

**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, 28 June 2023 at 10.20am**

**(Day 69)**

**Re: Death of John Russell  
Disappearance of Gilles Mattaini**

<b>Mr Peter Gray SC</b>	<b>(Senior Counsel Assisting)</b>
<b>Ms Christine Melis</b>	<b>(Counsel Assisting)</b>
<b>Mr Enzo Camporeale</b>	<b>(Director Legal)</b>
<b>Ms Elizabeth Blomfield</b>	<b>(Senior Solicitor)</b>
<b>Ms Emily Burston</b>	<b>(Senior Solicitor)</b>

**Also Present:**

**Mr Anders Mykkeltvedt with Aurhett Barrie for the NSW  
Police**

1 THE COMMISSIONER: My apologies for the delay this  
2 morning.

3  
4 Yes, Mr Gray?

5  
6 MR GRAY: Commissioner, today and tomorrow there will be  
7 hearings in relation to three cases, the investigations  
8 into which have been, in some respects, related.

9  
10 I believe Mr Mykkeltvedt is here as counsel for the  
11 Commissioner of Police.

12  
13 MR MYKKELTVEDT: Yes, Commissioner.

14  
15 THE COMMISSIONER: Thank you very much, Mr Mykkeltvedt.

16  
17 Thank you, yes?

18  
19 MR GRAY: Commissioner, the three cases are those of  
20 Gilles Jacques Mattaini, Ross Bradley Warren and John Alan  
21 Russell.

22  
23 Before you should be a total of six volumes of  
24 material, which I will tender. First, one volume relating  
25 to the death of Mr Gilles Mattaini in September 1985.  
26 I believe that will become exhibit 44.

27  
28 **EXHIBIT #44 TENDER BUNDLE RELATING TO THE DEATH OF**  
29 **MR GILLES MATTAINI**

30  
31 MR GRAY: Second, three volumes relating to the death of  
32 Mr Ross Warren in July 1989. They will be exhibit 45,  
33 I believe.

34  
35 **EXHIBIT #45 TENDER BUNDLE RELATING TO THE DEATH OF MR ROSS**  
36 **WARREN**

37  
38 MR GRAY: Third, two volumes relating to the death of John  
39 Russell in November 1989, and they will become exhibit 46.

40  
41 **EXHIBIT #46 TENDER BUNDLE RELATING TO THE DEATH OF MR JOHN**  
42 **RUSSELL**

43  
44 THE COMMISSIONER: Thank you.

45  
46 MR GRAY: Commissioner, there has also been provided to  
47 your associate some short minutes in relation to orders

1 which the parties seek to be made pursuant to section 8 of  
2 the Special Commissions of Inquiry Act. They relate to  
3 various redactions and pseudonym orders in connection with  
4 some of the contents of the tender bundles and persons  
5 referred to in them.  
6

7 I understand those orders are agreed and could be made  
8 by consent.  
9

10 MR MYKKELTVEDT: Yes, that is so.  
11

12 THE COMMISSIONER: Thank you. Just wait while I do that,  
13 then, thank you.  
14

15 Thank you. In each of those matters I have then made  
16 those consent orders, thank you.  
17

18 MR GRAY: Finally, Commissioner, you should also have  
19 before you a copy of our written submissions.  
20

21 THE COMMISSIONER: Yes.  
22

23 MR GRAY: They are dated 27 June and they relate to all  
24 three of these cases, and I adopt and rely upon those  
25 submissions which are now being formally handed up.  
26

27 THE COMMISSIONER: Thank you.  
28

29 MR GRAY: By way of general introduction, Commissioner,  
30 I observe that the deaths of all three of these men were  
31 associated with a very well-known part of Sydney, namely,  
32 the coastal area between Bondi and Tamarama.  
33

34 Partly because of those common features, these three  
35 deaths have been jointly the subject of three major police  
36 and coronial procedures: firstly, Operation Taradale,  
37 which was a significant police investigation under the  
38 leadership of Detective Sergeant Page between 2000 and  
39 2003; secondly, a coronial inquiry between 2003 and 2005 by  
40 Deputy State Coroner Milledge, whom I will refer to as  
41 "Coroner Milledge", Coroner Milledge considered and made  
42 findings based on the work of Operation Taradale in what  
43 I will call "the Milledge Inquest"; and, thirdly, there has  
44 been Strike Force Neiwand, which was a review of all three  
45 cases by the Unsolved Homicide Team between October 2015  
46 and January 2018.  
47

1 Commissioner, I intend to present oral submissions  
2 this morning in relation to the case of John Russell. This  
3 afternoon, I will present oral submissions in the case of  
4 Gilles Mattaini, and tomorrow morning, I will present oral  
5 submissions in the case of Ross Warren.  
6

7 I begin, therefore, with the case of John Russell.  
8 The family have provided a photograph of John Russell and  
9 I ask that that now be put on the screen.  
10

11 Mr Russell was a gay man. He was a barman at the  
12 Bronte Bowling Club and he lived with his brother, Peter  
13 Russell, in Bondi. John and Peter were both very close to  
14 their father, Ted, who died only last year.  
15

16 At the time of John's death, they had recently  
17 received an inheritance from their grandfather and John was  
18 planning to leave Sydney and build a kit home on his  
19 father's property at Wollombi. He also intended to use  
20 some of the funds to travel around Australia. In the words  
21 of his best friend, "he was looking forward to the best  
22 time of his life" and "everything was looking up for him."  
23

24 Peter Russell, John's brother, is here in court today,  
25 as is Peter's partner, Donna Hannah. Other family members  
26 are watching on the screen. Peter and Donna, in  
27 particular, have closely followed the work of this Inquiry  
28 and have attended many days of its public hearings. Both  
29 Peter and Donna, and also John Russell's cousin, Yvonne  
30 Hopkins, have prepared statements in which they reflect  
31 upon the man they lost and talk about the impact of his  
32 loss upon them and others.  
33

34 I first seek to tender those three statements. They  
35 might be exhibits 47, 48 and 49.  
36

37 **EXHIBIT #47 FAMILY STATEMENT OF PETER RUSSELL**

38 **EXHIBIT #48 FAMILY STATEMENT OF DONNA HANNAH**

39 **EXHIBIT #49 FAMILY STATEMENT OF YVONNE HOPKINS**

40  
41  
42  
43 MR GRAY: I will then invite, first Peter and then Donna,  
44 to read their statements. The statements are coming to you  
45 now, Commissioner.  
46

47 I will invite Peter Russell to come forward and to

1 read his statement.

2

3 THE COMMISSIONER: Do you have a copy of the statement?

4

5 MR RUSSELL: I have a copy.

6

7 THE COMMISSIONER: All right. Thank you. You take your  
8 time, please.

9

10 MR RUSSELL: My name is Peter Russell. I am the brother  
11 of John Russell who was tragically murdered in November  
12 1989. He will always be remembered to me as a loving,  
13 caring brother and friend. He was the most caring soul  
14 that anyone could meet.

15

16 As a single parent, he helped me raise my son, who was  
17 12 years of age at the time of his death. We resided in  
18 the family home at Bondi for all our lives.

19

20 After our mother's passing we both took care of our  
21 grandfather, who was a diabetic, for several years.  
22 Already at a tragic time in my family's life with the loss  
23 of my grandfather four weeks prior to my brother's death  
24 and the loss of another loved one, being my brother, which  
25 further devastated myself, my son and my partner, the grief  
26 was very hard to take.

27

28 At the time of my brother's passing, he was looking  
29 forward to moving to the Hunter Valley to build a home on  
30 land that the family had purchased years prior. He would  
31 have lived next door to dad and together they would have  
32 built a home for everybody. My father eventually did build  
33 a house up there, but it never turned out the way he  
34 envisioned, and dad eventually sold the land and moved to  
35 Cessnock. The loss of my brother John surely led to his  
36 early onset dementia and he never got over the grief.

37

38 As a father of five children and a husband to a loving  
39 wife, it has been heart wrenching to know that none of my  
40 younger children will ever get to meet someone who could  
41 have taught them so much about morals, life, history, art  
42 and about life in general.

43

44 I am very fortunate that when my mother was terminally  
45 ill with chronic renal failure, she never got to live  
46 through the tragedy of the loss of her father and her son  
47 within four weeks. For that, I am grateful. Thank you.

1  
2 THE COMMISSIONER: Thank you.

3  
4 MR GRAY: Thank you, Mr Russell.

5  
6 I would now ask Donna Hannah to read her statement.

7  
8 MS HANNAH: My name is Donna Cameron Hannah, partner of  
9 Peter Edward Russell, friend and sister-in-law of John Alan  
10 Russell.

11  
12 Words to describe John: kind, gentle, charismatic,  
13 inclusive, thoughtful, quirky sense of humour. He once  
14 bought Peter a jade tree for his birthday and wrapped gold  
15 coins on it with sticky tape. Now, that was a true money  
16 tree.

17  
18 Another time he put a morning tea party on for my  
19 grandparents and his grandfather so they could meet each  
20 other and he coordinated everything himself, to our  
21 surprise. Naturally, my grandparents loved him.

22  
23 Losing John has left an empty space in our lives that  
24 can't be filled. We think of him almost daily. It's hard  
25 not to when I look at my boys. I can see the resemblance  
26 between them and John and I'm reminded of what could have  
27 been and how much we've all missed.

28  
29 I try to imagine them all together and the enriched  
30 relationships they may have shared. John has two nieces  
31 and three nephews, six great nephews, and all the boys  
32 carry his name in his honour. Sadly, John never got the  
33 opportunity to meet them all.

34  
35 He wanted to build a house at Wollombi for all the  
36 Russells. We had some great plans for the future for all  
37 of us. He was looking forward to the next chapter of all  
38 our lives, after his grandfather passed away. John and  
39 Peter lived in the family home and shared care for their  
40 elderly grandfather and Peter's son Allen.

41  
42 Losing John was a huge devastation for Allen. He was  
43 only about 12 years old and about to start high school. He  
44 never complained, but I'm sure all the media about his  
45 uncle was distressing for him.

46  
47 In later years, it was distressing for our other

1 children. They knew of Uncle John but had never known how  
2 he passed until the "Bondi Badlands" book was released and  
3 the media that followed. We had to try to explain to  
4 a 14-, 16- and 10-year-old the truth.

5  
6 The Russell family lost more than just a son, brother,  
7 uncle and a friend. We lost part of ourselves. For all  
8 these years, even the highlights in our lives were never  
9 quite as joyous as they could have or should have been.  
10 It's difficult when one of us are not there.

11  
12 John was clever, artistic and a fabulous dancer. He  
13 had many talents that should have been passed along to his  
14 nieces and nephews. A huge loss for them.

15  
16 It's hard enough when you lose a loved one, even more  
17 difficult when it's tragic. Because of the circumstances  
18 of John's death, I have trust issues and I worry, I panic  
19 when my kids go out. I can't sit still, I can't sleep, my  
20 mind runs away and I think of all kinds of possibilities  
21 that may occur until I know they are home again. I just  
22 cannot rest.

23  
24 I'm not sure how I got through the teenage years and  
25 still have hair left. My kids are now 32, 30 and 26, and  
26 I still worry. I'm afraid that something terrible will  
27 happen to them. I know it's unreasonable but it's hard not  
28 to have these thoughts.

29  
30 John and Peter's father sadly passed away in 2022 from  
31 side effects of dementia. At one of our last visits he had  
32 a moment of clarity and distressingly asked for John and  
33 what happened to him and where was he. It was a very sad  
34 moment to see him with tears and fear in his eyes. These  
35 were his last lucid moments in life. A few days later, he  
36 passed over.

37  
38 Thank you.

39  
40 THE COMMISSIONER: Thank you.

41  
42 MR GRAY: Thank you, Donna Hannah.

43  
44 Commissioner, on behalf of the Inquiry, I extend my  
45 condolences to the Russell family and I thank Peter and  
46 Donna for giving us those words about John.

47

1 Commissioner, on the evening of Wednesday, 22 November  
2 1989, John Russell had farewell drinks with a friend at  
3 the Bondi Hotel. He had a similar evening planned for  
4 the following night and then, on the Friday, his father  
5 Ted Russell was going to drive down from Wollombi to  
6 collect him.

7  
8 He left the hotel at about 11pm that night. The next  
9 morning, Thursday morning, 23 November 1989, his body was  
10 found at the base of cliffs at Marks Park. The position of  
11 his body was such that his head and upper body were facing  
12 towards the cliff face, while his feet were towards the  
13 ocean. Human hairs, which may have been from another  
14 person, were observed on his left hand.

15  
16 The hairs were bagged for analysis, but they were lost  
17 prior to the initial inquest into Mr Russell's death which  
18 occurred in July the following year, 1990. No forensic  
19 analysis has ever been performed on those hairs.

20  
21 Police from Bondi Police Station investigated the  
22 scene. The OIC was a junior plain clothes constable. The  
23 OIC considered that Mr Russell's death was accidental and  
24 it was not really pursued as a homicide, although some  
25 police involved at the time suspected that Mr Russell may  
26 have been the victim of an assault.

27  
28 Much later, in the course of the Taradale inquest that  
29 I will come to, a forensic pathologist called Dr Cala said  
30 that he considered the position of John Russell's body to  
31 be unusual for a case of jumping or falling from a height.  
32 He considered that the position of the body was such that  
33 it may be that he had been pushed.

34  
35 Later again in the course of Strike Force Neiwand's  
36 work, another pathologist, Dr Duflou, also considered that  
37 the position of the body was somewhat unusual for an  
38 accidental or suicidal fall. Both pathologists considered  
39 it was unlikely that Mr Russell would have been able to  
40 move at all after the fall.

41  
42 Mr Russell's jeans, sloppy joe and shoes, which he was  
43 wearing, were not the subject of any forensic testing at  
44 the time of the initial investigation in 1989/90, nor were  
45 a cigarette packet, cigarette lighter or Coca-Cola bottle,  
46 all of which were found near Mr Russell's body.



