

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

ESTABLISHED BY INSTRUMENT MADE BY THE MINISTER FOR JUSTICE
AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
1921, ON 17 FEBRUARY 2017, AS AMENDED ON 7 DECEMBER 2018

CHAIRMAN OF DIVISION (P): MR. JUSTICE SEAN RYAN,
FORMER PRESIDENT OF THE COURT OF APPEAL

HEARING HELD IN DUBLIN CASTLE
ON THURSDAY, 24TH FEBRUARY 2022 - DAY 171

171

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

GWEN MALONE STENOGRAPHY
SERVICES

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TAKE NOTICE – PURSUANT TO ORDER DATED THE 1ST DAY OF
FEBRUARY 2022 OF MR. JUSTICE RYAN OF THE DISCLOSURES
TRIBUNAL

IT IS HEREBY ORDERED THAT the identification by name of Mr.
'A' or of any other suspect whether directly or indirectly
in connection with investigations undertaken by An Garda
Síochána is hereby prohibited;

AND IT IS FURTHER ORDERED THAT any interested party in this
matter be at liberty to apply on the giving of 2 days
notice in writing to the tribunal.

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1 THE HEARING RESUMED ON THURSDAY, 24TH FEBRUARY 2022 AS
2 FOLLOWS:

3
4 MR. MARRINAN: Good morning, Chairman. The first
5 witness this morning is Chief Superintendent
6 Christopher Mangan. He will be joining us over the
7 video link.

11:10

8 MR. O'HIGGINS: Chairman, could I mention one matter
9 just before we hear from Chief Superintendent Mangan?
10 Just a brief few things to say to you, Chairman.

11:11

11
12 As you will be aware I think, the parties have been
13 endeavouring to assist the Tribunal in its work and in
14 that connection, Sheehan & Partners, as the Tribunal is
15 aware, issued a letter dated the 14th February 2022, to
16 the Tribunal, on which our side were copied, and with
17 very much the assistance of the Tribunal there were
18 discussions this morning between Sergeant Hughes's
19 legal team and the team for An Garda Síochána with a
20 view to narrowing further the list of witnesses whom it
21 may be necessary to call. It obviously being entirely
22 a matter for you, Chairman, as to what witnesses are
23 ultimately called.

11:11

11:11

24
25 And can I just indicate the following things:

11:12

26 Firstly, the letter from Sheehan & Partners from our
27 point of view, is most welcome, and it is of
28 considerable assistance to us. We note that in
29 relation to Assistant Commissioner Catherine Clancy, it

1 has been made clear in the letter that it is not -- an
2 allegation of targeting is not being maintained against
3 her. It is our respectful view that that obviates the
4 necessity to call Assistant Commissioner Clancy, and it
5 is our understanding that that is an agreed position 11:12
6 from the point of view of Sergeant Hughes's team, and
7 Mr. O'Dwyer will address you shortly. That's the first
8 thing.

9
10 The second thing, Chairman, is that it is our 11:12
11 respectful view that the remaining matters set out
12 within the letter can be dealt with by way of
13 submissions in due course, including the question as to
14 the relevance of those remaining matters to your remit,
15 and that is our respectful position. 11:13

16
17 I don't want to indicate that we're necessarily in any
18 sense accepting the balance of the matters that are
19 being maintained, but we do -- it is our position that
20 the issue -- the disputed issue as to the relevance of 11:13
21 those matters can be dealt with by way of submission.

22
23 May it please you, Chairman.

24 MR. O'DWYER: Morning, yes. Yes, we agree with
25 Mr. O'Higgins. It is our position, and it's accepted, 11:13
26 that there is no need for Ms. Clancy to come to the
27 Tribunal and give evidence, and I hope our position in
28 that regard is helpful. You have her -- we have her
29 statement. We do intend to rely on her statement for

1 certain issues and, as Mr. O'Higgins has said, we will
2 be making submissions in respect of some of the issues
3 that are identified in the letter without attributing
4 personal blame, shall we say, to Assistant Commissioner
5 Clancy. That's our position. 11:14

6 CHAIRMAN: Thanks. Mr. O'Higgins, are you satisfied
7 that Assistant Commissioner Clancy's statement is to be
8 treated as evidence?

9 MR. O'HIGGINS: Yes, Chairman. We have no difficulty
10 with it being treated in the same manner as all of the 11:14
11 statements that have been provided. And -- sorry, you
12 have asked me a direct question in relation to treating
13 it I suppose as if it were read in.

14 CHAIRMAN: As if she had given the evidence, yeah.

15 MR. O'HIGGINS: Yes. We have no difficulty with that. 11:14

16 CHAIRMAN: Very good. Thank you very much. Well,
17 if -- I mean, it is of course the position that the
18 Tribunal is carrying out an inquiry and it's not an
19 action between two parties, but obviously there is an
20 element because the Tribunal is inquiring into issues 11:15
21 generated by Sergeant Hughes's complaints. And if the
22 parties are satisfied in respect of this particular
23 witness, I don't think that the Tribunal ought to
24 interfere with that, I think that there is no obvious
25 reason why the Tribunal should override what the 11:15
26 parties are agreed upon. And, yes, I appreciate the
27 letter from Sheehan & Partners which certainly has a
28 significant impact on the issue -- any issues
29 concerning Assistant Commissioner Clancy. So in those

1 circumstances the Tribunal is quite happy -- I'm quite
2 happy -- if that's the agreement between the parties,
3 and thank you for your endeavours in that regard, and I
4 appreciate that and the Tribunal has no interest beyond
5 what the parties have agreed in this instance to -- has 11:16
6 no interest in pursuing any other specific issue
7 outside of what you have agreed. So, so be it.
8 MR. O' HIGGINS: Thank you, Chairman.
9 CHAIRMAN: You are happy with that, Mr. McGuinness?
10 You have no objection? 11:16
11 MR. MCGUINNESS: No, I have no objection. I think it
12 facilitates the Tribunal not requiring evidence on the
13 issues in the letter.
14 CHAIRMAN: well. Thank you very much. That's very
15 helpful. 11:16
16 MR. O'DWYER: Chairman, if I could just indicate, we
17 are considering the position in respect of Fintan
18 Fanning, but, as you know, he is represented by a
19 different legal representative, so we may be -- there
20 may be an application in respect of him, but -- 11:17
21 CHAIRMAN: Thanks very much. That's a matter for the
22 parties and I'm quite happy about that and I'm sure
23 they will -- you can discuss that with your colleagues,
24 and if some agreement is reached, then please let me
25 know what the situation is. Okay. Thank you very 11:17
26 much.
27 MR. MARRINAN: Yes, Chief Superintendent Christopher
28 Mangan.
29 CHAIRMAN: Good morning, Chief Superintendent Mangan.

1 Thank you for making yourself available to give
2 evidence to us here. Where are you, chief
3 superintendent?

4 THE WITNESS: Chairman, I am actually at home, I tested
5 positive on an antigen test, unfortunately Covid yet 11:18
6 again, so I am unable to attend at my office so I am
7 actually at home via the laptop.

8 CHAIRMAN: Sorry, it was only just curiosity. Thanks
9 for making yourself available notwithstanding the Covid
10 situation, which is appreciated. So, your presence is 11:18
11 appreciated and thanks very much.

12
13 Now, Mr. Marrinan, is it yourself?

14 REGISTRAR: Chief superintendent, you have to repeat
15 after me. 11:18

16
17 CHIEF SUPERINTENDENT CHRISTOPHER MANGAN [VIA VIDEO
18 LINK], HAVING AFFIRMED, WAS EXAMINED BY MR. MARRINAN,
19 AS FOLLOWS:

20 11:17
21 CHAIRMAN: Thanks very much.

22 MR. MARRINAN: Chief Superintendent Mangan, my name is
23 Patrick Marrinan, I am senior counsel for the Tribunal.
24 Normally we meet witnesses when they come to give
25 evidence to the Tribunal to introduce ourselves to the 11:19
26 witnesses, but obviously we don't have that opportunity
27 with you this morning. But in any event I hope you are
28 well, despite testing positive, as you have done.

29 1 Q. I think you hold the rank of chief superintendent and

1 you have the responsibility of the Louth Garda
2 division, is that right?

3 A. That's correct.

4 2 Q. And I think in 2006, you were attached to the Dublin
5 Metropolitan Region North Central Division and at that 11:20
6 time you held the rank of detective inspector, is that
7 correct?

8 A. That's correct.

9 3 Q. Now, I think that in your statement to the Tribunal,
10 which is at page 847 of the material, which I don't 11:20
11 need to bring up on screen, but I think that you point
12 out that on the 6th December of 2006, you were
13 appointed by Chief Superintendent Michael Feehan, to
14 conduct what you refer to as a fact-finding
15 investigation into the level of knowledge in possession 11:20
16 of An Garda Síochána prior to Ms. Saulite's murder, and
17 you refer the Tribunal then to an exhibit that I'll
18 open just shortly.

19 But, could you help the Chairman in terms of what was
20 anticipated in the first instance in terms of a 11:20
21 fact-finding investigation?

22 A. Well, I received correspondence from Chief
23 Superintendent Feehan to carry out a fact-finding
24 investigation in relation to the level of knowledge in
25 possession of An Garda Síochána regarding a threat to 11:21
26 Baiba Saulite. And what I would've anticipated was, to
27 gather the information that was in possession of An
28 Garda Síochána relative to threats that may have been
29 in existence, and in possession of An Garda Síochána.

1 4 Q. You didn't receive this instruction in writing from
2 Chief Superintendent Feehan, but you received a letter
3 that had been sent by the Assistant Commissioner to
4 Chief Superintendent Feehan, is that correct?

5 A. There may have possibly been a cover letter with it. I 11:21
6 do not have that. I don't have all the documentation
7 that may have been sent. That's the only documentation
8 that was in my possession. There, more than likely,
9 would have been a cover letter from Chief
10 Superintendent Feehan that would have referred to the 11:22
11 request by Assistant Commissioner MCHugh; that would
12 have been the normal way correspondence would have been
13 transmitted.

14 5 Q. Indeed. We don't have that cover letter, so we might,
15 in the first instance, just look at the letter that was 11:22
16 sent by Assistant Commissioner MCHugh to Chief
17 Superintendent Feehan. And this is the 6th December
18 2006, and it will be brought up on screen for you
19 now -- it's at page 854 of the material.

20 A. Thank you. 11:22

21 6 Q. If we scroll down there. Can you see that?

22 A. Yes, I can see it, yes.

23 7 Q. We note that it refers to the murder of Baiba Saulite.
24 And then the second paragraph, it refers to Ms. Saulite
25 had previously been interacting with members of An 11:23
26 Garda Síochána involving her husband, Mr. A, which
27 resulted in recent court proceedings.
28 That appears to refer to the abduction case, is that
29 right?

1 A. That's correct.

2 8 Q. And then the second paragraph says:

3

4 "On the 14th November 2006, two members of An Garda
5 Síochána from Swords Garda Station met with 11:23

6 Mrs. Saulite. During the course of this meeting,
7 Mrs. Saulite provided written material for the
8 preparation of a victim impact statement in relation to
9 the sentencing of Mr. A arising from the abduction of
10 her children. It transpires that Ms. Saulite had 11:23
11 raised in the written material fears for her safety."

12

13 So, that is honing in, as it were, in relation to the
14 victim impact statement, isn't that right?

15 A. Yes, it's referring to it, yes. 11:24

16 9 Q. The second last paragraph says:

17

18 "Carry out a fact-finding investigation into the level
19 of knowledge in possession of An Garda Síochána prior
20 to Ms. Saulite's murder. Let me have your views and 11:24
21 recommendations in early course."

22

23 Did you see this at that stage as being an
24 investigation into the information that could be
25 gleaned from an examination of the victim impact 11:24
26 statement?

27 A. I saw it as part -- partially of the victim impact
28 statement, but also it refers to a level of knowledge
29 in possession of members of An Garda Síochána, so it's

1 a wider -- it's a wider brief than simply seeking the
2 victim impact and what was in that. For me, it was --

3 10 Q. Sorry.

4 A. Sorry.

5 11 Q. Did this relate to a specific threat to the life of 11:25
6 Ms. Saulite or did you perceive that it might be
7 potentially broader and it might involve an examination
8 of the threat to the life of her solicitor, John
9 Hennessy?

10 A. Well, what I saw was a specific reference in the victim 11:25
11 impact, but also a general reference as regards the
12 level of knowledge in possession of the Garda
13 organisation.

14 12 Q. Yes, but what I'm asking you is: did you believe that 11:25
15 that extended to information that was within An Garda
16 Síochána in relation to the threat to her solicitor,
17 Mr. Hennessy?

18 A. Not, not at that particular time, to the best of my
19 memory. It was the threat to Ms. Saulite herself and
20 what level of knowledge was in existence within the 11:26
21 Garda organisation.

22 13 Q. Did you have any background information in relation to
23 this or were you relying on the contents of this letter
24 that I have opened?

25 A. I was relying on the content of the letter, but 11:26
26 obviously I was aware that Ms. Saulite had been
27 murdered; that's the only knowledge I had.

28 14 Q. Were you familiar --

29 A. I didn't have any other information in relation to --

1 prior to her death.

2 15 Q. Were you also aware of the circumstances whereby
3 information came into An Garda Síochána in relation to
4 a significant threat that was posed to the life of her
5 solicitor, Mr. Hennessy? 11:27

6 A. Not at that time, no.

7 16 Q. When did you become aware of that?

8 A. Eh, I don't actually know. I have seen it referenced
9 in the papers so I couldn't put a specific date. It
10 may have been referenced at the time. I actually do 11:27
11 not know, but it is something I'm aware of obviously.
12 I think there might be reference to it in the Sergeant
13 Hughes report, I'm not one hundred percent certain.

14 17 Q. The last line of the letter, we don't need it back up
15 on the screen, but it says that: 11:27

16

17 "Detective Superintendent Michael Byrne, the officer in
18 charge of this investigation, will provide relevant
19 background material."

20 11:28

21 Now, on foot of that, you highlight in your statement
22 to the Tribunal, that you conducted a number of
23 inquiries. Could we just go through those inquiries
24 that you conducted?

25 A. Yes. 11:28

26 18 Q. Your first port of call, as it were, was that Detective
27 Superintendent Michael Byrne?

28 A. Yes, because he had been referenced as the senior
29 officer.

1 19 Q. Yes. And you say in your statement that you asked him
2 if he had any information in his possession in relation
3 to the matter, and he indicated that he was not in
4 possession of any such information. Was that the
5 extent of your inquiry of him at that time? 11:28

6 A. No, I believe we discussed the abduction. I would have
7 got a background to the case, I would say had
8 transpired with the abduction and then into her murder,
9 so, he would have been given me an overall view. But
10 my specific interest here was the level of knowledge, 11:29
11 and if he had a level of knowledge or was aware of a
12 level of knowledge, and he didn't.

13 20 Q. And he didn't. You note that you requested a
14 statement, or a report from Sergeant William Hughes, is
15 that right? 11:29

16 A. That's correct.

17 21 Q. And you also requested a report from Garda Nyhan, is
18 that right?

19 A. That's correct, yes.

20 22 Q. And then you also requested a report from D/Sergeant 11:29
21 Kieran McEneaney. Do you recall why you requested a
22 report of him?

23 A. At the time I believe he was the -- or sorry, he was
24 the D/Sergeant, and his name may have been mentioned by
25 Detective Superintendent Michael Byrne, so he would 11:30
26 have -- you know, might have been a D/Sergeant in
27 Swords, he would have a knowledge of what may have been
28 going on prior to her murder.

29 23 Q. Yeah. If we could just have page 877 up on the screen.

1 This is a report that was sent by him to you on the
2 21st December of 2006. And if you just look at the
3 heading there it says:

4
5 "Re: Information in possession of the Gardaí in respect 11:30
6 of threat to the personal safety of Baiba Saulite and
7 John Hennessy (solicitor)."

8
9 Do you recall asking him to address that particular
10 threat to John Hennessy, solicitor? 11:31

11 A. Not to Mr. Hennessy, no.

12 24 Q. He has included it under that heading which might
13 suggest that he was approached on that basis, but you
14 have no recollection of asking him to make a report in
15 relation to the threat to the life of Mr. Hennessy, is 11:31
16 that right?

17 A. No, I was concerned solely with the threat to Baiba
18 Saulite.

19 25 Q. And in terms of being solely concerned in relation to
20 that, was the focus almost entirely on the abduction 11:31
21 case?

