

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

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

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

On Wednesday, 21 June 2023 at 10.00am

(Day 63)

Ms Meg O'Brien	(Counsel Assisting)
Mr Enzo Camporeale	(Director Legal)
Ms Caitlin Healey-Nash	(A/Principal Solicitor)
Mr Rhys Carvosso	(Solicitor)

Also Present:

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

Mr Mark Tedeschi KC with Mr Patrick Hodgetts for NSW Police

1 THE COMMISSIONER: Yes.

2

3 MR THANGARAJ: Is the Commissioner ready for my
4 submissions?

5

6 THE COMMISSIONER: I'm certainly ready.

7

8 MR THANGARAJ: Thanks. Firstly, we are very grateful to
9 you, Commissioner, for accommodating us today with these
10 oral submissions. I know that a change of plans had taken
11 place to allow that to happen.

12

13 We have prepared written submissions and they will be
14 filed by the due date. We're not proposing to hand them up
15 today. We will finalise the tweaking and some references
16 in due course. But the oral submissions today will focus
17 on the death of Mr Johnson and Lateline. The other issues
18 that are referred to in Counsel Assisting's submissions we
19 will deal with in writing in our written document.

20

21 What must be accepted is that the contribution of the
22 Johnson family was significant. They faithfully refused to
23 believe that Mr Johnson had taken his own life. They knew
24 him better than anyone else and they were proven to be
25 correct. The suicide theory was proven to be wrong.

26

27 But, notwithstanding that important and ongoing fight
28 for justice, that does not mean, of course, that all of the
29 theories of the Johnson family were correct, and it does
30 not mean that all of the conclusions drawn by the police at
31 the time were incorrect. As it turns out, they were both
32 right and they were both wrong: Mr Johnson's death was not
33 suicide, but nor did it involve gay hate.

34

35 After conducting a thorough investigation, it was
36 clear that Ms Young had lost all objectivity, because she
37 believed that the Johnson family had received preferential
38 treatment and she, rightly or wrongly, formed the view that
39 they had been able to achieve that as a result of their
40 wealth and connections, advantages which other grieving
41 families did not have, as she perceived it.

42

43 That loss of objectivity caused Ms Young to devise and
44 execute a responsive strategy to publicly air her
45 grievances. Of course, she needed a trusted ally, and she
46 chose her offsider, Ms Brown. The two of them deliberately
47 then concealed their plan from everyone in NSW Police.

1
2 Neither Ms Young nor Ms Brown have given evidence
3 before this Commission, and we respectfully submit that
4 that constrains the findings that the Commission is
5 entitled to make.

6
7 THE COMMISSIONER: About her?

8
9 MR THANGARAJ: No, about us as well. I'll develop that as
10 I go.

11
12 THE COMMISSIONER: All right.

13
14 MR THANGARAJ: The submissions we make are, we say, the
15 only logical inference to be drawn from the documents and
16 the oral evidence before this Commission.

17
18 Now, it must be accepted, and I don't see anything
19 inconsistent with this in Counsel Assisting's submissions,
20 that Ms Young did not disclose, prior to 13 April, as she
21 was required to have done under police protocols and
22 policies - she had not disclosed prior to 13 April what she
23 had been planning with the ABC for some time. Her strategy
24 involved a high-profile program, being Lateline, with
25 a hand-picked journalist that she trusted, Ms Alberici.
26 Ms Young - and when I say "Ms Young", I mean Ms Young and
27 Ms Brown - kept --

28
29 THE COMMISSIONER: Can I interrupt you for a second. I do
30 apologise. Is Ms Brown still a serving police officer?

31
32 MR THANGARAJ: I don't know that. I can find that out.

33
34 THE COMMISSIONER: Is she a serving police officer,
35 Mr Tedeschi? You represent the police. I mean, I'm just -
36 I will not unduly interrupt, but I would like to know if
37 she is still serving, given what is being said about her.

38
39 MR TEDESCHI: I will get some instructions.

40
41 THE COMMISSIONER: Thank you.

42
43 Yes, Mr Thangaraj.

44
45 MR TEDESCHI: I'm instructed that Brown is still serving.
46 Young, of course, is no longer with the police --

47

1 THE COMMISSIONER: No, I know Ms Young is not there.

2

3 MR TEDESCHI: -- but Brown is still a serving police
4 officer.

5

6 THE COMMISSIONER: All right. Thank you.

7

8 MR THANGARAJ: What Ms Young's strategy involved, apart
9 from Lateline and a hand-picked journalist, was she then
10 kept it secret in order to avoid the risk that police would
11 have taken steps to stop the interview going to air. And
12 she needed to avoid that risk because otherwise it would
13 have destroyed everything that she was seeking to achieve
14 through that interview.

15

16 If she had failed to appear on Lateline and say the
17 things that she wanted to say, from her perspective, that
18 would have meant that the Johnson family would have won.

19

20 She knew full well that what she had told Ms Alberici
21 prior to the 13th was explosive. That was the term, of
22 course, that Ms Alberici used to describe the forthcoming
23 interview and what she had already ascertained well before
24 the 13th. Ms Young was accusing the Police Minister of
25 inappropriate conduct. She was accusing the Johnson family
26 of buying access and influence in order to jump the queue.

27

28 She knew full well that her planned interview required
29 approval from NSW Police, but she also knew that that
30 approval would never have been given. She would never have
31 been permitted to say what she wanted to say. If she was
32 going to be participating in a studio interview, she would
33 have been taken through and she would have had to say what
34 her answers would have been, what she proposed to say,
35 et cetera, and the moment that she tried to say anything
36 controversial, that would have been shut down, and she knew
37 that.

38

39 She knew that a studio interview as opposed to
40 a backgrounding interview - a studio interview - would have
41 mandated the presence of a Media Liaison Officer throughout
42 that whole process, not simply on the day of recording the
43 interview but in all the preparation, the meetings in
44 advance, any time there'd be contact with a journalist.
45 Because part of the Media Liaison Officer's role, of
46 course, is to tell a journalist, "No, you can't go there",
47 for example.

1
2 Ms Young's strategy, therefore, required that no-one
3 in police know that she would record a studio interview.
4 Her strategy required that no-one in police knew that she
5 had recorded a studio interview. It would be completely
6 illogical, with respect, to take active steps of
7 concealment in direct breach of police protocol for months
8 and then, yet, disclose the critical event beforehand. It
9 was imperative that no-one knew about the studio interview
10 until the program went to air.

11
12 THE COMMISSIONER: Is it part of your case theory that
13 Ms Brown had to be in on all of this?

14
15 MR THANGARAJ: Yes.

16
17 Any officer who knew about the studio interview in
18 advance would have initiated steps to stop the interview
19 being broadcast. Any officer that Ms Young told or
20 Ms Brown told would have been obliged to inform the Media
21 Unit, which would in turn activate normal police protocols.

22
23 Ms Young knew that Mr Willing would inform the Media
24 Unit of the 5pm phone call, and he did.

25
26 Ms Young's strategy succeeded. The interview went to
27 air and it left Georgie Wells from the Media Unit
28 speechless, as she told Ashurst, and yet our friend's
29 submissions, Counsel Assisting's submissions, say that
30 notwithstanding her concerted efforts of secrecy, she
31 revealed her hand before the critical moment to Mr Willing,
32 a senior officer who would naturally then pass on that
33 information to the Media Unit, who were the ones best
34 placed to put a stop to an interview that was scheduled to
35 go to air within a few hours.

36
37 The suggestion that Ms Young revealed the studio
38 interview after months of secrecy cannot be sustained
39 without reliable evidence to the contrary, which, in this
40 case, could only have been given by either Ms Young or
41 Ms Wells.

42
43 Counsel Assisting maintains that position, even though
44 it is clear what it is that Ms Wells told Ashurst, what it
45 is that she expected as a result of the phone call from
46 Mr Willing. From reading that interview with Ashurst, she
47 says she expected quick grabs or snippets and, very

1 importantly, she says "statements consistent with the media
2 release welcoming the third inquest", et cetera. Bland.
3 And she says to Ashurst that she did not expect a studio
4 interview.

5
6 Now, we haven't heard from Ms Wells, but it could not
7 possibly be suggested that she'd lied to Ashurst in her
8 police interview, and it could not possibly be suggested
9 that she failed to take proper steps in accordance with her
10 understandings as to what was coming on Lateline later that
11 evening.

12
13 What is further being asked by Counsel Assisting is
14 that a respected senior officer in Mr Willing's position
15 would have deliberately and wilfully ignored the media
16 strategy which had been approved by Deputy Commissioner
17 level and head of Public Affairs, and even, with respect,
18 more fancifully, that Mr Willing then risked the wrath of
19 the hierarchy for no obvious benefit.

20
21 Given what Ms Young said during the studio interview,
22 it's clear that something would result, and it did. It was
23 inevitable there would be an investigation.

24
25 THE COMMISSIONER: I hear what you say about that, but the
26 problem, or one of the problems, is that Ms Young's
27 behaviour was not universally condemned within the Police
28 Force. There is material before me where Mr Kaldas, who
29 was very senior, applauded what she had done, and he was
30 not the only person. I mean, leaving people outside
31 New South Wales to one side, there was somebody from
32 Western Australia who wrote to her in the materials I have
33 seen, but you well know that she was not universally
34 condemned for what she did and what she said. So it's not
35 true, in one sense, to juxtapose the unexpected nature of
36 what she said with the reaction on the part of those, some
37 of those, who obviously supported it.

38
39 MR THANGARAJ: If I can just respond to that, then,
40 firstly, we look at Ken Finch's reaction.

41
42 THE COMMISSIONER: Well, yes, but Kaldas was pretty
43 senior.

44
45 MR THANGARAJ: More senior, I accept that.

46
47 THE COMMISSIONER: Yes, and Mr Kaldas wrote to Ms Young in

1 glowing terms.

2

3 MR THANGARAJ: So, firstly, I'm not aware of that evidence
4 but I accept it, of course. But can I say this, I don't
5 act for the police.

6

7 THE COMMISSIONER: No, I know you don't.

8

9 MR THANGARAJ: What is clear is the secrecy and the
10 matters that I have taken the court through.

11

12 THE COMMISSIONER: All right. I follow.

13

14 MR THANGARAJ: What is inevitable is there would have been
15 a backlash. Now, Ken Finch is an example, but the State
16 Coroner is another example. The State Coroner was
17 contemplating contempt proceedings.

18

19 Further, the police initiated a part 8A investigation.
20 Now, that didn't just fall into the ether. She did a Boris
21 Johnson; she ran before she was pushed. Because she went
22 off sick, the investigation could not proceed. So that was
23 what was happening formally.

24

25 It may have been - I don't know this but it may have
26 been - that the police changed their tune because of the
27 backlash, originally warmly embracing some of it, but that
28 doesn't take away from her strategy leading in to that
29 broadcast.

30

31 THE COMMISSIONER: But what about Mr Willing's response
32 the next morning, written seemingly by Ms Wells, I think,
33 from his computer, in effect, saying, "Well, chill. Just
34 chill. It was all - it's all in her statement."

35

36 MR THANGARAJ: So there are a few things about that which
37 I will come to, but I can briefly address it now.

38

39 The original position that the Commissioner took was
40 very different to the position that he ultimately took,
41 which seemed to have changed after Mr Feneley wanted him to
42 go on the record. So what is happening at that moment in
43 time - and the Commission can't forget that that email that
44 the Commissioner is talking about was a media email. Yes,
45 they were all together, but it was --

46

47 THE COMMISSIONER: No, when you say "media email", it

1 starts by saying - Georgie - "I'm writing from Mick
2 Willing's computer." And he agreed in the evidence that he
3 was in the room.

4
5 MR THANGARAJ: No, I agree with that. I'm sorry.

6
7 THE COMMISSIONER: Yes, I'm sorry.

8
9 MR THANGARAJ: Sorry. The purpose of the email - this is
10 now crisis management.

11
12 THE COMMISSIONER: Well, it's a first reaction, because he
13 says he didn't ring her the night before.

14
15 MR THANGARAJ: I'll come to that, too.

16
17 THE COMMISSIONER: Yes, I'm sure you will. But if one
18 looks at reactions, and in lots of litigation, failure to
19 complain is often a very potent methodology by which one
20 judges plausibility sometimes, and if the immediate
21 reaction was, "Look, it's all in the affidavit, just chill
22 it", his immediate reaction, on one view, if that is
23 a snapshot at that point, was not one of outrage; it was
24 not one of, "How dare she?"; it was not one of, "This is
25 the first I've heard of all this." So it's a mixed
26 reaction at best, isn't it, from your client's point of
27 view?

28
29 MR THANGARAJ: With respect, no. But before I answer
30 that, if Commissioner Scipione and Deputy Commissioner
31 Kaldas took that warm view, it's not suggested they knew
32 about it in advance.

33
34 THE COMMISSIONER: No.

35
36 MR THANGARAJ: So what's then being relied on is that
37 Mr Willing took the same initial position as they did. So
38 there are reasons. The NSW Police Force is a complicated
39 institution, matched only by the Australian Federal Police,
40 in my experience of dealing with them, for and against.

41
42 THE COMMISSIONER: Sounds like evidence from the Bar
43 table, but --

44
45 MR THANGARAJ: But when you're in a crisis management
46 position --

47

1 THE COMMISSIONER: I'm not saying I'm disagreeing with
2 you, but --

3
4 MR THANGARAJ: I don't propose to give evidence about it.
5 But this was a crisis management situation. Everyone knew
6 this was going to be dealt with in the morning. The only
7 person that sent an email immediately was Mr Finch, but
8 a part 8A was launched.

9
10 He didn't give this evidence, but what is clear is
11 that Mr Willing, given that there was going to be
12 something, would have been a material witness, and I will
13 develop this down the track. But if he had called her,
14 there might have been concerns of, "Were you giving her a
15 heads up", "Were you telling her this" - there was
16 nothing, the broadcast had happened. Commissioner Scipione
17 had said, basically, "I'm relaxed". The State Coroner
18 hadn't watched the whole interview but said, "I'm relaxed".
19 Deputy Commissioner Kaldas - I didn't know that, but that's
20 consistent with that.

21
22 What they all did know, however, was, up until 5pm on
23 the 13th, as far as they were concerned, she had conducted
24 an extremely thorough investigation. She was not
25 criticised at the third inquest for the investigation. The
26 State Crime Commission was brought in by Mr Willing to
27 review what had happened. They didn't say a stone was left
28 unturned. What did happen is she was convinced about
29 suicide, and she resented --

30
31 THE COMMISSIONER: She wasn't the only one.

32
33 MR THANGARAJ: No, no, she wasn't the only one, not at
34 all. But she also resented the conduct of the Johnson
35 family in a number of different ways. That's clear.

36
37 THE COMMISSIONER: Yes, but that resentful attitude on her
38 part was communicated, at least indirectly, in those text
39 messages between herself and Mr Willing.

40
41 MR THANGARAJ: Yes, yes, and I'll come to those, too.
42 That first message - I'll come to that. I would rather not
43 divert now, but I will deal with that.

44
45 THE COMMISSIONER: I will tell you what, I will stop
46 interrupting you because it's not fair.

47

1 MR THANGARAJ: No, no, it's not - no, it's helpful.

2

3 THE COMMISSIONER: It isn't fair to take you off your
4 stride.

5

6 MR THANGARAJ: No, no, it's helpful to engage. I would
7 rather engage with you, Commissioner, because there are
8 a number of things to say.

9

10 What we can't lose sight of is that Ms Young had
11 a strategy and she executed that strategy. She's
12 a detective of decades of experience. She knows how to run
13 a covert operation, and it didn't take --

14

15 THE COMMISSIONER: Last interruption, for at least a few
16 minutes: she did put one big red flag up right in the
17 middle of the meeting --

18

19 MR THANGARAJ: The email is not a red flag, with respect.

20

21 THE COMMISSIONER: No, but she put up a red flag by saying
22 she didn't want anyone from the media department at that
23 interview and Mr Willing knew that.

24

25 MR THANGARAJ: Yes.

26

27 THE COMMISSIONER: If that was not to be construed as she
28 wanted to have a tete-a-tete with someone from the ABC,
29 nobody seems to have asked themselves, as sophisticated and
30 experienced as some of the people are that were looking at
31 it, including your client, "Why would she want to do this?"
32 "Why is this" - and this is an unusual thing.

33

34 MR THANGARAJ: Yes.

35

36 THE COMMISSIONER: But whatever took place, if anything,
37 between she and Mr Willing, he was calm and relaxed about
38 her taking that course. Now, you would say that's because
39 he trusted her. I accept that.

40

41 MR THANGARAJ: There's more to that - there's more to it
42 than that.

43

44 THE COMMISSIONER: Everything I raise there's more to,
45 I fully accept that, and I'm just interrupting with
46 snapshots. But she certainly laid her cards on the table
47 that she didn't want anyone there except Ms Brown, I think,

1 and she certainly didn't want anyone from the police, as it
2 were, in terms of monitoring or overseeing what she was
3 going to be saying.
4

5 Now, to some people, whether you're in the know or
6 whether you're not in the know, that's a pretty direct
7 indication that something controversial is likely to take
8 place or something out of the ordinary is likely to take
9 place, because if it was just going to be *vin ordinaire*, as
10 it were, routine stuff, she wouldn't have any objection to
11 someone being there from the Media Unit.
12

13 MR THANGARAJ: Yes. Can I just deal with that now.
14 Firstly, what was being organised were background
15 interviews. So it's very important that we not understand
16 that an MLO was being precluded - and that wouldn't have
17 been allowed. If it was a studio interview, there is no
18 chance that the head of Public Affairs would have said,
19 "That's fine." They're very different situations.
20

21 So an experienced and at that point completely trusted
22 senior officer. On the 10th, she had the backgrounding
23 interview with the Australian, no MLO. Not only was there
24 no suggestion of a problem but Georgie Wells reported back
25 that that had all gone well.
26

27 So after the 10th, the absence of an MLO had proved
28 not to be a problem at all.
29

30 THE COMMISSIONER: Am I able to infer, though, that
31 Mr Willing - well, not "infer", it's stated expressly that
32 the question of presence or absence of an MLO was raised
33 with him and he was relaxed with such a person not being
34 present?
35

36 MR THANGARAJ: It's a little bit more than that, because
37 what happened is he speaks to Strath Gordon about it. Now,
38 Mr Gordon is the head of Public Affairs. That was the next
39 point. He's the head of Public Affairs. And he has the
40 same view. He says one thing which is interesting, he
41 says, "Pam is Pam." So for them, it's a personality issue.
42 She wants to have a backgrounding, she wants to feel free
43 to say what she wants to say. She thinks it might put the
44 MLO - her justification is it might put the MLO in a
45 difficult position, and then the senior police say, "Well,
46 it's off the record, so it doesn't really matter what she
47 says; and, two, if anything goes wrong it's on her

1 shoulders and it's for her to wear, and she's happy to do
2 that."

3
4 So it's not just Mr Willing. That is a call not of
5 Mr Willing, that's a call of the head of Public Affairs,
6 because MLOs come under Mr Gordon's purview, it's nothing
7 to do with Mr Willing. And as, Commissioner, you asked,
8 does Ms Zdenka outrank Mr Willing, and on media matters she
9 does, because she's the Commissioner's media person.

10
11 Of course, nothing to do with the homicide
12 investigation, but similarly in this regard, Mr Willing did
13 the right thing. He spoke to Strath Gordon about it. It's
14 his call. He didn't say to Siobhan McMahon, I think her
15 name was, "Just leave it". There was a discussion, because
16 it was unusual. They trusted Ms Young, they had no reason
17 whatever to not accept her word or just assume that she
18 would conduct herself faithfully. She had earned the right
19 to be trusted in that way, and then there was no problem on
20 the 10th.

21
22 Now, notwithstanding all of those things, Mr Willing
23 told Ashurst that that was a mistake on his part.
24 Obviously with the benefit of hindsight, he wishes there
25 was an MLO.

26
27 But if this was on the record, it is impossible that
28 in the lead-up to and on the day, an MLO would not be
29 there. Impossible.

30
31 This is just an outline of where I'm going, and
32 so I'll come to the detail --

33
34 THE COMMISSIONER: Pardon me interrupting again. Is what
35 you are telling me today going to be repeated --

36
37 MR THANGARAJ: Yes.

38
39 THE COMMISSIONER: -- even in skeleton form or more
40 lengthily in what I will receive?