1           The jeans, sloppy joe and shoes were returned to the  
2 family. I will say a little more about that later. They  
3 were still covered in blood and salt water, which was the  
4 state they had been in when Peter Russell saw his brother's  
5 body at the morgue.  
6

7           The clothes were then provided to police for the  
8 purpose of being placed on a mannequin or dummy as part of  
9 an appeal for information. When Peter Russell saw that  
10 mannequin on display in Bondi, he noticed that the clothes  
11 were spotless and the shoes were clean. He said it was  
12 obvious that the clothes had been through the wash.  
13

14           The jeans and the sloppy joe and the shoes have  
15 subsequently been tested by FASS, formerly DAL - that is  
16 the forensic testing service within the Department of  
17 Health - on three separate occasions - namely, in about  
18 2002 during the course of Operation Taradale; in 2016  
19 during the course of Strike Force Neiwand; and again this  
20 year at the request of the Inquiry. I will come later to  
21 say a little more about those three tests.  
22

23           I mentioned, coming now to the original investigation,  
24 that none of the exhibits - that is, the clothing or the  
25 hairs or the cigarette packet or lighter or Coca-Cola  
26 bottle - were subjected to any fingerprinting or forensic  
27 testing during the course of the initial investigation. As  
28 to the cigarette packet and Coca-Cola bottle, the OIC's  
29 evidence at the subsequent Milledge Inquest 15 years later,  
30 was that, quite possibly, that was something that simply  
31 did not occur to her.  
32

33           The hairs - and I wonder if we could have a photo  
34 shown, there is a photo that is part of the records in this  
35 case which shows Mr Russell's left hand with the hair  
36 adhering to it, and perhaps that can be put up on the  
37 screen when convenient. There it is.  
38

39           Officers who attended the scene noted that the hair  
40 was present. One can see it at the top of Mr Russell's  
41 first index finger on his left hand, seemingly adhering to  
42 his hand just above his finger between the finger and the  
43 thumb.  
44

45           Sergeant Ingleby, one of those attending - an  
46 experienced uniformed officer who had himself earlier in  
47 his career been a detective - considered that the hairs

1 alone raised the possibility that Mr Russell may have been  
2 thrown or pushed off the cliff top. He considered that the  
3 hairs may well have come from someone else.  
4

5 Two officers from the police Crime Scene Unit attended  
6 the scene. They both also observed the hairs, and they  
7 took photos. That is how we were able to have this photo  
8 today.  
9

10 One or both of them then collected the hairs.  
11 However, what was then done with them is less than clear.  
12 Unfortunately, what is clear is that (a) no forensic  
13 testing was ever carried out on them; and (b) within seven  
14 months by the time of the inquest on 2 July 1990, the hairs  
15 had been lost.  
16

17 Meanwhile, the day after his brother's body was found,  
18 Peter Russell went to the Glebe morgue to identify the  
19 body. This was 24 November 1989. He saw the blood on  
20 John's clothes and he saw what he called "brownish blond  
21 hairs next to John's thumb". He said the hairs "were not  
22 John's, they were too long and the wrong colour".  
23

24 At the Milledge Inquest in 2003, the OIC, at the time  
25 a plain clothes constable, and by the time of the Milledge  
26 Inquest no longer a police officer, gave evidence. She  
27 said that she did remember the hair being there but that  
28 she did not know what happened to it. She said she thought  
29 she would have been interested in the hair but that she  
30 would have let the onus be on the scientific section to do  
31 "whatever they do with it". She said she took it for  
32 granted that they would be looking after that. When asked  
33 why she did not chase up or follow up the question of the  
34 hairs, she said, "I can't answer that."  
35

36 Dr Cala, the pathologist, gave evidence to the  
37 Milledge Inquest that he did not believe that the hair on  
38 Mr Russell's hand belonged to Mr Russell and that it  
39 appeared to have been pulled out or tugged out from another  
40 person, although, of course, he agreed that he could not be  
41 sure about that, in part, among other things, because all  
42 he had to look at was a photo.  
43

44 There are no recorded observations by any attending  
45 police officer as to a comparison between the hairs on  
46 Mr Russell's hand and Mr Russell's own hair, nor of  
47 Peter Russell being asked for his views on that question.

1  
2           Coroner Milledge described the loss of these vital  
3 hairs as "disgraceful". It is submitted that that is  
4 a fair characterisation. The loss of the exhibit means not  
5 only that it was not tested at the time, but that it now  
6 cannot be subjected to more modern testing. It may well  
7 have held the key to identifying the perpetrator of an  
8 attack on Mr Russell.  
9

10           Turning to Mr Russell's clothing, after John Russell's  
11 funeral, his father, Ted, received's call from the Coroners  
12 Court asking him to pick up a box of John's possessions.  
13 Peter Russell picked up the box. When his father opened  
14 the box, he picked up John's clothes and said, "I can smell  
15 the boy." The shoes and socks and jeans and sloppy joe  
16 were in the box, in Peter's words, "as it had been taken  
17 off John", ie, still with blood and salt water on the  
18 clothes.  
19

20           A little later, in December 1989, a mannequin wearing  
21 Mr Russell's clothing was displayed in Bondi as part of an  
22 appeal to the public for information, and we have a photo,  
23 or not a photo, but a copy of a news article about that  
24 display, which might be able to be shown.  
25

26           Peter Russell's recollection is that someone, probably  
27 a police officer, contacted his father and asked for  
28 clothes similar to what Mr Russell had been wearing on the  
29 night he died. His father simply gave the police back the  
30 box of clothes as they had been collected from the morgue.  
31

32           Police set the mannequin up in Bondi. Peter went to  
33 have a look at it and he saw that the clothes were spotless  
34 and the shoes were clean. It was obvious to Peter that the  
35 clothes had been through the wash, because when he had seen  
36 them on John's body at the morgue, they were covered in  
37 blood and salt water. When the clothes were later returned  
38 to his father, Ted Russell said immediately, "This has been  
39 washed."  
40

41           The police have provided the Inquiry with a statement  
42 by Detective Inspector Warren, which goes into considerable  
43 detail about what can now be ascertained from available  
44 police records as to the movements of the clothes in all  
45 the 30 years since 1989. Among the notes in the records  
46 are notes which refer to the clothing apparently having  
47 been "cleaned", but as to what the word "cleaned" exactly

1 meant, presently available records do not enable Detective  
2 Inspector Warren to say.

3  
4 The cleaning, whatever it was, whether it was simply  
5 putting the clothes through the washing machine or  
6 something other than that, is likely to have had some  
7 impact on the forensic testing subsequently undertaken at  
8 those three different stages that I mentioned. The  
9 Inquiry's understanding is that cleaning agents will  
10 typically dilute and/or remove staining and, therefore,  
11 make DNA, for example, less concentrated.

12  
13 Even if the DNA is not totally removed, some  
14 degradation is likely, which would mean that some of the  
15 larger fragments would be lost.

16  
17 In saying that, I acknowledge, of course, that in  
18 1989, DNA testing was in its infancy, at least in New South  
19 Wales, and the opportunities for DNA testing then were  
20 certainly not anything like the opportunities that exist  
21 today. However, obviously, had the hairs been retained and  
22 not lost, they could have been tested subsequently.

23  
24 Now, the reality seems to have been in 1989 that the  
25 investigating police, or at least the OIC, treated the case  
26 as not suspicious.

27  
28 Within a month of John Russell's body being found  
29 at the base of the Marks Park cliffs, another man called  
30 David McMahon was confronted and assaulted near Marks Park  
31 by a group of 10 or 12 young persons at a point on the  
32 cliff top, very close to the point below which Mr Russell  
33 was found.

34  
35 Sergeant Ingleby took a statement from Mr McMahon on  
36 3 January 1990 and put the statement, once completed, in  
37 the in-tray for the detectives, with a note, as he thought  
38 it was relevant to the investigation concerning Mr Russell.

39  
40 On 12 January 1990, an article was published in the  
41 Sydney Star Observer headed, "Mystery death of gay man near  
42 Bondi beat." The article stated that the investigating  
43 detectives believed that the death may have been a murder.  
44 The OIC was reported as having said that the possibility of  
45 murder had not yet been eliminated.

46  
47 However, a month after that, on 16 February, the OIC

1 signed her statement. Her opinion in that statement, which  
2 was presented to the Coroner in due course, was that there  
3 was no evidence to suggest that there were suspicious  
4 circumstances. She continued:

5  
6 *It is my opinion that the deceased fell*  
7 *from the cliff top to where he was located.*  
8 *Whether this can be attributed to the*  
9 *deceased's level of intoxication will be*  
10 *clear with the results of the forensic*  
11 *tests.*

12  
13 Ten days later, on 26 February, Sergeant Ingleby, the  
14 experienced officer, signed his statement. He said that he  
15 was aware that crimes of violence on what he called "the  
16 homosexual element" in the area were prevalent, he said he  
17 believed that:

18  
19 *... the level of unreported assaults and*  
20 *associated offences on the homosexual*  
21 *element in this area (and other areas)*  
22 *would be extremely high.*

23  
24 Nevertheless, it would appear that after  
25 about February 1990, there were no further steps by police  
26 to investigate Mr Russell's death. The available evidence  
27 indicates that no canvassing of the area was undertaken.  
28 Indeed, the OIC conceded as much in her evidence at the  
29 Milledge Inquest.

30  
31 Sergeant Ingleby did undertake some efforts to locate  
32 a person called "Red", known as "Red", whom a local person  
33 had suggested may have known something about an altercation  
34 at about the same period that included the night on which  
35 Mr Russell met his death. There were no witness statements  
36 taken from anyone, apparently, after that of Mr McMahon on  
37 3 January.

38  
39 Mr Ingleby's view - former Sergeant Ingleby - is that  
40 the Bondi detectives "were investigating Mr Russell's death  
41 as 'not suspicious' from day one." He said:

42  
43 *The focus of the investigation seems to*  
44 *have proceeded on the basis of "accident"*  
45 *or "misadventure", ignoring the potential*  
46 *new line of enquiry regarding the offenders*  
47 *who assaulted and robbed Mr McMahon.*

1  
2 It is submitted, Commissioner, that the original  
3 investigation in 1989/90 was essentially not an  
4 investigation of a possible homicide at all.  
5

6 In 2000, some 10 years later, in May, Detective  
7 Sergeant Page, who was then at the Rose Bay Local Area  
8 Command, received a file in relation to the disappearance  
9 of Mr Ross Warren, whom I mentioned earlier. That file  
10 contained a series of letters from Mr Warren's mother  
11 requesting that inquiries be made so that a death  
12 certificate could be issued in relation to her missing son,  
13 who had also met his death, as now appears, in 1989 at  
14 Marks Park.  
15

16 Detective Sergeant Page, on becoming aware of  
17 Mrs Warren's requests and of the belated and limited  
18 responses she had received, began to examine documents  
19 associated with the 1989 investigation into Mr Warren's  
20 death. Eventually, that led to the instigation of what  
21 became known as "Operation Taradale", which was established  
22 to investigate the disappearance and suspected death of  
23 Mr Warren, the death of Mr Russell and the assault on  
24 Mr McMahon, all of which had appeared at or near Marks  
25 Park.  
26

27 Apart from Detective Sergeant Page himself, there  
28 were, at various stages of Operation Taradale, up to  
29 12 police officers working with him. The scope of the  
30 operation was very substantial.  
31

32 Among other things, Operation Taradale utilised  
33 electronic surveillance by means of telephone  
34 interceptions. Some 17,000 telephone calls were  
35 intercepted and monitored. It used electronic surveillance  
36 by means of listening devices. It interviewed and took  
37 statements from numerous persons of interest.  
38

39 It arranged a reenactment of Mr Russell's fall by the  
40 use of a dummy on 9 December 2001, and there is an article  
41 which might be able to be shown on the screen, published in  
42 the Wentworth Courier, three days later on 12 December,  
43 showing the police operation at Marks Park, in which  
44 a dummy dressed in a similar style to the way Mr Russell  
45 had been dressed was launched off the cliff with a view to,  
46 among other things, looking at how its position might be at  
47 the bottom and also with a view to bringing the whole issue

1 to the attention of the public.

2  
3 Mr Russell's clothes were sent by Sergeant Page to DAL  
4 for forensic testing, including for DNA. The testing, in  
5 about 2002, which was the subject of a certificate  
6 in January 2003, was inconclusive. That is, perhaps  
7 looking at it from this vantage point, not surprising given  
8 the state of the capacity for DNA testing at that time.

9  
10 Operation Taradale also obtained expert evidence from  
11 various experts, including Dr Cala, the forensic  
12 pathologist that I mentioned; Dr Moynham, another forensic  
13 pathologist, in relation to Mr Russell's blood alcohol  
14 content; and Dr Brander, a coastal geomorphologist, whose  
15 expertise related to the cases of Mr Warren and  
16 Mr Mattaini.

17  
18 By late July 2002, Detective Sergeant Page had  
19 completed the brief of evidence for the Coroner. It  
20 included a 287-page statement by him relating to the  
21 disappearance and suspected death of Mr Warren and the  
22 death of Mr Russell. Attached to that statement were some  
23 270 documents. The evidence before the Coroner was  
24 extremely extensive.

25  
26 Then in August 2002, that having been done, there  
27 having been considerable publicity about the activities of  
28 Operation Taradale, two men, Mr Wyszynski and Mr Musy  
29 reported the disappearance of Mr Gilles Mattaini back in  
30 1985, it having occurred to them, it seems, that perhaps  
31 Mr Mattaini's disappearance had come about in circumstances  
32 similar to those that Operation Taradale was investigating.

33  
34 At the conclusion of his evidence to the Coroner,  
35 DS Page - Detective Sergeant Page - summarised his views in  
36 relation to the Russell case as follows: he did not  
37 believe that Mr Russell had attended Marks Park to commit  
38 suicide, as he was a gay man attending a known beat and was  
39 likely there for that purpose; taking into account the  
40 known extent of violence against gay men at Marks Park, he  
41 believed it was likely that Mr Russell met his death there  
42 as a result of violence.

