

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

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1921, ON 17 FEBRUARY 2017

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

HELD IN DUBLIN CASTLE
ON TUESDAY, 17TH APRIL 2018 - DAY 67

67

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

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1 THE HEARING RESUMED, AS FOLLOWS, ON TUESDAY, 17TH APRIL
2 2018:

3
4 MR. MARRINAN: Detective Superintendent Frank Walsh,
5 please. 10:03

6
7 DETECTIVE SUPERINTENDENT FRANK WALSH, HAVING BEEN
8 SWORN, WAS DIRECTLY EXAMINED BY MR. MARRINAN:

9 MR. MARRINAN: Detective Superintendent Walsh's
10 statement to the Tribunal investigators appears at page 10:03
11 1832 of the materials.

12 1 Q. Detective superintendent, you have already given
13 evidence earlier on --

14 A. That's correct.

15 2 Q. -- in an earlier term of reference. And you were 10:04
16 Commissioner Callinan's private secretary?

17 A. That's correct, Chairman.

18 3 Q. From January 2012, is that right?

19 A. I believe it was February.

20 4 Q. February 2012? 10:04

21 A. That's correct.

22 5 Q. I think in your statement you say:

23
24 "On 23rd January 2012, on the retirement of the then
25 private secretary, I transferred to Commissioner 10:04
26 Callinan's office as his new private secretary."

27 A. Sorry, that may be correct, my apologies.

28 6 Q. So that is correct. And I think that you worked with
29 him until his retirement in late March of 2014?

1 A. That's correct.

2 7 Q. And thereafter, with the Acting Commissioner and then
3 subsequently full-time Commissioner Nóirín O'Sullivan?

4 A. That's correct, Chairman.

5 8 Q. And you worked with her as her private secretary until 10:05
6 18th July of 2016, and at that time you transferred to
7 the Liaison and Protection Unit in Security and
8 Intelligence, is that right?

9 A. That's correct.

10 9 Q. Where was your office in relation to the Commissioner's 10:05
11 office?

12 A. The Commissioner's office is over two floors, so, if
13 you enter the front door there is a stairway leading
14 straight upstairs to the Commissioner's office. My
15 office was on the ground floor immediately on the 10:05
16 right-hand side as you entered the front door.

17 10 Q. And what did most of your work entail?

18 A. Administrative work, dealing with the public, dealing
19 with public representatives, dealing with foreign
20 police forces, embassies, etcetera. One of my main 10:05
21 roles was looking after all protected disclosure files.

22 11 Q. Right. And were these primarily matters that concerned
23 the Commissioner, that you were dealing with as his
24 private secretary in the first instance with
25 Commissioner Callinan? 10:06

26 A. To a certain extent. There would -- I suppose, yeah,
27 they would have dealt with the Commissioner on a
28 personal basis but I suppose 50% personal to the
29 Commissioner and the rest would have been general to

1 the organisation.

2 12 Q. All right. So he looked to you as his administrative
3 officer, isn't that right?

4 A. That's correct. There were two positions: There was a
5 personal assistant who is at the rank of chief 10:06
6 superintendent, the chief superintendent would have had
7 responsibility for policy matters; the private
8 secretary, which was my role, I would have had
9 responsibility for day-to-day administration.

10 13 Q. And who was the chief superintendent at that time? 10:06

11 A. It was Chief Superintendent Orla McPartlin at the time.

12 14 Q. And in terms of your working relationship with
13 Commissioner Callinan, how would you describe that?

14 A. Good professional working relationship, yes.

15 15 Q. Obviously you were on friendly terms with him? 10:07

16 A. Reasonably friendly with the Commissioner, yes. We
17 attended some social events together, he would have
18 asked me to accompany him to some social events, yes,
19 so friendly basis.

20 16 Q. Well you know the matters we are considering and 10:07
21 principally you are being called in relation to a
22 letter that had been sent to the Commissioner by
23 Mr. Kean, solicitor?

24 A. That's correct, yes.

25 17 Q. But just before we come to that, so that we can get a 10:07
26 flavour of your knowledge of what was going on at the
27 time, obviously in late 2013 the issues that Maurice
28 McCabe had agitated about were to the fore, is that
29 right?

1 A. That's correct, yes.

2 18 Q. And one is assuming that there was a great deal of
3 discussion about it informally at Headquarters?

4 A. Yes, I have given evidence previously that there were a
5 lot of rumours around Headquarters at that time. 10:08

6 19 Q. Well, I am not talking about rumours in relation to
7 Maurice McCabe; I am just talking about discussions
8 about the issues as they presented themselves.

9 A. Yes, yes.

10 20 Q. And there is no harm in that, one would have thought it 10:08
11 might be encouraged that people would openly discuss
12 these issues. From your discussions with the
13 Commissioner, could you discern what his position was?

14 A. His position was that he was trying to solve the
15 problems that were coming up. It was -- it was very 10:08
16 much, there was a lot of material appearing in the
17 public domain and he was trying to address the issues.
18 My sense was that, while he wasn't enjoying obviously
19 what was happening, that he was anxious to address the
20 issues and was trying to address them at that 10:09
21 particular time.

22 21 Q. Well, obviously he wasn't enjoying what was happening
23 but did he regard, as far as you could tell, Sergeant
24 McCabe as perhaps a thorn in the side of the Gardaí?

25 A. I couldn't -- I could give a personal opinion on that, 10:09
26 but I couldn't -- I couldn't refer to any particular
27 time when I recall a conversation involving him giving
28 out about Sergeant McCabe.

29 22 Q. Well, just feel free to express your personal opinion

1 in relation to it.

2 A. Well, my personal opinion was, yes, that he wished it
3 would go away and he was hoping to try and address the
4 issues. But as I say, I never -- I can't recall any
5 conversation that we may have had where he castigated 10:09
6 Sergeant McCabe or was --

7 23 Q. That is very helpful. Did you get any -- did you get
8 any sense that perhaps Commissioner Callinan was
9 becoming frustrated with the issues surrounding
10 Sergeant McCabe? 10:10

11 A. I would say that is probably fair to say, yes. I think
12 everybody was frustrated with the issues that were
13 appearing at that particular time. We were trying to
14 address them in the midst of other work that was very
15 important and had to go on, so it was an extra burden, 10:10
16 I suppose, on the office that we could have done
17 without but, nevertheless, it needed to be addressed
18 and I believe we were trying hard to address it at the
19 time.

20 24 Q. Now, obviously subsequently when Commissioner 10:10
21 O'Sullivan took over the reins, substantial progress
22 was made in relation to dealing with whistleblowers,
23 isn't that right?

24 A. I believe so, yes.

25 25 Q. And indeed, I think it fair to say that Commissioner 10:10
26 O'Sullivan met face-to-face with Sergeant McCabe, isn't
27 that right?

28 A. She did indeed, as did I. She asked me to go and meet
29 him. I met Sergeant McCabe in Mullingar and we sat

1 down for a meeting for several hours.

2 26 Q. well, was there any discussion perhaps towards the end
3 of 2013 that you might have had with Commissioner
4 Callinan that perhaps he ought to have met face-to-face
5 with Sergeant McCabe to discuss the issues? 10:11

6 A. I don't recall ever having that conversation with him,
7 no.

8 27 Q. Was there anybody suggesting at senior management level
9 that perhaps that's what ought to be done?

10 A. It may have been suggested to him, I genuinely don't 10:11
11 know. It was not in my presence, to the best of my
12 recollection. I can never remember it being suggested
13 that he should sit down and meet with him. I know at
14 the time the Commissioner was anxious to get out to the
15 various stations and meet people, and certainly we, as 10:11
16 his staff, were encouraging that. Commissioner
17 Callinan was a person who was literally in the office
18 from 7:00-7:30 in the morning until late in the
19 evening. I do recall saying to him on several
20 occasions that it would be good to get out and about 10:12
21 and meet people, probably good for himself as well
22 because he was -- and I don't wish to be seeing to be
23 buttering the man up, he had his faults like anybody
24 else, but he spent long hours in the office and I
25 personally thought it would be good that he would get 10:12
26 out and meet people outside in stations and show
27 himself out there as the Commissioner. That may have
28 been an opportunity for him to meet Sergeant McCabe,
29 but I don't believe I ever said to him you should go

1 and meet Sergeant McCabe.

2 28 Q. Was there any sense at this time in December of 2013,
3 going into January of 2014, that the Commissioner was
4 being overwhelmed by the problems that were presenting
5 themselves? 10:13

6 A. Certainly, as an office staff, I think we were all
7 probably worried that things were getting -- the volume
8 of allegations and instances that were coming before
9 him were becoming greater and greater and that he was
10 under pressure, I have no doubt about that. Again it's 10:13
11 not something that I would have discussed, I wouldn't
12 have said, Commissioner, you are under pressure, you
13 need to take a few days off.

14 29 Q. No, I understand that, but I mean, your views in this
15 regard are very helpful. Previously you told the 10:13
16 Chairman that rumours were rife in Garda Headquarters
17 in relation to Sergeant McCabe?

18 A. That's correct, Chairman, yes.

19 30 Q. And because you had dealt with him personally that you
20 didn't attach any significance, and certainly you 10:14
21 weren't one to spread any rumours in relation to him?

22 A. Well, that plus the fact that I had responsibilities
23 for the confidential reporting documents, I would have
24 an in-depth knowledge of them, and I would feel that
25 maybe I would be a target to ask me a question, people 10:14
26 might know that I knew something about them so I was
27 very circumspect as to what I would discuss.

28 31 Q. What were the rumours?

29 A. Well, the rumours -- I suppose it was more a curiosity

1 about Sergeant McCabe's motive for bringing these
2 matters to light.

3 32 Q. And what was being attributed as his motive?
4 A. I suppose the motive that was being spoken about at the
5 time was that he wasn't happy with how the DPP's 10:14
6 directions were conveyed to him arising out of the
7 alleged incident that occurred some years previously,
8 and that perhaps that he was some way annoyed over this
9 as well and was getting his own back on his management.
10 They were the types of rumours. 10:15

11 33 Q. And did you at any time discuss that with the
12 Commissioner?
13 A. I have no recollection of discussing it in any detail.
14 It may have been discussed, I couldn't say for definite
15 that I didn't, but there is nothing remarkable jumping 10:15
16 out at me to say, yes, I remember a conversation that
17 we had. I don't believe so, no.

18 34 Q. Well, is it a position that you don't believe that you
19 had any discussion with him touching on the subject of,
20 I'll put it, the 2006 investigation of Sergeant McCabe? 10:15
21 A. Yes, I don't believe that the Commissioner and I had a
22 direct conversation involving that. I may have been
23 present in a room while the matter was being discussed.
24 I couldn't say that I wasn't, but I have no
25 recollection of anything specific being discussed 10:16
26 between he and I. And our relationship, as I said, was
27 professional and I would bring files to his attention
28 and discuss them and decide the best way to deal with
29 them. More often than not the Commissioner would

1 decide the best way to deal with them. I would advise
2 on occasions and he wouldn't necessarily always take my
3 advice, but that's just -- that is the way the office
4 worked. So we wouldn't be sitting down having a
5 general conversation and discussing other people's
6 curiosity on the questions that were being asked about
7 files we were dealing with. 10:16

8 35 Q. Superintendent Taylor was the press officer at this
9 time, is that right?

10 A. That's right, yes. 10:16

11 36 Q. And we have a statement from, or a number of statements
12 from Superintendent Taylor. Was he a frequent caller
13 to the Commissioner?

