

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE  
ON THURSDAY, 28TH JUNE 2018 - DAY 96

96

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1 THE HEARING RESUMED, AS FOLLOWS, ON THURSDAY, 28TH JUNE  
2 2018:

3  
4 CHAIRMAN: Ladies and gentlemen, this morning is the  
5 easy bit, you talk and I listen. Just a couple of 10:04  
6 things before we begin. First of all, it seems to me  
7 that anyone who has shorter submissions to make, like,  
8 for instance, I don't mean uninterested or minor  
9 parties, but, it would economise in terms of cost to  
10 the taxpayer if they might wish to make their 10:05  
11 submissions and just go. So, I would invite people to  
12 do that if they wish. Secondly, as I understand it,  
13 there has been a request on behalf of Sergeant McCabe  
14 that his legal team should speak last, and I think  
15 that's fine, subject to a right of reply by An Garda 10:05  
16 Síochána. If that turns into a tennis match, well then  
17 hopefully I am just going to sit here and listen to it.  
18 And then the last thing is this: That we have audio of  
19 all the hearings but I was proposing to put up today  
20 and tomorrow's audio because the whole idea of public 10:06  
21 access to courts has to move into the modern age, but I  
22 won't do so in the event that people say outlandish or  
23 ludicrous things. So there it is. So who would like  
24 to commence.

25 MR. MURPHY: Chairman, just before we move into the 10:06  
26 individual submissions, on behalf of An Garda Síochána  
27 I wonder if I might just ask what the rationale for the  
28 request is on behalf of Sergeant McCabe to reverse the  
29 usual order. I will be, of course, entirely happy to

1 abide by your direction, Chairman, but it's not clear  
2 to me why this is being changed.

3 CHAIRMAN: well, I didn't think about it very deeply  
4 and I would have to say, Mr. Murphy, and I will tell  
5 you the reason I didn't think about it very deeply was, 10:06  
6 I felt that since this is all about what allegedly  
7 happened to Sergeant McCabe it would seem rational that  
8 he would speak. Now, equally, it seems to me also  
9 rational that since this is about what allegedly senior  
10 members of An Garda Síochána did to Sergeant McCabe, it 10:06  
11 would be unfair for him to speak last without you  
12 having a right of reply, and that's the basis upon  
13 which I thought it was right to proceed. And honestly,  
14 I am listening to everything and I don't see a big deal  
15 about it, and if, as I said, it turns into something 10:07  
16 being said on behalf of Sergeant McCabe and you having  
17 to reply further, I will try and be as tolerant as I  
18 possibly can be, given my track record so far, and  
19 let's see how we get on.

20 MR. MURRAY: May it please you, Chairman. 10:07

21 CHAIRMAN: would you like to go first, Mr. O'Higgins?

22 MR. MICHAEL O' HIGGINS: I am quite happy to do that.

23 CHAIRMAN: Unless there is some minor party who would  
24 wish to go first. Please don't be shy. Mr. Lehane?

25 MR. LEHANE: Chairman, yes, I have to make two very 10:07  
26 short submissions on behalf of Deputy John McGuinness  
27 in the first instance and then secondly on behalf of  
28 Ms. Anne Harris. My solicitors have copies of my  
29 speaking note, they are both relatively short, one is



1 ten pages and the other is 17 pages, unfortunately they  
2 are not here. So I am happy to go ahead now and have  
3 it handed up when it arrives.

4 CHAIRMAN: I am very happy for you to do that,  
5 Mr. Lehane. 10:08

6  
7 SUBMISSION BY MR. LEHANE ON BEHALF OF DEPUTY JOHN  
8 McGUINNESS:

9 MR. LEHANE: If I can deal first with Deputy John  
10 McGuinness. In respect of Mr. McGuinness I am 10:08  
11 instructed by Lawlor Partners Solicitors, Chairman. As  
12 you know paragraph [1] of the terms of reference  
13 requires the Tribunal to investigate whether a meeting  
14 took place between former Commissioner Martin Callinan  
15 and Deputy McGuinness on 24th January 2014 in the car 10:08  
16 park of Bewley's Hotel, Newlands Cross, County Dublin,  
17 and to examine and consider the circumstances which led  
18 to any such meeting, the purpose of such meeting and  
19 the matters discussed at such meeting.

20 10:08  
21 Now, Chairman, you will be aware that former  
22 Commissioner Callinan and Deputy McGuinness both agree  
23 that a meeting took place at the time and in the place  
24 specified in term of reference [1], they also agree  
25 that Sergeant McCabe was discussed at the meeting. 10:08  
26 However, they differ fundamentally in their accounts of  
27 how Sergeant McCabe was discussed at the meeting.  
28 Deputy McGuinness gave evidence to you, Chairman, that  
29 Mr. Callinan told him that Sergeant McCabe had sexually

1 abused his family and an individual and that he was not  
2 to be trusted. Deputy McGuinness stated that  
3 Mr. Callinan suggested that he, Mr. McGuinness, had  
4 made a grave error in relation to the Public Accounts  
5 Committee and the hearings because of Sergeant McCabe, 10:09  
6 and that he would find himself in serious trouble. You  
7 will be aware, Chairman, that Deputy McGuinness kept a  
8 handwritten note of the meeting, a copy of which, I  
9 think the original of which is in the Tribunal's  
10 possession and the relevant extract read: 10:09

11  
12 "Callinan, McCabe, sexual abuse! Individual + family.  
13 Don't trust him. Story not credible. Investigations  
14 ongoing. He's not credible."  
15 10:09

16 Now, Commissioner Callinan denied Deputy McGuinness's  
17 account. He agreed that the meeting was his last  
18 chance to stop the Public Accounts Committee from  
19 calling Sergeant McCabe. He testified that it was  
20 Mr. McGuinness who raised the allegation of child sex 10:10  
21 abuse and that he did so by asking whether Sergeant  
22 McCabe was raising these issues because of the file  
23 that went to the DPP. He stated that this query was  
24 not raised in response to, nor was it prompted by  
25 anything that Mr. Callinan had said. Mr. Callinan 10:10  
26 stated that he responded by telling Mr. McGuinness that  
27 he knew about the file that went to the DPP, he knew  
28 what the DPP had decided. He agreed that the data  
29 protection correspondence which he said he discussed at

1 the meeting was never sent.

2  
3 Now, Chairman, you will be aware that there were no  
4 other individuals present at this meeting. Garda Paul  
5 Hynes, who drove Mr. Callinan to the car park, 10:10  
6 witnessed the two individuals meeting but he remained  
7 in the car and his evidence was that former  
8 Commissioner Callinan did not discuss with him what he  
9 and Deputy McGuinness had spoken about in the car.

10  
11 Former Commissioner Callinan accepted in evidence that 10:10  
12 Deputy McGuinness's statement to him, on his account,  
13 was a significant intervention by the Chairperson of  
14 the Public Accounts Committee at a significant time.  
15 This was in a context in which Mr. Callinan had 10:11  
16 requested the meeting in order to discuss data  
17 protection concerns and to dissuade the Public Accounts  
18 Committee from calling Sergeant McCabe to give  
19 evidence. Notwithstanding this Mr. Callinan told you,  
20 Chairman, he did not take a note or record of the 10:11  
21 alleged intervention by Mr. McGuinness, nor did he  
22 relate it to anyone else, including, and significantly,  
23 Mr. Brian Purcell, the then Secretary General of the  
24 Department of Justice, whom he spoke to shortly after  
25 the meeting in the car park. 10:11

26  
27 Former Commissioner Callinan and Deputy McGuinness also  
28 differ fundamentally in their accounts of the  
29 circumstances leading up to the meeting. Deputy

1           McGuinness told you, Chairman, that at the conclusion  
2           of the Public Accounts Committee meeting on the 23rd  
3           January 2014, the day before the meeting in the car  
4           park, he approached Mr. Callinan to thank him for  
5           attending the Committee at the end of the hearing. He 10:11  
6           stated that as he approached Mr. Callinan, Mr. Callinan  
7           started telling a colourful story to the group he was  
8           in about former Garda John Wilson and a horse, at the  
9           conclusion of which Mr. Callinan stated "And the other  
10          fella fiddles with kids, they're the kind of fucking 10:12  
11          headbangers I am dealing with, it's outrageous". He  
12          stated that there was a general hubbub at the  
13          conclusion of the hearing so he couldn't say whether  
14          anyone had overheard what Mr. Callinan had said.

15  
10:12  
16          Former Commissioner Callinan denied Deputy McGuinness's  
17          account. He agreed that at the conclusion of the  
18          Public Accounts Committee meeting on the 23rd January  
19          2014 he spoke to Mr. McGuinness. He stated that he  
20          asked Mr. McGuinness whether the PAC intended to call 10:12  
21          former Garda John Wilson to which Mr. McGuinness  
22          replied "You must be joking, sure he's a fucking  
23          header". He denied any knowledge of the colourful  
24          story relating to Mr. Wilson and suggested that he  
25          always thought that the nickname given to Mr. Wilson as 10:12  
26          a result of this incident in fact related to the fact  
27          that Mr. Wilson shared a name with a famous darts  
28          player whom Mr. Callinan accepted looked nothing like  
29          Mr. Wilson. Mr. Callinan also stated that he had never

1 heard the term "kiddie fiddler" prior to the events  
2 which led to the establishment of this Tribunal.

3  
4 Mr. Chairman, a number of individuals witnessed the  
5 exchange between former Commissioner Callinan and 10:13  
6 Deputy McGuinness at the end of the meeting. Former  
7 Commissioner O'Sullivan told the Tribunal that she saw  
8 the interaction, however she stated that she did not  
9 hear what was said due to the general hubbub.

10 Assistant Commissioner John O'Mahony stated that he did 10:13  
11 not hear what passed between Mr. Callinan and  
12 Mr. McGuinness. And Mr. Andrew McLindon, the Garda  
13 Communications Director, told the Tribunal that he also  
14 witnessed the interaction but he did not hear what was  
15 discussed as he was focusing on the media. 10:13

16 Superintendent Taylor stated that he was in the process  
17 of getting Mr. Callinan's hat and satchel but that he  
18 heard former Commissioner Callinan refer to Sergeant  
19 McCabe as a kiddie fiddler.

20 10:13  
21 Chairman, you will have heard the evidence of Deputy  
22 Micheál Martin, the leader of Fianna Fáil,  
23 Mr. McGuinness's party leader, who told the Tribunal  
24 that in late February 2014 Deputy McGuinness dropped  
25 into his office to thank Mr. Martin for raising the 10:13  
26 contents of the McCabe dossier in Dáil Éireann. When  
27 Mr. McGuinness was leaving the office he mentioned to  
28 Deputy Martin that he had met the then Garda  
29 Commissioner Martin Callinan in a car park and that he

1 had said to him that Maurice McCabe was not to be  
2 trusted and that he was a child abuser. Deputy Martin  
3 told the Tribunal that shortly after this conversation  
4 he told his chef de cabinet, Ms. Deirdre Gillane, and  
5 his press officer, Mr. Pat McPartland, of  
6 Mr. McGuinness's comments.

10:14

7  
8 Chairman, in assessing the credibility of Deputy  
9 McGuinness and former Commissioner Callinan the  
10 Tribunal will obviously have to have regard to the  
11 evidence given by those two witnesses as well as the  
12 evidence of Mr. Martin and Mr. Purcell. And I don't  
13 proceed to set out in detail, Chairman, what that  
14 evidence is because the Tribunal is perfectly capable  
15 and has looked at it already. But I say in submission  
16 that the Tribunal is also entitled to consider the  
17 evidence of other witnesses in relation to their  
18 activities on the 23rd and 24th January 2014.

10:14

10:14

19  
20 The Comptroller & Auditor General, Mr. Seamus McCarthy,  
21 told the Tribunal that on his way into the Public  
22 Accounts Committee hearing on 23rd January former  
23 Commissioner Callinan approached and engaged him in  
24 conversation. Mr. McCarthy stated:

10:14

25  
26 "We -- my recollection is that we were apart from both  
27 groups, so my colleagues were not party to the  
28 conversation and the colleagues with Commissioner  
29 Callinan were not party to the conversation. We began

1 just with sort of normal greetings and -- but very  
2 quickly the Commissioner raised Sergeant McCabe's name  
3 in the conversation, along the lines that Sergeant  
4 McCabe is not to be trusted, that he had questions to  
5 answer and that there were sexual offence allegations  
6 against him."

7  
8 Mr. McCarthy stated that Mr. Callinan said sexual  
9 offences plural. Counsel for former Commissioner  
10 Callinan, as you know, challenged Mr. McCarthy on his 10:15  
11 account, it was put to Mr. McCarthy that it was he who  
12 raised the question of sexual allegations and that he  
13 said that he had heard rumours about Sergeant McCabe  
14 being investigated over an allegation a sexual nature  
15 and Mr. McCarthy replied that he did not say that. 10:15

16  
17 Deputy John Deasy told the Tribunal that on his way  
18 into the Public Accounts Committee hearing on 23rd  
19 January 2014 former Commissioner Callinan approached  
20 him and engaged in conversation. Mr. Deasy stated: 10:16

21  
22 "The only part that I do remember is him saying that  
23 Maurice McCabe was not to be believed or trusted with  
24 anything and the reason I think I remember that is  
25 because it surprised me, I have to say." 10:16

26  
27 Mr. Callinan accepted that the accounts given by Deputy  
28 McGuinness, Deputy Deasy and the Comptroller & Auditor  
29 General were independent and related to different

1 conversations that he had with these people and that  
2 they were independent of one another. It is submitted  
3 that the evidence of Mr. McCarthy in relation to his  
4 interaction with Mr. Callinan on the 23rd January 2014  
5 is quite similar to Deputy McGuinness's evidence of 10:16  
6 what transpired in the car park the following day. In  
7 both accounts Mr. Callinan states that Sergeant McCabe  
8 was not to be trusted, that he had questions to answer  
9 and that there were allegations plural of sexual  
10 offences against him. It is noteworthy, Chairman, that 10:16  
11 in responding to these allegations Mr. Callinan  
12 deployed the same tactic; namely, he suggested that it  
13 was the person with whom he was speaking and not him  
14 who raised the issue of sexual allegations in relation  
15 to Sergeant McCabe. 10:17

16  
17 It is submitted that Deputy Deasy's evidence as to what  
18 transpired on the 23rd January, while it does not  
19 allege that Mr. Callinan raised an allegation of sexual  
20 abuse, is also corroborative of the accounts given by 10:17  
21 Deputy McGuinness and the Comptroller & Auditor  
22 General, insofar as it shows that Mr. Callinan was  
23 briefing people negatively against Sergeant McCabe on  
24 the basis that he was not to be believed or trusted.

25 10:17  
26 On a more general level, it is submitted that the  
27 evidence of Mr. McCarthy and Mr. Deasy that former  
28 Commissioner Callinan was briefing them negatively in  
29 such a public manner is also corroborative of the



1 account given by Deputy McGuinness as to the public and  
2 casual nature in which Mr. Callinan described Sergeant  
3 McCabe. It is submitted that it is not probable that a  
4 police officer of Mr. Callinan's stature and experience  
5 working and living in this country over the past two 10:17  
6 decades would not have heard the term kiddie fiddler  
7 before.

8  
9 In addition to the evidence of Mr. McCarthy and  
10 Mr. Deasy it is submitted that the evidence of 10:18  
11 Mr. Philip Boucher-Hayes is also relevant insofar as it  
12 shows yet another witness giving direct evidence that  
13 Mr. Callinan was briefing them negatively against  
14 Sergeant McCabe. In Mr. Philip Boucher-Hayes' case the  
15 briefing took place on 17th December 2013 and consisted 10:18  
16 of Mr. Callinan stating that there were "psychological,  
17 psychiatric issues with this man and there's more that  
18 I could tell you but I won't. There's an awful lot  
19 worse that I could tell, the worst possible kind of  
20 things, we will just leave it there". 10:18

21  
22 The undisputed evidence relating to Mr. Callinan's  
23 interactions with Mr. Gerald Keane is also important.  
24 This shows Mr. Callinan interfering in a highly  
25 inappropriate manner, which Mr. Callinan accepted 10:18  
26 wasn't his finest hour, in a private dispute between  
27 Mr. Kean and Sergeant McCabe and is further evidence of  
28 Mr. Callinan's desire to influence people negatively  
29 against Sergeant McCabe.

1  
2 Chairman, the law relating to the standard of proof  
3 that a tribunal of inquiry is required to adopt is  
4 well-established and was authoritatively set out by the  
5 Supreme Court in Lawlor v. Planning Tribunal [2010]1IR, 10:19  
6 170, where former Chief Justice Murray held:

7  
8 "In principle evidential requirements must vary  
9 depending upon the gravity of the particular  
10 allegation. This is not to adopt the "sliding scale"  
11 of proof advocated by counsel for the applicant, but  
12 rather to simply recognise, as an integral part of fair  
13 procedures, that a finding in respect of a serious  
14 matter which may involve reputational damage must be  
15 proportionate to the evidence upon which it is based.  
16 For example, a finding that a particular meeting  
17 occurred on one day rather than another may be of such  
18 little significance that a tribunal could make a  
19 finding in that respect on the bare balance of  
20 probabilities. A finding of criminal behaviour on the  
21 other hand would require a greater degree of authority  
22 and weight derived from the evidence itself."

23  
24 Having regard to that test it is submitted the  
25 following are established by the evidence as a matter 10:19  
26 of probability:

27  
28 A. That Mr. Callinan was deeply unhappy with the  
29 actions of Sergeant McCabe.

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29

B. At the meeting in the car park on 24th January 2014 Mr. Callinan was intent on stopping the Public Accounts Committee from hearing evidence from Sergeant McCabe and he realised his meeting with Mr. McGuinness was his last chance to prevent Sergeant McCabe giving evidence to the PAC. 10:20

C. During the course of the meeting Mr. Callinan deployed the same tactic that he had used with the Comptroller & Auditor General the previous day and told Mr. McGuinness that Sergeant McCabe could not be trusted, that he had questions to answer and that he was a child sex abuser. He also threatened Mr. McGuinness with consequences both for him and the PAC should Sergeant McCabe give evidence. 10:20

D. Mr. McGuinness's evidence, which is supported by a near contemporaneous note and the account he gave shortly after the meeting to his party leader, is to be preferred over the account of Mr. Callinan which is supported by no documentary or hearsay evidence. 10:20

E. Rumours concerning sexual allegations involving Sergeant McCabe and minors were widespread in political and media circles. 10:20

F. Mr. Callinan repeated these rumours or implied their subject-matter in a very casual way over the

1 period December 2013 to February 2014 to a number of  
2 independent individuals; namely, Mr. Boucher-Hayes,  
3 Deputy Deasy, Mr. McCarthy and Deputy McGuinness.  
4

5 G. It is not credible that two independent witnesses, 10:21  
6 Mr. McGuinness and Mr. McCarthy, would have raises the  
7 issue of the child sex abuse allegations concerning  
8 Sergeant McCabe in a near identical fashion in the  
9 manner that Mr. Callinan alleges, and that Mr. Callinan  
10 would have responded in a near identical way while 10:21  
11 telling no other person or recording the fact that two  
12 such important personages, one of whom occupies one of  
13 the most important constitutional offices in this  
14 State, made such a significant intervention at such a  
15 sensitive time both for An Garda Síochána and 10:21  
16 Mr. Callinan personally.  
17

18 H. At the end of the meeting of the Public Accounts  
19 Committee on the 23rd January 2014, Mr. Callinan stated  
20 in Mr. McGuinness's earshot that "the other fella 10:21  
21 fiddles with kids" in reference to Sergeant McCabe.  
22 Mr. McGuinness's evidence in this respect is  
23 corroborated by the direct evidence of Superintendent  
24 Taylor. Mr. Callinan's account is corroborated by none  
25 of the additional people who were present in the 10:22  
26 general vicinity; namely, former Commissioner  
27 O'Sullivan, Assistant Commissioner O'Mahony or  
28 Mr. Andrew McLindon.  
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I. It is not credible that Mr. Callinan did not know what a kiddie fiddler was prior to the events that led to the establishment of the Tribunal.

J. Mr. Callinan was aware of the colourful story involving Mr. Wilson and the horse, as well as the true origin of Mr. Wilson's nickname. His denial of this was part of a further effort to remove himself from the account given by Mr. McGuinness of their interaction on 23rd January 2013. 10:22

That is my submission in relation to Mr. McGuinness, Chairman. 10:22

And my solicitor will hand in a copy of it. 10:22

CHAIRMAN: Yes. Was there a submission you wanted to make in relation to another particular point?

MR. LEHANE: Yes, Chairman. If it would suit you to take it now in relation to Ms. Anne Harris.

CHAIRMAN: Yes. Just let me get the submission, thank you. I am just encouraging you for your submission just to take a breath between each sentence, just to slow things down a wee bit. I am following you, thank you, but I find it just a little bit difficult and thank you for the speaking note, which I have. 10:23

1 SUBMISSION BY MR. LEHANE ON BEHALF OF MS. ANNE HARRIS:

2 MR. LEHANE: So I am now going to proceed to make a  
3 submission on behalf of Ms. Anne Harris and I am  
4 instructed by Mr. Alan O'Connor of Patrick F O'Reilly &  
5 Company Solicitors. My solicitor tells me that that 10:23  
6 has been handed in to you and this is slightly longer.

7  
8 Mr. Chairman, Ms. Harris is a freelance journalist who  
9 was the editor of the Sunday Independent for three  
10 years from 2012 to 2014 and Ms. Harris responded to the 10:23  
11 call for help that you made in the opening statement  
12 delivered on the 27th February 2017 and she wrote to  
13 the Tribunal at a very early stage of its proceedings  
14 by letter dated 11th March 2017 to inform you that she  
15 had been warned off Sergeant McCabe by several 10:23  
16 journalists within her newspaper. She wrote to the  
17 Tribunal again by letter dated the 21st May 2017  
18 providing greater detail of her information, met with  
19 the Tribunal investigators on the 17th and 24th October  
20 2017 and consented to the audio recording of those 10:24  
21 interviews. She made a statement to the Tribunal by  
22 way of those interviews on the 24th October 2017 and  
23 gave evidence on Day 82.

24  
25 Her evidence to the Tribunal may be summarised 10:24  
26 as follows. During the course of a regular editorial  
27 meeting at which Sergeant McCabe was discussed in May  
28 2013 a freelance journalist mentioned the 2006  
29 allegation. The freelance journalist repeated the

1 allegation in June 2013. Ms. Harris investigated this  
2 information and discovered that the matter had been  
3 investigated by the DPP and dismissed as groundless.  
4 Allegations concerning Sergeant McCabe circulated  
5 freely in Independent News & Media and were discussed 10:24  
6 in very casual fashion. Mr. Ian Mallon, the then group  
7 news editor, on one occasion told her that there was  
8 more to Sergeant McCabe than met the eye and said "you  
9 know about McCabe and children". Mr. Fionnan Sheahan  
10 in September 2014, on Ms. Harris's account, described 10:25  
11 Sergeant McCabe to her as a paedophile.  
12

13 Ms. Harris's account is heavily contested by  
14 Mr. Mallon, Mr. Sheahan and Independent News & Media.  
15 It was suggested that her evidence was false, tainted 10:25  
16 by improper motive, borne out of a grudge, that she was  
17 a bitter person and that she was abusing this tribunal  
18 of inquiry to ventilate her animus towards Mr. Mallon,  
19 Mr. Sheahan and Independent News & Media.

20 Notwithstanding the brutal nature of the assault on 10:25  
21 Ms. Harris by Mr. Mallon, Mr. Sheahan and Independent  
22 News & Media, Mr. Mallon and Mr. Sheahan ultimately  
23 accepted in their sworn evidence that allegations  
24 concerning Sergeant McCabe and child abuse circulated  
25 freely in INM, that those allegations were discussed in 10:25  
26 a very casual fashion and that it would have been  
27 perfectly proper to use the word paedophile in the  
28 context of such discussions. This journalistic clash  
29 cannot simply be ignored by the Tribunal; it must be

1 resolved and recorded in the report of the Tribunal.

2  
3 The Tribunal is tasked by term of reference paragraphs  
4 [a] and [b] with investigating the allegation of  
5 Superintendent Taylor, wherein he alleges that he was 10:26  
6 instructed to contact the media to brief them  
7 negatively against Sergeant Maurice McCabe and that he  
8 was directed to draw journalists' attention to an  
9 allegation of criminal misconduct made against Sergeant  
10 McCabe and that this was the root cause of his agenda; 10:26  
11 namely, revenge against the Gardaí.

12  
13 The Tribunal is tasked by term of reference [h] to  
14 investigate contacts between members of An Garda  
15 Síochána and media relevant to the matters set out in 10:26  
16 term of reference [a] and [b].

17  
18 Resolving the journalistic clash between Ms. Harris and  
19 Mr. Mallon, Mr. Sheahan and Independent News & Media is  
20 a necessary precursor to making a finding as to where, 10:26  
21 as a matter of probability, the source of these rumours  
22 was located. There is an additional reason why this  
23 journalistic clash must be resolved. Ms. Harris came  
24 to the Tribunal voluntarily as a citizen responding to  
25 a call for help by the Chairman of a tribunal of 10:27  
26 inquiry established at great public expense for the  
27 citizens of Ireland. As a consequence, she was  
28 subjected to a brutal attack on her credibility and  
29 motivation which has devastating consequences for her



1 reputation. She was also threatened with defamation  
2 proceedings for simply having provided a statement to  
3 the Tribunal, notwithstanding the fact that any such  
4 proceedings by virtue of the well-established  
5 principles of law would have been bound to fail. But 10:27  
6 these factors, combined with the privileges and  
7 immunities that attach to witnesses before tribunals of  
8 inquiry, and the qualified privilege that attaches to  
9 the reporting of the proceedings of a tribunal of  
10 inquiry, mean that while these proceedings may be 10:27  
11 sterile of legal effect they will certainly not be  
12 sterile of effect on her constitutionally protected  
13 rights to good name and reputation if these matters are  
14 left unresolved. It will also, I submit, have a  
15 chilling effect on other publicly minded citizens who 10:28  
16 might have to think twice before coming forward with  
17 information to assist a public inquiry in the future.

18  
19 The background, Chairman, is well-known and I recite  
20 there in the submission the exchange of correspondence 10:28  
21 between Ms. Harris and the Tribunal, her statement,  
22 Mr. Mallon's statement, Mr. Sheahan's statement and the  
23 response from Mr. Sheahan's solicitor in which the  
24 threat of legal proceedings are made and a request is  
25 made for the identities to which everybody -- the names 10:28  
26 of everyone to whom Ms. Harris's statements have been  
27 provided, and reference is also made to Mr. Sheahan's  
28 statement.

29

1 In section C, Mr. Chairman, I set out the relevant  
2 evidence, and in first case I go through Ms. Harris's  
3 evidence and at paragraph 18 you will see that  
4 Ms. Harris stated that after May 2013, she heard  
5 murmurings or echoes of that general story which she 10:29  
6 had heard from the freelance journalist throughout  
7 Independent News & Media. And she says:

8  
9 "You would hear it around the corridors. It was  
10 pervasive in the offices of INM, I think it's fair to 10:29  
11 say. People talked about it without actually talking  
12 about it, if that sounds strange. They would sort of  
13 talk about, you know, the thing or there was sort of a  
14 lot of innuendo. I never engaged in conversations with  
15 it and I generally shut it down, but it was quite clear 10:29  
16 that it was talked about. And then you'd meet people  
17 from the political spectrum and it would be, you now  
18 you'd hear the same sort of rumour and innuendo. And  
19 all of this rumour and innuendo, as far as I could see,  
20 had one purpose, which was to detract from the courage 10:29  
21 of a man who was doing something which had the explicit  
22 purpose of bringing something to the public interest  
23 which largely affected the public."

24  
25 Ms. Harris stated that the -- or described the casual 10:30  
26 way in which these matters were being discussed as  
27 struck her as "casual calumny". Ms. Harris described  
28 her interaction with Mr. Sheahan as follows:  
29

1 "At the end of conference towards the end of September  
2 everybody had left. He had gone out the door. He  
3 turned back, came to the office and said, because the  
4 last conversation had been about -- at the conference,  
5 had been about Sergeant Maurice McCabe and he said 10:30  
6 "he's a paedophile, McCabe is a paedophile" and I was  
7 shocked because up to then I had been hearing talk all  
8 day, all in typical Irish euphemisms, all talk, you  
9 know, about, you know, interfering with children or  
10 inappropriate or it was always said like that, an 10:30  
11 inappropriate interest in children. It was never said  
12 like that before and so it was the scale had suddenly  
13 up and accelerated." [As read]

14  
15 And she described the interaction as being over in a 10:30  
16 flash. Ms. Harris stated that this interaction  
17 occurred in the period September to early October,  
18 probably in the third week of September, and she said  
19 that she didn't think that Mr. Sheahan was gossiping.

20  
21 Ms. Harris described her interaction with Mr. Mallon 10:31  
22 as follows, she says, this is paragraph 21:

23  
24 "You are talking about Mr. Ian Mallon, who is the group  
25 news editor. He came in, very busy and came in and out 10:31  
26 of meetings, usually to give some message and then out  
27 again. And we were talking about McCabe and it was, it  
28 wasn't a very big Tuesday conference, it was a  
29 different one to the best of my recollection, and he

1 just said the same sort of thing, he said oh, you know,  
2 we have to bear in mind that he's -- that there's more  
3 to this than -- there's more to Sergeant McCabe than  
4 meets the eye, and that is all that was."

10:31

5  
6 Ms. Harris was heavily criticised in cross-examination,  
7 as I have said. She was criticised her for misspelling  
8 of your name, for using the plural rather than singular  
9 of executive in her letter of 11th March 2017 and for  
10 saying that Mr. Mallon had referred to the allegation 10:32  
11 on more than one occasion. It was suggested that as a  
12 result of these matters her evidence as a whole could  
13 not be relied upon. It was suggested to her that when  
14 she wrote to the Tribunal she was critical of INM and  
15 was happy to make a statement critical of its senior 10:32  
16 executives. She was criticised for her inability to  
17 put a precise date on when Mr. Sheahan made the remark  
18 to her. It was put to her that a finding of fact by  
19 the Tribunal that Mr. Sheahan had used the word  
20 paedophile would have very serious consequences for his 10:32  
21 reputation. She was also criticised for the fact she  
22 took no record of the interaction or discussed it with  
23 anyone else. She was also criticised for not naming  
24 the people in the corridors who were engaged in this  
25 casual calumny. It was put to her by counsel for 10:32  
26 INM:

27  
28 "Your evidence about Mr. Sheahan calling Sergeant  
29 McCabe a paedophile is tainted by improper motive, that

1 you are a bitter person, you bear a grudge towards  
2 Mr. Sheahan and towards your former employer,  
3 Independent Newspapers."

4  
5 And an article was put to her wherein she referred to 10:33  
6 men with big swinging titles as testifying to her  
7 animus against Mr. Sheahan.

8  
9 Paragraph 23, I refer to the evidence of Mr. Ian Mallon  
10 who gave evidence on day 90. And you will see that 10:33  
11 Mr. Mallon was unable to remember precisely when he  
12 became aware of the allegation against Sergeant McCabe  
13 but that he thought it was in early 2014, however he  
14 could not exclude the possibility that he had heard it  
15 earlier in 2013. Mr. Mallon stated that he had no 10:33  
16 recollection of a freelance journalist raising the  
17 allegation at an editorial meeting. However, he  
18 suggested that the story was sure to have come up and  
19 he stated that he couldn't rule out the possibility.  
20 Mr. Mallon said that while Ms. Harris said she heard 10:33  
21 mutterings and rumours, "...I can't argue with that but  
22 she certainly didn't hear them from me". Mr. Mallon  
23 stated that he never discussed the Paul Williams  
24 articles with Ms. Harris and that he had no  
25 recollection of a conversation with her about Sergeant 10:34  
26 McCabe ever and he denied her account of the  
27 conversation.

28  
29 However, Chairman, Mr. Mallon accepted that nearly

1 every journalist in Independent News & Media was aware  
2 of the allegation against Sergeant McCabe and the  
3 decision of the DPP. He was unable to tell the  
4 Tribunal who or when he became aware of these matters.  
5 He accepted that these matters were being discussed in 10:34  
6 a very casual way, however he said that he had never  
7 heard the word paedophile being used or the expression  
8 kiddie fiddler. He accepted that the word paedophile  
9 is a commonly used term to refer to people who commit  
10 sexual offences against children, however 10:34  
11 notwithstanding that fact he said he would have been  
12 absolutely advised if it was used in relation to  
13 Sergeant McCabe by those casually discussing the  
14 allegation.

15 10:34  
16 Mr. Rae gave evidence on day 92, Chairman, and the  
17 relevance of Mr. Rae's evidence is simply the fact that  
18 he testified, and he was the editor-in-chief of  
19 Independent News & Media from 2013 to 2018 and the  
20 person to whom Ms. Harris would have reported after 10:35  
21 June 2013, and you will see the question there where  
22 you say to him:

23  
24 "CHAIRMAN: She left in good standing and remained as a  
25 valuable contributor, would that be fair to say?

26 A. Well, I certainly offered her a contract as a  
27 mentor for young journalists and for some of our young  
28 managers.

29 CHAIRMAN: Yes. So you had good time for her?

1 A. Yes. "

2  
3 Mr. Sheahan gave evidence on day 93. He was unable to  
4 tell the Tribunal when he first became aware of the  
5 allegations concerning Sergeant McCabe. He accepted 10:35  
6 that allegations concerning Sergeant McCabe were being  
7 discussed in media circles as well as political  
8 circles. You will recall, Chairperson, that in his  
9 statement he only referred to political circles and  
10 sought to expand on the definition of political circles 10:35  
11 during his evidence. He said that he understood  
12 political circles to include media circles as well,  
13 notwithstanding the fact for those of us who are  
14 outside Leinster House that would not be apparent.

