

**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 Tuesday, 21 February 2023 at 10.12am**

**(Day 24)**

<b>Mr Peter Gray SC</b>	<b>(Senior Counsel Assisting)</b>
<b>Ms Meg O'Brien</b>	<b>(Counsel Assisting)</b>
<b>Mr Enzo Camporeale</b>	<b>(Director Legal)</b>
<b>Ms Caitlin Healey-Nash</b>	<b>(Senior Solicitor)</b>

**Also Present:**

**Mr Mark Tedeschi KC with Mr Anders Mykkeltvedt and  
Ms Amber Richards for NSW Police**

1 THE COMMISSIONER: Before you resume with Mr Willing, can  
2 I make these orders in relation to the documents, and the  
3 short minute of order, Mr Tedeschi, that was handed around  
4 yesterday - is that in agreement now?

5  
6 MR TEDESCHI: As I understand it, yes.

7  
8 THE COMMISSIONER: All right. Let me make that order,  
9 thank you.

10  
11 MR TEDESCHI: Would your Honour pardon me just for  
12 a moment?

13  
14 THE COMMISSIONER: Certainly.

15  
16 MR TEDESCHI: Apparently there is one matter that was  
17 raised this morning which concerns a redaction to annexure  
18 A in the documents. I'm not aware of what it is.

19  
20 THE COMMISSIONER: I'm certainly not aware of what it is.  
21 I've signed the orders, but it doesn't mean that they are  
22 in stone. You can tell me at some point whether the order  
23 that I've got, which has four paragraphs together with some  
24 schedule, is the appropriate schedule, and if it isn't, can  
25 you just tell me in the course of the morning whether the  
26 one matter that might be of some concern is either resolved  
27 or needs to be?

28  
29 MR TEDESCHI: I will.

30  
31 THE COMMISSIONER: Mr Tedeschi, before you sit down,  
32 I should just indicate for your purposes and Mr Willing's  
33 that as a result of certain matters that arose yesterday,  
34 partly matters that you raised with me but also additional  
35 matters which I don't propose to dilate upon at the moment,  
36 there is a significant degree of likelihood that Mr Willing  
37 will be asked to come back at some point.

38  
39 I know that he's in the private sector and I know that  
40 there are complications always with the activities that he  
41 is undertaking and what he might be doing. We will be as  
42 prompt as we can in letting him know, and of course we will  
43 work around his commitments as best we can. I can't give  
44 you or him for the moment an indication of when that might  
45 be, but we will certainly be in touch as quickly as I am  
46 able, or Mr Gray or someone else is able, to let you know  
47 and Mr Willing know when that is likely to happen.

1  
2 MR TEDESCHI: I've already notified Mr Willing of that  
3 likelihood.

4  
5 THE COMMISSIONER: All right. Thank you very much. The  
6 reason I'm raising it this morning is so that - and you  
7 will take whatever course you think is appropriate at the  
8 end of the current series of questions - I will leave it  
9 for you to tell me what you would like me to do as a result  
10 of what I have said and as a result of what you hear and  
11 that's entirely a matter for you, but I just wanted you and  
12 him to hear it formally from me so that you can make  
13 a fully informed choice about what course you may wish to  
14 take. Thank you.

15  
16 Yes, Mr Gray.

17  
18 <MICHAEL JOHN WILLING, on former oath: [10.15am]

19  
20 <EXAMINATION BY MR GRAY:

21  
22 MR GRAY: Q. Mr Willing, yesterday I asked you some  
23 questions about some emails on 7 February 2012 between  
24 Pamela Young and I think Chris Olen. You may remember?  
25 A. Yes.

26  
27 Q. I wonder if Mr Willing could have again volume 14,  
28 please. I just need to ask a couple of supplementary  
29 questions about that topic before we move on?  
30 A. Sure.

31  
32 Q. If you go to tab 312, [NPL.3000.0016.0014,0001]  
33 A. Yes, Mr Gray.

34  
35 Q. You remember we went through these yesterday?  
36 A. Yes.

37  
38 Q. Literally starting with the one from Chris Olen on the  
39 second and third pages but then focusing on the one from  
40 Pamela Young at the bottom of the first page?  
41 A. Yes.

42  
43 Q. And then on Christopher Olen's response at the top of  
44 that page. I won't repeat what we did yesterday.  
45 A. Sure.

46  
47 Q. But you will recall that you accepted yesterday that

1 following the zero solvability assessment of this Scott  
2 Johnson matter --

3 A. Yes.

4

5 Q. -- in approximately late 2012, a decision was indeed  
6 made, as Pamela Young said, not to proceed with further  
7 active investigation. We went through that yesterday?

8 A. Yes.

9

10 Q. And then Mr Olen said what he said in the third  
11 paragraph of his email referring to John Lehmann in a soon  
12 to be broadcast interview having already indicated that the  
13 case was open. We went through this?

14 A. Yes, that's right.

15

16 Q. You agreed yesterday that if Mr Lehmann did say that,  
17 that was false?

18 A. Yes.

19

20 Q. Right. Can I just take you to the transcript of the  
21 Australian Story program. It will be shown to you. This  
22 is Australian Story, you may recall, which was broadcast on  
23 the Monday, 11 February?

24 A. The 11th, thank you.

25

26 Q. 2013.

27 A. Yes.

28

29 Q. For the moment, I don't need to ask you about anything  
30 except one passage in it.

31 A. Sure.

32

33 Q. I need to hand one up so that the Commissioner can  
34 follow this. Speaking as a TV watcher, you would be aware  
35 that Australian Story, I imagine, is generally speaking not  
36 a live program, it's a pre-recorded program?

37 A. Yes, yes.

38

39 Q. It is apparent, even from the transcript, that  
40 excerpts from interviews with various people are spliced  
41 together to make the program?

42 A. Yes, yes.

43

44 Q. One of them is Detective Inspector Lehmann?

45 A. Yes.

46

47 Q. And on the last page of the transcript, you see at

1 about 10 lines down from the top, Detective Chief Inspector  
2 John Lehmann?

3 A. Yes.

4  
5 Q. He says on the program:

6  
7 *The case is with the unsolved homicide team*  
8 *having been referred to by the Coroner.*  
9 *I won't comment on what stage the*  
10 *investigation is at. Certainly we haven't*  
11 *closed the books on this case, it's an open*  
12 *case.*

13  
14 A. That's right, yep.

15  
16 Q. Now, is it your understanding, you tell us, that that  
17 is what Mr Olen was referring to in his email on the 7th?

18 A. I'm assuming that that is, having looked at this  
19 transcript for the first time and the email obviously again  
20 this morning.

21  
22 Q. Now, in any event, for Mr Lehmann to say that,  
23 whenever he said it in the course of an interview some time  
24 prior to 11 February, it wasn't true, was it, for the  
25 reasons that we went through yesterday?

26 A. The comment about it being on the books as an open  
27 case is quite true with Unsolved Homicide matters; they sit  
28 there and if something changes - they are never really  
29 closed.

30  
31 Q. I see.

32 A. And that's what is generally the case with all  
33 unsolved homicide matters.

34  
35 Q. I see, so the language --

36 A. He's referring to that, I'm assuming.

37  
38 Q. Sorry?

39 A. He's referring to that.

40  
41 Q. Yes. All right. So literally it's not untrue?

42 A. In the context of that paragraph and what he's saying  
43 there around it being an open case, because that's what  
44 unsolved homicides are, that's not an untrue statement.

45  
46 Q. No. But to the extent that it conveyed the impression  
47 that the Unsolved Homicide Team were actively working on

1 it, if it did convey that impression --  
2 A. That's not right.  
3  
4 Q. -- that was not right?  
5 A. Correct, yeah.  
6  
7 Q. Thank you.  
8  
9 MR GRAY: I tender that document, your Honour. It will  
10 become tab 319 of exhibit 6.  
11  
12 THE COMMISSIONER: Thank you.  
13  
14 Q. I take it, Mr Willing, as far as you are aware,  
15 Mr Lehmann is still in the Police Force?  
16 A. No, he left, Commissioner, in 2016.  
17  
18 Q. Do you know where he is?  
19 A. I don't. I haven't had any contact with him since he  
20 left.  
21  
22 MR GRAY: Q. He left in 2016?  
23 A. He went off sick and never returned, yes.  
24  
25 Q. Do you know when in 2016?  
26 A. From recollection, around October 2016, thereabouts.  
27 I might be wrong on the exact sort of time but around then,  
28 yes.  
29  
30 THE COMMISSIONER: Q. I take it from what you have said,  
31 you haven't heard from him nor about him, is that fair,  
32 since at or about the time he left?  
33 A. That's right.  
34  
35 THE COMMISSIONER: All right. Thank you.  
36  
37 MR GRAY: Q. Moving now to Strike Force Neiwand.  
38 A. Yes.  
39  
40 Q. As you agreed yesterday, it was created in October  
41 2015, initially?  
42 A. Initially, yes.  
43  
44 Q. In your statement at paragraphs 74 and 75 you say that  
45 you were not directly involved, and I asked you some  
46 questions yesterday about what that expression meant.  
47 A. Yes, and about the administrative versus direct

1 involvement, yes.

2

3 Q. This is right, I take it, just confirm if you could,  
4 that this reinvestigation under Neiwand from October 2015  
5 and subsequently was the first time that these three  
6 Taradale cases were to be investigated again since Taradale  
7 itself back in the early 2000s; correct?

8 A. Correct.

9

10 Q. And you may have said this yesterday but in case you  
11 didn't --

12 A. Sure.

13

14 Q. -- were you aware yourself, as at October 2015, of the  
15 review that Alicia Taylor had written in October 2012?

16 A. I think I was.

17

18 Q. When do you think you became aware of that?

19 A. I don't know. I don't know. It would be part and  
20 parcel of the conduct of the Macnamir investigation,  
21 probably 2013.

22

23 Q. Why would it be part and parcel of the Macnamir  
24 investigation?

25 A. Because part of what Macnamir was looking at were  
26 allegations that there was a similarity between what  
27 happened in Bondi and what happened to Scott Johnson over  
28 at Manly.

29

30 Q. So, at least as you understand matters now, was the  
31 Alicia Taylor exercise done under the umbrella of Macnamir?

32 A. No, it was beforehand.

33

34 Q. Pardon?

35 A. It was beforehand. 2012.

36

37 Q. I see. Just help me with the dates, then. I thought  
38 you said a minute ago that her investigation was prompted  
39 by Macnamir because of the Taradale factor?

40 A. No. Her review was conducted in October of 2012.

41 Macnamir didn't start until 2013, as we know.

42

43 Q. No. So what prompted it, the Taylor exercise?

44 A. The "Taylor exercise", as you put it, would have been  
45 a normal process of reviewing matters that were sitting on  
46 the Unsolved Homicide database. There was also obviously  
47 the referral from the Coroner in 2012 as well.

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Q. Well, when you say the Coroner in 2012, you mean the Scott Johnson Coroner?

A. Yes, sorry. My mistake. Two separate matters. So yes, there was - it was sitting on the Unsolved Homicide database and that would be the reason that it was reviewed, as part of the normal procedures.

Q. So nothing to do with --

A. Yes, sorry, I made a mistake there.

Q. -- the 2012 Coroner?

A. Correct, yes.

THE COMMISSIONER: Q. So the review was prompted by, what, you say some systematic review that would apply to each of the 700 cases?

A. That's correct, Commissioner.

Q. And what is this systematic review that would, for example, cause a review of the kind that Ms Taylor performed in 2012, just the fact that it was sitting there, the fact that there was new information? You tell me what it is that would prompt a review in 2012, if you know.

A. From recollection, the fact that it was sitting on the database.

Q. I see. And I can assume, can I, that each of the 700 cases are subject to systematic reviews of the kind performed by Ms Taylor; is that right?

A. They could and would be if we had the resources at Homicide to do that.

Q. When you say "could" or "would be", it's not correct, then, to suggest that each of those cases would be the subject of such a review as performed by Ms Taylor, is it, unless there was some new information or a prompt from perhaps a Coroner in some other context?

A. That would be correct.

THE COMMISSIONER: Thank you.

MR GRAY: Q. Was there a prompt in the case of the Alicia Taylor exercise?

A. I'm not aware of one.

Q. And you're still not aware now?



1 A. No.

2

3 Q. So when you requested the reinvestigation of the three  
4 cases in October 2015, as we established yesterday, that  
5 wasn't because of anything Alicia Taylor had written back  
6 in 2012, I take it?

7 A. Not particularly, but I note in her review that she  
8 thought there may be an opportunity to conduct a covert  
9 investigation into it, into those matters. I was of - I  
10 knew that Penny Brown, in particular, was interested in  
11 pursuing an investigation into those matters. I thought it  
12 appropriate to conduct an investigation into those matters  
13 and requested the Director of Serious Crime to form that  
14 strike force.

15

16 Q. Just to clarify the sequence, she writes her document  
17 in October 2012, she makes various recommendations,  
18 including the ones you've just mentioned?

19 A. Yes.

20

21 Q. But as I understand it - tell me if this is right -  
22 those recommendations are not adopted or implemented or  
23 anything at all done with them between then and October  
24 2015?

25 A. That's correct.

26

27 Q. So up to October 2015, there was not actually any  
28 investigating going on of these three Taradale cases;  
29 correct?

30 A. That's correct, yes.

31

32 Q. Do you still have volume 14 there?

33 A. Yes.

34

35 Q. Could you just have a look at tab 281  
36 [NPL.0115.0002.0757]. It is an email chain, most of which  
37 I don't need to ask you about, but if you need to get  
38 a sense of it, by all means do so.

39 A. Sure.

40

41 Q. It's an email chain on various dates from  
42 late November to other dates in December 2015.

43 A. Yes.

44

45 Q. I will try to say this in broad terms. It begins with  
46 an approach from a film company who are interested in doing  
47 a program about some of these topics?

- 1 A. Yes.  
2
- 3 Q. And there are various emails back and forth among  
4 various people about what the best response would be to  
5 that approach?  
6 A. Yes.  
7
- 8 Q. Then on the second page of the chain there is one from  
9 you?  
10 A. Yes.  
11
- 12 Q. Roughly in the middle of the page, on 8 December.  
13 A. Yes, to JT.  
14
- 15 Q. Yes, where you are addressing JT, who is evidently  
16 someone called John Thompson?  
17 A. Yes.  
18
- 19 Q. And you suggest caution is a good idea. But then in  
20 the third paragraph, which is the one I want to ask you  
21 about, you say - well, first of all, in the second  
22 paragraph you say:  
23
- 24 *The Johnson matter is before the State*  
25 *Coroner ...*  
26
- 27 You say:  
28
- 29 *... we are in the midst of battle with*  
30 *lawyers [about some matters] ...*  
31
- 32 A. Yes.  
33
- 34 Q. Then in the next paragraph you say:  
35
- 36 *In addition to that, my Unsolved Homicide*  
37 *Team have also commenced --*  
38
- 39 this is December --  
40
- 41 *... a fresh look at the Taradale matters*  
42 *under Detective Sergeant Penny Brown.*  
43
- 44 A. Yes.  
45
- 46 Q. And that's consistent with what you have been saying  
47 to date?

1 A. Yes.

2

3 Q. And you go on, though:

4

5 *... on the back of information received*  
6 *through the Johnson case.*

7

8 A. Yes.

9

10 Q. Now, what is that a reference to?

11 A. So during the course of Macnamir, Penny Brown and  
12 those that were investigating looked at a number of  
13 hypotheses including the fact that obviously there were  
14 people involved in gay hate assaults, and part of that,  
15 part of the review, was to review what occurred during the  
16 Taradale matters, as Pamela Young outlines in her  
17 statement, and that's what I refer to in that, information  
18 that had been provided by the Johnson family which -  
19 throughout the course of the investigation. So there was  
20 nothing specific about anything, but it was certainly the  
21 hypotheses that were being used.

22

23 Q. So does that mean, among other things, that a prompt,  
24 perhaps the main prompt, for you in October 2015 to set up  
25 Neiwand was the realisation that in the course of the  
26 Macnamir exercise, some work was being done on the Taradale  
27 topics?

28 A. That was part of it, and there was a view,  
29 particularly from Penny Brown, that it was worth pursuing  
30 and if there was a chance of identifying or uncovering  
31 further evidence, we should pursue it.

32

33 Q. And basically - no doubt there's more to it than this,  
34 but basically - she was talking about, and you understood  
35 her to be talking about, doing some more work on the  
36 persons of interest?

37 A. Correct.

38

39 Q. Namely, the many persons of interest that Taradale  
40 had --

41 A. That's correct, yes.

42

43 Q. -- turned up?

44 A. Yes.

45

46 Q. Could we just turn to tab 285 in that volume,  
47 [NPL.0115.0004.3512]. This is a couple of months later.

- 1 This is February 2016?  
2 A. Yes.  
3  
4 Q. This is Steve Morgan, who at this point was a member  
5 of the Macnamir team, but I think was about to be also  
6 a member of Neiwand?  
7 A. Mmm-hmm.  
8  
9 Q. And if you just read that to yourself.  
10 A. Yes.  
11  
12 Q. Now, according to Mr Morgan, known as Chad, which is  
13 self-deprecating, I imagine, on his part?  
14 A. Yes.  
15  
16 Q. He says apparently "It" - that is Neiwand -  
17  
18 *is going to be a political and media-driven*  
19 *hot potato later this year and the Boss*  
20 *wants to be able to say that his squad are*  
21 *further investigating the matter.*  
22  
23 Now, first of all, is "the Boss" you?  
24 A. That's me, yes.  
25  
26 Q. And was that the case?  
27 A. No, it was - that may well be his view and opinion of  
28 it but it was about identifying and seeing whether or not  
29 we could effect an arrest for those matters.  
30  
31 Q. And did you expect, in February 2016, that Neiwand was  
32 going to be a political and media-driven hot potato?  
33 A. It could well have been. It had received a lot of  
34 media to that point.  
35  
36 Q. Neiwand had --  
37 A. It was certainly a political - sorry, the Taradale  
38 matters.  
39  
40 Q. The Taradale matters had, yes?  
41 A. And it could well have been, but the intent behind  
42 Neiwand was to investigate it, and again if there was  
43 a chance of uncovering evidence that led to an arrest or  
44 arrests, that was the desired outcome.  
45  
46 Q. Then if you turn to tab 287 [NPL.0115.0002.5404]]?  
47 A. Yes.

- 1  
2 Q. This is a couple of months later again, this is  
3 now April 2016. You are sending to Mr Olen - this is at  
4 the top of the page - for his benefit, some emails that had  
5 passed between you and some other people?  
6 A. Mmm-hmm.  
7  
8 Q. You say - the only paragraph that I want to ask you  
9 about is the one beginning "Firstly". Do you see that?  
10 A. Yes.  
11  
12 Q. This is April 2016. You say:  
13  
14 *... the Unsolved Homicide Team is actively*  
15 *involvement in reinvestigating [the three*  
16 *Taradale deaths].*  
17  
18 A. Yes.  
19  
20 Q. Then you say:  
21  
22 *That reinvestigation was self initiated by*  
23 *the UHT ...*  
24  
25 Is that right?  
26 A. It would be - yes, I mean, it's a discussion that  
27 occurs. I don't request a strike force to be formed  
28 unilaterally. It's a discussion that would occur with  
29 members of the Unsolved Homicide Team, given the limited  
30 resources and what it was they were focused on at  
31 a particular time. So that is right.  
32  
33 Q. And does it mean - and this is not meant critically,  
34 it's just meant to find out --  
35 A. Sure.  
36  
37 Q. -- presumably, that means Penny Brown, does it? She's  
38 the one who seems, on your account, to have been keen to do  
39 something in this area?  
40 A. She was keen, but it would involve, I'm assuming,  
41 Chris Olen, who was there at that time; it may well have  
42 involved John Lehmann at that time as well, who was still  
43 there. But it's a decision that's taken in consideration  
44 with what is currently being investigated, what they have  
45 on their books and what their priorities are.  
46  
47 Q. You also say, then, in the next sentence:

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*I would submit that the UHT doing that --*

ie, investigating these three deaths --

*quite clearly shows that there is no  
homophobic bias (otherwise it wouldn't have  
occurred).*

A. Yes.

Q. Was that part of your reason for setting this strike force up, so as to make a show of not being homophobic?

A. Not to make a show. I thought that, you know - I thought that that would be demonstrable, but at the end of the day, the reason for it being set up was to try and effect an arrest and get fresh evidence.

Q. So just go back to tab 285 [NPL.0115.0004.3512] where Mr Morgan expresses his understanding, which is that you were setting this up because you wanted to be able to say that the squad was investigating?

A. Yes.

Q. And you said, no, that wasn't the reason?

A. No.

Q. If it wasn't the reason, tell us exactly what was the reason in October 2015?

A. The reason was because the possibility of uncovering further evidence that would lead to an arrest or the cases being solved.

Q. Yes. But what was the catalyst for suddenly doing it in October 2015?

A. The Macnamir matters were before the Coroner. There was a time when the resources could have been available to have a look at those matters. At the time, there had been a lot of resources from Unsolved Homicide put into another significant matter that had resulted in an arrest. Most of the Unsolved Homicide Team was involved in that particular matter. And it was - yes, the timing was right, and Penny Brown, in particular, wanted to do it and I supported her.

Q. You say something about this in your statement [SCOI.82369.00001\_0001].

A. Yes.

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Q. If we could turn to paragraph 89 and following --

A. Yes.

Q. I don't want to take you to every line of these but could you just glance over paragraphs 89 to 94 to remind yourself of what you have said there.

A. Yes.

Q. So, in perhaps incomplete summary, you're saying that it's not surprising, just normal practice, for the UHT to review matters where the Coroner refers them?

A. That is absolutely fundamental to what they do.

Q. But in this instance, the three Taradale cases, the Coroner, Deputy State Coroner Milledge, had not actually referred these cases to the UHT, had she?

A. No.

Q. So that's not the explanation?

A. I don't think it existed at the time. I'm not sure it existed at the time.

Q. No, it may not have. But in any event, the kind of referral that you refer to in paragraph 91 hadn't happened either, had it - you know, using phrases like "in accordance with usual protocols and procedures"?

A. Yes.

Q. She hadn't made such a reference, had she?

A. No.

Q. So that's not the explanation, namely, a reference from the Coroner. So it was a self-initiated decision from somewhere within the UHT?

A. That's right, and that - you know, the Unsolved Homicide Team, and myself as the Commander Homicide, had that authority to do that.

Q. So you say it wasn't just to be able to say that something was being done?

A. No.

Q. Was it because the Taradale work and the Milledge findings flowing from that work were of significance in the Johnson case, such that if the suicide theory in the Johnson case was to be supported, the Taradale findings

1 needed to be undermined?

2 A. No.

3

4 THE COMMISSIONER: Q. And as far as you're aware, there  
5 was not a jot, was there, of new information in relation to  
6 the three Taradale cases, which provoked the review?

7 A. No.

8

9 MR GRAY: Could Mr Willing have volume 6, please.

10

11 Q. Could you turn to tab 163, please,  
12 [SCOI.76862.00014\_0001]. Take a minute to orient yourself,  
13 but this is June 2015, some four months before Neiwand is  
14 actually initiated.

15 A. Yes.

16

17 Q. It is talking about a press release, which, if you  
18 flip over the pages, is there to be seen, about the deaths  
19 of Mattaini, Warren and Russell, and in particular, about  
20 the fact that rewards have now been offered?

21 A. Yes.

22

23 Q. And you are quoted or words are attributed to you  
24 about halfway down the press release?

25 A. Mmm-hmm.

26

27 Q. The press release, which is a police press release,  
28 says:

29

30 *The circumstances surrounding the three*  
31 *incidents have been the subject of a review*  
32 *by the ... Unsolved Homicide Team in recent*  
33 *years.*

34

35 What was that a reference to?

36 A. It's either a reference to the Alicia Taylor review  
37 or, by that point, the work that was done in Macnamir,  
38 looking at the possibilities of the similarities between  
39 what happened at Bondi and in Scott Johnson's death.

40

41 Q. And then you are attributed, not in quotes but  
42 attributed with saying that the matters had been reviewed  
43 "based on the Coroner's findings that they were suspicious  
44 in nature and possibly the result of gay hate related  
45 crimes"; now, is that correct?

