

**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**

Monday, 25 September 2023 at 10am

(Day 90)

Mr Peter Gray SC	(Senior Counsel Assisting)
Mr William de Mars	(Counsel Assisting)
Ms Meg O'Brien	(Counsel Assisting)
Mr Enzo Camporeale	(Director Legal)
Ms Caitlin Healey-Nash	(Principal Solicitor)
Ms Alexandra Touw	(Solicitor)

Also Present:

**Mr Mark Tedeschi KC with Mr Anders Mykkeltvedt and
Mr Mathew Short for NSW Police, Detective Acting
Sergeant Cameron Bignell, Detective Sergeant Alicia Taylor
and Ms Georgina Wells
Mr Murugan Thangaraj SC for Mr Michael Willing
Mr Ken Madden for Sergeant Geoffrey Steer
Mr Matthew Hutchings for Mr Stewart Leggat
Mr Darien Nagle for Mr John Lehmann
Ms Linda Barnes for Detective Sergeant Penelope Brown
Mr Jim Glissan KC for Ms Pamela Young
Mr Stephen Russell for Detective Sergeant Paul Rullo**

1 THE COMMISSIONER: Yes, Mr Gray.

2

3 MR GRAY: Commissioner, today there will be evidence,
4 I expect, from two witnesses, Ms Alicia Taylor and
5 Mr Stewart Leggat.

6

7 As to Ms Taylor, unfortunately, about 10 minutes ago,
8 there was produced to the Inquiry a document which is of
9 some central importance to the questions that I would be
10 asking Ms Taylor. It has never been produced before, even
11 though, as on 12 September, almost two weeks ago, a letter
12 was written specifically directing attention to a document
13 such as this one, which it had been deduced by those
14 assisting me and, indeed, by myself, must presumably have
15 existed.

16

17 At any rate, whatever the reason for that, the fact is
18 that we've received it about 10 minutes ago and I would ask
19 for a short time to look at it and work out where it fits
20 into the mosaic which I need to ask Ms Taylor about.

21

22 THE COMMISSIONER: Mr Mykkeltvedt, when did you become
23 aware of the document?

24

25 MR MYKKELTVEDT: I became aware of the document's
26 existence I think perhaps some time last week.
27 I did not --

28

29 THE COMMISSIONER: When? When? When?

30

31 MR MYKKELTVEDT: Your Honour, I don't recall exactly when
32 I viewed the document.

33

34 THE COMMISSIONER: Do your best as counsel, Mr Mykkeltvedt.
35 Was it Monday, Tuesday, Wednesday, Thursday or Friday?

36

37 MR MYKKELTVEDT: I cannot tell you, your Honour.

38

39 THE COMMISSIONER: Do your best.

40

41 MR MYKKELTVEDT: I'm doing my best.

42

43 THE COMMISSIONER: So you have no idea?

44

45 MR MYKKELTVEDT: No, I don't.

46

47 THE COMMISSIONER: Early in the week, late in the week?

1
2 MR MYKKELTVEDT: I think it was probably late in the week
3 that I saw the document the first time. I did not know
4 that the document had not been produced at that time.
5 I learned that --
6
7 THE COMMISSIONER: How did it come to be brought to your
8 attention?
9
10 MR MYKKELTVEDT: The document was provided to me in a
11 bundle of other materials relevant to the preparation --
12
13 THE COMMISSIONER: And you were told, were you, by those
14 who produced them, that these were the documents that had
15 been produced already to the Inquiry, were you?
16
17 MR MYKKELTVEDT: No. I was told that these were a bundle
18 of documents that may be relevant to the preparation for
19 Ms Taylor's evidence.
20
21 THE COMMISSIONER: And immediately, of course, as counsel,
22 you would have said, "Well, have these documents been
23 produced?" I presume you asked that question. You're
24 blank. What is the answer, Mr Mykkeltvedt? Don't laugh at
25 this.
26
27 MR MYKKELTVEDT: No, I'm not --
28
29 THE COMMISSIONER: Don't laugh at this because this is not
30 the first time this has happened. You are a large
31 institution which I accept has lots of records, but you as
32 counsel and those instructing you have, it seems to me,
33 taken not very much control over the production of
34 documents nor over the sifting through of relevant
35 documents, and if it didn't occur to you to ask the
36 question, "Have they already been produced" - when did you
37 discover that they had not been produced or this had not
38 been produced?
39
40 MR MYKKELTVEDT: That this document had not been produced,
41 I confirmed that this morning.
42
43 THE COMMISSIONER: And why did it take so long and how did
44 it arise that you asked that question?
45
46 MR MYKKELTVEDT: Well, your Honour, there are many things
47 occurring in this case. We have served --

1
2 THE COMMISSIONER: Mr Mykkeltvedt, how many times does
3 your client have to be reminded that last-minute production
4 is absolutely unacceptable? It is disruptive of the
5 Inquiry's proceedings. If you are not prepared to grasp
6 the nettle and take responsibility, and those assisting
7 you, early on - how many times has this happened? Many
8 times, where documents have been discovered at the last
9 minute.

10
11 Now, I gather Mr Gray may want to say that they were
12 captured by the original summons; you may have an argument
13 to the contrary of that. But even so, to gratuitously -
14 let's assume you're absolutely right and, just as a matter
15 of good grace, you produce a document at the last minute,
16 which you've had in your hand since some time last week,
17 and you only produce it, do you, not because you say it's
18 falling within the summons, but just to be, what, a good
19 person, a good citizen?

20
21 MR MYKKELTVEDT: Yes, in effect.

22
23 THE COMMISSIONER: I see; in effect. Mr Mykkeltvedt, I'm
24 tired of it. I'm sick and tired of your client's attitude
25 in relation to these documents and it is yet again
26 testimony to the fact that I think your client doesn't know
27 where half its records are and it will be required of me to
28 say something about this in due course. Thank you, sit
29 down.

30
31 MR MYKKELTVEDT: Thank you, Commissioner.

32
33 THE COMMISSIONER: I will adjourn in a moment, Mr Gray.

34
35 MR GRAY: Yes, Commissioner.

36
37 THE COMMISSIONER: I note this morning that there are no
38 other representatives here, or very few other
39 representatives here, for other parties.

40
41 MR RUSSELL: Good morning, your Honour. Russell is my
42 name. I appear instructed by Mr Keats for Mr Rullo,
43 Mr Paul Rullo, a police officer, who has provided
44 a statement.

45
46 THE COMMISSIONER: Thank you very much. We will deal with
47 Mr Rullo in due course. Thank you for that courtesy.

1
2 Today we will hopefully be able to deal with Ms Taylor
3 and Mr Leggat. Tomorrow, Mr Lehmann. Wednesday, as
4 I understand it, there is no witness scheduled. On
5 Thursday morning at 9.30, Ms Emma Alberici will be called
6 to give some evidence by AVL. I will return to her in a
7 moment. Friday will be Ms Wells and Ms Brown, and possibly
8 the following Tuesday for Ms Brown.
9

10 Wednesday, 4 October, is a non-sitting day, and at the
11 moment, 5 and 6 October are allocated, if needs be, for
12 Ms Young.
13

14 Just to confirm for all those who will read the
15 transcript, and for the benefit of the police, Mr Willing
16 and Mr Chebl have so far indicated they do not wish to give
17 any further evidence or any evidence at all, and that
18 matter will be clarified, in the case of Mr Willing,
19 finally towards the end of this week.
20

21 It's plain and obvious, given the time frames that are
22 now in place and the end date for this Commission of
23 Inquiry being 15 December, that these times with these
24 witnesses will have to be kept - there will be no
25 allowances made for persons, unless there are exceptional
26 circumstances. One can't rule that out but at the moment,
27 all effort is being made and, Mr Mykkeltvedt, let me just
28 make it plain to you as counsel - stand up, please - I want
29 your client to take on board, I have said this before,
30 Mr Mykkeltvedt, whether out of your good graces or
31 Mr Short's or Mr Hodgetts or anybody else's, I don't want
32 any documents produced on the morning when a witness is
33 going to get into the witness box. Do you think you could
34 take control of that issue for the last time, if I ask you
35 to do that, Mr Mykkeltvedt?
36

37 MR MYKKELTVEDT: Yes, Commissioner.
38

39 THE COMMISSIONER: Thank you. Please sit down.
40

41 Every afternoon this week I will have private
42 hearings, and I will not be able to have extended hours
43 this week. I may be able to start early but I'm not
44 entirely sure. Next week, I may be able to sit extended
45 hours. The process that I propose to follow is, first, all
46 witnesses will have to be completed in the day that they
47 are allocated or, in some cases, days. That may involve

1 constraints on cross-examination and they will be imposed,
2 like it or lump it.

3
4 The other thing that will occur is this: in broad,
5 I propose to follow the following course, if Counsel
6 Assisting wishes to call a witness for oral examination,
7 then that will happen first. In other words, Mr Gray, as
8 Counsel Assisting or Mr Emmett, if the case arises, will
9 call that witness first and ask such questions of that
10 witness as he thinks he needs to ask. What then follows
11 will obviously change per witness.

12
13 The broad proposition that I'm going to follow is that
14 the counsel or party responsible for that witness will go
15 second-last, in other words, or last, perhaps. Other
16 persons will ask questions of that witness following
17 Mr Gray and what will then happen is, for example, if the
18 witness is called by Mr Mykkeltvedt or Mr Tedeschi, either
19 can ask questions of that witness prior to Mr Gray asking
20 any further questions, if that were to happen. The order
21 of that may change and may be slightly more complicated in
22 questions involving Ms Young, for example, or Ms Brown,
23 because of Mr Thangaraj, who is not here today, but may or
24 may not be here in that week where those two witnesses are
25 relevant.

26
27 I won't say any more about it at the moment, but one
28 thing I do need to say, Mr Mykkeltvedt, is this: given the
29 need to interpose Ms Alberici at 9.30 on Thursday, I'm
30 afraid I'm going to have to move Mr Tedeschi's remarks to
31 2 o'clock that day --

32
33 MR MYKKELTVEDT: Yes, your Honour.

34
35 THE COMMISSIONER: -- so that we can complete Ms Alberici.
36 Now, I said I'd come back to her.

37
38 We have - that is, the Inquiry staff has - distributed
39 to all parties concerned those materials we have. It won't
40 come as any surprise that you haven't got an Alberici
41 statement yet, because we don't have one. I do not know
42 whether, and if so, that will materialise. I will
43 determine during the course of the next day or two how that
44 will occur. There are numerous permutations and
45 combinations that we could advert to and resort to in the
46 event that a statement isn't provided, but I will do my
47 level best to inform everyone at the same time we are

1 informed as to what materials, if any, are going to be
2 forthcoming from her.

3
4 There are obviously materials in the tender bundle
5 that relate to her already, and you will be familiar with
6 those. I do not believe, at the moment, there will be any
7 additional documentation forthcoming from the ABC or from
8 Ms Alberici herself, but because she is out of Sydney, that
9 evidence will have to be given by AVL. I will keep
10 everyone informed, I trust, by way of update later in the
11 day when I hear more about her position.

12
13 MR MYKKELTVEDT: Thank you, Commissioner.

14
15 THE COMMISSIONER: All right. Thank you.

16
17 Now, I don't think there is anything more I need to
18 say at the moment so I will adjourn, and, Mr Gray, you
19 might tell me when you are ready.

20
21 MR GRAY: Yes, certainly, Commissioner. I might just add
22 on that question of documents, as the Practice Guideline
23 makes clear, if any party has in mind putting any document
24 before a witness, being a document that is not already in
25 the tender bundle, then that party needs to provide any
26 such document to the Inquiry or to me before that witness
27 is called.

28
29 THE COMMISSIONER: All right.

30
31 Now, Mr Mykkeltvedt, I'm going to proceed for the
32 moment on the basis that the document that has been
33 produced, leaving aside whether it was covered by the
34 summons or not, is the only additional document that is
35 going to be put to Ms Taylor, or potentially put to her.
36 I'd like you to confirm that. Can you confirm that now?

37
38 MR MYKKELTVEDT: It's the only document that I'm aware of,
39 Commissioner.

40
41 THE COMMISSIONER: All right. Okay.

42
43 MR MYKKELTVEDT: I will confirm that in the break.

44
45 THE COMMISSIONER: Would you confirm that, and perhaps
46 rather than me come back for that purpose, would you
47 please, as quickly as possible, tell Mr Gray that that is

1 your understanding, and if that is your understanding, so
2 be it.

3
4 MR MYKKELTVEDT: Yes, Commissioner.

5
6 THE COMMISSIONER: All right. Now, that does not rule
7 out, if I may say so, because I haven't seen it myself, the
8 fact that there may be some further request. I simply
9 don't know. We will deal with that if it arises.

10
11 MR MYKKELTVEDT: Yes, Commissioner.

12
13 THE COMMISSIONER: All right. I will adjourn until I am
14 told otherwise.

15
16 **SHORT ADJOURNMENT**

17
18 THE COMMISSIONER: Yes.

19
20 MR GRAY: Commissioner, I have now had a chance to look at
21 that document. I would tender it. I would ask that it be
22 admitted, I will say something in a minute about
23 non-publication orders, but I would ask that it be admitted
24 as part of exhibit 6, volume 17, tab 399A. I ask that
25 because tab 399 is another related form and it would be
26 useful if they were together. So volume 17, tab 399A.

27
28 **EXHIBIT #6 SUPPLEMENTED BY THE ADDITION OF A DOCUMENT**
29 **HEADED "REVIEW OF AN UNSOLVED HOMICIDE CASE SCREENING FORM"**
30 **AT VOLUME 17, TAB 399A**

31
32 MR GRAY: Now, Commissioner, although the form was only
33 provided to us at 10 to 10 this morning, the police, and
34 perhaps other parties as well, have asked for some time to
35 consider what orders by way of non-publication or redaction
36 may be necessary. I don't have a difficulty with that,
37 subject to your view, Commissioner. Because I will
38 probably get to it this morning, before lunch, what I would
39 have in mind, if this is convenient, is that when I show it
40 to the witness, Ms Taylor, it would not, at least until
41 after lunchtime, be put on the screen.

42
43 THE COMMISSIONER: All right. That's acceptable to me.

44
45 Mr Mykkeltvedt, I suppose you haven't had time to look
46 at it from the point of view of non-publication.

47

1 MR MYKKELTVEDT: No, we're still considering the position.
2
3 THE COMMISSIONER: It would be helpful, if you discover
4 documents like this in future, that you try to do
5 everything in one go, because your side is alive only too
6 well to the question of confidentiality. Anyway, enough
7 said. Thank you. All right.
8
9 MR GRAY: I call Ms Taylor.
10
11 THE COMMISSIONER: I was informed briefly about some
12 additional documents.
13
14 MR GRAY: Yes. The document that was produced this
15 morning contains within it references to at least two,
16 perhaps three, other documents.
17
18 THE COMMISSIONER: Just excuse me a moment.
19
20 Ms Taylor, please take a seat just for the moment. We
21 will come to you in a minute.
22
23 Yes, Mr Gray.
24
25 MR GRAY: I have spoken to Mr Mykkeltvedt about that and
26 I have said that we would like those documents produced as
27 well. I think arrangements either have been made or are
28 being made for a summons to be issued for those very
29 documents.
30
31 THE COMMISSIONER: I signed a summons in chambers.
32
33 Mr Mykkeltvedt, are you familiar with what is, in
34 addition, being requested?
35
36 MR MYKKELTVEDT: I'm broadly familiar with the reference
37 to "review documents", yes.
38
39 THE COMMISSIONER: When you say "broadly", let's just deal
40 with it. Can you have them here this morning?
41
42 MR MYKKELTVEDT: Well, I don't yet know exactly what --
43
44 THE COMMISSIONER: Can someone go outside the courtroom
45 and make a phone call to someone who can give you an answer
46 to that question, please. I don't want to be constantly in
47 a position - either you object to the documents and I will

1 deal with it or, alternatively, if someone can find out
2 where the documents are, and if they are documents - I am
3 informed, rightly, I hope, that they are documents which
4 previously have not been produced. If that is the case,
5 I'd like someone to go out and give me the courtesy of an
6 update before 1 o'clock, please.

7
8 MR MYKKELTVEDT: Yes. Commissioner, I understand that
9 a very large quantity of documents have been produced both
10 in relation to Strike Force Macnamir and in relation to
11 Strike Force Welsford. I'm not, at present, aware as to
12 whether these materials may be contained in that
13 material --

14
15 THE COMMISSIONER: That's why I'm asking you to get
16 someone to go outside and find out.

17
18 MR MYKKELTVEDT: Yes, those inquiries are being made.

19
20 THE COMMISSIONER: All right. I don't mind if it's done
21 from the Bar table, or if it's more convenient in email, or
22 if someone goes and makes a call, whoever it is can be
23 excused if that's what will happen. I just would like to
24 know - it is 25 to 12 and I would like to know before
25 1 o'clock whether the documents are available and, if so,
26 how quickly they can become available.

27
28 MR MYKKELTVEDT: Yes, Commissioner.

29
30 THE COMMISSIONER: Obviously if Mr Gray can see them over
31 lunch, then he can make some forensic choices about what he
32 does and what he doesn't do.

33
34 MR MYKKELTVEDT: Yes, Commissioner.

35
36 THE COMMISSIONER: All right. Thank you.

37
38 <ALICIA TAYLOR, affirmed: [11.35am]

39
40 <EXAMINATION BY MR GRAY:

41
42 MR GRAY: Q. Ms Taylor, your name is Alicia Taylor?

43 A. Alicia Taylor, yes.

44
45 Q. You are a Detective Sergeant in the Child Abuse Squad?

46 A. That's correct.

47

1 Q. You've made a statement dated 20 September 2023 for
2 this Inquiry?
3 A. Yes, I have.
4
5 Q. Are the contents in that statement true and correct?
6 A. Yes.
7
8 Q. Briefly just on some dates, you joined the Unsolved
9 Homicide Team on 21 October 2007?
10 A. Yes.
11
12 Q. Earlier that year, a book called "Bondi Badlands" was
13 published, by Greg Callaghan, about the three Bondi death,
14 Mr Mattaini, Mr Warren and Mr Russell; were you aware of
15 that?
16 A. No.
17
18 Q. No?
19 A. No, I'm not, sorry.
20
21 Q. You remained at the Unsolved Homicide Team until
22 1 June 2013?
23 A. That's correct.
24
25 Q. And in that period - I just want to put a few dates
26 and events back before your mind. On 27 June 2012, there
27 was the second inquest into the death of Scott Johnson.
28 You were aware of that?
29 A. Yes.
30
31 Q. This was the one before Coroner Forbes, where she, in
32 effect, reversed an earlier suicide finding and instead
33 brought in an open finding?
34 A. Correct.
35
36 Q. You were aware of that at the time?
37 A. At the time I did the review, yes.
38
39 Q. But were you aware of it at the time it happened?
40 A. No.
41
42 Q. You became aware, did you, when you did the review
43 into the Johnson case later that year?
44 A. That's correct.
45
46 Q. That review, on your part, at least one document
47 emanating from it, bears a date 25 October 2012, and we

1 have that document - you have referred to it?
2 A. Is that the case review screening form?
3
4 Q. It is the one entitled, I think, "Review of An
5 Unsolved Homicide Case Screening Form".
6 A. For the three deaths?
7
8 Q. Yes.
9 A. I don't have that in front of me, but --
10
11 Q. No, but you remember doing it?
12 A. Yes, I do.
13
14 Q. And you took, I think you said, six or 12 months
15 working on that --
16 A. Yes, that's correct.
17
18 Q. -- exercise?
19 A. Yes, that's correct.
20
21 Q. So you began it, roughly, around about the beginning
22 of 2012?
23 A. I don't know the exact date, I'm sorry.
24
25 Q. Well, if it took six to 12 months and you finished it
26 at the end of October?
27 A. Correct.
28
29 Q. And then at about the same time - that is, around
30 about late 2012 - you also were working on a review and/or
31 a prioritisation and/or a screening of the Scott Johnson
32 case?
33 A. Yes, I did.
34
35 Q. How long did you spend on that one?
36 A. I don't know roughly the dates. Maybe up to --
37
38 Q. Sorry, could you speak up a bit?
39 A. Yes, sorry. Possibly three to six months, I'm not
40 quite sure of the start date.
41
42 Q. I'm just doing dates at the moment, just to orient
43 you. Early the next year, February 2013, on 11 February,
44 there was an Australian Story program on the ABC about
45 Scott Johnson. Do you remember that?
46 A. Yes, I do.
47

1 Q. Did you see it at the time?

2 A. I think I may have seen it, yes.

3

4 Q. And do you remember that Mr Lehmann, of the Unsolved
5 Homicide Team, was one of those who was shown on that
6 program?

7 A. I don't remember the contents of it, I'm sorry. I did
8 see the program but I don't remember the content.

9

10 Q. At almost the same time, about 11 February 2013,
11 Strike Force Macnamir was initiated?

12 A. I'm aware of that, yes.

13

14 Q. Were you aware at the time that it was initiated in
15 part because of or at least related to the Australian Story
16 broadcast?

17 A. I don't know the reasons why it was initiated but I'm
18 assuming that was the case.

19

20 Q. If Ms Taylor could be shown volume 8, please, and
21 could we go to tab 207 [SC0I.82071_0001]. I'm just going
22 to show you a few articles in the media at about this time
23 and see if you were familiar with them at the time. This
24 one at tab 207 is an article in the Sydney Morning Herald
25 on 13 February 2013 headed, "Gays hunted for sport, says
26 dead man's family"; do you see that?

27 A. I see the article, yes.

28

29 Q. Now, take maybe a minute or two to glance through it
30 and then if you could tell me whether you remember seeing
31 this article, either online, which this version is, or in
32 the actual newspaper?

33 A. From memory, I read this in a newspaper.

34

35 Q. You think you did?

36 A. I think I did.

37

38 Q. You see on the third page of this version that you
39 have in front of you, reference to, about just below
40 halfway on the page, similarities between Mr Johnson's
41 death - that is, Scott Johnson - at North Head, and the
42 murders of up to six men, in Sydney's Eastern Suburbs,
43 between '87 and '90. Do you see that reference?

44 A. Yes, I do.

45

46 Q. Pardon?

47 A. Yes, I do.

1
2 Q. And then the reference in the next paragraph to the
3 inquest before Coroner Milledge, who determined that those
4 three men had probably been hurled to their deaths by
5 violent gangs?
6 A. Yes.
7
8 Q. So you were aware of that being in the media at the
9 time?
10 A. I was aware, yes.
11
12 Q. Then if you turn to the next tab, 208
13 [SC0I.82031_0001], there is an article on 4 March that
14 year, 2013, about three weeks later, by Paul Sheehan headed
15 "Gay hate: the shameful crime wave", and at 209
16 [SC0I.82027_0001] another article by Paul Sheehan, three
17 days later, on 7 March, headed "Digging up past to reveal
18 scale of gay-hate deaths"; do you see those two?
19 A. Yes, I don't know that I've read either of these.
20
21 Q. That was going to be my question. Do you recall
22 seeing those at about this time?
23 A. No, I don't recall either of those.
24
25 Q. Sorry?
26 A. No, I don't recall seeing either of those.
27
28 Q. Do you recall seeing articles, whether it is these or
29 others, at about this time, in which, as indeed these ones
30 do, the media refer to claims being made by some people
31 about large numbers of gay men having been murdered in the
32 '70s and '80s, and about many of those cases being
33 unsolved? Do you remember that being in the press at the
34 time?
35 A. I do remember it being in the press, yes.
36
37 Q. You can close that folder, then, thank you.
38 Presumably, those sorts of articles about those sorts of
39 subjects were of some interest and discussion among members
40 of the Unsolved Homicide Team?
41 A. They may have been.
42
43 Q. Do you remember?
44 A. I don't recall.
45
46 Q. Do you recall any UHT officers expressing any views
47 about whether those claims were accurate?

1 A. No.
2
3 Q. Or whether they might have been exaggerated?
4 A. No.
5
6 Q. Nobody talked about it at all?
7 A. They may have. I guess there wasn't - it wasn't
8 a large team, so it was myself and two other investigators
9 at the time.
10
11 Q. In the UHT?
12 A. In the vicinity of where I was, yes.
13
14 Q. Of --
15 A. In the Unsolved Homicide Review Team, in that portion
16 where I was sitting.
17
18 Q. I was going to come to that, but I'll ask you that
19 now. What was the arrangement physically in terms of where
20 the UHT people were? Were you all in the one building?
21 Were you all in the one room or how was it organised?
22 A. We occupied the same floor space, the Unsolved
23 Homicide Review Team was a sergeant and up to three
24 investigators and we sat in front of the manager of that
25 unit, Mr Lehmann, and the Unsolved Homicide Teams, the
26 investigation teams, sat further towards the back of the
27 room. It was quite a large space.
28
29 Q. And where was this?
30 A. At headquarters, at Charles Street.
31
32 Q. In Parramatta?
33 A. Yes.
34
35 Q. So a largish room, with Mr Lehmann and three review
36 staff including yourself in one part of the room?
37 A. Yes.
38
39 Q. And the actual investigators who were engaged in
40 investigating particular cases at any given time also
41 sitting in the same room in a slightly different part of
42 it?
43 A. Yes.
44
45 Q. And how many of them were there, in your time?
46 A. Oh, I don't know the resourcing.
47

- 1 Q. No, in the room when you were there at work on
2 a typical day?
- 3 A. Maybe 10 - 10, 15. I'm not quite sure of the number.
4
- 5 Q. So neither DCI Young nor DCI Lehmann ever said
6 anything in your presence to the effect that they thought
7 these claims about the numbers of gay hate murders were
8 exaggerated or overstated?
- 9 A. No.
10
- 11 Q. Did Mr Willing ever come to the room where you worked?
12 A. He came and spoke to Mr Lehmann. I never - other than
13 to say hello, I never engaged with Mr Willing.
14
- 15 Q. Did he ever make presentations or chair meetings or
16 give updates or reviews of what the Homicide Squad was
17 doing or what the UHT was doing?
- 18 A. I wasn't part of those meetings, no.
19
- 20 Q. So if he did that, you weren't there?
21 A. I wasn't there.
22
- 23 Q. Did you have a view yourself about whether the claims
24 in the media about 80 or more gay hate murders, 30 of them
25 being unsolved, were accurate or inaccurate?
- 26 A. I had no view on - about those.
27
- 28 Q. Could Ms Taylor have volume 2, please. And turn to
29 tab 47 [SCOI.74906_0001]. Ms Taylor, this is a document
30 which you may or may not have ever seen. I just want to
31 ask you about it. It's a document dated after you had left
32 the Unsolved Homicide Team, so it's dated in September
33 2013, which you can see from the last page.
34 A. Yes.
35
- 36 Q. You can see it is prepared by, or it says it is
37 prepared by DCI Lehmann?
- 38 A. Correct
39
- 40 Q. You can accept, because the Commission has evidence,
41 that it was actually prepared by both Mr Lehmann and
42 DCI Young. Can you just accept that from me, if you would?
- 43 A. Okay, yes.
44
- 45 Q. First of all, have you ever seen this before?
46 A. No, I have not.
47

- 1 Q. Well, you can see that the topic or the issue, at the
2 top. Front page, is:
3
4 *Assessment of 30 potential "gay*
5 *hate" unsolved homicides by the ... (UHT) to*
6 *determine if any bias motivation existed.*
7
8 A. Yes, I can.
9
10 Q. He starts off by referring to a series of articles
11 written by Rick Feneley in the Sydney Morning Herald
12 in July 2013. Do you see that?
13 A. Yes, I do.
14
15 Q. Do you have a recollection of those articles by
16 Rick Feneley? There were four or five of them over
17 a weekend?
18 A. No, I don't.
19
20 Q. You had left the UHT by this time, I realise, but you
21 don't recall those articles?
22 A. I don't recall them.
23
24 Q. At any rate, he says, as you can see in that first
25 paragraph, that the articles quoted a number of people,
26 including Sue Thompson, claiming that up to 30 of these
27 were unsolved. Do you see that?
28 A. I do, yes.
29
30 Q. He says in the next paragraph that he gets, from
31 Ms Thompson, her list of 80 cases. Do you see that?
32 A. I do.
33
34 Q. He then conducts an assessment, and this document
35 comprises that assessment, do you follow?
36 A. I do.
37
38 Q. So everything I've just put to you in the last couple
39 of questions is something previously not known to you?
40 A. No. Not that I'm aware of. I --
41
42 Q. Just go to the last page.
43
44 THE COMMISSIONER: Q. Can I just interrupt just for one
45 moment? Is the reason you would not have seen a document
46 such as this because of your rank?
47 A. Typically I wouldn't have any input into this type of

1 document.

2

3 Q. I'm having difficulty hearing you, I'm sorry.

4 A. Typically, I wouldn't have input into this type of
5 document. It wouldn't have come to me to look at or
6 review.

7

8 Q. All right, but is that another way of putting that,
9 because of your rank or because of your general duties, it
10 would not be the kind of document you would either be asked
11 to comment on or be drawn to your attention?

12 A. Yes, that would be fair to say.

13

14 Q. Thank you.

15 A. Thank you.

16

17 MR GRAY: Q. And also, to be fair, as I mentioned, you
18 had, by this time, left the UHT. You were in another role?

19 A. Yes, I was. That is correct.

20

21 Q. At any rate, just looking at the last page, do you see
22 that he says - in fact, before I get to the last page, do
23 you see on I think about the fourth page, he has numbered
24 all these 30, do you see number 12, "Death of Scott
25 Johnson"?

26 A. Yes, I do.

27

28 Q. And this is as at September 2013, he says it is
29 currently being investigated by Macnamir. He gives
30 a summary of the nature of the case. Then he says, in the
31 last few lines:

32

33 *... at this late stage of the investigation*
34 *there is no indication that the deceased*
35 *was subjected to "gay hate" motivated*
36 *violence causing his death or in any case,*
37 *that he was murdered.*

38

39 Q. Do you see that?

40 A. I do see it, yes.

41

42 Q. I appreciate that this document is after your time at
43 UHT, but going back to when you were in UHT up to 1 June
44 that year, were you aware that that was the view of
45 DCI Young and DCI Lehmann about the Johnson case - namely,
46 that there was no indication that he had even been
47 murdered, much less that it was gay hate?

1 A. Again, I didn't have input into this document so
2 I can't talk to that. However, at the time I was working
3 on Macnamir as an investigator, it was still in the
4 evidence gathering phase so there was no indication there
5 was an outcome or a decision on where that investigation
6 was going. Again, I did leave in June, so --

7
8 Q. So at the time you left, so far as you were aware,
9 nobody involved in the work on the Johnson case had arrived
10 at any particular view?

11 A. No, they had not.

12
13 Q. Back on the last page of this document, do you see at
14 the top, Mr Lehmann and Ms Young say:

15 *Only 8 cases from 30 were probable or*
16 *possible "gay hate" motivated murders ...*

17
18
19 Do you see that?

20 A. I do see that.

21

22 Q. Did you, by the time you left UHT in June 2013, have
23 any awareness that that was the view of Mr Lehmann or
24 Ms Young?

