

**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 Thursday, 20 April 2023 at 10.04am**

**(Day 44)**

<b>Mr Peter Gray SC</b>	<b>(Counsel Assisting)</b>
<b>Ms Meg O'Brien</b>	<b>(Counsel Assisting)</b>
<b>Mr Enzo Camporeale</b>	<b>(Director Legal)</b>
<b>Mr Rhys Carvosso</b>	<b>(Solicitor)</b>

**Also Present:**

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

**Mr Murugan Thangaraj SC with Mr Jonathan Milner for  
Mr Willing**

1 THE COMMISSIONER: Mr Willing, please sit down, thank you.

2

3 MR GRAY: Commissioner, the proceedings are resuming today  
4 so as to enable Mr Tedeschi KC, who appears for the police,  
5 to question Mr Willing at this stage.

6

7 MR THANGARAJ: Commissioner, I appear for Mr Willing.

8

9 THE COMMISSIONER: Thank you very much. Leave is granted.

10

11 Before you start, Mr Tedeschi, can I just indicate  
12 that everybody in the room knows that the Terms of  
13 Reference require me to report by 30 June. I think, as  
14 a matter of courtesy to everyone in the room, given the  
15 significant volume of material that we have received, and  
16 again at the moment, without criticism, as recently as  
17 yesterday afternoon, from NSW Police, I have sought an  
18 amendment to the Terms of Reference to extend the time  
19 until 30 August this year. I do not propose to extend it  
20 any further, but I will be under quite significant  
21 constraints to achieve that end.

22

23 I should also indicate, as a matter of courtesy, that  
24 that extension has yet not been approved and I won't  
25 presume either way, but I thought I should let everybody  
26 know that I have sought that extension, and that will flow  
27 into perhaps a little later in the morning, or tomorrow,  
28 maybe a little presumptively setting some dates for some  
29 possible oral submissions of one sort or another.

30

31 So I thought I would tell you that at the very  
32 beginning. It doesn't affect anyone at the table at the  
33 moment for obvious reasons, but it may be the subject or  
34 I may want to make it the subject of some discussion a  
35 little later in the day or in the next day or two in  
36 communication in one form or another with relevant counsel  
37 concerned.

38

39 It won't affect Mr Willing, I can assure him that  
40 30 August won't be a problem for him, but it will be  
41 a problem for me. But I also want to highlight the  
42 necessity on my part to get that extension, but, secondly,  
43 to put some dates probably if only tentatively in place so  
44 that everyone knows what they're doing.

45

46 MR TEDESCHI: Commissioner, in relation to Mr Willing,  
47 neither my friend nor I wish to question him about what

1 could loosely be called the Lateline issue, because we  
2 understand that there are some documents that have been  
3 produced by a third party to the police just in the last  
4 day or so. We suspect that most of them might be  
5 duplicates but we haven't had an opportunity to check.  
6

7 THE COMMISSIONER: I don't think Mr Gray was going to ask  
8 any questions about that at all.  
9

10 MR TEDESCHI: No.  
11

12 THE COMMISSIONER: So the idea of today really was to  
13 sever those matters that you felt reasonably you could ask  
14 him about, given your involvement. That then means that  
15 certain topics are closed off theoretically, I don't say  
16 they will be opened up again, and that topic or topics such  
17 as Lateline are identified as separate issues and we're  
18 getting on top of the same documents, I presume, or we'll  
19 have to in due course.  
20

21 That does raise the question, though, and I'll raise  
22 it now: we had floated, I think in correspondence,  
23 28 April. I do not know whether that is realistic because  
24 I simply don't know at the moment, myself, what has been  
25 received; nor do I know whether what has been received may  
26 provoke further summonses - I simply don't know - to  
27 a third party or others, but I will want to proceed,  
28 likely, say 5 May. I'm just picking that date out of my  
29 head for the moment, it may not concern you because it's  
30 a matter that will concern other counsel, but I would like  
31 to talk about that at some point, too, because I want to  
32 move swiftly, both in my interest, selfishly, but in  
33 Mr Willing's interest, I would like him to know there is  
34 a date after which the deck is cleared. So that's why  
35 I want to try to accommodate that, if I can, both with him  
36 and senior counsel.  
37

38 I'm not going to fix dates now, but I just wanted to  
39 float the possibility of that but also to raise, I think,  
40 a question mark over the 28th, because, as I said,  
41 I personally haven't seen what has come in. I've had  
42 a report given to me and I simply don't know where that may  
43 end up just for the moment, but the 28th might be cutting  
44 it a bit fine, that's all.  
45

46 MR TEDESCHI: I can indicate, Commissioner, that my  
47 previous commitment, which was due to start on the 26th of

1 this month, has now been postponed, most recently, to  
2 8 May. So I would be available on either the 28th or the  
3 5th.

4  
5 THE COMMISSIONER: Okay. Look, I'm going try to make it  
6 one of those dates. I think you should all work on the  
7 basis that if I need to, I will undoubtedly give ourselves  
8 a bit more time simply to get on top, because I don't want  
9 to make this yet another production. I'd like Mr Willing  
10 to know with certainty, today, certain topics are off the  
11 table, and as and from the 28th, but more likely some date  
12 in very early May, the balance of what needs to be asked of  
13 him will be over and done and he can get about his  
14 activities.

15  
16 Yes, Mr Thangaraj?

17  
18 MR THANGARAJ: 5 May would be better for Mr Milner and me,  
19 Commissioner, for what it is worth.

20  
21 THE COMMISSIONER: I must take into account Mr Milner's  
22 availability, of course.

23  
24 MR THANGARAJ: He won't be in Sydney on the 28th. I will  
25 be back in the country on night of the 27th, if that --

26  
27 THE COMMISSIONER: You don't need to boast about your  
28 travel, or rub it in.

29  
30 MR THANGARAJ: The 5th would be - as long as that suits  
31 Mr Willing --

32  
33 THE COMMISSIONER: Why don't we do this: I will discuss  
34 with senior counsel at a convenient time, and either in the  
35 hearing or in correspondence we will sort it out. I think  
36 my view at the moment - I won't keep talking, but my view  
37 at the moment is the 28th is not going to be workable and  
38 I think I would prefer, if you say 5 May is fine for you  
39 and Mr Milner and Mr Willing, et cetera, I'd prefer to fix  
40 that today so everyone knows, and then you know if you want  
41 any other documents, or we want any other documents, we've  
42 got a bit more time to ask for them and consume them.

43  
44  
45 MR THANGARAJ: Yes.

46  
47 THE COMMISSIONER: Thank you, I will return to that either

1 later in the day or tomorrow in correspondence.

2  
3 Yes, Mr Tedeschi.

4  
5 <MICHAEL JOHN WILLING, on former oath: [10.11am]

6  
7 <EXAMINATION BY MR TEDESCHI:

8  
9 MR TEDESCHI: Q. Mr Willing, I'd like to take you to the  
10 transcript of proceedings of the evidence that you gave in  
11 answer to questions by Counsel Assisting, page 1629?

12 A. Yes.

13  
14 Q. I will start at page 1623, where Mr Gray drew your  
15 attention to your six-year period as the Commander of the  
16 Homicide Squad?

17 A. Yes.

18  
19 Q. He mentioned to you I think it was 10 different things  
20 that happened during that time that are relevant to this  
21 Inquiry, including: the first and second inquest - or,  
22 actually, the second inquest into Scott Johnson's death;  
23 various articles in the newspaper by various people;  
24 a statement by Chief Inspector Pamela Young; a decision by  
25 Coroner Barnes to hold a third inquest into the death of  
26 Scott Johnson; the interview of Pamela Young on the  
27 Lateline program; the removal of Detective Chief Inspector  
28 Young from the investigation; and the setting up of the  
29 three strike forces, Parrabell, Macnamir and Neiwand?

30 A. Yes.

31  
32 Q. He then asked you at page 1629 the question:

33  
34 -- *allowing for that, you were well aware*  
35 *of all of those events that I've just taken*  
36 *you through briefly during the course of*  
37 *those five or six years?*

38 A. *I was aware that they were ongoing,*  
39 *yes.*

40 Q. *And indeed, you had responsibility as*  
41 *Commander, at least up to April, ...*

42  
43 I presume that's 20 --

44 A. Seventeen.

45  
46 Q. 2017:

1           for every step taken by Homicide police  
2           including the Unsolved Homicide Team.  
3

4           And you said, "Yes." Could you describe in detail what the  
5           extent of your responsibility was?

6           A. So as the Commander of Homicide, I had overall  
7           responsibility for the activities undertaken by the squad.  
8           That included investigations, reviews, you know,  
9           administrative functions within the squad as well, but  
10          that - the structure of the squad necessarily saw me  
11          sitting over the top of a number of senior police, and  
12          I think I described it - I don't have the transcript in  
13          front of me, but there were investigation coordinators at  
14          the rank of inspector or chief inspector that sat below me,  
15          and then below them were sergeants or team leaders, and  
16          then detectives as well. So as the Commander of the squad,  
17          I was responsible for what output that squad undertook,  
18          similar, I guess, Mr Tedeschi, that the Commissioner of  
19          Police is responsible for everything that occurs within the  
20          Police Force, during his or her tenure.  
21

22          Q. To what degree did you have any real oversight of the  
23          quality of investigations? And I'm directing you  
24          particularly to the criticisms that have been made of the  
25          Neiwand strike force and the investigation that was done  
26          there?

27          A. I had responsibility for the conduct of Neiwand whilst  
28          I was the Commander of the squad, or at least whilst I was  
29          there prior to going in April 2017, but relied on briefings  
30          that came up and relied on what I was told and read from  
31          investigation coordinators, inspectors, who in turn would  
32          have much more direct oversight of the conduct of those  
33          inquiries.  
34

35          Q. So would it be possible, as the Commander of the  
36          Homicide Squad, for you to be aware of the quality of every  
37          investigation that's done in the Homicide Squad?

38          A. Not to the intricate degree, no.  
39

40          THE COMMISSIONER: Mr Tedeschi, could I just interrupt for  
41          a moment, and apologise for that.  
42

43          Q. Mr Willing, can I just ask you this, and you may have  
44          been asked before and, if you have, I am sorry to repeat  
45          it: who would have been responsible for choosing Mr Morgan  
46          to be either the head of or to be an integral part of  
47          Neiwand?

1 A. Commissioner, it would be primarily a role for the  
2 investigation coordinators, the inspectors.

3

4 Q. And at the time - and this is going back some years -  
5 who filled that role or those roles?

6 A. At the time, there was Detective Chief Inspector John  
7 Lehmann, was still there, who would have probably primary  
8 responsibility. Detective Chief Inspector Chris Olen was  
9 either at the Unsolved Homicide Squad or coming into the  
10 squad - sorry, the team, at the time, and would have had an  
11 input. And then the endorsement and/or, I guess,  
12 confirming of that is done by the Director of Serious Crime  
13 Directorate. Obviously I would have input and/or oversight  
14 in some form.

15

16 Q. Do you recall having input into the appointment of  
17 Mr Morgan?

18 A. I don't recall that, sir.

19

20 Q. Mr Lehmann you think almost certainly would have been  
21 aware of the choice of Mr Morgan?

22 A. In early 2016, yes.

23

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

25

26 MR TEDESCHI: Q. What characteristics would have been  
27 important in the choice of somebody like Mr Morgan to be  
28 involved in that strike force?

29 A. There are no set criteria. A lot of it related to the  
30 availability of somebody at that rank to be able to perform  
31 the role. The Unsolved Homicide Team at the time was  
32 small, I think somewhere between 23 and I think maybe 35,  
33 at the end of the day, resources in it, and it depended on  
34 who was available and where they sat in the structure of  
35 the team at the time.

36

37 Q. Do you have any view in retrospect, now, about the  
38 suitability of Detective Morgan to perform that role at  
39 that time?

40 A. In retrospect - no, I don't have a view, other than  
41 knowing that Detective Sergeant Morgan was experienced,  
42 he'd been around a long time, primarily in regional  
43 New South Wales - I'm not sure whether I gave evidence  
44 before about centralising the Unsolved Homicide resources  
45 at the time but he was part of that movement into the  
46 Unsolved Homicide Team that I undertook. He was as skilled  
47 as anyone else within the Unsolved Homicide Team from my

1 point of view. There are obviously different people with  
2 different skill sets, but he was quite capable of  
3 performing that role.  
4

5 Q. If you had thought somebody like him was not up to the  
6 job of doing that particular function at that time, was it  
7 within your power to change the decision or to influence  
8 the decision as to who was to be appointed?

9 A. Yes.

10  
11 Q. And had you thought that Detective Sergeant Morgan was  
12 unsuited to that job at that time, would you have done  
13 something about it?

14 A. Yes. It would depend on the circumstances of what  
15 "unsuitability" meant and why, but at the time, yes.  
16 I would have.

17  
18 THE COMMISSIONER: Q. So is it fair to say it is more  
19 likely than not that he was thought the best man for the  
20 job?

21 A. Commissioner, it may again have been a situation of  
22 being the only person available.

23  
24 THE COMMISSIONER: Fair enough, thank you.

25  
26 MR TEDESCHI: Q. Could I take you now, please, to  
27 page 1637 of the transcript. I'm not asking you to look at  
28 it.

29 A. Sure. I don't have it.

30  
31 Q. It is merely for the rest of the hearing. You were  
32 asked a number of questions by the Commissioner.

33  
34 THE COMMISSIONER: Pardon me for interrupting.

35  
36 Q. Mr Willing, it should be on your screen now.

37 A. Yes, I've got it now, thank you, Commissioner.

38  
39 MR TEDESCHI: Q. On page 1636 you were asked questions,  
40 sorry, by Mr Gray. Down the bottom of the page you were  
41 asked some questions about the outcome of the Neiwand  
42 investigation?

