

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

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

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

On Wednesday, 1 March 2023 at 10.00am

(Day 30)

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: Just to remind you, ladies and
2 gentlemen, at 11 this morning I have to attend to another
3 matter, possibly for an hour, so I will simply adjourn at
4 that point.

5
6 Dr Dalton, could you come back into the witness box,
7 thank you.

8
9 <DEREK DALTON, on former oath: [10.03am]

10
11 THE COMMISSIONER: Doctor, if during the course of the day
12 a point arises where you think you need a break, would you
13 just let me know and that can be arranged. Thank you.

14
15 THE WITNESS: Sir, thank you.

16
17 <EXAMINATION BY MR GRAY:

18
19 MR GRAY: Q. Dr Dalton, at the close of yesterday at the
20 end of a long answer you gave, you said, page 2434 of the
21 transcript, line 35:

22
23 *You would have been better to sequester*
24 *your energies to look at the 25 or 30 odd*
25 *cases that weren't determined and spent*
26 *a whole lot of resources looking at*
27 *that ...*

28
29 Remember saying that?

30 A. Yes, I do.

31
32 Q. I wanted to just pick up on that thought. As you
33 know, and as we discussed yesterday briefly, the impetus
34 for Parrabell, or one impetus, was the heavy publicity
35 about 88 deaths said to be gay hate related?

36 A. Yes.

37
38 Q. And up to 30 of those said to be unsolved --

39 A. Mmm.

40
41 Q. -- in the media and so on; correct?

42 A. Yes. Yes.

43
44 Q. And the concern in the LGBTIQ community about those
45 numbers - the 88 and the 30 - correct?

46 A. Well, the 88 primarily, yes. In their totality.

47

1 Q. And you'll recall, though, the 88 was prominent, but
2 there was also some attention given to claims that, of
3 those, 30 were unsolved?

4 A. I don't - I don't actually quite remember the crude
5 total number of the unsolved but I guess that that would
6 have been correct.

7

8 Q. No, well, you see, I think I understood your answer
9 late yesterday as being a reference to that. Your answer
10 was:

11

12 *You would have been better to sequester*
13 *your energies to look at the 25 or 30 odd*
14 *cases that weren't determined ...*

15

16 Isn't that what you were referring to?

17 A. I was very, very upset and the tenor of my answer,
18 which you keep - you've quoted to me, was that I don't see
19 that there's any particular value in attacking, kind of,
20 what any academic team would do in this process. It would
21 have been better, perhaps, to look at - draw up a pool of
22 any unsolved homicides or any one - even cases that were
23 insufficient information, and put a lot of energy and
24 attention into them, perhaps employing detectives, perhaps
25 reinvestigating, et cetera, rather than just this - all
26 this energy and money and time to --

27

28 THE COMMISSIONER: Q. Dr Dalton, first, you are not
29 entitled to assume we are not doing that. That's the first
30 thing. The second thing is have you even looked at the
31 Terms of Reference that I have?

32

33

34 Q. Well, then, you would know that Parrabell is one of
35 the focuses that I am told by the Executive to look at?

36

37

38 Q. Then would you please just listen to Mr Gray and
39 answer his questions.

40

41 MR GRAY: Q. I'm not for the moment suggesting anything
42 positive or negative about this, but your reference to the
43 25 or 30 odd cases that weren't determined, yesterday, was
44 a reference to the 30 or so unsolved from among the 88,
45 wasn't it? Isn't that what you were talking about?

46

47

1 Q. Apart from being upset, isn't that what you were
2 referring to?
3 A. I was so upset I couldn't actually answer that then.
4
5 Q. Well, what I wanted to explore with you was this: the
6 Strike Force Parrabell approach, as we discussed yesterday,
7 was - first of all, it was a paper review only by the
8 police?
9 A. That's correct, yes.
10
11 Q. Using, in particular, the Bias Crime Indicator Review
12 Form?
13 A. Yes.
14
15 Q. And arriving at a series of subjective views as to
16 whether these 80-plus cases did or did not have an anti-gay
17 bias factor?
18 A. Yes.
19
20 Q. And those views, thus arrived at, subjective as they
21 inevitably were, were always going to be contested in the
22 public square - there would be those who had a different
23 view, for example, ACON?
24 A. Yes.
25
26 Q. Now, what the police could have done, do you say,
27 instead of doing that exercise at all, was actually to
28 reinvestigate, not just review but actually reinvestigate,
29 those of the 88 cases that were still unsolved or, to use
30 your word, undetermined, or not determined?
31 A. Yes, I guess they could have done that.
32
33 Q. And is your view that that would have been a more
34 useful and less theoretical project to undertake?
35 A. Put that to me again, please.
36
37 Q. Is it your view that that would have been a more
38 useful project to undertake?
39 A. Yes, I think that would be fair to say.
40
41 Q. With hindsight, looking back, do you think that that
42 would have been a better approach for the police to take,
43 than to embark on the Parrabell exercise at all?
44 A. Ask me the question one more time, please, because
45 I thought I'd answered it.
46
47 Q. Perhaps you have answered it, in effect. It may be

1 much the same question. But looking back, do you consider
2 that that - that is, to reinvestigate those that were
3 unsolved - would have been a better approach for the police
4 to take?

5 A. It's complicated because I guess there's advantages to
6 both. One addresses the public consternation about the 88
7 and maybe it'd bring a bit of clarity to it, which is
8 a good thing. I guess the second thing, it may potentially
9 lead to more solved homicides, if indeed they're homicides.
10 So - but I guess, on the balance of it, you'd say that the
11 reinvestigation - I guess it is to presume that they needed
12 reinvestigation because they weren't reinvestigated
13 thoroughly or adequately in the first place, which
14 I couldn't really make a determination about.

15
16 Q. Well, whether they had or they hadn't been, which is
17 a whole other topic --

18 A. Yeah, sure.

19

20 Q. -- if they were unsolved, as they were --

21 A. Mmm-hmm.

22

23 Q. -- one approach that could have been taken was to
24 investigate them again to see if they could be solved?

25 A. See, I don't know enough about homicide procedure.
26 The way it was explained to me, any unsolved homicide is
27 a live case at any given moment and things can be going on
28 behind the scenes. In fact, at one stage I seem to recall
29 there was one case we were meant to get, my memory fails me
30 here but I think they said it was - all of a sudden it had
31 become - I can't remember the phrase, something like "hot"
32 or there was something going on behind the scenes that
33 meant it was not a cold case, it was actually quite active.
34 So I just don't know enough about - even despite having
35 a conversation with them, about homicide investigation, but
36 I guess as a general premise you could say yes, you'd
37 reinvestigate them.

38

39 THE COMMISSIONER: Q. Well, you did know, didn't you,
40 a great number of police officers were allocated to
41 Parrabell?

42 A. Yes.

43

44 Q. And those police officers, numbering I think at one
45 point 13, were taken off regular police duties to sit down,
46 to read through and create narratives about all these
47 historic files?

1 A. Yes.
2
3 Q. And don't you think it would have been a better use of
4 their time to actually look at whether these cases could be
5 solved or whether persons of interest could be identified
6 or reconsidered as opposed to simply sitting down and
7 creating anecdotes about what they thought happened in each
8 and every case?
9 A. Yeah, I guess that - that perhaps would have been
10 a better use of resources.
11
12 Q. Well, you think that's what I should be doing, don't
13 you, as a result of what you said yesterday?
14 A. Well, it just strikes me as a bit ironic that there's
15 another process.
16
17 Q. Don't you think the police should have been doing this
18 years ago? You were prepared to make the assertion
19 yesterday that I would have been better using my time,
20 didn't you.
21 A. Well, you've been directed to do something. I don't
22 mean you personally.
23
24 Q. Correct. So why don't you listen to Mr Gray. Anyway,
25 he'll ask you some more questions.
26 A. That's what I - that's what I am doing.
27
28 THE COMMISSIONER: Good. Keep doing it, then, Doctor.
29
30 MR GRAY: Q. Just another dimension to this general
31 topic, could Dr Dalton have volume 10, please, and could
32 you turn to tab 246 [SC0I.79856_0001]?
33 A. Mmm-hmm.
34
35 Q. This is an email from you to Sergeant Steer --
36 A. Yes.
37
38 Q. -- on 12 December 2016. So you've been on the job, as
39 it were, since October. You came to Sydney in October and
40 had a day or two of meetings. Do you remember that?
41 A. Yes.
42
43 Q. And then on 12 December, there was a meeting of some
44 sort. I'm not sure if it was in person; it may have been
45 by audio-visual link but you may remember - but in any
46 event, it was a meeting at which, among others, Sergeant
47 Steer was present, and you are emailing him about how good

1 it was to have his contribution "today". Do you see that?
2 A. Yes, and from memory, it wasn't audio-visual - I think
3 it was in person. I don't think I did any Zoom-type stuff.

4
5 Q. Oh, you think it was in person?

6 A. Yeah, I don't - I don't - I didn't really use Zoom
7 technology until around COVID.

8
9 Q. Okay. So you said to him:

10
11 *I must say that having the bias crime team*
12 *make determinations about the cases strikes*
13 *me as really important ...*

14
15 So that was your view, presumably?

16 A. Yes.

17
18 Q. I assume you knew who he was, in the sense that he was
19 the leader, if that's the word, of the Bias Crime Unit?

20 A. Well, I'd say more than that. He - when I first went
21 to Sydney he drove me around, having discussions with me to
22 sort of give me the context of various things, so --

23
24 Q. But he was the leader of the Bias Crime Unit; you knew
25 that?

26 A. Yes.

27
28 Q. And you say in the next paragraph:

29
30 *I really appreciate what you said about the*
31 *"tick sheet" approach and that the*
32 *suggestion that the Parrabell detectives*
33 *seem to have misused the instrument*

34
35 A. Mmm-hmm.

36
37 Q. Now, what had he said and what was it that you were
38 appreciating? Were you agreeing with something that he had
39 said, or tell us?

40 A. Yeah, I - I think he said that the instrument should
41 only be used as an aide-memoire, as a sort of a guide, and
42 that it was not to be used in a way that one would tick it
43 in a - tick it in a particular way and then count the ticks
44 and a certain number of ticks equals one thing and
45 a certain number less equalled another thing.

46
47 He, from memory, was somewhat scathing of the

1 instrument, hence what I said, here, "seem to have misused
2 the instrument".

3

4 Q. And did you agree with that at least in part? Did you
5 think they had misused the instrument?

6 A. Yeah, I would clarify that by saying to have adopted
7 the instrument was the first step to misusing it, if that
8 makes sense.

9

10 Q. Yes, I think it does, thank you. The instrument - and
11 this is a subject of evidence that you can assume has been
12 given and hasn't been challenged - the instrument, that is,
13 the actual form itself, which did contain the 10 indicators
14 but also contained those various findings about beyond
15 reasonable doubt and so on - the actual instrument itself
16 as a form was created by the Parrabell strike force, not by
17 Sergeant Steer. You understand that?

18 A. Only to - only as you put it to me now because
19 I thought the instrument had been adopted from America with
20 that number 10 added.

21

22 Q. No. Nine of the 10 indicators had been adopted from
23 America?

24 A. Yes, yes, that's right, I agree.

25

26 Q. The tenth indicator had been the work of the
27 NSW Police?

28 A. Yes.

29

30 Q. That's the source of the indicators?

31 A. Mmm-hmm.

32

33 Q. But the source of the form containing the indicators
34 and containing other material was the Parrabell strike
35 force. That's the evidence that the Commission has.

36 A. I couldn't say much to - about that, because
37 I thought, as one might imagine, that the instrument used,
38 they had found the pro forma of it somewhere and typed it
39 all out and then added the tenth sort of stuff. Like,
40 I know that they've got to produce it as a paper document
41 or a PDF, but I thought there was - and I tried to check,
42 by sourcing the original FBI instrument and that proved
43 profoundly difficult, and as I said yesterday, I don't have
44 my notes to check, but if you wanted to put it to me again,
45 if I haven't answered.

46

47 Q. Well, if you don't know the answer, that's okay.

1 A. Sure.
2
3 Q. But the evidence before the Commission is, and indeed
4 the assertion in the police part of the Parrabell report
5 is, that the form itself was created by the Strike Force
6 Parrabell police officers.
7 A. Yeah, I - as - that seems reasonable.
8
9 Q. Right. Now, coming back to your answer a couple of
10 minutes ago, you said, and I'm not quoting you
11 accurately --
12 A. Mmm-hmm.
13
14 Q. -- that the adoption of the form itself, before one
15 even gets to how it was used, was the first step in going
16 wrong?
17 A. Well, I mean, they had honourable and good intentions
18 because there aren't many good --
19
20 THE COMMISSIONER: Q. Dr Dalton, would you be kind
21 enough again just to address your attention to the terms of
22 the question, please. You weren't asked about whether
23 motives were honourable or otherwise. Just listen to the
24 question, please.
25
26 MR GRAY: Q. I'm trying to capture what you yourself
27 said, and I have not captured your precise words, a few
28 minutes ago.
29 A. Mmm-hmm.
30
31 Q. I asked you whether you agreed that the Parrabell
32 detectives had misused the instrument, and your answer was
33 to the effect, "Well, it was the adoption of the instrument
34 in the first place that was the problem, before one got to
35 whether or not they misused it"; do you remember saying
36 something like that?
37 A. Yes, yes.
38
39 Q. And that's your view, that the instrument itself was
40 the source of the problem from the police point of view,
41 and that's why you, in the end, and your colleagues did
42 not --
43 A. I would say yes, I wish to qualify it, but yes.
44
45 Q. Well, you, in the end, you and your colleagues,
46 declined to endorse it, as we've covered?
47 A. Certainly. Certainly.

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Q. What's the qualification that you want to give?
A. Merely that there's not many good instruments around.

Q. Thank you for that. Now, at two tabs on, tab 248 [SC0I.79391_0001] there's an email chain between you and Sergeant Steer two months later in February 2017. The bottom one that started the chain from you to him, has you saying to him:

I write because at a meeting ... Friday --
as this is February --

it became apparent that we need to know much more about the FBI 10 point instrument used by [the police].

A. Mmm-hmm.

Q. You say one paragraph down:

We fully appreciate that the instrument is just used as a "tick sheet" or guide to identifying a range of bias crimes [which is fine], but we really need to know if you have any data or research findings (that you may have gleaned ... in the USA perhaps?) that speaks to the reliability and grounding that underpins its creates ...

That was your query?

A. Yes.

Q. Now, Sergeant Steer responds, at the top of the page - I won't read it all out. He says:

9 of the indicators ... come from the [US] ... the 10th is one that we added.

Then he says:

To make it clear the indicators are not a definitive checklist or tick sheet as you put it. They do not work as a checklist but as an aide-memoire at best. The

1 *indicators are designed to prompt officers*
2 *to explore bias motivation, if any of the*
3 *indicators are present, officers should ask*
4 *questions to explore possible bias*
5 *motivation further.*

6
7 He goes on to expand on that?

8 A. Mmm-hmm.

9

10 Q. And he says in bold capitals:

11

12 *If they are used as a checklist they do not*
13 *work.*

14

15 So he's making his view very clear and I assume that's
16 a view that he had expressed previously?

17 A. Yes, it is.

18

19 Q. And you respond on the next page, the same day, you
20 say:

21

22 *To be clear - ... I completely appreciate*
23 *that the indicators are not a definitive*
24 *checklist or tick sheet. Mind you, the*
25 *detectives did somewhat [partially] use*
26 *them in this way as a tool to identifying*
27 *bias.*

28

29 Now, pausing there, that's correct, is it? Your
30 understanding is that that's what the detectives did do?

31 A. If I wrote it at the time I must have thought - back
32 then thought it was true, yes.

33

34 Q. And you add:

35

36 *I understand and appreciate that you have*
37 *some major reservations about what the*
38 *Parrabell detectives did.*

39

40 A. Mmm-hmm.

41

42 Q. Now, I just note that at the top of the page,
43 Dr Tyson, to whom you must have forwarded this - oh, no,
44 I'm sorry, it - I'll start that question again. Dr Tyson
45 responds --

46 A. Okay.

47

1 Q. -- to you and Dr de Lint:

2

3 *This is fascinating - so how do the Unit*
4 *make the decision? How do we assess that?*

5

6 And that's not an unreasonable question?

7 A. No, it's not.

8

9 Q. Pardon?

10 A. It's not an unreasonable question.

11

12 Q. No. Now, once this burgeoning nature of the problem
13 had become apparent to you - that is, the problems with the
14 form itself --

15 A. Mmm-hmm.

16

17 Q. -- and the problem with how it seems the police were
18 actually using it - should you have told the police that
19 this was fundamentally misconceived, their project?

20 A. I think - I think I did express an opinion to that
21 effect, and maybe --

22

23 THE COMMISSIONER: Q. To whom?

24 A. To the police.

25

26 Q. Well, "police", but who?

27 A. Almost certainly - oh, had meetings with - I'm trying
28 to think, would it have been perhaps Assistant Commissioner
29 Crandell; perhaps Detective Paul Grace; perhaps Detective
30 Craig Middleton, two or three of those people.

31

32 MR GRAY: Q. And what response did you get when you told
33 them that?

34 A. Well, I don't - I don't recall the precise tenor.
35 I certainly remember saying, "It's a shame that you didn't
36 choose a date point and end point and just ask a question
37 and not stick - and not just confine the review to 88."
38 Did I go further and say - I think I used strong language
39 like, "It's a pretty appalling instrument", that sort of
40 thing.

41

42 But I think, in the face of, if I could put it
43 politely, the NSW Police Force having got an awful lot of
44 money, having spent an awful lot of detectives' time using
45 this instrument, it's like the process was well in train
46 and I didn't see that I had the power as an academic to
47 sort of tell them to abandon the entire enterprise.

1
2 Q. No, that would have been difficult, I suppose. But
3 you could have, couldn't you, said to them, "Look, this
4 methodology that you're using, including this form, is so
5 flawed and so rife with problems, that it's not possible
6 for us to review your work; we're just - this project
7 really can't proceed"?
8 A. Yeah, in hindsight, perhaps I could have said that,
9 and maybe should have even said that, but it --
10
11 THE COMMISSIONER: Q. I take it from what you've said,
12 even though you may not have said it, that that was your
13 brief at the time; that it was likely to be a futile
14 exercise?
15 A. Not wholly futile, but --
16
17 Q. I didn't say "wholly futile", but did you think in
18 part it was going to be a futile exercise?
19 A. No.
20
21 Q. So why did you believe that it was a flawed process?
22 A. Because the instrument they had used was fairly
23 flawed.
24
25 MR GRAY: Q. Well, the instrument was flawed, and
26 according to what we've just been discussing, you
27 understood that the way they were using it was also flawed?
28 A. Yes.
29
30 Q. Well, that makes it unsustainable, doesn't it? If the
31 methodology is flawed to begin with and then even that
32 methodology is not pursued properly, it's beyond
33 redemption, isn't it?
34 A. No, that's too strong a term, I think.
35
36 Q. Well, what term should we use, if that's too strong?
37 A. I think we say in our strike force report the
38 identification of bias crime is profoundly fraught and a
39 difficult thing to do. So they were doing the best they
40 could with good intentions.
41
42 Q. Thank you for that, but my question was, if to say it
43 was beyond redemption was too strong, given the criticisms
44 that you've been making of it, what is an appropriate
45 description of the degree of the problem?
46 A. I couldn't really tell you on the spot. I'd have to
47 give it a bit - lot more thought.

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THE COMMISSIONER: Q. Didn't you give it a lot of thought when you decided to provide an alternative methodology?

A. Yes, Commissioner, I would have, but as I keep explaining, I had - all my thoughts were captured in handwritten notes that I no longer have, and that's a shame, because I think if I could have read them I would have been able to give you a lot - thorough answers, and that's being honest.

Q. All right. And reading the dense text of the material you and Mr de Lint did produce does not enable you to recall now what it was you were thinking at the time; is that right?

A. No - that is right, rather, yes.

THE COMMISSIONER: All right, thank you.

MR GRAY: Q. On a perhaps related note, in about this time, in fact, December/January, December 2016, January 2017, so slightly before this set of emails, were you aware that there was an exercise that's been referred to as a "dip sample", where Sergeant Steer was given some, I think about 12, of the Bias Crime Review Forms and asked to express a view of his own about those dozen or so?

A. Yeah, that does ring a bell. I don't recall much about it, but the number 12 and this - not the acronym, but this idea that Sergeant Steer was asked to look at a sample, that rings a bell.

Q. Well, were you told what the results of that were, as to whether or not he agreed with some or all of the views that the strike force had formed about that sample set of cases?

A. No, I only have a faint memory when you put it to me then that Sergeant Steer was given a small sample to do something with, like a quality control process or - I'm not - that's as much as I can remember.

Q. Well, you had the view, and we saw this morning, that the participation of the Bias Crime Unit, which is essentially personified by Sergeant Steer, was vital or very important - we saw that in an email that we looked at today?

A. Yes. And I remember Sergeant Steer really well. He was very helpful, he was very cooperative, really helped

1 bring me up to speed with a lot of the aspects of what the
2 police had been doing.

3
4 Q. But he wasn't part of the strike force, though, was
5 he?

6 A. Well, to be honest, I - you perhaps know better than
7 me. I thought he might have been part of the strike force
8 initially in some context but then was removed from it.

9
10 Q. That was your impression?

11 A. My impression - well, it - you've got to just
12 understand, from the perspective of when I arrived in
13 Sydney, the person who I meet fairly quickly and he's
14 taking me around and we're having discussions, so without
15 formally checking whether he is on some list of official
16 Parrabell people, I just presumed he was part of Parrabell.

17
18 Q. I see. And so did he tell you that he had been given
19 a sample and, in some respects, had different views from
20 the strike force people on those sample cases?

21 A. I think he must have. I can't remember whether it
22 might have been in an email that he said it to me or just
23 in person, but it - what you're saying strikes a chord.
24 I'm remembering merely that - if 12 is the number, that -
25 perhaps it makes sense, but something about that he was
26 asked to do, like, a quality control or some sort of
27 process with it.

28
29 Q. In a response document that you and Dr de Lint have
30 put in to the Special Commission, and if you need to have
31 it brought before you - we'd better have it called up.
32 It's in volume 12, tab 258 [SC0I.82365_0001]. This is the
33 one that says at the top, "Written by de Lint and endorsed
34 by Dalton"?

35 A. Okay.

36
37 Q. It's a document that - it's undated but it was within
38 the last month or two, I think.

39 A. Mmm-hmm.

40
41 Q. Now, on page 6 of that document --

42 A. Yeah, make it a bit - okay, a bit - smidge smaller,
43 please.

44
45 Q. Well, I'm trying to - I'm looking for page 6, at least
46 my numbering may be different. Do you have it in your
47 file?

- 1 A. Which tab, sorry?
2
- 3 Q. 258 of volume 12. Two-five --
4 A. Eight?
5
- 6 Q. Yes. On the screen, if we can just scroll up a bit
7 further. It must be on the previous page on this --
8 A. There was a reference to Sergeant Steer.
9
- 10 Q. -- just a bit further. See the paragraph beginning:
11
12 *There has been representation from*
13 *Sergeant ... Steer ...*
14
- 15 A. Yes.
16
- 17 Q. I won't read it all, but it refers to the BCIF, in his
18 view, something that should be used by frontline police as
19 a trigger; do you see that?
20 A. Yes.
21
- 22 Q. And then in the next paragraph, you and Dr de Lint
23 say:
24
25 *It is regrettable that the [Police Force]*
26 *was not able to resolve the hierarchy*
27 *question between the Hate Crimes Unit*
28 *Coordinator --*
29
- 30 that's Sergeant Steer --
31 A. Yes.
32
- 33 Q. --
34
35 *and Strike Force Parrabell so that each*
36 *party could participate to the best of*
37 *their capacity.*
38
- 39 You were conscious, I take it, because you and Dr de Lint
40 have said this --
41 A. Yes.
42
- 43 Q. -- that there was some hierarchy question that, in
44 your view, was not properly resolved?
45 A. Yes.
46
- 47 Q. And you go on - well, this is Dr de Lint writing it

1 but you endorsing it:

2

3 *According to my memory of events, we were*
4 *not informed that there was significant*
5 *non-concordance --*

6

7 A. Mmm-hmm.

8

9 Q. --

10

11 *between Sergeant Steer and the --*

12

13 I think that's Task Force Parrabell, perhaps Strike Force
14 Parrabell --

15

16 *... regarding a sample of cases.*

17

18 Is that your recollection too that you weren't --

19 A. Yes, because, as I said, I --

20

21 Q. -- that you were not informed?

22 A. Yes.

23

24 Q. Let me come back to where I was yesterday --

25 A. Mmm-hmm.

26

27 Q. -- and ask for Dr Dalton to have volume 2, please.

28 I was taking you through your tender, if you could find
29 that at tab 25 [SC0I.75775_0001].

30 A. I'd prefer to read it off the screen. Is that okay?

31

32 Q. All right, if you prefer to read it on the screen.

33 Volume 2, tab 25. There we are. Thank you, that's
34 correct. Well, that's the cover page. If we can scroll
35 through to where we were yesterday, which is about --

36

37 THE COMMISSIONER: I think we were on page 25 in the upper
38 right-hand corner.

39

40 MR GRAY: That's right, page 25 in the upper right-hand
41 corner.

42

43 Q. Now, I was taking you through the credentials and
44 expertise of yourself, Dr de Lint and Dr Dalton [sic]. If
45 you're happy to leave it on the screen, then that volume
46 can be taken away and could you just be given volume 13,
47 please. Just keep that on the screen. Tab 270. Volume

1 13, tab 270 [SC01.80032_0001]. Have you got - no. Well,
2 if we need to - you prefer to do it on the screen, don't
3 you?

4 A. I really do. It's just --

5

6 Q. In that case, could we have volume 13, tab 270 on the
7 screen. An email chain between you and Les Moran?

8 A. Mmm-hmm.

9

10 Q. He's an academic in the UK; is that right?

11 A. Yes, he's a retired professor from Birkbeck College.

12

13 Q. You write to him on 12 December 2016, after you had
14 been working on the Parrabell exercise for about two months
15 or so, and you say:

16

17 *The next stuff is TOP SECRET given the*
18 *conditions of my supply agreement.*

19

20 And you say, "Cone of silence", and then you say:

21

22 *I got the Strike Force Parrabell tender to*
23 *review the NSW police work on the 88*
24 *Hate-related homicide cases that the*
25 *community have been agitating about for*
26 *many years. It is a profoundly challenging*
27 *brief. Bloody difficult for all sorts of*
28 *reasons. I have Willem de Lint and*
29 *Danielle Tyson on my team, but it's still*
30 *a testing and hard slog. I wish I had some*
31 *of your hate crime knowledge and wisdom*
32 *between my ears. Perhaps I should have*
33 *roped you in when I was devising the*
34 *tender? Too late now!*

35

36 Do you see that?

37 A. Mmm.

38

39 Q. Now, when you say, "I wish I had some of your hate
40 crime knowledge and wisdom between my ears", was that
41 a candid reflection on your part that your hate crime
42 knowledge was scant, for someone engaged in this exercise?

43 A. No. Scant in - compared to someone like
44 Professor Moran.

45

46 Q. You were saying that you were finding it difficult, in
47 part, because you didn't have as much hate crime knowledge

1 as you think you might have needed?
2 A. Yeah, because it - there's so much out there. So,
3 yeah, I could agree with that.
4
5 Q. And the same would apply in your mind, I presume, to
6 Dr de Lint and Dr Tyson?
7 A. No, I couldn't speak for them. That wouldn't be fair.
8
9 Q. Well, they didn't have much in the way of hate crime
10 knowledge either, did they?
11 A. No, I don't think that's - I don't think that's
12 precisely true.
13
14 Q. I won't repeat what we went through yesterday but
15 their credentials are no doubt substantial in some respects
16 but they're not in that area, are they?
17 A. No, I guess they don't have hate crime written in a
18 lot of their academic articles.
19
20 Q. Well, not just written in, but they don't write about
21 that subject, do they?
22 A. No.
23
24 Q. Now, back to your tender, back at volume 2, tab 25
25 [SCOI.75775_0001], and if we can turn to page 27 in the top
26 right-hand corner, this heading, "Independence [a guarantee
27 of objectivity]" is similar, one can see, to the draft that
28 we looked at yesterday, and in terms of independence, you
29 stress towards the bottom of that paragraph two things,
30 really, in terms of objectivity. One being physical
31 distance?
32 A. Yes.
33
34 Q. And the other being lack of involvement in the events
35 under review - ie, in New South Wales?
36 A. Yes.
37
38 Q. And you, in effect, contrast that with the baggage
39 referred to 10 lines up that might be associated with some,
40 including some academics, in that regard; is that right?
41 A. Yes.
42
43 Q. Now, then there's a heading "Dedication to genuine
44 cooperation", and you see there that you devote
45 considerable emphasis to the idea of collaboration as being
46 how you saw the project proceeding --
47 A. Yes.

1
2 Q. -- is that right? In the second line you refer to
3 this collaboration. In the third line you refer to
4 cooperation fostering a collaborative spirit?
5 A. Yes.
6
7 Q. A couple of lines down --
8 A. Am I allowed to elaborate?
9
10 Q. Yes.
11 A. I seem to recall that the document that we were
12 responding to in the tender really emphasised this idea of
13 collaboration.
14
15 Q. Quite so.
16 A. I recall Narmon Tulsi saying to me, "You've got to
17 speak to this concept."
18
19 Q. Thank you. I was going to ask you that, but thank
20 you. You're quite right. The request for tender "Terms of
21 Reference" page had a number of bullet points, the first of
22 which was:
23
24 *A collaborative approach to working with*
25 *the police on Strike Force Parrabell.*
26
27 A. Yes.
28
29 Q. And you're saying that your colleagues or associates
30 at Flinders were telling you to emphasise the collaborative
31 idea?
32 A. Yes.
33
34 Q. In your tender?
35 A. Yes.
36
37 Q. And indeed, you did. You did emphasise it, as I'm
38 showing you now.
39 A. Mmm-hmm.
40
41 Q. Do you see a line or two below where I was, you say:
42
43 *By working creatively and*
44 *collaboratively ... and with a focus on the*
45 *minutiae), both the police and our academic*
46 *team will craft a meticulously well thought*
47 *through report ... that will*

1 *withstand ... scrutiny ...*

2

3 Et cetera. Do you see that?

4 A. Yes.

5

6 Q. And again the idea in your mind, then at least was, or
7 the expectation, was that the two of you, the police and
8 the academics, would be crafting one report, it seems?

9 A. Yes, I think that's fair.

10

11 Q. Now, at the top of the next page, in bold, this
12 appears:

13

14 *The intimate police knowledge (of the cases*
15 *under review) and our academic knowledge*
16 *will coalesce in a manner that sees a very*
17 *tightly honed report produced ...*

18

19 Et cetera?

20 A. Yes.

21

22 Q. And again, that's another way of stressing the
23 collaborative nature of what you were proposing?

24 A. Yes.

25

26 Q. Now, just briefly, in the next section headed,
27 "A meticulously well thought out approach to the brief",
28 there's an outline and 13 points as to various tasks that
29 would be pursued. At number 4, this appears:

30

31 *Derek --*

32

33 being yourself --

34

35 *to provide detailed feedback on --*

36

37 "Strike Force Parrabell" I imagine that is --

38

39 A. Yes.

40

41 Q.

42 *-- to allow client to improve working*
43 *understanding of review and hone quality*
44 *and scope of [Strike Force Parrabell].*

45

46 A. Yes.

47

- 1 Q. So the police, in your mind, were the client?
2 A. Yeah, loosely speaking because they were paying, I was
3 told that, by the university that, yeah, they were the
4 client.
5
6 Q.
7 *This will be a two-way process --*
8
9 you go on --
10
11 *with the view to clarify anything that*
12 *isn't entirely clear and produce a clarity*
13 *of understanding about [Strike Force*
14 *Parrabell] in its entirety shared by both*
15 *parties.*
16
17 A. Yes.
18
19 Q. At 5:
20
21 *Derek (and team) to write first draft of*
22 *report in close collaboration with police*
23 *as draft takes shape.*
24
25 A. Yes.
26
27 Q. Item 6:
28
29 *Client [will] review first draft and*
30 *provide feedback.*
31
32 You then would provide a second draft and then further
33 meetings would take place and eventually the report would
34 be arrived at?
35 A. Mr Gray, might I just for the Commission's benefit,
36 say this term "client" is not one that resonates with me.
37 I think I might have been given a pro forma thing to sort
38 of follow because it's just a word I kind of wouldn't
39 adopt. So I think Narmon or someone must have said, "You
40 put it this way." I find the term a bit --
41
42 Q. Well, "client" is a word generally that carries with
43 it connotations of someone working for someone else and
44 doing what that --
45 A. Absolutely.
46
47 Q. And doing what that someone --

1 A. I'm just trying --
2
3 Q. Just let me finish the question. Connotations of
4 working for someone else and doing what that someone else
5 wants - that's what you do for a client?
6 A. Yeah, within reason, I think that's one definition of
7 "client". You could say that an architect or something
8 doesn't just do what they want. They might say, "Actually,
9 it would be better to do X or Y", there's not --
10
11 Q. Of course. Of course.
12 A. Yeah.
13
14 Q. But the client/provider relationship is one where the
15 client is engaging the provider to do something --
16 A. Yes.
17
18 Q. -- for the client at the client's direction?
19 A. Yes.
20
21 Q. No doubt shaped to some extent by recommendations
22 which the provider might give to the client?
23 A. Yes.
24
25 Q. All right. Now, just lastly on this tender, under the
26 heading, "Value for money", without looking at the figures
27 per se, from the way the cost is broken up there, do we
28 take it that you were going to do the lion's share of the
29 work?
30 A. Yeah, and I can be honest and say it was my first
31 tender, I put it together under extreme pressure. It soon
32 became apparent - I don't know what I was thinking -
33 I needed much more help from Professor de Lint, so - and
34 I think at the time, some - was it a question of his
35 availability, because sometimes at university people are
36 busy doing all sorts of other things, but certainly with
37 all good intentions, I look at that as presented now and
38 I know it changed later and that was - that was
39 misconceived. I should have given more scope to
40 Professor de Lint.
41
42 Q. All right. Well, then, jumping forward then to what
43 in fact happened, by the time it was all finished, how had
44 the work been divided up approximately?
45 A. Well, for starters, can you scroll up a little bit -
46 oh, down, sorry. Okay. There was an additional dataset
47 that was entered so I wrote to Assistant Commissioner

1 Crandell and another \$5,000 was added.

2

3 Q. No, I'm not asking about the numbers of dollars, but
4 in terms of who did the work, overall, in the end, did you
5 do most of it or was it shared one-third, one-third
6 one-third, or what?

7 A. Yeah, no, it was - Dr Tyson was only involved in
8 coding or analysing the initial cases and then we'd had the
9 series of meetings of concordance, where we'd all talk
10 about the cases, disagreements, et cetera, to get a degree
11 of clarity, and she didn't want much more involvement in
12 the project, so she didn't do much more.

13

14 And Professor de Lint probably did, I don't know, 40 -
15 35, 40 per cent? A lot of the - a lot of the menial stuff,
16 sort of emailing the detectives and what have you, fell to
17 me. I did a lot of the admin. He certainly, in terms of
18 the Excel spreadsheets and all the statistical analysis,
19 did almost all of that. He was very good at that.

20

21 Q. I see. In terms of, as you say, communication with
22 the police by email and the like, it seems to have been
23 overwhelmingly yourself?

24 A. Yes, very fair to say that.

25

26 Q. Are you saying he did a lot of work on spreadsheets
27 and coding, was it?

28 A. Well, putting - putting the data into the Excel
29 sheets, and there's often problems, as one knows, with
30 Excel sheets, where if you don't triple-check, you get the
31 formula ever-so - wrong and then - so he spent a lot of
32 time and he's very good with that, sort of attending to
33 making sure that was thorough and accurate.

34

35 Q. And without remotely intending to minimise the
36 importance of that work, that's kind of data inputting and
37 numerical work; it's checking accuracy?

38 A. Yeah, no, no, I wouldn't - no, he did a lot - he did
39 a lot - he did a lot in terms of the discussions and the
40 analysis and I would - we had offices next to each other so
41 sometimes I would go to his office with homicide articles
42 and we would discuss concepts and - I mean, what - I know -
43 and I don't want to make a speech, because I know that
44 that's not what you like, but what sits behind the Strike
45 Force Parrabell report that we wrote is like a long movie
46 where there's a cutting room floor, there's just piles of
47 other articles and things that were read to distil down -

1 you know, I left as many references out as I could have put
2 in because I wanted to make it more succinct.

3
4 THE COMMISSIONER: Q. But the reality is this, is it,
5 that you were the one who had almost all, if not all, of
6 the face-to-face contact and/or discussions with
7 NSW Police?

8 A. Initially yes, but we'd have to qualify that by saying
9 that we flew to Sydney for some sort of big concordance
10 meeting with the police that I think went for - was it one
11 or two days, and he attended that and there was lots of
12 discussion.

13
14 Q. That was in October 2016?

15 A. I guess so.

16
17 Q. Well, 2021 and October 2016, but apart from that
18 meeting, is it fair to say that you participated in the
19 lion's share of either face-to-face, email and/or telephone
20 conversations with NSW Police, as opposed to
21 Professor de Lint?

22 A. Yes, very fair.

23
24 THE COMMISSIONER: Okay, thank you.

25
26 MR GRAY: Q. Now, just on this motion of collaboration,
27 I want to take you to some emails, but before I do that, in
28 the actual Parrabell report itself that was eventually
29 written, which is exhibit 1, tab 2 [SCOI.02632_0001], at
30 page 56 --

31 A. Mmm-hmm.

32
33 Q. -- down at the bottom of that page, you say - well,
34 in fact, I should scroll up one paragraph further.
35 Thank you. You give an account there in that paragraph,
36 beginning "In terms", of the nature of the way in which the
37 work was broken up.

38 A. Yes.

39
40 Q. Then in the paragraph below, you talk about both
41 consultation and deliberation being productive, and then
42 six or so lines in to that paragraph this appears:

43
44 *The academic team worked collaboratively*
45 *with the [police] as findings were being*
46 *finalised and experienced a strong spirit*
47 *of cooperation in its interactions.*

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That's accurate?

A. Yes.

Q. And when it uses the word "findings" there, that's the findings of the police or the findings of the academic team or both?

A. See, certainly when we had that big meeting in Sydney - it's a shame, I wish I had my notes, I could give a 100 per cent accurate answer. But my sense was we shared, case by case, our findings and we had productive discussions about all the details in the cases. Did that sway us, the academics, to make any changes to our classifications in light of - I can't recall. And did they make any changes in relation to ours, I also can't recall.

But you could then say, "Well, what was the - what was the nature of the meeting?" I just - it's a shame. I just wish I could - I remember the broad tenor of being in the room, but there was - I imagine by then, in a way, there - I think often we would just note cases where we thought, "Okay, that one clearly isn't a bias crime", we both seemed to be very clear about that, but some of the more controversial ones where there was insufficient information or - but, yeah, I just - I really just don't recall the nature of whether those conversations contributed to changes in final perspectives of the categories - the classifications, rather.

Q. Right. But accepting that for the moment, the object of these collaborative meetings and discussions, it seems, was for them to know what you thought about their findings, and whether you thought their findings needed some alteration, and for you to know what they thought about yours and whether they thought yours should be altered?

A. Yes, I guess that - that seems fair.

Q. Well, the next sentence in the report addresses what I want to ask you about.

A. Sure.

Q. The sentence then reads:

This might strike some observers as irregular (in terms of the logic that a review must be conducted from a perspective of pure objectivity) ...

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A. Yes.

Q. Now, if I may gently suggest to you, it might strike some observers as irregular, and indeed, it looks irregular, doesn't it, if the object is objectivity and independence?

A. The only way I could answer it would be to say there is a tension at play, a huge tension, which is - and please allow me to elaborate. I'll keep it as absolutely succinct - and the tension is, it's a tender process, so they are paying. But in terms of the importance of the task, one wants to be as objective as possible with one's instrument, but we did genuinely see that having these discussions would iron out misapprehensions or misunderstandings that might lead to mis-coding or misclassifications.

There was no sense - but I also understand, in terms of the purity of this sort of process, that this is superior in the sense that you Hoover up every document you can find - the pure objectivity, and you do whatever you want with it and you're beholden to no-one. That obviously is some sort of a gold standard of a process. But with a tender, where they're paying you, no, I struggled with the tension all the time, because I could see that in a - in a more perfect world, that this - that sense of objectivity would have been - and going back to your earlier point, where you did - I think, as envisaged initially, it was going to be this team report, and because it - it eventuated into something that one would say wasn't, it was like there were just two reports.

MR GRAY: I'm conscious of the time, Commissioner.

Q. But just one question there, thank you for that. One reason, I imagine, tell me if this is right, why the original idea of one report bifurcated in the end to a report with two different sections, was precisely because you came to the view that the way they had gone about it was just unjust - unsupportable?

A. I've given this a lot of thought in the past, and as I said, it's a shame I don't have my notes, but I honestly cannot tell you or give an explanation for why - and it's not uncommon with processes where you, you know, there's a document saying, "This is what we're going to do." I do not quite know why it ended up that way.

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THE COMMISSIONER: Q. But the use of the form was the bleeding obvious point of division at least, wasn't it?
A. Sorry? Put that to me again.

Q. The use by the police of the Bias Crime Indicator Form was a very obvious trigger point as to why you couldn't adopt their methodology?
A. Yes.

THE COMMISSIONER: Is that a convenient time?

MR GRAY: Yes.

THE COMMISSIONER: Mr Tedeschi, I will resume as quickly as I can and we will keep you informed.

MR TEDESCHI: Thank you.

SHORT ADJOURNMENT

THE COMMISSIONER: Yes, thank you. Dr Dalton, would you be kind enough just to come back. Thank you very much.

THE WITNESS: Sure.

THE COMMISSIONER: Yes, Mr Gray.

MR GRAY: Q. Could Dr Dalton have volume 12, tab 258 [SCOI.82365_0001]. This is the response document that you and Dr de Lint put in in response to the expert reports in this Commission. You understand?

A. Yes.

Q. You know the document I'm talking about? Tab 258 in volume 12, this is the one written by Dr de Lint and endorsed by you in recent months.

On the second page, at least in my copy, there's a paragraph beginning, "Collaboration was engaged"; do you see that?

A. Yes, I do.

Q. Your document - yours and Dr de Lint's document - says:

Collaboration was engaged to explore the

1 *decision-making behind categorisations and*
2 *processes. We were interested in learning*
3 *enough so that if there were still*
4 *differences in the weighing of indicators*
5 *and scoring, it was not on the basis of*
6 *mistaken interpretations or assumptions.*

7

8 Do you see that?

9 A. Yes, I do.

10

11 Q. So the use of the words "if" and "still" indicates,
12 does it, that the expectation was that, preferably, there
13 would not still be differences in the weighing of
14 indicators and scoring; correct?

15 A. Put that assertion to me again, please.

16

17 Q. The presence of the word "if" and the word "still" -
18 that is, "if there were still differences" - indicates that
19 the expectation was that preferably, there would not be
20 differences between the two teams in the weighing of
21 indicators and scoring; is that right?

22 A. There would - there were and would have been
23 differences, because they did score things differently to
24 us. So I'm trying to answer --

25

26 Q. Do it again. See the first sentence:

27

28 *Collaboration was engaged to explore the*
29 *decision-making behind categorisations and*
30 *processes?*

31

32 A. Yes.

33

34 Q. The next sentence is "We" - that is, you and
35 Dr de Lint:

36

37 *... were interested in learning enough so*
38 *that if there were still differences in the*
39 *weighing of indicators and scoring [that]*
40 *was not on the basis of some mistaken*
41 *interpretations or assumptions.*

42

43 Right?

44 A. Mmm-hmm.

45

46 Q. Now, that indicates that the expectation was that,
47 preferably, there would not be differences. This is saying

1 what would happen if there were "still" differences, but
2 seemingly, the expectation was that, for the most part,
3 that was something that it would be preferred not to
4 happen?

5 A. All I can - I mean, he wrote the sentence and
6 I endorsed it, but all I can say is that it's a strange
7 sentence in the whole thing because I would have thought
8 that we both would have expected that there would be some
9 differences.

10
11 Q. The sentence seems to read as though the expectation
12 was that there would not be many, and perhaps not any,
13 doesn't it? That's how the sentence reads?

14 A. Perhaps it does, but yes. It's a problematic sentence
15 because I would have - I would have fully expected at that
16 stage that there would be some differences in the coding,
17 as we - as we've discussed.

18
19 Q. In the next paragraph --

20 A. Mmm-hmm.

21
22 Q. -- you and Dr de Lint say this:

23
24 *On the question of whether these*
25 *discussions were directed at converting all*
26 *participants to a common point of view,*
27 *I reiterate that my view is that the*
28 *discussions were aimed at coming to an*
29 *understanding of how each party came to its*
30 *finding. We were not looking to come to*
31 *the same finding on the cases, although*
32 *there was a predisposition to generously*
33 *consider the alternative evaluation.*

34
35 Do you see that?

36 A. Yes.

37
38 Q. Now, is that a way of putting it that you agree with?

39 A. I certainly agree with - I certainly agree with the
40 first bit. The second bit, "We were not looking to come to
41 the same findings on the cases", absolutely, "although
42 there was a predisposition to generously consider the
43 alternative evaluation" I'm not entirely sure what he means
44 by that sentence.

45
46 THE COMMISSIONER: Q. Why did you endorse it?

47 A. I endorsed the tenor or the sentiment of the entire

1 document because I was too busy working 40 hours a week to
2 write one myself.

3
4 Q. Yes, but "endorse" means, doesn't it - or you tell me
5 what I should construe by the heading of this document:

6
7 *The response is written by Willem de Lint*
8 *and endorsed by Associate Professor Dalton.*

9
10 How should I interpret the word "endorse"?

11 A. I would say you should interpret it that I endorse the
12 tenor or the sentiment of the document.

13
14 Q. The sense of the document, not the detail of it?

15 A. Not all of the detail, no.

16
17 MR GRAY: Q. Did you say --

18
19 THE COMMISSIONER: Q. Some of the detail?

20 A. Would you like me to retract my endorsement?

21
22 Q. No. What I'd like you to do is to tell me the truth.

23 A. I'm telling you the truth.

24
25 Q. And what I'd like you to do is not ask me whether you
26 should withdraw your endorsement. If you genuinely feel
27 that, sitting here, as you are being asked questions, you
28 no longer wish to endorse the document, by all means, do
29 so. I'm anxious to hear your views. But I'm also anxious
30 for you to express them candidly and transparently.

31
32 Now, if what has been exchanged so far means that you
33 feel more comfortable not endorsing the document, then take
34 that course. If you're still happy for me to interpret the
35 word "endorse" as "agree", say, then put a caveat in if you
36 want to.

37 A. Yeah, it would seem - it would seem, in the interests
38 of this process working well, that I should remove my
39 endorsement because I didn't fashion the nuanced detail of
40 all these sentences, and so when being asked questions
41 about them, when you haven't written the sentence yourself,
42 it's a bit problematic. So perhaps whilst I still endorse
43 the tenor and the sentiment of what he has written, I
44 should, given he is the person who authored this document,
45 I should --

46
47 Q. Well, is this fair, then, that this is a document the

1 detail of which you did not carefully consider prior to him
2 obviously interpreting your participation in it as an
3 endorsement? Is it fair to say that you have not
4 considered carefully the detail of each of the sentences in
5 this document?

6 A. I guess that would be a fair point to put.

7
8 Q. You read it somewhat cursorily and you endorsed, do
9 I take it, the general sentiment of it?

10 A. I think that's a very fair thing to say, Commissioner.

11
12 THE COMMISSIONER: All right.

13
14 MR GRAY: Q. Well, was there a predisposition actually
15 on your part to generously consider the alternative
16 evaluation, if there was one, from the police?

17 A. I actually don't understand precisely what he means by
18 that phrase so I can't answer the question. I really
19 don't.

20
21 Q. What is difficult about that phrase "predisposition to
22 generously consider"?

23 A. I just - to me it's a bit vague. I really don't
24 understand it. The bit I'm comfortable with is - I'm a
25 hundred per cent comfortable with this bit, "The
26 discussions were aimed at coming to an understanding of how
27 each party came to its finding". I'm a hundred per cent
28 comfortable with that. The bit after it, I'm completely
29 uncomfortable with.

30
31 Q. What's the reason for the discomfort?

32 A. Because I don't understand it.

33
34 Q. Do you understand the word "predisposition"?

35 A. Please don't patronise me, that's not very nice.

36
37 Q. I'm not patronising you; I'm trying to find out what
38 your difficulty is in understanding it.

39 A. I didn't write the sentence. I don't quite understand
40 what he's getting at. That's all I can say.

41
42 THE COMMISSIONER: Q. Can I ask you this: if you go to
43 the paragraph immediately above the one Mr Gray's asking
44 you about --

45 A. Mmm-hmm, yes.

46
47 Q. -- you see the words, "We are not investigators, and

1 we understand that investigators make evaluations",
2 et cetera?

3 A. Mmm-hmm.

4

5 Q. Did you have an appreciation that each of the people
6 from the police's point of view in Parrabell were
7 experienced homicide investigators?

8 A. I had an understanding that some of them were homicide
9 investigators but I think some of the others were
10 detectives but perhaps not homicide detectives.

11

12 Q. All right. But each of them was an experienced
13 detective at least?

14 A. Yes, yes.

15

16 Q. And does it follow, because neither you or Willem
17 de Lint had actually ever yourselves performed any
18 investigations, you relied very heavily upon the police's
19 assessment of each of these cases, insofar as you thought
20 it was an indication of their investigation of their files?

21 A. I guess we relied on this - the logic that they would
22 have - in going through all the material and forming the
23 dossiers with the summary of the cases, that they would
24 have done that diligently.

25

26 Q. And you told me yesterday that you didn't go back and
27 second-guess the anecdotal or the narrative material that
28 the police had prepared?

29 A. No, I didn't. That's true.

30

31 THE COMMISSIONER: All right. Yes, Mr Gray.

32

33 MR GRAY: Q. Have a look at the next sentence after the
34 one that contains the passage that you say you don't
35 understand. The next sentence is:

36

37 *We were aiming at a consensus document ...*

38

39 Do you see that?

40 A. Yes.

41

42 Q. Pausing there - and I will go through the whole
43 sentence --

44 A. Sure, fair enough.

45

46 Q. -- were you aiming at a consensus document?

47 A. It's a very fair question to ask and I'm trying to

1 give an accurate answer. I mean, "consensus" in the sense
2 as, as much consensus as could be achievable, but not - we
3 certainly - were we aiming at a consensus document?
4 I guess the answer has to be no.
5

6 Q. So Dr de Lint in this sentence - and I will go through
7 the rest of it - says you were aiming at a consensus
8 document and you say you were not?

