

Bill No: MS55/2004

THE CIRCUIT CRIMINAL COURT, GALWAY  
BEFORE HIS HONOUR JUDGE GROARKE

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3 May 2012

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DIRECTOR OF PUBLIC PROSECUTIONS

v.

PAT HEGARTY

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Counsel for the Prosecution:

Mr R Farrell, SC  
Mr C Fahy, BL

Counsel for the Defence:

Mr P Flannery, SC  
Ms D Browne, BL

DPP v. Pat Hegarty  
3 May 2012

INDEX

<u>Proceedings</u>	<u>Pages</u>
David McFadden	1 - 11
Plea in mitigation	11 - 13
Sentence	13 - 17
Bond entered into by accused	16

1 MR FARRELL: Judge, whilst I appreciate the evidence of the case is no doubt very  
2 fresh in the Court's mind, there are dicta from the Court of Criminal Appeal. So ...

3 JUDGE: Oh, yes. No, no. I think you should invite back the officers you wish.

4 MR FARRELL: Mr McFadden is the appropriate officer.

5 JUDGE: And perhaps you might lead a précis of the evidence, Mr Farrell?

6 MR FARRELL: I will do.

7

8 DAVID McFADDEN (already sworn) - Examined by Mr Farrell

9

10 Q. Mr McFadden, you're already sworn, I think, in this case?

11 A. Yes.

12 Q. I think you are the officer who has principal charge of this investigation; is that  
13 correct?

14 A. That's correct. From day 1.

15 Q. Indeed, and I think for the purpose of giving an outline and précis of the facts, I think  
16 this is an investigation that concerns certain oil distributors in the Galway and  
17 connected counties region; is that correct?

18 A. That's correct, Judge. There were numerous allegations coming in, flowing in to the  
19 office, coming to me directly, in 2001 up until the time we did the searches in  
20 February of 2002 and they concerned allegations of price-fixing amongst numerous  
21 oil distributors in Galway and beyond. The actual investigation after the time of the  
22 searches and by the time the file was sent to the DPP some months later set out cases  
23 against 24 companies and individuals involved in the conspiracy.

24 Q. And I think the principal vehicle of the conspiracy was -- in fact it transpired to be a  
25 limited liability company called the Connaught Oil Producers Federation; is that  
26 correct?

27 A. Essentially - exactly - they had decided to put together a kind of a grouping whereby  
28 this group would be run by and chaired by a gentleman by the name of JP Lambe,  
29 who had formerly been in the industry, he had been an owner of a company, and he  
30 was to be some kind of like a neutral-type character who would, apart from  
31 organising meetings and booking hotel rooms and so forth, he would check up on  
32 members of the cartel when disputes arose, as they did constantly. So, for example,  
33 if prices had been agreed on a Monday, for argument's sake, by Tuesday or  
34 Wednesday it was quite possible that somebody might have cheated on that cartel.

1 That frequently seemed to happen. It's a feature of these kind of conspiracies, as it  
2 happens. To ensure that this conspiracy worked better, they had engaged this man to  
3 work effectively full-time as the enforcer, the police guy for the cartel. He had sold  
4 his business, he was no longer actually himself directly involved in the selling of oil,  
5 so his role was to chair meetings, arrange meetings, and then where disputes arose he  
6 would have the right to enter into premises, check the dockets of companies where  
7 oil was sold to homes or whoever, and he would find, for example, you know, "The  
8 allegation that we know you undercut on such and such by a customer", and he'd  
9 check the dockets and verify whether this was correct or not. When we searched his  
10 home we found numerous dockets. His home was in Claremorris. We found  
11 numerous dockets in the boot of his car for people from as far afield as Kinvara, all  
12 the way around Galway, Mayo, Roscommon, and we went to those people, each of  
13 them in turn, to verify, you know, "Where did you -- did you ever meet this man?  
14 Did you ever ..." -- and we found, of course, they had not given their docket -- it's  
15 like a two-part piece. One part's kept by the customer, one part's kept by the  
16 company. So, the only possible place he could have actually gotten these from, it  
17 turned out, was from the companies. So, it verified his policing role in the cartel.

18 Q. That deals I suppose with the role of JP Lambe?

19 A. The role of JP Lambe, yes.

20 Q. Can I ask you to deal with the role of Mr Hegarty?

21 A. Mr Hegarty was the manager. He literally ran the show in Sweeney & Rabbit Oil.  
22 He was the person who, I suppose -- he actually was the person who was the main  
23 man in that company, for that oil company. He attended meetings. He was to be the  
24 treasurer of the organisation and we did uncover some evidence that there was a  
25 bank account opened in a bank in Ballinrobe where he would take in money from the  
26 members of the cartel, money was lodged to that account, and he would pay out to  
27 various hotels for the booking of rooms and also paying for his expenses in his role  
28 as enforcer. So, he was the person who was the treasurer of the organisation. We  
29 know that he approached at least two parties. You heard evidence today in relation  
30 to -- or in the trial in relation to one --

31 Q. I think we might just confine it to the evidence of the trial as such?

32 A. Sorry. We'll do the -- just we know that he approached a party --

33 MR FLANNERY: In fairness, Judge --

34 A. I mean, it's clear that he approached --

1 JUDGE: No, I think, Mr Flannery, I'm entitled to know --

2 MR FARRELL: Very good.

3 JUDGE: Right. Well -- to know what the -- whether or not or what was going on in  
4 respect of those who might not have been agreeable or compliant.

5 MR FLANNERY: Well, I accept you're entitled. I mean, we're dealing with a  
6 specific case here where certain allegations have been proven by the prosecution but  
7 there are certain matters now coming before you that are not --

8 JUDGE: Well, I don't know what the witness was going to say. That's why I'm  
9 trying to -- what I'm saying is that if it's the case that his evidence is going to tell me  
10 how -- what form the enforcement took against those who were not agreeable or not  
11 compliant. In other words, was there a consequence -- was there consequential  
12 victims for the fact that an agreement was entered into by these undertakings, which  
13 was enforced by the undertakings. Surely I'm entitled to know the answer to that.

14 MR FLANNERY: Well, if it gives rise to a situation where there's a suggestion of  
15 other criminal activity involved that has not been before the Court, I would say that's  
16 inappropriate.

17 JUDGE: What do you say, Mr Farrell?

18 MR FARRELL: Well, I was going to ask Mr McFadden to deal with Mr Mulcair  
19 specifically because I think that is probably the answer to the question you're asking.

20 JUDGE: All right. Mr Flannery?

21 MR FLANNERY: Well, it seems I --

22 JUDGE: You can hardly object to that?

23 MR FLANNERY: I'll see what ...

24 JUDGE: I would have gone further outside that but if that's what Mr Farrell wants to  
25 limit it to, carry on. So be it.

26 Q. MR FARRELL: Yes?

27 A. The bottom line was Mr Hegarty approached parties -- a party in this trial who was  
28 not a member of the cartel. In other words, when Joe Mulcair in this instance joined  
29 a new company in or around late 2001 that company refused to be involved in this  
30 conspiracy but --

31 Q. I think that was Texoil; is that correct?

32 A. That was Texoil, exactly, and Mr Hegarty in that instance, along with JP Lambe,  
33 approached Joe Mulcair. He didn't have to do a whole lot of explaining because of  
34 course Joe Mulcair was aware or understood what the thing was about but he was

1 very adamant he didn't want to go back to this and it was very clear that this new  
2 company -- the company he worked for, it was their policy not to be involved, but  
3 Mr Hegarty approached in any event in that instance to get them to join back. One  
4 of the --

5 Q. Can I just stop you there?

6 A. Sorry.

7 Q. I think the evidence was at that point that Texoil was charging less than the members  
8 of the cartel; is that correct?

9 A. That's correct. One of the things - and it was mentioned in evidence - one of the  
10 aspects of the case was that if a company was not a member or refused to be a  
11 member or indeed, say, cheated on the cartel, other cartel members would target you  
12 as a company. So, they'd go after your customers or go into your area and undercut  
13 you, and that phrase, "they'd cut the price", was used in evidence and that's exactly  
14 what it meant. That was one of the methods, probably the principal method, that  
15 they had of ensuring compliance with the cartel.

16 Q. I think that's --

17 Q. JUDGE: Commercial intimidation?

18 A. I -- this is, I suppose, commercial activity. In relation to this accused, I'm not going  
19 to suggest that, that he engaged in that. Certainly there was targeted activity in  
20 relation to ensuring that if your company stepped out of line with the price, if you  
21 were a smaller company you'd be undercut, you'd be targeted pricewise. Other -- the  
22 phrase you've used certainly may have happened but I'm not suggesting at all that it  
23 was in relation to Mr Hegarty. I can say, by the by, that yes, certain witnesses,  
24 including Mr Mulcair, did suffer enormously but not in this instance in relation to  
25 Mr Hegarty. So, I think it's fair to put that on the record.

26 Q. MR FARRELL: All right. And I think this is known as predatory pricing; is that  
27 correct?

28 A. Well, it's not so much that, no. A cartel literally is -- the idea is instead of cutting  
29 each other's throats - this is the phrase that they were using. You know, "We're  
30 undercutting each other. We're trying to, you know -- all we're doing is driving the  
31 price down and we're getting nothing out of it".

32 Q. JUDGE: Predatory pricing is quite legitimate; is it not?

33 A. Not really.

34 Q. JUDGE: Oh. Right?

- 1 A. Predatory pricing is a little bit different, Judge. Sorry.
- 2 Q. JUDGE: All right?
- 3 A. Just to be --
- 4 Q. JUDGE: Sorry?
- 5 A. What they did was they agreed a price which was much higher than a competitive  
6 price might have been and a competitor who -- of a similar size or a smaller size or  
7 larger might come in and might undercut. That's just a competitive price. Predatory  
8 pricing is a little bit different. That's where you've got, say, a very large monopoly  
9 company which just destroys the competition because it has such market power that  
10 it uses it to completely undercut --
- 11 Q. JUDGE: Sell below cost, effectively?
- 12 A. Exactly, and all that kind of stuff.
- 13 Q. JUDGE: All right?
- 14 A. Now, there were elements of that. There's no doubt that as part of the punishment  
15 for companies that stepped out of line other companies would come in and there's no  
16 doubt from what we understand that this company was part of that, where they would  
17 target the customers of companies that stepped out of line or refused to participate in  
18 the cartel.
- 19 Q. MR FARRELL: Can I just very briefly, Mr McFadden, run through the evidence in  
20 the case for the purpose of synopsising it for the transcript? I think Mr Dillon gave  
21 evidence. He was an employee of Rabbit Sweeney Oil?
- 22 A. Correct.
- 23 Q. And I think he gave evidence of having been sent by Mr Hegarty to attend a meeting  
24 of the federation you've mentioned; is that so?
- 25 A. That's correct.
- 26 Q. And I think he gave evidence that there was discussion of fixing of prices,  
27 essentially, at that meeting?
- 28 A. "Keep the prices parallel" is a phrase he used, yes.
- 29 Q. Indeed. And I think he also gave evidence of a subsequent incident where Mr Tom  
30 Connolly, who is associated with Corrib Oil, called to the premises of Rabbit  
31 Sweeney Oil and handed over a price list which was then typed up on the company  
32 headed notepaper and circulated; is that correct?
- 33 A. That's correct.
- 34 Q. I think there was also then evidence from Mr Mulcair, who you've mentioned, and I

