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 Friday, 3 March 2023 at 9.30am

(Day 32)

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

Also Present:

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

1   THE COMMISSIONER: Yes, Mr Gray.
2
3   MR TEDESCHI: Commissioner, Mr Mykkeltvedt will take this
4   witness.
5
6   THE COMMISSIONER: Thank you. Yes, Mr Gray.
7
8   MR GRAY: Commissioner, the next witness is Ms Martha
9   Coakley, who is giving evidence by audio-visual link from
10   Massachusetts in the United States.
11
12   THE COMMISSIONER: Ms Coakley, can you both see us, or me,
13   and hear us or me?
14
15   MS COAKLEY: Right now I can see Mr Gray but I can
16   certainly hear you.
17
18   THE COMMISSIONER: He is the most important person in the
19   room, Ms Coakley, so it is good that you can see him. My
20   associate will ask you in a moment would you take an oath
21   or an affirmation, it is a matter of entire indifference to
22   me.
23
24   MS COAKLEY: Affirmation, please.
25
26   **<MARTHA COAKLEY affirmed: [9.32am]**
27
28   **<EXAMINATION BY MR GRAY:**
29
30   MR GRAY: Q.   Ms Coakley, I will ask you only a couple of
31   questions, and then Mr Mykkeltvedt, for the police, will
32   have some questions. You have provided an expert report to
33   the Commission of 20 December 2022.
34   A.   Yes.
35
36   Q.   Thank you. I wanted to just clarify one matter only.
37   I assume you have that report with you?
38   [SCOI.82367.00001_0001]
39   A.   I do.
40
41   Q.   Your own? Yes. In paragraph 25, you are talking
42   about crime indicators generally, and you are doing so in
43   answer to the first question that you were asked to address
44   by the Inquiry, namely, the origins and use of the bias
45   crime indicators contained in the 2000 document authored by
46   McLaughlin and others in Massachusetts. You were
47   addressing that question. And in 25, you were talking

1   about indicators generally; is that right?
2   A.   That's correct.
3
4   Q.   In 28, you list from (a) to (i) the nine indicators
5   that were indeed contained in that Massachusetts training
6   document?
7   A.   Yes.
8
9   Q.   And then in paragraphs 29, 30, 31 and 32, you are
10   making some remarks about those nine indicators, as
11   indicators; correct?
12   A.   That's correct.
13
14   Q.   Then when you come to question 2, towards the bottom
15   of that page, when you're asked to talk about the
16   appropriateness of the methodology used by Strike Force
17   Parrabell officers, including the use of the BCIF, you are
18   there moving, as I understand it, to talk about not just
19   the indicators but the particular form, the Bias Crime
20   Indicator Form, that the Parrabell officers used; is that
21   right?
22   A.   That is correct.
23
24   Q.   And of course, among other things - and I won't go to
25   this now, but among other things - in that form there were,
26   apart from the actual indicators, there were other
27   components of the form, including four separate
28   alternatives, four separate alternative findings, which the
29   officers were asked to say yes or no to, as to whether
30   "Evidence of Bias Crime", "Suspected Bias Crime", "Not Bias
31   Crime" or "Insufficient Information"; you recall that?
32   A.   Yes.
33
34   Q.   And in the case of "Evidence of Bias Crime", the form
35   stipulated that for the officers to say yes to that, they
36   needed to be satisfied beyond reasonable doubt that
37   evidence of bias crime was there; is that right?
38   A.   Yes.
39
40   MR GRAY: Thank you. That's what I wanted to clarify.
41   Mr Mykkeltvedt will now have some questions.
42
43   THE WITNESS: Yes, thank you.
44
45   **<EXAMINATION BY MR MYKKELTVEDT:**
46
47   MR MYKKELTVEDT: Q.   Could I ask whether you can see and

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 1    hear me?
 2    A.   Yes, I can, sir.
 3
 4    Q.   You are an extremely experienced lawyer - that's so?
 5    A.   I have certainly been practising and mostly in the
 6    criminal area since 1979.
 7
 8    Q.   And you have had a very successful career that
 9    culminated with your election as Attorney General for the
10    State of Massachusetts; is that correct?
11    A.   That is correct.
12
13    Q.   And from 2015 to 2019, and again from July 2022 to the
14    present, you have worked in a paid capacity with the US
15    legal team engaged by Scott Johnson's brother, Steve; is
16    that right?
17    A.   So in the first 2015 to 2019 time period, the firm at
18    which I was a partner, Foley Hoag, had taken on the Scott
19    Johnson case pro bono, and originally to work with them on
20    document sorting, et cetera, and I became involved because
21    of my extensive history in all kinds of criminal
22    investigations, prosecutions, including homicides.
23
24         When I returned to Foley Hoag most recently in June
25    I was not directly working with the Scott Johnson team at
26    that time.  I certainly stayed in touch with Mr Johnson but
27    I didn't really do anything on behalf of that team at that
28    time.
29
30    Q.   But in any event, setting aside your experience
31    working with the Johnson family in one capacity or another,
32    it is the case that you have never worked in Australia?
33    A.   I have never worked in Australia.
34
35    Q.   You have never, for example, conducted any research
36    here in the Australian context?
37    A.   I have not.
38
39    Q.   And you have never conducted any research generally in
40    an academic sense?
41    A.   I'm not sure that that's accurate, sir.  I have taught
42    courses in criminal law both at many levels including at
43    the university of law in Boston - Boston University School
44    of Law of which I'm a graduate, and certainly much of my
45    career has also been involved in researching the law and
46    other factors, in child abuse in doing briefs for trials,
47    and indeed looking at appellate work.
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1
2   Q.   But you yourself have not been involved in, for
3   example, the conduct of criminological studies or the like?
4   A.   I can't say that I have. I have read them in the
5   course of much of my work, but I have not done that
6   specific work, no.
7
8   Q.   And more or less your professional experience is
9   confined to the state of Massachusetts in the United
10   States?
11   A.   That is correct.
12
13   Q.   So in essence, the sum total of your exposure to
14   issues relating to violence against the LGBTIQ community in
15   Australia emerges in the context of your engagement by, at
16   least indirectly by the law firm, the family of Mr Johnson?
17   A.   I think that's fair to say.
18
19   Q.   You say at paragraph 11, of course, that - of your
20   report you detail some of the - well, the fact of your
21   experience, and as a consequence of your experience in that
22   case you are, of course, familiar with the efforts that
23   have been made in pursuit of justice on behalf of
24   Mr Johnson?
25   A.   Yes, and in fact, I attended the last coronial
26   inquest, it was in two parts, but I actually went to
27   Australia and - I did not participate directly but I sat
28   through it.
29
30   Q.   You say that, as a consequence of that experience, you
31   have some familiarity with other gay hate or bias crimes in
32   Australia during the relevant time period?
33   A.   I certainly became familiar with much of the
34   documentary evidence, some of the newspaper writings.
35   Having been involved with them for a while, I think I was
36   certainly familiar with both what had happened and what
37   some of the coverage was in Australia at the time.
38
39   Q.   Are you able to say which cases you are referring to
40   in that paragraph?
41   A.   Which paragraph, sir?
42
43   Q.   In paragraph 11, sorry.
44   A.   To the extent that other cases were mentioned in the
45   newspapers, some of which were the topic of Strike Force
46   Taradale. I'm not sure that I have the exact cases off the
47   top of my head.

1
2   Q.   As concerns those cases, you had no access, for
3   example, to the relevant homicide files held by police?
4   A.   No. I did not.
5
6   Q.   So in essence, your exposure to those cases arose as
7   a consequence of what you saw and heard in the media?
8   A.   Yes, that's fair.
9
10   Q.   If I can take you to paragraph 25 of your report, now,
11   you were asked a clarifying question in relation to that
12   paragraph, and you indicated that that paragraph related to
13   crime indicators, I think in the general sense. I just
14   want to explore that a little bit. You indicate in the
15   final sentence that the identification and confirmation of
16   such prejudice motivation should be made for five primary
17   reasons. Is it the case, then, that in that paragraph you
18   were referring to bias crime indicators generally but not
19   necessarily the BCIF?
20   A.   I think they apply to both. I think that bias crime,
21   for instance, gay hate or bias crimes, are a subset of
22   that, so I think it's generally applicable. I'm sorry,
23   I may not have answered your question directly.
24
25   Q.   No, that answers my question. So you would accept,
26   then, that the five reasons you list there from (a) to (e)
27   in paragraph 25 might be reasons that reference could be
28   made to the BCIF - factors, as opposed to the instrument,
29   I should clarify?
30   A.   Yes.
31
32   THE COMMISSIONER: When which you say "facts", I'm
33   sorry --
34
35   MR MYKKELTVEDT: I said "factors".
36
37   THE COMMISSIONER: "Factors", sorry. Thank you.
38
39   MR GRAY: As opposed to the instrument? I'm not sure that
40   that may have been heard.
41
42   THE WITNESS: Yes, the indicators, not the form. Is that
43   what you're referring to?
44
45   MR MYKKELTVEDT: Q.   Yes, that's what I was driving at,
46   thank you. And at paragraph 29 you provide some insight
47   into the purposes underpinning the bias crime indicators,

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1    which you say, of course, is the basis of the form created
2    by Strike Force Parrabell?
3    A.   Well, I've been told that was the basis of it, and I'm
4    certainly familiar with the material both because of this
5    Inquiry but from prior experience as a District Attorney
6    and Attorney General.
7
8    Q.   So the basis on which you proceeded in preparing this
9    report was that those indicators formed the basis for
10   a form prepared by police?
11   A.   Correct.
12
13   Q.   Do you recall seeing a copy of that form at the rear
14   of the Strike Force Parrabell report that you were provided
15   with?
16   A.   I do.
17
18   Q.   You indicate that those indicators were designed for
19   training police and some other groups to recognise,
20   investigate and identify hate or bias crime at the time; is
21   that right?
22   A.   That's correct.  That is correct.
23
24   Q.   But are you saying in that paragraph, in essence, that
25   the bias crime indicators are useful as a guide or a prompt
26   for police and other entities that might have similar
27   policy objectives?
28   A.   Are you talking about paragraph 29, sir?
29
30   Q.   Yes.
31   A.   Is that where your question is coming from?
32
33   Q.   Yes.
34   A.   Yes, generally that's true.  They were devised as
35   training materials, so that's what they were devised for,
36   also noting there were nine of them in that and the Strike
37   Force Parrabell added an additional item, "Level of
38   violence", that was not included in those factors.
39
40   Q.   They are, at least in your view, in essence, clues
41   that might inform the reasoning process of investigators?
42   A.   I think that's correct.
43
44   Q.   And you have listed - I didn't spell them out before,
45   but in paragraph 25 you list a number of reasons it might
46   be important to identify prejudice motivation, and I take
47   it you would accept that it is important to identify such
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1   motivations having regard to, for example, proper law
2   enforcement practices and victim assistance responses?
3   A.   Yes, particularly because of - the bias crime is the
4   motivation - the bias is the motivation. In most crimes,
5   property and otherwise, prosecutors never have to prove
6   motive - they like to - but it's an element of a bias
7   crime, and so in order to prove that, at least in its
8   successful prosecution, you have to establish the bias of
9   the perpetrator in the crime and that's true whether it's
10   a property crime, it's an assault and battery, or it's
11   a homicide.

12

13   Q.   And you say that one consideration or one reason it
14   might be important to identify such prejudice motivations
15   is for the purposes of victim and community awareness and
16   understanding. That's right?
17   A.   That's correct. Yes.

18

19   Q.   So, for example, the identification of bias crimes
20   might be a factor that informs community outreach efforts?
21   A.   Correct.

22

23   Q.   And seeks to enhance the understanding of the wider
24   community as to the importance of a particular issue?
25   A.   I think that's all correct.

26

27   Q.   So if police undertook the activity in relation to the
28   efforts of Strike Force Parrabell to essentially answer
29   questions from the LGBTIQ community regarding the bias
30   motivations that were potentially connected with relevant
31   deaths, that would be an appropriate use for bias crime
32   indicators of the likes contained in the BCIF?
33   A.   Well, there's two parts to that question. One is, you
34   know, I just don't believe that they used the form - or it
35   was used for a purpose it was not directed for, and
36   therefore, I don't question the motive of - if they were
37   trying to get through any of those five goals, sure,
38   I would support that, as I would police here and police
39   anywhere. But the underlying assumption of your question
40   is that it was going to be useful in doing that and that's
41   where I just disagree that it was useful for them to do it.
42   I just --

43

44   Q.   Quite. I have read what you said in your report in
45   that respect, but you would agree that, in essence, the
46   goal was a worthy goal?
47   A.   I can't agree with that because their goal was to take

1 reports, look at them, shift them around and check some
2 boxes and that to me is not all that useful. And had
3 some - to my mind had some deleterious effects, because it
4 appeared to be useful but it actually wasn't.
5
6 Q.   I'll take you to your consideration of what you refer
7 to as checking the boxes. Now, you indicate at the outset
8 of your report - I'll just turn up the paragraph -
9 paragraph 15, the materials that you have read and
10 considered in the context of the preparation of your
11 report?
12 A.   Yes.
13
14 Q.   So you've reviewed the Strike Force Parrabell report
15 and the Coordinating Instructions?
16 A.   Yes.
17
18 Q.   And you were, of course, provided with a copy of the
19 Inquiry's Terms of Reference?
20 A.   Yes.
21
22 Q.   You then also received the document authored by
23 McLaughlin entitled "Responding to Hate Crime", in part?
24 A.   Yes, and, of course, I was familiar with that document
25 from using it in my experience over the years.
26
27 Q.   Yes, quite. You have not reviewed any of the case
28 files associated with the deaths in this case?
29 A.   I have not.
30
31 Q.   You haven't reviewed the completed BCI forms used by
32 the Strike Force Parrabell investigators?
33 A.   I - not the completed forms. I've only seen the forms
34 that they used I assume at the outset and during the course
35 of the investigation.
36
37 Q.   And you haven't spoken to any of the investigators
38 involved?
39 A.   I have not.
40
41 Q.   And you haven't spoken with the academics involved in
42 any way, have you?
43 A.   I have not.
44
45 Q.   You're not familiar with all of the evidence that they
46 have been given in these proceedings?
47 A.   I am not familiar with what they were given.

1
2   Q.   So in essence, you have limited insight into the
3   actual thought processes of the relevant investigators?
4   A.   I think it's fair to say I was given and reviewed all
5   the materials that the Commission asked me to relative to
6   four questions, and so I think I was able to, based on
7   that, be able to answer those questions.
8
9   Q.   To be clear, I'm not being critical when I say that
10 you haven't reviewed that material. I'm simply seeking to
11 understand the extent of your insight. Surely it's the
12 case that if you haven't reviewed any of the forms
13 themselves, and you haven't spoken to any of the
14 investigators themselves, and you haven't reviewed the
15 evidence in this case, you must accordingly have limited
16 insight into the thought processes driving the
17 investigators and the academics?
18 A.   No, I disagree. I think given what I do know and the
19 evidence and the instruments I was able to look at and
20 understand the process, I think I was able to come to the
21 conclusions I did come to. I don't disagree that I did not
22 look at all of the things - I'm not disagreeing with you
23 factually, just with the conclusion, and I would disagree
24 with your conclusion.
25
26 Q.   So to the extent that the processes are not
27 comprehensively outlined - and by "processes" I mean three
28 things, the processes undertaken by the investigators; the
29 processes undertaken by the academics; and the
30 communications or oversight or review process that might
31 have been undertaken by more senior detectives - to the
32 extent that those three processes are not outlined in the
33 Strike Force Parrabell report, you would agree that you
34 have limited insight into them?
35 A.   I think for the questions I was asked to answer and
36 did in my report, and I do think the report speaks for
37 itself, I had more than adequate information to reach the
38 conclusions I did.
39
40 Q.   You have, I would suggest to you, as a result of the
41 information in the Strike Force Parrabell report and the
42 information you were provided, very limited information as
43 to the extent, for example, to which the final
44 determinations of Strike Force Parrabell officers were
45 subject to revision as a consequence of discussions between
46 the reviewing officers and more senior officers?
47 A.   I don't have that - I don't have that information.

.3/03/2023 (32)   2728   M COAKLEY (Mr Mykkeltvedt)

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 1    I acknowledge that.  But I would note that even the
 2    academics in their report indicated that what they could do
 3    even coming up with a new set of criteria was going to be
 4    very limited because there was no reinvestigation.  They
 5    were looking at old files, there was no indication of how
 6    those initial investigations were done, whether they were
 7    done completely, whether there was homophobia involved.
 8    And so the Strike Force Parrabell could only - could not
 9    improve, really, upon what the original investigators had
10    done, with no reinvestigation.
11
12    Q.    But to return to the question of the check box
13    exercise, you are, in essence, proceeding on the basis of
14    an assumption that Strike Force Parrabell engaged in a
15    "check the box" exercise without any of the insights I have
16    taken you through?
17    A.    Fair enough to that extent, but my argument and my
18    reasoning was they took these bias crime factors and used
19    them for a purpose they were not designed for.  They set up
20    what essentially was a check box and, yes, there may have
21    been population in the boxes, but there was not going to be
22    any greater clarity coming out of the use of those boxes
23    because the whole idea was really ill-conceived.  We can't
24    take this instrument designed to do something at the
25    beginning of an investigation and turn it into a form that
26    will let us come up with - you know, transmogrify the
27    results from what was - what they started with.
28
29    Q.    Yes, I've heard what you say, but I'm still asking
30    about this question.  So if the Strike Force Parrabell
31    officers engaged in a process of review of a large volume
32    of materials and a detailed consideration of those
33    materials, and then engaged, with the aid of the Strike
34    Force Parrabell indicators, in a consideration of
35    potentially relevant factors, and then had discussions with
36    supervising officers which ultimately led to determinations
37    as to the correct categorisation, it would not, in those
38    circumstances, be accurate to say that the officers were
39    simply engaged in a "check the box" exercise, would it?
40    A.    Look, it becomes a question that is in and of itself
41    subjective.  We can - I'm not going to argue with you about
42    that.  But my whole point is that even if the
43    categorisation was done and there was more information and
44    more discussion, in the end, you didn't end up with much
45    more of a useful product than you started with.
46
47    Q.    By the "product you started with" do you mean the
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1      original homicide files --
2      A.   Yes.
3
4      Q.   -- sitting in an archive somewhere?
5      A.   Correct.  And arguably, according to some reports I've
6      read, still "active cases", but - the unsolved ones were
7      still active cases but not actively worked upon.  But there
8      was no additional information, either investigated,
9      discovered, looked at - no-one was talked to, no-one
10     reviewed other information to see even if, in some cases,
11     there were persons of interest, for instance, that could
12     have been reviewed.  The information at the beginning was
13     the same as the information at the end, even though it may
14     have been a little bit re-categorised.
15
16     Q.   Well, it had been subjected to an analysis that had
17     never before been performed in connection with those files,
18     had it?
19     A.   I guess you could say that, but my argument is it
20     should have been subject to an investigation that had never
21     been completed before in some of those instances, so that's
22     a decision for you and the Commission to make, not me.
23
24     Q.   Quite.  And I will, of course, indicate that I will
25     turn to address that with you in a moment.  Before we get
26     there, you make an assertion in paragraph 37 that the
27     officers looked, it seems, at each factor almost in
28     isolation.  That's the first sentence of that paragraph.
29     A.   Just give me one second to get to it.  Yes.  From the
30     information that I had, based upon the way the review was
31     done, there were different police officers - at least the
32     information I had, they had varying degrees of experience
33     and training, and, you know, the process that they used
34     didn't seem to really change the outcome all that much.
35
36     Q.   But the assertion you make there that the officers
37     looked at each factor in isolation was grounded on the same
38     assumptions you made as to the process that they undertook,
39     wasn't it?
40     A.   Based upon the information that I had, that is
41     correct.
42
43     Q.   And again, that information did not include
44     a detailed detailing or a detailed account of what the
45     officers actually did?
46     A.   Well, I do know this took place over 18 months.  I do
47     have the general outline, including what's included in that
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1    paragraph about - and that's not information that
2    I supposed.  I was given that information, as to the way it
3    was set up and the processes that they went through,
4    including, which I think is very important, there's no
5    looking at what the quality of the original investigation
6    that was done.
7
8    Q.   The fact that it was undertaken over a period of some
9    18 months would suggest to you, without anything else, that
10   the process was a reasonably detailed one?
11   A.   I can't say that.  I just know that it was supposed to
12   take place over 18 months.  And so I don't know - I don't
13   know the answer to that.
14
15   Q.   Do you have a copy of the Parrabell report there with
16   you?
17   A.   I do not have that in front of me, sir.
18
19   Q.   I'm not sure whether a copy can be shown on the
20   screen.  Perhaps if the witness can be shown tab 2 of
21   exhibit 1, page 24 [SCOI.02632_0001].  Can you see that?
22   It might be ambitious question.
23   A.   Yes, I can see it.
24
25   Q.   Excellent.  Now, you see at the top of that
26   page there's reference to 86 cases that are reviewed, and
27   you'll see that there is a reference to eight cases where
28   it's said that evidence of bias crime was found, and to 19
29   cases where it's suggested that they were suspected bias
30   crimes.
31   A.   I see that.  Yes.
32
33   Q.   And so in 27 of the 86 cases, it's found that the
34   relevant case is either a bias crime or a suspected bias
35   crime.
36   A.   Yes.
37
38   Q.   That's almost a third, roughly.  And in a further 25
39   cases, those cases are categorised as "Insufficient
40   Information".  Do you see that?
41   A.   I do.
42
43   Q.   The remaining 34, it is said that they are cases where
44   there was no evidence of bias crime?
45   A.   I see that.
46
47   Q.   And of course that's a reference to the fact that
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1   there is an absence of evidence of bias crime, the fact
2   that there is no evidence of bias crime or a phrase "No
3   Evidence of Bias Crime" would not, in your understanding,
4   be a categorical assertion that the relevant case was
5   definitively not a bias crime?
6   A.   Well, that's not totally clear to me. That suggests
7   that, "No, we looked at this, we did a complete job and we
8   found 29 per cent, we didn't have enough information, and
9   another 40 per cent there was no evidence of bias crime."
10   But they didn't say, "We're going to follow up on these,
11   we're going to do further investigation on them." That was
12   presented as a good result; right? "We did some work and
13   this is what we found", and there was no suggestion that
14   they had more work to do or they were going to do more work
15   on this. So I wouldn't consider that categorisation
16   a success.
17
18   Q.   If you take together the "Evidence of Bias Crime"
19   category, together with the "Suspected Bias Crime"
20   category, you get some 27 cases, and then you have
21   a further 25 cases where there is insufficient information
22   to determine bias crime. Do you see that?
23   A.   I see that, yes. I'm looking at what you're looking
24   at. I see that.
25
26   Q.   Those together add up to 52 out of the 86 cases, don't
27   they?
28   A.   I'm not quarrelling with the numbers or the
29   percentages, sir.
30
31   Q.   No. My maths is often not fantastic, but certainly
32   that's my arithmetic. You would accept, then, that 52 out
33   of the 86 cases were cases, as discussed in the report,
34   where bias had not been in any way ruled out, whether
35   categorically or otherwise?
36   A.   That's what they reported in their decision-making,
37   that they couldn't - well, I don't recall that they said
38   they couldn't rule it out. They present this as the
39   findings, that there is no evidence and insufficient
40   evidence in what we looked at, and then we see eight plus
41   19 - I agree with you on the maths, that's not why we went
42   to law school - but that percentage, the presentation is,
43   you know, "Look, we only found one-third of these cases
44   show some evidence of bias crime."
45
46   Q.   But having regard to the fact that the report clearly
47   indicates that in 52 of the cases - well, in 27 of the

1   cases there at least was suspected bias crime, and in the
2   total, 52, bias crime was not in any way ruled out, it
3   cannot be said, contrary to what you say at paragraph 38 of
4   your report, that the Strike Force Parrabell exercise
5   really only created the illusion that there was not
6   extensive homicide or violence towards the LGBTIQ community
7   during the relevant time period, can it?
8   A.   I disagree with that. I think that conclusion that
9   I reached at the time I still hold as my conclusion.
10
11   Q.   In the "Discussion" section of the police aspect of
12   the report - that is, the Strike Force Parrabell report -
13   there's no statement to say that there was not extensive
14   homicide or violence against members of the LGBTIQ
15   community, is there?
16   A.   I don't have that report in front of me and I don't
17   think that's - that was the import of that report, but I -
18   you know, I'm not quarrelling with your charge or the
19   results, I'm just saying that the results still show,
20   without even looking at whether the original reports and
21   investigations could have or might have uncovered something
22   at the time - they don't even address that, and so I think
23   they wanted the public - I don't know that, this is
24   a supposition on my part - I think they wanted the
25   public --
26
27   Q.   I'll ask you not to speculate.
28   A.   Fair enough.
29
30   THE COMMISSIONER: She is an expert, I would let her
31   conclude.
32
33   Q.   Please go on and say whatever it is you wanted to say,
34   Ms Coakley.
35   A.   To me, the report wanted to confirm for the public
36   that, "We did this complete report, we did all this work
37   for 18 months, and here is the result. We didn't find any
38   evidence, we found insufficient evidence, and in this small
39   one-third of cases we found some evidence". They didn't
40   say, "Oh, we're going to look at those other cases, they
41   are still open cases." That was the conclusion I drew and
42   I would stand by my paragraph 38.
43
44   MR MYKKELTVEDT: Q.   As concerns violence generally, the
45   report is at pains, I would suggest, to point out, as it
46   does in the first paragraph under the heading on page 14 -
47   perhaps that could be shown to you, page 14 of the Strike

1   Force Parrabell report [SCOI.02632_0001] if we go down to
2   the heading "Context Strike Force Parrabell and the
3   NSW Police Force", in the second sentence of that
4   paragraph, it says:
5
6   *This is an important point, because the*
7   *review of these 88 deaths by Strike Force*
8   *Parrabell is not designed as commentary*
9   *upon the level of violence directed towards*
10   *the LGBTIQ community during these times.*
11   *It is clear and beyond question that levels*
12   *of violence inflicted upon gay men in*
13   *particular were elevated, extreme and often*
14   *brutal.*
15
16   A.   That was a little bit late coming up on my screen as
17   you read it. Can you just refer me to the paragraph you
18   are speaking to on that page?
19
20   Q.   Yes. If we can go down a little bit further. Yes.
21   So the first paragraph there.
22   A.   On page 14?
23
24   Q.   Yes, if you look at the second and third sentences of
25   that page, they are the ones that I sought to read out to
26   you - of that paragraph, I should say.
27   A.   This is the words starting "This is an important
28   point"?
29
30   Q.   Yes.
31   A.   It is clear and beyond question" - and what is your
32   question?
33
34   Q.   Well, that paragraph makes it abundantly clear, it
35   stands in stark contrast with any suggestion that police
36   were seeking to minimise or create the illusion of a lower
37   level of violence against members of that community, the
38   LGBTIQ community, than in fact existed?
39   A.   Well, I read the paragraph a little bit differently,
40   saying that they didn't include assaults that didn't result
41   in homicide, and they know that those were many and brutal,
42   and the victims of these crimes were outside their scope,
43   obviously, because they survived and they were fortunate to
44   live, so, yes, they make a comment which I think is
45   appropriate, given what they were doing and they are the
46   Police Department who has to work with the LGBTIQ
47   community, but I think that that is based upon not cases

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1   necessarily they looked at but those cases they were aware
2   of because there were witnesses left to talk about the
3   brutal assaults that they suffered. I mean, I may be
4   wrong, and I'm just - I'm reading it here, I haven't seen
5   it for a little bit, but isn't that paragraph referring
6   mostly to assault victims who survived?
7
8   Q.   It's certainly referring to assault victims. What I'm
9   suggesting is that when you take together the fact that
10 there were 27 of the 86 cases that were found to fall into
11 either bias or suspected bias, the fact that the great
12 majority of cases were not ruled out as bias crimes, or at
13 least the significant majority, I think it's 60 per cent,
14 and that the report unequivocally states that it's not
15 designed as a commentary upon the level of violence
16 directed to the LGBTIQ community during those times, it
17 cannot be said that the report is designed to create an
18 illusion of reduced violence?
19 A.   Well, I would take dispute with what they say and
20 actually what they did, and so that conclusion is mine, but
21 it's going to be up to other fact-finders in this matter to
22 make that determination. But I don't change my opinion on
23 that.
24
25 MR GRAY: May I just observe that my friend, perhaps
26 inadvertently, left out the word "homicidal" in that
27 reference to paragraph 38.
28
29 MR MYKKELTVEDT: Yes, certainly.
30
31 Q.   Do you wish to change your answer --
32
33 THE COMMISSIONER: Hang on, Mr Mykkeltvedt, you also
34 appreciate, as does everyone, that that statement, of
35 course, has to be read ultimately in context.
36
37 MR MYKKELTVEDT: As all statements do, your Honour,
38 I understand that.
39
40 THE COMMISSIONER: I know. But to pick something on
41 page 14, contrast it with something later in the report -
42 I'm not going to stop anything you want to do or, for that
43 matter, anyone more or less wants to do, but ultimately it
44 is a question for me and it has to be looked at in context.
45
46 MR MYKKELTVEDT: Yes, and I sought to provide the context
47 by referring the witness to --

THE COMMISSIONER: Don't argue about that, Mr Mykkeltvedt,
just get on with it, would you mind?

MR MYKKELTVEDT: Yes, Commissioner.

Q.   Now, if that could be taken off the screen. I am
going to touch upon the question of reinvestigations, which
of course is something that you have alluded to in your
evidence. Now, as we have gone through, you are very
experienced in law enforcement and dealing with police and
police investigations generally?
A.   That's your question to me?

Q.   Yes.
A.   Yes. I mean, since 1986 I have worked with local
police, state police, federal officers at the federal and
state level. My husband is a Retired Deputy Superintendent
of the Cambridge Police Department, so I actually live law
and order, but I am very familiar with investigations,
particularly given the way we approach those kind of cases
here in Massachusetts.

Q.   Does that experience involve experience in Unsolved
Homicide investigations?
A.   Yes, it does.

Q.   And so you would be familiar with the idea that in
many cases where there is a dead end struck, as it were, it
might be the case that little can be done further at
a particular time?
A.   You've qualified that by "a particular time", but we
are still working on cases right now because of DNA
evidence: we can go back and find rapists and murderers.
And I would note that we also go back when we have learned
there has been a mistake and reinvestigate it, because as
I have done training with police, I say, "If you have got
the wrong guy or you write it off as not a homicide, then
there are two injustices gone and the real perpetrator is
still at large." So you want to use these tools always to
get the right results. And I'm sure, counselor, that the
police agree with that and you would agree with that as
their mission.