15  
16 Mr. Sheahan stated that he had heard about an  
17 allegation of sexual assault and other allegations.  
18 And you will see there a reference to him saying that  
19 there was a series of allegations. Mr. Sheahan stated  
20 that he saw no evidence of a smear campaign, however he 10:36  
21 accepted that he had not volunteered any information to  
22 the Tribunal even though he accepted he had important  
23 information to give to this Tribunal. Mr. Sheahan  
24 stated that he would have regularly attended editorial  
25 meetings with Ms. Harris and that the subject-matter of 10:36  
26 what became the articles concerning Sergeant McCabe in  
27 the Sunday Independent would have been discussed.  
28 Mr. Sheahan accepted that he could not say that he had  
29 no contact with Ms. Harris during the whole of the

1 period beginning the start of September to the start of  
2 October during which Ms. Harris alleged their  
3 interaction took place. However, Mr. Sheahan denied  
4 describing Sergeant McCabe as a paedophile to  
5 Ms. Harris. He stated that newspaper coverage in his 10:36  
6 newspapers during the relevant period showed that he  
7 had no such view. However, he accepted the evidence of  
8 Professor Colum Kenny that gossip or rumours  
9 circulating in a newspaper office does not necessarily  
10 make it into a newspaper's content. Mr. Sheahan did 10:37  
11 not dispute Mr. Mallon's evidence that these  
12 allegations were being discussed in a very casual way  
13 amongst journalists in Independent News & Media.  
14 However, he said, interestingly, that he have never  
15 participated in or heard any of these conversations 10:37  
16 taking place. He concluded his evidence saying that  
17 Ms. Harris was a bitter person and that her evidence,  
18 as I said, was tainted by improper motive borne out of  
19 a grudge and he accused her of headline hunting and  
20 using this Tribunal to ventilate the grudge. 10:37

21  
22 You will see at the conclusion, Judge, I repeat the  
23 earlier reference from Chief Justice Murray's judgment  
24 in the Lawlor case in terms of the standard of proof,  
25 and I say at paragraph 39, having regard to that test 10:37  
26 it's submitted the following are established by the  
27 evidence as a matter of probability:

28  
29 A. That journalists in Independent News & Media were



1 aware of the 2006 allegation against Sergeant McCabe  
2 from 2013 onwards.

3  
4 B. That these allegations were discussed openly in a  
5 very casual fashion at all levels of the organisation. 10:38

6  
7 C. That the allegations were of child sex abuse and  
8 that consequently it is likely that the word paedophile  
9 - which, Chairman, is a perfectly normal word to be  
10 used in the context of these discussions - would have 10:38  
11 been used. And similarly, it is likely that the term  
12 kiddie fiddler - which unfortunately is a colloquial  
13 term, which, because of various scandals in our society  
14 over the previous two or three decades, is also a word  
15 or a term that is in common use - would likely have 10:38  
16 been used.

17  
18 D. The evidence of Ms. Harris that Mr. Mallon  
19 mentioned the allegation in a brief and colloquial  
20 manner is more likely than not. 10:38

21  
22 E. The evidence of Ms. Harris that Mr. Sheahan  
23 described Sergeant McCabe as a paedophile is more  
24 likely than not, whatever that Mr. Sheahan meant to  
25 imply when he said it, whether he was saying that or 10:39  
26 implying that Mr. McCabe was a paedophile or was being  
27 described as a paedophile.

28  
29 F. Ms. Harris's evidence was truthful and honest and

1 not tainted by any improper motive.

2  
3 They, Chairman, are my submissions on behalf of  
4 Ms. Harris and you will see the relevant extracts  
5 either referred to in the footnotes of the speaking 10:39  
6 note or set out in text. So unless there is anything  
7 else.

8 CHAIRMAN: Thank you very much, Mr. Lehane. That is  
9 very helpful. I just wanted to ask you two questions.  
10 First of all, if we can go back to John McGuinness, TD. 10:39  
11 I have a concern in relation to the whole notion of  
12 corroboration or support, and the law in that regard is  
13 somewhat complicated and as we know it has been  
14 abolished in the neighbouring kingdom. To what extent  
15 do you say that people saying similar things to what 10:40  
16 Deputy McGuinness alleges was said by Commissioner  
17 Callinan in any way supports that? And then secondly,  
18 what do you say the legal test is? Accepting as I do  
19 of course I am not bound by the Rules of Evidence.  
20 Just if you can help me on that, I'd be grateful. If 10:40  
21 you can't, fine.

22 MR. LEHANE: Yes, Chairman, I can do it in two ways.  
23 Firstly, I resisted the urge in the course of the  
24 speaking note to put in large amounts of law or  
25 references to textbooks because the Tribunal will be 10:40  
26 fully aware of what the law is, but if I can very and  
27 shortly just describe what my position in relation to  
28 this is.

29

1 It is well-established that the rules of evidence that  
2 apply in a courtroom, be it a civil or criminal court,  
3 do not apply in the context of a tribunal of inquiry.  
4 There have been rulings of a number of tribunals of  
5 inquiry in relation to what the meaning of the term 10:40  
6 evidence, for example, is: Does it include hearsay  
7 evidence, and if it does include hearsay evidence to  
8 what extent it can be relied upon. And I'll do a  
9 further short note on this just by reference to some  
10 decisions of the Moriarty -- or sorry, some findings of 10:41  
11 law of the Moriarty Tribunal in relation to that  
12 specific issue, and the Smithwick Tribunal, Judge, as  
13 well and I will circulate them.

14 CHAIRMAN: You don't need to do that, Mr. Lehane,  
15 because I am very well-advised. But just, what you say 10:41  
16 about it is what I am interested.

17 MR. LEHANE: You are at large, Chairman, when  
18 considering evidence in its broadest possible term to  
19 have regard to a huge range of material. I say that  
20 included in that range of material is hearsay 10:41  
21 evidence -- the hearsay evidence of people as to what  
22 they heard, but also evidence given by other  
23 individuals in relation to similar types of activity to  
24 see whether it establishes a pattern. And I say that  
25 the test of evidence, as I said, is very broad, in 10:41  
26 relation to its practical application and possible  
27 relevance to this Tribunal, what the Tribunal has to  
28 ask itself is: Do these other accounts, which  
29 Mr. Callinan accepted in cross-examination were

1 independent of each other, from, for example,  
2 Mr. McCarthy, Deputy Deasy and Mr. Boucher-Hayes, do  
3 they show a pattern of activity, and if they show a  
4 pattern of activity, what was the nature of that  
5 activity, to see whether or not it can then support the 10:42  
6 Independent accounts.

7  
8 So, in a normal situation, they would be largely  
9 irrelevant to each other, but in the context of an  
10 inquisitorial inquiry where these matters were 10:42  
11 ventilated and circulated to the affected parties  
12 giving them an opportunity to comment on it and to make  
13 submissions and cross-examine witnesses, in relation to  
14 the issue of whether it would establish a pattern or if  
15 it be more likely than not, I say that it's relevant. 10:42  
16 And in particular, Chairman, as I said in the speaking  
17 note, I think the evidence of the Comptroller & Auditor  
18 General has relevance when you look at both the content  
19 of what Mr. McCarthy said was said to him and what  
20 Mr. Callinan's response to that was in the nature of 10:43  
21 what Mr. Callinan said Mr. McCarthy said to him,  
22 because there is a striking similarity, Chairman,  
23 between that and Mr. McGuinness's evidence. And you  
24 will recall from my cross-examination and I think it  
25 was Mr. Murrinan's cross-examination of Mr. Callinan, 10:43  
26 that Mr. Callinan was probed on that, was there any  
27 link, was he suggesting there was any link between  
28 these individuals, that they might have contaminated  
29 each other's evidence in any way, and Mr. Callinan,

1 although he suggested or he implied the possibility  
2 when he said that these people are meeting each other  
3 on a regular basis, when pressed did not suggest that  
4 they were contaminated. So I say it's a very broad  
5 definition of evidence and that it goes to establishing 10:43  
6 a pattern, so I don't know if that --

7 CHAIRMAN: All right. I understand your position on  
8 that. Thank you. The second thing was this: In  
9 relation to Anne Harris and Mr. Mallon, Mr. Sheahan, if  
10 the evidence goes so far as to establish casual talk in 10:44  
11 relation to Sergeant McCabe and the possibility of him  
12 having been a paedophile and doesn't also include what  
13 one would expect from responsible journalists, the need  
14 to look into that and see whether it might be founded  
15 on any verifiable fact, does that help me in any way in 10:44  
16 relation to the terms of reference? You don't need to  
17 answer at length, Mr. Lehane, but what I am wondering  
18 is: Does the resolution of this matter actually put me  
19 in a position where I know more in terms of making a  
20 report? 10:44

21 MR. LEHANE: I suppose it's superficially attractive to  
22 the Tribunal to say that unlike Mr. McGuinness this  
23 dispute, this journalistic clash between Mr. Sheahan,  
24 Mr. Mallon and Ms. Harris is not referred to in the  
25 terms of reference, therefore it is not required for 10:44  
26 you to make a finding on. However, you are required to  
27 inquire into links between certain gardaí and  
28 journalists. As part of that inquiry you looked into  
29 this allegation, because if you are satisfied that, for

1 example, Mr. Sheahan used the word paedophile to  
2 describe Mr. McCabe, the following question arises:  
3 well, if that was how he was describing it, where did  
4 he hear this from, who told him and from whence did the  
5 source emanate? There was a lot of talk in the 10:45  
6 Tribunal, Judge, about rumours both in political and  
7 garda circles, but in relation to Mr. Sheahan, a very  
8 senior journalist, occupying a very important position  
9 in our society, who is denying using a very ordinary  
10 word in this context, I say that if you make a finding 10:45  
11 in relation to that it has a consequence for your terms  
12 of reference because if you find that he said it and he  
13 wasn't able to account for where he said it, contrast  
14 it with Ms. Harris's account where she says that when  
15 the freelance journalist raised the issue she took her 10:46  
16 own steps to ascertain the truth or otherwise of the  
17 statement. She was asked properly by your counsel,  
18 well, when you were inquiring into this statement by  
19 the freelance journalist, did you talk to Commissioner  
20 Callinan, former Commissioner O'Sullivan or 10:46  
21 Commissioner Taylor and she said she didn't. And  
22 that's perfectly relevant to your terms of reference.  
23 The same line of questioning would have followed had  
24 Mr. Sheahan admitted, for example, that he had used the  
25 term paedophile; well, what was the basis for that? 10:46  
26 Did you hear it from a guard? And that is the  
27 relevance of it, I say, to your terms of reference.  
28 But I do say, and I repeat my reference to the chilling  
29 effect and the fact that the evidence was volunteered

1 and inquired into. So I don't know if that is helpful  
2 to you.

3 CHAIRMAN: Thank you. I do understand where you are  
4 coming from, yes. So, we go on to? Who would like to  
5 go next? Would you like to go -- I was going to take 10:46  
6 you towards the end, Mr. O'Higgins, if that is  
7 convenient to you?

8 MR. MICHAEL O' HIGGINS: You were going to take me  
9 towards the end?

10 CHAIRMAN: Well, isn't that more logical, in the sense 10:47  
11 you have more to say?

12 MR. MICHAEL O' HIGGINS: It's a matter entirely for you,  
13 Chairman. We have what I would regard as a short  
14 submission.

15 CHAIRMAN: All right. Has anybody got any problem with 10:47  
16 that? No, they don't. All right. Mr. O'Higgins,  
17 please.

18

19 SUBMISSION BY MR. O' HIGGINS:

20 MR. MICHAEL O' HIGGINS: Thank you, Chairman. Chairman, 10:47  
21 I am going to make some submissions to you on behalf of  
22 Superintendent Taylor and if I could just indicate the  
23 manner in which I am approaching it. I am making a  
24 short submission at the outset to place Superintendent  
25 Taylor in context, and then I am going to go through 10:47  
26 the questions which you yourself posed and asked the  
27 parties to address their minds to, so I was going to go  
28 through those questions, and then I am going to do an  
29 overview on the other side of those questions. It is,

1 as I say, a short submission, I hope it won't suffer  
2 for its brevity in that regard. It's very clear that  
3 you, Chairman, have an exceptionally good grasp of the  
4 facts as alleged by witnesses in their testimony, and  
5 in my respectful submission I will not be using my time 10:48  
6 efficiently to go through any detailed analysis of  
7 that. Mr. Lehane is in a slightly different position  
8 because he is with regard to very defined exchanges.  
9 But I am not going to approach it in that way.

10  
11 If I could say, Chairman, in terms of the overview,  
12 Superintendent Taylor has made a protected disclosure.  
13 The essence and core of the disclosure is that he  
14 negatively briefed the media with regard to Sergeant  
15 McCabe, that he specifically did so by placing emphasis 10:49  
16 on the fact that Sergeant McCabe had been the subject  
17 of a previous investigation of sexual abuse on a minor,  
18 that he had been exonerated as a result of that  
19 investigation, but that he was angered as a member of  
20 the force to have been investigated in that manner and, 10:49  
21 hence, had baggage when it came to this issue and he  
22 was motivated by spite and ill-will and so forth.

23  
24 In terms of assessing that allegation, Chairman, that  
25 allegation would be assessed in the way that any 10:49  
26 allegation is assessed: You would look at what facts  
27 can be proved independently of it. In this instance,  
28 Superintendent Taylor nominated up to a dozen  
29 journalists whom he said would be in a position to



1 confirm that which he was alleging was true. I think  
2 it's the case that ten of those journalists have  
3 confirmed in stark terms that they did not receive any  
4 such briefing, and two of the journalists weren't  
5 willing to comment.

10:50

6  
7 There are, it seems to me, three particular criticisms  
8 levelled at Superintendent Taylor when it comes to  
9 assessing his credibility. One of those is that the  
10 briefing itself lacks any real specificity, it's vague  
11 in the extreme. Secondly, the timing as to when he  
12 spoke to these individuals and the context of the  
13 discussion is lacking in any detail. And thirdly, it  
14 is suggested that he does not come neutral to the  
15 position, that he is a person who had very serious and  
16 significant employment issues and other issues of a  
17 more grave nature, and that he himself has improper  
18 motive, because whatever information he has at his  
19 disposal he is manipulating it to put other people with  
20 whom he has grievances in a bad light.

10:50

10:51

10:51

21  
22 Can I say on his behalf, in my respectful submission,  
23 all of those are very valid complaints, and they are,  
24 in my respectful submission, conceded by me as matters  
25 to which the Tribunal would properly take into account.

10:51

26  
27 Because his evidence is as bare as it is, I am limited  
28 in terms of any submission I can make in attempting to  
29 build it from the ground up, but if I had to point to

1 one thing, it would be this: If Superintendent Taylor  
2 decided in September 2017 to make these allegations in  
3 the terms that he did and with the level of knowledge  
4 that he had at that point, it is, in my respectful  
5 submission, remarkable that allegations which, on their 10:52  
6 own, would seem to be -- on their own, I mean in  
7 isolation, preposterous, it is, in my respectful  
8 submission, either an incredible coincidence or there  
9 is something to it; that the very person which he  
10 claims was directing him to do this, on the evidence 10:53  
11 before the Tribunal, on five different occasions, in  
12 three different locations, within a very short time  
13 period, was, if the Tribunal accepts the evidence as  
14 given, and I'm only for the sake of this submission  
15 positing that it can do that, but if it does accept 10:53  
16 that, Superintendent Taylor has decided to come up with  
17 a version of events which on the face of it is  
18 preposterous, and yet, there are those instances where  
19 something very, very similar is going on. And if you  
20 conclude, by reference to the three PAC witnesses, 10:54  
21 Philip Boucher-Hayes and the episode with Mr. Kean,  
22 that Commissioner Callinan was engaging in a pattern of  
23 discrediting Sergeant McCabe, either that is something  
24 that fits with Superintendent Taylor's general  
25 allegations of being instructed to do things in a 10:54  
26 particular way, or Superintendent Taylor has got  
27 extremely lucky in that he fished out of virtually  
28 nowhere a scheme of things that actually matched quite  
29 closely some of the behaviour complained about with

1 respect to Commissioner Callinan. Now, I would just  
2 ask, as on overview position, that you would bear that  
3 in mind.

4  
5 If I could turn, Chairman, to the questions as posed by 10:55  
6 you, and some of them we are only in a position or  
7 deemed it appropriate to give very brief answers to;  
8 others we have sought to develop because, particularly  
9 the instance about confirmation and corroboration and  
10 that aspect of it. But if I could run through the 10:55  
11 questions in the order that they appear.

12  
13 The first question is: what kind of talk,  
14 communication are or innuendo can fairly be said to  
15 come within the terms of reference, and what is the 10:55  
16 full extent of any calumny or detraction against  
17 Maurice McCabe that should be regarded as proven?

18  
19 Now, in my respectful submission, Chairman, there is a  
20 distinction to be drawn -- and perhaps Ms. Harris might 10:55  
21 be a good example of it, there is a distinction to be  
22 drawn between, for the Tribunal's purposes, between  
23 gossip that is circulated and material that can be  
24 connected in some way or other to Superintendent  
25 Taylor. And in that regard, some journalists have 10:56  
26 given evidence that they were in general terms aware of  
27 the story as far back as 2011. But mindful that the  
28 first term of reference of the Tribunal is very heavily  
29 anchored in the protected disclosure and the manner of

1 media briefing and similarly with [b], the emphasis  
2 falls on the direction to journalists and to perhaps a  
3 slightly lesser extent [c], it seems to me that if you  
4 are of the view that a large number of people out here  
5 were aware of this allegation, mindful of the fact that 10:57  
6 you are not being asked to investigate or make findings  
7 that people were speaking ill of him but rather you are  
8 being asked in a very funneled and focused way to see  
9 whether that came from Superintendent Taylor, if no  
10 connection is made, it seems to me you are left in a 10:57  
11 position of saying, well, there is no connection made  
12 and the only remaining matter you have to look at is if  
13 the volume of material is just so high that it poses a  
14 question for you, well, because this was so out there  
15 and because it had a particular prominence at a 10:57  
16 particular time, could that point to maybe supporting  
17 that, as a matter of probability, it would have to go  
18 back to Superintendent Taylor. And in posing that  
19 question I want to make clear I'm not by any means  
20 suggesting the answer is in the affirmative, but that 10:57  
21 is its only relevance, in my respectful submission.

22  
23 If I could turn to the second question: To what extent  
24 are political, journalists and Garda rumours or talk  
25 necessarily to be considered? And in my respectful 10:58  
26 submission, it's the same answer.

27  
28 Turning then to question 3: Is there any truth in the  
29 protected disclosure of Superintendent Taylor? Is he a

1 witness whose evidence in any respect can be accepted?  
2 Should it as a matter of prudence be subject to a  
3 corroboration/caution warning?  
4

5 If I could answer those questions in reverse, Chairman, 10:58  
6 it might be a more efficient way for me to deal with  
7 it. As you have pointed out, the Tribunal is not bound  
8 by the Rules of Evidence but they are always useful  
9 beacons and, in my respectful submission, there is no  
10 getting away from this; my client is handicapped by 10:58  
11 virtue of the criticisms that can be levelled at his  
12 evidence. Now, some of the authorities refer to more  
13 neutral language than the criminal corroboration  
14 warning, they talk about the need to exercise caution  
15 before relying on a person's evidence, but it of course 10:59  
16 should be pointed out that notwithstanding the gravity  
17 of the Baskerville warning there is appended in the  
18 very last line of it that notwithstanding the danger of  
19 acting on the uncorroborated evidence of an accomplice,  
20 and I concede incidentally for the purpose of this 10:59  
21 submission by client fits the description of being an  
22 accomplice, notwithstanding that, the trier of fact can  
23 still rely on the evidence if satisfied to the  
24 appropriate standard of proof that it's true.

25 11:00  
26 So I would not demur from any suggestion that the  
27 Tribunal should approach his evidence with caution and  
28 that as a matter of practicality caution would involve  
29 looking, where possible, for evidence that either

1 confirms, which is consistent, or corroborates, not  
2 strictly in the criminal sense, which is something  
3 independent of the testimony that connects the accused  
4 to the offence, but independent in the sense that in  
5 this instance I would perhaps make the submission that 11:00  
6 something would be independent if you were satisfied  
7 that the different accounts which you are looking at  
8 were made independently of each other; in other words,  
9 if you were to look at Mr. McGuinness, if you were to  
10 look at Mr. McCarthy, look at Mr. Deasy, if you were to 11:01  
11 look at Mr. Boucher-Hayes, if you were to be satisfied  
12 that there was no collusion in those accounts, that  
13 they were all rendered independently of each other,  
14 that is something, in my respectful submission, which  
15 would exceed mere confirmation and might rise to 11:01  
16 corroboration.

17  
18 Moving to the middle question: Can his evidence be  
19 accepted in any respect? This, Chairman, is a matter  
20 which the answer can only somewhat tritely, admittedly, 11:01  
21 be in the affirmative. But the reason as to why that  
22 is so is laid out in the authorities. It is enshrined  
23 in the Gilligan judgment where there were many  
24 complaints about the quality of the witnesses, and  
25 indeed, an argument that was advanced to the effect 11:01  
26 that the manner in which the evidence had been gathered  
27 and the quality of the speaker was such that the  
28 evidence simply should not be received. And all of the  
29 way up to the Supreme Court there was the unanimous

1 view that that evidence should always be received  
2 subject to the usual admissibility rules, and it was  
3 under the heading of receiving every man's evidence,  
4 which in turn is a case which was decided in the Court  
5 of Appeal, I understand you were the counsel in it many 11:02  
6 years previously, in a case where the court deemed,  
7 notwithstanding certain prohibitions on a wife giving  
8 evidence against a man that certain evidence should be  
9 received, and any legislative prohibition on that would  
10 not be constitutional. The net effect of that is that 11:02  
11 all evidence can be received, all evidence is capable  
12 of being believed, and the test as to whether it should  
13 be believed, in my submission, is twofold: One, as in  
14 a witness with Superintendent Taylor, the necessary  
15 caution is required, the necessary -- the desirable 11:03  
16 confirmatory or corroborative elements have to be  
17 assessed, but at the end of the day, Chairman, you put  
18 all those things together, it's not a mathematical sum,  
19 you have to decide is it believable as a matter of  
20 probability. And as one of your own questions 11:03  
21 highlights later, something can point east but in  
22 certain circumstances that might entitle you  
23 nonetheless to conclude west. So is his evidence  
24 capable of being believed? In my submission, the  
25 answer is yes. Should it be believed? That is a 11:03  
26 function for you, factoring all the relevant  
27 considerations together.

28  
29 Next question: Is it possible to tell from a false

1 denial, for instance, but not limited to Superintendent  
2 Taylor to any journalists, that the opposite to an  
3 assertion is in fact the truth? And as I think I have  
4 given an indication, that can occur, but in my  
5 respectful submission, the number of occasions when it 11:04  
6 can occur are very minute, because if a witness says  
7 something, even something that is deemed to be false,  
8 it could not follow, in my respectful submission, that  
9 the reason why someone has asserted something that is  
10 false or incorrect even, is because the opposite is 11:04  
11 true. And one need look no further than the Lucas  
12 warning that is given in criminal cases to say that  
13 people tell untruths for a mixture of reasons, and to  
14 decide the significance of the truth you have to decide  
15 how material the lie is and examine the motives for 11:05  
16 telling it, and it's only when you exclude other  
17 possibilities that you are left with the position that  
18 they are telling it to advance some particular  
19 position.

20  
21 Next question: Is what Superintendent Taylor claims to  
22 have been done on behalf of Commissioner Callinan an  
23 understatement of the reality of what he in fact did?  
24 Did he do whatever he did at the behest of Commissioner  
25 Callinan or did he do it with the acquiescence or any 11:05  
26 knowledge of Deputy Commissioner O'Sullivan? If I  
27 could take the second question first, it might be more  
28 efficient.

29



1 The trite answer is, that is a matter for you,  
2 Chairman, looking at the evidence, to decide whether he  
3 did these things at the behest of Commissioner  
4 Callinan. Without running the risk of being  
5 repetitive, if Commissioner Callinan was uninvolved in 11:06  
6 this case, which is to say there was no suggestion that  
7 he had done anything improper, my client would be  
8 pushing a stone uphill, in my respectful submission, in  
9 persuading this Tribunal that he was acting in a scheme  
10 that was concerted or a joint enterprise. But the 11:06  
11 answer to that question, in my respectful submission,  
12 again lies in the Tribunal's own analysis of the PAC  
13 members and Mr. Boucher-Hayes and the Kean incident.  
14 And having analysed that, in my respectful submission,  
15 if it comes to a conclusion that Commissioner Callinan 11:06  
16 was pushing a line in a very concerted way, the  
17 question then arises: If Superintendent Taylor was  
18 pushing a similar line, is that mere coincidence or is  
19 it because there was a scheme in place? In my  
20 respectful submission, the Tribunal would more likely 11:07  
21 come down that the explanation is there was -- they  
22 were working in tandem rather than completely  
23 separately and in ignorance of each other.

24  
25 With regard to Deputy Commissioner O'Sullivan, the 11:07  
26 evidence, in my respectful submission, is thinner,  
27 considerably thinner, because, unlike Commissioner  
28 Callinan, there are no actions that can be pointed to  
29 independent of my client which seem to be capable of

1 interconnecting or interacting with my own client's  
2 account, and you are simply left with assertions by my  
3 client that she was aware at all times with respect to  
4 what was going on and that he had told her. So it's a  
5 much thinner case and it's a question whether looking 11:08  
6 at the evidence in the round, whether you are prepared  
7 to accept it as being broadly truthful.

8  
9 With regard to the question of whether or not what my  
10 client said is, in fact, the tip of the iceberg or 11:08  
11 understated, I would make the following submission. It  
12 would be a counter -- what I would describe as a  
13 counter-intuitive finding, but truth, as I say, is not  
14 a geometric exercise, but why do I say it's  
15 counter-intuitive? Well, a person makes an allegation 11:08  
16 and the manner in which the allegation is outlined  
17 permits certain matters to be checked. A checking  
18 exercise is carried out, and the allegation at the end  
19 of that checking exercise is unsupported. The first  
20 base inference that might be capable from drawing from 11:09  
21 that is in briefing the journalists in the manner  
22 described, it's a fabrication. If you wanted to take a  
23 kinder view of it, you might say it was exaggerated or  
24 grossly exaggerated. But if you are to draw an  
25 inference which, in my respectful submission, would be 11:09  
26 at the other end of the spectrum, which would be well,  
27 actually, in some way or another this state of affairs  
28 seems to indicate that not only did he say what he  
29 said, but he said things that went beyond that, if you

1 are to get to that point, in my respectful submission,  
2 you would only be able to reach it by rejecting the  
3 sworn testimony of the ten journalists and, while one  
4 cannot say weight of numbers is of itself persuasive,  
5 the fact when there is a consistency of response, that, 11:10  
6 in my respectful submission, would point away from  
7 that. And equally, when you pose the point of someone  
8 says A, could it actually mean the direct opposite of  
9 A, if you reach that point, it is, in my respectful  
10 submission, ultimately because, logically, you are 11:10  
11 pointed towards A but inexorably in assessing the truth  
12 you reach at point B and it's not always an entirely  
13 logical exercise. But even though it may not  
14 ultimately be a logical exercise it is, in my  
15 respectful submission, guided in the first instances by 11:10  
16 principles of logic, particularly when inferences are  
17 being drawn and particularly when there is no primary  
18 evidence. So, in my respectful submission, it would be  
19 extremely difficult and I might perhaps go as far as to  
20 say as a matter of law, in the absence of primary 11:11  
21 evidence, unless very, very clear sets of facts or a  
22 set of facts can be identified which would justify the  
23 inference, which would be actually what the journalists  
24 say is wrong and it went further.

25  
26 Turning to the next question: To what extent, if at  
27 all, is the account of Sergeant McCabe as to what he  
28 was told by superintendent reliable and accurate  
29 despite contradiction by Mrs. Taylor and Superintendent

1 Taylor? Could I make clear, Chairman, that in my  
2 submissions here, nothing I am saying implicitly even  
3 casts any doubt on the integrity of Sergeant McCabe.  
4 The question is --

5 CHAIRMAN: Sorry, Mr. O'Higgins, I don't mean to 11:12  
6 interrupt but I really don't see how you can possibly  
7 say that. I mean --

8 MR. MICHAEL O' HIGGINS: I am not.

9 CHAIRMAN: That is fine. But I mean, if two people say  
10 absolutely diametrically opposed things, what am I 11:12  
11 supposed to think? That one is a fantasist? That one  
12 is a liar? That somehow they got things totally wrong?  
13 It's not a challenge but I am just finding it very hard  
14 to see, that is all.

15 MR. MICHAEL O' HIGGINS: I would say, Chairman, there is 11:12  
16 a middle ground which is that someone is an unreliable  
17 historian but they are recounting to the best of their  
18 recollection. And for Sergeant McCabe to have, first  
19 of all, been brought to his attention that  
20 Superintendent Taylor wanted to talk to him and to have 11:12  
21 had the information imparted to him which was imparted  
22 to him, was obviously a very, very significant event  
23 and may well be that in the course of recollecting it  
24 later, some things were misunderstood and I am speaking  
25 specifically here incidentally about the suggestion 11:13  
26 that Superintendent Taylor said that he was mere, a  
27 conduit of prepared scripts that were forwarded to the  
28 media. And I would just make a couple of observations,  
29 Chairman, for what they are worth.

1  
2 Experience dictates when you take histories from  
3 people, whether it be in the capacity of a solicitor or  
4 counsel or journalist, or any other instances where  
5 histories are frequently taken, there can be things 11:13  
6 that get misunderstood, and sometimes an account has  
7 gone through two or three times before a fact which you  
8 had in the narrative is actually proven or established  
9 to be incorrect. And there is nothing sinister about  
10 it. But the second thing, Chairman, is this: In my 11:13  
11 respectful submission, Superintendent Taylor must have  
12 been conscious that when he said these things, that it  
13 wasn't going to stay within the four walls, and he must  
14 have been conscious, in my respectful submission, that  
15 questions would be asked. Now, it's always, I concede, 11:14  
16 a very weak position for a person to say, well, if I  
17 was going to tell a lie, do you think I would have told  
18 a lie as silly as that? Because regrettably, analysis  
19 of situation where untruths are told, often do unearth  
20 lies which are stupid. But this is a garda 11:14  
21 superintendent who knows the way investigation works  
22 and it seems, in my respectful submission, inevitable  
23 that it must -- he must have realised very -- he must  
24 have realised even before he said that, if he was going  
25 to say it, that it would be proved to be a nonsense. 11:14  
26 And it's not something, on his accounts, that is to  
27 say, accounts rendered by him and not through third  
28 parties, that he has ever asserted. And in my  
29 respectful submission, it is a misunderstanding.

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Next question: To what extent do Sergeant McCabe's reports of Superintendent Taylor -- that is the same question in relation to phone devices. Should a preference be made or what might be the effect of making a preference for Sergeant McCabe's protected disclosure?

11:15

If you decide, Chairman, that Superintendent Taylor told a lie about that - in other words, there is no confusion - does that damage Superintendent Taylor's credibility? Yes, it does. It would suggest that he was -- wanted to get Sergeant McCabe even more resentful and more angry than he otherwise would be, although, again, in my respectful submission, given the nature of what my client was saying and given that he was saying Commissioner Callinan was directing it de facto, it's difficult, in my respectful submission, to see how the fact that he was authoring the texts themselves would achieve that aim.

11:15

11:16

11:16

Of what relevance are the allegations of Superintendent Taylor as to his phones and the seizures thereof?

Now, can I just say with regard to that, Chairman, this is a matter which we have given some thought to, because it does not make a lot of sense that a guard who is familiar with phone evidence would seek to find comfort or succour in it if he was aware, in fact, that

11:16

1 the trail was gone cold. And the only thing that we  
2 can point to is this: when my client was arrested as  
3 part of the Clerkin investigation, phone records were  
4 put to him with regard to the Roma events, which were  
5 in October 2013, and it now appears that those 11:17  
6 questions which were directed to Roma in 2013, were put  
7 on the basis of billing records and not call data  
8 records, the distinction being that a billing record  
9 simply shows calls and when they were made and  
10 received; call data records have significantly more 11:17  
11 information with regard to the communications and with  
12 regard to texts, I believe, as to what was said. And  
13 that would appear to be the only submission I can make  
14 as to why he entertained a confidence that the phones  
15 would support him, when, in fact, there was nothing 11:18  
16 there either way.

17  
18 Of what relevance are the allegations of Superintendent  
19 Taylor as to Commissioner O'Sullivan, Detective  
20 Superintendent McGowan, Chief Superintendent Clerkin 11:18  
21 and his false High Court application?

22  
23 They are relevant in the context of Commissioner  
24 O'Sullivan to this extent: My client clearly bears an  
25 animus to Commissioner O'Sullivan and was of the view, 11:18  
26 incorrectly as it now turns out, that, somehow or  
27 other, she was a driving force behind his arrest and/or  
28 was using the arrest improperly to sideline him or to  
29 discredit him and in some way or other to protect

1 himself. That is not in the case. But if the -- if,  
2 Chairman, you say this is a man with an animus, this is  
3 a man with an agenda and his judicial review -- his  
4 state of mind in bringing that judicial review was  
5 informed by that, that counts against him, in my 11:19  
6 respectful submission, and that is a factor which would  
7 be included in the list which would indicate that his  
8 evidence was to be assessed with caution.

9  
10 With regard to Chief Superintendent McGowan, or 11:19  
11 Detective Superintendent McGowan, in my respectful  
12 submission, that is something of a much less  
13 significant factor in the case. It's a human element  
14 in the case that Detective Superintendent McGowan  
15 happened to be involved in the investigation. On a 11:19  
16 human level, it's not surprising, in my respectful  
17 submission, that my client would resent it, I'm not  
18 saying with justification, but would resent it, and  
19 it's, in my respectful submission, it's not a  
20 significant factor. 11:20

21  
22 With regard to Chief Superintendent Clerkin, my client  
23 -- and his judicial review application, my client was  
24 examined and cross-examined extensively on this, and  
25 two facts -- two matters emerge, in my respectful 11:20  
26 submission: Detective Superintendent Taylor has  
27 unequivocally conceded that the investigation was a  
28 proper one, that there was an entitlement to arrest and  
29 detain him, that the custody regulations were



1 implemented and that he was interviewed in accordance  
2 with the terms of all of those custody regulations, and  
3 that is an unequivocal response by him and that speaks  
4 for itself, in my respectful submission. As far as the  
5 High Court application is concerned, I would urge, 11:20  
6 Chairman, that the Commission would approach that with  
7 a degree of caution. There was never anything  
8 determined in the High Court. He has made it clear,  
9 rightly or wrongly, because, in my respectful  
10 submission, we are talking about a state of mind here, 11:21  
11 that he greatly resents the manner in which he was  
12 arrested, and by that I mean Mr. Clifford had it in the  
13 Examiner the night before, Mr. Browne was promo-ing it  
14 on TV3, there was a TV3 satellite van outside  
15 Balbriggan Garda Station, there was very informed 11:21  
16 articles in the newspaper, that he resents all that,  
17 and he is of the view, rightly or wrongly: I should  
18 have been brought down and had a voluntary statement.  
19 And I know, Chairman, you made an observation, and I  
20 understand it perfectly, that he had some warped view 11:21  
21 he should be brought down, you didn't quite say for tea  
22 and buns but wasn't a million miles away from that, and  
23 I could see a Garda commissioner saying, look, there is  
24 to be no voluntary statement here, we are not leaving  
25 ourselves open to an allegation of favourable 11:22  
26 treatment, he will be treated the same as every other  
27 suspect. But Detective Superintendent David Taylor's  
28 mindset was, I am a superintendent, no person of that  
29 rank has ever been arrested before, and, in fact, I

1 went down for a follow-up interview which was  
2 voluntary, in Ringsend or Sandymount Garda Station, and  
3 everything was in order.

4  
5 The next question then is: why were disciplinary 11:22  
6 proceedings withdrawn?

