

**2022 Special Commission of Inquiry
into LGBTIQ hate crimes**

**Before: The Commissioner,
The Honourable Justice John Sackar**

**At Level 2, 121 Macquarie Street,
Sydney, New South Wales**

On Wednesday, 7 December 2022 at 10.00am

(Day 12)

**Mr Peter Gray SC (Senior Counsel Assisting)
Ms Christine Melis (Counsel Assisting)
Mr William de Mars (Counsel Assisting)
Ms Kathleen Heath (Counsel Assisting)
Ms Gráinne Marsden (Counsel Assisting)
Ms Meg O'Brien (Counsel Assisting)
Ms Claire Palmer (Counsel Assisting)
Mr Enzo Camporeale (Director Legal)
Ms Kate Lockery (Principal Solicitor)**

Also Present:

**Mr Mark Tedeschi KC (for NSW Police)
Mr Anders Mykkeltvedt (for NSW Police)
Mr Ken Madden (for Sergeant Steer)**

1 THE COMMISSIONER: Yes?

2

3 MR TEDESCHI: Commissioner, we have not yet received
4 a transcript of yesterday's proceedings. I understand
5 there is a reason why. I was just wondering if every
6 attempt could be made, please, to provide us with
7 a transcript in the evening of the day that it is heard
8 because it does make it easier for us to keep up with the
9 fairly fast pace of what's happening.

10

11 THE COMMISSIONER: There is no issue about that at all.
12 Every step will be taken. I'm not currently familiar with
13 the precise reason. I think it has something to do - well,
14 I don't know, I won't speculate.

15

16 As soon as it is available - Mr Tedeschi, if at any
17 time late delivery of transcript causes you a problem, then
18 from my point of view, there will never be an issue about
19 forcing you on in any situation where you would wish to
20 reacquaint yourself with precisely what has been said. So
21 it's not going to be an issue, it's only a timing point,
22 but I will ensure that as soon as it is available, you and
23 Mr Madden and others get it. But keep me posted if there
24 is a problem, or tell Mr Gray, and if there is a problem,
25 I will get to the bottom of what the problem is.

26

27 MR TEDESCHI: Thank you.

28

29 THE COMMISSIONER: Yes, Mr Gray - Mr Crandell, would you
30 be kind enough to come back into the witness box, thank you
31 very much.

32

33 <ANTHONY CRANDELL, on former affirmation: [10.02am]

34

35 <EXAMINATION BY MR GRAY:

36

37 MR GRAY: Q. Mr Crandell, at the end of yesterday we had
38 look at the Terms of Reference for Strike Force Parrabell
39 which are extracted in the report itself?

40 A. Yes.

41

42 Q. I now want to turn to the investigation plan, which is
43 in volume 1, tab 14, [SCOI.74385].

44 A. Yes.

45

46 Q. At this stage, I just want to ask you one or two
47 general questions about this, and the first is, what is the

- 1 status of an investigation plan in a strike force such as
2 this one?
- 3 A. So that plan is generally put out in a specific
4 format, which indicates what the situation is and basically
5 gives you a general overview and some guidance on why the
6 investigation is here and how it should be conducted.
7
- 8 Q. And on page 3 - I will come back to some of the detail
9 of this, but on page 3 - at the top, the plan says that
10 investigators will commence a physical review of the files
11 to determine if any bias crime indicators exist.
- 12 A. Yes.
13
- 14 Q. The footnote tells the reader that indicators 1 to 9
15 have been taken from an American document --
- 16 A. Yes.
17
- 18 Q. -- which we will come to later, and that indicator 10
19 had been developed by bias crimes in New South Wales. So
20 that's nine from America and one developed locally;
21 correct?
- 22 A. Yes.
23
- 24 Q. And it says in the top paragraph on page 3 that the
25 incident in question in each case will be filtered through
26 the attached bias crime identification form. Now, the bias
27 crime identification form is a reference, I think, to what
28 is actually elsewhere called the Bias Crime Indicator Form;
29 is that right?
- 30 A. Yes, it's the same document.
31
- 32 Q. It's the same initials but the word "indicator" is
33 what is in fact on the form?
- 34 A. Yes.
35
- 36 Q. I will come back to that document because I need to go
37 through it with you. Then if you turn over to the next
38 tab, 15, [SCOI.75071], these are the coordinating
39 instructions, which you will recall. And what is the
40 status of something called "coordinating instructions" in a
41 strike force such as this one?
- 42 A. My understanding of that is that it gives some
43 guidance to investigators as to how they should behave and
44 what they're actually looking for, in terms of the
45 investigation behaviour.
46
- 47 Q. What is it doing differently from or over and above

1 the investigation plan? How do the two work together?

2 A. Yes, look, I think they're fairly similar documents.
3 I notice that there's fairly similar information in both of
4 them. It may well have been that one document was created
5 prior to the other. I'm uncertain. I didn't create the
6 documents but --

7

8 Q. I want to come back in a moment to who did create
9 them, but the coordinating instructions, we can see
10 starting on page 4, have embedded, or had embedded within
11 them, the actual form which was to be used; correct?

12 A. Yes.

13

14 Q. Which is the Bias Crime Indicator Form?

15 A. Yes.

16

17 Q. And it goes from page 4 to page 13 of the coordinating
18 instructions.

19 A. Yes.

20

21 Q. And I asked you this yesterday and you answered, but
22 just to confirm, this form that we're looking at at page 4
23 of the coordinating instructions is the form that was used
24 in the Strike Force Parrabell?

25 A. Yes.

26

27 Q. In your statement, and I will take you to it in a
28 minute, but just for the moment, briefly, at paragraph 43
29 you refer to the three documents that were created, namely,
30 the Terms of Reference, the investigation plan and the
31 coordinating instructions. The coordinating instructions,
32 as we can see, have the Bias Crime Indicator Form contained
33 within them, and what I wanted to ask is, may the
34 Commissioner take it that the central and governing one of
35 these documents was the coordinating instructions?

36 A. Mr Gray, I'm just uncertain of what the policy
37 position is on these documents, as I think about what
38 you're saying. It may well be that the coordinating
39 instructions were information for investigators that were
40 coming in to the strike force and that the plan, the
41 investigation plan, may be a document that was not
42 necessarily for the investigators but was for - as an
43 overall document that would guide the investigation and the
44 investigators. So I'm uncertain. There may well be
45 something in the policy that dictates that. I'm just
46 unaware of it.

47

1 Q. Do you mean by that that you don't remember or you're
2 just not sure of what the policy is generally?

3 A. I'm not certain of the policy generally and I'm
4 uncertain as to which document was for investigators and
5 which document was probably more of a guiding - a set of
6 guiding instructions for other people.

7
8 Q. I want to come to some of the detail of this, but
9 before I do, I should perhaps have started with this.
10 I understand that overnight you've checked your diary or
11 other records on the question of meetings with or any
12 meeting with Mick Willing in 2016 which had relevance to
13 Neiwand?

14 A. Yes.

15
16 Q. Could you tell the Commissioner what it is that you
17 were able to ascertain or check overnight?

18 A. Yes. So, Commissioner, I reviewed my diary back for
19 2016 just to have a look, searching for Neiwand or Willing.
20 I found that I had two meetings in 2016 with Mick Willing.
21 One was on 14 April. On that day I think - and I think
22 I've given evidence in relation to that date - on that day
23 I have documentation that says that we did discuss the
24 review of the Taradale matters. There was one document
25 that mentions Neiwand, but my memory did not allow me to
26 link in Neiwand with the Taradale reinvestigations, and
27 I fear that I misled you yesterday. The meeting on
28 17 May --

29
30 THE COMMISSIONER: Q. Pardon me interrupting, just for my
31 benefit, to what extent do you think you misled me
32 yesterday? I'm not suggesting anything untoward about it;
33 quite the opposite. I just wanted to know what is the
34 difference between what you might have said yesterday and
35 what you're now saying today?

36 A. I said yesterday that I was unaware of Neiwand until
37 recently.

38
39 Q. Yes.

40 A. Whereas the document attached to the 14th April
41 meeting does say "Neiwand". So it seems to me that
42 I probably was aware of that at the time, but I've told you
43 that I wasn't. So I --

44
45 Q. I follow. So you now accept that - without
46 necessarily any further independent recollection for the
47 moment, you accept that the term "Neiwand" and the

1 existence of it was mentioned to you in April 2016?

2 A. Yes, yes.

3

4 Q. Thank you.

5 A. And also I met with Michael Willing on 17 May, but
6 that was at Parliament House for the purpose of briefing
7 Alex Greenwich on progress of not only Parrabell but also
8 Neiwand, although Neiwand's not mentioned but it does say
9 the reinvestigation into the Taradale matters, incidents.

10

11 THE COMMISSIONER: Thank you very much.

12

13 MR GRAY: Q. I just want to ask you some questions about
14 the bias crime indicators form itself.

15 A. Yes.

16

17 Q. You see it there starting on page 4 in the
18 coordinating instructions at tab 15, [SCOI.75071]?

19 A. Yes.

20

21 Q. I'm sure you're quite familiar with this form, having
22 conducted the inquiry or the strike force?

23 A. Fairly, yes.

24

25 Q. It sets out under 10 different - sorry, it sets out
26 under 10 separate headings or indicators, the first one
27 being "Differences" --

28 A. Yes.

29

30 Q. I'll start again. It deals with 10 separate
31 indicators, the first one being "Differences".

32 A. Yes.

33

34 Q. And nine of those 10 had been largely taken from a US
35 curriculum document dated from 2000?

36 A. My understanding is that, yes, originally that's where
37 they were brought from, and I think Sergeant Steer brought
38 them to the NSW Police Force, and that those aspects were
39 contained in policy at the time, and I understand that that
40 was our corporate position, to look at those indicators as
41 to whether or not there was bias involved in crimes.

42

43 Q. I will come to some of that, but thank you. But just
44 for the moment, nine of the 10 had been derived from the US
45 document?

46 A. Yes.

47

1 Q. And the tenth had been developed locally perhaps by
2 Sergeant Steer --

3 A. I believe so.
4

5 Q. -- but certainly by bias crimes?

6 A. Definitely, yes.
7

8 Q. At the top of page 4 of the coordinating
9 instructions --

10 A. Yes.
11

12 Q. -- the following four findings are said to be
13 available, bias crime; suspected bias crime; not a bias
14 crime; insufficient information, with some detail provided
15 as to what each of those notions was referring to.

16 A. Yes.
17

18 Q. And so the form itself, though, starting at the bottom
19 of page 4, the tabulated form, as used by the strike force,
20 you would agree, was not itself created as a form by the
21 Bias Crimes Unit?

22 A. No.
23

24 Q. Or by Sergeant Steer?

25 A. My understanding is that the Parrabell investigators
26 created that form drawing upon Sergeant Steer's work in
27 identifying the bias crime indicators..
28

29 Q. Yes. So the form itself was created by the Parrabell
30 investigators?

31 A. That's my understanding, yes.
32

33 Q. And indeed, at page 3 of the coordinating
34 instructions, in the bottom two paragraphs, that is exactly
35 what it says - that the review would use a list of bias
36 crime indicators?

37 A. Yes.
38

39 Q. And then explaining where they had come from?

40 A. Yes.
41

42 Q. And in the last paragraph, the reader is told that the
43 persons who created the form, as distinct from the list of
44 indicators, were the Parrabell investigators?

45 A. Yes, that's true.
46

47 Q. Now, Sergeant Steer, in his statement - did you say

1 you had seen his statement?
2 A. I have.
3
4 Q. He says at paragraph 21 in the first paragraph:
5
6 *The BCIRF --*
7
8 meaning the form --
9
10 *was created by Strike Force Parrabell ...*
11
12 And you would agree with that?
13 A. I agree with that, yes.
14
15 Q. In your statement, which I would ask you to just turn
16 up - it is in volume 1, I think, tab 4, [SCOI.76961]?
17 A. Yes.
18
19 Q. At paragraph 59?
20 A. Yes.
21
22 Q. If you just read 59 and 60 to yourself?
23 A. Just 59, did you say?
24
25 Q. Well, just read 59 for the moment, yes.
26 A. Yes.
27
28 Q. Now, you would accept, I think, from what you've just
29 been saying very frankly --
30 A. Yes.
31
32 Q. -- that 59 is not accurate?
33 A. Yes.
34
35 Q. In the sense that the Bias Crimes Unit did not possess
36 the tool, being the form, and had not used the tool, being
37 the form?
38 A. No. The form was drawn from the bias crime
39 indicators.
40
41 Q. Now, still in your statement, back at 43 - in fact,
42 starting at 41, really --
43 A. Yes.
44
45 Q. -- this is talking about the early part or the first
46 part of 2015, and you say you had planning meetings with
47 various persons about what was to become Strike Force

1 Parrabell?

2 A. Yes.

3

4 Q. And you say that those meetings concerned, among other
5 things, the scope of the exercise and the development of
6 appropriate Terms of Reference and the investigation plan?

7 A. Yes.

8

9 Q. You mention that the meetings were attended by
10 Messrs Middleton and Grace and Bignell, and you give their
11 positions?

12 A. Yes.

13

14 Q. Were there other people who were present at these
15 initial planning meetings or was it just those three?

16 A. I think from - involving me, it was probably --

17

18 Q. Yes, involving you.

19 A. Probably those people. Whether there were other
20 meetings, given the role that then Detective Inspector
21 Middleton was to undertake - he was really taking
22 a leadership role in these reinvestigations - I'm sure that
23 he would have had other meetings with other people that I'm
24 not aware of.

25

26 Q. But from your point of view, though, the planning
27 meetings that you were having were with those three rather
28 than with other people not mentioned here?

29 A. From my memory, yes.

30

31 Q. Now, in 43 you say that it was as a result of those
32 planning meetings that the "below" documents were
33 ultimately prepared - and you set them out: the Terms of
34 Reference, the investigation plan - actually, not
35 "agreement"; you agree it's actually an investigation
36 plan --

37 A. Yes.

38

39 Q. -- and the coordinating instructions?

40 A. Yes.

41

42 Q. What I want to ask you is, when you say they were
43 ultimately prepared, by whom were they prepared? Who wrote
44 them? Who composed them?

45 A. The Terms of Reference I think I had some input into
46 those. The body of them may well have been prepared for me
47 and I may have well adjusted them. But the investigation

1 agreement, the coordinating instructions, were more likely
2 to have been done by the senior detectives.

3

4 Q. Meaning?

5 A. Meaning Craig Middleton, Paul Grace and probably
6 Cameron Bignell may well have had some input into that as
7 well.

8

9 Q. If there's a difference as to the investigation
10 agreement, if I were to ask you who composed it or drafted
11 it, you'd say some combination of those three?

12 A. I would.

13

14 Q. Is that right?

15 A. Yes.

16

17 Q. And would you say the same about the coordinating
18 instructions?

19 A. Yes.

20

21 Q. Some combination of those three?

22 A. I would think so.

23

24 Q. And as to the form itself - some combination of those
25 three?

26 A. I would say so. I don't know how that form was pulled
27 together, but it certainly says in the document that the
28 Parrabell investigators pulled that form together, so
29 I would assume that they have spoken about how it should
30 come together.

31

32 Q. As we observed yesterday, the investigation plan might
33 have been - or it is perhaps not entirely certain but might
34 have been - in existence as early as 25 May?

35 A. Yes.

36

37 Q. Which is a date appearing below Mr Grace's name?

38 A. Yes.

39

40 Q. Although that's perhaps not definitive and it may not
41 have been in existence until some time later than that?

42 A. Yes.

43

44 Q. I think that's what you said yesterday?

45 A. Yes, I think Craig Middleton's was dated 3 August or
46 something similar.

47

1 Q. That's right.

2 A. Yes, so --

3

4 Q. So it's not entirely clear exactly when the document
5 in final form might have come to fruition?

6 A. Yes.

7

8 Q. And in terms of the coordinating instructions which
9 are not dated, I think you said yesterday, but correct me
10 if I'm wrong, that your belief, at least, is that it must
11 have been in existence in final form by 30 August?

12 A. Yes.

13

14 Q. And would the same apply to the form, the actual form,
15 which indeed forms part of the coordinating instructions?

16 A. Yes, I say that because that date was the start of the
17 strike force, so you would have to have something in place
18 to guide the investigation.

19

20 Q. Now, to your knowledge - well, I'll start with you.
21 Did you, yourself, seek the views of the Bias Crimes Unit
22 or Sergeant Steer as to the proposed methodology as
23 outlined in the investigation plan and the coordinating
24 instructions?

25 A. I don't remember speaking to Sergeant Steer but I did
26 know that I wanted him involved in Parrabell, simply
27 because he had started off Operation Parrabell and, as
28 I said yesterday, that was definitely on the right track,
29 and I was able to give it resources. So yes, I wanted his
30 involvement. Whether or not I had a discussion with him,
31 though, he would probably know about that better than me.

32

33 Q. Well, to your knowledge, did anyone send him any draft
34 or indeed final version of either the investigation plan or
35 the coordinating instructions?

36 A. Not to my knowledge.

37

38 MR GRAY: My friend Mr Tedeschi has just informed me that
39 Sergeant Steer is in the courtroom, which is something
40 I was not aware of, and he is suggesting to me that perhaps
41 that's not appropriate. I just raise it because it has
42 been raised with me.

43

44 THE COMMISSIONER: Well, is he here, Mr Madden?

45

46 MR MADDEN: I am sorry, I didn't quite hear --

47

1 THE COMMISSIONER: Is Sergeant Steer here in the
2 courtroom?

3
4 MR MADDEN: He is, your Honour.

5
6 THE COMMISSIONER: All right. I have given him leave to
7 appear, and although he doesn't, in perhaps the traditional
8 sense, Mr Tedeschi, have party status, he has filed
9 a statement. I don't know that it is appropriate to make
10 the usual order for witnesses in a commission of inquiry,
11 but what's your problem - that he might hear something that
12 might influence his decision? The matter is being live
13 streamed. He could read the transcript. I couldn't
14 prevent him from doing any of those things. The mere fact
15 that he is actually hearing Mr Crandell in real time - he
16 could be doing so sitting in his living room, and
17 I wouldn't make an order that he should be prevented from
18 doing that.

19
20 MR TEDESCHI: Yes, I take that point.

21
22 THE COMMISSIONER: You can make the comment if indeed, as
23 often - not often but sometimes is the case where a witness
24 says something, if I may speak for a moment in code, that
25 you think has been contrived or put in a way as to be
26 exculpatory or in some way goes to his credit - you will
27 have every opportunity of putting that if you think,
28 instinctively or otherwise, there has been some trigger.
29 But it does seem to me, even if I hadn't given him leave to
30 appear, I wouldn't know and you wouldn't know whether he
31 was sitting at home watching the live streaming or somehow
32 or other getting access to transcript.

33
34 MR TEDESCHI: That's true.

35
36 THE COMMISSIONER: I take your point, and you will have
37 every available forensic strategy as you would otherwise
38 have in the case where you think there has been some
39 tailoring or accommodating of that sort, and we both know
40 what we're talking about.

41
42 MR TEDESCHI: Thank you.

43
44 THE COMMISSIONER: All right. Thank you.

45
46 Sergeant Steer, I'm not going to direct that you leave
47 the courtroom. And thank you for bringing it to my

1 attention, Mr Tedeschi.

2

3 MR GRAY: Q. I think the question I had asked - forgive
4 me if you had already answered it - was did anyone, to your
5 knowledge, send Mr Steer, Sergeant Steer, a draft or final
6 version of either the investigation plan or the
7 coordinating instructions?

8 A. Not to my knowledge.

9

10 Q. Did anyone, to your knowledge, send him a draft of the
11 bias crime indicators form?

12 A. Not to my knowledge.

13

14 Q. Was there a reason why that wasn't done?

15 A. The - well, I'm speculating, I suppose. I've been
16 told not to do that, but my understanding was that the bias
17 crime indicators were available in policy. If that's the
18 case, then I would presume that the investigators have
19 probably drawn that from policy, had a look at those
20 indicators and then said, "Well, these are the indicators".

21

22 The one thing I do remember about the bias crimes form
23 was the statement that every indicator may be present and
24 it may not be a bias crime or no indicators may be present
25 and it still might be a bias crime. So to me, that spoke
26 volumes about the document and about weight and how you
27 would weight different characteristics on that form. So --

28

29 Q. And what - sorry, go on.

30 A. Sorry. So to shorten it up, I guess, I'm not aware of
31 whether Sergeant Steer was involved or whether he was
32 contacted, but if he wasn't, then I'm presuming that
33 there's been some sort of guidance from policy to indicate
34 where we should be.

35

36 Q. And what are you meaning when you say "policy" in
37 those answers?

38 A. Standard Operating Procedures for bias crime, for bias
39 crimes to - for bias crime indicators and the like.

40

41 Q. At the time, as at 2015?

42 A. Yes. I say that because I don't think we would have
43 pulled the bias crime indicators out of the air. We would
44 have had something to refer to.

45

46 Q. As the senior officer - I've forgotten what your title
47 was for Parrabell - or commanding officer of Strike Force

1 Parrabell --

2 A. Yes.

3

4 Q. -- did you have to get approval from anybody else as
5 to the content of the investigation plan or the
6 coordinating instructions or was it up to you?

7 A. No, I think ultimately my decision, but I was very
8 sure to take advice from investigators and --

9

10 Q. Well, presumably, tell me if this is right, drafts of
11 those two documents, the investigation plan and the
12 coordinating instructions, circulated at least among the
13 Parrabell officers - that is, in particular, Middleton and
14 Grace and --

15 A. Cameron Bignell - I would think --

16

17 Q. And yourself, I assume; is that right?

18 A. Yes, I mean, they probably worked on drafts prior to
19 coming to me and then would present me with something that
20 I was comfortable with, although I notice in the earlier
21 document that you indicated, there was a place for the
22 signature of Craig Middleton and also Paul Grace. I can't
23 remember whether there was a place for my signature.

24

25 Q. No, there wasn't.

26 A. Right. So it may well have been that they've decided
27 that that was an appropriate document to publish without
28 necessarily coming to me. That would be okay with me on
29 the basis that they're very experienced detectives and they
30 should know how to run such an inquiry.

31

32 Q. Right. Well - and again, I'm not saying this
33 critically, Mr Crandell, that's not the object of this
34 exercise --

35 A. Sure, yes.

36

37 Q. -- but in your statement, those paragraphs that
38 I mentioned before, which I will just turn up again, 59 and
39 60, I will just take you to those again. At 59 you say in
40 the statement - but you've accepted this morning that it's
41 not quite accurate - that the Bias Crimes Unit already had
42 the tool, being the form, and you've agreed that that's not
43 quite how it was, that the form itself was developed by the
44 Parrabell officers?

45 A. Yes.

46

47 Q. But then in 60 you say - and I won't read it out, but

1 if you would read it to yourself - that you considered that
2 the Bias Crime Indicator Form or tool was appropriate for
3 various reasons. Take a moment to read through that. One
4 of them is the one you just mentioned, that all indicators
5 could be present and yet no bias crime, and conversely, no
6 indicators could be present and yet there was a bias crime.
7 A. Yes.

8
9 Q. And you make that point. But I'm raising 60 with you
10 because I just want to try to get some clarity about how
11 much awareness you had of the shape of the form that was
12 going to be used. It sounds like you --

13 A. Yes.

14
15 Q. -- yourself must have given it some thought and
16 approved of it?

17 A. Yes. No, I accept that the form and the indicators -
18 I was well aware of that. Whether I was involved in the
19 coordinating instructions I can't say, but I do know that
20 I understood the bias crime investigation tool because
21 I understood that that's how I was going to be able to show
22 that all of those factors had been considered and then how
23 those factors were weighed to ultimately determine an
24 intention or motivation of the offender.

25

26 Q. Now, in the course of the drafting process that
27 evidently went on, did anyone, for example,
28 Messrs Middleton or Grace or Bignell, or indeed anyone
29 else, point out or suggest any limitations or problems with
30 the proposed methodology?

31 A. Not to --

32

33 Q. Or possible problems?

34 A. Not to my knowledge.

35

36 Q. I think, though, at least in your mind, and perhaps
37 you can tell us about whether there were any discussions
38 about this, it was obvious to you that there would
39 inevitably be some, or perhaps many, cases among the 88
40 where the documentary material available was scant or,
41 indeed, in some cases, simply inadequate?

42 A. Absolutely.

43

44 Q. Did anyone, including you, raise that as a potential
45 speed hump?

46 A. In terms of identifying the factors?

47

- 1 Q. In terms of the methodology. If the whole methodology
2 was only to look at whatever was available in the
3 historical files --
- 4 A. Yes.
- 5
- 6 Q. -- it was obvious that some, at least, of the
7 historical files would just not have enough material there
8 to really be any use to you?
- 9 A. Yes, I agree.
- 10
- 11 Q. You would agree with that?
- 12 A. Yes, absolutely.
- 13
- 14 Q. That's a shortcoming in the methodology, is it not -
15 perhaps an unavoidable one but a shortcoming?
- 16 A. Well, yes, I think it's very difficult to avoid that
17 circumstance when, you know, we're talking about cases that
18 go back to 1976, and you're right, there was very scant
19 documentation in some of them and then there were others
20 that had massive amounts of documentation. But really, the
21 indicators should have been identified at a time when there
22 was evidence to show them. If there wasn't, and they
23 simply couldn't relate any of the indicators to any of the
24 evidence that they had, then they would - they would not.
- 25
- 26 Q. When you say "the indicators should have been
27 identified", you mean back in 1972 or whenever the incident
28 occurred?
- 29 A. No. I'm saying the investigators would review that
30 documentation and then determine whether or not the
31 information would sit in an indicator to indicate that
32 there was gay-hate bias.
- 33
- 34 Q. Let me just, because I need to do this formally, ask
35 you to have a look at Sergeant Steer's statement, which is
36 in that same volume, 1, at tab 6, I think, [SCOI.82080].
- 37 A. Yes.
- 38
- 39 Q. Could you just read paragraph 21 of his statement to
40 yourself. It's quite long. I want to ask you about some
41 aspects of it.
- 42 A. Yes, I've read that.
- 43
- 44 Q. I want to ask you about a few components of that. .
- 45 A. Sure.
- 46
- 47 Q. In the second line, or first of all, starting at the

1 first line, we agree - you agree - that the form was
2 created by the Parrabell officers?