- 1 think his evidence was that he was present at a number of meetings, I think four or  
2 five meetings; is that so?
- 3 A. Yes. He wasn't entirely sure. It could have been as many as six, he thought, but it  
4 was four or five anyway.
- 5 Q. I don't think he was in a position to say specifically what the dates were but there  
6 was other evidence in the case setting out dates of various meetings of the  
7 federation?
- 8 A. That's correct.
- 9 Q. And I think they notably took place predominantly within the run up to winter and  
10 the winter months; is that correct?
- 11 A. There seemed to have been a surge, a build-up of meetings, but there had been  
12 meetings throughout the summer as well but there had been a surge, yes.
- 13 Q. Yes. And I think Mr Mulcair gave evidence that Mr Hegarty had been present at  
14 some of those meetings; is that so?
- 15 A. Yes, that's correct.
- 16 Q. And that he was involved in the discussion of prices. I think he also gave evidence  
17 that in relation to the meetings that Mr Mulcair had not attended or had missed  
18 himself, that Mr Hegarty would call to his house --?
- 19 A. That's correct.
- 20 Q. -- and provide him with the agreed price list emanating from the most recent  
21 meeting; is that so?
- 22 A. That's correct.
- 23 Q. And then I think you've mentioned this meeting that took place in O'Grady's pub and  
24 I think that was where --?
- 25 A. I've mentioned that already. Yes, that's where there was an approach for him to  
26 rejoin the cartel now with this new company that he was working for.
- 27 Q. All right. I want to just ask you to briefly deal with the history of the case in relation  
28 to other individuals. I think there was a number of other individuals who were  
29 charged with offences arising from the same cartel; is that correct?
- 30 A. That's correct. In total, 24 companies and individuals were prosecuted and after  
31 today 18 - of which this is the last case - 18 have been convicted for their part in the  
32 conspiracy.
- 33 Q. All right. I think the first trial that came on was in relation to a Michael Flanagan; is  
34 that correct?



- 1 A. That's correct. That trial happened in this Court before yourself, your lordship, on  
2 the end of February and early March 2006. It was the first ever jury trial in a price-  
3 fixing case in Ireland or indeed Europe.
- 4 Q. And I think Mr Flanagan was convicted and I think a sentence of £3,500 was  
5 imposed; is that correct?
- 6 A. Euros. Yes, that's correct.
- 7 Q. Euros?
- 8 A. He was, at the time, very clearly, and your own comments were, that he was a  
9 minnow in this.
- 10 Q. All right. I think there were a number of other cases that were possibly backing that  
11 up and I think there was pleas of guilty emanating from other parties at that point; is  
12 that correct?
- 13 A. There was a plea of guilty immediately before the trial commenced, by Con  
14 Muldoon and Muldoon Oil, on the morning that the trial of Flanagan together with  
15 Muldoon was to start and he was treated very leniently. Your comments were that  
16 he pleaded guilty before the trial commenced. There was a flood of pleas entered  
17 then within -- in fact, the following week a number of people -- a number of  
18 companies and individuals pleaded and over the following couple of months one  
19 large company with a director pleaded guilty a year later in Dublin.
- 20 Q. And just in relation to Mr Lambe then, I think he was dealt with on the  
21 6th of March 2006 and there was a fine of €15,000 and a six-month suspended  
22 sentence suspended for 12 months; is that correct?
- 23 A. That's correct. Mr Lambe pleaded guilty, Judge, in Dublin Circuit Criminal Court  
24 and he pleaded in fact before the Flanagan trial but his sentencing didn't occur until  
25 the week or so after the trial of Flanagan. He received, as Mr Farrell said there, a  
26 six-month sentence suspended for 12 and a €15,000 fine.
- 27 Q. And I think - I don't propose to go through all of the details of the other --
- 28 Q. JUDGE: Well, now, when was the jurisdiction of these matters then taken to the  
29 Central Criminal Court, Mr McFadden? When did that happen?
- 30 A. The Act in 2002, the Competition Act 2002, changed the jurisdiction to the Central  
31 Criminal Court for a variety of reasons but one of them is to do with jurisdictional  
32 issues. It's actually a nightmare trying to bring cartel-type cases before the Circuit  
33 Court simply because if meetings were happening in numerous locations, companies  
34 are registered in numerous locations around the State, trying to get them all together

1 into one Circuit Court for a prosecution is very difficult. It's next to impossible. As  
2 it happened, we managed it here, albeit that one -- sorry, the case against JP Lambe,  
3 a company and two directors, on application by the parties, was moved to Dublin  
4 Circuit Criminal Court by your predecessor but then those cases took time in Dublin  
5 and came on there.

6 Q. JUDGE: I was just curious. All right?

7 A. Yes, Judge.

8 Q. JUDGE: So, now you've competition, murder, rape and treason and piracy?

9 A. Rape. And piracy. That's right. Genocide.

10 Q. JUDGE: All in the Central Criminal Court. All right?

11 A. Yes.

12 Q. MR FARRELL: And arson of Her Majesty's dockyards as well, Judge. Everyone  
13 forgets that one. I don't propose to go through the details of the other fines and so on  
14 but --?

15 A. Just --

16 Q. Yes?

17 A. Just in relation to the matters in relation to fines, there was a kind of a -- you applied  
18 I suppose in some respects a scale. There were a lot of minnows, a lot of small  
19 companies in this case. Of course, they all pleaded but there were two large  
20 companies --

21 JUDGE: I'm not comfortable with a commentary from the witness on the sentencing  
22 policy of the Court.

23 MR FARRELL: Yes.

24 A. Sorry. Apologies, Judge. Apologies.

25 Q. Yes. Let me just deal with it in this fashion. I think fines ranging from €7,500 up to  
26 €12,000 and €15,000 were imposed in various other cases?

27 A. Correct, Judge.

28 Q. All right?

29 JUDGE: On pleas?

30 MR FARRELL: On pleas of guilty.

31 JUDGE: Yes.

32 Q. MR FARRELL: Now, can I just ask you to deal with Mr Hegarty's personal  
33 circumstances? I think he doesn't have any convictions; is that right?

34 A. As far as I'm aware, no convictions, Judge.

1 Q. All right. And are you aware of his personal circumstances?

2 A. I think he's in business still, in the oil business, although for a different company now  
3 I think. I can stand to be corrected in that but he has certainly -- I can say he has  
4 been very ill. I don't know how much information I should divulge on that but --

5 Q. Go ahead?

6 A. He certainly has been very ill for a comparatively young man. He had serious cancer  
7 some years ago, Judge.

8 Q. JUDGE: Well, let his barrister deal with that, Mr McFadden. What age man is he?

9 A. I think he's about 40 but I'm not entirely sure.

10 MR FLANNERY: 3rd of March 1971.

11 Q. MR FARRELL: I'm not sure if there's anything else you wish to add, Mr McFadden,  
12 at this point?

13 A. It's just in relation to the size of the company or is that an issue?

14 Q. Yes?

15 A. At the time, Judge, the companies involved in this cartel tended to be one or  
16 two-truck operations, some were three or four-truck. The largest company had  
17 20 trucks. This company, Sweeney & Rabbit Oil, at the time had 14 trucks. It was  
18 the second largest by some distance amongst the companies involved in the  
19 conspiracy.

20 Q. Very good. You might answer any questions Mr Flannery has?

21

22 Witness cross-examined by Mr Flannery

23

24 Q. Mr McFadden, first of all, how many of all the cases you've mentioned, outside of  
25 this one with Mr Hegarty, how many other people were just employees of the  
26 company?

27 A. I can't say. There were a good number of drivers. In the office there was a small  
28 number of staff --

29 Q. No, sorry, you misunderstand my question. I probably formulated it wrongly. You  
30 said there was 18 people convicted; is it?

31 A. Apologies.

32 Q. Yes. I'm just wondering of all the people that were convicted, either by one --

33 Mr Flanagan, who I'll come back to, was the only one convicted after a trial; isn't that  
34 correct?

- 1 A. Correct.
- 2 Q. Yes. Of the others, was anybody in the same category as Mr Hegarty - in other  
3 words, an employee - or were they owners of the companies and directors of  
4 companies?
- 5 A. They were directors/owners, exactly.
- 6 Q. /Owners? And I believe --
- 7 A. With the exception of JP Lambe, who was --
- 8 Q. Oh, well, he was a different -- he wasn't in a company at all, yes?
- 9 A. Yes. He was an aider and abetter, yes.
- 10 Q. Yes. And am I right in thinking that in the case of Mr Flanagan that he fought his  
11 case and he was fined €3,500 by the judge?
- 12 A. Correct.
- 13 Q. Yes. Now, basically would you accept -- well, Fate Park was owned, wasn't it, by  
14 Statoil and Mr Sweeney; is that correct?
- 15 A. I think that's correct, yes.
- 16 Q. Yes?
- 17 A. Yes.
- 18 Q. And would you accept that Mr Hegarty was just an employee of the company?
- 19 A. He was the man who ran the company for them but he was an employee. That is  
20 correct.
- 21 Q. Yes. Mr Hegarty has instructed me that he was on a fixed salary?
- 22 A. Okay. That's ...
- 23 Q. Yes. And --
- 24 JUDGE: Well, what was he doing getting involved in this kind of conduct for then?
- 25 MR FLANNERY: Well, you see --
- 26 JUDGE: If he was on a fixed salary there was nothing in it for him. Is that what  
27 you're telling me?
- 28 MR FLANNERY: Well, I'll deal with that when --
- 29 JUDGE: All right. You can deal with that in due course, Mr Flannery. All right.  
30 Go on.
- 31 MR FLANNERY: Okay.
- 32 JUDGE: No, no, you can deal with that in due course, yes.
- 33 MR FLANNERY: Thank you.
- 34 JUDGE: Sorry, I shouldn't have interrupted you.

1 Q. MR FLANNERY: And as you said, he has no previous convictions; isn't that  
2 correct?

3 A. Correct. That's my understanding, yes.

4 Q. Thank you very much, Mr McFadden.

5 JUDGE: Thanks, Mr McFadden.

6 WITNESS: Thank you, Judge.

7 MR FARRELL: Judge, I should tell you in relation to the question of penalty --

8 JUDGE: Yes.

9 MR FARRELL: -- there is a penalty of two years imprisonment and/or a fine not  
10 exceeding £3 million. There's also a provision in relation to calculation of the fine  
11 by reference to turnover of a company but there's no evidence in relation to that  
12 matter, so £3 million is the maximum fine.

13 JUDGE: Yes. Mr Flannery?

14 MR FLANNERY: Yes. As indicated to you, Judge, Mr Hegarty was born the  
15 3rd of March 1971. He was originally born in Castlebar. He presently resides at  
16 Coole Park down outside Gort. He is married with three children, aged 15, 10 and  
17 two. Basically, he has no previous convictions and he has had a very good work  
18 record throughout his life. He lost his job with Fate Park in 1979, I believe, when  
19 they went into examinership and he had to --

20 MS BROWNE: No, it was 2009.

21 MR FLANNERY: Sorry. 2009.

22 JUDGE: All right.

23 MR FLANNERY: When they went into examinership, and basically he had to set up  
24 a business of his own to keep going. This is a man - I'm going to hand in medical  
25 records to you - as Mr McFadden has very fairly pointed out, has had an extremely  
26 unfortunate medical history, resulting in him having a resection of the left side of his  
27 bowel in October 2005, and basically he has to be monitored ever since in relation to  
28 his condition. As I say, he has no previous convictions.