22 A. No, it wasn't on the abduction case. It was to
23 establish the level of information. So that also for
24 me, included the statements that she would have made to
25 the investigators regarding the abduction and the 11:32
26 subsequent statements she made about the abduction and
27 then, into the victim impact statement that she
28 provided, the 12-page.

29 26 Q. You also note in your statement that you spoke with

1 Inspector Donal Waters, and he indicated that he was
2 not in possession of any information relative to the
3 investigation, is that correct?

4 A. That's correct.

5 27 Q. You haven't mentioned it in your statement, but we have 11:32
6 evidence from now Chief Superintendent Walter
7 O'Sullivan that he says that he was interviewed by you,
8 I think it was in Store Street Garda Station. Do you
9 have any recollection of that?

10 A. I noted that from the transcripts, but I do not have 11:32
11 knowledge of that. I didn't interview him at Store
12 Street in relation to the matter that I was inquiring
13 into, to the best of my knowledge, I do not remember
14 that, and I believe I would have referenced it in my
15 report to Chief Superintendent Feehan. 11:33

16 28 Q. Yes. I think, whilst he used the word "interview", I
17 think his evidence was that he was asked a similar
18 question to the question that had been asked of
19 Detective Superintendent Waters; namely, had he
20 information? And he indicated that he had no 11:33
21 information of a specific threat to Baiba Saulite. But
22 in any event, you have no note of that interaction and
23 you have no recollection of it, is that correct?

24 A. That's correct.

25 29 Q. Now, I think you also point out that you examined files 11:33
26 that were held at the district office at Coolock Garda
27 Station, and two reports relative to Ms. Baiba Saulite
28 were located, is that correct?

29 A. That's correct.

1 30 Q. Those two reports, one was dated the 20th January of
2 2005 and had been forwarded by Sergeant Hughes -- or to
3 Sergeant Hughes by the district officer, and that
4 report related to the abduction case, is that right?
5 A. That's correct. 11:34

6 31 Q. I think the second report that you referred to
7 contained a letter that had been sent by Mr. Hennessy
8 and which had been forwarded to Sergeant Hughes on the
9 1st November of 2005, and that also related to the
10 abduction case, is that so? 11:35

11 A. I am sorry, I just lost you there temporarily.

12 32 Q. I think that there was also a second report which was
13 behind a letter that had been sent by Mr. John
14 Hennessy, solicitor, which had been forwarded to
15 Sergeant Hughes on the 1st November of 2005, and I 11:35
16 asked you whether that also related to the abduction
17 case?
18 A. Yes, I believe it did, yes.

19 33 Q. I think you point out that at that time Superintendent
20 Noel McLoughlin was -- had retired and that he wasn't 11:35
21 interviewed, is that so?
22 A. That's correct.

23 34 Q. I think you also note that Garda Adrian Walsh was also
24 spoken to, and he was the district -- he was attached
25 to the district office in Coolock, and that he was 11:36
26 unable to provide any information to the investigation,
27 is that right?
28 A. That's correct.

29 35 Q. Now, if we just move on. You also indicate that you

1 had researched section 5 of the Criminal Justice Act
2 1993. what was that in relation to?

3 A. I believe it was -- if you could bring it up on the
4 screen, if you could please, I just can't -- I think it
5 was to do with the victim impact. 11:36

6 36 Q. I might be forgiven for prompting you in relation to
7 this. I think in the statement you point out that this
8 relates to the admissibility of the victim impact
9 statement?

10 A. Yes. Yes. 11:36

11 37 Q. And I think that you also considered the judgment of
12 the Court of Criminal Appeal in the case of DPP v.
13 Wayne O'Donoghue, that also related to the --

14 A. That's correct.

15 38 Q. -- the admissibility of a victim impact statement and 11:37
16 what the contents of that statement should in fact
17 cover, isn't that right?

18 A. That's correct.

19 39 Q. Now, you also researched and considered previous victim
20 impact statements in other cases, is that right? 11:37

21 A. Yes, I did, yes, to contrast and compare, yeah.

22 40 Q. And that was in the C district in the Dublin
23 Metropolitan Region, North Central District, is that
24 right?

25 A. That's correct, that's Store Street. 11:37

26 41 Q. Now, you also say that you interrogated the Garda Pulse
27 system, what were you looking for on that?

28 A. To see if there was a reference to a level of threat on
29 the Garda Pulse information system.

1 42 Q. And did you find anything?
2 A. Not as regards a level of threat. There was entries,
3 yes, but not as regards a level of threat, from memory,
4 yes.
5 43 Q. I think you also then examined statements that had been 11:38
6 made by Ms. Baiba Saulite to Garda Conor McNally, and
7 these were statements that were taken in the early
8 stages of the abduction case, is that correct?
9 A. That's correct.
10 44 Q. You also point out that you spoke with Garda Alan 11:38
11 Campbell, and that was because he was involved in the
12 completion of the original file in the abduction case,
13 is that right?
14 A. That's correct.
15 45 Q. Now, I think on the 17th December, you met with 11:39
16 Sergeant William Hughes, is that right?
17 A. That's correct, yes.
18 46 Q. And he handed you a 16-page report of his dealings with
19 Ms. Baiba Saulite and his handling of the victim impact
20 statement, isn't that right? 11:39
21 A. That's correct.
22 47 Q. I don't think there is any need to open the statement.
23 You are familiar with it, is that right?
24 A. That's correct, yes.
25 48 Q. And the Tribunal is as well. But would it be fair to 11:39
26 say that Sergeant Hughes set out his history of all his
27 interactions with Ms. Saulite, but also pointed to
28 other matters where Ms. Saulite had been the subject of
29 threats and in particular the arson of her motor car

1 previously, isn't that right?

2 A. That's correct, yes.

3 49 Q. And also Sergeant Hughes referred to the attack on her
4 solicitor's home, and also about threats that had been
5 made and were known of by An Garda Síochána in relation 11:40
6 to Mr. Hennessy, is that correct?

7 A. That's correct.

8 50 Q. I think in the circumstances, you didn't follow up that
9 information that was contained in Sergeant Hughes's
10 report, is that right? 11:41

11 A. No, I didn't follow it up because my remit was to
12 establish if there was a level of knowledge. It wasn't
13 to investigate the -- my function in this was to
14 establish if there was a level of knowledge and part of
15 that would be to consider the report submitted by 11:41
16 Sergeant Hughes and the other reports submitted by --
17 in relation to her own statements and also the victim
18 impact; they are the matters I would have been
19 considering it. I was not investigating the matters as
20 outlined by Sergeant Hughes. That was not my role. 11:41

21 51 Q. I suppose that -- I mean, to say that you had
22 established a level of contact between Sergeant Hughes
23 and Baiba Saulite and also the victim impact report and
24 the contents of the victim impact report, that that
25 might be open -- viewed as a somewhat narrow view of 11:42
26 the task that you were actually given. What do you say
27 in relation to that?

28 A. Well, I would disagree with that, because my role was
29 to carry out a fact-finding investigation, and that is

1 a scoping investigation. It is not to delve in and
2 seek out witnesses, interview people, because that
3 would take a considerable period of time. Also on my
4 mind was the initial statement she made where she said
5 he was going to kill her. That was quite clear that 11:42
6 there was a level of threat as regards knowledge in
7 existence within An Garda Síochána. So, it was not my
8 role to investigate what people were saying. My role
9 was to report upon what was transmitted to me.

10 52 Q. Then if we just then look at the report that you sent 11:43
11 in in the first instance. This is dated the 22nd
12 December of 2006, and if we could have page 879 brought
13 up on the screen, please. Yes. Can you see that now,
14 chief superintendent?

15 A. No, sir, I cannot. I can now, yes. 11:43

16 53 Q. Oh you can, good.

17 A. Yes I can.

18 54 Q. You'll see there that under the title, there is the
19 introduction, and then the second paragraph is:
20 11:44
21 "Contact between Baiba Saulite and members of An Garda
22 Síochána."
23

24 And it refers back to a meeting on the 11th October
25 2006 between Sergeant Hughes and Baiba Saulite. 11:44
26

27 And then the next paragraph, you refer to the 14th
28 November, and the interaction between Baiba Saulite and
29 Sergeant Hughes and Garda Declan Nyhan. And you

1 examine the circumstances of that.

2

3 This would appear to be largely on information that you
4 had obtained from the statement that had been provided
5 by Sergeant Hughes, is that right? 11:45

6 A. That's what Sergeant Hughes had said, yes, that's what
7 happened, yes.

8 55 Q. You then go on, under 3 you refer to observations on
9 section 5 of the Criminal Justice Act 1993, which is
10 the victim impact report. 11:45

11

12 And then in the following page, at 881, you examine
13 that in substantial detail, and you quote from the case
14 of the DPP v. Wayne O'Donoghue.

15

11:45

16 And then on page 882, you set out your conclusions. In
17 the second paragraph we see there:

18

19 "Sergeant Hughes has submitted a comprehensive report
20 outlining his dealings with the deceased." 11:46

21

22 And then:

23

24 "Detective Sergeant Tiernan McEaney has submitted a
25 report outlining his dealings with the deceased. 11:46

26

27 Both sergeants were not in possession of specific
28 threats to her and she did not make any formal
29 complaint to either member."

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And then you point out, in the next paragraph, that in your view the handwritten document submitted by Baiba Saulite would not have been accepted by the courts. And you also point out, in the following paragraph, that that document could not be used by gardaí to investigate a prosecution against Mr. A -- investigate or instigate a prosecution against Mr. A.

11:46

And you then go on, in the next paragraph to say:

11:47

"As a result of an examination of the facts to hand, I am of the view that Sergeant Hughes and Garda Nyhan completed a complex investigation in a very professional manner."

11:47

You then go to point out:

"There certainly was knowledge in existence and available to gardaí in relation to threats from Mr. A to Baiba Saulite. The members of An Garda Síochána involved with Baiba Saulite readily admit this in their reports."

11:47

And then you conclude by saying:

11:47

"In the absence of a statement of complaint from Baiba Saulite, the Gardaí would be unable to interview Mr. A who was in prison when the intimidation was ongoing."

1 Without a statement of complaint a prosecution could
2 not be instigated against Mr. A for the issuing of
3 threats. As the matter stood, the gardaí had no
4 evidence to deal with the situation and impose any form
5 of sanction on Mr. A." 11:47

6
7 And then at page 883 of the material -- just go over --
8 there is a list of appendices there. You included the
9 report of Sergeant Hughes, the report of Detective
10 Sergeant McEneaney, Pulse printouts and handwritten 11:48
11 documents provided to gardaí by Baiba Saulite. I think
12 that refers to the victim impact statement, is that
13 right?

14 A. That's correct.

15 56 Q. It appears that at that point in time, when you 11:48
16 reported, you didn't actually have a report from Garda
17 Declan Nyhan, is that right?

18 A. I think I received one later. Not at that particular
19 time. I had requested one but hadn't received it.

20 57 Q. Of note in that report you don't make any 11:48
21 recommendation to the chief superintendent, isn't that
22 correct?

23 A. That's correct.

24 58 Q. What were your views at that time as to what should be 11:49
25 done with this scoping exercise? Did you regard it as
26 having concluded?

27 A. Well... I regarded myself as having concluded --
28 endeavouring to establish the level of threat, to
29 speculate on somebody else what they were going to do

1 with it; it could range from an investigation into what
2 had been alleged in the victim impact, what was in her
3 original statements to the investigators relative to
4 the abduction, and also the report by Sergeant Hughes
5 and the report by Garda Nyhan, and the other reports as 11:49
6 they were reported by the members. So, an
7 investigation could have taken place in relation to
8 what was there if so desired or required by Chief
9 Feehan or Assistant Commissioner McHugh.

10 59 Q. Did you see information available at that time that 11:50
11 would give rise to a disciplinary investigation?

12 A. Yes, possibly, yes. It would have been a possibility.

13 60 Q. If we then move on to page 885. This is a letter that
14 was sent on the 10th January the following year to you
15 by Chief Superintendent Feehan referring to your 11:50
16 report, and he raised a number of queries in relation
17 to further matters that he wished you to look into.
18 It's on page 885 of the material, Mr. Kavanagh.
19 You see there he says:

20 11:50
21 "Do we have a copy of the statement made by Bai ba on
22 the 4/1/05 where she stated her fears that Mr. A would
23 cause her harm?"

24
25 Is that the statement that was made to Garda McNally? 11:51
26 I think it might have been, is that correct?

27 A. I believe it is, it's where I think she said he was
28 going to kill her.

29 61 Q. Then if we go onto the second point, if we have back

1 885 on the screen. And then:
2
3 "On the 11/10/06 Liam Hughes visited Bai ba Sauli te.
4 She allegedly said that Mr. A was intimidating her from
5 prison. Sergeant Hughes claims he collated this. Can 11:51
6 we get evidence of this collating?"
7
8 And then the next point is:
9
10 "Sergeant Hughes claims he contacted --" a member of 11:51
11 the DPP's office "--re intimidation of Bai ba Sauli te
12 and John Hennessy. He submitted a written report to
13 superintendent R on this -- is this available?"
14
15 And then: 11:52
16
17 "An intelligence report on Mr. A was compiled by Garda
18 Alan Campbell, Swords DDU and sent to C&S on the
19 1/1/05. Can we get a copy of this report?"
20 11:52
21 And then:
22
23 "A report from Garda Nyhan in relation to his meeting
24 with Bai ba Sauli te and any knowledge he may have had as
25 to any threat to her life." 11:52
26
27 So, you were to attend to those matters, and I think
28 that you did then report on those matters, is that
29 right?

1 A. I believe I did, yes.

2 62 Q. And you sent your final report in relation to this
3 matter on the 2nd February 2007. And it's at page 887
4 of the material. This report is almost identical to
5 your earlier report.

11:53

6

7 If we look at the first page, in fact it is identical.
8 And the second page, page 888, we'll see, if you scroll
9 down, there is an added paragraph there I think:

10

11 "Detective Sergeant Kieran McEneaney has submitted a
12 report outlining his dealings with Bai ba Saul ite."

11:53

13

14 That seems to be an additional matter that's reported
15 on.

11:53

16

17 Page 889 of the material, that appears to be identical,
18 and I hope you'll correct me if I'm wrong in this
19 regard, chief superintendent.

20

A. Yes.

11:54

21 63 Q. And then page 890, we see the conclusion. And this
22 appears to be identical except for in the second
23 paragraph, there is an additional sentence there:

24

25 "Garda Nyhan has submitted a brief report outlining
26 that he was not aware of a threat to her."

11:54

27

28 And then finally, in the final paragraph, you note
29 again:

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"There certainly was knowledge in existence and available to the Gardaí in relation to threats from Mr. A to Baiba Saulite. The members of An Garda Síochána involved with Baiba Saulite readily admit this in their reports." 11:54

And then you have added in:

"In order to clearly outline the facts in existence, I respectfully suggest that this matter be formally investigated." 11:54

That seems to be the matter that you have addressed in the queries that were raised by Chief Superintendent Feehan. You have addressed Garda Nyhan's report, I think you have included that, and you have also addressed a recommendation. 11:55

What did you mean by the use of the words "formally investigate it"? 11:55

A. Well, for somebody to be appointed to investigate the level of threats, to establish if there was a level of threats, and that would be based on the material provided, but also to investigate if there was other material available. It would be more comprehensive than my scoping exercise. 11:55

64 Q. Indeed. Now, I think in your statement to the Tribunal, a great deal of it is occupied in pointing

1 out that the statement that was submitted to you is not
2 the same statement that was submitted by Sergeant
3 Hughes to the Tribunal, and you have highlighted
4 certain discrepancies. We have already been through
5 that with Sergeant Hughes, and he has given his 11:56
6 explanation for that so I'm not going to bring you
7 through that aspect of your statement.

8
9 But also, you refute certain suggestions that are made
10 by Sergeant Hughes in his statement to the Tribunal, 11:56
11 isn't that right?

12 A. That's correct, I do.

13 65 Q. Yes. Would you just like to outline those yourself so
14 that you can, as it were, give your version of those
15 matters? 11:57

16 A. Well, I refute that I targeted him. I certainly
17 didn't. I was asked to carry out a function in
18 relation to establishing the level of knowledge in
19 existence within An Garda Síochána. It didn't name
20 Sergeant Hughes or Garda Nyhan. It said An Garda 11:57
21 Síochána. And that's the task to hand that I had and
22 that's the task that I completed.