43 A. Yes.

44  
45 Q. And on page 1637, around the top of the page, you were  
46 asked:  
47



1           --you are aware, then, that the Neiwand  
2           conclusions - and I'm paraphrasing - were  
3           that each of these three cases should be  
4           treated as inactive and not to be revived,  
5           as it were, unless and until some new  
6           information came in?

7  
8           A.    Yes.

9  
10          Q.    Your answer:

11  
12                *That's the effect of it, yes. That's what*  
13                *I've read.*

14  
15          Then:

16  
17                Q.    *That's another way of saying that the*  
18                *investigations have stalled, isn't it?*

19                A.    Yes.

20  
21                Q.    *Well, would this recommendation of*  
22                *Deputy State Coroner Milledge indicate that*  
23                *that should have then been referred to the*  
24                *State Coroner for his consideration?*

25  
26          Now, can I begin by asking you, when you agreed that the  
27          investigation had stalled, you also gave evidence  
28          previously about routine re-examinations of unsolved  
29          homicides.

30          A.    Yes.

31  
32          Q.    When you agreed that the investigation had stalled,  
33          what do you say about what would have happened after that  
34          by way of routine re-examination of unsolved cases?

35          A.    So those cases would have been originally on what was  
36          called at the time the Palace database, which was an  
37          e@gle.i shell, I think I described before. They would -  
38          they sit there, and should further information come in, as  
39          happens from time to time, they would be reactivated -  
40          should, sorry, the information be of the type that would  
41          cause a need to look at them again.

42  
43          Q.    What do you say about whether or not the police have  
44          an obligation to notify the State Coroner if they are of  
45          a view about a case that is different to the view that was  
46          expressed by the State Coroner?

47          A.    I think I gave evidence on the last occasion that, as

1 a courtesy, that could occur. It wouldn't be routine.  
2 Matters are looked at continually off the Unsolved Homicide  
3 database. Whether or not they could proceed or anything  
4 changes is not something that would ordinarily be referred  
5 back to the Coroner at all. I think the sheer volume of  
6 cases as well that the Coroners have on their books would  
7 make that difficult practically to do.

8  
9 Q. In reality, in practice, what would be required before  
10 a matter would be referred back to the State Coroner?

11 A. I don't think, Mr Tedeschi, it's anything like  
12 a general criteria, but it would have to be something which  
13 was of significance, something that would require, a la the  
14 Johnson case, you know, a request for someone to have  
15 a look at it to see whether or not it was worth  
16 re-examining. But there's no set criteria.

17  
18 Q. Would it be something of a nature that would possibly  
19 warrant a fresh Coronial inquest?

20 A. Yes. That would be correct.

21  
22 Q. Now, in this particular case, the Neiwand  
23 investigation, what do you say about when it was that  
24 Deputy Coroner Milledge came out with her findings and the  
25 formation of the Unsolved Homicide Team?

26 A. I think when she came out with her findings, I'm not  
27 sure that the Unsolved Homicide Team had been formed at the  
28 time. From recollection, it was in the mid 2000s when  
29 a decision was taken to review a range of unsolved homicide  
30 matters, and that, in itself, led to the formation of the  
31 Unsolved Homicide Team as a review body, and then later on  
32 down the track it took on an investigative function as  
33 well.

34  
35 Q. And by the time the Neiwand team had come out with  
36 their conclusions, their report, do you know whether  
37 Ms Milledge was still a State Coroner?

38 A. She wasn't.

39  
40 Q. And in the meantime, had the Chief State Coroner also  
41 changed?

42 A. On a couple of occasions at least.

43  
44 Q. Can I take you now, please, to page 1646. At  
45 page 1646, you gave evidence about the 700-odd cases that  
46 were within the Unsolved Homicide Team's list of cases?

47 A. Yes.

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Q. And you described how, at the bottom of the page, in late 2012 the Unsolved Homicide Team conducted a prioritised case screening review of the Neiwand matter?

A. Yes.

Q. I'm sorry, this is about the Johnson matter?

A. The - yes, Scott Johnson.

Q. And that it rated the case solvability of the Johnson matter, as at late 2012, as zero.

A. Yes.

Q. Then, over the page, you refer towards the top of the page about the Johnson family seeking to generate publicity about the case?

A. Yes.

Q. And at line 25 you were asked this question by Mr Gray:

*-- the assessment of zero solvability seems to have been incorrect?*

Your answer was:

*On the face of it, yes, however, you need to understand ... they're assessing at the time, and that was ... the availability in general terms - and I think I refer to it at some point in my statement, but fresh forensic evidence, whether anything was available; whether or not there were, you know, new technologies that could be applied to advance the investigation; whether or not new investigative techniques since that, the time of the original investigation, could shed light; it also included things like the identification of persons of interest or relationship breakdown, et cetera, that could be used to advance the case..*

A. Yes.

Q. Now, the assessment of a matter as having zero solvability, is that an assessment based upon the evidence

1 that's available at that time?

2 A. Yes.

3

4 Q. So does that preclude the possibility of some  
5 additional evidence or material becoming available at  
6 a later time that, in fact, changes that assessment?

7 A. That's correct, yes. That would have.

8

9 Q. As at 2012 when that assessment was made, what do you  
10 say now, in retrospect, about the assessment of the matter  
11 at that time of zero solvability?

12 A. I think it's correct at the time of the review.  
13 Obviously I've given an answer on the last occasion in the  
14 context of what we know now about the case.

15

16 Q. Of course, that case is remarkable for the fact that  
17 there has subsequently been a conviction recorded.

18 A. Yes.

19

20 Q. Was there some very dynamic and cogent new evidence  
21 that became available I think in 2019?

22 A. I believe so, yes.

23

24 Q. And was that information in any way available to the  
25 police as at 2012 when the assessment was made of zero  
26 solvability?

27 A. No, it wasn't.

28

29 Q. Was there anything in the file in 2012 to make  
30 a connection between that case, the Johnson case, and the  
31 person who eventually pleaded guilty?

32 A. Not from my understanding.

33

34 Q. Can I take you, please, to page 1684. You were asked  
35 some questions there by the Commissioner from about halfway  
36 down the page. At line 36 you were asked this question by  
37 the Commissioner:

38

39 *And the fact of the matter is, most often,*  
40 *unless there's a breakthrough, they simply*  
41 *collect dust, don't they?*

42

43 Your answer:

44

45 *No. They're subject to a review process,*  
46 *or, as Mr Gray says, the wheel turns around*  
47 *until the point where they are reviewed and*

1           *if there is - again, if there are*  
2           *opportunities to test forensic exhibits, if*  
3           *there are opportunities for relationship*  
4           *breakdowns, advances in technology, they*  
5           *may be subject to reinvestigation.*  
6

7           Was the Johnson case actually one of those cases, where at  
8           least one of those categories suddenly became available in  
9           2019?

10          A.    Yes, from my understanding - and again, just to  
11          clarify for the Commissioner, I wasn't involved in the  
12          reinvestigation or what happened under Strike Force  
13          Welsford, as it turned out to be, but that's my  
14          understanding, is that's what occurred.

15  
16          Q.    You were asked those questions about whether or not  
17          the matters simply collect dust and you referred to the  
18          review process.

19          A.    Yes.

20  
21          Q.    What do you say to the Commissioner about that review  
22          process, as to whether or not a matter could be jumped  
23          ahead of others in the queue if a certain situation arose?

24          A.    It could. There was no prioritisation of them from my  
25          recollection when I had the Homicide Squad, but if  
26          something came through or something came through the door  
27          in terms of evidence or information that would cause it to  
28          be looked at again, it could necessarily be jumped the  
29          queue, and it did happen.

30  
31          Q.    Could you give us an example of that?

32          A.    Family Law Court bombings.

33  
34          Q.    Could you tell us about that, what happened there?

35          A.    That was a case, you know, a huge investigation which  
36          was undertaken in the 1980s. It sat there. There was  
37          information that came through later on that caused  
38          a decision to re-look at it, and that led to a kicking off  
39          an investigation which ultimately involved almost  
40          two-thirds of the Unsolved Homicide Team working on it and  
41          ended up in a result where a person was arrested and  
42          charged and is serving life sentences.

43  
44          Q.    When did that reinvestigation occur?

45          A.    It concluded in 2015 and, as I think may be in  
46          evidence, Detective Chief Inspector Young led the  
47          reinvestigation into that, or at least the conclusion of

1 it. It kicked off, from recollection - I can't be a  
2 hundred per cent sure - around 2012-ish, 2013/2012, but I'm  
3 not sure.

4  
5 Q. Were it not for some fresh information or fresh  
6 evidence, would that not have been subject to the routine  
7 review that you have described in your evidence?

8 A. Yes.

9  
10 Q. The ultimate decision as to when a matter would be  
11 reviewed, was that left to the Unsolved Homicide Team?

12 A. Yes. The review team which sat within the Unsolved  
13 Homicide Team - so it was a team within a team that  
14 reported to an inspector, a chief inspector, yes

15  
16 Q. How many people were in that team?

17 A. It was led by a sergeant, and I think there were up to  
18 four detectives, I might be wrong there, it might be two to  
19 four detectives that were part of the team at the time.

20  
21 THE COMMISSIONER: Can I interrupt again, I'm sorry,  
22 Mr Tedeschi.

23  
24 Q. I take it the review might obviously on one hand be  
25 provoked by new material?

26 A. Yes.

27  
28 Q. And do I take it logically that it might also be  
29 provoked if, upon a review, somebody comes up with an idea  
30 that something's been missed or misinterpreted?

31 A. Yes.

32  
33 Q. Is there any other basis upon which, in a review, you  
34 might decide to reinvestigate, apart from those two  
35 situations?

36 A. Sir, there could be, it could be as simple as a media  
37 inquiry that causes you to have a look at it and - is it  
38 something --

39  
40 Q. No, but I'm talking - okay, so a review would be just  
41 looking at it, what you call a review?

42 A. Yes.

43  
44 Q. I draw a distinction then, perhaps fairly, between  
45 a review and reinvestigation. Many reviews would not lead  
46 to reinvestigation?

47 A. That's right.

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THE COMMISSIONER: All right. Thank you.

MR TEDESCHI: Q. Could a major advance in forensic science result in both extensive reviews and some reinvestigations?

A. Yes.

Q. Would it be correct to say that one of the examples of that is familial DNA testing based upon huge databases of the DNA of populations?

A. That's correct.

Q. That has resulted in matters being reinvestigated because of the availability of that avenue of inquiry?

A. Yes.

Q. And has that led to reinvestigations and convictions?

A. I think so. I can't think of anything off the top of my head now, sitting here.

THE COMMISSIONER: Q. And those types of reviews, though, are often, aren't they, contingent entirely upon the availability of exhibits and/or DNA samples?

A. Yes.

MR TEDESCHI: Q. Could I take you now, please, to page 1697. From 1697 to 1699, you were asked some questions by Mr Gray about your contact with counsel representing the Police Commissioner at the third inquest into the Johnson death?

A. Yes.

Q. You were asked a question towards the bottom of 1697:

*... the Commissioner was definitely not making an application for a third inquest; do you agree?*

And you said:

*A. Yes, I haven't seen the submissions or - but I'm taking what you're saying on face value.*

*Q. -- were you not involved in the conduct of these proceedings, including this question about whether or not there*

1           *would be a third inquest?*

2           A.   *I had some knowledge of it. I had*  
3           *some discussions with counsel in general*  
4           *terms, but that was left to Pam Young and*  
5           *Penelope Brown.*

6

7           A.   Yes.

8

9           Q.   Could I ask you there, who was the main person who was  
10          providing instructions to Counsel Assisting the  
11          Commissioner of Police in that application?

12          A.   The main person was Pam Young, but there were others  
13          that were involved as well from the Office of General  
14          Counsel of Police.

15

16          Q.   Further down the page, Counsel Assisting here  
17          suggested to you that the Johnson family were the ones who  
18          were actually making the application for the third inquest.  
19          You said that that may have occurred down the track?

20          A.   Yes.

21

22          Q.   A few questions further down:

23

24                 *And one of those factors, I suggest, that*  
25                 *was put forward on behalf of the*  
26                 *Commissioner, was that having a third*  
27                 *Johnson inquest would involve a diversion*  
28                 *of UHT resources ...*

29

30          You said:

31

32                 *I don't recall any of those submissions.*  
33                 *I wasn't present.*

34

35          A.   Yes.

36

37          Q.   Question:

38

39                 *Do you recall that a second factor that was*  
40                 *put forward on behalf of the Commissioner*  
41                 *was that all the work that Macnamir had*  
42                 *done to date indicated that it was unlikely*  
43                 *that a third inquest would reach any*  
44                 *different finding from the second one, ie,*  
45                 *an open finding?*

46

47          A.   Yes.



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Q. Now, was that your view at the time, namely, that the state of the evidence in the Johnson case as at that time, the time of these proceedings before Mr Barnes - that there was no further evidence that, in your view, was likely to result in a different conclusion to the second inquest which had made an open finding?

A. My view, my personal view at the time, I thought that was right. Now, that's notwithstanding what could occur in a coronial inquest with witnesses being examined, et cetera, but I thought - throughout the course of Macnamir, my view changed from time to time in terms of what I thought theoretically could have happened to Scott Johnson. If I thought at one point that one hypothesis might apply, I equally thought, you know, with further thought, that maybe it didn't, you know? So I wasn't sure, and ultimately I thought that an open finding was probably right at the time.

Q. And to your knowledge at the time of this application before Mr Barnes, had there been any fresh evidence obtained that changed your opinion about whether an open finding was the appropriate finding?

A. No, not from what I was being briefed on.

Q. Were you surprised by the finding of Mr Barnes?

A. I was. I was surprised. But it was necessarily left for him to make that finding or - and consider the three hypotheses that were put to him.