7  
8 I can answer that very easily, Chairman; we don't know,  
9 but we did forward the correspondence we received to  
10 the Tribunal in respect of that. 11:22

11  
12 Is there any inference to be drawn from changes of  
13 phones, loss of computers or phones or failure to  
14 remember PIN numbers?

15 11:22  
16 In our respectful submission, there is no inference to  
17 be drawn from Superintendent Taylor's use of mobile  
18 phones, the frequency with which he changed handsets or  
19 his inability to remember PIN numbers. We cannot see  
20 anything either side of the line on that. 11:23

21  
22 To what extent, if any, can the allegations of John  
23 McGuinness, Mr. Boucher-Hayes, Mr. McCarthy and  
24 Mr. Deasy be relied on? And even though merely guided  
25 by the Rules of Evidence and not bound by them, is this 11:23  
26 Tribunal in a position say that they corroborate or  
27 support each other?

28  
29 well, you will, I think, anticipate our position on

1 that, Chairman, from what I have said already. They  
2 are all, in my respectful submission, very respectable  
3 parties. They are all people who have achieved very  
4 well in their walks of life. Conversely, they are not  
5 people who appear to have any axe to grind. And they 11:23  
6 are people who were subjected to a detailed examination  
7 by the Tribunal team and cross-examination by all  
8 relevant parties. So are they someone who are capable  
9 of being relied on? Most definitely, in my submission.

10  
11 And do they -- are they confirmatory? They are. 11:24

12  
13 Are they corroborative? Well, I'm respectfully  
14 submitting that an important element here as to what  
15 might push something from being merely confirmatory to 11:24  
16 corroborative is, if you ask yourself the question, are  
17 these four or five accounts, are they independently  
18 existing in respect of each other? Are they  
19 uninfluenced by each other? And if you come down that  
20 some or all of them are, that, in my respectful 11:24  
21 submission, when you are looking for coincidence versus  
22 pattern from which inferences can be drawn, the more  
23 uninfluenced, the more independent they are of each  
24 other, the more likely they are to be true, in my  
25 respectful submission. 11:25

26  
27 Next question: If they are believed to be accepted as  
28 probable, what is the full extent of the allegation of  
29 calumny against Maurice McCabe? Is Superintendent

1 Taylor reducing his role, and, if so, does this factor  
2 lessen or completely dissolve his credibility?

3  
4 well, the full extent of the calumny is that important  
5 persons who are to determine the seriousness and 11:25  
6 gravity of Sergeant McCabe's complaint, there was an  
7 attempt surreptitiously, and in a way that people were  
8 not accountable, to influence the decision-makers that  
9 he was not a person to be relied upon, and furthermore,  
10 in approaching it in that way, it was done not just 11:25  
11 simply that his honesty was being put in issue, but for  
12 the most part, and I am excluding Mr. Deasy from this,  
13 who was simply told he wasn't to be trusted, but in the  
14 other instances the parties were left in no doubt that  
15 he'd performed, allegedly, or had been scrutinised for 11:26  
16 doing something, either outright sexual abuse or  
17 something unspeakable, so the level of calumny is high,  
18 in my respectful submission.

19  
20 With regard to if Superintendent Taylor was reducing 11:26  
21 his role, does this dissolve his credibility? well,  
22 you have heard my submissions, Judge, on -- or,  
23 Chairman, on that earlier, but, oddly enough, it  
24 doesn't, and it gives me no comfort to say it, but I am  
25 making the submission because the Tribunal has asked 11:26  
26 for it, does it dissolve his credibility, simply on the  
27 basis if you were to use an analogy of a criminal  
28 prosecution where the prosecution have relied upon an  
29 informer or someone who was part of a gang and that

1 person minimised their involvement, which frequently,  
2 perhaps invariably has happened in those types of  
3 cases, fact-finders have been -- it has been deemed  
4 that fact-finders should be allowed to determine,  
5 notwithstanding that they have been demonstrated to 11:27  
6 tell lies on important and material issues, can they be  
7 relied upon as witnesses to the truth of something  
8 beyond doubt? And the answer is, yes, they are so  
9 capable. And the answer, when put to the actual test,  
10 whether it be judge or jury, is to be -- find that they 11:27  
11 were, in fact, so capable.

12  
13 I am in the rather unusual position, Chairman, when I  
14 make my out remarks at the end of these questions, I am  
15 in this very unusual position that, to put my client's 11:27  
16 case, I actually have to persuade you that he behaved  
17 in a grossly improper way. It is an odd position to be  
18 in. But notwithstanding that he has behaved in a  
19 grossly improper way, I will be making a submission to  
20 you that there is a line that the Tribunal can consider 11:28  
21 drawing in assessing that level of culpability.

22  
23 Moving on to number 14:

24  
25 what led to the visits of Ms. McCann, Eavan Murray and 11:28  
26 Paul Williams to the home of Ms. D?

27  
28 well, the Court has heard evidence of that. My  
29 client's position is that with regard to Mr. Williams,

1 it was a fait accompli when it came to his attention.  
2 With regard to Ms. McCann and Ms. Murray, I think he  
3 indicated in his statement he was aware that they were  
4 going up there, but he had not prompted it, he did not  
5 discourage it and he did not have the information to 11:28  
6 hand as to direct them to any particular place, and we  
7 would say, therefore, was not involved in that.

8  
9 Has privilege been properly and honestly relied on and  
10 is there any evidence proffered by these parties that 11:28  
11 is reliable? What, in truth, happened? Did the visits  
12 have any Garda inspiration?

13  
14 The only one, in my respectful submission, which  
15 conclusively demonstrates any Garda input is, 11:29  
16 Superintendent Reilly was a contact point for  
17 Mr. Williams.

18 CHAIRMAN: Yes, O'Reilly, Mr. O'Higgins.

19 MR. MICHAEL O' HIGGINS: Or O'Reilly, I beg your pardon.  
20 With regard to the journalistic privilege and has it 11:29  
21 been properly and honestly relied on, the difficulty,  
22 in my respectful submission, in assessing that is that  
23 you are effectively looking at something behind the  
24 curtain and you don't really know what is behind the  
25 curtain so you are left in an awkward position of 11:29  
26 having to surmise in circumstances where there are  
27 perhaps primary facts it would be very useful to have  
28 at your disposal before you drew inferences.  
29

1 On the question of whether privilege is honestly  
2 asserted, in my submission that depends upon your view  
3 on the evidence tendered in support of the claim.  
4 Superintendent Taylor's position has been clear, he has  
5 given an unequivocal waiver in respect of that. 11:30

6  
7 There are conflicts in the evidence as to what happened  
8 with regard to the visits, and particularly with  
9 Mr. Williams and Superintendent Taylor. That is just a  
10 matter for the Tribunal to determine in ordinary 11:30  
11 course.

12  
13 To what extent, if any, does the evidence of the D  
14 family remain relevant?

15 11:30  
16 The evidence is still relevant, in our submission, so  
17 far as it does support evidence of local Garda  
18 involvement in promulgating allegations against  
19 Sergeant McCabe. It's also relevant to conflicts of  
20 evidence between Ms. McCann and Alison O'Reilly and may 11:30  
21 influence the Tribunal when it comes to assessing  
22 either the reliability and/or credibility of those  
23 witnesses. But as that is not a matter directly  
24 connected with us, I don't propose to make a submission  
25 on it. 11:30

26  
27 To what extent is any incorrect invocation of  
28 journalistic privilege such as to give rise to any  
29 inference, and, if so, what inference does any

1 incorrect invocation of journalistic privilege give  
2 rise to?

3  
4 And we would say, Chairman, that, in our submission,  
5 the emphasis falls on the raising of privilege, not 11:31  
6 whether it's properly or improperly raised, because we  
7 would say the real question is whether the claim of  
8 privilege gives rise to a concern that the journalist  
9 relying upon it was negatively briefed in the manner  
10 alleged by Superintendent Taylor, and we would say that 11:31  
11 concern arises irrespective of whether the privilege is  
12 properly or improperly asserted, and we would also make  
13 the submission that if you can't exclude that  
14 possibility, and that possibility being that behind the  
15 claim there may have been a discussion with 11:31  
16 Superintendent Taylor along the lines he says, if that  
17 can't be excluded, it would seem the Tribunal should  
18 draw an inference that it's possible that  
19 Superintendent Taylor was telling the truth in that  
20 regard. And it's submitted that other inferences that 11:32  
21 could be drawn, in effect that no briefing took place  
22 at all or a briefing that went further than alleged,  
23 that they are less inferences and matter of  
24 speculation.

25  
26 The next question is answered in the previous one. And  
27 we are up to 18:

28  
29 To what extent do journalistic clashes, apart from that



1 between Alison O'Reilly and Debbie McCann, require to  
2 be resolved or even recorded in a report to the Houses  
3 of the Oireachtas, and, if so, why?  
4

5 And I don't think I can profitably take up your time on 11:32  
6 that, Chairman. It's not a matter really directed to  
7 Superintendent Taylor.  
8

9 To what extent does the Tribunal have to report or  
10 comment on political involvement or the actions of any 11:32  
11 individual public representative?  
12

13 We would submit there is no obligation on the Tribunal  
14 to report on the actions of any political  
15 representative or political involvement of any witness. 11:32  
16 The Tribunal may be required to do so where it's  
17 relevant to an issue in evidence. The Tribunal has a  
18 discretion to make observations about how political  
19 representatives dealt with the issue of Sergeant  
20 McCabe, in the event that it finds such actions were 11:33  
21 unhelpful and led up to the setting of a tribunal of  
22 inquiry and/or prolonged hearings into the matter.  
23 It's further submitted that the Tribunal should  
24 exercise that comment -- that discretion to comment  
25 sparingly. 11:33  
26

27 So that deals with the questions that were posed,  
28 Chairman.  
29

1 And if I could just say, by reference to an overview as  
2 an out, the Garda Síochána -- An Garda Síochána is a  
3 large organisation, and Commissioner Callinan - and I  
4 am using the titles they had at the relevant time -  
5 made a number of references in the course of his 11:33  
6 evidence to the Garda family, and that can have a very  
7 benign meaning. We all know the benefits of a  
8 nurturing environment that a family provides, but not  
9 all families and not all family situations are healthy,  
10 and sometimes within that family environment people can 11:34  
11 feel very inhibited. And it does strike one, in my  
12 respectful submission, that there are an awful lot of  
13 people out there still who know a lot more about what  
14 has gone on in this -- in these matters that the  
15 Tribunal of Inquiry has been inquiring into, and 11:34  
16 Mr. Ferry has drawn my attention to a remark by you  
17 about the number of people who know things about it,  
18 and very, very, very few of them have come forward, and  
19 my client has come forward, and he is what I would  
20 describe in, I suppose, slightly colloquial or 11:34  
21 vernacular terms, a whistleblower. And whistleblowers,  
22 I am talking fairly generically here, but generically  
23 in the sense that it's an observation that can be  
24 perhaps universally or frequently applied,  
25 whistleblowers are very often damaged people. For 11:35  
26 instance, they may well have operated within a  
27 particular milieu which they must have known or should  
28 have known, had they given the matter appropriate  
29 consideration, was not an appropriate way to do their

1 business. But while part of that milieu were  
2 nonetheless satisfied not only to keep their head down  
3 but to be a cog or a -- even part of the engine driving  
4 that behaviour. And there may be a conversion,  
5 something of a Pauline conversion, when circumstances 11:35  
6 change and they find themselves on the outside looking  
7 in and seeing things through a different perspective, a  
8 different prism, and that person now comes forward with  
9 information. Now, again, Chairman, if I could use the  
10 analogy, because there are, in my respectful 11:36  
11 submission, some useful comparisons within it; in  
12 circumstances where the State in criminal prosecutions  
13 used people who, for want of a better description, were  
14 gangland members, those witnesses' testimony was  
15 attacked and their characters, which in general were -- 11:36  
16 they were people of poor character and they were people  
17 in respect of enough was known about their actions to  
18 be able to demonstrate very effectively the badness of  
19 that particular character and the fact that they were  
20 willing to tell a lie to advance a position and so 11:36  
21 forth, but nonetheless, the position in those cases  
22 always was that if you were drawing from a particular  
23 source, the persons in respect of whom you could draw  
24 from had, by definition, to be very flawed persons;  
25 they weren't choir boys, was the phrase that was used 11:37  
26 in some of the cases, and nor could you expect them to  
27 be. Now, this isn't murder and it isn't gangland  
28 crime, and that part of the analogy has no interface,  
29 but where there is a crossover, in my respectful

1 submission, is that if Superintendent Taylor was  
2 involved in this activity, which was completely  
3 indefensible activity, he is a flawed character. There  
4 is no getting away from that. But equally, in my  
5 respectful submission, and I don't make any apology for 11:37  
6 this, he did a brave thing. It could not have been  
7 easy to have invited Sergeant McCabe to his home and  
8 said, 'here is what I have done'. It could not have  
9 been easy to have made a protected disclosure and to  
10 have stepped outside the fold of the family to make 11:38  
11 those allegations. I want to make it very clear: I am  
12 not looking for any favouritism or favoured status  
13 because he has done that, I am not for a moment  
14 suggesting that, somehow or other, his evidence starts  
15 prima facie slightly more favourable than other 11:38  
16 persons' evidence, I am putting it into the mix in the  
17 same way I am realistically acknowledging the  
18 shortcomings in his evidence. But I would point out it  
19 would have been very easy for -- it would have been  
20 easier, I think it's fair to say, far easier for 11:38  
21 Superintendent Taylor, who, as he described in his  
22 evidence, was in a bad place when he made these  
23 statements, it would have been -- it would have been  
24 easier for him to just simply keep his head down. He  
25 didn't do that. Now, the question arises as to whether 11:39  
26 he actually has something to contribute in terms of the  
27 determinations which this Tribunal has to reach. And  
28 no doubt and quite correctly and -- there is, as I have  
29 conceded, objective premises upon which there are

1 doubts in terms of his testimony, and people who  
2 represent other parties here will correctly hone in on  
3 that, and all that's there. I mean, I am not running  
4 away from it; it would be foolish to attempt do so.  
5 But at the same time, you do have to ask yourself, why 11:39  
6 did he come out? And if you are saying he is a bitter  
7 man who simply wanted to use this as a staging post and  
8 a platform to attack people with respect to whom he  
9 bore grievances, but on the run of the evidence, in my  
10 respectful submission, he liked Commissioner Callinan, 11:40  
11 the two men had a good rapport, they trusted each  
12 other, that trust may have been abused in the sense  
13 that they had a rapport to do things which the Tribunal  
14 is investigating and may ultimately conclude they had  
15 no entitlement to do, but he doesn't appear to be a man 11:40  
16 who actually has a grievance with Commissioner  
17 Callinan. And insofar as he says that Deputy  
18 Commissioner, and later Commissioner, O'Sullivan stood  
19 four square with Commissioner Callinan, it's to be  
20 noted, in my respectful submission, he put his evidence 11:40  
21 where he put it. He didn't, in my respectful  
22 submission, push the boat out on it. He simply said  
23 they had conversations. When he was cross-examined on  
24 that, there was a lack of specificity, and that is  
25 where it lies. And I would ask you to bear in mind 11:41  
26 that he did come forward and came forward in  
27 circumstances where it must have been very difficult to  
28 do.  
29

1 And I would finish, Chairman, by simply making the  
2 point that I made at the outset:

3  
4 Is Superintendent Taylor a fantasist? Is  
5 Superintendent Taylor a person who had a certain amount 11:41  
6 of information and saw an opportunity to damage other  
7 people by making this statement? Or is he somebody who  
8 was, admittedly very belatedly, troubled by what he had  
9 done and wanted to let, in the first instance, because  
10 in the first instance, let's be clear, I don't think 11:41  
11 anybody anticipated a tribunal of inquiry, even one as  
12 efficient as this, running for 100 days to investigate  
13 it, he told Sergeant McCabe, he followed it up with a  
14 protected disclosure. He could not, in my respectful  
15 submission, have been looking so many hurdles down to 11:42  
16 us being present here today, and, in my respectful  
17 submission, his motive in that regard, admittedly very  
18 late, was a benign one. And I ask the Tribunal to give  
19 that full consideration, and I know the Tribunal will  
20 give that full consideration. But I come back again: 11:42  
21 If he was a fantasist, if he was somebody who simply  
22 wanted to throw a spanner in the works, he was a very  
23 lucky fantasist and he was a very fortunate  
24 spanner-thrower because further investigation has  
25 revealed that the man whom he said was directing him in 11:42  
26 this was extremely active and, moreover, in the case of  
27 Mr. Philip Boucher-Hayes, was nominating my client as  
28 the go-to person for further information. And if you  
29 accept Mr. Boucher-Hayes' evidence on that point, in my

1 respectful submission it goes a significant way to  
2 taking this out of conspiracy and fantasy and firmly  
3 planting a seed which grows into an oak tree as far as  
4 that aspect is concerned.

5 CHAIRMAN: Thank you, Mr. O'Higgins. Mr. Gillane, 11:43  
6 would you like to make a submission for RTÉ prior to  
7 lunch?

8 MR. GILLANE: Yes. I will be 15 minutes, I think, at  
9 the most.

10  
11 SUBMISSION BY MR. GILLANE: 11:43

12 MR. GILLANE: Thank you, Chairman, and I do have a  
13 speaking note that I can hand in to you if that is of  
14 any use to you, Chairman. What I propose to do is to  
15 address you briefly, I hope, in relation to [k] in the 11:43  
16 first instance, to deal with the February 2014 story  
17 and its alleged relationship to [k], and then, lastly,  
18 to deal with [a], [b] and [h] together, Chairman.

19  
20 And in dealing with [k] at the outset, I do so on the 11:44  
21 basis that this is a discrete term of reference  
22 directly referring to RTÉ, and I say that the actual  
23 terms in which [k] is expressed are vital to the  
24 exercise the Tribunal must undertake and that the true  
25 import and meaning of the terms of [k] must not be 11:44  
26 lost.

27  
28 It's submitted on behalf of RTÉ that this term of  
29 reference does not mandate some sort of broad inquiry

1 into journalism or journalistic standards, nor does it  
2 involve asking what might or might not have been  
3 included in some notional reasonable report on the  
4 O'Higgins Commission report. It cannot be  
5 over-emphasised, in my submission, that this term of 11:44  
6 reference is a targeted inquiry in relation to a very  
7 specific allegation, the elements of which involve the  
8 suggestion that Commissioner O'Sullivan herself, using  
9 briefing material prepared in Garda HQ, influenced or  
10 attempted to influence RTÉ broadcasts on the 9th May. 11:45

11  
12 Now, in the first instance on behalf of RTÉ, it's  
13 submitted that, unlike any of the other terms of  
14 reference with which you are dealing, there was never  
15 any primary or direct evidence whatsoever to support 11:45  
16 the proposition as expressed in [k]. The wording in  
17 [k] appears to borrow largely, if not entirely, from  
18 the protected disclosure of Sergeant McCabe dated the  
19 26th September 2016, wherein he states that he was on  
20 work-related stress leave, due, amongst other things, 11:45  
21 to a disgraceful series of broadcasts on RTÉ on the 9th  
22 May.

23  
24 In the same document, Sergeant McCabe goes on to state  
25 that he's now satisfied on impeccable authority that 11:45  
26 those broadcasts were "planned and orchestrated by  
27 Commissioner Nóirín O'Sullivan personally using  
28 briefing material prepared at Garda HQ."  
29



1 And the rest of the protected disclosure is then silent  
2 on that topic.

3  
4 In interview with your investigators, Chairman, on the  
5 6th December 2017, he stated that the impeccable 11:46  
6 authority that he was referring to was John Barrett of  
7 Human Resources.

8  
9 Now, in fairness to Sergeant McCabe, he has always been  
10 clear that the sole basis for his belief in this regard 11:46  
11 is what he asserts John Barrett said to him and that he  
12 has absolutely no other information in relation to  
13 this. And manifestly, there is now a significant  
14 conflict on this question as Mr. Barrett denies that  
15 this was said, and that is a matter for resolution 11:46  
16 ultimately by you.

17  
18 However, it's submitted on behalf of RTÉ that even  
19 apart from that conflict, which is obviously very, very  
20 important, it's respectfully submitted that the 11:46  
21 proposition housed in [k] never, in fact, gets out of  
22 the starting blocks. In the first instance, we say  
23 that grave findings would have to be made against  
24 former Commissioner O'Sullivan before one could even  
25 consider drawing the conclusions that are being 11:47  
26 contended for against RTÉ and Paul Reynolds. Former  
27 Commissioner O'Sullivan explicitly denies discussing  
28 the O'Higgins Commission report with Mr. Reynolds or  
29 indeed giving it to him. She has also explicitly

1 denied ever trying to influence RTÉ or any of our  
2 broadcasts in general or specifically in relation to  
3 the O'Higgins Commission report. There is no document,  
4 no text, no communication, supportive of such a  
5 proposition during what the Tribunal has referred to as 11:47  
6 the target time, and, in truth, in terms of her  
7 evidence here, there appears to be no challenge to her  
8 evidence in that regard.

9  
10 Further, not only does former Commissioner O'Sullivan 11:47  
11 make plain that she did not influence the 9th May  
12 reporting, she has said that she would have wanted an  
13 entirely different focus on the O'Higgins Report and  
14 that the RTÉ reports, in fact, did not strike the tone  
15 she would have wanted. It appears that the broadcasts 11:47  
16 on the 9th May managed to simultaneously upset both  
17 Sergeant McCabe and former Commissioner O'Sullivan at a  
18 time when the sting of the allegation against her was  
19 that she, in essence, authored or moulded the  
20 broadcasts for her purposes. Further, we say that the 11:48  
21 unchallenged evidence of Ray Burke, the senior news  
22 editor, is that he, in fact, directed Paul Reynolds to  
23 try and get his hands on the report, which was  
24 diametrically opposed to a claim that Mr. Reynolds had  
25 been fed a Garda story that he then brought to RTÉ. 11:48  
26

27 Mr. Reynolds has also explicitly denied receiving  
28 briefing material from former Commissioner O'Sullivan  
29 or being influenced by her in any way in relation to

1 the report. Indeed, he clearly stated that Garda HQ  
2 had "no idea" what he was doing. And it's of some  
3 relevance, we say, that these broadcasts take place  
4 some two years after the so-called Taylor campaign, or  
5 alleged campaign, is supposed to have ended.

11:48

6  
7 Sergeant McCabe himself agreed, when questioned by the  
8 Chairman, that he did not believe that RTÉ was so  
9 "spineless" that they would accede to a request to spin  
10 a report in favour of the gardaí. While he felt that  
11 the report was one-sided, again he said his sole basis  
12 for including it in his protected disclosure in the  
13 terms that he did was because of what he says

11:49

14 Mr. Barrett told him. Importantly, during these  
15 exchanges between you, Chairman, and the witness,  
16 counsel for Sergeant McCabe intervened to suggest that  
17 the broadcast and the leaked report was "an exclusive",  
18 and, after further questioning, Sergeant McCabe then  
19 indicated that he wished to agree with his counsel.

11:49

20 This was repeated after you indicated that now was an  
21 opportunity to give evidence on the topic rather than  
22 to simply agree with counsel, and Sergeant McCabe  
23 indicated that he had on three occasions explicitly no  
24 evidence in this regard.

11:49

25  
26 There was then a second intervention which is of some  
27 importance in the context of what we now know,  
28 Chairman. Counsel for Sergeant McCabe then made a  
29 second intervention on the basis of a submission that

11:49

1 there was "accompanying documentation" with the leaked  
2 report directing Mr. Reynolds to take a particular line  
3 and this could be divined from what appeared to be a  
4 question-and-answer script in the broadcast. The basis  
5 for both of these interventions on which you are being 11:50  
6 invited to draw inferences against RTÉ and Mr. Reynolds  
7 are plainly wrong.

8  
9 Firstly, this was not an exclusive, and it's beyond  
10 doubt now that a number of journalists and media 11:50  
11 organisations had access to the O'Higgins Commission  
12 report prior to the 9th May, and these include John  
13 Mooney, Mick Clifford, Philip Boucher-Hayes, and  
14 stories had run in print media and on the radio, and  
15 the Tribunal has heard in particular in relation to 11:50  
16 some of the radio material, that on the 26th April  
17 Mr. Mooney engaged in a discussion where it was put to  
18 him by an interviewer that Sergeant McCabe's claims had  
19 been "rubbished". This isn't in the terms of  
20 reference, but plainly was a matter of upset to 11:50  
21 Sergeant McCabe.

22  
23 Secondly, there is no evidence at all of any  
24 accompanying documentation as suggested, and the use of  
25 a script, far from being sinister, was openly 11:51  
26 acknowledged by Mr. Reynolds as a necessary part of  
27 live broadcasting and was written by him, and,  
28 significantly, this evidence was corroborated by  
29 Mr. Burke, and the Tribunal has seen evidence of the

1 genesis of the script originating from within RTÉ  
2 rather than externally.

3  
4 we respectfully submit that the task of the Tribunal  
5 again in this area is not to engage in some sort of 11:51  
6 quality analysis of individual pieces of journalism, I  
7 think that has already been acknowledged, and we  
8 explicitly say that everyone is entitled to a view on  
9 any issue of public concern and any individual piece of  
10 journalism covering such an issue. We have already 11:51  
11 explicitly accepted that Sergeant McCabe was absolutely  
12 entitled to his own views on these matters and no  
13 attempt was made to budge him from those views. It may  
14 perhaps be of relevance in your determination, however,  
15 in this regard, to have regard to the following: 11:51

16  
17 It does seem that Sergeant McCabe did not, in fact,  
18 hear or see most of the broadcasts after 8:20 a.m. on  
19 the 9th May, and, on his evidence, he may have been  
20 unaware of many of the references to him in those 11:52  
21 programmes as being never less than truthful, where his  
22 courage was applauded and that he had done the State  
23 some considerable service. It's not proposed to repeat  
24 here the details of the programmes - the Tribunal has  
25 the programmes - but it is submitted that a close 11:52  
26 reading of the actual words used during the broadcasts  
27 show any number of references to Sergeant McCabe's  
28 dedication, commitment, courage and public service, and  
29 all of those are undoubted facets of Sergeant McCabe's

1 career to date.

2  
3 There is nothing in the broadcasts that could give rise  
4 to an inference that the proposition in [k] is  
5 established. Suffice it to say that the words 'liar' 11:52  
6 and 'irresponsible' were never uttered in any  
7 broadcast, still less could reasonably be said that  
8 Sergeant McCabe was branded as such by RTÉ.

9 CHAIRMAN: well, the word 'liar' was used.

10 MR. GILLANE: No, I am going to come to that. The word 11:52  
11 'lie' was used, but not 'liar', which has an obvious  
12 broader connotation, and I meant to say that directly,  
13 and we will deal with that directly.

14 CHAIRMAN: All right. I didn't mean to challenge what  
15 you were saying. I do -- I do understand that 11:53  
16 'irresponsible' certainly doesn't come into it. The  
17 word 'lie' comes in in its generic forms.

18 MR. GILLANE: Yes. We also say that notwithstanding  
19 our position in relation to the task of the Tribunal in  
20 relation to the analysis of the broadcasts, that it is 11:53  
21 apparent on the evidence that great care was taken in  
22 relation to the broadcasts themselves. It cannot be  
23 ignored, I submit, that all of the broadcasts were the  
24 subject of a rigorous and structured editorial process.  
25 The Tribunal heard evidence from now-retired Ray Burke, 11:53  
26 but is also aware of the involvement of other senior  
27 editors. The report was being worked on over the  
28 weekend prior to broadcast, and discussion as to when,  
29 what format and on what programmes the report would

1 feature were all the subject of internal discussion  
2 with no outside interference whatsoever.

3  
4 Further factors are of relevance in relation to your  
5 assessment in this regard and I would ask the Tribunal 11:54  
6 to weigh these in the balance also.

7  
8 Mr. Reynolds honestly raised a narrow issue of  
9 privilege and had not sought to invoke privilege in a  
10 vacuum and simply say 'I am not answering any 11:54  
11 questions'. He engaged with the privilege issue in  
12 relation to the O'Higgins Commission report and  
13 confirmed that he had more than one source and  
14 cross-referenced the contents of each report to ensure  
15 it was the same final report. He has said on oath that 11:54  
16 the broadcasts were based on the O'Higgins Commission  
17 report and nothing else. There is a denial of the  
18 existence of any briefing material howsoever described  
19 and he has described his own approach to the  
20 construction of the reports and the editorial process 11:54  
21 which can be examined. He has himself disclosed to the  
22 Tribunal various notes in relation to the  
23 script-writing process and has been subjected to  
24 cross-examination on those notes. Where he has  
25 volunteered those notes, which are unstructured scraps 11:54  
26 of thought and contemporaneously-gathered information,  
27 it's submitted that the Tribunal should be slow to  
28 follow any invitation to draw critical conclusions from  
29 them. The use of the word 'lie' was explained in great

1 detail, and undoubtedly, Chairman, as you pointed out,  
2 the word 'lie' was included in some of the reports.  
3 This word was discussed between Mr. Reynolds and  
4 Mr. Burke and the decision to use the word was not  
5 lightly made, still less made on the basis of any 11:55  
6 outside influence. I don't propose to argue whether  
7 any difference exists between a knowing untruth and a  
8 lie, but the word is used in a context where  
9 Mr. Reynolds made clear that Sergeant McCabe was right  
10 to be suspicious of the withdrawal of a statement of 11:55  
11 complaint in the context in which this happened and in  
12 interview Mr. Reynolds did point out that Judge  
13 O'Higgins used the word 'untruth'.

14  
15 It's important, we submit also, that the document 11:55  
16 itself, the O'Higgins Commission Report, is available  
17 to the Tribunal, and the Tribunal, in that sense, is  
18 not in any sense deprived of it, and, by having that  
19 document, every word of the 9th May broadcasts can be  
20 analysed. 11:55

21  
22 We submit that it's the essence of the journalists'  
23 task to gather material, talk to sources, record  
24 relevant information as necessary to substantiate a  
25 story and thereafter to rely on accumulated material to 11:56  
26 make judgment calls as to what can be put out into the  
27 public domain. Almost every word in the broadcasts can  
28 be sourced in the O'Higgins Commission Report,  
29 Chairman. During cross-examination by counsel for the



1 former Commissioner, it was correctly observed that no  
2 one other than counsel for the Tribunal, properly  
3 performing her role in terms of putting available  
4 propositions, had suggested, in fact, to Paul Reynolds  
5 that he was influenced or shaped by anything that 11:56  
6 former Commissioner Nóirín O'Sullivan did or by any  
7 briefing documents. Mr. Reynolds was asked whether or  
8 not the broadcasts were the subject of complaint to the  
9 Broadcasting Complaints Commission, and he confirmed  
10 they were not. And it was also confirmed in evidence 11:56  
11 that, despite threats of legal action made on the day  
12 of the broadcast, no proceedings were ever issued in  
13 respect of those broadcasts, whereas other publications  
14 were subject to litigation.

15  
16 We respectfully submit that the 24th February story is 11:56  
17 a matter which the Tribunal is also considering, and  
18 how that story has emerged as an issue in the course of  
19 your work is worth exploring. This story, as you know,  
20 was not the subject of litigation or complaint and was 11:57  
21 not itself contained in the terms of reference of the  
22 Tribunal. That is not a complaint that the Tribunal is  
23 not entitled to have regard to it. However, the weight  
24 that is attempted to be placed on it by counsel for  
25 Sergeant McCabe in particular does illustrate some of 11:57  
26 the problems with the approach to [k]. Indeed, the  
27 text of the story was itself originally and wrongly  
28 billed as some class of press release. It's now  
29 accepted that this is no such thing. Sergeant McCabe,

1 just to fill in the context in which this arose, was  
2 asked very briefly about this by counsel for the  
3 Tribunal, and we've included relevant extracts from  
4 that evidence in our speaking note and I won't go into  
5 it now, and it appeared that the point of referring to 11:57  
6 that was to introduce the evidence of Sergeant McCabe's  
7 own statement on the issue of cooperation with the  
8 O'Mahony inquiry. We submit that Mr. Reynolds' story  
9 appeared so peripheral to the Tribunal's work prior to  
10 the commencement of hearings that it didn't feature in 11:58  
11 Sergeant McCabe's interviews or indeed Mr. Reynolds'  
12 interviews. Sergeant McCabe, further, was never asked  
13 about it by his own counsel, and, in fact, I asked a  
14 small number of questions about it as it had been  
15 brought up. 11:58

16  
17 Matters of significance are listed at page 10 in the  
18 speaking note in respect of that story, and I would ask  
19 the Tribunal to bear these in mind.

20 11:58  
21 The issue of the Commissioner's direction was being  
22 pursued in 2014 by other media organisations and this  
23 was accepted by Sergeant McCabe. It was also accepted  
24 that The Irish Times was going to run a story along  
25 those lines the following day, which was what, in fact, 11:58  
26 inspired Sergeant McCabe to issue his own press  
27 release. And what is clear about that 2014 story now  
28 is the following:  
29

1 The question of non-cooperation with the O'Mahony  
2 inquiry emanated from Dáil Éireann in 2013. In  
3 February 2014, Mr. Reynolds had sight of the direction  
4 issued by the Commissioner. Whatever view one takes of  
5 what is contemplated by the full passage under the 11:59  
6 heading "direction", Mr. Reynolds was informed on the  
7 record by the Garda Press Office that this was a  
8 direction to cooperate. The story was then written in  
9 those terms, was originally an on-line story and went  
10 through the on-line editorial process. The story 11:59  
11 never, in fact, made it to television. Mr. Reynolds  
12 did try and contact Sergeant McCabe for his views on  
13 the matter and to give him a right to reply. Sergeant  
14 McCabe declined to give him his version of events,  
15 which was his absolute right, and indicated a 11:59  
16 preference to give it to another journalist who would  
17 broadcast it much later that night. Before  
18 Mr. Reynolds had any detail of what Sergeant McCabe  
19 would say but now being conscious of the broad fact  
20 that Sergeant McCabe did not accept the 11:59  
21 characterisation of events from the Garda Press Office,  
22 Mr. Reynolds immediately amended the on-line story to  
23 reflect his understanding that Sergeant McCabe disputed  
24 this and gave that prominence as a headline  
25 introduction. Once Sergeant McCabe's statement was 12:00  
26 released, Mr. Reynolds again amended the story to  
27 reflect this and Sergeant McCabe's statement was given  
28 prominence and quoted from in full and this continued  
29 in further reports the following day.

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It's submitted that this story from 2014 is being inappropriately pulled into your work as if it were evidence against Mr. Reynolds in connection with the terms of reference, and he was accused actually of "deep prejudice" against Sergeant McCabe in this context. I respectfully submit that this is, in fact, a textbook example of journalism at work, where a story is sourced with a public interest at a time when other media organisations were doing the same, and, thereafter, seeking on-the-record contributions from participants and publishing those contributions when made. It's submitted that now, some years later, perhaps on the basis of the initial misunderstanding as to the nature of the document itself, which was Mr. Reynolds' copy, that a weight is now being placed on it which it simply does not and cannot bear.