23 66 Q. Thank you very much, chief superintendent. The other
24 parties will probably want to ask you a number of
25 questions. Thank you. 11:57

26 CHAIRMAN: Now, yes...

27 THE WITNESS: Thank you, sir.

28
29

1 THE WITNESS WAS CROSS-EXAMINED BY MR. O'DWYER AS

2 FOLLOWS:

3 67 Q. MR. O'DWYER: Hello, chief superintendent. I'll just
4 reiterate, at the beginning of Mr. Marrinan's -- sorry,
5 Colm O'Dwyer, senior counsel. I am one of the counsel 11:58
6 for Sergeant Hughes. And to begin with, I just wanted
7 to reiterate what Mr. Marrinan said about your... about
8 your illness and I hope that you're well and that you
9 have a rapid recovery.

10 THE WITNESS: Thank you. 11:58

11 68 Q. But if I could just -- Mr. Marrinan has covered many of
12 the issues I would have asked you about, and I don't
13 intend, particularly in the circumstances, to repeat
14 anything, but if I could just, I suppose, take you
15 directly to the first report that you did -- or perhaps 11:58
16 actually it might be better to begin with -- before you
17 did that report, obviously you had -- you had Sergeant
18 Hughes's, what has been termed a chronology, or a
19 report -- this is the 16-page document. You obviously
20 had sight of that when you were preparing your report; 11:59
21 he had given it to you, is that correct?

22 A. Yes, I had it in my possession, yes.

23 69 Q. Okay.

24 A. Sorry?

25 70 Q. I was going to say in that, there are obviously a 11:59
26 number of issues raised. There's issues about the
27 victim impact statement, but there's a history, it is a
28 form of chronology, it gives a history of his dealings
29 with Baiba Saulite, is that correct?

1 A. Yes, he outlines his involvement with the abduction
2 case right through to receiving the victim impact
3 statement, and it's a general account for his contact
4 with Baiba Saulite.

5 71 Q. With Baiba Saulite and -- but also there is obviously 12:00
6 an outlining of the connection between Baiba Saulite,
7 John Hennessy and Mr. A, or Suspect A, within the
8 statement?

9 A. That's correct, yes.

10 72 Q. Okay. 12:00

11 A. Within the report, yes.

12 73 Q. Yes. And you have -- I can -- without opening the
13 report, or the need to open the report, I just wanted
14 to point out that at page 869 and 870 - we have heard
15 about this before - there is reference in the report, 12:00
16 and I am not saying to a systems failure, but there is
17 reference to, several times within those two pages
18 there is reference to Sergeant Hughes not being briefed
19 about various matters, particularly relating to John
20 Hennessy and the threats to him and matters that might 12:01
21 have been outside Pulse. Are you aware of that?

22 A. I think he says he wasn't contacted in relation to the
23 attacks.

24 74 Q. Yes, there's several matters: he said I wasn't briefed,
25 I found out, effectively, you know, by my own every 12:01
26 defers or I found out through the grapevine that
27 different things had happened. But I mean you were
28 aware -- but I mean he seemed to be, if I may say so,
29 making points that he hadn't been -- I mean no one had

1 communicate with him, with Sergeant Hughes, about these
2 various matters, particularly focussing on John
3 Hennessy.

4 A. I am sorry, I just don't get the question.

5 75 Q. I am asking you -- perhaps it would be -- I can open 12:01
6 the pages, that's 869 and 870 in the papers.

7 A. Thank you.

8 76 Q. And if we take it... if I can just get to the start of
9 869 and I'll go through these. Just, it seems that he
10 was raising issues, you see in the second paragraph: 12:02
11
12 "I was not involved at all in any briefing or inquiry
13 regarding the attack on Mr. Hennessy."
14
15 Then he goes on to say in the next paragraph: 12:02
16
17 "I was not directly briefed as to the possible danger
18 to John Hennessy or Baiba Saulite."
19
20 And he talks about her not making any formal 12:02
21 complaints. And then he goes on, just at the end of
22 page 70 to say:
23
24 "I received no briefing or inquiry with regard to this
25 information." 12:03
26
27 So, I'm just asking you were you aware that he was
28 raising an issue about not being consulted, or not
29 being directly involved with these issues which were

1 clearly linked to Baiba Saulite?

2 A. Yes, I read the report as it was provided -- sorry, if
3 you could just leave it up, please --

4 77 Q. Yes, sorry...

5 A. The last page. 12:03

6 78 Q. 870, yeah.

7 A. Thank you very much. Yes.

8 79 Q. I am simply asking you, were you aware of this that he
9 was, or did you realise he was raising issues about not
10 being consulted or engaged with in respect of these 12:03
11 matters, even though, you know, he had been very
12 involved with Ms. Saulite?

13 A. Well, my interpretation of what he was raising was that
14 he believed he wasn't being included. But, in any
15 criminal investigation, if a serious investigation -- 12:04
16 let's say a serious case begins now in Crumlin and I
17 have information in relation to that, I would feel
18 personally obliged to contact the officer in Crumlin to
19 say, listen, here, I know about this, I may be in a
20 position to assist you. That's what I would do and 12:04
21 that's what most people would do. It would appear that
22 he is not happy that people weren't contacting him.
23 But there was the outlet that he could have contacted
24 them. And I just note he says "It annoyed me that he
25 was capable of making apparently unimpeded mobile 12:04
26 telephone calls from prison" - you know, we can take
27 executive action in relation to mobile phones in prison
28 to stop people from doing that. So, there were issues
29 being raised, but they were issues that he could, in my

1 consideration, have taken action himself by initiating
2 a contact with the investigating members in relation to
3 Mr. Hennessy and also in relation to the burning of
4 Baiba Saulite's car.

5 80 Q. Right. And in relation to John Hennessy, you have 12:05
6 already said in answer to Mr. Marrinan, that you didn't
7 really consider matters in relation to him to be
8 related to Baiba Saulite, if you follow what I mean.
9 So he doesn't really feature in any of your reports --

10 A. No, sorry -- 12:05

11 81 Q. This is Mr. Hennessy.

12 A. Sorry -- yes, what -- I wasn't saying they didn't
13 feature. What I'm saying, it was the level of threat
14 to Baiba Saulite that I was concerned with. An
15 investigation thereafter may have linked in the threats 12:05
16 to be emanating from the same person, I don't know.
17 What I was trying to endeavour to do was establish, in
18 this exercise, what the level of threat was in
19 possession of An Garda Síochána.

20 82 Q. Yes, but would you accept that you would certainly have 12:06
21 had an awareness that Mr. Hennessy's situation was
22 related to his contacts with Mr. A, but, in turn,
23 related to his contact, his work for Baiba Saulite?

24 A. Yes, I would accept that they would be interrelated in
25 that he was attacked, viciously attacked, his property. 12:06

26 83 Q. Yes. And would that not have struck you as something
27 that might be important about the level of knowledge
28 within -- that An Garda Síochána had, that knowledge in
29 respect of him may also have been, indirectly have been

1 knowledge in respect of her, or may have given rise to
2 some, you know, to worries about her safety?

3 A. Well, if there were concerns emanating from the threat
4 to Mr. Hennessy I would have considered that they would
5 have been documented and they would have been available 12:07
6 to me as regards a threat to Baiba Saulite. That would
7 have been my consideration. But it wasn't raised with
8 me.

9 84 Q. Okay. And if I move to the report that you actually
10 did, and I think the first report is at page 879. And 12:07
11 I know Mr. Marrinan has already opened this to a
12 certain extent, but I suppose -- I mean, reading it
13 now, you know, there is a real concentration, I mean
14 you begin contact between Baiba Saulite and members of
15 An Garda Síochána, and begin immediately in 2006. We 12:08
16 can see on the 11th October 2006 "Liam Hughes visited
17 Baiba Saulite". And then, you go on in that vein.
18 This is not a criticism, but this is what you seem to
19 be dealing with and be the extent of what you are
20 dealing with. 12:08

21
22 If we could go down, scroll down through the report, I
23 mean, you know, there does appear to be a concentration
24 on that last meeting in 2016 -- or sorry, in 2006, and
25 then the rest of it effectively seems to deal with 12:08
26 victim impact statements. And you have put a very -- I
27 mean, I have to say it's a comprehensive analysis of
28 what's required in a victim impact statement, but
29 nonetheless, would you accept that it does concentrate

1 on the meeting that took place on the 16th November and
2 on the victim impact statement itself, certainly your
3 first report?

4 A. No, I would disagree. I think it's been judged, that
5 report is being judged with 16 years of hindsight. I 12:09
6 concentrated on the information that was in possession
7 of An Garda Síochána. Sergeant Hughes and Garda Nyhan
8 were two of the most prominent people who were involved
9 in the abduction, conducted, as I clearly said, a very
10 professional and comprehensive investigation. They are 12:09
11 very difficult investigations, I know that myself: they
12 are fraught with danger, you are dealing with children,
13 a lot of emotion. But I concentrated on the victim
14 impact due to the level of threat that was contained
15 within in. It was quite significant what she was 12:10
16 outlining in my opinion, as regards how she actually
17 felt at that time. And at that time she was prepared
18 to commit it to writing, which was also significant.
19 So, technically, what she is saying is in possession of
20 An Garda Síochána. 12:10

21 85 Q. Yes...

22 A. We have it, we have it in our possession.

23 86 Q. So just from what you have said there, you said that
24 you were concentrating on the victim, the draft victim
25 impact statement? 12:10

26 A. It was part of it, but also significantly contained
27 within one of her original statements to the
28 investigators she said clearly he is going to kill me.
29 I mean, that line alone has resonated with me

1 throughout the years. She is prophecising her own
2 death in that line.

3 87 Q. Yes, and we have been over that several times in the
4 Tribunal. But that was in her statement to Garda
5 McNally, unless I am mistaken, is that correct? 12:11

6 A. Yes, that was --

7 88 Q. Did you interview him?

8 A. So that is also in possession of An Garda Síochána.

9 89 Q. Yes, but --

10 A. That's information in possession -- 12:11

11 90 Q. Yes, but that -- those documents, it's not as though
12 they were any... they were any form of a secret. I
13 mean, they were used in the child abduction
14 prosecution, they had -- they were available if -- you
15 know, they were available to other members of the 12:11
16 Guards, they had passed through the usual system to
17 become part of the prosecution, isn't that right? I
18 mean it's not as though they were a big secret that
19 wouldn't have been available to other people.

20 A. Well, it wasn't available to me. And that line really 12:12
21 is a striking line when somebody says he is going to
22 kill me. So, what I would -- you know, when I
23 concentrate on that line alone is: Did she say it to
24 anybody else? Was there any other information there in
25 relation to, you know, threats to her personal safety? 12:12
26 So it is the very important line that jumps off the
27 page to me. I hadn't read it before. I had never seen
28 it.

29 91 Q. You hadn't read the statement, you mean? Sorry?

1 A. No, I hadn't seen that statement until I got possession
2 of it.

3 92 Q. Right, okay?

4 A. I would have been unaware of it until it was given to
5 me. 12:12

6 93 Q. Yes.

7 A. So it is important.

8 94 Q. Yes.

9 A. And her 12-page victim impact really details in great
10 detail how she was feeling and how he was impacting on 12:12
11 her and the coercive behaviour.

12 95 Q. And just, I suppose, since you mention it, how did you
13 see those documents? Who gave them to you?

14 A. I don't remember who gave them to me. They were
15 provided to me. I don't know. 12:13

16 96 Q. Okay. And I don't see specific reference to that part
17 of the statement that she made, or the parts, because
18 there were different parts and there was actually I
19 think three statements in the end, if I'm correct, but
20 I don't see reference to that in your report 12:13
21 specifically, but... when you refer to threats, were
22 you referring to that?

23 A. I said in my -- I said there was a level of knowledge
24 in relation to threats. She says it in her original
25 statement. She says it clearly. 12:13

26 97 Q. Yes?

27 A. If I was to document every line that was contained
28 therein, it would have been a huge report.

29 98 Q. Yes. Okay.

1 A. It was for somebody else to consider.

2 99 Q. Yes. And your first report didn't reach any -- didn't
3 make any, as Mr. Marrinan has again pointed out, it
4 didn't make any particular recommendation. You do have
5 the report of -- the limited report from Kieran 12:14
6 McEneaney attached, but I mean it would appear, if I
7 may say so, that you were, certainly in respect of the
8 victim impact statement, that you appear to be -- I
9 mean the word has been used, exonerating, in the course
10 of these proceedings, Sergeant Hughes and Garda Nyhan 12:15
11 in respect of that because it wasn't a proper victim
12 impact statement, because it was handwritten, because
13 it didn't contain the information that a victim impact
14 statement should contain. I mean that, to me, reading
15 it, would be the gist of your -- certainly your first 12:15
16 report, would that be correct or am I...

17 A. Yes, because they were in a difficult position in
18 relation to the content of it. It would not have been
19 accepted by a court, to be fair to Sergeant Hughes, in
20 relation to what he was provided. So, a clear, precise 12:15
21 victim impact statement would have been required to
22 outline the impact of the crime on her, and how it
23 impacted on her over the years.

24 100 Q. Yes. And you didn't make... you didn't make any
25 particular recommendation -- I mean obviously we're 12:15
26 going to move -- I'm going to move to your second
27 report now. But why did you not -- did you feel you
28 didn't have to or there was nothing to recommend, why
29 did you not make any particular recommendation at the

1 end of that? This is your first report now.

2 A. I don't believe at the time -- yes, I understand. I
3 believe at the time I wasn't asked to make a
4 recommendation. I just don't have that paper trail
5 available to me. 12:16

6 101 Q. I understand. And... well, if we could briefly just
7 refer to page 885, which is the letter from Michael
8 Feehan to you, which asks you -- and perhaps we could
9 open that -- it just asks you to deal with some other
10 issues. That's at page 885. Can you see that? 12:16

11 A. Not yet. I have it now. Thank you.

12 102 Q. Okay. So it would appear that Chief Superintendent
13 Feehan is asking you for -- you know, for some further
14 information that arises, I think primarily from
15 Sergeant Hughes's chronology or statement, would that 12:17
16 be correct?

17 A. I don't know what informed his decision to seek this.
18 He must have believed it was -- he required it. That's
19 -- I don't know. But the report from Garda Nyhan was
20 awaited, that's one I think at the end I see there, so 12:17
21 I don't actually know how he was informed. Some of it
22 I'm sure came out of the report submitted by Sergeant
23 Hughes.

24 103 Q. Okay.

25 A. I think the second one definitely would have done. 12:18

26 104 Q. Yes. Okay. And so, you received that from Chief
27 Superintendent Feehan, and I think then after that, the
28 next document we have - now I may be mistaken, but -
29 seems to be your second report, at page 887?

1 A. I believe that's correct.

2 105 Q. And I'm just wondering, did you respond to this letter
3 in a different way other than the report, or was the
4 report your response, as such? This is your second
5 report. The kind of amended report. 12:18

6 A. Well, as has been pointed out by Mr. Marrinan, there
7 are I think two or three additions, and obviously one
8 of them is the recommendation at the very end.

9 106 Q. Yes. No, I was just asking you, it's not -- please
10 don't take it as a criticism or anything like that. 12:19
11 It's just, we appear to jump from that letter, which is
12 asking you for certain documents, to your second
13 report. I just wonder was there any -- are we missing
14 something or was there correspondence between you and
15 Chief Superintendent Feehan in the meantime? 12:19

16 A. We could be missing documentation. I would have
17 responded to the previous report, the one that you
18 showed me there, I think four or five items were
19 required to be attended to, so I would have probably
20 attended to those and reported them. I don't have that 12:19
21 documentation available to me.

22 107 Q. Okay. And in respect, I suppose, of the -- I mean
23 we're coming onto the second report, but I mean the
24 obvious, or the primary difference, as far as I can
25 see, is that there is a recommendation at the end. Did 12:20
26 Chief Superintendent Feehan ask you to do that?

27 A. I -- it is my consideration that I was asked to submit
28 a recommendation. I don't have any file in relation to
29 it, I don't have any memory in relation to Chief

1 Superintendent Feehan asking me to submit a
2 recommendation, but I don't believe I would have
3 submitted the second report without being asked for a
4 recommendation. I don't have documents.

5 108 Q. So somebody asked you to include a recommendation at 12:20
6 the end, would that be...