Q. As at the time of this application by the Johnson family for the third inquest to Mr Barnes --

A. Yes.

Q. -- what was your view about whether or not there was any benefit in the holding of a third inquest?

A. I personally felt that an inquest would be appropriate, to be honest.

Q. Why was that?

A. Because of the way that the investigation had led to, I guess, the breakdown in the relationship with the Johnson family, the speculation around what might have happened to Scott, and I felt that the best way of getting to the bottom of it, and in providing some confidence to the Johnson family and the wider public, was for an inquest to occur. But as, I think, the evidence I gave before,

1 I deliberately did not request an inquest; I asked the  
2 Coroner to re-examine it, and what form that took was  
3 a matter for him.  
4

5 Q. Did you actually speak to Mr Barnes about that?

6 A. Yes.  
7

8 Q. When was that in relation to this application?

9 A. I think I spoke to Mr Barnes about a week prior to it.  
10 I can't recall the exact content of it, because I had, you  
11 know, regular conversations with the Coroner and his  
12 predecessor as well.  
13

14 Q. Was that normal procedure?

15 A. Normal procedure, yes.  
16

17 Q. Between you, as the head of - as the then head of the  
18 Homicide Team or Squad?

19 A. Yes, yes.  
20

21 Q. And the Coroner?

22 A. Yes. So when I took over the Homicide Squad at the  
23 end of 2011, one of the - one of my tasks was to form  
24 a relationship with the State Coroner, a professional  
25 relationship, where at the time it was State Coroner  
26 Jerram, where she could have confidence in the squad, and  
27 that continued on to my relationship with Mr Barnes, and  
28 I would have regular meetings where they would - the  
29 Coroners would raise issues with me and I would raise  
30 issues with them, and it was a really good relationship.  
31

32 Q. So this conversation that you had with Mr Barnes about  
33 a week before this application, did you express your view  
34 about the inquest, the application for a third inquest?

35 A. I can't recall the exact content of it, but, yeah,  
36 I think I did.  
37

38 Q. And --  
39

40 THE COMMISSIONER: Q. I'm sorry, I keep interrupting.  
41 Would you mind just - you think you did, did you say?

42 A. I think I did, sir.  
43

44 Q. So does that mean that you think you would have  
45 expressed the view, what, that you thought the most  
46 appropriate outcome was an open finding?

47 A. No, that an inquest should occur.

1  
2 THE COMMISSIONER: Sorry, thank you.  
3  
4 MR TEDESCHI: Q. And did you express to him the reasons  
5 for that that you have expressed today?  
6 A. I think so, and again, I can't recall the exact  
7 content of it.  
8  
9 THE COMMISSIONER: Q. And is it fair to say that you  
10 thought that the third inquest would hopefully clear the  
11 air once and for all?  
12 A. Yes.  
13  
14 MR TEDESCHI: Q. Did it?  
15 A. Well, it depends on the - on what you are referring  
16 to, sir.  
17  
18 THE COMMISSIONER: Q. The outcome was unexpected from  
19 your point of view, presumably, so it didn't clear the air  
20 at all?  
21 A. Certainly not in the --  
22  
23 Q. Not from the police's point of view, if I may put it  
24 that way?  
25 A. That's correct, sir, but I also - it didn't clear the  
26 air in terms of our relationship with the Johnson family,  
27 as well.  
28  
29 MR TEDESCHI: Q. It didn't assist that relationship at  
30 all?  
31 A. No.  
32  
33 THE COMMISSIONER: Q. Indeed, it complicated it further,  
34 didn't it?  
35 A. Yes, from my observations, I guess, I'd left the  
36 Homicide Squad at the time.  
37  
38 Q. No, but leaving that to one side, there had been  
39 a metamorphosis, and the ultimate finding of Coroner Barnes  
40 went to the point of attribution of foul play?  
41 A. Yes.  
42  
43 Q. Which, if I may say so, was quite well beyond what  
44 previous Coroners had determined?  
45 A. Yes.  
46  
47 Q. And was more in keeping with what the Johnson family

1 had been agitating for years?

2 A. That's correct.

3

4 MR TEDESCHI: Q. Could I take you now, please, to  
5 page 1710. You are being asked some questions there by  
6 Counsel Assisting about Strike Force Neiwand, and you were  
7 asked some questions towards the top of the page about  
8 going against the Coroner's finding. It was suggested to  
9 you that that was exactly what Neiwand had done, gone  
10 against the Coroner's finding, and you agreed with that?

11 A. Yes.

12

13 Q. And then you were asked these questions:

14

15 *Q. Would it be fair to say that you*  
16 *indeed had in mind that that's what Neiwand*  
17 *would do?*

18 *A. No.*

19 *Q. So if Neiwand set about trying to*  
20 *undermine and contradict the findings of*  
21 *Coroner Milledge, that wasn't anything to*  
22 *do with you?*

23 *A. No, and I reject that. That was not*  
24 *the purpose of Neiwand.*

25

26 A question at line 41:

27

28 *Q. -- when Neiwand was set up, it was*  
29 *simply to conduct a genuine, open-ended*  
30 *investigation, let the cards fall where*  
31 *they may?*

32 *A. Yes, with - yeah, there were a number*  
33 *of persons of interest that had been*  
34 *identified, as we well know.*

35

36 What do you say about the suggestion that was made by  
37 Counsel Assisting at lines 19 to 21 asking you if Neiwand  
38 was set up to undermine and contradict the findings of  
39 Coroner Milledge?

40 A. I say that's wrong. It did not - it was not set up to  
41 do that.

42

43 Q. What possible benefit would there have been for the  
44 police in doing such an exercise to undermine Coroner  
45 Milledge in that way?

46 A. I don't know of any possible benefit that would have  
47 been achieved, if that was what was set out to do.

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Q. To your mind, was Neiwand set up to conduct a genuine reinvestigation of those matters?

A. Yes.

Q. Could I take you now to page 1720. You were asked some questions just starting at the bottom line of the previous page about Pamela Young thinking that what the Minister had done was improper and wrong on every level.

THE COMMISSIONER: Mr Tedeschi, is this not a Lateline topic? I'm not trying to define your retainer as opposed to somebody else's, but can you have two bob each way, if I may ask? I mean, I'm just presuming that although there is obviously a perception of conflict, you and Senior Counsel appearing otherwise have attempted to delineate what you are going to do and what you are not going to do, but why aren't you double-counting if you want to have a go at this as well?

MR TEDESCHI: I'm not seeking to have two goes.

THE COMMISSIONER: I know you weren't but I'm asking you to give it thought now.

MR TEDESCHI: I thought it was a limited issue that refers to an answer on line 13.

THE COMMISSIONER: I understand that, but what I'm putting to you quite directly is why doesn't it fall within the other camp - Lateline? I'm not trying to - I'm not trying to stop any questions on the topic, I'm just trying to think, is it more logical that it be dealt with under the Lateline rubric as opposed to otherwise because there are bits and pieces all over the place?

MR TEDESCHI: I'm content to do that. I think that is a proper approach.

THE COMMISSIONER: Well, I'm happy - does it mean, I'm not being disrespectful to either you or Mr Thangaraj - do you want me to give you a moment to talk to each other, just so that you can --

MR TEDESCHI: No, I don't think it is necessary. What I will do is I will ask a direct question which will hopefully take it out of the Lateline issue.

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THE COMMISSIONER: Okay. I'm not trying to be meddlesome; I'm only trying to work out what's best to be done, that's all.

MR TEDESCHI: Q. You say at line 13 that you didn't think it was improper, what the minister had done. Could you explain your reasons why?

A. I've had a number of conversations with the former minister since that time, and I think that he was trying to provide some comfort and some answers to the Johnson family. Perhaps the meeting shouldn't have been called the way it was, but I don't think it was doing anything inappropriate.

Q. Could I take you to page 1722 - sorry, I won't take you there. That's another Lateline issue. Can I take you, please, to your lengthy statement - do you have a copy of your statement?

A. I do.

Q. It is tab 252 [SCOI.82369.00001\_0001].

THE COMMISSIONER: Do you have the tab, Mr Willing?

THE WITNESS: 252?

MR TEDESCHI: It's the tab in the brief.

THE COMMISSIONER: No, I know it is but I'm just asking whether we will --

MR TEDESCHI: Q. Could I take you to paragraph 104, please. In that paragraph you say this:

*I recall giving Superintendent Crandell my full support in conducting the Strike Force Parrabell reviews ..*

A. Yes.

Q.

*... it was mutually agreed that they would be conducted independently from the UHT, given the allegations being propagated that the UHT was biased.*

1 A. Yes.

2

3 Q. Can you give us some context about allegations that  
4 had been made about the UHT being biased?

5 A. Well, there was media reporting that inferred that  
6 the Unsolved Homicide Team was biased in the Johnson  
7 investigation and in the context of the alleged 30 unsolved  
8 gay hate murders, and it was direct sort of allegations,  
9 and indirect as well.

10

11 Q. So did you consider that the team that then  
12 Superintendent Crandell had set up to conduct the operation  
13 that Strike Force Parrabell was involved in was, in fact,  
14 independent --

15 A. Yes.

16

17 Q. -- of the UHT?

18 A. Yes.

19

20 Q. And you approved of that?

21 A. I didn't have to approve of it, but, yeah, it was  
22 a matter for, I think, then Assistant Commissioner Fuller  
23 and Superintendent Crandell, but I was supportive of it.

24

25 Q. I will take you now to page 1728, and about line 18,  
26 you were asked your view about the conclusion that you had  
27 endorsed that only eight of 30 matters were possibly or  
28 probably gay hate incidents?

29 A. Yes.

30

31 Q. You said:

32

33 *I accepted what was written in that report.*

34

35 You then agreed that you'd endorsed it.

36 A. Yes.

37

38 Q. Then the question, at line 26:

39

40 *Q. So your view was only eight of the 30*  
41 *are gay hate?*

42 *A. That's what I thought, yes.*

43 *Q. And you knew that that was the view of*  
44 *Mr Lehmann and Ms Young?*

45 *A. That's right, yes.*

46 *Q. And you knew that their view, which*  
47 *you also endorsed, was that 30 was a gross*

1           *exaggeration?*

2           A.    Yes.

3

4           A.    Yes.

5

6           Q.    And then on page 1730, line 13, question:

7

8           *What is your understanding as to what use*  
9           *he --*

10

11          I presume that's Mr Crandell --

12

13           *would make or should have made of receiving*  
14           *that view from you?*

15

16           A.    My understanding was it would be  
17           irrelevant; he was going to apply or, you  
18           know, Parrabell was going to apply their  
19           own criteria to reviewing those matters.

19

20          Could I take you back to what you said at page 1728. Were  
21          you genuinely of the view at that time that only eight of  
22          the matters were genuine gay hate murders?

23

24          A.    Of the 30 alleged cases --

24

25          Q.    The 30 cases --

26

27          A.    -- that had been reported, yes.

27

28          Q.    What was that opinion based upon?

29

30          A.    When I looked at the report under John Lehmann's hand,  
31          it contained - well, a couple of - a few different things.  
32          One, I had no reason to question what John or Pam were  
33          asserting at all. There was - certainly the issue of  
34          unsolved gay hate murders was part and parcel of Macnamir.  
35          There was nothing at that point that had come up to  
36          indicate that that was the case, that there were  
37          30 unsolved. It contained comments in reports from  
38          Coroners where Coroners, on at least a couple of cases, had  
39          actually raised the issue of foul play and made comment  
40          about the lack of evidence. Some of the cases had  
41          actually been solved.

41

42          Q.    You're referring to those 30 matters?

43

44          A.    Those 30, yeah. And some of the cases had been solved  
45          by way of arrest or charge. So the assertion that there  
46          were 30 unsolved was not right.

46

47          Q.    So some of them had been solved, some of them had been



1 the subject of findings by Coroners?

2 A. Yes.

3

4 Q. And you genuinely believed at that time that only  
5 eight of them were genuine gay hate murders?

6 A. That there was evidence that they were possible or  
7 probable gay hate murders.

8

9 Q. It was then put to you a few pages further on - at  
10 page 1738, line 19, it was pointed out to you that the  
11 Parrabell report said that of the 86, eight were  
12 categorised as "Evidence of Bias Crime". And then there  
13 was an objection by me and it was pointed out that those  
14 eight were matters that were findings by Parrabell that,  
15 beyond a reasonable doubt, those matters were gay hate  
16 murders?

17 A. I recall that, yes.

18

19 Q. Beyond a reasonable doubt, there was evidence that  
20 they were a bias crime?

21 A. Yes.

22

23 Q. And then at page 1740, line 7, it was pointed out to  
24 you that eight - the eight, the number, eight, that was  
25 arrived at by Mr Lehmann and Ms Young and endorsed by  
26 yourself back in 2013 - was the same number as the eight  
27 that had been found or put into the beyond a reasonable  
28 doubt category by Parrabell?

29 A. Yes.

30

31 Q. Do you know if they were the same eight matters?

32 A. I don't know.

33

34 Q. You were asked whether that was coincidence that the  
35 number that had been found by Lehmann and Young, in 2013,  
36 and the number that was found to be in the beyond  
37 a reasonable doubt category by Parrabell just happened to  
38 be eight, and you were asked whether it was just  
39 coincidence, and you said, "I think so". You were then  
40 asked:

41

42 Q. *Or does it reflect, do you think, some*  
43 *communications or coordination between*  
44 *Parrabell and the Unsolved Homicide Team?*

45 A. *I don't think so at all.*

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47 A. I don't think so.

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Q. To your knowledge, are you aware of any attempt by anybody to try and coordinate the number of gay hate murders that Ms Young and Mr Lehmann had found in 2013 with the number that were placed into the beyond reasonable doubt category by Parrabell?

A. No.

Q. Was there any communication that you were aware of between the Parrabell team and the Unsolved Homicide Team in relation to coordinating those findings?

