 10:37
26 are said or what they may have meant?
27 A. No.

28 102 Q. Does that strike you now as a bit odd? If this is now
29 being put forward as a matter about which Philip was

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MR. MARRINAN: Tom Donnelly, please. Mr. Donnelly's statement is at page 7762 of the materials.

MR. TOM DONNELLY, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED BY MR. MARRINAN:

10:39

106 Q. MR. MARRINAN: I think, Mr. Donnelly, that in December of 2013 you were the series producer of Drive Time, is that right?

A. That's correct.

10:40

107 Q. And in late December, you had a conversation with Philip Boucher-Hayes, is that right?

A. That is correct.

108 Q. Now, in your statement to the Tribunal you place this conversation that you had with him either on the 19th, 20th or 30th December, is that right?

10:40

A. Yes, that's right.

109 Q. And you say that it was during a short seasonal Drive Time programme which you were producing?

A. That's right.

10:40

110 Q. You were aware of the disagreement that arose on the 17th December 2013, is that right?

A. Yes.

111 Q. And you, in fact, had offered some advice to Philip Boucher-Hayes in relation to his handling of the matter?

10:40

A. Yes. Philip explained to me the situation that had arisen earlier in the day when presented with the set of questions or the conditions under which the

1 Commissioner would be interviewed. He told me that he
2 would have difficulty asking these questions without
3 making reference to some of the difficulties as he saw
4 it An Garda Síochána had had in the previous year. I
5 think he was speaking to me in a capacity, I work with 10:41
6 him on an editorial basis from day-to-day and I think
7 he was asking would you be happy to ask these questions
8 in these circumstances? And I said that I agreed with
9 him, that I would expect that certain issues might be
10 raised during that interview. 10:41

11 112 Q. Now, I don't think that you were participating directly
12 in any dealings with the Garda Commissioner that
13 evening, is that right?

14 A. That's right.

15 113 Q. And the next that you became aware of any issue was 10:41
16 during the course of a conversation that you had either
17 on the 19th, 20th or 30th December with
18 Mr. Boucher-Hayes?

19 A. Yes, that's correct.

20 114 Q. Will you just tell us, where did this conversation take 10:41
21 place?

22 A. If, as I believe it did, it took place on the 30th
23 December. During the Christmas period staffing is
24 lower, so essentially Philip and I were working
25 together alone. A significant proportion of the 10:42
26 programme was on tape. So the conversation will either
27 have taken place in the Drive Time office, which is on
28 the ground floor of the RTÉ Radio centre, or in the
29 studio downstairs during the playing out of extended

1 prerecorded sequences.

2 115 Q. And will you tell us about the conversation that you
3 had with him?

4 A. Primarily my recollection is that the conversation was
5 about the events of the day and the editorial matter 10:42
6 which I think Philip outlined in his testimony here. I
7 was interested in how it was resolved. I didn't see
8 the programme which was broadcast on the 17th, so I was
9 asking how did it go and what happened. And in the
10 course of that conversation, Philip then told me about 10:43
11 his conversation with Mr. Callinan in the TV building
12 during that day.

13 116 Q. And did he tell you what was said by the Garda
14 Commissioner?

15 A. Yes. He recounted the conversation, which I think I 10:43
16 outline what I recall of it in my statement. I think
17 we were still primarily concerned in the conversation
18 about the editorial aspects of the interview on
19 Crimecall that day but he then said something along the
20 lines of, and you won't believe, or you know, you might 10:43
21 not believe this but, and then proceeded to tell me
22 about the conversation he had had with Commissioner
23 Callinan and the references to Sergeant McCabe.

24 117 Q. And do you recall what it was that he said?

25 A. So he said that the Commissioner had told him that 10:43
26 Sergeant McCabe had problems and he made -- and this is
27 my recollection, Philip told me that Mr. Callinan had
28 made references or allusions to, and this is the word
29 sticks in my head, the worst kind of things or the

1 worst sort of things. Furthermore, the Commissioner
2 said to Philip, as I recall Philip telling me, that if
3 he wanted any more information he could talk to a
4 colleague. I recall Philip saying to me that he sort
5 of gestured or pointed down the corridor to a colleague 10:44
6 from the Garda Press Office, if he wanted any more
7 details on whatever it was that Mr. Callinan was
8 referring to.

9 118 Q. Who did you believe the colleague was?
10 A. I believe that to be Superintendent David Taylor from 10:44
11 the Garda Press Office.

12 119 Q. Well, is that something that Mr. Boucher-Hayes said to
13 you or is it just something that you deduced from the
14 circumstances in which he was said?

15 A. I do not recollect specifically Philip naming 10:44
16 Superintendent Taylor on that day in that conversation.

17 120 Q. And was this being said to you in circumstances where
18 Mr. Boucher-Hayes appeared concerned that the Garda
19 Commissioner had said this to him?

20 A. I didn't perceive that Philip was particularly 10:45
21 concerned. I certainly perceived that he was surprised
22 that this had been said to him, or surprised that it
23 had been said to him in the context on the day in the
24 context of the Crimecall programme and what they were
25 dealing with on the day. 10:45

26 121 Q. And in your statement, in your evidence that you say
27 that he said that Mr. Callinan described Sergeant
28 Maurice McCabe as having problems --

29 A. Yes.

1 122 Q. -- and alluded non-specifically to the worst kind or
2 worst sort of thing or things?
3 A. Yes.

4 123 Q. Do you recall Mr. Boucher-Hayes saying anything else
5 about the conversation or are those just the words that 10:45
6 stand out in your memory?
7 A. Those are the only things that I remember about his
8 recounting of that conversation at that time, yes.

9 124 Q. You then go on to recount, at page 7763 of the
10 material, later efforts made by Mr. Boucher-Hayes to 10:46
11 make contact with the former Garda Commissioner, Martin
12 Callinan, is that right?
13 A. That's correct, yes.

14 125 Q. And you place those efforts in early May of 2016,
15 around the time of the publication of the O'Higgins 10:46
16 Report, is that right?
17 A. That's correct, yes.

18 126 Q. Do you recall what it was that Mr. Boucher-Hayes wished
19 to contact Martin Callinan about?
20 A. My recollection is that it was a simple request for an 10:46
21 interview or a response.

22 127 Q. Yeah. And I think he asked you had you any direct
23 contact that you could give him, presumably a mobile
24 phone number or something like that?
25 A. Yes, I think specifically he asked me did I have a 10:47
26 telephone number or a mobile number for Martin
27 Callinan.

28 128 Q. Yes. I think that you didn't. And so, you were aware
29 of the fact that Mr. Boucher-Hayes made efforts to

1 contact Mr. Callinan via the Garda Press Office and the
2 Chief State solicitor's office, to whom you recall that
3 he wrote a letter --

4 A. Yes.

5 129 Q. -- is that right?

10:47

6 A. That's correct.

7 MR. MARRINAN: would you answer any questions, please.

8 MR. McDOWELL: No questions, Chairman.

9 MR. FERRY: No questions.

10

10:47

11 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL

12 O' HIGGINS:

13 130 Q. MR. MÍCHEÁL O' HIGGINS: Mr. Donnelly, Mícheál O'Higgins
14 for An Garda Síochána and former Commissioner Callinan.
15 You were present for the evidence of the last witness,
16 were you?

10:47

17 A. I was, yes.

18 131 Q. I asked the last witness the initial question,
19 subsequent to Philip Boucher-Hayes -- and I am going to
20 ask you the same question, subsequent to Philip
21 Boucher-Hayes giving evidence this month to the
22 Tribunal, he contacted you, isn't that right?

10:48

23 A. That's correct.

24 132 Q. And when did he contact you?

25 A. On the day that Philip appeared here at the Tribunal,
26 in the late afternoon, I had a missed call on my mobile
27 phone. I called Philip back and had a brief
28 conversation with him. And during that conversation,
29 Philip told me that my name had arisen in his evidence

10:48

1 to this Tribunal and that the Tribunal would probably
2 seek to contact me.

3 133 Q. Yes. And he presumably told you that he, in his
4 evidence, had identified you as a person to whom, on
5 his case, he had relayed the fact that he had a
6 conversation with Martin Callinan around the time of
7 the Crimecall interview at Christmas 2013?

10:48

8 A. He did not tell me that. I was already aware of that.

9 134 Q. All right. And do you mind me asking, how were you
10 aware of that?

10:49

11 A. Well, obviously as a colleague of Philip, I was
12 interested in his evidence and I had been following the
13 reports of this Tribunal on social media through the
14 afternoon and I was already aware that my name had been
15 mentioned.

10:49

16 135 Q. I see. And thank you for that. Did you get a chance
17 to review the transcript of Philip Boucher-Hayes'
18 evidence?

19 A. I looked at the transcript of the evidence, I think,
20 over that weekend, so in the days that followed, yes.

10:49

21 136 Q. Right. And you presumably would have paid particular
22 attention to the issue of the conversation which he
23 maintains and which you also maintain he had with you
24 around the time shortly -- subsequent to the Crimecall
25 interview, isn't that right?

10:50

26 A. Well, I read with interest his account of the
27 conversation. I don't think he gave any -- I don't
28 think he said anything in particular at this Tribunal
29 about his conversation with me other than to say that

1 he had told me about a conversation with Martin
2 Callinan.

3 137 Q. Yes. And you have confirmed to Mr. Marrinan that you
4 did not perceive Philip was concerned when he relayed
5 to you what he maintains Commissioner Callinan said, 10:50
6 isn't that right?

7 A. I think concerned would be a deduction on my part. I
8 cannot say whether Philip was concerned or not. But he
9 did think it significant enough to tell me about.

10 138 Q. Yes. 10:50

11 A. So I would place the weight on his decision to tell me
12 this.

13 139 Q. Yes. I'd understood you to have answered actually the
14 question, perhaps unlike the last witness, when
15 Mr. Marrinan asked it, and you having given an answer 10:51
16 you didn't perceive Philip was concerned but you did go
17 on to say that you felt he was indicating surprise?

18 A. Yes.

19 140 Q. Right.

20 A. By which I mean, for the sake of clarification or 10:51
21 clarity, that I think he was surprised that a senior
22 Garda figure would say something like this to him in
23 the forum in which it was said.

24 141 Q. Yes. Can I ask you about the context in which this
25 arose at all. I think you indicated to Mr. Marrinan 10:51
26 that the primary focus was on the events of the day,
27 that is to say the editorial matter?

28 A. Yes, that is correct.

29 142 Q. And it's your best estimate, isn't it, that your

1 conversation with Philip Boucher-Hayes that occurred
2 subsequent to the Crimecall interview in December '13,
3 occurred, you have said in your statement, "either the
4 19th, 20th or most likely the 30th December"?

5 A. Yes. 10:52

6 143 Q. So, taking the last date as your best, in fairness you
7 are doing your best to nominate the date --

8 A. Yes.

9 144 Q. -- working, proceeding on the assumption it was the
10 30th December, that's approximately two weeks after the 10:52
11 Crimecall interview?

12 A. That is correct.

13 145 Q. And it's the case, therefore, that two weeks after the
14 Crimecall interview, Philip Boucher-Hayes remains
15 exercised and primarily exercised about the editorial 10:52
16 matter, isn't that right?

17 A. That's -- that isn't necessarily how I would describe
18 it. The context in which the conversation took place
19 was a conversation of me and him sitting down looking
20 back on something that had happened. I was obviously 10:52
21 personally interested as somebody who was a programme
22 editor also working in current affairs, about how the
23 issue was resolved. We encounter this situation quite
24 regularly where, particularly senior public officials
25 will, or at least their handlers will present them as 10:53
26 only willing to address certain issues. This is a
27 matter of negotiation we have to go through on a
28 regular basis. I was interested in how that was
29 resolved.

1 146 Q. Right. Really what I am seeking to get to and you
2 might assist us with this, I am correct, amn't I, that
3 Philip Boucher-Hayes did not open his conversation with
4 you by referencing the remarks made by Commissioner
5 Callinan that he maintains were made? He opened it, 10:53
6 the conversation started with the conversation about
7 the editorial matter, that is correct, isn't it?
8 A. I cannot say at this remove how the conversation was
9 opened.
10 147 Q. But I'd understood you to indicate in evidence only a 10:53
11 few minutes ago that the conversation was primarily
12 about the events of the day, the events of the
13 interview?
14 A. The events of the day, yes.
15 148 Q. And you went on then to make reference to the editorial 10:54
16 issue?
17 A. That is correct. We had a conversation about the
18 events of the 17th December, the day on which the
19 Crimecall programme was broadcast.
20 149 Q. But the sequence that you nominated, I'm suggesting to 10:54
21 you, was that the conversation focused initially on the
22 editorial matter, and that was the issue that was of
23 concern to you?
24 A. Yes, my recollection is that my questions to Philip
25 primarily concerned, I was interested in the editorial 10:54
26 issues and my memory is that the conversation went on
27 to Philip telling me the additional information about
28 the conversation --
29 150 Q. Right. But we are agreed, aren't we, that the

1 following did not occur: You asking questions about
2 the editorial matter?

3 A. Yes.

4 151 Q. That is to say, the unhappiness surrounding the guards
5 looking to dictate what course the matter took, you 10:54
6 were asking questions surrounding that issue, and I'm
7 correct, amn't I, that Philip Boucher-Hayes did not say
8 forget, that that is yesterday's news, wait until I
9 tell you what he said to me by way of a smear of
10 Sergeant McCabe, am I correct, that didn't happen or 10:55
11 anything like that?

12 A. That's not my recollection. I was asking -- if my
13 recollection is clear and I think it is, I was asking
14 the questions about the editorial and Philip moved on
15 to tell me about the encounter with Martin Callinan. 10:55

16 152 Q. Well, you see, I'm just looking at the transcript of
17 only a few minutes ago in the questions asked by
18 Mr. Callinan -- by Mr. Marrinan, and the following
19 question and answer appears, Mr. Marrinan asked:
20 10:55
21 "Will you tell us about the conversation that you had
22 with him?"
23
24 And you answered the following:
25 10:55
26 "Primarily, my recollection is that the conversation
27 was about the events of the day and the editorial
28 matter which I think Philip outlined in his testimony
29 here. I was interested in how it was resolved, I

1 didn't see the programme which was broadcast on the
2 17th, so I was asking him did it go and what happened,
3 and in the course of that conversation Philip then told
4 me about his conversation with Mr. Callinan in the TV
5 building."

10:56

6
7 All right. So you are clear that was the sequencing,
8 or at least you were clear that was the sequencing.

9 A. Yes, bearing --

10 153 Q. Just give you an opportunity to deal with this. You
11 then indicated in answer to the next question, when you
12 were asked:

10:56

13
14 "Did he tell you what was said with the Garda
15 Commissioner?"

10:56

16
17 You then answered:

18
19 "Yes, he recounted the conversation which I think I
20 outlined what I recall of in my statement. I think we
21 were still primarily concerned in the conversation
22 about the editorial aspects of the interview on
23 Crimecall that day. But he then said something along
24 the lines of, and you won't believe, or you know, you
25 might not believe this but and then proceeded to tell
26 me about the conversation he had with Commissioner
27 Callinan."

10:56

10:56

28
29 So am I correct -- well, first of all, do you wish to

1 revisit the correctness of that insofar as you gave an
2 answer to the Tribunal that you were still primarily
3 concerned about the conversation about the editorial
4 aspects of the interview? And you used the expression
5 "we were still primarily concerned"? 10:57

6 A. Perhaps I should have said "I". So, let me be clear,
7 at the point at which the conversation was had, I was
8 completely unaware that Martin Callinan had made any
9 comments of any nature about Sergeant McCabe to Philip
10 Boucher-Hayes. I, in having the conversation, was 10:57
11 interested in how the editorial issue was resolved. I
12 asked Philip about that, and then Philip told me about
13 the conversation that he had had with Martin Callinan.

14 154 Q. Right.

15 A. So perhaps to be more accurate, "I" rather than "we". 10:57

16 155 Q. And can you put an estimate of time on the chat you had
17 concerning the editorial issue, for how long did that
18 go on?

19 A. I don't recall. I don't recall a specific duration.

20 156 Q. But there was a discussion about that, and you are 10:58
21 clear-cut and that came first?

22 A. Yes, there was a discussion, yes.

23 157 Q. And you are clear that came first?

24 A. Yes, it did.

25 158 Q. You have given, in your statement on page 7762, your 10:58
26 recollection of what was relayed to you by Philip
27 Boucher-Hayes. And I'm just going to ask you, isn't it
28 quite possible, without any inappropriate motivation
29 whatsoever, without in any sense imputing wrongdoing to

1 you, isn't it possible, in the light of the passage of
2 time and the fact that you took the opportunity to read
3 the transcript and you had a conversation with Philip
4 Boucher-Hayes subsequent to his evidence, isn't it
5 quite possible that your memory of matters has been 10:59
6 infused by matters you discovered or learned
7 subsequently, isn't that a reasonable possibility?
8 A. You are suggesting that I didn't recall these things
9 but that the reading of the transcript several weeks
10 ago will have placed them in my head? 10:59
11 159 Q. I am suggesting to you that your reading of the
12 transcript and whatever conversation you had recently
13 with Philip Boucher-Hayes may have infused in your mind
14 details, may have, and that it would be perfectly
15 understandable because we are dealing with events which 10:59
16 took place a long time ago, that is perfectly
17 understandable, isn't it a possibility that occurred to
18 a degree?
19 A. I don't agree that this has occurred. I think if you
20 look at my statement, there are two things that I say I 10:59
21 recall clearly. The first being the reference to the
22 worst kind or the worst sort. It is a word or a phrase
23 that sticks in one's head. And I also recall very
24 particularly the gesticulation or the indication to a
25 colleague. Those are recollections that are 11:00
26 significantly older than reading the transcript of this
27 Tribunal from two weeks ago.
28 160 Q. And you are clear-cut, aren't you, that there was no
29 mention of the name of Superintendent Taylor?

1 A. I don't recall Philip specifically mentioning
2 Superintendent Taylor's name. I have no memory of
3 that.

4 161 Q. Well you see, that is what I am wondering. Isn't that
5 an example of something that appears to have been 11:00
6 filled in by way of subsequent events?

7 A. The name of the person to whom Mr. Callinan indicated.

8 162 Q. Yes.

9 A. Yes, that is possible.

10 163 Q. So isn't that the phenomenon that I am suggesting to 11:00
11 you may have occurred; that's an example of a later
12 event filling in the detail, a degree of innocent
13 retrofitting?

14 A. I think if you look at my statement, I think if it's
15 possible for me to see it, I think I say "I understand 11:01
16 that person".

17 164 Q. But you have no memory as to whether -- you have no
18 memory as to whether Philip mentioned him by name?

19 A. I do not have a specific memory of Philip mentioning
20 Superintendent Taylor to me by name on that day in 11:01
21 2013.

22 165 Q. Yes. Could I ask you then in relation to what you
23 recall as to Philip's later efforts to make contact
24 with the former Commissioner Callinan?

25 A. Yes. 11:01

26 166 Q. What is your recollection as to when those efforts
27 occurred?

28 A. My recollection is that those efforts occurred in early
29 to mid-May, around the time of the publication of the

1 O'Higgins Report.

2 167 Q. Yes.

3 A. At that point, Mr. Callinan was quite some time retired
4 as Garda Commissioner and in the normal course of
5 events when, on Drive Time, we report on events in 11:02
6 which people are named, we seek to make contact with
7 them in order to invite them for interview or to offer
8 a statement or in some way contribute to our coverage.

9 168 Q. Yes. You weren't here, but some weeks ago there was
10 evidence from a particular journalist, Gemma O'Doherty, 11:02
11 who it seems had no difficulty obtaining the address of
12 former Commissioner Callinan and arriving out to his
13 door. It would appear that Mr. Boucher-Hayes, insofar
14 as apparently he was seeking to contact Commissioner
15 Callinan, was unable to achieve that objective, is that 11:03
16 right?

17 A. Yes. I do not believe he was successful in making
18 direct contact with Mr. Callinan.

19 169 Q. Yes. Did he contact the Press Office?

20 A. My recollection is that, yes, he contacted the Press 11:03
21 Office. I do not know -- I cannot recall whether he
22 contacted the Press Office in writing or by telephone.
23 I do recall him preparing a letter which he said he was
24 going to send to the Office of the Chief State
25 solicitor. 11:03

26 170 Q. When you say you recall that, do you recall him doing
27 that in front of you or is this something he said to
28 you?

29 A. I recall him doing this actually in the Drive Time

1 office area of the RTÉ Radio centre.

2 171 Q. And what was he doing?

3 A. He was simply asking to be put in contact with

4 Mr. Callinan or seeking an interview with Mr. Callinan.

5 I don't recall that there was any detailed explanation 11:04

6 of his reasons or any outlining of the purpose but

7 simply a request for interview.

8 172 Q. And to whom was he writing?

9 A. I understood he was writing -- I don't know a named

10 person, but I understood it was to be sent to the 11:04

11 Office of the Chief State Solicitor.

12 173 Q. And how did you learn that?

13 A. Because Philip told me in the office that he was doing

14 this and he was preparing the letter.

15 174 Q. And why would he write to the Chief State solicitor in 11:04

16 relation to that?

17 A. I do not know. I think he believed it might have been

18 a route of making contact with Martin Callinan, but I

19 do not know specifically why this office.

20 175 Q. So he told you that I am writing to the Chief State 11:04

21 Solicitor, is that how you came by that information?

22 A. Yes.

23 176 Q. Yes. And did he mention that in the conversation with

24 you more recently after his evidence in June, this

25 month? 11:04

26 A. No.

27 177 Q. You see, the position is that Commissioner Callinan had

28 retired at this stage?

29 A. Yes. We had had a conversation around how does one

1 contact a retired Garda Commissioner. Philip had asked
2 me if I had a direct number for him. I did not. He
3 asked me if I had any advice on how one goes about
4 contacting a retired Garda Commissioner. I told him
5 that I actually believed that probably the Garda Press 11:05
6 Office would direct or redirect any requests.

7 178 Q. And are we to understand that, despite the, one would
8 imagine, very significant contact capabilities of RTÉ,
9 those efforts were ultimately unsuccessful, is that the
10 position? 11:05

11 A. I would draw a distinction between the abilities of RTÉ
12 corporately and the abilities of one programme team on
13 RTÉ Radio 1.

14 179 Q. So Drive Time ultimately was unable to contact former
15 Commissioner Callinan? 11:06

16 A. Drive Time was unable to contact Commissioner Callinan
17 at that point, yes.

18 180 Q. Did you ever raise it with Mr. Boucher-Hayes
19 subsequently, did you ever track him down?

20 A. I may have asked that question, I don't specifically 11:06
21 recall.

22 181 Q. Was that not something you would likely have done; how
23 did you get on with the letter?

24 A. Yes, yes, it is something I would likely have done but
25 there was never an interview with Martin Callinan nor 11:06
26 was there a statement provided to Drive Time that I
27 recall, from Martin Callinan, so therefore, the efforts
28 were unsuccessful.

29 182 Q. Right. But when did you chase that up with

1 Mr. Boucher-Hayes, to find out how are you getting on?
2 A. I do not have a specific recollection of when I would
3 have chased it.
4 183 Q. Was it in person or it was on the telephone?
5 A. If we had a conversation of that sort -- 11:06
6 184 Q. Did you have a conversation with him in which you
7 inquired how are you getting on contacting Martin
8 Callinan?
9 A. Yes, I did, I would have asked him that on several
10 occasions, the conversations would have taken place in 11:06
11 the Drive Time area of the RTÉ Radio centre. We sat
12 several desks apart for ten years.
13 185 Q. Right. So you recall several conversations in which
14 you raised with him, did you succeed in contacting
15 Martin Callinan? 11:07
16 A. Conversation might be too strong a word. But yes, I do
17 recall asking have you had any success in making
18 contact with Martin Callinan.
19 186 Q. Right.
20 A. Or have you heard back from -- questions of those 11:07
21 nature.
22 187 Q. Were there, one, two, three, more than three
23 conversations in which you raised this issue?
24 A. I cannot put a number on that.
25 188 Q. Well, there was more than one? 11:07
26 A. On more than one occasion, yes.
27 189 Q. And approximately in what period are we talking?
28 A. Again, I cannot put a period of days or weeks but it
29 would have been the news cycle that followed the

1 publication of the O'Higgins Tribunal report, which I
2 believe was the second week of May in 2016.

3 190 Q. And what efforts did Mr. Boucher-Hayes indicate he had
4 made, and what level of success had he met?

5 A. Well, the level success was obvious, he was 11:08
6 unsuccessful.

7 191 Q. But what did he indicate he had done? The reason I am
8 asking you this --

9 A. I think I have already said he contacted the Garda
10 Press Office and he wrote a letter to the Office of the 11:08
11 Chief State solicitor. Subsequently did he make
12 follow-up calls, I presume that he did. I cannot say
13 specifically.

14 192 Q. I had understood, maybe incorrectly, that he had
15 indicated those efforts in the initial conversation. I 11:08
16 am talking now about the subsequent ones where you are
17 chasing up with him how did you get on?

18 A. Yes.

19 193 Q. So in those late ones, which as I understand you from
20 your evidence there were more than one of -- 11:08

21 A. Yes.

22 194 Q. -- what efforts did he indicate he had made in those
23 later conversations?

24 A. I do not recall the specific description of the
25 efforts, whether those were in person, by telephone or 11:08
26 in writing.

27 195 Q. But I mean, you are bothered about this sufficiently to
28 ask him, have you managed to make contact with the man
29 to get the interview?

1 A. Bothered, I'm not sure. I was asking -- recalling that
2 he had made an effort, did you have any success.

3 196 Q. Forget the language. You are sufficiently interested
4 to raise the issue on a plurality of occasions
5 subsequently, you are getting back no, you raise it 11:09
6 again in a later conversation --

7 A. Yes.

8 197 Q. -- I am wondering, are you not asking him, listen, have
9 you not tracked him down, this is a relatively
10 straightforward task, find out his address and go out 11:09
11 to the house.

12 MR. GILLANE: Chairman, I am slow to interrupt but I do
13 wonder what this line of inquiry is related to.

14 CHAIRMAN: The questions are fine.

15 A. Well, in the first instance, I would not instruct 11:09
16 Philip Boucher-Hayes to go doorstep Martin Callinan.
17 In order for that occur in RTÉ we would need the
18 express permission of the director general, I did not
19 suggest that. And I did not suggest to Philip
20 Boucher-Hayes that he go and doorstep Martin Callinan 11:10
21 at his home. I am unaware where Martin Callinan lives.

22 198 Q. MR. MÍCHEÁL O' HIGGINS: All right. The reason I am
23 taxing you with these questions is, it would appear to
24 me, and I just want to give you an opportunity deal
25 with this, if I may say there appears to be a degree of 11:10
26 uncertainty in your evidence with respect to these
27 later conversations. Would you agree with that? You
28 are unclear on these later conversations which you
29 indicate you had with Mr. Boucher-Hayes as to the

1 efforts to secure an interview with Martin Callinan?
2 A. So I think I have been clear on the nature of the
3 efforts that were made initially. I did not in
4 subsequent conversations discuss with him the means
5 through which he had tried to follow up on that 11:10
6 interview request. My primary concern was: Have you
7 heard back from Martin Callinan? And after a period of
8 time, when there is no response, be it positive or
9 negative, it's clear that there is no desire or
10 intention to participate or contribute. We deal with 11:10
11 this on a daily basis, Mr. O'Higgins, with stories,
12 with interviewees, with principals we might seek to
13 include on our programme, we make efforts to contact
14 them and eventually when those efforts are
15 unsuccessful, you either move on or you interpret that 11:11
16 as no desire to participate.
17 199 Q. Lastly, can I ask you, did he indicate that he was
18 unable to find an address for Martin Callinan, did he
19 report that to you?
20 A. I don't recall ever having a conversation with Philip 11:11
21 Boucher-Hayes about an address for -- by which I
22 presume you mean a home address?
23 200 Q. Yes.
24 A. No, I don't recall ever having that conversation.
25 MR. MÍCHEÁL O' HIGGINS: Thanks very much. 11:11
26 A. Thank you.
27 MR. GILLANE: No questions.
28 MR. MARRINAN: No further questions. Thank you very
29 much.

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THE WITNESS THEN WITHDREW

MR. MCGUINNESS: Deputy Michael wallace. Mr. wallace's statement to the Tribunal was made originally, Chairman, in conjunction with Deputy Daly on 10th March, and it's to be found at volume 25, page 6862. 11:11

DEPUTY MICHAEL WALLACE, HAVING BEEN SWORN, WAS DIRECTLY EXAMINED BY MR. MCGUINNESS: 11:11

MR. MCGUINNESS: Chairman, Deputy wallace's statement to the Tribunal investigators is to be found at page 6848 of the Tribunal papers.

201 Q. Deputy wallace, I think you have been a TD since February of 2011? 11:12

A. Yeah, I think so, yeah.

202 Q. And you are currently still a TD?

A. Yeah.

203 Q. And I think you came into contact with Sergeant McCabe, I think in or around September 2012? 11:12

A. Yes, that would be right.

204 Q. And I think you've remained in contact with him, having met him several times and many phone contacts with him also, is that correct?

A. Yeah, we have kept contact. 11:13

205 Q. And I think did you meet him in particular in relation to some revelations that had been made to him by Superintendent Taylor?