7 A. Yes, I believe I was asked to submit a recommendation.

8 109 Q. Yes. And that you hadn't done that in your first
9 report?

10 A. That's correct. 12:20

11 110 Q. And was there any suggestion what the recommendation
12 might be?

13 A. No, not to my memory.

14 111 Q. So you were just asked to make a recommendation?

15 A. Sorry, I lost the last part of your question? 12:21

16 112 Q. I mean, you are saying that somebody else asked you to
17 make a recommendation but didn't specify what that was
18 to be, or even indicate what it was to be, is that
19 your...

20 A. Well, my belief is that I was asked to make a 12:21
21 recommendation as to what course of action should take
22 place. And the recommendation was to have -- to have
23 it formally investigated.

24 113 Q. Okay. I think you have responded to Mr. Marrinan in
25 respect of that, about what you meant; that that could 12:21
26 have been a wide variety I think -- I am sorry, I don't
27 mean to -- I'm not -- I think you said it could have
28 been a variety of -- you know, that that could have
29 taken a variety of forms, is that the -- was that what

1 you said earlier?

2 A. In general, yes.

3 114 Q. Sorry, I don't have a transcript but...

4 A. Yes, in general, it could take a number of different,
5 different leads as regards what sort of investigation 12:22
6 you would have.

7 115 Q. Okay. And I mean I suppose you are aware that Sergeant
8 Hughes never received either report, are you?

9 A. I only became aware of Sergeant Hughes not receiving
10 anything on I think it was 2011, I think. 12:22

11 116 Q. Yes. That would have been in the course of the High
12 Court litigation, one of the other cases, either -- am
13 I right or is that different?

14 A. Yes.

15 117 Q. Okay. And you have -- I mean there are -- there is a 12:22
16 chronology from you about what you did, and there's
17 also a series of questions, but they seem to -- on the
18 file -- but they seem to have been documents that you
19 prepared in 2011, certainly the date on them is 2011,
20 is that correct? 12:23

21 A. Yes, it was in respect of the civil legal action for
22 the State.

23 118 Q. So they weren't documents that were prepared at the
24 time. I mean you weren't raising those questions that
25 are in your 2011 document back in 2006 or 2007 at that 12:23
26 time?

27 A. No.

28 119 Q. Okay.

29 A. No, I wasn't.

1 120 Q. And again, I mean Sergeant Hughes, having seen your
2 report much later -- I'm not sure if he saw both
3 reports, but certainly I think saw the second one -- he
4 took that to be an -- I don't think it was Sergeant
5 Hughes that first used this term, but an exoneration of 12:24
6 him because you said, you know, with all of the
7 information about the victim impact statement, you said
8 that himself and Garda Nyhan had carried out a very
9 professional, you know, investigation and had done
10 everything possible, I suppose, sorry to paraphrase 12:24
11 you, but in respect of the child abduction
12 investigation, I mean that's part of your conclusion.
13 Was that what you actually meant? Is that what you
14 meant to convey in the report?

15 A. Yes, because they had -- he had, as the senior member, 12:24
16 you know, in charge of the file, let's say, he -- this
17 is a most difficult investigation. They are not easy,
18 I know that, I am in An Garda Síochána almost 40 years,
19 so a child abduction will really keep you awake at
20 night trying to make sure you are going to ensure the 12:25
21 safety of the children and, you know, deal with the
22 matter. So it's a very complex investigation. So, I
23 certainly was being complimentary in relation to his
24 professional investigation of the abduction.

25 121 Q. Okay. And just, I mean in relation to, neither report 12:25
26 mentions anything about breach of duty, or Article 2 of
27 the European Convention on Human Rights, or a failure
28 to, you know, protect someone's life. I mean, they
29 don't appear to have been matters that were within

1 your, what will I say, contemplation, judging by the
2 report; you don't seem to have -- I mean you don't seem
3 to have gone on to deal with those type of issues or to
4 have considered those type of issues at all?

5 A. I didn't deal with those issues in the report. I 12:26
6 clearly said that he conducted a very professional
7 investigation. But there was a level of knowledge in
8 possession of An Garda Síochána.

9 MR. O'DWYER: Thank you very much, chief
10 superintendent. I am sorry to be interviewing your 12:26
11 under these circumstances.

12 THE WITNESS: Thank you. Thank you for your courtesy.

13 CHAIRMAN: Now, Mr. O'Higgins.
14

15 THE WITNESS WAS CROSS-EXAMINED BY MR. O'HIGGINS AS 12:26
16 FOLLOWS:

17 MR. O'HIGGINS: Thank you, Chairman.

18 122 Q. Chief Superintendent Mangan, Mícheál O'Higgins for An
19 Garda Síochána, for the Commissioner and Garda
20 management. 12:26

21 Can I start, please, by asking you: in November 2006,
22 when you were tasked with carrying out the
23 fact-finding, where were you physically based?

24 A. I was based in Store Street Garda Station.

25 123 Q. Right. Did you know Sergeant Hughes at that point? 12:27

26 A. No, I didn't.

27 124 Q. In your -- we have seen already the -- and the Tribunal
28 has seen it quite a few times -- the report dated the
29 17th December 2006 provided by Sergeant Hughes. It

1 commences at page 860. I wonder could we go to page
2 871 of that report, please.

3 And at the bottom of page 871, we have the paragraph
4 commencing "The court ordered a victim impact
5 report..." Just the last paragraph, just there. 12:28
6 And then it starts to say:

7
8 "On the 14th November 2006 Bai ba Saulite arrived at
9 Swords station by appointment, along with Garda
10 Nyhan..." 12:28

11
12 And as it goes across the page, I just want to ask you
13 about the references on page -- the next page, 872,
14 deals with matters said during the conversation, which
15 we can pass over. 12:28

16
17 And I wonder could we move to page 873, please, and
18 just go to just the first paragraph down. We needn't,
19 for sensitive reasons, open up the balance of this
20 page. 12:28

21
22 You are familiar with this report, chief
23 superintendent, isn't that so?

24 A. That's correct, yes.

25 125 Q. I just want to ask you to deal with this. I am going 12:28
26 to summarise matters because it's not necessary to go
27 over potentially sensitive matters on this page.
28 But can I ask you, at the end of it I'm going to be
29 asking you did you regard these as relevant to the

1 brief you had. I am sorry for this longwinded question
2 now but I'm doing it so that we don't have to go over
3 the page.

4 In this report the sergeant outlines the following five
5 points. That [REDACTED]

12:29

6 [REDACTED] That's point one.

7 Point two: that Sergeant Hughes and his colleague had
8 asked her if they could approach the person in
9 question, and she had become anxious and said not to do
10 so. Do you recall that?

12:29

11 A. Yes, I recall that from the report, yes.

12 126 Q. All right. Point three: they reported in the report
13 that she told Sergeant Hughes she had stopped bringing
14 her sons to Mountjoy Prison on visits, and the sergeant
15 had asked her whether that was a good idea. Do you
16 recall that?

12:30

17 A. Yes, that's correct.

18 127 Q. The fourth point: she had told the two gardaí she had
19 changed her mobile telephone number and that Mr. A was
20 not aware of her new number. Do you recall that?

12:30

21 A. I do recall that. That's correct.

22 128 Q. And the fifth point that was mentioned in terms of this
23 conversation on the 14th November was that she had told
24 Sergeant Hughes and Garda Nyhan that she was making a
25 break from Mr. A once and for all, and "was not going
26 to tolerate his intimidation any further".

12:30

27

28 So, my question so you, chief superintendent, is: did
29 you regard what was reported to the two gardaí on the

1 14th November visit by her, did you regard that as
2 relevant to the inquiry you were tasked with carrying
3 out?

4 A. Yes. Yes, I did. Because she is speaking about
5 threats and overall general threats. But then she
6 appears to be upbeat well. 12:31

7 129 Q. Yes. And then if we move on to page 874, which is the
8 next page, where, if you like, Sergeant Hughes is
9 outlining his own position. The following is recorded
10 in his report, he says: 12:31

11
12 "From the outset I believed I was merely dealing with a
13 family law matter which had unfortunately escalated to
14 a case of child abduction."

15
16 Then two sentences on: 12:31

17
18 "I was familiar with the intelligence report already
19 collated in respect of Mr. A."

20
21 Again my question, chief superintendent: was that
22 something relevant to the brief you had in terms of the
23 fact-finding? 12:31

24 A. Well, it was -- sorry, I am just reading it again
25 please. 12:32

26 130 Q. So the paragraph commencing "From the outset..."

27 A. Yes.

28 131 Q. And the third sentence: "I was familiar with the
29 intelligence reports already collated in respect of

1 Mr. A. "

2 A. Yes.

3 132 Q. And in fairness, the report, I should acknowledge, it
4 goes on to say:
5
6 "None gave me concern for my personal safety or that of
7 Garda Nyhan or Baiba Saulite."
8
9 And it says:
10
11 "I informed Baiba that I would make contact with her
12 the following week. . ."
13 A. Yes, and that was -- would appear to be Sergeant
14 Nyhan's [sic] thinking at the time.
15 133 Q. Sergeant Hughes's? 12:32
16 A. Sorry, Sergeant Hughes's thinking at the time. That
17 none of this gave him concern for his personal safety
18 or for Garda Nyhan or Baiba Saulite.
19 134 Q. Yes?
20 A. Yeah, and that's his contention, and thinking, it would 12:32
21 appear, yes.
22 135 Q. All right. I understand that you yourself, chief
23 superintendent, you have some experience in
24 investigating protected disclosures, is that right?
25 A. Yes, I am a protect disclosures investigator in 12:33
26 relation to protected disclosures that are made within
27 the Garda organisation.
28 136 Q. Sergeant Hughes has maintained, although the Tribunal
29 has given its own ruling on this, but Sergeant Hughes

1 has maintained that the report he provided to you was a
2 protected disclosure. Do you accept that?

3 A. No. I do not accept that, no.

4 137 Q. All right. You have said -- you have given your view
5 on the significance of the victim impact statement. In 12:33
6 relation to this bind that -- and I don't mean that
7 pejoratively -- in relation to Sergeant Hughes's point
8 that he mentions a few times that Baiba Saulite had,
9 over the period, not followed through by making a
10 statement, following through on her concerns, did you 12:34
11 see any significance, or read any significance into the
12 victim impact report in relation to that aspect?

13 A. Well, I would have considered obviously that she hadn't
14 made a statement regarding the threats to her to
15 members of An Garda Síochána, but she appeared very 12:34
16 strong in her victim impact statement as regards the
17 impact Mr. A's behaviour had on her, and she outlined
18 in detail some of the acts that were perpetrated
19 against her over the years, and she appeared very
20 strong in relation to that. And if the impact 12:34
21 statement, as it was, had been submitted, it would have
22 been open to disclosure to, or it would have been
23 provided to Mr. A, so he would have been aware of what
24 she was contending to have happened in their
25 relationship. So, it was quite strong, I would have 12:35
26 thought.

27 138 Q. Can I ask you, then, to deal with the -- your meeting
28 with Sergeant Hughes. I think it's common case that
29 you met him for the purposes, on the 17th December,

1 2006, for the purposes of collecting the report from
2 him, is that so?

3 A. Yes, to receive it from him, yes, that's correct.

4 139 Q. And who phoned who? What was the arrangement to be?

5 A. I don't remember who phoned who to tell you the -- I 12:35
6 don't remember who phoned who, but the arrangement was
7 made that I would receive the report from Sergeant
8 Hughes.

9 140 Q. Right. Sergeant Hughes says that during your meeting,
10 he made you aware of "the systems failure", did that 12:36
11 happen?

12 A. No, that certainly did not happen. There was no
13 mention of systems failures to me, and there is clearly
14 no mention of the word "systems failures" in his report
15 that he provided to me, the 16-page report, there is 12:36
16 absolutely no mention of a systems failure.

17 141 Q. He says that he -- and I'm looking at his statement,
18 his interview, which is at page 13 of the whole
19 materials, he says that you casually mentioned a murder
20 that you yourself were dealing with in a way that he 12:36
21 felt that you were indicating this is simply just
22 another murder. What do you say to that?

23 A. Well, that, to me, would be very disrespectful to the
24 victim. I certainly would never discuss a murder
25 casually, and I certainly wouldn't discuss a murder 12:37
26 with somebody who was not involved in the murder
27 investigation. That absolutely would not happen. I
28 wouldn't speak like that at all.

29 142 Q. He says in his interview he cannot recall whether he

1 made you aware of how he was feeling in respect to
2 being -- I am borrowing his language -- "isolated or
3 being treated by senior management". Did he say
4 anything along those lines to you in this conversation?
5 A. Absolutely not. 12:37
6 143 Q. Finally then, chief superintendent, we know that you
7 submitted a fact-finding report to Chief Superintendent
8 Feehan on the 22nd December 2006. In your report did
9 you make findings against anybody?
10 A. No, I made no findings against anybody. 12:38
11 144 Q. In your report did you exonerate anybody?
12 A. No, I did not exonerate anybody.
13 145 Q. In your report you made -- gave a recommendation that
14 there should be a full investigation into the level of
15 knowledge of An Garda Síochána in relation to the 12:38
16 question of a threat to Baiba Saulite, isn't that so?
17 A. That's correct.
18 146 Q. Looking back now, do you stand over the recommendation
19 you made?
20 A. I absolutely do. 12:38
21 147 Q. Thanks very much.
22 CHAIRMAN: Thank you, Mr. Marrinan.
23 MR. MARRINAN: No further matters.
24 CHAIRMAN: Okay. Thank you very much. So we have
25 completed then Chief Superintendent Mangan. Thank you 12:38
26 very much for making yourself available especially in
27 your current condition, Chief Superintendent, which we
28 very much appreciate, and thank you for helping us with
29 our investigations.

1 So you are finished now. Thank you very much.

2 THE WITNESS: Thank you, sir.

3

4 THE WITNESS THEN WITHDREW

5

12:39

6 CHAIRMAN: Okay. Peter, can we uncontact -- can we
7 disengage from Chief Superintendent Mangan then.

8

9 Right. Now, gentlemen, where are we?

10 MR. MARRINAN: The next witness this morning is former
11 Superintendent Fergus Dwyer.

12:39

12 CHAIRMAN: Thanks very much.

13 MR. MARRINAN: Mr. Dwyer's statement appears at page
14 896 of the material for the benefit of the parties.

15 CHAIRMAN: Thank you. It's possible that

12:39

16 Superintendent Dwyer isn't quite ready or thinks that
17 he mightn't be here until the afternoon. That's not a
18 problem I think, and he is not a long witness, is that
19 right?

20 MR. MARRINAN: No, he shouldn't be that long, but I
21 spoke to him outside and he is here now.

12:40

22 CHAIRMAN: Oh very good. Thanks very much. Thanks,
23 superintendent. Thanks very much. Thanks
24 Superintendent Dwyer.

25

26

27

28

29

1
2 SUPERINTENDENT FERGUS DWYER, HAVING BEEN SWORN, WAS
3 EXAMINED BY MR. MARRINAN AS FOLLOWS:
4

5 148 Q. MR. MARRINAN: Now, I think that you are retired from 12:41
6 An Garda Síochána and you retired at the rank of
7 superintendent, isn't that right?

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

9 149 Q. I think during the relevant period of time under 12:41
10 consideration by the Tribunal, you were at the rank of
11 inspector in March 2007, isn't that right?

12 A. That's correct, Mr. Chairman, yes.

13 150 Q. And you were attached to Store Street Garda Station, 12:41
14 and in May 2009, you were promoted to the rank of
15 superintendent and you were transferred to Tullamore in
16 County Offaly, isn't that right?

17 A. That's correct, Mr. Chairman, yes.

18 151 Q. And I think that in July of 2010, you were transferred 12:42
19 to Internal Affairs in Garda Headquarters, isn't that
20 right?

21 A. That's correct, Mr. Chairman, yes.

22 152 Q. So during that period of time, you had different
23 functions and roles, but you also were interacting with
24 this case of Sergeant Hughes, isn't that right?

25 A. That's correct, Mr. Chairman, yes. 12:42

26 153 Q. And you did so in relation to, first of all, the
27 disciplinary investigation that was headed up by Chief
28 Superintendent Feehan, and also an investigation into
29 The Daily Star Newspaper, isn't that right?

1 A. That's correct, Mr. Chairman.

2 154 Q. And also the investigation under the Garda Síochána
3 (Confidential Reporting of Corruption and Malpractice)
4 Regulations 2007. And finally, as you point out, you
5 had dealings with the High Court proceedings that were 12:42
6 brought by Sergeant Hughes, isn't that right?