3 A. Yes.

4

5 Q. He says in the next sentence:

6

7 *There was no consultation with the Bias*
8 *Crimes Coordinator --*

9

10 ie, himself --

11

12 *in relation to the creation of this*
13 *form ...*

14

15 Insofar as you know, that's correct?

16 A. Yes.

17

18 Q. Then a couple of lines below he says:

19

20 *The [bias crime indicators] are utilised as*
21 *an aide memoire within bias crimes*
22 *investigations and not as a checklist as it*
23 *appears to have been used by Strike Force*
24 *Parrabell.*

25

26 Now, first of all, did Sergeant Steer ever say something to
27 that effect to you, either at the outset or at some point
28 along the Strike Force Parrabell exercise?

29 A. He may have, I don't remember.

30

31 Q. Do you know whether he is correct in saying that the
32 bias crime indicators were utilised as an aide-memoire
33 within bias crime investigations and not as a checklist?

34 A. I would agree with that statement, but I don't agree
35 that Strike Force Parrabell used them as a checklist.

36

37 Q. I see. I'll come to that, thank you. Now, at the
38 bottom of the page, still in paragraph 21, he says:

39

40 *The 10 indicators are designed to identify*
41 *where deeper investigation is required*
42 *during hate crime investigations ...*

43

44 Just pausing there, do you see that?

45 A. I'm sorry, I've just lost my place.

46

47 Q. The very bottom line on that page, where paragraph 21

1 appears, he says:

2

3 *The 10 indicators are designed to identify*
4 *where deeper investigation is required*
5 *during hate crime investigations ...*
6

7 Do you see that?

8 A. I'm sorry, am I still on page 8? I'm sorry. I'm
9 sorry, I'm on the wrong page, sorry.

10

11 Q. It's the bottom line on page 8 and it just spills over
12 to the top line on page 9.

13 A. Yes, I can see that, yes.

14

15 Q. Now, the point that he's making, as I would read it,
16 is that the indicators are for use during an investigation,
17 rather than after one?

18 A. Yes.

19

20 Q. Is that something that he ever put to you or explained
21 to you?

22 A. I don't believe so, but as I say, I just don't
23 remember.

24

25 Q. In the matter that appears on the top of page 9 in
26 that paragraph - I won't take you to the detail of it -
27 substantially, you and he are on much the same page in
28 those few sentences, in that he is saying that the
29 indicators --

30 A. Yes.

31

32 Q. -- are there to - it's possible to have all 10 and not
33 a hate crime or have none and it is a hate crime. You
34 agree with that?

35 A. Yes, I do.

36

37 Q. And he says the indicators are there to assist
38 investigators in identifying hate motivation through
39 thorough investigation practices, ie, while the
40 investigation is under way; agreed?

41 A. Yes.

42

43 Q. Then further down that paragraph, about four or five
44 lines from the bottom, he says:

45

46 *The mere presence of 1 indicator or*
47 *multiple indicators does not rule in or out*

1 *a hate motivation, it is the motivation of*
2 *the offender that determines the finding.*

3

4 Now, first of all, is that your understanding as well?

5 A. Yes, it is.

6

7 Q. And was that something that he ever said to you or you
8 to him?

9 A. Oh, we had a number of discussions and I would say
10 that we would have covered that topic, because I was trying
11 to learn what he knew about bias crimes.

12

13 Q. And when were you having these discussions with him?
14 In 2015 when Strike Force Parrabell was being set up or at
15 some earlier time, or when?

16 A. I don't recall it. It was - it may have been before
17 or during, I don't recall. I know - I know that Sergeant
18 Steer was at meetings that I attended also. There was also
19 a discussion that we had as a group in relation to some of
20 the findings and some of the outcomes, and an agreement was
21 reached on what those findings ought to be, and I took
22 particular notice because it wasn't that the strike force
23 investigators had their way on all occasions either. Some
24 of what Geoff had raised was - some of his information was
25 taken on board.

26

27 Q. Now, just in the last couple of lines of that
28 paragraph, 21, I just need to give you a chance to respond
29 to this, he says:

30

31 *The improper use of the indicators as*
32 *a checklist or a review form severely*
33 *jeopardises the integrity of hate crime*
34 *investigations ...*

35

36 What is your response to that?

37 A. Well, I agree that it shouldn't be used as
38 a checklist. The review team were not - were conducting
39 a review of material. I don't know why I wouldn't use hate
40 crime indicators systemically to - particularly on the
41 basis of the information that you've gone through, to
42 indicate whether there was or was not bias motivation.
43 Because ultimately, and as I understood it, we needed to
44 identify the motivation for the crime. The indicators, as
45 I said, they may all be present and it still might not be
46 a hate motivation; or none of them could be present. So to
47 me, that's not a tick box. That was a - that's something

1 that was able to be categorised by the investigators to
2 give me some comfort that they had considered these
3 different aspects and then show whether or not those
4 aspects contributed to the motivation of the offender.
5
6 Q. Did he, Sergeant Steer, tell you many times that the
7 indicators were not a checklist? Did he make that point to
8 you?
9 A. I don't recall, but I - but I agree with that
10 position.
11
12 Q. Did he tell you multiple times that Strike Force
13 Parrabell, in his opinion, was using the indicators
14 incorrectly?
15 A. I don't recall that, no.
16
17 Q. Do you know if either Sergeant Steer or anyone else
18 passed on to the Flinders academics Sergeant Steer's view
19 about the indicators not to be used as a checklist?
20 A. He may have. I don't remember whether I - whether
21 I was aware of any of that. I know Sergeant Steer did have
22 conversations with the academic review team, which I was
23 more than happy with.
24
25 Q. Right.
26 A. I don't know the content of those discussions, unless
27 you can point me to a document.
28
29 Q. I'll just take you to a couple of emails to see if you
30 are aware of them or if it triggers a memory.
31 A. Sure.
32
33 Q. In volume 10, if you would turn to tab 246,
34 [SCOI.79856], this, you can see, is an email from Dr Dalton
35 of Flinders --
36 A. Yes, to Sergeant Steer.
37
38 THE COMMISSIONER: I'm sorry, Mr Gray, what tab was it?
39
40 MR GRAY: 246, volume 10, [SCOI.79856].
41
42 THE COMMISSIONER: Thank you.
43
44 THE WITNESS: Sorry, mine is blacked out where it says who
45 it is to, so if that is to Sergeant Steer - it says, "Hi
46 Geoff" so I presume it is.
47

1 MR GRAY: Q. Well, it's his work email address, but you
2 can take it from me that --

3 A. I accept that it is, yes
4

5 Q. -- it's an email from Dr Dalton to Sergeant Steer,
6 and he starts off, "Hi Geoff?"

7 A. Yes.
8

9 Q. It is 12 December 2016?

10 A. Yes.
11

12 Q. Which you will recall was a point where the Strike
13 Force Parrabell officers had largely, perhaps not entirely
14 but largely, completed their reviews, and the Flinders team
15 had in the last month or two begun their work. Do you
16 remember that period?

17 A. Yes, that - sorry, there still would have been some
18 work to be done at that stage by Parrabell investigators.
19

20 Q. True, but they were getting towards the finish line?

21 A. Towards the end, yes.
22

23 Q. And Dr Dalton says to Sergeant Steer:

24
25 *It was ... good to have your contribution*
26 *today. I must say that having the BIAS*
27 *CRIME TEAM make determinations about the*
28 *cases strikes me as really important ...*
29

30 Now, pausing there, I'll come back to this, but the bias
31 crime team were not being utilised by Strike Force
32 Parrabell to make determinations about the cases, were
33 they?

34 A. The - no, I wouldn't agree with that. I think that
35 the bias crimes team - and bearing in mind the bias crimes
36 team was pretty much Geoff Steer --
37

38 Q. Yes.

39 A. -- I know of at least - at least a meeting that I went
40 to where input was sought. It didn't mean that
41 Sergeant Steer's opinion was necessarily determinative of
42 the outcome, but it was good to have that discussion, and
43 I know that Craig Middleton was interested in Geoff Steer's
44 views, and I know that Geoff also had access to the Strike
45 Force Parrabell e@gle.i system, which allowed him to be
46 able to review some of the material.
47

1 So I wouldn't say that he - that we weren't interested
2 in his views. I saw it as a collaborative approach. That
3 was my view. And I keep saying "we". To my mind, it
4 wasn't an "us and them" scenario; it was we as an
5 organisation needed to come together and find out whether
6 there was bias crime related.

7
8 Q. I'll come back to that side of it in a moment, the
9 extent to which Sergeant Steer was part of what Parrabell
10 did. But I'm just looking, for the moment, at the second
11 paragraph of this email, where Dr Dalton says to Sergeant
12 Steer:

13
14 *I really appreciate what you said about the*
15 *"tick sheet" approach and that the*
16 *suggestion that the Parrabell detectives*
17 *seem to have misused the instrument.*

18
19 Now, did Dr Dalton tell you that Sergeant Steer's view was
20 that the Parrabell detectives were using the Bias Crime
21 Indicator Form in the wrong way or a wrong way?

22 A. No, he did not.

23
24 Q. Did Sergeant Steer tell you that?

25 A. I don't - I don't remember that. The reason that
26 I say that is because I would have wanted details in
27 relation to that.

28
29 Q. Well, what about the email at 248, [SCOI.79391]? The
30 email chain, I should say. If we start from the back of
31 this one, that is the beginning of the chain, we're now at
32 28 February 2017, so a couple of months later?

33 A. Yes.

34
35 Q. And this is Dalton to Steer, copied to, among others,
36 Jacqueline Braw of the police and Craig Middleton of the
37 police. Do you see that?

38 A. Yes, I do, yes.

39
40 Q. And Dr Dalton says, among other things, that he's
41 asking Sergeant Steer for some more information about what
42 he calls - do you see in the second paragraph - the "FBI 10
43 point instrument"?

44 A. Yes.

45
46 Q. That's obviously a reference to the Bias Crime
47 Indicator Form that was being used?

1 A. Yes, yes.

2

3 Q. And the request that Dr Dalton makes is this:

4

5 *We fully appreciate that the instrument is*
6 *just used as a "tick sheet" or guide to*
7 *identifying a range of BIAS CRIMES [which*
8 *is fine], but we really need to know if you*
9 *have any data or research findings (that*
10 *you may have gleaned whilst on training in*
11 *the USA, perhaps?) that speaks to the*
12 *reliability and grounding that underpins*
13 *its accuracy use as an instrument.*

14

15 That's the question. Do you see that?

16 A. Yes, I do, yes.

17

18 Q. The answer that comes back from Sergeant Steer at the
19 top of the page, which I won't read out in full, consists
20 of Sergeant Steer spelling out to Dr Dalton that the
21 indicators are not a definitive checklist or tick sheet "as
22 you put it"?

23 A. Yes.

24

25 Q. And he goes on a few lines down:

26

27 *As the indicators are a prompt for officers*
28 *there is no research that I am aware of*
29 *that assesses their effectiveness.*

30

31 Do you see that?

32 A. Yes, I do.

33

34 Q. He says in bold capitals:

35

36 *IF THEY ARE USED AS A CHECKLIST THEY DO NOT*
37 *WORK.*

38

39 A. Yes.

40

41 Q. He says:

42

43 *They are purely designed to help police*
44 *identify situations where bias motivation*
45 *may be a factor and to then ask further*
46 *questions to explore it.*

47

1 Do you see that?

2 A. Yes, I do.

3

4 Q. Now, did Sergeant Steer, appreciating this email
5 doesn't go to you, ever express those views to you?

6 A. I don't believe so, but I can't remember. The reason
7 I say I don't believe so is because, if that was the case,
8 then I probably would have explored that more, but as
9 I indicated before, I do not believe that Strike Force
10 Parrabell used them as a checklist. It was not the case
11 that they went through each factor and ticked them off and
12 added them up and said, "Well, there's more in this
13 category, therefore, it's a bias crime; there's more in the
14 other category, therefore, it's not." So it wasn't used in
15 that fashion. The suggestion that it was is wrong.

16

17 Q. In the reply that Dr Dalton sends back on the front
18 page of this chain, to Sergeant Steer - and he copies in,
19 among others, Jackie Braw of the police - he says in the
20 first main paragraph:

21

22 *... I completely appreciate that the*
23 *indicators are not a definitive check list*
24 *or tick sheet.*

25

26 Do you see that?

27 A. Yes.

28

29 Q. And Dr Dalton says:

30

31 *Mind you, the detectives did somewhat*
32 *[partially] use them in this way as a tool*
33 *to identifying a bias.*

34

35 Pausing there, is that correct in your understanding?

36 A. They used them as a tool, as indicators of whether or
37 not there was a presence of bias.

38

39 Q. No, the suggestion in the sentence is that the
40 detectives did partially use them in this way - ie, as
41 a checklist or tick sheet, if you put those two sentences
42 together?

43 A. Well, I guess you'd have to define what checklist or
44 tick sheet is, because if it's a tick sheet that says,
45 "That's there, therefore it's bias", it was not used in
46 that way.

47

1 Q. Dr Dalton goes on:

2

3 *I understand and appreciate that you have*
4 *some major reservations about what the*
5 *Parrabell detectives did.*

6

7 Do you see that?

8 A. Yes.

9

10 Q. So this goes to Jackie Braw but doesn't go to you.
11 Was this exchange or the substance of it or the substance
12 of Sergeant Steer's views conveyed to you?

13 A. Did Sergeant Steer convey them to me?

14

15 Q. Did he or did anyone else, for example, Jackie Braw,
16 or did anyone, convey the substance of what Steer was
17 putting to Dalton, to you?

18 A. I don't believe so but, as I said, I would disagree
19 with it in any event.

20

21 Q. I will come back to that one more time a little later,
22 but for the moment, just on the subject of Sergeant Steer,
23 can I ask you a couple more questions. He was, as we've
24 established, the Bias Crime Coordinator as at this time and
25 the head of the Bias Crimes Unit --

26 A. Yes.

27

28 Q. -- or team leader of the Bias Crime Unit? He was
29 someone who had devoted years of study to the issue of bias
30 crime --

31 A. Yes.

32

33 Q. -- including both training and experience in the
34 United States?

35 A. Yes.

36

37 Q. He had experience, himself, in using the nine bias
38 crime indicators that he had learned about in the United
39 States?

40 A. I'm not aware of that.

41

42 Q. You're not aware of that?

43 A. No, but I presume so, given he brought them into our
44 organisation, that he'd have some understanding of them.
45 Whether or not he has experience using them, I don't know.

46

47 Q. You don't know whether he had any experience using

1 them?

2 A. No. In an investigation? No.

3

4 Q. He had himself developed and used the tenth indicator
5 that had been added in New South Wales?

6 A. Yes.

7

8 Q. Now, the central purpose and objective of Strike Force
9 Parrabell was to consider whether certain kinds of bias,
10 relating to sexuality and gender and like matters, were
11 identifiably present in the case of the 88 deaths; agreed?

12 A. Well, sorry, you said "certain kinds of bias". I'm
13 not sure what you mean by that.

14

15 Q. I did say certain kinds of bias relating to sexuality
16 or gender or related matters?

17 A. Well, it was pretty much gay-hate bias was what we
18 were looking for.

19

20 Q. All right. Let's use that term, then. I'll put the
21 question in that language. The central purpose of
22 Parrabell was to consider whether gay-hate bias was
23 identifiably present in the 88 cases?

24 A. Yes.

25

26 Q. And Sergeant Steer was the most knowledgeable and
27 experienced officer in the Police Force in relation to bias
28 crime generally, was he not?

29 A. Well, he - yes, he - in terms of bias crimes, yes.
30 Investigations, not necessarily, but definitely the bias
31 aspect of the investigation, yes.

32

33 Q. Now, in your statement, [SCOI.76961], and we'll just
34 go to it, at paragraph 48 and 49, you tell us --

35 A. Sorry, did you say my statement?

36

37 Q. I did. At volume 1, thanks.

38 A. Yes.

39

40 Q. I just want to go through what you say in 48 and 49
41 about the involvement of Sergeant Steer.

42 A. Yes.

43

44 Q. In 48 you say that during the planning of the strike
45 force, you approached and gained - sorry, obtained general
46 advice from the Bias Crimes Unit through Sergeant Steer in
47 relation to the assessment of bias crimes. Now, is that

1 accurate?

2 A. I believe so.

3

4 Q. And what was the general advice that you obtained from
5 him?

6 A. I don't - I don't remember the specific advice but
7 generally about bias, given he was the bias crimes
8 coordinator, it would make sense that I would do that.

9

10 THE COMMISSIONER: Q. So you went to him because of your
11 perception of his expertise?

12 A. Yes.

13

14 THE COMMISSIONER: Thank you.

15

16 MR GRAY: Q. The next sentence tells us that he was not
17 involved in the scope of Strike Force Parrabell. What does
18 that mean? Do you mean by that not involved in the scoping
19 - that is, the devising of Strike Force Parrabell - or do
20 you mean not involved in the work of Strike Force
21 Parrabell?

22 A. No, I don't mean not involved in the work of Strike
23 Force Parrabell because I believe he was. It was more as
24 to, you know, the fact that we were going to look at 88
25 gay-hate crimes, albeit he had indicated that in Operation
26 Parrabell anyway.

27

28 Q. What does it mean to say he was not involved in the
29 scope of the strike force?

30 A. I would say in relation to how we were going to go
31 about bringing the investigators in and how we were going
32 about investigating the different aspects of the crimes.

33

34 Q. And not involved - I think you may have said this
35 already - in the formulation of either the investigation
36 plan or the coordinating instructions?

37 A. I don't believe so.

38

39 Q. Or the bias crime indicators form?

40 A. Well, as I say, he may not have been personally
41 involved in that, but obviously that information has been
42 drawn from records that have been corporately endorsed, and
43 on that basis, I think were legitimate.

44

45 Q. On that basis, what?

46 A. I think they're legitimate, on that basis.

47

1 Q. I'm not asking you about whether they're legitimate.
2 I'm asking you whether he was involved in the formulation
3 of the form and I think your evidence is that he was not?
4 A. Well, it's a qualified answer. So I'm saying - I'm
5 saying that he may not have been involved personally in
6 preparing that form, but the information in that form was
7 drawn from information that he had brought into the
8 organisation.
9
10 Q. Sure.
11 A. So on that basis, I would say yes, there is some
12 involvement.
13
14 THE COMMISSIONER: Q. But, Mr Crandell, a cursory
15 reading of the form, which I understand you would have
16 undertaken at the very least, would expose the fact that it
17 was clearly not a form devised solely to identify gay-hate
18 bias?
19 A. That - the form was not?
20
21 Q. I'm putting to you that a cursory glance at the form
22 would indicate that it was not a form solely devised to
23 identify gay-hate bias?
24 A. I don't know if I agree with that, Commissioner.
25
26 Q. Don't you? Well, what has a burning cross got to do
27 with gay-hate bias? There are many forms of words in the
28 form that - would you not agree - make it clear that it was
29 a generic form which was devised and which could capture
30 religious, racial or other forms of bias?
31 A. It could capture different forms of bias, but --
32
33 Q. But what would a burning cross have to do with gay
34 hate, for example?
35 A. Well, if that was a symbol that indicated --
36
37 Q. Gay hate?
38 A. -- membership of a particular organisation or a hate
39 group, perhaps.
40
41 Q. And the organisation that that --
42
43 MR TEDESCHI: Commissioner, I would ask you to allow him
44 to finish to answer your questions, please. He was
45 attempting to answer your question.
46
47 THE COMMISSIONER: Thank you, Mr Tedeschi. Would you mind

1 taking your seat, thank you.

2

3 Q. Yes, go on, Mr Crandell.

4 A. I guess that would be relevant if it was indicative of
5 a person's membership of an organisation or a hate group.
6 To me, it was a form that would indicate different factors
7 that may produce a gay-hate motivation.

8

9 Q. Amongst other discriminatory attitudes?

10 A. Potentially, but my understanding, Commissioner, was
11 that that document was brought in specifically to give
12 indications of whether or not gay-hate motivation existed.

13

14 Q. And did you understand anything about the terminology
15 of the form, such that it was clearly also capable of
16 identifying racial or ethnic discrimination?

17 A. I would have to review the form, Commissioner, but --

18

19 Q. Well, you would have reviewed it at the time, surely?

20 A. I would have reviewed the form at the time,
21 absolutely.

22

23 THE COMMISSIONER: Yes, thank you. Yes, Mr Gray.

24

25 MR GRAY: Q. Just back to paragraph 48, you say:

26

27 *Although [he] was not involved in the scope*
28 *of Strike Force Parrabell, he was invited*
29 *to the initial planning meetings that were*
30 *held by the Strike Force ... investigation*
31 *team ...*

32

33 Now, I did ask you earlier whether anyone else was at the
34 meetings that you were at besides Messrs Middleton, Grace
35 and Bignell, and you said not in meetings that you were
36 present at. So was Sergeant Steer invited to any such
37 meetings?

38 A. Yes. Sorry, that's very broad, what you're talking
39 about there, because clearly I've been involved in meetings
40 with Sergeant Steer and those other people that you've
41 indicated, particularly on 1 December --

42

43 Q. 2015?

44 A. -- 2015, where we had a group meeting and we discussed
45 with other members of the community exactly where we were
46 in relation to Strike Force Parrabell. We also had at
47 least another meeting or another meeting that I'm aware of

1 that I was present in with Sergeant Steer and those other
2 officers to discuss the findings and the outcomes of some
3 of the - of some of the crimes being investigated or
4 reviewed.

5
6 Q. Let me just take you to 49 in your statement and see
7 whether you say that it's correct. "Sergeant Steer", I'm
8 quoting:

9
10 *... was not included in Strike Force*
11 *Parrabell ...*

12
13 That's correct, isn't it?

14 A. Well, that's probably not - not entirely correct,
15 because I am aware that Sergeant Steer had access to the
16 e@gle.i database for Strike Force Parrabell, so to say that
17 he's not involved is - sounds very exclusionary, but my
18 understanding was that that's not necessarily the case and
19 that he did have access to all material from Strike Force
20 Parrabell if he chose to look at it.

21
22 Q. Well, is it right to say that Sergeant Steer was not
23 included in Strike Force Parrabell - which you have said -
24 or is that wrong?

25 A. I don't say he was included in the Strike Force
26 Parrabell investigation team, but I do say that as part of
27 the overall operations of Strike Force Parrabell, he did
28 have access to material and he was consulted.

29
30 Q. Well, what you actually say is he was "not included in
31 Strike Force Parrabell" for a particular reason, namely,
32 because he was not part of the review team of
33 investigators. Now, indeed, he was not part of that review
34 team of investigators, was he?

35 A. He wasn't part of the review team of investigators,
36 but he did participate in particular reviews, and I know
37 that because --

38
39 Q. Well, I'll come to that but when - sorry, go on.

40 A. Sorry, I know that because I was in meetings at that
41 time with him.

42
43 Q. Well, I will come to that, but when you say he
44 participated in relation to particular reviews, that's one
45 meeting about 12 cases, isn't it?

46 A. No, well, that's one meeting that I've told you off
47 the top of my head. I would have to go and check as to

1 what other involvement there was. But there was - I was
2 eager to have Geoff Steer involved because of his position
3 as the bias crimes coordinator, bearing in mind that he had
4 a very, very broad remit and that Strike Force Parrabell
5 was only one of many other responsibilities that he had at
6 the time, and I was very much aware of that.

7
8 Q. Let's look at the second sentence of 49:

9
10 *He advised on use and rationale regarding*
11 *the bias/hate crime indicator tool ...*

12
13 Now, that is simply wrong, isn't it?

14 A. No, I don't - why would I say that's wrong?

15
16 Q. Well, I thought we had been through, this morning,
17 several times, actually, that the bias crime indicator tool
18 was created by the Parrabell detectives and not Sergeant
19 Steer?

20 A. That doesn't necessarily then lead to the fact that he
21 didn't advise on anything.

22
23 Q. But I have asked you several times whether he was
24 consulted or not and several times you have said no.

25 A. He may well have --

26
27 Q. Do you now want to change that?

28 A. No, I don't - no, I don't think I need to change
29 anything. What it says here is that he advised on the use
30 and rationale. So it may well have been --

31
32 Q. Regarding the tool, ie, the form?

33 A. That's right. It may well have been that he said
34 "Don't use it as a checklist", as he has indicated to Derek
35 Dalton. I can't tell you specific instances of where
36 that's occurred.

37
38 THE COMMISSIONER: Q. So the term "advised" in your
39 paragraph, could mean positively in favour of or negatively
40 against?

41 A. Yes.

42
43 Q. But you can't remember either way?

44 A. I can't remember either way, Commissioner. However,
45 if there was criticism of that tool, I can assure you
46 I would have taken action to make sure that it would
47 withstand criticism, given the enormity of the task that we

1 were going to undertake and the eagerness that I had to
2 make sure that all of the material was properly assessed
3 and properly considered to determine whether or not bias
4 was involved in any of these crimes.

5
6 THE COMMISSIONER: All right, thank you.

7
8 MR GRAY: Q. Next, in the same sentence, you say:

9
10 *... to my mind [he] commenced looking at*
11 *the 88 gay hate crimes through Operation*
12 *Parrabell ...*

13
14 Q. Now, that's not correct either, is it?

15 A. No, that is correct.

16
17 Q. I asked you this yesterday.

18 A. Why is that not correct?

19
20 Q. I asked you this yesterday. I asked you yesterday
21 whether he had prepared the North Head bias assessment in
22 2013, and we agreed that he had?

23 A. Yes.

24
25 Q. And he'd prepared the North Head Marks Park comparison
26 in 2014, and you agreed that he had?

27 A. Yes.

28
29 Q. And that took us up to May 2014?

30 A. Yes.

31
32 Q. And I asked you whether, thereafter, he or Operation
33 Parrabell did anything else in relation to the 88 cases,
34 and you said no, your understanding was that he didn't?

35 A. But clearly he would have --

36
37 Q. Now, is that right or is that not right?

38 A. No, clearly he would have been looking at the 88 gay
39 hate crimes, because there was a document that was compiled
40 and formed the basis of Operation Parrabell. So to say
41 that he wouldn't have commenced looking at those crimes
42 would be incorrect.

43
44 Q. What does the expression "to my mind" mean?

45 A. To my mind, in my opinion.

46
47 Q. Well, either he commenced looking at them or he

1 didn't. It's not a matter of opinion, is it?

2 A. Well, if the 88 gay-hate crimes indicated that formed
3 the basis of Operation Parrabell, then it would seem really
4 reasonable to me that somebody would have at least looked
5 at those, particularly the person who was the commander of
6 Operation Parrabell, that being Sergeant Steer - he would
7 have at least looked at those 88 crimes to see what they
8 were. He wouldn't simply put 88 people in a Terms of
9 Reference for an operation, I wouldn't think.