43  
44 However, although the considerable weight of evidence  
45 which he had been able to assemble showed that various  
46 groups or gangs, such as the Bondi Boys, the Tamarama Three  
47 and the Alexandria Eight were involved in violent offences

1 towards the gay community in the vicinity of Marks Park, he  
2 was not able to offer an opinion as to who precisely was  
3 responsible for Mr Russell's death.  
4

5 DS Page offered his views to the Coroner as to the  
6 adequacy of the initial investigation into Mr Russell's  
7 death. Those observations were as follows: first, that  
8 there was no evidence of a canvass being conducted;  
9 secondly, that the likelihood of death by violent means had  
10 been discounted early; thirdly, that the investigation had  
11 not taken into account the unusual position of Mr Russell's  
12 body or the presence of hair on his left hand or the  
13 disturbance of vegetation on the cliff top above where his  
14 body was found; and finally, of course, the fact that the  
15 hairs which may well have belonged to an offender had been  
16 misplaced.  
17

18 In early 2003, the hearings for the Milledge Inquest  
19 commenced. The first day was 31 March 2003. Counsel  
20 Assisting made an opening address, as did Counsel for the  
21 Commissioner of Police, who was represented by counsel  
22 throughout the inquest. Thereafter, there were a further  
23 eight hearing days in 2003, there were closing addresses  
24 in December 2004, and Coroner Milledge's findings were  
25 delivered in March 2005.  
26

27 I wonder if we could have on the screen  
28 Coroner Milledge's findings [SCOI.02751.00021\_0001].  
29 I will take you, Commissioner, to the findings that the  
30 Coroner made which appear on page 14. Her Honour there  
31 sets out her findings in relation to all three of these  
32 deaths.  
33

34 In relation to Mr Russell, her finding is that the  
35 cause of death was multiple injuries sustained when he was  
36 thrown from the cliff on to rocks, by a person or persons  
37 unknown - so clearly a homicide.  
38

39 And while I am here, Commissioner, you will see that  
40 in the case of Mr Warren, the finding was that the cause  
41 and manner of death were unknown, but her Honour was  
42 satisfied that the deceased was a victim of homicide  
43 perpetrated by a person or persons unknown.  
44

45 In the case of Mr Mattaini, the Coroner having  
46 determined that she would find him to have died, him having  
47 been not found by then for nearly 20 years, the finding was



1 that Mr Mattaini died on about 125 September 1958 but that:

2  
3 *The cause and manner of his death remain*  
4 *undetermined as the evidence before me does*  
5 *not enable me to say.*  
6

7 I draw attention to the remarks also made at the top  
8 of that page, in the four paragraphs above the formal  
9 findings, where her Honour expresses clear views, strong  
10 views one might say, about the evidence and what in her  
11 opinion it showed, including in the first paragraph:

12  
13 *There is no doubt that at the time of*  
14 *Mr Warren's and Mr Mattaini's disappearance*  
15 *and Mr Russell's death, this --*  
16

17 that is, assailants throwing people off the cliff --

18  
19 *was a Modus Operandi of some gay hate*  
20 *assailants.*  
21

22 Her Honour said:

23  
24 *This strongly supports the probability that*  
25 *Mr Warren, Mr Mattaini and Mr Russell met*  
26 *their deaths this way.*  
27

28 In the fourth of those paragraphs, moving forward  
29 briefly to the different case of Mr Mattaini, her Honour  
30 said that she could bring in a finding of death for  
31 Mr Mattaini, but where and how he died "remains unknown",  
32 but her Honour went on:

33  
34 *... there is a strong possibility that he*  
35 *died in similar circumstances to the other*  
36 *men.*  
37

38 Now, some of the gangs that the evidence at the  
39 Milledge Inquest shed light upon and that were  
40 systematically engaged in the assault and robbery of gay  
41 men in Marks Park and other areas, had adopted names. One  
42 of them, for example, was "PSK", which apparently stood for  
43 "Parkside Killers".  
44

45 Numerous persons of interest, several of them members  
46 of one or more of these gangs, gave evidence at the  
47 Milledge Inquest, including those known as the Tamarama

1 Three, who had killed a Thai man called  
2 Mr Rattanajurathaporn in July 1990.

3  
4 Some of the recorded conversations - and I mentioned  
5 there were some 17,000 of those - appeared to relate either  
6 to the disappearance of Mr Warren or perhaps to the death  
7 of Mr Russell, but in the end, those were investigated and  
8 DS Page excluded them as inculpatory of those persons of  
9 interest. He was not able, in the end, despite the volume  
10 of evidentiary material assembled, to offer an opinion as  
11 to who was responsible for the deaths of either Mr Warren  
12 or Mr Russell.

13  
14 Now, following the Milledge findings in March 2005, it  
15 is noteworthy that there was no review or otherwise use  
16 made of those findings or of the evidence assembled by  
17 Detective Sergeant Page by the police for many years. The  
18 Coroner had expressed the view that the information  
19 gathered by Operation Taradale would provide an excellent  
20 source of evidence for future reinvestigation, but that did  
21 not occur.

22  
23 Some seven years later, in October 2012, the three  
24 deaths were examined by an officer of the UHT - the  
25 Unsolved Homicide Team - called Detective Senior Constable  
26 Taylor. She expressed praise of the work of Operation  
27 Taradale, saying that the investigation by Detective  
28 Sergeant Page had been meticulously undertaken, and she  
29 recommended that an opportunity existed, because of the  
30 passage of time, to engage the persons of interest, or some  
31 of them, that had been identified by an undercover  
32 operation in relation to the "murders", as she described  
33 them, of Mr Russell and Mr Warren.

34  
35 In August 2013, Detective Chief Inspector Lehmann  
36 reviewed and endorsed that recommendation. However, it was  
37 never adopted or implemented. There was no reinvestigation  
38 of those persons of interest ever embarked upon.

39  
40 At about the same time, Detective Chief Inspector  
41 Lehmann and Detective Chief Inspector Young conducted an  
42 assessment of some 30 cases which Ms Sue Thompson had  
43 suggested were unsolved and which might be gay hate  
44 murders. The Lehmann/Young conclusion in an issue paper  
45 was that only eight of those 30 were even possible or  
46 probable gay hate murders. Two of those that were  
47 described as "probable" were the cases of Mr Warren and

1 Mr Russell. One of those that was described as "possible"  
2 was the case of Mr Mattaini.

3  
4 Now, earlier that year, 2013, in February, a strike  
5 force called Strike Force Macnamir had been set up. It  
6 was a strike force which was to look into the death of  
7 Scott Johnson at North Head.

8  
9 The catalyst for that strike force had two main  
10 components. The first was that in 2012, in June, a second  
11 inquest into the death of Scott Johnson, by Coroner Forbes,  
12 had declined to confirm an earlier coronial finding of  
13 suicide in the case of Mr Johnson and had instead  
14 substituted an open finding. One of the reasons why  
15 Coroner Forbes did that, in her reasons, was:

16  
17 *The information about the deaths at Bondi*  
18 *has sown a seed of doubt as to the positive*  
19 *finding of suicide.*

20  
21 One of the possibilities, said Coroner Forbes, was that  
22 Mr Johnson was the victim of a gay hate crime similar to  
23 those that occurred at Bondi.

24  
25 Seven or eight months after that, in February 2013,  
26 there was an episode of Australian Story on the ABC  
27 television concerning Scott Johnson's death. His brother  
28 Steve Johnson expressed some criticism of the way in which  
29 his brother's death had been investigated, and within a day  
30 or two of that story airing, Strike Force Macnamir was set  
31 up to look again at the death of Scott Johnson.

32  
33 Two years after that again, in April 2015, after the  
34 Strike Force Macnamir team had carried out considerable  
35 work, and work which had resulted in a lengthy statement by  
36 DCI Young, State Coroner Barnes decided to hold a third  
37 inquest into the death of Scott Johnson.

38  
39 Later that same day, DCI Young gave an interview on  
40 ABC Lateline, which has been the subject of submissions,  
41 Commissioner, elsewhere in relation to the Public Hearing  
42 2. But one of the things that Ms Young - DCI Young - said  
43 in her Lateline interview, when asked what had changed  
44 since the last coronial inquest concerning Scott Johnson  
45 that would warrant another one, was this, DCI Young said:

46  
47 *We have put to the test some of the*

1            *findings of Operation Taradale, which did*  
2            *identify or reinvestigate some gay hate*  
3            *crimes in Bondi, and two were found to be*  
4            *possible homicides.*

5  
6            Now, putting aside for the moment the inaccuracy of  
7            that description as to what Coroner Milledge had found, for  
8            the moment, what I would emphasise is that it seems that  
9            one of the perspectives, or the perspective, from which the  
10            Unsolved Homicide Team, in the guise of Strike Force  
11            Macnamir, was approaching the three Bondi deaths was to  
12            challenge Coroner Milledge's findings of homicide - that  
13            is, "to put them to the test". That was April 2015.

14  
15            As at October 2015, Mr Willing has given evidence,  
16            Commissioner, that up to and as at October 2015, there was  
17            no investigation under way at all of the three Bondi deaths  
18            that are the subject of today's hearing and tomorrow's  
19            hearing.

20  
21            In October 2015, however, Strike Force Neiwand was set  
22            up. Its first OIC was Detective Sergeant Penny Brown, who  
23            was also at that time the OIC of Strike Force Macnamir.

24  
25            By some time the next year, 2016, DSC - Detective  
26            Senior Constable - Chebl had become the OIC of Strike Force  
27            Neiwand, although Detective Sergeant Penny Brown was still  
28            listed as one of the personnel attached to that strike  
29            force, and the investigation supervisor for Strike Force  
30            Neiwand was Detective Sergeant Morgan.

31  
32            Now, may I pause in the narrative to note this  
33            development at that point. In the case of Mr Russell, as  
34            I have said, one of the critical pieces of evidence was, of  
35            course, the hairs on his left hand, which had been lost,  
36            and all that was left for anyone to work with, in terms of  
37            the hairs, was a photograph.

38  
39            One of the things that Detective Sergeant Penny Brown  
40            did, apparently wearing her Strike Force Macnamir hat as  
41            OIC of the Macnamir reconsideration of the Scott Johnson  
42            case, and presumably as part of "putting to the test" some  
43            of the Milledge findings, was to obtain a report from an  
44            expert as to whether the hairs might have been Mr Russell's  
45            own hair.

46  
47            In the tender bundle, which it is probably not

1 necessary for you to turn up, Commissioner, at tab 46A,  
2 there is an email from Detective Penelope Brown - Detective  
3 Sergeant Brown - to, among others, Michael Chebl, the OIC  
4 of Strike Force Neiwand, providing to him a statement by  
5 a forensic hair examiner. This is an email of 3 May 2016,  
6 but it is providing a statement from this forensic hair  
7 examiner dated 26 May 2014, so presumably it was obtained  
8 during the course of Strike Force Macnamir. The expert  
9 opinion, which appears at tab 47, based as I have said,  
10 which is all it could be based on, was on the photograph of  
11 the hairs, was as follows, and I'm quoting from  
12 paragraph 3.2:

13  
14 *Stereo microscopy of the photographs*  
15 *indicated that the deceased had visually*  
16 *brown head hair, and the hairs located on*  
17 *his hand also appeared to be visually*  
18 *brown. As such, these hairs are*  
19 *unremarkable, in that they could have come*  
20 *from the deceased's own scalp.*

21  
22 That's probably the central or essential statement in that  
23 report.

24  
25 The point, presumably, one infers, was to cast doubt  
26 over the significance of the hairs and the possibility that  
27 they were someone else's.

28  
29 Now, Commissioner, you have evidence that Mr Peter  
30 Russell saw the hairs in the morgue on his brother's hand  
31 on 24 November 1989 and saw immediately that, as he  
32 understood it, or as he perceived it, they were not his  
33 brother's hairs; they were too long and the wrong colour.

34  
35 Now, moving to Strike Force Neiwand itself, first may  
36 I direct some attention to what Strike Force Neiwand did  
37 not do.

38  
39 First of all, it did not implement the recommendations  
40 made by Detective Senior Constable Taylor in 2012 - namely,  
41 to engage the persons of interest via an undercover  
42 operation.

43  
44 Secondly, it did not, in fact, investigate any of the  
45 persons of interest, numbering some 116, listed in a  
46 spreadsheet which had been circulated to the Neiwand team  
47 in February 2016.

1  
2 Thirdly, in the case of Mr Mattaini, and certainly in  
3 the case of Mr Russell, Strike Force Neiwand did not pursue  
4 the homicide possibility at all. There is a slight  
5 exception to that in the case of Mr Warren, which I'll  
6 refer to tomorrow. But in the case of Mr Russell, there  
7 was no attempt to investigate, much less reinvestigate, the  
8 possibility of homicide.  
9

10 Mr Willing gave evidence in Public Hearing 2 that the  
11 decision not to pursue persons of interest was not a choice  
12 made by him. He said it would have been made by the  
13 investigative team and probably the OIC, which would mean  
14 either Detective Sergeant Brown, at the earliest stages, or  
15 from the first part of 2016, Detective Senior Constable  
16 Chebl. It is submitted that the more likely contender for  
17 the person who made that decision, at least as between  
18 DS Brown and DSC Chebl, is probably DSC Chebl.  
19

20 Mr Willing denied that the purpose of Strike Force  
21 Neiwand was to undermine and contradict the findings of  
22 Coroner Milledge. However, he agreed "that the course of  
23 action that ultimately seems to have evolved" was that  
24 Strike Force Neiwand was focused on analysing Operation  
25 Taradale and criticising it where possible.  
26

27 Mr Willing said he could not comment on whether this  
28 was deliberate and, if so, whose motivations these  
29 reflected.  
30

31 In an email, however, on 26 February 2016, very early  
32 in the life of Strike Force Neiwand, Detective Sergeant  
33 Morgan, then about to become the Investigation Supervisor,  
34 told colleagues that he had been put with Strike Force  
35 Neiwand, and he went on, describing Strike Force Neiwand,  
36 to say this:  
37

38 *Apparently it is going to be a political*  
39 *and media-driven hot potato later this year*  
40 *and the boss wants to be able to say that*  
41 *his squad are further investigating the*  
42 *matter.*  
43

44 At face value, it is obvious that Detective Sergeant  
45 Morgan appeared to be saying to his colleagues that "the  
46 boss", whom both he and Mr Willing agreed meant Mr Willing,  
47 wanted to be able to say that the Homicide Squad was

1 investigating or further investigating these three cases  
2 when, in fact, something else was the reality.  
3

4 Detective Sergeant Morgan, in his oral evidence, said  
5 that he did indeed have that view. As to where he got that  
6 view from, he had first described it as an impression that  
7 he had, but eventually his evidence was that a senior  
8 officer, either Mr Willing himself or DCI Lehmann, had told  
9 him that the SBS television station was going to be airing  
10 a program later that year called "Deep Water", and that  
11 Mr Willing wanted to be "on the front foot" in relation to  
12 the criticisms that were anticipated to be made by those  
13 programs.  
14

15 It is submitted, as we have put in writing, that in  
16 its implementation and in its outcomes, Strike Force  
17 Neiwand was quite obviously aimed at discrediting both the  
18 work of Operation Taradale and former Detective Sergeant  
19 Page personally and at discrediting the findings of the  
20 Milledge Inquest itself. It is difficult to resist the  
21 conclusion that the eventual implementation and outcomes,  
22 being the ones I have just noted, were consistent with the  
23 actual objectives, even if those actual objectives were not  
24 written down.  
25

26 Now, as we have outlined in our written submissions,  
27 Strike Force Neiwand, which extended for the better part of  
28 two years, perhaps a little less, generated nine progress  
29 reports. It ultimately generated, at the very end of its  
30 work, three summary documents, which I will refer to as  
31 "the Mattaini summary", "the Warren summary" and "the  
32 Russell summary", and it also generated an overall document  
33 called a "postoperative assessment", or POA, which referred  
34 to all three of them.  
35

36 Each of the summaries, the Neiwand summaries,  
37 including the Russell summary, was written, according to  
38 the evidence that, Commissioner, you received in February  
39 this year, by the OIC, Detective Senior Constable Chebl,  
40 and was then reviewed and accepted by the Investigation  
41 Supervisor, Detective Sergeant Morgan. It is submitted  
42 that both are responsible for their contents. DSC Chebl  
43 left the police some years ago, but DS Morgan gave both  
44 written and oral evidence about his role and the role of  
45 DSC Chebl.  
46

47 All of these documents - the progress reports, the

1 Neiwand summaries and the postoperative assessment - make  
2 clear that Strike Force Neiwand made a deliberate choice  
3 not to pursue persons of interest such as gang members,  
4 even though Operation Taradale had identified many such  
5 persons 15 years earlier.  
6

7 DS Morgan agreed that that was a deliberate decision  
8 on the part of Strike Force Neiwand. He was not able to  
9 say precisely by whom or precisely in what way the decision  
10 was made, but he offered the view that it was a consensus  
11 decision.  
12

13 Now, as both Mr Willing, former Deputy Commissioner  
14 Willing, and Detective Sergeant Morgan acknowledged in  
15 their oral evidence, the Neiwand summaries and the  
16 postoperative assessment were replete with very serious  
17 criticisms of Operation Taradale and of former Detective  
18 Sergeant Page. Some of those criticisms, which I will come  
19 to, related to particular aspects of each case, and I will  
20 deal shortly, in a moment, with the Russell part of that  
21 topic. However, there were also several recurring attacks  
22 on Operation Taradale and Mr Page that were common to all  
23 three summaries.  
24

25 First, each of them contained a paragraph in precisely  
26 the same terms, verbatim, which we have set out in our  
27 written submissions, the thrust of which was to accuse  
28 Operation Taradale of focusing on gay hate and relying on  
29 something called "Investigation confirmation bias", to the  
30 extent that that limited the validity of the Coroner's  
31 findings. "Confirmation bias" was said to be seeking to  
32 bolster a hypothesis by seeking consistent evidence while  
33 disregarding inconsistent evidence. So the accusation was  
34 confirmation bias which involved disregarding evidence  
35 inconsistent with a preferred hypothesis.  
36

37 Secondly, the Russell summary and the Warren summary  
38 accused Operation Taradale of having approached its  
39 investigation with tunnel vision, in the sense that it was  
40 said to have focused only on members of youth gangs and not  
41 to have considered other hypotheses.  
42

43 Thirdly, Operation Taradale was accused of failing to  
44 conduct a thorough victimology. That is an expression  
45 which refers to investigating a deceased person's  
46 associates, family and other contacts at the victim end of  
47 the spectrum rather than the possible attacker end of the



1 spectrum.