9 A. This term "consensus" is - it's very precise, so
10 it's - I mean, it was a very complex task that we did, so,
11 you know, you could talk about "consensus" in a different
12 context and it's easy to sort of clarify it, but the nature
13 of this task - and when he says - to be fair to him, when
14 he says, "We were aiming at a consensus document", there is
15 this slight confusion in terms of, at the start of the
16 tender, we thought there was going to be a consensus
17 document but it turned out there was a police bit at the
18 front and a police bit - and our bit at the end, yeah, that
19 they were two separate reports.
20

21 So I'm doing my best but I - I can't, in terms of
22 that - I can't in terms of that logic really, because it's
23 confusing in terms of what we thought was in - I seem to
24 recall that perhaps near that extreme end of the process
25 I was a little bit surprised that we weren't given a draft
26 of the final document, whatever that draft might have -
27 might have been.
28

29 Q. You mean a draft of the final police part?

30 A. Yeah - yes.
31

32 Q. Well, let's just go through the whole of the sentence,
33 as I promised you I would.

34 A. Mmm-hmm.
35

36 Q. What the sentence says is this:
37

38 *We were aiming at a consensus document that*
39 *reflected the work of the strike*
40 *force ... (with input from the Bias Crimes*
41 *Unit) in addition to our own analysis on*
42 *the cases as per bias crime indications.*
43

44 A. Mmm-hmm.
45

46 Q. Were you - that is, you and Dr de Lint - aiming at
47 a consensus document that reflected the work of the strike

1 force and your own analysis of the cases?

2 A. No, only to take on board their views as expressed in
3 the discussions that might have been helpful. But I guess
4 our review was going to be just ours itself.

5

6 Q. Well, let me take you to some emails --

7 A. Mmm-hmm.

8

9 Q. -- that you have written over the period, and just
10 reflect on the answers you've just been giving about
11 whether you were seeking consensus or not.

12 A. Mmm-hmm.

13

14 Q. First of all, could we go to volume 10, tab 247
15 [SC0I.79694_0001]. This is an email chain which has
16 quite a number of components to it. I want to start on
17 what is, at least on my copy, the bottom of the second
18 page, where there's an email from you to Craig Middleton
19 and Paul Grace of 12 December 2016?

20 A. Yes.

21

22 Q. Starting "Dear Craig and Paul, I hope you are both
23 well"?

24 A. Mmm-hmm.

25

26 Q. It's further up in that. There we are. Just scroll
27 down slightly further so we can see the top of that email.
28 There we go, thank you.

29

30 You see that is an email from you to Messrs Middleton
31 and Grace of 12 December?

32 A. Yes.

33

34 Q. You say various things by way of preliminaries. Six
35 lines in you say:

36

37 *For what it is worth, I have approximately*
38 *13 cases that I might classify differently.*
39 *As Craig alluded to, this was always likely*
40 *to be the case.*

41

42 *This morning, Willem and I had a fruitful*
43 *discussion with Jackie --*

44

45 that's Jackie Braw --

46

47 *Superintendent Crandell, Shobha --*

1
2 that's Shobha Sharma --

3
4 *and Geoff Steer this morning for one hour*
5 *(as instigated by [the police]).*
6

7 And I don't need to take you to the rest of it, but that's
8 what you are raising there?

9 A. Mmm-hmm, yes.

10
11 Q. The response comes back from Craig Middleton above,
12 and he says:

13
14 *Hi Derek.*
15 *Thanks for the update much appreciated ...*
16

17 And so on. Then the part that I want to take you to is at
18 the second-last paragraph. He says:

19
20 *As to the 13 cases you mention you might*
21 *classify differently - I did expect there*
22 *to be some differences ...*
23

24 And then he goes on to talk about that. Do you see that in
25 that paragraph?

26 A. Yes, I do.

27
28 Q. He says there were some that were quite tricky, and so
29 on. Then in the last paragraph he says:

30
31 *I really look forward to seeing the 13 you*
32 *have selected and comparing it to see if*
33 *they are the same as the ones that we had*
34 *some difficulty/discussions with.*
35

36 A. Mmm-hmm.

37
38 Q.
39 *At some point in the future it would be*
40 *great to sit down with you again (if*
41 *possible) and discuss those matters as I'm*
42 *sure that it would make for some*
43 *interesting discussions from differing*
44 *perspectives. I really don't think we*
45 *would be too far apart.*
46

47 You received that --

1 A. Mmm-hmm. Yes.

2

3 Q. -- didn't you? Yes. His expectation was that the
4 academic team and the police team, in the end, would not be
5 too far apart?

6 A. Yes.

7

8 Q. And did you share that expectation?

9 A. Yes. That's - that's fair to say.

10

11 Q. And then there's your answer, which is the top email
12 in the chain, 12 December. In the third paragraph, dealing
13 with the point that we're talking about, you say:

14

15 *The million dollar question is whether*
16 *Willem and Danielle will come up with the*
17 *same 13/15 odd cases as me ...*

18

19 You say:

20

21 *Dear god I am wanting overlap! (but it will*
22 *be what it will be).*

23

24 Pausing there, there you're talking about the preference,
25 if possible, for the three of you on your side to
26 eventually finish up in the same place?

27 A. Absolutely, I - it was important for the three of us
28 to reach a concordance about the cases or else how else
29 could we sort of settle upon them. So that's what I was
30 alluding to there.

31

32 Q. That's what you're talking about there. Sure. I will
33 come back to that. So you say:

34

35 *At some stage we academics will have to*
36 *settle on some sort of crude agreement.*

37

38 Do you see that?

39 A. That's a - yeah, and that's a terrible phrase.
40 I would have meant an agreement rather than - "crude" is
41 a bit awful; "agreement" would have been better.

42

43 Q. Yes. Then you say this:

44

45 *Superintendent Crandell mooted that in the*
46 *future we will no doubt engage in a sharing*
47 *process - one where we all get to argue*

1 *[deliberate might be a nicer term] about*
2 *the final or ultimate classification and*
3 *reach a consensus ...*

4
5 Now, that was your objective, wasn't it?

6 A. It's been helpful - see, with the passage of six years
7 you don't remember. Once you've presented me with all
8 this, I'm quite comfortable to say we were seeking
9 consensus.

10
11 Q. And by that I mean, just to be clear, that your
12 objective, yours and your two colleagues on the one hand,
13 and the police on the other hand, was, if at all possible,
14 to reach a consensus in the sense of arriving at the same
15 or almost the same views about the cases?

16 A. I wouldn't have said the same, but almost the same.

17
18 Q. Right. Thank you. Now if we could go to volume 3,
19 tab 80 [SCOI.74401_0001] this is the next day, 13 December,
20 and the chain starts with an email from Mr Crandell to you,
21 copied to various others?

22 A. Mmm-hmm.

23
24 Q. He is also referring to the meeting the day before.
25 And he says in those six numbered points that this is what
26 he has in mind, it seems: one, that the position of the
27 police investigators about the cases is indicated; two,
28 that the Bias Crimes Coordinator - namely, Sergeant Steer -
29 has also conducted a review of specific cases which require
30 further discussion with the Parrabell officers to determine
31 a NSW Police Force position?

32 A. Mmm-hmm.

33
34 Q. That's what he seemed to expect then at least?

35 A. Yes, it does.

36
37 Q. Although we know that subsequently that really didn't
38 happen?

39 A. Yes, that seems fair.

40
41 Q. Then, thirdly, any position taken on any case by the
42 police will be subject to further discussions with the
43 research team?

44 A. Yes.

45
46 Q. Now, that's consistent with, I'd suggest, what you've
47 just written --

1 A. Yes, it is.
2
3 Q. Namely, "We're aiming at consensus here"; you agree?
4 A. Yes.
5
6 Q. Number 4 is:
7
8 *The Bias Crimes Coordinator --*
9
10 that is, Sergeant Steer --
11
12 *will review specific cases where agreement*
13 *cannot be reached between the Parrabell*
14 *officers and the Research Team to enhance*
15 *further discussion around appropriate*
16 *classifications.*
17
18 Do you see that?
19 A. Yes, I do.
20
21 Q. So his expectations seemed to be that, in number 3,
22 anything that the police arrived at would be discussed
23 with the research team - and I'm interpolating, given your
24 email - with a view towards consensus if possible? It's
25 not in his email, but it's - I'm suggesting what was in
26 your mind, given the email you wrote the day before?
27 A. I guess so.
28
29 Q. Right. And he expected that if there were cases where
30 agreement could not be reached between the Parrabell
31 investigators and the research team, Sergeant Steer would
32 be brought in to kind of arbitrate between the two of you?
33 A. That's what that does suggest, isn't it?
34
35 Q. And then 5:
36
37 *The Research Team --*
38
39 namely you and your colleagues --
40
41 *will bring their position on all cases to*
42 *a meeting between the [Parrabell officers]*
43 *and [Mr Steer] for further discussion prior*
44 *to final positions being taken on your*
45 *views.*
46
47 Agreed?

- 1 A. Yes.
2
- 3 Q. Once again, the objective was consensus if possible.
4 A. Yes, I could agree with that, but not consensus as in
5 an identical match, so to speak.
6
- 7 Q. And then 6 is that:
8
9 *Prior to final reports being submitted it*
10 *is important that each ...*
11
12 of the police and Flinders --
13
14 *... are aware of positions on each case*
15 *together with reasons for the positions*
16 *taken so that if divergent findings are*
17 *made, they can be reported upon with*
18 *complete understanding.*
19
- 20 A. Yes.
21
- 22 Q. That was your understanding?
23 A. Yes.
24
- 25 Q. And you'd agree, wouldn't you, that given - that's
26 number 6, following numbers 1 to 5, that was, I take it,
27 being put forward, as you understood it, as a kind of
28 catch-all in case there were any left where there wasn't
29 consensus?
30 A. I take that to mean at some point that the quick
31 drying cement had to dry so that you were comparing
32 something that was fixed by the very end of the process.
33 Could you imagine if you'd finished your report and two
34 days later they sent you an email and said, "Actually,
35 we've changed some classifications"?
36
- 37 Q. All right. Okay. Let me take you --
38 A. Insofar as I understood part of the brief was to
39 evaluate what they had done. Yes?
40
- 41 Q. Sure. Let's go to your response, which is the second
42 one in the chain.
43 A. Mmm-hmm.
44
- 45 Q. You reply to Mr Crandell saying:
46
47 *Many thanks for our constructive discussion*

1 *yesterday ... and for sending out these*
2 *very clear guidelines. I think they augur*
3 *well for a smoother process of consultation*
4 *and collaboration.*

5
6 A. Yes.

7
8 Q.
9 *I really admire the way you arbitrate so*
10 *well between the various parties ... and*
11 *offer a voice of reason when any hint of*
12 *disharmony emerges.*

13
14 Is that right?

15 A. Yes.

16
17 Q. So the objective was to avoid disharmony and indeed to
18 have a harmonious and collaborative and consolidated --

19 A. Yes.

20
21 Q. -- approach; correct?

22 A. Yes.

23
24 Q. And he responds, at the top:

25
26 *Hi Derek.*

27 *...*
28 *As long as we can maintain focus on our*
29 *desired outcome I think we will do well.*

30
31 He says:

32
33 *Having said that I expect some robust*
34 *discussion which will require a referee*
35 *between Bias Crimes and [the] Parrabell*
36 *investigators ...*

37
38 Correct?

39 A. Yes.

40
41 Q. But the disagreement that he seemed to be expecting,
42 if any, was between Parrabell and Sergeant Steer, rather
43 than between Parrabell and the academics; correct?

44 A. Yes.

45
46 Q. When he says, "As long as we can maintain focus on our
47 desired outcome", the desired outcome was a consensus, or -

1 well, consensus view?

2 A. That seems a - that seems a fair inference from what's
3 written.

4

5 Q. Can we now go to tab 88 [SCOI.74447_0001] in that
6 volume. This is another email chain, this time
7 in February. Those ones were in December. This is
8 now February 2017. There's a long email from - well, it
9 starts actually with one from you on 10 February, the third
10 email:

11

12 *Dear Craig,*

13

14 *I hope you are having a good day at the*
15 *office.*

16

17 Do you see that one?

18 A. Yes, I do.

19

20 Q. You tell him, towards just a bit below where the
21 screen is now showing, you say:

22

23 *I think we agree on 57 and disagree on 21.*

24

25 A. Mmm-hmm.

26

27 Q. You say:

28

29 *... we (as a team) have about 3 or 4 we*
30 *cannot agree on but are trying to reach*
31 *agreement ...*

32

33 Do you see that?

34 A. Yes.

35

36 Q. Then you say for some cases you've done certain
37 sub-groupings, which I don't need to go into. Do you see
38 that?

39 A. Yes.

40

41 Q. And you say in the second-last paragraph:

42

43 *Where robbery is the motive for a crime,*
44 *I think we are still struggling with this*
45 *factor, if the offender(s) are targeting*
46 *men because they are perceived to be weak,*
47 *"easy" or vulnerable based on some sort of*

1 *dislike of homosexuals, this is*
2 *problematic. Bias may be a major factor*
3 *underpinning the commission of the crime,*
4 *and yet robbery appears as substantive*
5 *motive.*

6
7 So you're flagging a concern about how to deal with the
8 robbery cases?

9 A. Yeah, they were very hard to deal with.

10

11 Q. But having flagged those matters with him, he then
12 sends a very long and detailed response back, which I don't
13 want to take time going through the whole of --

14

15

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47

THE COMMISSIONER: Q. And agreeing to disagree would not

1 appropriately be described as a consensus, would it?

2 A. No.

3

4 THE COMMISSIONER: Is that a convenient time, Mr Gray?

5

6 MR GRAY: Yes, Commissioner.

7

8 THE COMMISSIONER: Thank you. I will adjourn until 2.

9

10 **LUNCHEON ADJOURNMENT**

11

12 THE COMMISSIONER: Yes, thank you, Dr Dalton.

13

14 MR GRAY: Q. Dr Dalton, we were looking at volume 3,
15 tab 88 [SC0I.74447_0001], which is an email chain between
16 you and Craig Middleton mainly?

17

18

19 Q. I was getting to your response beginning "Dear Craig".
20 Yes, thank you. So that email is 13 February, and in the
21 second paragraph you say:

22

23 *Some of the data (cases) are so relatively*
24 *impoverished that we classified them as*
25 *I/I --*

26

27 that's "insufficient information".

28

29

30 Q. And by "relatively impoverished" you meant, I take it,
31 had so little paper or material to work with?

32

33

34

35

36

37

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47

*Willem and I are trying to produce an
instrument that will help us better justify
our codings in the face of yours. It's
tricky because in a sense we had to "buy
into" aspects of the NSW police coding to
evaluate your findings. The obvious danger
is that if one doesn't augment or*

1 *supplement your system - one might just*
2 *reproduce your findings. I hope this makes*
3 *sense. It might when we meet in person.*
4 *That's part of the tension at play (and*
5 *[is] ultimately resolvable I hope).*
6

7 Do you see that?

8 A. Yes.

9

10 Q. So you were directing attention to the fact that you
11 were setting up your own taxonomy, one reason for which
12 being otherwise you, in effect, would merely be duplicating
13 what they'd done; is that right?

14 A. Yeah, and I guess if the instrument was really fit for
15 purpose, you could replicate it and use it and that might
16 be a sound thing to do. Yeah.

17

18 Q. But it wasn't?

19 A. It wasn't, no.

20

21 Q. And the next aspect of what you are saying to him is
22 that the tension at play - that is, between the way they've
23 gone about things and the results they have reached on the
24 one hand, and the way you were going to go about things and
25 any differences there might be in the results you reached -
26 would, you hoped, be ultimately resolvable - the last few
27 lines of the paragraph?

28 A. Can you highlight them for me, please, just to make
29 life - okay, there. I was reading the bottom. Okay. Yes,
30 yes.

31

32 Q. Again, a reference to what we discussed this morning?

33 A. Yes.

34

35 Q. That preferably, there would be a consensus of view;
36 correct?

37 A. Yes.

38

39 Q. Right. Now, could we have - oh, and on the same
40 email, just before I leave it, back at the beginning of
41 that chain, the last page of the document, which I started
42 with this morning, just before lunch, when you were raising
43 some of these matters with him, the last paragraph of this
44 email is:

45

46 *Where robbery is the motive for*
47 *a crime, ... we are still struggling ...*

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And so on?

A. Mmm-hmm.

Q. Now, in the end, where there were cases of a gay man being assaulted but also robbed, did that come within gay bias or did the fact that there was a robbery take it outside gay bias in the way you approached it?

A. No, I don't have a strong memory, unfortunately, but I think it pushed it into gay bias.

Q. It what, sorry?

A. I think it pushed it into gay bias.

Q. Pushed it into?

A. Mmm.

Q. Robbery pushed it into gay bias?

A. If there was - if there was other sentiments about gay bias as well. Robbery in and - robbery in and of itself obviously wouldn't have pushed it into gay bias.

Q. No. So what would push it into gay bias, if there was a death?

A. I guess - well, it's six years ago, it's very hard. I can't even - if it was a particular case - I guess if there was robbery, which is - and some indication of anti-homosexual animus, that would have - would have made it transcend the mere category of robbery.

Q. I'll come to animus more generally, but an indication of animus requires, doesn't it, I think, under your approach, some knowledge of the offender's state of mind?

A. Yes. Yes, that would seem fair.

Q. So when we have, for example, a cliff death, with simply a body at the bottom of the cliff --

A. Mmm-hmm.

Q. -- and no idea --

A. Yes.

Q. -- then immediately it's impossible for it to be within gay bias in your approach because one cannot know anything about animus?

A. I hear what you're saying, but I don't think there were any - well, I think the problem with the category, of

1 the cliff bias category, or whatever, were that they were
2 cases where, I think we speculate in the report, you had no
3 idea why they ended up at the bottom of the cliff. So they
4 were, I think from memory, coded as "Insufficient
5 Information". But I don't have a strong memory of it
6 because I don't have all the - that is the problem with the
7 passage of six years.

8
9 Q. All right. Well, I'll come back to that. Could we
10 move to tab 97 [SCOI.74771_0001] in this volume 3. This is
11 now March 2017, and you're writing to Mr Crandell to let
12 him - to let him know how things are progressing?

13 A. Yes.

14
15 Q. And in the first main paragraph, you refer to the need
16 to reach a consensus within your own side, with your other
17 two colleagues?

18 A. Yes.

19
20 Q. In the fourth paragraph you refer to the ACON data and
21 you say:

22
23 *We will probably be somewhat dismissive of*
24 *it [in the most polite and diplomatic way*
25 *of course] in the report.*

26
27 Do you see that?

28 A. Mmm-hmm, yes. Well, could I elaborate on that.

29
30 Q. Yes.

31 A. The problem with the ACON data seemed to be that it
32 was - that it wasn't particularly objective, because there
33 was an amalgam of newspaper information, which is fine, but
34 then there was always this section that - an evaluation of
35 the investigative process and, with all due respect, it
36 struck me as bizarre, frankly, that they could make such an
37 evaluation.

38
39 Q. That was what you meant by the expectation that you
40 would be dismissive of it?

41 A. Yes, because - well, in part because - well,
42 dismissive because it didn't - obviously you've got to be
43 very careful in terms of a forensic logic of relying on
44 media accounts of crimes as providing that valid
45 information. Now, sometimes I guess it might be, depending
46 on how it's been reported, but it's an amalgam of cases
47 that were just produced from media reports where it became

1 apparent that often the facts were, in fact, incorrect, and
2 then judgments, the second aspect of judgments on the
3 investigative process. It just - it didn't seem - just
4 didn't - they had good intentions as an organisation, but
5 it just didn't seem fair minded.
6

7 Q. It didn't seem fair minded?

8 A. No, no. Well, it's not as though - not - they weren't
9 reading the homicide file cases. We were. They were just
10 writing stuff from - suturing quotes from newspaper
11 articles.
12

13 Q. Sure, but how does that - even assuming that's right,
14 why does that make it not fair minded?

15 A. Well, because to have a little section on evaluating
16 the adequacy of the police investigation, based on what?
17 Based on what? There are - how were they even privy to the
18 elements or the - whether the police investigation was
19 thorough, insufficient, et cetera, et cetera?
20

21 Q. I suppose on the other hand, how else, on what else
22 could they have expressed such a view but newspaper
23 reports, given that they, as you pointed out, did not have
24 the police materials? How else were they to do it?

25 A. But it seems as bizarre to me as to - if there was
26 a newspaper article about someone having an operation to
27 evaluate the work of the surgeon.
28

29 Q. All right. I'll move on.

30 A. It does strike me as a strange thing.
31

32 Q. But you say not only strange but lacking in fair
33 mindedness?

34 A. No, well - I don't understand how you can evaluate
35 someone's investigation without being privy to the
36 information about the investigation.
37

38 Q. All right. All I'm getting at is when you say they
39 weren't fair minded, are you accusing them of being
40 inappropriately biased? Is that what you mean?

41 A. I think - I think in a way as a social advocacy
42 organisation, they had something of an idea to push.
43

44 Q. And you say they didn't do it fairly?

45 A. Not in - not in - not - perhaps in terms of the trying
46 to put the amalgam of media stuff together, that seems
47 pretty fair, but the judgment about police investigation

1 didn't seem fair.

2

3 Q. All right. Move to the bottom paragraph on that page,
4 beginning, "All this progress augurs well". You then say
5 to Mr Crandell:

6

7 *Revising the draft report will take a lot*
8 *of time but hopefully in a few months we*
9 *will be ready to share the draft and start*
10 *negotiating the final version with your*
11 *team (a somewhat delicate dance of*
12 *inclusion and exclusion I imagine, but one*
13 *that is necessary as part of this process).*

14

15 A. Mmm-hmm.

16

17 Q. So your expectation was that the contents of your
18 draft report, or part of the report, would be the subject
19 of negotiation with the police?

20

21 A. I think what I meant by "dance of inclusion and
22 exclusion" would be, you know, which cases, in terms of
23 when they're finally determined, were in or out.

23

24 Q. Well, you said "start negotiating the final version" -
25 so you expected a process of negotiation?

26

27 A. Yep, I did, yes.

27

28 Q. All right. And indeed, is this right, in due course
29 that did happen? You did send drafts to the police and
30 they did give you feedback and you did make some changes as
31 a result of their feedback?

32

33 A. I am - I only recall sending Mr Crandell a draft.
34 I honestly don't recall that he'd suggested many or any
35 changes. But you may factually be able to state that
36 occurred but I don't recall it.

36

37 Q. Could we move to volume 4, tab 109 [SC0I.74542_0001].
38 This is an email from Jackie Braw to you, 19 July:

39

40 *Dear Derek and the Flinders team.*
41 *I am attaching a document with feedback*
42 *collated from all of us ...*

43

44 And if you look at the attachment which is at 109A
45 [SC0I.74543_0001], there is some quite detailed feedback
46 from Mr Crandell and also from Craig Middleton?

47

47 A. Mmm-hmm.

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Q. Do you remember getting that feedback?

A. I can honestly say, and I understand I'm under oath, I don't remember getting it, but clearly that is feedback and I'm not going to deny that's factually what has been sent to me.

Q. And having got the feedback, I suggest you did make some changes.

A. I imagine I would have.

Q. If one goes to tab 117 [SC0I.74590_0001] in that bundle, that volume, in an email of 13 October, from you to Mr Crandell, you start by saying:

The changes Jackie suggested were easier to accommodate than we envisaged.

And you go on to say how you made various changes evidently in response to that feedback?

A. Sure, yes.

THE COMMISSIONER: Q. Indeed you say "90 per cent of her suggestions", don't you?

A. I do, that's correct.

MR GRAY: Q. At tab 112 [SC0I.74554_0001] in that volume, there's an email chain mainly between you and Mr Middleton, also July 2017, and I want to go to the second one on the page, that's, I think, the third one in the chain. It's an email from you to Middleton of 27 July 2017. Yes, that's the one, starting there. And you, first of all, refer to a few relatively minor matters that you had cleared up. In the third-last paragraph you refer to a reluctance to publish the individual classifications by either the police or the academics for the individual cases. Do you see that?

A. Yes.

Q. You were concerned that the wider readership, the public, if they saw that, might, as you put it, engage in a weird parlour game where they would query the conclusion or results without having read what you'd read?

A. Yeah, and I perceived that as kind of being a little bit awful for the memories of the victims and their death. I didn't think it was respectful.

1 Q. No, fair enough. What I really want to go to is
2 Mr Middleton's response to you, which is the first email.
3 And on that point he says:

4
5 *Interesting question, one that I am*
6 *reluctant to have an opinion on ...*
7

8 And that played out subsequently. But the second
9 paragraph, if you could read that to yourself in full?

10 A. Okay, yes.

11
12 Q. So after the whole - in the course of that discussion,
13 which I won't go through the whole of --

14 A. Mmm-hmm.

15
16 Q. -- he finishes up saying:

17
18 *If the truth be known a lot of these*
19 *matters were placed in their category based*
20 *on our "collective opinion".*
21

22 Meaning the collective opinion on the police side. Agreed?

23 A. Mmm-hmm.

24
25 Q. And he says:

26
27 *And you already know this, hence why your*
28 *results differ from ours, essentially those*
29 *differences are based on your opinion as*
30 *opposed to our opinion.*
31

32 Now, pausing there, you would agree with that, I take it?
33 It's a matter of opinion on both sides?

34 A. Yes.

35
36 Q. And he says:

37
38 *Whose opinion is right? I would suggest*
39 *both are.*
40

41 And would you agree with that as well?

42 A. Sorry, which bit, sorry?
43

44 Q. "Whose opinion is right? I would suggest both are."
45 Do you think - do you agree that --

46 A. It's a slightly strange phrase in that, you know, can
47 two people be right, opinions --

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Q. He seems to be suggesting it's just a matter of opinion, one opinion, if honestly held, is as good as another?

A. Yeah, perhaps it - perhaps, yeah, that seems to ring true.

Q. What that tells us, even though I'm not suggesting Mr Middleton was precisely saying this, is that really, both the process that the Parrabell officers engaged in, based on form, et cetera, and the process that your side engaged in, based on the taxonomy type A, type B, type C and so on, that we'll come to --

A. Mmm-hmm.

Q. -- ultimately produced two sets of opinions?

A. Yes.

Q. Now, at tab 115 - just one second. Can we just go briefly to tab 10 - sorry, volume 10, tab 251 [SCOI.79323_0001]. This is you to Mr Crandell on 17 August.

A. Mmm-hmm.

Q. In the second paragraph you say:

Craig changed one of the [Strike Force Parrabell] codings this week, so Willem and I made some changes.

Now, what is going on there? Why does some change to a coding by the police mean that you had to make changes?

A. Yeah, it looks - it looks very menacing as though we immediately changed it because they did, but I suspect it would have been in relation to, once he explained it to me, we then understood the case or revisited in a particular way and it made us change our mind.

Q. It was a change to a coding, apparently. What would that be?

A. Perhaps whether a case was "Insufficient Information", "Not a Bias Crime", et cetera.

Q. Yes. So if the police moved a case from one of their four options to another, why would that result in you making changes?

A. Well, I imagine in the discussion with Craig something

1 would have come up that might have made us think, "Oh,
2 actually, when you look at that one" - because often there
3 was just such a paucity of information and the tipping
4 point between "Insufficient Information", et cetera, or
5 another category, or our categories - yeah, it - I know it
6 looks - looked - as it's written there, it looked like he
7 just rang me up and said, "Oh, I'd like to just make the
8 change", but I can assure you I wouldn't have just made
9 that change just to accord with what they had done. It
10 would have been based on something that was much more
11 substantial and - yeah.

12
13 THE COMMISSIONER: Q. Whether substantial or not, it
14 appears you were accommodating each other, doesn't it?
15 A. Yes.

16
17 MR GRAY: Q. In the next paragraph, you say:

18
19 *Mind you, I think it was good that Craig*
20 *raised the need to adjust Crombie.*

21
22 Crombie being one of the cases?

23 A. Yes.

24
25 Q. So that seems to be saying that Craig said that the
26 approach to Crombie, in his opinion, should be different,
27 so you changed your opinion?

28 A. I think Craig must have - we must have - I wish I had
29 my notes - discussed Crombie in detail and something must
30 have come up that made me think, "Oh, actually", because
31 even - even right - one thing that was interesting, even in
32 the process where Dr Tyson, Dr de Lint and I did our
33 concordance where we'd discuss each case, it was
34 fascinating that sometimes we'd revisit them two or even
35 three times and we'd change our - we'd just keep changing
36 our minds and there was this maddening process of, "Oh,
37 what about this element? What about that element?" They
38 often didn't sit particularly comfortably, sometimes within
39 their own categories, based often on the paucity of the
40 data or just - you know, sometimes the only thing that
41 could tip something into a category of bias was one piece
42 of sentiment that might have been harnessed, the word
43 "poofter" or something like that. Does that make sense?

44
45 Q. Yes, thank you for that. But the bit that I'm
46 focusing on at the moment --

47 A. Yes.

1
2 Q. -- is simply that what seems clearly to be happening,
3 and I think your answer reflects this, is that they are
4 suggesting, in this case Middleton, revising both sides'
5 views about where a particular case should go?
6 A. Yes.
7
8 Q. And you are engaging in that process with him?
9 A. Yes.
10
11 Q. No doubt in good faith from your point of view?
12 A. Yes, I think that's a fair way to put it.
13
14 Q. And you are changing back and forth, and so are they,
15 classifications of individual cases, depending on views
16 exchanged by the two sides?
17 A. Yes.
18
19 Q. Now, purely from an abstract position, without
20 imposing any pejorative sense to this question --
21 A. Sure, yes, yes.
22
23 Q. -- that doesn't look like an independent objective
24 review by you of their work, does it?
25 A. There is a tension in that - that I've tried to be
26 fair about in that clearly, one has to be as independent as
27 possible, but the terms under which we signed this tender,
28 I was told to follow a template by the university, was this
29 idea of collaborative, so collaborative and independent
30 constantly meshed together. I felt the tension regularly.
31 I wish as I was sitting here today that somehow I had have
32 had the good grace to insist from the outset, it had to be
33 more independent than collaborative, which is what they'd
34 asked for. And yet I also can't shy away from the fact
35 that when we had the discussions, they were often - in
36 really good faith, they would illuminate ideas or things
37 that either party hadn't thought of that would genuinely
38 cause a shift in the category.
39
40 Q. All right. Thank you. That's all I need to ask about
41 that topic. I now want to turn to the final report itself,
42 the text of the report itself.
43 A. Mmm-hmm, sure.
44
45 Q. And that is exhibit 1, tab 2 [SC0I.02632_0001] and
46 could we turn to page 73, the paragraph beginning "At the
47 same time", and just - there it is, thank you.

- 1 A. Yes, I see.
2
- 3 Q. You see in that paragraph, about five lines from the
4 bottom, this sentence:
5
6 *The empirical foundation ...*
7
- 8 and you're there talking about the literature --
9 A. Yes.
10
- 11 Q. --
12
13 *is also observed to mask the difficulty of*
14 *forensic discovery of offender motivation,*
15 *an assessment that may defy objectivity and*
16 *reliability ...*
17
- 18 A. Reliability, yeah.
19
- 20 Q. Now, that's, I take it, a lasting problem in this
21 area?
22 A. Yes, yes. Absolutely.
23
- 24 Q. In that discovering offender motivation, certainly
25 with cases with no identified perpetrator but even more
26 generally, is very difficult?
27 A. Absolutely.
28
- 29 Q. And as you say, it's an assessment that may defy
30 objectivity and reliability.
31 A. Yeah, I can live with that. That's fair.
32
- 33 Q. And in part, no doubt, that's why, partly why, there
34 was nothing for it but to resort to subjectivity?
35 A. Yes, with instruments, yes.
36
- 37 Q. On page 74, a paragraph beginning with "Perhaps the
38 most overwhelming view "
39 A. Mmm-hmm.
40
- 41 Q. You have a passage that goes for a page and a half or
42 so on this point, that gay bias crimes are those which more
43 than other crimes inflict great harm upon their victims.
44 A. Yes, first sentence, yes.
45
- 46 Q. So there's a topic in your report which is that the
47 intensity of the harm tends to be something which indicates

- 1 a gay hate or a gay bias crime?
2 A. Certainly, and that's certainly what Iganski, 2001
3 purports, where I must have got it from.
4
5 Q. On the next page, 75, towards the bottom, there's
6 a section beginning with the paragraph "This is related to
7 scholarship", and this next section, which goes for
8 a couple of pages, is on the topic of beats?
9 A. Sure, yes.
10
11 Q. And that's a topic that you yourself had some
12 particular familiarity with --
13 A. Yes.
14
15 Q. -- in your work?
16 A. Yes, absolutely.
17
18 Q. Then at page 78, towards the bottom of the page, there
19 is a paragraph beginning, "Since the period of homicides
20 under review"?
21 A. Mmm-hmm.
22
23 Q. And what you're saying there is that there have been
24 noticeable changes in the area of bias crime policing since
25 the '80s and '90s, essentially?
26 A. Mmm-hmm.
27
28 Q. Is that right?
29 A. Yes.
30
31 Q. And you refer to the fact that in 2007, the NSW Police
32 created a dedicated Bias Crimes Unit with these various
33 features that are in the bullet points.
34 A. Mmm-hmm.
35
36 Q. Now, you knew - and I'll take you to the email if need
37 be, but you knew by the time you were writing this report,
38 that although in 2007, Mr Steer had been appointed to the
39 title, I think, Hate Crime Coordinator, or Bias Crime
40 Coordinator, as an individual, and although subsequently
41 that position came to attract the title Bias Crime Unit,
42 actually, there was a period of three years between 2009
43 and 2012 where the position was disestablished? You knew
44 that?
45 A. I can't - I can't recall.
46
47 Q. All right. Could we have volume 10, tab 249

1 [SC0I.79872_0001]. There's an email chain there between
2 you and Sergeant Steer in May 2017. The first one, which
3 is the third in the chain, is Sergeant Steer telling you -
4 beginning, "Sorry it's taken so long" - about the fact that
5 there's a restructure under way and the Bias Crimes Unit
6 will effectively cease to exist?

7 A. Yes.

8
9 Q. So he told you that?

10 A. Yes.

11
12 Q. And towards the bottom of that page - sorry, bottom of
13 that paragraph, or, in fact, in the next paragraph, he
14 says:

15
16 *Prior to the disbanding of the unit I was*
17 *going to send you the following ...*

18
19 And do you see the first bullet point is, as to the Bias
20 Crimes Unit, one position created in 2007 - that's one
21 person - "de-established in 2009, recreated in 2012 with
22 three staff in 2015." So he told you all that?

23 A. Yes. Well, yes, I can't deny that he has - hasn't --

24
25 Q. And he's also telling you that, as he understands it -
26 this is the body of the email, the longer paragraph above -
27 that:

28
29 *As a result of the restructure the Bias*
30 *Crimes Unit will effectively cease to*
31 *exist.*

32
33 Do you see that?

34 A. Yes.

35
36 Q. And he says it's been merged with the Fixated Persons
37 Investigations Unit, and a couple of lines down:

38
39 *Bias crimes will be left to the relevant*
40 *corporate sponsors and the unit will focus*
41 *on right wing, left wing and*
42 *anti-government groups.*

43
44 And so on. So he told you all that and you knew it?

45 A. Yes.

46
47 Q. But in your report at page 78 - this is exhibit 1,

1 tab 2 [SC0I.02632_0001], where we just were - all you say
2 is that in 2007, a dedicated unit had been created with
3 these initiatives, as though it was still going, and as
4 though none of those changes that I just took you through
5 had occurred. Did you leave them out for a reason?

6 A. I think I must have left them out because - I think
7 most of the correspondence I had with Sergeant Steer were
8 earlier on. I had so many emails from Craig, from -
9 I could almost barely keep track of them, as one person, as
10 a busy academic with other tasks to do, but I'm very aware
11 I'm under oath - I did not wilfully leave that information
12 out because it made the police look bad because they'd
13 disbanded or changed it or whatever - I did not do that.

14
15 Q. You see, what you do say --

16 A. I may have neglected - I certainly appear to have
17 neglected to give a more accurate account of the situation
18 given the two don't match.

19
20 Q. Given what, sorry?

21 A. Well, given - this doesn't really match the email,
22 does it, there is a gap in time or something --

23
24 THE COMMISSIONER: Q. No, but the effect of you omitting
25 it makes this aspect of the report misleading, doesn't it?

26 A. You'd have to say yes. Not - I didn't wilfully
27 mislead.

28
29 Q. I'm not suggesting wilful. As a result of your
30 omission or forgetting that you had received the
31 information and presumably making a careful note of it,
32 rightly or wrongly, this part of the report is misleading?

33 A. Yes.

34
35 MR GRAY: Q. Now, in fairness, below the bullet points,
36 you have a paragraph that says:

37
38 *As of the writing of this report, a new*
39 *"Fixated Persons Investigation Unit" has*
40 *been developed which is combined with the*
41 *"Bias Crimes Unit" ...*

42
43 Et cetera, but what you say is:

44
45 *It is envisaged that ... the [Police Force]*
46 *will through this unit ...*

47

1 Do these various things?

2 A. Yes.

3

4 Q. Now, that's what Mr Steer says will not happen in his
5 email to you. Now, regardless of which is correct, what
6 you knew was what Steer had told you, and you didn't put it
7 in?

8 A. Yeah, the - the problem is that I was - I can't
9 quite - I've got to be so careful with my language here.
10 I was given to believe that he, I think, had been removed
11 from involvement with any of us because he - there was -
12 there was some sort of issue at play in terms of the
13 NSW Police. I couldn't quite remember whether they were
14 unhappy with him or they didn't like him - you know how
15 police forces, often people are told to toe a certain line
16 or do a certain thing. My sense was, and I'm being honest
17 as I can, that he'd sort of fallen out of favour with them,
18 so I might have thought that some of the stuff that he put
19 in that email was the kind of musings of someone who was
20 angry and disgruntled.

21

22 I mean, I also recall - you know, it's a very
23 difficult era. I remember one day seeing on Lateline with
24 Emma Alberici, a detective called - was it Pamela Young? I
25 can't remember her surname. And Pamela was espousing all
26 sorts of beliefs officially on behalf of police in relation
27 to Strike Force Taradale, perhaps, and then somehow
28 I think - because I remember asking about it at one of the
29 meetings and everyone kind of looked down at their
30 folders - somehow I think she had said something that they
31 didn't agree with or untoward and became - was taken off
32 the case and was not involved anymore.

33

34 So I was aware - I'm trying to be fair about this -
35 that policing is an organisation where you can fall out of
36 favour all of a sudden and not - so I - now, I'm not saying
37 that - I don't even remember whether that was at the
38 forefront of why I - I can't honestly tell you - did I not
39 incorporate Sergeant Steer's stuff because I forgot or was
40 it that I thought, "Oh, he's fallen out of favour, are
41 those bullet points accurate or fair?" I can't even
42 remember - because I don't have my notes - whether I even
43 bothered to ask did it get disbanded, et cetera. I had
44 a lot of notes that unfortunately went in the yellow locked
45 disposal bin.

46

47 Q. Thank you for that very long answer. Just two things

1 arising from it. Putting aside whether he had fallen from
2 favour or not, for you to say in this report that in 2007,
3 a dedicated Bias Crime Unit had been created and leave out
4 that it had only had one person in it, and leave out that
5 for three years it had been disbanded, it was itself
6 misleading, and like the Commissioner, I'm not suggesting
7 intentionally --

8 A. Sure, sure.

9

10 Q. -- but it was misleading, wasn't it?

11 A. Yes, I can't disagree - yes.

12

13 Q. And secondly, the paragraph about the new Fixated
14 Persons Investigation Unit is phrased in a way that is, in
15 effect, laudatory of the police's expectations, in terms of
16 what they envisaged as to how this was going to be a good
17 thing in relation to bias crime policing - that's the
18 effect of what you wrote, isn't it?

19 A. Can I read it again before I give an answer? You're
20 asking me, sorry, if it's, what, laudatory?

21

22 Q. Yeah. You are dealing with the fact that a new
23 Fixated Persons Investigation Unit has been developed, you
24 say it's envisaged that the police will, through this unit,
25 much earlier than possibly in the past, identify people who
26 may pose a threat, and that this brings the precautionary
27 or preventative orientation of counter terrorism to the
28 domain of bias. And that's telling the reader of this
29 report that essentially that's all a good thing.

30 A. Well, in a sense, I guess, even - I think that it sort
31 of is a good thing. I could see that it might dilute the
32 emphasis of bias in terms of gay hate per se but expanding
33 out the remit doesn't seem like it's a terrible thing.

34

35 Q. Fine. But what it leaves out of account is that on -
36 somebody at the police must have told you this, I presume;
37 you didn't --

38 A. Perhaps so. I honestly don't remember.

39

40 Q. We, you didn't make it up so I assume --

41 A. No.

42

43 Q. -- someone from the police must have told you.

44 A. Yes.

45

46 Q. So someone from the police told you this positive view
47 of the world; you had, from Sergeant Steer, a very

1 different and not positive view of what was happening,
2 namely, that the bias crime capacity as previously
3 represented by him was going to cease to exist, and you
4 went with the line from the police which was positive,
5 didn't you?

6 A. I did because my sense is that with Sergeant Steer
7 disappearing from the process and not being party to it
8 anymore, that he was out of favour, and I didn't know
9 whether he was out of favour merely because they'd shunted
10 him off somewhere or whether some of his assertions in his
11 emails, et cetera - he seemed at times - I was fond of him,
12 he was a nice man, he was cooperative, he was good to work
13 with, but he seemed in many of the interactions I had with
14 him to be angry.

15
16 Q. All right. Again, thank you for that lengthy answer.
17 You chose to put in your report - whether or not he had
18 fallen out of favour, you placed in your report the
19 official police line rather than the line that you knew was
20 the line contended for by someone at the heart of it?

21 A. Oh, I don't know if he was at the heart of it anymore
22 but I guess that - I guess that's true. I guess you could
23 say that's what happened.

24
25 Q. All right. Now, then, can we turn to page - in fact,
26 at the bottom of that page or lower down that page, there
27 is a heading "Over-categorising Bias"?

28 A. Mmm-hmm, yes.

29
30 Q. And you devote a page and a half or so to this. And
31 you are flagging, in the first paragraph, the problem that
32 could emerge, hypothetically at least, if the scope of the
33 underlying phenomenon - that is, anti-gay bias in crimes of
34 homicide - was exaggerated; correct?

35 A. Yes.

36
37 Q. And at the top of the next page, 80, you say:

38
39 *Where there is an over-recording of bias*
40 *crime, the opposite distortion would*
41 *occur --*

42
43 opposite to under-recording. And you say:

44
45 *There will be over-criminalisation and the*
46 *potential for public or moral panic that*
47 *will have impact on freedoms.*

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Do you see that?

A. Yes.

Q. I'll come to moral panic a little later, but do we understand from those passages that one idea that was impelling your writing was to combat the view that the numbers put forward in the media of 80 or more, or 86, or whatever the article said, was correct and to put forward the view that that might be an exaggeration?

A. I mean, Professor de Lint used to often say to me, "Over and under, it's always a problem", both sort of things, and I'd listen to him, so we're trying to emphasise that, but certainly I guess you could draw a link between the two.

Q. Now, in the next two paragraphs, and I probably don't need to take you to the detail, but the one beginning "Both teams" --

A. Mmm-hmm.

Q. -- and the next one, you are making the point - perhaps not all you're doing, but you're making the point - that a lot of cases were coded as "Insufficient Information", and one reason for that was that the archival material was sometimes simply insufficient --

A. Yes.

Q. -- to enable you to form a view?

A. Yes.

Q. And you were making the point as well that a paper review like this is was only as good as the paper that existed in the first place?

A. Yes, absolutely.

Q. And you make the point further in the middle of that second paragraph:

*A cognitive state - animosity towards
homosexuality - does not always leave
a physical trace.*

A. Yes.

Q. And that's no doubt so, and you add:

1 *This is all the more pertinent in cases*
2 *where no suspect was identified.*

3

4 A. Yes.

5

6 Q. And you add, drilling down a bit further:

7

8 *... in cases involving cliff-fall deaths,*
9 *the trio of questions, "was he pushed, did*
10 *he jump, did he slip", may never be able to*
11 *be definitively answered.*

12

13 So in cases like that, because you can't establish motive,
14 you're left with "Insufficient Information" or --

15

16 A. Yes.

17

18 Q. -- the like?

19

20 A. Yes. And of course it's interesting there with the
21 allusion to Scott Johnson, and we all know now that has
22 a resolution, which is good. I'm glad his family have got
23 justice.

24

25 Q. So in the last sentence you say:

26

27 *Many deaths may well be attributable to*
28 *a fatal assault (e.g. a "gay bashing") but*
29 *in the absence of evidence or a confession,*
30 *the detectives and academics had little*
31 *option but to classify such cases as*
32 *Insufficient Information.*

33

34 A. Yes.

35

36 Q. So both the Parrabell methodology and your methodology
37 hit a brick wall - not saying this critically --

38

39 A. No, no, that's okay.

40

41 Q. -- where you couldn't pin a motive on somebody?

42

43 A. Yeah, that's a fair - that's a fair assertion.

44

45 Q. So if a review were to be attempted of these same 88
46 cases, that was to come up with a result that wasn't merely
47 "Insufficient Information", you would need a different
48 technique that didn't depend on motive of offender,
49 wouldn't you?

50

51 A. I guess so and it begs the question what would the
52 technique be, but yes.

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Q. All right. Now, in the next page, 81, you've got the heading "Defining Bias".

A. Mmm.

Q. And you quote the police definition of a "Bias Crime", first of all.

A. Yes.

Q. And I won't read it all out, but the definition includes offence motivated, in whole or in part, by an offender's bias, doesn't it?

A. Yes.

Q. And then you also quote the definition, police definition, of "Bias Crime Indicators"; do you see that one?

A. Yes.

Q. And that definition also includes, as part of it, the concept of the offender's actions being motivated in whole or in part by any form of bias; correct?

A. Yes.

Q. And you say that the academic reviewers largely agreed with the police definition of "Bias Crime", which is the upper one of those two?

A. Yes.

Q. And in relation to the second, the indicators, you say:

The academic reviewers ... to a degree, support that a means of identifying bias crime depends upon indicators.

A. Yes.

Q. Okay. But for the moment what I'm focusing on is that both of the police definitions include, as one of a number of indicia, "in whole or in part".

A. Yes.

Q. Right. Now, your own classification system, which we'll come to in a second, is this right - that is, the classification that you came up with for this particular academic review - does not seem to include the feature of

1 "in whole or in part"; is that correct?
2 A. Yes, it would appear to be correct.
3
4 Q. So that where there were cases where there was a gay
5 hate factor but it was only part of a larger matrix, you
6 would exclude it from being evidence of bias crime?
7 A. I know that's what it looks like in terms of the
8 failure to put this phrase in our actual instrument, but
9 I think we still would have tried to account for it.
10 I wish I had my notes so I could go back to them and give
11 you more thorough --
12
13 THE COMMISSIONER: Q. But if it's not in your
14 instrument, then how you account for it likely remains
15 obscure, doesn't it?
16 A. Yes. That's a fair point, Commissioner.
17
18 Q. And, if I may say so, likely to be highly subjective?
19 A. Yes.
20
21 MR GRAY: Q. Now, at 82, the next page, at the top of
22 the page you refer to the UK approach, or one approach in
23 the UK, which defines hate crime as any incident perceived
24 by the victim to be motivated by hate or prejudice. Now,
25 of course, when the victim is deceased --
26 A. Yes.
27
28 Q. -- there are obvious difficulties, at least to some
29 extent, with that approach. But the critique that is often
30 made of the English position, and you refer to it perhaps
31 a couple of lines down, is that that approach, on one view,
32 tends to overestimate the number of gay hate crimes;
33 correct?
34 A. Yes.
35
36 Q. Whereas, would you agree as well, what is sometimes
37 referred to, maybe not very elegantly, as the US approach,
38 might, on one view, be likely to underestimate the number
39 of gay hate crimes?
40 A. Yeah, that certainly seems a fair point.
41
42 Q. And that's - I'm putting this a little bit broadly -
43 largely because or significantly because the US approach
44 focused on motivation - motive --
45 A. Yes, yes.
46
47 Q. -- of offender?

1 A. Yes.

2

3 Q. Now, you then at the bottom of 82 arrive at what you
4 say your definition of "Bias Crime" is. Do you see it
5 there at the bottom of that page, yes:

6

7 *Bias crime --*

8

9 do you see at the end of that line with the colon:

10

11 *Bias crime:*

12

13 *(a) expresses a categorical animus*
14 *(directed at a person or group on the basis*
15 *of his/her perceived identification with*
16 *a vulnerable group).*

17

18 *(b) produced an act that intentionally, by*
19 *way of criminal predation on the basis of*
20 *that categorical animus, causes harm to*
21 *that person or group.*

21

22 And (c) - and I want to ask you these three seem to be
23 cumulative, they seem to be (a) and (b) and (c) - (c) is:

24

25 *Is mitigated or aggravated by an offender's*
26 *contemporaneous associations that are*
27 *linked by a commitment of denunciatory*
28 *non-identification with the vulnerable*
29 *person or group.*

30

31 That's the schema that you came up with. Now, are they
32 cumulative? They read as though they're cumulative. Is
33 that correct?

34

34 A. Could I look at page 90 of the report?

35

36 Q. Ninety?

37

37 A. Yeah, I think it's page 90, where we've got our table

38

38 of the - yeah, that's it. No, they're not - cumulative?
39
40 THE COMMISSIONER: Q. Sorry, why does the conjunction
41 "and" then happen between the first or in (a)? So those
42 two factors are cumulative, are they?

43

43 A. Let me have a look for a second. Yes. Yes, they -

44

44 you can't argue that they can't because of the word "and".

45

46 MR GRAY: Q. I'm happy for you to look at page 90, but

47

47 page 90 is addressing a development of your typology beyond

1 what's on page 82. 82 just gives us what bias crime is -
2 it's your definition. And it's (a), (b), (c). And I'm
3 asking you whether your definition of "Bias Crime" is
4 intended to tell the reader that bias crime has those three
5 components?
6 A. Yeah, can I go - can I go up so I can read the three
7 again?
8
9 Q. Of course.
10 A. Yes. Can I go to (c), please. Yes, it's cumulative.
11
12 Q. Okay. Now, (a) has the expression "categorical
13 animus". I suspect we all have a reasonable understanding
14 of what "animus" is, but what is "categorical animus"?
15 A. It's an artefact of the way Professor de Lint writes.
16 I understood "animus" just to be animus as in hatred,
17 et cetera. I'm not entirely sure. I think he means by
18 "categorical", gay hate animus.
19
20 Q. Well, this definition of "Bias Crime" is Dr de Lint's,
21 is it?
22 A. He - he devised the instrument.
23
24 Q. No, is this definition of "Bias Crime", (a), (b), (c),
25 a definition which Dr de Lint came up with?
26 A. In conjunction with myself. But he's --
27
28 Q. But you don't know what's meant by "categorical" as
29 applied to "animus" though?
30 A. Not six years later. I might have had a better
31 sense --
32
33 THE COMMISSIONER: Q. No, I know it is six years later,
34 but this is a report that I presume you sweated over with
35 Professor de Lint and perhaps to a much lesser extent
36 Dr Tyson. Are you telling me now, although it's described
37 as "our definition", that you actually have no idea,
38 conceptually, what is meant by "categorical" in that
39 sentence? It may be that it's obscure and if it's obscure
40 please say so.
41 A. It's not even that it is obscure. I don't - the
42 "animus" relates to hatred. "Categorical" means - I think
43 what he was trying to do --
44
45 Q. No, before you think, do I take it your position is
46 you have no idea now what that means and you would defer,
47 what, to Professor De Lint. Is that your position?

1 A. Yes, yes, that's fair.

2

3 MR GRAY: Q. As to (c), (a) is expressed as
4 a categorical animus directed to a person or group; (b) is
5 producing an act that intentionally causes harm; but then
6 (c) is, and we're talking about bias crime:

7

8 *Is mitigated or aggravated by an offender's*
9 *contemporaneous associations that are*
10 *linked by a commitment of denunciatory*
11 *non-identification with the vulnerable*
12 *person or group.*

13

14 I just want to break that down. "Aggravated", one might
15 understand a little more readily. But what does
16 "mitigated" mean in that sentence - in (c)?