41
42 MR THANGARAJ: Yes. I don't think there is any need for
43 you, Commissioner, to take notes. Well, there will be
44 a transcript - sorry, I mean, rather than listening to what
45 I was wanting to --

46
47 THE COMMISSIONER: That's a dangerous proposition, "Don't

1 take a note" --
2
3 MR THANGARAJ: Sorry, I didn't mean --
4
5 THE COMMISSIONER: -- "Don't take a note of what I'm
6 saying."
7
8 MR THANGARAJ: -- I accept this --
9
10 THE COMMISSIONER: Mr Tedeschi takes a different view
11 about things like that. He expects me to take copious
12 notes of everything he says, and I do, sometimes.
13
14 MR THANGARAJ: So, yes, they will be --
15
16 THE COMMISSIONER: No, I didn't mean to interrupt.
17
18 MR THANGARAJ: No, no, it's no problem.
19
20 THE COMMISSIONER: Thank you. I will be assisted -
21 obviously I am much assisted by what you're talking to me
22 about now, but I will be assisted by it being in writing as
23 well, thank you.
24
25 MR THANGARAJ: Yes. One thing we haven't done yet is to
26 put our references in, transcript references. We have
27 written the document. Whether we need to tweak it as
28 a result of today we will determine in due course, but it
29 is ready.
30
31 THE COMMISSIONER: All right.
32
33 MR THANGARAJ: And that's what I'm going to be taking the
34 Commission through shortly.
35
36 THE COMMISSIONER: All right. Thank you.
37
38 MR THANGARAJ: One thing I just want to finish, with
39 respect, in the opening, is that Ms Young had felt very let
40 down by Mr Willing's preparedness to attribute to himself
41 the word "inopportune" as part of the consequences of the
42 Lateline interview. It was something that he - it was
43 attributed to him, he agreed that he would be prepared to
44 sign off on that. It came from above him. It came from
45 a more senior person in relation to media. He had no
46 choice but he wore it.
47

1 What is important is Ms Young's reaction. Now, the
2 text messages are part of that. I will deal with that in
3 more detail later this morning. But what we do know from
4 Ms Young, one of the many things we know, is she's not
5 someone who holds back. She would describe it as it not
6 being in her DNA. And we know how robust she was prepared
7 to be, we just have to watch the Lateline interview.
8

9 She felt that Mr Willing had let her down. She felt
10 that head office had let her down and she was particularly
11 aggrieved by his preparedness to sign off on "inopportune"
12 and was not happy that he had failed to convince head
13 office to change the wording to something that suited her.
14

15 And yet, what is clear - and we have documents between
16 them and we have evidence - is that Ms Young, despite all
17 the stress that she was facing after the interview, the
18 pressure, the criticism, never suggested or said anything
19 to Mr Willing like, "Hang on, you knew I was recording that
20 interview" - never says that. And there is no chance that
21 she would not have said that.
22

23 We talk about silence being an important issue at
24 times, and in this case, it is. She never suggested to
25 Mr Willing that he knew of the studio interview before it
26 went to air, and she undoubtedly would have.
27

28 So when we talk about the reaction or lack of reaction
29 of Mr Willing after the broadcast, that's the way that we
30 also need to look at her reaction, because there are
31 explanations for why he chose to or chose not to do
32 something, but for her, she undoubtedly would have
33 complained to him and others, in writing, that he knew in
34 advance.
35

36 There were emails between them afterwards, there were
37 text messages between them afterwards. No suggestion.
38 This is someone who is sophisticated enough to email
39 herself text messages so that she has a record for later,
40 and yet she never makes a complaint.
41

42 The only logical conclusion to be drawn from her
43 silence in that regard is that Mr Willing did not know
44 about the studio interview until the broadcast, and that
45 Georgie Wells did not know about the studio interview until
46 the broadcast.
47

1 Commissioner, that was sort of the overview. I will
2 now go to the detail, and now I'm going to be taking you
3 through our written submissions in current form, so
4 everything I say from now is in writing but hopefully what
5 I've said in the opening is in the detail of our written
6 submissions, in any case, apart from the flourishes.

7
8 Now, the starting point, with respect, for this
9 Commission is to consider, when considering Mr Willing's
10 evidence, his character and to consider his career. It's
11 in the evidence - his CV is in the evidence - what he has
12 achieved at the police, Deputy Commissioner level, head of
13 Homicide, head of Counter Terrorism.

14
15 The starting point must be that a person who has
16 achieved that much in their career could only have got
17 there with integrity, dedication, application, being a team
18 leader, et cetera, and the starting point must be that you,
19 Commissioner, would be resistant to easily finding that he
20 had misled the Commission.

21
22 Mistakes can happen, there's no problem, and mistakes
23 have been made as more information has become available to
24 him. But a person of his character and background would
25 not mislead a commission. That is the starting point, we
26 say, when his evidence stands to be assessed.

27
28 Before I respond to the detail of Counsel Assisting's
29 submissions, some preliminary but important matters need to
30 be borne in mind that don't seem to have been analysed and,
31 in fact, are brushed aside or ignored in Counsel
32 Assisting's submissions and questioning of Mr Willing.

33
34 In order to prosecute a person, the Director of Public
35 Prosecutions needs more than a theory. The Director needs
36 to have reasonable prospects of conviction. And for
37 a police officer to charge someone with murder or a very
38 serious offence or, in fact, any offence, they need
39 evidence.

40
41 Because something similar happened nearby, or even at
42 the same location, that doesn't prove anything. That's not
43 even tendency evidence because it's not the same accused.
44 So none of the theories of gay beat, assaults, et cetera -
45 I will come to the detail which is important - are relevant
46 to charging someone.

1 Now, I know that's not what the inquest was
2 determining, whether someone ought to be charged so that
3 that can be proved, but we've got to look at it from the
4 police perspective of investigation. When they're
5 conducting an investigation, they're asking themselves,
6 "What happened?" "Who may have wanted that to happen?"
7 "Can we prove it?"
8

9 In late 2012, the solvability of the Johnson case was
10 described as "zero", and rightly so. This is criticised at
11 Counsel Assisting's submissions at 311, but that is
12 misplaced. In 2012, there was no evidence which might
13 later be tested with better technology. There was no
14 witness that could be spoken to but at that moment was
15 unavailable. There were no remaining leads at all.
16

17 THE COMMISSIONER: Yes, but the problem again, if I may
18 say so, is that if one is fixed with a case theory and the
19 fixation hasn't really changed over time, then it's a bit
20 difficult to say there is no other case that does exist; it
21 simply doesn't exist because one hasn't examined cases or
22 activities beyond one's present case theory. Mr Willing,
23 I think in answer to a question I put to him, one of the
24 reasons at least that he was hopeful or, rather,
25 supportive, directly or indirectly, of a third inquest, was
26 because it would put the issue to bed once and for all.
27

28 MR THANGARAJ: Yes.
29

30 THE COMMISSIONER: And by that, I take it to mean suicide,
31 perhaps misadventure at the very outside, but definitely
32 suicide, because Ms Young had worked assiduously, and the
33 evidence would support that at the time he was either
34 encouraging, not opposing - whatever attitude one takes to
35 the third inquest - there is evidence to suggest, isn't
36 there, that she was being lined up to travel to the United
37 Kingdom to see two additional witnesses in pursuit of the
38 suicide theory?
39

40 MR THANGARAJ: Yes. That was the third inquest, yes.
41

42 THE COMMISSIONER: Yes. And they're the two people who
43 are mentioned later.
44

45 MR THANGARAJ: Yes.
46

47 THE COMMISSIONER: But what I'm saying is it doesn't really

1 help us, does it, because there is a person who has pleaded
2 guilty to manslaughter? Now, that person has always been
3 there, it's just that he wasn't being looked for because
4 the theory which was adhered to over many, many years was
5 suicide and nothing but suicide, and had been fixated upon
6 from the very outset.

7
8 Now, it can't be that this person who has currently
9 pleaded guilty wasn't there; he was there. He was in the
10 vicinity, he was marauding around bashing people,
11 et cetera, et cetera, so it seems, in company, on one view,
12 with others, perhaps, and by resistant and fixated views
13 about the case, it can't really justify the fact that they
14 could adhere to that theory because it has been proven to
15 be wholly wrong.

16
17 MR THANGARAJ: Yes. Well --

18
19 THE COMMISSIONER: And wholly wrong in the sense that, the
20 other opposing view is, if a less than fixated view had
21 been adopted and people had listened to what was being said
22 about it being a beat and things of that sort - but it
23 seems that minds were closed very early and kept shut.

24
25 MR THANGARAJ: So there are a number of things in relation
26 to that. Firstly, what is theoretically available and
27 about what there is evidence are different things.

28
29 THE COMMISSIONER: No, but they didn't look for it because
30 they were fixated upon suicide, on one view.

31
32 MR THANGARAJ: Can I just get to that.

33
34 THE COMMISSIONER: Yes.

35
36 MR THANGARAJ: The starting point is, the theoretical
37 availability of the manner and cause of death --

38
39 THE COMMISSIONER: But it is theoretical because they
40 didn't bother looking. It was obviously there. Am I to
41 ignore the fact that the evidence which has now emerged in
42 the public domain is historic? It was material which was
43 there.

44
45 MR THANGARAJ: Yes, but, firstly, it wasn't gay hate.

46
47 THE COMMISSIONER: But that's a different issue at the

1 moment.

2

3 MR THANGARAJ: Well, it's not --

4

5 THE COMMISSIONER: They were not considering murder as
6 a realistic option, whether it was gay hate, whatever the
7 motive was, it was suicide, suicide, suicide, or he fell
8 over, or something happened, but it was not homicide.

9

10 MR THANGARAJ: Yes.

11

12 THE COMMISSIONER: What I'm putting to you at the moment
13 is - and it's irresistible, I think - that because they
14 absolutely persuaded themselves that it was suicide, part
15 and parcel of that was that it wasn't a gay beat, people
16 weren't up there for reasons other than looking at a view
17 or jumping off.

18

19 Now, even if there's no gay hate shown, the fact that
20 they ignored, seemingly for years, that it was a venue used
21 by people for casual and anonymous sex would have opened
22 their minds up to possibilities. You would know better
23 than anybody else, as does everybody else in the room, that
24 you don't always set out to prove the motive you think was
25 the motivation in the case.

26

27 MR THANGARAJ: No, I completely accept that. But the
28 starting point of this is there is a difference between
29 a theory and evidence. Now, zero solvability --

30

31 THE COMMISSIONER: Absolutely, but there's also
32 a difference between a theory and no evidence being
33 available and a theory which blocks the opportunity to
34 obtain the evidence.

35

36 MR THANGARAJ: I agree with that. I agree with that.

37

38 THE COMMISSIONER: All right.

39

40 MR THANGARAJ: So what we're looking at is, in 2012, what
41 evidence did they have of homicide? I know Counsel
42 Assisting says, "Well, this evidence emanated after the
43 third inquest and, therefore, was always available" -
44 that's flawed, with the greatest of respect. If someone
45 comes out and just - I'm not saying this is this case, but
46 as an example, then I'll get to this case, as an example,
47 what has happened, it doesn't happen often, but what --

1
2 THE COMMISSIONER: Justice Beech-Jones, I think the other
3 day in sentencing, described the suicide theory as absurd.

4
5 MR THANGARAJ: Yes.

6
7 THE COMMISSIONER: And the problem with this issue is that
8 if you deny any possibility of alternative theories, you
9 deny the possibility of obtaining evidence. Therefore, if
10 you say, "Well, there's no evidence because I've denied
11 a realistic or a tenable option or alternative", that's
12 hardly a very satisfactory way of saying everyone was in
13 the right because there was no evidence. There was no
14 evidence because of tunnel vision. There was no evidence
15 because there was a complete resistance within the Police
16 Force to admit that there could be anything else. Sure,
17 you might say correctly there was no evidence of homicide.
18 Partly that's because they weren't looking for it, on one
19 view.

20
21 MR THANGARAJ: I'd have to take issue with that,
22 Commissioner, unfortunately, because the evidence that
23 emanated wasn't - it has not been suggested in Counsel
24 Assisting's submissions, because it cannot be, that a stone
25 had been left unturned and that that was a link to the
26 offender.

27
28 What happened was evidence emanated post the third
29 inquest. So the third inquest didn't uncover any of this.
30 The State Coroner ran the investigation. The third inquest
31 did not uncover the offender. The Crime Commission didn't
32 say the offender should have been discovered or that
33 anything had not been done. They had conducted --

34
35 THE COMMISSIONER: But the fact that the third inquest
36 came as a shock and a surprise, terms I've used before, to
37 the Police Force is indicative of the fact that an
38 independent mind was brought to bear and Mr Barnes accepted
39 arguments put to him and adverted to other theories.

40
41 MR THANGARAJ: Well, I'll come to --

42
43 THE COMMISSIONER: Now --

44
45 MR THANGARAJ: Sorry.

46
47 THE COMMISSIONER: No, no.

1
2 MR THANGARAJ: I'll come to what Counsel Assisting
3 submitted in relation to the finding that should be made by
4 Mr Barnes.

5
6 THE COMMISSIONER: Well, you saw what counsel for the
7 police submitted as well.

8
9 MR THANGARAJ: Yes, and they said it should be an open
10 finding. That's what they wrote.

11
12 THE COMMISSIONER: Well, they might have, but I don't know
13 whether it's in evidence before me but I have read the
14 submission of counsel for the police and I have read the
15 submission put about the pen and the suicide note and the
16 wind blowing the suicide note away - that seems to be a
17 little bizarre, if I may say so, but there you are.

18
19 MR THANGARAJ: I'm proposing to take you through,
20 Commissioner, the respective counsel's submissions. They
21 are in a further supplementary tender bundle. They are
22 before you. But the police ultimately submitted that it
23 should be an open finding. They did not urge suicide.

24
25 THE COMMISSIONER: That was one of the things but did they
26 not also submit that it was open for him to find that
27 because of the inclement weather, because of the existence
28 of the pen on top of the clothing, that it was entirely
29 consistent that the wind had blown away a suicide note?
30 Isn't that in counsel's submissions?

31
32 MR THANGARAJ: I don't remember reading - I accept that
33 that's there. I don't remember reading it.

34
35 THE COMMISSIONER: No, I don't want you to accept it but
36 it's in one of the paragraphs of Ms Pritchard SC, as she
37 then was, for the police. Sure, they might have said,
38 "Well, on the one hand, misadventure is open", nobody
39 adverts, from the police's point view, to homicide, that is
40 true, nobody adverts from Counsel Assisting.

41
42 But obviously the Coroner, Mr Barnes, felt that there
43 was something in what he saw and heard, otherwise he
44 wouldn't have made the statements he made.

45
46 MR THANGARAJ: Yes. Well --
47

1 THE COMMISSIONER: But to put a proposition that because
2 a pen was found on the top of this person's clothing it was
3 open, as a fact, to be found that a suicide note was likely
4 to have been written or could have been written and blown
5 away in the wind is nothing short of fanciful.
6

7 MR THANGARAJ: What the State Coroner ultimately relied
8 upon to not have an open finding was the gay beat
9 attacks --

10
11 THE COMMISSIONER: Yes.

12
13 MR THANGARAJ: -- which ultimately were irrelevant and
14 wrong in relation to a relationship to this case.
15

16 THE COMMISSIONER: Well, they were irrelevant in one sense
17 but highly relevant in another. They were highly relevant
18 because they opened up an area that the police had denied
19 existed. Earlier evidence from police was that it was not
20 a gay beat, that they didn't have a lot of activity going
21 on up there or they didn't have a series of or multiple
22 complaints, and so on.
23

24 MR THANGARAJ: Yes.
25

26 THE COMMISSIONER: So he says, "Well, I don't accept that.
27 I think it was." Now, you might say ultimately, and it is
28 true on the pleas, gay hate - or, rather, Justice Wilson
29 didn't find it and it wasn't part of the agreed statement
30 of facts, nor does it emerge in the manslaughter verdict,
31 but the relevant part of it is, though, that it was
32 a trigger mechanism for expanding one's thought processes,
33 and that's where it becomes relevant.
34

35 Because that aspect of the case had been entirely
36 ignored, one argument might be: sure, in the particular
37 case, gay hate was not proven or accepted or admitted, but
38 it opened minds up to looking at who might have been up
39 there, who had a likelihood to be there, who was habitually
40 up there and why, and even though that was not proven
41 ultimately in the trial nor admitted, it opened people's
42 minds to opportunities to investigate, and that's why it
43 was closed-minded before that.
44

45 So therefore, the motive, although it was ultimately
46 not admitted or proved, was a catalyst in opening people's
47 minds up to different methodologies of investigation, and

1 in one sense or another, one way or another, it seems to me
2 it did lead to the identification of the person who
3 ultimately pleaded.

4
5 MR THANGARAJ: Firstly, it's not only that it wasn't
6 proven, it wasn't urged. The Director --

7
8 THE COMMISSIONER: That's irrelevant. You're talking
9 about the inquest and I'm agreeing that --

10
11 MR THANGARAJ: No, I'm talking about the sentencing.

12
13 THE COMMISSIONER: Well, so what? You got to the
14 sentencing on the basis, as I understand it, because people
15 had their minds opened up to other case theories. That
16 part of the case theory fell. It wasn't proven and it
17 wasn't admitted. That said, it was a trigger mechanism
18 which opened up opportunities of investigation and, hey,
19 presto, a person was identified.

20
21 Now, true it was that the motive wasn't found, nor was
22 it agreed to. That's irrelevant. It was a trigger
23 mechanism to open up a perspective, forensically, which had
24 been closed, shut and locked and bolted because the police
25 for a very long time had refused to accept it was a gay
26 beat. It doesn't matter that it wasn't proven that it was
27 a motive in the case. It opened up somebody else's mind to
28 new thoughts, to different theories, and it identified
29 somebody.

30
31 MR THANGARAJ: Except there is no link, Commissioner,
32 between opening police investigatory minds to this
33 offender. This offender was not found as a result of
34 a broader mind perspective. Actually there is no link
35 between being open-minded about all possibilities and then
36 finding this offender. The evidence came --

37
38 THE COMMISSIONER: How do you say the offender was found?

39
40 MR THANGARAJ: Well, I know how the offender was found,
41 and it was generally put in Mr Tedeschi's re-examination:
42 dynamic and cogent evidence came forward. It came forward.
43 And then by reading Justice Beech-Jones' remarks, we then
44 know some more detail: clearly undercover police
45 operatives --

46
47 THE COMMISSIONER: No, you get a huge amount of detail

1 from Justice Wilson. That's a matter of public record.

2

3 MR THANGARAJ: They both are. I agree. And
4 Justice Beech-Jones talks about recordings committed,
5 clearly --

6

7 THE COMMISSIONER: No, but it wasn't just recordings; it
8 was the accused's ex-wife, who came forward --

9

10 MR THANGARAJ: Yes, that's right. That's what I was
11 referring to.

12

13 THE COMMISSIONER: -- with cogent information. Why did
14 she come forward? She came forward because, all of
15 a sudden, she knew what her ex-husband had done habitually
16 up on that headland, and therefore she was able to raise
17 with Mr Yeomans matters that had passed between her and her
18 ex-husband.

19

20 MR THANGARAJ: Yes.

21

22 THE COMMISSIONER: That happened not because ultimately it
23 was proven as a motive but because it triggered in her
24 a recollection of what had occurred between her and her
25 ex-husband in terms of conversations, when the very point
26 of gay hate murder had arisen in the press.

27

28 So it's not true to say that it played no role
29 whatsoever in the outcome. It played a very significant
30 role. It plays no role in the sentencing because there's
31 nothing found on the facts and there's nothing found by way
32 of admission. But it clearly operated as a trigger
33 mechanism for, first of all, that person to come forward
34 and report what she had said had taken place, and then it
35 opened up minds if the minds weren't open before then.

36

37 MR THANGARAJ: I'm glad that you, Commissioner, have said
38 that, that's what I understood, too, that the ex-wife came
39 forward.

40

41 The point is, this offender was ultimately apprehended
42 because the ex-wife, for the very first time, gave
43 authorities information that they did not know about, which
44 then led to undercover operatives recording admissions,
45 which then led to a phone call with his niece from custody
46 that was recorded. That's what happened. So, firstly,
47 that evidence didn't exist in police hands prior to that.