25 A. No. I was not aware of the number of cases or the
26 number of unsolved or the number that they had selected for
27 gay hate crime. I don't - I had no knowledge --

28

29 Q. I beg your pardon? Sorry.

30 A. I had no knowledge of how they made that assessment.

31

32 Q. And no knowledge that such a view was held; is that
33 what you are saying?

34 A. I had no knowledge of that.

35

36 Q. I'm sorry, Ms Taylor, but I would be very grateful if
37 you could speak up a bit. It's very hard to hear.

38 A. I'm very sorry, yes.

39

40 Q. Thank you. In the second-last paragraph on that page,
41 the last page of this document, do you see that Mr Lehmann
42 says:

43

44 *In my opinion, the suggestion of 30 "gay*
45 *hate" related unsolved murders is a gross*
46 *exaggeration.*

47

- 1 And he refers to "irresponsible journalism bordering on
2 sensationalism". Do you see that?
3 A. I see that.
4
5 Q. Was any such view ever a view on the part of
6 Mr Lehmann or Ms Young that you were aware of?
7 A. No, no.
8
9 Q. Did either of them give you any indication of what
10 their view was about claims in the press about unsolved gay
11 hate murders?
12 A. No.
13
14 Q. Did any other UHT officer express a view about such
15 things?
16 A. Not that I recall, no.
17
18 Q. I will try not to take up more time on this than is
19 necessary, because we have lost a bit of time, but you can
20 accept from me that Mr Willing wrote a document, which is
21 actually at the next tab, tab 48 [NPL.0113.0001.0156] where
22 he, in effect, endorsed these views of Mr Lehmann and
23 Ms Young about only eight out of 30 being possible or
24 probable gay hate murders, and about the suggestion of 30
25 being a gross exaggeration. Just accept from me that
26 that's what he did; Mr Willing did endorse that.
27 A. Okay.
28
29 Q. Was that view on the part of Mr Willing something that
30 you were ever aware of?
31 A. I was not a party to any conversations with Mr Willing
32 about unsolved homicides.
33
34 Q. No, but my question is: were you aware that that was
35 his view?
36 A. No.
37
38 Q. Just a couple of things about the UHT generally. You
39 were only there, I think - is this right - two days per
40 week?
41 A. Two days per week, yes.
42
43 Q. And the two senior officers in your time were DCIs
44 Young and Lehmann; is that right?
45 A. To my recollection, yes.
46
47 Q. They were called, I understand, "Investigation

- 1 Coordinators"; is that right?
2 A. Yes.
3
4 Q. What did that mean, "Coordinators", as far as you
5 understood it?
6 A. They oversaw what investigations would be allocated,
7 who - yeah, that was pretty much what they did.
8
9 Q. And did they conduct investigations themselves as
10 well?
11 A. No.
12
13 Q. And I think, if I'm understanding what you said
14 earlier, as best you can remember - I'm not holding you
15 to the detail of this - there were something like
16 15 investigators and plus the three or four of you in the
17 review team?
18 A. As best as I can remember, 10 staff, 10 to 15, and
19 then three investigators on the review team.
20
21 Q. And would it be fair to say that people, among the
22 investigators working on a case or a strike force, and,
23 indeed, people like yourself, working on reviews, would
24 talk to others in the room about what they were all doing?
25 A. If we needed assistance with investigation of, like,
26 information, gathering information, where to source
27 information or who to talk to, we would generally talk
28 amongst ourselves.
29
30 Q. Sure. But presumably, people generally were aware of
31 what others were doing in the room? In other words, if
32 there were one or two or three then current investigations,
33 presumably everyone would be aware of that?
34 A. On the review team, we sort of knew who was allocated
35 what particular tasks.
36
37 Q. Within the investigators?
38 A. Within the review team.
39
40 Q. What about the investigators?
41 A. I would not be up to date with what they were doing.
42 They were allocated differently to us.
43
44 Q. But you didn't chat amongst yourselves just at
45 lunchtime or morning tea or the like about what everyone
46 was doing?
47 A. No, not really.

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Q. No?

A. No.

Q. That seems very reserved of you all, not to talk about the work you were doing? That didn't happen?

A. No.

Q. Were there regular meetings or, indeed, meetings less regular, of the whole of the Unsolved Homicide Team?

A. Not that I participated in, no.

Q. Nobody gave - such as the coordinators - updates as to what the team as a whole was up to?

A. That may have occurred but I wasn't party to any of those meetings.

Q. In your statement [NPL.9000.0033.0001], at paragraph 17, you talk about the prioritisation of cases for review. Do you have your statement there?

A. I do, yes.

Q. You say that assessments of case priority and decisions of case allocation were made by people senior to you?

A. Yes, yes, they were.

Q. Now, in that paragraph, see in about the middle of the paragraph, you talk about, you say:

Once a case was referred to the UHT --

depending on various factors --

the case would ultimately be allocated to an investigator in the [Unsolved Homicide Review Team] --

meaning someone like yourself; is that right?

A. Yes, that's right.

Q. --

to conduct the case review process.

Earlier in this Inquiry, we've heard evidence about a triage stage of the treatment of a case in the Unsolved

1 Homicide Team's world; is that a term you are familiar
2 with, "triage", in this context?
3 A. No. It was reviews and looking at the records for
4 information.
5
6 Q. So you don't have a sense of there having been
7 a three-stage process where there would be a triage to see
8 whether a case should be reviewed; secondly there would be
9 a review; and then, thirdly, if the review recommended an
10 investigation, then there would be an investigation?
11 That's not how it worked?
12 A. The triage may have occurred at Detective Sergeant
13 level, so that was documented and allocated from
14 a particular system.
15
16 Q. Sorry, from a --
17 A. From a system, like a TRIM system or a Palace, I think
18 it was called at the time.
19
20 Q. TRIM, being T-R-I-M, being a computer system?
21 A. Yes.
22
23 Q. And Palace being --
24 A. Palace being a data management to issue cases to
25 investigators.
26
27 Q. Well, you might be able to help me more when I show
28 you a couple of particular documents, but sometimes there
29 is reference to "case screening", sometimes there is
30 reference to "review" - What do those two terms mean as you
31 understood them?
32 A. So the review was gathering the information, the data,
33 the records, and the case screening form was how that was
34 documented, so the summary of all the documents that were
35 found. The case screening form was ultimately what was
36 produced at the end of looking at all the information.
37
38 Q. So the review came first and the screening came
39 second?
40 A. It was done in conjunction with each other. So it was
41 a live document that you would update as you found
42 information?
43
44 Q. I see. So they are done, as it were, in tandem, more
45 or less at the same time?
46 A. Yes, they were.
47

1 Q. At paragraph 28, you say - and here you happen to be
2 talking about your review of the Taradale deaths - it
3 became clear to you that there were a number of exhibits
4 missing. Do you see that?

5 A. Yes, I do.

6
7 Q. Was that something, namely, the absence of exhibits,
8 something that you often encountered at the UHT?

9 A. There had been this occasion that I noticed exhibits
10 had been missing. All attempts that I made to try and find
11 them, the exhibits just were missing.

12
13 Q. Sure. My question is: was that something that
14 happened often or something that only didn't happen often -
15 that is, not being able to find the exhibits?

16 A. This is what I recall as being the most significant
17 loss of exhibits or missing exhibits. I don't recall any
18 of the other reviews that I'd done.

19
20 Q. Let's go to paragraph 26 of your statement, where
21 you're talking about the work you did on the three Taradale
22 cases. At 29, you say you don't recall what
23 recommendations you made. Do you see that?

24 A. Yes.

25
26 Q. But aren't your recommendations set out in the
27 document itself that you eventually completed?

28 A. Yes, that's right. I had to refer to the screening
29 form to know what recommendations I had for that outcome.

30
31 Q. I see. So when you say that in paragraph 29, you mean
32 without looking at the form, you would not have remembered
33 the recommendations?

34 A. Yes.

35
36 Q. I see. Let's have a look at the form. It's in
37 volume 6, at tab 162B [NPL.0135.0001.0001]. Just
38 orientating you, have you found 162B?

39 A. Yes.

40
41 Q. So if you look at the last page, you'll see that it
42 bears your signature on 25 October 2012 --

43 A. Yes, it is.

44
45 Q. -- as reviewer, and it bears the signature of
46 John Lehmann on 14 August 2013 as coordinator?

47 A. Yes, it does.

1
2 Q. Back to the first page, it's called "Review of an
3 Unsolved Homicide Case Screening Form" - that's the title?
4 A. Yes, it is.
5
6 Q. Does that mean there is another document called "Case
7 Screening Form", or is this the case screening form?
8 A. This is the case screening form.
9
10 Q. I see. It's a case screening form in respect of the
11 review of an unsolved homicide. Is that how we should
12 understand the title?
13 A. Yes.
14
15 Q. I follow. Now, on page 5, before I get to the main
16 part of what I want to ask you, in relation to the case of
17 Mr Warren, there is reference to Detective Sergeant
18 Bowditch. Do you see that?
19 A. Yes, I do.
20
21 Q. It says, "Terminated 30/08/1996". Does that
22 "terminated" mean "dismissed" or does it mean something
23 else?
24 A. No, just disengaged from the police service. The
25 cause of that I don't know why.
26
27 Q. For whatever reason?
28 A. For whatever reason.
29
30 Q. On page 33, the second-last page, you get to your
31 recommendations. Do you have that?
32 A. I have that.
33
34 Q. You refer to the investigation by Detective Sergeant
35 Page, which is the Taradale investigation, in the first
36 paragraph?
37 A. Yes.
38
39 Q. And you describe that as something that was
40 meticulously undertaken?
41 A. Yes, I do.
42
43 Q. And I take it for you to be able to say that, you had
44 read at least some, perhaps a great deal, of the Taradale
45 material?
46 A. Yes, I had.
47

1 Q. In the third paragraph you refer to the fact that
2 there had been covert operations, including listening
3 devices and telephone interceptions, in relation to the
4 Russell and Warren cases?

5 A. Yes, I did.

6

7 Q. And in the next paragraph, describing both of those as
8 "homicides", you say there were links, significant links,
9 between the suspects and their associates, "who had been
10 involved in numerous assault and robbery offences" in
11 relevant areas, such as Marks Park and Bondi?

12 A. Yes.

13

14 Q. You nominate who the main suspects were, namely,
15 Sean Cushman and two others. Do you see that?

16 A. Yes, I do.

17

18 Q. The other two, you can see they've been given
19 pseudonyms here, but you will recall they were two persons
20 who, in fact, were convicted and gaoled in respect of
21 another murder of a gay man - do you remember that?

22 A. That is correct, yes.

23

24 Q. Then in the second-last paragraph, you say:

25

26 *Due to the loss or destruction of records*
27 *and exhibits there has been no opportunity*
28 *to use forensic evidence to assist in the*
29 *case of Russell, Warren or Mattaini.*

30

31 And no doubt you'd recall that and agree that you would say
32 that that is indeed the case?

33 A. I would agree, yes.

34

35 Q. And so your recommendation was that due to the passage
36 of time, as well as separation of alliances and social
37 isolation of the suspects from each other:

38

39 *... there exists an opportunity to engage*
40 *the persons of interest via an undercover*
41 *operation in relation to [these two*
42 *murders] Russell and Warren.*

43

44 Do you see that?

45 A. Yes.

46

47 Q. So when you say "due to the passage of time", you

- 1 mean, I take it, obviously enough, because of the passage
2 of time - that is, the very fact that quite a lot of time
3 had passed between the late '80s and 2013, even though
4 there had been covert operations in 2002 or so in the
5 Taradale investigation, there was now an opportunity,
6 because of the passage of time, to try again in that way?
- 7 A. Yes, I believe that there potentially was some avenues
8 to reinvestigate these matters because of that.
9
- 10 Q. By means of an undercover operation?
11 A. Potentially.
12
- 13 Q. Directed at the known persons of interest?
14 A. Yes.
15
- 16 Q. Now, on the next page, we see that above Mr Lehmann's
17 signature, what he certifies is, among other things:
18
- 19 *I am satisfied that the reviewer has*
20 *accessed available documentation and agree*
21 *with their recommendations.*
22
- 23 Do you see that?
24 A. Yes, I do.
25
- 26 Q. Do you have any knowledge as to whether your
27 recommendations that he agreed with were ever implemented?
28 A. I have no knowledge of what happened to this review
29 after it was completed.
30
- 31 Q. Can we go now to the Scott Johnson case and you deal
32 with this in your statement [NPL.9000.0033.0001] at
33 paragraphs 31 and following. Before I embark on the
34 Johnson case in particular, I wonder if Ms Taylor could
35 have volume 17, please. If you turn to tab 399
36 [NPL.0209.0001.0087], do you see at 399 - this is about the
37 Johnson case - it is headed "Review Prioritisation Form".
38 A. Yes, I see that.
39
- 40 Q. First of all, in the Johnson case, was that a form
41 that you completed?
42 A. No, I did not complete that.
43
- 44 Q. Sorry?
45 A. I did not complete this form. This is not something
46 an investigator does.
47

1 Q. I will come back to that. So would there have been
2 such a form, as far as you know, though, at the time you
3 did the Taradale one that we just looked at?
4 A. There may have, but again I didn't see that form and
5 I wasn't participating in the review prioritisation.
6
7 Q. So a document of the kind we just looked at, which was
8 headed, "Review of an Unsolved Homicide Case Screening
9 Form", that would come before a Review Prioritisation Form,
10 would it?
11 A. I wouldn't be certain of where that fell, whether it
12 was before or after. I don't have any involvement in the
13 process of this form, so --
14
15 Q. Of the prioritisation form?
16 A. Yes, I can't speak to how - if it's allocation or
17 whether it's after the review. I'm not too sure.
18
19 Q. Let's start with, then, just some background about
20 this, and I'm on the Johnson case now. You agreed at the
21 beginning that the second inquest in the Johnson case was
22 in June 2012, Coroner Forbes, open finding.
23 A. Yes.
24
25 Q. Do you remember that?
26 A. Yes.
27
28 Q. So your work on the Johnson case in the latter part of
29 2012 followed that second coronial finding, I take it?
30 A. Yes, it did.
31
32 Q. Because she referred the case to what she called "cold
33 cases", in her vocabulary?
34 A. Yes, that's right.
35
36 Q. So does Ms Taylor now have in her folder the one that
37 is now going to be - right. There has just been provided
38 to you, Ms Taylor, a document which is going to be the next
39 tab, shortly. It's going to be 399A, and it's a document
40 that we only received this morning, and it's headed, as was
41 the one we just looked at for the Taradale case - this one
42 is headed "Review of an Unsolved Homicide Case Screening
43 Form". Is this a document that you did prepare in respect
44 of the Johnson case?
45 A. Yes. The document's not signed, but I believe I did
46 do this document; did complete this one.
47

- 1 Q. When was the first time you were asked, in connection
2 with this Inquiry, to turn your mind back to these matters
3 and make a statement and refer to documents and so on? Was
4 it just in the last month or two or at some previous time?
5 A. No. The first indication was August, around August
6 22nd.
7
- 8 Q. Only a month or so ago?
9 A. Yes.
10
- 11 Q. And when you worked on your statement, did you have
12 either or both of these two documents, 399 or the one that
13 has just been put in front of you, 399A? Did you have them
14 before you to look at and refresh your memory from?
15 A. Tab 399 - I haven't seen the form 399, and 399A
16 I received a copy this morning.
17
- 18 Q. So you've never seen 399 before?
19 A. No.
20
- 21 Q. It bears a date 2 November 2012, as you can see?
22 A. Yes.
23
- 24 Q. 399 does?
25 A. Yes.
26
- 27 Q. Do you have any recollection of when you prepared this
28 document, 399A?
29 A. No. It would have been towards the end of 2012
30 because I was still finishing the Russell matters. What
31 was the date on that review, if you could assist me?
32
- 33 Q. I beg your pardon?
34 A. If you could assist me with the date on the completion
35 of the Russell --
36
- 37 Q. 25 October.
38 A. 25 October. So this must have been allocated shortly
39 before I finished that review and then I worked on this
40 one, or around the same time.
41
- 42 Q. So far as you can recall - this one, as you recall, is
43 unsigned - did you ever sign it?
44 A. I don't know that I did sign a copy of the Johnson
45 review. It then became Strike Force Macnamir, so the
46 review, I suspect, became obsolete because it became
47 a strike force, which is why it's unsigned.

1
2 Q. Who was the - if you recall - coordinator to whom you
3 submitted this?
4 A. I would have submitted a hard copy to one of the
5 supervisors, so either Detective Penelope Brown or
6 Connie Tse. The Investigation Coordinator I think at that
7 time was still Mr Lehmann.
8
9 Q. We've seen that it was Mr Lehmann who signed as
10 coordinator for the Taradale one that we just looked at?
11 A. Yes.
12
13 Q. So would he have been the person that would have been
14 expected, as far as you know, to be the coordinator to sign
15 this one, if indeed it was signed?
16 A. I believe so.
17
18 Q. And you mentioned you thought you handed this one to
19 Penny Brown - might have handed it to Penny Brown or Connie
20 Tse. Is that T-S-E?
21 A. T-S-E, yes.
22
23 Q. What was their role?
24 A. Their role was to review the case screening form, and
25 update if there was any errors needing correction or any
26 other inquiries that I had to make as part of the review
27 process, and hand that back to me before it could be
28 submitted.
29
30 Q. Sorry?
31 A. And hand it back to me to complete it and then hand it
32 in for completion.
33
34 Q. And did that happen? Did they hand this one back to
35 you?
36 A. No, I don't recall seeing that again.
37
38 Q. So just a couple of questions on this 399A, then.
39 You'll see they've got page numbers at the top. On page 5,
40 under the heading "Chronology of Events", do you see about
41 halfway down the page, there's a reference to "In early
42 2006"?
43 A. Yes.
44
45 Q. And there's reference to Detective Doherty of Manly
46 Local Area Command, commencing a further investigation of
47 the matter? Do you see that?

- 1 A. Yes, I do.
2
- 3 Q. What was that investigation, as far as you recall?
4 Did it result in some document or documents being produced?
- 5 A. I can't recall the outcome of that correspondence from
6 Manly. I don't refer to any annexures, so --
7
- 8 Q. No, you say that Detective Doherty commenced a further
9 investigation. I'm wondering whether you can recall what
10 that was, that investigation?
- 11 A. No, I'm sorry, I can't assist there.
12
- 13 Q. At the bottom of that page you say:
14
15 *On 7 January 2008 this matter was subject*
16 *of an Unsolved Homicide review.*
17
- 18 And you refer to what the recommendations were. I take it
19 you must have had access to that review, did you?
- 20 A. Yes, that was completed in 2008 by another officer who
21 used to be at the review team, Derek Henderson.
22
- 23 Q. According to what you have written here, the
24 recommendations were that there was no evidence to support
25 anything other than suicide?
- 26 A. Is that from the 2008, are you referring to? .
27
- 28 Q. That's what you've written at the bottom of page 5,
29 going over to the top of page 6?
- 30 A. Yes. The recommendations of the 2008 review were
31 there was no evidence.
32
- 33 Q. No evidence to support anything other than suicide?
- 34 A. That was the outcome of that review. That wasn't my
35 recommendations. That was what --
36
- 37 Q. No, I understand. You're telling us what the
38 recommendations of that review were?
- 39 A. Yes, I did.
40
- 41 Q. Pausing there, was that your own view when you did
42 the --
- 43 A. No.
44
- 45 Q. -- carried out this review?
- 46 A. No, it was not. I didn't have a view. I didn't have
47 any sort of preconceived ideas about what had happened.

1
2 Q. Perhaps no preconceived ideas, that's very good, but
3 this review of '08 had come to a view there was no evidence
4 of anything other than suicide. Your view was different
5 from that, was it, that an open mind was possible, or
6 something?

7 A. An open mind was always a possibility, yes.

8
9 Q. So it could have been something other than suicide,
10 you thought?

11 A. I thought there was potentially another reason.

12
13 Q. Like homicide?

14 A. Potentially.

15
16 Q. In the next sentence, towards the top of page 6, you
17 have written:

18
19 *On 21 January 2008 the case was suspended.*
20 *The conclusions of the review were recorded*
21 *in [certain] case ... notes by*
22 *Detective ... Doherty ...*

23
24 Now, a couple of questions about that. Are you referring
25 there to the same review as in the previous paragraph, the
26 review by the Unsolved Homicide Team, or is that
27 a different review?

28 A. Just give me a moment to read, thank you.

29
30 Q. Sure.

31 A. In looking at what I've recorded there, I've looked on
32 the COPS event for that case record and the case record is
33 as recorded in the notes written by Richard Doherty.

34
35 Q. Yes. Does that indicate that what's in the case notes
36 is something different from what you have called the
37 "Unsolved Homicide Review"?

38 A. Yes, I believe it would be something different. It
39 would be an individual case under that reference number.

40
41 Q. So we would be asking the police - if we wanted to see
42 these, we would be asking for two different documents?

43 A. Yes.

44
45 Q. After going through the balance of the document where
46 you've set out, I take it, a summary of everything that
47 you've ascertained in the course of your review, you come

1 to recommendations on page 15. Do you see that?

2 A. Yes, I do.

3

4 Q. And in the second paragraph you say:

5

6 *Without developing further lines of inquiry*

7 *there is no reasonable prospect of*

8 *determining if the death of Scott Johnson*

9 *was suicide or homicide.*

10

11 Do you see that?

12 A. Yes, I do.

13

14 Q. So in order to pursue the question whether it was
15 suicide or homicide, the police would need to develop
16 further lines of inquiry - ie, do something fresh to dig
17 deeper to find out more; is that right?

18 A. Yes, that's right, generate something.

19

20 Q. And you mention that there's been an outstanding
21 task - in the next paragraph - which is to do with the
22 suicide possibility. Do you see that?

23 A. Yes, I do.

24

25 Q. And then you say that consideration should be given to
26 a monetary reward. And then, after that, you say:

27

28 *It may be a consideration to gather further*

29 *information from those persons of interest*

30 *involved in similar offences to determine*

31 *any associates or knowledge of homosexual*

32 *hate crimes in the Manly area in 1988.*

33

34 A. Yes, I did.

35

36 Q. And you refer in the next paragraph to archived
37 records identifying assaults and the like against
38 homosexual males within the Manly patrol since 1986 - ie,
39 a couple of years before Scott Johnson died?

40 A. Yes, I did.

41

42 Q. And you say in the last paragraph:

43

44 *The results of the initial investigation*

45 *can not progress the matter further at this*

46 *stage. However consideration should be*

47 *given to undertake an investigation*

1 *targeting known persons of interest who*
2 *have been charged with offences against*
3 *homosexuals in the Northern Beaches area*
4 *over the period of Scott Johnson's death*
5 *which may produce further lines of Inquiry*
6 *and enable covert opportunities to gather*
7 *information.*

8
9 That was your recommendation?

10 A. That was my recommendation.

11
12 Q. So is it fair to say that your view, as expressed in
13 this document, was that, first of all, in order to make
14 some progress in finding out what happened, the police
15 would need to take some proactive steps themselves to
16 ascertain further information?

17 A. That's my opinion, yes.

18
19 Q. And that one thing that should be considered was to
20 investigate or to undertake an investigation targeting
21 known persons of interest who had been charged with
22 offences against homosexuals in the area?

23 A. Yes, I did.

24
25 Q. And you thought, and you said in this report, this
26 review, that if that were done, that might produce further
27 lines of inquiry and it might enable covert opportunities
28 to gather information?

29 A. Yes.

30
31 Q. That was your recommendation?

32 A. It was.

33
34 Q. Now, let's turn to 399 [NPL.0209.0001.0087]. I accept
35 that you explained that you didn't do this one - this is
36 not your document?

37 A. That's correct.

38
39 Q. Just looking at it now, we can see that it's said to
40 have been conducted, on the last page, by four people -
41 DCI Lehmann, DS Richardson, DS Brown - Penny Brown - and
42 DS Tse, the last two being the two people you mentioned
43 earlier?

44 A. Yes.

45
46 Q. You've never seen a document like this before - not
47 just this one but any other example of this document?

- 1 A. No, I don't recall seeing a document, a prioritisation
2 form.
3
- 4 Q. You can see that the structure of it is that there are
5 five criteria. So on the first page, the main heading at
6 the top is "Availability". Do you see that?
7 A. Yes.
8
- 9 Q. Then on the second page, the main heading at the top
10 is "Suspect"?
11 A. Yes.
12
- 13 Q. On the third page, the main heading at the top is
14 "Existence of New Technology". And halfway down, the
15 fourth criterion is "Passage of Time".
16 A. Yes.
17
- 18 Q. And on the last page, the fifth criterion is "Other
19 Leads"; do you see that?
20 A. Yes, I do.
21
- 22 Q. And so within each of those, there are various sort of
23 sub-topics, and they're all given a rating out of 10 --
24 A. Yes.
25
- 26 Q. -- do you see that? And then on the last page, in the
27 middle of the page, those five are summarised under the
28 heading "Prioritisation Assessment"; do you see that?
29 A. Yes, I do.
30
- 31 Q. So the total is obviously out of 50, and it's added up
32 and, in this case, the total is given as 14 out of 50.
33 A. Yes, I see that.
34
- 35 Q. So, down the bottom, the very last line - I should say
36 in that line where the number 14 appears, at the bottom of
37 that table in the middle of the last page, it says
38 "Priority: nil. Total score: 14". Do you see that?
39 A. Yes.
40
- 41 Q. At the last line of the page it says what "Nil
42 priority" means, namely, "close or suspend the case". Do
43 you see that?
44 A. Yes, I do.
45
- 46 Q. And that's what you do if there is a score of 15 or
47 less, according to this document; correct?

1 A. Correct.

2

3 Q. In the heading "Other Leads", at the top of that page,
4 there's reference to what the case screening process has
5 identified and the numerical rating that is given to each
6 of them?

7 A. I see that.

8

9 Q. Do you see that the last of those topics is this:

10

11 *The case screening process did not identify*
12 *any incomplete lines of inquiry that can*
13 *still be explored.*

14

15 And there's a rating of zero for that?

16

A. I see that.

17

18 Q. I appreciate this is not your document, so I'm not
19 expecting you to tell us exactly how this worked, but your
20 recommendation was, as we've just seen, that consideration
21 should be given to investigating known persons of interest,
22 including perhaps by covert operations - wasn't it? That's
23 the recommendation you made in your document?

24

A. Yes.

25

26 Q. Can you see - appreciating this is not your document -
27 how that, under the heading "Other Leads" on the last page,
28 would result in 4 out of 10?

29

A. I can't comment on this document. I wasn't present.
30 I can't provide any more advice about the case --

31

32 Q. Sorry?

33

A. I can't provide any advice about the Case
34 Prioritisation Form.

35

36 Q. Would it be your expectation, though, that if quite
37 senior officers such as the four named on this form
38 produced a document in which the case was given nil
39 priority and a score of 14 out of 50, that, as the last
40 line on page 4 says, the result would be that the case
41 would be closed or suspended?

42

A. Again, I can't make comment on what decisions were in
43 this process, of making this prioritisation. The
44 recommendations I thought were valid at the time I did my
45 review.

46

47

Q. Sure.

1 A. What decisions happened from there I'm not party to.

2

3 Q. No, I understand that. At the moment I'm just looking
4 at what you would, as a police officer experienced in this
5 field, expect, if the senior officers give it "nil
6 priority", which is said to mean "close or suspend case",
7 then you would expect that that is what would happen,
8 I presume - that the case would be closed or suspended?

9 A. I would expect that.

10

11 Q. You say in your statement, quite correctly, if I may
12 say so, in paragraph 36, that in your work, you did not
13 express a view about something called "solvability" at all;
14 is that right?

15 A. No, I did not.

16

17 Q. I think you say - perhaps you don't, but I will ask
18 you: is the expression "solvability", or "zero
19 solvability", an expression familiar to you from your time
20 in the Unsolved Homicide Team?

21 A. No.

22

23 Q. What about the expression "prioritisation" or "nil
24 prioritisation"?

25 A. Prioritisation in terms of the case allocations, what
26 I was given at the time - that was the only significance of
27 that word. But "solvability" wasn't really a term that was
28 used. We were only making recommendations on the reviews
29 that we had completed.

30

31 MR GRAY: I wonder if Ms Taylor could have volume 19,
32 tab 521. Would your Honour just pardon me a second.
33 Ms Healey-Nash is just going to get a hard copy of
34 something for me and we will proceed with that in a second.

35

36 Meanwhile, I wonder, if it is not too much imposition
37 on her, if the witness could have volume 11, tab 252
38 [SC0I.82369.00001_0001].

39

40 Q. Now, this is a statement that Mr Willing has provided
41 to the Inquiry?

42 A. Yes.

43

44 Q. I just want you to look, please, if you would, at
45 paragraph 31. Mr Willing there says that in late 2012, the
46 UHT conducted a prioritised case screening review of the
47 matter in which it rated the case solvability as zero. Do

1 you see that?

2 A. I see that, yes.

3

4 Q. Are you able to help us with what that might have
5 been, what that document might be?

6 A. I can't assist with the comments made in that
7 paragraph.

8

9 Q. And your evidence is that you are not aware of the
10 notion of "solvability" or "zero solvability" being
11 expressions which were used in the UHT in your time?

12 A. No.

13

14 Q. Just pardon me one second, Commissioner. Could the
15 witness please have volume 14, and would you mind turning
16 to tab 312 [NPL.3000.0016.0014] please. This is a series
17 of emails and I'm not suggesting you were included in the
18 chain, so you may very well not have seen these before.
19 They start from the back, on the second-last page, an email
20 from Detective Olen to a Mr Cotter and also to Michael
21 Willing and Pamela Young. Can you find that?

22 A. Yes, I can.

23

24 Q. It is 7 February 2013, so you're still in the Unsolved
25 Homicide Team; correct?

26 A. Yes, I was.

27

28 Q. And he says in the second paragraph - that is, Mr Olen
29 does - that the family, the Johnson family, had written to
30 DCI Lehmann on 9 January, expressing their dismay that
31 John's - that is John Lehmann's unit - had rated the
32 solvability as zero and had essentially declined to
33 investigate. Do you see that?

34 A. Yes, I do.

35

36 Q. Then Pamela Young responds to that, and this is at the
37 bottom of the first page. Can you find that, beginning
38 "Morning all", do you see? She says:

39

40 *I want to put on the record that the*
41 *decision not to proceed with further active*
42 *investigation was based on two reviews*
43 *conducted by the likes of Mick Ashwood,*
44 *Gary Jubelin and Glen Richardson in*
45 *addition to John Lehmann.*

46

47 Now, pausing there, are you aware of a review by any of

1 Mick Ashwood, Gary Jubelin or Glen Richardson about the
2 Johnson case?

3 A. No, I'm not aware of that.

4

5 Q. Are you aware that by this date, 7 February 2013 -
6 that is, are you aware now and were you aware then - that
7 there had, as Ms Young says there, been a decision not to
8 proceed with further active investigation?

9 A. No.

10

11 Q. That is something - those sorts of decisions would be
12 decisions that did not involve you; is that right?

13 A. Would not involve an investigator, no. And just
14 looking at the titles of the officers involved in that,
15 they're very senior police.

16

17 Q. And so not only were you not copied in the emails, but
18 you have no knowledge of what they're talking about in
19 those emails; is that right?

20 A. Not to my recollection, no.

21

22 Q. In the same volume, at tab 319 [SC0I.82485_0001], we
23 find the transcript of the Australian Story episode of
24 11 February 2013. Do you see that?

25 A. Yes.

26

27 Q. If we go to the last page, strictly, the second-last
28 page, do you see about a quarter of the way down, Detective
29 Chief Inspector Lehmann says five or six lines?

30 A. Is this on page 7.

31

32 Q. It's the last page before the little bit that says
33 "Introduced by Caroline Jones".

34 A. Of 319? Yes, I have found that page, thank you.

35

36 Q. You have found it?

37 A. I think so, yes.

38

39 Q. So Detective Chief Inspector Lehmann says, on
40 Australian Story, broadcast on 11 February 2013:

41

42 *The case is with the unsolved homicide*
43 *team, having been referred to by the*
44 *Coroner. I won't comment on what stage the*
45 *investigation is at. Certainly we haven't*
46 *closed the books on this case, it's an open*
47 *case.*

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Do you see that?

A. Yes, I do.

Q. What's your understanding as to whether that was correct as at 11 February 2013?

A. I can't comment on whether that was an open case for reinvestigation. It does become Strike Force Macnamir shortly thereafter. I'm not sure what happens in between the review and then becoming a strike force - this may have been in this period.

Q. Well, immediately before Strike Force Macnamir, which was just at about this time or a day or so later, but immediately before Strike Force Macnamir was instigated, so far as you were aware, was the Johnson case open and being investigated or was it closed?

A. It was still under review until it became a strike force. I didn't know that it had been closed or the prioritisation - that form, I didn't know that had been completed.

Q. If that form that we just looked at, 399A [sic], had been completed - which according to the date, it had - and if the result of nil priority was that the case was closed or suspended, I think you have agreed that you would expect that to have meant that the case would have been closed or suspended?

A. That's what the form indicates, but again, I'm not party to those conversations, so I can't really comment.

Q. So whether that actually happened, you can't say?

A. I can't say.

Q. Lastly on Strike Force Macnamir - you talk about this in your statement briefly at paragraph 37 to the end - were you on Macnamir essentially from the moment it started, which was about 11 or 12 February 2013?