2

3

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47

Now, first of all Mr Page gave evidence in February, which was unchallenged, in which he emphatically rejected all of these attacks and all of these criticisms. We submit that his evidence should be accepted. But in any event, by the time Mr Willing and Detective Sergeant Morgan had completed their oral evidence, all three of these criticisms, so conspicuously and repeatedly made throughout the Neiwand summaries, had been abandoned.

DS Morgan, having been questioned at some length by myself over some days and having made various concessions along the way, was then asked some questions by Senior Counsel for the Commissioner of Police in the form of what might be called leading questions, and he was invited to agree that "the vast majority of the criticisms in the Neiwand summaries of Operation Taradale and DS Page are unjustified", and he did agree with that; he said they were unjustified.

He also agreed, when invited to agree, that all three investigations by DS Page - that is, by Operation Taradale - were, in fact, very thorough and appropriate, and he also agreed, when invited to agree, that the allegations of tunnel vision and confirmation bias were unwarranted and unjustified.

In written submissions, we've given some of the many other examples of individual particular concessions by DS Morgan as to the unsustainability of a lot of these criticisms.

Mr Willing, for his part, made similar concessions, including that parts of these various summaries were "completely wrong", "just not true", or "ridiculous".

Now, I move to a second aspect of Strike Force Neiwand, speaking generally. Commissioner, you will recall that Coroner Milledge had found in 2005 that both Mr Warren and Mr Russell had been victims of homicide, and she had also stated her view, as we saw a little while ago, that it was probable that both they and Mr Mattaini had met their deaths at the hands of what her Honour called "gay hate assailants".

With that in mind, it is to be noted that when

1 Assistant Commissioner Crandell gave evidence in December  
2 in relation to what may have been the purpose of Strike  
3 Force Neiwand, he said that:

4  
5 *... questioning a Coroner's finding I don't*  
6 *think would be appropriate.*

7  
8 And where police undertook a new investigation "off our own  
9 instigation", which is what happened here with Strike Force  
10 Neiwand, Assistant Commissioner Crandell said he would:

11  
12 *... expect that to be to find the*  
13 *perpetrator, rather than question the*  
14 *Coroner's finding.*

15  
16 He also gave evidence, in relation to coronial  
17 findings generally and Strike Force Parrabell, that his  
18 view was that if a Coroner made a finding, we should be  
19 bound - "we", the police, should be bound - by that finding  
20 on that basis.

21  
22 Similarly, Mr Willing gave evidence that when  
23 a Coroner makes a finding that a death is a homicide, the  
24 police "are not at liberty to just proceed as though that  
25 finding hadn't been made and treat it as not a homicide".

26  
27 However, it is submitted, Commissioner, that the  
28 evidence overall establishes beyond argument that that is  
29 just what Strike Force Neiwand did. Indeed, Mr Willing  
30 conceded that that is what Strike Force Neiwand did. Its  
31 focus was overwhelmingly, in all three cases, on factors  
32 pointing to the possibility of either suicide or  
33 misadventure. In the case of Mr Russell, the focus was on  
34 misadventure. And Neiwand's focus was not, in any of these  
35 cases, on factors pointing towards the possibility of  
36 homicide, especially not gay hate homicide.

37  
38 Apart from the decision that I have mentioned  
39 specifically and deliberately not to pursue the persons of  
40 interest that were known, other concessions made by  
41 Detective Sergeant Morgan in this regard included the  
42 following, and we have listed these in the written  
43 submissions: that Neiwand put far more effort into finding  
44 evidence that might indicate suicide or misadventure than  
45 it did into finding evidence that might indicate homicide;  
46 that in the case of Mr Russell, Neiwand devoted its  
47 attention overwhelmingly to misadventure and really made no

1 inquiries at all directed to exploring the possibility of  
2 homicide; and that, in fact, it was Neiwand, not Operation  
3 Taradale, that might be seen to have engaged in tunnel  
4 vision and reliance on confirmation bias, at least in  
5 relation to the cases of Mr Russell and, indeed,  
6 Mr Mattaini.

7  
8 So what we submit, Commissioner, is that the evidence  
9 establishes that Strike Force Neiwand made virtually no  
10 attempt to investigate, as homicides, the deaths of any of  
11 these three men, notwithstanding that Coroner Milledge had  
12 expressly found that the deaths of Mr Russell and Mr Warren  
13 were homicides and had expressed the view that the death of  
14 Mr Mattaini probably was as well.

15  
16 Instead, what Neiwand did was to direct its very  
17 considerable efforts and resources over the better part of  
18 two years to attempting to build a case for contradicting  
19 and overturning the findings of Coroner Milledge. It did  
20 so without informing either the Coroner's office or Mr Page  
21 or the families of any of the three deceased men about whom  
22 those public findings had been made or the public  
23 generally.

24  
25 One can only imagine the reactions of the families,  
26 such as Peter Russell and Donna Hannah here today, on  
27 learning, at the end of last year for the first time, that  
28 the police had embarked for two years on a project which  
29 had the result, and we submit the purpose, of overturning  
30 the coronial findings made by Coroner Milledge in 2005.

31  
32 One doesn't have to imagine the reactions of Mr Page,  
33 because he gave evidence about those reactions, and I note  
34 as an addendum to what I have just said, at the  
35 Parliamentary Inquiry which ultimately led to the  
36 instigation of this Special Commission of Inquiry, no  
37 mention of Strike Force Neiwand was made. No mention of  
38 its activities was made. No mention of its conclusions was  
39 made.

40  
41 Now, Commissioner, I am conscious of the time and it  
42 may be that this is a convenient time.

43  
44 THE COMMISSIONER: I will take a break now. Yes,  
45 thank you, I will adjourn shortly.

46  
47 **SHORT ADJOURNMENT**

1  
2 THE COMMISSIONER: Yes, Mr Gray?  
3

4 MR GRAY: Commissioner, the next point that we make in our  
5 written submissions, and this is at paragraph 187, is that  
6 although the Terms of Reference for Strike Force Neiwand  
7 and its investigation plan describe it as a  
8 "reinvestigation" of these three deaths, in fact, with only  
9 minor exceptions, it was not a reinvestigation at all;  
10 rather, it was essentially a review on the papers of the  
11 earlier work by Operation Taradale.  
12

13 In the end, again in questioning by Senior Counsel for  
14 the Commissioner of Police, after many concessions along  
15 the way to that effect in answer to questions from myself,  
16 Detective Sergeant Morgan did make the direct concession  
17 that that was, indeed, so - namely, that it was essentially  
18 a review on the papers of the work of Operation Taradale.  
19

20 The Acting Commander Homicide, at the time,  
21 in September 2017, Detective Acting Superintendent Jason  
22 Dickinson, indeed, described it in writing in one of the  
23 progress reports as "cold case evidentiary review".  
24

25 For his part, Assistant Commissioner Crandell, when he  
26 gave oral evidence before you, Commissioner, in December,  
27 indicated that his understanding had always been, as it  
28 happened, prior to this Inquiry, that Neiwand was a review  
29 rather than an investigation or a reinvestigation.  
30

31 Now, the next point we make is that Mr Page - former  
32 Detective Sergeant Page - was unaware of the existence of  
33 Strike Force Neiwand until informed of it by this Inquiry  
34 late last year.  
35

36 At no stage did Strike Force Neiwand inform him that  
37 it was making the sorts of accusations against him and  
38 Operation Taradale that it did, nor was he given any  
39 opportunity to respond to any of those accusations. Yet,  
40 those accusations, very serious as many of them were,  
41 including the ones that I will come to this afternoon in  
42 relation to Mr Mattaini, were widely distributed within the  
43 NSW Police Force, including to very senior officers.  
44

45 We submit that the failure to afford Mr Page an  
46 opportunity to answer the allegations against him was most  
47 unfair. Mr Willing acknowledged that it was unfair.

1 DS Morgan was only prepared to say, "On face value, it  
2 appears to have been unfair", and a bit later, "I can see  
3 that it appears to have been unfair".  
4

5 Now, at the conclusion of the Neiwand exercise, what  
6 the three summaries purported to do in their concluding  
7 paragraphs in each case was to overturn the findings of the  
8 Milledge Inquest in March 2005. Those findings have been  
9 set out in our submissions and they were on the screen this  
10 morning. They were: homicide in the cases of Mr Warren  
11 and Mr Russell, and an open finding for Mr Mattaini with an  
12 expression of probability outside the formal finding that  
13 the likelihood was that he had met his death at the hands  
14 of a gay hate assailant as well.  
15

16 Now, by contrast - and I wonder if there could be  
17 shown on the screen paragraphs 195 and following of the  
18 written submissions that you have, Commissioner, because  
19 there is there set out the three concluding sets of words  
20 in the three summaries. In the case of Mr Russell, it  
21 reads:  
22

23 *The manner of [Mr] Russell's death should*  
24 *be reclassified as "undetermined", despite*  
25 *the 2005 homicide findings of the Coroner.*  
26 *It is recommended that this investigation*  
27 *be listed as inactive and only reactivated*  
28 *if new and compelling evidence becomes*  
29 *available.*  
30

31 An almost identical - not quite but almost identical -  
32 form of words was provided in the case of Mr Warren. It's  
33 at about page 40, I think, if you have that there,  
34 paragraph 197. As I've just quoted, Commissioner, in both  
35 cases, Neiwand says - we can see there the Warren and the  
36 Russell ones:  
37

38 *... should be reclassified as*  
39 *"undetermined" despite the ... "homicide"*  
40 *findings of the Coroner.*  
41

42 As we have said in our written submissions, the use of that  
43 word, "despite" in those two findings, is both audacious  
44 and insouciant as well as unjustified. It flies in the  
45 face of the evidence of former Deputy Commissioner Willing  
46 and Assistant Commissioner Crandell.  
47

1           Now, as we say at paragraph 200 of these submissions,  
2 Mr Willing agreed that Strike Force Neiwand had reached  
3 this position directly contradicting the findings of  
4 Coroner Milledge, without having made any attempt to  
5 explore the question of persons of interest.  
6

7           Mr Morgan, and this is at paragraph 200 - Detective  
8 Sergeant Morgan - agreed that the contradiction of the  
9 coronial findings was made even though Strike Force Neiwand  
10 had, in fact, uncovered nothing of any consequence beyond  
11 what was before Coroner Milledge.  
12

13           We submit, and we say this at paragraph 204, that  
14 Neiwand had no proper or reasonable basis for contradicting  
15 the coronial findings in any way, those findings should be  
16 confirmed. And as we noted in a couple of paragraphs above  
17 that, Mr Willing agreed willingly, in his evidence, that  
18 for Neiwand to say that the cause and manner of death  
19 remain undetermined despite the homicide findings of the  
20 Coroner was "completely without foundation", he said it was  
21 "breathtaking", he said it was "extraordinary", he said he  
22 had never seen the like before.  
23

24           As we submit in paragraph 205, the attacks by Neiwand  
25 on Operation Taradale and Mr Page were unfounded,  
26 unjustified and unsubstantiated. The investigations by  
27 Operation Taradale were appropriate and thorough, as  
28 Detective Sergeant Morgan eventually conceded, and Neiwand  
29 had absolutely no basis for its purported conclusions that  
30 the 2005 findings of Coroner Milledge should be overturned.  
31

32           The failure to give Mr Page any chance to know about  
33 what he was accused of or to answer it was unfair, and the  
34 failure to inform the Coroner's office of the accusations  
35 made both against Mr Page and about how the Coroner  
36 supposedly got it wrong, contradicting the express findings  
37 of the Coroner, was not only breathtaking, as Mr Willing  
38 agreed, but, we submit, indefensible.  
39

40           Now, so far as the particular Neiwand summary  
41 concerning Mr Russell was concerned, I will touch upon this  
42 relatively briefly. As I have said, the main thrust of  
43 Strike Force Neiwand's activity in relation to the death of  
44 Mr Russell was to advance and propound and bolster a theory  
45 of misadventure, ie, that Mr Russell had accidentally  
46 fallen to his death perhaps as a result of his level of  
47 intoxication.

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The three main components of that focus were: one, Mr Russell's blood alcohol concentration and some evidence from Dr Moynham that I'll come to; secondly, suggested differences of opinion between two forensic pathologists, Dr Cala and Dr Duflou, about, inter alia, the hairs and the position of the body; and, thirdly, the views of a crime scene officer as to the disturbance of some bushes at the top of the cliff.

We have made submissions about all of those matters, Commissioner, in the submissions in respect of Public Hearing 2, and I won't repeat those.

As to the first of those three components, namely, the blood alcohol concentration, Mr Russell's blood alcohol concentration was 0.255. That is obviously quite a high concentration. In section J of our submissions, we set out some of what Dr Moynham said about the blood alcohol and what it showed. I'll just turn that up.

Dr Moynham said in 2001, when he gave evidence at the request of Sergeant Page in connection with the Taradale operation and the Milledge Inquest, that at an alcohol concentration of 0.255, he would expect the victim to be displaying signs of marked intoxication, he would have impaired balance, impaired coordination, impaired spatial orientation and the like, and he would have had a diminished capacity to protect himself from danger.

