

**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 Monday, 27 February 2023 at 10.30am

(Day 28)

Mr Peter Gray SC	(Senior Counsel Assisting)
Ms Claire Palmer	(Counsel Assisting)
Mr Enzo Camporeale	(Director Legal)
Ms Caitlin Healey-Nash	(Senior Solicitor)

Also Present:

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

1 THE COMMISSIONER: Mr Tedeschi and Mr Gray, before we
2 resume, on Wednesday morning I would like to start, subject
3 to everyone's convenience, at 9.30. I will have to adjourn
4 at 11 to conduct a private hearing, and I would hope to
5 resume in about an hour, so around about 12-ish. Does that
6 cause any problem from your point of view?

7
8 MR GRAY: Not from my point of view, Commissioner.

9
10 MR TEDESCHI: I can make alternative arrangements.

11
12 THE COMMISSIONER: No, if it's a matter of - look, I'm
13 happy to start at 10 but I'd have to go off at 11.

14
15 MR TEDESCHI: I'd prefer to start at 10.

16
17 THE COMMISSIONER: That's all right. If you have other
18 matters, Mr Tedeschi, it is a walk down here. Just so that
19 you know, though, that at about 11 or thereabouts, I'll be
20 adjourning for about an hour to an hour and a quarter,
21 perhaps, and then I will resume shortly after that.

22
23 If needs be, I could perhaps sit on a little in the
24 afternoon if that was of any assistance, but let's just
25 wait and see. It may not be necessary. Okay, thank you.
26 Mr Morgan, would you please be kind enough to come back.

27
28 <STEVEN MORGAN, on former affirmation: [10.34am]

29
30 <EXAMINATION BY MR GRAY CONTINUING:

31
32 MR GRAY: Q. Mr Morgan, over the weekend the police have
33 provided to the Special Commission two task lists, one for
34 Taradale and one for Neiwand - they are e@gle.i listings?
35 A. Yes.

36
37 Q. I don't know if you have seen either of those over the
38 weekend?
39 A. I haven't over the weekend, no.

40
41 Q. Could I ask that you be shown both of them, the
42 Taradale one and the Neiwand one, and I will have copies
43 provided to the Commissioner and to Mr Tedeschi. I don't
44 want to spend long on this, Mr Morgan, but you will see
45 that you have just been handed two different lists?
46 A. Yes.

- 1 Q. And each of them is numbered with a number of tasks,
2 and for both the numbering starts from the back page and
3 runs through to the top of the front page?
4 A. Yes.
5
6 Q. One of them has 99 tasks on it - do you see that?
7 A. Yes.
8
9 Q. That's the Neiwand task list.
10 A. Yes, I accept that.
11
12 Q. And the other one has 212 tasks on it, and that is
13 apparently the Taradale task list.
14 A. Yes.
15
16 Q. When a task list like this is created on the system,
17 does that tell us the totality of the tasks that have been
18 set for the task force or strike force in question?
19 A. Well, it's what's set by the OIC generally, yes.
20
21 Q. So in the Neiwand one, can we assume that those 99
22 tasks, although the first one listed seems to be numbered
23 2, but any rate, 98 or 99 tasks are the totality of the
24 tasks that Neiwand embarked upon pursuant to the OIC's
25 direction?
26 A. Unless there are tasks that have been cancelled, yes.
27 Because I note here it says "70 rows returned" but there
28 are actually 99 tasks.
29
30 Q. What does "70 rows returned" mean?
31 A. I would say that is tasks that have not been cancelled
32 or duplicated or anything else. Sometimes tasks get
33 duplicated and that becomes realised later on so you cancel
34 the first - you cancel one.
35
36 Q. So does that tell us that the total number might be
37 more like 70 than 99?
38 A. Possibly.
39
40 Q. In the case of the Taradale one, the equivalent line
41 is 205 rows returned, I see, out of 212.
42 A. Yes.
43
44 Q. And would that therefore, as you understand it,
45 indicate that the total number of tasks was either 212 or
46 205?
47 A. Yes, that's my understanding of it.

1
2 Q. And with the Neiwand one, at number 71, there is the
3 word "caveated"?
4 A. Yes.
5
6 Q. What does "caveated" mean?
7 A. When you create a task or, for that matter, a product,
8 you can put a caveat on it that restricts the number of
9 people that have access to that.
10
11 Q. I see, okay. And just --
12 A. Generally, things to do with informants and that type
13 of matter - human sources.
14
15 Q. Right. Just while we are there, at number 71, the
16 next one above that is 75, so the 72, 73, 74 are missing.
17 A. Yes.
18
19 Q. Does that correlate in some way to the item at the
20 top, "70 rows returned"? If three numbers are not there,
21 does that mean they were cancelled or something? What does
22 that mean?
23 A. Quite possibly, yes. I can't say without being able
24 to see the whole.
25
26 Q. And the other question was number 47, says, "Review
27 CIRs for POIs"?
28 A. Yes.
29
30 Q. We know what POIs are, but what is a CIR?
31 A. Prior to COPS, so prior to 1994 when the COPS system
32 came in, crime reports were recorded on a duplicated form
33 and submitted and they were allocated a station number,
34 et cetera. So it was like a typed form as opposed to
35 a computer record.
36
37 Q. And does "CIR" stand for something like criminal
38 intelligence report or what?
39 A. Criminal - I can't remember what it stands for now,
40 but it was either a PIR and then it became a CIR, but we're
41 talking stuff pre '94.
42
43 Q. But in the case of a POI, a person of interest --
44 A. Yes.
45
46 Q. -- a CIR was some sort of record of information
47 available about that person, was it?

1 A. Within the NSW Police system, yes.
2
3 MR GRAY: I tender those two documents.
4
5 THE COMMISSIONER: All right, thank you.
6
7 MR TEDESCHI: No objection.
8
9 MR GRAY: They would be tab 324, perhaps jointly.
10
11 THE COMMISSIONER: Certainly. Yes, thank you.
12
13 MR GRAY: Q. Now, Mr Morgan, if Mr Morgan could have
14 volume 6 again, please, and turn again to tab 174
15 [SCOI.74883_0001].
16 A. Yes.
17
18 Q. Turn to page 42. On Friday afternoon, I had got to
19 the point where I asked you some questions about
20 paragraph 179. I just want to ask you a couple of
21 questions about 180.
22 A. Yes.
23
24 Q. You refer there to the persons of interest at the time
25 of Taradale or at least at the inquest --
26 A. Yes.
27
28 Q. -- becoming aware of certain methodologies that had
29 been used by Taradale of a covert kind?
30 A. Yes.
31
32 Q. You say in the fourth line that there was no evidence
33 or intelligence to link those POIs with Mr Warren's
34 disappearance. Then you say that that fact, combined with
35 the previous disclosure of methodology to them, was
36 a crucial factor in Neiwand not focusing on the youth gangs
37 theory. Do you see that?
38 A. Yes, I do see that.
39
40 Q. Now, pausing there, was there any other factor that
41 explained Neiwand not focusing on the youth gang theory,
42 besides that?
43 A. That's not particularly well worded, I've got to say,
44 but as I said the other day, the fact that her Honour at
45 the inquest, the Deputy State Coroner, did comment very
46 favourably on Taradale's - the investigation so far as
47 persons of interest that they'd identified. We didn't want

1 to go over old ground. We didn't see a need to do that.
2
3 Q. Right. I may come back to this, but you'll recall the
4 review conducted by Detective Senior Constable Alicia
5 Taylor in October 2012?
6 A. Yes.
7
8 Q. Which we've looked at before?
9 A. Yes.
10
11 Q. Without going back to it, although we may need to, her
12 recommendation was that precisely because of the passage of
13 time, among other things --
14 A. Yes.
15
16 Q. -- there should be renewed attention given to the
17 persons of interest by covert methods?
18 A. Yes, I think specifically an undercover operation was
19 mentioned.
20
21 Q. Yes, that's right. And we now know from a document
22 produced on, I think, Friday that in August 2013,
23 DCI Lehmann did sign off on that as reviewing and approving
24 her recommendations?
25 A. Yes.
26
27 Q. And so the recommendations of DSC Taylor and
28 DCI Lehmann --
29 A. Yes.
30
31 Q. -- were to revisit the POIs by covert means such as
32 undercover operations, weren't they?
33 A. Yes.
34
35 Q. Precisely because, among other things, 10 years had
36 passed?
37 A. Yes.
38
39 Q. But Neiwand at some point, according to your
40 paragraph 180 - and you've said this before - decided
41 positively not to do that?
42 A. Correct.
43
44 Q. Who made that decision and when?
45 A. I can't tell you when, obviously during Neiwand but
46 I couldn't tell you at what stage, and my recollection of
47 it would have been that it would have been a group - we

1 used to have regular team meetings and it would have been
2 considered at a team meeting and for various reasons it was
3 dismissed as a strategy.
4

5 Q. Well, what were the reasons? Why were the
6 recommendations of Alicia Taylor and John Lehmann reversed
7 and not carried out?

8 A. Well, predominantly because there are legal and
9 technical difficulties with pursuing an undercover
10 operation once a person has taken a right to silence.
11

12 Q. Once the person has --

13 A. Taken the right to silence, which many of these
14 persons of interest did when they were interviewed by
15 Taradale. Without going into it any further than that,
16 there are legal and technical difficulties with that.
17

18 Q. The fact that a person sought to take the advantage of
19 declining to answer questions in a court setting --

20 A. Or in a police interview.
21

22 Q. Previously?

23 A. Previously.
24

25 Q. That means that there is some obstacle to an
26 undercover operation?

27 A. Yes.
28

29 Q. What's the obstacle, as you understand it?

30 A. Commissioner, I don't know that I'm comfortable going
31 into this kind of methodology in a public hearing.
32

33 THE COMMISSIONER: Q. I don't think you are asked about
34 methodology, I think you are asked in the first instance -
35 you volunteered it - what is the problem about, as you
36 understood it at the time, if that's relevant, in further
37 pursuing persons of interest?
38

39 MR TEDESCHI: Commissioner, perhaps I might voice what
40 I think are the concerns that Sergeant Morgan has. Perhaps
41 if he could wait outside.
42

43 THE COMMISSIONER: Certainly. Mr Morgan, why don't you
44 just pop outside for a moment, thank you.
45

46 (The witness left the hearing room)
47

1 MR TEDESCHI: And could I suggest that this shouldn't be
2 broadcast?

3
4 THE COMMISSIONER: Well, I can't actually understand at
5 the moment why a general discussion could be of
6 significance. Nobody in the community would have any - or
7 most people in the community, would understand undercover
8 operations occur from time to time and that, in this very
9 case of Taradale, there's plenty of references in Coroner
10 Milledge's judgment to various things done.

11
12 MR TEDESCHI: Commissioner, I think that Sergeant Morgan
13 has an understanding of what the law was at that time. It
14 might be different now.

15
16 THE COMMISSIONER: Yes, I understand that as well, but
17 his --

18
19 MR TEDESCHI: I think what he's concerned about - and
20 I haven't spoken to him about it, I'm inferring what
21 I think he's concerned about - is that by exercising
22 a right to silence in a police interview, a suspect may
23 think that they make themselves immune from future covert
24 investigations.

25
26 THE COMMISSIONER: So what? If they have a
27 misunderstanding of the law - I was going to use the word
28 "entrapment", but if the concern is an entrapment concern
29 and the admissibility of that evidence --

30
31 MR TEDESCHI: I don't think it is that. I think what it
32 is --

33
34 THE COMMISSIONER: Okay. I'm not following the problem.
35 The following of the problem is --

36
37 MR TEDESCHI: I think the problem is that I think he
38 doesn't want to encourage persons to thwart what he sees as
39 being police investigations that would otherwise take place
40 by people exercising the right to silence.

41
42 THE COMMISSIONER: I still don't follow the point, I'm
43 sorry. You're being too obscure.

44
45 MR TEDESCHI: I'm being unclear.

46
47 THE COMMISSIONER: No, I know you are doing it for

1 whatever reason, but his understanding of what the legal -
2 if there was, in his mind, a legal impediment, then in
3 general terms I don't see why that should create any
4 sensitivity particularly if, as you surmise - you may be
5 right, you may not be right - it is an understanding of his
6 as to the law as at whatever date it was. But I think to
7 that limited extent, if he has an understanding and that
8 was a reason why, for example, he thought it inappropriate,
9 then I can't see a problem why he shouldn't say that it's
10 his understanding. He may be right or he may be wrong.
11 That doesn't disclose any methodology.

12
13 MR TEDESCHI: I think that the use of his term "police
14 methodology" is --

15
16 THE COMMISSIONER: Well, that's his term.

17
18 MR TEDESCHI: -- a bit of a euphemism. I think what he is
19 concerned about is that it might cause persons who are
20 suspects to act differently.

21
22 THE COMMISSIONER: But what suspects are we talking about?
23 Suspects in 1980 --

24
25 MR TEDESCHI: In the future, any suspects in the future,
26 generally.

27
28 THE COMMISSIONER: Oh, but, look, anybody watching this
29 who is hell-bent on criminal activity is not going to be
30 deterred by you or me, Mr Tedeschi. Much as we would like
31 to feel we could have some impact on community, I think
32 people out there committing crimes aren't listening to you
33 or me and they're not going to be deterred by you or me or
34 the powerful speeches we make or --

35
36 MR TEDESCHI: I think that's his concern.

37
38 THE COMMISSIONER: Let me deal with it delicately. Quite
39 seriously, if you would like to have a word to him in order
40 better to understand what his concern is, I'm very happy to
41 go off the bench. I don't want to intrude. Indeed,
42 I shouldn't unduly intrude into areas like this that could
43 possibly tip anybody off or transgress in any way a genuine
44 active and/or possible investigation. But if you'd like me
45 to go off --

46
47 MR TEDESCHI: If I could have five minutes, Commissioner.

1
2 THE COMMISSIONER: Sure. I will go off for five minutes
3 and then either you can give me an explanation in Delphic
4 terms or, alternatively, there may be none. At the moment,
5 tentatively, I cannot see any problem in him simply saying,
6 whether he is right or wrong, that his understanding of the
7 law at the time of Neiwand was a complication of some sort
8 and I don't understand that being so sensitive as to cause
9 any problem. But if you see differently having had a more
10 fulsome exchange with him I'm very happy.

11
12 Mr Gray, any objection to that course being taken?
13

14 MR GRAY: No, not at all, Commissioner.
15

16 THE COMMISSIONER: All right. Then Mr Tedeschi, why don't
17 you let me know when you're ready.
18

19 MR TEDESCHI: Thank you.
20

21 **SHORT ADJOURNMENT**
22

23 MR TEDESCHI: Commissioner, thank you for the opportunity
24 to speak to Sergeant Morgan. He has confirmed that my
25 understanding is correct but I didn't go far enough.
26 I will speak obliquely about the part that I didn't
27 identify.
28

29 His understanding of the law is based upon 2013, which
30 was the last occasion that he was involved in undercover
31 operations, and he understood the law then to have the
32 effect that if a person exercised the right to silence,
33 even in a police interview, that would preclude the
34 admissibility of subsequent covert operations.
35

36 I don't think that's the law at present but I haven't
37 specifically gone and looked it up and my vague
38 understanding of the law at present is that it may be
39 a discretionary consideration for a trial judge, but
40 I don't think it positively excludes such evidence.
41

42 His concern is not so much about that but about some
43 internal police procedures that are based upon that old
44 analysis of the law, that he doesn't want to disclose in
45 open court.
46

47 THE COMMISSIONER: I don't think anyone's asking him to

1 disclose procedures. What he is being asked about at the
2 moment is why he didn't give consideration to or put the
3 end to any thought of covert operations.
4

5 MR TEDESCHI: A full answer to that question would require
6 him to disclose that.
7

8 THE COMMISSIONER: I don't see that it would, frankly, and
9 to be perfectly frank, there is a very large number of
10 persons of interest in the Taradale documentation. The
11 mere fact that some of those persons, either during the
12 Taradale inquest, if I can call it that, or alternatively
13 otherwise, have exercised a right to silence, so be it, but
14 if that's the reason why he didn't go back and look at them
15 I can't see why he can't simply say - Mr Gray has heard
16 what you have said. I certainly won't ask him about
17 precise methodologies unless Mr Gray wants to press that
18 point.
19

20 But if his understanding is that there were
21 impediments to reinvigorating covert operations and his
22 understanding was because - leave aside police
23 methodologies - the law at the time was an obstacle to the
24 police pursuing those persons, at least, who had exercised
25 their right to silence in the past, of the persons of
26 interest in Taradale, I don't see a problem in him saying
27 that.
28

29 MR TEDESCHI: Because, your Honour, if he is to give a
30 full answer to that question, he would say what you,
31 Commissioner, have said about his understanding of the law,
32 but also then go on to say, "I was aware of certain police
33 procedures".
34

35 THE COMMISSIONER: Mr Gray can put it to him, if Mr Gray -
36 perhaps I should ask him. Mr Gray, apart from what we've
37 been discussing, namely, the understanding that Mr Morgan
38 says he had at the time and what impact that had on his
39 ability to reinvigorate covert operations - is that as far
40 as you want to take it? I presume - I don't know.
41

42 MR GRAY: I don't have any wish or intention to probe what
43 police procedures may have been then or now in this
44 particular frame, so no, I don't intend to do that.
45

46 THE COMMISSIONER: I think if it's left at that level,
47 Mr Tedeschi, and it is made clear - perhaps I can do so -

1 to Mr Morgan that it is purely based on his understanding,
2 perhaps I will tell him in advance that I propose to allow
3 a question, you can be vigilant about the question, but he
4 is entitled, indeed, I would understand or expect him to
5 give his understanding of an impediment or - impediment
6 without disclosing any additional - he has two
7 understandings or two problems. One is the state of the
8 law and, secondly, whatever machinations would have to go
9 on within the Police Force. As to the latter, I don't see
10 that as being relevant, firstly, and, secondly, Mr Gray
11 doesn't want to pursue it.

12
13 MR TEDESCHI: Thank you.

14
15 THE COMMISSIONER: All right, let's do it that way. Could
16 we get Mr Morgan back in, thanks.

17
18 (The witness returned to the hearing room)

19
20 THE COMMISSIONER: Q. Come and sit down again, please,
21 Mr Morgan. Before Mr Gray asks you the question, as
22 a result of a helpful exchange between myself and counsel,
23 you're going to be asked a question about what impediment
24 you thought there was in the way of covert operations in
25 respect of, as I understand your evidence, some of the
26 persons of interest in Taradale.

27 A. Yes.

28
29 Q. Mr Gray will ask you what impediment, and to the
30 extent that you had an understanding as to the state of
31 law, the law in 2013, I think you're entitled to answer
32 that question.

33
34 Mr Gray will not, however, ask you if any further
35 impediment was associated with your understanding as to
36 internal police methodologies. So if you can keep it
37 separate in your head, if the question causes you any
38 further problems, Mr Tedeschi is here and you can raise any
39 matter with me if you are concerned?

40 A. Thank you, Commissioner.

41
42 THE COMMISSIONER: All right. Yes, Mr Gray.

43
44 MR GRAY: Q. Mr Morgan, let me approach it this way: on
45 Penny Brown's list of POIs, there were 116 names, you'll
46 recall that?

47 A. Yes.

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Q. How many of those are you concerned may have exercised a right to silence?

A. Oh, I couldn't tell you. I have no idea. But I'm certain - I do know that some of them had - some of the prominent ones.

Q. One who had not, correct me if I'm wrong, was Sean Cushman; that's right, isn't it?

A. That surprises me, actually.

Q. Haven't you read Mr Cushman's transcript in the Milledge inquest?

A. No, not in recent times.

Q. Did you ever read it?

A. Oh, I don't recall. I may have.

Q. Well, is this right, in any event, that in respect of any person of interest who had not asserted a right to silence of some description, an undercover or other covert approach would not have been a problem; is that right?

A. That's my understanding of it, yes.

THE COMMISSIONER: Q. And those who did assert the right to silence, some of whom were called to give evidence before Coroner Milledge?

A. Yes.

MR GRAY: Q. In the same paragraph, 180, after those few sentences, you say, third-last line:

SF Neiwand identified witnesses who had previously not supplied statements ...

Do you see that?

A. Yes.

Q. For the most part - not going to chapter and verse here but for the most part - they were family persons and workplace persons?

A. Yes.

Q. And then there should be a full stop there, but you then say:

Ross Warren's background, social groups and

1 *relationships became the primary line of*
2 *enquiry.*

3
4 That's correct, isn't it?

5 A. I would agree with that, yes.

6
7 Q. In fact, would you go so far as to say that those
8 topics, Ross Warren's background, social groups and
9 relationships, became almost the only line of inquiry?

10 A. Well, definitely the dominant, yes, predominant, yes.

11
12 THE COMMISSIONER: Can I just interrupt and ask this
13 question.

14
15 Q. Certainly in paragraph 180, there is no reference, is
16 there, to the concern that you've just recently expressed
17 about the impediment in reactivating or activating covert
18 operations because of the previous persons of interest
19 having taken the right to silence?

20 A. No, it's more general than that, Commissioner. It
21 talks about previous disclosure of - oh, no, it doesn't
22 talk about the right to silence.

23
24 Q. It doesn't talk about that at all. What you were at
25 pains I think to point out in 180, in effect, was that
26 Mr Page had blown his cover and therefore, he had disclosed
27 the fact that covert operations had been taking place and
28 that that was one of the impediments you saw in going back
29 to reactivate not - at least in writing, at least, you
30 didn't disclose the fact or assert the fact that it was the
31 impediment that you've talked about this morning?

32 A. That's - a reading of that, yes, that's correct.

33
34 Q. And nowhere else in this report on Warren, if I've
35 read it correctly, do you accept that one of the
36 difficulties you then considered stood in the way of you
37 going to covert operations was this right to silence point?

38 A. That may not - that may well be the case.

39
40 THE COMMISSIONER: All right. Thank you.

41
42 MR GRAY: Q. Now, at 186 through to 197, you summarise
43 some accounts that Neiwand obtained from family members -
44 brother, sister, mother and some work colleagues?