14 A. He was a frequent caller, yes.

15 37 Q. And were they close? 10:17

16 A. They seemed to be -- they seemed to be close, yes.

17 38 Q. All right. Okay. Just on one matter, I think that you
18 had previously given your career in An Garda Síochána,
19 and I think that you were attested in 1981, is that
20 right? 10:17

21 A. That's right, November '81, yes.

22 39 Q. And that you were in Pearse Street?

23 A. That's correct.

24 40 Q. And that sergeant -- or Commissioner Callinan was a
25 sergeant in Pearse Street? 10:17

26 A. He was there as a sergeant at that time, yes.

27 41 Q. You have heard some cross-examination and discussion
28 here at the Tribunal in relation to John Wilson and a
29 story that it's suggested was circulating in Pearse

1 Street --

2 A. That's correct.

3 42 Q. -- in or around about that time. Do you recall that?

4 A. I have a vague recollection of that. I actually worked 10:17

5 with -- John Wilson was on the same unit as I was on.

6 John arrived there two or three years after I, so I

7 know John Wilson quite well, yes. I have a

8 recollection of the incident. If I was asked to swear

9 it was true, I couldn't, I don't honestly know.

10 43 Q. You have a recollection that it was something that 10:18

11 was --

12 A. Yeah, I am not sure was it because I read it in the

13 transcripts recently or do I remember it from way back.

14 44 Q. Ah, well now, there is a big distinction between the 10:18

15 two, as to whether or not you remember it as something

16 that was discussed or you remember it just simply from

17 hearing it at the Tribunal?

18 A. Yeah, but it is nearly 30 years ago.

19 45 Q. I know, but...

20 A. I genuinely couldn't say I remember it happening. 10:18

21 46 Q. But do you remember discussion about it back in your

22 time in Pearse Street?

23 A. I don't really, no.

24 47 Q. You don't?

25 A. No, no. 10:18

26 48 Q. When was it that former Commissioner Callinan arrived?

27 I think he didn't arrive until 1986, is that right?

28 A. Em, I don't know that. I know he was there for a short

29 time. I really don't know.

1 49 Q. We will hear from him in due course. In terms of the
2 impending appearance of the Commissioner before the
3 Public Accounts Committee, you recall that?
4 A. I do.

5 50 Q. Did you attend any of the pre-PAC meetings? 10:19
6 A. I didn't.

7 51 Q. Yes. They were quite extensive, isn't that right?
8 A. That's correct, yes.

9 52 Q. And a great deal of effort went into preparing for
10 them -- 10:19
11 A. That's correct.

12 53 Q. -- isn't that so? But you didn't have any role or
13 function in appearing, in the Commissioner's
14 appearance?
15 A. Not in his appearances other than I would have prepared 10:19
16 material on protected disclosures, I would have
17 prepared possibly a document saying how many protected
18 disclosures there had been and how many had been
19 finalised, how many were ongoing, etcetera.

20 54 Q. You recently had an interview with our investigators? 10:20
21 A. That's right.

22 55 Q. It went on for I think four hours in total, maybe
23 longer, and it dealt with a letter that the Tribunal
24 uncovered, and notes made by former Commissioner
25 Callinan touching on matters of concern to Sergeant 10:20
26 McCabe. Have you time had time to reflect on matters
27 further beyond what you discussed with our
28 investigators?
29 A. No, I think I made a very open and frank discussion

1 with the investigators. I told them everything that I
2 know about the letter.

3 56 Q. There is just one perhaps issue, and if we could look
4 at it, look at it more closely, but in a general sense;
5 you'll appreciate that the Chairman asked for 10:21
6 information touching on the terms of reference to the
7 Tribunal, isn't that right?

8 A. Yes, that's correct.

9 57 Q. And you are aware of the fact that the Tribunal wrote
10 out to each superintendent or garda of superintendent 10:21
11 rank and above --

12 A. Yes.

13 58 Q. -- for information that could be of assistance to the
14 Tribunal, and you got that letter, isn't that right?

15 A. I did indeed, yes. 10:21

16 59 Q. And in fact, you very helpfully provided a very long
17 and detailed statement to the Tribunal, but there was
18 no reference to this incident --

19 A. That's correct, yes.

20 60 Q. -- in that, isn't that right? 10:21

21 A. That's correct.

22 61 Q. You are also, I am sure, aware of the fact that,
23 similarly, Commissioner Callinan was asked to make a
24 statement to the Tribunal, and, in fact, was
25 interviewed on a number of occasions, extensively over 10:22
26 hours, and he made no reference to this incident
27 involving Gerald Kean, isn't that right?

28 A. Well, I am not aware of it. I take it that that is
29 correct.

1 62 Q. And similarly, Mr. Kean didn't advise the Tribunal, but
2 that is perhaps understandable because he is outside
3 the process. So as matters stood, the Tribunal wasn't
4 informed in relation to this letter that had been sent
5 by Gerald Kean in his interaction with the 10:22
6 Commissioner, isn't that right?
7 A. That's right, yes.
8 63 Q. And not only that, the letter received in the
9 Commissioner's office didn't appear on the
10 correspondence register, isn't that right? 10:23
11 A. I don't know that.
12 64 Q. Well, I think that you were shown a copy of it by the
13 investigators?
14 A. Of the correspondence register?
15 65 Q. Yes. 10:23
16 A. Yeah, possibly. yes, I am sure I was, yeah.
17 66 Q. I think it was pointed out to you that it didn't appear
18 there?
19 A. Okay, yeah, I accept that, yes.
20 67 Q. And there was no formal response to it, isn't that 10:23
21 right?
22 A. That's correct. In that, there was no response in
23 writing.
24 68 Q. Yes. well, no formal response?
25 A. There was a response, there was no -- yeah, I accept 10:23
26 there was no formal response.
27 69 Q. Well, your response was informal, we will come to it in
28 due course, but your response was informal, isn't that
29 right?

1 A. Yes.

2 70 Q. So there was no formal response. You keep a diary in
3 relation to appointments and such matters, isn't that
4 so?

5 A. Yes, there was an electronic diary, I also have a 10:24
6 personal diary.

7 71 Q. And there is no reference in that to a meeting with
8 Mr. Kean?

9 A. There is a reference in my personal diary, yes.

10 72 Q. what? 10:24

11 A. There is a reference in your personal diary.

12 73 Q. You kept a reference of that, is that right?

13 A. Yes.

14 74 Q. You might be able to provide that to us.

15 A. I have already discovered it. I have the diary with me 10:24
16 here also.

17 75 Q. That is excellent. Thank you. So, as far as these
18 matters are concerned, there was actually nothing in
19 the Commissioner's office to suggest that a letter had
20 been seen -- received from Gerald Kean, isn't that 10:24
21 right?

22 A. The letter was in the office.

23 76 Q. Yes, but other than that?

24 A. It seems not. Yeah.

25 77 Q. And there ought to have been a record? 10:24

26 A. There ought to have been, yes.

27 78 Q. The letter that was received ought to have been filed
28 on Sergeant McCabe's file, isn't that right?

29 A. That's correct.

1 79 Q. That file stretches to some 3,500 pages?
2 A. Correct, yes.

3 80 Q. But it didn't make its way to the Sergeant McCabe file?
4 A. It didn't, no.

5 81 Q. I mean, somebody looking at this may think that this 10:25
6 was sort of a matter that was being swept under the
7 carpet so nobody would be able to see what had
8 happened?
9 A. Okay, well, perhaps --

10 82 Q. Is there any sense of that? 10:25
11 A. No, not at all, no.

12 83 Q. Okay. well, you have had an opportunity to see
13 Commissioner Callinan's supplemental statement that he
14 made?
15 A. Yes. 10:25

16 84 Q. And you'll appreciate from that that he made no
17 reference at all to talking to Gerald Kean prior to the
18 Marian Finucane show on the Saturday?
19 A. I was never aware that he had spoken to Gerald Kean.

20 85 Q. You are aware from superintendent -- or Mr. Callinan's 10:26
21 supplemental statement to the Tribunal?
22 A. Yeah, I am aware now since I met the investigators,
23 yes.

24 86 Q. Yes. Is your evidence and does your evidence, does it
25 remain that you had no knowledge that he had spoken to 10:26
26 Gerald Kean on the Saturday?
27 A. Absolutely, yes.

28 87 Q. Does it surprise you that he didn't tell you that?
29 A. Not particularly, no.

1 88 Q. Well, right, we will come to that anyway. If we could
2 just perhaps, if you could just give your evidence as
3 to how this first arose, what did the Commissioner say
4 to you in the first instance?

5 A. Okay. I understand the letter came by courier, I 10:26
6 understand it was marked "Private and Confidential".
7 In the normal course of events, post arriving to the
8 Commissioner's office is sorted in a downstairs
9 administration office, it's sorted by staff there.
10 There are three Civil Service staff and two sergeants 10:27
11 attached to the office, so they would divide up the
12 post into its various categories, such as personal,
13 secret, confidential, private and confidential,
14 etcetera, etcetera. What they could open was opened
15 and was put through the correspondence register. 10:27
16 Letters that were marked "personal", "private and
17 confidential" etcetera would be delivered either
18 directly to myself or the chief superintendent for us
19 to deal with. In the normal course of events we would
20 open the post that was appropriate for us to open and 10:27
21 send them back downstairs to be entered on to the
22 correspondence register. Matters that were private and
23 confidential or personal, we would bring to the direct
24 attention of the Commissioner for he or she to open
25 them themselves, unless we were directed otherwise. 10:28
26 There may be a case where a letter would arrive, if the
27 Commissioner wasn't in the office and I might be
28 talking to the Commissioner on the phone and say there
29 is a personal letter here for you, sometimes it would

1 be obvious what it was, it would be obvious where it
2 was coming from and I could say it's one from the
3 Department, from the Secretary General, whatever it
4 might be, and invariably I would be told, go ahead,
5 open it and see what it is. So then, we could deal
6 with it like that.

10:28

7
8 This particular letter, I understand was delivered by
9 courier, would have been probably delivered to myself.
10 I have no recollection of actually getting the letter,
11 we had huge volumes of post, I have no recollection of
12 getting that particular letter but I do recall
13 discussing it with the Commissioner. In the normal
14 course of events I would have brought that letter to
15 the Commissioner, handed it to him to open or maybe he
16 would have asked me to open it. I recall --

10:28

10:28

17 89 Q. If we just can look at the letter as it came in at
18 1878. You see there:

19
20 "Dear Martin

10:29

21 I enclose copy letter which I have received --"

22 A. There is nothing on the screen. Can I refer to my own
23 documents?

24 90 Q. Yes, you can. It's in volume 7 if you wish to refer to
25 it there.

10:29

26 A. And sorry, the page number?

27 91 Q. 1878.

28 A. Yes, I have it here now.

29 92 Q. "Dear Martin

1 I enclose copy letter which I have received from
2 Maurice McCabe. I am also enclosing draft response. I
3 have not sent these letters to the other person. I
4 would be grateful if you would look at the letter that
5 I have received and my proposed draft response. I need 10:29
6 to be factually correct, and any assistance would
7 certainly be appreciated."
8

9 And enclosed with that is a letter that was sent by
10 Maurice McCabe to Mr. Kean, and that appears at page 10:30
11 1879, going to page 1881 of the material. This is
12 clearly a private matter between Sergeant McCabe and
13 Mr. Kean, isn't that right?