17 A. I don't - I can't - I can't recall.

18

19 Q. All right. Well, what does "aggravated" mean in
20 that - in (c)?

21 A. Made worse by - I think this is a legacy of the
22 category, and I wonder whether it's unfortunately
23 misproduced here, of the discussion about the associations
24 when we were talking about the gangs and groups.

25

26 Q. Well, just on "aggravating", if we leave "mitigated"
27 out for the moment, are you saying - is this definition
28 saying that a bias crime might be aggravated - that is,
29 made worse - if an offender had associations linked by
30 a commitment of denunciatory non-identification?

31 A. I'm doing my best, but with the passage of time I wish
32 I could answer with greater clarity.

33

34 THE COMMISSIONER: Q. Well, does "denunciatory
35 non-identification" make any sense at all, in this
36 context - "a commitment of denunciatory non-identification"
37 with the vulnerable group - person or group?

38 A. Yes, well, it's - non-identification is you don't
39 identify with the people, you don't feel you belong with
40 them, you want to denounce them. In the sense to
41 "denounce" is to criticise or to dislike.

42

43 MR GRAY: Q. So are you saying as to "aggravated", the
44 bias crime might be made worse if an offender had
45 associations with people or groups who were inclined to
46 denounce other groups, in the sense of having nothing to do
47 with them?

1 A. Yes, I think - yes.

2

3 Q. And why would that make it worse, if the crime had
4 been committed?

5 A. I can't say, I'm sorry.

6

7 Q. And coming back to "mitigated", how could an
8 offender's contemporaneous associations, linked by
9 a commitment of a denunciatory non-identification with the
10 vulnerable person or group, amount to mitigation?

11 A. I can't - I can't say, sorry.

12

13 THE COMMISSIONER: Q. So am I correct in saying that
14 your background and academic experience doesn't enable you
15 to breathe any life into the conceptual ideas that are
16 meant to be incorporated into this collocation of words?

17 A. Unfortunately, with - as I stand here today with it
18 being so many years and not - I wish I could have had - my
19 papers were - I had a lot of stuff and --

20

21 Q. No, but leaving - I accept for a moment that it's
22 years ago and I'm not --

23 A. Yes, sure, sorry, and I'm trying to answer.

24

25 Q. I'm not trying to suggest that you should remember.
26 What I'm saying is reading it now, with your background
27 and experience, you can't breathe any life into the
28 concepts that --

29 A. No, I --

30

31 Q. -- presumably Professor de Lint was conceptualising?

32 A. Yes.

33

34 MR GRAY: Q. Now, below that definition, the next
35 paragraph goes to expand a little bit, and it says:

36

37 *In this definition, we are concerned that*
38 *to categorise an act as a bias crime,*
39 *practitioners must be able to perceive*
40 *a minimum of discrete indicators or*
41 *factors --*

42

43 a minimum of discrete indicators or factors --

44

45 *that relate with one another and directly*
46 *to the phenomenon in question.*

47

1 And then this appears:

2

3 *The first requirement is that the act*
4 *expresses an animus, and does so by way of*
5 *some form of communication directed at the*
6 *target ...*

7

8 Do you see that?

9 A. Yes.

10

11 Q. Now, you say:

12

13 *This expression might be in the degree of*
14 *violence ...*

15

16 A. A gesture, a comment.

17

18 Q. Well, pausing there, it might be in the degree of
19 violence, first of all?

20

21 A. Yes.

22

23 Q. But it has to be a communication, apparently, either
24 in the degree of violence or in, for example, utterances,
25 statements, gestures or other communications?

26

27 A. Yes.

28

29 Q. So absent some communication, no bias crime?

30

31 A. Yeah, I guess you - because what would be left to sort
32 of adduce that it had occurred, yes, perhaps so, as best
33 I can --

34

35 Q. Well, that immediately sends the likely candidates for
36 bias crime in the Parrabell exercise plummeting, doesn't
37 it, if communication is essential, and there are many cases
38 where it's not possible to have any idea whether there was
39 communication?

40

41 MR TEDESCHI: I object.

42

43 THE COMMISSIONER: What do you object to?

44

45 MR TEDESCHI: Because at page 83 the report goes on to
46 say:

47

48 *This expression might be in the degree of*
49 *violence or in the utterances, statements,*
50 *gestures ...*

1
2 THE COMMISSIONER: Yes, so what?
3
4 MR TEDESCHI: It doesn't necessarily require verbal
5 utterance at the time of the --
6
7 THE COMMISSIONER: But Mr Gray has just read that out, and
8 the witness and everyone is in furious agreement that it's
9 expression - it could be a degree of violence, utterances,
10 statements or gestures. But it is a - no, no, it's the
11 first requirement in the so-called definition referred to
12 just immediately above. It can take one of a number of
13 forms.
14
15 MR TEDESCHI: Yes.
16
17 THE COMMISSIONER: But you have to determine
18 a communication - italicised - of some sort or other.
19
20 MR TEDESCHI: If the term "communication" is understood by
21 the witness in that way, I have no objection.
22
23 THE COMMISSIONER: No it's not a question of the witness
24 understanding it in that way. The words expressly say that
25 the expression might be violence, a gesture or whatever.
26 But whatever it is, the person writing this, presumably not
27 Dr Dalton, is saying the definition has, as its first
28 requirement, a communication of some sort or other -
29 a gesture or something else.
30
31 MR TEDESCHI: Yes.
32
33 THE COMMISSIONER: I don't think anyone's - so I'll allow
34 the question.
35
36 MR TEDESCHI: Yes.
37
38 THE COMMISSIONER: Thank you.
39
40 THE WITNESS: Could you allow me to make a suggestion?
41
42 THE COMMISSIONER: No, I think suggestion is really not
43 what's required, because if it amounts to speculation and
44 based not upon a memory of a discussion with
45 Professor de Lint --
46
47 THE WITNESS: No, it doesn't relate to any of those

1 things.

2

3 THE COMMISSIONER: Well, then, in that event, I'll let
4 Mr Gray ask another question and if you need to clarify
5 something, tell him, and if it's appropriate he or I will
6 let you do it.

7

8 MR GRAY: Q. What I'm focusing on, reading what you've
9 written - you and Dr de Lint - in the final report that's
10 made public as your rationale is that the first requirement
11 of your definition is that the act expresses an animus and
12 does so by way of some form of communication directed at
13 the target, and sometimes the wider population. It has to
14 be a communication, you say. Now, you say that the
15 expression could be in the form of violence - understand
16 that --

17 A. Mmm-hmm.

18

19 Q. -- or in utterances, statements, gestures or other
20 communications?

21 A. Mmm-hmm.

22

23 Q. But without a communication of some sort, no bias
24 crime.

25 A. Yeah, it's going to end up in "Insufficient
26 Information".

27

28 Q. Right. Straightaway, do not pass go, straight to
29 "Insufficient Information"?

30 A. I guess so.

31

32 Q. Indeed, halfway down that paragraph, you quote
33 somebody, or you cite somebody, as describing such hate
34 crimes as message crimes, sending a symbolic message.

35 A. Mmm.

36

37 Q. Now, in the next paragraph you say:

38

39 *The second factor --*

40

41 which is the (b) in the definition --

42

43 *permits a review of the intentionality of*
44 *harm.*

45

46 Do you see that?

47 A. Yes.

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Q. You say, a few lines in, this:

A person who seeks out a gay person against whom to do harm because of a perceived vulnerability is arguably more of a threat to the community than a person who reacts violently against an unanticipated gesture or sexual advance.

Do you stand by that - more of a threat to the community?

A. It is a confusing sentence, isn't it? I am wondering whether I was - we were referencing the case of Gillies.

Q. No, no, let's focus on specifics. It's a general sentence --

A. Yes.

Q. -- someone who seeks out a gay person against whom to do harm because of a perceived vulnerability is arguably more of a threat to the community than someone who reacts violently rather than seeking someone out. Now, do you really stand by that?

A. No, it's slightly problematic, isn't it?

Q. It's got to be wrong, hasn't it? If death results or is possible, or injury, or violence at all, why is one more of a threat to the community than the other?

A. These are - reports are often the product of two people writing different sections and different sections. I suspect, looking at that sentence, doesn't - that Professor de Lint wrote that sentence, and whilst I know my name is on the report, it might be helpful if you ask him.

Q. Do you stand by it? Do you say that's correct?

A. "Arguably more of a threat"? No, it's - no, I don't stand by it because it's a bit confusing even as a sentence.

Q. I'm sorry, could you say that again, I couldn't hear you?

A. No, I don't stand by it.

Q. Thank you. Now, the next sentence is:

In addition, if the victim is chosen exclusively to express an animus towards an

1 *identity group, this is the kind of*
2 *intention that is more solidly a bias*
3 *crime.*

4
5 Do you stand by that?

6 A. "If the victim is chosen exclusively to express an
7 animus towards an identity group" - "more solidly" is
8 a slightly problematic phrase, isn't it?

9
10 Q. Do you stand by it? Is it more solidly a bias crime -
11 that is, I assume you mean more an example of a case where
12 you would readily make a conclusion of bias crime - simply
13 because it's the behaviour of someone who was seeking
14 a victim out?

15 A. Yeah, I think - yeah, I think what we were getting at,
16 from memory, is the idea of to seek out is more culpable
17 than just to merely encounter someone and have it occur in
18 terms of the course of the encounter; to actually go out of
19 your way.

20
21 Q. Why? Why is it more culpable?

22 A. Because setting out - it's like the distinction
23 between murder/manslaughter. Setting out to kill someone
24 is more egregious than killing someone in the result of an
25 interaction where they die as a result of your harm.
26 That's why murder is placed on a higher rank, I imagine,
27 than manslaughter. That's the sort of logic at play,
28 I think.

29
30 Q. The distinctions that are in play here are not between
31 murder and manslaughter?

32 A. No, I know, I understand.

33
34 Q. They are whether bias crime or not bias crime. Why is
35 it more solidly a bias crime where someone seeks out
36 a victim, than where someone reacts to a victim, from a gay
37 hate or gay bias perspective?

38 A. I can't say.

39
40 Q. You don't know?

41 A. I can't say in terms of the passage of time. I know
42 we wrote the sentences, our names are on the report.
43 I just can't say.

44
45 Q. Because you then in the next sentence seem to contrast
46 that with another scenario. You say:

47

1 *Where the victim is chosen for another*
2 *crime (robbery, for example), because he is*
3 *an easy target, the strength of the*
4 *prejudice motivation in the causal*
5 *link ... between the prejudice and the*
6 *offending behaviour, may be relatively*
7 *weak.*

8

9 A. Mmm.

10

11 Q. What does that mean?

12 A. I can't remember because I can't remember what Hall
13 2004, page 12 said. I can't even remember whether I found
14 Hall 2004, 12, or Professor de Lint did, that it's his
15 idea, and at the time we must have saw fit in terms of
16 trying to elaborate to talk about the strength of the
17 prejudicial motivation by referring to his article.

18

19 Q. On the top of the next page there's a reference to the
20 third feature of the definitions, namely, the associations.

21 A. Mmm-hmm.

22

23 Q. And you say this:

24

25 *We are more likely to be confident in a*
26 *designation of bias where there is some*
27 *evidence that the perpetrator has had an*
28 *association with others who share the*
29 *offender's presumed antipathy to*
30 *a vulnerable group.*

31

32 Why does that make it more likely that you would be
33 confident in a designation of bias, the mere fact that
34 someone had associates who had the same views?

35 A. I guess it runs to this idea of some of the gangs,
36 using the term loosely, gangs or associates who seem to all
37 be grouped together to bash poofers or potentially murder
38 them, so it would appear to be that this idea that when you
39 associate together in a gang, it's sort of - it's just more
40 sort of that the involvement of other people in the shared
41 belief sort of strengthens the animosity.

42

43 Q. So your thinking was that a gang incident against
44 a gay man was more likely to be one where you would arrive
45 at a view of bias than violence against a gay man
46 perpetrated by one person?

47 A. No. I know that that's what that would suggest but

1 that wouldn't have been my belief.

2

3 Q. Well, that's what it says, isn't it? You'd be more
4 confident in a designation of bias where there's evidence
5 that the perpetrator has an association with others who
6 share his antipathy?

7 A. I guess my mind must have ran to the idea that if
8 there's a gang or - I can't remember the case details
9 unfortunately, that they had said - or there must have been
10 more evidence or more discussion of the animus than in a
11 case involving one person, just merely in terms of numbers,
12 or of bits of evidence that might be in the files.

13

14 Q. You add, in the next sentence:

15

16 *It is those who associate with others on*
17 *the basis of a common bias or prejudice*
18 *against a vulnerable group and who then*
19 *take an action either individually or*
20 *collectively intended to cause harm to that*
21 *target group that are justifiably the most*
22 *concerning to public policy.*

23

24 Do you see that?

25 A. Yes.

26

27 Q. Now, why are you bringing public policy into the
28 Parrabell exercise, which is are these or are they not bias
29 crime? What has public policy got to do with it?

30 A. Well, public policy, is, it seems, important if the
31 public at large are quite worried that gangs are targeting
32 people rather than just individuals, but you know, the gang
33 organisation, they can be more organised and make - do
34 greater planning, et cetera. So that must run to - I -
35 must run - there must have been a public policy logic or
36 document or something I read that sort of informed that
37 idea.

38

39 Q. I'll take you to a few - there are quite a few
40 references to public policy in your report in the coming
41 pages. Is that because you thought that your report,
42 somehow or other, wasn't only, or mainly, for the purpose
43 of reviewing the 85 Parrabell cases, but offering some view
44 generally or theoretically on what public policy - where
45 public policy ought to lead in terms of legislative reform
46 or things of that kind? What was the point of bringing in
47 public policy?

1 A. Yeah, I guess that logic would be if a comment could
2 be made about public policy that could be helpful or lessen
3 the amount of violence - I mean, I think it's why in that
4 later section we have recommendations for the police, and
5 I don't recall - maybe you can correct me - whether we were
6 essentially dictated to come up with some recommendations,
7 but my sense was, talking to colleagues at the time, they
8 said to me, "This is the sort of stuff you put in tenders -
9 in documents for which you have tendered." People at
10 Flinders University who'd done lots of tenders, I recall,
11 sort of said to me that's sort of what you do; you infuse
12 it with some public policy.

13

14 Q. And were the public policy references - that's one and
15 there are quite a few others - your doing or Dr de Lint's
16 doing?

17 A. Yeah, I think looking at some of the sentences in
18 terms of the legacy of sentences, so you look at it and you
19 go - you know how you kind of write - "I think they're
20 Professor de Lint's." But I'm not, in saying that, trying
21 to distance myself from them. We co-wrote the report. But
22 they're difficult things because some people write some
23 sections, another person, myself, writes another, and you -
24 it's really tricky.

25

26 It's not like writing a novel where there's one
27 author. You've got to kind of have a bit of give and take
28 about things that people do. So I don't - I don't recall -
29 I don't recall that I was - that I sort of infused as many
30 public policy comments.

31

32 Q. All right. Just given that this paragraph is
33 referring back to item (c) in the definition --

34 A. Mmm-hmm.

35

36 Q. -- which is "Mitigated or aggravated by associations
37 linked by commitment of denunciatory non-identification",
38 are we to understand this paragraph as, at least in some
39 respects, fleshing out the idea of aggravation, ie, if
40 there's an association with others sharing this antipathy
41 or bias, then that would more likely lead to a bias
42 conclusion? Is that what - is that what we're talking
43 about with "aggravated", or don't you know?

44 A. I don't know.

45

46 Q. And again, it doesn't seem to have any bearing on any
47 notion of mitigation?

1 A. No.
2
3 Q. So that remains a mystery to you?
4 A. As I sit here today, it does, yes.
5
6 Q. All right. Now, the next heading is "Anti-gay versus
7 anti-paedophile bias"; do you see that?
8 A. Mmm-hmm, yes.
9
10 Q. Now, I'm conscious of the time, but I'll just do it
11 this way. There's quite a lengthy discussion for about two
12 and a bit pages on this topic.
13 A. Sure.
14
15 Q. And if you need to read all of it, read all of it, but
16 the part that I want to bring you to is the end of the
17 section and a paragraph beginning, "Whatever the normative
18 argument." If you need to read it all, then read it all.
19 A. I'm up to the bottom bit. Do we need to scroll down?
20 Okay. Yes. I've read up to "paedophiles" - sorry. Sorry,
21 can you go back up, sorry? It's a long paragraph. Yes.
22
23 Q. Have you reached the paragraph that I want to ask you
24 about, yet?
25 A. Which one is that, sorry?
26
27 Q. "Whatever the normative argument"?
28 A. No, not yet. Is it still down further? It's a long,
29 long paragraph - couple of paragraphs. Are we - where is
30 the bit about "normative"? Is it on the next page?
31
32 Q. It's on page 86.
33 A. Hang on, that's - we've skipped a lot of --
34
35 Q. I repeat, if you need to read it all, read it all.
36 A. Keep going, then. Keep going. Yes.
37
38 Q. Right. Now, in the paragraph beginning, "Whatever the
39 normative argument" --
40 A. Yeah.
41
42 Q. -- you again place considerable weight on public
43 policy questions, don't you?
44 A. Yes.
45
46 Q. And not conflating homosexuals with paedophiles, which
47 is a perfectly reasonable point of view, of course. But

- 1 then you say:
2
3 *... we opted to distinguish these cases --*
4
5 that is anti-paedophile and anti-gay --
6
7 *because we believe as a matter of public*
8 *policy it is important to distinguish the*
9 *primary animus --*
10
11 is that anti-gay?
12
13 *-- from what may be a secondary animus that*
14 *sets up a different ... response.*
15
16 What's the primary animus - anti-gay or something like --
17 A. Yeah, the primary animus would be anti-gay, as far as
18 I recall.
19
20 Q. And is the secondary animus, anti-paedophile?
21 A. Well, certainly perceptions of paedophilia, yes.
22
23 Q. Well, animus against actual or perceived paedophiles;
24 is that right?
25 A. Yes, I think so.
26
27 Q. So, after reference to statutes, you say:
28
29 *... we nevertheless have sought to*
30 *distinguish the material fact that*
31 *anti-paedophile animus initiated many of*
32 *the crimes we examined in the Parrabell*
33 *case files.*
34
35 A. Mmm-hmm.
36
37 Q. Now, you say that as a fact, that anti-paedophile
38 animus initiated many of the crimes. That's based on the
39 papers available to you - sorry, that's based on what is
40 contained in the completed bias crime forms?
41 A. Mmm-hmm.
42
43 Q. Is it?
44 A. I think so.
45
46 Q. So you say, then, at the bottom:
47

1 ... we have used the term "bias" to denote
2 a hate crime against perceived homosexuals
3 and the more neutral term "animus" to
4 denote a crime against paedophiles.
5

6 Right? Yes?

7 A. Yes, that's what the sentence --
8

9 Q. I'll come to this once more I think, in a little
10 while, but is the upshot of that that in a case which may
11 have involved both an anti-gay component and a possible
12 anti-paedophile component, you wouldn't classify it as gay
13 bias; you'd only classify it as paedophile animus?

14 A. Yeah, I think so. My logic was I think from memory,
15 it was so we wouldn't double-count, but that the
16 anti-paedophile animus was still to be understood as
17 a sub-category of gay hate bias.
18

19 Q. Okay. Well --

20 A. I think.
21

22 Q. We'll come back to that, I think. Could Dr Dalton
23 have volume 13, tab 271 [SCOI.79339_0001]. It's an email
24 chain mainly between you and Dr de Lint, although Dr Tyson
25 is in one or two of them?

26 A. Mmm-hmm.
27

28 Q. The one I want to take you to first is the longish one
29 that's on the third page from Willem de Lint to you of
30 Monday, 20 February 2017. Yes, that one. The first
31 paragraph concerns the tool. The second paragraph contains
32 this:
33

34 ... Since we do not know how the police are
35 using their checklist (what happens when
36 there is no excessive violence, the
37 offender is not known to be gay, etc, how
38 does that impact the evaluation?) following
39 their method produces unreliable results.
40

41 So you were in agreement with that I take it?

42 A. Yes.
43

44 Q. And then Dr de Lint says this:
45

46 It should be clarified if the bias crime is
47 stipulated as anti-gay bias as opposed to

1 *anti-paedophile bias. If the offender is*
2 *identifying a person as a paedophile and*
3 *has an animus towards him on the basis of*
4 *that discrimination ... yes, it is likely*
5 *a bias crime, but it will also distort the*
6 *count (since it is assumed that we are*
7 *concerned with anti-gay bias). So on this*
8 *dimension, following my definition below --*
9

10 and he's got a definition of "Bias Crime" set out:

11 *... yes, there is an identification with*
12 *the victim with a "vulnerable position",*
13 *but, no, that identification is not*
14 *necessarily with the intended category of*
15 *vulnerability ... There is also*
16 *a distinguishing act of violence, but it*
17 *doesn't matter because the identification*
18 *is out of category.*
19

20
21 Do you see that?

22 A. Mmm-hmm.

23
24 Q. Then he goes on to say this:

25 *So on this I would classify all the*
26 *suspected anti-paedophile cases out ...*
27

28
29 Do you see that?

30 A. Yes.

31
32 Q. Is that a yes?

33 A. Do I see it? Do I see it? Yes, I see it.

34
35 Q. And that's what you did, isn't it? You classified all
36 the suspected anti-paedophile cases out?

37 A. Honest answer I don't recall.

38
39 Q. The definition, by the way, down below, of "Bias
40 crime" is one that he seems to have got from the internet,
41 perhaps, or it's perhaps not entirely clear where it has
42 come from, but it is not the definition that is found in
43 terms in your report that we just spent in time on, is it?

44 A. It doesn't appear to be, no.

45
46 Q. No. And then your response to that email, Monday,
47 20 February - so can we scroll up - and just down a bit

1 from there --

2 A. Mmm-hmm.

3

4 Q. Down a bit further. Yes. Is:

5

6 *Dear Willem and Danielle.*

7

8 And you say in the fourth paragraph:

9

10 *Willem. I find some of this cut n pasted*
11 *material fairly unhelpful --*

12

13 and that's a reference to the definition, isn't it?

14 A. Mmm-hmm, yes.

15

16 Q. Which does indeed, apparently in your mind, seem to
17 have been cut and pasted from somewhere:

18

19 *I too have a list of definitional ideas*
20 *gleaned from reading ... that might help to*
21 *shape such a tool. However, we have done*
22 *the codings already. Our rushed attempts*
23 *to back-engineer a tool feel very fraught*
24 *to me.*

25

26 This was February 2017. This was your view? This was your
27 view?

28 A. Must have been if I wrote it, yes.

29

30 Q. And over the page, you say:

31

32 *PS: in terms of the first definition you*
33 *supplied, the use of the word "predatory"*
34 *is problematic. Some of the violence might*
35 *be somewhat opportunistic ...*

36

37 Do you see that?

38 A. Yes.

39

40 Q. So your view seems to have been that opportunistic
41 violence was as serious as outright predatory, seeking-out
42 violence?

43 A. It seems to be there, and that there was just so much
44 backwards and forwards-ing at various times about agreement
45 about categories or types, it was very full on.

46

47 Q. You have a heading down below in bold:

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How paedo and homo play out in terms of accounting for bias?

A. Mmm-hmm.

Q. You say:

This is still a mess. I actually disagree with Mason. Because so many perpetrators seem to equate paedophile with homosexuality however flawed that conflation is, I think anti-paedophile bias must initially be counted as bias ...

That was your view, apparently - seemingly quite different from de Lint's view?

A. Yes.

Q. And you say:

I am not sure what the solution is now some 2/3 days before we leave for Sydney.

And I won't take you to the top email where you refer to some - you communicate with someone else and say that back-engineering at every turn is a difficulty that you're facing; is that right?

A. Yes.

Q. That's back-engineering emanating from Dr de Lint, is it?

A. Sorry?

Q. "Back-engineering", your term, emanating from Dr de Lint?

A. Yes.

Q. Now, at volume 3, tab 89 [SCOI.74448_0001], you say to Craig Middleton, later on this same day, just after that email exchange with Dr Dalton [sic], about five paragraphs down:

To be honest and transparent - our team are still really struggling with the cases involving paedophilia.

- 1 You mention that the academic literature is marked by
2 disagreement, et cetera. So you're --
3 A. Yes.
4
- 5 Q. -- acquainting him with that problem. Then you say:
6
7 *I guess it all goes to whether Parrabell is*
8 *framed as purely being about*
9 *anti-homosexual sentiment (which it appears*
10 *to explicitly and implicitly be).*
11
- 12 A. Mmm, mmm.
13
- 14 Q. What did you think that concept added to your
15 thinking - anti-homosexual sentiment? Is that something
16 different from bias or is it the same as bias?
17 A. No, it's - I think it's a bit of a synonym.
18
- 19 Q. A bit of a synonym for bias?
20 A. Yeah, I think so.
21
- 22 Q. Well, Parrabell was framed as being about
23 anti-homosexual bias, wasn't it?
24 A. Yes.
25
- 26 Q. If it was framed in that way, then cases, as you've
27 said yourself in that email to Dr de Lint - cases where
28 there was both belonged in the anti-gay bias column?
29 A. Yes, I guess so. I think if we had our time again, we
30 would perhaps have really given even more thought to this
31 distinction between the two. It was a - it was a mess. It
32 was difficult to - I mean --
33
- 34 Q. In the last paragraph, or second-last paragraph - or
35 third, actually, last paragraph of the email to
36 Mr Middleton, you say:
37
38 *Maybe we can get somewhere (as a group) on*
39 *Friday --*
40
41 that would have been 24 February --
42
43 *in terms of consensus about this vexatious*
44 *issue of the way that paedophilia might*
45 *[or] should be accounted for ...*
46
47 A. Yes.

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Q. And that again was a reference to the hope that the two groups, the police and the academics, would arrive at a consensus --

A. Yes.

Q. -- as to how cases should be categorised?

A. Yes.

Q. Now, back to the report - this is, I think, almost the last topic I want to deal with you from the report, which is exhibit 1, tab 2 [SC0I.02632_0001] if we go to page 88, there's a heading, "Proactive and associative bias". And you draw the distinction between "proactive", where someone actively sets out to find a victim and hurt them, and "reactive", obviously, is where someone responds to some prompt of some kind, some behaviour; agreed?

A. Yes.

Q. Now, you say in the next paragraph:

We also scored cases on whether we could find that the bias involved an association with others.

A. Yes.

Q. And again, just on the word "scored" --

THE COMMISSIONER: Sorry, just stopping you there, the screen should just go down a little.

MR GRAY: Sorry, yes, it should go down, yes, to that paragraph, thank you.

Q. Do you see:

We also scored cases on whether we could find that the bias involved an association with others.

First line?

A. Oh, sorry, the first line, yes. "Also scored cases" - yes.

Q. Now, the word "scored", I asked you about that yesterday in connection with the police exercise, but in

1 your exercise, what does "scoring" mean?

2 A. Categorising, I think.

3

4 Q. So placing in categories, rather than adding up
5 numbers to reach a score?

6 A. Yeah, because our instrument wasn't about numbers, it
7 was about the different attributes that you've seen, so it
8 wasn't about - yeah.

9

10 Q. Okay. So accepting that understanding of what you
11 meant by "scored", you were looking at whether you could
12 find that the bias involved an association with others, and
13 you say - well, pausing there, if it didn't, then what? If
14 it didn't involve an association with others, what flowed
15 from that, as you approached your work?

16 A. I don't recall, but I --

17

18 Q. Did that make it less likely to be a bias crime?

19 A. Perhaps so. I certainly don't think that, just
20 sitting here today, it would have then not counted if there
21 was obviously other factors - they would have fallen into
22 a different category, but - I don't think I've answered
23 your question clearly, sorry.

24

25 Q. When you say - sorry, go on.

26 A. I said I don't think I've answered your question
27 clearly, if you want to put it again.

28

29 Q. No, perhaps not, but I'll move on. The next sentence,
30 adding to that, you say:

31

32 *Broadly speaking, we were looking for*
33 *evidence that the crime involved*
34 *a communication to another perpetrator ...*

35

36 Now, why? Why was that something that needed to be found?

37 A. Yeah, I - it relates back to the gang sort of stuff
38 and I can see, reading it here in this context, it looks
39 like that that's so significant, but it's not just in a
40 case of a single person committing a bias crime. So that
41 does look misleading or a bit confusing.

42

43 Q. Well, it looks as though - tell me if this is not
44 right - that if you didn't find evidence that the crime
45 involved a communication to another perpetrator, or other
46 potential perpetrators, you would be inclined to lean
47 towards ruling it out as gay bias. Isn't that the only

1 reading available of that? Otherwise, what's the point?

2 A. I'd worry that in the way those sentences are
3 reproduced, that it was relating to the specific class of
4 bias crime. But I certainly would not have - never wanted
5 to count a crime as bias if it had elements that would
6 indicate that it was, that nevertheless might have excluded
7 the bit about the communication with another perpetrator.

8

9 Q. You go on:

10

11 *We looked for evidence of denunciatory*
12 *non-identification with the vulnerable*
13 *group.*

14

15 Now, "denunciatory" involves some kind of communication,
16 doesn't it?

17 A. Yes. Yes, it does.

18

19 Q. It means either saying something or communicating
20 something in some way?

21 A. Yes, it does, yes.

22

23 Q. And so if you didn't find that, some denunciatory
24 non-identification, what consequence flowed if that wasn't
25 found?

26 A. It's a fair question to ask. I can't recall.

27

28 Q. It looks like it means that either such a case would
29 be ruled out or would be likely to be ruled out, doesn't
30 it?

31 A. Or may have ended up in the "Insufficient Information"
32 category.

33

34 Q. Well, that would be ruling it out as being bias crime,
35 wouldn't it?

36 A. Yes.

37

38 Q. Just funnelling it into the "Don't know, can't tell"
39 category?

40 A. Yes.

41

42 Q. Now, in the next paragraph, you say that the academics
43 sub-categorised the cases into clusters, which I won't
44 take time on decoding for the moment, but in the end, at
45 the bottom of that paragraph you say:

46

47 *Accordingly, for the purpose of public*

1 *policy, the most serious kind of bias is*
2 *proactive and associative ...*

3

4 "Proactive" means someone who seeks out a victim --

5 A. That's right, yes, and associates with other people.

6

7 Q. And associates with other persons. Why is that the
8 most serious kind of bias?

9 A. My sense is in terms of remembering that it related to
10 this idea that to seek out and then to associate with
11 others, as in like a gang activity, because gangs regularly
12 organise activity and keep going as a clustered group, that
13 does seem to be more serious than just an individual who
14 might encounter another individual and - and subject them
15 to violence. This idea that it's a gang.

16

17 Q. Why is it more serious?

18 A. Because they can keep doing it each second weekend or
19 whatever communicated.

20

21 Q. As could an individual?

22 A. Oh, well - yes, I guess so.

23

24 Q. So why is a gang more serious?

25 A. More people potentially subjecting someone to violence
26 strikes me just as, from a numbers game, as more - more
27 serious.

28

29 Q. And now we're talking --

30 A. Like, I'd rather be, if I was in a park, set upon by
31 one person than six. I might have a chance - a better
32 chance to run away, et cetera.

33

34 Q. And this is based on public policy, it seems, or
35 considerations of public policy?

36 A. Yes.

37

38 Q. And after running through on page 89 the type A
39 crimes, which are proactive and associative, and the type B
40 crimes, which are proactive but not associative, and type
41 C, being reactive --

42 A. Mmm-hmm.

43

44 Q. -- you then produced the checklist, which you looked
45 at before, on page 90. And what did that checklist achieve
46 for you in terms of whether a case was a bias crime at all,
47 regardless of which of these descriptors it fitted into?

1 Apart from perhaps being an interesting intellectual
2 exercise, what was the point or the purpose of this?
3 A. To more --
4
5 Q. In terms of Parrabell?
6 A. To more carefully calibrate the instrument according
7 to the files, so that you could try to fathom amongst all
8 the factors involved what was going on.
9
10 Q. Okay. Now, can I just ask you these questions?
11 A. Mmm-hmm.
12
13 Q. I think you've agreed - in fact, you have agreed a few
14 times - that in your different ways, you and your two
15 colleagues on the one hand and the police on the other hand
16 were, although by different routes, really arriving at
17 subjective opinions about each case. We've agreed with
18 that?
19 A. Yes.
20
21 Q. Right?
22 A. But couldn't I suggest, though, that - isn't any
23 exercise of this nature, when you do it, "subjective", in
24 inverted commas?
25
26 Q. Perhaps so.
27 A. You know, trying to be fair to myself here.
28
29 Q. Perhaps so, but what I want to suggest to you is this,
30 that the erection of these seemingly quite complicated and
31 intricate typologies, with the checklists and the A and the
32 B and the C and the language, like denunciatory
33 non-identification --
34 A. Sure, yes, yes.
35
36 Q. -- and all the rest of it --
37 A. Mmm-hmm.
38
39 Q. -- makes your approach seem scientific and different
40 from the police and thus independent when, really, it was
41 just another way of arriving at a subjective opinion?
42 A. Was it another way of arriving at a subjective
43 opinion? The only caveat I would add would be with
44 a flawed but nevertheless the best instrument that we could
45 come up with in the absence of where we searched the world
46 over for a good instrument, we were hoping to find one, and
47 yes, it's very deficient.

1
2 THE COMMISSIONER: Q. And bespoke? In other words --
3 A. Yes, it's bespoke.
4
5 Q. -- nobody had ever used this categorisation before?
6 A. That's a fair point, it's bespoke.
7
8 Q. And it's fairer to go on to say "or since". This has
9 not been picked up by any academic as an appropriate way to
10 categorise gay hate bias, has it?
11 A. No.
12
13 MR GRAY: Q. Now, because the way that you and your two
14 colleagues went about attempting to apply your definitions
15 and your typology, as we've just been through, was to bring
16 your own individual intellectual equipment to it and arrive
17 at a view --
18 A. Yes.
19
20 Q. -- subjectively necessarily --
21 A. Yes.
22
23 Q. -- within that framework --
24 A. Mmm-hmm.
25
26 Q. -- it means that it's impossible for any future
27 researcher or commentator to replicate your approach so as
28 to test your findings, isn't it?
29 A. Yeah, to the extent that it was tethered to this
30 particular project, it was a flawed - yes, I - I imagine
31 that would be - that would probably be the case.
32
33 Q. Lastly on the text of the report on page 90, there's
34 a heading, "Concordance coding"?
35 A. Yes.
36
37 Q. And this is referring to the meetings and
38 communications between the three of you?
39 A. Sure, yes.
40
41 Q. To arrive at an internal consensus; agreed?
42 A. Yes.
43
44 Q. Now, that again, would you agree, indicates the
45 essential subjectivity of the exercise, in the sense that
46 each of you no doubt first diligently arrived at your own
47 individual view --

1 A. Yes.

2

3 Q. -- subjectively, and then you needed, for obvious
4 reasons, to merge those views into one combined view
5 representing the combined subjective view of the three of
6 you?

7 A. Absolutely - yeah, that's - yes, that's true.

8

9 Q. Which means that one or two of you in any given case
10 would need to be persuaded to go along with --

11 A. Yes.

12

13 Q. -- the two or one who had another view?

14 A. Yes, and to be honest, sitting here today with the
15 benefit of hindsight, I can acknowledge that was - they
16 were long, challenging, difficult decisions, reading this
17 terrible material - and it was terrible. It was very
18 difficult to do and perhaps it's a shame.

19

20 Q. Do you need a break?

21

22 THE COMMISSIONER: Q. Doctor, would you like to take
23 a break?

24 A. I'll be all right. It is perhaps a shame.

25

26 Q. No, Doctor, I don't want you to press on, if you're
27 not sure --

28 A. No, I'm okay to press on.

29

30 Q. Okay.

31 A. It's perhaps a shame that in light of how difficult it
32 was, I didn't say, "This is too difficult. Let's abandon
33 the process." But when you're on the train and you're in
34 the university and you're doing all this stuff, you're on
35 the journey, you've got to do the best you can. But in
36 hindsight, I can see we were doing the best we could with
37 an instrument that we devised, and I'd love to see someone
38 who comes up with a spectacular watertight instrument that
39 can identify bias in the world.

40

41 MR GRAY: Q. I just want to put one particular academic
42 approach to you. I'm not suggesting for a moment that it
43 is the only one.

44 A. Mmm-hmm.

45

46 Q. No doubt there are many. But one of the academics
47 that you reference in your report is a Professor

1 Gruenewald, of the United States?
2 A. Yes, mmm-hmm.
3
4 Q. I wonder if we could go to exhibit 2, tab 29
5 [SC0I.76824_0001], which is an article by
6 Professor Gruenewald and a colleague, Ms Kelley.
7 A. Mmm-hmm.
8
9 Q. It's from 2014, and it is headed "Exploring Anti-LGBT
10 Homicide by Mode of Victim Selection"?
11 A. Yes.
12
13 Q. Now, you may or may not be familiar with this article,
14 I will ask you?
15 A. Is it in the reference list for Parrabell?
16
17 Q. No, I don't think so. The other articles by
18 Dr Greunewald are but I don't think this one is.
19 A. So when I left the university I had one yellow bin
20 worth of piled printed homicide articles and hate crime
21 articles that I had - I'm old school, I kind of use
22 highlighters, Post-It notes, et cetera. I had piles and
23 piles and piles of them. They all went in that yellow
24 disposal bin. And looking at that one now, exploring
25 anti-gay by mode of victim selection, it doesn't ring
26 a bell. I don't think I read it.
27
28 Q. Okay, that's fine. Do you need a printed copy of it
29 or are you happy to look at it on the screen?
30 A. Happy to read it on the screen.
31
32 THE COMMISSIONER: Q. Just to inform you, in the
33 bibliography or notations to Parrabell, there is
34 a Gruenewald article, they're all alphabetically collected,
35 and the Gruenewald article is a 2001 article. There is no
36 other Gruenewald article, so this one isn't at least in --
37 A. Sure, thank you.
38
39 Q. I'm not saying it wasn't in the yellow bin but it's
40 not in your list.
41 A. No.
42
43 MR GRAY: Q. So this is not an exam. I'm not --
44 A. I understand that.
45
46 Q. I just want to acquaint you with some of the concepts
47 that are in this article to see whether (a) you're aware of

1 them and (b) what your view of them is.

2 A. Mmm-hmm.

3

4 Q. On the second page of the article proper, which is
5 page 1131 of the article, that page, if you just scroll
6 down a bit, to the paragraph beginning "Thus far" - now,
7 this is 2014. You see:

8

9 *Thus far, our understanding of bias crime*
10 *has been largely shaped by a general*
11 *typology centred on differences in offender*
12 *motives.*

13

14 A. Mmm-hmm.

15

16 Q. And you would agree, I think that that's largely so as
17 a matter of history.

18 A. (Witness nods).

19

20 Q. And the authors are making the point that there are
21 some issues bound up - issues as in problems, bound up with
22 focusing on motive. And indeed you have adverted to these
23 yourself. In the next paragraph, beginning "The first
24 issue", half a dozen lines in he says:

25

26 *Determining the actual motives of bias*
27 *crime offenders ... has been shown to be*
28 *challenging even under ideal*
29 *circumstances ...*

30

31 And you would be the first to agree with that?

32 A. Oh, yes.

33

34 Q. Now, the next paragraph, he says:

35

36 *One study to date has examined anti-LGBT*
37 *homicide --*

38

39 and this is one of his own, two years earlier, 2012 --

40

41 *as a unique form of bias crime based on*
42 *offender mode of victim selection.*

43

44 ie, not based on motive. Do you see that?

45 A. Yes.

46

47 Q. And he gives an account of what he had found in that

1 earlier article. And then over the page, he says the
2 purpose of the current study is:

3
4 *... to advance knowledge about the*
5 *comparative nature of anti-LGBT homicide*
6 *across different modes of LGBT victim*
7 *selection.*

8
9 Do you see that?

10 A. Yes.

11
12 Q. He says:

13
14 *Rather than focus primarily on bias*
15 *offender motives, this study draws from*
16 *Lawrence's "discriminatory selection model"*
17 *to categorise anti-LGBT homicide by*
18 *offenders' observable victim selection*
19 *behaviours ...*

20
21 Now, pausing there - and I won't take too long on this
22 because it's not an article that you've prepared for and,
23 as I say, it is not a quiz, but is that concept of looking
24 at victim selection behaviours rather than motives one that
25 you're aware of?

26 A. I don't remember.

27
28 MR TEDESCHI: I object.

29
30 THE COMMISSIONER: Why?

31
32 MR TEDESCHI: If you go on the paragraph, it says:

33
34 *In this study, anti-LGBT homicide refers to*
35 *fatal acts of criminal violence in which*
36 *victims were targeted in whole or in part*
37 *because of their actual or perceived sexual*
38 *orientation or gender identity.*

39
40 THE COMMISSIONER: So?

41
42 MR TEDESCHI: It seems to me exactly the same as what my
43 friend is suggesting is purely subjective.

44
45 THE COMMISSIONER: Well, I'll allow the cross-examination,
46 and no doubt you'll re-examine on it, Mr Tedeschi. If you
47 read it differently, that's one thing. But we've got

1 someone in the witness box who is an expert, and on aspects
2 of the literature, I propose to allow it.

3
4 MR TEDESCHI: If the Commissioner pleases.

5
6 THE COMMISSIONER: Thank you.

7
8 MR GRAY: Q. To the avoidance of doubt - I don't wish
9 this thread to be left hanging.

10 A. Sure.

11
12 Q. It is perfectly true - this is, in effect, the
13 abstract or the summary, these first few paragraphs.

14 A. Mmm-hmm.

15
16 Q. He says - they say:

17
18 *While offenders may not always*
19 *premeditatedly choose their victims, all*
20 *homicides in the current study involve*
21 *offenders who made deadly decisions to*
22 *violently attack LGBT individuals in such*
23 *a way to lead to the death of victims.*

24
25 Do you see that?

26 A. Yes.

27
28 Q. And he says:

29
30 *In this study --*

31
32 and he's giving, in effect, a definition of the phrase
33 "anti-LGBT homicide" --

34
35 A. Mmm-hmm.

36
37 Q. He said:

38
39 *... anti-LGBT homicide refers to fatal acts*
40 *of criminal violence in which victims were*
41 *targeted in whole or in part because of*
42 *their actual or perceived sexual*
43 *orientation or gender identity.*

44
45 Fine?

46 A. That's right. It's got nothing to do with motivation.

47

1 Q. Nothing to do with motivation?

2 A. That's right.

3

4 Q. But the point of the article, as I think you did
5 understand, maybe not everyone did, but you did, was that
6 whereas other approaches had focused on motive in respect
7 of anti-LGBT homicides as so defined --

8 A. Mmm-hmm.

9

10 Q. -- this one was going to focus on something different,
11 namely, observable victim selection behaviours?

12 A. Yes.

13

14 Q. You understood that, I think?

15 A. Yes, I did.

16

17 Q. And I think I asked you, and I think you answered,
18 that you don't think you were aware of this conceptual way
19 of going about the exercise?

20 A. I had so many piles of articles and I'd pull things
21 out of some, I'd try to synthesise them. I don't - yeah.

22

23 Q. Okay. Now, if you turn over to page 1134, there is
24 a heading, "The Current Study", and he describes or they
25 describe what they're going to do. And they, under that,
26 the paragraph beginning "Third", which is the one I want to
27 focus on:

28

29 *... this study extends prior research by*
30 *placing focus on one particular dimension*
31 *of crime, offender mode of victim*
32 *selection, to classify anti-LGBT homicide*
33 *events.*

34

35 And at the top of the next page in the same paragraph, and
36 he's here slightly expanding on what he put in the summary
37 at the beginning --

38 A. Mmm-hmm.

39

40 Q. About four lines down:

41

42 *[This] study's conceptualisation of*
43 *anti-LGBT bias crime is based on how, and*
44 *not why, offenders discriminately select*
45 *victims due to their membership in ... a*
46 *social group ...*

47

1 Do you see that?
2 A. Yeah, "how" is very important, of course.
3
4 Q. Indeed. So that's what he is aiming at, that's the
5 purpose of the study?
6 A. Yes, of course.
7
8 Q. He says a few lines down:
9
10 *By relying on the discriminatory selection*
11 *model, it is possible to avoid the*
12 *impossible task of reading offenders' minds*
13 *and evaluating their feelings prior to*
14 *their crimes. Instead, it is necessary to*
15 *identify only observable indicators of*
16 *biased victim selection by offenders, or*
17 *indicators that demonstrate how offenders*
18 *selected victims based on their perceived*
19 *social minority status.*
20
21 A. Mmm-hmm.
22
23 Q. Now, we're at the level of abstract theory here
24 I appreciate.
25 A. Mmm-hmm.
26
27 Q. And I'm not going to attempt to apply this to the
28 cases. But as a conceptual approach, does that strike you
29 as a way that one could do it?
30 A. To focus more on the "how" than the motive?
31
32 Q. Yes.
33 A. Yes, it does. The second order question comes, how do
34 you uncover or explore the "how", but yes, it's
35 certainly --
36
37 Q. Quite. Indeed. No doubt. I just want to take you in
38 very, very broad brush terms to something of what he says
39 about this.
40 A. Mmm-hmm.
41
42 Q. If we turn over to 1138, there's a heading "Predatory
43 Homicide". There we are.
44 A. Thank you.
45
46 Q. And he divides - or they, the authors, divide this
47 study into essentially two, predatory homicide, which is

1 what this heading is leading to, and responsive homicide,
2 which I'll come to in a sec. In predatory homicide, being
3 planned acts of violence against members of the LGBT
4 community, he distinguishes, down the bottom of that page,
5 two common profiles of predatory anti-LGBT homicide
6 situations, namely, what he calls representative
7 offences --

8 A. And instrumental.

9

10 Q. -- on the one hand and instrumental offences. Are
11 they terms that you are familiar with?

12 A. No.

13

14 Q. Okay. On the next page, you'll see, "Representative
15 offences". No, we've gone past it, I think. Higher up.
16 There we are. He says:

17

18 *Predatory representative offenders appear*
19 *to select victims whose deaths will*
20 *communicate symbolic messages ...*

21

22 et cetera?

23 A. Yes.

24

25 Q. Representative in that sense?

26 A. Yes.

27

28 Q. And then down the page a bit further, instrumental
29 offences are, in the second line, where offenders select
30 victims based on their sexual orientation or gender
31 identity primarily to rob them. Do you see that?

32 A. Yes.

33

34 Q. What he goes on to - they go on to - outline is that
35 they regarded such cases as bias crimes - you'll see
36 towards the end of that paragraph - because LGBT victims of
37 robbery homicides were discriminately selected based on
38 sexual orientation or gender identity.

39 A. Yeah, if that's what's happened, you'd have to. If
40 I'm --

41

42 Q. He gives some examples. He says they weren't, in
43 those cases, necessarily targeted because of deep-seated
44 hatred towards gays or lesbians, motives for victim
45 selection were often much more mundane, sometimes they were
46 targeted because they were thought of as easy prey?

47 A. Isn't that sort of having a bit of an each-way bet?

1 I'm finding it a bit confusing.

2

3 Q. I'm just exposing you to the view. We haven't got
4 time to debate it at length, but on that way of approaching
5 things, a crime where an LGBT person was selected as easy
6 prey to be robbed but then killed would be a crime
7 involving an element, at least wholly or partly, of
8 anti-gay bias, but would you say it wasn't? Would you
9 exclude such a case?

10 A. What I would say is that six years after the event and
11 not having my literature anymore and not having the time to
12 read this properly and let it percolate in my brain and
13 apply it to all the other stuff I've read, I don't -
14 I wouldn't know what I'd say about it today here on the
15 stand.

16

17 THE COMMISSIONER: Q. Can I ask you this: are you aware
18 of Professor Gruenewald?

19 A. Yes.

20

21 Q. And what reputation does he have in this particular
22 field?

23 A. I can't recall. I - some of the other ones I can
24 recall their reputation, but - what journal is this
25 published in?

26

27 MR GRAY: Q. "Criminal Justice and Behaviour"?

28 A. Okay, yeah.

29

30 Q. Pardon?

31 A. No, no, nothing.

32

33 Q. I'm sorry, I didn't hear you.

34 A. Nothing. No, I just thought in my head.

35

36 Q. Well, just to round this off for my purposes, if we
37 turn over to page 1146 --

38 A. Mmm-hmm.

39

40 Q. -- to the paragraph beginning "The second type", where
41 he's back on instrumental offences - do you see that?

42 A. Yes.

43

44 Q. He's talking about predatory instrumental homicides
45 involving robbery?

46 A. Mmm-hmm.

47

1 Q. And halfway down, he picks up, in effect, your point,
2 broadly speaking:

3
4 *... critics may question the inclusion of*
5 *instrumental homicides in a study of*
6 *anti-LGBT violence.*

7
8 Do you see that?

9 A. Yes.

10
11 Q. And he says:

12
13 *Determining the relative roles of bias and*
14 *profit-related circumstances in a single*
15 *homicide event undoubtedly presents*
16 *challenges.*

17
18 A. Don't they ever.

19
20 Q. You would agree with that so far?

21 A. Absolutely I do.

22
23 Q. What he says is this:

24
25 *This study ... suggests that the*
26 *discriminatory selection of LGBT victims in*
27 *instrumental offences is just as harmful*
28 *for victims and victim communities*
29 *regardless of the added complexity of*
30 *robbery motives.*

31
32 You would agree with that, I take it?

33 A. Sorry, was it that he said it's just as what, sorry?

34
35 Q. Just as harmful for the victims.

36 A. Well, I guess, yeah, the harm is the harm, isn't it?

37
38 Q. Yes. And he says "Therefore" - a couple of lines
39 down:

40
41 *... ignoring this subtype of homicide would*
42 *sacrifice a more complete understanding of*
43 *an important element of the anti-LGBT*
44 *violence story.*

45
46 Do you accept that? Do you agree with that?