7 A. That's correct, Mr. Chairman, yes.

8 155 Q. Now, you provided a comprehensive statement to the
9 Tribunal, along with appendices to that, which is very
10 helpful, and the Tribunal thanks you for that. And 12:43
11 during -- throughout this period of time that you were
12 involved with these investigations, you were acting
13 under the instructions of Chief Superintendent Feehan,
14 isn't that right?

15 A. That's correct, Mr. Chairman. Chief Superintendent 12:43
16 Feehan was appointed the investigating officer and I
17 was assisting him.

18 156 Q. And you were reporting directly to him, isn't that
19 right?

20 A. Yes. 12:43

21 157 Q. So, in those circumstances, I don't intend to bring you
22 through the reports that were submitted by Chief
23 Superintendent Feehan in relation to any of these
24 matters, or indeed some of the minutiae leading up to
25 it, but I'm just going to focus on your interactions 12:43
26 with Sergeant Hughes, okay? If any of the other
27 parties wish to pursue other matters, it's entirely
28 open to them.

29

1 I think that initially your involvement arose out of an
2 appointment that was made by Chief Superintendent
3 Feehan when he requested you and other Gardaí to become
4 involved in the investigation in relation to the
5 disciplinary matter, isn't that right 12:44

6 A. That's correct, Mr. Chairman, yes.

7 158 Q. And I think that you were present on the 15th June of
8 2007 when Chief Superintendent Feehan served Sergeant
9 Hughes with the Regulation 9 notice, isn't that right?

10 A. That's correct, Mr. Chairman. 12:44

11 159 Q. Again, the statement that you made to the Tribunal, you
12 point out that during the course of that particular
13 investigation you met with Detective Inspector Michael
14 Cryan, and also a friend of Ms. Saulite, isn't that
15 right? 12:45

16 A. I did, Chairman, yes.

17 160 Q. I think that you also corresponded with Ms. Saulite's
18 general practitioner and you obtained statements from
19 Inspector Cryan, Ms. Saulite's friend and also you
20 retained medical reports from Ms. Saulite's general 12:45
21 practitioner, isn't that right?

22 A. That's correct, Mr. Chairman, yes.

23 161 Q. I think that you also had cause to deal with a number
24 of interactions with Sergeant Hughes, but you became
25 aware, on the 17th May of 2007, that he had reported 12:45
26 unfit for duty because of work related stress, isn't
27 that right?

28 A. That's correct. That was actually prior to the service
29 of the Regulation 9 notice, he was actually on sick

1 leave when he received that notice, yes.

2 162 Q. I think that we have already heard from Chief
3 Superintendent Feehan, but that he, I think, decided to
4 seek the guidance of the Chief Medical Officer on the
5 member's fitness to be interviewed, and I think that he 12:46
6 wrote accordingly to the Chief Medical Officer.
7 I think that subsequently, on the 21st February of
8 2008, you had a conversation with Dr. Richard Quigley,
9 who informed you, amongst other things, that he would
10 undertake investigations into the member's medical 12:46
11 welfare, isn't that right?

12 A. That's correct, Mr. Chairman, yes.

13 163 Q. Now I think that you have attached your notes of that
14 conversation. They are at page 925 of the material.
15 If we just have those up on the screen. 12:46
16 And if you wouldn't just mind reading out that yourself
17 in terms of your conversation with Dr. Quigley.

18 A. Yes. They are dated and timed:
19
20 "15:45am 21/2/08. 12:47
21 Re: Telephone conversation with Dr. Richard Quigley.
22 Assistant Commissioner CMO."
23
24 CMO is for Chief Medical officer. 12:47
25
26 "Discussed the fitness of Sergeant Hughes. Inquired if
27 he was fit to be interviewed in respect of a
28 disciplinary matter.
29 Dr. Quigley responded.

1 - he stated that Sergeant Hughes currently has a case
2 in the High Court regarding his pay, said that if he
3 gave evidence in the case in court he may be capable of
4 being interviewed in respect of a disciplinary matter.

12:47

5
6 - undertook to conduct further inquiries and revert to
7 me later on the question of the member's fitness to be
8 interviewed."

9 164 Q. Now, I think that, did this issue of Sergeant Hughes's
10 fitness to be interviewed by the investigation team,
11 was that discussed between you and Chief Superintendent
12 Feehan?

12:48

13 A. Em, I am sure it was. I have no recollection of it,
14 but that would be standard practice, Mr. Chairman, in
15 relation to members suffering from stress who are the
16 subject of disciplinary proceedings. I have been a
17 sergeant in Internal Affairs, and I was aware that
18 members on that type of sick leave, you'd always seek
19 the guidance of the Chief Medical Officer before
20 approaching them in case their condition was compounded
21 in any way by your interactions with them.

12:48

12:48

22 165 Q. And we know that on the 29th April of 2008, Chief
23 Superintendent Feehan also wrote to the Assistant
24 Commissioner HRM, pointing out his obligations under
25 the discipline regulations to investigate the matter
26 with the member as soon as practicable, and seeking
27 advice in circumstances where the CMO was not
28 forthcoming with a decision on whether or not Sergeant
29 Hughes should be interviewed.

12:49

1 So, it was obviously a matter of concern that the
2 investigation should be progressed, but progressed in
3 circumstances where Sergeant Hughes's rights were
4 acknowledged in relation to it?

5 A. That would be correct, Mr. Chairman, yes. 12:49

6 166 Q. Now, I think on the 13th October 2008, you were tasked
7 with serving correspondence, which was dated the 2nd
8 October, from chief superintendent to Sergeant Hughes.
9 And I think that that correspondence was informing
10 Sergeant Hughes that the Chief Medical Officer had 12:50
11 advised that any outstanding disciplinary issues
12 against him should be dealt with as early as possible.
13 You also note in your statement that the Assistant
14 Commissioner Human Resource Management had advised that
15 this should be taken as confirmation that Sergeant 12:50
16 Hughes was fit to be interviewed and that you were to
17 arrange a suitable date for interview, is that right?

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

19 167 Q. I think that that correspondence is at page 926 of the
20 material -- we don't need it up on the screen, we have 12:50
21 already had it opened. But I think that same day you
22 telephoned Sergeant Hughes and you requested a meeting
23 with him, is that right?

24 A. That's correct.

25 168 Q. And do you recall what he said to you? 12:50

26 A. He asked, he asked me what it was about, and I told
27 him. And he asked me would I fax a copy of the letter
28 to his solicitor, which I did. And we arranged to meet
29 then I think the following day.

1 169 Q. I think that you took a note of that telephone
2 conversation, and you have attached that, at page 927
3 of the material. Again, Mr. Kavanagh, we don't need it
4 on the screen, I don't think there is any issue that
5 arises in relation to it. 12:51
6 I think on the 14th October, you phoned Sergeant Hughes
7 to confirm the meeting that you had with him, is that
8 right?
9 A. I did, Mr. Chairman, yes.

10 170 Q. And later that day, you accompanied Detective Inspector 12:51
11 Sweeney, who was part of the investigation team, to the
12 offices of Sean Costello & Co, where you met with
13 Sergeant Hughes?
14 A. That's correct, Mr. Chairman, yes.

15 171 Q. I think you met in the foyer of the office, is that 12:51
16 right?
17 A. That's correct. His solicitor was not present.

18 172 Q. And would you just tell the Chairman what transpired at
19 that meeting?
20 A. We just handed him a copy of the letter. He was aware 12:52
21 what the contents were. We discussed about arranging a
22 meeting. He told me he was out of the country, I think
23 he was going to Germany or something, and I said we'd
24 be in touch to arrange a meeting, and we did for, I
25 think it was, the 29th October was our first meeting. 12:52

26 173 Q. And I think that you met with Sergeant Hughes on the
27 29th October in the offices of Sean Costello & Co and
28 that on that occasion you were also accompanied by
29 Detective Inspector Fran Sweeney, is that right?

1 A. That's correct, Mr. Chairman, yes.

2 174 Q. I think that you were provided with a 25-page report
3 that had been signed by Sergeant Hughes, isn't that
4 right?

5 A. That's correct, Mr. Chairman, yes. 12:53

6 175 Q. Again, merely for the benefit of the parties, that
7 report is at page 929 to 955 of the material. I think
8 you have noted in your statement that Sergeant Hughes,
9 in his statement to the Tribunal, had referred to this
10 report as being a protected disclosure. Did you regard 12:53
11 this report that was being handed to you at that time
12 as amounting to a protected disclosure?

13 A. I did not, Mr. Chairman. I considered it to be a
14 response from Sergeant Hughes to the matters alleged
15 against him. 12:53

16 176 Q. Now, I think that you, also at that meeting then, read
17 over a number of questions to Sergeant Hughes, is that
18 right?

19 A. That's correct, Mr. Chairman, yes.

20 177 Q. And I think that that memo was read over and was signed 12:54
21 by Sergeant Hughes, and subsequently you sent in a
22 report of that meeting, and that's at page 956 of the
23 material. Again, I don't see that there is any need to
24 open that report. But how long did that meeting take,
25 do you recall? 12:54

26 A. It took a couple of hours. I recall there was a
27 discussion on the matters contained in his report that
28 were outside the ambit of the discipline investigation,
29 and I told him that they weren't relevant to what was

1 alleged against Sergeant Hughes, and they were both
2 adamant that it was and they wanted it to be included
3 in the discipline investigation as part of the
4 discipline. I tried to explain to them that the brief
5 of the investigating officer was outlined on the 12:54
6 Regulation 8 notice appointing him, and that was to
7 investigate Sergeant Hughes and his knowledge of was
8 there a real and immediate threat against Baiba
9 Saulite, and I said anything outside that does not come
10 within our remit. They argued that the points they 12:55
11 raised in the pre-prepared statement, they believed
12 certainly did, they were adamant that it did and the
13 conversation went round in circles for a while in
14 relation to that.
15 I also noticed in the pre-prepared statement that some 12:55
16 of the matters I was going to raise with Sergeant
17 Hughes had already been covered in that report, and
18 that's why the memo of interview is quite short there.
19 178 Q. Yes. Now, I suppose in his -- in the statement that he
20 provided to you, he raised a number of different issues 12:55
21 in it. There is a reference to earlier interactions
22 that he had with members of An Garda Síochána --
23 A. Yes.
24 179 Q. -- prior to the Baiba Saulite murder, isn't that right?
25 A. That's correct. 12:56
26 180 Q. He also raised issues in relation to how he had been
27 treated, as he saw it, since the murder of Baiba
28 Saulite, isn't that right?
29 A. That's correct, Mr. Chairman, yes.

1 181 Q. And he then also highlighted and put in his report his
2 interactions with Baiba Saulite.
3 Now, in terms of the first of those issues, those were
4 dismissed out-of-hand as coming within your
5 disciplinary investigation, is that right? 12:56

6 A. Absolutely, Mr. Chairman, yes.

7 182 Q. Were you aware at that time that correspondence had
8 gone back and forth between Mr. Costello and HRM?

9 A. I was not, Mr. Chairman, no.

10 183 Q. You were not? 12:56

11 A. No.

12 184 Q. But in any event you saw that as being clearly outside
13 your jurisdiction?

14 A. Yes.

15 185 Q. In terms of the second issue, as to how he had been 12:57
16 treated since the Baiba Saulite murder and how he had
17 felt that he was being ostracised, badly treated,
18 bullied, harassed, did you see that as coming within
19 your investigation?

20 A. No, I did not. Our belief was outlined on the 12:57
21 Regulation 8 notice that Chief Superintendent Feehan
22 was appointed under, and it was, what was alleged
23 against Sergeant Hughes was outlined on the notice
24 served on him. And that was strictly our brief. That
25 was the -- we only had the authority to investigate 12:57
26 those matters.

27 186 Q. Now, I think that you reported on this matter to the
28 chief superintendent, and you got certain directions in
29 relation to it, and the views of the chief

1 superintendent were conveyed to Sean Costello & Co and
2 also to Sergeant Hughes, isn't that right?

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

4 187 Q. Now, I think on the 9th December of 2008 -- sorry, on
5 the 8th December, if we could just deal with this --
6 you telephoned Sergeant Hughes looking to have a
7 meeting with him, is that right?

12:58

8 A. That's correct, Mr. Chairman, yes.

9 188 Q. Will you just tell us about that phone call that you
10 had with him?

12:58

11 A. Yeah. I told him that there was matters arising in his
12 report that I wanted to clarify, and he requested that
13 I communicate to him through his solicitor. So I
14 forwarded my request to the solicitor, I believe the
15 next day, and in it I outlined that I wanted to
16 interview Sergeant Hughes to clarify certain matters in
17 relation to the discipline arising in the pre-prepared
18 statement he handed me, and I also informed his
19 solicitor that Sergeant Hughes had requested that I
20 communicate through him.

12:58

21 189 Q. And if we could just have that up on the screen,
22 please. It's page 959 of the material. We might just
23 look at that. If we just scroll down.

24 You say that:

25
26 "A number of matters arising from the said report
27 require clarification. In this regard I wish to
28 inquire if Sergeant Hughes is available for further
29 interview? I spoke to him by phone yesterday on this

12:59

1 matter and he requested that I correspond with him
2 through your offices. "

3
4 And then you give your mobile phone number, isn't that
5 right? 12:59

6 A. Yes, Mr. Chairman, that's correct.

7 190 Q. I don't think that you received any reply to that
8 letter, and you forwarded another request to Sean
9 Costello & Co on the 7th January of 2009, isn't that
10 right? 13:00

11 A. That's correct, Mr. Chairman, yes.

12 191 Q. That is at page 960. We don't need it on the screen,
13 but there was again no response to that letter. And on
14 the 29th January, 2009, you forwarded a third letter to
15 Sean Costello & Co enclosing copies of your two earlier 13:00
16 requests, isn't that right?

17 A. That's correct, Mr. Chairman, yes.

18 192 Q. I think a meeting was eventually arranged for the 10th
19 February of 2009?

20 A. That's correct, Mr. Chairman, yes. 13:00

21 MR. MARRINAN: Now, we'll be going into that meeting.
22 I don't know whether that's a convenient time,
23 Chairman?

24 CHAIRMAN: Oh certainly, very good. Thank you very
25 much. All right. Two o'clock then. 13:00

26
27
28
29

1 THE HEARING ADJOURNED FOR LUNCH AND RESUMED AS FOLLOWS:

2

3 193 Q. MR. MARRINAN: Now, I think we had just arrived at a
4 stage where there was a meeting on the 10th February
5 2009. I think that you met with Sergeant Hughes in the 14:00
6 offices of Mr. Costello, is that right?

7 A. That's correct, Mr. Chairman, yes.

8 194 Q. There are notes of that meeting -- it's at page 962 of
9 the material, if we could have that up -- 962, yes.
10 These were the notes that you took of the interview 14:01
11 with Sergeant Hughes, isn't that right?

12 A. That's correct, Mr. Chairman, yes.

13 195 Q. And if we can scroll down we get a flavour of the
14 questions that were put to him. I think that these
15 relate to the pages in his 25-page document, isn't that 14:01
16 right?

17 A. That's correct, Mr. Chairman, yes.

18 196 Q. And you sought clarification in relation to those
19 matters. I think again the issue of how the earlier
20 bullying and harassment complaint made against Sergeant 14:01
21 Hughes was dealt with by Human Resource Management,
22 again that issue arose at the meeting, isn't that
23 right?

24 A. That issue and the other issues that were mentioned in
25 the pre-prepared statement that were not relevant to 14:02
26 the discipline investigation were all brought up.
27 Might I add too, Mr. Chairman, I was to go to that
28 meeting with Inspector Fran Sweeney was to accompany me
29 to that meeting, but due to work obligations he had to

1 cancel, and I went alone and I did that to keep matters
2 moving, to keep matters progressing. I never deferred
3 any meetings that I had arranged with Mr. Hughes.