10

11 Q. So when you say "to my mind" he did it, you're saying
12 that he would have done it, surely, he must have?

13 A. That would be my - a presumption that would naturally
14 follow.

15

16 Q. You then say, however, this:

17

18 *... aside from a brief advisory role, he*
19 *was not involved in Strike Force*
20 *Parrabell's daily operations.*

21

22 Is that correct?

23

A. Yes.

24

25 Q. And the brief advisory role was at the beginning of
26 the Strike Force Parrabell exercise, I take it?

27

28 A. I can't say that with certainty, because he was
29 definitely consulted, obviously, on 1 December, and
30 probably - and must have been prior to that, because he'd
31 come to a view.

31

32 There was also another meeting that I'm aware of with
33 him and the Strike Force Parrabell investigators, so there
34 would have been some advice from Geoff at that stage. But
35 to - it would be inappropriate to involve him in
36 Parrabell's daily operations given the position that he
37 held and the responsibilities that he had, in my opinion.

38

39 Q. Why?

40

41 A. Because he simply wouldn't have the time. He's one
42 man. To then say to him, "I want you to be part of Strike
43 Force Parrabell's operations" would be inappropriate.

43

44 Q. Even though he was the personification, in his own
45 individual self, of the expertise available to the
46 NSW Police about bias crime?

47

A. But that doesn't mean that I should have an expert

1 that runs through with an investigation team. That means
2 I have a person who has a look at different cases and
3 provides me advice, surely. I wouldn't have --
4

5 Q. But, Mr Crandell, Parrabell was not an investigation,
6 was it?

7 A. It's an investigative review. So --
8

9 Q. Well, no, I'm sorry, I know that expression is used in
10 the report, but the whole thrust of what the report
11 repeatedly says is that it was not an investigation; it was
12 a review?

13 A. No, you're mistaken.
14

15 Q. Isn't that right?

16 A. You're mistaken. It is not a reinvestigation. Okay,
17 you still have to investigate to perform a review. That's
18 my opinion.
19

20 Q. Well, just unpack that for us. What do you mean by
21 that?

22 A. Well, I've said consistently that it's not
23 a reinvestigation. A reinvestigation means that you go
24 back out, you review locations, you look for witnesses, you
25 re-interview people in order to determine who the
26 perpetrator is for an offence. That was not what Strike
27 Force Parrabell was doing. They were conducting a review,
28 which obviously requires skills of an investigator to have
29 a look at evidence that has been obtained at some stage.
30

31 Q. Right. So you're using the word "investigative" there
32 to apply to the intellectual exercise of looking at the
33 evidence to form a view as to whether there was a bias
34 factor or not?

35 A. To conduct a competent review, yes.
36

37 Q. You're calling that investigative?

38 A. Yes. I used investigators for that purpose -
39 dedicated investigators that - many of whom were designated
40 detectives or had significant experience in investigations
41 to do so.
42

43 THE COMMISSIONER: Q. And there was a directive, was
44 there not, that none of the people doing this should speak
45 to anyone who had been involved in the original
46 investigation? Is that so?

47 A. That's correct.

1
2 Q. So that their entire activity, pretty much without
3 exception, was to read whatever paper existed within your
4 holdings, take the form in their left hand or right, fill
5 it out for whatever purpose, and then form their own view
6 at the end as to whether or not they thought there was
7 a bias crime or not?
8 A. There was a little bit more in terms of governance for
9 that. I don't think it was a case of just the
10 investigators filling out a document.
11
12 Q. No, I'm not suggesting that's all they did. What
13 I said to you was they read the files, whatever the files
14 consisted of, they filled out the forms, by largely setting
15 out a narrative of what they believed had occurred from the
16 date of death or discovery of the deceased, and then formed
17 a view, based upon that exercise, as to whether they
18 thought there had been bias or no bias or evidence of or
19 lack of it?
20 A. Yes, on that journey, Commissioner, they would report
21 through on a weekly basis to the investigations manager,
22 Detective Sergeant Grace. There would be --
23
24 Q. Yes, but I'm sorry to interrupt you, but I'm just
25 trying to establish that prior to the reporting exercise,
26 the exercise undertaken by each of the officers - and
27 please correct me if I'm wrong - was that of the kind of
28 which I have outlined: they read the files, they filled
29 out the forms and they formed a view, obviously perhaps the
30 subject of reporting or discussion, as to whether or not
31 they thought at that stage there was or was not evidence of
32 bias?
33 A. Yes. And those thoughts or those - the position that
34 they came to would be under review by more senior
35 detectives, so that was the governance that I had in place.
36
37 Q. Who were governed by the same source material?
38 A. Yes.
39
40 THE COMMISSIONER: Thank you.
41
42 MR GRAY: Q. Could you just turn to Sergeant Steer's
43 statement in volume 1, tab 6 [SCOI.82080], and find
44 paragraph 40.
45 A. Yes.
46
47 Q. In fact, I will just start with 39. According to

1 Sergeant Steer, after completing the North Head assessment
2 and the Marks Park comparison, the archive briefs for the
3 identified homicides - which I presume he means the 80
4 odd - were identified and sourced from State Archives to
5 commence the initial review. Do you see that?

6 A. Yes.

7
8 Q. He says, however:

9
10 *... at this stage the scale of the*
11 *undertaking and the lack of resources*
12 *became a deciding factor.*

13
14 Do you see that?

15 A. Yes. Sorry, in context, I think he's talking about
16 Operation Parrabell; is that right.

17
18 Q. He talking about Operation Parrabell, quite so. So
19 we're on the same page. He's talking evidently about the
20 point just after the Marks Park comparison, which is May
21 2014. Agreed? That's what he says:

22
23 *After completing the North Head*
24 *assessment --*

25
26 which was October 2013 --

27
28 *and the Marks Park comparison --*

29
30 May 2014, he got the briefs of evidence, presumably for the
31 80, I take it, or for some of them, at least, from
32 archives?

33 A. Yes, I doubt --

34
35 Q. That's what he says he did?

36 A. Yes, I doubt that he got the whole 88 from State
37 Archives. I doubt that very much.

38
39 Q. Well, he got something. He got something from State
40 Archives. But in any event, what he says is - and this is
41 what I'm asking about -

42
43 *... at this stage the scale of the*
44 *undertaking and the lack of resources*
45 *became a deciding factor.*

46
47 And he goes on to say, in effect, that the only resources

1 available to him were - to Operation Parrabell - were
2 himself and Sergeant Kenworthy, and he says that:

3
4 *On obtaining the archived material ... it*
5 *was determined by ... Sergeant Kenworthy*
6 *and myself that ... [it would take us]*
7 *three years to [do it if that's all we*
8 *did].*

9
10 Do you see that?

11 A. Yes.

12
13 Q. And he says, if you read it all - by all means - there
14 were offers of additional staff, including an offer from
15 you, but that no additional resources were forthcoming.
16 What do you say about that?

17 A. I don't - I don't have an independent recollection of
18 asking for more staff, but Senior Sergeant Kenworthy,
19 Jo Kenworthy, was a senior Gay and Lesbian Liaison Officer.
20 Not under my command, I stress that. But I don't think
21 that the time frames are realistic at all.

22
23 Q. Perhaps not, but let's put that to one side; you may
24 well be right.

25 A. Well, no, I think it's relevant because --

26
27 Q. Well you go on, then, okay.

28 A. Because if you're saying three years and five years,
29 then I would have to ask for resources for a significant
30 period of time.

31
32 Q. Sure.

33 A. And I would need something, I think more than
34 a conversation, to say that those resources ought to be
35 applied, particularly when we're talking about
36 a reinvestigation, which would then involve detectives at
37 the very least.

38
39 Q. Sure. That's not actually where I'm going with this,
40 but thank you for that. But on the next page, still part
41 of paragraph 39, about four lines down, he says, given the
42 estimated time frames and competing priorities and so on:

43
44 *... it was decided to suspend Operation*
45 *Parrabell until additional resources could*
46 *be obtained.*

1 Now, he doesn't say who made that decision, but do you know
2 who made that decision to suspend Operation Parrabell?

3 A. Well, I would presume it was Sergeant Steer, given he
4 was the commander of Operation Parrabell, but that would be
5 a sensible decision in my view and I would have been
6 comfortable with that decision.

7

8 Q. And he says, moving down to the bottom of that
9 paragraph:

10

11 *It was not until 2015 that a minimal staff*
12 *allocation was received --*

13

14 by which he means for Operation Parrabell - and he says --

15

16 *... by that stage Strike Force Parrabell*
17 *had taken over.*

18

19 You may or may not know about those details. Do you know
20 anything about that?

21 A. Sorry, where is that?

22

23 Q. The last few lines of that paragraph.

24 A. Oh, no, I don't - I don't know about staff being
25 allocated to Operation Parrabell. It would depend when in
26 2015, but obviously by, I would say, June or July, Strike
27 Force Parrabell would have been sourcing resources.
28 I don't - and as I say, that's not resources just from one
29 command.

30

31 Q. Would you agree, given what Sergeant Steer describes
32 in the first half of that paragraph, that in fact, after
33 doing the two assessments, the North Head and the
34 comparison, he didn't actually do any work on the 88 as
35 a project?

36 A. Well - well, he's - according to his statement, he's
37 sourced some material from archives, so --

38

39 Q. That's right.

40 A. -- he's obviously gone some way to having a look at,
41 as I indicated, those 88.

42

43 Q. Well, no, he says, doesn't he, that having got it from
44 the archives, it was determined that it would take too long
45 and it was decided to suspend the operation?

46 A. Yes.

47

- 1 Q. So he didn't actually do any work in relation to the
2 80?
- 3 A. But he has obviously had to identify the victims and
4 the case files in order to get them from State Archives, so
5 obviously, he has started to have a look at them. You
6 don't just go to State Archives and say, "Give me what
7 you've got."
8
- 9 Q. Well, he identified which ones he wanted from State
10 Archives?
- 11 A. Yes.
12
- 13 Q. But having got them, he then suspended the operation?
14 A. Well --
15
- 16 Q. Isn't that what he --
17 A. Yes, but that supports what I'm saying in my
18 statement, that he commenced looking at them. I don't
19 think that I would go - come back from that.
20
- 21 Q. If that's what you say, all right, I'll move on. In
22 paragraph 40, Sergeant Steer says that he had minimal
23 involvement with respect to Strike Force Parrabell. Would
24 you agree with that?
25 A. No, I don't.
26
- 27 Q. He says at the original meeting he gave certain advice
28 about the assessments and then he says:
29
30 *I offered to assist the Strike Force and*
31 *was advised that the Strike Force would*
32 *seek assistance if required.*
33
- 34 Do you agree with that?
35 A. Sorry, is that - are you reading from the paragraph --
36
- 37 Q. The fourth line of paragraph 40:
38
39 *I offered to assist the Strike Force and*
40 *was advised that the Strike Force would*
41 *seek assistance if required.*
42
- 43 Do you agree with that?
44 A. No, I - well, I can't agree with that because I don't
45 know that that occurred.
46
- 47 Q. Well, if he made such an offer, are you saying it

1 wasn't made to you?

2 A. Well, it wasn't made to me, necessarily, in those
3 terms. But my understanding was that Geoff Steer was to be
4 involved in Strike Force Parrabell in his capacity as the
5 bias crimes coordinator.

6

7 THE COMMISSIONER: Q. Do you mean by that, I'm sorry,
8 that the strike force were instructed or directed to check
9 with him in relation to the assessments of each case?

10 A. Not of each case, Commissioner no.

11

12 Q. What, on an ad hoc basis, if and when they thought it
13 was helpful?

14 A. If they thought it was helpful, then it would be - he
15 would be a person that I would think they --

16

17 Q. All right. So it was left to the discretion of the
18 individual member of Strike Force Parrabell whether he or
19 she made any contact with Sergeant Steer about any
20 particular case?

21 A. I don't think it's necessarily the discretion of the
22 individual investigators, because each of those cases were
23 reviewed by more senior investigators, whether that be
24 Detective Sergeant Grace or Detective Inspector Middleton.
25 So it may well have --

26

27 Q. All right. Let me reformulate it: then, was it left
28 to the discretion of whoever the senior person was,
29 including yourself as commanding officer, whether
30 Sergeant Steer's views on any individual case were sought
31 or not?

32 A. Yes.

33

34 THE COMMISSIONER: Thank you.

35

36 MR GRAY: Q. In the same volume, tab 14, the
37 investigation plan, [SCOI.74385], if you turn to page 4 of
38 that in tab 14?

39 A. Yes.

40

41 Q. This is the investigation plan, and I'm at page 4 and
42 there's a heading "Progress Meetings"; do you see that?

43 A. Yes, I do.

44

45 Q. Under "Monthly Progress Meetings" it says that monthly
46 progress meetings would include, among others, the Bias
47 Crime Coordinator, meaning Steer?

- 1 A. Yes.
2
- 3 Q. Now, the Strike Force Parrabell work started in
4 late August or early September 2015, and it went through to
5 some time in 2017?
6 A. Mmm-hmm.
7
- 8 Q. So 18 months or so. Presumably, there were monthly
9 meetings over those 18 months?
10 A. Yes, I believe so.
11
- 12 Q. But Sergeant Steer, the bias crimes coordinator, was
13 at very few, if any, of those; is that right?
14 A. I don't know that.
15
- 16 Q. Did you not attend them yourself?
17 A. I wasn't at each of those meetings either.
18
- 19 Q. Was he at any of the ones that you were at?
20 A. I don't remember. I know - I know Detective Inspector
21 Craig Middleton conducted many of those meetings and that
22 involved the investigators and Detective Sergeant Grace.
23
- 24 Q. Detective what, sorry?
25 A. Detective Sergeant Grace.
26
- 27 Q. Back to paragraph 40 of Sergeant Steer's statement,
28 which is at tab 6 of the volume, [SCOI.82080]?
29 A. Sorry, what was that paragraph?
30
- 31 Q. Paragraph 40, tab 6.
32 A. Yes.
33
- 34 Q. About five lines down, do you see he has a sentence
35 beginning:
36
37 *During the time frame ...*
38
- 39 A. Yes.
40
- 41 Q. He says:
42
43 *During the time frame that the Strike Force*
44 *Parrabell operated there was no*
45 *consultation with the Bias Crimes*
46 *Coordinator ... with any of the cases.*
47

1 Now, I want to ask you a question about that, but just so
2 that we don't go off on a tangent, do you see a few lines
3 down, three lines from the bottom of that page, he says:

4
5 *After Strike Force Parrabell completed*
6 *their assessments, and after raising*
7 *concerns about the lack of consultation,*
8 *I was allowed to conduct a dip sample of 12*
9 *cases.*

10
11 A. Sorry, where is that written? I've lost --

12
13 Q. Paragraph 40. I'll go over it again. Five lines down
14 paragraph 40, do you see a sentence beginning "During the
15 time frame"?

16 A. Yes, no, I've read that one. You just read further on
17 and I didn't know where.

18
19 Q. About five lines below that, three lines from the
20 bottom of the page - the same page --

21
22 MR MADDEN: It's the next page.

23
24 THE WITNESS: It is the next page.

25
26 MR GRAY: Q. It's not on mine, I have different
27 pagination, I'm sorry. Well, anyway, five lines below, do
28 you see a sentence beginning:

29
30 *After Strike Force Parrabell --*

31
32 A. Yes.

33
34 Q. He says:

35
36 *After Strike Force Parrabell completed*
37 *their assessments and after raising*
38 *concerns ... I was allowed to conduct a dip*
39 *sample of 12 cases.*

40
41 Do you see that?

42 A. Yes.

43
44 Q. So he is differentiating, rightly or wrongly, between
45 the time that Strike Force Parrabell operated, when he says
46 there was no consultation about any of the cases, and after
47 the strike force had completed their assessments when he

1 said he was allowed to do a dip sample of 12. Do you
2 follow what he is saying?

3 A. Yes, I do.

4

5 Q. The first question is prior to the dip sample of 12,
6 which we will come to and which is in 2017, do you agree
7 that during the time frame that Strike Force Parrabell
8 operated, there was no consultation with him about any of
9 the cases?

10 A. No.

11

12 Q. Well, which cases was there consultation about?

13 A. I don't know, but I am aware that Sergeant Steer was
14 involved in meetings about particular cases. So --

15

16 Q. How are you aware of that?

17 A. Well, 1 December, in 2015 --

18

19 Q. But was that about particular cases?

20 A. -- there was a meeting that - yes.

21

22 Q. Wasn't that a meeting of stakeholders --

23 A. Yes.

24

25 Q. -- with politicians and people from the gay community?

26 A. Yes, that was talking about the cases, and that - and
27 I think I said yesterday, the difficulty with that process
28 was the confidentiality concerns that we had when we were
29 discussing cases.

30

31 THE COMMISSIONER: Q. Yes, but you're suggesting, are
32 you, that a meeting with, amongst other people,
33 stakeholders at which the Sergeant Steer was present,
34 complies with the definition of you or others in Parrabell
35 consulting with him on cases? Do you say it comes within
36 that definition, do you?

37 A. Well, I would say that there would be some information
38 provided to Sergeant Steer in relation to the cases that we
39 were discussing with members of the community.

40

41 Q. So, therefore, because some information was supplied
42 to a meeting, which included members of the community or
43 community groups, but at which Sergeant Steer was present,
44 you include that in what you called "consultation process"
45 with Sergeant Steer about particular cases?

46 A. I would say that's part of it, Commissioner. That's
47 part of a consultation, because obviously if there was

1 concerns from the Bias Crime Coordinator, I would want to
2 hear those if --
3
4 Q. All right, thank you. All right, that's fine. I just
5 wanted to know whether you included it as part of the
6 definition of "consultation". Thank you for that.
7 A. Thank you. I think there was other - there was other
8 instances where there was - where he was present during
9 meetings.
10
11 MR GRAY: Q. With you?
12 A. I believe so.
13
14 Q. Discussing cases?
15 A. Yes - in fact, yes, because there was a meeting
16 where - there was a discussion with Sergeant Steer and
17 others, although that may have been the dip sampled ones
18 I'm thinking of now --
19
20 Q. Well, just for the moment - although I will come
21 to that --
22
23 MR TEDESCHI: I ask that he be able to finish his
24 answer --
25
26 MR GRAY: Q. No, please. For the moment, although
27 I will come to that, I'm just putting the dip sample
28 meeting to one side.
29 A. Yes.
30
31 Q. So apart from that dip sample meeting --
32 A. Yes.
33
34 Q. -- and apart from the community meeting that you were
35 just discussing with the Commissioner --
36 A. Yes.
37
38 Q. -- is there any other meeting that you say occurred
39 where he was consulted about any particular case?
40 A. I don't have evidence of other meetings before me now.
41 Whether that was or was not the case I'm uncertain, but --
42
43 Q. You don't know?
44 A. No. But the other fact is that he also had access to
45 Strike Force Parrabell and every piece of information that
46 that strike force went through.
47

1 THE COMMISSIONER: Q. And do you know, Mr Crandell,
2 whether minutes of the, say, monthly meeting, were kept or
3 not - you know, the monthly meeting that has been discussed
4 where the investigators got together and consulted amongst
5 themselves. Do you know whether minutes were kept of those
6 meetings?

7 A. I'm uncertain, Commissioner. I could check to see
8 whether there was some documentation.

9
10 THE COMMISSIONER: All right, thank you. Are you going to
11 go to another topic?

12
13 MR GRAY: I'm content to take the break.

14
15 THE COMMISSIONER: I will take the break now, thank you.
16 I will adjourn shortly.

17
18 **SHORT ADJOURNMENT**

19
20 THE COMMISSIONER: Thank you, Mr Crandell.

21
22 Before you resume, Mr Gray, can I just ask if at some
23 point, you, Mr Gray, Mr Madden, Mr Tedeschi, could talk to
24 each other about timing so that whatever is going to
25 happen - I'm indifferent as to when things happen, but if
26 you can just talk to each other so as to accommodate each
27 other as to whatever else you think is on your respective
28 agenda.

29
30 MR GRAY: Certainly.

31
32 THE COMMISSIONER: Right, thank you. Yes.

33
34 MR GRAY: Q. I will just try to get to the end of this
35 topic, if I can, Mr Crandell. Can we go back to your
36 statement, volume 1, tab 4, [SCOI.76961], paragraphs 48 and
37 49. Now, we've been over them. I won't rehash the ground
38 again. Just to pick up what you are saying there - I'm not
39 suggesting this is everything you are saying, but the gist
40 of it - you say, among other things:

41
42 *... Sergeant Steer was not involved in the*
43 *scope of Strike Force Parrabell ...*

44
45 Correct?

46 A. Yes.
47

1 Q.
2 *... he was invited to some initial planning*
3 *meetings.*
4
5 Correct?
6 A. Yes.
7
8 Q. Then in 49, "not included in Strike Force Parrabell"?
9 A. Yes.
10
11 Q. He was not part of the review team investigators?
12 A. No, not - with the exception of the 14.
13
14 Q. Pardon?
15 A. With the exception of the 14 - I think there was 14
16 that was asked for his review.
17
18 Q. Oh, the 12?
19 A. The 12, sorry, 12.
20
21 Q. The proposition you state is he was not part of the
22 review team of investigators, and that's correct?
23 A. Yes.
24
25 Q. And you say in the last line of 49:
26
27 *... aside from a brief advisory role, he*
28 *was not involved in Strike Force*
29 *Parrabell's daily operations.*
30
31 And that's right, isn't it?
32 A. Yes, that's true.
33
34 Q. Now, before the break, we were talking about the
35 question of how much consultation was involved between the
36 strike force and Sergeant Steer?
37 A. Yes.
38
39 Q. And as I understood it, your suggestion was, in
40 effect, twofold, that in the first place, the strike force
41 material was on e@gle.i?
42 A. Yes.
43
44 Q. And so are you saying that he could have got on to the
45 computer and looked up the thousands of documents that the
46 Parrabell people had, in effect, duplicated what they were
47 doing personally, if he'd wanted to?

1 A. Yes.

2

3 Q. That's not really what most people would think of as
4 consultation, is it?

5 A. Oh, I'm not necessarily saying that was consultation.
6 I'm just indicating that he did have that access. I was
7 aware that he had that access. I'm not suggesting that
8 that's a consultation - an element of consultation.

9

10 Q. Fine. And nor is it really a realistic possibility
11 that one man could single handedly duplicate what 13 people
12 were doing in a strike force?

13 A. No. He had a large job ahead of him, there is no
14 doubt about that, and not just in this strike force.

15

16 Q. Quite. And then the other aspect of consultation you
17 mentioned was that he was at, you say, at least a couple of
18 meetings along the time frame, and you mentioned one, being
19 the stakeholder meeting on 1 December 2015, where there
20 were community representatives and politicians; that was
21 one?

22 A. Yes.

23

24 Q. And another one was what he calls the dip --

25 A. The dip sample, 12, yep.

26

27 Q. The dip sample meeting which was in early 2017?

28 A. Yes.

29

30 Q. But apart from those two meetings you have no personal
31 knowledge yourself of any other meetings that he was
32 present at involving review of the cases?

33 A. No, not without me going and reviewing records or
34 whatever. But I don't - I don't remember - they're the two
35 that I remember.

36

37 Q. Okay.

38 A. But - no.

39

40 Q. If he was to have been consulted - that's
41 hypothetically --

42 A. Yes.

43

44 Q. -- putting aside the possibility of looking at the
45 entirety of what was available on e@gle.i, the way to do
46 it, presumably, would have been to show him, had someone
47 wanted to, some or all of the completed Bias Crime

1 Indicator Forms; correct?
2 A. Yes, I would think so - I'm not sure what he was shown
3 in relation to the 12, but whatever that was would be --
4
5 Q. Well, let's just keep the 12 to one side for the
6 moment, but just in the broad, a way, realistically, in
7 which he could have been consulted, would have been to send
8 him the completed forms and seek his views?
9 A. Yes.
10
11 Q. That wasn't done, was it?
12 A. I don't believe so.
13
14 Q. No. And indeed, as late as December - sorry, November
15 2016, do you recall this - and you may or may not, it was
16 an email into which you were copied and I'll show it to
17 you - Shobha Sharma asked when the cases that had been
18 worked on were going to be sent to the bias crimes team to
19 have a look at; do you remember that?
20 A. If you say to me that's in the email, then obviously
21 I was told that. I don't remember - have an independent
22 recollection of that.
23
24 Q. Fair enough. Could I ask you to just turn up volume
25 3, please, and turn to tab 76, [SCOI.74377]. It's an email
26 chain and just again, as usual, start from the back, or
27 bottom. It's an email from Shobha Sharma on 10 November
28 2016 to Mr Middleton, with a copy to you. Do you see that?
29 A. Yes. Yes, I do.
30
31 Q. November 2016 was a year and a bit into the strike
32 force's work; agreed?
33 A. Yes.
34
35 Q. And although not quite finished, the strike force team
36 was nearing the end of its work in reviewing the cases;
37 you'd agree?
38 A. Yes.
39
40 Q. And Shobha Sharma says to Mr Middleton:
41
42 *When will you send through the cases that*
43 *the team have worked on for the Bias Crimes*
44 *Team to look at?*
45
46 A. Yes.
47

1 Q. And you can read the rest of it to yourself.
2 Mr Middleton replies, turning to the front of the page --

3 A. Yes.

4

5 Q. -- in the second paragraph, he says:

6

7 *... we have commenced sending the review*
8 *forms to Dr Dalton ... I was not privy to*
9 *any agreement to send the Bias Crime Unit*
10 *the review forms prior to sending them to*
11 *Dr Dalton.*

12

13 Do you see that?

14 A. Yes.

15

16 Q. And it's pretty clear, and I think you've just agreed
17 anyway yourself, that the bias crime forms had not been
18 sent to the Bias Crimes Unit?

19 A. No, I don't think so.

20

21 Q. And Shobha Sharma responds at the top of the page, in
22 the third - it's the second paragraph actually, that there
23 had been an agreement that after the Parrabell team
24 completed its work, the next step would be to send it
25 across to bias crimes?

26 A. Yes.

27

28 Q. But evidently that had not happened; do you agree?

29 A. Yes.

30

31 Q. Given that state of affairs, and given what you've
32 said in paragraphs 48 and 49 - sorry, before I ask you
33 that, there's one more question or one more context I
34 should give you, which is the email that I showed you
35 earlier but I'll just show you again. It's in volume 10 at
36 tab 246, [SC0I.79856].

37 A. Yes.

38

39 Q. So this is an email from Dalton to Steer a month
40 later - a month after that little exchange between Sharma
41 and Middleton?

42 A. Yes.

43

44 Q. So it's December 2016, and Dalton is saying to Steer:

45

46 *It was ... good to have your contribution*
47 *today.*

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So Steer had evidently had some involvement that day, it seems?

A. Yes. With Mr Dalton, yes.

Q. With Dalton, that's right.

A. Yes.

Q. And Dalton says:

I must say that having the BIAS CRIME team make determinations about the cases strikes me as really important ...