29

30 I would say to you that unlike a lot of the other undertakings, he was -- I mean, in  
31 some ways you could call it stupid but he was working for an undertaking that's not  
32 before the Court for various reasons, but he was earning at the time in or around  
33 £30,000, by the way, at the start and then obviously the equivalent and that,  
34 ironically enough, outside of the company doing well, there was nothing in this for

1 him outside of the company doing well, as opposed to a lot of the other entities. I  
2 would ask you, I mean, given his history of no previous convictions, given that he's a  
3 good citizen in society, a good family man, and when he basically got the cancer he  
4 has been very active in a cancer group, a cancer support group, which he's very  
5 actively involved with for the last four years. He's a man, as I said, who has three  
6 children and basically he's the main - while his wife is working as well - income in  
7 the family and that basically I'd ask you to show as much leniency as possible as you  
8 can in the circumstances.

9

10 I would ask you in particular if you were looking for a reference point - and I  
11 appreciate you're totally at will on the point - to bear the case of Mr Michael  
12 Flanagan in mind but, more importantly, this happened back in 2002 and, as you  
13 know, the incomes at that time were a lot less. I would ask you to show, in the  
14 circumstances, as much leniency as you can to Mr Flanagan and if possible --  
15 Mr Hegarty and if possible limit this to a monetary fine, as he has to continue work  
16 to look after both his family, himself --

17 JUDGE: What are his current financial circumstances? I understand he's in the  
18 same business he was in. He's running a company.

19 MR FLANNERY: He's presently in the same business, basically operating a  
20 company called Cosy Home Heating Limited, which operates in south Galway and a  
21 little farther afield I think also into part of Clare, and effectively I was asking him  
22 and he said it had made a net profit of 10,000 last year but, in fairness, he was  
23 drawing a salary of about 25,000 to 30,000 a year out of it and essentially you're  
24 talking about his income being about 30,000 out of that company.

25 JUDGE: How many lorries has he on the road, Mr Flannery?

26 MR FLANNERY: I understand from Mr Hegarty that he has presently eight trucks  
27 on the road.

28 JUDGE: Yes.

29 MR FLANNERY: What I'm going to say next is probably a bit of double-edged  
30 sword, and actually, Judge, I'll leave you -- I'll ask you to use as much clemency as  
31 possible, particularly given his no previous record and particularly showing that he's  
32 now a man with a serious health problem, and he was, at the end of the day, an  
33 employee of the company. Thank you.

34 MR FARRELL: Judge, there's one matter I should have brought to your attention,

1 and I don't have the relevant statute in front of me. There will be a consequential  
2 automatic disqualification order under the Companies Acts but I'll deal with that in  
3 due course.

4 JUDGE: All right. I wondered about that. That is consequential?

5 MR FARRELL: It is. Any offence that's committed in relation to a limited liability  
6 company results in an automatic five-year disqualification unless the DPP applies  
7 otherwise and I have no instruction to apply otherwise.

8 JUDGE: Well, first of all, the offence. Well, this, I suppose, has to be viewed as a very  
9 serious matter. There are many victims as a direct or indirect result of the criminal  
10 conduct of which Mr Hegarty has been convicted. I speak, of course, obviously that  
11 the ordinary consumer is presented with a fake market when competitive forces do  
12 not operate, and the motivation for this crime was one of greed. I'm told Mr Hegarty  
13 had -- there was nothing in it for him. I have a difficulty with that, I have to say. If  
14 this man was being paid a salary and had no other interest other than him working his  
15 40-hour week, I for the life of me cannot see why he would have been engaged in  
16 such a proactive way in criminal conduct of this nature. Was it an ego trip? I doubt  
17 that very much. I therefore am not convinced. I appreciate the submission has been  
18 made on instructions but I'm far from convinced that there was nothing in it for  
19 Mr Hegarty. Apart from the widespread class of victims of this crime, of course,  
20 there are more specifically the Mr Mulcairs of this world, who walk the narrow  
21 legitimate path, who work hard to eke a modest living, and act within the law, people  
22 who make up the overwhelming majority, obviously, of people in this country and  
23 who suffer the consequences at the hands of bullies such as Mr Hegarty and his  
24 associates, who caused huge economic damage to Mr Mulcair and apparently would  
25 willingly have done so to many others if the necessity had arisen. This, therefore, is  
26 serious conduct and I cannot avoid the conclusion that Mr Hegarty was one of the  
27 moving forces behind what was taking place. He was an officer of the federation,  
28 the treasurer of the federation and on the evidence accepted clearly by the jury was  
29 one of those who was masquerading around, handing out the fixed price list. So,  
30 therefore he's not peripheral. He was a serious moving party behind this federation  
31 in their illegal activities.

32

33 I accept Mr Hegarty is a man with no previous convictions, that he has  
34 responsibilities to his three young children, to his wife. A man who, I have no doubt,

1 in the ordinary way exercises great discipline in his life. He lost his job in 2009  
2 where the company then employing him, who I presume were the company the  
3 subject matter of this matter, Fade Park Limited, went into examinership. I'm told  
4 that he's had serious health difficulties, which I see originated back in 2006 and he  
5 had surgery in 2007, I think, or he's had treatment. I can only assume that he's doing  
6 well. I hope so.

7  
8 I'm very conscious of the fact that in a recent decision - or not perhaps that recent - a  
9 recent decision in the superior court, Mr Justice McKechnie made an observation  
10 that it is but a short time before people who engaged in conduct such as this will end  
11 up in prison, and in my view this is a matter which undoubtedly warrants the  
12 imposition of a term of imprisonment and I see no reason why I would not impose a  
13 two-year term of imprisonment upon Mr Hegarty. That is the maximum provided by  
14 the statute. I'm also of the view that a penalty of a financial nature -- as I've said, the  
15 motivation for the commission of this crime was clearly greed, and a financial  
16 penalty must be imposed in order to teach those who are motivated by greed to  
17 commit crime that there can be a serious and painful penalty for them as and when  
18 the crime is to be punished.

19  
20 I'm told this man has a company which last year yielded a profit of €10,000. I'm also  
21 told that he has eight lorries on the road. I'm assuming he employs quite a number of  
22 people. I have determined to impose a fine of €30,000 upon Mr Hegarty and I will  
23 hear what you have to say in respect of the payment of that fine. I am conscious of  
24 the fact that there is an ancillary punishment, which really I ought not to have any  
25 regard to, to wit, his disqualification as a director following upon this conviction.  
26 The only matter which remains is whether or not the warrant to serve two years  
27 imprisonment should issue. I'm conscious of one reason and one reason only why  
28 that should not happen, and that is that the offences were committed in 2001 into  
29 2002. It's now 10 years on - and I know the reasons why that is so - but it is 10 years  
30 and people move on with their lives, people get wiser, more sensible perhaps, take on  
31 and undertake duties and responsibilities. It is regrettable, I suppose, in a sense that  
32 this matter hasn't come before the courts for determination long before now. It  
33 would seem to me, given the period of time which has elapsed, that it would be  
34 somewhat invidious and certainly unfair if I was to issue the warrant for Mr Hegarty



1 to serve the term. Let it be a warning, however, to others that that day described by  
2 Mr Justice McKechnie is fast approaching, even if not on order of the Circuit Court.  
3 What do you want to say about payment of the fine, Mr Flannery?

4 MR FLANNERY: I'm going to ask my solicitor to -- I will need some time. If you'd  
5 just bear with me a second while my solicitor asks ...

6 JUDGE: Let me make it clear that I propose to suspend the two-year sentence on  
7 condition of Mr Hegarty entering into a bond to keep the peace and be of good  
8 behaviour for a period of two years from this date.

9 MR FLANNERY: My lord, I understand from my solicitor that -- would it be  
10 possible to give him 12 months to pay the fine?

11 JUDGE: I don't have a difficulty in principle with that but I would like to see it  
12 being paid in stages during the course of that 12 months, Mr Flannery.

13 MR FLANNERY: Yes.

14 JUDGE: Do you want to say anything to me, Mr Farrell?

15 MR FARRELL: No, Judge.

16 MR FLANNERY: Every three months, is it? Well, then perhaps if there was a  
17 quarter tranche every three months?

18 JUDGE: Seven and -- well, very good. Well, what I'll do is I'll fine him in the sum  
19 of €30,000 to be paid as to €7,500 three months from now and on the three -- and  
20 each three months thereafter, on the 3rd of the month.

21 MR FLANNERY: May it please you.

22 JUDGE: In default -- Mr Farrell, do you want to tell me what default order should  
23 follow?

24 MR FARRELL: I'm trying to recollect what the new provisions provide, Judge,  
25 under the -- there has been a change in relation to the legislation relating to fines.

26 JUDGE: Will I leave it stand, Mr Farrell?

27 MR FARRELL: I think the Court -- yes, because I think you have to specify a  
28 period of imprisonment in default and I think normally that would probably be  
29 whatever the suspended period the Court has indicated but I had perhaps better just  
30 check my Ps and Qs on that.

31 JUDGE: Would you just check the order for me, please?

32 MR FARRELL: Yes.

33 JUDGE: Just if you'd discuss the matter with Mr Flannery. All right.

34 MR FLANNERY: May it please you.

1 JUDGE: I'll leave the matter stand. Sorry, I know I'd like to get the matter out of the  
2 way but I'd like to get it right also. All right. I'll take the next sentencing matter. If  
3 you agree on -- come back to me, Mr Farrell.

4 MR FARRELL: Yes, Judge.

5 JUDGE: Interrupt me, indeed, to make whatever order you want me to make.

6 MR FARRELL: Thank you.

7 JUDGE: I want you to take the bond of the accused, please. Would you come up  
8 here, Mr Hegarty?

9 MR FARRELL: Mr Hegarty, would you come up here, please?

10 REGISTRAR: Are you Pat Hegarty?

11 ACCUSED: Yes.

12 REGISTRAR: Pat Hegarty, do you acknowledge yourself bound to the people of  
13 Ireland in the sum of €100, the condition being that you will keep the peace and be  
14 of good behaviour for two years from this date and that you will come up if called  
15 upon to serve the balance of this sentence imposed but suspended on your entering  
16 into this bond? Do you acknowledge yourself so bound?

17 ACCUSED: I do.

18 JUDGE: Very well. I'll leave it stand then to finalise the order. All right.

19 MR FARRELL: May it please you, Judge.

20

21 (Court dealt with other matters)

22

23 JUDGE: Yes, Mr Farrell?

24 MR FARRELL: Judge, I've looked at the Fines Act and we're a little bit perplexed  
25 as to whether it's supposed to be retrospective or not, bearing in mind when this  
26 offence was committed. Myself and Mr Flannery are going to suggest to the Court  
27 that you might deal with it in the following way: If the bond can be amended to  
28 include within it a term that Mr Hegarty would pay the fine in the instalments as  
29 indicated by the Court and in default of that it can be re-entered in the ordinary way  
30 and dealt with as appropriate at that stage.