A. Yes.

Q. And as we've agreed, or, rather, as you've said, you left the UHT three and a half months later or so, on 1 June?

A. Yes, I did.

Q. So you were only on Macnamir for about three and a half months or so?

- 1 A. That's correct.
2
- 3 Q. And you're aware, I imagine, that it actually went on
4 for a number of years thereafter?
5 A. Yes, I was.
6
- 7 Q. The two factors that led to Macnamir being set up, to
8 your understanding, is this right, were, firstly, the
9 findings of the second inquest in June 2012 and the
10 referral to "cold cases"?
11 A. Yes.
12
- 13 Q. And, secondly, Australian Story of 11 February and the
14 concern of the Johnson family about zero solvability?
15 A. The reasons for Strike Force Macnamir being set up is
16 at the discretion of the investigations coordinator.
17 Again, that's not something I participate in.
18
- 19 Q. No, but I'm asking about your understanding as to why
20 it was set up.
21 A. Yes, possibly.
22
- 23 Q. A couple of years after that, in April 2015, DCI Young
24 went on Lateline and was interviewed by Emma Alberici. Do
25 you remember that?
26 A. Yes.
27
- 28 Q. Do you know anything of the circumstances in which
29 that came to happen?
30 A. No.
31
- 32 Q. Could we please have volume 16, tab 342
33 [NPL.2017.0004.0549]. And just before I ask you the
34 question that I want to ask you, in the three and a half
35 months or so that you were on Macnamir, were you involved
36 in any - which was, of course, about Scott Johnson - were
37 you involved in any work in relation to Macnamir in
38 connection with the three Bondi deaths, the Taradale
39 deaths?
40 A. Sorry, I don't really understand the question.
41
- 42 Q. No, it wasn't a very good question. I'll try that
43 again. So you had done the work you did on the three Bondi
44 deaths in the document of 25 October 2012?
45 A. Yes.
46
- 47 Q. You had also done some work in relation to the Johnson

1 case, which is at least in the undated one that we've
2 looked at today?
3 A. Yes.
4
5 Q. About the same time, probably?
6 A. Yes, that's right.
7
8 Q. October/November 2012?
9 A. Correct.
10
11 Q. And then in February 2013, Macnamir is set up to look
12 at the Johnson case?
13 A. That's right.
14
15 Q. You are on that Macnamir strike force personally for
16 about three and a half months?
17 A. I was.
18
19 Q. In your time on Macnamir, was Macnamir, being an
20 investigation in relation to Johnson, looking at the Bondi
21 cases at all?
22 A. In the time that I worked on Macnamir we were
23 evidence-gathering for the Scott Johnson matter. So
24 I don't know whether it never did or it progressed after
25 that. I'm not sure what the scope of that investigation
26 was to include the Taradale three or not.
27
28 Q. So in your time, you're not aware of the Taradale
29 three coming in to Macnamir at all?
30 A. No.
31
32 Q. In this document that I've just asked you to look at,
33 which is in volume 16, tab 342 [NPL.2017.0004.0549], this
34 is an interview between Emma Alberici and Ms Young on
35 10 April 2015. Do you see that on the front page?
36 A. Yes, I did.
37
38 Q. This is not the interview that actually went to air
39 a couple of days later, but it is an interview between
40 Emma Alberici and Pamela Young - do you follow?
41 A. Okay.
42
43 Q. On page 20 at line 24, Emma Alberici asks Pamela
44 Young, bearing in mind that at this point, the Coroner,
45 Michael Barnes, was considering whether or not to have
46 a third inquest - do you follow?
47 A. Yes.

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Q. So Emma Alberici asks her at line 24:

*What's changed since the last coronial
inquest that would warrant another one?*

Do you see that?

A. Yes, I do.

Q. And Pamela Young gives an answer that starts at
line 27 and goes down to the bottom of the page. You can
see that?

A. Yes.

Q. What I want to ask you about is just what she says at
line 37. She says:

*We have put to the test some of the
findings of Operation Taradale, which was -
did identify or reinvestigate some gay-hate
crimes in Bondi, and two were found to be
possible homicides.*

And so on. Do you see that?

A. I can see that, yes.

Q. Were you aware of Macnamir in some way setting out to
put to the test the findings of the Milledge Inquest about
the three Taradale deaths?

A. No.

Q. You're just going to have put in front of you the
statement of Pamela Young. This document, I will be
corrected if this is not quite right, already is or will
soon be tab 521 in volume 19. I think the position may be,
but again I will be corrected if this is not right, that
the police and/or other parties have not yet completed
their exercise of letting the Commission know what
redactions or non-publication orders they may seek, but the
questions that I want to ask now will not trespass upon
that topic.

Could you go to paragraph 22, please, Ms Taylor. The
question is the way that the Unsolved Homicide Team sorted
out which cases would be looked at in which order - that's
what I'm interested in here.

A. Okay.

- 1
2 Q. So Ms Young says at paragraph 22 that in 2013 there
3 were more than 600 unsolved cases that were being tracked
4 from 1970 onwards. Is that your understanding?
5 A. I don't know the number but there were a lot.
6
7 Q. She says:
8
9 *Tracked cases were reviewed in*
10 *chronological order based on the date of*
11 *the offence.*
12
13 Is that your understanding?
14 A. It could have been. I'm not sure of how they put it
15 into the system or chronological - how they numbered it or
16 how they allocated it.
17
18 Q. You simply don't know how a case out of the 600, if
19 that's how many there were, was selected to be given to
20 someone like you for review or case screening?
21 A. No, not as an investigator, it wasn't --
22
23 Q. You just took what you were given?
24 A. Took what I was given.
25
26 Q. She, Pamela Young, says later in this same
27 paragraph that a case screening form was used. Presumably,
28 I imagine - you may be able to comment - one like the one
29 you did in the Taradale case, 25 October?
30 A. I'm assuming that's what that's referring to.
31
32 Q. And like the undated one that you did for Johnson?
33 A. Again, yes, I'm assuming that's what that's referring
34 to.
35
36 Q. And she says that that form - I'm looking at the top
37 of page 5 now - the completed case screening form, was
38 reviewed by a UHT inspector who would determine a high,
39 medium, low or negligible solvability rate. Do you see
40 that?
41 A. Yes.
42
43 Q. She says the solvability was entered into the tracking
44 file in e@gle.i, and so on.
45 A. I see that, yes.
46
47 Q. Now, I think your evidence is that you don't know

1 anything about solvability ratings being something that was
2 sought to be done at all?

3 A. Solvability at my level was certainly nothing that
4 I recall being discussed with me, it wasn't part of my role
5 as a reviewer.

6
7 Q. Then she says in paragraph 23:

8
9 *A case that was screened and remained*
10 *unsolved, or a reinvestigation that entered*
11 *suspension, was screened again after*
12 *a lapse of approximately five years.*

13
14 Do you know anything about whether that's right or wrong?

15 A. I can't comment on that, I'm sorry.

16
17 Q. And in paragraph 24 she says:

18
19 *Due to resourcing, the systematic review*
20 *approach was not always as regular as it*
21 *was designed, and reinvestigations had*
22 *a waitlist.*

23
24 Are you able to comment on that?

25 A. I can't make any comment on that. I'm just not aware.

26
27 MR GRAY: Those are my questions, Commissioner.

28
29 THE COMMISSIONER: Do you want to see the documents before
30 you conclude?

31
32 MR GRAY: I'm sorry.

33
34 THE COMMISSIONER: There are some documents which may be
35 produced. I will reserve your position on the matter until
36 2 o'clock.

37
38 MR GRAY: Subject to those, those are my questions.

39
40 THE COMMISSIONER: All right. I will adjourn.

41
42 Mr Mykkeltvedt can you give me an update now on those
43 documents?

44
45 MR MYKKELTVEDT: Yes, your Honour. I'm instructed that
46 a letter will be with the Inquiry imminently producing some
47 items in respect of items C and D on the summons. Item A

1 is apparently located at archives presently and a request
2 has been made and we understand that that will be available
3 at some stage this afternoon. I don't yet have a time in
4 respect of that.

5
6 THE COMMISSIONER: Apart from the letter, did I hear you
7 say that, apart from the archived letter, the others would
8 be attached to the letter that the Inquiry will receive?

9
10 MR MYKKELTVEDT: Yes, items C and D will be attached.

11
12 THE COMMISSIONER: All right. What I will do, Mr Gray, is
13 I will adjourn until 2 o'clock.

14
15 Ms Taylor, I'm sorry to ask you to come back at 2.
16 I can't excuse you for the moment because I don't know
17 whether, if at all, you will be asked anything further.
18 Would you be kind enough to return a little before
19 2 o'clock?

20
21 THE WITNESS: Of course.

22
23 THE COMMISSIONER: All right. We'll just take it from
24 there. All right. Thank you, I will adjourn.

25
26 **LUNCHEON ADJOURNMENT**

27
28 THE COMMISSIONER: Yes.

29
30 MR GRAY: Commissioner, of the documents that I have
31 myself seen, which I think are responsive to this morning's
32 summons, I don't need to ask Ms Taylor anything about
33 those.

34
35 There is one other document which I had thought was
36 called for by the summons but Mr Mykkeltvedt seems to think
37 it isn't, which is any signed version of the draft document
38 that became tab 399A this morning. If that's not called
39 for by the summons, then I would ask, through you,
40 Commissioner, that any such signed version nonetheless be
41 produced as soon as possible.

42
43 Assuming there is such a document - and there may or
44 may not be - and assuming it is in due course produced, it
45 is possible, although I think unlikely, that I might need
46 to ask something of Ms Taylor about that.

1 THE COMMISSIONER: Certainly.

2

3 MR GRAY: Subject to that, from my perspective, and
4 subject to any questions that others may have today, she
5 would not need to be detained here today.

6

7 THE COMMISSIONER: Mr Mykkeltvedt, do you know whether it
8 exists or not?

9

10 MR MYKKELTVEDT: Yes, I'm instructed that the
11 understanding of my instructing solicitor was that
12 paragraph D referred to the same document as paragraph B
13 and, as a consequence, it has not yet been further looked
14 for.

15

16 Mr Warren is in the building and so we will make some
17 further inquiries as to the extent to which checks have
18 previously been made for a signed version of that document.

19

20 THE COMMISSIONER: But was it the view that because the
21 word "signed" wasn't used in the summons, it fell outside
22 it?

23

24 MR MYKKELTVEDT: No. The view, as I understand it, that
25 was taken is that paragraph B refers to an unsolved
26 homicide review of the death of Scott Johnson on or about
27 7 January 2008 and then paragraph D is not dated, so the
28 document that is referred to in paragraph D does not bear
29 a date and, in context, it was perceived that paragraph D
30 referred to paragraph B.

31

32 THE COMMISSIONER: I am struggling to follow that but in
33 any event, you are going to make inquiries to see whether
34 a document exists and, if it does - let's not debate the
35 issue. I presume without a summons, if it does exist, you
36 will produce it?

37

38 MR MYKKELTVEDT: I believe, I should say, that some
39 inquiries were previously made to try to find it but we
40 will make further inquiries.

41

42 THE COMMISSIONER: Just to repeat, without being tedious,
43 your side doesn't require a summons: if you find it, you
44 will produce it?

45

46 MR MYKKELTVEDT: Yes.

47

1 THE COMMISSIONER: All right. Thank you. In that event,
2 could Ms Taylor come back into the witness box.
3
4 MR MYKKELTVEDT: I understand there may be some other
5 questions, your Honour, so I will reserve my position.
6
7 THE COMMISSIONER: Let me just work that out. You weren't
8 here this morning, Mr Hutchings or Mr Nagle, but I take it
9 you've read or heard what I have had to say about time and
10 things?
11
12 MR NAGLE: If I am more than two minutes, your Honour,
13 I would invite your Honour to stop me. I won't be long.
14
15 THE COMMISSIONER: All right. Mr Hutchings, do you have
16 any questions at all?
17
18 MR HUTCHINGS: I have no questions, your Honour.
19
20 THE COMMISSIONER: Go ahead, Mr Nagle. Then
21 Mr Mykkeltvedt will ask anything he has and then Mr Gray
22 will finish. Thank you.
23
24 MR NAGLE: Thank you.
25
26 **<EXAMINATION BY MR NAGLE:**
27
28 MR NAGLE: Q. This morning you were asked some questions
29 about the transcript from the Australian Story.
30
31 THE COMMISSIONER: Can I just interrupt you?
32
33 MR NAGLE: Yes.
34
35 THE COMMISSIONER: As a courtesy to the witness, just in
36 case she is not aware who you are --
37
38 MR NAGLE: Oh, sorry.
39
40 THE COMMISSIONER: No, no, I think it is important you
41 tell her who you represent, not that that should have any
42 effect on the answer she gives you, but just so that she
43 knows who you are, I think that would be helpful.
44
45 MR NAGLE: For your Honour's benefit, I had introduced
46 myself to the witness outside so that she knew who I was --
47

1 THE COMMISSIONER: I did not know that so --
2
3 MR NAGLE: No, I will do it formally now as well.
4
5 THE COMMISSIONER: No, you don't need to do it formally if
6 you've done it. I'm just suggesting a way forward, but,
7 anyway, you go ahead.
8
9 MR NAGLE: Thank you, your Honour.
10
11 Q. This morning you were asked some questions about
12 a transcript from the Australian Story program. Do you
13 recall that?
14 A. Yes, I do.
15
16 MR NAGLE: Your Honour, might the witness be shown tab 319
17 [SCOI.82485_0001] in exhibit 6, please.
18
19 THE COMMISSIONER: Sure.
20
21 MR NAGLE: And I wonder if it might be brought up on the
22 screen. I think I'm after page 5 of 6, if that might be
23 possible. Thank you.
24
25 Q. Do you see on the screen there - I'm sorry, it was
26 actually on the screen. It's the portion that was asked
27 about this morning. There we are. Thank you very much to
28 whoever just did that.
29
30 This morning you were asked some questions in relation
31 to the entry that says "Detective Chief Inspector John
32 Lehmann"; do you remember that?
33 A. Yes, I do.
34
35 Q. And the second half of that entry wasn't read to you,
36 was it, that is, "And to that end".
37 A. No.
38
39 Q. So it says:
40
41 *And to that end, we've also applied for*
42 *a monetary reward to the Government for*
43 *information that may lead to the*
44 *identification of the persons that may have*
45 *been responsible for Scott's death.*
46
47 Counsel Assisting suggested to you that despite what was

1 said in the two sentences before it about it being an open
2 case, that because it had zero solvability, that that
3 wasn't right. Do you recall that?

4 A. Yes, I do.

5

6 Q. You spent some time in Unsolved Homicide?

7 A. I did.

8

9 Q. And it was sometimes the case that if there were no
10 active leads or no leads that looked promising, sometimes
11 a monetary reward would be applied for so that new leads
12 could be gathered or obtained so that further inquiries
13 could be undertaken?

14 A. That's correct.

15

16 Q. And in that sense, the case would not have been
17 a closed case, would it?

18 A. It still remains unsolved.

19

20 Q. It remains unsolved, but in terms of it being open or
21 closed, if you're applying for a monetary reward, trying to
22 find other people that might be able to assist with the
23 investigation, would it follow that it's still an open
24 case?

25 A. It would follow.

26

27 MR NAGLE: Thank you, your Honour. That's the further
28 questions.

29

30 THE COMMISSIONER: Thank you. Yes, Mr Mykkeltvedt.

31

32 MR MYKKELTVEDT: I have no questions, your Honour.

33

34 THE COMMISSIONER: All right. Thank you.

35

36 Mr Gray, nothing arising?

37

38 MR GRAY: No.

39

40 THE COMMISSIONER: All right. Thank you very much for
41 attending this morning, Ms Taylor. I can now excuse you
42 from further evidence.

43

44 <THE WITNESS WITHDREW

45

46 MR NAGLE: Your Honour, might I take my leave until
47 tomorrow now?

1
2 THE COMMISSIONER: Of course.
3
4 MR NAGLE: Thank you.
5
6 MR GRAY: Commissioner, the next witness is Stewart
7 Leggat.
8
9 THE COMMISSIONER: Yes.
10
11 <STEWART JOHN LEGGAT, sworn: [2.15pm]
12
13 <EXAMINATION BY MR GRAY:
14
15 MR GRAY: Q. Mr Leggat, your name is Stewart John
16 Leggat?
17 A. That's correct, sir, yes.
18
19 Q. And you've made a statement for the Inquiry dated
20 15 September 2023?
21 A. Yes, sir.
22
23 Q. Are the contents of that statement true and correct?
24 A. Yes, they are.
25
26 Q. You were with the Homicide Squad initially from 2009
27 to 2013?
28 A. That's correct.
29
30 Q. When in 2013 did you move on from the Homicide Squad?
31 A. October.
32
33 Q. Thank you. Then at some point in 2013 you were
34 promoted to Inspector?
35 A. That's correct, sir, yes.
36
37 Q. Then after a stint of four years or so elsewhere, you
38 came back to the Homicide Squad in 2017?
39 A. Correct.
40
41 Q. And in doing so, went to the Unsolved Homicide Team?
42 A. Yes, sir.
43
44 Q. And you were there from 2017 to 2022?
45 A. Yes, sir; that's correct.
46
47 Q. In the course of which, in 2020, you were promoted to

1 Detective Chief Inspector?
2 A. That's correct, yes, sir.
3
4 Q. During your first period in Homicide - not in Unsolved
5 Homicide - 2009 to 2013, in that period, Mr Leggat, could
6 I just take you back to a few things that happened in that
7 era --
8 A. Yes, sir.
9
10 Q. -- to see about your recollections of them. On
11 27 June 2012, there was the second Scott Johnson inquest
12 before Coroner Forbes, when she returned an open finding
13 which was different from an original finding of suicide; do
14 you remember that?
15 A. No, sir, I don't.
16
17 Q. No recollection?
18 A. I had nothing to do with it, so it was - no, sir,
19 I don't.
20
21 Q. In late 2012, there was a review of the Johnson case
22 by Ms Alicia Taylor, who gave evidence this morning. Were
23 you aware of that?
24 A. No, I wasn't, sir, no.
25
26 Q. And there was also, at about the same time, a review
27 by Ms Taylor of the Bondi deaths, the three Bondi deaths.
28 Were you aware of that?
29 A. Yes, I was aware of that one, sir, yes.
30
31 Q. Were you aware of that at the time, even though you
32 weren't in Unsolved Homicide?
33 A. No, I wasn't in Unsolved at that stage, I was on the
34 floor in Homicide, so, no, I wasn't aware at that stage.
35
36 Q. So you became aware later?
37 A. Yes, as a result of this Special Commission.
38
39 Q. Only last year?
40 A. This year.
41
42 Q. In February 2013 there was an Australian Story
43 broadcast on the ABC about the Johnson case in which
44 Detective Inspector or Chief Inspector Lehmann
45 participated. Were you aware of that?
46 A. No, sir, I wasn't.
47

- 1 Q. At about the same time, February 2013, Strike Force
2 Macnamir was established. Were you aware of that at the
3 time?
4 A. In 2013, no, I wasn't aware at that time, sir.
5
6 Q. You only became aware later?
7 A. Yes, when I returned to Unsolved.
8
9 Q. In February 2013 there was an article in the Sydney
10 Morning Herald reporting on the suggestions of a link
11 between the Johnson case at North Head and the three Bondi
12 cases that were investigated by Taradale. Were you aware
13 of that?
14 A. I wasn't aware of the Sydney Morning Herald article,
15 no, sir.
16
17 Q. What about some other articles in March 2013 by
18 Paul Sheehan reporting on claims by some of a large number
19 of gay hate related deaths, some 30 of which were said to
20 be unsolved. Were you aware of that at the time?
21 A. No, sir, I wasn't.
22
23 Q. Have you become aware since that these various press
24 articles appeared?
25 A. Not really, sir, no.
26
27 Q. You joined the Unsolved Homicide Team in March 2017?
28 A. Yes, sir.
29
30 Q. In your time - that is, 2017 to 2022 - were the senior
31 officers at the Unsolved Homicide Team DCI Lehmann and
32 yourself?
33 A. No, sir.
34
35 Q. Who were they?
36 A. It was DCI Olen, DCI Laidlaw and myself.
37
38 Q. Three of you?
39 A. Yes.
40
41 Q. Not DCI Lehmann?
42 A. No, he'd gone before I arrived there, sir.
43
44 Q. He'd gone before March 2017?
45 A. Well, yes, sir, he wasn't there.
46
47 Q. Did you know him?

- 1 A. I only knew him in passing because he was in Unsolved
2 and I was on the floor in the 2009 to '13 period, so that
3 was only - and it was only in passing that I knew him.
4
- 5 Q. But you're aware, I imagine, that at an earlier time
6 before you came to the Unsolved Homicide Team, he had been
7 one of the two Investigation Coordinators?
8 A. Yes, I was aware of that, sir, yes.
9
- 10 Q. Now, in your time there, from March 2017, how many
11 officers were there at the Unsolved Homicide Team?
12 A. That's a good question. There were - I had three,
13 then two teams, so there was a sergeant for each team on
14 my side of the floor plus four to five senior constables or
15 four to five detectives under each of those sergeants.
16 Then on the other side there was the same amount of police
17 as well.
18
- 19 Q. When you say "other side", is that one other side or
20 two other sides?
21 A. No, like there was teams 7, 8, 9, 10, and then 11. So
22 I was in charge of 9, 10 and 11. And Detective Chief
23 Inspector Olen was in charge of 7 and 8.
24
- 25 Q. So each of them had a sergeant plus about five?
26 A. Roughly, yes, sir.
27
- 28 Q. Roughly?
29 A. Yeah.
30
- 31 Q. So roughly six each times five equals about
32 30 altogether; is that right?
33 A. That's correct, sir, yes.
34
- 35 Q. And what about Unsolved Homicide Review Teams, were
36 they different?
37 A. That was under DCI Laidlaw and that varied. I think
38 there was probably two sergeants, two part-time sergeants,
39 one full-time sergeant, and two or three senior constables.
40 That's from memory anyway, sir.
41
- 42 Q. So about half a dozen altogether?
43 A. Correct, sir, yeah.
44
- 45 Q. All in the same room - that is, all five investigating
46 teams plus the review team?
47 A. Yes, in a large open office.

1
2 Q. A large open space?
3 A. Yes, sir.
4
5 Q. And presumably - is this right - people working on
6 whatever case they were, or review, or strike force, would
7 typically talk to others in the room about what they were
8 doing?
9 A. Yes, sir, they - yeah, we'd talk about the jobs we
10 were doing on our side of the floor with the people on our
11 side of the floor.
12
13 Q. Sure. But it being all in the one room and you all
14 being part of the same overall exercise --
15 A. You had a general idea of what the other teams were
16 doing but you didn't know the specifics, sir.
17
18 Q. Were there meetings of the whole UHT group from time
19 to time?
20 A. Yes, sir, there were.
21
22 Q. How often were they?
23 A. They were infrequent. It was more that you would have
24 meetings with your specific teams, so you could discuss
25 investigative strategies and what you were getting up to.
26 The larger meetings were more about staffing and if we
27 needed to provide a response to something like the on-call
28 or something like that, but that was infrequent, sir, with
29 the whole office.
30
31 Q. Sorry?
32 A. That was infrequent, with the whole office.
33
34 Q. And at such meetings that involved the whole office,
35 would there be typically, or sometimes, updates given about
36 what everyone was actually doing?
37 A. No, sir. My side of the floor would update me and I'd
38 update the commander in regard to what was happening. The
39 other side of the floor would update their inspector, who
40 in turn would update the commander.
41
42 Q. The Commander Homicide?
43 A. That's correct, sir, yes.
44
45 Q. Who, at the time we're talking about for you,
46 from March 2017, was who?
47 A. It varied. Mick Willing had gone upstairs to the next

- 1 level up. And then I think it was shared in a relieving
2 capacity by a number of people - a number of inspectors.
3
- 4 Q. I think Mr Dickinson at one point may have been in the
5 chair; is that correct?
6 A. That's correct, sir, yes.
7
- 8 Q. And in due course, perhaps with one or two in between,
9 Mr Cook?
10 A. That's right, yes.
11
- 12 Q. So when you got there in March 2017, Mr Willing was
13 already gone?
14 A. Yes, sir.
15
- 16 Q. I just want to ask you about how cases were
17 prioritised at the Unsolved Homicide Team in your era.
18 A. Yes, sir.
19
- 20 Q. So we've had other evidence, some of it from you
21 perhaps last year, to the effect that there were in the
22 order of 700 cases on the Unsolved Homicide Team's books?
23 A. That's correct, sir, yes.
24
- 25 Q. And going back to 1970?
26 A. Yes. That's right.
27
- 28 Q. Now, the Unsolved Homicide Team itself had been
29 established, is this right, in about 2005 or thereabouts?
30 A. That's right, as a result of the Gordana Kotevski
31 Inquest, it was a recommendation of Mr Abernethy.
32
- 33 Q. Sorry, a recommendation of --
34 A. Mr Abernethy, the then State Coroner.
35
- 36 Q. And either at the time you arrived in March 2017 or at
37 some time after that, was there in existence or did there
38 develop a three-stage process, namely, firstly, a triage
39 process, leading possibly to a review, leading in turn
40 possibly to a reinvestigation; is that the system?
41 A. That's pretty much the simplified version of what
42 occurred, sir, yes.
43
- 44 Q. We've had some evidence that suggests that at an
45 earlier time, perhaps prior to 2017, the system had been
46 somewhat different from that. Can you tell us what the
47 system was before that?

1 A. It was basically cases were reviewed and looked at on
2 the basis of solvability, which is what we ran with as
3 well - solvability is the main thing that we ran with in
4 regard to the reinvestigation of cases, sir.

5
6 Q. "Solvability" meaning what, if you could just tell us
7 what is meant by that - what was meant by that expression?

8 A. Basically, there's - the matters have been
9 investigated as a homicide initially, so we had a good
10 foundation to build upon. You may have forensics,
11 witnesses, a good suspect, and then you can build upon that
12 to do the investigation.

13
14 Q. But I'm asking what did the expression "solvability"
15 mean?

16 A. A likelihood of prosecution, a successful prosecution
17 in the Supreme Court.

18
19 Q. And is that something different from "priority"??

20 A. No, not at all. Priority - the priority would be the
21 most solvable case to be presented and to be
22 reinvestigated.

23
24 Q. In some places in the material we have, there is
25 a suggestion that the way in which the 700 or so cases on
26 the tracking file were dealt with was to go to them in
27 chronological order by date of death. Is that correct?

28 A. No, look, the tracking file had every case listed and
29 then there were priority cases on that, and they were
30 divided into four categories, but - you know.

31
32 Q. The four categories being?

33 A. Well, undetected or unsolved, unresolved; - I'm sorry,
34 the third one escapes me, undetermined, and the last one's
35 solved.

36
37 Q. Could Mr Leggat please have volume 19, tab 521. Now,
38 that's a statement of Ms Pamela Young, which has been
39 provided to the Inquiry?

40 A. Yes, sir.

41
42 Q. I just want to ask you a couple of questions about
43 paragraphs 22 to 24, if you could turn to those in
44 paragraph 22 she refers to about 600 unsolved cases as at
45 2013. Do you see that?

46 A. Yes, sir, I see that.

47

1 Q. Then she says:

2

3

4

5

6

*Tracked cases were reviewed in
chronological order based on the date of
the offence.*

7

Now, are you saying that your recollection is different
from that?

8

9

10

11

12

13

14

A. Usually the older matters were reviewed first and then
they changed the process, so the more recent matters were
reviewed. But that - a chronological order based on the
date of the offence, yes, so the oldest ones were looked at
first.

15

16

17

18

Q. The oldest ones were looked at first?

A. That's - and then the process was changed in 2018, so
they reviewed the more recent cases.

19

20

21

22

Q. But prior to 2018, the process was: look at the
oldest cases first and --

A. That's correct, sir.

23

24

25

Q. In chronological order?

A. Yes.

26

27

28

Q. So a case that was much more recent than 1970, say
a case from the 2010s, ordinarily, would not have got
looked at for many years?

29

30

31

32

33

A. Not necessarily, sir, because a couple of cases we did
were from 2008 and 2010, and it was just on the basis of
it's arrived, have a look at it, okay, let's review that
case and then, yes, it's a go.

34

35

36

37

38

39

40

Q. And why would that happen if the system was to do the
oldest ones first?

A. Because as they came in we wanted to see what was
coming in. There might have been a piece of evidence that
the initial investigators didn't get. So we thought, well,
yeah, we'll give it a run.

41

42

43

44

45

46

47

Q. So there are 700 cases - this is what I'm trying to
understand - in chronological order, case number 432, when
would you get to that?

A. Well, it depends because a lot of the cases had
already previously been reviewed under the old system.
I don't know how many had been reviewed. And they had been
scored and if they were suitable for reinvestigation, they

- 1 would have been allocated.
2
- 3 Q. They would have been allocated back then when they
4 were reviewed the first time?
5 A. Yes.
6
- 7 Q. But what would the UHT team do post 2005 when its
8 process, as you have said, for its part was to look at the
9 oldest ones first?
10 A. Sorry, sir, can you repeat the question?
11
- 12 Q. You mentioned that some cases may have been reviewed
13 prior to the UHT coming into existence?
14 A. Yes.
15
- 16 Q. That's fine. But in terms of once the UHT had come
17 into existence, if its process was to look at the 700 in
18 chronological order starting with the oldest ones, when
19 would you get to one numbered in the 400s chronologically?
20 A. It could take years, sir.
21
- 22 Q. Well, it would take many, many, many years.
23 A. Because you've got to review everything that's in the
24 archive boxes.
25
- 26 Q. The answer is yes, isn't it, it would take an
27 enormously long time?
28 A. It would take a long time, yes, sir.
29
- 30 Q. Decades?
31 A. Potentially decades.
32
- 33 Q. Now, assuming a case by that means, let's say one gets
34 some attention to it relatively early in the UHT's
35 existence, within the first few years after 2005, and the
36 upshot of looking at it then is that at the moment, there's
37 nothing more we can do - suppose that happens?
38 A. Yes, sir.
39
- 40 Q. When does that case, which has already been looked at
41 by the UHT in that way, get looked at again, and by what
42 system?
43 A. It probably wouldn't be looked at again for quite some
44 time. It would be continuing with the review process on
45 other cases.
46
- 47 Q. Quite. What would be "quite some time" - decades?

- 1 A. Well, no, not decades. We've only had an
2 investigative wing at Unsolved since 2008. So prior to
3 that it was just reviews. As I said, the bulk of the
4 cases, my understanding, had been reviewed, sir.
5
- 6 Q. Maybe so. But I'm asking about the UHT process. I'm
7 just trying to understand how often the bottle was turned
8 over in the cellar; do you follow?
9
- 10 A. It depends on, as I said solvability, if we see cases
11 with exhibits, with advances in technology and the like,
12 there might be a forensic review on that case and then we'd
13 run --
- 14 Q. But what would prompt it? How would it, somehow or
15 other rise, to the surface?
16
- 17 A. I'm only going from memory, but on the tracking file
18 itself, it lists what cases have exhibits that relate to
19 that particular case. So it might be a case that, "Okay,
20 let's have a look at this one again because there are some
21 exhibits with forensic potential."
- 22 Q. Do you mean some new exhibits turn up? Is that what
23 you mean?
24
- 25 A. No, not new exhibits. With the improvement in
26 technology, with DNA, the sensitivity of the testing and
27 the like, improvements, there might be a potential there.
- 28 Q. And somehow, that would come to someone's attention,
29 would it, that case number 432 might be a candidate for
30 another look?
31
- 32 A. That's right. And if it had something on the side
33 saying, in the column saying "Exhibits Available", yes.
- 34 Q. So the example you are giving is if a case has
35 exhibits - you tell me if I'm understanding this - and at
36 some point along the timeline, some development in
37 technology, eg, DNA, occurs --
38
- 39 A. Yes, sir.
- 40 Q. -- a bell would ring such that any case with exhibits
41 in it would rise to the surface? Is that what you are
42 saying?
43
- 44 A. They'd be looked at, sir, and the exhibits, for the
45 potential, yeah, I - well - yes.
- 46 Q. Would they, really?
47
- A. Well, we have, in my time at Unsolved in five years,

- 1 we had 12 successful arrests based on review of exhibits.
2
- 3 Q. Sure. But I'm trying to get the system. If there are
4 700 of them, some of which have been looked at, at some
5 point, and been assessed as showing no potential for
6 a further investigation, when would they ever get looked at
7 again, is my question, and I think your answer is well, if
8 it was a case with exhibits and something happened by way
9 of an advance in DNA, say, that might make somebody
10 think --
- 11 A. That might make it, or you might get some intelligence
12 come through in regard to a witness, a potential witness
13 that hasn't come forward at some stage, or something that -
14 or that we identify, for instance, someone may come forward
15 and say, "Look, I was privy to the murder", they'd get
16 a statement off that person and --
- 17
- 18 Q. Sure. I understand that, if something brand new comes
19 in --
- 20 A. That's right.
- 21
- 22 Q. -- unexpectedly, that is --
- 23 A. That could be a trigger as well, sir.
- 24
- 25 Q. -- clear enough?
- 26 A. Yes.
- 27
- 28 Q. But what I'm trying to get at: what about the cases
29 where that doesn't happen, how often is the bottle turned
30 over?
- 31 A. Well, infrequently, sir. If it's - it depends if they
32 are an unsolved case or an undetected case or an
33 undetermined case. Undetermined cases probably wouldn't be
34 looked at as frequently as an unsolved case.
- 35
- 36 Q. Is the reality that in a case of the kind I've just
37 mentioned - namely, one that at some stage had been looked
38 at and the assessment made that nothing more could be done
39 for the time being --
- 40 A. Yes, sir.
- 41
- 42 Q. -- nothing new happens, no relevant DNA improvement,
43 no new information from the public, wouldn't that case, as
44 I understand what I've seen, just sit there?
- 45 A. That's right.
- 46
- 47 Q. Nothing would happen at all?