Q.   Yes, quite. So I take it that what you are driving at
there is that opportunities or investigative opportunities
might present themselves only relatively unpredictably,

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 1   perhaps at some later time; would you agree with that?
 2   A.   I'm not sure I understand the question.
 3
 4   Q.   So, for example, there might be no viable leads at the
 5   moment in relation to a particular case, but it might be
 6   true that in five years' time there could be, for example,
 7   an advance in some kind of forensic technology or a shift
 8   in the relationships between people associated with the
 9   perpetrator that might lead to new evidence being
10   uncovered?
11   A.   That is true, but it also requires keeping an open
12   case, keeping officers involved on it, and I just would
13   note, just to clarify, for at least eight years, and before
14   that as an Assistant District Attorney, I worked in a
15   system where the DA had jurisdiction over all homicides.
16   Every unattended death in Massachusetts, we would send
17   state police, because, you know, maybe it's an overdose,
18   maybe someone was, you know, given some drugs, maybe it was
19   a suicide, maybe it wasn't.  But if there is no
20   investigation done at the time, it becomes very difficult
21   to say, "Well, maybe five years later, someone would come
22   through with something", because you haven't collected the
23   evidence, you haven't talked to witnesses at the time.
24
25       So that investigation - that's what those bias crime
26   indicators were for, training police to say, "At the
27   outset, when you are first looking at something that's
28   occurred, you need to do this work around this so that if
29   there is a bias crime we can prove it."
30
31   Q.   Yes.  I'm not asking you about the investigation
32   conducted at the time or the application of the bias crimes
33   at the time, I'm asking about the notion of
34   reinvestigations.  If you assume, for instance, that there
35   are 700 unsolved homicides in a given jurisdiction, it
36   would not be possible for officers to be actively
37   investigating all of those cases at once, would it?
38   A.   No, and you wouldn't expect that.  I understand that.
39
40   Q.   And so, having regard to the fact that there might be,
41   you know, a cold case and no viable leads at a particular
42   time, even if a proper investigation was conducted at the
43   outset, there may be no prospect of reinvestigation at
44   a given time in relation to a given case?
45   A.   That is also true, which is why we keep a Cold Case
46   Squad to periodically and frequently revisit those cases.
47   Things change, someone is in gaol, someone tells somebody
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1 something, new technologies, as you have noted, and we
2 always keep unsolved homicides open and do revisit them
3 actively from time to time.
4
5 Q.   But if you take a given set of, say, 25 or 30 unsolved
6 homicides, irrespective of the question of whether those
7 cases were motivated - those deaths, be they homicides -
8 were motivated by bias, many, if not all of those cases, at
9 any given time might not be ripe for reinvestigation?
10 A.   That is true, but if they are written off initially as
11 suicides, and therefore no further investigation is needed,
12 the chance goes way down that they would even be under
13 anybody's inquiry, and so, yes, you are correct, and we
14 have unsolveds to this date that we will probably never
15 solve, but that doesn't mean we stop trying.
16
17 Q.   You make a recommendation at paragraph 48 of your
18 report that a useful exercise, or a more realistic and
19 useful exercise, would have been for Strike Force Parrabell
20 to triage the relevant cases, you say "even using the BCIF
21 in reviewing" the cases. I pause there to say, so you are
22 not ruling out the applicability or the utility of the BCIF
23 indicators in conducting that exercise, are you?
24 A.   Well, I'm saying that they didn't - if they used them
25 in their proper manner, to say, "This will help us move
26 forward on an investigation", sure, but they didn't do
27 that. They only used them as a categorisation tool.
28
29 Q.   And then you say:
30
31   ... to triage those files for unsolved
32   death which had the greatest indicia of
33   hate/bias crimes, with sufficient, or even
34   some evidence.
35
36 There is not likely, is there, to be, necessarily, any
37 correlation between the strength of indicators of bias and
38 the likelihood of productive avenues of further inquiry
39 existing in a given case, is there?
40 A.   If you are looking to determine what is the range and
41 number of bias crime indicators, which Parrabell was
42 supposedly doing, then there is no initial correlation
43 between that. But if you are trying to solve those cases,
44 those are cases you might start with and go back and do
45 that investigation around bias and were there witnesses or
46 other evidence that might be used to further a case.
47

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 1    Q.   But there is nothing about the existence of potential
 2    bias in a case that makes that case more likely to have
 3    productive avenues of further inquiry than another cold
 4    case, is there?
 5    A.   No, but the goal of Parrabell was trying to determine
 6    how much of a problem do we have with gay hate bias
 7    homicides particularly, and so if that's your goal, then
 8    you might look at those cases where there is some indicia
 9    of bias and hate to see if, in fact, it's a homicide and
10    not a suicide or a misadventure.
11
12    Q.   You of course have some familiarity or perhaps
13    significant familiarity with the Johnson investigation?
14    A.   I do.
15
16    Q.   And the extent of resources applied by police over
17    a lengthy period of time in order to resolve that case?
18    A.   I do.
19
20    Q.   You are aware, then, that an enormous amount of
21    resources was applied to that case over a lengthy period of
22    time?
23    A.   Well, I disagree that they were applied in the
24    appropriate manner, because I am familiar with lack of
25    investigation initially, a second inquiry was required,
26    and, frankly, I sat and saw what the police did and said
27    during that inquiry.  So I disagree that the resources were
28    put in to solving that crime.  I think there were a lot of
29    resources put in to paying attention to that crime, but not
30    necessarily productively.
31
32    Q.   Whether or not you agree that the resources were
33    applied productively, you would agree that an enormous
34    amount of resources were, in fact, applied, and that it
35    would be wholly impractical - impracticable for, for
36    example, that level of resources to be applied to 25 to 30
37    cases at any one time?
38    A.   Well, we're just arguing different points here,
39    counselor.  I'm not suggesting that every case could or
40    should have those resources, but I think what we learned is
41    if that case had had the appropriate resources from the
42    beginning, instead of writing it off as a suicide, losing
43    evidence, not talking to folks, and if that was done even
44    with some of these other cases that Parrabell looked at,
45    some of those - some of that progress could be made,
46    because there was just not an acknowledgment that it was
47    even a homicide at the beginning.
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Q.   If the Strike Force Parrabell team was, for example,
to select the cases by reference to the presence of bias
rather than the existence of potentially productive avenues
for reinvestigation, that could conceivably result in the
application of scarce police resources in inefficient ways;
is that not right?
A.   I suppose that's true, and I'm not in a position to
even know what the budgets are like or what the resources
are like. My only question is an enormous amount of
resources seemed to be put into Parrabell - and I'm not
saying that you can investigate a case where it all appears
to be a dead end - but if there were cases in that group
that could be further investigated, and it seemed like
there might have been - I'm speculating - but that task
wasn't performed by Parrabell. So everybody's left to
speculate what else might have been done, either at the
time or now?

Q.   Well, having regard to your experience with the
Johnson investigation and unsolved homicide cases
generally, you would agree, wouldn't you, that a team of
six to 10 officers would take potentially very, very many
years to properly reinvestigate some 25 to 30 homicides?
A.   I can't say that. I don't know because I didn't - as
you have pointed out, I did not see those original files.
But I've worked in this area for a long time and I know
that you bring in the resources you need to do what you
can. They're not unlimited, they never are, and that's
a decision for the police and those who oversee them.

Q.   Just one final topic. Just in relation to the nature
of the exercise generally, are you aware of any other
equivalently sized police-driven assessment of gay hate
homicides, and/or LGBTIQ bias related homicides?

THE COMMISSIONER: Sorry, just to interrupt you, can you
make more precise what it is you are asking the witness?
Are you contrasting Parrabell as an exercise against other
things she may be aware of? I'm not quite sure of your
question.

MR MYKKELTVEDT: Yes, I'm referring to Strike Force
Parrabell.

Q.   I'm simply asking whether you are aware of any other
comparable exercise that has been undertaken anywhere in

1   the world.

2

3   THE COMMISSIONER: In the way that Parrabell was
4   undertaken?

5

6   MR MYKKELTVEDT: Well, I'm asking at the broader --

7

8   THE COMMISSIONER: But I'm asking you to be more precise,
9   otherwise it is a nonsensical question. Are you asking her
10   to assume that - or to give any insight into whether she's
11   aware of anything akin to Parrabell and the way they did
12   their work, or are you talking about police investigations
13   generally?

14

15   MR MYKKELTVEDT: I will try and put it again, your Honour.

16

17   THE COMMISSIONER: I would ask you to do it, because
18   I can't understand what it is you are asking her.

19

20   MR MYKKELTVEDT: Q.   Are you aware of any other similarly
21   sized endeavour involving a review of the homicide files in
22   as large a cohort of potential gay hate or LGBTIQ bias
23   related deaths?
24   A.   I ever never seen anything like it.

25

26   Q.   So you would accept it is a fairly unique endeavour
27   that was sought to be undertaken?
28   A.   It certainly is unique.

29

30   Q.   And it was not one that police were required, to your
31   understanding, to undertake by any body?

32

33   THE COMMISSIONER: That's fairly loaded, Mr Mykkeltvedt,
34   given evidence I've heard here. So - a matter for you if
35   you want to press that.

36

37   MR MYKKELTVEDT: I press the question.

38

39   THE COMMISSIONER: Good. So it was not a PR exercise, was
40   it? Is that what you are going to submit to me ultimately?
41   There was nothing causing the police to do what they did,
42   when I've heard evidence that it was a direct result, in
43   some respects, of thought to be negative publicity?
44   I don't think it is appropriate, on the evidence I have
45   heard from police officers themselves. This was not
46   something dreamt up one morning just for the sake of it.
47   It had a catalyst.

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1
2   MR MYKKELTVEDT: No doubt, your Honour.
3
4   THE COMMISSIONER: All right, when you say "no doubt", be
5   accurate, though, when you put this to this witness,
6   because with expert evidence you either have to put
7   alternative assumptions to the expert to make he or she -
8   ask them to make the assumptions or not.
9
10   MR MYKKELTVEDT: I sought to use the word "required"
11   precisely.
12
13   THE COMMISSIONER: Yes, and you didn't insert what the
14   evidence before me would tend to suggest. I'm not going to
15   permit re-examination, so, therefore, it is over to you in
16   cases like this, or Mr Gray, holistically to put material
17   which assists me to assess the evidence in totality.
18
19   So to put to this witness, for example, that it was
20   a spontaneous reaction on the part of the police, does not
21   accord with the evidence I've heard.
22
23   MR MYKKELTVEDT: I certainly wasn't suggesting that,
24   your Honour.
25
26   THE COMMISSIONER: All right. Okay.
27
28   MR MYKKELTVEDT: I have heard what your Honour says and
29   I don't seek to press that question.
30
31   THE COMMISSIONER: All right. Thank you.
32
33   MR MYKKELTVEDT: Q.   Speaking to the particular
34   characteristics of this exercise, is it, in your
35   experience, quite unusual for law enforcement to
36   voluntarily open themselves up to scrutiny by academia in
37   any respect?
38   A.   That's not true. I mean, that happens fairly
39   frequently here, that police who are on ticketing and riots
40   and racial stops, they work with Northeastern University,
41   with academics, all the time, to devise an appropriate
42   mechanism to look at the problem and analyse it. So it
43   does happen. But, as I said earlier, I haven't seen
44   anything like Parrabell.
45
46   MR MYKKELTVEDT: I'm suggesting that it is not a common
47   result or process whereby police provide, for example,

1   documents that they have completed to academics and ask the
2   academics to indicate whether or not they agree with the
3   determinations conveyed in that material?
4   A.   So I - I disagree with that, because we do do that
5   here in the United States, and I also just don't think -
6   and I've mentioned this in my statement, I don't think the
7   academic piece really assisted in any useful way, either
8   for the report or, more importantly, for police moving
9   forward on what they should be doing in looking at gay hate
10   and bias crimes.
11
12   Q.   Well, again, you are not familiar with the Australian
13   context in that respect and the interactions between
14   Australian academics and Australian law enforcement
15   agencies, are you?
16   A.   I can't say I am, but things aren't all that different
17   around the world when it comes to democracies and civilian
18   police departments and academic institutions. So I think
19   there are probably more similarities than there are
20   differences, frankly.
21
22   Q.   I will ask you to assume that the inquiry has heard
23   some evidence that Assistant Commissioner Crandell, who was
24   effectively the Commander of this exercise, informed the
25   relevant, at least one of the relevant academics, that they
26   were to work without fear or favour?
27   A.   I can assume that's what he said.
28
29   Q.   And that they were told that there would be no
30   inducement or no encouragement to minimise the number of
31   bias crimes found.
32   A.   I'm trusting that that's what he said, sir.
33
34   Q.   And that he told them that they were to find "as many
35   cases in whatever category as you see fit"?
36   A.   I'm trusting your reporting of that to me.
37
38   Q.   Well, you would agree that engaging academics to
39   conduct a review of the work conducted by police by
40   reference to the BCIF forms that they had completed was at
41   least a positive step in the context of that process which
42   I've heard you describe as "flawed"?
43   A.   I don't agree with that, and for the reasons I've
44   stated in my statement. I think the origin of the whole
45   process seemed to be futile in layering on the academics to
46   look at not the original files but only what the police
47   have done; it's just another the level of layering that on.

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 1        So again, adding the academics, to me, doesn't add anything
 2        to the quality of the product here.
 3
 4        Q.    Just one last question.  Is it the case that
 5        Massachusetts - I should say two questions, one very short
 6        topic.  Is it the case that Massachusetts is in some
 7        respects an early adopter when it comes to the assessments
 8        and consideration of hate crimes?
 9        A.    I think that's probably fair to say, yes.
10
11        Q.    And yet to this day, at least as applied in
12        Massachusetts, there is not, to your understanding, any
13        scientifically reliable or valid assessment tool deployed
14        in relation to the assessment of LGBTIQ hate crimes, is
15        there?
16        A.    Well, if you are talking about a tool like DNA, no,
17        there isn't, because as we know, we're talking about
18        motive, we're talking about - you can't get inside
19        somebody's head.  That's what these bias crime indicators
20        help to teach people to look for as we look for motives.
21        So you are really talking social sciences, plus experience
22        that police get, and those training tools at the beginning,
23        and that's - they are now 23 years old - they are still in
24        use.  I'm sure they have been improved upon, there's been
25        more case law, there have been developments, but they are
26        basically sound to be used, based on my training and
27        experience, at the beginning of an investigation, and we
28        didn't talk about this, but they obviously cover a whole
29        range of race, gender, religion, other kinds of bias crimes
30        that we deal with still, and those kinds of indicators are
31        important for police investigators to use in their
32        investigations.
33
34        Q.    And so those indicators are still used, they have not
35        been replaced, for example, with a scientifically validated
36        peer-reviewed tool or structured professional judgment tool
37        for the assessment of bias, have they?
38        A.    Well, now you are talking academically about what is
39        a practical process, and all I would say to that question
40        is the EDC has continued - the Educational Development
41        Corporation, which is the educational company that does
42        this kind of work, works extensively with DOJ, with federal
43        agencies, with places like Massachusetts and California, to
44        develop these tools and to update them.  So, no, there is
45        no DNA now for finding someone's bias when a crime has been
46        committed.
47
```

1   Q.   I'm not asking you whether there is a DNA tool, I'm
2   asking you whether there is a, for example, structured
3   professional judgment tool that has been scientifically, to
4   the extent that it is possible to scientifically validate
5   such a tool, in existence? If you don't know the answer,
6   that's fine.
7   A.   No, I would say those - the material that was used in
8   2000 has been updated and it's still valid. I don't have
9   a particular date for you, but that's how these crimes are
10   still investigated. I know that from my work as AG and
11   from my work now with the current AG's office and other law
12   enforcement around the country.

13

14   MR MYKKELTVEDT: Thank you. No further questions.

15

16   THE COMMISSIONER: Yes, Mr Gray.

17

18   MR GRAY: Just two matters, if I may.

19

20   **<EXAMINATION BY MR GRAY:**

21

22   MR GRAY: Q. Ms Coakley, just turn again to paragraph 38
23   of your report.
24   A.   Yes.

25

26   Q.   You were asked some questions the line of which was to
27   draw your attention to an early paragraph in the Parrabell
28   report where the police acknowledge that there was violence
29   against LGBTIQ people of considerable dimensions, but that
30   they were not part of the Parrabell report because they
31   were events where the victim survived; do you remember you
32   were taken to that paragraph?
33   A.   Yes, page 14.

34

35   Q.   Yes. Now, in this paragraph, 38, as I understand it -
36   could you correct me if I'm wrong - the point you are
37   making is that the methodology used by Parrabell tended to
38   give the impression of an open, rigorous and scientific
39   investigation, but really only created the illusion that
40   there was not extensive homicidal violence towards the
41   LGBTIQ community, your point being that given that
42   Parrabell was only looking at homicide or deaths, your
43   point about the illusion is made on that footing; is that
44   right?
45   A.   That is correct.

46

47   Q.   The second matter is just this: in the course of some

1   questions about the Scott Johnson case, you said that you
2   actually sat through the hearing. Is that the third
3   hearing, the one before Coroner Barnes?
4   A.   There were two hearings - two portions of the hearing
5   before Coroner Barnes and, yes, I was present for both of
6   those. One was in July and one was in December.

7

8   Q.   Yes. And in the course of one of your answers to my
9   friend, when he asked you a question to the effect that the
10   police had applied a lot of resources to the Scott Johnson
11   case, you gave an answer which was along these lines -
12   I may not have it precisely - that as you saw it, those
13   resources were not applied to solving the case. Do you
14   remember saying something like that?
15   A.   I do.

16

17   Q.   What were you referring to there when you made that
18   observation?
19   A.   It seemed to me, and this is my impression from my
20   work with the Johnson family and sitting through the
21   inquest, that the police put a lot of resources into
22   resisting any change of the finding from suicide, or once
23   it was determined in 2012 to be an open case, to actually
24   moving forward to see what it could be determined, if it
25   could be determined to be a homicide.

26

27   Q.   That is, your impression was that they resisted both
28   of those things; resisted moving away from suicide and
29   resisted investigating the openness that flowed from the
30   second finding?
31   A.   Yes.

32

33   MR GRAY: Those were the only matters.

34

35   THE COMMISSIONER: Ms Coakley, thank you very much for
36   being available today, your evening. I can now excuse you
37   from further attendance, so thank you very much.

38

39   THE WITNESS: Thank you, Commissioner.

40

41   **<THE WITNESS WITHDREW**

42

43   THE COMMISSIONER: I will you go off the bench for a short
44   time. I think it will be easier. Dr de Lint has arrived,
45   but I'll give you a moment or two to sort the papers out.

46

47   **SHORT ADJOURNMENT**

1   THE COMMISSIONER: Yes, Dr de Lint, would you be kind
2   enough to come back into the witness box, please,
3   thank you.
4
5   **<WILLEM DE LINT, on former affirmation:**   **[11am]**
6
7   THE COMMISSIONER: Mr Tedeschi, there have been a few
8   disruptions this morning, for which I apologise to everyone
9   concerned. We had a fair bit of extra material to work
10   with. What I propose to do is obviously start now, but
11   I will probably take a break before lunch anyway because
12   nobody has had a break except me, so we will just see how
13   we're going in about an hour, and I might take a short
14   break then, or Dr de Lint, if you need a break earlier than
15   that, please let me know, thank you.
16
17   MR TEDESCHI: Thank you.
18
19   THE COMMISSIONER: All right. Yes, Mr Gray.
20
21   **<EXAMINATION BY MR GRAY:**
22
23   MR GRAY: Could we just have before the witness volume 13
24   again, please.
25
26   THE WITNESS: May I - I made a comment yesterday in answer
27   to a question, and I'm wondering if I can amend that
28   answer?
29
30   THE COMMISSIONER: Q.   By all means, if you wouldn't mind
31   putting it into context so that you tell us what --
32   A.   There was a question with respect to a body on the
33   beach and relating to the definition of crime that we were
34   using, whether we could make a - whether we could use that
35   to make a determination, and the answer is "yes" instead of
36   "no", and the determination is "Insufficient Information".
37
38   MR GRAY: Q.   Help us with what you mean by that?
39   A.   Pardon?
40
41   Q.   Why is the answer now "yes" when it previously was
42   "no"?
43   A.   Well, I was - I thought about it overnight, and it
44   struck me that we were using the definition and we did make
45   determinations and we did make a determination of
46   "Insufficient Information".
47

```
1    Q.    Indeed, you did.  You are talking about Mr Russell's
2    case, are you?
3    A.    I'm talking about cases in which the only information,
4    as you described, is that there is a body on a beach.
5
6    Q.    Well, a body at the base of a cliff is what I put to
7    you?
8    A.    A body at the base of the cliff, yes.
9
10   Q.    I'm not sure that the thrust of your answer is
11   actually any different, really.  Let me just flesh this
12   out.  You say that you did make a determination in such
13   cases, namely, putting it into the "Insufficient
14   Information" category?
15   A.    Yes.
16
17   Q.    And that is because, isn't it, you couldn't put it
18   into the "Evidence of Bias Crime" because there was no
19   communication?
20   A.    No, it is because there is - using the definition
21   there is insufficient information to determine the nature
22   of the crime.
23
24   THE COMMISSIONER:    Q.    But that would follow, wouldn't
25   it, that in every case where you couldn't identify
26   a communication, as defined by you, those cases, every one
27   of them, have to be in the insufficient evidence category,
28   wouldn't they?
29   A.    If there is no information --
30
31   Q.    No.  If you wouldn't mind just attending to my
32   question.  If the absence of a communication in the
33   situation we are positing leads to an "Insufficient
34   Information" category, it would follow that every case in
35   which there was no communication as defined by you -
36   gesture, et cetera, utterance - every one of those cases
37   would fall into "Insufficient Evidence", wouldn't they,
38   per se?
39   A.    If there is no communication as - yes, but we would
40   use the definition to allocate --
41
42   Q.    I don't know what you are talking about, Doctor, if
43   you just listen again, let's try it again.  I'm sure you
44   are doing your best.  If the reason why, or, rather, the
45   body at the foot of the cliff, went in, you say, to the
46   "Insufficient Information" category --
47   A.    Yes.
```

1
2   Q.   -- what I'm putting to you is this: does it follow
3   logically that every case in which there is an absence of
4   your first requirement as defined by you - utterance,
5   gesture, et cetera - they would all go in, logically,
6   wouldn't they, all go in to the "Insufficient Information"
7   category; every one of them?
8   A.   Yes.
9
10   THE COMMISSIONER: Thank you.
11
12   MR GRAY: Q.   Do you have volume 13 in front of you?
13   A.   Yes.
14
15   Q.   If you turn to tab 277 [SCOI.80025_0001], which is
16   where we were at the end of yesterday, this is an email
17   chain. I asked you some questions about one aspect of it,
18   namely, where you suggested to Dr Dalton that perhaps you
19   could come up with another term instead of "paedophilia",
20   such as "conflict identity bias"?
21   A.   Yes.
22
23   Q.   I asked you about that yesterday.
24   A.   Yes.
25
26   Q.   I just want to go back in the chain, a couple in the
27   chain, earlier in the chain. You will see that - and are
28   you using the screen or are you looking on the document?
29   A.   Oh --
30
31   Q.   Would you just turn back in the chain and see that on
32   the page that has 0005 at the top, there is an email from
33   Mr Parkhill, who is from ACON, to Mr Crandell, saying that
34   he is attaching a revised version of the ACON report, where
35   ACON had incorporated feedback from the police; do you see
36   that?
37   A.   Yes.
38
39   Q.   And then at the top of the page, Mr Crandell sends
40   that on to Dr Dalton, saying, "Please find attached
41   a report from ACON surrounding the alleged 88 gay hate
42   deaths"?
43   A.   Yes.
44
45   Q.   Then Dr Dalton sends that - or Dr Dalton responds to
46   Mr Crandell, and in due course he sends that on to you. He
47   sends the ACON report on to you?

```
1      A.   Okay.
2
3      Q.   Now, what I want to take you to is the email which you
4      saw, because it was in the chain that you received from
5      Dr Dalton.  The email from Dr Dalton to Mr Crandell on
6      18 April at 1.30.  It is at the bottom of that page with
7      the number 3 at the top.  Have you found that one?
8      A.   The top of - the top of 003?
9
10     Q.   The bottom of that page, Dalton to Crandell, 18 April,
11     1.30?
12     A.   Yes.
13
14     Q.   He's --
15
16     THE COMMISSIONER:   Q.   Doctor, if you look in the upper
17     right-hand corner of the hard copy, it might be quicker.
18     I think it's 0003.
19     A.   Yeah, 3.  Yep.
20
21     MR GRAY:   Q.   So in this email to Mr Crandell, which you
22     then see because it comes through to you on the chain,
23     Dr Dalton says he's going to share the ACON report with
24     you; do you see that?  That's the first thing he says?
25     A.   Yes.
26
27     Q.   And on the next page, the page with 0004 at the top,
28     he then expresses some views about the ACON report; do you
29     see that?
30     A.   On the top of that page?
31
32     Q.   Yes.  He says:
33
34          Something that really worries me is that
35          their report has the imprimatur of
36          appearing very authoritative ...
37
38     Do you see that page numbered 0004, the second paragraph on
39     that page?
40     A.   Yes.
41
42     Q.   Is that something that worried you, too, that the ACON
43     report looked authoritative?
44     A.   No, not that it - why would it worry me?
45
46     Q.   I don't know; I'm ask whether it did?
47     A.   No, it didn't worry me.
```

1
2   Q.   But it worried him, apparently. He said it really
3   worried him actually?
4   A.   Well, I can't speak for him.
5
6   Q.   Did you discuss it?
7   A.   He - I don't remember discussing the report. I'm sure
8   we did. It sounds like we must have, but I don't remember
9   doing it so.
10
11   Q.   Well, he's expressing a real worry about it appearing
12   very authoritative because it looks so slick and
13   professional. Now --
14   A.   I - I would not share in that language. I mean, that
15   is not language that I would - that I would use.
16
17   Q.   Well, was it a concern of his, as you understood it,
18   that the ACON report was something that needed to be
19   rebutted or refuted or challenged?
20   A.   I don't think so. I don't believe so.
21
22   Q.   Or criticised?
23   A.   I don't believe so.
24
25   Q.   Was it your view that it needed to be rebutted or
26   criticised?
27   A.   No. I don't believe so. I - no, not at all. I -
28   I thought the ACON report would help us.
29
30   Q.   Why is that?
31   A.   Because there would be more - there would be some
32   information that we could use.
33
34   Q.   Well, you had finished your report by now, April 2018,
35   hadn't you?
36   A.   Oh, okay, I'm sorry. I've got the timing wrong,
37   sorry. Then no.
38
39   Q.   Why did you think it would help you?
40   A.   Because if they had looked at similar cases and - and
41   there's different information, and information that we
42   didn't have from our case summaries, then it would be
43   useful.
44
45   Q.   You see, what Dr Dalton says in the next paragraph is
46   that the presentation - that is, ACON's - is of a high
47   standard, and then he says:

```
 1
 2            Willem and I will carefully dissect
 3            it ... to try and identify sections that
 4            the media might use to seek to discredit or
 5            disavow our particular findings.
 6
 7    A.    Yeah.
 8
 9    Q.    Did you and Dr Dalton carefully dissect it --
10    A.    No.
11
12    Q.    -- with that aim in mind?
13    A.    I didn't carefully dissect it, no.
14
15    Q.    Did you read it?
16    A.    I don't know if I read.  I - I skimmed the report.
17    I couldn't tell you, right sitting here, really, what's in
18    it.
19
20    Q.    Dr Dalton finishes off his remarks about the ACON
21    report by saying:
22
23            "In pursuit of truth and justice".  It is
24            such a grandiose title.  It might be nice
25            for us in the media process to point out
26            that the NSW police had "truth" and
27            "justice' in mind in pursuing this review
28            in the first instance.
29
30    Do you see that?
31    A.    Yes.
32
33    Q.    Now, this is not your email, but when he says "it
34    might be nice for us", that's a reference to the academic
35    team and the police together, isn't it?
36    A.    It would appear so.
37
38    Q.    And that's consistent with Dr Dalton and yourself, may
39    I suggest, seeing yourself as aligned with the police in
40    defending what you had written and criticising what ACON
41    had written?
42    A.    I didn't write the email so I don't have that --
43
44    Q.    I know, I included that in my question.  So what's
45    your answer?
46    A.    I didn't think that it was necessary to do anything
47    with the report.
```

Transcript produced by Epiq

1
2   Q.   Well, you see the next email up the chain, there's
3   another one from Dr Dalton to you, 18 April, one minute
4   later at 1.31pm?
5   A.   Yeah.
6
7   Q.   Telling you that he is going to send you the ACON
8   report:
9
10   *We had better read it and workshop some*
11   *common criticisms.*
12
13   Do you see that?
14   A.   Yes.
15
16   Q.   Is that what you did?
17   A.   I don't remember if - if that took place. Maybe it
18   did. I don't remember the conversation at - I'm sure -
19   there might have been one. I don't remember it. I'm not -
20   I'm not trying to be difficult, I just don't remember.
21
22   Q.   Well, the ACON report, do you recall, expressed the
23   view that there were indeed 80 or more cases that may well
24   have been gay hate homicides, didn't it?
25   A.   Okay.
26
27   Q.   You don't know that?
28   A.   I don't remember, no, sorry.
29
30   Q.   What do you think it said? What's your memory of what
31   it said?
32   A.   I'm sorry, but I don't really - I apologise but
33   I didn't really read - this is six years ago. I did not
34   read - have not read the report since then and I don't -
35   I don't remember what was in it.
36
37   Q.   On the same chain, another - well, in the next answer,
38   Dr Dalton says, in response to your suggestion of
39   substituting "conflict identity bias" for the
40   paedophilia --
41   A.   Yeah.
42
43   Q.   -- line, he says various things about that, and he
44   wonders if, to be honest, it's too late, and in general
45   he's - apart from being too late, he's suggesting that he
46   thinks what you've written is better left alone?
47   A.   Well, I --

```
1
2      Q.    That seems to be the thrust of what he's saying?
3      A.    Yeah, I know, yeah.
4
5      Q.    Do you agree?
6      A.    Yeah.
7
8      Q.    And then in your answer, you say:
9
10           Hi Derek, reading ACON report.
11
12     And you give one particular observation, which seems to be
13     by way of a criticism of the ACON report; do you see that?
14     A.    Yep.
15
16     Q.    His response is:
17
18           That's profound.  Well spotted.
19
20     So does that suggest that you did, in fact, talk about the
21     ACON report, either in emails or in conversation, and work
22     up some criticisms of it?
23     A.    I don't - I don't believe that we worked up criticisms
24     of it.  I don't have any memory of doing that.  I - it
25     looks like I read the report, here, and made an observation
26     on it.
27
28     Q.    You also say in that email, 18 April at 2.14pm:
29
30           Also am beginning the paper on moral
31           panics.
32
33     Do you see that?
34     A.    Yes.
35
36     Q.    He says in his response:
37
38           I am happy to help with Moral Panics
39           article so we can share the burden.
40
41     A.    Yes.
42
43     Q.    I'll come back to that.  While we are in this volume,
44     could we just turn over to tab 279, please
45     [SCOI.80074_0001]?
46     A.    Yes.
47
```

1   Q.   This chain starts with one from Derek Dalton on
2   19 November 2018?
3   A.   Yes.
4
5   Q.   To orient you in time, by this time both the ACON
6   report and the Parrabell report were in the public domain?
7   A.   Okay.
8
9   Q.   And what was either already under way or about to get
10   under way was the Parliamentary Inquiry?
11   A.   Okay.
12
13   Q.   And what Dr Dalton is doing is, seemingly, quoting
14   from something that was said by one of the parliamentarians
15   in respect of the opening of the Inquiry, and Dr Dalton
16   says:
17
18   *They are a bit sloppy with their*
19   *language! - 88 murder victims.*
20
21   That's the heading of the email, do you see that?
22   A.   Yeah.
23
24   Q.   Now, in your response, which is the next email,
25   Monday, the 19th, you send Dr Dalton the transcript of the
26   first day's proceedings of the --
27   A.   Yep.
28
29   Q.   -- Parliamentary Inquiry. Do you see that?
30   A.   Yep.
31
32   Q.   And you refer to there having been mention of
33   criticism and a disappointing result of Parrabell?
34   A.   Yes.
35
36   Q.   Do you see that?
37   A.   Yes.
38
39   Q.   You say:
40
41   *The second point is that there was*
42   *insufficient respect or apology and this*
43   *refers to the police part of the report,*
44   *which I wish they had not written.*
45
46   Do you see that?
47   A.   Yes.

Transcript produced by Epiq