31 JUDGE: All right. So, in default of any one instalment being paid, the matter to be  
32 re-entered?

33 MR FARRELL: Yes.

34 JUDGE: Before the Court for finalisation.

1 MR FARRELL: Yes.

2 MR FLANNERY: Correct.

3 JUDGE: You're happy if I do that, Mr Farrell. All right. Thank you, gentlemen.

4 MR FARRELL: Thank you, Judge.

5 MR FLANNERY: Thank you.

6

7 (Court dealt with other matters)

8

9 JUDGE: All right. Now, Mr Farrell?

10 MR FARRELL: Sorry, Judge. Sorry to trouble you. Mr McFadden was asking me  
11 would you be minded, Judge, to direct a transcript purely of the sentencing hearing.

12 The Competition Authority obviously have an interest from a soft regulation point of  
13 view in terms of bringing public attention to matters that are dealt with before the  
14 courts. It's an unusual application, I appreciate, but in the context of regulatory  
15 prosecutions they're seeking that transcript.

16 JUDGE: Well, are they going to pay for it, Mr Farrell?

17 MR FARRELL: That would seem to follow.

18 JUDGE: If they're going to pay for it, I will -- I'm not sure. I think that I'm actually  
19 barred from making such an order, Mr Farrell.

20 MR FARRELL: Well --

21 JUDGE: But if the Competition Authority were to pay for it, I will direct that it be  
22 made available to them.

23 MR FARRELL: Yes.

24 JUDGE: But on that understanding that it's paid for by the Competition Authority.

25 MR FARRELL: Very good, Judge.

26 JUDGE: All right.

27 MR FARRELL: Much obliged. Thank you.

28 REGISTRAR: Of the sentencing only?

29 JUDGE: Of the sentencing only, yes.

30 MR FARRELL: Yes. Thank you, Judge.

31

32 Case concluded

33

1 Certified to be a complete and correct transcript of the record of the proceedings  
2 herein:

3

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11 Office Manager

12 WordWave International Ltd.

**A**

**abetter** 10:9  
**about** 3:34 9:9  
 12:23,24 13:4  
 15:3  
**accept** 3:5 10:13,18  
 13:33  
**accepted** 13:28  
**account** 2:25,26  
**acknowledge**  
 16:12,16  
**active** 12:4  
**actively** 12:5  
**activities** 13:31  
**activity** 3:15 4:18,19  
**actual** 1:21  
**actually** 2:4,16,22  
 7:32 12:30 17:18  
**adamant** 4:1  
**add** 9:11  
**afraid** 2:11 12:21  
**after** 1:21 4:12 6:30  
 7:25 9:33 12:16  
**against** 1:23 3:10 8:2  
**age** 9:8  
**aged** 11:16  
**ago** 9:7  
**agree** 16:3  
**agreeable** 3:4,10  
**agreed** 1:33 5:5 6:20  
**agreement** 3:12  
**ahead** 9:5  
**aid** 10:9  
**albeit** 8:2  
**allegation** 2:8  
**allegations** 1:18,20  
 3:6  
**along** 3:32  
**already** 1:8,10 6:25  
**also** 2:27 5:29,34 6:16  
 11:10 12:21  
 14:14,20 16:2  
**although** 9:2  
**amended** 16:27  
**amongst** 1:20 9:18  
**ancillary** 14:24  
**and**  
 1:5,15,16,20,21,2  
 2,23,24,28,29,31  
 2:5,7,8,9,12,14,24  
 26,27 3:32  
 4:1,9,12,13,26,31  
 5:6,7,12,15,23,26,  
 29,31,32,34  
 6:9,13,16,20,23,3  
 0  
 7:2,4,8,11,14,15,1  
 8,20,21,24,26,27  
 8:3,5,8,9,12,13,26  
 9:1  
 10:3,6,9,10,11,14,  
 18,23  
 11:1,9,16,17,19,2  
 3,27,33  
 12:3,6,7,10,1  
**answer** 3:13,19 9:20  
**any** 4:3 8:33 9:20  
 13:5 14:24 16:31  
**anybody** 10:2  
**anything** 9:11 15:14  
**anyway** 6:4  
**apparently** 13:24  
**application** 8:3 17:14  
**applied** 8:17  
**applies** 13:6  
**apply** 13:7  
**appreciate** 1:1 12:11  
 13:17 17:14  
**approach** 6:25  
**approached**  
 2:29,32,34  
 3:27,33 4:3  
**approaching** 15:2  
**appropriate** 1:4  
 16:30

**are** 1:2,12 3:7 7:34  
 9:1 12:17 13:9,20  
 14:16 16:10,26  
 17:13,16  
**area** 4:12  
**argument's** 1:33  
**arisen** 13:25  
**arising** 6:29  
**arose** 1:32 2:5  
**around** 2:12 3:29  
 7:34 11:32 13:29  
**arrange** 2:5  
**arson** 8:12  
**ask** 2:20 3:18 6:27  
 8:32  
 12:2,7,10,13,30  
 15:4  
**asking** 3:19 12:21  
 17:10  
**asks** 15:5  
**aspects** 4:10  
**associated** 5:30  
**associates** 13:24  
**assume** 14:5  
**assuming** 14:21  
**attend** 5:23  
**attended** 2:23 6:17  
**attention** 12:34 17:13  
**automatic** 13:2,6  
**available** 17:22  
**avoid** 13:26  
**aware** 3:34 8:34 9:1  
**Act** 7:30 13:21 16:24  
**Acts** 13:2  
**ACCUSED** 4:18  
 16:7,11,17  
**All** 2:11 3:20  
 4:22,26,30  
 5:2,12,13 6:27,33  
 7:10,27,34  
 8:6,10,19,28  
 9:1,24,32 10:8,29  
 11:22 13:4,8  
 15:33 16:2,18,31  
 17:3,9,26  
**Apart** 1:30 13:19  
**Apologies** 8:24 9:31  
**Appeal** 1:2  
**Authority**  
 17:12,21,24  
**B**  
**back** 1:3 4:1,3 9:33  
 12:12 14:4 16:3  
**backing** 7:10  
**balance** 16:15  
**bank** 2:25  
**barred** 17:19  
**barrister** 9:8  
**basically** 10:13  
 11:17,23,27  
 12:3,6,7,19  
**bear** 12:11 15:5  
**bearing** 16:25  
**because** 3:19,33 5:9  
 7:33 15:27  
**been** 1:29,33 3:4,6,15  
 5:6,23  
 6:3,11,12,13,31  
 9:4,6 12:4  
 13:10,15,17 15:25  
**before** 3:7,15  
 7:1,13,16,24,32  
 11:32 14:10,32  
 16:34 17:13  
**behaviour** 15:8 16:14  
**behind** 13:27,30  
**being** 12:24 13:14  
 15:12 16:13,31  
**believe** 10:6 11:18  
**below** 5:11  
**better** 2:2 15:29  
**beyond** 1:21  
**bit** 5:1,8 12:29 16:24  
**bond** 15:7 16:7,16,27  
**booking** 1:31 2:27  
**boot** 2:11

**born** 11:14,15  
**both** 12:16  
**bottom** 3:27  
**bound** 16:12,16  
**bowel** 11:27  
**briefly** 5:19 6:27  
**bring** 7:32  
**bringing** 17:13  
**brought** 12:34  
**build** 6:11  
**bullies** 13:23  
**business** 2:4 9:2  
 11:24 12:18,19  
**Ballinrobe** 2:25  
**BROWNE** 11:20  
**But** 3:6,24,30,34  
 4:2,22,24  
 6:3,5,11,12  
 7:24,31 8:4,14,19  
 9:3,4,9 10:19  
 11:11,31,32  
 12:12,22 13:2,18  
 14:10,29 15:11,29  
 16:2,15  
 17:14,21,24  
**C**  
**calculation** 11:10  
**call** 6:18 11:31  
**called** 1:25 5:30 12:20  
 16:14  
**came** 6:33 8:5  
**can't** 9:27  
**can** 2:20 3:22 4:5,23  
 5:19 8:32 9:3  
 10:29,32 12:8,14  
 14:5,17 16:27,29  
**cancer** 9:6 12:3,4  
**cannot** 13:15,26  
**car** 2:11  
**carry** 3:25  
**cartel** 1:32,34  
 2:3,17,26 3:28  
 4:8,11,15,28 5:18  
 6:26,29 7:32 9:15  
**cases** 1:22 7:10,32  
 8:4,26 9:24  
**category** 10:2  
**caused** 13:24  
**certain** 1:16 3:6,7  
 4:23  
**certainly** 4:19,22  
 9:3,6 14:34  
**chair** 2:5  
**chaired** 1:28  
**change** 15:25  
**changed** 7:30  
**character** 1:30  
**charge** 1:12  
**charged** 6:29  
**charging** 4:7  
**cheated** 1:34 4:11  
**check** 1:31 2:6,9  
 15:30,31  
**children** 11:16 12:6  
 13:34  
**circulated** 5:32  
**circumstances** 8:33  
 9:1 12:8,14,17  
**citizen** 12:3  
**class** 13:19  
**clear** 2:34 4:1 15:6  
**clearly** 7:8 13:28  
 14:15  
**clemency** 12:30  
**come** 5:7,15 9:33  
 14:32 16:3,7,9,14  
**comfortable** 8:21  
**coming** 1:18,19 3:7  
**commenced** 7:13,16  
**commentary** 8:21  
**comments** 7:8,15  
**commercial** 4:17,18  
**commission** 14:15  
**commit** 14:17  
**committed** 13:5  
 14:28 16:26

**company** 1:25,29  
 2:16,23 3:29  
 4:2,10,12,20,21  
 5:9,16,31 6:26  
 7:19 8:3  
 9:2,13,16,17,26  
 10:8,18,19  
 11:11,34  
 12:1,18,20,24,33  
 13:6 14:2,20  
**comparatively** 9:6  
**competitive** 5:5,7  
 13:11  
**competitor** 5:6  
**complete** 18:1  
**completely** 5:10  
**compliance** 4:15  
**compliant** 3:4,11  
**concerned** 1:20  
**concerns** 1:16  
**concluded** 17:32  
**conclusion** 13:26  
**condition** 11:28 15:7  
 16:13  
**conduct** 10:24  
 13:10,16,26 14:10  
**confine** 2:31  
**connected** 1:17  
**conscious** 14:8,23,27  
**consequence** 3:11  
**consequences** 13:23  
**consequential** 3:11  
 13:1,4  
**conspiracies** 2:1  
**conspiracy** 1:23,24  
 2:2 3:30 6:32 9:19  
**constantly** 1:32  
**consumer** 13:11  
**context** 17:14  
**continue** 12:15  
**convicted** 6:31 7:4  
 9:30,32,33 13:10  
**conviction** 14:25  
**convictions** 8:33,34  
 11:1,17,28 12:2  
 13:33  
**convicted** 13:17,18  
**correct**  
 1:13,14,17,18,26  
 2:9 3:31 4:8,9,27  
 5:22,25,32,33  
 6:8,10,15,19,22,2  
 9,30,34  
 7:1,5,6,12,22,23  
 8:27 9:34  
 10:1,12,14,15,20  
 11:2,3 17:2 18:1  
**corrected** 9:3  
**cost** 5:11  
**could** 2:16 6:3 11:31  
**counties** 1:17  
**country** 13:22  
**couple** 7:18  
**course** 2:14 3:34 8:19  
 10:29,32  
 13:3,10,19 15:12  
**courts** 14:32 17:14  
**crime** 13:12,19  
 14:15,17,18  
**criminal** 1:2 3:15  
 7:23,29,31 8:4,10  
 13:9,16  
**cross** 9:22  
**curious** 8:6  
**current** 12:17  
**customer** 2:8,15  
**customers** 4:12 5:17  
**cut** 4:13  
**cutting** 4:28  
**Case** 1:1,10 3:6,9  
 4:10 5:20  
 6:6,27,31 7:3  
 8:2,19 10:10,11  
 12:11 17:32  
**Castlebar** 11:15  
**Central** 7:29,30 8:10