- 1 A. Exactly.
2
- 3 Q. There was no system whereby every case got another
4 round of checking by any system at all, was there?
5 A. Other than if there were advances in technology or,
6 alternatively, intelligence came in that indicated some
7 valuable information that could progress the case.
8
- 9 Q. So absent that, nothing would happen?
10 A. That's right, sir.
11
- 12 Q. Now, the Johnson case, of course, was a case where the
13 death happened in December 1988. You know that?
14 A. I'll take your word for it, sir, yes.
15
- 16 Q. But it was only referred to the UHT, or as the Coroner
17 put it, "cold cases", in 2012? You can assume that's
18 right.
19 A. Yes, sir.
20
- 21 Q. Would that ordinarily have meant that it would not
22 have been looked at by the UHT for many years because of
23 the system you've been describing?
24 A. Pretty much, sir, because there's - I don't know the
25 case details of what's involved. Are there forensics with
26 the case? Are there witnesses to the offence? All those
27 things would come into play. Is there any intelligence
28 that relates to the disappearance or the murder of?
29
- 30 Q. Why would such a case ordinarily coming to the UHT for
31 the first time in 2012, be looked at at all rather than
32 simply taking its place in the queue?
33 A. It probably would take its place in the queue, sir,
34 because I don't know at the time, her Honour - what her
35 findings were in regard to the Johnson matter in 2012.
36
- 37 Q. That was when her findings were made, yes.
38 A. I don't know what her findings were. If it was - if
39 she came back with a finding that would determine the
40 matter was an undetermined matter, then the case would sit
41 there.
42
- 43 Q. Well, her words were, "I return an open finding"?
44 A. Or an open finding, yes.
45
- 46 Q. That's all. And she referred it to "cold cases". And
47 what I'm trying to get from you is, so far as you

- 1 understood the system, what ordinarily would have happened?
2 And I'm suggesting that, as I understand it, the answer is
3 nothing, for quite a long time, because it would have just
4 taken its place in the queue; is that right?
- 5 A. Well, because of the type - yes, sir, because of the
6 type of case it was or presented to us, as what you have
7 told me, yes, it would have just sat in the queue.
8
- 9 Q. Now, in your time at the UHT, 2017 for five years,
10 approximately how many cases would get a screening - that
11 is, an initial UHT screening - per year?
- 12 A. I'm not sure, sir. I wasn't in charge of the review
13 side. Detective Chief Inspector Laidlaw was. My role was
14 investigation, coordinating investigative teams, and that
15 means responding to the investigations.
16
- 17 Q. So you couldn't tell us how many would get
18 a screening?
- 19 A. No, I couldn't, sir.
20
- 21 Q. How many per year, as far as you know, got a review -
22 that is, the second stage?
- 23 A. Again, sir, I don't know.
24
- 25 Q. You don't know. And how many per year, if you can
26 tell us, to your knowledge, proceeded to the third stage,
27 namely, an actual investigation?
- 28 A. It would depend. Three, maybe four, would proceed to
29 investigation.
30
- 31 Q. Per year?
- 32 A. Three - but then on top of that you've got trials that
33 are running which absorb a lot of the time of the staff in
34 responding to requisitions and subpoenas from the defence.
35 So there's --
36
- 37 Q. I'm not directing criticism in your direction --
- 38 A. No, no, not at all, sir. I'm just explaining.
39
- 40 Q. -- I'm just trying to understand numbers, and I'm not
41 holding you to three, but it is of that order, is it?
- 42 A. It is.
43
- 44 Q. Three or four a year?
- 45 A. That's right, sir. That's per team.
46
- 47 Q. Per team?

1 A. Well, per grouping of teams. So there might be two on
2 one - yes, so I might have had three or four for my two
3 teams.
4
5 Q. And --
6 A. The same on the other side of the floor.
7
8 Q. Who was --
9 A. Mr Olen.
10
11 Q. He might have had three or four as well?
12 A. That's correct.
13
14 Q. So six to eight per year all up?
15 A. Well, yeah, and they do - they take longer than
16 a year, a lot of the investigations.
17
18 Q. Quite. Once they started, the investigation might
19 take any length of time?
20 A. That's right, sir, yes.
21
22 Q. It might take months; it might take years?
23 A. Yes, sir, and it may not go anywhere either.
24
25 Q. Now, turning to Strike Force Neiwand, could we have
26 volume 1, please. And could we turn to tab 16
27 [SCOI.76962.00001_0001], please. This document, as far as
28 we know, is a document that tells us that Strike Force
29 Neiwand was instigated at least by 26 October 2015 - do you
30 see that?
31 A. Yes, sir, that's right.
32
33 Q. Do you see the date? And the initial Investigation
34 Supervisor was DCI Lehmann?
35 A. Yes, sir.
36
37 Q. And the initial Officer in Charge, or OIC, was
38 Detective Sergeant Penny Brown?
39 A. Yes, sir.
40
41 Q. And then the next tab, 17 [SCOI.74884_0001], which is
42 dated various dates on the third page in May and June 2016,
43 so about seven or eight months later, tells us that by then
44 the Investigation Supervisor was Detective Sergeant Morgan,
45 and the OIC was Detective Senior Constable Chebl?
46 A. Yes, sir.
47

- 1 Q. The Terms of Reference in both documents are said to
2 be to re-investigate, basically, the three cases?
3 A. Yes, sir, that's right.
4
- 5 Q. The word is "re-investigate"; do you see that?
6 A. Yes, sir, yeah.
7
- 8 Q. Then at tab 18 [SC0I.74880_0001], we have the
9 investigation plan for Neiwand. Now, it's not dated, but
10 the evidence before the Inquiry is that it probably came
11 into existence about September or October 2016. Can you
12 just assume that from me for the moment?
13 A. Yes, sir.
14
- 15 Q. If that's right, then the investigation plan didn't
16 come into existence until the better part of a year after
17 the strike force was first initiated?
18 A. It appears that - that's --
19
- 20 Q. The investigation plan, as you can see, is a bit less
21 than three pages in total.
22 A. Yes, sir.
23
- 24 Q. And the first page and a half is a kind of general
25 outline of the background to the three cases, setting the
26 scene for what the plan was going to be?
27 A. Yes, sir.
28
- 29 Q. So the plan itself is only about a page and a bit,
30 starting with the heading "Mission" on the second page?
31 A. Yes, sir.
32
- 33 Q. Under the heading "Strategies/Execution", we're told
34 that the initial priority would be to locate the relevant
35 material - you can see that?
36 A. Yes, sir.
37
- 38 Q. And then investigators will review material from
39 Operation Taradale - that's the Detective Sergeant Page
40 exercise from 2002?
41 A. Yes, sir.
42
- 43 Q. And then "Separate and re-investigate each case
44 individually" - do you see that as the second bullet point?
45 A. Yes.
46
- 47 Q. And on the last page, under the heading "Canvassing",

1 there was to be a revisit of residents in the nearby area,
2 Marks Park, and possible follow-up. To your knowledge,
3 appreciating that you didn't come in until March 2017, was
4 that ever done?

5 A. I couldn't answer that question, sir, sorry.

6
7 Q. Under the heading "Witness Management", it says:

8
9 *Follow up statements will be required from*
10 *identified witnesses for*
11 *clarification ... as well as statements*
12 *from freshly identified witnesses.*

13
14 To your knowledge, was that ever done?

15 A. To my knowledge, statements were obtained from
16 witnesses or associates of, say, Mr Warren or Mr Mattaini's
17 partner, I think, from memory.

18
19 Q. Were they from freshly identified witnesses --

20 A. No, sir.

21
22 Q. -- or witnesses that Taradale --

23 A. I think they were originally from the Taradale
24 investigation itself.

25
26 Q. Under the heading "Persons of Interest", it says:

27
28 *A detailed list of persons of interest will*
29 *be developed after an extensive review of*
30 *all material.*

31
32 Was that ever done?

33 A. "A detailed list of persons of interest will be" -
34 I know that they reviewed the material from Taradale prior
35 to my arrival there and - yes.

36
37 Q. You haven't answered my question yet. Was a detailed
38 list of persons of interest developed?

39 A. No, because they focused on the background of - when
40 I arrived they were focusing on the background and - of
41 each of the gentlemen and also their last movements.

42
43 Q. So the answer is "no" - that was not done; correct?

44 A. To my knowledge, no.

45
46 Q. I will come back to that. On the second page at the
47 bottom of the page, the relevant roles are set out and the

1 coordinator is DCI Olen.
2 A. Yes, sir.
3
4 Q. What does that mean in this context? What does the
5 Investigation Coordinator do?
6 A. Basically acts as a sounding board to the supervisor
7 and to the officer in charge. They also manage staffing
8 for the operations and for the investigations themselves.
9
10 Q. Right. And the Investigation Supervisor, Sergeant
11 Morgan - what's the role of the Investigation Supervisor,
12 generally speaking?
13 A. Generally speaking the supervisor will oversight the
14 investigation to ensure that the Officer in Charge is on
15 the right track. He or she will verify the product that
16 goes through e@gle.i, the database that is used by the
17 police.
18
19 Q. And what does that mean, "verify the product"?
20 A. Well, read the product, ensure that it makes sense
21 and - so they're across the investigation itself. And then
22 they feed that information back to the coordinator.
23
24 Q. So just digressing for a moment from the Neiwand
25 exercise, which is the three Bondi deaths --
26 A. Yes, sir.
27
28 Q. -- to the Macnamir exercise, which was the Scott
29 Johnson death. I imagine you are aware - tell me if you're
30 not - that the Investigation Supervisor initially was
31 DCI Young?
32 A. Yes, I am aware of that, yes, sir.
33
34 Q. And initially the OIC was Detective Sergeant Penny
35 Brown?
36 A. Yes, sir.
37
38 Q. You're aware of that?
39 A. Yes, I am.
40
41 Q. And I suspect you probably also are aware that the
42 person who prepared the very lengthy statement for the
43 Coroner in the Macnamir exercise, the Johnson case, was the
44 Investigation Supervisor, DCI Young --
45 A. I should imagine that would be the case if it was
46 a coronial matter, sir, yes.
47

- 1 Q. In other words, the Investigation Supervisor did that
2 not the OIC. Are you aware of that?
- 3 A. In that particular case, yes, sir.
4
- 5 Q. So is this right, that the Investigation Supervisor,
6 in a strike force such as, for example, this Neiwand one,
7 but generally, would be expected to be taking an active and
8 close interest in what was going on?
- 9 A. I'd hope so, yes, sir.
10
- 11 Q. Not just leaving it to whoever the OIC was to just
12 decide for himself or herself what might be done?
- 13 A. No, the OIC would make the decisions which he or she
14 would run past the supervisor.
15
- 16 Q. And when it came to writing review documents, or in
17 the case of Neiwand, summary documents --
- 18 A. Yes, sir.
19
- 20 Q. -- is this right that the OIC might draft them but the
21 Investigation Supervisor would be expected to carefully
22 read and review and check them before endorsing them?
- 23 A. Yes, sir, yes.
24
- 25 Q. Do you have any idea as to how it was that Detective
26 Sergeant Morgan and Detective Senior Constable Chebl were
27 chosen for this Neiwand job?
- 28 A. I don't know how they were chosen, just that they were
29 there at that particular team and they needed someone to do
30 the job, I should imagine.
31
- 32 Q. And I think you've told us in your statement, if I can
33 find it, that you regarded Detective Sergeant Morgan as an
34 experienced investigator?
- 35 A. Yes, he had over 15 years in Homicide.
36
- 37 Q. And you said you thought Detective Senior Constable
38 Chebl was experienced, engaged and enthusiastic?
- 39 A. In regard to this particular job, yes, sir.
40
- 41 Q. But he was obviously junior to Morgan?
- 42 A. Yes, sir.
43
- 44 Q. Morgan was more experienced?
- 45 A. Yes.
46
- 47 Q. In terms of the investigation plan, that you might

1 still have there, I think, tab 18, I mentioned that it
2 refers to persons of interest and how a detailed list of
3 persons of interest would be developed. Now, could we have
4 volume 14, please - you won't need that volume anymore.

5
6 In volume 14, could we turn to tab 306
7 [NPL.3000.0001.0026], please. Now, you tell us in your
8 statement that you were not aware - I can't turn it up but
9 you say somewhere that you were not aware of Penny Brown
10 sending this list of persons of interest?

11 A. No, I wasn't, sir, at all. I wasn't aware of that.

12
13 Q. But looking at it now, have you seen this email before
14 today?

15 A. Yes, because it was in the bundle of material that
16 I reviewed from the Special Commission.

17
18 Q. In the course of the last month or so?

19 A. Yes, sir.

20
21 Q. Just looking at it briefly now, here is Penny Brown on
22 1 February 2016, when she's still the OIC of Neiwand - do
23 you follow? See the date up the top, 1 February 2016?

24 A. Yes, sir.

25
26 Q. So she is still the OIC at this point, and she is
27 sending an email to, among others, Mr Chebl - I won't read
28 them all out - and cc-ed Mr Olen and Mr Lehmann and blind
29 copied Mr Willing. Do you see that?

30 A. Yes, sir, I do.

31
32 Q. And she says:

33
34 *Attached is a spreadsheet of the Taradale*
35 *suspects and victims.*

36
37 And if we go to 306A, there is quite a lengthy spreadsheet
38 with a large number of suspects, and you can take it, if
39 you would for today's purposes, that there are 116 persons
40 of interest listed on that spreadsheet?

41 A. 116?

42
43 Q. Yes. Now, first of all, when you came to Neiwand
44 in March 2017, no-one ever showed you this?

45 A. I wasn't aware of it, sir, no.

46
47 Q. You were aware, I take it, or you became aware, at

1 least, soon after March 2017, that the Taradale Inquiry by
2 Page had occurred?
3 A. Yes, I was aware of that.
4
5 Q. And which had led ultimately to the Milledge inquest?
6 A. Yes.
7
8 Q. And you knew that Taradale and Detective Sergeant Page
9 had identified large numbers of possible persons of
10 interest, essentially these - basically, those on this
11 list?
12 A. Well, I will take your word for it, sir. I don't know
13 if they're on the list or not.
14
15 Q. Well, a large number of persons of interest at any
16 rate?
17 A. All right, okay.
18
19 Q. Many of whom had been the subject of surveillance of
20 various covert kinds, telephone intercepts and so on - you
21 became aware of all of that?
22 A. Yes, sir, I was aware of that.
23
24 Q. So here is Penny Brown, on 1 February 2016, attaching
25 a spreadsheet of the suspects?
26 A. Yes.
27
28 Q. And she is saying in the third paragraph that she is
29 hoping to get together next week to kick off Neiwand - I'm
30 just reading from the third paragraph - and she looks
31 forward to working with you, and so on. Now, she, it would
32 seem, was envisaging that the Taradale persons of interest
33 would be pursued - those on her list?
34 A. I guess that's what she's envisaging. I can't really
35 actually say what she was envisaging but it looks like
36 that.
37
38 Q. Just from that email, that's how it seems to read,
39 doesn't it? "Here's the list, let's get cracking"; isn't
40 she, more or less?
41 A. I suppose you could take it as that, sir, yes.
42
43 Q. Maybe we could just put that to one side. I might
44 need to come back to that volume. But could we have
45 volume 6 and could you turn to tab 162B
46 [NPL.0135.0001.0001]. Have you got that in front of you,
47 162B?

- 1 A. Yes, I do, sir, yes.
2
- 3 Q. So this is the case screening form in respect of the
4 three deaths, Mr Warren, Mr Russell, Mr Mattaini, and if
5 you go to the very back page, the last page, you'll see
6 that it was completed by Detective Senior Constable Alicia
7 Taylor, the very back page, on 25 October 2012?
8 A. Yes, sir.
9
- 10 Q. And that 10 months later on 14 August 2013, it was
11 certified by DCI Lehmann; do you see that?
12 A. I do, sir, yes.
13
- 14 Q. And DCI Lehmann says, "I agree with the
15 recommendations of the reviewer", namely, DSC Taylor. Do
16 you see that?
17 A. Yes, sir.
18
- 19 Q. Did you see this case screening form during your time
20 at Neiwand?
21 A. I can't recall whether I've seen it at all, sir.
22
- 23 Q. Have a look at the recommendations, which are on the
24 second-back page, page 33.
25 A. So the second-last paragraph; is that the --
26
- 27 Q. I'm just finding the recommendations, which are
28 halfway down page 33. Do you see "12", "Recommendations"?
29 A. Yes sir.
30
- 31 Q. Have you ever read these recommendations before?
32 A. Not to my knowledge, sir, no.
33
- 34 Q. Just going through it now, not too slowly but not too
35 quickly either, she, in the first paragraph, describes
36 Detective Sergeant Page's investigation as having been
37 meticulously undertaken?
38 A. Yes, sir.
39
- 40 Q. That that investigation team was highly motivated?
41 A. That's correct.
42
- 43 Q. She notes that in the absence of intelligence - this
44 is the second paragraph - or witnesses or forensic
45 evidence, there were no further investigative avenues for
46 Mr Mattaini?
47 A. Yes, sir.

1
2 Q. As to Russell and Warren, she says that the suspects
3 nominated were subject to covert operations, including
4 listening devices and telephone intercepts?
5 A. Yes, sir.
6
7 Q. She notes in the next two paragraphs who some of the
8 main suspects were, namely, Mr Cushman and two others whose
9 names I'm sure are familiar to you?
10 A. Yes, sir. I can see them, yes, sir.
11
12 Q. And she notes that because the records - this is the
13 second-bottom paragraph - and exhibits have been lost or
14 destroyed, there is no opportunity to use forensic evidence
15 to assist in these cases. Do you see that?
16 A. Yes, I do.
17
18 Q. And so she says it was her recommendation, due to the
19 passage of time, separation of alliances and social
20 alliances [sic] of the suspects, that there exists an
21 opportunity to engage the persons of interest - that is,
22 the persons of interest from the Taradale inquiry --
23 A. Yes, sir.
24
25 Q. -- in an undercover operation?
26 A. I've read that, sir, yes.
27
28 Q. Have you read that before?
29 A. No, but I have heard about it.
30
31 Q. When did you hear about it?
32 A. I think from Detective Sergeant Morgan's evidence.
33
34 Q. Do you mean last year?
35 A. Yes.
36
37 Q. Prior to '22 you have never known about this?
38 A. The Undercover Branch have a strict protocol in
39 relation to the deployment of undercover operatives. My
40 understanding is that these individuals wouldn't have met
41 the criteria.
42
43 Q. But that's slightly at an angle to what I'm asking
44 you. When did you become aware that Detective Senior
45 Constable Taylor --
46 A. Through --
47

1 Q. -- had made these recommendations?
2 A. Through Detective Sergeant Morgan's evidence.
3
4 Q. This year?
5 A. Well, whenever it was, sir, yes.
6
7 Q. Prior to that, you had never known that Detective
8 Senior Constable --
9 A. No.
10
11 Q. -- Taylor had done this exercise at all?
12 A. No, I wasn't aware of the - prior to that, no.
13
14 Q. And you had no knowledge that Detective Chief
15 Inspector Lehmann had expressed agreement with her
16 recommendation?
17 A. As I said, there's a criteria for the undercover
18 branch to deploy --
19
20 Q. No, just answer my question, first. You had no idea
21 that Detective Chief Inspector Lehmann --
22 A. No, I didn't.
23
24 Q. -- had expressed agreement --
25 A. No, I didn't.
26
27 Q. -- with Detective Senior Constable --
28 A. No, sir.
29
30 Q. -- Taylor's recommendations?
31 A. No idea.
32
33 Q. Reading it now, though, especially the last three
34 lines on the bottom of page 33, it's clear, isn't it, that
35 what Ms Taylor was saying was that due to the passage of
36 time - that is, precisely because of the passage of time -
37 as well as the other factors she mentions, an undercover
38 operation might have merit. That's what she was saying?
39 A. Well, she's wrong.
40
41 Q. Says who?
42 A. Me.
43
44 Q. Why?
45 A. Well, I'm disclosing methodology to you, sir, if
46 I raise that with you but she's wrong.
47

1 Q. So Detective Chief Inspector Lehmann thought she was
2 right but you think she's wrong?
3 A. Yes, sir.
4
5 Q. And what is it that you can't disclose?
6
7 MR MYKKELTVEDT: I object, your Honour.
8
9 THE COMMISSIONER: I'm intrigued. So you tell me the
10 problem.
11
12 MR MYKKELTVEDT: I don't know what he is going to say. He
13 is indicating a real concern that it relates to some kind
14 of methodology.
15
16 THE COMMISSIONER: It may or may not be a real concern.
17
18 Q. Are you prepared to write on a piece of paper and show
19 it to Mr Mykkeltvedt, in the first instance, what you have
20 in mind?
21 A. Yes, sir.
22
23 THE COMMISSIONER: All right. Yes, Mr Hutchings.
24
25 MR HUTCHINGS: Can I indicate, Commissioner, the concern
26 is revealing police procedure and tactics and technique.
27 That's the only concern about it. The witness has no
28 difficulty providing the information in the way that
29 your Honour has just suggested. That's the only concern,
30 as a retired police officer he doesn't wish to impact upon
31 the conduct --
32
33 THE COMMISSIONER: That's fair enough. Can you take it up
34 from there, I don't know?
35
36 MR MYKKELTVEDT: Yes. Once we see the position, we can
37 take some instructions.
38
39 THE COMMISSIONER: Just write on a piece of paper what
40 your concern is. Show it to Mr Gray and Mr Mykkeltvedt,
41 and then we can take it from there.
42
43 THE WITNESS: Sorry, I hope you can understand the
44 writing.
45
46 THE COMMISSIONER: If you can hand it to Mr Gray and
47 Mr Mykkeltvedt, they can have a look at it.

1
2 MR GRAY: We're both having a difficulty. There are
3 a couple of words that we can't read. They may be names.
4 I'm not sure.
5
6 THE WITNESS: There are a couple of stated cases.
7
8 MR GRAY: Q. Mr Leggat, could you just --
9 A. Swaffield and Pavic.
10
11 Q. Who are they?
12 A. Sorry, sir?
13
14 Q. Who are Swaffield and Pavic?
15 A. They are two cases that relate to the deployment of
16 undercover operatives.
17
18 Q. In connection with these Neiwand matters?
19 A. No, no, in connection to when you can do it.
20
21 Q. So you're telling us that the cases of Swaffield and
22 Pavic are some sort of precedent about what's permitted in
23 terms of --
24 A. That's correct, sir.
25
26 Q. -- use of undercover methods?
27 A. That's right, sir, yes.
28
29 Q. The questions that I want to ask you don't, at least
30 in my mind, trespass upon what you're concerned about. I'm
31 asking you something slightly different, I hope, which is
32 this: her recommendation was, because a lot of time had
33 passed since various undercover methods had been used in
34 the past, it might be worth trying undercover methods
35 again. That was her recommendation, wasn't it?
36 A. Sir, my understanding is an undercover operation is
37 the use of an undercover operative.
38
39 Q. That may be so. I'm just trying to get you to
40 understand what her recommendation was, and the reason for
41 it. The reason was that due to the passage of time,
42 precisely because there had been an interval of time
43 between when they - they, the persons of interest in the
44 Taradale cases - had been the subject of various
45 surveillance methods, it was now a time when there was
46 a chance to do it again. That's what she was saying,
47 wasn't she?

- 1 A. No, sir, she's saying an undercover operation.
2
3 Q. Yes, an undercover operation.
4 A. Which, to my knowledge, is an undercover operation
5 using undercover operatives.
6
7 Q. As distinct from surveillance means?
8 A. Yes.
9
10 Q. Okay, let's assume that. What I'm driving to is the
11 relevance of the time having passed.
12 A. Oh, okay, sir, yes.
13
14 Q. Do you follow, that's where I'm going to?
15 A. Yes.
16
17 Q. She's saying that precisely because time had passed,
18 an undercover operation with these people might work now.
19 That's what she's saying, isn't she?
20 A. That's what she's saying.
21
22 Q. And that's what DCI Lehmann said he agreed with?
23 A. Yes, sir, but in the terms of an undercover operation,
24 it is an undercover operative.
25
26 Q. Which DCI Lehmann agreed with?
27 A. Yes, but what I'm saying is they were both wrong.
28
29 Q. And why?
30 A. For the reasons that I've explained to you, sir.
31
32 Q. I'm not sure. You are saying, I gather, that there
33 would have been problems procedurally with doing that for
34 reasons to do with Swaffield and Pavic?
35 A. Exactly right, sir.
36
37 Q. But my question is not to do with whether there were
38 procedural problems or not, my question is: conceptually,
39 the idea of an undercover operation in her mind and
40 DCI Lehmann's mind, according to what they have written,
41 would be timely because of the passage of time. You can
42 see that, can't you?
43 A. I can see what you're saying, but what I'm saying is
44 that an undercover operation, using an undercover
45 operative, could not occur.
46
47 Q. So you say. That may be right or it may be wrong but

1 at any rate, that's your view.

2 A. It's right, sir.

3

4 THE COMMISSIONER: Q. Let me ask you this: by saying
5 that Mr Lehmann was wrong at the time, and I presume in
6 2013, you must be suggesting that he would not have been
7 aware that it was inappropriate or wrong to do it?

8 A. That's correct, sir.

9

10 Q. Is that because you think he lacked experience in the
11 field?

12 A. Not at all. He may have just --

13

14 Q. Is it possible that someone might have a different
15 view to yours?

16 A. I don't think so, sir. The Undercover Branch have
17 a very strict criteria for the deployment of undercover --

18

19 Q. I will ask you again, whatever your view of the branch
20 was, you are ruling out any possibility that you might be
21 wrong?

22 A. Yes, sir, I am.

23

24 THE COMMISSIONER: Okay, good.

25

26 MR GRAY: Q. Now, in your statement at paragraph 37,
27 [SCOI.85707_0001] you say that soon after you joined the
28 UHT in March 2017, you were told by the team, principally
29 Mr Chebl, that any further targeting of the POIs the
30 subject of Taradale would have a very low likelihood of
31 success. Do you see that?

32 A. Yes, sir, I do.

33

34 Q. In 38 you also mention, I think approximately the
35 point that you have just been making in the last five
36 minutes in the witness box; is that right?

37 A. Yes, sir.

38

39 Q. Is that what you were referring to in 38?

40 A. In addition, the main person of interest had
41 participated in giving evidence at the Taradale inquest.
42 This -

43

44 Q. Sorry, you don't need to read it out but is 38
45 capturing the problem that you have just about telling us
46 about?

47 A. No, it's not.

1
2 Q. I see. What's the difference? What is 38 telling us?
3 A. What 38 is saying is that they were privy to the
4 evidence at the Taradale inquest, they were also aware that
5 they were persons of interest from the get-go, whereas the
6 other one I'm talking about is an undercover operation.
7
8 Q. But in 37 and 38, putting aside the precise nature of
9 how the POIs - persons of interest - might be targeted,
10 whether it's an undercover operation or some other method
11 like surveillance, the two - the reasons that you were
12 telling us that you were given by the Neiwand personnel,
13 including Chebl, was that targeting them again now - that
14 is, in 2016, 2017 - would not be likely to work, because
15 they had been exposed to such methods previously?
16 A. That's what I was told, sir, yes.
17
18 Q. That's exactly what DSC Taylor and DCI Lehmann
19 disagreed with, wasn't it?
20 A. No, sir.
21
22 Q. They thought they could be targeted again precisely
23 because time had passed?
24 A. Sir, I think I explained it. They said - in her
25 report, it says "an undercover operation", which is an
26 entirely different proposition to what you are suggesting.
27
28 Q. I see. So your position is that it would have been
29 pointless to target the persons of interest, according to
30 what you were told, because they had been targeted before
31 by surveillance methods?
32 A. That's what I was told when I arrived at the
33 Undercover - sorry, the Unsolved Homicide Team.
34
35 Q. And you agreed, did you?
36 A. Yes, sir. I was operating on the advice of people
37 that had been working on the job for the better part of
38 10 months.
39
40 Q. Did you read Coroner Milledge's findings?
41 A. Not at that stage, sir, no.
42
43 Q. When did you read them, if ever?
44 A. I read them recently, obviously.
45
46 Q. That's good. But in 2017, did you read them?
47 A. No, sir.

1
2 Q. So you'd be unaware that she suggested that there
3 might come a time when it would be worthwhile revisiting
4 these persons of interests?
5 A. I was unaware of that, sir.
6
7 Q. That's news to you, is it?
8 A. Yes, sir.
9
10 Q. If you had known that, would that have affected your
11 view?
12 A. No, I would have been operating on the advice from my
13 Detective Sergeant and my Officer in Charge.
14
15 Q. Even though the Coroner had suggested that --
16 A. Yes, sir, even though the Coroner had suggested that,
17 I would have been operating on the advice of my staff.
18
19 Q. Did you discuss the views of Mr Chebl and the other
20 Neiwand people with Mr Lehmann or had he already gone?
21 A. He had already gone, sir.
22
23 Q. Did you discuss them with anyone else in Unsolved
24 Homicide, eg, Mr Olen or Mr Laidlaw?
25 A. I can't recall. Not Mr Lehmann, he had gone, sir.
26
27 Q. Sorry?
28 A. Mr Lehmann had gone at that stage.
29
30 Q. No, no, Mr Olen or Mr Laidlaw?
31 A. No, sir.
32
33 Q. So you just accepted what you were told by Mr Chebl?
34 A. Yes, sir. I had no reason to doubt what he was
35 saying.
36
37 Q. Did Mr Morgan tell you the same thing?
38 A. Yes, sir.
39
40 Q. Was that in a meeting that you had, with the two of
41 them and/or others?
42 A. I can't recall. It would have been in a meeting or it
43 might have been in the general office area, sir.
44
45 Q. But as you point out in paragraph 40, the decision not
46 to pursue the targeting of the Taradale POIs had actually
47 already been made some time before you arrived?