12:00

12:00

12:00

In relation to terms [a], [b] and [h] and Superintendent Taylor, I would propose to say the following, and I have some speaking notes, they are commencing at page 11 in respect of that:

12:01

The extent to which the Tribunal can rely on the evidence of Superintendent Taylor at all on the question of negative briefing, is a live issue, obviously, and dependent on a number of matters. Whether it can be said, and the Tribunal has raised a number of questions on it, whether there is any truth

12:01

1 in relation to what he told Sergeant McCabe and then  
2 included in his protected disclosure, is obviously a  
3 matter for you, Chairman. Before one considers the  
4 individual allegations, and they are allegations,  
5 against John Burke and Paul Reynolds, the Tribunal will 12:01  
6 be concerned with questions of credit and transactions  
7 to which RTE and its employees are strangers. For  
8 example, whether Commissioner Callinan did direct a  
9 course of action to be taken, whether Superintendent  
10 Taylor agreed to it, whether former Commissioner 12:02  
11 O'Sullivan connived in it, questions in relation to  
12 texts, phones and missing phones and questions in  
13 relation to Mr. Taylor's motivation. Other parties  
14 before you, Chairman, will have perhaps longer and more  
15 relevant submissions to make in relation to those 12:02  
16 questions. However, for my purposes, I think it can be  
17 said, and to use a phrase that I think Mr. O'Higgins  
18 used earlier in relation to whistleblowers, I say I  
19 think it can be said that Superintendent Taylor is a  
20 damaged witness, who made his disclosure in a context 12:02  
21 of what he was then describing as a trumped-up  
22 investigation into him, and it's submitted that, in  
23 consequence of that, combined with, combined with the  
24 allegations he is making, which are so serious, that  
25 great care does, in fact, have to be taken with his 12:02  
26 evidence in terms of seeing whether it's supported  
27 outside him. He presented a picture to the Tribunal,  
28 from taking up his post, of meeting journalists, as  
29 they made it their business to introduce themselves to

1 him, or he would encounter them at crime scenes, where  
2 he was an assiduous attender. In September 2016 he  
3 made his protected disclosure, where he makes no  
4 reference at all to Mr. Burke, but does refer to  
5 Mr. Reynolds in a context other than the negative 12:03  
6 briefing that he is then outlining in detail in that  
7 disclosure, and it's submitted that that is not a  
8 solecism on his part where he does specifically name  
9 another journalist in the Ms. D context. It's not  
10 until the 13th April 2017 that Mr. Burke and 12:03  
11 Mr. Reynolds are named and named in a fashion utterly  
12 devoid of detail or context, and this is replicated in  
13 his evidence, and Mr. O'Higgins has indicated earlier  
14 that criticisms in that regard, which I am not going to  
15 repeat in terms of vagueness, are valid criticisms. 12:04  
16 But the validity, I respectfully submit, of those  
17 criticisms is that the person on the other end of the  
18 allegation is at the sharp end of why those criticisms  
19 can be made, because the potential for unfairness is  
20 real and tangible where someone is left in a situation 12:04  
21 where bare assertion meets denial and it becomes  
22 impossible to forensically stress-test what is being  
23 said. It's impossible to know or determine from  
24 Superintendent Taylor, out of the scores of contacts  
25 with the Garda Press Office with members of the media, 12:04  
26 why Mr. Burke and Mr. Reynolds ended up his on list.  
27 It may be because it's easy and has the appearance of  
28 credibility to place someone on the list who has a  
29 profile or reputation. Specifically in relation to

1 Mr. Reynolds, Superintendent Taylor described the  
2 briefing as opportunist and arising at crime scenes and  
3 press conferences rather than by telephone. There was,  
4 what I respectfully characterise, a targeted  
5 intervention and questioning by you, Chairman, in 12:05  
6 relation to that, and, in response, Superintendent  
7 Taylor was unable to give a single scrap of detail to a  
8 single instance of this. Despite claiming he linked  
9 the briefing explicitly to the sexual assault  
10 allegation, he could not even recount in any way 12:05  
11 Mr. Reynolds' supposed reaction to it. And when you,  
12 Chairman, asked him to relive the reaction of any  
13 journalist, he said he could not do so. It's a signal  
14 fact, I respectfully submit, in addition, that  
15 Superintendent Taylor never mentioned in his 12:05  
16 disclosure, in his interview or in his initial  
17 evidence, that he'd never, in fact, even met John Burke  
18 before or during the time period of the negative  
19 briefing. In fact, in relation to Mr. Burke, there was  
20 an impressionistic account of briefing him by phone. 12:05  
21 And I respectfully submit that it beggars belief that,  
22 when asked questions on this topic by counsel for the  
23 Tribunal directly in relation to Mr. Burke, that  
24 Superintendent Taylor did not say that Mr. Burke was  
25 someone he'd never even met at that stage, rather than 12:06  
26 vaguely asserting that he was someone who wasn't given  
27 to going to crime scenes.  
28  
29 It's of further note that of the very small number of

1 phone contacts with Mr. Burke, some of them pre- and  
2 post-date the actual campaign that Superintendent  
3 Taylor described, which took place over a relatively  
4 narrow time frame. Obviously, it must be accepted that  
5 just because he never met Mr. Burke, doesn't make it 12:06  
6 impossible that he negatively briefed him. However, it  
7 might be expected, we submit, that some class of  
8 relationship of trust would be developed before such a  
9 thing could be contemplated or attempted, and while  
10 such a relationship could, in principle, develop over 12:06  
11 the phone, it seems the evidence for it here in  
12 relation to Mr. Burke is simply non-existent. Further,  
13 and understandably, when Superintendent Taylor was  
14 pushed on these matters generally and his  
15 apprehensiveness about bringing the matter of sexual 12:06  
16 abuse into conversations, Superintendent Taylor said he  
17 was "careful" about the journalists he approached. And  
18 we respectfully ask the question, how can this sit with  
19 the proposition that he's briefing someone he had never  
20 even met? And further, we say that this is somewhat 12:07  
21 even more bizarre, that he would be sharing this  
22 allegation and agenda with Mr. Burke, whom he had never  
23 met, while keeping it a secret, on his account, from  
24 all those he worked with, with the exception of Andrew  
25 McLindon. 12:07

26  
27 It's submitted further that the inherent implausibility  
28 in this account is vividly illustrated in relation to  
29 the evidence in respect of Ms. McCann and Ms. Murray.



1 Leaving aside the weight of phone contact and the  
2 timing of the visit to Ms. D, it's clear that  
3 Mr. Taylor had communications with them specifically in  
4 relation to Ms. D in the spring of 2014 when Sergeant  
5 McCabe-related issues were reaching a crescendo or 12:07  
6 peak. And further, on the evidence that you have  
7 heard, this was not just generic run-of-the-mill  
8 contact with those journalists, but now there was the  
9 very real prospect of national newspapers running a  
10 story based on this allegation, which was, I 12:07  
11 respectfully submit, if there is any truth to his  
12 allegation, to be the entire thrust of the campaign.

13  
14 No coherent, credible or rational explanation has been  
15 advanced by Superintendent Taylor as to why these 12:08  
16 people were not on his list. Indeed, when pressed on  
17 it, he attempted to say that he brought their names  
18 forward to the Tribunal, but it's crystal clear that,  
19 in fact, they were put to him by Tribunal investigators  
20 halfway through his clarifying interview. They are the 12:08  
21 only journalists, in fact, in respect of whom some  
22 detail was available to Superintendent Taylor in terms  
23 of dates and locations, yet those events are absolutely  
24 and singularly absent from his protected disclosure,  
25 from his correspondence with the Tribunal and indeed 12:08  
26 absent from his interview with the investigators until  
27 they bring it up.

28  
29 We draw the analogy with a person who is fishing or a

1 man fishing for days, weeks and months without success,  
2 until one day ultimately that person lands not just a  
3 fish but a very large fish, and, on return from his  
4 trip, when asked to recount the details of the trip,  
5 the one thing he forgets to mention is the day he  
6 caught the fish. 12:09

7  
8 Mr. Burke and Mr. Reynolds have denied the allegations  
9 of Superintendent Taylor. There is little more they  
10 can do in the context of the baldness of the 12:09  
11 allegation. They have both provided their phone  
12 numbers to the Tribunal, they have both explained the  
13 context of their phone contacts. And in Mr. Burke's  
14 case, he has also explained the context and meaning of  
15 later texts after Superintendent Taylor had retired, as 12:09  
16 an attempt to see if something might come of staying in  
17 contact with him, but nothing ever did. We  
18 respectfully submit that Superintendent Taylor's  
19 account is unworthy of credit and must be jealously  
20 examined in the light of the consequences for the 12:09  
21 people of whom he speaks.

22  
23 Chairman, you have referred in the number of questions  
24 you asked last week in respect of which you required  
25 some assistance, to journalistic clashes, and I attempt 12:09  
26 to deal with that at just page 14 of the speaking note.  
27 And you have heard in the specific context of evidence  
28 from Professor Kenny and a suggested conversation with  
29 Mr. Reynolds and Mr. Brady at a PAC meeting, which has

1           been denied by Mr. Reynolds. It's submitted that this  
2           is not a matter that necessarily requires resolution in  
3           the context of the terms of reference that you are  
4           analysing and dealing with. Professor Kenny mentioned  
5           the names for the first time after giving evidence to 12:10  
6           the Tribunal, in respect of a particular event said to  
7           have taken place in February 2014. He subsequently  
8           provided some detail to support that claim, and  
9           Mr. Reynolds was in a position to check the detail and  
10          establish that Mr. Kenny was in error in that regard. 12:10  
11          While it may be suggested that this might have happened  
12          on some other occasion, this places Mr. Reynolds in an  
13          invidious position, having dealt with the material  
14          advanced to support the first proposition. Mr. Brady  
15          has also denied the conversation took place, although, 12:10  
16          importantly, he says he did speak to Professor Kenny on  
17          another occasion about Sergeant McCabe when  
18          Mr. Reynolds was not present, and I respectfully  
19          submit, in the context of the terms of reference,  
20          resolution of that matter is not necessary, but you 12:11  
21          have the evidence of Mr. Reynolds on oath in that  
22          connection.

23  
24          In relation to Mr. Boucher-Hayes, the Tribunal has  
25          heard evidence from him in relation to what transpired 12:11  
26          in the vicinity of the RTÉ studio immediately prior to  
27          the broadcast of the Crimecall programme, and I am not  
28          going to rehearse that evidence, but it does appear  
29          that -- or does not appear that any rational basis has

1           been advanced as to why he would make that up or be  
2           mistaken in his recollection of it. He, in fact, came  
3           forward to the Tribunal with details of it, having  
4           heard the Tribunal's call for relevant information.  
5           while not corroborated in any strict sense, any 12:11  
6           allegation of recent fabrication is refuted by the  
7           evidence of his colleagues, who gave evidence that he  
8           reported the conversation to them shortly afterwards in  
9           broadly similar terms to the way in which he reported  
10          it to you, Chairman. 12:11

11  
12          while RTÉ, Paul Reynolds and John Burke are not central  
13          characters in terms of the wide range of issues with  
14          which the Tribunal is concerned, the Tribunal itself is  
15          very central to them in terms of allegations that have 12:12  
16          hung over them for a very long time. To put it in  
17          simple terms, in relation to John Burke, no one has  
18          ever pointed to a single syllable of his journalism to  
19          bear out any claim that he was ever involved, wittingly  
20          or unwittingly, in a campaign against Sergeant McCabe. 12:12

21  
22          In relation to Mr. Reynolds, an allegation of deep  
23          prejudice was made which it was suggested governed the  
24          overall conduct of Mr. Reynolds. Over four years of  
25          journalism and hundreds of broadcasts, this allegation 12:12  
26          appears to rest on a single sourced -- on-the-record,  
27          sourced on-line story that never even made it to  
28          television and an attempt to tie it to the 9th May  
29          broadcasts two years later, and we respectfully say

1 that that allegation ought never to have been made. We  
2 say that hard-earned reputations of these individuals  
3 have been built up over decades and hang in the balance  
4 in terms of the allegations made against them and it's  
5 respectfully submitted that there is simply no evidence 12:13  
6 to support adverse findings against them.

7  
8 And those are my submissions on behalf of RTÉ,  
9 Chairman.

10 CHAIRMAN: Thank you, Mr. Gillane. I have no questions 12:13  
11 for you. Can I just see where do we go from here.  
12 It's a quarter past. Just one other thing that was on  
13 my mind, if I might mention it: I am just going  
14 through who is represented, and there is a lot of  
15 people, and they are clearly not here, but unless I am 12:13  
16 wrong, Mr. McGuinness, I think the situation is that  
17 Haughey rights involve giving people an opportunity,  
18 they don't involve obviously requiring them to be here  
19 and make submissions. If they don't want to be here,  
20 what can I do. Am I wrong? 12:13

21 MR. MCGUINNESS: No, Chairman. I think everyone  
22 represented is well aware that this day and tomorrow  
23 have been set aside, and perhaps beyond, for those who  
24 wish to attend and make a case such as it may be on  
25 behalf of their clients, and if they choose not to 12:13  
26 partake, that is their business.

27 CHAIRMAN: Yes. Mr. Ó Muirheartaigh, would you like  
28 to make a submission now? I am uncomfortable about  
29 calling on people because I think, really, I am happy

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to adopt any order the room wants, save for what we discussed at the very beginning.

MR. Ó MUIRCHEARTAIGH: Chairman, I would like to make a submission, but if I could possibly make it after lunch?

12:14

CHAIRMAN: Yes, definitely. Is there anyone who wants to make a submission before lunch? All right. Well, then, I am going to adjourn for an hour.

THE HEARING ADJOURNED FOR LUNCH

12:15

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2  
3 SUBMISSION BY MR. Ó MUIRCHEARTAIGH:

4 MR. Ó MUIRCHEARTAIGH: Thank you very much, Chairman.  
5 Fionán Ó Muircheartaigh for Alison O'Reilly, instructed 13:21  
6 by Augustus Cullen Law.

7  
8 These submissions have three sections: The evidence of  
9 Alison O'Reilly in response to the Tribunal request and  
10 related matters; evidence as to credit and credibility; 13:21  
11 and some short answers on some of the 20 questions you  
12 listed, Chairman, the other day.

13  
14 Taking the first part, first. Alison O'Reilly's  
15 involvement stems from her awareness of a whispering 13:21  
16 campaign against Sergeant Maurice McCabe in 2013 and  
17 her discussions with the Irish Mail on Sunday crime  
18 correspondent Debbie McCann in 2013 and 2014. Both  
19 Debbie McCann and Alison O'Reilly were both working for  
20 the Irish Mail on Sunday at the time. Alison O'Reilly 13:21  
21 is now employed in the Irish Mail on Sunday's sister  
22 paper, the Irish Daily Mail. Debbie McCann's  
23 discussions regarding Sergeant McCabe became  
24 increasingly animated in the early months of 2014.  
25 Alison O'Reilly's evidence is that, insofar as she had 13:22  
26 discussions with Debbie McCann on this matter, she is  
27 attesting to the fact of those conversations. She is  
28 not saying that everything she was told by Debbie  
29 McCann was true, but she is saying that what she

1 ascribes to Debbie McCann is a true account of what  
2 Debbie McCann said to her regarding Maurice McCabe,  
3 Superintendent David Taylor and the former Garda  
4 Commissioner Nóirín O'Sullivan.

5  
6 It is common call between Alison O'Reilly and Debbie  
7 McCann that the topic was discussed between them on a  
8 number of occasions. Alison O'Reilly had concerns in  
9 relation to the veracity of the story regarding  
10 Sergeant McCabe, as detailed to her by Debbie McCann in 13:22  
11 those conversations. Alison O'Reilly decided to  
12 investigate that matter for herself. She went to Cavan  
13 and met John Wilson, the retired garda, and  
14 subsequently Sergeant McCabe on the 28th February 2014.  
15 Through her statement, her direct evidence and through 13:23  
16 her phone records and the records of text messages that  
17 still exist, Alison O'Reilly has been able to confirm  
18 the timing of her visit precisely. Alison O'Reilly has  
19 provided those text messages, phone records to the  
20 Tribunal to show that she attended John Wilson and 13:23  
21 Maurice McCabe in Cavan on the 28th February 2014, and,  
22 I might add, she met Maurice McCabe after 3:15 --  
23 3:11pm on that day. Whereas Debbie McCann has not been  
24 in a position to provide evidence of her exact travel  
25 date, Debbie McCann has advised the Tribunal that she 13:24  
26 travelled to Cavan sometime in or around the end of  
27 February and she also mentioned the 14th or 21st -- or  
28 the 14th and the 21st February have also been mentioned  
29 in relation to that visit. Robert Cox, the deputy



1 editor of the Irish Daily Mail, gave evidence in his  
2 statement of the 15th June 2018 that both Alison  
3 O'Reilly and Debbie McCann visited Cavan at the same  
4 time, on the same day and that this stuck in his memory  
5 as a result of a phone call he received on that same 13:24  
6 day from Alison O'Reilly. Alison O'Reilly provided  
7 phone records to the Tribunal, and Mr. Cox accepts,  
8 under cross-examination at the Tribunal, that this  
9 phone call did not happen. Mr. Cox withdrew many of  
10 the assertions he had made in that written statement of 13:24  
11 the 15th June 2018, when faced with the phone records,  
12 texts and the questions raised about his statement.  
13 There is, therefore, a clear inconsistency between the  
14 evidence of Robert Cox and Debbie McCann in terms of  
15 the timing of Debbie McCann's date of travel to Cavan 13:25  
16 and the related events. As detailed in her evidence to  
17 the Tribunal, Alison O'Reilly was satisfied, after  
18 speaking to Sergeant McCabe on the 28th February, that  
19 there was no basis for the suggestions that he was a  
20 paedophile. Alison O'Reilly informed Debbie McCann 13:26  
21 about her meeting with Sergeant McCabe and Debbie  
22 McCann responded that Alison O'Reilly was being  
23 manipulated. Debbie McCann claims Sergeant McCabe was  
24 a paedophile and that this had been confirmed to her by  
25 Superintendent David Taylor and a senior Garda source. 13:26  
26 Alison O'Reilly asked Debbie McCann whether the Garda  
27 source was her pal Nóirín and Debbie McCann confirmed  
28 that it was.  
29

1 Debbie McCann denies that this conversation took place.  
2 Alison O'Reilly is clear on the fact and content of  
3 that conversation. As noted previously, Alison  
4 O'Reilly does not attest to the truth of what she was  
5 told in that conversation. In her evidence, Debbie 13:26  
6 McCann misrepresented a sequence of texts between her  
7 and Alison O'Reilly on the 9th May, subsequent to the  
8 publication of the Guerin Report. Debbie McCann  
9 advised the Tribunal that a text in the sequence of  
10 messages furnished by Alison O'Reilly was deleted and 13:27  
11 that it was held back to show her in a bad light. The  
12 actual sequence, as has been included above, shows that  
13 this is not so. Alison O'Reilly did not delete any  
14 texts. Debbie McCann's perception of Sergeant McCabe  
15 on the 9th May 2014 should be considered in the light 13:27  
16 of the following: Approximately two-and-a-half months  
17 after Debbie McCann was refused a meeting with Ms. D  
18 and after both she and the Irish Mail on Sunday had  
19 apparently dropped the story, she responded to a text  
20 from Alison O'Reilly as follows, on the 9th May 2014 13:27  
21 Alison O'Reilly texted to Debbie McCann:

22  
23 "A highly respected officer held in high regard is how  
24 judge Guerin describes McCabe. "

25  
26 On the 9th July, Debbie McCann responded as follows:

27  
28 "I am fully aware and to be honest I think it is gross.  
29 There is a very messed-up girl at the heart of this and

1 no one gives an eff. "

2

3 On the 9th May 2013 [sic], Alison O'Reilly replied:

4

5 "' Paul Williams and the Indo have an agenda against 13:28  
6 McCabe', says Micheál Martin to pals. "

7

8 On the 9th May 2014, Debbie McCann replied:

9

10 "It's a farce. Everybody knows, from politicians to 13:28  
11 cops to journalists. It's an effing pantomime. "

12

13 This exchange occurred after the Mail had apparently  
14 decided not to run with the story concerning Ms. D.  
15 This is referred to in the evidence of Debbie McCann to 13:28  
16 the Tribunal on the 8th June. This suggests that even  
17 after the decision to drop the story by the Mail,  
18 Debbie McCann still had a very negative perception of  
19 Sergeant McCabe. The Tribunal heard in evidence on the  
20 8th June that, despite being on maternity leave, Debbie 13:28  
21 McCann continued to work on stories for her employer.

22

23 But the following points are pertinent in that regard:  
24 Debbie McCann was the crime correspondent with the  
25 Irish Mail on Sunday; she was in regular contact with  
26 David Taylor, the head of the Garda Press Office. 13:29

26

27 Superintendent David Taylor says he negatively briefed  
28 journalists as the opportunity arose in relation to  
29 Sergeant Maurice McCabe's agendas and his motivation  
for revenge against the gardaí. Superintendent David

1 Taylor says he was in touch with and discussed Debbie  
2 McCann's visit to Ms. D's house with her in or about  
3 the time of her visit. The Mail legal team did not  
4 challenge this evidence by cross-examination. Debbie  
5 McCann was the first journalist to visit Ms. D's house 13:29  
6 seeking an interview with Ms. D. It is unlikely that  
7 Debbie McCann did not discuss Sergeant McCabe with  
8 David Taylor. Debbie McCann was refused to divulge the  
9 content of any discussion she had with Superintendent  
10 David Taylor about Maurice McCabe or Ms. D. Debbie 13:29  
11 McCann's father, Superintendent John McCann, was aware  
12 of the historic allegations against Sergeant McCabe.  
13 He told the Tribunal that he did not discuss it with  
14 his daughter, and Debbie McCann concurs with that  
15 account. 13:30

16  
17 It is submitted that these facts suggest that the  
18 origin of Debbie McCann's concerns regarding Sergeant  
19 McCabe and Ms. D were as a result of Superintendent  
20 David Taylor and other senior gardaí. This contact was 13:30  
21 indicated in Debbie McCann's conversations with Alison  
22 O'Reilly. The contact is an identifiable factor in the  
23 escalation of her interest and her express views of  
24 Sergeant McCabe and her excursion to Ms. D's house.

25 13:30  
26 Debbie McCann's refusal to answer any questions  
27 regarding her contacts with David Taylor,  
28 notwithstanding his waiver of privilege, suggests the  
29 inference that Superintendent Taylor did brief her

1 negatively. If he did not, there could be no reason  
2 for not divulging the content of those conversations.  
3 It also suggests that, whatever contacts took place,  
4 they were not confined to the formula suggested by  
5 Superintendent David Taylor in his evidence. 13:31

6  
7 If Debbie McCann had not been persuaded that Sergeant  
8 McCabe was guilty of sexual misconduct with a minor, it  
9 is difficult to rationalise how she could have  
10 expressed the views she did about Sergeant McCabe. The 13:31  
11 texts suggest that she continued to hold those views  
12 for some time after her visit to the D household.

13  
14 It seems inescapable also that Debbie McCann learned  
15 the detail of the allegations from a Garda source. In 13:31  
16 her direct evidence to the Tribunal she stated she knew  
17 before her visit to Ms. D's house of the issue of  
18 tickling. The reference to tickling only appeared in  
19 the confidential Garda investigation of the complaint,  
20 and, as far as we are aware, this was never divulged to 13:31  
21 third parties or never mentioned prior to Debbie  
22 McCann's evidence to this Tribunal.

23  
24 In his direct evidence, editor of the Irish Mail on  
25 Sunday, Conor O'Donnell, told the Tribunal: 13:31

26  
27 "I believe that it was fair to say that a likely source  
28 of Debbie McCann's information was the gardaí."  
29

1 I now go on to the second part, Chairman.

2  
3 Evidence as to credibility and credit:

4  
5 A number of considerations arise in assessing the 13:32  
6 evidence of Alison O'Reilly and Debbie McCann, where it  
7 conflicts. And I will try and address the  
8 circumstances surrounding the submission of the  
9 evidence and the manner in which the witnesses were  
10 treated. 13:32

11  
12 As to the submission of the evidence, the process by  
13 which DMG Ireland responded to the Tribunal appears to  
14 be that Mr. Kealey, solicitor for the Mail, met with  
15 Alison O'Reilly and three other reporters in the Mail 13:32  
16 group who were written to by the Tribunal. A response  
17 was then forwarded that the Mail had no information  
18 that could help the Tribunal. There were, in effect,  
19 two parts to this response: that there were no  
20 communications and the other communications would 13:32  
21 attract journalist privilege. This response was  
22 despite the fact that there were events, such as Debbie  
23 McCann's visit to Ms. D's house and Alison O'Reilly's  
24 visit to Sergeant McCabe's house, and that these were  
25 matters of fact that had nothing to do with 13:33  
26 journalistic privilege and the Tribunal is entitled to  
27 be told about them.

28  
29 Alison O'Reilly's approach:

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Alison O'Reilly indicated in her evidence that she was cautioned against becoming involved in the Tribunal. In this regard, we refer to the emails from Mr. Kealey to Alison O'Reilly on the 29th May 2017 and the memo of the 14th June 2017, which the Tribunal have. Counsel for the Irish Mail advised that Mr. Kealey had a different account in relation to this matter. In this regard, a document was provided to the Tribunal by Mr. Mohan SC, without any notice to Ms. O'Reilly, but Mr. Kealey did not come forward or give evidence to the Tribunal to rebut Alison O'Reilly's note, email and personal evidence. It is for the Tribunal to draw whatever inferences it may from these facts - in particular, the email, I think, on the 29th May at 15:44pm, to which Alison O'Reilly received no response, it is clear in that email Alison O'Reilly offered to provide her employer with any information required.

Legal advice:

Alison O'Reilly consulted her solicitor and counsel as to her duty with regard to the Tribunal. She was advised, notwithstanding the difficulty it might place her with her employer and taking account of the approach indicated to her by Mr. Kealey, that she had a legal, civic and moral duty to assist the Tribunal. She was further advised she should furnish the Tribunal with any information that might be relevant to their

1 inquiries, and I might add there, without delay. This  
2 was the context in which she furnished the Tribunal  
3 with her statement dated the 7th June 2017.

4  
5 The response to Alison O'Reilly's statement: 13:34

6  
7 There was no substantive response from the Irish Mail  
8 and Debbie McCann until the Tribunal wrote and  
9 indicated that it knew of the visit of Debbie McCann to  
10 Ms. D's house. When a subsequent statement of Debbie 13:35  
11 McCann was discussed with investigators,  
12 notwithstanding Debbie McCann having Alison O'Reilly's  
13 statement, no specific inaccuracy was identified. It  
14 simply stated that some statements were inaccurate,  
15 with no indication of what they were. Indeed, no 13:35  
16 indication of what might be inaccurate was given to  
17 Alison O'Reilly until she was actually giving evidence,  
18 approximately a year after she had submitted her  
19 statement. This was done orally, when Alison O'Reilly  
20 was giving evidence on the second day of the Tribunal, 13:35  
21 and it was then done only on the prompting of the  
22 Tribunal.

23  
24 A subsequent written statement from Debbie McCann  
25 denied several of the statements made in Alison 13:35  
26 O'Reilly's statement. The written supplementary  
27 statement was eventually submitted a few days before  
28 Debbie McCann gave her evidence. This approach to her  
29 evidence was contrary to the process and procedure laid



1 down by the Tribunal.

2  
3 It is submitted that Debbie McCann's involvement with  
4 this Ms. D is central to the sequence of events where  
5 Sergeant McCabe's character was being increasingly 13:36  
6 called into question. Key events that had a resonance  
7 with this were the meetings of the PAC in January 2014  
8 with Commissioner Callinan and Sergeant McCabe, and the  
9 alleged contacts with the Comptroller & Auditor  
10 General, the Chair of the PAC, John Deasy, and Philip 13:36  
11 Boucher-Hayes, of the then Garda Commissioner. These  
12 events were in one sense a high tide of allegations of  
13 negative briefing. This led shortly thereafter to the  
14 eventual emergence of the historic allegations about  
15 Sergeant McCabe through a series of newspaper articles 13:36  
16 by another journalist with whom both Debbie McCann and  
17 David Taylor had contact. Counsel for the Irish Mail  
18 put it to Alison O'Reilly that the reason why she made  
19 the statement to the Tribunal was because she had legal  
20 issues with the Mail. Alison O'Reilly refutes this and 13:37  
21 points out the legal advice she had and the fact that  
22 there was no nexus whatever between the issues before  
23 the Tribunal and the matters in her dispute with the  
24 newspaper. It was also suggested by Mr. Mohan, for the  
25 Irish Mail, and in evidence of Sebastian Hamilton and 13:37  
26 Debbie McCann, that Clare Daly TD was approached to  
27 raise these matters relating to Sergeant McCabe in the  
28 Dáil at Alison O'Reilly's request.  
29

1 As the evidence by Deputy Daly to the Tribunal on the  
2 21st June showed, Alison O'Reilly was in no way  
3 involved communicating with Deputy Daly or having  
4 contact with Deputy Daly at any stage. Deputy Daly's  
5 concerns regarding Sergeant McCabe extended over a much 13:37  
6 longer period.

7  
8 Attack on character:

9  
10 The Irish Mail Group media wrote in correspondence 13:37  
11 dated the 18th April to the Tribunal alleging the  
12 statement made by Alison O'Reilly on the 7th June was  
13 motivated by a dispute she was having with the  
14 newspaper. An attack was made on the motivation, but  
15 no effort was made to engage in a timely manner with 13:38  
16 the factual matters which were the issue before the  
17 Tribunal and the substance of her submission.

18  
19 It is submitted that the position of the paper in that  
20 regard is entirely unsustainable for the following 13:38  
21 reasons: she acted on legal advice of a solicitor and  
22 counsel; she made a statement only after careful  
23 deliberation; as a result, she believed she had a  
24 legal, civic and moral duty to assist the Tribunal; it  
25 turned out she had well-founded concerns regarding the 13:38  
26 initial approach and was advised upon by solicitors --  
27 as advised upon by the solicitors for DMG Media; there  
28 was a failure to show any nexus between the legal  
29 dispute of Alison O'Reilly and the dispute she had with

1 DMG Media; there was a failure to show any  
2 justification for the attack on Alison O'Reilly's  
3 credibility; the manner of Alison O'Reilly's  
4 cross-examination exceeded the bounds of what was  
5 warranted by the nature and purpose of the Tribunal; 13:39  
6 intrusive personal questions were asked of her that had  
7 no conceivable relevance to the matters being  
8 investigated, and it is of note that the only  
9 journalist to be asked her age was Alison O'Reilly, she  
10 was also asked about her personal relationships. 13:39

11  
12 All in all, there was an attempt not just to discredit  
13 but to intimidate the witness outside the parameters  
14 which were relevant to this inquiry.

15 13:39  
16 Alison O'Reilly formed the view that Mr. Kealey, her  
17 newspaper's solicitor, was not desirous of entering  
18 into any substantial dialogue with the Tribunal on the  
19 matters raised. He tabled an account of events which  
20 was incomplete. Alison O'Reilly tabled her own note of 13:39  
21 the encounter which counsel for the Irish Mail stated  
22 Mr. Kealey would challenge. It is a matter of fact  
23 that Mr. Kealey did not offer any oral evidence or  
24 offer any opportunity to be examined on this note.

25 13:40  
26 Conclusion on evidence tendered:

27  
28 It is submitted that this contrast in conduct and  
29 circumstance should be given weight in the Tribunal's

1 consideration of any material conflict of evidence. It  
2 is suggested where there are conflicts in evidence,  
3 these should be resolved in favour of Ms. O'Reilly.  
4 Ms. O'Reilly is not attesting, as I said before, to the  
5 truth or otherwise of what she was told by Debbie  
6 McCann; she is giving an account of what she was told  
7 by Debbie McCann. It is entirely possible that Debbie  
8 McCann exaggerated her knowledge of the matter,  
9 conflated information she had obtained or adopted in  
10 her conversation, but the conversation reported by  
11 Alison O'Reilly did take place and in the terms which  
12 are contained in her statement. Alison O'Reilly acted  
13 at all times as requested by the Tribunal, responding  
14 in a timely and complete manner to those requests.  
15 This is to be contrasted with the approach adopted by  
16 DMG Media Ireland. Notwithstanding a different version  
17 of events put to Alison O'Reilly by Mr. Mohan SC on  
18 behalf of Mr. Kealey, he did not seek to give evidence  
19 on the matter of his handling of the paper at Tribunal  
20 interface. The attempts by DMG Media Ireland to  
21 conflate the Tribunal matters with other disagreements  
22 which predated the Tribunal request by more than a  
23 year, were, both in fact and in manner of the  
24 challenges made, an abuse of process.

13:40

13:40

13:40

13:41

13:41

25  
26 And the final part, Chairman, you will be relieved to  
27 hear I'm not going to address the 20 questions, but I'm  
28 going to just touch on three or four of them, and these  
29 are the ones we think we can say something usefully.

1  
2 On question 1, we think this is an absolutely  
3 fundamental question to the Tribunal's inquiry, and  
4 what we would say, having listened to a lot of the  
5 evidence here, is that it is suggested that a very wide 13:41  
6 definition is warranted. Obviously, such a definition  
7 would include allegations that Maurice McCabe was a  
8 paedophile or a kiddie fiddler or he had interfered  
9 with nephews and nieces, but it should also, in our  
10 view, include confirmation of allegations by State 13:42  
11 agencies that Sergeant McCabe was the subject of sexual  
12 allegations and that there was a damaged person at the  
13 centre of these allegations. While professionalism and  
14 care has been shown by many, many journalists, it is  
15 possible to be negatively briefed without even knowing 13:42  
16 it. The Tribunal may wish to consider whether leaks  
17 were used to influence the perception of Sergeant  
18 McCabe and his attempts to have disfunction in  
19 Cavan-Monaghan addressed. Whether this was a  
20 deliberate attempt -- whether reports based on leaks 13:42  
21 were a deliberate attempt to belittle Sergeant McCabe  
22 on behalf of those who leaked the report, or not, it  
23 could certainly be said that these leaks promoted a  
24 dialogue that Sergeant McCabe was not all he was  
25 cracked up to be by his advocates. 13:42  
26

27 Now, on questions 12 and 13, if I might take them  
28 together, relating to John McGuinness, Philip  
29 Boucher-Hayes and John Deasy, I say the following:

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As regards the evidence of the Chairman of the PAC, the Comptroller & Auditor General, Philip Boucher-Hayes, John Deasy, this evidence, if it is to be believed, would constitute direct evidence of negative characterisation of Sergeant McCabe. The evidence of Alison O'Reilly, on the other hand, is direct evidence of conversations. It is submitted that it is evidence of what may be accepted or suggested as a fact of those conversations, but not to the truth of those, of what was said. It is for the Tribunal to assess the likely truth of what was said to Alison O'Reilly, taking account of the evidence of Debbie McCann and all the surrounding circumstances, including the explanation given for refusing to disclose a conversation with Superintendent David Taylor. If the Tribunal accepts that Alison O'Reilly was told that Superintendent David Taylor confirmed to Debbie McCann that Sergeant McCabe was connected to Ms. D, being in a bad way, we submit that the refusal to confirm or deny what the superintendent may have told Debbie McCann should be taken as indicative of what she told Alison O'Reilly in that regard was true.