1
2 THE COMMISSIONER: Absolutely.
3
4 MR THANGARAJ: If it had, it can't possibly be suggested
5 that Ms Young would have ignored it.
6
7 THE COMMISSIONER: I was proposing to take a break at
8 about 11.30, the usual time, just to let you know in
9 advance, if that suits you, but if you --
10
11 MR THANGARAJ: Any time is fine.
12
13 THE COMMISSIONER: No, no, if you're midstream I won't
14 interrupt you, but roughly 11.30.
15
16 MR THANGARAJ: I don't believe that your Honour won't
17 interrupt me, but that's fine.
18
19 THE COMMISSIONER: I am glad you understand me.
20
21 MR THANGARAJ: We have said more about the zero
22 solvability in the written submissions and I might leave it
23 for that.
24
25 THE COMMISSIONER: Your point is that the retrospectoscope
26 shouldn't be used too generously; that the police position
27 at the relevant points in time historically was the best
28 position arrived at on the available material and that the
29 mere fact that someone later is arrested and pleads guilty
30 can't be used to criticise the police historically, in
31 broad terms.
32
33 MR THANGARAJ: They can be, but not this case, because if
34 there's a failure --
35
36 THE COMMISSIONER: No, I'm talking about this case; I'm
37 not talking about any other case.
38
39 MR THANGARAJ: Yes. Okay.
40
41 THE COMMISSIONER: But for various reasons, you say
42 that --
43
44 MR THANGARAJ: That's right.
45
46 So let's move on, then, to what was the position of
47 the command in relation to Ms Young? They believed that

1 she was an outstanding detective. They knew she was
2 experienced. They knew she was valuable. They knew she
3 had conducted a meticulous investigation. But the fact
4 that she ultimately lost objectivity doesn't undermine the
5 quality of her police work until she reached a view, and
6 the view she reached was a very strident view, that there
7 was no evidence about unlawful death. Then she believed,
8 ultimately proven to be incorrect, that there was evidence
9 to support the suicide theory, as was found by the first
10 Coroner.

11
12 Could I, just to finish this off, look at what it is
13 that all the parties said at the third inquest in relation
14 to their positions. I could read out the paragraphs but
15 maybe I can just summarise them and give the Commissioner
16 the reference.

17
18 THE COMMISSIONER: Work on the basis that I have read them
19 and I know - if you just tell me what you say is a summary
20 of what Ms Stern and Ms Pritchard and others had to say,
21 and Mr Agius, each of you will be assured I will read the
22 detail of these materials very carefully.

23
24 MR THANGARAJ: Yes. So could I just start with
25 submissions of Counsel Assisting, Ms Stern, as her Honour
26 then was. At paragraphs 139 to 140, she submitted that
27 accident remained a possibility. At 155, she said that
28 suicide remained a reasonable possibility. At 158 - this
29 has a bit more importance - she said that there was no
30 evidence that Mr Johnson arranged to meet someone there or
31 met anyone by chance for some sexual activity.

32
33 So looking through what was canvassed, Counsel
34 Assisting did not consider - because it wasn't the way the
35 investigation, the inquest, was being conducted - that
36 Mr Johnson went there voluntarily with someone, which is
37 what happened. That was not on anyone's radar, including
38 the State Coroner. And so it's not a surprise that it
39 wasn't on the police radar.

40
41 As she noted at 158, the inquest focused on Mr Johnson
42 being a victim of violent conduct, motivated by robbery or
43 gay hate, and we now know that neither of those matters
44 were urged on sentence, by the Director, and not found.

45
46 At 243 she differentiates between homicide and foul
47 play, and quite rightly, with respect, says, "Just because

1 we cannot identify a person of interest, that does not mean
2 that homicide or foul play are not a real possibility."
3

4 But she says at 244 to 246 that the reason it was
5 a possibility was because of violent gay conduct there or
6 nearby, and includes in that theoretical possibility, army
7 personnel, because they had a station nearby.
8

9 Now, all of that is ultimately not correct -
10 theoretically possible, yes, worth investigating, yes, need
11 to be open-minded about it, yes, but ultimately they
12 weren't correct.
13

14 At 247, what was submitted was that it was open to
15 find some form of foul play, and particulars were listed,
16 but she said "equally open" to find that the evidence was
17 insufficient to find foul play. What she submitted was,
18 yes, they're both equally open, but you need actual
19 persuasion to make a finding, and she went through the
20 legal analysis, and my reading of it - it may not be
21 everyone's reading of it - was that she was saying,
22 "They're both open, but you wouldn't be actually persuaded
23 of a finding of foul play."
24

25 Ultimately what Mr Barnes found was predicated in
26 significant part, if not wholly, on gay attacks in the
27 area. If that had been excluded from consideration, with
28 the benefit of hindsight --
29

30 THE COMMISSIONER: It wasn't just only that, though.
31

32 MR THANGARAJ: No, that's what I'm saying. It wasn't only
33 that, but it was predicated - that was a very important
34 part of it. And the second inquest was exactly the same,
35 "There's a seed of doubt in my mind, I've sown a seed of
36 doubt - the Taradale matters have sown a seed of doubt in
37 my mind." Once we know that they are actually unrelated,
38 they're not like offenders, they're not the same offenders
39 and it wasn't a gay attack, once those matters are taken
40 out of consideration, the second inquest should have been
41 a different finding and the third inquest, with respect,
42 should have been an open finding, as urged by the police.
43

44 So it's important to note that Counsel Assisting did
45 say it was equally open to find the evidence was not
46 sufficient for foul play at the third inquest.
47

1 So the reason why some of these things are important,
2 of course, is because there is some justification, external
3 justification, for the views, ultimate views, that the
4 police took in this matter, or at various times. So
5 Ms Pritchard was saying it should be an open finding, it
6 should positively be an open finding, and with the benefit
7 of hindsight and the analysis of the evidence, she was
8 correct. The police --

9
10 THE COMMISSIONER: Why? Because there was no gay hate
11 found?

12
13 MR THANGARAJ: That's right.

14
15 THE COMMISSIONER: But I'm not bound by this.

16
17 MR THANGARAJ: I'm not saying that.

18
19 THE COMMISSIONER: No, no, I understand that.

20
21 MR THANGARAJ: I'm not saying that. I'm just saying if
22 you, as a Coroner, make a finding, a positive finding, and
23 what you thought was relevant has proven to be irrelevant
24 and then you reconsider it with the benefit of that, the
25 finding would be - the finding quite possibly, but I say
26 probably, if not definitely, would be different on the
27 evidence.

28
29 So the police, Ms Pritchard, as her Honour then was,
30 at paragraph 23 of their written submissions, did not
31 actively say it was suicide. She said it could not be
32 ruled out.

33
34 THE COMMISSIONER: Well, no, that's --

35
36 MR THANGARAJ: The police position was not one of seeking
37 a finding of --

38
39 THE COMMISSIONER: But you're not reading the last few
40 paragraphs where, as I recall it, she does advance
41 positively that the suicide theory has legs --

42
43 MR THANGARAJ: Yes.

44
45 THE COMMISSIONER: -- because of the presence of the pen
46 and the possibility, because of inclement weather, that the
47 suicide note (a) was written with the pen and (b) was blown

1 away in the wind. Now, that sounds to me pretty fanciful,
2 but I read it in the police submissions.

3
4 MR THANGARAJ: In my memory of her written submissions
5 there were reasons put for exactly that.

6
7 THE COMMISSIONER: She has put it. She has put that
8 there's a pen there - and she has put other material,
9 I accept that, about suicidal ideation, or whatever - but
10 the presence of the pen on top was said to be proof, or at
11 least some evidence, that a suicide note was written which
12 blew away.

13
14 MR THANGARAJ: Yes. So let's ignore that. Let's set that
15 aside. No, no, I'm not saying --

16
17 THE COMMISSIONER: It's in black and white. It's pretty
18 hard to ignore it.

19
20 MR THANGARAJ: Sorry, I mean in our benefit of hindsight
21 assessment --

22
23 THE COMMISSIONER: I understand. I understand what you're
24 saying.

25
26 MR THANGARAJ: Let's ignore that in the same way that
27 I say we ignore the gay hate attack theory. There was
28 still other evidence that was relevant to the suicide
29 theory such that it couldn't be foreclosed, and the reason
30 why that is made out is because Counsel Assisting leaves
31 open suicide as a possibility. That's all I'm trying to
32 advance.

33
34 THE COMMISSIONER: Okay, I understand.

35
36 MR THANGARAJ: What the police did say in paragraph 25 was
37 there was insufficient evidence for a positive finding of
38 foul play and, in my respectful submission, that was
39 patently correct. They do leave open foul play, and at 44
40 to 45 say without actual persuasion there should be an open
41 finding. So while they were advancing reasons why suicide
42 was available, they were not seeking a positive finding of
43 suicide, and they left that open - again, all three
44 possibilities were left open in their reply.

45
46 I do need to, unfortunately, address the submissions
47 made on behalf of the family. They, as they always had,

1 were urging a finding of homicide, such as resulting
2 perhaps from an assault. There's no difficulty with that.
3 And Mr Agius said it was likely to have been motivated by
4 gay hate. But what their submissions did include, and in
5 the same way that the police submissions did include the
6 pen and the note, they specifically referred to Michael
7 Noone, paragraph 19. There was direct criticism of
8 Mr Noone for allegedly shifting in his versions of events.
9

10 Now, this is important because it goes back to the
11 difficulties that Ms Young had, as exposed in those text
12 messages, with the family, because what happened was the
13 ongoing attacks on Mr Noone that were coming from the
14 Johnson family were something that Ms Young completely
15 disagreed with. She had determined that he was a loving
16 and devastated partner, and ultimately he gave a victim
17 impact statement, and ultimately that has been proven to be
18 clearly correct. He had nothing to do with his death or
19 any attempt to cover up anything to do with the death. So
20 it's clear that she was distressed by the criticism of
21 Mr Noone. Yet in the written submissions filed on behalf
22 of the family, there was this criticism of him and his
23 evidence.
24

25 THE COMMISSIONER: It wasn't a question, though, of
26 Mr Noone being associated with his death. It seemed, did
27 it not, that Mr Noone was, rightly or wrongly, favouring
28 the suicide theory, and certainly supportive of the
29 police's position, and that would unsurprisingly cause
30 friction between him, as the former partner of the
31 deceased, and the deceased's family? Why wouldn't it?
32 It's bleeding obvious that if this person is supporting
33 a view which the family reject absolutely, he's seen to
34 wear a black hat, and it's both logical and understandable
35 that the family turned on him, because he seems to have, on
36 one view, for whatever reason, been supportive of
37 a position which they thought was untenable.
38

39 MR THANGARAJ: Yes, but what he was concerned about and
40 upset about, as she was - and it's referred to, she deals
41 with it in her statement and it's also dealt with in the
42 Ashurst materials - where he's receiving bullying letters
43 and emails from the family and so he's trying to cope with
44 losing Mr Johnson, as well as this at the same time. He's
45 worried about his reputation being destroyed by the Johnson
46 family in America, and Ms Young, she's taken the view, yes,
47 it may be that they're relying on the suicide issue, but

1 she's also worried about his welfare and her view is he
2 hasn't got a million dollars to put a team together, as was
3 a sum postulated by Mr Feneley in the material that is
4 before the Commission; he's the person that is grieving and
5 then dealing with these difficulties.
6

7 There were outbursts at times, and I think we can
8 assume they were outbursts as opposed to a serious
9 suggestion that he was involved in the death, but there
10 were outbursts between him and the family, in relation to
11 these problems. Mr Noone and the police had genuine
12 concerns for him.
13

14 Mr Willing notes at page 4 of the Ashurst interview
15 that he felt sick because he had given Mr Noone his word
16 that he would protect him, but he describes Mr Noone as
17 being 'petrified' - that was the word that was used - of
18 Mr Johnson's influence ruining his reputation, and that
19 Ms Young was beside herself. She refers to it in her
20 statement at 786 to 800.
21

22 Now, the underlying reason for that, the underlying
23 reason for the animosity, isn't the only issue. I accept
24 fully that one can understand why the family had taken
25 a view of him because he was not accepting that it was
26 homicide. Maybe he wanted to believe it was suicide. But
27 they also didn't like the fact that he'd told the police
28 about the Golden Gate issue, and so no doubt there was
29 a reason for the family to be upset with Mr Noone. But
30 whether it was legitimate or illegitimate, the fact is, he
31 needed to be looked after, and it turns out, it seems, that
32 the people that were looking after him were Ms Young and,
33 to some extent, Mr Willing, trying to say, "I will look
34 after you."
35

36 And so there's a background to these text messages
37 between Mr Willing and Ms Young about defeating the Johnson
38 family. It's not just about preventing a finding of
39 homicide, as was put in Counsel Assisting's submissions.
40

41 THE COMMISSIONER: I think, if I may say so, if what
42 you're suggesting is that the text messages ought to be
43 construed as supportive of Mr Noone or, put the other way
44 around, concern about the family's bullying or overreaction
45 of Mr Noone, I don't read them that way.
46

47 MR THANGARAJ: What I'm saying is there was a background

1 to --

2

3 THE COMMISSIONER: I understand the background.

4

5 MR THANGARAJ: Yes, that's --

6

7 THE COMMISSIONER: But unless it's said to be contextual
8 in some way, and I understand you're --

9

10 MR THANGARAJ: That's what I'm saying.

11

12 THE COMMISSIONER: I know you are. But if it's meant to
13 be contextual in the sense that it gives a flavour or some
14 form of interpretation or impression of those text
15 messages, I don't read them that way.

16

17 MR THANGARAJ: What I'm submitting in relation to that
18 is --

19

20 THE COMMISSIONER: Because Mr Johnson was obviously, from
21 the police's point of view, causing them a great deal of
22 grief and a lot of work, and he had the capacity to do that
23 from their point of view, and they were undoubtedly
24 concerned - I will put it no higher than that - about the
25 resources that they had to use to oppose his ability to
26 raise issues publicly, as they saw it. I understand that.

27

28 MR THANGARAJ: Yes, yes. There is a further difficulty,
29 which is that one side of that will always be hamstrung,
30 because the reality is that if you're in the situation of
31 the police, you can't take the gloves off in the way that
32 Mr Johnson was able to.

33

34 THE COMMISSIONER: Not publicly.

35

36 MR THANGARAJ: That's right.

37

38 THE COMMISSIONER: But privately, you can.

39

40 MR THANGARAJ: That's right. And that's what the
41 backgrounding strategy was attempting to deal with in some
42 way, because they had to get some balance in the reporting.
43 That could be achieved by powder-puff pieces or it could be
44 achieved by those following the case realising, "Oh, there
45 is another side to this."

46

47

That's why the strategy had to go to such a senior

1 level, because they were in crisis mode and they just could
2 not respond, so they had to deal with it strategically. So
3 it's signed off by Deputy Commissioner Kaldas; head of
4 Public Affairs. But a very deliberate, careful strategy
5 done in a way of, "Okay, we can do this, because we can't
6 do that." And then that wasn't good enough for Ms Young.

7
8 I think I've dealt with some of these, I'm just
9 working out what I don't need to repeat.

10
11 THE COMMISSIONER: While you're pausing, could I ask you
12 this: in terms of timing, only because I need to organise
13 other things, what is your rough estimate, and it need only
14 be rough, of course?

15
16 MR THANGARAJ: It might depend on how many times the
17 Commissioner interrupts me.

18
19 THE COMMISSIONER: No, it won't depend on that at all.

20
21 MR THANGARAJ: Well, then I will finish by lunch but very
22 close to 1 o'clock, not half an hour.

23
24 THE COMMISSIONER: No, that's fine.

25
26 Mr Tedeschi, do you imagine saying anything today?

27
28 MR TEDESCHI: No, I don't.

29
30 THE COMMISSIONER: All right. In that event - thank you.
31 Thank you.

32
33 I thought you enjoyed the engagement.

34
35 MR THANGARAJ: I do. That's why I'm asking your Honour
36 not to cease engagement.

37
38 THE COMMISSIONER: Well, I took it as being an extraction
39 of a promise from me that I'd continue to do so, because
40 you found it so helpful.

41
42 MR THANGARAJ: Yes, I do. This goes somewhat outside what
43 I want to address but it makes the point in relation to the
44 findings of the various inquests: what is said is the
45 findings that Coroner Milledge made are sacrosanct; the
46 findings of the second and third inquest in relation to the
47 Johnson matter are --

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THE COMMISSIONER: Oh, look, you are very provocative, if I may say so. There's no suggestion they were sacrosanct. That's not true at all. They remain for as long as they remain. If a new inquest was to be ordered because of new information and a variation made of the findings about those cases, then so be it.

MR THANGARAJ: Sorry, what I meant was the way that that was dealt with in cross-examination and in the written submissions of Counsel Assisting is: how is it that the police have - I haven't focused on that, but it's more coming back to the --

THE COMMISSIONER: It's more for Mr Tedeschi.

MR THANGARAJ: Yes. But the point is: if the police should not have - tried to not do anything other than follow exactly what a Coroner had found, such as Coroner Milledge, and therefore run inquiries or minds in a certain way, and then focused only, as found in the third inquest, that this was foul play from a gay hate attack, that would have been limiting.

Just going back, I forgot to say this earlier: the Commission cannot find positively, unless there is evidence that we are not aware of and haven't read, and that is possible, but the Commission cannot find that the reason the ex-wife came forward - Commissioner, as far as I understand, there is no evidence as to why the ex-wife came forward before the Commission. So the Commission can't say, "It came forward because there was press about gay hate attacks."

THE COMMISSIONER: Well, if there is any material - I can't recall whether Justice Beech-Jones said anything about that.

MR THANGARAJ: No, he didn't. He didn't.

THE COMMISSIONER: But I do recall there is material, but I don't presently recall what it is. There were two judgments of Justice Wilson. The first judgment was I think on the issue of whether he could withdraw the plea.

MR THANGARAJ: Withdraw the plea, yes.

1 THE COMMISSIONER: And in that context I don't say I know,
2 but there might be something, because I know Justice Wilson
3 makes reference to the press reports that were said to be
4 the trigger for conversations between the ex-wife and
5 Mr White and which led to certain admissions, so it was
6 said.

7
8 MR THANGARAJ: Okay. I'll have a look at that.

9
10 THE COMMISSIONER: Yes, have a look at that.

11
12 MR THANGARAJ: Yes.

13
14 THE COMMISSIONER: Leaving aside the other issues
15 concerning Mr White's health and so on, I think Justice
16 Wilson in that judgment - I don't say that I know - says
17 what it was that provoked her, but certainly what provoked
18 conversations were press reports which provoked
19 conversations between the ex-wife, but how all that came
20 about, I'm not sure whether Justice Wilson - but that would
21 be the only public statement, I think.

22
23 MR THANGARAJ: I didn't note anything in Counsel
24 Assisting's submissions in relation to that, and that's why
25 I made that assumption. I have only read the plea, the
26 murder sentence, sorry, that her Honour wrote. So I will
27 have to go back and read --

28
29 THE COMMISSIONER: It's likely something is there because
30 Justice Wilson had to form a view and did, I think, about
31 the reliability or credibility of the ex-wife's ability to
32 link conversations, relevant conversations, with the
33 accused with opportunities which arose because of the topic
34 of gay hate or whatever --

35
36 MR THANGARAJ: Okay.

37
38 THE COMMISSIONER: -- having been raised in the media.

39
40 MR THANGARAJ: All right. Thanks.

41
42 Ironically, the only person, it seems - we've been
43 through the written submissions put on by the respective
44 parties. The only person, it seems, that maybe at one
45 point thought that maybe Mr Johnson had met the person, the
46 man, and then the two of them had gone there together, is
47 noted at Counsel Assisting's submissions at 378 when

1 Mr Willing told Ashurst that he contemplated that at one
2 point. Now, this is, of course, well before the evidence
3 in relation to the offender came forward. But people had
4 different views at different times because the evidence has
5 changed and you're keeping an open mind, and as he said, at
6 some times he thought it was a suicide and at other times
7 he thought it was not.

8
9 But what no-one contemplated also was a punch which
10 led to a tragic consequence only because of the location.
11 This was not a murder. This was a manslaughter, unlawful
12 and dangerous act, manslaughter, because the punch,
13 unfortunately, was on a cliff edge, and Justice Beech-Jones
14 even said, "I don't find that he punched him because the
15 cliff face was there, but he obviously knew the cliff face
16 was there and that's part of what made it dangerous." But
17 if Mr Johnson was a metre away, we may not be here. It's
18 like a one-punch death where if someone lands on the side
19 of the head, they're okay; if they land on their occipital
20 protuberance, they may die. So there are tragedies
21 unfolding everywhere in relation to this matter. But that
22 was also something that was never contemplated. Everyone
23 had ruled out misadventure. There was either a strong view
24 for suicide or a strong view for a deliberate gay hate
25 attack.

26
27 Ms Young had a number of matters that she was
28 distressed about and extremely concerned about leading in
29 to the plan with respect to the ABC. She expressed her
30 concern or upset that many grieving families were not
31 getting the resources that they were equally entitled to,
32 and she allowed those concerns, and no doubt the personal
33 problems that she had with the Johnson family, to lose
34 objectivity and dictate her behaviour, and she essentially
35 went on a personal crusade. That's the point that she'd
36 reached. Highly unbecoming any police officer, but
37 certainly a serious --

38
39 THE COMMISSIONER: Do you say that Mr Willing shared none
40 of those views?