- 1 A. Yes, it had.
2
3 Q. And they told you that, did they?
4 A. Yes.
5
6 Q. Did they tell you when they had made that decision?
7 A. No, sir.
8
9 Q. In paragraph 40 you say:
10
11 *In making the decision to undertake such*
12 *a wide scale operation, ...*
13
14 What do you mean by that, what was the "wide scale
15 operation"?
16 A. Well, the monitoring of telephone intercepts and
17 surveillance devices is very labour intensive. You've also
18 got to get the devices, you have to make application for
19 them, and it's 24-hour monitoring of the devices for
20 surveillance devices.
21
22 Q. Yes. So it's a resources issue; is that what you are
23 saying there?
24 A. Partially a resources issue and partially based on
25 what they'd told me, that it wasn't feasible to target
26 those individuals.
27
28 Q. Feasible?
29 A. Feasible.
30
31 Q. In what way not feasible?
32 A. For the reasons that I've already outlined to you,
33 sir.
34
35 Q. Namely?
36 A. Namely, that they were aware of the evidence, having
37 been in an open court, probably as persons of interest at
38 the court, had been served with a brief of evidence.
39 I don't know whether they were served with Mr Page's
40 coronial statement which outlined the detailed methodology
41 adopted by the police.
42
43 Q. Yes. And all of that in 2002?
44 A. Correct.
45
46 Q. And the advice you were given by the Neiwand people
47 was that there was absolutely no point in doing that again

1 15 years later?
2 A. That's right, sir, yes.
3
4 Q. And you think that's correct?
5 A. Yes, sir.
6
7 THE COMMISSIONER: Q. So why didn't you bring a stop to
8 it straightaway?
9 A. Because I saw other lines of inquiry that they could
10 conduct.
11
12 Q. What do you mean other lines of inquiry, tell me?
13 A. Okay, background, your Honour.
14
15 Q. What do you mean, "background"?
16 A. Background on Mr Warren, for instance, who his
17 associates were.
18
19 Q. Mr Warren? What did you need to know more about
20 background on Mr Warren?
21 A. Just who he was associated with, his relationships,
22 whether there was anything that may have been relevant to
23 his death or suspicious disappearance and death.
24
25 Q. But no interest whatsoever in any of the previously
26 identified persons of interest?
27 A. That was the advice I was given, sir.
28
29 Q. I'm not saying you weren't given it, but I'm just
30 saying that you weren't - it seemed to you your officers
31 were not, and you agreed, that there was no point pursue
32 any of the earlier persons of interest?
33 A. That's correct, sir.
34
35 Q. So you just had a look around in the backgrounds of
36 these people to see, what, if something randomly might turn
37 up?
38 A. That was the line of inquiries or the lines of inquiry
39 that they were pursuing, sir.
40
41 Q. Would you like to answer my question? So you decided
42 that whatever energy and resources should be put in to
43 looking at the backgrounds of these people - that is,
44 Mr Warren, Mr Mattaini and Mr Russell - to see whether
45 anything randomly might turn up?
46 A. That's correct, sir, yes.
47

1 THE COMMISSIONER: I see.
2
3 MR GRAY: Commissioner, before I proceed, I perhaps should
4 tender, perhaps as a confidential exhibit, the paper --
5
6 THE COMMISSIONER: Yes, I will make it a confidential
7 exhibit. Now, Mr Hutchings hasn't seen it. Perhaps he
8 ought to see it as well. Then I will, subject to any -
9 I take it there won't be an objection to it becoming
10 a confidential exhibit?
11
12 MR MYKKELTVEDT: Not as a confidential exhibit.
13
14 THE COMMISSIONER: All right.
15
16 MR HUTCHINGS: Thank you, Commissioner.
17
18 THE COMMISSIONER: We will stick it on another piece of
19 paper so that there is less chance of it being lost and it
20 will be confidential exhibit whatever that is.
21
22 **CONFIDENTIAL EXHIBIT #62 NOTE WRITTEN BY MR LEGGAT ON**
23 **POST-IT PAPER**
24
25 THE COMMISSIONER: Yes, Mr Gray.
26
27 MR GRAY: Q. Mr Leggat, Sergeant Morgan has told the
28 Commission that the change in Neiwand's approach - that is,
29 away from investigating the POIs as Penny Brown had
30 suggested in February to deliberately not doing so - was
31 made early in Neiwand. You may accept that that's what he
32 has said. And it seems that it may have been, although
33 this may be not quite exactly clear, in the first half of
34 2016. Can you accept that that's what - just for the sake
35 of these questions --
36 A. Yes, sir, I accept that's right.
37
38 Q. -- accept, that that's what the evidence appears to
39 indicate?
40 A. Oh, yes, sir.
41
42 Q. Now, the Neiwand team was only half a dozen or so
43 people, wasn't it?
44 A. Yes, sir.
45
46 Q. Not counting Mr Olen - not ignoring him but not
47 counting him as an active hands-on person, there was

- 1 Morgan, Chebl, and I think about three others; is that
2 right?
- 3 A. Yes, sir.
- 4
- 5 Q. Plus yourself as - what was your role in the end?
6 A. Coordinator.
- 7
- 8 Q. Coordinator, yes. Now, if there had been any attempt
9 to investigate 116 persons of interest, you would have
10 needed far more people, wouldn't you?
11 A. Yes, sir, you would have needed quite a few people.
- 12
- 13 Q. Infinitely more people and quite a long time?
14 A. Yes, it would have taken quite some time.
- 15
- 16 Q. Neiwand never made any application or request for more
17 resources in order to do that, did it?
18 A. Not to my knowledge, no.
- 19
- 20 Q. So the result, would you agree, was that from some
21 time in the first half of 2016, what Neiwand actually did
22 was deliberately not investigate the gay hate homicide
23 possibility in respect of any of these three deaths?
24 A. The decision was made not to target the individuals
25 that were listed in the Taradale operation.
- 26
- 27 Q. Yes. And they were individuals listed because of
28 their likely involvement in or association with gangs or
29 other groups of homophobic people who were attacking gay
30 men; correct?
31 A. That's correct.
- 32
- 33 Q. So I put it to you again that the decision that was
34 made from early in Neiwand was deliberately not to
35 investigate the gay hate homicide possibility at all, and
36 instead to focus on --
37 A. Well, I can't actually say what their intention was,
38 sir.
- 39
- 40 Q. I will just finish the question. And, instead, to
41 focus on the things you have mentioned - the victimology or
42 the deceased's known associates, and their last movements
43 and so on?
44 A. That was - that was the ultimate, yes, sir, that's
45 right.
- 46
- 47 Q. You are agreeing with both of what I just put - not to

1 pursue the gay hate homicide but, instead, to do the
2 victimology and so on?
3 A. If something came up in regard to the gay hate angle,
4 it certainly would have been investigated, sir.
5
6 Q. Not my question, though.
7 A. All right, then.
8
9 Q. The decision that was made was deliberately not to
10 pursue the gay hate homicide angle but, instead, to pursue
11 the victimology and related matters; correct?
12 A. Yes, sir.
13
14 Q. So what Neiwand actually did, would you agree, was to
15 direct its efforts to the possibility of suicide or
16 misadventure or, in the case of Warren only, homicide but
17 of a domestic - that is, non gay hate kind?
18 A. Pretty much sir, yes.
19
20 Q. For Mr Mattaini, the overwhelming focus was on
21 suicide?
22 A. Yes, sir. And I think in my statement I outlined that
23 Mr Mattaini's matter hadn't been reported for some 17 or 18
24 years after the event. There was no crime scene. There
25 was no corpse. There was no forensics, no exhibits. There
26 was no person of interest, even by her Honour's own --
27
28 THE COMMISSIONER: Q. Mr Leggat, I just wonder if you
29 would be kind enough to answer the question. You may be
30 asked to give an explanation. The point that was made to
31 you was that the focus of Mr Mattaini's position was that
32 of suicide?
33 A. Yes, sir.
34
35 THE COMMISSIONER: Thank you.
36
37 MR GRAY: Q. Nothing was done in terms of investigating
38 Mr Mattaini's death from the perspective of the possibility
39 of homicide, was it? Nothing at all?
40 A. As I said, it was very difficult, based on --
41
42 Q. No, what's the answer?
43 A. No.
44
45 Q. You agree with me - nothing; correct?
46 A. Yes.
47

1 Q. Do you agree?
2 A. Yes, sir.
3
4 Q. In the case of Russell, the overwhelming focus was on
5 the possibility of misadventure, wasn't it?
6 A. Yes, sir.
7
8 Q. And nothing, or virtually nothing, was done in terms
9 of investigating the possibility of homicide, was it?
10 A. No, sir.
11
12 Q. And in the case of Warren, the focus was very largely
13 on the possibility of a homicide of a non gay hate kind?
14 A. Yes, sir. By the time I arrived, that was the case,
15 yes.
16
17 Q. Sorry?
18 A. When I arrived, yes, that was the case.
19
20 Q. Now, those three overwhelming foci, more than one
21 focus, in terms of the three cases, were choices made by
22 Neiwand, notwithstanding the express findings of Coroner
23 Milledge that the deaths of Mr Warren and Mr Russell were,
24 in fact, homicides?
25 A. That's correct, sir, yes.
26
27 Q. And that they were homicides likely to have been at
28 the hands of gay hate assailants?
29 A. That's correct, sir.
30
31 Q. Neiwand, said to be a re-investigation of these three
32 deaths, simply did not investigate those matters at all,
33 did it? Did it?
34 A. A re-investigation requires --
35
36 Q. No, no, the question - please,
37 A. -- a review of all the material that's available --
38
39 Q. Excuse me, it did not investigate the question of
40 homicide at the hands of gay hate assailants at all, did
41 it?
42 A. It reviewed the material from Taradale that related to
43 that.
44
45 Q. Now could you answer my question: did it investigate
46 the possibility of homicide at the hands of gay hate
47 assailants at all?

1 A. No.

2

3 THE COMMISSIONER: Q. Could I just ask this: would the
4 change in the direction, if there were such a change, in
5 Neiwand, have been Mr Morgan's call or would he have had to
6 look to someone else in order to redefine what he was
7 doing. I know that you say that when you came, the
8 concrete was set?

9 A. That's right, sir.

10

11 Q. But leaving that to one side, would it have been
12 Mr Morgan's call, prior to your arrival, as to how the
13 Neiwand investigation or inquiry, or whatever it was,
14 review, would have pursued the issues, or would it have
15 been somebody else's call?

16 A. I should imagine he would have had to have run it past
17 someone else.

18

19 Q. Well, who is the someone else?

20 A. But I don't know.

21

22 THE COMMISSIONER: All right.

23

24 MR GRAY: Q. Well, the person above him in the
25 hierarchy, in Neiwand, was either you or Mr Olen, wasn't
26 it?

27 A. Or Mr Lehmann.

28

29 Q. Pardon?

30 A. Or Mr Lehmann.

31

32 Q. When did Mr Lehmann leave?

33 A. I don't know when he left but he was - yes.

34

35 Q. Well, apart from the possibility of him running it
36 past somebody above him in hierarchy, certainly it was his
37 call rather than Chebl's call, wasn't it - he as the
38 Investigation Supervisor?

39 A. Pretty much, sir, yes.

40

41 Q. Now, would you agree that as Neiwand actually evolved
42 in terms of what actually happened, the course of action
43 that evolved was that Neiwand focused on analysing Taradale
44 and criticising it where possible?

45 A. It analysed Taradale and the OIC came to the
46 conclusions that he came to.

47

- 1 Q. Well, did the course of action that evolved involve
2 analysing Taradale and criticising it where possible? Is
3 that what actually unfolded?
- 4 A. The OIC made comments in the - in his summary that
5 related to Taradale and some of them were, yes, critical.
6
- 7 Q. I will come to the summary, but the OIC may have
8 drafted that summary, but as you agreed earlier, the
9 supervisor, Mr Morgan, you expect, should have read,
10 reviewed, checked and endorsed what Chebl wrote; correct?
- 11 A. Yes, sir.
12
- 13 Q. And you assume he did, I suppose?
- 14 A. Yes.
15
- 16 Q. Because you had to write a post operational - part of
17 the post operational assessment in due course?
- 18 A. That's right.
19
- 20 Q. And in doing so, no doubt, you had regard to those
21 three summaries?
- 22 A. Yes, sir.
23
- 24 Q. And I take it that you either took it for granted or
25 indeed checked with Mr Morgan that he, indeed, agreed with
26 what Chebl had written?
- 27 A. Yes, sir.
28
- 29 Q. Did you? Did you ask Morgan whether he agreed?
- 30 A. With the summaries, they're signed off or they're
31 placed onto e@gle.i and they're accepted by the
32 supervisors, so to me that's his endorsement of the
33 document.
34
- 35 Q. So what's the answer to my question. Did you yourself
36 check with Morgan that he agreed with what Chebl had
37 drafted?
- 38 A. I don't have a specific memory of it, sir, no.
39
- 40 Q. Did you take the view that you didn't need to do that,
41 because if Morgan had endorsed them by using the word
42 "approved" or whatever the word is in the e@gle.i system,
43 that meant that he had indeed done so?
- 44 A. Yes, sir.
45
- 46 Q. And in your view, he certainly should have done so,
47 and you presumed that you were entitled to assume that he

1 did do so?
2 A. Yes, sir.
3
4 Q. I will just take you to a couple of documents. Is
5 that volume 6 that you have there at the moment?
6 A. Yes, sir.
7
8 Q. Could you turn to tab 164E [SCOI.82050_0001]. Have
9 you found that?
10 A. Yes, sir, I have.
11
12 Q. So this is one of a series of progress reports for
13 Neiwand.
14 A. Yes, sir.
15
16 Q. Now, this one, you will see towards near the top
17 right, is for the period ending 23 March 2017. Do you see
18 that on the top of the page? 164E we're looking at.
19 A. Sorry, just bear with me a sec, sir, at the final
20 page?
21
22 Q. First page, top right?
23 A. Yes.
24
25 Q. "Reporting Period Ending" "23/03/2017"?
26 A. Yes, sir.
27
28 Q. Now, that's, I think, just after you've come on board?
29 A. Ten days after I have arrived.
30
31 Q. So this is, as far as I can tell, the first one that
32 you've signed off on, and you can see that you have signed
33 off on it --
34 A. Yes, sir, that's right, yep.
35
36 Q. -- on the second-last page? And on page 5, in the
37 case of Warren, there is a note:
38
39 *Possible homicide but possibly of*
40 *a domestic nature --*
41
42 A. Sorry, sir.
43
44 Q. Page 5?
45 A. Yes, sir.
46
47 Q. Heading "Comments", "Warren"?

- 1 A. Yes, sir.
2
3 Q. Middle of the page:
4
5 *Possible homicide but possibly of*
6 *a domestic nature involving a former*
7 *partner rather than the result of gay-hate*
8 *gang violence (as thoroughly investigated*
9 *by Taradale).*
10
11 A. That's right, sir, and that's what I was told.
12
13 Q. Sorry? That's what you were told?
14 A. That's what I was told, yes, sir.
15
16 Q. So when you sign off on that, what does that mean,
17 that you're --
18 A. That I've read the document, sir.
19
20 Q. That's all?
21 A. Yes, sir.
22
23 Q. And if we go to --
24
25 THE COMMISSIONER: Q. And when you are signing off, in
26 effect, that was just, was it, an acknowledgment or
27 a noting of the opinion of the persons who had prepared
28 that opinion or those comments?
29 A. Yes, sir, that's right.
30
31 THE COMMISSIONER: Okay.
32
33 MR GRAY: Q. Now, at 164F [SC0I.82051_0001] which is the
34 next one, which is for the period ending 16 May, could you
35 just turn to page 4, and I think you've signed off on this
36 one, too?
37 A. Yes, sir.
38
39 Q. Look at the entry in relation to Mr Mattaini - do you
40 see there are three bullet points there?
41 A. Yes, sir, I can see them.
42
43 Q. In the third bullet point it says this:
44
45 *On Monday, 10 [April] 2017, a team meeting*
46 *was held where a review of the current*
47 *evidence was discussed. It was decided*

1 *that as Mattaini's cause of death cannot be*
2 *determined, there is no evidence of*
3 *homicide; death may be the result of*
4 *suicide or misadventure.*

5
6 Now, pausing there, does that make sense to you?

7 A. Well, that's - that's what's in the document, sir, and
8 that's what I was told.

9
10 Q. No, my question is, does that make sense to you?

11 A. Yes, sir.

12
13 Q. So because the cause can't be determined, and because
14 there is no evidence of homicide, it might be suicide or
15 misadventure? How does that follow --

16 A. That's the conclusion reached by the OIC, sir, yes.

17
18 Q. I know that. How does that follow logically? That's
19 why I asked you does it make sense to you? Just because
20 the cause of death can't be determined, why do you rule out
21 one and just run with the other two? It's nonsensical,
22 isn't it?

23 A. I think what he is trying to say is that there is no
24 evidence of homicide so the probability is that the other
25 two are more than likely.

26
27 Q. Was there evidence of misadventure?

28 A. Not to my knowledge, no.

29
30 Q. So why wouldn't you rule that out too?

31 A. Well, perhaps he should have, sir, yes.

32
33 Q. Was there evidence of suicide?

34 A. Not specific to the 1 September 1985.

35
36 Q. There was evidence, wasn't there - I'm sure you know
37 this now - that he had seemingly made at least one, perhaps
38 two, suicide attempts quite some years earlier?

39 A. Quite some years before, sir, yes.

40
41 Q. And there was evidence, which Neiwand had, as I'm sure
42 you know, that was given at the inquest in 2003, from his
43 partner, Mr Musy, that Mr Mattaini's suicidal thoughts were
44 way in the past and for many years he had been happy and
45 not suicidal at all - you knew that, didn't you?

46 A. After reading the material recently, yes, sir.

47

1 Q. Sorry, after reading?
2 A. After reading the summaries recently again yes, sir,
3 that's right.
4
5 Q. You didn't know that when you were --
6 A. Yes, I was aware that there had been suicidal ideation
7 prior to that, but as to the specifics of the inquest
8 material, no.
9
10 Q. Did you ever at any time read any of the transcripts
11 of the Musy evidence at the Milledge Inquest?
12 A. No, sir.
13
14 Q. Did you ask Mr Chebl or Mr Morgan if they had?
15 A. Not - not to my knowledge, sir, no.
16
17 Q. In terms of their making accusations which, as you
18 know, they did, about what Mr Musy said about things and
19 about Mr Mattaini's previous suicidal ideas, did you say to
20 Mr Morgan or Mr Chebl, "Well, have you checked what he said
21 at the inquest"?
22 A. No, sir.
23
24 Q. Should you have?
25 A. Perhaps should have, now looking at this, yes.
26
27 Q. Because it turns out, doesn't it, that what he said at
28 the inquest was completely different from what Chebl and
29 Morgan wrote in the summary - you know that now, don't you?
30 A. What was written in the summary, sir?
31
32 Q. What was written in the summary was that Page failed
33 to disclose to the Coroner suicidal ideation on the part of
34 Mattaini as a result of which the Coroner was misled. You
35 know that, don't you?
36 A. No, yes, that's right, yes, sir.
37
38 Q. You know that, in fact - you know now --
39 A. I know now, yes, sir.
40
41 Q. -- in fact, suicidal ideation was before the Coroner,
42 and that Mr Morgan now accepts, as of this year, that,
43 indeed, those matters were before the Coroner and that
44 Mr Page had not misled her at all. You know that now,
45 don't you?
46 A. I know that, yes.
47

- 1 Q. But you didn't check any of that at the time?
2 A. No, I took the summary and read the summary and took
3 it on board as what they'd done and what the evidence was.
4
5 Q. You saw that they were making these extremely serious
6 allegations against Page, didn't you, in the summary?
7 A. Yes, they had made some comments in regard to Mr Page.
8
9 Q. Not it's not just "some comments"; they accused him of
10 withholding evidence from the Coroner, as a result of which
11 her findings were not to be relied upon, didn't they?
12 A. That's what I've been told.
13
14 Q. No, no, that's what the summary said?
15 A. Yes, that's right, sir.
16
17 Q. And you read it?
18 A. Yes, sir.
19
20 Q. Did you ask them, "Are you sure about this"?
21 A. No, sir.
22
23 Q. Did you say, "Have you checked what was said at the
24 inquest"?
25 A. No, sir.
26
27 Q. Why not?
28 A. Because that was their role to go through everything
29 and ensure that what they were presenting was accurate.
30
31 Q. Precisely. So to ensure that it was accurate,
32 wouldn't they have needed to check the transcript?
33 A. Yes, I agree with you.
34
35 Q. And why didn't you tell them to do so?
36 A. Because it didn't enter my thought process when the
37 summary came through.
38
39 Q. You didn't think of it?
40 A. I just assumed that they had done that -- -
41
42 Q. Why would you --
43 A. -- otherwise they wouldn't have been making the
44 comment that they were making.
45
46 Q. Why would you assume that? You hadn't read it. Why
47 would you assume they had?

- 1 A. Because they were responsible for the investigation,
2 sir.
3
- 4 Q. So your assumption was that both Morgan and Chebl
5 would at least have checked the transcript of Milledge?
6 A. That's correct, yes, sir.
7
- 8 Q. Are you shocked to find, as we now know, that they
9 didn't?
10 A. I can't speak for Chebl but, yes, I am shocked if
11 that's the case.
12
- 13 Q. What do you mean, you can't speak for Chebl?
14 A. Well, he's not giving evidence, but - I can't speak
15 for him, but I know that if Steve Morgan hasn't checked
16 it --
17
- 18 Q. I'm sorry?
19 A. If Steve Morgan hasn't checked it, that's not good.
20
- 21 Q. Well, if Chebl hadn't checked it, that wouldn't be
22 good either, would it?
23 A. That would be terrible.
24
- 25 Q. And it would be terrible if Morgan hadn't checked it?
26 A. I agree, sir.
27
- 28 Q. Back to this item that I'm looking at in tab 164F, the
29 next sentence is that "As a result" - that is, as a result
30 of the fact that Mattaini was going to be relegated to
31 being either suicide or misadventure - "the investigation
32 into Mattaini's death will be inactive, so investigators
33 can concentrate on the Warren matter"?
34 A. Yes, sir; that's correct.
35
- 36 Q. Why did you think that made sense?
37 A. Why did I think it made sense?
38
- 39 Q. Yes.
40 A. Because we didn't have - as I tried to explain
41 before - evidence in regard to Mr Mattaini's disappearance.
42 No --
43
- 44 Q. No - I'm sorry.
45 A. You go.
46
- 47 Q. But you made no attempt to get any, did you?

- 1 A. I didn't, no.
2
3 Q. Neiwand didn't?
4 A. No, apart from the DNA sample from the mum.
5
6 Q. That's it; is that right?
7 A. Pretty much, yes, sir.
8
9 Q. Now, could we have volume 14, please, tab 304
10 [NPL.0115.0002.7430]. Do you see that's an email from you,
11 or the main part is an email from you, to Jason Dickinson
12 on 9 November --
13 A. Yes, sir.
14
15 Q. So that's close to the end of Neiwand, isn't it --
16 A. Pretty much, yes, sir.
17
18 Q. -- not quite, but almost at the end? And down the
19 bottom of that page under the heading "Team 11" - that's
20 one of your teams --
21 A. Yes, sir.
22
23 Q. -- and about Neiwand. The first few lines on the
24 bottom of that page are a summary of what had happened with
25 Page doing the investigation, and then --
26 A. Yes, sir.
27
28 Q. -- just on the last line, towards the end of the last
29 line, it reads as follows:
30
31 *Detective Sergeant Page's investigation*
32 *whilst thorough was flawed in that the*
33 *victim's associates and last movements were*
34 *not explored.*
35
36 Do you see that?
37 A. Yes, sir.
38
39 Q. You know now that that's wrong, don't you?
40 A. I do now, yes, sir.
41
42 Q. Well, why did you write it?
43 A. Because that's what I'd been told, sir.
44
45 Q. You were told that by whom?
46 A. Chebl.
47

- 1 Q. Morgan?
2 A. Morgan too, probably, yes.
3
4 Q. So you know now that that's simply wrong. What do you
5 say about the fact that that's what they told you, that it
6 may be something that was quite wrong?
7 A. In some ways, that their review had been flawed
8 itself.
9
10 Q. Then you write on the next sentence:
11
12 *The focus of his --*
13
14 that's Page's --
15
16 *investigation ignored alternate theories*
17 *including suicide and death by*
18 *misadventure.*
19
20 You know now that that's wrong too, don't you?
21 A. Yes, sir, I do.
22
23 Q. Again, is that something you were told by Morgan
24 and/or Chebl?
25 A. That's correct, sir.
26
27 Q. Do you recall being told it and, if so, by whom, or is
28 it something you read or what?
29 A. I recall being told, and it was Chebl and/or Morgan.
30
31 Q. Possibly one, possibly the other, possibly both?
32 A. Possibly two, yes.
33
34 Q. Then you say, next sentence:
35
36 *The subsequent Coronial Inquest ... relied*
37 *on Detective Sergeant Page's flawed*
38 *investigative focus.*
39
40 Do you see that?
41 A. Yes, sir.
42
43 Q. You now know that that is also wrong, don't you?
44 A. Yes, sir.
45
46 Q. Again, were you told that by Morgan?
47 A. Yes, sir.

1
2 Q. Were you told that by Chebl?
3 A. A combination.
4
5 Q. In the next paragraph, you talk about what team 11 had
6 done, and I won't go through all of that, but you say in
7 the third and fourth line that team 11 of Neiwand had
8 developed alternative theories. Do you see that?
9 A. Yes, sir.
10
11 Q. As to Mattaini, the alternative theories, presumably,
12 from the next sentence, is a reference to suicide; is that
13 right?
14 A. Yes, sir.
15
16 Q. But you know that, in fact, that wasn't an alternative
17 theory developed by Neiwand - that is to say, Page had
18 already put that before the Coroner, hadn't he?
19 A. I know that now, sir, yes.
20
21 Q. So they weren't developing an alternative theory, they
22 were simply going over what Page had already done?
23 A. Yes, sir.
24
25 Q. And as to Russell, you say that toxicology indicated
26 a high level of intoxication, and you refer to Dr Cala and
27 Professor Duflou, but that topic, the level of intoxication
28 of Russell, had also been before the Coroner, and Page had
29 investigated that, too, hadn't he?
30 A. Yes, sir.
31
32 Q. So, again, that wasn't new either, was it?
33 A. No, sir.
34
35 Q. And in the case of Warren, you just say the
36 investigation was inconclusive?
37 A. Yes, sir.
38
39 Q. In the next paragraph you say that detailed summaries
40 have been prepared, and then you refer to something which
41 you address in your statement, namely, that you - it says
42 "held", but I imagine it means had, does it - "had planned
43 contact with State Coroner's" --
44 A. Yes, sir:
45
46 Q.
47

1 ... had planned contact with the State
2 Coroners Office to allow for informed
3 consideration as to whether a further
4 Inquest should be held in relation to the
5 [three] deaths. This contact has now been
6 postponed ...
7

8 In your statement, you say that you should have followed
9 this up and you had intended to do so - I'm looking at
10 about paragraphs 49 and 50 of your statement. Are we to
11 understand from that that you now say that that's, in
12 effect, an oversight on your part and you should --

13 A. Yes, sir, it is, and I apologise for that.
14

15 Q. In effect, you forgot, basically?

16 A. Yes, sir.
17

18 Q. The accusations that Neiwand was making against Page,
19 as I put to you a minute ago, were extremely serious about
20 misleading the Coroner or withholding evidence from the
21 Coroner, weren't they?

22 A. Yes, I guess they were.
23

24 Q. And how was it that you could just forget telling the
25 Coroner that that's what had, according to Neiwand,
26 happened?

27 A. Sorry, sir?
28

29 Q. If that's what Neiwand considered had happened,
30 withholding evidence and thus misleading a Coroner, how is
31 it that you could just forget to tell the Coroner?

32 A. It's an oversight on my behalf, sir. I take full
33 responsibility for it.
34

35 Q. Did you discuss it with anyone else, your view that
36 you say you held, that, actually, the Coroner should have
37 been told?

38 A. Yes, sir, in a team meeting, I discussed it with the
39 team itself.
40

41 Q. The team being, do you mean, Morgan and Chebl?

42 A. Neiwand, yes.
43

44 Q. What about anyone else, for example in Unsolved
45 Homicide, like Mr Olen or Mr Laidlaw or Mr Willing or
46 whomever the Commander of Homicide was?

47 A. I can't - I can't recall. I know that I sent an email

1 to Mr Dickinson.
2
3 Q. About this?
4 A. Yes. That's the email you were referring me to.
5
6 Q. Oh, this one?
7 A. Yes.
8
9 THE COMMISSIONER: Q. Can I ask you this: the contact
10 had been postponed pending the retirement of State Coroner
11 Barnes. When was his retirement due?
12 A. I'm not sure, but around that time, sir. I know that
13 the new State --
14
15 Q. What would Coroner Barnes's retirement have to do with
16 it. It's the Coroner's office to whom you would be
17 reporting this, not the Coroner himself, surely? What
18 would it matter whether Barnes was coming or going?
19 A. We thought it would be more appropriate for the new
20 State Coroner to have the material, sir.
21
22 Q. I didn't hear, I'm so sorry.
23 A. We thought it would be more appropriate for the new
24 State Coroner to have that material, sir.
25
26 Q. But did you ever contemplate being asked by the new
27 Coroner why you had waited, and what were you going to say,
28 "Oh, we thought we would let Mr Barnes retire before we
29 contacted the new Coroner" - is that what you had in mind?
30 A. Yes, sir.
31
32 Q. Did you have in mind that Mr Barnes had ordered the
33 third inquest in Scott Johnson?
34 A. No, sir.
35
36 Q. In any event, it was forgotten by not only you but
37 apparently anyone else that you had spoken to about it?
38 A. It's in a log, and Chebl and Steve Morgan were there
39 in the meeting, sir.
40
41 Q. Well, is the answer to my question that it was
42 forgotten by you and apparently anyone else to whom you had
43 spoken?
44 A. That's correct, sir, yes, sir.
45
46 MR GRAY: Q. In your statement at 47 to 50 you say - and
47 you have frankly said as much again just now - that this

1 was an oversight and you should have followed it up and so
2 on. But at paragraph 60, you say --

3
4 THE COMMISSIONER: I'm sorry, may I interrupt.

5
6 Q. Now that you know the true position about this,
7 I suppose you are glad you didn't follow it up, aren't you?

8 A. Perhaps, yes, sir.

9
10 Q. Well, you would have had egg on your face, surely. If
11 proper analysis had been applied to this and Morgan's views
12 had been ventilated before the new Coroner - that's
13 assuming you got that far - it's highly likely it would
14 have proved an embarrassment for the police, surely?

15 A. Yes, sir.

16
17 Q. To show that there was no basis, in fact, for
18 criticism of Page?

19 A. That's correct, sir.

20
21 Q. So really it was luck that saved you in the end,
22 wasn't it?

23 A. Pretty much, sir, yes.

24
25 MR GRAY: Q. At paragraph 60, on a related point, you
26 say that you reject any suggestion that there was any
27 attempt at secrecy. You say that it was your intention to
28 ensure that the findings were referred to the Coroner, and
29 you say that's regrettable and an oversight. I've been
30 over that with you in the last few minutes. But you also
31 didn't tell the families, did you?

32 A. No, sir. I didn't, no.

33
34 Q. Well, nobody did, did they?

35 A. I couldn't answer for the others, sir. I'm not sure.

36
37 Q. Did you ask anybody --

38 A. No, sir, I didn't.

39
40 Q. Are you aware of the families being told, now?

41 A. No.

42
43 Q. Are you aware of the evidence of Mr Morgan that they
44 were in fact not told?

45 A. I am now.

46
47 Q. So you accept that they were not told?

1 A. Yes, sir.
2
3 Q. Should they have been told?
4 A. Yes, I guess they should have been told.
5
6 Q. Well, there had been a very public lengthy Coroner's
7 inquest in 2003/2004/2005, resulting in express findings of
8 murder for Mr Warren and Mr Russell, hadn't there?
9 A. Yes, sir.
10
11 Q. And then what Neiwand had done was to say that those
12 findings should be set aside, didn't they? That's what
13 Neiwand said?
14 A. For Mattaini I don't think that's the case, sir.
15
16 Q. No, Russell and Warren I am talking about?
17 A. They looked at homicide and alternates to homicide.
18 That was the conclusion of Neiwand.
19
20 Q. You are not answering my question. I will take you to
21 the documents, if we have to, but I'm trying to do this
22 more quickly. The Neiwand summaries, in the case of
23 Russell and Warren, said - and I'm paraphrasing - that the
24 findings of Milledge should be set aside; that the cases
25 should be categorised as undetermined, notwithstanding the
26 findings of Milledge, didn't they?
27 A. That's what's written sir, yes.
28
29 Q. That's what's written. Now, that would have been
30 something that the families would have been pretty
31 interested in, wouldn't it?
32 A. I guess so, yes. Yes, sir.
33
34 Q. Well, you should have told them, surely?
35 A. The OIC or the supervisor should have told them.
36
37 Q. The police should have told the families, shouldn't
38 they?
39 A. Yes, sir.
40
41 Q. You were the coordinator of this strike force, weren't
42 you?
43 A. Of - yes, of the team and the strike force, yes.
44
45 Q. Did you bear some responsibility for making sure that
46 was done?
47 A. No, sir.