46 A. Yes.

47



1 Q. And you went on in next couple of paragraphs where you  
2 are quoted saying what you can see there --  
3 A. Yep.  
4  
5 Q. -- which is directed, I take it, to the notion that  
6 what you had in mind, at least that's what you were  
7 actually saying, was actually chasing down the  
8 perpetrators?  
9 A. Yes.  
10  
11 Q. That was trying to find out who killed these men?  
12 A. Yes.  
13  
14 Q. Now, what was the sequence of events that made that by  
15 some lead-up process there were rewards issued and then  
16 four months later Neiwand instituted? What was happening?  
17 A. I can't recall the sequence of events but the rewards  
18 are - there was a process in place where an independent  
19 panel within the Police Force decided to allocate rewards  
20 upon application by investigators or commands within the  
21 NSW Police Force.  
22  
23 Q. Let me move slightly on --  
24 A. Sure.  
25  
26 Q. -- but still on the same ballpark. As you have  
27 accepted earlier today, up to the initiation of Neiwand  
28 in October 2015, there was no actual investigation going on  
29 yet of the Taradale cases.  
30 A. That's right.  
31  
32 Q. Since Taradale, Milledge, in the early 2000s?  
33 A. Yes.  
34  
35 Q. That being so, could you just help us with something  
36 that appears in a newspaper article in volume 8.  
37  
38 THE COMMISSIONER: Just before you go there, Mr Gray, can  
39 I ask this question.  
40  
41 Q. Mr Willing, would you go back to the top of that press  
42 release. In the second paragraph, you will see:  
43  
44 *Gilles Mattaini, a 27-year-old French*  
45 *national living in Bondi, was last seen*  
46 *walking along the coastal walking track at*  
47 *Tamarama ...*

1  
2 Have you got any idea where that information is likely to  
3 have come from?  
4 A. No, Commissioner. That would be a matter for the  
5 journalist.  
6  
7 Q. I'm sorry?  
8 A. The journalist - I - that would be a question for the  
9 journalist. I don't know where that came from.  
10  
11 Q. But the journalist is issuing or preparing a press  
12 release on behalf of the Police Force.  
13 A. Sorry.  
14  
15 Q. Surely, the journalist wouldn't just make that up; the  
16 journalist would presumably want to check the accuracy of  
17 that assertion with someone at NSW Police, wouldn't they?  
18 A. Sorry, that's my mistake there. That came from us.  
19 I don't know where the content of that came from, in terms  
20 of --  
21  
22 Q. All right. Where would it likely come from, though?  
23 Who would have knowledge at the time, someone of Unsolved  
24 Homicide, I would assume?  
25 A. I would assume so.  
26  
27 THE COMMISSIONER: All right. Thank you.  
28  
29 MR GRAY: Q. In volume 8, could you turn to tab 214  
30 [SCOI.82026\_0001] here we have a Sydney Morning Herald  
31 article on 9 August 2013?  
32 A. Sorry, what tab was that, Mr Gray?  
33  
34 Q. 214.  
35 A. 214. Yes.  
36  
37 Q. Again, orienting you time-wise, the Rick Feneley  
38 series of articles had come out in July 2013?  
39 A. Yes.  
40  
41 Q. And then this is another Rick Feneley article about  
42 a month after the main suite of them.  
43 A. Mmm-hmm.  
44  
45 Q. If you recall?  
46 A. Yes.  
47

1 Q. Now, according to this article, you are said to have  
2 said that - well, I'll start that question again. The  
3 third paragraph of the article by Mr Feneley says:

4  
5 *After a Fairfax Media investigation --*

6  
7 which is basically the July articles, I think --

8  
9 *pointed to as many as 80 gay-hate murders*  
10 *between the late 1970s and late '90s -*  
11 *almost 30 of which remain unsolved -*  
12 *Superintendent Willing agreed to an*  
13 *interview this week ...*

14  
15 Now, pausing there; is that right? Were you approached for  
16 an interview by Mr Feneley?

17 A. Yes, I'm assuming that's right.

18  
19 Q. Then you are quoted as saying, in August 2013:

20  
21 *I know I've been quiet until this point and*  
22 *there is a reason for that - and that's*  
23 *because we're quietly working away on it.*

24  
25 Meaning the three Taradale cases?

26 A. Yes.

27  
28 Q. But you weren't?

29 A. As part of the Macnamir review.

30  
31 Q. I see. So although there was no investigation --

32 A. They were reviewing them and there was --

33  
34 Q. As you've agreed several times?

35 A. Correct.

36  
37 Q. You're saying that that statement was justified  
38 because, in the Macnamir exercise, some work was being done  
39 in seeing whether the Taradale persons of interest had  
40 something to do with the Johnson death?

41 A. Whether or not there were similarities between the  
42 Bondi matters and what happened to Scott Johnson. That's  
43 what I'm referring to.

44  
45 Q. Right. But that exercise, assuming that it happened  
46 as you say --

47 A. Yes.

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Q. -- wasn't in any way reinvestigating or reviewing the three Taradale deaths themselves, was it?

A. No, that's right. That's correct.

Q. So when you said here, "we're quietly working away on it", being the three Taradale deaths, that's stretching the truth, isn't it?

A. Well, I don't think so. I think it's a broad term. I'm not going to give the journalist details of exactly what we're doing in relation to those matters. It would be inappropriate for me to do that, so --

Q. Well, you apparently told him, I assume from the next paragraph, that the police were reviewing the three cases covered by Taradale?

A. As part of the Macnamir investigation.

Q. Did you tell him that?

A. I can't recall it but if it's inferred there, I probably did.

Q. But the cases under review, according to the article - at least that seems to be the impression having been left with Mr Feneley - were the murder of Russell and the disappearance of Warren and Mattaini. That's not what was happening, was it?

A. They were being reviewed as part of --

Q. To see whether they shed any the light on the Johnson case?

A. That's right, yes.

Q. But not being reviewed to see who killed those three men, at all?

A. Not specifically, no, that's correct.

Q. Would it be fair to say that in August 2013, in the wake of the Rick Feneley articles of July 2013, that you wanted the public to think that something was actually being done about these three cases, when in truth, it wasn't?

A. No, I don't think that's a fair assertion. I could have proactively come out and talked about it. I wanted the Macnamir investigation to have the freedom to conduct the inquiries that they needed to conduct. Journalists come to you all the time and ask questions. There was no

1 way that I was going to get into detail with Mr Feneley  
2 about what was going on.

3

4 THE COMMISSIONER: Q. Why did you bother speaking to him  
5 at all then?

6 A. Because he - it was a public matter, he made a request  
7 to speak to me. Yeah, I could have said no, but as part  
8 and parcel of my role as the Commander Homicide, it  
9 involved talking to journalists on almost a daily basis.

10

11 MR GRAY: Q. In your statement at paragraph 73, you say  
12 that Neiwand was established to look at the available  
13 evidence and, if at all possible, to bring any person or  
14 persons who might have been involved in the deaths to  
15 justice?

16

17

18 Q. And in paragraph 72 you give some evidence which is  
19 along the same theme?

20

21

22 Q. Indeed, you've said similar things yesterday and  
23 today.

24

25

26 Q. Now, in the early stages of Neiwand - that is,  
27 in February 2016 - Penny Brown sent an email to the other  
28 Neiwand people, and I just want to show it to you. It's in  
29 volume 14, if you still have that. No, I don't think you  
30 do. Mr Willing needs number 14.

31

32

33 Q. It is tab 306, [NPL.3000.0001.0026\_0001]. So you see  
34 it's 1 February 2016?

35

36

37 Q. And Miss Brown, or Ms Brown, is attaching  
38 a spreadsheet of the Taradale suspects and victims?

39

40

41 Q. And she sends that to various people who are in the  
42 Neiwand team, including Mr Chebl and Mr Rullo and others?

43

44

45 Q. And she copies it to Mr Olen and Mr Lehmann and she  
46 blind copies it to you?

47

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Q. Now, the spreadsheet itself is behind tab 306A?

A. Yes.

MR GRAY: Commissioner, this document won't come up on the screen because it contains numerous names of persons which it is inappropriate to put on the screen, at least at this stage.

Q. Do you have it in your folder, Mr Willing?

A. Yes, I do.

Q. 306A?

A. Yes.

Q. It's lengthy, as you can see, it's about four or five pages?

A. Yes.

Q. Of lists of persons of interest, for the most part?

A. Many of them.

Q. Many, many of them. I haven't counted them, but perhaps 100 or so?

A. Perhaps, yes.

Q. Fifty at least?

A. Yes.

Q. The covering email, tab 305?

A. 306?

Q. Sorry, 306, thank you. From Penny Brown says on 1 February in the third paragraph:

*I'm anticipating that we all get together next Monday to kick off [Strike Force] Neiwand.*

So it sounds like - and again I'm not saying this critically - Neiwand was only seriously getting under way in early 2016?

A. Yeah, that's right.

Q. The spreadsheet, in its length and detail, would indicate, would it, that Penny Brown thought that what Neiwand was going to be doing was pursuing the persons of

1 interest that Taradale had identified?  
2 A. Yes.  
3  
4 Q. And is that what you thought was going to be done?  
5 A. Yes.  
6  
7 Q. And indeed, it seems that that's more or less  
8 consistent with what Alicia Taylor had thought should be  
9 done?  
10 A. Yes, that's right.  
11  
12 Q. I'm sure you have seen the three Neiwand summaries  
13 that were written then at the end of the Neiwand process?  
14 A. I have, yes. Some weeks ago, yes. But yes.  
15  
16 Q. You've seen them I imagine only relatively recently?  
17 A. Yes.  
18  
19 Q. And you had never seen them before --  
20 A. No.  
21  
22 Q. -- until getting ready for this Inquiry?  
23 A. That's correct.  
24  
25 Q. But you have read them now?  
26 A. Yes.  
27  
28 Q. It's obvious, isn't it, from those summaries that in  
29 fact Neiwand did not pursue all those persons of interest  
30 at all; in fact, it seems probably none of them?  
31 A. The summaries are quite brief so I don't - I can't  
32 tell whether or not --  
33  
34 Q. There's no mention of any of those people, any of  
35 them?  
36 A. But I certainly know Penny Brown did, and interviewed  
37 people in custody and other places.  
38  
39 THE COMMISSIONER: Q. Mr Willing, I wonder if you would  
40 be kind enough to answer the question: is there any  
41 mention in the summaries you've read of any of the persons  
42 here having been interviewed or any covert operations  
43 undertaken in relation to any of these people?  
44 A. No.  
45  
46 Q. It's a remarkable omission if those things had been  
47 done, isn't it?

1 A. Yes.

2

3 MR GRAY: Q. Indeed, Mr Willing, it's clear - and I'll  
4 take you to some of this later - from those summaries that  
5 a deliberate decision was made not to do so?

6 A. I can't comment on that. I don't know.

7

8 Q. You don't recall that?

9 A. I wasn't involved in that. I don't know.

10

11 Q. But you've read the summaries now?

12 A. I've read the summaries, yes.

13

14 Q. Isn't it obvious that a deliberate decision was made  
15 not to focus on persons of interest at all but to pursue  
16 other approaches altogether?

17 A. I can't say one way or the other.

18

19 Q. Really?

20 A. Yeah, because the summaries may not have included the  
21 interviews of persons of interest. I know Penny Brown  
22 spoke to people in custody.

23

24 Q. No, no, you're not perhaps grasping the question. The  
25 summaries make it clear, don't they, that there was  
26 a deliberate decision not to pursue chasing up the persons  
27 of interest?

28 A. That's an inference that can be drawn but I don't know  
29 whether or not that occurred, or not.

30

31 Q. Well, I'm putting - I'm going to suggest to you it is  
32 not an inference but it actually says as much when we read  
33 them but you don't recall that?

34 A. I wasn't at the Homicide Squad at the time.

35

36 Q. No, but you've read them?

37 A. I've read them, yes.

38

39 Q. Isn't that what they say?

40 A. That could be an inference that's drawn from that,  
41 yes.

42

43 THE COMMISSIONER: Q. Could I just ask while this is  
44 happening, in the middle of this email from Ms Brown, she  
45 says she has a meeting with OGC at their chambers. Who is  
46 OGC?

47 A. Office of General Counsel.



1  
2 MR GRAY: Q. You are not aware from reading the  
3 summaries in recent times that a deliberate decision was  
4 made, rather than pursuing the Taradale persons of  
5 interest, to do essentially two other things - one,  
6 focusing on victimology --  
7 A. Mmm-hmm.  
8  
9 Q. -- learning more about the deceased person from some  
10 of his associates --  
11 A. Yep.  
12  
13 Q. -- and, secondly, focusing not on possible homicide  
14 but much more on the possibilities of suicide or  
15 misadventure. Isn't that apparent from the summaries?  
16 A. Again, it's an inference that can be drawn from those  
17 summaries that that's what occurred. I don't have any  
18 direct knowledge about that.  
19  
20 Q. I'm asking you about the summaries.  
21 A. I know.  
22  
23 Q. Isn't it apparent from the summaries that that's what  
24 happened?  
25 A. I believe I've answered it and said yes --  
26  
27 Q. No, you keep saying you could draw an inference. My  
28 question is isn't it actually apparent that that's what  
29 they did?  
30 A. I believe it's an inference that can be drawn and  
31 that's as high as it goes.  
32  
33 Q. It's also apparent from the summaries, isn't it, that  
34 what Neiwand increasingly focused on was finding fault with  
35 how Taradale had been conducted?  
36 A. That's - are you suggesting that's what is inferred in  
37 those summaries?  
38  
39 Q. Not inferred, apparent?  
40 A. Again, the same question - same answer I provided to  
41 the previous question. That's an inference --  
42  
43 THE COMMISSIONER: Q. What, you can't remember, or what  
44 is it that you're saying?  
45 A. Not that I can't remember. I wasn't involved in --  
46  
47 Q. I didn't ask you whether you were involved. We're

1 talking about the summaries. So what Mr Gray is asking you  
2 is the effect - your perception, when you read the  
3 summaries recently, was that one of the things they  
4 directed themselves to was the inadequacy of the original  
5 Taradale investigation?

6 A. Yes. Yes.

7

8 MR GRAY: Q. And on finding fault with it?

9 A. Inadequacy, finding fault.

10

11 Q. Now, to some extent, although perhaps not to the same  
12 extent, I want to suggest to you that some of what I have  
13 just been suggesting to you, although not all, is apparent  
14 from the progress reports in Neiwand, some of which you did  
15 see at the time, didn't you, when you were Commander  
16 Homicide?

17 A. Yes, some of them I did.

18

19 Q. Could we go to volume 6, please.

20 A. Which tab, sir?

21

22 Q. Could you turn to tab 164a, [SCOI.82054\_0001]. You  
23 will see that 164a through to 164i are a total of nine  
24 progress reports?

25 A. Mmm-hmm, yes.

26

27 Q. The last few are on dates after you've moved on, after  
28 April 2017, but the first however many, four or five,  
29 I think, are while you are still in the position of  
30 Commander Homicide?

31 A. Yes.

32

33 Q. So the first one at 164a is for the period ending, you  
34 can see on the top of the first page, 12 July 2016?

35 A. Yes.

36

37 Q. And there is an operation summary - by the way, at the  
38 bottom of that page there's a little heading that says  
39 "Progress report compliance issues"; do you see that? The  
40 front page, down the bottom?

41 A. Yes.

42

43 Q. And then there is a box "Terms of Reference: Yes."  
44 "Investigation Plan: N", for "No".

45 A. Mmm-hmm.

46

47 Q. So there was at that point, July 2016, still no

1 investigation plan; correct?

2 A. That's what it suggests, yes.

3

4 Q. Then under the heading "Operation Summary" on the next  
5 page, which goes for a few pages, there's a summary, as  
6 suggested, of what had happened up to the Milledge stage,  
7 2005?

8 A. Yes.

9

10 Q. Then on the next page, page 4, I think, there's  
11 a heading "Status of Investigation"?

12 A. Yes.

13

14 Q. I wanted to mention a couple of those bullet points.  
15 The first one is to say that, at this point, they had  
16 reviewed 42 boxes from Strike Force Taradale. The second  
17 one was to say that a number of products, predominantly  
18 statements, from Taradale were being got on to the Neiwand  
19 system for review?

20 A. Yes.

21

22 Q. The third one says that through those documents,  
23 a number of persons of interest are being identified and  
24 will be looked at further when the investigation moves into  
25 the next phase?

26 A. Yes.

27

28 Q. And then the fourth one refers to a meeting on  
29 14 April between you, Superintendent Crandell, who was  
30 running Parrabell --

31 A. Parrabell, yes.

32

33 Q. -- and Detective Chief Inspector Olen from Unsolved  
34 Homicide?

35 A. Yes.

36

37 Q. And according to the bullet point, that meeting was:

38

39 *... to discuss alleged "gay-hate" death*  
40 *investigations (Strike Force Parrabell) ...*  
41 *and any relevance to [Unsolved Homicide*  
42 *Team] investigations?*

43

44 A. Yes.

45

46 Q. Now, I will come back to that a bit later, but the  
47 topic for discussion was interrelationship between

1 Parrabell and Neiwand; correct?  
2 A. It was - that was the meeting where - I think someone  
3 else was present as well from Tony Crandell's office, where  
4 we discussed what Parrabell's intention was and what they  
5 were doing, including the academic review that was  
6 proposed, yes.  
7  
8 Q. And the interrelationship or crossover between  
9 Parrabell and Neiwand; correct?  
10 A. Yes, naturally, yes.  
11  
12 Q. On the bottom bullet point on that page, it says that  
13 on 27 May 2016, Parrabell detectives handed over to Neiwand  
14 documents relating to investigations, I presume it means  
15 being conducted under Neiwand, presumably meaning the three  
16 Taradale deaths I suppose; is that right?  
17 A. So Parrabell detectives attended headquarters to hand  
18 over documents conducted under - yes, that's correct, yes.  
19  
20 Q. So it looks like Parrabell was giving Neiwand material  
21 that they had relating to the three Taradale cases?  
22 A. That's what it looks like, yes.  
23  
24 Q. Because at that point, is this right, the arrangement  
25 was that Parrabell would not look at the three Taradale  
26 cases?  
27 A. At that point, yes, that's correct, yes.  
28  
29 Q. And was that because you told Mr Crandell that Neiwand  
30 was doing that?  
31 A. Yes, that Neiwand was looking at those matters.  
32  
33 Q. And so he said, in effect - I'm paraphrasing - "All  
34 right, then, fine, you do that, and we won't include them"?  
35 A. At this point - at that point in time, yes, that's  
36 correct.  
37  
38 Q. Under the heading "Future Directions" - perhaps I'll  
39 just ask you, under the heading "Individual case actions",  
40 there are various bullet points for Mattaini and Russell  
41 and Warren respectively; you can see that?  
42 A. Yes.  
43  
44 Q. The fourth bullet point under Mattaini says that on  
45 18 May you were informed of the media's intention to  
46 publish articles in the Saturday and Sunday papers in  
47 relation to Taradale and Parrabell and Neiwand; is that

1 correct?

2 A. Yes, I believe so.

3

4 Q. And it says the decision was taken to contact the next  
5 of kin or family of Mattaini and so on, but did you  
6 participate in interview or interviews with the journalists  
7 in relation to that intended publication?

8 A. I can't recall which one it was. From recollection,  
9 it might have been articles from Ava Benny-Morrison, who  
10 was at the Sydney Morning Herald at the time, who I knew  
11 quite well.

12

13 Q. Now, none of those bullet points in relation to  
14 Mattaini mentioned anything about persons of interest or  
15 doing anything in that line, do they?

16 A. Not that I can see at that point, no.

17

18 Q. Under "Warren", there is a person of interest,  
19 namely - I'm not sure if this name is redacted, it may well  
20 be, but you can see there is a person of interest noted in  
21 the first bullet point under "Warren"?

22 A. Yes.

23

24 Q. That's one. Other than that one, there doesn't seem  
25 to be any reference to any attempt to pursue any of the 50  
26 to 100 Taradale persons of interest, does there?

27 A. Not at that point, no.

28

29 Q. And under "Russell", again, there is no mention of  
30 doing anything in relation to persons of interest, is  
31 there?

32 A. No.

33

34 Q. Under "Future Directions", what's going to happen  
35 apparently is continue uploading material, complete an  
36 investigation plan, complete victimology of the three men  
37 and do a few other things, none of which, with the possible  
38 exception of the second-last bullet point, mentions  
39 anything about persons of interest, does it?

40 A. Are you referring to the second-last point on page 6,  
41 the Crime Commission reference?

42

43 Q. No, the second-last point on the whole list, on  
44 page 7 - namely, "Continual review of intelligence reports  
45 being received"?

46 A. The request to the NSW Crime Commission for their  
47 holdings in relation to Taradale under their reference

1 "Wellington" related to persons of interest.  
2  
3 Q. I see. At any rate, this report doesn't have - this  
4 progress report doesn't have your signature on it.  
5 Somebody else has signed as squad commander?  
6 A. Yes. I can just make out Grant Taylor, I think.  
7  
8 Q. Grant Taylor, he must have been in your place for the  
9 moment on that date?  
10 A. Correct.  
11  
12 Q. All right. Then the next one that I want to take you  
13 to - I will skip over the second one for my purposes and  
14 move to the third one, which is tab 164c,  
15 [SC0I.82053\_0001]. Now, this one is - perhaps one brief  
16 thing on the second one, 164b, [SC0I.82049\_0001] in the box  
17 at the top of page 1 and the bottom of page 2, you will see  
18 that the investigation plan apparently still didn't exist?  
19 A. The investigation plan?  
20  
21 Q. Yes.  
22 A. Yes, that's what it infers, yes.  
23  
24 Q. Pardon?  
25 A. That's what it infers, yes.  
26  
27 Q. So there still was no investigation plan?  
28 A. That looks like it's correct.  
29  
30 Q. And then when we get to 164c, [SC0I.82053\_0001], which  
31 is now the end of October 2016, that box is now ticked "Y",  
32 so it seems that an investigation plan had eventually come  
33 into existence?  
34 A. Yes.  
35  
36 Q. Now, in this third one, the one for 28 October 2016?  
37 A. Sorry, which one was that, Mr Gray?  
38  
39 Q. It's 164c.  
40 A. Yes.  
41  
42 Q. I don't want to make your task logistically too  
43 difficult but if you could just keep that open and could  
44 Mr Willing also have volume 14, please, and turn to  
45 tab 295A, [NPL.0015.0003.1501].  
46 A. 295?  
47

1 Q. 295A.  
2 A. Yes.  
3  
4 Q. That's a document headed "State Crime Command",  
5 et cetera?  
6 A. "Operational Legal Support"?  
7  
8 Q. Yes.  
9 A. Yes.  
10  
11 Q. Now, it bears a date 17 August 2016?  
12 A. Yes.  
13  
14 Q. It describes you at number 7 as the strike force  
15 detective superintendent?  
16 A. Yes.  
17  
18 Q. And that's, I presume, simply because you were  
19 Commander Homicide?  
20 A. That's correct, yes.  
21  
22 Q. And then the strike force team leader is said to be  
23 John Lehmann?  
24 A. Yes.  
25  
26 Q. That was correct, I take it?  
27 A. Yes. Yes.  
28  
29 Q. And resources are listed, in terms of personnel, and  
30 then at 15, on the second page under the heading "Persons  
31 of interest", we see the words, "None known at this stage"?  
32 A. Yes, well, that's incorrect.  
33  
34 Q. That's not exactly right, is it?  
35 A. No, that's not right.  
36  
37 Q. There were 50 to 100 persons of interest at least  
38 known, weren't there?  
39 A. Yes.  
40  
41 Q. That can be put away, please. So that's August. Then  
42 at 164c, which is where we were a minute ago --  
43 A. Yes.  
44  
45 Q. -- this is the third progress report, as at  
46 28 October?  
47 A. Yes.

1  
2 Q. Under "Status of Investigation" at the bottom of  
3 page 3 --  
4 A. Yes.  
5  
6 Q. -- nothing seems to be noted that refers to pursuing  
7 persons of interest?  
8 A. Except for the top point, as referenced before, around  
9 the Crime Commission and Wellington.  
10  
11 Q. Getting what the Crime Commission might have?  
12 A. Yes.  
13  
14 Q. And then under "Individual case actions" again, with  
15 one exception in the case of Warren, no persons of interest  
16 are referred to as being tasks pursued?  
17 A. Sorry, under who?  
18  
19 Q. Warren, in the third bullet point for Warren, a person  
20 is said to have been identified as a person of interest?  
21 A. Yes, that's correct.  
22  
23 Q. But with that one exception, there's no mention of any  
24 pursuing of persons of interest?  
25 A. That's correct.  
26  
27 Q. Nor is there under the heading, "Future Directions";  
28 is that right?  
29 A. No, that's correct.  
30  
31 Q. Now, under the heading on the next page,  
32 "Investigation coordinator" - do you see that?  
33 A. Yes, I do.  
34  
35 Q. This is apparently a comment by someone called Matthew  
36 or Mathieu Russell?  
37 A. Mathieu.  
38  
39 Q. Who was he?  
40 A. He was a detective senior sergeant or sergeant within  
41 the Unsolved Homicide Team. He, in that position, was  
42 relieving into one of the investigation coordinator's roles  
43 at the time.  
44  
45 Q. So he apparently records this comment:  
46  
47 *Meeting held with ... Neiwand on Tuesday,*



1                   25/10/2016. Advice provided to target POIs  
2                   with CCRs --  
3  
4           A.    Yes.  
5  
6           Q.    --  
7  
8                   around recent "gay hate" media events and  
9                   to consider patterns of behaviour and  
10                  movement.  
11  
12          A.    Yes.  
13  
14          Q.    Now, "CCRs", I believe, stands for call charge  
15                records?  
16          A.    That's correct.  
17  
18          Q.    And that is a reference to something that can record  
19                the phone numbers of all outgoing calls made from  
20                a particular phone?  
21          A.    Yes, and incoming calls, yes.  
22  
23          Q.    And incoming calls. Now, so someone was advising  
24                Neiwand that they should be targeting persons of interest  
25                by the use of call charge records?  
26          A.    Yes.  
27  
28          Q.    And was that someone Mr Russell or was that someone  
29                else?  
30          A.    It appears to be Mr Russell by the look of the  
31                document.  
32  
33          Q.    And you have signed this one on the next page.  
34          A.    Mmm-hmm.  
35  
36          Q.    As squad commander.  
37          A.    Yes.  
38  
39          Q.    So you would have expected some targeting of POIs or  
40                persons of interest to have ensued?  
41          A.    Yes.  
42  
43          Q.    Did it?  
44          A.    I haven't - I don't know. My understanding was that  
45                the entire time they were looking at persons of interest,  
46                but that comment from Russell reads to me like he's giving  
47                them advice around a particular investigative strategy that

1 might reveal evidence at that time around those media  
2 events.  
3  
4 Q. Yes, that because there were recent media events, that  
5 there might be some phone activity?  
6 A. Yes, that's right.  
7  
8 Q. And that the POIs - presumably the ones on the lengthy  
9 spreadsheet provided by Penny Brown --  
10 A. Yes.  
11  
12 Q. -- should be targeted?  
13 A. Yes.  
14  
15 Q. If we turn to 164d [SCOI.82050\_0001], the next one,  
16 which is the fourth progress report, for the period ending  
17 23 January --  
18 A. Yes.  
19  
20 Q. -- it doesn't look as if any such targeting has been  
21 done, does it?  
22 A. No, with again the exception of reviewing material  
23 from the Wellington reference from the Crime Commission.  
24  
25 Q. No, but as you have explained already, that's quite  
26 a different thing, isn't it? That's getting material from  
27 the Crime Commission?  
28 A. Yes, that's right.  
29  
30 Q. From their holdings from times past?  
31 A. Relating to persons of interest, that's right.  
32  
33 Q. Yes. But I'm asking you, as you know --  
34 A. Yes.  
35  
36 Q. -- whether any targeting of persons of interest by  
37 CCRs, as recommended at the previous meeting by Detective  
38 Russell, had happened?  
39 A. I don't know.  
40  
41 Q. And it seems not?  
42 A. I don't know but it's not mentioned here.  
43  
44 Q. It's not mentioned, is it?  
45 A. Correct.  
46  
47 Q. Now, in the case of Mattaini, at the bottom of page 3,

1 there's no suggestion that anything's been done about any  
2 persons of interest whatsoever, is there?