**Certified** 18:1  
**Circuit** 7:23,32 8:1,4  
 15:2  
**Clare** 12:21  
**Claremorris** 2:10  
**Companies** 1:23  
 2:6,17 5:15,17  
 6:30 7:18,33  
 8:19,20 9:15,18  
 10:3,4 13:2  
**Competition** 5:9 7:30  
 8:8 17:12,21,24  
**Con** 7:13  
**Connaught** 1:25  
**Connolly** 5:30  
**Coole** 11:16  
**Corrib** 5:30  
**Cosy** 12:20  
**Court's** 1:2  
**Court** 1:2 3:15  
 7:1,23,29,31,33  
 8:1,4,10,22 11:32  
 14:9 15:2,27,29  
 16:21,26,29,34  
 17:7  
**D**  
**damage** 13:24  
**date** 15:8 16:14  
**dates** 6:5,6  
**day** 1:14 12:32 15:1  
**deal** 2:20 3:18 6:27  
 8:25,32 9:8  
 10:28,29,32 13:2  
 16:27  
**dealing** 3:5  
**deals** 2:18  
**dealt** 7:20 16:21,30  
 17:7,13  
**decided** 1:27  
**decision** 14:8,9  
**default** 15:22,28  
 16:29,31  
**described** 15:1  
**destroys** 5:9  
**details** 7:27 8:13  
**determination** 14:32  
**determined** 14:22  
**dicta** 1:2  
**did** 1:19,32  
 2:13,14,24 4:24  
 5:5 7:29  
**didn't** 3:33 4:1 7:24  
**different** 5:1,8 9:2  
 10:8  
**difficult** 8:1  
**difficulties** 14:4  
**difficulty** 13:13 15:11  
**direct** 13:9 17:11,21  
**directly** 1:19 2:4  
**director** 7:19 14:25  
**directors** 8:3 10:3,5  
**discipline** 14:1  
**discuss** 15:33  
**discussion** 5:26 6:16  
**disputes** 1:32 2:5  
**disqualification**  
 13:2,6 14:25  
**distance** 9:18  
**distributors** 1:16,21  
**divulge** 9:4  
**docket** 2:14  
**dockets** 2:6,9,10,11  
**dockyards** 8:12  
**doesn't** 8:33  
**doing** 4:30 10:24  
 11:34 12:1 14:5  
**don't** 3:8 6:5 7:27  
 8:13 9:4 13:1  
 15:11  
**done** 13:25  
**double** 12:29  
**doubt** 1:1 5:14,16  
 13:16,34  
**down** 4:31 11:16  
**drawing** 12:23  
**drivers** 9:27

**driving** 4:30  
**due** 10:29,32 13:3  
**during** 15:12  
**duties** 14:31  
**DAVID** 1:8  
**Dillon** 5:20  
**DPP** 1:22 13:6  
**Dublin** 7:19,23 8:3,4  
**E**  
**each** 2:12 4:29,30  
 15:20  
**early** 7:2  
**earning** 11:32  
**economic** 13:24  
**edged** 12:29  
**effectively** 2:3 5:11  
 12:21  
**ego** 13:16  
**eight** 12:26 14:21  
**either** 9:32  
**eke** 13:21  
**elapsed** 14:33  
**elements** 5:14  
**else** 9:11  
**emanating** 6:20 7:11  
**employee** 5:21  
 10:3,18,19 12:33  
**employees** 9:25  
**employing** 14:2  
**employs** 14:21  
**end** 7:2 12:32 14:10  
**enforced** 3:13  
**enforcement** 3:10  
**enforcer** 2:3,28  
**engaged** 2:2 4:19  
 13:15 14:10  
**enormously** 4:24  
**enough** 11:34  
**ensure** 2:2  
**ensuring** 4:15,20  
**enter** 2:6  
**entered** 3:12 7:16  
 16:29,32  
**entering** 15:7 16:15  
**entirely** 6:3 9:9  
**entities** 12:1  
**entitled** 3:1,5,13  
**equivalent** 11:33  
**essentially** 1:27 5:27  
 12:23  
**even** 15:2  
**event** 4:3  
**ever** 2:13,14 7:2  
 11:27  
**every** 15:16,17  
**evidence** 1:1,5  
 2:24,29,31 3:9  
 4:7,9,13  
 5:19,21,23,26,29,  
 34 6:1,6,13,16  
 11:11 13:28  
**exactly** 1:27 3:32 4:13  
 5:12 10:5  
**examined** 1:8 9:22  
**examinership**  
 11:19,23 14:3  
**example** 1:32 2:7  
**exceeding** 11:10  
**exception** 10:7  
**exercises** 14:1  
**expenses** 2:27  
**explaining** 3:33  
**extremely** 11:25  
**Europe** 7:3  
**Euros** 7:6,7  
**Everyone** 8:12  
**F**  
**fact** 1:24 3:12 7:17,24  
 14:8,24  
**facts** 1:15  
**fair** 4:25  
**fairly** 11:25  
**fairness** 2:33 12:22  
**fake** 13:11  
**family** 12:3,7,16  
**far** 2:11 8:34 13:18

farther 12:21  
 fashion 8:25  
 fast 15:2  
 feature 2:1  
 federation 1:25 5:24  
 6:7 13:27,28,30  
 file 1:22  
 finalisation 16:34  
 finalise 16:18  
 financial 12:17  
 14:14,15  
 find 2:7  
 fine 7:21,26  
 11:9,10,12 12:15  
 14:22,23  
 15:3,10,18 16:28  
 fined 10:11  
 first 6:33 7:2 9:24  
 13:8  
 five 6:2,4 13:6  
 fixed 10:21,26 13:29  
 fixing 1:20 5:26 7:3  
 flood 7:16  
 flowing 1:18  
 follow 15:23 17:17  
 following 7:17,18  
 14:25 16:27  
 for 1:15,32,33  
 2:3,7,11,23,27  
 3:12 4:2 5:15,20  
 6:25,26,31  
 7:22,26,31 8:1  
 9:2,6 10:19,24,26  
 11:31,32,34  
 12:5,10  
 13:12,13,15,18  
 14:15,17,32,34  
 15:8,31 16:14,34  
 17:16,18,21,24  
 forces 13:11,27  
 forgets 8:13  
 form 3:10  
 formerly 1:29  
 formulated 9:29  
 forth 1:31  
 fought 10:10  
 found 2:10,14  
 four 6:1,4 9:16 12:5  
 frequently 2:1  
 fresh 1:2  
 from 1:2,14,30  
 2:11,16,17,25  
 5:16,34 6:20,29  
 7:11 8:21,25  
 12:26 13:18,19  
 15:8,9,19 16:14  
 17:12,19  
 front 13:1  
 full 2:3  
 further 3:24  
 Fade 14:3  
 Fate 10:13 11:18  
**FARRELL**  
 1:1,4,5,6,8  
 3:2,17,18,24,26  
 4:26 5:19 7:25  
 8:12,23,30,32  
 9:11 11:7,9 12:34  
 13:5  
 15:14,15,22,24,26  
 ,27,32  
 16:3,4,6,9,19,23,2  
 4,33  
 17:1,3,4,9,10,16,1  
 7,19,20,23,25,27,  
 30  
**February** 1:20 7:2  
**Fines** 8:13,17,25  
 15:25 16:24  
**Flanagan** 6:33  
 7:4,14,24,25 9:33  
 10:10 12:12,14  
**FLANNERY** 2:33  
 3:1,5,14,20,21,23  
 9:10,20,22  
 10:25,28,29,31,33

11:1,13,14,21,23  
 12:19,25,26,29  
 15:3,4,9,12,13,16,  
 21,33,34 16:26  
 17:2,5  
**G**  
 gave 5:20,23,26,29  
 6:13,16  
 gentleman 1:28  
 gentlemen 17:3  
 get 4:3 7:34 14:30  
 16:1,2  
 getting 4:31 10:24  
 give 15:10  
 given 2:14 12:2,31  
 14:33  
 gives 3:14  
 giving 1:15  
 going 3:3,8,9,18 4:18  
 11:24 12:29 15:4  
 16:26 17:16,18  
 gone 3:24  
 good 3:2 9:20,27  
 11:17 12:3  
 15:7,18 16:14  
 17:25  
 got 5:8 12:3  
 gotten 2:16  
 great 14:1  
 greed 13:12 14:15,16  
 group 1:28 12:4  
 grouping 1:27  
 guilty  
 7:11,13,16,19,23  
 8:30  
 guy 2:3  
 Galway 1:16,21 2:12  
 12:20  
**Genocide** 8:9  
**Gort** 11:16  
**H**  
 had 1:27,29,33  
 2:2,3,14 4:15  
 6:11,12,13,17  
 9:6,16,17  
 11:17,19,23,25  
 12:22 13:13,14,25  
 14:4,5 15:29  
 hand 11:24  
 handed 5:31  
 handing 13:29  
 hands 13:23  
 happen 2:1 7:29  
 14:28  
 happened 4:22 7:1  
 8:2 12:12  
 happening 7:33  
 happens 2:2  
 happy 17:3  
 hard 13:21  
 hardly 3:22  
 has 1:12 3:15 5:9  
 9:3,6,20 10:21  
 11:1,17,25,27,28  
 12:4,5,15,25,26  
 13:8,10,17,33  
 14:20,21,33  
 15:25,29  
 hasn't 14:32  
 have 1:34 2:6,16  
 3:4,6,24,33 4:22  
 5:6 6:3,11,31 8:33  
 10:34 12:34  
 13:1,7,13,15,25,3  
 4 14:22,23,24  
 15:11,27 17:12  
 having 5:23 11:26  
 he'd 2:8  
 he's 9:2,9  
 12:2,4,5,6,17,18,1  
 9,31 13:30 14:4,5  
 headed 5:32  
 health 12:32 14:4  
 hear 14:23  
 heard 2:29  
 hearing 17:11