14 A. That's correct, yes.

15 93 Q. It had absolutely nothing to do with the Garda 10:30
16 Commissioner, isn't that right?

17 A. No, ostensibly, no.

18 94 Q. And you weren't aware of the fact that, of course,
19 according to Mr. Kean, and this hasn't been confirmed
20 by Mr. Callinan, but according to Mr. Kean he had 10:30
21 spoken with Commissioner Callinan on the Saturday
22 before his appearance on the 26th January on the Marian
23 Finucane Show, he had spoken at length with the
24 Commissioner and in fact got most of the information
25 that he subsequently used on the show from the 10:31
26 Commissioner?

27 A. That's correct.

28 95 Q. You weren't aware of that?

29 A. I was not aware, no.

1 96 Q. So this was just, as far as you were concerned, a
2 letter effectively out of the blue from Mr. Kean to the
3 Commissioner, asking for some advice in relation to a
4 private matter between he and Sergeant McCabe, isn't
5 that right? 10:31

6 A. I'm sorry, I don't follow the question.

7 97 Q. This was a letter out of the blue from Mr. Kean to the
8 Commissioner, is that right --

9 A. Yes.

10 98 Q. -- looking for advice from the Commissioner -- 10:32

11 A. Yes.

12 99 Q. -- in relation to a private matter between Mr. Kean and
13 Sergeant McCabe?

14 A. Private matter, em, well, it was very much a public
15 matter obviously at that point in time. 10:32

16 100 Q. Well, no, it's a private matter insofar as Mr. McCabe,
17 in his letter -- or Sergeant McCabe in his letter to
18 Mr. Kean, sets out clearly that he believes that he has
19 been defamed.

20 A. Okay. 10:32

21 101 Q. Isn't that right?

22 A. Yes.

23 102 Q. This is a matter, a private matter between Sergeant
24 McCabe and Mr. Kean.

25 CHAIRMAN: In other words, what is being put to you is 10:32
26 it's not part of the Commissioner's public duties, it's
27 two citizens having a row with each other, which of
28 course will go to the courts and become public, but as
29 regards the public function of the Commissioner, it's

1 nothing to do, it would seem on the face of it, with
2 the public function of the Commissioner. Is that fair,
3 Mr. Murrinan?
4 MR. MURRINAN: Yes, sir.

5 A. I would disagree slightly, Chairman, in that, the fact 10:33
6 that it had been aired on the public airwaves, then in
7 my opinion it was now a public matter.

8 103 Q. In your opinion. And in your opinion do you think it's
9 appropriate for the Garda Commissioner to be advising a
10 solicitor as to how he should draft a response to a 10:33
11 letter concerning an action for defamation? Do you
12 think that is appropriate?

13 A. No, I didn't believe so.

14 104 Q. No. I mean, in hindsight, the fact that this matter
15 was even considered by the Commissioner at the time was 10:33
16 inappropriate, wasn't it?

17 A. I wouldn't go that far. I would say --

18 105 Q. Well, it ought to have been referred to the Press
19 Office if Mr. Kean was merely seeking information,
20 isn't that right? 10:34

21 A. Possibly, yes.

22 106 Q. Yes. Or Mr. Kean ought to have been advised in a
23 fairly frank letter saying that it wasn't a matter for
24 the Garda Commissioner and if he wished to find out
25 information in relation to this matter, he could look 10:34
26 at the transcript from the PAC meeting where the
27 Commissioner set out his stall, isn't that right?

28 A. That would certainly be an alternative means of dealing
29 with it, yes.

1 107 Q. Yet it appears that the Commissioner sought some advice
2 from you as to how he should deal with this letter, is
3 that right?

4 A. We had a general discussion on it, yes.

5 108 Q. And did you perhaps venture a view, look, this isn't 10:34
6 really a matter for you, why is Mr. Kean writing this
7 letter to you?

8 A. Em, my concern with the letter -- Sergeant McCabe's
9 letter to the solicitor was very obviously something
10 that may end up in litigation, and I thought it was 10:35
11 inappropriate for the Commissioner to be seen to be
12 advising a solicitor in a case involving a member of An
13 Garda Síochána which would possibly go before the
14 courts for adjudication.

15 109 Q. Well, it wasn't just inappropriate to be seen to be 10:35
16 doing that; it was inappropriate to do it, isn't that
17 right?

18 A. Yes, yes, absolutely, yes.

19 110 Q. So you advised the Commissioner that in your view that
20 it was inappropriate? 10:35

21 A. I actually agreed with the Commissioner, he was also of
22 the view that it was inappropriate.

23 111 Q. Yes. But of course, you weren't aware of the fact that
24 he had spent nearly an hour on the phone on the
25 Saturday? 10:36

26 A. No, I was not, no.

27 112 Q. And he didn't tell you?

28 A. He didn't, no.

29 113 Q. Does it surprise you, looking back at this in

1 hindsight, that he didn't advise you, look, the reason
2 that I got this letter is because I gave him the
3 information?

4 A. Knowing Commissioner Callinan, no, it doesn't surprise
5 me and I don't mean anything bad by that. But he 10:36
6 wouldn't normally have long conversations with me in
7 relation to who he was speaking to. So no, it doesn't
8 surprise me.

9 114 Q. Ah, look, you are dealing with a letter that has come
10 in. I'm sure it's not every day of the week that a 10:36
11 solicitor writes in looking for advice from the Garda
12 Commissioner as to how to respond to a letter that had
13 been written in relation to proposed defamation
14 proceedings, it's not every day of the week, is it?

15 A. It's not every day of the week. 10:36

16 115 Q. Has it ever happened before?

17 A. I couldn't recall a specific instance but I deal --
18 well, at that point in time I dealt with maybe 20
19 letters a week from solicitors to the Commissioner.

20 116 Q. So you must have at the very least have found this 10:37
21 somewhat peculiar?

22 A. It was unusual, most definitely unusual, yes.

23 117 Q. But perhaps not so had you been advised that
24 Commissioner Callinan had provided the information to
25 Mr. Kean before he went on the show? 10:37

26 A. That would certainly have put a different slant on it,
27 yes.

28 118 Q. Yes. So I will come back to the question that I asked
29 you: Are you surprised that Commissioner Callinan

1 didn't tell you that nugget of information that perhaps
2 would have thrown some light on this unusual
3 occurrence?

4 A. Well, given the type of relationship I had with the
5 Commissioner, that is what I have been just trying to 10:37
6 explain. I am not surprised, no. It would have been
7 preferable for me trying to advise if I knew all the
8 facts, obviously, but I wasn't given that information,
9 so...

10 119 Q. So, in any event, did you both then consider the letter 10:38
11 that had been sent by Sergeant McCabe to Mr. Kean?
12 CHAIRMAN: Just before you go on there, Mr. Marrinan,
13 forgive a brief interruption. What Mr. Marrinan has
14 been asking you about, superintendent, he says, look,
15 you are sitting in the Garda Commissioner's office, you 10:38
16 are his secretary, you are in charge of administration
17 and a letter comes from in from a solicitor, a
18 well-known solicitor, saying, oh, Maurice McCabe is
19 suing me for libel and here is a draft response to his
20 initial letter, now please advise me. And the word 10:38
21 bizarre may be bandied about but surely you were
22 utterly astonished and I am not getting any sense of
23 that, or any sense of how your conversation developed
24 and I really do need your help on that.

25 A. Chairman -- 10:39
26 CHAIRMAN: I mean, I can't think of anything stranger.
27 I mean, there has been a lot of strange things but this
28 is really, really, really strange.

29 A. I would say, Chairman, utterly astonished would be very

1 strong. I wasn't utterly astonished by it. But I will
2 try and set out the conversation that we had in
3 relation.

4 CHAIRMAN: Right, do. You know, Superintendent, given
5 that it must be the case certainly that, in the course 10:39
6 of correspondence, you get a lot of letters from a lot
7 of disgruntled people --

8 A. Yes.

9 CHAIRMAN: -- who may or may not necessarily be
10 completely lacking in paranoia and so you would get odd 10:39
11 correspondence, but this is a piece of official
12 correspondence from a solicitor to the Garda
13 Commissioner asking him, apparently out of the blue,
14 how do I reply to a letter from Maurice McCabe accusing
15 me of libelling him on the radio? So the first 10:40
16 question that would come into your head is: well, what
17 has that got to do with us? We should surely put it in
18 the file for people who are somewhat out of touch with
19 reality and that's the place for it, not any
20 conversation with the Garda Commissioner? 10:40

21 A. Well, Chairman, I will try to explain the conversation
22 we had around it, I am kind of waiting for it to
23 develop to that point in time. I can do it now if you
24 wish.

25 CHAIRMAN: well, yes. 10:40

26 120 Q. MR. MARRINAN: well do, because, I mean, I am not
27 getting any flavour at all of just how bizarre this is,
28 do you understand?

29 A. I understand where you are coming from, yes.

1 Bizarre --

2 121 Q. You see, as a lawyer, and you have studied some law
3 yourself, isn't that right?

4 A. Yes.

5 122 Q. And that is why the Commissioner was bringing you in on 10:41
6 this?

7 A. That's correct, yes.

8 123 Q. It just seems quite astonishing that a solicitor would
9 request the Garda Commissioner, who was the employer of
10 Sergeant McCabe, to help him draft a legal letter in 10:41
11 response to the letter from Sergeant McCabe?

12 A. I agree, I agree 100 percent.

13 124 Q. Do you find it as astonishing as I am stating it to be?

14 A. Astonishing is not the word I would have used.

15 125 Q. What word would you use? 10:41

16 A. Most unusual, and inappropriate. And that is what I
17 said and agreed with the Commissioner; that it was
18 inappropriate for him to send a response to Mr. Kean on
19 this letter, given that the subject of the letter would
20 probably end up in litigation and involved a member of 10:42
21 An Garda Síochána, for whom the Commissioner had
22 responsibility.

23 126 Q. Well, you know, I mean that was what you said to the
24 investigators, because it might end up in litigation.
25 I mean, is that because we might be discovered in 10:42
26 giving this help to Mr. Kean?

27 A. No.

28 127 Q. It was either inappropriate or it wasn't.

29 A. It was inappropriate, yes.

1 128 Q. Yes. But in any event, the letter that was drafted by
2 the Commissioner, the handwritten letter, is at page
3 1895 of the material. I don't intend to open it all,
4 but did he draft this in your presence?
5 A. No. 10:43
6 129 Q. He drafted this privately in his office, did he?
7 A. Yes.
8 130 Q. And you will see that the first paragraph there is in
9 the first person: "Can I just --"
10 A. Mr. Marrinan, if I may just go back -- 10:43
11 131 Q. Yes, of course.
12 A. -- because I am anxious to address what the Chairman
13 has asked about the conversation that we had.
14 132 Q. Of course, yes.
15 A. The Commissioner expressed his view that this matter 10:43
16 was inappropriate for him to address back to Mr. Kean.
17 I was in agreement with that, for the reasons I have
18 stated, given that Maurice McCabe was a member of the
19 force, etcetera, etcetera. The Commissioner was still
20 anxious to do something for Mr. Kean, and I do 10:43
21 recollect him saying, because he was a great supporter
22 of the guards and he was anxious to assist him in some
23 way. Now, that is the conversation that we had around
24 this. Most likely what happened after that was,
25 because I don't remember exactly, but the Commissioner 10:44
26 said he'd take some time to consider it and the next
27 thing that he came up with was his handwritten notes on
28 this.
29 133 Q. Chief superintendent, it would appear that the

1 Commissioner was deceiving you at the time, if that is
2 the conversation that you had, wouldn't it?

3 A. It would appear that I certainly didn't have all the
4 information.

5 134 Q. Well, that he was deceiving you and quite deliberately 10:44
6 deceiving you, because it wasn't a matter of Mr. Kean
7 being in some way or expressing views, positive views
8 about the Gardaí; it was the fact that Mr. Callinan had
9 assisted Mr. Kean during the course of a conversation
10 he had with him on Saturday the 25th January, we know 10:44
11 that to be so?