13:43

13:43

13:43

13:44

Question 14: what led to the visit of Debbie McCann, Eavan Murray and Paul Williams?

13:44

Two things are clear from Alison O'Reilly's evidence: Sergeant McCabe was subject to an ever-increasing

1 interest throughout 2013 and 2014. Alison O'Reilly's  
2 evidence is that Debbie McCann was increasingly  
3 exercised not by penalty points but with the sexual  
4 allegations concerning Sergeant McCabe. This is  
5 demonstrated by McCann's articles submitted to the 13:44  
6 Tribunal. Debbie McCann gave evidence to the Tribunal  
7 that she knew at the time she was going to Cavan that  
8 the allegations included tickling, and, as I said  
9 before, that phrase appears in the confidential report  
10 of Inspector Cunningham, which was not known to anyone 13:44  
11 except the gardaí until it was circulated to the  
12 Tribunal subsequent to her evidence on the point. This  
13 was after she made reference to tickling. Mrs. D in  
14 her evidence says she was horrified by the visit of  
15 Debbie McCann. 13:45

16  
17 It follows inescapably that the most likely source of  
18 the information was a revelation to her before the time  
19 of her visit and it is submitted, therefore, that her  
20 visit must have had Garda inspiration. 13:45

21  
22 Question 15, which is: Does evidence of the D family  
23 remain relevant?

24  
25 This might need to be modified. I gather there are 13:45  
26 fresh papers in today from the D family, but I will  
27 read out what I had in good time.

28  
29 The evidence of Ms. D's family remains relevant. They

1 say Debbie McCann was the first journalist to call.  
2 They say Paul Williams was the only journalist to  
3 interview Ms. D. They say Eavan Murray also visited  
4 before Paul Williams -- visited them before Paul  
5 Williams. There is an important conflict of evidence 13:46  
6 here, as Ms. Eavan [sic] says that when she visited  
7 them, it was a few days or very shortly after Paul  
8 Williams, she expressly explains that in terms of a  
9 video that was made and a discussion about that video.  
10 This is important, because if there was a discussion 13:46  
11 about the video, it would suggest the family's  
12 recollection in regard to these events might be  
13 mistaken.

14  
15 And finally, on the question of political involvement, 13:46  
16 I don't intend to depress on this, except to mention  
17 the case of Deputy Wallace and Deputy Clare Daly. The  
18 evidence suggests that Deputy Wallace and Daly had been  
19 expressing concerns about Garda management and were  
20 familiar with the concerns of Sergeant McCabe and they 13:46  
21 were in regular contact with Sergeant McCabe since in  
22 or about 2011. I've already covered the fact that  
23 there is no substance to the suggestion made by counsel  
24 that Deputy Clare Daly was contacted or asked by  
25 someone else at the request of Alison O'Reilly to raise 13:47  
26 the smearing of Sergeant McCabe in the Dáil. Deputy  
27 Daly does not know Alison O'Reilly, never met her and  
28 never asked anybody -- and was -- never asked anybody  
29 to do or -- something for her by Alison O'Reilly.



1 Thank you very much, Chairman.

2 CHAIRMAN: Thank you very much, Mr. Ó Muirheartaigh.

3 Refreshingly forthright, if I might say so. There's

4 just two things, however, that are on my mind in

5 consequence of listening to you. The first is this: 13:47

6 You're correct in saying that where two people have a

7 disagreement as to what one said to the other, that

8 this doesn't necessarily mean if one person is to be

9 believed in preference to the other, that what that

10 person was told was true, and I think we all accept 13:47

11 that. But there is an issue here. First of all, I'm

12 not bound by the hearsay rule; and secondly, even if I

13 was bound by the hearsay rule, an admission against

14 interest by a party to proceedings is an exception to

15 the hearsay rule. Now, unless you have a difficulty 13:48

16 with that. I mean, the classic example of it is R v.

17 Christie, isn't it, 1916 Appeal Cases, what is said in

18 the presence of the accused can be admitted. It can

19 also be the case that where something calls for a

20 denial and a denial is not made, that that can be taken 13:48

21 as an admission, but it is, in fact, the prime driving

22 force of the law in relation to confessions, that when

23 someone makes an admission against their interest, that

24 that is admissible in evidence. So I just tend to

25 wonder whether you're right in the submission you make 13:48

26 on -- just prior to question 14, where you say the

27 evidence of Alison O'Reilly and the others' direct

28 evidence of conversations - that is correct. It is

29 submitted that it is evidence which may be accepted or

1 rejected of the fact of those conversations - that is  
2 correct. As to whether they took place - correct. But  
3 you say not to the truth of what Alison O'Reilly was  
4 told. I am not sure that is correct. Do you get the  
5 point I'm making, Mr. Ó Muircheartaigh?

13:49

6 MR. Ó MUIRCHEARTAIGH: Yes, Chairman. Let me explain  
7 why that particular submission --

8 CHAIRMAN: Don't worry about the submission. It is  
9 just I want to move on from that.

10 MR. Ó MUIRCHEARTAIGH: I didn't mean to say, and, in  
11 fact, I tried to explain in a following paragraph that  
12 the truth of what was reported in those conversations  
13 could and should be considered in the broader context  
14 of the other things that happened, including the

13:49

15 refusal to expand on conversations with Superintendent  
16 Taylor. The reason I put that there was, Ms. O'Reilly

13:49

17 was again and again, and I'm sorry to use the word  
18 'badgered', but she was badgered really about the fact  
19 that certain things in the conversation she reported

20 couldn't be true. Now, if there are things in the  
21 conversation that couldn't be true, like about her

13:50

22 having had an interview with Ms. D, we -- the purpose  
23 of that submission is to cover off that point. In the  
24 statement Ms. O'Reilly gave the Tribunal, she only gave

25 a statement to cover what she knew and she knew she was  
26 told. But there are other pieces of evidence that have

13:50

27 come before this Tribunal which corroborate and  
28 underline many of the things that are in that  
29 conversation. And I apologise for the careless

1 drafting, but I was really trying to distinguish  
2 between the things she stands over as absolute fact and  
3 the things that had to be -- the truth has to be  
4 deduced from surrounding other evidence.

5 CHAIRMAN: Mr. Ó Muirheartaigh, I do understand, and 13:51  
6 it's just taking the sentence in a particular place it  
7 is, perhaps led me to think something that it doesn't,  
8 in fact, mean. And the second point that I wanted to  
9 ask you about in consequence of your submission was  
10 this: Again, under question 14, you say that 13:51  
11 Ms. McCann was increasingly exercised not by the whole  
12 issue of cancelling fixed charge penalty notices but  
13 the alleged sexual allegation or allegations concerning  
14 Sergeant McCabe, and then you say this is demonstrated  
15 by Debbie McCann's articles submitted to the Tribunal. 13:51  
16 Now, I can't actually for the life of me think of how  
17 there is any possible connection whatsoever. I mean,  
18 any responsible journalist is entitled to, for  
19 instance, take the view that much is being made of  
20 little, that a mountain is being made out of a 13:51  
21 molehill, but there are no articles written by anybody  
22 saying that Sergeant McCabe had done anything  
23 discreditable, and the closest anyone gets to that are  
24 the Paul Williams articles from the 14th April 2014.  
25 I'm just not sure, it may be that that came out wrong 13:52  
26 in the word processor.

27 MR. Ó MUIRHEARTAIGH: I'm afraid that seems to have  
28 come in from somewhere, and it relates to a completely  
29 different matter and is not really within the terms of

1 the Tribunal.

2 CHAIRMAN: I understand that.

3 MR. Ó MUIRCHEARTAIGH: So I would like you to disregard  
4 that.

5 CHAIRMAN: Yes. No, you have clarified this, 13:52  
6 Mr. Ó Muircheartaigh, and that isn't a problem. And as  
7 indeed I have said on a number of occasions, we live in  
8 a free country, and whether people like Sergeant McCabe  
9 or take a different view to him or not, they're  
10 absolutely entitled to do that, just as they are 13:52  
11 entitled to take a different view in relation to, for  
12 instance, a judgment of the High Court, or whatever.  
13 Thank you very much. So could I ask Mr. Freeman?

14 MR. TOM MURPHY: Tom Murphy, Chairman, instructed by  
15 Michael Kealey for Associated Newspapers. I wonder 13:53  
16 would it be prudent if I would go next?

17 CHAIRMAN: Yes, it certainly would, and I meant to do  
18 that. Just let me find you, please, if you wouldn't  
19 mind, Mr. Murphy. Yes, please go ahead.

20 13:53

21 SUBMISSION BY MR. TOM MURPHY:

22 MR. TOM MURPHY: Thank you, Chairman. I have a  
23 speaking note, which has been handed in. I don't  
24 propose to be too long.

25 13:53

26 As I said, these submissions are made on behalf of  
27 Associated Newspapers Limited, trading as DMG Media  
28 Ireland, and its journalists, and they are Debbie  
29 McCann, Sebastian Hamilton, Conor O'Donnell and Robert

1 Cox.

2  
3 Respectfully, as we see it, Chairman, the remaining  
4 terms of reference of the Tribunal of relevance to my  
5 clients are [a], [b] and [h], and adopting the 13:54  
6 numbering employed by you in your remarks on the 22nd  
7 June, Chairman, the questions relevant to my clients  
8 appear to be the following:

9  
10 4. Is it possible to tell from a false denial, for 13:54  
11 instance, but not limited to Superintendent Taylor or  
12 to any journalist, that the opposite of an assertion is  
13 in fact a truth?

14  
15 14. What led to the visits of Debbie McCann, Eavan 13:54  
16 Murray and Paul Williams to the home of Ms. D? In that  
17 regard, has journalistic privilege been properly and  
18 honestly relied on and is there any evidence proffered  
19 by these parties that is reliable? What, in truth,  
20 happened? Did the visits have any Garda inspiration? 13:54

21  
22 15. To what extent, if any, does the evidence of the D  
23 family members remain relevant?

24  
25 16. To what extent is any incorrect invocation of 13:54  
26 journalistic privilege such as to give rise to any  
27 inference and, if so, what inference does any incorrect  
28 invocation of journalistic privilege give rise to?  
29

1 Question 17 was: what is the relevance of question 5  
2 as to any incorrect or dishonest invocation of  
3 journalistic privilege? And question 5 read: Is what  
4 Superintendent Taylor claims to have done on behalf of  
5 Commissioner Callinan an understatement of the reality 13:55  
6 of what, in fact, he did? Did he do whatever he did at  
7 the behest of Commissioner Callinan and did he do it  
8 with the acquiescence or any knowledge of Deputy  
9 Commissioner O'Sullivan?

10  
11 And finally, number 18: To what extent do journalistic  
12 clashes - seven of them now today - apart from that  
13 between Alison O'Reilly and Debbie McCann, require to  
14 be resolved or even recorded in a report to the Houses  
15 of the Oireachtas, and, if so, why? 13:55

16  
17 while this submission will cover each of those matters,  
18 it is necessary, for reasons that will become apparent,  
19 to do so in a slightly different order to that adopted  
20 by you, Chairman. Thus, it is appropriate that the 13:55  
21 question of whether the Chairman is required to resolve  
22 the conflict of evidence between Debbie McCann and  
23 Alison O'Reilly should be considered first.

24  
25 Conflict of evidence: 13:56

26  
27 From her first written statement to the Tribunal  
28 onwards, Ms. Alison O'Reilly has made it clear that she  
29 has no "direct information" of the matters into which

1 the Chairman is investigating, of alleged attempts by  
2 senior gardaí to besmirch the reputation of Sergeant  
3 McCabe. She is relying wholly on things that Debbie  
4 McCann allegedly told her and which Debbie McCann  
5 strenuously denies. Thus, in her written statement to 13:56  
6 the Tribunal on the 9th June 2017, she summarised her  
7 interaction with Deputy Howlin as:

8  
9 "I said it's not really direct information. I only  
10 know what Debbie told me." 13:56

11  
12 The Tribunal has heard ample evidence from several  
13 witnesses that a number of things that Ms. McCann is  
14 alleged to have told Ms. O'Reilly did not happen. A  
15 stark example of the descriptions that she is meant to 13:56  
16 have given of an interview between her and Ms. D,  
17 Ms. O'Reilly claimed that Ms. McCann "described in  
18 detail the state the woman was in", and to have given  
19 details of the nature of the alleged assault and where  
20 it took place. She is also alleged to have said that 13:57  
21 she remained in contact with Ms. D in the period after  
22 this interview. The fact that no meeting and no  
23 interview ever took place, however, has been confirmed,  
24 not only by Ms. McCann and her colleagues in the Mail  
25 on Sunday, Conor O'Donnell, Robert Cox, but by members 13:57  
26 of the D family - Ms. D, Mr. D and Mrs. D.

27  
28 It can therefore be stated with some confidence that  
29 the Chairman is largely faced with a conflict of

1 evidence in which either Alison O'Reilly is telling of  
2 statements that were not made relating to things that  
3 could not have happened, or Debbie McCann was falsely  
4 telling her of things that did not happen. Neither of  
5 these outcomes can in any practical way assist the 13:57  
6 Chairman in determining the matters he is obliged to  
7 investigate under the terms of reference set out at  
8 paragraph 2 above. Notwithstanding the preceding  
9 paragraph, it may be argued that you, Chairman, could  
10 determine that Mr. McCann was speaking the truth when, 13:58  
11 as Ms. O'Reilly alleges, she told Ms. O'Reilly "Between  
12 2013 and 2014 that Superintendent Dave Taylor and then  
13 Acting Commissioner O'Sullivan told her Maurice McCabe  
14 abused a girl when she was a child and that the abuse  
15 was covered up because Mr. McCabe was a garda and the 13:58  
16 case was never given a Pulse number."

17  
18 Leaving aside Ms. McCann's denials and, for example,  
19 that she only became aware of any issue with regard to  
20 Pulse when Paul Williams wrote about it in the Irish 13:58  
21 Independent, these allegations are hearsay upon  
22 hearsay. While tribunals of inquiry can consider  
23 hearsay evidence, it is well-established that it must  
24 be treated with caution.

25 13:58  
26 Further and more importantly, it is not necessary for  
27 you, Chairman, to make a decision on this aspect of the  
28 evidence before you to come to a conclusion on the  
29 matters that you are obliged to investigate. The



1 Tribunal has had the advantage of hearing from all of  
2 the parties central to these issues. They are  
3 Ms. McCann, former Commissioner O'Sullivan and  
4 Superintendent David Taylor. Each has been  
5 cross-examined by several parties. Witnesses who were 13:59  
6 in a position to corroborate the allegations, or  
7 otherwise, have been called. These range from  
8 Superintendent Taylor's colleagues in the Garda Press  
9 Office, to those who worked with former Commissioner  
10 O'Sullivan, to the Teachta Dála who raised 13:59  
11 Ms. O'Reilly's allegations in the Dáil. Without  
12 relying upon hearsay evidence of little probative value  
13 and it is submitted that to place any relevance -- or  
14 reliance on evidence of such a nature would be inherent  
15 and unsafe [sic], it is submitted that you, Chairman, 13:59  
16 are actually in a position to evaluate the credibility  
17 of all the aforementioned witnesses and you do not need  
18 to rely upon matters which do not on any  
19 characterisation come close to direct evidence to  
20 fulfil the obligation the Oireachtas has entrusted in 13:59  
21 you.

22  
23 In these circumstances, it would not be in the  
24 interests of those either involved or implicated in  
25 these allegations or, in my respectful submission, in 14:00  
26 the interests of the Tribunal, to record them in a  
27 report to the Houses of the Oireachtas.

28  
29 Should you, Chairman, nonetheless decide that the

1 conflict of evidence must be resolved and included in  
2 your report, the following matters, some of which have  
3 already been touched upon, should be considered:  
4

5 The primary or initial allegations against Ms. McCann 14:00  
6 are contained in a letter from Brendan Howlin TD to the  
7 Tribunal on the 15th March 2017. Ms. McCann was  
8 unaware, until she had sight of this letter, that she  
9 was alleged to have been one of the journalists to whom  
10 Deputy Howlin made reference in his statement to the 14:00  
11 Dáil on the 8th February 2017. While there are several  
12 divergences between what Deputy Howlin told the Dáil  
13 and what is contained in his letter to the Tribunal,  
14 the central allegations bear repeating. They are:

15 14:00  
16 "Ms. O'Reilly informed me that the Mail on Sunday crime  
17 correspondent, Debbie McCann, had an ongoing  
18 communication with Garda Commissioner Nóirín O'Sullivan  
19 during 2013 and 2014. Ms. O'Reilly said that  
20 Ms. McCann told her that the Commissioner had given 14:01  
21 information to her containing serious sexual misconduct  
22 on behalf of Mr. McCabe. It involved a girl in Cavan  
23 whom it was alleged had been abused by Sergeant  
24 McCabe."

25 14:01  
26 Notwithstanding the constraints placed upon her by her  
27 obligations to uphold journalistic privilege,  
28 Ms. McCann has been clear about these allegations. As  
29 she stated in her first interview with the Tribunal

1 investigators:

2  
3 "Commissioner O'Sullivan has never mentioned or spoken  
4 to me about Sergeant McCabe, ever."

5  
6 She reiterated this when giving evidence in public.  
7 Ms. McCann's position is that, in this regard, it was  
8 wholly supported by former Commissioner O'Sullivan in  
9 her evidence. Further, former Commissioner  
10 O'Sullivan's records show no mobile telephone contact 14:01  
11 with Ms. McCann, contrary to what was alleged in the  
12 Dáil. Lastly, even Superintendent Taylor has not made  
13 the case that former Commissioner O'Sullivan was  
14 involved in a campaign to denigrate Sergeant McCabe in  
15 such a direct fashion. 14:01

16  
17 In short, there is no evidence before this Tribunal  
18 that former Commissioner O'Sullivan ever spoke to  
19 Ms. McCann about Sergeant McCabe in any way adverse or  
20 otherwise. 14:02

21  
22 Subsequent to Deputy Howlin's letter, Ms. O'Reilly  
23 wrote to the Tribunal alleging that Ms. McCann had told  
24 her that in 2013/'14 Superintendent Taylor had provided  
25 her with similar information about Sergeant McCabe. 14:02  
26 For reasons outlined in correspondence to the Tribunal  
27 from her solicitor and confirmed in evidence by  
28 Ms. McCann, she is unable, for reasons of journalistic  
29 privilege, to confirm or deny that Superintendent

1 Taylor was a confidential source or to discuss any  
2 confidential communications she may have had with him.  
3 In light of this, it is incumbent on the Tribunal to  
4 consider the other evidence before it rather than seek  
5 to draw adverse inferences from Ms. McCann's reliance 14:02  
6 upon her Article 10 rights and those provided to her  
7 under the Constitution of Ireland.

8  
9 Central to this is the visit of Ms. McCann to the home  
10 of Ms. D in early 2014. It is important to stress that 14:02  
11 the relevant terms of reference require the Tribunal  
12 not to investigate the fact of this visit or those of  
13 Ms. Murray or Mr. Williams, but whether it was prompted  
14 by an attempt by Superintendent Taylor to encourage the  
15 media to write negatively about Sergeant McCabe, as per 14:03  
16 term of reference [a], or as a result of having been  
17 "directed to draw journalists' attention to an  
18 allegation of criminal misconduct made against Sergeant  
19 McCabe", term of reference [b].

20 14:03  
21 In this third statement to the Tribunal on the 22nd  
22 Tribunal 2017, which he reiterated in evidence,  
23 Superintendent Taylor said the following about the  
24 visits to Ms. D's home by Ms. McCann and Ms. Murray:

25 14:03  
26 "I was made aware they were going up there, I did not  
27 discourage it. I don't know if I knew Ms. D's name. I  
28 knew that Ms. D's family lived up in Cavan. I don't  
29 know if I knew their address. I don't think so. I do

1 remember Debbie McCann and Eavan Murray contacting me  
2 separately and telling me that they were going to do a  
3 story, before each of them went up to Cavan. I don't  
4 think I gave these journalists any information about  
5 the address of Ms. D. I recall they had a fair amount 14:04  
6 of information themselves. I was aware they were going  
7 to the house, yes. I did not discourage them from  
8 attending Cavan. I would have encouraged it."

9  
10 "Further, I did not provide any information in relation 14:04  
11 to Ms. D, I did not know her first name, I did not know  
12 the detail. I knew it was an allegation against  
13 Sergeant McCabe by Mr. D's daughter. They both had  
14 this level of detail, from my recollection. I have  
15 been asked if I confirm the information that it was 14:04  
16 Mr. D's daughter that had made the allegations against  
17 Sergeant McCabe and I believe that I did confirm that  
18 to them both separately. They would have been aware of  
19 our attitude to Sergeant McCabe. They would have known  
20 this from my previous briefings. They would, 14:04  
21 therefore, have been telling me what they were going to  
22 do. I do not -- I would not discourage it as it suited  
23 the agenda."

24  
25 Finally, he says: 14:05

26  
27 "I remember Debbie McCann contacting me before she went  
28 to Cavan to Ms. D's home, but I cannot remember her  
29 contacting me afterwards."

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29

In summary, Superintendent Taylor says that while he had, at unspecified times, dates and places and in a wholly unspecified manner, negatively briefed Ms. McCann, he did not speak with her until she was on her way to visit the Ds' property, had provided no information to facilitate the visit, was aware that she had "a fair amount of information" prior to it and has no recollection of any contact or discussion with Ms. McCann subsequently.

Ms. McCann has strenuously denied that she was negatively briefed by any member of An Garda Síochána in relation to Sergeant McCabe. She has confirmed that she had multiple sources in respect of the allegations against Maurice McCabe made by Ms. D and that they were both Garda and non-Garda sources. She did not contact the Garda Press Office about the allegation. She obtained the address of the D family through her own efforts rather than from sources. Her description of the important elements of her interactions with Mrs. D, namely that they met at the home of the D family, that they had a conversation in which Mrs. D declined an interview with Ms. McCann, that Ms. McCann never met Ms. D, and that, following the meeting at the D household, Ms. McCann took the matter no further, all have been confirmed by Mrs. D. It is accepted by all parties and by the Tribunal that Ms. McCann did not write negatively about Sergeant McCabe on the Ms. D

1 allegation or on any other matter.

2  
3 Evidence before the Tribunal has shown that knowledge,  
4 sometimes detailed, of the sexual allegations against  
5 Sergeant McCabe were well-established among gardaí in 14:06  
6 the Cavan-Monaghan region, at Garda Headquarters and  
7 among politicians, especially in Leinster House, and  
8 journalists. It is set out and supported by evidence  
9 given to the Tribunal that journalistic interest in  
10 Sergeant McCabe and the allegations he was making 14:07  
11 against, increased considerably in the period after  
12 former Commissioner Callinan described his actions as  
13 'disgusting' when appearing before the PAC on 23  
14 January 2014. It is not, therefore, at all surprising  
15 that a number of media outlets would seek to explore 14:07  
16 various aspects of Sergeant McCabe's past at this time.  
17 The fact that four national newspapers sought to make  
18 contact with the D family - the Irish Mail on Sunday,  
19 the Irish Sun, the Irish Daily Star and, successfully,  
20 the Irish Independent - is hardly a surprise. This is 14:07  
21 how independent journalists operate, especially when  
22 the persons being sought are part of a bigger story of  
23 the day. This cannot be taken, on any reasonable view,  
24 as a sign that the journalist in question has been  
25 directed or encouraged to follow this path either by 14:07  
26 gardaí or by others. It is submitted that there is  
27 certainly no evidence before the Tribunal that could  
28 lead to any such deduction with regard to Ms. McCann.  
29 On the remaining allegations by Ms. O'Reilly, the

1 following factors should be borne in mind:

2  
3 A. Several of the matters she alleges were told to her  
4 simply could not have happened.

5 14:08

6 B. If, as now appears to be alleged, Ms. McCann was  
7 inventing matters as a form of braggadocio, which she  
8 strenuously denies, her lies would have quickly  
9 unravelled, especially the crucial ones that she had an  
10 hour-long interview with Ms. D and that her story had  
11 not appeared in the paper only because her  
12 editor-in-chief, Sebastian Hamilton, didn't want the  
13 story in the paper because he was too cautious about  
14 the scandal, and that she was annoyed about this. All  
15 of this is wholly inconsistent with what Ms. McCann has  
16 told several of her colleagues in the Irish Mail on  
17 Sunday. As she pivotally described her interactions  
18 with Mrs. D, there was no story.

14:08

14:08

19  
20 Ms. McCann has no earthly reason to make up what she is  
21 alleged to have said, and no credible explanation as to  
22 why she had done so has been produced to this Tribunal.  
23 On the other hand, for reasons detailed in Mr. Kealey's  
24 letters of the 13th April 2018 to the Tribunal  
25 solicitor, Ms. O'Reilly had a strong motivation,  
26 largely as a result of her dispute with her employers,  
27 to make the allegations that she did, not just to the  
28 Tribunal but to Deputy Howlin and earlier to Alan  
29 Crohan, who subsequently passed them to Deputy Clare

14:08

14:09



1           Daly.

2  
3           That three different versions of text conversation  
4           between Ms. McCann and Ms. O'Reilly have sought to be  
5           relied upon by Ms. O'Reilly in support of her evidence   14:09  
6           is of concern to my clients and it is respectfully  
7           submitted that the Tribunal should be similarly greatly  
8           concerned by this. Ms. O'Reilly sought to implicate  
9           Ms. McCann's father, retired Superintendent John  
10          McCann, in the allegations she made concerning Debbie   14:09  
11          McCann. Ms. O'Reilly led this Tribunal to believe,  
12          both in her written statements to the Tribunal and also  
13          in the evidence that she gave, that superintendent  
14          McCann was "a source" of the information for Ms. McCann  
15          in her journalistic work.   14:10

16  
17          Superintendent McCann was the head of the Domestic  
18          Violence and Sexual Assault Investigations Unit within  
19          the National Bureau of Criminal Investigation. The  
20          Tribunal heard strong denials from both Ms. McCann and   14:10  
21          from Superintendent McCann, this allegation was utterly  
22          false.

23  
24          In short, the factual evidence before this Tribunal all  
25          points in the direction of Ms. McCann's evidence is   14:10  
26          credible while Ms. O'Reilly's is not.

27  
28          Evidence of the D family:  
29

1 For the reasons outlined above, especially in paragraph  
2 5 of the speaking note, the evidence of the D family is  
3 not just relevant but important in corroborating the  
4 nature of the interaction between Mrs. D and Ms. McCann  
5 and the extent of Ms. McCann's pursuit of the matter 14:10  
6 following their meeting.

7  
8 Invocation of journalistic privilege, questions 16 and  
9 17. Questions posed by you, Chairman, refer to two  
10 possible inappropriate invocations of journalistic 14:10  
11 privilege: incorrect and dishonest. It is necessary  
12 to deal with these separately.

13 CHAIRMAN: There is one other as well, Mr. Murphy,  
14 which is correct invocation of journalistic privilege.  
15 And I don't mean to stop you, but it may be 14:11  
16 misunderstood, because what I said on Friday last was  
17 pretty long and pretty complicated.

18 MR. TOM MURPHY: Yes.

19 CHAIRMAN: But it could be the case that someone has  
20 correctly invoked journalistic privilege where, let us 14:11  
21 say, the source has come out publicly and said that, I  
22 did such and such, but in fact it's only the tip of the  
23 iceberg, and the journalist, using that person as a  
24 source prior to them coming out, has been told the  
25 other nine-tenths of the iceberg and feels, therefore, 14:11  
26 under a duty of confidence. So there are three, I  
27 think, possibilities.

28 MR. TOM MURPHY: Yes.

29 CHAIRMAN: And you can address that one as you go along

1 if you wish, but I just thought, just for fear I was  
2 unclear, I just thought you should perhaps be reminded  
3 of that.

4 MR. TOM MURPHY: Thank you, Chairman. Yes. And I  
5 think I've actually -- if you just refer to my reading 14:11  
6 note, I'm speaking about the two possible inappropriate  
7 invocations. It is necessary to deal with these  
8 separately. The possibility that the privilege has not  
9 been honestly invoked is also touched upon in question  
10 14, which is dealt with further on. 14:12

11  
12 On June 22nd, 2018, you, Chairman, heard submissions on  
13 privilege, including those on behalf of my clients, and  
14 there is no need to repeat these now, save to say that  
15 they primarily address the question of whether 14:12  
16 privilege is correctly invoked by my clients and  
17 especially by Ms. McCann. It is important to record at  
18 the outset that no party to the Tribunal has suggested  
19 or alleged that Ms. McCann's reliance on Article 10  
20 rights is anything other than honest. Furthermore, 14:12  
21 there is no evidence that her invocation of  
22 journalistic privilege was anything other than  
23 principled. On several occasions during her evidence  
24 Ms. McCann made clear how difficult a position she had  
25 been placed in because of her stance, thus she told the 14:12  
26 Tribunal:

27  
28 "I really wish I could help you further on this, it  
29 would probably make my life easier if I could help you

1 further on this, but I have a career as a journalist  
2 that I'm very keen to protect in all of this, as well  
3 as assist your work, obviously. And again, I can't  
4 answer that question. He" -- meaning  
5 Superintendent Taylor -- "has waived privilege. I am 14:13  
6 the journalist and I believe that that decision lies  
7 with me. I have a career to think about going forward.  
8 I can't go there. I would love to go there, but I  
9 honestly cannot do that."

10  
11 The impact on Ms. McCann's career and livelihood of  
12 revealing confidential sources was stressed by her on  
13 several occasions. For example, she said:

14  
15 "I am in a position where I am trying my best to defend 14:13  
16 not only my own career as a journalist but also assist  
17 the Tribunal. It is a very difficult position to be  
18 in. By revealing the contents of my communication and  
19 conversations with a source, it is leaving me very much  
20 open as a journalist not to be trusted when I continue 14:13  
21 my career as I intend to do."

22  
23 This is an archetypal catch-22: answer the question  
24 and your career will be damaged, perhaps irrevocably;  
25 don't answer the question and your failure to do so 14:13  
26 could lead to adverse inferences, including, most  
27 seriously, a potential finding of dishonesty. Further,  
28 and despite some suggestions to the contrary, the  
29 stance adopted by Ms. McCann in relation to her

1           journalistic privilege is mirrored by other  
2           journalists, including some who, like her, sought to  
3           contact Ms. D. Thus, Conor Lally and The Irish Times,  
4           who, albeit somewhat later, published an interview with  
5           Ms. D, relied upon his Article 10 rights, and his           14:14  
6           position was not altered by the fact that  
7           Superintendent Taylor, Commissioner O'Sullivan and  
8           former Commissioner Callinan are not claiming  
9           privilege. Like Ms. McCann, Mr. Lally also told the  
10          Tribunal that no Garda member, past or present, had           14:14  
11          ever briefed him negatively about Sergeant McCabe.

12  
13          Similarly, Michael O'Toole of the Irish Daily Star told  
14          the Tribunal, in response to his having been identified  
15          by Superintendent Taylor as one of the reporters to           14:14  
16          whom he passed negative information about Sergeant  
17          McCabe, he said:

18  
19          "I am going to claim journalistic privilege. The  
20          principle of journalistic privilege is very important           14:14  
21          to me. However, I do wish to state that nobody in any  
22          position of authority in An Garda Síochána smeared  
23          Maurice McCabe to me or negatively briefed me about  
24          Sergeant McCabe. "

25  
26          Mr. O'Toole had contacted Mr. D by Facebook in early  
27          2014, according to the latter's evidence.

28  
29          Finally, John Mooney of the Sunday Times, who

1 repeatedly approached Ms. D via Facebook, declined to  
2 answer certain questions of him by the Tribunal,  
3 relying on his privilege as a journalist. All these  
4 journalists had regular ongoing contact with  
5 Superintendent Taylor at the relevant time, yet none 14:15  
6 have had their honesty impugned, and neither should  
7 Ms. McCann.

8  
9 Question 17 appears to proceed on the basis that  
10 journalists may have improperly or dishonestly invoked 14:15  
11 privilege to assist Superintendent Taylor because what  
12 he was allegedly saying to reporters was worse than he  
13 was outlining to this Tribunal. Such a finding,  
14 certainly in relation to Ms. McCann, would require a  
15 very substantial leap on the part of this Tribunal, on 14:15  
16 the evidence before it. While Superintendent Taylor  
17 has told the Tribunal that Ms. McCann was one of the  
18 several journalists he would negatively brief, which  
19 Ms. McCann denies, there is no evidence that Ms. McCann  
20 is seeking to down-play any wrongdoing by him by 14:16  
21 exercising Article 10 rights. Further, there is no  
22 conceivable reason why she would do this. The Tribunal  
23 must ask itself, it is submitted, how does it benefit  
24 Ms. McCann to lie to this Tribunal, to cover up  
25 anything Superintendent Taylor was telling her and 14:16  
26 other journalists about Sergeant McCabe was worse than  
27 that he had alleged he said? It is submitted that if  
28 Ms. McCann was willing to lie for Superintendent  
29 Taylor, surely the easiest avenue for her would be to

1 simply lie to the Tribunal in evidence and deny that  
2 Superintendent Taylor was a source. The fact that  
3 Ms. McCann went through the obviously difficult  
4 experience of claiming privilege and under  
5 cross-examination from a number of parties and in the 14:16  
6 face of important observations from the Chairman as to  
7 the effects of claiming such privilege, refused to  
8 waiver on the point, convincingly suggests that her  
9 reliance on Article 10 and her rights contained therein  
10 was both honest and appropriate. Further, it is also 14:17  
11 undermining of a suggestion of a contrivance on her  
12 part in the interests of protecting Superintendent  
13 Taylor. Further, even if this Tribunal was to  
14 determine that Ms. McCann's reliance on journalistic  
15 privilege was incorrect as opposed to dishonest, this 14:17  
16 also could not justify any inference that she had done  
17 so to assist Superintendent Taylor or to cover up any  
18 additional wrongdoing on his part. Such a finding  
19 would be, in the absence of any other evidence, and it  
20 is submitted that there is no such evidence, a breach 14:17  
21 of her Article 10 rights, suggesting, as it necessarily  
22 would, impropriety on her part and thereby damage her  
23 professional standing and good name.