A. Yes, I did. Both myself and Claire Daly met him that

1 day at lunchtime.

2 206 Q. Yes. And I think the day we are referring to is the
3 3rd October of 2016?

4 A. That's right.

5 207 Q. And I think you met him in premises that you have in 11:13
6 Dublin City?

7 A. Yeah.

8 208 Q. And can you recall what he told you of importance to
9 the Tribunal?

10 A. Well, I suppose the gist of what he told us, we spent 11:13
11 about an hour-and-a-half with him, the gist of what he
12 told us was that Superintendent Taylor, who had been in
13 the Press Office, that he had confirmed what Maurice
14 would have felt all along, that there was a targeted
15 campaign to discredit him because of his efforts at 11:14
16 challenging the authorities and highlighting wrongs
17 within the organisation.

18 209 Q. Yes. And just to be clear, did he tell you when he had
19 received this information from Superintendent Taylor?

20 A. From my memory, it was definitely within the previous 11:14
21 fortnight, probably even within a week, I'd say, that
22 is just my recollection.

23 210 Q. Yes. And did he tell you that he had a made a
24 protected disclosure at that stage?

25 A. Yeah. 11:14

26 211 Q. Okay. And did he provide you with a copy of that at
27 that stage?

28 A. No.

29 212 Q. Did he fill you in on the contents of it?

1 A. Yes, he did.

2 213 Q. And how did Sergeant McCabe describe how Superintendent
3 Taylor had been conducting the smear campaign?

4 A. Well, he said that he was head of the Press Office and
5 he was in direct contact with, at that time, 11:15
6 Commissioner Callinan and also the Assistant
7 Commissioner Nóirín O'Sullivan and that there was --
8 and that he was part of a campaign to discredit
9 Maurice. He told me that he -- that they genuinely
10 believed at the time -- well, he did anyway, that he 11:15
11 genuinely believed that Maurice wasn't a good piece of
12 work and that he was up to no good.

13 214 Q. Yes. And how was the campaign being conducted as it
14 was reported to you by Sergeant McCabe?

15 A. Well, the impression that I got -- sorry, are you 11:15
16 telling me from Maurice or from Superintendent Taylor?

17 215 Q. I am focusing firstly on your meeting with Sergeant
18 McCabe, Maurice, and the question is: How was he
19 describing the campaign to you as having been relayed
20 to him by Superintendent Taylor? 11:16

21 A. That derogatory comments about Maurice were being fed
22 to the media, some politicians and other members,
23 senior members of an Gardaí. And they were designed to
24 discredit him and that Superintendent Taylor was
25 confirming this to Maurice. 11:16

26 216 Q. Yes.

27 A. It wasn't -- I suppose, it wasn't coming as a shock on
28 what Taylor was saying to us; it was something that we
29 felt was happening anyway ourselves, but Maurice was

1 probably -- he was very excited about the fact that it
2 was incredibly interesting that a senior member of the
3 force was actually confirming what he suspected all
4 along.

5 217 Q. Yes. In terms of how the comments were being fed to 11:16
6 the media, politicians and other senior gardaí, did
7 Sergeant McCabe describe how that was being done, to
8 you?

9 A. As you gather from my statement, when -- this has
10 obviously become an issue of contention. 11:17

11 218 Q. Yes.

12 A. And from my memory, Maurice would have gave us the
13 impression that texts were being used, that texts were
14 being sent out to the media. Now, obviously, as you
15 can tell from my statement, when we went to the meeting 11:17
16 with Taylor, both myself and Clare Daly -- well, I
17 better not speak for Clare Daly, she will be able to
18 speak for herself.

19 219 Q. I think so.

20 A. I think so, yeah. But I did have the impression that 11:17
21 texts were being sent out, but as you can tell from my
22 statement, when Superintendent Taylor claimed in here
23 that no, that wasn't what happened, I phoned him and I
24 said, did you not tell me and tell us that you sent
25 texts out to the media, some politicians and some 11:18
26 senior members of the Gardaí that were of a derogatory
27 nature which you had got past -- more or less got
28 permission from Commissioner Callinan at the time and
29 you were checking with Nóirín before you sent them out?

1 That was the impression that I got. And what I said in
2 my statement, that could I say 100 percent that David
3 Taylor definitely told me that he sent the texts out, I
4 wasn't able to say it. And in fairness to him, it's
5 possible that he didn't specifically say that he 11:18
6 actually sent the texts out in text form to the media.
7 But I have to say, that it was the impression that I
8 left his home with.

9 220 Q. Yes. well, we will come to that in due course. I
10 think in relation to your conversation with Sergeant 11:19
11 McCabe on this day and this isn't a criticism, you
12 didn't actually take any notes yourself --

13 A. No.

14 221 Q. -- as to how it was phrased to you. But your clear
15 impression and recollection was that it was being 11:19
16 conducted by text to the media and others, from
17 Superintendent Taylor?

18 A. That was the impression, yeah.

19 222 Q. Just on this point at the time, had you ever met
20 Superintendent Taylor or had any dealings with him in 11:19
21 any way, shape or form?

22 A. No.

23 223 Q. And in terms of the existence of a campaign, did any
24 journalist ever come to you and said, look, have you
25 heard what the Garda Press Officer is doing? 11:19

26 A. No, I will tell you, the first -- with regard to a
27 campaign to discredit Maurice in relation to the fact
28 that he may have been guilty of some sexual offences,
29 the first we would have heard of that was an anonymous

1 phone call to our office, which my parliamentary
2 assistant, Chris Ronan, would have received.

3 224 Q. But I mean, I am not prying into your relationship with
4 journalists, who is a source for what, or anything, but
5 did any journalist, without naming them, at any time, 11:20
6 did any journalist come to you and say look, have you
7 heard what Superintendent Taylor, the Garda Press
8 Officer, is doing to Maurice?

9 A. No. But probably I should tell you that our
10 relationship with journalists would be pretty poor. We 11:20
11 generally wouldn't even take their calls and certainly
12 wouldn't be ringing them.

13 225 Q. OK. The phone call that you made reference to there,
14 when did that occur so far as you can --

15 A. I don't have a date for it. But it was either 20th -- 11:20
16 it was probably 2014 but I can't be certain on that.

17 226 Q. All right. In any event, it appears to have been a
18 decision you made on the day that you met Maurice,
19 fairly immediately, that you wanted to speak to
20 Superintendent Taylor, and I think you asked Sergeant 11:21
21 McCabe had he got his number and you made contact?

22 A. Yeah. I mean, I put it to Maurice, listen, given that
23 we were being told that Taylor was putting in a
24 protected disclosure and that he was confirming what
25 Maurice had suspected all along, I thought it would be 11:21
26 really good to speak to him ourselves and I asked
27 Maurice did he think, if he thought Taylor would talk
28 to us. And Maurice says, I don't know, but he said I
29 have Michelle's number and I will give it to you. He

1 gave me Michelle's number, I rang Michelle about an
2 hour, hour-and-a-half later, asked her would she meet
3 myself and Clare Daly and she said yes, they would and
4 we met them that night at eight o'clock in their home.

5 227 Q. Yes. Now, you did take some notes of that and I am not 11:22
6 going to take you through all of them. You have made
7 them available to the Tribunal. They are at page 6872
8 onwards. But can you just give us a clear and concise
9 summary, as it were, of what he was telling you about
10 the campaign, what he did tell you about the campaign. 11:22

11 A. He told us that there was -- that it was orchestrated,
12 there was a campaign to discredit Maurice, that he
13 understood at the time himself that Maurice was
14 motivated out of badness because he said that he felt
15 -- the idea that he got was that Maurice had not been 11:23
16 well treated over the allegations that had been made
17 about him and that this was his effort to get back at
18 them, and that there was -- that he was in contact with
19 Commissioner Callinan at the time and that he would
20 check -- when he would -- he would have a derogatory 11:23
21 text or information, he used to run it by Nóirín to
22 check to see what did she think and he told us that a
23 regular reply, not always, but a regular reply of hers
24 would have been, just a single word "perfect". And
25 that -- now, obviously I did get the impression then 11:23
26 that this text was being sent around, because he did
27 tell us that he was feeding the media derogatory
28 information about Maurice. So I presumed that this was
29 going out in text form. But obviously as I said, when

1 I rang him, when I heard him say that in here at the
2 Tribunal, that he actually wasn't sending it out in
3 text form, I actually rang him and said did you not
4 tell us that this was going out in text form? And he
5 said no. I said, well, what texts were you talking 11:24
6 about? And he said, well, I would be -- I was keeping
7 the Commissioner informed and Assistant Commissioner
8 O'Sullivan about derogatory things that were being said
9 in the media and whatever, and I was running them by
10 him. So obviously this, as I have said, seemed like a 11:24
11 change of position from my perspective.

12 228 Q. Yes. I mean, you seem to have a very clear
13 recollection that both from your meeting with Sergeant
14 McCabe and from your meeting with Superintendent
15 Taylor, that this was being conducted by text? 11:25

16 A. That was the impression I had. But as I said, could I
17 say 100 percent that Superintendent Taylor told me, oh,
18 I was sending these out to the media then in text form,
19 no, he didn't specifically say that but it was the
20 impression I got. 11:25

21 229 Q. Yes. I will touch on your joint submission to the
22 Chairman later, which you made after his call for
23 information in your submission of the 10th March of
24 2017, but you don't refer to your meetings in that
25 submission, but you also don't refer specifically to 11:25
26 any allegation of child abuse or sexual assault, nor do
27 you seem to refer to it in your notes. Did
28 Superintendent Taylor make any reference to an
29 allegation of sexual assault that he was spreading

1 around about Sergeant McCabe?

2 A. From my recollection, yes, that was mentioned at the
3 meeting.

4 230 Q. Right. Is there any part of your notes that you think
5 refer to that? 11:26

6 A. To be honest, I don't really know.

7 231 Q. 6872 is, I don't know, have you got a copy of your
8 original notes?

9 A. I have a copy of my notes, here. 6872?

10 232 Q. That is in our volume 25, if you want to look at it. 11:26

11 A. I have 14 pages of my statement here. What page is it
12 on?

13 233 Q. It's 6872. It's one of the appendices, as it were, to
14 your statements.

15 A. No, I don't have that, no. 11:26

16 234 Q. Well, if you'd care to take down the volume, volume 25
17 on your left-hand side there, Deputy Wallace, you can
18 see it on paper. It's the first volume beside the
19 screen.

20 A. Oh, yes. Right. What am I looking for? 11:26

21 235 Q. Yes, page 6872.

22 A. Yeah.

23 236 Q. And you were asked obviously by our investigators about
24 each of the entries, and I didn't see myself, and nor
25 is there any reference in your statement, to the 11:27
26 allegation relating to Ms. D, you know the criminal
27 investigation that had taken place back in 2006, am I
28 correct in that?

29 A. Well I mean, first of all, I was being quizzed on my

1 notes.

2 237 Q. Yes?

3 A. And I didn't take a lot -- as you can see I took three
4 pages of notes, right.

5 238 Q. Yes. 11:28

6 A. And the meeting went on for three hours and 15 minutes,
7 and to be honest in the early part of the meeting I
8 wasn't taking notes, I was just listening, and I was
9 conscious of the fact that Clare was taking notes, but
10 then at a stage in the meeting I did start taking 11:28
11 notes. So I mean, was it discussed beforehand? well,
12 I mean, to the best of my memory, we did discuss -- the
13 Ms. D thing did come up, from my memory, yeah.

14 239 Q. Okay. You do say in your statement to the 11:28
15 investigators that it was your understanding that he,
16 Superintendent Taylor, watched everything that you and
17 Ms. Daly said in the Dáil in relation to the matter.
18 And I think the public commentary that yourself and
19 Deputy Daly engaged in, did refer to the sending out of
20 hundreds of text messages to the media, isn't that 11:28
21 right?

22 A. I haven't got my Dáil records with me here now but we
23 did obviously mention the fact that a senior garda,
24 that Superintendent Taylor was -- I presume we named
25 him, I am not sure, but he was confirming that an 11:29
26 orchestrated campaign had been going on against
27 Maurice.

28 240 Q. Yes. I mean, we have heard that Deputy Daly went out
29 on the radio I think on the following day from this, or

1 perhaps within a day or two of it, and in a radio
2 interview made reference to the sending out of hundreds
3 of text messages. But the issue is, did Superintendent
4 Taylor ever contact you about anything that was either
5 broadcast or said by you or Deputy Daly to correct you? 11:29

6 A. No, he didn't. Unless he contacted Clare, but I don't
7 recall him ever contradicting anything I ever said in
8 the Dáil.

9 241 Q. All right. In terms of the investigation that
10 Superintendent Taylor had been subjected to, what was 11:29
11 he saying about that?

12 A. About how he was being treated himself?

13 242 Q. Yes, yes.

14 A. Well, I mean, I do refer to that a bit in my notes and
15 he did feel he was being unfairly treated and he did 11:30
16 say that there were trumped up charges against him.
17 Now, obviously given everything that we've heard at
18 this stage, it's probably fair to say that he was
19 embellishing his own -- the problems that he was being
20 faced and how he was being treated, and that maybe he 11:30
21 was exaggerating his own position.

22 243 Q. Well, misrepresenting it is --

23 A. Well, misrepresenting is probably the better word,
24 yeah. I would imagine that, given that there was --
25 that he had been breaking rules and that there was good 11:30
26 cause to be investigating the rules he was breaking,
27 then I would say that, yeah, he was probably guilty of
28 misrepresenting his own position --

29 244 Q. All right.

1 A. -- to us on the night.

2 245 Q. Okay. Now, I mean, did he go as far saying that the
3 Gardaí were out to shaft him and you say "that was in a
4 manner he regarded as not dissimilar to what they had
5 done to Maurice." That is Sergeant McCabe. 11:31

6 A. Yeah, I mean he didn't say I am being treated the same
7 as Maurice. That is not what he said. And that is why
8 I used the word not dissimilar, rather than similar,
9 which I find having a slightly different meaning.

10 246 Q. All right. 11:31

11 A. But he did more or less say, well, I have an idea, I
12 have some idea more or less as to how Maurice must have
13 felt and feels.

14 247 Q. All right. Now, one of the references in your notes is
15 to appointing her husband to take three phones. Was he 11:31
16 giving you the impression that her husband had been
17 appointed to seize the phones from him because they
18 related to the campaign against Sergeant McCabe?

19 A. Well, he gave us the impression that her husband
20 definitely took a phone from him. 11:32

21 248 Q. Yes.

22 A. I mean, is that untrue now, is it?

23 249 Q. Well, you say at page 6857 of your statement in
24 reference to Frank Clerkin:
25 11:32
26 "David Taylor said this was trumped up charges to get
27 his phone off him."
28 A. Yeah.

29 250 Q. But was that being conveyed in the context of it

1 relating to what he knew about Sergeant McCabe and the
2 campaign, that they were seizing the phones to get rid
3 of evidence?

4 A. That was the impression I got, yeah.

5 251 Q. All right. Now, obviously it wasn't your job to 11:32
6 investigate the allegations or the protected
7 disclosures, but you, I think you did speak about them
8 in the Dáil and in the context of Commissioner
9 O'Sullivan's position, isn't that right?

10 A. Em, yeah, that's true, yes. But I mean, to infer that 11:33
11 Taylor influenced our opinion of the former
12 Commissioner Nóirín O'Sullivan's management of An Garda
13 Síochána is nonsense. I mean, it needs to be
14 clarified, that before she even got the job we argued
15 on the floor of the Dáil that she shouldn't be getting 11:33
16 it and the day she was appointed officially to the job
17 I brought up at Leaders' Questions with Enda Kenny, the
18 former Taoiseach, and I told him he had made a mistake
19 and we called for her resignation on numerous occasions
20 long before we knew that David Taylor even existed. 11:34

21 For clarity, I mean just, the issues that we were
22 highlighting included her treatment of Nick Kehoe, her
23 failure to implement the 20 plus recommendations by the
24 Garda Inspectorate, the homicide figures, how she dealt
25 with them, the breath test scandal, the checkpoint 11:34
26 figures, breaches in public procurement, her continued
27 failure to cooperate with the policing authority and
28 GSOC and the financial irregularities in Templemore.
29 And that is only some of them. We could talk about it

1 for a couple of days here.

2 252 Q. I am not disputing, Deputy Wallace, that you had many
3 different perspectives and reasons as you have outlined
4 there yourself for having a view, but you did draw to
5 the attention of the Chairman in your joint submission 11:34
6 that the discipline, the disciplinary action taken in
7 relation to Superintendent Taylor was an example of how
8 the top echelons of An Garda Síochána circled the
9 wagons against those who dissent. Had you been
10 persuaded by Superintendent Taylor that there was 11:35
11 absolutely no merit in any disciplinary action or other
12 action being taken against him?

13 A. Well, obviously we weren't totally au fait with
14 Taylor's position with management, we weren't totally
15 au fait with anything he had done, but we were talking 11:35
16 to a senior member of the force who had put in a
17 protected disclosure. I mean, if a senior member of
18 the organisation puts in a protected disclosure, you
19 would be suspecting that there would be some element of
20 truth to what he might be about to say in it. 11:35

21 253 Q. Well, had you seen the protected disclosure or received
22 a copy of it?

23 A. No.

24 254 Q. Or did Superintendent Taylor brief you as to what he
25 was putting in it? 11:36

26 A. Well, we got a general impression. No, I mean, we
27 wouldn't have been as well briefed on his protected
28 disclosure as Maurice would have briefed us on his, but
29 we did get the impression that David Taylor had put in

1 a protected disclosure which was confirming that there
2 was an orchestrated campaign at the behest of the
3 senior members of the organisation to undermine Maurice
4 McCabe, that we understood was the gist of his
5 protected disclosure.

11:36

6 255 Q. Yes. In one of the first points made in your
7 submission to the Chairman in March, you say:

8
9 "The majority of the information we have in our
10 possession and have used under Dáil privilege at times
11 concerning terms of reference [a] to [o] will be
12 presented to you by Sergeant McCabe and his legal team.
13 Therefore, we will not seek to duplicate this
14 evidence."

11:36

15
16 Have you any additional information at this point in
17 time that you wish to bring to the attention of the
18 Chairman?

11:36

19 A. Sorry, I missed -- can you say it again, please?

20 256 Q. Sorry. Perhaps we'd just look at the paragraph I'm
21 referring to at page 6862.

11:37

22 A. 6862, yeah.

23 257 Q. The first paragraph welcomes the Chairman's
24 appointment. The second notes his request for people
25 with knowledge to come forward. And the third one
26 says:

11:37

27
28 "The majority of information we have in our possession
29 and have used under Dáil privilege at times concerning

1 term of reference [a] to [o] will be presented to you
2 by Sergeant Maurice McCabe and his legal team.
3 Therefore, we will not seek to duplicate this
4 evidence. "

11:37

6 Have you any additional information to put before the
7 Chairman?

8 A. In terms of -- to be honest with you, I probably
9 haven't, even though I followed the Tribunal reasonably
10 well, I probably haven't followed it in enough detail
11 to actually say that I have.

11:38

12 MR. McGUINESS: Okay. Thank you, Deputy Wallace,
13 would you answer any more questions?

14 MR. McDOWELL: No questions.

11:38

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

17 258 Q. MR. FERRY: Hello, Deputy Wallace, my name is John
18 Ferry and I am one of the lawyers representing
19 Superintendent Taylor. And I just want to bring you to
20 the part of your evidence in relation to your meeting
21 with Superintendent Taylor in his home, and as I think
22 you have outlined in your evidence, there is just --
23 there has been different evidence given in relation to
24 the issue of texts and Superintendent Taylor's evidence
25 has been that texts were being used in the manner of
26 informing his superiors of information that was in the
27 media and other matters about Sergeant Maurice McCabe,
28 and that he was not receiving or sending out texts in
29 relation to Maurice McCabe that were of a derogatory

11:38

11:38

1 nature. Now, Sergeant Maurice McCabe has given a
2 different version, and he had given evidence that he
3 was told that there were derogatory texts being
4 received by Superintendent Taylor from his superiors
5 and that they were in some way being distributed as 11:39
6 part of the campaign. So there is a difference between
7 the parties in relation to that. But in relation to
8 your evidence, I think you said that you got the
9 impression that there were derogatory texts sent out.
10 And I appreciate you said that you spoke to my client 11:39
11 at a later stage, but I am just putting it to you that
12 Superintendent Taylor denies that he said that he was
13 sending out derogatory texts and that's his position
14 now. And I'm just asking you, is it possible that you
15 are mistaken in having that impression from your 11:40
16 meeting with him?

17 A. Well, listen, I have seen what Superintendent Taylor
18 said in here, and it's clear that he couldn't have told
19 the truth in his living room and in here as far as I am
20 concerned, and did he tell more in the truth in his 11:40
21 living room or in here? That's for Judge Charleton to
22 decide. But if you were looking for my opinion on it,
23 I think he told us more the truth in his living room
24 than he told in here.

25 259 Q. Yes. But in relation to the aspect of the texts do you 11:40
26 accept that -- I don't think you have a note in
27 relation to that aspect of it, and I think you say it
28 was your impression?

29 A. Yes, and as I said, in fairness to Superintendent

1 Taylor, it would be wrong of me to say that I know for
2 a fact that he said that, for 100 percent, that he sent
3 out those texts then in that form to the media, senior
4 politicians and gardaí, I have said that I would have
5 to say that I got the impression that that is what 11:41
6 happened and that it would be unfair to David Taylor
7 for me to say that I knew for 100 percent because I
8 can't say that.

9 260 Q. Yes. And in relation to the meeting that you had with
10 him, I think in your statement as opposed to your 11:41
11 evidence this morning, I think in your statement you
12 give some information about the view that you took of
13 the mental state or the condition that you found
14 Superintendent Taylor to be in, and I think in your
15 statement you outlined some aspects in relation to 11:41
16 that. Can I ask you, how did you find him as a person
17 at that time?

18 A. I found him, I genuinely, I really did find him genuine
19 and I found him remorseful and as I said in my notes, I
20 mean, myself and Clare would have discussed this 11:41
21 afterwards and we both agreed, God, he is in a bad
22 place mentally. And I made the point in my notes that
23 he did seem genuinely sorry that he had done serious
24 damage to Maurice McCabe and his family, that was the
25 impression that we got, and we felt that he was being 11:42
26 sincere. There is -- look at, I mean, we have met
27 hundreds of whistleblowers of different natures at this
28 stage, and I would have to say that he came across at
29 the time as -- you know, as I said earlier, he may have

1 embellished how he was treated himself, but I actually
2 believed what he was saying in relation to the
3 orchestrated campaign in relation to Maurice.

4 261 Q. And in your statement, you also noted that, just at
5 page 6854 of the statement that you provided to the
6 Tribunal, at the bottom of that page, you had said:

11:43

7
8 "It was like as if now that he was no longer in his job
9 in the cold light of day, he realised what they were
10 doing to Maurice could have completely destroyed him
11 and his wife and children."

11:43

12
13 How did you form that or what did you mean by "in the
14 cold light of day" or what impression were you
15 recalling there?

11:43

16 A. Well, as I said, I definitely found that he was, that
17 he realised that what he did was inhumane, I suppose,
18 for want of a better word, and that, you know, Maurice
19 McCabe and -- we have known Maurice a long time, we
20 have met him a lot, and there was times where we seen
21 Maurice in a very bad place over the whole episode and
22 bad things, even worse things could have happened, when
23 people are in a bad place mentally, it's hard to stay
24 strong all the time, and I think Superintendent Taylor
25 realised that, to a certain degree, Maurice McCabe was
26 being driven to the brink. And I also made the point
27 that, look at, it was -- Superintendent Taylor was
28 probably the most senior member to actually put his
29 head above the parapet and say that everything wasn't

11:44

11:44

1 good, but I did make the point in my statement that if
2 he had not run foul of the authorities themselves,
3 himself, I don't believe he'd have put his head above
4 the parapet. And listen, there is nothing unusual
5 about that, there's -- the Garda Síochána, it doesn't 11:45
6 work quite on the same lines as an army but there is --
7 there is still a certain element of it and breaking
8 rank is pretty well scorned upon. And for someone in a
9 senior position to break rank is a huge ordeal and I
10 don't believe he would have done that but for the fact 11:45
11 that he found himself outside the pale himself.

12 262 Q. Yes. And just, I will be finished in a minute or so,
13 but just if you could look at page 6852 of the
14 statement you gave to the Tribunal.

15 A. 6852? 11:45

16 263 Q. 6852. Just before you look at that, there is something
17 mentioned in it that I don't want you to open up in
18 detail to the Tribunal but I just want to make
19 reference to it, in relation to your visit to the house
20 with Deputy Daly and the manner in which you found 11:46
21 Superintendent Taylor to be and how he explained to you
22 what was happening. You make reference there to the
23 tipping point came, if you can just look at your
24 statement four lines from the bottom, you say that, I
25 think you are referring to Superintendent Taylor, that 11:46
26 he said the tipping point came a few weeks previous
27 when they had a family trauma. Without explaining
28 that, can you just explain what he was -- not what he
29 was referring to, but how you found him and what you

1 understood the lead-up to be, without going into the
2 specific details of that incident, if it had been
3 relayed to you.

4 A. Yeah, look it, it's hard to say much about it if I
5 can't mention the detail and I understand why I 11:47
6 shouldn't, but he was very emotional and it was -- he
7 was crying talking about it, and I could tell from
8 Michelle as well that obviously it was something
9 incredibly difficult for them and he cried a few times
10 that night. 11:47

11 264 Q. Yes. So that was the circumstances as you found them
12 at that time and in relation to what he said about his
13 superiors and the other matters that have been referred
14 to in relation to the investigation into him, that was
15 clearly his view at that time from the position that he 11:48
16 found himself in, but I think it's fair to say that,
17 objectively, now, in light of evidence before the
18 Tribunal, that there is a different evidence in
19 relation to the other aspects, the Clerkin
20 investigation, for example, but at that time that was 11:48
21 his subjective viewpoint and you found him to be
22 genuine on the night you visited him?

23 A. Yeah, and obviously -- I mean, I made the point in my
24 notes as well, I think, that he was complaining about
25 the fact that his wages were cut and they were under 11:48
26 financial pressure, so -- and, yes, in hindsight, it is
27 fair to say that he was being a bit, for want of a
28 better word, he was probably being economical with the
29 truth about the trumped up charges in every aspect that

1 he made at that time.

2 265 Q. Yes. But in relation to the meeting that you had with
3 him and the purpose of you attending there, that the
4 purpose of that was in relation to what he had to say
5 about Sergeant Maurice McCabe? 11:49

6 A. Yeah, I mean, that was what -- it's pretty well-known
7 that myself and Clare Daly had been highlighting
8 problems in how An Garda Síochána operated since 2012,
9 and going to see Superintendent Taylor that night was
10 part of that, and we were looking at -- we were 11:49
11 interested in what he had to say about senior
12 management treatment of Maurice McCabe. That was the
13 core of our interest.

14 266 Q. Yes. And I know you have said you haven't followed
15 every aspect of the Tribunal closely but in relation to 11:50
16 that aspect of what he said to you that night in
17 relation to the Sergeant Maurice McCabe and what he
18 said the campaign against him was, from what you
19 understand of the evidence that has come out to date,
20 was his account from that night consistent with his 11:50
21 evidence to the Tribunal and other evidence that you
22 have heard coming out of the Tribunal, in the sense
23 that I understood your evidence to be that when asked,
24 that David Taylor outlined to you that Maurice McCabe
25 was motivated out of badness because he felt the idea 11:50
26 that he got was that Sergeant McCabe had not been well
27 treated in relation to the allegations against him, the
28 investigation into Sergeant McCabe, that he felt he
29 wasn't well treated in relation to that and that was

1 his effort to get back at them, so in other words, that
2 he had a reason or an agenda or a motivation to get
3 back at the guards, that's Sergeant McCabe. Now, in
4 light what have Superintendent Taylor --

5 CHAIRMAN: I am sorry, Mr. Ferry, I am completely lost 11:51
6 by that question. Maybe you'd split it up into a
7 couple of questions, if you wouldn't mind, please.

8 MR. FERRY: Yes.

9 267 Q. Well, I understood that the information that you got
10 from Superintendent Taylor on the night that you 11:51
11 visited him in relation to the campaign, that the
12 campaign was to get the message out to feed the media
13 that Sergeant Maurice McCabe was motivated by badness
14 and that related back to the investigation into him, am
15 I correct in that understanding? 11:51

16 A. Yeah, I mean, I suppose, I mean, you are in the -- in
17 the middle of your question there, you were asking me,
18 I suppose, do I believe what Superintendent Taylor told
19 me about the efforts to undermine Maurice, yeah, I do,
20 yeah. And you say in light of what has gone on at the 11:52
21 Tribunal here, do I still believe that that was true;
22 listen, that is obviously Judge Charleton's call at the
23 end of the day but I would say there has never been a
24 judge in the history of the State told so many lies.