```
1
2      Q.   What were you getting at there?  What is it that you
3      wish they had not written?
4      A.   My understanding was that there was going to be, in
5      terms of narrative, a singular report.  And in my
6      recollection, I was only aware of the separate narrative of
7      the police report the day before, I think, or the day of
8      the release, and - so my understanding was that there was
9      going to be one narrative, and that's why we had the police
10     findings and our findings in our part of the report.  Then
11     there were a whole bunch of other tables that, again, I -
12     in my recollection, I only saw very close to the time of
13     the release of the report.  I'm not sure how many hours
14     before, or how many days before or - but very, very quickly
15     in front of that release.
16
17     Q.   What is it that you wish they had not written and why?
18     A.   The reason I wish that they didn't was because
19     I thought --
20
21     THE COMMISSIONER:   Q.   No, no, sorry, didn't what?
22     A.   What?
23
24     Q.   Before your regret, tell me what it was that you
25     wish --
26     A.   Specifically?
27
28     Q.   Yes.
29     A.   I think I'm responding to the entirety of it.
30
31     Q.   So you thought the whole police narrative as you
32     describe it --
33     A.   Yeah.
34
35     Q.   -- was, what, unfortunate, ill-considered, badly
36     worded, wrong conclusion?
37     A.   No.
38
39     Q.   Just be a little bit more precise.
40     A.   The existence of it.
41
42     Q.   You didn't like the --
43
44     MR GRAY:   Q.   Sorry, did you say "the existence of it"?
45     A.   Yeah.  Where's the line again that I'm responding to?
46
47     THE COMMISSIONER:   Q.   At the top of page 0001.
```

Transcript produced by Epiq

```
1      A.    Yep.
2
3      Q.    And you're talking to "transcript of the first day"
4      of, presumably, the Parliamentary hearing, and then it's
5      the second full paragraph:
6
7           The second point ...
8
9      And "insufficient respect or apology", was that the
10     parliamentarians to you and Dr Dalton, was it, or what was
11     it that you were you saying there was insufficient respect
12     or apology?
13     A.    Oh, I don't know, "refers to the police part of the
14     report".
15
16     Q.    Well, do your best --
17     A.    I don't know.
18
19     Q.    Well, do your best.  They're your words.  "There was
20     insufficient respect or apology and this refers to the
21     police part of the report"?
22     A.    Well, I think I'm summarising --
23
24     Q.    Excuse me, excuse me --
25     A.    Yes.
26
27     Q.    Does it mean - I'm trying to help you and help myself
28     understand your evidence.
29     A.    Yes.
30
31     Q.    Are you saying that there was insufficient respect or
32     apology to the police part of the report - comma - "which
33     I wish they had not written"?
34     A.    Right.
35
36     Q.    All right.  There seem to be two concepts there.
37     A.    Yes.
38
39     Q.    One, that you were concerned that, what, the
40     Parliamentary Committee showed insufficient respect and
41     apology - we'll come back to that perhaps - in relation to
42     the police part, but you then wish they had not written.
43     So do your best on both of those, if what I have said to
44     you strikes a chord, helps your recollection or is
45     accurate?
46     A.    I believe what I was saying is that the Parliamentary
47     Inquiry was expressing that there was insufficient respect
```

Transcript produced by Epiq

```
 1    or apology shown in the police part of the report.
 2
 3    Q.    To whom?
 4    A.    To - I am assuming the LGBTIQ community, but I don't
 5    know.  I am assuming that but I don't know because
 6    I can't - I'm trying to - I'm trying to fill in the blanks.
 7
 8    Q.    I understand.  And then do I understand that the tone
 9    of the balance of that sentence is that you are, in effect,
10    according to the Parliamentary Committee a perfectly
11    appropriate remark, because you wish the police hadn't
12    written it in the form that you saw it?  Is that what --
13    A.    I don't know.  I'm not sure of the coupling of those
14    two thoughts, even although they're in the same sentence.
15
16    MR GRAY:   Q.    Putting aside the coupling of the thoughts
17    for the moment - that is, they may or may not be coupled -
18    but you say you wish the police had not written the police
19    part of the report.  That much is clear.
20    A.    Yes.
21
22    Q.    Now, why?  Why did you wish they hadn't written --
23    A.    Well, as I said, I wish that - I assumed that there
24    was going to be a collaboration on the final text of the
25    entire report.
26
27    Q.    Yes.  But is there something wrong in your mind with
28    what the police had written, which made you wish they
29    hadn't written it?
30    A.    I can't think of anything wrong with it, other than
31    there are tables there we didn't look at, we didn't have -
32    we didn't have an opportunity to do any back and forth on
33    it, and I - in that respect, I wished that - I didn't -
34    I wished that there was only a singular report.  That was
35    what I was getting at.
36
37    Q.    Do you mean by that that you wished that it had just
38    been your report alone without the part that they wrote?
39    A.    In a sense, if you want to put it that way, yes.
40
41    THE COMMISSIONER:   Q.    No, no, not --
42
43    MR GRAY:   Q.    I'm asking the question --
44
45    THE COMMISSIONER:   Q.    I'm sorry --
46    A.    Well, I - not that the --
47
```

```
 1    Q.   No, Doctor - Doctor, please?
 2    A.   Yes.
 3
 4    Q.   We're trying to do this in an orderly fashion, and I'm
 5    not meaning to talk over the top of you, but I would ask
 6    you to be a little more direct.
 7
 8         Mr Gray, you might pursue the matter.
 9
10    MR GRAY:   Q.   Do you mean by that that you wish the
11    police had not written their part; that you would have
12    preferred your part to stand as the joint report of
13    yourselves and the police?
14    A.   I mean to say that in whatever I interpret it to be at
15    the time, which I don't know, I was unsatisfied with the
16    police report.
17
18    Q.   Why?  What was wrong with it?
19    A.   I don't know.  I can't say.  I don't - I don't -
20    I don't remember my thoughts from six years --
21
22    THE COMMISSIONER:   Q.   Well, let's try and examine that.
23    Was it inaccuracy, for example, in some part of it?  Was it
24    the tone?  Was it a combination of perceived inaccuracies
25    and tone?  Was it merely the fact that they didn't give you
26    the courtesy of enough time to review it, and when you did
27    review it, you didn't like it?  Do the best.
28    A.   I think that you - the best answer that I can give you
29    is that I wish it wasn't written because I wanted -
30    I assumed that there was going to be one report.  That's
31    the best answer I can give you.
32
33    Q.   And is that another way of saying you would have
34    preferred more control over what the police's expressed
35    views were?
36    A.   No.
37
38    THE COMMISSIONER:   Okay.
39
40    MR GRAY:   Q.   Just while we are on this email chain, at
41    the top of that page is a response to you from Dr Dalton,
42    saying that he has read the transcript, and he then says in
43    the next paragraph:
44
45         ACON submission was a pile of rubbish ...
46
47    Do you see that?
```

1   A.   Yes.

2

3   Q.   Was that your view too?
4   A.   No.

5

6   Q.   Did you have a view about other material that you had
7   received from ACON, apart from their submission to the
8   Parliamentary Inquiry?
9   A.   I don't remember having a view. I remember that there
10   was a meeting, I think that Derek had, or an interaction
11   that Derek had with them, and then I do - obviously I read
12   their - the report. As I say, in terms of the ACON
13   material, I was looking for any kind of additional
14   information on the cases that could be useful, when it -
15   obviously at this point it's not going to have been useful
16   because it was after the publication. But prior to that,
17   that was the - as I understood the point of the interaction
18   with ACON, to see if there was additional information that
19   could be gleaned to help flesh out those cases.

20

21   Q.   Now, ACON, in the course of your work, had supplied
22   you with dossiers about the cases --
23   A.   Yes.

24

25   Q.   -- hadn't they?
26   A.   Well, yes - I - yes, I think they did. I'm not -
27   I think that - I can't remember dossiers, but - yeah.

28

29   Q.   Well, Dr Dalton has given some evidence about
30   receiving the dossiers?
31   A.   Okay.

32

33   Q.   And there are some emails about that?
34   A.   Yeah.

35

36   Q.   But are you telling us that you yourself did not read
37   the ACON dossiers?
38   A.   I am not - I don't remember reading the ACON dossiers,
39   even - I'm not - I don't know. I can't remember. I'm
40   sorry.

41

42   Q.   Let me take you to another couple of emails on a
43   different topic, and they concern the case of Mr Russell.
44   I'm not showing you a document yet, although I will in the
45   minute. You're aware of Mr John Russell? Do you remember
46   that case? He's the man whose body was found at the base
47   of the cliff --

```
 1        A.   Yes.
 2
 3        Q.    -- at Marks Park?  Does that come back to you?
 4        A.   A little bit.
 5
 6        Q.   A little bit.  And there was - that was a place, Marks
 7        Park --
 8        A.   Yeah.
 9
10        Q.    -- that you know, and knew at the time of this
11        Parrabell work, where many attacks on gay men had occurred
12        at the time in question; you knew that?
13        A.   Yes, I think so.
14
15        Q.   And you recall that there was an operation called
16        Operation Taradale --
17        A.   Yes, I remember Operation Taradale, yes.
18
19        Q.    -- which looked at three deaths, Mr Russell's being
20        one of them?
21        A.   Yes.
22
23        Q.   And you recall that there was a coronial inquest --
24        A.   Yes.
25
26        Q.    -- at the end of the Taradale process, before
27        Coroner Milledge?
28        A.   Yes.
29
30        Q.   And you recall that she made an explicit finding of
31        homicide in relation to Mr Russell's case?
32        A.   Perhaps.  I'm sorry, but my memory is now getting
33        quite vague.
34
35        Q.   And do you recall that that followed a lengthy police
36        investigation and lengthy inquest hearings, the Taradale
37        hearings?
38        A.   No.  Sorry, but no.
39
40        Q.   No memory of that?
41        A.   No.
42
43        Q.   Do you recall that she also - she, the Coroner - apart
44        from making a finding of homicide, also expressed
45        a considered view that the evidence strongly supported the
46        probability that Mr Russell met his death at the hands of
47        gay hate assailants?
```

```
 1      A.    No, I don't - I don't - I don't recall that.  If - if
 2      it was not in our material on the - from Strike Force
 3      Parrabell, then - and it was not discussed in our meetings
 4      with the police, then - then it wouldn't have been part -
 5      then it wouldn't have been part of the consideration for
 6      the assessment that we made.
 7
 8      Q.    Well, I'll come to what may have been your awareness
 9      at the time, of which you now don't remember, but you
10      categorised - you and Dr Dalton categorised - the case of
11      Mr Russell as "Insufficient Information"; I think you
12      mentioned that this morning.  Do you recall that?
13      A.    Yep.
14
15      Q.    Just bear with me a second.  I'm going to put this in
16      front of you so you can recall.  It's volume 2, tab 49
17      [SCOI.76961.00014_0001].  These are a set of case summaries
18      prepared by Strike Force Parrabell.  I took you to a couple
19      of these yesterday.  If you would turn to number 36, which
20      is on page 18, do you see that's the case of Mr Russell?
21      A.    Yes.
22
23      Q.    You will see under the Heading "Location of
24      Body/Circumstances of Death", the account is that
25      Mr Russell's body was discovered lying on rocks, et cetera?
26      A.    Yes.
27
28      Q.    Then there is a heading "Coroner/Court Findings"; do
29      you see that?
30      A.    Yes.
31
32      Q.    And that refers to the original Coroner's finding?
33      A.    Yes.
34
35      Q.    And then it refers to the 2002 reinvestigation by
36      Strike Force Taradale?
37      A.    Yep.
38
39      Q.    And then it refers to links to groups of youths
40      targeting men in the Bondi and Alexandria areas, including
41      various ones that are mentioned?
42      A.    Yes.
43
44      Q.    And then there's a reference to the second coronial
45      inquest in 2005, with the Coroner stating:
46
47            ... the cause of death is multiple injuries
```

Transcript produced by Epiq

```
 1          sustained when he was thrown from the cliff
 2          on to rocks, by a person or persons
 3          unknown.
 4
 5     Do you see that?
 6     A.   Yeah.
 7
 8     Q.   Now, does that jog your memory - were the matters
 9     included in that summary matters of which you were aware
10     when you were doing your Parrabell reviews?
11     A.   The only thing that I can think of is that some of -
12     the - in a case of unsolved homicide, we had some
13     trepidation in finding a bias crime, but --
14
15     Q.   The first question is --
16     A.   I'm a little uncomfortable with that finding.
17
18     Q.   Please.  The first question is, when you were doing
19     your Parrabell review work --
20     A.   Yes.
21
22     Q.    -- in relation to Mr Russell, did you know the
23     matters contained in that summary?
24     A.   Oh, it looks like we did.  I think we did.  If this
25     was - yeah.
26
27     Q.   Right.  So, you knew that there had been many other
28     attacks on gay men in this area; correct?
29     A.   Yes.
30
31     Q.   You knew that the Coroner had made an explicit finding
32     of homicide?
33     A.   Yes.
34
35     Q.   And you knew, did you, that she expressed the view,
36     and you may or may not know this, but I'm asking you - did
37     you know that she had expressed the view that the evidence
38     strongly supported the probability that he met his death at
39     the hands of gay hate assailants?
40     A.    I don't know.  I don't know if - I - that doesn't
41     strike a bell, but I doubt - well, I would - I don't - I
42     don't know if we knew that.
43
44     Q.   Okay.  But at any rate, we can see from the top
45     right-hand corner of this entry, 36, about Mr Russell, that
46     your academic review categorised this case as "Insufficient
47     Information"?
```

Transcript produced by Epiq

1   A.   Yes.
2
3   Q.   Now, as we went through briefly this morning, one
4   reason for that - and you accepted this this morning - is
5   that because your definition of "Bias Crime" required
6   communication of some sort, and here there was no
7   indication of communication or not --
8   A.   Yes.
9
10   Q.   -- instantly, it could not go into your category of
11   "Evidence of Bias Crime"; correct?
12   A.   Yes.
13
14   Q.   And really, therefore, the only place you could put it
15   was "Insufficient Information"?
16   A.   Correct.
17
18   Q.   Because you didn't have a "Suspected Bias Crime"
19   category; correct?
20   A.   Yes.
21
22   Q.   Now, I just want to show you a couple of emails that
23   you - I want to show you a couple of emails about this.
24   The first is volume 4, do you have volume 4?
25   A.   Yes.
26
27   Q.   Could you turn to tab 102, please [SCOI.74496_0001]?
28   A.   Yes.
29
30   Q.   Now, this is an email chain which does not include
31   you, but in a moment I'll show you another chain which does
32   include you which includes some of what's in this one, but
33   I want to start with the email from Dr Dalton to
34   Craig Middleton, 5 June 2017 - it's on the page numbered
35   0001, the first page in this tab, down the bottom.
36   A.   0001?
37
38   Q.   Yes, at the very bottom of the page, 5 June 2017 at
39   1:18pm, "Hi Craig"; do you see that?
40   A.   I'm sorry. What is the --
41
42   Q.   Not the one that's on the screen. Bottom of
43   page 0001:
44
45   *Hi Craig.*
46   *Good morning to you.*
47

.3/03/2023 (32)   2764   W DE LINT (Mr Gray)
Transcript produced by Epiq

```
1       Do you see that?  Tab 102?
2       A.   I've got tab 102 and I don't have that.
3
4       THE COMMISSIONER:   Q.   In the upper right-hand corner,
5       0001.
6
7       MR GRAY:   Q.   You seem to be looking at the wrong
8       document, Doctor.  Do you have tab 102?  Perhaps someone
9       can help you locate it.
10      A.   Okay, thank you.
11
12      Q.   Do you have that now?
13      A.   Yes.
14
15      Q.   So Derek says to Craig Middleton on the top of the
16      next page:
17
18          We are being driven mad by Russell (36).
19
20      Do you see where he says that?  Do you see that?
21      A.   Yes.
22
23      Q.
24          We are being driven mad by Russell ... You
25          guys [meaning the police] say SBC --
26
27      which is suspected bias crime --
28
29          (I agree with that 100%).
30
31      Do you see that?
32      A.   Yes.
33
34      Q.
35          ... but applying our classificatory tool is
36          problematic.
37
38      Do you see that?
39      A.   Yes.
40
41      Q.   And it was problematic, wasn't it, because you didn't
42      have a "Suspected" category?
43      A.   Yes.
44
45      Q.   And it couldn't go in "Evidence of Bias Crime" because
46      no communication?
47      A.   Yes.
```

Transcript produced by Epiq

```
 1
 2      Q.    So Derek points out - Derek Dalton - in the next
 3      sentence:
 4
 5            Coroner says he was thrown by person(s)
 6            unknown --
 7
 8      A.    Yes.
 9
10      Q.      --
11            but we think that II [Insufficient
12            Information] might be a better
13            classification.
14
15      And then he says:
16
17            And yet that clashes with the coronial
18            ruling.
19
20      A.    Yes.
21
22      Was that a conundrum that exercised your mind?
23      A.    Yes.
24
25      Q.    And the response came back, back on the front page,
26      from the police in the person of Mr Middleton - do you see
27      that?
28
29            Hi Derek.
30            I understand your predicament.
31
32      A.    Yes.
33
34      Q.    He says:
35
36            However it's easier for us.  We have no
37            evidence that would overrule the Coroner's
38            findings, who by all rights viewed much
39            more evidence than we did.
40
41      Do you see that?
42      A.    Yes.
43
44      Q.
45            Her finding is based on the entirety of
46            evidence presented under [Taradale].
47
```

```
 1      A.   Yes.
 2
 3      Q.
 4           (A lot of which is actually outside our
 5           terms of reference for Parrabell).
 6
 7      He says:
 8
 9           For us --
10
11      that's the police --
12
13           given what we did review, coupled with the
14           Coroner's findings, SBC [Suspected Bias
15           Crime] was the best suited.
16
17      Do you see that?
18      A.   Yes.
19
20      Q.   And he adds:
21
22           Although I don't disagree that II
23           [Insufficient Information] is also
24           suitable.
25
26      A.   Yes.
27
28      Q.   He says:
29
30           For us the tipping point was the hair
31           located in Russell hand.
32
33      A.   Yes.
34
35      Q.   He goes on:
36
37           Whilst not conclusive, it puts it into
38           the suspected category (at least for
39           a murder) ...
40
41      Do you see that?
42      A.   Yes.
43
44      Q.   And he says:
45
46           ... as for gay hate motivation? - that is
47           purely circumstantial and will remain that
```

1   *way until offenders are identified.*

2

3   A.   Yes.

4

5   Q.   Now, bearing that in mind, can we turn to volume 13,
6   which is a different folder, and turn to tab 274
7   [SCOI.81012_0001], which is an email chain of the same day,
8   5 June 2017. Do you see it starts at the bottom of the
9   first page in that tab, 274, with an email from Derek
10   Dalton to you at 1.18pm?
11   A.   Yes. I've got it, yep.

12

13   Q.   And so this is four minutes after that response from
14   Craig Middleton, which you'll see on the next page quoted
15   or extracted in Derek Dalton's email to you, the one we
16   just went through?
17   A.   Yes.

18

19   Q.   And Derek says to you:

20

21   *The hair seems compelling, W. Maybe we*
22   *should classify it as Pro-active, Anti-gay,*
23   *multiple?*

24

25   Do you see that?
26   A.   Yes.

27

28   Q.   You respond:

29

30   *Yes, a murder, but how to guess that it is*
31   *anti-gay?*

32

33   A.   Yes.

34

35   Q.   And he says:

36

37   *Ok. Perhaps II --*

38

39   A.   Right.

40

41   Q.   "Insufficient Information":

42

43   *... is indeed safest option.*

44

45   A.   Yes.

46

47   Q.   So in the space of an hour or two, the full gamut of

1   possibilities from the strongest of your classifications,
2   "Pro-active, Anti-gay, multiple", down to the last of them,
3   "Insufficient Information", is spanned?
4   A.   "Insufficient Information" doesn't mean that the case
5   ultimately isn't a bias crime. It just means that --
6
7   Q.   No, quite. I accept that. You have made that clear.
8   I understand that. But your question to Dr Dalton is a
9   little bit illustrative, perhaps, of the way you went about
10   it, you said:
11
12   *Yes, a murder, but how to guess that it is*
13   *anti-gay.*
14
15   A.   Yes.
16
17   Q.   You knew, as we've just established, that the area was
18   a gay beat, where his body was found; correct?
19   A.   Yes.
20
21   Q.   You knew that there had been numerous attacks on gay
22   men in that area?
23   A.   I should have known.
24
25   Q.   Well, you did know from the summary we just looked at?
26   A.   Well, yes.
27
28   Q.   From the summary I just took you to?
29   A.   Yeah, yeah.
30
31   Q.   You did know that?
32   A.   Yeah.
33
34   Q.   You knew that a Coroner had found homicide?
35   A.   Yeah.
36
37   Q.   But because there was no communication --
38   A.   Yes.
39
40   Q.   -- you simply, on your taxonomy, had nowhere to go but
41   "Insufficient Information"?
42   A.   Yes.
43
44   Q.   Now, turn to another topic. We saw a little while ago
45   that you were planning an article about moral panic --
46   A.   Yes.
47

```
1    Q.    -- well before the Parrabell report was published?
2    A.    Planning an article?  Yes.
3
4    Q.    Indeed, you had been thinking about writing such an
5    article almost from the time you started doing the
6    Parrabell work, hadn't you?
7    A.    Writing an article on moral panic?
8
9    Q.    Yes.
10   A.    I'm - don't recall that, but maybe it's true.  I don't
11   know.
12
13   Q.    Well, let's have a look at volume 3, tab 92
14   [SCOI.77540_0001].  This is a document produced by you --
15   A.    Yes.
16
17   Q.    -- in answer to a summons from this Special
18   Commission?
19   A.    Yes.
20
21   Q.    And it is undated but created on 28 February 2017.
22   A.    Okay.
23
24   Q.    Apart from the first couple of lines which refer to
25   The Star Observer in 1990, the first line in normal font
26   is:
27
28         Anatomy of a moral panic:  the wave of gay
29         homicides in Sydney.
30
31   Do you see that?
32   A.    Okay, yep.
33
34   Q.    Now, that is the title of the article that you in due
35   course published, isn't it, "Anatomy of a moral panic"?
36   A.    Yeah.
37
38   Q.    This document seems clearly to represent some initial
39   thoughts on your part --
40   A.    Yes.
41
42   Q.    -- in relation to what would in due course become that
43   article?
44   A.    Yes.
45
46   Q.    So you created this document, apparently, on
47   28 February 2017, which is within a few months of starting
```

```
 1      the Parrabell exercise?
 2      A.    Okay, yes.
 3
 4      Q.    And well over a year before the academic review was
 5      completed.
 6      A.    Yes.  There was a time lapse between the publication
 7      and the completion, I think.
 8
 9      Q.    Of the article?
10      A.    Of the Parrabell report.
11
12      Q.    That is true.
13      A.    Yes.
14
15      Q.    Quite right.  Your work, speaking slightly broadly,
16      seems to have been completed by mid to late 2017, at least?
17      A.    Mid to late 2017, yes.
18
19      Q.    And the report was not actually published until June
20      2018?
21      A.    Yes.
22
23      Q.    But here we are in February 2017 --
24      A.    Yes.
25
26      Q.    -- and, under the heading "Anatomy of a moral panic",
27      you have written these notes:
28
29          *A crime wave depends on reliable data.*
30
31      Do you see that?
32      A.    Yes.
33
34      Q.    Then you have written:
35
36          *A moral panic depends on trumped up facts.*
37
38      A.    Yes.
39
40      Q.    Then you've written:
41
42          *Like an urban legend a moral panic joins up*
43          *a plausible explanation with plausible*
44          *data.*
45
46      A.    Mmm-hmm.
47
```

```
 1      Q.   And then you've written:
 2
 3           A moral panic is fed by moral entrepreneurs
 4           (on this case Tomsen, Thompson and [ACON]
 5           as well as a pliant mass media).
 6
 7      Do you see that?
 8      A.   Yes.
 9
10      Q.   So as early as February 2017, when your academic work
11      on Parrabell had only started a few months earlier, you
12      already had the view, it seems, that the suggestion of
13      80-plus gay bias murders amounted to trumped-up facts?
14      A.   I don't - I - these are notes.  I think they are notes
15      to myself.
16
17      THE COMMISSIONER:   Q.   So what?
18      A.   Well, when you are talking to yourself, essentially,
19      about a potential academic application for material, you
20      scope out possibilities.  They may not represent the -
21      certainly the totality of your personal introspection on
22      a subject.  So in terms of an angle for an academic paper,
23      what I do in talking to myself is scoping out possible
24      scenarios.
25
26           You know, another scenario would be, you know, if
27      88 cases are found to be gay bias related, then the
28      material of Parrabell would produce a paper that would be
29      very interesting because it would support what's already
30      evidently believed with respect to the incidence of gay
31      bias homicide.  So, I mean, there are various types of
32      scoping that a person does for papers.  They're not
33      necessarily reflective of the full or complete
34      interpretation of an event; they are an angle on an event,
35      and this is an academic exercise.
36
37           Now, other scoping events in terms of possible
38      approaches or takes on information may be, as I just
39      mentioned, quite different and go in a completely different
40      direction.
41
42      Q.   But this, you would agree, on any view, is
43      a reasonably highly developed insight into your thoughts?
44      A.   It is not a reasonably developed insight into the
45      totality of my thoughts.
46
47      Q.   Did I use the word "totality", Doctor?
```

Transcript produced by Epiq

```
 1      A.   No.
 2
 3      Q.   You choose to use the word, and I accept that, but it
 4      is a highly developed, as it were, scheme or structure as
 5      to your thought processes at the time?
 6      A.   Into one thought process.
 7
 8      Q.   Well, let's say it's one, if you're more comfortable
 9      with one, but it is clear, from the middle of the first
10      page, that you had, in your thoughts, the list of 88 cases
11      when you were developing only one aspect of your thought
12      process in this regard?
13      A.   Yes.  Only one.
14
15      THE COMMISSIONER:   Okay.  Well, Mr Gray will explore that.
16
17      MR GRAY:   Q.   The first question I would like to ask is
18      whether this document, from February 2017, would indicate
19      that you had the view at that time, at least provisionally,
20      that the suggestion of 80-plus gay bias murders amounted to
21      trumped-up facts?
22      A.   Provisionally I would say that if it's the case --
23
24      Q.   Is the answer yes before you develop it?
25      A.   No - I would say no, because it's too strong.
26
27      Q.   Okay.  Why is it too strong?
28      A.   Because it depends on the predicate, which is what are
29      the facts?
30
31      Q.   Well, let's look at what - well - let's look at the
32      next part of what you have written.  You seem to have had
33      the view, at least provisionally, in February 2017, that
34      the moral panic - your expression - in relation to the gay
35      homicides in Sydney topic was like an urban legend, meaning
36      not real?
37      A.   I had a view that in terms of scoping a narrative for
38      a paper, that that was a construction, dependent on what
39      could be uncovered with respect to the facts.
40
41      Q.   And you had the view that a moral panic is fed by
42      moral entrepreneurs.  What's a moral entrepreneur?
43      A.   A moral entrepreneur is understood as an actor who
44      gets behind an issue, develops an issue as a social problem
45      requiring changes in the behaviour or conduct, perhaps, of
46      the law, perhaps of law enforcement, perhaps of other
47      institutions.
```

1
2   THE COMMISSIONER: Q.   When it may or may not be?
3   A.   When what may or may not be?
4
5   Q.   Well, a moral entrepreneur may promote an idea, are
6   you suggesting, without a basis for it, or are you
7   suggesting just promotion of a thought process leading to
8   suggested legal or social change which is not justified?
9   A.   No, the moral entrepreneur is often an actor at the
10   back of a movement or in front of a movement to promote
11   a correction, oftentimes in policy or public interest, in a
12   phenomenon. And so moral entrepreneurs and moral crusaders
13   are oftentimes very important in raising the status of
14   a particular social problem.
15
16   Q.   So they are just agitators who may be agitating for
17   good reason?
18   A.   They are - often times, they are credited, Joseph
19   Gusfield, who is a progenitor of moral - this idea - talked
20   about the Women's Christian Temperance association, and how
21   effective it was in terms of drink, alcoholism, alcohol
22   policy.
23
24   Q.   Let's get back to your words. Did you think
25   Professor Tomsen, Sue Thompson and ACON were moral
26   crusaders agitating for good reason?
27   A.   Yes, I think they were agitating for a - for a good
28   reason.
29
30   Q.   So you weren't intending to be critical of them at
31   all?
32   A.   Well - this is complicated.
33
34   Q.   No, it may be, but were you intending by -- -
35   A.   No, I wasn't intending to be critical of them, no.
36   The idea is that you have to have moral entrepreneurs,
37   moral crusaders. Now, the question is does that overstep
38   the empirical evidence? That's the only - that's the
39   question.
40
41   Q.   I understand that, and you were going to be the
42   arbiter, ultimately in your article, as to whether or not
43   you thought what they were saying had overstepped the
44   empirical threshold, weren't you?
45   A.   I wasn't going to be the arbiter, no. I --
46
47   THE COMMISSIONER: All right. We'll come to that. Yes,

```
 1      Mr Gray.
 2
 3      MR GRAY:   Q.   At any rate, the moral entrepreneurs that
 4      you had in mind in connection with this topic of 80-plus
 5      gay bias murders were Professor Stephen Tomsen, Ms Sue
 6      Thompson, the former police liaison officer, and ACON;
 7      correct?  Is that right?
 8      A.   Well, that is put in there, yes, that's what's --
 9
10      THE COMMISSIONER:   Q.   Sorry, it's not just put in there.
11      You --
12      A.   Well, this is a note to myself.
13
14      Q.   Doctor, obviously, but would you be kind enough just
15      to agree that you typed it yourself, did you?
16      A.   Yes, I did.
17
18      Q.   Yes, okay.  So this wasn't some exterior force coming
19      into your study and saying, "Write Tomsen, write Thompson,
20      write ACON" --
21      A.   Right.
22
23      Q.    -- you were giving them, in brackets, as examples of
24      moral entrepreneurs, weren't you?
25      A.   Yes.
26
27      MR GRAY:   Q.   In connection with this 80-plus gay hate
28      bias homicide topic?
29      A.   Yes.
30
31      Q.   And you were saying in the note to yourself, in other
32      words, in the record of your provisional state of mind,
33      that these three moral entrepreneurs --
34      A.   Excuse me, may I correct that?
35
36      Q.   Yes.
37      A.   It's not a provisional state of mind.  It is one
38      view of a treatment of a possible paper.  As I say, there
39      could - there could easily be other treatments depending on
40      how things work out in terms of whatever the empirical
41      record shows.
42
43      THE COMMISSIONER:   Q.   Doctor, all that may be so, but we
44      are presently - I think you do appreciate this, and if you
45      didn't, let me make it clear - we're looking at your state
46      of mind in late February or mid to late whatever it
47      was, February, 2017.
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1      A.    I don't - with respect, Commissioner, I don't know if
2      that reflects my state of mind.  It reflects --
3
4      Q.    A contemporaneous note that you sit down and write in
5      your computer is not a bad indication of your thought
6      process at least at that stage, is it?
7      A.    At that stage - that moment.
8
9      Q.    That's all we need to deal with.
10     A.    But that's one moment.
11
12     Q.    Doctor, let's deal with it, if you wish, as
13     a nanosecond?
14     A.    Yes, okay.
15
16     Q.    But let's just work on the basis that these are your
17     thoughts at the date that you're being asked about.  If
18     you've got a problem with that, let me know, but I'm going
19     to work on the basis that this is a three- or
20     four-page note that you prepared to yourself, sitting on
21     your own, at or about the date that we're talking about.
22     A.    Okay, thank you.
23
24     MR GRAY:   Q.   Just developing in the way you've been
25     expressing it, are you more comfortable saying that this
26     was your outline of what you might write in an article in
27     due course?
28     A.    Yes.
29
30     Q.    And what you thought you might be writing, when you
31     came to write it fully, was that there was a moral panic in
32     connection with the 88 gay bias cases, and that it had been
33     based on trumped-up facts?
34     A.    Well, as I say, the - this is one potential treatment.
35
36     Q.    Yes?
37     A.    But there are other potential treatments depending
38     on --
39
40     Q.    Maybe so, but this was the one you wrote down?
41     A.    This is the one I wrote down but - yeah.  There were
42     other ones.
43
44     Q.    My question simply is:  this indicates, at least one -
45     you say there may be others but, if so, no document has
46     been produced by you - at least a view that you were
47     writing down for use in a possible future article that you
```

1   had in mind, the theory of which would be that trumped-up
2   facts had led to a moral panic in relation to this topic?
3   That's got to be right, hasn't it?
4   A.   A moral panic depends on trumped-up facts.
5
6   Q.   Yes.
7   A.   Now, whether that comes to play is not clear.
8
9   THE COMMISSIONER: Q.   Doctor, I am going interrupt you,
10   because you are not answering the question, and I'm going
11   to ask you would you please do Mr Gray and myself, for that
12   matter, the courtesy of attending to the question and doing
13   your best to answer the question. We're talking about the
14   time you made these notes to yourself. I'll keep reminding
15   you of that if that escapes your attention. Mr Gray is
16   asking you about your thoughts as at that time.
17   A.   Well, my thoughts are that to qualify as a moral
18   panic, there are facts that need to be treated - trumped-up
19   is one way of describing it - by various media, and so this
20   is - these are the constituent parts of what's required.
21   Now, it doesn't mean that those parts are in evidence.
22
23   Q.   No, but "trumped-up" meaning what - fake news, for
24   example?
25   A.   This, according to this --
26
27   Q.   Would you like to answer my question? "Trumped-up",
28   for example, meaning fake news?
29   A.   I can't say what --
30
31   Q.   Well, what did you mean when you put down "trumped-up
32   facts"? "Trumped-up" means, what, false, inaccurate, fake?
33   "Trumped-up", overexaggerated? Please use whatever
34   terminology of any of those or none of those, but what did
35   you --
36   A.   In the moral --
37
38   Q.   No, please, Doctor, you know by now that it would be
39   helpful to listen to the question. What did you mean by
40   "trumped-up" in that context on that night, afternoon, the
41   nanosecond you typed it up? What did you mean by
42   "trumped-up", there and then?
43   A.   Where the statement about a phenomenon exceeds the
44   information to support the statement.
45
46   Q.   False, inaccurate?
47   A.   An exaggeration.