24  
25 Insofar as it is alleged that Ms. McCann's visit to the 14:17  
26 home of Ms. D was the result of a campaign of briefings  
27 by gardaí, that has already been dealt with in my  
28 submissions.  
29

1 False denials:

2  
3 For the reasons outlined previously, Chairman,  
4 particularly in paragraphs 4 and 22 of the speaking  
5 note, the Tribunal could not conclude that any of my 14:17  
6 clients who gave evidence to it could be taken to have  
7 made false statements or to have given false denials.  
8 That said, in the event that you were to so conclude,  
9 Chairman, the mere fact that a false denial has been  
10 given cannot, in the absence of other corroborative 14:18  
11 evidence, lead to a conclusion that the opposite  
12 assertion must be true. A denial may be wholly or  
13 partly false, as may be the assertion to which the  
14 response has been given, neither party may be telling  
15 the truth, wholly or in part. It is, of course, open 14:18  
16 to the Tribunal to determine the credibility, or  
17 otherwise, of any witness before it, but that cannot  
18 involve a decision that an adverse finding of itself  
19 must corroborate the alternative.

20  
21 Visit to Ms. D's home:

22  
23 The circumstances surrounding and the evidence  
24 regarding Ms. McCann's visit to the home of Ms. D are  
25 outlined in previous paragraphs of the speaking note, 14:18  
26 Chairman. It is not necessary to repeat them.  
27 However, the central question and indeed the only  
28 question which falls within the terms of reference is:  
29 Did the visits have any Garda inspiration? while



1 Ms. McCann has accepted that her sources of information  
2 regarding the allegations about Sergeant McCabe were  
3 Garda and non-Garda, she has consistently made clear  
4 that in seeking to firm up the information which she  
5 had received, she was not directed or therefore 14:19  
6 inspired to do so by anyone. As she told the  
7 Tribunal's investigators:

8  
9 "Sources don't direct me to do my job."  
10 14:19

11 Further, even counsel for Superintendent Taylor stated  
12 that he could not advance the theory that his client  
13 had directed Ms. McCann to go to Ms. D's home. There  
14 is no evidence that any member of An Garda Síochána  
15 pushed, directed or inspired Ms. McCann to follow up 14:19  
16 this line of inquiry.

17  
18 In summary, the evidence before the Tribunal is that  
19 Ms. McCann, acting in a wholly professional manner,  
20 sought to ascertain the accuracy of information she had 14:19  
21 received. She did so in a sensitive and appropriate  
22 way by approaching those persons best able to confirm  
23 or deny the allegations. When they declined to do so,  
24 she took the matter no further. This is what  
25 professional journalists do, and any finding to the 14:19  
26 contrary would, it is respectfully submitted, be  
27 perverse.

28  
29 It is important to stress that, in seeking to assist

1 the Tribunal, journalists are faced with professional  
2 obligations which require serious consideration. My  
3 clients have, it is submitted, at all times sought to  
4 assist the Tribunal with its investigation, both  
5 through statements to the Tribunal investigators and 14:20  
6 through direct evidence and under cross-examination.  
7 At no time have they either dishonestly or improperly  
8 sought to hinder its work. Any finding or inference  
9 drawn to the contrary would be devastating both  
10 personally and professionally for those involved. 14:20  
11 while it is submitted that any such finding would be  
12 unwarranted given the evidence before the Tribunal, it  
13 is important to again emphasise that the reliance on  
14 the rights afforded to journalists either through  
15 Bunreacht na hÉireann or by virtue of Article 10 of the 14:20  
16 European Convention on Human Rights, has only been done  
17 so for professional and legitimate reasons and with a  
18 view to the protection of sources in the wider context  
19 of this democratic society. The Tribunal is urged to  
20 be mindful of these core principles when assessing the 14:20  
21 evidence.

22 CHAIRMAN: Thank you very much, Mr. Murphy. There's  
23 just a couple of things that arise in relation to that.  
24 You make a number of references to Article 10. As you  
25 are aware, Article 10 has two parts. The first gives 14:21  
26 rise to what is the right to communicate.

27 MR. TOM MURPHY: Yes.

28 CHAIRMAN: which, in the case of journalists, as I have  
29 said already in my ruling, involves confidential

1 communication, the non-revelation of sources, but it  
2 is, of course, under the second part of Article 10,  
3 subject to the good of society.

4 MR. TOM MURPHY: Yes.

5 CHAIRMAN: I don't, therefore, know how journalists can 14:21  
6 possibly claim that the privilege is theirs and not a  
7 privilege that is granted by society for specific  
8 reasons, which, if it steps outside that, can require  
9 an answer? That is a question.

10 MR. TOM MURPHY: Sorry, Chairman, yes. I mean, these 14:21  
11 submissions were made previously on the point, I think.  
12 whoever claims to have owned the privilege, I think the  
13 test remains the same, the test that I previously  
14 outlined, I think, in the submissions to you last week,  
15 and they were whether there is this pressing need for 14:22  
16 the information that has been sought. Journalists, I  
17 suppose, in many ways, they see it as their own, and I  
18 can see why they might do that, given the nature of the  
19 profession that they engage in, but it is certainly my  
20 client's position that it is not for Superintendent 14:22  
21 Taylor to waive that privilege.

22 CHAIRMAN: Right. The second point is the point that I  
23 asked Mr. Ó Muircheartaigh about. You'll appreciate  
24 it's all very well to say hearsay, hearsay, but hearsay  
25 has exceptions. 14:22

26 MR. TOM MURPHY: Yes.

27 CHAIRMAN: The biggest and most obvious exception is  
28 that admission against interest is never taken as  
29 hearsay. I don't have to cite any case law in that

1 respect. It goes back hundreds of years.

2 MR. TOM MURPHY: Yes.

3 CHAIRMAN: So if there was an admission, and I say if,  
4 and please don't take any question as being an  
5 assertion, it's not, if there was an admission against 14:23  
6 interest by Debbie McCann, then that's surely something  
7 I am entitled to rely on, even if I was sitting as a  
8 judge in the High Court. I don't know if you quarrel  
9 with that proposition?

10 MR. TOM MURPHY: Sorry, Chairman, I mean, it has been 14:23  
11 our position that the conversations which  
12 Mr. Ó Muirheartaigh asserts did take place, it has  
13 been Ms. McCann's position from the very outset that  
14 they did not take place, so I am not sure that there is  
15 an admission against interest there, but it is firmly 14:23  
16 our position that they did not take place.

17 CHAIRMAN: I get that. But, I mean, whatever about the  
18 very colourful comment made by a public representative  
19 here last week, and obviously I have no quarrel with  
20 that public representative, he is obviously a decent 14:24  
21 person, as to the amount of lies told to the Tribunal,  
22 the plain reality is that, with this, if I think,  
23 Mr. Murphy, that I have to resolve this issue as to who  
24 said what, vis-à-vis the conversations between  
25 Ms. O'Reilly and Ms. McCann, the plain reality is that 14:24  
26 if I resolve them in a particular way, then it may be  
27 that I am dealing with an admission against interest by  
28 a party. In the context of a court case, I would be  
29 entitled to rely on that. In the context of a criminal

1 case, that would amount to an admission. In this  
2 context, where I'm not bound by the hearsay rule, it  
3 seems to me that those considerations merely help to  
4 illuminate this but don't stop me from reaching a  
5 conclusion in the event that I were to come to that  
6 conclusion. 14:24

7 MR. TOM MURPHY: Thank you, Chairman, yes. I can't  
8 quarrel with that too much, I would have to say. But I  
9 would say that there really isn't any further  
10 corroborating evidence of the matters that have been  
11 put forward. 14:25

12 CHAIRMAN: You're relying principally, Mr. Murphy, on  
13 the lack of substance --

14 MR. TOM MURPHY: Yes.

15 CHAIRMAN: -- between what was behind what was  
16 allegedly said -- 14:25

17 MR. TOM MURPHY: Yes.

18 CHAIRMAN: -- to say that they weren't said or I should  
19 find they probably weren't said.

20 MR. TOM MURPHY: Yes. And in my speaking note, I have  
21 urged caution in respect of that. 14:25

22 CHAIRMAN: The next matter was, I am somewhat puzzled,  
23 given that Ms. McCann said that she was never  
24 negatively briefed by Commissioner O'Sullivan,  
25 Superintendent Taylor or Commissioner Callinan, as to  
26 why no question was ever put to those witnesses on  
27 behalf of her or on behalf of the Daily Mail or the  
28 Mail on Sunday -- sorry, no question was put to, I  
29 obviously mean Nóirín O'Sullivan, Commissioner Callinan 14:25

1 or David Taylor on behalf of the Mail on Sunday or the  
2 Irish Daily Mail or the represented journalists and  
3 editor.

4 MR. TOM MURPHY: Yes, Chairman. Well, I think it is  
5 obviously an incredibly difficult position to be in if 14:26  
6 you are claiming privilege over certain conversations  
7 or sources or information, depending on which way you  
8 would look at it, that you would then go in and  
9 stress-test the particular evidence to which you are  
10 refusing to give any information, but I think that was 14:26  
11 made clear to the Tribunal previously, but I can't put  
12 it any further than that.

13 CHAIRMAN: Well, it may be we're back to Browne v. Dunn  
14 yet again. Just another thing: The address of the D  
15 family, Ms. McCann says, was obtained through her own 14:26  
16 efforts rather than from sources. I presumed that  
17 meant looking at the phone book, but to do that one has  
18 to have a first name and a second name.

19 MS. TOM MURPHY: I think in evidence she accepted that  
20 she had the name, but it was her own endeavours, 14:26  
21 presumably through the phone book, I think she may well  
22 have said that in her evidence. She resourced that  
23 herself.

24 CHAIRMAN: And then I think the last substantial matter  
25 is that the Irish Daily Mail and the Mail on Sunday are 14:27  
26 saying that Alison O'Reilly gave evidence out of  
27 bitterness, but the Irish Daily Mail and the Mail on  
28 Sunday are also telling me that I can't make a finding  
29 that there may have been improper or dishonestly

1 invoked privilege.

2 MR. TOM MURPHY: Yes.

3 CHAIRMAN: Just merely stating it perhaps shows the  
4 disharmony between those two positions, and given that  
5 your clients have had every possible opportunity 14:27  
6 perhaps not to rely on their previous correspondence,  
7 accusing one of their own staff members of dishonest  
8 conduct and deliberately supporting a different staff  
9 member, I just tend to wonder where that stands?

10 MR. TOM MURPHY: Chairman, I think correspondence came 14:28  
11 from my clients saying that they couldn't challenge the  
12 credibility of Ms. O'Reilly without doing so under  
13 cross-examination, I think, is that right?

14 CHAIRMAN: well, I think we're way past the whole  
15 notion of correspondence. I mean, the reality is, the 14:28  
16 position that was taken was adopted in evidence.

17 MR. TOM MURPHY: Yes.

18 CHAIRMAN: was actually supported by evidence, but it  
19 was evidence of opinion, and indeed I think I put it to  
20 Mr. Hamilton that there is a vast difference between, 14:28  
21 for instance, disliking somebody and then doing  
22 something bad to them. That seems to me to be a leap.  
23 I don't know whether you feel you want to make a  
24 submission on that. And I'm not saying you've left  
25 anything out, Mr. Murphy, your submissions have been 14:29  
26 very comprehensive and to the point, if I may say so.

27 MR. TOM MURPHY: Sir, I don't think I can put the  
28 matter much further than that.

29 CHAIRMAN: Thank you very much, and I'm very

1 appreciative of your help. So can I just go through  
2 things, if I may, from the start, ladies and gentlemen.  
3 So I have heard -- the Tribunal, Mr. McGuinness would  
4 come back at me in the event that there is any serious  
5 error of law made by anybody which he feels I ought to 14:29  
6 be corrected on, and obviously he is here with  
7 Mr. Marrinan and Ms. Leader and Ms. Mullan.  
8 Mr. McDowell is going at the end, so is the  
9 Commissioner and the various represented gardaí. I  
10 have heard from Superintendent Taylor, I have heard 14:30  
11 from Alison O'Reilly, I have heard from RTÉ. I just  
12 want to make sure. And then there's Independent News &  
13 Media, is the next one, so would I take a submission  
14 from Independent News & Media now?  
15 MR. MCGUINNESS: Chairman -- 14:30  
16 CHAIRMAN: Sorry, Mr. McGuinness, I beg your pardon.  
17 MR. MCGUINNESS: -- might I just say that Mr. Fanning,  
18 Senior Counsel, has been in direct contact and he  
19 expected to be here tomorrow morning --  
20 CHAIRMAN: That is fine. 14:30  
21 MR. MCGUINNESS: -- to do that.  
22 CHAIRMAN: That is absolutely fine.  
23 MR. QUINN: well, Chair, I could go on behalf of the  
24 Examiner, if that was convenient. I have a relatively  
25 short submission. 14:30  
26 CHAIRMAN: Yes. well, certainly, you can do that.  
27 Thank you, Mr. Quinn. And I don't mind if someone is  
28 here tomorrow, not today, that's grand.  
29 MR. BUCKLEY: Chairman, if it is convenient, on behalf



1 of the D family - Mr. Buckley - we might follow  
2 Mr. Quinn, if that is convenient to the Tribunal. I  
3 will be very brief, less than five minutes or so.

4 CHAIRMAN: well, I am happy to take you whenever you  
5 want. Do you want to go now? 14:31

6 MR. BUCKLEY: I think Mr. Quinn was keen to proceed  
7 first, so I'm very happy with that.

8 CHAIRMAN: Yes, Mr. Quinn, I am all ears.

9

10 SUBMISSION BY MR. QUINN: 14:31

11 MR. QUINN: Thank you, Chairman. We have a speaking  
12 note prepared and Ms. English will just pass a copy of  
13 that in. This closing submission will be brief, Chair.  
14 It's on behalf of the Irish Examiner, its former editor  
15 Tim Vaughan, and then its journalists Mick Clifford, 14:31  
16 Cormac O'Keefe, Juno McEnroe and Daniel McConnell.

17

18 And, Chair, you already have the benefit of the  
19 submission that was made on Friday by Mr. English in  
20 relation to journalistic privilege and the speaking 14:31  
21 note that we circulated on Friday.

22

23 We have carefully considered, Chair, the 20 detailed  
24 questions which you set out on Friday, on page 146 of  
25 the transcript of that day, and, having considered 14:31  
26 those, from our perspective it seems to us that they  
27 are perhaps more appropriately addressed by the  
28 principal protagonists or at least others who have been  
29 involved in this module. As it happened, neither the

1 Examiner nor its journalists have been involved in any  
2 journalistic clashes, either one way or the other. And  
3 obviously the Tribunal will be conscious that the  
4 hearings are not an inter partes nature, and none of  
5 our parties nor the legal advisers have been present 14:32  
6 for the entirety of the module, so we don't propose to  
7 address the central issues which the Tribunal has to  
8 consider as part of its terms of reference in this  
9 module. From our perspective, however, there are some  
10 key points we would just like to briefly outline. They 14:32  
11 are set out in bullet-point format on page 2 of the  
12 speaking note.

13  
14 Firstly, to reiterate that, in our view, journalistic  
15 privilege properly arises in relation to Mr. McEnroe, 14:32  
16 O'Keefe and O'Connell in their capacity as  
17 journalists, and that the privilege has been  
18 appropriately invoked by them in that context.

19  
20 Secondly, the privilege is not that of the source and 14:32  
21 it's not designed or intended to benefit the source.  
22 The fact that an alleged source has apparently waived  
23 privilege is not determinative.

24  
25 Thirdly, there is vital public interest behind 14:33  
26 protecting journalistic privilege, which should only be  
27 pierced in limited cases in the public interest and  
28 where absolutely necessary, and, to use that  
29 well-rehearsed quote, unless it is justified by an

1 overriding requirement in the public interest. And  
2 then as Mr. Vaughan, a former editor of the Examiner  
3 with 15 years' experience explained during his  
4 evidence, if you are a journalist who would decide to  
5 reveal the source, whether the source chooses to or 14:33  
6 not, then it has the potential to cause problems down  
7 the line in relation to future contacts who might  
8 decide not to approach you with stories in the public  
9 interest.

10  
11 Next we say that to draw negative or indeed any 14:33  
12 inferences from the evidence of witnesses who have  
13 invoked privilege, runs the risk of undermining the  
14 privilege itself and its purpose and could do so in an  
15 unstructured way. We say there should be no attempt, 14:33  
16 without coherently meeting the necessary and carefully  
17 calibrated legal tests, to circumvent the privilege by  
18 drawing inferences.

19  
20 Next we say that the privilege has been honestly 14:33  
21 invoked by these journalists and in a considered manner  
22 and in the specific context of the factual issues that  
23 arise herein. We say it is entirely misguided and  
24 contrary to the privilege itself to expect those  
25 invoking it to set out in detail precisely how the 14:34  
26 privilege will be damaged if they address the  
27 questions. As was painstakingly explained in Becker,  
28 even to do so runs the risk of undermining the  
29 privilege. Each of the journalists has independently

1 adopted a bona fide position about an issue critical to  
2 their profession.

3  
4 Next we say that each of the parties has cooperated  
5 with the Tribunal and has engaged honestly with the 14:34  
6 Tribunal. And then over on to page 3 we say there is a  
7 huge public interest in maintaining journalistic  
8 privilege and confidentiality, which should not be  
9 undermined without comprehensively and in a reasoned  
10 fashion addressing the requirements of the 14:34  
11 jurisprudence.

12  
13 And then 8, we say: Aside from the foregoing, it is  
14 submitted that no necessity has been established or  
15 successfully contended for by any party to establish 14:34  
16 why it is essential for these journalists to answer  
17 those questions to enable the Tribunal to reach a  
18 decision on the matters pertinent to the terms of  
19 reference in this module.

20 14:34  
21 At 9 we say: It should also be noted on behalf of  
22 these journalists that they firmly submit that no  
23 inferences should be drawn one way or another based on  
24 their answers. The arguments of other parties that  
25 inferences should be drawn one way or the other are 14:35  
26 self-serving and unjustified.

27  
28 And then finally we say, and perhaps this is not  
29 central from the Tribunal's perspective, there was an

1 unjustified collateral attack on the Irish Examiner by  
2 and on behalf of the Garda Commissioner and the former  
3 commissioners, and this is utterly rejected and was  
4 entirely unjustified for the reasons which we set out  
5 below. You will recall, Chairman, this occurred at the 14:35  
6 end of Mr. Clifford's evidence, and at the end of  
7 Mr. Vaughan's evidence we say it was a gratuitous,  
8 deliberate and was a considered attack.

9  
10 The initial news coverage of the Examiner in October 14:35  
11 2016, the coverage commenced on the 4th October, of the  
12 protected disclosures, was entirely justified,  
13 irrespective of the conclusions that may or may not be  
14 drawn by this Tribunal.

15 14:35  
16 In short, the effort on behalf of the Commissioner in  
17 particular to attack and criticise the Irish Examiner  
18 in this regard is a classic example of trying to shoot  
19 the messenger. The fact that two senior serving  
20 members of An Garda Síochána had made hugely 14:36  
21 significant protected disclosures to the Department of  
22 Justice back in September 2016 was unprecedented and  
23 entirely newsworthy. Mr. Clifford gave detailed  
24 evidence of that on Day 85.

25 14:36  
26 In addition, we point out that neither former  
27 commissioner contacted the Irish Examiner at the time  
28 to make a complaint or seek a right of reply, nor have  
29 they ever since made any complaint to the Irish

1 Examiner, either directly or via the Press Ombudsman.  
2 Former Commissioner O'Sullivan did make a public  
3 statement on the 5th October and this was quoted  
4 extensively by the Irish Examiner on the 6th October on  
5 page 1 and on page 6 stories under the headline 14:36  
6 "O'Sullivan denies all knowledge of plots". Former  
7 Commissioner O'Sullivan did not resign until September  
8 10th, 2017, almost a year later. The true position is  
9 that this story was hugely newsworthy and the Irish  
10 Examiner reported the fact that these protected 14:36  
11 disclosures had been made, the nature of the complaints  
12 and the allegations and that they raised serious and  
13 significant issues.

14  
15 We say it's wholly unrealistic to expect that this news 14:36  
16 should not have been published until, somehow or other,  
17 the actual full validity of all of the claims are fully  
18 investigated. We say that clearly those issues are  
19 part of the central matters being explored by the  
20 Tribunal and they have taken significant and careful 14:37  
21 probing, much of which has only unfolded gradually and  
22 during the course of this module itself.

23  
24 And then, Chair, just only by way of example, we point  
25 to two events that happened as recently as last week. 14:37  
26 One was during the cross-examination of the editor of  
27 the Irish Daily Mirror by counsel for the former  
28 commissioners, where it emerged that he was saying that  
29 he had become aware over the following two or three

1 weeks that the story, namely the Ms. D allegation about  
2 Sergeant McCabe, had been peddled around town by  
3 Superintendent Taylor to a number of other news  
4 outlets. That evidence only emerged last week.

5 Mr. Kierans confirmed under further questioning by  
6 counsel on behalf of the gardaí that the story about  
7 Sergeant McCabe that we were offered was certainly sent  
8 to at least two or three other newsrooms, and I  
9 discovered that in the two or three weeks after we had  
10 the story that Cathal McCann [sic] had. And just

11 another example we gave of how this complicated,  
12 difficult issue has evolved is the statement from Tom  
13 Donnelly, again I think just of last week, the 18th  
14 June, where he confirms what he says Philip

15 Boucher-Hayes said to him; that, namely, after  
16 Commissioner Callinan had -- or former Commissioner  
17 Callinan had spoken to Philip Boucher-Hayes and  
18 indicated that he could get more information by  
19 contacting Superintendent Taylor, that Philip  
20 Boucher-Hayes had said that very thing to Mr. Donnelly.

21  
22 So these things are only emerging, and the argument  
23 somehow that the claims in the protected disclosures  
24 were clearly a ball of smoke meriting no reporting, we  
25 say is clearly unsustainable and that there were real,  
26 significant and serious issues involved.

27  
28 So we entirely reject that attack that was made on the  
29 paper by that party.

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In addition, these parties would like to reiterate the point made in the submission and in the speaking note last week, that, as a newspaper, former editor and journalists, they entirely reject the argument that they should sit in judgment on sources. By their nature, sources come with many different motives, some may be high-minded and some may be malicious; in other words, of the nature of sources, is usually of complex and varied motivations. Also, a source's motives or interests can evolve or change with time. Ultimately, the important exercise is that of news-gathering, and the importance of the European Court of European Rights decision in Goodwin is that the rights protected by Article 10 apply to all sources, whether high-minded or malicious. And we say it's not the function of the journalist to abandon the confidentiality of their relationship based on passing judgment of the worthiness of the source.

14:38

14:38

14:39

14:39

The criticisms that have been put forward on behalf of the former commissioners in particular, they are utterly rejected.

And then in conclusion we say it is respectfully submitted that these parties honestly, correctly and properly invoked the legal entitlements to journalistic privilege in the matter. These parties have cooperated with the Tribunal at all times and their evidence has

14:39



1           been consistent throughout. The privilege is clearly  
2           engaged despite the alleged source waiving the  
3           privilege. The parties submit that no inferences  
4           should be drawn from the invocation of the privilege,  
5           and finally, that the collateral attacks during the 14:39  
6           course of this module on the Irish Examiner's coverage  
7           of the protected disclosure by An Garda Síochána were  
8           wholly unjustified and represent a misguided attempt to  
9           shoot the messenger, rather than address the real  
10          issues. Thank you, Chairman. 14:39

11          CHAIRMAN: Thank you very much. Mr. Quinn, thank you  
12          very much for that. There is just one matter again.  
13          You have invoked Article 10. I take it you agree with  
14          all the judgments of the European Court of Human Rights  
15          in doing so? 14:40

16          MR. QUINN: Yes, Chair.

17          CHAIRMAN: Every single one of them on journalistic  
18          privilege?

19          MR. QUINN: Yes.

20          CHAIRMAN: What about the one which says that the 14:40  
21          journalist wasn't entitled to hold back the source of  
22          information that there was to be a terrorist attack and  
23          that the public interest overrode any privilege? You  
24          are aware of that one?

25          MR. QUINN: Yes, Chair, and I think that is one of the 14:40  
26          classic example where the public interest clearly does  
27          override.

28          CHAIRMAN: Well, then, how can the privilege be  
29          personal to the journalist, his or hers to waive or not

1 waive at will?

2 MR. QUINN: And, Chair, I think in terms of trying to  
3 carefully frame our speaking note and submission, we  
4 didn't exactly make that point. I think the point made  
5 on page 2, you will see it's slightly more nuanced and 14:40  
6 in line with the jurisprudence that while it's not the  
7 source's privilege, we then talk about the public  
8 interest and the fact that it can be pierced where  
9 absolutely necessary. And I think that is the point we  
10 have made there in the third -- second and third 14:41  
11 bullet-point on page 2. I suppose, therefore, the  
12 challenge from the Tribunal's point of view is to  
13 determine or to have it submitted to you by somebody  
14 that, without the evidence of, and if I can confine  
15 myself to Messrs. McEnroe, McConnell and O'Keefe, that 14:41  
16 without their evidence, that the Tribunal cannot  
17 determine the issues in the terms of reference.

18 CHAIRMAN: And how is a tribunal or a court to decide  
19 under Article 10, paragraph 2, of the European  
20 Convention on Human Rights, that there is an overriding 14:41  
21 requirement in the public interest, if the journalist  
22 refuses to simply answer any questions of any kind  
23 whatsoever and simply blanks a judge attempting to get  
24 to the truth of matters?

25 MR. QUINN: well, I suppose, Chair, if one looks at the 14:41  
26 example of what happened in Becker, they were able to  
27 simply get on with it and complete the prosecution of  
28 Mr. X, notwithstanding the absence of the journalist's  
29 evidence. And I suppose in this case the Tribunal has,

1 perhaps to use one of the road traffic analogies that  
2 may have been envisaged, you have the drivers of both  
3 cars giving evidence than you have of the twelve  
4 so-called bystanders, eight of them.

5 CHAIRMAN: That is what -- I thought it was ten. 14:42

6 MR. QUINN: well, nine, I think, and the names have  
7 been added as we have gone along.

8 CHAIRMAN: Yes.

9 MR. QUINN: I don't want to be perhaps -- yes. But to  
10 make the point, I think there is no doubt, I can see 14:42  
11 from the Tribunal's point of view, it would be  
12 desirable and helpful to have the evidence of all of  
13 the bystanders.

14 CHAIRMAN: Tell me who the two drivers of the cars are.

15 MR. QUINN: Superintendent Taylor and Commissioner 14:42  
16 Callinan.

17 CHAIRMAN: Okay, but one is saying and the other  
18 denying.

19 MR. QUINN: Yes.

20 CHAIRMAN: I get your point. I understand. Thank you 14:42  
21 for your submission, Mr. Quinn.

22 MR. QUINN: Thank you, Chairman.

23

24 SUBMISSION BY MR. BUCKLEY:

25 MR. BUCKLEY: Chairman, it might be convenient. Niall 14:42  
26 Buckley, instructed by Fanning & Kelly on behalf of the  
27 D family, and hopefully our submissions will be quite  
28 short. Mr. Kelly is just handing in a brief speaking  
29 note, to which I will just speak to briefly, Chairman.

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29

The Tribunal formulated a number of questions in which it anticipated represented parties might wish to address it, and I think only a very limited number of those pertain to Ms. D and the members of her family, namely questions 14 and 15, principally. And to address those briefly in reverse first in outline and then to develop that a little, Chairman.

14:43

I think the D family's position is that the relevance of their evidence has receded in terms of significance during the course of the Tribunal's inquiries. whilst Ms. D is obviously at the centre of the early part of a key narrative of events that involve Sergeant McCabe, in reality their evidence really provides context, the true focus of the inquiry is what happened subsequently. And it's respectfully submitted that the balance of evidence indicates that their evidence is rather peripheral to the core inquiry the subject of the terms of reference.

14:43

14:43

14:44

In terms of the issue of the media visits to the D family home, Chairman, I think it's important to point out that, of the three visits by journalists in respect of which the Tribunal had raised specific query, Ms. McCann, Ms. Murray and Mr. Williams, two of those, the evidence has been, were entirely unsolicited. The visits of Debbie McCann and Ms. Murray in the spring of 2014 were unsolicited, and neither of them, on the

14:44

1 evidence of both the journalists and the D family  
2 members, met with Ms. D. And the D family really have  
3 no information as to how these visits came to be  
4 initiated.

5  
6 Ms. McCann confirmed she visited of her own initiative  
7 without invitation, on Day 88, and Ms. McCann also said  
8 there was never any meeting or discussion with Ms. D.  
9 To the extent, I suppose, that Ms. O'Reilly's counsel  
10 has suggested a greater significance to this, I was  
11 slightly troubled by the submission which was made that  
12 Ms. McCann's involvement with this Ms. D is central to  
13 the sequence of events where Sergeant McCabe's  
14 character was being increasingly called into question.  
15 With respect, I think the internal logic in respect of  
16 that statement is perhaps a little open to question,  
17 certainly insofar as it suggests or implies that there  
18 may have been or would need to have been direct  
19 communication occurring between Ms. D and Ms. McCann.  
20 And as I say, the evidence of both the protagonists in  
21 that regard is that there with none and no meeting or  
22 interview occurred between them. I say the logic of  
23 that is a little questionable because the published  
24 articles don't bear that out. And secondly, on the  
25 logic of Ms. O'Reilly's counsel, the key revelation  
26 regarding allegations of Ms. D were already known to  
27 Ms. McCann prior to the time of her visit, ergo she had  
28 sources independent of Ms. D in relation to the  
29 allegations. So the theory advanced by Ms. O'Reilly's

14:44

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14:45

14:45

1 counsel really isn't predicated on any direct contact  
2 between them at all, and I don't think the Court needs  
3 to or that it would be warned in disregarding the  
4 direct evidence of both individuals whom it is alleged  
5 met, when both of their evidence to this Tribunal has 14:46  
6 been that they did not. And insofar as there was an  
7 emphasis placed by Ms. O'Reilly's counsel on a  
8 continuing key relevancy of the D family's testimony, I  
9 would query to what extent that was substantiated.  
10 There was a focus placed on a discrepancy of the 14:46  
11 recollection of dates as to the occurrence of a meeting  
12 between Ms. Murray and the D family, but really, the  
13 materiality of that discrepancy wasn't thrashed out in  
14 the submission and it is still not entirely apparent to  
15 the D family. 14:47

16  
17 Returning, though, Chairman, to the second visit, that  
18 that of Ms. Murray, again Ms. Murray confirmed in her  
19 evidence that her initial contact with the D family was  
20 made by way of an unsolicited phone call. Her evidence 14:47  
21 was that she understood Mr. D was not opposed to them  
22 visiting -- to her visiting them, and she also never  
23 met with Ms. D, and the evidence of Mrs. D was  
24 consistent with this also insofar as there was a  
25 generic discussion about having been through a 14:47  
26 difficult period in recent times, and the resurgence of  
27 attention on Sergeant McCabe had not helped their  
28 daughter's circumstances.  
29

1 So whilst Mr. and Mrs. D's evidence was that they  
2 recall the meeting with Ms. Murray predating the  
3 interview with Mr. Williams, they're not aware of what,  
4 if anything, turns on that. Certainly, Ms. Murray had  
5 no evidence of telephone records, mileage claims or 14:47  
6 notes to verify her alternative recollection of dates  
7 which was advanced four years later and after they had  
8 given their evidence, and by which stage she was  
9 familiar with and had read that evidence. But it's  
10 also noted that her recollection of the genesis of the 14:48  
11 story lead and her timeline was at odds with the  
12 evidence of her deputy head of news, Mr. O'Shea, when  
13 he gave evidence, but the D family really don't have  
14 any information to share on those matters.

15  
16 With respect to Mr. Williams, Chairman, the engagement  
17 was somewhat different. Ms. D gave evidence in late  
18 2013/early 2014 she had articulated to her father that  
19 she wanted to get across her side of the story and she  
20 had become frustrated at the public lauding of Sergeant 14:48  
21 McCabe in certain quarters. The evidence was that her  
22 father had cautioned her against reporters, but Ms. D  
23 had persisted with a desire to speak to someone, and  
24 Mr. D gave evidence that his primary concern was for  
25 his daughter and she remained distraught at this time, 14:48  
26 and it was for this reason he raised the issue of  
27 responding to media approaches with a long-time family  
28 friend, Superintendent O'Reilly. So I'd respectfully  
29 ask that the Tribunal might consider that communication

1 and that initiation of communication through the prism  
2 of a parent approaching a family friend on behalf of a  
3 child, rather than qua any office held by any of the  
4 parties.

5  
6 Mr. D gave evidence that it was he that initially  
7 contacted Paul Williams to facilitate his daughter's  
8 wishes, and Mr. Williams confirmed in his evidence that  
9 Mr. D contacted him and explained that his daughter  
10 wished to speak with Mr. Williams. Again, Ms. D gave  
11 unchallenged evidence that she'd met with Mr. Williams  
12 on one occasion, on the 8th March, and that nobody  
13 prompted her or encouraged her to speak with any  
14 reporter.

15  
16 This ultimately prompted an article in April 2014 in  
17 the Irish Independent, which reported Ms. D  
18 articulating a desire to see an investigation into the  
19 manner in which her original 2006 complaint had been  
20 handled. It's important to stress that it had nothing  
21 to do with the false Rian referral, of which contents  
22 Ms. D was then unaware. And whilst I suppose the  
23 Tribunal has properly inquired into those matters, it's  
24 respectfully submitted that the facts show that  
25 ultimately these matters fall outside the terms of  
26 reference as properly understood.

27  
28 Ms. D also gave evidence of discussions regarding  
29 pursuing a GSOC complaint as a possible avenue of



1 redress and pursuing contact with political figures  
2 around a dossier of cases, intended to be pursued  
3 further. And again, it is respectfully submitted that  
4 those matters and those discussions fall outside the  
5 terms of reference, given the underlying focus of Ms. D 14:50  
6 at that time being concerned with an investigation of  
7 an earlier complaint and not the later Tusla file and  
8 the contents as reflected by it.

9  
10 And returning then to reflect on what, in light of 14:51  
11 that, is the continuing relevance of the D family's  
12 evidence. I think the D family do not contend their  
13 evidence is of key relevance to the primary focus of  
14 the Tribunal's inquiries as prescribed by the terms of  
15 reference. It obviously has an importance in terms of 14:51  
16 grounding the context to what subsequently happened,  
17 but they would respectfully request that, insofar as is  
18 possible, their affairs be treated with as much  
19 sensitivity as possible in the context of an inquiry  
20 which has made clear what is properly and what is not 14:51  
21 its focus of inquiry.

22  
23 And I suppose, finally, I just add that Ms. D's  
24 interview with Mr. Williams, a voluntary interview took  
25 place against a context of widespread media reporting 14:51  
26 on deficiencies in Garda investigations and  
27 shortcomings had been highlighted in the press, and  
28 there were certain issues which might have created  
29 traction from Ms. D's perspective, as a source of

1           discontent about the way her complaint was handled, it  
2           being undertaken by a colleague in the same district.  
3           It is not suggested that the Tribunal would determine  
4           or arrive at any view in respect of that, and that's  
5           being pursued before a separate forum, but I suppose I 14:52  
6           advance those remarks and submissions only to  
7           demonstrate that there are independent and  
8           understandable impetuses derived from Ms. D's personal  
9           experiences for her pursuing the interview with  
10          Mr. Williams and that they are not necessarily tied up 14:52  
11          in the matters the subject of the Tribunal's inquiry.