12 A. We know now, yes. I know that now, yes.

13 135 Q. So if Mr. Callinan was offering you a reason as to why
14 he should respond to what was agreed to be an
15 inappropriate letter and he was saying he was doing it 10:45
16 because Mr. Kean was in some way well-disposed to the
17 Gardaí, he was in fact deceiving you, isn't that right?

18 A. Deception is very strong word. He certainly wasn't
19 giving me all the information. I can't really speak to
20 his state of mind, but I think deception is probably a 10:45
21 strong word.

22 136 Q. The letter starts off in the first person:
23
24 "Can I just first of all say that I am invited on
25 several radio and television programmes to discuss many 10:45
26 topical issues where I voice my opinions as I am
27 entitled to do and I hope I always act fairly to
28 everyone."
29

1 Looking back on this and looking at the content of this
2 draft and the whole circumstances that we are dealing
3 with here, do you regret dealing with it in the way
4 that you did deal with it?

5 A. Certainly if I had the information then that I have 10:46
6 now, I would have dealt with it differently.

7 137 Q. And do you think in any sense that the fact that this
8 was done at all perhaps reflects on the view that the
9 Commissioner Callinan had towards Sergeant McCabe at
10 the time and was influenced by that? 10:47

11 A. That calls for an opinion which is -- I don't think my
12 opinion is --

13 138 Q. Well, you are very close --

14 A. -- relevant.

15 139 Q. Well, it is, and you are very close to what was going 10:47
16 on at the time.

17 A. So what -- I'm sorry, what you are asking me then is?

18 140 Q. Do you think the fact that Commissioner Callinan
19 drafted this inappropriate response for Mr. Kean was
20 influenced by his attitude towards Sergeant McCabe at 10:47
21 the time?

22 A. At the time he drafted the response I believed that
23 this was an attempt to get over an administrative
24 impasse, so to speak.

25 141 Q. All right. And the administrative impasse, it could 10:47
26 have been dealt with by just simply writing back to
27 Mr. Kean, pointing out that his letter was
28 inappropriate, isn't that right?

29 A. It could have, yes.

1 142 Q. It could have been dealt with by writing back to
2 Mr. Kean and referring him to the Garda press officer?
3 A. That's correct, yes.

4 143 Q. It could have been dealt by writing back to Mr. Kean
5 and referring him to the evidence that had been given 10:48
6 by the former Commissioner to the Public Accounts
7 Committee?
8 A. That's correct, yes.

9 CHAIRMAN: But I am wondering about the use of the
10 words impasse. Why is it an impasse? I mean, it's 10:48
11 perfectly clear what one ought to do: This is nothing
12 to do with me, send this particular individual who
13 clearly is not fully is touch with reason for writing
14 to me about this thing, to Superintendent Taylor or
15 somebody in the Press Office and palm him off with a 10:48
16 few statistics and get him off my back, isn't that the
17 response you'd actually have expected?
18 A. Yes, Chairman, the difficulty was, as I say, I didn't
19 have the full information, I didn't know there had been
20 other telephone calls. The impasse as I referred to, 10:49
21 as I referred to it, stems from the fact that the
22 Commissioner realised, and I advised, that it was
23 inappropriate to respond to it. Notwithstanding that,
24 the Commissioner was anxious to do something to assist
25 Mr. Kean because of the fact, as he put it, that he was 10:49
26 very -- he was very good to the guards or was a great
27 supporter of An Garda Síochána and he was anxious to
28 assist him.
29 CHAIRMAN: I still don't -- I still don't see that.

1 You can be a great supporter of the Dublin Gaelic
2 football team and not drafting responses on their
3 behalf to any libel actions that might be taken against
4 individual members of them.

5 A. I appreciate that, Chairman, but that was the decision 10:49
6 that was made at the time based on the facts as --
7 well, I knew them at that particular time.

8 CHAIRMAN: But you must have thought the Commissioner
9 had lost all touch with reality?

10 A. Certainly in hindsight, Chairman, if I was aware of the 10:49
11 other telephone calls that had taken place, I would
12 have looked at this completely differently, but based
13 on the information that I had and what I was told at
14 that particular time, I agreed that this was a good way
15 of dealing with what we saw as an impasse, that we'd 10:50
16 try and assist him in some way. We did discuss the
17 content of what was going back to Mr. Kean.

18 CHAIRMAN: Right. We have got to that point,
19 Mr. Marrinan. Excuse my interruption.

20 144 Q. MR. MARRINAN: But in any event, the handwritten letter 10:50
21 at page 1895, and then that was given to you, is that
22 right, and you typed up a note, you typed that up.
23 It's at page 1896.

24 A. That's correct, yes.

25 145 Q. And there are four paragraphs on that, and I think that 10:50
26 you had indicated to the Commissioner that you knew
27 Mr. Kean personally, is that so?

28 A. That's correct.

29 146 Q. And it was decided that no written response or formal

1 response would be made, is that right?

2 A. I'm not quite sure was that ever decided as such, that
3 there would be no written response, but it was
4 certainly decided that I would go and see him, see
5 Mr. Kean. 10:51

6 147 Q. well, what was the purpose of that?

7 A. The purpose of that was to assist him arising from the
8 Commissioner's concerns.

9 148 Q. what concerns?

10 A. His concerns that he was anxious to assist him in some 10:51
11 way because he was a supporter of An Garda Síochána.

12 149 Q. But you just -- you write a letter, all right, in
13 response, that's the first option, isn't that right?

14 A. Yeah, I am merely trying to say that I have no
15 recollection of the Commissioner saying do not write to 10:51
16 him or me saying we will not write to him.

17 150 Q. The normal response that one would expect is that you
18 write a letter in response to a letter, isn't that
19 right?

20 A. That would be the normal response, yes. 10:52

21 151 Q. If not, you pick up the phone and you make a phone
22 call, isn't that right?

23 A. That's right.

24 152 Q. what is the purpose of setting up a meeting for a
25 face-to-face with Mr. Kean? what is the reason for 10:52
26 that in this instance?

27 A. well, from my point of view, it was to convey the
28 Commissioner's thoughts and response to the letter.

29 153 Q. why couldn't that be done on the phone?

1 A. There is no reason it couldn't be done on the phone.

2 154 Q. So in any event, you make an arrangement to go to
3 Mr. Kean. What date was it that you went in February
4 to --

5 A. I believe it was the 12th February. 10:52

6 155 Q. 12th. And I think that the investigators went through
7 some telephone records that we had, but they merely
8 indicate that you phoned the Commissioner first thing
9 in the morning and then phoned Mr. Kean I think, and
10 then later on went down to Mr. Kean's office, isn't 10:53
11 that so?

12 A. That's correct, yes.

13 156 Q. And that you saw Mr. Kean for about half an hour, is
14 that right?

15 A. Yeah, I would have thought it was less than half an 10:53
16 hour.

17 157 Q. Right. And you had this typed note with you, is that
18 right?

19 A. That's correct.

20 158 Q. And we know that that typed note, that the four 10:53
21 paragraphs made it -- made their way into Mr. Kean's
22 response to Sergeant McCabe, isn't that right?

23 A. That's correct.

24 159 Q. And that response is at 1898. And we know that the
25 second paragraph there - "I would like to say that I am 10:54
26 invited on several radio and TV programmes..." - that
27 that is almost verbatim from the note and paragraph one
28 of note, isn't that right?

29 A. That's correct, yes.

1 160 Q. And then if one turns over the page at page 2, the
2 subject of the fixed charge penalty system on the show
3 that day, that corresponds with paragraph 2 of
4 Commissioner Callinan's note, isn't that right?
5 A. That's correct, yes. 10:54
6 161 Q. Again, the next paragraph, it was also the case of
7 course that the Data Protection Commissioner's views --
8 that is verbatim, paragraph 3 of Commissioner
9 Callinan's note, isn't that right?
10 A. That's correct. 10:54
11 162 Q. And then the next paragraph:
12
13 "I have no doubt that GSOC investigation will fully
14 examine all of these matters."
15
16 That is paragraph 4 of the note, isn't that right?
17 A. Yes, that's correct.
18 163 Q. And can you just tell us how it is that that is so?
19 A. Because I brought it to Mr. Kean and discussed it with
20 him. I think the investigators asked me whether I left 10:55
21 him a copy, I don't recall leaving him a copy. I think
22 it's quite obvious that I did because he has them
23 verbatim. I don't believe I brought the handwritten
24 version. But I certainly brought the typed version.
25 As I say, I couldn't swear 100 percent that I left a 10:55
26 copy of it, but I would say quite possibly I did.
27 164 Q. Well, regardless, somehow or another the Commissioner's
28 draft made its way into the actual letter that was sent
29 by Mr. Kean?

1 A. That's correct, yes, I accept that.

2 165 Q. And you then left and returned to the Commissioner.
3 Did you update him then as to what had happened?
4 CHAIRMAN: Just before we get to that point,
5 Mr. Murrinan, I think Mr. Kean said that one of the 10:56
6 possibilities was that he had actually dictated the
7 letter in front of the superintendent, and I don't
8 know, he wasn't particularly definite about that.

9 166 Q. MR. MARRINAN: Was there any possibility?

10 A. I don't believe so. If he was -- I can't remember him 10:56
11 dictating it. I think I would remember that so I would
12 say, no, that didn't happen.

13 167 Q. You see, one way of looking at this, and looking at it
14 at the bigger picture in relation to this, and forgive
15 me for putting this so bluntly as I am going to put it; 10:56
16 I mean, one view of this is that this was something
17 that was very obviously inappropriate, there should
18 never have been any assistance offered to Mr. Kean,
19 that the only reason that assistance was offered to
20 Mr. Kean was because Commissioner Callinan took the 10:57
21 view that Mr. Kean was in conflict with Sergeant
22 McCabe, right, and that he didn't want to side with
23 Sergeant McCabe but he'd side with Mr. Kean to put down
24 Sergeant McCabe, do you understand?

25 A. I understand. I don't necessarily agree but I 10:57
26 understand.

27 168 Q. Yeah. Well, I am just putting the bigger picture to
28 you.

29 A. Yeah.

1 169 Q. That he didn't want to do this publicly or where there
2 would be a record of his interaction with Mr. Kean, so
3 that he sent you down with the note to either give to
4 Mr. Kean or read out to Mr. Kean, which would be part
5 of his response to Sergeant McCabe, and that you'd 10:57
6 return from your mission and there would be no record
7 kept of that in the Commissioner's office?
8 A. I disagree with that.

9 170 Q. Yes. That's perhaps an extreme view of what may have
10 occurred. But then there has to be some other 10:58
11 explanation if that is not correct, do you understand?
12 A. I do.