A. No.

Q. Can I take you now to page 1759. About the middle of the page, you were asked by Counsel Assisting:

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

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

And then you were asked a question about doing more work on persons of interest, you said, "Correct" - persons of interest in the Taradale matter. And then over the page at line 41, you said:

*... but the intent behind Neiwand was to investigate it, and again if there was a chance of uncovering evidence that led to an arrest or arrests, that was the desired outcome.*

A. Yes.

Q. And then at 1762, you were asked this question at line 34:

*But what was the catalyst for suddenly doing it in October 2015?*

1 You said:

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A. Yes.

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Q. Is that the --

15

A. Family Law Court murders.

16

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Q.

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A. Yes.

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Q. That was true? And then over the page, 1763, at line 44:

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

36

And you answered "No".

37

A. That's correct.

38

39

Q. Is there anything further you would like to say about that suggestion?

40

41

A. I just reject that assertion. I don't think that that could have occurred. It would have involved some sort of a conspiracy involving a range of different people, including the Director of Serious Crime. You would have to make it public what the outcome of Neiwand was, and I just reject it. It didn't occur.

42

43

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47

1 Q. And would it, in fact, have assisted the Johnson case,  
2 no matter what the finding was in Neiwand?

3 A. The matter was before the Coroner so I don't think it  
4 would have had an impact.

5

6 Q. I will take you now to page 1856. You were being  
7 asked some questions again about Neiwand. Perhaps I can  
8 take you to the previous page, 1855. You were asked some  
9 questions at line 37 by Counsel Assisting about whether or  
10 not it might have been appropriate for the Neiwand  
11 conclusions to be made public because they had contradicted  
12 the previous findings by Coroner Milledge. At the bottom  
13 of page 1855, you were asked:

14

15 *Q. And if the public needed to know what*  
16 *the police really thought, wouldn't it be*  
17 *necessary to acquaint the public with the*  
18 *fact that the findings of Coroner Milledge,*  
19 *which were so well known, were regarded by*  
20 *the police as wrong?*

21 *A. That's one way of looking at it. You*  
22 *could say that. I do think they're two*  
23 *separate things. I think the Parrabell*  
24 *process was different to a reinvestigation*  
25 *or a review conducted of the likes that*  
26 *Neiwand conducted. It's not normal that*  
27 *those - the findings or results of those*  
28 *investigations conducted by Unsolved*  
29 *Homicide are made public.*

30

31 Is it part of police practice to make public further  
32 investigations in matters that have previously been the  
33 subject of a coronial inquest?

34 A. Not generally.

35

36 Q. Why is that?

37 A. It would follow one of two paths. So if there was  
38 a result that occurred, necessarily it would become public  
39 because it would be back before a court or in some form or  
40 fashion; if not, the matters would still sit there. There  
41 are a range of reasons for not making it public, including  
42 the impact on potential witnesses coming forward out of the  
43 blue, the impact on persons of interest that may exist in  
44 those matters, and, you know, generally you wouldn't make  
45 the results of those reviews or investigations known.

46

47 Q. What do you say about the difference between Parrabell

1 and Neiwand in terms of notifying the public?

2 A. I think Parrabell was set up to do exactly that, from  
3 my understanding, to review those 88 cases and to provide  
4 answers for the public specifically.

5

6 Q. Did, in fact, Parrabell actually notify the public  
7 about any particular views of the police in relation to the  
8 88 cases that it looked at?

9 A. My understanding is they reported the results of the  
10 reviews, not particularly the views of the police.

11

12 MR TEDESCHI: Commissioner, could I have a moment?

13

14 THE COMMISSIONER: Yes.

15

16 MR TEDESCHI: That's the questioning of Mr Willing that  
17 we'd like to do.

18

19 THE COMMISSIONER: All right. What I'm going to do is  
20 this, Mr Tedeschi: I will take a break now, I will get an  
21 update from those assisting me as to materials that have  
22 come in. I will resume and then we will fix those relevant  
23 dates that we have discussed and talk about, briefly, the  
24 items that are going to be dealt with. Lateline is clearly  
25 one of them. But I think what I'll do is take the break  
26 now and resume as soon as I can for the purposes of fixing  
27 that date and sorting things out so that you and everybody  
28 else, including Mr Willing, know what's happening.

29

30 **SHORT ADJOURNMENT**

31

32 THE COMMISSIONER: I apologise for the delay. It has  
33 taken a little while for me to understand what we have and  
34 what we don't have.

35

36 I'm assuming, Mr Tedeschi, what we got yesterday, as  
37 I best understand it, is it the end of the materials that  
38 we expect to get from the police in relation to the topics  
39 that we are concerned about?

40

41 MR TEDESCHI: As I understand it, yes.

42

43 THE COMMISSIONER: On that basis, I will fix the 5th for  
44 the completion of Mr Willing's evidence on the topics that  
45 have been limited.

46

47 What I'm going to do also, Mr Tedeschi, is this: I'm

1 going to provide two days for oral submissions in relation  
2 to this portion of the hearing, which is Parrabell, Neiwand  
3 and so on. There will be material which clearly will be  
4 passed between the various entities.

5  
6 I don't exclude the possibility that Mr Willing may or  
7 may not wish to say something discrete about some aspect;  
8 I'm imagining that won't happen. In other words, there  
9 could be a possibility, but because of the written material  
10 which everyone is going to be passing between you, I will  
11 fix two days, 27 and 28 June.

12  
13 Now, that's obviously a little presumptuous, and it is  
14 assuming that I'm not going to expire at midnight on the  
15 30th, but if that's likely, I will let you know and you can  
16 organise the undertaker. But you will either see publicly  
17 or I will disclose the moment I formally have an extension.

18  
19 So just reiterating, 5 May to complete Mr Willing and  
20 then I will hear - everyone having received written  
21 materials, I will apportion the 27th and 28th, I will give  
22 a day each between you and Mr Gray to address limited  
23 topics orally.

24  
25 MR TEDESCHI: Thank you.

26  
27 THE COMMISSIONER: All right. Is there anything further  
28 you need to tell me about this morning?

29  
30 MR THANGARAJ: Just to make sure that I heard correctly.  
31 Your Honour is not intending to hear from us on 27 and  
32 28 June; is that correct? Because I won't be --

33  
34 THE COMMISSIONER: No, what I've said is I don't expect to  
35 hear from you. I would expect those items to be dealt with  
36 in writing. But if there is something - the topics that  
37 generally will be dealt with on those days at this portion  
38 of the hearing, and it obviously includes bits of  
39 Mr Willing, I would expect, and he touches Parrabell and  
40 Neiwand, and you have heard, and you will have read the  
41 transcript, Mr Tedeschi will deal, I imagine, principally  
42 with those issues insofar as who set what up, et cetera,  
43 et cetera. If in the submissions that are received you  
44 perceive anything in there, then just let me know.

45  
46 MR THANGARAJ: I will have to confine whatever I may or  
47 may not need to be do in writing because I won't be here on

1 those two dates in June. Anyway, we will deal with it.

2

3 THE COMMISSIONER: Why don't we deal with that if and when  
4 it arises --

5

6 MR THANGARAJ: Yes.

7

8 THE COMMISSIONER: -- and I will accommodate, obviously,  
9 within my own strictures. Unlike most situations, I will  
10 have a sunset clause and it will be, I hope, 30 August.  
11 Why don't you just assess your position and I'll deal with  
12 it if we need to.

13

14 MR THANGARAJ: Thanks.

15

16 THE COMMISSIONER: So 5 May, and otherwise, Mr Tedeschi,  
17 27 and 28 June in relation to Parrabell, Neiwand and  
18 related topics. All right. Very well, thank you.

19

20 Thank you all for this morning, and I will now adjourn  
21 until 5 May.

22

23 **AT 11.47AM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**  
24 **TO FRIDAY, 5 MAY AT 10AM**

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**1**

**10** [1] - 3432:19  
**10.04am** [1] - 3428:25  
**10.11am** [1] - 3432:5  
**104** [1] - 3449:33  
**10AM** [1] - 3458:24  
**11.47AM** [1] - 3458:23  
**121** [1] - 3428:20  
**13** [3] - 3448:27, 3449:6, 3451:6  
**1623** [1] - 3432:14  
**1629** [2] - 3432:11, 3432:32  
**1636** [1] - 3435:39  
**1637** [2] - 3435:27, 3435:45  
**1646** [2] - 3437:44, 3437:45  
**1684** [1] - 3439:34  
**1697** [3] - 3442:28, 3442:34  
**1699** [1] - 3442:28  
**1710** [1] - 3447:5  
**1720** [1] - 3448:6  
**1722** [1] - 3449:16  
**1728** [2] - 3450:25, 3451:20  
**1730** [1] - 3451:6  
**1738** [1] - 3452:10  
**1740** [1] - 3452:23  
**1759** [1] - 3453:14  
**1762** [1] - 3453:42  
**1763** [1] - 3454:26  
**18** [1] - 3450:25  
**1855** [2] - 3455:8, 3455:13  
**1856** [1] - 3455:6  
**19** [2] - 3447:37, 3452:10  
**1980s** [1] - 3440:36

**2**

**2** [1] - 3428:20  
**20** [2] - 3428:25, 3432:43  
**2000s** [1] - 3437:28  
**2011** [1] - 3445:23  
**2012** [5] - 3438:3, 3438:11, 3439:9, 3439:25, 3439:29  
**2012-ish** [1] - 3441:2  
**2013** [3] - 3452:26, 3452:35, 3453:4  
**2013/2012** [1] - 3441:2  
**2015** [3] - 3440:45, 3453:19, 3453:46  
**2016** [1] - 3434:22

**2017** [2] - 3432:46, 3433:29  
**2019** [2] - 3439:21, 3440:9  
**2022** [1] - 3428:9  
**2023** [1] - 3428:25  
**21** [1] - 3447:37  
**23** [1] - 3434:32  
**25** [1] - 3438:19  
**252** [2] - 3449:22, 3449:26  
**26** [1] - 3450:38  
**26th** [1] - 3430:47  
**27** [3] - 3457:11, 3457:31, 3458:17  
**27th** [2] - 3431:25, 3457:21  
**28** [4] - 3430:23, 3457:11, 3457:32, 3458:17  
**28th** [7] - 3430:40, 3430:43, 3431:2, 3431:11, 3431:24, 3431:37, 3457:21

**3**

**30** [14] - 3429:13, 3429:19, 3429:40, 3450:7, 3450:27, 3450:40, 3450:47, 3451:23, 3451:25, 3451:36, 3451:42, 3451:43, 3451:45, 3458:10  
**30th** [1] - 3457:15  
**34** [1] - 3453:43  
**35** [1] - 3434:32  
**36** [1] - 3439:36  
**37** [1] - 3455:9

**4**

**41** [2] - 3447:26, 3453:32  
**44** [2] - 3428:27, 3454:27

**5**

**5** [7] - 3430:28, 3431:18, 3431:38, 3457:19, 3458:16, 3458:21, 3458:24  
**5th** [3] - 3431:3, 3431:30, 3456:43

**7**

**7** [1] - 3452:23

**700-odd** [1] - 3437:45

**8**

**8** [1] - 3431:2  
**86** [1] - 3452:11  
**88** [2] - 3456:3, 3456:8

**A**

**able** [1] - 3434:30  
**accepted** [1] - 3450:33  
**accommodate** [2] - 3430:35, 3458:8  
**account** [1] - 3431:21  
**achieve** [1] - 3429:21  
**achieved** [1] - 3447:47  
**acquaint** [1] - 3455:17  
**activities** [2] - 3431:14, 3433:7  
**additional** [1] - 3439:5  
**address** [1] - 3457:22  
**adjourn** [1] - 3458:20  
**administrative** [1] - 3433:9  
**advance** [3] - 3438:35, 3438:42, 3442:4  
**advances** [1] - 3440:4  
**affect** [2] - 3429:32, 3429:39  
**afternoon** [1] - 3429:17  
**agitating** [1] - 3447:1  
**agree** [1] - 3442:38  
**agreed** [5] - 3436:26, 3436:32, 3447:10, 3449:43, 3450:35  
**ahead** [1] - 3440:23  
**air** [3] - 3446:11, 3446:19, 3446:26  
**allegations** [3] - 3449:45, 3450:3, 3450:8  
**alleged** [2] - 3450:7, 3451:23  
**allowing** [1] - 3432:34  
**almost** [2] - 3434:20, 3440:39  
**Amber** [1] - 3428:38  
**amendment** [1] - 3429:18  
**Anders** [1] - 3428:37  
**answer** [6] - 3432:11, 3436:10, 3438:25, 3439:13, 3439:43, 3448:27  
**answered** [1] - 3454:36  
**answers** [2] - 3449:11, 3456:4  
**anyway** [1] - 3458:1  
**apart** [1] - 3441:34  
**apologise** [2] - 3433:41, 3456:32  
**appear** [1] - 3429:7  
**appearing** [1] - 3448:16  
**application** [8] - 3442:37, 3443:11, 3443:18, 3444:20, 3444:31, 3445:8, 3445:33, 3445:34  
**applied** [1] - 3438:35  
**apply** [3] - 3444:15, 3451:16, 3451:17  
**appointed** [1] - 3435:8  
**appointment** [1] - 3434:16  
**apportion** [1] - 3457:21  
**approach** [1] - 3448:38  
**appropriate** [4] - 3444:23, 3444:38, 3445:46, 3455:10  
**approve** [1] - 3450:21  
**approved** [2] - 3429:24, 3450:20  
**April** [4] - 3428:25, 3430:23, 3432:41, 3433:29  
**arises** [1] - 3458:4  
**arose** [1] - 3440:23  
**arrest** [3] - 3451:44, 3453:37, 3454:10  
**arrested** [1] - 3440:41  
**arrests** [1] - 3453:37  
**arrived** [1] - 3452:25  
**articles** [1] - 3432:23  
**aspect** [1] - 3457:7  
**asserting** [1] - 3451:32  
**assertion** [2] - 3451:44, 3454:41  
**assess** [1] - 3458:11  
**assessing** [1] - 3438:28  
**assessment** [7] - 3438:22, 3438:46, 3438:47, 3439:6, 3439:9, 3439:10, 3439:25  
**assist** [1] - 3446:29  
**Assistant** [1] - 3450:22  
**assisted** [1] - 3455:1  
**assisting** [1] - 3456:21  
**Assisting** [9] - 3428:30, 3428:31,