In 2016, at the request of Dr Neiwand, Dr Moynham provided a second report. He said, in that report, that his opinion had not altered since 2001, but he added, in clarification or explanation of what he had said before - and we have set this out at paragraph 478 of the written submissions:

*This level of intoxication --*  
*that is 0.255 --*  
*would make a person more prone to trauma as a consequence of physical impairment. It would also make a person more vulnerable to predatory behaviour by other persons. His capacity to protect or defend himself would be impaired.*

1  
2 And Dr Moynham finished by saying:  
3

4 *It is not possible to determine if he was*  
5 *the victim of an accident or if he was the*  
6 *victim of foul play. Both are possible.*  
7

8 Now, in the Neiwand summary - and I paraphrase - the  
9 effect of what is written and the way in which it is  
10 written is to suggest that Dr Moynham's evidence points  
11 strongly towards the likelihood of an accidental fall  
12 because of the impairment of various kinds brought about by  
13 the level of intoxication. But in fact, Dr Moynham's  
14 evidence points in both directions - that is to say, the  
15 level of blood alcohol could have meant that Mr Russell's  
16 coordination and movements were impaired but also could  
17 have meant, or would have meant, that his capacity to  
18 resist an attack or to ward off an assailant would be  
19 reduced. In other words, as Professor Moynham, as he then  
20 was, finished up by saying, in his view, it was not  
21 possible to determine whether Mr Russell, from the point of  
22 view of blood alcohol content, was the victim of an  
23 accident or foul play; both were possible.  
24

25 Mr Page, in his evidence, pointed out that the blood  
26 alcohol concentration is capable of supporting both the  
27 possibility of homicide and the possibility of  
28 misadventure.  
29

30 In the case of the two pathologists, Drs Cala and  
31 Duflou - and we summarise this at 251 - both considered the  
32 position of Mr Russell's body to be unusual for a fall,  
33 such that foul play was possible; both thought that the  
34 hairs on Mr Russell's hand were more likely to be from  
35 a second person than to be Mr Russell's own hair; both  
36 considered that some of the bruising on Mr Russell's head  
37 could have - they did not say "did" come but "could have" -  
38 come from an assault prior to death, and both acknowledged  
39 that misadventure could not be ruled out.  
40

41 The submission that we advance is that the two experts  
42 overall were largely in agreement. The few differences  
43 between their respective views were relatively slight.  
44 When Mr Morgan - DS Morgan - said in his statement that  
45 Dr Duflou's findings "differed significantly" from those of  
46 Dr Cala, in our respectful submission, that is not  
47 a sustainable position.



1  
2           The third component on which Neiwand relied in  
3 pressing its misadventure theory was evidence, including  
4 evidence from a crime scene officer called  
5 Sergeant Cameron, that some shrubbery at the top of the  
6 cliff had been disturbed, and Mr Russell had some strands  
7 of grass near and underneath his body, down on the rock  
8 shelf below, and the suggestion advanced by Neiwand,  
9 relying on Sergeant Cameron, was that those two pieces of  
10 evidence - shrubbery disturbed at the top, strands of grass  
11 near Mr Russell's body, below - would refute the theory of  
12 him being thrown over the edge of the cliff. It is  
13 submitted, and indeed Mr Page made this observation in his  
14 evidence, that that theory does not withstand a moment's  
15 scrutiny. Among other things, it is at least equally  
16 possible that shrubbery could be disturbed during  
17 a struggle.

18  
19           It is submitted that in the case of the Neiwand  
20 summary concerning Mr Russell, Neiwand had no proper or  
21 reasonable basis for its purported conclusion that the 2005  
22 findings of Coroner Milledge should be overturned.

23  
24           In the concluding part of our written submissions, we  
25 summarise the evidence now available to the Inquiry. The  
26 evidence now available to the Inquiry, of course, includes  
27 the evidence that was available through Operation Taradale  
28 to Coroner Milledge and it includes all the materials  
29 generated by Strike Force Neiwand, including the summaries,  
30 all of which I have already said something about today and  
31 I won't repeat.

32  
33           At the very end of our written submissions, we observe  
34 that we ourselves - that is, the Inquiry - have sought to  
35 have Mr Russell's clothing forensically tested by FASS.  
36 I've noted this morning that no such testing was carried  
37 out in 1989, but I've also noted that, at that time, DNA  
38 testing was only in its infancy in this State.

39  
40           I have noted that in 2002 or thereabouts, Operation  
41 Taradale sent the clothes for testing, and some testing was  
42 done, but produced no useful result.

43  
44           In 2016, Strike Force Neiwand arranged for some  
45 testing as well, and although the testing was not very  
46 informative, it did inform Neiwand - and this is in the  
47 materials - that there was a mixed DNA profile on the

1 jeans. That indicates, as we understand it, that the DNA  
2 on the jeans is from more than one person.

3  
4 In 2016, however, FASS, as we understand it, was not  
5 given a reference sample, by which I mean was not given  
6 a sample of DNA of the same stamp as Mr Russell, eg, by  
7 getting some DNA from Peter Russell.

8  
9 The Inquiry, for its part, has arranged for testing  
10 this year, and that has included the provision of  
11 a reference sample.

12  
13 The test results will be the subject of a statement  
14 from the appropriate officer from FASS, which is not yet  
15 available. It should be available shortly. It will  
16 address, I expect, not only the results of the testing done  
17 this year in 2023 but will clarify exactly what testing was  
18 done in 2002, what testing was done in 2016, and will  
19 include, I anticipate, some reference to the possible  
20 impact, if any, on any of those tests, at any of those  
21 stages, of the fact that the clothes, it seems, were washed  
22 or cleaned in some way in 1989.

23  
24 So far as manner and cause of death is concerned, the  
25 submission we make, Commissioner, is that the finding made  
26 by Coroner Milledge in 2005 is still appropriate - that is,  
27 John Alan Russell died at Marks Park near Bondi between  
28 22 and 23 November 1989. The cause of death is multiple  
29 injuries sustained when he was thrown from the cliff on to  
30 rocks by a person or persons unknown.

31  
32 So far as bias is concerned, which is, of course, one  
33 of the critical factors which this Inquiry's Terms of  
34 Reference require you, as Commissioner, to consider, it's  
35 submitted that the evidence is sufficient to establish that  
36 Mr Russell's death was a gay hate crime - that is, a death  
37 in which LGBTIQ bias was a factor.

38  
39 Among the matters that inform that suggested  
40 conclusion are: first, the location where Mr Russell's  
41 body was found, which was a very well-known gay beat at the  
42 time; second, the probability that Mr Russell was at Marks  
43 Park in order to use the beat, it not being on his way home  
44 from the hotel where he was last seen; thirdly, the  
45 position in which his body was found, which the two experts  
46 do agree was unusual for an accidental fall; fourthly, the  
47 coins scattered around his body, which may indicate that

1 they had been in his hand rather than his pocket and  
2 perhaps had been used as a means of signalling to other  
3 persons on the top of the cliff. The Inquiry has evidence  
4 that that mode of communication was sometimes used by those  
5 using beats; fifthly, the strands of hair found on  
6 Mr Russell's left index finger, likely to have been from  
7 another person, particularly in the light of the evidence  
8 of Peter Russell; sixthly, the position of his sloppy joe,  
9 which both Drs Cala and Duflou indicate might - not  
10 necessarily, but might - indicate that it had reached that  
11 position by causes otherwise than just the fall; seventhly,  
12 the assault on Mr McMahon only one month later at the very  
13 same location; and, eighthly, the abundance of evidence of  
14 gay hate assaults in the Bondi/Tamarama area in the 1980s  
15 and 1990s, including the disappearance and death of  
16 Mr Warren in July 1989, other assaults, including that on  
17 Mr McMahon in or near Marks Park in November and December  
18 1989, and the murder of Mr Rattanjurathaporn in July 1990,  
19 all of those occurring in or near Marks Park.

20  
21 It is submitted that it is highly probable that  
22 Mr Russell met his death at the hands of one or more gay  
23 hate assailants.

24  
25 Those are our submissions.

26  
27 THE COMMISSIONER: Thank you.

28  
29 MR MYKKELTVEDT: We will provide submissions in writing in  
30 accordance with the practice direction.

31  
32 THE COMMISSIONER: All right. Thank you.

33  
34 Mr Gray, I take it you want to move to the other  
35 matter after lunch?

36  
37 MR GRAY: If I may.

38  
39 THE COMMISSIONER: What would be a convenient time to  
40 resume?

41  
42 MR GRAY: I wonder if either 2.15 or 2.30 would be  
43 convenient.

44  
45 THE COMMISSIONER: Yes.

46  
47 MR GRAY: There are one or two matters that I need to

1 attend to, and that would be suitable to me if it's  
2 suitable to the Commission.

3  
4 THE COMMISSIONER: No, it is.

5  
6 Does that cause any concern on your part?

7  
8 MR MYKKELTVEDT: That's fine, Commissioner.

9  
10 THE COMMISSIONER: All right. If I make it 2.30, we'll be  
11 finished by the normal time?

12  
13 MR GRAY: We certainly would.

14  
15 THE COMMISSIONER: All right. In that event I will make  
16 it 2.30, so I will adjourn these proceedings until 2.30.  
17 Thank you.

18  
19 **LUNCHEON ADJOURNMENT**

20  
21 THE COMMISSIONER: Yes?

22  
23 MR GRAY: Commissioner, I turn to the case of Gilles  
24 Mattaini.

25  
26 Mr Mattaini's partner at the time of his death in 1985  
27 was Mr Jacques Musy. He has consented to the Inquiry  
28 showing a photograph of Mr Mattaini and I ask that that now  
29 be put on the screen. Thank you.

30  
31 Mr Mattaini is there wearing a yellow spray jacket,  
32 which I will come to a little later in these submissions.

33  
34 Mr Musy, who now lives again in France, has prepared  
35 a statement in which he reflects on the life and the loss  
36 of his partner, Mr Mattaini. I tender that statement,  
37 which I believe will be exhibit 50.

38  
39 **EXHIBIT #50 FAMILY STATEMENT OF MR JACQUES MUSY**

40  
41 THE COMMISSIONER: Thank you very much.

42  
43 MR GRAY: Commissioner, on behalf of the Inquiry, I extend  
44 my condolences to Mr Musy and to all of Mr Mattaini's  
45 surviving family and friends, and thank Mr Musy for  
46 providing a statement.  
47

1 Commissioner, Gilles Mattaini was a gay man, born in  
2 France in October 1958. He was last seen walking near  
3 Bondi Beach on 15 September 1985, when he was 26 years old.  
4 He was never seen again, and his body has never been  
5 recovered.  
6

7 Mr Mattaini met his partner, Mr Jacques Musy, in  
8 France in about 1978, and they began a relationship which  
9 lasted until Mr Mattaini's death. In 1983, they moved to  
10 Australia, first Mr Musy and then Mr Mattaini. As  
11 at September 1985, they lived together in an apartment in  
12 Ramsgate Avenue, Bondi Beach, near the intersection with  
13 Campbell Parade.  
14

15 At the very time that Mr Mattaini disappeared, from  
16 about late August to late September 1985, Mr Musy was in  
17 France on holiday.  
18

19 Mr Mattaini worked at the Menzies Hotel in the city as  
20 a waiter or barman. At the time of his disappearance, he  
21 had some concern about his residency, which I'll come to,  
22 because he had, it seems, overstayed his visa. However,  
23 the evidence is that he was enjoying his time alone while  
24 Mr Musy was away on holidays, and he was also looking  
25 forward not only to Mr Musy's return but to a visit from  
26 a friend from France, Mr Antony Wyszynski, who would be  
27 staying with him, or with them, in their apartment, and he  
28 was purchasing things for the apartment in anticipation of  
29 that visit.  
30

31 One of the leisure activities which Mr Mattaini  
32 enjoyed was walking around the beachside areas and paths  
33 near Bondi, including the coastal walk from Bondi to  
34 Bronte, which goes around Marks Park.  
35

36 I wonder if, at the moment, I could ask to have put on  
37 the screen - I think we have both a map and an aerial photo  
38 which show the relevant area. The first is an aerial photo  
39 which shows Marks Park. The park itself is the green area  
40 on the right of the photo. One can see the walking track  
41 skirting from the top of the photo around the park and  
42 around the southern side. The water which is shown as  
43 white water on the bottom of the photo is in an area which  
44 is known as Mackenzies Bay, and the park itself, the  
45 headland, is sometimes, or was sometimes used to be known  
46 as Mackenzies Point.  
47

1           While I am speaking about this, the area where  
2 Mr Russell's body was found, about whom we made submissions  
3 this morning, was just to the right of where all that white  
4 water is, slightly to the right of the building that one  
5 can see at the southern end of that park, which is an  
6 ablution block. So just to the right of that and down is  
7 the area of the cliff at the bottom of which Mr Russell's  
8 body was found.

9  
10           If we could just see the other map, thank you, Marks  
11 Park, which we just saw in the photo, is the area circled  
12 at the bottom of this aerial photo, and one can see the  
13 sweep of land around to the north, where the walking track  
14 leads north from Marks Park, arriving at Bondi Beach and  
15 then, at the far end of Bondi Beach, the northern end,  
16 circled in red is the area where the apartment was where  
17 Mr Musy and Mr Mattaini lived at the time.

18  
19           Just to the right and above that, at the top of that  
20 photo, is another bit of parkland that one can begin to  
21 see, and that's the Bondi Golf Club, where the Bondi  
22 Diggers Club is, which is mentioned in the evidence which  
23 we will come to.

24  
25           The headland at the top of Bondi Beach, to the right  
26 of that smaller red circle, arrives at a point, and the  
27 point is known as Ben Buckler.

28  
29           Now, as I said, Mr Mattaini enjoyed walking that  
30 coastal track, according to his friends, sometimes walking  
31 north from his home, but also sometimes walking south and  
32 sometimes as far as Marks Park. He would take his  
33 headphones or earphones and listen to music, and he would  
34 sit and look at the ocean, which was something he liked to  
35 do.

36  
37           According to his friends, although some of them later  
38 were aware and maybe one or two of them were already aware  
39 in 1985 that Marks Park was a gay beat, Mr Mattaini would  
40 not have been someone who used the gay beat at all; he was  
41 a shy and private person and he was in a committed  
42 relationship and none of his friends expected that he would  
43 have been using the beat.