13 171 Q. Because we have a series of factors that would tend to
14 suggest that this was being done unofficially, all
15 right, and that this wasn't an official response, and 10:58
16 therefore, Commissioner Callinan's time that was
17 occupied drafting this letter, the time that it took to
18 discuss these matters with you and for you to be
19 dispatched off to Mr. Kean's office, was utilised for a
20 particular reason, all right, and it wasn't just the 10:59
21 reason to keep Mr. Kean happy. Can you help us in any
22 way at all in relation to your view, looking back at
23 this in hindsight and with the benefit of hindsight, as
24 to what was actually going on?
25 A. Certainly. With the benefit of hindsight, as I say, I 10:59
26 would have done things differently knowing what I know
27 now. After I delivered or read these to Mr. Kean, I
28 returned and the investigators tell me there was a
29 phone call between -- from my number then to the

1 Commissioner's -- to the Commissioner, so I am
2 assuming -- I don't recall it but I am assuming I would
3 have rung him and told him I have been down with
4 Mr. Kean, I have given him the details, that is where
5 we are currently at. In relation to this being a 10:59
6 clandestine activity, certainly I can see why it would
7 be seen that that is what we were trying to do.

8 172 Q. Yes.

9 A. I think the mere fact -- or the very fact that the
10 letters are here before the Tribunal shows there was no 11:00
11 attempt by me to hide these letters in any way, shape
12 or form. After I rang the Commissioner on that day my
13 next port of call would be to put this matter through
14 the system because it hadn't been correspondence
15 registered, corr reged as recall it. So my next action 11:00
16 after the meeting with Gerald Kean would have been to
17 return the file into the typing pool, get it to be
18 assigned a number. The number it should have been
19 assigned and the file it should have been on is the
20 three-and-a-half thousand page filed that I have 11:00
21 previously referred to on Sergeant McCabe. And if I
22 may just take this opportunity as far as disclosure in
23 response to the Chairman's letter is concerned, once I
24 got that letter, I immediately went to the
25 Commissioner's office and retrieved Sergeant McCabe's 11:00
26 file on which all correspondence that I dealt with in
27 relation to Sergeant McCabe I would have normally said
28 was definitely filed. On this case I would say this
29 letter wasn't on it for some reason, I don't really

1 know why. So, therefore, that is why it wasn't
2 discovered when the Chairman originally wrote looking
3 for discovery. I would have assumed everything on the
4 file was discovered. This obviously wasn't on the
5 file, but it was on a file, it has been discovered. 11:01
6 Now, I would accept I didn't discover it because I had
7 no recollection of it. My diary entry for the 12th
8 February 2004 [sic] reads:

9
10 "Gerald Kean meeting at 11:30am." 11:01

11
12 That is the only note I have of it.

13 173 Q. Does it say it's in relation to Sergeant McCabe?

14 A. No, it doesn't. And if I could point out also that the
15 correspondence register system it would normally -- if 11:01
16 a case -- if a letter came in with a heading on the
17 letter, heading, shall we say, the 'DPP v. Frank
18 Walsh', if that was the heading on the letter, the file
19 would be put on the correspondence register and the
20 file description would be the 'DPP v. Frank Walsh', 11:02
21 followed by the number that was assigned to it. I just
22 note from Mr. Kean's letter that there is no heading on
23 the letter. It may be an explanation, I cannot say,
24 but it may be an explanation as to why it got filed on
25 a different file, and I don't know where it was filed, 11:02
26 to be quite honest, but it was filed. So there was no
27 attempt, either to escape discovery on the matter or to
28 hide the file some place. And I may not have answered
29 all of the original question, I'm sorry, I took the

1 opportunity to try and explain.
2 174 Q. Yes. No, that is fair enough. You have to be given
3 every opportunity. Thank you very much.
4 A. Thank you.

11:03

5
6 MR. McDOWELL: No questions, Chairman.

7

8 THE WITNESS WAS CROSS-EXAMINED BY MR. MICHAEL

9 O'HIGGINS:

10 175 Q. MR. MICHAEL O'HIGGINS: Good morning, superintendent.
11 My name is Michael O'Higgins.

11:03

12 A. Morning.

13 176 Q. I am counsel for Superintendent Taylor and I have a few
14 questions for you, I hope not to be very long.

15 A. Thank you.

11:03

16 177 Q. You knew Commissioner Callinan and at the time Deputy
17 Commissioner Nóirín O'Sullivan professionally, isn't
18 that right?

19 A. That's correct, yes.

20 178 Q. You didn't know my client but you observed him going in
21 and out of the Commissioner's office?

11:03

22 A. That's correct, yes. I would know him on a hello
23 basis, on a first name basis, yes.

24 179 Q. It seems, and correct me if I am wrong, that you had an
25 ongoing contact with Sergeant McCabe over a period?

11:03

26 A. That's correct, Chairman, yes.

27 180 Q. And just, the context for that is, I think in your
28 statement when you said there were rumours going around
29 you said you didn't want to be party to it because you

1 had contact with him and you didn't want that contact
2 sullied by reference to that?

3 A. That's correct, Chairman, yes.

4 181 Q. When you made your statement to the Tribunal, did you
5 consult your diaries to see what contact you had had 11:04
6 with Sergeant McCabe?

7 A. Yes, I did, yes.

8 182 Q. And would that also have included your personal diary?

9 A. Yes.

10 183 Q. And can I ask you, am I correct in my view that in your 11:04
11 original statement to the Tribunal, you didn't mention
12 this matter?

13 A. The Gerald Kean matter?

14 184 Q. Yes.

15 A. That's correct, yes. 11:04

16 185 Q. And would the diary entry not have alerted you to an
17 event? what was the actual entry, can you recollect?

18 A. The entry just says "Gerald Kean meeting at 11:30 on
19 12th February 2014".

20 186 Q. And when you were going through your diary would that 11:04
21 not have alerted you to a Sergeant McCabe moment, for a
22 want of a better description?

23 A. It possibly would have if I had Sergeant McCabe's name
24 on it. If I could point out, I reviewed I think maybe
25 six diaries, and I have one of them before me, and I 11:05
26 have it marked with the various entries that were
27 appropriate and that needed to be discovered. This is
28 one of six, as I say. This entry, to me, wasn't
29 remarkable, and --

1 187 Q. I do appreciate it was Mr. Kean as opposed to Sergeant
2 McCabe, but given that this was your only contact with
3 Mr. Kean and must be, I would assume you would accept
4 my categorisation of it as an unusual contact, would
5 that not have brought immediately to mind Sergeant 11:05
6 McCabe?

7 A. It should have, but I obviously completely missed it.
8 It's not marked in any shape or form on the diary.
9 Everything else is tabbed, it's not marked
10 unfortunately. 11:06

11 188 Q. All right. You have said a couple of times in answer
12 to questions that if you had known then what you know
13 now, you would have dealt with it differently, and you
14 have expressly made reference to some telephone calls
15 of which you were unaware, but for my assistance, would 11:06
16 you set out what it is that you know now that had you
17 known then would have coloured your approach?

18 A. Well, I understand from testimony that has been given
19 that Commissioner Callinan was in contact with Gerald
20 Kean prior to his appearance on the RTÉ programme and 11:06
21 that he gave him, or allegedly gave him certain
22 information that Mr. Kean used during the course of
23 that programme.

24 189 Q. Now, I infer from your answer, therefore, that in your
25 discussions with Commissioner Callinan and in your 11:07
26 discussions with Mr. Kean, the Marian Finucane
27 programme didn't get referenced?

28 A. I would imagine it did. I wasn't aware of the Marian
29 Finucane programme.

1 190 Q. Sorry, maybe I put the question a bit more tight: That
2 Marian Finucane wasn't referenced and/or, and more
3 pertinentlly, Commissioner Callinan's reference to
4 Marian Finucane was not referenced to you either by the
5 Commissioner Callinan or by Mr. Kean? 11:07

6 A. Sorry, are we talking about when the letter came in and
7 my discussion --

8 191 Q. Yes, we are talking about the morning you spoke to the
9 Commissioner and the time you spent in Mr. Kean's
10 office -- 11:07

11 A. Yes.

12 192 Q. -- neither Commissioner Callinan said to you words or
13 words effect, I was aware Mr. Kean was going on the
14 programme and I gave him a steer, and Mr. Kean didn't
15 say, look, I have said these things on the radio, I'm 11:08
16 vulnerable now and I want to know can the Commissioner
17 supply me with the evidence to back up what he said,
18 neither of those conversations took place?

19 A. No, they did not.

20 193 Q. Could I just ask you to look at Mr. Kean's letter. I 11:08
21 think it's at page 1878.

22 A. Yes.

23 194 Q. Now, if, to take a slightly different hypothesis, let
24 us suppose there had been no contact between
25 Commissioner Callinan and Mr. Kean prior to the 11:08
26 programme and this letter arrived in, it wouldn't --
27 you wouldn't have been having the discussion you were
28 having, isn't that so?

29 A. That's correct, yes.

1 195 Q. And the letter is written to the Commissioner but
2 commences "Dear Martin", isn't that right?
3 A. Yes.
4 196 Q. Which is a rather informal approach, isn't that so?
5 A. Yes. 11:09
6 197 Q. And it says:
7
8 "I need to be factually correct and any assistance
9 would certainly be appreciated."
10 11:09
11 Did it occur to you that a letter written in that
12 manner might be predicated on a conversation preceding
13 it?
14 A. It didn't occur to me, no.
15 198 Q. It didn't occur to you. Now, the letter wasn't 11:09
16 recorded in the post register?
17 A. It seems not, no.
18 199 Q. And to be clear --
19 A. It certainly wasn't on the day it came in. No, it
20 wasn't. 11:09
21 200 Q. And to be clear, your statement deals with this in some
22 detail. That wasn't, because it was marked private or
23 confidential, isn't that right?
24 A. Well, originally it was because it was marked private
25 and confidential. 11:10
26 201 Q. But that wouldn't explain its exclusion from the post
27 register?
28 A. No, it wouldn't, no.
29 202 Q. Because there is a method to deal with that?

1 A. Yes.

2 203 Q. And when you arrived in the office, Commissioner
3 Callinan already had the four paragraphs drafted?

4 A. When I arrive -- no, I gave the Commissioner the
5 letter, he opened it, we had a quick discussion around 11:10
6 the appropriateness or otherwise of responding to it.
7 Most likely the Commissioner said leave it with me, I
8 will have a think about it.

9 204 Q. All right.

10 A. He subsequently produced the four paragraphs. 11:10

11 205 Q. And just to be clear about this, the Commissioner
12 didn't say words or words effect, oh great, I spoke to
13 Mr. Kean on this, giving a bit of background and now I
14 am dragged into the middle of this row, he never said
15 anything to that effect? 11:11

16 A. I have no recollection of that.

17 206 Q. Well, I mean, no recollection might allow for the
18 possibility of such a discussion taking place but not
19 remembering it, versus no such discussion took place,
20 can you tell us where you are on those? 11:11

21 A. I would say no such discussion took place. Because, as
22 I say, I wasn't aware of any prior phone calls or
23 anything like that, so I still wasn't aware until I met
24 with the investigators that there had been prior phone
25 calls -- prior phone calls. So I would say, in all I 11:11
26 would say that, no, that conversation that did not take
27 place.

28 207 Q. And Mr. Kean said in his statement to the Tribunal that
29 once the threat of proceedings had been made he wanted

1 the Commissioner to provide the evidence to him in
2 respect of that which he had said to him a couple of
3 days previously, and he emphasised that many, many
4 times in his evidence here before the Tribunal, but you
5 seem confident he never mentioned that he had had prior 11:12
6 communication with the Commissioner before going on the
7 programme?