3432:11, 3443:10, 3443:16, 3447:6, 3447:37, 3453:15, 3455:9  
**assuming** [2] - 3456:36, 3457:14  
**assure** [1] - 3429:39  
**AT** [2] - 3458:23, 3458:24  
**attempt** [1] - 3453:2  
**attempted** [1] - 3448:16  
**attention** [1] - 3432:15  
**attribution** [1] - 3446:40  
**August** [3] - 3429:19, 3429:40, 3458:10  
**availability** [5] - 3431:22, 3434:30, 3438:29, 3442:15, 3442:24  
**available** [10] - 3431:2, 3434:34, 3435:22, 3438:33, 3439:1, 3439:5, 3439:21, 3439:24, 3440:8, 3454:5  
**avenue** [1] - 3442:15  
**aware** [7] - 3432:34, 3432:38, 3433:36, 3434:21, 3436:1, 3453:2, 3453:9

**B**

**balance** [1] - 3431:12  
**Barnes** [10] - 3432:25, 3444:4, 3444:21, 3444:26, 3444:32, 3445:5, 3445:9, 3445:27, 3445:32, 3446:39  
**based** [3] - 3438:47, 3442:10, 3451:28  
**basis** [3] - 3431:7, 3441:33, 3456:43  
**became** [2] - 3439:21, 3440:8  
**become** [1] - 3455:38  
**becoming** [1] - 3439:5  
**begin** [1] - 3436:26  
**beginning** [1] - 3429:32  
**behalf** [2] - 3443:25, 3443:40  
**behind** [1] - 3453:34  
**below** [2] - 3433:14, 3433:15  
**benefit** [3] - 3444:36, 3447:43, 3447:46



- best** [4] - 3435:19, 3444:44, 3449:3, 3456:37
- better** [1] - 3431:18
- between** [10] - 3434:32, 3439:30, 3441:44, 3445:17, 3452:43, 3453:10, 3455:47, 3457:4, 3457:10, 3457:22
- beyond** [6] - 3446:43, 3452:15, 3452:19, 3452:27, 3452:36, 3453:5
- Bias** [1] - 3452:12
- bias** [1] - 3452:20
- biased** [3] - 3449:46, 3450:4, 3450:6
- bit** [3] - 3430:44, 3431:8, 3431:42
- bits** [2] - 3448:35, 3457:38
- blue** [1] - 3455:43
- boast** [1] - 3431:27
- bob** [1] - 3448:13
- body** [1] - 3437:31
- bombings** [1] - 3440:32
- books** [1] - 3437:6
- bottom** [6] - 3435:40, 3438:2, 3442:34, 3444:45, 3448:7, 3455:12
- break** [2] - 3456:20, 3456:25
- breakdown** [2] - 3438:41, 3444:42
- breakdowns** [1] - 3440:4
- breakthrough** [1] - 3439:40
- brief** [1] - 3449:28
- briefed** [1] - 3444:24
- briefings** [1] - 3433:29
- briefly** [2] - 3432:36, 3456:23
- Brown** [3] - 3443:5, 3453:24, 3454:21
- BY** [1] - 3432:7
- 
- C**
- 
- camp** [1] - 3448:31
- Camporeale** [1] - 3428:32
- capable** [1] - 3435:2
- cards** [1] - 3447:30
- Carvosso** [1] - 3428:33
- case** [17] - 3436:45, 3437:14, 3437:22, 3438:4, 3438:10, 3438:16, 3439:14, 3439:16, 3439:30, 3440:7, 3440:35, 3444:3, 3451:35, 3454:31, 3454:33, 3455:1
- case.** [1] - 3438:42
- cases** [14] - 3436:3, 3436:34, 3436:35, 3437:6, 3437:45, 3437:46, 3440:7, 3451:23, 3451:25, 3451:37, 3451:39, 3451:43, 3456:3, 3456:8
- catalyst** [1] - 3453:45
- categories** [1] - 3440:8
- categorised** [1] - 3452:12
- category** [3] - 3452:28, 3452:37, 3453:6
- caused** [1] - 3440:37
- causes** [1] - 3441:37
- cent** [1] - 3441:2
- centralising** [1] - 3434:44
- certain** [3] - 3430:15, 3431:10, 3440:23
- certainly** [3] - 3434:20, 3446:21, 3451:32
- certainty** [1] - 3431:10
- cetera** [5] - 3431:39, 3438:41, 3444:11, 3457:42, 3457:43
- chance** [2] - 3453:26, 3453:36
- change** [1] - 3435:7
- changed** [3] - 3437:41, 3444:12, 3444:22
- changes** [2] - 3437:4, 3439:6
- characteristics** [1] - 3434:26
- charge** [1] - 3451:44
- charged** [1] - 3440:42
- check** [1] - 3430:5
- Chief** [6] - 3432:24, 3432:27, 3434:6, 3434:8, 3437:40, 3440:46
- chief** [2] - 3433:14, 3441:14
- choice** [2] - 3434:21, 3434:27
- choosing** [1] - 3433:45
- Chris** [1] - 3434:8
- circumstances** [1] - 3435:14
- clarify** [1] - 3440:11
- clause** [1] - 3458:10
- clear** [3] - 3446:10, 3446:19, 3446:25
- cleared** [1] - 3430:34
- clearly** [2] - 3456:24, 3457:3
- closed** [1] - 3430:15
- cogent** [1] - 3439:20
- coincidence** [2] - 3452:34, 3452:39
- collect** [2] - 3439:41, 3440:17
- comfort** [1] - 3449:11
- coming** [2] - 3434:9, 3455:42
- Commander** [6] - 3432:15, 3432:41, 3433:6, 3433:16, 3433:28, 3433:35
- comment** [1] - 3451:38
- comments** [1] - 3451:36
- Commission** [1] - 3428:9
- COMMISSION** [1] - 3458:23
- Commissioner** [21] - 3428:15, 3429:3, 3429:7, 3429:46, 3430:46, 3431:19, 3433:18, 3434:1, 3435:32, 3435:37, 3439:35, 3439:37, 3440:11, 3440:21, 3442:30, 3442:36, 3443:11, 3443:26, 3443:40, 3450:22, 3456:12
- commissioner** [1] - 3435:21
- COMMISSIONER** [38] - 3429:1, 3429:9, 3430:7, 3430:12, 3431:5, 3431:21, 3431:27, 3431:33, 3431:47, 3433:40, 3434:24, 3435:18, 3435:24, 3435:34, 3441:21, 3442:2, 3442:22, 3445:40, 3446:2, 3446:9, 3446:18, 3446:33, 3448:11, 3448:23, 3448:29, 3448:40, 3449:2, 3449:24, 3449:30, 3456:14, 3456:19, 3456:32, 3456:43, 3457:27, 3457:34, 3458:3, 3458:8, 3458:16
- commitment** [1] - 3430:47
- communication** [2] - 3429:36, 3453:9
- communications** [1] - 3452:43
- complete** [1] - 3457:19
- completion** [1] - 3456:44
- complicated** [1] - 3446:33
- concern** [2] - 3430:29, 3430:30
- concerned** [2] - 3429:37, 3456:39
- concluded** [1] - 3440:45
- conclusion** [3] - 3440:47, 3444:6, 3450:26
- conclusions** [3] - 3436:2, 3437:36, 3455:11
- conduct** [6] - 3433:27, 3433:32, 3442:46, 3447:29, 3448:2, 3450:12
- conducted** [5] - 3438:3, 3449:44, 3455:25, 3455:26, 3455:28
- conducting** [1] - 3449:37
- confidence** [2] - 3444:45, 3445:26
- confine** [1] - 3457:46
- confirming** [1] - 3434:12
- conflict** [1] - 3448:15
- connection** [1] - 3439:30
- consider** [2] - 3444:28, 3450:11
- consideration** [1] - 3436:24
- conspiracy** [1] - 3454:43
- constraints** [1] - 3429:21
- consume** [1] - 3431:42
- contact** [1] - 3442:29
- contained** [2] - 3451:30, 3451:36
- content** [4] - 3445:10, 3445:35, 3446:7, 3448:37
- context** [3] - 3439:14, 3450:3, 3450:7
- contingent** [1] - 3442:23
- continually** [1] - 3437:2
- continued** [1] - 3445:27
- contradict** [2] - 3447:20, 3447:38
- contradicted** [1] - 3455:11
- convenient** [1] - 3431:34
- conversation** [1] - 3445:32
- conversations** [2] - 3445:11, 3449:9
- conviction** [1] - 3439:17
- convictions** [1] - 3442:18
- coordinate** [1] - 3453:3
- coordinating** [1] - 3453:11
- coordination** [1] - 3452:43
- coordinators** [3] - 3433:13, 3433:31, 3434:2
- copy** [1] - 3449:18
- Coroner** [23] - 3432:25, 3436:22, 3436:24, 3436:44, 3436:46, 3437:5, 3437:10, 3437:24, 3437:37, 3437:40, 3445:2, 3445:11, 3445:21, 3445:24, 3445:25, 3446:39, 3447:21, 3447:39, 3447:44, 3454:4, 3455:3, 3455:12, 3455:18
- Coroner's** [2] - 3447:8, 3447:10
- Coroners** [6] - 3437:6, 3445:29, 3446:44, 3451:37, 3452:1
- coronial** [2] - 3444:10, 3455:33
- Coronial** [1] - 3437:19
- correct** [10] - 3437:20, 3439:7, 3439:12,

3442:9, 3442:12,  
3446:25, 3447:2,  
3453:30, 3454:37,  
3457:32  
**correctly** [1] - 3457:30  
**correspondence** [3] -  
3430:22, 3431:35,  
3432:1  
**Counsel** [11] -  
3428:30, 3428:31,  
3432:11, 3443:10,  
3443:14, 3443:16,  
3447:6, 3447:37,  
3448:16, 3453:15,  
3455:9  
**counsel** [6] - 3429:36,  
3430:30, 3430:36,  
3431:34, 3442:29,  
3443:3  
**counting** [1] - 3448:18  
**country** [1] - 3431:25  
**couple** [3] - 3437:42,  
3451:30, 3451:37  
**course** [6] - 3430:19,  
3431:22, 3432:36,  
3439:16, 3444:11,  
3453:20  
**court** [1] - 3455:39  
**Court** [2] - 3440:32,  
3454:15  
**courtesy** [3] -  
3429:14, 3429:23,  
3437:1  
**Crandell** [4] - 3449:36,  
3450:12, 3450:23,  
3451:11  
**crime** [1] - 3452:20  
**Crime** [2] - 3434:12,  
3454:44  
**Crime** [1] - 3452:12  
**crimes** [1] - 3428:11  
**criteria** [4] - 3434:29,  
3437:12, 3437:16,  
3451:18  
**criticism** [1] - 3429:16  
**criticisms** [1] -  
3433:24  
**cutting** [1] - 3430:43

---

## D

---

**database** [2] -  
3436:36, 3437:3  
**databases** [1] -  
3442:10  
**date** [5] - 3430:28,  
3430:34, 3431:11,  
3443:42, 3456:27  
**dates** [6] - 3429:28,  
3429:43, 3430:38,

3431:6, 3456:23,  
3458:1  
**days** [3] - 3457:1,  
3457:11, 3457:37  
**deal** [4] - 3457:41,  
3458:1, 3458:3,  
3458:11  
**dealt** [4] - 3448:33,  
3456:24, 3457:35,  
3457:37  
**death** [3] - 3432:22,  
3432:25, 3442:31  
**decide** [1] - 3441:34  
**decision** [6] -  
3432:24, 3435:7,  
3435:8, 3437:29,  
3440:38, 3441:10  
**deck** [1] - 3430:34  
**define** [1] - 3448:12  
**definitely** [1] -  
3442:36  
**degree** [2] - 3433:22,  
3433:38  
**delay** [1] - 3456:32  
**deliberately** [1] -  
3445:1  
**delineate** [1] -  
3448:16  
**depended** [1] -  
3434:33  
**Deputy** [2] - 3436:22,  
3437:24  
**describe** [1] - 3433:4  
**described** [4] -  
3433:12, 3436:37,  
3438:2, 3441:7  
**desired** [1] - 3453:37  
**detail** [1] - 3433:4  
**Detective** [7] -  
3432:27, 3434:6,  
3434:8, 3434:38,  
3434:41, 3435:11,  
3440:46  
**detectives** [3] -  
3433:16, 3441:18,  
3441:19  
**determined** [1] -  
3446:44  
**difference** [1] -  
3455:47  
**different** [9] - 3432:19,  
3435:1, 3435:2,  
3436:45, 3443:44,  
3444:6, 3451:30,  
3454:43, 3455:24  
**difficult** [1] - 3437:7  
**direct** [3] - 3433:32,  
3448:46, 3450:8  
**directing** [1] - 3433:23  
**directly** [1] - 3448:30