Do you see that?

A. Yes.

Q. And although it struck Dalton as being important, it evidently hadn't struck you or the Strike Force Parrabell team; correct?

A. Yes.

Q. My question, I suppose, in the light of all that, is why didn't you utilise Sergeant Steer or the Bias Crimes Unit in relation to Strike Force Parrabell more than what, in your own words, was a brief advisory role? Why not?

A. My view at the time was that the investigators are trained to identify motivation. Ultimately, at the end of all of our deliberations and all of our recordings, it came down to that question: what was the motivation of the perpetrator?

I felt that the team of detectives had sufficient ability to be able to look at the different factors of bias motivation and then make a determination as to whether or not a case was bias or hate-crime related.

There were some matters, though - and I think that's where the 12 cases come from - that - and there are a number of matters where the determination of that bias was extremely difficult, not only for the police but also for the academic team. And even in the case files, you'll see where there's polar opposites of whether or not there was gay-hate bias found. So to my view, I had a very senior level team of detectives in charge of a number of other detectives doing the reviews and I felt that they had sufficient experience and training to be able to identify

1 whether or not motivation fell into the bias category. So
2 what I'm saying is in terms of - in my opinion, when we
3 developed the system of looking at the bias crimes, the
4 indicators, that gave me an ability to see the thinking of
5 the investigators and to see how their - what factors come
6 into play, but once we had that system in place and we knew
7 that these are the factors that we look at and this is how
8 it comes together to form the intention, then I felt that
9 I had sufficient expertise in that investigative team to be
10 able to come to that - to arrive at that finding or
11 determination without necessarily going to the bias crimes
12 coordinator on every occasion.

13
14 The other thing that I was mindful of was the bias
15 crimes coordinator was really one person, so to me, he had
16 a much broader remit than just LGBTI gay-hate bias.

17
18 Q. No doubt. What I want to ask you, I suppose, is this,
19 though: did you choose not to utilise him more than you
20 did because he might have expressed views or made
21 assessments that you preferred not to receive?

22 A. No. Definitely not. I can elaborate on that if you
23 wish.

24
25 Q. Do.

26 A. I would say definitely not, and the reason I say that
27 is because I knew very early on that the identification of
28 gay-hate bias was an extremely difficult task. So for
29 Geoff or anybody in operational programs to have
30 a different view, that would not be surprising to me,
31 because there were so many factors, and then there was
32 a weighting that had to be involved. It was not a simple
33 process. So I don't believe that I would shy away from
34 wanting to know contrary views, and I don't believe that
35 that would have been a factor in me saying, "Please don't
36 provide that material to the bias crimes coordinator."

37
38 At the time - I mean, I wasn't aware of the email from
39 Shobha Sharma, but I have a very good working relationship
40 with Shobha Sharma, and so to my mind, if there was a big
41 concern over matters, I think she would - she would speak
42 to me about that, she would raise that.

43
44 Q. Well, she did - oh, you mean spoken to you as distinct
45 from emailed you?

46 A. Yes, but - I mean, I can't remember her emails to me,
47 but if she said to me, "Look, I'm concerned about Geoff not

1 having enough involvement in reviews", then I would have
2 certainly brought that into consideration.
3
4 Q. Isn't that what essentially she did say in that email
5 of November?
6 A. Is that to me, though, is it?
7
8 Q. It's copied to you.
9 A. Okay.
10
11 Q. That's at tab 79 --
12 A. Yes, but I thought that Detective Inspector --
13
14 Q. 76, I'm sorry.
15 A. Sorry?
16
17 Q. I beg your pardon. It's tab 76, if you need to see it
18 again.
19 A. Okay. Is that in a different volume?
20
21 Q. Tab 3 - sorry, volume 3, tab 76, [SCOI.74377], that's
22 if you need it again?
23 A. I remember the general gist --
24
25 Q. I'm just observing that it was copied to you.
26 A. Yeah, but I thought Craig Middleton answered that.
27
28 Q. He did, also copied to you?
29 A. Yes. And I thought that Shobha Sharma accepted what
30 Craig had said in the main. Am I --
31
32 Q. Well, she accepted, I think, that Middleton may not
33 have known of the arrangement?
34 A. Yes.
35
36 Q. But she was confirming that, indeed, that was the
37 arrangement, and that Steer should have, and perhaps
38 inferentially should now, be given the forms.
39 A. Yes.
40
41 Q. And then if I can just move on from that, it seems
42 that what then happened - tell me if this is your
43 recollection - is that the next month, which was by
44 then January 2017, there's what Mr Steer calls the dip
45 sample exercise occurred --
46 A. Yes.
47

1 Q. -- where he, according to him, was given 12 to look
2 at?
3 A. Yes.
4
5 Q. You recall that he says that?
6 A. Yes.
7
8 Q. And you indeed recall, I gather, something essentially
9 to that effect?
10 A. Yes.
11
12 Q. He did look at 12?
13 A. Yes.
14
15 Q. And he expressed certain views about those 12?
16 A. Yes.
17
18 Q. Which in some respects were different from what the
19 Parrabell officers had said?
20 A. Well, there were some differences and some
21 similarities.
22
23 Q. Yes.
24 A. And then I think there was a collaborative effort to
25 then come to an agreed position.
26
27 Q. Yes. And that - do you have volume 3 with you there?
28 It is tab 83, [SCOI.74429]. It's volume 3, tab 83.
29 A. Yes.
30
31 Q. This is, it seems, in effect, minutes of a meeting on
32 19 January 2017?
33 A. Yes.
34
35 Q. Which you attended among others, including Sergeant
36 Steer?
37 A. Yes.
38
39 Q. Item 2 is "Bias Crime Unit review of 12 cases"?
40 A. Yes.
41
42 Q. And there is a note of what the upshot was of this
43 meeting in respect of all of those 12?
44 A. Yes.
45
46 Q. As far as you're aware, that's the only time Sergeant
47 Steer was asked to give his views on any of the 88 cases?

- 1 A. Yes, look, I - I can't give evidence on that, but if
2 Sergeant Steer says that, then I would accept that.
3
- 4 Q. Do you have an actual live recollection now of that
5 meeting and what was --
6 A. Yes, I do. I saw something else in documents that
7 gave a table. There were three tables in relation to the
8 cases that were reviewed.
9
- 10 Q. Perhaps I should show you that. I think that is at
11 tab 84, [SCOI.74430]. Is that the one you are recalling?
12 A. Yes, yes.
13
- 14 Q. So the idea was, was it - tell me if this is right -
15 that Sergeant Steer's views would be discussed?
16 A. Yes.
17
- 18 Q. And the attempt would be made to reach what might be
19 called a consensus?
20 A. Yes.
21
- 22 Q. And according to this document, at any rate, the
23 consensus was what's under the heading "Combined
24 Assessment" in the lower table?
25 A. Yes. Yes. That's what I recall the outcomes to be.
26 I was quite happy with that approach. I can't tell you why
27 they were those 12. I don't know. There would have been
28 reasons for why they were those 12. And I suspect that
29 they may have been cases that the investigation team wanted
30 to have some external input. When I say "external input",
31 input from our bias crimes coordinator, obviously.
32
- 33 Q. All right, thank you. Now, moving away from Sergeant
34 Steer, let me ask you some questions about the officers who
35 were involved in Strike Force Parrabell.
36 A. Yes.
37
- 38 Q. This is in your statement, which of course is in
39 volume 1 at paragraph 64, [SCOI.76961], and following.
40 A. Yes.
41
- 42 Q. So you tell us - and I'm summarising this a little
43 bit - in 64 and following, that the officers, who overall
44 at various times numbered approximately 13 --
45 A. Yes.
46
- 47 Q. -- were from Central Metropolitan Region?

1 A. Yes.
2
3 Q. Including but not limited to the Surry Hills local
4 area?
5 A. Yes.
6
7 Q. Three were chosen by you, namely, Messrs Middleton,
8 Grace and Bignell?
9 A. Yes.
10
11 Q. They were all detectives; that's correct?
12 A. Yes, that's correct, yes.
13
14 Q. But the rest, the other 10 in total, were chosen by
15 somebody else, not you?
16 A. Yes.
17
18 Q. Were they chosen by Mr Fuller or were they chosen by
19 someone else?
20 A. No. They would be chosen by the individual commanders
21 from the different areas that they came. So basically,
22 Assistant Commissioner Fuller, at the time, would have put
23 out a staffing request. It would go to the commander and
24 then the commander would make inquiries as to which of his
25 team would be appropriate to come in, given the - outlining
26 the investigation requirements.
27
28 Q. And in paragraph 66 you say you yourself did not have
29 any involvement in the particular selection of those
30 officers?
31 A. Yes.
32
33 Q. And you say also that you're not aware whether any
34 particular criteria were used for their selection?
35 A. That's true.
36
37 Q. Wouldn't the criteria have been of some interest to
38 you, to know what their credentials, experience,
39 qualifications were?
40 A. Yes, but I had some comfort on the basis that I had
41 Detective Inspector Middleton, a career detective, senior
42 detective; I had Detective Sergeant Grace, another career
43 detective, and I also had Plain Clothes Senior Constable
44 Cameron Bignell, who very shortly thereafter became
45 Detective Senior Constable Cameron Bignell, who was not
46 only a designated detective but also a Gay and Lesbian
47 Liaison Officer.

1
2 So I had - I had confidence in that upper echelon and
3 I knew that they were reviewing not only the progress each
4 week but then also each month to make sure that we were all
5 on track. So whilst, yes, I was interested in their
6 investigative qualifications, I was - nevertheless, if they
7 had investigation experience and they were - they had some
8 training in how to identify motivation, then I was
9 comfortable that they would have appropriate supervision to
10 be able to perform in the correct fashion.

11
12 Q. Would some knowledge of bias crime have been, in your
13 mind, a useful or relevant criterion?

14 A. Well, yes, but also knowledge of the LGBTIQ community
15 and particular sensitivities around that.

16
17 Q. And did these people, to your knowledge, have such
18 qualities?

19 A. I can't tell you that, I don't - I don't recall.

20
21 Q. Was it really - again I'm not saying this critically -
22 just a matter of accepting whoever was presented to you as
23 being available?

24 A. Look, I was happy to get the allocations of
25 investigators and people that were in full-time
26 investigative positions so, yes, I was happy to get them.

27
28 THE COMMISSIONER: Q. So is the answer to that question
29 "yes"? Do you want it posed again? I would like you to
30 answer it.

31 A. Yes.

32
33 MR GRAY: Q. Was it really just a matter of accepting
34 whoever was presented to you as available?

35 A. Yes. However, if there was something that was
36 completely not compatible with the strike force, then
37 I would expect that would have been worked out prior to
38 their attachment to the strike force, if that makes sense.

39
40 Q. Of the 13 - and you list them in paragraph 68 - seven
41 of them were detectives, as in they had the word
42 "detective" in their rank?

43 A. Yes.

44
45 Q. And then two plain clothes senior constables?

46 A. Yes.

47

1 Q. And forgive my partial or total ignorance, but "plain
2 clothes" designates someone with investigative or
3 detective --

4 A. So, yes, if you're a --

5
6 Q. -- capacity?

7 A. Yes, if you get designated a plain clothes officer,
8 that means you are undertaking the detectives education
9 program, whatever that might look like, and you are in a
10 full-time criminal investigative position.

11
12 Q. Right. So seven detectives, two plain clothes
13 officers, as you have just explained --

14 A. Yes.

15
16 Q. -- and then four uniformed officers?

17 A. No, I don't think they would be uniformed officers.
18 I think whilst they carry that designation, they may - they
19 would have been from an investigative environment, is my
20 understanding.

21
22 Q. And thus plain clothes or --

23 A. So they - the plain clothes designation, as
24 I understand it, is people that have commenced the course,
25 commenced the detectives designation course, and are in a
26 full-time position. So you could have, for example,
27 a senior constable that's attached to a detectives office
28 or a criminal investigators office, but has not necessarily
29 started the course, and usually they could have up to
30 12 months criminal investigative experience but haven't
31 actually started the course or are designated as plain
32 clothes.

33
34 Q. None of them were from the Unsolved Homicide Team;
35 correct?

36 A. I don't believe so, no. In fact, I can confirm that
37 would not be the case, because the staffing order was for
38 central metropolitan staff.

39
40 Q. Yes. So not from homicide and not from unsolved
41 homicide?

42 A. No.

43
44 Q. And appreciating the point about staffing, was there
45 a reason for not having any people from homicide or with
46 homicide experience?

47 A. No. I felt - I actually felt that the people that

1 were leading the investigation team, first of all, they
2 understood the LGBTI community given they were attached to
3 Surry Hills, and I knew that they had significant
4 investigative experience amongst them. So I didn't really
5 consider homicide. To be frank, it's not a normal
6 consideration, when you're putting together a strike force,
7 to then go to some of the specialist areas, normally. It
8 would just be from the regional resources. I mean, if
9 I'd have done that, it would be an escalation, then, to
10 a deputy commissioner to say, "Yes, we're prepared to
11 supply those resources." I didn't think it was necessary
12 at the time.

13

14 Q. Did any of the 13 have any training or experience in
15 relation to bias crime or hate crime?

16 A. I can't tell you off the top of my head. I would
17 suspect that Craig Middleton may have, just given his
18 extensive experience as an investigator; Paul Grace,
19 potentially; and yes for Cameron Bignell on the basis that
20 he's a Gay and Lesbian Liaison Officer and I know that they
21 teach bias. In fact, Sergeant Steer taught bias to the Gay
22 and Lesbian Liaison Officers courses when he was the
23 coordinator.

24

25 Q. Of which Mr Bignell was one?

26 A. Yes, yes, he was a designated Gay and Lesbian Liaison
27 Officer.

28

29 Q. In the coordinating instructions and in the
30 investigation plan, there are numerous terms used
31 including, for example, if I can just run through them, the
32 word "bias", and the word "gay"?

33 A. Yes.

34

35 Q. And the word or the phrase "hate crime"?

36 A. Yes.

37

38 Q. And "bias crime", and "gay hate", among others?

39 A. Yes.

40

41 Q. Now, none of those terms is defined in any - in either
42 the investigation plan or the coordinating instructions;
43 you would agree? There is no definition given of those
44 words?

45 A. Probably not.

46

47 THE COMMISSIONER: Q. When you say "probably not"?

1 A. I don't know, Commissioner. I could check the
2 document, but I would accept that if it's put to me that
3 that isn't the case, then I would accept that.

4
5 THE COMMISSIONER: All right, thank you.

6
7 MR GRAY: Q. Perhaps maybe in the lunch break, if you
8 check and see --

9 A. Sure.

10
11 Q. -- but my suggestion to you would be that none of
12 those terms is the subject of a definition?

13 A. Okay.

14
15 Q. Just proceed on that footing for the moment.

16 A. Yes, yes.

17
18 Q. How were the strike force officers meant to know what
19 meaning they should give to terms such as those?

20 A. You're looking at a document that has been provided to
21 them. It's not just a document that's provided to those
22 officers when they walk in and start the strike force.
23 There would be a briefing conducted and the senior officers
24 that were in charge of the strike force would conduct that
25 briefing. Now, they would cover exactly what's required of
26 them --

27
28 THE COMMISSIONER: Q. Mr Crandell, you have used
29 constantly the term "would have". Do I take it from what
30 you are saying that you have no idea one way or the other
31 whether there was a briefing as to the terms --

32 A. No.

33
34 Q. -- and the definition of those terms? You're assuming
35 it probably took place?

36 A. Well, I would disagree with the term "no idea",
37 Commissioner.

38
39 Q. Are you telling me, though, that you assume that such
40 a briefing probably took place?

41 A. No. No, Commissioner. A briefing absolutely took
42 place.

43
44 Q. And the briefing included a discussion of what each of
45 the officers were to interpret the terms to mean?

46 A. I can't tell you that, Commissioner.

47

1 Q. So does that mean on that point you have no idea
2 either way whether, at the briefing which you believe did
3 take place, the term or the definitions were discussed and
4 some agreement or directive was given as to precisely, when
5 all these papers were being reviewed, how each individual
6 police officer should interpret the terms?

7 A. Correct.

8

9 THE COMMISSIONER: Thank you.

10

11 MR GRAY: Q. Thank you for that. Can I suggest this to
12 you: unless clear definitions were provided of terms such
13 as the ones I just went through, the possibility must
14 exist, mustn't it, that some Parrabell officers had
15 different views or understandings from others as to what
16 was to be regarded as the appropriate meaning of such words
17 and phrases?

18 A. Yes. Well, I can't - as I said, I can't give evidence
19 in relation to the briefings that were undertaken. When
20 you said - you spoke earlier about training. There is
21 training that is conducted in the detectives course in
22 relation to bias. That's certainly in relation to
23 motivation, that is a factor of the detectives course.
24 So --

25

26 Q. I'm asking - sorry, go on.

27 A. Sorry. So when you say there is different
28 understandings, I would say that would be the case with any
29 group of people. But the briefing may well have focused
30 their understanding.

31

32 Q. Things may well have happened or may well not have
33 happened, but my question was: unless definitions were
34 provided - and you are not in a position to say whether
35 they were or they weren't - about terms such as the ones
36 I mentioned, the possibility must exist that some officers
37 had different understandings or views about what those
38 terms meant from others?

39 A. As I say, I can't give evidence about what was in the
40 briefings, so the question --

41

42 Q. Accepting that, that possibility must exist, mustn't
43 it?

44 A. Well, the question is narrow, saying, "There must be
45 a definition". I can't say what the conversation was in
46 the briefing. It may well have covered that, it may well
47 have covered many other heads of bias.

- 1
2 Q. Lots of things may well have happened, but I'm asking
3 you the question, unless something did happen, namely, that
4 they were told what meaning was to be attributed to words
5 and phrases like the ones I mentioned - unless that
6 actually happened - then the possibility inevitably existed
7 that some had different interpretations of those terms than
8 others?
9 A. Well, yes, I'd agree with that.
10
11 Q. Right. Now, in your statement, which is in volume 1,
12 at paragraph 85, [SC0I.76961], you say some things about
13 the general methodology.
14 A. Sorry, I've just dropped my glasses.
15
16 Q. Volume 1.
17 A. Sorry, I've got the wrong - yes.
18
19 Q. So you have your statement?
20 A. Yes, I do.
21
22 Q. Okay, paragraph 85. You're talking about the general
23 methodology employed by the strike force.
24 A. Yes.
25
26 Q. The bit that I wanted to just focus on is in about the
27 fourth line, where you say that in relation to the 88
28 cases, the strike force would:
29
30 *... allocate an examination of each case to*
31 *one or more officers within*
32 *the ... team ...*
33
34 A. Yes.
35
36 Q. Now, how many cases, if you know, were allocated to
37 one officer, and how many were allocated to more than one
38 officer?
39 A. I can't tell you that. I don't know.
40
41 Q. How did you decide or how was it decided, if it wasn't
42 by you, which cases would be reviewed by one and which
43 cases would be reviewed by more than one?
44 A. That would have been a decision of Detective Inspector
45 Middleton or Detective Sergeant Grace.
46
47 Q. In the cases reviewed by more than one, were some

1 cases reviewed by two and/or three and/or four? What was
2 the system?

3 A. They may well have been, given the amount of material
4 that related to different cases, because, as we established
5 earlier, some cases had very little material, but others
6 had hundreds of boxes of material.

7

8 Q. Quite. So perhaps, then, you think that in a case
9 where there was a great deal of material, two or three or
10 even more people may have been assigned to it?

11 A. Maybe.

12

13 Q. And in a sense, divided up the task?

14 A. Yes.

15

16 Q. In a case where it was two or more people assigned to
17 it, what was the system, if there was one, where those two
18 arrived at different views, as to the filling out of the
19 form?

20 A. So the system was that the - there would be a weekly
21 review conducted of the active investigations by Detective
22 Sergeant Grace. There would then be a monthly review of
23 all of the investigations that were active, by a team,
24 being Detective Sergeant Grace, Detective Inspector
25 Middleton, and then - and teams would be given guidance as
26 they went through their task of identifying whether or not
27 bias was a factor.

28

29 Q. Well, they'd be given guidance, and then if officer A
30 had a view to one effect and officer B had a view to, let's
31 say, opposite effect, hypothetically --

32 A. Yes.

33

34 Q. -- how would the guidance work? How would that be
35 resolved?

36 A. Well, they would discuss the different reasons as to
37 why those officers came to those views, and then apply
38 their experience to whether or not that was appropriate.
39 But that's presuming that they've even come to that
40 outcome, because this is a lengthy period of time,
41 obviously. So they may well be just identifying different
42 factors of bias.

43

44 Q. My question is directed to where they had arrived at
45 actually different views as to the correct answers on the
46 file?

47 A. I don't know that that's a fact. I can't tell you

1 that, because I wasn't involved in that.

2

3 Q. My question is, if it did happen, how was it to be
4 resolved?

5 A. Well, I have outlined the governance structures and
6 there would be a discussion with senior investigators as to
7 whether or not it was appropriate to assign that particular
8 bias or not.

9

10 THE COMMISSIONER: Q. So did the senior investigators,
11 in effect, in your mind, have a power of veto? In other
12 words, if they thought differently to the assessment done
13 by the individual officers, then it would be up to the
14 senior investigator's own view as to whether or not he or
15 she thought bias was present or not?

16 A. Yes, I would say so, Commissioner. I suppose I would
17 be relying on their experience to do that, and also their
18 knowledge of the individual cases, because I couldn't
19 expect them to be across them in as much detail as the
20 investigators.

21

22 THE COMMISSIONER: All right, thank you.

23

24 MR GRAY: Q. Now, turning to a different aspect of this
25 for a moment, in terms of the Unsolved Homicide Team, you
26 have established that there was nobody from unsolved
27 homicide in the strike force?

28

29

30 Q. Would it be fair to say that unsolved homicide put no
31 resources or time or effort into the strike force?

32 A. No. I think that they were consulted and I think
33 I saw some documentation in relation to that from Detective
34 Inspector Middleton.

35

36 Q. Would it be fair to say that all that unsolved
37 homicide did was to give the strike force access to some of
38 its holdings?

39 A. Yes - well, they would have.

40

41 Q. But is that all they did?

42 A. Oh, I can't tell you that. I don't know the
43 conversations that Mr Middleton would have had. But I know
44 that he did have conversations with them and he did
45 consult.

46

47 Q. Could we turn to volume 3, please, I'm sorry, and turn

1 to tab 93, [SC0I.74459]?

2 A. Yes.

3

4 Q. There's an email at the bottom of that page from

5 Mr Middleton to you on 9 March 2017?

6 A. Yes.

7

8 Q. It's concerning Taradale and some matters relating to
9 that that I'll come to, but over the page, if I could just
10 ask you to turn over the page and look at the second-bottom
11 paragraph, the one beginning:

12

I am still a little perplexed ...

13

14 Do you see that paragraph?

15 A. Yes.

16

17 Q. He, Mr Middleton, says at the end of that first line
18 of that paragraph:

19

*As we discussed earlier Homicide have put
20 no resources, money, equipment, time or
21 effort into this review. All they did was
22 agree to give us access to some of their
23 holdings.*

24

25 Do you agree that that's the case?

26 A. Certainly if Craig Middleton is saying that, I would
27 agree.

28

29 Q. Well, your response to him, which is at the top of the
30 next page, didn't suggest otherwise.

31 A. Yes. I'm saying asking now for any further
32 assistance.

33

34 Q. Yes.

35 A. Yes.

36

37 Q. So the context, it seems, for Mr Middleton's email to
38 you is that Mr Willing, around about this time,
39 presumably - March 2017 - had asked your strike force to
40 look at the three Taradale cases?

41 A. To, sorry?

42

43 Q. To review the three Taradale cases?

44 A. Right.

45

46

47

- 1 Q. Do you see, if you look at the beginning of his email,
2 which is at the bottom of the first page of this tab --
- 3 A. Yes.
- 4
- 5 Q. -- he says:
- 6
- 7 *Hi Boss*
- 8
- 9 *I have been doing some thinking and digging*
10 *on the Taradale issue. I am a bit*
11 *concerned as to [Mr Willing's] request to*
12 *now review these matters.*
- 13
- 14 A. Yes.
- 15
- 16 Q. So what had happened, I understand - tell me if this
17 is right - was that up to this point, around about March
18 2017, the arrangement with unsolved homicide had been that
19 they would look at the three or were looking at the three
20 Taradale cases?
- 21 A. Yes.
- 22
- 23 Q. And that, in effect, as a consequence, you would not;
24 is that right?
- 25 A. Yes, look, I would think that would be correct, and
26 the reason I say that is because they were conducting
27 the reinvestigation of those three cases, so they would be
28 in a far better position to determine - well, a far better
29 position to look at any new evidence that might come in,
30 but not necessarily to identify bias crime motivation.
- 31
- 32 Q. No. And so Mr Middleton is saying to you that he's
33 a bit, in effect, concerned about that, because that would
34 be a big job for Parrabell to do, because Taradale was such
35 a large exercise?
- 36 A. Yes.
- 37
- 38 Q. I'm paraphrasing, but you can see that's what he is
39 saying?
- 40 A. Yes.
- 41
- 42 Q. In the second-last paragraph of Mr Middleton's email,
43 where he says the unsolved homicide - sorry, I beg your
44 pardon, I take that back. He says "homicide have put no
45 resources into Parrabell", and so on; do you see that?
46 That's the bit I took you to originally.
- 47 A. Sorry, could you just indicate what --

1
2 Q. Yes, the paragraph beginning:
3
4 *I am still a little perplexed ...*
5
6 A. Yes.
7
8 Q. In the second line of that he talks about homicide not
9 having put any resources in your strike force?
10 A. Yes.
11
12 Q. Keeping that in mind, I just want to ask you about
13 a few other documents touching on the connections between
14 Parrabell and unsolved homicide. And before I do, when
15 Mr Middleton talks in that email about unsolved homicide
16 having hitherto been the ones looking at the Taradale
17 cases, that was, of course, we now all know, Neiwand?
18 A. Yes.
19
20 Q. By this point, March 2017, did you know that it was
21 Neiwand that was doing that or just that it was unsolved
22 homicide?
23 A. I would have known it was unsolved homicide. But for
24 some reason, Neiwand didn't mean a lot to me at the time.
25 I know that now.
26
27 Q. Okay. So at tab - in the same volume that you have
28 there, tab 60A, [SCOI.74210], there's an issues paper of
29 your own dated November 2015. Do you see that?
30 A. Yes, yes.
31
32 Q. And at the foot of the first page, you say about
33 Parrabell - you actually call it "Operation Parrabell", but
34 it is what we now know as the strike force?
35 A. Yes.
36
37 Q. You say:
38
39 *[It] is being conducted with assistance*
40 *from the Unsolved Homicide Squad, members*
41 *of which have already contributed to*
42 *processes of review.*
43
44 Now, that seems to be not correct, doesn't it, given what
45 Mr Middleton said and you agreed with?
46 A. Well, no, Mr Middleton is talking about resources
47 being applied. My understanding was that we had discussed

1 matters with the unsolved homicide squad, given they had
2 reviewed 30 of the cases. So my understanding was that
3 they had contributed. Whether or not that's in a resource
4 sense or in an advice sense, but I would still say that
5 that's correct.
6

7 Q. When you say they had reviewed 30 of the cases, are
8 you talking about Mr Lehmann's --

9 A. Yes.

10
11 Q. -- exercise of a couple of years earlier?