8 A. That the Commissioner never mentioned it to me?

9 208 Q. No, Mr. Kean. Mr. Kean in his statement to the
10 Tribunal said, look, I wrote to the Commissioner 11:12
11 because I wanted him to produce evidence of what he
12 told me.

13 A. Okay.

14 209 Q. And he mentioned this many, many times in giving
15 evidence, but he never mentioned it to you that he had 11:12
16 had prior communication and that the Commissioner had
17 provided him with information?

18 A. Mr. Kean never mentioned, no, he didn't. No.

19 210 Q. He didn't. Okay. Now, you volunteered to talk to
20 Mr. Kean. Was that before or after the Commissioner 11:12
21 had an opportunity to think, when he said leave it with
22 me for a while, when did the suggestion spring that
23 someone would talk to him; was it at that point or
24 later, or can you remember?

25 A. I think it was probably -- most likely at that point in 11:13
26 time, because the Commissioner was in a quandary as to
27 how he would deal with it. And I suppose in an effort
28 to assist I told him that I knew Mr. Kean, that he had
29 acted for me previously, and that I had known him for

1 some years.

2 211 Q. There is from my recollection, I hope this is correct,
3 some indication that there was contact between the
4 Commissioner's office and Mr. Kean before you went to
5 Mr. Kean's office, did the Commissioner tell you about 11:13
6 that, no?

7 A. There was contact that morning, it would seem from the
8 telephone records.

9 212 Q. Yes.

10 A. That was obviously me ringing Gerald Kean to set up the 11:13
11 meeting.

12 213 Q. Right.

13 A. That was from my telephone extension to Mr. Kean's
14 mobile telephone number, as far as I can recall.

15 214 Q. Now, you make reference to the four paragraphs and you 11:14
16 describe them as notes, isn't that right?

17 A. Yes.

18 215 Q. And I wonder if we could just put those up on screen
19 for a moment, please, the typed version is easier to
20 read. 1896. Now, I don't want to be unnecessarily 11:14
21 pedantic about this, but, first of all, I would
22 respectfully suggest to you, they are not notes; notes
23 are notes that are made of relevant points, but why I'm
24 suggesting to you these are not notes is that this is
25 actually the voice of Mr. Kean speaking in the first 11:14
26 person and written in a manner in which it's both
27 anticipated and calculated will appear in Mr. Kean's
28 responding letter to Sergeant McCabe, do you follow me?

29 A. I follow you, yes.

1 216 Q. In other words, it's not a coincidence that this format
2 appeared in the letter, but rather, from its very
3 creation that was its only purpose, do you follow me?
4 A. I follow you.

5 217 Q. And when this was presented to you, it must, I suggest 11:15
6 to you, have been presented to you in terms that the
7 Commissioner was saying, this is what I think he should
8 put in his letter, isn't that right?
9 A. That's correct, yes.

10 218 Q. Yes. What was your response to that? 11:15
11 A. I don't believe I had a response to the fact that it
12 was being written in the first person --

13 219 Q. Okay. What impression did you form as a result of that
14 request?
15 A. My main concern at that point in time was that no 11:16
16 information was being provided to Mr. Kean that wasn't
17 already in the public domain.

18 220 Q. Well, I wonder could that assuage any of your concerns?
19 I mean, the issue isn't whether the information is
20 private. The information -- the crux, it seems to me, 11:16
21 is, if it is a crux, that the Commissioner is assisting
22 a solicitor to respond in a piece of litigation, and
23 the assistance is being provided in a way that it is
24 the thoughts of the solicitor, when in fact it's his
25 own thoughts; do you see the distinction? 11:16
26 A. I see the distinction, yes.

27 221 Q. And mindful of the questions that were asked earlier,
28 that this was in effect a private dispute between
29 citizens, how unusual do you think it is that the

1 Commissioner was writing in the first person material
2 that would go into that letter which was unattributed
3 to him and untraceable to him?

4 A. I don't agree that it was untraceable to him. The
5 Commissioner's handwritten notes and the letter and my 11:17
6 typed version of -- we disagreed that they are notes,
7 the handwritten note is how I described it, but they
8 were all in the Commissioner's office on a file,
9 perhaps not on the correct file but on a file in the
10 Commissioner's office. There was no attempt to hide 11:17
11 those.

12 222 Q. When I say unseen or untraced or unattributable I am
13 saying that the person sending the letter makes no
14 reference to the Commissioner; the person receiving the
15 letter is unaware of the Commissioner's contribution, 11:17
16 that is what I mean by that.

17 A. Okay.

18 223 Q. I mean, do you think it's an acceptable thing to do?

19 A. I think -- to try and answer the question, I think you
20 are asking me, my concern with this letter was not 11:18
21 whether it was written in the first or third person; my
22 concern with the letter was that it was correct and
23 already in the public domain, that we weren't in breach
24 of any data protection issues or anything like that by
25 providing it. They were the concerns I had. To be 11:18
26 honest, I didn't give it any thought as to whether it
27 was in the first person or not.

28 224 Q. Both yourself and the Commissioner, it appeared,
29 readily formed the view it wouldn't be appropriate to

1 overtly engage in the matter, isn't that right?

2 A. We formed -- well, my view was that it wouldn't be
3 appropriate to engage at all.

4 225 Q. Yes. Well, does it follow then that this was not an
5 appropriate engagement if you are saying you didn't 11:18
6 think it was appropriate to engage at all, does it
7 follow you don't think this is an appropriate
8 engagement?

9 A. Well, having discussed the matter with the
10 Commissioner, he was anxious to assist Mr. Kean 11:19
11 because, as I said, of the quote, Mr. Kean is a good
12 friend or is very friendly towards the guards and he
13 was anxious to assist him. That is where I was coming
14 from in delivering the --

15 226 Q. You see, if it were the case that it would not have 11:19
16 been appropriate to engage overtly, I would suggest to
17 you that the case for engaging covertly is even less
18 plausible?

19 A. It was certainly never meant to be a covert engagement.

20 227 Q. Well, how was it supposed to be anything different when 11:19
21 the Commissioner was writing in the first person to the
22 solicitor in a fashion that was never going to be
23 visible, how could it be anything other than covert,
24 with respect?

25 A. With respect, the fact that the file is before us today 11:19
26 will show that it was never meant to be a covert visit.
27 Had the file been properly recorded on Sergeant
28 McCabe's file, it would have been discovered earlier
29 and I would have had the opportunity address this at an

1 earlier stage.

2 228 Q. Could I ask that page, sorry, page 26 of your
3 statement, and I will give the proper number for that
4 just in one moment, page 1857, please.

5 A. Yes. 11:20

6 229 Q. If I could ask you to go -- that you were dealing at
7 line 387, as you describe, with a little bit of an
8 impasse, isn't that right?

9 A. That's correct, yes.

10 230 Q. And you go on to say: 11:20

11

12 "We were both agreed it wasn't prudent for us to write
13 back to Mr. Kean given it was a legal adviser seeking
14 advice from the Commissioner."

15 11:21

16 Isn't that right?

17 A. That's correct.

18 231 Q. "In relation to a matter which could end up being in
19 court." Isn't that right?

20 A. Yes. 11:21

21 232 Q. "Especially in the light of the fact that the subject
22 of the letter was a serving member of An Garda
23 Síochána."

24 A. Yes.

25 233 Q. So am I correct in interpreting that, that if there had 11:21
26 been an official response the Commissioner would have
27 been the subject of both scrutiny and in all
28 probability or certainty criticism for adopting that
29 course?

1 A. I think that the thought process was more just on the
2 appropriateness. I don't think -- I certainly didn't
3 give any thought to what might happen with any such
4 letter later on in proceedings.

5 234 Q. The question of getting any advice from the head of 11:21
6 internal legal affairs did not arise, is that right?

7 A. Did not arise, no.

8 235 Q. Is that a surprise?

9 A. Usually, I suppose, letters from legal representatives 11:22
10 would be referred to the head of legal services. On
11 this occasion the Commissioner was dealing with the
12 matter, he had decided this was the way he was going to
13 deal with the matter, so therefore it wasn't sent on
14 that route.

15 236 Q. Well, in effect, is it your answer that the manner in 11:22
16 which the Commissioner was dealing with it by his
17 conduct, indicated he had considered the option of
18 legal affairs and was not going to resort to it or did
19 he actually apply his mind to it?

20 A. I couldn't say. And I don't recall applying my own 11:22
21 mind to that particular avenue, and I don't recall it
22 being discussed, no.

23 237 Q. Could I just ask you to go to the next page, I am 11:23
24 almost finished now, at line 403. I just want to read
25 through a few lines:

26
27 "I have no recollection of saying to Gerald Kean that
28 the notes were being provided to him 'off the record'.
29 I think the fact that I was going to meet Mr. Kean and

1 the fact we were not committing the notes to formal
2 correspondence then that could be considered as being
3 off the record."
4
5 You see that? 11:23
6 A. I do.
7 238 Q. Is that your -- do you think the same as you're sitting
8 here now as when you put that in your statement?
9 A. Yeah. Well, it was an answer to a specific question
10 from the investigators as regards whether the matter 11:23
11 was on or off the record, so I was trying to explain my
12 thought process on it at the time.
13 239 Q. And you did view it as being off the record?
14 A. I am sorry, say again.
15 240 Q. You did view it as being off the record? 11:23
16 A. Em, yeah, it's off the record, yes.
17 241 Q. Now, the words off the record has perhaps different
18 meanings and connotations to people, but in a general
19 sense I would take an off the record exchange to be one
20 that is confidential between the parties and will not 11:24
21 be disclosed to third parties unless there is some
22 overriding obligation to do so, would that be a fair
23 description?
24 A. That would, yes.
25 242 Q. why was it necessary to be dealing in that level of 11:24
26 subterfuge?
27 A. Well, I would disagree with the subterfuge aspect of
28 it, in the first instance, and if -- to refer back to
29 the previous line on the statement that you quoted

1 from, you will see that it also -- not only refers to
2 Mr. Kean, it refers to a member of An Garda Síochána.
3 My concern, and I believe the Commissioner's concern at
4 the time, related not only to protecting Gerald Kean,
5 it was also to protect a member of An Garda Síochána 11:24
6 who may be involved in litigation with the solicitor.

7 243 Q. Sorry?

8 A. It's just important to point out that it wasn't -- this
9 wasn't about protecting Gerald Kean. It was equally
10 about protecting a member of An Garda Síochána for whom 11:25
11 the Commissioner had responsibility.

12 244 Q. So are you putting forward the proposition that the
13 persons whom the Commissioner was seeking to protect
14 was primarily Sergeant McCabe and perhaps indirectly
15 Mr. Kean? 11:25

16 A. No, I would say both equally.

17 245 Q. Could I suggest to you that there was a third person
18 who was being protected and whose interests were
19 dwarfing the other two, which was Commissioner
20 Callinan's own position? 11:25

21 A. You are suggesting it to me? Yeah, I can see why you
22 would say that, yes.

23 246 Q. You can see why I would say that?

24 A. Yes.

25 247 Q. You are a little bit hesitant at the description of 11:25
26 your dealings in this matter as being clandestine, but
27 could I point to the straws in the wind, which I'd
28 respectfully suggest do point up very strongly that it
29 was clandestine. Firstly, the letter didn't make

1 itself on to the post register; second, it never got
2 filed on Sergeant McCabe's file; thirdly, there was no
3 official response; fourth, the official response was
4 drafted in a way to keep the Commissioner off the
5 radar; five, it never got mentioned in initial 11:26
6 statements; and taking all of those together
7 cumulatively, they point very strongly to the fact that
8 when Mr. Kean said here in evidence the other day that
9 it was clear to him that the Commissioner did not want
10 a record of any contact with his office, that is what 11:26
11 was happening?