12  
13          Those are the principal submissions on behalf of the D  
14          family, unless I can assist any further, Chairman?

15          CHAIRMAN: Yes. In the course of your submissions, I 14:52  
16          note, Mr. Buckley, that you make reference to the  
17          letter from Sergeant McCabe to Superintendent Clancy,  
18          and, as you will be aware, the vast majority of that  
19          was blacked out because it was irrelevant to anything  
20          that we are doing, and it apparently concerned events 14:53  
21          at a barbecue or some other kind of gathering where  
22          perhaps there was refreshments taken. And therefore, I  
23          appreciate you reminding me of that, but that is the  
24          position the Tribunal has --

25          MR. BUCKLEY: I'm obliged, Chairman. 14:53

26          CHAIRMAN: Yes. Well, let's go through this from the  
27          back. Are there going to be any submissions by Cathal  
28          McMahon? Have you heard anything, Mr. McGuinness?

29          MR. MCGUINNESS: No, Chairman.

1 CHAIRMAN: well, like, that somebody may be here  
2 tomorrow or tomorrow afternoon?  
3 MR. McGUI NNESS: No, no, I have heard nothing,  
4 Chairman. Thank you.  
5 CHAIRMAN: All right. Okay. And then John Barrett? 14:53  
6 MR. McGUI NNESS: Mr. Barrett's legal representatives  
7 don't intend to make any submissions.  
8 CHAIRMAN: All right. That is grand. Thank you. And  
9 then Eavan Murray?  
10 MR. McGUI NNESS: Mr. McAleese, I think, has indicated 14:54  
11 by correspondence he doesn't intend to make any  
12 submission.  
13 CHAIRMAN: All right. And then John Mooney? I think  
14 Mr. Bradley was here briefly for John Mooney. I mean,  
15 he really just flits into the picture and flits out 14:54  
16 again.  
17 MR. McGUI NNESS: I don't believe we have heard anything  
18 from Mr. Mooney in that regard.  
19 CHAIRMAN: Okay. And then Mr. Lally? And again, it's  
20 no criticism to say that no one wants to make 14:54  
21 submissions - they're entitled to, if they wish, and it  
22 quite often happens at the ends of cases that people  
23 don't want to make a submission, so that is fine, and  
24 they are very minor players.  
25 MR. McGUI NNESS: The Irish Times, through their 14:54  
26 solicitors, have indicated they didn't intend to make  
27 any submissions.  
28 CHAIRMAN: For Mr. Lally?  
29 MR. McGUI NNESS: Yes.

1 CHAIRMAN: Yes. And again, I think very peripheral.  
2 Okay. And then we have heard from counsel for Anne  
3 Harris. And for John Kierans? I am going back to the  
4 page previously then.  
5 MR. MCGUINNESS: I don't believe he intends to make any 14:55  
6 submissions.  
7 CHAIRMAN: Okay, that is fine. And again, that is  
8 fairly normal at the end of a case. And then the  
9 Department of Justice and Brian Purcell, we have had  
10 extensive submissions from them in the issue relating 14:55  
11 to the O'Higgins Tribunal, but they were hardly ever  
12 involved in this at all.  
13 MR. MCGUINNESS: No. Mr. McCann had been here, but --  
14 CHAIRMAN: Yes.  
15 MR. MCGUINNESS: And Mr. Meehan. But there's no 14:55  
16 evidence of any intention to make any submission in the  
17 matter.  
18 CHAIRMAN: Yes. And then for Mr. Shatter, was there  
19 any indication that -- I mean, I can take the evidence  
20 as given, obviously, but... 14:55  
21 MR. MCGUINNESS: Mr. Gallagher on his behalf, and  
22 indeed Mr. Shatter, have been following matters  
23 closely, but there's no intention, as I understand it,  
24 to make -- or necessity to make any submission.  
25 CHAIRMAN: Yes. And again, I have no difficulty with 14:55  
26 that. And then for Gemma O'Doherty, have you heard  
27 anything, Mr. McGuinness?  
28 MR. MCGUINNESS: We haven't had any correspondence, I  
29 think, from Ms. O'Doherty's solicitors or from

1 Mr. Harty.

2 CHAIRMAN: Yes. And then we have heard from Mr. Lehane  
3 on behalf of John McGuinness. For Michelle Taylor was  
4 there any desire to make any submissions? Has anything  
5 been indicated? I know she was separately represented 14:56  
6 to you, Mr. O'Higgins, isn't that right?

7 MR. MICHAEL O' HIGGINS: we don't believe there is any  
8 intention to make a submission, Chairman.

9 CHAIRMAN: Yes. Just let me check.

10 MR. MICHAEL O' HIGGINS: we will confirm that overnight, 14:56  
11 but that is the position.

12 CHAIRMAN: Yes, it's a separate firm of solicitors, in  
13 any event, but if she wants to make submissions,  
14 certainly I'm here to listen, but if she doesn't, again  
15 it is fairly normal. And The Irish Times is here 14:56  
16 twice, because they're also for The Irish Times Trust,  
17 and I presume they don't want to make any submissions,  
18 as we have heard, in relation to Mr. Mallon. Okay.  
19 The Irish Examiner have made submissions. The Times  
20 newspaper and News Group Limited, I think that was 14:57  
21 Mr. Mooney. But have we heard anything as to whether  
22 they wish to?

23 MR. MCGUINNESS: There's no indication of any intention  
24 to do so.

25 CHAIRMAN: Yes. And again, that can happen. And for 14:57  
26 Michael O'Toole, Mr. Thuillier is here, is he?

27 MR. KELLY: Mr. Thuillier appeared in that, Chairman.  
28 We are not making any submissions, thank you.

29 CHAIRMAN: You're not making any submissions. Thank

1 you, Mr. Kelly. Independent News & Media and Paul  
2 Williams then?

3 MR. FREEMAN: Mr. Fanning appears with me in that.  
4 CHAIRMAN: And that's tomorrow, that is fine.  
5 MR. FREEMAN: Tomorrow. 14:57

6 CHAIRMAN: That is absolutely fine. There is no  
7 difficulty whatever about that. So what I seem to have  
8 left then is for, it's the Commissioner, and it is  
9 Independent News & Media, and it is Sergeant McCabe.  
10 And I have covered everybody else, haven't I? Can I 14:58  
11 just ask for an indication, Mr. McDowell, how long do  
12 you think you will be? If we have to go to tomorrow,  
13 then we have to go to tomorrow, that is fine.

14 MR. McDOWELL: I'd imagine we will have to go -- unless  
15 we're going to sit very late this evening, because I 14:58  
16 don't know how long the Commissioners' counsel are  
17 going to be.

18 CHAIRMAN: well, I don't know, do you want to start  
19 making submissions now?

20 MR. MURPHY: Certainly, Chairman. 14:58

21 CHAIRMAN: Yes, you do. And again, I am not trying to  
22 rush anybody.

23 MR. MURPHY: No, I appreciate that, Chairman.

24 CHAIRMAN: well, I mean, that may be taken as somewhat  
25 hypocritical, given my attitude before, but just wipe 14:58  
26 out those sins, Mr. Murphy, and just carry on as best  
27 you can.

28 MR. MURPHY: Thank you, Chairman.  
29

1 SUBMISSION BY MR. MURPHY:

2 MR. MURPHY: Chairman, thank you for the opportunity to  
3 make final submissions on behalf of the former Garda  
4 Commissioners, the current Garda Commissioner and  
5 senior officers in An Garda Síochána. 14:58

6  
7 In making our submissions, we would submit that there  
8 is a value in considering the matters that the Tribunal  
9 was asked to investigate and the evidence heard in  
10 those matters by reference, firstly, to the starting 14:58  
11 point of the Tribunal. And as I will outline in the  
12 course of these submissions, this Tribunal was set up  
13 against a background of huge public controversy,  
14 arising from the publication of allegations contained  
15 in two protected disclosures. 14:59

16 CHAIRMAN: Mr. Murphy, I don't mean to interrupt your  
17 flow, even as are you getting off the ground. Did you  
18 want me to look at something?

19 MR. MURPHY: I have a note, Judge, if it would assist  
20 you, yes. 14:59

21 CHAIRMAN: I am happy to look at it, Mr. Murphy, if you  
22 feel that it would help in your -- the bench has just  
23 collapsed under the weight of it, Mr. Murphy, but thank  
24 you.

25 MR. MURPHY: As you appreciate, Chairman, from the top 14:59  
26 of the document, that I have to deal with references  
27 [a], [b], [c], [f], [g], [i], [j], [l], [k], [m], so I  
28 would ask the Chairman's indulgence in relation to  
29 that. I will go as speedily as I can. Chairman, at

1 the outset --

2 CHAIRMAN: well, not so speedily as the stenographer  
3 can't follow it, but thank you, even though we have the  
4 best in the world.

5 MR. MURPHY: well, my first point, Chairman, is that 15:00  
6 the controversy which is the subject of considerable  
7 media and political commentary, much of that was highly  
8 critical of An Garda Síochána as an organisation, and  
9 of former Commissioners Callinan and O'Sullivan in  
10 particular, and on behalf of those parties, it is our 15:00  
11 central submission that when commentary was for the  
12 first time subjected to any degree of scrutiny, many of  
13 the allegations, including some of the most serious,  
14 were either withdrawn or were shown to be misinformed  
15 and groundless. And while in such circumstances so 15:00  
16 many questioned the value of conducting these hearings,  
17 we submit that the true value of this process lies not  
18 in upholding the allegations, but in the process  
19 itself. And what this process, conducted by you,  
20 Chairman, has demonstrated, is the ease with which 15:00  
21 allegations of misconduct can gain public and political  
22 traction, with little or no concern for whether they  
23 are true or not. For when those allegations are  
24 subjected to a form of judicial scrutiny or Tribunal  
25 scrutiny of looking for and testing the evidence in 15:01  
26 support of them, a very different picture can emerge.

27

28 And we say that before sifting the evidence from the  
29 commentary and the conjecture in respect of these



1           allegations, briefly I would like to address the  
2           background to the allegations and some of what we say  
3           are the applicable legal principles, in very general  
4           terms. Then, having applied those principles to the  
5           individual matters covered by the terms of reference, I 15:01  
6           will address the 20 questions that you invited the  
7           parties to assess.

8  
9           The first point I wish to make in relation to the  
10          allegations, Chairman, is that the central reason why 15:01  
11          this Tribunal was established to deal with the matters  
12          which are before you today, was the allegation made by  
13          Superintendent David Taylor in his protected disclosure  
14          of the 30th September 2016 and in that disclosure he  
15          claimed that the most senior police officer in the 15:01  
16          State had instructed or directed him, and those two  
17          words are most important in the terms of reference,  
18          instructed or directed him, to brief negatively against  
19          Sergeant Maurice McCabe to the media and to politicians  
20          in a manner which included referring to an allegation 15:01  
21          that Sergeant McCabe had submitted a sexual assault.  
22          And the words that were used in the protected  
23          disclosure, if I can quote them briefly, are:

24  
25          "I recall being instructed or directed to contact the 15:02  
26          media to brief them on a particular line the  
27          Commissioner had instructed; namely, to brief  
28          negatively against Sergeant McCabe. In particular, I  
29          recall I was to brief the media that Sergeant McCabe

1 was motivated by maliciousness and revenge. I was also  
2 to encourage media to write negatively about Sergeant  
3 McCabe, that his complaints had no substance, that the  
4 Garda who fully investigated his complaints had found  
5 no substance to his allegations. In essence, I was to 15:02  
6 brief that Sergeant McCabe was driven by agendas. I  
7 was also directed to draw journalists' attention to the  
8 complaint of sexual assault made against Sergeant  
9 McCabe and that this was the root cause of the agenda:  
10 revenge against the gardaí." 15:02

11  
12 Those very specific terms contained in the protected  
13 disclosure have been subject to analysis by this  
14 Tribunal and to challenge in the course of the  
15 evidence, and I will come back to specific details of 15:03  
16 it later on. What we will be saying, Chairman, is that  
17 what has emerged from the evidence is a very different  
18 picture to what was contained in the protected  
19 disclosure of Superintendent Taylor. And although  
20 Sergeant McCabe has clearly expressed a great interest 15:03  
21 in these complaints, on an analysis of the terms of  
22 reference it's our submission actually the central  
23 person is Superintendent Taylor and his credibility is  
24 absolutely central to any assessment of the merits of  
25 the matters which were put before you for this 15:03  
26 assessment.

27  
28 Now, on the opening day of this process on the 27th  
29 February 2017, you, Chairman, interpreted this aspect

1 of the terms of reference as inquiring into whether the  
2 reaction of senior officers of An Garda Síochána to  
3 concerns about poor performance was in your words "not  
4 only one of distaste but of active and thought-through  
5 malice whereby media briefings take place against  
6 individuals who rock the boat".

15:03

7  
8 And in determining whether there was any evidence of  
9 media briefings being motivated by active and  
10 thought-through malice, you set the following standard  
11 in your approach to all the allegations when you said  
12 this:

15:04

13  
14 "One useful aspect of the legal mind is it's  
15 conditioned to look for evidence, to seek supporting  
16 evidence, to look for patterns indicative of truth, not  
17 to leap to conclusions and not to declare that someone  
18 has done something discreditable without sufficient  
19 proof. That is our standard and we will abide by it."

15:04

20  
21 Now, the primary submission, Chairman, on behalf of An  
22 Garda Síochána, is that the evidence that's been put  
23 before you allegedly of briefings motivated by malice,  
24 is wholly inadequate, and that what little evidence  
25 there is is inherently flawed and contradictory and the  
26 only direct evidence of these briefings is the account  
27 of Superintendent Taylor, which we will submit is  
28 utterly lacking in credibility. To the extent that  
29 there is any supposed supporting evidence of the

15:04

15:04

1 briefings, Sergeant McCabe's protected disclosure  
2 contained what, in broad terms, was the same  
3 allegations made by Superintendent Taylor, albeit with  
4 more details than were provided by Mr. Taylor, but it's  
5 important to note that insofar as it relates to this 15:05  
6 allegation, Sergeant McCabe's protected disclosure was  
7 based solely on his account of his conversations with  
8 Superintendent Taylor, on the 20th September and the  
9 21st September 2014, and what he says he was told by,  
10 what he referred to as an impeccable authority, 15:05  
11 Mr. John Barrett. In each case, of course, the  
12 evidence of Sergeant McCabe is hearsay, as he himself  
13 candidly acknowledged on Day 60 of this Tribunal, at  
14 page 35, when he said to you, Chairman:

15  
16 "All I'm doing, I am not saying I have evidence against 15:05  
17 either of the Commissioners, all I'm saying is, this is  
18 what he, Mr. Taylor, told me."

19  
20 So front and centre, Chairman, you will recall that 15:05  
21 when Sergeant McCabe gave his evidence during the last  
22 section of the Tribunal's inquiries, he made it very,  
23 very clear what the position was. You adopted that  
24 position. And in relation to the need to cross-examine  
25 him about these issues, that was all passed over 15:06  
26 because he very frankly indicated that he was merely a  
27 herald of the information that was going to be given  
28 and led in evidence by Superintendent Taylor. So we  
29 say that that emphasises the central role of

1 Superintendent Taylor, and it would appear an  
2 acknowledgment by Sergeant McCabe of his role is a  
3 minor role in relation to this matter, other than as  
4 the person who brought this to the attention through  
5 his protected disclosure, having spoken to  
6 Superintendent Taylor.

15:06

7  
8 So we say, that you have mentioned several times,  
9 Chairman, that hearsay is admissible in a tribunal such  
10 as this, and your opening statement makes it clear that  
11 the hearsay aspect of evidence will go to the weight to  
12 be attached, given the absence of any opportunity to --  
13 the absence of any opportunity to test the hearsay  
14 evidence. But significantly, however, this is not a  
15 situation where the person who purportedly made the  
16 hearsay statement is unavailable, but where in fact  
17 they are available and have contradicted the hearsay  
18 statement in a number of important respects. And it is  
19 submitted, therefore, that the weight to be attached to  
20 the accounts of both Superintendent Taylor and Sergeant  
21 McCabe is affected by the fact that a significant  
22 divergence emerged between them about what was said in  
23 their conversations in September 2014, which we will  
24 deal with later on.

15:06

15:06

15:07

25  
26 You, Chairman, on day 60 referred to this split, as it  
27 were, in terms of the evidence, between Sergeant McCabe  
28 and Superintendent Taylor as a chasm in the evidence  
29 and so it has proved to be in the time that has flowed

15:07

1 since March 2018.

2  
3 So in effect, and in summary, we say the position of An  
4 Garda Síochána is that neither of the protected  
5 disclosures of Sergeant McCabe or Superintendent Taylor 15:07  
6 are correct in relation to the allegations of series of  
7 negative media briefings because Sergeant McCabe relies  
8 exclusively on what he has been told by Superintendent  
9 Taylor and Superintendent Taylor's credibility has been  
10 effectively shattered, we say, by a series of parts of 15:07  
11 examination in the part of this process. So the  
12 position is that the evidence rests on two accounts,  
13 one of which is entirely hearsay and both of which  
14 contradict each other in several important respects.

15 15:08  
16 Briefly, Chairman, if I might address a word in  
17 relation to the background prior to the institution of  
18 this Tribunal. The history, which you have examined,  
19 demonstrates that the protected disclosures were  
20 addressed to the Minister for Justice at the time, 15:08  
21 Ms. Frances Fitzgerald, they were delivered to her  
22 through the disclosure manager at An Garda Síochána,  
23 they were sent to the Minister on 3rd October 2016. In  
24 making these disclosures, both Sergeant McCabe and  
25 Superintendent Taylor sought to avail of the 15:08  
26 protections under the Protected Disclosures Act 2014,  
27 including that of having their identities protected.  
28 It's emerged from the evidence that the Tribunal has  
29 examined that at the same time both Sergeant McCabe and

1 Superintendent Taylor were in a manner inconsistent  
2 with such protected briefings, seemed to be briefing  
3 and/or confirming the contents of the protected  
4 disclosure to at least one member of the media and to  
5 members of the Oireachtas. Before the Minister had any 15:09  
6 substantial opportunity to consider the protected  
7 disclosures, long before the persons against whom the  
8 allegations were made became aware of the actual  
9 content of the disclosures, substantial details of the  
10 disclosures were carried in a newspaper on the 4th 15:09  
11 October 2014, raised on radio by a TD and raised in the  
12 Dáil. Mr. Callinan, then acting Commissioner, and  
13 acting Commissioner O'Sullivan and An Garda Síochána  
14 immediately became the focus of a political and media  
15 storm, and that required Ms. O'Sullivan, who was then 15:09  
16 acting Commissioner of An Garda Síochána, to take  
17 unusual step of issuing a press release in which she  
18 made it clear that she was "not privy and did not  
19 approve any action designed to target any Garda  
20 employee who may have made a protected disclosure" and 15:09  
21 that she would condemn such an action.

22  
23 On the 7th October 2014, in circumstances where  
24 controversy about the allegations in the protected  
25 disclosures had raged over the previous days, the 15:09  
26 Minister announced that Mr. Justice O'Neill, then  
27 retired, would conduct an initial review into the  
28 protected disclosures and that he would advise what, if  
29 any, further investigation would be required. And

1 Sergeant McCabe and Superintendent Taylor had by then  
2 been named in the media as the authors of the protected  
3 disclosures. On the 17th December 2016, Mr. Justice  
4 O'Neill reported back to the Minister and in  
5 circumstances where there was a clear conflict between 15:10  
6 Superintendent Taylor's allegations and the unequivocal  
7 denials by Mr. Callinan and Ms. O'Sullivan he  
8 recommended the establishment of a commission of  
9 investigation on the basis that matters of significant  
10 public concern flowed from it. 15:10

11  
12 Then parliamentary steps were taken to establish such a  
13 commission of investigation and put in place in the  
14 first week of the 7th February of 2017. But a series  
15 of events that week led instead to the establishment of 15:10  
16 this tribunal of inquiry.

17  
18 The factors which contributed to the momentum behind  
19 the decision to establish this Tribunal included the  
20 following: 15:10

21  
22 A. On the 8th February 2017 Mr. Brendan Howlin TD,  
23 leader of the Labour Party, published an allegation in  
24 the Dáil that Ms. O'Sullivan, who was then the Garda  
25 Commissioner, had personally made phone calls "to 15:11  
26 journalists during 2014 in the course of which the  
27 Commissioner made very serious allegations of sexual  
28 crimes having been committed by Sergeant Maurice  
29 McCabe". Deputy Howlin incorrectly said in the Dáil



1 that he had that morning spoken to journalists who he  
2 said had direct knowledge of such phone calls and not  
3 surprisingly the allegation then published by Deputy  
4 Howlin in the Dáil had profound and immediate political  
5 and media impact. Commissioner O'Sullivan issued a 15:11  
6 statement that evening in which she said she had no  
7 knowledge of the claims referred to by Mr. Howlin and  
8 refused them in the strongest possible terms. Evidence  
9 at this Tribunal has established that Ms. Alison  
10 O'Reilly, a journalist for the Irish Daily Mail, was 15:11  
11 the source of this allegations published by Deputy  
12 Howlin. It emerged during this Tribunal that she had  
13 told Deputy Howlin the conversations she had had with a  
14 colleague, Ms. Debbie McCann, journalist with the Irish  
15 Daily Mail, which, according to Ms. O'Reilly, 15:11  
16 Ms. McCann said that Commissioner Callinan and  
17 Superintendent Taylor had told her about an allegation  
18 of sexual assault against Sergeant McCabe. There is  
19 obviously a dispute between Ms. McCann and Ms. O'Reilly  
20 in respect of what Ms. McCann may have said, but 15:12  
21 however we say that Ms. O'Sullivan's evidence has been  
22 that no such allegation about Sergeant McCabe was ever  
23 made by Commissioner O'Sullivan to Ms. McCann and that  
24 they never discussed Sergeant McCabe at any stage. The  
25 Tribunal in its own inquiries has established that 15:12  
26 there is no record of any such calls between  
27 Ms. O'Sullivan and Ms. McCann during the relevant  
28 period. Also there has been no evidence of any  
29 suggestion of contact by Ms. O'Sullivan with any other

1 journalist of the kind contained in the allegation  
2 published by Deputy Howlin.

3  
4 B. Secondly, on the evening of the 9th February 2017,  
5 in a report in the examiner.ie website, later on the 15:12  
6 RTÉ Prime Time programme, the fact that a more serious  
7 allegation about Sergeant McCabe had apparently been  
8 made and processed by Tusla was revealed and the  
9 circumstances in which this Tusla allegation came about  
10 were of course the subject of a previous module. This 15:12  
11 Tribunal will ultimately determine what occurred, but  
12 we submit that all the evidence suggests that it was  
13 not in any way caused or contributed to by any member  
14 of An Garda Síochána.

15 15:13  
16 C. Then thirdly, on Monday, 13th February 2017,  
17 Sergeant McCabe, together with Mrs. McCabe, through  
18 their solicitors, issued a statement calling for the  
19 establishment of this Tribunal, a tribunal rather than  
20 a commission of investigation, and the statement was 15:13  
21 headed "Truth Today - Justice to Follow", and in it the  
22 reason given for the need for a public inquiry in the  
23 form of a tribunal was what Sergeant McCabe claimed to  
24 have been his treatment by lawyers for An Garda  
25 Síochána and Commissioner Callinan at the O'Higgins 15:13  
26 Commission. And the statement included a number of  
27 quotations. The first was:

28  
29 "Our experience of the O'Higgins Commission is too

1 fresh in our minds to allow for repetition."

2  
3 It goes on to deal with the fact that:

4  
5 "...Maurice at the hands of the legal team representing  
6 the current Commissioner, was cast in the role of  
7 culprit and/or defendant and as a person making those  
8 complaints in bad faith and without cause.

9  
10 When challenged in that respect that legal team sought 15:14  
11 and obtained confirmation from the present Commissioner  
12 that they did so on her personal instructions.

13  
14 Because the 2004 Act prohibits under pain of criminal 15:14  
15 law the publication of the actual evidence tendered to  
16 such commissions, the public has little or no  
17 appreciation of what was done and attempted to be done  
18 to Maurice in the course of its hearings."

19  
20 And then: 15:14

21  
22 "For example, against the background of the current  
23 Tusla controversy, the entirely false allegation made  
24 of sexual abuse in 2006 against Maurice was repeatedly  
25 the subject of attempts at introduction in the 15:14  
26 proceedings for the purpose of discrediting his motives  
27 and testimony...

28  
29 ...for these reasons we have consistently submitted

1 that any further inquiry into these matters must be a  
2 public inquiry. "

3  
4 This was a point, Chairman, that we touched on just at  
5 the very end of the last section of your inquiries, but 15:14  
6 we say it is an important point and it is a point that  
7 demonstrates the background of the process; because in  
8 essence that particular suggestion of a false  
9 allegation being made in the source of the O'Higgins  
10 Commission never took place. 15:14

11  
12 The statement then went on to say:

13  
14 "Now that the truth has emerged of the false and  
15 shocking campaign to vilify us and discredit us there 15:15  
16 is no reason to have any secret or private inquiry  
17 under the Commission of Inquiry Act 2004. "

18  
19 So as we submitted at the end of the previous module  
20 the facts which emerged in the course of that module 15:15  
21 about what actually happened in the O'Higgins  
22 Commission were markedly different to the allegations  
23 which led Sergeant McCabe to call for the establishment  
24 of the establish and we say no reason has been given by  
25 him for that particular disparity, which we say is 15:15  
26 somewhat striking.

27  
28 Chairman, if I can move then please to the section 4  
29 which deals with the focus of the Tribunal. Again your

1 words, Chairman, were, you had to examine whether there  
2 was any evidence of briefings, motivated by "active and  
3 thought through malice". And we say, taking that focus  
4 and that approach, that the focus of this Tribunal is  
5 not to any wider knowledge or discussion by anybody of 15:15  
6 the allegations of sexual assault against Sergeant  
7 McCabe, but rather on the use to which it is claimed  
8 that allegation was put by Superintendent Taylor on the  
9 instructions or directions of Commissioner Callinan and  
10 with the knowledge of Ms. O'Sullivan. And applying 15:16  
11 that focus to the evidence we say the task of the  
12 Tribunal is somewhat complicated by the fact that the  
13 Tribunal has heard extensive evidence of stories  
14 indicating the wider circulation of rumours about  
15 Sergeant McCabe in media, political and Garda circles 15:16  
16 in 2014 and 2013. Knowledge of the fact that Sergeant  
17 McCabe had been the subject of a complaint of sexual  
18 assault was known to some journalists, specifically  
19 involved in covering policing and crime issues, from as  
20 early as 2011. And this has emerged also in the course 15:16  
21 of the evidence in this Tribunal.

22  
23 Chairman, you will remember the evidence of crime  
24 reporter Michael O'Toole of The Star newspaper, where  
25 he said he heard it some time around then and that he 15:16  
26 heard it from a non-Garda source. Similar evidence was  
27 given by John Mooney, crime correspondent the Sunday  
28 times. Mr. Conor Lally also gave evidence that he  
29 heard about this around 2010/2011. This of course was

1 long before the period being considered by this  
2 Tribunal and indeed before the beginning of the alleged  
3 campaign which Superintendent Taylor alleged he was  
4 instructed and directed to begin, in the middle of  
5 2013. It's noteworthy that at that stage Mr. O'Toole, 15:17  
6 having become aware from sources which were non-Garda  
7 sources, was moved to explore the allegation and he has  
8 told you that he promptly established from local Garda  
9 sources not only that no charges had been directed  
10 against Sergeant McCabe but that there was no substance 15:17  
11 to the allegations. And Mr. O'Toole when he spoke to  
12 you about that uttered the phrase, very memorable  
13 phrase, he said "the matter was dead to me from then  
14 on".

15  
16 The evidence before you, Chairman, has also established 15:17  
17 that there was an intensification of knowledge about  
18 the historical allegation against Sergeant McCabe  
19 amongst political journalists, amongst politicians and  
20 in Leinster House circles in late 2013 and early 2014. 15:17  
21 A point I wish to make at this stage is that that of  
22 itself does not establish the existence of a campaign  
23 on part of Superintendent Taylor of the types which he  
24 has alleged he was directed and instructed to conduct.

25  
26 The further increased knowledge about historic 15:18  
27 allegations of sexual assault concerning Sergeant  
28 McCabe is likely of course to have been a consequence  
29 of the greater prominence which he had attained in the

1 public domain and the issues which he was attracting in  
2 political and media circles during the period leading  
3 up to and after his appearance at the Public Accounts  
4 Committee in January 2014.

5  
6 And it's interesting in the submission filed a few  
7 moments ago by Mr. Buckley on behalf of the D family,  
8 what was submitted to you today was that Ms. D saw that  
9 Sergeant McCabe:

10  
11 "... was being glorified in certain sections of the  
12 media for exposing deficient investigative practices,  
13 she --"

14  
15 Ms. D

16  
17 "-- considered this ironic given she harboured concerns  
18 about the investigation of her own complaint about  
19 Sergeant McCabe and she felt that the prevailing media  
20 focus represented an opportunity to ask questions about  
21 her own complaint now that she had reached a majority."

22  
23 So there is evidence of a non-Garda person responding  
24 to that ever increasing controversy.

25  
26 Many of the witnesses who have spoken to you, Chairman,  
27 have given this Tribunal a flavour of the extent to  
28 which rumours of all types are prevalent under the  
29 surface in Irish politics and in the journalistic

1 community. The pattern of progress of this rumour  
2 concerning Sergeant McCabe was as sporadic and as  
3 unstructured as rumours on the scale usually are. Some  
4 witnesses spoke of never having heard the rumour  
5 although they dwelled in political or media circles at 15:19  
6 the time. Many witnesses have spoke of having become  
7 aware of suggestions about Sergeant McCabe and sexual  
8 assault, but most often from another journalist or from  
9 political circles and without being able to pin down  
10 precisely where they heard it from. Such is the nature 15:19  
11 of the pattern of rumour it would be beyond the  
12 capacity even of a tribunal of inquiry to identify its  
13 original process or to plot its pattern of process.

14  
15 I make the case very briefly that rumours can travel in 15:19  
16 unexpected directions, their dissemination can be  
17 incoherent, but insofar as the process of rumour  
18 mongering is concerned different people hear different  
19 versions. Another feature of rumours which can become  
20 widespread, particularly within the narrow confines of 15:20  
21 journalistic and political circles, is they travel back  
22 on themselves and mutate and alter in character. You  
23 have the evidence of journalists, such as Mr. Fionnan  
24 Sheehan, about the process of this type of exchange of  
25 rumour within political and media circles. 15:20  
26

27 we say that the existence of this rumour, even in the  
28 intense and widespread manner achieved by early 2014,  
29 does not of itself ground an inference that it must



1 have been deliberately spread in a systematic way by  
2 Superintendent Taylor. In addition, we say the mere  
3 existence of a rumour certainly cannot be relied upon  
4 to confer credibility on Superintendent Taylor's  
5 account and his account which is otherwise unsupported 15:20  
6 that he was instructed and directed by the  
7 Commissioners to harm Sergeant McCabe in any way.

8  
9 Finally on this point, Chairman, we say that the  
10 existence of widespread awareness of the story or even 15:21  
11 widespread discussion or chatter in relation to  
12 political or journalistic and Garda sources doesn't  
13 come within the terms of reference, does not in itself  
14 need to be considered. We accept that the Tribunal is  
15 entitled to, perhaps even obliged to, consider the 15:21  
16 same, as to whether there is evidence of this type of  
17 talk, communication or innuendo falling within the  
18 terms of reference.

19  
20 Briefly, Chairman, we deal in the next three sections 15:21  
21 with the burden of proof. I don't propose to address  
22 you at any length, Chairman, as I think you have  
23 already been addressed on that front. To simply  
24 shorten the point --

25 CHAIRMAN: I'm just wondering, do you have any -- maybe 15:21  
26 it would just shorten it if I ask you the question.  
27 You have no quarrel with the proposition that the  
28 standard of proof is probability --

29 MR. MURPHY: Yes.

1 CHAIRMAN: -- but that every judge should be careful  
2 before coming to a conclusion that something  
3 particularly discreditable was done by somebody --  
4 MR. MURPHY: Yes.  
5 CHAIRMAN: -- in expressing that opinion, that the 15:21  
6 proof is actually there --  
7 MR. MURPHY: Yes.  
8 CHAIRMAN: -- in other words, that the ground is firm;  
9 in other words, the heavier the allegation the more  
10 solid the ground possibly would need to be -- 15:22  
11 MR. MURPHY: Precisely, yes.  
12 CHAIRMAN: -- but it is still balance of probabilities.  
13 MR. MURPHY: And perhaps the clearest quotation one can  
14 see is Mr. Justice O`Flaherty's quotation at paragraph  
15 26: 15:22  
16  
17 "The degree of probability required should always be  
18 proportionate to the nature and gravity of the issue to  
19 be investigated."  
20 15:22  
21 And that comes from the case of O'Laohre v. Medical  
22 Council.  
23  
24 The other authorities which are contained there exactly  
25 replicate what you've said a moment ago, Chairman, 15:22  
26 indicating the need in this process to carefully weigh  
27 the evidence and to look at the implications of  
28 findings for those who might be the subject of findings  
29 from that evidence.

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We say at paragraph 28, Chairman, having moved through the case law, that we invite you to apply a suitably exacting standard of evidence when considering whether allegations of serious wrongdoing and moral turpitude by, for example, two former Commissioners or Mr. McLindon, have been proved on the balance of probabilities. There has to be, we say, a proportionality between the gravity of the matters alleged by Superintendent Taylor as to an alleged orchestrated and sustained smear campaign, and the evidence relied upon to justify that profoundly serious allegation. There must also, we say, be a proportionality between the gravity of the allegations made as to the remarks attributed to Commissioner Callinan in December 2013 and January 2014, and the evidence relied upon to justify those two separate allegations.

In support of that proposition, Chairman, we briefly address a point which I think you have raised on a number of occasions, both in this section of the Tribunal's work and its previous sections, relating to all persons, from whatever perspective or side they may come from, who may be affected by attacks on their good name. But what we say is that the allegations of a coordinated effort or campaign conducted on the directions or instructions of, and with the knowledge and acquiescence of senior Garda management, that

1 allegation itself, we say - and there is evidence  
2 before you to that effect - has caused significant  
3 damage to the reputation and standing of An Garda  
4 Síochána. For example, for Mr. Callinan, for  
5 Ms. O'Sullivan, for Mr. McLindon, Superintendent 15:23  
6 Taylor's allegations have the greatest seriousness and  
7 one that is deeply damaging. It has had the effect of  
8 being put in the public of undermining their  
9 professional standing, impugning their personal  
10 integrity, it is one which they and their families have 15:24  
11 had to endure for more than a year and a half, often in  
12 the context of intense media and political commentary  
13 which is detrimental to them.