12 A. Yes, but I'm - and I'm almost certain that
13 Detective Inspector Middleton spoke to Detective Inspector
14 Lehmann about that, or somebody from unsolved homicide, in
15 relation to their findings, and also obtained - I think
16 that's where the list came from, the 88, the original list.
17

18 Q. It did, but that was in September 2013, though, long
19 before Strike Force Parrabell?

20 A. Yes, yes.

21
22 Q. So what was the contribution to Parrabell's processes
23 of review that you are referring to there?

24 A. No, I think that Detective Inspector Middleton -
25 I don't want to speak on his behalf, but my understanding
26 was that he was consulting the Unsolved Homicide Team in
27 relation to these matters. Particularly when you are
28 looking at unsolved homicides, it would be highly unusual,
29 for me, if he didn't do that.
30

31 Q. Well, his account, Mr Middleton's account, which
32 I took you to, was that homicide had put no resources,
33 money, equipment, time or effort into the Parrabell review.
34 That doesn't sound like they were giving him much
35 assistance?

36 A. No. But that - I know that's what he said in an
37 email, but whether or not that's the reality of providing
38 advice to us is what I'm questioning.
39

40 Q. So when you say in this one at 60A, [SC0I.74210], that
41 members of the unsolved homicide had contributed to
42 processes of review, are you referring to --

43 A. Sorry, could you just indicate --
44

45 Q. The bottom couple of lines in tab 60A?

46 A. Yes.
47

1 Q. When you say that, unsolved homicide had contributed
2 to processes of review for your strike force --

3 A. Yes.

4

5 Q. -- you mean by that that you think Mr Middleton would
6 have had some discussions with unsolved homicide about some
7 of these cases?

8 A. Yes, Middleton, but it could have been any other
9 member of the strike force, because if they are
10 investigating unsolved homicides, it would seem to me
11 reasonable that they would contact - or essential that they
12 would contact the Unsolved Homicide Team, given they are
13 responsible for those unsolved cases. So I have obviously
14 had some material somewhere that's contributed to that
15 sentence. I must have known somehow that unsolved homicide
16 have made some contribution, otherwise, I wouldn't report
17 that through to my commissioner.

18

19 THE COMMISSIONER: Q. There was nothing, though, in the
20 operating instructions or anything else, was there - just
21 remind me - that suggested that members of Strike Force
22 Parrabell should from time to time, if they needed to,
23 consult with unsolved homicide?

24 A. I don't believe so, Commissioner.

25

26 THE COMMISSIONER: Thank you.

27

28 MR GRAY: Q. If we turn to tab 60, which is the one
29 before, [SCOI.74209], this is an email from you on 7 May
30 2016 to various people. I think Ainslie Blackstone and
31 Georgina Wells are media-related people in the police; is
32 that right?

33 A. Media, yes, police media unit.

34

35 Q. And Michael Willing, of course we know who
36 Michael Willing was?

37 A. Yes.

38

39 Q. You say that you attach a brief summary of Operation
40 Parrabell, which I suggest is the one we just looked at,
41 the issues paper behind tab 60A, [SCOI.74210]?

42 A. Yes.

43

44 Q. Do you agree that that seems to be the case?

45 A. Sorry, could you just repeat that question?

46

47 Q. Well, your email starts off:

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I have attached a fairly brief summary of Operation Parrabell drawn from an earlier report submitted.

A. Yes.

Q. And I am suggesting that that attachment is the one at 60A, ie, your issues paper that we just looked at?

A. I would say so. Can I just check that? 17 November. Yes, I would - I assume so.

Q. Yes. In 60A, the sentence that I am focusing on is the one that I have asked you about --

A. Yes.

Q. -- where you said that unsolved homicide had already contributed to processes of review?

A. Yes.

Q. Then, in this email you say:

I included a reference to Unsolved Homicide assistance which consisted of information regarding earlier review activities which remain on Parrabell's list.

A. Yes.

Q. Do you see that?

A. Yes.

Q. So that looks like it's a reference to Mr Lehmann's 2013 exercise, doesn't it, or is it a reference to something else?

A. Well, it could - I'm not whether it is those 30 or whether there was further inquiries undertaken into those 30. I can't say that was from that list in a report from Lehmann, when my understanding would be that we would liaise with unsolved homicide and they would contribute.

Q. Well, except that what you tell Mr Willing and others in this one is that the unsolved homicide assistance consisted of information regarding earlier review activities?

A. Yes.

- 1 Q. But you think that you may have meant by that,
2 information provided to Mr Middleton in discussions?
3 A. Absolutely.
4
- 5 Q. I see, all right. And then at tab 61, [SCOI.74221],
6 you are adapting or editing a draft statement that had been
7 prepared by Ainslie Blackstone from the media unit. Can
8 you see that?
9 A. Yes.
10
- 11 Q. If you acquaint yourself with that?
12 A. Yes, I can.
13
- 14 Q. And so you have changed something in red, by the look
15 of it, in the proposed statement?
16 A. Yes, yes.
17
- 18 Q. Above the words in red, about four paragraphs above,
19 the statement includes the words:
20
21 *... the operation is being conducted with*
22 *the support of the Homicide Squad's*
23 *Unsolved Homicide Team.*
24
- 25 A. Sorry, could you just - when you say "four sentences
26 up" --
27
- 28 Q. Well, I took you to the words in red --
29 A. Yes.
30
- 31 Q. -- which I think were your editing?
32 A. Yes, my amendments, yes.
33
- 34 Q. And about four paragraphs above that, there is
35 a statement which you haven't changed, which says:
36
37 *... the operation --*
38
39 meaning your operation --
40
41 *is being conducted with the support of*
42 *the ... Unsolved Homicide Team.*
43
- 44 A. Yes.
45
- 46 Q. What did that mean "with the support of"?
47 A. That would be information that they have provided us

1 or any - any guidance that they have provided us throughout
2 the course of the investigation.

3

4 Q. I see. Then I will just ask you about one more, which
5 is at tab 70, [SCOI.74338].

6 A. Yes.

7

8 Q. You write to Mr Willing in October 2016, you tell him
9 that Dr Dalton has been contracted. You say:

10

11 *Given the connection between Parrabell and*
12 *the Unsolved Homicide Team, would you*
13 *[Mr Willing] like to meet with him?*

14

15 A. Yes.

16

17 Q. What did you mean by "the connection between Parrabell
18 and the Unsolved Homicide Team?"

19 A. Well, the Unsolved Homicide Team are responsible for
20 unsolved homicides, so there is a connection between
21 Parrabell and the Unsolved Homicide Team, and so really, in
22 my view, Commander Willing should have been involved in
23 processes of review to understand - particularly in
24 unsolved matters, to understand whether there was any
25 progress or not.

26

27 Q. Sorry?

28 A. Sorry, to understand whether there was any progress or
29 otherwise.

30

31 Q. How would he --

32 A. But my understanding was, as I said - is that there
33 was a collaboration --

34

35 Q. Between?

36 A. -- between us and unsolved homicide. That's my
37 understanding.

38

39 Q. On the Parrabell review?

40 A. Yes.

41

42 Q. In connection with finding out whether there were bias
43 indicators?

44 A. No, well, having a look at - because you can imagine
45 they would have material that would relate to unsolved
46 cases. So there may be - there may be information that we
47 would want to get from them in relation to those matters.

1 So that's what I'm saying. To say that we simply had
2 nothing to do with unsolved homicide I think is wrong.

3
4 Q. Well, I haven't said that to you, but I thought the
5 whole thrust of what you have said in your statement and in
6 your evidence is that the Parrabell exercise was the
7 documentary review of holdings available to Parrabell?

8 A. Yes.

9
10 Q. But are you now saying that, actually, it was
11 a documentary review flavoured by what unsolved homicide
12 might say?

13 A. No, no. I'm - no. When I say it is a documentary
14 review, I'm talking about in the context of not going and
15 reinterviewing witnesses or revisiting locations or
16 reconstructing crime scenes or - everything that might
17 happen in an ordinary reinvestigation. It was a paper
18 review on the basis of the holdings that we had.

19
20 The Unsolved Homicide Team, though, may well have been
21 able to give us some insight into what occurred in an
22 investigation, so I don't see why we wouldn't use them --

23
24 THE COMMISSIONER: Q. But, Mr Crandell, you can't point,
25 can you, to any example - and I take it from your own
26 knowledge you are not aware of any - where anybody from
27 unsolved homicide was asked about any particular case and
28 the classification of any particular case?

29 A. No, I can't give that evidence, Commissioner, you are
30 correct.

31
32 Q. Well, that's because, as you sit there today, although
33 you believe there must be some collaboration, your belief
34 really goes no further, does it not, than the belief that
35 it may well be that unsolved homicide provided what
36 additional holdings or paper or material that they might
37 have had, as opposed to the deployment of resources - that
38 is, members of the team, Unsolved Homicide Team - to
39 comment on any particular analysis that your Parrabell
40 strike force came to?

41 A. Yes.

42
43 THE COMMISSIONER: Thank you.

44
45 THE WITNESS: Sorry, Commissioner, can I just say that the
46 reason I come to that view is that I don't understand why
47 I would be corresponding with the commander of homicide,

1 who is also responsible for unsolved homicide, to say, "We
2 need to do collaborative media", if that wasn't the case.

3
4 THE COMMISSIONER: Q. Mr Crandell, when you say you
5 don't understand, is that a way of saying you wouldn't have
6 done so unless there was some relevance in it?

7 A. Yes.

8
9 Q. All right. But the relevance might be no more than
10 a matter of courtesy, may it not, or to facilitate the
11 provision of any additional paper which unsolved homicide
12 might have over and above the holdings you could access?

13 A. That's true. The only thing that I'm looking at is
14 also that I'm saying to the commander of unsolved homicide
15 that this is a collaborative effort, or words to that
16 effect, in my correspondence to him.

17
18 Q. But, Mr Crandell, let's go back to where we were
19 a moment or two ago. First of all, it was not part of the
20 operating instructions, was it, that your classification or
21 Strike Force Parrabell's classification be looked at,
22 checked, monitored, commented upon by unsolved homicide?

23 A. No.

24
25 Q. As far as you are aware as you sit there today, you
26 can't point to one case where unsolved homicide was asked
27 for a particular view one way or the other as to whether
28 they agreed with Strike Force Parrabell's classification of
29 the case?

30 A. Yes, that's true.

31
32 Q. You are assuming that there must have been some
33 collaboration because you are obviously communicating with
34 Mr Willing?

35 A. Yes.

36
37 Q. But at the moment, that's as far as it goes?

38 A. Absolutely.

39
40 THE COMMISSIONER: Thank you.

41
42 MR GRAY: Q. Just on unsolved homicide, we looked
43 yesterday, and you took us to it again this morning, that
44 you had a meeting with Mr Willing and others in April 2016
45 in which Parrabell and what we now know to have been
46 Neiwand were talking to each other; correct?

47 A. Yes, yes.

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Q. And another meeting you've mentioned today in May 2016?

A. On 17 May, yes.

Q. At that point - and I can show these documents to you if you need them - and indeed beyond that point, the investigation coordinator for Neiwand was Mr Lehmann?

A. Yes.

Q. Did you know that? Was he one of the people you spoke to in these meetings?

A. I'm uncertain, but he may have been with Commander Willing when I met on 4 April. There was somebody else with Commander Willing. It wasn't just me and him.

Q. Yes. And Commander Willing, of course, was commander of the Homicide Squad?

A. Yes.

Q. And so he was, in that sense, the overall officer supervising Neiwand ultimately?

A. Yes.

Q. Just back to that email of Mr Middleton at tab 93 [SCOI.74459] - I won't linger on this but I would like you to help us understand it - in his last paragraph, and this is tab 93, Mr Middleton's email --

A. Yes.

Q. -- or the second-last paragraph, actually, the one beginning, "I am still a little perplexed" --

A. Yes.

Q. -- the request that Mr Willing had made was for Parrabell to look at the three Taradale cases which, hitherto, Parrabell was not going to do?

A. Yes.

Q. And Mr Middleton says - read the whole paragraph to yourself, but he finishes up saying:

*I am not critical of Mr Willings request
but I am suspicious of his motives and his
bad timing.*

1 What was he getting at there, as you understood it.
2
3 MR TEDESCHI: I object.
4
5 THE COMMISSIONER: The cross-examiner can ask, or the
6 examiner can ask, what his understanding is?
7
8 MR TEDESCHI: Commissioner, he can be asked whether he
9 knew anything --
10
11 THE COMMISSIONER: No, he can ask what his understanding
12 is of that because it is an email directed to him. He may
13 have had information in his head which puts that into
14 context.
15
16 MR TEDESCHI: Yes.
17
18 THE COMMISSIONER: And you can ask him in due course, "Did
19 you have the faintest idea what Mr Middleton was talking
20 about", and he will either have given an answer by then or
21 you will get from him, "No, I have no idea what he is
22 talking about".
23
24 MR TEDESCHI: He can be asked what his understanding might
25 have been.
26
27 THE COMMISSIONER: That's all I'm just saying to you,
28 Mr Tedeschi.
29
30 MR TEDESCHI: But he can't be asked what was in
31 Mr Middleton's mind.
32
33 THE COMMISSIONER: I don't think that's the question.
34 I think he is being asked what did he understand that to be
35 a reference to, and on that basis, I would allow that.
36 Equally, when you get your opportunity, if there is
37 something to clarify that, of course, you will bring it to
38 my attention.
39
40 MR TEDESCHI: Thank you.
41
42 THE COMMISSIONER: Maybe ask it again, Mr Gray.
43
44 MR GRAY: Yes. I think my question actually included that
45 concept, but I will ask it again.
46
47 Q. What was Mr Middleton saying, as you understood it,

1 when he said he was suspicious of Mr Willing's motives and
2 his bad timing?

3 A. I really don't know. I would be happy to read the
4 rest of the document. I don't - I'm not sure why he's
5 saying that.

6
7 Q. By all means, do. I don't want to put you at
8 a disadvantage. By all means, read the whole thing.

9 A. I mean --

10
11 THE COMMISSIONER: Mr Crandell, I'm not going to interrupt
12 the flow of thought, only to say this, it is a matter
13 I think, or potentially, of some importance. I'm happy to
14 take the luncheon break now and give you a slightly longer
15 opportunity to collect your thoughts, because it is a long
16 email and I appreciate, as you do, what you are being
17 asked. So, in fairness, rather than you feeling as if you
18 have to rush the answer, I will adjourn now, and by all
19 means, Mr Gray, there can be no difficulty in Mr Crandell
20 having access to these over lunch?

21
22 MR GRAY: Not at all.

23
24 THE COMMISSIONER: All right. Then either the copy that
25 you have got there or somehow or other, just have an
26 uninterrupted session in your own head as to what you
27 thought was going on. I appreciate it is a long time ago,
28 but it may be a matter of some importance. All right.
29 I will adjourn until 2 o'clock.

30
31 **LUNCHEON ADJOURNMENT**

32
33 THE COMMISSIONER: Mr Tedeschi and Mr Crandell, the
34 solicitors who are assisting have decided that the "do it
35 yourself" component for the witness having to grab their
36 own folder is becoming a bit burdensome, so we're going to
37 have somebody at the Bar table and when a volume is needed,
38 Mr Crandell and any other witness won't need to look after
39 themselves. I am sorry if it has been any inconvenience to
40 date.

41
42 THE WITNESS: Not at all.

43
44 THE COMMISSIONER: Thank you, yes.

45
46 MR GRAY: Q. Mr Crandell, we were on the email at
47 tab 93, [SCOI.74459], and I was asking you what did you

1 understand Mr Middleton to be referring to when he said
2 that he was suspicious of Mr Willing's motives and his bad
3 timing.

4 A. So I know that there would have been feeling in that
5 email, because Parrabell would have been finished --
6

7 Q. Yes.

8 A. -- but for the request of Commander Willing to
9 continue with the Taradale matters. I don't know why
10 Craig Middleton would say that he's suspicious of his
11 motives. I don't want to speculate about that. But
12 I simply offer the observation that there would have been
13 some feeling in it because not only did Parrabell then need
14 to continue, according to my response, but he also had to
15 go out and source more investigators, preferably from the
16 original Parrabell team.
17

18 Q. All right. Then five days later, if we go to the next
19 tab, 94, [SCOI.74466], on 14 March, Mr Middleton writes to
20 you, emails you, and in the third paragraph picks up this
21 topic about the three Taradale matters?

22 A. Yes.
23

24 Q. And he says this in March 2017:
25

26 *... I have spoken to DInsp Chris Olen at*
27 *UHT who tells me that they are presently*
28 *re-opening those matters [the three*
29 *Taradale matters] for re-investigation*
30 *under a new [Strike Force]?? ... he*
31 *estimates there is about 50 boxes of*
32 *[them] ...*
33

34 Pausing there --

35 A. Yes.
36

37 Q. -- as you now know, that's the reference - the "new
38 strike force" is a reference to what you now know to be
39 Neiwand; correct?

40 A. Yes.
41

42 Q. And you knew yourself, because we went through this
43 yesterday and you've expanded on it slightly this morning,
44 that from April 2016, when you had a meeting with
45 Mr Willing and perhaps Mr Lehmann - that is, a year
46 earlier --

47 A. Yes.

1
2 Q. -- that the strike force, which in fact bore the name
3 of Neiwand, whether you knew the name or not, was already
4 under way back in April 2016?
5 A. Yes.
6
7 Q. And you knew that Superintendent Willing was involved
8 in overseeing it?
9 A. Yes.
10
11 Q. And you knew that back in April. And if you remember
12 this, good, if you don't remember, I will put it in front
13 of you again - the document we looked at yesterday that
14 recorded the fact that you had had that meeting in April
15 also recorded that Neiwand had, by then - that is, April
16 2016 - received 42 boxes of Taradale material. Do you
17 remember seeing that?
18 A. I remember a large number of boxes, yes.
19
20 Q. And clearly, from that document that we looked at
21 yesterday which was dated July '16 but included reference
22 to your April meeting --
23 A. Yes.
24
25 Q. -- the work of what we now know to be Neiwand was well
26 under way?
27 A. Yes.
28
29 Q. By July '16, and it seems that they had, according to
30 that document, already 42 boxes?
31 A. Yes.
32
33 Q. But it seems that, looking at this one at 94,
34 [SCOI.74466], this email at tab 94, that Detective
35 Inspector Olen tells Mr Middleton that unsolved homicide
36 are presently reopening those matters, and he tells
37 Mr Middleton, apparently, that there's about 50 boxes of
38 files. Now, Mr Middleton, perhaps, was not aware - as you
39 were - that, in fact, Neiwand had been going for a year or
40 more, so it seems from his email that he simply accepts
41 what Detective Inspector Olen tells him, but he tells you
42 that, in this email to you, and you must have known that
43 that wasn't right when you got that?
44 A. No, that's right.
45
46 Q. You're agreeing with me?
47 A. I do.

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Q. Well, did you explain to Middleton that what Mr Olen was telling him wasn't right?

A. I can't recall a conversation with Craig Middleton, but I was actually happier that Parrabell was going to review the Taradale cases, so whilst Detective Inspector Middleton had questions about reviewing them, I wanted him to review them.

Q. I understand that, but what did you make of the fact, if it was the fact - it looks like it on the page - that what Olen was telling Middleton wasn't right?

A. I can't say at the time, I don't remember.

Q. Now, Mr Middleton tells you in this email, in the next sentence or so, that his suspicions about the timeliness of the Taradale matters now being reviewed were growing. Do you see that?

A. Yes.

Q. Again, did you know what he was referring to, and whatever they were, did you share those suspicions?

A. I would have had a conversation with him, there's no doubt about that. But the nature of that, the content of that conversation, I can't recall.

Q. Well, I have to put this, Mr Crandell. Is the explanation that you knew more about what Neiwand was doing and why than Mr Middleton did, and so you didn't tell Mr Middleton everything you knew?

A. Oh, I would disagree, on the basis that I didn't have any secrets from Craig Middleton. Anything that I knew, I would want him to know. I wouldn't ever try to hold anything back from him knowingly, particularly given his central role in Parrabell and the fact that Taradale matters were important to the Parrabell reviews.

Q. What I want to come to is this - and tell me if you knew this: by the end of that year, that is, by the end of 2017, Neiwand had reached conclusions that Coroner Milledge's 2005 findings about the three Bondi deaths should essentially be disregarded. You know that now, I take it?

A. Yes.

Q. When did you find that out?

A. I don't believe that I took a great interest in

1 Neiwand at all. I was more focused on Parrabell. Whilst
2 I understand the nexus, I understand the connections, I was
3 still most interested in our original brief and making sure
4 that we followed that through.

5

6 Q. Fine, but my question, though, is, when did you find
7 out that Neiwand had reached the conclusions that
8 Coroner Milledge's findings should be disregarded?

9 A. I can't tell you. I would think when they were
10 published, but I can't tell you.

11

12 Q. Well, the point is they weren't published.

13 A. Oh.

14

15 Q. So how did you find out?

16 A. I would say in --.

17

18 THE COMMISSIONER: I am sorry, Mr Gray.

19

20 Q. Or were they published?

21 A. Oh, I don't know, Commissioner. I can't tell you.
22 Whether it was made known to me because of the closeness of
23 the two strike forces, I don't know. But I believe that
24 I've - I've read those in this - in these bundles.

25

26 MR GRAY: Q. Right.

27 A. And I'm surprised with the findings, because as I've
28 said before --

29

30 Q. Sorry, I just didn't hear that?

31 A. I'm surprised by the findings.

32

33 Q. The Neiwand findings?

34 A. Yes.

35

36 Q. Yes.

37 A. Because to my mind - to my mind, I would wonder why
38 they would go down that path of questioning a coroner's
39 finding, on the basis that the coroner gets to see all the
40 evidence, and that was something in Parrabell that we
41 considered early on, that we should not do that.

42

43 Q. Well, as you can probably tell from some of my
44 questions, we are also struggling to understand it, and are
45 you saying that you can't help us with understanding it?

46 A. I wish I could.

47

1 Q. Well, when you said a minute ago, and the Commissioner
2 was prompted to ask a question, that you probably learnt
3 about Neiwand's findings when they were published, what
4 might you have meant by that when you said that
5 spontaneously?
6 A. I - well, my presumption was that they were - they had
7 been published similar to what Parrabell findings had been
8 published, but that may not be the case. And then the only
9 other way I would have found out about that is if I had
10 been provided with something from Neiwand, but I don't have
11 any recollection of that.
12
13 Q. Or someone told you?
14 A. Or somebody would have - somebody told me perhaps from
15 unsolved homicide, but once again, I don't have
16 recollection of that.
17
18 Q. So no recollection, for example, of Mr Willing telling
19 you that?
20 A. No.
21
22 Q. Or Mr Lehmann telling you that?
23 A. No. As I say, whilst I've - I've known Commander
24 Willing for a long, long time, I didn't have regular
25 contact with him necessarily, and my contact with him
26 wasn't regular.
27
28 Q. By that time - that is, the end of 2017 - when the
29 Neiwand exercise had arrived at the documents that you have
30 seen, which are, in effect, conclusions --
31 A. Yes.
32
33 Q. -- Neiwand was also asserting, wasn't it, that the
34 work of Detective Sergeant Page in Taradale, to which
35 Coroner Milledge had given considerable praise --
36 A. Yes.
37
38 Q. -- was actually open to very serious criticism?
39 A. Yes.
40
41 Q. You agree?
42 A. Yes, I do.
43
44 Q. Now, again, when did you first become aware that
45 that's what Neiwand was saying and that that's what Neiwand
46 had been directing itself to?
47 A. I don't believe that I knew about that until I read

1 that in the bundle.

2

3 Q. In this bundle in this Special Commission?

4 A. Yes. I don't think - I don't remember turning my mind
5 to those findings at that time.

6

7 THE COMMISSIONER: Q. But Mr Crandell, in the course of
8 preparing to give your evidence in this matter, surely you
9 would have made inquiries as to whether, if at all, Neiwand
10 was ever published? I'm just going back to the statement
11 you made a little while ago suggesting to me that it might
12 have been, and your inquiries would have detected that
13 there was no such publication except perhaps within the
14 small group of people in the Police Force - or have you
15 come across some information to suggest that Neiwand's
16 findings were widely published within the force?

17 A. Well, Commissioner, I didn't have a great deal of -
18 I don't want to say "interest", but --

19

20 Q. No, Mr Crandell, I didn't ask you whether you had
21 occasion to worry about it or not. I'm accepting
22 unequivocally what you have already told me about your
23 state of knowledge.

24 A. Yes.

25

26 Q. I'm not disagreeing with that for the moment.

27 A. Yes.

28

29 Q. I'm just asking you, in the course of preparing to
30 give your evidence in this case or in this Commission, it
31 must have come across or come to your attention that the
32 findings of Neiwand were not widely published - or, were
33 they - and if they were, to whom?

34 A. No, I did not know that.

35

36 THE COMMISSIONER: Okay, all right.

37

38 MR GRAY: Q. In the cases of both Ross Warren and John
39 Russell, Coroner Milledge had made express findings of
40 homicide?

41 A. Yes.

42

43 Q. You know that? And she had said that the evidence
44 "strongly supported the probability" that those homicides
45 were gay-hate related?