3 A. No, not to that point.  
4

5 Q. In the case of Russell, on the next page, there's no  
6 suggestion that anything has been done to do with persons  
7 of interest?

8 A. That's correct.  
9

10 Q. In the case of Warren, the third bullet point does  
11 identify people described as persons of interest?

12 A. Yes.  
13

14 Q. And they are set out there, and there's about five or  
15 six of them?

16 A. Five or six, yes.  
17

18 Q. Now, turning to the next one, which is 164e  
19 [SCOI.82048\_0001] --  
20

21 THE COMMISSIONER: Q. Can I just ask this question.  
22 I'll take you back, Mr Willing, to page 3 of the current  
23 one we're looking at, 164d, before Mr Gray moves on?

24 A. Yes, Commissioner.  
25

26 Q. I know this probably stretches your recollection, do  
27 you recall there ever being a person of interest in  
28 relation to Mattaini at any time?

29 A. I can't recall.  
30

31 Q. All right. And the third bullet point under his name  
32 on page 3 --

33 A. Yes.  
34

35 Q. -- would suggest that, on one view, one of the  
36 activities undertaken was to pursue with his ex-partner  
37 a previous suicide attempt?

38 A. Yes.  
39

40 THE COMMISSIONER: Okay, thank you.  
41

42 MR GRAY: Q. Moving to 164e [SCOI.82048\_0001] which is  
43 for the period ending 23 March 2017 --

44 A. Yes.  
45

46 Q. -- under "Status of Investigation" on page 3,. There's  
47 no mention of any pursuit of persons of interest, is there?

1 A. On the - page 3, did you say?  
2  
3 Q. Yes.  
4 A. No.  
5  
6 Q. Under the heading "Status of Investigation"?  
7 A. No, it appears that they are primarily involved in  
8 reviewing and uploading material on to the systems.  
9  
10 Q. Yes, and this is at March 2017?  
11 A. Yes.  
12  
13 Q. They have been under way for at least a year?  
14 A. That's correct.  
15  
16 Q. So, so far, they seem to have done nothing, basically,  
17 about persons of interest, except for the handful that I've  
18 taken you to?  
19 A. It seems to me that they've been reviewing material  
20 the entire time.  
21  
22 Q. They've been reviewing holdings from previous --  
23 A. That's right.  
24  
25 Q. -- work done by others?  
26 A. With the exception of bits and pieces, as, for  
27 example, the contact of Gilles Mattaini's former partner,  
28 et cetera.  
29  
30 Q. Apart from speaking to somebody about Mattaini about  
31 suicide; is that right?  
32 A. That's correct, yes.  
33  
34 THE COMMISSIONER: Q. And on page 4 there's a mention in  
35 bullet point 3 under Mr Warren, about some decision to be  
36 taken as to which, if any, persons at all were to be spoken  
37 to?  
38 A. Yes.  
39  
40 THE COMMISSIONER: Thank you.  
41  
42 MR GRAY: Q. In this one, this 23 March one, on page 5,  
43 there is a comment, which it seems comes from Stewart  
44 Leggat --  
45 A. Yes.  
46  
47 Q. -- that as to Warren, while it might have been

1 a homicide, it was possibly of a domestic nature involving  
2 a former partner rather than the result of gay hate gang  
3 violence?  
4 A. Yes, there's a comment by Leggat to that effect, yes.  
5  
6 Q. And so what Mr Leggat then sets out in bullet points  
7 is that somebody should do an executive summary of what  
8 Taradale found out about youth gangs, first bullet point?  
9 A. Yes.  
10  
11 Q. Then somebody else should compile Warren's medical  
12 history to see if he might have had some illness that might  
13 have prompted someone to murder him?  
14 A. Yes.  
15  
16 Q. Someone else should compile a chart of his associates?  
17 A. Yes.  
18  
19 Q. And then someone else, or the same person, actually,  
20 an analyst, advised that CCRs, so call charge records, had  
21 been obtained but didn't reveal any adverse or suspicious  
22 contacts between Warren's former associates.  
23 A. Mmm-hmm.  
24  
25 Q. But nothing about CCRs connected to persons of  
26 interest; correct?  
27 A. That's the way it reads; that's correct.  
28  
29 Q. It is, yes. Then the next bullet point is that  
30 interview/statement plans were to be drawn up for each of  
31 the POIs identified from Warren's associates, but not for  
32 the ones sent through by Penny Brown?  
33 A. No, the ones sent from Penny Brown aren't mentioned.  
34 I don't take that to mean that they are excluding those.  
35 I take that to mean perhaps additional persons of interest.  
36  
37 Q. So you think that actually what was going on was that  
38 a great body of work was being done about Penny Brown's  
39 long list but there was no mention of it?  
40 A. No, I didn't say that. I'm saying that that point to  
41 me reads that that's a reference to further POIs that might  
42 have been identified.  
43  
44 Q. All right. This one you have signed on page 7 as  
45 Commander?  
46 A. Yep.  
47

- 1 Q. And then I think the last one, which you may not be  
2 able to help us much with - the last one from me today - is  
3 164f [SC0I.82051\_0001].  
4 A. Yes.  
5  
6 Q. Which is the one for the period ended 16 May 2017.  
7 A. Yes.  
8  
9 Q. Now, you had I think already moved on to do the Lindt  
10 Cafe work by then?  
11 A. From 11 April; that's correct.  
12  
13 Q. Yes. So you, I presume, didn't see this then, in May?  
14 A. No.  
15  
16 Q. But you have seen it more recently --  
17 A. Yes.  
18  
19 Q. -- getting ready for today?  
20 A. Correct.  
21  
22 Q. With this one on page 3, under "Status of  
23 Investigation", we see that the third bullet point includes  
24 that for the first time, as I read these documents, an  
25 actual person of interest has been met with. Do you see  
26 that person named in the third bullet point?  
27 A. I don't read it as saying the first time. I read it  
28 as on that date, investigators met with that person.  
29  
30 Q. Well, that may be a matter for submission, all right.  
31 A. Sure.  
32  
33 Q. Under the heading of "Gilles Mattaini" on page 4, the  
34 first bullet point deals with endeavours related to French  
35 authorities, seemingly mainly concerned with the topic of  
36 suicide?  
37 A. Yes.  
38  
39 Q. The second bullet point concerns attempts to get DNA  
40 from Mr Mattaini's mother in France?  
41 A. Yes.  
42  
43 Q. And then the third bullet point says this:  
44  
45 *On Monday, 10 [April] --*  
46  
47 which is the day before you moved on --

1  
2           *It was decided that as Mattaini's cause of*  
3           *death cannot be determined, there is no*  
4           *evidence of homicide; death may be the*  
5           *result of suicide or misadventure. As*  
6           *a result the investigation into Mattaini's*  
7           *death will be inactive --*

8  
9           A.    Yes.

10  
11          Q.    --  
12  
13                *so investigators can concentrate on the*  
14                *Ross Warren matter.*

15  
16          A.    Yes.

17  
18          Q.    Well, given everything we've looked at so far, it  
19                would appear that there was no investigation of Mattaini's  
20                death at all, wouldn't you agree?

21          A.    I take it from that paragraph that there's been an  
22                investigation but there was no evidence of homicide that  
23                was found or new evidence of homicide.

24  
25          Q.    But from what you have been looking at, what  
26                investigation was there of anything to do with homicide in  
27                the case of Mattaini - from what you have read in these  
28                progress reports?

29          A.    I take it that there has been an investigation but  
30                they haven't uncovered evidence of homicide.

31  
32          Q.    I'm not asking that.

33          A.    That's what --

34  
35          Q.    I'm asking you, from the series of progress reports  
36                that we've just been through, four or five of them, and  
37                I've taken you to "Mattaini" each time --

38          A.    Yes.

39  
40          Q.    -- there is no record of any investigation pursuing  
41                possible homicide in the case of Mattaini, is there?

42          A.    From the progress reports that appears to be right.

43  
44          Q.    And yet they have determined - well, "the cause of  
45                death cannot be determined" and "there is no evidence of  
46                homicide", even though they haven't sought any; isn't that  
47                right?

1 A. I wouldn't suggest that they haven't sought any.  
2 There was none that was identified.

3  
4 THE COMMISSIONER: Q. Well, there is no suggestion in  
5 relation to the document we looked at a little earlier  
6 today of anybody, if it be accurate, trying to determine  
7 what time of the day Mr Mattaini was on the coastal walk,  
8 for example; correct?

9 A. Not according to these documents, these summaries.

10  
11 Q. Well, when you say "Not according to these documents",  
12 I'm assuming documents of this sort are important?

13 A. Yes.

14  
15 Q. And they are created so as to give the likes of  
16 yourself a complete, up-to-date and focused position as to  
17 investigations?

18 A. An overview of where the investigations are up to.

19  
20 Q. Well, when you say "An overview", it's meant to be  
21 accurate, isn't it?

22 A. It is.

23  
24 Q. And it's meant to save you the time of having to  
25 interrogate officers at great length or alternatively read  
26 the materials they have produced?

27 A. That's correct, and therefore it would be impossible  
28 to include everything.

29  
30 Q. And something that you relied heavily upon your  
31 officers to produce something which was pithy, accurate and  
32 concise?

33 A. Yes.

34  
35 MR GRAY: Q. So from this one, of 16 May, it seems that,  
36 essentially, Neiwand had stopped work on Mattaini?

37 A. Yes.

38  
39 Q. Under "Warren", there are a number of bullet points,  
40 including reference in the fourth one to a walk-through  
41 around Mackenzies Point with an associate of Mr Warren?

42 A. Yes.

43  
44 Q. And reference to people going to New Zealand to find  
45 a former housemate of a former associate of Warren?

46 A. Yes.

47



- 1 Q. And in the next one, someone compiling an association  
2 chart of Warren's social circles; and in the next one,  
3 someone getting statements from employees from his  
4 workplace?  
5 A. Yes.  
6
- 7 Q. There doesn't seem to be a lot of work on persons of  
8 interest, does there?  
9 A. Not listed there, no.  
10
- 11 Q. No. And in the case of Russell, again, no mention of  
12 anything being done about trying to find out more of  
13 persons of interest?  
14 A. That's correct.  
15
- 16 Q. But the meeting that was held was giving consideration  
17 to the possibility of death by misadventure or homicide.  
18 Do you see that in the second bullet point?  
19 A. Yes.  
20
- 21 Q. Then, somewhat elliptically, this sentence appears, or  
22 two sentences appear:  
23  
24 *Suicide is an unlikely cause of death. As*  
25 *a result, investigators will primarily*  
26 *focus on the Warren matter and to a lesser*  
27 *extent Russell's death.*  
28
- 29 A. Yes.  
30
- 31 Q. Why would the exclusion of suicide mean that you'd  
32 stop focusing on Russell?  
33 A. I don't know.  
34
- 35 Q. That doesn't really make any sense, does it?  
36 A. No, it doesn't.  
37
- 38 THE COMMISSIONER: Q. I presume the second bullet point  
39 about the team meeting, "possibility of misadventure  
40 (keeping in mind alcohol reading)" --  
41 A. Yes.  
42
- 43 Q. -- you perhaps don't have a recollection of this at  
44 the time --  
45 A. No, I wasn't present.  
46
- 47 Q. -- but the alcohol reading - I see. So you have no

1 recollection whether it means a high or a low alcohol  
2 reading or no alcohol reading?

3 A. Sorry, are you asking in relation to the alcohol  
4 reading?

5  
6 Q. Yes.

7 A. Or the meeting?

8

9 Q. I'm asking you whether you have a recollection - I'm  
10 assuming you probably don't - why the reference "keeping in  
11 mind the alcohol reading" would rather suggest that it  
12 couldn't explain the misadventure. That's why it's there?

13 A. No, I don't have any recollection.

14

15 MR GRAY: I notice that I've gone past time, Commissioner.

16

17 THE COMMISSIONER: Yes, certainly. I'll take the break  
18 now. Thank you. I will adjourn.

19

#### 20 **SHORT ADJOURNMENT**

21

22 MR GRAY: Q. Mr Willing, on the assumptions that I'm  
23 going to ask you to make for the purposes of this question,  
24 that with some relatively minor or relatively few  
25 exceptions that I've just been through with you, Neiwand  
26 did not go down the path of pursuing persons of interest on  
27 Penny Brown's spreadsheet at all - making that assumption -  
28 was that a choice that you made as Commander Homicide?

29 A. No.

30

31 Q. Whose choice would that have been?

32 A. If that choice had been made, that would be a matter  
33 for the investigative team.

34

35 Q. Well, as a team or led by someone?

36 A. Well, each team is led by someone.

37

38 Q. Who was this team led by that would have made such  
39 a decision?

40 A. I don't know. So you've got originally Penny Brown  
41 was the officer in charge of it, and then Michael Chebl  
42 became the officer in charge of it, from my reading of the  
43 documents, some time later.

44

45 Q. Yes. But above them in the hierarchy as it's written  
46 down, at least --

47 A. Yes.

1  
2 Q. -- were John Lehmann --  
3 A. For a period of time, yes.  
4  
5 Q. -- for a period of time, and Steve Morgan at  
6 a subsequent period of time?  
7 A. Subsequently, yes.  
8  
9 Q. So who runs the show in a strike force like this, the  
10 officer in charge or the person above them, be it Lehmann  
11 or Morgan?  
12 A. The officer in charge but obviously reporting and  
13 oversight of the supervisor at the time. So there are  
14 other people involved as well in these matters, namely  
15 Olen, Leggat, who you have referenced as well as having  
16 some involvement.  
17  
18 Q. Well, they did, Olen and Leggat, have some  
19 involvement --  
20 A. Yes.  
21  
22 Q. -- how much is not entirely clear perhaps, but if  
23 a decision of that nature was made somewhere along the line  
24 not to pursue further investigations of the original  
25 Taradale persons of interest in 2016/2017 but instead to  
26 focus on victimology and possible theories other than  
27 suicide - sorry, other than homicide, like suicide or  
28 misadventure, who would have been responsible for that  
29 change of course as you understand it?  
30 A. As I understand it, the officer in charge.  
31  
32 Q. So you say either Brown, in her time, and/or Chebl, in  
33 his time?  
34 A. Yes.  
35  
36 Q. Just I hope briefly I want to look at the personnel of  
37 the two strike forces, namely Macnamir and Neiwand?  
38 A. Yes.  
39  
40 Q. We have been through yesterday who the people were in  
41 Macnamir and you have given evidence about that?  
42 A. Yes.  
43  
44 Q. In Neiwand, at the October 2015 initial stage, the  
45 investigation supervisor was Mr Lehmann and the OIC was  
46 Penny Brown?  
47 A. Yes.

- 1  
2 Q. And Penny Brown was then and continued to be also the  
3 OIC for Macnamir?  
4 A. That's right.  
5  
6 Q. Then it seems that in about May 2016 or thereabouts,  
7 there was a kind of reboot or reshuffle --  
8 A. Yes.  
9  
10 Q. -- of the personnel in Neiwand, as a result of which -  
11 I can take you to the documents --  
12 A. Sure.  
13  
14 Q. -- but you may know this, but the investigation  
15 supervisor became Mr Morgan?  
16 A. Yes.  
17  
18 Q. The OIC became Mr Chebl?  
19 A. Yes.  
20  
21 Q. And the investigation team, from that point onwards,  
22 was listed as including three, a total of three others,  
23 Mr Oldfield, Mr Rullo and Penny Brown?  
24 A. Yes.  
25  
26 Q. So of the six officers on Neiwand from then on, being  
27 the ones I've just mentioned, three of them were also  
28 members of Macnamir, namely, Penny Brown, Chebl and Rullo?  
29 A. Yes, they were listed on the resource list for  
30 Macnamir, from recollection.  
31  
32 Q. Penny Brown was the OIC?  
33 A. That's right, yes, she was.  
34  
35 Q. And you are saying as to Chebl and Rullo, they were  
36 only listed on the resource list?  
37 A. Yeah, they may not have played an active part.  
38 I don't know. I can't recall what role they played in  
39 Macnamir. But as I tried to explain yesterday, resource  
40 lists are allocated to the system administratively, so  
41 those resources can be used as required.  
42  
43 Q. At any rate, you don't actually know how much work  
44 those people did on Macnamir?  
45 A. Not on Macnamir.  
46  
47 Q. Or Neiwand - well, on Macnamir?

1 A. No.  
2  
3 Q. More generally, Neiwand had six officers altogether?  
4 A. Mmm-hmm.  
5  
6 Q. And they were looking at three deaths?  
7 A. Yes.  
8  
9 Q. Macnamir had up to - given the two levels that you've  
10 explained - about 20, according to that list we looked at  
11 yesterday?  
12 A. That were available to be used, yes.  
13  
14 Q. About seven or eight, you said, were heavily involved,  
15 and another dozen or so that were available?  
16 A. There was, from recollection in my statement, about  
17 four or five that were heavily involved but yes, others  
18 were available.  
19  
20 Q. You listed six as heavily involved, namely, Young,  
21 Brown, Jones, Taylor, Clancy and Dickinson, and then  
22 another 10 as being, in effect, available?  
23 A. Yes. With Dickinson coming on post the commencement  
24 of the inquest.  
25  
26 Q. How was it that a strike force looking into three  
27 deaths had six people available to it, and a strike force  
28 looking into one death had up to 16 or more?  
29 A. Again, those resources you're referring to are listed  
30 administratively on a database. Should Neiwand or any  
31 other homicide investigation require more resources, they  
32 could and would be made available.  
33  
34 THE COMMISSIONER: Q. I wonder if you would be kind  
35 enough to answer the question, Mr Willing.  
36 A. I've tried to answer that question, Commissioner.  
37  
38 MR GRAY: Q. I will ask it again. Macnamir, looking  
39 into one death --  
40 A. Yes.  
41  
42 Q. -- had six people heavily involved and another 10  
43 available, on your evidence?  
44 A. Yes.  
45  
46 Q. Neiwand, looking into three deaths, had a total of six  
47 people, one of whom, Penny Brown, was listed as being -

- 1 I forget the expression - on call or available or assisting  
2 or some term like that. Agreed?
- 3 A. Yes.  
4
- 5 Q. Well, how could it be that an investigation into one  
6 death gets far more people allocated to it than an  
7 investigation into three deaths?
- 8 A. You are referring to the administrative list of  
9 available resources. Again, should the Neiwand matter or  
10 investigation require more, more would have been allocated  
11 to it.  
12
- 13 Q. Well, it's not likely, to take one example, that the  
14 huge list of persons of interest --
- 15 A. Yes.  
16
- 17 Q. -- on Penny Brown's spreadsheet could have been  
18 annualised and researched and investigated, whether by  
19 surveillance or any other overt or covert means, by the  
20 small team that Neiwand had, wouldn't you agree?
- 21 A. That's correct, on the face of it, yes.  
22
- 23 Q. And they never asked for more, did they?
- 24 A. Not from my knowledge or recollection, no.  
25
- 26 Q. So really the chances of them being able to  
27 investigate the 50 or more persons of interest were nil,  
28 weren't they?
- 29 A. Not nil, but limited, yes.  
30
- 31 Q. Nearly nil, negligible?
- 32 A. Limited, yes.  
33
- 34 Q. I want to just draw your attention to the two  
35 investigation plans, the one for Macnamir and the one for  
36 Neiwand. I wonder if Mr Willing could have volume 1,  
37 please. If you would turn to tab 7 [SCOI.75757\_0001],  
38 you'll find the investigation plan for Strike Force  
39 Macnamir?
- 40 A. Yes.  
41
- 42 Q. I want to draw your attention to a few aspects of it.  
43 It has a date, first of all, which we can see on the bottom  
44 of all the pages, namely, 13 March 2013?
- 45 A. Yes.  
46
- 47 Q. Which is roughly a month after it was instituted --

- 1 A. Yes.  
2
- 3 Q. -- is that right? It's seven pages long, and it  
4 contains quite a deal of detail?  
5 A. Yes.  
6
- 7 Q. It looks as though it's been written by the  
8 investigation supervisor, Pamela Young; is that what we  
9 would infer from her name being on the bottom?  
10 A. Yes.  
11
- 12 Q. And under the heading "Strategies", on page 3 -  
13 actually, "Strategies/Execution" --  
14 A. Yes.  
15
- 16 Q. -- there are quite a number of topics dealt with in a  
17 fair amount of detail, as you can see?  
18 A. Yes.  
19
- 20 Q. The first one is "Victimology and Last Movements"?  
21 A. Yes.  
22
- 23 MR GRAY: Would your Honour just pardon me a moment?  
24
- 25 THE COMMISSIONER: Certainly.  
26
- 27 MR GRAY: My friend doesn't seem to have a printed copy in  
28 his own folder so we are making arrangements to have it  
29 provided to him.  
30
- 31 Q. In any event, back to you, Mr Willing, under the first  
32 topic, "Strategies/Execution" is "Victimology and Last  
33 Movements"?  
34 A. Yes.  
35
- 36 Q. And various matters are identified there?  
37 A. Yes.  
38
- 39 Q. Then there is a heading "The Location of the Body",  
40 with quite a few details and topics sketched out?  
41 A. Yes.  
42
- 43 Q. Then, number 3 is "Identify Persons of Interest"?  
44 A. Yes.  
45
- 46 Q. And that section goes for a page and a half or so; is  
47 that right?

1 A. Yes.  
2  
3 Q. And quite a number of steps are outlined as steps that  
4 were going to need to be taken in terms of finding persons  
5 of interest; agreed?  
6 A. Yes.  
7  
8 Q. And over the page, on page 6, there's a heading  
9 "Strategic"; do you see that?  
10 A. Yes.  
11  
12 Q. The investigation plan says that what will happen is  
13 that a coordinated approach to POIs, if identified, will be  
14 prepared, and DCI Young will be briefed on investigation  
15 strategies?  
16 A. Yes.  
17 Q. And under "Witness Management" on page 7, there are  
18 some remarks made about other aspects of what would be  
19 involved in pursuing persons of interest in reality?  
20 A. Yes.  
21  
22 Q. Now, by comparison, can we turn to tab 18  
23 [SCOI.74880\_0001], where we find the investigation plan for  
24 Neiwand - do you have that?  
25 A. Yes.  
26  
27 Q. First of all, there's no date on it, as you can see.  
28 A. Yes.  
29  
30 Q. But as you may recall from some questions I asked you  
31 before the break, it's apparent that it came into existence  
32 some time between September 2016 and the end of October  
33 2016. Do you remember I showed you that in the progress  
34 reports?  
35 A. Yes, correct, yes.  
36  
37 Q. If that's when it came into existence, as apparently  
38 it was, that's about a year after you began Neiwand  
39 in October 2015?  
40 A. Yes.  
41  
42 Q. And it's about five months after the rebooting of  
43 Neiwand in about May 2016.  
44 A. Yes.  
45  
46 Q. So for all of that time there just wasn't an  
47 investigation plan; correct?



1 A. There wasn't one that was uploaded on the system;  
2 that's correct.

3  
4 Q. Well, there wasn't one at all, according to the  
5 progress reports?

6 A. It appears that's right.

7  
8 Q. The one that did come into existence, seemingly this  
9 one, is a great deal shorter than the Macnamir one, isn't  
10 it?

11 A. Yes, it is.

12  
13 Q. The first page and a half out of two and a half pages  
14 is simply a summary of what was known many years before --

15 A. Yes.

16  
17 Q. -- about the three deaths? And then under the heading  
18 "Strategies/Execution", there is, would you agree, almost  
19 nothing of any substance? I will come to the detail of  
20 that but --

21 A. Sure.

22  
23 Q. -- would you agree with that?  
24 A. Yes, it's very, very limited.

25  
26 Q. So it says under the heading "Strategies/Execution"  
27 that the first thing would be to try and find investigation  
28 material from holdings elsewhere - that's in the first  
29 paragraph?

30 A. Yeah.

31  
32 Q. Then the second paragraph, four bullet points, which  
33 also largely involves getting material from previous work  
34 that had been done in other periods of time?

35 A. Yes.

36  
37 Q. Then there's some administrative material about  
38 information management and positions held and crime scene  
39 management. Then there's a heading "Canvassing"; do you  
40 see that?

41 A. Yes.

42  
43 Q. What is proposed is a revisit of residents who resided  
44 around Marks Park, Tamarama, in 1989/90, were spoken to in  
45 2001/2002; a review of the canvass forms and possible  
46 follow-up with these persons; do you see that?