47 A. Yes.

1
2 MR GRAY: Commissioner, I am conscious of the time.
3 I would expect that I would be able to finish within half
4 an hour. If it is convenient to the Commission and it's
5 not too much of an imposition on the witness, given our
6 constraints of time this week --
7
8 THE COMMISSIONER: What would you prefer?
9
10 THE WITNESS: I'm happy to keep going if that's the --
11
12 THE COMMISSIONER: Well, don't be too enthusiastic about
13 that prospect. Mr Tedeschi may have some questions for
14 you. Do you have any questions?
15
16 MR TEDESCHI: I will, yes.
17
18 THE COMMISSIONER: How long will you be?
19
20 MR TEDESCHI: I will probably be an hour.
21
22 THE COMMISSIONER: Q. An hour. So we're not going to
23 finish this afternoon.
24 A. No, I was already told that I'd have to stay another
25 night.
26
27 Q. All right. But your preference, would you like to go
28 another half hour and come back tomorrow morning with
29 Mr Tedeschi asking you some questions; would you prefer to
30 have a break now and come back in the morning and deal with
31 the balance of Mr Gray and whatever Mr Tedeschi has to ask
32 you?
33 A. No, I'd be happy for Mr Gray to finish today if that
34 pleased you.
35
36 Q. All right. Matter for you. But if at any point in the
37 next half hour - barristers, as Mr Tedeschi so wisely
38 points out, sometimes aren't always accurate in their
39 estimates --
40 A. Mmm-hmm.
41
42 Q. -- so you tell me if it gets to a point where you'd
43 like to have a break?
44 A. Thank you, yes.
45
46 THE COMMISSIONER: All right. Yes, Mr Gray.
47

- 1 MR GRAY: Thank you, Commissioner.
2
- 3 Q. I want to turn to one last topic.
4 A. Mmm-hmm.
5
- 6 Q. Can we have the Parrabell report, exhibit 1, tab 2
7 [SC0I.02632_0001]. Can I just take you first to a couple
8 of passages in the police section of the report?
9 A. Sure.
10
- 11 Q. At page 12 - this is in the police section --
12 A. Yes.
13
- 14 Q. -- there's a heading "Social Progress" down the bottom
15 of the page.
16 A. Mmm-hmm.
17
- 18 Q. And there's a reference to HIV/AIDS arriving in the
19 early '80s?
20 A. Yes, there is, yes.
21
- 22 Q. And the police section says:
23
24 *What followed is often referred to as the*
25 *"AIDS crisis" drawing a significant media*
26 *and social response of gay alienation*
27 *within the context of "moral panic".*
28
- 29 A. Yes.
30
- 31 Q. And in the two paragraphs down, after referring to the
32 Grim Reaper campaign --
33 A. Yes, terrible campaign, mmm.
34
- 35 Q. -- the police section says:
36
37 *The link between anti-gay violence and*
38 *moral panic associated with the spread of*
39 *AIDS in Australian states is well*
40 *documented.*
41
- 42 And you'd be aware of that?
43 A. Yes, certainly the idea that in the advent of AIDS
44 there's a lot of animosity towards gay men because they're
45 carrying the plague and spreading a disease, yes.
46
- 47 Q. Yes. And as you read what the police section is

1 saying there in using the term "moral panic", what, as you
2 understand it, was meant by that phrase in the passages
3 that I have just taken you to?

4 A. It's complicated. I think they're alluding to the
5 fact that the moral - it's tricky because if you go back to
6 Stanley Cohen's definition of "moral panic", there's both
7 that definition in criminology and the more general lay
8 definition, but I think they're getting at this idea of
9 anti-gay violence is going to be fuelled by panic in the
10 community amongst some violent heterosexual men
11 predominantly, that these poofers are spreading AIDS,
12 they're bad news, they're going to make everyone sick, and
13 that causes this kind of fervour or hatred against them.
14 I'm doing the best you can here.

15

16 Q. No, fair enough, thank you. And on page 15, still in
17 the police section, having referred to the levels of
18 violence against gay people --

19 A. Mmm-hmm.

20

21 Q. -- in the '70s, '80s and '90s --

22 A. Yes.

23

24 Q. -- but in a general way, in the next
25 paragraph beginning "All these factors"?

26 A. Mmm-hmm.

27

28 Q. The police say:

29

30 *All these factors were relevant to Strike*
31 *Force Parrabell and form significant*
32 *context for this report. Importantly,*
33 *fear, moral panic and moral judgments*
34 *towards beats usage were very real.*

35

36 A. Yes.

37

38 Q. And that's being said in the context of acknowledging,
39 in the next sentence, that these attitudes inevitably
40 coloured the perceptions of police officers?

41 A. Yes.

42

43 Q. Now, there's the usage by the police of the term
44 "moral panic". In your part of the report, if we go to
45 page 80, at the top of the page --

46 A. Sure.

47

1 Q. -- I took you to this passage a little while ago in a
2 different context:

3
4 *Where there is an over-recording of bias*
5 *crime, ... There will be [an]*
6 *over-criminalisation and the potential for*
7 *public or moral panic that will have impact*
8 *on freedoms.*

9
10 A. Yes, keep going.

11
12 Q. And there it seems that the notion of "moral panic" is
13 being used in the sense that if the community gets the idea
14 that there are more of these deaths, or more of this kind
15 of violence than there actually was, that would cause the
16 community to, as it were, panic unnecessarily?

17 A. Yeah, I guess the logic there is if the prevalence of
18 the number of the homicides is reported as being higher
19 than it actually is, people will be more fearful of being
20 predated by a criminal who will - where they'll become
21 a victim of homicide.

22
23 Q. Okay. Now, if we just go to volume 3, tab 92
24 [SCOI.77540_0001] this is a document produced in answer to
25 a summons titled "Notes 3", and I want to ask you, first of
26 all, whether this is your document or whether it's someone
27 else's document. It's headed "Anatomy of a moral panic:
28 the wave of gay homicides in Sydney".

29 A. Sorry, "Reported in The Star Observer", or are we just
30 looking at this text here?

31
32 Q. By all means look at that. This is just a document
33 that has been produced --

34 A. Yes.

35
36 Q. -- by Dr de Lint, I'm told.

37 A. Yes, I --

38
39 Q. So it may be, but I'm not saying it is, it may be that
40 it's his document, do you know?

41 A. I don't think I would have misspelt "Acorn" [sic].
42 I would have probably typed it all in capitals.

43
44 Q. Assuming it is his document, which it may be, have you
45 seen it before?

46 A. And can I keep reading it, sorry?
47

1 Q. Sure.
2 A. No, no, go back up to the top. It's too fast. "Like
3 an urban legend a moral panic joins up". I don't recall
4 seeing it.
5
6 Q. All right. Well, if you haven't seen it before,
7 I won't spend time on it, I'll ask Dr de Lint about it.
8 A. Yes. It may have been a preparatory document to
9 discuss a subsequent academic article.
10
11 Q. Yes. I'm going to come to the article. It does look
12 as though it might be an embryonic beginning of what later
13 became that article.
14 A. Yes.
15
16 Q. That doesn't necessarily mean you've seen this
17 document.
18 A. No, and I don't - yeah.
19
20 Q. All right.
21 A. I don't recall.
22
23 Q. We'll move on from that. Could we have volume 4,
24 tab 129 [SCOI.74734_0001] this is an email chain between
25 you and Mr Middleton of the police.
26 A. Me and who, sorry?
27
28 Q. Middleton of the police?
29 A. Yes.
30
31 Q. And you say to Craig Middleton - this is October 2018,
32 so this is after the Parrabell report has been made public.
33 A. Yes.
34
35 Q. And it's when the Parliamentary Inquiry in Sydney was
36 getting under way.
37 A. Mmm-hmm.
38
39 Q. You tell Craig Middleton:
40
41 *We have been approached to make*
42 *a submission to the Upper House*
43 *Parliamentary Committee and [will go] --*
44
45 Perhaps it hasn't come up on the screen, has it. It's the
46 last email in this?
47 A. Mmm-hmm.

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Q. The first email, at the back of the document.

THE COMMISSIONER: That's it.

MR GRAY: Q. I didn't realise you didn't have it in front of you, but:

We have been approached to make a submission to the Upper House Parliamentary Committee and will do so.

A. Mmm-hmm, yes.

Q. You say in the third paragraph:

Some of the post Parrabell criticisms floating out there in the cesspool of public commentary have been pretty objectionable --

"the cesspool" being?

A. I recall at the time, and I tried to keep a track of it but it's all got thrown away, that very - the negative things that were being said about what we did, very uncomplimentary things.

Q. The next sentence is:

Sue Thompson implied Willem and I have "no honour" ...

Do you see that?

A. Mmm-hmm, yes.

Q. Sue Thompson being the former gay and lesbian consultant within the police?

A. Yes, yes.

Q. And one of the people who had compiled the list of 88?

A. Mmm-hmm.

Q. And you say that she had implied that Willem and yourself had:

... "no honour" ... in one of her online rants that nobody probably reads.

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Was that your view of Sue Thompson, was it, that she was an online ranter?

A. Yes, because she must - I can't - I didn't capture the documents, obviously in the bin, where she calls it - said we were - what was it? Scroll over?

Q. That's the start. This is the first email in the chain.

A. I've quoted her directly, so I must have quoted, given I put it in quotation marks, that the internet site or whatever she was writing it on, said that we were people of no honour.

Q. Fine. If that's your recollection. My question is did you regard her as an online ranter?

A. It's an expression - it's such a - it's such a horrible expression, but when all these people are going round calling me a gun for hire, a FIFO worker - a fly-in/fly-out worker - and saying I'm a person of no honour, I just was so saddened and angry that people, when I did the best work I could with this review, would say that I'm a person of no honour. It's just such a terrible accusation. I can't even remember where she wrote it but --

Q. You can't remember?

A. Where she wrote it.

Q. Where she wrote it?

A. But I've quoted her, so I must have - and I had a folder where I had negative stuff that people were saying in it that ended up in the bin.

Q. In the first email, the last, but the top of the first page, from you to Craig Middleton --

A. Mmm-hmm.

Q. -- after some preliminary paragraphs that I don't need to take you to, you say:

*PS: I have a full draft of my Encountering
Nazi Tourism sites book so happy about
that!*

And then you say:

1 *(and in response to - The Empire Strikes*
2 *Back [bad mouthing by Tomsen and his crew*
3 *of imbecilic devotees] --*

4
5 A. Mmm.

6
7 Q. --

8
9 *Willem and I are quietly about to submit*
10 *a journal article that accuses these*
11 *players of fuelling a moral panic about*
12 *homicides that is not supported by*
13 *evidence.*

14
15 That's what you say, isn't it?

16 A. It's too strong a language and I regret writing it,
17 but it came from a position where I felt that I was being
18 bad-mouthed all over Sydney and I didn't deserve to be
19 bad-mouthed as a dishonourable person. But it's a shame
20 because you think, you know, you're just writing
21 a communication to one person, like you say something on
22 the phone. I'm saying it's sentiment that captures how sad
23 I was that people were saying that I was a dishonest
24 person.

25
26 Q. Well, you were saying that devotees of Stephen Tomsen
27 were imbecilic?

28 A. Yeah, it's pretty - it's --

29
30 MR TEDESCHI: I object.

31
32 THE COMMISSIONER: Why?

33
34 MR TEDESCHI: Commissioner, I ask rhetorically, is any of
35 this going to assist you in your task in this inquiry.

36
37 THE COMMISSIONER: I'm not going to answer you,
38 Mr Tedeschi, and I won't answer it today and now. I don't
39 know. But there will be arguments no doubt put, or may be
40 put, about motivation and attitude and so on. I'm not
41 going to give a ruling now as to whether or not it plays
42 any role.

43
44 MR TEDESCHI: If the Commission pleases.

45
46 THE COMMISSIONER: Thank you.

47

1 MR GRAY: Q. You describe what you call "devotees" of
2 Stephen Tomsen as "imbecilic", didn't you?
3 A. Yes.
4
5 Q. Does that mean people who subscribed to his views are
6 devotees or what?
7 A. I guess I meant anyone who wanted to sort of devote -
8 to buy into the idea that there were 88 cases of homicide.
9
10 Q. So anyone who bought into that view that there were 88
11 gay hate homicides was an imbecile?
12 A. Yeah, it's too strong a language. I regret writing
13 it.
14
15 Q. But it reflected - it may be too strong, but it
16 reflected your actual viewpoint, albeit perhaps overstated?
17 A. More - I'm trying to - you know, it comes from
18 a position of sadness and anger that people were just
19 saying things that I was a terrible person, that I was
20 dishonourable, that I was whatever. I just tried to do the
21 best I could with the review. And in the case that the -
22 that there weren't 88 cases of homicide, and that - I still
23 don't think there are, the insufficient category aside,
24 it's just - it's like in the manner you have a phone call
25 with someone and then one day you write an email - you
26 know, it's - I can't deny I wrote it, but --
27
28 Q. My question is not directed so much to the fact that
29 you wrote it, but as to what it tells us about your actual
30 state of mind, and was your actual state of mind that
31 anyone who thought that there was any substance in the idea
32 of 88 deaths was --
33 A. Just incorrect in the sense --
34
35 Q. No, not just incorrect, but imbecilic in the sense
36 that nobody could reasonably or honestly hold such a view?
37 Was that your state of mind, your belief?
38 A. I think I was just so worn down by --
39
40 Q. No. Was it your state of mind, that's all?
41 A. Was it my state of mind? Yes, I guess it was.
42
43 Q. All right. Now, just two more things.
44 A. Sure.
45
46 Q. In the response document --
47

1 THE COMMISSIONER: Just before you go on, I'm sorry.
2
3 Q. You see the link after you say "PS: did you see this
4 piece in the Weekend Australian?" Do you see that bit on
5 the screen, Doctor?
6 A. Mmm-hmm, yes.
7
8 Q. All right. And you see the link there?
9 A. Yes.
10
11 Q. All right. In the middle of the link is
12 "Pamela-Johnson"; does that help you recall what that
13 article was about?
14 A. No.
15
16 Q. Sure?
17 A. A little bit. It's obviously Pamela Johnson was --
18
19 Q. No, "Pamela-Johnson". It was about Pamela Young and
20 Scott Johnson, wasn't it?
21 A. It was about what, sorry?
22
23 Q. It was about Pamela Young and Scott Johnson, wasn't
24 it?
25 A. I don't recall.
26
27 Q. And you go on to say:
28
29 *I always wondered why her name*
30 *evoked ... silences at the Homicide meeting*
31 *I went to on my first trip.*
32
33 A. Mmm.
34
35 Q. Does that help you recall who it was about?
36 A. Yeah, I think - I think - "why her name evoked
37 silence" - yes.
38
39 Q. Well, Pamela Young, wasn't it?
40 A. Yes, I think so, although I'm a little bit confused by
41 the - but if you're asking me --
42
43 Q. If you have no recollection, don't speculate, but if
44 you haven't got a recollection as a result of what I've put
45 to you, let's move on.
46 A. Well, I haven't clicked on the link to read that news
47 item but I imagine from my next comment there that she was

1 the person I said to earlier who all of a sudden had become
2 persona non grata sort of in terms of what was going on.

3
4 THE COMMISSIONER: That's one way of putting it. Yes,
5 Mr Gray.

6
7 MR GRAY: Q. Could we go to one last document,
8 Dr Dalton. It's a document in volume 8, tab 205
9 [SCOI.82022_0001].

10 A. Mmm-hmm.

11
12 Q. And it's the article that you and Dr de Lint wrote, or
13 published, in July 2020, headed "Anatomy of Moral Panic:
14 The "List of 88" and Runaway Constructionism."

15 A. Mmm-hmm.

16
17 Q. Do you remember that article?

18 A. Yes, I do.

19
20 Q. That's the article that you foreshadowed in your email
21 to Mr Middleton that you and Willem were quietly working
22 on?

23 A. Yes, it must have been, I guess.

24
25 Q. Now, who wrote this article? That is to say, was it
26 an entirely joint exercise or was this one of the ones that
27 you say Dr de Lint mainly wrote or what was the position?

28 A. We co-authored it but most of the sections - well,
29 from memory were written by Dr de Lint, I think.

30
31 Q. Most of the - most of all the sections?

32 A. Many of the sections. He took - he took - should
33 I say he took the lead on this article because he was first
34 author.

35
36 Q. Well, if it's mainly Dr de Lint, I'll perhaps defer
37 most of my questions to him, but is that what you're
38 telling us, that it was mainly him who wrote it rather than
39 you?

40 A. Certainly I wrote a whole lot of - certain sections,
41 et cetera. I'd almost sort of it stare at it again and try
42 to work out the percentages, but he - I'm comfortable
43 saying he took the lead and wrote many of the sections,
44 yeah.

45
46 Q. Well, in the first few pages, there is an
47 introduction, and on page 725, there is the table that is

- 1 extracted from the Parrabell report.
2 A. Mmm-hmm.
3
4 Q. Where clearly, there is set out a distinction between
5 anti-gay, on the one hand, and anti-paedophile, on the
6 other?
7 A. Yes.
8
9 Q. And of course, if the two right-hand columns "No
10 Bias", and "Insufficient Information", add up to 56 --
11 A. Mmm-hmm.
12
13 Q. -- so your report was saying that of the 85 cases, 56
14 were either "No Bias" or "Insufficient Information",
15 leaving only 29 other, of which 17 were anti-gay and 12
16 were anti-paedophile?
17 A. Mmm-hmm.
18
19 Q. Is that right?
20 A. I don't recall. If you're saying --
21
22 Q. Well, that's what the numbers add up to, don't they,
23 as you're looking at them?
24 A. Yes, I guess so, you clearly added them up.
25
26 Q. Now, in a footnote - because this article analyses the
27 Parrabell report and the response to it - in a footnote you
28 disclose that you and Dr de Lint were two of the three
29 academics who were commissioned to re-evaluate the cases.
30 A. Yes.
31
32 Q. And you say:
33
34 *It is acknowledged that the [police], who*
35 *contracted our services, will have known*
36 *that any number significantly fewer than 88*
37 *would have been a reasonably favourable*
38 *outcome.*
39
40 A. Yes.
41
42 Q. Now, that was something that was present to your mind
43 as you were doing the Parrabell exercise, I assume -
44 a number lower than 88 would be considered a reasonably
45 favourable outcome by the police?
46 A. Significantly fewer, not just lower. Like. It was
47 82, you wouldn't have thought that was --

1
2 Q. Yes, sorry, any number significantly fewer, quite so.
3 A. Yes, yes.
4
5 Q. Now, in this paragraph just above that, you talk about
6 actors becoming invested in crime facts and encountering
7 review posed by challengers, as in ideological opponents.
8 Now, you are there identifying yourselves - that is,
9 Dr de Lint and yourself - as the challengers, aren't you?
10 Somebody challenging this 88 view?
11 A. I can recognise from that language that
12 Professor de Lint wrote that sentence, so it would perhaps
13 be --
14
15 Q. Is the answer yes, though? Are the challengers you,
16 or do they include you, the two of you?
17 A. Yes, I guess so.
18
19 Q. Yes. And the last sentence, the last line of this
20 summary or introduction, brings in the concept of "fake
21 news", doesn't it?
22 A. Yes.
23
24 Q. Which is a pretty loaded term in this modern --
25 A. Is it ever.
26
27 Q. -- Trumpian era, isn't it? And that's what you choose
28 to refer to the view of those who think there could have
29 been as many as 88 as - "fake news"?
30 A. Yes.
31
32 Q. That's pretty strong, isn't it?
33 A. It's too strong and I - I objected to it at the time
34 with him. I said I thought the term was perhaps
35 overplaying it.
36
37 THE COMMISSIONER: Q. But he overbore your will, did he?
38 A. Sorry.
39
40 Q. He overbore your will?
41 A. I - from memory, he did, yes.
42
43 Q. On the next page, 726, just above halfway, talking
44 about what is meant by "moral panic", there is a sentence
45 that begins "For Cohen" --
46 A. Mmm-hmm.
47

1 Q. -- who was a particular author:

2

3 *... and many following his example, the*
4 *point of the spectre of the "moral panic"*
5 *is to raise the concern that elite*
6 *interests manipulate societal reaction to*
7 *produce tighter social control or more*
8 *robust regulatory restrictions.*

9

10 Do you see that?

11 A. Mmm-hmm.

12

13 Q. Now, you are citing another author, of course?

14 A. Yes.

15

16 Q. But is the point that you are making there, or that
17 you would want the reader to understand, having read the
18 whole article, that in the case of the Parrabell exercise,
19 there were elite interests manipulating societal reaction?

20 A. No, no. That's - that's just - it's saying "For
21 Cohen", so it's sort of citing what he says about moral
22 panic.

23

24 Q. So it's not relevant to your argument in this article;
25 why else would you put it in there?

26 A. There's dozens of references there, it's just sort of
27 the manual in which often arguments get made --

28

29 Q. So you are not suggesting or you are not intending the
30 reader who reads the rest of this to suppose that the elite
31 interests were, among others, Sue Thompson and
32 Stephen Tomsen?

33 A. I couldn't say.

34

35 Q. You couldn't say. All right. Let me move over. On
36 the top of page 728, you say:

37

38 *In the case we are investigating --*

39

40 which is the Parrabell exercise --

41

42 *we hope to show how the data, once*
43 *inflated, become a prized possession; it*
44 *becomes short-hand proof that the reform is*
45 *necessary and just; it is also resistant to*
46 *review and revision, as if to discredit the*
47 *number is to discredit the social movement*

1 *and reform. Thus, we seek to provide an*
2 *account of the resilience of the "false*
3 *facts" despite their very public*
4 *correction.*

5

6 So that was your objective in this article?

7 A. Yeah, I - it was born out of the fact that this
8 number, 88, was diminished to something that was
9 significantly less, and that then immediately the number
10 seemed to be, 88, resuscitated in the media and kept being
11 discussed in the media as 88, and it just didn't seem good
12 that a number that wouldn't stand up to that sort of
13 scrutiny - and I - as in - was continually sort of being
14 resuscitated. So 88 just sort of didn't go away. It was
15 88.

16

17 Q. And your view was - and part of the reason you wrote
18 this article - was that that was in the region of false
19 facts or fake news and had to be thoroughly and utterly
20 rebutted?

21 A. Yeah, "fake news" is a very unfortunate term, but
22 certainly that 88 wasn't a justified number, wasn't a sort
23 of --

24

25 Q. On page 734, under the heading "'The List' Reviewed"?

26 A. Mmm-hmm.

27

28 Q. Towards the bottom of the page - I won't take you to
29 all this detail, towards the bottom of the page where you
30 are talking about how the Parrabell exercise was conducted
31 and police used the 10 point Bias Indicator Review Form, do
32 you see in that paragraph, it says:

33

34 *The academics took the summaries from the*
35 *police and re-interpreted the chances of*
36 *bias against their own bias indicator*
37 *assessment tool.*

38

39 Mmm-hmm, yes.

40

41 Q. And you say:

42

43 *In doing so, the academic researchers*
44 *determined that what was necessary and*
45 *sufficient was the evidence of proactive or*
46 *predatory intent and communication with*
47 *others (association) about that intent.*

1
2 A. Mmm-hmm.
3
4 Q. Well --
5 A. Yes.
6
7 Q. -- that is excluding non-predatory cases, isn't it,
8 according to this sentence?
9 A. Yeah, I guess according to that sentence it perhaps
10 does.
11
12 Q. Well, is that sentence accurate? Is that what you
13 actually did do, to only regard as necessary and
14 sufficient, cases that had evidence of proactive or
15 predatory intent?
16 A. No, I don't think we excluded ones that were
17 non-proactive or non-predatory.
18
19 Q. According to this --
20 A. I know - I know that's produced - that's --
21
22 Q. According to this, it was necessary that there be
23 evidence of proactive or predatory intent and evidence of
24 communication with others about that intent. So the reader
25 of this article is being told that, in your view, those two
26 things were essential, and without those, cases would be
27 excluded. Are you saying that, in fact, that's wrong;
28 that's now how you did it?
29 A. I'm saying that a lot of these sentences and the lead,
30 in terms of the argument in this, the article, was
31 Professor de Lint, and he said to me last - the other day,
32 he's happy to speak to this.
33
34 Q. So is putting your name to it something that we should
35 place no store by? It's really his article, is it?
36 A. It's safe to say he took the lead on this article.
37 I had misgivings about some aspects of it. We were under
38 such pressure at the university to get academic articles
39 out there. I - my name is on it, I'm the second author,
40 despite those misgivings. The pressure we were under -
41 I sort of wish I had - I had misgivings certainly about
42 this - about this idea about the "fake news". I thought it
43 was too strong a term. I wish I had have convinced him to
44 restrict that term.
45
46 Q. All right. Bottom of that page, the very last line,
47 this appears:

1
2 *In coming to its conclusion, the academic*
3 *team developed its own assessment tool*
4 *because it needed to differentiate the*
5 *target of bias (was it anti-gay or*
6 *anti-paedophile animus that may have*
7 *motivated the offender?)*

8
9 A. Mmm-hmm.

10
11 Q. Is that the reason why you developed your tool, which
12 is what that sentence says?

13 A. No, I'm - my understanding was we merely developed -
14 not "merely", that's not the right word. We developed our
15 tool because the police instrument wasn't fit for purpose,
16 and that the tool that we tried to devise, the way
17 I perceive it, irrespective of whether it's produced well
18 here, was to try to capture any and all bias that might
19 have been discernible.

20
21 Q. Okay. On page 737 there is a heading --

22
23 THE COMMISSIONER: Before you move on.

24
25 MR GRAY: Sorry.

26
27 THE COMMISSIONER: Q. Before we move on, wouldn't
28 intellectual integrity and honesty require you, in an
29 article such as this where you are being so critical of
30 others, to have been accurate about the reason why you
31 developed your own tool, namely, that the police
32 methodology was one you couldn't accept?

33 A. Sorry, put that to me again, please?

34
35 Q. Wouldn't intellectual integrity and/or honesty require
36 you, in an article such as this, to disclose the fact that
37 the real reason, or at least one of the reasons why you
38 developed your own tool, was because you didn't think much
39 of the police's methodology in their use of the form?

40 A. Yeah, you would - well --

41
42 Q. Was it - sorry, please go on?

43 A. I guess that is an omission.

44
45 Q. Well, it's not just an omission, it's a serious
46 omission, because it's - and a complete lack of candour to
47 the reader, in relation to the reader, isn't it?

1 A. No, I don't necessarily think so, that - it - you are
2 forced, with these articles, they want them to be of
3 certain length and often all sorts of things get left out,
4 edited.
5
6 Q. Dr Dalton, it was a serious omission not to fully and
7 transparently disclose the fact that the reason, in part,
8 at least, you developed your own tool, was because the
9 methodology used by the police could not be sustained?
10 A. I perhaps would have - we would have presumed that in
11 reading the Parrabell report, which I think is cited or
12 referenced, that they could read the entire thing and glean
13 that themselves.
14
15 Q. Oh, I see, so you left to the reader, through tens of
16 pages, to find footnote 20 in your report; is that what you
17 say?
18 A. Don't know what I say. I feel like I'm being sort of
19 fed words.
20
21 MR GRAY: Q. On the top of that page --
22 A. Mmm-hmm.
23
24 Q. -- you assert the reason for developing your own tool,
25 namely, it's to differentiate between anti-gay and
26 anti-paedophile?
27 A. Mmm-hmm.
28
29 Q. So, firstly, that's not true, on the evidence you have
30 given today and yesterday: that was not the reason for
31 developing the tool; correct?
32 A. I - I - I just can't answer. I just don't - I don't
33 know. That's so long ago. I'm --
34
35 Q. Dr Dalton, you have given numerous answers accepting
36 that you developed your own tool because you regarded the
37 police tool as unacceptable.
38 A. Yes. Yes, I agree with that.
39
40 Q. That's the real reason you developed the tool, isn't
41 it?
42 A. Yes, it is.
43
44 Q. But you told the reader, falsely, in this article that
45 you'd developed the tool for some other reason, didn't you?
46 A. What is the other reason we've provided here?
47

- 1 Q. To differentiate between anti-gay and anti-paedophile.
2 A. That seems to be the case in the --
3
4 Q. So you told the reader something that was false and
5 you - instead of telling them what was true, which was that
6 the police methodology was unacceptable --
7 A. Well, it would appear that you could make that
8 assertion, yes.
9
10 Q. At the bottom of page 737 - sorry, in the middle of
11 page 737, under the heading "Embedding the Panic"?
12 A. Mmm-hmm.
13
14 Q. About halfway down that first paragraph, there is
15 a sentence that reads:
16
17 *Crusader interest to inflate the problem --*
18
19 A. Mmm-hmm.
20
21 Q. --
22
23 *interacts with the "rhetoric of numbers in*
24 *front page journalism" ...*
25
26 A. Mmm-hmm.
27
28 Q. Now, the "crusaders" included Sue Thompson and Stephen
29 Tomsen, in your view, didn't they?
30 A. It would appear to be, yes.
31
32 Q. So they were, according to you, seeking to inflate the
33 problem. Did you mean, by that, inflating it dishonestly
34 or --
35 A. No, no, not dishonest, no. Not dishonestly, no.
36
37 Q. I see.
38 A. No, they had - as I made, and it's in the report -
39 they had very good intentions, particularly Sue. She's
40 a good person.
41
42 Q. Okay, thank you. Bottom of page 737 --
43 A. Although, I don't know why she said I had no honour,
44 that's a bit --
45
46 Q. Bottom of page 737?
47 A. Mmm-hmm.

- 1
2 Q. You and de Lint say:
3
4 *To grasp the extent to which the so-called*
5 *problem of gay homicide was being*
6 *promulgated ... we --*
7
8 did various things. "The so-called problem of gay
9 homicide" - was it a problem that was only "so-called" or
10 was it a real problem?
11 A. It's a real problem. It's a very unfortunate phrase.
12
13 Q. It is a very unfortunate phrase that indicates that
14 the authors of it regarded the problem of gay homicide as
15 not real?
16 A. Well, I think he's been sloppy with his language,
17 perhaps. I think what he meant was the so-called - the
18 prevalence of the homicide, not so much the problem.
19
20 Q. On the next page, 738, the first main paragraph --
21 A. Mmm-hmm.
22
23 Q. -- the first new paragraph, you, the authors, say:
24
25 *News items were augmented by visual media,*
26 *which helped embed the notion of a*
27 *"problem" of gay homicide in the public*
28 *consciousness.*
29
30 A. Yes.
31
32 Q. The insertion of the inverted commas is to introduce
33 in the reader an idea of scepticism about the existence of
34 such a problem, isn't it?
35 A. It is terrible language. It should have been about
36 the prevalence, because I was thinking back to this - the
37 documentary and that interactive website, et cetera. But
38 it's - it seems very inelegantly expressed, but it's not -
39 you know, to say it is a "so-called problem", clearly, gay
40 hate homicide it is a problem, but it is the prevalence
41 that is meant to be the focus of the issue --
42
43 Q. At the bottom of page 739, under the heading
44 "Conclusion"?
45 A. Mmm-hmm.
46
47 Q. Just slightly further down, thank you. You say:

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Having pushed veracity --

ie, having pushed truthfulness --

with reference to the number, an attack on the quantity comes to stand-in for a diminution of the problem. Established normatively in this way, the number is politicised and made virtuous; it becomes a totem.

A. Mmm-hmm:

Q.

Its interrogation represents a callous indifference to the sacred site.

A. Mmm-hmm.

Q. Again, pretty horrible language, don't you think?

A. The final --

Q. Does it seem to be using the expression "sacred site" in a mocking way?

A. I would like you to ask Professor de Lint about it.

Q. I'm asking you.

A. No - yeah, well, hear me out.

Q. The question is, is the expression "the sacred" --

A. Can you hear me out?

Q. Listen to the question, please. Is the expression "the sacred site" being used in a mocking way?

A. I don't know. But if you would like me to elaborate, the very final version of this joint article was accepted - normally, when they come back, they come back with revisions from the journal, and you discuss the article with your co-author and make the revisions and the changes - yeah?

I have to be honest here because - and unfortunately I'm placed in an invidious position, this final version, and, indeed, this kind of final paragraph, which I'm not happy or comfortable with, the final journal - what's the journal again, the - I can't remember off the top of my

1 head where this ended up.

2

3 Q. It's in a journal called "Critical Criminology"?

4 A. "Critical Criminology". When the final revisions came
5 back, suggestions for change with all sorts of stuff,
6 Professor de Lint didn't show me, didn't tell me. He just
7 made the final changes and got it accepted.

8

9 He then, at some stage, told me about this. I got
10 very upset and said, "Why did you do that? We're meant to
11 be doing this together. We're meant to sort of - I'm meant
12 to have a read of this material." I can't remember the
13 tenor of what his reply was. I think it was he said, "You
14 said you were too busy or you didn't have time" or "I just
15 decided to fix it myself." I was, like a lot of academics,
16 burdened with all sorts of other tasks - teaching, all the
17 things I mentioned earlier.

18

19 I was very angry. I'm being honest. He knows this.
20 I was very angry with him that he didn't give me a chance
21 to have a look at the final version that would have my name
22 on it, and, indeed, I recall being horrified by this, this
23 last paragraph, and not even being able to understand it.

24

25 THE COMMISSIONER: Q. Now, is that another example of
26 him, in effect, overbearing you?

27 A. Yes, I guess you would have to say it is.

28

29 MR GRAY: Q. Turn to the last page of the article, 740.

30 A. Because I am - even as I read it there now, and I know
31 my name is on it, I cringe when I read some of it, because
32 I - it doesn't strike a chord with me.

33

34 Q. All right. Well, I will ask the next question,
35 appreciating that you have made that clear. The last
36 sentence of the article --

37 A. Mmm-hmm.

38

39 Q. -- says:

40

41 *It is not just the police who are vexed by*
42 *the figure; the wider community is jolted*
43 *by a "false news" imprimatur, whatever the*
44 *social reality of the period in history the*
45 *number is meant to represent.*

46

47 A. Mmm-hmm.

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Q. Again, putting the phrase "false news" in inverted commas is another reference to the "fake news" concept, isn't it?

A. Mmm-hmm, yes. "False news", "fake news", yes.

Q. And again, it's very harsh, very loaded, and very pro-police?

A. I don't know about the third, but the first two I will agree with, and it's another sentence that, when it appeared, I was somewhat horrified.

Q. Now, I have heard what you have said about how this article came to be produced and who wrote most of it, and so on.

A. Mmm-hmm.

Q. I understand that. In your long answer at the close of the hearing yesterday, you said that you were "not a police apologist".

A. No, I'm not.

Q. Now, would you agree that in this article, as it is written, with you put forward as one of its two authors, the authors would appear to be, indeed, police apologists?

A. No, despite everything I've said, I still wouldn't agree with that.

MR GRAY: All right. Commissioner, I have no further questions for Dr Dalton.

THE COMMISSIONER: All right. Well, I will excuse him for the afternoon, obviously, and we will resume at 10 in the morning.

MR TEDESCHI: Commissioner, I would like to have a chance to speak to Dr Dalton tomorrow morning.

THE COMMISSIONER: No, 10 o'clock. I have made it very clear before, Mr Tedeschi, you have had this - I haven't made this clear, but you have had the statement of various bits and pieces of experts and so on for some time. I think the police were behind, or at least party to, the production of both Dr Dalton's and Professor de Lint's material. I've really got to press on with this witness, we have other witnesses to deal with. It's only 10 to 5. If it suits you, I will start at half past 10, but that's

1 the only concession I will make.
2
3 MR TEDESCHI: That's all I was going to ask.
4
5 THE COMMISSIONER: All right.
6
7 MR GRAY: On that or a similar note, Commissioner, I too
8 of course am conscious, as are those instructing me, of the
9 time constraints that the Commission faces.
10
11 THE COMMISSIONER: Yes.
12
13 MR GRAY: Now, the next witness after Dr Dalton is of
14 course Dr de Lint.
15
16 THE COMMISSIONER: Yes.
17
18 MR GRAY: As I have said, I don't expect to be anything
19 like as long with him as I was with Dr Dalton. That will
20 leave, then, three witnesses, Professors Asquith and
21 Lovegrove, and Ms Coakley. Ms Coakley is fixed to give her
22 evidence at 9.30 on Friday.
23
24 THE COMMISSIONER: I don't know whether it is 9.30 or 9.
25 I'm just not certain.
26
27 MR GRAY: Very well.
28
29 THE COMMISSIONER: It is one or the other. I will clarify
30 that.
31
32 MR GRAY: My present intention, just so my friend is
33 aware, for two reasons - one, pressures of time, and, two,
34 because the evidence of those three experts is there in
35 their statements - my present intention is to ask them
36 either nothing or very little, myself, to see what
37 questions Mr Tedeschi may have of them, and to ask any
38 questions that I may have after that.
39
40 THE COMMISSIONER: All right. We will adjourn until 10.30
41 in the morning and shortly thereafter we will get to
42 Dr de Lint. All right. Thank you.
43
44 **AT 4.49PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
45 **TO THURSDAY, 2 MARCH 2023 AT 10.30AM**
46
47

\$	2514:23	2453:24	2553:10, 2553:11, 2553:42, 2553:46	2446:47, 2525:32
\$5,000 [1] - 2458:1	13/15 [1] - 2471:17	251 [1] - 2486:20	738 [1] - 2554:20	abandoned [1] - 2478:35
'	15 [1] - 2537:16	258 [4] - 2449:32, 2450:3, 2462:29, 2462:35	739 [1] - 2554:43	able [7] - 2448:9, 2450:26, 2483:34, 2497:10, 2503:39, 2535:3, 2556:23
'70s [1] - 2537:21	17 [2] - 2486:22, 2546:15	27 [2] - 2453:25, 2484:31	74 [1] - 2489:37	absence [2] - 2497:27, 2523:45
'80s [3] - 2490:25, 2536:19, 2537:21	19 [1] - 2483:38	270 [3] - 2451:47, 2452:1, 2452:6	740 [1] - 2556:29	absent [1] - 2504:27
'90s [2] - 2490:25, 2537:21	2	271 [1] - 2514:23	75 [1] - 2490:5	absolutely [10] - 2456:45, 2461:10, 2464:41, 2471:27, 2489:22, 2489:27, 2490:16, 2496:35, 2525:7, 2534:21
'the [1] - 2549:25	2 [12] - 2435:20, 2451:27, 2451:33, 2453:24, 2459:29, 2478:8, 2488:45, 2492:1, 2519:12, 2526:4, 2536:6, 2558:45	29 [2] - 2526:4, 2546:15	78 [2] - 2490:18, 2491:47	abstract [3] - 2488:19, 2529:13, 2531:23
1	2 [12] - 2435:20, 2451:27, 2451:33, 2453:24, 2459:29, 2478:8, 2488:45, 2492:1, 2519:12, 2526:4, 2536:6, 2558:45	3	8	academic [21] - 2437:20, 2446:46, 2452:10, 2453:18, 2454:45, 2455:15, 2459:44, 2460:6, 2471:4, 2492:10, 2498:25, 2498:33, 2498:47, 2503:14, 2518:1, 2524:9, 2525:41, 2539:9, 2549:43, 2550:38, 2551:2
1 [7] - 2435:25, 2459:29, 2474:26, 2488:45, 2491:47, 2519:12, 2536:6	2/3 [1] - 2517:23	3 [8] - 2472:18, 2473:21, 2476:29, 2478:14, 2481:10, 2517:39, 2538:23, 2538:25	8 [1] - 2545:8	academics [13] - 2453:40, 2455:8, 2460:13, 2471:35, 2475:43, 2484:36, 2497:28, 2519:3, 2521:42, 2525:46, 2546:29, 2549:34, 2556:15
10 [16] - 2440:31, 2442:13, 2442:20, 2442:22, 2444:16, 2453:39, 2469:14, 2476:9, 2486:20, 2490:47, 2549:31, 2557:33, 2557:39, 2557:46, 2557:47	20 [3] - 2514:30, 2515:47, 2552:16	30 [8] - 2435:27, 2436:24, 2436:38, 2436:45, 2437:3, 2437:13, 2437:43, 2437:44	80 [4] - 2472:19, 2495:37, 2496:8, 2537:45	accept [3] - 2503:21, 2534:46, 2551:32
10.00am [1] - 2435:25	2001 [2] - 2490:2, 2526:35	35 [2] - 2436:21, 2458:15	80-plus [1] - 2438:16	accepted [2] - 2555:37, 2556:7
10.03am [1] - 2436:9	2004 [2] - 2509:13, 2509:14	4	81 [1] - 2498:2	accepting [3] - 2460:30, 2520:10, 2552:35
10.30 [1] - 2558:40	2007 [5] - 2490:31, 2490:38, 2491:20, 2492:2, 2494:2	4 [5] - 2455:29, 2473:6, 2476:29, 2483:37, 2539:23	82 [5] - 2499:21, 2500:3, 2501:1, 2546:47	accommodate [1] - 2484:17
10.30AM [1] - 2558:45	2009 [2] - 2490:42, 2491:21	4.49PM [1] - 2558:44	83 [1] - 2504:42	accommodating [1] - 2487:14
100 [1] - 2460:10	2012 [3] - 2490:43, 2491:21, 2527:39	40 [3] - 2458:14, 2458:15, 2465:1	85 [2] - 2510:43, 2546:13	accord [1] - 2487:9
109 [1] - 2483:37	2014 [2] - 2526:9, 2527:7	5	86 [2] - 2496:8, 2512:32	according [8] - 2447:26, 2451:3, 2523:6, 2550:8, 2550:9, 2550:19, 2550:22, 2553:32
109A [1] - 2483:44	2015 [1] - 2491:22	5 [4] - 2456:19, 2473:35, 2474:26, 2557:46	88 [29] - 2436:35, 2436:45, 2436:46, 2437:1, 2437:44, 2438:29, 2439:6, 2446:37, 2452:23, 2476:5, 2478:15, 2497:41, 2519:12, 2540:40, 2543:8, 2543:10, 2543:22, 2543:32, 2545:14, 2546:36, 2546:44, 2547:10, 2547:29, 2549:8, 2549:10, 2549:11, 2549:14, 2549:15, 2549:22	accordingly [1] - 2521:47
10th [1] - 2444:40	2016 [6] - 2440:38, 2448:21, 2452:13, 2459:14, 2459:17, 2469:19	56 [3] - 2459:30, 2546:10, 2546:13	89 [2] - 2517:39, 2522:38	account [7] - 2459:35, 2492:17, 2494:35, 2499:9, 2499:14,
11 [1] - 2436:2	2017 [9] - 2444:7, 2448:22, 2476:8, 2481:11, 2484:29, 2484:32, 2491:2, 2514:30, 2516:26	57 [1] - 2476:23	9	
112 [1] - 2484:27	2018 [1] - 2539:31	6	9 [2] - 2444:39, 2558:24	
1131 [1] - 2527:5	2020 [1] - 2545:13	6 [5] - 2449:41, 2449:45, 2456:27, 2474:7, 2474:26	9.30 [2] - 2558:22, 2558:24	
1134 [1] - 2530:23	2021 [1] - 2459:17	7	90 [7] - 2484:23, 2500:34, 2500:37, 2500:46, 2500:47, 2522:45, 2524:33	
1138 [1] - 2531:42	2022 [1] - 2435:9	725 [1] - 2545:47	92 [1] - 2538:23	
1146 [1] - 2533:37	2023 [2] - 2435:25, 2558:45	726 [1] - 2547:43	97 [1] - 2481:10	
115 [1] - 2486:19	205 [1] - 2545:8	728 [1] - 2548:36	A	
117 [1] - 2484:12	21 [1] - 2476:23	73 [1] - 2488:46	abandon [2] -	
12 [17] - 2440:38, 2440:43, 2448:25, 2448:28, 2449:24, 2449:32, 2450:3, 2452:13, 2462:29, 2462:36, 2469:19, 2469:31, 2471:12, 2509:13, 2509:14, 2536:11, 2546:15	2020 [1] - 2545:13	734 [1] - 2549:25		
121 [1] - 2435:20	2021 [1] - 2459:17	737 [5] - 2551:21,		
129 [1] - 2539:24	2022 [1] - 2435:9			
13 [12] - 2439:45, 2451:46, 2452:1, 2452:6, 2455:28, 2469:38, 2470:20, 2470:31, 2472:19, 2478:20, 2484:13,	2023 [2] - 2435:25, 2558:45			

2527:47, 2549:2
accounted [1] - 2518:45
accounting [1] - 2517:3
accounts [1] - 2481:44
accuracy [1] - 2458:37
accurate [9] - 2458:33, 2460:2, 2460:10, 2468:1, 2492:17, 2493:41, 2535:38, 2550:12, 2551:30
accurately [1] - 2443:11
accusation [1] - 2541:24
accuses [1] - 2542:10
accusing [1] - 2482:39
achievable [1] - 2468:2
achieve [1] - 2522:45
acknowledge [1] - 2525:15
acknowledged [1] - 2546:34
acknowledging [1] - 2537:38
ACON [3] - 2438:23, 2481:20, 2481:31
Acorn [1] - 2538:41
acquaint [1] - 2526:46
acquainting [1] - 2518:5
acronym [1] - 2448:28
act [6] - 2500:17, 2502:5, 2503:38, 2504:3, 2506:11, 2515:17
action [1] - 2510:19
actions [1] - 2498:21
active [1] - 2439:33
actively [1] - 2519:15
activity [2] - 2522:11, 2522:12
actors [1] - 2547:6
acts [3] - 2528:35, 2529:39, 2532:3
actual [11] - 2442:13, 2442:15, 2459:28, 2499:8, 2513:23, 2527:26, 2528:37, 2529:42, 2543:16, 2543:29, 2543:30
add [7] - 2445:34, 2496:46, 2497:6, 2510:14, 2523:43, 2546:10, 2546:22
added [7] - 2442:20, 2442:39, 2444:40, 2458:1, 2518:14, 2534:29, 2546:24
adding [2] - 2520:4, 2520:30
addition [2] - 2468:41, 2507:46
additional [1] - 2457:46
address [1] - 2443:21
addresses [2] - 2439:6, 2460:38
addressing [1] - 2500:47
adduce [1] - 2504:29
adequacy [1] - 2482:16
adequately [1] - 2439:13
adjourn [3] - 2436:3, 2478:8, 2558:40
adjust [1] - 2487:20
admin [1] - 2458:17
admire [1] - 2475:9
adopt [2] - 2456:39, 2462:8
adopted [3] - 2442:6, 2442:19, 2442:22
adoption [2] - 2443:14, 2443:33
advance [2] - 2507:9, 2528:4
advantages [1] - 2439:5
advent [1] - 2536:43
adverted [1] - 2527:22
advocacy [1] - 2482:41
afternoon [2] - 2535:23, 2557:33
aggravated [8] - 2500:25, 2502:8, 2502:14, 2502:19, 2502:28, 2502:43, 2511:36, 2511:43
aggravating [1] - 2502:26
aggravation [1] - 2511:39
agitating [1] - 2452:25
ago [7] - 2440:18, 2443:10, 2443:28, 2480:25, 2503:22, 2538:1, 2552:33
agree [27] - 2442:4, 2442:24, 2453:3, 2464:38, 2464:39, 2465:35, 2473:3, 2474:4, 2474:25, 2476:23, 2476:30, 2485:32, 2485:41, 2485:45, 2493:31, 2499:36, 2524:44, 2527:16, 2527:31, 2534:20, 2534:32, 2534:46, 2552:38, 2557:10, 2557:23, 2557:27
agreed [10] - 2443:31, 2448:33, 2473:47, 2485:22, 2498:25, 2519:17, 2523:13, 2523:17, 2524:41
agreeing [2] - 2441:38, 2477:47
agreement [10] - 2452:18, 2471:36, 2471:40, 2471:41, 2473:12, 2473:30, 2476:31, 2505:8, 2514:41, 2516:44
aide [2] - 2441:41, 2444:47
aide-memoire [2] - 2441:41, 2444:47
AIDS [4] - 2536:25, 2536:39, 2536:43, 2537:11
aimed [2] - 2464:28, 2466:26
aiming [9] - 2467:37, 2467:46, 2468:3, 2468:7, 2468:14, 2468:38, 2468:46, 2473:3, 2531:4
albeit [1] - 2543:16
Alberici [1] - 2493:24
alienation [1] - 2536:26
allocated [1] - 2439:40
allow [6] - 2455:42, 2461:10, 2505:33, 2505:40, 2528:45, 2529:2
allowed [1] - 2454:8
alluded [1] - 2469:39
alluding [2] - 2471:30, 2537:4
allusion [1] - 2497:19
almost [8] - 2446:27, 2458:19, 2459:5, 2472:15, 2472:16, 2492:9, 2519:10, 2545:41
alphabetically [1] - 2526:34
alteration [1] - 2460:34
altered [1] - 2460:35
alternative [4] - 2448:3, 2464:33, 2464:43, 2466:15
amalgam [3] - 2481:33, 2481:46, 2482:46
Amber [1] - 2435:38
America [2] - 2442:19, 2442:23
amount [2] - 2503:10, 2511:3
amounts [1] - 2505:43
analyses [1] - 2546:26
analysing [1] - 2458:8
analysis [4] - 2458:18, 2458:40, 2468:41, 2469:1
anatomy [2] - 2538:27, 2545:13
and" [1] - 2500:44
Anders [1] - 2435:37
anecdotal [1] - 2467:27
anecdotes [1] - 2440:7
anger [1] - 2543:18
angry [5] - 2493:20, 2495:14, 2541:21, 2556:19, 2556:20
animosity [3] - 2496:40, 2509:41, 2536:44
animus [32] - 2480:28, 2480:31, 2480:32, 2480:45, 2500:13, 2500:19, 2501:14, 2501:16, 2501:18, 2501:29, 2501:42, 2502:4, 2504:4, 2506:11, 2507:47, 2508:7, 2510:10, 2513:9, 2513:13, 2513:16, 2513:17, 2513:20, 2513:23, 2513:31, 2513:38, 2514:3, 2514:13, 2514:16, 2515:3, 2551:6
animus" [1] - 2501:13
answer [29] - 2436:20, 2437:8, 2437:9, 2437:17, 2437:39, 2438:3, 2442:47, 2443:9, 2443:32, 2460:10, 2461:8, 2463:24, 2466:18, 2468:1, 2468:4, 2471:11, 2488:3, 2493:47, 2494:19, 2495:16, 2502:32, 2503:23, 2515:37, 2538:24, 2542:37, 2542:38, 2547:15, 2552:32, 2557:18
answered [7] - 2438:45, 2438:47, 2442:45, 2497:11, 2520:22, 2520:26, 2530:17
answers [3] - 2448:9, 2469:10, 2552:35
Anti [1] - 2526:9
anti [53] - 2438:16, 2480:28, 2491:42, 2495:33, 2512:6, 2512:7, 2513:5, 2513:11, 2513:16, 2513:17, 2513:20, 2513:31, 2513:37, 2514:11, 2514:12, 2514:16, 2514:47, 2515:1, 2515:7, 2515:27, 2515:36, 2517:13, 2518:9, 2518:15, 2518:23, 2518:28, 2526:25, 2527:36, 2528:5, 2528:17, 2528:34, 2529:33, 2529:39, 2530:7, 2530:32, 2530:43, 2532:5, 2533:8, 2534:6, 2534:43, 2536:37, 2537:9, 2546:5, 2546:15, 2546:16, 2551:5, 2551:6, 2552:25, 2552:26, 2553:1
anti-gay [20] - 2438:16, 2495:33, 2512:6, 2513:5, 2513:11, 2513:16, 2513:17, 2514:11, 2514:47, 2515:7, 2518:28, 2526:25, 2533:8, 2536:37, 2537:9, 2546:5, 2546:15, 2551:5, 2552:25, 2553:1
anti-government [1] - 2491:42
anti-homosexual [4] - 2480:28, 2518:9, 2518:15, 2518:23
Anti-LGBT [1] - 2526:9
anti-LGBT [12] - 2527:36, 2528:5, 2528:17, 2528:34,