46 A. Yes.

47

- 1 Q. You're aware of that?
2 A. I do.
3
4 Q. And you'd been aware of that basically since the time
5 Coroner Milledge's findings had been published?
6 A. Yes.
7
8 Q. And you know, at least now, that Neiwand's conclusions
9 by late 2017 were to the effect that in the case of
10 Mr Mattaini, it was probably suicide and not homicide; you
11 are aware of that?
12 A. I'm aware of that, yes.
13
14 Q. And that in the case of Ross Warren, misadventure or
15 suicide were just as likely as homicide?
16 A. Yes.
17
18 Q. And in the case of John Russell, misadventure was just
19 as likely as homicide?
20 A. Yes.
21
22 Q. And again, when did you become aware of that, that
23 that's what Neiwand's conclusions were about those three
24 cases?
25 A. I believe at the same time that I read the bundle.
26
27 Q. ie, when you were preparing for this hearing in the
28 last month or two?
29 A. Yes.
30
31 Q. Were you aware at any time in 2017 or earlier that the
32 Neiwand strike force was going down that path of arriving
33 at or looking at arriving at findings contrary to Milledge?
34 A. No.
35
36 Q. Were you aware that Neiwand was directing itself to
37 criticisms of Detective Page?
38 A. No.
39
40 Q. You see - and you've just made this point yourself
41 a moment ago - your evidence is that a coroner has more
42 information and evidence than the police do, and that
43 a coroner considers that evidence objectively. You have
44 made those points yourself?
45 A. Yes.
46
47 Q. And you said yesterday, and I'm not quoting you, but

1 you gave evidence to this general effect, that for your
2 part, your view was, and is, that where a coroner has made
3 a finding, it's not for the police subsequently to
4 challenge or seek to contradict that finding.

5 A. Yes, that's what I've said.

6
7 Q. So for the Parrabell exercise, your exercise, in the
8 cases of Ross Warren and John Russell, the obvious
9 classification would have been that there is evidence of
10 bias crime, wouldn't it?

11 A. I think those cases were classified as suspected bias
12 crime.

13
14 Q. They were?

15 A. Yes.

16
17 Q. And that's really what I'm coming to.

18 A. Yes.

19
20 Q. The coroner has found what she found - I won't go over
21 it again.

22 A. Yes.

23
24 Q. Wouldn't the more obvious classification in the
25 Parrabell taxonomy be that there is evidence of bias crime?

26 A. Yes.

27
28 Q. But in fact, as you say, Parrabell classified those
29 two cases not as cases where there was evidence of gay-hate
30 bias, but only as cases where gay-hate bias could be
31 suspected?

32 A. Yes, suspected bias.

33
34 Q. Was that classification affected in any way by the
35 approach or conclusions that the Neiwand exercise was
36 engaged in?

37 A. I don't know. Certainly the investigation team would
38 know, but I can't tell you that.

39
40 THE COMMISSIONER: Q. It would have been a simple matter
41 in those two cases to have said, "Well, we've looked at
42 them," - "we" being Parrabell - "we don't propose to say
43 any more than what Coroner Milledge has said. We simply
44 repeat her findings"?

45 A. And that was open to us, Commissioner, however, I did
46 want them to go through the process that had been
47 undertaken for the rest of the investigations.

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THE COMMISSIONER: Well - all right.

MR GRAY: Q. I want to turn back to the investigation plan now, which is in volume 1, tab 14, [SCOI.74385].

Now, I may as well ask you this now - I was going to ask you later, but I will ask you now. Is it your evidence that the investigation plan was provided to all the Parrabell officers, or is it your evidence that it was only known to or provided to yourself and Messrs Middleton, Grace and Bignell?

A. I would think it more likely that the coordinating instructions would have been provided to the investigators.

Q. Yes.

A. Whether or not this --

Q. I think there's no doubt from what you said this morning that at least the coordinating instructions were?

A. Yes.

Q. That's, I think, your evidence, isn't it, that at least that was clear?

A. Yes.

Q. But I'm just asking whether the investigation plan was provided to everyone as well or only to those few?

A. I don't know.

Q. Okay. Well, I'm going to draw your attention to some apparent differences between them. That's why I am seeking to set this up. In the investigation plan, tab 14, page 2, there is a heading "Mission"; do you see that?

A. Yes.

Q. The language used here is that the mission is - and I'm not reading every word of it - to determine if there is any evidence of sexuality or gender bias involvement which may have contributed to the death. Correct?

A. Yes.

Q. To determine if there is any evidence of that possibility?

A. Yes.

Q. But a few lines later, in the same paragraph, it says:

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*The purpose of the review is to determine
if any sexuality or gender bias was
involved ...*

Do you see that?

A. Yes.

Q. Now, they're two different things, aren't they? One is, was there any evidence; and the other is, was it a fact? Was the bias in fact involved? They're not the same, are they?

A. The words are different, yes.

Q. Well, the concepts are different, aren't they? The first concept is, is there any evidence of it at all? And the second is, has it been established?

A. Yes.

Q. It's a determination.

A. That's right. But the evidence could lead to that determination.

Q. Evidence could lead to that, but I'm just - you don't agree that they're two different concepts?

A. Well, they're different words, they're different sentences, I understand that.

Q. That's not my point, though. They certainly are different sentences, but aren't they different concepts?

A. I think they're related concepts.

Q. But they're different, maybe related but different?

A. They're essentially looking for evidence of bias crime.

Q. But the last sentence says that the purpose is to determine if bias crime - sorry, gender bias was involved, not to look at whether there was evidence suggesting that, but whether it was so?

A. Yes.

Q. Two different things.

A. No, I disagree.

Q. I see. All right. Then under the heading "Execution", and the subheading "Strategy", it's put

1 differently again. This time it says that the purpose is:

2
3 *... to determine if a sexuality or gender*
4 *bias was a contributing factor.*

5
6 Do you see that?

7 A. Yes.

8
9 Q. That is more like the first of those two sentences in
10 the "Mission" paragraph than the second, isn't it?

11 A. Well, that could involve either sentence.

12
13 Q. Pardon?

14 A. That could involve either of those earlier sentences,
15 I would have thought.

16
17 Q. Perhaps so, but it is a third different way of
18 expressing whatever it is that Parrabell was attempting to
19 do, isn't it? Three separate sentences addressing
20 apparently the same idea but in three different ways?

21 A. All connected to determining whether bias was
22 a factor, really.

23
24 Q. Then we have the heading "Tactical". In fact, before
25 I do that - oh, no, I'll do that. Then we have the heading
26 "Tactical" and the first sentence of that is that:

27
28 *Investigators will ... review the ...*
29 *holdings to identify existing evidence*
30 *indicative of any ...crime.*

31
32 Do you see that?

33 A. Yes.

34
35 Q. Which is a fourth way of putting that?

36 A. Well, no, it's not. You're talking about individual
37 words, the tenet of what we're talking about is consistent.

38
39 Q. You don't accept that they are four different ways of
40 describing what it is that Parrabell was doing?

41 A. No.

42
43 Q. Then Parrabell investigators, of course, or Parrabell
44 officers, were only going to have regard to the historical
45 documentary record, as we have established - agreed - and
46 review of the original papers?

47 A. Yes.

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Q. So the effectiveness of the exercise depended entirely on the nature and quality of whatever old written records were available?

A. "Oral or written", did you say?

Q. Whatever old written records were available?

A. Yes.

Q. And the Parrabell officers had to form a view, derived only from whatever material of a documentary kind was available to them, as to whether a sexuality or gender bias was present. Some question like that was what they were asked to do?

A. Whether the crime - if in fact it was a crime - was motivated by bias.

Q. Is that the question, or is the question whether there was evidence indicative of that?

A. Well, I need to --

Q. That's a serious question, I want you to take that seriously, because under the heading "Tactical" --

A. I'm taking every question you give me seriously, I assure you.

Q. Good. Under the heading "Tactical", the question is said to be identifying evidence indicative of bias crime which is, I'm suggesting to you, different from what you have just said, which was "determine whether there was bias crime"?

A. Yes, but you're talking about a process here. So the investigators need to gather evidence and gather information and bring that all together and then determine, ultimately, whether or not there is a motivation with bias. So regardless of those words, the process, which is being outlined, is still followed and we still follow that same outcome as to the motivation of bias.

THE COMMISSIONER: Q. Mr Crandell, the problem with that response, if I may say so, is that if the question was simply "yes or no", that may well be a tenable proposition, but you well know that on the next page there were shades and grades of likelihood and possibility. So the persons concerned who were answering the questionnaire, as it were, or the problem, were asked in various shades and grades, "Was there evidence", "Did it appear likely" "appears

1 unlikely", or "no evidence". So the actual definition of
2 these terms was of some considerable importance because the
3 police officer concerned had to deal with four separate
4 theoretical outcomes. So it wasn't just, "Do you find it",
5 or "Do you think it's there or not?" So it wasn't just
6 a case of assessing the materials and sitting down and
7 saying, "Well, there's only one question here: do I think
8 it's present or not"; the questions purported to break
9 themselves into four components, each of which would have
10 a different consequence as we know. Isn't that right? So
11 it wasn't just a "yes or no" question.

12 A. No, but, Commissioner, what I'm saying is that they
13 had to go through a process in order to get --

14
15 Q. No, I know that, I'm not disagreeing with you at all.
16 Of course they had to go through a process. What I'm
17 saying though is Mr Gray is putting to you that there are
18 differences - Mr Tedeschi may take a different view, you
19 are taking a different view - as I understand you at the
20 moment, correct me if I'm wrong, each of the phrases that
21 Mr Gray has referred to you on this page are, in your mind,
22 synonyms?

23 A. Yes.

24
25 Q. Okay. And so on that basis, they then were asked to
26 answer the four separate questions, but each of those
27 concepts they should or were intended to understand as
28 being identical?

29 A. No, I don't - I don't think they needed to understand
30 them as identical.

31
32 THE COMMISSIONER: Well - okay. Over to you, Mr Gray.

33
34 MR GRAY: Q. Let's have a look at the top of page 3,
35 where this topic is continued. At the top of page 3, the
36 first bullet point - this is still under the heading
37 "Tactical" - is:

38
39 *Investigators will commence a physical*
40 *review of these files to determine --*

41
42 and I quote --

43
44 *if any bias crime indicators exist.*

45
46 Do you see that?

47 A. Yes.

1
2 Q. And in the second bullet point, where there is
3 reference to the bias crimes - it says "identification
4 form" but it is actually indicators form, the second bullet
5 point says:

6
7 *This form will assist investigators in*
8 *determining, based on the available*
9 *evidence, whether bias crime indicators*
10 *exist.*

11
12 Do you see that?

13 A. Yes.

14
15 Q. Now, those two sentences, the one I just read out from
16 the second bullet point and the first sentence from the
17 first bullet point, are indeed saying virtually the same
18 thing, aren't they - the question is: do bias crime
19 indicators exist, according to those two sentences?

20 A. Yes.

21
22 Q. But in the second sentence in the first bullet point,
23 it is said that the aim of using the bias crime form is not
24 to determine if indicators existed, it was to determine if
25 bias was involved. Do you see that?

26 A. Yes.

27
28 Q. Now, I put to you again, that's a very different
29 thing, isn't it?

30 A. I don't - I don't believe so. As an investigator,
31 I don't think there would be confusion over exactly what
32 was required of them.

33
34 Q. On page 5, under the heading "Follow up Enquiries"
35 another form of words is used. It says:

36
37 *... [the] focus will be in determining*
38 *whether any of the identified deaths were*
39 *in fact motivated by a sexuality or gender*
40 *bias ...*

41
42 Do you see that?

43 A. Yes.

44
45 Q. ie, not in determining whether there were indicators
46 of bias and not in determining whether there was evidence
47 of bias, but determining whether, as a matter of fact, the

1 deaths were motivated by bias. You don't agree that
2 they're different propositions?

3 A. No.

4

5 Q. On page 3, there is a heading "Investigative
6 Outcomes". Do you see that there, the reader is told that
7 at the end of the review, the completed forms will be
8 attached to an overall standard report summarising the
9 entire review and making the following findings - do you
10 see that?

11 A. Yes.

12

13 Q. And the four possible findings in this document are
14 expressed in language where they begin - I won't read them
15 all out but the first one is:

16

17 *There is evidence that sexuality or other*
18 *bias was involved ...*

19

20 Do you see that?

21 A. Yes.

22

23 Q. The second one:

24

25 *It appears likely ...*

26

27 Et cetera. The third one:

28

29 *It appears unlikely ...*

30

31 Et cetera. The fourth one:

32

33 *There is no evidence that ...*

34

35 A. Yes.

36

37 Q. Now, whatever else might be said about that language
38 in those four bullet points in the investigation plan, what
39 I want to draw your attention to at the moment is simply
40 this: that language, in setting out the four possible
41 findings that we're just looking at in the investigation
42 plan, is not the language that we find in relation to the
43 four possible findings in the coordinating instructions, is
44 it?

45 A. Yes.

46

47 Q. You are agreeing with me?

1 A. Yes, I am.
2
3 Q. Because if we turn to tab 15, which is the
4 coordinating instructions, [SCOI.75071] and we go to
5 page 4, the reader is told that for each indicator, the
6 following four findings are available, and they're set out
7 there. They're in quite different terms from the terms in
8 the investigation plan, aren't they?
9 A. Yes.
10
11 Q. If we go to the Bias Crime Indicator Form, which
12 appears at pages 4 and following of the coordinating
13 instructions --
14 A. Yes.
15
16 Q. -- the four possible findings are set out, aren't
17 they, under the heading "Indicators"?
18 A. Yes.
19
20 Q. Ten times over, for the ten different indicators?
21 A. Yes.
22
23 Q. And they are in the language that appears on page 4 of
24 the coordinating instructions?
25 A. Correct.
26
27 Q. Now, given that it is at least possible, on your
28 evidence, that the Parrabell officers were given both the
29 investigation plan and the coordinating instructions, was
30 some explanation given to them about why the two documents
31 had completely different possible findings?
32 A. As I said, I can't answer that.
33
34 Q. Weren't you in charge of this operation?
35 A. Yes, but I don't induct investigators into the team.
36 That's something that would have been done by the senior
37 investigators and there would have been ample explanation
38 as to exactly what they wanted those investigators to do.
39 To simply rely on a document and say, "Well, there are
40 inconsistencies in it" is inappropriate, in my opinion.
41
42 Q. Well, you may be reversing the problem, I suspect.
43 Can I suggest to you that the problem is that if they were
44 given two documents, both of which supposedly set out the
45 task they were obliged to undertake, and one said you do it
46 this way and the other said you do it in this quite
47 different way, they would be entitled to be puzzled,

1 wouldn't they?
2 A. Yes.
3
4 Q. And unless someone explained to them that you should
5 follow one and not the other, they wouldn't know what they
6 were to do, would they?
7 A. To my mind, it would be clear that they would follow
8 the coordinating instructions.
9
10 Q. Why would that be clear?
11 A. Because - clear because it indicates the bias crimes
12 indicator tool and it indicates exactly those categories
13 that are indicated in the coordinating instructions.
14
15 Q. So you think that they would have understood that they
16 should just ignore the investigation plan, at least in this
17 respect?
18 A. No, I think they would have listened to the induction
19 that was given to them --
20
21 Q. No, not my question?
22 A. -- and that they --
23
24 Q. Well, perhaps it is, really. Perhaps it is, sorry.
25 A. And I think that they would have been given some very
26 clear direction on what exactly was required of them.
27
28 Q. You think they would have been?
29 A. Yes.
30
31 Q. Why do you think those who drafted this - and I think
32 you have told us that it was some combination of Messrs
33 Middleton, Grace and Bignell - provided these two
34 completely different sets of possible findings?
35 A. I don't know.
36
37 Q. Do you accept that at least this is correct, that the
38 presence of the two very different formulations of what the
39 possible findings were may have been a source of confusion
40 for the Parrabell officers?
41 A. Yes, if they were given both of those documents, yes.
42
43 Q. And it may have been a source of uncertainty as to
44 what approach they should take?
45 A. Yes, which would have been corrected in any
46 instructions that were given to them.
47

1 Q. Well, would you accept, though, that one consequence
2 is that it is now, as we discuss these matters today,
3 impossible to know how the Parrabell officers actually went
4 about their task?

5
6 MR TEDESCHI: I object.

7
8 THE COMMISSIONER: Why?

9
10 MR TEDESCHI: He has given evidence extensively that the
11 exercise conducted by the actual officers was to fill out
12 that form, which is in the instructions.

13
14 THE COMMISSIONER: Yes. Well, that's his evidence, then.

15
16 MR TEDESCHI: That the exercise involved a discussion
17 after the form had been filled out. So for my learned
18 friend to say that police officers would have been confused
19 when they were doing the exercise, when the very exercise
20 itself involved the criteria that are in the instructions,
21 is misleading.

22
23 THE COMMISSIONER: All right, thank you. I will allow the
24 question and Mr Crandell can handle it. Repeat it, though,
25 in fairness, Mr Gray.

26
27 MR GRAY: Q. Would you accept that one consequence of
28 these two documents having these two different sets of
29 possible findings is that it is now impossible to know how
30 the Parrabell officers actually went about their task?
31 A. No, I don't accept that.

32
33 Q. Because one possibility - perhaps among many - is that
34 even though they ultimately filled out the form as it
35 appears in the coordinating instructions, in their right
36 hand, they also had in their left hand another document
37 which says, in effect, "The way to do it is this way",
38 which is different. Mustn't that have formed part of their
39 thinking?

40 A. No, you - the presumption is that they did get both
41 those documents, and I can't --

42
43 Q. Well, that's because you have said they may well have
44 done?

45 A. They may well have done, exactly.

46
47 Q. Yes, that's my question, based on that --

1 A. So that's not - that's not a certainty, at all.
2
3 Q. It's an uncertainty that you can't help us with.
4 A. And in any event - in any event - if they are provided
5 with those documents and they have questions about those
6 documents, whether that be on day 1 or day 365, I am
7 certain that they would have been given clear guidance on
8 exactly what is required of them and the objectives of this
9 particular operation. I am certain of that.
10
11 Q. Well, that's good, but supposing they had the
12 uncertainty but didn't ask a question and just proceeded
13 down what they thought was okay?
14 A. There was plenty of guidance for them in terms of the
15 governance process that had been set up, particularly
16 oversight by Detective Senior Constable Bignell and
17 Detective Sergeant Grace and Detective Inspector Middleton.
18
19 Q. Could you have a look at volume 2 - keep that one
20 open, perhaps as we've now got assistance, you can put that
21 one aside and pick up volume 2, and turn to tab 59,
22 [SCOI.77317].
23 A. Yes.
24
25 Q. Now, this document is called "Strike Force Parrabell
26 Induction Package".
27 A. Yes.
28
29 Q. Was that another document that the Parrabell officers
30 were given?
31 A. I would think so.
32
33 Q. Well, who composed this one?
34 A. I can't tell you definitively. It would have been
35 something that the investigation team produced.
36
37 Q. The same three people?
38 A. I would say so.
39
40 Q. Well, in terms of the date of it, although it's not
41 dated, on page 3 at the top of the page, the first
42 paragraph begins:
43
44 *In August 2015, Investigators commenced*
45 *a systematic review ...*
46
47 Et cetera. That might seem to indicate that perhaps this

1 document came a little later than the other two, do you
2 think, or not?
3 A. I'm uncertain.
4
5 THE COMMISSIONER: It has a date on the front page, hasn't
6 it?
7
8 MR GRAY: Oh, I am sorry.
9
10 THE COMMISSIONER: There is a date. It says "Published
11 2016".
12
13 MR GRAY: That does add clarity to the situation.
14
15 THE COMMISSIONER: It doesn't mean there wasn't
16 a predecessor, but at page 1 it seems to say April 2016.
17
18 MR GRAY: I'm grateful to you, Commissioner.
19
20 Q. That is of course right. Does that assist you,
21 though, Mr Crandell?
22 A. Yes, it does.
23
24 Q. How does it assist you?
25 A. Well, if that's the date that it was published, that
26 would be the date that the document was completed, I would
27 have thought.
28
29 Q. Except that to be fair to you, as the Commissioner
30 pointed out, it may have been that there was some earlier
31 iteration?
32 A. Yes.
33
34 Q. And you don't know?
35 A. No. I mean, there may have been some earlier
36 iteration. I would say very likely, on the basis that
37 Parrabell started on 30 August 2015.
38
39 Q. At any rate, what I wanted to draw to your attention
40 again is the words at the bottom of page 3, where again we
41 have the four possible findings listed - do you see that?
42 A. Yes.
43
44 Q. And they're expressed in the language of the
45 investigation plan, contrary to the language of the
46 coordinating instructions, aren't they?
47 A. Yes, they are.

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Q. So it seems, then, that it's at least possible that the Parrabell officers had three documents, two of which said that these were the four findings they should be looking at, and one of which said differently; correct?

A. Yes. I think - yes.

Q. Do you accept that the possibility of confusion that I referred to earlier is only highlighted by that state of affairs?

A. I don't believe there was confusion.

Q. Well, have a look at the bias crime indicators form that's embedded within the induction package. Do you see that in this version of the bias crime indicators form, under the heading "Indicators" in each case, rather than there being four indicators, as there are in the form actually used, there are only three, and they're in terms similar to three of the four so-called findings that are available in the induction package and the investigation plan?

A. Yes, with the exception of "insufficient information."

Q. That's right. So what were the investigators to make of this fourth document?

A. Well, I think that the indicators are extremely close and that the general tenet of what we wanted them to do would have been very clear to those officers. We're not talking about people that are simply robots. If they weren't certain, they would raise those matters. They're professional people and I would expect that. And I would expect then the senior leadership team to show them the way.

Q. Well, would you accept in the first instance that the senior leadership team should have got it right and had a consistent set of documents rather than completely inconsistent sets of documents?

A. Yes - yes, with the exception of any changes that may well have needed to have been made. I mean, it would be a simple process to work out which documents were used, because they would be the documents that the Parrabell operatives completed for the final report.

Q. I will come to that, and just to fast-forward for the moment - I will deal with the point you are driving at - and correct me if you think this is not correct, but the

1 completed forms, with the one exemption that I will come
2 to, adopt the language of the form as it appears in the
3 coordinating instructions?
4 A. Yes.
5
6 Q. That's your understanding too, I think.
7 A. I know that.
8
9 Q. Yes. So whatever it is that the investigators were to
10 make of this quite different so-called bias crime
11 indicators form, you can't help us with?
12 A. I don't agree that it's quite different.
13
14 Q. Pardon?
15 A. I don't agree that it's quite different.
16
17 Q. Well, the indicators --
18 A. In terms of the indicators.
19
20 Q. -- are three rather than four, and all three of those
21 three are in different terms from any of the four; correct?
22 A. The tenet of each of the indicators is consistent.
23
24 Q. Of three of them?
25 A. Yes, and one is "insufficient evidence", which an
26 investigator would come to that view, if in fact there
27 wasn't any evidence, or insufficient evidence, I would
28 think.
29
30 Q. Just picking you up on that suggestion, if it's
31 possible for you to have open tab 15 from volume 1,
32 [SC0I.75071], which is the one that was in fact used and
33 the one in the induction package, and we just need to look
34 at it once, because it's repeated 10 times over --
35 A. So, sorry, what volume am I looking at?
36
37 Q. I want you to compare volume 1, tab 15 [SC0I.75071] --
38 A. Yes, which I'm looking at, yes.
39
40 Q. -- page 5 --
41 A. Yes.
42
43 Q. -- on the one hand, with volume 2, tab 59, page 4,
44 [SC0I.77317]?
45 A. Yes.
46
47 Q. Okay? Now, in the induction package, the first

1 indicator is:

2

3 *There is evidence that sexuality or other*
4 *bias was involved in the death.*

5

6 Isn't it?

7 A. This is under "Indicators"?

8

9 Q. Yes. That's the first one in the induction package
10 version of the form?

11 A. Yes.

12

13 Q. But in the actual form, as used, the indicator is
14 "Sufficient information exists". Straightaway there is
15 a difference, isn't there? One says, "There is evidence";
16 the other says, "There is sufficient evidence"?

17 A. Well, it goes on to --

18

19 Q. Yes, I know it goes on, but straightaway there's
20 a difference, isn't there?

21 A. Well, I think you need to read the entire sentence.

22

23 Q. I'm going to read the entire sentence, don't worry.
24 But first of all, the first one in the induction package
25 doesn't mention sufficiency at all?

26 A. They are different words, I agree.

27

28 Q. It doesn't mention sufficiency at all, does it; it
29 just says, "There is evidence"?

30 A. Yes.

31

32 Q. And in the real form, if I might call it that, the one
33 in the coordinating instructions, what is said to be
34 required on the first finding is "sufficient
35 evidence/information", so it brings in some sort of
36 alternative of information rather than evidence - that's
37 a difference, isn't it?

38 A. Well, yes.

39

40 Q. Isn't it?

41 A. Yes.

42

43 Q. It must be intended to mean something, mustn't it?

44 A. Yes.

45

46 Q. And then it says "sufficient evidence/information
47 exists to prove beyond a reasonable doubt", something?

1 A. Yes.
2
3 Q. Nothing about that in the induction package version,
4 is there?
5 A. No.
6
7 Q. Quite different, in fact.
8 A. Well, it talks about evidence as to whether sexuality
9 or other bias was involved.
10
11 Q. The existence of evidence?
12 A. Yes.
13
14 Q. In the induction package?
15 A. Yes.
16
17 Q. But in the real form, "sufficient evidence to prove
18 something beyond a reasonable doubt". Don't you accept
19 that they are two different concepts?
20 A. No - I understand that there's conceptual differences,
21 but the tenet of what we want them to do is consistent.
22
23 THE COMMISSIONER: Q. Yes, but what you want them to do
24 is answer a precise question, don't you? And doesn't it,
25 therefore, matter what the term of that question is?
26 A. Yes, it does.
27
28 Q. Well, therefore, on the one hand, you are asking
29 "There is evidence", namely, a little bit of evidence or
30 a lot of evidence - it could mean either end of that
31 spectrum. The next question, though, is, "There is
32 sufficient evidence", and whoever drafted this draws the
33 distinction, whatever it might be, between evidence and
34 information; it's then added the criminal onus, as it were,
35 "exists beyond reasonable doubt"?
36 A. Yes.
37
38 Q. And it goes on to talk about wholly or partially?
39 A. Yes.
40
41 Q. It's a very different question, it is more complex and
42 it has many more components to it than the simple version
43 which is here. Do you agree with that?
44 A. I think they are different, yes, but what I'm saying,
45 Commissioner, is that I believe we are asking them whether
46 or not there's evidence of a bias crime.
47

1 THE COMMISSIONER: All right. Okay.

2

3 MR GRAY: All right.

4

5 THE COMMISSIONER: Q. And so the terms of the question
6 were immaterial, were they?

7 A. No, I'm not saying that, Commissioner. I'm not saying
8 that's immaterial. I'm simply saying that there is
9 a general tenet of what we're asking them to do.

10

11 Q. No, I understand the general tenet and I understand
12 the overall objective.

13

14

15 Q. But at the end of the day there was a particular
16 question put, as opposed to others?

17

18

19 THE COMMISSIONER: All right. Okay.

20

21 MR GRAY: Q. I'll just run through the others more
22 briefly, but in the case of the second indicator in the
23 induction package, it is expressed as, "It appears likely
24 that sexuality or other bias was involved" - "It appears
25 likely"?