44  
45           On 16 September 1985, he failed to turn up for his  
46 shift at the Menzies Hotel. This became known to his  
47 friends, who tried to find out what may have happened to

1 him, and they had no success. Mr Musy, who was in France,  
2 was informed of his disappearance by one of those friends,  
3 whose name was Vincent Ottaviani. He also worked at the  
4 Menzies Hotel, as did another friend, Mr Marc Hubert, both  
5 of whom I'll come to in a little while.  
6

7 The day before, or perhaps a couple of days before, he  
8 disappeared, Mr Mattaini had asked Mr Hubert, his friend  
9 and supervisor at the Menzies, if he could finish his shift  
10 early. He said he was feeling stressed, he didn't tell  
11 Mr Hubert about what, and he, uncharacteristically, asked  
12 for a cigarette because he was feeling the need for one.  
13 Mr Hubert gave evidence later that he did not know what  
14 this stress related to.  
15

16 A copy of a September 1985 calendar from the  
17 apartment, much later, in 2002, was obtained in the course  
18 of Operation Taradale. The word "off" was marked on  
19 15 September, indicating probably that Mr Mattaini was not  
20 working on that day, and the same calendar had a number of  
21 future days after 15 September marked as days on which  
22 various anticipated events would occur.  
23

24 Possibly on 15 September, and if not, then shortly  
25 before that date, Mr Mattaini spoke on the telephone with  
26 his friend Mr Wyszynski, who was then in France but who was  
27 the friend who was going to come in the near future to  
28 visit Sydney. Mr Wyszynski said that Mr Mattaini was in  
29 good spirits and looking forward to his visit.  
30

31 Mr Wyszynski later - and all of these things only  
32 became known later, for reasons that I'll come to - told  
33 Mr Mattaini's mother that Mr Mattaini had told him that he  
34 was going swimming in the sea on that day, which may or may  
35 not have been the day he disappeared.  
36

37 There was a sighting of Mr Mattaini on 15 September in  
38 Bondi by a neighbour. That neighbour described Mr Mattaini  
39 as looking "aloof". That, on the evidence, is the last  
40 sighting of Mr Mattaini.  
41

42 Mr Musy, when he came to give evidence many years  
43 later in the Taradale inquest, referred to this neighbour  
44 as being known as "Terry", but the full name and possible  
45 whereabouts of Terry are unknown.  
46

47 When Mr Mattaini did not turn up to his shift at the

1 Menzies on the 16th, Mr Hubert contacted Mr Ottaviani.  
2 Mr Ottaviani visited Mr Mattaini's flat but there was no  
3 answer. Mr Ottaviani telephoned Mr Wyszynski in France and  
4 told him this. Mr Wyszynski asked Mr Ottaviani to go to  
5 Mr Mattaini's flat and check.  
6

7 According to Mr Wyszynski's statement, he received  
8 a further call from Mr Ottaviani to say that he had checked  
9 the apartment and that it was intact, with his passport and  
10 house keys present. How it is that Mr Ottaviani could have  
11 gained entry to the apartment is not clear. As just  
12 mentioned, a couple of days earlier when he had gone there  
13 and got no answer, he had apparently not gone in.  
14

15 In any event, when Mr Wyszynski later gave oral  
16 evidence at the Milledge Inquest, which I'll come to, he  
17 said that, in fact, he had no specific recollection of  
18 Mr Ottaviani saying anything about the keys and, further,  
19 when Mr Musy, in due course, returned from France and went  
20 to his own apartment that he shared with Mr Mattaini, he  
21 saw that Mr Mattaini's keys were, in fact, missing.  
22

23 Now, Mr Ottaviani and Mr Hubert made inquiries with  
24 various bodies as best they could - hospitals and,  
25 according to one recollection, at least, the police - as to  
26 Mr Mattaini's whereabouts. They failed to obtain any  
27 information. It remained a mystery.  
28

29 Mr Musy, when he returned, was under the impression  
30 that Mr Ottaviani and Mr Hubert had indeed reported the  
31 disappearance to police. I'll come back to that, as to  
32 whether they did or whether they didn't. Mr Musy himself  
33 was very distressed and being treated with Valium because  
34 of his upset at the disappearance of his partner.  
35

36 Mr Wyszynski in due course, a week or two later,  
37 arrived in Australia and he and Mr Ottaviani made further  
38 attempts to see if they could find Mr Mattaini or find out  
39 what had happened to him, but they again had no success.  
40

41 Because there seems to have been no report to police  
42 at the time, in 1985, there was no police investigation at  
43 the time. The first investigation into Mr Mattaini's  
44 disappearance by police was not until the second half of  
45 2002, as part of Operation Taradale. However, that  
46 investigation was relatively confined due to the fact that  
47 Mr Musy and Mr Wyszynski only reported Mr Mattaini's



1 disappearance to Detective Sergeant Page in August 2002, at  
2 a time when, otherwise, the brief of evidence for the  
3 Coroner in relation to the cases of Mr Warren and  
4 Mr Russell had been completed.

5  
6 Now, as to Terry, Coroner Milledge, whose findings  
7 I'll come to shortly, described Mr Mattaini as being last  
8 seen "walking on the track at Bondi on about 15 September".  
9 That is consistent with Mr Musy's evidence at the Milledge  
10 Inquest as to what the man called Terry had told him.

11  
12 Mr Musy's recollection at the time of the Milledge  
13 Inquest was that Terry saw Mr Mattaini walking near Terry's  
14 apartment, which was in Campbell Parade, near Ramsgate  
15 Avenue, where Mr Musy and Mr Mattaini's apartment was, up  
16 the hill slightly towards the Bondi Diggers.

17  
18 I add that a map that Mr Musy provided to the Inquiry  
19 in October last year, which is in tab 43 of the tender  
20 bundle, puts Terry's apartment in Campbell Parade, but on  
21 the southern side of Ramsgate Avenue, whereas his evidence,  
22 Mr Musy's evidence in 2003, seems to indicate that he was  
23 saying that Terry's apartment was on the northern side of  
24 Ramsgate Avenue.

25  
26 Mr Musy has been asked about Terry in various  
27 contexts, in particular, in 2002 by Mr Page - Detective  
28 Sergeant Page - and in 2003 in the Milledge Inquest, and in  
29 2016 in the course of Strike Force Neiwand. He  
30 consistently said that the man called Terry told him that  
31 he had seen Mr Mattaini walking in Bondi that morning and  
32 that he looked "aloof". He said he always remembered that  
33 word "aloof" and the date, because it was his own birthday.

34  
35 The Inquiry has made what efforts it has been able to  
36 make, including by communications with Mr Musy and also  
37 another friend, Mr Glen Lehman, who was in the circle of  
38 friends shared by Mr Musy and Mr Mattaini, as to whether  
39 there is any prospect now of identifying Terry or his  
40 whereabouts, and that has not been able to be achieved.

41  
42 Now, as I mentioned, Interpol, with whom both  
43 Operation Taradale and Strike Force Neiwand had some  
44 communications in connection with this case, advised back  
45 in 2002, at the time of Taradale, that Mr Mattaini's mother  
46 recalled Mr Wyszynski telling her that Mr Mattaini had told  
47 him that he was going to go swimming on the day that

1 Mr Mattaini and Mr Wyszynski had spoken on the phone, which  
2 may have been 15 September. The mother, Mrs Mattaini,  
3 described her son as an amateur scuba diver. On the other  
4 hand, Mr Musy told Strike Force Neiwand that Mr Mattaini  
5 did not go scuba diving in the time he knew him, was not an  
6 athlete and was too scared to go into the ocean.

7  
8 By contrast again, Mr Lehman recalls Mr Mattaini as  
9 being a good swimmer and that swimming was one of the  
10 social activities he took part in with the group of  
11 friends. And there the evidence stands on that topic.

12  
13 Now, as I mentioned, there was no original  
14 investigation. Mr Hubert, to whose evidence I'll come in a  
15 second, thought or was under the impression that  
16 Mr Ottaviani had reported Mr Mattaini's disappearance to  
17 Paddington Police Station. There is no record available to  
18 the Inquiry of any such report of a missing person, and so  
19 either there was some misunderstanding on the part of  
20 Mr Hubert and no such report had been made, or, if there  
21 was a report and there was a record made of it, no such  
22 record is any longer available.

23  
24 Now, that brings me to Operation Taradale. I won't  
25 repeat what I said this morning about Operation Taradale  
26 generally. As you will recall, Commissioner, I referred to  
27 the evidence. It was an extensive investigation over some  
28 two years in relation to the cases of Mr Warren and  
29 Mr Russell. The investigation into the disappearance of  
30 Mr Mattaini was a much more circumscribed exercise by  
31 necessity because of its only being reported to Mr Page -  
32 Detective Sergeant Page - very late in the piece.

33  
34 What seems to have clearly happened is that  
35 Mr Wyszynski and Mr Musy, probably in that order, came to  
36 see Detective Sergeant Page in early August 2002 having  
37 seen publicity about Operation Taradale in the press. In  
38 that regard, may I show two articles on the screen, both  
39 from late July 2002.

40  
41 The first one, that has now come up, is an article in  
42 the Sydney Star Observer for 25 July 2002 [SC0I.23974\_0002]  
43 and as can be seen, perhaps more easily when one has it in  
44 front of one in hard copy, it's on the front page, I think,  
45 of the Sydney Star Observer, and it is reporting on the  
46 fact that the Taradale investigation, Operation Taradale,  
47 has been under way and is now, as at late July 2002, about

1 to move into the next phase, which will be an inquest.  
2 It's referred to as a "hate crimes inquest".  
3

4 The second article that I want to show, which is from  
5 a few days earlier, 21 July 2002, is a Daily Telegraph  
6 article, which again is on the front page, the only story  
7 on the front page, heading "Exclusive: six gay men  
8 disappear. Police believe their killers are gang members",  
9 and the main heading is "Linked by hate". So it's  
10 immediately clear that the publicity that was attending  
11 Operation Taradale was considerable and prominent.  
12

13 Now, Detective Sergeant Page, having been told by  
14 Mr Wyszynski and Mr Musy that their friend, partner in  
15 the case of Mr Musy, had disappeared back in September  
16 1985, 17 years previously, set about doing as much as he  
17 could as quickly as he could.  
18

19 His statement, which I don't need to take you to,  
20 Commissioner, his own statement - that is, Detective  
21 Sergeant Page's statement - is in exhibit 6 at tab 160, and  
22 he recounts that he obtained a statement from Mr Musy; he  
23 obtained a statement from Mr Wyszynski; he conducted  
24 inquiries with the police computer system, COPS; he made  
25 inquiries with the Missing Persons Unit; he made inquiries  
26 with the Department of Immigration as to Mr Mattaini's visa  
27 and his movements in and out of Australia; he contacted the  
28 French Consulate, he contacted the Roads and Transport  
29 Authority; he published a media release; and he added and  
30 caused to be added the disappearance of Mr Mattaini to  
31 Operation Taradale.  
32

33 The statement by Mr Musy that he obtained is at  
34 tab 160 of exhibit 6. I beg your pardon, tab 159 of  
35 exhibit 6. The statement covers Mr Musy's account of  
36 meeting Mr Mattaini in France, something of what Mr Musy  
37 knew about Mr Mattaini's past before they met, and then  
38 something about their lives in Australia and what he found  
39 when he came back from France.  
40

41 At paragraphs 5 and 6 of that statement, Mr Musy  
42 referred to two suicide attempts that Mr Mattaini had  
43 apparently made back in France in his teens. One of them,  
44 which is the one in paragraph 6 - they're out of order -  
45 was before he entered the French military, which he did by  
46 way of conscription, and that's, according to Mr Musy, in  
47 this statement, probably when he was in his late teens;

1 and, secondly, when he was in national service in France -  
2 this is at paragraph 5 - that he had seemingly made  
3 a second attempt to take his life while he was in the  
4 military, and the effect of that was that he was  
5 hospitalised and dismissed from the army, and I'll come  
6 back to that.

7  
8 In paragraph 13 he refers to Mr Mattaini taking walks  
9 around the coastal areas during daylight hours and the  
10 early evening, and sometimes around Marks Park. He refers  
11 to being told by Mr Ottaviani that Mr Mattaini was missing.  
12 At paragraph 20 he refers to coming home and noticing that  
13 Mr Mattaini's keys and headphones, Walkman, were missing.

14  
15 Another thing that was missing was his bright yellow  
16 rubber spray jacket, and that, as I mentioned, is the spray  
17 jacket that is being worn by Mr Mattaini in the photo that  
18 was put up on the screen at the beginning of this  
19 afternoon's hearing.

20  
21 At paragraph 23, there is the reference to the man who  
22 lived in the unit block nearby who had seen Mr Mattaini  
23 walking at Bondi on 15 September, looking "aloof".

24  
25 At paragraph 24 he says that his understanding was  
26 that Mr Hubert and Mr Ottaviani had reported Mr Mattaini  
27 missing at Paddington Police Station but that there is no  
28 report of any such thing to be found.

29  
30 A statement was also taken by Mr Page - Detective  
31 Sergeant Page - from Mr Wyszynski. That is at tab 4 of the  
32 tender bundle. I will mention briefly that among the  
33 things Mr Wyszynski says in that statement, which is dated  
34 3 August 2002, is that when he spoke to Mr Mattaini at  
35 around about 15 September, shortly before he, Mr Wyszynski,  
36 was going to come to Australia, he says that Mr Mattaini:

37  
38 *... was very happy and he was looking*  
39 *forward to my visit. There was no*  
40 *indication about him being in trouble.*

41  
42 He refers in the next paragraph, 7, to Mr Ottaviani  
43 telling him that Mr Mattaini had not turned up for work.  
44 He says that Mr Ottaviani went to Mr Mattaini's place and  
45 told him, told Mr Wyszynski, that everything was intact and  
46 that his passport and house keys were there. As I've said,  
47 that seems not to be right.