25 268 Q. I am not asking you to judge it, I am being clumsy in 11:52
26 the way I am putting the question to you, Deputy
27 Wallace, but what I am saying is that while you met
28 Superintendent Taylor and he was in a particular
29 personal space at that time, am I correct in saying

1 that what he outlined to you about what the campaign
2 was is consistent with what he has said to the
3 Tribunal, in the sense that his evidence has been that
4 he was instructed by his commissioner to brief the
5 media that the reason why Sergeant McCabe was then 11:53
6 raising issues about, for example, penalty points, was
7 because he was motivated by revenge against the Gardaí
8 because of the manner in which he himself had been
9 subjected to an investigation in relation to sexual
10 abuse? You do understand that's what Superintendent 11:53
11 Taylor has said he was instructed to do?

12 A. Yes.

13 269 Q. Now, is it your evidence that that is what he
14 instructed you of on the night that you visited him in
15 relation to the campaign, that that was what it related 11:53
16 to; in other words, that Sergeant McCabe was motivated
17 by revenge against the job?

18 A. Yes. He told us that he genuinely believed that at the
19 time back in 2014, yeah.

20 270 Q. Yes. And I understand that from your notes and from 11:53
21 your evidence that he didn't go any further, there was
22 no opening up of the case or the allegations against
23 Sergeant McCabe?

24 A. No, in terms of -- no, we didn't go there. But I mean,
25 I don't think there was any need to. It's not like as 11:54
26 if we were hearing it for the first time.

27 271 Q. No, but what I am saying is that Superintendent Taylor
28 was saying that the campaign was related to Sergeant
29 McCabe, was motivated by revenge against the job

1 because of a grievance he had going back to what is now
2 known as the Ms. D allegation?

3 A. Yeah, I mean -- yes, that's probably fair enough, yeah.

4 272 Q. Yes. And that has been his evidence, that has been his
5 evidence to the Tribunal. So what I'm saying is, he 11:54
6 has been consistent in relation to his in evidence
7 relation to what he says the campaign was and what he
8 was instructed to do by his Commissioner, do you
9 understand what I'm saying?

10 A. Yeah, I do, yeah. Yeah. Yeah, and I have made the 11:54
11 point already that I think he -- I believe that he was
12 being truthful to us about the orchestrated campaign
13 against Maurice, he was obviously less truthful in
14 relation to how he was being treated himself and why.

15 273 Q. Yes. But that is what -- 11:55

16 A. That's fine. That is the impression I got.

17 274 Q. That is the question I am putting to you. In relation
18 to the Maurice McCabe aspect of your visit to his
19 house, that was the purpose I understand of your visit
20 to the house? 11:55

21 A. Yes.

22 275 Q. In relation to that aspect, would you agree that he has
23 been consistent in his reporting of what the campaign
24 was about and in his evidence of what the campaign was
25 about, from the time you met him and in relation to the 11:55
26 evidence he has given to the Tribunal, as far as you
27 are aware?

28 A. Just generally speaking, yeah, yes, but I mean, I
29 probably haven't read his testimony in enough detail to

1 say that I can vouch for 100 percent of his story in
2 here in comparison to what he said in his living room.
3 But the gist of it is, yeah, I mean, obviously we have
4 already debated the issue of did these texts go out in
5 text, or did this derogatory information go out in text 11:56
6 form to the different individuals, obviously I'm not
7 able to say categorically that he definitely said that,
8 yeah. Aside from that, the general gist of it, yeah.

9 276 Q. And in relation to that meeting on the evening with
10 yourself and deputy Taylor [sic], it's a case that it 11:56
11 was yourselves that sought that meeting by contacting
12 Michelle Taylor?

13 A. That's true, yeah.

14 277 Q. And that up to that point, Superintendent Taylor had
15 made no attempt to contact you? 11:56

16 A. No.

17 MR. FERRY: Thank you, Deputy wallace.

18 A. No problem.

19 MR. GILLANE: No questions, Chairman.

20 11:56

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

22 278 Q. MR. DIGNAM: Deputy wallace, my name is Conor Dignam, I
23 appear on behalf of An Garda Síochána and I have some
24 questions specifically on behalf of former Commissioner
25 Callinan and former Commissioner O'Sullivan. I don't 11:57
26 propose to keep you very long, there is really only
27 three or four areas that I want to cover quite briefly.
28 Mr. McGuinness has already covered some of the areas
29 that I want to touch on with you.

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I want to focus on the interactions that you had with Superintendent Taylor. We know from your evidence and indeed your statement that you have had ongoing contacts with Sergeant McCabe since about 2012, I think you said, but I really want to focus on what you were told by Superintendent Taylor and what you did with that information. Because I think you and Deputy Daly did the very responsible thing, that when Sergeant McCabe told you what Superintendent Taylor had told him, you insisted on meeting Superintendent Taylor, isn't that right?

A. Well, we asked if we could possibly do so, yeah.

279 Q. Yes. And I take it that the purpose of that was because you wanted to hear from the horse's mouth what was being said rather than relying on thirdhand or secondhand information?

A. That is fair enough, yeah.

280 Q. The impression I have, and you might correct me if I am wrong, that when you left the living room, I think is how you described it, or sitting room possibly, in Superintendent Taylor's house on the evening when you met Superintendent Taylor, you believed what he had told you, isn't that right?

A. Em, generally speaking, yes.

281 Q. Yes.

A. But I mean, you know, I mean obviously, in hindsight, now, we realised that we weren't told everything 100 percent accurately, but I mean, that is probably not

1 quite as unnatural as we might like.

2 282 Q. Yes. I don't think we will have any disagreement in
3 relation to that. But you heard what Superintendent
4 Taylor had to say and you, in general or generally
5 believed what he had to say to you, and you relied on 11:59
6 that information, isn't that right?

7 A. Well, you use the term relied upon; we really didn't
8 hear anything new on the night, really, from the point
9 of view of the treatment of Maurice McCabe. It was, I
10 suppose, what was most interesting about it was that we 11:59
11 experienced a senior member of the force confirming
12 what we would have suspected already.

13 283 Q. I mean, it's not quite correct to say, Deputy Wallace,
14 that you didn't hear anything new because you heard
15 details at the very least -- 11:59

16 A. All right, but the general gist of what he was saying
17 was what we already understood.

18 284 Q. Yes, I take that to be your case. But you had now been
19 given extensive detail from Superintendent Taylor in
20 relation to what he was describing as a campaign? 12:00

21 A. Well, given the fact that the detail wasn't as
22 extensive maybe as I would have liked.

23 285 Q. No, no, but at the time, Deputy Wallace. I mean, you
24 were told about text messages, you were told about --

25 A. Yeah, well, obviously the very fact that I can't say 12:00
26 for one hundred percent fact that he sent the text
27 messages or the derogatory information out in text
28 form, obviously means that I didn't get as detailed as
29 I probably should have.

1 286 Q. Yes. Well, can we just park exactly what you were told
2 about the texts just for the moment and I will come
3 back to that. But there was a discussion, and a
4 reasonably detailed discussion, about texts of one sort
5 or another, either going to the commissioners or going 12:00
6 to the media, politicians, et cetera, or both?
7 A. Yeah.

8 287 Q. And you acted on that information because you actually
9 included the fact that text messages were being sent
10 out as part of a campaign in Dáil statements, isn't 12:00
11 that right?
12 A. That's right, yeah.

13 288 Q. Yes. And can I take it from that that you, at that
14 stage, through no fault of your own, at that stage
15 believed what Superintendent Taylor was saying about 12:01
16 the campaign against Sergeant McCabe, but also what he
17 was saying about the treatment of him by An Garda
18 Síochána?
19 A. Yeah, and obviously I looked back over my Dáil
20 statements on that and, yeah, I was giving him the 12:01
21 benefit of the doubt and I probably gave him, probably,
22 in terms of his own position, I probably gave him more
23 credence than it has been -- as things have turned out,
24 he was exaggerating his own position.

25 289 Q. Yes. You championed the case of Garda Harrison also, 12:01
26 isn't that right?
27 A. Championed the case of him? I'll tell you what we
28 did --

29 290 Q. Well, maybe that is an unfair way of putting it.

1 A. Well, look, you asked me a question so I will answer
2 it, right? We highlighted the fact that Garda Harrison
3 was, when he also -- when he got into difficulties with
4 An Garda Síochána, the manner in which he was treated
5 by them left a lot to be desired. And if you -- if you 12:02
6 check, you'll find that at no stage did we say one word
7 about how Tusla had handled him. And he came in here
8 in the wrong module and paid a price for it, because
9 Tusla were found, if they had behaved any different
10 they would have been negligent and they were right to 12:02
11 behave as they did. But it wasn't our doing. And on
12 the night that the terms of reference for this Tribunal
13 were being set up, we actually went to the Minister for
14 Justice for that night, Frances Fitzgerald, and we told
15 her that it was a mistake to put Harrison in that 12:03
16 module. Now, but did we -- did we raise issues about
17 his treatment in An Garda Síochána? Yes, we certainly
18 did. And we would still insist that he was poorly
19 treated by An Garda Síochána after he falling foul of
20 them. 12:03

21 291 Q. And you believed -- you believe what Garda Harrison
22 told you, isn't that right?

23 A. Do I believe it?

24 292 Q. Yes.

25 A. Well, sure, listen, no matter what anyone tells us, we 12:03
26 are going to -- I mean, we have met so many
27 whistleblowers at this stage, and before we would -- we
28 would give the information that we get as serious a
29 consideration as we could, we would try and cross-check

1 it as much as we could. But if -- you know, if you are
2 going to take individual statements from our Dáil
3 record and use them as you see fit, I would argue that
4 it -- that will be taking things out of context. We --
5 in 2012, we first raised issues in the Dáil and we had 12:04
6 to break the rules to even get up issues about An Garda
7 Síochána. And you'll remember that for about a good
8 part of two years, we were ridiculed and rubbished for
9 anything that we said and that we were told that we
10 were barking up the wrong tree. 12:04

11 293 Q. Deputy wallace, if I could just give you some
12 reinsurance. I don't intend ridiculing you or
13 rubbishing --

14 A. Right, okay. Well, I mean, the point I am trying to
15 make is now, you are looking at statements that I made 12:05
16 after meeting Taylor and, I mean, I saw -- I have seen
17 reference made in here that -- I seen some, I don't
18 know whether it was in here or maybe in the media, that
19 we actually were using false information from Taylor to
20 actually undermine the position of Nóirín O'Sullivan. 12:05
21 I mean, I would suggest anyone making that claim to
22 actually do a bit of research and actually check the
23 records in the Dáil.

24 CHAIRMAN: Mr. Dignam and Mr. wallace, can I just
25 intervene, please. We can't descend into an argument 12:05
26 particularly about matters that are best dealt with in
27 the opinion pages of a newspaper. I know you have
28 questions. I know a view was taken by Deputy wallace
29 in relation to Garda Keith Harrison, I know he is now

1 taking a view in relation to Garda Keith Harrison and
2 An Garda Síochána, but I don't think any more of him or
3 any less of him for that. And if there is an issue in
4 relation to what level of scrutiny public
5 representatives who are told very unpleasant things 12:06
6 about people should undertake before mentioning those
7 things in Dáil Éireann, that may be something that is
8 relevant, I don't know, but I am not sure any of this
9 is at the moment.

10 MR. DIGNAM: No, and I tried to reassure Deputy 12:06
11 Wallace, I don't propose going back into Dáil records
12 and putting extensive Dáil statements to you, Deputy
13 Wallace. I think your record speaks for itself. And
14 the Dáil records and the full context of them are
15 available to any members of the public who want to 12:06
16 examine what you had to say.

17 CHAIRMAN: Yes, Mr. Wallace, that is not a criticism.
18 You are absolutely entitled to hold an opinion if you
19 wish.

20 MR. DIGNAM: Yes. 12:06

21 294 Q. Now, if I could just come on to the specifics then,
22 Deputy Wallace. As I say, you took the responsible
23 step of meeting Superintendent Taylor and you went to
24 his house that evening, and you have described the
25 meeting as taking about three-and-a-half hours, I think 12:06
26 you said, on that evening. You say in your
27 statement -- your interview with the investigators on
28 6852, and this is an area that Mr. Ferry asked you
29 about, you said that Superintendent Taylor said to you

1 that "the tipping point came a few weeks previous".
2 And I don't need to go any further, but if you wish me
3 to, I will, but he said that "the tipping point came a
4 few weeks previous". Now, when you made that statement
5 to the Tribunal investigators, were you aware that 12:07
6 Superintendent Taylor, in fact, had had two
7 conversations with the journalist Mr. Clifford of the
8 Examiner prior to what he describes as the tipping
9 point, were you aware of that?

10 A. No. 12:07

11 295 Q. No. Superintendent Taylor didn't tell you when you met
12 him that evening in his house that he'd already had
13 conversations with the journalist Mr. Clifford?

14 A. No.

15 296 Q. No. Now, you describe his condition as you saw it on 12:07
16 that evening as him being in a bad place mentally, I
17 think is how you described it, you gave additional
18 detail.

19 A. Mm-hmm.

20 297 Q. I think you'll accept that there can be any number of 12:08
21 reasons why a person would be in a bad place mentally,
22 would you accept that as a general proposition?

23 A. Yeah, mm-hmm.

24 298 Q. Yes. You weren't aware at that stage, and you weren't
25 made aware of it by Superintendent Taylor, that he knew 12:08
26 that he had committed the wrongdoing for which he was
27 being investigated as part of the Clerkin
28 investigation, isn't that right, you didn't know that
29 he --

1 A. No, he didn't inform us of that, no.

2 299 Q. Yes. You know that he has come in to this Tribunal and
3 accepted that he did almost all of what he was being
4 investigated for by the Clerk in --

5 A. Yeah, I do, yes. 12:08

6 300 Q. And he didn't tell you that on that night?

7 A. No.

8 301 Q. Would you accept as a general proposition that being
9 under criminal and disciplinary investigation for
10 offences is something which will bring its own stresses 12:09
11 and worries and concerns?

12 A. Yes, that is true, yeah.

13 302 Q. And could put one, a person, in a bad place mentally?

14 A. Yes, I accept that.

15 303 Q. Yes. Now, you -- in relation to the text messages, and 12:09
16 you have very fairly said in your statement that you
17 don't recall, and I am going to summarise it rather
18 than reading out the statement, just for the purpose of
19 time, you say that you don't recall Superintendent
20 Taylor specifically saying that he was sending 12:09
21 derogatory text messages to members of the media or
22 politicians or journalists, that was an assumption on
23 your part?

24 A. It was the impression that he gave us.

25 304 Q. Impression. And indeed, that had been mentioned, I 12:09
26 think, earlier in the day by Sergeant McCabe as him
27 having been told that by Superintendent Taylor, is that
28 right?

29 A. Yeah.

1 305 Q. Yes. Now, Ms. Daly -- or Deputy Daly also deals with
2 the question of text messages and whether this campaign
3 was conducted, at least in part, by text messages. And
4 if I could just ask you to look at page 6333, which is
5 Deputy Daly's interview with the investigators. 12:10

6 A. It's in a different book, is it?

7 306 Q. Sorry, it is in a different book. 6333.

8 A. Right.

9 307 Q. About two-thirds of the way down, Deputy Daly says --
10 about two-thirds of the way down and halfway across the 12:11
11 page, Deputy Daly says:
12
13 "We definitely discussed phone messages and phones".
14
15 Do you see that? 12:11

16 A. Yes.

17 308 Q. "We definitely discussed phone messages and phones.
18 He" -- being Superintendent Taylor -- "broadly verified
19 what Sergeant McCabe said earlier to us that day. He
20 said that former Commissioner Martin Callinan's phone 12:11
21 had been bleached before and that any evidence would be
22 destroyed because that is what the guards do. We did
23 discuss Nóirín replying 'perfect' to the texts he sent
24 and also the negative briefing by text, but I did not
25 note this down in my notes because Sergeant McCabe had 12:11
26 already told us this earlier that day and also because
27 we knew they had made protected disclosures."
28
29 Now, earlier -- do you agree with that account, Deputy

1 wallace?
2 A. Em, well, right now I don't see anything wrong with it:
3
4 "He broadly verified what Sergeant McCabe said earlier
5 to us that day." 12:12
6
7 Yeah, that is true.
8
9 "He said that former Commissioner Martin Callinan's
10 phone had been bleached before and that any evidence
11 would be destroyed because that is what the guards do."
12
13 Yeah, he said that.
14
15 "We did discuss Nóirín replying 'perfect' to the texts
16 he sent and also the negative briefing by text..."
17
18 Yes, that's true. She said she didn't write down, nor
19 did I.
20
21 "Sergeant McCabe had already told us this earlier that
22 day..."
23 Yeah, that is also true, yeah.
24 309 Q. Yes. And, in fact, Deputy Daly, earlier in her
25 interview, on page 6328, recounted what Sergeant McCabe 12:12
26 had told the both of you earlier that day. It's on
27 page 4 of her interview, so page 6328 in the booklet,
28 and you will see at the top of the page that she says:
29

1 "Sergeant McCabe said he had made a protected
2 disclosure based on what Superintendent Taylor told
3 him. He said Superintendent Taylor was also making a
4 protected disclosure. We asked Sergeant McCabe if we
5 could contact Superintendent Taylor and whether he had 12:13
6 contact details for him.

7
8 Sergeant McCabe gave Mick a telephone number. Sergeant
9 McCabe would have said that the commissioners were
10 fully aware and actually even directed a lot of the 12:13
11 bad-mouthing or smearing against Sergeant McCabe with
12 the media and that they were fully complicit in that.
13 Sergeant McCabe talked about a security file called
14 Oisín which he said was about him in Garda Headquarters
15 that Superintendent Taylor told him about. " 12:13

16
17 And then he says -- or then Deputy Daly says:

18
19 "Sergeant McCabe also said that text messages were sent
20 out by Superintendent Taylor and that Nóirín O'Sullivan 12:13
21 in one instance replied 'perfect' in response.
22 Sergeant McCabe told us that Superintendent Taylor said
23 that he was directed to do this, and not only that he
24 was directed to do this, but that he did it. He said
25 that Superintendent Taylor said that he did it in the 12:14
26 full knowledge and instruction of the former
27 Commissioner Martin Callinan and Nóirín O'Sullivan.
28 Sergeant McCabe also said that Superintendent Taylor
29 said that when the media were pursuing negative

1 commentary about him, former Commissioner Nóirín
2 O'Sullivan was aware of that and that she was, in fact,
3 involved in it."

4
5 Okay. Now, there is two types of texts being referred 12:14
6 to in that passage. One is when the -- when the media
7 was pursuing negative commentary about Sergeant McCabe,
8 but also that reference by Deputy Daly to Sergeant
9 McCabe saying that text messages were sent out by
10 Superintendent Taylor. Now, I understand that to 12:14
11 mean -- and I take it from your evidence that you had
12 the impression that the media were being briefed by
13 text. I understand that to mean that texts were being
14 sent out from the Garda organisation, outside the Garda
15 organisation, to politicians and journalists, is that 12:15
16 the way you read that?

17 A. Well, the impression I got was that texts -- I mean, as
18 I said already, the impression we got was that texts
19 were being sent out of a derogatory nature about
20 Maurice McCabe to the media and others. 12:15

21 310 Q. Yes. And then finally on this issue, on page 6335,
22 Deputy Daly's interview, at the very top of the page --
23 sorry, on the previous page, Deputy Wallace, Deputy
24 Daly is asked:

25
26 "If either of the parties, i.e. Sergeant McCabe or 12:15
27 Superintendent Taylor, referred to text messages being
28 used in a campaign to negatively brief journalists
29 against Sergeant McCabe."

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Okay. And Deputy Daly says in answer to that question on 6335:

"Both of them referred to text messages being used in a campaign to negatively brief journalists against Sergeant McCabe by Superintendent David Taylor." 12:16

Do you agree with that statement?

A. Sorry, say it again, please. 12:16

311 Q. Yes. Deputy Daly is asked whether either Sergeant McCabe or Superintendent Taylor referred to text messages being used in a campaign to negatively brief journalists against Sergeant McCabe by Superintendent David Taylor. And Deputy Daly answers: 12:16

"Both of them" -- i.e. Sergeant McCabe and Superintendent Taylor -- "referred to text messages being used in a campaign to negatively brief journalists against Sergeant McCabe by Superintendent David Taylor." 12:16

Do you agree with that?

A. Yeah, as I have said, Maurice mentioned the fact that Superintendent Taylor had confirmed that derogatory text messages were being sent out to undermine him, to the media, other senior members of the force and some politicians, and I got the impression, and as I said, I haven't been able to say that I heard Taylor saying for 12:16

1 one hundred percent that he sent it out in text form,
2 but I got the impression that that is what was
3 happening.

4 312 Q. Now, just the last area I wanted to cover with you,
5 Deputy Wallace, is on page 6854, which is your own 12:17
6 interview, which I think you had opened just a moment
7 ago, so it's probably in the other volume you have
8 open.

9 A. Go ahead.

10 313 Q. 6854. 12:17

11 A. I have that, yes.

12 314 Q. You will see about a third of the way down, there is a
13 sentence beginning "Much of the rest of the meeting".
14 You say:

15 12:18
16 "Much of the rest of the meeting, David Taylor
17 concentrated a lot then on what they" -- the gardaí --
18 "were doing to him and the lengths they were going to.
19 He said they were out to shaft him now in a manner he
20 regarded not dissimilar to what they had done to 12:18
21 Maurice."

22
23 Now, you have dealt with that in your evidence with
24 Mr. McGuinness. Can I take it from that that quite a
25 portion of the meeting was taken up with David Taylor 12:18
26 complaining about his own treatment?

27 A. Em, it would be very difficult for me to say what
28 portion of it.

29 315 Q. Okay.

1 A. And I made the point earlier that the meeting went on
2 for three hours and 15 minutes, and for a large part of
3 the early part of the meeting I wasn't taking notes
4 because I was conscious of the fact that Clare was, and
5 we talked, obviously -- we would have spoken mostly 12:18
6 about the campaign against Maurice, but, yeah, he did
7 talk a fair bit later about their own position and --
8 but as to what percentage, to be honest it would be
9 very hard for me to say.

10 316 Q. Okay, well, I think it's understandable how you 12:19
11 wouldn't have been taking notes throughout the meeting,
12 given the nature of the meeting, but the notes that you
13 have provided to the Tribunal are all to do with, or
14 almost all to do with, the complaints or allegations
15 that Superintendent Taylor was making about his 12:19
16 treatment by, as he saw it, by An Garda Síochána, would
17 you accept that?

18 A. Yeah, I noted that myself, that there was a lot in my
19 notes on that area because of the fact that it was the
20 later part of the meeting when I was taking notes. 12:19

21 317 Q. Yes. And I am not going to go through them, the
22 Tribunal has them. But you -- there is reference to
23 trumped-up charges --
24 CHAIRMAN: well, do you want to give a page number?
25 Maybe just a sample, if you are going to -- 12:20

26 318 Q. MR. DIGNAM: Sorry, on page -- they are on page 6872,
27 they are your handwritten notes, and, in fact, much of
28 them is contained in your interview where they were put
29 as questions to you.

1 A. Yeah, which -- what is on the top of the page? I have
2 three pages here, I think.

3 319 Q. Yes. So really what I wanted to ask you: It seems
4 that during the course of this part of the meeting at
5 least with Superintendent Taylor, he was making 12:20
6 complaints about the appointment of the former
7 Commissioner's husband to the investigation team, the
8 fact that phones were taken, and, in fact, in one place
9 you have noted "appointed her husband to take three
10 phones". So I take it from that that you were being 12:20
11 told that the purpose of appointing her husband was in
12 order to ensure that he would get the three phones, is
13 that --

14 A. Yeah, well, he did --

15 CHAIRMAN: Just direct me to that. So there is two 12:21
16 references. One is to "Jim McGowan has her phone".
17 That is a reference to Chief Superintendent McGowan.
18 And then "appointed her husband to take three phones".

19 MR. DIGNAM: It's the -- sorry, Chairman, I was
20 operating off the -- it's at the bottom of page 6872: 12:21
21

22 "Appointed her husband to take three phones."

23 A. Yes. What are you asking me about it?

24 320 Q. Yes, the impression -- am I correct in saying that the
25 impression you had from that was that Superintendent 12:21
26 Taylor was saying that the purpose that Commissioner
27 O'Sullivan appointed her husband, a senior detective,
28 as part of this investigation team, was in order to
29 secure the three phones for improper purposes, is that

1 the impression you had?

2 A. Yeah, that would -- yes, he felt that the appointment
3 of her husband in this role, he felt, was going a bit
4 too far.

5 321 Q. Is it fair to say that the impression that you took 12:22
6 from what you were being told by Superintendent Taylor
7 was that this was an invalid and an improper
8 investigation, that it was for ulterior purposes?

9 A. Yeah, he did say it was on trumped-up charges, and
10 obviously the testimony in here has contradicted that. 12:22

11 322 Q. Yes. And you have heard, in fact, that he has now
12 accepted --

13 A. Yeah, I did, yeah.

14 323 Q. -- despite issuing judicial review proceedings,
15 et cetera, he has now accepted that this was a valid 12:22
16 and proper investigation and, in fact, admitted that he
17 committed some of the wrongdoing that he was being
18 investigated for?

19 A. Yeah. And I think for him to misrepresent his own
20 position, well obviously it's clearly undermined his 12:22
21 credibility. The fact that he did it, when he did it,
22 speaking to us, I suppose isn't madly surprising, given
23 that he was in a very bad place, and he is not probably
24 the first human being to exaggerate their problems when
25 they are in a hole. 12:23

26 324 Q. Yes. You've very politely, Deputy Wallace, used a few
27 euphemisms; you've said he was economical with the
28 truth, he was embellishing his own position, possibly
29 exaggerating his own position --

1 A. And misrepresenting it, yeah. And was he being
2 untruthful? And was he being untruthful? Yes, he was,
3 yeah.

4 325 Q. Yes. And I think you've described him in your view as
5 either telling more of the truth in the sitting room, 12:23
6 or possibly less of the truth in the sitting room, or
7 more of the truth to this Tribunal. Do you consider
8 yourself to have been lied to by Superintendent Taylor,
9 Deputy Wallace?

10 A. As I said already, I think that in relation to the 12:23
11 treatment of Maurice McCabe, I would say that he was
12 telling us the truth in his living room. Was he being
13 untruthful about his own position? Yes, it certainly
14 looks that way.

15 326 Q. Do you consider yourself to have been sold a pup by 12:24
16 Superintendent Taylor?

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

18 327 Q. At least in relation to the investigation against him?
19 A. I understand that he was in a very difficult place and
20 he was untruthful about some of his own position, but 12:24
21 we do not for a second believe that we were sold a pup
22 and that we felt that it was very interesting that such
23 a senior member of the force would confirm the fact
24 that there was a concerted campaign to undermine the
25 credibility of Maurice McCabe. 12:24

26 MR. DIGNAM: Yes. Thank you, Deputy Wallace.

27 A. Thank you.

28 MR. McGUINESS: Nothing further, Chairman.

29 CHAIRMAN: Thank you very much, Deputy Wallace. We

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will take a break until half past one. Thank you.

THE WITNESS THEN WITHDREW

THE HEARING ADJOURNED FOR LUNCH

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 MR. MARRINAN: Sir, the next witness is Deputy Clare
4 Daly, please.

5
6 DEPUTY CLARE DALY, HAVING AFFIRMED, WAS DIRECTLY
7 EXAMINED BY MR. MARRINAN:

13:32

8
9 328 Q. MR. MARRINAN: The Deputy's statement is to be found at
10 page 6325 of the materials. I think that you're aware
11 of the fact that we are focusing on two particular
12 meetings that you had in the first instance with
13 Sergeant Maurice McCabe and then with Superintendent
14 David Taylor?

13:33

15 A. Sure.

13:33

16 329 Q. Both of which took place on the 3rd October of 2016 and
17 arose out of protected disclosures that were made on
18 the 26th September 2016. I think that you are aware of
19 the fact that the protected disclosures had, in fact,
20 been made on the 26th September 2016, is that right?

13:33

21 A. That's right.

22 330 Q. Were you aware of the content of the protected
23 disclosures at that time?

24 A. Broadly. Not in detail, but the broad generalisations,
25 yes.

13:33

26 331 Q. And I think that Sergeant Maurice McCabe was in contact
27 with you and you arranged to meet him on the 3rd
28 October of 2016, is that right?

29 A. That's right. We would have a long-standing

1 relationship with Maurice McCabe. We would meet him
2 regularly. He contacted us on that day to say he had
3 some news, good news, and we arranged to meet him for
4 lunch. Yeah.

5 332 Q. Now, I think you met him for lunch, and then he 13:34
6 recounted a conversation that he had with
7 Superintendent Taylor, is that right?

8 A. That's right.

9 333 Q. And you made some notes of that conversation that you 13:34
10 had with Sergeant McCabe, and those are at page 6347 of
11 the materials. Now, I think I'm not going to go
12 through those with you. I think that you have very
13 helpfully set out at page 6329 of your statement a
14 reference to the different matters --

15 A. Yes. 13:35

16 334 Q. -- that arose during the course of the conversation,
17 and have referred to the typed notes.

