

DTI:DAT

D3

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5 MCCALLUM J
AND A JURY OF FOUR

THIRD DAY: WEDNESDAY 25 OCTOBER 2017

10 **2016/00013257 - CHRIS GAYLE v FAIRFAX MEDIA PUBLICATIONS PTY LIMITED**
2016/00013259 - CHRIS GAYLE v THE AGE COMPANY PTY LIMITED
2016/00013260 - CHRIS GAYLE v THE FEDERAL CAPITAL PRESS OF AUSTRALIA PTY LIMITED

15

IN THE ABSENCE OF THE JURY

20 HER HONOUR: Dr Collins, I have read your written submissions, unless there's anything you feel you need to add I don't think you need to address me. It's a very, if I may say so, very clearly set out in the written document.

25 COLLINS: Unless we can assist your Honour we're content. Would your Honour like a copy of the authority?

HER HONOUR: That would be helpful, thank you. Do you have those now?

30 MCCLINTOCK: We do.

HER HONOUR: Mr McClintock, what further do you want to say about this issue? I must say, so the transcript makes sense for myself later we are visiting whether the question of reasonableness under s 30 should be determined by the jury.

35

MCCLINTOCK: I put to your Honour previously that that is the wrong question. The right question is--

40 HER HONOUR: Mr McClintock, I understood that submission. Please, I'm using it in shorthand, I understood your submission, the question is whether under the general law it was a question that was determined by the jury.

45 MCCLINTOCK: I hope I wasn't being discourteous, your Honour. I didn't intend to be. The two propositions I wish to urge upon your Honour are these; the first is that your Honour could not be convinced that the Victorian Court of appeal was plainly wrong in Popovic. The proposition is set out very clearly and it's a very strong decision. There's no equivocation about it and if your Honour looks at para 112 which appears on p 28 of 2003.

50 HER HONOUR: What page?

MCCLINTOCK: At p 28 of 2003, 9 VR; it's after the discussion that commences on p 27 which is again about the allocation of responsibility of a decision in this area. Your Honour will see 112, I don't think I need read it to your Honour.

5

HER HONOUR: Let me just remind myself. That sentence that says, "That is the question of whether the defence has been established", must be taken, mustn't it, to be a reference to the judge's role to determine the question whether it was an occasion of qualified privilege which, as Dr Collins' submissions point out, picks up elements A and B in s 30, not C.

10

MCCLINTOCK: With respect, your Honour, no. Still the question is because of the opening words of s 30, there is a defence of qualified privilege if, and asking the question, is it an occasion of qualified privilege is only asking is the defence established. It's only another way of saying that same thing. The reason why that must be the case, because at common law, if it was an occasion of qualified privilege the defence was established.

15

HER HONOUR: That's Dr Collins' point.

20

MCCLINTOCK: Your Honour, but it still comes down to the same thing, it is a defence of qualified privilege and therefore--

HER HONOUR: I don't understand the concept of a statute recognising a new kind of a defence under a label which was used in the common law and saying that therefore it's a common law defence, if it's created by the statute. The defence under s 30 didn't exist before s 30 was enforced so how can you characterise it as anything other than a statutory defence? It just doesn't make sense.

25

30

MCCLINTOCK: Your Honour, once again that is the wrong question. Yes, of course, it's a statutory offence but it is a defence of qualified privilege. The Act says so unequivocally and at common law qualified privilege was a question for the judge.

35

HER HONOUR: But again, you're giving it a broad label, qualified privilege was a question for the judge. The question for the judge was whether it was an occasion of qualified privilege. Reasonableness was not part of that determination and reasonableness is a question of fact.

40

MCCLINTOCK: Your Honour, again, with respect to your Honour, I was going to come to this. Reasonableness is not a question of fact in those terms, it's a normative judgment which might be based upon other facts.

45

HER HONOUR: Popovic describes reasonableness as a question of fact.

MCCLINTOCK: They describe it as inferences, inferences being drawn from the primary facts as a question of fact, yes, indeed. Just as in that sense the question of whether there was a duty or whether there was an interest, it conceivably could be a question of fact at common law but the fact--

50

HER HONOUR: No, but there, normative judgments don't fall necessarily on one side of the line or the other. There are plenty of normative judgments properly left to juries.

5 MCCLINTOCK: But it's a fairly good indication it's likely to be one for the judge, your Honour and if one considers in the context of media cases, the issue is what journalists should do and that involves issues about journalistic practice and what is appropriate in the circumstances. It would mean, for
10 example, that we could lead expert evidence as to those matters if it was a question of fact. That would be very surprising and it would be very surprising if--

HER HONOUR: Sorry, can you say that again, why would that be so?

15 MCCLINTOCK: Your Honour, what journalists do is not something that a jury, what journalists should do is not something that a jury could be expected to know or understand based on their general experience. Your Honour knows that journalists before they publish a serious allegation have an obligation to check their facts. The jury doesn't know that. That's the reason why
20 reasonableness, we would say, is classically a matter for the judge because your Honour knows what is appropriate in the circumstances.

Your Honour, as I've I said, I'm repeating myself and I shouldn't do that but it appears to us as soon as s 30 says it's a defence of qualified privilege and
25 then one picks up the fact that there are matters in the subs which guide it, that is, for example, the--

HER HONOUR: Sorry to interrupt you, Mr McClintock, can you give me one minute?

30 MCCLINTOCK: Certainly, your Honour. Your Honour, where it says the extent to which the matter is a matter of public interest, public interest is unquestionably a question - whether it is or isn't is for the judge. The jury is presumably then to be asked, having been told that it's a matter of public
35 interest, the extent to which it's a matter of public interest. It would be fatally confusing, in our submission, if that were done but, in any event, just going back to Popovic, your Honour, the fact is that under the Victorian common law, that is the common law, reasonableness was a question for the judge, Popovic so holds and, in my submission, your Honour could not--

40 HER HONOUR: Have you looked at Dr Collins' submissions?

MCCLINTOCK: Yes, I have, your Honour.

45 HER HONOUR: What do you say in response to the point made about the citation being to a case dealing with legislation at a time when under 7A of the 74 Act defences were determined by the judge, para 19 of their submissions?

50 MCCLINTOCK: Your Honour, we join issue with that. In our submission it's wrong.

HER HONOUR: What's wrong?

MCCLINTOCK: The proposition, the criticism of Popovic put in paragraph--

5 HER HONOUR: Sorry, it's not wrong that at the time of the decision in Longey 7A limited the role of juries to determine whether the imputations were conveyed and were defamatory; that's not wrong, what's wrong?

10 MCCLINTOCK: What's wrong about it is, your Honour, the answer is that at all times there was a provision in the 1974 Act that said that the decision was a decision on qualified privilege was one for the judge. Section 23 originally said that. I can't remember whether that survived after the 1995 amendments that introduced s 7A but their Honours were alive to that as can be seen by s 113.

15 HER HONOUR: Sorry?

MCCLINTOCK: Paragraph 113 of Popovic, their Honours specifically dealt with this.

20 HER HONOUR: Is that what you have to say about it?

MCCLINTOCK: Yes, it is, your Honour.

25 HER HONOUR: I will have to go back and look at Popovic more carefully. Are we ready for the witness?

DISCUSSION AS TO SCHEDULING OF WITNESSES AND TIME REMAINING

30 MCCLINTOCK: If your Honour is against me on the qualified privilege issue and who determines it, we'll have to settle the issues to go to the jury and Dr Collins will have to articulate the conduct that he says is reasonable in the circumstances.

35 HER HONOUR: You better start working on that today, Dr Collins. I haven't yet made a decision but you had better be ready to address that tomorrow.

40 COLLINS: In our submission, if the matter goes to the jury they should just be given a simple question of the kind that appears in the draft questions and they should be addressed orally by my learned friend and myself on the content.

HER HONOUR: Like a murder trial, can we deal with that tomorrow, I just want to get the jury in.

45

IN THE PRESENCE OF THE JURY

<CHRISTOPHER BARRETT, ON FORMER AFFIRMATION(10.01AM)

5 <EXAMINATION-IN-CHIEF BY DR COLLINS

Q. Mr Barrett, yesterday afternoon I was asking you some questions about
your conversation with Sir Ritchie Richardson and Mr Spooner at the Sydney
Cricket Ground on 5 January 2016. Did you communicate to Chloe Saltau
10 what had been conveyed to you in those conversations?

A. Yes, I sent her an email with a comment from Mr Richardson soon after the
conversation.

15 Q. Yes, did you have a conversation with Ms Saltau or simply send her an
email?

A. I had a conversation with her subsequently, yes.

Q. Which came first, the email or the conversation?

20 A. The email.

EXHIBIT 5 SHOWN TO WITNESS

Q. Do you recognise that, Mr Barrett, as the email that you sent to Ms Saltau?

25 A. Yes.

Q. On 5 January 2016 at 4.14pm, and you've said in the email:

30 "Approached by Fairfax Media at the SCG and asked about the
allegations against Gayle from February. Richardson said, 'At this
point I have nothing to say about that or about what happened with
Chris Gayle (in Hobart)'."

Why do those words appear in quotation marks?

35 A. In quotation marks or brackets, sorry, the?

Q. I start with the quotations marks?

A. Because at the conclusion of my conversation with Mr Richardson and
Mr Spooner I asked whether he actually wanted to make a comment about the
40 allegations I was raising and they were the words he said at the end of the
conversation.

Q. The words in Hobart that appear in parentheses?

A. So that's my addition, he's referring there to the television interview with
45 Mel McLaughlin that had happened shortly beforehand.

Q. You said that after sending that email you had a conversation with
Ms Saltau about your communications with Sir Richie Richardson and
Mr Spooner?

50 A. Yes.

Q. Could you tell us when that conversation occurred?

A. Well that email was sent at 4.14, so shortly after that email was sent.

Q. Could you tell the jury what you said to Ms Saltau in that conversation?

5 A. I effectively told--

HIS HONOUR

Q. Again, do you mind please making sure that you do it in I said, he said?

10 A. I told Chloe that--

Q. I said?

A. I said to Chloe that there was nothing that had been communicated to me in the conversation with Mr Richardson and Mr Spooner that cast doubt on the truth of the story.

15

COLLINS

Q. Did you say to Ms Saltau what Sir Richie Richardson had said to you in the conversation at the SCG?

20

A. Yes.

Q. What words did you use when you told Ms Saltau what Sir Richie Richardson had said to you?

25

A. I said he refused to confirm or deny the allegations that I raised about Chris Gayle. Yes.

Q. Did you say anything else?

A. I said to her that he had asked who I'd heard the allegations from and I said to her that I'd responded to him that I'd heard them from the woman. Or that Fairfax had heard them from the woman.

30

EXHIBIT #7 EMAIL FROM CHRISTOPHER BARRETT TO IAN FUGE AND LISA DAVIES DATED 05/01/16 TENDERED, ADMITTED WITHOUT OBJECTION. SHOWN TO JURY

35

Q. Mr Barrett, this is an email from you on 5 January at it looks like 6.10pm to Ian Fuge and Lisa Davies, both from Fairfax Media. Who are Ian Fuge and Lisa Davies?

40

A. Ian Fuge is the sports editor of The Sydney Morning Herald, Lisa Davies is the editor now of The Sydney Morning Herald. I from - to the best of my knowledge at the time she was the news editor of The Sydney Morning Herald.

Q. In this email you've said, "Hi guys. In the Gayle news pull together, please use this from James Sutherland to replace the comments we had from him in the middle of the story". Then you've set out some words to be attributed to James Sutherland. Who is James Sutherland?

45

A. He's the chief executive officer of Cricket Australia.

Q. Had you had a conversation with Mr Sutherland before sending this email?

50

A. No.

Q. Where did you get the comments to be attributed to him that are set out in this email?

5 A. These comments were emailed to me, to the best of my knowledge, from Jonathan Rose, the then head of communications of Cricket Australia.

10 Q. Was the purpose of this email to have those comments included in the stories that were to be published online later that day and then in the print edition of the Fairfax papers the following morning?

A. Yes.

Q. What was the purpose of seeking a comment from Mr Sutherland?

15 A. Well, obviously the incident on television with Mel McLaughlin on the coverage of the Big Bash involving Chris Gayle had created a fair bit of controversy, so he was being asked about that principally, and he'd made comments about that I believe during the day as well and these were replacement comments from earlier ones during the day.

20 EXHIBIT A SHOWN TO WITNESS

Q. Mr Barrett, could I ask you to go to tab 3 in that folder and if I could ask the members of the jury to turn up tab 3? Could you take it from me that that's a copy of the article that appeared in the print edition of The Sydney Morning Herald on 7 January 2016, so that's the second day in the run of articles, and you'll see it's headed, "Gayle faces prospect of expulsion from BBL", with your name appearing?

A. Yes.

30 Q. Did you write that article?

A. Yes.

Q. The whole of the article?

A. Yes.

35

Q. Could I ask you about what inquiries you made prior to writing that article as it appeared in The Sydney Morning Herald on 7 January? Did you have a conversation on 6 January 2016 with someone from the ICC?

A. I had a conversation with two people from the ICC, yeah--

40

Q. Tell the members of the jury what the ICC is?

A. The International Cricket Council.

Q. Yes, and could you tell us who you had conversations with?

45 A. The first one I had a conversation with was David Richardson, the CEO of the ICC. I rang him in the afternoon of that day because he's a South African - actually and he lives in South Africa obviously and I woke him up with the phone call. He wasn't aware of the allegations that had been published about Mr Gayle in The Herald and The Age that day.

50

Q. What was the purpose of calling him in the middle of the night in South Africa?

5 A. It was a reasonable time in the morning, it was - it'd - but I wanted to find out whether the ICC as the world governing body of the sport would look to investigate, or, you know, had any concerns about the allegations that had been printed in the paper.

Q. Did you put a question to that effect to Mr Richardson?

10 A. Yes, I did.

Q. What did he say by way of response?

A. His reply was that the ICC code of conduct for players amounted essentially to behaviour and conduct that happened inside the ropes, "inside the rope".

15

Q. What did that mean to you?

HIS HONOUR

20 Q. Is it a metaphor based on boxing, inside the ring?

A. It's not I mean as a rope, that the - the boundary is a rope around the--

Q. The boundary of the cricket field?

25 A. --cricket field, so he's saying to me that this is a particular incident that wouldn't come under the jurisdiction of the ICC.

Q. It governs behaviour on the field?

A. It governs behaviour on the field, yeah.

30 COLLINS

Q. Did he say anything else?

A. He advised me to ring Sami Ul-Hasan in Dubai, Sami is the communications manager for the ICC.

35

Q. Did you contact Sami Ul-Hasan?

A. Yes, I rang him.

Q. Could you tell the jury what you said to Mr Ul-Hasan?

40 A. I said to him a similar question to what I'd said to David Richardson, I asked him whether the ICC would investigate whether he was aware of the allegations that had been printed in the newspaper. He said he was aware of the publication of those allegations but similarly he told me that it was not a matter that the ICC would look to investigate because it did not fall under the scope of their code of conduct, the players.

45

EXHIBIT #8 EMAIL FROM SAMI UL-HASAN TO CHRISTOPHER
BARRETT DATED 06/01/16 TENDERED, ADMITTED WITHOUT
OBJECTION. SHOWN TO JURY

50

Q. Mr Barrett, do you see this appears to be an email from Mr Ul-Hasan to you on 6 January at 7.13pm Australian time with the subject line, "Queries on Chris Gayle", and Mr Ul-Hasan has said to you, "Please accept my sincere apologies", and so on? Can I ask you about the text that appears below

5 Mr Ul-Hasan's sign off, see in smaller print there are a series of questions, is the ICC aware of the allegations and so on, did you write those questions?

A. No, I didn't.

Q. Are you able to identify for the jury who did?

10 A. I don't know. Another journalist for Fairfax.

Q. Is this right, that as you understand it Mr Ul-Hasan had received some questions from Fairfax and by this email he was providing his response to those questions?

15 A. Yes.

Q. Were the substance of those responses then incorporated into your article published on 7 January 2016?

20 A. I - couldn't recall without looking at the article. I certainly quoted him from my original conversation with him.

Q. Did you speak to anybody else on 6 January 2016 in connection with the series of articles about Mr Gayle?

25 A. Yes I did, yeah.

Q. Did you speak to some sources who initially sought to have their identities protected?

A. Yes.

30 Q. Have you since received permission to name some of those sources?

A. Yes, I have, yeah.

Q. Would you tell the jury about the first of the sources with whom you spoke?

35 A. Yes, the first of the sources was - he's relieved himself of his anonymity in the lead up to this case, is Jonathan Rose, who was then head of communications for Cricket Australia.

Q. Did you contact him or did he contact you?

40 A. I had multiple conversations with him, but I contacted him in the first instance.

Q. What was the purpose of contacting Mr Rose from Cricket Australia?

45 A. I was wanting to ask the question whether there would be any potential consequences if an investigation into the allegations against Mr Gayle proved their truth, or if there was an investigation carried out by a particular organisation.

Q. Did you put a question to that effect to Mr Rose?

50 A. I did, yes.

Q. Could you tell the jury, using your best recollection of the words he actually used, what he said to you?

5 A. He said that if any investigation verified the allegations that Mr Gayle would not be invited back to the Big Bash League at any time in the future by Cricket Australia.

Q. Did he say anything else?

10 A. He said that, Mr Gayle's cards were marked and that any further reputational damage to the game would result in a ban from participating in the BBL and it would be applied retrospectively so taking into account the allegations against Mr Gayle from before the World Cup as well as the television interview for which he was fined.

15 Q. Did he explain to you what he meant by Mr Gayle's cards being marked?

A. I took it as--

20 HER HONOUR: No, not what you took it as, if those were his only words then that's all you need to say.

WITNESS: Okay, no.

COLLINS

25 Q. Apart from that discussion did anything else pass between you and Mr Rose?

30 A. Yes, he said that the BBL manager, Anthony Everard had spoken to Mr Gayle about the television interview with Mel McLaughlin; he also said that Cricket Australia officials had spoken with Ritchie Richardson as a result of the allegations being published and that it was the understanding of Cricket Australia officials that because the matter had been made public Mr Richardson would file a report to the West Indies Cricket Board.

35 Q. Did you have a conversation with a further person who was initially a source but you are now permitted to name?

A. Yes.

Q. Who was that?

40 A. I'm just trying to recall his name, sorry. He was the general manager of the Sydney Sixes Big Bash League team; his name is Dominic Remond.

Q. What is the Sydney Sixes?

A. They're one of the Big Bash League clubs.

45 Q. Did you contact him or did he contact you?

A. I contacted him.

Q. Why were you contacting Mr Remond from the Sydney Sixes?

50 A. I was seeking a reaction to, from the cricket fraternity to the latest allegations against Mr Gayle but also to the incident involving Mel McLaughlin

on television previous.

Q. Why did you choose the Sydney Sixes rather than some other team or contact?

5 A. I don't know, he's an official I know.

Q. Could you tell us again using your best recollection of the words that were actually used, what you said to Mr Remond and what he said to you?

10 A. He said that--

HER HONOUR

15 Q. Again, it's not he said that, it's he said, "Good morning, how are you, Chris?" I said, "Good thanks, how are you?" so try and capture the conversation verbatim, do you understand?

A. Right, he said, "Cricket Australia, the game itself had missed an opportunity to have come down more strongly on Mr Gayle for his comments on television". He said that, for a game that was prioritising the engagement of women and female participation that it was an opportunity lost.

20

COLLINS

Q. Was there anything else in that conversation apart from that comment?

25 A. Not that I recall.

Q. Did you have a contact on the same day, 6 January 2016, with a further source?

A. I did.

30 Q. Are you able to name that source?

A. No.

Q. Was any part of your conversation with that source--

35 MCCLINTOCK: I object to the evidence if we're not told who it was.

HER HONOUR: How can you lead that evidence if you're maintaining the confidentiality in respect of the source?

40 COLLINS: I'm going to identify what the subject matter of--

HER HONOUR: Not if it's objected to in the presence of the jury, Dr Collins.

45 COLLINS: I don't need to take it any further.

Q. Did you have a conversation on 6 January 2016 with anyone from the West Indies Cricket Board?

A. I did, yes.

50 Q. Who was that?

A. Carol Beckford.

Q. Who is she?

A. She is the head of communications and marketing at the WICB.

5

Q. Did you contact her or did she contact you?

A. I contacted her.

Q. Why did you contact Ms Beckford from the West Indies Cricket Board?

10 A. I was seeking to ask whether the West Indies Cricket Board were aware of the allegations against Mr Gayle had been published and was it as a result investigated.

15 Q. Could you tell the jury again using your best recollection of the precise words used what you said to Ms Beckford and what she said to you?

20 A. I said to her, "Are you aware of the allegations against Mr Gayle that have been published in the newspaper about allegedly exposing himself to a woman around the team before the World Cup in 2015?" She said she was not aware of the allegations and she had not received a report from anyone involved in the team.

EXHIBIT #9 EMAIL RECEIVED BY CHRIS BARRETT TENDERED,
ADMITTED WITHOUT OBJECTION

25 Q. Mr Barrett, do you recognise that as an email that you and other people in the media generally received on 6 January 2016 at about 5.20pm?

A. Yes.

30 Q. On the second page attached is a statement by Mr Gayle in which he denies the allegations published by Fairfax.

HER HONOUR: That's not by Mr Gayle, it's by Mr Gayle's management, isn't it, Dr Collins?

35 COLLINS

Q. Yes, I'm sorry, Mr Gayle's management, it does say Mr Gayle denies, "Chris denies the allegations published by Fairfax Media earlier today"?

40 A. Yes.

Q. Could I hand you another email please?

MCCLINTOCK: I object to this, I don't see the relevance of it.

45 COLLINS: I press the tender, your Honour, it's further evidence of the investigations which were undertaken on behalf of--

50 HER HONOUR: This is not an investigation into the truth of the allegations, like a number of the inquiries, this is going to other people for comment, isn't it?

COLLINS: It goes to the question of the significance of the extent to which this was a subject matter of public interest, it's not our best point, of course, but it is a matter relevant to the degree of public interest in this subject matter.

5 HER HONOUR: There's an aspect of - I won't finish the sentence but this is not an inquiry into the truth. None of these past inquiries have been inquiries into the truth of the allegation made by Ms Russell, they've all been taking those allegations to a variety of people involved in the sporting world for comment. If anything, it's generating public interest, not researching it.

10 COLLINS: With respect, your Honour, all of this evidence goes to the s 30 defence, not to the truth defence, that's certainly right but one of the matters--

15 HER HONOUR: I propose to give another firm direction to the jury about that at the conclusion of the evidence but, Mr McClintock, it has gone in, it's in the same category as everything else that's come this morning.

MCCLINTOCK: I don't wish to be heard further, your Honour.

20 HER HONOUR: It's kind of taking the objection that the seventh of what I hope is only about seven or eight times this kind of inquiry was made but the other six have gone in.

25 EXHIBIT #10 EMAIL FROM TIM WHITTAKER DATED 06/01/16, ADMITTED FOLLOWING OBJECTION

COLLINS

30 Q. Mr Barrett, do you recognise that as an email that you and other journalists received on 6 January at 5.28pm from Mr Tim Whittaker?

A. Yes.

Q. Is he the external communications manager at Cricket Australia?

35 A. Yes.

Q. Are you able to say whether this came to you as a result of an inquiry made by you or did it come just unilaterally, as it were?

A. Unilaterally, I mean, I didn't make the inquiry to receive this comment, yeah.

40

HER HONOUR: Which one are you referring to exhibit 10?

45 COLLINS: Yes, exhibit 10. It looks as though it's gone to members of other media organisations including someone at News Limited and someone at Nationwide Print.