1  
2 In paragraph 10 - I should draw attention to this -  
3 Mr Wyszynski says this:  
4

5 *I remember that Marks Park had a reputation*  
6 *for a cruising place for gay men. It also*  
7 *had a reputation for being dangerous, there*  
8 *were bashings and robbing of gay men at the*  
9 *park. This was happening in 1985, I know*  
10 *this because I was told this by men who had*  
11 *been bashed and robbed and were too scared*  
12 *to report it to police.*  
13

14 He says that he experienced such things himself between  
15 1986 and 1989.  
16

17 In paragraph 18, finally for present purposes,  
18 Mr Wyszynski recounts that he had been reading about murder  
19 cases in the paper, the ones that happened in Bondi  
20 involving gay men, and he says:  
21

22 *I began to think that maybe Gilles had been*  
23 *murdered in these circumstances. About*  
24 *a week ago I read an article in The Star*  
25 *Observer about reporting information to*  
26 *Paddington Police in relation to murders*  
27 *and hate crimes in the area. I contacted*  
28 *Paddington Police and spoke to them ... I*  
29 *spoke ... to Detective Page. I then was in*  
30 *contact with Jacques --*  
31

32 that is to say Mr Musy --  
33

34 *and we came in to Paddington Police ... to*  
35 *give a statement.*  
36

37 Mr Wyszynski later - I'll just jump ahead - at the Milledge  
38 Inquest gave oral evidence where he was mainly questioned  
39 about the contents of his statement.  
40

41 At page 63, which is at tab 14 of the tender bundle,  
42 he describes Mr Mattaini's state of mind when he spoke to  
43 him on the phone in anticipation of his visit to Australia  
44 as being "extremely happy, exhilarating." At page 64 he  
45 says he sounded joyful on the telephone, and when asked by  
46 Counsel Assisting whether there was anything in his manner  
47 which caused Mr Wyszynski to have any concern about him, he

1 said, "Absolutely not. On the contrary."  
2

3 On the same page, page 64, at tab 14, Counsel  
4 Assisting asked this question:  
5

6 *Q. Mr Ottaviani told you that he had gone*  
7 *to Gilles' flat, found that everything was*  
8 *intact and that his passport and house keys*  
9 *were still there, is that correct?*

10 *A. Yes.*

11 *Q. Do you specifically recall a reference*  
12 *to the house keys?*

13 *A. No.*

14 *Q. So that's just as best a memory as you*  
15 *can have so many years after the event?*

16 *A. Basically everything was intact. That*  
17 *there was no indication in the flat that*  
18 *he'd been robbed or why he disappeared or*  
19 *that he ran away even.*  
20

21 At page 68, Mr Wyszynski gave evidence that  
22 Mr Mattaini's father had refuted or rejected his son  
23 because of his homosexuality, and at page 69, in answer to  
24 questions put by Counsel for the Commissioner of Police, he  
25 agreed with what was put to him as follows:  
26

27 *Q. Back in 1985 Marks Park had*  
28 *a reputation for being dangerous. ...*  
29 *that's what you said in your statement?*

30 *A. Yes. As I said I arrived in '85 and*  
31 *I didn't know Sydney so I can't really say*  
32 *that it was '85 or '86.*

33 *Q. ... but you say the mid-80s onwards?*

34 *A. Maybe a few months later I started to*  
35 *go for walks. I mean, it could have been*  
36 *already '86 ...*

37 *Q. But you said in your statement that*  
38 *you became aware that men had been bashed*  
39 *around that area, bashed and robbed?*

40 *A. Yes.*

41 *Q. And they were too scared to report it*  
42 *to the police; is that what they told you?*

43 *A. Yes that was the talk in the gay*  
44 *community I would say.*  
45

46 Mr Hubert, the other friend who worked at the Menzies  
47 Hotel, gave oral evidence at the Milledge Inquest. That is

1 at tab 12 of the tender bundle. In particular, may I note  
2 that at page 41 of the transcript, on the topic of  
3 Mr Mattaini's visa, he was asked at line 1:

4  
5 *Q. What did he tell you about his visa*  
6 *problems?*

7  
8 Mr Hubert's answer was:

9  
10 *A. Well I knew that he had to leave the*  
11 *country every three months to renew his*  
12 *visa which was the case at the time.*  
13 *I think he would have been on the one-year*  
14 *visa and had to leave the country for three*  
15 *months.*

16 *Q. Did he tell you at some point that he*  
17 *became an illegal immigrant?*

18 *A. I don't know if he was by then illegal*  
19 *or not, I don't think he actually really*  
20 *was ever illegal since he always renewed*  
21 *his visa. That's the reason why he*  
22 *actually left each time.*

23  
24 Later down that page, asked again about the term "illegal  
25 immigrant", he answered at line 30:

26  
27 *A. Maybe it was about to expire I'm not*  
28 *sure. I really wouldn't know that it's too*  
29 *far away for me to remember ...*

30  
31 And then at line 40:

32  
33 *A. I know he was worried ... and I also*  
34 *know that financially it was a burden ...*  
35 *to leave every three months to go away for*  
36 *a week or so and come back.*

37  
38 And at page 44, transcript page 44, at about line 40, he  
39 says that his understanding was that Vincent Ottaviani  
40 would have contacted the Paddington Police Station because  
41 that's where he was living. He said:

42  
43 *... I don't remember why I remember the*  
44 *Paddington Police Station but that's still*  
45 *in my mind somehow ...*

46  
47 Now, Mr Musy gave oral evidence as well at the

1 Milledge Inquest. His evidence is in exhibit 6, tab 280.  
2 Again, I won't take time at length on it. It's referred to  
3 in our written submissions. But, in particular, he says  
4 the following things at around pages 48 to 50. He is asked  
5 at the bottom of page 48 this:  
6

7 Q. ... you've told us, I think, that your  
8 relationship with him commenced about 1978  
9 and of course ended when he went missing in  
10 1985, a period of some seven years?

11 A. That is correct.

12 Q. In that period, [that is, the whole  
13 seven years], did he give any indication of  
14 the fact that he was thinking about  
15 suicide, contemplating it in any respect or  
16 was so stressed or sad or depressed that  
17 that might be something he could do?

18 A. No.  
19

20 The answer went on:

21  
22 *On the contrary meeting me and being*  
23 *involved with me in a love relationship*  
24 *actually made him sort of forget about*  
25 *these thoughts or his problems he had in*  
26 *the past.*

27  
28 Next sentence:

29  
30 *He had sort of a kind of frame of mind*  
31 *where he was somebody who was more*  
32 *attracted to death than life and meeting me*  
33 *show him life in a different way and he had*  
34 *a very fulfilling relationship with me and*  
35 *he was commenting often that he was really*  
36 *happy and how stupid he had been before to*  
37 *sort of want to die because there was much*  
38 *more to life than what he thought there*  
39 *was.*

40  
41 He went on:

42  
43 *The coming to Australia was a very ... big*  
44 *part of this and he was extremely, very*  
45 *very happy to be in Australia and to find*  
46 *a new life living in Bondi by the seaside*  
47 *and all this was exhilarating for him. He*



1           *was very very happy he - it was just like*  
2           *a cure for him from his bad faults he had*  
3           *in the past --*

4  
5           and then Mr Musy added this, at line 20 on page 49:

6  
7           *and anyway, the Army event --*

8  
9           which is the second suicide attempt --

10  
11           *was probably more to get out of the system*  
12           *than actually to end his days because he*  
13           *was in a relationship with me already.*

14  
15           And at the bottom of that page, he is asked about the visa  
16           issue and whether that was something that Mr Mattaini was  
17           worried about, and he, in line 40, answers that he was very  
18           happy in Australia but he was worried by the fact that his  
19           status as an illegal immigrant, so to speak, was preventing  
20           him from going to France to visit his parents, because he  
21           really wanted to live here:

22  
23           Q.    ... how worried he was about his  
24           immigration status?

25           A.    Worried to [a] point --

26  
27           And the answer goes on, and then next answer at line 55:

28  
29           A.    ... it was worrying him not to be in  
30           the law, like he was like illegal but  
31           I mean it was a thought but it was not  
32           something which was really sort of  
33           weighting on him constantly not at all.

34  
35           finally at page 51 he is asked:

36  
37           Q.    -- was there anything in any of the  
38           phone calls that you had with him when you  
39           were in France and he was in Australia  
40           in August '85 and September that caused you  
41           to think that he wasn't his normal self,  
42           that he was perhaps depressed or stressed  
43           or otherwise pressured?

44           A.    No, I would say no because he was  
45           happy that I was coming back. He was happy  
46           to tell me that he had bought this and that  
47           ... for the flat. [He was proud] that he

1           *had done that, even though we would have*  
2           *argued about the financial repercussions of*  
3           *his spendings, but he would laugh about*  
4           *that and he was very happy of me coming*  
5           *back.*

6  
7           Now, at the Milledge Inquest, again, I won't repeat  
8 what I said this morning, but you'll recall, Commissioner,  
9 that it went for some eight or nine days of hearing in 2003  
10 and many witnesses were called there were many intercepted  
11 telephone conversations and listening devices, there were  
12 persons of interest and so on. I won't repeat what I said  
13 this morning.

14  
15           Then the findings that Coroner Milledge delivered,  
16 included findings about Mr Mattaini, and perhaps that could  
17 be shown on the screen. It was shown this morning, but  
18 it's in exhibit 6, tab 161 [SCOI.02751.00021\_0001] the  
19 findings of the Coroner. And as to Mr Mattaini,  
20 her Honour, Coroner Milledge, said:

21  
22           *I find that Gilles Jacques Mattaini died on*  
23           *or about 15 September 1985 at Sydney. The*  
24           *cause and manner of his death remain*  
25           *undetermined as the evidence before me does*  
26           *not enable me to say.*

27  
28 And in addition to the formal finding to that effect,  
29 higher up on the same page, page 14, as was shown this  
30 morning, her Honour expressed views about the evidence.

31  
32           Yes, thank you, just above that. There we are.  
33 Thank you very much.

34  
35           Her Honour referred to Marks Park victims of assaults  
36 reporting their assailants threatening to throw them off  
37 the cliff face, that this was a modus operandi at the time  
38 of Mr Warren's and Mr Mattaini's disappearances, and  
39 Mr Russell's death, and that that strongly supported the  
40 probability that Mr Warren and Mr Mattaini and Mr Russell  
41 met their deaths in this way.

42  
43           I should say that at page 3 of the findings, on the  
44 topic of Mr Mattaini and suicide, the Coroner said:

45  
46           *Mr Mattaini's father was not close to his*  
47           *son and his mother believed it was possible*

1           that her son had "suicided". There is no  
2           evidence before me to support the finding  
3           of "suicide".  
4

5           Now, again, I won't repeat what I said this morning.  
6           Between the Coroner's findings in 2005 and the instigation  
7           of Strike Force Neiwand in October 2015, there was no  
8           reinvestigation of any of these three deaths.  
9

10          I have made submissions this morning which are equally  
11          applicable this afternoon to this case in relation to  
12          Strike Force Neiwand generally and the accusations about  
13          tunnel vision and confirmation bias and the like. Those  
14          submissions apply equally here.  
15

16          But so far as I need to say something about the  
17          Neiwand summary, specifically directed to the case of  
18          Mr Mattaini, in our written submissions, this topic is  
19          dealt with at paragraph 207 and following.  
20

21          At 209 we submit that the authors of the Mattaini  
22          summary, namely, DSC Chebl, as the OIC, and DS Morgan, as  
23          the Investigation Supervisor, who reviewed the summary,  
24          accused Detective Sergeant Page of deliberately not  
25          informing Coroner Milledge of information provided to him  
26          by Mr Musy in relation to previous suicide attempts and  
27          suicidal ideation on the part of Mr Mattaini, despite  
28          Mr Musy having told Detective Sergeant Page about those  
29          matters. They further alleged in the Mattaini summary that  
30          this supposed withholding of information:  
31

32                 ... was a key factor in the Coroner not  
33                 considering suicide as a possibility in  
34                 Mr Mattaini's disappearance.  
35

36  
37          At 210 of our submissions we summarise the essence of  
38          the allegations made in the Mattaini summary on this point,  
39          and they are, firstly, that Mr Mattaini had made multiple  
40          attempts at suicide.  
41

42          Secondly, that "throughout his relationship" with  
43          Mr Musy, Mr Mattaini spoke openly about dying, saying that  
44          he was comfortable with dying and that he preferred death  
45          to life; and said also that if he did commit suicide, he  
46          would do it in a way that no-one would find his body.  
47

1 Thirdly, the Mattaini summary alleged that Mr Musy  
2 told Detective Sergeant Page all of those things in 2002,  
3 but Detective Sergeant Page failed to include them in  
4 Mr Musy's statement.

5  
6 Fourthly, that it was Detective Sergeant Page who had  
7 actually persuaded Mr Musy that Mr Mattaini's disappearance  
8 was a homicide.

9  
10 Fifthly, that, as a consequence, Coroner Milledge did  
11 not consider the possibility of suicide in relation to  
12 Mr Mattaini.

13  
14 The evidence is now amply sufficient for you as  
15 Commissioner to find that every single one of those  
16 allegations was and is completely wrong.

17  
18 First of all, Mr Mattaini had not made multiple  
19 suicide attempts, he had made either one or two, both of  
20 which were mentioned in the statement by Mr Musy, taken by  
21 Sergeant Page, and the second one, which we've just seen,  
22 was actually regarded by Mr Musy as quite likely not to  
23 have been a suicide attempt at all but only a device to get  
24 out of the army or to get out of conscription.

25  
26 Secondly, Mr Musy made crystal clear - and I've taken  
27 the Commissioner to this just a few minutes ago - in his  
28 2003 oral evidence at the Milledge Inquest, and he made it  
29 clear as well in another document which Neiwand had  
30 received in 2017 from the French police, that the ideas  
31 about death that I have just referred to, about being  
32 comfortable with dying, preferring death to life, and that  
33 if he did commit suicide, he would do it in a way that  
34 no-one would find his body - Mr Musy made clear that those  
35 ideas and notions and remarks were ideas that Mr Mattaini  
36 had once had in his youth, many years earlier, prior to  
37 meeting Mr Musy, but that he had never had or expressed any  
38 such views ever since meeting Mr Musy in 1978.

39  
40 Indeed, as we've just seen, Mr Musy's evidence in the  
41 witness box at the Milledge Inquest was that being with  
42 him, being with Mr Musy, had made Mr Mattaini forget about  
43 these thoughts or problems that he had had in the past, and  
44 that Mr Mattaini had actually remarked how stupid he had  
45 been before when he had had such thoughts.

46  
47 Thirdly, Mr Page gave unchallenged evidence before

1 you, Commissioner, that Mr Musy did not say to him anything  
2 at all along those lines, ever.

3  
4 Fourthly, it is not right to say that Mr Page was the  
5 one who put the idea into Mr Musy's ahead that Mr Mattaini  
6 might have been the victim of a homicide. On the contrary,  
7 as is now shown by a welter of evidence, Mr Musy and  
8 Mr Wyszynski went to the police, went to see Sergeant Page,  
9 precisely because that idea had been sparked in their minds  
10 by the publicity they had read about the work of Operation  
11 Taradale. It had caused them to think that perhaps this  
12 gay hate bashing era, this gay hate murder era, might be  
13 the explanation for what happened to their friend. That's  
14 why they went to the police.

15  
16 Fifthly, the possibility of suicide most certainly was  
17 considered by Coroner Milledge in the case of Mr Mattaini  
18 in 2003 to 2005. It was expressly raised in the opening  
19 address of Counsel Assisting; the two suicide attempts were  
20 expressly raised in Mr Musy's written statement; the topic,  
21 both of the suicide attempts and of the nature and timing  
22 of any suicidal ideation on the part of Mr Mattaini was  
23 addressed at some length in Mr Musy's oral evidence in the  
24 transcript that I've just referred to; it was referred to  
25 again in the closing address of Counsel Assisting; and it  
26 was dealt with by Coroner Milledge in her findings.

27  
28 Mr Page gave evidence before you, Commissioner, as to  
29 how it was that he prepared the statement for Mr Musy.  
30 This evidence was unchallenged. This was in oral evidence.  
31 He explained that the way he created the Musy statement, in  
32 particular, paragraphs 5 and 6, which refer to suicide  
33 attempts, was that he sat at his computer at the police  
34 station and typed, quickly, as Mr Musy spoke, what Mr Musy  
35 said, on to the screen, with Mr Musy watching him and  
36 watching the screen as the typing was done. He asked  
37 Mr Musy open-ended questions about his recollections and  
38 what he typed was what Mr Musy answered.

39  
40 Mr Musy did not say to him anything about suicide or  
41 suicidal thoughts in relation to Mr Mattaini, besides what  
42 appears in the statement. If he had done so, Mr Page would  
43 have included it. As I say, Mr Page was not challenged on  
44 that evidence.