18 A. Sure.

19 335 Q. Or the handwritten notes, and gives a typed version of 13:35
20 it. It refers to a number of issues. John Barrett is
21 mentioned in it, in terms of a belief that he was
22 referring to the fact that John Barrett may have
23 approved or had information, was it --

24 A. Mm-hmm.

25 336 Q. -- in relation to whether or not Nóirín O'Sullivan had 13:35
26 assisted in the smear campaign. And then there's
27 reference to "Superintendent Dave Taylor out of the
28 Roma". That is the Roma investigation, I assume. Then
29 there's a reference to "McGuinness - abused kids". And

1 that must be a reference then to Deputy McGuinness and
2 his comments about former Commissioner Martin Callinan.
3 Then you've noted "Clifford", which is probably a
4 reference to Mick Clifford?

5 CHAIRMAN: Sorry, Mr. Murrinan, I think we have got the 13:36
6 wrong page number up. Did you want 6347 on the screen?

7 MR. MARRINAN: No, I am looking at 6329 now, sir. I'm
8 looking at the typed. I'm not going to the
9 handwritten.

10 CHAIRMAN: Yes. 13:36

11 MR. MARRINAN: And then at 6330 you refer to the
12 Cunningham, this is noted in the handwritten.

13 A. Mm-hmm.

14 337 Q. And there is a reference there: "Should be okay,
15 Taylor out" and "nothing", and then you have got "two 13:36
16 protected disclosures", the fact that they had been
17 made, and then the reference to Oisin in the report.
18 This is something that had been said to Sergeant McCabe
19 by Superintendent Taylor. Then "Nóirín O'Sullivan -
20 RESP" and then "perfect". That is a reference to 13:37
21 Nóirín O'Sullivan responding "perfect" to texts that
22 had been sent, and I will come to that in a moment.

23 Then: "Cunningham to Dave to Nóirín O'Sullivan put me
24 under the bus." And then you have an explanation
25 there. I am not going to develop any of these because 13:37
26 I don't see that they have any great import in terms of
27 the matters that the Tribunal is, in fact, examining.
28 And then there's the reference again to John Barrett
29 there, circled as such:

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"Elevates it a bit from my own reference, I believe this was John Barrett had knowledge of the Commissioner's involvement in the smear campaign against Sergeant McCabe."

13:37

And then over the page at 6331 there is a reference to an anniversary meeting, Dundalk. And we know what that was about in relation to Deputy John McGuinness.

13:38

If I can just come back to the reference to texts. Aside from the notes, do you have any recollection of Sergeant McCabe telling you about text messages that had been sent by Superintendent Taylor to other gardaí or to the media in relation to the smear campaign?

13:38

A. Yeah. I mean, this one page of handwritten notes are my only notes from the meeting, but my recollection would be very much that there was an understanding on Maurice's part that, having met former press secretary Dave Taylor, that he discussed with Maurice that he had evidence of that activity, yes.

13:38

338 Q. And we need to be as definite as we can be in relation to this, and this is arising out of your conversation with Maurice McCabe --

A. Hm.

13:39

339 Q. -- was the strategy then adopted in relation to the smearing of Maurice McCabe, that Superintendent Taylor was to send text messages to journalists, I think at one stage you say perhaps politicians and also to other

1 gardaí, to send them text messages about Maurice
2 McCabe?

3 A. That would have been the understanding that I had with
4 that conversation with Maurice, yes, that that was what
5 Dave Taylor had briefed him. 13:39

6 340 Q. And was there a reference to the 2006 investigation,
7 the Ms. D matter?

8 A. Not specifically at that -- no.

9 341 Q. You don't recall that being said to you --

10 A. Not hugely. 13:39

11 342 Q. -- by Sergeant McCabe?

12 A. Not hugely, no. I mean, to be honest, we never hugely
13 placed a great emphasis on that. We were the last
14 people who would have been, I suppose, the recipients
15 of that rumour, and we kind of dismissed it as quick as 13:40
16 we heard it, so we wouldn't have placed any great
17 emphasis on that anyway.

18 343 Q. Well, just before we move on to your meeting with
19 Superintendent Taylor, you heard Deputy Wallace this
20 morning inform the Tribunal that a phone call had been 13:40
21 put through to his office --

22 A. Mm-hmm.

23 344 Q. -- in Dáil Éireann, in 2014, he thought --

24 A. Mm-hmm.

25 345 Q. -- in relation to somebody ringing about Maurice 13:40
26 McCabe. Do you recall that?

27 A. I recall being told of it at the time. I'm certainly
28 aware of the rumour, I suppose, at the time. But as I
29 say, we would have dismissed it straightaway, so it

1 didn't -- I didn't place --

2 346 Q. well, we are more concerned about actually receiving a
3 call?

4 A. I didn't receive a call, but I am aware that Mick
5 Wallace's office did receive a call, and I would have 13:40
6 been informed of that at the time, yes.

7 347 Q. was this just put down at the time as some crank
8 ringing in in relation to --

9 A. well, not necessarily. I think I saw it very much as
10 part of a campaign that we had been aware of since 13:41
11 2011, since when I met Maurice McCabe, that there had
12 been whole-scale efforts to undermine him, isolate him,
13 with a view to discrediting the actual information he
14 was bringing in to the public domain.

15 348 Q. And what had you heard during that period of time? 13:41

16 A. I've thought long and hard about this and when I first
17 heard it. I suppose I would have been aware of what I
18 can only describe as a whispering in relation to, you
19 know, allegations involving children, or whatever. But
20 as I say, I didn't place any huge stock in it. 13:41

21 349 Q. All right. And this allegations in relation to
22 children and the whisperings of that, did that go back
23 to 2011?

24 A. No, not that far, no, no.

25 350 Q. When did that start? 13:41

26 A. Probably I suppose in terms of the D allegations, my
27 first firm knowledge of that would have been around the
28 Paul Williams article on that, around that time.
29 Probably 20 --

1 351 Q. Well, the 12th April 2014 was the Paul Williams
2 article.
3 A. Yeah, yeah.

4 352 Q. But I'm not really talking about the particular
5 allegations made by Ms. D. 13:42
6 A. I know.

7 353 Q. I'm more concerned about the whispering that you heard
8 that there were allegations in relation to children and
9 Maurice McCabe?
10 A. I can't remember when I heard that first. 13:42

11 354 Q. You can't.
12 A. But what I am very sure of is that from the beginning
13 of when we began to raise some of Maurice's concerns,
14 that they were met in various quarters with a response
15 of sort of, well, he's a bit of a nut, or whatever. 13:42
16 Various underminings without necessarily all of them
17 being specific to child abuse, or anything like that,
18 but a general undermining would have been the context:
19 is your man not a bit of a crank, is there not a
20 history there? That type of stuff. 13:42

21 355 Q. Was this in political circles that you heard this?
22 A. Yes.

23 356 Q. Did you hear it outside the political circles?
24 A. No.

25 357 Q. No. Okay. So then if we could just move on. I think 13:42
26 that you asked Sergeant McCabe would it be possible to
27 meet with Superintendent Taylor and he indicated that
28 he had his phone number and you could phone him if you
29 wished to, and I think that he was phoned and you then

1 went to his home with Deputy Wallace later on that
2 evening, isn't that right?

3 A. That's right.

4 358 Q. And again, we have notes of that, but before I come to
5 that, could you just give us as much as you can detail 13:43
6 in relation to what Superintendent Taylor told you
7 about the smear campaign against Maurice McCabe, just
8 leaving aside for the moment what he told you about his
9 own situation. What did he tell you was his modus
10 operandi in relation to the smear campaign? 13:43

11 A. Well, I suppose we went with a view to verifying the
12 information that Maurice had given us earlier.

13 359 Q. Yes.

14 A. And leaving the meeting, I would have been very clear
15 that Dave Taylor had confirmed the information that 13:44
16 Maurice gave us. My notes from the time, which are a
17 better recollection than my memory, would tell me that
18 he, I suppose, gave us an insight into how the guards
19 at that level were operating, at a time when maybe some
20 of the confrontations were coming into the public 13:44
21 domain, we got an insight into behind the scenes. And
22 he would have told us that, and my notes from the time
23 reflect it, that his job was to tip off journalists, to
24 look into the background of Maurice McCabe, to say that
25 he hadn't been cooperating, he was driven by agendas 13:44
26 and revenge on the guards, and that basically that
27 campaign issued a frenzy point around the appearance of
28 Martin Callinan at the Public Accounts Committee, and
29 that he did that. It struck me he was remorseful for

1 doing that, but he acknowledged that he played that
2 role and that his job was to basically tip off
3 journalists and anybody else who would listen,
4 essentially that Maurice was somebody not to be
5 trusted.

13:45

6 360 Q. So if we could just look at page 6335 of your
7 statement. This is in answer to a question, but you
8 say:

9
10 "Both of them referred to text messages being used in a
11 campaign to negatively brief journalists against
12 Sergeant McCabe by Superintendent Dave Taylor, but I do
13 not have a note of the specifics. I remember at the
14 meeting with Superintendent Taylor the context of
15 phones being destroyed, SIM cards being destroyed and
16 being bleached, the phones would be destroyed because
17 this is what the gardaí do. As referred above, was in
18 relation to negative briefings about Sergeant Maurice
19 McCabe."

13:45

13:45

20 A. Mm-hmm.

13:45

21 361 Q. So could you just maybe expand on that a little bit in
22 terms of this issue?

23 A. Yes. I mean, what the Tribunal investigators were
24 seeking to find out from me at that stage was the best
25 of my recollection, I suppose, of the essential
26 discrepancies that have emerged at the Tribunal between
27 what Maurice McCabe has said --

13:45

28 362 Q. Yes.

29 A. -- and what Dave Taylor has said, and I was trying, in

1 that context, to be as helpful as I could. I think
2 what I have to rely on first and foremost is my notes
3 from the time, which are quite clear, I think, in terms
4 of what I had noted Dave Taylor had said. I was very
5 clear that we discussed phones a lot. We discussed the 13:46
6 idea of phones being bleached, which was obviously
7 something Dave Taylor introduced, I would have no
8 knowledge about that. That was clearly in the context
9 that information on phones would, I suppose, verify
10 that there had been a campaign to undermine Maurice 13:46
11 McCabe. But can I, with my hand on my heart, say that
12 Dave Taylor told us one hundred percent that day that
13 he sent out texts negatively briefing which had been
14 written by Nóirín O'Sullivan and Martin Callinan, no, I
15 can't a hundred percent say that he said that at the 13:46
16 meeting, but that was definitely my recollection. We
17 talked a lot about text messages, about those text
18 messages being part of a campaign to undermine the
19 credibility of Maurice McCabe. But who wrote the
20 texts, I suppose, and where they were sent out to, I 13:47
21 can't be as clear on that. But I'm very clear that the
22 impression we were being given was that there was a
23 campaign, and it was very much put in that context, to
24 undermine his credibility. And that very much verified
25 the experience we had had over the years before we ever 13:47
26 even heard of Dave Taylor. So we weren't hugely -- it
27 was interesting and it was enlightening to hear
28 something that you kind of felt anyway, but that's
29 about as much as it represented at the time, I suppose.

1 363 Q. Did you get the impression that Superintendent Taylor
2 was telling you that he was in some way hindered in
3 making his case because the phones had been taken from
4 him and because the Commissioner's phone, as he put it,
5 had been bleached? 13:48

6 A. I think that discussion was in the context of we had
7 sought information, I suppose, about the evidence of
8 text messages and the evidence of the smear campaign in
9 the context of text messages, and that was probably
10 where the discussion led to the concept of bleaching of 13:48
11 phones and the clear, I suppose, impression was that,
12 look at, you're not going to find any evidence on
13 phones any more because if the evidence was there it
14 would have been well-destroyed by now.

15 364 Q. So you're aware of the importance of the question 13:48
16 that's being asked of you, I suppose, but at the end of
17 the day, having met Sergeant McCabe, having met
18 Superintendent Taylor, you were certainly under the
19 impression from talking to both of them that text
20 messages had been sent to the media smearing Maurice 13:49
21 McCabe, is that right?

22 A. That's probably correct, yes.

23 365 Q. Yes.

24 A. I do know texts were mentioned, absolutely, and I am
25 very sure, and my notes reflect it, that there was an 13:49
26 order or an instruction or a willingness from Dave
27 Taylor's point to be -- to be part of that parting of
28 that information.

29 366 Q. And indeed we know that you subsequently went on radio,

1 I think, two days later?

2 A. Mm-hmm.

3 367 Q. I don't intend to go through that with you.

4 A. Okay.

5 368 Q. But you refer to text messages again being sent to 13:49
6 gardaí and to the media. And again, it was developed
7 in speeches in the Dáil as well, indeed. Did anybody
8 seek at any time to correct the public record? Did you
9 hear from --

10 A. Never. 13:49

11 369 Q. -- Superintendent Taylor or from Sergeant McCabe --

12 A. Never.

13 370 Q. -- attempting to correct these public utterances that
14 you were making?

15 A. No. 13:50

16 371 Q. And your notes of the meeting start at page 6348, and I
17 will just go through them very quickly with you. They
18 are dated, obviously, there at page 6348, the 3rd
19 October. And then it says "agree protocol" halfway
20 through there, "Callinan first, O' Sullivan second". 13:50
21 Then above that there is a reference to the crime and
22 security. There's a reference, I think, to "hated
23 GSOC", you say that that refers to Martin Callinan.
24 And then if we just move over the page at 6349, and
25 then it says, third line, "particularly around PAC" and 13:51
26 then "had to be stopped". This was the smearing was
27 taking place at that time, is that right?

28 A. Yeah, I mean, essentially when we met Dave Taylor
29 first, he gave us a brief outline of his history, how

1 he ended up in the job that he was in, how Martin
2 Callinan had picked him, and I suppose he gave us an
3 insight into what Garda HQ was like around the time
4 that we had been raising issues in the Dáil, and some
5 of this had entered the public domain at that time. 13:51
6 The tensions between GSOC and the Garda hierarchy were
7 hinted at in the media, we would have felt them in some
8 public utterances, but to hear them expressed from
9 somebody who was in the insight was quite interesting
10 for us. So he was saying that Commissioner Callinan 13:52
11 had hated GSOC, it was around the timing of the ending
12 of the Boylan affair, that Maurice was somebody who was
13 against the regime, he had to be crushed, he was
14 against us, I have "us" underlined, which meant the
15 guards, and that he had been asked to tip off 13:52
16 journalists to look into Maurice's background, that he
17 was driven by agendas, and that he believed that, and
18 that it was believed around the country and that
19 particularly reached a point around the time of the PAC
20 appearances that things were getting really heated in 13:52
21 Garda HQ at that time.

22 372 Q. And then 6350, we see that this seems to move on to
23 Superintendent Taylor's own position. Because it says
24 "all predecessors promoted". I think that is a
25 complaint that he had expected to be promoted to chief 13:52
26 superintendent. And then halfway down -- or three
27 quarters of the way down, "investigation Frank
28 Clerkin", and then "husband" written.

29 A. Mm-hmm.

1 373 Q. what's that a reference to, do you recall?
2 A. Nóirín O'Sullivan's husband, I assume, being appointed
3 in some of the investigations, yeah.
4 374 Q. Yes. And then over the page at 6351, "have to take
5 your phone", that is a reference to his phone being 13:53
6 taken from him by the investigators, isn't that right?
7 A. Yeah.
8 375 Q. And then could you just read the following line after
9 that, after "Roma investigating", I think it says, and
10 then "gave back"? 13:53
11 A. Which page is this now, sorry?
12 376 Q. Sorry, just there, it's on the screen in front of you,
13 you see the third line down, there's an arrow going
14 "gave back".
15 A. Oh, "gave back with the same number, SIM card gone". 13:53
16 Got the phone back with the same number, but the SIM
17 card had been replaced.
18 377 Q. I think that, then, things just simply continue on
19 focusing on the investigation into him. And if we then
20 go to page 6353 of the material, and then there's a 13:54
21 reference again to Jim McGowan and then there's a
22 reference to "Viber". The Tribunal understand what
23 that was a reference to, but again related to the
24 misuse of his phone, as he --
25 A. That's right. 13:54
26 378 Q. And the interference with, perhaps, evidence that he
27 could have that would support his case?
28 A. That's right, yeah.
29 379 Q. Isn't that the position?

1 A. That's my understanding, yeah.

2 380 Q. And then there is a focus again, "further report to
3 DPP", and he gives you the dates of that. And then if
4 you turn over to page 6354, halfway down, there is a
5 reference to "35 people Dublin Castle", and then it 13:54
6 goes on, "all hand picked by Jim McGowan". Is that a
7 complaint in relation to -- that Jim McGowan had
8 hand-picked the investigators to investigate
9 Superintendent Taylor?

10 A. I'm not sure. It possibly is. I really don't know. 13:55

11 381 Q. Okay. Then over the page at 6355, and then there's a
12 reference to "bleached", that's a reference to the
13 phone, at the top of the page, is that right?

14 A. Mm-hmm.

15 382 Q. And then to the right of that "own husband to make 13:55
16 sure". Again, is that a reference to Superintendent
17 McGowan?

18 A. Yeah, I think the notes reflect that, yeah, that Dave
19 Taylor was saying he had been given a job to feed the
20 media and that the evidence of that, I suppose, was 13:55
21 going to be destroyed and was taken and that there was
22 an involvement of Jim McGowan in that, yeah.

23 383 Q. Okay. So, as I said, you left the meeting under the
24 clear impression that the phones were significant and
25 important and that was linked to the text messages that 13:56
26 had been sent out in relation to Sergeant McCabe?

27 A. That's right.

28 384 Q. Okay. Now, you've provided other information to the
29 Tribunal that is very helpful, but we are not dealing

1 with that at the moment, at this moment in time. Thank
2 you very much. Would you answer any questions.

3 MR. McDOWELL: No questions, Chairman.
4

5 THE WITNESS WAS CROSS-EXAMINED BY MR. CONLON:

13:56

6
7 385 Q. MR. CONLON: Ms. Daly, I am Carthage Conlon, solicitor
8 for David Taylor. Just a few points. Firstly, it was
9 you and Deputy Wallace that instigated the contact with
10 Michelle Taylor, is that correct?

13:56

11 A. Absolutely, yeah.

12 386 Q. Dave Taylor at no stage made contact with yourselves?

13 A. Never, never.

14 387 Q. And it was the impression that you had going into that
15 meeting that it was text messages that had been sent
16 out, but that was gleaned from Sergeant McCabe, not
17 from Dave Taylor?

13:56

18 A. Well, to be honest, I'm not as obsessed about text
19 messages as anybody else here is. I went in with a
20 briefing from having met Maurice McCabe, who had given
21 us some impression of the information he had received
22 from Dave Taylor, about how he had been involved in a
23 smear campaign. Text messages was part of that. But,
24 yeah, we were going to meet him to verify -- to have
25 that verified, but not the text messages for the whole
26 thing, yeah.

13:57

27 388 Q. And as you just confirmed there, there wasn't a real
28 particular focus from your point about the detail of
29 that; it was just the fact that text messages were part

13:57

1 of the campaign?

2 A. The significance for us was that we'd been dealing
3 around Garda issues from 2011 and we would have been
4 aware of efforts to undermine and isolate Maurice
5 McCabe systematically from that period, so, in that 13:57
6 sense, what Dave Taylor was telling us, for us,
7 actually, wasn't anything new. It was simply a
8 verification of what we had believed anyway. It
9 obviously had weight because it was coming from
10 somebody at a level inside the guards that we hadn't 13:58
11 dealt with previously. But it wasn't news to us, it
12 was our direct experience anyway, so...

13 389 Q. And it was that which you were seeking to confirm with
14 him, and I appreciate you have said about the text
15 messages, they weren't as big a focus for you; it was 13:58
16 more the general campaign from Headquarters?

17 A. Unfortunately, in hindsight, they weren't, but at the
18 time, no, they weren't. It was a detail at that time.
19 It wasn't the big issue. The big issue was the bigger
20 picture. 13:58

21 390 Q. The bigger issue and the campaign, which, as far as you
22 were concerned, started sometime in the 2011, 2012 and
23 became more into focus 2013 into 2014 with the
24 attendance at PAC?

25 A. Yeah, I mean, there's different things going on. I 13:58
26 suppose in 2011 Maurice McCabe wasn't a household name.
27 I had met Maurice for the first time then. A lot of
28 the issues never -- I never raised those issues
29 publicly until around 2012. But I was very much aware

1 in 2011 that, inside An Garda Síochána, efforts had
2 been made to undermine his standing amongst his
3 colleagues, that would have related to material we sent
4 to the Tribunal in relation to the letter by Chief
5 Superintendent Rooney, which I know he has apologised 13:59
6 here for, but, to be honest, it was also circulated by
7 Superintendent Clancy at that time. I referred to the
8 previous Commissioner, Rice, to have that investigated.
9 They investigated it and decided there was no campaign
10 around Maurice McCabe. So I suppose the point I'm 13:59
11 trying to make is that, from the early days, we tried
12 to alert senior Garda authorities about the treatment
13 of Maurice McCabe, but -- and I'm not surprised that
14 they were well aware of it, and what Dave Taylor was
15 confirming was that they were well aware of it and 13:59
16 involved in it.

17 391 Q. And was it your understanding then that in 2013 into
18 2014, there was a renewed focus on that campaign that
19 you were aware of previously?

20 A. Yes. 13:59

21 392 Q. And that that accelerated and particularly around the
22 time that Maurice McCabe was to appear at the PAC or
23 there was proposals that he would appear at PAC?

24 A. Yes. I mean, I think there is a tendency to look at
25 today -- with the eyes of today, to look back at then. 14:00
26 But at the time a serving garda to appear before a
27 Public Accounts Committee to give evidence that
28 undermined the Garda hierarchy, was borderline
29 revolutionary, to be honest, so, yeah.

1 393 Q. And was that the subject of much discussion in Leinster
2 House as well?

3 A. Yes.

4 394 Q. Amongst the media, with the politicians?

5 A. I don't talk to the media. But with the politicians 14:00
6 for sure, yeah.

7 395 Q. And that around this time we have had various
8 journalists say that everybody seems to know about this
9 rumour and allegation but nobody seems to know from
10 where. Had you been hearing it around Leinster House 14:00
11 as well?

12 A. Yes.

13 396 Q. This rumour?

14 A. Yes.

15 397 Q. And can you say from where you heard it, apart from the 14:00
16 phone call?

17 A. I can't, I'm afraid. And as I say, we were probably
18 less likely to hear about it than others because, you
19 know, we were going to dismiss it straightaway and give
20 it no credibility anyway, so -- 14:01

21 398 Q. And just then in terms of the appearance at the PAC by
22 Commissioner Callinan, was that a day of high tension
23 in Leinster House?

24 A. Unbelievable.

25 399 Q. And was there great scrutiny around his attendance? 14:01
26 Was there a big media presence there that day?

27 A. It was huge. Myself and Mick attended for the whole
28 thing, even though we weren't members of the PAC, we
29 were there for the whole session. I have never

1 experienced a committee meeting like it.

2 400 Q. It seemed to have been a very tough session and I think
3 it went on for something like five-and-a-half hours
4 straight through?

5 A. Mm-hmm. 14:01

6 401 Q. And was there much discussion about the attendance
7 afterwards?

8 A. Well, obviously the 'disgusting' remark had sort of
9 floored everybody who was there. It didn't seem to
10 rattle the cages of any of the guards who were there at 14:02
11 the time. But the minute it was uttered, yeah, it
12 caused quite a stir, for sure.

13 402 Q. And was there much conversation about that in the
14 environs of Leinster House that evening?

15 A. There was. 14:02

16 403 Q. And was there much fallout, as far as you were
17 concerned, after that, in the weekend afterwards?

18 A. I can't specifically remember. I mean, I think the
19 general impression would have been that Commissioner
20 Callinan had sort of, I don't want to be derogatory, 14:02
21 but revealed his true colours, had let the mask slip,
22 had exposed what was really going on. And, yeah, it
23 was laid bare for all to see. And people who maybe
24 hadn't seen it before were beginning to see it. So it
25 caused quite a stir. 14:02

26 404 Q. And did that tension continue into the following week
27 with the potential appearance in public of Maurice
28 McCabe before the PAC?

29 A. Oh, absolutely, yeah.

1 405 Q. And was there the same focus and attention throughout
2 Leinster House between the media and politicians in or
3 around that time as well?
4 A. Yeah, I would think it was, yeah, a bit of a frenzy, to
5 be honest, yeah. 14:03

6 406 Q. And am I right in saying that it somewhat died off a
7 little and then it came starkly into focus again with
8 Minister Varadkar's comments in mid-March?
9 A. Yeah, I couldn't exactly say that, but, yeah, that was
10 a point that got some attention back on to the issue, 14:03
11 yeah.

12 407 Q. Now, going back to the meeting that you had with Dave
13 Taylor on the night, I think you have made comment that
14 part of the meeting did focus on his own situation and
15 his own plight, but your focus there on the night was 14:03
16 to confirm what Maurice McCabe had said to you?
17 A. Absolutely. And, I mean, I know my notes reflect that
18 I did take notes about the other stuff, for want of a
19 better word --

20 408 Q. Yes. 14:03
21 A. -- that he was telling us, but that was because we
22 hadn't been exposed to that before, and I was more
23 interested -- my notes on the first part were probably
24 more sparse because a lot of the issues were issues
25 that I was familiar with anyway. 14:04

26 409 Q. And I think Deputy Wallace had confirmed earlier that
27 David Taylor's mental state at that time was a bit
28 fraught?
29 A. Yeah, I mean, as Mick said, he was emotional at times,

1 it was actually -- it was a stressful meeting, I think,
2 for all of us. It was raw. He was very emotional. He
3 definitely struck me as genuine. As I say, we were the
4 ones who asked him to meet. We were in his home with
5 his wife. And, yeah, it was a difficult meeting for 14:04
6 him. It was -- for us, it was giving us an insight
7 into a level of An Garda Síochána that we hadn't seen,
8 that maybe we had suspected, but we hadn't had
9 verified, but he struck me as definitely sincere,
10 remorseful, but, as Mick said earlier, you know, look 14:04
11 at, I don't think he would have been there with us had
12 his own personal situation not intervened.

13 410 Q. Yes.

14 A. Yeah.

15 411 Q. And it was a lengthy meeting and as we would read the 14:05
16 notes of it, it was -- you left it run somewhat
17 organically so that you could elicit as much
18 information as possible, is that a fair
19 characterisation?

20 A. Yeah, probably, yeah. 14:05

21 412 Q. And, in that, it certainly would seem that Mr. Taylor
22 vented quite a lot about his own situation?

23 A. Yeah, I mean, look at, we had no plan, like. I suppose
24 the two meetings those days were different. We know
25 Maurice very well, we meet him regularly, update, how 14:05
26 are things going, all the rest, we're comfortable in
27 his company. We'd never met Dave Taylor, I had hardly
28 heard of him, and we were meeting him in his home. So,
29 yeah, we were, I suppose, getting as much information

1 as we could. But our purpose was to verify what
2 Maurice had told us, and then where the discussion led
3 us, it led us, yeah.

4 413 Q. And as regards his own situation, that was a subjective
5 view that he had at that time. Objectively, that is 14:05
6 not borne out now, but we just have to acknowledge
7 that, that it was his subjective position as of October
8 20 --

9 CHAIRMAN: Sorry, Mr. Conlon, you know, the fact that
10 someone believes someone is making an allegation 14:06
11 against several people, I don't know how I'm expected
12 to believe that he subjectively actually believed that.

13 MR. CONLON: I appreciate that, Judge.

14 CHAIRMAN: Every evidence of the pieces of the jigsaw
15 being put down with the greatest of care. I mean, you 14:06
16 can make a submission on that at the end, but I don't
17 think you should ask Deputy Daly to accept that what
18 may be the greatest pack of lies --

19 MR. CONLON: I appreciate that, Judge.

20 A. And I don't know. And, I mean, without being in any 14:06
21 way derogatory to Superintendent Taylor, I don't care.
22 That wasn't my purpose in going there. I never batted
23 for him or argued his case, he never asked me to do so,
24 and I never did it or raised it anywhere. It was an
25 interesting, I suppose, note-taking exercised that I 14:06
26 banked with other information I regularly bank about An
27 Garda Síochána. But I never used it anywhere or paid
28 it particular attention. My purpose in meeting him was
29 to verify the information he had given to Maurice in

1 relation to the smear campaign, and I am broadly
2 satisfied that he verified that.

3 MR. CONLON: Thank you, Ms. Taylor.

4 MR. GILLANE: No questions, Chairman.

5 MR. DIGNAM: I will be very brief --

14:07

6 CHAIRMAN: Mr. Ó Muircheartaigh?

7 MR. DIGNAM: Oh, sorry, Chairman.

8 MR. Ó MUI RCHEARTAIGH: Thank you, Chairman.

9

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

14:07

11

12 414 Q. MR. Ó MUI RCHEARTAIGH: Good afternoon, Deputy. I have
13 three short questions for you. It arises from Day 83
14 of the proceedings when Mr. Mohan, counsel for the
15 Irish Mail, put it to my client, Alison O'Reilly, that
16 she had given you some material via Alan Crohan and
17 that material is in the papers in a submission. The
18 question I want to ask you is, do you know Alison
19 O'Reilly?

14:07

20 A. No.

14:07

21 415 Q. Have you ever met Alison O'Reilly?

22 A. Well, not to my knowledge. I mean, certainly not about
23 this, but whether -- no. As far as I know, I don't --
24 I have never met her.

25 416 Q. She says she has never met you.