45 A. Yes.

46
47 Q. And then above 198 there is a heading which I must say

1 I can't read on mine, but - no.
2 A. I think I know the person to whom it refers.
3
4 Q. Yes, I just don't know what the heading is, but never
5 mind. Oh, the heading is simply the person's name. I see.
6 A. Yes.
7
8 Q. From 198 through to 226, you go through various people
9 that Neiwand followed up with, the first one being the
10 person named at 198?
11 A. Yes.
12
13 Q. And what I want to invite you to agree with is that
14 these were all people that Taradale had already taken
15 statements from and obtained evidence from. The person
16 named in 198 was in that category, there is an exception to
17 what I just put, namely, the person named in 189 who -
18 sorry, 205, who was a former flatmate of somebody. Do you
19 see 205?
20 A. Yes.
21
22 Q. But then that somebody is the person named in 209?
23 A. Yes.
24
25 Q. And that's somebody that Taradale had taken
26 a statement from and obtained evidence from?
27 A. Yes.
28
29 Q. And the same applies to the person named in 215?
30 A. Yes.
31
32 Q. And 217?
33 A. Yes.
34
35 Q. And 222?
36 A. Yes.
37
38 Q. Then there are some sections dealing with exhibits and
39 fingerprints and so on. And then again from 235 onwards
40 there's reference to various people who were then
41 eliminated as persons of interest by Neiwand. The first of
42 them, the person named in 235, is someone that Taradale had
43 looked at and obtained evidence about?
44 A. Yes, I don't have that person's name, but I'm not
45 doubting that's the case.
46
47 Q. Ah. I'm not sure how I can convey that to you.

1 A. I think I know who the person is.
2
3 Q. You would, I'm sure. But whether you can tell from
4 this redacted paragraph, I don't know. Yes, the name will
5 just be put in front of you.
6 A. Yes.
7
8 Q. That's somebody that Neiwand looked at whom Taradale
9 had also previously looked at?
10 A. Yes, I believe so.
11
12 Q. And then the person referred to in 238 is in the same
13 boat?
14 A. Yes.
15
16 Q. You can tell who that is, I dare say?
17 A. I do know who that person is.
18
19 Q. And the same applies to 241?
20 A. Yes.
21
22 Q. And 242?
23 A. 242, I am familiar with who that person is, and
24 certainly we interviewed that person, and as I sit here,
25 I don't recall whether Taradale did or not. I'm not
26 doubting that they may have.
27
28 Q. Well, there are two people in 242, I should,
29 I suppose, make clear. The first one is the person whose
30 name is redacted but you know who that is?
31 A. Yeah. I'm talking about the other person.
32
33 Q. And you know that the Taradale inquiry certainly
34 obtained evidence from him, the person given a code of
35 I198, I think, in that --
36 A. Oh, okay, yes.
37
38 Q. But the person whose name appears on the screen, you
39 can't remember whether Taradale spoke to him or not?
40 A. Yes, I know I certainly spoke to that person myself.
41
42 Q. All right. Now, just while I'm here, by early 2017,
43 you had been working on Neiwand - you and others - for
44 12 months or so?
45 A. Thereabouts, yes.
46
47 Q. And you were increasingly focusing on, we can see, and

1 I think you've to some extent accepted, faults that you
2 were identifying in Taradale and its approach?

3 A. I don't know that that's - that I would agree with
4 that at that time.

5

6 Q. Well, repeatedly through the summaries that we've been
7 looking at, the Mattaini one and now the Warren one, are
8 accusations of confirmation bias and tunnel vision and
9 failing to take enough statements from family and workplace
10 colleagues and so on, these were all criticisms of
11 Taradale, weren't they?

12 A. They were, yes.

13

14 Q. And they were well and truly in your mind by - at
15 least after you'd been at it for a year?

16 A. Possibly - probably, yes.

17

18 Q. Now, at this point, that is, early 2017, the Macnamir
19 strike force in connection with Scott Johnson was still
20 also very much on foot?

21 A. I couldn't answer that. I wasn't part of the strike
22 force. I don't know. It may have been.

23

24 Q. Assume from me that - take it from me that it was, and
25 that it continued up to the conclusion of the third
26 inquest.

27 A. Yes, and offhand I don't recall when that was.

28

29 Q. Well, it concluded in about November 2017.

30 A. Okay, thank you.

31

32 Q. Now, did you know that Detective Sergeant or former
33 Detective Sergeant Page by then had assisted the Johnson
34 family in connection with the third Johnson inquest by
35 providing statements and so forth? Did you know that?

36 A. No, I don't think I did.

37

38 Q. Were you aware that Penny Brown, who was the OIC of
39 Macnamir and also someone listed as a participant in
40 Neiwand, sought to obtain the personal records of former
41 Detective Sergeant Page?

42 A. No, I wasn't aware of that.

43

44 Q. So you don't know that she emailed someone in the
45 staff area of the police saying that Mr Page and another
46 person were attached to what she called "team Scott"?

47 A. I haven't heard that before, or any reference like it.

1
2 Q. And you don't know that she said to the staff person
3 that Mr Page and --
4
5 MR TEDESCHI: I object. He said that he doesn't know.
6
7 THE COMMISSIONER: That doesn't mean he may not have
8 a recollection of another event. I will allow it, yes.
9
10 MR GRAY: Q. I will put the document in front of you.
11 If Mr Morgan could have volume 14, please. Could you turn
12 to tab 298 [NPL.0115.0004.1462]. Do you see that's an
13 email chain on 8 March 2017?
14 A. Yes.
15
16 Q. And it starts with one down the bottom of the
17 page from Penny Brown to someone at "Staff", and we can
18 tell from the email above that that that person was in the
19 Human Resources section of State Crime Command?
20 A. Yes.
21
22 Q. Penny Brown asks for the personal records of two
23 former police officers, one of them being Stephen Page?
24 A. Yes.
25
26 Q. And on the next page she says:
27
28 *Both of these officers --*
29
30 one of them being Mr Page --
31
32 *are attached to team Scott ...*
33
34 She says both of them, in television and in print, have
35 been critical of the police investigation into Scott's
36 death. Then she says:
37
38 *I would like to have a look at their*
39 *service history to ascertain their*
40 *credibility for such criticism.*
41
42 A. Yes, I see that.
43
44 Q. So you were unaware of all of this communication, were
45 you?
46 A. Totally. Never seen that email before.
47

1 Q. Is that an appropriate step --
2
3 MR TEDESCHI: Object.
4
5 MR GRAY: Q. -- for Ms Brown to have taken, in your
6 view.
7
8 MR TEDESCHI: I object.
9
10 THE COMMISSIONER: What's the objection?
11
12 MR TEDESCHI: How can he say whether it's appropriate or
13 inappropriate without knowing the circumstances in which it
14 was made --
15
16 THE COMMISSIONER: Well, if he can't answer it, he'll --
17
18 MR TEDESCHI: -- whether she was directed to do that,
19 whether she consulted with anyone.
20
21 THE COMMISSIONER: He has heard your various permutations
22 and combinations so by now he will be able to give that
23 evidence. I'll allow it.
24
25 MR TEDESCHI: I think it is an unfair question --
26
27 THE COMMISSIONER: I don't think it is unfair at all,
28 Mr Tedeschi.
29
30 MR TEDESCHI: -- without any foundation for it.
31
32 THE COMMISSIONER: It's not unfair. I don't think it is
33 unfair in the scheme of an inquiry. I will allow it.
34
35 Mr Morgan, if you'd like the question to be repeated,
36 you are entitled to have it repeated.
37
38 THE WITNESS: If I could, yes.
39
40 MR GRAY: Q. In your view, was that an appropriate step
41 for Ms Brown to have taken in the circumstances?
42 A. As I said, I was unaware of that until just now and
43 I'm not prepared to comment. I'm not able to comment on
44 that.
45
46 Q. Why not?
47 A. Because I had no - I wasn't involved in that inquiry.

1
2 Q. No, but assuming that --
3
4 MR TEDESCHI: He hadn't finished his answer.
5
6 THE COMMISSIONER: Q. All right. So you had no
7 involvement in the inquiry. Yes, go on?
8 A. I had no involvement in the inquiry and I'm not aware
9 of the circumstances.
10
11 MR GRAY: Q. Well, the circumstances are set out in her
12 email, that Mr Page is, in her view, on team Scott, he has
13 made criticisms of the Macnamir investigation, and so she
14 wants to get the personnel details to see whether he's got
15 credibility. Is that an appropriate step?
16 A. I - as I said, I wasn't involved in the matter. I've
17 only just become aware of that email, I've never seen it
18 before, ever, and no, I'm not prepared to comment. I don't
19 believe --
20
21 Q. Unless the Commissioner directs that you don't have to
22 answer, then I'm asking you to answer the question.
23 A. I can't see how I can comment on that.
24
25 THE COMMISSIONER: Q. Why not?
26 A. How can I comment on what is somebody else's mind?
27
28 Q. No, no, it's not a question of that. You have made it
29 very clear that you are not aware of the email before now,
30 but you're being asked the question, as a senior member of
31 the force, is this an appropriate step to take to
32 double-check or check on the credibility of a person who
33 has been critical of the police? What's your view about
34 it?
35 A. I don't have a view about that. Maybe I would
36 do the - I don't know whether she was directed --
37
38 Q. Sorry, were you about to say maybe you would do the
39 same thing?
40 A. I can't say.
41
42 Q. So as a senior member of the force, you have no view
43 one way or the other?
44 A. Not on this matter, no.
45
46 THE COMMISSIONER: All right.
47

1 MR GRAY: Q. That volume can come back, and could
2 Mr Morgan have volume 6 again, please. And back to
3 tab 174 [SCOI.74883_0001].

4 A. And, sorry, what page were we up to?

5

6 Q. Tab 174, and I'm now going to take you to page 60.

7

8 THE COMMISSIONER: Upper right-hand corner, Mr Morgan,
9 I think.

10

11 THE WITNESS: Thank you, yes.

12

13 MR GRAY: Q. We have a heading "Summary"; do you see
14 that?

15 A. I do see that.

16

17 Q. This is almost at the end of this document. And at
18 paragraph 258, you say that Taradale focused on one line of
19 inquiry, youth gangs and gay hate related crime. You
20 accept, I think, from questions that I asked you last week,
21 that while that may have been the main focus, it wasn't the
22 only focus of Taradale?

23 A. I agree.

24

25 Q. And then the next line I need to ask you about is
26 this. You say - or this summary says, written by Chebl and
27 endorsed by you - that.

28

29 *... Detective Sergeant Page viewed McMahon*
30 *as a "survivor" of a youth gang attack ...*

31

32 Do you see that?

33 A. Yes, I do see that.

34

35 Q. And you agreed I think last week that indeed, McMahon,
36 or DM, I should say, was a survivor of a youth gang attack?

37 A. Yes.

38

39 Q. It wasn't a matter of Page viewing him as one; he was
40 in fact one?

41 A. Yes.

42

43 Q. And the next sentence says:

44

45 *Although a valid line of inquiry it --*

46

47 that is, the youth gang line of inquiry --

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*limited the focus ... to youth gangs
without considering the crucial aspect of
victimology.*

A. Yes.

Q. Now, you would accept, wouldn't you, that that is an
overstatement, in the sense that Taradale did not fail
altogether to consider victimology, did it?

A. No, it didn't.

Q. This paragraph goes on:

*Some of Warren's associates and former
partners were not identified and
interviewed.*

Neiwand doesn't claim, and I take it you don't claim, that
once Neiwand had identified and interviewed more of them,
that anything in particular flowed from that? It didn't
lead anywhere, the interviewing of more family or
associates, did it?

A. No, I don't think it did.

Q. When you say in the last sentence that Warren's last
known movements were not thoroughly explored, that's
actually factually wrong, isn't it?

A. I would have thought so, yes.

Q. I mean, Taradale did explore his last movements quite
closely?

A. Most certainly.

Q. Let me come to 266, where you say this - or the
summary says this:

*An interesting detail from several
witnesses who frequented the Mackenzies
Point gay beat was that they did not
witness or encounter violence of any sort.*

Do you see that?

A. Yes.

Q.

They were aware that "gay bashings"

1 *happened at beats but were not aware that*
2 *they happened [at Mackenzies Point] ...*

3

4 The foundation for that is said to be the statement of
5 a Mr Ellis and the statement of another person, and I think
6 you know who that other person is?

7 A. I think so, yes.

8

9 Q. And the paragraph goes on:

10

11 *Based on this information --*

12

13 ie, the statements of those two men --

14

15 *police confirmed that attacks on gay men*
16 *did occur, but may not have been as*
17 *prevalent as portrayed by the Operation*
18 *Taradale investigation or the media.*

19

20 Do you see that?

21 A. Yes, I do see that.

22

23 Q. Now, did you check to see what, first of all, Mr Ellis
24 had said at the time of Taradale in his statement then?

25 A. I - no, I don't believe so.

26

27 Q. Well, let me have that put in front of you, the
28 statement of Mr Ellis in Taradale, which is a statement
29 dated 25 September 2000. It's just coming now. Have you
30 seen that before, Mr Morgan?

31 A. I dare say I would have at some stage, back during
32 Neiwand.

33

34 Q. Yes. Well, familiarise yourself with it by all means.
35 I only want to take you to one paragraph towards the end,
36 but you will see that he gives an account of his friendship
37 with Ross Warren, what sort of a person he was, how he saw
38 him on the night of 21 July 1989, how he was in good
39 spirits, and how, when he failed to come back to the place
40 where he was staying and failed to turn up for work, he,
41 Mr Ellis, and someone else, a Mr Saucis, took it upon
42 themselves to try to find out what happened and they went
43 to Marks Park and they found his car and they found his
44 keys and they made reports to the police and so on. So the
45 statement is about all of that?

46 A. Yes.

47

1 Q. Then at paragraph 25 he says:

2

3 *I do not believe that Ross Warren would*
4 *have committed suicide.*

5

6 And then at paragraph 26 he says:

7

8 *I am aware that Marks Park in the late*
9 *1980s was the scene of at least one assault*
10 *on a gay man as a result of homophobia.*

11

12 A. Yes, I see that.

13

14 Q. That seems to be somewhat different from what you've
15 put in paragraph 266?

16 A. You keep saying "you" and we've been down this track.
17 I accept that it is at odds with what is in 266.

18

19 MR GRAY: Yes. I tender that statement --

20

21 THE COMMISSIONER: I am sorry.

22

23 Q. Mr Morgan, may I just pursue that for a moment. Is
24 your concern that you didn't choose the words in this
25 summary or this report or these reports, and - I don't
26 quite understand your concern. Is it that you didn't read
27 them carefully before you accepted them? Is it that you
28 have no responsibility for doing so or do you accept that
29 you did read them carefully before they were accepted by
30 you or does the process not involve you reading anything
31 carefully?

32 A. I accept that I obviously didn't read the document
33 carefully enough, Commissioner.

34

35 THE COMMISSIONER: Okay, all right, thank you.

36

37 MR GRAY: I tender the statement of Mr Ellis of
38 25 September 2000. It would be tab 325.

39

40 THE COMMISSIONER: Thank you.

41

42 MR GRAY: Q. Now, so far as the other person named in
43 266 of the Neiwand summary, paragraph 266 --

44 A. Yes.

45

46 Q. -- whose name is given the number I198 - are you sure
47 you know who that is? I think you do --

1 A. I'm not sure, but if you gave me the initials,
2 perhaps.
3
4 THE COMMISSIONER: Q. It is the same name, perhaps, as
5 was on the piece of paper you were shown a minute ago, but
6 just to make sure, have a look at that.
7 A. Oh, yes. Yes.
8
9 MR GRAY: Q. Right. Now, that person is the second
10 person put forward as being a witness who frequented the
11 beat at Mackenzies Point but was aware that gay bashings
12 happened at beats but not that they happened at Mackenzies
13 Point. He's the second person put forward as saying that
14 in your paragraph 266?
15 A. Yes, that's reported there.
16
17 MR TEDESCHI: It doesn't say they didn't occur at
18 Mackenzies Point.
19
20 MR GRAY: Not aware.
21
22 MR TEDESCHI: He said did occur, may not have been as
23 prevalent.
24
25 MR GRAY: That's one sentence.
26
27 Q. Do you see the second sentence in paragraph 266?
28 A. Yes.
29
30 Q. It says "they", meaning Mr Ellis and this person that
31 we're now talking about were --
32 A. That's my understanding of it, yes.
33
34 Q.
35 *... were aware that "gay bashings" happened*
36 *at beats but were not aware that they*
37 *happened at Mackenzies Point --*
38
39 A. That's what it appears to say, yes.
40
41 Q. I've taken you to what Mr Ellis actually said about
42 that in the statement we've just looked at?
43 A. Yes.
44
45 Q. Now, in terms of the man known as I198, could you turn
46 back to your own - by that I mean yours and Mr Chebl's own
47 - paragraph 201 in this document. This is the same person

1 in 201?
2 A. Yes, I198, I see that.
3
4 Q. Yes. He says, or he is described in paragraph 201 as
5 saying, that he did not encounter any violence or gangs
6 during his visits to Mackenzies Point, but then do you see
7 what he then goes on to say?
8 A. Yes.
9
10 Q. He recalled noticing that if something wasn't right,
11 he would see numerous men walking away from Marks Park. He
12 interpreted this to be "not right to be there"?
13 A. Yeah, it's not very clear.
14
15 Q. No. But it seems clearly enough to be telling the
16 reader that what Mr I198 saw at Marks Park was sometimes
17 things not being right, when he would see numerous men
18 walking away?
19 A. Yes.
20
21 Q. That's telling the reader, isn't it, really, that he
22 was aware that there could be trouble from marauders or
23 people intending harm to the gay people who were meeting
24 there?
25 A. Yes, that's my interpretation and in addition, he used
26 to personally carry a weapon.
27
28 Q. He used to personally carry a weapon --
29 A. Yes.
30
31 Q. -- namely, nunchucks --
32 A. Yes.
33
34 Q. -- when he went to Marks Park?
35 A. Yes.
36
37 Q. That rather indicates that he was aware that
38 Marks Park was possibly a dangerous place for gay men?
39 A. That's certainly the way I read it, yes.
40
41 Q. Thank you. That being so, when we go to 266, to put
42 Mr I198 forward as someone who was not aware that bashings
43 happened at Mackenzies Point is not really right?
44 A. It's inaccurate, totally.
45
46 Q. So in that paragraph, 266, there are then a few
47 problems. First of all, it says that there were several

- 1 witnesses who said that they didn't encounter violence at
2 Mackenzies Point and were not aware that violence happened
3 there, although they were aware of bashings elsewhere. So
4 it says "several", but in fact only two were put forward?
5 A. Yes.
6
- 7 Q. Even those two, it's now clear - and you accept - were
8 actually aware of the risk of violence at Marks Park?
9 A. Of?
10
- 11 Q. Of the risk of violence against --
12 A. Of risk of violence, yes.
13
- 14 Q. -- gay men at Marks Park, and were aware of, in the
15 case of Mr Ellis, he said he was directly aware of at least
16 one?
17 A. Yes.
18
- 19 Q. And in the case of Mr [REDACTED], he took weapons
20 there and was aware of things not being right, and so on?
21 A. Clearly.
22
- 23 Q. You would agree that even if there were two men who
24 did say they weren't aware of bashings at Marks Park, that
25 would not be a sufficient basis for confirming, picking up
26 the second-last line, that attacks on gay men may not have
27 been as prevalent as portrayed by Taradale or the media?
28 A. I would agree with that, yes.
29
- 30 Q. Thank you. But in any case - and I imagine, given our
31 questions and answers last week you would accept this, that
32 Neiwand also had available to it and was aware of
33 a mountain of evidence going back to the late '80s of many,
34 many, many violent attacks on gay men in the Bondi,
35 Tamarama, Marks Park area?
36 A. Yes.
37
- 38 Q. Much of that evidence indeed has specifically been
39 referred to by you and Mr Chebl in this very summary?
40 A. Yes.
41
- 42 Q. Quite lengthy extracts from the statements of
43 Mr McCann and Mr Ingleby?
44 A. Yes.
45
- 46 Q. And numerous other sources that you have set out at
47 some length in this very summary?

1 A. Yes.

2

3 Q. Were you also aware in that context - that is, the
4 frequency and overall numbers of attacks on gay men in this
5 Bondi, Tamarama, Marks Park area - of the work done by
6 various LGBTIQ groups in the late 1980s and early '90s to
7 document such attacks?

8 A. Are you talking about as a result of Neiwand, yes.

9

10 Q. No, no, not as - long before Neiwand. There were
11 reports called the Streetwatch Reports, there were reports
12 by the Lesbian and Gay Anti-Violence Project, there were
13 reports called Count & Counter reports. These were mainly
14 in the early 1990s documenting dozens, hundreds of attacks
15 on gay people around that time. Were you aware of those?

16 A. Not until I became part of Neiwand.

17

18 Q. Were you aware then, during the course of Neiwand?

19 A. Yes.

20

21 Q. And so the statement in paragraph 266 that the
22 accounts of two men, which we have now seen are not quite
23 what they are put forward as, amounted to confirmation that
24 although attacks on gay men did occur, they may not have
25 been as prevalent as portrayed by Operation Taradale, is
26 not a confirmation that actually stands up, is it?

27 A. No, it is totally incorrect.

28

29 Q. Thank you. Was that paragraph included so as to
30 downplay or minimise the extent and frequency of such
31 attacks?

32 A. I don't know why it was put in there. I don't.

33

34 Q. Well, since you have accepted that it's almost
35 completely incorrect and that the opposite was the truth,
36 why put it in, do you think?

37 A. I don't know.

38

39 Q. What other reason could there be, given that it is so
40 obviously unsupportable, but to downplay or minimise the
41 extent of gay hate attacks in this area?

42

43 MR TEDESCHI: I object.

44

45 THE COMMISSIONER: I will allow it.

46

47 MR GRAY: The objection was that I'm asking him to look

1 into somebody else's mind, which I assume --

2

3 THE COMMISSIONER: Well, Mr Tedeschi, I'm still very
4 confused. Perhaps I can ask this question of the witness.

5

6 Q. Mr Morgan, so that we can just have it clear - perhaps
7 for the last time, I hope - Mr Chebl prepared the text, as
8 I best understand it; correct?

9 A. Correct.

10

11 Q. But you and he would have had numerous meetings over
12 the time that you and he were, along with others, involved
13 in Neiwand?

14 A. Yes.

15

16 Q. And undoubtedly from time to time he would update you
17 on views he had expressed or, tentative or otherwise, he
18 may have come to?