here 3:6 8:2 16:8,9  
 herein 18:2  
 higher 5:5  
 him 6:20,25 10:26  
 11:26 12:1,21  
 13:13,14 14:2  
 15:10,18  
 himself 2:4 6:18  
 12:16  
 his  
 2:4,5,9,10,11,17,2  
 7 3:9 6:1,18 7:24  
 9:1,8 10:10  
 11:18,24,26,28  
 12:2,6,16,17,24,3  
 1 13:14,23,34  
 14:1,25  
 history 6:27 11:26  
 12:2  
 homes 2:7  
 hope 14:6  
 hotel 1:31  
 hotels 2:27  
 hour 13:15  
 house 6:18  
 however 15:1  
 huge 13:24  
 Heating 12:20  
 Hegarty's 8:32  
 Hegarty 2:20,21  
 3:27,32 4:3,23,25  
 5:23 6:13,18 9:25  
 10:2,18,21 11:14  
 12:15,26  
 13:10,12,19,23,26  
 ,33 14:13,22,34  
 15:7  
 16:8,9,10,12,28  
**Her** 8:12  
**Home** 2:10 12:20  
**How** 3:10 9:4,24,25  
 12:25  
**I**  
 idea 4:28  
 ill 9:4,6  
 illegal 13:31  
 immediately 7:13  
 importantly 12:12  
 impose 14:12,22  
 imposed 7:5 8:26  
 14:16 16:15  
 imposition 14:12  
 impossible 8:1  
 imprisonment 11:9  
 14:12,13,27 15:28  
 inappropriate 3:16  
 incident 5:29  
 include 16:28  
 including 4:24  
 income 12:6,24  
 incomes 12:13  
 indeed 1:15 4:11 5:29  
 7:3 16:5  
 indicated 11:14 15:29  
 16:29  
 indirect 13:9  
 individuals 1:23  
 6:28,30 7:18  
 industry 1:29  
 information 9:4  
 instalment 16:31  
 instalments 16:28  
 instance 3:28,32  
 4:3,24  
 instead 4:28  
 instructed 10:21  
 instruction 13:7  
 instructions 13:18  
 interest 13:14 17:12  
 interrupted 10:34  
 intimidation 4:17  
 into 2:6 3:12 4:12 8:1  
 11:19,23 12:21  
 14:3,28 15:7  
 16:16

investigation 1:12,16,21  
 invidious 14:34  
 invite 1:3  
 involved 1:23 2:4  
 3:15,29 4:2 6:16  
 9:15,18 10:24  
 12:5  
 ironically 11:34  
 isn't 9:33 11:1  
 issue 9:13 14:27,34  
 issues 7:32  
 it's 2:1,14,34 3:9  
 4:25,28 7:32 8:1  
 9:13 14:29 16:25  
 17:14,24  
 I'd 12:7 16:1,2  
 I'll 3:23 9:33 10:28  
 12:30 13:2 15:18  
 16:1,2,18  
**I'm** 3:1,8,9,13 4:18,22  
 8:21,34 9:9,11,32  
 11:24 12:29  
 13:12,18  
 14:3,8,14,20,21,2  
 7 15:4,24 17:18  
**I've** 6:25 14:14 16:24  
**International** 18:12  
**Interrupt** 16:5  
**Irland** 7:3 16:13  
**J**  
 job 11:18 14:1  
 join 4:3  
 joined 3:28  
 jurisdiction 7:28,30  
 jurisdictional 7:31  
 jury 7:2 13:28  
**Joe** 3:28,33,34  
**Judge** 1:1,3,5,18 2:33  
 3:1,3,8,17,20,22,2  
 4 4:17,32,34  
 5:1,2,4,11,13  
 7:23,28  
 8:6,7,8,10,12,21,2  
 4,27,29,31,34  
 9:7,8,15  
 10:11,24,26,29,32  
 ,34  
 11:5,6,7,8,13,14,2  
 2  
 12:17,25,28,30,34  
 13:4,8  
 15:6,11,14,15,18,  
 22,24,26,31,33  
 16:1,4,5,7,18,19,2  
 3,24,31,34  
 17:3,4,9,10,  
 Just 2:31,32 4:5  
 5:3,7,9,19 6:27  
 7:20  
 8:6,15,17,25,32  
 9:13,25,32 10:18  
 15:5,29,31,33  
**Justice** 14:9 15:2  
**K**  
 keep 5:28 11:24 15:7  
 16:13  
 kept 2:15  
 kind 1:27,30 2:1 5:12  
 8:17 10:24  
 know 2:7,8,13,29,32  
 3:1,3,8,13 4:29,30  
 9:4 12:13 14:29  
 16:1  
 known 4:26  
 Kinvarya 2:11  
**L**  
 large 5:8 7:19 8:19  
 larger 5:7  
 largest 9:16,18  
 last 6:31 12:5,22  
 14:20  
 late 3:29  
 later 1:22 7:19  
 law 13:21

lead 1:5  
 least 2:29  
 leave 12:30 15:26  
 16:1,18  
**left** 11:26  
**legislation** 15:25  
**legitimate** 4:32 13:21  
**leniency** 12:7,14  
**leniently** 7:15  
**less** 4:7 12:13  
**liability** 1:25 13:5  
**life** 11:18 13:15 14:1  
**like** 1:30 2:15 15:11  
 16:1,2  
**limit** 3:25 12:15  
**line** 3:27 4:20 5:15,17  
**list** 5:31 6:20 13:29  
**literally** 2:21 4:28  
**little** 5:1,8 12:21  
 16:24  
**lives** 14:30  
**living** 13:21  
**locations** 7:33,34  
**lodged** 2:26  
**long** 14:32  
**longer** 2:4  
**look** 12:16  
**looked** 16:24  
**looking** 12:10  
**lord** 15:9  
**lordship** 7:1  
**lorries** 12:25 14:21  
**lost** 11:18 14:1  
**lot** 3:33 8:18 11:30  
 12:1,13  
**Lambe** 1:28 2:18,19  
 3:32 7:20,23 8:2  
 10:7  
**Let** 8:25 9:8 15:1,6  
**Limited** 1:25 12:20  
 13:5 14:3  
**Ltd** 18:12  
**M**  
**made** 12:22 13:18  
 14:9 17:22  
**main** 2:22 12:6  
**majority** 13:22  
**make** 13:22 15:6 16:5  
**making** 17:19  
**man** 2:2,13,23 9:6,8  
 10:19 11:24  
 12:3,5,32  
 13:14,33,34 14:20  
**managed** 8:2  
**many** 6:3 9:24,25  
 12:25 13:9,25  
**market** 5:9 13:11  
**married** 11:16  
**masquerading** 13:29  
**matter** 11:12 12:34  
 13:9  
 14:3,11,26,32  
 15:33 16:1,2,31  
**matters** 3:7 7:28 8:17  
 16:21 17:7,13  
**maximum** 11:12  
 14:13  
**mean** 2:34 3:5 11:30  
 12:2  
**meant** 4:14  
**medical** 11:24,26  
**meet** 2:13  
**meeting** 5:23,27  
 6:21,23  
**meetings** 1:31 2:5,23  
 6:1,2,6,11,12,14,1  
 7 7:33  
**member** 3:28 4:10,11  
**members** 1:32 2:26  
 4:7,11  
**mentioned** 4:9  
 5:24,34 6:23,25  
 9:24  
**method** 4:14  
**methods** 4:14

**might** 1:5,34 2:31 3:4  
 5:6,7 9:20 16:27  
**million** 11:10,12  
**mind** 1:2 12:12 16:25  
**minded** 17:11  
**minnow** 7:9  
**minnows** 8:18  
**missed** 6:17  
**misunderstand** 9:29  
**modest** 13:21  
**monetary** 12:15  
**money** 2:25,26  
**monitored** 11:27  
**monopoly** 5:8  
**month** 7:21,26 15:20  
**months** 1:22 6:10  
 7:18,22  
 15:10,12,16,17,19,  
 ,20  
**more** 12:12 13:20  
 14:30  
**morning** 7:14  
**most** 6:20  
**motivated** 14:16  
**motivation** 13:12  
 14:15  
**move** 14:30  
**moved** 8:3  
**moving** 13:27,30  
**murder** 8:8  
**must** 14:16  
**Majesty's** 8:12  
**Manager** 2:21 18:11  
**March** 7:2,21 9:10  
 11:15  
**May** 4:22 15:21,34  
 16:19  
**Mayo** 2:12  
**McFadden** 1:4,8,10  
 3:18 5:19 7:29  
 9:8,11,24  
 11:4,5,25 17:10  
**McKechnie** 14:9 15:2  
**Michael** 6:33 12:11  
**Monday** 1:33  
**Much** 4:28 5:5 9:4  
 11:4 12:7,14,30  
 13:17 17:27  
**Mulcair**  
 3:18,28,33,34  
 4:24 5:34 6:13,17  
 13:24  
**Mulcairs** 13:20  
**Muldoon** 7:14,15  
**Myself** 16:26  
**N**  
**name** 1:28  
**narrow** 13:20  
**nature** 13:16 14:14  
**necessity** 13:25  
**need** 15:4  
**net** 12:22  
**neutral** 1:30  
**new** 3:29 4:1 6:26  
 15:24  
**next** 8:1 12:29 16:2  
**nightmare** 7:32  
**normally** 15:28  
**not** 2:9,14  
 3:3,4,7,10,15,28  
 4:2,10,18,22,24,2  
 8,32,33 6:17 8:21  
 9:9,11 11:9,31  
 13:12,17,30  
 14:8,12,24,26,28  
 15:2 16:25 17:18  
**notably** 6:9  
**notepaper** 5:32  
**nothing** 4:31 10:26  
 11:34 13:13,18  
**number** 6:1,28  
 7:10,17 9:27,28  
 14:21  
**numerous** 1:18,20  
 2:10,11 7:33,34