```
1
2      THE COMMISSIONER:    Thank you.
3
4      MR GRAY:    Q.    "Trumped-up" - I will come back to this
5      when we get to the article itself, but "trumped-up", in
6      ordinary parlance, means much more than just "exaggerated",
7      doesn't it?
8      A.    I'm speaking --
9
10     Q.    It means "falsified" usually?
11     A.    I am - I am - well, yes, I suppose it does.
12
13     Q.    Thank you.  So the theory that you were roughing out
14     here for possible use later in an article was that there
15     had been falsified facts causing a moral panic, and that
16     that moral panic had been fed by, in this case, Stephen
17     Tomsen, Sue Thompson and ACON.  That was the outline of
18     what you thought you might perhaps write at some future
19     time?
20     A.    No, because I said before that there are - a moral
21     panic depends on facts or interpretations or statements
22     exceeding the empirical evidence - so an exaggeration.
23     Whether that - these are - these are constituent parts
24     necessary if a paper such as this could be written.  So
25     these - all these - all these constituent elements need to
26     be - need to be discovered at some point.
27
28     Q.    Presumably you were aware, Doctor, by this
29     time, February 2017, that there was a strongly held view
30     within the NSW Police that claims of 80-plus gay bias
31     homicides were a gross exaggeration?
32     A.    Probably.
33
34     Q.    You were aware of that, weren't you?
35     A.    Yes.
36
37     Q.    And your views, to the extent that they are reflected
38     in this note that you wrote in February 2017, correlate
39     closely with the police view in that regard, don't they?
40     A.    They would appear to correlate with the police view.
41
42     Q.    And you knew that they did, obviously, from what you
43     have just said?
44     A.    Well, I was discovering what the facts were, so - so
45     again --
46
47     Q.    No, excuse me.  Sorry, no, the question.  You knew
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 1     that the views noted down in this document by you
 2     correlated with the police view that claims of 80-plus gay
 3     bias homicides were a gross exaggeration?
 4     A.   Was I conscious of the correlation?  I don't know.
 5
 6     Q.   You knew that that was the police view?  You've just
 7     agreed to that.
 8     A.   Well --
 9
10     Q.   And so there is a correlation between the police view
11     and what you wrote, isn't there?
12     A.   Was I conscious of the correlation?  No, I don't know.
13
14     Q.   There is a correlation, isn't there?
15     A.   Yeah.  Yes, there is a correlation.
16
17     Q.   But you're suggesting that perhaps you didn't put two
18     and two together?
19     A.   Yes, perhaps not.
20
21     Q.   Now, your numbers in the Parrabell report in the end,
22     your final numbers which I looked at yesterday - I can show
23     them to you again if need be but I dare say you remember
24     them - you had 23 as "Not Bias Crime"?
25     A.   Yes.
26
27     Q.   And then you had 17 "Anti-gay Bias" and 12
28     "Anti-paedophile Animus" --
29     A.   Yes.
30
31     Q.    -- which, added together, comes to 29?
32     A.   Yes.
33
34     Q.   And your evidence yesterday was generally to the
35     effect that, at least for some purposes, one should add
36     them together?
37     A.   Yes.
38
39     Q.   And then you had 33 as "Insufficient information" --
40     A.   Yes.
41
42     Q.    -- which, as you've been pointing out, did not
43     necessarily mean that they weren't bias crime --
44     A.   Yes.
45
46     Q.    -- but simply that you couldn't tell.
47     A.   Yes.
```

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1
2   Q.   So if we add the 29 and the 33 - 29 "Anti-gay" and
3   "Anti-paedophile", plus 33 "Insufficient Information" -
4   there are 62 which either did show bias, in your
5   assessment --
6   A.   Yes.
7
8   Q.   -- or might have involved bias --
9   A.   Yeah.
10
11   Q.   -- although you couldn't be sure; correct?
12   A.   Yeah.
13
14   Q.   62 out of 85; correct?
15   A.   Yes.
16
17   Q.   Now --
18   A.   But - yes.
19
20   Q.   Do you want to add something?
21   A.   Yeah, when you - when you look at, I think you said,
22   32 or 33 were "Insufficient Information".
23
24   Q.   You said 33?
25   A.   Yeah, 33. Okay. Right.
26
27   Q.   So 62 --
28   A.   Yep.
29
30   Q.   -- either were or might have been gay hate bias out of
31   the 85?
32   A.   Yes.
33
34   Q.   Does 62 gay bias homicides, if it was that many --
35   A.   If it was, yes.
36
37   Q.   -- seem to you to indicate a problem of serious social
38   concern in that 24-year period?
39   A.   I think any --
40
41   Q.   No, answer that question.
42   A.   Yes.
43
44   Q.   Would you accept that a number that was up to 62
45   rather than up to 85 would understandably lead to the
46   LGBTIQ community being horrified by what had happened?
47   A.   Yes.

Q.   It wouldn't involve them being the victims of a moral
panic, would it?
A.   No.

Q.   Would the possibility of 50 gay hate murders in that
period be sufficient to justify them being horrified?
A.   Well, I suppose one could argue that any number could
justify them being horrified.

Q.   So is there any relevant difference, from the point of
view of moral panic, between 85 and 62?
A.   I don't know the answer to that question. I think
that the - in the moral panic literature, there's a gap
between the discoverable empirical evidence and the claims
with respect to the extent or incidence of a phenomenon.

Q.   Maybe so, but what I'm --
A.   So what that gap needs to be, you know, how big that
gap needs to be I suppose is a big question and I don't --

THE COMMISSIONER: Q.   Does that indicate that expressing
a view ultimately would be outside your area of expertise?
A.   I don't know how to answer that.

Q.   There's a very simple answer. You've been thinking
about these issues over time for I would have thought quite
some time. You're being asked questions about matters
which truly are a few years old. You wrote a very
extensive report on gay hate in joint venture with the
police, as it were. I ask you the question again: is the
question that has just been posed such as you regarded as
outside your expertise and that's why you're unable to
express an opinion about it?
A.   I would not say - I will say no, it's not - that's not
the reason.

Q.   Well, is the answer you do feel able to express an
opinion or you don't feel able? I'm just trying to
understand what your evidence is. You're hesitating, and
I don't really understand. Do you feel it was - the
question is such that it is outside your expertise to
express a view or do you feel it's within your expertise
such that you should be able to express a view, or, rather,
you will express a view?
A.   Can you repeat the question?

```
1      THE COMMISSIONER:   I'll get Mr Gray to repeat it.
2
3      MR GRAY:   Q.   You have said, I think, a few minutes ago,
4      that you regard yourself as having the expertise to express
5      a view on the question that is being put?
6
7      MR TEDESCHI:   Could the question be put, please?
8
9      THE WITNESS:   Could the question be put?
10
11     MR GRAY:   I won't be able to recapture the question
12     precisely, so --
13
14     THE WITNESS:   Then it's very difficult for me --
15
16     THE COMMISSIONER:   Why don't we do it this way.  It is not
17     an unimportant issue.  I will take a few minutes break.  It
18     may be that the reporter has or is able to reproduce in
19     some form for yourself and the witness and, of course, for
20     Mr Tedeschi what the question or questions were, and if I
21     come back in five or ten minutes, then we'll recap.
22     I think it's important enough to try to get the question.
23     I will adjourn for a short period.
24
25     SHORT ADJOURNMENT
26
27     THE COMMISSIONER:   Dr de Lint, please come back.
28
29     MR GRAY:   Commissioner, we are able to bring up on the
30     screen the relevant passage which will identify the
31     question, I believe.
32
33     THE COMMISSIONER:   All right.
34
35     MR GRAY:   Q.   The question that was put, as you can see,
36     the second question on what is now on the screen, was:
37
38         Q.  Would you accept that a number that was
39         up to 62 rather than up to 85 would
40         understandably lead to the LGBTIQ community
41         being horrified by what had happened?
42
43     And you said "Yes".  The question:
44
45         Q.   It wouldn't involve them being the
46         victims of a moral panic, would it?
47
```

1   Answer "No." Then the question was:

2

3   *Q.   Would the possibility of 50 gay hate*
4   *murders in that period be sufficient to*
5   *justify them being horrified?*
6   *A.   Well, I suppose one could argue that*
7   *any number could justify them being*
8   *horrified.*

9

10   *Q.   So is there any relevant difference,*
11   *from the point of view of moral panic,*
12   *between 85 and 62?*

13

14   And you said:

15

16   *A.   I don't know the answer to that*
17   *question.*

18

19   And you referred to the moral panic literature and there
20   being a gap between discoverable empirical evidence and the
21   claims with respect to the extent off incidence of
22   a phenomenon, and you were going to say a little bit more,
23   and then the Commissioner intervened with:

24

25   *Q.   Does that indicate that expressing*
26   *a view ultimately would be outside your*
27   *area of expertise?*

28

29   So the question to which that intervention was directed
30   was:

31

32   *Q.   So is there any relevant difference,*
33   *from the point of view of moral panic,*
34   *between 85 and 62?*

35

36   You said you don't know the answer and the Commissioner was
37   asking you, "Is that because you don't have the expertise?"
38   So can you take it from there.

39

40   MR TEDESCHI: I object to the question but I need to be
41   heard in the absence of the witness.

42

43   THE COMMISSIONER: Certainly. Would you mind stepping
44   outside the hearing room, thank you, Dr de Lint.

45

46   (The witness left the hearing room)

47

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1   MR TEDESCHI: Your Honour, the way I understand his
2   evidence is that he is saying that a moral panic involves
3   a situation where the data that is presented to the
4   community in a misleading or exaggerated way is different
5   to the factual basis on which it is based. My learned
6   friend has added the figures of 23 - sorry, of 29 plus 33
7   equals 62, and the 29 comes from 23 "Not Bias Crime", 17
8   "Anti-gay Bias Crime", 12, "Anti-paedophile Bias Crime",
9   which makes 29, plus 33 "Insufficient Information". So for
10   a start, my learned friend has included those that are not
11   bias crime --
12
13   MR GRAY: No, I haven't.
14
15   MR TEDESCHI: -- in the figures. Please.
16
17   THE COMMISSIONER: No, no, hang on, Mr Tedeschi. I'm
18   sorry --
19
20   MR GRAY: I have not included that. I have included the
21   two versions of "Anti-gay" and "Anti-paedophile", total 29,
22   and the 33 "Insufficient" equals 62.
23
24   MR TEDESCHI: I accept that. Now, the unfairness in the
25   question is that, as I understand his evidence, what he is
26   saying is that the portrayal in the media by the people
27   that he's mentioned is that there are 88 undoubted
28   homicides that are unsolved gay hate murders, and that his
29   calculations would come to the conclusion that there are,
30   in fact, only 29 of those that are identified as a gay hate
31   murder, be they anti-gay or anti-paedophile.
32
33   THE COMMISSIONER: Yes.
34
35   MR TEDESCHI: Now, my learned friend, in including 33 with
36   insufficient information, is including it in the
37   calculation of the reality, but not taking account of the
38   fact that the 88 is purporting, in his analysis, the way
39   that it's presented in the media, as being 88 accepted gay
40   hate murders. So it's comparing apples with oranges.
41
42   THE COMMISSIONER: I don't think it's accepted. I don't
43   think it's accepted. I think the assertion is that it
44   could be up to 88, and there's no doubt that there's an
45   assertion that it could be up to that number. I don't
46   think I have ever seen anything from ACON or anyone else to
47   say there is definitely 88, but there is a suspicion, or

1   a more than suspicion, that in many cases it's more than
2   nil and it certainly could be as many as 88.
3
4   MR TEDESCHI: Yes.
5
6   THE COMMISSIONER: But I don't understand the problem.
7   This is an expert. Either he has expertise or he doesn't.
8   You have conferred with him and you're going to obviously
9   ask him some questions to resurrect, clarify or ask him to
10   make the position clear, and if you can point out the fact
11   that he has been asked to take into account but is either
12   unwittingly doing so, then you can point it out.
13   Alternatively, Mr Gray may well - and you don't know what
14   he has available. The impression I had was the witness
15   would say any real gay hate murder would be a matter for
16   concern.
17
18   MR TEDESCHI: Yes.
19
20   THE COMMISSIONER: And the question is, on one view, the
21   article says none of the 88 are real. So Mr Tedeschi,
22   let's get real. The fact of the matter is this is the
23   prelude, on one view, to the article, although this diary
24   note goes on to talk about involvement with police officers
25   about categories, it's true, but I don't think it's
26   impermissible for an expert or a person who says he has
27   expertise to deal with it in theory. Your position is
28   undoubtedly, "But you have to take 33 out because they
29   don't pass muster of evidence, and then you're left with
30   29".
31
32   MR TEDESCHI: Yes.
33
34   THE COMMISSIONER: And so let the expert say, "Well, 29 is
35   really a moral panic because it is only 29 and not 62", and
36   if he says that --
37
38   MR TEDESCHI: Not 88.
39
40   THE COMMISSIONER: Yes, maybe. But ultimately it'll come
41   to a view of what he thinks about the 88.
42
43   MR TEDESCHI: Yes, I agree.
44
45   THE COMMISSIONER: And one view is - on one view of his
46   early thoughts or whatever it might be, musings - he is
47   questioning the total of 88. And so therefore, what he

1   might be saying on one view - I don't know, I will come to
2   a view about it in due course - that he didn't believe any
3   of them were real, that there might be suspicions and there
4   might be gay hate in eight of them, perhaps. I don't know.
5   I'm not going to stop an expert being asked questions and
6   I won't stop you asking him questions, so I don't see --
7
8   MR TEDESCHI: Commissioner, might I make a submission to
9   you?
10
11   THE COMMISSIONER: Yes, of course.
12
13   MR TEDESCHI: We know what --
14
15   THE COMMISSIONER: If you're trying to suggest to me that
16   the professor is unwittingly agreeing, Mr Gray has made it
17   I thought clear to him that the two numbers which total 62
18   come from his categorisation accordingly. Now, Mr Gray can
19   make that point again and you can make it again when you
20   ask him questions. I don't want to predict what you
21   might --
22
23   MR TEDESCHI: Commissioner, my objection is that, in our
24   submission, the question is misleading and --
25
26   THE COMMISSIONER: I don't think it is in the context of
27   an expert who is --
28
29   MR TEDESCHI: If I could make a submission to perhaps back
30   that up. And I perceive that Dr de Lint is struggling with
31   it. I don't know that --
32
33   THE COMMISSIONER: I do not have that perception. This is
34   a highly intelligent man who rose to the ranks of Professor
35   at Flinders University. He accepted a retainer with your
36   client, and either he has the expertise or he hasn't.
37   I don't propose to put experts in mothballs or cotton wool,
38   or whatever description one might use. If he doesn't turn
39   out to be as expert as he would appear to be, so be it. It
40   is very difficult to put a question that you're misleading
41   an expert in the field in which he is meant to be expert.
42
43   MR TEDESCHI: Commissioner, we have the article --
44
45   THE COMMISSIONER: Are you suggesting to me that he is so
46   vulnerable at the moment and fragile that he may make
47   a concession --

1
2   MR TEDESCHI: Commissioner, I haven't been able to put my
3   submission to you.
4
5   THE COMMISSIONER: I don't understand what you are
6   putting. If you put it succinctly, it would help.
7
8   MR TEDESCHI: The submission, with respect, is this: my
9   learned friend's question is misleading because we know
10   from the article what this man intends by his notes, and
11   what he intends by his notes is this, that in the public
12   arena, the impression that is being put about is that there
13   were 88 unsolved gay hate homicides.
14
15   THE COMMISSIONER: Yes.
16
17   MR TEDESCHI: Whereas in reality it was considerably less
18   than that.
19
20   THE COMMISSIONER: Sure.
21
22   MR TEDESCHI: And it might have been as low as 29, because
23   that was the number that was found by the academics during
24   their exercise in Parrabell.
25
26   THE COMMISSIONER: Yes.
27
28   MR TEDESCHI: That's what I understand to be the basis of
29   the article, and that's the way that I understand his notes
30   as well.
31
32   THE COMMISSIONER: Sure.
33
34   MR TEDESCHI: But my learned friend is putting it in a
35   potentially misleading way by adding the 33 that were found
36   to be "Insufficient Information" and therefore making
37   a total of 62.
38
39   THE COMMISSIONER: Mr Tedeschi, I have heard you say this
40   several times. He hasn't said there are 62 and he hasn't
41   explained to the witness how those numbers are derived. He
42   has said there were this number and there were --
43
44   MR TEDESCHI: His question was "Is 62 out of 85 a moral
45   panic?"
46
47   THE COMMISSIONER: No, no, no, let's go back a little bit

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1      higher than that.  I thought he put the --
2
3      MR TEDESCHI:
4           Q.    Would you accept that a number that
5           was up to 62 rather than up to 85 would
6           understandably --
7
8      THE COMMISSIONER:   Yes, but you have to go back higher
9      than that.  But, look, I'm going to permit Mr Gray, as
10     I will you - you can unpick any misleading impression that
11     you think this witness has been labouring under, and as you
12     well know, from what has been going on to date, I haven't
13     stopped leading questions, whether you call them Dorothy
14     Dixers or not.  If you think it's unfair, I note what
15     you've said but, one, this is not adversarial litigation;
16     two, this man is an expert; three, this is a thought
17     process prior to an article and I don't see any reason why,
18     in principle - it's like any expert evidence, and you know
19     as well as anybody else, if an assumption is put to an
20     expert and the expert expresses a view, and the underlying
21     assumption is fallacious, the expert's view doesn't stand.
22
23         So you're in the perfect position, if it turns out to
24     be so, to say, "This was a misconceived proposal because
25     the sum total was not 62, it could never be 62.  More to
26     the point, his objection to fake news was not to gay
27     unsolved homicides but to 88".  I understand that.  And no
28     doubt you're ready to go in terms of correcting the
29     misapprehension.  I'm alive to all the issues.
30
31     MR TEDESCHI:   If the Commission pleases.
32
33     THE COMMISSIONER:   Thank you.  Can Dr de Lint come back
34     in, please, thank you.
35
36         (The witness returned to the hearing room)
37
38     MR GRAY:   Commissioner, just as Dr de Lint is coming, may
39     I just make these observations for the record.  The
40     question that I asked about the 62 was the subject of
41     a simple answer "Yes".  There was no objection taken.  And
42     the question that has now actually given rise to this
43     objection is the question after the break, picking up the
44     question that you, Commissioner, had asked about expertise.
45
46     MR TEDESCHI:   My underlying objection is to my friend's
47     question.  "So is there any relevant difference from the
```

1   point of view of moral panic between 85 and 62?"

2

3   THE COMMISSIONER: That's very interesting, Mr Tedeschi,
4   I can read as well, but the question we had arrived at, or
5   the position we had arrived at, was whether any difference
6   between asserted numbers and actual numbers might make any
7   difference, whether the number was X or Y or 3X or 4Y, and
8   it reached a point where, for whatever reason, Dr de Lint
9   says he didn't - wasn't able to answer, it wasn't simple.
10   That provoked me to say, "Well, in a question of proportion
11   of this sort, underlying assumption it might be accurate -
12   it doesn't matter if it is accurate or inaccurate - if you
13   get down to these kinds of proportions, are you able to
14   express a view, and he said, on one view, it wasn't
15   a simple question. That's what provoked me to say was it
16   outside his expertise?

17

18   So we're a long way away at the moment from I think
19   your concerns but I'm alive to your concerns. So, Mr Gray,
20   I will permit you to put it. But having heard all of this,
21   Dr de Lint is entitled to have put, I think, whatever it is
22   you want to put again.

23

24   MR GRAY: Q.   I have in fact put what I wanted to put.
25   But I will go over it again with you, Dr de Lint, because
26   of the various concerns that Mr Tedeschi has raised. In
27   your numbers in the report, adding "Anti-gay" and
28   "Anti-paedophile" together, we get 29, don't we; correct?
29   A.   Yes.

30

31   Q.   Right. So on the view of the academics, there were at
32   least 29 bias related homicides --
33   A.   Yes.

34

35   Q.   -- out of the 80 plus?
36   A.   Yes.

37

38   Q.   Pausing there. Would 29 be enough for the LGBTIQ
39   community to have ample reason to be horrified by that
40   number of murders in a 24-year period?
41   A.   Yes.

42

43   Q.   That wouldn't involve a moral panic on their part,
44   would it?
45   A.   No.

46

47   Q.   In your report, as you've very candidly explained this

```
 1    morning and to some extent yesterday - the cases that you
 2    put into the "Insufficient Information" category, of which
 3    there are 33, are not cases where you're saying "It's not
 4    bias crime"; they're cases where you're saying, "We're not
 5    able to say"?
 6    A.   Yes.
 7
 8    Q.   And therefore, I put to you - and I think you agreed,
 9    because it's pretty obvious - that there is the
10    possibility, on your numbers, of a total of up to 62?
11    A.   Yes.
12
13    Q.   Being 29 plus 33?
14    A.   Yes.
15
16    Q.   I think you agreed with that.  And hence my question
17    was:  would the possibility of as many as up to 62 seem to
18    indicate a problem of serious social concern?  And I think
19    your answer is --
20    A.   Yes.
21
22    Q.   -- well, yes it would; is that right?
23    A.   Yes.
24
25    Q.   So, anyway, indeed - I'll go back a step - even if the
26    number was lower than that, if it was 10 gay hate murders
27    in a 24-year period, that would be sufficient --
28    A.   Yes.
29
30    Q.   -- and a serious social concern, wouldn't it?
31    A.   Yes.
32
33    Q.   Which again would not be a moral panic?
34    A.   Moral panic and serious social concern aren't
35    antonyms.
36
37    Q.   They are not antonyms?
38    A.   Yes.
39
40    THE COMMISSIONER:   Q.   I didn't hear that, "not" --
41
42    MR GRAY:   He said, "They are not antonyms".
43
44    THE COMMISSIONER:   Antonyms, right.
45
46    THE WITNESS:   I mean, they're not opposites, they don't
47    exclude each other.  So that a matter can be of serious
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 1   social concern. That doesn't mean that in terms of the gap
 2   between the empirical number, discovered number, the sort
 3   of known number, and the representational number isn't
 4   significant for the points of view of the literature of
 5   moral panic.
 6
 7   Q.   I understand your point on that, and you've made it
 8   several times, and it's clearly understood, I'm sure.
 9   A.   Okay.
10
11   Q.   But my question, which is a different one, I think,
12   is: even a much lower number, say, 10, would give rise to
13   serious moral concern?
14   A.   Yes.
15
16   Q.   I'm sorry, serious social concern?
17   A.   Yes.
18
19   Q.   In the community, including the LGBTIQ community?
20   A.   Yes.
21
22   Q.   Over a 24-year period?
23   A.   Yes.
24
25   Q.   If it's 29, which you say it was at least --
26   A.   Yes.
27
28   Q.   -- then all the more so?
29   A.   Yes.
30
31   Q.   And if it was up to a possible 62, which your report
32   allows for the possibility of --
33   A.   Yes.
34
35   Q.   Then even more so again?
36   A.   Yes.
37
38   THE COMMISSIONER: Q.   But at the time you were roughing
39   out your musings, at least in part, with an article in
40   mind, you were proceeding, were you not, upon the basis
41   that the 88 assertions which had been current, either had
42   no base for any of them or very few of them?
43   A.   No, I don't think that I was. Certainly not, no..
44
45   Q.   Well, then, why were you talking about the "started
46   with the list of 88" in the context of this, and you go on
47   to say that the list was being used in the Scott Johnson

1 matter, as if to suggest that it was being put forward as
2 a given in circumstances where it shouldn't have been?
3 A.   Because 88 was still in doubt.
4
5 Q.   I'm sorry?
6 A.   Because the number 88 was still in doubt.
7
8 Q.   Maybe, but you were saying that it was nothing like
9 that; it was just - a total exaggeration, as you were
10 thinking about it at this point. And the example you give
11 was that this had got some life of its own, proliferated or
12 as part of the entrepreneurial activities of Tomsen,
13 Thompson and ACON and a pliant media?
14 A.   In moral panic literature it is the difference between
15 empirical findings and representations thereof, oftentimes
16 mostly in media, which is, I guess, the problem sect.
17
18 Q.   But do you see what you are being asked? The musings
19 here are directed to the 88 which you say has got some form
20 of folklore or currency about it, and it was being overused
21 because it was a gross exaggeration. They're the thoughts,
22 aren't they, if not express, implicit?
23 A.   I can't say what - I'm not looking at anything in
24 front of me right here.
25
26 Q.   Well, let's put it in front of you, Doctor. I dare
27 say you will be asked about it a bit more, if not by me
28 then by Mr Gray or Mr Tedeschi. Okay. So if you look
29 down, you'll see "Started with a list of 88" - that's after
30 you have referred to Tomsen, Thomson, ACON and a pliant
31 media, "Started with list of 88"; do you see that?
32 A.   Yes.
33
34 Q.   Then below that you are critical because you say the
35 list has got some currency, status, whatever you think -
36 unjustified by the sound of it - and it has emerged in the
37 Scott Johnson inquest, so that's how insidious this list is
38 because it's poking its nose into all manner of things.
39 That's really what you're musing about, isn't it?
40 A.   Yes, the idea is that the list becomes a totem and --
41
42 Q.   I do understand that, and the word "totem" is
43 something that no doubt you will be reminded of in due
44 course, but you are criticising the totality of the 88 or
45 the fact that the 88 continues to be asserted when it must
46 be much less than that because it is a gross exaggeration -
47 aren't they your thoughts?

1   A.   I assumed that it's going to be less than 88, and
2   I also assumed that there isn't a comparator with respect
3   to how 88 sits across cities, jurisdictions, et cetera.
4
5   Q.   That's not the point. The point is you're criticising
6   people activating themselves in the local jurisdiction.
7   The 88, as far as you know, wasn't being used in Seattle,
8   New York, Paris, Rome or anywhere else. You're talking
9   about it in the very context of you being up to your ears,
10   as it were, at this time, in relation to the preparation of
11   the Parrabell report, weren't you?
12   A.   I have - as a person that's involved in multiple
13   projects, I compartmentalise. So, you know, I can have
14   a compartment that deals with matters for the purposes of
15   an audience and a presentation or a format which is
16   academic, and I can compartmentalise for other venues. So
17   that's what I do as an academic.
18
19   Q.   All right. I'm going to stop you there, because your
20   general work as an academic I accept is valuable from your
21   point of view. But in the context of this list, do you see
22   what you have said - the list was being used in the Scott
23   Johnson inquest to reverse the onus - your words, aren't
24   they?
25   A.   This is a hypothesis.
26
27   THE COMMISSIONER: All right. Yes, Mr Gray.
28
29   MR GRAY: Q.   I will move on, I think, Dr de Lint.
30   A.   Thank you.
31
32   Q.   Do you accept that what this document indicates is
33   that from as early as February 2017, you had in mind the
34   possibility of writing an article which would describe the
35   concerns of the LGBTI community in connection with a figure
36   of 88 as a moral panic, fed by entrepreneurs promoting
37   trumped-up facts?
38   A.   No, not the - I wouldn't say that that's - represents
39   the concerns of the community, no. I mean, this has - this
40   is the relationship between what the - how the - how a
41   phenomenon is being represented.
42
43   Q.   I will break it down into two parts.
44   A.   Yes.
45
46   Q.   The document indicates that you had in mind the
47   possibility of writing an article describing the concerns

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 1        of the LGBTI community in relation to an 88 number as
 2        a moral panic, clearly?
 3        A.    Not the concerns of the LGBTIQ - no, no.
 4
 5        Q.    Well, what was the moral panic, then, that you had in
 6        mind talking about?
 7        A.    I can't say because I - as I say, I was developing an
 8        hypothesis, and I cannot say what I - what I had in mind at
 9        the time.  I cannot go back to that and put myself and
10        think what I had in my mind.
11
12        Q.    Well, if that's your evidence, so be it.  At any rate,
13        your written expression of what you had in mind involves
14        the notion that the moral panic that you had in mind
15        talking about was one that depended on trumped-up facts?
16        A.    I think we've already been over that and I --
17
18        Q.    Is the answer "yes", at least in that sense?
19        A.    I outlined some constituent requirements of a paper
20        and some of the elements that need to be addressed in order
21        to construct that paper.
22
23        Q.    Yes.  And one of them was that you had in mind writing
24        about a moral panic?
25        A.    Yes.
26
27        Q.    And another one was that you had in mind making
28        a point about the moral panic in question, namely, that it
29        depended on trumped-up facts?
30        A.    "A moral panic depends on trumped-up facts" is what
31        I have there, and that is an element or a constituent
32        element of a paper that would need to be developed along
33        lines that relate the empirical data to the representation
34        of a phenomenon in media.
35
36        Q.    Yes.  You have said that.  But the moral panic that
37        you had in mind here was a moral panic in relation to
38        a list of 88 concerning gay bias deaths, wasn't it?  That's
39        the topic that the moral panic in question, in your
40        anticipated article, was going to be talking about?
41        A.    The question was whether that would be an illustration
42        of a gap between facts and - or empirical facts and
43        representations.
44
45        Q.    Trumped-up facts?
46        A.    Well --
47
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 1    Q.    That's your language.  Not just some bloodless gap but
 2    trumped-up facts?
 3    A.    In a description of the necessities of a paper of - on
 4    moral panic, I wrote that line.  But that is what - that is
 5    to describe the gap between the empirical and the
 6    representational.
 7
 8    Q.    The use of the word, the expression, "trumped up", is
 9    just a description of a gap between the empirical and the
10    representational?
11    A.    Yes.
12
13    Q.    Is that a serious answer?
14    A.    Yes.  I mean, that's - that's what that - that's how -
15    because the moral panic literature has this discussion,
16    this whole long discussion or interest in this question of
17    this empirical gap.
18
19    THE COMMISSIONER:   Q.   So does that follow, that the
20    moral panic is sometimes induced by factual material which
21    is accurate, in part?
22    A.    Well, the - one of the problems - well --
23
24    Q.    No, no, would you like to answer the question, please?
25    A.    Sure.
26
27    Q.    Does that mean that you had in mind that a moral panic
28    can sometimes be induced by factual material, part of which
29    is true?
30    A.    Sorry.  My hearing isn't very good and I didn't hear
31    the last part of that.
32
33    THE COMMISSIONER:   I won't ask it.  I will just let
34    Mr Gray put it to you.
35
36    MR GRAY:   Q.   Can we at least glean this from what you
37    wrote in February 2017, that the moral panic in this case -
38    I'm looking at your words - was one fed by moral
39    entrepreneurs, namely, Tomsen, Thompson and ACON?
40    A.    A moral panic depends on --
41
42    Q.    No, no, the question - please - were you identifying
43    here in what you wrote in 2017 a particular moral panic in
44    this case, namely, the one where Tomsen, Thompson and ACON
45    were the moral entrepreneurs feeding it?
46    A.    Did I write that?  Yes.
47
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1      Q.   And is that what it meant, what I just said?
2      A.   I know that I was - what I was thinking.
3
4      Q.   Well, I will ask it again.  Isn't it saying that you
5      had in mind a particular moral panic when you were writing
6      these notes, namely, a moral panic, in this case, being the
7      one where you called Tomsen, Thompson and ACON as moral
8      entrepreneurs feeding that moral panic?
9      A.   That would be part of a hypothesis.
10
11     Q.   Thank you.  Let's go to the article that emerged some
12     time later.
13
14     THE COMMISSIONER:   Before you do, I'm sorry to do this.
15
16     Q.   The balance of this note also deals, does it not, with
17     some of your criticisms, perceived as early as February or
18     in February, of the Bias Crime Indicator Form as
19     communicated to you, as a result of your exchanges with the
20     police.  Look at paragraph 3 on the next page of the note.
21     I don't want to ask you any detail about it, I just want to
22     ask you, these were also your thoughts about exchanges you
23     had had about the form, et cetera?
24     A.   You are referring to number 3 there?
25
26     Q.   Yes, I'm referring to it as 3, and 4.  Simple
27     question:  are they your thoughts, at least at the date of
28     this note, about the differences or the concerns that you
29     had with the form being used by the police?
30     A.   Yes.
31
32     THE COMMISSIONER:   Thank you.  Yes, Mr Gray.
33
34     MR GRAY:   Q.   Could we have volume 8, tab 205
35     [SCOI.82022_0001].
36
37          Just while that's coming, Commissioner, I have been
38     reminded, and I may have known this before, I probably did,
39     but at any rate, I have been reminded that
40     Professor Asquith really needs to give her evidence today,
41     because she is not available next week.
42
43     THE COMMISSIONER:   All right.  That's simple.  We have two
44     options.  What you are about to start may not be completed
45     by 1 o'clock?
46
47     MR GRAY:   No, it won't be.
```