HER HONOUR

50 Q. It says, "See below, as requested, position from Cricket Victoria"?

A. Yes, but one of the other journalists--

Q. You're not suggesting it wasn't a response to a journalist?

A. It's gone to four journalists including a colleague of mine, Larissa Nicholson.

5 COLLINS

Q. Your evidence is you didn't make the request?

A. That's right.

10 Q. Do you know who did make the request?

A. No.

COLLINS: There's just one more, could I have one more document.

15 MCCLINTOCK: Your Honour, this would be in the same category as the previous one.

HER HONOUR: Mr McClintock?

20 MCCLINTOCK: I'm sorry, your Honour, what I was saying is that I won't object, it is in the same category as the previous document, exhibit 10.

HER HONOUR: This is an inquiry from Mr Barrett to another body.

25 MCCLINTOCK: Yes, your Honour.

HER HONOUR: Are we going to have the response?

COLLINS: I'll ask the witness about it.

30

EXHIBIT #11 EMAIL, ADMITTED WITHOUT OBJECTION

Q. Mr Barrett, do you recognise that as an email that you sent on 7 January 2016 at 10.36am?

35 A. Yes.

Q. It's to someone, D Cameron at windiescricket.com, who was that?

A. Dave Cameron, the president of the West Indies Cricket Board.

40 Q. In the email you've asked Mr Cameron if he has a view on the allegations against Chris Gayle from the World Cup in Sydney last February, will the WICB, is that the West Indies Cricket Board?

A. Yes.

45 Q. Be getting an investigation on the matter; did you receive any response to that email?

A. No.

<CROSS-EXAMINATION BY MR MCCLINTOCK

50

Q. Mr Barrett, you told us yesterday that you work for The Sydney Morning Herald and that's where you were working in January 2016, that's correct?

A. That's correct, yes.

5 Q. You were, of course, a journalist, weren't you?

A. Yes.

Q. You weren't an editor?

A. No.

10

Q. I think you said, let me be precise about it, that the editors were Mr Fuge, how do I pronounce his name?

A. Fuge.

15 Q. He was the sports editor?

A. Yes.

Q. And Lisa Davies was the news editor?

A. To the best of my recollections, yes.

20

Q. That's why, I don't have the email in front of me and it probably doesn't much matter but that's the reason why you were communicating with them, it's exhibit 7, that is your email of 5 January, that's why you were communicating with them in exhibit 7, wasn't it, because they were the sports editor and the news editor respectively?

25

A. The story was on the front page so that's why it was of the interest to the news editor.

30

Q. In fact, it was the news editor who had the final decision as to whether it would be put in The Sydney Morning Herald on 6 January and go up on the website on 5 January, that's correct, isn't it?

A. I couldn't say that.

35

Q. Who did have - or do you know who had final responsibility?

A. I don't know, but generally editorial decisions are, that are, you know, on the front page of the paper, the editor would play a role in that.

HIS HONOUR

40

Q. The news editor?

A. No - well the editor.

Q. The overall editor?

45

A. The overall editor.

Q. Whose that - or who was that?

A. I believe it was Darren Goodsir at the time.

50

MCCLINTOCK

Q. It was indeed Mr Goodsir, wasn't it, yes?

A. Yes.

5 Q. My point really is this, it wasn't your decision, was it, to put this material in the paper? That was a decision made by someone else, wasn't it?

A. Yes.

Q. Is Ms Davies still with The Sydney Morning Herald?

10 A. She's the editor.

Q. Mr Goodsir's left, hasn't he?

A. Yes.

Q. Is Mr Fuge still around?

15 A. Yes.

Q. Mr Goodsir is still at Sydney though, isn't he?

A. I don't know.

20 Q. Could I ask you about exhibit 9, if you've got it there, that's the email from Mr Auteri to you and others on 6 January? Do you have exhibit 3, Mr--

A. Yeah, I've got it, yeah, yep.

Q. That's the email from Mr Auteri on the sixth?

25 A. Yes.

Q. That statement is reflected in - go to tab 3, that is the article published on 7 January in The Sydney Morning Herald?

30 A. Yes.

Q. You see the first column is excerpted on the left, and if you go to about to about the second last paragraph it says, "Gayle denied the allegation after it was published"?

35 A. Sorry, you mean on the left, yes I see that, yes.

Q. Yes. I'm sorry, did I say on the right, I meant on the left. You see, "Gayle denied the allegation after it was published"?

A. Yes, I see that, yeah.

40 Q. The denial that you're referring to there was the denial set out in the attachment to Mr Auteri's email, that's correct, isn't it?

A. Yes.

Q. Did you - I'm sorry, you have to answer audibly, I didn't hear you?

45 A. Yes.

Q. Of course if someone denies an allegation like that it's an important part of journalistic practice to include the denial in the public - in any article written about it, isn't it?

50 A. Yes.

EXHIBIT 2 SHOWN TO WITNESS

Q. Do you see exhibit 2 there?

A. Yes.

5

Q. You'll see that it's an email from Ms Saltau in fact to Leanne Russell?

A. Yeah, I see that, yes.

10 Q. You can take it, in fact it's obvious to you, that the material under the words by Chloe Saltau is Ms Saltau's first draft of the article that was published in The Age and The Herald and the Canberra Times in the print edition on 6 January and went online 5 January?

A. It looks like a draft, yes.

15 Q. Look if you would, go to the second page of the email and you see Ms Saltau says in the fifth paragraph on the second page, "Team Manager, Richie Richardson, was told about what had happened by another staff member but he was not told the name of the player involved"?

A. Yes, I see that.

20

Q. Were you aware of this draft at some point on 5 January 2016?

A. I can't say whether I was aware of this particular draft.

25 Q. You certainly knew, didn't you, that the information that Ms Saltau had was what I have read to you, "Team Manager, Richie Richardson, was told about what had happened by another staff member but he was not told the name of the player involved"? You knew that, didn't you?

A. Yes, I knew that.

30 Q. Could you also go if you would now to tab 1 of exhibit A? You'll see that in the final version as published, and before I take you to it, could we take it that you read this article when it was published?

A. Yes.

35 Q. No doubt to see what had - or what part of your work had got into it?

A. Yes.

40 Q. If you look at the column on the right this time you'll see that about five paragraphs up from the bottom it says, "It is understood that Team Manager, Richie Richardson, was told about the incident but Gayle was not named"?

A. Yes, I see that, yeah.

45 Q. You saw that, you understand that reflects what Ms Saltau had been told on 5 January 2016, don't you?

A. Yes.

Q. Do you recall giving evidence yesterday, page 176, line 31? I'll read it to you. Dr Collins asked you a question:

50 "Q. Why was it obvious that you needed to approach Sir Richie

Richardson?

5 A. Well, Richie Richardson being the Team Manager of the West Indies at the time, and also being the Team Manager of the West Indies during the World Cup and before the World Cup, when the incident was alleged and also during that time - sorry, during the phone call from Chloe she made me aware that the woman had approached Richie Richardson about the allegation, and also that
10 Richie Richardson had sent an email to the team effectively saying that you know that the woman had to be respected at all times and there'd been some uncomfortable incidents in and around the team."

If you want to see the page, I'll have it shown to you?

15 A. No, that's fine.

Q. The point that I want to direct your attention to particularly is your words, "...during the phone call from Chloe she made me aware that the woman had approached Richie Richardson about the allegation..."?

20 A. Yes, so what's the question?

Q. That's what you said yesterday?

A. Yeah.

Q. That's the question. You agree with me, don't you?

25 A. Yes.

Q. You see, what's in the draft has Ms Saltau saying that - if you look back at exhibit 2, "Team Manager, Richie Richardson, was told about what had happened by another staff member but he was not told the name of the player involved", that's right, isn't it?

30 A. Right.

Q. It follows, doesn't it, that Ms Saltau did not say to you what you've said in evidence yesterday, does it?

35 A. Yes, I've misread - misrecalled that I suppose, yes.

Q. In fact, Mr Barrett, you've made it up, haven't you, to assist your employer to win this case, haven't you?

40 A. No.

Q. What I want to suggest to you is when you gave that evidence yesterday you knew it was untrue, didn't you?

A. No.

45 Q. What's your explanation for getting it wrong or getting it so wrong when you gave the evidence yesterday, Mr Barrett?

A. I have - I was under the impression, or at least I recall, that it was the woman, Leanne Russell, who had alerted Mr Richardson to the incident in the dressing room.

50

Q. You see now that that's not true, don't you?

A. That's not what's been reported, yes.

Q. It's not what Ms Saltau told you, is it?

5 A. No.

Q. You see, at another point in your evidence - I'm going to read you another question and answer, and this was a question from her Honour, McCallum J. Perhaps I should pick it up a little bit earlier, it's page 177, you were being
10 asked about your conversation with Sir Richie Richardson, and Dr Collins asked you, Did Sir Richie Richardson say anything in response". Her Honour:

"Q. Can you try and give us his exact words, I said, he said, do you understand what I mean?

15 A. Yes, he said in response, 'Did you hear this from the woman or someone else?'. "

A. Yes. Yep.

Q. Was that answer true?

20 A. Yes, absolutely, yeah.

Q. Do you recall being consulted by the lawyers for your employer to provide information to answer some interrogatories, written questions, do you recall that?

25 A. Yes.

Q. You told them the truth at the time as best you could recall it, didn't you?

A. Yes.

30 Q. I'm going to have you shown an interrogatory answer and I'm going to suggest to you that it's based on information that came from you, Mr Barrett. It's C on the page I have open. I should probably take you back a bit earlier--

HIS HONOUR: Which page, Mr McClintock?

35

MCCLINTOCK: The actual answer is on p 22, but I should go back to p 18 which is where the question is asked.

40 Q. You will see, go back if you would, to actually page 17, sorry, I'm slightly confused. You see on page 17 there's a question and it's as to the inquiries that were made on behalf of the defendant and you see 22 A, when was it made, where was it made, to whom was it made, who made it, what was the substance and the effect of the inquiry, what was the substance and effect of the reply received, do you see that on page--

45 A. Yes.

Q. If you go forward to page 22, you will see set out there paragraph C. Read paragraph C to yourself, would you, Mr Barrett?

A. Okay.

50

HIS HONOUR: Mr McClintock, you're taking him to para C compared with p 177, line 37?

MCCLINTOCK

5

Q. You see that towards the end of answer C, you say you quote or you indicate Mr Richardson said after you asked him whether he could confirm the incident, you have him saying, "Mr Richardson did not confirm or deny the incident and responded, in substance, that at that point he had nothing to say about that or about what happened with the plaintiff in Hobart"?

10

A. Yes, I see that.

Q. You've set out accurately, haven't you, in the interrogatory answer, what Mr Richardson said to you?

15

A. Yes.

COLLINS: There's an unstated premise in that, the witness hasn't been asked to adopt the content of that answer.

20

HER HONOUR: But that was the point I was trying to indicate to Mr McClintock, the interrogatory is in the same terms verbatim as the answer he gave yesterday as to the first part.

MCCLINTOCK: As to the first part, yes, your Honour.

25

HER HONOUR: Rather first you seem to be suggesting an inconsistency in that first part but I think that suggestion might come later.

MCCLINTOCK

30

Q. I'll just read your answer on page 177, you were asked the question by Dr Collins yesterday, did he say anything in response to that and your answer was, "No, I repeatedly asked whether they could confirm or deny the story and they repeatedly chose not to confirm it".

35

COLLINS: My learned friend is being very unfair. He put a question by your Honour at line 35 and put a response, he put the witness' response which as your Honour has pointed is verbatim what appears in the answer to interrogatories

40

HER HONOUR: Yes, not quite but--

COLLINS: In the transcript it's "Did you hear this from the woman or someone else?" In the answer to interrogatories, Mr Richardson--

45

HER HONOUR: Is did he hear that information.

COLLINS: Whether the defendant heard that information from the woman or someone else. That's not been cross-examined on.

50

MCCLINTOCK: Your Honour, I withdraw the question. I'll put this.

COLLINS: It's really then--

5 HER HONOUR: Dr Collins, it's been indicated another question is going to be put.

COLLINS: I didn't get to the objection.

10 HER HONOUR: There's no need to continue with the objection once the objection is withdrawn, that means you've won and you get to sit down.

MCCLINTOCK

15 Q. Mr Barrett, Sir Ritchie Richardson repeatedly refused to confirm or deny the story, didn't he?

A. Absolutely, yes.

20 Q. A perfectly understandable reaction given the lack of detail that you had given to him, that's correct, isn't it?

A. I wouldn't agree with that.

25 Q. In the article you don't say in the part that you're responsible that he had repeatedly refused to confirm or deny, do you?

A. No, I don't.

Q. You say, "At this point I have nothing to say". That's what you quote him as saying, don't you?

A. That's correct.

30 Q. It would have been considerably more accurate and fairer if you had said he refused to confirm or deny it, wouldn't it?

A. I believe it was an accurate representation of the conversation.

35 Q. You would certainly agree with me, wouldn't you, that Sir Ritchie Richardson did not verify the story that Ms Saltau had told you about, that's correct, isn't it?

A. That's correct.

40 <RE-EXAMINATION BY DR COLLINS

EXHIBIT A SHOWN TO WITNESSES

45 Q. Could I ask you to go to tab 3 which is the article with your name from The Sydney Morning Herald on 7 January 2016?

A. Yes.

Q. Mr McClintock asked you whether it was important for you to include Mr Gayle's denial, you recollect him asking you that?

50 A. Yes.

Q. You agreed it was and he referred you to the sentence appearing on the left-hand column at the top of the last full paragraph, "Gayle denied the allegation after it was published"?

A. Yes.

5

Q. Could I ask you whether you reported the denial anywhere else in that article?

A. I'm unsure. I believe there was further elaboration of the denial further down the copy. Now looking at it, there is, yes.

10

Q. Where do you see that, Mr Barrett?

A. It's in the seventh paragraph of the story, so the third paragraph down on the second column of this exhibit.

15

Q. Is that "Gayle's management in Sydney, Sports International issued a statement on Wednesday saying "Chris denies the allegations published by Fairfax Media earlier today. There will be no further comment from Chris or his management at this stage"?

A. Yes.

20

<THE WITNESS WITHDREW

<LEANNE GAYE RUSSELL, AFFIRMED(10.50AM)

<EXAMINATION-IN-CHIEF BY DR COLLINS

5 Q. Could you state your full name?

A. Leanne Gaye Russell.

Q. What's your business address, Ms Russell?

10 A. 140 Harbour Esplanade, Docklands.

Q. What is your occupation?

A. I am an executive assistant at the AFL.

Q. The AFL is the Australian Football League?

15 A. That is correct.

Q. Do you have any formal qualifications?

A. Yes, I do. In any particular area, I have quite varied qualifications?

20 Q. Go ahead, tell the jury?

A. I have, it's a long list, I have a Diploma of Sport and Recreation, an Advanced Diploma of Sport and Recreation, I have a Diploma of Massage Therapy, Master Trainer and Personal Fitness. Certificate IV in Business and Administration. I think that's all that comes to mind at this point.

25

Q. Between August 2005 and about January 2011 were you employed by Cricket Australia?

A. Yes, I was.

30 Q. What was your role at Cricket Australia in that period?

A. I was the team operations officer for visiting international teams and I was the team manager of the Australian Women's Cricket Team.

Q. What did the first of those roles, being the teams officer, entail?

35 A. An international teams officer is a common role amongst cricket boards, it is designed to implement the operations of any team that visits the country.

Q. What did that involve on a day to day basis when a team was visiting the country?

40 A. You would, in the lead up to a tour, negotiate the memorandum of understanding with the visiting board, you would negotiate the terms of that tour, get that country to agree to the terms of the tour and then you would implement the operations related to the tour, that would be flights, accommodation, cricket balls, cash, daily allowances, anything of that nature.
45 So, basically, it was one point of liaison between the visiting board and Cricket Australia and that person was me.

Q. Could you identify for the jury in your role as a teams officer which visiting teams you managed in the way you've described?

50 A. I managed the West Indies, I managed England, New Zealand, India,

Sri Lanka and South Africa.

Q. When did you first have contact with the West Indies team in that role as teams officer for Cricket Australia?

5 A. In November of 2005.

Q. Did you have other dealings with the West Indies team in that same capacity after 2005?

10 A. Yes, they had a subsequent tour thereafter, I believe that was in 2009.

Q. When did you cease to be employed by Cricket Australia?

A. In January of 2011.

Q. After you ceased to be employed by Cricket Australia what did you do?

15 A. I was the international teams officer for the Rugby World Cup in New Zealand.

Q. What did that role involve being an international teams officer for the Rugby World Cup?

20 A. Similar role, all based on team operations for tournament time. I managed six times for the Rugby World Cup.

Q. After the Rugby World Cup, what did you do?

25 A. I did some casual work, I got another role after a couple of months with a production company where I was for about ten months.

Q. A production company is not a company involved in the sporting area?

A. No, they're not.

30 Q. Did you have a further engagement with the sporting industry after that role?

A. I did after I finished up with the production company, I then moved into a role as an executive assistant with Melbourne Cricket Club which is the MCG.

35 Q. What did the role of executive assistant entail?

40 A. I was the executive assistant for the general manager of membership and heritage, so this is the oldest membership in Australia where we would manage the 102,000 members for the MCG and we were responsible for all the heritage assets of the MCG, managing the library, the statues, the archives.

Q. Are you still in that role?

A. No, I'm not.

45 Q. When did you cease in that role at the Melbourne Cricket Club?

A. In November of 2016.

Q. Are you currently employed?

50 A. I am.

Q. Is your current employment the employment you described at the Australian Football League?

A. Yes.

5 Q. What's your job title at the AFL?

A. Executive assistant to the general - sorry, it's really long, executive assistant to the chief financial officer and the general manager of clubs and broadcasting.

10 Q. Could you just give us a thumbnail sketch about what your responsibilities are in that role?

A. My responsibility is the support of one general manager. Specifically, we manage all 18 clubs for the AFL competition, all the broadcasting, fixture and the financial operations of the AFL.

15 Q. We've heard some evidence that in the Australian summer of 2013 the West Indies cricket team came to Australia; did you have a role in connection with that tour?

20 A. I did, I was appointed as their massage therapist in 2013 and at the time I was between jobs so it was a contract that I took up on a casual basis.

Q. What was it about the role of massage therapist for the West Indies team that appealed to you?

25 A. I knew the team, I knew the administrative staff from the West Indies Cricket Board, they knew of my experience as a massage therapist. I had previously toured with the New Zealand team and the Irish team as a massage therapist and because that team was in the Caribbean that is when my massage skills became known to the administration of the West Indies Cricket Board and they asked me to be a local massage therapist. It's typical that
30 when you don't have personnel within a team such as a massage therapist and the regular massage therapist is not available to appoint someone from the country to which you're travelling because it's quite a cost saving.

35 Q. Just thinking about the 2013 tour, what was the duration of that tour just roughly?

A. I believe it was four weeks.

40 Q. Are you able to tell the jury just to give them an idea how many massages you would have performed in the four week period of the 2013 West Indies tour?

A. On average you would do three massages a day, seven days a week, so.

45 Q. What's the typical length of a massage on a player of a visiting international cricket team?

A. By player request, it can be 30 minutes, particularly if it's before training or before a match and then after match they can typically come to you for an hour.

50 Q. Can I ask, I take it you've met Mr Gayle, the plaintiff in these proceedings?

A. Yes, I have.

Q. Can you tell the jury when you first met him?

A. I would have met Chris in November of 2005.

Q. Have you performed massages on Mr Gayle from time to time?

5 A. Yes, but not until the 2013 tour.

Q. Can you tell the jury about the first time you gave a massage to Mr Gayle? Just identifying when it was first off?

10 A. Yeah. Again would have been in January of 2013. We had a short tour, I believe it was Sydney, Melbourne, Canberra and Brisbane. I don't recall the specific location we were in when I first gave Chris a massage, but that would have been at request.

Q. Can you identify for the jury how the request came to you?

15 MCCLINTOCK: Is this relevant? I object.

COLLINS: I put this to Mr Gayle and in fairness I now need to put it to this witness.

20 HIS HONOUR: It's fairly peripheral, Dr Collins. Is there any real issue of that?

COLLINS: I did put it to Mr Gayle and in fairness to Mr Gayle I ought now put it to this witness.

25 HIS HONOUR: That's just repeating what you just said, but how is it relevant? Does it matter?

30 COLLINS: It probably doesn't matter but I don't want a submission made at the end of the day that I've done something improper in putting something to Mr Gayle which I then didn't put to this witness.

HIS HONOUR: No, I don't think that's going to be said since Mr McClintock took the objection.

35 COLLINS

Q. How many massages did you perform on Mr Gayle during the 2013 tour by the West Indies of Australia?

40 A. I wouldn't be able to tell you specifics, but at a guess I'm guessing one a week maybe, six total.

Q. Why is that your best guess?

45 A. It was four years ago and I didn't keep notes on that tour.

Q. Did you have a recollection of what it was that Mr Gayle required from a massage therapist by way of treatment?

50 A. Most players just prefer to treat any specific injuries. Chris had one specific injury at the time, but that was when we treated Chris for that injury, that was in conjunction with the team physio at the time. My role with Chris was to provide

general massage, which I did.

Q. Can I ask you about the 2015 World Cup? How did you come to be engaged as the massage therapist for the team for that tour?

5 A. The exact same way. Their exact same massage therapist had again suffered an injury and they were seeking an Australian massage therapist which they knew for the team and could perform the role. So I took leave without pay from my role with Melbourne Cricket Club in order to perform that service.

10

Q. What was the duration of your engagement as the massage therapist for the 2015 World Cup?

A. I believe that was five to six weeks.

15

Q. Was that limited to Australia?

A. No, it was Australia and New Zealand.

Q. You travelled to New Zealand with the team?

A. Yes.

20

Q. Over that five or six week period are you able to estimate for the jury how many massages you performed on members of the West Indies team?

A. I probably estimate the same again, I probably do three massages a day, sometimes four, sometimes two, so I'd be guessing on an average.

25

Q. Are you able to tell the jury how many times you massaged Mr Gayle during the 2015 World Cup?

A. My best estimation is probably three times.

30

Q. Are you able to identify when those massages occurred over the course of the five or six week period of the World Cup?

A. It was all in the beginning of the tour, I remember one at the first hotel we were at, which was out of tournament time, it was a different hotel, which was up in Ultimo, and then the second one I believe was - I'd be guessing to be honest with you, I'm not sure of the locations.

35

Q. Could I ask you about 10 February 2014 2015. Did you perform a massage on that day on a member of the team called Dwayne Smith?

A. I did.

40

Q. Could you tell the jury how that massage came to be organised?

MCCLINTOCK: I object.

45

HIS HONOUR: Dr Collins, again, can I ask, it became an issue that you wanted to press with Mr Smith as a credit issue, but ultimately you got what you wanted, why do we need this evidence from this witness?

COLLINS: Because the jury is going to have to--

50

HIS HONOUR: What issue in the proceedings does it relate to?

COLLINS: It goes to truth, your Honour, it goes to the assessment of--

5 HIS HONOUR: The truth of the allegations against Mr Gayle?

COLLINS: No. The assessment of this witness' credit in respect of the truth defence.

10 HIS HONOUR: You got everything you wanted out of Mr Smith.

COLLINS: I would like the witness to see--

15 HIS HONOUR: How does it go to the truth of - the only issues you are trying to prove the truth of are the allegations against Mr Gayle.

COLLINS: I will be seeking to put submissions to the jury about--

20 HIS HONOUR: I think I'll deal with it in the absence of the jury please.

IN THE ABSENCE OF THE JURY

5 HIS HONOUR: While I remember Mr McClintock, I've had a note which I've twice overlooked. You called for a legal advice yesterday, has that call been answered?

MCCLINTOCK: No, it hasn't, your Honour.

10 BARNETT: The response is nothing to produce, your Honour.

HIS HONOUR: I thought it was a reference to a written advice.

15 BARNETT: No, it wasn't. Your Honour, the reference to Ms Saltau's evidence was at T137. What Ms Saltau said was their advice was that I should ask Leanne whether we could publish it. The call was made at T140 for the advice referred to, and there's no document to produce, your Honour.