41
42 MR THANGARAJ: None.

43
44 THE COMMISSIONER: Really?

45
46 MR THANGARAJ: None of those views.

47

1 THE COMMISSIONER: That he didn't share the view that the
2 Johnson family had managed to seek priority?
3
4 MR THANGARAJ: Oh, no, sorry. I'm sorry, I thought you
5 meant the actions as a result. He shared none of her views
6 as to what needed to be done as a consequence. He
7 certainly --
8
9 THE COMMISSIONER: Leaving aside her agenda just for the
10 moment --
11
12 MR THANGARAJ: Yes.
13
14 THE COMMISSIONER: -- whatever that was or is, but he
15 clearly must have been on board and/or understood, at the
16 very least, and sympathised with her views, that the
17 Johnsons had achieved an unfair priority over other
18 families who were the subject or might have been the
19 subject of having their deceased relatives investigated.
20
21 MR THANGARAJ: I'll answer that directly, but can I just
22 say this: the Commission is relying, in part at least, on
23 the text message exchange between him and --
24
25 THE COMMISSIONER: No, I'm just relying on the fact that
26 they're working together, they would have had
27 conversations.
28
29 MR THANGARAJ: Yes.
30
31 THE COMMISSIONER: He was head of Homicide.
32
33 MR THANGARAJ: Yes.
34
35 THE COMMISSIONER: This was a long-term case within the
36 division of Homicide. I cannot accept for a moment that it
37 wouldn't have been the subject of multiple conversations,
38 asides and views expressed from time to time. She doesn't
39 hide her light under a bushel, Pamela Young.
40
41 MR THANGARAJ: No, she doesn't, no.
42
43 THE COMMISSIONER: She was pretty direct. I cannot think
44 for a moment that he would have found very much of what she
45 said on the television as surprising. She had probably
46 aired views along those lines, if not identically along
47 those lines, for some time with him or with others.

1
2 MR THANGARAJ: Privately.
3
4 THE COMMISSIONER: Yes, absolutely, privately, yes. For
5 the minute I accept privately. Not suggesting that she
6 walked around Phillip Street with a sandwich board on her
7 announcing her views. But I don't think she would have
8 been silent, nor would she have been secretive about her
9 distaste for what she saw as an unfair advantage which the
10 Johnson family managed to secure for various reasons.
11
12 MR THANGARAJ: I think there's no doubt that must be
13 correct. And so --
14
15 THE COMMISSIONER: And equally devout, was she, that the
16 best theory of the case, indeed, probably the only real
17 theory of the case, was suicide.
18
19 MR THANGARAJ: Yes.
20
21 THE COMMISSIONER: On her perception.
22
23 MR THANGARAJ: Yes. And I'm not here acting for her --
24
25 THE COMMISSIONER: No.
26
27 MR THANGARAJ: -- but I don't want to also undermine -
28 because it is relevant - that she reached that point of
29 view stridently at a point in time. It hasn't been said,
30 and I don't think it can be said, that she was always
31 closed-minded. She formed the view that there was no
32 evidence of foul play and she was convinced it was suicide.
33
34 THE COMMISSIONER: Yes, but whether it's weeks or months
35 or years doesn't matter very much. By the time of the
36 Lateline interview --
37
38 MR THANGARAJ: Oh, there's no doubt.
39
40 THE COMMISSIONER: -- she's absolutely --
41
42 MR THANGARAJ: Oh, months before that.
43
44 THE COMMISSIONER: -- devout.
45
46 MR THANGARAJ: Months before that interview. No doubt.
47

1 THE COMMISSIONER: Yes, and she would have regarded
2 herself, along with those working with her, including
3 Ms Brown, perhaps, as having thoroughly turned over the
4 soil many, many times.

5
6 MR THANGARAJ: Yes, that's right.

7
8 THE COMMISSIONER: There's no doubt.

9
10 MR THANGARAJ: That's right. I haven't diverted to avoid
11 the question. Let's go back to Mr Willing's perception.
12 He is the head of Homicide. He has different things he has
13 to take care of in relation to this problem. He is senior.
14 She has the luxury of being a detective. He doesn't have
15 that luxury. He's in management and so he has to deal with
16 a lot of different things. He has to deal with the State
17 Coroner, he has to deal with the Minister, he has to deal
18 with his own Commissioner and he has to deal with the
19 family. So he has to appease a lot of people.

20
21 Now, what he also needs to do is - there's a crisis
22 management part of it when that happens, but part of his
23 leadership with respect to his team is to sympathise with
24 their positions at times. There are some things that are
25 worthy of sympathy and there are others that are not, and
26 the reality is that Macnamir emanated in a way that would
27 not have emanated for other families, and but for the
28 urgings of the family - how many people who have lost
29 a loved one would have an audience with the Police
30 Minister? Very, very few, I would suspect.

31
32 So there's no doubt that there was an advantage
33 gained, and there's no doubt that there was a genuine
34 attempt to do so - "recruit people to the cause", I think
35 is a phrase that has been used. And that's perfectly
36 understandable for any family to want to do that. That's
37 not in issue. But Mr Willing has 60 to 80 active cases and
38 700 unsolved murders. Ms Young is trying to solve - she
39 has other grieving families that she's saying, "We just
40 don't have any evidence in relation to" - not just gay
41 matters but murders generally, or deaths, and she's telling
42 these families, and they're saying, "Well, can't you do
43 this?" And, "Yes, we can. But we don't have the resources
44 to deal with that". Imagine a family being told, "We don't
45 have the resources to deal with that".

46
47 THE COMMISSIONER: Is there evidence that she was telling

1 other families that the reason why the police weren't
2 investigating their cases was because they were spending
3 all their time on the Johnson family?
4

5 MR THANGARAJ: Sorry, I didn't mean it like that. What
6 I mean is there are times where police just have to say to
7 families, "We've reached a dead end". So that's what she
8 is --
9

10 THE COMMISSIONER: Yes, but I presume you would suggest
11 that, in those cases, if that's the view expressed, that
12 would be a genuinely held view.
13

14 MR THANGARAJ: Of course, of course.
15

16 THE COMMISSIONER: So it wouldn't be a case of, "We can't
17 do anything further for you because of resources"; "We
18 can't do anything further for you because there is no
19 opportunity, we think, presently open for us to advance
20 your relative's case."
21

22 MR THANGARAJ: Because there are no loose ends, there are
23 no leads left.
24

25 THE COMMISSIONER: Yes, yes. Sure.
26

27 MR THANGARAJ: That's the position.
28

29 THE COMMISSIONER: But not because of lack of resources.
30

31 MR THANGARAJ: Well, sometimes there is a lack of
32 resources.
33

34 THE COMMISSIONER: You might say "sometimes" - and again
35 evidence from the Bar table - but there is no case before
36 me or evidence before me that anyone, including Ms Young,
37 had said to some grieving relative, "Look, we'd love to
38 help you, and we probably might or might not be able to
39 help you. We simply don't know. We haven't got the
40 resources to go in and look at whether we can help you
41 because this fellow, Johnson, has held us captive and all
42 we seem to do is answer the phone or answer an email or
43 pursue his case theories, so he's elbowing us out of the
44 way, we can't help you for that reason." There's no
45 evidence that she was lacking resources and no evidence
46 that she was unable - she says that they got undue
47 priority.

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MR THANGARAJ: Yes.

THE COMMISSIONER: But she wasn't solo, she had Ms Brown and I presume she had other detectives in Homicide from time to time assisting her with that and with other cases, including other major cases.

MR THANGARAJ: Yes. But the reason we don't have that evidence, with respect, is she hasn't been called to give evidence.

THE COMMISSIONER: Well, no, it's not that reason at all. Mr Willing doesn't say, "I couldn't make resources available because Pamela had her hands full with Johnson family problems." He could devote resources. He was the one, not Ms Young.

I presume Ms Young, even though senior, if she wanted to set up a strike force and if there was a reason, logically and objectively, to pursue another matter, she would have gone either to Mr Willing or somebody else and said, "Look, this matter needs to be advanced. I need resources." He wouldn't sit back and say, "Sorry, the Johnson family have taken all our resources for the month of June. No, none left, Pam, so, sorry, we can't look at that because of the Johnson family." He could have given that evidence. He could have said she'd made application to him from time to time to devote other people to other cases. "No", he would say, "the Johnsons have captivated us all." That's not in the evidence. He could have given that evidence.

MR THANGARAJ: No, I was responding to, Commissioner --

THE COMMISSIONER: I know you were. But if you want to talk about evidence, he was in a position, because he would have been in a position to allocate resources or he would have been in a position to talk to people, if there were people more senior than him, to allocate resources if they needed to be allocated.

MR THANGARAJ: Yes. I was --

THE COMMISSIONER: There is no evidence from him, though, that a lack of allocation of resources to other worthy cases which were solvable was directly caused by the

1 Johnson family captivating the Homicide Unit.

2

3 MR THANGARAJ: Well, there are two things. Firstly, I was
4 responding to the suggestion from you, Commissioner, that
5 there wasn't evidence of what Pam Young was telling
6 families: that can only have come from her.

7

8 Secondly, it can't be disputed that a huge amount of
9 resources went into this case.

10

11 THE COMMISSIONER: Yes, but are you going to deal with the
12 problem I've just advanced for you: there is no evidence
13 that Mr Willing or the Homicide Division suffered in any
14 way or was detrimentally affected in the work it was able
15 to do because it was spending an undue amount of time, or
16 whatever, on the Johnson matter?

17

18 MR THANGARAJ: But every time you spend any resources on
19 one case, it's taking away from those resources being used
20 on another case.

21

22 THE COMMISSIONER: What's the point of that? I don't
23 understand the proposition. Of course it's plain and
24 common sense, because there are only a limited number of
25 people in Homicide.

26

27 MR THANGARAJ: Yes.

28

29 THE COMMISSIONER: All right. But are you telling me that
30 Mr Willing was in some way, what, pandering, himself, to
31 the Johnson family by allocating resources which he should
32 objectively have allocated somewhere else?

33

34 MR THANGARAJ: No, of course not.

35

36 THE COMMISSIONER: Therefore I'm assuming that, as the
37 senior person in Homicide, he allocated the resources he
38 thought appropriate to do so, as he did to other cases.
39 I'm not suggesting his role was easy, and I'm suggesting
40 that he had to balance a lot of considerations.

41

42 MR THANGARAJ: Yes, he did.

43

44 THE COMMISSIONER: I'm accepting all of that. But the
45 point that you're making I'm not sure suffers in any way,
46 shape or form simply because Ms Young hasn't come along and
47 said her own view was, yes, undue time was being spent.

1
2 MR THANGARAJ: Okay. What he did do was he wanted - when
3 we're dealing with the sympathy question, going back to the
4 original issue of Ms Young and her falling out with the
5 Johnson family and Mr Willing's position on it, he wanted
6 the third inquest to resolve all of these problems. That
7 was one of the neat solutions.

8
9 Another one was the New South Wales Crime Commission
10 conducting a thorough review. We know what their
11 conclusions were. And another one was a third inquest.

12
13 Of course, when the Chief of Staff of the Police
14 Minister rings and wants further action, then there are
15 difficult positions then, too. You would hardly have the
16 Commissioner of Police saying, "No, we're not doing that",
17 I imagine. I don't know that, but I imagine that that's
18 the situation. So there were many, many stakeholders that
19 Mr Willing had to deal with. Ms Young didn't.

20
21 What she did know was that senior police hierarchy
22 would not support her publicly ventilating her forthright
23 positions. Whether she thought they were too weak, whether
24 she thought that they would not want to upset the Police
25 Minister, "How can we dare upset the Police Minister?" -
26 she may have had all these views, which she has the luxury
27 of holding as being someone working at the coalface, as
28 opposed to someone who is going to Macquarie Street asking
29 for funding or for legislative change.

30
31 She knew full well that she was only authorised to
32 speak off the record in a backgrounding context. And yes,
33 that meant she could take some liberties, because there
34 would be no public reference, and that meant that there was
35 no need for the MLO in the usual way. But it would permit
36 more balanced reporting in the face of the media campaign
37 which the police were fighting with one arm tied behind
38 their back, and as Georgie Wells reported, Dan Box said,
39 "I'm not sure there's a story here but I can understand the
40 position now", and she thought that - she understood from
41 him that the backgrounding on the 10th went well.

42
43 Now, what it seems to us is that the reason that there
44 was no controversy from the 10th was because Ms Young has
45 promised the exclusive to Emma Alberici; she hasn't told
46 Dan Box, "Oh, the Police Minister did this. This is my
47 view." He would have written that up immediately. She has

1 given him a bland interview, a bland backgrounding, exactly
2 how she was supposed to do - given him an update, given him
3 a different perspective, summarised her statement, told him
4 some things maybe with some nuance, but certainly not
5 explosive. She knew full well that she was not permitted
6 to say publicly what she wanted to say and what she
7 ultimately did say. But that was not going to stop her.
8 It would have stopped 99-point-something per cent of
9 officers who bite their tongue. But she's not made that
10 way.

11
12 Not only did she know that what she had told
13 Ms Alberici before the 13th was explosive; she wanted it to
14 be explosive, and Ms Alberici understood it that way.

15
16 Ms Young knew full well that the police hierarchy
17 would actively stop an on-the-record interview which
18 adversely questioned the conduct of the Police Minister,
19 and so therefore she needed to keep the studio interview
20 a secret until it was aired, and she achieved that.

21
22 Ms Wells was speechless. Mr Willing was shocked and
23 angry.

24
25 And she knew she had to organise the interview
26 discreetly. She had one trusted person, which was
27 Ms Brown, and she knew that anyone else in the police
28 hierarchy would not be supportive and help her with what
29 she had to do, and that's why she had to keep it to herself
30 or themselves, otherwise her plan may be foiled.

31
32 But it wasn't only covert, it was sophisticated.
33 She's the one that raised the concept of backgrounding.
34 But what she did not reveal was that she had already been
35 dealing with the ABC. She had already been speaking to
36 Ms Alberici. So she pretends to Mr Willing and others that
37 she has thought of this idea of backgrounding, but not told
38 them that she had already commenced it, she had already
39 chosen her journalist as well, and possibly by then - and
40 I think in fact by then - had actually provided her
41 statement, over which police were worried about
42 publication.

43
44 She replaced the journalist that was suggested by
45 police. They had suggested Lorna Knowles, but she had her
46 own choice in Ms Alberici.

47

1 But despite all of these behaviours, plans, execution
2 of her strategies, Counsel Assisting's submissions barely
3 if at all criticise Ms Young and Ms Brown for their
4 extraordinary concealment, deception and misconduct, and
5 perhaps we can understand that because if the submissions
6 had addressed the facts and what Ms Young and Ms Brown had
7 been doing, it would only highlight the absurdity of
8 a suggestion that anyone else in the Police Force knew
9 about the studio interview in advance, let alone had
10 approved it.

11
12 Even on the afternoon of the 13th, Ms Young kept her
13 plans to herself. Ms Wells emailed Ms Young and Mr Willing
14 to update them on the media that had come after the
15 announcement of the third inquest, because, of course, the
16 Media Unit was to be informed of all appearances and
17 backgrounding.

18
19 In that 2.15 email from Ms Wells, she included media
20 articles which had been posted online. Those articles
21 noted that Mr Steve Johnson had spoken to media outside
22 Glebe Coroners Court. Mr Willing was given that
23 information in that email of 2.15. So at 2.15, he knew
24 that Mr Johnson had spoken to the media at Glebe.

25
26 In his evidence, he obviously didn't remember that
27 email, but he said, "Well, I assume that Mr Johnson spoke
28 out the front of court because he always did", and he was
29 correct. His supposition was correct. But, in fact, he
30 was actually informed by email at 2.15.

31
32 It was positively put to Mr Willing as a challenge to
33 his evidence that as of 6.30pm on the Monday, he did not
34 know whether Ms Alberici had spoken to Mr Johnson outside
35 court. That was put as a *Browne v Dunn* proposition. But
36 that's not correct. He had been informed because he had
37 been sent that email hours earlier.

38
39 So when Mr Willing said that he understood that
40 Mr Johnson and Ms Young would be on Lateline in the same
41 format, he was correct, he was entitled to form that view.
42 He was informed on the afternoon of the 13th that
43 Mr Johnson had spoken to the media at Glebe, and he also
44 knew that he had authorised Ms Young to speak to the media
45 at Glebe in a bland door-stop. And coupled with the
46 reference from Ms Young to Ms Brown's hair and lipstick in
47 the email, or text messages, it is clear, or at the very

1 least cannot be discounted, that Mr Willing understood the
2 Lateline appearance to be limited to Glebe.

3
4 That belief is consistent with Ms Wells' understanding
5 of what Ms Young had told Mr Willing, and this is not
6 analysed in Counsel Assisting's submissions. Ms Wells gave
7 her understanding to Ashurst. She followed police
8 processes, which included recording the information, such
9 that the relevant persons would be informed and able to
10 access. That's not just people within media, that's senior
11 police as well. Counsel Assisting's submissions must be
12 that Mr Willing knew about the Lateline interview, the
13 studio Lateline interview, in advance, did not want to do
14 anything about it, and yet told Ms Wells, who had
15 formalised that very information, that very information
16 that the Police Media Unit and senior police could access.
17 And, with respect, that suggestion is illogical.

18
19 The email was sent at 2.15pm and Ms Young should have
20 informed the two of them, particularly Ms Wells, that she
21 had already agreed to a studio interview that evening. But
22 her deception continued. She did not do that because she
23 did not want to tell anyone until it went to air. That was
24 another perfect opportunity. Of course, she should have
25 told them well in advance. She had promised the interview
26 well before the 13th. To suggest that she told Mr Willing
27 before the broadcast that she would or had been recorded in
28 a studio interview would be completely inconsistent with
29 the evidence, even including these communications.

30
31 THE COMMISSIONER: And you submit, do you, that both this
32 planned and implementation of this deception was as
33 a result of both Ms Brown and Ms Young cooperating with
34 each other?

35
36 MR THANGARAJ: Well, Ms Brown was there on the 10th and
37 she was there on the 13th and she prepared her statement to
38 give to Ms Alberici. So Ms Brown must have been intimately
39 involved.

40
41 THE COMMISSIONER: In other words, intimately involved and
42 knowing there was a studio interview?

43
44 MR THANGARAJ: Yes, and for provision of the statement to
45 Ms Alberici in advance and the recording on the 10th.

46
47 THE COMMISSIONER: All right. So she kept back from her

1 superiors --
2
3 MR THANGARAJ: Yes.
4
5 THE COMMISSIONER: -- on the way you've put it, all of the
6 materials which Ms Young did as well?
7
8 MR THANGARAJ: Yes.
9
10 THE COMMISSIONER: Okay.
11
12 MR THANGARAJ: I don't see anything that Ms Young planned
13 or did that Ms Brown was not aware of.
14
15 THE COMMISSIONER: Okay. Is that a convenient point?
16
17 MR THANGARAJ: Yes.
18
19 THE COMMISSIONER: Now, if I take a short break, will that
20 still get you finished by --
21
22 MR THANGARAJ: I'll do my best. I hope to finish - I'm
23 happy to continue but, of course, if the staff need a break
24 and the Commissioner needs a break, I'm happy to have
25 a break.
26
27 THE COMMISSIONER: Well, I will take a break. So whether
28 I need it or not is irrelevant, I'm taking it. But the
29 point about it is, I will sit on beyond 1 --
30
31 MR THANGARAJ: That's great.
32
33 THE COMMISSIONER: -- to assist you.
34
35 MR THANGARAJ: Thank you.
36
37 THE COMMISSIONER: I'll just make some inquiries about
38 this afternoon. I've got other matters on in relation to
39 the Inquiry. I will just see what I can do about those.
40
41 Mr Tedeschi, you won't be inconvenienced if we travel
42 a little into the lunch?
43
44 MR TEDESCHI: No, not at all.
45
46 THE COMMISSIONER: Let me just make some inquiries.
47 I will take a short break now and we'll deal with timing

1 when I come back. Thank you. I will now adjourn.

2

3

SHORT ADJOURNMENT

4

5

THE COMMISSIONER: I will sit, if needs be, beyond 1. I've got Inquiry commitments this afternoon which I would like to keep because I need to keep them for other reasons.

6

7

8

9

MR THANGARAJ: Of course.

10

11

THE COMMISSIONER: Why don't you just keep going and we'll see how we go.