4 197 Q. And can you tell us how long did that meeting last for?
5 A. I'd say that meeting lasted for two hours. Numerous 14:02
6 discussions on issues in Coolock. Mr. Hughes and his
7 solicitor were insistent that they were relevant to the
8 discipline. In fact, I quite distinctly recall when I
9 asked him to make the connection -- the relevance, they
10 told me that I knew well what the relevance was, they 14:03
11 wouldn't give me particular details on that. I did not
12 understand what they meant by that, and I kept
13 focussing back on what the brief was for the discipline
14 investigation as outlined on the notice that had been
15 served on Sergeant Hughes. 14:03

16 198 Q. Now, I think that you typed out your notes from
17 handwritten notes, and those were sent to Sean Costello
18 & Co on the 11th February 2009, seeking confirmation
19 that the notes were a correct interpretation of
20 Sergeant Hughes's responses, isn't that right? 14:03

21 A. That's correct, Mr. Chairman, yes.

22 199 Q. If we could just have that up on the screen, please,
23 it's at page 966 of the material. It's dated the 11th
24 February. If we look at the third paragraph of the
25 letter, you say: 14:04
26
27 "With regard to some of the other matters contained in
28 the report of Sergeant Hughes, to wit, the allegations
29 of bullying and harassment and the alleged misconduct

1 of a detective sergeant, it is noted that Sergeant
2 Hughes expressed dissatisfaction with the way these
3 matters were handled by Assistant Commissioner, Human
4 Resource Management. However, it has also been noted
5 that your client believes that cognisance should be
6 taken of these matters in the current disciplinary
7 investigation. As I recall, you undertook to forward
8 me all relevant material pertaining to these matters.

14:04

9
10 Your concerns regarding Assistant Commissioner Michael
11 Feehan's appointment to investigate the complaint made
12 by you in respect of the article that appeared in The
13 Star Newspaper on Thursday the 20th November 2008 have
14 also been noted and will be brought to the attention of
15 the Commissioner."

14:04

14:05

16
17 Now did that issue arise during the course of the
18 meeting that we are referring to?

- 19 A. It did, Mr. Chairman, yeah. Those issues were
20 discussed and they did have objections against Chief
21 Superintendent Feehan, I think as he was then,
22 investigating their complaint in respect to the
23 Newspaper article, and I told them I'd relay their
24 concerns. I also had corresponded with them on the
25 16th January in respect of -- or I reported, I think,
26 their issues on the 16th January to Assistant
27 Commissioner Feehan, telling -- or Assistant
28 Commissioner McHugh telling them that these were --
29 some matters in the pre-prepared statement were outside

14:05

14:05

1 the ambit of the investigation. Sorry, yeah.

2 200 Q. Yes. Now, I think that there was some correspondence
3 passing between you and Mr. Costello, but if we could
4 have page 968 up on the screen, please. This is a
5 letter sent by you to Mr. Costello. 14:06
6 If we look at the third -- fourth paragraph down:
7
8 "As you have previously requested that cognisance be
9 taken of the matter referred to in the said
10 correspondence, I would be most grateful if you could, 14:06
11 for the avoidance of doubt, detail what your client
12 believes the connection between the two matters is."
13
14 That's a reference to the issue of bullying and
15 harassment and the disciplinary matter, isn't that 14:06
16 right?
17 A. That's correct, Mr. Chairman, yes.

18 201 Q. And then: "In the correspondence of the 19th June
19 2007, reference is made to the Regulation 9 notice
20 which was served on your client shortly after the 14:07
21 commencement of this discipline investigation, wherein
22 you state, inter alia, 'On our client's instructions
23 the motive behind the service of such a notice on our
24 client is quite clear...' please clarify what your
25 client believes the motive to be." 14:07
26
27 Now, could you just tell us about that and how this
28 issue arose and what your concerns were at that stage?
29 A. Again, it was during the course of the meeting with him

1 where I was asking him the connection between the
2 discipline and the matters that had been raised by
3 Sergeant Hughes in respect of bullying and being, I
4 suppose, ostracised and not being approached in
5 relation to the murder investigation and not being 14:07
6 invited to the conference, and all these other issues
7 that were outside the ambit of the discipline
8 investigation. They had said to me at the meeting I
9 knew well what they were about, and I wanted it
10 documented in writing and asked them exactly please 14:08
11 identify for me the link on what you are saying these
12 issues have with the discipline investigation.

13 202 Q. Now, did you ever actually get a response to that query
14 that you raised from Mr. Costello?

15 A. I think there was a response back from Mr. Costello in 14:08
16 relation to the material from HR and so on, I think it
17 was a vague kind of: we have already alluded to what we
18 mean, I think was the wording he used in his response.

19 203 Q. The response that I see in the material is on the 30th
20 April of 2009, and it's at page 970 of the screen. 14:08
21 This seems to be the only correspondence that I can
22 find at that time. If we just scroll down it, maybe
23 you might recall it.

24 A. This was in response. I had asked him to ensure that
25 the replies I had documented at the previous meeting 14:09
26 were correct because I was alone at that meeting and I
27 took the notes myself, so I had sent them back my
28 interpretation of the replies issued by Sergeant
29 Hughes, and this is his response, where he comes back

1 to me providing clarification in respect of his
2 client's responses that were issued at the meeting.

3 204 Q. Okay. Now, I think that that effectively concluded
4 your role in the investigation. Chief Superintendent
5 Feehan submitted his final report in relation to the 14:10
6 matter on the 3rd June 2009, when the disciplinary
7 proceedings against Sergeant Hughes were discontinued
8 on foot of that final report, isn't that right?

9 A. That's correct, Mr. Chairman, yes.

10 205 Q. Now, if we go on then and deal with the issue in 14:10
11 relation to the article published in The Daily Star
12 Newspaper. I think that you -- I think that you
13 assisted Chief Superintendent Feehan in conducting
14 inquiries in relation to this, isn't that right?

15 A. That's correct, Mr. Chairman, yes. 14:10

16 206 Q. I think that this was in December of 2008, and you were
17 informed that Sean Costello & Company solicitors had
18 written to the Commissioner alleging that the article
19 complained of was hugely defamatory and alleged gross
20 negligence on the part of Sergeant Hughes, isn't that 14:11
21 right?

22 A. That's correct, Mr. Chairman, yes.

23 207 Q. And I think that you are aware of the fact that Chief
24 Superintendent Feehan had been tasked by the
25 Commissioner to provide a report so that a response 14:11
26 could be facilitated to Sean Costello & Company
27 solicitors, is that right?

28 A. That's correct, Mr. Chairman, yes.

29 208 Q. I think that you took a view very early on in this that

1 you would comply with Sergeant Hughes's previous
2 requests that you referred to before lunch, that any
3 contact with him would be directed through his legal
4 representatives, is that correct?

5 A. That's correct, Mr. Chairman, yes. 14:11

6 209 Q. Now, I think that you wrote to Sean Costello & Co on
7 the 16th January 2009 -- if we could have page 972 up
8 on the screen, please. And that letter just simply
9 sets out that you are assisting in the investigation.
10 And in the final paragraph you say: 14:12

11
12 "In this regard, I wish to request a meeting with your
13 client at the earliest opportunity."

14
15 And you give your mobile number there that you can be 14:12
16 contacted on, isn't that right?

17 A. That's correct, Mr. Chairman, yes.

18 210 Q. Now, you received a response on the 24th March of 2009,
19 from Sean Costello & Co -- if we have page 973 on the
20 screen, please. 14:12

21 If we scroll down, we'll see in the second paragraph
22 there:

23
24 "With due respect, the allegation which we make alleges
25 that the information which appears to be the basis for 14:13
26 the article, as pointed out in our letter, can only
27 have been provided by a member of An Garda Síochána and
28 it would appear with due respect to Assistant
29 Commissioner Feehan that as he is in charge of the said

1 investigation that he is effectively investigating his
2 own members and that investigation team. We require a
3 full and independent inquiry and we await hearing from
4 you in this respect."

14:13

6 Now, did you draw Assistant Commissioner Feehan's
7 attention to that letter?

8 A. Yes.

9 211 Q. Now, I think then if we have page 974 up on the screen,
10 this is a further letter that was sent from you, and we
11 see in the final paragraph:

14:14

13 "I now request a meeting with your client at the
14 earliest opportunity. Should your client wish to meet
15 me to assist in the investigation..."

14:14

17 And you give your mobile number as a contact, isn't
18 that right?

19 A. That's correct, Mr. Chairman, yes.

20 212 Q. Now, in the meantime I think that you had interviewed
21 Mr. Mick O'Toole, who wrote the article in The Star
22 Newspaper, isn't that right?

14:14

23 A. That's correct.

24 213 Q. And I think that that was on the 28th January of 2009.
25 And if we have page 975 up on the screen, you'll see
26 there that he says that he is a crime correspondence
27 with The Star Newspaper, he indicates how long he has
28 worked there.

14:15

1 "Inspector Fergus Dwyer has just shown me a copy of a
2 newspaper article entitled 'Cop never looked at tragic
3 Bai ba' s warni ng', which appeared in The Star Newspaper
4 on Thursday, November 20th, 2008. Inspector Dwyer has
5 sought the identity of the 'Garda sources' referred to 14:15
6 in the said article. I do not wish to comment on any
7 aspect of the article. I have read this statement and
8 it is correct."
9

10 So that was the position that was adopted by 14:16
11 Mr. O'Toole at that time, is that right?

12 A. That's correct, Mr. Chairman, yes.

13 214 Q. Was consideration given at that juncture to bring the
14 matter any further with Mr. O'Toole?

15 A. Not at that time, Mr. Chairman, no. 14:16

16 215 Q. So, in any event, if we then just move forward, you
17 have helpfully alerted the Tribunal to a meeting that
18 you actually had with Sergeant Hughes that he seems to
19 have forgotten about, and indeed you forgot about it
20 yourself because you didn't put it in your statement? 14:16

21 A. I did. It was only, you know, when I was reviewing the
22 material from the Tribunal I came across an e-mail and
23 minutes of a meeting we had with Sergeant Hughes.

24 216 Q. We might just look at that. It's at page 2487. And
25 this appears to have been a meeting that you had on the 14:17
26 11th May of 2009, isn't that right?

27 A. That's correct, and the only record I have of it,
28 Mr. Chairman, is an e-mail I sent to Michael -- or
29 Assistant Commissioner Feehan, as he was then, and it

1 indicates that I received a phone call from
2 Mr. Costello's office asking could we meet. So, I'm
3 not sure whether it was the day before, but I know
4 quite soon afterwards we did meet in Mr. Costello's
5 office and I was accompanied by my colleague Sergeant 14:17
6 Mark Waters at that meeting, which was quite brief, I
7 might add.

8 217 Q. And I think it's noted there that:

9
10 "Sean Costello stated that the article published in The 14:17
11 Star Newspaper did and could only refer to his client,
12 Sergeant Hughes. He said that the headline highlighted
13 Sergeant Hughes. He also said that all aspects of the
14 article which were not of public record were given to
15 the journalist by persons who were involved in the 14:18
16 various investigation in which Sergeant Hughes is
17 subject or implicated in."

18
19 And then:

20 14:18
21 "He says that John Hennessy spoke with Mick O' Toole and
22 O' Toole stated that he got it from a higher level
23 member of An Garda Síochána."

24
25 Then it notes that you asked Sergeant Hughes who knew 14:18
26 of the document in his locker. And then:

27
28 "Sergeant Hughes stated that he told certain members
29 what occurred in Walter O' Sullivan's office, and also

1 through the channels. He stated that he told Mick Ryan
2 and Walter O'Sullivan --"

3
4 what's that a reference to?

5 A. I believe it's a reference to the document. The victim 14:19
6 impact document that Ms. Saulite had provided.

7 218 Q. In his locker.

8
9 "Sergeant Hughes stated that he could not recollect
10 whom he told and that Christy Mangan knew. Sergeant 14:19
11 Hughes, on being asked by Inspector Dwyer if he
12 thought that a lot of Swords station party were aware
13 of the document and its contents, Sergeant Hughes
14 stated that they might be."

15
16 It notes:

17
18 "The meeting concluded and Sergeant Hughes was asked to
19 make a statement.

20
21 Sergeant Hughes stated that he would get in contact
22 with Inspector Dwyer in the near future regarding the
23 making of his statement."

24
25 And that was reported up. Can you just tell us, I mean 14:20
26 was this -- were you formally at this meeting taking a
27 complaint from Sergeant Hughes in relation to the
28 article?

29 A. No. Mr. -- I was phoned out of the blue by

1 Mr. Costello's office, and, as I said previously, I was
2 anxious to keep things moving. He asked could we meet
3 him in the office. I said we could. And I arranged
4 for Mark Waters to come with me, and that was the
5 conversation, and it culminated in Sergeant Hughes 14:20
6 giving me an undertaking that he would provide me with
7 a statement or arrange to meet me to make a statement.
8 I actually subsequently corresponded -- when I heard
9 nothing, I corresponded and the correspondence is in
10 the material before the Tribunal. 14:20

11 219 Q. Yes.

12 A. Yeah, yeah, there is a letter afterwards, when I hadn't
13 heard from them.

14 220 Q. Okay. Now, I think that subsequently to that meeting
15 -- we'll just move on to an interaction that you had 14:21
16 with Sergeant Hughes -- you wrote on a number of
17 occasions to him, or to his solicitor, requesting a
18 meeting where the statement would be taken, isn't that
19 right?

20 A. What happened after this was, a file was subsequently 14:22
21 submitted without any input from Sergeant Hughes, and
22 we received a direction down to go and contact him
23 directly.

24 221 Q. We'll just come back to that now in one moment...

25 A. Yeah... 14:22

26 222 Q. I might be able to get a reference to it but I have
27 just lost it myself at this juncture. Yes, I'll come
28 back to it because my note of it is --
29 I'll come back with the exact reference, but you wrote

1 two letters to Sean Costello I think in May and in July
2 of 2009, asking that Sergeant Hughes should make
3 himself available to take a statement, and you didn't
4 receive a response?

5 A. No, on the 29th April, I sent my letter to him asking 14:23
6 for to meet up. And then this meeting took place I
7 think on the 11th May.

8 223 Q. Right.
9 A. Which I believe was in response to my letter of the
10 29th April. 14:23

11 224 Q. Very good, yes.
12 A. After this meeting, when I had received no response
13 from Sergeant Hughes, or he hadn't been in touch with
14 me about the statement he undertook to provide me with,
15 I corresponded with him I think on the 29th May then 14:23
16 following on from the meeting I still hadn't received
17 the statement or words to that effect.

18 225 Q. And you got no response on the 29th of May?
19 A. I got no response to that correspondence, yes.

20 226 Q. And because you didn't get any response, you ended up 14:24
21 submitting a report in relation to the matter, isn't
22 that right?

23 A. Some months later, yes, I was transferred that month,
24 the month of May, and I know Assistant Commissioner
25 Feehan then put in his final report some time after 14:24
26 that.

27 227 Q. It was in May of 2010 I think that he sent in his
28 report?

29 A. It's quite sometime afterwards, yes.

1 228 Q. But in July of 2010, the Deputy Commissioner
2 Operations, who had received the report --
3 A. Yes.
4 229 Q. -- directed that Sergeant Hughes be approached directly
5 to ascertain if he had anything to offer the 14:24
6 investigation, isn't that right?
7 A. That's correct, Mr. Chairman, yes.
8 230 Q. That was in the absence of any report from Sergeant
9 Hughes?
10 A. Yes. We had received nothing from him in relation to 14:25
11 the newspaper article.
12 231 Q. And then if we have page 980 up on the screen. On foot
13 of that direction -- if we just scroll down there -- we
14 see this is a letter to Sergeant Hughes as opposed to
15 his solicitor. The second paragraph you said: 14:25
16
17 "As you are aware, I have been endeavouring to take a
18 statement of complaint from you in respect of the
19 aforementioned complaint. In this regard we arranged
20 to meet on the 8/9/10. The meeting was subsequently 14:25
21 deferred to the 10/9/10 and again to 13/9/10, each time
22 at your request.
23
24 On the 10/9/10 Inspector Aidan O'Donnell, AGSI,
25 contacted me on your behalf and requested a further 14:26
26 deferral of our meeting citing the unavailability of
27 your legal representative as his reason for doing so."
28
29 Then you note:

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"In view of the fact that our proposed meeting has been deferred a number of times, I informed Inspector O'Donnell that I was now placing the onus on you to contact me within the next fourteen days and provide me with a date suitable to all parties when you can meet me and provide a statement of complaint in relation to this matter."