47 A. Yes, I do.

1  
2 Q. To your knowledge, was any such re-canvassing ever  
3 done?  
4 A. I don't know whether it was or not.  
5  
6 Q. There's no mention of it in any of those progress  
7 reports that I took you to, is there?  
8 A. That's right, correct.  
9  
10 Q. And of course 1989/90 doesn't have anything to do with  
11 Mr Mattaini in the first place, does it?  
12 A. That's correct. It was five years before.  
13  
14 Q. Then under the heading "Witness Management", it says  
15 that follow-up statements will be required for identified  
16 witnesses for clarification and expansion purposes as well  
17 as statements from freshly identified witnesses.  
18 A. Yes.  
19  
20 Q. To your knowledge, to what extent was that done, in  
21 the time up to April 2017?  
22 A. I don't know how extensive that was undertaken,  
23 Mr Gray.  
24  
25 Q. Would you agree that in the light of the progress  
26 reports that we went through this morning, if any such work  
27 was done, it was extremely limited?  
28 A. And not recorded in those progress reports.  
29  
30 Q. Well, in terms of what was recorded, it was extremely  
31 limited?  
32 A. In terms of what was recorded, yes.  
33  
34 Q. And if anything else was done and wasn't recorded, why  
35 would that be, would you think?  
36 A. I don't know.  
37  
38 THE COMMISSIONER: Q. So does that mean that lots of  
39 work of significance in these sorts of activities may be  
40 undertaken but simply never recorded in a progress report?  
41 A. Not in the progress report, Commissioner. Again, it's  
42 a summary. They're in varying quality. It would be  
43 impossible to include everything, in some cases --  
44  
45 Q. I will put the question again and I'd like you to  
46 direct, if you wouldn't mind, to my question: does this  
47 mean that in activities of this sort, significant matters

1 of investigation may have been undertaken and not recorded  
2 in progress reports? The word "significant" is what I'd  
3 like you to focus on?

4 A. Yes. "Significant", I would expect it to be in the  
5 progress report.

6  
7 THE COMMISSIONER: Thank you.

8  
9 MR GRAY: Q. Because the progress report was how you, as  
10 commander, or whoever was sitting in your chair, was to  
11 know what was going on, wasn't it?

12 A. It was one of the methods, yes.

13  
14 Q. Well, according to your statement, it was the main  
15 method apart from occasional - my word - ad hoc verbal  
16 discussions?

17 A. Correct, yes.

18  
19 Q. But I'm sure you would agree as a former very senior  
20 police officer that in the Police Force, like any other  
21 very large organisation, keeping a record is critical,  
22 isn't it?

23 A. Yes.

24  
25 Q. So if something significant was done, it would be  
26 recorded, in this situation, in the progress report,  
27 wouldn't it?

28 A. Yes, it should be.

29  
30 Q. And if it is not there, that's a pretty good  
31 indication that it didn't happen, isn't it?

32 A. That's correct.

33  
34 Q. Now, under the heading "Persons of Interest" towards  
35 the end of the third page, it says:

36  
37 *A detailed list of persons of interest will*  
38 *be developed after an extensive review of*  
39 *all material.*

40  
41 Do you see that?

42 A. Yes.

43  
44 Q. Was that ever done?

45 A. I don't know.

46  
47 Q. The progress reports certainly don't indicate it, do

1 they?  
2 A. No.  
3  
4 Q. Even though Penny Brown had provided Neiwand with  
5 a lengthy spreadsheet, back in February 2016?  
6 A. Yes.  
7  
8 Q. Now, the contrast, I'd suggest to you, between the two  
9 investigation plans is striking; would you agree?  
10 A. Certainly different, yes.  
11  
12 Q. Why was that?  
13 A. I don't know.  
14  
15 Q. You had no role to play in the creation of either of  
16 them?  
17 A. No.  
18  
19 Q. Was it because, do you think, with Neiwand, by the  
20 time this investigation plan was produced in late 2016, the  
21 real objective was not to reinvestigate the deaths in any  
22 comprehensive way but, rather, to focus on the  
23 possibilities of suicide or misadventure and to cast  
24 a critical eye over Taradale?  
25 A. That is an assertion that could be made. I don't  
26 believe it was the case.  
27  
28 Q. Could Mr Willing have volume 6, please. I want to  
29 take you to the eighth progress report, which is at 164h,  
30 [SC0I.82052\_0001]. Do you have that?  
31 A. Yes.  
32  
33 Q. This is for a period ending 18 September 2017. So of  
34 course it's after you've moved to your new role?  
35 A. Correct, yes.  
36  
37 Q. And I'm assuming you didn't see this until recently?  
38 A. That's correct.  
39  
40 Q. On page 3, under "Mattaini", there is a repetition of  
41 something that was in one of the earlier ones that I took  
42 you to, namely, that the investigation into Mattaini will  
43 be inactive, so that --  
44 A. Yes, they can concentrate.  
45  
46 Q. -- people can concentrate on Warren?  
47 A. Yes.

- 1  
2 Q. Under "Warren" there's a reference - there are  
3 references to speaking to two or three people. Do you see  
4 that?  
5 A. Yes.  
6  
7 Q. And under "Russell", there's a reference to receiving  
8 a report of a Dr Duflou?  
9 A. Yes.  
10  
11 Q. And to the fact that the summary of evidence in  
12 relation to Mr Russell had been completed?  
13 A. Yes.  
14  
15 Q. Under the heading, which is almost completely blacked  
16 out, on page 5, "Investigation Coordinator", someone called  
17 Peter Ruskin has repeated something that we saw in an  
18 earlier one about Warren, namely, "Possible homicide, but  
19 possibly of a domestic nature"?  
20 A. Yes.  
21  
22 Q. And then the part that I actually want to ask you  
23 about is on page 6, where the squad commander fills out the  
24 section for him; do you see that?  
25 A. Yes.  
26  
27 Q. And that's Jason Dickinson, who by this time was the  
28 Acting Commander Homicide; correct?  
29 A. Correct, yes.  
30  
31 Q. And what he says is:  
32  
33 *Cold Case. Evidentiary review.*  
34  
35 Do you see that?  
36 A. Yes.  
37  
38 Q. Would you agree that in substance, that is correct -  
39 that is, the Neiwand exercise was really almost entirely an  
40 evidentiary review?  
41 A. It seems that they spent a large portion of their time  
42 reviewing the evidence, yes.  
43  
44 Q. Rather than going out to try to find new evidence?  
45 A. That's what it seems like, yes.  
46  
47 Q. That's what it seems like and that's what Acting

1 Homicide Commander Dickinson understood to have happened?  
2 A. That's what he's put for reasons for not having  
3 a formal review into it, yes.  
4

5 Q. And the evidence that was being reviewed was almost  
6 entirely the evidence gathered by Taradale, wasn't it?

7 A. And the NSW Crime Commission, yes.  
8

9 Q. Well, the NSW Crime Commission had gathered evidence  
10 for Taradale, hadn't they, and that's what you were then  
11 getting access to?

12 A. Correct, yes.  
13

14 Q. So I repeat, the evidence that was being reviewed was  
15 almost entirely the Taradale evidence?

16 A. Yes.  
17

18 Q. In the case of Mattaini, there had never been any  
19 investigation of his disappearance at the time, in 1985,  
20 because it seemingly wasn't reported; correct?

21 A. Correct.  
22

23 Q. And the work that Taradale was able to do in relation  
24 to it in August 2002 was limited, as we went through  
25 yesterday?

26 A. Yes.  
27

28 Q. Because it came in at the heel of the hunt?

29 A. Correct.  
30

31 Q. So in the case of Mattaini, there had barely ever been  
32 an investigation at all; correct?

33 A. Yes, that's correct.  
34

35 Q. In the case of Warren, the original investigation in  
36 1989 by Sergeant Bowditch was so inadequate that Coroner  
37 Milledge called it disgraceful?

38 A. Yes.  
39

40 Q. And in the case of Russell, the original investigation  
41 in 1989 was considered by the Coroner, Coroner Milledge, to  
42 be not as bad as the one for Warren but still "far from  
43 adequate"?

44 A. Yes.  
45

46 Q. You remember that? Now, on what you know of those two  
47 original investigations, for Warren and Russell, do you

1 agree with what Coroner Milledge said?  
2 A. I don't know the details of what was conducted in  
3 those investigations.  
4  
5 THE COMMISSIONER: Q. Did you not know that in the case  
6 of Russell a very important exhibit had been lost?  
7 A. Being the hair; is that correct?  
8  
9 Q. Well, that's pretty important?  
10 A. Yes.  
11  
12 Q. But you knew that had been lost long ago, didn't you?  
13 A. Yes, I did, yes.  
14  
15 Q. And that was a significant inadequacy in record or  
16 exhibit keeping on the part of the police who investigated  
17 that matter?  
18 A. Yes.  
19  
20 Q. Indeed, it's almost unthinkable that something like  
21 that could go missing, isn't it?  
22 A. Yes.  
23  
24 MR GRAY: Q. Given what I've just said and you've agreed  
25 to the last few questions that I have asked you, do you  
26 agree, then, that Neiwand was, for the most part, actually  
27 not seeking to reinvestigate these three cases at all, but  
28 rather to analyse Taradale and criticise it where possible?  
29 A. I agree that that's the course of action that  
30 ultimately seems to have evolved; not the intent of the  
31 original establishment of Neiwand.  
32  
33 Q. Not your intent at any rate?  
34 A. No. And in terms of the intent around criticising  
35 Taradale, I can't comment whether that was a motivation or  
36 not. I wasn't - certainly not mine.  
37  
38 Q. So as I understand your evidence today - and do  
39 clarify this if need be - your intention when setting up  
40 Neiwand was actually genuinely to try to reinvestigate  
41 these three deaths?  
42 A. It was --  
43  
44 Q. Including by chasing down persons of interest?  
45 A. Yes.  
46  
47 Q. And your understanding is that that's what Penny Brown

1 thought was going to happen?

2 A. Yes, she was very keen to do that.

3

4 Q. But as I've been taking you through all this material,  
5 you accept, as I understand it, that it would very much  
6 appear that is not what happened?

7 A. It appears that, that's right.

8

9 Q. And that what did happen was what I've suggested,  
10 namely, a focus on criticising Taradale where possible and  
11 exploring hypotheses other than homicide; correct?

12 A. That's the way it appears, what you've taken me  
13 through.

14

15 Q. And if that is what happened, and as you say, that's  
16 how it appears, you can't assist us with who might have  
17 been responsible for that very different approach?

18 A. No.

19

20 Q. Let's have a look at the post operational assessment  
21 in Neiwand, which is in volume 6, the one you have, in  
22 tab 176.

23 A. Yes, Mr Gray.

24

25 Q. The post operational assessment, presumably given the  
26 title, is a kind of wrap up or summary document at the  
27 conclusion of an operation or a strike force?

28 A. Yes.

29

30 Q. This one, on the front - not quite the front page, but  
31 the sort of cover page, says that the start date of the  
32 operation was 11 June 2016 and that the finish date was  
33 30 November 2017?

34 A. Yes.

35

36 Q. So whoever wrote this - and it seems to have been  
37 Chebl by the look of the next line - regarded the operation  
38 as not having started until 11 June 2016?

39 A. That's right.

40

41 Q. Does that seem right to you or is it somewhat  
42 inaccurate?

43 A. Somewhat inaccurate. As we know, it started earlier.

44

45 Q. If we turn over to page - well, they're not numbered,  
46 actually, but it's the sixth page, I believe, it's the one  
47 that has a heading about a third of the way down, "Post



1 Operational Assessment", and then there are two headings in  
2 the middle of the page, one, "Terms of Reference", and the  
3 second, "Investigation Summary". Have you got that page?  
4 A. Yes.

5  
6 Q. So "Investigation Summary" - I don't need to take you  
7 to all the detail of this, it will be mainly a matter for  
8 Mr Morgan I dare say, but the investigation summary has  
9 three parts, of course, one for Mr Mattaini, one for  
10 Mr Warren and one for Mr Russell.

11 A. Yes.

12  
13 Q. Now, looking at the one for Mr Mattaini, as I say,  
14 I won't do this in detail with you, but the very first  
15 sentence is wrong, isn't it? He wasn't last seen walking  
16 along a track around Mackenzies Point, was he?

17 A. Not from my understanding, no.

18  
19 Q. Does that trouble you, that after all this time,  
20 somebody sits down to write a summary, a post operational  
21 assessment, and gets the very first sentence as to where he  
22 was last seen wrong?

23 A. Yes, it was - it's not right, yes.

24  
25 Q. It's not very good, is it?

26 A. No.

27  
28 THE COMMISSIONER: Q. It hardly smacks of  
29 a reinvestigation, does it, unless some new information had  
30 come to light to support that assertion?

31 A. That's right, Commissioner.

32  
33 MR GRAY: Q. In the Mattaini summary, starting from  
34 about the third or fourth paragraph from the bottom on that  
35 page where the Mattaini summary starts, and going over to  
36 the next page, almost the entirety of the subject matter  
37 concerns the possibility of suicide, doesn't it?

38 A. Yes, it does.

39  
40 Q. Indeed, basically nothing is said about any  
41 exploration of the possibility of homicide; correct?

42 A. Correct.

43  
44 Q. In the case of Mr Warren, which is the subject of  
45 a considerably longer summary, the summary identifies those  
46 from whom Neiwand obtained statements, and this is on what  
47 is in fact the tenth page, but - if you start with the

- 1 heading about Warren and go not to the immediate next  
2 page but the page after that, you'll see that reference is  
3 made to - apart from experts like Dr Brander --  
4 A. Yes.  
5  
6 Q. -- there's a reference to a statement from a  
7 Mr [REDACTED], about the fifth paragraph down:  
8  
9 *On the 2/5/2017 a statement was*  
10 *obtained ...*  
11  
12 I see it has been redacted anyway. But --  
13 A. That's right.  
14  
15 Q. Then the next paragraph refers to getting a statement  
16 from someone in New Zealand who was a housemate of someone  
17 else who knew Mr Warren?  
18 A. Yes.  
19  
20 Q. The next one is getting a statement from someone who  
21 was a former associate of Mr Warren who had maintained  
22 a friendship, so not a person of interest, obviously?  
23 A. Yes.  
24  
25 Q. Then a statement from someone that was interviewed at  
26 Surry Hills station, who was clearly not regarded as  
27 a person of interest; correct?  
28 A. It doesn't appear that way.  
29  
30 Q. No. And then statements from former and current  
31 employees from Mr Warren's workplace; correct?  
32 A. Yes.  
33  
34 Q. On the top of the next page, statements from various  
35 close or distant family members?  
36 A. Yes.  
37  
38 Q. And then after that, a statement from another person,  
39 who also doesn't seem to be treated as a person of  
40 interest.  
41 A. Is that the last paragraph?  
42  
43 Q. The second-last one, the short paragraph, about two  
44 lines?  
45 A. That's right, yes.  
46  
47 Q. And then in the last paragraph, someone who

1 a statement is taken from --

2 A. Yes.

3

4 Q. Someone who, if one reads it, is not said to be  
5 a person of interest at all but is someone whose account  
6 might point towards a conclusion other than homicide;  
7 correct?

8 A. Yes.

9

10 Q. So here we are in the post operational assessment in  
11 relation to Mr Warren, and basically, nothing seems to have  
12 been done about pursuing any actual persons of interest;  
13 correct?

14 A. That's the way it seems, yes.

15

16 Q. And in the case of Mr Russell, starting towards the  
17 bottom of that page, we find on the next page, the third  
18 paragraph, in May 2016, Neiwand commenced its  
19 reinvestigation, they obtained exhibits, they had  
20 a scientist examine some old photographs, they approached  
21 somebody expert in biology and forensics about the old  
22 photographs to do with the hair on the hand?

23 A. Yes.

24

25 Q. They got a report from a pathologist about  
26 Mr Russell's post-mortem, and then they got a report from  
27 another pathologist, so two in total, Professor Moynham and  
28 Professor Duflou?

29 A. Mmm-hmm.

30

31 Q. Apparently no attempt to pursue any persons of  
32 interest whatsoever do you agree?

33 A. Not recorded here, no.

34

35 Q. Well, if it had happened, it surely would be recorded  
36 in the post operational assessment?

37 A. That's right, correct.

38

39 Q. So it didn't happen; correct?

40 A. It doesn't seem to have happened.

41

42 Q. So all of that is then signed off by Michael Chebl on  
43 the top of the next page, you see?

44 A. Yes, I do.

45

46 Q. Then the next section headed "3. Key Findings: " is  
47 signed off by Stewart Leggat, Detective Inspector?

1 A. Yes.

2

3 Q. Now, by this time, Stewart Leggat was what in relation  
4 to Neiwand?

5 A. I believe that he was an investigation coordinator  
6 within the Unsolved Homicide Team by that point.

7

8 Q. Generally?

9 A. Yes.

10

11 Q. And what, if you know, was his position or title or  
12 role in the Neiwand exercise specifically?

13 A. He would be - I don't know specifically what his role  
14 was, but by virtue of the fact of him signing off on this  
15 post operational assessment, he'd be an investigation  
16 coordinator if not supervisor by that point. I don't know.

17

18 Q. Right. So he was putting himself forward as an  
19 authoritative figure who could state for the record what  
20 had actually been done?

21 A. Yes.

22

23 Q. Now, at the bottom of that page where the heading  
24 "3. Key Findings" appears, he says what Neiwand did,  
25 doesn't he, namely:

26

27 *Strike Force Neiwand investigators focused*  
28 *on victimology, associates and the last*  
29 *known movements of the three males.*

30

31 A. Yes.

32

33 Q. Not persons of interest; correct?

34 A. Yes.

35

36 Q. From everything you've been shown today in the witness  
37 box, and also what you may have read itself in preparation  
38 for today, that summary in one and a bit lines by Detective  
39 Inspector Leggat is accurate, isn't it?

40 A. Yes.

41

42 Q. Now, that, being accurate, is very, very different  
43 from what the investigation plan proposed, isn't it?

44 A. Yes.

45

46 Q. And it is very, very different from what you say you  
47 thought Neiwand was going to do?

1 A. Yes.

2

3 Q. In the next part of Mr Leggat's section he has three  
4 sets of paragraphs, one about Mattaini, one about Warren  
5 and one about Russell, and for the most part, although  
6 I don't need to go through the details with you, he is, for  
7 the most part, lifting that, I don't say that critically,  
8 but taking that from the summaries, the Neiwand summaries?

9 A. Yes.

10

11 Q. Let me, however, just do this next set of questions  
12 from this document, because you'll see that towards the end  
13 of what he has to say about Mattaini, his  
14 paragraph concludes:

15

16 *There are no further lines of inquiry for*  
17 *the Mattaini matter. There is no forensic*  
18 *evidence, no identified suspect and/or*  
19 *witnesses that can provide a time line for*  
20 *his last movements.*

21

22 A. Where is that, Mr Gray, sorry?

23

24 Q. Do you see the page where Stewart Leggat's signature  
25 appears, the last page really --

26 A. Yes.

27

28 Q. -- the page before that?

29 A. The page before?

30

31 Q. Under the heading to do with Mattaini at the top?

32 A. Yes, yes, I see that.

33

34 Q. I'm looking at about - in that long paragraph under  
35 that section, so just a bit above halfway on the page --

36 A. Yes.

37

38 Q. -- about four lines from the end of the paragraph, it  
39 contains these words:

40

41 *There are no further lines of inquiry for*  
42 *the Mattaini matter. There is no forensic*  
43 *evidence, no identified suspect and/or*  
44 *witnesses that can provide a time line for*  
45 *his last movements.*

46

47 Now, pausing there --

- 1 A. Yes.  
2
- 3 Q. -- from what you've seen, Neiwand had made not the  
4 slightest attempt to obtain either forensic evidence or the  
5 identification of a suspect or to approach any witnesses;  
6 correct?  
7 A. From what I've seen, that's right.  
8
- 9 Q. And going on, Mr Leggat continues:  
10  
11 *Mattaini's disappearance - cause and manner*  
12 *of death remain "undetermined".*  
13
- 14 A. Yes.  
15
- 16 Q.  
17 *It is recommended that this investigation*  
18 *be listed as inactive and only reactivated*  
19 *if new and compelling evidence becomes*  
20 *available.*  
21
- 22 A. Yes.  
23
- 24 Q. Now, would you agree that having not done any of the  
25 things that I've just suggested that they didn't do, to  
26 arrive at that conclusion is hopeless?  
27 A. I wouldn't - well, it could be construed that.  
28
- 29 Q. Now, in the case of both Warren and Russell, in the  
30 next page or so --  
31 A. Yes.  
32
- 33 Q. -- there are sentences almost in the same terms as  
34 those ones applicable to Warren and Russell. In the case  
35 of Warren, do you see at the very bottom of that same page:  
36  
37 *There are no further lines of inquiry for*  
38 *the Warren matter.*  
39
- 40 et cetera? Three lines from the bottom?  
41 A. Yes.  
42
- 43 Q. Now, that is almost word for word the same as what  
44 I just read out to you from Mattaini; correct?  
45 A. Yes, it is, yes.  
46
- 47 Q. And the singular exception is, in the case of Warren,

1 Mr Leggat says:

2

3

4

5

6

7

8

9

10 Q. So it's a direct contradiction of the Coroner's  
11 findings by Neiwand, isn't it?

12 A. That's what he's saying, yes.

13

14 Q. Without having taken any attempt to explore the  
15 question of persons of interest?

16 A. Yes.

17

18 THE COMMISSIONER: Q. And did you have any appreciation  
19 or did you inform yourself prior to you leaving this task  
20 how extensive Coroner Milledge's activities were in terms  
21 of hearing time, persons of interest and other matters?

22 A. No, I knew, Commissioner, that it was - in general  
23 terms I knew she spent considerable time but I don't  
24 know --

25

26 Q. And you knew that there were covert operations and  
27 there was a huge amount of material that she had available?

28 A. Yes.

29

30 Q. Including a number of persons of interest who were  
31 actually called to give evidence before her?

32 A. Yes.

33

34 Q. Not one of whom the Neiwand people seem to have spoken  
35 with?

36 A. Yes.

37

38 MR GRAY: Q. That being so, Mr Willing, would you agree  
39 that for Neiwand to purport to say what it has said there,  
40 that the cause and manner of death remain undetermined  
41 despite the homicide findings of the Coroner, is completely  
42 without foundation?

43 A. That's the way it appears.

44

45 Q. When we get to Mr Russell, the exact same words appear  
46 as for Mr Warren, don't they, including the phrase "despite  
47 the 2005 'homicide' findings of the Coroner"?

1 A. Yes.

2

3 Q. And again, for Neiwand to purport to say that the  
4 death of Mr Russell should be reclassified as undetermined,  
5 in effect thereby contradicting the findings of the  
6 Coroner, was completely without foundation, wasn't it?

7 A. That's the way it appears.

8

9 Q. When you read this material in readiness or in  
10 preparation for these hearings, did you arrive at the same  
11 conclusions that I've just been putting to you?

12 A. I didn't arrive at any conclusion because I don't know  
13 the background of the detail of what they did and what they  
14 didn't do until we've gone through it now.

15

16 Q. Well, you read the summaries?

17 A. Yes.

18

19 Q. Sorry, the progress reports that I took you to?

20 A. Yes.

21

22 Q. And you saw what they revealed about what was done and  
23 thus about what wasn't done; correct?

24 A. Yes, as recorded, yes.

25

26 Q. And you read the post operational assessment?

27 A. Yes.

28

29 Q. Which even more formally recorded what had been done  
30 and thus, in effect, what had not been done?

31 A. Yes.

32

33 Q. And you saw that the conclusions were as I've just  
34 been taking you to, and it didn't cross your mind that  
35 those conclusions were unjustified?

36 A. I was surprised at those conclusions. It was the  
37 first time that I'd seen them. I wasn't aware of them at  
38 the time, I thought - and whether they were justified or  
39 not justified was something that didn't actively cross my  
40 mind, but - yeah, I was - I was - yeah, I didn't have an  
41 opinion one way or the other, to be honest.

42

43 Q. I see. Well, I'll take you to the actual summaries  
44 which are, of course, longer --

45 A. Yes.

46

47 Q. -- but which contain - all of those pieces of



1 phraseology that I've just taken you to are to be found in  
2 the summaries. But focusing at least for the moment on  
3 those four or five sentences at the end of each of these  
4 three assessments --

5 A. Yes.

6

7 Q. -- case "should be reclassified as undetermined",  
8 "investigation should be listed as inactive", the "homicide  
9 findings of the Coroner" about Mr Warren and Mr Russell  
10 should in effect be contradicted or are contradicted and  
11 should be rejected, what is the status within the  
12 NSW Police Force of those very definite conclusions? Where  
13 do they sit? What happens with them when that  
14 reclassification is asserted?

15 A. The matters sit and remain on the Unsolved Homicide  
16 database until or if further evidence arises.

17

18 Q. Well, part of what is said by Mr Leggat, but he's  
19 repeating what Mr Chebl says in the summaries --

20 A. Yes.

21

22 Q. -- is that the manner of death should be reclassified  
23 as "undetermined". Well, who responds to that? Does  
24 someone somewhere reclassify something or --

25 A. Internally it may be, it may sit on the Unsolved  
26 Homicide database with that characteristic but nothing  
27 further.