**Director** [3] - 3428:32,  
3434:12, 3454:44  
**Directorate** [1] -  
3434:13  
**disclose** [1] - 3457:17  
**discrete** [1] - 3457:7  
**discuss** [1] - 3431:33  
**discussed** [1] -  
3456:23  
**discussion** [1] -  
3429:34  
**discussions** [1] -  
3443:3  
**disrespectful** [1] -  
3448:41  
**distinction** [1] -  
3441:44  
**diversion** [1] -  
3443:27  
**DNA** [3] - 3442:10,  
3442:11, 3442:24  
**documents** [4] -  
3430:2, 3430:18,  
3431:41  
**done** [11] - 3431:13,  
3433:25, 3433:37,  
3434:12, 3435:12,  
3443:42, 3447:9,  
3448:9, 3449:3,  
3449:7, 3453:21  
**door** [1] - 3440:26  
**double** [1] - 3448:18  
**double-counting** [1] -  
3448:18  
**doubt** [5] - 3452:15,  
3452:19, 3452:28,  
3452:37, 3453:6  
**down** [7] - 3429:1,  
3435:40, 3437:32,  
3439:36, 3443:16,  
3443:19, 3443:22  
**draw** [1] - 3441:44  
**drew** [1] - 3432:14  
**due** [2] - 3430:19,  
3430:47  
**duplicates** [1] -  
3430:5  
**during** [3] - 3432:20,  
3432:36, 3433:20  
**dust** [2] - 3439:41,  
3440:17  
**dynamic** [1] - 3439:20

---

## E

---

**e@gle.i** [1] - 3436:37  
**early** [2] - 3431:12,  
3434:22  
**effect** [1] - 3436:12  
**eight** [12] - 3450:27,

3450:40, 3451:21,  
3452:5, 3452:11,  
3452:14, 3452:24,  
3452:26, 3452:31,  
3452:38  
**either** [8] - 3429:25,  
3431:2, 3431:34,  
3431:47, 3433:46,  
3434:9, 3448:41,  
3457:16  
**enable** [1] - 3429:4  
**end** [5] - 3429:21,  
3430:43, 3434:33,  
3445:23, 3456:37  
**ended** [2] - 3440:41,  
3447:29  
**endorsed** [4] -  
3450:27, 3450:35,  
3450:47, 3452:25  
**endorsement** [1] -  
3434:11  
**entirely** [1] - 3442:23  
**entities** [1] - 3457:4  
**Enzo** [1] - 3428:32  
**equally** [1] - 3444:15  
**et** [5] - 3431:39,  
3438:41, 3444:11,  
3457:42, 3457:43  
**events** [1] - 3432:35  
**eventually** [1] -  
3439:31  
**Evidence** [1] -  
3452:12  
**evidence** [23] -  
3432:10, 3434:43,  
3436:27, 3436:47,  
3437:45, 3438:32,  
3438:47, 3439:5,  
3439:20, 3440:27,  
3440:46, 3441:6,  
3441:7, 3444:3,  
3444:5, 3444:21,  
3444:47, 3451:39,  
3452:6, 3452:19,  
3453:27, 3453:36,  
3456:44  
**exact** [3] - 3445:10,  
3445:35, 3446:6  
**exactly** [2] - 3447:9,  
3456:2  
**exaggeration** [1] -  
3451:1  
**examination** [1] -  
3436:34  
**examinations** [1] -  
3436:28  
**examine** [1] - 3445:2  
**examined** [1] -  
3444:10  
**examining** [1] -

3437:16  
**example** [1] - 3440:31  
**examples** [1] - 3442:9  
**exclude** [1] - 3457:6  
**exercise** [2] - 3447:44,  
3453:21  
**exhibits** [2] - 3440:2,  
3442:24  
**exist** [1] - 3455:43  
**expect** [4] - 3456:38,  
3457:34, 3457:35,  
3457:39  
**experienced** [1] -  
3434:41  
**expire** [1] - 3457:14  
**explain** [1] - 3449:8  
**express** [2] - 3445:33,  
3446:4  
**expressed** [3] -  
3436:46, 3445:45,  
3446:5  
**extend** [2] - 3429:18,  
3429:19  
**extension** [4] -  
3429:24, 3429:26,  
3429:42, 3457:17  
**extensive** [1] - 3442:5  
**extent** [1] - 3433:5

---

## F

---

**face** [2] - 3438:27,  
3442:44  
**fact** [7] - 3439:6,  
3439:16, 3439:39,  
3450:13, 3455:1,  
3455:18, 3456:6  
**factor** [1] - 3443:39  
**factors** [1] - 3443:24  
**fair** [4] - 3435:18,  
3435:24, 3446:9,  
3447:15  
**fairly** [1] - 3441:44  
**fall** [2] - 3447:30,  
3448:30  
**familial** [1] - 3442:10  
**Family** [1] - 3454:15  
**family** [9] - 3438:15,  
3440:32, 3443:17,  
3444:32, 3444:43,  
3444:46, 3446:26,  
3446:47, 3449:12  
**fashion** [1] - 3455:40  
**felt** [3] - 3430:13,  
3444:37, 3444:44  
**few** [3] - 3443:22,  
3451:30, 3452:9  
**file** [1] - 3439:29  
**filled** [1] - 3434:5  
**findings** [12] -

3437:24, 3437:26,  
3447:20, 3447:38,  
3452:1, 3452:14,  
3453:11, 3454:30,  
3454:34, 3455:12,  
3455:18, 3455:27  
**fine** [2] - 3430:44,  
3431:38  
**first** [1] - 3432:21  
**five** [1] - 3432:37  
**fix** [5] - 3430:38,  
3431:39, 3456:22,  
3456:43, 3457:11  
**fixing** [1] - 3456:26  
**float** [1] - 3430:39  
**floated** [1] - 3430:22  
**flow** [1] - 3429:26  
**flowing** [1] - 3454:30  
**follow** [1] - 3455:37  
**Force** [5] - 3433:20,  
3440:12, 3447:6,  
3449:37, 3450:13  
**force** [2] - 3433:25,  
3434:28  
**forces** [1] - 3432:29  
**forensic** [3] - 3438:32,  
3440:2, 3442:4  
**form** [5] - 3429:36,  
3434:14, 3445:2,  
3445:23, 3455:39  
**formally** [1] - 3457:17  
**formation** [2] -  
3437:25, 3437:30  
**formed** [1] - 3437:27  
**former** [2] - 3432:5,  
3449:9  
**forward** [3] - 3443:25,  
3443:40, 3455:42  
**foul** [2] - 3446:40,  
3451:38  
**four** [2] - 3441:18,  
3441:19  
**fresh** [5] - 3437:19,  
3438:31, 3441:5,  
3444:21  
**FRIDAY** [1] - 3458:24  
**friend** [1] - 3429:47  
**front** [1] - 3433:13  
**full** [1] - 3449:37  
**Fuller** [1] - 3450:22  
**function** [2] - 3435:6,  
3437:32  
**functions** [1] - 3433:9

**G**

**gay** [9] - 3450:8,  
3450:28, 3450:41,  
3451:22, 3451:33,  
3452:5, 3452:7,

3452:15, 3453:3  
**general** [3] - 3437:12,  
3438:30, 3443:3  
**General** [1] - 3443:13  
**generally** [3] -  
3455:34, 3455:44,  
3457:37  
**generate** [1] - 3438:15  
**genuine** [4] - 3447:29,  
3448:2, 3451:22,  
3452:5  
**genuinely** [2] -  
3451:21, 3452:4  
**given** [5] - 3429:14,  
3430:14, 3430:42,  
3439:13, 3449:45  
**granted** [1] - 3429:9  
**Gray** [8] - 3428:30,  
3430:7, 3432:14,  
3435:40, 3438:20,  
3439:46, 3442:29,  
3457:22  
**GRAY** [1] - 3429:3  
**gross** [1] - 3450:47  
**guess** [4] - 3433:18,  
3434:11, 3444:42,  
3446:35  
**guilty** [1] - 3439:31

**H**

**halfway** [1] - 3439:35  
**hand** [2] - 3441:24,  
3451:29  
**happy** [1] - 3448:40  
**hate** [10] - 3428:11,  
3450:8, 3450:28,  
3450:41, 3451:22,  
3451:33, 3452:5,  
3452:7, 3452:15,  
3453:3  
**head** [5] - 3430:29,  
3433:46, 3442:20,  
3445:17  
**hear** [3] - 3457:20,  
3457:31, 3457:35  
**heard** [2] - 3457:30,  
3457:40  
**hearing** [4] - 3431:35,  
3435:31, 3457:2,  
3457:38  
**highlight** [1] - 3429:41  
**hold** [1] - 3432:25  
**holding** [1] - 3444:36  
**Homicide** [30] -  
3432:16, 3433:1,  
3433:2, 3433:6,  
3433:36, 3433:37,  
3434:9, 3434:31,  
3434:44, 3434:46,

3434:47, 3437:2,  
3437:25, 3437:27,  
3437:31, 3437:46,  
3438:3, 3440:25,  
3440:40, 3441:11,  
3441:13, 3445:18,  
3445:22, 3446:36,  
3450:6, 3452:44,  
3453:10, 3454:8,  
3454:18, 3455:29  
**homicide** [1] -  
3437:29  
**homicides** [1] -  
3436:29  
**honest** [1] - 3444:38  
**Honour** [1] - 3457:31  
**Honourable** [1] -  
3428:16  
**hope** [1] - 3458:10  
**hopefully** [2] -  
3446:10, 3448:47  
**huge** [2] - 3440:35,  
3442:10  
**hundred** [1] - 3441:2  
**hypotheses** [1] -  
3444:29  
**hypothesis** [1] -  
3444:14

**I**

**idea** [2] - 3430:12,  
3441:29  
**identification** [1] -  
3438:39  
**identified** [2] -  
3430:17, 3447:34  
**identifying** [1] -  
3453:26  
**imagine** [1] - 3457:41  
**imagining** [1] - 3457:8  
**impact** [3] - 3455:4,  
3455:42, 3455:43  
**important** [1] -  
3434:27  
**improper** [2] - 3448:9,  
3449:7  
**inactive** [1] - 3436:4  
**inappropriate** [1] -  
3449:14  
**incidents** [1] -  
3450:28  
**included** [2] - 3433:8,  
3438:39  
**includes** [1] - 3457:38  
**including** [6] -  
3432:21, 3433:2,  
3442:46, 3454:44,  
3455:41, 3456:28  
**incorrect** [1] - 3438:23

**indeed** [3] - 3432:40,  
3446:33, 3447:16  
**independent** [1] -  
3450:14  
**independently** [1] -  
3449:44  
**indicate** [5] - 3429:11,  
3429:23, 3430:46,  
3436:22, 3451:35  
**indicated** [1] -  
3443:42  
**indirect** [1] - 3450:9  
**inferred** [1] - 3450:5  
**influence** [1] - 3435:7  
**information** [7] -  
3436:6, 3436:38,  
3436:40, 3439:24,  
3440:27, 3440:37,  
3441:5  
**input** [3] - 3434:11,  
3434:13, 3434:16  
**inquest** [22] - 3432:21,  
3432:22, 3432:25,  
3437:19, 3442:30,  
3442:37, 3443:1,  
3443:18, 3443:27,  
3443:43, 3444:6,  
3444:10, 3444:32,  
3444:36, 3444:37,  
3444:46, 3445:1,  
3445:34, 3445:47,  
3446:10, 3455:33  
**inquiries** [1] - 3433:33  
**inquiry** [2] - 3441:37,  
3442:15  
**Inquiry** [2] - 3428:9,  
3432:21  
**INQUIRY** [1] - 3458:23  
**insofar** [1] - 3457:42  
**inspector** [4] -  
3433:14, 3441:14  
**Inspector** [5] -  
3432:24, 3432:27,  
3434:6, 3434:8,  
3440:46  
**inspectors** [2] -  
3433:31, 3434:2  
**instructions** [1] -  
3443:10  
**integral** [1] - 3433:46  
**intending** [1] -  
3457:31  
**intent** [1] - 3453:34  
**interest** [7] - 3430:32,  
3430:33, 3438:40,  
3447:33, 3453:30,  
3453:31, 3455:43  
**interrupt** [2] -  
3433:40, 3441:21  
**interrupting** [2] -

3435:34, 3445:40  
**interview** [1] - 3432:26  
**intricate** [1] - 3433:38  
**investigate** [1] -  
3453:35  
**investigation** [17] -  
3432:28, 3433:13,  
3433:25, 3433:31,  
3433:37, 3434:2,  
3435:42, 3436:27,  
3436:32, 3437:23,  
3438:35, 3438:38,  
3440:35, 3440:39,  
3444:41, 3447:30,  
3450:7  
**investigations** [6] -  
3433:8, 3433:23,  
3436:18, 3455:28,  
3455:32, 3455:45  
**investigative** [2] -  
3437:32, 3438:36  
**involve** [1] - 3443:27  
**involved** [8] - 3434:28,  
3440:11, 3440:39,  
3442:45, 3443:13,  
3450:13, 3454:19,  
3454:42  
**involvement** [1] -  
3430:14  
**involving** [1] -  
3454:43  
**irrelevant** [1] -  
3451:16  
**issue** [6] - 3430:1,  
3448:26, 3448:47,  
3449:17, 3451:32,  
3451:38  
**issues** [4] - 3430:17,  
3445:29, 3445:30,  
3457:42  
**items** [2] - 3456:24,  
3457:35  
**itself** [1] - 3437:30

**J**

**Jerram** [1] - 3445:26  
**job** [3] - 3435:6,  
3435:12, 3435:20  
**JOHN** [1] - 3432:5  
**John** [4] - 3428:16,  
3434:6, 3451:29,  
3451:31  
**Johnson** [23] -  
3432:26, 3437:14,  
3438:7, 3438:8,  
3438:10, 3438:15,  
3439:30, 3440:7,  
3442:31, 3443:17,  
3443:27, 3444:3,