1
2 Q. None?
3 A. I didn't do it.
4
5 Q. No, no, do you bear some responsibility for its not
6 being done?
7 A. Yes, sir. The buck stops with me, sir, yes, sir.
8
9 Q. You didn't tell Page, did you?
10 A. No, sir.
11
12 Q. You should have, shouldn't you?
13 A. Well, I don't know why Mr Page left the police.
14
15 Q. Did I ask you that? You should have told Mr Page that
16 all these accusations were being made against him, surely?
17 A. I disagree, sir.
18
19 Q. Why?
20 A. Well, I don't know why Mr Page has left the police --
21
22 Q. What has that got to do with it?
23 A. -- and it's not appropriate for us to discuss what has
24 occurred in the Neiwand investigation with a former police
25 officer.
26
27 Q. Even though you were accusing him of misleading
28 a Coroner? Shouldn't he have had a right of reply?
29 Shouldn't he have had a chance to give you his side of the
30 story?
31 A. It was an internal document, sir, and it wasn't me
32 accusing him.
33
34 Q. It was Neiwand accusing him, of which you were the
35 coordinator and, indeed, signing off on the post
36 operational assessment?
37 A. That's right, sir.
38
39 Q. So you were endorsing the accusation, weren't you?
40 A. I was endorsing what I had read, yes, sir.
41
42 Q. Which included that accusation, didn't it?
43 A. Yes, sir.
44
45 Q. But you never told him?
46 A. No, that's right.
47

1 Q. You never gave him a chance to say, "Well, look you
2 have got that wrong", did you?
3 A. No, sir.
4
5 Q. You now know that in fact you did get wrong, don't
6 you?
7 A. He didn't get it wrong, yes, sir.
8
9 Q. You got it wrong, in Neiwand?
10 A. Neiwand got it wrong, yes, sir.
11
12 Q. Shouldn't you have told him? Wouldn't that have been
13 fair?
14 A. Again, I don't know whether I would have told him or
15 not, sir.
16
17 Q. No, should you have? Would it not have been fair?
18 A. No.
19
20 Q. It wouldn't have been fair?
21 A. I probably wouldn't have told him, sir, that's the --
22
23 Q. Should you have?
24 A. Yes.
25
26 Q. Thank you. You never told the public, generally, did
27 you?
28 A. No.
29
30 Q. Even though, from the public's point of view, the
31 correct analysis of these deaths was the analysis by
32 Coroner Milledge in 2005?
33 A. That's right, sir.
34
35 Q. But the police had now, in Neiwand, come to a view
36 that the Coroner was wrong, at least in the case of Warren
37 and Russell?
38 A. That's right.
39
40 Q. And you didn't tell the public that?
41 A. No, sir.
42
43 Q. You just kept it under wraps within the police?
44 A. That's right, sir.
45
46 Q. Why?
47 A. I can't provide an explanation for that --

1
2 THE COMMISSIONER: Q. Is the explanation purely that
3 everyone forgot about it? Is that what you ask --
4 A. No, sir.
5
6 Q. Well, then, is there some other explanation, other
7 than that everybody forgot about it? Because it was sent,
8 wasn't it - the Neiwand ultimate report and the progress
9 reports were sent up the line to senior people in the
10 police, weren't they?
11 A. Just to the - upstairs to the Coordinator of State
12 Crime.
13
14 Q. But the reason it wasn't said, nothing further was
15 said, was simply this case of everyone having forgotten
16 about it because you were waiting on Mr Barnes to retire
17 and, whatever happened, it fell between the cracks?
18 A. Pretty much, sir, yes.
19
20 THE COMMISSIONER: All right. Okay.
21
22 MR GRAY: Q. Now, turning to the Neiwand summaries - and
23 you know what I mean by that, the three final documents --
24 A. Yes.
25
26 Q. -- authored by Chebl but reviewed and accepted by
27 Morgan, now, I think you have accepted this, in effect,
28 earlier, but Morgan, as the Investigation Supervisor, is
29 obviously responsible for the contents of those summaries,
30 isn't he - as well as Chebl?
31 A. Yes, Chebl and Morgan, yes, sir.
32
33 Q. So if they are wrong or inaccurate or false in any
34 respect, Morgan is responsible, just as much as Chebl,
35 isn't he?
36 A. I guess so, sir, yes.
37
38 Q. Now, did you, as the coordinator, see those three
39 summaries before they were finalised?
40 A. Yes, sir.
41
42 Q. Did you discuss them, in effect, in draft form, with
43 either Chebl or Morgan?
44 A. I did.
45
46 Q. When you read them, you saw that they were making
47 these very serious allegations against Page and Taradale?

- 1 A. They were the opinions of the OIC, yes. I saw those.
2
3 Q. In the Neiwand reports, the summaries?
4 A. That's right, yes, sir.
5
6 Q. They were being put forward as conclusions of Neiwand:
7 not just opinions, but analyses, weren't they?
8 A. That's correct, sir, yes.
9
10 Q. So he was being accused of, among other things,
11 ignoring alternative lines of inquiry; correct?
12 A. That's correct.
13
14 Q. Tunnel vision?
15 A. Yes.
16
17 Q. Confirmation bias?
18 A. Yes, sir.
19
20 Q. And deliberately withholding evidence from the
21 Coroner?
22 A. That's correct.
23
24 Q. Now, you know, don't you, now, today, that both
25 Mr Morgan, in the witness box, and the submissions for the
26 police, have both conceded that all of those allegations
27 are wrong, don't you?
28 A. That's right, sir, yes.
29
30 Q. Now, indeed, you know, do you, that the police
31 submissions include that the criticisms of Taradale by
32 Neiwand are unjustified and unfounded?
33 A. Yes, sir.
34
35 Q. You know that? You know that the police submissions
36 are that Mr Page and Taradale conducted an investigation
37 which was diligent and comprehensive?
38 A. Yes, sir.
39
40 Q. And you know that the police submissions include that
41 Mr Page and Taradale should be commended for their work in
42 Taradale?
43 A. Yes, sir.
44
45 Q. And you agree with all of that, don't you?
46 A. Yeah, I do.
47

1 MR GRAY: Commissioner, can I just intervene. I, myself,
2 for my part, probably only have about five or ten minutes
3 to go.

4
5 THE COMMISSIONER: I'm going to finish this witness today
6 and I will sit on, so Mr Mykkeltvedt will follow you, and
7 then Mr Hutchings can ask some questions, if he has any,
8 after that. If anything arises, you can do it. But I will
9 sit on, I'm sure Mr Leggat would like to get away, and
10 I would like to finish, as I have said this morning, each
11 witness in turn.

12
13 MR GRAY: Are you okay with that, Mr Leggat.

14
15 THE WITNESS: Yes, of course I'm okay.

16
17 MR GRAY: Q. Turning to the post operational
18 assessment - do you have volume 6 there at the moment?

19 A. Fourteen, sir.

20
21 Q. We need volume 6?

22 A. Thank you.

23
24 Q. And if we can turn to tab 176 [SC0I.76962.00007_0001].

25 A. Yes, sir.

26
27 Q. On the front page, it is called "Post operational
28 assessment", and it actually says in type, "Prepared by"
29 DSC Chebl. Just about in the middle of the page. Do you
30 see that? I'm sorry, it's actually the third page. The
31 first page is a memorandum, I think?

32 A. Oh, yes, yep.

33
34 Q. But the third page is the actual POA itself?

35 A. Yes, sir.

36
37 Q. And it says in the middle of the page, "Prepared by",
38 Chebl?

39 A. Yes, sir.

40
41 Q. But, in fact, the pages do have numbers in the very
42 top right lengthy numbers, but the last two digits are the
43 actual page numbers. If you turn to the page numbered 13,
44 top right?

45 A. Sir, on the top of the page what does it say, because
46 I don't have numbers on my page.

47

1 Q. I'm sorry, I didn't hear that?
2 A. There are no numbers on the top of my page.
3
4 Q. Isn't there a very small long number beginning with
5 "SCOI".
6
7 THE COMMISSIONER: Right at the very top.
8
9 THE WITNESS: Oh, yes, yep.
10
11 MR GRAY: Q. If you look at the last two digits, they
12 are actually page numbers. So if you get to the page that
13 has 13 as the last two digits, have you found that?
14 A. No.
15
16 THE COMMISSIONER: It is right at the top right-hand
17 corner of the page --
18
19 THE WITNESS: Oh, it is cut off on that one. 13, yes.
20
21 MR GRAY: I'm sorry, apparently it is cut off on the
22 version that Mr Leggat has.
23
24 Q. Anyway, you can see it on the screen, Mr Leggat?
25 A. Yes, I can.
26
27 Q. So up to that page, you see Mr Chebl's signature, so
28 presumably, he has written it up to that point?
29 A. That's correct, yes.
30
31 Q. Then the next bit, which is headed "Key Findings" --
32 A. Yes.
33
34 Q. -- goes over for two and a half pages, and that is
35 under your signature?
36 A. Yes.
37
38 Q. So you have written that, presumably?
39 A. Yes, sir.
40
41 Q. The part that you have written, pages 13 to 15, I take
42 it you have based on the summaries?
43 A. That's right.
44
45 Q. The Neiwand summaries?
46 A. Yes, sir.
47

- 1 Q. And you have based it on what Chebl has written in
2 this very document?
- 3 A. Yes, sir, and primarily on what Chebl's told me and
4 what Detective Sergeant Morgan has told me.
5
- 6 Q. We know from the front page of this, the page that has
7 03 as the last two digits, that this document, the post
8 operational assessment, goes to at least three very
9 high-ranking officers, doesn't it?
- 10 A. That's right, sir, yes.
11
- 12 Q. Mr Cook is the head of Homicide by then, Commander
13 Homicide, by then?
- 14 A. Yes, sir.
15
- 16 Q. And on the front page, Detective Acting Chief
17 Superintendent Wallace, the Director of Crime Operations -
18 I think that's a female officer?
- 19 A. Yes, sir.
20
- 21 Q. And Assistant Commissioner Lanyon is the Commander of
22 State Crime Command. That's right?
- 23 A. Yes, sir, that's right.
24
- 25 Q. So those three, at least, get this document, which
26 contains all these damning allegations against Page, don't
27 they?
- 28 A. That's right, sir, yes.
29
- 30 Q. Now, you accept, now, that those damning allegations
31 against Page are wrong, don't you?
- 32 A. I do now, sir, yes.
33
- 34 Q. Do you regret, now, that these damning allegations
35 were published up the chain to these very high ranking
36 officers, when it turns out they were quite wrong?
- 37 A. Yes, I do.
38
- 39 Q. Do you think an apology to Mr Page is in order?
- 40 A. I guess so, yes.
41
- 42 Q. Do you make it?
- 43 A. Sorry, sir?
44
- 45 Q. Do you make that apology?
- 46 A. Do I make the apology?
47

- 1 Q. Yes.
2 A. I'm not a serving police officer anymore.
3
4 Q. No. You --
5 A. I apologise that the information that I provided or
6 was provided was not accurate.
7
8 Q. Now, in paragraph 57 of your statement
9 [SCOI.85707_0001] --
10 A. Yes, sir.
11
12 Q. -- you refer to the POA, do you see that?
13 A. Yes, sir.
14
15 Q. And you say in the third line:
16
17 *The findings concerning Mr Mattaini's*
18 *matter aligned with those of the Coroner.*
19
20 A. Yes, sir.
21
22 Q. That's not correct, is it?
23 A. She came back with an open finding, didn't she, sir?
24
25 Q. She did.
26 A. But have you got the findings there for her, sir - her
27 findings - her actual findings?
28
29 Q. Yes.
30 A. Because I think they do align with Mr Mattaini's --
31
32 Q. Well, I can certainly show them to you if you need
33 them, but, in a nutshell, what she said about Mr Mattaini
34 was that he was dead, because at that point he had simply
35 not been found - so she found that he was dead - and she
36 found that the manner and cause of death could not be
37 determined?
38 A. Yes, sir.
39
40 Q. There may be more to it than that, but that's
41 essentially what she found about Mattaini. But although
42 not a finding, she did express the view in what she
43 published that it was likely that he had met his death in
44 the same way as she found that Russell and Warren had met
45 their deaths - namely, at the hands of gay hate assailants.
46 Not as a finding but as an expression of likelihood?
47 A. Yes, sir, but the findings align with her --

- 1
2 Q. Well, do they, though? In your post operational
3 assessment for Neiwand, if we turn to the page with 13 at
4 the top, and then we need to scroll down to the next page,
5 which has, at the top of the page, a heading "The
6 suspicious disappearance and death of Gilles Mattaini" - do
7 you see that?
8 A. Yes, sir.
9
10 Q. This is your writing?
11 A. Yes.
12
13 Q. You say in the middle of that paragraph - first of
14 all, in the first paragraph, you cite what the Coroner had
15 said, do you see that, "The Coroner stated", at the top of
16 the page?
17 A. Yes.
18
19 Q. And that's approximately what I just put to you,
20 although not quite exact.
21 A. Yes, sir.
22
23 Q. And then in the middle of your paragraph, you say:
24
25 *Page's failure to include all the*
26 *information about Mattaini's suicidal*
27 *ideation in Musy's 2002 statement was a key*
28 *factor in the Coroner not considering*
29 *suicide as a possibility in Mattaini's*
30 *disappearance.*
31
32 A. That's what I read.
33
34 Q. Well, that doesn't coincide with the Coroner, does it?
35 A. No, sir.
36
37 Q. That's quite different, isn't it?
38 A. Yes, sir.
39
40 Q. It's a different accusation by you, undercutting the
41 finding of the Coroner, isn't it?
42 A. Yes, sir.
43
44 Q. And it's wrong, isn't it?
45 A. Yes, sir.
46
47 Q. I think, finally, Mr Leggat, in your part of this

1 document on the page which has 13 at the top, where the
2 heading "3. Key Findings" appears, towards the bottom of
3 the page there is a paragraph beginning "On 09/03/2005"; do
4 you see that?

5 A. Yes, sir.

6

7 Q. You there say that Taradale focused on a gay hate
8 motive and were likely affected by a form of confirmation
9 bias which, in turn, impacted on the Coroner's findings?

10 A. Yes, sir.

11

12 Q. And you know that's wrong, don't you?

13 A. Yes, sir.

14

15 Q. And then you say at the bottom of that page that
16 Neiwand investigators focused on victimology, associates
17 and the last known movements - now, that is right?

18 A. Yes, that's right, sir.

19

20 Q. Now, for Neiwand to have done what you correctly say
21 there it did do - namely, to focus us on victimology,
22 associates and the last known movements of the three males,
23 is very different from what had been proposed in the
24 investigation plan in the first place, isn't it?

25 A. Yes, sir, it is.

26

27 Q. You would accept, wouldn't you, in the end, as to both
28 Warren and Russell, Neiwand did not uncover anything that
29 would alter the views expressed by the Coroner, did it?

30 A. Yes, sir, I know that now, yes.

31

32 Q. You agree with that?

33 A. I agree.

34

35 Q. And so for Neiwand to say, which it did, as you have
36 quoted in all three of your three pages here, in the three
37 cases, that the deaths should be reclassified as
38 "undetermined", despite the Coroner's homicide findings,
39 was completely without foundation, wasn't it?

40 A. Based on the information I received - but yes, now,
41 I acknowledge that.

42

43 Q. And so far as Mr Mattaini's case is concerned, to say
44 that because there was no forensic evidence and because
45 there was no identified suspect there was no prospect of
46 ascertaining what happened to Mr Mattaini is just not
47 right, is it?

1 A. For Mr Mattaini - I hold by that view that there was
2 no forensics, there were no exhibits.
3
4 Q. That's right. That is true. But to say that,
5 therefore, one simply could not explore how he died is not
6 correct, is it?
7 A. It would be very difficult to explore how he died.
8
9 Q. It would be difficult, but not --
10 A. It would be almost impossible to explore how he died.
11
12 Q. Basically because it was so long ago and all that had
13 happened was that he had simply disappeared?
14 A. Well, it was 17, 18 years before it was reported and
15 the Taradale suspect pool was 11 or 13, so they were out of
16 the picture.
17
18 Q. They were, but no attempt made by Neiwand to see if
19 anyone else might be in the picture?
20 A. No, sir.
21
22 MR GRAY: Yes. Those are my questions.
23
24 **<EXAMINATION BY MR MYKKELTVEDT:**
25
26 MR MYKKELTVEDT: Q. Thank you, Mr Leggat. You indicate
27 in your statement at paragraph 25 [SCOI.85707_0001] that
28 you suspect you may have been listed on e@gle.i as part of
29 Strike Force Macnamir --
30 A. Yes.
31
32 Q. -- because you were one of the coordinators of the
33 UHT. You adhere to that?
34 A. That's right, yes, I was.
35
36 Q. Was it common, as the coordinator of the UHT, for you
37 to be listed on e@gle.i as part of various strike forces?
38 A. It was common, yes, sir.
39
40 Q. And was that the case even in cases that you played no
41 active part in?
42 A. Yes, sir, that's correct.
43
44 Q. Did you, in fact, ever undertake any active
45 investigative steps in relation to Strike Force Macnamir?
46 A. I had no role at all in that investigation.
47

1 Q. So you didn't, for example, give directions to --
2 A. That's right.
3
4 Q. -- Detective Chief Inspector Young --
5 A. No.
6
7 Q. -- or Detective Sergeant Brown --
8 A. No.
9
10 Q. -- or any other officer --
11 A. That's correct.
12
13 Q. -- in relation to their conduct of Strike Force
14 Macnamir?
15 A. I didn't, that's right. That's correct.
16
17 THE COMMISSIONER: Q. What's the point of listing you,
18 then, as associated with it, if there is absolutely no
19 connection at all?
20 A. Good question. I think that probably the reason that
21 I was listed on it was in case a product needed to be
22 verified, but it just - I was listed on a number of strike
23 forces that I had no involvement in, and Macnamir was one.
24
25 Q. But you can't tell me why --
26 A. No, I can't, sir.
27
28 Q. -- the system would even mention you if you --
29 A. Well, someone would have had to nominate me and put me
30 on to the system. It's not automatically generated.
31
32 THE COMMISSIONER: Okay, all right.
33
34 MR MYKKELTVEDT: Q. And so, in short, did you have any
35 influence whatsoever over the conduct of Strike Force
36 Macnamir?
37 A. No influence whatsoever, sir.
38
39 Q. You have been asked a number of questions in relation
40 to the investigation of persons of interest by Strike Force
41 Neiwand?
42 A. Yes, sir.
43
44 Q. And you have given some evidence as to the reasons
45 Detective Senior Constable Chebl considered that various
46 persons of interest that had been identified earlier by
47 Detective Sergeant Brown could not be productively

1 investigated - do you recall that?

2 A. Yes, sir.

3

4 Q. Did you at any stage form a view as to whether
5 Detective Senior Constable Chebl's decision was taken in
6 good faith?

7 A. Yes, sir, it was taken in good faith, but he was
8 referring to the Taradale suspects, not the 116 that
9 Mr Gray has mentioned, because I wasn't aware of those.

10

11 Q. In deciding not to pursue various persons of interest
12 in connection with what might be termed the "gay hate
13 hypothesis", did detective Senior Constable Chebl appear to
14 you to be acting pursuant to any ulterior motive?

15 A. No.

16

17 Q. In particular, was there anything that you observed to
18 indicate to you that either Detective Senior Constable
19 Chebl or Detective Sergeant Morgan were deliberately trying
20 to minimise the potential involvement of gay hate in the
21 relevant deaths?

22 A. Nothing. Nothing that I saw, sir, no.

23

24 Q. I will just ask you a few questions about overarching
25 resourcing considerations. One of your duties as the UHT
26 coordinator, I imagine, was to determine how resources
27 might be best allocated within the team; is that right?

28 A. That's right, sir, yes.

29

30 Q. Subsequent to a review of a particular case being
31 conducted, it was reasonably common, I take it, for
32 recommendations to be made in relation to investigative
33 steps that could be conducted?

34 A. Yes, sir; that's correct.

35

36 Q. And so one of your roles was to look at those
37 recommendations and consider which steps or which cases
38 might be most productively pursued?

39 A. That's right.

40

41 Q. In connection with these cases - that is, the
42 Taradale/Bondi deaths - the targeting of persons of
43 interest, I think you indicated by reference to the types
44 of surveillance that might need to be undertaken and the
45 monitoring of that, might have been a very
46 resource-intensive step?

47 A. It would have been, sir, yes.

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Q. Did you make any assessment as to whether that exercise would have been the best use of the limited resources that were available to the UHT?

A. I --

THE COMMISSIONER: I'm sorry, Mr Mykkeltvedt, that's contrary to the facts, isn't it? Wasn't that decision made before this gentleman came into the role? I mean, you haven't really established that he applied his mind to that. My understanding of the evidence so far is that the die was cast when he came into the role: people had diverted attention away from persons of interest. Or have I misunderstood the evidence?

MR MYKKELTVEDT: I've asked him simply whether he made any of those --

THE COMMISSIONER: He didn't on the evidence, Mr Mykkeltvedt. It is clear, isn't it. Unless you've got instructions that he did - I mean, you are not just here to fly kites, are you? I just wonder whether that has a basis in fact.

MR MYKKELTVEDT: I will rephrase the question.

Q. Having regard to the evidence you have given and what you know as the case, do you have a view as to whether that would have been - that is, for example, the conduct of those kinds of surveillance exercises - the best possible use of the available resources of the UHT?

A. I based my decision on what I'd been told by Chebl and Morgan and - yes - and their determination was that it wasn't an effective use of resources, so I went with that, but it had been made well before I arrived at Unsolved.

Q. Did you agree with their determination?

A. Yes, I did.

Q. Why did you agree with that determination?

A. Based on what I'd been told by those officers in the Neiwand team.

Q. And in particular, what factors were you relying on?

A. The factor that a lot of the evidence had been presented in open court, the targets had already - were aware that they had been targeted by police in the past and

1 the difficulty in running an operation based on that.
2
3 Q. And did you have any regard to the level of resourcing
4 that would have been applied or required to properly pursue
5 such an undertaking?
6 A. It would have been very labour-intensive, sir.
7
8 Q. Hopefully I can avoid taking you to the relevant
9 document, but you might recall that there is a progress
10 report of 20 March 2017, which is tab 164A of the record --
11 A. Yes, sir.
12
13 Q. -- and you made some recommendations in relation to
14 some steps that might be undertaken?
15 A. That's right.
16
17 Q. You requested a summary of the investigation of
18 Taradale into various gay hate gang crimes?
19 A. Yes, sir.
20
21 Q. And you requested a consideration of HIV-AIDS related
22 illnesses that might provide a motive for murder?
23 A. That's correct.
24
25 Q. And a consideration of persons of interest identified
26 from Mr Warren's former associates?
27 A. That's right, sir, yes.
28
29 Q. What did you hope to achieve by asking for those
30 steps?
31
32 MR GRAY: I object to this.
33
34 THE COMMISSIONER: What document is it?
35
36 MR GRAY: That's my concern. I just checked with my
37 friend and he said, as I thought he said, he was referring
38 to 164A, which is many months before Mr Leggat had anything
39 to do with this.
40
41 THE COMMISSIONER: Yes, what volume is it, Mr Mykkeltvedt?
42
43 MR GRAY: Volume 6.
44
45 MR MYKKELTVEDT: I'm seeking to refer to the 20 March 2017
46 document. I might have referred to the wrong tab. I think
47 I meant 164E. I apologise.

1
2 Q. If you turn to page 5 of that document, there are
3 a series of steps listed. Thank you. You have seen those
4 steps?
5 A. Is that - I'm sorry, it is 164B.
6
7 Q. E?
8 A. E? Sorry.
9
10 Q. Yes, and page 5.
11
12 THE COMMISSIONER: Page 5 in the upper right-hand corner.
13
14 THE WITNESS: I'm sorry, I apologise. "Comments" - under
15 the "Comments" section, sir?
16
17 MR MYKKELTVEDT: Q. Yes, I have taken you through some
18 of the matters, in summary, that you have listed there?
19 A. Yes.
20
21 Q. The question I have is: what had you hoped to achieve
22 by reference to those steps?
23 A. To determine any other potential lines of inquiry that
24 may exist in regard to the death of Mr Warren and because
25 the other, the Taradale stuff wasn't there, these were what
26 I considered valid lines of inquiry, based on my limited
27 information at that time.
28
29 Q. Were you hoping, in essence, to identify a killer, if
30 there was one?
31 A. Yes, sir, I was.
32
33 Q. Were you aware that rewards had been offered in each
34 of the Taradale cases?
35 A. I was aware of that, sir, yes.
36
37 Q. And that those rewards were in the amount of \$100,000
38 each?
39 A. That's right, sir, yes.
40
41 Q. What, in your experience, is the purpose of rewards in
42 connection with unsolved homicide cases?
43 A. To generate information from the public and hopefully
44 identify the offender that's responsible for the offence.
45
46 Q. So in seeking rewards, it's your understanding that
47 the NSW Police Force would have been seeking to elicit

1 information directed to identifying the killers in each of
2 those cases?

3 A. That's correct, sir, yes.

4

5 Q. Now, as has just been discussed, after joining the
6 UHT, you were assigned to Strike Force Neiwand as the
7 coordinator, and it had already been operating for some
8 significant time. Did anyone at any stage, whether above
9 you or below you, suggest to you that the Strike Force
10 Neiwand objective was to attack and rebut the findings of
11 Operation Taradale and Coroner Milledge?

12 A. Not at all, sir, no.

13

14 THE COMMISSIONER: Q. Were you surprised when it did?

15 A. I - I just took the - I reviewed the summaries and -
16 no, I wasn't surprised, I just took on board what was
17 written in the document.

18

19 Q. I know you did, but were you surprised that the
20 inquiry of the strike force had taken that turn, to be so
21 aggressively critical of the Coroner and, more importantly,
22 Page's role?

23 A. No, sir, because I looked at what was included in the
24 document and --

25

26 Q. I hear what you have said numerous times. Were you
27 surprised with the direction that the strike force 's
28 report had taken?

29 A. I am now, sir, yes.

30

31 THE COMMISSIONER: All right.

32

33 MR MYKKELTVEDT: Q. Did anyone suggest to you that there
34 was a company line that needed to be adhered to, that gay
35 hate crimes had been exaggerated?

36 A. No. No, sir.

37

38 Q. What do you say to the suggestion that there was
39 a coordination between Strike Force Neiwand and Strike
40 Force Macnamir, the two strike forces, that was directed
41 primarily to discrediting claims that so many deaths might
42 have been gay hate crimes?

43 A. I have never heard anything along those lines, sir,
44 and - no, I don't - I - no, definitely not.

45

46 Q. What was the ultimate aim, as you understood it, of
47 Strike Force Neiwand?

1 A. Well, my understanding was it was to reinvestigate the
2 suspicious disappearance and death of Mr Mattaini, and the
3 same for Mr Warren and the suspected murder of Mr Russell.
4
5 Q. As you understood it, was it directed, to the best of
6 the ability and within the resources available of the
7 relevant investigators, to discern what had actually
8 happened in the three cases?
9 A. Yes, sir.
10
11 Q. Now, you have said in your statement that you accept
12 that it was deeply regrettable that Strike Force Neiwand's
13 findings were not referred to the Coroner.
14 A. Yes, it is.
15
16 Q. And you have indicated that the failure to do so was
17 the product of an oversight?
18 A. That's correct.
19
20 Q. Was that all it was or was there some kind of
21 strategic purpose?
22 A. There was no strategic purpose. It was an oversight,
23 sir.
24
25 THE COMMISSIONER: Q. So it is ineptitude, is it?
26 A. I guess that's a way of describing it, sir.
27
28 MR MYKKELTVEDT: Q. And so, having regard to that, what
29 do you say to the suggestion that Strike Force Neiwand was
30 deliberately secretive?
31 A. I don't believe it was deliberately secretive.
32 I certainly didn't take a secretive attitude with it, sir.
33
34 Q. Did you ever observe, at any juncture, Detective
35 Sergeant Morgan, Detective Senior Constable Chebl or any of
36 the officers involved in Strike Force Neiwand to have been
37 motivated by any kind of personal bias?
38 A. Not at all, sir, no.
39
40 MR MYKKELTVEDT: Those are my questions, your Honour.
41
42 THE COMMISSIONER: Yes, Mr Hutchings, anything?
43
44 MR HUTCHINGS: Your Honour, I have no questions.
45
46 THE COMMISSIONER: All right. Thank you. Anything
47 arising?

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MR GRAY: No, Commissioner.

THE COMMISSIONER: Mr Leggat, I can excuse you from further attendance and thank you for your attendance.

<THE WITNESS WITHDREW

THE COMMISSIONER: I will now adjourn until tomorrow morning.

**AT 4.27PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED
TO TUESDAY, 26 SEPTEMBER 2023 AT 10AM**

#					
#62 [1] - 5966:22	13 [8] - 5897:25, 5989:43, 5990:13, 5990:19, 5990:41, 5993:3, 5994:1, 5995:15	5949:40, 5964:43, 5993:27	5962:14, 5962:46, 5972:17, 5973:45, 5999:10, 5999:45	5962:14, 5962:46, 5972:17, 5973:45, 5999:10, 5999:45	312 [1] - 5922:16
\$	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2003 [1] - 5974:42	2018 [2] - 5942:16, 5942:19	2018 [2] - 5942:16, 5942:19	319 [3] - 5923:22, 5923:34, 5933:16
\$100,000 [1] - 6000:37	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2003/2004/2005 [1] - 5984:7	2020 [1] - 5935:47	2020 [1] - 5935:47	33 [4] - 5909:30, 5955:24, 5955:28, 5957:34
'	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2005 [4] - 5940:29, 5943:7, 5943:35, 5986:32	2022 [3] - 5885:7, 5935:44, 5937:30	2022 [3] - 5885:7, 5935:44, 5937:30	342 [2] - 5925:32, 5926:33
'08 [1] - 5916:3	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2006 [1] - 5914:42	2023 [4] - 5885:22, 5895:1, 5935:20, 6003:13	2023 [4] - 5885:22, 5895:1, 5935:20, 6003:13	36 [1] - 5921:12
'13 [1] - 5938:2	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2007 [1] - 5895:9	207 [2] - 5897:21, 5897:24	207 [2] - 5897:21, 5897:24	37 [4] - 5924:36, 5927:16, 5961:26, 5962:8
'22 [1] - 5956:37	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2008 [8] - 5915:15, 5915:20, 5915:26, 5915:30, 5916:19, 5931:27, 5942:30, 5944:2	208 [1] - 5898:12	208 [1] - 5898:12	38 [6] - 5961:34, 5961:39, 5961:44, 5962:2, 5962:3, 5962:8
'70s [1] - 5898:32	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2009 [3] - 5935:26, 5936:5, 5938:2	209 [1] - 5898:15	209 [1] - 5898:15	399 [9] - 5892:25, 5911:35, 5911:36, 5913:12, 5913:15, 5913:18, 5913:24, 5918:34
'80s [2] - 5898:32, 5911:3	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2010 [1] - 5942:30	21 [2] - 5895:9, 5916:19	21 [2] - 5895:9, 5916:19	399A [10] - 5892:24, 5892:26, 5892:30, 5912:39, 5913:13, 5913:15, 5913:28, 5914:38, 5924:23, 5930:38
'87 [1] - 5897:43	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2010s [1] - 5942:27	22 [4] - 5927:43, 5928:2, 5941:43, 5941:44	22 [4] - 5927:43, 5928:2, 5941:43, 5941:44	
'90 [1] - 5897:43	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2012 [19] - 5895:26, 5895:47, 5896:22, 5896:30, 5908:42, 5912:22, 5912:29, 5913:21, 5913:29, 5921:45, 5925:9, 5925:44, 5926:8, 5936:11, 5936:21, 5946:17, 5946:31, 5946:35, 5955:7	23 [2] - 5929:7, 5972:17	23 [2] - 5929:7, 5972:17	
0	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2013 [31] - 5895:22, 5896:43, 5897:10, 5897:25, 5898:14, 5900:33, 5901:12, 5902:28, 5903:22, 5908:46, 5911:3, 5922:24, 5923:5, 5923:24, 5923:40, 5924:6, 5924:38, 5926:11, 5928:2, 5935:27, 5935:30, 5935:33, 5936:5, 5936:42, 5937:1, 5937:4, 5937:9, 5937:17, 5941:45, 5955:10, 5961:6	23/03/2017 [1] - 5972:25	23/03/2017 [1] - 5972:25	
03 [1] - 5991:7	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2015 [3] - 5925:23, 5926:35, 5948:29	24 [4] - 5926:43, 5927:2, 5929:17, 5941:43	24 [4] - 5926:43, 5927:2, 5929:17, 5941:43	
09/03/2005 [1] - 5994:3	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2016 [8] - 5948:42, 5949:11, 5953:22, 5953:23, 5954:24, 5962:14, 5966:34, 5967:21	24-hour [1] - 5964:19	24-hour [1] - 5964:19	
1	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2017 [21] - 5935:38, 5935:44, 5937:27, 5937:30, 5937:44, 5938:10, 5939:46, 5940:12, 5940:36, 5940:45, 5947:9, 5950:3, 5953:44, 5954:1, 5961:28,	25 [10] - 5885:22, 5894:24, 5895:47, 5908:42, 5913:37, 5913:38, 5925:44, 5928:29, 5955:7, 5995:27	25 [10] - 5885:22, 5894:24, 5895:47, 5908:42, 5913:37, 5913:38, 5925:44, 5928:29, 5955:7, 5995:27	4
1 [10] - 5894:6, 5894:25, 5895:22, 5902:43, 5924:43, 5948:26, 5953:22, 5953:23, 5954:24, 5974:34	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2018 [8] - 5915:15, 5915:20, 5915:26, 5915:30, 5916:19, 5931:27, 5942:30, 5944:2	252 [1] - 5921:37	252 [1] - 5921:37	4 [5] - 5889:10, 5898:13, 5920:28, 5920:40, 5973:35
1 [16] - 5886:7, 5886:18, 5892:33, 5900:3, 5905:18, 5919:23, 5920:28, 5926:35, 5938:21, 5938:22, 5955:10, 5962:38, 5973:45	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2019 [3] - 5935:26, 5936:5, 5938:2	26 [3] - 5908:20, 5948:29, 6003:13	26 [3] - 5908:20, 5948:29, 6003:13	4.27PM [1] - 6003:12
10AM [1] - 6003:13	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2020 [1] - 5935:47	27 [3] - 5895:26, 5927:11, 5936:11	27 [3] - 5895:26, 5927:11, 5936:11	40 [2] - 5963:45, 5964:9
10am [1] - 5885:22	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2021 [19] - 5895:26, 5895:47, 5896:22, 5896:30, 5908:42, 5912:22, 5912:29, 5913:21, 5913:29, 5921:45, 5925:9, 5925:44, 5926:8, 5936:11, 5936:21, 5946:17, 5946:31, 5946:35, 5955:7	28 [1] - 5908:1	28 [1] - 5908:1	400s [1] - 5943:19
11 [14] - 5896:43, 5897:10, 5921:37, 5923:24, 5923:40, 5924:6, 5924:38, 5925:13, 5938:21, 5938:22, 5978:19, 5980:5, 5980:7, 5995:15	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2022 [3] - 5885:7, 5935:44, 5937:30	29 [2] - 5908:22, 5908:31	29 [2] - 5908:22, 5908:31	432 [2] - 5942:42, 5944:29
11.35am [1] - 5894:38	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2023 [4] - 5885:22, 5895:1, 5935:20, 6003:13			47 [2] - 5900:29, 5982:46
116 [4] - 5953:39, 5953:41, 5967:9, 5997:8	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2024 [1] - 5935:47			48 [1] - 5904:21
12 [8] - 5886:11, 5894:24, 5896:14, 5896:25, 5902:24, 5924:38, 5945:1, 5955:28	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2025 [3] - 5925:23, 5926:35, 5948:29			49 [1] - 5981:10
121 [1] - 5885:18	14 [9] - 5908:46, 5919:32, 5919:36, 5920:39, 5922:15, 5953:4, 5953:6, 5955:10, 5978:9	2026 [8] - 5948:42, 5949:11, 5953:22, 5953:23, 5954:24, 5962:14, 5966:34, 5967:21			
	2		3		5
	2 [8] - 5885:18, 5890:31, 5900:28, 5913:21, 5929:36, 5930:13, 5930:15, 5930:19		3 [1] - 5994:2		5 [11] - 5889:11, 5909:15, 5914:39, 5915:28, 5928:37, 5933:22, 5972:36, 5972:44, 6000:2, 6000:10, 6000:12
	2.15pm [1] - 5935:11		30 [10] - 5900:24, 5901:4, 5901:26, 5902:24, 5903:16, 5903:44, 5904:23, 5904:24, 5937:19, 5938:32		50 [5] - 5919:31, 5919:32, 5920:39, 5981:10, 5982:46
	20 [4] - 5895:1, 5926:43, 5999:10, 5999:45		30/08/1996 [1] - 5909:21		521 [3] - 5921:32, 5927:35, 5941:37
	2002 [4] - 5911:4,		304 [1] - 5978:9		57 [1] - 5992:8
			306 [1] - 5953:6		
			306A [1] - 5953:37		
			31 [2] - 5911:33, 5921:45		