THE COMMISSIONER: All right. Then what I would propose
is this: unless Mr Tedeschi has a particular problem,
I will adjourn now, come back in, say, 40 minutes or so,
and Professor Asquith can be interposed and Dr de Lint can
follow Professor Asquith.

        Is there any particular problem, Dr de Lint, from your
point of view - I know there are some domestic issues.

THE WITNESS: Yes.

THE COMMISSIONER: There are domestic issues but we will -
I think if you sort out amongst yourselves the domestic
issues, which I'm aware of, I would see no difficulty, for
example - let me come to you, Mr Tedeschi. If
Professor Asquith were called at 1.30, 1.40, or something,
Mr Gray would be short. Would you finish Professor Asquith
today?

MR TEDESCHI: Oh, yes.

THE COMMISSIONER: Would there be enough change left in
the day, though, for Mr Gray - Mr Gray, you will have to
come back to the article - I am anxious that we can get
Dr de Lint away as opposed to inconveniencing him next
week.

        Look, why don't you talk among yourselves.

MR TEDESCHI: Yes. Pardon me for just one moment.

THE COMMISSIONER: Yes.

MR TEDESCHI: Based on what my learned friend has told me,
your Honour, I'm quite confident that we can finish
Dr de Lint today.

THE COMMISSIONER: Yes, but that's not the issue. Would
you have any objection --

MR TEDESCHI: I have no be objection to the other witness
being intervened.

THE COMMISSIONER: What about this: it is 5 to 1. What
about if I come back at, say, 20 to 2, and we deal with
Professor Asquith. Dr de Lint, as an expert, is entitled

```
 1      to listen to another expert, so I have no problem with you
 2      being in the room.  I don't expect you to walk around
 3      Sydney in the rain.
 4
 5          We will interpose Professor Asquith and come back to
 6      Dr de Lint.  The object will be to get both
 7      Professor Asquith and Dr de Lint finished today.
 8
 9      THE WITNESS:    Thank you.
10
11      MR TEDESCHI:    Yes, that's suitable.
12
13      THE COMMISSIONER:    All right.  What I will do is this.
14      I will indicate that this afternoon, subject to reporting
15      staff, et cetera, I could sit on until, say, 5.
16
17          Now, don't look at me like that, Mr Tedeschi, your
18      professional diary is of no interest to me, nor your social
19      diary.
20
21      MR TEDESCHI:    It is not a social - it is a professional
22      engagement, Commissioner.
23
24      THE COMMISSIONER:    Would 4.30 see us done?
25
26      MR TEDESCHI:    4.30 will be fine.
27
28      THE COMMISSIONER:    I am happy to sit on this afternoon to
29      make sure that both Dr de Lint and Professor Asquith get
30      away.  I will at least sit until 4.30, if it turns out to
31      be 25 to - what I am saying is I would like to sit on and
32      get both done.  All right.  It is 5 to; I will resume at,
33      say, 20 to 2.  I will adjourn.
34
35      LUNCHEON ADJOURNMENT
36
37      THE COMMISSIONER:    Yes, Mr Gray.
38
39      MR GRAY:    The next witness is Professor Nicole Asquith.
40      I call Professor Asquith.
41
42      THE COMMISSIONER:    Professor, would you come forward,
43      thank you.  Will you take an oath or an affirmation?
44
45      PROF ASQUITH:    Affirmation.
46
47
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1   <NICOLE ASQUITH, affirmed: [1.42pm]
2
3   <EXAMINATION BY MR GRAY:
4
5   MR GRAY: Q.   Professor, you are a professor at the
6   University of Tasmania. Indeed, you are the Chair and
7   Professor of Policing and Emergency Management in the
8   School of Social Sciences in the College of Arts, Law and
9   Education at that university?
10 A.   That's right.
11
12 Q.   And you have prepared a report for the purposes of
13 this Special Commission, which is dated 25 January 2023?
14 A.   That's correct.
15
16 Q.   I have one matter that I would just ask you about
17 briefly and then Mr Tedeschi will ask you some questions.
18 At paragraphs 119 to about 132 --
19
20 THE COMMISSIONER: Mr Gray, I think there is a problem
21 with the sound, I'm not quite sure. We need a couple of
22 minutes to sort it out.
23
24   Yes, Mr Gray, apparently we are right.
25
26 MR GRAY: Do I need to repeat anything I have said?
27
28 THE COMMISSIONER: No, apparently not, thank you.
29
30 MR GRAY: Q.   Professor, just this one matter. At
31 paragraphs 119 through to about 132, you were talking about
32 the United Kingdom model. Do you see that?
33 A.   Yes.
34
35 Q.   And you refer to the fact that it's referred to often
36 enough as a subjective model. Is the use of the concept of
37 a subjective model in relation to the UK concerned with the
38 investigatory stage of a police investigation rather than
39 the court hearing stage?
40 A.   Yes, there is a distinction, and I think this is
41 something that's come through throughout the last couple of
42 weeks of evidence, is the assumption that if a victim
43 claims it to be a hate crime, then that is it, it is a hate
44 crime, when, in fact, we're talking about two distinct
45 things, the policing practices and the legislation. And
46 the policing practices in the UK preface and give a
47 dominant role of the victim's perceptions. Whether that

1   then leads to a prosecution as a hate crime will be
2   dependent upon the evidence that is presented, the evidence
3   that is collected. All it does is prompt the police
4   officer to recognise that they may need to collect very
5   specific forensic evidence.
6
7   MR GRAY: Thank you.
8
9   THE COMMISSIONER: Yes, Mr Tedeschi.
10
11   **<EXAMINATION BY MR TEDESCHI:**
12
13   MR TEDESCHI: Q.   Professor Asquith, thank you very much
14   for your report. You tendered for the job that was
15   advertised by the NSW Police?
16   A.   Yes. I was approached initially to put in a bid
17   before it went to tender, and then I also tendered as well.
18
19   Q.   So you were obviously interested in participating in
20   this program?
21   A.   That's right.
22
23   Q.   Do you see some real social value in what the police
24   were proposing?
25   A.   What they were proposing in the tender documents, yes,
26   without a doubt.
27
28   Q.   What did you see as being the social value?
29   A.   The social value of undertaking this kind of activity
30   was to demonstrate that NSW Police were concerned about
31   past practices and possibly identifying bad practices that
32   they would not replicate in the future.
33
34   Q.   So really, can I suggest, it was to some considerable
35   degree, a PR exercise?
36   A.   Yes.
37
38   Q.   And it was designed to show, as you say, past
39   practices that were undesirable that were no longer being
40   used?
41   A.   That they perceived that were no longer being used;
42   whether the community perceived that was a different case.
43
44   Q.   And was it also part of the exercise that you
45   perceived that they wanted genuinely to know the incidence
46   of gay hate crimes so as to be able to publicly acknowledge
47   that this was a real problem?

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 1        A.    I think in principle, yes, the rhetoric was, but the
 2        practice was not.
 3
 4        Q.    But that was the aim or the objective --
 5        A.    The intent, yes,
 6
 7        Q.     -- of the exercise, so far as you could tell from the
 8        police?
 9        A.    That's right.
10
11        Q.    And you were keen to assist them in all of that,
12        because it was a highly desirable objective?
13        A.    That and also because I'd had history with some of the
14        cases and that I'd been working within the community sector
15        as a client advocate at the time of many of the incidents.
16
17        Q.    In New South Wales?
18        A.    In New South Wales.
19
20        Q.    Now, you understood from the invitations to tender
21        from the police, that independence was very important?
22        A.    That's right.
23
24        Q.    And were you led to believe that one of the reasons
25        why you didn't get the job was because of that prior
26        contact that you'd had with the police, that they were
27        concerned that, because you had had that prior contact with
28        the police, there might be some people in the LGBTIQ+
29        communities who might say, well, you know, you've got some
30        prior contact, therefore, you're not fully independent?
31        A.    I doubt that anybody in the LGBTIQ community would
32        expect that of me or Associate Professor Angela Dwyer.
33
34        Q.    Because they know you?
35        A.    Exactly, and because I participate in quite a lot of
36        work in this space with the community.
37
38        Q.    But did it appear to you that the police were
39        concerned about that?
40        A.    My understanding, because it was never put in writing,
41        it was only by a phone conversation from Jacqueline Braw,
42        that the reason why we were perceived as not being
43        independent was not being independent of the LGBTIQ
44        community, but independent of Stephen Tomsen, who was also
45        at Western Sydney University with me.
46
47        Q.    So that you were not independent of him?
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```
 1        A.   Yes.
 2
 3        Q.   So what was the problem with him?
 4        A.   Because he was not perceived as being independent
 5        enough to be able to undertake this kind of work.
 6
 7        Q.   I see.  So you were not independent enough because of
 8        your association with someone else?
 9        A.   That's right.  That was the perception that we got
10        from a phone conversation.
11
12        Q.   All right.  But when you put in your tender, you knew
13        what it was that the police wanted you to do?
14        A.   According to the terms of the tender documents, yes.
15
16        Q.   And that did not involve - correct me if I'm wrong,
17        that did not involve any reinvestigations by the police?
18        A.   That's correct.  It was about looking at the case
19        summary files.
20
21        Q.   And were you aware at that stage that it would not
22        necessarily mean that you, as the academic adviser, would
23        have access to the original documents --
24        A.   No.
25
26        Q.    -- that you'd be looking at some summaries and things
27        like that?
28        A.   No, we were - according to the tender documents, it
29        was about getting access to the case files.
30
31        Q.   The original case files?
32        A.   Yes.
33
34        Q.   If I can take you --
35
36        THE COMMISSIONER:   Excuse me just interrupting.
37
38        Q.   Professor Tomsen, remind me, was not part of your
39        tender, was he?
40        A.   No, he was not.
41
42        THE COMMISSIONER:   Thank you.
43
44        MR TEDESCHI:   Q.   Do you have a copy of your report there?
45        A.   I do.
46
47        Q.   I would like to go through some select parts of your
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 1    report.  Could I take you to page 12, please.
 2    A.    Mmm-hmm.
 3
 4    MR TEDESCHI:    Commissioner, would you like the volume and
 5    tab number?
 6
 7    THE COMMISSIONER:    I have it handy but if you have
 8    a volume number for the transcript, it might be helpful.
 9
10    MR TEDESCHI:    I will get that from my friend.  It's at
11    tab 255 [SCOI.82368.0001_0001].
12
13    THE COMMISSIONER:    At volume?    I have a copy but I think
14    for the transcript it might be helpful.
15
16    MR TEDESCHI:    I'm told it's volume 12.
17
18    THE COMMISSIONER:    Thank you.
19
20    MR TEDESCHI:    Q.    Professor, around the middle of the
21    page, it says that Associate Professor Dwyer recalled that
22    Associate Professor Derek Dalton had done some work in
23    relation to policing in gay beats and you then say:
24
25        I recall giving Jackie Braw --
26
27    Who was one of the police people, not an officer, I think?
28    A.    That's right.
29
30    Q.    An admin assistant?
31    A.    A liaison coordinator, I think it was - yes.
32
33    Q.
34        I recall giving Jackie Braw Associate
35        Professor Dalton's name around the middle
36        of 2016 as a person who had done some work
37        in the field but at that stage, I knew very
38        little about Associate Professor Dalton and
39        I had no familiarity with him or his work.
40
41    I take it you were asked to recommend some other people so
42    that they could get a number of tenders so that it was
43    a proper tender process?
44    A.    That's correct.
45
46    Q.    And you say that you recommended Professor Dalton,
47    even though you didn't really know much about him.  Was
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 1    that because there are very few people in Australia who you
 2    felt were qualified to do this work?
 3    A.   I have to say from the outset, I wasn't recommending;
 4    I was passing on that detail.
 5
 6    Q.   Yes.
 7    A.   Because I did not know of Derek Dalton's work at that
 8    point.
 9
10    Q.   I accept that.
11    A.   It was --
12
13    Q.   What I'm asking is why did you pass on someone's name
14    who you didn't know much about?  Was that because there
15    were very few people in Australia who were qualified?
16    A.   At that stage, yes.  The only other person that
17    I would have advised would be Professor Gail Mason and
18    she'd already indicated that she was not prepared to do the
19    work.
20
21    Q.   Yes, I think Gail Mason - the evidence is that
22    Gail Mason had already been approached --
23    A.   That's right.
24
25    Q.    -- and she didn't have the time?
26    A.   So that was before we went to tender, Gail was
27    approached and Gail suggested that I was approached by
28    Jackie, and that was before the tender process.
29
30    Q.   All right.  If I could take you next, please, to
31    page 24.  You are commenting, on that page, about the
32    BCIF - the Bias Crime Indicator Form, and you state there
33    that the original nine bias crime indicators were created
34    by McLaughlin, the typology was expanded by Levin and
35    McDevitt, so you're referring there to some academic
36    literature there about the BCIF?
37
38    MR GRAY:   I object.
39
40    THE WITNESS:   Two separate things --
41
42    MR GRAY:   It's not about the BCIF.  It's about the
43    indicators.
44
45    THE COMMISSIONER:   Yes.
46
47    MR TEDESCHI:   I'll clarify that.
```

Q.   Was that academic literature about the indicators in
the BCIF?
A.   Two separate things. The Levin and McDevitt and the
McDevitt et al work, which was the original typology and
the expanded typology, existed prior to McLaughlin's work,
and it was their original and their expanded typology that
McLaughlin et al developed the training program.

Q.   But what you're talking about there are the indicators
in the BCIF; is that right?
A.   Not on that page because all I'm talking about there
is the typology presented by Levin and McDevitt, and
McDevitt et al in the expanded.

Q.   Didn't that form the basis for the indicators in the
BCIF?

THE COMMISSIONER: If you read what the first
paragraph says, though, it's an assumption, I think she's
been asked to make, but she may have independent knowledge
about it, of course.

MR TEDESCHI: Q.   Is it correct to say that those three
authors that you've mentioned were - their academic
publications were the basis for the indicators or the
criteria in the bias crime --
A.   I don't think there is a direct relationship between
the typologies created by Levin and McDevitt and McDevitt
et al and how it's operationalised in a policy and practice
and education document by McLaughlin et al. They reference
Levin and McDevitt and McDevitt et al. But as you can see,
Levin and McDevitt had three and then originally four
categories of motivations, whilst we know the BCIF has nine
and plus a ten that the NSW Police added.

Q.   Was it their work that led to the nine in the American
test?
A.   I'm really not sure if it - if Levin and McDevitt
worked directly with McLaughlin et al or whether McLaughlin
et al actually developed that independently of them
individually.

Q.   May I take you to page 26, paragraph 78. You say:

        Despite these caveats about its efficacy
        and face value, Levin & McDevitt's typology

```
 1            continues to be used in hate crime
 2            scholarship.
 3
 4       Now, when you say, "Despite these caveats about its
 5       efficacy and face validity", are you referring there to the
 6       criteria, the nine of the 10 criteria in the BCIF?
 7       A.    No.  I'm referring to the Levin and McDevitt typology.
 8
 9       Q.    So what are you referring to?  What is their typology?
10       What's that a reference to?
11       A.    That's the typology that is listed at point 70 on
12       page 24 - so "Thrill", "Reactive", "Mission", and then
13       later the expanded category of "Retaliatory".
14
15       Q.    All right.  So those four different categories?
16       A.    That's right.
17
18       Q.    Did those four different categories eventually get
19       expanded into the nine categories?
20       A.    No.  They were originally three and they were expanded
21       to four.
22
23       Q.    So what's the academic basis for the nine categories
24       that were used by the FBI in America and that were
25       incorporated into the BCIF?
26       A.    I do not know.  I expect that they - because they
27       reference Levin and McDevitt in that training program, that
28       they drew on their typology.
29
30       Q.    Who did?
31       A.    McLaughlin et al.  The FBI, I expect, would have drawn
32       on Levin and McDevitt's work because I know that at least
33       one of their projects were funded by the NIJ, but how they
34       developed, I'm not sure if it was directly related to that
35       original work.
36
37       Q.    So what I'm trying to get in a very broad sense is the
38       Levin and McDevitt material was developed by McLaughlin.
39       That work was incorporated into the nine categories that
40       were used by the FBI, and those same categories were nine
41       of the 10 that were used in the BCIF?
42       A.    That's correct.
43
44       Q.    Is that roughly right?
45       A.    Yes, that's correct.
46
47       Q.    What you say at paragraph 78 is that there are some
```

```
 1    caveats --
 2    A.    Mmm-hmm.
 3
 4    Q.     -- about the efficacy and the validity of those
 5    categories - of the typology?
 6    A.    Yes.
 7
 8    Q.    Correct?
 9    A.    That's right.
10
11    Q.    The typology that's led to the BCIF?
12    A.    That's right.
13
14    Q.    But that despite that, it continues to be used in hate
15    crime scholarship?
16    A.    That's right.
17
18    Q.    Is that in many parts of the world?
19    A.    Yes, as I note on footnote 28.  There is a list of
20    publications there that I've referred to and that is just
21    a selection that directly relate to the application of that
22    typology or the testing of that typology.
23
24    Q.    And as you note in your report - I mean, there are
25    some real problems with that typology, aren't there?
26    A.    I think the issues with the typology come from
27    a couple of - for a couple of reasons.  One is the typology
28    was created within the context of US jurisprudence at that
29    time and it was very specific at that time that it was very
30    much focused on racist --
31
32    Q.    More than 20 years ago?
33    A.    Yes, and it was focused on predominantly racist
34    violence, and we know even to this day that the
35    predominant - the large number of hate crimes are actually
36    racist hate crimes.
37
38         I think the other side to that is that the issues that
39    we perhaps have with that typology is that it's based on
40    crimes that have come to the attention of police.
41
42    Q.    Yes.
43    A.    And that have possibly been adjudicated as hate crimes
44    or investigated as hate crimes by the police and
45    adjudicated as hate crimes by the courts.  And as we know
46    between 5 and 20 per cent of hate crimes are actually
47    reported to police.
```

1
2   Q.   Are actually?
3   A.   Reported to police.
4
5   Q.   Right. So although there are difficulties, it's
6   still, would you agree, perhaps the most popular approach
7   or typology around the world at the moment?
8   A.   It is, and I think that's because, you know, the
9   citational history of social science is you start with who
10   started it and then you go forward, who's developed it
11   further, and I've mentioned a few other developments,
12   particularly by Phillips and also Gruenewald and Kelley.
13
14   Q.   Would it be correct to say that it would appear from
15   the literature that the reason why this Levin/McDevitt
16   typology continues to be the most popular around the world
17   is because it has been universally recognised how difficult
18   it is to come up with another model?
19   A.   Yes and no. If you look at the UK, they came up with
20   a much easier model of doing this, particularly at the
21   frontline of first responders.
22
23   Q.   Can I suggest to you the reason why the Levin and
24   McDevitt typology is still the most popular around the
25   world is because of perceived difficulties in academic
26   circles with other typologies?
27   A.   Again I would go back to citational history; we cite
28   the original and then go forward. I think you can't look
29   at that in isolation, that just because that continues to
30   be cited and used and tested by some, that it doesn't mean
31   that there's not been better developments since then.
32
33   Q.   And when you say "since then", would that be post
34   2017?
35   A.   Definitely. There's been a lot of work in Australia
36   particularly post 2017.
37
38   Q.   So in other words, post the Parrabell report?
39   A.   That's right. That's right.
40
41   Q.   There's been a considerable amount of academic
42   expertise and literature and --
43   A.   That's right.
44
45   Q.   -- to try and develop a better system --
46   A.   Correct.
47

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```
1    Q.    -- correct?  Has there been one that has been
2    universally accepted, as being better?
3    A.    The difficulties - and this again comes back to
4    jurisdictional issues, you know, depending on the
5    legislation, depending on the policing practices, depends
6    on which one will be the most appropriate or most
7    applicable.
8
9    Q.    And what you say at paragraph 101 is that beyond the
10   indicators developed from the work of Levin and McDevitt
11   and McDevitt et al, which form the basis of McLaughlin and
12   others' nine indicators, is that:
13
14        ... other jurisdictions and regions have
15        begun to develop their own typologies and
16        indicators of hate crime that align more
17        closely with their cultural contexts and
18        historical practices of hate.
19
20   A.    Mmm-hmm.
21
22   Q.    By that do you mean that cultural context and
23   historical practice is really important in devising
24   a system that's best for each jurisdiction?
25   A.    Of course.  You know the issues of hate crimes against
26   indigenous Australians is basically irrelevant to the UK
27   jurisdiction, for example.
28
29   Q.    And has there been one that has been accepted as being
30   suitable in a cultural context and bearing in mind
31   historical practices for Australia?
32   A.    I think the work of Vergani et al from Deakin, and the
33   KRIS network more generally, is an important start to that,
34   but again, these are indicators and these are prompts to
35   police in order for them to recognise a hate crime --
36
37   Q.    When was their work done?
38
39   THE COMMISSIONER:    I wonder if you would just let her
40   finish.  You have been concerned about other witnesses so
41   let's make that a general principle.
42
43   Q.    Please go on.
44   A.    Thank you.  That their work - that they have put
45   together indicators, and indicators are different from
46   typologies, and it is a really important thing.  Typologies
47   are a theoretical framing; indicators are prompts for
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 1    police.  So in Vergani et al's work they have 23 and 19,
 2    I think, prompts for heterosexist and cissexist violence,
 3    and that was generated not from cases reported to police;
 4    it was actually generated by nearly 18 months of engagement
 5    with targeted communities about what they perceived were
 6    the indicators or the characteristics that led to them
 7    being targeted.
 8
 9    MR TEDESCHI:   Q.    And when was that work done?
10    A.   That's been developed over the last 18 months,
11    published only last year.
12
13    Q.   Still ongoing?
14    A.   Well, they've published it.  We have so few hate crime
15    cases that even come to the police attention, let alone to
16    the courts, so we don't know, we can't test it yet, about
17    whether it's working.  I think it would also require
18    a policing organisation to be open to outside researchers
19    actually looking at how they adjudicate or investigate
20    those cases.
21
22    Q.   Can I ask you this:  do you think that the exercise
23    that was engaged in by the police in Parrabell encouraged
24    academics around Australia to engage in that sort of
25    research to try and find a better way?
26    A.   Not necessarily.  A lot of the work that's been done
27    now is in relation to the Christchurch massacre.
28
29    Q.   So it's about different - other kinds of hate crime?
30    A.   That's right.
31
32    Q.   Racist hate crime?
33    A.   And religious, Islamophobic, anti-Semitic, ableist.
34
35    Q.   Do you agree that the independent indicators for gay
36    hate crime or LGBTIQ --
37    A.   Mmm-hmm.
38
39    Q.   -- hate crime would be different to racist hate crime?
40    A.   There's a lot of common experiences across all forms
41    of hate crime, but there are some unique practices with
42    particular communities.
43
44    Q.   So indicators that might work for racist crime would
45    not necessarily work for --
46    A.   No.
47
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1      Q.    -- gay hate crime, for instance?
2      A.    Not all gay hate crimes, yes.
3
4      Q.    And in fact the BCI form that was used, and that has
5      been used in various parts of the world --
6
7      MR GRAY:    I object to that.
8
9      MR TEDESCHI:    I withdraw the question.
10
11     Q.    The BCI form is really much more specifically designed
12     for racist hate crime, isn't it?
13     A.    And for the US context.
14
15     Q.    In the US context?
16     A.    And with very different kinds of legislation.
17
18     THE COMMISSIONER:    Q.    So to that extent, it would be
19     quite inappropriate, in your view, would it, to be used
20     outside the United States?
21     A.    Definitely.
22
23     MR TEDESCHI:    Q.    Can I take you to page 41, paragraphs
24     114 to 115.  You talk about the UK approach?
25     A.    Mmm-hmm.
26
27     Q.    Now, the UK approach, you say, is based on the
28     perceived offender motivation, in essence?
29     A.    Yes and no.  There's two streams.  Are we talking
30     policing practices or legislation?
31
32     Q.    Policing practices.
33     A.    Policing practices privilege the victim's perspective,
34     that then prompts them to collect the evidence, which may
35     include the offender's motivation.
36
37     Q.    And that's why you call it a subjective test, because
38     it queries or questions the subjective assessment of the
39     victim as to whether or not it was a hate crime?
40     A.    I have to say that the objective/subjective, I've
41     always had an issue with because even if a police officer
42     is making the judgment, that is subjective.
43
44     Q.    But you've used the term "subjective test" about the
45     UK?
46     A.    And that's what I'm saying, that the terms
47     "subjective" and "objective" is - is throughout the hate
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 1    crime literature, particularly in the UK.  What I'm saying
 2    is that I am critical of that distinction because everybody
 3    is subjective in this assessment.
 4
 5    Q.   But in terms of the UK approach, the primary focus is
 6    on the subjective --
 7    A.   Perception by the victim.
 8
 9    Q.   -- perception of the victim?
10    A.   Yep.
11
12    THE COMMISSIONER:   No, no, by the victim.  Same thing, I
13    suppose.
14
15    MR TEDESCHI:   Q.   Yes, by the victim?
16    A.   Mmm-hmm
17
18    Q.   Now, as you describe in your report, one of the issues
19    with that is that it obviously can't apply in that way to
20    homicides, because you haven't got a victim to question, so
21    you have to resort to other persons to try and assess
22    whether it's a hate crime or not?
23    A.   That's right.
24
25    Q.   And those people might have knowledge about the crime
26    and they might not?
27    A.   Correct.
28
29    Q.   I mean, if they're just family members who know little
30    about the life of the victim, they might have very little
31    to contribute to that?
32    A.   And that's why the guidance documents for the 43 UK
33    policing services is that it is "interested parties", and
34    that can be victim's - victim organisations, family,
35    friends, witnesses, by standards and the police officer.
36
37    Q.   Do you agree that whether it's - using that test, the
38    UK test, either with live victims or with deceased victims,
39    that there are going to be inaccuracies in two different
40    ways:  there are going to be some cases that it turns out
41    are objectively gay hate crimes, but that it wasn't
42    perceived that way either by the victim or the victim's
43    associates; and the reverse, that there are going to be
44    some instances where the victim or the victim's associates
45    assume that it's a gay hate crime but, in fact, from the
46    perpetrator's point of view, it was not?
47    A.   Mmm-hmm.
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 1
 2      Q.    So there are those --
 3      A.    Yes.
 4
 5      Q.    -- uncertainties or inaccuracies in that system?
 6      A.    Correct.
 7
 8      Q.    Do you agree with this:  no system is perfect; every
 9      system has its advantages and disadvantages?
10      A.    And I keep coming back to this, this is a
11      first-responder prompt.  It is not the end of the
12      investigation.  It is simply if the victim says, "I believe
13      I have been targeted, this is a hate crime", that then
14      prompts the police officer to go back to their hate crime
15      assessment form and to go through and ask a series of
16      questions that they may not ask of other victims, though in
17      20 per cent of cases they do resort to those questions
18      because they themselves think it's a hate crime.
19
20      Q.    So it's a prompt for the police to alert them to
21      a particular line of investigation?
22      A.    That's right.
23
24      Q.    And in that sense, you believe that that subjective
25      model is preference to the Australian model?
26      A.    Definitely.  Police officers - so I'm - I train police
27      officers, I know that they have to be incredibly privileged
28      to even get through the recruitment training program.  Very
29      few of them would have encountered hate crime themselves,
30      and then we - what we know of, and, of course, this is
31      quite confidential in terms of police training programs,
32      what we know of that training is very, very limited, and it
33      may be that a police officer or a constable, probationary
34      constable, is out on the street for five, 10 years before
35      they encounter their first hate crime.  So they have less
36      knowledge about what it means to be hated than the victim.
37
38      Q.    Can I take you, please, to page 46.  In paragraph 137
39      you say this, that the NSW Police Force:
40
41            ... continues to lead in Australia on the
42            policing of hate crime, and their
43            willingness to be subject to a series of
44            internal and external reviews is laudable.
45
46      A.    Mmm-hmm.
47
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1    Q.   You believe that today?
2    A.   Well, there are very few other organisations that have
3    opened themselves up to this kind of investigation.
4
5    Q.   Right.  So is it fair to say that the NSW Police are
6    at the cutting edge in Australia, at least, in that regard?
7    A.   They were.  I would not count them as such now, but
8    they were.
9
10   Q.   What's happened in the meantime?
11   A.   Other jurisdictions have brought in hate crime laws.
12   New South Wales was one of the first jurisdictions to do so
13   and was alone for a very long time in having those laws.
14   I suggest that the work that has been done by Vergani et al
15   in conjunction with Victoria Police has actually progressed
16   particularly the policing, the reporting and the recording
17   of hate crime, I think a little further than what
18   NSW Police is now.
19
20   Q.   You say in the next paragraph that the NSW Police:
21
22        ... is not the only policing organisation
23        that is currently grappling with the
24        perceived inadequate investigation of
25        homicides of gay men.
26
27   And you refer to the UK Office for Police Conduct and later
28   on you mention the MPS, which I assume is the Metropolitan
29   Police Service?
30   A.   London Metropolitan Police Service.
31
32   Q.   London?
33   A.   Yes.
34
35   Q.   And you refer particularly to what are known as the
36   families of the victims of a Mr Port?
37   A.   That's correct.
38
39   Q.   Where there were four cases that were not investigated
40   properly, and in particular, were not linked together?
41   A.   That's right.
42
43   Q.   And were in fact victims of a serial criminal?
44   A.   That's right.
45
46   Q.   That's a problem with any serial crime, isn't it, that
47   it's important with any serial crime for the police to link
```

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1     the cases together in order to have a better chance of
2     solving all of them?
3     A.    That's right.
4
5     Q.    And it's no different for gay hate crimes?
6     A.    I think it's quite telling, both in terms of my
7     original research with the London Metropolitan Police
8     Service and the outcome of the Port cases, or the lack of
9     action in terms of the Port murders, that it is telling
10    that it is in relation to homophobic violence, in both
11    cases.
12
13    Q.    So in other words, to understand the motivation of the
14    offender, it's important to link cases together that are
15    committed by the one serial killer?
16    A.    That's right.
17
18    Q.    Or serial offender of any kind?
19    A.    And in the case of Port, I think it's not just about
20    linking the homicides.  There were six additional sexual
21    assaults conducted by Port that were in and around the same
22    time as those homicides.
23
24    Q.    That the police had failed to link?
25    A.    That's right.
26
27    Q.    And it's really with any type of crime, if you're
28    going link them, it's important to understand the
29    motivation of the offender and perhaps use that motivation
30    as the linking factor?
31    A.    In those cases, I think there was a stronger case to
32    be made that the link was in relation to location and
33    events.
34
35    Q.    Okay.  Could I take you now to page 48, please,
36    paragraph 145:
37
38        It is my view that NSWPF have made laudable
39        efforts in shifting officer opinions and
40        police culture through the work of the
41        LGBTIQA+ Corporate Sponsor and portfolio,
42        as well as its development of LGBTIQ
43        Liaison Officers across the state.
44
45    Then you go on to say that not everything is rosy and
46    positive; there have been some areas in which further
47    effort needs to be made?
```

```
 1      A.   Correct.

 2

 3      Q.   However, when you say that the NSW Police have made
 4      laudable efforts in shifting officer opinions and police
 5      culture, is that just a reflection of changes in society
 6      generally or is it something where you feel the NSW Police
 7      have had active programs and active efforts to change
 8      opinions of police?
 9      A.   I have to say that the development of the work by
10      NSW Police particularly from the 1990s was in direct
11      response to the quite strong advocacy work of the Gay and
12      Lesbian Rights Lobby and at that time the Gay and Lesbian
13      Anti-Violence Project, which was then, of course, rolled
14      into ACON.

15

16           I literally was on the phone to New South Wales police
17      officers on a daily basis and we were trying to build their
18      capacity and knowledge to understand what was a targeted
19      violence, but it wasn't until much later that that then
20      became legislation and became mandated Standard Operating
21      Procedures.

22

23      Q.   So internal police procedures?
24      A.   That's right.

25

26      Q.   And so I'll go back to my question:  do you think
27      these changes have just come about because of changes in
28      society's values or is it something that police have
29      actually done more than just reflect society's values and
30      taken positive steps?
31      A.   As I said, I think that - again, in many respects, in
32      the early stages it was a PR exercise to show that they
33      were doing something in this space because, you know, if we
34      think about the 1990s, we had the Wood Royal Commission and
35      the Wood Royal Commission actually led to quite an uptick
36      in violence against gay men particularly but also
37      transgender women.  There was a --

38

39      Q.   The inquiry led to --
40      A.   Yes.

41

42      Q.   -- more violence?
43      A.   There was a link between the violence, particularly --

44

45      Q.   After the Commission?
46      A.   During the Commission.  So I mapped the increases in
47      reports of violence in and around the Wood Royal
```