20 HIS HONOUR: It was forwarded to me via our lawyers and their advice was, so that advice is not included in the forwarding email?

BARNETT: The reference to it - your Honour, it is a reference to the Richie Richardson email.

25 HIS HONOUR: Yes, but that was forwarded and there's no advice recorded in the forwarding email?

BARNETT: No, your Honour.

30 MCCLINTOCK: Your Honour, I call for any file note made by Minters recording the advice in question.

HIS HONOUR: That will have to be responded to at a different time. Dr Collins?

35 COLLINS: Perhaps the witness should be asked to.

HIS HONOUR: Yes, Mr Russell, it is preferable if I do this in your absence.

IN THE ABSENCE OF THE WITNESS

40 COLLINS: Your Honour, in respect of the justification defence, the credit is the central issue. Who is to be believed out of the evidence given by Mr Gayle and Mr Smith on the one hand, and this witness on the other. A ferocious attack is being made, has been made in open--

45 HIS HONOUR: No attack's been made at all, she hasn't been cross-examined, her cross-examination hasn't commenced.

50 COLLINS: The attack was open in this - and it's suggested that she--

HIS HONOUR: Dr Collins, please.

COLLINS: It's been suggested that she's made it up.

5 HIS HONOUR: The cross-examination has not commenced. I don't know
whether Mr McClintock is going to put that she's made it up or that she might
have been mistaken, but the point is whatever the - however the
cross-examination is going to be run, which has not yet commenced, you're
10 talking about an incident two days before the critical incident concerning the
credibility of Mr Smith, not Mr Gayle. Mr Gayle wasn't even present for those
events, how can her credibility - and Mr Smith ultimately agreed with
everything you put to him. How can her account of that version possibly assist
the jury to determine whether Mr Gayle exposed his genitals to her two days
later?

15 COLLINS: The directly relevant background context to the circumstances in
which this witness made her complaint.

HIS HONOUR: You have the background context.

20 COLLINS: Yes, but the witness is going to be asked--

HIS HONOUR: Whenever a barrister resorts to its background context, I start
to think that is a fairly clear flag that the evidence probably isn't admissible or
25 might well not be. I just don't see how it informs the question of what
happened two days later one way or the other. Except as to credit, but on the
credit issue there's no longer any credit issue regarding what you put to
Mr Smith as to - all it is is that he sent a text message, he ultimately agreed he
sent the text message. It tells us nothing at all about what past between
30 Mr Gayle and Ms Russell two days later.

COLLINS: I accept that, but what happens on the day after that is Sir Richie
Richardson sends his email in which he refers to uncomfortable situations and
I must be entitled to ask this witness what uncomfortable situations, if any, she
35 had conveyed to Sir Richie Richardson.

HIS HONOUR: She didn't convey anything to Sir Richie Richardson, she
spoke to her physio.

40 COLLINS: Your Honour hasn't heard any evidence about that - hasn't heard
evidence about that yet. This is the witness who can give evidence about
that. Your Honour's heard evidence from journalists, not from this witness.

HIS HONOUR: Mr McClintock, if it informs the content of what was conveyed
45 over to Sir Richie Richardson or the physio, perhaps I have to allow it.

MCCLINTOCK: Your Honour, I'm just a little surprised because, as your
Honour heard me cross-examining Mr Barrett and Ms Saltau, this witness or
Ms Saltau said this witness told her that she didn't approach
50 Sir Richie Richardson.

HIS HONOUR: That doesn't mean that won't be her evidence though, I fell into the same trap, I've read that somewhere else, but she may well have spoken to Sir Richie Richardson, we don't know yet.

5 MCCLINTOCK: That's true, your Honour.

HIS HONOUR: I take it neither of you are calling either the physio or Sir Richie.

10 COLLINS: We've made attempts, your Honour, we'll explain that through the witness.

MCCLINTOCK: I don't propose to, your Honour, I'll be making a submission at least in relation to the physio about that, a Jones v Dunkel submission;
15 although I don't believe I can make that submission in relation to Sir Richie.

HIS HONOUR: Because he's not in anyone's camp.

MCCLINTOCK: Couldn't be said to be.
20

HIS HONOUR: Probably more likely in your camp maybe, but if it informs the content of her complaint as one of the several things that made her feel uncomfortable.

25 MCCLINTOCK: If the evidence is going to be - this--

HIS HONOUR: She can say what happened and that it made her feel uncomfortable and that she reported it.

30 MCCLINTOCK: Yes, I can understand the relevance of that.

HIS HONOUR: I think I'll have to allow it on that basis.

MCCLINTOCK: That was not the basis on which I understood it to be put. It was put as a - I can see the relevance to an issue there, but the way it was put by my learned friend was as if it was a credit issue and as if he was saying, well she told the truth then, therefore it means she didn't - she told the truth later, which said--
35

40 HIS HONOUR: That's what I thought was being put, Mr McClintock, that's why I was.

MCCLINTOCK: I can see that connection, your Honour.

45

IN THE PRESENCE OF THE JURY

5 HIS HONOUR: Members of the jury, you are allowed to turn the lights on in your room when you go in there. Is there a problem with the lights in the jury room, Madam Foreperson?

FOREPERSON: No.

10 HIS HONOUR: We try not to keep juries in the dark. Boom, boom.

IN THE PRESENCE OF THE WITNESS

15 Can I give you this assurance, when I send you out of the room it's not to exclude you from anything important, on the contrary, it's a protection for a witness to have legal debate heard in their absence.

COLLINS

20 MFI 3 SHOWN TO WITNESS

Q. Ms Russell, I was asking you about the message you gave to Dwayne Smith on 10 February 2015. Do you identify that as a printout from the message exchange on your mobile phone?

25 A. Yes, I do.

Q. It's an exchange between you and Mr Smith on 10 February 2015?

A. That's correct.

30 Q. Which is yours and which is his out of the white and the green boxes?

A. I'm in green and he's in white.

35 Q. At 12.48, "Hi, can I get a massage?" and then you see your response and then it goes backwards and forwards a bit about the appropriate time. At 1.18pm you say, "Just having lunch, how is 2pm for 30 minutes and he responds "Kool" with a K?

A. Correct.

Q. "See you then" is your response?

40 A. Correct.

Q. Did you go on to perform a massage at 2 o'clock on 10 February 2015 on Mr Smith?

A. I did.

45 Q. You see the second last message in white, that's the message from Mr Smith with the word "Sexy" at 2.29pm, when did you see that message?

A. That was during the massage.

50 Q. How is it that you managed to see your phone while performing a massage?

A. My phone sits up next to my massage table, it's how I track the time.

Q. Did you observe Mr Smith sending messages from his phone while performing the massage?

5 A. Yes.

Q. Did you react upon receiving that message?

A. I did not, I completed the massage.

10 Q. Could I ask you how receiving that message made you feel?

A. Intimidated.

MCCLINTOCK: I object to that.

15 COLLINS: It goes to the content of exhibit B, your Honour.

HER HONOUR: Mr McClintock, don't I have to allow it in accordance with what we just debated in the absence of the jury?

20 MCCLINTOCK: I can see what your Honour is thinking but, in my submission, no. It's because it's the relevance to something that happened later rather than what was communicated, rather than the actual feeling.

HER HONOUR: What was later said to someone?

25

MCCLINTOCK: The question is what was said--

HER HONOUR: Later. I think that's right, Dr Collins because otherwise I think it does trespass against the other principle.

30

COLLINS: Yes, I accept that.

EXHIBIT #12 FORMERLY MFI 3 TENDERED, ADMITTED WITHOUT OBJECTION

35

HER HONOUR: That's what you're just about to receive, members of the jury, they've just been tendered by the jury. The question asks, can we see the texts, and that is exhibit 12. I'll just have that marked as jury note 1.

40 COLLINS

Q. Could I ask, Ms Russell, relative to the massage that you gave to Dwayne Smith, can you say whether you had performed massages on Mr Gayle before or after?

45 A. Yes.

Q. When?

A. As I said, at the beginning of the tournament we were in a different hotel, I remember massaging him in that room. Beyond that, I don't have a specific recollection.

50

Q. Do you have a recollection as to how proximate it was, the massage you gave to Mr Smith on 10 February and the last massage you gave to Mr Gayle?
A. My estimation would be a few days.

5 Q. The Court has heard evidence that the West Indies team was staying at the Intercontinental Hotel during the World Cup?

A. That's correct. However, they arrived early and they stayed at another hotel prior to the ICC assuming financial responsibility for teams, so we had the first hotel in Ultimo.

10

Q. When did they move to the Intercontinental relative to the start of the tour?

A. It would have been three days before the first practice match against Scotland, that's when contractually the International Cricket Council takes financial responsibility for a team competing in World Cup level.

15

Q. What period do practice matches in the warm up to the World Cup occur?

A. It's within a two week period, but it varies based on team to team. Some teams can have three days between their practice matches. I think in the case of Ireland, they have 12 days.

20

Q. You're from Melbourne?

A. I'm originally from Sydney but I live in Melbourne, yes.

25

Q. During the World Cup while the team was at the Intercontinental Hotel, where were you?

A. In Melbourne.

30

Q. During the practice matches and the World Cup itself during the period when you were performing massages where did you stay?

A. In the team hotel.

Q. That's the Intercontinental?

A. That's correct.

35

Q. I want to ask you about 11 February 2015, could you tell the jury what happened on that day, just starting with the morning?

A. In the morning I performed massages on players by request and that was in the team room of the Intercontinental Hotel.

40

Q. Just explain what a team room is?

A. A team room is a cleared out meeting room at any hotel where they put theatre style seating so the team can have meetings, it's also a gathering point for conversations, casual meetings, you would leave your team kit there, your cricket coffins ready for transport to trucks and coaches, it's basically a locked room for the purpose of the team, the physio also works out of there, yeah.

45

Q. A cricket coffin is not something for a body, I take it, what's a cricket coffin?

A. A cricket coffin is so named because you could fit a body in it, but and players generally have two coffins, some have more. One has personal gear in it, the other has all their cricket gear in it.

50

Q. What time did you get up on the morning of 11 February?

A. I don't have a specific recollection but I'm not one to sleep in, it would have been before 8 o'clock.

5 Q. Did you have breakfast on that morning?

A. I did not.

Q. You said you performed some massages in the team room on that morning, how many massages?

10 A. I believe that was three.

Q. Over what duration?

A. That would've been, players like to have breakfast at their leisure so I would have been massaging between 9am and 1pm.

15

Q. What happened on that afternoon?

A. On that afternoon we went to training.

Q. Did you have lunch before going to training?

20

A. I did not.

Q. How did the team get to training?

A. Via the bus.

25 Q. Did you travel with the team on the bus?

A. I did.

Q. Where was the training?

A. The training was at Drummoyne Oval.

30

Q. Prior to this training session on the afternoon of 11 February 2015 had you been to the Drummoyne Oval before?

A. Yes, I think we'd been there the day prior.

35 Q. Can you describe for the jury the change room that the players, the West Indies team used at the Drummoyne Oval on 11 February 2015?

A. Yeah, so it's just on the concourse as you walk inside the ground. You walk into the change room, there was a treatment room off to the left-hand side. The room opened up into spots where players can sit and put their gear and the shower room is at the back of the room.

40

Q. You said there was a treatment room, is that a separate room or part of the main change room?

A. It's part of the main change room but it's got a door on it.

45

Q. Did you set yourself up to perform massages in the treatment room of the change room?

A. No, I was just outside that room. The physio took the treatment room and his gear took up the majority of space so I was just outside the door.

50

Q. Who was the team physio for the West Indies team for the 2015 World Cup?

A. Christopher Clark.

5 Q. What's your relationship with Christopher Clark?

A. I had met Christopher Clark, he was the physio of the Sri Lankan team when I started working at Cricket Australia. They were also a team that toured in 2005 so I met him at the same time that I had met the West Indies team in 2005. After that he moved on to be the physio of the West Indies team so I
10 knew him through my capacity as team operations officer and then beyond that I was touring on two tours with him.

Q. Just while I'm on the team physio, Mr Clark, are you still in contact with Mr Clark?

15 A. Not at the moment, no.

Q. When is the last time you contacted Mr Clark?

A. I believe that to be about May this year.

20 Q. Why did you contact him in May of this year?

A. Just in relation to this case.

Q. What did you ask him?

25 MCCLINTOCK: My friend has foreshadowed a Jones v Dunkel application about this witness.

HER HONOUR: Is this going to his availability now?

30 COLLINS: Yes, it's going to where he is, yes.

HER HONOUR: What has the conversation in May got to do with it?

35 MCCLINTOCK: If that's what it's going to it's hearsay, your Honour and I object.

HER HONOUR: That's probably right, Dr Collins.

COLLINS

40

Q. Do you know where Mr Clark is as at today's date?

A. If he's on tour he may be elsewhere but I know his residence to be in the UK.

45 HER HONOUR: Ms Russell, again can I ask you to keep your voice up please.

COLLINS

50 Q. In the UK. Could I get you to describe the facilities inside the change

room, you've described the treatment room, what else was in the change room at the Drummoyne Oval on 11 February?

5 A. There's seating, bench seating for the players, there's temporary tables set up to put things on, any team gear that you want to put down. The catering was in there that day, towels are always provided by the host cricket association, that's as much as I recall.

Q. When you say there was catering, what do you mean?

10 A. Catering is always provided at training sessions, so if you have a morning session the catering is largely eaten after the guys have finished training. If you have an afternoon session the catering is largely consumed before the training session.

Q. What are the items that constitute the catering?

15 A. It's mostly cut sandwiches and fresh fruit.

Q. Did you see cut sandwiches and fresh fruit in the change room on 11 February 2015?

20 A. Yes, I did.

Q. Where in the change room?

A. It was next to my table, it was on the left-hand wall outside the treatment room.

25 Q. Apart from food were there other things for the players to consume?

A. Yeah, there's normally eskies of Gatorade and water, things of that nature.

Q. What time did the bus leave the Intercontinental Hotel to go to the training session?

30 A. 1.30.

Q. What time did it arrive at the Drummoyne Oval?

A. Approximately 2 o'clock.

35 Q. What did you do upon arriving at the Drummoyne Oval at about 2 o'clock on 11 February?

40 A. I went into the change room, I set up my table and if players ask me for any treatment or back adjustments I'm there to perform that. I don't recall - these can normally be two minute back adjustments so I can't tell you what I did on that day specifically. I know I would have walked in there, set up my table and my normal behaviour is to see if anyone wants me, when it's clear that nobody - any longer needs me I stand outside the door so I'm visible and I'm contactable if someone needs me.

45 Q. Do you have a recollection of performing back adjustments or the like shortly after arrival on 11 February?

A. I don't, no.

HER HONOUR

50

Q. Just so that's transcribed properly, you meant, "I don't, no". Not, I don't know?

A. Yes, correct.

5 COLLINS

Q. You waited to see whether anyone wanted you and when you identified that you were no longer required what did you do?

A. I walked outside of the change room and I stood at the front door.

10

Q. What did you observe when you were standing at the front door?

A. Players coming and going. I believe I spoke very briefly to the media manager, Phillip Spooner and just players generally preparing to go out on the field.

15

Q. Did the players in fact go out on the field?

A. Yes, they did. They take some time to get out there, but yes.

Q. Did you see what the players were doing on the field?

20

A. Yes, they normally play soccer to warm up.

Q. Did you stand and watch them playing soccer?

A. I did for a little time, yes.

25

Q. What time, are you able to give the jury an idea about what time you started watching them play soccer?

A. Possibly about ten past two.

Q. For how long did you stand outside the change room watching the players playing soccer?

30

A. Only a few minutes.

Q. What did you do after those few minutes had expired?

A. I went into the change room for some lunch.

35

Q. Could you just described to the jury what happened when you went into the change room?

A. When I went into the change room I saw Chris and Dwayne.

40

Q. That's Chris Gayle and Dwayne Smith?

A. Correct.

Q. Just describe for the jury where they were in the change room relative to the door that you entered on?

45

A. Chris was just inside the change room. He was probably about five or six feet back, near where the bank of lockers starts. Dwayne was behind Chris's left shoulder. Chris was - Chris was wearing a towel and he said, "What are you looking"--

50

Q. Before you go to that, sorry, Ms Russell can you describe for us what Mr Gayle was wearing apart from a towel, if anything?

A. I believe he was wearing a shirt as well.

5 Q. Are you able to describe the shirt?

A. My best guess would be the usual training shirt, he would not be in plain clothes.

Q. What was Mr Smith wearing, did you notice that?

10 A. I can't say I recall, no.

Q. Where was Mr Smith relative to where Mr Gayle was?

A. Behind is left shoulder and possibly about two feet back.

15 Q. Are you able to say which way Mr Gayle was facing as you entered the room?

A. Facing directly to me when I walked in.

Q. What about Mr Smith?

20 A. He was standing almost on an angle looking to his right side of the room.

Q. You were about to tell the jury what happened as you entered the room?

A. Yes. Chris asked me what I was looking for.

25 Q. If you could, try and use the exact words that he used, so he said, and then say the precise words he used?

A. He said, "What are you looking for".

Q. Yes?

30 A. I said, "A towel". He replied, "Are you looking for this?", and pulled his towel out and down. I proceeded to shield my eyes and said, "No", and I exited the change room.

Q. When he said, "Are you looking for this?", what did you see?

35 A. I saw the top half of Chris's penis, I apologise, and I thereafter shielded my view and I left the change room.

Q. How far away from Mr Gayle were you when this occurred?

A. About three feet.

40

Q. You say you shielded your view, can you show the jury what you physically did? The witness has shown--

HIS HONOUR: No, just for the transcript the witness is holding her left hand up, palm out, near her eye.

45

COLLINS

Q. You lifted your left palm up in front of your eye and what did you do then?

50 A. I said, "No", and I walked out.

Q. Can you estimate for the jury how long this interaction took?

A. I would guess from the time I entered the change room to the time I left it would have been under ten seconds.

5 Q. Did you observe what Mr Smith was doing while this occurred?

A. He was eating something.

Q. Why are you so sure about that?

10 A. I remember him chewing, and he was looking off to over his right shoulder. I remember him chewing something.

Q. Are you able to say what Mr Smith was looking at as this interaction occurred between you and Mr Gayle?

15 A. No, the change room was empty.

Q. What was Mr Smith looking at, are you able to say?

A. He was looking off to the right, which was the right wall of the change room.

Q. Yes, and what does that mean relative to where Mr Gayle was?

20 A. To where Mr Gayle was? Can you repeat the question, I'm just--

Q. I'll ask you squarely, was Mr Smith looking in your direction in the time of this interaction?

25 A. No, he was looking over his right shoulder towards the right wall.

COLLINS: Your Honour, I notice the time. Is that a convenient point for the morning break?

30 HIS HONOUR: Yes. I'll take an early adjournment, members of the jury. If you would go to the jury room and I might ask the Court officer to turn the lights on in that room. Ms Russell, obviously your evidence is not complete, we'll take a short break of about 15 minutes. Could you please just remain within the precincts of the Court? I think I noticed that you've got some people who have come with you this morning, if you could stay with those people and not
35 speak to anybody else, and please don't discuss your evidence in the proceeding with the people that you've come with. Just talk about other things.

IN THE ABSENCE OF THE JURY AND WITNESS

HIS HONOUR: Dr Collins, I'm not questioning it, I just don't remember it, was it put to Mr Gayle and Mr Smith that Mr Smith was looking in another direction?

5

MCCLINTOCK: No.

COLLINS: I asked the witnesses about where they were standing and I got their evidence about it.

10

HIS HONOUR: Did you put it to Mr Smith that he was looking away at the critical moment?

COLLINS: I'll have to check the transcript, your Honour.

15

HIS HONOUR: I don't remember it, but--

COLLINS: Yes, I don't recollect it.

20

MCCLINTOCK: It wasn't put, your Honour, nor was the suggestion of eating put.

HIS HONOUR: I'd need to ask about that too.

25

COLLINS: He says it didn't happen of course - his evidence of course is it didn't happen.

HIS HONOUR: That doesn't mean you don't have an obligation to put your version.

30

SHORT ADJOURNMENT

HER HONOUR: Ms Barnett, do you have any further response to the call or do you need to take further instructions about that?

35

BARNETT: Yes, I don't have a further response at this stage, your Honour.

IN THE PRESENCE OF THE JURY AND WITNESS

HER HONOUR: Ms Russell, I should remind you, you took an affirmation at the outset of your evidence and you remain bound by that affirmation.

5

COLLINS

Q. Ms Russell, what made you go into the change room at the time you've described, a bit after 2 o'clock on 11 February 2015?

10

A. I hadn't eaten that day and the catering was placed in the change room on that occasion.

Q. Do we take it from that that you went into the change room looking for catering?

15

A. Correct.

Q. When Mr Gayle asked you, "What are you looking for?" why did you say, "A towel"?

20

A. I have a history of eating disorders, I often avoid food. I lose weight very quickly when I'm alone, particularly on tour. My natural inclination is to not discuss food. I rarely accept invitations out based around food. So, it was a knee jerk reaction to avoid the topic of food.

Q. Sorry to ask you the question but what is the nature of the eating disorder?

25

A. I suffered with anorexia in a point where I would starve myself and exercise excessively in order to lose weight. Had a history of going up and down with my weight and that was a way that, a method that I had employed to keep my weight under control.

Q. What was the nature of your condition in relation to your eating disorder as at 11 February 2015?

30

A. It was at the start of the tour, and again, when I'm away from family and friends it's an opportunity for me to not have to eat very much so I was starting to employ those tactics or had already started, I should say.

35

Q. You've described putting your hand up, turning and leaving the change room, what did you do after leaving the change room?

A. I remember standing outside the change room for a minute or so and that morning I had discussed the Dwayne Smith text message with the physio, CJ Clark whom I reported it to. I approached CJ and I told him what happened in that moment. He said, "Are you okay? Let me think about what we do about this". And I said, "Thank you". I went upstairs where there was a seated area within the cricket pavilion and I was very upset but I was alone up there, I was crying for some time.

45

Q. Before going to the stands did you hear any interaction between Mr Gayle and Mr Smith as you were in or leaving the change room?

A. No, I didn't.

50

Q. For how long were you sitting in the stand after speaking to CJ Clark in the

way you've described?

A. The majority of the training session.

Q. How long is that?

5 A. A training session is three hours so it would have been shy of that, I'm estimating one and a half to two hours.

Q. What was your emotional state like as you sat in the stand?

10 A. Horrific, I was very upset. I had my sunglasses on. I was crying uncontrollably, like crying like a child and after a time Clive Lloyd who was the team selector came up. I was very grateful. He didn't realise I was crying. He told me old cricket stories to make me laugh, so if he did know I was crying he certainly didn't let on. He told me old cricket stories to make me laugh until I'd settled down.

15 Q. Can you describe to the jury what it was that had made you so upset?

20 A. I was upset because of what Chris had done because we had known each other for ten years and that jokes of that nature meant nothing to him but upset me greatly. They were very confronting. In the context of the text message I got the previous day from Dwayne Smith I felt that the players thought this was funny and had started to gather in a - gather an attack to either try their luck or intimidate, I don't know. You would have to ask them. I was very upset that a team that I knew for so long would treat me that way.

25 Q. At what time did you leave the Drummoyne Oval on 11 February?

A. We'd have left just prior to 5pm.

Q. If you need a break just let us know, Ms Russell.

30 A. Okay.

Q. Did you get on the bus and go back to the Intercontinental Hotel?

A. Yes.

Q. Did you have any interaction with any of the players on the bus?

35 A. Not that I recall.

Q. What did you do upon returning to the Intercontinental Hotel?

A. I'd have just gone to my room.

40 Q. What did you do in your room?

45 A. I remember being upset, I remember thinking that I was very cranky as well by that point. I remember in the evening that I was sick of being treated this way. I am someone who has forged my career in sport. I'll never be anything near as successful as I would have been had I been a bloke and it made me angry. I went down, as I recall to JB Hi-Fi in The Strand and I bought my Samsung tablet.