19 A. Yes.

20

21 Q. All right. And when this document at the end of it
22 says, or where it is accepted by you, although you did not
23 write every word of text, you would have to have looked at
24 it carefully, knowing where that document was about to end
25 up, namely, further up in the senior police in the
26 NSW Police Force?

27 A. Yes. I obviously didn't read it carefully enough.

28

29 Q. No, no, if I may say, you're being entirely candid,
30 I'm not criticising you for that.

31

32 But, Mr Tedeschi, on that basis, I think it is
33 permissible to ask the question.

34

35 MR TEDESCHI: If the Commissioner pleases.

36

37 MR GRAY: Q. So what I'm asking you is what possible
38 reason could there be for it being included -
39 paragraph 266 - given that it is so obviously
40 unsupportable, other than that the reason was to downplay
41 the extent and frequency of attacks of this kind in this
42 area?

43 A. Yes, I - I can only think that it was - it is totally
44 wrong, that statement, and I can only think that it suited
45 Senior Constable Chebl's findings on it to put that
46 forward, that he wanted to put that forward as a fact, when
47 clearly it wasn't.

1 THE COMMISSIONER: Q. And it is plainly ridiculous, if
2 I may use that term without intending any disrespect to
3 anybody, by reason of what was in paragraph 82 of the very
4 same document?

5 A. Yes.

6

7 Q. There was evidence there by a person who had
8 perpetrated somewhere between 70 to 100 assaults on gay men
9 in, amongst other places, the Bondi area.

10 A. That's if you accept that what that person said was
11 the truth.

12

13 Q. Well, it was a piece of evidence on behalf of someone
14 who might have been boasting --

15 A. Yes.

16

17 Q. -- but even if you divided it by two, there were
18 multiple assaults being committed, from the evidence of
19 that one person alone?

20 A. Yes, significant number. I agree.

21

22 THE COMMISSIONER: Okay. All right.

23

24 MR GRAY: Q. At 268, the document, written by Chebl,
25 authorised by you, repeats the assertion, which we have
26 looked at before, about Taradale supposedly having
27 investigation confirmation bias, et cetera?

28 A. Yes.

29

30 Q. I don't need to go over that again, but you will
31 recognise that that paragraph or something almost the same
32 was in the Mattaini summary?

33 A. Yes.

34

35 Q. And we will come to it. Again, it appears, I think
36 verbatim, in the Russell summary?

37 A. Yeah.

38

39 Q. I don't need to go over that with you again. But at
40 269, it is asserted that there was limited scope for
41 identifying potential POIs. Now, pausing there, that's
42 obviously quite wrong, in that there were 116 potential
43 POIs put forward in an email right at the beginning?

44 A. Yeah, I take that as something else. I take that as
45 referring to new POIs other than those that were
46 investigated by Taradale. But I may be wrong in that.

47

1 Q. Well, if it was referring to POIs in the gang world,
2 it's certainly not correct to say that there was limited
3 scope for identifying them, because they were well and
4 truly identified, weren't they?
5 A. They were.
6
7 Q. Already. Then in the next sentence, however, in any
8 event, Neiwand says that its investigators focused on
9 victimology, identifying associates, former partners,
10 family and work colleagues. Now, that's clearly correct?
11 A. Yes.
12
13 Q. That is what Neiwand largely did. And there are then
14 three bullet points that are matters said to have been
15 established?
16 A. Yes.
17
18 Q. Can I put this to you, and I may have essentially put
19 this to you before, but what Neiwand focused on in reality
20 was lines of inquiry in relation to (a) the possibility of
21 suicide; (b) the possibility of misadventure; and (c) the
22 possibility of a homicide of a domestic nature - that is,
23 not gay hate related?
24 A. Yeah, I wouldn't even say so much the misadventure.
25
26 Q. All right. So mainly --
27 A. It was certainly 1 and 3, yes.
28
29 Q. Well, those three, and mainly suicide or domestic
30 homicide?
31 A. Yes.
32
33 Q. And what Neiwand did not do was to take any steps to
34 renew investigation of the POIs identified by Taradale?
35 A. No, if there were, they were very minimal.
36
37 Q. Now, one reason that you've given for that prior to
38 today, that is, the decision not to pursue those POIs
39 again --
40 A. Yes.
41
42 Q. -- was, and I'm paraphrasing what you've said, that
43 Taradale had done that thoroughly and Coroner Milledge had
44 said that they had done it thoroughly?
45 A. Yes, and we also accepted that they had done it very
46 thoroughly.
47

1 Q. And that therefore, as I understand it, there was no
2 reason to or no point in doing it again?
3 A. Yes, my - I think my term was what was to be achieved
4 by reinventing the wheel, yes.
5
6 Q. But 15 years had passed since Taradale had done it
7 back in 2001/2002.
8 A. Yes. Yes.
9
10 Q. And those persons of interest might have thought that
11 they were no longer likely to be under investigation,
12 mightn't they?
13 A. That is a consideration.
14
15 Q. And so reinvestigating them by covert or any other
16 means may well have borne fruit had you tried it?
17 A. That's a possibility.
18
19 Q. And that's exactly what Alicia Taylor had recommended
20 in October 2012?
21 A. Well, my understanding was that the suggestion by
22 Detective Senior Constable Taylor was that specifically
23 with a view to an undercover approach, and as we've
24 discussed --
25
26 Q. Quite so. She did specifically refer to undercover as
27 one way of doing it, but the thrust of her recommendation
28 was, time having passed, it's worth take a Page-style
29 approach to pursuing these known persons of interest again?
30 A. Yes.
31
32 Q. Because of the passage of time?
33 A. Yes.
34
35 Q. Among a few other factors that she named. All right.
36 Now, 270 in the summary --
37 A. Yes.
38
39 Q. -- this is the final paragraph in the Warren summary
40 document?
41 A. It is.
42
43 Q. So the authors, Chebl and yourself in the ways that
44 have been made clear, were, as it were, wrapping up or
45 winding up the upshot or the conclusion from all the
46 foregoing?
47 A. Yes.

- 1
2 Q. And all the foregoing amounted to this, if I may
3 summarise: no further investigation of the identified
4 POIs, being people who were in the various gangs and their
5 associates, and so on --
6 A. I won't agree that none, but minimal.
7
8 Q. Minimal, all right.
9 A. I recall one person in particular who was revisited.
10
11 Q. He was one of the Tamarama Three?
12 A. Yes.
13
14 Q. Was he revisited because he had written a letter which
15 was published by the SBS program?
16 A. I do recall a letter being written but I'm not sure if
17 that was the reason why that person was revisited.
18
19 Q. At any rate, encapsulating where Neiwand had got to,
20 in your word - which I'm happy to accept - "minimal"
21 further work on the persons of interest?
22 A. The Taradale persons of interest, yes.
23
24 Q. The known persons of interest. Some work looking at
25 additional people, mainly with a view to the possibilities
26 of other suicide or domestic homicide?
27 A. Yes.
28
29 Q. None of which lines of inquiry led anywhere in the
30 end?
31 A. Correct.
32
33 Q. More work done on victimology, including speaking to
34 some more family people and some more work colleagues?
35 A. Yes, and even that was probably heading towards the
36 potential for a suicide finding, yes.
37
38 Q. Yes. And again, none of that - I'm not criticising
39 it, but none of that led anywhere in the end?
40 A. Not that I can remember, no.
41
42 Q. No. So the basic upshot was the work that Neiwand did
43 did not shed any further light on what had happened to
44 Mr Warren, in the end?
45 A. No, it didn't.
46
47 Q. And yet in 270, what you and Mr Chebl do is to say

1 that the Coroner's findings should be overturned, the cause
2 and manner of death --

3
4 A. Yes.

5
6 Q. -- should be called "undetermined" despite the
7 Coroner's homicide finding?

8 A. Yes.

9
10 Q. Well, would you agree that essentially, Neiwand had
11 uncovered nothing of any consequence beyond what was before
12 the Coroner? In terms of cause and manner of death?

13 A. There was some evidence along the lines of concerns
14 about HIV and the like, which I'm not sure whether the
15 Coroner was aware of that. That came forward, I think,
16 from Neiwand.

17
18 Q. Would you agree that Neiwand really had no proper or
19 reasonable basis for contradicting the Coroner's findings?

20 A. No, I don't know that I'd agree with it, with that
21 comment.

22
23 Q. Turn to tab 7, which is the post operational - sorry,
24 tab 176, the post operational assessment?

25 A. Yes.

26
27 Q. As we have noticed before, these pages aren't
28 numbered. But the third full page of the actual substance
29 of the document has a heading towards the bottom, picking
30 up the Warren case?

31 A. Yes.

32
33 Q. And it runs for about three pages or so.

34 A. Yes.

35
36 Q. In the middle of the next page, just below halfway, it
37 says:

38
39 *In May 2016, SF Neiwand commenced*
40 *a reinvestigation into this matter.*
41 *A review of the investigation undertaken*
42 *by ... Taradale revealed several areas that*
43 *had not been explored.*

44
45 A. Yes.

46
47 Q. Are those several areas the - well, tell us what the

1 several areas are that hadn't been explored?

2 A. I believe one of them was the potential that Mr Warren
3 may have committed suicide due to an HIV exposure. I don't
4 think that was covered by Taradale, if my memory serves me
5 correct.

6

7 The other one was the information from a family member
8 that he had missed out on a job or hadn't received a job at
9 a Sydney television program, which again was toward the
10 suicide hypothesis. And I know we had concerns about the
11 finding of the keys, which was why a particular person was,
12 we thought, a person of interest, and that person was an
13 associate.

14

15 Q. Yes. But that person had been --

16 A. Interviewed by Taradale, yes.

17

18 Q. Yes. And indeed, your further exploring of the
19 finding of the keys led you to the conclusion that there
20 was nothing of concern there; that that possible line of
21 inquiry could be stopped?

22 A. Yes.

23

24 Q. And so far as suicide is concerned, your own
25 conclusion - that is, Neiwand's conclusion in paragraph 263
26 of tab 174 [SC0I.74883_0001] - was that suicide seems an
27 unlikely scenario in Warren's case. This was your
28 conclusion at the end of all your work. If you turn to
29 tab 174, and if you go to paragraph 263. You say:

30

31 *... suicide seems an unlikely scenario in*
32 *Warren's case.*

33

34 A. Yes, it says "although suicide seems" --

35

36 Q. That's right. I'm coming to that.

37 A. Yes.

38

39 Q. But obviously your view was that suicide seems an
40 unlikely scenario?

41 A. On the face of it, yes.

42

43 Q. But then you went on to say that, still, there was
44 evidence about not getting a job and about relationships,
45 his one or more so-called failed relationships?

46 A. Yes.

47

- 1 Q. And the last sentence in 263 is:
2
3 *These factors ... may have led to him*
4 *taking his own life, ... despite his family*
5 *and friends saying he wasn't suicidal or*
6 *depressed.*
7
- 8 A. Yes.
9
- 10 Q. So in fairness to you and Neiwand, those factors are
11 there.
12 A. Yes.
13
- 14 Q. You ascertained them, but your conclusion nevertheless
15 was, bearing in mind that all his family and friends were
16 saying he wasn't suicidal or depressed --
17 A. Correct.
18
- 19 Q. -- your conclusion was that suicide seemed an unlikely
20 scenario?
21 A. Yes.
22
- 23 Q. Back to tab 176, to the post operational assessment.
24 The further exploring of the suicide possibility actually
25 led, in the minds of yourself and Chebl, to the conclusion
26 that suicide was unlikely?
27 A. Unlikely but not totally ruled out, yes.
28
- 29 Q. And that was a conclusion that was quite consistent
30 with what the Coroner had found, wasn't it, namely, that
31 you couldn't perhaps rule suicide out, but it was unlikely,
32 and she found homicide.
33 A. Oh, I can't remember what the Coroner said about
34 suicide, but certainly the Coroner found that it was
35 homicide, yeah.
36
- 37 Q. So when, at this page of the POA, the assertion is
38 made that several areas have not been explored by Taradale,
39 if that is a criticism, which perhaps it is, it's a rather
40 faint one, isn't it?
41 A. Yes, it's - yes.
42
- 43 Q. In the section written by Detective Inspector Leggat,
44 in the last three pages under the heading "Key Findings" --
45 A. Yes.
46
- 47 Q. -- do you see the section to do with Mr Warren, which

- 1 is on the second of those pages?
2 A. Yes.
3
4 Q. The first paragraph deals with the inadequacies of the
5 original 1989 investigation --
6 A. Correct.
7
8 Q. -- and the thoroughness, at least in some respects, of
9 Taradale?
10 A. Yes.
11
12 Q. In the second paragraph, there is a paragraph which
13 seems to have been lifted - I don't mean this critically,
14 but lifted from the summary that we've just been going
15 through, the reference to "limited scope for identifying
16 potential POIs" --
17 A. Yes, repeats those same three.
18
19 Q. It's the same. So we have been through that?
20 A. Yes.
21
22 Q. And then the last paragraph says that Neiwand
23 concluded that Warren's death could be one of several
24 possibilities, including misadventure, suicide or homicide,
25 and within homicide, it could be individual, gang or
26 domestic?
27 A. Yes.
28
29 Q. But then this appears:
30
31 *Unfortunately, a lack of physical evidence,*
32 *credible suspects and witnesses' accounts*
33 *prevent this investigation from*
34 *progressing.*
35
36 A. Yes.
37
38 Q. That is again slightly perhaps clumsily expressed, but
39 "lack of physical evidence" relates, does it, to the -
40 well, what does it relate to? What's the physical evidence
41 that is lacking?
42 A. I'm assuming that's a reference to the further
43 examination that Neiwand had conducted of the wallet,
44 I think it was - Mr Warren's personal possessions. I think
45 it was a wallet and contents.
46
47 Q. But what's the lack of physical evidence that

1 prevented the investigation from progressing?

2 A. Well, obviously there was no fingerprints or DNA of
3 substance recovered from those items. That's what I take
4 from that. I may be wrong.

5

6 Q. I see. "Lack of credible suspects" - that presumably
7 means that the people that you looked at were not credible
8 as suspects; that they seemed, on investigation, not really
9 to be suspects who could be pursued, the ones that Neiwand
10 looked at?

11 A. Yes.

12

13 Q. But there was no lack of other credible suspects, was
14 there, from the Taradale investigation?

15 A. Taradale had over 100, as you pointed out.

16

17 Q. That's right. And then the third thing mentioned is
18 "witnesses' accounts". I'm not sure whether that means
19 a lack of witnesses' accounts or whether it means
20 witnesses' accounts, but what was there about witnesses'
21 accounts that prevented the investigation from progressing?

22 A. I may be wrong again but I take that as being that
23 there were obviously no eyewitnesses to whatever happened
24 to Mr Warren.

25

26 Q. And then it is stated, "There are no further lines of
27 inquiry". That again operates on the footing that the
28 known POIs from Taradale were simply not going to be looked
29 at?

30 A. No.

31

32 Q. Let me turn to Mr Russell. I think in that regard if
33 you could turn to tab 173 [SCOI.74882_0001].

34

35 THE COMMISSIONER: I didn't take a break this morning
36 largely because we started a bit later. I might take that
37 break now, before you move to a new topic. All right.
38 Thank you.

39

40 **SHORT ADJOURNMENT**

41

42 THE COMMISSIONER: Yes, please take a seat again,
43 Mr Morgan, thank you. Yes.

44

45 MR GRAY: Commissioner, during the break, the police
46 provided to us the email chain between Mr Chebl and Mr or
47 Ms Eyraud from the French police in November 2016, and

1 I should tender that chain for completeness.

2

3 THE COMMISSIONER: All right.

4

5 MR GRAY: I don't need to ask Mr Morgan about it, with one
6 exception. But if I could hand those up - I think my
7 friend has copies.

8

9 MR TEDESCHI: Yes.

10

11 MR GRAY: Q. This is back in the Mattaini topic, as you
12 appreciate; that's right?

13 A. Yes.

14

15 Q. I did ask you about Mr Chebl's investigator's note
16 where he referred to there having been an email from
17 a person called Eyraud from France?

18 A. Correct.

19

20 Q. This has now been produced, this email chain, and we
21 see that on 15 November 2016 - this is the last one in the
22 chain - Mr Chebl writes to the person whose surname is
23 Eyraud and says what his query is about, and then there is
24 a response from Mr or Ms Eyraud on 19 November; do you see
25 that?

26 A. Yes.

27

28 Q. What Mr or Ms Eyraud says is that he or she had found
29 Mr Musy - found his address and phone number. This is at
30 the top of the second page:

31

32 *... so I called him ... 17th of November.*

33

34 And then Mr or Ms Eyraud says:

35

36 *He's ready to answer all question you have*
37 *but it was a long time ago so he doesn't*
38 *remember everything.*

39

40 Do you see that?

41 A. Yes.

42

43 Q. Now, two paragraphs down, after the one about the
44 legislative problem --

45 A. Yes.

46

47 Q. -- there appears the passage that Mr Chebl then

1 paraphrases in his investigator's note about Mr Mattaini
2 having said at some point he wanted to die and nobody
3 finding his body?

4 A. A couple of times, yes.

5

6 Q. Yes, but the starting point at the top of the
7 page from Mr Musy had been, apparently, it was a long time
8 ago so he doesn't remember everything?

9 A. Yes.

10

11 Q. Now, were you aware - had you ever seen this email
12 before?

13 A. Look, I may have. I don't think I was included in the
14 email trail, but --

15

16 Q. No?

17 A. -- I think Mr Chebl may have shown it to me at some
18 stage. I'm familiar with the basics of it.

19

20 MR GRAY: I tender that email. It could perhaps become
21 326.

22

23 THE COMMISSIONER: All right.

24

25 MR GRAY: Q. Now, back to volume 6, tab 173
26 [SCOI.74882_0001].

27 A. Yes.

28

29 Q. This is the summary concerning John Russell.

30 A. Yes.

31

32 Q. I'll just take you through a few paragraphs of it
33 without doing many of them in any detail. The first 14
34 paragraphs are by way of general background or an account
35 of the situation generally?

36 A. Yes.

37

38 Q. At 15 - well, at 12 there is a recognition that
39 Mr Russell was known to be a happy and cheerful person who
40 didn't have any worries?

41 A. Yes.

42

43 Q. At 15, there's a reference to his being about to
44 inherit a sum of money and looking forward to building
45 a home on his father's property in the country?

46 A. Yes.

47

- 1 Q. At 16, there's a reference to his criminal record?
2 A. Which is very minimal, yes.
3
- 4 Q. Which is very minimal, as you say very fairly, and
5 what is pointed out in paragraph 16 is that two of them
6 relate to PCA - prescribed concentration of alcohol?
7 A. Yes.
8
- 9 Q. They are driving offences?
10 A. Yes.
11
- 12 Q. At 19, there's a reference to his friend, Mr Redmile,
13 with whom he had been drinking on the night in question --
14 A. Yes.
15
- 16 Q. -- describing him as being moderately affected by
17 alcohol but not drunk?
18 A. Yes, I note that.
19
- 20 Q. And Mr Redmile said that Mr Russell was in control of
21 his physical actions?
22 A. Yes.
23
- 24 Q. Then there are references to the body being found on
25 the Thursday morning, 23 November?
26 A. Yes.
27
- 28 Q. By a passer-by, and there are some photos of the body
29 and the location. And as can be seen in the photo at
30 paragraph 24, and is remarked upon later - for example, at
31 paragraph 30 - the body was lying at the base of cliff with
32 the head and upper body towards the cliff face.
33 A. Yes.
34
- 35 Q. There were some items near the body, including some
36 coins, an empty Coca-Cola bottle, a packet of cigarettes
37 and a cigarette lighter?
38 A. Yes.
39
- 40 Q. In 31 and 32, there's a reference to the initial
41 investigation led by Plain Clothes Constable Dunbar?
42 A. Yes.
43
- 44 Q. Who, at paragraph 32, expressed the opinion that the
45 deceased fell from the cliff top edge to where he was
46 located?
47 A. I see that.

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Q. And Plain Clothes Constable Dunbar went on:

Whether this can be attributed to the deceased's level of intoxication will be clear with the results of the forensic tests.

So Constable Dunbar, it would seem, spoke of a fall, without speaking of anything else, in terms of the cause of the fall?

A. It's not clear at what point Constable Dunbar said that.

Q. All right. Now, at paragraph 35, there are four photographs, and the fourth of them shows some hair adhering to the area behind the index knuckle of the left hand.

A. Yeah, my photographs 3 and 4 are just blank, like a black screen, but I accept what you're saying. I have seen the photograph in question.

Q. Well, that's sufficient for my purposes today. You've seen these photos before?

A. I have.

Q. And there is indeed a clump, a smallish clump of hair on the left hand index finger?

A. Yes.

Q. Just above the index finger?

A. Yes.

Q. I think the photos can be shown to you for present purposes.

A. Yes, I can see that.

Q. Thank you. Then, as is well known, and as is stated in paragraph 38, the exhibits, at least the hair, as one of the exhibits, were lost?

A. Yes. My recollection is that the Detective Sergeant Carlton Cameron, who was a very experienced crime scene officer, took exhibits, including the hair, to Bondi Police Station, but there's no - and I think he was asked about that at the inquest - there's no further - it doesn't mention what happened to them after that.

- 1 Q. But in a nutshell, they've never been seen since?
2 A. No, they were lost by police, which is horrendous.
3
4 Q. Which is very bad and everyone agrees that it's very
5 bad?
6 A. Yes.
7
8 Q. But they were lost then, right back at the beginning?
9 A. It appears so, yes.
10
11 Q. In 1989?
12 A. There or shortly thereafter, yes.
13
14 Q. Now, what happened to the packet of cigarettes and the
15 Coke bottle and the cigarette lighter?
16 A. The Coke bottle I don't remember, but the - my
17 understanding is that the cigarette packet may have been
18 fingerprinted but there was no result, and I think a family
19 member or an associate identified that the Peter Stuyvesant
20 soft packet was the cigarettes that were favoured by
21 Mr Russell.
22
23 Q. At 40, there is a reference to the original
24 investigation, which was indeed conducted by Plain Clothes
25 Constable Dunbar and Sergeant Ingleby from Bondi Police
26 Station?
27 A. Yes.
28
29 Q. Now, Plain Clothes Constable Dunbar, although a plain
30 clothes officer, was junior, quite junior?
31 A. Yes.
32
33 Q. Sergeant Ingleby, a uniformed officer, was quite
34 senior, quite experienced?
35 A. Yes. And he was also a former detective.
36
37 Q. And I don't need to go to this, I don't think, but he
38 provided a statement at the time about what he observed,
39 including that he was the one who actually saw the hair and
40 he was the one who was able to put forward quite a deal of
41 information about the activities of youth gangs in that
42 area at that time?
43 A. Yes. He made a number of statements, including one or
44 two, I think, to Neiwand.
45
46 Q. But he certainly made one back in February 1990?
47 A. Certainly.