12

13

14

MR THANGARAJ: Yes. I will try to go a little bit faster. But can I just say one thing: because we diverted - no problem - to answering some issues that I was going to address later, there will be a little bit of repetition because I have to make an initial point, so I'm sorry about that in advance.

15

16

17

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19

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21

THE COMMISSIONER: No, it's the inevitable problem when you're taken off your stride, so I accept that.

22

23

24

MR THANGARAJ: Thank you, Commissioner.

25

26

The approved media strategy contemplated going on the record if a third inquest was announced and the statement of Ms Young was released, however, further consideration had to be undertaken first and the email of Ms Wells of 14 April made that clear.

27

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That was obvious in any case because the strategy had been approved at very senior levels and you don't make amendments, especially amendments like going on the record, which is a material change, without the same people approving it, and it would have been career suicide for anyone less senior than those levels to have either authorised a variation, which they had no authority to do, or to stay quiet about it.

33

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That is part of the reason why we say it's fanciful to suggest that Mr Willing would simply ignore relevant chains of command and approve or stay quiet in advance of a studio interview in what could only be described as a nuclear strategy.

42

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47

Counsel Assisting says at 420 that there is no reason

1 to believe that whatever happened on the 10th did not
2 finish on the 10th. There are a few difficulties with that
3 submission. Firstly, we don't have any evidence that the
4 backgrounding had finished. That's a very minor point.
5 There are more substantive points. Mr Willing had not
6 heard of the outcome of it. Ms Young had also spent time
7 with The Australian earlier that afternoon, or earlier that
8 day, and the dot point notes record that later that
9 afternoon, being after 1.54pm, Ms Young was on her way to
10 the ABC, so whether they ran out of time we don't know.

11
12 But this is the more important point: Ms Young
13 informed Mr Willing on the 12th - that is, after the 10th -
14 that the ABC had been in contact with her to clarify a few
15 things. That's noted at Counsel Assisting's submissions at
16 421. So clearly the backgrounding had not finished on the
17 10th. There were still matters that required
18 clarification.

19
20 Perhaps the most important point in relation to this
21 question is that the inquest was about to be announced on
22 the 13th, and it's clear from the materials that
23 Ms Alberici believed that the inquest would be announced.
24 So why would that not be a particularly notable event that
25 particularly warranted further backgrounding? "What's the
26 reaction to that?" "What do the police think?" "Has
27 anything happened?" It would make eminent sense for
28 a backgrounding like this - compare that to The Australian,
29 which was a bland, start and finish on the 10th, but
30 a backgrounding like the one that was happening with the
31 ABC - to continue to the day of the major announcement,
32 which was the whole point of the media strategy. That was
33 the point of the media strategy, to deal with this inquest
34 and the Johnson family reaction to the inquest.

35
36 The criticism at Counsel Assisting's submissions at
37 420 is, with respect, misplaced.

38
39 Now, a focus has been the 5pm phone call, and it is
40 suggested in our friend's submissions that Mr Willing's
41 evidence was not true. It was also suggested, incorrectly,
42 that that had been subject to a considerable amount of
43 evidence, which is true to that extent, but it's not the
44 entirety of what has happened.

45
46 In this case, there's an absence of evidence about
47 this issue and certainly an absence of compelling evidence

1 to support the findings for which Counsel Assisting
2 contends in the face of all of the evidence against his
3 proposition. The most critical witnesses in relation to
4 this issue have not given evidence.

5
6 Ms Young could easily have told the Commission whether
7 she called Mr Willing before or after her attendance at the
8 ABC on the 13th. She could have told the Commission
9 whether or not she told Mr Willing about a recorded
10 interview. She could have told the Commission whether or
11 not she said anything other than the door-stop at Glebe.
12 We know that she attended the Commission here physically,
13 in this very room, so we know she's in the jurisdiction.

14
15 Counsel Assisting could have asked her the above
16 questions, we could have asked her those pertinent
17 questions on the issues about which Counsel Assisting now
18 seeks to impugn his character.

19
20 Now, we're not saying that Ms Young had to be called.
21 What we're saying is the Commission cannot make findings in
22 the absence --

23
24 THE COMMISSIONER: I can't make findings on the basis of
25 his evidence, are you saying?

26
27 MR THANGARAJ: On the basis of his evidence without the
28 benefit of her evidence in relation to that finding.

29
30 THE COMMISSIONER: Well, only if her evidence might be
31 relevant on that topic. What he says she told him, what he
32 was thinking, is all evidence directly given by him.

33
34 MR THANGARAJ: Yes, but it depends entirely on what she
35 told him.

36
37 THE COMMISSIONER: My findings about him will turn upon
38 what he tells me she told him.

39
40 MR THANGARAJ: Yes. But she was in a position to
41 corroborate precisely what we say she told him.

42
43 THE COMMISSIONER: So what?

44
45 MR THANGARAJ: In my respectful submission, there is
46 a procedural unfairness if there's a finding to be made
47 against Mr Willing on the basis of a phone call where the

1 other person on the phone call --

2

3 THE COMMISSIONER: If I make a finding, though, on the
4 basis of his version of the phone call, what's unfair about
5 that?

6

7 MR THANGARAJ: Because her evidence could have
8 corroborated his.

9

10 THE COMMISSIONER: So what? You're not listening, I don't
11 think, to what I'm saying to you. If I make a finding on
12 the basis of his direct evidence, where is the procedural
13 unfairness? You were here. You could have asked him more
14 questions about what she told him or other things she might
15 have told him. He was the person that was privy to one
16 side of that conversation.

17

18 MR THANGARAJ: Yes, and it's not --

19

20 THE COMMISSIONER: And it's not as if I'm determining
21 a version of hers against his. I'm determining what
22 I think might be the position based solely on his evidence.
23 What is unfair about that?

24

25 MR THANGARAJ: Because if she came along and said, "I had
26 this strategy to keep everything quiet from everyone" --

27

28 THE COMMISSIONER: So what? That's your case, and
29 I either find it or I don't.

30

31 MR THANGARAJ: Yes. But if she had given evidence to
32 say --

33

34 THE COMMISSIONER: What, if she had come and fallen on her
35 sword with a devastating cross-examination by you, what,
36 I would have then believed him, that he didn't know about
37 it?

38

39 MR THANGARAJ: No. If she had given evidence to say,
40 "I did not tell Mr Willing about a studio interview", that
41 would be relevant evidence to the determination --

42

43 THE COMMISSIONER: I hear what you're saying. I don't see
44 a problem on procedural fairness issues if, in fact, I, as
45 I will, determine the matter on the basis of objective
46 material, eg, texts, emails written by him, et cetera, and
47 his views expressed in the witness box. I'm entitled, as

1 you well know, with any witness to accept or reject what
2 they say. I will explain why, if I do that, of course.
3 But I'm not bound to accept his answers and nor am I bound
4 to accept everything he says because theoretically what he
5 says might have been corroborated by a witness, if I may
6 say so with great respect, hostile to his interests. So
7 you're speculating that you might have, what, winkled out
8 of a witness who doesn't seem to have very much time for
9 Mr Willing, concessions corroborating him?

10
11 MR THANGARAJ: Just because she doesn't have time for him
12 doesn't mean that she would say, "No, I told him all these
13 things", because the obvious --

14
15 THE COMMISSIONER: Why don't you move on, because
16 I understand what you're putting to me. Having heard what
17 I have said, you will elaborate it further in submissions
18 when you go back and no doubt tweak them. But all I'm
19 saying to you for the moment is I do not accept
20 a procedural unfairness could possibly arise if I were to
21 determine matters based on what he tells me, what he tells
22 me he believes, what he tells me he didn't believe or
23 didn't know. I'm entitled to accept or reject that
24 evidence and that has long since been the law in this
25 country, whether it is in an inquiry context or a trial.
26 Perversity is one thing but what is reasonably open on the
27 basis of what he says and what he has written is clearly
28 open.

29
30 He has had procedural fairness. He has been in the
31 witness box. You've been here separately representing him.
32 So I don't see any procedural unfairness if I deal with his
33 evidence as I'm entitled to deal with it, judicially, as
34 I will.

35
36 MR THANGARAJ: All right. I have put on the record what
37 our position is in relation to that.

38
39 THE COMMISSIONER: As I said, I hear what you're saying.

40
41 MR THANGARAJ: All right. There is also no evidence from
42 the ABC as to when the interview on the 13th actually took
43 place. No doubt their recordings would have time stamps.
44 We have seen that internal ABC material has been put before
45 this Commission --

46
47 THE COMMISSIONER: We know it was before 7 o'clock news,

1 though, don't we?
2
3 MR THANGARAJ: No, when the Lateline broadcast was
4 actually interviewed.
5
6 THE COMMISSIONER: Sorry, you mean filmed?
7
8 MR THANGARAJ: No, sorry, the recording - that's right.
9 When she actually attended and the interview was recorded.
10
11 THE COMMISSIONER: But it has to be before 7pm on the
12 night, at the very least, doesn't it?
13
14 MR THANGARAJ: Yes.
15
16 THE COMMISSIONER: Because on the ABC News, which we saw,
17 Ms Nielsen [sic], I think her name is, Juanita Nielsen
18 [sic] announced the program was going to be aired that
19 evening, so the assumption must be reasonably to be
20 inferred that it was in the can prior to the 7 o'clock
21 news.
22
23 MR THANGARAJ: Yes.
24
25 THE COMMISSIONER: And possibly by 5 o'clock. Possibly,
26 but certainly before 7.
27
28 MR THANGARAJ: Yes, but the real question is the ABC
29 material could have or presumably would have told us when
30 that recording was and --
31
32 THE COMMISSIONER: You're assuming that that wasn't asked
33 for and you're assuming that there's material that could
34 have been procured, are you?
35
36 MR THANGARAJ: No, I make no assumptions, I don't know.
37
38 THE COMMISSIONER: All you're submitting to me at the
39 moment is, on the state of the evidence --
40
41 MR THANGARAJ: Yes.
42
43 THE COMMISSIONER: -- there is no precise indication of
44 when that was filmed and/or thought to be a concluded
45 interview for viewing later in the evening?
46
47 MR THANGARAJ: Yes. But what we do know is that the phone

1 call has been described as the 5pm phone call. So the
2 question is: did the recording with Ms Young take place
3 before then or after then?
4

5 THE COMMISSIONER: Yes.
6

7 MR THANGARAJ: There is some evidence, however, as to what
8 the timings were. By the time of the - I'll come to
9 this --
10

11 THE COMMISSIONER: I had better correct the record.
12 I said "Juanita Neilsen". That's a person long since
13 deceased --
14

15 MR THANGARAJ: Juanita Phillips.
16

17 THE COMMISSIONER: -- in rather strange circumstances.
18 I apologise to Ms Phillips and I'm not suggesting that
19 she's anything other than Juanita Phillips.
20

21 MR THANGARAJ: I'll come to the timings in relation to the
22 ABC shortly. Yes, I will, that's later on. I'll come to
23 that shortly, because there is some evidence that we have
24 that has been tendered as to the timings of arrangements in
25 relation to --
26

27 THE COMMISSIONER: Well, going to paragraph 438 of Counsel
28 Assisting, that purports to be a quotation from Mr Willing,
29 and if that is correct - and I'm assuming it is - he says:
30

31 *At 5pm I was driving home and I received*
32 *a call. She stated she had recorded an*
33 *interview.*
34

35 That's further evidence of at least her participating in an
36 exercise.
37

38 MR THANGARAJ: But we say that relates to the Glebe
39 door-stop.
40

41 THE COMMISSIONER: No, I know what you're saying.
42

43 MR THANGARAJ: Yes.
44

45 THE COMMISSIONER: And Mr Willing says that that's all he
46 ever understood. I understand the case in that respect.
47

1 MR THANGARAJ: Yes.
2
3 THE COMMISSIONER: But we're now talking discretely about
4 timings.
5
6 MR THANGARAJ: Yes.
7
8 THE COMMISSIONER: We know at 7 o'clock it's advertised,
9 as it were, on Ms Phillips' news broadcast, or the ABC's
10 broadcast, but Mr Willing accepts, apparently, that she
11 told him, he thought it was a door-stop or believed it was
12 a door-stop, and she told him it had been recorded, past
13 tense, and he heard that at 5 o'clock.
14
15 MR THANGARAJ: So we're saying that's what happened at
16 Glebe. That's got nothing to do --
17
18 THE COMMISSIONER: I understand what you're saying. We're
19 at cross-purposes, I think. We're talking about timings
20 and all he says at paragraph 438, or rather in that
21 conversation, is he was told that something - you say
22 something, that door-stop - had been recorded with the ABC.
23
24 MR THANGARAJ: Yes.
25
26 THE COMMISSIONER: Okay.
27
28 MR THANGARAJ: So what we're saying is in that phone call
29 at 5pm she continued her strategy which she had employed
30 for months of not telling anyone about the studio
31 interview, and the only reference to "recorded interview",
32 was Glebe. I'm going to come back to the timings that we
33 do have from the ABC in a moment, that are in the
34 materials.
35
36 THE COMMISSIONER: She says later in the conversation,
37 according to Mr Willing's own evidence, that it would
38 feature on that night's Lateline program.
39
40 MR THANGARAJ: Yes.
41
42 THE COMMISSIONER: So whatever it was, snapshot,
43 door-stop, just look at the handbag and the lipstick,
44 nothing else had been recorded, and it was going to be on
45 Lateline that night?
46
47 MR THANGARAJ: No dispute about that.

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THE COMMISSIONER: Correct. All right.

MR THANGARAJ: But by the time of that 5pm phone call, Mr Willing had no reason to believe that Ms Young was doing anything other than complying with the agreed background strategy. No problem had emanated from the backgrounding interviews on the 10th with either The Australian or the ABC despite the absence of an MLO and, in fact, by email, Ms Wells had informed Mr Willing and Ms Young that the backgrounding with The Australian had gone well.

At this stage, Mr Willing was not aware that Ms Young had gone further than she should have at the Glebe door-stop. As far as he knew, the trust that the police and the Media Unit had in this extremely experienced detective was being respected.

The difficulty with Counsel Assisting's submissions is the theme to the effect that Mr Willing knew what Ms Young was doing and either encouraged it or did nothing about it.

THE COMMISSIONER: What about paragraph 439? On 24 April 2015, in the Ashurst interview, he's reported as having told them:

Next thing I hear is she did an interview with Emma Alberici.

Not a door-stop, an interview with Emma Alberici. So he believes, does he, that Emma Alberici has gone down to the Glebe Coroners Court and done an interview which will be on TV that night? Is that what you're putting?

MR THANGARAJ: No, no. No, that has never been the position. The position is that Emma Alberici did the door-stop at Glebe by herself. That's what he's talking about to Ashurst and that's what Georgie Wells --

THE COMMISSIONER: Okay. He goes on to say, "I thought it meant backgrounding."

MR THANGARAJ: Yes, precisely.

THE COMMISSIONER: I understand that, but - okay.

MR THANGARAJ: Our position is, and Ms Wells' evidence is

1 consistent with ours, that the media pack had gone,
2 Ms Young reports back that the media pack had gone so she
3 missed it. What she didn't reveal, until the 5 o'clock
4 phone call - and there was a good reason for that which I'm
5 coming to - is that she, in fact, had been interviewed at
6 Glebe by the ABC, by Ms Alberici. So that's what later has
7 become known as part of this working out what happened.
8 She didn't report back - she didn't tell them immediately,
9 "Oh, well, Ms Alberici, Emma Alberici, spoke to me at Glebe
10 with a door-stop." We know that in fact happened, but he
11 didn't know that at the time because she had said the
12 opposite and didn't correct it until the 5 o'clock phone
13 call.

14
15 So what had happened was - we don't know whether it
16 was contrived or convenient, there was supposed to be -
17 there was a media pack there waiting for a bland door-stop.
18 She says, "Well, I was stuck with counsel so by the time
19 I came out, they were gone." Now, very conveniently, the
20 one person who has remained is the person that she has been
21 liaising with for months, has given her statement to
22 improperly, has recorded an interview with her on the 10th,
23 and then has the explosive interview with her that
24 afternoon. And so it does suggest that perhaps there was
25 a plan to not speak to the media so that the footage would
26 be an exclusive. And so what then happens is, the ABC News
27 at 7pm can say, "We have an exclusive", because they'd
28 waited until the media pack had gone.

29
30 Now, the problem Ms Young had is, because the Media
31 Unit was expecting a door-stop with the media pack - the
32 media pack was there, they wanted it, there had been a big
33 announcement, it would be natural for the officer in charge
34 to say something, she had authority to do it, the Media
35 Unit's waiting for her to tell them that's what happened.
36 But she didn't want to do that because she wanted to give
37 Emma Alberici a lead-in with an exclusive. So she
38 conveniently waits until the media pack's gone. They go.
39 They've got to file their own stories.

40
41 Emma Alberici conveniently happens to be at Glebe
42 after everyone else leaves. She then does a door-stop, for
43 which only the ABC now has footage, including with Penny
44 Brown with her hair and lipstick done, and then she
45 realises, "Well, this is going to be used on the 7 o'clock
46 news, or it's going to become obvious to the Media Unit
47 that I have done that door-stop with the ABC. I'd better

1 put this on the record." She has to put it on the record
2 before it goes to air.

3
4 THE COMMISSIONER: So is your theory that either Ms Young
5 goes rogue or, alternatively, is deliberately engaged in a
6 kamikaze act?

7
8 MR THANGARAJ: No, it's not kamikaze at all.

9
10 THE COMMISSIONER: Why isn't it? Because your case is
11 that she must have known that what she was doing was
12 contrary to the authority that she had. She did not have
13 authority to go beyond a backgrounding process.

14
15 MR THANGARAJ: That's right.

16
17 THE COMMISSIONER: And all along, she had intended to do
18 more than that.

19
20 MR THANGARAJ: Yes.

21
22 THE COMMISSIONER: And therefore, that is either rogue or
23 kamikaze, isn't it, or one or both of the same thing?

24
25 MR THANGARAJ: Well, it's certainly rogue.

26
27 THE COMMISSIONER: But if your position is that what she
28 was doing was deliberately contrary to authority and that
29 she knew it and she contrived the situation to achieve that
30 outcome, that doesn't sound like a career-enhancing
31 process.

32
33 MR THANGARAJ: She had lost all objectivity and had
34 promised --

35
36 THE COMMISSIONER: I understand that.

37
38 MR THANGARAJ: That's the explanation.

39
40 THE COMMISSIONER: I'm not getting you to agree to my
41 terminology, because you don't have to, but it doesn't
42 sound to me like a career-enhancing process.

43
44 MR THANGARAJ: But going on to Lateline --

45
46 THE COMMISSIONER: Unless she thought - unless she
47 thought, irrationally, as you would put it, of course, that

1 she had a lot of support within the Police Force for her
2 views.

3
4 MR THANGARAJ: Maybe she did.

5
6 THE COMMISSIONER: She certainly had a lot of support from
7 Mr Willing for many of her views, didn't she?

8
9 MR THANGARAJ: But not for what she did.

10
11 THE COMMISSIONER: I didn't say that. I said she had
12 support from Mr Willing for many of the views that she had
13 obviously expressed over time.

14
15 MR THANGARAJ: Unless we particularise what they are --

16
17 THE COMMISSIONER: Well, let me particularise them: the
18 suicide theory and that the Johnson family had jumped the
19 queue. Let's start with those two.

20
21 MR THANGARAJ: He gave evidence to say, "At, times I did
22 believe it was a suicide" --

23
24 THE COMMISSIONER: Correct, correct.

25
26 MR THANGARAJ: -- "but at other times I wasn't sure".

27
28 THE COMMISSIONER: Sure. But he sympathised with her view
29 that it was suicide, even if he was deciding for himself
30 "maybe this", "maybe that".

31
32 MR THANGARAJ: Yes, but maybe the better example, with
33 respect, is the reaction that you, Commissioner, have
34 highlighted of the Deputy Commissioner and the Commissioner
35 originally to the Lateline program. So maybe she did
36 believe that, "No-one's got the guts to allow me to do
37 this, but I will be okay if I do it anyway." Now, that's
38 quite possible. And on the immediate reactions from people
39 until the media outcry and the pressure for the
40 Commissioner to sign off on, effectively, the Lateline
41 interview, maybe that's exactly what she thought. And that
42 makes sense, so it's not --

43
44 THE COMMISSIONER: I'm certain - well, "certain" is
45 putting it too high. It may very well be there were
46 a number of wet fingers up in the air waiting to see what
47 the reaction was going to be and some people's initial

1 reaction, including that of Mr Willing, was on the sanguine
2 side: he did not react, either on the evening or on the
3 next morning, by condemning her directly for what was an
4 unauthorised act; indeed, he went into bat for her by
5 saying "Really much of it, if not all of it, is in the
6 statement."