45  
46 Now, I mentioned a 2017 French document - this is the  
47 one referred to in our submissions at 219. It was

1 a statement or record of some kind, it's not quite clear  
2 what it is because the translation is inelegant, to put it  
3 mildly, having been achieved by means of someone using  
4 Google Translate, but it's clear enough, I would submit,  
5 that Mr Musy is saying in that document, which is some sort  
6 of interview with French police during the course of 2017,  
7 that the suicidal ideation that I have described was indeed  
8 in the past, and not at any time after meeting Mr Musy.

9  
10 Now, as we have submitted, Mr Page was not given any  
11 chance to respond to the allegations against him being made  
12 by Strike Force Neiwand. In particular, he was given no  
13 opportunity to respond to these allegations about  
14 withholding from the Coroner information which Mr Musy had  
15 supposedly given to him about suicide.

16  
17 He has given evidence here expressly rejecting any  
18 such thing. That evidence should be accepted. But, in  
19 addition to that, even putting aside his emphatic evidence,  
20 if the authors of the Mattaini summary had checked the  
21 transcript of the Milledge Inquest, in particular, the  
22 evidence of Mr Musy, they would have known that their  
23 allegations were utterly unsustainable.

24  
25 On the question of whether they did read and check the  
26 transcript of the Milledge Inquest, including the evidence  
27 of Mr Musy, Detective Sergeant Morgan chopped and changed  
28 a number of times as to whether he had read it or whether  
29 he would have read it, or whether DSC Chebl had read it or  
30 would have read it, and his evidence fluctuates at various  
31 points among all of those alternatives, and perhaps one or  
32 two others. But the point is this: either DSC Chebl  
33 and/or DS Morgan did not read the transcript of Mr Musy's  
34 evidence at the Milledge Inquest, or they did read it but  
35 chose to omit any reference to it in the Mattaini summary.  
36 Either of those alternatives, we submit, is indefensible.

37  
38 DS Morgan, in due course, in the course of his  
39 evidence in February this year before this Commission,  
40 conceded that to assert that the Coroner had not considered  
41 the possibility of suicide was inaccurate and was wrong and  
42 therefore, inexorably, the blame for the Coroner supposedly  
43 not considering that possibility could not be laid at the  
44 feet of Detective Sergeant Page.

45  
46 He nevertheless - he, Detective Sergeant Morgan -  
47 sought to stand by his allegation that Mr Page had

1 deliberately withheld information from the Coroner. He  
2 gave three reasons for doing so, all of which he  
3 subsequently resiled from. The first was that the Coroner  
4 was not told about Mr Mattaini feeling more comfortable  
5 with death than being alive. As we've just seen from the  
6 transcript, the Coroner was told exactly that.

7  
8 Secondly, he said that the Coroner was not told about  
9 Mr Mattaini saying that if he did kill himself, he wanted  
10 to make sure the remains were not found. Now, as to that  
11 one, which he subsequently accepted could not be sustained,  
12 the facts are these: first, Mr Musy did not tell Mr Page  
13 any such thing; secondly, Mr Musy was asked a lot of  
14 questions at the Milledge Coronial Inquiry about  
15 Mr Mattaini and the topic of suicide, and he never - he,  
16 Mr Musy - chose to mention this particular notion about  
17 making sure his remains were not found, and as Sergeant  
18 Morgan conceded, what Mr Musy chose to say in the witness  
19 box when he was asked about suicide and suicidal ideation  
20 was up to Mr Musy. He said what he wanted to say and he  
21 left out what he left out, either by chance or otherwise.  
22 But either way, whatever he said in the witness box had  
23 nothing to do with Detective Sergeant Page. So that second  
24 basis for standing by his allegation was not sustainable,  
25 as he conceded.

26  
27 Then the third reason that Detective Sergeant Morgan  
28 gave for trying to stand by the allegation that Page  
29 withheld information was:

30  
31 *Most importantly, the fact that he claims*  
32 *that Mr Page convinced him that it was*  
33 *a homicide rather than a suicide or*  
34 *anything else.*

35  
36 Now, that third reason, as we have seen, is untenable,  
37 indeed, not true.

38  
39 The accusations made by Detective Sergeant Morgan and  
40 DSC Chebl in this Mattaini summary, that Detective Sergeant  
41 Page deliberately withheld information from the Coroner,  
42 thereby causing her not to consider suicide as  
43 a possibility, were and are completely without foundation.  
44 They should be rejected out of hand. It's our submission  
45 that for the two officers in question to have made them,  
46 Detective Sergeant Morgan and DSC Chebl, given that they  
47 did so either in the teeth of knowing what Mr Musy had said

1 in his sworn evidence or, alternatively, without even  
2 checking that evidence, was disgraceful.

3  
4 We've noted in our written submissions other ways in  
5 which the Mattaini summary by Strike Force Neiwand, on one  
6 reading, which is the reading that we would submit is the  
7 most realistic, is slanted towards suggesting or  
8 emphasising the likelihood of suicide. One of those  
9 respects is the question of the keys. If somebody is going  
10 to commit suicide, some postulate that they don't bother  
11 taking their keys with them because they won't be coming  
12 back.

13  
14 In the Mattaini summary, we find that the hearsay  
15 understanding of Mr Wyszynski, based on something  
16 Mr Ottaviani told him, that Mr Mattaini's keys were still  
17 in the apartment, is included more than once, but what is  
18 not included is any reference to Mr Wyszynski's more  
19 equivocal evidence at the inquest where he said that,  
20 actually, he had no specific recollection of Mr Ottaviani  
21 saying anything about the keys.

22  
23 Secondly, the summary refers to Mr Musy noticing that  
24 the yellow spray jacket was missing, but, of course,  
25 Mr Musy also said in his very same statement that he  
26 noticed that the keys were missing, and that is omitted.  
27 Mr Musy's evidence in his statement that the keys were  
28 missing is omitted.

29  
30 Thirdly, the summary stresses, or makes particular  
31 reference to, the visa issue as being something that  
32 "appeared to weigh heavily on Mr Mattaini's mind", whereas  
33 the express evidence of Mr Musy was that it was not  
34 something that was really sort of weighing on him  
35 constantly, not at all.

36  
37 The submission that we make, a serious one, at  
38 paragraph 231, is that this summary, in the Mattaini case,  
39 aimed as it was at advancing only a suicide hypothesis,  
40 making no attempt to investigate the possibility of  
41 homicide at all, aimed at discrediting Sergeant Page and at  
42 the objective of overturning the Milledge finding, was  
43 either incompetent or dishonest or both, and it should be  
44 rejected.

45  
46 Now, elsewhere in our submissions we set out some of  
47 the steps that the Inquiry itself has taken to pursue the



1 case of Mr Mattaini. Among those steps are the obtaining  
2 of an opinion from the forensic pathologist, Dr Linda Iles,  
3 regarding the decomposition of bodies in water; another is  
4 the obtaining of an opinion from Professor Robert Brander,  
5 a coastal geomorphologist, in relation to the likely or  
6 possible movements of a body, had it entered the water in  
7 the relevant area at or about or soon after 15 September  
8 1985; and thirdly, there is reference at 297 to the fact  
9 that the Inquiry has used its coercive powers to undertake  
10 private hearings with a number of people, including persons  
11 of interest.

12  
13 I should say that that last factor applies in all  
14 three of these cases - that is, the case of Mr Russell,  
15 this case of Mr Mattaini, and also the case of Mr Warren.

16  
17 So far as the evidence now stands, and again as  
18 I mentioned this morning, as with the case of Mr Russell,  
19 much of the evidence, most of the evidence, apart from the  
20 professional opinions of Dr Iles and Professor Brander, is  
21 evidence that was available at the Milledge Inquest and/or  
22 during the course of Strike Force Neiwand.

23  
24 The submissions that we make about that are as  
25 follows: first of all, various attempts were made,  
26 including by Strike Force Neiwand, to obtain a DNA sample  
27 from Mr Mattaini's mother. Those attempts were not  
28 successful. Mr Mattaini's mother has died. She died  
29 in March 2017.

30  
31 It seems that Mr Mattaini had a sister but it does not  
32 appear that any attempt has been made to obtain a DNA  
33 sample from her, but, in any event, Mr Mattaini's body  
34 never having been found, the utility of obtaining such DNA  
35 samples, even if it had been done or was now possible, is  
36 limited.

37  
38 Dr Iles, as I have said, was asked to report on the  
39 decomposition of human bodies in seawater, the average  
40 period of time between the initial submergence of a body  
41 and its resurfacing and related matters, and Dr Iles has  
42 provided a report, which we refer to in our submissions.

43  
44 The short point is that because there are so many  
45 variables, it is not possible to reliably estimate the rate  
46 of decomposition of human remains in seawater. Typically,  
47 but not universally, if sufficiently buoyant, a body will

1 float for a while until it sinks, but then, having sunk, if  
2 that's what's happened, the process of decomposition can  
3 mean, often does mean, that it resurfaces. But then, as  
4 the decomposition proceeds further and gases are released  
5 from the body, buoyancy is reduced and the remains sink  
6 again. Whether that has happened in the case of  
7 Mr Mattaini is, of course, entirely unknown.

8  
9 Professor Brander, who is an expert on, among other  
10 things, tidal conditions and movements of water in the  
11 ocean, was asked by the Inquiry to report on what might  
12 have happened to Mr Mattaini's body assuming it entered the  
13 water anywhere between North Bondi, near Ben Buckler, and  
14 all the way around to Marks Park, and the short point is  
15 that it could have remained near the shore for a while but  
16 probably would then have been taken a long way out to sea,  
17 but that whether that, in fact, happened, it is really not  
18 possible to say.

19  
20 The professor expressed the further opinion, perhaps  
21 consistent with common sense, that 15 September is likely  
22 to have been a time of the year when Mr Mattaini, or anyone  
23 else, might not have turned his thoughts to swimming  
24 because of the prevailing air and sea temperatures but  
25 again, of course, one doesn't know, and I've mentioned that  
26 there are seemingly some different recollections in the  
27 evidence as to Mr Mattaini's interest in swimming and  
28 competence at swimming.

29  
30 Dr Iles' report was provided to Professor Brander -  
31 her report, as I say, was about decomposition of bodies -  
32 and Professor Brander has expressed a view about that,  
33 namely, that if Mr Mattaini's body had become submerged  
34 quickly after entering water, it may have remained  
35 submerged for longer due to colder water temperatures  
36 in September, and it may not have resurfaced at all prior  
37 to the extreme weather conditions which began on  
38 19 September.

39  
40 Now, the Inquiry is left with the reality that  
41 Mr Mattaini's body has never been found, so precisely what  
42 happened to him is simply unknown. It's submitted,  
43 therefore, that, in terms of manner and cause, the open  
44 finding made by Coroner Milledge is still appropriate -  
45 namely, Gilles Jacques Mattaini died on or about  
46 15 September 1985 in Sydney. The cause and manner of his  
47 death remain undetermined.

1  
2 Finally, we have made some submissions in writing on  
3 the question of bias, which is, of course, one of the  
4 central features of what the Special Commission and you as  
5 Commissioner must consider under the Terms of Reference -  
6 that is, the possibility or the likelihood that LGBTIQ bias  
7 was a factor in Mr Mattaini's death.  
8

9 In that regard, we observe Mr Mattaini was a gay man,  
10 he was known to walk around the Bondi/Tamarama/Marks Park  
11 area, which did include the well-known Marks Park beat. He  
12 didn't use the beat himself, on the evidence, and it needs  
13 to be acknowledged as well that the last-known sighting of  
14 him, if Terry was correct, was in the morning.  
15

16 Having regard to the evidence that I have summarised  
17 this afternoon, our submission is that it is unlikely that  
18 Mr Mattaini committed suicide - in fact, most unlikely that  
19 he did so. Although he had, it seems, some worry at some  
20 level about his visa status, that was not weighing  
21 significantly upon him. Indeed, on the evidence,  
22 in September 1985 he was and had been for years "very, very  
23 happy", "in a very fulfilling relationship", "really  
24 enjoying life fully", and happy that Mr Musy would soon be  
25 back and Mr Wyszynski would soon be arriving.  
26

27 As at 1985, it would appear that there were no  
28 reported assaults or suspected gay hate deaths in Bondi.  
29 We know that by 1989/90, that was by no means any longer  
30 the case. However, there is a substantial weight of  
31 evidence which establishes that many such assaults were  
32 occurring but not being reported, and we have Sergeant  
33 Ingleby's statement of February 1990 and we have Detective  
34 Sergeant McCann's two reports of 1991 in that regard.  
35

36 We also have - and this is something which didn't find  
37 its way into our written submissions but I've taken you,  
38 Commissioner, to the evidence this afternoon - the evidence  
39 of Mr Wyszynski, who said that in 1985, gay men were being  
40 bashed at Marks Park and that it was the talk of the gay  
41 community that that was happening, and that they weren't  
42 being reported. He said that in his statement of 2002 and  
43 he said it again in his oral evidence before the Coroner.  
44

45 As to the possibility of misadventure, it cannot be  
46 discounted, given that the evidence in so many respects is  
47 a blank page, but it is submitted that it does not seem

1 particularly likely. Mr Mattaini was, on the evidence,  
2 very familiar with the walking paths in the area. As  
3 Professor Brander says, it does seem unlikely that  
4 15 September would be a day that he would have chosen to go  
5 for a swim. However, it's acknowledged that if he did go  
6 swimming on that day, then according to Professor Brander,  
7 conditions for swimming would have been challenging and  
8 perhaps hazardous. However, our submission is that both  
9 suicide and misadventure, on balance, are unlikely.

10  
11 By contrast, we know that, as Strike Force Neiwand  
12 itself recognised, at least by the latter part of the  
13 1980s, there was what Strike Force Neiwand called a "spate"  
14 of attacks on gay men in the Bondi/Tamarama area.

15  
16 As to whether they were occurring as early as 1985 is  
17 perhaps less clear, but the evidence of Mr Wyszynski, which  
18 I have referred to today, and also the evidence received by  
19 the Inquiry in Public Hearing 1 as to the attacks on gay  
20 men in Sydney, including the Eastern Suburbs generally in  
21 the 1980s, would suggest that attacks in the Bondi/Tamarama  
22 area as early as 1985 were highly likely to be happening.

23  
24 It is submitted, therefore, that there is a distinct  
25 possibility that Mr Mattaini was murdered and that, if so,  
26 LGBTIQ bias was likely to have been a factor in his death.  
27 However, it's submitted that the available evidence does  
28 not permit a positive conclusion in either of those  
29 respects.

30  
31 Those are our submissions, Commissioner.

32  
33 THE COMMISSIONER: Thank you.

34  
35 MR MYKKELTVEDT: Again, we will respond in writing.

36  
37 THE COMMISSIONER: Thank you. All right. I will adjourn,  
38 then, until the morning. Thank you.

39  
40 **AT 3.46PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**  
41 **ACCORDINGLY**

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