- 1
2 Q. That mentioned the things I've just summarised?
3 A. Yes.
4
5 Q. Now, at 42, there's a reference to the blood alcohol
6 content as tested being 0.255?
7 A. Yes.
8
9 Q. In 43, there's a reference to what I've just
10 mentioned, the statement of Sergeant Ingleby, which
11 outlined other crimes committed around this area against
12 gay men at around this time?
13 A. Yes.
14
15 Q. And at 44, the Neiwand summary says - and this is
16 based on Ingleby, not Taradale -
17
18 *Marks Park was a known area for brutal*
19 *attacks on homosexual males.*
20
21 Correct?
22 A. Correct.
23
24 Q. In 45, the initial inquest returns a finding that the
25 manner of death was the injuries sustained by the fall, but
26 whether the fall was accidental or otherwise, the Coroner
27 could not say?
28 A. Correct.
29
30 Q. At 46, Neiwand, in the person of yourself and Chebl,
31 takes the trouble to highlight what they call - what you
32 call - the spate of assaults, robberies, murders, against
33 gay men in the Eastern Suburbs around the period of
34 Mr Russell's death?
35 A. Yes.
36
37 Q. And then from 47 through to 55, there's considerable
38 detail given about some of the relevant cases that are the
39 subject of Mr Ingleby's statement, that is, the death of
40 Mr Rattanajurathaporn, the death of Richard Johnson, the
41 death of William Allen?
42 A. Yes, I actually think that may be Detective Sergeant
43 McCann as opposed to Sergeant Ingleby, but I may be wrong.
44
45 Q. I suggest it's both?
46 A. Oh, possibly, yes.
47

1 Q. Certainly it's McCann, as you say?
2 A. Yes.
3
4 Q. And to some extent Ingleby as well?
5 A. Yes.
6
7 Q. By the way, a lot of these paragraphs in the Russell
8 summary are either the same as or extremely similar to
9 comparable paragraphs in the Warren summary, so for
10 example --
11 A. I don't doubt that.
12
13 Q. For example, these paragraphs, 46 through to 55, are -
14 and I won't do this with you, I'll just put it on the
15 record - essentially the same, if not literally the same,
16 as paragraphs 62 to 71 of the Warren summary.
17 A. Yes, I wouldn't dispute that.
18
19 Q. No. And similarly, when we get to paragraphs 58 and
20 following, which start off by reference to Mr McCann's 1991
21 document, paragraphs 58 to 65 of this document are the same
22 as paragraphs 77 to 84 of the Warren summary, with one or
23 two minor exceptions.
24 A. I would accept that.
25
26 Q. Again, when we get to paragraph 66 and following,
27 there's a summary of the Taradale exercise, and paragraphs
28 66 to 70 again are very substantially the same as
29 paragraphs 102 to 112 of the Warren summary.
30 A. Yes.
31
32 Q. So I won't repeat the questioning about this very same
33 matter. Now, at 74 and 75, there's a reference to the
34 clothing worn by Mr Russell on the night of his death.
35 A. Yes.
36
37 Q. Mr Russell dies in November 1989. As you understand
38 it, what was done with the clothing, then?
39 A. I believe it may have been given back to Mr Peter
40 Russell, who was John Russell's brother.
41
42 Q. And was it then reacquired from the family in order to
43 be put on a mannequin for a --
44 A. Yes.
45
46 Q. That is, the police had it again?
47 A. In 2001, yes.

1
2 Q. Or earlier, or only in 2001?
3 A. Well, it appears it was given back in 2001. I'm not
4 sure about before that.
5
6 Q. Are you aware one way or the other whether the
7 clothing, while in the custody of the police, was washed or
8 laundered?
9 A. I'm not aware.
10
11 Q. You don't know one way or the other?
12 A. No, but I believe that the clothing was re-tested at
13 some stage.
14
15 Q. Well, it was tested by the Taradale operation?
16 A. Yes.
17
18 Q. And it was tested again in the course of the Neiwand
19 operation?
20 A. I believe so, yes.
21
22 Q. But am I right to understand that it was not tested at
23 the time of the death itself, around 1989/1990?
24 A. I wouldn't like to say. I'm not aware either way.
25
26 Q. Well, paragraphs 77 to 91 deal with various named
27 persons of interest, being, among others, members of some
28 of these gangs - the Alexandria Eight, PSK, the Tamarama
29 Three, the Bondi Boys and so on?
30 A. Yes.
31
32 Q. And all of those paragraphs, 77 to 91, are again the
33 same as or virtually the same as paragraphs 152 to 164 of
34 the Warren summary?
35 A. I would accept that.
36
37 Q. At 92 to 96, there's reference to the evidence of
38 a Dr Cala, a forensic pathologist, whose opinion was sought
39 by Taradale?
40 A. Yes.
41
42 Q. I'll come back to that. Then at 99, the statement is
43 made again that Taradale exhausted all avenues of
44 investigating the hypothesis that Warren and/or Russell
45 died because of a gay hate related attack?
46 A. Yes.
47

- 1 Q. The sentence then reads:
2
3 *Therefore, no charges were made in relation*
4 *to these deaths.*
5
6 A. That's correct.
7
8 Q. At 104 and following, there begins the summary of what
9 Neiwand did?
10 A. Yes.
11
12 Q. At 107, there is the assertion again that Taradale had
13 tunnel vision?
14 A. I see that.
15
16 Q. Which is almost verbatim the same as the assertion
17 made at paragraph 179(a) of the Warren statement. I've
18 asked you about that?
19 A. Yes.
20
21 Q. Now, 108, it's asserted that Neiwand investigators
22 identified a number of flaws in the previously conducted
23 investigations. This is about Russell. What are these
24 flaws that were identified?
25 A. I - as I sit here, I don't know what that refers to.
26
27 Q. At 113, there is reference to the evidence of Mr I198
28 again, which is essentially the same as the paragraph that
29 I took you to this morning in Mr Warren's summary, which
30 was 247?
31 A. Yes.
32
33 Q. I have covered that with you and I won't cover it
34 again. And at 115, there is the assertion in similar,
35 although not quite identical, terms to the one that I took
36 you to in the Warren case this morning about bashings not
37 being as prominent or frequent as portrayed by Taradale?
38 A. Agreed.
39
40 Q. And the equivalent paragraph is 266 of Warren. For
41 the same reason that we went through this morning, you
42 would accept that the notion that the bashings were not as
43 prominent or frequent as portrayed by Taradale is not
44 sustainable?
45 A. I'd agree with that, yes.
46
47 Q. Now, at 122 and following, there's - I'll go back

1 a step. At 117, there's reference to the testing of the
2 exhibits and reference to the fact that in 2016
3 Mr Russell's clothing, or some of it, was re-tested.

4 A. Yes.

5

6 Q. At 122, there is reference to a forensic scientist
7 with the Australian Federal Police who provided a statement
8 in 2014, and that scientist, in the first quoted passage in
9 123, offered the view that the hairs could have come from
10 the deceased's own scalp?

11 A. Yes.

12

13 Q. And you don't know, according to paragraph 122, why it
14 was that this person, Dr Brooks, was asked to look at this
15 question in 2014?

16 A. Well, no, it was - I think, keeping in mind that she
17 was only examining colour photographs - to either rule the
18 hair in or out as possibly coming from Mr Russell.

19

20 Q. Yes, but who asked her to do it? It wasn't Neiwand,
21 in 2014, so who was it that --

22 A. Oh, I see. No, I can't answer that. I don't know.
23 Yes, I see that, it was 2014. I don't know.

24

25 Q. As you point out, everyone at this period and
26 subsequently who is offering views about the hairs --

27 A. Yes.

28

29 Q. -- only has photographs to work with?

30 A. Yes, which is terribly unfortunate.

31

32 Q. Yes. Now, at 124 and 125 there is a reference to
33 Neiwand having provided these photographs to a Ms Boehme?

34 A. Yes.

35

36 Q. A biologist from the AFP, and that she offered the
37 view in 125 that she was aware of cases where a victim of
38 a homicide had a bundle of their own displaced hair on or
39 around their body?

40 A. Yes.

41

42 Q. But in 126, the same forensic biologist said that it's
43 highly probable that if Mr Russell had a laceration to the
44 back of his head, that the hair from around the wound would
45 be displaced. But in the end, and we'll come to this, she
46 didn't actually, in the end, offer a view as to whether the
47 hair was probably Mr Russell's or probably someone else's?

1 A. Yes, I don't think she could make a firm comment one
2 way or the other.
3
4 Q. That's right. At 127 to 131, there's a reference to
5 some review of the phone intercepts and transcripts by
6 Neiwand, and those paragraphs, 127 to 131 are reproduced or
7 the same as 181 to 185 in the Warren summary.
8 A. Yes.
9
10 Q. Then at 133 to 135 --
11 A. Yes.
12
13 Q. -- there's reference to a report by Associate
14 Professor Moynham mainly to do with the possible effect of
15 the blood alcohol concentration of 0.255 on Mr Russell
16 prior to his death?
17 A. Yes.
18
19 Q. I'll come back to that. In fact, that goes to 136.
20 Then there's a reference at 137 to 139 to the evidence
21 obtained by Neiwand from another pathologist called
22 Professor Duflou?
23 A. Yes.
24
25 Q. Mainly about, although not only about, the position of
26 the body and what that may say about the likelihood of
27 homicide or jumping?
28 A. Or falling.
29
30 Q. Or falling?
31 A. Yes.
32
33 Q. Quite. Now, just pausing there, before we get to the
34 summary beginning at 140, it's fair to say, isn't it, that
35 the main focus of Neiwand, in the case of Mr Russell, was
36 to focus on the possibility of misadventure - that is,
37 a fall?
38 A. Yes.
39
40 Q. And in that regard, mainly to focus on the blood
41 alcohol concentration?
42 A. Yes. And also the evidence of Carlton Cameron, the
43 crime scene sergeant.
44
45 Q. In what respect?
46 A. Mr Cameron attended the crime scene in 1989 and he was
47 of the view - and he was a very experienced crime scene

1 officer - that the disturbance in the shrubbery or bushes
2 at the top of the cliff above where Mr Russell was found
3 were the result of one person only.
4

5 Q. That was evidence that was before the Coroner;
6 correct?

7 A. I believe that went before the Coroner, but it wasn't
8 commented on, from memory, in the coronial.
9

10 Q. At any rate, Neiwand devoted a great deal of
11 attention, as we read in the summary, to the opinions of
12 three forensic pathologists. First of all, as to the blood
13 alcohol content, Professor Moynham?

14 A. Moynihan or Moynham, yes.
15

16 Q. Now, he had also originally given evidence to the
17 Taradale inquiry?

18 A. I wasn't aware of that.
19

20 Q. Secondly, as to the position of the body and the
21 significance of the hairs on Mr Russell's hand and some
22 other matters, two other forensic pathologists, namely,
23 Dr Cala and Dr Duflou?

24 A. Yes. I don't think we spoke to Dr Cala, at Neiwand.
25

26 Q. No, but you focused a great deal of attention on the
27 opinion that he had given in writing and then on the
28 opinion that Dr Duflou gave in writing?

29 A. Yes.
30

31 Q. In terms of the blood alcohol content and Professor
32 Moynham, can we turn to paragraph 134. Now, the reading at
33 post-mortem was 0.255. That's clear?

34 A. Yes.
35

36 Q. And you're aware, aren't you, that there was
37 a possibility, adverted to by Dr Moynham and dealt with in
38 the findings of Coroner Milledge, that that post-mortem
39 level could perhaps have been increased as compared to the
40 moment of death by reason of the effects of putrefaction?

41 A. Yes.
42

43 Q. And Professor Moynham notes this possibility, but in
44 the course of what he's quoted as saying here, in the end,
45 he considers that, nevertheless, 0.255 was most likely the
46 blood alcohol content at the time of death?

47 A. Yes.

- 1
2 Q. And on that basis, he expresses various views about
3 the likely effect on a person of having such a blood
4 alcohol content; correct?
5 A. Yes.
6
7 Q. And one of them is impairment of perceptible skills
8 and reaction times - this is at the bottom of page 36 --
9 A. Correct.
10
11 Q. -- you see in that bottom paragraph?
12 A. Yes.
13
14 Q. It would be expected that with that blood alcohol
15 concentration, all persons would possess impairment of
16 their perceptive skills and reaction time.
17
18 Then on the next page, in the third paragraph, it
19 would be expected that he would also appear to be unsteady
20 when standing or walking?
21 A. Yes.
22
23 Q. In the next paragraph, there's reference to there may
24 also have been some impairment of critical thinking?
25 A. Yes.
26
27 Q. And below that, next paragraph:
28
29 *A high blood alcohol level would not only*
30 *increase the amount of time needed to*
31 *respond to a stimulus but also increases*
32 *the frequency of inappropriate error*
33 *responses.*
34
35 In the next paragraph, reference to:
36
37 *His capacity to respond to an unexpected*
38 *incident such as a trip or a loss of*
39 *balance would be impaired.*
40
41 A. Yes.
42
43 Q. So he mentions all of those things as likely to be the
44 result of such a high blood alcohol reading?
45 A. Correct.
46
47 Q. And then he goes on, or, rather, the Russell summary

1 goes on, to rely on those matters as supporting
2 a misadventure hypothesis; correct?

3 A. Yes.

4
5 Q. For example, at 149, in the "Summary" section, the
6 Neiwand summary says:

7
8 *Despite all this --*

9
10 being a reference to various factors relevant to the
11 possibility of misadventure:

12
13 *Despite all this there is still*
14 *a possibility of Russell's death being*
15 *a result of a homicide ...*

16
17 So that's acknowledged?

18 A. Yes.

19
20 Q. But Neiwand says, in the same language as we saw
21 before with Warren:

22
23 *... a lack of corroborating evidence,*
24 *physical evidence and witness accounts*
25 *prevents this investigation being*
26 *considered as a homicide from proceeding*
27 *any further.*

28
29 A. Yes.

30
31 Q. Because in that case, the lack of physical evidence,
32 in particular the hairs, was as a result of errors on the
33 part of the original police?

34 A. Yes.

35
36 Q. But the line that I want to direct your attention to
37 in this context is this:

38
39 *Consideration needs to be given to the fact*
40 *Russell may have died as a result of*
41 *misadventure, which can be supported with*
42 *corroborating evidence.*

43
44 And the corroborating evidence is then said to be Russell's
45 level of intoxication and the impairment the amount of
46 alcohol in his system would have on his mental and physical
47 ability, the terrain of the walkway, no barrier and a steep

1 drop-off?

2 A. Yes.

3

4 Q. So the impairment caused by the amount of alcohol
5 comes from Dr Moynham; correct? That's where that comes
6 from?

7 A. Yes.

8

9 Q. Just pausing there, those factors - the level of
10 intoxication, the impairment, and so on - were all
11 considered by the Coroner, weren't they?

12 A. To an extent, yes.

13

14 Q. In fact, Dr Moynham was a witness in the coronial
15 inquest?

16 A. Yeah, I - as I sit here, I don't recall that, but
17 I accept that that was the case.

18

19 Q. Then at 154, the final paragraph of the summary, there
20 again, in about the fifth line in this sort of wind-up
21 paragraph, again there is reliance placed on Russell's
22 level of intoxication and related impairment as being
23 something that may have also led him to falling from the
24 cliff?

25 A. Yes.

26

27 Q. So again, that's Dr Moynham being the source of that
28 way of approaching it?

29 A. Yes.

30

31 Q. Now, there were a number of aspects of Dr Moynham's
32 views which the Neiwand summary does not mention. I want
33 to just take you to them. First of all, at 135, which is
34 a very long paragraph, a long extract, at the top or almost
35 at the top of page 36, do you see Professor Moynham states:

36

37 *The drinking history of Mr Russell is not*
38 *recorded ...*

39

40 A. Yes.

41

42 Q. That history, or at least aspects of it, were
43 available, weren't they, in terms of Mr Peter Russell's
44 evidence and Mr Redmile's evidence - available to Neiwand?

45 A. Yeah - yeah, I'm not sure what you're asking. Are you
46 asking about the fact that Mr Russell had had 12 to 15
47 middies of Power's beer?

- 1
2 Q. No. I'm asking about his drinking history which, as
3 Professor Moynham says, is not recorded?
4 A. I see, yes.
5
6 Q. Indeed, it wasn't recorded in what Professor Moynham
7 had, apparently?
8 A. No.
9
10 Q. But my question is related to the fact that Neiwand,
11 in fact, had information about Mr Russell's drinking
12 history?
13 A. That he regularly drank and handled it quite well.
14
15 Q. Exactly. As you summarised, that he was a regular
16 drinker?
17 A. Yes.
18
19 Q. He drank, by many people's standards, fairly decent
20 amounts, and handled it well, as you say?
21 A. Yes.
22
23 Q. And we had the evidence of Mr Redmile that on the
24 night in question he was moderately affected by alcohol but
25 not drunk?
26 A. Yes.
27
28 Q. Now, if Dr Moynham had been given that information,
29 that could have affected his views, couldn't it?
30 A. It possibly.
31
32 Q. He might have - one can only speculate, but he might
33 have - formed the view that Mr Russell could have been
34 regarded as someone who was a chronic drinker who had
35 developed, as people can, a degree of tolerance to the
36 effects of alcohol?
37 A. I can understand that, yes.
38
39 Q. But he wasn't told that. He wasn't given that
40 information?
41 A. Apparently - well, not that it's clear here.
42
43 Q. No. Well, "the drinking history of Mr Russell is not
44 recorded" - that's pretty clear?
45 A. Yes.
46
47 Q. Secondly, Dr Moynham as well made a number of other

1 observations which are not mentioned in the Neiwand
2 summary. Could I take you to them. They're in
3 paragraph 136, the ones that I want to take you to, which
4 starts at the bottom of page 37. You see he refers to the
5 fact that he had prepared a statement back in July 2001?

6 A. Yes.

7
8 Q. That's for the Taradale investigation. And then at
9 the top of page 38, Professor Moynham says, among other
10 things, having referred to the impairment of capacity that
11 was likely, he says:

12
13 *This level of intoxication would make*
14 *a person more prone to trauma as*
15 *a consequence of physical impairment.*

16
17 A. Yes.

18
19 Q. He goes on:

20
21 *It would also make a person more vulnerable*
22 *to predatory behaviour by other persons.*
23 *His capacity to protect or defend himself*
24 *would be impaired.*

25
26 A. Yes, I see that.

27
28 Q. But you don't mention that in the Neiwand summary
29 later when you come to analyse and make conclusions?

30 A. Well, I'd agree that it's not mentioned, yes.

31
32 Q. But it's significant, isn't it, that one aspect of
33 a level such as 0.255 may well be impairment of some
34 physical functions?

35 A. Yes.

36
37 Q. But another one would be making a person more
38 vulnerable to attack if there was a predator around?

39 A. Agreed.

40
41 Q. But that was not mentioned when you come to the
42 analysis part of the summary?

43 A. No, apparently not.

44
45 Q. And Dr Moynham goes on:

46
47 *There was probable marked intoxication at*

- 1 *the time of death. It is not possible to*
2 *determine if he was the victim of an*
3 *accident or if he was the victim of foul*
4 *play. Both are possible.*
5
6 A. Yes. I see that.
7
8 Q. Again, that's not mentioned later either, is it, in
9 the summary analysis part?
10 A. No, well, one flows into the other, but yes.
11
12 Q. So Professor Moynham was plainly aware, and indeed
13 said, that the blood alcohol reading would have made
14 Mr Russell more vulnerable to foul play?
15 A. Yes, or less likely to be able to defend himself, yes.
16
17 Q. And he also said, based on all the factors that he'd
18 taken into account, that both accident and foul play were
19 possible?
20 A. Yes.
21
22 Q. But Neiwand, at 149 and 154, uses Dr Moynham's
23 evidence only for the single purpose of advancing the
24 accident or misadventure possibility; correct?
25 A. I can see that, yes.
26
27 Q. Would that be an example in your mind of confirmation
28 bias?
29 A. It could well be.
30
31 Q. Or even tunnel vision?
32 A. I look at them as being interchangeable, but yes.
33
34 Q. Much the same?
35 A. Yes.
36
37 Q. Now, as to Dr Cala and Dr Duflou, Dr Cala's report
38 is in the same volume that you have there, at tab 157
39 [SCOI.10386.00142_0001]; do you have that?
40 A. I'm just finding it.
41
42 Q. Sure.
43 A. Yes. I have that.
44
45 Q. So his report is dated 14 August 2001, obviously in
46 the context of Taradale?
47 A. Yes.

- 1
2 Q. And he notes on the first page that he has been asked
3 10 questions, to which he gives the answers. We don't have
4 the questions, however, we do have the answers.
5 A. Yes.
6
7 Q. The answer to question 9 is:
8
9 *The deceased was alive when he fell or was*
10 *possibly pushed ...*
11
12 And he gives reasons as to why he holds that view?
13 A. Yes.
14
15 Q. And then under the heading "Opinion", he addresses
16 a number of topics. The first is, he says:
17
18 *The position of John Russell's body ... is*
19 *unusual in a case of jumping or falling*
20 *from a height. The body is facing towards*
21 *the base of the cliff, which is unusual*
22 *given the small height of the cliff,*
23 *implying if the deceased acted alone, he*
24 *has been able to twist his body 180 degrees*
25 *to rest in the position depicted. I do not*
26 *believe he would have been able to move at*
27 *all following the fall.*
28
29 Do you see all that?
30 A. I accept that.
31
32 Q. So the opinion he is offering is that the position is
33 unusual for a jump or a fall. That's the first sentence?
34 A. Yes. Yes.
35
36 Q. In that the body is facing towards the cliff?
37 A. Yes.
38
39 Q. And he says he doesn't think Mr Russell would have
40 been able to move, having hit the ground?
41 A. No. No, I accept that.
42
43 Q. So, that in other words, therefore, he's saying, the
44 body probably is in the position --
45 A. In which it landed.
46
47 Q. -- in which it landed?