- 3457:38, 3458:8  
**occasion** [2] - 3436:47, 3439:13  
**occasions** [1] - 3437:42  
**occur** [6] - 3437:1, 3440:44, 3444:9, 3444:47, 3445:47, 3454:46  
**occurred** [4] - 3440:14, 3443:19, 3454:42, 3455:38  
**occurs** [1] - 3433:19  
**October** [2] - 3453:19, 3453:46  
**OF** [1] - 3458:23  
**Office** [1] - 3443:13  
**often** [2] - 3439:39, 3442:23  
**Olen** [1] - 3434:8  
**once** [1] - 3446:11  
**one** [18] - 3429:29, 3429:36, 3431:6, 3440:7, 3440:8, 3441:24, 3442:9, 3443:24, 3443:44, 3444:14, 3445:23, 3446:38, 3451:31, 3455:21, 3455:37, 3456:25  
**ones** [1] - 3443:17  
**ongoing** [1] - 3432:28  
**open** [6] - 3443:45, 3444:7, 3444:17, 3444:22, 3445:46, 3447:29  
**open-ended** [1] - 3447:29  
**opened** [1] - 3430:16  
**operation** [1] - 3450:12  
**opinion** [2] - 3444:22, 3451:28  
**opportunities** [2] - 3440:2, 3440:3  
**opportunity** [1] - 3430:5  
**opposed** [2] - 3448:12, 3448:34  
**oral** [2] - 3429:29, 3457:1  
**orally** [1] - 3457:23  
**ordinarily** [1] - 3437:4  
**organise** [1] - 3457:16  
**original** [1] - 3438:37  
**originally** [1] - 3436:35  
**otherwise** [3] - 3448:16, 3448:34, 3458:16  
**ourselves** [1] - 3431:7  
**outcome** [5] - 3435:41, 3445:46, 3446:18, 3453:38, 3454:45  
**output** [1] - 3433:17  
**overall** [1] - 3433:6  
**oversight** [3] - 3433:22, 3433:32, 3434:13  
**own** [2] - 3451:18, 3458:9
- 
- P**
- 
- page** [34] - 3432:11, 3432:14, 3432:32, 3435:27, 3435:39, 3435:40, 3435:45, 3437:44, 3437:45, 3438:2, 3438:14, 3438:15, 3439:34, 3439:36, 3442:28, 3443:16, 3447:5, 3447:7, 3448:6, 3448:8, 3449:16, 3450:25, 3451:6, 3451:20, 3452:10, 3452:23, 3453:14, 3453:15, 3453:31, 3454:26, 3455:6, 3455:8, 3455:13  
**pages** [1] - 3452:9  
**Palace** [1] - 3436:36  
**Pam** [3] - 3443:4, 3443:12, 3451:31  
**Pamela** [3] - 3432:24, 3432:26, 3448:8  
**paragraph** [2] - 3449:33, 3449:34  
**paraphrasing** [1] - 3436:2  
**parcel** [1] - 3451:33  
**pardon** [1] - 3435:34  
**Parrabell** [18] - 3432:29, 3449:38, 3450:13, 3451:17, 3452:11, 3452:14, 3452:28, 3452:37, 3452:44, 3453:6, 3453:10, 3455:23, 3455:47, 3456:2, 3456:6, 3457:2, 3457:39, 3458:17  
**part** [7] - 3429:42, 3433:46, 3434:45, 3441:19, 3451:33, 3453:23, 3455:31  
**particular** [5] - 3435:6, 3437:22, 3454:19, 3454:21, 3456:7  
**particularly** [3] - 3433:24, 3453:24, 3456:10  
**party** [2] - 3430:3, 3430:27  
**passed** [1] - 3457:4  
**passing** [1] - 3457:10  
**paths** [1] - 3455:37  
**Penelope** [1] - 3443:5  
**Penny** [2] - 3453:24, 3454:20  
**people** [4] - 3432:23, 3435:1, 3441:16, 3454:43  
**per** [1] - 3441:2  
**perceive** [1] - 3457:44  
**perception** [1] - 3448:15  
**perform** [2] - 3434:30, 3434:38  
**performing** [1] - 3435:3  
**perhaps** [5] - 3429:27, 3441:44, 3449:12, 3453:18, 3455:7  
**period** [1] - 3432:15  
**person** [5] - 3435:22, 3439:31, 3440:41, 3443:9, 3443:12  
**personal** [1] - 3444:8  
**personally** [2] - 3430:41, 3444:37  
**persons** [5] - 3438:40, 3447:33, 3453:30, 3455:43  
**Peter** [1] - 3428:30  
**picking** [1] - 3430:28  
**pieces** [1] - 3448:35  
**place** [2] - 3429:43, 3448:35  
**placed** [1] - 3453:5  
**play** [2] - 3446:40, 3451:38  
**pleaded** [1] - 3439:31  
**point** [9] - 3430:31, 3435:1, 3438:31, 3439:47, 3444:14, 3446:19, 3446:23, 3446:40, 3451:34  
**pointed** [3] - 3452:10, 3452:13, 3452:23  
**Police** [7] - 3428:38, 3429:17, 3433:19, 3433:20, 3442:30, 3443:11, 3443:14  
**police** [13] - 3429:4, 3430:3, 3433:1, 3433:11, 3436:43, 3439:25, 3447:44, 3455:16, 3455:20, 3455:31, 3456:7, 3456:10, 3456:38  
**police's** [1] - 3446:23  
**populations** [1] - 3442:11  
**portion** [2] - 3457:2, 3457:37  
**position** [1] - 3458:11  
**possibility** [4] - 3430:39, 3439:4, 3457:6, 3457:9  
**possible** [5] - 3429:29, 3433:35, 3447:43, 3447:46, 3452:6  
**possibly** [2] - 3437:18, 3450:27  
**postponed** [1] - 3431:1  
**potential** [1] - 3455:42  
**power** [1] - 3435:7  
**practically** [1] - 3437:7  
**practice** [2] - 3437:9, 3455:31  
**preclude** [1] - 3439:4  
**predecessor** [1] - 3445:12  
**prefer** [2] - 3431:38, 3431:39  
**present** [1] - 3443:33  
**Present** [1] - 3428:35  
**presumably** [1] - 3446:19  
**presume** [4] - 3429:25, 3430:18, 3432:43, 3451:11  
**presuming** [1] - 3448:14  
**presumptively** [1] - 3429:28  
**presumptuous** [1] - 3457:13  
**previous** [5] - 3430:47, 3446:44, 3448:8, 3455:8, 3455:12  
**previously** [2] - 3436:28, 3455:32  
**primarily** [2] - 3434:1, 3434:42  
**primary** [1] - 3434:7  
**principally** [1] - 3457:41  
**prioritisation** [1] - 3440:24  
**prioritised** [1] - 3438:4  
**probable** [1] - 3452:7  
**problem** [2] - 3429:40, 3429:41  
**procedure** [2] - 3445:14, 3445:15  
**proceed** [2] - 3430:27, 3437:3  
**proceedings** [4] - 3429:3, 3432:10, 3442:46, 3444:4  
**process** [4] - 3439:45, 3440:18, 3440:22, 3455:24  
**produced** [1] - 3430:3  
**production** [1] - 3431:9  
**professional** [1] - 3445:24  
**program** [1] - 3432:27  
**prompt** [2] - 3453:18  
**propagated** [1] - 3449:45  
**proper** [1] - 3448:38  
**propose** [1] - 3429:19  
**provide** [3] - 3449:11, 3456:3, 3457:1  
**providing** [2] - 3443:10, 3444:45  
**provoke** [1] - 3430:26  
**provoked** [2] - 3441:25, 3441:29  
**public** [12] - 3444:46, 3454:45, 3455:11, 3455:15, 3455:17, 3455:29, 3455:31, 3455:38, 3455:41, 3456:1, 3456:4, 3456:6  
**publicity** [1] - 3438:15  
**publicly** [1] - 3457:16  
**purpose** [1] - 3447:24  
**purposes** [1] - 3456:26  
**pursue** [1] - 3453:27  
**pursuing** [1] - 3453:25  
**put** [8] - 3429:43, 3443:25, 3443:40, 3444:29, 3446:23, 3452:9, 3452:27, 3454:8  
**putting** [1] - 3448:29
- 
- Q**
- 
- quality** [2] - 3433:23, 3433:36  
**questioning** [1] - 3456:16  
**questions** [16] - 3430:8, 3432:11, 3435:32, 3435:39,

3435:41, 3439:35,  
3440:16, 3442:29,  
3443:22, 3447:5,  
3447:7, 3447:13,  
3448:7, 3448:32,  
3455:7, 3455:9  
**queue** [2] - 3440:23,  
3440:29  
**quite** [4] - 3429:20,  
3435:2, 3446:43,  
3448:30

---

## R

---

**raise** [5] - 3430:21,  
3430:39, 3445:29  
**raised** [1] - 3451:38  
**range** [3] - 3437:29,  
3454:43, 3455:41  
**rank** [2] - 3433:14,  
3434:30  
**rated** [1] - 3438:10  
**re** [5] - 3436:28,  
3436:34, 3437:16,  
3440:38, 3445:2  
**re-examination** [1] -  
3436:34  
**re-examinations** [1] -  
3436:28  
**re-examine** [1] -  
3445:2  
**re-examining** [1] -  
3437:16  
**re-look** [1] - 3440:38  
**reach** [1] - 3443:43  
**reactivated** [1] -  
3436:39  
**read** [3] - 3433:30,  
3436:13, 3457:40  
**real** [1] - 3433:22  
**realisation** [1] -  
3453:20  
**realistic** [1] - 3430:23  
**reality** [1] - 3437:9  
**really** [3] - 3430:12,  
3445:30, 3455:16  
**reason** [1] - 3451:31  
**reasonable** [5] -  
3452:15, 3452:19,  
3452:27, 3452:37,  
3453:5  
**reasonably** [1] -  
3430:13  
**reasons** [4] - 3429:33,  
3446:4, 3449:8,  
3455:41  
**received** [5] - 3429:15,  
3430:25, 3457:20,  
3457:43  
**receiving** [1] -

3451:13  
**recently** [2] - 3429:16,  
3431:1  
**recollection** [3] -  
3437:28, 3440:25,  
3441:1  
**recommendation** [1] -  
3436:21  
**recorded** [1] - 3439:17  
**refer** [2] - 3438:14,  
3438:30  
**Reference** [2] -  
3429:13, 3429:18  
**referred** [4] - 3436:23,  
3437:4, 3437:10,  
3440:17  
**referring** [2] -  
3446:15, 3451:42  
**refers** [1] - 3448:26  
**reflect** [1] - 3452:42  
**regarded** [1] - 3455:19  
**regional** [1] - 3434:42  
**regular** [2] - 3445:11,  
3445:28  
**reinvestigate** [1] -  
3441:34  
**reinvestigated** [1] -  
3442:14  
**reinvestigation** [8] -  
3440:5, 3440:12,  
3440:44, 3440:47,  
3441:45, 3441:46,  
3448:3, 3455:24  
**reinvestigations** [2] -  
3442:6, 3442:18  
**reiterating** [1] -  
3457:19  
**reject** [3] - 3447:23,  
3454:41, 3454:46  
**related** [2] - 3434:29,  
3458:18  
**relation** [7] - 3429:46,  
3445:8, 3453:11,  
3456:7, 3456:38,  
3457:1, 3458:17  
**relationship** [9] -  
3438:40, 3440:3,  
3444:42, 3445:24,  
3445:25, 3445:27,  
3445:30, 3446:26,  
3446:29  
**relevant** [3] - 3429:36,  
3432:20, 3456:22  
**relied** [2] - 3433:29,  
3433:30  
**remarkable** [1] -  
3439:16  
**removal** [1] - 3432:27  
**repeat** [1] - 3433:44  
**report** [6] - 3429:13,

3430:42, 3437:36,  
3450:33, 3451:29,  
3452:11  
**reported** [3] - 3441:14,  
3451:26, 3456:9  
**reporting** [1] - 3450:5  
**reports** [1] - 3451:36  
**representing** [1] -  
3442:30  
**request** [2] - 3437:14,  
3445:1  
**require** [2] - 3429:13,  
3437:13  
**required** [1] - 3437:9  
**resources** [5] -  
3434:33, 3434:44,  
3443:28, 3454:5,  
3454:7  
**responsibility** [5] -  
3432:40, 3433:5,  
3433:7, 3433:27,  
3434:8  
**responsible** [3] -  
3433:17, 3433:19,  
3433:45  
**rest** [1] - 3435:31  
**result** [4] - 3440:41,  
3442:5, 3444:6,  
3455:38  
**resulted** [2] - 3442:14,  
3454:9  
**results** [3] - 3455:27,  
3455:45, 3456:9  
**resume** [2] - 3456:22,  
3456:26  
**resuming** [1] - 3429:3  
**retainer** [1] - 3448:12  
**retrospect** [3] -  
3434:37, 3434:40,  
3439:10  
**return** [1] - 3431:47  
**review** [17] - 3437:29,  
3437:31, 3438:4,  
3439:12, 3439:45,  
3440:18, 3440:21,  
3441:7, 3441:12,  
3441:24, 3441:29,  
3441:33, 3441:40,  
3441:41, 3441:45,  
3455:25, 3456:3  
**reviewed** [2] -  
3439:47, 3441:11  
**reviewing** [1] -  
3451:18  
**reviews** [7] - 3433:8,  
3441:45, 3442:5,  
3442:22, 3449:38,  
3455:45, 3456:10  
**revived** [1] - 3436:4  
**Rhys** [1] - 3428:33

**Richards** [1] - 3428:38  
**role** [5] - 3434:1,  
3434:5, 3434:31,  
3434:38, 3435:3  
**roles** [1] - 3434:5  
**room** [2] - 3429:12,  
3429:14  
**routine** [4] - 3436:28,  
3436:34, 3437:1,  
3441:6  
**rub** [1] - 3431:28  
**rubric** [1] - 3448:34