Now 3:7 5:14 6:26 7:28 8:8,32 9:2 10:13 12:32 14:29,32 15:19 17:9	<b>party</b> 2:32 3:27 13:30 <b>path</b> 13:21 <b>pay</b> 2:26 15:10 16:28 17:16,18,21 <b>paying</b> 2:27 <b>payment</b> 14:23 15:3 <b>peace</b> 15:7 16:13 <b>penalty</b> 11:7,9 14:14,16,17 <b>people</b> 2:11,12 7:17 9:25,30,32 13:21,22 14:10,22,30 16:12 <b>perhaps</b> 1:5 14:8,30 15:16,29 <b>period</b> 14:33 15:8,28,29 <b>peripheral</b> 13:30 <b>perplexed</b> 16:24 <b>person</b> 2:22,28 <b>personal</b> 8:32 9:1 <b>phrase</b> 4:13,22,29 5:28 <b>piece</b> 2:15 <b>piracy</b> 8:8,9 <b>place</b> 2:16 6:9,23 13:27 <b>plea</b> 7:13 <b>pleaded</b> 7:16,18,19,23,24 8:19 <b>pleas</b> 7:11,16 8:29,30 <b>please</b> 15:21,31,34 16:7,9,19 <b>point</b> 4:7 7:11 9:12 12:10,11 17:12 <b>pointed</b> 11:25 <b>police</b> 2:3 <b>policing</b> 2:17 <b>policy</b> 4:2 8:22 <b>position</b> 6:5 <b>possible</b> 1:34 2:16 12:7,14,15,31 15:10 <b>possibly</b> 7:10 <b>power</b> 5:9 <b>predecessor</b> 8:4 <b>predominantly</b> 6:9 <b>premises</b> 2:6 5:30 <b>present</b> 6:1,13 <b>presented</b> 13:11 <b>presently</b> 11:15 12:19,26 <b>presume</b> 14:2 <b>previous</b> 11:1,17,28 12:2,31 13:33 <b>précis</b> 1:5,15 <b>price</b> 1:20 4:13,20,31 5:5,6,7,31 6:20 7:2 13:29 <b>prices</b> 1:33 5:26,28 6:16 <b>pricewise</b> 4:21 <b>pricing</b> 4:26,32 5:1,8 <b>principal</b> 1:12,24 4:14 <b>principle</b> 15:11 <b>prison</b> 14:11 <b>proactive</b> 13:16 <b>probably</b> 3:19 4:14 9:29 12:29 15:28 <b>problem</b> 12:32 <b>proceedings</b> 18:1 <b>profit</b> 12:22 14:20 <b>propose</b> 7:27 8:13 15:6 <b>prosecuted</b> 6:30 <b>prosecution</b> 3:6 8:1 <b>prosecutions</b> 17:15 <b>proven</b> 3:6 <b>provide</b> 6:20 15:24 <b>provided</b> 14:13 <b>provision</b> 11:10 <b>provisions</b> 15:24 <b>pub</b> 6:23 <b>public</b> 17:13	<b>punished</b> 14:18 <b>punishment</b> 5:14 14:24 <b>purely</b> 17:11 <b>purpose</b> 1:15 5:20 <b>put</b> 1:27 4:25 <b>Park</b> 10:13 11:16,18 14:3 <b>Pat</b> 16:10,12 <b>Predatory</b> 4:26,32 5:1,7 <b>Producers</b> 1:25 <b>Q</b> <b>quarter</b> 15:17 <b>question</b> 3:19 9:29 11:7 <b>questions</b> 9:20 <b>quite</b> 1:34 4:32 14:21 <b>R</b> <b>ran</b> 2:21 10:19 <b>ranging</b> 8:25 <b>really</b> 4:33 14:24 <b>reason</b> 14:12,27 <b>reasons</b> 7:31 11:32 14:29 <b>received</b> 7:25 <b>recent</b> 6:20 14:8,9 <b>recollect</b> 15:24 <b>record</b> 4:25 11:18 12:31 18:1 <b>records</b> 11:25 <b>reference</b> 11:11 12:10 <b>refused</b> 3:29 4:10 5:17 <b>regard</b> 14:25 <b>region</b> 1:17 <b>registered</b> 7:34 <b>regrettable</b> 14:31 <b>regulation</b> 17:12 <b>regulatory</b> 17:14 <b>rejoin</b> 6:26 <b>relating</b> 15:25 <b>relation</b> 2:29,30 4:18,20,23,24 6:17,27,33 7:20 8:17 9:13 11:7,10,11,27 13:5 15:25 <b>relevant</b> 13:1 <b>remains</b> 14:26 <b>resection</b> 11:26 <b>resides</b> 11:15 <b>respect</b> 3:4 14:23 <b>respects</b> 8:18 <b>responsibilities</b> 13:34 14:31 <b>result</b> 13:9 <b>resulting</b> 11:26 <b>results</b> 13:6 <b>retrospective</b> 16:25 <b>right</b> 2:6 3:3,20 4:26,34 5:2,13 6:27,33 7:10 8:6,9,10,28,33 9:1 10:10,29 11:22 13:4 15:33 16:2,18,31 17:3,9,26 <b>rise</b> 3:14 <b>road</b> 12:25,27 14:21 <b>role</b> 2:5,17,18,19,20,2 7 <b>rooms</b> 1:31 2:27 <b>run</b> 1:28 5:19 6:9 <b>running</b> 12:18 <b>Rabbit</b> 2:21 5:21,30 9:17 <b>Rape</b> 8:8,9 <b>REGISTRAR</b> 16:10,12 17:28 <b>Roscommon</b> 2:12 <b>S</b> <b>said</b> 7:25 9:30 11:1 12:5,22 14:14	<b>sake</b> 1:33 <b>salary</b> 10:21,26 12:23 13:14 <b>same</b> 6:29 10:2 12:18,19 <b>say</b> 3:8,15,17 4:11,23 5:8 6:5 9:3,27 11:28,30 12:29 13:13 14:23 15:3,14 <b>saying</b> 3:9 <b>scale</b> 8:18 <b>searched</b> 2:9 <b>searches</b> 1:19,22 <b>second</b> 9:18 15:5 <b>see</b> 3:23 10:25 13:15 14:4,12 15:11 <b>seeking</b> 17:15 <b>seem</b> 14:33 17:17 <b>seemed</b> 2:1 6:11 <b>seems</b> 3:21 <b>selling</b> 2:4 <b>sense</b> 14:31 <b>sensible</b> 14:30 <b>sent</b> 1:22 5:23 <b>sentence</b> 7:4,22,26 15:6 16:15 <b>sentencing</b> 7:24 8:21 16:2 17:11,28,29 <b>serious</b> 9:6 12:32 13:9,26,30 14:4,17 <b>serve</b> 14:26 15:1 16:15 <b>set</b> 1:22 11:23 <b>setting</b> 6:6 <b>short</b> 14:10 <b>should</b> 1:3 9:4 11:7 12:34 14:27,28 15:22 <b>shouldn't</b> 10:34 <b>show</b> 2:21 12:7,13 <b>showing</b> 12:31 <b>side</b> 11:26 <b>similar</b> 5:6 <b>simply</b> 7:33 <b>since</b> 11:27 <b>situation</b> 3:14 <b>six</b> 6:3 7:21,26 <b>size</b> 5:6 9:13 <b>small</b> 8:18 9:27 <b>smaller</b> 4:21 5:6 <b>society</b> 12:3 <b>soft</b> 17:12 <b>sold</b> 2:3,7 <b>solicitor</b> 15:4,5,9 <b>some</b> 1:22,30 2:24 6:14 8:18 9:7,16,18 11:31 15:4 <b>somebody</b> 1:34 <b>somewhat</b> 14:34 <b>south</b> 12:20 <b>speak</b> 13:10 <b>specific</b> 3:6 <b>specifically</b> 3:19 6:5 13:20 <b>specify</b> 15:27 <b>staff</b> 9:28 <b>stage</b> 16:30 <b>stages</b> 15:12 <b>stand</b> 9:3 15:26 16:1,18 <b>start</b> 7:15 11:33 <b>statute</b> 13:1 14:14 <b>stepped</b> 4:20 5:15,17 9:2 <b>still</b> 9:2 <b>stop</b> 4:5 <b>stuff</b> 5:12 <b>stupid</b> 11:31 <b>subject</b> 14:3 <b>submission</b> 13:17 <b>subsequent</b> 5:29 <b>such</b> 2:8,31 5:9 13:16,23 14:10 17:19	<b>suffer</b> 4:24 13:23 <b>suggest</b> 4:19 16:26 <b>suggesting</b> 4:22 <b>suggestion</b> 3:14 <b>sum</b> 15:18 16:13 <b>summer</b> 6:12 <b>superior</b> 14:9 <b>support</b> 12:4 <b>suppose</b> 2:18,22 4:18 8:18 13:8 14:31 <b>supposed</b> 16:25 <b>sure</b> 6:3 9:9,11 17:18 <b>surge</b> 6:11,12 <b>surgery</b> 14:5 <b>suspend</b> 15:6 <b>suspended</b> 7:21,22,26 15:29 16:15 <b>sword</b> 12:30 <b>sworn</b> 1:8,10 <b>synopsising</b> 5:20 <b>Sell</b> 5:11 <b>Seven</b> 15:18 <b>Sorry</b> 2:32 4:6 5:1,4 8:2,24 9:29 10:34 11:21 16:1 17:10 <b>State</b> 7:34 <b>Statoil</b> 10:14 <b>Surely</b> 3:13 <b>Sweeney</b> 2:21 5:21,31 9:17 10:14 <b>T</b> <b>take</b> 2:25 14:30 16:2,7 <b>taken</b> 7:28 <b>taking</b> 13:27 <b>talking</b> 12:24 <b>target</b> 4:11 5:17 <b>targeted</b> 4:19,21 <b>teach</b> 14:16 <b>tell</b> 3:9 11:7 15:22 <b>telling</b> 10:27 <b>tended</b> 9:15 <b>term</b> 14:12,13 15:1 16:28 <b>terms</b> 17:13 <b>than</b> 4:7 5:5 13:14 <b>that's</b> 1:14,18 3:8,15,24 4:9,13,16 5:7,8,25,33 6:8,15,19,22,25,3 7:1,6,23 8:9 10:15,22 11:3,31 13:5 <b>that</b> 1:12,16,17,25,34 2:1,2,8,18,23,24,2 6:29,32,34 3:7,9,12,13,15,19, 22,24,29,31,32 4:1,3,7,8,10,13,14 19,20,22,23,25,2 6,28,29 5:9,12,14,15,16,1 7,24,26,27,32 6:1,2,10,13,14,16, 17,18,21,23,24,25 26,29,33,34 7:1,5,8,10,11,12,1 4,15,22,29 8:2,13,33 9:3,4,8,13 <b>the</b> 1:1,2,3,4,5,12,15, 16,18,19,21,22,23 24,25,28,29,32 2:3,4,6,7,9,11,12, 15,16,17,18,19,20 21,22,23,24,25,2 6,27,28,30,31,32 3:3,6,8,9,10,12,13 15,19,27,28,34 4:2,4,7,8,9,10,11, 13,14,15,20,21,23 25,28,29,30 5:9,14,17,18,19,2	0,24,28,30,31 6:5,6,9,10,12,16,1 <b>their</b> 2:14 4:2 6:31 13:31 14:30 <b>them</b> 2:13 4:3 7:31,34 10:19 14:17 17:22 <b>then</b> 2:5 5:31,34 6:23 7:17,20,28 8:4 10:24 11:33 14:2 15:16 16:18 <b>there's</b> 3:14 5:14,15 9:11 11:10,11 12:34 <b>there</b> 1:2,18 2:24 3:7,11 4:5,19 5:14,26,34 6:5,11,12,25,28 7:10,11,13,16,21, 25 8:5,17,18,19 9:27,30 10:26 11:9,34 13:1,9,13,18,20 14:17,24 15:16,25 <b>thereafter</b> 15:20 <b>therefore</b> 13:17,25,30 <b>these</b> 2:1,16 3:12 7:28 <b>they'd</b> 4:12,13 <b>they're</b> 17:15,18 <b>they</b> 1:20,27,32 2:2,14 4:15,29 5:5,16 6:9 8:19 10:3,5 11:19,23 17:16 <b>thing</b> 3:34 <b>things</b> 4:9 <b>think</b> 1:3,10,12,15,24 2:31 3:1,19,31 4:7,16,25,26 5:20,23,26,29,34 6:1,5,9,13,16,23,2 4,28,33 7:4,10,11,20,27 8:25,33 9:2,3,9 10:15 12:21 14:5 15:27,28 17:18 <b>thinking</b> 10:10 <b>this</b> 1:10,12,16,28 2:2,9,13 3:27,28,29 4:1,18,24,26,29 5:16 6:23,26,31 7:1,9 8:19,25 9:12,15,17,25 10:24 11:24,34 12:12,15 13:8,12,14,16,19, 20,22,25,30 14:3,10,11,15,20, 25,32 15:8 16:14,15,16,25 <b>those</b> 2:12 3:4,10 6:14 8:4 13:29 14:16 <b>thought</b> 6:3 <b>three</b> 9:16 11:16 12:5 13:34 15:16,17,19,20 <b>throats</b> 4:29 <b>through</b> 5:19 7:27 8:13 <b>throughout</b> 6:12 11:18 <b>time</b> 1:19,21,22 2:3 7:8 8:4 9:15,17 11:32 12:13 14:10,33 15:4 <b>today</b> 2:29 6:31 <b>together</b> 1:27 7:14,34 <b>told</b> 13:12 14:3,20,21 <b>took</b> 3:10 6:9,23 8:4 <b>total</b> 6:30 <b>totally</b> 12:11 <b>tranche</b> 15:17 <b>transcript</b> 5:20 17:11,15 18:1 <b>transpired</b> 1:24 <b>treason</b> 8:8
---	--	---	---	--	---