14:08

26 A. No, I don't think so.

27 417 Q. And therefore, the next question is perhaps redundant.
28 Did she ever contact you about Maurice McCabe?

29 A. No.

1 418 Q. And finally, was there any request ever conveyed to you
2 that Alison O'Reilly wished to have the matter of
3 Sergeant McCabe raised in the Dáil by you?

4 A. Not to my knowledge, no. The only correspondence I
5 have is the letter I gave to the Tribunal from Alan
6 somebody, whose name I can't remember. 14:08

7 419 Q. Alan Crohan.

8 A. Yeah. I have no knowledge of any of that being in any
9 way connected to Alison O'Reilly, who I'd never heard
10 of, I'd never heard of Debbie McCann either, but 14:08
11 that's --

12 MR. Ó MUI RCHEARTAIGH: Thank you very much.

13

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

15

16 420 Q. MR. DIGNAM: Deputy Daly, my name is Conor Dignam. I
17 appear on behalf of An Garda Síochána, and specifically
18 I have some questions for you on behalf of former
19 Commissioner Callinan and former Commissioner
20 O'Sullivan and I hope to be very brief. 14:09

21 A. Sure.

22 421 Q. Just firstly, you met Superintendent Taylor for the
23 first time, I understand, on the evening of the 3rd
24 October and that was following your meeting with
25 Sergeant McCabe earlier that day, around lunchtime. 14:09

26 A. That's right.

27 422 Q. And can I take it that the reason you wanted to meet
28 Superintendent Taylor was to do the responsible thing
29 of hearing the account from the horse's mouth, so to

1 speak? You had been told --

2 A. Yeah.

3 423 Q. -- by Sergeant McCabe what Superintendent Taylor had
4 told him, but you wanted to hear that from
5 Superintendent Taylor, is that fair? 14:09

6 A. That's right, yeah.

7 424 Q. Yes. And you, I would imagine, correct me if I am
8 wrong, but, as a public representative, meet all sorts
9 of people about all sorts of issues, and at least in
10 the first instance you have to take them at face value 14:09
11 and take what they are saying at face value?

12 A. I do, yeah.

13 425 Q. And in many ways and in many respects you're not an
14 investigator, that is not your function, so in many
15 respects you have to act on and rely on what they are 14:09
16 telling you, if you are satisfied that it is true, is
17 that fair?

18 A. That is fair. Obviously it's tempered by the fact that
19 if you meet people who have wild allegations, you're
20 going to verify them as best you can. 14:10

21 426 Q. Yeah.

22 A. You don't just take something somebody gives you and
23 run with it.

24 427 Q. Yes, you bring a sense of judgment to it?

25 A. Absolutely, yeah. 14:10

26 428 Q. And you met Superintendent Taylor and I think he told
27 you certain things, and you seem to have accepted those
28 as being correct or as being true, is that correct?

29 A. Yes. I still largely do, yeah.

1 429 Q. Now, you said that when you met him that evening on the
2 3rd October, I think the phrase you use, that either
3 you wouldn't have been there or he wouldn't have been
4 there were it not for his own personal situation having
5 intervened. And I think by that you mean he wouldn't 14:10
6 have been disclosing these things to you?

7 A. Yeah, I think for somebody of that rank to break rank,
8 it wouldn't have happened in his case without his own
9 situation intervening. I don't think he would have
10 championed or atoned for the wrong done to Maurice 14:11
11 McCabe unless he himself had felt that he also was a
12 victim or that he had had a falling-out himself. I
13 don't think he would have just --

14 430 Q. Yes. And on that subject of a falling-out, I think
15 you -- did he tell you what he was being investigated 14:11
16 for at that stage?

17 A. Well, my notes reflect, we broadly discuss -- I mean, I
18 had a general awareness that he was being investigated
19 I presumed around leaks for the Roma children story,
20 and that. As I said earlier, without being in any way 14:11
21 derogatory to Superintendent Taylor, I wasn't hugely
22 interested in his plight, I didn't really see it as my
23 job of being there. But, yeah, I mean, we broadly
24 discussed that, yeah, what had happened to him with him
25 being arrested, and all of that, and how he was 14:11
26 treated.

27 431 Q. Yes. And that is reflected in your notes.

28 A. Yeah.

29 432 Q. Did he -- you mention the investigation of the Roma

1 children leak. Did he tell you that he was also being
2 investigated for leaks in relation to a multitude of
3 other matters, including live investigations about
4 serious offences such as rape?

5 A. Yeah, I have no recollection of that. 14:12

6 433 Q. Okay.

7 A. He could have. I just don't know. I have no idea.

8 434 Q. Did he tell you that, in fact, he had committed -- or
9 had leaked those informations and had committed the
10 wrongdoing for which he was being investigated? 14:12

11 A. To the best of my knowledge, no.

12 435 Q. You say that in those -- in your notes, you record
13 various things that you were told, and we heard from
14 Deputy Wallace earlier on also that Superintendent
15 Taylor was raising concerns or making complaints about 14:12
16 Commissioner O'Sullivan appointing her husband to the
17 investigation, the purpose of which, it seems, was to
18 secure phones, to get their hands on evidence that
19 might be damaging to Commissioner O'Sullivan, and I
20 think the phrase that Deputy Wallace has recorded and 14:12
21 contains in his statement, is that they were trumped-up
22 charges on which Superintendent Taylor was being
23 investigated. Do you remember that type of message
24 being given to you?

25 A. Yeah, I mean, certainly the impression was being given 14:13
26 that one of the reasons why Dave Taylor was under
27 investigation was because of the knowledge he had
28 regarding the smear campaign against Maurice McCabe,
29 for sure, that was an intent of some of the discussion

1 that evening, yeah.

2 436 Q. Yes. And it follows from that that he was conveying
3 the impression to you, if not expressly saying, that
4 the only reason he was being investigated was to -- was
5 because of what he knew about the campaign against 14:13
6 Sergeant McCabe?

7 A. Well, you would have to ask him about that.

8 437 Q. Okay.

9 A. That wasn't where my interest in the issue lay. But,
10 yeah, he was inferring that, but that wasn't where I 14:13
11 was placing any emphasis.

12 438 Q. You've heard -- or, sorry, you've read, I take it, that
13 Superintendent Taylor has now accepted that the
14 investigation of him was legitimate, that the
15 constitution of the investigation team was legitimate 14:13
16 and, in fact, has admitted much of the wrongdoing in
17 respect of which he was being investigated?

18 A. Yeah.

19 439 Q. Have you read that evidence?

20 A. Yeah. I mean, again, I don't want to be rude, but I 14:14
21 don't really care about that because I never really
22 cared about it to begin with. My only interest in his
23 evidence was the value it had regarding other issues we
24 had been involved in; namely, efforts to smear Maurice
25 McCabe and the evidence that he gave us with regard to 14:14
26 that. Whatever his motivation in giving to us was what
27 was the most important thing to me.

28 440 Q. Mr. Conlon, on behalf of Superintendent Taylor, put it
29 to you that Superintendent Taylor, and you agreed,

1 vented quite a lot about his own situation at the
2 meeting in the house?

3 A. He did.

4 441 Q. Can I take it from your evidence that you also consider
5 him to have invented quite a lot about his own
6 situation at that meeting? 14:14

7 A. Well, as I say, I didn't place any huge stock in that.
8 I've never really -- you know, I have never used it
9 anywhere. Quite often people tell us a lot of things
10 that we make a note of, we file it in our back drawer 14:15
11 and we do nothing on it, and that was one of those
12 things.

13 CHAIRMAN: I think the import of the question is this:
14 If someone is in trouble and, in order to get
15 themselves out of trouble, invents a whole load of 14:15
16 stuff which we know to be completely wrong, isn't it
17 the case that they may well be inventing the stuff that
18 is of public interest, specifically what you were
19 concerned about?

20 A. Yeah. 14:15

21 CHAIRMAN: That, I think, is the import of Mr. Dignam's
22 statement.

23 A. And that is a very valid question. And I suppose that
24 is why our emphasis focused on trying to validate and
25 join the dots with the public interest issue rather 14:15
26 than his own personal situation, which I never paid any
27 huge attention to. So, absolutely, the motivation in
28 why somebody would give us that information needs to be
29 looked at, and it always would when we would raise

1 these matters, but I was looking at what he was
2 actually saying, and the notes I have at the time about
3 his role in tipping off journalists, and that, broadly
4 tallied with my own direct experience.

5 442 Q. MR. DIGNAM: Deputy Daly, I just have two final 14:16
6 questions that I wanted to ask you.

7 A. Sure.

8 443 Q. Firstly, you referred to Superintendent Taylor saying 14:16
9 that phones had been bleached, etcetera. Did
10 Superintendent Taylor tell you that, in fact, he at all
11 times had retained possession of the phone which he at
12 the time when he was supposed to have been carrying out
13 this campaign, did he tell you that?

14 A. I don't remember him discussing that, no. I mean, the 14:16
15 'bleaching' comment referred to, I suppose, about
16 evidence being destroyed and stuff.

17 444 Q. Yes. And then, finally, just you gave a radio 14:16
18 interview I think on the 4th October, is that right,
19 the day after you had this meeting, and I don't propose
20 taking you all the way through it, but you say on page
21 3213 --

22 CHAIRMAN: Let's just get it up.

23 MR. DIGNAM: Yes. Sorry, 3210, I think, Deputy Daly. 14:17
24 On page 3210 you say -- and I'm not going to read the
25 whole excerpt to you, Deputy Daly. If you feel that I
26 need to, please say so. But you say:

27

28 "I suppose what makes this more shocking is that we
29 have seen a lot of what we have been saying and a lot

1 of what they have experienced absolutely vindicated in
2 the most shocking terms by one senior officer --"

3
4 I take that to be Superintendent Taylor.

5
6 "-- who has admitted that he played a part in that,
7 and, in essence, what's been said is that there was a
8 deliberate and organised campaign to, in essence,
9 annihilate a whistleblower."

10 A. Mm-hmm.

11 445 Q. And then if I could just ask you then to turn to page
12 3213, just to conclude. And you say in the answer at
13 the top of that page, you say:

14
15 "I really don't see why we need another inquiry at this 14:17
16 stage."

17
18 Six lines down from the top of the page.

19 A. Yeah, go on, yeah.

20 446 Q. Now, in light of the evidence that we have heard from 14:18
21 Superintendent Taylor in this type of tribunal where he
22 has made admissions and withdrawn some of what he was
23 alleging, do you see the value in having had an inquiry
24 into this issue?

25 A. I suppose history will attest to that. I mean, the 14:18
26 point that was being made in the interview, in both of
27 the quotes that you've randomly selected, is that we
28 saw this revelation as very much in tune with our
29 direct experience over the previous number of years in

1 regard to issues of Garda malpractice. I am referring
2 to the -- in the interview to the fact that I suppose
3 the position that the Commissioner was in was one of
4 unfinished business, that it was the same hierarchy
5 that was there under Commissioner Callinan, with Nóirín 14:19
6 O'Sullivan, that there had been other Section 41
7 allegations going in, there were other issues going
8 around in the background, and that this was just
9 another issue, if you like, with regard to Garda
10 accountability, and why the Commissioner, in our 14:19
11 opinion, should go, and, as Mick said earlier, I mean,
12 it's not personal, we felt that even before the
13 appointment was confirmed, that there shouldn't have
14 been somebody from the old hierarchy put in that
15 position, and I think the litany of events that took 14:19
16 place after that verify that. And if you look at the
17 interview in its entirety, because I've had to go back
18 and read it, I'm very much touching back to that all
19 the time, that it wasn't just this protected disclosure
20 that put things where they were; it was in the context 14:19
21 of everything else, that it just verified what we knew.
22 And obviously when you hear it confirmed from the
23 inside, you kind of go whoa, but, you know, that's the
24 value of it.

25 447 Q. You understand that former Commissioner O'Sullivan's 14:20
26 case is that it wasn't confirming anything true, you
27 understand that?

28 A. Well, I understand that that is her position.

29 448 Q. Yes.

1 A. But I also understand that it is a fact that there were
2 a huge, and are a huge, number of issues regarding the
3 lack of Garda accountability in a whole number of
4 oversight areas, particularly including the treatment
5 of whistleblowers. Because in actual fact, whatever 14:20
6 about Dave Taylor and Maurice McCabe, we had repeatedly
7 raised with Commissioner O'Sullivan, more so than
8 former Commissioner Callinan, the treatment of other
9 Garda whistleblowers rather than just Maurice McCabe,
10 and we felt that there was a very clear discrepancy 14:20
11 between utterances that were made in public and what
12 was going on behind the scenes.
13 MR. DIGNAM: Thank you, Deputy.
14 MR. MARRINAN: Nothing further, sir. Thank you very
15 much, Deputy. 14:20
16 CHAIRMAN: Thank you, Deputy Daly.
17
18 THE WITNESS THEN WITHDREW
19
20 MS. LEADER: The next witness, sir, is Mr. Cathal 14:20
21 McMahon, and I understand there is an application for
22 representation on his behalf.
23 MR. FENNELLY: Chairman, David Fennelly instructed by
24 Dara Robinson and Catherine Almond of Sheehan &
25 Partners, solicitors, applying for formal 14:21
26 representation on behalf of Mr. McMahon today.
27 CHAIRMAN: Yes. And granted.
28 MR. FENNELLY: obliged.
29

1 MR. CATHAL McMAHON, HAVING BEEN SWORN, WAS DIRECTLY
2 EXAMINED BY MS. LEADER:

3
4 MS. LEADER: Mr. McMahon's interview with the Tribunal
5 investigators is in volume 27, beginning at page 7629. 14:21

6 449 Q. Mr. McMahon, I understand you previously worked as a
7 journalist, is that correct?

8 A. That's correct.

9 450 Q. And, in particular, between July 2012 and June 2014 you
10 worked with the Irish Daily Mirror? 14:22

11 A. That's correct.

12 451 Q. And what did you do in the Irish Daily Mirror?

13 A. I was a crime reporter.

14 452 Q. And prior to taking up that position, had you much
15 experience in journalism? 14:22

16 A. So I had approximately five to six years.

17 453 Q. All right. And was all of that with the Irish Daily
18 Mirror?

19 A. With other publications.

20 454 Q. With other publications, all right. Now, I think 14:22
21 sometime in 2014 you heard something in relation to
22 Sergeant McCabe, and would you tell the Tribunal about
23 that, please?

24 A. Yeah, that's correct. I learned from a source, I'm not 14:22
25 willing to name, that Sergeant McCabe had been
26 investigated for alleged sexual abuse of a child in the
27 Cavan area and that the allegation was historic in
28 nature.

29 455 Q. And when you say sometime in 2014, I wonder are you

1 able to pin down; was it the first half or second half?

2 A. It would have been in early 2014.

3 456 Q. Do you think it was before April 2014?

4 A. My best guess is that it was, yeah.

5 457 Q. All right. Well, I don't know if this would assist you 14:23
6 in any way, but I don't know if you're aware of
7 articles Paul Williams wrote which appeared in the
8 Irish Independent beginning in April 2014, are you
9 aware of them?

10 A. I am of course, yeah. 14:23

11 458 Q. Was it before those articles appeared, do you think?

12 A. I believe it was before those articles. My best guess
13 is that it was between January and February 2014.

14 459 Q. All right. Now, you say you don't wish to name the
15 source, but if we could, we would like to try and 14:23
16 exclude certain people from that.

17 A. Okay.

18 460 Q. Now, you understand that former Commissioner Callinan,
19 Superintendent David Taylor and former Commissioner
20 O'Sullivan have waived any privilege that they may have 14:24
21 in relation to any communications with journalists
22 regarding Sergeant McCabe?

23 A. None of the three mentioned were the source in my
24 story.

25 461 Q. And you are happy to confirm that? 14:24

26 A. I am happy to confirm that, yeah.

27 462 Q. Now, in relation to any senior guards, I don't know if
28 you can help us with regard to that?

29 A. Em, as my statement outlines, I don't wish to go into

1 the source of my story at this point.

2 463 Q. All right.

3 A. I did mention in my interview that it wasn't a member
4 of An Garda Síochána.

5 464 Q. Okay. That is helpful. Thank you very much. So you 14:24
6 heard this from a source, not a member of An Garda
7 Síochána, at the beginning of 2014. What did you do
8 with this information?

9 A. I then contacted Superintendent Dave Taylor, who was at
10 the time the Press Officer, and he confirmed the story 14:24
11 as I had given it to him, and the only addition was
12 that he suggested that maybe I should go to Cavan and
13 find further details there.

14 465 Q. All right. Now, I just want to ask you a few questions
15 about what you say Superintendent Taylor said to you 14:25
16 about going to Cavan. What did you know in relation to
17 Cavan before you went to Superintendent Taylor?

18 A. As I previously mentioned, my information was that the
19 allegation related to an alleged historical sexual
20 assault of a child in County Cavan. 14:25

21 466 Q. In Cavan. And Superintendent Taylor's comment was
22 maybe you should go to Cavan. So did he point you
23 towards anybody in particular in Cavan?

24 A. He didn't.

25 467 Q. All right. Did you ask him? 14:25

26 A. I didn't.

27 468 Q. And why is that the case?

28 A. As I said in my statement, I wanted -- after receiving
29 the confirmation, I felt that the most prudent next

1 step was to speak to my editor. I had serious concerns
2 about the story, I wasn't convinced to be able to
3 pursue it much further. I wanted to first seek the
4 guidance of my editor.

5 469 Q. And say, hypothetically speaking, if you had gotten the 14:26
6 go-ahead from your editor, would you have gone back to
7 Superintendent Taylor for further assistance in
8 relation to who you were to speak to in Cavan?

9 A. I can't answer hypothetic questions.

10 470 Q. All right. But you didn't pursue the matter of who you 14:26
11 should speak to in Cavan, with Superintendent Taylor?

12 A. I didn't.

13 471 Q. Okay. Right. So you went to your editor; who was
14 that?

15 A. John Kierans. 14:26

16 472 Q. And could you tell us about the exchange you had with
17 Mr. Kierans?

18 A. Yeah, it was quite a short exchange. I outlined the
19 details as I knew them at the time and I asked if he
20 felt it was a story worth pursuing. He said he didn't 14:26
21 feel it was a story that warranted much extra work --
22 or, sorry, excuse me, he said he didn't feel that it
23 was a story worth pursuing and, you know, I was
24 satisfied with that response. I was working on a
25 number of other stories at the time. Had, as I 14:27
26 mentioned earlier, serious concerns about the veracity
27 and truthfulness of that particular story and was happy
28 to move on.

29 473 Q. Mr. Kierans seemed to think you were disappointed when

1 he didn't give you the go-ahead. I don't know if you
2 wish to say anything about that?

3 A. That's not my memory of the situation.

4 474 Q. All right. Did you hear of the story from any other
5 source, other than what you've just told us?

14:27

6 A. I didn't.

7 475 Q. All right. Now, you're aware the Tribunal wrote to you
8 back in March and April 2017 asking if you had any
9 information in relation to the terms of reference, and
10 no real substantial reply was received to that
11 correspondence. Why is that the case?

14:27

12 A. I sought legal counsel at the time, and I was taken to
13 believe that my evidence didn't fall within the terms
14 of reference of the Tribunal. I obviously had serious
15 concerns about the protection of sources, as a number
16 of colleagues in other newspapers have raised. I
17 didn't write anything about this story. I never
18 pursued the story outside a very short conversation. I
19 wasn't negatively briefed about Sergeant McCabe by any
20 of the people mentioned as part of the terms of
21 reference of this Tribunal. And I also wasn't named by
22 Superintendent Dave Taylor as one of the 11 journalists
23 he said he had negatively briefed.

14:28

24 476 Q. Now, you say you weren't negatively briefed about
25 Sergeant McCabe, but at the same time you're saying you
26 did speak to Superintendent Taylor in relation to the D
27 allegation, as it is referred to here, and he pointed
28 you in a particular direction. Do you consider that
29 negatively briefing?

14:28

1 A. It was a direction I already knew. He was merely
2 repeating what I had already said to him --

3 477 Q. Yes.

4 A. -- in terms of the location of where the allegation had
5 come from. 14:29

6 478 Q. Right. But, for instance, Superintendent Taylor could
7 say, look, there's nothing to that and leave it at
8 that, instead of pointing you in a particular
9 direction, maybe -- maybe it does actually constitute
10 negative briefing, pointing you in a particular 14:29
11 direction, hinting that you should take the story a bit
12 further, do you see that now, with the benefit of
13 hindsight?

14 A. I'm not quite sure what you are asking, sorry.

15 CHAIRMAN: In other words, counsel's question, as I 14:29
16 understand it, is this: You hear a rumour, then you go
17 to someone who is expected to know whether the rumour
18 is true or not, but the person then confirms the
19 rumour, and added on to that is, well, what I would
20 take as an invitation to go and look into the matter 14:29
21 further and the place you need to look into it is
22 indeed the area you mentioned. That is counsel's
23 question.

24 MS. LEADER: Yes.

25 CHAIRMAN: So that -- 14:30

26 A. Are you asking me if I should have come forward sooner?

27 CHAIRMAN: No, I think -- I know what counsel is
28 actually asking you is, I suppose, the definition of
29 negative briefing, do you see that as being helpful to

1 Sergeant McCabe or not helpful to Sergeant McCabe? If
2 it was you they were talking about --

3 A. I understand.

4 CHAIRMAN: -- that there was an historical allegation
5 of sex abuse, that it happened in relation to a child, 14:30
6 if they went to your editor and if they asked the
7 question, look, is it true what they say about this
8 fellow, and the editor confirmed it, yes, and
9 furthermore, if you want to find out more, the place to
10 go is Drumcondra, where this thing happened, counsel is 14:30
11 asking you how would you feel about that?

12 A. Yes, I understand.

13 MS. LEADER: Yes.

14 A. So are you asking me to say if I feel like I should
15 have taken different steps? 14:30

16 479 Q. Well, no, do you think now, having heard it explained
17 to you in those terms, that that constitutes negative
18 briefing?

19 A. I don't believe I was negatively briefed.

20 MS. LEADER: All right. If you would answer any 14:31
21 questions anybody else might have.

22 MR. McDOWELL: No questions.

23

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

25

26 480 Q. MR. FERRY: Good afternoon, Mr. McMahon. My name is
27 John Ferry and I represent Superintendent David Taylor.
28 In your evidence and also in your statement you refer
29 to the information that you were given in relation to

1 Sergeant McCabe and it seems to have been, for somebody
2 in your position, quite a startling revelation to be
3 told that a serving member of the guards had been
4 investigated for an offence that you had outlined.
5 Now, was that your understanding at the time? Was it a 14:31
6 very serious and startling revelation to be made aware
7 of?

8 A. It was a very serious allegation about a very prominent
9 and well-known figure.

10 481 Q. Yes. And prior to that period that you have placed in 14:32
11 early 2014, what had you -- or had you heard anything
12 about Sergeant McCabe?

13 A. No, nothing in this nature.

14 482 Q. But were you aware of him and knew that he had been in
15 the media and that he was the man -- 14:32

16 A. Of course, yes.

17 483 Q. I know have you left journalism, but do you remember
18 what you would have known him for at that time, back in
19 early 2014?

20 A. Outside, you know, obviously he was a Garda 14:32
21 whistleblower who had come forward with allegations
22 about Garda corruption and penalty points issue. The
23 usual stuff that anyone else, a member of the public
24 would have known.

25 484 Q. Yes. And at that time, being a crime journalist, 14:32
26 before 2014 was that all you had been aware of? Had
27 you heard any rumours about Sergeant McCabe prior to
28 that period?

29 A. I hadn't.

1 485 Q. Okay. So in early 2014 you hear this. You've ruled
2 out members of An Garda Síochána, I think, as your
3 source, but, I mean, I appreciate what you have said,
4 but, I mean, what was said to you? Do you remember
5 what was actually said and the context of how it was 14:33
6 put to you?

7 A. By the original source?

8 486 Q. Yes. In your statement, I think you refer to it as a
9 casual conversation, during a casual conversation?

10 A. Yes. 14:33

11 487 Q. So was it put to you in casual sort of terminology or
12 was it put in any formal terms, look, what detail did
13 you have?

14 A. Outside what is in my statement, you know, it was
15 simply that Sergeant McCabe was investigated for the 14:33
16 alleged sexual abuse of a child in County Cavan and
17 that the abuse was historic in nature.

18 488 Q. Yes.

19 A. Outside that, nothing more significant to add.

20 489 Q. Yes. And were you of the view that there was merit to 14:34
21 that allegation?

22 A. I didn't hold a strong view on it. As I said,
23 mentioned earlier, I was dubious about the allegation,
24 especially given the fact that Sergeant McCabe was
25 still a serving member of the force, and I know that 14:34
26 certain members of the force cannot -- obviously if the
27 allegation was true, it would have been investigated,
28 he may have been brought before the courts.

29 490 Q. But had you been made aware of the outcome of the

1 investigation?

2 A. I hadn't been, no.

3 491 Q. Okay. So when you contacted Superintendent Taylor, you
4 weren't aware of whether the investigation had
5 concluded or if there had been any recommendations by 14:34
6 anybody in relation to the investigation?

7 A. I didn't have that information at the time.

8 492 Q. And in contacting Superintendent Taylor, how did you
9 contact him?

10 A. On the phone. 14:34

11 493 Q. And did you ring the Press Office or ring him directly?

12 A. I rang him directly.

13 494 Q. And had you been in the habit of speaking to him
14 directly on the phone?

15 A. He was the Garda Press Officer and I was a crime 14:35
16 reporter. There was an obvious professional
17 relationship there.

18 495 Q. And had you ever spoken to him about Sergeant McCabe
19 before?

20 A. I hadn't. 14:35

21 496 Q. And had you spoken to him about other issues in
22 relation to your work?

23 A. I had.

24 497 Q. Okay. So are you saying that you just, out of the
25 blue, rang him and told him about this matter to do 14:35
26 with Sergeant McCabe?

27 A. You have to appreciate it was four years ago when we
28 had this call so I don't recall the exact course of
29 events or the exact details of the conversation. It

1 may have been as part of a number of other questions I
2 was asking about related stories of the day, but I
3 simply contacted him, asked him these questions.

4 498 Q. And in relation to what Superintendent Taylor said to
5 you, are you simply saying that he pointed you to
6 Cavan? 14:35

7 A. That's my recollection, yes.

8 499 Q. You see, Superintendent Taylor has said that he was
9 briefing journalists. Now, you're not on the list that
10 he originally provided, but you've come forward, in 14:36
11 fairness to you, whatever way that has occurred, but
12 are you saying that you simply rang the Press Officer
13 on his mobile number and, out of the blue, brought this
14 up about Sergeant McCabe, and all he said was, well,
15 sure why don't you go to Cavan? 14:36

16 A. That's what happened, yes.

17 500 Q. And he didn't -- or you didn't inquire was there an
18 outcome to the investigation or was it sent to the DPP
19 or was he appearing before court, was he going to be
20 arrested? Are you honestly saying that there was no 14:36
21 other talk between you and Superintendent Taylor?

22 A. You have to remember that conversation with the Press
23 Officer - he's a very busy man - were very, very short
24 in general, and that was simply -- he simply -- I put
25 to him what I had learned, asked him was it true, he 14:37
26 said they were, he said you might find more information
27 in Cavan, and that was simply it. I said I'm going to
28 need to speak to my editor about this.

29 501 Q. And in relation to -- that was the sum total, just go

1 to Cavan? There was no narrowing down of the location
2 or the address, or anything else?

3 A. Nothing.

4 502 Q. So did you not think that was unusual?

5 A. That the -- 14:37

6 503 Q. You've said a busy man, the Garda Press Officer, that
7 he had nothing further to say but that he told you to
8 go to Cavan. I mean, if you were telling him for the
9 first time that you had heard a serving sergeant was
10 being investigated for child sexual abuse, you knew no 14:38
11 more about it and you are ringing the Garda Press
12 Officer, was it not very unusual that he just said,
13 well, why don't you go to Cavan?

14 A. You will have to ask your client that.

15 504 Q. But you, as a journalist, you then decide to bring it 14:38
16 back to your editor?

17 A. Are you asking me if I think that was unusual?

18 505 Q. Yeah.

19 A. I don't see it.

20 506 Q. Well, for example, if the sergeant was somebody who was 14:38
21 well-known and if he was somebody who was high profile,
22 and if he was somebody that an allegation had been made
23 against and that there had been an outcome to that
24 allegation, and if you were the Press Officer and you
25 were aware of all of that information, and a journalist 14:39
26 rings you out of the blue, would it not be unusual to
27 send them to Cavan as opposed to saying, well, hang on
28 a minute, I know about that, that was investigated,
29 etcetera? Do you get what I am saying?

1 A. I understand what you are saying.

2 507 Q. Yeah. Do you not find -- would it not be unusual that
3 he would say just go to Cavan, as opposed to saying,
4 well, hang on a minute, that was investigated and that
5 that man was cleared? 14:39

6 A. You'd have to ask Dave Taylor that directly.

7 508 Q. Yes.

8 A. I don't --

9 509 Q. Ms. Leader has already said to you that it could be
10 that that was a part of a negative briefing and a 14:39
11 smearing of Sergeant McCabe, that the Press Officer was
12 referring you straight to Cavan; in other words, you
13 weren't discouraged from going to Cavan?