12 A. I see where you are coming from, but I would again
13 suggest that there is another element to it and that is
14 the fact that the letters and my typed notes and the
15 Commissioner's handwritten notes are here before the 11:27
16 Tribunal today.

17 CHAIRMAN: Sorry, superintendent, you appreciate to get
18 to that, Commissioner never told us, you never told us,
19 Mr. Kean never told us, and it took counsel rooting
20 through tens of thousands of documents to actually find 11:27
21 this, and then lo and behold, when the investigators
22 put it to people, everybody says oh, I am so grateful
23 for you to draw this to my attention, now I remember
24 it, despite the fact that this must be one of the most
25 bizarre things you ever had to do in the course of your 11:27
26 duties.

27 A. I wouldn't say that, Chairman. I would point out,
28 Chairman, that in December of last year, I got an email
29 from an office in Headquarters and it was -- official

1 email is not the correct word, but it was a general
2 email to various people asking did anybody know about a
3 file dealing with Gerald Kean, solicitor. The moment I
4 got that, I said, yeah, I dealt with Mr. Kean on this
5 matter. It was only then, that was the first 11:28
6 realisation that I had that this hasn't been discovered
7 and I immediately responded --

8 CHAIRMAN: I know, but unfortunately, you know, my job,
9 unfortunately my job is unfortunately to sit in
10 judgment on people and to call things when the time 11:28
11 comes as they are obvious. And I have no idea as to
12 the veracity or otherwise of your testimony, I need to
13 listen to everything, but you are telling me that when
14 the Garda Commissioner receives a letter from a
15 solicitor, which apparently has nothing to do with him, 11:28
16 and drafts a handwritten response, and you go out to
17 that solicitor and you actually give him a typed
18 version which you have typed up in the office in
19 relation to a matter which is between him and a member
20 of the Garda Siochana that that is something you 11:29
21 forget, you are telling me that?

22 A. Chairman, the only note I have of it other than the
23 file is -- and I have it here before me, I brought the
24 original diary to show if you wish, it's already been
25 discovered, there is a copy of it on the record, but it 11:29
26 just says "Gerald Kean meeting". When I went through
27 the diaries there was no reference in it to Sergeant
28 McCabe, therefore I didn't put -- I can't even recall
29 seeing it, to be quite honest.

1 248 Q. MR. MICHAEL O'HIGGINS: My final question then is,
2 chief superintendent, the purpose of the exercise was
3 for Commissioner Callinan and An Garda Síochána to get
4 his version of events out there in this dispute,
5 without having to account for it publicly? 11:29

6 A. I can see why that would be -- why people would believe
7 that.

8 MR. MICHAEL O'HIGGINS: Thank you very much.

9 CHAIRMAN: Mr. O'Higgins, you are representing
10 Superintendent Taylor. Now, any information in 11:30
11 relation to Superintendent Taylor's involvement in the
12 various telephone calls which led to the communication
13 between Mr. Kean and the Garda Commissioner involving
14 the Garda Press Office only came to light when I
15 specifically asked the question have you any 11:30
16 instructions on that.

17 MR. MICHAEL O'HIGGINS: Yeah.

18 CHAIRMAN: I need to ask you again, have you any
19 instructions relative to this and any knowledge that
20 Superintendent Taylor had of this matter, however one 11:30
21 likes to characterise it, clandestine other otherwise,
22 let's take it as a set of objective facts that the
23 Garda Commissioner drafted a response to a solicitor's
24 letter from Maurice McCabe threatening libel
25 proceedings; do you have any instructions on that? 11:30

26 MR. MICHAEL O'HIGGINS: The answer to that, Chairman,
27 is no, but I will double-check over lunchtime, but the
28 answer is no.

29 CHAIRMAN: well, you could make a telephone call

1 because this is very significant --

2 MR. MICHAEL O'HIGGINS: We will do it now, but the
3 answer is no.

4 CHAIRMAN: Given that he was involved in setting up the
5 communication between Dr. Kean and Commissioner 11:30
6 Callinan, and given that it was only when the matter
7 actually came to light through another party that he
8 was involved in that, that this actual revelation was
9 made or accepted by Superintendent Taylor, I'd actually
10 really like to know -- 11:31

11 MR. MICHAEL O'HIGGINS: That will be done, Chairman.

12 CHAIRMAN: -- what he knew in relation to this matter
13 and given also that he was apparently very close to
14 Commissioner Callinan on everybody's account in Garda
15 Headquarters, in fact so close that nobody else knew, 11:31
16 it seems, what they were talking about or anything to
17 do with their private discussions, what discussion he
18 had with him, if any, after this matter. So I had
19 would like to know that if you have a chance,
20 Mr. O'Higgins. 11:31

21 MR. MICHAEL O'HIGGINS: Chairman, you may take that as
22 done now, that will be done immediately. I would just
23 say there has been a lot of evidence suggesting a close
24 working relationship but, for instance, immediately
25 subsequent to the Public Accounts Committee senior 11:31
26 management withdrew to discuss the matter, my client
27 was not party to that, and there are lots of things to
28 which he was not party. But I hear what you are
29 saying, Chairman, we will have a response quickly.

1 CHAIRMAN: I appreciate that, Mr. O'Higgins. So is
2 there any questions on behalf of -- I think the Garda
3 Commissioner? Mr. Lehane, you don't have any
4 questions? Mr. O'Higgins, yes.

11:32

6 THE WITNESS WAS CROSS-EXAMINED BY MR. MÍCHEÁL

7 O'HIGGINS:

8 249 Q. MR. MÍCHEÁL O'HIGGINS: Superintendent, the letter was
9 discovered as part of the Commissioner's office, the
10 discovered made by the Commissioner's office?

11:32

11 A. Correct.

12 250 Q. Can I just, you may already have covered this but just
13 so I am clear with precision as to the documents that
14 are concerned, from your knowledge of matters can you
15 offer any view as to whether the documents in question
16 that you made reference to, the notes, the letter and
17 so on, as to where you feel they would have been put in
18 circumstances where you accept they weren't registered
19 on what has been termed the McCabe file, Sergeant
20 McCabe's file?

11:32

21 A. Yes, Chairman, I can only assume, as I say, normally
22 there will be a heading on a letter and it will be
23 recorded under the heading. As I say, a note on
24 Mr. Kean's that there is no heading. I would -- in the
25 normal course of events it would be correspondence to
26 the Commissioner from Dr. Gerald Kean, of whatever
27 date, would be put in, in lieu of there being no
28 heading on the letter. I don't know where the letter
29 was discovered, whether it was discovered on a file

11:33

11:33

1 entitled just what I've said, or where else it may have
2 been discovered. My intention when I sent the letter
3 and attachments back to be filed was that it would be
4 put on the Sergeant McCabe file where every other piece
5 of correspondence that I dealt with in relation to 11:34
6 Sergeant McCabe was kept.

7 251 Q. Right.

8 A. Amounting to over three-and-a-half thousand pages.

9 252 Q. The fact that the letter was included as part of the
10 Commissioner's office discovery, can you infer anything 11:34
11 from that in relation to where the documents, where it
12 is likely the documents were kept?

13 A. Well, they were kept in the Commissioner's office. But
14 I can't -- I can't say where, I don't know at this
15 point in time, I don't know which file they were on but 11:34
16 they were still in the Commissioner's office.

17 253 Q. And when you say documents plural, what documents are
18 you talking about?

19 A. I'm talking about the letter from Mr. Kean, the
20 attachment of the letter from Sergeant McCabe, the 11:34
21 Commissioner's handwriting on the notes and my typed
22 version of those four paragraphs.

23 254 Q. Yes. Thank you very much.

24

25 THE WITNESS WAS RE-EXAMINED BY MR. MARRINAN: 11:34

26 255 Q. MR. MARRINAN: Just two matters arising. Detective
27 superintendent, you say that you became aware of this
28 in December last, is that right?

29 A. December '17, that's correct.

1 256 Q. Did you make a statement to the Tribunal at that time?
2 A. I did -- well, I have a copy of the response that I
3 made at the time. I don't know whether it came back to
4 the Tribunal, I'm sure it did.

5 257 Q. I'm not sure that it did. Could I have a look at that, 11:35
6 please?
7 A. Certainly. I'll just make sure it's the correct one.
8 [DOCUMENT HANDED TO MR. MARRINAN]

9 258 Q. I am not going to pursue that because there may have
10 been on face value some break down in communication 11:36
11 between the liaison team and the Tribunal, so I am not
12 going to pursue that matter, all right, in fairness to
13 you, all right?
14 A. But perhaps, if I could just say, I'm merely -- I
15 merely refer to that to show that immediately when this 11:36
16 question arose, I immediately recognised that, yes,
17 that was something I dealt with and within a couple of
18 hours I had literally gone back and said, yes, I know
19 about this.

20 259 Q. That indeed would appear to be the situation. 11:37
21 A. Yes.

22 260 Q. It's just that the Tribunal weren't advised of that
23 development.
24 CHAIRMAN: So it took until the investigators went out
25 for you to get the opportunity to say that? 11:37
26 A. Oh, right, I am sorry, Chairman.
27 CHAIRMAN: And we weren't told.

28 261 Q. MR. MARRINAN: I am not going to visit any fault on you
29 for that, all right, on the basis of the document that

1 you produced there.

2 A. Thank you.

3 262 Q. The other matter that I wanted to ask you about was
4 whether or not Commissioner Callinan had indicated to
5 you that he was in direct contact himself on the 12th 11:37
6 February 2014 with Mr. Kean?

7 A. No, he did not.

8 263 Q. You are aware of the fact that apparently there were
9 two text messages sent by Commissioner Callinan from
10 his mobile number to Mr. Kean's mobile number at 7:51 11:37
11 and 7:57am on the 12th February of 2014?

12 A. I was so informed by the investigators, that is the
13 first time I became aware of that.

14 264 Q. And it would appear that you were talking to
15 Commissioner Callinan that morning on the phone prior 11:38
16 to going to see Mr. Kean, is that right?

17 A. That's correct, yes. Again, that would have been
18 inferred from the telephone records and, as I suggested
19 to the investigators, it was more than likely my
20 telling the Commissioner that I was going to ring 11:38
21 Gerald Kean to make an appointment to see him.

22 265 Q. Now, the final matter, detective superintendent, is
23 that in answer to Mr. O'Higgins you stated that you
24 believed that the Commissioner's concern at the time in
25 drafting the letter for Mr. Kean related not only to 11:39
26 protecting Gerald Kean but it was also to protect a
27 member of An Garda Síochána who may be involved in
28 litigation with a solicitor?

29 A. Yes, that was certainly my thought process, and I

1 believe it was his also.

2 266 Q. How could that be so?

3 A. Because our discussion centred around the fact that
4 this litigation could end up before the courts and
5 involved a solicitor whom the Commissioner described as 11:39
6 being a friend of An Garda Síochána or words to that
7 effect, and a member of An Garda Síochána. It wasn't
8 just left at one side of it; it was also and a member
9 of An Garda Síochána.

10 267 Q. How was that going to protect, in this instance we know 11:39
11 it's Sergeant McCabe? How was the Commissioner
12 drafting a response for Mr. Kean going to protect
13 Sergeant McCabe?