---

## S

---

**Sackar** [1] - 3428:16  
**samples** [1] - 3442:24  
**sat** [4] - 3433:14,  
3434:34, 3440:36,  
3441:12  
**saw** [1] - 3433:10  
**SC** [2] - 3428:30,  
3428:40  
**science** [1] - 3442:5  
**SCOI.82369.00001\_0001** [1] - 3449:22  
**Scott** [5] - 3432:22,  
3432:26, 3438:8,  
3444:13, 3444:44  
**screen** [1] - 3435:36  
**screening** [1] - 3438:4  
**second** [5] - 3432:21,  
3432:22, 3443:39,  
3443:44, 3444:6  
**secondly** [1] - 3429:42  
**see** [2] - 3437:15,  
3457:16  
**seeking** [2] - 3438:15,  
3448:21  
**selfishly** [1] - 3430:32  
**Senior** [1] - 3448:15  
**senior** [3] - 3430:36,  
3431:34, 3433:11  
**sentences** [1] -  
3440:42  
**separate** [2] -  
3430:17, 3455:23  
**sergeant** [1] - 3441:17  
**Sergeant** [2] -  
3434:41, 3435:11  
**sergeants** [1] -  
3433:15  
**Serious** [2] - 3434:12,  
3454:44  
**serving** [1] - 3440:42  
**set** [12] - 3434:29,  
3437:16, 3447:19,  
3447:28, 3447:38,  
3447:40, 3447:47,  
3448:2, 3450:12,

3453:19, 3456:2,  
3457:42  
**sets** [1] - 3435:2  
**setting** [2] - 3429:28,  
3432:28  
**seventeen** [1] -  
3432:44  
**sever** [1] - 3430:13  
**shed** [1] - 3438:38  
**sheer** [1] - 3437:5  
**shell** [1] - 3436:37  
**side** [1] - 3446:38  
**significance** [2] -  
3437:13, 3454:31  
**significant** [3] -  
3429:15, 3429:20,  
3454:9  
**similar** [1] - 3433:18  
**simple** [1] - 3441:36  
**simply** [7] - 3430:24,  
3430:26, 3430:42,  
3431:8, 3439:40,  
3440:17, 3447:29  
**sit** [3] - 3429:1,  
3436:38, 3455:40  
**sitting** [2] - 3433:11,  
3442:20  
**situation** [2] -  
3435:21, 3440:23  
**situations** [2] -  
3441:35, 3458:9  
**six** [2] - 3432:15,  
3432:37  
**six-year** [1] - 3432:15  
**skill** [1] - 3435:2  
**skilled** [1] - 3434:46  
**small** [1] - 3434:32  
**so** [1] - 3452:39  
**Solicitor** [1] - 3428:33  
**solvability** [5] -  
3438:10, 3438:22,  
3438:47, 3439:11,  
3439:26  
**solved** [3] - 3451:40,  
3451:43, 3451:47  
**someone** [1] -  
3437:14  
**something's** [1] -  
3441:30  
**somewhere** [1] -  
3434:32  
**soon** [1] - 3456:26  
**sorry** [9] - 3433:44,  
3434:10, 3435:40,  
3436:40, 3438:7,  
3441:21, 3445:40,  
3446:2, 3449:16  
**sort** [4] - 3429:29,  
3431:35, 3450:8,  
3454:42

- sorting** [1] - 3456:27  
**sought** [2] - 3429:17, 3429:26  
**South** [2] - 3428:21, 3434:43  
**SPECIAL** [1] - 3458:23  
**Special** [1] - 3428:9  
**specifically** [1] - 3456:4  
**speculation** [1] - 3444:43  
**Squad** [8] - 3432:16, 3433:36, 3433:37, 3434:9, 3440:25, 3445:18, 3445:22, 3446:36  
**squad** [8] - 3433:7, 3433:9, 3433:10, 3433:16, 3433:17, 3433:28, 3434:10, 3445:26  
**stage** [1] - 3429:5  
**stalled** [3] - 3436:18, 3436:27, 3436:32  
**start** [3] - 3429:11, 3430:47, 3432:14  
**starting** [1] - 3448:7  
**state** [1] - 3444:3  
**State** [9] - 3436:22, 3436:24, 3436:44, 3436:46, 3437:10, 3437:37, 3437:40, 3445:24, 3445:25  
**statement** [4] - 3432:24, 3438:31, 3449:18, 3449:19  
**step** [1] - 3433:1  
**still** [3] - 3434:7, 3437:37, 3455:40  
**stop** [1] - 3448:32  
**Street** [1] - 3428:20  
**strictures** [1] - 3458:9  
**Strike** [4] - 3440:12, 3447:6, 3449:37, 3450:13  
**strike** [3] - 3432:29, 3433:25, 3434:28  
**structure** [2] - 3433:10, 3434:34  
**subject** [7] - 3429:33, 3429:34, 3439:45, 3440:5, 3441:6, 3452:1, 3455:33  
**submissions** [5] - 3429:29, 3442:42, 3443:32, 3457:1, 3457:43  
**subsequently** [1] - 3439:17  
**suddenly** [2] - 3440:8, 3453:45  
**suggest** [1] - 3443:24  
**suggested** [2] - 3443:17, 3447:8  
**suggestion** [2] - 3447:36, 3454:40  
**suicide** [1] - 3454:32  
**suitability** [1] - 3434:38  
**suits** [1] - 3431:30  
**summonses** [1] - 3430:26  
**sunset** [1] - 3458:10  
**Superintendent** [3] - 3449:36, 3450:12, 3450:23  
**support** [1] - 3449:37  
**supported** [2] - 3454:22, 3454:33  
**supportive** [1] - 3450:23  
**surprised** [2] - 3444:26, 3444:27  
**suspect** [1] - 3430:4  
**swiftly** [1] - 3430:32  
**Sydney** [2] - 3428:21, 3431:24
- 
- T**
- 
- tab** [3] - 3449:22, 3449:24, 3449:28  
**table** [2] - 3429:32, 3431:11  
**Taradale** [4] - 3453:22, 3453:31, 3454:29, 3454:34  
**tasks** [1] - 3445:23  
**Team** [16] - 3433:2, 3434:31, 3434:46, 3434:47, 3437:25, 3437:27, 3437:31, 3438:3, 3440:40, 3441:11, 3441:13, 3445:18, 3450:6, 3452:44, 3453:10, 3454:18  
**team** [11] - 3433:15, 3434:10, 3434:35, 3437:35, 3441:12, 3441:13, 3441:16, 3441:19, 3450:11, 3453:10  
**Team's** [1] - 3437:46  
**techniques** [1] - 3438:36  
**technologies** [1] - 3438:34  
**technology** [1] - 3440:4  
**Tedeschi** [15] - 3428:37, 3429:4, 3429:11, 3432:3, 3433:18, 3433:40, 3434:24, 3437:11, 3441:22, 3448:11, 3456:20, 3456:36, 3456:47, 3457:41, 3458:16  
**TEDESCHI** [25] - 3429:46, 3430:10, 3430:46, 3432:7, 3432:9, 3434:26, 3435:26, 3435:39, 3442:4, 3442:27, 3446:4, 3446:14, 3446:29, 3447:4, 3448:21, 3448:26, 3448:37, 3448:45, 3449:6, 3449:28, 3449:33, 3456:12, 3456:16, 3456:41, 3457:25  
**tentatively** [1] - 3429:43  
**tenure** [1] - 3433:20  
**Terms** [2] - 3429:12, 3429:18  
**terms** [6] - 3438:30, 3440:27, 3443:4, 3444:12, 3446:26, 3456:1  
**test** [1] - 3440:2  
**testing** [1] - 3442:10  
**THANGARAJ** [9] - 3429:7, 3431:18, 3431:24, 3431:30, 3431:45, 3457:30, 3457:46, 3458:6, 3458:14  
**Thangaraj** [3] - 3428:40, 3431:16, 3448:41  
**theoretically** [2] - 3430:15, 3444:13  
**theory** [1] - 3454:32  
**thinking** [1] - 3448:8  
**third** [13] - 3430:3, 3430:27, 3432:25, 3442:30, 3442:37, 3443:1, 3443:18, 3443:26, 3443:43, 3444:32, 3444:36, 3445:34, 3446:10  
**thirds** [1] - 3440:40  
**three** [3] - 3432:29, 3436:3, 3444:28  
**throughout** [1] - 3444:11  
**Thursday** [1] - 3428:25  
**timing** [1] - 3454:20  
**TO** [1] - 3458:24  
**today** [5] - 3429:3, 3430:12, 3431:10, 3431:40, 3446:5  
**tomorrow** [2] - 3429:27, 3432:1  
**took** [3] - 3437:32, 3445:2, 3445:22  
**top** [7] - 3430:18, 3431:8, 3433:11, 3435:45, 3438:14, 3442:19, 3447:7  
**topic** [3] - 3430:16, 3448:12, 3448:32  
**topics** [9] - 3430:15, 3430:16, 3431:10, 3453:22, 3456:38, 3456:44, 3457:23, 3457:36, 3458:18  
**touches** [1] - 3457:39  
**towards** [3] - 3438:14, 3442:34, 3447:7  
**track** [2] - 3437:32, 3443:19  
**transcript** [4] - 3432:10, 3433:12, 3435:27, 3457:41  
**travel** [1] - 3431:28  
**treated** [1] - 3436:4  
**true** [1] - 3454:26  
**try** [3] - 3430:35, 3431:5, 3453:3  
**trying** [8] - 3447:19, 3448:12, 3448:31, 3448:32, 3449:2, 3449:3, 3449:10  
**turn** [1] - 3433:31  
**turned** [1] - 3440:13  
**turns** [1] - 3439:46  
**two** [11] - 3429:35, 3440:40, 3441:18, 3441:34, 3448:13, 3448:21, 3455:22, 3455:37, 3457:1, 3457:11, 3458:1  
**two-thirds** [1] - 3440:40  
**type** [1] - 3436:40  
**types** [1] - 3442:22
- 
- U**
- 
- UHT** [5] - 3443:28, 3449:44, 3449:46, 3450:4, 3450:17  
**ultimate** [2] - 3441:10, 3446:39  
**ultimately** [2] - 3440:39, 3444:17  
**uncovering** [2] - 3453:26, 3453:36  
**under** [4] - 3429:20, 3440:12, 3448:33, 3451:29  
**undermine** [3] - 3447:20, 3447:38, 3447:44  
**undermined** [1] - 3454:34  
**undertaken** [2] - 3433:7, 3440:36  
**undertaker** [1] - 3457:16  
**undertook** [2] - 3433:17, 3434:46  
**undoubtedly** [1] - 3431:7  
**unexpected** [1] - 3446:18  
**unless** [2] - 3436:5, 3439:40  
**unlike** [1] - 3458:9  
**unlikely** [1] - 3443:42  
**Unsolved** [2] - 3433:2, 3434:9, 3434:31, 3434:44, 3434:46, 3434:47, 3437:2, 3437:25, 3437:27, 3437:31, 3437:46, 3438:3, 3440:40, 3441:11, 3441:12, 3450:6, 3452:44, 3453:10, 3454:8, 3454:18, 3455:28  
**unsolved** [7] - 3436:28, 3436:34, 3437:29, 3450:7, 3451:33, 3451:36, 3451:45  
**unsuitability** [1] - 3435:15  
**unsuited** [1] - 3435:12  
**up** [18] - 3430:16, 3430:43, 3432:28, 3432:41, 3433:30, 3435:5, 3440:41, 3441:17, 3441:29, 3447:28, 3447:38, 3447:40, 3448:2, 3450:12, 3451:34, 3453:19, 3456:2, 3457:42  
**update** [1] - 3456:21
- 
- V**
- 
- value** [1] - 3442:44

**various** [3] - 3432:23,  
3457:4

**view** [24] - 3431:36,  
3434:37, 3434:40,  
3435:1, 3436:45,  
3444:2, 3444:5,  
3444:8, 3444:12,  
3444:35, 3445:33,  
3445:45, 3446:19,  
3446:23, 3450:26,  
3450:40, 3450:43,  
3450:46, 3451:14,  
3451:21, 3453:24

**views** [2] - 3456:7,  
3456:10

**volume** [2] - 3429:15,  
3437:5

---

## W

---

**Wales** [2] - 3428:21,  
3434:43

**warrant** [1] - 3437:19

**week** [2] - 3445:9,  
3445:33

**Welsford** [1] - 3440:13

**wheel** [1] - 3439:46

**whilst** [2] - 3433:27,  
3433:28

**wider** [1] - 3444:46

**WILLING** [1] - 3432:5

**willing** [1] - 3431:9

**Willing** [17] - 3428:41,  
3429:1, 3429:5,  
3429:7, 3429:39,  
3429:46, 3431:31,  
3431:39, 3432:9,  
3433:43, 3435:36,  
3449:24, 3456:16,  
3456:28, 3457:6,  
3457:19, 3457:39

**Willing's** [2] -  
3430:33, 3456:44

**wish** [2] - 3429:47,  
3457:7

**WITNESS** [1] -  
3449:26

**witnesses** [2] -  
3444:10, 3455:42

**words** [1] - 3457:8

**workable** [1] -  
3431:37

**worth** [3] - 3431:19,  
3437:15, 3453:25

**writing** [2] - 3457:36,  
3457:47

**written** [3] - 3450:33,  
3457:9, 3457:20

## Y

---

**year** [2] - 3429:19,  
3432:15

**years** [3] - 3432:37,  
3434:4, 3447:1

**yesterday** [2] -  
3429:17, 3456:36

**Young** [11] - 3432:24,  
3432:26, 3432:28,  
3440:46, 3443:4,  
3443:12, 3448:8,  
3450:44, 3452:25,  
3452:35, 3453:4

**yourself** [1] - 3452:26

---

## Z

---

**zero** [5] - 3438:11,  
3438:22, 3438:46,  
3439:11, 3439:25