1 A. Yes.

2

3 Q. And he says that that unusual position, if he had been
4 acting alone, would have probably had to have come about by
5 twisting himself 180 degrees in the course of the fall?

6 A. That's what he says, yes.

7

8 Q. Then the second topic that he addresses is the fact
9 that the red jumper has ridden up; that the back and the
10 lower abdomen are exposed. He says that that suggests it
11 had been pulled up prior to the fall.

12 A. Yes.

13

14 Q. Rather than being pulled up during or because of the
15 fall. That's the point of what he is saying there?

16 A. Yes.

17

18 Q. And the third topic is the hairs.

19 A. Yes.

20

21 Q. He describes where they are and that they are brown.
22 He says:

23

24 *It would be unusual to find hairs on the*
25 *hands of a person who has jumped.*

26

27 That's the first point.

28 A. Correct.

29

30 Q. And you would agree with that, presumably?

31 A. Yes. Yes.

32

33 Q. Secondly, he says:

34

35 *This finding --*

36

37 that is, the hairs on the hand --

38

39 *is suggestive the deceased might have*
40 *pulled them from the head of another person*
41 *at the time he fell ...*

42

43 So he offers that as a possibility.

44 A. Yes, obviously the possibility of foul play, yes.

45

46 Q. Yes. And he says that that implies - the fact that he
47 might have pulled them from the head of another person

1 implies - the presence of another person or persons at the
2 time of the fall?

3 A. Yes.

4

5 Q. Which is logical enough. And he says this raises the
6 possibility of foul play. Do you agree?

7 A. Agreed.

8

9 Q. Then the next paragraph, he refers to injuries
10 inflicted as a result of the fall, and says the cause of
11 the fall remains unexplained, and he says:

12

13 *I cannot exclude foul play ...*

14

15 Do you see that?

16 A. I see that.

17

18 Q. He says he doesn't know about what evidence there may
19 be about suicide. He says:

20

21 *The blood alcohol level and the presence of*
22 *other drugs are not detailed in the*
23 *report ...*

24

25 So he doesn't know, evidently, at this point what the blood
26 alcohol level was, but he says that would be of relevance
27 to know.

28 A. Yes.

29

30 Q. He makes that observation. He says:

31

32 *The injuries to the hands*
33 *are ... non-specific ... not obviously*
34 *assault-related.*

35

36 A. Correct.

37

38 Q. And in the last sentence of that paragraph he says:

39

40 *... there are some injuries ...*

41

42 although there are none that indicate definitely an
43 assault, there are some injuries to the face and hands
44 which are suggestive of an assault?

45 A. Yes.

46

47 Q. In the final paragraph he says:

1
2
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47

In summary, [Mr] Russell appears to have died from multiple injuries, consistent with a fall from a height.

Then he says:

There are several unresolved issues in relation to this man's death ...

which are mentioned above. So he describes them as "unresolved".

A. Yes.

Q. He says:

... some of [those] raise concerns that another person or persons were with him at the time of his death. The possibility still exists that this man has been met with foul play and might have been forcibly thrown off the cliff.

So that's Dr Cala's opinion and that was before the Coroner?

A. Yes, I have trouble understanding why Dr Cala didn't have the information about the blood alcohol limit - level, but he didn't, clearly.

Q. Evidently, apparently, he didn't.

A. Yes.

MR GRAY: Commissioner, I see it is about 5 to 1. I am conscious of the fact that Mr Tedeschi will have some questions for Mr Morgan. I'm not far off, but I probably need at least another 10 minutes. Perhaps it is convenient --

THE COMMISSIONER: Oh, no - it is a matter - well, if you want to finish it, by all means, and then I can come in a little after 10 past 2.

MR GRAY: Perhaps I will see if 10 minutes gets me to the end and then --

THE COMMISSIONER: All right. Okay. Are you content with that?

1
2 MR TEDESCHI: Yes, I am, thank you.
3
4 MR GRAY: Q. Of course, Neiwand obtained a report from
5 Dr Duflou?
6 A. Yes.
7
8 Q. And it's referred to at paragraphs 138 and 139 of the
9 Neiwand summary, at tab 173 [SCOI.74882_0001]. In 138, in
10 sort of partially summarising Dr Duflou's report, Neiwand
11 says:
12
13 *... "the pattern and distribution of the*
14 *injuries ... do not allow one to*
15 *differentiate between an accidental fall,*
16 *an intentional fall ... or a fall*
17 *[involving other persons].*
18
19 A. Yes.
20
21 Q. But he also states, according to the summary at 138:
22
23 *... the position of the body is somewhat*
24 *unusual for an accidental or suicidal*
25 *fall --*
26
27 in that the head and the shoulders were facing the cliff.
28
29 Correct?
30 A. Yes. That's what he says.
31
32 Q. Now, that observation, that the position of the body
33 was unusual for an accidental or suicidal fall, is
34 essentially the same as the view that Dr Cala expressed,
35 isn't it?
36 A. Yes, he has some concerns about that, yes.
37
38 Q. Well, they both say that the position of the body is
39 unusual for an accident or a suicide?
40 A. Yes, which leaves only one alternative.
41
42 Q. Exactly. And then at 139, the summary indicates
43 Professor Duflou's view that the laceration on the back of
44 the head could have been the result of fractured skull
45 edges penetrating the scalp from the inside?
46 A. Yes.
47

- 1 Q. So therefore it could be an impact injury rather than
2 a prior assault injury?
3 A. Yes.
4
- 5 Q. And as to the hair, the summary says that Professor
6 Duflou surmises that it's relatively unlikely that the hair
7 on Mr Russell's hand originated from the head of the
8 deceased.
9 A. Yes.
10
- 11 Q. Which again is essentially the same opinion as
12 Dr Cala, isn't it, in that regard?
13 A. Yes.
14
- 15 Q. And Dr Duflou goes on to say, in fairness, "although
16 that cannot be absolutely excluded". That's 138 and 139.
17 In the "Key Findings" section at 154, the Neiwand summary
18 says that Professor Duflou's opinion contrasted with the
19 opinion provided by Dr Cala.
20 A. Yes. It does say that.
21
- 22 Q. Indeed, in your statement at paragraph 67, your
23 evidence is that the findings of Professor Duflou in his
24 report differed significantly from the earlier findings of
25 Dr Cala.
26 A. Yes. That was the impression I had at the time of
27 making the statement.
28
- 29 Q. And what's the different - sorry, the significant
30 difference or differences?
31 A. My recollection is that - and obviously looking at
32 that, it's incorrect - was that Dr Duflou had expressed,
33 whilst he said it wasn't absolute that a person falling
34 wouldn't fall at that angle, wouldn't land that way with
35 the head facing the cliff, as it were - I thought he'd
36 expressed some - a different opinion to Dr Cala on that.
37 But it appears that their opinions are quite similar.
38
- 39 Q. That's where I'm going with this, just to make myself
40 clear.
41 A. Yes.
42
- 43 Q. I'm going to suggest to you that really - and I will
44 take you to them - actually, their opinions are very
45 similar.
46 A. Not dissimilar, mmm.
47

1 Q. Let's go to Dr Duflou's. Before I do that, are you
2 aware that Dr Cala gave evidence orally at the Milledge
3 inquest?

4 A. I think I was.

5

6 Q. And did you - I think you have actually referred to
7 that fact obliquely in this Neiwand summary. Do you see
8 paragraph 153, the last sentence:

9

10 *Dr Cala also stated --*

11

12 A. Yes.

13

14 Q.

15

16 *Dr Cala also stated that the position of*
17 *Russell's body at the base of the cliff was*
18 *consistent with him being "deliberately*
19 *thrown off the cliff perhaps".*

20

21 A. Yes.

22

23 Q. That, as you may or may not remember, is a quote not
24 from his report but from his transcript.

25 A. I accept that.

26

27 Q. Were you the one who looked up the transcript to see
28 what Dr Cala had said or was that Mr Chebl?

29 A. I don't recall. I saw various parts of transcript.
30 I couldn't tell you offhand which person it was.

31

32 MR GRAY: Perhaps what I will do, Commissioner - I see
33 that I will need more than another five more minutes - is
34 I will tender the Cala transcript and Mr Morgan can have it
35 and my friend can have it, and that will shorten what
36 I need to ask after lunch.

37

38 THE COMMISSIONER: All right. Do you have them readily
39 available?

40

41 MR GRAY: I do.

42

43 THE COMMISSIONER: In which case, give it to Mr Morgan and
44 Mr Tedeschi and I will adjourn until 5 past 2. Thank you.
45 I will adjourn, thanks.

46

47 **LUNCHEON ADJOURNMENT**

1
2 MR GRAY: Commissioner, that transcript, if I didn't say
3 so already, could be tab 327 [SCOI.02751.00152_0003] of
4 volume 14.
5
6 THE COMMISSIONER: Yes, certainly.
7
8 Q. Briefly, Mr Morgan --
9
10 THE COMMISSIONER: I am sorry, Mr Morgan, please sit down,
11 thank you.
12
13 MR GRAY: Q. Have you had a chance to look at that
14 transcript over lunch?
15 A. I have.
16
17 Q. I will just take you to a few things briefly. It
18 starts at page 3 for the day, 2 April?
19 A. Yes.
20
21 Q. If you turn to page 10, you'll see the first few lines
22 on that page are directing Dr Cala's attention to the
23 position of the body with the head towards the cliff?
24 A. Yes.
25
26 Q. And he says:
27
28 *That's an unusual position ...*
29
30 I won't read the answer out, beginning at line 9. At the
31 end of the answer, it has Dr Cala saying:
32
33 *As soon as he's struck the rocks he hasn't*
34 *been able to move. That being the case*
35 *would make me wonder whether he's been*
36 *deliberately thrown off the cliff perhaps.*
37
38 Do you see he expresses it that way?
39 A. Yes.
40
41 Q. He's not putting it forward as an assertion that
42 that's what happened, but that it's a possibility?
43 A. Consideration, yes.
44
45 Q. At the same page, lines 39 to 50, he's asked whether
46 it's conceivable that someone might have ended up that way
47 by reason of accident?

- 1 A. Yes.
2
- 3 Q. And the answer is:
4
5 *I think that's unlikely I couldn't say it's*
6 *impossible but I think it's unlikely ...*
7
- 8 A. Yes.
9
- 10 Q. Then on page 11, the topic of the hairs is addressed
11 from about line 10 onwards. Do you see at line 18 Dr Cala
12 says.
13
14 *... Mr Russell's head hair is dark brown*
15 *and these hairs that I saw ... did not look*
16 *as if they would have come naturally from*
17 *Mr Russell's head hair.*
18
- 19 A. Yes, I see that.
20
- 21 Q. He says in the next answer.
22
23 *... I can't be absolutely sure ... can't*
24 *say that they were definitively ... but*
25 *they don't appear to be.*
26
- 27 He says.
28
29 *... it's also unusual in a case like this,*
30 *and I've seen many people who've jumped*
31 *from great heights. The findings of hairs*
32 *is unusual and would raise questions with*
33 *me.*
34
- 35 A. I see that.
36
- 37 Q. He notes in the next question and answer that it's
38 more than a single strand of hair, it's a small clump --
39 A. Yes.
40
- 41 Q. -- at least four?
42 A. Yes.
43
- 44 Q. The Coroner interjects to say Mr Russell has curly
45 hair; do you see that at --
46 A. Yes.
47

1 Q. And then at line 45 the Coroner asks again or draws
2 attention to the fact that the hair is wavy hair, very wavy
3 hair - Mr Russell's hair?

4 A. Yes.

5

6 Q. And Dr Cala says "Yes, and also" - he goes on:

7

8 *... where the hairs actually are located at*
9 *the base of the left index finger is*
10 *unusual. I have no definite*
11 *explanation ... but it's unusual and raises*
12 *questions.*

13

14 A. Yes.

15

16 Q. Do you see the question at line 53 - I won't read it
17 out - and the answer is "Yes", on the top of page 12?

18 A. Yes.

19

20 Q. And at page 12, about line 11, he thinks.

21

22 *... it's unlikely that it's just fallen*
23 *out ... more likely that it's been tugged*
24 *out ... it is unusual and to me tends to*
25 *suggest that it came from the head of*
26 *somebody else, perhaps.*

27

28 A. Yes.

29

30 Q. So you'll agree that although he is expressing the
31 view that it looks likely, perhaps even more likely, that
32 it's the hair of someone else, he's not asserting as a fact
33 that it is?

34 A. Yes.

35

36 Q. Now, at line 43 or so, he is asked:

37

38 *What about the possibility of accidental*
39 *injury ...*

40

41 And he says:

42

43 *I guess that's also a possibility.*

44

45 And he mentions that he doesn't know what the blood alcohol
46 was?

47 A. Yes.

- 1
2 Q. And then he is told that it was 0.225, in fact it was
3 0.255?
4 A. Correct.
5
6 Q. And he says:
7 *That's quite high ... so he's probably, at*
8 *the very least, quite drunk.*
9
10 Then it is put to him, the topic that I mentioned to you
11 this morning:
12
13 *... the evidence seems to disclose that he*
14 *was a seasoned drinker who drank large*
15 *quantities and appeared to hold his liquor*
16 *well.*
17
18 Do you see that?
19 A. Yes.
20
21 Q. And then on the top of page 13, Dr Cala says:
22
23 *Nevertheless ... even for a seasoned*
24 *drinker [0.255] ... you would expect there*
25 *to be some impact and certainly in a*
26 *non-seasoned drinker, you would expect that*
27 *the effect would be more marked than to*
28 *[someone] who is a regular imbiber?*
29
30 A. Yes.
31
32 Q. But he adds, however, that he can't exclude the
33 possibility of an accidental death?
34 A. I see that.
35
36 Q. Then page 13, lines 14 onwards, he talks about the
37 question of the position of the jumper, the sloppy joe?
38 A. Yes.
39
40 Q. And at line 30, he says that the position makes him
41 wonder whether it's been forcibly retracted in some way by
42 another person?
43 A. Yes.
44
45 Q. Again, he's not expressing a definitive view, but he
46 says it makes him wonder.
47 A. Yes.

- 1
2 Q. Then at page 15, there are questions about what
3 happens to a body when it goes into the water. And then at
4 page 16, line 9, there are the questions from counsel for
5 the police - do you see that?
6 A. Yes, Mr Saidi, yes.
7
- 8 Q. Beginning there. And on page 17, do you see, at about
9 line 26, Mr Saidi puts to Dr Cala:
10
11 *So we've got this possibility then that*
12 *Mr Russell was indeed assaulted?*
13
- 14 Answer:
15
16 Yes.
17
- 18 A. Yes.
19
- 20 Q. And if you just read the questions and answers from
21 line 35 down to line 50, it seems that Mr Saidi was
22 positively putting to Dr Cala that the most likely scenario
23 was that Mr Russell had been assaulted?
24 A. Yes, that does seem the nature of those questions.
25
- 26 Q. And indeed, in the question at line 45, he is putting
27 to Dr Cala that the theory that he came to fall over the
28 cliff by himself as a result of being intoxicated could be
29 discounted to a large extent. Do you see that was the way
30 the police counsel was approaching it?
31 A. Yes.
32
- 33 Q. At page 19, he is asked by Mr Saidi at line 6 and
34 following: if a person had been pushed off the cliff, is
35 there a possibility of that person adjusting the position
36 of the body during the fall? And he answers:
37
38 *I think it's unlikely particularly if*
39 *they're intoxicated.*
40
- 41 A. Yes.
42
- 43 Q. And again, Mr Saidi at line 15, puts that he would be
44 entitled to deduce that, on the probabilities, Mr Russell
45 came to be pushed off the cliff. That's the probability
46 that counsel for the police advances.
47 A. Yes, I see that.

1
2 Q. And Dr Cala agrees. And there are reasons given for
3 that in the question and answer at line 21. Do you see
4 that?
5 A. Yes, yes.
6
7 Q. And at 25, counsel for the police again puts to the
8 witness that, on the probabilities, being pushed off
9 appears to be the likely scenario. Do you see that?
10 A. Yes.
11
12 Q. And what Dr Cala says is:
13
14 *I don't know about the likeliest but*
15 *I strongly favour that one as being quite*
16 *likely, among other explanations as well,*
17 *but that is a quite likely explanation for*
18 *that scenario.*
19
20 A. Yes.
21
22 Q. So again, you would agree that in answer to those
23 positive questions from counsel for the police, Dr Cala is
24 expressing views about likelihood, not excluding other
25 possibilities, but expressing views about likelihood?
26 A. Mmm-hmm. Yes.
27
28 Q. Now, I took you earlier to the part of your summary -
29 that is, yours and Mr Chebl's - at paragraph 153 of tab 173
30 [SC0I.74882_0001] where the quoted passage is actually from
31 the transcript, and - do you see that, in the last line or
32 so of paragraph 153, is a quotation, you can accept from
33 me, from the transcript, rather than from his report?
34 A. Yes.
35
36 Q. So clearly either you or Mr Chebl had the transcript
37 and read at least some of it?
38 A. Yes.
39
40 Q. So you knew how Dr Cala had expressed himself in terms
41 of possibilities and likelihoods and so on?
42 A. Yes.
43
44 Q. Now, let's go to Dr Duflou, tab 171
45 [SC0I.10385.00060_0001] of your folder?
46 A. Yes, I have that document.
47

- 1 Q. Now, at paragraph 5 on page 2, he sets out the
2 material that he had been provided with. Do you see that -
3 down the bottom of the page, page 2 of 9?
4 A. Yes.
5
- 6 Q. Among the things he was provided with was a statement
7 from Carlton Cameron?
8 A. Yes.
9
- 10 Q. Among the things that he was not provided with was the
11 transcript of Dr Cala's evidence?
12 A. Correct.
13
- 14 Q. Dr Duflou, at paragraph 11, summarises some of the
15 points made by Dr Cala in his report that we looked at
16 before lunch.
17 A. Yes.
18
- 19 Q. And then he goes through the questions that he has
20 been asked and he gives his answers at paragraph 12 and
21 following --
22 A. Yes, I see that.
23
- 24 Q. -- or 12(a) to (g)?
25 A. Yes.
26
- 27 Q. Now, 12(a) asks him for an opinion as to two things:
28 what the injuries, on the one hand, and the position of the
29 body, on the other hand, suggest was the manner of death.
30 Do you see that?
31 A. I see that.
32
- 33 Q. He answers that by saying, as to the pattern and
34 distribution of the injuries, they don't allow one to
35 differentiate between accidental fall, intentional fall -
36 ie, suicide --
37 A. Yes.
38
- 39 Q. -- or fall assisted by someone else, in effect, foul
40 play?
41 A. Yes.
42
- 43 Q. He can't distinguish between those three from the
44 pattern of the injuries?
45 A. Yes.
46
- 47 Q. But as to the position of the body, he says that is

- 1 somewhat unusual for an accidental or suicidal fall.
2 A. I see that.
3
4 Q. Now, that is essentially, not quite the same language
5 but essentially, the same opinion as Dr Cala, isn't it --
6 A. Yes.
7
8 Q. -- on that point? He says in his experience, much
9 more commonly, a person accidentally or suicidally falling
10 would have been facing in the direction of the fall?
11 A. Yes.
12
13 Q. And then Dr Duflou, just like Dr Cala, says he cannot
14 exclude the possibility of something slightly different -
15 do you see that?
16 A. Yes.
17
18 Q. But even there, you will notice that what Dr Duflou
19 says he can't exclude is:
20
21 *... the possibility that the deceased was*
22 *walking backwards ... (for example as*
23 *a result of trying to move away from*
24 *a person) ...*
25
26 Do you see that?
27 A. Yes.
28
29 Q. And he also can't exclude entirely the possibility of
30 the deceased having been pushed and falling backwards but
31 lying face down?
32 A. Yes.
33
34 Q. So on that topic, the position of the body, his
35 opinion, you would agree, is substantially the same as
36 Dr Cala's, and perhaps even a little bit stronger?
37 A. It's very similar, yes.
38
39 Q. In the next paragraph, he says he agrees with Dr Cala
40 as to the likelihood of the deceased moving - ie, it's
41 unlikely?
42 A. Yes.
43
44 Q. And he agrees again as to the jersey, about four or
45 five lines in to that --
46 A. Yes.
47

1 Q. -- he agrees with Dr Cala? And then the conclusion
2 at the bottom of the page is that he can't say whether it's
3 accident, suicide, or the action of another person. Do you
4 see that?

5 A. Yes.

6
7 Q. But it's clear from the top paragraph that Dr Duflou
8 certainly regards being pushed as distinctly possible?

9 A. Yes.

10
11 Q. At (b) on the next page, he is asked whether the
12 injuries sustained by the deceased indicate any sign of
13 assault. The answer begins by saying that he agrees with
14 Dr Cala as to aspects of that?

15 A. Yes.

16
17 Q. About half a dozen lines down, seven or eight lines
18 down, he says it's reasonably possible that one of the
19 bruises could be the result of an assault before death or
20 at the time of death. Again, that's no different from, and
21 indeed substantially similar to, Dr Cala?

22 A. Yes.

23
24 Q. (c) is whether the injuries could all be attributed to
25 the fall itself, and he says yes, that's possible; (d) is
26 pattern of injuries, including the laceration on the back
27 of the head?

28 A. Yes.

29
30 Q. What are the possibilities, he's essentially asked
31 there: is it the fall? Is it perhaps an assault? And he
32 says, at the bottom in the last couple of lines, that that
33 injury could be the result of an impact prior to the fall
34 or an impact during the fall, and that again is
35 substantially similar to Dr Cala?

36 A. Yes.

37
38 Q. (e) is "Does the position of the body found give an
39 indication as to how the deceased left the cliff", which is
40 a question not very different from question (a), "Could he
41 have fallen? Is it more likely he was pushed?" And of
42 course the answer is:

43
44 *My answer to question (a) applies.*

45
46 A. Yes.