Q. A Samsung tablet is like an iPad?

50 A. Correct.

Q. Why did you go to JB Hi-Fi and buy a Samsung tablet?

A. All I had was my phone in terms of an electronic device and I was angry enough to think that I should start a diary, and that's what I did. I wrote down what happened, saved it, that was it.

5

Q. When relative to the incident you've described a bit after 2 o'clock on 11 February did you start keeping the diary?

A. I believe it was that night. I remember Googling the store hours to check it was still open, because I don't think, we got back to the hotel until quarter to 6. So I went down and I purchased it and I went back to my room. I charged it, I remember starting a note and I also remember sitting on the bay window the following morning and continuing that note.

10

Q. What do you mean by the bay window?

A. There was a bay window in my hotel room.

15

Q. For the remainder of that evening on 11 February, did you leave your hotel room?

A. Not that I recall.

20

Q. What did you do for the remainder of the evening apart from starting to keep your diary?

A. Kept to myself, stayed in my room.

25

Q. Can I ask you about the following day, 12 February? Could you tell the jury what you did on 12 February, the day after the incident you've described?

A. That was the practice match day versus Scotland. We got the bus through the SCG where the match was and the team were warming up on the field. I again did my same thing, took my massage table into the change room, set it up, waited outside the change room, the usual.

30

Q. What was your emotional state like on the morning of 12 February?

HIS HONOUR: What's the significance of that, Dr Collins? We're into complaint now, aren't we? I just need the language. I'm only raising it because it's governed by the ruling I gave before.

35

COLLINS: As your Honour pleases.

40

Q. You waited until the players had gone to do the warm-up, what happened then?

A. I was approached by the manager, Richie Richardson.

45

Q. Did you know Sir Richie Richardson prior t that day?

A. Yes, he was also on the previous tour where I acted as massage therapist, he was known to me very well.

Q. Where were you when Sir Richie Richardson approached you?

A. On the field of the SCG.

50

Q. You mean on the oval?

A. Yes.

Q. At what time of the day on 12 February did he approach you?

5 A. I remember it to be a day match, it would have been around 9 o'clock, 9.30 in the morning.

Q. Could you now tell the jury please about what Sir Richie Richardson said to you and what you said to him, and if I could ask you as best you can to use the precise words that each person used?

10

MCCLINTOCK: Your Honour, I don't understand the relevance of this. Perhaps it is relevant.

15 COLLINS: This is what informs exhibit B.

IN THE ABSENCE OF THE JURY AND WITNESS

HIS HONOUR: Mr McClintock, it's just complaint evidence, isn't it? It'd be admissible in a criminal trial.

5

MCCLINTOCK: If it is going to be complaint. The only thing that still puzzles me, your Honour, I had operated on the assumption, because of Ms Saltau's evidence that this woman's evidence was going to be that she didn't say anything to Richie Richardson because that's what's in the article and what's in the email to her. Maybe I'm starting at shadows.

10

HIS HONOUR: Or you may have an inconsistency that you can cross-examine on, but if the witness' evidence is she spoke to Sir Richie then she spoke--

15

MCCLINTOCK: And complained, yes.

HIS HONOUR: --then she can give that evidence if it's complaint evidence. I just want to.

20

MCCLINTOCK: Yes. Your Honour, even, I'd have to say this, obviously depending how I cross-examine her, the way I will cross-examine her would get it in any way I would imagine, even before the Evidence Act.

25

HIS HONOUR: Except, sorry, there's one aspect - if we're not having Sir Richie or the physio, sorry, then it's not admissible as complaint evidence, is it? I need to remind myself of the sections, Dr Collins, give me a minute please. Unless you want to direct me to something. How is it admissible if you're not calling the witness because it trespasses against what we used to call the rule against self-corroboration. I'm saying it here and I said it previously.

30

COLLINS: That is true. Our friend rightly says he's going to cross-examine it and in any event I can deal with it in that way.

35

HIS HONOUR: Mr McClintock, you're saying you're going to cross-examine it in?

MCCLINTOCK: The difficulty is I don't yet know what the witness is going to say on this point, and so I can't say necessarily that I'll cross-examine it in. It's just I'm in a quandary not knowing what it's about and not understanding its relevance, and not understanding how, as your Honour says, self-corroboration evidence of this kind gets in. Even if I say the incident never happened, it doesn't make any difference - that doesn't make admissible what she said or what she said later I would have thought.

40

45

COLLINS: It is relevant in another way of course. Exhibit B has gone in which is the email from Sir Richie Richardson to the members of the team. This is the immediate precursor to the sending of that--

50

5 HIS HONOUR: That's gone in because it was relied upon by the journalists in the preparation for their story because that's where I checked with Ms Saltau whether she had any information from Ms Russell as to the content of her complaint and she said no. He assumed the complaint that was made was the same as had been made to her so it doesn't go in on the qualified privilege issues and it can't go in on the truth issues if you're not calling the people to whom the complaint was made.

10 COLLINS: No, that's true and we accept it's in the nature of a prior consistent statement. That's right.

15 HIS HONOUR: I think then you can't lead it, Dr Collins, and it'd be up to Mr McClintock if he decides he wants to cross-examine in evidence a fresh complaint.

COLLINS: Your Honour pleases. If he dares to bring it in.

20 HIS HONOUR: Where the person complained to won't be being called. It could only be cross-examined in if it's a prior inconsistent statement and if she can tell Ms Saltau what she said of the prior inconsistent statement being whether she spoke to Mr Richardson at all. I can't remember if she said she positively said she didn't or if we've all just been assuming she didn't because of other documents that we've seen.

25 MCCLINTOCK: The evidence from Ms Saltau was--

HIS HONOUR: She said she spoke to the physio, physio spoke to Richardson.

30 MCCLINTOCK: Richardson, yes.

HIS HONOUR: That was my understanding, but I can't now remember the source of that understanding.

35 MCCLINTOCK: It's in exhibit 2, the draft article and in exhibit 3, the version amended by Ms Russell.

40 HIS HONOUR: That's where I heard it. I read it in the newspaper, it must be true, Mr McClintock.

COLLINS: Depends which newspaper, your Honour.

45 HIS HONOUR: Dr Collins, I think you can't lead it in-chief, is probably the correct analysis.

COLLINS: I accept that after the debate at the Bar table.

IN THE PRESENCE OF THE JURY AND WITNESS

COLLINS

5 Q. Ms Russell, were you provided with a copy of the email that Sir Richie Richardson sent to the team on 12 February 2015?

A. I was CCd on that email, yes.

Q. When did you see the email?

10 A. Sorry, can you repeat that?

Q. When did you first see that email?

A. I saw that email as a draft version while the players were playing their match against Scotland, on Richie's computer.

15

Q. Did you massage Mr Gayle again after the incident you've described on 11 February?

A. No.

20

Q. Have you had any contact with Mr Gayle since 11 February?

A. No.

Q. Did you go on, Ms Russell, to New Zealand as part of the World Cup tour in March 2015?

25

A. Yes.

Q. Can you tell the jury who Julie Bland is?

A. Julie Bland was the massage therapist for the New Zealand team.

30

Q. Did you have any conversation with Ms Bland during the New Zealand part of the World Cup tour in March 2015?

MCCLINTOCK: I object.

35

HIS HONOUR: Where is this going, Dr Collins?

COLLINS: This is now in the nature of the matter which we've just had the debate about, but in respect of a witness who is being called.

40

HIS HONOUR: I probably need to allow it, don't I, Mr McClintock?

MCCLINTOCK: Yes, your Honour.

COLLINS

45

Q. Ms Russell, did you have a conversation with Julie Bland, the New Zealand team massage therapist during the World Cup, the New Zealand part of the World Cup in March 2015?

A. Yes, I did.

50

Q. Could you tell the jury, again using the words as best you can remember them, the precise words used, what you said to her and what she said to you?

5 A. Julie and I had a general discussion, the situation at the time was that there were three women on tour, one with the South African team, myself with the West Indies and Julie with the New Zealand team. It's led to a discussion on how rare that was, and in that discussion I told Julie, "I've had some trouble", and she said, "What's happened. Are you - do you want to speak to me about it", and I said, "Yes". I described the text message from--

10 HIS HONOUR

Q. More so you have to give the words, I said?

15 A. I said, "I had a text message from a player and", I'm trying to remember my words. I said I'd had a text message from a player and, "an issue with Chris Gayle", and beyond that I don't remember the words I used to describe that, but I know I told Julie what happened.

COLLINS

20 Q. When you say you told her what happened, if you can't remember the precise words can you say what the substance of it was?

A. I described the incident in the change room.

25 Q. I'm sorry to take you through it again, but can you say what you said to Ms Bland about what had happened in the change room?

A. I said that, "Chris had flashed me in the change room and asked me if I was looking for this", and she sympathised and said, you're kidding, or words to the effect, and she offered her support.

30 Q. Are you able to identify for the jury when that conversation took place?

A. I believe that was a match day in Wellington. Whilst I don't remember the exact date, you would be able to look up West Indies versus New Zealand in Wellington.

35 Q. How long after the incident in the change room did that conversation occur?

A. That was in March I believe, and the change room was in February, two to three weeks.

40 Q. Can I ask you now to turn your mind to January of 2016 and the Big Bash League competition? The jury has heard some evidence about an interview that Mr Gayle gave to a journalist with Channel 10 called Mel McLaughlin on 4 January. You're aware of that interview?

A. I am.

45

Q. How did you come to learn of the interview?

A. I was watching the match on TV.

Q. Did you see the interview itself?

50 A. I did.

Q. What was your reaction to the interview?

A. I was horrified.

Q. Why were you horrified?

5 A. I was horrified because I saw how uncomfortable Mel looked.

MCCLINTOCK: I object.

HER HONOUR: What's the relevance of her reaction?

10

COLLINS: This explains, I'll just say it very quickly, explains what happened on the following day which is when this witness goes to--

HER HONOUR: We don't need an explanation for that. We just need the fact of what happened on the following day, don't we?

15

COLLINS: I accept that.

Q. Could I ask you about the day after the Mel McLaughlin, 5 January 2016, I'll just have you handed a copy of exhibit 1.

20

EXHIBIT 1 SHOWN TO WITNESS

25 Can you identify that document for us, Ms Russell?

A. That is a Facebook message between myself and the journalist for The Age, Chloe Saltau.

Q. Did you know Chloe Saltau prior to sending that Facebook message?

30

A. I knew of her, I worked with her husband.

Q. In what context had you worked with her husband?

A. Her husband was the media manager at the Melbourne Cricket Club. I was an executive assistant at the Melbourne Cricket Club, we worked in the same room.

35

Q. Were you friends?

A. Yes.

Q. Were you friends with Chloe Saltau?

40

A. No.

Q. You were friends with the husband but not with the wife?

A. Correct.

45

Q. Had you socialised with Chloe Saltau?

A. No.

Q. Why did you send a Facebook message to Chloe Saltau?

50

A. I know her husband to be a man of great integrity and she was someone

who I felt comfortable in approaching.

5 Q. You sent that message to Chloe Saltau and you got that response that we see in exhibit 1 where she said a story about Chris Gayle being inappropriate was of interest, "Do you want to talk on the phone?" and gave a mobile phone number. Did you call Chloe Saltau?

A. I did.

10 Q. I ask you to recount your conversation with Chloe Saltau, again as best you can using the exact words that she used and that you used?

A. I called Chloe and she said, "Hi, how are you?" I said, "Thank you for taking my call". I said that, as a result of last night's interview with Mel McLaughlin, I said that I was very upset and I was very angry and I described to Chloe what happened in the change room again.

15

HER HONOUR

Q. Again, I'm sorry to do this to you but I do need you to use the words, I said, she said.

20 A. I said to Chloe Saltau that I was in the change room in Sydney and that Chris, upon me entering the room, I said, "Chris pulled his towel out and down and asked me if I was looking for this when I went into the change room". She asked me questions clarifying that information, "When did this happen?".

25 COLLINS

Q. Can you identify the questions that she asked you?

30 A. She asked me the date of when that happened and the time. I gave her my recollections of 11 February, Drummoyne Oval and she said, "Are you okay?" and I said, I said, "I'm very upset with what I saw last night", I said "I'm furious that women who work hard in this industry are made to feel that way, both on camera and within a change room and that people like Chris get to decide whether we're successful or not and that I was extremely upset".

35 Q. Did you have a conversation with Ms Saltau about whether what you had said to her was for publication in the Fairfax Media?

40 A. Yes. My discussion with Chloe was that I wanted to limit the story, my motivation - I said to Chloe, "My motivation for calling you is that so other women realise that this happens all the time and that nobody has the guts to speak out and they should". And Chloe had asked me to provide Ritchie Richardson's email to the team which I declined.

45 Q. There must have been something about Sir Ritchie Richardson's email before she asked you for it, can you tell the jury what you said on that subject?

50 A. In describing what happened to me on tour I had told Chloe that Ritchie Richardson sent an email to the playing group asking for respect. Ritchie Richardson did that on my request and in that email, he remained intentionally vague at my request because I didn't want to have this conversation one on one with every player. He sent a very simple email asking for respect on tour and to treat me professionally and I had told Chloe that information. She

wanted the email and I declined.

Q. Why did you decline?

5 A. Largely because Ritchie Richardson again is a man of great integrity, I didn't want to put him in the newspaper. I didn't have any issue with the way Ritchie supported me at the time and I thought that was unfairly putting his correspondence in the newspaper as well as that would clearly identify me.

10 Q. Implicit in what you've just said is that there must have been some conversation concerning whether you would be identified in any reporting in the Fairfax papers, could you tell the jury what passed between you and Ms Saltau on that subject?

15 A. I said to Chloe that "I accept that there will be a fair few people in the cricket world who would know who I am based on how many females were on tour". There's only one female with a red pass who would have been anywhere near the change room. I told her that I accepted that those people would know who I was but the wider public would not and based on that I didn't want any further identifying information on me. Again, my purpose was to speak out so that women who are on the receiving end of this behaviour would perhaps in future stand up for themselves.

20

Q. You made the point about your identity, what did Ms Saltau say in relation to the question of your identity?

25 A. She was supportive of that, she told me that she would black out anything that identified me specifically and she allowed me to proof read the article before it was posted.

EXHIBIT 2 SHOWN TO WITNESS

30 HER HONOUR

Q. Just while that's happening, Ms Russell, did you refer to a red pass?

A. Yes.

35 Q. Is that a pass that allows people beyond the public areas?

A. That's correct, a red pass relates specifically to players and team management and everyone else has a different coloured pass. There's only a certain number of people who would have that.

40 COLLINS

Q. Ms Russell, if you could look at exhibit 2, do you recognise that as an email exchange or an email from Ms Saltau to you on 5 January about 12.29pm?

45 A. Yes, I do.

Q. It contains a draft of Ms Saltau's article?

A. Yes, it did.

50 Q. Did you read that email as you received it?

A. I did.

Q. Did you respond to it?

A. I did.

EXHIBIT 3 SHOWN TO WITNESS

5

Q. Ms Russell, this is part of the same email chain, if you would go please to the third page at the bottom, you'll see a copy of that same email from 12.29pm?

A. Yes.

10

Q. At the foot of the page and then over the page we see the draft article with some text that's been struck out and some text that appears in blue print, could you tell the jury what that shows?

15

A. That was identifying Ritchie Richardson. After our conversation she wanted to put that in the article and I declined, I didn't want mention of the email.

Q. You're talking about the text on the fifth page that's got strike through on it and ruled out?

20

A. Yes, that's right, it refers to the email.

Q. Why did you want that ruled out?

HER HONOUR: She's just answered that, Dr Collins.

25

COLLINS

Q. What about the blue text, Ms Russell?

30

A. I had said to Chloe that I entered some amendments and that I had altered part of my quote to her on the phone to reflect my true feelings on the matter.

35

Q. Could you go back to the third page, you see your response at 12.42, "Thanks, Chloe. It's very well written and I'm happy for the article to come from you", that was on 5 January and the first of the articles appeared online later that day and in the print editions of the Fairfax papers on 6 January?

A. Yes.

Q. Did you have any further conversations with Ms Saltau after the publication of the first?

40

A. Yes, I believe there was a couple of phone calls, possibly a Facebook message asking if she could call me.

Q. Could you just identify for the jury when that occurred as best you can?

45

A. That was in the days after the article was released, that would've been 7 January from recollection.

Q. You received a message, did you?

A. Yes, I think she'd said, "Are you okay?"

50

Q. Did you respond to that message?

A. Yes, I did.

Q. Did you respond in writing or orally?

A. I responded in writing I believe.

5

Q. Did you have any further conversations with Ms Saltau on 7 January?

A. Yes.

10 Q. Could you tell the jury again using as best you can the precise words that were used what you said to her and what she said to you?

A. There was a response, I believe, in the media that Chris would use legal action for any such accusation and Chloe requested the Ritchie Richardson email. I believe we discussed providing her that email which I believe she subsequently printed.

15

Q. Anything else that you recollect about that conversation between you and Ms Saltau?

A. Not that I recall at this time.

20 Q. Did you subsequently provide the Ritchie Richardson email to Ms Saltau?

A. I did.

Q. When did that occur?

A. I believe that would have been around 7 January.

25

Q. Did you have any further conversations with Ms Saltau in connection with the provision of the Sir Ritchie Richardson email?

A. Yes, again I think we discussed leaving out the address that it came from. My name was blocked out, I believe we discussed that detail.

30

<CROSS-EXAMINATION BY MR MCCLINTOCK

Q. Ms Russell, I don't wish to be unkind to you in any way, but you told the jury that you were suffering from anorexia in February 2015, didn't you?

35

A. Yes.

Q. Anorexia is of course a recognised psychiatric illness, isn't it?

A. Yes.

40 Q. Were you taking any medication in 2015 for it?

A. Yes.

Q. What medication were you taking then?

A. I was taking Sertraline.

45

Q. What does that do?

A. Sertraline is an antidepressant.

Q. Are you taking any medication now?

50

A. Yes.

Q. What medication are you taking?

A. Same thing.

Q. Is that the only drug that you're taking?

5 A. Yes.

Q. Were you receiving any treatment from a psychiatrist in respect of anorexia, your anorexia in February 2015?

10 A. No.

Q. Are you receiving any such treatment now?

A. No.

Q. Could I ask you if you would, you've still got exhibit 2 and exhibit 3 there before you?

15 A. Yes.

Q. If you would look at the second page of exhibit 2, you see the fifth paragraph on that page says, "Team Manager, Richie Richardson, was told about what had happened by another staff member but he was not told the name of the player involved"?

20 A. I'm reading that, yes.

Q. You read that when Ms Saltau sent you that draft article on 5 January, didn't you?

25 A. Yes.

Q. It was obviously based on something that you'd told Ms Saltau, wasn't it?

30 A. Yes.

Q. In fact later that day, and this is exhibit 3 if you'd go to that, you sent back to Ms Saltau that draft article with your amendments, didn't you?

A. Yes.

35 Q. Before you sent it back you read the draft article carefully, didn't you?

A. Yes.

Q. You made some quite detailed changes to it, didn't you?

40 A. I made an amendment to my quote and I included words that more accurately described the situation, yes.

Q. You didn't change the words to which I've drawn your attention, did you?

Do you see that appear as the second paragraph on the fifth page of exhibit 3?

45 A. Correct.

Q. You of course knew, because Ms Saltau was in effect telling you that in exhibit 2, that this is what she was going to put in The Age, didn't you?

A. Yes.

50 Q. You see, there's no reference in that article to any conversation between

you and Richie Richardson, is there?

A. Can you repeat that?

5 Q. There's no reference in the article to any conversation between you and Richie Richardson, is there?

A. No.

10 Q. Look again if you would at the paragraph I've drawn your attention to. "Team Manager, Richie Richardson, was told about what had happened by another staff member but he was not told the name of the player involved", do you see that?

A. Yes, I do.

15 Q. That was not true, was it?

A. No, that is true, he wasn't told the name of the player by the other staff member that informed him of the incident.

20 Q. He wasn't told about what had happened by the other staff member referred to there is CJ Clark, isn't it?

A. Correct.

25 Q. Focus on the opening words of it, "Team Manager, Richie Richardson, was told about what had happened by another staff member", that statement is not true, is it?

A. "Team Manager, Richie Richardson, was told about what had happened by another staff member", that is 100% correct.

30 Q. Do you say that you told him about this?

A. No.

35 Q. You say that you didn't tell Richie Richardson about this incident?

A. I had a conversation with Richie Richardson after he was informed by CJ Clark. What this statement means to me is that CJ Clark did not identify any players to Richie Richardson, that was me.

40 Q. What you're saying is that you identified Mr Gayle to Sir Richie Richardson, is that your evidence?

A. That's correct.

45 Q. You didn't tell Ms Saltau that, did you?

A. I don't recall, but it's - not printed. The statement relates strictly to what Christopher Clark had told Richie Richardson, which was not to identify the player.

50 Q. Let's go to Mr Clark. When did you tell us that you first met Mr Clark?

A. In November 2005.

Q. As at the February 2015 World Cup he was your boss, wasn't he?

A. Yes.

Q. You reported to him I think you said?

A. Yes.

Q. You've had a fairly close personal relationship with him?

5 A. As much as two people do on too.

Q. Could you say that again?

A. As much as two people do on tour, yes.

10 Q. You knew about, because he'd told you, his previous dealings with Mr Gayle, that's correct, isn't it?

A. I knew of one situation he had told me about, nothing more.

Q. What did he tell you about?

15 A. He told me that Christopher had been angry with him based on CJ declaring Chris unfit to tour and that there had been a situation where Chris had become threatening to CJ over I - what I assume is the loss of income that Chris would have gone through as a result of him being unfit for a tour.

20 Q. You see, you knew what had happened was that Mr Clark had declined to say certify Mr Gayle as fit for a tour of Pakistan as a result of which he missed out on that tour, that's correct, isn't it?

A. I believe so, yes.

25 Q. Mr Clark also told you about an incident that had happened in Durban, didn't he, shortly before the 2015 World Cup, that is when he challenged Mr Gayle to a fight?

A. I don't recall that specifically.

30 Q. You certainly knew that relations between Mr Gayle and Mr Clark were poisonous, didn't you?

A. I knew that they didn't get along. I don't think I can say to any extent of the intricacies of their relationship, no.

35 Q. You knew, because he told you, that Mr Clark regarded Mr Gayle as a creep, didn't you?

A. Yes.

Q. That's an indication of fairly strong animosity, isn't it?

40 A. I would suppose so.

Q. When did you last speak to Mr Clark?

A. I believe that would have been in March last year.

45 Q. March last year?

A. No. I'm happy to be presented with evidence otherwise.

Q. I'm going to have you shown some documents, Ms Russell. While I think about it, you mentioned that you started creating a diary on your Samsung tablet?

50

A. Yes.

Q. At the same time as you were doing that you say you were sending text messages passing between you and Mr Clark, weren't there?

5 A. Correct.

Q. I'm going to have you shown this document, and you see that's a text message that you sent to Mr Clark at 1.43 on 11 February 2015, isn't it?

10 A. Yes.

EXHIBIT #G MESSENGER TEXT MESSAGES BETWEEN LEANNE RUSSELL AND CJ CLARK DATED 11/02/15 TENDERED, ADMITTED WITHOUT OBJECTION. SHOWN TO JURY

15 Q. You see Mr Clark responds at 13.44?

A. Yes.

Q. You asked him for a quick chat, didn't you?

20 A. Yes.

Q. It was in relation to the inappropriate text message you had got from a player yesterday?

A. Yes.

25 Q. You actually had a conversation with Mr Clark very shortly after this text message, didn't you?

A. Yes.

30 Q. The conversation was about the text message from the player the previous day, wasn't it?

A. Correct.

35 Q. I'm going to have you shown another document, Ms Russell and you will see it's a series of text message - actually I should be precise about it, are they text messages or are they Facebook Messenger messages?