7
8 MR THANGARAJ: Well, the majority of it was in the
9 statement, but the critical thing --

10
11 THE COMMISSIONER: But his words. His words.

12
13 MR THANGARAJ: They're words being drafted to massage the
14 media.

15
16 THE COMMISSIONER: Are you suggesting that they were less
17 than frank?

18
19 MR THANGARAJ: Well, clearly they - everyone had the
20 statement --

21
22 THE COMMISSIONER: Or contrived for the media's
23 consumption as opposed to what he really thought? Is that
24 what you're putting?

25
26 MR THANGARAJ: It's not a media release that's going out
27 for him as a person.

28
29 THE COMMISSIONER: No, I understand that, but he
30 is writing that to senior people, and what he doesn't say
31 is his first instinct is, "This is absolutely outrageous.
32 This is totally outside anything that I thought was going
33 to happen"; rather, he says, "Hang on, this is much of it,
34 most of it, all of it - look, chill" - it wasn't a critical
35 or condemnatory tone at all. It was supportive, in fact,
36 wasn't it?

37
38 MR THANGARAJ: It was somewhat supportive.

39
40 THE COMMISSIONER: And the wet finger is up in the air and
41 it was supportive until the wind changes.

42
43 MR THANGARAJ: But it was supportive in the sense of this
44 was about how they were dealing with the crisis that
45 morning.

46
47 THE COMMISSIONER: I know that people in crises in a

1 political environment - and this is quasi-political - have
2 to be very deft about the way they handle things. But what
3 he didn't say - his initial instinct was not, "Young and
4 Brown are outside the ballpark. This is absolutely
5 unauthorised material and I dissociate myself" - not
6 "inopportune"; "I entirely dissociate myself from this
7 activity". He didn't say that.

8
9 MR THANGARAJ: No, but the wording of a media release is
10 up to head of Public Affairs and the Commissioner.

11
12 THE COMMISSIONER: Well, it might be, but it does sound to
13 me like a very wet finger is up in the air and the wind
14 changes and an attitude changes.

15
16 MR THANGARAJ: He has made it clear throughout the Ashurst
17 material and his own evidence that this was completely
18 unauthorised. No-one is suggesting that it was authorised.

19
20 THE COMMISSIONER: Sure. But he didn't say so at the time
21 to the very person to whom he either gave or did not give
22 authority.

23
24 MR THANGARAJ: But that does not mean that he had advanced
25 warning inconsistent with her strategy.

26
27 THE COMMISSIONER: I agree it doesn't mean that
28 inevitably, but it's some evidence that he was complacent
29 or acquiesced, some evidence he was not shocked or
30 surprised at what she said, and the reason might be because
31 he had heard it over and over again. This woman was devout
32 in her belief as to her case theory.

33
34 MR THANGARAJ: Yes.

35
36 THE COMMISSIONER: And she was very angry, aided and
37 abetted to some extent by Mr Noone, but she was aided and
38 abetted in her views by her own investigation, her own
39 thoughts of this, turning it over time and time and time
40 again, she'd committed herself and wedded herself to this
41 theory and she was indignant that Mr Johnson, seemingly,
42 was distracting her and others and, in fact, getting an
43 unjustified priority.

44
45 MR THANGARAJ: Yes. But the most compelling event after
46 the interview wasn't Mr Willing hearing this again that he
47 has heard 100 times, it's her complete lack of accusation

1 towards Mr Willing of, "You knew this" --
2
3 THE COMMISSIONER: That cuts both ways, doesn't it?
4
5 MR THANGARAJ: No, it doesn't, with respect.
6
7 THE COMMISSIONER: All right, okay.
8
9 MR THANGARAJ: Because this suggestion - if he knew that
10 she was going in for a studio interview, she would have
11 complained, she would have said that straightaway and she
12 would have put it in her materials. She has not said, "You
13 knew I was going to say this, Mick. You knew I was going
14 to be - you knew, I told you that I had a studio
15 interview."
16
17 THE COMMISSIONER: But, as I say, it cuts both ways. He
18 didn't say to her, "Pamela, I really have to tell you,
19 I respect you greatly for your investigative skills and
20 your attention to detail, but this is absolutely contrary
21 to what we discussed. It is contrary to the authorisation
22 that you had." Why wouldn't he have just said that to her
23 as a colleague, if he thought that, genuinely thought that?
24 If everything she had said on the program - and the fact
25 that it existed as a program in that format - had been so
26 contrary to everything that he understood, why wouldn't he
27 be frank enough? They'd been colleagues for years, he had
28 her phone number in his phone. Why doesn't he ring her?
29 Why doesn't he say to her, "Outside the ballpark, Pamela.
30 This is uncalled for, unauthorised, and you know it." It
31 cuts both ways, I think.
32
33 MR THANGARAJ: I have made my submissions.
34
35 THE COMMISSIONER: You have, thank you.
36
37 MR THANGARAJ: Anyway, we've dealt with his reaction to it
38 and why and --
39
40 THE COMMISSIONER: I understand.
41
42 MR THANGARAJ: -- sometimes, you put your hand up and then
43 say, "We'll just have to deal with it." No-one else dealt
44 with it. No-one said anything that night except for
45 Mr Finch. Everyone was just waiting for the next morning
46 and then, "Let's deal with it now."
47

1 THE COMMISSIONER: What do you mean? I don't follow this.
2 Are you saying that they were playing a political game,
3 they were waiting to see what the fallout was?
4

5 MR THANGARAJ: No, no, I didn't mean that. I mean that --
6

7 THE COMMISSIONER: As I said, I don't want to unduly infer
8 things that you're not intending to say, but - anyway, I'm
9 sorry.
10

11 MR THANGARAJ: No, I wasn't suggesting that. I'll go back
12 to what I was about to say in relation to the 5pm phone
13 call.
14

15 He had no reason at that point - none - to suspect,
16 when she called him, that she had done anything other than
17 complied with the agreed background strategy. There had
18 been no problem on the 10th. And he wasn't aware that she
19 had gone further at the Glebe door-stop than she had. I'll
20 develop the point that I was making when I went off to talk
21 about why she had to tell him at 5pm that she, in fact, had
22 had a door-stop at Glebe.
23

24 Could I develop that point. This is an important
25 issue, as to what her motivations were in that 5 o'clock
26 phone call, what she had to achieve.
27

28 Ms Young had been authorised to give a door-stop at
29 Glebe. Now, we do not know if she deliberately avoided
30 that in order to give Ms Alberici and the ABC sole access
31 at Glebe, but it certainly does suggest that that's
32 a possibility.
33

34 In any case, she informed Mr Willing and Ms Wells at
35 about midday that it was too late for the media pack.
36 That's what generated the bland media release to go out,
37 because something had to be said on behalf of the police.
38 She says she missed the media pack so, therefore, the media
39 release goes out.
40

41 What we do, in fact, know was she was recorded at
42 Glebe by the ABC and she, at that point, did not tell the
43 Media Unit or Mr Willing that. She told them the opposite.
44

45 Now, the media release - and Mr Willing was asked this
46 and gave this evidence - would have been sent to her by
47 email. Of course it would. She's the point person. And

1 it would have reached her phone. So the media release goes
2 out. She would clearly have seen it. It's the only
3 logical inference, that she would have read it. She would
4 have known it was coming, in any case, because it was
5 obvious that without the media pack door-stop, the release
6 would have to go out. And then she reads the release, as
7 one would expect, but now she knows that she had to tell
8 the police about the door-stop with Ms Alberici. She had
9 to. Because if what was ascertained, which it would have
10 been inevitably by Police Media, for example, by watching
11 the 7pm news, which, of course, they would - this is the
12 organisation with whom they engage in backgrounding, they
13 would cover all the commentary, of course, they would watch
14 all the programs - they would see on the 7pm news, or
15 a promotion for it, that Pamela Young had given an
16 exclusive interview to Emma Alberici at Glebe, and they
17 would think, "Well, hang on, she hasn't told us that; she's
18 told us the opposite. She's told us there was no media and
19 we're seeing this at 7pm on the news." And now the people
20 will be thinking, "What's going on here? Why has she told
21 us that?". Then the 7pm news is saying there's an
22 exclusive on Lateline and now there's a reason to be
23 suspicious.

24
25 THE COMMISSIONER: And does anyone make contact with her?

26
27 MR THANGARAJ: She makes contact with Mr Willing.

28
29 THE COMMISSIONER: And does anybody raise with her --

30
31 MR THANGARAJ: Could I just finish the point, just to make
32 the point?

33
34 THE COMMISSIONER: Sure.

35
36 MR THANGARAJ: She pre-empts the problem, so it's not for
37 anyone - the first time that anyone would have seen, would
38 have known, but for her phone call at 5pm would have been
39 later, would have been 7pm. So at that point there's no
40 reason for anyone to have a problem with her, there's no
41 reason for anyone to call her and say - because no-one
42 knows about Emma Alberici at Glebe.

43
44 So at 5pm, she has received the media release on her
45 phone. She knows that it's going to come out that, in
46 fact, contrary to what she has told the police, she has
47 been interviewed, she has given a recorded interview with

1 Emma Alberici at Glebe. That is a fact. We have the
2 transcript. We know it happened. But it is a fact that
3 that would have been exposed. It would have been exposed
4 at the latest at 7pm.

5
6 So, what does she do? She does two things. She has
7 a text message exchange with Mr Willing and Ms Wells.
8 She's talking about Glebe and she's clearly talking about
9 Glebe because she's talking about Penny Brown's hair and
10 lipstick. That is clearly a reference to the Glebe
11 door-stop with Emma Alberici.

12
13 Then she rings Mr Willing. She has to tell him, "I've
14 done a door-stop at Glebe with Emma Alberici" or "the ABC."
15 She has to tell him that. That's why she emails herself --

16
17 THE COMMISSIONER: That's why I put to you a little
18 earlier your case theory must involve her taking an
19 extraordinary risk - in other words, if she is deliberately
20 downplaying the significance of what she has done and, in
21 fact, indeed what she has done, but it's going to air that
22 night, her deception is going to last two and a half hours
23 at most. Then, if I may finish, everybody knows that what
24 she has been saying is a deliberate lie.

25
26 MR THANGARAJ: Yes.

27
28 THE COMMISSIONER: Correct. So, therefore, your theory
29 must be she's gone rogue, she's irrational, and she must be
30 doing what she thought she had no authority to do, there's
31 an interview going on that evening, the court has sat that
32 day and ordered a third inquest, and, what, she has just
33 taken a lid off the hand grenade, according to you?

34
35 MR THANGARAJ: Well --

36
37 THE COMMISSIONER: No, because, how else, if you're right -
38 and you're putting the submissions to me that she was being
39 deceptive and that she was telling him things that were not
40 true - it was all going to come out in the wash in about
41 two and a half to three hours later. So what is it that
42 she is doing? Is she self-destructing? There's no point
43 just leading up to this tantalisingly by saying that she'd
44 contrived this whole exercise, accepting that for the
45 moment: it's all going to come out in about two or three
46 hours because everyone is being invited, on the ABC, to
47 watch Lateline because it's an exclusive interview. So

1 she's either betting on the fact that nobody in the Police
2 Force really is going to have a problem with what she has
3 said, or she has just gone rogue.
4

5 MR THANGARAJ: I do need to lead into this briefly to get
6 into that answer. She had been engaging in deliberately
7 deceptive conduct, flouting police rules, for months,
8 leading into this moment, the interview. There is a reason
9 why she was being secretive.
10

11 So what her objective was wasn't to do this under the
12 radar; her objective was to publicly air her grievances -
13 the Police Minister and the Johnson family. Her objective
14 was to make sure the broadcast went to air, which she
15 achieved.
16

17 Now, the consequences: one, she may have believed
18 that she would get support from the very top of the police,
19 because that's what it would have taken to save her, it
20 wasn't going to be up to Mr Willing; or, two, she had lost
21 such objectivity that she didn't care about the
22 consequences. She went off sick. It's not like she was at
23 the beginning of her career, that she has ambitions to be
24 the Commissioner. The point is, everything she did was
25 going to come out eventually. She wasn't trying to hide
26 anything - until the broadcast went to air. Then, as far
27 as she's concerned, she's won and the Johnson family has
28 lost.
29

30 We know how much she had lost objectivity. She was
31 prepared to continually lie to her superiors --
32

33 THE COMMISSIONER: Sorry, when you say "lost objectivity",
34 what --
35

36 MR THANGARAJ: By being focused solely on suicide. So she
37 had lied to her superiors within the Police Force for
38 months.
39

40 THE COMMISSIONER: So a suicide theory in and of itself
41 was a loss of objectivity, was it, in your view, in your
42 submission?
43

44 MR THANGARAJ: No, at the very end --
45

46 THE COMMISSIONER: No, not at the very end. Why had she
47 lost objectivity only at the end when everybody within the

1 Police Force, as far as I'm aware up to that point, whilst
2 they flirted with other possibilities - Mr Willing hadn't
3 put in the spadework that she'd put in nor had he spoken,
4 no doubt, to all of the witnesses she had spoken to.
5
6 MR THANGARAJ: Yes.
7
8 THE COMMISSIONER: He must have deferred to her views.
9
10 MR THANGARAJ: Yes.
11
12 THE COMMISSIONER: So I don't understand why you say she
13 lost objectivity as to the suicide theory, and in fact, the
14 police, as you rightly pointed out this morning, and
15 others, put to the to Coroner, Mr Barnes, that suicide was
16 open. So why was that a loss of objectivity that she was
17 adhering to the suicide theory?
18
19 MR THANGARAJ: I'm accepting Counsel Assisting's
20 submissions that by --
21
22 THE COMMISSIONER: No, I'm asking you about your
23 submissions.
24
25 MR THANGARAJ: She wasn't being as open-minded as the
26 submissions being put on behalf of the Commissioner were in
27 relation to the finding. She said to Emma Alberici,
28 "I would be leaning more to a positive finding of suicide."
29 So that's why I say she was discounting by that stage other
30 available options. But that's not what I'm trying to --
31
32 THE COMMISSIONER: And that's not inconsistent with what
33 the police put to Mr Barnes either.
34
35 MR THANGARAJ: No, they wanted - well, they said it should
36 be an open finding.
37
38 THE COMMISSIONER: Yes, but --
39
40 MR THANGARAJ: In any case, the point is, to go back to
41 what Ms Young was trying to achieve, she goes off sick at
42 the end of --
43
44 THE COMMISSIONER: Yes, but leaving the sickness --
45
46 MR THANGARAJ: No, but that may be very relevant because
47 if she thinks --

1
2 THE COMMISSIONER: Is it your case that she then went
3 rogue and was irrational? Is that your case, and is it
4 supported by the fact that she went off sick? I'm trying
5 to understand what you want --
6
7 MR THANGARAJ: Commissioner, I don't have to have a case.
8
9 THE COMMISSIONER: No, you don't. You're absolutely
10 right. You don't. That is fair.
11
12 MR THANGARAJ: I can only go by inferences capable of
13 being drawn --
14
15 THE COMMISSIONER: But you can assist me by submitting
16 what you think are the plausible scenarios factually and --
17
18 MR THANGARAJ: Yes, so --
19
20 THE COMMISSIONER: If I may.
21
22 MR THANGARAJ: Sorry.
23
24 THE COMMISSIONER: -- from which you would ask me to draw
25 inferences in favour of your client.
26
27 MR THANGARAJ: Yes. And so she engages in this concealed
28 operation for some months. She provides a statement to
29 Emma Alberici well before she had authority to do it. She
30 promised an exclusive interview, which she had no authority
31 to do. She agrees to be recorded on the 10th for something
32 to be used in a promotional program, which she had no
33 authority to do. So we know that, whatever her reasoning
34 was, and I don't have to put a theory as to why she was
35 prepared to do this, but she was prepared to do these
36 things for which she had no authority. We know that.
37
38 Now, whether it's because she thought she would have
39 support from the Commissioner and the Deputy Commissioner
40 or whether she was going to go off sick anyway so she
41 didn't care about the rest of her career, because she was
42 leaving in any case, we don't know.
43
44 It is an available inference that she was acting
45 irrationally. It certainly is. That may explain her
46 deception and her recruiting of Ms Brown.
47

1 THE COMMISSIONER: But you don't suggest Ms Brown was
2 behaving irrationally?
3
4 MR THANGARAJ: I don't know have - I don't anything about
5 Ms Brown. All I know is that she --
6
7 THE COMMISSIONER: But no, I'm sorry, you have implicated
8 Ms Brown in what you said was a state of deception.
9
10 MR THANGARAJ: Yes.
11
12 THE COMMISSIONER: Now you're saying that you don't want
13 to say anything about Ms Brown.
14
15 MR THANGARAJ: No, I'm saying I can't say that it was
16 irrational of her. I don't have any insight into --
17
18 THE COMMISSIONER: What, she was just overborne by
19 Ms Young, was she?
20
21 MR THANGARAJ: I don't have any insight into that
22 relationship.
23
24 THE COMMISSIONER: Well, then, why would you then suggest
25 that Ms Brown was privy to this event if you have no
26 insight into it at all? You can't be afraid to strike but
27 anxious to wound.
28
29 MR THANGARAJ: No, not at all. She was there on the 10th.
30
31 THE COMMISSIONER: I'm not trying to gird your loins, I'm
32 just trying to understand what you're saying.
33
34 MR THANGARAJ: She was there on the 10th. She provided
35 a copy - she prepared an envelope with the 440-odd
36 page statement for provision to Ms Alberici. She must have
37 known that she wasn't allowed to do that. That's the
38 inference I'm seeking. The fact is, she's going there on
39 the 10th, she's there on the 13th, and the irresistible
40 inference is that she was doing with Ms Young, for whatever
41 reason, what Ms Young was doing.
42
43 Now, Ms Brown had obligations to report back to Media
44 about interviews. And so she failed to do that. I'm not
45 prepared to put it any - I can't ascribe a motivation.
46 I don't know whether it was because her boss was wanting
47 her or encouraging her to do it or because she genuinely

1 believed everything - I don't know. I don't propose to
2 know. But I do know that she did engage in a deliberate
3 concealment from police. I can put that confidently.
4

5 So, going back to the 5pm phone call, Ms Young has
6 told Police Media and Mr Willing that she has not spoken to
7 the media at Glebe. At that point in time, that was
8 probably true, because she hadn't yet spoken to
9 Ms Alberici.

10
11 The media pack's gone. She speaks to Ms Alberici,
12 which is an exclusive; because everyone else has gone, it
13 is an exclusive. And not all of that door-stop is played
14 on the 7pm news.

15
16 What she really wants is she doesn't want something to
17 happen from Police Media to the ABC where they pull the
18 interview from being broadcast. It's in the can, but it
19 doesn't mean it can't be pulled at the last minute. It's
20 happened plenty of times if there's a controversy and it
21 might have to be played the next day. She doesn't risk
22 anything. So she knows, "Well, I have spoken to Emma
23 Alberici, it's going to be on the 7 o'clock news. I've got
24 to give the heads up to the police, otherwise they are
25 going to watch the 7pm news and say, 'Hang on, she told us
26 she didn't speak to any media at Glebe.'"
27

28 So she rings Mr Willing. She tells him, "I've had
29 a recorded interview with Ms Alberici". The one she has
30 had is Glebe, and she has to put on the record that that's
31 exactly what she did. That's why she emails herself the
32 text messages that she sent to Ms Wells and Mr Willing
33 about Glebe, and it is about Glebe because, and she is
34 making it clear - Penny's hairstyle and the lipstick. That
35 might have been deliberate. But in any case, it's putting
36 on the record, "I did tell them about the door-stop."
37

38 Then, because the last thing she wants is anyone to
39 know about what she had been planning for months, that she
40 was going to say in a broadcast to the public, "The Police
41 Minister is acting inappropriately and the Johnson family
42 has acted inappropriately" - and she achieved that. It
43 would have undermined everything she had sought to achieve
44 if she'd told anyone at police in advance that she had
45 conducted a studio interview. That's the evidence.
46

47 Mr Willing has not misled the Commission and his

1 evidence is supported by Ms Wells.
2

3 Paragraph 444 of Counsel Assisting's submissions is
4 telling. What Ms Wells thought would be on Lateline is not
5 unclear, as is suggested in the submissions, and it's far
6 from unclear as to whether we need to, in relation to can
7 we work out whether or not Mr Willing has lied - it's not
8 a need for a precise clarity of exactly the words in her
9 mind. It's also about what she did believe generally and
10 what she knew wasn't going to happen in her mind.
11

12 What she believed was that there would be snippets or
13 quick grabs. And Counsel Assisting's submissions leave out
14 two very important things of what she told Ashurst.
15 Firstly, she thought it would be in line with the media
16 release - that's what she told Ashurst. That's not in
17 Counsel Assisting's submissions - and she also did not
18 believe that Ms Young had participated in a studio
19 interview. That's why the interview left her speechless.
20 That's what she told Ashurst, and all of her information
21 has come from Mr Willing's phone call. He has done exactly
22 the right thing. He has told Media.
23

24 Now, if we're looking at things that should or
25 shouldn't have happened, the criticism that is being put to
26 him in relation to Ms Young and the interview: why did he
27 ring Ms Wells to generate the standard Media response,
28 Media Unit response? She sends the email, she makes
29 a record, she tells the relevant people.
30

31 But what she told Ashurst is exactly what Mr Willing
32 believed - snippets or a quick grab consistent with a Glebe
33 door-stop, and their reactions are the same. She is
34 speechless; he is shocked and angry.
35

36 So what is omitted from Counsel Assisting's
37 submissions are that Ms Wells expected Ms Young to have
38 said things along the media release. That was an important
39 understanding that she expressed, entirely consistent with
40 the authorised door-stop, entirely consistent with her
41 authority. And what it meant was that that 5 o'clock phone
42 call, no-one had a reason to have a problem with it.
43

44 What was also missing from Counsel Assisting's
45 submissions is Ms Wells told Ashurst that she did not
46 expect a studio interview. That is not what she understood
47 from what Mr Willing told her, because that's not what he

1 understood. What Ms Wells told Ashurst is entirely
2 inconsistent with the serious allegations made in Counsel
3 Assisting's submissions about what Mr Willing understood
4 from the 5pm phone call.