28

29 Q. Sorry, who does the reclassifying?

30 A. It would be, you know, the Unsolved Homicide Team  
31 itself. Again, internally, not externally at all.

32

33 Q. And when it says:

34

35 *It is recommended that this investigation*  
36 *be listed as inactive ...*

37

38 And this is a recommendation by Mr Leggat who was more or  
39 less at the top of the tree in Unsolved Homicide --

40 A. At the time.

41

42 Q. -- who acts on the recommendation?

43 A. The team itself. Like, it doesn't go anywhere. It  
44 sits on the database as with that classification.

45

46 Q. What is the effect of that, either in practical terms  
47 or in any other terms? What is the effect of that

1           happening?  
2           A.    The effect - in practical terms, nothing, you know,  
3           unless somebody - some further information comes in to  
4           contradict that or to change that assessment.  
5  
6           Q.    So the three cases just die on the vine inside  
7           Unsolved Homicide --  
8           A.    No, they sit there, they sit there.  
9  
10          Q.    -- without anyone knowing that that's what's  
11          happened?  
12          A.    They sit there on the database without anyone knowing  
13          what's happened.  
14  
15          Q.    They sit there on the database as undetermined and  
16          inactive and never to be reactivated unless someone  
17          somewhere else in the police does something?  
18          A.    No, I think we covered that before in terms of no  
19          cases are ever closed. If further information comes to  
20          light, they can and are often reactivated.  
21  
22          Q.    Only reactivated if new and compelling evidence  
23          becomes available?  
24          A.    Yes.  
25  
26          Q.    That's what it says?  
27          A.    Yes.  
28  
29          Q.    In the context where, from the police's point of view,  
30          the investigation was inactive?  
31          A.    That's right.  
32  
33          Q.    So the police weren't going to do anything about  
34          getting any new or compelling evidence?  
35          A.    Well, once that post operational assessment has been  
36          done, that's correct.  
37  
38          Q.    So it would remained inactive forever unless someone  
39          else, not being the police, came up with something?  
40          A.    Yeah, which is often the case with unsolved homicide  
41          matters sitting on the database.  
42  
43          Q.    Was the Coroner ever informed that her findings in  
44          relation to Mr Warren and Mr Russell had been overturned by  
45          Neiwand?  
46          A.    Not that I am aware.  
47

1 Q. Should she have been?

2 A. As a courtesy, perhaps, but no, I'm not sure what  
3 decisions were made around that.

4

5 THE COMMISSIONER: Q. Pretty breathtaking, though, isn't  
6 it, that internally the NSW Police, not having spoken to  
7 one person of interest, seemingly not even spoken to any of  
8 the forensic persons themselves, would just reverse the  
9 decision of the Coroner, she having sat for a very long  
10 period and having heard a lot of witnesses? It's  
11 extraordinary, isn't it?

12 A. Yes.

13

14 MR GRAY: Q. In your experience, have you ever seen the  
15 like before?

16 A. Not in my experience. That's not to say it hasn't  
17 happened before.

18

19 Q. I asked you about your experience.

20 A. Yes, and I answered.

21

22 Q. You did. And your experience includes rising to the  
23 height of Deputy Commissioner?

24 A. Yes.

25

26 Q. So that's a very broad and long experience across many  
27 branches or aspects of the Police Force?

28 A. Yes.

29

30 Q. And you have never seen anything like this before?

31 A. Not in the terms you are putting it, no.

32

33 Q. Sorry, you'll have to say that again.

34 A. No.

35

36 Q. Apart from the fact that it would have been courteous  
37 to tell Coroner Milledge what Neiwand had done, do you  
38 conceive of there having been any obligation other than  
39 courtesy to tell her?

40 A. No, because matters are reviewed and looked at as  
41 a matter of course by Unsolved Homicide looking at coronial  
42 findings, looking - you know, which resulted sometimes in  
43 reinvestigations, and --

44

45 THE COMMISSIONER: I think whatever is fascinating the  
46 Australian Air Force or somebody else at the moment might  
47 mean that we should perhaps break soon if this keeps going,

1 Mr Gray.

2

3 MR GRAY: Yes.

4

5 THE COMMISSIONER: I'm sure there's some rational  
6 explanation for it.

7

8 MR GRAY: Experience suggests not always, Commissioner.

9

10 Q. I'll just try a couple more and if we have to abandon  
11 ship and have the lunch break, we'll do that.

12 A. Sure.

13

14 Q. Were the families of Mr Warren or Mr Russell ever  
15 informed that Coroner Milledge's findings had been  
16 overturned?

17 A. I don't know.

18

19 Q. Should they have been?

20 A. Yes, I would suggest. However, in saying that, often,  
21 as I was attempting to answer before, matters are reviewed  
22 and looked at as a matter of course and either they don't  
23 proceed or they do proceed in different varying forms, but  
24 given that they're unsolved, the possibility of other  
25 evidence coming forward, other persons of interest being  
26 impacted on, decisions are made not to inform.

27

28 THE COMMISSIONER: Q. That was clearly not the case  
29 here, though, was it, Mr Willing?

30 A. That's right.

31

32 Q. Because these cases were closed from the police's  
33 point of view on a very different basis to the way in which  
34 they were left after Coroner Milledge had delivered her  
35 judgment, and closed on the basis that unless somebody  
36 outside the Police Force introduced some new or compelling  
37 evidence, as far as the police were concerned, not only was  
38 the case closed, but Coroner Milledge's decision had been  
39 effectively reversed?

40 A. They weren't closed; they were made inactive.

41

42 Q. Well, all right, let's not debate that point.

43 A. Sure.

44

45 Q. But Coroner Milledge's findings were in effect  
46 reversed?

47 A. Yes, Commissioner.

1  
2 Q. It's not just courtesy, wouldn't you think the family  
3 would like to know that the police were then off the job?  
4 A. Yes, but I don't know whether that occurred or not.  
5  
6 MR GRAY: Q. It's inherent in that answer that you think  
7 they should have been told?  
8 A. In these circumstances?  
9  
10 Q. Yes.  
11 A. I think so.  
12  
13 Q. Who should have told them?  
14 A. Perhaps the officer in charge or a member of the  
15 Unsolved Homicide Team.  
16  
17 Q. Should Mr Page have been told?  
18 A. I don't know.  
19  
20 Q. You don't know?  
21 A. No, I don't know. I wouldn't think so.  
22  
23 Q. Well, you're aware that in the course of the  
24 summaries, which you have read --  
25 A. Yes.  
26  
27 Q. -- criticism after criticism after criticism is  
28 levelled at him, some of them very serious - you're aware  
29 of that?  
30 A. I'm aware that the summaries contain criticisms, yes.  
31  
32 Q. To your knowledge, did the Neiwand personnel ever  
33 approach or contact Mr Page and ask him for his response to  
34 any of these criticisms?  
35 A. I don't know.  
36  
37 Q. Should they have?  
38 A. It's a matter for those investigators. I don't know  
39 one way or the other. It's difficult for me to answer  
40 that.  
41  
42 THE COMMISSIONER: Q. But what is your view, as a senior  
43 police officer, if criticisms of this sort --  
44 A. It depends on the circumstances.  
45  
46 Q. Please, do me the courtesy of just listening. If  
47 criticisms of this sort are being made and, in particular,

1 the inadequacy of his activities are being assumed -  
2 because if he is not asked, you will know, from your own  
3 reading of this, that there are serious criticisms about  
4 what it is said he was told and didn't record.

5 A. Yes.

6

7 Q. And yet not one attempt was made to determine whether  
8 that was a true position or just a wrong assumption on the  
9 part of the investigator in Neiwand?

10 A. Are you telling me that or is that --

11

12 Q. I'm asking you the question. If you don't understand  
13 it, I will repeat it.

14 A. Please repeat it.

15

16 Q. All right. If an allegation was going to be made that  
17 Page had been given information, for example, which he  
18 ignored deliberately, on one view --

19 A. Yes.

20

21 Q. -- is that the kind of thing that a real investigator  
22 would want to check with the investigating officer to see  
23 whether that was factually accurate or not before they  
24 wrote a report derogatory of the earlier investigation?

25 A. It may well be, but it may not be, under different  
26 circumstances. You know, you don't necessarily - you may  
27 not do it on every occasion but - because of the  
28 circumstances of what's happening in the inquiry, but on  
29 this occasion I would expect that it should have happened.

30

31 Q. But in circumstances where the ultimate conclusion of  
32 Coroner Milledge was being challenged - and I'm talking now  
33 particularly about the Mattaini matter --

34 A. Yes.

35

36 Q. -- you will know that a criticism was made of Mr Page  
37 that he was told something which, on one view, the  
38 suggestion was he ignored?

39 A. Yes.

40

41 Q. And yet the new investigator was thoroughly on top of  
42 the job and was able to come, by reason of some other  
43 information, to an entirely different view to that of  
44 Coroner Milledge?

45 A. Yes.

46

47 Q. Partly based upon the assumption on the part of that

1 investigator that Page had deliberately ignored a piece of  
2 relevant information?  
3 A. Yes.  
4  
5 Q. And do you think it would have been smart of the  
6 investigator to actually check whether that was factually  
7 accurate or not, given the fact that the result was that  
8 Coroner Milledge's decision was reversed?  
9 A. Yes.  
10  
11 MR GRAY: Q. Apart from or in addition to being smart,  
12 wouldn't it have been fair to Page?  
13 A. Yes.  
14  
15 Q. Because the result of not asking him is that these  
16 damning accusations against him, as you have explained,  
17 just sit rotting on the file inside the Unsolved Homicide  
18 Squad, don't they, where he could never have ever answered  
19 them, had it not been for this Special Commission?  
20 A. That's correct, they sit there --  
21  
22 Q. Is that fair, in your view?  
23 A. That's a difficult question to answer.  
24  
25 Q. Is it? What's difficult about it?  
26 A. Yes, because there are circumstances where sometimes  
27 you would not talk to previous investigators.  
28  
29 Q. Well, this one, these circumstances: was it fair not  
30 to ask him?  
31 A. On the face of it, no, it wasn't fair.  
32  
33 Q. It was terribly unfair, wasn't it?  
34 A. Now you are putting words into my mouth.  
35  
36 Q. I am. I'm asking you to agree that it was terribly  
37 unfair?  
38 A. It was unfair.  
39  
40 Q. To what extent, so far as you know, were these  
41 conclusions of Neiwand in all three of these cases  
42 disseminated - that is, did they go only to somewhere  
43 within the Unsolved Homicide Team or did they go in any  
44 respect wider than that?  
45 A. The normal processes are that they would go to the  
46 Director and then probably - possibly the Commander of  
47 State Crime Command.

- 1  
2 Q. Of, sorry?  
3 A. State Crime Command.  
4  
5 Q. And does that person sit above Commander Homicide?  
6 A. Yes.  
7  
8 Q. So that person, Director of State Crime Command, is  
9 it?  
10 A. Director of the Serious Crime Directorate, and then,  
11 on occasion, the Commander of the State Crime Command.  
12  
13 Q. So one or both of those, you would expect, would have  
14 received these Neiwand summaries?  
15 A. Yes.  
16  
17 Q. So the attacks on Mr Page's reputation spread at least  
18 that far?  
19 A. To those two people, yes.  
20  
21 Q. And what do they do with them in the ordinary course,  
22 as you understand it?  
23 A. Well, as you can see, there's a notation made by the  
24 Director, of the report, in I think - I think the front --  
25  
26 Q. When you say "as I can see" - whereabouts is that?  
27 A. Page 1, you can see that there is a notation by  
28 Detective Acting Chief Superintendent Wallace and Assistant  
29 Commissioner Lanyon.  
30  
31 Q. I see. A couple of things about that before we break.  
32 It seems that the Commander of the State Crime Command was  
33 sent the post operational assessment by the Director of  
34 Crime Operations Support?  
35 A. Yes, yes.  
36  
37 Q. So where does Crime Operations Support sit in the  
38 framework?  
39 A. So in - so the two - there were two directorates that  
40 existed in State Crime Command at the time that I was  
41 there. One was the Serious Crime Directorate and one was  
42 the operation - sorry, the Organised Crime Directorate.  
43 They were amalgamated into one, which was the Director  
44 Crime Operations, after a review of the entire Police Force  
45 was conducted by Commissioner Fuller.  
46  
47 Q. In about when?



- 1 A. In around 2017.  
2
- 3 Q. So the memorandum that we're looking at has a date for  
4 Mr Wallace of 23 February 2018, which, should we infer, is  
5 the date when he sent it to --  
6 A. It is a she and --  
7
- 8 Q. She, I beg your pardon, when she sent it to Mr Lanyon?  
9 A. Yes, certainly the date she signed it.  
10
- 11 Q. So it's gone from Leggat, presumably, to Wallace, has  
12 it?  
13 A. It would go through the Commander Homicide Squad at  
14 the time - I think you can see Cook has signed it - and  
15 then gone to Wallace.  
16
- 17 Q. Just tell me --  
18 A. The next page.  
19
- 20 Q. Oh, I see, on the third page?  
21 A. Yes.  
22
- 23 Q. So it's gone from Leggat to Cook as, by then,  
24 Commander Homicide?  
25 A. Yes.  
26
- 27 Q. It's gone from Cook to Wallace as Director of Crime  
28 Operations?  
29 A. Yes.  
30
- 31 Q. And Wallace has sent it to Lanyon, being Commander of  
32 State Crime Command?  
33 A. Yes, that's the way it appears.  
34
- 35 Q. And Lanyon has put the date 1 August 2018?  
36 A. Yes.  
37
- 38 Q. Now, the memorandum says:  
39  
40 *The following recommendation/s was/were*  
41 *raised in the Post Operational Assessment:*  
42 *Nil.*  
43
- 44 A. Yes.  
45
- 46 Q. That's not right, is it?  
47 A. Have a look at the recommendations that were made.

1 I don't think you took me to those.  
2  
3 Q. I think I did. They were that the deaths should be  
4 reclassified as undetermined --  
5 A. Oh, yes.  
6  
7 Q. -- and that the investigation be listed as inactive?  
8 A. So the title "Recommendations", that's what she's  
9 referring to.  
10  
11 Q. She is referring to the fact that there is no section  
12 with the heading "Recommendations", is that what you mean?  
13 A. There is a section at the end which says  
14 "Recommendations" and there is nothing recorded there  
15 except the word "Nil".  
16  
17 Q. I see. I see what you mean.  
18 A. Yes.  
19  
20 Q. Now, if this post operational assessment was sent in  
21 this way, we need to separate it, then, from the summaries.  
22 Were the summaries sent anywhere else, or would they be?  
23 A. The progress reports go to the Director, which would  
24 be the same position as the Director Crime Operations. So  
25 the summaries, the progress reports, up until the time of  
26 the structural change, went to the Director of Serious  
27 Crime Operations, and that's where they would generally  
28 stay.  
29  
30 Q. I see the time, so I will have to come back to this.  
31 A. Sure.  
32  
33 Q. But I used the term "summaries" and in your answer you  
34 said "progress reports". I need to make sure we are  
35 talking about the same thing?  
36 A. I think that's one - I think we are.  
37  
38 MR GRAY: I will deal with that after lunch, if that is  
39 a convenient time.  
40  
41 THE COMMISSIONER: Yes, it is. We will adjourn until 2.  
42  
43 **LUNCHEON ADJOURNMENT**  
44  
45 THE COMMISSIONER: Yes, Mr Gray.  
46  
47 MR GRAY: Q. Mr Willing, we were on the post operational

1 assessment?  
2 A. Yes, Mr Gray.  
3  
4 Q. Tab 176 of volume 6?  
5 A. Yes.  
6  
7 Q. I wanted to take a little time, not a long time, to  
8 just distinguish between it, the post operational  
9 assessment, and where it went, on the one hand, and where,  
10 what I'm referring to as the Neiwand summaries, went to on  
11 the other hand, which I will come to.  
12 A. Yes.  
13  
14 Q. We've been talking about the post operational  
15 assessment and you have explained that it, the document at  
16 176, has gone from Leggat to Wallace to Lanyon?  
17 A. Via Cook.  
18  
19 Q. Via Cook, thank you, quite right. I just wanted to  
20 make clear, in case there is any confusion anywhere, that  
21 many, perhaps not all but many, of the criticisms of  
22 Sergeant Page and Taradale are to be found in the post  
23 operational assessment as well as in the summaries.  
24 A. Yes.  
25  
26 Q. Could I ask you in tab 176, to turn to the section -  
27 it's on the unnumbered seventh page, which starts with the  
28 heading dealing with Mattaini, and on the next page, the  
29 second of two pages dealing with Mattaini --  
30 A. Yes.  
31  
32 Q. -- do you see there is a paragraph beginning  
33 "Mattaini's first suicide attempt occurred"?  
34 A. Yes.  
35  
36 Q. Now, without reading out every sentence, there is  
37 reference to two suicide attempts.  
38 A. Yes.  
39  
40 Q. There is an assertion that Musy said that throughout  
41 his relationship with Mattaini, he had found him to be of  
42 a certain state of mind?  
43 A. Yes.  
44  
45 Q. And then a couple of lines down there is a sentence  
46 beginning:  
47

1           *Musy explained this by stating "He*  
2           *(Mattaini) spoke of death as being*  
3           *a release for him ...*

4  
5           et cetera?

6           A.    Yes.

7  
8           Q.    After the last quoted passage in italics, the  
9           summary - sorry, the post operational assessment then says:

10  
11           *Musy stated that this information was*  
12           *provided to Detective Sergeant Page ...*  
13           *of ... Taradale in 2002.*

14  
15           A.    Yes.

16  
17           Q.    Musy is quoted as saying:

18  
19           *Of course I told Steven Page of this ...*

20  
21           Do you see that?

22           A.    Yes.

23  
24           Q.    And then the author goes on - this is Chebl -

25  
26           *Despite Mattaini's suicide attempt history,*  
27           *Detective Sergeant Page convinced Musy that*  
28           *Mattaini was most likely murdered.*

29  
30           A.    Yes, he does say that.

31  
32           Q.    So pausing there, that passage clearly involves some  
33           criticism of Page?

34           A.    Yes.

35  
36           Q.    And then if we go over to what Mr Leggat has to say  
37           about the Mattaini matter, which is on the second-last  
38           page of the main part of the document --

39           A.    Yes.

40  
41           Q.    -- you will see there is a heading to do with Mattaini  
42           at the top of the page?

43           A.    Yes.

44  
45           Q.    So what Mr Leggat says is:

46  
47           *The Coroner stated that there was no*

1           *evidence before her to support the finding*  
2           *of suicide ...*

3

4           and then a passage is quoted?

5           A.    Yes.

6

7           Q.    And then Leggat goes on:

8

9           *Mattaini's partner ... Musy provided*  
10          *Detective Sergeant Page with a statement in*  
11          *2002. The statement outlined two suicide*  
12          *attempts by Mattaini ... but failed to*  
13          *outline prior suicidal ideation despite*  
14          *Musy raising it with Page.*

15

16          A.    Yes.

17

18          Q.    Then it goes on:

19

20          *In 2017, Musy provided French Police with*  
21          *a statement which clearly outlined*  
22          *Mattaini's suicidal ideation and multiple*  
23          *attempts at suicide.*

24

25          Do you see that?

26          A.    Yes.

27

28          Q.    Seemingly, contrasting two suicide attempts with  
29          multiple attempts?

30          A.    Yes.

31

32          Q.    And then the next sentence is:

33

34          *Page's failure to include all the*  
35          *information about Mattaini's suicidal*  
36          *ideation in Musy's 2002 statement was a key*  
37          *factor in the Coroner not considering*  
38          *suicide as a possibility in Mattaini's*  
39          *disappearance.*

40

41          A.    Yes.

42

43          Q.    That's obviously a serious criticism of Page?

44          A.    Yes, it is, yes.

45

46          Q.    It is accusing Page of withholding relevant evidence  
47          from the Coroner?

1 A. Yes.  
2  
3 Q. Knowingly?  
4 A. Yes.  
5  
6 Q. In the case of Warren - before I finish with Mattaini,  
7 sorry, back on that early page of this document --  
8 A. Yes.  
9  
10 Q. -- authored by Chebl, in the section to do with  
11 Mattaini, if you've got that page there?  
12 A. I've got it, yes.  
13  
14 Q. Chebl also says, towards the bottom of this long  
15 passage:  
16  
17 *Despite Mattaini's suicide attempt history,*  
18 *Detective Page convinced Musy that Mattaini*  
19 *was most likely murdered.*  
20  
21 A. Yes.  
22  
23 Q. That's obviously another serious criticism of  
24 Detective Page?  
25 A. It is.  
26  
27 Q. It amounts to an accusation that Detective Page had,  
28 in effect, coerced a witness to say something otherwise  
29 than what he himself would have said?  
30 A. Yes.  
31  
32 Q. And that's an extremely serious allegation, isn't it?  
33 A. It is.  
34  
35 Q. Now, in the case of Warren - in fact, before I get to  
36 Warren generally, in the section authored by Leggat, the  
37 three pages at the end --  
38 A. Yes.  
39  
40 Q. -- the page that has the heading "3. Key Findings",  
41 on it?  
42 A. Yes, "Key Findings", yes.  
43  
44 Q. Yes. Towards the bottom of that page, there is  
45 a paragraph beginning:  
46  
47 *On 9/3/2005 ...*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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33  
34  
35  
36  
37  
38  
39  
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41  
42  
43  
44  
45  
46  
47

A. Yes.

Q. And there is a reference to Deputy State Coroner Milledge delivering her findings, and that they were premised on the gay hate line of inquiry. Do you see that?

A. Mmm-hmm.

THE COMMISSIONER: Mr Gray, I'm finding your voice is dropping or the microphone isn't picking it up quite as effectively as it might.

MR GRAY: Q. In that paragraph, Mr Leggat goes on:

*Taradale focused on a "gay hate" motive and were likely effected --*

he means "affected" --

A. Yes.

Q. --

*by a form of confirmation bias which in turn impacted on the Senior Deputy State Coroner's findings.*

Do you see that?

A. I do see that, yes.

Q. Mr Leggat goes on:

*Confirmation bias "is the tendency to bolster a hypothesis by seeking consistent evidence while disregarding inconsistent evidence. In criminal investigations ...*

I'm paraphrasing --

A. Et cetera.

Q. -- this could lead investigators to disregard evidence that challenges their theory?

A. Yes.

Q. So that's another serious criticism of Taradale and Page, isn't it?

A. Yes, it is.

1 Q. Generally speaking?  
2 A. It is.  
3  
4 Q. It is accusing him of, among other things,  
5 disregarding inconsistent evidence?  
6 A. Yes.  
7  
8 Q. And as well as doing that, it accuses him of doing so  
9 because he was a slave to a problem, being confirmation  
10 bias?  
11 A. That's what it suggests, yes.  
12  
13 Q. Now, all of those serious criticisms of Mr Page and of  
14 Taradale went to Cook, the Commander of Homicide --  
15 A. Yes.  
16  
17 Q. -- Wallace, the Director of Crime Operations, and  
18 Lanyon, Commander of State Crime Command?  
19 A. Correct.  
20  
21 Q. At least. You mentioned this morning that another  
22 possibility - and it doesn't appear from this document - is  
23 that it could have gone to higher up than that, to the --  
24 A. I don't think I said that.  
25  
26 Q. Maybe I've got the hierarchy wrong - the Commander of  
27 Homicide, though?  
28 A. The Commander of?  
29  
30 Q. Oh, the Commander of Homicide was Cook?  
31 A. Correct, yes.  
32  
33 Q. So we know it had gone to him? All right. My  
34 misunderstanding. You're quite right. So that's where the  
35 post operational assessment went --  
36 A. Yes.  
37  
38 Q. -- as far as you can tell?  
39 A. Yes, as far as I can tell, yes.  
40  
41 Q. And once it does get to the Director of Crime  
42 Operations and the Commander of State Crime Command, as far  
43 as you know, does it sit on their files in their office, as  
44 the person holding that position?  
45 A. Yeah, it would - there's an office attached to the  
46 Commander's office where the two directors would sit and,  
47 post the restructure, the one director, and they sit there.



1 They sit there.  
2  
3 Q. And do they sit there physically or only  
4 electronically?  
5 A. On a database. Electronically.  
6  
7 Q. That'd be electronic. And the same would apply to the  
8 Commander of State Crime Command?  
9 A. Yes.  
10  
11 Q. Now, moving to the summaries - and you will find these  
12 in volume 6, which I think is a different volume from the  
13 one you have.  
14 A. Yes.  
15  
16 Q. If you turn to tab 172 [SCOI.74881\_0001], that should  
17 be a summary in relation to Gilles Mattaini?  
18 A. Yes.  
19  
20 Q. Do you have the cover page, the e@gle.i page that  
21 looks like this (indicating)?  
22 A. No.  
23  
24 Q. Well, I can tell you - we will have to get that out -  
25 it's another page of the sort we looked at yesterday.  
26 A. Yes.  
27  
28 Q. And it says the attached document, which is the one  
29 you do have, is a summary of the investigation conducted by  
30 Operation Taradale and Strike Force Neiwand into Mattaini's  
31 disappearance and death?  
32 A. Yes.  
33  
34 Q. And it says:  
35  
36 *Date Created 27 December 2017*  
37 *Created By ...Cheb1*  
38 *Reviewed By ... Morgan*  
39  
40 That's just to acquaint you with what that e@gle.i document  
41 says?  
42 A. Sure.  
43  
44 Q. You have looked at this Mattaini summary in recent  
45 times?  
46 A. I think it was part of the bundle that was given to me  
47 at some point, yes, in preparation for this.