6

6 [13] - 5889:11,
5892:24, 5892:28,
5908:37, 5915:29,
5916:16, 5933:17,
5933:22, 5954:45,
5972:5, 5989:18,
5989:21, 5999:43
60 [2] - 5983:2,
5983:25
600 [3] - 5928:3,
5928:18, 5941:44

7

7 [8] - 5898:17,
5915:15, 5922:24,
5923:5, 5923:30,
5931:27, 5938:21,
5938:23
700 [5] - 5940:22,
5941:25, 5942:41,
5943:17, 5945:4

8

8 [4] - 5897:20,
5903:16, 5938:21,
5938:23
80 [2] - 5900:24,
5901:31

9

9 [4] - 5922:30,
5938:21, 5938:22,
5978:12
9.30 [2] - 5889:5,
5890:29
90 [1] - 5885:24

A

ABC [3] - 5891:7,
5896:44, 5936:43
Abernethy [2] -
5940:31, 5940:34
ability [1] - 6002:6
able [11] - 5889:2,
5889:42, 5889:43,
5889:44, 5907:27,
5908:15, 5909:43,
5922:4, 5928:28,
5929:24, 5934:22
absence [2] - 5908:7,
5955:43
absent [1] - 5946:9
absolutely [4] -
5888:4, 5888:14,

5964:47, 5996:18
absorb [1] - 5947:33
Abuse [1] - 5894:45
accept [14] - 5887:31,
5900:40, 5900:42,
5904:20, 5904:25,
5918:34, 5966:31,
5966:34, 5966:36,
5966:38, 5983:47,
5991:30, 5994:27,
6002:11
acceptable [1] -
5892:43
accepted [4] -
5963:33, 5971:31,
5987:26, 5987:27
accepts [1] - 5975:42
access [1] - 5915:19
accessed [1] -
5911:20
according [6] -
5915:23, 5919:47,
5924:24, 5960:40,
5962:29, 5981:25
accurate [5] -
5898:47, 5900:25,
5976:29, 5976:31,
5992:6
accusation [3] -
5985:39, 5985:42,
5993:40
accusations [3] -
5975:17, 5981:18,
5985:16
accused [2] - 5976:9,
5988:10
accusing [3] -
5985:27, 5985:32,
5985:34
achieve [2] - 5999:29,
6000:21
acknowledge [1] -
5994:41
acknowledgment [1] -
5973:26
Acting [2] - 5885:37,
5991:16
acting [1] - 5997:14
action [2] - 5970:42,
5971:1
active [7] - 5922:41,
5923:8, 5934:10,
5952:7, 5966:47,
5995:41, 5995:44
acts [1] - 5951:6
actual [6] - 5897:32,
5899:39, 5947:27,
5989:34, 5989:43,
5992:27
add [1] - 5891:21

added [1] - 5919:31
addition [3] - 5893:34,
5922:45, 5961:40
ADDITION [1] -
5892:28
additional [3] -
5891:7, 5891:34,
5893:12
address [1] - 5980:41
adhere [1] - 5995:33
adhered [1] - 6001:34
adjourn [7] - 5888:33,
5891:18, 5892:13,
5929:40, 5930:13,
5930:24, 6003:9
admitted [2] -
5892:22, 5892:23
adopted [1] - 5964:41
advanced [1] - 5945:9
advances [2] -
5944:10, 5946:5
advert [1] - 5890:45
advice [7] - 5920:30,
5920:33, 5962:36,
5963:12, 5963:17,
5964:46, 5965:27
affected [2] - 5963:10,
5994:8
affirmed [1] - 5894:38
afraid [1] - 5890:30
afternoon [2] -
5889:41, 5930:3
aggressively [1] -
6001:21
ago [6] - 5886:7,
5886:11, 5886:18,
5913:8, 5981:19,
5995:12
agree [16] - 5910:31,
5910:33, 5911:20,
5955:14, 5967:20,
5968:14, 5968:45,
5969:1, 5970:41,
5976:33, 5977:26,
5988:45, 5994:32,
5994:33, 5998:37,
5998:40
agreed [12] - 5911:27,
5912:20, 5924:26,
5924:41, 5960:22,
5960:26, 5962:35,
5965:31, 5971:8,
5971:25, 5971:29,
5971:36
agreeing [1] - 5967:47
agreement [2] -
5957:15, 5957:24
ahead [2] - 5932:20,
5933:7
AIDS [1] - 5999:21

aim [1] - 6001:46
air [1] - 5926:38
Alberici [10] - 5889:5,
5890:29, 5890:35,
5890:40, 5891:8,
5925:24, 5926:34,
5926:40, 5926:43,
5927:2
Alexandra [1] -
5885:31
Alicia [6] - 5885:38,
5886:4, 5894:42,
5894:43, 5936:22,
5955:6
ALICIA [1] - 5894:38
align [2] - 5992:30,
5992:47
aligned [1] - 5992:18
alive [1] - 5893:5
allegations [6] -
5976:6, 5987:47,
5988:26, 5991:26,
5991:30, 5991:34
alliances [3] -
5910:36, 5956:19,
5956:20
allocated [12] -
5889:11, 5889:47,
5905:6, 5905:34,
5905:42, 5906:35,
5907:13, 5913:38,
5928:16, 5943:1,
5943:3, 5997:27
allocation [2] -
5906:24, 5912:16
allocations [1] -
5921:25
allow [1] - 5981:2
allowances [1] -
5889:25
almost [4] - 5886:11,
5897:10, 5978:18,
5995:10
alter [1] - 5994:29
alternate [1] - 5979:16
alternates [1] -
5984:17
alternative [5] -
5980:8, 5980:11,
5980:16, 5980:21,
5988:11
alternatively [2] -
5894:1, 5946:6
altogether [2] -
5938:32, 5938:42
amount [2] - 5938:16,
6000:37
AN [1] - 5892:29
analysed [1] - 5970:45
analyses [1] - 5988:7

analysing [2] -
5970:43, 5971:2
analysis [3] - 5983:11,
5986:31
Anders [1] - 5885:36
angle [3] - 5956:43,
5968:3, 5968:10
annexures [1] -
5915:6
answer [17] - 5887:24,
5893:45, 5927:10,
5932:42, 5943:26,
5945:7, 5947:2,
5950:5, 5950:43,
5957:20, 5965:41,
5968:29, 5968:42,
5969:45, 5971:35,
5982:41, 5983:35
answered [1] -
5950:37
answering [1] -
5984:20
anyway [4] - 5893:6,
5933:7, 5938:40,
5990:24
apart [4] - 5930:6,
5930:7, 5970:35,
5978:4
apologise [4] -
5981:13, 5992:5,
5999:47, 6000:14
apology [3] - 5991:39,
5991:45, 5991:46
appear [2] - 5888:42,
5997:13
appeared [1] -
5937:24
application [2] -
5964:18, 5967:16
applied [5] - 5933:41,
5934:11, 5983:11,
5998:10, 5999:4
applying [1] - 5934:21
appreciate [2] -
5902:42, 5920:18
appreciating [2] -
5920:26, 5950:3
approach [2] -
5929:20, 5966:28
appropriate [3] -
5982:19, 5982:23,
5985:23
approved [1] -
5971:42
April [3] - 5925:23,
5926:35, 5973:45
archive [1] - 5943:24
archived [2] -
5917:36, 5930:7
archives [1] - 5930:1

- Area** [1] - 5914:46
area [5] - 5917:32, 5918:3, 5918:22, 5950:1, 5963:43
areas [1] - 5910:11
argument [1] - 5888:12
arise [1] - 5887:44
arises [3] - 5890:8, 5892:9, 5989:8
arising [2] - 5934:36, 6002:47
arrangement [1] - 5899:19
arrangements [1] - 5893:27
arrests [1] - 5945:1
arrival [2] - 5950:35, 5970:12
arrived [1] - 5903:9, 5937:42, 5940:36, 5942:31, 5950:40, 5962:32, 5963:47, 5969:14, 5969:18, 5972:29, 5998:35
article [7] - 5897:24, 5897:27, 5897:31, 5898:13, 5898:16, 5937:9, 5937:14
articles [9] - 5897:22, 5898:28, 5898:38, 5901:10, 5901:15, 5901:21, 5901:25, 5937:17, 5937:24
ascertain [1] - 5918:16
ascertained [1] - 5916:47
ascertaining [1] - 5994:46
Ashwood [2] - 5922:43, 5923:1
aside [4] - 5891:33, 5962:8, 5984:12, 5984:24
assailants [4] - 5969:28, 5969:40, 5969:47, 5992:45
assault [1] - 5910:10
assaults [1] - 5917:37
assessed [1] - 5945:5
Assessment [1] - 5919:28
assessment [12] - 5901:4, 5901:34, 5901:35, 5903:30, 5945:38, 5971:17, 5985:36, 5989:18, 5989:28, 5991:8, 5993:3, 5998:2
assessments [1] - 5902:11, 5943:34, 5944:28, 5998:13
assigned [1] - 6001:6
assist [7] - 5910:28, 5913:31, 5913:34, 5915:11, 5922:6, 5934:22, 5956:15
assistance [1] - 5905:25
Assistant [1] - 5991:21
assisting [2] - 5886:14, 5888:6
Assisting [6] - 5885:26, 5885:27, 5885:28, 5890:6, 5890:8, 5933:47
associated [2] - 5965:21, 5996:18
associates [9] - 5910:9, 5917:31, 5950:16, 5965:17, 5967:42, 5978:33, 5994:16, 5994:22, 5999:26
association [1] - 5967:28
assume [8] - 5888:14, 5946:17, 5949:12, 5960:10, 5971:13, 5971:47, 5976:46, 5976:47
assumed [1] - 5976:40
assuming [7] - 5897:18, 5928:30, 5928:33, 5930:43, 5930:44, 5943:33, 5983:13
assumption [1] - 5977:4
AT [3] - 5892:30, 6003:12, 6003:13
attached [3] - 5930:8, 5930:10, 5953:34
attaching [1] - 5954:24
attack [1] - 6001:10
attacking [1] - 5967:29
attempt [4] - 5967:8, 5977:47, 5983:27, 5995:18
attempts [2] - 5908:10, 5974:38
attendance [2] - 6003:5
attending [1] - 5934:41
attention [6] - 5886:12, 5887:8, 5902:11, 5943:34, 5944:28, 5998:13
attitude [2] - 5888:24, 6002:32
August [4] - 5908:46, 5913:5, 5955:10
Australian [8] - 5896:44, 5897:15, 5923:23, 5923:40, 5925:13, 5932:29, 5933:12, 5936:42
authored [1] - 5987:26
automatically [1] - 5996:30
availability [1] - 5919:6
Available [1] - 5944:32
available [8] - 5894:25, 5894:26, 5911:20, 5930:2, 5969:37, 5998:4, 5998:31, 6002:6
avenues [2] - 5911:7, 5955:45
AVL [2] - 5889:6, 5891:9
avoid [1] - 5999:8
aware [76] - 5886:23, 5886:25, 5891:38, 5894:11, 5895:14, 5895:28, 5895:36, 5895:39, 5895:42, 5897:12, 5897:14, 5898:8, 5898:10, 5901:40, 5902:44, 5903:8, 5903:25, 5904:6, 5904:30, 5904:34, 5905:30, 5905:33, 5922:9, 5922:47, 5923:3, 5923:5, 5923:6, 5924:16, 5925:3, 5926:28, 5927:27, 5929:25, 5932:36, 5936:23, 5936:28, 5936:29, 5936:31, 5936:34, 5936:36, 5936:45, 5937:2, 5937:4, 5937:6, 5937:12, 5937:14, 5937:20, 5937:23, 5938:5, 5938:8, 5951:29, 5951:32, 5951:38, 5951:41, 5952:2, 5953:8, 5953:9, 5953:11, 5953:45, 5953:47, 5954:3, 5954:21, 5954:22, 5956:44, 5957:12, 5961:7, 5962:4, 5964:36, 5975:6, 5983:40, 5983:43, 5997:9, 5998:47, 6000:33, 6000:35
awareness [1] - 5903:23
-
- B**
-
- background** [8] - 5912:19, 5949:25, 5950:39, 5950:40, 5965:13, 5965:15, 5965:16, 5965:20
backgrounds [2] - 5965:35, 5965:43
Badlands [1] - 5895:12
balance [1] - 5916:45
Bar [1] - 5894:21
Barnes [7] - 5885:44, 5926:45, 5982:11, 5982:18, 5982:28, 5982:32, 5987:16
Barnes's [1] - 5982:15
based [14] - 5922:42, 5928:10, 5942:4, 5942:11, 5945:1, 5964:24, 5968:40, 5990:42, 5991:1, 5994:40, 5998:32, 5998:41, 5999:1, 6000:26
basis [5] - 5891:32, 5941:2, 5942:30, 5983:17, 5998:22
Beaches [1] - 5918:3
bear [4] - 5931:28, 5972:19, 5984:45, 5985:5
bearing [1] - 5926:44
bears [4] - 5895:47, 5908:42, 5908:45, 5913:21
became [12] - 5886:25, 5895:42, 5908:3, 5913:45, 5913:46, 5924:18, 5930:38, 5936:36, 5937:6, 5953:47, 5954:21
become [5] - 5886:22, 5894:26, 5924:8, 5937:23, 5956:44
becoming [2] - 5924:10, 5966:9
beg [2] - 5903:29, 5913:33
began [1] - 5896:21
beginning [5] - 5896:21, 5912:21, 5922:37, 5990:4, 5994:3
behalf [1] - 5981:32
bell [1] - 5944:40
below [2] - 5897:39, 6001:9
benefit [2] - 5889:15, 5932:45
best [10] - 5886:34, 5886:39, 5886:41, 5890:47, 5905:14, 5905:18, 5997:27, 5998:3, 5998:30, 6002:5
better [2] - 5949:16, 5962:37
between [12] - 5897:40, 5897:43, 5910:9, 5911:3, 5924:9, 5926:34, 5926:39, 5937:11, 5940:8, 5959:43, 5987:17, 6001:39
bias [4] - 5901:6, 5988:17, 5994:9, 6002:37
Bignell [1] - 5885:38
bit [7] - 5896:38, 5903:37, 5904:19, 5923:32, 5949:20, 5949:29, 5990:31
blank [1] - 5887:24
blind [1] - 5953:28
board [5] - 5889:29, 5951:6, 5972:28, 5976:3, 6001:16
Bondi [1] - 5895:12, 5895:13, 5910:11, 5925:38, 5925:43, 5926:20, 5927:21, 5936:27, 5937:11, 5951:25
book [1] - 5895:12
books [2] - 5923:46, 5940:22
bordering [1] - 5904:1
bottle [2] - 5944:7, 5945:29
bottom [13] - 5915:13, 5915:28, 5919:35, 5919:36, 5922:37, 5927:11, 5950:47, 5956:13, 5957:34, 5978:19, 5978:24, 5994:2, 5994:15
Bowditch [1] - 5909:18

box [4] - 5889:33, 5932:2, 5961:36, 5988:25	5974:1	5944:18, 5944:29, 5944:34, 5944:40, 5945:8, 5945:32, 5945:33, 5945:34, 5945:36, 5945:43, 5946:3, 5946:7, 5946:12, 5946:25, 5946:26, 5946:30, 5946:40, 5947:6, 5949:43, 5951:43, 5951:45, 5952:3, 5952:17, 5955:3, 5955:19, 5968:16, 5969:4, 5969:12, 5969:14, 5969:18, 5972:37, 5977:11, 5980:35, 5984:14, 5984:22, 5986:36, 5987:15, 5994:43, 5995:40, 5996:21, 5997:30, 5998:28	cc-ed [1] - 5953:28	5971:36, 5976:1, 5976:32
boxes [1] - 5943:24	canvassing [1] - 5949:47	cellar [1] - 5944:8	central [1] - 5886:9	checked [10] - 5971:10, 5971:25, 5975:20, 5976:23, 5977:5, 5977:15, 5977:19, 5977:21, 5977:25, 5999:36
Branch [2] - 5956:38, 5961:16	capacity [1] - 5940:2	certain [2] - 5912:11, 5916:21	certainly [9] - 5891:21, 5923:45, 5929:3, 5931:1, 5968:4, 5970:36, 5971:46, 5992:32, 6002:32	checking [1] - 5946:4
branch [2] - 5957:18, 5961:19	captured [1] - 5888:12	chain [2] - 5922:18, 5991:35	chair [2] - 5900:15, 5940:5	checks [1] - 5931:17
brand [1] - 5945:18	capturing [1] - 5961:45	certified [1] - 5955:11	chambers [1] - 5893:31	Chief [12] - 5923:29, 5923:39, 5933:31, 5936:1, 5936:44, 5938:22, 5947:13, 5957:14, 5957:21, 5958:1, 5991:16, 5996:4
break [1] - 5891:43	carefully [1] - 5952:21	certifies [1] - 5911:17	chance [5] - 5892:20, 5959:46, 5966:19, 5985:29, 5986:1	chronological [8] - 5928:10, 5928:15, 5941:27, 5942:4, 5942:11, 5942:23, 5942:42, 5943:18
brief [1] - 5964:38	Caroline [1] - 5923:33	charge [4] - 5938:22, 5938:23, 5947:12, 5951:7	charge [5] - 5890:11, 5890:21, 5966:28, 5970:4	chronologically [1] - 5943:19
briefly [4] - 5893:11, 5895:8, 5924:36, 5953:21	carried [1] - 5915:45	Charge [3] - 5948:37, 5951:14, 5963:13	charged [2] - 5918:2, 5918:21	Chronology [1] - 5914:40
bring [1] - 5965:7	Case [6] - 5896:5, 5909:3, 5909:6, 5912:8, 5912:42, 5920:33	Charles [1] - 5899:30	chat [1] - 5905:44	circumstances [2] - 5889:26, 5925:28
broad [2] - 5890:4, 5890:13	case [137] - 5887:47, 5889:18, 5890:8, 5894:4, 5895:43, 5896:2, 5896:32, 5897:18, 5902:30, 5902:36, 5902:45, 5903:9, 5905:22, 5906:23, 5906:24, 5906:31, 5906:35, 5906:44, 5906:47, 5907:8, 5907:29, 5907:33, 5907:35, 5909:7, 5909:8, 5909:10, 5909:16, 5910:29, 5910:32, 5911:31, 5911:34, 5911:37, 5911:40, 5912:20, 5912:21, 5912:28, 5912:32, 5912:41, 5912:44, 5914:24, 5916:19, 5916:21, 5916:32, 5916:35, 5916:39, 5919:32, 5920:4, 5920:11, 5920:30, 5920:38, 5920:40, 5921:6, 5921:8, 5921:25, 5921:46, 5921:47, 5923:2, 5923:42, 5923:46, 5923:47, 5924:7, 5924:16, 5924:25, 5924:27, 5926:1, 5926:12, 5928:18, 5928:20, 5928:27, 5928:29, 5928:37, 5929:9, 5932:36, 5934:2, 5934:9, 5934:16, 5934:17, 5934:24, 5936:21, 5936:43, 5937:11, 5939:6, 5941:21, 5941:28, 5942:26, 5942:27, 5942:32, 5942:42, 5943:33, 5943:40, 5944:11,	CASE [1] - 5892:29	charge [3] - 5927:4, 5942:10, 5942:16	claiming [1] - 5901:26
broadcast [3] - 5897:16, 5923:40, 5936:43	cases [56] - 5889:47, 5898:32, 5899:40, 5901:31, 5903:16, 5903:25, 5906:19, 5907:24, 5908:22, 5910:4, 5912:33, 5925:10, 5926:21, 5927:45, 5928:3, 5928:9, 5937:12, 5940:16, 5940:22, 5941:1, 5941:4, 5941:25, 5941:29, 5941:44, 5942:3, 5942:17, 5942:20, 5942:29, 5942:41, 5942:44, 5943:12, 5943:45, 5944:4, 5944:9, 5944:17, 5945:28, 5945:33, 5946:17, 5947:10, 5949:2, 5949:25, 5956:15, 5959:6, 5959:15, 5959:21, 5959:44, 5969:21, 5984:24, 5994:37, 5995:40, 5997:37, 5997:41, 6000:34, 6000:42, 6001:2, 6002:8	Chargé [2] - 5918:2, 5918:21	Chebl [39] - 5889:16, 5948:45, 5952:26, 5952:38, 5953:27, 5961:29, 5962:13, 5963:19, 5963:33, 5967:1, 5971:10, 5971:26, 5971:36, 5975:14, 5975:20, 5975:28, 5977:4, 5977:10, 5977:13, 5977:21, 5978:46, 5979:24, 5979:29, 5980:2, 5981:41, 5982:38, 5987:26, 5987:30, 5987:31, 5987:34, 5987:43, 5989:29, 5989:38, 5991:1, 5996:45, 5997:13, 5997:19, 5998:32, 6002:35	claims [7] - 5898:30, 5898:47, 5900:7, 5900:23, 5904:10, 5937:18, 6001:41
broadly [2] - 5893:36, 5893:39	cases" [1] - 5919:42	cheat [1] - 5905:44	Chebl's [4] - 5970:37, 5990:27, 5991:3, 5997:5	clarification [1] - 5950:11
brought [3] - 5887:7, 5895:33, 5933:21	cast [1] - 5998:12	categories [2] - 5941:30, 5941:32	check [4] - 5952:22,	clarified [1] - 5889:18
Brown [17] - 5885:44, 5889:7, 5889:8, 5890:22, 5914:5, 5914:19, 5918:41, 5948:38, 5951:35, 5953:9, 5953:21, 5954:24, 5966:29, 5996:7, 5996:47	categories [2] - 5941:30, 5941:32	categorised [1] - 5984:25		clear [6] - 5891:23, 5908:3, 5945:25, 5957:34, 5966:33, 5998:20
build [1] - 5985:7	causing [1] - 5902:36	cc [1] - 5953:28		client [3] - 5888:3, 5888:26, 5889:29
build [2] - 5941:10, 5941:11				client's [1] - 5888:24
building [2] - 5899:20, 5931:16				close [5] - 5898:37, 5919:42, 5921:6, 5952:8, 5978:15
bulk [1] - 5944:3				closed [9] - 5920:41, 5921:8, 5923:46, 5924:17, 5924:19, 5924:25, 5924:27, 5934:17, 5934:21
bullet [3] - 5949:44, 5973:40, 5973:43				coincide [1] - 5993:34
bundle [5] - 5887:11, 5887:17, 5891:4, 5891:25, 5953:15				cold [4] - 5912:32,
BY [6] - 5892:28, 5894:40, 5932:26, 5935:13, 5966:22, 5995:24				

C

5925:10, 5946:17, 5946:46
column [1] - 5944:32
combination [1] - 5980:3
combinations [1] - 5890:45
coming [5] - 5926:29, 5942:37, 5943:13, 5946:30, 5982:18
Command [2] - 5914:46, 5991:22
commander [2] - 5939:38, 5939:40
Commander [4] - 5939:42, 5981:46, 5991:12, 5991:21
commanded [1] - 5915:8
commencing [1] - 5914:46
commended [1] - 5988:41
comment [11] - 5902:11, 5920:29, 5920:42, 5923:44, 5924:7, 5924:30, 5928:28, 5929:15, 5929:24, 5929:25, 5976:44
comments [8] - 5922:6, 5971:4, 5972:47, 5973:28, 5976:7, 5976:9, 6000:14, 6000:15
COMMISSION [1] - 6003:12
Commission [7] - 5885:7, 5889:22, 5900:40, 5927:38, 5936:37, 5953:16, 5966:28
COMMISSIONER [106] - 5886:1, 5886:22, 5886:29, 5886:34, 5886:39, 5886:43, 5886:47, 5887:7, 5887:13, 5887:21, 5887:29, 5887:43, 5888:2, 5888:23, 5888:33, 5888:37, 5888:46, 5889:39, 5890:35, 5891:15, 5891:29, 5891:41, 5891:45, 5892:6, 5892:13, 5892:18, 5892:43, 5893:3, 5893:11, 5893:18, 5893:31, 5893:39, 5893:44, 5894:15, 5894:20, 5894:30, 5894:36, 5901:44, 5929:29, 5929:34, 5929:40, 5930:6, 5930:12, 5930:23, 5930:28, 5931:1, 5931:7, 5931:20, 5931:32, 5931:42, 5932:1, 5932:7, 5932:15, 5932:20, 5932:31, 5932:35, 5932:40, 5933:1, 5933:5, 5933:19, 5934:30, 5934:34, 5934:40, 5935:2, 5935:9, 5958:9, 5958:16, 5958:23, 5958:33, 5958:39, 5958:46, 5961:4, 5961:24, 5965:7, 5966:1, 5966:6, 5966:14, 5966:18, 5966:25, 5968:28, 5968:35, 5970:3, 5970:22, 5973:25, 5973:31, 5982:9, 5983:4, 5987:2, 5987:20, 5989:5, 5990:7, 5990:16, 5996:17, 5996:32, 5998:7, 5998:19, 5999:34, 5999:41, 6000:12, 6001:14, 6001:31, 6002:25, 6002:42, 6002:46, 6003:4, 6003:9
Commissioner [27] - 5885:13, 5886:3, 5888:31, 5888:35, 5889:37, 5891:13, 5891:21, 5891:39, 5892:4, 5892:11, 5892:20, 5892:32, 5892:37, 5894:8, 5894:28, 5894:34, 5922:14, 5929:27, 5930:30, 5930:40, 5935:6, 5958:25, 5966:3, 5966:16, 5989:1, 5991:21, 6003:2
common [3] - 5995:36, 5995:38, 5997:31
company [1] - 6001:34
complete [5] - 5890:35, 5911:42, 5911:45, 5912:46, 5914:31
completed [11] - 5889:46, 5908:27, 5911:29, 5911:41, 5915:20, 5921:29, 5924:21, 5924:24, 5927:37, 5928:37, 5955:6
completely [2] - 5975:28, 5994:39
completion [2] - 5913:34, 5914:32
complicated [1] - 5890:21
comprehensive [1] - 5988:37
comprises [1] - 5901:35
computer [1] - 5907:20
conceded [1] - 5988:26
concentrate [1] - 5977:33
conceptually [1] - 5960:38
concern [8] - 5925:14, 5958:13, 5958:16, 5958:25, 5958:27, 5958:29, 5958:40, 5999:36
concerned [3] - 5890:39, 5959:30, 5994:43
concerning [1] - 5992:17
conclude [1] - 5929:30
conclusion [2] - 5974:16, 5984:18
conclusions [3] - 5916:20, 5970:46, 5988:6
concrete [1] - 5970:8
conduct [7] - 5905:9, 5906:44, 5958:31, 5965:10, 5996:13, 5996:35, 5998:29
conducted [6] - 5918:40, 5921:46, 5922:43, 5988:36, 5997:31, 5997:33
conducts [1] - 5901:34
confidential [5] - 5966:4, 5966:6, 5966:10, 5966:12, 5966:20
CONFIDENTIAL [1] - 5966:22
confidentiality [1] - 5893:6
confirm [5] - 5889:14, 5891:36, 5891:43, 5891:45
confirmation [2] - 5988:17, 5994:8
confirmed [1] - 5887:41
conjunction [1] - 5907:40
connection [8] - 5913:1, 5925:38, 5959:18, 5959:19, 5996:19, 5997:12, 5997:41, 6000:42
Connie [2] - 5914:6, 5914:19
consequence [1] - 5931:13
consider [2] - 5892:35, 5997:37
consideration [7] - 5917:25, 5917:28, 5917:46, 5920:20, 5981:3, 5999:21, 5999:25
considerations [1] - 5997:25
considered [4] - 5918:19, 5981:29, 5996:45, 6000:26
considering [3] - 5893:1, 5926:45, 5993:28
Constable [12] - 5948:45, 5952:26, 5952:37, 5955:6, 5956:45, 5957:8, 5957:27, 5996:45, 5997:5, 5997:13, 5997:18, 6002:35
constables [2] - 5938:14, 5938:39
constantly [1] - 5893:46
constraints [1] - 5890:1
contact [4] - 5980:43, 5981:1, 5981:5, 5982:9
contacted [1] - 5982:29
contained [1] - 5894:12
contains [2] - 5893:15, 5991:26
contemplate [1] - 5982:26
content [1] - 5897:8
contents [4] - 5895:5, 5897:7, 5935:23, 5987:29
context [3] - 5907:2, 5931:29, 5951:4
continuing [1] - 5943:44
contrary [2] - 5888:13, 5998:8
control [2] - 5887:33, 5889:34
convention [2] - 5892:39, 5894:21
conversations [2] - 5904:31, 5924:30
convicted [1] - 5910:20
Cook [2] - 5940:9, 5991:12
coordinating [1] - 5947:14
coordination [1] - 6001:39
Coordinator [3] - 5914:6, 5951:5, 5987:11
coordinator [15] - 5908:46, 5914:2, 5914:10, 5914:14, 5925:16, 5951:1, 5951:22, 5967:6, 5967:8, 5984:41, 5985:35, 5987:38, 5995:36, 5997:26, 6001:7
Coordinators [3] - 5905:1, 5905:4, 5938:7
coordinators [2] - 5906:13, 5995:32
copied [2] - 5923:17, 5953:29
COPS [1] - 5916:32
copy [4] - 5913:16, 5913:44, 5914:4, 5921:33
corner [2] - 5990:17, 6000:12
Coroner [49] - 5895:31, 5898:3, 5912:22, 5923:44, 5926:44, 5936:12, 5940:34, 5946:16, 5951:43, 5962:40, 5963:15, 5963:16, 5969:22, 5975:33, 5975:34, 5975:41, 5975:43, 5976:10, 5980:18, 5980:28, 5981:20, 5981:21, 5981:25, 5981:30,