26

27

28 Q. In the case of the real form, under the title
29 "Suspected Bias Crime", what appears is:

30

31 - ... Evidence/Information exists that the
32 incident may have been motivated by bias
33 but the incident cannot be proved beyond
34 a reasonable doubt that it was either
35 wholly or partially motivated by bias ...

36

37

38

39 Q. That is a rather different, related may be but quite
40 different way of formulating the question, isn't it?

41

42

43

44 Q. It may do, but - I'm putting this hypothetically - if
45 an investigator had the impression that the way it was put
46 in the induction package was another way of putting the
47 same thing, which is largely what you are saying, that the

1 tenet was the same, the investigator would have had a wrong
2 impression, wouldn't he, or she?
3 A. Yes, I understand what you're saying, but I do not
4 believe that an investigator would simply go off a document
5 that wasn't the document that was ultimately completed --
6
7 Q. But what if --
8 A. -- to get a completely different understanding of what
9 was required of them.
10
11 Q. But what if the investigator - I beg your pardon.
12 Sorry, say that again. I cut across you.
13 A. I'm just saying that I don't believe that an
14 investigator would go off the induction package document
15 when they are filling out a different requirement in the
16 indicators and then say that they are confused. I don't
17 believe that to be the case.
18
19 Q. But what if they weren't confused or didn't think they
20 were, but thought that the two questions were the same -
21 that to answer the question "it appears likely", was
22 effectively to answer the actual question? Supposing they
23 thought that?
24 A. I believe that they would have been guided by the
25 ultimate document that they were required to complete.
26
27 Q. Did you yourself ever have a conversation with any of
28 the investigators about these divergences among all the
29 various documents?
30 A. No, I didn't.
31
32 Q. Did you ever hear anyone else, eg, Messrs Middleton,
33 Grace or Bignell, have any such conversation with any of
34 them?
35 A. No - well, as I said, they - instructions would have
36 been given, no doubt. What was said in those instructions
37 I cannot tell you.
38
39 THE COMMISSIONER: Q. And who would have given those
40 instructions, do you think?
41 A. I believe one of those three officers.
42
43 Q. One of those three, all right?
44 A. If not all of them, Commissioner.
45
46 THE COMMISSIONER: All right.
47

1 MR GRAY: Q. How is it possible now for an objective
2 observer to be sure, today, that each Parrabell officer
3 carried out the review process in the same way?
4 A. It's entirely possible --
5
6 Q. How?
7 A. -- because all you need to do is have a look at the
8 finalised documents that are completed by the Parrabell
9 team --
10
11 Q. But how would that answer that question?
12 A. -- and have a look - I must have misunderstood your
13 question. Could you repeat that, please?
14
15 Q. Perhaps so. Perhaps I will put it again. Given that
16 what I'm calling the discrepancies or at least the
17 differences among these various documents and formulations,
18 how is it possible to be sure now, whatever may have been
19 written down on the completed forms, that the mental
20 processes engaged by this or that of the Parrabell officers
21 were the same?
22 A. Because of the governance structures that were put in
23 place and the review mechanism.
24
25 Q. Namely?
26 A. Namely, you had the commander of the operation, being
27 myself, you had a very experienced detective inspector in
28 charge and in charge of reviewing on a monthly basis; you
29 had a very experienced detective sergeant who was reviewing
30 on a weekly basis; and you had a detective senior constable
31 who was also a member of the Gay and Lesbian Liaison
32 Officers group, having a look on a daily basis as to
33 exactly what was happening, and what understandings, what
34 misunderstandings there were, how documents were to be
35 filled out, and I believe that you could tell from the
36 completion of those final documents whether or not there
37 was any confusion.
38
39 Q. Well, for the moment, before I move on to the form
40 itself more fully, let me ask you this: it is a more
41 overall question involving several aspects of what we have
42 been talking about yesterday and today. You would agree
43 that it's clear from many of the documents that we have
44 looked at over the course of the last day and a half that
45 the driving reason, perhaps the main driving reason but
46 certainly one driving reason, for the establishment of
47 Strike Force Parrabell was the perceived need for the

1 police to be seen to be responding to the list of the 88
2 deaths?
3 A. Yes.
4
5 Q. And to be responding to all the publicity relating to
6 the list?
7 A. Yes, and respond to those community calls.
8
9 Q. And to be seen to be responding to the suggestion that
10 the police had not done enough to solve cases where LGBTIQ
11 people were the victims?
12 A. Yes.
13
14 Q. And the response that you decided upon, as we know,
15 was the Strike Force Parrabell style of response?
16 A. Yes.
17
18 Q. And as we know, that was a review on the papers of all
19 88 cases, both solved and unsolved; correct?
20 A. Correct.
21
22 Q. Again, going over ground that has been covered - not
23 a reinvestigation of any of them, even the unsolved ones?
24 A. Yes.
25
26 Q. And, rather, instead, the forming of a view based on
27 the old papers, such as they were available, as to whether
28 a sexuality or gender bias was involved?
29 A. Yes.
30
31 Q. Right. Now, another approach that you could have
32 taken, no doubt among several other possibilities, would
33 have been this, wouldn't it: you could have said, "Well,
34 look, as to those of the 88 that are solved", which even
35 the media articles were acknowledging was around the 60
36 mark or so - there is little to be gained by going over
37 them again now, but as to the unsolved ones - which the
38 media were saying, rightly or wrongly, were about 30 - "the
39 police will commit to actually reinvestigating those."
40 That's something you could have done?
41 A. Yes.
42
43 Q. And why --
44 A. Sorry, with the resources that I had, though?
45
46 Q. Well, it's something the police could have done?
47 A. Yes. Yes.

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Q. Why wasn't that done?

A. To my - well, I didn't consider that at the time. The reason that I would not have gone down a reinvestigation is that not necessarily all of the unsolved cases would warrant reinvestigation. So there would - and there would then have to be some explanation as to why. For example, matters that were unsolved but a person had been acquitted on the grounds of self-defence, or where it had been no-billed or otherwise discontinued, I would say that that needs to remain as unsolved.

The resources and time frames, in my opinion, would have been far greater, had we decided to do reinvestigations, and also I would have to start somewhere in relation to that.

Q. Sorry, you would have to start somewhere?

A. I would have to start with which investigation.

Q. Oh, you would have to have a priority, as it were, an order?

A. I would think so, if I was going to use the same team to do the reinvestigations. But the - I mean, that's why we have an Unsolved Homicide Team because of the extent of inquiry that's required and the resources that are required for that. So I would be - I would have been very hesitant to go down a complete reinvestigation path.

The other thing is I think even though the solved matters were reviewed, I still thought there was benefit in that because there was - yes, there was a great deal of media, we all can agree on that, but I think it's helpful from a social policy perspective to have a look at the amount of gay hatred at that time, and certainly from the community's perspective, it was almost cathartic for the community to say that their - that a lot of not only the deaths of the time but also the serious assaults of the time, of gay men in particular, were a reality and not necessarily something that didn't have facts and investigation behind it.

Q. As to that last point, although it is mentioned in the final report, I acknowledge, that's not what the review process was looking at, was it?

A. Sorry --

1 Q. The extent of violence generally is not what the
2 review was looking at?

3 A. No, no. It wasn't. It was only to do with the 88
4 list, on the basis that that list had been compiled
5 predominantly, to my mind, from an ex-employee of
6 NSW Police Force, that being Sue Thompson, and I think in
7 order to identify those sorts of cases, it would be very
8 difficult.

9

10 Q. Identify which sorts --

11 A. Cases of gay hate, gay-hate death, or potential
12 gay-hate death.

13

14 Q. Over and above the 88, do you mean?

15 A. Yes.

16

17 Q. Thank you, because that leads to my next question,
18 which was going to be, and now is, another different
19 approach that you could have taken would have been to say,
20 "Not only will we look again at the unsolved cases from
21 among the 88, or indeed all the cases from among the 88
22 that Sue Thompson and Stephen Tomsen had put together, but
23 we'll also conduct a thorough search of all our unsolved
24 homicides in the relevant period and we'll also investigate
25 any additional cases that we find, ourselves, from among
26 that group, which might be gay-hate related or LGBTIQ bias
27 related"; you could have done that?

28 A. I could not have done that with the resources that
29 I was - that were committed to me from my assistant
30 commissioner. I don't believe that I could have done that.

31

32 Q. Well, the police could have done that?

33 A. Oh, the police generally, yes. But in my
34 circumstances, I don't believe that I - I think that would
35 have had to have been a larger strike force than what we
36 had.

37

38 Q. Perhaps so. But I think in your statement you very
39 fairly say that you didn't take any steps to research
40 whether there might have been more than 88?

41 A. No.

42

43 Q. But all I'm putting to you is that that step could
44 have been taken, perhaps not by you but by unsolved
45 homicide or whoever - could have been done?

46 A. Yes, it could have.

47

1 Q. Just on the point about the exercise that you did
2 choose, the paper-based review --
3 A. Yes.
4
5 Q. -- you would agree, wouldn't you, that throughout
6 almost the whole of the period in question, that's 1976 to
7 2000, there was no requirement in that period for the
8 possibility of sexuality or gender bias to be thought about
9 or recorded by those investigating crimes?
10 A. Yes - oh, well, with the exception of the gay advance
11 defence. So there was --
12
13 Q. With that exception, certainly?
14 A. Yes. So there was some cases that the police actively
15 sought to refute that defence.
16
17 Q. Cases of that kind?
18 A. Yes.
19
20 Q. But with that exception, which I understand, there was
21 no requirement in the procedures for the possibility of
22 sexuality bias or gay-hate bias to be considered or
23 recorded?
24 A. In the --
25
26 Q. From 1976 to 2000. There was no system whereby that
27 was to happen?
28 A. In terms of - no. So we don't - we still don't record
29 sexuality unless it's offered.
30
31 Q. No, sexuality bias?
32 A. Oh.
33
34 Q. The possibility of sexuality bias?
35 A. No, that's correct.
36
37 Q. Or gay-hate bias?
38 A. Yes. That's correct, yes. Sorry, just so I can be
39 clear. There is capability now within our current systems
40 to identify forms of bias. But not - certainly not
41 throughout the period that we looked.
42
43 Q. No, quite so. That's what I'm getting to?
44 A. Yes.
45
46 Q. And the electronic COPS system, computerised
47 operational policing system --

1 A. Policing system, yes.
2
3 Q. -- was not introduced until about 1994?
4 A. That's correct.
5
6 Q. And even it did not originally contain any provision
7 or option for the recording of such a possibility?
8 A. Yes, correct.
9
10 Q. And when it was altered - that is, COPS was altered -
11 in about 1999 --
12 A. Yes.
13
14 Q. -- so as to allow for the possibility of recording
15 such a factor under I think a heading called "Associated
16 Factor" --
17 A. Yes.
18
19 Q. -- it was still only an option, wasn't it? It wasn't
20 mandatory?
21 A. Yes, yes.
22
23 Q. Is it mandatory as we speak?
24 A. To turn their mind to --
25
26 Q. Yes, to turn their mind --
27 A. Yes.
28
29 Q. -- and to record it in the COPS system?
30 A. If an officer believes there is evidence of bias
31 motivation, then they are required to record that into the
32 COPS system and then that goes for further review to the
33 Engagement and Hate Crimes Unit.
34
35 Q. I think I will come to this, but that's a pretty
36 recent development, isn't it?
37 A. That was as a result of one of the 12 recommendations
38 from Strike Force Parrabell.
39
40 Q. So post 2018?
41 A. So post 2018, yes.
42
43 Q. I'll come to that. Now, in terms of the state of
44 play, 1976 to 2000, in that regard as just discussed,
45 didn't those realities tell you that the prospect of
46 meaningful results from a review of the old papers, all of
47 them predating those changes, were very remote?

1 A. No, I - no, I don't think so. Are you saying because
2 they weren't flagged as such on the system?
3
4 Q. Yes, yes. Well, not just flagged in the system, but
5 there was no obligation or expectation in the 70s and 80s
6 and 90s for someone - for an officer investigating
7 a homicide, let's say, to think about whether a gay-hate
8 bias was involved or to record it? There was no obligation
9 for that to be done?
10 A. No, that's true.
11
12 Q. So if an officer either didn't think of it, didn't
13 cross his or her mind, well, that would be that?
14 A. Yes.
15
16 Q. And if an officer did think of it, did cross his or
17 her mind but chose not to write it down, well, that would
18 also be that?
19 A. Yes.
20
21 Q. From the point of view of the Parrabell exercise -
22 there would be nothing there?
23 A. No. No, I - I don't think that's quite right. I hope
24 I'm on the same page as you here, but if - to my mind, the
25 cases were able to be reviewed regardless of
26 a categorisation in COPS, because that was only one small
27 part of a much larger body of evidence, if that makes
28 sense.
29
30 Q. Sure. And let's iron this out. I don't mean to
31 confine these questions to COPS, because COPS only came in
32 in the 90s?
33 A. Yes.
34
35 Q. So put COPS to one side. I'm speaking about
36 record-keeping generally?
37 A. Yes.
38
39 Q. In your Parrabell exercise, it's essentially paper
40 records?
41 A. Yes.
42
43 Q. Right? Now, if no obligation existed for any such
44 thing to be thought about or written down in the period in
45 question, and all you are reviewing is what was written
46 down --
47 A. Yes.

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Q. -- your prospects of identifying the existence of bias are low, aren't they?

A. No, I don't think so.

THE COMMISSIONER: Q. Mr Crandell, the problem was this, wasn't it? For example, if the sexual orientation of the deceased was not the subject of thought at the time and the investigating person in Parrabell was not to go and ask any questions of anybody, you would have to just have a stab at the sexual orientation from whatever was on file?

A. Yes.

Q. Okay.

A. Yes - yes.

Q. And, for example, there may be disagreements on other factual issues which may mean that there would be a whole series of questions which could not really be answered, given the fact that you were working on historical records?

A. Yes. Yes, the distinct possibility, Commissioner, that there was insufficient information contained in the records, and that's reflected in the findings.

Q. Yes. But I think Mr Gray is putting to you that whatever was in the records, you were driven entirely by that?

A. Yes.

Q. And if you were, or if an investigating officer was to, let's say, opine on motive, that would be such inferences that may or may not be able to be drawn on the records as they existed?

A. Yes.

THE COMMISSIONER: Okay.

MR GRAY: Q. Now, would you agree with this, that the paper review process necessarily meant, as well, that the classification of cases as involving bias or not involving bias, based only on the old records, having the drawbacks that they necessarily had, was inevitably going to come down to the subjective individual reactions or thoughts of the various Parrabell officers?

A. No. No, I don't think that's right, because they're looking for the evidence, they're looking through a great deal of material to find whether or not an indicator exists

1 and then why they think that indicator does exist, and then
2 ultimately putting all that together to determine
3 a motivation, so they're looking at a motivation.

4

5 Q. I understand that that's what they are hoping to
6 arrive at?

7 A. Yes.

8

9 Q. That's the end game or the goal?

10 A. Yes.

11

12 Q. But to get there, according to the very processes that
13 you have just described, they are making subjective
14 assessments along the way, aren't they, as to their view as
15 to whether something amounts to something worth considering
16 or not?

17 A. Yes.

18

19 Q. I'll go through some of the other emails in more
20 detail later, but could you just have a look at volume 4,
21 tab 112, [SCOI.74554]. Now, this is an email chain --

22 A. Yes.

23

24 Q. I only need to ask you about part of this, but it is
25 an email chain between mainly Mr Middleton and Dr Dalton,
26 and it is in mid 2017. So it's well after the Parrabell
27 officers have essentially completed their work, and it's
28 while the academics are doing their work.

29 A. Yes, I'm not sure whether there were some Parrabell
30 officers, though, working on those Taradale cases at the
31 time.

32

33 Q. Maybe so, but I'm just orienting you in terms of where
34 we are in the time frame?

35 A. Yes.

36

37 Q. So on the second page, Dr Dalton asks Mr Middleton
38 about the question of publishing the actual classifications
39 arrived at of the 88 cases.

40 A. Sorry, is this in Dr Dalton's original email?

41

42 Q. Are you at tab 112?

43 A. Yes, I am.

44

45 Q. It's on the second page of the chain. It is
46 page numbered 0002 at the top.

47 A. Yes, yes.

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Q. And where he says:

Hey - for what it's worth Craig --

Do you see that?

A. Yes, I can see that.

Q. So he is raising the topic of whether the actual classifications of the 88 cases, as bias or not bias, et cetera, should be published?

A. Yes.

Q. That's the topic?

A. Yes.

Q. Mr Middleton on the front page of the chain discusses that topic, the pros and cons of doing that. And do you see about halfway down in the first paragraph of Mr Middleton, the paragraph that begins with "I agree", on the front page --

A. Yes.

Q. -- about halfway down that paragraph, he says this, if you can find it, roughly in the middle of that paragraph:

Even within the review team itself we had differences of opinion on cases and which category it was placed.

A. Yes.

Q. And no doubt you would accept that that's so?

A. I do.

Q.

In some respects, some of these matters could almost sit in 2 categories. But ultimately we had to make a choice, of which opinion played a part.

Do you see that?

A. Yes.

Q. He says:

If the truth be known a lot of these

1 *matters were placed in their category based*
2 *on our "collective opinion".*

3
4 Do you see that?

5 A. Yes.

6
7 Q.
8 *You already know this --*

9
10 he says to Dr Dalton --

11
12 *hence why your results differ from ours,*
13 *essentially those differences are based on*
14 *your opinion as opposed to our opinion.*

15
16 Agreed?

17 A. Yes.

18
19 Q. He says:

20
21 *Whose opinion is right? I would suggest*
22 *both are.*

23
24 A. Yes.

25
26 Q. Doesn't that suggest to you that, in Mr Middleton's
27 mind, which I'm not criticising, ultimately, these
28 questions were questions of opinion?

29 A. Yes, they are - it's very difficult to identify the
30 animus. I accept that.

31
32 Q. And the choices made by the officers necessarily were
33 opinions and necessarily were subjective. Again, I'm not
34 criticising that; it's just the reality, isn't it?

35 A. Yes, it is, but it's not necessarily the individual
36 officers that are making those final determinations. So --

37
38 Q. Well, it's the individual officers first along the
39 process --

40 A. Yes.

41
42 Q. -- who make calls or judgments based on their own
43 opinions, and then there is the process of review that you
44 have described --

45 A. Yes.

46
47 Q. -- where there is a kind of collective opinion arrived

1 at?

2 A. Yes.

3

4 Q. But still opinion, and thus still subjective, don't
5 you agree?

6 A. Yes. Well, there must be subjectivity in it. You
7 cannot be completely objective, I don't believe.

8

9 Q. Indeed.

10 A. It was a difficult process.

11

12 Q. Yes. And indeed, when the academics produced their
13 final report as part of the Parrabell report itself -
14 I will just show you that, it's in exhibit 1, that's tab 2,
15 [SCOI.02632]?

16 A. Sorry, you said tab 2?

17

18 Q. Yes, it's the Parrabell report itself, and I would
19 just like you to turn to page 69, if you would. Maybe
20 start at 68. I will take you to 68 first. The academics
21 are describing, summarising, the way the Parrabell
22 detectives went about their task?

23 A. Yes.

24

25 Q. And they set out the possible findings?

26 A. Yes.

27

28 Q. They say on page 69 that they scored each case using
29 the indicators, et cetera?

30 A. Yes.

31

32 Q. And then the paragraph I wanted to take you to is the
33 one below that, beginning:

34

35 *Although each indicator was scored --*

36

37 Do you see that?

38 A. Yes, I do.

39

40 Q. The academics say that the summary or finding was not
41 determined by counting the number of yes or nos, et cetera?

42 A. Yes.

43

44 Q. And they say this:

45

46 *Rather, the process --*

47

1 meaning the police process --

2
3 *was described as intuitive and relied on*
4 *qualitative data in the form of contextual*
5 *information derived from analysing each*
6 *case.*

7
8 A. Yes.

9
10 Q. And they go on to say that the detectives would take
11 into account the "Summary of findings" section, which they
12 say was often rich in detail, and they say that:

13
14 *... allowed a view of whether bias was*
15 *involved to emerge.*

16
17 Now, the word I wanted to focus on was "intuitive". That
18 tells us it's subjective and personal to the people doing
19 it, doesn't it? It's not objective; it's not determined by
20 a system; it's, according to this analysis, intuitive.

21 A. Yes, but I don't know that that's intuitive to each
22 individual investigator. That's - that could well be an
23 intuition from the experienced investigators that come to
24 that finding. So --

25
26 Q. Well, the academics - and I'm not holding you to this
27 because you didn't write this, although you, as we will see
28 later, were involved to some extent in its drafting, but
29 they say the process itself was described as intuitive.
30 Would you accept that?

31 A. Well, to an extent, yes. They need to apply their
32 intuition to the facts and circumstances and evidence that
33 they had a look at.

34
35 THE COMMISSIONER: Q. It would be an extreme case, as it
36 was, where, for example, there was only a person of
37 interest about whom you were not going to make any
38 inquiries beyond that which was in the papers?

39 A. Yes.

40
41 Q. Or alternatively where there was no person of
42 interest?

43 A. Yes.

44
45 Q. And so in the absence of a person of interest or even
46 with limited material about the person of interest, the
47 question of how you would ever come to terms rationally

1 with what that person's motivation might have been at the
2 time would be an extremely difficult one?
3 A. Yes, it is.
4
5 Q. And about which reasonable minds may differ?
6 A. Yes.
7
8 THE COMMISSIONER: Okay.
9
10 MR GRAY: Q. Could I just ask you again, isn't it the
11 reality that the paper review process that Parrabell
12 consisted of meant that the classification of cases as
13 involving bias or not involving bias did come down to
14 subjective opinions of the individual officers and then of
15 a kind of collective of the officers?
16 A. Well, I think it's more about intuition on the basis
17 of the facts and evidence that they have had a look at. So
18 there may well be circumstances that surround a person's
19 intention, and there may not be. It's a matter for them to
20 bring that material together and then come to a view on
21 whether or not the crime was motivated by gay hate.
22
23 Q. And you would accept, as you just did, that the word
24 "instinctive" --
25 A. "Intuitive".
26
27 Q. I'm sorry, "intuitive", beg your pardon - covers that?
28 A. Yes, you have to apply intuition to those facts,
29 I would have thought.
30
31 Q. Can I just take you to the coordinating instructions
32 in a little bit more detail, that's volume 1, tab 15,
33 [SCOI.75071].
34 A. Yes.
35
36 Q. I'll pass over page 1 and just move to page 2, which
37 has the heading "Mission" at the top. As with the
38 investigation plan, I'm going to suggest to you that there
39 are some variations in the way the task is described.
40 Under the heading "Mission", the reader is told that the
41 purpose of the review is to determine if an anti-gay bias
42 was involved.
43 A. Sorry, I'm on page 3. You said under "Mission".
44
45 Q. Under the heading "Mission" at the top of the page?
46 A. Yes. Yes, that's correct.
47

1 Q. It says:

2

3 *The purpose of the review is to determine*
4 *if an anti-gay bias was involved in any of*
5 *the deaths.*

6

7 A. Yes.

8

9 Q. That is, not to determine if there was evidence, but
10 to determine if the bias was there; correct?

11 A. Yes.

12

13 Q. The next paragraph, the first one, under the heading
14 "Execution", says that the objective is to identify if
15 there is evidence indicative of bias crime.

16 A. Under "Execution"?

17

18 Q. Yes.

19 A. Yes.

20

21 Q. Which is, I'm suggesting to you, and perhaps your
22 answer is the same, a different question from determining
23 whether bias was in fact involved?

24

25 MR TEDESCHI: I object. It's been asked and answered many
26 times.

27

28 THE COMMISSIONER: That's all right. The answer is there,
29 I will allow it. Yes, go on.

30

31 MR GRAY: Q. Do you agree with that? This is the first
32 time I have asked you about this document in this respect?

33 A. No, well, I would refer to my earlier answer and I
34 don't - I think that, yes, if they want to identify if
35 anti-gay bias is involved in any of the deaths, then they
36 would take into account the evidence that would indicate
37 that.

38

39 Q. Well, in the fourth paragraph under the heading
40 "Execution", after saying that the strike force was not
41 going to be reinvestigating, the reader is told that the
42 primary focus:

43

44 *... will be in determining whether any of*
45 *the identified deaths were in fact*
46 *motivated by an anti-gay bias ...*

47

1 Do you see that?
2 A. Yes.
3
4 Q. So is that the proposition you adopt as being the main
5 objective of this strike force - to determine whether in
6 fact anti-gay bias motivated a death?
7 A. Yes - well, as that sentence continues, though, in
8 context, it also says "rather than identifying and
9 prosecuting offenders."
10
11 Q. Sure.
12 A. So that indicates to the investigator that you are not
13 necessarily here to identify offenders or prosecute
14 offenders; you are here for a review to determine
15 motivation and what that motive is.
16
17 Q. Well, accepting that, the objective, according to this
18 sentence, was to make a determination as to whether the
19 deaths were in fact motivated by the bias?
20 A. That's what --
21
22 Q. That's what it says. Rather than an objective of
23 identifying whether there were indicators indicative of
24 bias or indicators which might suggest the possibility of
25 bias; correct.
26 A. No. So this is a process. We're talking about
27 a process here. It's a process of gathering the evidence
28 to determine whether there is a motivation of bias.
29
30 Q. Okay. Now, the second paragraph under the heading of
31 "Execution" contains a definition of "Bias Crime
32 Indicators", and it says that it comes from the
33 Massachusetts model. Do you see that?
34 A. Yes.
35
36 Q. I'll take you to that model in a minute. In fact,
37 I'll take you to that model now. You need to have volume 9
38 for this, and it's tab 228, [SC01.82087]?
39 A. Yes.
40
41 Q. This is the Massachusetts document in question. Have
42 you seen this document before?
43 A. No.
44
45 Q. You've never seen it?
46 A. No, not to my memory, no.
47

1 Q. That will enable me to be pretty quick, in that case,
2 if you haven't seen it. If we turn to page 15 - the pages
3 are numbered in black boxes down at the bottom --
4 A. Yes.
5
6 Q. -- we have in a box at the top of that page the
7 definition of "bias crime indicator", which is the one
8 found in your document, and then starting about halfway
9 down the page there's a list of bias crime indicators. The
10 first one, do you see, being racial, ethnic, gender and/or
11 cultural differences?
12 A. Oh, yes.
13
14 Q. And then in the bullet points, the various sort of
15 factors that feed into that topic of difference?
16 A. Yes.
17
18 Q. Then they're not numbered, but there are, in all, if
19 you care to count them, nine of those indicators in that
20 box. It may be common ground - it seems clear enough -
21 that that's where the nine indicators came from?
22 A. Oh, okay.
23
24 Q. The footnotes to your document, to your report, say
25 that they came from that document, and that's where they
26 seem to be, but since you haven't seen it, I won't trouble
27 you with it further. Go back to the coordinating
28 instructions, and go to page 4 - this is at tab 15,
29 [SC0I.75071] and here are the four possible findings set
30 out. Now, first of all, may I ask you, what was then or is
31 now, if there is any difference, your understanding of the
32 word "finding"?
33 A. In a sentence here or just generally?
34
35 Q. Well, generally, and if need be, if there's some
36 special meaning that you would give it in this sentence?
37 A. Look, I suppose a finding is after reviewing all the
38 facts and circumstances, to come to an outcome that would
39 be supported by the material that has been reviewed.
40
41 Q. That has been --
42 A. Supported by the material that has been reviewed.
43
44 Q. You are an experienced police officer, to put it
45 mildly, and I notice that you have a legal qualification as
46 well?
47 A. I don't use that.