A. I believe this was on Messenger.

Q. That's the Messenger app that's associated with Facebook, isn't it?

40 A. Yes.

Q. These are a series of text messages passing between you and Mr Clark on 12 February 2015, correct?

A. That is correct.

45 Q. Could you read them to yourself?

A. Yep.

Q. Let's go through them. Look at the first page. Something's been cut off--

50 HIS HONOUR: I'm wondering if Dr Collins doesn't object this will be easier for

the jury to follow if they're before them.

MCCLINTOCK: Certainly. I'll tender them.

5 COLLINS: No objection, but I would say one thing about it; that is that the bit that's been cut off from the top is the last exhibit, it's a run of messages from the same Messenger so it made more sense to have just the one run.

10 EXHIBIT #G SUPPLEMENTED BY THE ADDITION OF MESSENGER TEXT MESSAGES BETWEEN LEANNE RUSSELL AND CJ CLARK DATED 12/02/15, ADMITTED WITHOUT OBJECTION. SHOWN TO JURY

15 HIS HONOUR: Members of the jury, I keep forgetting to tell you this for which I apologise. You are quite free to write on each of those copies that you get what exhibit number they are. I should have told you that yesterday, I'm very sorry. Anything that you are given in the jury box you can write all over, whatever notations you want to make, everything you have owned will be shredded at the end of the trial.

20 MCCLINTOCK

Q. Have you looked at these text messages, Ms Russell?

A. Yes, I have.

25 Q. You see if you look at the second page, that these appear to have been printed out from at about 17.48 and on which date, do you recall?

A. On 12 February.

30 Q. Just look at the third page, Ms Russell you'll see 17.48 Thursday 7 January. Were they on your phone or on your Samsung tablet?

A. They were on my phone.

35 Q. The material that I've addressed your attention to suggests that they were printed out on 7 January, which year?

A. 2016.

Q. Why did you print them out?

40 A. Because there were allegations in the newspaper that I would be facing legal action for what information I provided to The Age and I screenshotted all of the information in my phone.

Q. Let's look at that, the first is a text message from Mr Clark, isn't it?

A. Correct.

45

Q. In fact, the first five are from Mr Clark, aren't they "Do not back down or show weakness. You've done nothing wrong. Do not give them the satisfaction. If you want to talk later, I'm free, okay", you see that?

A. Yes.

50

Q. All sent about 6.20 on 12 February 2015?

A. Yes.

5 Q. Then Mr Clark says, "This is more about them pressuring manager"?
A. Yes.

Q. Who was the "them" that you understood Mr Clark to be referring to?

A. The playing group of the West Indies cricket team.

10 Q. Then you responded to him, this is the top of the next page, "Okay, I'm on it. Thank you" 18.22, 6.22, you see that?

A. Yes.

15 Q. Then he says to you, "Always here Rusty. You are the problem"?

A. Yes.

Q. Then you said, "Sure feels like it"?

A. Yes.

20 Q. Just dropping down there, you see "Sammy telling me he is disappointed in me, like I'd done something wrong", that's at 6.26?

A. Yes.

25 Q. Mr Clark says to you, obviously a typo for just, "Just smile and say FU under your breath"?

A. Yes.

30 Q. Then he says, "He is a big flirt", then he says, "But he isn't the problem, right?"

A. Correct.

Q. Then you say, "Na, never has been"?

A. Yes.

35 Q. Then you say, "So why listen to him, he doesn't know what happened?"

HER HONOUR: That's CJ Clark saying that, isn't that, Mr McClintock?

40 MCCLINTOCK: Yes.

Q. He doesn't know what happened, you see that?

A. Yes.

45 Q. Then you say, "Good point. Thanks, CJ"?

A. Yes.

Q. Then "Going to sink a bottle of red in my room" at 6.30?

A. Yes.

50 Q. Then there's some suggestions from Mr Clark to you, you see that?

A. Yes.

5 Q. Then you say, "Feel really shit how he went at manager when manage just trying to back me up. That's what happens when you're a girl in sport. The player never wrong". You see that?

A. Yes.

Q. That was a reference to Mr Sammy, wasn't it?

10 A. Yes.

Q. Then you added, "Don't matter how much you know, how hard you work or how professionally you are, you're a woman and you're wrong"?

A. Yes.

15 Q. Just going over the page, you'll see that the material I've just directed you to is repeated, isn't it?

A. Yes.

20 Q. Then he says, "It doesn't matter. You okay, Rusticles?"?

A. Yes.

Q. That was is pet name for you, wasn't it?

25 A. It was a joke in cricket circles as to how many nicknames people could give me in cricket circles out of my last name, Russell. I have many nicknames like that.

Q. And you said, "Always" in response to the question, "Are you okay?", didn't you?

30 A. Yes.

Q. You would agree with me that there is no reference to my client by name in those text exchanges, is there?

A. There's no reference to him in person, no.

35 Q. Nor is there any reference to anything that he had done, is there?

A. No, I would say that when I wrote that "That's what happens when you're a girl in sport, the player is never wrong", that was in specific reference to the email that Ritchie wrote which was a direct result of what your client had done.

40 Q. You would agree with me that there is no specific reference in that text message to what you say my client had done, is there?

A. His name is not in the document is what I would say.

45 Q. Let's go to January 2016. I apologise, Ms Russell, I can't recall whether you said you were last in contact with CJ Clark in March this year or March last year, which was it?

A. No, it would've been at some stage this year. I was attempting to contact him in relation to these proceedings.

50 Q. To ask him to come along and back you up, that's correct, isn't it?

A. No, to say that my lawyers wanted to have a discussion with him.

EXHIBIT #H MESSENGER MESSAGES TENDERED, ADMITTED WITHOUT
OBJECTION

5

Q. You would agree with me, wouldn't you, Ms Russell, that this is an exchange of Messenger messages between you and Mr Clark on 5 January 2016?

A. Correct.

10

Q. The first thing you say is, "I can only lol" laugh out loud?

A. Correct.

15

Q. Then there's a reference to my client's interview with Mel McLaughlin, isn't there?

A. That's correct.

20

Q. Then he responds, "Yeah, I've seen". Then he makes a suggestion, "Maybe you should put in your two cents. That would be most appropriate"?

A. Correct.

25

Q. You understood him to be suggesting that you go to the newspapers, didn't you?

A. Yes.

Q. You certainly understood that that's what he wanted you to do, didn't you?

A. My next statement is, "I've thought about it, that's for sure". That shows that I thought about that independently of CJ telling me that on 5 January.

30

Q. But it is certainly a suggestion that he made, isn't it?

A. Yes.

Q. Just going along, you say, "I've thought about that that's for sure"?

A. Yes.

35

Q. Then he says, "Serial offender"?

A. Yes.

40

Q. Then you say, "Should make a call to The Age today"?

A. Yes.

Q. Why did you choose The Age, because of Ms Saltau?

A. Correct.

45

Q. Then he says, "Well, I would back you up"?

A. Yes.

Q. "Wrong is wrong"?

A. Yes.

50

Q. Then you say, "Ha, think you're the only one that would"?

A. Yes.

Q. Then you said, "Ridiculous"?

5

HER HONOUR: He says. He says, "Ridiculous", Mr McClintock. That's CJ Clark writing, "Ridiculous".

MCCLINTOCK: I'm sorry, your Honour is quite right.

10

Q. Mr Clark says, "Ridiculous. Manage too", that of course, you understood to be a reference to management?

A. That is Ritchie Richardson.

15

Q. Then you said, "You guys are the two most important anyway"?

A. Correct.

Q. That was a reference to Mr Clark and to Sir Ritchie Richardson, was it?

A. Correct.

20

Q. Then you say, one down, I'm sorry, that's Clark saying, "But I would definitely consider saying something"?

A. Correct.

25

Q. You understood him to be pushing you to going to the newspapers, didn't you?

A. That's not pushing.

Q. What would you describe it as?

30

A. As I said, my message on the previous page shows independent thought of this. I had considered who I would approach to tell my story and I don't think CJ had any bearing on that at all.

Q. But you certainly knew that he wanted you to go to the press, didn't you?

35

A. I can see that he suggests that but in no way does that make me bear myself to a newspaper on a national scale.

HER HONOUR: Members of the jury, I don't mark an exhibit I. That will be exhibit J, there's no "I" because that can get confused with "1" so it's exhibit J.

40

EXHIBIT #J MESSAGES ON 05/01/15 TENDERED, ADMITTED WITHOUT OBJECTION. SHOWN TO JURY

MCCLINTOCK

45

Q. This is an exchange of messages on, can you assist me, also on 5 January 2015 I think, Ms Russell?

A. Correct.

50

Q. You see that the first one is at, I think, 1649 or 1657?

A. Correct.

Q. Can you tell us what prompted Mr Clark to say to you, "I really admire you" in the second page?

5 A. The comment that is further down the page suggests that Ritchie Richardson was contacted by a reporter and therefore CJ knew that I had informed The Age of the situation.

10 Q. Over the page on the last page of the document, you see the last message from Mr Clark to you, Ms Russell?

A. Yes.

15 Q. "You little beauty. Well done", there's no question, is there, that you knew that Mr Clark was delighted that you had made the attack on Mr Gayle that you had made, that's correct, isn't it?

A. I think it's true that he's proud of me for saying something.

20 Q. You were, of course, reporting to Mr Clark at the time, weren't you, in January 16?

A. No.

Q. Of course, you had been reporting to him at the time, as you've said, during the World Cup in February 2015, hadn't you?

25 A. That's correct, for the contracted period.

Q. I just go to now, to ask you about the incident that you say occurred on 11 February 2015 first. You say that you went into the dressing room looking for sandwiches?

30 A. Yes.

Q. You say that when Mr Gayle asked you what you were looking for you said, "A towel"?

A. Correct.

35 Q. The reason why you said that was because of this psychiatric illness, anorexia that you were suffering, wasn't it?

A. Correct.

40 Q. I'm not criticising you for this, but it wasn't true, was it, you weren't looking--

HIS HONOUR: That you were looking for a towel.

MCCLINTOCK

45 Q. You weren't looking for a towel?

A. No, correct.

Q. The illness, you felt so sensitive about the illness you suffered that you told Mr Gayle an untruth you say?

50 A. Yes.

Q. Did you then say, tell me, what you say he did with the towel?

A. He pulled his towel out and down and said, "Are you looking for this?".

5 Q. When you say out and down what do you mean? First, how was the towel around his waist?

A. It was positioned around his waist and wrapped there.

Q. What exactly did he do with it?

10 A. He put his thumb down the towel, pulled it out and down and said, "Are you looking for this?".

Q. He didn't pull the towel out?

A. No.

15 Q. He didn't expose his penis in the sense of the whole of it did he?

A. No. Yeah.

Q. It has always been, I take it, your belief that he did what you've described here in the witness box today?

20 A. Yes.

Q. You've never given any other versions, Ms Russell?

A. No.

25 Q. I want to have you shown another document, Ms Russell, you see you gave some evidence this morning about typing up some notes on your Samsung tablet, correct?

A. That's correct.

30 EXHIBIT #K WEST INDIES NOTES 1 SAMSUNG TABLET FEBRUARY 2015
TENDERED, ADMITTED WITHOUT OBJECTION. SHOWN TO JURY AND
WITNESS

35 Q. I'm going to ask you some questions about that diary note, but before I do I'm going to show you another document and I'm going to ask you to tell me what it is, I'm not going to tender it yet. Could you have a look at this document?

A. I don't see a difference.

40 Q. No, first there's different type script, isn't there, there's different type face, isn't there?

A. Someone point that out to me, I don't.

45 MCCLINTOCK: I'd better make sure that the document that you've got, because there may have been - perhaps I could have back the document that was just handed to you. I'm sorry, somehow the wrong document.

Q. Have a look at this document. You see the first one is headed "West Indies notes 1"?

50 A. Yes.

Q. This one is headed "LR dairy from CWC"?

A. Yes.

5 Q. Cricket World Cup. I want to understand what the relationship between these two documents is?

A. Yes.

Q. When did you create them?

10 A. The first document in the courier script is from my tablet, which is what I wrote on tour. That was created on my Samsung tablet on tour.

Q. What about the second one?

15 A. The second document is the forwarded message from my tablet to my work email in which I changed the grammar and spelling prior to providing the document to my lawyers for the purpose of legal proceedings.

Q. When did you do that?

A. That would have been when they asked for it around May of 2016.

20 Q. What legal proceedings were they?

A. That was that this was potentially coming up and that they wanted the evidence to show what had happened to me on tour.

Q. Who are you referring to by--

25 A. I believe I was subpoenaed for this information.

Q. Who are you referring to as my lawyers?

A. This was the MinterEllison lawyers.

30 Q. The lawyers in fact for the defendants in these proceedings?

A. Yes.

35 Q. Let's just look at the first document, West Indies notes 1. Before I do, I'll ask you - before I actually go to that I'll ask you to have a look another document which is headed "West Indies notes 2"?

COLLINS: There's no objection to the tender of that.

MCCLINTOCK

40

Q. First, when did you create that document, West Indies notes 2?

45 A. Around the time that the article was published and that there was a clear threat that I would need to go through legal proceedings. I added the final two paragraphs labelled, "Post tour notes", these were well after the tour and were not written when I was on tour.

Q. You refer there to Darren Sammy, don't you?

A. Yes.

50 Q. If in fact it's exclusively about Darren Sammy, isn't it?

A. The continued part is, yes.

MCCLINTOCK: I'll tender it separately.

5 HIS HONOUR: Exhibit K, can I check was the one that was prepared on the tablet, is that right? I want to distinguish them in the description for the transcript, Mr McClintock, what's exhibit K?

10 MCCLINTOCK: Exhibit K was prepare I think she said on the tablet in February 2015.

HIS HONOUR: Post tour notes have been added to it.

15 MCCLINTOCK: Post tour notes have been added to it in January 2016.

HIS HONOUR: What is exhibit L going to be?

MCCLINTOCK: I think it probably should be a separate tender, your Honour.

20 HIS HONOUR: Yes, but I want to know what it is.

MCCLINTOCK: I'll have it shown to your Honour, it's probably the easiest way of doing it. It says continued or cont at the top and I apprehend it's an addition to exhibit K.

25 HIS HONOUR: I see. We can call them West Indies notes 1 and 2, can't we?

MCCLINTOCK: Yes.

30 EXHIBIT #L WEST INDIES NOTES 2 WITH POST TOUR NOTES JANUARY 2016, ADMITTED WITHOUT OBJECTION. SHOWN TO JURY

35 HIS HONOUR: Ms Russell, now that you're under cross-examination it's extremely important that you not talk to anyone else or discuss your evidence during the lunch adjournment. I'm not saying you have to remain alone, and I know that you've come with some other people, the temptation to discuss the evidence with them will be large but you must resist that temptation. Just talk about the weather. If you could please come back ready to resume at two and members of the jury, if you could come back at 2 o'clock.

40

IN THE ABSENCE OF THE JURY AND WITNESS

5 HIS HONOUR: Can someone please remind me, because I keep forgetting, I need to give them the direction about Mr Barrett's evidence being admissible for the limited purpose of the qualified privilege defence. I did give them that direction yesterday, Mr McClintock in respect of Ms Saltau's evidence, so I don't think it's critical, but I should have given it at the conclusion of his evidence, but I didn't want to hold up Ms Russell. In fact I might just give it tomorrow, Mr McClintock, if you're content rather than interrupt her evidence.

10 MCCLINTOCK: Yes. Absolutely.

HIS HONOUR: They have heard it already, thank you.

15 LUNCHEON ADJOURNMENT

MCCLINTOCK: Mr Richardson has a notice to produce to call upon, your Honour.

20 RICHARDSON: Yes, your Honour, there were two notices to produce called on last night; I call on categories 1 and 2 in the first and category 1 in the second.

25 BARNETT: Your Honour, I have a document to produce, I'm not sure which.

HER HONOUR: Perhaps Mr Richardson could hand you the notices to produce you could say which notice it's produced in response to.

30 BARNETT: Your Honour, I produce the document in response to category 1 in both notices. There's an objection to production of documents in category 2 on the basis of legal professional privilege.

HER HONOUR: Client legal privilege. Do you want access to that?

35 MCCLINTOCK: I seek access, your Honour.

HER HONOUR: There's no objection to access to this one?

40 BARNETT: No, your Honour. I can provide to my learned friend, your Honour.

HER HONOUR: Could I have the notice so that I can attach what's been produced to the notice please. Also, we need to have an argument about the other or is the privilege claim accepted, Mr Richardson? Has it been verified in an affidavit, Ms Barnett?

45 BARNETT: It hasn't, your Honour.

HER HONOUR: Perhaps we can deal with that at a later--

50 RICHARDSON: The issue will be waiver and we'll consider our position.

DTI:DAT

D3

HER HONOUR: Could I ask you to perhaps if possible have some discussions with Ms Barnett about that?

IN THE PRESENCE OF THE JURY

5 MCCLINTOCK: Your Honour, I tender the document that I asked the witness about, the diary from CWC and there are two copies for tender and for your Honour and four for the jury.

COLLINS: There's no objection.

10 HER HONOUR: This is the one that was edited for provision to the lawyers, is that right?

MCCLINTOCK: That's what the evidence was, your Honour.

15 EXHIBIT #M DIARY, ADMITTED WITHOUT OBJECTION. SHOWN TO JURY
IN THE PRESENCE OF THE WITNESS

EXHIBIT K, EXHIBIT L AND EXHIBIT M SHOWN TO WITNESS

20 MCCLINTOCK

Q. Look, if you would, Ms Russell, at exhibit K, the document headed "West Indies notes"?

25 A. Yes.

Q. You actually commenced to write that document at 7.12pm on 12 February 2015, didn't you?

A. I have no way of knowing that definitively but that sounds correct.

30 Q. You did not start it on 11 February as you said in your evidence this morning, did you?

A. Sorry, could you repeat that.

35 Q. You did not start it on 11 February 2015 which is what you said in your evidence this morning?

A. If I'm a day off I'm happy to accept that.

40 HER HONOUR: Sorry to interrupt, Mr McClintock. I just need to be clear. I thought her evidence was that she bought the note pad after the incident on the 12th?

MCCLINTOCK: On the 11th.

45 HER HONOUR: I'll take your word for it.

MCCLINTOCK: Yes, your Honour, that is both my recollection and Mr Richardson's recollection, your Honour.

50 Q. You are aware, aren't you, that you had to hand over your computer or your Samsung tablet to have it analysed?

A. Yes, that was recently.

Q. Just recently, and you're aware that an expert witness chosen by my learned friend's solicitors, Minter Ellison analysed and produced a report?

5 A. Yes.

Q. Have you seen the report?

A. I have not.

10 Q. I'll have you shown it open to a particular page. You see there that the expert--

HER HONOUR: Mr McClintock, it's not her document. There's a constraint on how it can be put, it's not her document. You put it under her nose and ask her
15 the question that she's already answered again.

MCCLINTOCK

Q. You would agree with me, wouldn't you, that having seen that document
20 you accept that you started preparing the note that is now exhibit K at 7.12 on 12 February?

A. That looks to be correct.

MFI #6 EXPERT REPORT

25 COLLINS: Your Honour, my learned junior tells me it's in evidence by operation of the rules because it's a court appointed expert and the rules provide that once a report is provided to the Court it's in evidence without anything further from the parties.

30 HER HONOUR: I thought that that meant it became the evidence of the expert if the expert was called. I don't know that it means it goes before the jury, Dr Collins but can we have that debate later?

35 COLLINS: We can have the debate later, yes.

MCCLINTOCK: When it's been marked, your Honour, I'll have it given back to her because there's one other question I want to ask about it.

40 HER HONOUR: What's the rule you're referring to, Dr Collins?

COLLINS: 31, 49.

MFI 6 SHOWN TO WITNESS

45 MCCLINTOCK

Q. You see, I had it opened up at page 5 and I was asking you about that, just while we've got it, you see, go to page 6 and you see there document title,
50 CONT, you see that, that tells you that what this gentleman--

COLLINS: I object to this, there's a proper way of doing this, the document is not in evidence, my friend must comply with--

5 HER HONOUR: Yes, Mr McClintock, the usual way is to ask the question, if she accepts what you put there's no need to put the report in front of her, if she doesn't accept it, there's a way of doing it.

MCCLINTOCK: Certainly, your Honour.

10 Q. Just put that document aside, Ms Russell. You would agree with me, wouldn't you, that exhibit L, that is the short one was created by you on 7 January 2016?

15 A. I believe the two paragraphs under, post tour notes was created by me at that time. Within my Samsung tablet there is a maximum text count allowed and that my addition of that paragraph on post tour notes pushed that out to create a second file.

Q. You would agree with me, wouldn't you, that you modified that document, and indeed exhibit K on May 11 last year?

20 A. No, as I said, the post tour notes is what was modified at that time. You'll notice the grammatical errors in the paragraphs above it, that has not been modified.

Q. That has not been, sorry?

25 A. Modified.

Q. What you're saying is the only thing that was added or changed is what's exhibit L, is that correct?

30 A. No, it's the last paragraph of exhibit K under post tour notes and exhibit L is the extension of that same file which moves onwards to open a second file as the maximum text count had been reached.

Q. Let's look at exhibit M, what computer was that created on?

35 A. That was printed on my computer that I worked with at the Melbourne Cricket Club.

Q. It was not on the Samsung, was it?

A. No.

40 Q. It's obviously based, if I could put it like that, on exhibit K, isn't it?

A. Yes, very much so.

45 Q. Let's just go back to exhibit K, you've told us that you accept that it was created at 7.12 or you commenced to create it, to be absolutely fair, at 7.12pm on 12 February 2015?

A. That would seem to be correct.

Q. That was when you were drinking the bottle of red that you'd mentioned in your text to Mr Clark, wasn't it?

50 A. I think someone could use a turn of phrase without expressly ingesting a

bottle of red.

Q. You were having a drink though, weren't you?

A. Not that I recall.

5

Q. It was certainly after you had been texting Mr Clark, wasn't it?

A. Yes, I think they're in a piece of evidence somewhere which I'm sure people have access to. Chris had said to me that it might not be a bad idea. I agreed.

10

Q. You accept, don't you, that the document was amended in May 2016?

A. Yes.

Q. Can you tell us what the amendments were?

15

A. The amendments were grammatical. If you compare the two versions it's very clear what the amendments were, they're grammatical, they're spelling mistakes, the general notes have not been changed.

Q. Let's just examine that, Ms Russell. Just let's look first at exhibit K. You see you've got an entry there, 10 February at 2.28 about Mr Smith?

20

A. Yes.

Q. Just by the way, you refused to tell Ms Saltau who the second player in the room was, didn't you?

25

A. I don't believe I needed to go into that detail.

Q. Please, would you answer my question? You refused to tell Ms Saltau the identity of the second player in the room, didn't you?

A. Yes.

30

Q. She specifically asked you, didn't she?

A. I don't recall.

Q. You don't recall?

35

A. No.

Q. I suggest to you that she did ask you who the name of the second player, do you agree with me?

A. I don't recall.

40

Q. I also suggest to you that you specifically refused to tell her the name of the second player in the room whom you knew to be Mr Smith?

A. All I can say about that is that that sounds like something I would do.

45

Q. The reason why was that you did not want Ms Saltau to get in contact with Mr Smith, did you?

A. No. My reaction in contacting Chloe was in relation to the Mel McLaughlin incident the previous night and I didn't feel Dwayne Smith had anything to do with that.

50

Q. He had something to do with the incident that you told Ms Saltau about involving my client in the changing room, that's correct, isn't it?