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1   Commission, and that was because of the - I would say
2   predominant focus at some points in Wood's Royal Commission
3   on paedophiles and the links of paedophiles to corrupt
4   police. And we saw an uptick in the use of anti-paedophile
5   hate speech in those attacks.
6
7   Q.   And the then distorted malevolent view about there
8   being a link between homosexuality and paedophilia?
9   A.   That's correct, yes, and that can be borne out in most
10   of the research that I've done in the words that are used
11   in those hate crimes.
12
13   Q.   I understand. Could I take you over the page to
14   page 49. Paragraph 147:
15
16   *Given the context of precarious, fractured*
17   *and estranged relationships between the*
18   *police and LGBTIQ communities - in*
19   *Australia as elsewhere - [Strike Force*
20   *Parrabell] was an important attempt at*
21   *demonstrating that [NSW Police] were*
22   *committed to changing the nature of these*
23   *relationships and police culture more*
24   *generally.*
25
26   You accept that now?
27   A.   Yes, and I think put the emphasis on "attempt."
28
29   Q.   And do you agree, maybe from your research, or from
30   what you know from your activist activities, is the Strike
31   Force Parrabell project the only project of its kind by
32   a police service that you know of where an attempt has been
33   made to assess a number of gay hate crimes?
34   A.   As far as I know. But I think, you know, if you look
35   at the work of the Hate Crimes Scrutiny Panels in the UK,
36   that is the equivalent of something like Strike Force
37   Parrabell but it is in real time.
38
39   Q.   When was that?
40   A.   They are - there are Hate Crime Scrutiny Panels in
41   every one of the 43 UK policing organisations and in most
42   organisations there is a Hate Crime Scrutiny Panel for
43   every targeted community.
44
45   Q.   And that's quite recent?
46   A.   I was on two of their panels 2009 to 2010. They still
47   exist to this day and they are also - there's also Hate

1 Crime Scrutiny Panels in The Crown Prosecution Service.
2
3 Q. In paragraph 148, you say:
4
5 *The "88" had become lore in New South Wales*
6 *LGBTIQ communities ...*
7
8 What do you mean by that?
9 A. Even when I was a quite junior member of the Lesbian
10 and Gay Anti-Violence Project as the client advocate, we
11 were already discussing at that time the - in 1994/95, that
12 there existed a group of homicides and attacks that were
13 not being recognised by NSW Police as possible hate crimes.
14
15 Q. So it was thought that there might be up to 88 hate
16 based homicides in New South Wales?
17 A. At least.
18
19 Q. And you refer to a sense of the police having failed
20 to address those concerns and then you say in
21 paragraph 149:
22
23 *The approach decided upon by [NSW Police*
24 *Force] to review the Parrabell*
25 *cases ... may have caused more distrust ...*
26
27 And then you state some reasons for that. The first reason
28 is the exclusion of hate crime specialists from the review.
29 By that, did you mean Sergeant Steer?
30 A. Well, at that time it was Sergeant Steer, and
31 I believe Jade Istanbouli that was part - he did have one
32 other member of staff that was working in, at that time,
33 the Bias Crime Unit.
34
35 Q. So the perceived lack of training and preparation of
36 Strike Force Parrabell investigators - did you know
37 anything about whether they received any induction or
38 training prior to their exercise?
39 A. I'm only working on the basis of what evidence has
40 been presented.
41
42 THE COMMISSIONER: Q. Do you mean by that the report
43 itself or --
44 A. Yes.
45
46 MR TEDESCHI: Q.
47

1   *The exclusion of LGBTIQ stakeholders from*
2   *the ... review ...*
3
4   A.   You know, again, I keep coming back to the UK model.
5   Every stage of hate crime involves victims or victim
6   communities in the development and adjudication of cases,
7   and I think the reason why they have such high levels of
8   trust is because they were involved in those processes.
9
10   Q.   Were you aware of any involvement by persons from
11   within the LGBTIQ community in the process?
12   A.   I - well, I was invited along to the Operation
13   Parrabell meeting where there would have been, I'd say,
14   30 community members that were given an initial assessment,
15   I believe, of eight cases, though we only got to about five
16   of them, by which point NSW Police closed the meeting down.
17
18   Q.   And you felt that the academic team only had limited
19   knowledge about hate crime?
20   A.   I agree.
21
22   Q.   You have described the fact that there was a dearth of
23   expertise in Australia at that time, which was the reason
24   why you had mentioned Derek Dalton's name?
25   A.   Mmm-hmm.
26
27   Q.   In paragraph 155 you say that it was noted by Dalton
28   and de Lint that the concept of hate crime was not even
29   considered at the time of many of the homicides.
30   A.   Mmm-hmm.
31
32   Q.   Can you explain that?
33   A.   Well, whether we talk about it in terms of social
34   understanding or whether we talk about it in terms of
35   legislation, there was no legislation at that time. When
36   I was working at the Anti-Violence Project, '94, '95, '96,
37   possibly a little bit of '97, it was all police practices,
38   so we had an informal mechanism to record it as hate crime.
39
40   Eventually, there was a question that was not
41   mandatory in the COPS system that prompted. At that time,
42   there was only two prompts, anti-Semitic and homophobic.
43   It didn't even include racist at that point. So it was
44   very early in the stage.
45
46   Q.   So you're talking about in terms of recording rather
47   than in terms of police awareness of hate crimes?

1   A.   I couldn't even tell you if police understood what was
2   a hate crime at that time. We did a lot of work with
3   individual Gay and Lesbian Liaison Officers and with
4   officers in Surry Hills, Darlinghurst, Kings Cross and
5   Newtown.
6
7   Q.   Liaison officers?
8   A.   Liaison officers, as well as general duties officers
9   and investigators, to try and build their knowledge and
10   capacity of what this involved.
11
12   Q.   This is in the '90s?
13   A.   Yes.
14
15   Q.   So a lot of work was done in the '90s to try and
16   educate police about this?
17   A.   That's correct.
18
19   Q.   And there were administrative changes that were made
20   perhaps in the '90s at some stage to try and record hate
21   crimes and the categories became wider --
22   A.   That's right.
23
24   Q.   -- as one went on?
25   A.   Exactly.
26
27   Q.   Going over the page to page 51, you talk about the
28   fact that Strike Force Parrabell did not address or seek to
29   investigate the possible bias in the original police
30   investigations, and what you describe further on, I think
31   on the next page, actually, that often police bias in the
32   original investigation would actually result in what is not
33   there rather than what is there?
34   A.   Correct.
35
36   Q.   Do you agree that it would be very difficult from
37   looking at what is not in a box of investigative files to
38   determine whether that is because of a bias on the part of
39   the original investigating officer or whether it's due to
40   the fact that there was just a dearth of evidence?
41   A.   Or incompetence.
42
43   Q.   Or incompetence, yes. It's very hard to distinguish,
44   isn't it?
45   A.   I would suggest that the absence of investigation
46   particularly in terms of engaging with community, engaging
47   with people who may have been in those locations,

1   investigation in terms of tracking previous incidents,
2   even, if they were not homicides - if there is no paperwork
3   that actually demonstrates that they did that work, then,
4   clearly, they did not consider it as a hate crime or count
5   it as a hate crime at the outset.
6
7   Q.   It might be due to incompetence or laziness rather
8   than bias?
9   A.   Yes, definitely.
10
11   Q.   It is very hard to ascribe whether it is one or the
12   other?
13   A.   And we have to think about the context in which,
14   particularly in the 1990s, I - and I was trying to go
15   through my files last week about this because I actually
16   had access to all of the files as part of my PhD research,
17   and there was at least 10 cases that were reported to us
18   where the offender was a police officer.
19
20   Q.   Of some violence or of a homicide?
21   A.   Assaults.
22
23   Q.   That was back in the 1990s?
24   A.   That's correct.
25
26   Q.   Right. So that was obviously --
27   A.   So we - there was a level of distrust within the
28   community given we knew this.
29
30   Q.   I understand. So do you agree that in terms of
31   reinvestigating a matter, going and speaking to the
32   original police officer might be totally useless to
33   determine whether there was bias, whether there was
34   laziness, whether there was ineptitude. It doesn't
35   necessarily - it isn't necessarily going to help?
36   A.   I think if you're speaking to officers that were
37   working at that time, as a group, not as individuals, then
38   you may get a sense that there was what I would call
39   institutional homophobia, institutionalised homophobia,
40   that it was part and parcel of policing organisations.
41
42   Q.   That's very hard to detect in relation to an
43   individual, though, isn't it, if you go and ask
44   an individual investigator?
45   A.   Not at all. There's a load of cultural awareness and
46   cultural capability training that uncovers those kinds of
47   implicit biases or explicit biases. They were around at

1   that time, you know. There's ways in which to uncover that
2   information just as police officers have ways of uncovering
3   similar information from victims and offenders.
4
5   Q.   So you feel that a qualified person with knowledge
6   about those aspects that you have just mentioned might be
7   able to discern from speaking to the original investigator
8   whether there was bias years earlier in the investigation?
9   A.   I think so, and also if you speak to victims at that
10   time, not of homicides but victims of assault, that we
11   could name particular patrol areas that were known to be
12   homophobic and known to be involved in homophobic violence.
13   It was a - you know --
14
15   Q.   Or known not to investigate?
16   A.   Exactly. And if we go Janet Chan's original research
17   on NSW Police culture, it clearly shows that at that time -
18   and I would suggest continuing, given the case brought by
19   police officers from Newtown Police Station a year ago, two
20   years ago - that there continues to be a level of
21   institutionalised homophobia in NSW Police.
22
23   Q.   Do you agree that the Police Force is attempting to
24   improve that situation and has been for some considerable
25   time?
26   A.   NSW Police have attempted to do it in particular ways.
27   I don't think they were very effective ways. I think
28   Parrabell was deeply flawed from the beginning and I think
29   there could have been a much better way of engaging the
30   community in those matters that would have brought them on
31   board and brought them through the process with them.
32
33   Q.   Having said that, you have acknowledged that it might
34   have been better if they had brought on board community
35   groups more, do you agree that the objective was still
36   a laudable one?
37   A.   Yes. They didn't achieve it but they did attempt to.
38
39   Q.   They did an attempt, in the absence of any similar
40   exercise anywhere in the world at that time, and perhaps,
41   you know, without the academic knowledge that persons like
42   yourself might have?
43   A.   And can we put this in the context that we're talking
44   about an organisation that has made a commitment to
45   evidence-based policing? This is the dominant paradigm of
46   policing now, and yet, they decided to create and initiate
47   Strike Force Parrabell without any involvement of

```
 1    academics.
 2
 3    Q.   At paragraph 166 on page 53, you describe - you
 4    criticise the final report of Parrabell for not giving
 5    a full list of the conclusions reached in relation to each
 6    independent case.
 7    A.   Yes.
 8
 9    Q.   Do you agree that if that had been done, it might well
10    have infringed people's privacy; it might well have caused
11    relatives and friends great distress who weren't aware of
12    some of the evidence, so it would have - it could
13    potentially have been counterproductive and caused some
14    very unfortunate reactions from people?
15    A.   Only because NSW Police did not --
16
17    THE COMMISSIONER:   Just hang on, Professor.
18
19    THE WITNESS:   Only because NSW Police did not engage those
20    families, friends, community in the process at the
21    beginning.  I know that there is a difficulty, particularly
22    applying language and labels from the 21st Century to the
23    late 20th Century, where those labels may not have been
24    appropriate.  I think that we need to be really careful
25    about privileging families in relation to identity because,
26    as my research shows, sometimes, families are the most
27    dangerous perpetrators of homophobic violence, and that we
28    need to be aware that the victims' communities may have
29    known them much better than their families, and
30    disrespecting the community in favour of protecting the
31    wellbeing of a family may actually be counter to what that
32    person actually wanted in the first place.
33
34    MR TEDESCHI:   Q.   Do you agree that the publication of
35    that sort of information could well have caused a terrible
36    ruckus in the community and conflict between families and
37    LGBTIQ+ communities?
38    A.   If there was a relationship that allowed that to
39    occur, yes, I think there could be, but equally, that by
40    not doing so, NSW Police has created increased distrust
41    from the LGBTIQ community because they have not been
42    transparent in how they came and reached these decisions.
43
44    Q.   Finally, at page 54, paragraph 175, you point out that
45    the academic team didn't have faith in the BCIF instrument
46    to identify bias?
47    A.   Sorry, what point, sorry?
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 1
 2      Q.    Paragraph 175?
 3      A.    Yes.
 4
 5      Q.    You say:
 6
 7            ... the academic team did not have faith
 8            in the BCIF instrument to identify bias ...
 9
10      Do you agree that that, above all else, shows the
11      independence of the academic team, that they were prepared
12      right from the beginning, or maybe from the outset of their
13      report, to criticise the BCIF and find it inadequate to the
14      task?
15      A.    Yes.
16
17      MR TEDESCHI:    Thank you, Commissioner.
18
19      THE COMMISSIONER:    Anything arising?
20
21      <EXAMINATION BY MR GRAY:
22
23      MR GRAY:    Just two matters if I may, Commissioner.
24
25      Q.    Professor, towards the beginning of the questions from
26      Mr Tedeschi, there were some questions about typologies and
27      Levin and McDevitt - you remember those questions?
28      A.    Yes.
29
30      Q.    And one question was to ask you whether there had been
31      development of other typologies post 2017?
32      A.    Mmm-hmm.
33
34      Q.    And you said yes, there had been.  But had there been
35      developments, and if so could you tell us a little about
36      them, of other typologies pre-2017 as well?
37      A.    And I think the most significant was Gruenewald and
38      Kelley, which again is much more aligned to the UK model of
39      addressing hate crime, in that it is a victim-centred
40      approach, in that it seeks to investigate how particular
41      people are targeted and the conditions under which they are
42      targeted.
43
44      Q.    And is that the work that you refer to, at least
45      briefly at paragraph 82 of your report, where you cite
46      Gruenewald and Kelley and their --
47      A.    Offender mode.
```

```
1
2     Q.    -- the offender mode of victim selection?
3     A.    That's correct.
4
5     Q.    And they focus on how, not why, offenders
6     discriminately select victims?
7     A.    That's right.
8
9     Q.    And that has come from the article cited in the
10    footnote by Gruenewald and Kelley, 2014, "Exploring
11    Anti-LGBTIQ Homicide By Mode of Victim Selection"?
12    A.    That's correct.
13
14    Q.    The second matter, if I could just ask you this, is
15    that at the outset of the questioning you were asked some
16    questions about whether you thought, when you were applying
17    for the - or putting in a tender for this Parrabell job,
18    whether you thought you would get access to the original
19    case files, and as I understand it, you said that you
20    understood that you were to get access to the case files;
21    is that right?
22    A.    That's right.
23
24    Q.    And that came from the request for tender document
25    itself?
26    A.    As well as the conversations with Jacqueline Braw.
27
28    Q.    If you had been chosen as the academic team, and it
29    turned out you were not going to get access to the original
30    source material but you had only had the completed BCIF
31    forms, what would you have done?
32
33    MR TEDESCHI:    That's hypothetical.  I object.
34
35    THE COMMISSIONER:    There are a lot of hypothetical matters
36    in this.  I will allow it.
37
38    MR TEDESCHI:    Really, in fairness, Commissioner, my friend
39    should inform what that would have involved, how many,
40    I don't know, hundreds and hundreds of boxes it would have
41    involved.
42
43    THE COMMISSIONER:    No, he is not asking the question about
44    volume.  That might be the second or third dimension to the
45    question, but I will allow him to ask the first bit first.
46
47    MR GRAY:    Q.    Do you need it again or --
```

```
 1        A.   Yes, please.
 2
 3        Q.   If you had been chosen - your team - and it turned out
 4        you were not going to get access to the original source
 5        material which the Parrabell officers had had, and you were
 6        only going to get the completed BCIF forms filled in by
 7        those officers, what would your response have been?  What
 8        would you have done?
 9        A.    In the first instance, I would have tried to negotiate
10        with NSW Police to explain to them how their methodology
11        would not result in the outcome that they were seeking if
12        they were unprepared to share those extra resources, the
13        original resources, to the - what I feel is that the
14        academic team that were appointed were given third-hand
15        data.  What I would have been wanting to get is to get at
16        least second-hand data, the summaries of those case files,
17        not the BCIF forms.  If that was not possible, then I would
18        have handed back the money and told them that I could not
19        meet the brief.
20
21        MR GRAY:   Yes, thank you.  Those are my questions.
22
23        THE COMMISSIONER:  All right.  Professor, thank you very
24        much.  I can now excuse you from further attendance.
25
26        THE WITNESS:   Thank you.
27
28        <THE WITNESS WITHDREW
29
30        THE COMMISSIONER:   Is Dr de Lint around, do we know?
31
32        MR TEDESCHI:   Yes, he is.
33
34        <WILLEM DE LINT, recalled, on former oath:        [2.42pm]
35
36        THE COMMISSIONER:   Please come and make yourself
37        comfortable in the witness box, Doctor.
38
39        <EXAMINATION BY MR GRAY CONTINUING:
40
41        MR GRAY:   Q.   Dr de Lint, I'm going to ask you about this
42        "Anatomy of Moral Panic" article.
43        A.   Yes.
44
45        Q.   It is in volume 8, tab 205 [SCOI.82022_0001].  So you
46        will need volume 8.  Now, the first question I want to ask
47        you is:  who largely wrote this article?  Was it largely
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1   you, or was it largely Dr Dalton, or if both of you, then
2   in what proportion?
3   A.   Largely me.
4
5   Q.   What contribution - I don't mean line by line, but
6   what was the nature of Dr Dalton's contribution?
7   A.   Contribution to writing.
8
9   Q.   But to what extent?
10   A.   What percentage I couldn't say, but a - a minority
11   percentage, I guess.
12
13   Q.   More generally, just stepping away from the article
14   for a moment, in terms of the Parrabell exercise, your
15   team's work on the Parrabell --
16   A.   Yes.
17
18   Q.   -- review, the material that the Special Commission
19   has would indicate that it was Dr Dalton who did the lion's
20   share of the email communication and meetings and that kind
21   of hands-on work; is that correct?
22   A.   Yes.
23
24   Q.   Broadly speaking?
25   A.   Yes.
26
27   Q.   And I think you said yesterday that there might have
28   been as many as three or four meetings where he was present
29   with police?
30   A.   Yes.
31
32   Q.   How many such meetings were there where you were
33   present with police?
34   A.   I believe there were three or four meetings, probably
35   three.
36
37   Q.   Where you were present?
38   A.   Yes. One of them I think was a whole - almost, if I
39   remember, a whole day, I'm pretty sure. I - you know,
40   I seem to recall it being a very long - yes.
41
42   Q.   And if you're able to do this, and if you can't then
43   just say that, in terms of the overall work of the academic
44   Flinders team on the Parrabell task --
45   A.   Yes.
46
47   Q.   -- from beginning to end, what sort of proportion

```
1    would you say of the work was undertaken by Dr Dalton and
2    what sort of proportion by you?
3    A.    Maybe 65:35.
4
5    Q.    Something of that order?
6    A.    Yes.  I mean, the total proportion of the work
7    including all of the administration of it, et cetera,
8    probably maybe even less.
9
10   Q.    Even less than 35?
11   A.    Yeah.
12
13   Q.    All right.  Now, let's have a look at the article.
14   The abstract on the first page, if we just scroll down
15   slightly - an abstract is in the nature of a summary,
16   I take it; is that right?
17   A.    Yes.
18
19   Q.    You refer to the term "moral panic" in the fourth line
20   as being a - or at least a well-known feature of moral
21   panic, rather:
22
23        ... a discovered crime fact and demand for
24        an enforcement response disproportionate to
25        the fact.
26
27   A.    Yes.
28
29   Q.    And in this instance, the discovered crime fact is the
30   suggestion of 88 deaths, is it?
31   A.    Yes.
32
33   Q.    Now, in about halfway through that paragraph, you say:
34
35        Demand groups and crusaders placed a high
36        semiotic burden beyond [the] capacity [of
37        the list] as a comparable objective
38        measure.
39
40   The sentence may have just lost something in translation,
41   but the crusaders, I take it, are, or include, Sue
42   Thompson, Stephen Tomsen and ACON; is that right?
43   A.    There is a slippage between the general description of
44   what crusaders do in this kind of phenomenon and what
45   individuals do in the specific case of this list.
46
47   Q.    I'm asking you who you are talking about in this
```

```
1     sentence when you use the --
2     A.   Well, that's my answer.
3
4     Q.   No, no.  Who?  Who are the crusaders?  Aren't they
5     Sue Thompson, Stephen Tomsen and ACON?
6     A.   Let me see the line again.  Okay, yes.
7
8     Q.   And then in the last sentence of the abstract you say
9     that this Strike Force Parrabell story is illustrative of
10    the occupation of media frames and formats by weak data or
11    of the runaway character of crime stories in an era of fake
12    news.  Do you see that?
13    A.   Yes.
14
15    Q.   So the term "fake news" is a very well-known term now
16    in the era of Donald Trump, isn't it?
17    A.   Yes.
18
19    Q.   And it means, doesn't it, false news - that is, news
20    purportedly advanced which is actually false, but hence the
21    word "fake"?
22    A.   The line is that this is "an era of fake news" --
23
24    Q.   Yes, that's right.
25    A.   -- in which this phenomenon is taking place.
26
27    Q.   That's right.  And I'm asking you about the term "fake
28    news".  It means false news, doesn't it?
29    A.   I am not defining it in --
30
31    Q.   No, I'm asking you now?
32    A.   Well, there are - news that departs in some capacity
33    from a reliable, empirical measure.
34
35    Q.   It's much stronger than that, Doctor, as you well
36    know.
37    A.   But that's a era of --
38
39    Q.   The term "fake news" as used in this era that you
40    refer to, suggests false and/or invented news, doesn't it?
41    A.   It - the line is not saying --
42
43    Q.   I didn't ask that.  The term "fake news" refers in
44    ordinary parlance not to some departure from an empirical
45    standard; it refers to something false, if not invented,
46    doesn't it?  That's what the term is used to mean?
47    A.   I'm - you're asking me how I meant to use it?
```

1
2   Q.   No, I am asking you what you understand it to mean in
3   common parlance?
4   A.   That is my understanding of - I have given you my
5   understanding of what I take it to mean.
6
7   THE COMMISSIONER: Q.   But why did you import a term at
8   all of that kind which you knew was currently being used to
9   describe falsity; why didn't you simply say what you have
10   just said, that --
11   A.   Well --
12
13   Q.   Please let me finish.
14   A.   Yes, sir.
15
16   Q.   That there was a distinction between the empirical
17   materials that were available and the representations being
18   made by, say, people who had an agenda? Why didn't you use
19   that terminology instead of importing a term which you must
20   have known in current parlance would mean one thing and one
21   thing only?
22   A.   I very much regret that I did that.
23
24   MR GRAY: Q.   Why?
25   A.   Because of the interpretation that you're providing.
26   I - you know, I - I wasn't thinking about that.
27
28   Q.   You're not serious?
29   A.   Well, I am - this - when you're writing a paper you're
30   thinking about how to hook it in to various audiences and
31   various concerns, and so that - that interest in hooking
32   something in to something sometimes overtakes your, you
33   know, judicial use of phraseology.
34
35   Q.   So you've brought in this obviously charged term so as
36   to get the article published; is that what you are really
37   saying?
38   A.   No. No, I'm not saying that.
39
40   Q.   Well, let's see whether the rest of the article
41   pursues some similar themes. On the next page, 724, in the
42   top paragraph, you talk about how the list was drawn up
43   under what you call "a moniker of gay-hate-related
44   homicides"; do you see that?
45   A.   Yes.
46
47   Q.   Why did you use the word "moniker" in this academic

.3/03/2023 (32)   2830   W DE LINT (Mr Gray)

```
 1    article?  Is that to somehow or other lessen or --
 2    A.   No.
 3
 4    Q.   -- trivialise or --
 5    A.   Well, it's a synonym for "label", I guess.
 6
 7    Q.   Well, it's a colloquial synonym for "label", perhaps.
 8    But why in an academic article use such a colloquial term?
 9    A.   I don't know.  I - I thought it was as a synonym for
10    "label".
11
12    Q.   Was it to diminish the significance of what was being
13    put forward in the list?
14    A.   No.
15
16    THE COMMISSIONER:   Q.   Was it for the purposes of trying
17    to be provocative?
18    A.   No.
19
20    MR GRAY:   Q.   Why bring in the word at all?  You could
21    have just said, "A list was drawn up of gay-hate-related
22    homicides"?
23    A.   Yes.
24
25    Q.   Why bring in "moniker"?
26    A.   I don't know.  It was under the label, right, it was
27    under a heading, I guess.
28
29    Q.   In the beginning of that sentence you say that the
30    drawing up of a list was "impelled by a New South Wales
31    Police civilian"; do you see that?
32    A.   Yes.
33
34    Q.   And there's a footnote that tells the reader that the
35    civilian in question was a non-sworn NSW Police employee?
36    A.   Yes.
37
38    Q.   You are actually referring to Sue Thompson there,
39    weren't you?
40    A.   I think so.
41
42    Q.   You think so?  You know so, don't you?
43    A.   This is - well, see, as I say, 35 per cent is Derek's
44    and so I assume that that is - yes, I agree.  I think so.
45
46    Q.   You assume what?
47    A.   I assume so, yes.
```