14 A. That's correct.

15 510 Q. Yeah. You weren't put off the scent of Maurice McCabe 14:39
16 by saying that that man is innocent and he has been
17 cleared?

18 A. Okay.

19 511 Q. Isn't that correct? Because the person you were
20 talking to was the Press Officer who was in a position 14:40
21 of knowledge, so you weren't being put off the scent,
22 is what I am saying to you?

23 A. Okay, that is fair enough.

24 512 Q. And I take it you didn't make any further inquiries,
25 that you went to your editor and that was the end of 14:40
26 it?

27 A. I didn't.

28 513 Q. And did you take any notes of the conversation of
29 Superintendent Taylor?

1 A. I didn't. It was a very, very short conversation in
2 relation to that.

3 514 Q. Yes. Well, in relation to Superintendent Taylor, his
4 evidence has been that he was negatively briefing
5 journalists in relation to Sergeant McCabe, but you're 14:41
6 not one of the journalists on the list and he has -- he
7 doesn't recall the sequence that you're recalling to
8 him, but you would have been one of the journalists
9 that he dealt with in the course of your work. But in
10 relation to the sequence of events and when you called 14:41
11 him, etcetera, he just doesn't have a specific
12 recollection of that. But I'm putting it to you that
13 if he was talking to you and referred you to Cavan,
14 that that was unusual and that in itself was a form of
15 negative briefing, because he didn't -- he didn't put 14:41
16 you straight in relation to Sergeant McCabe?

17 A. That's your view, yes.

18 MR. FERRY: Yes. Thank you, Mr. McMahon.

19 CHAIRMAN: Mr. Ferry, you will appreciate that
20 throughout this Tribunal I have been banging the Browne 14:42
21 v. Dunn tom-toms. I don't know from your
22 cross-examination whether Superintendent Taylor is
23 actually denying having this conversation. The other
24 thing that I am bearing in mind is that, vis-à-vis
25 Mr. McMahon, something similar to this was said on Day 14:42
26 11 by Paul Williams, and that was very definitely
27 denied, and in very specific terms, by David Taylor.
28 So, I mean, if you need to make a phone call, for
29 instance, today, to confirm that, but my hair will be

1 gone attempting to simply ask people if, yes, someone
2 is saying something about you, you have got to put what
3 they say about it. And if you need a bit of time,
4 Mr. Ferry, I do understand that, and I do understand
5 your client is on vacation on the continent some place, 14:43
6 so if you wish to make a phone call and come back to
7 me, I would be very happy with that.
8 MR. FERRY: Yes. well, I'd better take that
9 opportunity, Chairman.
10 CHAIRMAN: Yes, if you wouldn't mind, Mr. Ferry. 14:43
11 MR. FERRY: I don't want to put something to him that I
12 haven't --
13 CHAIRMAN: No, and I appreciate your reluctance to do
14 any more.
15 MR. FERRY: Yes. 14:43
16 CHAIRMAN: But if it's not done, well then my
17 assumption is it's a very similar case to that that was
18 put to Paul Williams. But, please, if you wouldn't
19 mind staying until four o'clock and then we will just
20 recall you very briefly. 14:43
21 MR. FERRY: Yes.
22 CHAIRMAN: I am sorry for the inconvenience, but there
23 it is.
24 MR. FERRY: I think my solicitor, Mr. Conlon, is able
25 to contact him, and I will make that inquiry now. 14:43
26 CHAIRMAN: Yes. well, as soon as you can, and just
27 please just indicate if you are ready and then we will
28 call Mr. McMahon back.
29 MR. FERRY: Yes.

1 CHAIRMAN: And we will get you away then, Mr. McMahon.
2 MR. FERRY: Thank you.
3 CHAIRMAN: And I think we will just suspend everything
4 else for the moment, if that is all right. So if you
5 wouldn't mind just staying. 14:44
6 A. Okay.
7 MS. LEADER: we will call you back later on.
8
9 THE WITNESS STOOD DOWN
10 14:44
11 MS. LEADER: Mr. John Kierans, please. Mr. Kierans'
12 interviews with the Tribunal investigators are in
13 volume 15 at page 4136 and volume 27 at page 7459.
14
15 MR. JOHN KIERANS, HAVING BEEN SWORN, WAS DIRECTLY 14:44
16 EXAMINED BY MS. LEADER:
17
18 515 Q. MS. LEADER: Now, Mr. Kierans, I think you're the
19 editor of the Irish Daily Mirror, and have been so for
20 the past 13 years? 14:45
21 A. Absolutely, yeah.
22 516 Q. And you're Mr. McMahon's editor?
23 A. I was Cathal's editor, yeah.
24 517 Q. I wonder would you tell the Tribunal about your version
25 of what Mr. McMahon came to you in relation to Sergeant 14:45
26 McCabe?
27 A. Well, it's -- I don't really -- I have been away in
28 Spain so I only seen Cathal's statement there yesterday
29 when I came back, so I don't really have much dispute

1 with what he said --

2 518 Q. Yes.

3 A. -- you know. Basically, Cathal got this really good
4 story, came in to us, we had a meeting in the boardroom
5 in the office in Dublin, he said that he had a cracking 14:45
6 story about that Sergeant McCabe had been questioned
7 over the abuse of a child. I was quite shocked, you
8 know. In our world we would have looked at it as one
9 hell of a story, but my antenna was up and I felt that
10 something wasn't right. And it's one thing for 14:46
11 somebody to be questioned by the police, but my view of
12 it was, well, why hadn't he been charged, you know.
13 And, like, we talked about the story. I don't
14 really -- because it's four or five years ago, I don't
15 really remember the full discussion I had with Cathal, 14:46
16 to be honest about it, and, you know, I took a
17 decision, you know, I spoke to the news desk about it,
18 some of my executives, and over the next couple of days
19 Cathal said that he'd go to Cavan, and I told him not
20 to, that I wanted to hold off, that I just felt 14:46
21 something was wrong here, that I didn't really believe
22 it. My view of it was, you know, this was a very, very
23 serious story, if we are going to run it, the risks to
24 the publication from a defamation point of view would
25 have been absolutely huge, you know, we were talking 14:46
26 about millions, making an allegation, if it turned out
27 to be false, against a Garda whistleblower, and also
28 the fact that Sergeant McCabe had been a whistleblower
29 also, you know, I don't always believe everything that

1 I'm told by governments or by the police. So, for that
2 reason, I kind of decided that we'd back off. Now, I
3 didn't believe the story and I wasn't going to run it,
4 so I more or less told Cathal to just concentrate on
5 other things, that I wasn't going to take a risk on it, 14:47
6 and I didn't really believe it in my gut, to be
7 perfectly honest.

8 519 Q. Okay. Had you ever heard any story like that about
9 Sergeant McCabe?

10 A. Not before then, not before then I hadn't heard 14:47
11 anything kind of negative about Maurice McCabe, to be
12 perfectly honest about it. You know, we keep an eye on
13 a lot of stuff that goes on in Leinster House and
14 various other parts of the political establishment and
15 in the cops, but I hadn't. So it did come as a bit of 14:47
16 a shock. But again, just because somebody -- the
17 question in my head, and I have got a responsibility
18 for all our products and our brands as editor, was,
19 well, it's one thing being questioned, you know, well,
20 why hasn't he been charged? And then the other thing 14:47
21 that was in my head: why are the cops telling us this?
22 You know, why are the gardaí telling us that Maurice
23 McCabe has been questioned over a child sex abuse
24 allegation, you know? And the fact that he was a
25 whistleblower, you know, I kind of said there's 14:48
26 something not right here. So again, in my gut, I felt
27 my antenna was up and I walked away from the story.
28 I'm glad I did because it was absolutely totally
29 untrue.

1 520 Q. who did you understand was Mr. McMahon's source?
2 A. well, Cathal, in fairness, didn't tell me who his
3 source was. I suspected that his source was Dave
4 Taylor because I knew Cathal was very close to Dave
5 Taylor. When Dave Taylor was appointed superintendent 14:48
6 of the Press Office, I had met him with Cathal, we went
7 for lunch with him one day. I knew that Cathal was
8 crime reporter. Like all crime reporters, they would
9 have an ongoing daily relationship with the officer in
10 charge of the Press Office, you know. I would regard 14:49
11 the position of Garda Press Officer as one of the most
12 responsible positions in the country, and we expect the
13 person who was in that position to be honest and
14 truthful and we asked them questions that they would
15 tell us, you know, truthful and accurate information, 14:49
16 and that's what we expected of them. And there has
17 been some really, really good previous press officers
18 like Superintendent John Farrelly, Brian Higgins, who
19 ran that office with great dignity and honesty. So,
20 you know, when I met Mr. Taylor, I had been told he had 14:49
21 been a spook, and I asked whether -- where he'd worked
22 in Garda intelligence, how true that was I didn't know.
23 I met Mr. Taylor with Mr. McMahon. I would have got
24 his phone number, I would have spoken to him on a
25 number of occasions. It's always handy if you are an 14:49
26 editor you have the Garda Press Officer's mobile
27 number, because if you get a story that, say, three
28 people have been shot dead down in Kerry at ten o'clock
29 at night and you've heard it on the ground but you're

1 awaiting for official confirmation, you know, so it's
2 always handy if you can ring the superintendent in the
3 Press Office and get the story confirmed. And I would
4 have rang Superintendent Taylor on a handful of
5 occasions. I wouldn't have had a close relationship, 14:50
6 maybe, that I would have had with his predecessors. I
7 would have known Superintendent Farrelly quite well
8 because he was from my native county, Louth, and I
9 would have known Brian Higgins very well.

10 521 Q. Okay. So, just, you are saying, you knew 14:50
11 Superintendent Taylor, you had his phone number?

12 A. Yeah.

13 522 Q. And you phoned him --

14 A. On other occasions I had phoned him, you know. I would
15 have had his mobile number and I would have spoken to 14:50
16 him and I would phoned him, on a very odd occasion.
17 But generally the reporters are dealing with the Press
18 Office on a daily basis. Editors generally don't,
19 unless it is a government press officer ringing up
20 ranting and raving at editors because they don't like 14:50
21 something that was written in the paper.

22 523 Q. All right. And is it true to say that the story that
23 Mr. McMahon had brought to you in relation to Sergeant
24 McCabe, potentially was a big story?

25 A. Was a huge story. 14:51

26 524 Q. Okay. well --

27 A. But it was also a huge risk, because to call somebody a
28 paedophile is probably one of the worst things you can
29 ever call anyone. So the risk for us from an

1 editorial -- from a legal point of view was enormous,
2 so we want to make sure we have all the facts. And I
3 just couldn't believe that the cops were spinning it,
4 that's the way I had seen it, that they so easily
5 confirmed -- you know, Cathal said that the guards had 14:51
6 confirmed it. I can't remember if I asked him
7 specifically who it was, but I assumed it was Dave
8 Taylor. Like, in fairness to Cathal, he's a very
9 honest reporter, always has been, he would always tell
10 you the truth, and, as a journalist, he would never, 14:51
11 ever put you wrong on a story. He's a very low-key
12 guy. He's not one of those guys who wants to be on
13 television every night of the week, and he's a very
14 honest individual.

15 525 Q. So how long have you been in the newspaper business? 14:51
16 A. I have been involved in journalism for 38 years, as a
17 reporter and as an editor.

18 526 Q. So I am just suggesting this to you, Mr. Kierans, that
19 as somebody who has been in the newspaper business
20 quite a long time and you have a relatively young 14:52
21 journalist coming to you --
22 A. Yeah.

23 527 Q. -- somebody who you regard as honest --
24 A. Yeah.

25 528 Q. -- with a huge story -- 14:52
26 A. Mm-hmm.

27 529 Q. -- isn't that exactly the type of thing that would
28 merit phoning up the Press Officer about?
29 A. Well, it wouldn't be up to me to phone up the Press

1 Officer. I trust my reporters, and Cathal told me he
2 had spoken to the cops, to the gardaí, he'd had the
3 story confirmed that Sergeant McCabe had been
4 questioned, and his information was, was that the
5 victim was in Cavan and did I want him to go up to 14:52
6 Cavan to track down the victim. You know, I spoke to
7 my executives and we decided -- and I took a decision
8 that I didn't believe the story. Right. So, as an
9 editor, I always follow my gut instinct, and I'm glad I
10 did on this one, and I just didn't believe it and I 14:52
11 felt that something was wrong. It also kind of alarms
12 me as well when the Garda Press Office were confirming
13 a story against an existing member of their own force,
14 right, because normally if a member of the Garda
15 Síochána is in any trouble, they tend to cover it up 14:53
16 from one end of the country to another, because they
17 really stand together, the guards.

18 530 Q. Yes. But I think that is exactly the point I'm trying
19 to make, that this was fairly unusual in a number of
20 levels? 14:53

21 A. It was. It was very unusual, but as an editor --

22 531 Q. Well, if you just leave me finish.

23 A. Go on.

24 532 Q. This is something that would bring you to phone the
25 Press Officer and say, look -- 14:53

26 A. No, I wouldn't -- unless it was something, you know --
27 I didn't believe it, so I didn't actually phone
28 Mr. Taylor in relation to that. I would have only --
29 I'd say if I phoned Mr. Taylor three or four times

1 about stuff, that would have been it, in his time in
2 the Garda Press Office. And as I said, it is handy
3 when something is breaking late at night, when a
4 tragedy or something occurs with a shooting and you're
5 up against a deadline and you need to get confirmation 14:53
6 fast.

7 533 Q. And why then, if you didn't believe it, did you discuss
8 it with some senior executives?

9 A. Well, we would talk about it and we just all agreed
10 that the risk was too much and we didn't believe it. 14:54

11 534 Q. Right. Why did it even merit a further conversation?

12 A. Well, because the risk for us, if you are accusing a
13 serving member of the gardaí of being a child sex
14 abuser and you are questioning him and now you've to
15 use the word 'whistleblower', because at that stage 14:54
16 there was only a handful of whistleblowers in the
17 country, so even if you said 'whistleblower', like
18 there's only three or four. How many was there,
19 whistleblowers, at that time in the force? The risk to
20 us from a defamation point of view, and especially in 14:54
21 relation to the defamation laws which are so anti-press
22 in this country, like it was just a wild allegation
23 that there was absolutely no evidence of and that we
24 didn't -- we didn't believe it. I didn't believe it,
25 as editor, and I wasn't going to take a risk. And I'm 14:54
26 so glad I didn't run the story because I was proven
27 right, it was totally nonsense.

28 535 Q. Right. So it was dismissed on a risk basis?

29 A. On a risk basis, yeah.

1 536 Q. Alone?
2 A. Yeah. And you must remember, I deal with -- you know,
3 I run four websites, two editions of the paper, I'm
4 dealing with 200 or 300 stories every day on a daily
5 basis, I'm breaking news as it happens. And, you know, 14:55
6 my biggest job is the legal risk on a lot of stuff, so
7 if we are going to go with a story (a) I want to know
8 the original source if we're going to run it, and (b)
9 we want to have all our ducks in a row. I can't be
10 more forthright than that. 14:55
11 537 Q. Did you see Mr. Williams' story on the 12th April?
12 A. I vaguely ran it -- sorry, I vaguely read it.
13 538 Q. Read it. And did you recognise it as being the same
14 story that Mr. McMahon had brought to you?
15 A. Yeah. 14:55
16 539 Q. Were you regretting your decision --
17 A. No.
18 540 Q. -- at that stage?
19 A. Absolutely not. I thought they were mad in the head to
20 run it. Because it was anonymous, it was no names, 14:55
21 what did it mean? Like, to Joe public, unless people
22 are named, they don't really know who they are. So you
23 had a garda questioned over an allegation of
24 paedophilia and there was no more detail, you know, so
25 it was all anonymous. And you had quotes from the 14:56
26 victim, is my recollection of it.
27 541 Q. Yes.
28 A. So my view is, I didn't care less, that is their
29 business, and I suspect they'll probably pay a price

1 for it.

2 542 Q. I don't know if you heard the evidence of Ms. Murray,
3 who said she was sent to Cavan from the Sun in order to
4 get --

5 A. To be honest, I didn't -- 14:56

6 543 Q. -- advance notice --

7 A. Okay.

8 544 Q. -- of the Paul Williams story. She was aware in the
9 Sun that the Independent were looking to -- or
10 considering running a story in relation to Sergeant 14:56
11 McCabe.

12 A. Mm-hmm.

13 545 Q. Had you any notice, knowledge of that?

14 A. No, to be honest, I haven't read any of Eavan Murray's
15 evidence because I've been in Marbella for 12 days and 14:56
16 I only got back and was only catching up in the last
17 few days.

18 546 Q. But what I'm asking you is, had you any knowledge of
19 the Independent's intention to run a story?

20 A. No. Paul Williams, the last person he's going to tell 14:57
21 if he is going to run a story is me.

22 547 Q. Well, perhaps somebody else in the Independent --

23 A. No.

24 548 Q. -- may have shared that with you?

25 A. No, no. 14:57

26 549 Q. All right. Now, when you were originally interviewed
27 by the Tribunal investigators, this wasn't something
28 you brought to their attention. How did you remember
29 it?

1 A. I just had a phone call with somebody. And I like to
2 tell the truth as best I can and I think this Tribunal
3 is really important, I think that the Irish people have
4 a right to know what was going on in the Gardaí at this
5 particular time of our history, and when the 14:57
6 investigators initially came into my office and
7 interviewed me and they asked me had we come across any
8 stories in relation to Maurice McCabe, and I didn't
9 remember any. And then subsequent to that, I think it
10 was on the day I was due to come in here to give 14:57
11 evidence, I had a phone call with somebody and then it
12 just triggered a memory that I had and I mentioned it
13 to my lawyer and he said, well, you'd better make a new
14 statement to the Tribunal, and this is how it came
15 about that this story that Cathal had, I had completely 14:58
16 forgotten about it, and Cathal had been out of my mind
17 because he'd left the Mirror and moved on to other
18 publications, and that's how it came to be.

19 550 Q. All right. And the person you spoke to and who jogged
20 your memory? 14:58

21 A. I'm not prepared to reveal that. It's privilege.

22 551 Q. Well, what privilege? Is that person a source of
23 yours?

24 A. Yeah, it would have been somebody -- it just triggered
25 a memory, a conversation I had with my contact of mine. 14:58

26 552 Q. Was it somebody who worked in your newspaper?

27 A. It would have been somebody that would have been
28 connected with my organisation.

29 553 Q. And was it somebody who you discussed the story with

1 when Mr. McMahon had brought it to you?

2 A. No, no. It was just something that triggered a memory
3 that I had.

4 554 Q. Okay. Well, did that person mention during the phone
5 conversation that Mr. McMahon had brought a story to 14:58
6 you?

7 A. Just mentioned that it was -- Cathal's name came up in
8 passing and then it just triggered the mention that he
9 had brought in the story, and I had completely
10 forgotten about it. So I felt I had a duty to tell the 14:59
11 Tribunal because I had told them when they came into my
12 office that we hadn't come across any story in relation
13 to this. So I was trying to be as truthful with the
14 Tribunal and that is why I made the second statement
15 where I gave details of the story and that Cathal had 14:59
16 brought it in and that we decided not to run it.

17 555 Q. Okay. Now, you mentioned that you met Superintendent
18 Taylor in the company of Mr. McMahon?

19 A. That would have been normal procedure when there's a
20 new Garda superintendent appointment, appointed, the 14:59
21 same as you'd go and meet government press officers or
22 whatever ministerial advisers, and that would be
23 normal, that the editor would go with his crime
24 reporter and meet Mr. Taylor.

25 556 Q. Okay. And did Superintendent Taylor bring up Sergeant 14:59
26 McCabe during that?

27 A. No, it was just an informal -- I think he was only new
28 to the job and I think he might have come into the
29 office once, but it was all quite informal, from what I

1 remember.

2 557 Q. All right. Now, the Tribunal investigators -- and
3 maybe if page 4149 could be brought up on screen,
4 please. It's an extract from your first interview with
5 the Tribunal investigators, and you gave a particular 15:00
6 view to them in relation to a situation about
7 protecting sources --

8 A. Yeah.

9 558 Q. -- of information. And I wonder could you confirm that
10 that remains your view? 15:00

11 A. That does remain my view, yeah.

12 559 Q. Yes. That, so, when a source wishes to be identified,
13 you don't believe journalistic privilege attaches --

14 A. No, I don't, no. I think we've spent a lifetime
15 cultivating our contacts and we build them up, and 15:00
16 especially real confidential informants, it takes a lot
17 of time and trust, and a lot of these people are your
18 best friends and, you know, but if somebody wants -- if
19 a contact came to me and wanted to be identified, I
20 would have no problem with it. But I have to say and I 15:00
21 point out that in 38 years I have never had a contact
22 who came to me, you know. But in this case Mr. Taylor
23 has identified himself, so I personally see no problem
24 with it. I think privilege is something that should be
25 cherished and it's really important for our industry, 15:01
26 and equally, I don't think it should be misused either.

27 MS. LEADER: Right. If you would answer any questions
28 anybody else has.

29 A. Yeah.

1 MR. McDOWELL: No questions -- oh, sorry, there is just
2 one question.

3

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

5

15:01

6 560 Q. MR. McDOWELL: Do you think that Cathal and your paper
7 got special treatment from Superintendent Taylor?

8 A. No, I think Cathal came across the story from a source,
9 who I don't know who that source was, as he said, and I
10 think he put it to him, like he would have done with
11 any story, and I think Mr. Taylor, as Cathal said in
12 his statement, confirmed it to him, you know. 15:01

13 561 Q. And does it follow from that that if any newspaper had
14 asked Superintendent Taylor the same question, you'd
15 have expected they got the same treatment? 15:01

16 A. That's up to him. I can't answer for Superintendent
17 Taylor. It depends what his agenda was.

18 MR. McDOWELL: Thanks.

19 MR. FERRY: Chairman, I'm awaiting clear instructions
20 in relation to the previous witness, and I think it
21 might be prudent to await them before I put any
22 questions to this witness. 15:02

23 CHAIRMAN: Sure. Actually, I'm not sure you would have
24 many questions for this witness, Mr. Ferry, but, yes,
25 please, if you need to ask Mr. Kierans, do you think
26 you will? 15:02

27 MR. FERRY: well, not at this time, but in relation to
28 his meeting with Superintendent Taylor at the outset of
29 his role as Press Officer, I just want to take

1 instructions in relation to that aspect.

2 CHAIRMAN: Sure. But if it helps you, Mr. Ferry, I
3 simply took that as being a very good idea by
4 Superintendent Taylor.

5 MR. FERRY: Yes. 15:02

6 CHAIRMAN: The kind of thing that people really ought
7 to do: meet editors, get to know each other, exchange
8 numbers. I mean, I couldn't say there would be the
9 slightest thing wrong with that. It certainly doesn't
10 set off bells ringing in my mind either confirming or 15:02
11 denying any conspiracy. If that helps, I don't know.

12 MR. FERRY: Yes. well, at the moment --

13 CHAIRMAN: But it's up to you. If you wouldn't mind
14 hanging on, I am sorry, Mr. Kierans, just for half an
15 hour. 15:03

16 A. No, it would be routine, Judge, as you say. Normally,
17 every new press officer comes in and goes out and meets
18 all the crime reporters and meets all the editors, and
19 especially somebody like Mr. Taylor who'd never worked
20 with the press before, that is just normal. It's 15:03
21 normal practice, anyone in that position.

22 CHAIRMAN: And there wasn't anything odd about it?

23 A. Absolutely not. It was just an informal chat. It was
24 just getting to know you, you know.

25 CHAIRMAN: All right. So do you think -- well, look, 15:03
26 if Superintendent Taylor says there's something you
27 ought to ask him, that's fine, if you wouldn't mind
28 just holding on for a moment. Thank you.

29 MR. FERRY: At this stage, no questions.

1 CHAIRMAN: Thank you.

2 MR. GILLANE: No questions.

3 CHAIRMAN: No. Go ahead, Mr. O'Higgins.

4 MR. MÍCHEÁL O' HIGGINS: Thank you, Chairman.

5

6 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL

7 O' HIGGINS:

8

9 562 Q. MR. MÍCHEÁL O' HIGGINS: Mr. Kierans, Micheál O'Higgins
10 for An Garda Síochána, Commissioner Callinan and 15:03
11 Commissioner O'Sullivan. You had David Taylor's phone
12 number, you've told us?

13 A. Yeah.

14 563 Q. You were never negatively briefed about David Taylor,
15 isn't that correct? 15:04

16 A. Personally, no.

17 564 Q. You never learned of an orchestrated campaign to
18 discredit Sergeant McCabe?

19 A. I would say that I would have learned then -- after we
20 had this particular story, I would have discovered then 15:04
21 over the following two or three weeks that that story
22 had been pedalled around town by Superintendent Taylor
23 to a number of other news outlets.

24 565 Q. I'm sorry now, I'm asking you now in relation to an
25 orchestrated campaign which you were asked about -- 15:04

26 A. Well, it depends how you describe an orchestrated
27 campaign. What I am saying is that I subsequently
28 learned, after we had this story and we decided not to
29 run it, that the story had been pedalled to other

1 newsrooms in town by Superintendent Taylor.

2 566 Q. Can I ask you this, would you mind going to page 7463
3 of your -- of the materials.

4 A. I haven't got my statement.

5 MS. LEADER: Volume 27. 15:05

6 567 Q. MR. MÍCHEÁL O' HIGGINS: And this now is your interview
7 with the Tribunal investigators.

8 A. Yeah.

9 568 Q. And you're simply asked the question -- well, the
10 question is asked in the previous page, the bottom of 15:05
11 it, and you are asked:

12

13 "Whether you had any information or evidence about an
14 orchestrated campaign directed by senior officers in An
15 Garda Síochána, civilian or otherwise, including 15:05
16 Superintendent Taylor, former Commissioner Callinan or
17 former Commissioner Nóirín O'Sullivan to discredit
18 Sergeant McCabe by spreading rumours about his
19 professional or personal life or by reference to an
20 allegation of criminal misconduct against him. 15:05
21 If yes, I have been asked to provide details and all
22 attendant circumstances."

23

24 And am I correct that the interviewer has correctly
25 captured your answer as the following: 15:05
26

27 "There was no other negative story brought to my
28 attention in relation to Sergeant McCabe, just the one
29 I have outlined above."

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That is the detail --

A. I think this -- was this the first statement that I made or was this the second one?

569 Q. This is the statement of the 30th May 2018, this year. 15:06

A. Yeah. Well --

570 Q. You might just confirm for me the following answer you gave --

A. Well, that's what I said, as I -- well, I'm obviously wrong in what I've said there, because what I was aware of was that there was at least a story from McCabe that we were offered, was certainly sent to at least two or three other newsrooms, and I discovered that in the two or three weeks after we had that story that Cathal had. 15:06

571 Q. So -- 15:06

A. And my understanding was that it came from Mr. Taylor. And again, if you call that an orchestrated campaign, I don't know.

572 Q. Well, insofar as -- dealing now with the information from Mr. Kierans -- from Mr. McMahon, please, your journalist, you appear, am I correct in my understanding of this, you appear, perhaps due to the large number of stories that you deal with - you mentioned 200 or 300 a day - you appear to have got mixed up in relation to the identity of his source, isn't that fair? 15:07

A. No, I would accept if Cathal tells me that, you know, his original source was not Dave Taylor, that is fair enough, but I suspected it was Mr. Taylor. But I

1 accept Cathal's evidence, and I'm wrong in that.

2 573 Q. Right.

3 A. But he did confirm in his statement that Mr. Taylor had
4 involvement and he confirmed in his own statement that
5 when he put it to -- when he put the allegation to 15:07
6 Mr. Taylor, Mr. Taylor confirmed it and said to him go
7 to Cavan.

8 574 Q. Well, what I am asking you is, you appear to have
9 formed the impression initially that his source was
10 Superintendent Taylor? 15:07

11 A. Yes.

12 575 Q. You might just confirm for the Tribunal you accept
13 Mr. McMahon's indication that that is incorrect?

14 A. I accept that Mr. McMahon's original source of the
15 story was not Mr. Taylor. 15:07

16 576 Q. Right.