A. Yes, correct.

5 Q. You refused to tell, I'll put it to you again, Ms Saltau the identity of Mr Smith because you did not want Ms Saltau to contact Mr Smith, that's correct, isn't it?

A. No, that's not correct.

Q. Why did you refuse to tell Ms Saltau Mr Smith's identity?

10 A. Again, because what infuriated me was the previous evening with Mel McLaughlin, my beef was with Chris. I have no issue with Dwayne being asked what happened at the day or the day before in sending me a text message, I was quite pleased he was brought before the Court.

15 Q. It was perfectly open to you to tell Ms Saltau that there was another player in the dressing room which did, that's correct, isn't it?

A. That is correct.

Q. It was equally open to you to tell her who that was, wasn't it?

20 A. Yes.

Q. You refused to do that, as you've told us, didn't you?

A. Yes, correct.

25 Q. The reason why, I'll put it to you again, you refused to tell Ms Saltau the identity of the second player was you didn't want her contacting that person, did you?

A. I reject that.

30 Q. Why do you say you refused to tell Ms Saltau?

A. You'll see that my behaviour on tour was also to protect the players. That is my natural inclination. At the time I said I don't want players to be named. At the time I was upset with Chris and what he had done on TV with Mel McLaughlin. My beef at that time was not with Dwayne Smith, it was with
35 Chris Gayle, and that is on the basis that I proceeded. As I--

Q. You knew, didn't you, that if Mr Smith was contacted by The Age he would say, as he said in evidence here, that the incident never happened? You knew that, didn't you?

40 A. No.

Q. That's the reason why you refused to tell Ms Saltau his name?

A. No, that's absolutely incorrect.

45 Q. Also may I put to you that your evidence about not naming the players is false? Do you agree with me on that or not?

A. You're welcome to put that to me, sir, but I am disagreeing with you.

50 Q. You were quite prepared to name my client, weren't you, and smear him, weren't you?

A. It was in direct relation to the altercation the previous night on TV. It was in direct reaction to that.

5 Q. You were very careful, weren't you, to prevent Ms Saltau from making inquiries that could verify your story, weren't you?

A. No, I think in the way I assess the situation is we're all here today because I've made a complaint about one player. Imagine my world if I've complained about two or three. This is quite enough, sir.

10 Q. You deliberately withheld from Ms Saltau the fact that you say you had told Richardson of the identity of Mr Gayle?

A. No.

Q. You didn't tell her that, did you?

15 A. I didn't tell her about the identity - can you repeat the question please?

Q. You didn't tell Ms Saltau that you had told Richardson the identity of the player in the dressing room?

20 A. I don't recall that. I remember telling her that CJ approached the manager and CJ did not reveal any players' identities to the manager. That was my conversation with Chloe.

Q. You say, don't you, that you had told Richardson my client's name as the perpetrator of this supposed incident, don't you?

25 A. Yes, that's correct. Yes.

EXHIBIT 3 SHOWN TO WITNESS

30 Q. You know that that's the email that you sent back to Ms Saltau with your amendments on 5 January 2016?

A. Yes.

Q. You told us before that you read it with care, didn't you?

35 A. Yes.

Q. You see that the one reference that you left in in this article was the one on the second paragraph on the fifth page of the draft article?

A. Can you repeat which paragraph that is please?

40 Q. It's actually the second and third paragraphs, you see? You see you took out the paragraph about Richardson sending the email, didn't you?

A. Yes.

Q. What was your reason for doing that again?

45 A. Again I didn't want that email to go into the paper. That took quite some convincing to get that into the paper, what was it, a day or two later. I - that was not my initial wish at all.

Q. Why?

50 A. Why - because the response in the newspapers was that Chris was going

to use legal action in order to call any accusations to account, and I didn't feel that that was a necessary piece of information until that threat had been put forward in a public forum.

5 Q. The threat of legal action was made on 7 January last year, wasn't it? Your answer then was referring to events after that date, that's correct, isn't it?

A. Okay, my apologies.

10 Q. On 5 January you didn't want the email to be put forward, did you?
A. No.

Q. Why, in the absence of a threat of legal action, was that the case, Ms Russell?

15 A. That was the case because an email is very specific. It identified me, it identified Richie Richardson and would identify me to the wider public from having it published.

Q. There is in fact no reference to you by name in that email, is there?

20 COLLINS: That's just wrong.

MCCLINTOCK: I withdraw that.

25 HIS HONOUR: And rejected, Mr McClintock.

MCCLINTOCK

Q. It was in fact redacted when it was published on the ninth, wasn't it?

30 A. Yes.

Q. You see, I'll come back to that email a little bit later on, Ms Russell, but you recall you approved it on Mr Richardson's computer, or Sir Richie Richardson's computer, didn't you?

35 A. The email that Richie Richardson sent?

Q. Yes.

A. Yes.

40 Q. Let's look back at the two paragraphs which survived referring to Sir Richie Richardson. You see, "Team Manager, Richie Richardson, was told about what had happened by another staff member but he was not told the name of the player involved, 'he, Richie Richardson, was 100% supportive of me. I had his absolute apologies and support", the woman said"?

45 A. Yes.

Q. There is no reference anywhere in this article to the fact that Richardson knew the name of my client because you told him, is there?

A. No, there's not.

50 Q. Indeed anyone reading this article would come away with the impression

from looking at the second paragraphs on page 5 that Mr Richardson did not know the name of the player?

5 COLLINS: I object. Mr McClintock can't ask the witness to speculate about what any reader of this article might have taken from it.

HIS HONOUR: I think you probably need to put it in terms of what she must have appreciated when she saw the draft.

10 MCCLINTOCK: I thought that was my question, but I'll withdraw whatever I put and I'll put it like this.

Q. When you sent this draft back to Ms Russell(as said) having made your changes, Ms Russell, you appreciated, didn't you, that anyone reading it would not know that Richardson knew the name of the player?

15 A. No, I don't agree with that I'm afraid.

Q. Where do you tell me in this draft article does it say that Richardson knew the name of the player?

20 A. I read the sentence as, Richie Richardson was not told about what happened - sorry, the name of the player involved by the other staff member. It is the same sentence, it is the same topic. That is how I read that article.

Q. The article is completely silent on the fact that you had told Richardson and Richardson knew, isn't it?

25 A. I'd agree with that, the article only deals with the fact that Richardson was not told by the other staff member. That sentence does not relate to me in any way, shape or form.

Q. Didn't it occur to you that it was really quite misleading to let people think or to omit reference to what you had told Richardson?

30 A. Can't speak for what other people find misleading. To me that sentence makes sense.

Q. You see there's no reference in the article to what - anything you said to Richardson, is there, that's what you've said, correct?

35 A. I didn't write the article, I can't speculate on what people--

HIS HONOUR

40 Q. You're just being asked whether you accept that it implies that he didn't know the name?

A. Yes, but I don't read it that way, that wasn't my experience. I see how someone else could read it that way.

45

MCCLINTOCK

Q. You see, Ms Russell, there's a real sense in which you did write the article, isn't it? I know Ms Saltau penned it, but you provided the information for it, didn't you?

50

A. Yes, based on our phone conversation, yes.

Q. Then she drafted it, prepared it, and sent it to you and you read it, changed it and approved what you sent back to her, didn't you?

5 A. The changes are very minimal.

Q. Yes, but you certainly approved the entirety of it insofar as it related to what you had told her, didn't you?

10 A. Yes.

Q. You were saying to her, this is true, weren't you in effect when you sent it back?

A. Yes.

15 Q. It wasn't true because there's a critical piece of information omitted, that's right, isn't it?

A. I was never asked what was missing from the article. I was asked if what I'd provided was true, what is in front of me is true.

20 Q. You see, it didn't occur to you, did it, that it would be a correct thing to do to let The Age know that Richardson knew?

A. No, it didn't.

25 Q. There was a reason why you didn't tell The Age that or Ms Saltau that, isn't there? I'll suggest it to you. You didn't want Mr Richardson being contacted to ask about the incident, that's right, isn't it?

A. No, that's not correct. He was the first person they contacted.

30 Q. You see, didn't it occur - I'm asking you about what you wanted, not what they did. You didn't want The Age to contact Mr Richardson, that's the reason why you didn't tell them about the fact that you had told him the identity of my client, that's right, isn't it?

A. No. I'd be more than happy for Richie Richardson to be contacted.

35 Q. Let's go back, if you would, to exhibit K, that is the first of the diary notes. Actually for a second I'll go to something else. You're a woman whose prepare to call a spade a spade, aren't you?

40 HIS HONOUR: Mr McClintock, I'm not sure that that's a very meaningful question.

MCCLINTOCK

45 Q. You're a woman who is prepared to use blunt language, aren't you? Did you answer the question?

COLLINS: It's with respect, not a proper question. In what context, when, acknowledgement of what subject matter.

50 HER HONOUR: I'll use blunt language, Mr McClintock. I reject the question.

MCCLINTOCK

Q. You had a friend called Katie Stalker, didn't you?

A. Kate Stalker.

5

Q. Kate Stalker, who was she?

A. She was the ex-physio of the New Zealand cricket team.

10 Q. You were texting her, weren't you, in Facebook messages I think they probably are. I'll have them shown to you, this is how they've been produced to us. I'll have it opened at the third page. You see, there's an exchange of text messages with Ms Stalker?

A. Yes.

15 Q. Facebook messages I think, is that right?

A. Yes, that's correct.

Q. These were sent in February 2015, weren't they?

A. Yes.

20

MESSAGES TENDERED

COLLINS: I question the relevance first, your Honour.

25 HER HONOUR: What's the relevance, Mr McClintock?

MCCLINTOCK: Your Honour, the relevance is what they don't say.

30 HER HONOUR: I don't know anything about them, I don't have them in front of me, Mr McClintock.

MCCLINTOCK: And also what they do say, it's not exclusively what they don't say, your Honour.

35 HER HONOUR: Could I see a copy please?

MCCLINTOCK: I have a copy; the first two pages are in the format produced to us and they're impossible to read. The remainder of the pages are enlargements of the first two pages. I hand a copy to your Honour.

40

HER HONOUR: What's the date of them?

MCCLINTOCK: I believe it's 14 February 2015, your Honour. Perhaps 15 February 2015, your Honour.

45

HER HONOUR: I still can't read them, Mr McClintock, they're very hard to read.

50 MCCLINTOCK: Yes, your Honour, it is extremely hard to read but perhaps the witness can remember them sufficiently to be able to--

HER HONOUR: Just let me read what I can read. Dr Collins, what's the basis for the objection?

5 COLLINS: Relevance, your Honour, it doesn't seem to have a date on it. The subject matter hasn't been identified. It's a relevance objection.

HER HONOUR: Mr McClintock, did you establish a date?

10 MCCLINTOCK: I think I asked the witness. I'll ask her again though.

HER HONOUR: Sorry, but in any event, Dr Collins, they're only capable of being understood to describe the relevant events whenever they were sent.

15 COLLINS: The difficulty is what is the event that's being described.

HER HONOUR: That's Mr McClintock's point, that they have enough, there's enough in them that the jury could understand them to refer to that period.

20 COLLINS: My friend ought to establish the relevance by identifying the date. It might pre- date it.

HER HONOUR: Mr McClintock, you might have to take a few more steps.

25 MCCLINTOCK: Your Honour, the information we have--

HER HONOUR: What was the subpoena in response to which they were produced or the production requirement in response to which they were produced?

30 MCCLINTOCK: I'll have that checked, your Honour.

HER HONOUR: Dr Collins must know; do we need to--

35 MCCLINTOCK: There is some form of analysis, your Honour, that I have that suggests - perhaps I better not say it.

HER HONOUR: Just ask the witness, she might accept it.

40 MCCLINTOCK

Q. Ms Russell, this is an exchange of Facebook Messenger messages between you and Ms Stalker on 15 February 2014?
A. Correct.

45 COLLINS: 2014 can't be right.

WITNESS: 15.

50 MCCLINTOCK: I'm sorry.

Q. 2015, I'm sorry, 2015.

HER HONOUR: What was that date, Mr McClintock?

5 MCCLINTOCK: 15 February 2015.

HER HONOUR

10 Q. Do you accept that, Ms Russell?
A. Yes, I do.

HER HONOUR: Dr Collins, do you maintain the objection?

15 COLLINS: We've identified a date, that tends to bring it within the relevant period.

EXHIBIT #N FACEBOOK MESSENGER MESSAGES DATED 15/02/15,
ADMITTED WITHOUT OBJECTION. SHOWN TO JURY

20 MCCLINTOCK: Could the members of the jury open it up to the third page.
You understand, members of the jury, from what I've said to her Honour that
the first two pages are the original form and the last pages are an enlargement
of that. I appreciate it's very hard to read but I will ask Ms Russell - or I'm
going to go through it with Ms Russell.

25 Q. You see the first entry on the third page is, "They are indeed, they come to
play", you see that?
A. Yes.

30 Q. That's something that you sent to Ms Stalker, isn't it?
A. That's correct.

Q. Then you say, "Man, Gayle is a lazy arse mother fucker", don't you?
A. Yes, I do.

35 Q. Forgive me, Ms Russell, but that betrays a certain hostility towards my
client, doesn't it?
A. I'm quite capable of swearing in daily conversation.

40 HER HONOUR: Could you just please answer the question.

Q. Do you accept that it displays hostility?
A. Yes.

45 MCCLINTOCK

Q. Then you add, "Does no work or prep", another attack on my client,
correct?
A. Yeah.

50

Q. Then Ms Stalker says, "Ha, yeah, poor Windies", you see that?

A. Yes.

5 Q. Then you say, "I'm more active than he is. I have a titanium knee"?
A. Yes.

Q. Another attack on Mr Gayle?

A. Yes.

10 Q. Then she says, "I'd kill him. Ha, ha, ha", you see that?
A. Yes.

Q. A certain hostility in that statement, isn't there?

15 A. She's referring to the fact that she's a physio and she would be frustrated by that.

Q. Then she said, "The boys hitting on you"??

A. Yes.

20 Q. Your answer was, "Yeah, big drama the past few days because I told them all to fuck off with their late night texts", that's what you said, isn't it?
A. That is correct.

25 Q. You see, then Ms Stalker says to you, "Good, you're not a sex toy" and then you say, "It's always the girls' fault. If I shagged half the team everything would be sweet but I say, no and the world implodes. Piss off, you sleazy pack of shits", that's what you said to Ms Stalker, isn't it?
A. That's correct.

30 Q. "That's why I'm alone. No one want to talk to me", do you see that there?
A. Correct.

35 Q. Then, if you go over to the next page, you see, there's four statements from Ms Stalker, the last two of which are, "What about Ritchie? He's a good boy", you see, then you said, "I spoke up and said that and I copped the biggest barrage of shit", do you see that?
A. Yes.

40 Q. Then she says, "That's not fair. Why should you put out when others don't have to"?
A. Correct.

45 Q. And you said this, "Hopefully, it's calmed down now. I pulled some individuals aside today and explained my position, said I'm here to do my job and nothing more"?
A. Correct.

50 Q. Then you said, "Stick your penis in any woman outside the bus and not me"?
A. Yes.

Q. She says, "It will blow over. Good girl, don't screw the crew. Never shit on your own doorstep", you see that?

A. Yes.

5 Q. Then you said, "My ability to give a fuck is somewhere over the Tasman Sea. Up to them to get over it. I could give a fat rat's clacker"?

A. Correct.

Q. What's a clacker?

10 A. It's a slang term.

Q. Yes, what does it mean?

A. I don't know.

15 Q. You don't know?

A. No.

Q. You know full well, don't you, what it means and the answer you've just given is false, isn't it?

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

Q. What did you mean it to mean when you put it in the text message to your friend, Ms Stalker?

25 A. I believe the term is a rat's arse. I believed it to be along the same lines.

Q. It's a reference to a vagina, isn't it, Ms Russell, isn't it?

A. I suppose so.

Q. Yes, why didn't you say that when I first asked you?

30 A. Because I know the term as fat rat's clacker, I could give a fat rat's arse, I could give a rat's arse, these are general terms which I know.

Q. Synonymous with, I couldn't care less, correct?

35 A. Correct.

Q. Then Ms Stalker says, "The company ink pot is out of bounds. Good girl. What did CJ say?", you see that there?

A. Yes.

40 Q. Then you say, "CJ", this of course is CJ Clark, isn't it?

A. Yes.

Q. "had my back 100%, was trying to be helpful" and then there's a series of comments by Ms Stalker, you see that?

45 A. Yes.

50 Q. Let's go back to the first page I was asking you about and the reference to the big drama, the reason why I've done this, Ms Russell, is so that we have a record, because these are very hard to read, of what you said. Let's just go back to the first page I asked you about, the third page of the document,

exhibit N "Big drama the last few days because I told them all to fuck off with their late night texts"?

A. Yes.

5 Q. You were telling Ms Stalker that the cause for the drama in the last few days was what you had done in relation to the late night texts, that's correct, isn't it?

A. The big drama the first few days--

10 Q. Would you answer my question?

A. Can you repeat it?

Q. You were telling Ms Stalker that the big drama from the last few days had resulted from the late night texts, that's correct, isn't it?

15 A. Yes.

Q. There's no reference there, is there, to Mr Gayle?

A. Mr Gayle's name appears several lines up.

20 Q. Sorry, you're quite right but in the reference, there was no late night texts from Mr Gayle, were there, in February 2015?

A. I never accused Chris Gayle of texting me late at night.

Q. You were accusing other players of texting you late at night?

25 A. Yes.

Q. That wasn't, of course, Mr Smith, who texted you at 2.29 on 10 February, was it?

A. No.

30

Q. Who else were you complaining about texting you late at night?

A. Kumar Roach texted me "Good night" the night of the incident with Chris, which was why the issues compounded. I'd received two text messages from players as well as the incident with Chris and here is a generalisation comment to Kate Stalker regarding those issues.

35

Q. There is no reference at all in these messages to Mr Stalker of any suggestion that Mr Gayle had exposed himself to you, is there?

A. No, but I've kept very general in all of my comments there, I've not gone into any level of detail.

40

HER HONOUR: Ms Russell, it's just a yes, no question.

MCCLINTOCK

45

Q. The answer to my question is no, there is no such reference, that's right, isn't it?

A. No, there is no such reference.

50 Q. There is no reference at all in these messages to Ms Stalker of any

suggestion that Mr Gayle had exposed himself to you, is there?

A. No, but I've kept very general on all of my comments there, I've not gone into any level of detail.

5 HIS HONOUR: Ms Russell, it's a yes/no question.

MCCLINTOCK

10 Q. The answer to my question is, no, there is no such reference, that's right, isn't it?

A. No, there is no such reference.

Q. You chose to mention that late night texts, not the incident that you say had happened in Drummoyne on 11 February, that's right, isn't it?

15 A. Correct.

Q. You were having a frank and frankly obscene conversation with Ms Stalker, weren't you?

20 A. Yes.

Q. It was exactly the place given the frankness of the exchange that you would expect to see a reference to the incident in Drummoyne if it had occurred, isn't it?

25 A. No.

Q. Ms Stalker was a friend of yours, wasn't she?

A. Yes.

30 Q. There was no reason why you couldn't tell her in this exchange about the incident that you say that happened in Drummoyne three or four days before, is there?

A. I have the opportunity to do that, but I have never written to anybody in black and white and described that over text message or otherwise.

35 Q. Why is that? What you're saying is that you have never made a written communication to anyone saying that my client exposed himself to you. That is correct, isn't it?

A. Not within a friends forum, no.

40 Q. No, not in any forum, Ms Russell?

A. Well, not until Chloe Saltau was writing her article, no.

Q. You didn't put anything in writing about this at the time, did you?

45 COLLINS: That's simply inconsistent with the evidence.

MCCLINTOCK: I withdraw that.

50 Q. You didn't make any communication to anyone else at the time about this supposed incident, did you?

A. Not in writing.

5 Q. That of itself is telling, isn't it, Ms Russell, because if it had happened you'd expect you to - given the seriousness of what had occurred, you say, you'd expect someone like you to make a written complaint to the management of the team, wouldn't you?

A. I made a verbal complaint to the management of the team.

10 Q. You'd expect a written complaint if it was as serious as you say, wouldn't you?

A. I don't expect that, no.

Q. You didn't do that, did you?

15 A. I made a verbal complaint.

HIS HONOUR

Q. You're just being asked, did you make a written complaint?

20 A. No, I didn't.

MCCLINTOCK

Q. You didn't even make a verbal complaint I suggest?

25 A. No, I did make a verbal complaint.

Q. To Sir Richie Richardson?

A. No, to Christopher Clark.

Q. You say you didn't talk to Sir Richie Richardson about it, is that right?

30 A. I did, but he approached me, I did not approach him.

Q. You'd agree with me that the text messages I've just been asking you about in exhibit N hardly reveal you to be a wilting violet, do they? Do they?

35 A. A wilting violet?

Q. A wilting violet?

A. Can you explain what you mean by that please?

40 Q. You're not afraid to say what you think, even if it involves the use of the standard obscenities like fuck and arsehole and mother fucker and so on, are you?

A. I'm talking directly to a friend in that forum.

45 Q. You'd answer my question, wouldn't you, you're not afraid to say what you think?

A. Not within a friendly environment, no, I'm not.

EXHIBIT K, EXHIBIT L AND EXHIBIT M SHOWN TO WITNESS

50 Q. I apologise, Ms Russell, that this is going to be perhaps a little bit tedious,

but it's necessary to do it, you see on 10 February, exhibit K is headed "West Indies notes 1" and the first item is about what happened with Mr Smith on 10 February?

A. Yes.

5

Q. Then there is the heading, "11 Feb"?

A. Yes.

10 Q. Let's go through it. You say, "I had just discussed the text message with CJ, but not identified the player because I did not wish to cause embarrassment and wanted advice on how to manage any further situations", do you see that, where did that conversation or that discussion take place?

A. That was at Drummoyne oval when we arrived at training.

15 Q. You go on, "I said to CJ I would wait to see if anything further happened before I took any further action"?

A. Yes.

20 Q. "CJ also recommended that next time it happened I should outwardly say stop it if I felt comfortable doing so"?

A. Yes.

25 Q. Then you say, "I walked away", obviously from CJ, "into the change rooms thinking all players were on the field as I was looking for a sandwich"?

A. Yes.

30 Q. "I entered the change room and Dwayne Smith was in there with Chris Gayle. Chris asked me what I was looking for and I replied, 'Towels', then you say, 'He asked me, 'Are you looking for this', and pulled out his towel to expose his penis", do you see that?

A. Yes.

35 Q. "I put my hand up, looked away and walked out of the change room", I'm going to come back to that, but let's just go on. You see, "I spoke to CJ after the change room", using an abbreviation of a change room, "with Chris and said I understood that they are a flirtatious group, but I felt players were targeting me". You were suggesting, weren't you, that what had happened or that what had happened with Mr Gayle was him being flirtatious, that's right, isn't it?

40 A. No, I'm not referring to Chris as being flirtatious, I'm referring to the group being a flirtatious group.

Q.

45 "I described what Chris did and I told him I was receiving odd messages and nothing that had been outwardly forward there and were vague enough to not elicit a response from me telling the players to leave me alone. I said I was therefore in an awkward situation because I couldn't call people out for poor behaviour nor
50 stay silent as that would not be stamping out the behaviour. He told

me to let him think about it."

Do you see that?

A. Yes.

5

Q. Then you go on and you mention a text from Kemar Roach saying goodnight, do you see that?

A. Yes.

10

Q. Did you find that offensive?

A. No. As I said in my previous passage, that was - their approach is to get you to say something in response to goodnight, and that's when it starts.

15

Q. Then, "12 February, around 9.15am, I was approached by manager, Richie Richardson, who asked me to tell me of the instances and if I felt comfortable the identity of the people involved which I did"?

A. Yes.

20

Q. That would have included, you would say, Mr Gayle, wouldn't it?

A. Yes.

Q.