- 1  
2 Q. Well, until you did that in recent weeks, is it the  
3 position that you really didn't have any understanding or  
4 barely any of what had been done by Neiwand about Mattaini?  
5 A. That's correct.  
6
- 7 Q. Now, when we get to - these pages are numbered -  
8 page 5, and the numbers are down the bottom --  
9 A. Yes.  
10
- 11 Q. -- we see that paragraph 27 tells us that on 1 August  
12 2002, a Mr Wyszynski contacted police about Mattaini's  
13 disappearance?  
14 A. Yes.  
15
- 16 Q. And as I was putting to you yesterday, that seems to  
17 be the first time police were ever acquainted with the fact  
18 that Mattaini had disappeared?  
19 A. Yes.  
20
- 21 Q. There is a reference in paragraphs 33 and following to  
22 the coronial inquest, and then there is an account of  
23 Strike Force Neiwand, beginning at paragraph 35?  
24 A. Yes.  
25
- 26 Q. At 45 and 46 there's reference to Mr Musy, during the  
27 course of Neiwand, speaking about two previous suicide  
28 attempts of Mattaini?  
29 A. Yes.  
30
- 31 Q. And at 48 we find the passage that was also in post  
32 operational assessment where Musy is quoted as saying, "Of  
33 course I told Steven Page of this", et cetera?  
34 A. Yes.  
35
- 36 Q. And in 49, there's an assertion by the author, Chebl,  
37 that Musy was of the firm belief that Mattaini did not  
38 commit suicide, and that was based on "because everything  
39 that has happened in Bondi", and he refers to Page - the  
40 author refers to Musy having told Page in 2002 about  
41 Mattaini wanting to die, but that after meeting Page, Musy  
42 was of the belief that Mattaini was murdered?  
43 A. Yes.  
44
- 45 Q. So again, that's as you would read it, an accusation  
46 that Page has somehow convinced a witness to depart from  
47 what he had said in the first place?

1 A. Yes.

2

3 Q. And a similar allegation is found in 52.

4 A. Yes.

5

6 Q. And in 59, which is the "Key Findings" part of the  
7 summary, we find the accusation in Chebl's words about  
8 Taradale relying on investigation bias and disregarding  
9 inconsistent evidence?

10 A. Yes.

11

12 Q. Which has obviously found its way into the post  
13 operational assessment?

14 A. Yes.

15

16 Q. And in 60, very plainly, it is asserted that the  
17 original Musy statement in 2002, when Mr Page was the  
18 person doing that work, failed to outline prior suicidal  
19 ideation despite Musy raising it with Page?

20 A. Yes.

21

22 Q. Which is an accusation substantially repeated in the  
23 post operational assessment?

24 A. Yes, it is.

25

26 Q. And again, there is the reference to multiple attempts  
27 at suicide, seemingly contrasted with two, and there's the  
28 accusation that Page's failure to include all the  
29 information about Mattaini's suicidal ideation in the 2002  
30 statement was a key factor in the Coroner not considering  
31 suicide?

32 A. Yes.

33

34 Q. Again, those being the same accusations, they're very  
35 serious?

36 A. Yes, they are.

37

38 Q. Just before I put the concluding questions that I want  
39 to put to you about this, just in the same summary, I will  
40 just ask you about a couple of other things. Would you  
41 look at paragraph 55. The statement is made that:

42

43 *The investigation ... under ... Taradale*  
44 *did not identify any Person/s of interest*  
45 *that could be linked to the death of*  
46 *Mattaini.*

47

- 1 A. Yes.  
2
- 3 Q. Now, would you appreciate that although that was true,  
4 the Taradale operation had essentially no opportunity to  
5 carry out any inquiries?  
6 A. Yes.  
7
- 8 Q. So that assertion, although true, is somewhat  
9 misleading; would you agree?  
10 A. Yes, perhaps not intentionally, but yes.  
11
- 12 Q. And the second sentence and following goes on to say  
13 that:  
14  
15 *... Taradale ... focused on members of*  
16 *marauding youth gangs ...*  
17
- 18 et cetera?  
19 A. Yes.  
20
- 21 Q.  
22 *... Taradale exhausted all avenues related*  
23 *to members of these youth gangs ...*  
24
- 25 A. Yes.  
26
- 27 Q.  
28 *It should be noted all persons of interest*  
29 *arguments by Operation Taradale are aware*  
30 *of covert methods and overt police*  
31 *methodology.*  
32
- 33 A. Yes.  
34
- 35 Q. Now, pausing there, Mattaini disappeared in 1985?  
36 A. Yes.  
37
- 38 Q. Didn't he?  
39 A. Yes.  
40
- 41 Q. And all the work that Taradale did about persons of  
42 interest was in connection with the 1989 --  
43 A. That's right.  
44
- 45 Q. -- death or disappearance of the other two men?  
46 A. Yes.  
47

1 Q. So that Taradale had not done any investigations about  
2 persons of interest apropos 1985 and Mattaini; correct?  
3 A. That's necessarily correct, yes.  
4  
5 Q. Yes. So for Chebl to say that the Taradale operation  
6 had done all that could be done about looking for youth  
7 gangs and the like in 1985 is just completely wrong, isn't  
8 it?  
9 A. On the face of it, yes.  
10  
11 Q. And then Mr Chebl goes on in the last sentence:  
12  
13 *One cannot dismiss the involvement of the*  
14 *members of these youth gangs but based on*  
15 *the investigation carried out*  
16 *under ... Neiwand no evidence has come to*  
17 *light to draw a nexus between youth gangs*  
18 *and the disappearance and suspected death*  
19 *of Mattaini.*  
20  
21 Do you see that?  
22 A. Yes. Yes, I do see that.  
23  
24 Q. As we've established this morning and you've agreed,  
25 Neiwand had not carried out any such investigation at all  
26 in relation to Mattaini, had it?  
27 A. Not specifically Mattaini, yes.  
28  
29 Q. Well, not at all in relation to Mattaini; do you  
30 agree?  
31 A. Yes.  
32  
33 Q. So for Chebl to say that Neiwand's investigation had  
34 produced a result, namely, the absence of a nexus, is  
35 simply meaningless, isn't it?  
36 A. Yes.  
37  
38 Q. Now, as to this summary, as distinct from the post  
39 operational assessment, where does it go? What happens to  
40 it?  
41 A. This would be, I assume, sitting on the e@gle.i  
42 investigation database, so the case management system,  
43 which is e@gle.i, where - which is, I guess, the front  
44 cover of what's - I don't have in front of me - but that is  
45 an administrative record, part of e@gle.i, so this would  
46 sit as what's called a product on the e@gle.i system, the  
47 case management system.

1  
2 Q. And who has access to e@gle.i?  
3 A. The investigators.  
4  
5 Q. Which investigators?  
6 A. Those that are allocated to the investigation as per  
7 our discussion before about those resources.  
8  
9 Q. So the Neiwand nominated people?  
10 A. Yes.  
11  
12 Q. More widely than that? Is e@gle.i accessible to  
13 others?  
14 A. In some circumstances, yes. You can search it. You  
15 can search it, but then some products are - can't be  
16 accessed, I guess, I'm trying to look for the word. But  
17 some products are not open, for open observation if you  
18 search the database.  
19  
20 Q. And are you able to tell us whether this one would  
21 have been accessible only to the handful of Neiwand people  
22 or more widely?  
23 A. I don't know.  
24  
25 Q. You don't know. Well, whoever did have access to it  
26 via e@gle.i --  
27 A. Yes.  
28  
29 Q. -- would be able to read all these criticisms of  
30 Taradale --  
31 A. That's right.  
32  
33 Q. -- and Sergeant Page?  
34 A. Yes. Sorry, the word I was looking for was  
35 "restricted", so there's restricted access to certain  
36 products that go on.  
37  
38 Q. And I appreciate you don't have this document in front  
39 of you, the e@gle.i document, but there is no word like  
40 "restricted" on it, but I'm not suggesting there would have  
41 to be, but how would one know whether it was restricted or  
42 not?  
43 A. There's a product list on every investigation which  
44 outlines - investigations are broken down into categories  
45 and then you can search via product list and the product  
46 list would come up with a restricted title next to the  
47 product, unless you had access, you couldn't go into it.

1  
2 Q. But it would appear that we can't tell that from what  
3 we have at the moment?  
4 A. I don't know, no. Not from what I've seen.  
5  
6 Q. I won't take long on this, Commissioner. I will just  
7 show you the document, and I will show my friend.  
8 A. Thank you.  
9  
10 Q. You will know your way around a document like this  
11 better than I will, but is there anything on that that  
12 sheds any light on what I've just been asking you about?  
13 A. No.  
14  
15 THE COMMISSIONER: Q. And what is the basis for the  
16 restriction? Is it seniority in rank? What is it  
17 that would --  
18 A. It --  
19  
20 Q. Just let me finish. What is that - would it, for  
21 example, restrict every member of the Homicide Squad from  
22 access to Neiwand?  
23 A. There could be telephone intercept material, for  
24 argument's sake.  
25  
26 Q. I'm so sorry, what?  
27 A. There could be telephone intercept material, the like,  
28 like that, that is restricted.  
29  
30 Q. Well, they're summaries. What would be the basis for  
31 restricting access of any homicide detective to these  
32 summaries?  
33 A. To the products, you mean, that are on the system?  
34 That's what I'm referring to.  
35  
36 Q. Well, what's been described as the summaries of the  
37 Neiwand investigation - what would be the basis, if any at  
38 all, to restrict anyone in Unsolved Homicide from having  
39 access to it?  
40 A. I couldn't see any basis on what I've seen.  
41  
42 MR GRAY: Q. Thank you. So does that mean that, as far  
43 as you know, the likelihood is that these summaries were  
44 unrestricted?  
45 A. The likelihood is, but I don't know.  
46  
47 Q. Thank you. And if they were unrestricted, that would

1 mean anyone in the Police Force would have access to them?  
2 A. Possibly. Possibly.

3  
4 Q. Why only possibly?

5 A. Because some people don't have access to the e@gle.i  
6 system; some people don't have access to Homicide; some  
7 people don't have access to particular crime types - types  
8 of crime, I should say.

9  
10 Q. So as best you can surmise, it being likely that this  
11 was not restricted --

12 A. I would think so, yes.

13  
14 Q. -- the range of police officers who had access to it  
15 was quite considerable?

16 A. It was - it possibly was considerable. So for  
17 argument's sake, if I can demonstrate - so even after  
18 leaving homicide, so my access to matters was removed  
19 because I didn't need it. And so if - you know, persons  
20 with a reason to access investigations would have that  
21 access granted to them.

22  
23 THE COMMISSIONER: Q. But would it also mean that whilst  
24 in Homicide, all Homicide detectives would have access to  
25 this sort of material?

26 A. Possibly, Commissioner.

27  
28 MR GRAY: Q. And people outside Homicide as well?

29 A. They could do, they could do. If they had reason to  
30 have access to homicide, for argument's sake, as a crime  
31 type.

32  
33 Q. I will just turn to the next summary --

34 A. Sure.

35  
36 Q. Which is tab 173 in this bundle [SCOI.74882\_0001]?

37 A. Yes.

38  
39 MR GRAY: Actually, could I tender that last document?

40  
41 THE COMMISSIONER: Yes. Do you want to make it part of the  
42 volume perhaps.

43  
44 MR GRAY: Maybe it could be 172A, or some such?

45  
46 Q. You may not have it, but again, there's a cover  
47 document for that as well, which is substantially



1 similar --  
2 A. I will assume it is the same.  
3  
4 Q. -- as there is for the Warren one, when we come to  
5 that. But in terms of the Russell one at tab 173 --  
6 A. Thank you.  
7  
8 Q. -- there is, in the summary, in the case of Russell,  
9 of course, there was an investigation which the Coroner  
10 thought was not adequate but, nevertheless, better than the  
11 one in the Russell case [sic], back in 1989?  
12 A. Yes.  
13  
14 Q. And so there's an account of that in the first half  
15 a dozen pages or so?  
16 A. Yes.  
17  
18 Q. And then - oh, well, more than half a dozen pages.  
19 And then starting at page 19 there is an account of the  
20 Taradale work?  
21 A. Yes.  
22  
23 Q. Which includes, you will see at page 22 and following,  
24 a lot of information about possible persons of interest --  
25 A. Yes.  
26  
27 Q. -- that Taradale had identified? And at 85 there is  
28 a reference to the fact that the covert phase of Taradale  
29 had been carried out with the assistance of the Crime  
30 Commission?  
31 A. Yes.  
32  
33 Q. On pages 25 and 26 there's reference to various other  
34 techniques that Taradale utilised. And then there's  
35 reference at page 28 to the inquest before Coroner  
36 Milledge, and then starting at 29, there's an account of  
37 what Neiwand did?  
38 A. Yes.  
39  
40 Q. At 107, Mr Chebl goes on and he says that Operation  
41 Taradale approached the investigation with a great deal of  
42 tunnel vision; do you see that?  
43 A. Yes.  
44  
45 Q. 107?  
46 A. Paragraph 107, yes.  
47

- 1 Q. Mr Chebl goes on:  
2  
3 *There was a narrow focus on members of the*  
4 *previously mentioned youth gangs ...*  
5  
6 Then he says:  
7  
8 *No other hypothesis was considered or*  
9 *explained.*  
10  
11 Do you see that?  
12 A. Yes, I do see that.  
13  
14 Q. Now, you would know from just reading Mr Chebl's own  
15 summary of what Taradale did that that's just not true, is  
16 it?  
17 A. Yes.  
18  
19 Q. You agree with me?  
20 A. Yes.  
21  
22 Q. Taradale did consider and explain the other, or at  
23 least consider the other hypotheses?  
24 A. At least consider, yes.  
25  
26 Q. At 108, Mr Chebl says that Neiwand investigators:  
27  
28 *... identified a number of flaws in the*  
29 *previously conducted investigations.*  
30  
31 Plural, meaning a reference to the original one and to  
32 Taradale?  
33 A. Yes.  
34  
35 Q. At 122 and following, there's a discussion of the  
36 remarkable failure of the police to retain and have  
37 available the hair that was on Mr Russell's hand?  
38 A. Yes.  
39  
40 Q. And thus the impossibility of testing that properly?  
41 A. Yes.  
42  
43 Q. At 127 and following there's a review of various - the  
44 product relating from various other techniques that were  
45 deployed?  
46 A. Yes.  
47

- 1 Q. At 133 and following there is an account of two  
2 reports that were obtained by Neiwand from pathologists,  
3 a Professor Moynham, about blood alcohol content?  
4 A. Yes.  
5
- 6 Q. And a report by a Professor Duflou --  
7 A. Yes.  
8
- 9 Q. -- about, among other things, the pattern of injuries  
10 and so on?  
11 A. Yes.  
12
- 13 Q. At 140, in what is said to be a summary, Mr Chebl says  
14 that there were crucial errors or oversights made by  
15 Taradale. Do you see that?  
16 A. Yes.  
17
- 18 Q. He then sets out what they were. He says:  
19  
20 *The identified errors/oversights ... are as*  
21 *follows -*  
22
- 23 Firstly:  
24  
25 *a premature approach towards persons of*  
26 *interests being made ...*  
27
- 28 On your reading of this material, was there an error  
29 involved in the timing of the approach towards persons of  
30 interest?  
31 A. On reading of these - this material?  
32
- 33 Q. The material that you had --  
34 A. That I had? Doesn't seem to be.  
35
- 36 Q. No. The second one is "tunnel vision"?  
37 A. Yes.  
38
- 39 Q. Do you, on the material that you have been able to see  
40 including this summary, see any evidence of tunnel vision?  
41 A. Not from the documents that you're leading me through.  
42
- 43 Q. The third factor said to be an error or an oversight  
44 is a "lack of identifying witnesses". Now, if witnesses  
45 are lacking, is that an error or an oversight by Taradale?  
46 A. Look, it could be, but I don't see it.  
47

1 Q. It doesn't look like it, does it, just logically?  
2 A. Not on what you have shown me.  
3  
4 Q. Mr Russell's body, as you know, was found at the  
5 bottom of a cliff?  
6 A. Yes.  
7  
8 Q. How it got there is the whole point of the  
9 investigation?  
10 A. That's right.  
11  
12 Q. So the fact that there wasn't an identifying witness  
13 is hardly an error or an oversight by Taradale, is it?  
14 A. I would say that's correct.  
15  
16 Q. And finally, the fourth one that is said to be an  
17 error or an oversight is "a lack of physical evidence being  
18 present"?  
19 A. Yes.  
20  
21 Q. Again, it's simply ridiculous to say of Taradale that  
22 that's an error or an oversight, isn't it?  
23 A. Yes. I agree with that.  
24  
25 Q. At 143, there is again an accusation that a key flaw  
26 in Taradale was a closed-minded focus on the persons of  
27 interest identified, this being said to be, according to  
28 Neiwand, a tunnel vision approach?  
29 A. Yes.  
30  
31 Q. Do you see that?  
32 A. I do see that.  
33  
34 Q. Now, I will take it from the evidence that you have  
35 given earlier about what you thought Neiwand was going to  
36 do - namely, chase down persons of interest --  
37 A. Yes, that was their primary focus.  
38  
39 Q. -- the idea that somehow or other giving a lot of  
40 attention to persons of interest amounted to tunnel vision  
41 in some way that was to be criticised is a little bit hard  
42 to follow, isn't it?  
43 A. Yes.  
44  
45 Q. In the later part of that paragraph, Mr Chebl says:  
46  
47 *It appears the reason for the investigation*

1           *following this direction --*

2

3           ie, pursuing persons of interest --

4

5           *could be attributed to two major factors --*

6

7           The first that Detective Page viewed a man called McMahon  
8           as a survivor; do you see that?

9           A.    Yes, I do.

10

11          Q.    You are familiar with the McMahon part of this story?

12          A.    I believe he was assaulted; is that right? I don't  
13          know.

14

15          Q.    Yes, he was. He was assaulted on a date in December  
16          1989, ie, roughly a month after Mr Russell's body was  
17          found?

18          A.    Right, okay.

19

20          Q.    He was assaulted between Bondi Beach and Marks Park?

21          A.    Right.

22

23          Q.    In that area, on that walkway. And he survived?

24          A.    Yes.

25

26          Q.    And he gave an account, in fact, more than one  
27          account, about what happened?

28          A.    Right.

29

30          Q.    So he in fact survived?

31          A.    Yes, he did.

32

33          Q.    He wasn't being viewed as a survivor; he was, in fact,  
34          a survivor, you would agree?

35          A.    Yes.

36

37          Q.    So to somehow drum up a criticism of Sergeant Page on  
38          the footing that he had viewed McMahon as a survivor is  
39          again ridiculous, isn't it?

40          A.    It seems that, yes.

41

42          Q.    And the second possible hypothesis - sorry, the second  
43          factor which Mr Chebl says led to Mr Page succumbing to  
44          tunnel vision, was the possible hypothesis presented by  
45          former Detective Sergeant McCann that youth gangs were  
46          responsible. Do you see that?

47          A.    I do see that.

1  
2 Q. Now, we have Mr McCann's material here?  
3 A. Sure.  
4  
5 Q. I'm just wondering whether you either have it now or  
6 have seen it in the past?  
7 A. I - it might have been in the bundle of things that  
8 I have been given, but I can't recall it. I know who Steve  
9 McCann is - was.  
10  
11 Q. You do or you don't?  
12 A. I do. I know him from historically in the Police  
13 Force. He worked in the major Crime Squad South Region.  
14  
15 Q. If I can summarise, without taking you to the  
16 detail --  
17 A. Sure.  
18  
19 Q. -- Sergeant McCann in 1991, ie, within two years of  
20 the deaths of Mr Warren and Mr Russell --  
21 A. Yes.  
22  
23 Q. -- wrote two separate statements or summaries which he  
24 communicated higher up the chain in the Police Force as his  
25 analysis --  
26 A. Yes.  
27  
28 Q. -- of certain patterns of behaviour by various gangs  
29 around Sydney?  
30 A. Right.  
31  
32 Q. Including a gang responsible for the death of  
33 Mr Rattanajurathaporn, a Thai man, near Bondi?  
34 A. Yes.  
35  
36 Q. And another gang responsible for the death of a man  
37 called William Allen?  
38 A. Yes.  
39  
40 Q. I'm sorry, I beg your pardon, a man called Richard  
41 Johnson in Alexandria?  
42 A. In a park, yes.  
43  
44 Q. In a park in Alexandria?  
45 A. Yes.  
46  
47 Q. And Mr McCann set out in considerable detail back in

1 1991 a deal of information about those various gangs and  
2 about possible connections or overlaps between them?

3 A. Yes.

4

5 Q. Are you broadly aware of that?

6 A. In general terms, yes, but - I accept what you're  
7 saying.

8

9 Q. Now, given that that analysis by Mr McCann had been,  
10 to use the expression that I've used, sitting on the files  
11 for 10 or so years by the time Sergeant Page came along in  
12 the early 2000s --

13 A. Mmm-hmm.

14

15 Q. -- what do you say about Mr Chebl's contention that  
16 for Sergeant Page to place some weight as reliable on what  
17 McCann had found out back in the early '90s was somehow a  
18 mistake or a wrong turning?

19 A. On the face of it I don't think it was a mistake.

20

21 Q. No, it's far from being a mistake; it's a completely  
22 appropriate and one might even say necessary matter to  
23 explore?

24 A. Yes.

25

26 Q. Wouldn't you think? And yet Mr Chebl says, at 144,  
27 that all of this work by Page in relation to these gangs  
28 which McCann had identified in the early '90s --

29 A. Ten years earlier, mmm-hmm.

30

31 Q. -- amounted merely to a preconceived agenda, and so  
32 on. Now, would you agree with that criticism?

33 A. No.

34

35 Q. When one gets to 149 in this Russell summary, Mr Chebl  
36 says, perhaps somewhat grudgingly, it might be thought:

37

38 *Despite all this --*

39

40 ie, despite all the criticisms that he has just been  
41 making --

42

43 *there is still a possibility of Russell's*  
44 *death being a result of a homicide.*

45

46 Do you see that?

47 A. Yes.

1  
2 Q. That is, one might say, damning with faint praise,  
3 isn't it, in the sense that the possibility of homicide is  
4 not one that needs to be acknowledged grudgingly; it's one  
5 that was obviously there?  
6 A. Of course it was there.  
7  
8 Q. Of course it was there. Now, what Mr Chebl then says  
9 is that although that can be conceded:  
10  
11 *... a lack of corroborating evidence,*  
12 *physical evidence and witness accounts*  
13 *prevents this investigation being*  
14 *considered as a homicide from proceeding*  
15 *any further.*  
16  
17 Now, does that follow, in your mind?  
18 A. No, not necessarily.  
19  
20 Q. It doesn't follow in the slightest, does it?  
21 A. No.  
22  
23 Q. That's the whole point of having a reinvestigation,  
24 isn't it?  
25 A. That's exactly right.  
26  
27 Q. But what Mr Chebl derives from that non sequitur is  
28 that consideration needs to be given to an alternative  
29 theory, namely, misadventure. Does that suggest to you,  
30 and has it occurred to you as you have read this before  
31 now, that the Chebl/Morgan approach was designed to arrive  
32 at an analysis favouring misadventure over homicide as  
33 a likely explanation?  
34 A. I wouldn't agree with "designed", but that's what it  
35 appears that they've arrived at.  
36  
37 Q. In 150, Mr Chebl says a couple of lines in, referring  
38 to the shrubbery on the cliff top being disturbed --  
39 A. Yes.  
40  
41 Q.  
42 *... consideration needs to be given to the*  
43 *fact that Russell had strands of grass near*  
44 *and underneath his body on the rock shelf.*  
45 *This would refute the theory of him being*  
46 *thrown over the edge of the cliff.*  
47



1 Does that follow?  
2 A. I don't - I don't necessarily think so on the face of  
3 it.  
4  
5 Q. It just doesn't follow in the slightest, does it?  
6 A. Yes.  
7  
8 Q. You agree?  
9 A. I'm agreeing, yes.  
10  
11 Q. At 152, Mr Chebl again repeats, I think verbatim but  
12 if not, close to verbatim, the accusation about  
13 confirmation bias and disregarding evidence that we saw  
14 before?  
15 A. Yes, that's right, yes.  
16  
17 Q. In 153, Mr Chebl says that the Coroner, in 2005,  
18 placed considerable weight on the opinion of a Dr Cala?  
19 A. Yes.  
20  
21 Q. Who was a pathologist?  
22 A. Pathologist, yes.  
23  
24 Q. And goes on to say in 154 that Neiwand, in 2017, had  
25 obtained an opinion from another pathologist, Professor  
26 Duflou, that contrasted with the opinion of Dr Cala. Now,  
27 you, I imagine, have not seen either of those reports?  
28 A. No.  
29  
30 Q. So you can't express a view as to whether there really  
31 was such a contrast or not?  
32 A. Oh, I can't.  
33  
34 Q. No, all right. But looking at that summary overall,  
35 the Russell summary, it's obviously very critical of  
36 Taradale and Sergeant Page again, in slightly different  
37 ways from the Mattaini one?  
38 A. Yes.  
39  
40 Q. And again, it would have gone --  
41 A. The same process as the other, Mattaini.  
42  
43 Q. The same process as before?  
44 A. Yes.  
45  
46 Q. And finally, the Warren summary, which is at tab 174  
47 [SCOI.74883\_0001], we have, starting at page 1, the

1 overview and then the background, all of which is  
2 historical and available from the previous Taradale work.  
3 A. Yes.  
4  
5 Q. On page 7 there's a reference to the original  
6 investigation, which is the one by Bowditch, which Coroner  
7 Milledge said was disgraceful. You will recall that?  
8 A. I do recall that.  
9  
10 Q. Then there is, at 62 and following, a reference to the  
11 work done by Homicide Squad South?  
12 A. Yes.  
13  
14 Q. In relation to attacks on gay men in the Eastern  
15 Suburbs more generally?  
16 A. Yes.  
17  
18 Q. Including the cases that I mentioned,  
19 Rattanajurathaporn and Richard Johnson?  
20 A. Yes.  
21  
22 Q. And then at 77, there's an extract from one of the two  
23 reports that I've referred to that Sergeant McCann did in  
24 1991?  
25 A. Yes.  
26  
27 Q. And at 80 there's a reference to other work that  
28 Sergeant McCann had done back at that time, around 1990 or  
29 so?  
30 A. Yes.  
31  
32 Q. And all of the next paragraphs through to 101 deal  
33 with those matters which were known prior to Taradale, and  
34 you will see in 101 there is an extract from one of  
35 Sergeant McCann's documents, where you will see down the  
36 bottom of that page, page 23, that one particular gang  
37 member --  
38 A. Yes.  
39  
40 Q. -- admitted being involved in approximately 70 to 100  
41 gang assaults and robberies on homosexual men in these  
42 three areas, being Bondi, Centennial Park and Moore Park.  
43 A. Sorry, just let me read that.  
44  
45 Q. Certainly.  
46 A. Sorry, I'm just missing the word - the number 100.  
47