17 A. I would accept what Cathal said was that the story was
18 confirmed by Mr. Taylor and he was told to go to Cavan.

19 577 Q. You might listen to the question for a moment. Would
20 you accept as well, insofar as Mr. McMahon, your 15:08
21 journalist, has confirmed that his original source, in
22 fact, was a non-member of An Garda Síochána, I take it
23 you accept --

24 A. I accept that.

25 578 Q. You accept that as well? 15:08

26 A. Yeah.

27 MÍCHEÁL O' HIGGINS: Thanks very much.

28 CHAIRMAN: Well, Mr. Ferry, I think you do have
29 something to ask now. I think it is imperative that

1 there should be communication with Superintendent
2 Taylor. I mean, it's not just a question of the nine
3 nominated or the two nominated when we went to
4 Superintendent Taylor, but the evidence now from
5 Mr. Kierans is that this particular story was peddled 15:08
6 around the town to at least two or three other
7 newsrooms or news editors by Superintendent Taylor, and
8 I think it is up to him to say whether that happened or
9 not and what the names of those people are. And
10 whereas I am grateful, obviously, to the media, and 15:09
11 from time to time I see, because I do read the
12 newspapers and I get both entertainment and instruction
13 from them, perhaps colourful things that I have said in
14 relation to, I don't know, Kurosawa or anything else
15 like that coming up, but this is a very serious matter. 15:09
16 I mean, this thing is beginning to come to an end and I
17 would be grateful if the message would go forth through
18 whatever media are present in the room, there is
19 actually a duty on people who actually know something
20 about this to come forward. I made that plea back in 15:09
21 February 2017, and here is yet another variation of
22 people not coming forward, perhaps, perhaps suppressing
23 matters, here is a view being expressed in relation to
24 a situation where an individual has completely waived
25 their privilege. If people say they have a privilege 15:10
26 but they know something, I would much rather know that,
27 than for them to simply, if it is the case, sit in
28 their office blocks and not come to the Tribunal and
29 not communicate. There is a website. You can

1 communicate. There is a phone line. It is manned. It
2 will be manned indeed all day on Saturday. This matter
3 is coming close to an end. And I regard it as not a
4 legal obligation, but much, much more serious than
5 that: a patriotic obligation of people who know 15:10
6 something to come forward so that the people of Ireland
7 aren't left in the daft situation that people who know
8 things in the journalistic profession have not come
9 forward to speak, but, nonetheless, will be able to
10 write articles about what happened to them in the 15:10
11 aftermath of the Tribunal report appearing. Now, in
12 the event that that happens, the people of Ireland will
13 no doubt take their own view as to the credibility of
14 the persons who do that and that may indeed cause
15 damage to the media outlets who may be involved in 15:11
16 this, and I don't know if they are or not, much worse
17 than any libel action on earth; in other words, people
18 simply stop trusting journalists. And it is important
19 that they do, because journalists fulfil an extremely
20 important function within our society and one which 15:11
21 personally I value very highly.

22 MS. LEADER: Mr. Kierans, if you can perhaps stands
23 down for the moment.

24 A. Okay.

25 15:11

26 THE WITNESS STOOD DOWN

27

28 MR. MCGUINNESS: Chairman, if we could call then
29 Mr. John McCann.

1
2 MR. JOHN McCANN, HAVING BEEN SWORN, WAS DIRECTLY
3 EXAMINED BY MR. McGUI NNESS:
4

5 MR. McGUI NNESS: Mr. McCann's statement is to be found 15:12
6 in volume 27 of the Tribunal papers at page 7399. It's
7 a statement to the investigators made on the 21st July
8 of 2017.
9

10 Mr. McMahon, you're a retired member of An Garda 15:12
11 Síochána, isn't that correct?

12 A. That's correct.

13 579 Q. And I think you retired at the end of July of 2013,
14 having attained the rank of detective superintendent at
15 that point in time? 15:12

16 A. That's correct.

17 580 Q. I think, just very briefly, you joined An Garda
18 Síochána in 1974, you served in the Central Detective
19 Unit, you were promoted to the rank of sergeant and
20 transferred to Irishtown, you were back in the fraud 15:13
21 squad for an investigation relating to the Beef
22 Tribunal, you were appointed a detective sergeant in
23 the fraud squad, you were promoted to the rank of
24 inspector and transferred to Garda Headquarters, where
25 you dealt with transport and ministerial drivers, you 15:13
26 were there for approximately two years, and then you
27 returned to what was the then, the Garda Bureau of
28 Fraud Investigation, as a detective inspector, you were
29 promoted to superintendent in August 2005, transferred

1 to Clonmel Garda Station, presumably as a uniform
2 superintendent?

3 A. That's correct.

4 581 Q. And then you were promoted, you were transferred, you
5 were appointed detective superintendent while there. 15:13
6 In March 2007 you transferred to the National Bureau of
7 Criminal Investigation and, while there, you had
8 responsibility for the Domestic Violence and Sexual
9 Assault Investigation Unit. And did you stay in that
10 position from 2007 until your retirement in 2013? 15:14

11 A. I did indeed, Judge.

12 582 Q. And I think among the other responsibilities there in
13 the National Bureau of Criminal Investigation, you were
14 involved in the investigation of organised crime,
15 serious crime, murders throughout the State, apart from 15:14
16 the responsibility for Domestic Violence and Sexual
17 Assault Investigation Unit?

18 A. That's correct, Judge, yes.

19 583 Q. And I think while working in that unit, your line
20 responsibility was to Detective Superintendent Pádraig 15:14
21 Kennedy, and then Assistant Commissioner Byrne was the
22 assistant commissioner in charge of the national
23 support services which was in charge of your unit?

24 A. That's correct.

25 584 Q. What was it that -- the actual detail of your 15:14
26 responsibility in the Domestic Violence and Sexual
27 Assault Investigation Unit?

28 A. Within that unit, Judge, we maintain what we call the
29 sex offenders register. We work with other agencies in

1 relation to the management of sex offenders and the
2 risk assessment of them. We maintain a lot of
3 information in relation to crimes against children,
4 paedophile investigations, investigations into online
5 abuse of children, and we also maintain a lot of 15:15
6 information relating to clerical abuse. So anything,
7 really, sexual crime, crimes against women, crimes
8 against children, we were the national unit involved in
9 it and we were also involved in a lot of policy-making
10 in relation to it. 15:15

11 585 Q. Yes. Now, you were transferred there and started there
12 in March 2007?

13 A. That's correct, Judge.

14 586 Q. And you're based in Dublin, isn't that correct?

15 A. In Harcourt Square, in Harcourt Street. 15:15

16 587 Q. But does that have national oversight of investigations
17 that take place around the country?

18 A. It wouldn't have national oversight, but we would get
19 involved in investigations. As a detective
20 superintendent, I would do certain weekends on call, so 15:16
21 that would bring me into other areas of investigation.
22 So if there was a serious crime, a murder maybe, I
23 would be called out at the weekends to get involved in
24 the investigation and oversee the setting up of the
25 investigations and stay with that then for a period of 15:16
26 time, with some staff from the National Bureau of
27 Criminal Investigation.

28 588 Q. Yes.

29 A. But my other responsibility was in relation to domestic

1 violence, so we had sort of two different areas of
2 responsibility.

3 589 Q. Yes, indeed. And that latter area of responsibility,
4 domestic violence, sexual assault, does that have sort
5 of a national overview of investigations that go on 15:16
6 around the country?

7 A. Not in the early stages, Judge, it didn't, but it
8 developed as I was there, and towards the end, then, we
9 had a sexual crime management unit within it and in
10 that we would keep an eye on certain investigations. 15:17
11 we would advise in relation to investigations as well,
12 if, you know, there was an investigation that was in
13 a -- a tricky investigation maybe down the country,
14 people would ring and look for advice and we would
15 advise in relation to it. But we had a sexual crime 15:17
16 management unit which was set up by Commissioner
17 Fachtna Murphy, and at that time then we did take a
18 role in relation to the oversight of some
19 investigations.

20 590 Q. Yes. Well, would those be investigations that involved 15:17
21 members of the gardaí as suspects?

22 A. On occasions it did.

23 591 Q. And would that be something that certainly on the basis
24 of that policy or practice, would they be referred to
25 your area of responsibility for that reason, that they 15:17
26 involve members of An Garda Síochána?

27 A. Not necessarily, not necessarily. It only commenced
28 really in about 2010, Judge, the oversight that we had
29 in relation to it. Up to that, we didn't have

1 oversight in relation to it.

2 592 Q. Yes. It so happens, obviously, that the Ms. D
3 allegation arose in the 2006/2007 period, and I see
4 from your statement you weren't involved in any way in
5 that investigation? 15:18

6 A. No, certainly not.

7 593 Q. But were you copied or was your unit, if I can put it
8 that way, copied in on any of the documentation that
9 arose in that?

10 A. No. I was never aware of the Ms. D allegation until 15:18
11 the Prime Time programme, in fact, and I don't actually
12 know who Ms. D is or Mr. D or any of that.

13 594 Q. Yes, that is what I was going to ask you about in due
14 course. But just in terms of the practice of your unit
15 as you experienced it, you wouldn't be aware, is that 15:18
16 right, of any allegation made against a member of An
17 Garda Síochána that was being investigated?

18 A. No, I wouldn't. That investigation, I understand, took
19 place in 2006/2007.

20 595 Q. Yes. 15:19

21 A. That was before my attendance there, Judge. And I was
22 never aware of that investigation.

23 596 Q. Okay. And you're not -- your office, as it were, your
24 unit, weren't routinely copied on investigations that
25 had taken place relating to members? 15:19

26 A. No.

27 597 Q. Who were still, in fact, serving members?

28 A. Certainly not, Judge. We were copied in relation to,
29 at that time, clerical abuse investigations and we

1 maintained data in relation to such.

2 598 Q. Yes. Just coming back to some of the personnel
3 involved. I think you knew Commissioner Callinan for a
4 number of years?

5 A. I did, Judge, yes. 15:19

6 599 Q. And you worked with him in your role as detective
7 superintendent, in fact drawing up the policy on
8 domestic violence and sexual crime for An Garda
9 Síochána, is that right?

10 A. Yes, it was domestic violence, sexual crimes and crimes 15:20
11 against children and child welfare, Judge. That was
12 directed by Commissioner Murphy. Mr. Callinan was
13 deputy commissioner, he had oversight of it, and I
14 suppose, for the want of a better word, I was the
15 draft-person of the regulations. 15:20

16 600 Q. Yes. I mean, would you have regarded him as a personal
17 friend?

18 A. No, certainly not.

19 601 Q. All right.

20 A. No. 15:20

21 602 Q. But you encountered him a lot professionally, as it
22 were, over the years?

23 A. I did, over the years, yes.

24 603 Q. And I think you told the investigators he attended your
25 retirement party? 15:20

26 A. He did. That wasn't unusual in those days, that a
27 commissioner would attend someone of my own rank's
28 retirement function and maybe say a few words.

29 604 Q. Yes. And you said to the investigators, "Commi ssi oner

1 O' Sullivan I know for a number of years", but you've
2 never worked directly with her?

3 A. No.

4 605 Q. In what context would you have known her?

5 A. She was a detective inspector in drugs, maybe, when I 15:21
6 got to know her first. I suppose there's only so many
7 at that level, that you would get to know people,
8 especially in the national units, and she was a member
9 of a national unit, I was a member of a national unit,
10 we would attend meetings and briefings, etcetera, 15:21
11 together, but I never knew her personally.

12 606 Q. Yes. And Superintendent Taylor, I think you told the
13 investigators you knew him for a number of years?

14 A. Yeah. And likewise, he was a member of a national unit 15:21
15 based in Harcourt Square, and when I was in the fraud
16 unit many years ago I would have interacted with him on
17 occasions. I didn't really know him. I got to know
18 him a little bit better when he became Press Officer.
19 He would be attending as the Press Officer, I would be
20 attending serious crime in relation to the 15:21
21 investigation. We would interact at the scenes,
22 etcetera, and maybe prepare a press bulletin or a press
23 statement together or a bit of guidance from one
24 another in relation to it.

25 607 Q. Yes. And you would have been dealing with him perhaps 15:21
26 up until closely before the time of your retirement in
27 July 2013?

28 A. I would. I can't remember exactly. But would I have,
29 yes, I would have been in contact with him.

1 608 Q. And you haven't spoken to him since, as I understand
2 it, is that right?
3 A. No, I haven't.

4 609 Q. The issue has arisen from an assertion made by a
5 Ms. O'Reilly, recounting a conversation which she said 15:22
6 she had with your daughter, Debbie McCann, who is a
7 press reporter, I think you understand that?
8 A. I do, I understand that.

9 610 Q. Yes. And it is suggested in Ms. O'Reilly's statement
10 that Ms. McCann, your daughter, confirmed to her 15:22
11 details relating to the investigation that she obtained
12 from you?
13 A. Ms. O'Reilly is incorrect. I didn't have any
14 information in relation to it, Judge, and I certainly
15 never confirmed it to my daughter. 15:23

16 611 Q. Well, I think the investigators obviously asked you
17 about the Ms. D file, and you told them that you had
18 "certainly never seen a file, paperwork or
19 documentation in relation to it. I was not involved in
20 the investigation of it." 15:23
21 A. That's correct.

22 612 Q. And did anyone ever brief you about it in any way --
23 A. No.

24 613 Q. -- shape or form --
25 A. No. 15:23

26 614 Q. -- while you were a member of An Garda Síochána?
27 A. Absolutely not.

28 615 Q. So is it the position that you were head of the unit
29 that you retired from as detective superintendent and

1 you never knew about the investigation into Sergeant
2 McCabe?

3 A. No, there's a huge volume of investigations go on on a
4 daily and weekly and yearly basis, Judge, I wouldn't be
5 familiar with them all, and I certainly wasn't familiar 15:23
6 with this. It was pre my time there.

7 616 Q. Yes. Well, familiarity is, I suppose, a different
8 concept, but the question was relating to your
9 knowledge. Is it your evidence that you never knew
10 about the investigation into Sergeant McCabe up until 15:23
11 the time you retired as a detective superintendent?

12 A. That's correct.

13 617 Q. Is it something, looking back on it, that you might
14 have expected to have learned of or been briefed about
15 at some stage? 15:24

16 A. I'd say if it had happened in the latter years,
17 possibly, yes, I would have been involved or I would
18 have been notified of it or maybe someone would ring
19 for a bit of advice in relation to it, but certainly
20 not in the early years. It developed quite 15:24
21 considerably and very quickly while I was there. I
22 suppose to equate it, like initially when I went in
23 there, domestic violence side of the house took up
24 maybe 5%/10% of my time. It turned around totally in
25 those years because of clerical abuse allegations and 15:24
26 commission reports, etcetera, in that it was then
27 taking up the vast majority of my time.

28 618 Q. Yes. But just turning to the issue of rumours, while
29 you were a detective superintendent and up until your

1 retirement, did you ever, in fact, hear any rumours
2 about Sergeant McCabe?

3 A. I heard rumours, Judge, after I retired, I believe.
4 Certainly, it didn't -- the best I can do when thinking
5 hard about it is, it didn't come to me as a surprise 15:25
6 when it was made public, so I was aware of it. Who
7 made me aware of it, for the life of me I can't
8 remember. I'd say it came up in some conversation with
9 a colleague, or something, after I retired, but I have
10 no recollection of who it was. I didn't put much 15:25
11 emphasis on it. It was an investigation that was
12 carried out. What I understood was, it was relating to
13 a sexual crime and a file had gone to the DPP and there
14 was no prosecution, and that's where I left it and
15 rested. 15:25

16 619 Q. Okay. Well, just to go back a little. The Tribunal
17 has heard that Mr. Mooney, a journalist from the Sunday
18 Times, had identified Sergeant McCabe in November 2010
19 as having brought forward allegations about the
20 malpractice issues in the Cavan-Monaghan area. Now, 15:26
21 had you yourself identified or known that Sergeant
22 McCabe was raising those issues?

23 A. I was aware of it, Judge, on a peripheral basis. None
24 of the issues raised by Sergeant McCabe, by Maurice,
25 actually impacted on me in any way. I never worked in 15:26
26 that area. I hadn't been in a position in relation to
27 penalty points for a number of years, so it didn't
28 impact on me at all, so really, I didn't place any
29 great thought or emphasis on it.

1 620 Q. Yes. But Assistant Commissioner Byrne was the
2 assistant commissioner with operational control over
3 your area, isn't that right?
4 A. That's correct.

5 621 Q. And he had, in fact, assumed responsibility for an 15:26
6 investigation into Sergeant McCabe's complaints; you
7 must have been aware of that?
8 A. I was aware that he was involved in an investigation
9 with Chief Superintendent McGinn. The detail of it, I
10 had no idea of. 15:26

11 622 Q. Well, I mean, did you become aware that, you know,
12 there had been an allegation of a tussle in a hotel
13 involving Assistant Commissioner Byrne and boxes of
14 documents that had resulted in allegations being raised
15 by Sergeant McCabe about what had happened there in the 15:27
16 hotel, the seizure of the documents, unlawful restraint
17 of Sergeant McCabe?
18 A. A tussle in a hotel?

19 623 Q. Yeah.
20 A. No, I have no knowledge of it at all. 15:27

21 624 Q. Over boxes of papers being seized --
22 A. No.

23 625 Q. -- from Sergeant McCabe?
24 A. No.

25 626 Q. You knew nothing about that? 15:27
26 A. Nothing.

27 627 Q. Even if it was written in the paper, you didn't pick up
28 on that?
29 A. If it was, I haven't read it.

1 628 Q. All right.

2 A. I haven't read it.

3 629 Q. So what you have told the investigators on page 7403
4 is:
5
6 "I think I heard a rumour shortly after my retirement
7 and I can't recall who I heard the rumour from."
8
9 And you think that's correct?

10 A. That's correct. 15:27

11 630 Q. And what was the rumour then that you heard at that
12 point in time?

13 A. It was very a vague rumour in that it was -- there had
14 been an investigation of a sexual crime, a file had
15 gone to the DPP and there was no prosecution brought. 15:28

16 631 Q. Okay.

17 A. That's as much as I knew.

18 632 Q. You see, I'm just wondering, having retired from the
19 position that you had been in at the end of July 2013,
20 and not having heard any previous rumour to that 15:28
21 effect, did this not come as a matter of some great
22 perhaps surprise or concern that this was so and it
23 hadn't come on to your radar at any stage?

24 A. No.

25 633 Q. All right. well, is it not something that you were, in 15:28
26 fact, surprised to hear?

27 A. Sorry, I don't understand.

28 634 Q. Were you surprised to hear the rumour when you heard it
29 after your retirement?

1 A. In the area that I worked, I was the recipient of huge
2 volumes of information.

3 635 Q. Yes.

4 A. Some of it -- most of it factual, indeed, relating to
5 allegations of crimes committed by people and against 15:29
6 people. It was just another piece of information that
7 I really -- I had moved on, I had retired. It was
8 something that didn't mean anything to me, to be
9 honest. I didn't certainly put any emphasis on it.

10 636 Q. Well, I'm not asking really whether it meant anything 15:29
11 to you. But you were, in fact, continuing to work in
12 the area of child protection after your retirement?

13 A. Yes.

14 637 Q. For a private company business?

15 A. For a private company, yes. 15:29

16 638 Q. So you still had an interest in that sort of subject
17 matter, as it were?

18 A. Yeah, it's totally -- the area I work in is totally
19 different than what I used to work in.

20 639 Q. Okay. But that is what I am just concerned to know, 15:29
21 what your evidence is about this. Who did you hear the
22 rumour from after you retired?

23 A. As I say, I have no recollection of who told me, who
24 told me it. It came -- I take it it came up in some
25 conversation I was having with a former colleague, but 15:30
26 other than that, I have no recollection of it.

27 640 Q. Well, you see, that is what I am interested in finding
28 out, because if you had heard this from a civilian,
29 perhaps you'd have been more surprised, I'd suggest,

1 because you'd be hearing something about Garda
2 investigations from a civilian that you mightn't expect
3 to hear. So presumably that didn't happen, you didn't
4 hear this from a civilian?

5 A. No, I'm not sure what civilian would be aware of it to 15:30
6 tell me, so --

7 641 Q. Exactly.

8 A. -- I would have been surprised if I heard it from a
9 civilian, I suppose, yes.

10 642 Q. So, would you agree that you probably in fact heard it 15:30
11 from a member of the force?

12 A. I would have to agree with you.

13 643 Q. All right. And a retired member or a serving member?

14 A. I have no idea.

15 644 Q. All right. 15:30
16 A. I genuinely have no idea.

17 645 Q. But certainly as of the date of your retirement and up
18 until that point, you wouldn't have been in a position
19 to pass on any information about Sergeant McCabe,
20 there's no doubt about that, is there? 15:31

21 A. No.

22 646 Q. But from the date of your retirement and from the date
23 you heard the rumour, and from what you have told us
24 about you heard, you would be in a position to pass on
25 that information from the date you heard the rumour? 15:31

26 A. It was a rumour -- it was just a rumour. I didn't put
27 any emphasis on it.

28 647 Q. Yes.

29 A. I didn't know whether it was factual or not. And I

1 didn't put much thought into it to be honest.

2 648 Q. I mean, obviously it didn't concern you. I mean, you'd
3 have no function in relation to it at all.

4 A. Yeah.

5 649 Q. But you learned three important facts relating to it, 15:31
6 or perhaps four, the rumour related to Maurice McCabe,
7 it was that he had been investigated for sexual crime,
8 thirdly that a file had gone to the DPP and fourthly
9 that there would be no prosecution. So you learned
10 those four facts for the first time, isn't that right? 15:32

11 A. That's correct.

12 650 Q. And you would, therefore, logically be in a position
13 to, should the need or occasion ever arise, pass on
14 that information because you had that information to
15 pass on, isn't that right? 15:32

16 A. I had that information to pass on but I did not pass it
17 on.

18 651 Q. Okay. Well, the issue of an increased press interest
19 in Sergeant McCabe seems to have been triggered by
20 events in 2014 because the Tribunal has heard evidence 15:32
21 of a number of journalists going to Ms. D's house, your
22 daughter in fact was perhaps the first of them that we
23 know of. Is it a coincidence that the information you
24 had, which you acquired not in your capacity as a
25 member of the guards, could have led her go there? 15:33

26 A. It didn't lead her to go there, because I didn't -- I
27 don't know who Ms. D is.

28 652 Q. All right.

29 A. I don't know who Mr. D is. I have read very briefly my

1 daughter's transcript.

2 653 Q. Yes.

3 A. I had that information as I've said earlier, I did not
4 pass that information on to my daughter.

5 654 Q. Yes. 15:33

6 A. I didn't put any emphasis on it. In the position I
7 held, if I had, I was -- I held a lot of information
8 and still hold a lot of information.

9 655 Q. Yes.

10 A. If I wanted to give my daughter a story, there are lots 15:33
11 of stories I could give her --

12 656 Q. Yes.

13 A. -- without passing on some rumour through her.

14 657 Q. All right.

15 A. But that's not the way she and I worked. 15:33

16 658 Q. No. I understand what you are saying there. Obviously
17 from the point of view of any information you acquired
18 while a member of An Garda Síochána, it would be
19 improper to pass that on, you could be breaching --

20 A. Improper? Improper? 15:34

21 659 Q. Improper.

22 A. Improper, yes, indeed. I thought you said proper.

23 660 Q. But anything you learned in a private capacity, there
24 is not necessarily anything improper about passing it
25 on, isn't that right, in the sense there is a 15:34
26 completely different set of circumstances?

27 A. You're talking about following my retirement --

28 661 Q. Yes.

29 A. -- if I got some information then?

1 662 Q. Yes.

2 A. Well, if it was given to me in confidence, yes, I
3 certainly wouldn't be passing it on.

4 663 Q. But certainly from the point of view of the position of
5 a member, I mean you're no longer subject to the 15:34
6 provisions of the Garda Síochána Act in relation to
7 information you acquire after you retire, isn't that
8 right?

9 A. I believe I'm still subject to investigation by GSOC
10 though. That is my understanding of it. You can 15:34
11 correct me if I am wrong in relation to it. But I
12 understand that complaints could be made.

13 664 Q. In relation to information you acquire after you cease
14 to be --

15 A. No, probably not. 15:35

16 MR. McGUI NNESS: No. All right. would you answer any
17 other questions thank you?

18

19 THE WITNESS WAS CROSS-EXAMINED BY MR. McDOWELL AS
20 FOLLOWS: 15:35

21 665 Q. MR. McDOWELL: Just briefly, Mr. McCann, there seems to
22 be -- I just want to ask you was that rumour passed on
23 to you in confidence?

24 A. No.

25 666 Q. There was nothing confidential about it? 15:35

26 A. I understand it was -- it came to me via a conversation
27 of some description. That's all. I'm not sure when I
28 became aware of it. I just became aware that I was
29 aware of it when it became public.

1 667 Q. But secondly, I mean just going back to Mr. Kierans'
2 evidence before, if it was true it was a very big
3 story, isn't that right?
4 A. Not necessarily to me, no. It was someone who had been
5 investigated, a file had gone to the DPP and there was 15:36
6 no prosecution. That's -- you know, that's as much as
7 I thought of it.
8 668 Q. But if it had been improperly investigated in the way
9 that your daughter seems to have believed that it was
10 improperly investigated -- 15:36
11 A. I'm not sure how she would know that.
12 669 Q. -- that would be a story, wouldn't it?
13 A. I suppose that's a question for a journalist, rather
14 than myself, indeed. You know I really don't know
15 whether -- 15:36
16 CHAIRMAN: I will take it as a given, Mr. McDowell. In
17 the event -- I mean, you wouldn't have come across as
18 superintendent many gardaí who were involved allegedly
19 in sexual abuse or that kind of thing, there's bound to
20 have been some, and I don't want to ask you about 15:36
21 those.
22 A. Of course.
23 CHAIRMAN: But in the event that -- it would be made
24 worse certainly if the Gardaí kind of circled the
25 wagons and wouldn't have investigated it properly and I 15:36
26 doubt that that would have happened actually, but --
27 A. Yes. And yes, there have been some in my time there
28 and I can assure you they were investigated very
29 thoroughly indeed.

1 670 Q. MR. McDOWELL: And reason I ask you, Mr. McCann, is
2 very simply that you weren't under any duty of
3 confidence in relation to this rumour you'd heard, it
4 concerned somebody who was in the public spotlight, it
5 concerned somebody who was likely to be in the news, 15:37
6 and I'm just trying to work out why you wouldn't even
7 in casual conversation impart it to a member of your
8 family who was in the media business, why you wouldn't
9 discuss it?

10 A. The first we discussed of -- the first recollection of 15:37
11 me ever discussing anything with my daughter in
12 relation to it is following the Prime Time programme.
13 I recall that she called out to our house the next day
14 and we had a discussion about it. I don't ever
15 remember discussing Maurice McCabe prior to that with 15:37
16 my daughter. I certainly wouldn't be giving my
17 daughter that type of information and passing it on to
18 her. And I most certainly didn't.

19 671 Q. Even though it was potentially a very big story?

20 A. I have information and still retain information of very 15:38
21 big stories that I could pass on but I don't and
22 haven't.

23 672 Q. That's because this was confidential to you as a member
24 of An Garda Síochána, isn't that right?

25 A. Which was confidential? 15:38

26 673 Q. All the stories you have in your head that you could
27 pass on, but you hadn't.

28 A. Yes.

29 674 Q. But this was not a confidential matter, was it?

1 A. This was a rumour.

2 675 Q. Yes. 15:38

3 A. And that's as much as it was that I heard, a rumour.

4 And I certainly didn't pass it on to my daughter. I

5 didn't think she'd be -- well, I'm not sure whether she

6 would have been interested in it, but certainly I

7 didn't pass it on to her and didn't feel that she would

8 be interested in it even.

9 676 Q. I am putting to you, just to be fair, I am putting to 15:39

10 you that she would be interested in that kind of

11 rumour, any news person who had, you know, an interest

12 in current affairs and Sergeant McCabe would be

13 interested in that kind of information.

14 A. It appears they were, yes.

15 677 Q. And that doesn't surprise you, does it? 15:39

16 A. No.

17 678 Q. And therefore, when you say you didn't think she'd be

18 interested in it, I have got to suggest to you it's the

19 exact kind of story that any journalist would have been

20 interested in hearing. 15:39

21 A. I didn't have any detail in relation to it. I had no

22 facts around it. I had heard a rumour. That's as far

23 as it went with me.

24 MR. McDOWELL: I see. Thank you.

25 MR. GILLANE: No questions. 15:39

26 MR. MÍCHEÁL O' HIGGINS: No questions, Chairman.

27

28 THE WITNESS WAS RE-EXAMINED BY MR. MCGUINNESS AS

29 FOLLOWS:

1 679 Q. MR. McGUI NNESS: Maybe one matter in your statement, I
2 don't know if you have it there, but at page 7407 --

3 A. I have my original statement if you could give me the
4 page.

5 680 Q. To the investigators?

15:40

6 A. Yes.

7 681 Q. It's at the bottom of page 8.

8 A. Yes certainly.

9 682 Q. There's a question there:

10

15:40

11 "I have been asked to detail any contacts I had with
12 Debbie McCann relating to Ms. D Sergeant, Maurice
13 McCabe and/or the current Garda Commi ssi oner Nóirín
14 O' Sullivan, what was discussed and the type of contacts
15 I had with my daughter in this regard i.e.
16 face-to-face, telephone, email."

15:40

17

18 Then your answer on the next page is:

19

20 "I never spoke to my daughter about Ms. D. No more
21 than any other father speaking to his daughter about
22 current affairs, the ongoing controversi es in An Garda
23 Síochána would have been di scussed, but any di scussi ons
24 relating to Maurice McCabe or any parties in the
25 questi on asked of me or the ongoing controversi es took
26 place after my retirement, these were informal chats."