<b>treasurer</b> 2:24,28 13:28	<b>unfortunate</b> 11:26	7:2,4,8,11,13,15,1 6,20,21,28	<b>while</b> 12:6 15:5	<b>would</b> 1:28,30,31 2:6,7,25,26	4,30,33 14:23
<b>treated</b> 7:15	<b>unless</b> 13:6	8:3,6,17	<b>whilst</b> 1:1	3:15,24 4:11	15:3,14,21,22,27, 31,34
<b>treatment</b> 14:5	<b>unlikely</b> 11:30	9:17,27,30,33	<b>who</b> 1:12,29,30	5:15,16 6:18	16:3,5,6,7,9,10,12 ,13,14,16,19,27
<b>trial</b> 2:30,31 3:27 6:33	<b>until</b> 1:19 7:24	10:2,7,8,9,11,13,1 8,19,21,24,26	2:22,28 3:4,10,27	10:13,18 11:30	17:3,4,5,10,11,27, 30
7:1,2,13,14,16,24, 25 9:33	<b>unusual</b> 17:14	11:14,15,20,30,31	5:6,30,34 6:28	12:2,10,13	<b>young</b> 9:6 13:34
<b>trip</b> 13:16	<b>upon</b> 14:13,22,25 16:15	<b>wasn't</b> 6:3 10:8,13	9:33 10:7,19 12:5 13:20,21,22,23,24 ,29,34 14:2,10,16	13:15,24 14:12,33 15:9,11,28,31	<b>your</b> 4:12,20 7:1,8,15 8:4 12:34 16:15
<b>trouble</b> 17:10	<b>use</b> 12:30	<b>way</b> 2:12 11:33 13:16 14:1 16:2,27,29	<b>whoever</b> 2:7	16:7,9,28 17:11,17	<b>yourself</b> 7:1 16:12,16
<b>truck</b> 9:16	<b>used</b> 4:13,22 5:28	<b>ways</b> 11:31	<b>whole</b> 3:33	<b>wrongly</b> 9:29	<b>Yes</b> 1:3,11 2:19 3:26 4:23 5:28
<b>trucks</b> 9:17 12:26	<b>uses</b> 5:10	<b>we're</b> 3:5 4:29,30,31 16:24	<b>why</b> 3:8 13:15 14:12,27,29	<b>We'll</b> 2:32	6:3,12,13,15,25 7:6
<b>trying</b> 3:9 4:30	<b>using</b> 4:29	<b>week</b> 7:17,25 13:15	<b>widespread</b> 13:19	<b>Wednesday</b> 1:34	8:7,11,16,23,25,3 1 9:14,32
7:32,34 15:24	<b>V</b>	<b>went</b> 2:12 11:19,23 14:3	<b>will</b> 1:6 12:11 13:1 14:10,22 15:4,26 16:13,14 17:18,21	<b>Well</b> 3:3,5,8,14,18,21 4:28 6:12 7:28 8:12 9:8	10:2,8,9,10,13,15, 16,17,21,23,32 11:3,8,13,14 12:28 15:13,27,32 16:4,11,23,33 17:1,23,29,30
<b>turn</b> 2:13	<b>variety</b> 7:31	<b>were</b> 1:18 3:10 4:21,29 5:14 6:5,28,30	<b>willingly</b> 13:25	10:8,13,24,25,28 11:34 12:1,6 13:8 14:6 15:16,18 16:18 17:16,20	12:28 15:13,27,32 16:4,11,23,33 17:1,23,29,30
<b>turned</b> 2:17	<b>various</b> 2:27 6:6 8:26 11:32	7:8,10,15,33 8:18,19,26 9:16,25,27,32 10:3,5 12:10,13 14:2,28 17:21	<b>winter</b> 6:9,10	16:18 17:16,20	<b>WITNESS</b> 3:8 8:21 9:22 11:6
<b>turnover</b> 11:11	<b>vehicle</b> 1:24	<b>what</b>	<b>wiser</b> 14:30	<b>WordWave</b> 18:12	<b>WordWave</b> 18:12
<b>two</b> 2:15,29 8:3,19 9:16 11:9,17 14:13,26 15:6,8 16:14	<b>verified</b> 2:17	3:3,8,9,10,17,23,2 4,34 4:14 5:5,16 6:5 9:8 10:24,26 12:17,29 13:27 14:23 15:3,18,22,24	<b>wish</b> 1:3 9:11	<b>X</b>	<b>X</b>
<b>type</b> 1:30 7:32	<b>verifies</b> 2:9,13	11:16,18 12:5,32 13:2,11,13,33 14:30 15:5,11,33 16:21,27,30 17:7,13	<b>wit</b> 14:25	<b>Y</b>	<b>Y</b>
<b>typed</b> 5:31	<b>viewed</b> 13:8	<b>whatever</b> 15:29 16:5	<b>with</b> 2:18,20 3:5,18,32 4:15,20 5:30	<b>year</b> 7:19 12:22,23 13:6 14:13,20 15:6	<b>year</b> 7:19 12:22,23 13:6 14:13,20 15:6
<b>Textoil</b> 3:31,32 4:7	<b>Very</b> 1:1 3:2 4:1 5:8,19 7:8,15 8:1 9:4,6,20 11:4,17,25 12:4 13:8,17 14:8 15:18 16:18 17:25	<b>when</b> 1:32 2:9 3:28 7:28,29 10:28 11:18,23 12:3 13:11 14:17 16:25	6:20,26,27,29 7:14,19,20,31 8:21,25,32 9:8,25 10:7,28,29,32 11:16,18 12:5,32 13:2,11,13,33 14:30 15:5,11,33 16:21,27,30 17:7,13	<b>years</b> 9:7 11:9 12:5 14:26,29 15:8 16:14	<b>years</b> 9:7 11:9 12:5 14:26,29 15:8 16:14
<b>Thank</b> 10:33 11:4,6 12:33 16:6 17:3,4,5,27,30	<b>Want</b> 4:1 6:27 15:3,14,22 16:5,7	<b>where</b> 2:5,6,13,25 3:6,14 5:8,16,29 6:24,25 14:2	<b>within</b> 6:9 7:17 13:21 16:28	<b>yielded</b> 14:20	<b>yielded</b> 14:20
<b>Thanks</b> 11:5	<b>walk</b> 13:20	<b>whereby</b> 1:27	<b>witnesses</b> 4:23	<b>you'd</b> 4:21 15:4,33	<b>you'd</b> 4:21 15:4,33
<b>Tom</b> 5:29	<b>want</b> 4:1 6:27 15:3,14,22 16:5,7	<b>whether</b> 2:9 3:3 14:26 16:25	<b>wondered</b> 13:4	<b>you've</b> 4:22 5:8,24,34 6:23 8:8 9:24	<b>you've</b> 4:22 5:8,24,34 6:23 8:8 9:24
<b>Tuesday</b> 1:33	<b>wants</b> 3:24	<b>which</b> 3:12 5:5,9,31 6:31 12:4,20 13:10 14:4,11,20,24,26, 33	<b>wondering</b> 9:32	<b>you</b> 1:3,5,12 2:7,8,13,14,20,29 3:7,17,22 4:5,11,13,20,29,3 0 6:27 8:17,32 9:1,11,20,29 10:13,18,25,29,32 ,33,34 11:1,4,6,7,14,25,3 0,31 12:2,7,10,12,13,1	<b>you</b> 1:3,5,12 2:7,8,13,14,20,29 3:7,17,22 4:5,11,13,20,29,3 0 6:27 8:17,32 9:1,11,20,29 10:13,18,25,29,32 ,33,34 11:1,4,6,7,14,25,3 0,31 12:2,7,10,12,13,1
<b>U</b>	<b>warrant</b> 14:26,34		<b>work</b> 2:2 4:2 6:26 11:31 12:6 13:14	<b>yielded</b> 14:20	<b>yielded</b> 14:20
<b>uncover</b> 2:24	<b>warrants</b> 14:11		<b>working</b> 6:26 11:31 12:6 13:14	<b>you're</b> 1:10 3:5,19 10:27 12:11,23 17:3	<b>you're</b> 1:10 3:5,19 10:27 12:11,23 17:3
<b>under</b> 13:2 15:25	<b>was</b> 1:22,24,30,34 2:4,5,7,9,10,17,21 ,22,23,24,26,28 3:3,8,11,12,13,18, 27,31,32,34 4:1,2,7,9,10,13,14 ,19,23 5:5,16,21,26,31,3 4 6:1,4,5,6,16,24,25 ,26,28,33		<b>world</b> 13:20	<b>Z</b>	<b>Z</b>
<b>undercut</b> 2:8 4:12,21 5:7,10				<b>000</b> 7:21,26 8:26 11:33 12:22,23,24 14:20,22 15:19	<b>000</b> 7:21,26 8:26 11:33 12:22,23,24 14:20,22 15:19
<b>undercutting</b> 4:30				<b>100</b> 16:13	<b>100</b> 16:13
<b>understand</b> 5:16 12:17,26 15:9				<b>1971</b> 9:10 11:15	<b>1971</b> 9:10 11:15
<b>understanding</b> 11:3 17:24				<b>1979</b> 11:18	<b>1979</b> 11:18
<b>understood</b> 3:34				<b>2001</b> 1:19 3:29 14:28	<b>2001</b> 1:19 3:29 14:28
<b>undertake</b> 14:31				<b>2002</b> 1:20 7:30 12:12 14:29	<b>2002</b> 1:20 7:30 12:12 14:29
<b>undertaking</b> 11:31				<b>2005</b> 11:27	<b>2005</b> 11:27
<b>undertakings</b> 3:12,13 11:30				<b>2006</b> 7:2,21 14:4	<b>2006</b> 7:2,21 14:4
<b>undoubtedly</b> 14:11				<b>2007</b> 14:5	<b>2007</b> 14:5
<b>unfair</b> 14:34				<b>2009</b> 11:20,21 14:1	<b>2009</b> 11:20,21 14:1
				<b>3rd</b> 9:10 11:15 15:20	<b>3rd</b> 9:10 11:15 15:20
				<b>500</b> 7:4 8:25 10:11 15:19	<b>500</b> 7:4 8:25 10:11 15:19
				<b>6th</b> 7:21	<b>6th</b> 7:21