- 2529:33, 2529:39,
2530:7, 2530:32,
2530:43, 2532:5,
2534:6, 2534:43
- anti-paedophile** [16] -
2512:7, 2513:5,
2513:20, 2513:31,
2513:37, 2514:12,
2514:16, 2515:1,
2515:27, 2515:36,
2517:13, 2546:5,
2546:16, 2551:6,
2552:26, 2553:1
- antipathy** [3] -
2509:29, 2510:6,
2511:40
- anxious** [2] - 2465:29
- anyway** [1] - 2440:24
- apart** [7] - 2438:1,
2459:17, 2470:45,
2471:5, 2477:22,
2477:38, 2523:1
- apologist** [1] -
2557:20
- apologists** [1] -
2557:25
- appalling** [1] -
2446:39
- apparent** [4] -
2444:15, 2446:13,
2457:32, 2482:1
- appear** [8] - 2492:16,
2499:2, 2509:38,
2515:44, 2532:18,
2553:7, 2553:30,
2557:25
- appeared** [1] -
2557:11
- applied** [1] - 2501:29
- apply** [4] - 2453:5,
2524:14, 2531:27,
2533:13
- appointed** [1] -
2490:38
- appreciate** [5] -
2441:30, 2444:23,
2445:22, 2445:36,
2531:24
- appreciated** [1] -
2470:15
- appreciating** [2] -
2441:38, 2556:35
- appreciation** [1] -
2467:5
- approach** [21] -
2438:6, 2438:42,
2439:3, 2439:23,
2441:31, 2454:24,
2455:27, 2475:21,
2480:33, 2480:44,
2487:26, 2499:22,
2499:29, 2499:31,
2499:37, 2499:43,
2523:39, 2524:27,
2525:42, 2531:28
- approached** [4] -
2480:8, 2520:15,
2539:41, 2540:9
- approaches** [1] -
2530:6
- approaching** [1] -
2533:4
- appropriate** [4] -
2447:44, 2473:15,
2506:5, 2524:9
- appropriately** [1] -
2478:1
- arbitrate** [2] - 2473:32,
2475:9
- architect** [1] - 2457:7
- archival** [1] - 2496:25
- area** [3] - 2453:16,
2489:21, 2490:24
- arguably** [3] - 2507:6,
2507:20, 2507:36
- argue** [2] - 2471:47,
2500:44
- argument** [5] -
2512:18, 2512:27,
2512:39, 2548:24,
2550:30
- arguments** [2] -
2542:39, 2548:27
- arises** [1] - 2436:12
- arising** [1] - 2494:1
- arranged** [1] - 2436:13
- arrive** [5] - 2500:3,
2509:44, 2519:3,
2524:16, 2524:41
- arrived** [5] - 2438:20,
2449:12, 2456:34,
2473:22, 2524:46
- arriving** [6] - 2438:15,
2472:14, 2523:16,
2523:41, 2523:42,
2536:18
- artefact** [1] - 2501:15
- article** [43] - 2482:26,
2496:9, 2509:17,
2526:5, 2526:13,
2526:34, 2526:35,
2526:36, 2526:47,
2527:4, 2527:5,
2528:1, 2528:22,
2530:4, 2539:9,
2539:11, 2539:13,
2542:10, 2544:13,
2545:12, 2545:17,
2545:20, 2545:25,
2545:33, 2546:26,
2548:18, 2548:24,
2549:6, 2549:18,
2550:25, 2550:30,
2550:35, 2550:36,
2551:29, 2551:36,
2552:44, 2555:37,
2555:39, 2556:29,
2556:36, 2557:14,
2557:23
- articles** [10] - 2453:18,
2458:41, 2458:47,
2482:11, 2526:17,
2526:20, 2526:21,
2530:20, 2550:38,
2552:2
- aside** [2] - 2494:1,
2543:23
- aspect** [3] - 2479:21,
2482:2, 2492:25
- aspects** [4] - 2449:1,
2478:45, 2529:1,
2550:37
- Asquith** [1] - 2558:20
- assault** [1] - 2497:26
- assaulted** [1] - 2480:6
- assert** [1] - 2552:24
- assertion** [5] -
2440:18, 2443:4,
2463:15, 2497:39,
2553:8
- assertions** [1] -
2495:10
- assess** [1] - 2446:4
- assessment** [5] -
2467:19, 2489:15,
2489:29, 2549:37,
2551:3
- assist** [1] - 2542:35
- Assistant** [2] -
2446:28, 2457:47
- Assisting** [2] -
2435:30, 2435:31
- assists** [1] - 2477:19
- Associate** [1] - 2465:8
- associate** [3] -
2509:39, 2510:16,
2522:10
- associated** [2] -
2453:39, 2536:38
- associates** [5] -
2454:29, 2509:34,
2509:36, 2522:5,
2522:7
- association** [8] -
2509:28, 2510:5,
2511:40, 2519:23,
2519:39, 2520:12,
2520:14, 2549:47
- associations** [8] -
2500:26, 2502:9,
2502:23, 2502:29,
2502:45, 2503:8,
2509:20, 2511:36
- associative** [4] -
2519:13, 2522:2,
2522:39, 2522:40
- assume** [7] - 2437:29,
2441:18, 2442:11,
2445:15, 2494:40,
2508:11, 2546:43
- assumed** [1] - 2515:6
- assuming** [2] -
2482:13, 2538:44
- assumptions** [2] -
2463:6, 2463:41
- assure** [1] - 2487:8
- AT** [2] - 2558:44,
2558:45
- attaching** [1] -
2483:41
- attachment** [1] -
2483:44
- attack** [2] - 2529:22,
2555:6
- attacking** [1] -
2437:19
- attempt** [1] - 2531:27
- attempted** [1] -
2497:41
- attempting** [1] -
2524:14
- attempts** [1] - 2516:22
- attend** [1] - 2436:2
- attended** [1] - 2459:11
- attending** [1] -
2458:32
- attention** [4] - 2437:2,
2437:24, 2443:21,
2479:10
- attitude** [1] - 2542:40
- attitudes** [1] - 2537:39
- attract** [1] - 2490:41
- attributable** [1] -
2497:25
- attributes** [1] - 2520:7
- audio** [2] - 2440:45,
2441:2
- audio-visual** [2] -
2440:45, 2441:2
- augment** [1] - 2478:47
- augmented** [1] -
2554:25
- augur** [1] - 2475:2
- augurs** [1] - 2483:4
- August** [1] - 2486:22
- Australian** [2] -
2536:39, 2544:4
- author** [6] - 2511:27,
2545:34, 2548:1,
2548:13, 2550:39,
2555:40
- authored** [2] -
2465:44, 2545:28
- authors** [6] - 2527:20,
2531:46, 2554:14,
2554:23, 2557:24,
2557:25
- availability** [1] -
2457:35
- available** [2] -
2513:39, 2521:1
- avoid** [2] - 2475:17,
2531:11
- avoidance** [1] - 2529:8
- aware** [10] - 2448:22,
2474:14, 2492:10,
2493:34, 2526:47,
2528:25, 2530:18,
2533:17, 2536:42,
2558:33
- awful** [4] - 2446:43,
2446:44, 2471:41,
2484:45

B

- back-engineer** [1] -
2516:23
- back-engineering** [3]
- 2517:27, 2517:31,
2517:35
- background** [2] -
2503:14, 2503:26
- backwards** [1] -
2516:44
- bad** [5] - 2492:12,
2537:12, 2542:2,
2542:18, 2542:19
- bad-mouthed** [2] -
2542:18, 2542:19
- baggage** [1] - 2453:38
- balance** [2] - 2439:10,
2535:31
- barely** [1] - 2492:9
- barristers** [1] -
2535:37
- based** [19] - 2476:47,
2482:16, 2482:17,
2485:19, 2485:29,
2486:11, 2486:12,
2487:10, 2487:39,
2505:44, 2513:38,
2513:39, 2522:34,
2527:41, 2527:44,
2530:43, 2531:18,
2532:30, 2532:37
- bash** [1] - 2509:37
- bashing** [1] - 2497:26
- basis** [6] - 2463:5,
2463:40, 2500:14,

- 2500:18, 2510:17,
2515:3
BCIF [1] - 2450:17
be [2] - 2471:22,
2518:10
bearing [1] - 2511:46
beats [2] - 2490:8,
2537:34
became [5] - 2444:15,
2457:32, 2481:47,
2493:31, 2539:13
become [5] - 2439:31,
2446:13, 2538:20,
2545:1, 2548:43
becomes [2] -
2548:44, 2555:10
becoming [1] - 2547:6
begin [1] - 2447:31
beginning [21] -
2450:10, 2459:36,
2462:40, 2478:19,
2479:40, 2483:4,
2488:46, 2489:37,
2490:6, 2490:19,
2491:4, 2496:18,
2512:17, 2512:38,
2527:6, 2527:23,
2530:26, 2530:37,
2533:40, 2537:25,
2539:12
begins [1] - 2547:45
begs [1] - 2497:46
behalf [1] - 2493:26
Behaviour [1] -
2533:27
behaviour [3] -
2508:13, 2509:6,
2519:17
behaviours [3] -
2528:19, 2528:24,
2530:11
behind [6] - 2439:28,
2439:32, 2458:44,
2463:1, 2463:29,
2557:43
beholden [1] -
2461:23
belief [3] - 2509:41,
2510:1, 2543:37
beliefs [1] - 2493:26
bell [3] - 2448:27,
2448:30, 2526:26
belong [1] - 2502:39
belonged [1] -
2518:28
below [8] - 2454:41,
2459:40, 2476:20,
2492:35, 2503:34,
2515:8, 2515:39,
2516:47
benefit [2] - 2456:35,
2525:15
bespoke [3] - 2524:2,
2524:3, 2524:6
best [12] - 2444:47,
2447:39, 2450:36,
2468:21, 2502:31,
2504:29, 2523:44,
2525:35, 2525:36,
2537:14, 2541:22,
2543:21
bet [1] - 2532:47
better [15] - 2436:23,
2437:12, 2437:21,
2438:42, 2439:3,
2440:3, 2440:10,
2440:19, 2449:6,
2449:31, 2457:9,
2471:41, 2478:42,
2501:30, 2522:31
between [36] - 2444:6,
2450:27, 2451:11,
2452:7, 2452:32,
2452:40, 2463:20,
2473:13, 2473:30,
2473:32, 2473:42,
2475:10, 2475:35,
2475:42, 2475:43,
2477:30, 2478:15,
2479:22, 2484:28,
2487:4, 2490:42,
2491:1, 2496:14,
2500:41, 2508:23,
2508:30, 2509:5,
2514:24, 2518:31,
2519:14, 2524:38,
2536:37, 2539:24,
2546:4, 2552:25,
2553:1
beyond [4] - 2442:14,
2447:32, 2447:43,
2500:47
Bias [30] - 2438:11,
2441:19, 2441:24,
2448:25, 2448:42,
2462:6, 2468:40,
2472:28, 2473:8,
2475:35, 2486:42,
2490:32, 2490:39,
2490:41, 2491:5,
2491:19, 2491:29,
2492:41, 2494:3,
2498:6, 2498:16,
2498:26, 2500:4,
2500:11, 2501:3,
2501:20, 2501:24,
2546:10, 2546:14,
2549:31
bias [107] - 2438:17,
2441:11, 2444:25,
2445:2, 2445:4,
2445:27, 2447:38,
2460:22, 2468:42,
2477:2, 2480:7,
2480:8, 2480:10,
2480:13, 2480:18,
2480:20, 2480:21,
2480:23, 2480:44,
2481:1, 2487:41,
2489:42, 2490:1,
2490:24, 2491:39,
2494:17, 2494:28,
2494:32, 2495:2,
2495:27, 2495:33,
2495:39, 2498:12,
2498:22, 2498:34,
2499:6, 2500:7,
2501:1, 2501:4,
2502:6, 2502:28,
2502:44, 2503:38,
2504:27, 2504:33,
2506:23, 2508:2,
2508:10, 2508:12,
2508:34, 2508:35,
2508:37, 2509:26,
2509:33, 2509:45,
2510:4, 2510:17,
2510:28, 2511:41,
2512:7, 2513:40,
2514:1, 2514:13,
2514:17, 2514:46,
2514:47, 2515:1,
2515:5, 2515:10,
2515:39, 2517:3,
2517:13, 2517:14,
2518:16, 2518:19,
2518:23, 2518:28,
2519:23, 2519:39,
2520:12, 2520:18,
2520:40, 2520:47,
2521:4, 2521:5,
2521:34, 2522:1,
2522:8, 2522:46,
2524:10, 2525:39,
2527:9, 2527:26,
2527:41, 2528:14,
2530:43, 2532:35,
2533:8, 2534:13,
2538:4, 2549:36,
2551:5, 2551:18
bias" [2] - 2498:3,
2519:13
bias [1] - 2515:7
biased [2] - 2482:40,
2531:16
bibliography [1] -
2526:33
bifurcated [1] -
2461:38
big [2] - 2459:9,
2460:8
bin [6] - 2493:45,
2526:19, 2526:24,
2526:39, 2541:5,
2541:33
Birkbeck [1] - 2452:11
bit [47] - 2439:7,
2440:14, 2447:47,
2449:42, 2450:6,
2450:10, 2456:40,
2457:45, 2464:40,
2465:42, 2466:23,
2466:24, 2466:25,
2466:28, 2468:17,
2468:18, 2468:25,
2471:41, 2476:20,
2484:45, 2485:42,
2487:45, 2497:6,
2499:42, 2503:35,
2507:37, 2511:27,
2512:12, 2512:19,
2512:30, 2515:47,
2516:4, 2518:17,
2518:19, 2520:41,
2521:7, 2527:6,
2532:28, 2532:47,
2533:1, 2544:4,
2544:17, 2544:40,
2553:44
bits [2] - 2510:12,
2557:42
bizarre [2] - 2481:36,
2482:25
bleeding [1] - 2462:3
bloody [1] - 2452:27
board [1] - 2469:2
body [2] - 2480:37,
2491:26
bold [3] - 2445:10,
2455:11, 2516:47
book [1] - 2541:43
born [1] - 2549:7
bothered [1] - 2493:43
bottom [28] - 2444:8,
2453:29, 2459:33,
2469:17, 2479:29,
2480:37, 2481:3,
2483:3, 2489:4,
2490:5, 2490:18,
2491:12, 2495:26,
2500:3, 2500:5,
2512:19, 2513:46,
2521:45, 2532:4,
2536:14, 2549:28,
2549:29, 2550:46,
2553:10, 2553:42,
2553:46, 2554:43
bought [1] - 2543:10
bound [2] - 2527:21
box [2] - 2436:6,
2529:1
brain [1] - 2533:12
Braw [2] - 2469:45,
2483:38
break [6] - 2436:12,
2502:14, 2525:20,
2525:23, 2535:30,
2535:43
breathe [2] - 2503:15,
2503:27
brick [1] - 2497:35
brief [4] - 2447:13,
2452:27, 2455:27,
2474:38
briefly [3] - 2436:33,
2455:26, 2486:20
bring [5] - 2439:7,
2449:1, 2473:41,
2512:16, 2524:15
bringing [2] - 2510:27,
2510:46
brings [2] - 2494:26,
2547:20
broad [2] - 2460:19,
2531:38
broadly [3] - 2499:42,
2520:32, 2534:2
broken [2] - 2457:27,
2459:37
brought [2] - 2449:31,
2473:32
brush [1] - 2531:38
bullet [5] - 2454:21,
2490:33, 2491:19,
2492:35, 2493:41
bundle [1] - 2484:13
burdened [1] -
2556:16
burgeoning [1] -
2446:12
busy [4] - 2457:36,
2465:1, 2492:10,
2556:14
buy [2] - 2478:44,
2543:8
BY [1] - 2436:17
-
- C**
-
- c** [1] - 2501:2
Caitlin [1] - 2435:33
calibrate [1] - 2523:6
callous [1] - 2555:16
campaign [2] -
2536:32, 2536:33
Camporeale [1] -
2435:32
candid [1] - 2452:41
candidates [1] -
2504:32

candidly [1] - 2465:30
candour [1] - 2551:46
cannot [4] - 2461:44, 2473:13, 2476:30, 2480:44
capacity [2] - 2450:37, 2495:2
capitals [2] - 2445:10, 2538:42
capture [3] - 2443:26, 2541:4, 2551:18
captured [2] - 2443:27, 2448:6
captures [1] - 2542:22
careful [3] - 2481:43, 2492:31, 2493:9
carefully [3] - 2466:1, 2466:4, 2523:6
carries [1] - 2456:42
carrying [1] - 2536:45
case [36] - 2439:27, 2439:29, 2439:33, 2440:8, 2452:6, 2460:11, 2469:40, 2472:41, 2474:14, 2474:28, 2480:26, 2486:36, 2486:41, 2486:44, 2487:33, 2488:4, 2488:5, 2493:32, 2507:13, 2508:11, 2510:8, 2510:11, 2513:33, 2514:10, 2520:40, 2521:28, 2522:46, 2523:17, 2524:31, 2525:9, 2533:9, 2543:21, 2548:18, 2548:38, 2553:2
cases [75] - 2436:25, 2437:14, 2437:22, 2437:43, 2438:16, 2438:29, 2440:4, 2441:12, 2448:35, 2449:20, 2451:16, 2452:24, 2455:14, 2458:8, 2458:10, 2460:12, 2460:21, 2464:31, 2464:41, 2467:19, 2467:23, 2468:42, 2469:1, 2469:38, 2470:20, 2471:17, 2471:28, 2472:15, 2472:27, 2472:29, 2473:12, 2473:29, 2473:41, 2476:36, 2477:8, 2478:23, 2480:5, 2481:2, 2481:46, 2482:9, 2483:21, 2484:37, 2487:22, 2488:15, 2489:25, 2496:24, 2497:1, 2497:8, 2497:13, 2497:29, 2497:42, 2499:4, 2504:34, 2510:43, 2513:3, 2515:27, 2515:36, 2517:45, 2518:26, 2518:27, 2519:7, 2519:22, 2519:38, 2519:43, 2521:43, 2531:28, 2532:35, 2532:43, 2543:8, 2543:22, 2546:13, 2546:29, 2550:7, 2550:14, 2550:26
catch [1] - 2474:28
catch-all [1] - 2474:28
categorical [9] - 2500:13, 2500:19, 2501:12, 2501:14, 2501:18, 2501:28, 2501:38, 2501:42, 2502:4
categories [5] - 2460:27, 2487:5, 2487:39, 2516:45, 2520:4
categorisation [1] - 2524:5
categorisations [2] - 2463:1, 2463:29
categorise [3] - 2503:38, 2524:10, 2528:17
categorised [2] - 2519:7, 2521:43
categorising [2] - 2495:27, 2520:2
category [15] - 2480:29, 2480:47, 2481:1, 2485:19, 2487:5, 2487:41, 2488:38, 2502:22, 2514:17, 2515:15, 2515:19, 2520:22, 2521:32, 2521:39, 2543:23
causal [1] - 2509:4
causes [3] - 2500:19, 2502:5, 2537:13
caveat [2] - 2465:35, 2523:43
cease [3] - 2491:6, 2491:30, 2495:3
cement [1] - 2474:31
cent [5] - 2458:15, 2460:10, 2466:25, 2466:27, 2484:23
centred [1] - 2527:11
certain [8] - 2441:44, 2441:45, 2476:36, 2493:15, 2493:16, 2545:40, 2552:3, 2558:25
certainly [24] - 2443:47, 2446:27, 2446:35, 2457:36, 2458:17, 2460:8, 2464:39, 2468:3, 2489:24, 2490:2, 2492:16, 2496:14, 2499:40, 2513:21, 2520:19, 2521:4, 2531:35, 2536:43, 2545:40, 2549:22, 2550:41
cesspool [2] - 2540:18, 2540:22
cetera [21] - 2437:25, 2455:3, 2455:19, 2458:10, 2467:2, 2482:19, 2486:11, 2486:42, 2487:4, 2492:43, 2493:43, 2495:11, 2501:17, 2510:34, 2518:2, 2522:32, 2526:22, 2532:22, 2545:41, 2554:37
chain [17] - 2444:6, 2444:8, 2452:7, 2469:15, 2471:12, 2472:20, 2474:42, 2476:6, 2478:15, 2479:41, 2484:28, 2484:31, 2491:1, 2491:3, 2514:24, 2539:24, 2541:9
challenged [1] - 2442:12
challengers [3] - 2547:7, 2547:9, 2547:15
challenges [1] - 2534:16
challenging [4] - 2452:26, 2525:16, 2527:28, 2547:10
chance [4] - 2522:31, 2522:32, 2556:20, 2557:36
chances [1] - 2549:35
change [7] - 2486:31, 2486:37, 2486:39, 2487:8, 2487:9, 2487:35, 2556:5
changed [6] - 2457:38, 2474:35, 2486:27, 2486:34, 2487:27, 2492:13
changes [15] - 2460:13, 2460:15, 2460:27, 2483:30, 2483:34, 2484:9, 2484:16, 2484:19, 2486:29, 2486:32, 2486:46, 2490:24, 2492:4, 2555:41, 2556:7
changing [3] - 2477:34, 2487:35, 2488:14
check [3] - 2442:41, 2442:44, 2458:30
checking [2] - 2449:15, 2458:37
checklist [7] - 2444:45, 2444:46, 2445:12, 2445:24, 2514:35, 2522:44, 2522:45
checklists [1] - 2523:31
choose [3] - 2446:36, 2529:19, 2547:27
chord [2] - 2449:23, 2556:32
chose [1] - 2495:17
chosen [3] - 2507:46, 2508:6, 2509:1
circumstances [2] - 2527:29, 2534:14
cite [1] - 2506:33
cited [1] - 2552:11
citing [2] - 2548:13, 2548:21
claims [1] - 2437:2
Claire [1] - 2435:31
clarified [1] - 2514:46
clarify [5] - 2442:6, 2456:11, 2468:12, 2506:4, 2558:29
clarity [4] - 2439:7, 2456:12, 2458:11, 2502:32
class [1] - 2521:3
classification [4] - 2472:2, 2477:34, 2498:44, 2498:46
classifications [6] - 2460:14, 2460:28, 2473:16, 2474:35, 2484:35, 2488:15
classified [2] - 2478:24, 2515:35
classify [7] - 2469:38, 2470:21, 2497:29, 2514:12, 2514:13, 2515:26, 2530:32
clear [11] - 2444:44, 2445:15, 2445:22, 2456:12, 2460:23, 2472:11, 2475:2, 2515:41, 2556:35, 2557:40, 2557:41
cleared [1] - 2484:34
clearly [9] - 2460:22, 2484:4, 2488:2, 2488:26, 2520:23, 2520:27, 2546:4, 2546:24, 2554:39
clicked [1] - 2544:46
client [10] - 2455:42, 2456:1, 2456:4, 2456:29, 2456:36, 2456:42, 2457:5, 2457:15, 2457:18, 2457:22
client" [1] - 2457:7
client's [1] - 2457:18
client/provider [1] - 2457:14
cliff [5] - 2480:36, 2480:37, 2481:1, 2481:3, 2497:8
cliff-fall [1] - 2497:8
close [3] - 2436:19, 2456:22, 2557:18
clustered [1] - 2522:12
clusters [1] - 2521:43
co [3] - 2511:21, 2545:28, 2555:40
co-author [1] - 2555:40
co-authored [1] - 2545:28
co-wrote [1] - 2511:21
Coakley [2] - 2558:21
coalesce [1] - 2455:16
coded [2] - 2481:4, 2496:24
coding [8] - 2458:8, 2458:27, 2461:16, 2464:16, 2478:45, 2486:32, 2486:39, 2524:34
codings [3] - 2478:43, 2486:28, 2516:22
cognitive [1] - 2496:40
Cohen [2] - 2547:45, 2548:21
Cohen's [1] - 2537:6
cold [1] - 2439:33
collaboration [9] - 2453:45, 2454:3, 2454:13, 2456:22, 2459:26, 2462:40,

- 2462:47, 2463:28, 2475:4
- collaborative** [9] - 2454:4, 2454:24, 2454:30, 2455:23, 2460:31, 2475:18, 2488:29, 2488:33
- collaboratively** [2] - 2454:44, 2459:44
- collated** [1] - 2483:42
- colleague** [1] - 2526:6
- colleagues** [9] - 2443:41, 2443:45, 2454:29, 2472:12, 2473:39, 2481:17, 2511:7, 2523:15, 2524:14
- collected** [1] - 2526:34
- collective** [2] - 2485:20, 2485:22
- collectively** [1] - 2510:20
- College** [1] - 2452:11
- collocation** [1] - 2503:16
- colon** [1] - 2500:9
- coloured** [1] - 2537:40
- column** [1] - 2518:28
- columns** [1] - 2546:9
- combat** [1] - 2496:7
- combined** [3] - 2492:40, 2525:4, 2525:5
- comfortable** [7] - 2465:33, 2466:24, 2466:25, 2466:28, 2472:8, 2545:42, 2555:46
- comfortably** [1] - 2487:38
- coming** [6] - 2443:9, 2464:28, 2466:26, 2503:7, 2510:40, 2551:2
- commas** [3] - 2523:24, 2554:32, 2557:3
- commendably** [1] - 2477:17
- comment** [3] - 2504:16, 2511:1, 2544:47
- commentary** [1] - 2540:19
- commentator** [1] - 2524:27
- comments** [1] - 2511:30
- COMMISSION** [1] - 2558:44
- Commission** [8] - 2435:9, 2442:35, 2443:3, 2449:30, 2462:32, 2535:4, 2542:44, 2558:9
- commission** [1] - 2477:3
- Commission's** [1] - 2456:35
- commissioned** [1] - 2546:29
- Commissioner** [16] - 2435:15, 2446:28, 2448:5, 2457:47, 2461:34, 2466:10, 2478:6, 2494:6, 2499:16, 2529:4, 2535:2, 2536:1, 2542:34, 2557:29, 2557:36, 2558:7
- COMMISSIONER** [76] - 2436:1, 2436:11, 2437:28, 2439:39, 2440:28, 2443:20, 2446:23, 2447:11, 2448:2, 2448:18, 2451:37, 2459:4, 2459:24, 2462:2, 2462:11, 2462:15, 2462:22, 2462:27, 2464:46, 2465:19, 2466:12, 2466:42, 2467:31, 2477:47, 2478:4, 2478:8, 2478:12, 2484:23, 2487:13, 2492:24, 2499:13, 2500:40, 2501:33, 2502:34, 2503:13, 2504:40, 2505:2, 2505:7, 2505:17, 2505:23, 2505:33, 2505:38, 2505:42, 2506:3, 2519:30, 2524:2, 2525:22, 2526:32, 2528:30, 2528:40, 2528:45, 2529:6, 2533:17, 2535:8, 2535:12, 2535:18, 2535:22, 2535:46, 2540:4, 2542:32, 2542:37, 2542:46, 2544:1, 2545:4, 2547:37, 2551:23, 2551:27, 2556:25, 2557:32, 2557:39, 2558:5, 2558:11, 2558:16, 2558:24, 2558:29, 2558:40
- commitment** [6] - 2500:27, 2502:10, 2502:30, 2502:36, 2503:9, 2511:37
- committed** [1] - 2503:4
- Committee** [2] - 2539:43, 2540:11
- committing** [1] - 2520:40
- common** [3] - 2464:26, 2510:17, 2532:5
- communicate** [2] - 2517:26, 2532:20
- communicated** [1] - 2522:19
- communicating** [1] - 2521:19
- communication** [19] - 2458:21, 2504:5, 2504:22, 2504:27, 2504:34, 2504:36, 2505:18, 2505:20, 2505:28, 2506:12, 2506:14, 2506:23, 2520:34, 2520:45, 2521:7, 2521:15, 2542:21, 2549:46, 2550:24
- communications** [3] - 2504:24, 2506:20, 2524:38
- communities** [1] - 2534:28
- community** [11] - 2436:44, 2452:25, 2507:7, 2507:11, 2507:21, 2507:28, 2532:4, 2537:10, 2538:13, 2538:16, 2556:42
- comparative** [1] - 2528:5
- compared** [1] - 2452:43
- comparing** [2] - 2470:32, 2474:31
- compiled** [1] - 2540:40
- complete** [3] - 2474:18, 2534:42, 2551:46
- completed** [1] - 2513:40
- completely** [2] - 2445:22, 2466:28
- complex** [1] - 2468:10
- complexity** [1] - 2534:29
- complicated** [3] - 2439:5, 2523:30, 2537:4
- component** [2] - 2514:11, 2514:12
- components** [2] - 2469:16, 2501:5
- concept** [6] - 2454:17, 2498:21, 2518:14, 2528:23, 2547:20, 2557:3
- concepts** [3] - 2458:42, 2503:28, 2526:46
- conceptual** [3] - 2503:15, 2530:18, 2531:28
- conceptualisation** [1] - 2530:42
- conceptualising** [1] - 2503:31
- conceptually** [1] - 2501:38
- concern** [3] - 2436:44, 2477:7, 2548:5
- concerned** [3] - 2484:40, 2503:37, 2515:7
- concerning** [1] - 2510:22
- concerns** [1] - 2514:31
- concession** [1] - 2558:1
- conclusion** [5] - 2484:42, 2508:12, 2511:42, 2551:2, 2554:44
- concordance** [6] - 2451:5, 2458:9, 2459:9, 2471:28, 2487:33, 2524:34
- conditions** [1] - 2452:18
- conducted** [3] - 2460:46, 2472:29, 2549:30
- cone** [1] - 2452:20
- confession** [1] - 2497:27
- confident** [3] - 2509:25, 2509:33, 2510:4
- confine** [1] - 2446:37
- conflating** [1] - 2512:46
- conflation** [1] - 2517:13
- confused** [1] - 2544:40
- confusing** [5] - 2468:23, 2507:12, 2507:37, 2520:41, 2533:1
- confusion** [1] - 2468:15
- conjunction** [2] - 2500:40, 2501:26
- connection** [1] - 2519:47
- connotations** [2] - 2456:43, 2457:3
- conscious** [5] - 2450:39, 2461:34, 2512:10, 2535:2, 2558:8
- consciousness** [1] - 2554:28
- consensus** [29] - 2467:37, 2467:46, 2468:1, 2468:2, 2468:3, 2468:7, 2468:9, 2468:11, 2468:14, 2468:16, 2468:38, 2468:47, 2469:11, 2472:3, 2472:9, 2472:14, 2473:3, 2473:24, 2474:3, 2474:4, 2474:29, 2475:47, 2476:1, 2478:1, 2479:35, 2481:16, 2518:43, 2519:4, 2524:41
- consequence** [1] - 2521:24
- consider** [6] - 2439:1, 2464:33, 2464:42, 2466:1, 2466:15, 2466:22
- considerable** [2] - 2453:45, 2512:42
- considerations** [1] - 2522:35
- considered** [2] - 2466:4, 2546:44
- consistent** [1] - 2472:46
- consolidated** [1] - 2475:18
- constantly** [1] - 2488:30
- consternation** [1] - 2439:6
- constraints** [2] - 2535:6, 2558:9
- Constructionism** [1] - 2545:14
- constructive** [1] - 2474:47
- construe** [1] - 2465:5

- consultant** [1] - 2490:40
2540:37
- consultation** [2] - 2459:41, 2475:3
- contact** [1] - 2459:6
- contain** [1] - 2442:13
- contained** [2] - 2442:14, 2513:40
- containing** [2] - 2442:33, 2442:34
- contains** [2] - 2467:34, 2514:31
- contemporaneous** [3] - 2500:26, 2502:9, 2503:8
- contended** [1] - 2495:20
- contents** [1] - 2483:17
- contested** [1] - 2438:21
- context** [9] - 2441:22, 2449:8, 2468:12, 2502:36, 2520:38, 2536:27, 2537:32, 2537:38, 2538:2
- continually** [1] - 2549:13
- contracted** [1] - 2546:35
- contrast** [2] - 2453:38, 2508:45
- contributed** [1] - 2460:26
- contribution** [1] - 2441:1
- control** [3] - 2448:38, 2449:26, 2548:7
- controversial** [1] - 2460:24
- convenient** [3] - 2462:11, 2478:4, 2535:4
- convergence** [1] - 2477:44
- conversation** [1] - 2439:35
- conversations** [2] - 2459:20, 2460:26
- converting** [1] - 2464:25
- convinced** [1] - 2550:43
- cooperation** [3] - 2453:44, 2454:4, 2459:47
- cooperative** [2] - 2448:47, 2495:12
- Coordinator** [5] - 2450:28, 2472:28, 2473:8, 2490:39, 2490:40
- copied** [1] - 2472:21
- copy** [3] - 2462:39, 2469:17, 2526:28
- corner** [3] - 2451:38, 2451:41, 2453:26
- corporate** [1] - 2491:40
- correct** [26] - 2436:41, 2436:45, 2437:6, 2437:36, 2438:9, 2440:24, 2445:29, 2451:34, 2463:14, 2475:21, 2475:38, 2475:43, 2479:36, 2484:25, 2493:5, 2495:34, 2496:9, 2498:22, 2499:1, 2499:2, 2499:33, 2500:33, 2503:13, 2507:35, 2511:5, 2552:31
- correction** [1] - 2549:4
- correspondence** [1] - 2492:7
- cost** [1] - 2457:27
- Counsel** [2] - 2435:30, 2435:31
- count** [4] - 2441:43, 2514:15, 2515:6, 2521:5
- counted** [2] - 2517:14, 2520:20
- counter** [1] - 2494:27
- couple** [9] - 2443:9, 2454:7, 2477:21, 2490:8, 2491:37, 2499:31, 2512:29, 2534:38, 2536:7
- course** [18] - 2436:11, 2457:11, 2465:34, 2481:25, 2483:28, 2485:12, 2497:18, 2499:25, 2501:9, 2508:18, 2512:47, 2531:2, 2531:6, 2546:9, 2548:13, 2558:8, 2558:14
- cover** [1] - 2451:34
- covered** [1] - 2443:46
- COVID** [1] - 2441:7
- craft** [1] - 2454:46
- crafting** [1] - 2455:8
- Craig** [18] - 2446:30, 2469:18, 2469:22, 2469:39, 2470:11, 2476:12, 2478:16, 2483:46, 2486:27, 2486:47, 2487:19, 2487:25, 2487:28, 2492:8, 2517:40, 2539:31, 2539:39, 2541:36
- Craig** [1] - 2478:19
- Crandell** [12] - 2446:29, 2458:1, 2469:47, 2471:45, 2472:20, 2474:45, 2481:11, 2483:5, 2483:32, 2483:46, 2484:14, 2486:21
- create** [1] - 2439:46
- created** [6] - 2442:16, 2443:5, 2490:32, 2491:20, 2492:2, 2494:3
- creates** [1] - 2444:31
- creating** [1] - 2440:7
- creatively** [1] - 2454:43
- credentials** [2] - 2451:43, 2453:15
- crew** [1] - 2542:2
- Crime** [19] - 2438:11, 2441:19, 2441:24, 2448:25, 2448:42, 2462:6, 2486:42, 2490:39, 2490:41, 2494:3, 2498:6, 2498:16, 2498:26, 2500:4, 2501:3, 2501:20, 2501:24, 2515:10
- crime** [65] - 2441:11, 2447:38, 2452:31, 2452:40, 2452:41, 2452:47, 2453:9, 2453:17, 2460:22, 2468:42, 2476:43, 2477:3, 2479:47, 2490:1, 2490:24, 2494:17, 2495:2, 2495:40, 2498:35, 2499:6, 2499:23, 2500:7, 2500:11, 2501:1, 2501:4, 2502:6, 2502:28, 2502:44, 2503:3, 2503:38, 2504:27, 2504:33, 2506:24, 2508:3, 2508:10, 2508:12, 2508:34, 2508:35, 2509:2, 2510:29, 2513:40, 2514:2, 2514:4, 2514:46, 2515:5, 2515:40, 2520:18, 2520:33, 2520:40, 2520:44, 2521:4, 2521:5, 2521:34, 2522:46, 2526:20, 2527:9, 2527:27, 2527:41, 2530:31, 2530:43, 2533:5, 2533:6, 2538:5, 2547:6
- Crimes** [10] - 2450:27, 2468:40, 2472:28, 2473:8, 2475:35, 2490:32, 2491:5, 2491:20, 2491:30, 2492:41
- crimes** [17] - 2435:11, 2444:25, 2481:44, 2489:42, 2489:43, 2491:39, 2495:33, 2499:32, 2499:39, 2506:34, 2513:32, 2513:38, 2522:39, 2522:40, 2531:14, 2532:35
- criminal** [5] - 2500:18, 2528:35, 2529:40, 2533:27, 2538:20
- criminalisation** [2] - 2495:45, 2538:6
- criminology** [1] - 2537:7
- Criminology** [1] - 2556:3
- Criminology** [1] - 2556:4
- cringe** [1] - 2556:31
- crisis** [1] - 2536:25
- Critical** [2] - 2556:3, 2556:4
- critical** [1] - 2551:29
- critically** [1] - 2497:35
- criticise** [1] - 2502:41
- criticisms** [2] - 2447:43, 2540:17
- critics** [1] - 2534:4
- critique** [1] - 2499:29
- Crombie** [4] - 2487:20, 2487:22, 2487:26, 2487:29
- cross** [1] - 2528:45
- cross-examination** [1] - 2528:45
- crude** [3] - 2437:4, 2471:36, 2471:40
- crusader** [1] - 2553:17
- crusaders** [1] - 2553:28
- culpable** [2] - 2508:16, 2508:21
- cumulative** [6] - 2500:23, 2500:32, 2500:38, 2500:42, 2501:10
- current** [2] - 2528:2, 2529:20
- Current** [1] - 2530:24
- cursorily** [1] - 2466:8
- cut** [2] - 2516:10, 2516:17
- cutting** [1] - 2458:46

D

- Dalton** [23] - 2436:6, 2436:19, 2437:28, 2440:31, 2443:20, 2449:34, 2451:27, 2451:44, 2462:22, 2462:29, 2465:8, 2478:12, 2478:14, 2505:27, 2514:22, 2517:41, 2545:8, 2552:6, 2552:35, 2557:30, 2557:37, 2558:13, 2558:19
- DALTON** [1] - 2436:9
- Dalton's** [1] - 2557:44
- dance** [2] - 2483:11, 2483:20
- danger** [1] - 2478:46
- Danielle** [3] - 2452:29, 2471:16, 2516:6
- data** [8] - 2444:27, 2458:28, 2458:36, 2478:23, 2481:20, 2481:31, 2487:40, 2548:42
- datasheet** [1] - 2457:46
- date** [2] - 2446:36, 2527:36
- days** [3] - 2459:11, 2474:34, 2517:23
- de** [61] - 2446:1, 2448:13, 2449:29, 2449:33, 2450:22, 2450:39, 2450:47, 2451:44, 2452:28, 2453:6, 2457:33, 2457:40, 2458:14, 2459:21, 2462:31, 2462:36, 2462:44, 2463:35, 2464:22, 2465:7, 2467:17, 2468:6, 2468:46, 2487:32, 2491:21, 2496:11, 2501:15, 2501:20, 2501:25, 2501:35, 2501:47, 2503:31, 2505:45, 2506:9, 2507:32, 2509:14, 2511:15, 2511:20, 2514:24, 2514:29, 2514:44,

2517:17, 2517:31,
2517:36, 2518:27,
2538:36, 2539:7,
2545:12, 2545:27,
2545:29, 2545:36,
2546:28, 2547:9,
2547:12, 2550:31,
2554:2, 2555:26,
2556:6, 2557:44,
2558:14, 2558:42

de-established [1] -
2491:21

deadly [1] - 2529:21

deal [5] - 2477:7,
2477:9, 2519:11,
2535:30, 2557:46

dealing [2] - 2471:12,
2494:22

dear [6] - 2469:22,
2471:21, 2476:12,
2478:19, 2483:40,
2516:6

death [5] - 2480:24,
2480:36, 2484:45,
2497:26, 2529:23

deaths [6] - 2436:35,
2497:8, 2497:25,
2532:19, 2538:14,
2543:32

debate [1] - 2533:4

deceased [1] -
2499:25

December [9] -
2440:38, 2440:43,
2448:21, 2452:13,
2469:19, 2469:31,
2471:12, 2472:19,
2476:7

December/January
[1] - 2448:21

decided [2] - 2448:3,
2556:15

decision [3] - 2446:4,
2463:1, 2463:29

decision-making [2] -
2463:1, 2463:29

decisions [2] -
2525:16, 2529:21

declined [1] - 2443:46

decoding [1] -
2521:44

dedicated [3] -
2490:32, 2492:2,
2494:3

dedication [1] -
2453:43

deep [1] - 2532:43

deep-seated [1] -
2532:43

defer [2] - 2501:46,
2545:36

deficient [1] - 2523:47

defined [1] - 2530:7

defines [1] - 2499:23

defining [1] - 2498:3

definition [32] -
2457:6, 2498:6,
2498:10, 2498:15,
2498:16, 2498:20,
2498:26, 2500:4,
2501:2, 2501:3,
2501:20, 2501:24,
2501:25, 2501:37,
2502:27, 2503:34,
2503:37, 2505:11,
2505:27, 2506:11,
2506:41, 2511:33,
2515:8, 2515:10,
2515:39, 2515:42,
2516:13, 2516:32,
2529:32, 2537:6,
2537:7, 2537:8

definitional [1] -
2516:19

definitions [3] -
2498:40, 2509:20,
2524:14

definitive [2] -
2444:45, 2445:23

definitively [1] -
2497:11

defy [2] - 2489:15,
2489:29

degree [8] - 2447:45,
2458:10, 2498:33,
2504:13, 2504:18,
2504:23, 2504:45,
2505:9

deliberate [1] - 2472:1

deliberation [1] -
2459:41

delicate [1] - 2483:11

demonstrate [1] -
2531:17

denote [2] - 2514:1,
2514:4

denounce [3] -
2502:40, 2502:41,
2502:46

dense [1] - 2448:12

denunciatory [11] -
2500:27, 2502:10,
2502:30, 2502:34,
2502:36, 2503:9,
2511:37, 2521:11,
2521:15, 2521:23,
2523:32

deny [3] - 2484:5,
2491:23, 2543:26

DEREK [1] - 2436:9

Derek [5] - 2455:31,
2456:21, 2470:14,
2475:26, 2483:40

describe [2] -
2530:25, 2543:1

described [2] -
2478:1, 2501:36

describes [1] -
2530:24

describing [1] -
2506:33

description [1] -
2447:45

descriptors [1] -
2522:47

deserve [1] - 2542:18

designation [3] -
2509:26, 2509:33,
2510:4

designed [1] - 2445:1

desired [3] - 2475:29,
2475:47

despite [4] - 2439:34,
2549:3, 2550:40,
2557:26

detail [9] - 2465:14,
2465:15, 2465:19,
2465:39, 2466:1,
2466:4, 2487:29,
2496:18, 2549:29

detailed [4] - 2455:35,
2477:12, 2477:17,
2483:45

details [2] - 2460:12,
2510:8

Detective [2] -
2446:29

detective [2] -
2467:13, 2493:24

detectives [10] -
2437:24, 2441:32,
2443:32, 2445:25,
2445:30, 2445:38,
2458:16, 2467:10,
2497:28

detectives' [1] -
2446:44

determination [1] -
2439:14

determinations [1] -
2441:12

determine [2] -
2472:30, 2505:17

determined [6] -
2436:25, 2437:14,
2437:43, 2438:30,
2483:22, 2549:44

determining [2] -
2527:26, 2534:13

developed [12] -
2492:40, 2494:23,
2551:3, 2551:11,
2551:13, 2551:14,
2551:31, 2551:38,
2552:8, 2552:36,
2552:40, 2552:45

developing [2] -
2552:24, 2552:31

development [1] -
2500:47

devise [1] - 2551:16

devised [2] - 2501:22,
2525:37

devising [1] - 2452:33

devote [3] - 2453:44,
2495:30, 2543:7

devotees [4] - 2542:3,
2542:26, 2543:1,
2543:6

dictated [1] - 2511:6

die [1] - 2508:25

differ [1] - 2485:28

differences [14] -
2463:4, 2463:13,
2463:18, 2463:20,
2463:23, 2463:38,
2463:47, 2464:1,
2464:9, 2464:16,
2470:22, 2479:25,
2485:29, 2527:11

different [22] -
2438:22, 2449:19,
2449:46, 2461:39,
2468:11, 2478:37,
2487:26, 2495:1,
2497:43, 2507:30,
2513:14, 2517:16,
2518:16, 2520:7,
2520:22, 2523:14,
2523:16, 2523:39,
2528:6, 2530:10,
2538:2

differentiate [3] -
2551:4, 2552:25,
2553:1

differently [4] -
2463:23, 2469:38,
2470:21, 2528:47

differing [1] - 2470:43

difficult [14] - 2442:43,
2447:2, 2447:39,
2452:27, 2452:46,
2466:21, 2489:26,
2493:23, 2511:22,
2518:32, 2525:16,
2525:18, 2525:31,
2525:32

difficulties [1] -
2499:28

difficulty [3] -
2466:38, 2489:13,
2517:27

difficulty/
discussions [1] -
2470:34

diligently [2] -
2467:24, 2524:46

dilute [1] - 2494:31

dimension [3] -
2440:30, 2515:8,
2530:30

diminished [1] -
2549:8

diminution [1] -
2555:8

dip [1] - 2448:24

diplomatic [1] -
2481:24

directed [7] - 2440:21,
2464:25, 2500:14,
2502:4, 2504:5,
2506:12, 2543:28

directing [1] - 2479:10

direction [1] - 2457:18

directly [2] - 2503:45,
2541:10

Director [1] - 2435:32

disagree [4] -
2476:23, 2477:47,
2494:11, 2517:9

disagreement [2] -
2475:41, 2518:2

disagreements [1] -
2458:10

disappearing [1] -
2495:7

disbanded [3] -
2492:13, 2493:43,
2494:5

disbanding [1] -
2491:16

discernible [1] -
2551:19

disclose [3] - 2546:28,
2551:36, 2552:7

discomfort [1] -
2466:31

discovering [1] -
2489:24

discovery [1] -
2489:14

discredit [2] -
2548:46, 2548:47

discrete [2] - 2503:40,
2503:43

discriminately [2] -
2530:44, 2532:37

discrimination [1] -
2515:4

discriminatory [3] -

- 2528:16, 2531:10, 2534:26
- discuss** [6] - 2458:42, 2470:41, 2477:21, 2487:33, 2539:9, 2555:39
- discussed** [7] - 2436:33, 2438:6, 2464:17, 2473:22, 2479:32, 2487:29, 2549:11
- discussing** [1] - 2447:26
- discussion** [13] - 2459:12, 2469:43, 2472:30, 2473:15, 2473:43, 2474:47, 2475:34, 2485:12, 2486:47, 2502:23, 2505:44, 2510:10, 2512:11
- discussions** [14] - 2441:21, 2449:14, 2458:39, 2459:6, 2460:12, 2460:31, 2461:15, 2464:25, 2464:28, 2466:26, 2469:3, 2470:43, 2472:42, 2488:35
- disease** [1] - 2536:45
- disestablished** [1] - 2490:43
- disgruntled** [1] - 2493:20
- disharmony** [2] - 2475:12, 2475:17
- dishonest** [2] - 2542:23, 2553:35
- dishonestly** [2] - 2553:33, 2553:35
- dishonourable** [2] - 2542:19, 2543:20
- dislike** [2] - 2477:1, 2502:41
- dismissive** [3] - 2481:23, 2481:40, 2481:42
- disposal** [2] - 2493:45, 2526:24
- distance** [2] - 2453:31, 2511:21
- distil** [1] - 2458:47
- distinction** [4] - 2508:22, 2518:31, 2519:14, 2546:4
- distinctions** [1] - 2508:30
- distinguish** [3] - 2513:3, 2513:8, 2513:30
- distinguishes** [1] - 2532:4
- distinguishing** [1] - 2515:17
- distort** [1] - 2515:5
- distortion** [1] - 2495:40
- divergences** [1] - 2477:29
- divergent** [1] - 2474:16
- divide** [1] - 2531:46
- divided** [1] - 2457:44
- divides** [1] - 2531:46
- division** [1] - 2462:3
- doctor** [2] - 2436:11, 2525:22
- Doctor** [3] - 2440:28, 2525:26, 2544:5
- document** [44] - 2442:40, 2449:29, 2449:37, 2449:41, 2454:11, 2461:21, 2461:46, 2462:30, 2462:35, 2462:44, 2465:1, 2465:5, 2465:12, 2465:14, 2465:28, 2465:33, 2465:44, 2465:47, 2466:5, 2467:37, 2467:46, 2468:3, 2468:8, 2468:14, 2468:17, 2468:26, 2468:38, 2468:47, 2479:41, 2483:41, 2510:36, 2538:24, 2538:26, 2538:27, 2538:32, 2538:40, 2538:44, 2539:8, 2539:17, 2540:2, 2543:46, 2545:7, 2545:8
- documentary** [1] - 2554:37
- documented** [1] - 2536:40
- documents** [2] - 2511:9, 2541:5
- dollar** [1] - 2471:15
- dollars** [1] - 2458:3
- domain** [1] - 2494:28
- done** [9] - 2438:26, 2438:31, 2467:24, 2474:39, 2476:36, 2479:13, 2487:9, 2511:10, 2516:21
- dossiers** [1] - 2467:23
- double** [1] - 2514:15
- double-count** [1] - 2514:15
- doubt** [13] - 2442:15, 2453:15, 2457:21, 2471:46, 2488:11, 2489:33, 2496:46, 2524:46, 2525:46, 2528:46, 2529:8, 2531:37, 2542:39
- down** [37] - 2439:45, 2440:6, 2444:21, 2454:7, 2457:46, 2458:47, 2459:33, 2469:27, 2470:40, 2491:37, 2493:29, 2495:26, 2497:6, 2499:31, 2502:14, 2506:32, 2512:19, 2512:28, 2515:39, 2515:47, 2516:4, 2516:47, 2517:42, 2519:31, 2519:33, 2527:6, 2530:40, 2531:8, 2532:4, 2532:28, 2534:1, 2534:39, 2536:14, 2536:31, 2543:38, 2553:14, 2554:47
- dozen** [2] - 2448:26, 2527:24
- dozens** [1] - 2548:26
- Dr** [64] - 2436:6, 2436:19, 2437:28, 2440:31, 2443:20, 2445:43, 2445:44, 2446:1, 2449:29, 2450:22, 2450:39, 2450:47, 2451:27, 2451:44, 2453:6, 2458:7, 2462:22, 2462:29, 2462:31, 2462:36, 2462:44, 2463:35, 2464:22, 2468:6, 2468:46, 2478:12, 2478:14, 2487:32, 2501:20, 2501:25, 2501:36, 2505:27, 2506:9, 2511:15, 2514:22, 2514:24, 2514:44, 2517:31, 2517:36, 2517:41, 2518:27, 2526:18, 2538:36, 2539:7, 2545:8, 2545:12, 2545:27, 2545:29, 2545:36, 2546:28, 2547:9, 2552:6, 2552:35, 2557:30, 2557:37, 2557:44, 2558:13, 2558:14, 2558:19, 2558:42
- draft** [13] - 2453:27, 2456:21, 2456:23, 2456:29, 2456:32, 2468:25, 2468:26, 2468:29, 2483:7, 2483:9, 2483:18, 2483:32, 2541:42
- drafts** [1] - 2483:29
- draw** [3] - 2437:21, 2496:14, 2519:14
- drawing** [1] - 2536:25
- draws** [1] - 2528:15
- drilling** [1] - 2497:6
- drove** [1] - 2441:21
- dry** [1] - 2474:31
- drying** [1] - 2474:31
- due** [3] - 2481:35, 2483:28, 2530:45
- duplicating** [1] - 2479:12
- during** [1] - 2436:11
- duties** [1] - 2439:45
-
- E**
-
- e.g** [1] - 2497:26
- each-way** [1] - 2532:47
- early** [1] - 2536:19
- ears** [2] - 2452:32, 2452:40
- easier** [1] - 2484:16
- easily** [3] - 2477:24, 2477:30, 2477:40
- easy** [5] - 2468:12, 2476:47, 2509:3, 2532:46, 2533:5
- edited** [1] - 2552:4
- effect** [12] - 2438:47, 2443:33, 2446:21, 2453:38, 2479:12, 2492:24, 2494:15, 2494:18, 2529:12, 2529:32, 2534:1, 2556:26
- effectively** [2] - 2491:6, 2491:30
- egregious** [1] - 2508:24
- eight** [1] - 2450:4
- either** [10] - 2453:10, 2459:19, 2484:36, 2488:37, 2504:22, 2510:19, 2521:19, 2521:28, 2546:14, 2558:36
- elaborate** [5] - 2454:8, 2461:10, 2481:28, 2509:16, 2555:36
- elegantly** [1] - 2499:37
- element** [4] - 2487:37, 2533:7, 2534:43
- elements** [2] - 2482:18, 2521:5
- elite** [3] - 2548:5, 2548:19, 2548:30
- email** [49] - 2440:35, 2444:6, 2448:44, 2449:22, 2452:7, 2458:22, 2459:19, 2469:15, 2469:18, 2469:27, 2469:30, 2471:11, 2472:20, 2473:24, 2473:25, 2473:26, 2474:34, 2476:6, 2476:8, 2476:10, 2477:16, 2478:15, 2478:20, 2479:40, 2479:44, 2483:38, 2484:13, 2484:28, 2484:31, 2485:2, 2490:36, 2491:1, 2491:26, 2492:21, 2493:5, 2493:19, 2514:23, 2515:46, 2517:25, 2517:41, 2518:27, 2518:35, 2539:24, 2539:46, 2540:2, 2541:8, 2541:35, 2543:25, 2545:20
- emailing** [2] - 2440:47, 2458:16
- emails** [5] - 2448:22, 2459:27, 2469:6, 2492:8, 2495:11
- emanating** [2] - 2517:31, 2517:35
- embark** [1] - 2438:43
- embed** [1] - 2554:26
- embedding** [1] - 2553:11
- embryonic** [1] - 2539:12
- emerge** [1] - 2495:32
- emerges** [1] - 2475:12
- Emma** [1] - 2493:24
- emphasis** [2] - 2453:45, 2494:32
- emphasise** [3] - 2454:30, 2454:37, 2496:13
- emphasised** [1] - 2454:12
- Empire** [1] - 2542:1
- empirical** [1] - 2489:6
- employing** [1] - 2437:24
- enable** [3] - 2448:13, 2496:29, 2503:14