47

1 Q. In summary, possible to have fallen backwards or to
2 have been pushed. Do you see that?
3 A. Yes, I see that.
4
5 Q. He says:
6
7 *I am of the view that it is less likely*
8 *that the deceased's body rotated during the*
9 *fall to land in the way*
10 *depicted ... I agree with Dr Cala that it*
11 *would be most unlikely that the deceased*
12 *would have moved significantly after*
13 *sustaining the injuries from the fall ...*
14
15 A. Definitely.
16
17 Q. So when you put (e) and (a) together, he is saying,
18 isn't he, that he leans towards the likelihood of being
19 pushed, although not saying it definitively?
20 A. He's saying it's a consideration. I don't know that
21 he's saying he leans towards it.
22
23 Q. Well, he says the position of the body is unusual
24 for --
25 A. Yes.
26
27 Q. -- an accidental fall or a jump?
28 A. Yes.
29
30 Q. Which tends to point towards the greater likelihood of
31 being pushed?
32
33 MR TEDESCHI: I object. The words speak for themselves.
34
35 THE COMMISSIONER: Well, no, he can ask him to draw the
36 conclusion or inference. If he doesn't, that's fine. I'll
37 allow it.
38
39 MR GRAY: Q. Don't you read it that way? I appreciate
40 those are not the precise words but isn't that how it reads
41 generally?
42 A. I don't read it that way, but --
43
44 Q. How do you read it?
45 A. I read it that he's saying it's a possibility that he
46 was pushed but I don't see him leaning one way or the
47 other.

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Q. Well, he says the position of the body is unusual if it were to have been a fall or a jump, accidental fall or a jump?

A. Oh, yeah. I don't think anyone's suggesting, by the way, that it was a jump.

Q. Quite.

A. Yes.

Q. But in terms of the position of the body, he says both for a jump or an accidental fall, that position is unusual?

A. Yes.

Q. Whereas inferentially, or collaterally, it's not unusual if he was pushed?

MR TEDESCHI: I object. That's not what it says.

MR GRAY: Q. No, that's not what it says, of course it's not what it says, but isn't it the way that the flow of this report goes?

MR TEDESCHI: I object. "The flow of the report".

THE COMMISSIONER: Oh, Mr Tedeschi, I'm going to allow it, as I will allow you the same latitude, and no doubt you'll put the opposite propositions to this witness, so you'll get the same latitude. I propose to allow it.

MR TEDESCHI: If your Honour please.

THE COMMISSIONER: This is an experienced homicide detective who has procured this report for the purposes of his own report, so why couldn't he be asked how he interpreted the material which he'd procured? I'm going to allow it. Thank you.

MR GRAY: Q. Isn't that how it reads overall, Mr Morgan?
A. That's how it could be interpreted, I can see that.

Q. Thank you. And then with question (g) at the bottom of page 8, about the hair, the question is:

Is it possible the hair is either Russell's own hair or another person who may have had some involvement in the death? I seek to

1 *clarify whether it's possible the hair*
2 *could have fallen out of Russell's own*
3 *head?*

4
5 And the answer given is:

6
7 *I am of the opinion it is relatively*
8 *unlikely to have originated from the head*
9 *of the deceased although I do not*
10 *absolutely exclude this as*
11 *a possibility ...*

12
13 Do you see that?

14 A. Yes, "Given there was laceration of the back of the
15 scalp". Yes.

16
17 Q. Yes. He doesn't exclude it as a possibility but it's
18 relatively unlikely to have been the deceased's own hair?

19 A. Yes, I see that.

20
21 Q. And that again is substantially the same opinion as
22 Dr Cala offered, isn't it?

23 A. I believe so, yes.

24
25 Q. Now, let's look at your paragraphs 153 and 154 in the
26 summary at tab 173 [SCOI.74882_0001].

27 A. Yes.

28
29 Q. In 153, it's asserted that the Coroner placed
30 considerable weight on Dr Cala's opinion?

31 A. Yes.

32
33 Q. And there is a sentence in the next line that reads as
34 follows:

35
36 *One of the photographs depicted loose hairs*
37 *on the rear of Russell's hand, which*
38 *Dr Cala claimed were not his.*

39
40 Do you see that?

41 A. Yes.

42
43 Q. Now, that's not accurate, is it? Dr Cala did not make
44 such a claim, did he?

45 A. That's not exactly what he said, no.

46
47 Q. He made no such claim, I suggest to you. He said that

1 he thought it was more likely that they were somebody
2 else's hair than Mr Russell's hair?
3 A. Yes.
4
5 Q. But he didn't claim that to be so, did he?
6 A. No, that's --
7
8 Q. No.
9 A. That's not strictly correct.
10
11 Q. No. And then 154 states that Professor Duflou
12 provided an opinion which contrasted with that of Dr Cala,
13 and in your own statement, as I took you to this morning,
14 you say that Dr Duflou's opinion differed significantly
15 from that of Dr Cala. Do you remember that?
16 A. Yes.
17
18 Q. Would you agree, now we've been through it, that
19 Dr Duflou's report and findings do not differ significantly
20 from Dr Cala's report at all?
21 A. I would agree with that.
22
23 Q. In fact, they barely differ at all. They are
24 substantially similar if not substantially the same?
25 A. They're quite similar.
26
27 Q. What paragraphs 153 and 154 have done, and you in your
28 statement have done, is to suggest that there's a contrast
29 or a significant difference between Duflou and Cala and
30 that that casts doubt on Cala's opinion, isn't it?
31 A. That seems to be the crux of it, yes.
32
33 Q. And you would accept that, in fact, there isn't
34 a significant difference, and so Dr Duflou's report does
35 not cast doubt on Dr Cala's opinion?
36 A. It's not strikingly dissimilar to Dr Cala's report,
37 no.
38
39 Q. No, and nor does it cast doubt on Dr Cala's opinion?
40 A. No.
41
42 Q. For that reason?
43 A. Yes.
44
45 Q. Now, almost finally, Mr Morgan, 140 in this summary.
46 At 140 the Neiwand summary says this:
47

1 *The purposes of this re-investigation was*
2 *to identify any new lines of inquiries and*
3 *to ensure the case was previously*
4 *investigated thoroughly.*

5

6 A. Yes.

7

8 Q. In terms of new lines of inquiries, the position seems
9 to be that all that Neiwand really did was to pursue the
10 existing line of inquiry, namely, misadventure, by
11 reference to the pathologist reports from Dr Moynham and
12 Dr Duflou?

13 A. And Dr Boehme - the person from the AFP.

14

15 Q. And Dr Boehme, who in the end said, "Well, I can't
16 offer an opinion".

17 A. Yes.

18

19 Q. So they were the new lines of inquiries. They were
20 actually the continuation of previous lines of inquiry,
21 namely --

22 A. Yes.

23

24 Q. -- misadventure, which had, in fact, been the subject
25 of evidence by Dr Moynham and Dr Cala at the time of
26 Taradale?

27 A. Yes.

28

29 Q. So really no new lines of inquiries?

30 A. I wouldn't say absolutely none, but certainly not
31 many, yes.

32

33 Q. And the second purpose identified here is to ensure
34 the case was previously investigated thoroughly.

35 A. Yes.

36

37 Q. Now, who initiated that purpose? Who said that that
38 was a purpose of the Strike Force Neiwand?

39 A. Well, I don't know. It was something that obviously
40 Detective Chebl felt was important and put it in the
41 summary, but I don't know where that term came from.

42

43 Q. Well, as I've put to you in various different ways, in
44 fact, what Neiwand seems to have been heavily focused on in
45 all three of these cases is finding fault with Taradale in
46 all kinds of ways, including confirmation bias and tunnel
47 vision and not pursuing victimology, and so on and so

1 forth, isn't it?
2 A. Yes.
3
4 Q. Well, why was that so? Why was Neiwand set up to see
5 how well or badly a previous investigation had been done?
6 A. Well, that wasn't my recollection of why it was set
7 up.
8
9 Q. It says it there in that sentence, doesn't it, that's
10 the purpose?
11 A. It does. It does say that, yes.
12
13 Q. So is he wrong?
14 A. Well, I don't agree with what he's got there, but I -
15 yeah, I can't comment on it.
16
17 Q. Well, when you read it --
18 A. Yes.
19
20 Q. -- and you saw that, why didn't you correct it?
21 A. Well, as I said earlier, I clearly didn't read it in
22 enough detail.
23
24 Q. I see. Now, then, I just want to take you to the
25 middle of 140:
26
27 *... the re-investigation encountered great*
28 *difficulties as a result of crucial errors*
29 *or oversights made by "... Taradale."*
30
31 Do you see that?
32 A. Yes. Again, I would say that's an overstatement.
33
34 Q. Thank you. The paragraph goes on to purportedly
35 identify the errors or oversights by Taradale. Do you see
36 that in the next sentence?
37 A. Yes.
38
39 Q. And they are the following: one, premature approach
40 towards persons of interests.
41 A. Yeah, I don't understand what that means, but yeah.
42
43 Q. It's difficult to know what it means, but doing the
44 best you can, can you fathom any error or oversight in
45 Taradale having attempted to explore the persons of
46 interest that it did?
47 A. No.

1
2 Q. The second supposed error or oversight is "tunnel
3 vision"?
4 A. Yes, and we've been down that track, yes.
5
6 Q. We've been down that track and you would not express
7 it that way, would you?
8 A. No.
9
10 Q. The third one said to be an error or oversight by
11 Taradale is a lack of identifying witnesses - that's not
12 conceivably an error or oversight by Taradale, is it?
13 A. No.
14
15 Q. And the fourth one is a lack of physical evidence
16 being present. Again, that's not conceivably an error or
17 oversight by Taradale, is it?
18 A. No. The most significant part of the physical
19 evidence was lost well prior to Taradale. Yes. And it
20 then says "and." So I don't --
21
22 Q. So would you agree that virtually every sentence and
23 every part of the sentence in 140 is wrong?
24 A. I would.
25
26 THE COMMISSIONER: Q. And as you pointed out a moment
27 ago, Mr Morgan, it's obviously a typo, but it looks as if
28 the sentence wasn't completed anyway?
29 A. Yes.
30
31 Q. Because of the word "and" followed by a full stop?
32 A. Yes. I don't know what "and" was - whether there was
33 something else meant to be included there and wasn't.
34
35 THE COMMISSIONER: Okay, thank you.
36
37 MR GRAY: Q. At 143, there's another return to the theme
38 of the tunnel vision, which I won't take you through again.
39 A. Yes.
40
41 Q. But towards the second half of that paragraph, two
42 factors are put forward as to the reasons why Detective
43 Sergeant Page pursued the persons of interest line. One is
44 that he viewed --
45 A. Yes.
46
47 Q. -- DM as a "survivor" --

1 A. Yes.

2

3 Q. -- do you see that? Again, for the reasons we've
4 been through, to put that forward as reasonable, that he
5 merely viewed him as a survivor is silly?

6 A. Yes.

7

8 Q. And to put it forward as something that led him to
9 mistakenly look at persons of interest such as those who
10 attacked DM is also silly?

11 A. Yes, it's incorrect, yes.

12

13 Q. And the second factor said to have mistakenly
14 influenced Detective Sergeant Page, following the gang
15 hypothesis, is that Sergeant McCann had presented that
16 hypothesis as youth gangs being responsible.

17 A. Yes, and I don't follow that either.

18

19 Q. So again - thank you - the notion that somehow or
20 other that's a mistake by Taradale or some error that they
21 shouldn't have gone down - that they'd gone down the wrong
22 path, is again just silly, isn't it?

23 A. Yes, I don't agree with it.

24

25 Q. In 144, the assertion is made that a fault ever
26 present in Taradale is rather than investigators reviewing
27 the original investigation and its respective holdings,
28 et cetera, before focusing on particular persons of
29 interest, Taradale chose that line of inquiry and persisted
30 with it. Do you see that?

31 A. Yes, it doesn't make sense.

32

33 Q. It doesn't make sense, and apart from not making
34 sense, briefly, in the case of Mattaini, there had never
35 been an investigation; correct?

36 A. No, correct.

37

38 Q. In the case of Warren, there had been a negligible,
39 four-days so-called investigation by Bowditch, which has
40 had all the criticism that we know about?

41 A. Agreed.

42

43 Q. And in the case of Russell, although not quite as bad,
44 that inquiry was also suboptimal, for the reasons that
45 we've been through, including the ones that the Coroner
46 noted, and including because the hairs were lost?

47 A. The hairs being lost was very significant and

1 unfortunate to the inquiry. Other than that, I don't agree
2 that it was a "sub" investigation. I don't think it was
3 a bad investigation, other than that one point.
4

5 Q. Well, it didn't pursue - that is, the 1989
6 investigation, in the Russell case, didn't pursue - or make
7 any attempt to ascertain whether, if it were a homicide,
8 there were ways of exploring it, eg, canvassing and the
9 like; that wasn't done, was it?

10 A. I may be mistaken but I thought some canvassing was
11 done in that matter.
12

13 Q. The record will speak for itself. At any rate, the
14 notion in this 144 that Taradale was flawed because it
15 should have paid more attention to previous investigations,
16 at least in the case of Mattaini and Warren, is
17 unmaintainable, isn't it?

18 A. Agreed.
19

20 Q. In 145, the sentence appears:

21 *It appeared --*
22

23 this is in Taradale --
24

25 *any evidence of misadventure was discounted*
26 *with no corroborating evidence being*
27 *submitted.*
28

29 Now, that's plainly not right, is it?

30 A. No, that's incorrect.
31

32 Q. It's certainly completely wrong in the case of Russell
33 and, indeed, it's completely wrong in the case of Warren?
34

35 A. Yes.
36

37 Q. Now, in 150, in the third line, it's asserted that:

38 ... *consideration needs to be given to the*
39 *fact that Russell had strands of grass near*
40 *and underneath his body on the rock shelf.*
41 *This would refute the theory of him being*
42 *thrown over the edge of the cliff.*
43

44 That simply doesn't follow, does it?

45 A. I think I understand what he's trying to make - the
46 point he's trying to make, but yeah, it - I don't even
47

1 recall if there were strands of grass underneath
2 Mr Russell.
3
4 Q. But if there were, that would not refute the
5 possibility of his having been thrown over, would it?
6 A. Well, perhaps not if he, for instance, had been
7 involved in an altercation on the grass prior.
8
9 Q. Quite.
10 A. Mmm.
11
12 Q. Now, 152 contains the familiar assertions about
13 confirmation bias, and I won't go over those again with
14 you.
15 A. Thank you.
16
17 Q. And I have done most of 153 and 154 with you. Again,
18 the last five lines of 154, which are essentially identical
19 to the last few lines of the Warren summary --
20 A. Yes.
21
22 Q. -- again say that the manner of Russell's death should
23 be reclassified as undetermined, despite the Coroner's
24 finding of homicide?
25 A. Yes.
26
27 Q. Now, again, that contradiction of the Coroner's
28 findings is made although really, would you agree, Neiwand
29 had uncovered nothing of any consequence beyond what was
30 before the Coroner?
31 A. That's probably correct.
32
33 Q. So you would agree that, in reality, Neiwand had no
34 proper or reasonable basis for contradicting the Coroner in
35 this way?
36 A. I think it's a matter of interpretation of the
37 evidence.
38
39 Q. I think lastly, Mr Morgan, on tab 176, the post
40 operational assessment --
41 A. Yes.
42
43 Q. -- if you go to the section dealing with Mr Russell,
44 which is about five or six pages in --
45 A. Yes.
46
47 Q. -- and just turn over to the top of the next page,

1 after where it starts, you see, "Operation Taradale placed
2 emphasis on the opinion of Dr Cala"?

3 A. Yes.

4

5 Q. Now, here, Mr Chebl asserts that Dr Cala had given an
6 opinion that Russell had been thrown from the cliffs by his
7 attackers. He had not done that, had he?

8 A. No, my recollection of it was that Dr Cala had said
9 that that was a possibility.

10

11 Q. Exactly. So Mr Chebl, in writing this, was not
12 recording Dr Cala's evidence correctly, was he?

13

14

15 Q. And in the next sentence, Chebl says:

16

17 *Dr Cala based this opinion on ...*

18

19 And he gives then three things: Russell's jumper was
20 lifted --

21

22

23 Q. -- exposing his torso.

24

25

26

27 Q. He didn't base his opinion on that at all, did he?

28

29

30 Q. Secondly, his head was positioned towards the cliff
31 face. He certainly did say that the position of the body
32 with the head towards the cliff face was unusual for an
33 accidental fall or a suicide?

34

35

36 Q. And so, at least inferentially, it suggested at least
37 the possibility of a homicide?

38

39

40 Q. But then the third thing that Chebl says Dr Cala based
41 his opinion on is:

42

43

44

45

46

47

A. Yeah, that's totally without basis anywhere that I've

1 seen.

2

3 MR GRAY: Thank you. Yes, I've nothing further.

4

5 THE COMMISSIONER: Thank you. Yes, Mr Tedeschi.

6

7 <EXAMINATION BY MR TEDESCHI:

8

9 MR TEDESCHI: Q. Sergeant Morgan, on reflection, after
10 the extensive questioning in this inquiry, do you now
11 accept that the investigations that were conducted
12 predominantly under the direction of Detective Sergeant
13 Chebl as part of Strike Force Neiwand, that you were the
14 supervisor of --

15 A. Sorry, Detective Chebl was a Detective Senior
16 Constable.

17

18 Q. Senior Constable Chebl.

19

A. Yes.

20

21 Q. Do you accept that those investigations would more
22 accurately be described predominantly, not entirely but
23 predominantly, as a review on the papers of the Taradale
24 investigations?

25

A. I do.

26

27 Q. You obtained a little bit of fresh evidence in some
28 areas, but predominantly, it was a review of Taradale?

29

A. Correct.

30

31 Q. On reflection, do you accept that after the period of
32 many years after the Taradale investigation, that it would
33 have been appropriate for Neiwand to have re-interviewed
34 a whole lot of witnesses who had provided statements to the
35 original investigation under Sergeant Page?

36

37 A. Yes, although, if I can just clarify that in relation
38 to both Ross Warren and John Russell, Sergeant Page wasn't
39 the original investigating officer. Yes.

39

40 Q. I accept that he wasn't the original investigating
41 officer, but do you agree that it was an opportunity, under
42 Strike Force Neiwand, to have re-interviewed a whole lot of
43 people?

44

A. Yes.

45

46 Q. And it was also an opportunity under Strike Force
47 Neiwand to have reinvestigated at least a number of

1 persons of interest that had been identified in the list
2 of 116 persons of interest prepared by Penny Brown?

3 A. Yes.

4

5 Q. Apart from the fact that there was publication of the
6 fact that there were rewards totalling \$300,000 in relation
7 to these three cases - \$100,000 in relation to each case -
8 do you agree that there could have been a lot more
9 publicity about Strike Force Neiwand calling for members of
10 the public to provide information --

11 A. I agree with that.

12

13 Q. -- to the police? And I think it's fair to say, is
14 it not, that you now accept that the vast majority of the
15 criticisms made by Detective Chebl, and reviewed by you in
16 the summaries, criticisms of Taradale and Sergeant Page,
17 are in fact, you now agree, unjustified?

18 A. I do agree with that.

19

20 Q. Do you accept, by and large, that the investigations
21 headed by Sergeant Page were in fact very thorough?

22 A. Yes, and especially in relation to the identified
23 persons of interest.

24

25 Q. Coroner Milledge, in her findings, expressed - and
26 indeed during the course of submissions by Counsel
27 Assisting expressed - great appreciation and admiration for
28 the investigation that had been conducted by Sergeant Page?

29 A. She did.

30

31 Q. Would you agree that that's a good look for the Police
32 Force?

33 A. Yes. Yes, it is.

34

35 Q. The Police Force likes to receive comments like that?

36 A. Yes.

37

38 Q. Accolades from judicial officers for complex and
39 lengthy investigations conducted by members of the force?

40 A. Yes, and this was a very complex and lengthy
41 investigation.

42

43 Q. Did you, at the time during which you were involved in
44 Neiwand, or do you now, see any advantage or benefit for
45 the Police Force in criticising the Taradale investigation
46 or Sergeant Page, who had been described in such
47 complimentary terms by the Coroner?

1 A. No, there is none.
2
3 Q. Is it, in fact, perhaps the reverse?
4 A. Yes, it's most unusual and, on reflection, it's not
5 a good look.
6
7 Q. It's been suggested to you on a number of occasions by
8 Counsel Assisting that your task force, or strike force,
9 was focused on finding either misadventure or suicide or an
10 open finding as opposed to these three victims being
11 victims of gay hate crimes. You recall that has been
12 suggested to you a number of times?
13 A. Yes.
14
15 Q. Did anyone in the Police Force at any level either
16 instruct you or direct you or suggest to you or hint to
17 you, firstly, that your investigation in Strike Force
18 Neiwand should only be a cursory one and not a full
19 reinvestigation?
20 A. No, that didn't happen.
21
22 Q. Did any of those things get told to you, that you
23 should not reinvestigate these matters fully or even
24 partially, and that you should not reinvestigate persons of
25 interest?
26 A. No.
27
28 Q. Did anybody say any of those things to you, that your
29 investigation should criticise Taradale and/or Sergeant
30 Page?
31 A. No, definitely not.
32
33 Q. Did anybody say anything to you along those lines,
34 that your investigation should exclude or diminish the
35 possibility that Mr Mattaini and/or Mr Warren and/or
36 Mr Russell were the victims of gay hate murders?
37 A. No.
38
39 Q. Did anybody in the Police Force say anything to you
40 along those lines that you should criticise or diminish or
41 detract from or depart from the findings that had been made
42 by Coroner Milledge?
43 A. No.
44
45 Q. In particular, did you receive any direction or
46 suggestion or hint, "wink-wink, nod-nod" indication from
47 then Superintendent Mick Willing as to what the findings of

- 1 Neiwand should be?
2 A. Definitely not.
3
4 Q. Was there anything similar from Inspector Lehmann?
5 A. No.
6
7 Q. Or anybody else?
8 A. No.
9
10 Q. You've been asked a number of questions about the
11 three summaries in relation to these three investigations,
12 and your role with those summaries was that you reviewed
13 them - that's the word that's used on the front page?
14 A. Yes.
15
16 Q. Would you explain to the Commissioner what your role
17 was as the reviewer of the evidence summaries?
18 A. I didn't compile the summaries. I read through them.
19 Obviously I didn't read through them in enough detail. But
20 I read through them and it was a basic thing of did
21 anything leap out at me, which it didn't at the time, and
22 to accept them and pass them on to my inspector.
23
24 Q. Was it part of your role as the reviewer of those
25 summaries to check the factual accuracy of evidence or
26 facts that were contained within those summaries that had
27 been prepared by Detective Chebl?
28 A. No. No, I accepted that what Detective Chebl had said
29 by and large was accurate.
30
31 Q. Is that normal practice in the NSW Police Force when
32 a reviewer, in your position, reviews a summary of a case
33 that has been prepared by one of the officers in your team?
34 A. It is.
35
36 Q. Did you, in fact, rely upon the correctness and the
37 accuracy of the summaries that had been prepared by
38 Detective Chebl in terms of what he said about those facts
39 and the evidence?
40 A. Yes.
41
42 Q. In particular, did you rely upon Detective Chebl's
43 account of the telephone call that he had had with Mr Musy
44 that was recorded in his investigator's note?
45 A. In relation to Mr Mattaini --
46
47 Q. In relation to Mattaini?