14  
15 Ms. O'Sullivan has also given evidence that these 15:24  
16 allegations assert to undermine her position as  
17 Commissioner and contribute significantly to the  
18 circumstances which occasioned her decision to retire  
19 from that post in September 2017.

20 15:24  
21 We also submit that the reportage and commentary on the  
22 matter was particularly difficult for those who were  
23 the subject of allegations in circumstances where the  
24 media felt free, because the allegation was contained  
25 in a protected disclosure, to report on the allegation 15:24  
26 without having to establish whether the allegations  
27 made had any basis in fact or in some cases even having  
28 to put them to the person who was the subject of the  
29 allegation. And because the provisions of the

1 operation of the 2014 Protected Disclosure Act was such  
2 that those against whom the accusations were made were  
3 initially not even aware of the content of the  
4 allegations, they were constrained in how they would  
5 respond.

15:25

6  
7 Moving from that, Chair, to one issue which we say will  
8 be of importance to our submission, and to your  
9 assessment of all of the evidence in this case, and  
10 that's the question of the impact of delay and flawed  
11 memory.

15:25

12  
13 The first point we wish to make, Chairman, is that many  
14 of the matters being inquired into by your, Chairman,  
15 have been the subject of intense political, media and  
16 public commentary for a considerable period of time.  
17 Many of these matters have been discussed in detail, in  
18 public, and have been presented in some cases as  
19 accepted as being true. One such example is the  
20 content of Superintendent Taylor's protected  
21 disclosure. Many of the points that he made out in  
22 that protected disclosure in the course of his evidence  
23 he now accepted were not accurate, yet at the time and  
24 over many months up to this process of your hearings in  
25 this Tribunal, they were presented in political circles  
26 and in the media print and broadcast as being true,  
27 even to the extent that some people thought that this  
28 inquiry wasn't necessary at all because they appear to  
29 be so self-evidently true.

15:25

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We say as a consequence of these matters being discussed so intensely in public is that what people learn through that public discussion can often inform or taint their own memory. One feature which has arisen in this Tribunal is that individuals have given information or evidence for the first time about events that occurred long before they first gave that information and after aspects of that information had been in public circulation for a considerable period of time, and we say it's entirely possible that their memory of those is mistaken through the passage of time and we say it's particularly important that regard be had to these delays and it's also possible that their memories are based on what they have since heard.

We will deal with a number of those instances below but at the outset it's our submission that the Tribunal should exercise great care in looking at the reliability of information against the fact of this background. So we will see a number of examples where witnesses have spoken of instances which occurred effectively in private, in a one-to-one discussion, say in 2014, and then for the first time they mention this three years later, after there has been a tsunami of public discussion about the very same events, to what effect that may affect people, not even a question of ill will but a question simply affecting the process and understanding the arrangements themselves.

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Moving if I can now, Chairman, to the terms of reference and I will begin if I could with sections [a] and [b]. [a] and [b] I have referred to a few moments ago and the Tribunal has these issues, very clearly. This relates to the specific statement by Superintendent Taylor that he was instructed or directed by former Commissioner Martin Callinan and/or Deputy Commissioner Nóirín O'Sullivan to contact the media, to brief them negatively and to brief them Sergeant McCabe was motivated by malice and revenge, and then also to draw attention to the allegation of criminal conduct made against Sergeant McCabe.

15:27

15:27

So we say that the allegation in [a] and [b], which you have to assess, is that the two most senior officers in An Garda Síochána were involved in directing and instructing a systematic campaign to malign the reputation of a sergeant of An Garda Síochána, including by advancing the suggestion of his involvement in a sexual offence, and we say that from a point of view of interpretation that both of those paragraphs should be read together; because the reference to Sergeant McCabe being driven by agendas in paragraph [a] can only be understood by the reference in paragraph [b] to the route cause of his agenda being "the allegation of criminal misconduct" against him. That is to say, the 2006 allegation. So we submit that the reference to the 2006 allegation are part of

15:28

15:28

15:28

1 paragraphs [a] and [b], notwithstanding that there is  
2 no express reference to same in paragraph [a].  
3

4 In his statement to you and in his evidence to you,  
5 Chairman, Superintendent Taylor has sought to extend 15:28  
6 this allegation to encompass Mr. Andrew McLindon, the  
7 civilian director of communications of An Garda  
8 Síochána. Superintendent Taylor belatedly accused

9 Andrew McLindon of an involvement in the alleged  
10 conspiracy we say long after he had made his own 15:29

11 protected disclosure. Now the words of these  
12 paragraphs in the terms of reference are in fact, in  
13 [a] and [b], taken from Superintendent Taylor's  
14 protected disclosure. This may explain the looseness

15 of the language employed. But given that Sergeant 15:29  
16 McCabe was completely exonerated by the DPP, the  
17 ingredients of the alleged briefing which

18 Superintendent Taylor alleges he was instructed to  
19 carry out, we say, are nonsensical and this raises  
20 questions as to the credibility of his account. This 15:29  
21 is touched upon in question 5 which you have raised,  
22 Chairman: what is the full extent of the allegation of  
23 calumny against Sergeant McCabe? A point to which I  
24 will return to later on.

25  
26 At the outset the submission that we wish to make,  
27 Chair, is that having looked at all of the evidence  
28 that you have heard and looking at all of the testimony  
29 of Superintendent Taylor we respectfully submit that



1 the allegation made by Superintendent Taylor is untrue.  
2 We say it's not supported by any evidence whatsoever  
3 that is capable of being relied upon from  
4 Superintendent Taylor or any other party and we say  
5 that in fact when one looks at the evidence all of the 15:30  
6 available evidence contradicts rather than supports his  
7 allegation of negatively briefing the media. And more  
8 fundamentally, we say there's no credible evidence that  
9 if he did anything of the sort he claimed to have done  
10 that he did it on the direction or instruction of 15:30  
11 Commissioner Callinan, Deputy Commissioner O'Sullivan  
12 or with the acquiescence or permission of either.

13  
14 On a preliminary point, Chairman, we say that one might  
15 have thought that if such a campaign actually existed, 15:30  
16 that there would be evidence of it in the media. On  
17 the contrary, all the evidence before you demonstrates  
18 there is no actual output from which such an effort or  
19 campaign in the form of negative stories about Sergeant  
20 McCabe, there's no sign of a chilling effect operating 15:30  
21 in the media coverage of Sergeant McCabe. In the years  
22 since 2010, seven and a half years, when Sergeant  
23 McCabe had raised issues, when these first became  
24 reported in the media, there have been hundreds and  
25 hundreds of print media reports and broadcast items, 15:31  
26 all of which refer to him, the majority of which were  
27 positive, if there were any such campaign or  
28 coordinated effort to malign Sergeant McCabe to the  
29 media on Superintendent Taylor's own part it was

1 extremely unsuccessful to the extent that it is hard to  
2 believe that it ever happened at all.

3  
4 The Tribunal's own inquiries have identified only one  
5 set of stories which can be said to malign Sergeant 15:31  
6 McCabe and reference the Ms. D allegation. They are  
7 the Paul Williams stories in March and April of 2014,  
8 in which Sergeant McCabe wasn't named but was  
9 identifiable as the subject of the story to anyone who  
10 was otherwise aware of the matter, but we say that 15:31  
11 neither Superintendent Taylor, nor anyone in senior  
12 Garda management at Garda Headquarters was involved in  
13 directing Paul Williams towards the D family. The  
14 initiative, the approach to Paul Williams came, as  
15 established by the evidence, from the D family 15:31  
16 themselves. Chairman, you have received that evidence.

17  
18 We say the only direct evidence such as it was, that  
19 could possibly suggest the existence of a campaign or  
20 effort was the evidence of Superintendent Taylor 15:32  
21 himself. And we invite you, Chairman, to consider that  
22 for the very reasons I'm going to outline now his  
23 evidence is not to be believed.

24  
25 First, we say that Superintendent Taylor is not a 15:32  
26 person in his testimony one can identify credibility  
27 and credit.

28  
29 1. We say that he misled the Clerkin inquiry in his

1 first statement.

2  
3 2. He swore an affidavit in the High Court proceedings  
4 verifying a series of very serious allegations --

5 CHAIRMAN: I'm sorry, Mr. Murphy, to interrupt, maybe 15:32  
6 just tell me why you say he misled Clerkin if you  
7 wouldn't mind, it might help.

8 MR. MURPHY: Ultimately by effectively denying any  
9 involvement in the process, in contrary to the evidence  
10 which you received here. So there is a stark contrast 15:32  
11 between what he has said to you, Chairman, and what was  
12 said at that time. And insofar as the notifications in  
13 relation to the Roma children, there was also a  
14 specific point of evidence there where there's a denial  
15 which ultimately was present. If you see, Chairman, 15:33  
16 down at the end of page 16, footnote 17 in the Tribunal  
17 materials, first of all, Mr. Taylor says:

18  
19 "I did not disclose any of the information or release  
20 any other information to any persons within the media 15:33  
21 or to any media outlets."

22  
23 But in evidence to you on day 77, page 113, he says:

24  
25 "CHAIRMAN: I mean this thing with the press would have 15:33  
26 gone on. I mean, you might thank them for it, perhaps,  
27 until now; investigations could have been compromised,  
28 cases could not have been brought. I mean, are you not  
29 grateful for Superintendent Clerkin stopping your

1 tracks?

2 A. I regret immensely."

3

4 The following exchange, Mr. McGuinness asked him:

5

15:33

6 "Do you accept that on many occasions you engaged in  
7 systematic and continuous seeking out of information  
8 from officers, documents and you circulated the  
9 information and documents to many journalists --

10 A. Yeah. I accept that.

15:34

11 Q. -- at a time when you're not entitled to do it?

12 A. Yeah, I accept that, yeah.

13 Q. Now it seems to be, looking at the totality of it,  
14 therefore, acting as a press officer in an unauthorised  
15 way, would you agree with that, at the very least?

15:34

16 A. Yes, I regret, I regret that matter."

17

18 So we say that there is a complete difference in his  
19 approach towards the Clerkin investigation at that time  
20 and to his evidence here to you.

15:34

21

22 Second point: Chairman, he swore an affidavit in the  
23 High Court verifying a series of very serious  
24 allegation about the Clerkin which he has now accepted  
25 were not true. And we say that all the evidence before  
26 the Tribunal has established that contrary to the  
27 various assertions made on behalf of Superintendent  
28 Taylor in that affidavit, the Clerkin investigation was  
29 well-founded and extremely well conducted. And again,

15:34

1 Chairman, applying this Tribunal's assessment and  
2 experience in the criminal law to the process of that  
3 investigation file submitted by the DPP to the Tribunal  
4 for its investigation, we say it is clear that that  
5 examination and investigation by Superintendent Clerkin 15:35  
6 was meticulous, incredibly thorough and fair.

7  
8 We say it is clear from the evidence that Commissioner  
9 O'Sullivan had no involvement in the organisation or  
10 management of the Clerkin investigation. We know that 15:35  
11 she had no involvement in the appointment of Chief  
12 Superintendent Clerkin to conduct the investigation.  
13 We know that Superintendent Clerkin alone made the  
14 decision to appoint Superintendent James McGowan as the  
15 superintendent to the investigation. We say that the 15:35  
16 criticisms of the conduct of the investigation made by  
17 Superintendent Taylor in his application for leave for  
18 judicial review and similar criticisms made by  
19 Mrs. Taylor were unfounded. Needless to say they had  
20 an effect not just on the people referred to, Martin 15:35  
21 Callinan and Nóirín O'Sullivan, but on public  
22 confidence in An Garda Síochána as an institution.

23  
24 In response to your ninth question, the relevance of  
25 the allegations of Superintendent Taylor as to 15:35  
26 Commissioner O'Sullivan, Detective Superintendent  
27 McGowan, Chief Superintendent Clerkin and the false  
28 High Court applications, is that they show that he was  
29 prepared to lie about serious and significant matters

1 which are relevant to this Tribunal and that he had an  
2 animus towards former Commissioner O'Sullivan. We say  
3 furthermore that his belated and apparent reluctance to  
4 withdraw the allegation during the course of the  
5 Tribunal goes to the credibility of his account. 15:36

6  
7 Third, we say that Superintendent Taylor, as  
8 acknowledged by him for the first time in evidence, was  
9 in fact engaged in a pattern of inappropriately  
10 providing confidential information about Garda 15:36  
11 activities and investigations to selected journalists.  
12 He has now belatedly and after vigorously challenging  
13 the bona fides of the investigations into these matters  
14 admitted doing this after he had left his role with the  
15 Garda Press Office. The evidence demonstrates that his 15:36  
16 activities in that regard were extensive. They were  
17 ongoing for many months. They didn't even cease after  
18 he came under suspicion for leaking police information  
19 concerning a Roma child. This leaking included the  
20 provision of confidential information to journalists 15:37  
21 about the most sensitive of live Garda investigations,  
22 including into a rape investigation and a murder  
23 investigation, he thereby risked significant harm being  
24 caused to these investigations. Not only that, by  
25 effectively providing to certain members of the media a 15:37  
26 parallel and unapproved press information service he  
27 was undermining the Garda Press Office.

28  
29 Fourth, we say and acknowledge it's a matter for this

1 Tribunal to decide on the conflict of facts which have  
2 now arisen about what Superintendent Taylor told  
3 Sergeant McCabe during their conversation on the 20th  
4 and 21st September 2016 and the conflict between  
5 Superintendent Taylor and Deputy Wallace, Deputy Daly, 15:37  
6 Deputy McGuinness and the journalist Mr. Michael  
7 Clifford over what he told them about the use of texts  
8 in the alleged campaign to malign Sergeant McCabe. If  
9 the Tribunal on the weight of the evidence before it  
10 finds Superintendent Taylor's testimony to this 15:37  
11 Tribunal on that aspect to be untrue, then it goes to  
12 his general lack of credibility and further undermines  
13 the credibility of his protected disclosure.

14  
15 We draw attention to those specific clashes between the 15:38  
16 different version of events which different witnesses  
17 have told you he provided to them.

18  
19 The next point, Chairman, I would like to make briefly,  
20 but it's a point which has not been addressed in the course 15:38  
21 of earlier comments and submissions to the Tribunal:  
22 Superintendent Taylor's protected disclosure was bereft  
23 of any specific detail that one might have expected to  
24 enable some party to contradict or disprove his  
25 account. He hasn't at any stage provided specifics of 15:38  
26 any incident or occasion at or on which he engaged in  
27 such negative briefings with journalists. His  
28 subsequent statements to the Tribunal are similarly  
29 lacking into detail. This is notwithstanding the fact

1 that Mr. Callinan and Ms. O'Sullivan repeatedly  
2 expressing their concern about the absolute lack of any  
3 detail and impossibility of defending themselves  
4 against such vague and nebulous allegations. We  
5 submit, Chairman, it would be unfair, fundamentally 15:38  
6 unfair, to make any findings against any individual on  
7 the basis of any allegation of such vagueness, not  
8 least because that vagueness effectively denies the  
9 parties any opportunity to meaningfully cross-examine  
10 the person making the allegation. Superintendent 15:39  
11 Taylor hasn't identified any occasion when he says he  
12 spoke to Commissioner Callinan during which he was  
13 instructed to conduct the campaign or on which he  
14 subsequently updated Commissioner Callinan on the  
15 progress or effect of any such campaign with the 15:39  
16 exception of the purported communications about the  
17 Williams visits, which we will discuss later on. He  
18 hasn't identified any specific occasion when he  
19 discussed such a campaign of negative briefing with  
20 Andrew McLindon. We say it is simply unsafe to rely 15:39  
21 upon vague evidence lacking detail. We also submit,  
22 Chairman, that it lacks credibility that Superintendent  
23 Taylor would not have some detail if these incidents  
24 had actually happened in point of fact. And we submit  
25 that one is forced to conclude that they did not 15:39  
26 happen.

27  
28 In evidence Superintendent Taylor merely repeated that  
29 he availed of opportunities to drop negative references



1 about Sergeant McCabe or suggestions about a backstory  
2 into the conversations with journalists but he was  
3 unable to identify any such particular occasion.  
4

5 We say that the importance of focusing on the words of 15:40  
6 the terms of reference is emphasised because the words  
7 at paragraphs [a] and [b] are taken from Superintendent  
8 Taylor's protected disclosure. During his evidence he  
9 repeatedly said that his alleged briefing was  
10 "opportunistic when opportunity arose". However, 15:40  
11 according to him the direction he had been given was  
12 "to contact the media to brief them negatively against  
13 Sergeant McCabe". That is, in other words, to  
14 proactively take steps to brief the media. So the  
15 account of what he did is at odds with his direction to 15:40  
16 proactively brief the media.  
17

18 Another point, Chairman, is that in his protected  
19 disclosure Superintendent Taylor did not name any  
20 journalists who he had negatively briefed. He didn't 15:40  
21 do so during the review conducted by Mr. Justice  
22 O'Neill. He didn't do so in his initial statement to  
23 the Tribunal. He did not provide the names of any such  
24 journalists until 2017. And that's in a letter of the  
25 13th April of 2017 from his solicitor. 15:41  
26

27 In response to a specific query correspondence from the  
28 Tribunal he named for the first time nine journalists  
29 as being those to whom he claims he maligned Sergeant

1 McCabe. Later he produced two further names, those of  
2 journalists Debbie McCann and Eavan Murray. But this,  
3 however, was only after the Tribunal had become aware  
4 of the degree of telephone contact between  
5 Superintendent Taylor and these two journalists, and 15:41  
6 after the Tribunal had become aware that they had each  
7 travelled to seek to interview Ms. D. But remarkably,  
8 having allowed the Tribunal hearings to proceed almost  
9 to conclusion, on day 94 of this Tribunal's hearings  
10 Superintendent Taylor named a twelfth journalist who in 15:41  
11 common with seven other journalists on his list  
12 promptly denied his allegation.

13  
14 Chairman, now turning please to page 20, we point out  
15 that Superintendent Taylor acknowledged that he, in his 15:42  
16 words, "ceased" activities in relation to the alleged  
17 campaign after Mr. Callinan had retired as  
18 Commissioner. This was notwithstanding the fact that  
19 he also claimed that the new Commissioner, Nóirín  
20 O'Sullivan, and Mr. McLindon had been complicit in 15:42  
21 conducting such a campaign and he had kept them both  
22 fully informed. In Superintendent Taylor's case, if it  
23 were true, there is no good reason for him to have  
24 ceased the alleged activity. Indeed, it could be said  
25 that he would have continued or possibly even 15:42  
26 accelerated his campaign in order to impress the new  
27 management, but that didn't happen because again the  
28 fundamental underlying allegation was false.  
29

1 Five, we would say that one would have thought  
2 logically any purported smear campaign that had at its  
3 core a reference to an allegation of child sexual abuse  
4 would be directed at discrediting the victim by causing  
5 the listener to believe the historical allegation to 15:42  
6 have been true. In other words, that by dropping  
7 mention of the sexual assault allegation into  
8 conversations, the listener's mind would be prompted  
9 into thinking that the allegation was true or that  
10 there was something to it in. 15:43

11  
12 In relation to core issue, Superintendent Taylor gave  
13 entirely contradictory evidence. On day 76, page 7, he  
14 was asked was it is his position that he was to impart  
15 the message to parties that were being negatively 15:43  
16 briefed that "there's no smoke without fire" in  
17 relation to the sexual abuse allegation. He confirmed  
18 twice that that was not part of the methodology of the  
19 smear campaign, day 76, page 7. But this evidence  
20 flatly contradicts the statement he had given to the 15:43  
21 Tribunal investigators in May 2017, which appears at  
22 page 128 of the materials. There he said:

23  
24 "I was to say that Maurice McCabe was driven by  
25 agendas, he was motivated by revenge, that revenge is 15:43  
26 driven by the allegation, sexual allegation made  
27 against him by another member's daughter a number of  
28 years ago. I would say, I did always clarify to a  
29 journalist that a file had gone to the DPP and that

1 there was no prosecution. However, this was the  
2 narrative... it was put in such a way that there was no  
3 smoke without fire. I would drop that in when talking  
4 to journalists."

5  
6 In this Tribunal when Superintendent Taylor was asked  
7 to account for the contradict, the question put to him  
8 was:

9  
10 "I suggest to you that no smoke without fire means  
11 there is something in the allegation, the allegation is  
12 likely to be true, isn't that what the expression  
13 means."

14  
15 Superintendent Taylor said:

16  
17 "I don't accept that."

18  
19 He was questioned, the question said:

20  
21 "I see. And are you in a position to reconcile what  
22 you told us a few minutes ago with what I suggest to  
23 you was a different account in the statement to the  
24 Tribunal investigators."

25  
26 Superintendent Taylor replied:

27  
28 "No. As I said, my position as directed by the  
29 Commissioner was always to bring the journalists'

1 attention to the fact that Sergeant McCabe was  
2 motivated by revenge in bringing these matters to the  
3 public arena."

4  
5 That is day 76, page 10.

15:44

6  
7 We submit, Chairman, the fact that Superintendent  
8 Taylor isn't even able to say whether the smear  
9 campaign he claims to have existed involved inducing  
10 the persons being briefed to believe that Sergeant  
11 McCabe was guilty of child sexual abuse is a strong  
12 indicator that no such smear campaign ever existed.  
13 Apart from discrediting a core plank of the alleged  
14 smear campaign, the superintendent's directly  
15 contradictory accounts of the campaign calls into  
16 question the very essence of his story and further  
17 underscores the necessity to treat his entire account  
18 with skepticism.

15:44

15:45

19  
20 Again, in the course of interaction with the Chairman,  
21 you asked him, in the course of the process, questions  
22 5 and 13, the question of:

15:45

23  
24 "Is what Superintendent Taylor claims to have been done  
25 an understatement of the reality of what he did?"

15:45

26  
27 Question 13:

28  
29 "If these are to be believed or accepted as probable

1 what is the full extent of allegation of calumny  
2 against Sergeant McCabe? Is Superintendent Taylor  
3 reducing his role, and if so, does this factor lessen or  
4 completely dissolve his credibility?"

15:45

5  
6 And we say that it must be emphasised that Commissioner  
7 Callinan did not ask Superintendent Taylor to  
8 negatively brief the media, whether in the form  
9 suggested in the questions or at all. The significance  
10 of the ambiguity in Superintendent Taylor's account is 15:45  
11 he clearly cannot decide which lie to settle on. If he  
12 briefed the media negatively he would know what the  
13 message was. The fact that he doesn't means that he  
14 did neither. For this reason, this factor we say  
15 lessens his credibility to the extent of completely 15:46  
16 dissolving it. It's very difficult to see why  
17 Superintendent Taylor would, when making his protected  
18 disclosure, or more particularly in giving evidence,  
19 reduce his role from what he was actually doing.

15:46

20  
21 A further point we wish to make, Chairman, is that  
22 based on the evidence you have heard there is no other  
23 evidence of any kind to substantiate Superintendent  
24 Taylor's allegations. As we have submitted in our  
25 submissions last week in relation to the issue of 15:46  
26 journalistic privilege, none of the journalists who  
27 Superintendent Taylor claims to have briefed supported  
28 his claim. On the contrary, eight of the journalists  
29 have expressly denied that they received any such

1 briefing from him or from any member of An Garda  
2 Síochána and the balance invoked journalistic  
3 privilege. Of those four, as previously submitted, two  
4 can be discounted by reference to the timeframe in  
5 which they became aware of the rumours against Sergeant 15:46  
6 McCabe and one of the remainder, Cormac O'Keefe,  
7 expressly denied having been negatively briefed by  
8 either Mr. Callinan or Ms. O'Sullivan. So, in those  
9 circumstances we submit it would be wrongful to draw  
10 any inference from their claim of privilege against a 15:47  
11 third party such as Mr. Callinan, Ms. O'Sullivan or  
12 Mr. McLindon, where the Tribunal itself hasn't  
13 challenged the claim of privilege and sought to compel  
14 the witnesses to answer the question using the  
15 mechanisms under the Tribunal of Inquiry Act. 15:47

16  
17 If there is a consequence for that claim of  
18 journalistic privilege, it's a consequence for the  
19 journalist and not for any third party.

20 15:47  
21 Chairman, we also go on to say that looking at the  
22 Clerkin investigation, from the standpoint of An Garda  
23 Síochána, as an institution, one of the more damaging  
24 allegations put forward by Superintendent Taylor was  
25 his suggestion that the absence of documentary or 15:47  
26 electronic evidence to support his claims was due to,  
27 as his counsel put it, in the judicial review  
28 application report, "skulduggery". Part of  
29 Superintendent Taylor's case in this regard is that the

1 Clerk investigation was "trumped up" and that Deputy  
2 Commissioner O'Sullivan caused his phone to be seized  
3 for the purpose of securing the evidence on that phone  
4 about Superintendent Taylor's negative briefing of  
5 journalists with her acquiescence.

15:48

6  
7 Of course the evidence has established that the phone  
8 he used during that time period was the one that would  
9 have contained such evidence, if it existed, was never  
10 seized and always remained in the position of  
11 Superintendent Taylor. And he must have known that to  
12 be the case.

15:48

13  
14 His allegations in this regard, which he repeated to  
15 politicians and journalists and to the High Court, were  
16 false. They created a public narrative that was false  
17 and caused tremendous to An Garda Síochána, to  
18 Commissioner O'Sullivan and to her husband. This issue  
19 has to go to the credibility of the rest of his  
20 protected disclosure and to his credit.

15:48

15:48

21  
22 It's difficult to imagine an allegation more  
23 undermining to An Garda Síochána, its law enforcement  
24 role, than one which alleges that having confiscated  
25 material which demonstrated misconduct by its senior  
26 officers, more junior officers destroyed that evidence.  
27 But that is an allegation that was recklessly made and  
28 it was as recklessly made as it was casually withdrawn.  
29

15:48



1 we say also that Superintendent Taylor's allegation are  
2 not substantiated by the content of various computers,  
3 laptops or email addresses used by Superintendent  
4 Taylor to which this Tribunal has had access and which  
5 have been forensically examined by the Tribunal, nor 15:49  
6 are they substantiated by the contents of or metadata  
7 relating to other parties' devices. And a very  
8 thorough examination has been conducted under your  
9 direction, Chairman: Nothing by way of evidence to  
10 support Superintendent Taylor's claim has emerged from 15:49  
11 that forensic independent assessment.

12  
13 A further question arises, Chairman, as to if you take  
14 the view that the evidence is as I have set it out to  
15 be in the last few minutes, given by Superintendent 15:49  
16 Taylor, is there a motive for this deception. We would  
17 respectfully submit that there is. We say in  
18 determining the credibility of Superintendent Taylor's  
19 allegation, clearly a highly relevant consideration is  
20 whether he may have had a motive to lie and if so, what 15:50  
21 the motive might have been. Well, Chairman, you have  
22 heard evidence that Superintendent Taylor was upset, he  
23 was angry, at having been moved from the Press Officer  
24 role. That he was bitter with Commissioner O'Sullivan  
25 as a result. It upset him to the extent, through the 15:50  
26 evidence, transcript day 76, that he had difficulty  
27 sleeping, that he openly voiced his upset to colleagues  
28 and to journalists.

29

1 Third, we say that Superintendent Taylor on the  
2 evidence was further embittered against Commissioner  
3 O'Sullivan after he became the subject of the criminal  
4 investigation into the leak of detail about the Roma  
5 child and when the Clerkin investigation broadened into 15:50  
6 an investigation into many other leaks of confidential  
7 information made by Superintendent Taylor. Now, we  
8 know from the evidence that Superintendent Taylor and  
9 Mrs. Taylor believed, and still believe, that  
10 Ms. O'Sullivan was determined to somehow "get a charge" 15:50  
11 in, that phrase that was used. Superintendent Taylor  
12 seems to have developed a particular fixation about the  
13 fact that Ms. O'Sullivan's husband was involved in the  
14 Clerkin investigation and seemed to see that this was  
15 some way reflecting Commissioner O'Sullivan's intention 15:51  
16 to have him prosecuted.

17  
18 Fourth, the evidence suggests that Superintendent  
19 Taylor was particularly embittered about his arrest and  
20 detention and that he visited his angst in this regard 15:51  
21 also upon Commissioner O'Sullivan. This was a theme of  
22 his discussion with the journalist Mick Clifford in the  
23 summer of 2016 and in his discussions with Deputies  
24 Wallace and Daly on the 3rd October 2016, all of which  
25 we say is reflected in the notes that each of them took 15:51  
26 at the time and which has been reflected in the  
27 evidence they gave to the Tribunal.

28  
29 Furthermore, it's also evident, we say, as a theme in

1 his meeting with Deputy McGuinness in January 2017. In  
2 addition, Superintendent Taylor expressed his  
3 unhappiness about his arrest and the intensification of  
4 his angst against Ms. O'Sullivan in particularly  
5 trenchant terms during his second visit to Commissioner 15:52  
6 Callinan's home when the evidence indicates that he  
7 said "bring her down".  
8

9 And If I could also indicate that this evidence, I  
10 think, in addition the Tribunal materials at -- 15:52  
11 Tribunal transcripts, Day 76 and page 184. We say that  
12 this is evidence which you could safely rely upon,  
13 Chairman, if you consider it appropriate to do so, to  
14 consider that it is evidence of motive, that  
15 Superintendent Taylor was very motivated to falsely 15:52  
16 implicate Ms. O'Sullivan as being involved in or aware  
17 of an alleged campaign of negative briefing against  
18 Sergeant McCabe because he was bitter towards her. And  
19 the extent to which he was motivated to undermine  
20 Commissioner O'Sullivan was reflected in his 15:52  
21 involvement within a few days of makings his protected  
22 disclosure, in circumstances of his anonymity initially  
23 being protected, in meeting the journalist Mr. Clifford  
24 to disclose or confirm details of his protected  
25 disclosure, and then in his actions in briefing Deputy 15:53  
26 Wallace and Daly on Monday the 3rd October 2017,  
27 thereby ensuring that his allegations against  
28 Commissioner O'Sullivan received publicity.  
29

1 As referred to above, these actions, we say, are the  
2 antithesis of a statutorily-protected disclosure  
3 process. They led to significant political and media  
4 controversy and repeated calls for Commissioner  
5 O'Sullivan to resign from then on. 15:53

6  
7 Superintendent Taylor also alleges that Commissioner  
8 Callinan was involved in directing him to conduct a  
9 campaign of briefing against Sergeant McCabe. We  
10 suggest that his reason for doing so was to give 15:53  
11 credence to the suggestion that such a campaign was  
12 being conducted by senior management and that  
13 Ms. O'Sullivan was aware of it and would be implicated  
14 in it. In order for his allegation of an unauthorised  
15 campaign against Sergeant McCabe to have any credence, 15:53  
16 it had to include a suggestion that Commissioner  
17 Callinan was involved in directing it. Any suggestion  
18 that Superintendent Taylor would have been involved in  
19 such activity with the knowledge of only Deputy  
20 Commissioner O'Sullivan and not of Commissioner 15:54  
21 Callinan, wouldn't have been credible, having regard to  
22 the fact that he worked directly with the Commissioner  
23 and was perceived as being closer to Superintendent  
24 Taylor and would, of course, have had recourse to the  
25 Commissioner. 15:54

26  
27 And in an effort to give his allegation of an  
28 unauthorised campaign further credence, belatedly,  
29 Superintendent Taylor suggested that Mr. McLindon, the

1 newly-appointed civilian director of communication,  
2 also had knowledge of or involvement in it. And we say  
3 it appears that he did so apparently out of personal  
4 and professional animosity towards Mr. McLindon, who he  
5 appears to have resented as his newly-appointed 15:54  
6 external line manager. This can be seen in the  
7 footnote, Chairman, at the end of page 26, footnote 31,  
8 extract from the transcript Day 70, page 48, line 20,  
9 and also in the Tribunal materials at page 2407 where a  
10 text message has been reviewed by the Tribunal from 15:54  
11 Superintendent Taylor to another person, and it says:

12  
13 "Glad to be away from the impending car crash by her,  
14 and especially the rodent Andy. But really miss the  
15 team. Keep in touch. Dave." 15:55

16  
17 And it would appear from a reading of that text and the  
18 context it was written, the "car crash by her" refers  
19 to Ms. O'Sullivan and "the rodent Andy" refers to  
20 Mr. Andrew McLindon. But this is not the only 15:55  
21 evidence. There is other evidence from the  
22 circumstances and from his actions at the time and  
23 evidence from persons who were in the Press Office.

24  
25 We say it is also entirely possible for you, Chairman, 15:55  
26 to conclude that Superintendent Taylor made his  
27 allegations against Commissioner Callinan and Deputy  
28 Commissioner O'Sullivan to Sergeant McCabe which  
29 eventually found their way in some form into his

1 protected disclosure, in order to create a smokescreen  
2 or fog bank which could be used by him in the defence  
3 of possible criminal and disciplinary proceedings, in  
4 respect of the various wrongdoing which he had  
5 vigorously denied and which he apparently now appears 15:55  
6 to accept.

7  
8 So, in summary, what we say, Chairman, is that there is  
9 no substantiating evidence that Mr. Callinan or  
10 Ms. O'Sullivan instructed or directed any such effort 15:56  
11 on Superintendent Taylor's part to malign Sergeant  
12 McCabe or that either were aware of any such effort.  
13 The evidence before the Tribunal has established, we  
14 submit, that Superintendent Taylor's protected  
15 disclosure, and indeed much of his verifying statement 15:56  
16 of grounds and the verifying affidavit, is essentially  
17 a work of fiction. We invite you, Chairman, to find  
18 that the allegations framed in Terms of Reference (a)  
19 and (b) are untrue. We say that such a finding, if  
20 made, would serve the public interest in establishing 15:56  
21 how a mere allegation can become the received truth at  
22 enormous personal cost to the individuals involved and  
23 at enormous cost to our society. It would also serve  
24 public interest at least partially redressing the  
25 substantial harm to the reputation of An Garda Síochána 15:56  
26 generally and the reputation and professional standing  
27 of former Commissioner Callinan, former Commissioner  
28 O'Sullivan and Mr. McLindon. So in those --

29 CHAIRMAN: Sorry, Mr. Murphy, you wanted to say

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something?

MR. MURPHY: Just to summarise in one sentence,  
Chairman: Ultimately we say that there is no evidence  
that is subtended to support the allegations made which  
form the subject matter of Superintendent Taylor's  
accusations in terms [a] and [b].

15:57

I wonder, Chairman, whether this would be an  
appropriate moment?

CHAIRMAN: Yes, I think it is. I'm afraid there is bad  
news for coffee lovers in the sense that I have just  
got a message that the meeting at 10:00 has been put  
back to 9:30, which means I should be in a position to  
start here at 10:15, but that will mean we will get  
things done that bit quicker.

15:57

15:57

MR. MURPHY: Yes.

CHAIRMAN: Thank you.

THE HEARING THEN ADJOURNED UNTIL FRIDAY, 29TH JUNE 2018  
AT 10:15AM

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