15:40

15:40

27

28 Do you see that?

29 A. I do, yes.

1 683 Q. It seems to suggest that in fact after your retirement
2 you did discuss the current controversies including
3 Maurice McCabe?
4 A. Yes. As I have said, my first recollection of
5 discussing Maurice McCabe was after the Prime Time 15:41
6 programme. It was the following day. I know she was
7 in our house and we had a chat about it. And we had
8 some discussion about it. In relation to the other
9 controversies in relation to the Garda Commissioner,
10 outside of that, I've no doubt we had -- you know, 15:41
11 she's a journalist, I'm a former guard, we both have an
12 interest in current affairs, I have no doubt we had
13 chats about it. But that's what they were. They were
14 chats with my daughter.
15 684 Q. Yeah. It's just, you place this possibility or perhaps 15:41
16 more, maybe I'm misinterpreting it, or
17 over-interpreting, but you place it as taking place
18 after your retirement, not necessarily by reference to
19 after the Prime Time programme there?
20 A. Well, yeah. Maybe it was the way the question was 15:42
21 phrased or the way I answered it.
22 685 Q. Okay.
23 A. But certainly I didn't mean anything, I wasn't trying
24 to push it out to my retirement, if that is what you
25 are suggesting. 15:42
26 686 Q. It's just at page 11 of your statement, line 170 you
27 are being asked again sort of a very direct question:
28
29 "I have been asked whether my daughter, Debbie McCann,

1 or any other journalist negatively briefed me about
2 Sergeant Maurice McCabe or whether they spoke to me
3 about Sergeant McCabe. If yes, I have been asked what
4 was said. Absolutely not."

15:42

5
6 Is the answer.

7
8 "The only journalist I would have discussed these
9 matters with was my daughter. As already stated that
10 was not on an informal -- that was on an informal basis
11 in the context of discussing current affairs and again,
12 as stated already, this occurred following my
13 retirement."

15:42

14
15 So you do seem to be -- perhaps I'm misunderstanding,
16 you do seem to be conceding that you would have
17 discussed it with your daughter after your retirement.

15:42

18 A. I think I've answered that question. Have I not
19 answered that question?

20 687 Q. All right. Do you stand by this answer then?

15:43

21 A. Well --

22 688 Q. That is really the last question I want to ask you. Do
23 you stand by that answer?

24 A. The question was, I have been asked whether my
25 daughter, Debbie McCann, or any other journalist
26 negatively briefed me about Sergeant McCabe or whether
27 they spoke to me about Sergeant McCabe, and if yes I
28 have been asked what was said. And my reply is
29 "absolutely not", so I was never negatively briefed by

15:43

1 any of them.

2 689 Q. Yes.

3 A. And the only journalist, I'm trying to qualify it by
4 saying that I did have chats with my daughter and that
5 as after my retirement. 15:43

6 690 Q. Yes. It's just it says, the words there are "would
7 have discussed these matters", it seems to --

8 A. Well, I didn't -- you know, I didn't go -- you know, I
9 wasn't hanging on every word, so really, you know,
10 maybe if I knew I was going to be sitting here I might 15:43
11 have double-read it maybe or been a lot more careful
12 about my language or even, you know, studied it a bit
13 more when I got it to sign.

14 691 Q. I'm sure as a detective superintendent you would agree
15 this was read over to you? 15:44

16 A. Oh correct, yes.

17 MR. McGUI NNESS: Thank you.

18

19 THE WITNESS WAS THEN QUESTIONED BY THE CHAIRMAN,
20 AS FOLLOWS: 15:44

21 692 Q. CHAIRMAN: Detective superintendent, in the area of
22 child sex abuse you worked basically at an intense
23 level for how many years?

24 A. About five years, Judge. About from 2007 to my
25 retirement in 2013. 15:44

26 693 Q. CHAIRMAN: And I presume it was something you didn't at
27 all enjoy?

28 A. It was very difficult, but very satisfactory at the
29 same time, because we did a lot of work in relation to

1 child abuse on the internet and you were often saving
2 children from harm.

3 694 Q. CHAIRMAN: Yes. But even still, things would haunt
4 you?

5 A. Yes, they would. 15:44

6 695 Q. CHAIRMAN: Was it your practice to bring these things
7 home or was it your practice to say the office is the
8 office and --

9 A. Absolutely.

10 696 Q. CHAIRMAN: -- that's where I leave it? 15:45

11 A. You couldn't bring them home with you, really. You
12 would -- they would drive you mad.

13 CHAIRMAN: All right. Thank you very much.

14

15 THE WITNESS THEN WITHDREW 15:45

16

17 MR. McGUI NNESS: Chairman, we're just making an inquiry
18 as to whether Mr. Ferry is in a position to deal with
19 matters, if you just bear with us please.

20 CHAIRMAN: If we can finish Mr. Kierans today and if we 15:45
21 can finish Cathal McMahon.

22 MR. McGUI NNESS: Yes.

23 CHAIRMAN: The Hardiman lecture today begins at five
24 o'clock, but let's try and get things finished by four,
25 a quarter past or thereabouts. 15:45

26 MR. McGUI NNESS: Yes, Chairman.

27 CHAIRMAN: Maybe I don't know, maybe the right thing to
28 do is if Superintendent Taylor would sit beside his
29 lawyers and if we could maybe go through the relevant

1 pieces of evidence again, I have them noted and then
2 questions can be asked. I am asked to wait for a
3 minute. Let's wait.
4 MR. MCGUINNESS: Mr. Conlon is returning.
5 CHAIRMAN: Sure. I know that. Mr. McGuinness, I think 15:46
6 you can confirm we wrote to every editor, isn't that
7 right?
8 MR. MCGUINNESS: I certainly believe we did.
9 CHAIRMAN: Yeah. I think we did. I think we also
10 wrote to every journalist in respect of whom there was 15:46
11 any possibility that there was any negative briefing.
12 MR. MCGUINNESS: Yes, Chairman.
13 CHAIRMAN: whereas there are 700 contacts apparently in
14 the Garda Press Office and there are perhaps 50 people
15 regularly contacted by Superintendent Taylor that would 15:46
16 be in the ordinary course of work as far as we are
17 aware, and as regards calling any of those, let's say,
18 even calling ten or 15 or 50 more journalists, there
19 would literally be no question you could ask them based
20 on any testimony of Superintendent Taylor, because he 15:47
21 has not, if you like, made any statement to the effect
22 that any other journalist apart from the 11 named was
23 ever briefed by him, isn't that correct?
24 MR. MCGUINNESS: I think it is fair to say, Chairman,
25 that there would be no evidential material to put to 15:47
26 them from Superintendent Taylor.
27 CHAIRMAN: Yes.
28 MR. MCGUINNESS: In any event, Mr. Ferry is here with
29 his solicitor and client.

1 CHAIRMAN: Yes.

2 MR. McGUINESS: Perhaps we would recall Mr. McMahon
3 first.

4

5 MR. McMAHON TAKES THE STAND

15:47

6

7 CHAIRMAN: Yes. Mr. Ferry, as I understand the
8 evidence that is relevant - and maybe you would
9 contradict me, Mr. McMahon, in the event that I get any
10 of this wrong --

15:47

11 A. Of course.

12 CHAIRMAN: -- in early 2014 probably before the Paul
13 Williams articles were published from the 12th July
14 2014 you learned from a source, which you have
15 confidence over, that Sergeant McCabe had been
16 investigated for a child abuse allegation historically
17 in the Cavan area, you said your source was not David
18 Taylor, Martin Callinan or Nóirín O'Sullivan, your
19 source was not a garda. On receipt of that information
20 you then contacted David Taylor, the Garda Press
21 Officer, and as Garda Press Officer he confirmed the
22 details of the story and he added on a suggestion that
23 you go to Cavan to find further details there. You
24 didn't follow that up except with your news editor and
25 no one in particular was pointed to and you didn't ask
26 him at that stage because, as I understand your
27 evidence, the matter would have to be passed by
28 Mr. Kierans before any money or any further expenditure
29 of journalists' time, which of course he was paying

15:48

15:48

15:48

1 for, was going to be expended on it. So that is that
2 bit, Mr. Ferry.

3 MR. FERRY: Yes, and thank, you Chairman.

4 CHAIRMAN: Any questions will obviously be directed to
5 Mr. McMahon. 15:49

6
7 MR. CATHAL McMAHON WAS CROSS-EXAMINED BY MR. FERRY AS
8 FOLLOWS:

9 697 Q. MR. FERRY: Yes. So my instructions are, and I have to
10 put it to you, that you were a journalist that was in 15:49
11 contact with Superintendent Taylor and that -- in the
12 period that he was a Press Officer and in that period
13 of early 2014 that you were one of the journalists that
14 was being negatively briefed by Superintendent David
15 Taylor, and that the form and the manner in which it 15:49
16 was done was that Maurice McCabe was in the news at
17 various times and Superintendent Taylor took the
18 opportunity to drop it into conversations with you and
19 that he had spoken with you about the allegation and
20 that there had been an investigation and that Sergeant 15:50
21 McCabe was motivated by revenge against An Garda
22 Síochána as a result of that allegation. They are my
23 instructions, I am putting it to you that that is the
24 background to your interactions with Superintendent
25 Taylor and that you are one of the journalists who was 15:50
26 negatively briefed by Superintendent Taylor.

27 A. That is not correct.

28 698 Q. And in relation to the evidence where you say that you
29 contacted Superintendent Taylor in relation to the

1 allegation and that you were referred to Cavan,
2 Superintendent Taylor's instructions are that he never
3 referred or directed any journalist to travel to Cavan
4 and that that is incorrect that you directed you to
5 Cavan?

15:50

6 A. That's not my recollection.

7 MR. McDOWELL: Chairman --

8 699 Q. MR. FERRY: Basically to reconfirm that, that he says
9 that you are one of the journalists that he was
10 negatively briefing, that there would have been
11 numerous interactions with you, I think he would have
12 met you on occasions at crime scenes and there was also
13 telephone contact with you and that you had already had
14 conversations with him in relation to Sergeant McCabe.

15:52

15 A. As I said in my evidence, there was that one
16 conversation over the phone, which I am happy to give
17 the detail today to the Tribunal, but there was no
18 further interactions.

15:52

19 MR. FERRY: That's all I have for you, Mr. McMahon.

20 CHAIRMAN: Just, I'm now in the situation that we had a
21 list of nine and then following interviews with our
22 investigators where a visit to the D house was put to
23 Superintendent Taylor, that nine was added to and
24 became 11, it's now become 12, is there any way that we
25 can bring up the number perhaps to another two or three
26 news editors as has been said today or to other
27 journalists? Bearing in mind that I am very well aware
28 of, you know, phone contacts by Superintendent Taylor.
29 There are 50 journalists he regularly contacted, but I

15:52

15:53

1 have to appreciate that he had very good reason to
2 contact them when he was in the Press Office and had
3 very legitimate reasons for talking to them, but he has
4 nominated first nine, added two, and now added one and
5 we have heard today about two to three extra news 15:53
6 editors; so, is there anything else, is there anybody
7 else that he wants to nominate today now that he is
8 here, that you are here, Mr. Ferry, that we are all
9 here, that this Tribunal is attempting to reach a
10 logical conclusion at some stage? 15:53
11 MR. FERRY: My instructions are that there's no other
12 names that he wishes to add to the list.
13 CHAIRMAN: It's not a question of wishing.
14 MR. FERRY: There are no other names.
15 CHAIRMAN: well, it's a funny phraseology to use, 15:54
16 Mr. Ferry. I mean, it is very easy unfortunately for a
17 Judge to get annoyed with counsel, and I'm not, but
18 just, I don't understand the use of the word "wishes".
19 It's not a question of wishing. It's a question of
20 actually assisting in this process. 15:54
21 MR. FERRY: well, there isn't anyone else to add.
22 CHAIRMAN: There aren't any others?
23 MR. FERRY: There isn't anyone else to add.
24 CHAIRMAN: And how come we have another today which was
25 never mentioned before? Is there any instructions on 15:54
26 that?
27 MR. FERRY: well, the instructions I received on that,
28 is that at the time of making the disclosure
29 Mr. McMahon was no longer working as a journalist and

1 wasn't included.

2 CHAIRMAN: Mr. Ferry, I appreciate -- I have been in
3 difficult situations as a practitioner with
4 instructions from clients and I appreciate your honesty
5 and your diligence in carrying out what you say, but 15:55
6 that is really -- it doesn't come from you but it also
7 doesn't make any sense. So if there are perhaps other
8 people who have ceased to be journalists and who were,
9 to use the now time honoured phrase, negatively
10 briefed, I think now is the time to tell us, if that is 15:55
11 the excuse for not coming up with the name of this
12 particular journalist working in a very prominent
13 position at the relevant time, namely Mr. McMahon.

14 MR. FERRY: No, there are no further journalists to be
15 named. 15:56

16 CHAIRMAN: Or ex-journalists?

17 MR. FERRY: Or ex-journalists.

18 CHAIRMAN: Mr. McDowell, did you want to say something?

19 MR. McDOWELL: I just wanted for clarity sake, and
20 maybe I'm missing something, is it accepted by 15:56
21 Superintendent Taylor that the conversation that this
22 witness claims he had with him in which he sought
23 confirmation of the investigation, I am not clear as to
24 whether that is accepted or disputed.

25 CHAIRMAN: Mr. McDowell, I see where you are coming 15:56
26 from. I did ask that question and the way I resolved
27 it in my mind was: Yes, those kind of questions were
28 allegedly asked by Paul Williams, according to him they
29 were answered by Superintendent Taylor, but given that

1 Superintendent Taylor is now saying that even before
2 any question was asked the negative briefing was given
3 with all of that information in it, there would be no
4 point in Mr. McMahon ringing up and him confirming
5 particular issues.

15:57

6 MR. McDOWELL: well, that is one way of looking at it,
7 but I just want to know is his evidence being disputed.

8 CHAIRMAN: I can't see any other way of looking at it
9 at the moment. But, Mr. Ferry, it may be a legitimate
10 question: was there any phone call in which

15:57

11 Mr. McMahon raised with Superintendent Taylor, look, I
12 have the following information and the following
13 information is to the following effect, there has been
14 an investigation into a child abuse allegation,
15 historically in the Cavan area against Maurice McCabe
16 and therefore I am contacting you, David Taylor, as
17 head of the Press Office and would you confirm the
18 details of the story I have been told?

15:57

19 MR. FERRY: No. That wasn't what happened. It was,
20 Superintendent Taylor had briefed the journalist of the
21 information relating to Sergeant McCabe. So those
22 queries didn't come from the journalist. It was the
23 other way round; Superintendent Taylor briefed
24 Mr. McMahon.

15:57

25 CHAIRMAN: Mr. Ferry, that is what I took from the
26 questions you asked. Yes. Do you want to say anything
27 about that?

15:58

28 A. That is simply not true.

29 CHAIRMAN: All right. Thanks, Mr. Ferry. I presume,

1 Mr. Dignam, you don't have any questions arising out of
2 that, do you?

3 MR. MÍCHEÁL O' HIGGINS: No questions, Chairman.

4 MS. LEADER: Nothing arising.

5 CHAIRMAN: Thank you very much.

15:58

6

7

THE WITNESS THEN WITHDREW

8

9 MS. LEADER: If Mr. Kierans could return to the witness
10 box, please.

15:58

11

12

MR. KIERANS TAKES THE STAND

13

14

CHAIRMAN: Yes. And again, just to summarise what I
15 have noted in relation to Mr. Kierans. He was the
16 editor of the Irish Daily Mirror at the time, and again
17 that is not in dispute. He confirms basically that
18 Cathal McMahon came to him with the story, which was to
19 the effect that Maurice McCabe was questioned over the
20 abuse of a child, and he regarded it as a big story but

15:58

21

he felt there was something wrong, huge risk of
22 defamation and he was also skeptical about things said
23 in authority by police or politicians and so he told
24 him to back off. He had met Superintendent Taylor by
25 the two of them having lunch. He understood,
26 Mr. Kierans understood that Cathal McMahon was close
27 enough to David Taylor, which again there's nothing
28 wrong with that at all. Over lunch they discussed all
29 kinds of things and at the very early stage of him

15:59

15:59

1 being appointed, so we're going back to June or
2 thereabouts of 2012, and there was nothing improper
3 said at the lunch or anything else like that. When,
4 however, the story was floated or pitched to him,
5 having made a decision that he wasn't going to run with 16:00
6 it, he discussed the matter with a number of other
7 people and discovered, and this is his evidence, that
8 the same story had been, and I use his word, peddled
9 around the town to other newsrooms or news editors by
10 Superintendent Taylor. That is the relevant bit. The 16:00
11 last bit.

12
13 MR. JOHN KIERANS WAS CROSS-EXAMINED BY MR. FERRY AS
14 FOLLOWS:

15 700 Q. MR. FERRY: Hello, Mr. Kierans, I am John Ferry, 16:00
16 representing Superintendent Taylor. In relation to
17 your evidence, Superintendent Taylor's evidence is that
18 he was negatively briefing journalists around that time
19 and actively briefing them in relation to Sergeant
20 McCabe. And in relation to the evidence that you have 16:00
21 given, that it was being peddled around newsrooms and
22 around editors, can you be in any way specific; are you
23 suggesting that he was briefing editors in person or is
24 that --

25 A. I don't know that. I just know that that story was, as 16:01
26 I said, peddled around the town about Sergeant McCabe.
27 And that is in conversations I had with various people
28 in the industry, which I'm not prepared to go into.
29 But that is what was happening at that time.

1 701 Q. Superintendent Taylor's evidence was that he was
2 actively and over a period of time briefing
3 journalists --
4 A. Yeah.

5 702 Q. -- here in Dublin and in the -- 16:01
6 A. Yeah.

7 703 Q. -- particularly in the crime reporting circle of
8 journalists --
9 A. Yeah.

10 704 Q. -- in relation to Maurice McCabe. Now what he says is 16:01
11 that he was briefing them that Sergeant Maurice McCabe
12 was motivated by maliciousness and revenge as a result
13 of Sergeant Maurice McCabe being the subject of an
14 investigation into alleged sexual assault of a child,
15 and that because of that, Sergeant Maurice McCabe had a 16:01
16 grievance against the job and that was a ground or a
17 reason for Sergeant Maurice McCabe bringing matters
18 into the public. Are you, can you confirm was that the
19 rumour that you had heard?

20 A. The rumour I heard was in relation to the story about 16:02
21 Maurice McCabe, that the accusation was that he had
22 been questioned by the cops over the abuse of a child,
23 and that story had run around a number of newsrooms in
24 Dublin and a lot of journalists, like myself, didn't
25 touch the story, because they didn't believe it, and it 16:02
26 was because it was highly defamatory.

27 705 Q. Yes. And I think your evidence was that it was being
28 peddled by Superintendent Taylor?

29 A. My understanding was it was peddled by Mr. Taylor, yes.

1 706 Q. And can you assist the Tribunal by identifying in any
2 way which newsrooms --

3 A. No, I'm not prepared to identify sources within the
4 business, you know. I'm trying to be helpful to the
5 Tribunal, but that is what happened at that time and 16:02
6 the story was doing the rounds. So the story has to
7 originate from somewhere and my belief was, having
8 spoken to a number of people, was that it had come from
9 Mr. Taylor.

10 CHAIRMAN: I beg your pardon, Mr. Ferry, for 16:03
11 interrupting you, but to be fair to Mr. Kierans, I
12 think the plain reality is that in the event that there
13 are people to be identified as news editors to whom
14 that story was given, and after all the Garda Press
15 Officer operates at a very high level, it's for 16:03
16 Superintendent Taylor to tell us that, rather than to
17 put Mr. Kierans through an embarrassment.

18 MR. FERRY: No, I don't --

19 CHAIRMAN: Similarly, you know, in the event that that
20 doesn't come from Superintendent Taylor and we were to 16:03
21 call anybody or were to call let's say 50 people at
22 random, it's very hard to know what possible question
23 counsel on behalf of the Tribunal could put to them,
24 unless the accusation is made. And it's not really an
25 acquisition. It's not something that impacts on the 16:03
26 character of somebody to the effect that at a
27 particular event a particular story was whispered in
28 their ear by somebody else. One can't -- I don't know,
29 camels can close their nostrils, I don't know if they

1 can close their ears, but we can't close our ears to
2 things that are being made, but I think the onus is on
3 Superintendent Taylor to say if there were such people
4 who they were, now that this matter has come out in the
5 open and this prompting has been helpfully given to the 16:04
6 Tribunal by Mr. Kierans.
7 MR. FERRY: Yes. But I think Mr. Kierans, and I don't
8 mean to embarrass you in any way --
9 A. You're not embarrassing me.
10 707 Q. -- but I think that it's not the case that you're 16:04
11 saying that you're aware that editors were themselves
12 briefed?
13 A. I have no idea about editors.
14 708 Q. Yes.
15 A. What I said was that the story about Mr. McCabe, 16:04
16 Sergeant McCabe was being peddled around the newsrooms.
17 That's what I said.
18 709 Q. And your evidence is that that was being peddled by
19 Superintendent Taylor?
20 A. Yes. 16:04
21 710 Q. Yeah. And Superintendent Taylor instructions are that
22 he didn't brief any editors?
23 A. Yeah. I don't know who he briefed or who he didn't
24 briefed. All I'm telling you is, my understanding was
25 that that story that we came across was peddled around 16:05
26 other newsrooms.
27 711 Q. Yes. And I just suggest to you that if, as his
28 evidence has been, that he was briefing journalists,
29 that that briefing could have made its way back into

1 the newsrooms and to editors as a result of briefing
2 journalists?

3 A. I have no idea. I don't know who Dave Taylor briefed
4 or didn't brief, you know. All I can tell you is what
5 I know and what I heard from inquiries that I made and 16:05
6 I just became alarmed as a citizen that such a story
7 should be put out there by the Garda Press Office of a
8 man who was totally innocent. And as a citizen of this
9 country that really upset me, you know. I know the
10 Judge doesn't think journalists have morals but we 16:05
11 actually do sometimes, believe it or not.

12 CHAIRMAN: No, no, no, please, Mr. Kierans, in all
13 seriousness, I am actually related to a journalist.

14 A. Okay.

15 CHAIRMAN: And I mean, it's nothing to do with me. 16:06

16 A. Yeah.

17 CHAIRMAN: Coming as I do from a large and colourful
18 family.

19 A. Right.

20 CHAIRMAN: I mean, the plain reality of it is, I think 16:06
21 I have said, I do respect the function of journalists
22 very much and I do think people have morals. I don't
23 think journalists have any more morals than, say,
24 lawyers or doctors.

25 A. I would agree with that. 16:06

26 712 Q. MR. FERRY: So, Chairman, just for clarity, Mr. Kierans
27 Superintendent Taylor's position is that, yes, he was
28 briefing journalists but he did not brief editors
29 directly and he did not brief the newsrooms directly.

1 It was directly and via the journalists that he --
2 A. well, I presume that's what would happen anyway.
3 713 Q. Yes.
4 A. You know, I mean he certainly didn't brief me as an
5 editor. I never had a conversation with him about any 16:06
6 of this.
7 MR. FERRY: Thank you very much.
8 A. Okay.
9 CHAIRMAN: Did you want to ask a question, Ms. Leader?
10 Sorry. 16:06
11 MR. MÍCHEÁL O' HIGGINS: Very briefly, Chairman.
12
13 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL O' HIGGINS
14 AS FOLLOWS:
15 714 Q. MR. MÍCHEÁL O' HIGGINS: You've told us that you don't 16:07
16 know whether Superintendent Taylor did or didn't brief
17 newsrooms, you've also told us, have you not, that your
18 initial belief that your journalist, the source for
19 your journalist's information was Superintendent
20 Taylor, you now accept that that initial brief was 16:07
21 incorrect, isn't that correct?
22 A. That's correct. But I accept equally that Mr. McMahon
23 rang Mr. Taylor and Mr. Taylor confirmed the story.
24 715 Q. And you are also happy to confirm to the Chairman --
25 A. So to be honest, there's not really much different. 16:07
26 Mr. Taylor confirmed the story about Mr. McCabe to
27 Cathal McMahon.
28 716 Q. would you mind just for a moment -- we will get through
29 this quickly --

1 A. No, I don't want you to mix my words either, do you
2 know what I mean.

3 717 Q. If you wouldn't mind just focusing on the question I'm
4 going to ask.

5 A. Yeah. 16:07

6 718 Q. My question is this: You're able to confirm that it is
7 no more than your belief that Superintendent Taylor was
8 the source for the newsrooms that you mention?

9 A. My understanding is that Mr. Mr. Taylor had peddled the
10 story about Mr. McCabe around a number of newsrooms in 16:08
11 Dublin, yes.

12 719 Q. And you're not prepared to say from whom you heard
13 those rumours?

14 A. No.

15 MR. MÍCHEÁL O' HIGGINS: Thank you. 16:08
16

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

18 720 Q. MS. LEADER: Mr. Kierans, in relation to the newsrooms
19 that the story was peddle around, right?

20 A. Yes. 16:08

21 721 Q. Talking about those, you're not prepared --

22 A. No.

23 722 Q. -- to tell the Tribunal who told you about it?

24 A. No.

25 723 Q. But I just wonder if I could ask you the question in 16:08
26 another way. The Tribunal knows that DMG Media was
27 aware of this story from the evidence Debbie McCann has
28 given to the Tribunal; the Tribunal also knows that
29 Independent News and Media was aware of the story from

1 evidence given by Mr. Williams; the Tribunal also knows
2 the Irish Times was aware of the story from Mr. Lally's
3 evidence; and there was also, Mr. O'Toole was aware of
4 the story who I think is The Star?

5 A. Yeah.

16:09

6 724 Q. The Daily Star?

7 A. Mm-hmm.

8 725 Q. And then we have Ms. Murray's evidence from The Sun?

9 A. The Sun.

10 726 Q. Are there any other newsrooms that the Tribunal should
11 be aware of?

16:09

12 A. Not that I'm aware of, no.

13 MS. LEADER: All right. Thank you very much.

14 CHAIRMAN: Right. We covered all the bases then.

15 A. Yeah.

16:09

16 CHAIRMAN: Thank you very much.

17 A. Thanks, Judge.

18

19 THE WITNESS THEN STOOD DOWN

20

16:09

21 CHAIRMAN: Mr. McGuinness, will you just briefly

22 discuss tomorrow? That is as far as we can go today.

23 Now, I have a longstanding appointment that I have to

24 keep and so tomorrow the proposal is to sit from nine

25 o'clock until about quarter to one without a break.

16:09

26 And then on Saturday the proposal is, and I'm sorry,

27 this is what I am going to do, because I am back

28 full-time in my other job and I'm not a show pony to be

29 put in here and not put in here as it suits the

1 parties, I'm afraid they have to suit and arrange
2 commitments to be here, the proposal is to sit on
3 Saturday morning at ten o'clock to hear any submissions
4 there may be in relation to journalistic privilege. I
5 can then rule on that and then we can see where we go 16:10
6 from there. But we have four days available next week,
7 in the event that it is a question of going on at that
8 point as opposed to adjourning for perhaps a year, if
9 that happens we could perhaps take Monday off and there
10 would be another day where I am sitting in the Supreme 16:10
11 Court, but that's the way that it is. Well, I'm not
12 going to make any apology for it. That's just the way
13 that it is. So is there anything you need to add
14 Mr. McGuinness to that?
15 MR. MCGUINNESS: No. 16:10
16 CHAIRMAN: Do we have witnesses tomorrow?
17 MR. MCGUINNESS: Well, we have, Chairman, two witnesses
18 that we didn't get to today unfortunately.
19 CHAIRMAN: Yes.
20 MR. MCGUINNESS: Mr. O'Shea and Mr. Brady and we are 16:11
21 proposing to put them in, in the morning after Mr. Cox,
22 who will be taken first. They're all going to be
23 relatively short.
24 CHAIRMAN: And have we more tomorrow then?
25 MR. MCGUINNESS: No. 16:11
26 CHAIRMAN: So that, we should easily get through
27 tomorrow?
28 MR. MCGUINNESS: It is anticipated we would finish the
29 evidence of those three witnesses very quickly in the

1 morning --

2 CHAIRMAN: All right.

3 MR. McGUI NNESS: -- and be able to start on the

4 submissions.

5 CHAIRMAN: If anyone wants to start making submissions 16:11

6 tomorrow. I mean, I have indicated, it may have gone

7 through to the parties, that I would much prefer, and

8 it's perhaps an appropriate time to revisit this, that

9 people would actually ask me what they want me to do:

10 In other words, what order do they want the Tribunal to 16:11

11 make and why. There would have to be submissions

12 obviously in relation to the relevant procedure, in

13 relation to why I ought to go through that procedure,

14 in relation to whether I have a discretion in relation

15 to that, whether on the state of the evidence that will 16:11

16 actually result in something happening as opposed to,

17 let's use the maxim equity does not act in vain, and I

18 think as well it would have to be made clear the basis

19 upon which there is something there to be added to my

20 state of knowledge. So those are the things that I 16:12

21 think need to be addressed. If people want to use a

22 speaking note that is fine, but it is not a question of

23 making legal submissions to the Supreme Court and

24 people exchanging those submissions, just use a

25 speaking note and just hand it in. Nothing that anyone 16:12

26 is going to say is going to come as a surprise to me,

27 apart from whatever attitude they're going to take.

28 And I'm open to all attitudes and all submissions on

29 this particular matter.

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MR. MCGUINNESS: Chairman, just to make it clear that obviously your directions in relation to the witnesses and the commencement of submissions that was put on the Tribunal website and all the parties were made perfectly well aware that the submissions will start tomorrow after the evidence finishes.

16:13

CHAIRMAN: Yeah. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FRIDAY, 22ND JUNE 2018 AT 9:00AM

16:13

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