25

"And he said he would like to send a general email asking for players' respect. Around 2pm he allowed me to proofread the email which was brief and to the point. I agreed with what he wrote and I thanked both he and CJ for their support and having my back."

30

Do you see that?

A. Yes.

35

Q. Let's go to exhibit M - before I do, the conversation with CJ Clark which you have there in exhibit K is entirely on 11 February, isn't it?

A. Yes.

Q. That is a diary note that you commenced on 14 February, isn't it - I'm sorry, 12 February, I apologise?

A. 12th, yes.

40

Q. The day after?

A. Yes.

45

Q. Then if you look to the entry under 12 February, just look for yourself, there's no conversation there on that date with Mr Clark, is there?

A. No.

50

Q. Let's look now at the diary note that is exhibit M for Mary, which you said you prepared in May 2016, May last year, that's correct, isn't it?

A. Yes.

Q. On your computer at the MCG?

A. Yes.

5 Q. Can I take it that you had your notes which are now exhibit K in front of you when you did this?

A. I forwarded that message to my MCC computer, so it is one and the same, and I altered it from there.

10 Q. You edited the document on the screen in May 2016 to turn it into the form that it has actually as exhibit M, did you?

A. Correct.

15 Q. Let's go through the entry on 11 February "Training Drummoyne oval, just after 2pm", do you see that?

A. Yes.

Q. That's added from what was in exhibit K, isn't it?

A. All I'm doing there is providing a time.

20 Q. Then you say, "Had just discussed Smith text message with CJ, but not identified the player", and so on. I think that's virtually the same or identical in fact to what is in exhibit K, isn't it?

A. Yes.

25 Q. Then you continue on and you see that you say this, "As I walked away from CJ and into the change rooms, thinking all the players are on the field training, as I was looking for a sandwich as I hadn't eaten yet that day", you see, I hadn't eaten yet that day is added in, isn't it?

A. Yes.

30 Q. Are you seriously saying that you can recall that 15 months later, that you hadn't eaten that day?

A. Yeah, I distinctly remember that I didn't have breakfast until we got to Canberra during that tour.

35 Q. That's because of the anorexia, is it?

A. It was because I'm not a breakfast eater by and large, that's regardless.

40 Q. Then you say, "I entered the change room and Dwayne Smith was in there with Chris Gayle"?

A. Yes.

Q. "Chris approached me", do you see that?

A. Yes.

45 Q. That wasn't in the earlier note, was it?

A. My earlier note says Chris asked me what I was looking for and the later version says Chris approached me and asked me what I was looking for.

50 Q. It wasn't in your evidence this morning, was it, about what happened? You

didn't say that Mr Gayle approached you, did you?

A. I don't understand.

5 Q. When you were giving evidence this morning about this incident, you did not say to the jury that Mr Gayle had approached you in the dressing room, did you?

A. I believe I did.

10 Q. In fact your evidence was that he was standing near the door. That's right, isn't it?

A. He was standing inside the door and whether he approached me or addressed me, that is just a word I've used.

15 Q. You don't think it might be significant for the case what exactly you say Mr Gayle did? It is, isn't it?

A. As in?

Q. Approached or standing?

20 A. Approached, standing, spoke, addressed, I don't find the difference. I'm sorry.

Q. You don't see a difference between approached, which means that Mr Gayle was moving towards you, and Mr Gayle standing, which means he was still? There's plainly a difference, isn't there, Ms Russell?

25 A. I can see why you would think that, I accept that if you think that.

Q. I'm not asking whether you accept it because I think that, I am suggesting to you that it's the truth?

30 A. It's a word I've put in there to describe what happened. He turned and he looked at me and he spoke to me.

Q. It's different from what you said this morning, isn't it?

A. I personally don't see it as different to what I said this morning, no.

35 Q. Then it goes on, it says, "Ask me what I was looking for and I replied towels"?

A. Yes.

40 Q. Then you say, "He then asked me, 'Are you looking for this' and pulled out his towel to partially expose his penis"?

A. Yes.

Q. There's a difference there between what you said in the first version, exhibit K, isn't there?

45 A. Yes.

Q. You see, in the first version you say, "He pulled out his towel to expose his penis", didn't you?

50 A. Yes.

Q. Just before I come to that, when you say, "Pulled out his towel" and forgive me, I'll do it with my robe as if it were a towel; what you meant was he did something like that, isn't it?

A. No.

5

Q. That's what the logical, the obvious meaning of pulling out a towel is, isn't it? You were suggesting he flashed you, weren't you?

A. No.

10

Q. I think you used that description, pulled out - flashed, I'm sorry, you used the word "flashed" didn't you, when you were giving evidence about your conversation with Ms Bland, the New Zealand physiotherapist, the New Zealand massage therapist, didn't you?

A. I would imagine that that's a fairer description.

15

HER HONOUR

Q. No, you're being asked, do you accept that this morning when you were giving evidence about what you said to the woman in New Zealand, you used the word, "flashed"?

20

A. Yes.

MCCLINTOCK

25

Q. The action I did, forgive me, your Honour, for doing this, that's what flashing is, isn't it?

A. I don't agree.

30

HER HONOUR: Does anyone want or need me to describe that action for the transcript?

COLLINS: It will remain burned on my memory.

MCCLINTOCK: I'm nonplussed, your Honour.

35

Q. The other difference is that you had now inserted in May 2016 the word, "partially", haven't you?

A. Yes.

40

Q. Why didn't you put that in in 2015 when you wrote this diary note on 12 February?

A. Because I was typing on my tablet, that's what I wrote at the time and ever since then I've thought it to be very important to be accurate and honest in these dealings and I did not see the whole of Chris' penis, it was the top half of his penis, as he pulled his - out his towel from his body, he did not open his towel. I'm very--

45

Q. He did not open his towel?

A. He did not open his towel, he pulled his towel out from his body and down and I saw the top half of his penis.

50

Q. I'm going to come back to that but you said you thought it was important to be honest about this, you would accept that the description in exhibit K is not accurate, wouldn't you, because it omits the word, "partially"?

5 A. Yes, that's right. The version, however, that I've submitted to my lawyers are very accurate.

Q. But the version you wrote in February 2015 was not accurate, was it?

A. No, I think it is, it's just the removal of the word "partial".

10 EXHIBIT 2 AND 3 SHOWN TO WITNESS

Q. You see, let's just go to exhibit 2 first and you see exhibit 2 was the version that Ms Saltau was putting to you and you see on the second last paragraph on the first page you say, "She said she found Gayle in the room with one
15 other player. Gayle was wrapped in a towel which she says he removed to expose his genitals to her while saying to her, 'Are you looking for this'", that's not an accurate description, is it? I'm not suggesting you accepted it as accurate because you corrected it, didn't you?

20 A. Yes.

Q. But what Ms Saltau said to you wasn't accurate, was it?

A. No.

Q. You made the following change which appears in exhibit 3, "Gayle was wrapped in a towel which she says he pulled down to partially expose his
25 genitals to her while saying, "Are you looking for this?"?

A. Correct.

Q. The words you use there is "pulled down"?

30 A. Yes.

Q. You didn't say, pulled out or pulled up and down or pulled out and down, did you?

35 A. No.

Q. The word, "partially" appears there, doesn't it?

A. Yes.

Q. Just by the way, why didn't you think it appropriate to point out that Mr Gayle was wearing his practice shirt as well as the towel you assert he was wearing?
40

A. Because I wasn't overly sure. I thought he was wearing a shirt.

Q. You see, there's something very strange about a player being dressed in a practice shirt and a towel, isn't there?
45

A. You'd have to ask Chris that.

Q. I'm asking you, I'm asking you what you thought at the time?

50 A. I walked into a change room and I was confronted with that. I wasn't thinking about the makeup of what he was wearing.

Q. Well, think about it now, think about it now. Why would a player have a practice shirt on and a towel?

A. I don't know.

5 Q. In fact, you never saw Mr Gayle in a towel, did you, he was at all times wearing his practice gear?

A. Not correct.

10 Q. In fact, he was wearing his practice gear on the bus when you went to the game, wasn't he?

A. I don't recall.

Q. He wasn't sitting on the bus in a towel, was he?

15 COLLINS: It was a responsive answer.

HER HONOUR: Dr Collins, I'm sorry, I think it was actually a fair question.

MCCLINTOCK

20

Q. He wasn't sitting in the bus in a towel, was he, Ms Russell?

A. No, he wasn't sitting on the bus in a towel.

25 Q. He wasn't wearing the whites that test cricketers wear when they're playing test cricket, was he?

A. No.

30 Q. He wasn't wearing the one day uniform that the West Indies was wearing during the World Cup because that's for the games, isn't it?

A. Yes.

Q. That leaves the only possibility be, I suggest, being the practice gear, that's right, isn't it?

A. That is correct.

35

Q. You know full well that's what he was wearing on the bus, wasn't he?

A. Yes, players have an option of what they wear in terms of their training kit. He would've chosen from those items available to him.

40 Q. The only thing that he would've been wearing that he would not have been wearing that he trained with was his boots, that's correct, isn't it?

A. Yes.

45 Q. Because there's a ban on wearing boots with spikes on the bus for obvious reasons, that's why, isn't it?

A. I actually don't know that rule but, okay.

Q. You know, I suggest, that Mr Gayle stayed in his cricket training gear all that afternoon and that's all you ever saw him in, that's right, isn't it?

50

A. That I only ever saw him in his training gear?

Q. Yes.

A. No. I recall seeing him in a towel.

5 Q. Let's just go through it again, I'm sorry to be tedious but, you see, on February 12 when you write the first set of notes you say, "pulled out" correct?

A. Yes.

Q. "to expose his penis", correct?

10 A. Yes.

Q. In the notes in January 16 you said to Ms Saltau in exhibit 3, "pulled down to partially expose", didn't you?

A. Yes.

15 Q. That's something that was repeated in the notes of May 2016, the diary notes, correct?

A. Yes.

20 Q. Today you said, "pulled out and down to partially expose", haven't you?

A. Yes.

Q. They're different, aren't they, they're quite different versions?

A. It describes the same occurrence.

25 Q. You kept, may I suggest, Ms Russell, tinkering with the wording of this incident, didn't you?

A. I could see why they've been described differently, yes but the essence of the incident does not change.

30 Q. You kept tinkering them to give them the specious air of credibility, didn't you?

A. No. No, I don't agree with that.

35 Q. Let's just look at something different about these notes. You see in 11 February you set out the conversation, I've asked you about this before, with CJ Clark, don't you?

A. Yes.

Q. That's exhibit K?

40 A. Yes.

45 Q. Let's look at exhibit M for Mary in relation to this; before I do, could I just ask you this, Ms Russell, it's a cliché of human life that memory fades over time and the best memory is that which is closest to the events in question, isn't it, do you agree with me or not?

A. Okay, yeah.

50 Q. Let's just look at the second set, you see in the second set, in the paragraph after the one I was asking you about before with the change to "partially expose", you see, "Went to CJ and told him of Gayle pulling down his

towel. He was in disbelief. He asked if I was okay and apologised", you see that?

A. Yes.

5 Q. You see, you spoke to Clark immediately before going into the dressing room and you went straight from there, afterwards speaking with Clark about the Dwayne Smith text message, didn't you?

A. Can you say that again please?

10 Q. If you look up to the first entry and there's no change here from one diary note to the other, you see, "had just discussed Smith text message with CJ", you see that?

A. Yes.

15 Q. You went straight from there into the dressing room, didn't you, you say?

A. Yes.

Q. Then it's clear you went straight to CJ afterwards?

A. Yes.

20

Q. You did ask Mr Clark to come to court and give evidence in this case, didn't you?

A. I did not, no.

25 Q. You had communications with him about giving evidence in the case, didn't you?

A. I believe that Minter Ellison wanted to contact CJ and that was up to them.

30 Q. You certainly sent a text message to Sir Ritchie Richardson, didn't you, asking for his help in the case?

A. Yes, I asked him for several pieces of information, yes.

Q. You see, the conversation there, it stops, you see, after he asked you were okay and apologised and then you say, "I went and sat upstairs" and so on?

35

A. Yes.

Q. You see, if you look at 12 February--

HER HONOUR: Exhibit K?

40

MCCLINTOCK: No, 12 February in exhibit M.

Q. You'll see:

45

"SCG match day, I spoke to CJ this morning to discuss the combined instances and that I felt players were making an effort to target me. We discussed again what Gayle had done the previous day and I said the text messages had not been outwardly forward and were vague enough as not to not elicit a response from me

50

telling the players to leave me alone."

A. Yes.

Q.

5

"I said I was therefore in an awkward situation as I couldn't call out the people who had texted me for their poor behaviour, nor stay silent as that was not helping to stamp out the behaviour."

10

Do you see that?

A. Yes.

Q. You've changed that part of the conversation from 11 February to 12 February, haven't you?

15

HIS HONOUR: Between exhibits K and M?

MCCLINTOCK

20

Q. Between exhibits K and M?

A. Yes, what is on 12 February is correct.

Q. So what was on 11 February is not correct?

25

A. No.

HIS HONOUR: I think, Mr McClintock, you'd better make sure it's clearly understood what you're putting.

30

Q. What's being put is that the third paragraph in exhibit K was attributed to happening on the 11th and that's now what is described in exhibit M as being a second conversation with Mr Clark on the 12th?

A. Yes.

35

MCCLINTOCK

Q. You see, 12 February, the very day in question, you say the entirety of the conversation happened on 11 February, don't you?

40

A. No, I would see that on the second version of my diary notes the conversation that I had with CJ had been added, whereas my previous notes I mention only the conversation with Richie Richardson.

Q. Ms Russell, that answer is simply false, isn't it?

A. No.

45

Q. Let's just look at it. You see in the first notes, exhibit K, you say this, "I spoke to CJ after"--

HIS HONOUR: As happening on the 11th?

50

MCCLINTOCK

Q. As happening on the 11th, you see it's under the heading "11th" and before the heading "12 February", isn't it?

5 A. Yes.

Q. You say, "I spoke to CJ after the change room with Chris and said I understood they're a flirtatious group, but I felt the players were targeting me", you see that?

10 A. Yes.

Q. In exhibit M you say, "On 12 February I spoke to CJ this morning to discuss the combined instances and I felt the players were making an effort to target me, do you see that?"

15 A. Yes.

Q. The same words or same content of the conversation, isn't it?

A. Yes, it is, but it relates to a different conversation because I got the Kemar Roach text message late at night and that's another conversation I had with CJ. I've just used the same language in version 2.

20

Q. You've made a change from exhibit K to exhibit M, haven't you?

A. Yes.

25 Q. In the first version, exhibit K, there's no suggestion of any conversation, and you agreed with this earlier, about these matters with CJ Clark on 12 February, is there?

A. No, I haven't mentioned the conversation with CJ that morning. No.

30 Q. You've actually put that conversation as occurring on 11 February, haven't you? I'll take you through it again if you want?

A. No, I - no. No, that's not correct. I've used some of the language that I have referred to on my first version, in the second version I've used the word target which I think is leading to confusion on that being the same conversation, they were two separate conversations.

35

Q. Look at the last two sentences of what you say. You say in exhibit K, "I said I was therefore in an awkward situation as I couldn't call out the people who had texted for their poor behaviour", you see that?

40 A. Yes.

Q. I'm sorry, I was looking at exhibit M, I apologise.

HIS HONOUR: It's in both, Mr McClintock, as is the--

45

MCCLINTOCK

Q. It is in both but the critical thing is that one occurs on 11 February, exhibit K, and the other occurs on 12 February, exhibit M. That's correct, isn't it?

50

A. Yes, and they are two different conversations.

5 HIS HONOUR: I want to make sure you have an opportunity to read the whole paragraph. Read the whole of paragraph 3 on exhibit K and the whole of the paragraph under the heading "12 February" in exhibit M.

WITNESS: I see what you mean.

10 MCCLINTOCK

Q. Yes.

A. Yes.

15 Q. You've changed that part of the conversation, not the entirety I accept, that part of the conversation from 11 February to 12 February, haven't you?

A. Yes.

20 Q. The first version, exhibit K, that you wrote, was of course written on the very day that it happened, wasn't it?

A. Yes.

25 Q. In fact the day after the conversation on 11 February. You couldn't possibly have been mistaken about the timing of that conversation when you wrote that note on 12 February 2015, Ms Russell, could you?

A. No, I'm happy to accept that.

30 Q. Why did you change it to a version that was not true, I suggest, in May 2016?

A. I believe I recalled that I spoke to CJ that morning, after the goodnight message from Kemar the night before.

Q. Ms Russell, you've just made that up in the witness box, haven't you?

A. What have I made up?

35 Q. You've made up the suggestion that you remembered speaking to CJ after the Kemar Roach text, as you sit there in the witness box, haven't you?

A. No. No, that's not true.

40 Q. It's false to your knowledge, isn't it?

A. No.

45 Q. Your explanation for changing the two in changing the conversation from 11 February to 12 February in May 2016 is that you suddenly remembered that it happened on 12 February, not 11 February, that's right, isn't it?

A. No.

Q. What is the explanation for why you changed it?

50 A. As I said, what differs here is that I spoke to CJ on the morning of 12 February in addition to speaking to him on 11 February. That's all that I find that's different. I understand the dates are different.

HIS HONOUR

Q. When you say in addition to, are you saying the first conversation with CJ is that which is in paragraph 3 of exhibit M, went to CJ and told him?

5 A. That's fine, that absolutely happened that day, that's correct. What I'm referring to--

Q. Is that in your original note though?

10 A. "Spoke to CJ after the change room with Chris and said I"--

Q. Is that exhibit M?

A. Sorry. To me that's the same thing. What I'm saying I've added is that I spoke to CJ on the morning of 12 February.

15 Q. Just asking where in your original note is the conversation that you've recorded in the third paragraph of exhibit M?

A. That is saying where I spoke to CJ after the change room with Chris and I said I understood that they're a flirtatious group but I felt players were targeting me. I described what Chris did and told him I was receiving odd messages.

20 MCCLINTOCK

Q. You're quite prepared, aren't you, to tamper with and change documents like that to suit your purposes, aren't you?

25 A. I'm happy if I've made a genuine mistake and I would own that. I've not intentionally doctored anything to be misleading.

Q. You see, Ms Russell, it can't have been a mistake, can it? Because in February 2015 you wrote the note on 12 February itself, didn't you? You would not have forgotten then that you had a conversation on that date with Mr Clark, would you?

30 A. To my mind I recalled speaking to CJ and I've added that to my notes.

Q. You see, what I want to suggest to you is that exhibit M is false in that respect in suggesting the conversation happened on 12 February and you know it's false, Ms Russell?

35 A. No.

Q. You deny that, do you?

40 A. Yes, I do.

Q. Do you know Claire Samford?

A. I've met her a couple of times, yes.

45 Q. You were trying to get - contact her, or you were in contact with her in July 2016, weren't you?

A. Yes.

50 Q. Do you recall sending her a text message which said this, I don't think I have a copy so I'll read it to you and ask. You see, you sent a text message to

her:

5 "So sorry to bother you as I see you are enjoying some very relaxing time there. I have been trying to urgently contact CJ as there is a matter relating to him and the case I am undergoing v Chris Gayle. I shouldn't take more than a few mins of his time, if you can ask him to call me. Many thanks and I hope you and Harrison are well."

10 Do you recall sending that text message?
A. Yes, I do.

15 Q. You would agree with me that the evidence you gave earlier about not attempting to contact Mr Clark about this case was not true, wouldn't you, in light of that email?

COLLINS: I don't recollect the witness giving evidence remotely of that.

20 HIS HONOUR: I don't recall it, Mr McClintock. Sorry, she said it was the lawyers.

MCCLINTOCK: She did, your Honour, if I recall it. I withdraw the question.

25 Q. You told us earlier, didn't you that you did not try and contact Mr Clark about the case, that's correct, isn't it?

A. I said that I contacted Chris in order to speak to my lawyers.

30 Q. You said that you knew Minters were trying to contact him, didn't you?
A. Yes.

Q. The sense of what you are saying was that you yourself had not made any effort, correct, to contact Mr Clark about the case?

A. As in to discuss the case.

35 Q. I'll have you shown this text message and I'll ask you to accept that you sent it?

HIS HONOUR: I think she's already accepted it, Mr McClintock.

40 MCCLINTOCK: Might it be marked for identification in that case, your Honour, I don't have copies. I can't tender it, your Honour.

MFI #7 TEXT MESSAGE FROM LEANNE RUSSELL TO CLAIRE SANFORD
JULY 2016

45 HIS HONOUR: I'll return it to you, Mr McClintock and then if you do want to tender it tomorrow you can.

50 MCCLINTOCK: Certainly, your Honour. I want now to ask you, Ms Russell, about the email that you approved and Mr Richardson sent, exhibit B.

HIS HONOUR: Return this one to Mr McClintock because he might want to tender it tomorrow.

5 MCCLINTOCK: I'll need it for copies, your Honour, to make copies. The two diary notes can be returned.

EXHIBIT B SHOWN TO WITNESS

10 Q. You've told us, I think on several occasions, that you approved the language of this email?

A. Yes.

15 Q. You told us that after the supposed incident with Mr Gayle you went upstairs and burst into tears and stayed sobbing uncontrollably, I think you said for a couple of hours, didn't you?

A. I was up there for a few hours, I didn't say I was crying--

HIS HONOUR

20 Q. Ms Russell, can you keep your voice up please?

A. I said I was up there for the duration of the training sessions. I didn't suggest that I was crying for two hours straight.

MCCLINTOCK

25 Q. I'll put this to you, Ms Russell, no rational person could describe, and you know this, an incident of a male exposing himself to a woman in a circumstance as you say happened, as merely an uncomfortable situation, could they?

30 A. No, it's quite.

Q. It's language that is simply not appropriate for what you assert happened, is it?

35 A. The language was discussed and was very carefully chosen.

Q. How would you expect any member of the team to know what you were referring to or what Mr Richardson was referring to?

40 A. That was the point.

Q. You know that it caused mass confusion within the team because no one knew what was going on when this email was received?

45 A. I disagree, I think that several players would know exactly what the email was about.

Q. Let's just go to something else. You see, you've told us before, haven't you, that Mr Clark was your boss?

A. I reported to him, yes.

50 Q. That you knew he didn't like Mr Gayle?

A. Yes.

Q. You obviously yourself didn't like Mr Gayle, "Lazy arse mother fucker", correct?

A. Not after that incident, no.

5

Q. Didn't like him before it, did you?

A. Had no issue to that extent prior to this.

10

Q. You spoke to Clark immediately before the incident you say happened, didn't you?

A. Yes.

Q. You spoke to him immediately afterwards, didn't you?

A. Yes.

15

Q. Those are the conversations I've been asking you about from the diary notes, you know that?

A. Correct.

20

Q. You know that he spoke to Richardson before you did?

A. Yes.

Q. He, Mr Clark encouraged you to go to The Age on 5 January 2015?

A. I believe mention of The Age was from my side.

25

Q. Yes, but he encouraged you to go, didn't he, I can take you back to the text message but that's what he did?

A. He encouraged me to come out with my story, The Age was not mentioned by CJ.

30

Q. But you mentioned The Age to him, didn't you?

A. Yes.

Q. You knew that at that stage he still hated my client, Mr Gayle, didn't you?

35

A. I don't know that I'm qualified to say if CJ hates Chris Gayle, it's not a question I can answer.

Q. You earlier agreed that he did hate him in February 2015, nothing had changed, had it?

40

A. Not to my knowledge.

Q. He rejoiced with you after the online version of the article had been published as to what you'd done to my client, didn't he?

A. He was proud of me for saying what happened.

45

Q. You were celebrating the attack on my client, you two?

A. Celebrating the attack on your client?

Q. I'm sorry?

50

A. We were not celebrating the attack on your client.

Q. You see, what I want to suggest to you is that you knew both in February 2015 and in January 2016 that Mr Clark wanted Mr Russell out of the West Indies cricket team.