```
1
2       Q.   What do you assume?
3
4       THE COMMISSIONER:   Q.   Are you suggesting that the term
5       "NSWP civilian" and the footnote could be Derek's
6       contribution, do you?
7       A.   Yes.
8
9       MR GRAY:   Q.   Are you saying that because you don't think
10      you would have written that or because it's a bit
11      embarrassing or --
12      A.   Because Derek was across the personnel, I suppose.
13
14      THE COMMISSIONER:   Q.   So when you read his draft, you
15      must have thought to yourself, "Golly, who could that be",
16      did you?
17      A.   I don't know if I did.
18
19      Q.   Well, have a go at it.
20      A.   Okay.
21
22      Q.   When you read his draft using, as you think his words,
23      "NSWP civilian", and perhaps with or without the footnote,
24      "a non-sworn NSWP employee", you must have said to
25      yourself, "Golly, who could that be"?
26      A.   Okay.  Well, I don't know, I don't recollect doing
27      that, but --
28
29      Q.   And do you have any recollection of saying to him,
30      "Derek, who on earth are you referring to"?
31      A.   No, I don't.
32
33      MR GRAY:   Q.   Or is the position that actually you wrote
34      that and you knew full well that it was Sue Thompson who
35      had been one of those who generated this list?
36      A.   I was under the understanding from - that there were
37      a number of people who had generated the list, and she was
38      involved in that as well, yes.
39
40      Q.   Right.  So you knew that, and you chose to call her an
41      "NSWP civilian"?
42      A.   I didn't - as far as that language is concerned, I'm -
43      I think that's - as I say, that was what Derek had
44      provided.
45
46      Q.   Well, if you turn over to page 731, at the bottom of
47      the page --
```

```
 1      A.   Yes.
 2
 3      Q.   -- we find a little bit more about Sue Thompson's
 4      contribution, don't we, because you say in that paragraph,
 5      in the middle of the paragraph, page 731:
 6
 7           In order to support informed interdiction
 8           against perpetrators, [NSW Police]
 9           Gay/Lesbian Client Consultant Sue Thompson,
10           together with Detective Sergeant Steve
11           McCann, developed [NSW Police] capabilities
12           with respect to identifying
13           gay-hate-related homicides --
14
15      A.   Yes.
16
17      Q.   --
18
19           work that was further developed as
20           a working list of cases?
21
22      A.   Yes.
23
24      Q.
25           ... she was supported by community
26           activists (the Gay and Lesbian Rights
27           Lobby) ...
28
29      A.   Yes.
30
31      Q.   --
32
33           and other researchers, including Tomsen ...
34
35      In an article by him alone and Tomsen in an article with
36      someone else?
37      A.   Yes.
38
39      Q.   So you knew perfectly well who Sue Thompson was?
40      A.   Right.
41
42      Q.   And you even said so?
43      A.   Yes.
44
45      Q.   Why in your opening gambit did you choose to downgrade
46      her to the level of "NSWP civilian" who is non-sworn?
47      A.   Isn't that - my understanding that that's - that was
```

```
 1      the facts.  If it's not the facts I'm --
 2
 3      Q.    Let's assume it is fact.
 4      A.    Okay.
 5
 6      Q.    But what is the relevance of that?
 7      A.    There is no relevance.
 8
 9      Q.    Why put it in?
10      A.    Okay, I don't know.  As far as I know, there is no
11      relevance to it.
12
13      THE COMMISSIONER:    Q.    Are you sure you weren't trying to
14      be demeaning towards her?
15      A.    Of course not.  Absolutely not.  Seriously not.
16
17      THE COMMISSIONER:    All right.  I hear what you say,
18      thank you.
19
20      MR GRAY:    Q.    So the New South Wales civilian is perhaps
21      Sue Thompson, and you "say supported by a prominent
22      journalist".  Is that Rick Feneley; is that who you mean?
23      A.    Sorry?
24
25      Q.    Rick Feneley, is that the --
26      A.    I believe so, yes.
27
28      Q.    "A robust demand group", is that ACON?
29      A.    Yes, probably.
30
31      Q.    "And one or two sympathetic academics", namely Stephen
32      Tomsen, and perhaps others; is that right?
33      A.    Yes.
34
35      Q.    In the next paragraph, you say that:
36
37            Moral crusaders would point to "the list"
38            as a proxy for a variety of social ills.
39
40      The moral crusaders being Sue Thompson, Stephen Tomsen and
41      ACON.  That's what you say they were doing?
42      A.    Where is this?
43
44      Q.    In the paragraph beginning, "The 'list of 88'" on
45      page 724.  I don't think it's showing on the screen at the
46      moment.  The first complete paragraph on page 724.  Fourth
47      line.
```

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 1
 2      THE COMMISSIONER:   Q.   It's in the middle of the
 3      paragraph commencing, "The 'list of 88'".
 4      A.   Yes, I see it, sir.
 5
 6      Q.   On page 724.
 7      A.   Yes.
 8
 9      MR GRAY:   Q.   The question simply is are you saying there
10      that it was Sue Thompson, Stephen Tomsen and ACON who were
11      pointing to the list as a proxy for a variety of social
12      ills?  Are they the moral crusaders you are talking about?
13      A.   I don't know how that - I think something must have
14      occurred with editing, because "moral crusaders" - yes,
15      "point to the list as a proxy for" - there are - I must
16      have had it in my mind other people pointing to the list,
17      but that is not obviously clear in that paragraph.
18
19      Q.   I asked you already, in connection with the previous
20      page, whether by the word "crusaders" you meant Stephen
21      Tomsen, Sue Thompson and ACON, and you said yes.
22      A.   Yes, but this - this refers to other people in the
23      wider - other crusaders in the wider - pointing to the list
24      as a proxy for --
25
26      Q.   Who were they?  Did this --
27      A.   I don't know.  This is - it's discontinuous.  I can't
28      defend it.
29
30      THE COMMISSIONER:   Q.   So it is anyone who would point to
31      the list?
32      A.   There --
33
34      Q.   Is it anyone at all, including those people, who
35      either purported to point to or use the list in some way or
36      other?
37      A.   I - I'm at a loss to defend that line.
38
39      Q.   Well, it may be that that is the consequence, but were
40      you saying, that anyone, including Thompson, Tomsen, ACON
41      and whoever else it was --
42      A.   I don't know.
43
44      Q.   -- a journalist - well, I hear what you say, but it
45      suggests, doesn't it, that any of the moral crusaders, or
46      all of them, who point to the list, use it as a proxy?
47      A.   It seems to suggest that, and I can't defend it.
```

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```
1
2     Q.    Well, does this mean this is an example of something
3     that you didn't carefully think out before you submitted it
4     for publication?
5     A.    I would say that that would be a fair assessment.
6
7     Q.    And without wishing to test your memory too much, is
8     this a Derek Dalton line or do you think this is more
9     likely one of yours?
10    A.    Well, I'm going to guess it's more likely one of mine
11    because it, you know, refers to this phenomenon that is
12    related to the moral crusader, and then it refers to what
13    the moral crusaders do, but then it's sandwiched in there
14    to suggest that it's being done with the list, and it's
15    very unfortunate and it strikes me as problematic and
16    wrong.
17
18    Q.    And it rather conveys the impression, does it not,
19    that every single case on the list has been the subject of
20    exaggeration too, doesn't it?
21    A.    No, I don't think it does that, but I --
22
23    Q.    Well, why didn't you say, "Some of the cases on the
24    list may be based in fact" --
25    A.    Yes.
26
27    Q.    -- "but not all"?  What you do on every single
28    occasion in this article is you never, ever do any more
29    than describe "the list" in its totality, suggestive, it
30    seems to me, and I'd ask you to comment on it, that the
31    entire list is the subject of exaggeration?
32    A.    What I would say is that the list represents an
33    underlying phenomenon.  So it's a representation of an
34    underlying phenomenon.
35
36    Q.    It's iconic in the sense that it's an example of
37    exaggeration?
38    A.    Yeah, so it's - well, it suggests something
39    extraordinary; right?  So the idea is that this number is
40    extraordinary, and so it would suggest that it must be very
41    different than another list that could be derived from
42    another jurisdiction; right?  So there - it's a list
43    without a comparator and yet it is extraordinary.
44
45    Q.    Sure.
46    A.    So that's - that's the phenomenon that's intended to
47    be --
```

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1
2   Q.   I understand that. I understand that, but every time
3   you refer to it you refer to it as one single iconic event,
4   namely, "the list of 88"?
5   A.   Yes.
6
7   Q.   Never once suggesting there could be any substance in
8   any one or more cases in the list?
9   A.   Yes, but - yes, of course - there is --
10
11   MR TEDESCHI: If the Commissioner looks at the next
12   paragraph, the last few sentences.
13
14   THE COMMISSIONER: Which paragraph?
15
16   MR TEDESCHI: The next paragraph after the one that
17   commences "The 'list of 88'". So it commences with "In
18   2016 'the list'" - if you look at the second half of that
19   paragraph.
20
21   THE COMMISSIONER: Are we on page 724?
22
23   MR TEDESCHI: Page 724. There's a reference there to
24   "Fewer than half of the 85 or 86 cases".
25
26   THE COMMISSIONER: Yes, thank you.
27
28   MR GRAY: Q.   Dr de Lint, on the next page, 725, do you
29   see the paragraph beginning "We trust" - it's towards the
30   lower part of the page?
31   A.   Yes.
32
33   Q.   What I want to direct you to is in the middle of the
34   paragraph.
35   A.   Yes.
36
37   Q.   You say:
38
39   *Crime facts become contested property as*
40   *stand-ins for or foundations that buttress*
41   *a crusade; actors become invested in them*
42   *and encounter review posed by challengers*
43   *as ideological opponents.*
44
45   Do you see that?
46   A.   Yes.
47

Transcript produced by Epiq

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1      Q.    Now, you were putting yourself and Dr Dalton in the
2      category of challengers, weren't you?  You were the ones
3      who had challenged this --
4      A.    Yes.
5
6      Q.    -- status of the list?
7      A.    Yes.
8
9      Q.    Including in this article?
10     A.    Yes.
11
12     Q.    You're the challengers?
13     A.    Yes.
14
15     Q.    Thank you.  And then in that same paragraph you say
16     this in the last sentence:
17
18           The lack of fitness or proportionality
19           between the signified (88 homicides) and
20           the signifier (an epidemic of gay bias
21           crime) remains illustrative of the runaway
22           character of crime stories in an era of
23           "fake news".
24
25     Do you see that?
26     A.    Yes.
27
28     Q.    Now again, I suggest to you, you are using the
29     expression "fake news" with its well-known charged meaning
30     of "false" or "invented" to invite the reader to assume
31     that what is involved in promoting of the concerns found in
32     the list as being false or invented assertions?
33     A.    I wouldn't - as I - we already went over this terrain
34     and I would simply say in answer it's --
35
36     Q.    You're saying that this --
37     A.    The era is the era --
38
39     Q.    You're saying that this story, you're calling it
40     a crime story --
41     A.    Yes.
42
43     Q.    -- is an example of fake news.  That's the sense of
44     what you are saying?
45     A.    Well, it's not - I don't take that from what I wrote.
46
47     Q.    Well, a reader could understandably forgiven for
```

```
 1      figure that's what you meant; would you agree with that?
 2
 3      MR TEDESCHI:    I object.
 4
 5      THE WITNESS:    No, that's not what I meant.
 6
 7      MR GRAY:    Q.    No, I know you say that.  I said
 8      a reader --
 9      A.    A reader can be forgiven, yes.
10
11      Q.    -- could well understand it --
12      A.    Well --
13
14      Q.    -- assume or understand that that's what you meant?
15      A.    Well, a reader may read that in that, yeah.
16
17      Q.    Yes.  And then if we, for example, look at page 728 -
18      have a look at the balance of the paragraph at the top of
19      that page, 728, you say:
20
21            In the case we are investigating, we hope
22            to show how the data, once inflated ...
23
24      so you're accusing those who put forward the 88 as having
25      inflated the data --
26
27            becomes a prized possession ...
28
29      And then you say "Thus, we" - that is, you and Dr Dalton -
30
31            seek to provide an account of the
32            resilience of the "false facts" --
33
34      So you are asserting that the facts by reference to the
35      list of 88 are false?
36      A.    I am saying - we are saying that 88, as a number, is
37      not the empirical number.
38
39      Q.    I understand you're saying that.
40      A.    Yes.
41
42      Q.    But you're saying more than that, I suggest, namely,
43      that it's not just not the empirical number, but it's being
44      inflated and falsified by those who are putting it forward?
45      A.    No, no, I am not saying that.
46
47      THE COMMISSIONER:    Q.    So anyone who drew that
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1    conclusion, you say it was certainly nothing you intended?
2    A.   Yes.  Not my intent.
3
4    Q.   And you intended precisely what by saying those words?
5    A.   What I intended is that media get a hold of a figure
6    and that figure becomes a stand-in for whatever the
7    empirical reality is and the idea of its extraordinariness
8    is repeatedly re-circulated without the required, I suppose
9    you could say, reliance on comparable measures.  So in
10   other words, what makes it extraordinary?  Where is the
11   comparator that makes it extraordinary?  What is there that
12   says that this phenomenon is greater than a like example in
13   another jurisdiction or another place?
14
15   MR GRAY:   Q.   Okay, thank you.  I understand that.
16   A.   And I understand that - you go ahead, sir, sorry.
17
18   Q.   Have a look at page 737, under the heading "Embedding
19   the Panic."  Page 737.  Have you got that?
20   A.   Yes.
21
22   Q.   Halfway through that first paragraph under that
23   heading, you say:
24
25       Crusader interest to inflate the problem
26       interacts with the "rhetoric of numbers in
27       front page journalism" ...
28
29   Don't you?
30   A.   Right.
31
32   Q.   The reader must understand that, don't you agree, as
33   your saying that the crusaders deliberately inflated the
34   problem, because it was in their interests to do so; isn't
35   that how that sentence reads?
36   A.   In attracting attention to a problem, you need to -
37   crusaders discover as much of it as possible, so the
38   interest is to find as much of it as possible.  There's
39   nothing wrong with that, of course, it's necessary, it's
40   very necessary to do that, that's a very --
41
42   Q.   I'm focusing on the word "inflate".  You say that the
43   crusader interest was to inflate the problem.  Now, that is
44   accusing the crusaders --
45   A.   No, it --
46
47   Q.   Excuse me.  That is accusing the crusaders of
```

```
 1      knowingly --
 2      A.   No.
 3
 4      Q.   -- putting forward numbers that were bigger than they
 5      were?
 6      A.   Inflating the problem is making the problem
 7      significant enough to attract other people to address it.
 8      That's the purpose of a crusade.  That's the purpose of
 9      a crusader.
10
11      Q.   So you are saying "inflate" --
12
13      MR TEDESCHI:   He is not allowed to answer.  He has been
14      interrupted a number of times.
15
16      THE COMMISSIONER:   Mr Tedeschi, please.
17
18      Q.   Just answer the question, Doctor, if you would.
19      Continue.
20      A.   Inflation is a very important function.  So there are
21      processes which tend to criminalise and processes which
22      tend to decriminalise.  There are people that tend to bring
23      a phenomenon into public attention because it needs the
24      resources of policy and remedy.  That's a very important
25      function, and it's a necessary function and it's a function
26      of moral crusaders and other - and other actors.  And so
27      yes, epistemologically, you know, comparatively, there is
28      an inflation, right, of the issue, of the problem, to make
29      it - to make it worthy of attention.  So there is - the
30      energy is to make it bigger, not to make it smaller.
31
32      THE COMMISSIONER:   Q.   And do you suggest here that it
33      was your intention to portray the moral crusaders as
34      honestly and sincerely advocating the list as a true
35      number?
36      A.   Yes, of course.  I mean, they're --
37
38      Q.   Just excuse me.
39      A.   Well, I mean --
40
41      Q.   Excuse me.
42      A.   Just go ahead.
43
44      Q.   And just to make sure that you do understand what
45      I want to put to you?
46      A.   Yeah, okay.
47
```

Transcript produced by Epiq

```
 1      Q.   You were intending in that article, were you, to
 2      convey that the moral crusaders were, although you thought
 3      them wrong-headed, nonetheless, proceeding honestly and
 4      sincerely to advocate these numbers?
 5      A.   Yes.
 6
 7      Q.   Did you say that?
 8      A.   I don't know if I did.
 9
10      THE COMMISSIONER:   Okay.
11
12      MR GRAY:   Q.   You've given some very long answers on this
13      topic about the word "inflate".  Doesn't the word "inflate"
14      mean something different from "highlight"?  Your answers
15      seem to suggest that by "inflate" you simply mean "draw
16      attention to"?
17      A.   Yes.
18
19      Q.   But "inflate" means "exaggerate", doesn't it?
20      "Inflate", "make bigger", to deliberately make it bigger --
21      A.   To make the problem --
22
23      Q.   -- blow up?  No, is that --
24      A.   It's the problem that needs to --
25
26      Q.   -- the word "inflate" means?
27      A.   It's the problem that needs to be bigger.
28
29      Q.   No,  no, is that what the word "inflate" means?
30      A.   The problem needs to be bigger.
31
32      Q.   But is that what the word "inflate" means?
33      A.   To make it more visible.
34
35      Q.   Does it mean merely to make more visible or does it
36      mean deliberately to make bigger?
37      A.   To make it more visible.
38
39      Q.   Not bigger?  You say "inflate" doesn't involve --
40      A.   More visible
41
42      Q.   Do you say - excuse me.  Do you say "inflate" does not
43      involve making something bigger?
44      A.   Well, I - I think making more visible is what I'm
45      saying.
46
47      THE COMMISSIONER:   Q.   So "inflate", as you intended it
```

Transcript produced by Epiq

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 1      to be used, simply meant to state actually the fact, did
 2      you, by making it more visible - in other words, to
 3      accurately state the fact by making it more visible?
 4      A.    To produce a - to take a more inclusive view of
 5      a phenomenon.  I don't know.
 6
 7      MR GRAY:   Q.   If that's your evidence, Dr de Lint, so be
 8      it.  Lower down the page, lower down that paragraph, you
 9      say:
10
11           Moral entrepreneurs and crusaders will
12           double down on their stake in the outcome.
13           Crusaders may draw down alarm but maintain
14           the contention of disproportion.
15
16      Are you saying that crusaders there are just behaving
17      genuinely and honestly?  Do you say that that paragraph is
18      portraying crusaders as being genuine people doing their
19      best, or do you think there is an element of accusation in
20      that?
21      A.    Well, I don't know.  I'm --
22
23      Q.    You don't know.  All right.  I'll move on.  Have
24      a look at page 730.  I want to ask you about the bottom
25      line on that page, where you say:
26
27           ... crime depends on construction and
28           official recording.
29
30      Do you see that?
31      A.    Yes.
32
33      Q.    What does that mean?
34
35      THE COMMISSIONER:    Sorry, was that page 730?
36
37      MR GRAY:   Yes.
38
39      THE COMMISSIONER:    Under the heading - under the heading
40      or above it?
41
42      MR GRAY:   The very last line on the page.
43
44      THE COMMISSIONER:    Thank you.
45
46      MR GRAY:   Q.
47
```

1   *... crime depends on construction and*
2   *official recording.*
3
4   What do you mean by that?
5   A.   Something must be constructed as a crime problem.
6   Something must be - a phenomenon must be turned into -
7   through social processes, through law, through all sorts of
8   processes, into a problem at the level of criminality. In
9   other words, it must be - people participate in how
10   phenomenon are reviewed and a consensus of review,
11   generally speaking, for the very serious crimes, is that
12   they are - they are such seriousness to social problems
13   that they require a legal criminal remedy.
14
15   Q.   Are you simply saying, if I'm trying to understand
16   you, that society considers something to be a crime because
17   society has certain values that criminal behaviour
18   contravenes? Is that the idea?
19   A.   Yes.
20
21   MR TEDESCHI: How does this assist you, Commissioner?
22
23   THE COMMISSIONER: Mr Tedeschi, I am not prepared to close
24   my mind to any piece of evidence that might in the end
25   assist me. This is written by two people who your client
26   relied upon to produce an academic study. It is an
27   insight, albeit after the point, into their state of mind.
28   It could be highly relevant. So, thank you, but I don't
29   regard the objection, if there is one, as being sustained,
30   and I certainly am not going to close my mind at this
31   point.
32
33   MR TEDESCHI: If the Commissioner pleases.
34
35   MR GRAY: Q.   I think you said you accepted that, but if
36   not, what do you say?
37   A.   Yes, I believe so, yes.
38
39   Q.   What you go on to say - just for my friend's benefit,
40   this is why the question was asked - in the next sentence
41   is:
42
43   *And if crime, in robust objective facticity*
44   *is weak or empirically wanting, then bias*
45   *crime is at the weak end of an anaemic*
46   *concept.*
47

.3/03/2023 (32)   2844   W DE LINT (Mr Gray)

1   What do you mean by the preliminary part of that sentence:

3   *If crime, in robust objective facticity is*
4   *weak or empirically wanting ...*

6   What were you referring to there, given that the conclusion
7   of the sentence goes on to say something about bias crime?
8   A.   Crime is a difficult phenomenon to measure. Most
9   social - many social phenomena are difficult to measure.

11   Q.   So that I understand you, are you saying that crime
12   generally - crime generally in robust objective facticity
13   is weak or empirically wanting?
14   A.   Well --

16   Q.   Is that your overall assumption as a starting point
17   for this sentence? Is that what you're getting at?
18   A.   I am implying that it is.

20   Q.   Right. And by that - from that implied starting point
21   you say:

23   *... bias crime is at the weak end of an*
24   *anaemic concept.*

26   Correct?
27   A.   Yes.

29   Q.   So the concept of crime is anaemic and bias crime is
30   at the weak end of it; is that what you're saying?
31   A.   There --

33   Q.   Is that what you're saying?
34   A.   That's what it's --

36   MR TEDESCHI: I object to him being interrupted
37   continually. He was starting to interrupt, Commissioner,
38   and my friend interrupts him after one word.

40   THE COMMISSIONER: Dr de Lint, would you please step
41   outside for a moment, please.

43   (The witness left the hearing room)

45   THE COMMISSIONER: Mr Tedeschi, I don't really see the
46   problem that you see, for the main reason that he is asked
47   a question and it may well be a personality problem, he

1   just doesn't have a capacity to focus on the question. All
2   allowances have to be made for people who are non-lawyers,
3   I accept that. But on a number of occasions, in answer to
4   a question which appears to me to be capable not
5   necessarily of yes or no, he has gone off on what appears
6   to mean, after having listened to a lot of people give
7   evidence over a lot of years, the same as you have -
8   appears to me - by reason of his adoption of a general
9   proposition or some hypothetical situation, it appears to
10   me that he is going off and not answering the direct
11   question.
12
13   In those circumstances, given efficiencies and other
14   considerations, it is not inappropriate, in my view, for
15   counsel, for you for that matter, for Mr Gray for that
16   matter, and on occasions for me, to ask the witness to
17   focus on the content and substance of the question. He is
18   not here and permitted to go off, whether he thinks it's
19   some sort of academic forum.
20
21   MR TEDESCHI: I don't dispute that, but after one word,
22   it's hard to say that he is not answering the question.
23
24   THE COMMISSIONER: Because, Mr Tedeschi, the word often is
25   "in" something or other, and he gives the indication for
26   almost any experienced observer that he is not directing
27   himself to the precise topic, question, or substance but he
28   is going off at a tangent.
29
30   Now, true it is, sometimes that instinctive reaction
31   on your part, Mr Gray's part or mine, may be wrong but
32   we've been watching witnesses give evidence for a very long
33   time, and when a witness starts not by saying "Yes" or
34   "No", or "The problem is this", or "I approached it this
35   way", but "Generally speaking, in academic work, you do
36   this", that sort of sounds like, tastes like and smells
37   like, a non-responsive answer. You are here to protect him
38   in a sense --
39
40   MR TEDESCHI: I'm not his counsel.
41
42   THE COMMISSIONER: No, Mr Tedeschi, let's not muck around
43   here, this person is in your interest, in your client's
44   interest. He is not your witness because everyone called
45   here is called by the Commission. That is technically
46   true. But it is fanciful to suggest that he and Dr Dalton
47   are not in your interest, at the very least, and so to that

```
 1    extent, of course, you are here to protect him as a matter
 2    of commonsense.  But I won't stop people interrupting
 3    witnesses who instinctively are going off to answer
 4    a question seemingly they're posing to themselves.  So
 5    that's what it is.  It's a balance and I accept that.
 6
 7         Would you call Dr de Lint back in, please.
 8
 9         (The witness returned to the hearing room)
10
11    THE COMMISSIONER:   Q.   Doctor, can I just say something
12    to you, and it is not intended to be any criticism at all,
13    and I fully accept that you are not familiar with the
14    process that you are engaging in, but the problem has
15    arisen on a number of occasions.  When you are asked
16    a question by myself, by Mr Gray or Mr Tedeschi, generally
17    speaking, the question is intended to identify the
18    substance, the topic and the precise aspect of the topic
19    that you're being asked to address.
20
21         It may be a lack of experience on your side, but would
22    you do your very best - and I do accept that this may be
23    a foreign environment for you - would you please do your
24    very best to concentrate on the terms of the question that
25    are put to you and address that aspect of it.
26
27         You are not obliged to answer a question you do not
28    understand.  If you don't understand the question, you are
29    entitled to have it repeated.  But if the question is
30    specific, for example, about words in an article that you
31    chose, for example, by that I mean either you or Dr Dalton,
32    or about some concept, and you are taken to a specific
33    matter, would you do your best to please address the
34    specifics of what is being asked of you and not address
35    something more generally or something that you think should
36    be put into context?
37
38         Now, that is not to say that if you cannot answer the
39    question directly, you are entitled to say that needs to be
40    put into context or something, but if you're being asked
41    about the words "I presume you or in concert with Dr Dalton
42    chose", would you do your best to answer the questions
43    about the words in the article?  Thank you.
44
45    MR GRAY:   Q.   Back to this sentence, given your
46    explanation of what you meant about "crime", are you saying
47    in the second part of the sentence beginning "then bias
```

1   crime", that the concept of crime itself is anaemic, an
2   anaemic concept, and that bias crime is at the weak end of
3   that concept?
4   A.   It is - I would like to answer the question but
5   I would like to provide a context.
6
7   Q.   Well, answer the question first and then, by all
8   means, provide a context.
9
10   THE COMMISSIONER: Q. And can I say this, Doctor, it
11   might assist you, when you're asked a question about
12   something, especially the words of an article, that - and
13   I take it you were focusing on the screen, but in your own
14   interests, please have a look at the words you're being
15   asked about --
16   A.   Yes.
17
18   Q.   -- before you answer, and if the screen works for you,
19   that's fine; if the hard copy is better for you, by all
20   means, whichever is better. But when you're being asked
21   about a sentence by Mr Gray, or in due course by
22   Mr Tedeschi, focus on the actual words you're being asked
23   about. So, sorry I interrupted.
24
25   MR GRAY: Q.   You were going to say that you could answer
26   the question but then provide context. So please do it in
27   that order. Answer the question --
28   A.   Yes.
29
30   Q.   -- and then by all means provide context. So what's
31   the answer to the question?
32   A.   Yes.
33
34   Q.   The answer is yes. And then the context?
35   A.   The context is that there is a whole tradition in
36   criminology which understands crime as a social
37   construction, and so there's a constructivist - there are
38   constructivist claims, claims making, in particular the
39   critical and radical criminology, and that's the context of
40   this. And the other context is the relative weakness of
41   crime research criminology, in particular, with respect to
42   the sort of high standards of scientific measure, and so -
43   yeah, that's the context.
44
45   Q.   All right. Thank you. Now, does that lead to the
46   further distillation of what your views might be that the
47   whole concept of bias crime is - well, you say at the weak

```
 1    end of an anaemic concept.  But do you mean that bias crime
 2    itself as a concept is flimsy or difficult to pin down?
 3    A.   It's - can I say yes with an elaboration?
 4
 5    Q.   Thank you.  Yes, do that.
 6    A.   Yes, because it requires an interpretation of the
 7    phenomenon which uses devices or tools that are somewhat
 8    imprecise.
 9
10    Q.   Bias crime does?
11    A.   Yes.  And - well - yes.
12
13    Q.   I will move on.  At the bottom of page 735, the very,
14    very bottom of page 735 - sorry, I beg your pardon, 734.
15    The very last line.  You will see that a sentence begins:
16
17         In coming to ...
18
19    On the very last line of that page.  The last three words
20    are, "In coming to"?
21    A.   Which page, sorry?
22
23    Q.   734.
24    A.   "In coming to", yes.
25
26    Q.   Then we go over to 736.  So the sentence reads:
27
28         In coming to its conclusion, the academic
29         team developed its own assessment tool ...
30
31    Now, pausing there, of course that's correct; you did
32    develop your own assessment tool, didn't you?
33    A.   Yes.
34
35    Q.   But you then say that the reason for that was as
36    follows:
37
38         ... because it needed to differentiate the
39         target of bias (was it anti-gay or
40         anti-paedophile animus that may have
41         motivated the offender?).
42
43    Do you see that?
44    A.   Yeah, there's a footnote on that.
45
46    Q.   Well, there isn't actually, there's a footnote to the
47    next sentence?
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Transcript produced by Epiq

```
 1      A.    Oh, well it --
 2
 3      Q.    Pausing there, to say that the academic team developed
 4      its own assessment tool because it needed to differentiate
 5      the anti-gay and anti-paedophile point is just not true, is
 6      it?  That's not the reason --
 7      A.    A part of --
 8
 9      Q.    That's not the reason you developed the tool, is it,
10      because of the anti-gay/anti-paedophile issue?
11      A.    There - it's one of the reasons.
12
13      Q.    I thought we went through the reasons at considerable
14      length yesterday?
15      A.    Yes.
16
17      Q.    And you accepted that the form had problems?
18      A.    Yeah.
19
20      Q.    That the methodology had problems?
21      A.    Yes.
22
23      Q.    That you couldn't get behind it?
24      A.    Yes.
25
26      Q.    There were disconnects that you felt were not
27      suitable, and so forth.  You gave quite a bit of evidence
28      about this yesterday?
29      A.    Yes, yes.
30
31      Q.    And nowhere once did you say that a reason for - much
32      less the reason for - developing your own tool was anything
33      to do with the anti-gay/anti-paedophile topic?
34      A.    No, I did not state that yesterday, but as I recall,
35      the development of our discussions vis-à-vis what the -
36      what we were trying to do with the information in the
37      forms, we had this issue with some kind of a, you know,
38      identity conflict or it turned into this anti-paedophile
39      bias, so that was also one of the problems that we were
40      addressing.
41
42      THE COMMISSIONER:    Q.    But you didn't state in footnote
43      20 to Parrabell, did you, that this matter that you refer
44      to at the top of 736 was the reason why you developed your
45      own tool, either, did you?  Would you like to have another
46      look at footnote 20 in your Parrabell report or are you
47      familiar with it?
```