encounter [3] - 2508:17, 2508:18, 2522:14
Encountering [1] - 2541:42
encountering [1] - 2547:6
end [17] - 2436:20, 2443:41, 2443:45, 2446:36, 2458:4, 2461:38, 2468:18, 2468:24, 2471:4, 2474:32, 2477:16, 2480:5, 2500:9, 2506:25, 2512:16, 2521:44, 2532:36
ended [5] - 2461:47, 2481:3, 2521:31, 2541:33, 2556:1
endorse [8] - 2443:46, 2464:46, 2465:4, 2465:10, 2465:11, 2465:28, 2465:35, 2465:42
endorsed [6] - 2449:33, 2462:37, 2464:6, 2464:47, 2465:8, 2466:8
endorsement [4] - 2465:20, 2465:26, 2465:39, 2466:3
endorsing [2] - 2451:1, 2465:33
energies [2] - 2436:24, 2437:13
energy [2] - 2437:23, 2437:26
engage [2] - 2471:46, 2484:41
engaged [6] - 2452:42, 2462:40, 2462:47, 2463:28, 2486:10, 2486:12
engaging [2] - 2457:15, 2488:8
engineer [1] - 2516:23
engineering [3] - 2517:27, 2517:31, 2517:35
English [1] - 2499:30
enhance [1] - 2473:14
entered [1] - 2457:47
enterprise [1] - 2446:47
enthusiastic [1] - 2535:12
entire [3] - 2446:47, 2464:47, 2552:12
entirely [5] - 2456:12, 2464:43, 2501:17, 2515:41, 2545:26
entirety [1] - 2456:14
entitled [1] - 2437:29
envisaged [5] - 2461:29, 2484:17, 2492:45, 2494:16, 2494:24
Enzo [1] - 2435:32
equalled [1] - 2441:45
equals [1] - 2441:44
equate [1] - 2517:11
equipment [1] - 2524:16
era [2] - 2493:23, 2547:27
erection [1] - 2523:30
espousing [1] - 2493:25
essential [3] - 2504:34, 2524:45, 2550:26
essentially [6] - 2448:43, 2485:28, 2490:25, 2494:29, 2511:6, 2531:47
establish [1] - 2497:13
established [2] - 2491:21, 2555:8
estimates [1] - 2535:39
et [21] - 2437:25, 2455:3, 2455:19, 2458:10, 2467:2, 2482:19, 2486:11, 2486:42, 2487:4, 2492:43, 2493:43, 2495:11, 2501:17, 2510:34, 2518:2, 2522:32, 2526:22, 2532:22, 2545:41, 2554:37
etc [1] - 2514:37
evaluate [5] - 2474:39, 2478:46, 2482:27, 2482:34, 2546:29
evaluating [2] - 2482:15, 2531:13
evaluation [6] - 2464:33, 2464:43, 2466:16, 2481:34, 2481:37, 2514:38
evaluations [1] - 2467:1
event [4] - 2440:46, 2506:3, 2533:10, 2534:15
events [3] - 2451:3, 2453:34, 2530:33
eventually [3] - 2456:33, 2459:28, 2471:26
eventuated [1] - 2461:31
ever-so [1] - 2458:31
evidence [20] - 2442:11, 2442:35, 2443:3, 2497:27, 2499:6, 2509:27, 2510:4, 2510:10, 2510:12, 2520:33, 2520:44, 2521:11, 2542:13, 2549:45, 2550:14, 2550:23, 2552:29, 2558:22, 2558:34
evidently [1] - 2484:19
evoked [2] - 2544:30, 2544:36
exactly [1] - 2528:42
exaggerated [1] - 2495:34
exaggeration [1] - 2496:10
exam [1] - 2526:43
examination [1] - 2528:45
examine [1] - 2528:46
examined [2] - 2513:32, 2527:36
example [7] - 2438:23, 2480:36, 2504:23, 2508:11, 2509:2, 2548:3, 2556:25
examples [1] - 2532:42
Excel [3] - 2458:18, 2458:28, 2458:30
excessive [1] - 2514:36
exchange [1] - 2517:41
exchanged [2] - 2465:32, 2488:16
exclude [2] - 2499:6, 2533:9
excluded [3] - 2521:6, 2550:16, 2550:27
excluding [1] - 2550:7
exclusion [2] - 2483:12, 2483:21
exclusively [2] - 2507:47, 2508:6
excuse [1] - 2557:32
Executive [1] - 2437:35
exercise [20] - 2438:27, 2438:43, 2447:14, 2447:18, 2448:23, 2452:14, 2452:42, 2504:33, 2510:28, 2519:47, 2520:1, 2523:2, 2523:23, 2524:45, 2530:19, 2545:26, 2546:43, 2548:18, 2548:40, 2549:30
exhibit [6] - 2459:29, 2488:45, 2491:47, 2519:12, 2526:4, 2536:6
exist [3] - 2491:6, 2491:31, 2495:3
existed [1] - 2496:34
existence [1] - 2554:33
expand [2] - 2445:7, 2503:35
expanding [2] - 2494:32, 2530:36
expect [5] - 2470:21, 2472:34, 2475:33, 2535:3, 2558:18
expectation [10] - 2455:7, 2463:12, 2463:19, 2463:46, 2464:2, 2464:11, 2471:3, 2471:8, 2481:39, 2483:17
expectations [2] - 2473:21, 2494:15
expected [4] - 2464:8, 2464:15, 2473:29, 2483:25
expecting [1] - 2475:41
experience [2] - 2503:14, 2503:27
experienced [3] - 2459:46, 2467:7, 2467:12
expert [2] - 2462:31, 2529:1
expertise [1] - 2451:44
experts [2] - 2557:42, 2558:34
explained [2] - 2439:26, 2486:35
explaining [1] - 2448:6
explanation [1] - 2461:44
explicitly [1] - 2518:10
explore [6] - 2438:5, 2445:2, 2445:4, 2462:47, 2463:28, 2531:34
exploring [2] - 2526:9, 2526:24
exposing [1] - 2533:3
express [5] - 2446:20, 2448:26, 2465:30, 2507:47, 2508:6
expressed [5] - 2445:16, 2469:2, 2482:22, 2502:3, 2554:38
expresses [3] - 2500:13, 2504:4, 2506:11
expression [11] - 2501:12, 2504:13, 2504:45, 2505:9, 2505:25, 2506:15, 2541:17, 2541:18, 2555:24, 2555:31, 2555:34
expressly [1] - 2505:24
extends [1] - 2530:29
extent [5] - 2457:21, 2499:29, 2501:35, 2524:29, 2554:4
extracted [1] - 2546:1
extreme [2] - 2457:31, 2468:24

F

face [6] - 2446:42, 2459:6, 2459:19, 2478:43
face-to-face [2] - 2459:6, 2459:19
faces [1] - 2558:9
facing [1] - 2517:28
fact [23] - 2439:28, 2448:21, 2457:43, 2459:34, 2479:10, 2480:7, 2482:1, 2488:34, 2490:31, 2491:4, 2491:13, 2494:22, 2495:25, 2509:33, 2513:30, 2513:37, 2523:13, 2537:5, 2543:28, 2549:7, 2550:27, 2551:36, 2552:7
factor [5] - 2438:17, 2476:45, 2477:2, 2499:5, 2506:39
factors [7] - 2500:42, 2503:41, 2503:43, 2520:21, 2523:8, 2537:25, 2537:30
facts [4] - 2482:1, 2547:6, 2549:3, 2549:19
factually [2] - 2483:34,

2484:5
fails [1] - 2439:29
failure [1] - 2499:8
faint [1] - 2448:36
fair [40] - 2438:39, 2453:7, 2455:9, 2458:24, 2459:18, 2459:22, 2460:36, 2465:47, 2466:3, 2466:6, 2466:10, 2467:44, 2467:47, 2468:13, 2471:9, 2472:39, 2476:2, 2480:34, 2482:5, 2482:7, 2482:14, 2482:32, 2482:39, 2482:47, 2483:1, 2485:1, 2488:12, 2488:26, 2489:31, 2493:34, 2493:41, 2497:39, 2499:16, 2499:40, 2502:1, 2521:26, 2523:27, 2524:6, 2537:16
fairer [1] - 2524:8
fairly [4] - 2447:22, 2449:13, 2482:44, 2516:11
fairness [1] - 2492:35
faith [2] - 2488:11, 2488:36
fake [7] - 2547:20, 2547:29, 2549:19, 2549:21, 2550:42, 2557:3, 2557:5
fall [2] - 2493:35, 2497:8
fallen [5] - 2493:17, 2493:40, 2494:1, 2495:18, 2520:21
false [6] - 2549:2, 2549:18, 2553:4, 2556:43, 2557:2, 2557:5
falsely [1] - 2552:44
familiar [2] - 2526:13, 2532:11
familiarity [1] - 2490:12
family [1] - 2497:20
far [9] - 2465:32, 2470:45, 2471:5, 2477:22, 2477:38, 2513:17, 2527:6, 2527:9, 2534:20
fascinating [2] - 2446:3, 2487:34
fashion [1] - 2465:39
fast [1] - 2539:2
fatal [3] - 2497:26, 2528:35, 2529:39
fathom [1] - 2523:7
favour [7] - 2493:17, 2493:36, 2493:40, 2494:2, 2495:8, 2495:9, 2495:18
favourable [2] - 2546:37, 2546:45
FBI [2] - 2442:42, 2444:16
fear [1] - 2537:33
fearful [1] - 2538:19
feature [2] - 2498:47, 2509:20
features [1] - 2490:33
February [10] - 2444:7, 2444:13, 2476:7, 2476:8, 2476:9, 2478:20, 2514:30, 2515:47, 2516:26, 2518:41
fed [1] - 2552:19
feedback [10] - 2455:35, 2456:30, 2483:30, 2483:31, 2483:41, 2483:45, 2484:2, 2484:4, 2484:8, 2484:20
feelings [1] - 2531:13
fell [1] - 2458:16
felt [2] - 2488:30, 2542:17
fervour [1] - 2537:13
few [12] - 2443:27, 2479:26, 2483:8, 2484:33, 2507:2, 2510:39, 2511:15, 2523:13, 2529:13, 2531:8, 2545:46
fewer [3] - 2546:36, 2546:46, 2547:2
field [1] - 2533:22
FIFO [1] - 2541:19
figure [1] - 2556:42
figures [1] - 2457:26
file [2] - 2449:47, 2482:9
files [5] - 2439:47, 2467:20, 2510:12, 2513:33, 2523:7
final [18] - 2460:27, 2468:26, 2468:29, 2472:2, 2473:44, 2474:9, 2483:10, 2483:24, 2488:41, 2506:9, 2555:22, 2555:37, 2555:44, 2555:45, 2555:46, 2556:4, 2556:7, 2556:21
finalised [1] - 2459:46
finally [1] - 2483:22
finding [1] - 2466:27
findings [14] - 2442:14, 2444:27, 2459:45, 2460:5, 2460:6, 2460:11, 2460:32, 2460:33, 2464:41, 2474:16, 2478:46, 2479:2, 2524:28
fine [6] - 2444:26, 2481:33, 2494:35, 2526:28, 2529:45, 2541:15
finish [5] - 2457:3, 2471:26, 2535:3, 2535:23, 2535:33
finished [2] - 2457:43, 2474:33
finishes [1] - 2485:16
first [52] - 2437:28, 2437:29, 2438:7, 2439:13, 2441:20, 2442:7, 2443:15, 2443:34, 2454:21, 2456:21, 2456:29, 2457:30, 2463:26, 2464:40, 2469:14, 2481:15, 2484:32, 2485:2, 2489:44, 2491:2, 2491:19, 2495:31, 2496:34, 2498:7, 2500:41, 2504:3, 2504:19, 2505:11, 2505:27, 2506:10, 2514:28, 2514:30, 2516:32, 2519:42, 2519:43, 2524:46, 2527:23, 2527:31, 2529:13, 2536:7, 2538:25, 2540:2, 2541:8, 2541:35, 2544:31, 2545:33, 2545:46, 2553:14, 2554:20, 2554:23, 2557:9
firstly [1] - 2552:29
fit [3] - 2479:14, 2509:15, 2551:15
fitted [1] - 2522:47
five [3] - 2450:3, 2489:3, 2517:41
fix [1] - 2556:15
fixated [1] - 2492:39
Fixated [3] - 2491:36, 2494:13, 2494:23
fixed [2] - 2474:32, 2558:21
flagged [1] - 2477:11
flagging [2] - 2477:7, 2495:31
flawed [9] - 2447:5, 2447:21, 2447:23, 2447:25, 2447:27, 2447:31, 2517:12, 2523:44, 2524:30
fleshing [1] - 2511:39
flew [1] - 2459:9
Flinders [4] - 2454:30, 2474:12, 2483:40, 2511:10
floating [1] - 2540:18
floor [1] - 2458:46
flowed [2] - 2520:14, 2521:24
fly [1] - 2541:20
fly-in/fly-out [1] - 2541:20
focus [11] - 2454:44, 2475:28, 2475:46, 2491:40, 2507:15, 2528:14, 2530:10, 2530:27, 2530:30, 2531:30, 2554:41
focused [2] - 2499:44, 2530:6
focuses [1] - 2437:35
focusing [4] - 2487:46, 2498:39, 2506:8, 2527:22
folder [1] - 2541:32
folders [1] - 2493:30
follow [3] - 2456:38, 2467:16, 2488:28
followed [1] - 2536:24
following [5] - 2474:26, 2491:17, 2514:38, 2515:8, 2548:3
fond [1] - 2495:11
footnote [3] - 2546:26, 2546:27, 2552:16
Force [18] - 2438:6, 2443:5, 2446:43, 2450:25, 2450:35, 2451:13, 2452:22, 2454:25, 2455:37, 2455:44, 2456:13, 2458:45, 2472:31, 2486:27, 2492:45, 2493:27, 2537:31
force [9] - 2442:16, 2442:35, 2447:37, 2448:34, 2449:4, 2449:7, 2449:20, 2468:40, 2469:1
forced [1] - 2552:2
forces [1] - 2493:15
forefront [1] - 2493:38
forensic [2] - 2481:43, 2489:14
foreshadowed [1] - 2545:20
forgetting [1] - 2492:30
forgot [1] - 2493:39
Form [3] - 2438:12, 2462:6, 2549:31
form [17] - 2442:13, 2442:16, 2442:33, 2443:5, 2443:14, 2446:14, 2447:4, 2462:2, 2486:11, 2496:29, 2498:22, 2504:5, 2506:12, 2506:15, 2527:41, 2537:31, 2551:39
forma [2] - 2442:38, 2456:37
formally [1] - 2449:15
formed [1] - 2448:34
former [2] - 2436:9, 2540:36
forming [1] - 2467:22
forms [2] - 2505:13, 2513:40
Forms [1] - 2448:25
formula [1] - 2458:31
forth [1] - 2488:14
forward [7] - 2457:42, 2470:31, 2474:27, 2477:20, 2496:8, 2496:9, 2557:24
forwarded [1] - 2445:43
following [1] - 2516:44
forwards-ing [1] - 2516:44
fostering [1] - 2454:4
foundation [1] - 2489:6
four [2] - 2486:45, 2530:40
fourth [2] - 2481:20, 2516:8
framed [3] - 2518:8, 2518:22, 2518:26
framework [1] - 2524:23
frankly [1] - 2481:36
fraught [2] - 2447:38, 2516:23
freedoms [2] - 2495:47, 2538:8
Friday [3] - 2444:11, 2518:39, 2558:22
friend [2] - 2528:43, 2558:32
front [3] - 2468:18,

2540:7, 2553:24
frontline [1] - 2450:18
fruitful [1] - 2469:42
fuelled [1] - 2537:9
fuelling [1] - 2542:11
full [3] - 2485:9,
 2516:45, 2541:42
fully [3] - 2444:23,
 2464:15, 2552:6
fundamentally [1] -
 2446:19
funnelling [1] -
 2521:38
furious [1] - 2505:8
futile [4] - 2447:13,
 2447:15, 2447:17,
 2447:18
future [3] - 2470:39,
 2471:46, 2524:26

G

game [2] - 2484:42,
 2522:26
gang [8] - 2509:39,
 2509:43, 2510:8,
 2510:32, 2520:37,
 2522:11, 2522:15,
 2522:24
gangs [5] - 2502:24,
 2509:35, 2509:36,
 2510:31, 2522:11
gap [1] - 2492:22
gay [62] - 2436:35,
 2438:16, 2480:5,
 2480:6, 2480:8,
 2480:10, 2480:13,
 2480:18, 2480:19,
 2480:21, 2480:23,
 2480:44, 2489:42,
 2490:1, 2494:32,
 2495:33, 2497:26,
 2499:4, 2499:32,
 2499:39, 2501:18,
 2507:4, 2507:19,
 2508:36, 2508:37,
 2509:44, 2509:45,
 2512:6, 2513:5,
 2513:11, 2513:16,
 2513:17, 2514:11,
 2514:12, 2514:17,
 2514:37, 2514:47,
 2515:7, 2518:28,
 2520:47, 2524:10,
 2526:25, 2533:8,
 2536:26, 2536:37,
 2536:44, 2537:9,
 2537:18, 2538:28,
 2540:36, 2543:11,
 2546:5, 2546:15,

2551:5, 2552:25,
 2553:1, 2554:5,
 2554:8, 2554:14,
 2554:27, 2554:39
gays [1] - 2532:44
gender [4] - 2528:38,
 2529:43, 2532:30,
 2532:38
general [7] - 2439:36,
 2440:30, 2466:9,
 2507:15, 2527:10,
 2537:7, 2537:24
generally [4] -
 2456:42, 2480:31,
 2489:26, 2510:44
generously [4] -
 2464:32, 2464:42,
 2466:15, 2466:22
gentlemen [1] -
 2436:2
gently [1] - 2461:4
genuine [1] - 2453:43
genuinely [3] -
 2461:14, 2465:26,
 2488:37
Geoff [1] - 2470:4
gesture [4] - 2504:16,
 2505:25, 2505:29,
 2507:8
gestures [4] -
 2504:24, 2504:47,
 2505:10, 2506:19
Gillies [1] - 2507:13
given [29] - 2437:2,
 2439:27, 2442:12,
 2447:43, 2448:24,
 2448:37, 2449:18,
 2451:46, 2452:17,
 2456:37, 2457:39,
 2461:42, 2465:44,
 2468:25, 2473:23,
 2473:26, 2474:25,
 2482:23, 2492:18,
 2492:20, 2492:21,
 2493:10, 2511:32,
 2518:30, 2525:9,
 2535:5, 2541:10,
 2552:30, 2552:35
glad [1] - 2497:20
glean [1] - 2552:12
gleaned [2] - 2444:28,
 2516:20
god [1] - 2471:21
gold [1] - 2461:24
government [1] -
 2491:42
grace [1] - 2488:32
Grace [3] - 2446:29,
 2469:19, 2469:31
grasp [1] - 2554:4

grata [1] - 2545:2
GRAY [47] - 2436:17,
 2436:19, 2437:41,
 2440:30, 2443:26,
 2446:32, 2447:25,
 2448:20, 2451:40,
 2459:26, 2461:34,
 2462:13, 2462:29,
 2465:17, 2466:14,
 2467:33, 2478:6,
 2478:14, 2484:27,
 2487:17, 2492:35,
 2499:21, 2500:46,
 2502:3, 2502:43,
 2503:34, 2506:8,
 2519:33, 2524:13,
 2525:41, 2526:43,
 2529:8, 2533:27,
 2535:2, 2536:1,
 2540:6, 2543:1,
 2545:7, 2551:25,
 2552:21, 2556:29,
 2557:29, 2558:7,
 2558:13, 2558:18,
 2558:27, 2558:32
Gray [13] - 2435:30,
 2437:38, 2440:24,
 2456:35, 2462:27,
 2467:31, 2478:4,
 2505:7, 2506:4,
 2535:31, 2535:33,
 2535:46, 2545:5
Gray's [1] - 2466:43
great [3] - 2439:40,
 2470:40, 2489:43
greater [2] - 2502:32,
 2510:34
Greunewald [1] -
 2526:18
Grim [1] - 2536:32
grounding [1] -
 2444:30
group [17] - 2500:14,
 2500:20, 2500:29,
 2502:4, 2502:12,
 2502:37, 2503:10,
 2508:1, 2508:7,
 2509:30, 2510:18,
 2510:21, 2518:38,
 2521:13, 2522:12,
 2530:46
group [1] - 2500:16
grouped [1] - 2509:37
groupings [1] -
 2476:37
groups [6] - 2477:30,
 2491:42, 2502:24,
 2502:45, 2502:46,
 2519:3
Gruenewald [6] -

2526:1, 2526:6,
 2526:34, 2526:35,
 2526:36, 2533:18
guarantee [1] -
 2453:26
guess [45] - 2437:5,
 2438:31, 2439:5,
 2439:8, 2439:10,
 2439:11, 2439:36,
 2440:9, 2453:17,
 2459:15, 2460:36,
 2466:6, 2467:21,
 2467:27, 2468:4,
 2469:3, 2473:27,
 2479:14, 2480:25,
 2480:26, 2481:45,
 2494:30, 2495:22,
 2496:14, 2497:46,
 2504:28, 2506:30,
 2509:35, 2510:7,
 2511:1, 2518:7,
 2518:29, 2522:22,
 2534:36, 2538:17,
 2543:7, 2543:41,
 2545:23, 2546:24,
 2547:17, 2550:9,
 2551:43, 2556:27
guide [2] - 2441:41,
 2444:24
guidelines [1] -
 2475:2
gun [1] - 2541:19

H

half [7] - 2489:41,
 2495:30, 2527:24,
 2535:3, 2535:28,
 2535:37, 2557:47
halfway [4] - 2506:32,
 2534:1, 2547:43,
 2553:14
Hall [2] - 2509:12,
 2509:14
hand [13] - 2451:38,
 2451:40, 2453:26,
 2472:12, 2472:13,
 2479:24, 2482:21,
 2523:15, 2532:10,
 2546:5, 2546:9,
 2548:44
handwritten [1] -
 2448:7
hang [1] - 2512:33
hanging [1] - 2529:9
happy [10] - 2451:45,
 2465:34, 2500:46,
 2526:29, 2526:30,
 2535:10, 2535:33,
 2541:43, 2550:32,

2555:46
hard [3] - 2452:30,
 2477:9, 2480:25
harm [11] - 2489:43,
 2489:47, 2500:19,
 2502:5, 2506:44,
 2507:5, 2507:20,
 2508:25, 2510:20,
 2534:36
harmful [2] - 2534:27,
 2534:35
harmonious [1] -
 2475:18
harnessed [1] -
 2487:42
harsh [1] - 2557:7
Hate [2] - 2450:27,
 2490:39
hate [25] - 2435:11,
 2436:35, 2452:24,
 2452:31, 2452:39,
 2452:41, 2452:47,
 2453:9, 2453:17,
 2490:1, 2494:32,
 2499:5, 2499:23,
 2499:24, 2499:32,
 2499:39, 2501:18,
 2506:33, 2508:37,
 2514:2, 2514:17,
 2524:10, 2526:20,
 2543:11, 2554:40
hate-related [1] -
 2452:24
hatred [4] - 2501:16,
 2501:42, 2532:44,
 2537:13
head [2] - 2533:34,
 2556:1
headed [4] - 2455:26,
 2526:9, 2538:27,
 2545:13
heading [18] -
 2453:26, 2453:43,
 2457:26, 2465:5,
 2495:27, 2498:3,
 2512:6, 2516:47,
 2519:13, 2524:34,
 2530:24, 2531:42,
 2532:1, 2536:14,
 2549:25, 2551:21,
 2553:11, 2554:43
Healey [1] - 2435:33
Healey-Nash [1] -
 2435:33
hear [6] - 2465:29,
 2480:46, 2507:40,
 2533:33, 2555:29,
 2555:32
heard [1] - 2557:13
hearing [1] - 2557:19

- heart** [2] - 2495:20, 2495:21
- heavily** [1] - 2467:18
- heavy** [1] - 2436:34
- held** [1] - 2486:3
- help** [5] - 2457:33, 2478:42, 2516:20, 2544:12, 2544:35
- helped** [2] - 2448:47, 2554:26
- helpful** [5] - 2448:47, 2469:3, 2472:6, 2507:33, 2511:2
- hence** [2] - 2442:1, 2485:27
- heterosexual** [1] - 2537:10
- hi** [2] - 2470:14, 2475:26
- hierarchy** [2] - 2450:26, 2450:43
- higher** [3] - 2508:26, 2532:15, 2538:18
- highlight** [1] - 2479:28
- highlighters** [1] - 2526:22
- highly** [1] - 2499:18
- hindsight** [4] - 2438:41, 2447:8, 2525:15, 2525:36
- hint** [1] - 2475:11
- hire** [1] - 2541:19
- his/her** [1] - 2500:15
- historic** [1] - 2439:47
- history** [2] - 2527:17, 2556:44
- hit** [1] - 2497:35
- HIV/AIDS** [1] - 2536:18
- hmm** [117] - 2439:21, 2440:33, 2441:35, 2442:31, 2443:12, 2443:29, 2444:19, 2445:8, 2445:40, 2446:15, 2449:39, 2451:7, 2451:25, 2452:8, 2454:39, 2459:31, 2463:44, 2464:20, 2466:45, 2467:3, 2468:34, 2468:44, 2469:7, 2469:12, 2469:24, 2470:9, 2470:36, 2471:1, 2472:22, 2472:32, 2474:43, 2476:25, 2477:26, 2478:17, 2480:3, 2480:38, 2481:28, 2483:15, 2483:47, 2485:14, 2485:23, 2486:14, 2486:23, 2488:43, 2489:39, 2490:21, 2490:26, 2490:34, 2495:28, 2496:20, 2506:17, 2506:21, 2509:21, 2511:34, 2512:8, 2513:35, 2513:41, 2514:26, 2515:22, 2516:2, 2516:14, 2517:5, 2522:42, 2523:11, 2523:37, 2524:24, 2525:44, 2526:2, 2526:7, 2527:2, 2527:14, 2529:14, 2529:35, 2530:8, 2530:38, 2531:21, 2531:25, 2531:40, 2533:38, 2533:46, 2535:40, 2536:4, 2536:16, 2537:19, 2537:26, 2539:37, 2539:47, 2540:13, 2540:34, 2540:41, 2541:37, 2544:6, 2545:10, 2545:15, 2546:2, 2546:11, 2546:17, 2547:46, 2548:11, 2549:26, 2549:39, 2550:2, 2551:9, 2552:22, 2552:27, 2553:12, 2553:19, 2553:26, 2553:47, 2554:21, 2554:45, 2555:13, 2555:19, 2556:37, 2556:47, 2557:5, 2557:16
- hold** [1] - 2543:36
- Homicide** [2] - 2526:10, 2544:30
- homicide** [33] - 2439:25, 2439:26, 2439:35, 2452:24, 2458:41, 2467:7, 2467:8, 2467:10, 2482:9, 2495:34, 2526:20, 2527:37, 2528:5, 2528:17, 2528:34, 2529:33, 2529:39, 2530:32, 2531:47, 2532:1, 2532:2, 2532:5, 2534:15, 2534:41, 2538:21, 2543:8, 2543:22, 2554:5, 2554:9, 2554:14, 2554:18, 2554:27, 2554:40
- Homicide"** [1] - 2531:43
- homicides** [13] - 2437:22, 2439:9, 2490:19, 2529:20, 2530:7, 2532:37, 2533:44, 2534:5, 2538:18, 2538:28, 2542:12, 2543:11
- homo** [1] - 2517:2
- homosexual** [4] - 2480:28, 2518:9, 2518:15, 2518:23
- homosexuality** [2] - 2496:41, 2517:12
- homosexuals** [3] - 2477:1, 2512:46, 2514:2
- hone** [1] - 2455:43
- honed** [1] - 2455:17
- honest** [8] - 2448:10, 2449:6, 2457:30, 2493:16, 2517:44, 2525:14, 2555:43, 2556:19
- Honest** [1] - 2515:37
- honestly** [7] - 2461:43, 2483:33, 2484:3, 2486:3, 2493:38, 2494:38, 2543:36
- honesty** [2] - 2551:28, 2551:35
- honour** [6] - 2540:31, 2540:46, 2541:13, 2541:21, 2541:23, 2553:43
- honourable** [2] - 2443:17, 2443:23
- Honourable** [1] - 2435:16
- hoover** [1] - 2461:21
- hope** [8] - 2469:22, 2476:14, 2477:19, 2477:29, 2477:40, 2479:2, 2519:2, 2548:42
- hope)** [1] - 2479:5
- hoped** [1] - 2479:26
- hopeful** [2] - 2477:24, 2477:39
- hopefully** [1] - 2483:8
- hoping** [1] - 2523:46
- horrible** [2] - 2541:18, 2555:21
- horrified** [2] - 2556:22, 2557:11
- hot** [1] - 2439:31
- hour** [7] - 2436:3, 2470:4, 2535:4, 2535:20, 2535:22, 2535:28, 2535:37
- hours** [1] - 2465:1
- House** [2] - 2539:42, 2540:10
- huge** [1] - 2461:9
- hundred** [2] - 2466:25, 2466:27
- hurt** [1] - 2519:15
- hypothetically** [1] - 2495:32
-
- I**
-
- I/I** [1] - 2478:25
- idea** [30] - 2448:29, 2453:45, 2454:12, 2454:31, 2455:6, 2461:38, 2480:40, 2481:3, 2482:42, 2488:29, 2496:6, 2501:37, 2501:46, 2504:35, 2508:16, 2509:15, 2509:35, 2509:38, 2510:7, 2510:37, 2511:39, 2522:10, 2522:15, 2536:43, 2537:8, 2538:13, 2543:8, 2543:31, 2550:42, 2554:33
- ideal** [1] - 2527:28
- ideas** [3] - 2488:36, 2503:15, 2516:19
- identical** [1] - 2474:5
- identification** [16] - 2447:38, 2500:15, 2500:28, 2502:11, 2502:30, 2502:35, 2502:36, 2502:38, 2503:9, 2511:37, 2515:12, 2515:14, 2515:18, 2521:12, 2521:24, 2523:33
- identified** [3] - 2440:5, 2489:25, 2497:2
- identify** [4] - 2494:25, 2502:39, 2525:39, 2531:15
- identifying** [5] - 2444:25, 2445:26, 2498:34, 2515:2, 2547:8
- identity** [6] - 2508:1, 2508:7, 2528:38, 2529:43, 2532:31, 2532:38
- ideological** [1] - 2547:7
- Iganski** [1] - 2490:2
- ignoring** [1] - 2534:41
- illuminate** [1] - 2488:36
- imagine** [11] - 2442:37, 2455:37, 2460:20, 2461:37, 2474:33, 2483:12, 2484:10, 2486:47, 2508:26, 2524:30, 2544:47
- imbecile** [1] - 2543:11
- imbecilic** [4] - 2542:3, 2542:27, 2543:2, 2543:35
- immediately** [6] - 2466:43, 2480:43, 2486:34, 2504:32, 2505:12, 2549:9
- impact** [3] - 2495:47, 2514:38, 2538:7
- impelling** [1] - 2496:7
- impetus** [2] - 2436:33, 2436:34
- implicitly** [1] - 2518:10
- implied** [2] - 2540:30, 2540:43
- importance** [2] - 2458:36, 2461:12
- important** [8] - 2441:13, 2448:44, 2471:27, 2474:10, 2510:30, 2513:8, 2531:2, 2534:43
- importantly** [1] - 2537:32
- imposing** [1] - 2488:20
- imposition** [1] - 2535:5
- impossible** [3] - 2480:43, 2524:26, 2531:12
- impoverished** [2] - 2478:24, 2478:30
- impression** [2] - 2449:10, 2449:11
- imprimatur** [1] - 2556:43
- improve** [1] - 2455:42
- in/fly** [1] - 2541:20
- inappropriately** [1] - 2482:40
- incident** [2] - 2499:23, 2509:43
- inclined** [2] - 2502:45, 2520:46
- include** [3] - 2498:40, 2498:47, 2547:16
- included** [1] - 2553:28
- includes** [2] - 2498:11, 2498:20
- including** [2] - 2447:4,

- 2453:40
inclusion [3] - 2483:12, 2483:20, 2534:4
incorporate [1] - 2493:39
incorporated [1] - 2503:16
incorrect [3] - 2482:1, 2543:33, 2543:35
indeed [15] - 2439:9, 2443:3, 2454:37, 2461:5, 2475:17, 2483:28, 2484:23, 2506:32, 2516:16, 2527:22, 2531:4, 2531:37, 2555:45, 2556:22, 2557:25
independence [3] - 2453:26, 2453:28, 2461:7
independent [5] - 2488:23, 2488:26, 2488:29, 2488:33, 2523:40
indicate [2] - 2477:40, 2521:6
indicated [1] - 2472:27
indicates [6] - 2463:11, 2463:18, 2463:46, 2489:47, 2524:44, 2554:13
indication [3] - 2467:20, 2480:27, 2480:31
indications [1] - 2468:42
indicator [2] - 2442:26, 2549:36
Indicator [3] - 2438:11, 2462:6, 2549:31
Indicators [1] - 2498:16
indicators [19] - 2442:13, 2442:22, 2442:30, 2442:33, 2444:39, 2444:44, 2445:1, 2445:3, 2445:23, 2463:4, 2463:14, 2463:21, 2463:39, 2498:30, 2498:35, 2503:40, 2503:43, 2531:15, 2531:17
indicia [1] - 2498:41
indifference [1] - 2555:17
individual [9] - 2484:35, 2484:36, 2488:15, 2490:40, 2522:13, 2522:14, 2522:21, 2524:16, 2524:47
individually [1] - 2510:19
individuals [2] - 2510:32, 2529:22
inelegantly [1] - 2554:38
inevitably [2] - 2438:21, 2537:39
inference [1] - 2476:2
inflate [2] - 2553:17, 2553:32
inflated [1] - 2548:43
inflating [1] - 2553:33
inflict [1] - 2489:43
inform [1] - 2526:32
information [8] - 2437:23, 2460:24, 2481:33, 2481:45, 2482:36, 2487:3, 2492:11, 2492:31
Information [10] - 2486:41, 2487:4, 2496:25, 2497:14, 2497:30, 2497:43, 2506:29, 2521:31, 2546:10, 2546:14
information" [1] - 2478:27
Information" [2] - 2481:5, 2506:26
informed [4] - 2451:4, 2451:21, 2462:16, 2510:36
infuse [1] - 2511:11
infused [1] - 2511:29
ing [1] - 2516:44
initial [1] - 2458:8
initiated [2] - 2513:31, 2513:38
initiatives [1] - 2492:3
injury [1] - 2507:27
input [1] - 2468:40
inputting [1] - 2458:36
INQUIRY [1] - 2558:44
inquiry [1] - 2542:35
Inquiry [2] - 2435:9, 2539:35
insertion [1] - 2554:32
insist [1] - 2488:32
insofar [2] - 2467:19, 2474:38
instead [3] - 2438:27, 2531:14, 2553:5
instigated [1] - 2470:5
instructing [1] - 2558:8
instrument [33] - 2441:33, 2441:40, 2442:1, 2442:5, 2442:7, 2442:10, 2442:12, 2442:15, 2442:19, 2442:37, 2442:42, 2443:32, 2443:33, 2443:39, 2444:16, 2444:23, 2446:39, 2446:45, 2447:22, 2447:25, 2461:14, 2478:42, 2479:14, 2499:8, 2499:14, 2501:22, 2520:6, 2523:6, 2523:44, 2523:46, 2525:37, 2525:38, 2551:15
instrument" [1] - 2442:2
instrumental [7] - 2532:8, 2532:10, 2532:28, 2533:41, 2533:44, 2534:5, 2534:27
instruments [2] - 2444:3, 2489:35
insufficient [7] - 2437:23, 2460:24, 2478:27, 2482:19, 2496:26, 2543:23, 2546:10
Insufficient [11] - 2481:4, 2486:41, 2487:4, 2496:24, 2497:14, 2497:30, 2497:43, 2506:25, 2506:29, 2521:31, 2546:14
integrity [2] - 2551:28, 2551:35
intellectual [4] - 2523:1, 2524:16, 2551:28, 2551:35
intended [3] - 2501:4, 2510:20, 2515:15
intending [2] - 2458:35, 2548:29
intensity [1] - 2489:47
intent [5] - 2549:46, 2549:47, 2550:15, 2550:23, 2550:24
intention [3] - 2508:2, 2558:32, 2558:35
intentionality [1] - 2506:43
intentionally [3] - 2494:7, 2500:17, 2502:5
intentions [5] - 2443:17, 2447:40, 2457:37, 2482:4, 2553:39
interaction [1] - 2508:25
interactions [2] - 2459:47, 2495:13
interactive [1] - 2554:37
interacts [1] - 2553:23
interest [2] - 2440:5, 2553:17
interested [2] - 2463:2, 2463:37
interesting [5] - 2470:43, 2485:5, 2487:31, 2497:18, 2523:1
interests [4] - 2465:37, 2548:6, 2548:19, 2548:31
internal [1] - 2524:41
internet [2] - 2515:40, 2541:11
interpolating [1] - 2473:23
interpret [3] - 2465:10, 2465:11, 2465:34
interpretations [2] - 2463:6, 2463:41
interpreted [1] - 2549:35
interpreting [1] - 2466:2
interrogation [1] - 2555:16
intimate [1] - 2455:14
intricate [1] - 2523:31
introduce [1] - 2554:32
introduction [2] - 2545:47, 2547:20
inverted [3] - 2523:24, 2554:32, 2557:2
invested [1] - 2547:6
investigate [1] - 2439:24
investigating [1] - 2548:38
Investigation [2] - 2494:14, 2494:23
investigation [8] - 2439:35, 2467:20, 2482:16, 2482:18, 2482:35, 2482:36, 2482:47, 2492:39
Investigations [1] - 2491:37
investigations [1] - 2467:18
investigative [2] - 2481:35, 2482:3
investigators [7] - 2466:47, 2467:1, 2467:7, 2467:9, 2472:27, 2473:31, 2475:36
invidious [1] - 2555:44
involve [2] - 2520:14, 2529:20
involved [9] - 2458:7, 2493:32, 2514:11, 2519:23, 2519:39, 2520:12, 2520:33, 2520:45, 2523:8
involvement [4] - 2453:34, 2458:11, 2493:11, 2509:40
involves [1] - 2521:15
involving [5] - 2497:8, 2510:11, 2517:46, 2533:7, 2533:45
iron [1] - 2461:15
ironic [1] - 2440:14
irregular [3] - 2460:45, 2461:5, 2461:6
irrespective [1] - 2551:17
issue [4] - 2493:12, 2518:44, 2527:24, 2554:41
issues [2] - 2527:21
it'd [1] - 2439:7
italicised [1] - 2505:18
item [3] - 2456:27, 2511:33, 2544:47
items [1] - 2554:25
itself [12] - 2442:13, 2442:15, 2443:5, 2443:14, 2443:39, 2446:14, 2459:28, 2469:4, 2480:20, 2488:41, 2488:42, 2494:5
-
- J**
-
- Jackie** [4] - 2469:43, 2469:45, 2483:38, 2484:16
January [1] - 2448:21
job [1] - 2440:38
John [1] - 2435:16
Johnson [5] - 2497:19, 2544:12, 2544:17, 2544:20, 2544:23
Johnson" [1] -

2544:19
joins [1] - 2539:3
joint [2] - 2545:26,
 2555:37
jolted [1] - 2556:42
journal [6] - 2533:24,
 2542:10, 2555:39,
 2555:46, 2555:47,
 2556:3
journalism [1] -
 2553:24
journey [1] - 2525:35
judgment [1] -
 2482:47
judgments [3] -
 2482:2, 2537:33
July [4] - 2483:38,
 2484:29, 2484:31,
 2545:13
jump [1] - 2497:10
jumping [1] - 2457:42
justice [1] - 2497:21
Justice [2] - 2435:16,
 2533:27
justifiably [1] -
 2510:21
justified [1] - 2549:22
justify [1] - 2478:42

K

KC [1] - 2435:37
keep [16] - 2437:18,
 2440:28, 2448:5,
 2451:47, 2461:10,
 2462:16, 2487:35,
 2492:9, 2512:36,
 2522:12, 2522:18,
 2535:10, 2538:10,
 2538:46, 2540:23
Kelley [1] - 2526:6
kept [1] - 2549:10
kill [1] - 2508:23
killed [1] - 2533:6
killing [1] - 2508:24
kind [22] - 2437:19,
 2443:20, 2456:38,
 2458:36, 2462:23,
 2473:32, 2474:27,
 2484:44, 2493:19,
 2493:29, 2508:1,
 2510:46, 2511:19,
 2511:27, 2519:17,
 2521:15, 2522:1,
 2522:8, 2526:21,
 2537:13, 2538:14,
 2555:45
knowledge [9] -
 2452:31, 2452:40,
 2452:42, 2452:47,

2453:10, 2455:14,
 2455:15, 2480:33,
 2528:4
known [3] - 2485:18,
 2514:37, 2546:35
knows [2] - 2458:29,
 2556:19

L

lack [2] - 2453:34,
 2551:46
lacking [1] - 2482:32
ladies [1] - 2436:1
language [9] -
 2446:38, 2493:9,
 2523:32, 2542:16,
 2543:12, 2547:11,
 2554:16, 2554:35,
 2555:21
large [1] - 2510:31
largely [4] - 2498:25,
 2499:43, 2527:10,
 2527:16
larger [1] - 2499:5
last [24] - 2449:38,
 2470:18, 2470:29,
 2476:41, 2479:26,
 2479:41, 2479:43,
 2484:34, 2497:23,
 2518:34, 2518:35,
 2519:11, 2536:3,
 2539:46, 2541:35,
 2545:7, 2547:19,
 2550:31, 2550:46,
 2556:23, 2556:29,
 2556:35
lasting [1] - 2489:20
lastly [2] - 2457:25,
 2524:33
late [2] - 2437:9,
 2452:34
Lateline [1] - 2493:23
laudatory [2] -
 2494:15, 2494:20
Lawrence's [1] -
 2528:16
lay [1] - 2537:7
lead [9] - 2439:9,
 2461:16, 2510:45,
 2511:41, 2529:23,
 2545:33, 2545:43,
 2550:29, 2550:36
leader [2] - 2441:19,
 2441:24
leading [1] - 2532:1
lean [1] - 2520:46
learning [2] - 2463:2,
 2463:37
least [17] - 2442:4,

2449:45, 2455:6,
 2462:3, 2462:39,
 2467:13, 2469:17,
 2472:34, 2477:41,
 2495:32, 2499:28,
 2511:38, 2526:36,
 2533:7, 2551:37,
 2552:8, 2557:43
leave [10] - 2451:45,
 2479:40, 2492:5,
 2492:11, 2494:3,
 2494:4, 2496:41,
 2502:26, 2517:23,
 2558:20
leaves [1] - 2494:35
leaving [2] - 2503:21,
 2546:15
left [11] - 2459:1,
 2474:28, 2491:39,
 2491:41, 2492:6,
 2497:14, 2504:28,
 2526:19, 2529:9,
 2552:3, 2552:15
legacy [2] - 2502:21,
 2511:18
Legal [1] - 2435:32
legend [1] - 2539:3
legislative [1] -
 2510:45
length [2] - 2533:4,
 2552:3
lengthy [2] - 2495:16,
 2512:11
Les [1] - 2452:7
lesbian [1] - 2540:36
lesbians [1] - 2532:44
less [4] - 2438:34,
 2441:45, 2520:18,
 2549:9
lessen [1] - 2511:2
lesser [1] - 2501:35
level [1] - 2531:23
Level [1] - 2435:20
levels [1] - 2537:17
LGBT [19] - 2526:9,
 2527:36, 2528:5,
 2528:6, 2528:17,
 2528:34, 2529:22,
 2529:33, 2529:39,
 2530:7, 2530:32,
 2530:43, 2532:3,
 2532:5, 2532:36,
 2533:5, 2534:6,
 2534:26, 2534:43
LGBTIQ [2] - 2435:11,
 2436:44
life [3] - 2479:29,
 2503:15, 2503:27
light [2] - 2460:14,
 2525:31

likely [13] - 2447:13,
 2469:39, 2499:14,
 2499:18, 2499:38,
 2504:32, 2509:25,
 2509:32, 2509:44,
 2511:41, 2515:4,
 2520:18, 2521:29
line [15] - 2436:21,
 2454:2, 2454:3,
 2454:41, 2493:15,
 2495:4, 2495:19,
 2495:20, 2500:9,
 2519:42, 2519:43,
 2532:29, 2547:19,
 2550:46
lines [13] - 2453:39,
 2454:7, 2459:42,
 2469:35, 2479:27,
 2489:3, 2491:37,
 2499:31, 2507:2,
 2527:24, 2530:40,
 2531:8, 2534:38
link [8] - 2440:45,
 2496:14, 2509:5,
 2536:37, 2544:3,
 2544:8, 2544:11,
 2544:46
linked [5] - 2500:27,
 2502:10, 2502:29,
 2503:8, 2511:37
Lint [54] - 2446:1,
 2448:13, 2449:29,
 2449:33, 2450:22,
 2450:39, 2450:47,
 2451:44, 2452:28,
 2453:6, 2457:33,
 2457:40, 2458:14,
 2459:21, 2462:31,
 2462:36, 2463:35,
 2464:22, 2465:7,
 2467:17, 2468:6,
 2468:46, 2487:32,
 2496:11, 2501:15,
 2501:25, 2501:35,
 2501:47, 2503:31,
 2505:45, 2506:9,
 2507:32, 2509:14,
 2514:24, 2514:29,
 2514:44, 2517:31,
 2517:36, 2518:27,
 2538:36, 2539:7,
 2545:12, 2545:27,
 2545:29, 2545:36,
 2546:28, 2547:9,
 2547:12, 2550:31,
 2554:2, 2555:26,
 2556:6, 2558:14,
 2558:42
Lint's [6] - 2462:44,
 2501:20, 2511:15,

2511:20, 2517:17,
 2557:44
lion's [2] - 2457:28,
 2459:19
list [5] - 2449:15,
 2516:19, 2526:15,
 2526:40, 2540:40
List [1] - 2545:14
List' [1] - 2549:25
listen [5] - 2437:38,
 2440:24, 2443:23,
 2496:13, 2555:34
literature [4] - 2489:8,
 2518:1, 2529:2,
 2533:11
live [2] - 2439:27,
 2489:31
loaded [2] - 2547:24,
 2557:7
locked [1] - 2493:44
logic [9] - 2460:45,
 2467:21, 2468:22,
 2481:43, 2508:27,
 2510:35, 2511:1,
 2514:14, 2538:17
longish [1] - 2514:28
look [23] - 2436:24,
 2437:13, 2437:21,
 2437:35, 2440:4,
 2447:3, 2448:29,
 2457:37, 2467:33,
 2470:31, 2483:44,
 2487:2, 2488:23,
 2492:12, 2500:34,
 2500:43, 2500:46,
 2511:18, 2520:41,
 2526:29, 2538:32,
 2539:11, 2556:21
looked [8] - 2437:30,
 2448:44, 2453:28,
 2487:6, 2493:29,
 2521:11, 2522:44
looking [18] - 2436:26,
 2438:41, 2439:1,
 2449:45, 2457:26,
 2464:30, 2464:40,
 2477:19, 2477:31,
 2478:14, 2507:31,
 2511:17, 2520:11,
 2520:32, 2526:24,
 2528:23, 2538:30,
 2546:23
looks [8] - 2461:5,
 2486:33, 2487:6,
 2499:7, 2520:38,
 2520:43, 2521:28
loosely [2] - 2456:2,
 2509:36
love [1] - 2525:37
Lovegrove [1] -