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Q. Nonetheless, it's been achieved?

A. It's there, yes.

Q. Is your understanding that, in a legal sense, in court contexts, a finding - a finding of fact - is in the nature of a definitive decision or arrival at a view that is definitive, rather than a possibility or indicative; it is a finding that something is indeed the case?

A. Yes, I guess in a court of law, yes, I would agree.

Q. And is that the sense that the word was being used here?

A. I don't believe so, because if I'm saying for an investigator to make a finding, that would mean that - I mean, I wouldn't question the Commissioner's or a judge's finding, so no, it would be something - and obviously we've had discussions on outcomes and where we should allocate different bias crimes. So I would not say that that's a definitive outcome at the investigator level.

Q. Well, what were the investigators - sorry, the Parrabell officers - told about what they were to make of the word "findings" there?

A. I can't tell you.

Q. Well, they appear, the four findings listed on page 4, 10 times over throughout the form, don't they --

A. Yes.

Q. -- under the heading "Indicator", so that what are called on page 4 "Findings" appear each time in the form under the heading "Indicators"?

A. Yes.

Q. Now, the first possible finding or, in the form, indicator, is "Bias Crime"; agreed?

A. Yes.

Q. And the pointer, if that's an appropriate expression to use, is that the matter which would mean that the officer would come to the view that there was a bias crime, was:

- Sufficient evidence/information exists to prove beyond a reasonable doubt that the incident was either wholly or partially

1 *motivated by bias towards one of the*
2 *protected categories and constitutes*
3 *a criminal offence.*

4
5 A. Yes.

6
7 Q. What were the protected categories?

8 A. I can't tell you that.

9
10 Q. Well, might it be that the language there reflects the
11 reality that these indicators were generic, in the sense
12 that they weren't peculiar to LGBTIQ type bias but other
13 types of bias as well?

14 A. That's possible. I think that the term of "finding",
15 though, is used in a different context to that of
16 a courtroom.

17
18 Q. Sorry?

19 A. Sorry. I think the term "finding" is used in a
20 different context to that which it's known to be in a
21 courtroom.

22
23 Q. But what is that --

24
25 THE COMMISSIONER: Sorry - I'm sorry, I'm interrupting --

26
27 MR GRAY: Q. What is that different context and why do
28 you think it is a different context?

29 A. Well, because for a police officer to find something
30 is different from a judge, and I don't think that we would
31 be saying, "Well, the investigator's made a finding,
32 therefore we're bound by that finding". I think that would
33 be not right, in the right context.

34
35 Q. Well, all right, what about the expression
36 "evidence/information" - what is the distinction being made
37 there?

38 A. I think that would probably be an all-encompassing
39 term, if it is evidence or information.

40
41 THE COMMISSIONER: Q. But why draw the distinction?

42 A. Well, it may be that there is information in the file
43 that does not amount to evidence. It might simply --

44
45 Q. So that would be enough, would it?

46 A. Well, if, in combination with other factors --

47

- 1 Q. Well, it doesn't say "in combination". Is the stroke
2 meant to be an alternative, namely, you could either have
3 sufficient information or you could have - I am sorry,
4 information or sufficient evidence, you could have one or
5 the other, or have you got to have both?
6 A. I believe so, Commissioner, if the information --
7
8 Q. When you say you believe so, does that mean that the
9 person filling out the form would be satisfied either if
10 there was, in their view - whatever this means - sufficient
11 evidence, or alternatively, also information, whatever that
12 means?
13 A. Yes, to prove --
14
15 Q. I understand what it is meant to do --
16 A. -- beyond a reasonable doubt.
17
18 Q. -- but I'm trying to understand qualitatively what
19 the officer filling out this form was intended to
20 understand the term "sufficient evidence" as opposed to
21 "information", to mean?
22 A. Sorry, your question, Commissioner?
23
24 Q. I'm sorry, as the commanding officer, I'm assuming
25 that before this form went out finally and was given to the
26 various people, you must have spent a good deal of time,
27 given the importance you placed upon this exercise, in
28 trying to understand the terminology used in the questions
29 that were going to be posed of the various experienced
30 investigators you talk about --
31 A. Yes.
32
33 Q. -- and who were going to fill out the form? Do I take
34 it from your answers that you did not, in fairness to you,
35 or did you, give consideration to whether there was
36 a distinction to be drawn between the term "sufficient
37 evidence" as an alternative, so it seems, to "information",
38 or did you not give any consideration to that? Did you
39 regard them as synonyms, if so, why did you choose to have
40 alternatives?
41 A. I did regard them as synonyms.
42
43 Q. I'm so sorry?
44 A. I do regard them as synonyms, because --
45
46 Q. But why have them, though?
47 A. Why have them?

1
2 Q. Why have an alternative if they're meant to be
3 synonyms?
4 A. Because of the later part of that instruction that
5 says "to prove beyond a reasonable doubt", so that would --
6
7 Q. But that's an onus point. Why would that affect the
8 question of evidence as opposed to information - the mere
9 fact that the criminal standard was being imported?
10 A. Well, I was giving general guidance, I saw that as
11 general guidance to the officers, it's not a --
12
13 Q. So it's only guidance?
14 A. Sorry?
15
16 Q. It's only guidance, then?
17 A. It's - yes.
18
19 Q. And again, Mr Gray has asked you the question, and
20 I would like to know, what were the protected categories?
21 Is that defined in the document?
22 A. I don't - looking at the document, I can't tell you
23 what the protected categories are, but I'm happy to go and
24 research that.
25
26 Q. No, it's not a question of researching it. If the
27 person who was filling this form out, as you have, I think,
28 intimated on a number of occasions, you have been taken to
29 variations of the form, but if this was the ultimate form,
30 I'm just asking, is there somewhere in the document that
31 tells the person filling it out what are the protected
32 categories?
33 A. Not that I'm aware of.
34
35 Q. Right. So - okay. So there is no definition of that
36 term.
37 A. I --
38
39 Q. So what was the person filling out the form, from your
40 point of view or understanding, meant to construe by the
41 term "protected categories"?
42 A. Well, I think if they were uncertain about the
43 protected categories, that they should then seek guidance
44 from the senior investigators --
45
46 Q. No, no, it is not a question of seek, it is not
47 a question of need to know. This is a form that presumably

1 has gone through some changes --

2 A. Yes.

3

4 Q. -- in the coordinating instructions and various other
5 things, and it's an exercise which I understand and accept
6 entirely that you thought was both useful and necessary?

7 A. Yes.

8

9 Q. But am I understanding you now to tell me that first
10 you did give thought to the notion and that you thought
11 that sufficient evidence should be interpreted by the
12 officer as synonymous with each other, so --

13 A. Sorry, Commissioner, I don't think I actually sat down
14 and gave thought to those particular words and the
15 differences between them.

16

17 Q. Well, isn't that what this is all about? If you
18 didn't give any thought to this individual terminology,
19 what on earth were you asking these people to do by
20 allocating all these resources? Weren't the words
21 important? And weren't you intending each officer to take
22 seriously the task of sitting down, reviewing either small
23 amounts of material or vast volumes of material, and then
24 sitting down to answer the questions?

25 A. Well, I wanted it to be broadly understood, because
26 I don't want officers to necessarily look at things and
27 then say, "Well, that's not evidence, that's information,
28 therefore I disregard it". So I want them to take into
29 account and regard everything: whether that be evidence or
30 information, does that show that there is a bias crime?
31 That's what I want them to understand.

32

33 Q. But - I'm sorry to have to come back to it. In the
34 first question, Mr Gray will come to others, you can't help
35 me at the moment in terms of understanding what "protected
36 categories" meant?

37 A. I don't know what that refers to.

38

39 THE COMMISSIONER: All right, thank you.

40

41 MR GRAY: Q. Let me ask you about another phrase that
42 appears in this formulation. What the investigator -
43 sorry, what the officer needs to find in order to say "yes"
44 to the "Bias Crime" possible finding is sufficient
45 evidence/information existing to prove beyond a reasonable
46 doubt either whole or partial motivation of bias?

47 A. Yes.

1
2 Q. Now, the "beyond a reasonable doubt" is the criminal
3 standard of proof?
4 A. Yes.
5
6 Q. To be contrasted with the lower standard of proof
7 applicable in a civil case, namely, balance of
8 probabilities?
9 A. Yes.
10
11 Q. You would be well aware of that, of course?
12 A. Yes.
13
14 Q. And the beyond reasonable doubt standard in criminal
15 cases is deliberately set very high --
16 A. Yes.
17
18 Q. -- isn't it? It's a very difficult and demanding
19 standard to meet?
20 A. Yes.
21
22 Q. Because of the very serious consequences of a guilty
23 verdict in a criminal case?
24 A. Yes.
25
26 Q. Including, sometimes, loss of liberty.
27 A. (Witness nods).
28
29 Q. Do you think now, or did you think then, that that
30 very high and difficult standard, beyond reasonable doubt,
31 was appropriate for considering whether, in a review
32 exercise on the papers, known to be likely to be incomplete
33 or imperfect - whether the incident was wholly or partially
34 motivated by bias? Was it appropriate that they had to
35 reach that determination, if at all, only beyond
36 a reasonable doubt?
37 A. I think yes for the first category.
38
39 Q. Why?
40 A. Because that showed an almost certainty that bias was
41 involved in that crime, and that's what I was looking for.
42
43 Q. Well, obviously you can look at this again if you need
44 to, but I don't want to keep asking you to get folders in
45 and out. You will recall that in the Parrabell report,
46 when you published it, you said - this is at page 21 - that
47 the Parrabell investigators had to answer a simple

1 question - your words - "is there evidence of a bias
2 crime"? Now, actually, the question, not simple at all,
3 was not that question but, just on the first possible
4 finding, it was whether something had been proved beyond
5 a reasonable doubt, not whether evidence existed; agreed?
6 A. Yes.

7
8 Q. So why did you say that in the report?
9 A. What I meant by saying "was there evidence" was that,
10 first of all, was there a bias crime or was there not
11 a bias crime? That was the pure distinction that I wanted
12 to work out. Whether --

13
14 Q. And you thought that you would communicate that by
15 saying that the simple question, singular, simple, one
16 question, that they had to answer, was, "Is there evidence
17 of bias crime", did you?
18 A. That was a start, yes.

19
20 Q. Well, you don't say in the report that it was a start;
21 you said that's what they had to do?
22 A. This is a report after the fact --

23
24 Q. It is.
25 A. -- of the investigations, and my view was that that
26 was a question that was relevant.

27
28 Q. Well, I will read the sentence:

29
30 *To be clear --*

31
32 you said in the report --

33
34 *NSW Police ... investigators assigned to*
35 *Strike Force Parrabell applied a general*
36 *tenet to case classification by answering*
37 *a simple question:*

38
39 *"Is there evidence of a bias crime."*

40
41 Now, looking at page 4 of the coordinating instructions,
42 that's just not true, is it?

43 A. Well, the final report wasn't meant to go down every
44 path and examine every word that is said. The final report
45 was just that.

46
47 THE COMMISSIONER: Q. But it was intended, surely

1 accurately, to tell the public precisely the question that
2 was posed, wasn't it - or not?

3 A. Yes, Commissioner, because I wanted to understand
4 whether there was a bias crime or whether there wasn't.

5
6 Q. No, but you were publishing to the world at large,
7 because you were telling the public, "We've done our
8 investigation and this is what we've come up with, and
9 we've got Flinders who are running their own study on
10 this." All Mr Gray is putting to you, I think, is that the
11 publication of the ultimate question doesn't reflect the
12 exercise that the officers undertook.

13
14 MR TEDESCHI: Your Honour, I rise to voice my concern that
15 the question is somewhat misleading - not your question,
16 Commissioner, but the overall question from my learned
17 friend - because four pages later, he divides it into the
18 four categories.

19
20 THE COMMISSIONER: Okay, fair enough.

21
22 MR TEDESCHI: So it is misleading to suggest that he has
23 just presented this one question and provided an answer to
24 it.

25
26 THE COMMISSIONER: All right, fair enough. Mr Gray, you
27 will accommodate that.

28
29 MR GRAY: Yes, I will. I just observe that my friend is
30 mistaken. Four pages later in the report, there is no such
31 thing.

32
33 MR TEDESCHI: Page 24:

34
35 *Of the [88] cases that were reviewed --*

36
37 and it lists the four categories.

38
39 MR GRAY: Well, I won't make submissions about it now.
40 Page 24 says what it says and my friend can make
41 submissions about that no doubt.

42
43 MR TEDESCHI: Your Honour, it is not a question for
44 submissions, it is a question to be fair to the witness.

45
46 THE COMMISSIONER: Well, Mr Tedeschi, I have read page 24
47 and that doesn't say what you say it says at all.

1
2 MR TEDESCHI: The top of the page describes the four
3 different categories --

4
5 THE COMMISSIONER: Where is that?

6
7 MR TEDESCHI: On my copy, the very top of page 24, above
8 a circular diagram. It says:

9
10 *Of the 86 cases that were reviewed --*

11
12
13 THE COMMISSIONER: Yes.

14
15 MR TEDESCHI: Then it divides them into different
16 categories. So I submit it is an unfair question to
17 suggest --

18
19 THE COMMISSIONER: I don't agree with you, Mr Tedeschi.
20 What the top of page 24 does is to say, if I may say so, on
21 the face of it, that there were different categories, all
22 right? If elsewhere in this document it says that the
23 officers answered four different questions, that's one
24 thing. If it is said earlier on that there was a question,
25 simple question, posed, and if the analysis, for whatever
26 reason explained or unexplained, breaks them up into four
27 different categories, that does not indicate that the
28 questions that the officers answered were four in number.

29
30 So I do not agree with you that at the moment, on the
31 basis of what I'm looking at - it's true that at the top of
32 page 24 the report does say they were reviewed and in
33 certain cases there was evidence found of suspected bias
34 crimes or so on. It does not say, unless it is elsewhere
35 in the report, that officers were invited to address four
36 different questions.

37
38 Now, what is said earlier is there was a simple
39 question posed. Now, if that's right, then you are right,
40 there is a juxtaposition between what is at the top of 24
41 and what is earlier said, but it doesn't follow that the
42 report itself is explicit, namely, that there was more than
43 one simple question asked, because another reading of the
44 top of page 24 is that the officers, on the basis of
45 whatever answers they got or whatever material they
46 analysed, were able to find "Bias Crime" in a certain
47 percentage and "No Bias Crime" in others. It doesn't

1 follow that the four questions were asked at all.

2

3 MR TEDESCHI: But it necessarily implies, Commissioner --

4

5 THE COMMISSIONER: No, it doesn't, Mr Tedeschi, please.
6 It is open to the cross-examiner, on the basis of this
7 document - you are right, you can ask whether this witness
8 intended, when this document was drafted and published to
9 the world, to indicate that there were four questions
10 asked. You may be able to ask that question. His
11 intention, though, may not have manifested itself in the
12 text of the report as it went public. That will be
13 a matter for me if it becomes relevant in due course.

14

15 MR TEDESCHI: If the Commissioner pleases.

16

17 THE COMMISSIONER: Thank you.

18

19 MR GRAY: Q. Let me, Mr Crandell, try to deal with the
20 point that Mr Tedeschi has been making this way, in the
21 time remaining - do you have the report in front of you?

22

A. Yes.

23

24 Q. Page 21.

25

A. Yes.

26

27 Q. This is the point that I was putting to you.

28

A. Yes.

29

30 Q. You say, or the report says:

31

32 *To be clear, ... investigators assigned to*
33 *Strike Force Parrabell applied a general*
34 *tenet to case classification by answering*
35 *a simple question:*

36

37 *"Is there evidence of a bias crime?"*

38

39 A. Yes.

40

41 Q. I have suggested to you that that's not accurate.
42 I have put that to you and you have begun to answer it.
43 Now, the point that Mr Tedeschi is directing attention to
44 is at the top of page 24, but can I just start with
45 page 23, do you see that it's got a heading "Findings"?

46

A. Yes.

47

1 Q. That wasn't unintentional, I take it; the public was
2 being told that Strike Force Parrabell had arrived at
3 findings; correct?
4 A. Yes, I don't think that's unusual for reports of this
5 nature to have findings or outcomes.
6
7 Q. I don't suggest that it is unusual, but I thought you
8 were intending to say earlier that the use of the word
9 "findings" in the coordinating instructions was not to be
10 taken in some definitive sense but in some lesser sense?
11 A. Yes, well, these are the findings of a process of
12 Parrabell, not an internal document. So - I - I'm not
13 meaning "findings" in the legal sense here.
14
15 Q. Okay. On page 24, which is the page that my learned
16 friend was pointing to, there is a pie chart and a graph.
17 And the line at the top, or the few lines at the top, say:
18
19 *Of the 88 cases that were reviewed - 8*
20 *cases --*
21
22 sorry --
23
24 *... 86 cases that were reviewed - 8 cases*
25 *(9%) found evidence of bias crime ...*
26
27 Do you agree?
28 A. Yes, yes.
29
30 Q. And then different numbers for other classifications.
31 A. Yes.
32
33 Q. Now, the point that I'm getting at is this: that both
34 the assertion on 21 that there was just one simple
35 question, "Is there evidence of a bias crime", and the
36 statement on the top of page 24, "8 cases found evidence of
37 bias crime", do not correspond with the question that the
38 officers actually had to answer, namely, the question on
39 the top of page 4 of the coordinating instructions, because
40 the question was not, "Is there evidence of bias crime",
41 was it?
42 A. Yes, but --
43
44 Q. No, please - it was not, "Is there evidence of bias
45 crime", was it?
46 A. In the coordinating instructions, are you talking
47 about?

1
2 Q. On page 4, the first bullet point, the question is
3 not, "Is there evidence of bias crime", is it?
4 A. No, it talks about sufficient evidence or information.
5
6 Q. Correct. And on page 24 of the report, where it says,
7 "8 cases found evidence of bias crime" --
8 A. Yes.
9
10 Q. -- that also does not reflect the question that they
11 were actually answering, does it? The question they were
12 actually answering was not, "Is there evidence of bias
13 crime"; it was, "Is there sufficient evidence to prove
14 beyond a reasonable doubt that there might have been bias
15 crime?"
16 A. Yes, I --
17
18 Q. Quite a different thing, isn't it?
19 A. No, I disagree.
20
21 THE COMMISSIONER: Q. Is there any reason why you
22 couldn't have set out verbatim on page 21 the actual
23 question asked, if there was only one question asked?
24 A. No.
25
26 Q. And is there any reason why you couldn't have set out
27 in verbatim terms all of the questions that were asked?
28 A. No. Commissioner, it was a general tenet, is what
29 I said. A general tenet. It wasn't a specific question.
30 It was in generality.
31
32 THE COMMISSIONER: All right. Okay.
33
34 MR GRAY: I will just cover off, if there is time,
35 Commissioner, the four of these, if that's convenient - it
36 will take another few minutes.
37
38 THE COMMISSIONER: Yes.
39
40 MR GRAY: Q. The second bullet point on page 4 of the
41 coordinating instructions, the second available finding,
42 was called "Suspected Bias Crime"; agreed?
43 A. Yes.
44
45 Q. And that, according to the guidance provided by the
46 coordinating instructions, being the same guidance found in
47 the form, was:

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- Evidence/Information exists that the incident may have been motivated by bias but the incident cannot be proved beyond a reasonable doubt that it was either wholly or partially motivated by bias ...

Agreed?

A. Yes.

Q. So again, there is the opaque, if I may say so, inclusion of the phrase "evidence/information", with whatever shades of meaning might be thought by somebody to be involved there?

A. Yes.

Q. And again, there is the criminal standard of proof, "beyond a reasonable doubt", imported into the question?

A. Yes.

Q. Then we have not "Not a Bias Crime", where the guidance given to the officer is:

- The incident has been determined as either not being motivated by bias towards a protected group or although bias motivation is in evidence it does not relate to a protected group.

Agreed?

A. Yes.

Q. Now, first of all, this one doesn't have within it any standard of proof, does it? Not beyond reasonable doubt, not on the balance of probabilities, not anything else?

A. Yes.

Q. So what standard of proof were the officers to use for that one?

A. Well, I don't know that they needed to apply a standard of proof to that.

Q. Didn't they?

A. Given there's - well, no.

Q. Well, they were making a determination either that there wasn't any bias or that although there was some bias,

1 it didn't relate to the protected group. They were
2 determining that as a fact - by what standard?
3 A. Well, I don't necessarily think that you can say it's
4 determined as a fact.
5
6 THE COMMISSIONER: Q. No, but they were expressing their
7 own personal view?
8 A. Yes.
9
10 Q. Weren't they? And they were to determine, or together
11 with others there was to be a determination which would
12 lead to that conclusion?
13 A. Yes.
14
15 THE COMMISSIONER: Okay.
16
17 MR GRAY: Q. Why didn't there need to be some standard
18 of proof? What was the criterion? What was the litmus
19 test?
20 A. The criterion is whether it is or is not a bias crime.
21
22 Q. No, "motivated by bias towards a protected group",
23 well --
24 A. Well, obviously --
25
26 Q. How are they to determine that one way or the other?
27 A. Well, obviously it would be towards the victim,
28 I would think, so I don't think there is too much
29 uncertainty about a protected group when we are talking
30 about a homicide.
31
32 Q. All right. Well, what does "protected group" mean?
33 A. "Protected group", in my opinion, would mean
34 a marginalised community.
35
36 THE COMMISSIONER: Q. A what, sorry?
37 A. As in LGBTIQ - a marginalised community like LGBTIQ
38 people.
39
40 MR GRAY: Q. And if "Bias Crime", first bullet point -
41 that is, the existence of bias crime - had to be proved
42 beyond a reasonable doubt - I will start that again. If,
43 under the heading "Bias Crime", first finding, there needed
44 to be proved beyond a reasonable doubt the existence of
45 sufficient evidence, for "Not a Bias Crime", what needed to
46 be proved beyond a reasonable doubt.
47

1 THE COMMISSIONER: If anything?
2
3 MR GRAY: Q. If anything?
4 A. Well, the fact that it wasn't bias related, and that
5 would be from a review of the material.
6
7 Q. And was it to be determined beyond reasonable doubt or
8 not?
9 A. Well, it doesn't say that in the --
10
11 Q. No, it doesn't, and hence my question. What standard
12 were they to apply?
13 A. Well, I would imagine the standard from "Bias Crime",
14 but in any event these --
15
16 Q. Sorry, the --
17 A. The standard of the "Bias Crime".
18
19 Q. Which is?
20 A. Well, which is sufficient evidence or information
21 exists beyond a reasonable doubt.
22
23 Q. You think beyond a reasonable doubt came into the
24 third one as well, the third bullet --
25 A. It is not said in there is what I'm saying, so
26 I can't --
27
28 Q. I know it is not said, but I thought your answer just
29 then was that you would assume that they would have needed
30 to --
31 A. It may be the case. I can't tell you that.
32
33 Q. You don't know?
34 A. No. But as I said, we're looking at not necessarily
35 evidence, not necessarily - we're looking at all of the
36 facts and circumstances to determine whether or not bias is
37 involved as a motivating factor to create that victim
38 [sic].
39
40 Q. All right. Just finally for the moment, for today,
41 anyway, the fourth one is "Insufficient Information".
42 I won't need to go on to read the whole of what then
43 appears, but it begins with "Insufficient Information".
44 What was the meaning of "Insufficient", as against
45 "Sufficient", in this context?
46 A. Well, it's not sufficient to come to a finding - to
47 come to a view or come to a finding as to whether or not

1 bias was involved in the offence.

2

3 THE COMMISSIONER: Q. So in other words, it was again up
4 to the individual police officer's appreciation whether he
5 or she thought there was or was not sufficient information?

6 A. Subject to the governance structures and reviews that
7 were put in place.

8

9 Q. When you say "subject to the governance structures",
10 none of these terms, "sufficient evidence" or "insufficient
11 evidence" are the subject of definition?

12 A. Right. Yes.

13

14 Q. Were they the subject of tutorials of the group of
15 investigating police officers or strike force persons so as
16 to get some uniformity amongst the group as to how each
17 should regard the notion of sufficiency or insufficiency of
18 evidence?

19 A. I can't tell you whether there was tutorials or such,
20 Commissioner. I can tell --

21

22 Q. Well, would anyone have been skilled, amongst those
23 who were the senior persons, to give tutorials or give
24 lectures or give guidance to the persons filling out the
25 form as to what they should regard as sufficient or
26 insufficient, leaving aside "protected group", "beyond
27 reasonable doubt", and otherwise?

28 A. Yes.

29

30 Q. And did they?

31 A. I can't tell you that, Commissioner, but I would be
32 surprised if not, because that was the purpose of the
33 weekly meetings and the monthly reviews, and that was part
34 of the governance that I was speaking of.

35

36 Q. All right. And so somebody with, what, legal
37 qualifications or otherwise or best guess as to what they,
38 from their own experience, thought might be sufficient or
39 insufficient?

40 A. Yes.

41

42 THE COMMISSIONER: Okay, thank you.

43

44 MR GRAY: Is that a convenient time, Commissioner?

45

46 THE COMMISSIONER: Yes, 10 o'clock - oh, I am sorry,
47 I won't be able to resume until 2 tomorrow, as I indicated

1 previously. I will at the moment say no more. If counsel
2 want to talk about accommodating each other on whatever
3 else needs to be done, then, again, the invitation is
4 offered by me, but otherwise, I will resume at 2 tomorrow.
5 Thank you.
6

7 **AT 4.05PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
8 **TO THURSDAY, 8 DECEMBER 2022 AT 2PM**
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