Isn't that right? 14:26

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

232 Q. And those followed on from a letter on the 27th July of 2010, which is at page 879 of the material -- no, 979, sorry. And that's the letter that flowed on from the direction from Deputy Commissioner Operations and it's a letter to Sean Costello & Co? 14:27

A. Yes, I was putting Mr. Costello on notice that I had been directed to approach Sergeant Hughes directly; I wanted his legal representative to be aware of that and to give him an opportunity to make arrangements to contact me. 14:27

233 Q. So, just looking at the first paragraph there, just so that we're clear in relation to this. If we look there, you refer to "my items of correspondence dated the 29/4/09 and the 29 /5/09, refer"? 14:27

A. Yes.

234 Q. So they were looking to take a statement, and you say that as a result of that correspondence on the 29th of April 2009, that the meeting took place. And then, so

1 the only correspondence that was outstanding was the
2 correspondence of the 29th May of 2009, is that right?
3 A. Yes, that's correct, Mr. Chairman, yes.
4 235 Q. And in that final paragraph you say:
5
6 "Should you fail to respond to this correspondence
7 within seven days I have been directed to approach your
8 client in person and afford him this final opportunity
9 to make a statement."
10
11 Is that right?
12 A. That's right, Mr. Chairman, yes.
13 236 Q. And that's ultimately why you did contact Sergeant
14 Hughes directly.
15 Now, ultimately you did meet with Sergeant Hughes in
16 relation to his complaint, isn't that right?
17 A. Yes, Mr. Chairman, I did.
18 237 Q. And that was on the 12th October of 2010?
19 A. Yes.
20 238 Q. I think at that meeting he stated -- sorry, where did
21 that meeting take place, do you recall?
22 A. In Mr. Costello's office, Mr. Chairman.
23 239 Q. And I think at that meeting Sergeant Hughes stated that
24 this was the first time he had been invited to make a
25 statement in relation to the matter, isn't that right?
26 A. He did. And he handed me a pre-prepared statement at
27 that meeting, and that was mentioned in the statement
28 he handed me too.
29 240 Q. I think that statement is at page 984 of the materials.

1 And for our purposes, the complaint that he makes, he
2 makes that complaint in that statement, that he hadn't
3 been approached to make a statement.

4 Now, you report on this meeting, isn't that right?

5 A. I did, Mr. Chairman, yes.

14:30

6 241 Q. If we look at page 988 of the material, please. This
7 is a report of the 19th October of 2010 to Assistant
8 Commissioner Feehan.

9 If we look at the third paragraph down there you say:

10

14:31

11 "Two issues arise from the statement provided by
12 Sergeant Hughes. The member states that 'the
13 correspondence from Superintendent Dwyer of the 30th
14 July 2010 and subsequent telephone conversations
15 represent the first formal request I have received from 14:31
16 Garda management to make a statement regarding this
17 matter'."

18

19 That's a quote from Sergeant Hughes's statement. You
20 go on to say:

14:31

21

22 "Whilst Mr. Costello acknowledged that his office
23 received correspondence from Superintendent Dwyer
24 seeking to interview his client, he contended that the
25 superintendent should have made direct contact with his 14:31
26 client anyway.

27

28 Superintendent Dwyer explained to Mr. Costello that
29 Sergeant Hughes, who was the complainant in this case,

1 had requested that any approach to him was to be made
2 through Mr. Costello and that his client's wishes were
3 simply being respected. However, Mr. Costello argued
4 that his client's wishes should have been ignored and a
5 direct approach made. " 14:32

6
7 So that was dealt with at the meeting, was it?

8 A. Yes.

9 242 Q. And obviously you had a different view in relation to
10 that than Mr. Costello, is that right? 14:32

11 A. I was completely surprised.

12 243 Q. Sergeant Hughes, in his evidence, appears to have been
13 surprised at the time, and the suggestion is maybe he
14 expressed that at the meeting, that he was surprised
15 that Mr. Costello had in fact received the 14:32
16 correspondence and that he himself hadn't been made
17 aware of it. Do you recall that?

18 A. I do -- well, no, he didn't say that to me. But I had
19 assumed that Mr. Costello was keeping him abreast of
20 all matters, including the objection to Assistant 14:33
21 Commissioner Feehan that was raised initially. I
22 assumed that he had been keeping his client up to speed
23 on all those matters.

24 244 Q. Yes...

25 A. But I was caught completely off guard at that meeting 14:33
26 when those matters were raised.

27 245 Q. Okay. And then you note in the next paragraph:

28

29 "The second matter arising from Sergeant Hughes's

1 statement is the indication that Mr. John Hennessy,
2 solici tor for Bai ba Sauli te, had pri or knowl edge of the
3 newspaper arti cle and i nformed Sergeant Hughes of the
4 contents of the proposed arti cle the night pri or to i ts
5 publi cation. "

14:33

6
7 And you note that:

8
9 "Arrangements are currently being put in place to
10 i ntervi ew Mr. Hennessy. "

14:33

11
12 So, from that point of view, Mr. Hennessy had been
13 mentioned in the earlier meeting back in May.

14 A. Yes, in May, yes.

15 246 Q. But had the particular information been given in
16 relation to his conversation with Mr. O'Toole the night
17 before the article appeared?

14:34

18 A. Yeah, it's referred to in the notes there. But I
19 believe my thinking at the time was a statement is
20 forthcoming any day now and we'll wait until we get the
21 statement to see what matters we have to address out of
22 it.

14:34

23 247 Q. So, in any event, a statement was taken from
24 Mr. Hennessy, isn't that right?

25 A. Yes, Mr. Chairman, that's correct.

14:34

26 248 Q. That's at page 990 of the material. And that statement
27 was taken on the 19th November of 2010.

28 A. Mmm.

29 249 Q. And then if we go to your report of the 24th January of

1 2011 -- this is at page 991 of the material -- and if
2 we scroll down there. This is a report sent by you to
3 Assistant Commissioner Feehan.

4 In the third paragraph you say:

5
6 "On the 19th November, 2010 Detective Sergeant Mark
7 Waters met with John Hennessy, solicitor, and took a
8 statement from him in which Mr. Hennessy outlined his
9 dealings with Mick O'Toole prior to the publication of
10 the newspaper article. Mr. Hennessy stated that he 14:35
11 recalled being approached by Mr. O'Toole who informed
12 him that he was writing an article in respect of a
13 garda involved in the Saulite children's abduction
14 case. Mr. O'Toole asked Mr. Hennessy for a comment on
15 the alleged retention of the victim impact statement by 14:36
16 a member of An Garda Síochána. Mr. Hennessy declined
17 to comment on the article and asked Mr. O'Toole for the
18 identity of his source. Mr. Hennessy allegedly
19 informed Mr. O'Toole --"

20 CHAIRMAN: It says Mr. Hennessy informed -- 14:36

21 MR. MARRINAN: Yes, no, I was just going to correct
22 that. It would appear --

23 CHAIRMAN: -- I think it's obvious Mr. O'Toole didn't
24 inform Mr. Hennessy.

25 THE WITNESS: It is the other way round. Sorry, yeah. 14:36

26 MR. MARRINAN: Yes. If we look at the fourth paragraph
27 there:

28
29 "After speaking with Mr. O'Toole, Mr. Hennessy

1 contacted Sergeant Hughes and informed him of his
2 conversation with Mr. O'Toole. Mr. Hennessy concluded
3 by stating that he did not know the name of the high
4 ranking officer referred to by Mr. Michael O'Toole. A
5 copy of Mr. Hennessy's statement is attached." 14:37

6
7 **And then you note:**

8
9 "On the 21st January [yourself] and Detective Sergeant
10 Mark Waters met with Mr. O'Toole at the offices of the 14:37
11 Irish Star by prior arrangement. Mr. O'Toole was
12 accompanied by his solicitor. At the outset
13 Mr. O'Toole indicated that he would not be answering
14 any questions in relation to the newspaper article and
15 he remained silent throughout the interview when 14:37
16 questions were put to him regarding the identity of the
17 high ranking officer referred to in Mr. Hennessy's
18 statement."

19
20 **we need to scroll down to the next page, sorry you** 14:37
21 **hadn't seen that.**

22
23 "The recent interviews with Mr. Hennessy and
24 Mr. O'Toole progressed the investigation no further.
25 Although Mr. O'Toole informed Mr. Hennessy that he had 14:37
26 obtained the story from a garda source he had already
27 made reference to garda sources in the original
28 newspaper article. Throughout my dealings with
29 Mr. O'Toole he has at all times indicated that he

1 would, under no circumstances, divulge the identity of
2 his source nor would he confirm if the source was in
3 fact a member of An Garda Síochána."

4
5 And I think that you signed off on that, isn't that
6 right? 14:38

7 A. That's correct, Mr. Chairman, yes.

8 250 Q. Now, I think that subsequently a report was sent by
9 Chief Superintendent Feehan in relation to the matter,
10 isn't that right? 14:38

11 A. I believe so, yes.

12 251 Q. And effectively it said that the report couldn't be
13 advanced any further?

14 A. That's correct, Mr. Chairman, yes.

15 252 Q. Now, I think then, if we can just move onto the report
16 that was made to the confidential recipient. I think
17 that you, along with other gardaí, were involved in
18 assisting Assistant Commissioner Feehan in relation to
19 that investigation, isn't that right? 14:39

20 A. I was, in the very early stages, Mr. Chairman; I had
21 been transferred down to Tullamore and I kind of stood
22 back from things then. 14:39

23 253 Q. And I think you were merely tasked with various jobs of
24 interviewing various witnesses during the course of
25 that investigation, isn't that right? 14:39

26 A. I was liaising with some witnesses, trying to make
27 arrangements to have them interviewed but I did not
28 interview them, Mr. Chairman.

29 254 Q. You also note that you were involved in the High Court

1 proceedings, or in the preparation for that, but that's
2 not a matter that we're concerned with. So would you
3 answer any questions please?

4 CHAIRMAN: Now... Mr. Lynn.

5
6 THE WITNESS WAS CROSS-EXAMINED BY MR. LYNN AS FOLLOWS:

14:40

7 255 Q. MR. LYNN: Good afternoon, Superintendent Dwyer, my
8 name is Michael Lynn, I am representing Sergeant
9 Hughes.

10 You first became involved when you were tasked to
11 assist Chief Superintendent Feehan, as he then was, in
12 the disciplinary investigation, and I think you
13 confirmed this morning that you acted on his
14 instructions?

14:40

15 A. That is correct, Mr. Chairman, yes.

14:40

16 256 Q. And you have said in your statement to the Tribunal --
17 it's at page 898, but I don't know that we need to look
18 at it -- but that the investigation centred around
19 Ms. Saulite's victim impact statement?

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

14:40

21 257 Q. And you spoke with Inspector Cryan. And there might be
22 a date discrepancy not really of any importance I don't
23 think, Inspector Dwyer, but we might clear it up, but
24 you spoke to Inspector Cryan in respect of the victim
25 impact statement, isn't that correct? And at page 912
26 of the documents, and this is the actual report of
27 Chief Superintendent Feehan, you'll see there towards
28 the bottom three lines up: "On the 12th November
29 '07..." Sorry, you have gone up too far, can we just go

14:41

1 back? Middle of the page -- up again a fraction. At
2 the very bottom here, Superintendent Dwyer:

3
4 "On the 12/11/07 Detective Inspector Cryan was shown a
5 copy of the statement [by yourself] and confirmed it 14:42
6 was a copy of the document handed to him by Sergeant
7 Hughes on the 22/11/06."

8
9 I don't think this is of any real importance, but I
10 think that statement was actually taken on the 12th 14:42
11 November 08, because if we go to page 2247 -- but you
12 might just clarify. Sorry, I have got the wrong page
13 number now. Can you bear with me a second? Sorry. I
14 think it might be 2347, sorry about this. That says
15 now the 12th November '08 at the top. But... and it 14:43
16 does refer, you will see, to the date of 12th December
17 '07, which would suggest that -- I don't think it's of
18 any great importance, Superintendent Dwyer, just to
19 clarify.

20 A. It was just to clarify, yeah. It was just to clarify 14:43
21 how that victim impact statement came to management's
22 attention, basically, and I knew Michael Cryan was
23 integral in taking possession of it at the time.

24 258 Q. And it's to do with the victim impact statement?

25 A. Yes. 14:43

26 259 Q. Which seems to be the case that statement was taken in
27 November of '08 rather than '07.

28 A. That's what appears, yes, Mr. Chairman.

29 260 Q. Now, you phoned Dr. Quigley on the 21st February of

1 2008 in respect of Sergeant Hughes's fitness to be
2 interviewed. And I think he said he would revert to
3 you on the matter?

4 A. Yes.

5 261 Q. Now, I don't think, but correct me if I'm wrong, that 14:44
6 you had any more contact with Sergeant Hughes until the
7 13th October of that year you phoned him?

8 A. That's correct. When we had received clearance from
9 the CMO and HRM that he was fit to be approached and
10 interviewed in respect to the matters alleged against 14:44
11 him. That was in October.

12 262 Q. I mean I was going to ask you about that passage of
13 time and you were awaiting guidance, is that your
14 position, from the CMO and HRM?

15 A. There was no, no effort to interview Sergeant Hughes 14:44
16 during the time he was on sick leave with stress. And
17 that's standard practice, yes.

18 263 Q. But is it the position that you felt you couldn't do
19 any more at that point until you heard from Dr. Quigley
20 and HRM? 14:45

21 A. Well I knew Assistant Commissioner Feehan was also in
22 touch with HRM and the CMO in relation to this matter
23 too.

24 264 Q. All right.

25 A. In fact, it was primarily Assistant Commissioner Feehan 14:45
26 dealing with this matter. But I had been tasked with
27 contacting Dr. Quigley direct on that occasion.

28 265 Q. And having made contact on the 13th October, there was
29 an interview then on the 29th October with Sergeant

1 Hughes, and he gave you the 25-page report, and
2 Mr. Marrinan has asked you about that.
3 Now you yourself said to Mr. Marrinan, before lunch,
4 that it was a short interview, the memo of interview.
5 A. The memo of quite short. The memo was. But not the 14:45
6 actual -- the length of time I was there.
7 266 Q. You said you were there for two hours?
8 A. Yes.
9 267 Q. But you said that the memo of interview was short
10 because certain matters were dealt with in the 25-page 14:46
11 report?
12 A. That's correct. I remember having a kind of checklist
13 and I don't remember exactly the details of it, but I
14 know by reading the pre-prepared statement, some of the
15 questions that I had prepared were already covered in 14:46
16 his response. I know there was a lot of tension in the
17 room at the time. It was quite difficult to engage
18 with him. They kept bringing up the matters that were
19 outside the brief of the discipline investigation. So
20 that was taking away from the task in hand during the 14:46
21 course of our two hours together.
22 268 Q. But the matters that you did deal with in the memo of
23 interview --
24 A. Yes.
25 269 Q. -- were actually dealt with in the 25-page report as 14:46
26 well, were they not?
27 A. They were, but it was just confirmation that this was
28 the document we were talking about, to have the
29 evidence correct.

1 270 Q. Because if certain matters were dealt with in the
2 25-page report in writing, could the whole matter not
3 have been dealt with in writing?
4 A. No. I know from my time in Internal Affairs,
5 solicitors had made similar requests beforehand and 14:47
6 they would not be acceded to, because in the live
7 environment, when questions are being put to somebody,
8 the replies may take you somewhere else, and it was
9 always practice that you'd have face-to-face interviews
10 with people under investigation. 14:47
11 271 Q. The only focus in the memo of interview was really the
12 victim impact report?
13 A. At that time, yes.
14 272 Q. There is reference to the statement from --
15 A. I know there was two other members appointed with me to 14:47
16 assist Chief Superintendent Feehan, and I know one of
17 them had conducted a trawl of documentation out in
18 Coolock Garda Station, in the R district, to see was
19 there anything out there that would substantiate the
20 allegation that was being made against Sergeant Hughes 14:48
21 at the time, and it appeared that the only matter of
22 concern at that time, because we couldn't find any
23 document or anything that would support the allegation
24 against Sergeant Hughes, and we're talking about a real
25 and immediate threat against Ms. Saulite, the main 14:48
26 focus was the victim impact statement at that time.
27 273 Q. Right. And so, the focus was on the real and serious
28 risk. And I know you have referred to other matters
29 that Sergeant Hughes and Mr. Costello raised that you

1 regarded as outside of your remit. Did you reach that
2 decision -- that viewpoint at that point, almost
3 immediately?

4 A. No, that is a fact. That's standard in the discipline
5 regulations. The brief for the investigation team what 14:49
6 was alleged on the Regulation 9 notice; that was our
7 brief.