5
6 Now, the messages between Ms Fiore and Mr Doyle at the
7 ABC suggest that the plan was for Ms Young to arrive at the
8 ABC at around 5pm for the interview, and emails are being
9 exchanged between ABC staff up to 4.16pm regarding parking
10 for Ms Young, so obviously she hadn't arrived by then.

11
12 Ms Young would have had to park, enter the building,
13 meet relevant staff, go to make-up and presumably have
14 a final discussion with Ms Alberici, then the interview
15 could be recorded, and then, after that, whatever
16 formalities have to happen before Ms Young then gets back
17 into her car and makes a call.

18
19 When you look at all of that evidence, it is more
20 likely that the call described as the 5pm phone call in
21 Counsel Assisting's submissions took place before Ms Young
22 arrived at the ABC studios. Certainly couldn't be
23 discounted. But that is, in fact, the more likely
24 scenario. She could not have completed the 5pm studio
25 interview in such time to make a call around 5pm. And
26 that's why - another reason why - the recorded interview
27 that she tells Mr Willing she has engaged in is the Glebe
28 door-stop interview, which is recorded and which is played.

29
30 THE COMMISSIONER: But is it a matter of judicial notice
31 that it couldn't have been done before then? Why isn't it
32 open that it could have been done?

33
34 MR THANGARAJ: I'm just relying on the evidence; I'm
35 relying on the evidence before the court as to when the
36 interview was planned and --

37
38 THE COMMISSIONER: But the phone call - Mr Willing seems
39 to accept, he says, as I understand it, that he understood
40 what was being talked about there was the door-stop,
41 nothing else.

42
43 MR THANGARAJ: Yes.

44
45 THE COMMISSIONER: Okay. But your assumption, though,
46 is that, what, quickly, rapidly, after 5pm, but before 7pm,
47 an interview is concluded and, as it were, filmed for the

1 purpose of being on Lateline and in time to tell
2 Ms Phillips to announce on the 7 o'clock news?

3
4 MR THANGARAJ: It doesn't have to be quickly. That's the
5 timing. She's on the way to the ABC. She's on the way to
6 the ABC, she rings Mr Willing, then she does the interview.
7 I don't know - just because it's announced on the 7pm news,
8 it doesn't mean that the editing or the interview is
9 finished. All it means is it's likely she has been
10 interviewed. I accept that she was being interviewed.

11
12 THE COMMISSIONER: As a matter of practical reality,
13 I would think most television programs wouldn't announce
14 something was going to happen unless it was at at least
15 a very advanced stage.

16
17 MR THANGARAJ: I completely accept that.

18
19 THE COMMISSIONER: They don't play games at the ABC in the
20 sense that I don't think they would be announcing an
21 interview on the 7 o'clock news if it were not thought that
22 it was in the can and all ready to be shown.

23
24 MR THANGARAJ: I'm agreeing with that. So I'm saying
25 she's on her way to the ABC, she's making the phone call to
26 Mr Willing, she tells him about the door-stop. She doesn't
27 tell him that she's going in for a studio interview. She
28 then arrives at the ABC as planned, conducts the interview
29 as planned, by 7pm they've got the recording done.

30
31 THE COMMISSIONER: But you're also assuming, aren't you,
32 that on a prior occasion when she speaks with Ms Alberici
33 some filming hasn't occurred then?

34
35 MR THANGARAJ: We know that the interview on the 10th,
36 what was supposed to be a backgrounding interview, was
37 recorded.

38
39 THE COMMISSIONER: Yes. How do you know what the content
40 of that was?

41
42 MR THANGARAJ: We know the content because we have the
43 transcript.

44
45 THE COMMISSIONER: Yes, okay.

46
47 MR THANGARAJ: Whether it was video-recorded, I don't

1 know. I don't know if there's evidence about that, but --

2

3 THE COMMISSIONER: There are summonses that have been
4 issued. You'll find out about that in due course. But
5 whatever material has been procured is in the tender
6 bundle, as I understand it.

7

8 MR THANGARAJ: What we know is that the Police Media had
9 been told backgrounding strategy - sorry, backgrounding
10 interviews with The Australian and the ABC on the 10th.
11 They heard that The Australian one went well. They hadn't
12 heard anything back in relation to the 10th. No problems
13 have emanated.

14

15 Then she goes in on the 13th, we say after the phone
16 call with Mr Willing, and then conducts the interview. The
17 timing works perfectly. It is consistent with the ABC
18 emails and communications, consistent with it coming after
19 the 5pm phone call, it's completed before 7pm for the news
20 to have the confidence to say it's going to be on Lateline,
21 and it goes ahead. It's not something that we need to
22 contrive with the times.

23

24 THE COMMISSIONER: No.

25

26 MR THANGARAJ: That's the evidence.

27

28 THE COMMISSIONER: I understand.

29

30 MR THANGARAJ: So that is the position that we say the
31 evidence demonstrates, and the dot point notes are
32 described by Mr Gray in Counsel Assisting's submissions at
33 451 as being a believable account because they're
34 contemporaneous.

35

36 Now, some of the things that are said there are, by
37 Mr Willing, she had recorded an interview with the ABC and
38 that her interview, along with the interviews with Steve
39 Johnson and Dan Box would feature on that night's Lateline
40 program, which suggest that the format of those interviews
41 were the same. And they were, in the sense of they were
42 all at Glebe. And he knew by that time, he knew by after
43 the 2.15 email, that Mr Johnson had been interviewed. He's
44 then told at 5pm about the door-stop at Glebe and they are
45 the same format, outside court. That's why he describes it
46 in that way to Ashurst.

47

1 The interview with Mr Johnson which featured was from
2 Glebe, as I said, and Lateline is a program that does
3 feature, we know in this case, this particular broadcast,
4 they do have clips from other things to set the scene for
5 whatever the feature is.
6

7 And what Mr Willing also tells Ashurst is he assumed
8 at that time that the Lateline interview was the original
9 backgrounding discussion, that is, it was certainly not
10 a studio interview, and it's also clear from the notes that
11 Ms Young did not suggest that Mr Willing's expressed views
12 had changed or that he knew about the studio interview in
13 advance.
14

15 This came up in cross-examination when Mr Gray took
16 him to some of this material and he said, "But I also did
17 say 'a stand-up interview at best'", because that's in the
18 material.
19

20 So the dot points support Mr Willing's evidence. As
21 I said, he also told Ashurst that he assumed it would be
22 a door-stop or just the material from the background made
23 into a story, at most, a stand-up type interview, and it's
24 never been suggested to Mr Willing that he lied to Ashurst,
25 for example, or that his notes were contrived. They're
26 contemporaneous material. He clearly did his best and told
27 the truth to Ashurst. He clearly did his best with his
28 notes, as did Ms Wells.
29

30 Mr Willing's dot point summary is consistent with the
31 6.18 email from Ms Wells, noted at Counsel Assisting's
32 submissions at 453, that both Ms Young and Mr Johnson had
33 been interviewed on camera and would appear on Lateline.
34 Both of them had been interviewed at Glebe, she had
35 authority to speak at Glebe.
36

37 By 6.18pm she had no authority to participate in a
38 studio interview, she had no authority to do anything more
39 on the record than the bland media release had said, as she
40 had been authorised to provide, and yet no-one in the
41 Police Media Unit had any idea that she'd be giving
42 a studio interview and that's why Ms Wells described her
43 reaction as being speechless. That information came from
44 Mr Willing.
45

46 So in the submissions of Counsel Assisting at 454,
47 it's actually submitted that Ms Wells must have understood

1 that the interview was not a door-stop. That's the
2 submission that the Commission is being asked to accept.
3 But that's inconsistent with the evidence, inconsistent
4 with telling Ashurst - sorry, this is repetitive but I need
5 to make the point - inconsistent with what she told Ashurst
6 about snippets and quick grabs in line with the media
7 release, inconsistent with her belief that it would not be
8 a studio interview and the fact that she was not troubled,
9 given the media strategy, about a bland acknowledgment.
10 That's why she was speechless. What she told Ashurst must
11 be accepted as truthful. It hasn't been suggested --

12
13 THE COMMISSIONER: Surely, though, the "speechless" must
14 be directed to the context, rather than being --

15
16 MR THANGARAJ: Oh, yes, I accept that. No, I definitely
17 accept that.

18
19 THE COMMISSIONER: I mean, this is playing with words.
20 Whether it was door-stop or a recorded interview, what
21 everybody knew was that Young was on the television, and
22 even had she at the door-stop said what she said later, or
23 in the interview, it, no doubt, would have left Ms Wells,
24 according to her, speechless.

25
26 MR THANGARAJ: That's right. But the point is, what she
27 understood was --

28
29 THE COMMISSIONER: Why does it matter what she understood?

30
31 MR THANGARAJ: Because it has come from Mr Willing.

32
33 THE COMMISSIONER: Maybe, but isn't that a bit of
34 a furphy, because it's not really a question of her not
35 going on television. This point about door-stop as opposed
36 to Lateline is what sometimes is called in the Equity
37 Division a pleading point, isn't it, because it's really
38 not a question of how or, rather, the precise format; it's
39 rather a question of what she says when she goes on, and it
40 doesn't matter - she could have said exactly the same
41 things at a door-stop, or am I to take judicial notice that
42 a door-stop is, "My name is DCI Pamela Young. I reside at
43 so-and-so street and I've been investigating this thing and
44 I think the most likely thing is suicide"? I mean, really?

45
46 MR THANGARAJ: Whether it's a door-stop at Glebe or on
47 Lateline is a massive difference.

1
2 THE COMMISSIONER: Why?
3
4 MR THANGARAJ: Because if what Mr Willing was told --
5
6 THE COMMISSIONER: But where is the evidence of why it
7 would be a massive difference?
8
9 MR THANGARAJ: Because --
10
11 THE COMMISSIONER: Please let me finish.
12
13 MR THANGARAJ: Sorry.
14
15 THE COMMISSIONER: Why isn't the content of what she says
16 the real issue?
17
18 MR THANGARAJ: The content of what she said is very
19 important.
20
21 THE COMMISSIONER: No, it's not important, it's the only
22 thing that's relevant, because she could be parking her car
23 in the street and somebody puts a microphone in the window
24 and she says, "Well, I think the Johnson family have jumped
25 the queue here and I think it's absolutely outrageous and,
26 by the way, the politicians are kowtowing to these people."
27 Content is what's important. In other words, am I meant to
28 infer from your characterisation that "door-stop" means
29 trivial or superficial or something like that, whereas
30 a recorded interview is something more in depth? Is that
31 the distinction you want me to draw?
32
33 MR THANGARAJ: No.
34
35 THE COMMISSIONER: Okay, good, thank you.
36
37 MR THANGARAJ: The distinction is - I need to address
38 this, Commissioner. There are a number of issues.
39 Firstly, if it's irrelevant as to whether it was
40 a door-stop that he was told about or a studio interview,
41 that means the Commission does not need to determine for
42 itself a finding of fact as to what Mr Willing believed
43 after receiving the 5 o'clock phone call.
44
45 THE COMMISSIONER: No, it doesn't mean that at all.
46
47 MR THANGARAJ: Okay, but there is a massive difference

1 between whether it's Glebe or Lateline, a studio interview.
2 Can I make the submission as to why. What was authorised
3 at Glebe was a bland media release type door-stop.

4
5 THE COMMISSIONER: The content of which was left to her.

6
7 MR THANGARAJ: Yes, meaning the precise words.

8
9 THE COMMISSIONER: Yes.

10
11 MR THANGARAJ: But the topics were clear.

12
13 THE COMMISSIONER: Sure.

14
15 MR THANGARAJ: All she could do was welcome the inquest.
16 All she could do was say things in line with a very bland,
17 completely anodyne media release.

18
19 THE COMMISSIONER: Yes.

20
21 MR THANGARAJ: So if police were on notice about that,
22 it's irrelevant.

23
24 THE COMMISSIONER: Why couldn't that be done in a recorded
25 interview?

26
27 MR THANGARAJ: Well, she could have. But the point is
28 that she had no authority --

29
30 THE COMMISSIONER: But, for example, they wanted her in a
31 studio setting. Why? Because Johnson was being
32 interviewed in a studio, they wanted like for like.

33
34 MR THANGARAJ: No, he wasn't interviewed in a studio.

35
36 THE COMMISSIONER: All right. If he wasn't, it doesn't
37 matter, but --

38
39 MR THANGARAJ: But the "like for like" is the format at
40 Glebe. That is the "like for like". The "like for like"
41 was both of them being interviewed at Glebe outside court.

42
43 THE COMMISSIONER: But, Mr Thangaraj, what you're now
44 putting to me is nothing of what Mr Willing said. He
45 simply says, no more no less, than he thought it was going
46 to be a background and, by inference, in accordance with or
47 consistent with the media package.

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MR THANGARAJ: Yes.

THE COMMISSIONER: All right. Do you need to say any more than that?

MR THANGARAJ: To respond to Counsel Assisting's submissions I have to, because the 5pm --

THE COMMISSIONER: I'm not suggesting that that's the only thing that can be said about it, but that is your point, though: that he should be believed when he says he thought it was a background and, therefore, consistent with that, a benign, fairly dreary description of events, perhaps historical, and a welcoming of the third inquest and no more.

MR THANGARAJ: Yes. So the point is at 5pm he had no reason to believe that there was a problem. What he believed was what Georgie Wells told Ashurst as well, that --

THE COMMISSIONER: And this crack media group at the Police Force, would they know the difference between something which was a door-stop, a Lateline featured exclusive interview and something else? Do I assume that nobody in the media department, leaving aside what Wells says, she said she was speechless when she saw the content, but everyone seems to be, what, moving on the basis that it's always going to be benign, and an exclusive interview, and what she was telling people, didn't cause anyone to be concerned or interested?

MR THANGARAJ: No, so the difference, in this case, is she had authority to give a particular type of door-stop.

THE COMMISSIONER: Mmm.

MR THANGARAJ: She had no authority to give an on-the-record interview.

THE COMMISSIONER: Yes.

MR THANGARAJ: Because, at a door-stop, with a difficult question, you could walk away. A studio interview, you're sitting there answering questions. Now, the real problem, however, is that she had authority for one and she

1 concealed the fact that she was doing the other. She had
2 no authority to be interviewed on air - sorry, in the
3 studio. That's why the understanding of Mr Willing and
4 Ms Wells at 5 o'clock, between 5 and 6.18, is so important.
5 They had no reason, up to 5pm, to distrust her or be
6 suspicious - none - that she would actually do what she
7 did, which was so unacceptable.

8
9 And at that point, they understood there'd be footage
10 from Glebe, a door-stop interview, which they didn't have
11 any problem with because it would be anodyne, it would
12 normally be part of any story. Of course, there's going to
13 be a story - the real story, as the Media Unit understood
14 it, that the ABC was covering, was the fact that there had
15 been a third inquest announced. That's the way that the
16 ABC's 7pm news led the story. It was, "There's a major
17 announcement. There's going to be a third inquest." That
18 was the story. They didn't say, "There's a major story.
19 The chief investigator believes the Police Minister" -
20 et cetera. That's not how they led the 7pm news. They led
21 it as the major story being the fact of the third inquest.

22
23 So the Police Media Unit sees that, okay, there's
24 going to be an exclusive view with the investigator. Well,
25 there was, because she's spoken only to Emma Alberici
26 because she waited for the media pack to go, and there's
27 also going to be Mr Johnson, et cetera, all in the
28 like-for-like format. And so at 7pm there's no reason to
29 have a problem either, all because of the way that Ms Young
30 had informed Ms Wells and Mr Willing about the media pack,
31 the failure to report about Emma Alberici, and then at
32 5 o'clock saying, "Okay, well, look, I actually have had
33 a recorded interview with Emma Alberici", and there's no
34 reason for that to be a problem because it's after the
35 media pack had gone.

36
37 THE COMMISSIONER: Is there any evidence that anyone in
38 the media department that evening watched the program?

39
40 MR THANGARAJ: I don't know that.

41
42 THE COMMISSIONER: Well, I'm just asking you. I don't
43 know the answer to that either.

44
45 MR THANGARAJ I don't know.

46
47 THE COMMISSIONER: Either they were all in bed or nobody

1 bothered to record it or monitor it, I suppose.

2

3 MR THANGARAJ: Well, I presume it was recorded, but - I'm
4 assuming, I don't know that, but --

5

6 THE COMMISSIONER: Well, it is pretty extraordinary that
7 this crack Media Unit that is devoted to monitoring
8 everything that happens, on one of the biggest stories ever
9 in the history of coronial inquiries in the State of New
10 South Wales - you know that the senior officer is going to
11 be interviewed, door-stop, of course, as you say, and
12 nobody sits up and watches it; everyone's sleepy at the
13 time? It's extraordinary, isn't it? And the reaction the
14 next day is not, "Gee, I've watched it now and I'm
15 absolutely gobsmacked that she's so far out of the ballpark
16 in terms of her authority to deal with this."

17

18 MR THANGARAJ: If I could just deal with the first part
19 and, like I said, they are not my client, I don't need to,
20 but the story was something that everyone knew: there is
21 a third inquest. There is a reason to think --

22

23 THE COMMISSIONER: Media departments generally are
24 employed to do nothing but monitor the media.

25

26 MR THANGARAJ: I agree. I completely agree with that.

27

28 THE COMMISSIONER: Okay, all right.

29

30 MR THANGARAJ: I'm embracing that, because I'm saying they
31 would have twigged at 7pm, or there is a risk they would
32 have twigged at 7pm, that, in fact, Ms Young had spoken to
33 the ABC already at Glebe. So that's part of what I'm
34 relying on. Now, I can't answer whether they were watching
35 the program. I don't know that.

36

37 What we do say is the submissions put by Counsel
38 Assisting in 454 that Ms Wells must have understood that
39 the interview was not a door-stop - we do not understand
40 how that proposition can be put when the Commission has not
41 heard evidence from Ms Wells.

42

43 THE COMMISSIONER: I understand that. But it's not
44 a procedural fairness issue.

45

46 MR THANGARAJ: I know. No, I'm not saying that. I am
47 saying it's --

1
2 THE COMMISSIONER: You say it is not reasonably open on
3 the material that's there.
4
5 MR THANGARAJ: Yes. Given the material we do have.
6
7 THE COMMISSIONER: Now, I'm going to interrupt you.
8 What's your timing?
9
10 MR THANGARAJ: Very close to finishing.
11
12 THE COMMISSIONER: Oh, okay.
13
14 MR THANGARAJ: There is an important point to be made, but
15 we have gone past it; I'm going to put it in the written
16 submissions --
17
18 THE COMMISSIONER: No, if you want to make an important
19 point, if anyone thinks there is something important to say
20 and it is that important, then --
21
22 MR THANGARAJ: All right. This is the point, then,
23 Commissioner, in relation to - this goes back to what
24 evidence might Ms Young have given, given her relationship
25 with Mr Willing. That came from something that you raised.
26
27 THE COMMISSIONER: Yes.
28
29 MR THANGARAJ: Mr Milner makes the point, with respect
30 correctly, that she may have been hostile to Mr Willing -
31 does the Commissioner want to say something?
32
33 THE COMMISSIONER: No, I know his background, and normally
34 what he does say is worth listening to, but go on.
35 "Normally", I say.
36
37 MR THANGARAJ: He has made significant contributions, as
38 the Commissioner would expect.
39
40 It may have been that she was hostile to Mr Willing --
41
42 THE COMMISSIONER: But not hostile to the Police Force, is
43 that what you want to say?
44
45 MR THANGARAJ: No, that's not his point, it's not my
46 point. But she never suggested - notwithstanding any
47 hostility, in fact, despite having hostility, she never

1 suggested, "But you knew some or all of this."