Transcript produced by Epiq

```
1      A.   I don't know that - you're correct I'm sure.  May I --
2
3      Q.   I'll read you bits of it so that you have it back in
4      your mind:
5
6           ... [NSW Police] placed great faith in
7           the instrument --
8
9      A.   Yeah.
10
11     Q.   --
12
13          the academic team was surprised to discover
14          that scarcely any academic literature
15          exists ...
16
17     Et cetera, et cetera?
18     A.   Yes.
19
20     Q.
21          Nor could the [NSW Police] supply an
22          article ...
23
24     et cetera.  There was a:
25
26          ... dearth of such literature; the
27          academic team are reluctant to endorse
28          the indicators.  [That is] not decreeing
29          they are wholly deficient ... but we would
30          have liked to garner independent
31          evidence ...
32
33     A.   Yes.
34
35     Q.   Now, what you told the audience in the Parrabell
36     context was that you devised your own indicators because
37     you couldn't rely upon the indicators in the form being
38     used by the police?
39     A.   Yes.
40
41     Q.   And you never --
42     A.   But was there - yes.
43
44     Q.   Well, you didn't expose in the Parrabell report what
45     you say at the top of 736, did you?
46     A.   I guess not, no.
47
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```
 1    MR GRAY:    Q.    In the next sentence you say "it" - that is
 2    the academic team --
 3
 4          also used a concordance method to develop
 5          greater certainty regarding the
 6          attributions (see Table 2).
 7
 8    A.    Yes.
 9
10    Q.    And then there is a footnote to that sentence,
11    footnote 11, where you make reference to the
12    anti-paedophile/anti-gay topic in the first few lines.  Do
13    you see that - the first four or five lines of that
14    footnote?
15    A.    Yes.
16
17    Q.    And then you say:
18
19          In addition, we deemed that the ten-point
20          ... Form did not offer a straightforward
21          relationship between the factors and the
22          destination of bias.
23
24    A.    Yes.
25
26    Q.    And instead you came up with your own three-point
27    assessment?
28    A.    Yes.
29
30    Q.    Now, the second part of that footnote, where you talk
31    about what your view was of the form and how you therefore
32    set up your own test, is something like what you said in
33    the Parrabell report; it's a bit similar to footnote 20?
34    A.    Yes.
35
36    Q.    But what you say in the body of this article is that
37    the reason for the development of your own tool was because
38    of the anti-gay/anti-paedophile point, and I'm simply
39    putting to you that to say that as bluntly as you do on the
40    top of that page is just not true?
41    A.    It's not complete.
42
43    Q.    All right.  I won't take any more time on it.  At 737,
44    at the bottom of the page, bottom paragraph, you refer to
45    the "so-called problem of gay homicide", which I imagine
46    may have perhaps been intended to be the "so-called problem
47    of gay" - I take that back, sorry.  You refer to the
```

```
 1        "so-called problem of gay homicide".  Why was it
 2        a "so-called problem"?
 3        A.    Where - sorry?
 4
 5        Q.    Page 737, bottom paragraph, first line:
 6
 7              ... the so-called problem of gay
 8              homicide ...
 9
10        Why "so-called"?
11        A.    What - in terms of its extraordinariness.  So --
12
13        Q.    Well, was there a problem of gay homicide?
14        A.    Of course there was a problem.  It's a question --
15
16        Q.    Right, so why --
17        A.    It's a question of the extraordinariness of it.
18
19        Q.    No, no.  You refer to the problem of gay homicide as
20        "so-called", as though it's not really a problem?
21        A.    Well, yes, that's --
22
23        Q.    Why?  Is it an error?
24        A.    It - yeah, it's meant to - it's meant to refer to the
25        relationship of the problem to the incidence.  So it
26        becomes a - an extraordinary problem as opposed to
27        a problem that all jurisdictions are confronted with.  This
28        is an extraordinary problem.  And it's been very poorly and
29        very wrongly expressed.
30
31        Q.    All right.  738, in the first full paragraph,
32        a similar point.  You refer to the "notion of a 'problem'
33        of gay homicide"?
34        A.    Yes.
35
36        Q.    Again, the suggestion obviously being that there
37        wasn't really a problem of gay homicide, isn't it?
38        A.    Yes, and this is again - it was this issue of the
39        extraordinariness of it; in other words, it rises above the
40        level of gay homicide being a problem, as it is.  But this
41        one is an extraordinary problem.
42
43        Q.    But that's not what the sentence says, is it?
44        A.    Okay, yes, it's true, it's very, very poorly put.
45
46        Q.    At the bottom of 738 - first of all, sorry, near the
47        bottom of 738, just above the paragraph beginning with
```

1   "Unsatisfied", do you see you refer in about four lines
2   from the end of that paragraph:
3
4   .. a counter-narrative was needed; the
5   number 88 had been reduced by two-thirds.
6
7   And by that you were referring to the Parrabell report?
8   A.   Yes.
9
10   Q.   As saying it wasn't 88, it was only a third of 88;
11   agree?
12   A.   Yes.
13
14   Q.   So you say:
15
16   Rejecting the story that the number had
17   been exaggerated, the media scrum ...
18
19   went on and did certain things. So again, aren't you
20   reiterating your assertion that the number of 88 wasn't
21   just mistakenly high but exaggeratedly high, and doesn't
22   that involve deliberateness?
23   A.   It's exaggerated from the empirical number - the
24   number that is - that is known to exist. So 88 is a - is
25   an exaggeration of 50 or 40 or 30 or what have you.
26
27   Q.   Well, it's larger, obviously --
28   A.   Yeah.
29
30   Q.   -- but the notion of exaggeration usually means that
31   somebody is - someone knows the true position but
32   exaggerates it. Is that what you were suggesting here?
33   A.   It's greater than the number --
34
35   Q.   I understand.
36   A.   -- known to represent the extent or incidence
37
38   Q.   I'll move on again. At the bottom of 739 under the
39   heading ""Conclusion", you talk about crusaders and the
40   notion that the claim concerning "facts" is "loaded and so
41   signified", and at the end of that paragraph you say:
42
43   Its interrogation --
44
45   meaning to interrogate or challenge what you say is the
46   correct number --
47

.3/03/2023 (32)   2854   W DE LINT (Mr Gray)

1   *represents a callous indifference to the*
2   *sacred site.*
3
4   Do you see that?
5   A.   Yes.
6
7   Q.   Now, is that reference to "the sacred site" mocking?
8   A.   So the number becomes a totem, it becomes
9   a representation. It actually stands in for all of the
10   grief and misery, the decades of hurt and pain, and any
11   questioning of that number is to act as if you - to utter
12   profanity, to be completely indifferent to the extent of
13   that horror. So that's what I mean by that.
14
15   Q.   All right. And then the last sentence of the whole
16   article on page 740, you say:
17
18   *It is not just the police who are vexed by*
19   *the figure; the wider community is jolted*
20   *by a "false news" imprimatur, whatever the*
21   *social reality of the period in history the*
22   *number is meant to represent.*
23
24   Do you see that
25   A.   Right.
26
27   Q.   So you are ending the way you began by a reference to
28   this supposedly being false news or, to put it another way,
29   fake news, aren't you?
30   A.   I am - no, I - well, what's being said there is that
31   there's a - there's a representation of extraordinariness,
32   so that it needs to attract a requisite response equivalent
33   to the extraordinariness of the phenomenon. But since that
34   extraordinariness has never been determined, the response -
35   the response is measured in relation to an extent which is
36   beyond the empirical measure. And so that's the intention
37   of that.
38
39   Q.   Let me put these questions to you by way of
40   concluding. Could I suggest that overall, this article
41   reveals that you held very, very strong opinions about the
42   illegitimacy, indeed, the deliberate falsity, of any
43   suggestion that the number of gay bias homicides in the
44   period in question was more than 80 or indeed 88; do you
45   agree with that?
46   A.   No.
47

```
1     Q.    And I suggest that you regarded your role as to
2     challenge that suggestion and indeed to rebut it, as you
3     have done in this article?
4     A.    No.
5
6     Q.    And that that was the approach you took in conducting
7     your work as an academic reviewer of Strike Force
8     Parrabell?
9     A.    No.
10
11    MR GRAY:    Those are my questions.
12
13    THE COMMISSIONER:    I've just got one question, perhaps,
14    before Mr Tedeschi.
15
16    Q.    Did you ever put any pressure on Dr Dalton in relation
17    to the language that you suggested be used in this
18    article - namely, he having difficulties with some language
19    that you used?
20    A.    Putting pressure?
21
22    Q.    Yes.  Did you ever put any pressure or overbear
23    Dr Dalton in respect of any of the language ultimately
24    published in this article?
25    A.    Not to my knowledge, no.
26
27    Q.    So it would be false, would it, to suggest that he
28    took exception to the notion of "fake news" and told you
29    so?
30    A.    He - I think he - no, no, I don't - I think he may
31    have been not happy with "fake news".
32
33    Q.    And you ignored his reaction, did you?
34    A.    I didn't ignore his reaction.
35
36    Q.    Well, you disregarded it, didn't you, because the term
37    "fake news" appears?
38    A.    Yes, "false news", yes.  Yes.
39
40    Q.    All right.  And the notion of a sacred site, is that
41    something that he also took exception to?
42    A.    I don't know.
43
44    Q.    And if he did, it would be true to suggest you ignored
45    that as well; is that fair?
46    A.    That I would what?
47
```

```
1      Q.    If he did say or does say that he took exception to
2      your use of the term "sacred site" in the sentence you've
3      been taken to - do you recall him taking exception to that
4      language and asking you, as it were, to tone it down and
5      take it out?
6      A.    Yes, that's possible.
7
8      Q.    And is it also fair to say that, in that case again,
9      you just ignored his objection?
10     A.    No.
11
12     Q.    Well, you left it in, though, didn't you?
13     A.    Yes.
14
15     Q.    So you must have ignored, if he did take exception to
16     that term - you must have ignored any comment he made to
17     you suggesting that it was offensive or something of that
18     effect?
19     A.    Yes.
20
21     THE COMMISSIONER:    All right.  Thank you.  Yes,
22     Mr Tedeschi.
23
24     <EXAMINATION BY MR TEDESCHI:
25
26     MR TEDESCHI:    Q.    Dr de Lint, you were asked a number of
27     questions by Counsel Assisting the Commissioner about the
28     deficiencies that you saw in the tool that the police used,
29     the BCI form.  Despite those reservations about the BCI
30     form, you continued your involvement in this project and
31     participated in the report that was included with the
32     police part of the report.  Would you tell the Commissioner
33     what role, if any, did the BCI forms play in your
34     consideration of these cases?
35     A.    They provided the material, the narrative material, of
36     the cases.  Despite their being produced through the form,
37     it was, nevertheless, possible to glean the information of
38     the cases, and so in that respect the form wasn't, you
39     know, a huge - it wasn't an imposition that couldn't be
40     overcome.
41
42     Q.    And we've seen from the few summaries that Counsel
43     Assisting showed you that they record a finding by the
44     police, the Parrabell team, and a finding by yourselves,
45     and if one looks at the whole summary of the document,
46     a lot of the conclusions are the same or similar?
47     A.    Yes.
```

1
2   Q.   Is that right?
3   A.   Yes.
4
5   Q.   How was that consensus arrived at?
6   A.   The academic team did a concordance process and we
7   also met with the police, and in a number of cases, we
8   would discuss, sometimes over email but also when we were
9   visiting, some of the - whatever details about that case
10   were sort of outstanding in terms of differences of opinion
11   with respect to how to code.
12
13   Q.   In those cases where ultimately there was a difference
14   of opinion about which category they should go in, how did
15   the police react by way of that difference? How did they
16   react to that difference in - towards yourself and
17   Dr Dalton?
18   A.   Oh, well, I mean, they took on board what we would
19   have said and - I don't recall that - that they moved in
20   our direction in individual cases. They - I'm not certain
21   that they did. It wasn't a concern that the teams had the
22   same result. So we - they would take on board what we'd
23   say, "Yes, noted, okay, let's think. No. Continue with" -
24   you know, don't change. The same with us, we would take on
25   board what they said and in some cases, they would be
26   significant enough, so we'd say, "Okay, we had better
27   reevaluate."
28
29   Q.   So in some cases, one or the other side would change
30   their view?
31   A.   Yes.
32
33   Q.   In other cases, there was ultimately an agreement to
34   disagree?
35   A.   Yes, exactly.
36
37   Q.   You were asked a number of questions by Counsel
38   Assisting about subjective testing, objective testing and
39   reproducibility and the like?
40   A.   Yeah.
41
42   Q.   In the social science field, what do you say about
43   subjective testing and objective testing?
44   A.   A - I think I had some - a note here. Can I just
45   consult my note for a second? So --
46
47   THE COMMISSIONER: Q.   Sorry, just before you do that, do

```
 1      I understand you have prepared a careful response to the
 2      question that has just been put to you, hence you made
 3      a note to that effect?
 4      A.   No, I have - last night, I made a lot of notes to
 5      myself --
 6
 7      Q.   Is that right?
 8      A.   Yeah.
 9
10      Q.   As a result of what?
11      A.   As a result of yesterday's experience.
12
13      Q.   Okay.  You read out your note you've made, then, if
14      that's what you want to do.
15      A.   Well, it doesn't - it's not - so we use concordance
16      because we can have very many people, in a sense, taking
17      a measure of something, and the more people that take
18      a measure of the same thing, using the same devices, using
19      the same parameters and the same assumptions, et cetera,
20      coming up with the same agreement, the more, in a sense,
21      objective the result becomes.
22
23          Tools have a reliability factor or measure, and some
24      are - some are perfect; like, DNA sampling is very, very
25      high, you know, 99 or whatever per cent, you know, times
26      out of a - so that is extremely robust in terms of
27      reliability.  Many areas of social sciences, it's quite
28      weak, and it's because the measures tend to be a bit
29      softer, or they - or the phenomenon tend to be a bit
30      softer.  But - so concordance is a way of getting around
31      the idea of --
32
33      MR TEDESCHI:   Q.   By "concordance" you mean different
34      people using the same tool and coming to the same
35      conclusion?
36      A.   Yes, yeah.
37
38      Q.   So that doesn't result in an objective test, though,
39      does it; it just results in a subjective test being
40      confirmed by different people?
41      A.   Yeah, that's right.  Well, it's - when does
42      subjective - when does a subjective test become objective,
43      to the point where no matter how many times you throw it
44      into a sample, you end up with the same result?  Yes.
45
46      Q.   Can you give us an example, apart from in the hate
47      crimes area?  Can you give us an analogy?
```

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1
2   THE COMMISSIONER: Of concordance?   Of concordance or --
3
4   MR TEDESCHI: Q.   Of subjective testing reaching a level
5   of objectivity because of concordance?
6   A.   Well, if you go to a specialist and the specialist
7   makes an evaluation about, you know, you may have this, and
8   you take that on, but then you'd like to go to another
9   specialist to see if that's confirmed, maybe it's not
10   confirmed, and then you may have to go to five more
11   specialists to develop some view of certainty.
12
13   Q.   Is that different to some sort of - like a blood test
14   or a medical test of some kind that gives you an objective
15   test?
16   A.   Yes, in a sense that the tool is used, but the tool -
17   also, the tool could be invented by - you know, eventually
18   it becomes a tool that has, like I say, robustness, if it's
19   if it's a robust tool. A tool doesn't necessarily make it
20   objective because a tool might not be robust.
21
22   Q.   So in your field of criminology, social science
23   generally, are most tests subjective tests?
24   A.   They rely on people making observations or
25   interpretations about phenomenon to a great degree.
26
27   Q.   You were asked a number of questions by my learned
28   friend about the fact that if you have a case where all
29   you've got is a body found at the base of a cliff and you
30   said first thing this morning that you wanted to correct
31   what you said yesterday, you said you would place it into
32   the "Insufficient Information" category?
33   A.   Yes.
34
35   Q.   Now, if you had a little bit more information, like,
36   for instance, that the person's body has been found at the
37   base of a cliff right next to a gay beat, would that change
38   the categorisation?
39   A.   It might. I mean, the - if - yeah, it - more
40   information might be needed is --
41
42   Q.   If you didn't have any more information, that's all
43   you had - body found at the base of a cliff next to a gay
44   beat - which category would you put it into?
45   A.   "Insufficient Information."
46
47   Q.   You were also asked some questions by Counsel

```
1    Assisting about the fact that the indicators that were used
2    in the BCI form referred to whether there was a gay hate -
3    an intention of gay hate crime "in whole or in part",
4    whereas your indicators didn't refer to --
5    A.   Right, right.
6
7    Q.   -- "in whole or in part"?
8    A.   Right.
9
10   Q.   Your immediate answer was, "Well, it's implicit" --
11   A.   Yes.
12
13   Q.   -- in your indicator?
14   A.   Yes.
15
16   Q.   Do you want to say anything more about that?
17   A.   Nothing other than my assumption is that any part of
18   a bias motivation is sufficient to categorise it as bias
19   motivated.
20
21   Q.   Or a bias motivation together with other motivations?
22   A.   Yes.  Yes.
23
24   Q.   I think Counsel Assisting questioned you about the
25   robbery situation --
26   A.   Yes.
27
28   Q.   -- where the person is a victim of robbery because
29   they're perceived to be gay --
30   A.   As vulnerable --
31
32   Q.   -- and they're perceived to be vulnerable?
33   A.   -- and in a category, yeah.
34
35   Q.   You said you would categorise that as a gay hate
36   crime?
37   A.   Yes, yes.
38
39   Q.   Even though there's an aspect of robbery?
40   A.   Yes.  Yes, I said that the person is targeted for
41   robbery because they are vulnerable - they have
42   a vulnerability attached to their status, and so that
43   targeting is the bias.  And it - and so you can - it can -
44   it can be that the person's primary motivation is robbery,
45   and alongside that motivation of robbery, there is
46   a targeting, and the targeting involves the bias.
47
```

```
 1      Q.   So even if the primary motivation is robbery and
 2      a secondary motivation is a gay person is an easy target,
 3      would that still be categorised as a gay hate crime?
 4      A.   Yes.
 5
 6      Q.   You were asked a number of questions about the fact
 7      that in your tool that you and Dr Dalton used, there were
 8      cases where you not only said it was a gay hate crime, but
 9      you sub-categorised it into either a gay hate crime or an -
10      an anti-gay intention or an anti-paedophile animus; do you
11      recall those questions?
12      A.   Yes.
13
14      Q.   Now, Mr Gray read to you some of the summaries?
15      A.   Yes.
16
17      Q.   I think there were two of them, maybe three --
18      A.   Yes.
19
20      Q.    -- in which there was no reference at all to
21      paedophilia?
22      A.   Right.
23
24      Q.   Now, in your answer to Mr Gray, you referred to
25      "conflict identity bias"?
26      A.   Yes.
27
28      Q.   Can you explain what is the connection between
29      conflict identity bias and paedophilia?
30      A.   Well, it's not a very strong assumption and I - and,
31      well, it's not a very - in some of the cases we noticed
32      that there were - there were people who had some sexual
33      abuse in their past, and the literature also says that
34      people that are sexually abused, you know, are obviously at
35      greater risk of a myriad of issues, and the - and so some
36      people are in - are triggered when they - and so the - you
37      know, and this goes back to the sort of reactive crime
38      category that there's quite a few bias crimes in, but the
39      sort of components of that trigger include that sort of
40      reference to historical trauma.
41
42      Q.   So is this what you are saying - and please correct me
43      if I'm wrong --
44      A.   Yes.
45
46      Q.    -- that although there's no reference in the summary,
47      that you might have seen some reference in the BCI form to
```

```
 1      this concept of conflict - sorry, what's the term?
 2      A.    Identity conflict, conflict identity, yes.
 3
 4      Q.    This conflict identity issue?
 5      A.    Yes, yes.
 6
 7      Q.    Is that what you are saying?
 8      A.    Yes.
 9
10      Q.    And that you inferred from that that there may have
11      been earlier sexual abuse on the part of the offender?
12      A.    In some cases - in some cases, it was - yeah, there
13      was - yeah, evidence provided.
14
15      Q.    Just this afternoon, you gave evidence that you would
16      have much preferred if there'd just been one report?
17      A.    Yes.
18
19      Q.    Rather than a separate police report and academic
20      report?
21      A.    Yes.
22
23      Q.    By that, do you mean a combined report by both the
24      police and the academics?
25      A.    It's not that we couldn't - that we weren't, in the
26      main, writing the report, but --
27
28      THE COMMISSIONER:   Q.  Sorry, Doctor, I am sorry.
29      A.    Sorry.
30
31      Q.    Would you please --
32      A.    Answer the question - yes.
33
34      Q.    Well, have a go, would you?  Just answering that
35      question for once.
36      A.    Yes.
37
38      THE COMMISSIONER:  I won't put words in Mr Tedeschi's
39      mouth.  Would you please ask it again and see what answer
40      we can get.
41
42      MR TEDESCHI:   Q.    By that answer, did you mean that you
43      would have preferred to have seen a joint account written
44      in collaboration by both the police and the academics?
45      A.    Yes.
46
47      Q.    And what would have been preferable about that?
```

1   A.   What would have been preferable is that we would have
2   had a few - a couple more iterations with respect to the -
3   they had some text that ultimately was their report,
4   Assistant Commissioner Crandell's report, that we could
5   have shared and amalgamated those texts.

7   Q.   And you didn't get a chance to review their part of
8   the report --
9   A.   No.

11   Q.   -- before it was issued?
12   A.   Yes.

14   Q.   Do you think it would have been preferable if you had
15   had that opportunity --
16   A.   I think so.

18   Q.   -- to either review a joint report or at least to
19   review their part of their report?
20   A.   Yes, I think it would have been preferable.

22   Q.   Why?
23   A.   Because I think it was inelegant that there were all
24   these tables that we were - we had tables that were
25   intended to represent their findings, but then they were
26   reproduced in the whole package of reports, and I think
27   that's a bit inelegant. I think you need, you know, to
28   have tables represented once in a report, not a couple of
29   times. So - but that's one reason.

31   The other reason, as I say, is that - and I may be
32   repeating myself - this would have offered more of an
33   opportunity to synthesise at least the narrative. The
34   findings are separate. That's fine, they create --

36   Q.   The narrative of the cases was not in either report,
37   was it?
38   A.   No. I'm talking about the whole narrative of the
39   report, sorry.

41   Q.   So, what, the guts of the report?
42   A.   Yes.

44   Q.   You would have preferred to have had that by
45   agreement?
46   A.   Yes.

```
 1    THE COMMISSIONER:   Q.   Is that because you didn't think
 2    it appropriate to disclose the differences or what?
 3    A.   No, the differences have to be - the differences are
 4    the differences in the --
 5
 6    Q.   So is it just optics?  Are we just talking about
 7    style, elegance, inelegance?  What are we talking about?
 8    A.   Yeah, more or less.  I think there is - I thought
 9    there was going to be a singular report.
10
11    Q.   I know you did and you said, "I wish it hadn't been
12    written", in the note or email, but are we just really
13    talking about formatting, style and elegance or inelegance
14    or are we talking about substance?
15    A.   Yes, I think so.  I would say yes.
16
17    Q.   So is it just purely --
18    A.   Can I answer yes.
19
20    Q.   So it's purely aesthetic?
21    A.   Yes.
22
23    Q.   It's purely aesthetic, is it?
24    A.   Yes.
25
26    THE COMMISSIONER:   Okay, fine.
27
28    MR TEDESCHI:   Q.   Doctor, you were asked a lot of
29    questions about the article by yourself and Dr Dalton and
30    about moral panic?
31    A.   Yes.
32
33    Q.   What was your aim or objective in writing that
34    article?
35    A.   Rightly or wrongly, and I'm willing to admit that it
36    may be wrongly, I thought I - you know, we were perceiving
37    a kind of a divorce or a detachment of signified and
38    signifier with respect to a list of 88, and, you know,
39    I thought it was an interesting phenomenon with respect to
40    how it sort of becomes almost an independent - with an
41    independent life.  And I thought, you know, does that - you
42    know, can that represent an illustration of a - you know,
43    this - you know, interest in - in how a - you know,
44    obviously a very valuable interest in drawing attention to
45    a phenomenon can bring that phenomenon to a very - in a
46    sense, very great height in the public imaginary; right?
47
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 1          So it's a huge and important, and a very invested
 2     object in the public imaginary, and really, you know, it
 3     was an interest in sort of exploring that development.
 4     Because it - because the - the sort of understanding is
 5     that in Sydney, this phenomenon is much different than it
 6     is anywhere else.  So that's what people would - you know,
 7     that's what you kind of take away from it, that there's -
 8     that there must be an extraordinary incidence here as
 9     opposed to other places, that this is a - this is just an
10     extraordinary, you know, place of this phenomenon.
11
12          And I was fascinated by, you know, well, how does that
13     come to be?  Whether, you know - because if you don't - if
14     you don't have the - any means or measure of ascertaining
15     that it is extraordinary, you know, taking another city,
16     taking several other cities and comparing, because there is
17     no comparable data, so we have no comparable lists like
18     this in other places, and so, you know, how do you know how
19     extraordinary it is, you know, considering its genesis?
20
21     Q.   And were you in any way seeking to diminish the
22     seriousness of the problem of gay hate violence or gay hate
23     murders?
24     A.   No.  No.  This is a - this is an artefact of spending
25     too much time in - you know, in criminology articles and
26     texts.  One becomes fascinated by the dimension of
27     something and then one, you know, tends to forget that
28     underneath all of that there are - there are real people,
29     you know, and that - you know, and as Derek expressed it,
30     it's an incredibly terrible and tragic situation; right?  A
31     terrible and tragic phenomenon, in the real phenomenon of
32     it; right?  And I'm - I couldn't say that - how regretful
33     I am that --
34
35     Q.   That it might have given that appearance?
36     A.   That it might have given that appearance, yes.  You
37     know, I - I wish, you know, that that could be
38     reconsidered, because, you know, there are some things you
39     do and you say, "Why did you do that, that's a really -
40     that's not only stupid it's" - you know.  But anyway, so --
41
42     THE COMMISSIONER:   Q.   Do you regret any aspect of the
43     article?
44     A.   Yes, I do, yes.  Yeah, I do.  I - if you offered me
45     the opportunity to say, "Oh, I'm going to wave a magic wand
46     and that article doesn't exist" --
47
```

```
1      Q.   Would you --
2      A.   I would be --
3
4      Q.   Okay, so your preference --
5      A.   I would be extremely happy.  More than happy.
6
7      Q.   I don't think you're going to do anything about that.
8      A.   No.
9
10     Q.   Not unless we reverse the time clock.
11     A.   No, well, you know --
12
13     Q.   But do you regret that it was ever submitted for
14     publication?
15     A.   Yes, I do.
16
17     MR TEDESCHI:   Q.   And is that because you acknowledge
18     that it could be viewed in the light of diminishing what is
19     a very serious problem?
20     A.   Yes.  And, you know, with respect to my obstinance on
21     the point, you know, you get - you get so involved in these
22     debates, these arcane debates, and then you say "Well,
23     let's, you know, do this over here."  And of course, you
24     know, it eventually becomes totally detached from reality
25     and - you know, and unfortunately that's - you know, that's
26     a legacy of working in a completely different environment.
27     This is a - this is a law environment, you know, and it's
28     such a different environment from a sort of a discourse
29     intensive environment where all the sort of discourse is
30     almost, in a sense, equally meaningless, you know, if I may
31     use that expression.  And so what happens is that you can't
32     intertwine the two very readily.
33
34     Q.   Is this what you are saying, that in the context of
35     academia, you can get so focused on a social phenomenon
36     that you in fact lose sight of the underlying social
37     problem?
38     A.   You lose sight that there are all sorts of connections
39     to that underlying social problem, all sorts of real
40     connections to that.  For you, they're hypothetical
41     connections to a social problem, but they're actually, you
42     know, in another way, real connections to the social
43     problem, and that - that discord or that - that is what
44     gets lost, you know, sort of lost in translation, if you
45     will.
46
47          But I take full responsibility because I - you know,
```

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1   you get involved in the heat of the moment and in - you
2   know, you become sort of tunnel visioned in your immersion
3   in a particular kind of discourse, and - but I take it -
4   I take it on. I - you know, I would - if you, as the
5   Commissioner, did have a magic wand that could do what you
6   suggested, I would be very happy if you could do that.
7
8   Q.   Doctor, finally, Counsel Assisting took you to the
9   Russell case, number 36, that summary. That was an example
10 where, in fact, the academics came to the conclusion that
11 there was insufficient information, but the police had come
12 to the conclusion that it was suspected to be a bias crime.
13 A.   Okay.
14
15 Q.   Was that an example where, in fact, the academics were
16 more - I'm not sure of the right word, more cautious, more
17 conservative, more reluctant to admit that it was a bias
18 crime, and the police were more ready to find that it was
19 a bias crime?
20 A.   Sorry, can you go back? I apologise.
21
22 Q.   Yes. That was a case, the case of Russell.
23 A.   Yeah.
24
25 Q.   There was a body found at the base of a cliff?
26 A.   Yeah.
27
28 Q.   Next to Marks Park?
29 A.   Yeah.
30
31 Q.   Some hair was found on his hand?
32 A.   Right. Yes.
33
34 Q.   Do you remember that case?
35 A.   Yep, yep, yep.
36
37 Q.   And that was a case where the academics had found that
38 there was insufficient information?
39 A.   Yes.
40
41 Q.   The police found that it was suspected to be a bias
42 crime?
43 A.   Yes.
44
45 Q.   Was that an example of a case where the police were
46 more ready to find that it was a bias crime than the
47 academics were?

```
 1     A.   Yes.
 2
 3     Q.   So in that sense, you were more cautious about or more
 4     reluctant --
 5     A.   Yes.
 6
 7     Q.   -- to find a bias crime than they were?
 8     A.   Yes.
 9
10     Q.   Were there other cases like that?
11     A.   I think there were a couple.  I think - off the top of
12     my head I can't tell you, but that's why the numbers are
13     just slightly different, and again, we used a slightly
14     different evaluation as Mr Gray has said, you know, through
15     our definition.
16
17     MR TEDESCHI:   Yes, thank you.
18
19     THE COMMISSIONER:   All right.
20
21     MR TEDESCHI:   Might he be excused?
22
23     THE COMMISSIONER:   Yes, yes, by all means.  I'm going to
24     adjourn anyway.  So I will adjourn now.  Dr de Lint,
25     thank you very much.  You are free to go and I'll discharge
26     you from further attendance.
27
28     <THE WITNESS WITHDREW
29
30     THE COMMISSIONER:   I will resume at 10 in the morning - 10
31     on Monday morning, I'm sorry.
32
33     MR TEDESCHI:   Only one witness left, I think.
34
35     THE COMMISSIONER:   There's only one witness left, and
36     I take it you will be here, or not here?
37
38     MR TEDESCHI:   I will be here but Mr Mykkeltvedt will be
39     doing that witness.
40
41     THE COMMISSIONER:   I will look forward to that.  Very
42     well.  I will adjourn until 10 on Monday morning.
43
44     AT 4.20PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED
45     TO MONDAY, 6 MARCH 2023 AT 10AM
46
47
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