8 274 Q. Yes. And so, these other matters, extraneous matters,
9 really from the off, you were firmly of the view that
10 even though Mr. Costello and Sergeant Hughes may have 14:49
11 been pursuing them, that really they were simply
12 outside of your remit?

13 A. Of that investigation, yes. Now they were afforded an
14 opportunity later on if they wanted to make a separate
15 complaint in respect of those matters, there were 14:49
16 afforded that opportunity.

17 275 Q. Now, you took a statement from a friend of
18 Ms. Saulite's on the 19th -- this is at 2344, page 2344
19 -- on the 19th January of 2009. And if we can go down
20 -- well, in fact, we can leave it as it is. 14:50
21 You see you informed that witness that you were
22 inquiring into an internal Garda disciplinary
23 investigation in respect of Sergeant Hughes. Wasn't it
24 inappropriate to close that information?

25 A. I don't believe so. No, because I think she had a 14:50
26 right to know what she was making her statement in
27 relation to. And also, had the matter progressed to a
28 board of inquiry, she could have been summoned to
29 attend as a witness to it.

1 276 Q. Yes, but at this stage it was unnecessary to name
2 Sergeant Hughes?

3 A. I felt that she was entitled to know what was being
4 investigated; that was my view at the time.

5 277 Q. And what was the relevance of her evidence in respect 14:51
6 of Sergeant Hughes's conduct?

7 A. She had compiled the victim impact report on behalf of
8 Ms. Saulite, and I was wondering did she know anything
9 that may have been of relevance to the allegation.
10 Now, I threaded carefully with her with regards to what 14:51
11 exactly was alleged against Sergeant Hughes, I told her
12 that he was the subject to a discipline investigation,
13 that's all.

14 278 Q. Well, with respect, could the interview with her and
15 the information gathering exercise not have been 14:51
16 conducted in a way that didn't disclose to someone that
17 Sergeant Hughes was subject to an investigation -- a
18 disciplinary investigation?

19 A. I think she had a right to know what she was making
20 this statement in relation to. 14:52

21 279 Q. Now, moving on to The Star article investigation, and
22 you referred to a meeting in February 2009 in your
23 evidence this afternoon, where this was raised by
24 Mr. Costello and Sergeant Hughes -- sorry, what was
25 raised was the conflict of Assistant Commissioner 14:52
26 Feehan heading that investigation when he was also
27 heading the disciplinary investigation, which was of
28 course the new information, as it were, that The Star
29 published.

1 Can you not see that there was a conflict there?

2 A. I don't believe so.

3 280 Q. But he was one of the members who was in possession of
4 the information, and we're not suggesting for one
5 moment that he leaked it, but that there was a conflict 14:53
6 that somebody -- part of the disciplinary investigation
7 would also be involved in The Star article
8 investigation, do you not accept that there was a
9 conflict there?

10 A. No, I don't. 14:53

11 281 Q. Now, Chief Superintendent Feehan stated that no
12 other -- no Garda members were interviewed in respect
13 of the leak. So, I presume you're not at variance with
14 that position?

15 A. No Garda members were interviewed in respect of it 14:53
16 because there was no evidence pointing at any
17 particular Garda member.

18 282 Q. Well, the article itself referred to Garda sources, and
19 Mr. Hennessy said that he had been informed by Michael
20 O'Toole that it had come from a garda, so... And it 14:54
21 was information that was within a fairly small set of
22 people, and I suppose all I am asking you to do is
23 confirm that no other Garda members were interviewed
24 about this?

25 A. No other Garda members were interviewed because we had 14:54
26 no evidence pointing at a particular Garda member. And
27 just in relation to it, say, like the appointment
28 document originated from the Assistant Commissioner's
29 office in Harcourt Square, where there is about twelve

1 people employed. It came down to Store Street, where
2 there is about another eight people employed in the
3 office there. There was the team, there was --
4 operations were aware, the Commissioner's office were
5 aware, and this doesn't take into account who Sergeant 14:54
6 Hughes and Garda Nyhan informed, because they had
7 informed Mr. Hennessy, and I don't know who else they
8 had informed. So, are you proposing that we draw up a
9 list of all those people and go interviewing them?

10 283 Q. Well, I'm not making any proposal. I'm just asking to 14:55
11 confirm that no one was questioned. No member was
12 questioned about this leak.

13 A. We did not interview any guard in respect of that leak
14 because we had no evidence to support -- to justify
15 such action. 14:55

16 284 Q. All right. Thank you superintendent.
17 CHAIRMAN: Thanks very much. Now.
18

19 THE WITNESS WAS CROSS-EXAMINED BY MS. HORAN AS FOLLOWS:
20 MS. HORAN: Thank you, Superintendent Feehan. Thank 14:55
21 you, Chair. Shelley Horan on behalf of An Garda
22 Síochána, just a few questions and I hope to be quite
23 brief.

24 285 Q. Just in respect of the pre-prepared statements that
25 were given to you by Sergeant Hughes, did you at any 14:55
26 stage have any inkling that they would be categorised
27 or could be categorised as protected disclosures?

28 A. None whatsoever, Mr. Chairman.

29 286 Q. And what is your position in respect of any other

1 communications you received from Sergeant Hughes or on
2 his behalf over the course of dealings you had with
3 him? Did you ever have any inkling at any stage that
4 those represented or constituted protected disclosures?

5 A. Absolutely not, Mr. Chairman, no. I believe my 14:56
6 interactions with him on the discipline, all --
7 anything he said to me, or the pre-prepared statement
8 he gave me, was all in relation to his response to the
9 disciplinary allegation against him.

10 287 Q. Thank you, superintendent. I just want to take you, if 14:56
11 I may, to the statement that Sergeant Hughes gave to
12 Tribunal investigators. And if I could just ask
13 Mr. Kavanagh to turn, in the first instance, to page
14 43. And this is to deal with some specific allegations
15 made by Sergeant Hughes against you personally in your 14:56
16 professional capacity.

17 If we could just look at line 668, just starting on
18 with the words "On the 19 October 2008 I furnished a
19 report --" and then if we could please, Mr. Kavanagh,
20 turn to the next page, 669 it continues, after the 14:57
21 exhibit reference "-- to Inspector Dwyer in relation to
22 the disciplinary process. I deemed the process to be
23 improper, an abuse of process, scapegoating of me,
24 intimidation and harassment. I also deemed this action
25 to be potentially one of criminal activity. The reason 14:57
26 I say this is that the bullying and harassment of me
27 was impacting on my physical well being and causing me
28 harm. The matters I raised in the report were not
29 addressed and once again as a result of the non-action

1 I believe I was being targeted. Assistant Commissioner
2 Al McHugh, Chief Superintendent Mick Feehan and
3 Inspector O'Dwyer, each of them knew there was a
4 systems failure and yet this was not investigated. The
5 individuals who targeted me in respect of the 14:57
6 disciplinary process were Assistant Commissioner Al
7 McHugh, who was overseeing the investigation, Chief
8 Superintendent Michael Feehan and Inspector Fergus
9 O'Dwyer."

10
11 Just moving on a little bit. 14:58

12
13 "On the 16th January 2009 Inspector Dwyer sent a letter
14 to my solicitor, Sean Costello, stating that the
15 complaints I made in my report to the disciplinary 14:58
16 investigation did not come within the ambit of that
17 particular investigation. I felt that at that stage
18 that if these matters did not come within his gift then
19 he should have referred these matters on to someone who
20 could have dealt with them. I believe this was 14:58
21 targeting through cover up and failing to investigate
22 the matters that could exonerate me. In this regard
23 Inspector Dwyer targeted me."

24
25 And can I just ask you, what's your position in respect 14:58
26 of those allegations?

27 A. I totally refute those allegations. As I explained
28 earlier, as I informed Mr. Hughes and the solicitor,
29 the matters that were outside the ambit of the

1 investigation were forwarded up the line. His
2 solicitors was afforded an opportunity to make a formal
3 complaint in respect of those matters and they didn't
4 avail of that opportunity.

5 288 Q. Thank you, superintendent. Could I just ask 14:59
6 Mr. Kavanagh to move to page 45, which I think is the
7 next page. Starting at line 691.
8 It says there:

9
10 "On the 8th July 2008 Garda Declan Nyhan was cleared of 14:59
11 any discipline brought against him. I believe that
12 this was an abuse of process and targeting of me. I
13 felt that any decision about the disciplinary charge
14 against Declan Nyhan would not be appropriate without
15 having formally interviewed me first. The targeting of 14:59
16 me in this instance came from Assistant Commissioner Al
17 McHugh, Chief Superintendent Mick Feehan and Fergus
18 O'Dwyer. Once again, the targeting of me resulted in
19 me being isolated."

20 14:59
21 Can I just ask you for your position in respect of that
22 allegation?

23 A. I refute that allegation.

24 289 Q. And if we could turn, please, Mr. Kavanagh, to the 14:59
25 penultimate part of the statement that I just want to
26 draw Superintendent Dwyer's attention to, which is page
27 47, please.
28 Starting at lines 720, starting with the words:
29

1 "On the 19th May 2010 I received correspondence from
2 the confidential recipient stating that matters had
3 been examined and no issues were arising."

4
5 Then there is a reference to the correspondence being 15:00
6 provided. So, 723:

7
8 "As a result of this process I felt bullied, harassed
9 and scapegoated. I felt that there was an abuse of
10 process, cover-up, harassment of me, criminal activity 15:00
11 and mal practice. The criminal activity I am referring
12 to here is the continued harassment of me by the Garda
13 authorities in failing to properly investigate the
14 serious complaints which I believe may have constituted
15 a breach of the Non-fatal Offences Against the Person 15:00
16 Act. I felt that the investigations failed to uncover
17 if there had been an offence of reckless endangerment
18 committed insofar as the alleged failure to properly
19 coordinate serious crimes involving John Hennessy and
20 Bai ba Saul ite prior to the murder. I felt that the 15:00
21 investigation files should have been forwarded to the
22 law officers for their determination in that regard.
23 The investigation files I am referring to here are
24 those arising from my reports to the confidential
25 recipient and the disciplinary investigation file 15:01
26 relating to me which included these complaints. I
27 believe that these files should have been forwarded to
28 the law officers to determine whether offences had been
29 committed. I felt intimidated because of this, that

1 these serious matters I was raising were not properly
2 examined. Also, as a result of these matters not being
3 properly examined, this led to me being further
4 isolated. The persons responsible for this targeting
5 of me include Commissioner Noel Conroy, Assistant 15:01
6 Commissioner Al McHugh, A/C HRM, Chief Superintendent
7 Mick Feehan, Chief Superintendent Gerry Phillips,
8 Superintendent Mark Curran and Inspector Fergus
9 O'Dwyer."

10
11 And insofar as those allegations reference you, Chief
12 Superintendent, what is your position in respect of
13 that?

14 A. I totally refute those allegations, Mr. Chairman.

15 290 Q. And then finally if we could just turn, please, 15:01
16 Mr. Kavanagh, to page 49 of the statement.
17 Starting at the line 749 at the top.

18
19 "On the 27th November 2008 I sent a report to the
20 confidential recipient and the Garda Commissioner 15:02
21 regarding the article in The Star Newspaper on 20th
22 November 2008 which indicated that I (without naming
23 me) was negligent in my duties concerning the Baiba
24 Saulite case. I understand that this report was sent
25 to the Garda Commissioner. I believe that I was 15:02
26 targeted as there was no immediate response by the
27 Garda authorities to this. I was first contacted on
28 the 16th January 2009. An investigation was undertaken
29 by Inspector Fergus Dwyer. There was no outcome to the

1 investigation in that the source of the leak could not
2 be established. I believe I was targeted in this
3 regard due to a failure to interview me promptly and
4 the fact that a proper investigation was not conducted.
5 I believe this was an abuse of process at my expense
6 and a cover-up."

15:02

7
8 Can I just ask you, please, for your position in
9 respect of that allegation?

10 A. I refute that allegation totally, Mr. Chairman.

15:02

11 291 Q. Did you at any stage, superintendent, target or seek to
12 discredit Sergeant Hughes in any of your dealings with
13 him?

14 A. I did not, Mr. Chairman.

15 MS. HORAN: Thank you very much. I have no further
16 questions.

15:02

17 MR. MARRINAN: One matter, Chairman, so that we can be
18 precise in relation to any observations.

19
20 THE WITNESS WAS RE-EXAMINED BY MR. MARRINAN AS FOLLOWS:

15:03

21 292 Q. MR. MARRINAN: You recall that I opened a letter that
22 you sent to Sean Costello & Company Solicitors on the
23 10th April 2009. This, amongst other things, concerned
24 a matter in relation to the motive behind the service
25 of the disciplinary proceedings.

15:03

26 A. Yes.

27 293 Q. And I referred you to a later response that came from
28 Sean Costello & Co. There is in actual fact an earlier
29 one that deals with it, it's at page 969 of the

1 material, and it's a response of the 16th April 2009,
2 which is six date later.

3 If we just scroll down. I think you had referred to
4 this yourself. But there, you'll see in the final
5 paragraph it says:

15:04

6
7 "In relation to the question of our client's belief
8 concerning the instigation of this disciplinary
9 investigation, this is a matter about which our client
10 has already elaborated."

15:04

11
12 And that was the response that came in.

13 A. That's correct, Mr. Chairman.

14 294 Q. CHAIRMAN: That's the actual reference.

15 A. Yeah.

15:04

16 295 Q. CHAIRMAN: You gave evidence actually earlier, you
17 don't describe it but that's the precise reference to
18 it.

19 A. Yes.

20 CHAIRMAN: Yeah, thanks very much. Okay. So nothing
21 arising out of that. Very good. Thanks very much,
22 superintendent. Thank you for coming to help us and
23 you are now free to go, thank you.

15:04

24 THE WITNESS: Thank you, Mr. Chairman.

25 CHAIRMAN: And you are finished with your involvement
26 with the Tribunal. Thank you very much.

15:04

27 THE WITNESS: Thank you.

28

29 THE WITNESS THEN WITHDREW

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CHAIRMAN: So, Mr. McGuinness, where do we stand now?

MR. MC GUINNESS: Chairman, we have now in fact dealt with the witnesses scheduled to give evidence this week, and the next day listed for the taking of evidence in the consideration of the complaint is on Monday morning, when Assistant Commissioner Fanning is listed, and then on Tuesday for Dr. Quigley.

15:04

CHAIRMAN: And there is some question -- you are free to go superintendent, or you can go out and around that way if you like. Whatever you like. Don't worry.

15:05

And Mr. O'Higgins and Mr. Lynn, you were going to have some consideration about Assistant Commissioner Fanning, is that right? I mean, I am quite -- I suppose the sensible thing -- let me see what I think the sensible thing. If you reach agreement on that -- sorry, Mr. McGuinness.

15:05

MR. MCGUINNESS: I should say that Mr. O'Higgins is not acting for former Assistant Commissioner Fanning, it's Mr. Costello instructing Mr. McGarry in the matter.

15:05

CHAIRMAN: Of course. But equally, if the parties here -- if the parties here -- let me stick my nose in where I probably shouldn't, but if the parties here were agreed that they didn't need Assistant Commissioner Fanning, it's scarcely conceivable that Mr. McGarry would be insisting on calling superintendent -- Assistant Commissioner, so I can't see the Tribunal would want to hear from Assistant Commissioner Fanning.

15:06

1 But, gentlemen, if you want to work that out among
2 yourselves --
3 MR. O' HIGGINS: No difficulty, Chairman.
4 CHAIRMAN: -- keep in touch with counsel. Obviously,
5 please bear in mind that if that's an issue, if that's 15:06
6 a question, the earlier you decide it, the more notice
7 would be given to Assistant Commissioner Fanning and
8 his representative. So it would be more polite, if we
9 could do it, I'd much prefer to do it, if we could,
10 today or early tomorrow morning, if that was possible. 15:06
11 And if it's not possible, that's not a problem also.
12 MR. O' HIGGINS: We can discuss it immediately.
13 CHAIRMAN: Okay. Thanks. That seems sensible
14 Mr. McGuinness, doesn't it?
15 MR. MC GUINNESS: Yes, Chairman, of course. 15:07
16 CHAIRMAN: Okay. Thanks very much. Very good so we'll
17 see you on Monday then, or Tuesday, maybe.
18
19 THE HEARING ADJOURNED UNTIL TUESDAY, 1ST MARCH 2022 AS
20 10:30 A.M. 15:08
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