- 1 Q. It's page 23, bottom paragraph.  
2 A. Bottom paragraph.  
3  
4 Q. This person "admitted being involved in  
5 approximately" --  
6 A. Sorry, yes, I see the paragraph.  
7  
8 Q. And the three areas, we can tell from a couple of  
9 paragraphs up, are Bondi, Centennial Park and Moore Park?  
10 A. Yes.  
11  
12 Q. Now, at 102 and following there's an account of the  
13 Taradale work?  
14 A. Yes.  
15  
16 Q. Including, in 115, the fact that Taradale obtained  
17 a statement from the initial so-called investigator,  
18 Sergeant Bowditch. You recall that?  
19 A. I can see that, yes.  
20  
21 Q. And Mr Chebl, at 116, thinks it is interesting that  
22 Bowditch thought there was nothing to suggest that Warren's  
23 disappearance was the result of foul play.  
24 A. Yes.  
25  
26 Q. So Chebl apparently placed some weight on the opinion  
27 of Bowditch, who had been responsible for the disgraceful  
28 investigation.  
29 A. Yes. He's quoted him, yes.  
30  
31 Q. Then there are references from 117 onwards to various  
32 people that Taradale spoke to and/or obtained statements  
33 from.  
34 A. Yes.  
35  
36 Q. That takes us over all the way to really about 142 or  
37 so, 141.  
38 A. Yes.  
39  
40 Q. Again, in 141, Mr Chebl refers to the McMahon story,  
41 and apparently again criticises Taradale for what Chebl  
42 calls at the bottom of page 32 a "strong reliance on the  
43 version of events McMahon provided Police"; do you see  
44 that?  
45 A. Yes.  
46  
47 Q. And the criticism seems to be, as I read it, that

- 1 Chebl is saying that the Taradale investigators utilised  
2 the incident involving McMahon not as a possible hypothesis  
3 but more of a likely occurrence, which resulted in Warren's  
4 disappearance. Now, putting aside the slightly illogical  
5 ending to that sentence, can you conceive of a reason why  
6 one would not regard McMahon's account as a likely  
7 occurrence?
- 8 A. No - as in the account of McMahon being assaulted, by  
9 himself?
- 10
- 11 Q. Yes.
- 12 A. No.
- 13
- 14 Q. And yet Chebl seems to be saying that to regard the  
15 assault on McMahon as likely to have happened is some sort  
16 of mistake; it should have only been a hypothetical  
17 possibility?
- 18 A. No, he was assaulted.
- 19
- 20 Q. Clearly, he was?
- 21 A. Yes.
- 22
- 23 Q. So again, the line that Chebl seems to be following is  
24 away from material that indicates the possibility of  
25 homicide and towards some other possibility.
- 26 A. That's the way it seems.
- 27
- 28 Q. Then there's reference to the tidal expert, in 146 and  
29 following?
- 30 A. Yes.
- 31
- 32 Q. Then at 152 and following there's quite a lengthy  
33 summary of what was known back in 1990 or so from Sergeant  
34 McCann - see 152?
- 35 A. Yes, I do.
- 36
- 37 Q. Again, Mr Chebl finds an opportunity to somehow  
38 criticise Taradale by saying that to look at these gangs,  
39 this direction was not an original hypothesis formed by  
40 Taradale, it was merely - Chebl's word "merely" -  
41 a continuation of the investigation conducted by Sergeant  
42 McCann.
- 43 A. Oh, yes.
- 44
- 45 Q. He puts that forward as though somehow or other it's  
46 a weakness or a defect or something in the approach of  
47 Taradale?

1 A. Yes.  
2  
3 Q. And that is ridiculous, isn't it?  
4 A. Yes.  
5  
6 Q. 159 onwards, there is an account of various techniques  
7 used to uncover evidence from persons who might know  
8 something of one sort or another?  
9 A. Yes, yes.  
10  
11 Q. And then finally at page 41, paragraph 177, we get  
12 Strike Force Neiwand, and at 181 and following we learn  
13 that Neiwand reviewed various transcripts that had been  
14 obtained by Taradale.  
15 A. Yes.  
16  
17 Q. And then at 187 and following, Chebl says that:  
18  
19 *As part of collating, a detailed*  
20 *victimology, investigators opted to obtain*  
21 *statements from Warren's siblings, as no*  
22 *statements had been previously obtained.*  
23  
24 And they got a follow-up statement from Kay Warren, who was  
25 his mother.  
26 A. Yes.  
27  
28 Q. Then there are references to what those family members  
29 had to say?  
30 A. Yes.  
31  
32 Q. And then there's some reference to the workplace at  
33 195 and 196. Then in 198 and following there's an account  
34 of the people from whom statements were obtained by  
35 Neiwand, and, for example, the person named in 198 --  
36 A. Yes.  
37  
38 Q. And the people named in 205, 209 --  
39 A. Yes.  
40  
41 Q. -- and I think 216, 217 --  
42 A. Yes.  
43  
44 Q. -- and 222. Without pinning you down to this detail  
45 or taking the time myself, some, at least, of those had  
46 also been the subject of the Taradale inquiries you may  
47 have noticed on the way through?

1 A. Yes.

2

3 Q. Then eventually we get to the summary, that starting  
4 at page 256 - sorry, paragraph 256.

5 A. Paragraph 256.

6

7 Q. At 257, Chebl acknowledges that the Bowditch  
8 investigation was inadequate. At 258, he, Chebl, repeats  
9 the language of Page viewing McMahon as a survivor?

10 A. Yes.

11

12 Q. And suggests that that was a mistaken way to proceed,  
13 because although a valid line of inquiry, it limited the  
14 focus of the investigation.

15 A. Yes.

16

17 Q. At 261, Chebl says that Neiwand considered several  
18 possibilities, including misadventure, suicide or homicide?

19 A. Yes.

20

21 Q. Of course, Taradale had done so as well, hadn't it?

22 A. Yes.

23

24 Q. At 262 there is again a propping up of the unsupported  
25 opinion of Sergeant Bowditch back in 1989?

26 A. Yes - well, yes, he mentions - yes.

27

28 Q. At 263, there is a concession that suicide seems  
29 unlikely but nonetheless an attempt thereafter to say that  
30 still it might have been suicide after all.

31 A. Yes.

32

33 Q. And then in 264, as to homicide, there is this:

34

35 *Homicide was thoroughly explored in*  
36 *relation to youth gangs by Operation*  
37 *Taradale ...*

38

39 Do you see that?

40 A. Yes.

41

42 Q. I'm not reading it all out but you can read everything  
43 that's there:

44

45 *... Neiwand explored the possibility of an*  
46 *associate or person known to Warren being*  
47 *involved in his disappearance.*

1  
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3  
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47

So pausing there, not persons of interest?

A. Sorry, what was that, Mr Gray?

Q. Neiwand, according to this paragraph, explored the possibility of an associate --

A. Yes.

Q. -- of Warren or a person known to Warren as being involved in his disappearance?

A. As a possible person of interest, yes.

Q. Well, in that sense?

A. Or that scenario, yes.

Q. But what I mean by the question is, they did not explore whether the persons of interest in Penny Brown's spreadsheet had anything to do with it; correct?

A. I think that's right; that's correct.

Q. At 266 - and I might ask Mr Morgan about this - Mr Chebl says that several witnesses said that they themselves did not witness or encounter violence at Mackenzies Point, which is another term for Marks Park?

A. Right, yep.

Q. And Chebl says:

*Based on this information police confirmed --*

his word --

*that attacks on gay men did occur, but may not have been as prevalent as portrayed by ... Taradale ... or the media.*

Do you see that?

A. I do see that.

Q. Now, given the pretty comprehensive for 1990/1991 analysis by Sergeant McCann and others --

A. Yes.

Q. -- the notion that somehow attacks on gay men weren't as prevalent as Taradale suggested is again ridiculous, isn't it?

1 A. It's inaccurate, yes.  
2  
3 Q. It's at least inaccurate; you don't want to adopt  
4 ridiculous?  
5 A. You can call it ridiculous.  
6  
7 Q. Well, I'm asking you if you would agree with it?  
8 A. It's inaccurate.  
9  
10 Q. Again, this one, the Warren summary, would have  
11 been --  
12 A. Exactly the same process.  
13  
14 Q. -- treated and would have gone off in exactly the same  
15 way the other ones did?  
16 A. (Witness nods).  
17  
18 Q. All right, thank you. Moving to a different topic?  
19 A. Sure.  
20  
21 Q. That folder could come back, thank you.  
22  
23 MR GRAY: I probably should add these two cover pages.  
24  
25 THE COMMISSIONER: Yes, all right. One is the cover  
26 page for Russell and one is the cover page for Warren.  
27  
28 THE COMMISSIONER: Yes.  
29  
30 MR GRAY: They should be added to 173 and 174.  
31  
32 THE COMMISSIONER: Yes, thank you.  
33  
34 MR GRAY: Q. In early 2017, shortly before you departed  
35 from Homicide to work on the Lindt Cafe matters, you  
36 requested Parrabell to add the three Taradale cases to its  
37 review?  
38 A. Yes.  
39  
40 Q. Previously, those three had been excluded from  
41 Parrabell?  
42 A. Yes, by agreement, yes.  
43  
44 Q. By agreement, you having explained to Crandell that  
45 Unsolved Homicide was looking at those three via Neiwand?  
46 A. Yes.  
47



1 Q. Of course, as at early 2017, when you now requested  
2 Parrabell to take on those three matters --  
3 A. Yes.  
4  
5 Q. -- the work of Neiwand was still continuing, wasn't  
6 it?  
7 A. Yes.  
8  
9 Q. Why did you change tack and request Parrabell to  
10 include those three cases in what it was doing?  
11 A. Mr Crandell, from my understanding, always wanted to  
12 review them, considered that Parrabell wouldn't be complete  
13 without applying the same criteria to them. My  
14 understanding was that Parrabell was coming to a conclusion  
15 and I felt it appropriate that prior to it being concluded,  
16 that it consider the Taradale matters.  
17  
18 Q. All right. You touch on this in your statement?  
19 A. Yeah, I do.  
20  
21 Q. If you still have that with you, at paragraph 111.  
22 A. Yes.  
23  
24 Q. And to complete this, I think you also refer to this  
25 point at 118.  
26 A. Yes.  
27  
28 Q. Tell me if I'm right, putting 111 and 118 together -  
29 and you may want to expand on this - largely, you're  
30 putting forward probably four reasons for this addition of  
31 the three cases to Parrabell. The first one is that you  
32 thought that the Parrabell review, given what it was, would  
33 be incomplete if it didn't also look at these three cases?  
34 A. Yes, yes.  
35  
36 Q. You say that Mr Crandell positively wanted to include  
37 them?  
38 A. Yes, and I think he shared the same view, yes.  
39  
40 Q. Now, in the middle of your paragraph 111, you give as,  
41 I think, a reason that at that point, early 2017, Neiwand  
42 had not resulted in anyone being charged?  
43 A. Yes.  
44  
45 Q. I don't want to tarry on this really, but how is that  
46 a reason, given that Neiwand had only been going for less  
47 than a year and had a long way to go?

1 A. Well, if somebody had been charged or before the  
2 court, that would impact on that decision.

3  
4 Q. I see. All right, thank you. And then the last  
5 reason that I pick out from these paragraphs is you say,  
6 not quite in these words, that because of the publicity --

7 A. Yes.

8  
9 Q. -- that had surrounded all of these issues about gay  
10 hate crimes and murders, you thought it was in the public  
11 interest that the Parrabell process include these three  
12 cases?

13 A. I did.

14  
15 Q. So is this right, that an important part of your  
16 reason - perhaps the main part - was that because of the  
17 public interest in this entire topic of gay hate murders --

18 A. Yes.

19  
20 Q. -- how extensive it had been and how many of the 88  
21 were gay hate and so on, the public should know as fully as  
22 possible what the police assessment of all these cases  
23 actually was?

24 A. Yeah, I thought it was necessary to include the  
25 Taradale matters because they were at the centre, I guess,  
26 of that publicity in lots of ways and I thought that the  
27 public would want to know what an assessment --

28

29 Q. Of the police was about these cases?

30 A. Yes.

31

32 Q. Now, would it follow that, in your mind, the public  
33 should know what the conclusions of Neiwand actually were?

34 A. Possibly, but that's not the general practice of what  
35 occurs in those matters.

36

37 Q. But putting aside for the moment whether it is the  
38 general practice, if the point was, in your mind, that  
39 there was a large topic of public interest and a serious  
40 exercise, namely, Parrabell, was addressing that --

41 A. Yes.

42

43 Q. -- and the public deserved to know what the police  
44 really thought, wouldn't that mean that they needed to know  
45 what Neiwand thought?

46 A. I - my view is that there were two separate things.  
47 One was an investigation, regardless of how thorough and

1 the quality of it, that could be revisited at another time  
2 if again information came forward from another source,  
3 which was different from a review that was done based on  
4 paper by Parrabell.

5  
6 Q. Well, you may or may not know this, but the Parrabell  
7 report, although it set out findings in terms of numbers  
8 and statistics --

9 A. Yes.

10  
11 Q. -- some of which we looked at yesterday --

12 A. Yes.

13  
14 Q. -- didn't actually contain in any public way what  
15 Parrabell's view was of this case or that case or the other  
16 case?

17 A. Right.

18  
19 Q. The names of, for example, Mr Russell and Mr Warren,  
20 but indeed any other names, were not part of the Parrabell  
21 report?

22 A. Right.

23  
24 Q. Are you aware of that?

25 A. Not offhand but I accept what you're saying, yes.

26  
27 Q. Right. Well, assuming that to be so, the Parrabell  
28 report was not going to tell the public what the police  
29 thought about any particular case, was it?

30 A. Taking what you are saying, that sounds correct, yes.

31  
32 Q. Whereas the Neiwand report had specific conclusions  
33 about three of those cases?

34 A. Yes.

35  
36 Q. Now, can I suggest that another reason why it might  
37 have been appropriate for the Neiwand conclusions to be  
38 made public was that they were contradicting the express  
39 findings of a senior Coroner more than 10 years earlier,  
40 which had themselves been the subject of wide publicity,  
41 including in newspapers and television programs and even  
42 books - you'd be aware of that?

43 A. Yes, I am aware of that.

44  
45 Q. And if the public needed to know what the police  
46 really thought, wouldn't it be necessary to acquaint the  
47 public with the fact that the findings of Coroner Milledge,

1 which were so well known, were regarded by the police as  
2 wrong?

3 A. That's one way of looking at it. You could say that.  
4 I do think they're two separate things. I think the  
5 Parrabell process was different to a reinvestigation or  
6 a review conducted of the likes that Neiwand conducted.  
7 It's not normal that those - the findings or results of  
8 those investigations conducted by Unsolved Homicide are  
9 made public.

10  
11 Q. Well, accepting that that may well be so, I'm asking  
12 the questions really in the context of you having said --

13 A. Yes.

14  
15 Q. -- not unreasonably, that you took the view that in  
16 light of the public interest in these matters, the public  
17 needed to know what the police really thought?

18 A. I would assume - I assumed that the Parrabell report,  
19 it would be known that the Taradale matters had been  
20 considered as part of it. Whether they were named or gone  
21 into at length was not a matter for me, but --

22  
23 Q. Well, when you saw the Parrabell report, which  
24 I assume you did when it came down --

25 A. Not - some time after it came out, actually.

26  
27 Q. Well, it didn't come down until I think June 2018.

28 A. Yes.

29  
30 Q. So some time after the events I've been asking you  
31 about?

32 A. And I think I first saw it a long time after that.

33  
34 Q. Well, whenever it was that you did see it --

35 A. Yes.

36  
37 Q. -- some time after that, did you notice that it was -  
38 the findings were numerical and statistical --

39 A. Yes.

40  
41 Q. -- rather than case by case?

42 A. Yes.

43  
44 Q. So did that cause you to think, well, the public's not  
45 actually been told what the police think about this case or  
46 that case or the other case, they're only getting  
47 a numerical result?

1 A. At that time I can't recall what I thought about it,  
2 Mr Gray.

3

4 Q. In fact - tell me if this is right - until this  
5 Special Commission of Inquiry, not only the findings of  
6 Neiwand but even the very existence of Strike Force Neiwand  
7 had never been mentioned in public by the police; is that  
8 right?

9 A. That's - could be correct.

10

11 Q. And not even mentioned in the Parliamentary Inquiry?

12 A. As far as I'm aware.

13

14 Q. Why not?

15 A. I don't know.

16

17 Q. Should it have been?

18 A. The Parliamentary Inquiry?

19

20 Q. Yes.

21

22 MR TEDESCHI: I object.

23

24 THE COMMISSIONER: What's the objection?

25

26 MR TEDESCHI: Your Honour, it is a vague question that any  
27 answer couldn't have any possible meaning. It would depend  
28 upon the questions asked.

29

30 THE COMMISSIONER: I don't know until I hear it. I'm  
31 prepared to hear it, thank you.

32

33 MR GRAY: Q. What's your view on that, given that the  
34 Parliamentary Inquiry which spread over two or three years  
35 was looking at the very question of the 88 deaths and which  
36 ones were gay hate and which ones were unsolved, and the  
37 police, through various personnel, participated in that  
38 inquiry and certain people gave evidence in that sense  
39 before the Parliamentary Inquiry, but if you assume, as  
40 I ask you to do, that no-one mentioned the existence of  
41 Strike Force Neiwand or its conclusions --

42 A. Yes.

43

44 Q. -- do you think that the Parliamentary Inquiry should  
45 have been told?

46 A. On the face of what you're putting to me, yes.

47

1 Q. And why? Why do you think that?

2 A. If the Parliamentary Inquiry - because of what you  
3 said, the Parliamentary Inquiry were looking at the  
4 circumstances of the 88 and it would necessarily flow that  
5 the results of something like Neiwand would form part of  
6 what they were considering.

7

8 Q. Could I ask you to have a look almost finally at  
9 a document in volume 14. It's at tab 304  
10 [NPL.0115.0002.7430]. Do you have that?

11 A. Yes.

12

13 Q. It's an email, the top one is one from Stewart Leggat  
14 to Christopher Olen?

15 A. Yes.

16

17 Q. But it's really forwarding on an email from Jason  
18 Dickinson to Stewart Leggat?

19 A. From Leggat to Dickinson I think.

20

21 Q. I'm sorry, quite right. From Leggat to Dickinson.  
22 I beg your pardon?

23 A. Yes.

24

25 Q. I wanted to take you to the bottom of the first page,  
26 where Leggat is telling Dickinson a few things about Strike  
27 Force Neiwand. Do you see that?

28 A. Yes.

29

30 Q. This is on 9 November 2017, when, for all practical  
31 purposes, Neiwand was all but finished.

32 A. Yes.

33

34 Q. As we have seen?

35 A. Yes.

36

37 Q. At the foot of that page, in relation to Strike Force  
38 Neiwand, after the first few sentences, which are kind of  
39 introductory, Leggat says, last line:

40

41 *[Detective Sergeant] Page's investigation,*  
42 *whilst thorough was flawed in that the*  
43 *victim's associates and last movements were*  
44 *not explored.*

45

46 Now, you would know that that's wrong, wouldn't you? The  
47 victim's associates and last movements were explored.

1 A. Yes.

2

3 Q. And Leggat goes on:

4

5 *The focus of his investigation ignored*  
6 *alternate theories including suicide and*  
7 *death by misadventure.*

8

9 And that's wrong too, isn't it?

10 A. Yes.

11

12 Q. Then Leggat says:

13

14 *The subsequent Coronial Inquest ... relied*  
15 *on [Detective Sergeant] Page's flawed*  
16 *investigative focus.*

17

18 What do you say about that?

19 A. That's not right.

20

21 Q. In the next paragraph, Leggat says:

22

23 *Over the last 18 months --*

24

25 so he puts it back beginning in about May 2016 --

26

27 *Team 11 --*

28

29 which I assume is another way of saying Neiwand, is it?

30 A. Oh, no, it's a title that was given to groups within  
31 the Unsolved Homicide Team. If you recall there were one  
32 to six were the response teams and then others.

33

34 Q. Speaking perhaps slightly imperfectly, he's really  
35 talking about what Neiwand has done?

36 A. Yes.

37

38 Q. In that paragraph, he says - and he's talking about  
39 Warren and Mattaini at first, he says:

40

41 *Particularly with the Warren matter*  
42 *a significant number of his closest friends*  
43 *and partners had never been interviewed.*

44

45 I won't ask you to comment on that because you may not know  
46 how accurate or inaccurate that is, I assume?

47 A. I don't.

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Q. No. Then Leggat goes on:

*From that investigation --*

that is, speaking to Warren's friends and partners --

*alternate theories have been developed.*

Do you see that?

A. Yes.

Q. And as to Mattaini he says:

*Mattaini's suicidal ideation was well  
known ...*

He says:

*Toxicology for Russell indicated a high  
level of intoxication.*

A. Yes.

Q. The last sentence in that paragraph is:

*The Warren reinvestigation --*

that is, the Neiwand one --

*was inconclusive and no clear lines of  
enquiry were identified.*

A. Yes.

Q. Then the part that I really wanted to ask you about is  
the next and final paragraph:

*On 18/10/2017 - during a meeting with Team  
11 ... with [Detective Inspector] Leggat --*

This sentence is a little bit jumbled so you might have to  
help me with what's actually being said, it says:

*... [Detective Inspector] Leggat held  
planned contact with the State Coroners  
Office to allow for informed consideration*



1           *as to whether a further Inquest should be*  
2           *held in relation to the Mattaini, Warren*  
3           *and Russell deaths.*

4  
5           A.    Yes.

6  
7           Q.    Now, pausing there, as I say, the sentence seems a  
8           little bit jumbled.

9           A.    But it seems to me he is saying that he planned to  
10          contact the Coroner's office and tell them.

11  
12          Q.    Yes.  But then he says, Leggat says:

13  
14                 *This contact --*

15  
16                 ie, with the Coroner's office about whether a further  
17                 inquest should be held --

18  
19                 *has now been postponed pending retirement*  
20                 *of the current State Coroner Mr Barnes and*  
21                 *appointment of his successor.*

22  
23          A.    Yes, I see that.

24  
25          Q.    Now, the dates will be known accurately somewhere in  
26          this room, but Mr Barnes ceased being State Coroner,  
27          I think, in on or about 30 November 2017, or if not then,  
28          soon afterwards.

29          A.    Yes.

30  
31          Q.    This document is 9 November.  So what can you tell us  
32          about what that paragraph contains?  I don't mean that you  
33          might yourself know what happened.

34          A.    No, I don't, this is the first I've heard of it.

35  
36          Q.    But what do you derive from that - that they were  
37          considering informing the Coroner what they had come up  
38          with and asking the Coroner if another inquest should be  
39          held --

40          A.    Yes, that's what I take from that.

41  
42          Q.    -- but then they thought they'd put it off until there  
43          was a new Coroner?

44          A.    Yes.

45  
46          Q.    But then, according to material that the Special  
47          Commission of Inquiry has been provided with, nothing else

1 seems to have ever happened on that front. Should  
2 something else have happened?  
3 A. I don't know. I would expect that they would carry on  
4 as planned, you know, once a new Coroner had been appointed  
5 or an Acting Coroner, State Coroner, go and fulfil what  
6 they are suggesting that they are going to do.  
7  
8 Q. Well it indicates, doesn't it, that at least Leggat  
9 and perhaps others thought that the Coroner needed to know  
10 what Neiwand had arrived at?  
11 A. Yes, it does.  
12  
13 Q. But either Leggat or someone else, it seems, at some  
14 later point decided not to tell the Coroner?  
15 A. If what you're telling me is before the Commission,  
16 that that didn't occur, well, I have to agree.  
17  
18 Q. I will be corrected if I'm mistaken about that.  
19 A. Sure.  
20  
21 Q. But that is the understanding that the Commission has  
22 at the moment?  
23 A. Okay.  
24  
25 Q. I think probably the last topic that I want to ask you  
26 about is just some questions about the interrelationship  
27 between Parrabell and Neiwand?  
28 A. Yes.  
29  
30 Q. Now, we saw yesterday, and I will need to just show  
31 you again, that there was a meeting on 14 April 2016?  
32 A. Yes.  
33  
34 Q. Which involved, among others, at least yourself and  
35 Crandell and Olen?  
36 A. Yes.  
37  
38 Q. And I think one or two others?  
39 A. And I think one from - one other person.  
40  
41 Q. And we find that, if you could have volume 6, at 164a  
42 [SC0I.82054\_0001]. This is the progress report?  
43 A. Yes.  
44  
45 Q. The first progress report about Neiwand. If we look  
46 at page 4, the fourth bullet point refers to that meeting  
47 having occurred?