5

COLLINS: There's no person, there is no Mr Russell.

MCCLINTOCK: I'm sorry, Mr Gayle, I apologise, it's nominal aphasia, your Honour, it comes with age.

10

Q. You knew that Mr Clark wanted Mr Gayle out of the West Indies team, didn't you?

A. I don't agree that that's a correct statement.

15

Q. You and he hatched up a plot to fabricate this allegation about my client to achieve that end, didn't you?

A. Absolutely untrue.

20

Q. The incident in question that you've given evidence about, Ms Russell, never happened, did it?

A. Absolutely incorrect.

25

Q. Just by the way, if you want to think about it, when did you pass onto Minters the suggestion of Mr Smith was eating in the dressing room?

A. I don't know that I have.

30

Q. You've never told anyone that before, have you?

A. It's a recollection that I have, I don't know.

Q. You made it up in the witness box, didn't you?

A. No.

35

Q. It's not in any of the diary notes, is it?

A. I've been asked several times today to recall, that is what I recall.

Q. You agree with me it's not in either of the diary notes, is it?

A. There's a lot of on tour behaviour that's not in my diary notes.

40

Q. Have you looked at any statement or proof of evidence before giving evidence here today, Ms Russell to remind yourself of what happened?

HER HONOUR

Q. Of your own?

45

A. Of my own, yes, I've seen my notes, my pictures. My screen shots.

MCCLINTOCK

Q. Are you able to produce the documents you've looked at?

50

A. Some yes, some no.

Q. Where are they now?

A. It depends, I was operating off an old phone, off an old jobs computer, I don't have access to a lot of these things anymore.

5

Q. I'm asking whether in the last few days you've looked at any documents to assist you to give evidence here?

A. I've looked at the screen shots that I still have access to, yes.

10

Q. Are they the screen shots of the texts that I've taken you to?

A. Yes, and also my witness statement.

Q. You've looked at the witness statement?

A. Yeah.

15

MCCLINTOCK: I call for production of the witness statement.

COLLINS: Sorry, I don't know what the witness is referring to.

20

HER HONOUR

Q. When you say your witness statement?

A. There was a document that I discussed on an initial meeting with my lawyers and it detailed my experience, my background in a professional capacity and exactly what the evidence describes here.

25

Q. That's the document that's being called for, do you have it with you in court?

A. No.

30

Q. Where do you have it?

A. I would've had an old copy of an email from some time ago.

Q. What was the document you consulted in the last few days, where did you do that, on an email or on a piece of paper?

35

A. I had a printout of my own.

Q. Where's that?

A. That is in my hotel room.

40

Q. In your hotel room?

A. Hotel room.

HER HONOUR: It will have to be produced tomorrow, Dr Collins.

45

COLLINS: We'll get some instructions about it after court if that's convenient.

HER HONOUR: Can you please bring that document to give to Dr Collins at some point? Is that the cross-examination, Mr McClintock?

50

MCCLINTOCK: It is, your Honour.

HER HONOUR: I just want to check something about dates, I just want to make sure I've understood correctly.

5 EXHIBIT K SHOWN TO WITNESS

Q. Did I understand you to accept that that whole document was first begun to be created at the end of the day on 12 February 2015?

A. Yes.

10

Q. Does it follow that the whole account was first made after the meeting that you've described on the bottom half of the first page?

A. Can you repeat the question, sorry, your Honour?

15

Q. Did you first start making that file note after the meeting that is described on the bottom half of the first page?

A. No. No, that was a match - sorry, you are correct, yes.

MCCLINTOCK

20

Q. Just to be clear about this, Ms Russell, you wrote the entirety of what appears in exhibit K on the night of 12 February 2015, didn't you?

A. No, I believe the post tour notes was created after.

25

HER HONOUR

Q. Later?

A. Yes.

30

MCCLINTOCK

Q. You're quite correct, I apologise, but everything other than that was on the night of 12 February 2015?

A. Yes.

35

<RE-EXAMINATION BY DR COLLINS

Q. Ms Russell, it was put to you by our friend, Mr McClintock that you hadn't made a written complaint about the incident in the Drummoyne Oval change room on 11 February.

40

HER HONOUR: That was her evidence, Dr Collins.

COLLINS: Sorry, it was put that there hadn't been a written complaint and she agreed, I'm about to say that she agreed, your Honour.

45

Q. You said, however, that you had made verbal complaints to CJ Clark and to Sir Ritchie Richardson?

A. Yes.

50

Q. Can you tell the jurors when you had the conversation with Sir Ritchie Richardson by which you made the verbal complaint?

5 A. That was on the morning of 12 February when Ritchie approached me and said that CJ had informed him that there had been some issues and would I care to talk to him about those issues so that he could help.

Q. Where were you when you had that conversation?

A. On the ground of the SCG.

10 Q. Did you respond to that invitation?

A. I did.

Q. What did you say?

15 HER HONOUR: Dr Collins, how does that arise in re-examination?

20 COLLINS: Our friend has put that no contemporaneous written complaint, with respect he said no contemporaneous written complaint was made. The witness gave a response in answer that she had made two verbal complaints.

HER HONOUR: My second question is, do you really want to press that question at this point?

25 COLLINS: I think the witness needs a break, your Honour.

HER HONOUR: She may need more than a break, Dr Collins, she might want to get out of the witness box. Matter for you, I frankly don't think it does arise out of cross-examination and I'm certainly going to let her have a break at the moment.

30 <THE WITNESS WITHDREW

35 I just don't see how it falls within the normal rules of re-examination. It hasn't been put to her that she didn't make those complaints. We've already established that they're not admissible in the way in which you tried to lead it in chief. I don't think it arises in re-examination.

40 COLLINS: With respect, your Honour, our friend put a suggestion to this witness to the effect that she had not made any contemporaneous written complaint. The witness attempted to explain that she had made verbal complaints and our friend would not allow her to answer. That, in our respectful submission, is the very definition of a matter that arises in re-examination. Next, our friend put in the notes, the tour reports which make a reference to this. These matters arise directly out of cross-examination. Our
45 friend has tendered the West Indies tour notes in which there is a reference to this verbal complaint.

50 HER HONOUR: I don't agree and I don't propose to allow it. Did you have any other re-examination?

COLLINS: There's one other matter and it concerns the witness was asked - I'll just put it to your Honour because I won't get her back if we're going to have the same debate. The witness was asked about the Ritchie Richardson email and our friend said that--

5

HER HONOUR: Just before you move onto the next - I'll say it later.

COLLINS: My friend put to her the words "encountered a few uncomfortable situations", it was put to her that that couldn't possibly describe the incident involving Mr Gayle and the witness said those words were very carefully chosen, that was the point. I wish to ask her, what was the point.

10

HER HONOUR: Are you saying that's a separate basis for introducing the terms of the complaint?

15

COLLINS: No, it's a separate matter. The witness was asked a question about the terms of Sir Ritchie Richardson's email in exhibit B, in particular, the words "encountered a few uncomfortable situations".

20

HER HONOUR: I thought the answer to that was obvious, I don't think it's something that needs to be clarified in re-examination. I probably couldn't stop you putting it but having regard to the state of the witness, do you need it?

COLLINS: We think it's obvious as well, your Honour.

25

HER HONOUR: Then it's not a matter for re-examination so I think what I will say is the witness is now excused, if someone could communicate that to her, thank you.

30

COLLINS: Your Honour, my learned friend, Ms Barnett will call the next witness.

<TOM DECENT, AFFIRMED(3.38PM)

<EXAMINATION-IN-CHIEF BY MS BARNETT

5 Q. Your name is Tom Decent?

A. That's correct.

Q. Could you tell the Court your business address please?

A. 1 Darling Island Road, Pyrmont.

10

Q. You're a journalist employed by Fairfax Media Publications?

A. That's correct.

Q. That's the company responsible for production of The Sydney Morning Herald?

15

A. That's correct.

Q. When did you commence employment with Fairfax?

A. It would have been May 2014.

20

Q. In what role did you commence at the time?

A. I came on as a cadet reporter.

Q. Did you have any formal qualifications prior to that cadetship?

25

A. I'd completed two years of university and then I came from university to take up the cadetship.

Q. In that cadetship role did you cover different sections of the news room?

A. I did. So provide - whilst I did three months in sport, I did other various rounds from state, online, entertainment, and a variety of other different rounds within that 12 months.

30

Q. After that 12 months, what did your role become at that time?

A. I then became a sports reporter in the sports section.

35

Q. Do you remain in that role?

A. I do.

Q. What sports do you cover in that role?

40

A. At present?

Q. Yes?

A. I cover rugby.

45 Q. From time to time have you covered other sports or events?

A. I have, yes. So from throughout 2015 I covered a number of different sports, cricket, league, union, soccer, other sports, and then from 2016 onwards I have just covered rugby predominantly.

50 EXHIBIT A SHOWN TO WITNESS

Q. Mr Decent, could you please turn to the document behind tab 8? Is that an article you had some involvement in preparing?

A. Yes, that's correct.

5 Q. This is the article as it appears in The Sydney Morning Herald. To your knowledge was that article also published across other mastheads throughout the Fairfax group?

A. That's correct.

10 Q. Did you write any of this, the text of this article?

A. No.

Q. Can you tell the Court what your involvement was in respect of that article?

15 A. So I was asked by my editor Ian Fuge to help with the story that Andrew Wu was preparing, so Andrew wrote the words for that piece, and my job was to contact Chris Gayle's management and the Melbourne Renegades to seek a comment.

20 Q. We're just taking it one step at a time. Do you recall when you were asked to do that?

A. On the afternoon before the story was published, it would have been 8 January 2014.

25 Q. Were you told at that time in the conversation with Mr Fuge what the topic of the article was to be?

A. That's correct.

Q. Using as best as you can, words he said, I said, what did Mr Fuge say to you at the time?

30 A. Mr Fuge said that we'd obtained a copy of an email from Richie Richardson and it was following up from the story we'd written the day before. He forwarded that email onto me, you know, in the text form so I knew a bit of context, and then he asked for me to make a couple of phone calls.

35 Q. Is that the email you've just referred to?

A. Yes, that's correct.

EXHIBIT #O EMAIL FROM RICHIE RICHARDSON TENDERED, ADMITTED
WITHOUT OBJECTION. SHOWN TO JURY

40 Q. You said in evidence that Mr Fuge asked you to contact two people, the first being Mr Gayle's manager?

A. That's correct.

45 Q. Did you do that?

A. I did. The first time it didn't ring and then we managed to make contact shortly after.

Q. You said the first time it did ring?

50 A. From memory it was disconnected the phone, and then I tried again to my

knowledge, then we had a conversation.

Q. What was the conversation you had with - firstly, can you identify who that person was by name?

5 A. Simon Auteri.

Q. What was the conversation you had with Mr Auteri?

10 A. I explained in nature the story that we were preparing to write. I explained that we had obtained a copy of the email from Richie Richardson and we were prepared, you know, to write a story that we could obtain that, and that had been sent to West Indian players and Simon said no comment and that was the end of the phone call.

15 Q. The second task you were attributed I think you said was to contact the Renegades?

A. That's correct.

Q. What steps did you take in respect of that task?

20 A. I obtained a phone number from a contact - sorry, from a colleague to contact Stuart Coventry who was the chief executive of the Renegades at the time to get a comment from the club. I didn't manage to get onto Stuart at the time, and then I had further communications with Tim Whittaker from Cricket Australia.

25 Q. How did that come about?

30 A. Time contacted me and said that he was looking after the Renegades media at the time, which I wasn't aware of but obviously in light of a number of stories he had taken over, then media management in that department, and in the story we'd written that Stuart Coventry did not want to comment. Tim then messaged me and said--

Q. Prior to publication you said Tim contacted you about Mr Coventry's media?

35 A. Yes, that's correct.

Q. In that conversation what did he say to you, did he give you a statement from Mr Coventry?

A. He said that they would be making no comment or words to those effect.

40 Q. Was that the extent of your investigations prior to the publication of the article?

45 A. Well I mean the only thing that I would add to that is that Tim in the story once published, we wrote that Coventry didn't want to make comment and Tim made it clear to me that that was incorrect, because it, you know, Tim - sorry, Stuart hadn't been contacted so therefore he couldn't, you know, make no comment, it was the Renegades that should have been the no comment, and then after a few texts back and forward Tim said that he'd spoken to Stuart and Stuart was happy to say that he did not comment on the story.

50 <CROSS-EXAMINATION BY MR MCCLINTOCK

Q. Mr Decent, who inside Fairfax Media made the decision to publish the pieces in whose writing you'd participated?

A. As in from an editorial perspective?

5 Q. Yes.

A. It would have been Ian Fuge, who is the managing editor.

Q. Mr Fuge is still with Fairfax, isn't he?

A. That's correct.

10

Q. You yourself didn't have any contact with Ms Russell or with my client, Mr Gayle, did you?

A. No.

15 EXHIBIT O SHOWN TO WITNESS

Q. Have a look at that. Mr Fuge says to you on 8 January at 17.21, that's 5.21pm, "Re Gayle. Maybe try to get in through Renegades media department. We just need to be able to say we tried to get him, but could not", do you see that, that didn't strike you when you read it as indicating a sincere attempt to get a comment from Mr Gayle, did it?

20

A. It would, you know, suggest that we tried to get him and that it was my editor's, you know, wish that we did seek an opinion, and if we were not able to not do that, then so be it.

25

Q. Is what it suggested to you is Mr Fuge is paying lip service to the obligation that journalists have to get the other side of the story, that's correct, isn't it?

A. No, I disagree.

30 NO RE-EXAMINATION

<THE WITNESS WITHDREW

COLLINS: Your Honour, that exhausts the available witnesses for today. Can I indicate what we have to come and I will explain why we don't have someone at a quarter to four. Mr Merrick who was the Drummoyne oval attendant is coming from Port Macquarie, he will be available tomorrow morning. Ms Bland is either in the air or about to land in Sydney from New Zealand, she'll be available tomorrow morning. That leaves Mr Wu and Mr Murnane, two journalists for whom video conferencing arrangements have been set up for tomorrow afternoon. I'm told that the Court is somewhat inflexible with changing that, but we're making efforts to try and have that brought forward. I don't know whether your Honour's associate might be able to assist us.

35

40

45 HER HONOUR: Different parts of the Court, Dr Collins. I might have more power than you in that respect.

COLLINS: I would hope so.

50 MCCLINTOCK: So would I.

HER HONOUR: Did you speak to somebody in the registry?

BARNETT: Nathan.

5 HER HONOUR: Nathan. Nathan J apparently was the one.

COLLINS: We don't need to deal with this in the presence of the jury, it's just a logistical matter.

10 HER HONOUR: I'll do what I can. How long do you think the other two witnesses will take?

COLLINS: The video conference witnesses are very similar to Mr Decent.

15 HER HONOUR: No, but what I'm saying is the groundsman is just going to talk about what the change room looked like?

COLLINS: That's right.

20 HER HONOUR: The New Zealand lady is going to talk about evidence of a single conversation?

COLLINS: Correct.

25 HER HONOUR: We'd be wanting the video link. Is there a time difference with New Zealand? No.

COLLINS: She'll be here. We don't need a video link for her, she'll be here.

30 HER HONOUR: Where are the video link witnesses?

COLLINS: Melbourne. There's no time difference.

35 HER HONOUR: I won't make any jokes about time difference. Melbourne's ten years behind, isn't it, Dr Collins?

COLLINS: There's a 20 year difference, but it's not in the clock. Our learned friends wanted to interpose a reputation witness.

40 HER HONOUR: On early analysis though we'd want that video link at 11 or 12 rather than two, wouldn't we?

COLLINS: 11 we would have thought, your Honour.

45 HER HONOUR: Perhaps I'll say 11.30 and then if we get through the other people we could put it in place after a morning break. I'll try and put that in place for 11.30 and then that will be your case?

COLLINS: Yes.

50

HER HONOUR: Mr McClintock, do you anticipate having a case in reply?

MCCLINTOCK: No, your Honour, but I do have the reputation witness who is coming from London who I will interpose at some convenient time tomorrow.

5

HER HONOUR: Yes. We might even move into closing addresses tomorrow.

MCCLINTOCK: It's possible, your Honour, but we might need to get a number of issues settled before that actually happens.

10

HER HONOUR: Yes. Members of the jury, what that I think indicates is that we'll almost certainly finish the evidence tomorrow and I'll decide depending on what time that happens and other tasks I have whether to then start the closing addresses. You will recall that I have a difficulty on Friday morning and I'm sorry, that's unmoveable, it's a criminal matter and I really can't change it. We will discuss this in your absence, counsel, to have you come in on a Friday afternoon and hear the beginnings of the addresses is probably not desirable, prefer to start it all on the Monday morning so I hope that doesn't inconvenience you, but I will communicate with the Sheriff's Office to ask that you be paid for Friday because that's come about because of my indication to you that we can't really sit on Friday. If there's any difficulty and if you want to raise about that, please let me know. What it will mean is that you'll probably be hearing all of the addresses I think, probably within the day on Monday, and you'll be deliberating your verdict certainly by Tuesday.

15

20

25

If there's any issue that you need to raise with me, you look as though there's a difficulty. Is it a question of work commitments or?

FOREPERSON: That's okay, yes, we'll work it out.

30

HER HONOUR: Perhaps I'd better rethink Friday then if there's an issue about that.

FOREPERSON: That's fine.

35

HER HONOUR: It may be that we could use the time on Friday afternoon.

COLLINS: What we would say is it's obviously undesirable that there be a gap of even a weekend, but much worse two and a half or three days between one side's address, the other side's address and then.

40

HER HONOUR: It would just be a weekend on that basis.

COLLINS: Yes. It nonetheless deliver a forensic advantage to that party which goes second, the additional time and the addresses are not as fresh in the jury's mind at the point when your Honour charges them.

45

HER HONOUR: A weekend is a normal period of break within a jury trial, Dr Collins, it happens frequently in criminal trials where the issues are at higher stakes than here.

50

COLLINS: The concern is really that we might be forced into the position of starting for a little bit on Thursday, continuing a little bit at some point in the afternoon on Friday, and it's just very disjointed.

5 MCCLINTOCK: Your Honour, I think we should see how we go tomorrow.

10 HER HONOUR: Yes, I'm thinking I really don't like to inconvenience jurors and I'm thinking in the face of their reaction just now, Dr Collins, I think we might need to think about using Friday afternoon. The difficulty is I've now received all of the material in the criminal matter and I think it's going to take probably at least until about 12.30. If we started at one and sat until four you'd go close to both having your addresses complete.

15 COLLINS: Yes, your Honour, that's true, but--

HER HONOUR: I don't mind doing that.

20 MCCLINTOCK: This is an unfair question to your Honour, but I'll nevertheless put it. Is your Honour confident that the matter will finish by 12.30?

25 HER HONOUR: I'm pretty confident. They're calling it two and a half hours. I've read the material, I've seen the submissions. What I don't know is whether a psychologist is going to be called. I'll see if I can find that out. That might slow it down, otherwise I would think I could be confident to sit in this trial by one.

MCCLINTOCK: I'm completely in your Honour's hands and with whatever the jury wants to do.

30 HER HONOUR: General rule of thumb for all of his, Mr McClintock, is keep the jury happy. Would it be feasible for you all to - you don't have to answer this now if you don't want to - start at one and sit until four on Friday? Do you want to consult? Would that be the preference of you all?

35 FOREPERSON: It's all a bit--

40 HER HONOUR: Do you want to consult with your fellow jurors about that and let me know? I can only repeat the apology with the nature of the matter I'm hearing on Friday morning, I can't move that. I'm sorry.

FOREPERSON: We'll just have a quick chat now.

45 HER HONOUR: Yes. You can let me know tomorrow morning. Or actually I might ask you to have it--

FOREPERSON: No, we can.

HER HONOUR: --yes, would you mind doing that now, thank you?

50 FOREPERSON: Certainly.

IN THE ABSENCE OF THE JURY

5 MCCLINTOCK: Your Honour, I keep forgetting that I haven't actually formally
tendered interrogatory 32, which is the one that your Honour ruled could go in
on its own. I only say that so it's marked in my mind so I do it tomorrow, or at a
convenient time.

10 COLLINS: The only corresponding matter we have outstanding is a USB of
the Mel McLaughlin interview which I tendered but we didn't have a form
suitable for--

15 HER HONOUR: Yes. I think it's being passed to you now. We're waiting for
the jury. Do you want to go and see when, make sure they know how to let
you know when they're ready?

COURT OFFICER: Yes, your Honour, the jury will - are going to let us know.

20 HER HONOUR: They can let us know with a note or they can come back in,
whatever's easier.

COURT OFFICER: They're going to do a knock on this door. I'll listen out for
it.

25 HER HONOUR: Yes. Do they want to come back in?

COURT OFFICER: No.

HER HONOUR: Have they got a note, can they write it in a note?

30 COURT OFFICER: They were just going to verbally say.

HER HONOUR: They're not ready yet?

35 COURT OFFICER: Not ready yet.

HER HONOUR: Sorry, I misunderstood, misheard you at the beginning.
Perhaps we could make a list of things that we all need to do. Mr McClintock,
you need to tender the interrogatory.

40 MCCLINTOCK: Yes.

HER HONOUR: Dr Collins, you need to tender the USB.

45 COLLINS: We have that, but perhaps it should be done in the presence of the
jury.

50 HER HONOUR: That needs to be done in the presence of the jury. I need to
give them the direction about the journalists' evidence, which I might do at the
outset of the next journalist. You need a ruling on the jury questions. Can I tell
you one thing I have concluded, which is that if I decide that the jury should

decide reasonableness, I think the order of her questions should be reasonableness, malice. Do you want to be heard further on that, Mr McClintock?

5 MCCLINTOCK: Only to say, your Honour, that the course that would absolve all the problems is to ask it first.

HER HONOUR: I thought about that. It's very attractive, but I--

10 MCCLINTOCK: What happens if they ask, yes, reasonable, but then there's malice? Got a problem then.

HER HONOUR: The risk of inconsistent verdicts isn't a reason for putting the questions out of the usual order.

15 MCCLINTOCK: Your Honour, there's no usual order in this.

HER HONOUR: No, but it's a question of there's a legally logical order, because reasonableness is an element for the defendants to prove and it's only upon proof of that that you need to prove malice.

20 MCCLINTOCK: That's true, your Honour, but it--

HER HONOUR: It's a question of legal logic.

25

IN THE PRESENCE OF THE JURY

5 FOREPERSON: That's fine. So we've just had a quick discussion. So we're flexible either way, whatever's going to suit the Court. We don't want to be pressured to make a deliberation either, so we understand you want to get it finished but we just want to give it its proper dues. So if Friday suits you all, that's fine with us, but if you'd rather sit it all on the Monday, we're okay to do that as well.

10 HER HONOUR: I'm inclined to start on the Friday at 1 o'clock, and then we move into closing address on the Monday.

COLLINS: Sorry, your Honour, I'm confused. It's Wednesday now.

15 HER HONOUR: Closing addresses on the Friday afternoon and then moving to summing-up I meant to say on Monday.

20 COLLINS: The alternative is that we could commence closing immediately after the end of the evidence tomorrow--

HER HONOUR: That's what I mean, I mean keep moving sequentially and sit all the available time.

25 COLLINS: Yes, we'll do that, so that you would expect that both of us would have finished closing addresses by tomorrow and that your Honour will be in a position to charge on Friday.

HER HONOUR: We'll take it all as far as we can.

30 MCCLINTOCK: Yes.

35 HER HONOUR: On that basis I think I'll ask you to make your arrangements on the basis that we'd start at one on Friday, and thank you very much for your attention to that issue. You are free to leave now. Please remember what I've said each day about not making inquiries outside the Court, and we'll see you tomorrow morning at 10 o'clock.

ADJOURNED PART HEARD TO THURSDAY 26 OCTOBER 2017