2

3 THE COMMISSIONER: But how could she say what he knew?

4

5 MR THANGARAJ: Because she could have said, "I told you in
6 the emails".

7

8 THE COMMISSIONER: No, no, no. I am interested in what
9 Mr Willing says he was told. That is the evidence I'm
10 going to deal with. Not what she didn't or did tell him.
11 She might have given a version - Mr Milner is right, in
12 theory - she might have given a version of what she said to
13 him. But what if that was contrary to what Mr Willing says
14 she told him. I would then have to make a decision. At
15 the moment, it's a one-way street. It's a one-way street.
16 He gives evidence of what she says to him. That's the
17 evidence.

18

19 MR THANGARAJ: Just to finish that off and I won't go any
20 further than saying these two things: one, it's not
21 inconsistent with what Mr Willing has given evidence about;
22 and, secondly, it would be inconsistent with her other
23 material.

24

25 THE COMMISSIONER: What would be inconsistent?

26

27 MR THANGARAJ: Her emails and text messages to him after,
28 where she doesn't complain for one second.

29

30 THE COMMISSIONER: Yes, but, look, we've been through
31 this. Again --

32

33 MR THANGARAJ: That's the point.

34

35 THE COMMISSIONER: All right. I will say it for the last
36 time. It is a two-way street. You are correct to say that
37 I will make, and should make, my findings appropriately on
38 what he says he was told and what objective material there
39 is to corroborate or which runs contrary to that issue.

40

41 Secondly, there is plenty of authority, I can accept
42 or reject what he says happened. But that can't be
43 domestic whimsically or capriciously; it has to be done
44 judicially, I understand that.

45

46 MR THANGARAJ: Yes. In our respectful submission, all of
47 the available evidence reinforces Mr Willing's recollection

1 about the 5pm phone call. Ms Young sent a text to both him
2 and Ms Wells where she referred to the exclusive on
3 Lateline that night. There was no suggestion, however, in
4 those messages, that there would be a studio interview.
5 There was, however, a reference to hair and lipstick of
6 Ms Brown. There was never a suggestion that Ms Brown would
7 be interviewed by Lateline in any format, but clearly she
8 would be alongside Ms Young in a door-stop or walking
9 footage, and that's precisely what happened.

10
11 The Young texts to both Mr Willing and Ms Wells
12 reference Glebe and Glebe only, and even though Ms Young
13 knew that she had a studio interview prearranged, she kept
14 that secret, she did not reveal it in the text. Why would
15 she possibly reveal it for the first time in a call with
16 Mr Willing at 5pm? She did not.

17
18 At 5pm he had no problem with Ms Young at all, nor did
19 anyone in the Media Unit, and he had had a busy week in
20 relation to other multiple matters that were taking up his
21 time. He has given evidence about that in re-examination.

22
23 But not only that, when we're talking about, "What's
24 your memory of this incident, this 5 o'clock phone call",
25 which for him at that time was an anodyne phone call, it
26 can't be just forgotten that he has come from a funeral of
27 a former Commander of the Homicide Unit.

28
29 THE COMMISSIONER: Why?

30
31 MR THANGARAJ: Because that's something that is capable of
32 affecting --

33
34 THE COMMISSIONER: I'm sorry, I don't follow this. Now
35 you are asking me, what, to infer that he was so emotional
36 about the funeral he had been to that he was distracted to
37 the point, what, he didn't --

38
39 MR THANGARAJ: No, certainly not.

40
41 THE COMMISSIONER: I don't understand why you are bringing
42 the funeral into it.

43
44 MR THANGARAJ: There has been criticism that he has worked
45 out, by looking at other material, what it is, some of what
46 it is, that was said on the call. It was put in
47 cross-examination, "When have you determined this" and he

1 said, "Well, in the last month".
2
3 THE COMMISSIONER: That's on the record, though, isn't it?
4
5 MR THANGARAJ: Yes. But I'm saying --
6
7 THE COMMISSIONER: What has the funeral got to do with
8 that?
9
10 MR THANGARAJ: Because the fact that someone has come from
11 an event like that - it may be something that requires you
12 to --
13
14 THE COMMISSIONER: But you didn't lead evidence of this.
15 This is now your evidence from the Bar table. Did you lead
16 evidence from him that somehow or other he was so
17 emotionally consumed as a result of going to the funeral
18 that day that he has in some way or other misremembered
19 something or that --
20
21 MR THANGARAJ: No, no. And I'm not --
22
23 THE COMMISSIONER: Well, I don't follow what you are
24 saying.
25
26 MR THANGARAJ: I'm not putting --
27
28 THE COMMISSIONER: Is it an ad misericordiam argument of
29 some sort? I don't understand.
30
31 MR THANGARAJ: I'm not putting that. I'm just saying we
32 can't forget about the --
33
34 THE COMMISSIONER: Well, I can forget about it because
35 it's - when I say that, I don't mean to be disrespectful.
36
37 MR THANGARAJ: No, no.
38
39 THE COMMISSIONER: I don't understand what part - if you
40 can help me in understanding in terms of the mechanism of
41 working out factually what I think occurred, how does the
42 funeral come into it?
43
44 MR THANGARAJ: All right. Well, my submission is, he has
45 had a difficult day, he gets a phone call which he thinks
46 is an anodyne phone call --
47

1 THE COMMISSIONER: He is a top professional who is dealing
2 with death every day of his life. Now, he loses
3 a colleague. Other people lose family members but, you
4 know what, we have to come to work and get on with it, and
5 he is a thorough professional. I would have thought - he
6 has given the best evidence he can, but he hasn't said,
7 "Look, my mind was distracted".

8
9 MR THANGARAJ: No, I'm not --

10
11 THE COMMISSIONER: You haven't led that from him. So I'm
12 not going to infer something that you tell me from the Bar
13 table for the first time.

14
15 MR THANGARAJ: All right. Well, I wasn't trying to say
16 that it changes - anyway, I won't press it.

17
18 THE COMMISSIONER: Good.

19
20 MR THANGARAJ: What is suggested in Counsel Assisting's
21 submissions at 503 is that Mr Willing supported what
22 Ms Young said. Now, I have not found where that was put to
23 him, that he supported what it is that she in fact said --

24
25 THE COMMISSIONER: Why can't I draw that as an inference
26 from the email he tells Wells to send on the morning after
27 the interview?

28
29 MR THANGARAJ: Because the purpose of the email is
30 completely different.

31
32 THE COMMISSIONER: No, the purpose of the email might be
33 one thing. I don't have to accept his characterisation or
34 yours of that purpose. It is unequivocally - he chose the
35 words, he dictates to Wells what to write. He could easily
36 have said to those concerned, "This comes as a bolt out of
37 the blue. I am shocked and surprised that this has
38 happened." You want me to say, "No, no, it was much more
39 sophisticated than that because he had to be very easy with
40 the media and he had to sort of massage it and to see how
41 things were going." I don't quite understand what you are
42 putting. But all I can say is that if he were wishing to
43 be entirely frank, as I understand him to say otherwise,
44 that was an odd thing to write, that, "It's just there -
45 it's all there anyway." It is a very odd thing to say
46 because it wasn't all there anyway. Everyone knows that.
47 And the fact of the matter is, the pungency of some of the

1 things she said - unless he hadn't even watched it by the
2 time he sent that email - I don't know. I've got to try to
3 get to the bottom of it all. But it is a very odd thing to
4 say and not to ring her on the night before and say, "Hey,
5 wow, just between us, Pamela, this is just out of the
6 ballpark. This is not authorised. Things are not going to
7 look good for you tomorrow. What were you thinking?"

8
9 MR THANGARAJ: There are three things I need to say in
10 relation to that. Firstly --

11
12 THE COMMISSIONER: No, you come back to the first point:
13 why can't I draw an inference that the tone of that email
14 was supportive? If he is saying to those concerned,
15 "Chill. This is, in fact, all there. It's 445 pages plus
16 annexures. It's all there."

17
18 MR THANGARAJ: So to answer that question, one of the
19 things that the Commissioner has just raised as a relevant
20 issue is the email the next day. Firstly, he did not
21 dictate that email. That was written by three people in a
22 room together.

23
24 THE COMMISSIONER: With him.

25
26 MR THANGARAJ: Yes. He didn't dictate it.

27
28 THE COMMISSIONER: Oh --

29
30 MR THANGARAJ: No, but that means it's your words and
31 you're telling someone else what's going out on behalf of
32 the three people.

33
34 THE COMMISSIONER: So do I infer that he was in a corner,
35 not listening --

36
37 MR THANGARAJ: That's the opposite --

38
39 THE COMMISSIONER: Please.

40
41 MR THANGARAJ: Sorry.

42
43 THE COMMISSIONER: -- not listening to what people were
44 saying, and do I infer that he did not authorise the terms
45 of that email? Is that what you want me to find?

46
47 MR THANGARAJ: This is an email that's going back up to

1 the Commissioner.
2
3 THE COMMISSIONER: I'm asking you is your submission that
4 that was an email - - -
5
6 MR THANGARAJ: No, he was part of it.
7
8 THE COMMISSIONER: Pardon?
9
10 MR THANGARAJ: He was part of it.
11
12 THE COMMISSIONER: Yes, so he authorised it.
13
14 MR THANGARAJ: It is not a question of authority.
15
16 THE COMMISSIONER: Yes, it is. He is sanctifying the
17 terms of that email. Was he the most senior person in the
18 room?
19
20 MR THANGARAJ: From a media perspective, no.
21
22 THE COMMISSIONER: Was he the most senior police officer
23 in the room?
24
25 MR THANGARAJ: I think he was.
26
27 THE COMMISSIONER: All right. So, therefore, the
28 terminology was out of his control, was it?
29
30 MR THANGARAJ: If this is about a media release, it is out
31 of his control.
32
33 THE COMMISSIONER: Was the terminology out of his control?
34
35 MR THANGARAJ: Yes, because it is a media release.
36
37 THE COMMISSIONER: I see. So he was passive, and Georgie
38 just typed it and Willing just had to say, "Whatever you
39 think, media guides."
40
41 MR THANGARAJ: No. The ultimate decision on what goes out
42 in a media release is not his; it is the head of Public
43 Affairs.
44
45 THE COMMISSIONER: That was a view expressed, though,
46 which was indicated from Wells, that she was, in effect,
47 conveying to those who received that, that Mr Willing was

1 privy to what she was saying, surely, and what she was
2 saying, with his being privy to it, was that, "Look,
3 chill", in effect, "It's all in her statement". Not
4 "I didn't authorise this", or "This is outrageous", or
5 "Some of it's in the statement", "Bits of it are in the
6 statement." "It's all in there, it's in the statement.
7 It's all what she's been saying." Why isn't that
8 supportive?
9

10 MR THANGARAJ: Because --

11
12 THE COMMISSIONER: Given the message that clearly Ms Young
13 conveyed in the interview, which is unmistakable in a
14 couple of obvious respects, why can't I draw the inference
15 that that email was supportive in tone and in terms?
16

17 MR THANGARAJ: How someone reacts to something that is now
18 too late to stop --

19
20 THE COMMISSIONER: Oh, really.

21
22 MR THANGARAJ: -- is very different to doing something in
23 advance.

24
25 THE COMMISSIONER: Okay, all right, thank you. So it was
26 too late to do anything about it, so he went along with it?
27

28 MR THANGARAJ: No, but just because they're trying to
29 massage something from a corporate perspective --

30
31 THE COMMISSIONER: Okay, so it is a massage meaning
32 economical with the truth? What is it?
33

34 MR THANGARAJ: No, it means trying to put the best spin,
35 to use the media term.
36

37 THE COMMISSIONER: All right. So it was not his true
38 views, he was participating in something which was part of
39 a massaging exercise to, what, preserve the reputation of
40 the force?
41

42 MR THANGARAJ: Well, that's what media people are employed
43 to do.
44

45 THE COMMISSIONER: Yes, I know that's what media people do
46 if they are doing it on their own. But if Mr Willing was
47 in the room, I would have expected that if anything was

1 going from his computer to others which he didn't think was
2 accurate or truthful or fair, he wouldn't allow it to go.
3 Is that a fair inference to draw, given the man of
4 integrity that you tell me he is?

5
6 MR THANGARAJ: I accept that.

7
8 THE COMMISSIONER: All right. So, therefore, let's go
9 back to it. It can obviously be characterised as
10 supportive of Ms Young, clearly.

11
12 MR THANGARAJ: Sometimes when you are dealing with
13 a crisis, you just have to deal with the crisis. If you
14 are worried about branding, it doesn't --

15
16 THE COMMISSIONER: No, look, I'm not going to expect
17 a direct answer because - perhaps I won't get one. I will
18 make it clear. I think it is open to me to form a view,
19 reasonably, that that, in all of the circumstances, was in
20 tone and in terms supportive of Ms Young.

21
22 You can deal with that, if you wish, in your written
23 submission and tell me why that is not open as a reasonable
24 inference on tone and terms.

25
26 MR THANGARAJ: Yes. Part of what was generating this
27 response was the way that Ms Young was. Now, it's clear on
28 the evidence that she was inconsolable, she was distressed
29 that the organisation wasn't backing her to the hilt. She
30 sent a text message, after repeated phone calls from
31 Mr Willing that she refused to answer. She sent a text to
32 him and Mr Finch, so it wasn't just to him, complaining
33 that the organisation wasn't supporting her. She
34 ultimately goes off sick. She doesn't participate in the
35 part 8A investigation. And so he has got to deal with her
36 on the one hand, whatever the Commissioner ultimately
37 wants. A media release is not going to be drafted in a way
38 that is inconsistent with what the Commissioner wants or
39 inconsistent with what the Media Unit suggest - that's
40 their job - unless the Commissioner overrules it. So there
41 is no point putting something in a media release that is
42 not going to go through. The question is, how do we deal
43 with this crisis? We've got a crisis, how do we deal with
44 it? That's the solution. We can worry about ramifications
45 and we can worry about personal views later. The point is,
46 we've got to do a job now, and that's what was needed.

47

1 But he also had another job. He's got a pastoral care
2 responsibility of Ms Young. So he says - the dot point
3 notes are far more extensive than are quoted in Counsel
4 Assisting's submissions, and he gave some evidence about
5 this in re-examination, but it's all there in the
6 materials. He's trying to ring her countless times. He's
7 finally got her when she engages with him by sending a text
8 to him and Mr Finch. So now he's got her, so now he can
9 actually try to make her feel a bit better. She's a member
10 of his team. Whether she's done the right thing or not
11 doesn't matter from a perspective of someone's mental
12 health and their wellbeing and, "What are we going to do
13 now?" So she doesn't like the word, "inopportune", he
14 says, "Okay, I will fight for you with head office", and he
15 is the one that then has to say, "I haven't been able to do
16 that." Of course he's going to be supportive. He should
17 be supportive.

18
19 That doesn't mean you are agreeing with a public
20 criticism of the Police Minister or a public excoriation of
21 the Johnson family, or that this is the time to talk about
22 queue jumping through money. That's not the time for any
23 of those things. At the moment, he's got an immediate
24 need. He's trying to juggle the Commissioner on one hand,
25 the Media Unit on another hand, the Johnson family, the
26 State Coroner, who he has also had to communicate with and
27 who is now ultimately, looking at - ultimately, not at this
28 point, or maybe by this point or certainly shortly after -
29 contemplating contempt of court proceedings. He's the only
30 one that has to deal with all of these things. Everyone
31 else has the luxury of just dealing with one issue.

32
33 As far as she is concerned, her reputation is at risk.
34 Everything that she should have thought about before, which
35 maybe she hadn't thought about because of irrationality or
36 otherwise, is now coming down on her, and he's the only
37 person that is in a position to help her.

38
39 And what is completely untenable is the submission at
40 Counsel Assisting's written submissions at 359, the
41 suggestion that he wanted to prevent a finding of homicide.
42 That was not put to him in cross-examination. That is
43 something that should have been, if it is to be seriously
44 suggested.

45
46 And it can't be seriously suggested that if the
47 ex-wife had come forward at any time prior to when she did,

1 that it wouldn't have been completely embraced by the
2 police and properly investigated.

3
4 Now, I only have one further topic, but I'm not going
5 to deal with it today, I'm going to deal with it in written
6 submissions unless, Commissioner, you want me to deal with
7 it orally, which is, it is our respectful submission that
8 the adverse conclusions being sought by Counsel Assisting
9 are outside the Terms of Reference.

10
11 Now, I have read the judgment of 6 December. I don't
12 propose to argue about that. But we do have issues in
13 relation to the terms. We have put them in our written
14 submissions. I am happy to leave it for the written
15 submissions or deal with it now. It's a matter for you,
16 Commissioner.

17
18 THE COMMISSIONER: No, it is a matter for you. If you
19 think your client would be assisted by oral submissions,
20 I will make arrangements for this to continue either now or
21 in half an hour's time.

22
23 MR THANGARAJ: No. Everything we want to say is in the
24 written submissions, so we are relaxed about that.

25
26 THE COMMISSIONER: And is your position, what, reserving
27 that I am in error in my earlier judgment about the Terms
28 of Reference or, as a result of my judgment, you say that
29 whatever it is you identify are outside the Terms of
30 Reference?

31
32 MR THANGARAJ: It is a bit of both. The short point in
33 relation to the Johnson matter - because they have regard
34 to really the other issues in relation to Mr Willing as
35 opposed to this one - by the time the Terms of Reference
36 were signed, there was already someone who had been charged
37 with respect to Mr Johnson, so it was no longer unsolved,
38 and nor at that time was it gay hate. So there are
39 questions whether it comes in within paragraph 1 or 2 of
40 the terms. And then --

41
42 THE COMMISSIONER: Sorry, I don't follow. You had better
43 tell me in short term: is it that because it was not
44 unsolved, anything at all to do with the Johnson matter,
45 including the Lateline issue, falls outside the Terms of
46 Reference?

1 MR THANGARAJ: Not necessarily anything at all but
2 certainly the Lateline issue.
3
4 THE COMMISSIONER: Okay. Not even on credit?
5
6 MR THANGARAJ: Well, our position is there isn't a reason
7 to not accept his credit. So that's our primary position.
8
9 THE COMMISSIONER: I understand that. But it could be
10 relevant to credit.
11
12 MR THANGARAJ: Yes.
13
14 THE COMMISSIONER: And if it is only taken into account
15 not as an issue that is as part of any consideration by me
16 as to manner and cause of the Johnson matter, but taken
17 into account on matters of credit that would be
18 appropriate, you would say it shouldn't be, and it
19 shouldn't go to his credit, but it could go to his credit?
20
21 MR THANGARAJ: Well, our position is that the inquiry into
22 the Johnson matter is outside the terms, that's the
23 problem.
24
25 THE COMMISSIONER: I see. So nothing at all, whether it
26 is credit or otherwise, can be taken into account?
27
28 MR THANGARAJ: Yes, to make findings against him.
29
30 THE COMMISSIONER: I understand. All right.
31
32 MR THANGARAJ: So I have one last conclusory submission:
33 the findings, we say, are not open on the evidence, that
34 are being sought by Counsel Assisting, because of the
35 evidence and because of the logic of it, because of the
36 inherent implausibility of what is being put. But in any
37 case, they are not needed to be made by this Commission in
38 order to satisfy the functions that the Commission has been
39 asked and tasked to do. And notwithstanding the
40 disagreement between you, Commissioner, and myself in
41 relation to that we say there are procedural witness
42 unfairness issues, if findings are to be made in relation
43 to Mr Willing, they, further, in any case would be outside
44 the terms. But I'm grateful for the opportunity to address
45 you today and we will file our written submissions by
46 Wednesday.
47

1 THE COMMISSIONER: All right. Thank you. Mr Tedeschi,
2 I take it you are not going to say anything now?
3

4 MR TEDESCHI: No, thank you.
5

6 THE COMMISSIONER: That's all right. Well, thank you,
7 Mr Thangaraj. Thank you, Mr Tedeschi and others. I will
8 now adjourn, thank you.
9

10 **AT 1.27PM THE COMMISSION WAS ADJOURNED ACCORDINGLY**
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