1 A. Yes.  
2  
3 Q. I took you to that before?  
4 A. You showed me that earlier.  
5  
6 Q. I did, yes. That's all I need, just to remind you of  
7 that. Then if you could have volume 14 again and turn to  
8 tab 289, [NPL.0115.0004.2637]?  
9 A. 289?  
10  
11 Q. Yes.  
12 A. Yes. Yes.  
13  
14 Q. This is an email, the one I'm looking at, the main  
15 one, from Steven Morgan to Christopher Olen and John  
16 Lehmann on 13 April. Do you see that about halfway down  
17 the page?  
18 A. He's cc'ing them into it, yes. It's to other members  
19 of Unsolved Homicide.  
20  
21 Q. I'm sorry; you're quite right. It's a cc. Yes, it's  
22 two other members of --  
23 A. The team, yes.  
24  
25 Q. -- Neiwand, yes, and cc Olen and Lehmann.  
26 A. Yes.  
27  
28 Q. You're quite right, thank you. What Olen says in the  
29 second paragraph is - that is on 13 April, the day before  
30 the meeting that obviously happened the next day:  
31  
32 *Of interest ... tomorrow ... [Detective*  
33 *Superintendent] Willing & D/C/I Olen will*  
34 *be attending a meeting with*  
35 *[Superintendent] Tony Crandell ... who is*  
36 *the Corporate Spokesperson for GLBTI*  
37 *issues. They will be discussing an alleged*  
38 *80-odd gay-hate deaths that are being*  
39 *investigated by officers from that*  
40 *Command --*  
41  
42 Surry Hills, being the Parrabell exercise --  
43 A. Yes.  
44  
45 Q. --  
46  
47 *and any crossover or relevance with either*

1            *UHT investigations Neiwand or Macnamir.*

2

3            A.    Yes.

4

5            Q.    Now, is that, as you understand it, although short, an  
6 accurate summary of what was going to be talked about?

7            A.    That might be his interpretation of what was going to  
8 be discussed, but it was going to be around the conduct of  
9 Parrabell in general and - yes.

10

11           Q.    Well, yes, but it was going to discuss, and I want to  
12 suggest to you it did discuss, any crossover involving  
13 Parrabell and/or Neiwand and/or Macnamir?

14           A.    In the context of what was happening in Macnamir at  
15 the time.

16

17           Q.    Yes.

18           A.    That would have been discussed. I can't recall it but  
19 it naturally flows that it would have been.

20

21           Q.    I want to put to you for your consideration that there  
22 was indeed crossover between or among those three in a  
23 number of ways. Would you agree that all three either - in  
24 terms of what you know now --

25           A.    Yes.

26

27           Q.    All three, either from their inception or perhaps in  
28 the case of Neiwand in your understanding later in its  
29 development, were directed to arriving at conclusions that  
30 minimised the likelihood of gay-hate bias in the deaths  
31 they were looking at?

32           A.    I don't agree with that.

33

34           Q.    In the case of Macnamir, the Scott Johnson related  
35 strike force --

36           A.    Yes.

37

38           Q.    -- would you agree that it was heavily concentrating  
39 on factors supporting the suicide theory and on factors  
40 casting doubt on the homicide theory?

41           A.    I think we've gone through this yesterday. I - if the  
42 evidence led in that direction, that was where the evidence  
43 led. My observations of particularly Pamela Young as an  
44 investigator, she was very, very thorough and would always  
45 cast her mind to any possibility.

46

47           Q.    Well, that means, I take it, that you would say no to

1 my question? My question was: was Macnamir heavily  
2 concentrating on factors supporting suicide --  
3 A. No.  
4  
5 Q. -- and on factors casting doubt on homicide?  
6 A. I'm saying no.  
7  
8 Q. So your answer is no?  
9 A. Yes.  
10  
11 Q. And in the case of Parrabell, do you agree that it was  
12 inevitably likely to arrive at low numbers of gay-hate  
13 bias, first of all, because of the high requirement of  
14 beyond reasonable doubt imposed on the criterion as to  
15 whether there was evidence of such bias?  
16 A. The criteria you showed me yesterday, yes.  
17  
18 Q. You'd agree with that?  
19  
20 MR TEDESCHI: I object for the reasons I stated yesterday.  
21  
22 THE COMMISSIONER: Yes, thank you.  
23  
24 MR GRAY: Q. You are agreeing with me so far on that  
25 one?  
26 A. That, as discussed yesterday, there was a criteria  
27 there that made it difficult to arrive at something  
28 different, yes.  
29  
30 Q. Made it difficult to get over the threshold --  
31 A. Of beyond reasonable doubt.  
32  
33 Q. -- of beyond reasonable doubt as to whether gay hate  
34 bias could be shown to have been present?  
35 A. No, there was a possibility, there was a second  
36 category as well.  
37  
38 Q. Yes, I know, but I'm asking about the first category,  
39 as I did yesterday.  
40 A. Well, the first category --  
41  
42 Q. The first category was is there evidence of gay hate  
43 bias, and that had to be established beyond reasonable  
44 doubt?  
45 A. Beyond reasonable doubt.  
46  
47 Q. And as we went through yesterday --

1 A. I agree with you on the first category.  
2  
3 Q. And because that requirement was there, the likelihood  
4 of many cases surmounting that threshold of actual evidence  
5 of gay hate bias was low, wasn't it?  
6  
7 MR TEDESCHI: Evidence beyond a reasonable doubt.  
8  
9 THE COMMISSIONER: I'm sure that's implicit and you'll  
10 make it clear.  
11  
12 MR TEDESCHI: It should be explicit, Commissioner, because  
13 the two categories both referred to evidence --  
14  
15 THE COMMISSIONER: Mr Tedeschi, I accept what you say.  
16 Mr Gray will correct it if he thinks he should and you will  
17 point out if he doesn't. Mr Gray, put it again.  
18  
19 MR GRAY: I will put it again.  
20  
21 Q. I'm speaking about the first category.  
22 A. Yes, we've established that.  
23  
24 Q. Which is evidence of gay hate bias?  
25 A. Mmm-hmm.  
26  
27 Q. The second category, of course, was suspected gay hate  
28 bias?  
29 A. The possibility of gay hate bias, beyond reasonable, I  
30 think is what it said, but, yes, I accept the hypothesis.  
31  
32 Q. I don't want to do it all again, but the second one,  
33 as my friend pointed out yesterday, had beyond reasonable  
34 doubt on the converse, that the - do you recall that  
35 discussion?  
36 A. Yes.  
37  
38 Q. But in terms of the first one, which is what I'm  
39 asking you about --  
40 A. Yes.  
41  
42 Q. -- is there evidence of gay hate bias, the criterion  
43 or standard was beyond reasonable doubt?  
44 A. That's right.  
45  
46 Q. Right. And because that is so, the chances of that  
47 first box being ticked "Yes" were low in most cases,

1 because of the requirement of beyond reasonable doubt?  
2 A. Yes.  
3  
4 Q. Right. Now, a second reason why Parrabell was likely  
5 inevitably to arrive at low numbers of gay hate bias, I'd  
6 suggest, is because that requirement, the one that we have  
7 just talked about involving beyond reasonable doubt --  
8 A. Yes.  
9  
10 Q. -- for that first box, represented a particularly high  
11 bar in the Parrabell context where they were only looking  
12 at historical paper and not reinvestigating; you agree?  
13 A. I accept that, yes.  
14  
15 Q. Now, as to Neiwand, given what we've been through for  
16 most of today, it did not pursue very many at all, in fact,  
17 hardly any, of the known POIs that Penny Brown told them  
18 about back in February?  
19 A. The post Penny Brown part of it, yes.  
20  
21 Q. That's right.  
22 A. That's right.  
23  
24 Q. You'd agree?  
25 A. That's right.  
26  
27 Q. And instead, you would accept, in the light of what  
28 we've discussed today --  
29 A. Yes.  
30  
31 Q. -- that Neiwand focused not on persons of interest for  
32 the most part, but on victimology and on matters thought to  
33 bolster the possibilities of suicide or misadventure rather  
34 than homicide?  
35 A. Certainly victimology. Focused on - it did focus on  
36 matters that resulted in bolstering those other two things.  
37 I wouldn't say at the exclusion of homicide.  
38  
39 Q. In the case of Macnamir and Neiwand, putting Parrabell  
40 to one side for the moment --  
41 A. Yes.  
42  
43 Q. -- would you agree that in the end, whether they were  
44 set up to do this or not for the moment --  
45 A. Yes.  
46  
47 Q. -- both of them arrived at conclusions which supported

1 the contention that the death or deaths that they were  
2 respectively looking at were not or may not have been gay  
3 hate homicides?  
4 A. The second, Neiwand, I agree. Macnamir, as we've gone  
5 through yesterday, outlined in my view the evidence for the  
6 hypotheses and left it to the Coroner.  
7  
8 Q. All right. I now need you to just be shown volume 8,  
9 please.  
10 A. Yes.  
11  
12 Q. While that is coming, I will just put this question --  
13 A. Sure.  
14  
15 Q. -- for completeness, just so you have a chance to  
16 answer it directly. Would you agree that throughout 2016  
17 and 2017, all three of Macnamir, Parrabell and Neiwand were  
18 being directed, whether you had any part in it or not, to  
19 the end points that I have suggested, namely, suicide more  
20 likely, homicide less likely?  
21 A. No, I don't agree.  
22  
23 MR TEDESCHI: I object.  
24  
25 MR GRAY: Sorry, I withdraw that question. I will put the  
26 question again.  
27  
28 Q. Would you agree that throughout 2016 and 2017, both  
29 Macnamir and Neiwand were being directed, whether to your  
30 knowledge or not but on what you know now, to the end point  
31 that the deaths in question, Scott Johnson in Macnamir and  
32 Messrs Mattaini, Russell and Warren in Neiwand, were  
33 unlikely to be homicide.  
34  
35 MR TEDESCHI: I object to the word "directed",  
36 your Honour. It is a question that seems to ask him  
37 whether somebody was directing inquiring in that direction.  
38  
39 THE COMMISSIONER: No, if he wants to put that he can, but  
40 he can also put that the effect of those inquiries were  
41 directed in the --  
42  
43 MR TEDESCHI: He has already been asked about the  
44 effect --  
45  
46 THE COMMISSIONER: I'm going to allow it, Mr Tedeschi.  
47 Please go on, Mr Gray.



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MR GRAY: Q. Can you answer that, Mr Willing?

A. That is not the case. I point out, too, that when you say 2016 to 2017, Macnamir was before the Coroner and under the control of the Coroner. Inquiries being conducted at that time were done under his imprimatur.

Q. I will ask the question again and take the word "directed" out. The police who were working on Macnamir, principally Pamela Young until she departed --

A. Yes.

Q. -- and then thereafter principally, although not by herself obviously, Penny Brown --

A. Yes.

Q. -- were strongly of the view that homicide was not the right finding and that suicide was more likely but that, in any event, only an open finding should be made?

A. They may have thought that but it didn't preclude them from investigating persons of interest. As you have seen, they conducted inquiries into groups on the North Shore that were involved in gay hate crimes. They went to great lengths after the matter was before the Coroner to appeal for witnesses publicly to come forward. So I wouldn't agree with that.

Q. And in the case of Neiwand, you would agree in the light of what we've been through today that from some point after the first few months of 2016 --

A. Yes.

Q. -- it is perhaps not clear when, exactly, Neiwand directed its attention almost exclusively not to homicide but to other possibilities?

A. To victimology and other things, yes.

Q. To victimology and to the possibilities of suicide and/or misadventure?

A. And again, as I've said before, I don't think that was exclusive to the possibility of homicide but that's where the end result was.

Q. My question was "almost exclusively", that they --

A. I don't agree with that. I think that if evidence came forward that would support homicide, they would pursue that.

1  
2 Q. All right. Now --  
3  
4 THE COMMISSIONER: Q. Mr Willing, it's not a question  
5 of, if I may say so, if evidence came forward. You are  
6 being asked, I think, as to the impression one might gain  
7 objectively, having read what has been put on behalf of the  
8 police, for example, in Macnamir via their senior counsel  
9 before Mr Barnes, and likewise in the documents we've read  
10 this afternoon - do you say objectively viewed, those two  
11 exercises could only be construed as the police putting  
12 forward with equal weight the scenarios of suicide,  
13 misadventure and/or homicide?  
14 A. Not with equal weight, no, Commissioner.  
15  
16 Q. Well, then, what was it from your perception? You've  
17 been through it yesterday and today. Do you say --  
18 A. They --  
19  
20 Q. Would you just do me the courtesy of listening.  
21 A. Oh, geez --  
22  
23 Q. Do you - I'm sorry?  
24 A. Yes, Commissioner.  
25  
26 Q. Did you want to say something, Mr Willing?  
27 A. No, Commissioner.  
28  
29 Q. Would you answer in your own way, having undoubtedly  
30 heard what I have said, and do your best, Mr Willing?  
31 A. The evidence that was put before the Coroner outlined  
32 the evidence as the investigators saw it for homicide,  
33 suicide and misadventure. In the case of Macnamir, that's  
34 what we're talking about.  
35  
36 Q. And do you say that objectively viewed, I should form  
37 the view, and anybody else reading those materials,  
38 including the submissions made on behalf of senior counsel  
39 on behalf of the police before Mr Barnes, objectively  
40 viewed, that police took the view that each of those  
41 scenarios should be regarded as equal on the evidence?  
42 A. It's difficult - no, not objectively. The evidence  
43 naturally flows where it flows. There may be more evidence  
44 for one than another, and so --  
45  
46 Q. Mr Willing, I'm not asking you about theoretical  
47 possibilities with the evidence. I'm asking you,

1 objectively viewed, was the position or stance taken by the  
2 police, to your perception --  
3 A. Yes.  
4  
5 Q. -- at the Macnamir inquest, that the police were  
6 agitating for equal weight to be given to homicide,  
7 misadventure and suicide?  
8 A. Yes.  
9  
10 Q. Thank you. The same for Neiwand, was it? That the  
11 Neiwand summaries were advocating, notwithstanding the fact  
12 that Coroner Milledge's finding should be, as it were,  
13 disregarded, that again, those who put the summaries  
14 together in Neiwand were equally advocating there to be of  
15 an equal weight to suicide, misadventure or homicide?  
16 A. Not according to the summaries that I've read.  
17  
18 Q. What did you say, I'm sorry?  
19 A. I said not according to the summaries that I have  
20 read.  
21  
22 Q. Well, according to what, then?  
23 A. The summaries contain more evidence inferring  
24 something other than suicide [sic], which we've already  
25 established.  
26  
27 MR GRAY: Q. Something other than homicide?  
28 A. Sorry, other than homicide, which we've already  
29 established.  
30  
31 Q. So you accept the proposition apropos Neiwand; is that  
32 right?  
33 A. That the summaries contain that evidence.  
34  
35 Q. Well, not just evidence, that the summaries of Neiwand  
36 are very obviously emphasising possibilities other than  
37 homicide and de-emphasising the possibility of homicide?  
38 A. Yes.  
39  
40 Q. But you don't accept that in relation to Macnamir?  
41 A. No.  
42  
43 Q. Now, do you have volume 8?  
44 A. Yes.  
45  
46 Q. Could you turn to tab 221 [SC0I.82030.0001]. Do you  
47 see that is an article in the Herald on 21 May 2016 by Ava

1 Benny-Morrison?  
2 A. Yes.  
3  
4 Q. And you would remember this article, I imagine?  
5 A. Yes.  
6  
7 Q. And it's a story about the police embarking upon the  
8 Parrabell exercise.  
9 A. Yes.  
10  
11 Q. And at 222, tab 222 [SC0I.82028\_0001] two days later -  
12 21 May was a Saturday --  
13 A. Yes.  
14  
15 Q. -- and this one at 222 is on Monday, 23 May --  
16 A. Yes.  
17  
18 Q. -- there is another report by Ava Benny-Morrison, and  
19 although the word "Neiwand" is not mentioned, if you read  
20 it, I imagine you'll agree with me that that's obviously  
21 what it's about?  
22 A. Yes.  
23  
24 Q. Now, there is an online version of this second  
25 article, which is longer, it has more text.  
26 A. Sure.  
27  
28 Q. And for the record I will note that that's at volume  
29 12, tab 259 [SC0I.82370\_0001], but for present purposes  
30 I don't need to trouble you with that. But what  
31 Ms Benny-Morrison says in the first paragraph is that for  
32 the third time in three decades, the deaths of three men in  
33 Sydney's Eastern Suburbs will be investigated, et cetera.  
34 A. Yes.  
35  
36 Q. And in the second column, she says:  
37  
38 *Now the ... Unsolved Homicide Team has*  
39 *reopened the investigation into the three*  
40 *men's deaths in the hope of putting their*  
41 *killers behind bars. Fairfax Media*  
42 *understands ... Detective Superintendent*  
43 *Mick Willing reopened the investigation*  
44 *earlier this year after the cases were*  
45 *reviewed.*  
46  
47 A. Mmm-hmm.

- 1  
2 Q. So far so good. You would say that so far that's more  
3 or less accurate?  
4 A. That's right.  
5  
6 Q. And then in the third column you are quoted as saying:  
7  
8 *Flowing on from the UHT's ongoing*  
9 *investigation into the death of Scott*  
10 *Johnson, the investigations into the deaths*  
11 *of Gilles Mattaini, John Russell and Ross*  
12 *Warren have been recommenced ...*  
13  
14 A. Yes.  
15  
16 Q. Et cetera. Now, these articles - and I should say  
17 that the online version of this article, of the 23rd, is  
18 dated the 22nd - in other words, it seems to have come out  
19 online --  
20 A. Overnight or something.  
21  
22 Q. -- on the Sunday, and then it's in print on the  
23 Monday?  
24 A. Mmm-hmm.  
25  
26 Q. So the two articles follow hot on the heels, one after  
27 the other?  
28 A. Yes.  
29  
30 Q. In the first one, the one about Parrabell, the one at  
31 tab 221, Mr Crandell is referred to, and I think, if I'm  
32 not mistaken - yes, he is quoted, there are some quotes  
33 attributed to Superintendent Crandell about the Parrabell  
34 matter, and there are some quotes attributed to you in this  
35 one about Neiwand.  
36 A. Yes.  
37  
38 Q. Now, tell us how that came about? How did it come  
39 about that, on two successive days, two articles were  
40 written, one about Parrabell and one about Neiwand?  
41 A. I can't recall other than Ava was a police reporter.  
42 She would, almost on a daily basis, be asking questions of  
43 the Police Media Unit. She may well have asked about the  
44 two separate things at the same time, with one being under  
45 the carriage of Crandell and the other being under me.  
46  
47 Q. Well, did you and Mr Crandell speak to each other

1 about the fact that these articles were in the wind or  
2 going to be written?

3 A. I - not directly, usually that would be through - if  
4 we did, it would be through a liaison officer, media  
5 liaison officer, who would gather the response together.  
6

7 Q. Did you each, either together or separately, speak to  
8 Ms Benny-Morrison?

9 A. I can't recall talking to her about this but I did  
10 speak to her regularly. I'm assuming that Mr Crandell has  
11 spoken to her as well, so - but not together.  
12

13 Q. To your recollection, did the impetus for these two  
14 stories come from her, from whatever inquiries she may have  
15 made, or did it come from you and Mr Crandell?

16 A. I thought it came from her.  
17

18 Q. And how would she have known, as best you can tell,  
19 that Neiwand existed?

20 A. She may have been told from an internal police source.  
21 I don't know.  
22

23 Q. To your recollection, first of all, was there any  
24 reason why you didn't mention the word "Neiwand", whereas  
25 Parrabell was mentioned quite a bit in the Crandell  
26 articles?

27 A. Not particularly. Not particularly. No.  
28

29 Q. No particular reason? And to your recollection, has  
30 there been any other article ever, that you know of, where  
31 Neiwand has been referred to?

32 A. By name I - I don't know.  
33

34 Q. What about even not by name?

35 A. No, not from my recollection.  
36

37 MR GRAY: I have nothing further, your Honour.  
38

39 THE COMMISSIONER: All right. Up to you, Mr Tedeschi.  
40 It's quarter to 4 anyway, so - and I know Mr Willing has  
41 a problem tomorrow, as I understand it. So I have offered  
42 you the opportunity this morning of you telling me what  
43 you'd like to do?  
44

45 MR TEDESCHI: Commissioner, there are so many quite  
46 complex areas that have been covered that I would need to  
47 spend more time in conference with Mr Willing than I had

1 thought, so I would suggest that the best way forward would  
2 be that his hearing is adjourned until such time as Counsel  
3 Assisting is in a position to indicate that he is ready to  
4 complete the remaining section, which is just one topic,  
5 perhaps if I could re-examine him after that.  
6

7 THE COMMISSIONER: Yes, all right.  
8

9 MR TEDESCHI: That will give me an opportunity over the  
10 next few days to speak to him.  
11

12 THE COMMISSIONER: Well, I'm not going to - at the moment  
13 I can't, rather, indicate when that might be. We've got  
14 other witnesses lined up for the balance of this week and  
15 for next week. The prospect at the moment is that it won't  
16 be in the immediate future. If that changes, and I don't  
17 think it will but if it does change, we will give you  
18 plenty of warning, and of course we will consider, as we  
19 must reasonably, Mr Willing's private sector commitments.  
20 So we will do our very best to do it, but I think you can  
21 work on the basis it's unlikely to be before - I will be in  
22 a position to say anything or Mr Gray will be in a position  
23 to say anything probably for another week or two, but we  
24 will be here and we will let you know if there is any  
25 update. But we will obviously give you plenty of time to  
26 check Mr Willing's availability.  
27

28 Q. Mr Willing, can I just ask you this, apart from  
29 immediate short term --

30 A. Yes.  
31

32 Q. -- do you have any plans in the next couple of weeks  
33 to be out of Australia, for example?

34 A. No, I don't, Commissioner.  
35

36 THE COMMISSIONER: Okay. All right. I will leave it just  
37 at that.  
38

39 MR TEDESCHI: I'm sorry, I didn't want to interrupt you.  
40 I thought you were just about to go off the Bench and  
41 I wanted to mention something.  
42

43 THE COMMISSIONER: No, I was about to defer to you again,  
44 Mr Tedeschi.  
45

46 MR TEDESCHI: Commissioner, there are some redaction  
47 issues which my learned junior Mr Mykkeltvedt is in a

1 position to raise with you now, if that's appropriate.

2

3 THE COMMISSIONER: In that event, what about I excuse  
4 Mr Willing now so he can get away.

5

6 I won't formally excuse you, Mr Willing, from giving  
7 some future evidence, but by all means, if convenient and  
8 you'd like to go now, by all means go and someone will be  
9 in touch, or whatever you would like to do.

10

11 THE WITNESS: Thank you, Commissioner.

12

13 THE COMMISSIONER: Thank you.

14

15 <THE WITNESS WITHDREW

16

17 THE COMMISSIONER: What are the issues?

18

19 MR MYKKELTVEDT: The issues relate to the orders that  
20 your Honour has made now.

21

22 THE COMMISSIONER: No, what I said this morning I think -  
23 I think I said it - Mr Tedeschi, I thought, said there  
24 might have been a problem. I said in everyone's company  
25 that I had signed the orders. I certainly do not wish you  
26 to think that they are in a block of concrete. So if there  
27 is something that you need to be heard upon, that's fine.

28

29 MR MYKKELTVEDT: The difficulty is not with the orders  
30 themselves, your Honour; it is with the publication of the  
31 documents to which the orders relate.

32

33 THE COMMISSIONER: I'm so sorry.

34

35 MR MYKKELTVEDT: It's the publication of the documents to  
36 which the orders relate.

37

38 THE COMMISSIONER: Yes.

39

40 MR MYKKELTVEDT: Those instructing me have been informed  
41 that there is an intention to publish those documents,  
42 including documents that were only served in the last  
43 24 hours, at 4pm today.

44

45 A number of items have been identified to this point  
46 in the review that has been able to be --

47



1 THE COMMISSIONER: Is the bottom line that you want more  
2 time to think about it?

3  
4 MR MYKKELTVEDT: Yes, in short, your Honour. We seek  
5 24 hours.

6  
7 THE COMMISSIONER: I don't see, myself, at the moment  
8 a problem with the next 24 hours, unless, Mr Gray, you have  
9 a problem with the next 24 hours, even assuming that the  
10 other side have had documents for a while, I just don't  
11 know what the problem is, but will 24 hours make or break  
12 anybody? I can't imagine it would.

13  
14 MR GRAY: I don't imagine so. I don't know what this  
15 topic is at all, Commissioner.

16  
17 THE COMMISSIONER: All right. Mr Mykkeltvedt, what about  
18 we do it this way: unless I'm told something to the  
19 contrary, I can't see possibly how 24 hours will make  
20 a difference. Discussions between yourselves and staff of  
21 the Inquiry have generally led to some resolution of  
22 matters. Why don't you raise it with me tomorrow or the  
23 next day, whenever an impasse has arrived which requires --

24  
25 MR MYKKELTVEDT: It's simply about ensuring that the  
26 redactions are applied correctly. Some of them have been  
27 missed and we just want to check that.

28  
29 THE COMMISSIONER: I think there were problems with the  
30 interpretation of the orders and the existence of which  
31 orders ought to trump which orders.

32  
33 MR MYKKELTVEDT: No doubt.

34  
35 THE COMMISSIONER: I'm privy to that complication. It  
36 ought to be sorted out. So what about you try and sort it  
37 out, and if you can't I'll sort it out, but I imagine you  
38 are certainly going to have the 24 hours and if you need  
39 more time just let me know.

40  
41 MR MYKKELTVEDT: Thank you, your Honour.

42  
43 THE COMMISSIONER: All right. Nothing else, Mr Gray, this  
44 afternoon?

45  
46 MR GRAY: No, your Honour. There are some other matters  
47 that can be dealt with, but perhaps it might be better to

1 deal with them first thing tomorrow morning and that now.

2

3 THE COMMISSIONER: And tomorrow is Mr Morgan, is it?

4

5 MR GRAY: Yes.

6

7 THE COMMISSIONER: All right. I will adjourn at the  
8 moment until 10 in the morning. Thank you.

9

10 **AT 3.50PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**  
11 **TO WEDNESDAY, 22 FEBRUARY 2023 AT 10AM**

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