- 2558:21
lower [3] - 2495:26,
 2546:44, 2546:46
lunch [1] - 2479:42
-
- M**
-
- Macquarie** [1] -
 2435:20
maddening [1] -
 2487:36
main [2] - 2481:15,
 2554:20
maintain [2] -
 2475:28, 2475:46
major [2] - 2445:37,
 2477:2
man [4] - 2480:5,
 2495:12, 2509:44,
 2509:45
manipulate [1] -
 2548:6
manipulating [1] -
 2548:19
manner [2] - 2455:16,
 2543:24
manslaughter [2] -
 2508:27, 2508:31
manual [1] - 2548:27
MARCH [1] - 2558:45
March [2] - 2435:25,
 2481:11
Mark [1] - 2435:37
marked [1] - 2518:1
marks [1] - 2541:11
mask [1] - 2489:13
Mason [1] - 2517:10
match [3] - 2474:5,
 2492:18, 2492:21
material [11] -
 2442:34, 2448:12,
 2467:22, 2467:27,
 2478:31, 2496:26,
 2513:30, 2516:11,
 2525:17, 2556:12,
 2557:45
materials [1] -
 2482:24
matrix [1] - 2499:5
matter [7] - 2436:3,
 2485:33, 2486:2,
 2513:7, 2515:18,
 2527:17, 2535:36
matters [5] - 2470:41,
 2477:11, 2479:43,
 2484:33, 2485:19
mean [23] - 2440:22,
 2443:17, 2458:42,
 2464:5, 2468:1,
 2468:10, 2468:29,
 2472:11, 2474:30,
 2482:40, 2486:32,
 2493:22, 2496:11,
 2502:16, 2502:19,
 2508:11, 2509:11,
 2511:3, 2518:32,
 2520:1, 2539:16,
 2543:5, 2553:33
meaning [1] - 2485:22
means [15] - 2464:43,
 2465:4, 2465:28,
 2465:32, 2466:17,
 2498:34, 2501:17,
 2501:42, 2501:46,
 2521:19, 2521:28,
 2522:4, 2524:26,
 2525:9, 2538:32
meant [20] - 2439:29,
 2439:33, 2471:40,
 2477:32, 2478:30,
 2481:39, 2483:20,
 2501:28, 2501:38,
 2503:16, 2520:11,
 2537:2, 2543:7,
 2547:44, 2554:17,
 2554:41, 2556:10,
 2556:11, 2556:45
media [9] - 2436:41,
 2481:44, 2481:47,
 2482:46, 2496:8,
 2536:25, 2549:10,
 2549:11, 2554:25
meet [2] - 2449:13,
 2479:3
meeting [11] -
 2440:43, 2440:46,
 2444:11, 2459:10,
 2459:18, 2460:8,
 2460:18, 2472:24,
 2473:42, 2477:20,
 2544:30
meetings [7] -
 2440:40, 2446:27,
 2456:33, 2458:9,
 2460:31, 2493:29,
 2524:37
members [1] - 2532:3
membership [1] -
 2530:45
memoire [2] -
 2441:41, 2444:47
memories [1] -
 2484:45
memory [13] -
 2439:29, 2441:2,
 2441:47, 2448:36,
 2451:3, 2480:9,
 2481:4, 2481:5,
 2505:44, 2508:16,
 2514:14, 2545:29,
 2547:41
men [3] - 2476:46,
 2536:44, 2537:10
menacing [1] -
 2486:33
menial [1] - 2458:15
mention [2] - 2470:20,
 2518:1
mentioned [1] -
 2556:17
mere [2] - 2480:29,
 2509:33
merely [9] - 2444:3,
 2449:24, 2479:12,
 2495:9, 2497:42,
 2508:17, 2510:11,
 2551:13, 2551:14
merge [1] - 2525:4
merged [1] - 2491:36
meshed [1] - 2488:30
mess [2] - 2517:9,
 2518:31
message [2] - 2506:34
messages [1] -
 2532:20
Messrs [1] - 2469:30
method [1] - 2514:39
methodology [11] -
 2447:4, 2447:31,
 2447:32, 2448:4,
 2462:8, 2497:34,
 2551:32, 2551:39,
 2552:9, 2553:6
meticulously [2] -
 2454:46, 2455:27
middle [3] - 2496:37,
 2544:11, 2553:10
Middleton [18] -
 2446:30, 2469:18,
 2469:30, 2470:11,
 2478:16, 2483:46,
 2484:29, 2484:31,
 2486:9, 2488:4,
 2517:40, 2518:36,
 2539:25, 2539:28,
 2539:31, 2539:39,
 2541:36, 2545:21
Middleton's [1] -
 2485:2
might [48] - 2442:37,
 2449:7, 2449:22,
 2453:1, 2453:39,
 2456:35, 2456:37,
 2457:8, 2457:22,
 2460:44, 2461:4,
 2461:16, 2468:26,
 2468:27, 2469:3,
 2469:38, 2470:20,
 2472:1, 2479:1,
 2479:3, 2479:15,
 2479:25, 2481:45,
 2484:41, 2487:1,
 2487:42, 2493:18,
 2494:31, 2496:10,
 2499:38, 2501:30,
 2502:14, 2502:28,
 2502:44, 2504:13,
 2504:18, 2504:45,
 2505:25, 2507:33,
 2510:12, 2516:20,
 2516:34, 2518:44,
 2521:6, 2522:14,
 2522:31, 2539:12,
 2551:18
million [1] - 2471:15
mind [17] - 2445:24,
 2453:5, 2455:6,
 2456:1, 2472:26,
 2473:26, 2480:33,
 2486:37, 2487:19,
 2510:7, 2516:16,
 2543:30, 2543:37,
 2543:40, 2543:41,
 2546:42
minded [4] - 2482:5,
 2482:7, 2482:14,
 2482:39
mindedness [1] -
 2482:33
minds [2] - 2487:36,
 2531:12
minimise [1] -
 2458:35
minimum [2] -
 2503:40, 2503:43
minor [1] - 2484:33
minority [1] - 2531:19
minutes [2] - 2443:10,
 2443:28
minutiae [1] - 2454:45
mis [1] - 2461:16
mis-coding [1] -
 2461:16
misapprehensions
 [1] - 2461:15
misclassifications [1]
 - 2461:17
misconceived [2] -
 2446:19, 2457:39
misgivings [3] -
 2550:37, 2550:40,
 2550:41
mislead [1] - 2492:27
misleading [5] -
 2492:25, 2492:32,
 2494:6, 2494:10,
 2520:41
misproduced [1] -
 2502:23
misspelt [1] - 2538:41
mistaken [2] - 2463:6,
 2463:40
misunderstandings
 [1] - 2461:16
misused [5] -
 2441:33, 2442:1,
 2442:5, 2443:32,
 2443:35
misusing [1] - 2442:7
mitigated [6] -
 2500:25, 2502:8,
 2502:16, 2502:26,
 2503:7, 2511:36
mitigation [2] -
 2503:10, 2511:47
mmm-hmm [117] -
 2439:21, 2440:33,
 2441:35, 2442:31,
 2443:12, 2443:29,
 2444:19, 2445:8,
 2445:40, 2446:15,
 2449:39, 2451:7,
 2451:25, 2452:8,
 2454:39, 2459:31,
 2463:44, 2464:20,
 2466:45, 2467:3,
 2468:34, 2468:44,
 2469:7, 2469:12,
 2469:24, 2470:9,
 2470:36, 2471:1,
 2472:22, 2472:32,
 2474:43, 2476:25,
 2477:26, 2478:17,
 2480:3, 2480:38,
 2481:28, 2483:15,
 2483:47, 2485:14,
 2485:23, 2486:14,
 2486:23, 2488:43,
 2489:39, 2490:21,
 2490:26, 2490:34,
 2495:28, 2496:20,
 2506:17, 2506:21,
 2509:21, 2511:34,
 2512:8, 2513:35,
 2513:41, 2514:26,
 2515:22, 2516:2,
 2516:14, 2517:5,
 2522:42, 2523:11,
 2523:37, 2524:24,
 2525:44, 2526:2,
 2526:7, 2527:2,
 2527:14, 2529:14,
 2529:35, 2530:8,
 2530:38, 2531:21,
 2531:25, 2531:40,
 2533:38, 2533:46,
 2535:40, 2536:4,
 2536:16, 2537:19,
 2537:26, 2539:37,
 2539:47, 2540:13,

- 2540:34, 2540:41,
2541:37, 2544:6,
2545:10, 2545:15,
2546:2, 2546:11,
2546:17, 2547:46,
2548:11, 2549:26,
2549:39, 2550:2,
2551:9, 2552:22,
2552:27, 2553:12,
2553:19, 2553:26,
2553:47, 2554:21,
2554:45, 2555:13,
2555:19, 2556:37,
2556:47, 2557:5,
2557:16
- mocking** [2] -
2555:25, 2555:35
- Mode** [1] - 2526:10
- mode** [3] - 2526:25,
2527:42, 2530:31
- model** [2] - 2528:16,
2531:11
- modern** [1] - 2547:24
- modes** [1] - 2528:6
- modified** [1] - 2478:35
- moment** [9] - 2437:41,
2439:27, 2460:30,
2487:46, 2498:39,
2502:27, 2503:21,
2521:44, 2525:42
- Monday** [2] - 2514:30,
2515:46
- money** [3] - 2437:26,
2446:44, 2457:26
- month** [1] - 2449:38
- months** [4] - 2444:7,
2452:14, 2462:37,
2483:8
- mooted** [1] - 2471:45
- moral** [18] - 2495:46,
2496:5, 2536:27,
2536:38, 2537:1,
2537:5, 2537:6,
2537:33, 2537:44,
2538:7, 2538:12,
2538:27, 2539:3,
2542:11, 2547:44,
2548:4, 2548:21
- Moral** [1] - 2545:13
- Moran** [2] - 2452:7,
2452:44
- morning** [11] - 2436:2,
2448:41, 2469:42,
2470:4, 2479:32,
2479:42, 2535:28,
2535:30, 2557:34,
2557:37, 2558:41
- most** [13] - 2458:5,
2464:2, 2481:24,
2489:38, 2492:7,
2510:21, 2522:1,
2522:8, 2545:28,
2545:31, 2545:37,
2557:14
- motion** [1] - 2459:26
- motivated** [4] -
2498:11, 2498:21,
2499:24, 2551:7
- motivation** [10] -
2445:2, 2445:5,
2489:14, 2489:24,
2499:44, 2509:4,
2509:17, 2529:46,
2530:1, 2542:40
- motive** [11] - 2476:43,
2477:5, 2479:46,
2497:13, 2497:38,
2497:44, 2499:44,
2527:22, 2527:44,
2530:6, 2531:30
- motives** [7] - 2443:23,
2527:12, 2527:26,
2528:15, 2528:24,
2532:44, 2534:30
- mouthed** [2] -
2542:18, 2542:19
- mouthing** [1] - 2542:2
- move** [10] - 2481:10,
2482:29, 2483:3,
2483:37, 2520:29,
2539:23, 2544:45,
2548:35, 2551:23,
2551:27
- moved** [1] - 2486:44
- movement** [1] -
2548:47
- movie** [1] - 2458:45
- mundane** [1] -
2532:45
- murder** [3] - 2508:26,
2508:31, 2509:37
- murder/**
manslaughter [1] -
2508:23
- musings** [1] - 2493:19
- must** [27] - 2441:11,
2445:31, 2445:43,
2449:21, 2450:7,
2456:39, 2460:46,
2487:28, 2487:29,
2490:3, 2492:6,
2494:36, 2494:43,
2503:39, 2509:15,
2510:7, 2510:9,
2510:34, 2510:35,
2516:28, 2517:14,
2541:4, 2541:10,
2541:31, 2545:23
- Mykkeltvedt** [1] -
2435:37
- mystery** [1] - 2512:3
-
- N**
-
- name** [7] - 2507:33,
2544:29, 2544:36,
2550:34, 2550:39,
2556:21, 2556:31
- namely** [9] - 2472:28,
2473:3, 2473:39,
2495:2, 2509:20,
2530:11, 2532:6,
2551:31, 2552:25
- names** [1] - 2508:42
- Narmon** [2] - 2454:16,
2456:39
- narrative** [1] - 2467:27
- narratives** [1] -
2439:46
- Nash** [1] - 2435:33
- nature** [8] - 2446:12,
2455:23, 2459:36,
2460:18, 2460:26,
2468:12, 2523:23,
2528:5
- Nazi** [1] - 2541:43
- near** [1] - 2468:24
- necessarily** [6] -
2505:4, 2515:15,
2524:20, 2532:43,
2539:16, 2552:1
- necessary** [6] -
2483:13, 2531:14,
2548:45, 2549:44,
2550:13, 2550:22
- need** [22] - 2436:12,
2444:15, 2444:26,
2449:30, 2452:2,
2470:7, 2476:37,
2481:15, 2487:20,
2488:40, 2490:36,
2496:18, 2497:43,
2506:4, 2512:15,
2512:18, 2512:19,
2512:35, 2525:10,
2525:20, 2526:28,
2541:39
- needed** [7] - 2439:11,
2453:1, 2457:33,
2460:33, 2520:36,
2525:3, 2551:4
- negative** [3] - 2437:42,
2540:24, 2541:32
- neglected** [2] -
2492:16, 2492:17
- negotiating** [2] -
2483:10, 2483:24
- negotiation** [2] -
2483:19, 2483:25
- neutral** [1] - 2514:3
- never** [2] - 2497:10,
2521:4
- nevertheless** [3] -
2513:29, 2521:6,
2523:44
- New** [2] - 2435:21,
2453:35
- new** [4] - 2492:38,
2494:13, 2494:22,
2554:23
- news** [12] - 2537:12,
2544:46, 2547:21,
2547:29, 2549:19,
2549:21, 2554:25,
2556:43, 2557:2,
2557:3, 2557:5
- news** [1] - 2550:42
- newspaper** [4] -
2481:33, 2482:10,
2482:22, 2482:26
- next** [48] - 2441:28,
2445:19, 2450:22,
2452:17, 2455:11,
2455:26, 2458:40,
2460:38, 2463:34,
2464:19, 2467:33,
2467:35, 2472:19,
2478:38, 2479:21,
2487:17, 2490:5,
2490:7, 2491:13,
2495:37, 2496:17,
2496:22, 2498:2,
2499:21, 2503:34,
2506:37, 2507:44,
2508:45, 2509:19,
2510:14, 2512:6,
2512:30, 2519:20,
2520:29, 2521:42,
2527:23, 2527:34,
2530:35, 2532:14,
2535:37, 2537:24,
2537:39, 2540:28,
2544:47, 2547:43,
2554:20, 2556:34,
2558:13
- nice** [2] - 2466:35,
2495:12
- nicer** [1] - 2472:1
- night** [1] - 2535:25
- nine** [1] - 2442:22
- ninety** [1] - 2500:36
- no-one** [1] - 2461:23
- nobody** [3] - 2524:5,
2540:47, 2543:36
- nods** [1] - 2527:18
- non** [16] - 2451:5,
2500:28, 2502:11,
2502:30, 2502:35,
2502:36, 2502:38,
2503:9, 2511:37,
2521:12, 2521:24,
2523:33, 2545:2,
2550:7, 2550:17
- non-concordance** [1]
- 2451:5
- non-identification**
[11] - 2500:28,
2502:11, 2502:30,
2502:35, 2502:36,
2502:38, 2503:9,
2511:37, 2521:12,
2521:24, 2523:33
- non-predatory** [2] -
2550:7, 2550:17
- non-proactive** [1] -
2550:17
- none** [1] - 2492:4
- normally** [1] - 2555:38
- normative** [4] -
2512:17, 2512:27,
2512:30, 2512:39
- normatively** [1] -
2555:9
- notations** [1] -
2526:33
- note** [5] - 2445:42,
2448:20, 2460:21,
2492:31, 2558:7
- notes** [10] - 2442:44,
2448:7, 2460:9,
2461:43, 2487:29,
2493:42, 2493:44,
2499:10, 2526:22,
2538:25
- nothing** [7] - 2489:34,
2502:46, 2529:46,
2530:1, 2533:31,
2533:34, 2558:36
- noticeable** [1] -
2490:24
- notion** [3] - 2511:47,
2538:12, 2554:26
- novel** [1] - 2511:26
- NSW** [10] - 2435:38,
2442:27, 2446:43,
2452:23, 2459:7,
2459:20, 2472:31,
2478:45, 2490:31,
2493:13
- nuanced** [1] - 2465:39
- number** [29] - 2437:5,
2439:40, 2441:44,
2441:45, 2442:20,
2448:28, 2449:24,
2454:21, 2455:29,
2469:16, 2473:6,
2473:21, 2474:26,
2498:40, 2499:32,
2499:38, 2505:12,
2538:18, 2546:36,

- 2546:44, 2547:2,
2548:47, 2549:8,
2549:9, 2549:12,
2549:22, 2555:6,
2555:9, 2556:45
numbered [1] -
2472:25
numbering [2] -
2439:44, 2449:46
numbers [10] -
2436:45, 2458:3,
2474:26, 2496:8,
2510:11, 2520:5,
2520:6, 2522:26,
2546:22, 2553:23
numerical [1] -
2458:37
numerous [1] -
2552:35
-
- O**
-
- o'clock** [1] - 2557:39
oath [3] - 2436:9,
2484:3, 2492:11
object [6] - 2460:30,
2461:6, 2504:38,
2504:40, 2528:28,
2542:30
objected [1] - 2547:33
objection [1] -
2505:21
objectionable [1] -
2540:20
objective [8] -
2461:13, 2472:5,
2472:12, 2474:3,
2475:17, 2481:32,
2488:23, 2549:6
objectivity [8] -
2453:27, 2453:30,
2460:47, 2461:6,
2461:22, 2461:28,
2489:15, 2489:30
obscure [4] - 2499:15,
2501:39, 2501:41
observable [3] -
2528:18, 2530:11,
2531:15
observed [1] -
2489:13
Observer [1] -
2538:29
observers [2] -
2460:44, 2461:5
obvious [5] - 2462:3,
2462:7, 2478:46,
2499:28, 2525:3
obviously [9] -
2461:23, 2466:2,
2480:21, 2481:42,
2519:16, 2520:21,
2541:5, 2544:17,
2557:33
occur [2] - 2495:41,
2508:17
occurred [3] -
2483:35, 2492:5,
2504:29
October [6] - 2440:39,
2459:14, 2459:17,
2484:13, 2539:31
odd [4] - 2436:24,
2437:13, 2437:43,
2471:17
OF [1] - 2558:44
offence [1] - 2498:11
offences [5] - 2532:7,
2532:10, 2532:29,
2533:41, 2534:27
offences" [1] -
2532:15
offender [13] -
2489:14, 2489:24,
2497:44, 2499:47,
2502:29, 2502:44,
2514:37, 2515:1,
2527:11, 2527:42,
2528:15, 2530:31,
2551:7
offender's [7] -
2480:33, 2498:12,
2498:21, 2500:25,
2502:8, 2503:8,
2509:29
offender(s) [1] -
2476:45
offenders [8] -
2527:27, 2529:18,
2529:21, 2530:44,
2531:16, 2531:17,
2532:18, 2532:29
offenders' [2] -
2528:18, 2531:12
offending [1] - 2509:6
offer [1] - 2475:11
offering [1] - 2510:43
office [2] - 2458:41,
2476:15
officers [10] - 2439:40,
2439:44, 2443:6,
2445:1, 2445:3,
2472:30, 2473:14,
2473:42, 2486:10,
2537:40
offices [1] - 2458:40
official [2] - 2449:15,
2495:19
officially [1] - 2493:26
often [15] - 2458:29,
2460:21, 2482:1,
2487:2, 2487:38,
2487:39, 2488:35,
2493:15, 2496:11,
2499:29, 2507:29,
2532:45, 2536:24,
2548:27, 2552:3
old [1] - 2526:21
omission [5] -
2492:30, 2551:43,
2551:45, 2551:46,
2552:6
omitting [1] - 2492:24
once [6] - 2446:12,
2472:7, 2474:3,
2486:35, 2514:9,
2548:42
one [139] - 2436:34,
2437:22, 2437:34,
2438:44, 2439:6,
2439:23, 2439:28,
2439:29, 2439:44,
2441:42, 2441:44,
2442:37, 2443:14,
2443:34, 2444:8,
2444:21, 2444:40,
2449:33, 2453:27,
2453:30, 2455:8,
2456:36, 2457:6,
2457:14, 2458:5,
2458:6, 2458:29,
2459:5, 2459:10,
2459:34, 2460:22,
2461:13, 2461:23,
2461:31, 2461:36,
2461:38, 2462:36,
2465:2, 2466:16,
2466:43, 2467:34,
2470:4, 2471:47,
2472:12, 2472:26,
2474:42, 2476:9,
2476:17, 2478:38,
2478:47, 2479:1,
2479:11, 2479:24,
2480:44, 2483:12,
2484:12, 2484:30,
2484:32, 2485:5,
2486:3, 2486:19,
2486:27, 2486:44,
2487:2, 2487:22,
2487:31, 2487:41,
2488:26, 2491:2,
2491:20, 2492:9,
2493:23, 2493:28,
2494:4, 2496:6,
2496:18, 2496:22,
2496:25, 2498:17,
2498:27, 2498:40,
2499:22, 2499:31,
2499:38, 2502:14,
2503:45, 2505:12,
2507:27, 2509:44,
2509:46, 2510:11,
2511:14, 2511:26,
2512:25, 2514:25,
2514:28, 2514:30,
2515:40, 2522:31,
2523:15, 2523:46,
2525:4, 2525:9,
2525:13, 2525:41,
2525:43, 2525:46,
2526:18, 2526:19,
2526:24, 2526:36,
2527:36, 2527:39,
2528:24, 2528:47,
2530:10, 2530:26,
2530:30, 2531:29,
2532:10, 2536:3,
2540:40, 2540:46,
2542:21, 2543:25,
2545:4, 2545:7,
2545:26, 2546:5,
2551:32, 2551:37,
2557:24, 2558:29,
2558:33
one's [1] - 2461:13
one-third [3] - 2458:5,
2458:6
ones [6] - 2460:24,
2470:33, 2476:7,
2533:23, 2545:26,
2550:16
online [3] - 2540:46,
2541:3, 2541:16
operation [1] -
2482:26
opinion [14] -
2446:20, 2485:6,
2485:22, 2485:29,
2485:30, 2485:33,
2485:38, 2485:44,
2486:3, 2487:26,
2487:27, 2523:41,
2523:43
opinion" [1] - 2485:20
opinions [3] -
2485:47, 2486:16,
2523:17
opponents [1] -
2547:7
opportunistic [2] -
2516:35, 2516:40
opposed [4] - 2440:6,
2459:20, 2485:30,
2514:47
opposite [2] -
2495:40, 2495:43
opted [1] - 2513:3
option [1] - 2497:29
options [1] - 2486:45
order [1] - 2531:33
organisation [4] -
2482:4, 2482:42,
2493:35, 2510:33
organise [1] - 2522:12
organised [1] -
2510:33
orientation [5] -
2494:27, 2528:38,
2529:43, 2532:30,
2532:38
original [2] - 2442:42,
2461:38
otherwise [3] -
2443:23, 2479:12,
2521:1
ought [1] - 2510:45
outcome [5] -
2475:29, 2475:47,
2546:38, 2546:45
outline [2] - 2455:28,
2532:34
outright [1] - 2516:41
outset [1] - 2488:32
outside [1] - 2480:8
over-categorising [1]
- 2495:27
over-criminalisation
[2] - 2495:45, 2538:6
over-recording [2] -
2495:39, 2538:4
overall [1] - 2458:4
overbearing [1] -
2556:26
overbore [2] -
2547:37, 2547:40
overestimate [1] -
2499:32
overlap [1] - 2471:21
overplaying [1] -
2547:35
overstated [1] -
2543:16
overwhelming [1] -
2489:38
overwhelmingly [1] -
2458:23
own [17] - 2448:26,
2468:41, 2469:1,
2479:11, 2481:16,
2487:39, 2498:44,
2524:16, 2524:46,
2527:39, 2549:36,
2551:3, 2551:31,
2551:38, 2552:8,
2552:24, 2552:36
-
- P**
-
- paedo** [1] - 2517:2

paedophile [19] - 2510:41, 2512:12, 2512:7, 2513:5, 2513:20, 2513:31, 2513:37, 2514:12, 2514:13, 2514:16, 2515:1, 2515:2, 2515:27, 2515:36, 2517:11, 2517:13, 2546:5, 2546:16, 2551:6, 2552:26, 2553:1
paedophiles [4] - 2512:20, 2512:46, 2513:23, 2514:4
paedophilia [3] - 2513:21, 2517:46, 2518:44
page [86] - 2436:20, 2444:36, 2445:19, 2445:42, 2449:41, 2449:45, 2450:7, 2451:34, 2451:37, 2451:40, 2453:25, 2454:21, 2455:11, 2459:30, 2459:33, 2462:39, 2469:18, 2479:41, 2483:3, 2484:30, 2488:46, 2489:37, 2489:41, 2490:5, 2490:18, 2491:12, 2491:47, 2495:25, 2495:26, 2495:30, 2495:37, 2498:2, 2499:21, 2499:22, 2500:5, 2500:34, 2500:37, 2500:46, 2500:47, 2501:1, 2504:42, 2509:13, 2509:19, 2512:30, 2512:32, 2514:29, 2516:30, 2519:12, 2522:38, 2522:45, 2524:33, 2527:4, 2527:5, 2528:1, 2530:23, 2530:35, 2532:4, 2532:14, 2532:28, 2533:37, 2536:11, 2536:15, 2537:16, 2537:45, 2541:36, 2545:47, 2547:43, 2548:36, 2549:25, 2549:28, 2549:29, 2550:46, 2551:21, 2552:21, 2553:10, 2553:11, 2553:24, 2553:42, 2553:46, 2554:20, 2554:43, 2556:29
pages [5] - 2490:8, 2510:41, 2512:12, 2545:46, 2552:16
Palmer [1] - 2435:31
Pamela [8] - 2493:24, 2493:25, 2544:12, 2544:17, 2544:19, 2544:23, 2544:39
Pamela-Johnson [1] - 2544:12
Pamela-Johnson" [1] - 2544:19
panic [16] - 2495:46, 2496:5, 2536:38, 2537:1, 2537:6, 2537:9, 2537:33, 2538:7, 2538:12, 2538:16, 2538:27, 2539:3, 2542:11, 2547:44, 2548:4, 2548:22
Panic [2] - 2545:13, 2553:11
panic" [2] - 2536:27, 2537:44
paper [5] - 2438:7, 2442:40, 2478:31, 2496:32, 2496:33
papers [2] - 2503:19, 2513:39
paragraph [77] - 2441:28, 2444:21, 2450:10, 2450:22, 2453:29, 2459:34, 2459:35, 2459:40, 2459:42, 2462:40, 2464:19, 2466:43, 2470:18, 2470:25, 2470:29, 2471:12, 2476:41, 2478:21, 2478:38, 2479:27, 2479:43, 2481:15, 2481:20, 2483:3, 2484:34, 2485:9, 2486:25, 2487:17, 2488:46, 2489:3, 2489:37, 2490:6, 2490:19, 2491:13, 2491:26, 2492:36, 2494:13, 2495:31, 2496:38, 2503:35, 2506:32, 2506:37, 2511:32, 2511:38, 2512:17, 2512:21, 2512:23, 2512:29, 2512:38, 2514:31, 2516:8, 2518:34, 2518:35, 2519:20, 2519:34, 2521:42, 2521:45, 2527:6, 2527:23, 2527:34, 2528:32, 2530:26, 2530:35, 2532:36, 2533:40, 2537:25, 2540:15, 2547:5, 2549:32, 2553:14, 2554:20, 2554:23, 2555:45, 2556:23
paragraphs [6] - 2496:17, 2512:29, 2517:41, 2529:13, 2536:31, 2541:39
pardon [2] - 2446:9, 2533:30
park [1] - 2522:30
Parliamentary [3] - 2539:35, 2539:43, 2540:11
parlour [1] - 2484:42
Parrabell [55] - 2436:34, 2437:34, 2438:6, 2438:43, 2439:41, 2441:32, 2442:16, 2442:34, 2443:4, 2443:6, 2443:31, 2445:38, 2449:16, 2450:35, 2451:13, 2451:14, 2452:14, 2452:22, 2454:25, 2455:37, 2456:14, 2458:45, 2459:28, 2467:6, 2472:30, 2473:13, 2473:30, 2473:42, 2475:35, 2475:42, 2475:43, 2486:10, 2486:28, 2497:34, 2504:33, 2510:28, 2510:43, 2513:32, 2518:7, 2518:22, 2523:5, 2526:15, 2526:33, 2536:6, 2537:31, 2539:32, 2540:17, 2546:1, 2546:27, 2546:43, 2548:18, 2548:40, 2549:30, 2552:11
Parrabell [1] - 2455:44
part [31] - 2442:4, 2443:4, 2447:18, 2449:4, 2449:7, 2449:16, 2452:41, 2452:47, 2464:2, 2466:15, 2468:29, 2470:17, 2474:38, 2477:41, 2479:4, 2481:41, 2483:13, 2483:18, 2489:33, 2492:32, 2498:11, 2498:20, 2498:22, 2499:1, 2499:5, 2512:16, 2528:36, 2529:41, 2537:44, 2549:17, 2552:7
part" [1] - 2498:41
partially [1] - 2445:25
participants [1] - 2464:26
participate [1] - 2450:36
participated [1] - 2459:18
participation [2] - 2448:42, 2466:2
particular [13] - 2437:19, 2438:11, 2441:43, 2480:26, 2486:36, 2488:5, 2490:12, 2498:46, 2524:30, 2525:41, 2530:30, 2533:21, 2548:1
particularly [3] - 2481:32, 2487:38, 2553:39
parties [2] - 2456:15, 2475:10
partly [2] - 2489:33, 2533:7
party [6] - 2450:36, 2464:29, 2466:27, 2488:37, 2495:7, 2557:43
pass [1] - 2506:28
passage [7] - 2467:34, 2472:6, 2481:7, 2489:41, 2502:31, 2508:41, 2538:1
passages [3] - 2496:6, 2536:8, 2537:2
past [4] - 2461:42, 2494:25, 2532:15, 2557:47
pasted [2] - 2516:10, 2516:17
patronise [1] - 2466:35
patronising [1] - 2466:37
paucity [2] - 2487:3, 2487:39
Paul [3] - 2446:29, 2469:19, 2469:22
pausing [7] - 2445:29, 2467:42, 2471:24, 2485:32, 2504:18, 2520:13, 2528:21
paying [3] - 2456:2, 2461:12, 2461:25
PDF [1] - 2442:41
pejorative [1] - 2488:20
people [28] - 2446:30, 2449:16, 2449:20, 2457:35, 2467:5, 2485:47, 2493:15, 2494:25, 2502:39, 2502:45, 2507:30, 2509:40, 2510:32, 2511:9, 2511:22, 2511:28, 2522:5, 2522:25, 2537:18, 2538:19, 2540:40, 2541:12, 2541:18, 2541:21, 2541:32, 2542:23, 2543:5, 2543:18
per [8] - 2457:27, 2458:15, 2460:10, 2466:25, 2466:27, 2468:42, 2484:23, 2494:32
perceive [2] - 2503:39, 2551:17
perceived [11] - 2476:46, 2484:44, 2499:23, 2500:15, 2507:5, 2507:20, 2513:23, 2514:2, 2528:37, 2529:42, 2531:18
percentages [1] - 2545:42
perceptions [2] - 2513:21, 2537:40
percolate [1] - 2533:12
perfect [1] - 2461:27
perfectly [2] - 2512:47, 2529:12
performed [1] - 2467:17
perhaps [50] - 2437:21, 2437:24, 2438:47, 2440:9, 2444:29, 2446:28, 2446:29, 2447:8, 2448:20, 2449:6, 2449:25, 2451:13, 2452:32, 2464:12, 2464:14, 2465:42, 2467:10, 2468:24, 2482:45, 2486:5, 2486:41, 2489:37, 2493:27, 2494:38, 2496:23, 2499:30, 2501:35, 2504:29, 2515:41, 2518:30, 2520:19, 2520:29, 2523:1, 2523:26,

2523:29, 2525:18,
2525:24, 2525:31,
2539:45, 2543:16,
2545:36, 2547:12,
2547:34, 2550:9,
2552:10, 2554:17

period [4] - 2469:9,
2490:19, 2490:42,
2556:44

permits [1] - 2506:43

perpetrated [1] -
2509:46

perpetrator [6] -
2489:25, 2509:27,
2510:5, 2520:34,
2520:45, 2521:7

perpetrators [2] -
2517:10, 2520:46

person [37] - 2440:44,
2441:3, 2441:5,
2449:13, 2449:23,
2465:44, 2479:3,
2491:21, 2492:9,
2494:4, 2500:14,
2500:20, 2500:29,
2502:4, 2502:12,
2502:37, 2503:10,
2505:26, 2507:4,
2507:7, 2507:19,
2509:46, 2510:11,
2511:23, 2515:2,
2520:40, 2522:31,
2533:5, 2541:20,
2541:23, 2542:19,
2542:21, 2542:24,
2543:19, 2545:1,
2553:40

persona [1] - 2545:2

personally [1] -
2440:22

personified [1] -
2448:43

persons [3] - 2440:5,
2492:39, 2522:7

Persons [3] - 2491:36,
2494:14, 2494:23

perspective [3] -
2449:12, 2460:47,
2508:37

perspectives [2] -
2460:27, 2470:44

persuaded [1] -
2525:10

pertinent [1] - 2497:1

Peter [1] - 2435:30

phenomenon [2] -
2495:33, 2503:46

phone [2] - 2542:22,
2543:24

phrase [12] - 2439:31,
2466:18, 2466:21,
2471:39, 2485:46,
2499:8, 2508:8,
2529:32, 2537:2,
2554:11, 2554:13,
2557:2

phrased [1] - 2494:14

physical [2] - 2453:30,
2496:42

pick [1] - 2436:32

picked [1] - 2524:9

picks [1] - 2534:1

piece [2] - 2487:41,
2544:4

pieces [1] - 2557:42

piled [1] - 2526:20

plies [5] - 2458:46,
2526:22, 2526:23,
2530:20

pin [1] - 2497:38

place [7] - 2439:13,
2443:34, 2456:33,
2471:26, 2496:34,
2512:42, 2550:35

placed [4] - 2485:19,
2495:18, 2508:26,
2555:44

placing [2] - 2520:4,
2530:30

plague [1] - 2536:45

planned [1] - 2532:3

planning [1] - 2510:34

play [7] - 2461:9,
2479:4, 2479:22,
2493:12, 2508:27,
2508:30, 2517:2

played [1] - 2485:8

players [1] - 2542:11

plays [1] - 2542:41

pleased [1] - 2535:34

pleases [2] - 2529:4,
2542:44

plummeting [1] -
2504:33

point [41] - 2436:4,
2436:12, 2439:45,
2443:40, 2444:16,
2446:36, 2461:29,
2462:3, 2462:7,
2464:26, 2466:6,
2467:6, 2470:39,
2471:13, 2474:30,
2478:37, 2485:3,
2487:4, 2488:11,
2489:42, 2491:19,
2496:22, 2496:23,
2496:32, 2496:37,
2499:16, 2499:40,
2510:46, 2512:47,
2521:1, 2523:2,
2524:6, 2527:20,
2530:4, 2534:1,
2535:36, 2535:42,
2548:4, 2548:16,
2549:31

pointed [1] - 2482:23

points [7] - 2454:21,
2455:28, 2472:25,
2490:33, 2492:35,
2493:41, 2535:38

police [96] - 2438:8,
2438:26, 2438:42,
2439:3, 2439:40,
2439:44, 2439:45,
2440:17, 2443:4,
2443:6, 2443:40,
2446:17, 2446:18,
2446:24, 2446:26,
2449:2, 2450:18,
2452:23, 2454:25,
2454:45, 2455:7,
2455:14, 2456:1,
2456:22, 2458:22,
2459:10, 2459:45,
2460:6, 2462:6,
2466:16, 2467:28,
2468:17, 2468:18,
2468:29, 2471:4,
2472:13, 2472:27,
2472:42, 2473:22,
2474:12, 2478:45,
2482:16, 2482:18,
2482:24, 2482:47,
2483:19, 2483:29,
2484:36, 2485:22,
2486:32, 2486:44,
2492:12, 2493:15,
2493:26, 2494:24,
2494:36, 2494:43,
2494:46, 2495:4,
2495:19, 2498:6,
2498:15, 2498:26,
2498:40, 2511:4,
2514:34, 2519:3,
2519:47, 2523:15,
2523:40, 2536:8,
2536:11, 2536:22,
2536:35, 2536:47,
2537:17, 2537:28,
2537:40, 2537:43,
2539:25, 2539:28,
2540:37, 2546:34,
2546:45, 2549:31,
2549:35, 2551:15,
2551:31, 2552:9,
2552:37, 2553:6,
2556:41, 2557:8,
2557:20, 2557:25,
2557:43

Police [10] - 2435:38,
2442:27, 2446:43,
2450:25, 2459:7,
2459:20, 2472:31,
2490:31, 2492:45,
2493:13

police's [4] - 2467:6,
2467:18, 2494:15,
2551:39

police] [1] - 2444:17

police]) [1] - 2470:5

policing [3] - 2490:24,
2493:35, 2494:17

policy [18] - 2510:22,
2510:27, 2510:29,
2510:30, 2510:35,
2510:40, 2510:44,
2510:45, 2510:47,
2511:2, 2511:12,
2511:14, 2511:30,
2512:43, 2513:8,
2522:1, 2522:34,
2522:35

polite [1] - 2481:24

politely [1] - 2446:43

politicised [1] -
2555:10

pofter [1] - 2487:43

pofters [2] - 2509:37,
2537:11

pool [1] - 2437:21

population [1] -
2506:13

pose [1] - 2494:26

posed [1] - 2547:7

position [16] -
2472:26, 2472:31,
2472:41, 2473:41,
2488:19, 2490:41,
2490:43, 2491:20,
2499:30, 2501:45,
2501:47, 2515:13,
2542:17, 2543:18,
2545:27, 2555:44

positions [3] -
2473:44, 2474:14,
2474:15

positive [4] - 2437:42,
2494:46, 2495:1,
2495:4

possession [1] -
2548:43

possible [13] - 2445:4,
2447:5, 2461:13,
2470:41, 2471:25,
2472:13, 2473:24,
2474:3, 2488:27,
2504:35, 2507:27,
2514:11, 2531:11

possibly [2] - 2436:3,
2494:25

Post [1] - 2526:22

post [1] - 2540:17

Post-It [1] - 2526:22

potential [3] -
2495:46, 2520:46,
2538:6

potentially [3] -
2439:8, 2509:37,
2522:25

power [1] - 2446:46

practitioners [1] -
2503:39

precautionary [1] -
2494:26

precise [3] - 2443:27,
2446:34, 2468:9

precisely [4] -
2453:12, 2461:39,
2466:17, 2486:9

predated [1] - 2538:20

predation [1] -
2500:18

predatory [13] -
2516:33, 2516:41,
2531:42, 2531:47,
2532:2, 2532:5,
2532:18, 2533:44,
2549:46, 2550:7,
2550:15, 2550:17,
2550:23

predisposition [5] -
2464:32, 2464:42,
2466:14, 2466:21,
2466:34

predominantly [1] -
2537:11

prefer [5] - 2451:30,
2451:32, 2452:2,
2535:8, 2535:29

preferably [4] -
2463:12, 2463:19,
2463:47, 2479:35

preference [2] -
2471:24, 2535:27

preferred [1] - 2464:3

prejudice [4] -
2499:24, 2509:4,
2509:5, 2510:17

prejudicial [1] -
2509:17

preliminaries [1] -
2469:34

preliminary [1] -
2541:39

premeditatedly [1] -
2529:19

premise [1] - 2439:36

preparatory [1] -
2539:8

prepared [3] -
2440:18, 2467:28,

- 2528:22
presence [1] - 2463:17
present [5] - 2440:47, 2445:3, 2546:42, 2558:32, 2558:35
Present [1] - 2435:35
presented [2] - 2457:37, 2472:7
presents [1] - 2534:15
press [3] - 2525:26, 2525:28, 2557:45
pressure [3] - 2457:31, 2550:38, 2550:40
pressures [1] - 2558:33
presumably [4] - 2441:15, 2492:31, 2503:31, 2505:26
presume [4] - 2439:11, 2453:5, 2494:36, 2501:34
presumed [3] - 2449:16, 2509:29, 2552:10
pretty [7] - 2446:39, 2482:47, 2540:19, 2542:28, 2547:24, 2547:32, 2555:21
prevalence [4] - 2538:17, 2554:18, 2554:36, 2554:40
preventative [1] - 2494:27
previous [1] - 2450:7
previously [2] - 2445:16, 2495:2
prey [2] - 2532:46, 2533:6
primarily [3] - 2436:46, 2528:14, 2532:31
primary [3] - 2513:9, 2513:16, 2513:17
printed [2] - 2526:20, 2526:28
privy [2] - 2482:17, 2482:35
prized [1] - 2548:43
pro [3] - 2442:38, 2456:37, 2557:8
pro-police [1] - 2557:8
proactive [10] - 2519:13, 2519:14, 2522:2, 2522:4, 2522:39, 2522:40, 2549:45, 2550:14, 2550:17, 2550:23
problem [27] - 2443:34, 2443:40, 2446:12, 2446:17, 2447:45, 2480:47, 2481:6, 2481:31, 2489:20, 2493:8, 2495:31, 2496:12, 2518:5, 2553:17, 2553:33, 2554:5, 2554:8, 2554:9, 2554:10, 2554:11, 2554:14, 2554:18, 2554:27, 2554:34, 2554:39, 2554:40, 2555:8
problematic [6] - 2464:14, 2465:42, 2477:2, 2507:24, 2508:8, 2516:34
problems [4] - 2446:13, 2447:5, 2458:29, 2527:21
procedure [1] - 2439:25
proceed [1] - 2447:7
proceeding [1] - 2453:46
process [25] - 2437:20, 2440:15, 2446:45, 2447:21, 2448:38, 2449:27, 2456:7, 2461:11, 2461:20, 2461:24, 2465:38, 2468:24, 2471:47, 2474:32, 2475:3, 2481:35, 2482:3, 2483:25, 2486:10, 2486:11, 2487:32, 2487:36, 2488:8, 2495:7, 2525:33
process [1] - 2483:13
processes [3] - 2461:45, 2463:2, 2463:30
produce [5] - 2442:40, 2448:13, 2456:12, 2478:41, 2548:7
produced [10] - 2455:17, 2481:47, 2486:16, 2500:17, 2522:44, 2538:24, 2538:33, 2550:20, 2551:17, 2557:14
produces [1] - 2514:39
producing [1] - 2502:5
product [1] - 2507:29
production [1] - 2557:44
productive [2] - 2459:41, 2460:11
professor [1] - 2452:11
Professor [23] - 2452:44, 2457:33, 2457:40, 2458:14, 2459:21, 2465:8, 2496:11, 2501:15, 2501:35, 2501:47, 2503:31, 2505:45, 2507:32, 2509:14, 2511:20, 2525:47, 2526:6, 2533:18, 2547:12, 2550:31, 2555:26, 2556:6, 2557:44
Professors [1] - 2558:20
profiles [1] - 2532:5
profit [1] - 2534:14
profit-related [1] - 2534:14
profoundly [3] - 2442:43, 2447:38, 2452:26
Progress [1] - 2536:14
progress [1] - 2483:4
progressing [1] - 2481:12
project [7] - 2438:34, 2438:38, 2446:19, 2447:6, 2453:46, 2458:12, 2524:30
prominent [1] - 2437:1
promised [1] - 2468:33
prompt [2] - 2445:1, 2519:17
promulgated [1] - 2554:6
proof [1] - 2548:44
proper [1] - 2527:4
properly [3] - 2447:32, 2450:44, 2533:12
propose [1] - 2529:2
proposing [1] - 2455:23
prospect [1] - 2535:13
proved [1] - 2442:42
provide [5] - 2448:3, 2455:35, 2456:30, 2456:32, 2549:1
provided [1] - 2552:46
provider [2] - 2457:15, 2457:22
providing [1] - 2481:44
PS [3] - 2516:32, 2541:42, 2544:3
public [29] - 2438:22, 2439:6, 2484:41, 2495:46, 2506:10, 2510:22, 2510:27, 2510:29, 2510:30, 2510:31, 2510:35, 2510:40, 2510:44, 2510:45, 2510:47, 2511:2, 2511:12, 2511:14, 2511:30, 2512:42, 2513:7, 2521:47, 2522:34, 2522:35, 2538:7, 2539:32, 2540:19, 2549:3, 2554:27
publicity [1] - 2436:34
publish [1] - 2484:35
published [2] - 2533:25, 2545:13
pull [1] - 2530:20
pure [3] - 2460:47, 2461:22, 2477:34
purely [3] - 2488:19, 2518:8, 2528:43
purity [1] - 2461:20
purports [1] - 2490:3
purpose [7] - 2479:15, 2510:42, 2521:47, 2523:2, 2528:2, 2531:5, 2551:15
purposes [1] - 2533:36
pursued [2] - 2447:32, 2455:29
push [2] - 2480:23, 2482:42
pushed [8] - 2480:10, 2480:13, 2480:15, 2480:18, 2480:21, 2497:9, 2555:2, 2555:4
put [37] - 2437:23, 2438:35, 2442:18, 2442:44, 2444:46, 2446:42, 2448:36, 2449:30, 2456:40, 2457:31, 2459:1, 2462:4, 2462:31, 2463:15, 2465:35, 2466:6, 2474:27, 2482:46, 2484:41, 2488:12, 2493:6, 2493:18, 2495:17, 2496:8, 2496:9, 2499:8, 2511:8, 2520:27, 2525:41, 2530:36, 2541:11, 2542:39, 2542:40, 2544:44, 2548:25, 2551:33, 2557:24
putting [8] - 2458:28, 2464:38, 2494:1, 2499:42, 2545:4, 2550:34, 2557:2
-
- Q**
-
- qualification** [1] - 2444:2
qualify [2] - 2443:43, 2459:8
quality [3] - 2448:38, 2449:26, 2455:43
quantity [1] - 2555:7
query [2] - 2444:33, 2484:42
questions [15] - 2437:39, 2440:25, 2445:4, 2465:27, 2465:40, 2497:9, 2512:43, 2523:10, 2535:13, 2535:14, 2535:29, 2545:37, 2557:30, 2558:37, 2558:38
quick [1] - 2474:30
quickly [2] - 2449:13, 2462:15
quietly [2] - 2542:9, 2545:21
quite [20] - 2437:4, 2439:33, 2454:15, 2454:20, 2461:47, 2466:39, 2469:16, 2470:28, 2472:8, 2483:45, 2493:9, 2493:13, 2510:31, 2510:39, 2511:15, 2512:11, 2517:16, 2523:30, 2531:37, 2547:2
quiz [1] - 2528:23
quotation [1] - 2541:11
quote [3] - 2498:6, 2498:15, 2506:32
quoted [4] - 2437:18, 2541:10, 2541:31
quotes [1] - 2482:10
quoting [1] - 2443:10
-
- R**
-
- raise** [1] - 2548:5
raised [1] - 2487:20
raising [2] - 2470:8, 2479:42
ran [1] - 2510:7
rang [1] - 2487:7

range [1] - 2444:25
rank [1] - 2508:26
ranter [2] - 2541:3, 2541:16
rants [1] - 2540:47
rather [13] - 2437:25, 2448:16, 2460:28, 2471:40, 2475:42, 2495:19, 2507:22, 2510:32, 2520:4, 2522:30, 2528:14, 2528:24, 2545:38
rational [1] - 2506:10
re [3] - 2528:46, 2546:29, 2549:35
re-evaluate [1] - 2546:29
re-examine [1] - 2528:46
re-interpreted [1] - 2549:35
reach [6] - 2471:28, 2472:3, 2472:14, 2476:30, 2481:16, 2520:5
reached [5] - 2473:13, 2473:30, 2479:23, 2479:25, 2512:23
reaction [2] - 2548:6, 2548:19
reactive [2] - 2519:16, 2522:41
reacts [3] - 2507:7, 2507:21, 2508:36
read [37] - 2439:46, 2444:37, 2448:8, 2450:17, 2451:30, 2451:32, 2458:47, 2464:11, 2466:8, 2484:43, 2485:9, 2494:19, 2498:10, 2500:32, 2501:6, 2505:7, 2510:36, 2512:15, 2512:18, 2512:20, 2512:35, 2526:26, 2526:30, 2528:47, 2533:12, 2533:13, 2536:47, 2544:46, 2548:17, 2552:12, 2556:12, 2556:30, 2556:31
reader [11] - 2494:28, 2501:4, 2548:17, 2548:30, 2550:24, 2551:47, 2552:15, 2552:44, 2553:4, 2554:33
readership [1] - 2484:40
readily [2] - 2502:15, 2508:12
reading [12] - 2448:12, 2479:29, 2482:9, 2503:26, 2506:8, 2516:20, 2520:38, 2521:1, 2525:16, 2531:12, 2538:46, 2552:11
reads [5] - 2460:42, 2464:13, 2540:47, 2548:30, 2553:15
ready [1] - 2483:9
real [6] - 2537:34, 2551:37, 2552:40, 2554:10, 2554:11, 2554:15
realise [1] - 2540:6
reality [2] - 2459:4, 2556:44
really [36] - 2439:14, 2441:6, 2441:13, 2441:30, 2444:26, 2447:7, 2447:46, 2448:46, 2448:47, 2452:4, 2453:30, 2454:12, 2460:25, 2466:18, 2466:23, 2468:22, 2470:31, 2470:44, 2472:37, 2475:9, 2477:19, 2477:22, 2479:14, 2485:1, 2486:9, 2488:36, 2492:21, 2505:42, 2507:23, 2511:24, 2517:45, 2518:30, 2523:16, 2523:40, 2550:35, 2557:45
Reaper [1] - 2536:32
reason [17] - 2457:6, 2461:37, 2466:31, 2475:11, 2479:11, 2492:5, 2496:25, 2549:17, 2551:11, 2551:30, 2551:37, 2552:7, 2552:24, 2552:30, 2552:40, 2552:45, 2552:46
reasonable [4] - 2442:15, 2443:7, 2501:13, 2512:47
reasonably [3] - 2543:36, 2546:37, 2546:44
reasons [5] - 2452:28, 2474:15, 2525:4, 2551:37, 2558:33
rebutted [1] - 2549:20
received [2] - 2470:47, 2492:30
recent [1] - 2462:37
recognise [1] - 2547:11
recollection [4] - 2451:18, 2541:15, 2544:43, 2544:44
recommendations [3] - 2457:21, 2511:4, 2511:6
reconsidered [1] - 2440:6
recording [3] - 2495:39, 2495:43, 2538:4
recreated [1] - 2491:21
redemption [2] - 2447:33, 2447:43
refer [11] - 2454:2, 2454:3, 2481:15, 2481:20, 2484:33, 2484:34, 2490:31, 2499:22, 2499:30, 2517:25, 2547:28
referee [1] - 2475:34
reference [14] - 2437:9, 2437:42, 2437:44, 2450:8, 2479:32, 2509:19, 2513:27, 2516:13, 2519:2, 2525:47, 2526:15, 2536:18, 2555:6, 2557:3
Reference [2] - 2437:31, 2454:21
referenced [1] - 2552:12
references [4] - 2459:1, 2510:40, 2511:14, 2548:26
referencing [1] - 2507:13
referred [6] - 2448:23, 2453:39, 2499:37, 2505:11, 2536:24, 2537:17
referring [7] - 2437:16, 2438:2, 2472:24, 2509:17, 2511:33, 2524:37, 2536:31
refers [3] - 2450:17, 2528:34, 2529:39
reflect [1] - 2469:10
reflected [4] - 2468:39, 2468:47, 2543:15, 2543:16
reflecting [1] - 2477:31
reflection [1] - 2452:41
reflects [1] - 2488:3
reform [3] - 2510:45, 2548:44, 2549:1
regard [3] - 2453:40, 2541:16, 2550:13
regarded [3] - 2532:35, 2552:36, 2554:14
regarding [1] - 2451:16
regardless [3] - 2493:5, 2522:47, 2534:29
region [1] - 2549:18
regret [2] - 2542:16, 2543:12
regrettable [1] - 2450:25
regular [1] - 2439:45
regularly [2] - 2488:30, 2522:11
regulatory [1] - 2548:8
reinvestigate [4] - 2438:28, 2439:2, 2439:37
reinvestigated [1] - 2439:12
reinvestigating [1] - 2437:25
reinvestigation [2] - 2439:11, 2439:12
reiterate [1] - 2464:27
relate [2] - 2503:45, 2505:47
related [6] - 2436:35, 2448:20, 2452:24, 2490:6, 2522:9, 2534:14
relates [2] - 2501:42, 2520:37
relating [2] - 2478:37, 2521:3
relation [6] - 2460:15, 2486:35, 2493:26, 2494:17, 2498:30, 2551:47
relationship [1] - 2457:14
relative [1] - 2534:13
relatively [4] - 2478:23, 2478:30, 2484:33, 2509:6
relevant [3] - 2491:39, 2537:30, 2548:24
reliability [4] - 2444:29, 2489:16, 2489:18, 2489:30
relied [2] - 2467:18, 2467:21
reluctance [1] - 2484:35
reluctant [1] - 2485:6
relying [2] - 2481:43, 2531:10
remains [2] - 2499:14, 2512:3
remember [32] - 2436:29, 2437:4, 2439:31, 2440:40, 2440:45, 2443:35, 2446:35, 2448:39, 2448:46, 2449:21, 2460:19, 2472:7, 2484:2, 2484:4, 2493:13, 2493:23, 2493:25, 2493:28, 2493:37, 2493:42, 2494:38, 2503:25, 2509:12, 2509:13, 2510:8, 2528:26, 2541:24, 2541:27, 2545:17, 2555:47, 2556:12
remembering [2] - 2449:24, 2522:9
remind [1] - 2436:1
remit [1] - 2494:33
remotely [1] - 2458:35
remove [1] - 2465:38
removed [2] - 2449:8, 2493:10
repeat [2] - 2453:14, 2512:35
replicate [2] - 2479:15, 2524:27
reply [2] - 2474:45, 2556:13
report [56] - 2443:4, 2447:37, 2454:47, 2455:8, 2455:17, 2456:22, 2456:33, 2458:45, 2459:28, 2460:38, 2461:30, 2461:38, 2461:39, 2474:33, 2481:2, 2481:25, 2483:7, 2483:18, 2488:41, 2488:42, 2489:46, 2490:37, 2491:47, 2492:25, 2492:32, 2492:38, 2494:2, 2494:29, 2495:17, 2495:18, 2500:34, 2501:34, 2504:42, 2506:9, 2507:33, 2508:42, 2510:40, 2510:41, 2511:21, 2515:43, 2519:10, 2519:11, 2524:33,