1 A. -- most certainly.

2

3 Q. Did you play any role in the wording of Detective
4 Chebl's investigator's note about that conversation with
5 Mr Musy?

6 A. No, I did not.

7

8 Q. Would it have been your role, as the supervising
9 officer, to have checked the wording or the accuracy of an
10 investigator's note?

11 A. No.

12

13 Q. I'd like to ask you some questions about the
14 investigations into Mr Mattaini's disappearance. I think
15 that I'm pronouncing his name correctly. I hope so.

16 A. Yes, I'm not sure if I was, but yes.

17

18 THE COMMISSIONER: I think it's "Matanee".

19

20 MR TEDESCHI: I'm not sure. I know that's what my
21 friend's been saying, but --

22

23 THE COMMISSIONER: We won't get a consensus on it, so I
24 wouldn't worry about it.

25

26 MR TEDESCHI: Q. Do you acknowledge that the
27 investigation by Strike Force Taradale of Mr Mattaini's
28 disappearance was conducted appropriately having regard to
29 the limited time that was available for investigations to
30 be conducted into his death?

31 A. Yes, and of course the fact that he wasn't reported
32 missing for some 16 years, yes.

33

34 Q. That made things very difficult, didn't it - (a) there
35 was no body; and (b) he hadn't been reported as a missing
36 person at the time of his disappearance?

37 A. And we had no crime scene, correct.

38

39 Q. Do you acknowledge that with the exception of some
40 steps taken to obtain additional information from Mr Musy,
41 that the reinvestigation of this matter by Neiwand was
42 largely limited to a review of the investigations that
43 Taradale had conducted?

44 A. I would agree with that.

45

46 Q. Was it a case in which, on reflection, Neiwand should
47 have re-examined the evidence and sought to identify

1 persons of interest?
2 A. Sorry, re-examine the evidence gathered by Taradale?
3
4 Q. Yes.
5 A. Yeah, quite possibly.
6
7 Q. Was this a case in which Neiwand decided that it was
8 not a case that was potentially related to gang violence?
9 A. Yes. Our view from quite early on was that that
10 particular case was most likely a matter of suicide.
11
12 Q. And would you explain to the Commissioner why you came
13 to that conclusion?
14 A. That was based upon the prior suicidal ideation and
15 the - which included the two prior suicide attempts, if
16 they can both be referred to as that, and I think also the
17 fact that Mr Musy, who had said that their relationship -
18 that Mr Mattaini was quite happy in their relationship - he
19 was actually out of the country at the time that
20 Mr Mattaini went missing.
21
22 Q. So you thought it was of significance that his partner
23 was not present at the time in Australia?
24 A. Yes.
25
26 Q. What else did you think was of significance?
27 A. Well, as I say, the suicidal ideation, as had
28 previously been expressed; the concerns about the visa
29 situation, his visa had actually expired at the time of his
30 disappearance.
31
32 Q. Now, in relation to the suicidal ideation, I'd like to
33 take you through some of the documents that you were asked
34 some questions about by Counsel Assisting.
35 A. Yes.
36
37 MR TEDESCHI: Could we start off, please, with tab 326.
38
39 Commissioner, I don't know if those assisting Counsel
40 Assisting could assist in the same way that they have.
41
42 THE COMMISSIONER: I'm certain that's appropriate.
43
44 MR TEDESCHI: This was only marked today, it's the
45 exchange of emails with the French investigators, tab 326.
46
47 THE WITNESS: Yes, I have that.

- 1
2 MR TEDESCHI: Q. Could I take you, firstly, please, to
3 the bottom of the first page, which is an email from -
4 I think it's a French police officer; is that right?
5 A. That's my understanding, it's a French law enforcement
6 officer, yes.
7
8 Q. Whose surname is Eyraud, E-Y-R-A-U-D?
9 A. Correct.
10
11 Q. To Detective Chebl on 19 November 2016; correct?
12 A. Yes.
13
14 Q. Now, in that email, could I take you over to the next
15 page, to the third paragraph which reads as follows - it
16 starts:
17
18 *For the moment, he just said ...*
19
20 Is that a reference to the French police officer referring
21 to a conversation he'd had with Mr Musy?
22 A. That is my understanding of that, yes.
23
24 Q. And it says:
25
26 *For the moment, he just said that he was*
27 *surprised in 2002 of crime investigation's*
28 *about Gilles Mattaini because he said*
29 *a couple of times "he wanted to died and*
30 *nobody would found his body". He made*
31 *suicide attempts before he missing so*
32 *Mattaini's relatives haven't been surprised*
33 *of his disappearance.*
34
35 Now, is that the first reference that presumably Detective
36 Chebl would have had during his investigation of suicide
37 ideation?
38 A. I - no, I don't know if it's the first, because
39 obviously prior to that I would have thought he had access
40 to the Taradale material.
41
42 Q. Sorry, the first new information?
43 A. Yes, correct.
44
45 Q. Okay. And it's a bit unclear from that, do you agree,
46 whether Mr Musy is talking about something that was said
47 during the course of his relationship or whether it was

1 something that was said at another time; it doesn't really
2 state when it was said?

3 A. No.

4

5 Q. Thank you. Could I next take you, please, to tab 167B
6 [SCOI.82480_0001]. That is an exchange of emails between
7 Detective Chebl and Mr Musy.

8 A. Yes.

9

10 Q. Could I take you, please, to the first page, which is
11 an email from Mr Musy to Detective Chebl on 10 December
12 2016.

13 A. I have that.

14

15 Q. On the third page, which is part of that same email,
16 which ends on that page, if you go to the second paragraph,
17 it reads as follows:

18

19 *So if such daunting times were to fall on*
20 *him he couldn't rule out that he could*
21 *resort to such solution to try to escape.*

22

23 A. Yes.

24

25

26 Q. *When I objected that he was selfish to*
27 *overlook the extreme trauma, anguish*
28 *despair and pain his suicide would cause to*
29 *his mother, family, friends, and me --*

30

31 and I stress "and me" --

32

33 *to that matter.*

34

35 *His view to that (he thought) was that we*
36 *would easily carry on with our lives as we*
37 *would not find his body!*

38

39 A. With an exclamation mark, yes.

40

41 Q. With an exclamation mark. Do you understand that to
42 be referring to Mr Musy describing something that
43 Mr Mattaini had said during the course of their
44 relationship?

45 A. Yes.

46

47 Q. And particularly the reference to Mr Musy objecting

1 that it would cause great pain and despair to him seems to
2 strengthen that interpretation; is that right?

3 A. Yes.

4

5 Q. Now, could I take you now, please, to the
6 investigator's note, which is tab 167A
7 [SCOI.10389.00042_0001].

8

9 THE COMMISSIONER: Sorry, can I just interrupt,
10 Mr Tedeschi?

11

12 Q. Do I understand, though, Mr Morgan, that you have no -
13 or do you have any recollection of reading this particular
14 email between Mr Musy and Mr Chebl at or after 10 December
15 2016?

16 A. I think that Mr Chebl would have shown me that email
17 at some stage.

18

19 Q. And like anything else that he collected during the
20 course of it, he would have shown you other bits and pieces
21 from time to time?

22 A. From time to time.

23

24 THE COMMISSIONER: Okay, thank you.

25

26 MR TEDESCHI: Q. Could I take you, please, to page 2.

27

28 THE COMMISSIONER: Is that 168A?

29

30 MR TEDESCHI: That's 167A [SCOI.10389.00042_0001],
31 I think.

32

33 THE COMMISSIONER: 167A.

34

35 THE WITNESS: Yes.

36

37 THE COMMISSIONER: Yes, thank you.

38

39 MR TEDESCHI: Q. Could I take you, sorry, to page 4 of
40 that note, the last paragraph on that page?

41 A. Yes.

42

43

44 Q.
45 *Musy stated throughout his relationship*
46 *with Mattaini he found him to be*
47 *comfortable with death and would speak*
openly about dying on his own accord rather

1 *than naturally.*

2

3 A. Yes.

4

5 Q. How do you interpret that as to when those
6 conversations took place between Mattaini and Musy?

7 A. My take on that is that it occurred more than once and
8 throughout the relationship rather than on one specific
9 occasion.

10

11 Q. Could I take you now, please, to page 5 at the top of
12 the page:

13

14 *Detective Chebl asked Musy about the*
15 *information he provided Eyraud in relation*
16 *to Mattaini stating "he wanted to die and*
17 *nobody would found his body". Musy agreed*
18 *this comment was said by Mattaini, he*
19 *elaborated on this by explaining that*
20 *Mattaini believed if nobody found his body*
21 *it would cause less pain and grief for his*
22 *family. Musy quoted Mattaini "If I die*
23 *I will do it so no one finds my corpse, it*
24 *would cause less pain and grief for my*
25 *mother."*

26

27 Do you agree that there's no indication in that
28 paragraph when that was said, whether it was during their
29 relationship or not?

30 A. I agree.

31

32 Q. Could I take you to page 9, which is a photocopy of
33 the investigator's note. There's a reference there again
34 to the same comment that I referred to earlier from the
35 email?

36 A. Yes.

37

38 Q. This is in the investigator's note, a copy of that
39 email?

40 A. Yes.

41

42 Q. Did you then, at a time when you think you would have
43 seen this investigator's note, interpret the investigator's
44 note as referring to suicidal ideation expressed by
45 Mr Mattaini during the course of his relationship with
46 Mr Musy?

47 A. Yes.

1
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Q. Do you interpret it in the same way now?

A. Yes.

Q. You've now been made aware by Counsel Assisting that there's no mention of anything like that in Mr Musy's statement to Taradale?

A. Correct.

Q. Or in his evidence to the Coroner?

A. No.

Q. That's right, isn't it?

A. That's correct.

Q. At page 5 of the investigator's note, in the second paragraph, it says this:

Detective Chebl asked Musy if the information about Mattaini's comments about "dying" was provided to Police in 2002, Musy stated "Of course I told Steven Page of this, of course, in 2002 I said this. I said Gilles was comfortable with dying and he would do it so his body is not found, but this did not happen".

A. Yes.

Q. Now, did you interpret that at the time that you must have read it during Neiwand, that in fact, Mr Musy was claiming that Sergeant Page had been informed of this suicidal ideation expressed by Mr Mattaini during the course of his relationship?

A. Yes.

Q. I think you have accepted now, having been taken to all of the evidence, that in fact, Mr Musy was wrong and he had not told Sergeant Page about this? Is that your position or are you unsure or what's your present position, having about questioned by Counsel Assisting?

A. Well, he didn't mention it in his evidence at the two-thousand- - well, the inquest that finished in 2005.

Q. He had every opportunity to mention it at the inquest and he failed to?

- 1 A. Correct.
2
- 3 Q. He had every opportunity to put it in his statement
4 and he failed to?
5 A. Yes.
6
- 7 Q. Do you now accept that Mr Musy may have been wrong
8 when he told Mr Chebl that he had said that to Sergeant
9 Page?
10 A. Yes, I - I would accept that, particularly in light of
11 the fact that he, I think, pre-empted it by saying words to
12 the effect, "My memory's not as fresh now as it was years
13 ago". Yes, I would accept that.
14
- 15 Q. But at the time, during the course of the Neiwand
16 investigation, you accepted this as being evidence that
17 Musy had provided this information to Page, but it had
18 never been put before the Coroner?
19 A. Correct.
20
- 21 Q. You've accepted now that that's quite possibly wrong?
22 A. Yes.
23
- 24 Q. But you genuinely thought that, based upon this
25 material, during Neiwand?
26 A. Yes.
27
- 28 Q. At the time during Neiwand, did you have any reason to
29 doubt that Sergeant Chebl had accurately reflected his
30 conversations with Musy in this investigator's note?
31 A. Not at all.
32
- 33 Q. So I'd now like to take you to the summary in relation
34 to Mr Mattaini. At the time that you were reviewing the
35 Neiwand summary regarding Mr Mattaini, did you accept from
36 Detective Chebl, who had prepared this summary, that the
37 evidence established the following facts: firstly, that
38 Chebl had got some additional information from Musy about
39 suicidal ideation of Mattaini during the course of their
40 relationship?
41 A. Yes.
42
- 43 Q. Secondly, that, at the inquest, Mr Musy had given
44 evidence about some relationship problems that he had had
45 with Mr Mattaini, including touching their personal lives?
46 A. Yes.
47

- 1 Q. Thirdly, that there was some evidence that Mr Mattaini
2 was worried to some degree about his visa status in
3 Australia, desperately keen to stay in Australia?
4 A. Yes.
5
- 6 Q. Fourthly, that there was no evidence as to the place
7 or even the date of death?
8 A. Apart from the sighting, I think it was 15 September
9 1985.
10
- 11 Q. And the sighting was of him heading north from his
12 home at North Bondi?
13 A. Yes.
14
- 15 Q. So in the opposite direction to Marks Park?
16 A. Correct.
17
- 18 Q. So apart from that, there was no evidence as to the
19 place and time of death?
20 A. No, that was the last sighting that we had, yes.
21
- 22 Q. And, fifthly, that Mr Mattaini was not a man who would
23 go to gay beats?
24 A. Apparently not, no.
25
- 26 Q. Sixthly, that there was no evidence in your mind to
27 link his death to Marks Park other than the fact that he
28 would sometimes walk past the park on his walks, but on
29 that particular day of his disappearance, he was heading in
30 the opposite direction?
31 A. Correct.
32
- 33 THE COMMISSIONER: Can I just interrupt you - I'm sorry to
34 do this, Mr Tedeschi.
35
- 36 Q. I think you've been asked this before, Mr Morgan, and
37 I just want to clarify my own thinking. At tab 172
38 [SCOI.74881_0001] - that's the summary that, in part, I
39 think Mr Tedeschi is --
40 A. Yes.
41
- 42 Q. I think you've been asked this before but let me ask
43 you, in paragraph 1, which is also part of what Mr Chebl
44 prepared --
45 A. Yes.
46
- 47 Q. -- "Mr Mattaini was last seen walking along a track

1 around Mackenzies Point" - I think you were asked about
2 that. Do you have any idea at all where that came from?

3 A. No, but it's clearly incorrect.

4

5 Q. Well, why do you say that?

6 A. Because my understanding of the last sighting was that
7 he was seen in Campbell Street and another cross street at
8 North Bondi.

9

10 Q. I do understand that that's your understanding, and
11 I'm not saying it isn't one, but at the minute, you have no
12 idea where Mr Chebl could have got that?

13 A. No, I don't, sir.

14

15 Q. But it is a significant piece of observation, if it's
16 accurate?

17 A. Clearly, yes.

18

19 THE COMMISSIONER: Okay, thank you.

20

21 MR TEDESCHI: Q. The evidence was that he would
22 sometimes walk along the track around Mackenzies Point?

23 A. Yes.

24

25 Q. But there was no evidence to suggest that he was there
26 on the day of his disappearance?

27 A. No. And in addition, I believe that sighting by the
28 neighbour - Terry, I think his name was - was in the
29 morning of that date.

30

31 Q. That was the man who thought he was looking "aloof"?

32 A. Yes. Yes, I remember that.

33

34 Q. All right. Going back to the evidence that I'm
35 suggesting emerged in your mind from the investigation of
36 Mr Mattaini during Neiwand, seventhly, that despite the
37 fact that Taradale had investigated numerous persons of
38 interest, despite the fact that they had analysed something
39 like 17,000 phone calls, that there was no evidence that
40 you were aware of to link Mr Mattaini's death to gay hate
41 gangs at that time?

42 A. Correct.

43

44 Q. And the gangs that were identified by task force
45 Taradale were gangs that would have been too young to have
46 been involved in Mr Mattaini's disappearance?

47 A. Most likely. I think we worked out they would have

1 been about 14 at the time, which doesn't absolutely rule
2 them out but it's unlikely.

3
4 Q. Did you also accept from your analysis of this case
5 that upon being informed about the disappearance of
6 Mr Mattaini, his partner, Mr Musy, had immediately
7 concluded that Mr Mattaini had suicided, and that he had
8 maintained that belief from 1989 until 2002?

9 A. That's correct.

10
11 Q. That was also a belief that you were informed that his
12 mother had accepted?

13 A. I believe so, yes.

14
15 Q. And, of course, you also had in mind the information
16 that was available to Taradale that there had been up to
17 two previous suicide attempts, although many, many years
18 earlier?

19 A. Yes.

20
21 Q. Now, as a result of those facts, would you go to
22 paragraph 61 of this summary in relation to Mr Mattaini -
23 tab 172 --

24 A. Yes.

25
26 Q. What Sergeant Chebl has stated in paragraph 61 is
27 this:

28
29 *In concluding this summary, when*
30 *considering the information obtained by*
31 *both Operation Taradale and Strike Force*
32 *Neiwand, it can be suggested that Mattaini*
33 *may well have taken his own life rather*
34 *than met with foul play. There are no*
35 *further lines of inquiry ... there is no*
36 *forensic evidence ...*

37
38 et cetera. Mr Chebl then concludes:

39
40 *Mattaini's disappearance - cause and manner*
41 *of death remain "undetermined".*

42
43 Was that your view at that time, based upon the evidence
44 that I have referred to?

45 A. Yes.

46
47 Q. Is it still your opinion to this day?

1 A. It's - yes, it's undetermined, but my own personal
2 view is more likely that it was a suicide.
3
4 Q. And that's despite the questions that have been asked
5 of you by Counsel Assisting in this Inquiry?
6 A. Yes.
7
8 Q. Now, you told the Inquiry that you have been trained
9 as and had experience as a police negotiator?
10 A. Correct.
11
12 Q. And does that involve you, amongst other things, in
13 trying to convince people who are threatening suicide to
14 bring them back and cause them to desist?
15 A. Yes, many times.
16
17 Q. How many times do you think you would have been
18 involved in such an exercise?
19 A. Over 23 years as a negotiator, possibly over a hundred
20 such cases.
21
22 Q. And in each case, does it require you to do your best
23 to engage in active conversation with the person who is
24 threatening suicide?
25 A. Yes.
26
27 Q. And do you talk to them about their motivations, their
28 lives, their loved ones - a whole lot of things about
29 themselves to try and understand why they're there?
30 A. Yes.
31
32 Q. And to try and convince them that there are reasons
33 why they should not commit suicide?
34 A. Correct.
35
36 Q. So in your experience, over all those years as
37 a negotiator with people threatening suicide, what do you
38 say about whether people who attempt suicide, whether they
39 do so unpredictably?
40 A. Some people certainly do. It's a spur of the moment
41 thing with some people. Other people, there's a great deal
42 of planning.
43
44 Q. All right. So some people have a great deal of
45 planning; other people do so on the spur of the moment?
46 A. Correct.
47

- 1 Q. And what do you say about cases in which loved ones
2 are totally surprised?
- 3 A. Yes, there are quite a few cases where the family or
4 the loved ones aren't aware of the disposition towards
5 suicide, if I can put it that way.
6
- 7 Q. Have you had cases where people who attempted to
8 commit suicide have had extensive plans for the future?
- 9 A. Yes, and something has set them off, yes.
10
- 11 Q. And what, to your experience, is the most significant
12 predictive factor for people to attempt or commit suicide?
- 13 A. There are a number, but of course, threats, or prior
14 suicide attempts, is obviously a very significant
15 indicator.
16
- 17 Q. Is that the most significant indicator for the risk of
18 suicide, previous threats or attempts?
- 19 A. I don't know if I'd say "the most", but it's a very
20 significant indicator.
21
- 22 Q. Now, I'd like to take you to the submissions made by
23 Counsel Assisting in relation to Mr Mattaini. Could I take
24 you, please, to volume 14, tab 323 [SCOI.02751.00159_0001],
25 which is the closing address of Mr Lakatos, who was
26 assisting the Coroner, Coroner Milledge.
- 27 A. Sorry, sir, what was that tab number?
28
- 29 Q. Tab 323, volume 14.
- 30 A. Yes, I have that document.
31
- 32 Q. Can I take you to page 4, down the bottom of the page,
33 line 56, manner and cause of death:
34
- 35 *In my submission your Honour the situation,*
36 *so far as the evidence discloses --*
37
- 38 A. Sorry, sir, what was the page?
39
- 40 Q. Sorry, the bottom of page 4.
- 41 A. Oh, page 4.
42
- 43 Q.
44 *In my submission your Honour, so far as the*
45 *evidence discloses --*
46
- 47 Do you see that?

1 A. Yes.

2

3 Q. --

4

5 *is that the manner and cause of the deaths*
6 *of Mr Mattaini and Mr Warren remain*
7 *unknown.*

8

9 A. Yes.

10

11 Q.

12 *As I have said there are real suspicions*
13 *that they met their deaths by foul play and*
14 *by being the subject of gay hate attacks,*
15 *however there is no reliable evidence that*
16 *this conclusion can firmly be drawn.*

17

18 And in the next paragraph he said:

19

20 *On the present state of the evidence*
21 *your Honour it is submitted that*
22 *your Honour should bring in an open finding*
23 *in relation to the deaths of Mr Mattaini*
24 *and Mr Warren.*

25

26 A. Yes, I see that.

27

28 Q. Now, your conclusion in your summary in relation to -
29 sorry, Mr Chebl's conclusion, which you reviewed and
30 presumably accepted, was in paragraph 61:

31

32 *... [Mr] Mattaini may well have taken his*
33 *own life rather than met with foul play.*

34

35 Manner and cause of death remains undetermined.

36

37 A. Yes.

38

39 Q. Do you agree that the submission made by Counsel
40 Assisting was very similar to the conclusion that Mr Chebl
41 came to in the summary?