14 A. Well, it was the appropriateness of doing the response,
15 that is where the -- 11:40

16 268 Q. I asked you how was that going to protect Sergeant
17 McCabe's interests?

18 A. Because the Commissioner didn't -- my opinion is that
19 the Commissioner didn't want to be seen to be assisting
20 Gerald Kean to protect himself against a lawsuit from a 11:40
21 member of An Garda Síochána, so he was concerned
22 that -- I believe he was concerned that Gerald Kean was
23 being sued, but he was also concerned that it would be
24 inappropriate for him to be advising Gerald Kean, given
25 that the person who might be taking that lawsuit was a 11:40
26 member of An Garda Síochána under his control. I am
27 not sure if that answers the question.

28 269 Q. I am not sure that I follow you. Are you suggesting
29 that you believe that part of the Commissioner's reason

1 for drafting this letter for Mr. Kean was in part to
2 protect Sergeant McCabe?

3 A. No, I don't think that is what I am suggesting -- it
4 goes to the appropriateness of doing a response to the
5 letter in the first instance. 11:41

6 270 Q. You are not suggesting, as your answer would appear to
7 suggest, that the motivation of Commissioner Callinan
8 was to protect in part Sergeant McCabe?

9 A. Protect mightn't be the word to use, no. But his
10 concern was twofold, and my concern was twofold: That 11:41
11 the two parties involved, number one -- not necessarily
12 in that order, but Gerald Kean and Sergeant McCabe --
13 Sergeant McCabe being a member of An Garda Síochána, it
14 was inappropriate for the Commissioner to be helping
15 Gerald Kean to defend himself, equally it would have 11:41
16 been inappropriate for him to be helping Sergeant
17 McCabe to take a case against Gerald Kean. So there is
18 protection involved there for both parties. I'm not
19 saying he was protecting him fully from --

20 271 Q. And obviously Mr. Kean was consulted in relation to 11:42
21 that. Did anybody consult with Sergeant McCabe?

22 A. I didn't, no.

23 272 Q. Did the Commissioner advise Sergeant McCabe that he'd
24 protected his interests by drafting this letter?

25 A. Well, we had no correspondence -- from a personal point 11:42
26 of view, I had no correspondence from Sergeant McCabe
27 on that particular issue.

28 MR. MARRINAN: Thank you very much.

29 A. Thank you.

1 CHAIRMAN: Mr. O'Higgins, was there anything that you
2 think might have arisen?

3 MR. MICHAEL O'HIGGINS: I beg your pardon, sorry? I
4 have three matters to confirm by way of instructions.
5 My client, David Taylor, had no knowledge of any 11:43
6 contact between the Commissioner and Mr. Kean prior to
7 his appearing on the programme. Number two, my client
8 had no knowledge that Mr. Kean sent a letter into the
9 Commissioner's office. And number three, which follows
10 by extension, he was unaware of any response to that 11:43
11 letter.

12 CHAIRMAN: All right. That's fine. So there is no
13 questions arising out of that. Thank you.

14 A. Thank you, Chairman.

15 11:43
16 THE WITNESS THEN WITHDREW

17
18 MR. MCGUINNESS: Chairman, that concludes the evidence
19 today, and no further witnesses are scheduled for this
20 week. The hall here, St. George's Hall, is not 11:44
21 available to us next week due to other necessities, and
22 it is intended to resume the sittings of the Tribunal
23 and the taking of evidence -- and I should say that it
24 is obviously intended to serve the remaining material
25 today, if possible, on all relevant parties. I should 11:44
26 say, of course, Chairman, that you will remember that a
27 fortnight in advance of the conclusion of the O'Higgins
28 module, you indicated that you would like to hear
29 submissions from counsel for the Tribunal in relation

1 to the law relating to cross-examination as to credit
2 and the duty of the Tribunal in relation to disclosure,
3 and on day 61 I made submissions to you, on the 8th
4 march, in relation to that issue here in public. We
5 didn't obviously address any of the factual issues on 11:45
6 the O'Higgins module, but each of the parties had the
7 benefit of being circulated with those submissions and
8 hearing them in public, and most parties I think, if
9 not all of them, agreed with the submissions as to the
10 duty of the Tribunal. I just say that in the context 11:45
11 of, I suppose, seeking to explain and excuse the volume
12 of material that will be served on relevant parties.
13 And obviously the material to be served on parties with
14 full representation who have an interest in all of the
15 matters, will receive all of the volumes and other 11:45
16 parties who don't have as extensive a right of
17 representation will not necessarily get all of the
18 volumes. They will get everything appropriate to their
19 interest and any reputational issues appropriate
20 thereto. 11:46

21
22 It is intended to resume sittings, commencing from the
23 30th April onwards, and to sit as continuously as
24 possible thereafter until the conclusion of matters,
25 followed by appropriate submissions at an appropriate 11:46
26 stage. It might be perhaps just helpful to the parties
27 to indicate the nature of the volumes and the number of
28 the volumes that will be served.
29

1 Obviously some eight volumes have been served to date.
2 It is intended to serve what will turn out to be 21
3 volumes, that is 13 volumes more. And Volumes 9 and 10
4 will deal principally with material relating to
5 Superintendent Taylor; Volume 11 will deal with 11:47
6 statements from personnel, both civilian and Garda
7 personnel in the Press Office and the spotlight records
8 that have been examined by the FSNI; Volume 12 will
9 deal with Superintendent Ferris's statements in
10 relation to matters and relevant appendices; Volume 13 11:47
11 will deal with Superintendent Taylor's latest statement
12 to the investigators and the appendices thereto, as
13 well as the statement of Mrs. Michelle Taylor; Volumes
14 14 and 15 will deal exclusively with journalists and
15 material relating to publications and editors of 11:47
16 papers; Volume 16 will deal to a very large degree with
17 a technical evidence emanating from the guards relating
18 to devices, computers, systems, etcetera, insofar as
19 they are relevant; Volume 17 will deal almost
20 principally with material relating to reports and 11:48
21 statements from the Forensic Service of Northern
22 Ireland concerning their examination of phones from
23 Superintendent Taylor, ex-Commissioner Callinan,
24 ex-Commissioner Nóirín O'Sullivan, laptops, Garda
25 systems, etcetera; Volume 18 will be another volume 11:48
26 relating to journalists, and that will be followed by
27 two succeeding volumes concerning material relating to
28 RTÉ, which will be contained in volumes 19 and 20; and
29 there will be then a miscellaneous, as it were, mop-up

1 volume containing some material that's already been
2 circulating already but unpaginated. So it's intended
3 that these materials would be made available to the
4 relevant parties as soon as possible, with a view to
5 the continuation of the hearings.

11:49

6 CHAIRMAN: Mr. McGuinness, thank you very much. I
7 think it's very appropriate to record here that we have
8 to adjourn now for a time. That is of course
9 precipitated by the unavailability of the hall and it's
10 really the only venue that is big enough to contain
11 what comes forward, but I want to express a word of
12 gratitude to counsel and solicitor for the Tribunal and
13 documentary counsel and our office manager,

11:49

14 administrative staff and registrar, an absolutely vast
15 amount of work is being done behind the scenes. It
16 will be appreciated that in an ordinary civil case the
17 duty of parties, for instance, to a commercial dispute
18 is to find the documents that are relevant to

11:49

19 themselves and make discovery to each other, but many
20 parties are represented here and the duty of the
21 Tribunal is to get such documents as are available,
22 gather them in, sort them out in relation to relevance,
23 discard what is irrelevant, is not going to help

11:50

24 anybody and there obviously I have a role, and then to
25 pass them out to the parties. But it involves
26 extraordinary amounts of work. And in this regard, as
27 I have mentioned before, counsel have not stinted in
28 the sense that they have literally read through
29 absolutely everything to find the significance of it

11:50

1 and it would be very easy to say ah, there's 15 boxes
2 over there in the corner, let's just take a sample out
3 of each and see where that -- but that was not done.
4 The, I suppose, the approach of someone who is working
5 in the public service from the point of view of my own 11:50
6 philosophy, is to do the job and to do more than the
7 job because that's, it seems to me, what the privilege
8 of working for the people of Ireland involves and that
9 certainly has been done within the Tribunal team. So I
10 want to say thank you. And the results of that are 11:51
11 obvious, it seems to me, to everybody over the course
12 of the last two weeks, even if they weren't obvious
13 before.

14
15 There is a second matter I might mention which is what 11:51
16 Mr. McGuinness has said in relation to the whole issue
17 of credit and credibility. Clearly we have had a long
18 discussion about that and particular reference has been
19 made to the O'Callaghan case, the case law has been
20 analysed in detail by Mr. McGuinness and again those 11:51
21 submissions are very helpful and no one has sought to
22 disagree with them. So, certain things will be sent
23 out and they will be redacted. There will be issues
24 perhaps in relation to credit but they can't be raised,
25 it seems to me, without first of all making an 11:51
26 application to me; in other words, I am making the same
27 ruling as Mr. Justice O'Higgins made in the course of
28 the O'Higgins Commission: If people want to raise
29 issues as to credit they can come to me and say, all

1 right, well what does this redacted piece mean, is it
2 anything to do with me, would you at all be influenced?
3 And ultimately that is the test. Because even in an
4 ordinary case, the judge is entitled to rule that
5 cross-examination as to credit is limited by first of 11:52
6 all relevance to the issues and secondly, there has to
7 be a limit in terms of time and in terms of decorum and
8 a preliminary view has therefore been taken in terms of
9 what is taken out and expressed in laconic terms, that
10 at the moment issues as to credit are not going to 11:52
11 assist the Tribunal, they will lead us down paths that
12 are unnecessary and become upsetting. But that is only
13 a preliminary view, and if people wish to make an
14 application, well then I ask you to cast your mind back
15 to the Keith Harrison module where there was an 11:53
16 application in private in relation to a matter, I am
17 not going to mention that, and that was done, and
18 eventually ruled out by me. I am not saying I would
19 take the same attitude, but if people want to raise
20 matters that are external to the facts which we are 11:53
21 dealing with, then they might kindly make an
22 application and just, if they wouldn't mind just flag
23 that and we will deal with that, of course in public
24 because that is the ordinary and normal way of doing
25 it, but if there are strong reasons for going into 11:53
26 private session in relation to those matters, then of
27 course I will hear those submissions and make my
28 decision accordingly.
29

1 So there it is. For two weeks, and we are back and
2 hopefully we will continue on. Mr. McGuinness, what is
3 your estimate for the time of arrival at the airport?
4 MR. MCGUINNESS: If I had the trumpet I would sound it
5 now, Chairman, but it's difficult to predict. We 11:53
6 certainly hope that the major part of the evidence
7 would be concluded by the middle of June.
8 CHAIRMAN: Yes. And can I ask parties, I know people
9 say look, do I have time to make submissions, you can
10 certainly have 24 hours but I don't want to hang around 11:54
11 for a week while you make your minds up. If it's not
12 perfectly obvious to you at this point what case you
13 are making it's not going to become perfectly obvious
14 in consequence of a week of doing your garden and in
15 the meantime seriously considering your papers. So I 11:54
16 will allow a day, but that is it. And don't ask
17 counsel to ask me because I think they all know what a
18 grumpy and unreasonable person I am in relation to
19 getting on with things. All right. Thank you.

20
21 THE TRIBUNAL THEN ADJOURNED TO MONDAY, 30TH APRIL 2018
22 AT 10:00AM
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