2525:47, 2536:6,
2536:8, 2537:32,
2537:44, 2539:32,
2546:1, 2546:13,
2546:27, 2552:11,
2552:16, 2553:38
reported [3] - 2474:17,
2481:46, 2538:18
Reported [1] -
2538:29
reports [7] - 2461:32,
2462:31, 2468:19,
2474:9, 2481:47,
2482:23, 2507:29
represent [1] -
2556:45
representation [1] -
2450:12
representative [4] -
2532:6, 2532:14,
2532:18, 2532:25
represented [1] -
2495:3
representing [1] -
2525:5
represents [1] -
2555:16
reproduce [1] - 2479:2
reproduced [1] -
2521:3
reputation [2] -
2533:21, 2533:24
request [1] - 2454:20
require [5] - 2472:29,
2475:34, 2505:4,
2551:28, 2551:35
required [1] - 2505:43
requirement [4] -
2504:3, 2505:11,
2505:28, 2506:10
requires [1] - 2480:32
research [6] -
2444:27, 2472:43,
2473:23, 2473:31,
2473:37, 2530:29
Research [1] -
2473:14
researcher [1] -
2524:27
researchers [1] -
2549:43
reservations [1] -
2445:37
resilience [1] - 2549:2
resistant [1] - 2548:45
resolution [1] -
2497:20
resolvable [2] -
2479:5, 2479:26
resolve [1] - 2450:26
resolved [5] -
2450:44, 2477:24,
2477:30, 2477:33,
2477:40
resonates [1] -
2456:36
resort [1] - 2489:34
resources [2] -
2436:26, 2440:10
respect [2] - 2481:35,
2530:6
respectful [1] -
2484:46
respects [3] -
2449:19, 2453:15,
2511:39
respond [1] - 2445:19
responding [1] -
2454:12
responds [4] -
2444:36, 2445:45,
2475:24, 2519:16
response [17] -
2446:32, 2449:29,
2462:30, 2462:31,
2465:7, 2470:11,
2474:41, 2477:12,
2478:19, 2484:20,
2485:2, 2513:14,
2515:46, 2536:26,
2542:1, 2543:46,
2546:27
responsive [1] -
2532:1
rest [4] - 2468:7,
2470:7, 2523:36,
2548:30
restrict [1] - 2550:44
restrictions [1] -
2548:8
restructure [2] -
2491:5, 2491:29
result [9] - 2440:13,
2483:31, 2486:45,
2491:29, 2492:29,
2497:42, 2508:24,
2508:25, 2544:44
results [7] - 2448:32,
2479:23, 2479:25,
2484:43, 2485:28,
2507:26, 2514:39
resume [2] - 2462:15,
2557:33
resuscitated [2] -
2549:10, 2549:14
retired [1] - 2452:11
retract [1] - 2465:20
review [23] - 2438:7,
2438:28, 2446:37,
2447:6, 2452:23,
2453:35, 2455:15,
2455:43, 2456:29,
2460:46, 2469:4,
2472:29, 2473:12,
2488:24, 2490:20,
2496:33, 2497:41,
2498:47, 2506:43,
2541:22, 2543:21,
2547:7, 2548:46
Review [3] - 2438:11,
2448:25, 2549:31
Reviewed [1] -
2549:25
reviewers [2] -
2498:25, 2498:33
reviewing [1] -
2510:43
revising [2] - 2483:7,
2488:4
revision [1] - 2548:46
revisions [3] -
2555:39, 2555:40,
2556:4
revisit [1] - 2487:34
revisited [1] - 2486:36
rhetoric [1] - 2553:23
rhetorically [1] -
2542:34
Richards [1] - 2435:58
rife [1] - 2447:5
right-hand [4] -
2451:38, 2451:40,
2453:26, 2546:9
rightly [1] - 2492:32
ring [3] - 2448:27,
2486:5, 2526:25
rings [1] - 2448:30
rob [1] - 2532:31
robbed [2] - 2480:6,
2533:6
robbery [14] -
2476:43, 2477:4,
2477:8, 2479:46,
2480:7, 2480:18,
2480:20, 2480:27,
2480:29, 2509:2,
2532:37, 2533:45,
2534:30
robust [2] - 2475:33,
2548:8
role [1] - 2542:42
roles [1] - 2534:13
room [2] - 2458:46,
2460:20
roped [1] - 2452:33
round [2] - 2533:36,
2541:19
routes [1] - 2523:16
ruled [2] - 2521:29
ruling [3] - 2520:47,
2521:34, 2542:41
run [3] - 2510:34,
2510:35, 2522:32
Runaway [1] -
2545:14
running [1] - 2522:38
runs [1] - 2509:35
rushed [1] - 2516:22

S

Sackar [1] - 2435:16
sacred [4] - 2555:17,
2555:24, 2555:31,
2555:35
sacrifice [1] - 2534:42
sad [1] - 2542:22
saddened [1] -
2541:21
sadness [1] - 2543:18
safe [1] - 2550:36
sample [7] - 2448:24,
2448:30, 2448:34,
2448:37, 2449:19,
2449:20, 2451:16
saw [5] - 2448:41,
2448:44, 2453:46,
2484:41, 2509:15
SC [1] - 2435:30
scant [2] - 2452:42,
2452:43
scathing [1] - 2441:47
scenario [1] - 2508:46
scenes [2] - 2439:28,
2439:32
scepticism [1] -
2554:33
schema [1] - 2500:31
scholarship [1] -
2490:7
school [1] - 2526:21
scientific [1] -
2523:39
SCOI.02632_0001 [4]
- 2459:29, 2488:45,
2492:1, 2519:12
SCOI.02632_0001 [1]
- 2536:7
SCOI.74401_0001 [1]
- 2472:19
SCOI.74447_0001 [2]
- 2476:5, 2478:15
SCOI.74448_0001 [1]
- 2517:39
SCOI.74542_0001 [1]
- 2483:37
SCOI.74543_0001 [1]
- 2483:45
SCOI.74554_0001 [1]
- 2484:27
SCOI.74590_0001 [1]
- 2484:12
SCOI.74734_0001 [1]
- 2539:24
SCOI.74771_0001 [1]
- 2481:10
SCOI.75775_0001 [1]
- 2453:25
SCOI.75775_0001 [1]
- 2451:29
SCOI.76824_0001 [1]
- 2526:5
SCOI.77540_0001 [1]
- 2538:24
SCOI.79323_0001 [1]
- 2486:21
SCOI.79339_0001 [1]
- 2514:23
SCOI.79391_0001 [1]
- 2444:6
SCOI.79694_0001 [1]
- 2469:15
SCOI.79856_0001 [1]
- 2440:32
SCOI.79872_0001 [1]
- 2491:1
SCOI.80032_0001 [1]
- 2452:1
SCOI.82022_0001 [1]
- 2545:9
SCOI.82365_0001 [2]
- 2449:32, 2462:30
scope [3] - 2455:44,
2457:39, 2495:32
score [2] - 2463:23,
2520:5
scored [6] - 2519:22,
2519:28, 2519:38,
2519:43, 2519:46,
2520:11
scoring [5] - 2463:5,
2463:14, 2463:21,
2463:39, 2520:1
Scott [3] - 2497:19,
2544:20, 2544:23
screen [13] - 2450:6,
2451:30, 2451:32,
2451:45, 2451:47,
2452:2, 2452:7,
2476:21, 2519:31,
2526:29, 2526:30,
2539:45, 2544:5
scroll [9] - 2450:6,
2451:34, 2457:45,
2459:34, 2469:26,
2512:19, 2515:47,
2527:5, 2541:6
scrutiny [2] - 2455:1,
2549:13
se [2] - 2457:27,

2494:32
searched [1] - 2523:45
seated [1] - 2532:43
sec [1] - 2532:2
second [30] - 2437:30, 2439:8, 2454:2, 2456:32, 2462:39, 2464:40, 2467:27, 2469:17, 2470:18, 2474:41, 2476:41, 2478:21, 2482:2, 2484:30, 2485:8, 2486:19, 2486:25, 2496:38, 2498:30, 2498:45, 2500:43, 2506:39, 2514:31, 2518:34, 2522:18, 2527:4, 2531:33, 2532:29, 2533:40, 2550:39
second-guess [1] - 2467:27
second-last [3] - 2470:18, 2476:41, 2518:34
secondary [2] - 2513:13, 2513:20
secondly [1] - 2494:13
SECRET [1] - 2452:17
section [13] - 2455:26, 2481:34, 2482:15, 2490:6, 2490:7, 2511:4, 2512:17, 2536:8, 2536:11, 2536:22, 2536:35, 2536:47, 2537:17
sections [9] - 2461:39, 2507:30, 2511:23, 2545:28, 2545:31, 2545:32, 2545:40, 2545:43
see [83] - 2437:8, 2437:18, 2439:24, 2439:25, 2441:1, 2446:46, 2449:18, 2450:10, 2450:19, 2452:36, 2453:27, 2453:44, 2454:41, 2455:3, 2458:21, 2460:8, 2461:14, 2461:26, 2462:41, 2463:8, 2463:26, 2464:35, 2466:47, 2467:39, 2469:27, 2469:30, 2470:24, 2470:32, 2471:38, 2472:6, 2473:18, 2476:17, 2476:33, 2476:37, 2477:16, 2479:7, 2481:27, 2484:37, 2489:1, 2489:3, 2491:19, 2491:33, 2492:15, 2494:31, 2496:2, 2498:16, 2500:4, 2500:9, 2504:8, 2506:46, 2510:24, 2512:7, 2515:21, 2515:29, 2515:33, 2516:37, 2519:36, 2520:38, 2525:36, 2525:37, 2526:47, 2527:7, 2527:44, 2528:9, 2529:25, 2531:1, 2532:14, 2532:31, 2532:35, 2533:41, 2534:8, 2540:33, 2544:3, 2544:4, 2544:8, 2548:10, 2549:32, 2552:15, 2553:37, 2558:36
seeing [3] - 2470:31, 2493:23, 2539:4
seek [3] - 2508:16, 2522:10, 2549:1
seeking [6] - 2469:11, 2472:8, 2507:22, 2508:13, 2516:41, 2553:32
seeking-out [1] - 2516:41
seeks [4] - 2507:4, 2507:19, 2508:35, 2522:4
seem [25] - 2439:28, 2441:33, 2442:1, 2454:11, 2465:37, 2468:23, 2480:34, 2482:3, 2482:5, 2482:7, 2483:1, 2494:33, 2498:47, 2500:22, 2500:23, 2508:45, 2509:36, 2511:46, 2516:16, 2517:11, 2522:13, 2523:39, 2549:11, 2555:24
seemingly [3] - 2464:2, 2517:16, 2523:30
sees [1] - 2455:16
select [3] - 2530:44, 2532:19, 2532:29
selected [4] - 2470:32, 2531:18, 2532:37, 2533:5
Selection [1] - 2526:10
selection [12] - 2526:25, 2527:42, 2528:7, 2528:16, 2528:18, 2528:24, 2530:11, 2530:32, 2531:10, 2531:16, 2532:45, 2534:26
send [2] - 2483:29, 2491:17
sending [3] - 2475:1, 2483:32, 2506:34
sends [2] - 2477:12, 2504:32
Senior [2] - 2435:30, 2435:33
sense [28] - 2441:18, 2442:8, 2449:25, 2460:10, 2461:19, 2461:21, 2461:27, 2465:14, 2468:1, 2472:14, 2478:44, 2479:3, 2487:43, 2488:20, 2493:16, 2494:30, 2495:6, 2501:31, 2502:35, 2502:40, 2502:46, 2511:7, 2522:9, 2524:45, 2532:25, 2538:13, 2543:33, 2543:35
sent [2] - 2474:34, 2484:6
sentence [45] - 2460:38, 2460:42, 2463:26, 2463:34, 2464:5, 2464:7, 2464:11, 2464:13, 2464:14, 2464:44, 2465:41, 2466:39, 2467:33, 2467:35, 2467:43, 2468:6, 2468:32, 2468:36, 2489:4, 2489:44, 2497:23, 2501:39, 2502:16, 2507:12, 2507:16, 2507:31, 2507:32, 2507:38, 2507:44, 2508:45, 2510:14, 2514:7, 2520:29, 2537:39, 2540:28, 2547:12, 2547:19, 2547:44, 2550:8, 2550:9, 2550:12, 2551:12, 2553:15, 2556:36, 2557:10
sentences [7] - 2465:40, 2466:4, 2508:42, 2511:17, 2511:18, 2521:2, 2550:29
sentiment [8] - 2464:47, 2465:12, 2465:43, 2466:9, 2487:42, 2518:9, 2518:15, 2542:22
sentiments [1] - 2480:19
separate [1] - 2468:19
sequester [2] - 2436:23, 2437:12
Sergeant [24] - 2440:35, 2440:46, 2442:17, 2444:7, 2444:36, 2448:24, 2448:29, 2448:37, 2448:43, 2448:46, 2450:8, 2450:13, 2450:30, 2451:11, 2472:28, 2473:10, 2473:31, 2475:42, 2491:2, 2491:3, 2492:7, 2493:39, 2494:47, 2495:6
series [2] - 2438:15, 2458:9
serious [9] - 2516:41, 2522:1, 2522:8, 2522:13, 2522:17, 2522:24, 2522:27, 2551:45, 2552:6
services [1] - 2546:35
set [5] - 2448:22, 2448:34, 2515:10, 2522:30, 2546:4
sets [3] - 2486:16, 2513:14, 2519:15
setting [3] - 2479:11, 2508:22, 2508:23
settle [2] - 2471:29, 2471:36
sexual [5] - 2507:9, 2528:37, 2529:42, 2532:30, 2532:38
shame [9] - 2446:35, 2448:8, 2460:9, 2460:18, 2461:43, 2525:18, 2525:24, 2525:31, 2542:19
shape [2] - 2456:23, 2516:21
shaped [2] - 2457:21, 2527:10
share [6] - 2457:28, 2459:19, 2471:8, 2483:9, 2509:28, 2510:6
shared [6] - 2456:14, 2458:5, 2460:11, 2477:28, 2477:29, 2509:40
sharing [2] - 2471:46, 2511:40
Sharma [1] - 2470:2
sheet [4] - 2441:31, 2444:24, 2444:45, 2445:24
sheets [2] - 2458:29, 2458:30
shift [1] - 2488:38
Shobha [2] - 2469:47, 2470:2
short [1] - 2548:44
short-hand [1] - 2548:44
shortly [1] - 2558:41
show [2] - 2548:42, 2556:6
showing [2] - 2454:38, 2476:21
shown [1] - 2527:27
shunted [1] - 2495:9
shy [1] - 2488:34
sic [1] - 2517:41
sic [2] - 2451:44, 2538:41
sick [1] - 2537:12
side [4] - 2471:25, 2481:16, 2485:22, 2486:11
sides [2] - 2485:33, 2488:16
sides' [1] - 2488:4
signed [1] - 2488:27
significant [4] - 2451:4, 2520:39, 2536:25, 2537:31
significantly [5] - 2499:43, 2546:36, 2546:46, 2547:2, 2549:9
silence [2] - 2452:20, 2544:37
silences [1] - 2544:30
similar [2] - 2453:27, 2558:7
simply [6] - 2436:3, 2440:6, 2480:37, 2488:2, 2496:26, 2508:12
since [1] - 2524:8
single [2] - 2520:40, 2534:14
sit [4] - 2439:45, 2470:40, 2487:38, 2512:4
site [4] - 2541:11, 2555:17, 2555:24, 2555:35
sites [1] - 2541:43

sits [1] - 2458:44
sitting [5] - 2440:6, 2465:27, 2488:31, 2520:20, 2525:14
situation [1] - 2492:17
situations [1] - 2532:6
six [10] - 2459:42, 2469:34, 2472:6, 2472:25, 2480:25, 2481:7, 2501:30, 2501:33, 2522:31, 2533:10
skipped [1] - 2512:33
slight [1] - 2468:15
slightly [7] - 2448:22, 2469:27, 2485:46, 2507:24, 2508:8, 2530:36, 2554:47
slip [1] - 2497:10
slog [1] - 2452:30
sloppy [1] - 2554:16
small [1] - 2448:37
smaller [1] - 2449:42
smidge [1] - 2449:42
smoother [1] - 2475:3
so-called [6] - 2505:11, 2554:4, 2554:8, 2554:9, 2554:17, 2554:39
social [8] - 2482:41, 2530:46, 2531:19, 2536:14, 2536:26, 2548:7, 2548:47, 2556:44
societal [2] - 2548:6, 2548:19
Solicitor [1] - 2435:33
solidly [4] - 2508:2, 2508:7, 2508:10, 2508:35
solution [1] - 2517:22
solved [3] - 2439:9, 2439:24, 2440:5
someone [32] - 2452:42, 2452:43, 2456:39, 2456:43, 2456:47, 2457:4, 2482:26, 2493:19, 2494:43, 2494:46, 2495:20, 2507:19, 2507:21, 2507:22, 2508:13, 2508:17, 2508:23, 2508:24, 2508:35, 2508:36, 2509:34, 2517:26, 2519:14, 2519:16, 2522:4, 2522:25, 2525:37, 2529:1, 2538:26, 2543:25
sometimes [12] - 2457:35, 2458:41, 2477:32, 2481:45, 2487:34, 2487:38, 2487:40, 2496:26, 2499:36, 2506:13, 2532:45, 2535:38
somewhat [7] - 2441:47, 2445:25, 2466:8, 2481:23, 2483:11, 2516:35, 2557:11
somewhere [4] - 2442:38, 2495:10, 2516:17, 2518:38
soon [1] - 2457:31
sorry [43] - 2445:44, 2450:1, 2457:46, 2462:4, 2478:37, 2480:12, 2485:42, 2486:20, 2491:4, 2491:12, 2492:20, 2494:20, 2500:40, 2503:5, 2503:11, 2503:23, 2507:40, 2512:20, 2512:21, 2512:25, 2513:39, 2517:33, 2519:30, 2519:33, 2519:43, 2520:23, 2520:25, 2533:33, 2534:33, 2538:29, 2538:46, 2539:26, 2544:1, 2544:21, 2547:2, 2547:38, 2551:25, 2551:33, 2551:42, 2553:10
sort [48] - 2440:44, 2441:22, 2441:41, 2442:39, 2446:39, 2446:47, 2449:26, 2456:37, 2458:16, 2458:32, 2459:9, 2461:20, 2461:24, 2468:12, 2471:29, 2471:36, 2476:47, 2493:12, 2493:17, 2494:30, 2496:12, 2504:28, 2505:18, 2505:28, 2506:23, 2508:27, 2509:39, 2509:40, 2509:41, 2510:36, 2511:8, 2511:11, 2511:29, 2520:37, 2532:47, 2543:7, 2545:2, 2545:41, 2548:21, 2548:26, 2549:12, 2549:13, 2549:14, 2549:22, 2550:41, 2552:18, 2556:11
sorts [6] - 2452:27, 2457:36, 2493:26, 2552:3, 2556:5, 2556:16
sought [1] - 2513:29
sound [1] - 2479:16
source [3] - 2442:30, 2442:33, 2443:40
sourcing [1] - 2442:42
South [2] - 2435:21, 2453:35
speaking [3] - 2456:2, 2520:32, 2534:2
speaks [1] - 2444:29
SPECIAL [1] - 2558:44
Special [2] - 2435:9, 2449:30
specific [3] - 2472:29, 2473:12, 2521:3
specifics [1] - 2507:15
spectacular [1] - 2525:38
spectre [1] - 2548:4
speculate [2] - 2481:2, 2544:43
speculation [1] - 2505:43
speech [1] - 2458:43
speed [1] - 2449:1
spend [1] - 2539:7
spent [4] - 2436:25, 2446:44, 2458:31, 2515:43
spirit [2] - 2454:4, 2459:46
sponsors [1] - 2491:40
spot [1] - 2447:46
spread [1] - 2536:38
spreading [2] - 2536:45, 2537:11
spreadsheets [2] - 2458:18, 2458:26
square [1] - 2438:22
staff [1] - 2491:22
stage [4] - 2439:28, 2464:16, 2471:35, 2556:9
stand [11] - 2503:17, 2507:11, 2507:23, 2507:35, 2507:37, 2507:42, 2508:5, 2508:10, 2533:15, 2549:12, 2555:7
stand-in [1] - 2555:7
standard [1] - 2461:24
Stanley [1] - 2537:6
Star [1] - 2538:29
stare [1] - 2545:41
start [8] - 2445:44, 2468:15, 2469:16, 2483:9, 2483:24, 2484:14, 2541:8, 2557:47
started [2] - 2444:8, 2479:41
starters [1] - 2457:45
starting [2] - 2469:22, 2484:32
starts [2] - 2472:20, 2476:9
state [8] - 2480:33, 2483:34, 2496:40, 2543:30, 2543:37, 2543:40, 2543:41
statement [1] - 2557:41
statements [5] - 2504:24, 2504:46, 2505:10, 2506:19, 2558:35
States [1] - 2526:1
states [1] - 2536:39
statistical [1] - 2458:18
status [1] - 2531:19
statutes [1] - 2513:27
stay [1] - 2535:24
Steer [28] - 2440:35, 2440:47, 2442:17, 2444:7, 2444:36, 2448:24, 2448:29, 2448:37, 2448:43, 2448:46, 2450:8, 2450:13, 2450:30, 2451:11, 2470:4, 2472:28, 2473:10, 2473:31, 2473:43, 2475:42, 2490:38, 2491:2, 2491:3, 2492:7, 2493:4, 2493:6, 2494:47, 2495:6
Steer's [1] - 2493:39
step [2] - 2442:7, 2443:15
Stephen [4] - 2542:26, 2543:2, 2548:32, 2553:28
stick [1] - 2446:37
still [23] - 2438:29, 2452:29, 2463:3, 2463:11, 2463:13, 2463:17, 2463:18, 2463:38, 2464:1, 2465:34, 2465:42, 2476:44, 2477:23, 2479:47, 2492:3, 2499:9, 2512:28, 2514:16, 2517:9, 2517:45, 2537:16, 2543:22, 2557:26
stipulated [1] - 2514:47
stopping [1] - 2519:30
store [1] - 2550:35
story [1] - 2534:44
straight [1] - 2506:28
straightaway [1] - 2506:28
strange [4] - 2464:6, 2482:30, 2482:32, 2485:46
Street [1] - 2435:20
strength [2] - 2509:3, 2509:16
strengthens [1] - 2509:41
stress [1] - 2453:29
stressing [1] - 2455:22
Strike [13] - 2438:6, 2443:5, 2450:35, 2451:13, 2452:22, 2454:25, 2455:37, 2455:44, 2456:13, 2458:44, 2486:27, 2493:27, 2537:30
strike [14] - 2442:16, 2442:34, 2447:37, 2448:34, 2449:4, 2449:7, 2449:20, 2460:44, 2461:4, 2468:39, 2468:47, 2482:30, 2531:28, 2556:32
Strikes [1] - 2542:1
strikes [4] - 2440:14, 2441:12, 2449:23, 2522:26
strong [13] - 2446:38, 2447:34, 2447:36, 2447:43, 2459:46, 2480:9, 2481:5, 2542:16, 2543:12, 2543:15, 2547:32, 2547:33, 2550:43
struck [1] - 2481:36
struggled [1] - 2461:25
struggling [3] - 2476:44, 2479:47, 2517:45
Study [1] - 2530:24
study [11] - 2527:36, 2528:2, 2528:15, 2528:34, 2529:20, 2529:30, 2530:29, 2531:5, 2531:47, 2534:5, 2534:25

- study's** [1] - 2530:42
stuff [15] - 2441:3, 2442:39, 2452:17, 2458:15, 2482:10, 2482:46, 2493:18, 2493:39, 2503:19, 2511:8, 2520:37, 2525:34, 2533:13, 2541:32, 2556:5
sub [3] - 2476:37, 2514:17, 2521:43
sub-categorised [1] - 2521:43
sub-category [1] - 2514:17
sub-groupings [1] - 2476:37
subcategories [1] - 2478:38
subject [5] - 2442:11, 2453:21, 2472:42, 2483:18, 2522:14
subjecting [1] - 2522:25
subjective [9] - 2438:15, 2438:20, 2499:18, 2523:17, 2523:23, 2523:41, 2523:42, 2525:5, 2528:43
subjectively [2] - 2524:20, 2525:3
subjectivity [2] - 2489:34, 2524:45
submission [2] - 2539:42, 2540:10
submit [1] - 2542:9
submitted [1] - 2474:9
subscribed [1] - 2543:5
subsequent [1] - 2539:9
subsequently [3] - 2472:37, 2485:8, 2490:40
substance [1] - 2543:31
substantial [3] - 2453:15, 2487:11, 2487:13
substantive [1] - 2477:4
subtype [1] - 2534:41
succinct [2] - 2459:2, 2461:11
sudden [3] - 2439:30, 2493:36, 2545:1
Sue [6] - 2540:30, 2540:36, 2541:2, 2548:31, 2553:28, 2553:39
sufficient [2] - 2549:45, 2550:14
suggest [10] - 2461:4, 2472:46, 2473:33, 2484:8, 2485:38, 2485:44, 2503:25, 2509:47, 2523:22, 2523:29
suggested [2] - 2483:33, 2484:16
suggesting [10] - 2437:41, 2473:25, 2486:2, 2486:8, 2488:4, 2492:29, 2494:6, 2525:42, 2528:43, 2548:29
suggestion [3] - 2441:32, 2505:40, 2505:42
suggestions [2] - 2484:24, 2556:5
suggests [1] - 2534:25
suits [1] - 2557:47
summaries [1] - 2549:34
summary [4] - 2467:23, 2529:13, 2530:36, 2547:20
summons [1] - 2538:25
Superintendent [2] - 2469:47, 2471:45
superior [1] - 2461:2
supplement [1] - 2479:1
supplied [1] - 2516:33
supply [1] - 2452:18
support [1] - 2498:34
supported [1] - 2542:12
suppose [3] - 2447:2, 2482:21, 2548:30
surgeon [1] - 2482:27
surname [1] - 2493:25
surprised [1] - 2468:25
suspect [4] - 2486:34, 2497:2, 2501:13, 2507:31
suspected [2] - 2515:27, 2515:36
sustained [1] - 2552:9
suturing [1] - 2482:10
sway [1] - 2460:13
sweated [1] - 2501:34
Sydney [9] - 2435:21, 2440:39, 2441:21, 2449:13, 2459:9, 2460:9, 2517:23, 2539:35, 2542:18
Sydney [1] - 2538:28
symbolic [2] - 2506:34, 2532:20
synonym [2] - 2518:17, 2518:19
synthesise [1] - 2530:21
system [2] - 2479:1, 2498:44
-
- T**
-
- tab** [35] - 2440:32, 2444:5, 2449:32, 2450:1, 2451:29, 2451:33, 2451:47, 2452:1, 2452:6, 2453:24, 2459:29, 2462:29, 2462:35, 2469:14, 2472:19, 2476:5, 2478:15, 2481:10, 2483:37, 2484:12, 2484:27, 2486:19, 2486:20, 2488:45, 2490:47, 2492:1, 2514:23, 2517:39, 2519:12, 2526:4, 2536:6, 2538:23, 2539:24, 2545:8
table [2] - 2500:37, 2545:47
tabs [1] - 2444:5
Taradale [1] - 2493:27
target [5] - 2504:6, 2506:13, 2509:3, 2510:21, 2551:5
targeted [4] - 2528:36, 2529:41, 2532:43, 2532:46
targeting [2] - 2476:45, 2510:31
Task [1] - 2451:13
task [5] - 2461:13, 2468:10, 2468:13, 2531:12, 2542:35
tasks [3] - 2455:28, 2492:10, 2556:16
taxonomy [2] - 2479:11, 2486:12
teaching [1] - 2556:16
team [20] - 2437:20, 2441:11, 2452:29, 2454:46, 2456:21, 2459:44, 2460:6, 2461:30, 2471:4, 2472:43, 2473:23, 2473:31, 2473:37, 2476:29, 2477:20, 2483:11, 2483:40, 2517:44, 2551:3
Team [1] - 2473:14
teams [2] - 2463:20, 2496:19
technique [2] - 2497:44, 2497:47
technology [1] - 2441:7
Tedeschi [10] - 2435:37, 2462:15, 2528:46, 2535:13, 2535:29, 2535:31, 2535:37, 2542:38, 2557:40, 2558:37
TEDESCHI [19] - 2462:18, 2504:38, 2504:42, 2505:4, 2505:15, 2505:20, 2505:31, 2505:36, 2528:28, 2528:32, 2528:42, 2529:4, 2535:16, 2535:20, 2542:30, 2542:34, 2542:44, 2557:36, 2558:3
telephone [1] - 2459:19
template [1] - 2488:28
tender [13] - 2451:28, 2452:22, 2452:34, 2453:24, 2454:12, 2454:20, 2454:34, 2457:25, 2457:31, 2461:11, 2461:25, 2468:16, 2488:27
tendered [1] - 2511:9
tenders [2] - 2511:8, 2511:10
tends [2] - 2489:47, 2499:32
tenor [7] - 2437:17, 2446:34, 2460:19, 2464:47, 2465:12, 2465:43, 2556:13
tens [1] - 2552:15
tension [8] - 2461:9, 2461:11, 2461:26, 2479:4, 2479:22, 2488:25, 2488:30
tenth [2] - 2442:26, 2442:39
term [18] - 2447:34, 2447:36, 2456:36, 2456:40, 2468:9, 2472:1, 2505:20, 2509:36, 2514:1, 2514:3, 2517:35, 2537:1, 2537:43, 2547:24, 2547:34, 2549:21, 2550:43, 2550:44
Terms [2] - 2437:31, 2454:20
terms [41] - 2443:21, 2453:28, 2453:30, 2458:4, 2458:17, 2458:21, 2458:39, 2459:36, 2460:45, 2461:12, 2461:19, 2468:15, 2468:21, 2468:22, 2468:23, 2478:37, 2481:43, 2482:45, 2483:21, 2488:27, 2493:12, 2494:15, 2494:32, 2499:7, 2508:18, 2508:41, 2509:15, 2510:11, 2510:45, 2511:18, 2515:43, 2516:32, 2517:2, 2518:43, 2522:9, 2522:46, 2523:5, 2531:38, 2532:11, 2545:2, 2550:30
terrible [8] - 2471:39, 2494:33, 2525:17, 2536:33, 2541:23, 2543:19, 2554:35
terrorism [1] - 2494:27
test [1] - 2524:28
testing [1] - 2452:30
tethered [1] - 2524:29
text [4] - 2448:12, 2488:42, 2524:33, 2538:30
themselves [1] - 2552:13
theoretical [1] - 2438:34
theoretically [1] - 2510:44
theory [1] - 2531:23
thereafter [1] - 2558:41
therefore [1] - 2534:38
they have [2] - 2479:23, 2482:22
they've [2] - 2442:40, 2479:22
thinking [5] - 2448:14, 2457:32, 2509:43, 2518:15, 2554:36
third [15] - 2454:3, 2458:5, 2458:6, 2471:12, 2476:9, 2484:30, 2484:34, 2491:3, 2509:20

- 2514:29, 2518:35,
2530:26, 2540:15,
2557:9
third-last [1] - 2484:34
thirdly [1] - 2472:41
Thompson [5] -
2540:30, 2540:36,
2541:2, 2548:31,
2553:28
thorough [4] - 2448:9,
2458:33, 2482:19,
2499:11
thoroughly [2] -
2439:13, 2549:19
thoughts [1] - 2448:6
thread [1] - 2529:9
threat [6] - 2494:26,
2507:6, 2507:11,
2507:21, 2507:28,
2507:36
three [15] - 2446:30,
2471:25, 2471:27,
2487:35, 2490:42,
2491:22, 2494:5,
2500:22, 2501:4,
2501:6, 2524:38,
2525:5, 2546:28,
2558:20, 2558:34
thrown [1] - 2540:24
THURSDAY [1] -
2558:45
tick [6] - 2441:31,
2441:42, 2441:43,
2444:24, 2444:45,
2445:24
ticks [2] - 2441:43,
2441:44
tighter [1] - 2548:7
tightly [1] - 2455:17
tip [1] - 2487:41
tipping [1] - 2487:3
title [2] - 2490:39,
2490:41
titled [1] - 2538:25
TO [1] - 2558:45
today [10] - 2448:45,
2488:31, 2503:17,
2512:4, 2520:20,
2525:14, 2533:14,
2535:33, 2542:38,
2552:30
today" [1] - 2441:1
toe [1] - 2493:15
together [7] - 2457:31,
2474:15, 2482:46,
2488:30, 2509:37,
2509:39, 2556:11
tomorrow [2] -
2535:28, 2557:37
Tomsen [5] - 2542:2,
2542:26, 2543:2,
2548:32, 2553:29
took [8] - 2492:4,
2538:1, 2545:32,
2545:33, 2545:43,
2549:34, 2550:36
tool [18] - 2445:26,
2514:31, 2516:21,
2516:23, 2549:37,
2551:3, 2551:11,
2551:15, 2551:16,
2551:31, 2551:38,
2552:8, 2552:24,
2552:31, 2552:36,
2552:37, 2552:40,
2552:45
top [19] - 2444:36,
2445:42, 2449:33,
2453:25, 2455:11,
2469:27, 2471:11,
2475:24, 2495:37,
2499:21, 2509:19,
2517:25, 2530:35,
2537:45, 2539:2,
2541:35, 2548:36,
2552:21, 2555:47
TOP [1] - 2452:17
topic [9] - 2439:17,
2440:31, 2488:41,
2489:46, 2490:8,
2490:11, 2512:12,
2519:11, 2536:3
total [1] - 2437:5
totality [1] - 2436:46
totem [1] - 2555:11
Tourism [1] - 2541:43
towards [17] -
2453:29, 2473:24,
2476:20, 2490:5,
2490:18, 2491:12,
2496:40, 2507:47,
2508:7, 2515:3,
2520:47, 2532:36,
2532:44, 2536:44,
2537:34, 2549:28,
2549:29
trace [1] - 2496:42
track [2] - 2492:9,
2540:23
train [2] - 2446:45,
2525:33
transcend [1] -
2480:29
transcript [1] -
2436:21
transparent [1] -
2517:44
transparently [2] -
2465:30, 2552:7
tricky [4] - 2470:28,
2478:44, 2511:24,
2537:5
tried [6] - 2442:41,
2488:25, 2499:9,
2540:23, 2543:20,
2551:16
trigger [2] - 2450:19,
2462:7
trio [1] - 2497:9
trip [1] - 2544:31
triple [1] - 2458:30
triple-check [1] -
2458:30
true [9] - 2445:32,
2453:12, 2467:29,
2486:6, 2495:22,
2525:7, 2529:12,
2552:29, 2553:5
Trumpian [1] -
2547:27
truth [3] - 2465:22,
2465:23, 2485:18
truthfulness [1] -
2555:4
try [4] - 2523:7,
2530:21, 2545:41,
2551:18
trying [19] - 2443:26,
2446:27, 2449:45,
2457:1, 2463:24,
2466:37, 2467:47,
2476:30, 2478:41,
2482:45, 2493:34,
2496:13, 2501:43,
2503:23, 2503:25,
2509:16, 2511:20,
2523:27, 2543:17
Tulsi [1] - 2454:16
turn [11] - 2440:32,
2453:25, 2488:41,
2488:46, 2495:25,
2517:27, 2530:23,
2531:42, 2533:37,
2536:3, 2556:29
turned [1] - 2468:17
two [54] - 2440:40,
2444:5, 2444:7,
2446:30, 2449:38,
2450:3, 2452:14,
2453:29, 2454:41,
2455:7, 2456:7,
2459:11, 2461:32,
2461:39, 2463:20,
2468:19, 2472:12,
2472:27, 2473:32,
2474:33, 2477:30,
2481:17, 2485:47,
2486:16, 2487:34,
2488:16, 2492:18,
2493:47, 2496:15,
2496:17, 2498:27,
2500:42, 2507:29,
2512:11, 2514:25,
2518:31, 2519:3,
2523:14, 2524:13,
2525:9, 2525:13,
2527:39, 2531:47,
2532:5, 2536:31,
2543:43, 2546:9,
2546:28, 2547:16,
2550:25, 2557:9,
2557:24, 2558:33
two-five [1] - 2450:3
two-way [1] - 2456:7
type [8] - 2441:3,
2486:12, 2522:38,
2522:39, 2522:40,
2533:40
typed [2] - 2442:38,
2538:42
types [1] - 2516:45
typologies [1] -
2523:31
typology [3] -
2500:47, 2524:15,
2527:11
Tyson [8] - 2445:43,
2445:44, 2452:29,
2453:6, 2458:7,
2487:32, 2501:36,
2514:24
-
- U**
-
- UK** [3] - 2452:10,
2499:22, 2499:23
ultimate [1] - 2472:2
ultimately [3] -
2479:5, 2479:26,
2486:16
unacceptable [2] -
2552:37, 2553:6
unanticipated [1] -
2507:8
uncomfortable [1] -
2466:29
uncommon [1] -
2461:45
uncomplimentary [1]
- 2540:26
uncover [1] - 2531:34
undated [1] - 2449:37
under [20] - 2453:35,
2455:15, 2457:25,
2457:31, 2480:32,
2484:3, 2488:27,
2490:20, 2491:5,
2492:11, 2495:43,
2496:12, 2527:28,
2530:25, 2539:36,
2549:25, 2550:37,
2550:40, 2553:11,
2554:43
under-recording [1] -
2495:43
underestimate [1] -
2499:38
underlying [1] -
2495:33
underpinning [1] -
2477:3
underpins [1] -
2444:30
understood [11] -
2437:8, 2447:27,
2474:27, 2474:38,
2477:33, 2486:36,
2501:16, 2505:20,
2514:16, 2530:14
undertake [2] -
2438:34, 2438:38
undetermined [1] -
2438:30
undoubtedly [1] -
2534:15
unfortunate [3] -
2549:21, 2554:11,
2554:13
unfortunately [6] -
2480:9, 2493:44,
2502:22, 2503:17,
2510:9, 2555:43
unhappy [1] - 2493:14
unhelpful [1] -
2516:11
unique [1] - 2527:41
Unit [15] - 2441:19,
2441:24, 2448:42,
2450:27, 2468:41,
2490:32, 2490:41,
2491:5, 2491:20,
2491:30, 2491:37,
2492:41, 2494:3,
2494:14, 2494:23
unit [7] - 2446:3,
2491:16, 2491:40,
2492:2, 2492:39,
2492:46, 2494:24
United [1] - 2526:1
university [6] -
2456:3, 2457:35,
2488:28, 2525:34,
2526:19, 2550:38
University [1] -
2511:10
unjust [1] - 2461:41
unnecessarily [1] -
2538:16
unreasonable [2] -
2446:6, 2446:10

- unreliable** ^[1] - 2514:39
- unsolved** ^[9] - 2436:38, 2437:3, 2437:5, 2437:22, 2437:44, 2438:29, 2439:3, 2439:20, 2439:26
- unsupportable** ^[1] - 2461:41
- unsustainable** ^[1] - 2447:30
- untoward** ^[1] - 2493:31
- up** ^[54] - 2436:32, 2436:38, 2437:21, 2449:1, 2449:31, 2450:6, 2453:39, 2457:27, 2457:44, 2457:45, 2459:34, 2459:37, 2461:21, 2461:47, 2469:26, 2471:16, 2471:26, 2479:11, 2481:3, 2484:34, 2485:16, 2487:1, 2487:7, 2487:30, 2494:40, 2497:42, 2498:46, 2500:31, 2501:6, 2501:25, 2506:25, 2511:6, 2512:19, 2512:20, 2512:21, 2513:14, 2515:47, 2520:4, 2521:31, 2523:45, 2524:9, 2525:38, 2527:21, 2532:15, 2534:1, 2539:2, 2539:45, 2541:33, 2546:10, 2546:22, 2546:24, 2549:12, 2556:1
- up"** ^[1] - 2539:3
- update** ^[1] - 2470:15
- Upper** ^[2] - 2539:42, 2540:10
- upper** ^[3] - 2451:37, 2451:40, 2498:27
- upset** ^[5] - 2437:17, 2437:46, 2438:1, 2438:3, 2556:10
- upshot** ^[1] - 2514:10
- urban** ^[1] - 2539:3
- US** ^[3] - 2444:40, 2499:37, 2499:43
- USA** ^[1] - 2444:28
- usage** ^[2] - 2537:34, 2537:43
- useful** ^[2] - 2438:34, 2438:38
- uses** ^[1] - 2460:5
- utterance** ^[1] - 2505:5
- utterances** ^[4] - 2504:23, 2504:46, 2505:9, 2506:19
- utterly** ^[1] - 2549:19
-
- V**
-
- vague** ^[1] - 2466:23
- valid** ^[1] - 2481:44
- value** ^[2] - 2437:19, 2457:26
- various** ^[12] - 2441:22, 2442:14, 2455:28, 2469:34, 2472:21, 2475:10, 2484:19, 2490:32, 2493:1, 2516:44, 2554:8, 2557:41
- veracity** ^[1] - 2555:2
- verbal** ^[1] - 2505:4
- version** ^[5] - 2483:10, 2483:24, 2555:37, 2555:44, 2556:21
- versus** ^[1] - 2512:6
- vexatious** ^[1] - 2518:43
- vexed** ^[1] - 2556:41
- Victim** ^[1] - 2526:10
- victim** ^[22] - 2499:24, 2499:25, 2507:46, 2508:6, 2508:14, 2508:36, 2509:1, 2515:13, 2519:15, 2522:4, 2526:25, 2527:42, 2528:6, 2528:18, 2528:24, 2530:11, 2530:31, 2531:16, 2532:44, 2534:28, 2538:21
- victims** ^[14] - 2484:45, 2489:43, 2528:36, 2529:19, 2529:23, 2529:40, 2530:45, 2531:18, 2532:19, 2532:30, 2532:36, 2534:26, 2534:28, 2534:35
- view** ^[55] - 2438:23, 2438:33, 2438:37, 2441:15, 2443:39, 2443:40, 2445:15, 2445:16, 2448:26, 2448:41, 2450:18, 2450:44, 2456:11, 2461:40, 2464:26, 2464:27, 2467:6, 2473:24, 2476:1, 2477:28, 2477:29, 2479:35, 2482:22, 2488:11, 2489:38, 2494:46, 2495:1, 2496:7, 2496:10, 2496:29, 2499:31, 2499:38, 2509:45, 2510:43, 2512:47, 2516:26, 2516:27, 2516:40, 2517:16, 2517:17, 2524:17, 2524:47, 2525:4, 2525:5, 2525:13, 2527:1, 2533:3, 2541:2, 2543:10, 2543:36, 2547:10, 2547:28, 2549:17, 2550:25, 2553:29
- viewpoint** ^[1] - 2543:16
- views** ^[17] - 2438:15, 2438:20, 2448:33, 2449:19, 2465:29, 2469:2, 2472:15, 2473:45, 2477:23, 2477:39, 2477:44, 2488:5, 2488:15, 2509:34, 2525:4, 2543:5
- violence** ^[26] - 2504:14, 2504:19, 2504:23, 2504:46, 2505:9, 2505:25, 2506:15, 2507:27, 2509:45, 2511:3, 2514:36, 2515:17, 2516:34, 2516:41, 2516:42, 2522:15, 2522:25, 2528:35, 2529:40, 2532:3, 2534:6, 2534:44, 2536:37, 2537:9, 2537:18, 2538:15
- violent** ^[1] - 2537:10
- violently** ^[3] - 2507:8, 2507:22, 2529:22
- virtuous** ^[1] - 2555:10
- visual** ^[3] - 2440:45, 2441:2, 2554:25
- vital** ^[1] - 2448:43
- voice** ^[1] - 2475:11
- volume** ^[27] - 2440:31, 2449:32, 2450:3, 2451:27, 2451:33, 2451:45, 2451:46, 2451:47, 2452:6, 2453:24, 2462:29, 2462:36, 2469:14, 2472:18, 2476:6, 2478:14, 2481:10, 2483:37, 2484:13, 2484:28, 2486:20, 2490:47, 2514:23, 2517:39, 2538:23, 2539:23, 2545:8
- vulnerability** ^[3] - 2507:6, 2507:20, 2515:16
- vulnerable** ^[10] - 2476:47, 2500:16, 2500:28, 2502:11, 2502:37, 2503:10, 2509:30, 2510:18, 2515:13, 2521:12
-
- W**
-
- Wales** ^[2] - 2435:21, 2453:35
- wall** ^[1] - 2497:35
- wants** ^[2] - 2457:5, 2461:13
- watertight** ^[1] - 2525:38
- wave** ^[1] - 2538:28
- ways** ^[1] - 2523:14
- weak** ^[2] - 2476:46, 2509:7
- website** ^[1] - 2554:37
- Wednesday** ^[1] - 2435:25
- week** ^[3] - 2465:1, 2486:28, 2535:6
- Weekend** ^[1] - 2544:4
- weekend** ^[1] - 2522:18
- weeks** ^[1] - 2477:21
- weighing** ^[4] - 2463:4, 2463:13, 2463:20, 2463:39
- weight** ^[1] - 2512:42
- weird** ^[1] - 2484:42
- well"** ^[1] - 2483:4
- whereas** ^[2] - 2499:36, 2530:6
- whilst** ^[2] - 2465:42, 2507:32
- who'd** ^[1] - 2511:10
- whole** ^[16] - 2436:26, 2439:17, 2464:7, 2467:42, 2468:32, 2477:13, 2485:12, 2485:13, 2498:11, 2498:21, 2498:41, 2499:1, 2528:36, 2529:41, 2545:40, 2548:18
- wholly** ^[3] - 2447:15, 2447:17, 2533:7
- wider** ^[3] - 2484:40, 2506:13, 2556:42
- wilful** ^[1] - 2492:29
- wilfully** ^[2] - 2492:11, 2492:26
- Willem** ^[14] - 2452:28, 2465:7, 2467:16, 2469:42, 2471:16, 2478:41, 2486:28, 2514:29, 2516:6, 2516:10, 2540:30, 2540:43, 2542:9, 2545:21
- wing** ^[2] - 2491:41
- wisdom** ^[2] - 2452:31, 2452:40
- wisely** ^[1] - 2535:37
- wish** ^[14] - 2443:43, 2452:30, 2452:39, 2460:9, 2460:19, 2465:28, 2487:28, 2488:31, 2499:10, 2502:31, 2503:18, 2529:8, 2550:41, 2550:43
- withdraw** ^[1] - 2465:26
- withstand** ^[1] - 2455:1
- witness** ^[9] - 2436:6, 2505:8, 2505:21, 2505:23, 2527:18, 2529:1, 2535:5, 2557:45, 2558:13
- WITNESS** ^[5] - 2436:15, 2462:25, 2505:40, 2505:47, 2535:10
- witnesses** ^[2] - 2557:46, 2558:20
- wonder** ^[3] - 2477:32, 2502:22, 2526:4
- wondered** ^[1] - 2544:29
- wondering** ^[1] - 2507:12
- word** ^[16] - 2438:30, 2441:19, 2456:38, 2456:42, 2460:5, 2463:17, 2465:10, 2465:35, 2466:34, 2487:42, 2500:44, 2516:33, 2519:28, 2519:46, 2551:14
- words** ^[7] - 2443:27, 2463:11, 2466:47, 2503:16, 2505:24, 2524:2, 2552:19
- worker** ^[2] - 2541:19, 2541:20
- world** ^[4] - 2461:27, 2494:47, 2523:45, 2525:39
- worn** ^[1] - 2543:38
- worried** ^[1] - 2510:31

worry ^[1] - 2521:2
worse ^[4] - 2502:21,
 2502:29, 2502:44,
 2503:3
worth ^[2] - 2469:37,
 2526:20
write ^[9] - 2444:11,
 2452:13, 2453:20,
 2456:21, 2465:2,
 2466:39, 2511:19,
 2511:22, 2543:25
writes ^[2] - 2501:15,
 2511:23
writing ^[13] - 2450:47,
 2481:11, 2482:10,
 2490:37, 2492:38,
 2496:7, 2505:26,
 2507:30, 2511:26,
 2541:12, 2542:16,
 2542:20, 2543:12
written ^[15] - 2449:33,
 2453:17, 2453:20,
 2459:29, 2462:36,
 2465:7, 2465:41,
 2465:43, 2469:9,
 2472:47, 2476:3,
 2487:6, 2506:9,
 2545:29, 2557:24
wrongly ^[1] - 2492:32
wrote ^[24] - 2445:31,
 2457:47, 2458:45,
 2464:5, 2473:26,
 2494:18, 2507:32,
 2508:42, 2511:21,
 2516:28, 2541:24,
 2541:28, 2541:30,
 2543:26, 2543:29,
 2545:12, 2545:25,
 2545:27, 2545:38,
 2545:40, 2545:43,
 2547:12, 2549:17,
 2557:14

2451:24, 2451:35,
 2453:14, 2453:28,
 2467:26, 2475:1,
 2519:47, 2552:30,
 2557:19
Young ^[4] - 2493:24,
 2544:19, 2544:23,
 2544:39
yourself ^[11] -
 2443:26, 2451:44,
 2455:33, 2458:23,
 2465:41, 2485:9,
 2490:11, 2518:27,
 2527:23, 2540:44,
 2547:9
yourselves ^[2] -
 2467:17, 2547:8

Z

zoom ^[2] - 2441:3,
 2441:6
zoom-type ^[1] -
 2441:3

Y

years ^[13] - 2440:18,
 2452:26, 2472:6,
 2480:25, 2481:7,
 2490:42, 2494:5,
 2501:30, 2501:33,
 2503:18, 2503:22,
 2527:39, 2533:10
yellow ^[4] - 2493:44,
 2526:19, 2526:23,
 2526:39
yesterday ^[17] -
 2436:19, 2436:33,
 2437:9, 2437:43,
 2438:6, 2440:13,
 2440:19, 2442:43,