42 A. I do.

43

44 Q. And I think you've conceded that there was very little
45 additional evidence that was before you in 2017 that hadn't
46 been before the Coroner 13 years earlier?

47 A. Correct.

1
2 Q. Did anyone push you or tend to push you in the
3 direction to suggest that that was the way that Neiwand
4 should go?
5 A. No.
6
7 Q. Were you of the view in 2017 that you could positively
8 exclude other hypotheses including homicide?
9 A. No. And that remains the case now.
10
11 Q. You still concede that homicide is a possibility?
12 A. Correct.
13
14 Q. Do you accept that other people, on these same facts,
15 may have different views about the manner and cause of
16 death of Mr Mattaini?
17 A. Yes, it's very subjective.
18
19 Q. Did you gain any benefit or advantage whatsoever in
20 your career as a police officer by advancing the hypothesis
21 that suicide may well have been the cause of Mr Mattaini's
22 death?
23 A. None whatsoever.
24
25 Q. Are you aware of any benefit or advantage that
26 Sergeant Chebl gained as a result of coming to that
27 conclusion?
28 A. No. None at all.
29
30 Q. Could I take you now, please, to the Warren case.
31 This was the case that was investigated by Detective
32 Bowditch.
33 A. Yes.
34
35 Q. And about which the Coroner made scathing findings?
36 A. Yes.
37
38 Q. I think you acknowledge that those findings were
39 entirely appropriate?
40 A. Yes.
41
42 Q. This was a case in which there was no body?
43 A. Correct.
44
45 Q. But the death had most likely occurred at Marks Park
46 because of the location of Mr Warren's keys and his car?
47 A. Yes.

1
2 Q. There was - correct me if I'm wrong - no direct
3 evidence of suicidal ideation or expressions of suicidal
4 ideation?
5 A. No.
6
7 Q. There was some evidence that had been investigated by
8 Taradale about a link, a possible link, to one - of one of
9 the gangs to the death?
10 A. Sorry, a link by --
11
12 Q. There was some evidence that was investigated by
13 Taradale about a link between a gang member and the death,
14 that had been investigated by Page but discounted by him.
15 I think, if my memory serves me correctly, somebody had
16 made an admission on a recording about involvement in the
17 death of a news reader or something like that?
18 A. Yes.
19
20 Q. And that had been investigated but found that the
21 details did not match Mr Warren?
22 A. Yes. And we further investigated that particular
23 aspect as part of Neiwand.
24
25 Q. And what conclusion did you come to?
26 A. We were advanced no further. It appears to be an
27 embellishment by the person who was quoted as having said -
28 made the admission.
29
30 Q. Do you now acknowledge that the investigations by
31 Taradale into the death of Mr Warren were appropriate and
32 fulsome?
33 A. Yes.
34
35 Q. Once again, do you acknowledge that the
36 reinvestigation by Neiwand was more of a review with some
37 additional evidence of a minor kind obtained?
38 A. Yes. I don't know if that's how it was intended when
39 we first started, but that's certainly how it finished.
40
41 Q. Once again, do you acknowledge that there was an
42 opportunity for witnesses to be re-interviewed and persons
43 of interest to be reinvestigated?
44 A. Yes.
45
46 Q. I think in fact there were some additional witnesses
47 interviewed and persons of interest pursued?

- 1 A. Yes.
2
3 Q. But not all of them?
4 A. No, certainly not the - all the 116 or whatever it
5 was.
6
7 Q. There were only a few that were re-interviewed and
8 reinvestigated?
9 A. From that 116 list, yes, and there was a few more that
10 weren't on the list.
11
12 Q. And as you have told Counsel Assisting, most of the
13 witnesses that were interviewed were persons who were
14 family or associates of Mr Warren?
15 A. Yes.
16
17 Q. Once again, is it more accurate to describe this as
18 being more of a review on the papers, with some limited
19 additional investigation rather than as a full
20 reinvestigation?
21 A. Yes, on reflection, yes.
22
23 Q. Once again, do you agree that the criticisms of
24 Taradale in the summary are largely unwarranted?
25 A. Correct.
26
27 Q. In particular, the suggestion that the evidence at the
28 inquest was focused exclusively on the links between youth
29 gangs, gay hate crimes and the disappearance of Mr Warren,
30 is unjustified?
31 A. Yes.
32
33 Q. And the criticism, "It appears that any other
34 hypotheses" - ie, misadventure, suicide or domestic related
35 homicide - "were discounted without being thoroughly
36 explored" is unjustified?
37 A. Yes, although I don't recollect particular attention
38 being given by Taradale to the possibility of a domestic
39 type homicide, but I may be wrong.
40
41 Q. All right. Once again, do you agree that the
42 allegation of tunnel vision or confirmation bias is
43 unjustified?
44 A. Yes.
45
46 Q. Did anybody in the Police Force direct you or suggest
47 you or hint to you what line or direction Neiwand should

1 take in relation to Mr Warren?

2 A. No. No, Mr Chebl was given pretty free rein to
3 investigate it as he saw fit.

4

5 Q. Correct me if I'm wrong, but you've given evidence
6 that Neiwand did obtain a little bit of more evidence about
7 Mr Warren, namely, firstly, that there were two people that
8 he had been romantically interested in and whom he had
9 photographs of in his home who had rejected him?

10 A. Yes.

11

12 Q. Are you able to remember whether that was new or old
13 information?

14 A. My recollection is that it was relatively new. I'm
15 not sure that it was available to Taradale.

16

17 Q. Secondly, that he'd failed to obtain employment with
18 a major television network - was that new or old
19 information?

20 A. That, I believe, was new. That came from I think
21 Mrs Warren, the mother.

22

23 Q. And thirdly, you've referred to the possibility that
24 he may have been exposed to HIV - was that new or old
25 information?

26 A. I think that may also have been new information.

27

28 Q. Now, could I take you to the conclusions reached by
29 Neiwand in relation to Mr Warren, which is tab 174
30 [SCOI.74883_0001]. Could I take you to paragraph 261,
31 page 61. Do you have that?

32 A. Yes.

33

34 Q. Paragraph 261 reads:

35

36 *Strike Force Neiwand considered the*
37 *possibility that Warren's death may have*
38 *been one of several possible scenarios,*
39 *including misadventure, suicide or*
40 *homicide. Police were unable to rule out*
41 *the possibility of the death being linked*
42 *to any one of those scenarios.*

43

44 A. Correct.

45

46 Q. Was that your view at that time?

47 A. Yes.

- 1
2 Q. Is that still your view to this day?
3 A. Yes.
4
5 Q. Could I take you now to paragraph 270:
6
7 *[Strike force] Neiwand investigators*
8 *concluded that Warren's death could be one*
9 *of several possibilities including;*
10 *misadventure, suicide or homicide*
11 *[individual, gang or domestic related].*
12 *Unfortunately, a lack of physical evidence,*
13 *credible suspects and witnesses accounts*
14 *prevent this investigation from*
15 *progressing.*
16
17 A. Yes.
18
19 Q.
20 *Warren's disappearance - cause and manner*
21 *of death remain "undetermined" ...*
22
23 A. Yes.
24
25 Q. Was that your conclusion at the time?
26 A. Yes.
27
28 Q. Is it still your view to this day?
29 A. That is still my personal view, yes.
30
31 Q. All right. Now, could I take you back to the inquest,
32 which was in volume 14, tab 323. Could I take you to
33 page 4 again.
34 A. Yes.
35
36 Q. Again, down the bottom of the page and going over the
37 top, in relation to Mr Warren, the submission by Counsel
38 Assisting was that the manner and cause of the death of
39 Mr Warren remains unknown?
40 A. Yes.
41
42 Q. And he says in relation to that case:
43
44 *As I have said there are real suspicions*
45 *that they met their deaths by foul play and*
46 *by being the subject of gay hate attacks,*
47 *however there is no reliable evidence that*

1 *this conclusion can firmly be drawn.*

2

3 A. Yes.

4

5 Q. And in the next paragraph, he recommended that the
6 Coroner bring in an open finding in relation to the death
7 of Mr Warren?

8 A. Yes.

9

10 Q. Do you agree that the position that was taken by
11 Sergeant Chebl as reviewed by you and the position taken by
12 Counsel Assisting at the inquest are very similar?

13 A. Yes.

14

15 Q. Do you agree that there was hardly any additional
16 evidence that you had apart from the new evidence that
17 I referred you to regarding Mr Warren that had not been
18 before the Coroner 13 years earlier?

19 A. Yes, I agree with that.

20

21 Q. Did anyone direct you or suggest to you or hint to you
22 that you should come to a finding of that kind?

23 A. No.

24

25 Q. At that time, in 2017, were you of the view that you
26 could possibly exclude other hypotheses for the death of
27 Mr Warren, including homicide?

28 A. No.

29

30 Q. Is that still your view to this day?

31 A. It is.

32

33 Q. Do you accept that different people might have
34 different views about the manner and cause of the death of
35 Mr Warren based upon the same evidence?

36 A. Yes.

37

38 Q. Did you gain any benefit or advantage in your career
39 as a police officer by the way in which you pursued or
40 explored or concluded the hypotheses of suicide in relation
41 to Mr Warren?

42 A. Definitely not.

43

44 Q. Are you aware of any advantage or benefit that
45 Mr Chebl may have gained from pursuing that line?

46 A. No, he did not.

47

- 1 Q. I'd now like to take you to the Russell case. In this
2 case, of course, Mr Russell's body had been found on the
3 rocks below Marks Park?
4 A. Yes.
5
6 Q. And you have acknowledged that the loss of hairs from
7 the deceased's hand was regrettable and inexcusable?
8 A. Yes.
9
10 Q. Apart from that issue, what in your view was the
11 standard of the investigation that was conducted by
12 Constable Dunbar?
13 A. I thought notwithstanding the loss of the hairs, which
14 is - is a very significant piece of evidence, crucial -
15 notwithstanding that, the remainder of the inquiry appeared
16 to be in keeping with the standard of the day, keeping in
17 mind the restrictions that were had back in those days with
18 technology and examination - you know, DNA and that type of
19 thing.
20
21 Q. What do you mean by "the standard[s] of the day"?
22 A. Well, my recollection of it is that as at 1989, whilst
23 DNA had been discovered overseas, we weren't in the habit
24 of using it here. So clothing, for instance, I don't
25 believe was examined for DNA back at the time. Obviously
26 the hairs had gone missing.
27
28 Q. I think, in fact, DNA only became used in criminal
29 trials in New South Wales in the mid '90s?
30 A. That would be about right.
31
32 Q. And hair, of course, doesn't have chromosomal DNA, it
33 has mitochondrial DNA?
34 A. Correct.
35
36 Q. That only became used in criminal trials in New South
37 Wales some years after the mid '90s?
38 A. Yes.
39
40 Q. It was much later than standard chromosomal DNA?
41 A. Yes, and much later than developments overseas in the
42 UK, for instance.
43
44 Q. Do you acknowledge that the investigation of
45 Mr Russell's death by Taradale was appropriate?
46 A. Yes.
47

1 Q. And fulsome?

2 A. Yes.

3

4 Q. Are there any comments that you would make about it
5 now in the light of your questioning by Counsel Assisting?

6 A. My only comments are along the lines of at the
7 inquest, whilst the evidence about the blood alcohol
8 reading was in evidence, I have concerns about the veracity
9 that was attached to that evidence at the time, apparently.

10

11 And also it appears, even though it was also in
12 evidence, that the view of Sergeant Carlton Cameron who
13 was, as I say, a very experienced crime scene person,
14 doesn't appear to have been considered, where he said that
15 he believed only one person had disturbed the shrubbery
16 above where Mr Russell's body was found, that --

17

18 THE COMMISSIONER: Q. But Mr Morgan, that is one piece
19 of evidence, that is true, and however experienced
20 Mr Cameron, in your mind, might have been, the two medical
21 experts expressed views which were consistent with
22 Mr Russell, on one view, being pushed over?

23 A. Yes, well, thrown over, yes.

24

25 Q. Well, thrown over. And the presence of the hair, both
26 Mr Duflou and Dr Cala thought more likely than not his?

27 A. Yes.

28

29 Q. So what does it matter whether Mr Cameron, as hugely
30 experienced as he was, formed a view about whether grass
31 moving one way or the other might or might not have shown
32 signs of one or two people against that medical evidence?
33 It's only one piece of evidence against the medical
34 evidence, isn't it?

35

36 MR TEDESCHI: Commissioner, I intend to come to the
37 evidence of --

38

39 THE COMMISSIONER: I know you do, but I'm asking the
40 question now because this is not the first time this
41 witness has given, seemingly, priority to --

42

43 Q. Do you know Mr Cameron, by the way?

44 A. Oh, I have had jobs with him over the years.

45

46 THE COMMISSIONER: Okay. Well, he has given priority to
47 Mr Cameron's evidence, but I shouldn't interrupt. You go

1 on, Mr Tedeschi.

2

3 MR TEDESCHI: If the Commissioner pleases.

4

5 Q. Do you acknowledge, Sergeant, that the reinvestigation
6 by Neiwand was more of a review on the papers in relation
7 to the death of Mr Russell?

8 A. Yes, although, as I say, I don't know that it was
9 intended to be at the start, but that's how it eventuated.

10

11 Q. Once again, do you acknowledge that it was an
12 opportunity for witnesses to be re-interviewed and persons
13 of interest to be reinvestigated?

14 A. Yes.

15

16 Q. Once again, do you agree that the criticisms in the
17 Neiwand summary of the Taradale investigation and
18 Sergeant Page are largely unwarranted?

19 A. Yes, I would agree with that.

20

21 Q. In particular, the criticism that Taradale approached
22 the investigation with tunnel vision and a narrow focus on
23 youth gangs, that was unwarranted?

24 A. Yes.

25

26 Q. And that no other hypothesis was considered or
27 explained?

28 A. Well, clearly that wasn't the case, they did consider
29 other hypotheses.

30

31 Q. That they formed a preconceived agenda focusing on
32 youth gangs?

33 A. That was very much the focus of their investigations,
34 but they did consider other possible hypotheses.

35

36 Q. And you've been asked questions about the conclusion
37 that bashings were not as prominent or frequent as
38 portrayed by Operation Taradale, and you've conceded that
39 that was grossly inaccurate?

40 A. Correct.

41

42 Q. I'd like to take you to the documents that were shown
43 to you earlier today in relation to Dr Cala and Dr Duflou.
44 Perhaps, firstly, in relation to Mr Russell, if I could ask
45 you this: you saw that there was evidence from Mr Redmile
46 about the amount that he and Mr Russell had had to drink?

47 A. Yes, correct. 12 to 15 middies of Power's, which was

1 a full strength beer.

2

3 Q. And could I take you to Dr Moynham's statement or
4 report, that's - tab 173 [SC0I.74882_0001], sorry, can
5 I take you to the summary?

6 A. Yes.

7

8 Q. The summary at tab 173 at page 36 - that doesn't
9 appear to be the right page. Maybe paragraph 36?

10 A. Yes, I've got that page.

11

12 Q. At page 36, there's a lengthy extract from
13 Dr Moynham's report?

14 A. Yes.

15

16 Q. And in the third paragraph on that page, he is quoted
17 as saying this in his report:

18

19 *Based upon the stated weight of Mr Russell*
20 *(55 kilograms), the estimated number of*
21 *middies (285 millilitres) of beer consumed*
22 *(between twelve to fifteen), the type of*
23 *beer (... 4.8% alcohol ...) and the time*
24 *during which the alcohol was consumed*
25 *(7.00pm to 11.00pm) at 11.00pm the blood*
26 *alcohol concentration of Mr Russell would*
27 *lie within a range the lower limit of which*
28 *would be not less than 0.244 grams of*
29 *alcohol ... and the upper limit of which*
30 *would not exceed 0.385 grams of alcohol ...*

31

32 A. Yes.

33

34 Q.

35 *His most likely blood alcohol concentration*
36 *would be close to 0.315 grams of*
37 *alcohol ...*

38

39 A. Yes.

40

41 Q. So we know that the level of alcohol in Mr Russell's
42 blood was 0.255, so that falls within the range that was
43 referred to in the report of Dr Moynham.

44 A. Yes.

45

46 Q. It was suggested to you by Counsel Assisting that
47 Dr Moynham was not provided with information about the

1 blood alcohol level of Mr Russell.

2

3 MR GRAY: I object.

4

5 THE COMMISSIONER: I don't think it was, Mr Tedeschi.
6 I think the fact is that the transcript shows that he did
7 consider it, doesn't it?

8

9 MR TEDESCHI: I see. I might have that wrong. I haven't
10 had an opportunity to look at the transcript, obviously.

11

12 THE COMMISSIONER: Well, it might be - it's a matter for
13 you. I mean, it might be a good idea, if Mr Gray can --

14

15 MR TEDESCHI: Q. At the top of the page 36, the first
16 full paragraph says:

17

18 *The drinking history of Mr Russell is not*
19 *recorded ...*

20

21 THE COMMISSIONER: Yes.

22

23 MR TEDESCHI: Q. But, in fact, do you agree that the
24 drinking activity of Mr Russell on the day of his death was
25 actually very well documented?

26

27

28 Q. And from your knowledge as a police officer, is 0.255
29 a high amount of alcohol in the blood?

30

31

32 Q. Are you able to say from your knowledge as a police
33 officer how it would affect people?

34

35 A. Well, it affects different people differently,
36 depending on their resistance to it, I guess, over a period
37 of time, whether they're regular drinkers, et cetera. But
38 in any case, 0.255, well, it's over five times the legal
39 driving limit, and it is a significant - it is
40 a significant reading as far as alcohol in the blood.
41 Sorry, was that the question?

41

42 Q. Yes. Yes, thank you.

43

44

45 Q. And I think it was generally agreed by all concerned
46 that it would affect Mr Russell's physical capacities to
47 recover from a fall or a slip?

- 1 A. Yes.
2
3 Q. Or to defend himself if he was attacked?
4 A. Correct.
5
6 Q. And the blood alcohol reading in New South Wales, the
7 limit for driving, is how much?
8 A. 0.05 --
9
10 Q. So it's --
11 A. -- for regular drivers.
12
13 Q. For regular drivers. It's more than five times that?
14 A. It is.
15
16 Q. Could I take you, please, to Dr Cala's report, which
17 is tab 157 [SCOI.10386.00142_0001]. Is it apparent from
18 Dr Cala's report that he was not aware of the blood alcohol
19 level of Mr Russell?
20 A. Yes, it's --
21
22 Q. In particular on page 3, the middle of the second
23 paragraph, does he say:
24
25 *The blood alcohol level and the presence of*
26 *other drugs are not detailed in the report,*
27 *and would be of relevance in this case.*
28
29 A. It does.
30
31 Q. In his report, does he say this on page 3, in the
32 second paragraph:
33
34 *There are clearly injuries which have been*
35 *inflicted as a result of the fall, however*
36 *the cause of the fall remains unexplained.*
37
38 A. Yes.
39
40 Q. He then goes on to say:
41
42 *I cannot exclude foul play based on the*
43 *scene photographs and description of*
44 *injuries in the post-mortem report. I am*
45 *not aware if there was any evidence to*
46 *support suicide.*
47

1 A. Yes.

2

3 Q. And in the last sentence of his report he says:

4

5 *The possibility still exists that this man*
6 *has been met with foul play and might have*
7 *been forcibly thrown off the cliff.*

8

9 A. Yes.

10

11 Q. So then at the inquest, if I can take you to that,
12 which is tab 327 [SCOI.02751.00152_0003]

13 A. Yes, I have that document.

14

15 Q. Could I take you to page 12.

16 A. Page 12, yes.

17

18 Q. Line 42. The question by Counsel Assisting:

19

20 *What about the possibility of accidental*
21 *injury as a likely explanation, taking into*
22 *account all of the material we've spoken*
23 *about?*

24

25 Answer:

26

27 *I guess that's also a possibility. I don't*
28 *know what Mr Russell was engaging in, if*
29 *anything, at the top of the cliff and*
30 *I don't know what his blood alcohol was.*

31

32 A. Yes.

33

34 Q. So as at that point, obviously Dr Cala didn't know
35 about his very high alcohol reading?

36 A. No.

37

38 Q. So his expressions of opinion up until that point in
39 time were based upon the information that had been supplied
40 that omitted that very important detail?

41 A. Yes.

42

43 Q. Do you agree it was a very important detail?

44 A. Most certainly.

45

46 Q. He is then told, according to the transcript, about
47 the 0.225 milligrams of blood alcohol reading?

1 A. Yes.
2
3 Q. But over the page at line 4, he responds:
4
5 *Nevertheless, 0.255 ...*
6
7 So there's a possibility that there is a transcription
8 error there and it was always 0.255?
9 A. Yes, I'd agree with that.
10
11 Q. So when he's told about the 0.255 reading, at the end
12 of that answer, line 9.
13
14 *... I think it's a possibility that*
15 *Mr Russell may have met his death*
16 *accidentally, I can't exclude that*
17 *possibility.*
18
19 A. Correct.
20
21 Q. So upon being informed for the first time about that
22 salient and significant detail, he concludes for the first
23 time, does he not --
24
25 MR GRAY: I object.
26
27 MR TEDESCHI: Sorry, I withdraw that.
28
29 Q. He acknowledges the possibility that Mr Russell may
30 have met his death accidentally?
31 A. Yes.
32
33 Q. Now, he's asked a number of questions about the
34 position of the body?
35 A. Yes.
36
37 Q. And could I take you to page 10.
38 A. Of the transcript?
39
40 Q. Of the transcript.
41
42 MR TEDESCHI: Commissioner, I don't know if you want me to
43 commence this line now or whether to --
44
45 THE COMMISSIONER: It's a matter for you. How long do you
46 think you might be?
47

1 MR TEDESCHI: I might be another 20 minutes.

2

3 THE COMMISSIONER: Oh, no, well, I will adjourn until the
4 morning. All right. I will adjourn until 10 o'clock
5 tomorrow morning. Thank you.

6

7 **AT 4PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED TO**
8 **TUESDAY, 28 FEBRUARY 2023 AT 10AM**

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