5981:31, 5981:36,
5982:10, 5982:15,
5982:17, 5982:20,
5982:24, 5982:27,
5982:29, 5983:12,
5983:28, 5985:28,
5986:32, 5986:36,
5988:21, 5992:18,
5993:14, 5993:15,
5993:28, 5993:34,
5993:41, 5994:29,
6001:11, 6001:21,
6002:13
Coroner's [5] -
5980:43, 5982:16,
5984:6, 5994:9,
5994:38
Coroners [1] - 5981:2
coronial [4] - 5912:29,
5927:4, 5951:46,
5964:40
Coronial [1] - 5979:36
corpse [1] - 5968:25
correct [70] - 5894:46,
5895:5, 5895:23,
5895:34, 5895:44,
5896:16, 5896:19,
5896:27, 5900:38,
5902:19, 5910:22,
5918:37, 5919:47,
5920:1, 5922:25,
5924:6, 5925:1,
5926:9, 5934:14,
5935:17, 5935:23,
5935:28, 5935:35,
5935:39, 5935:45,
5936:2, 5938:33,
5938:43, 5939:43,
5940:5, 5940:6,
5940:23, 5941:27,
5942:21, 5948:12,
5950:43, 5955:41,
5959:24, 5961:8,
5964:44, 5965:4,
5965:33, 5965:46,
5967:30, 5967:31,
5968:11, 5968:45,
5969:25, 5969:29,
5971:10, 5977:6,
5977:34, 5979:25,
5982:44, 5983:19,
5986:31, 5988:8,
5988:11, 5988:12,
5988:22, 5990:29,
5992:22, 5995:6,
5995:42, 5996:11,
5996:15, 5997:34,
5999:23, 6001:3,
6002:18
corrected [2] -
5927:34, 5927:36
correction [1] -
5914:25
correctly [2] -
5921:11, 5994:20
correspondence [1] -
5915:5
Cotter [1] - 5922:20
counsel [5] - 5886:34,
5887:21, 5887:32,
5889:28, 5890:14
Counsel [6] - 5885:26,
5885:27, 5885:28,
5890:5, 5890:8,
5933:47
counting [2] -
5966:46, 5966:47
couple [13] - 5901:38,
5904:38, 5907:28,
5914:38, 5916:24,
5917:39, 5925:23,
5926:39, 5941:42,
5942:29, 5959:3,
5959:6, 5972:4
course [18] - 5887:21,
5888:28, 5888:47,
5890:5, 5890:43,
5916:47, 5925:36,
5930:21, 5930:44,
5935:2, 5935:47,
5940:8, 5946:12,
5953:18, 5970:42,
5971:1, 5971:17,
5989:15
court [3] - 5964:37,
5964:38, 5998:46
Court [1] - 5941:17
courtesy [3] -
5888:47, 5894:5,
5932:35
courtroom [1] -
5893:44
covered [1] - 5891:33
covert [7] - 5910:2,
5911:4, 5918:6,
5918:27, 5920:22,
5954:20, 5956:3
cracking [1] - 5954:39
cracks [1] - 5987:17
crime [3] - 5898:15,
5903:27, 5968:24
Crime [3] - 5987:12,
5991:17, 5991:22
crimes [6] - 5885:9,
5917:32, 5927:21,
5999:18, 6001:35,
6001:42
criteria [4] - 5919:5,
5956:41, 5957:17,
5961:17
criterion [2] - 5919:15,
5919:18
critical [2] - 5971:5,
6001:21
criticising [2] -
5970:44, 5971:2
criticism [2] -
5947:37, 5983:18
criticisms [1] -
5988:31
cross [1] - 5890:1
cross-examination [1]
- 5890:1
current [2] - 5905:32,
5973:46
Cushman [2] -
5910:15, 5956:8
cut [2] - 5990:19,
5990:21

D

damning [3] -
5991:26, 5991:30,
5991:34
Darien [1] - 5885:43
data [2] - 5907:24,
5907:32
database [1] - 5951:16
date [17] - 5889:22,
5895:47, 5896:23,
5896:40, 5905:41,
5913:21, 5913:31,
5913:34, 5923:5,
5924:24, 5928:10,
5931:29, 5941:27,
5942:4, 5942:12,
5948:33, 5953:23
dated [7] - 5895:1,
5900:31, 5900:32,
5931:27, 5935:19,
5948:42, 5949:9
dates [5] - 5895:8,
5895:25, 5896:36,
5896:42, 5948:42
days [6] - 5889:47,
5898:17, 5904:39,
5904:41, 5926:39,
5972:29
DCI [24] - 5900:5,
5900:37, 5900:42,
5902:45, 5918:41,
5922:30, 5925:23,
5937:31, 5937:36,
5937:41, 5938:37,
5948:34, 5951:1,
5951:31, 5951:44,
5955:11, 5955:14,
5960:22, 5960:26,
5960:40, 5962:18
DCIs [1] - 5904:43
de [1] - 5885:27
dead [3] - 5897:26,
5992:34, 5992:35
deal [7] - 5888:46,
5889:2, 5892:9,
5893:39, 5894:1,
5909:44, 5911:31
dealt [1] - 5941:26
death [25] - 5895:13,
5895:27, 5897:41,
5902:24, 5902:36,
5917:8, 5918:4,
5931:26, 5933:45,
5941:27, 5946:13,
5951:29, 5965:23,
5968:38, 5974:1,
5974:3, 5974:20,
5977:32, 5979:17,
5992:36, 5992:43,
5993:6, 6000:24,
6002:2
deaths [23] - 5896:6,
5898:4, 5898:18,
5908:2, 5925:38,
5925:39, 5925:44,
5927:29, 5936:27,
5937:19, 5951:25,
5955:4, 5967:23,
5969:23, 5969:32,
5981:5, 5986:31,
5992:45, 5994:37,
5997:21, 5997:42,
6001:41
debate [1] - 5931:34
decades [4] - 5943:30,
5943:31, 5943:47,
5944:1
deceased [1] -
5902:34
deceased's [1] -
5967:42
December [2] -
5889:23, 5946:13
decide [1] - 5952:12
decided [2] - 5965:41,
5973:47
deciding [1] - 5997:11
decision [12] - 5903:5,
5922:41, 5923:7,
5963:45, 5964:6,
5964:11, 5967:24,
5967:33, 5968:9,
5997:5, 5998:8,
5998:32
decisions [6] -
5906:24, 5920:42,
5921:1, 5923:11,
5923:12, 5952:13
declined [1] - 5922:32
deduced [1] - 5886:13
deeper [1] - 5917:17
deeply [1] - 6002:12
defence [1] - 5947:34
definitely [1] -
6001:44
deliberately [8] -
5966:30, 5967:22,
5967:34, 5968:9,
5988:20, 5997:19,
6002:30, 6002:31
deploy [1] - 5957:18
deployment [3] -
5956:39, 5959:15,
5961:17
Derek [1] - 5915:21
describe [1] - 5909:39
describes [1] -
5955:35
describing [3] -
5910:7, 5946:23,
6002:26
designed [1] -
5929:21
despite [2] - 5933:47,
5994:38
destroyed [1] -
5956:14
destruction [1] -
5910:26
detail [1] - 5905:15
detailed [6] - 5950:28,
5950:33, 5950:37,
5953:2, 5964:40,
5980:39
details [1] - 5946:25
detained [1] - 5931:5
detective [1] - 5997:13
Detective [54] -
5885:37, 5885:38,
5885:44, 5885:46,
5894:45, 5907:12,
5909:17, 5909:34,
5914:5, 5914:45,
5915:8, 5916:22,
5922:20, 5923:28,
5923:39, 5933:31,
5936:1, 5936:44,
5938:22, 5947:13,
5948:38, 5948:44,
5948:45, 5949:39,
5951:34, 5952:25,
5952:26, 5952:33,
5952:37, 5954:8,
5955:6, 5955:36,
5956:32, 5956:44,
5957:2, 5957:7,
5957:14, 5957:21,
5957:27, 5958:1,
5963:13, 5978:31,

- 5979:37, 5991:4,
5991:16, 5996:4,
5996:7, 5996:45,
5996:47, 5997:5,
5997:18, 5997:19,
6002:34, 6002:35
- detectives** [1] -
5938:15
- determination** [3] -
5998:33, 5998:37,
5998:40
- determine** [7] -
5890:43, 5901:6,
5917:30, 5928:38,
5946:39, 5997:26,
6000:23
- determined** [5] -
5898:3, 5974:2,
5974:13, 5974:20,
5992:37
- determining** [1] -
5917:8
- develop** [2] - 5917:15,
5940:38
- developed** [5] -
5950:29, 5950:38,
5953:3, 5980:8,
5980:17
- developing** [2] -
5917:6, 5980:21
- development** [1] -
5944:36
- devices** [6] - 5910:3,
5956:4, 5964:17,
5964:18, 5964:19,
5964:20
- Dickinson** [3] -
5940:4, 5978:11,
5982:1
- die** [1] - 5998:12
- died** [4] - 5917:39,
5995:5, 5995:7,
5995:10
- difference** [1] - 5962:2
- different** [18] -
5899:41, 5916:4,
5916:27, 5916:36,
5916:38, 5916:42,
5936:13, 5938:36,
5940:46, 5941:19,
5942:7, 5959:31,
5961:14, 5962:26,
5975:28, 5993:37,
5993:40, 5994:23
- differently** [1] -
5905:42
- difficult** [3] - 5968:40,
5995:7, 5995:9
- difficulty** [5] -
5892:36, 5902:3,
5958:28, 5959:2,
5999:1
- dig** [1] - 5917:16
- digging** [1] - 5898:17
- digits** [4] - 5989:42,
5990:11, 5990:13,
5991:7
- digressing** [1] -
5951:24
- diligent** [1] - 5988:37
- direct** [1] - 5968:15
- directed** [4] - 5911:13,
6001:1, 6001:40,
6002:5
- directing** [2] -
5886:12, 5947:37
- direction** [3] -
5947:37, 5970:4,
6001:27
- directions** [1] - 5996:1
- Director** [2] - 5885:29,
5991:17
- disagree** [1] - 5985:17
- disagreed** [1] -
5962:19
- disappearance** [6] -
5946:28, 5965:23,
5977:41, 5993:6,
5993:30, 6002:2
- disappeared** [1] -
5995:13
- discern** [1] - 6002:7
- disclose** [2] - 5958:5,
5975:33
- disclosing** [1] -
5957:45
- discover** [2] -
5887:37, 5893:3
- discovered** [1] -
5888:8
- discrediting** [1] -
6001:41
- discretion** [1] -
5925:16
- discuss** [6] - 5939:24,
5963:19, 5963:23,
5981:35, 5985:23,
5987:42
- discussed** [4] -
5929:4, 5973:47,
5981:38, 6001:5
- discussion** [1] -
5898:39
- disengaged** [1] -
5909:24
- dismay** [1] - 5922:30
- dismissed** [1] -
5909:22
- disruptive** [1] - 5888:4
- distinct** [1] - 5960:7
- distributed** [1] -
5890:38
- diverted** [1] - 5998:13
- divided** [1] - 5941:30
- DNA** [5] - 5944:25,
5944:37, 5945:9,
5945:42, 5978:4
- document** [80] -
5886:8, 5886:12,
5886:23, 5886:32,
5887:3, 5887:4,
5887:10, 5887:40,
5888:15, 5891:23,
5891:24, 5891:26,
5891:32, 5891:34,
5891:38, 5892:21,
5893:14, 5895:46,
5896:1, 5900:29,
5900:31, 5901:34,
5901:45, 5902:1,
5902:5, 5902:10,
5902:42, 5903:1,
5903:13, 5903:41,
5904:20, 5907:41,
5908:27, 5909:6,
5912:7, 5912:38,
5912:39, 5912:43,
5912:46, 5913:28,
5915:4, 5916:45,
5918:13, 5918:36,
5918:46, 5918:47,
5919:1, 5919:47,
5920:18, 5920:23,
5920:26, 5920:29,
5920:38, 5922:5,
5925:44, 5926:32,
5927:33, 5930:35,
5930:37, 5930:43,
5931:12, 5931:18,
5931:28, 5931:34,
5948:27, 5948:28,
5971:33, 5973:18,
5974:7, 5985:31,
5991:2, 5991:7,
5991:25, 5994:1,
5999:9, 5999:34,
5999:46, 6000:2,
6001:17, 6001:24
- DOCUMENT** [1] -
5892:28
- document's** [2] -
5886:25, 5912:45
- documentation** [2] -
5891:7, 5911:20
- documented** [2] -
5907:13, 5907:34
- documents** [37] -
5887:14, 5887:18,
5887:22, 5887:34,
5887:35, 5888:8,
5888:25, 5889:32,
5891:22, 5893:4,
5893:12, 5893:16,
5893:26, 5893:29,
5893:37, 5893:47,
5894:2, 5894:3,
5894:9, 5894:25,
5907:28, 5907:34,
5913:3, 5913:12,
5915:4, 5916:42,
5929:29, 5929:34,
5929:43, 5930:30,
5949:1, 5952:16,
5952:17, 5972:4,
5984:21, 5987:23
- Doherty** [4] - 5914:45,
5915:8, 5916:22,
5916:33
- domestic** [3] -
5968:17, 5972:40,
5973:6
- done** [28] - 5894:20,
5907:40, 5907:44,
5908:18, 5918:26,
5925:43, 5925:47,
5929:2, 5933:6,
5945:38, 5950:4,
5950:14, 5950:32,
5950:43, 5952:12,
5957:11, 5968:37,
5969:8, 5971:43,
5971:46, 5976:3,
5976:40, 5980:6,
5980:22, 5984:11,
5984:46, 5985:6,
5994:20
- doubt** [3] - 5910:31,
5963:34, 5971:20
- down** [10] - 5888:29,
5889:39, 5914:41,
5919:14, 5919:35,
5923:28, 5927:11,
5955:28, 5978:18,
5993:4
- dozen** [2] - 5938:42,
5966:42
- Dr** [1] - 5980:26
- draft** [3] - 5930:37,
5952:20, 5987:42
- drafted** [2] - 5971:8,
5971:37
- drawn** [1] - 5902:11
- driving** [1] - 5960:10
- DS** [3] - 5918:41,
5918:42
- DSC** [3] - 5955:15,
5962:18, 5989:29
- due** [13] - 5888:28,
5888:47, 5910:26,
5910:35, 5910:47,
5929:19, 5930:44,
5940:8, 5956:18,
5957:35, 5959:41,
5971:17, 5982:11
- Dufrou** [1] - 5980:27
- during** [3] - 5890:43,
5936:4, 5955:19
- duties** [2] - 5902:9,
5997:25
-
- ## E
-
- e@gle.i** [6] - 5928:44,
5951:16, 5971:31,
5971:42, 5995:28,
5995:37
- early** [8] - 5886:47,
5888:7, 5889:43,
5896:43, 5914:41,
5943:34, 5966:31,
5967:34
- Eastern** [1] - 5897:42
- ed** [1] - 5953:28
- effect** [12] - 5888:21,
5888:23, 5895:32,
5900:6, 5904:22,
5932:42, 5940:21,
5973:26, 5981:12,
5981:15, 5987:27,
5987:42
- effective** [1] - 5998:34
- effort** [1] - 5889:27
- efforts** [1] - 5968:15
- eg** [2] - 5944:37,
5963:24
- egg** [1] - 5983:10
- eight** [3] - 5904:23,
5948:14, 5948:43
- either** [21] - 5890:18,
5893:27, 5893:47,
5897:31, 5898:19,
5898:23, 5898:26,
5902:10, 5904:9,
5913:12, 5914:5,
5940:36, 5948:23,
5955:35, 5970:25,
5971:24, 5977:22,
5977:31, 5980:32,
5987:43, 5997:18
- elicit** [1] - 6000:47
- elsewhere** [1] -
5935:37
- email** [9] - 5894:21,
5922:19, 5953:13,
5953:27, 5954:38,
5978:10, 5978:11,
5981:47, 5982:4
- emails** [3] - 5922:17,
5923:17, 5923:19
- emanating** [1] -

5895:47	equals [1] - 5938:31	5962:18, 5966:33	5920:36	factor [2] - 5993:28, 5998:45
embark [1] - 5911:33	era [2] - 5936:7, 5940:17	exaggerated [3] - 5899:3, 5900:8, 6001:35	expected [3] - 5914:14, 5952:7, 5952:21	factors [4] - 5906:33, 5925:7, 5957:37, 5998:44
embarrassment [1] - 5983:14	errors [1] - 5914:25	exaggeration [2] - 5903:46, 5904:25	expecting [1] - 5920:19	facts [1] - 5998:8
Emma [6] - 5889:5, 5925:24, 5926:34, 5926:40, 5926:43, 5927:2	escapes [1] - 5941:34	examination [2] - 5890:1, 5890:6	experience [2] - 5961:10, 6000:41	failed [1] - 5975:32
Emmett [1] - 5890:8	especially [1] - 5957:33	example [8] - 5890:17, 5890:22, 5918:47, 5944:34, 5952:6, 5981:44, 5996:1, 5998:29	experienced [4] - 5921:4, 5952:34, 5952:38, 5952:44	failure [2] - 5993:25, 6002:16
enable [2] - 5918:6, 5918:27	essence [1] - 6000:29	excuse [5] - 5893:18, 5930:16, 5931:33, 5932:1, 5968:24, 5982:36	explain [1] - 5977:40	fair [8] - 5902:12, 5902:17, 5905:21, 5918:12, 5958:33, 5986:13, 5986:17, 5986:20
encountered [1] - 5908:8	essentially [4] - 5922:32, 5924:37, 5954:10, 5992:41	exceptional [1] - 5889:25	explained [3] - 5918:35, 5960:30, 5962:24	faith [2] - 5997:6, 5997:7
end [13] - 5889:19, 5889:22, 5896:26, 5907:36, 5913:29, 5924:36, 5933:41, 5967:5, 5978:15, 5978:18, 5978:28, 5983:21, 5994:27	established [3] - 5937:2, 5940:29, 5998:10	excuse [5] - 5893:18, 5930:16, 5931:33, 5932:1, 5968:24, 5982:36	explaining [1] - 5947:38	falling [1] - 5888:18
end" [1] - 5933:36	event [6] - 5890:46, 5916:32, 5931:33, 5932:1, 5968:24, 5982:36	excused [1] - 5894:23	explanation [4] - 5968:30, 5986:47, 5987:2, 5987:6	false [1] - 5987:33
ending [2] - 5972:17, 5973:34	events [1] - 5895:26	exercise [9] - 5896:18, 5927:38, 5939:14, 5949:40, 5951:25, 5951:28, 5951:43, 5957:11, 5998:3	explore [3] - 5995:5, 5995:7, 5995:10	familiar [7] - 5891:5, 5893:33, 5893:36, 5897:23, 5907:1, 5921:19, 5956:9
Ending [1] - 5972:25	Eventually [1] - 5908:27	EXHIBIT [2] - 5892:28, 5966:22	explored [2] - 5920:13, 5978:34	families [4] - 5983:31, 5983:40, 5984:30, 5984:37
endorse [1] - 5904:26	evidence [56] - 5886:3, 5887:19, 5889:6, 5889:17, 5891:9, 5900:40, 5903:4, 5906:46, 5910:28, 5915:24, 5915:31, 5915:33, 5916:3, 5922:9, 5926:23, 5928:47, 5934:42, 5936:22, 5940:20, 5940:44, 5942:37, 5949:10, 5955:45, 5956:14, 5956:32, 5957:2, 5961:41, 5962:4, 5964:36, 5964:38, 5966:38, 5973:47, 5974:2, 5974:14, 5974:24, 5974:27, 5974:33, 5974:36, 5974:41, 5975:11, 5976:3, 5976:10, 5977:14, 5977:41, 5981:20, 5981:30, 5983:43, 5988:20, 5994:44, 5996:44, 5998:11, 5998:14, 5998:19, 5998:27, 5998:45	exercises [1] - 5998:30	express [5] - 5904:14, 5921:13, 5969:22, 5984:7, 5992:42	family [4] - 5897:26, 5922:29, 5925:14
endorsed [3] - 5904:22, 5971:10, 5971:41	endorsement [1] - 5971:32	exhibit [7] - 5892:24, 5933:17, 5966:4, 5966:7, 5966:10, 5966:12, 5966:20	expressed [4] - 5918:12, 5957:15, 5957:24, 5994:29	far [16] - 5889:16, 5903:8, 5905:4, 5912:2, 5913:42, 5914:14, 5915:3, 5924:16, 5946:47, 5947:21, 5948:27, 5967:10, 5972:31, 5983:13, 5994:43, 5998:11
endorsing [3] - 5952:22, 5985:39, 5985:40	energy [1] - 5965:42	EXHIBIT [2] - 5892:28, 5966:22	expressing [2] - 5898:46, 5922:30	feasible [4] - 5964:25, 5964:28, 5964:29, 5964:31
engage [2] - 5910:39, 5956:21	engaged [3] - 5899:39, 5900:13, 5952:38	exhibits [22] - 5908:3, 5908:7, 5908:9, 5908:11, 5908:15, 5908:17, 5910:27, 5944:10, 5944:17, 5944:20, 5944:22, 5944:24, 5944:32, 5944:35, 5944:40, 5944:43, 5945:1, 5945:8, 5956:13, 5968:25, 5995:2	expression [6] - 5921:18, 5921:19, 5921:23, 5941:7, 5941:14, 5992:46	February [19] - 5896:43, 5897:10, 5897:25, 5922:24, 5923:5, 5923:24, 5923:40, 5924:6, 5924:38, 5925:13, 5926:11, 5936:42, 5937:1, 5937:9, 5953:22, 5953:23, 5954:24, 5966:30
engaged [3] - 5899:39, 5900:13, 5952:38	enormously [1] - 5943:27	exist [2] - 5931:35, 6000:24	expressions [1] - 5922:11	feed [1] - 5951:22
ensure [5] - 5951:14, 5951:20, 5976:29, 5976:31, 5983:28	ensure [5] - 5951:14, 5951:20, 5976:29, 5976:31, 5983:28	existed [2] - 5886:15, 5901:6	extended [2] - 5889:42, 5889:44	fell [3] - 5912:11, 5931:21, 5987:17
enter [1] - 5976:36	entered [2] - 5928:43, 5929:10	existence [8] - 5886:26, 5919:14, 5940:37, 5943:13, 5943:17, 5943:35, 5949:11, 5949:16	extensive [1] - 5950:29	female [1] - 5991:18
entered [2] - 5928:43, 5929:10	enthusiastic [1] - 5952:38	exists [4] - 5910:39, 5931:8, 5931:34, 5956:20	extent [1] - 5931:17	Feneley [2] - 5901:11, 5901:16
entirely [2] - 5889:44, 5962:26	evidence-gathering [1] - 5926:23	expect [6] - 5886:4, 5921:5, 5921:7, 5921:9, 5924:26, 5971:9	extremely [2] - 5976:5, 5981:19	few [10] - 5888:38, 5895:25, 5897:22, 5902:31, 5936:6, 5943:35, 5967:11, 5978:23, 5983:30,
entitled [2] - 5896:4, 5971:47	evolved [3] - 5970:41, 5970:43, 5971:1	expectation [1] - 5962:18, 5966:33		
entry [3] - 5933:31, 5933:35, 5973:39	exact [2] - 5896:23, 5993:20			
envisaging [3] - 5954:32, 5954:34, 5954:35	exactly [7] - 5886:31, 5893:42, 5920:19, 5946:1, 5960:35,			
Enzo [1] - 5885:29				
episode [1] - 5923:23				

F

5997:24	5938:14, 5938:15,	5948:28, 5995:29,	5920:37, 5935:37,	5994:7, 5997:12,
field [2] - 5921:5,	5938:25, 5938:31,	5995:45, 5996:13,	5938:14, 5938:15,	5997:20, 5999:18,
5961:11	5938:45, 5944:47,	5996:35, 5996:40,	5941:30, 5941:32,	6001:34, 6001:42
fifth [1] - 5919:18	5947:9, 5961:35,	6000:47, 6001:6,	5947:28, 5947:44,	gay-hate [3] -
file [4] - 5928:44,	5989:2	6001:9, 6001:39,	5948:2, 5948:11	5898:18, 5927:20,
5941:26, 5941:28,	flawed [3] - 5978:32,	6001:40, 6001:47,	fourteen [1] - 5989:19	5973:7
5944:16	5979:7, 5979:37	6002:12, 6002:29,	fourth [3] - 5902:23,	gays [1] - 5897:25
final [2] - 5972:19,	floor [9] - 5899:22,	6002:36	5919:15, 5980:7	general [4] - 5902:9,
5987:23	5936:34, 5938:2,	forces [3] - 5995:37,	frames [1] - 5889:21	5939:15, 5949:24,
finalised [1] - 5987:39	5938:14, 5939:10,	5996:23, 6001:40	frankly [1] - 5982:47	5963:43
finally [2] - 5889:19,	5939:11, 5939:37,	forensic [7] - 5894:31,	frequently [1] -	generally [7] -
5993:47	5939:39, 5948:6	5910:28, 5944:11,	5945:34	5904:38, 5905:27,
findings [23] - 5925:9,	fly [1] - 5998:22	5944:20, 5955:44,	fresh [1] - 5917:16	5905:30, 5951:12,
5927:19, 5927:28,	foci [1] - 5969:20	5956:14, 5994:44	freshly [2] - 5950:12,	5951:13, 5952:7,
5946:35, 5946:37,	focus [10] - 5967:36,	forensics [4] -	5950:19	5986:26
5946:38, 5962:40,	5967:41, 5968:20,	5941:10, 5946:25,	Friday [2] - 5886:35,	generate [2] -
5969:22, 5976:11,	5968:31, 5969:4,	5968:25, 5995:2	5889:7	5917:18, 6000:43
5983:28, 5984:7,	5969:12, 5969:21,	forgot [2] - 5981:24,	friend [1] - 5999:37	generated [1] -
5984:12, 5984:24,	5979:12, 5979:38,	5981:31	front [1] - 5896:9,	5996:30
5984:26, 5992:17,	5994:21	forgot [3] - 5981:15,	5897:39, 5899:24,	gentleman [1] -
5992:26, 5992:27,	focused [4] - 5950:39,	5987:3, 5987:7	5901:2, 5913:13,	5998:9
5992:47, 5994:9,	5970:43, 5994:7,	forgotten [3] -	5926:35, 5927:32,	gentlemen [1] -
5994:38, 6001:10,	5994:16	5982:36, 5982:42,	5954:46, 5989:27,	5950:41
6002:13	focusing [1] - 5950:40	5987:15	5991:6, 5991:16	Geoffrey [1] - 5885:41
Findings [2] -	folder [2] - 5898:37,	Form [5] - 5909:3,	full [2] - 5938:39,	Georgina [1] -
5990:31, 5994:2	5912:36	5909:7, 5912:9,	5981:32	5885:39
fine [1] - 5943:16	follow [19] - 5889:45,	5920:34	full-time [1] - 5938:39	get-go [1] - 5962:5
finish [4] - 5932:22,	5890:5, 5890:13,	form [32] - 5892:25,	future [1] - 5893:4	Gilles [1] - 5993:6
5967:40, 5989:5,	5901:35, 5909:15,	5892:32, 5896:2,		given [24] - 5889:21,
5989:10	5926:40, 5926:46,	5907:33, 5907:35,	G	5890:28, 5891:9,
finished [2] - 5896:25,	5931:32, 5934:23,	5908:29, 5908:32,	gang [2] - 5973:8,	5899:40, 5910:18,
5913:39	5934:25, 5944:8,	5908:36, 5909:7,	5999:18	5917:25, 5917:47,
finishing [1] - 5913:30	5950:2, 5950:9,	5909:8, 5909:10,	gangs [2] - 5898:5,	5919:23, 5919:32,
first [41] - 5887:3,	5953:23, 5960:14,	5911:40, 5911:45,	5967:28	5920:5, 5920:21,
5887:30, 5889:45,	5974:15, 5974:18,	5912:2, 5912:4,	gaoled [1] - 5910:20	5920:38, 5921:26,
5890:7, 5890:9,	5983:7, 5989:6	5912:13, 5912:15,	Gary [2] - 5922:44,	5928:19, 5928:23,
5900:45, 5901:24,	follow-up [1] - 5950:2	5913:15, 5914:24,	5923:1	5928:24, 5939:35,
5907:38, 5909:2,	followed [3] -	5919:2, 5920:37,	gather [5] - 5888:11,	5962:12, 5964:46,
5909:35, 5911:40,	5912:29, 5981:8,	5924:20, 5924:23,	5917:28, 5918:6,	5965:27, 5965:29,
5913:1, 5913:5,	5983:1	5924:29, 5928:27,	5918:28, 5960:32	5974:42, 5996:44,
5918:13, 5919:5,	following [4] - 5889:8,	5928:36, 5928:37,	gathered [1] - 5934:12	5998:27
5922:37, 5936:4,	5890:5, 5890:16,	5955:3, 5955:19,	gathering [4] - 5903:4,	glad [1] - 5983:7
5942:9, 5942:13,	5911:33	5987:42, 5994:8,	5905:26, 5907:32,	glance [1] - 5897:29
5942:15, 5942:20,	follows [2] - 5890:10,	5997:4	5926:23	Glen [2] - 5922:44,
5942:35, 5943:4,	5978:29	FORM [1] - 5892:29	gay [35] - 5898:15,	5923:1
5943:9, 5943:35,	Forbes [3] - 5895:31,	Form" [3] - 5896:5,	5898:18, 5898:31,	Glissan [1] - 5885:45
5946:31, 5949:17,	5912:22, 5936:12	5911:37, 5912:43	5900:7, 5900:24,	Gordana [1] - 5940:30
5949:24, 5953:43,	force [12] - 5905:22,	formally [2] - 5933:3,	5901:4, 5902:35,	Government [1] -
5955:35, 5957:20,	5913:47, 5924:10,	5933:5	5902:47, 5903:17,	5933:42
5958:19, 5966:33,	5924:19, 5926:15,	former [3] - 5973:6,	5903:27, 5903:44,	grace [1] - 5888:15
5967:21, 5972:22,	5939:6, 5949:17,	5985:24, 5999:26	5904:10, 5904:24,	graces [1] - 5889:30
5972:31, 5978:23,	5952:6, 5984:41,	forthcoming [2] -	5910:21, 5927:20,	granted [1] - 5971:24
5989:31, 5993:13,	5984:43, 6001:20,	5891:2, 5891:7	5937:19, 5967:22,	grasp [1] - 5888:5
5993:14, 5994:24	6001:27	forward [5] - 5933:6,	5967:29, 5967:35,	grateful [1] - 5903:36
firstly [2] - 5925:8,	Force [26] - 5894:10,	5945:13, 5945:14,	5968:1, 5968:3,	gratuitously [1] -
5940:38	5894:11, 5897:11,	5954:31, 5988:6	5968:10, 5968:17,	5888:13
fits [1] - 5886:19	5913:45, 5924:8,	foundation [2] -	5969:13, 5969:28,	GRAY [42] - 5886:3,
five [14] - 5901:16,	5924:13, 5924:15,	5941:10, 5994:39	5969:40, 5969:46,	5888:35, 5891:21,
5919:5, 5919:27,	5924:35, 5925:15,	four [13] - 5901:16,	5973:7, 5992:45,	5892:20, 5892:32,
5923:29, 5929:12,	5937:1, 5948:25,	5905:16, 5918:40,		5893:9, 5893:14,

5893:25, 5894:40,
5894:42, 5902:17,
5921:31, 5929:27,
5929:32, 5929:38,
5930:30, 5931:3,
5934:38, 5935:6,
5935:13, 5935:15,
5959:2, 5959:8,
5961:26, 5966:3,
5966:27, 5968:37,
5970:24, 5973:33,
5982:46, 5983:25,
5987:22, 5989:1,
5989:13, 5989:17,
5990:11, 5990:21,
5995:22, 5999:32,
5999:36, 5999:43,
6003:2
Gray [18] - 5885:26,
5886:1, 5888:11,
5888:33, 5890:7,
5890:17, 5890:19,
5891:18, 5891:47,
5893:23, 5894:30,
5930:12, 5932:21,
5934:36, 5958:40,
5958:46, 5966:25,
5997:9
great [1] - 5909:44
Greg [1] - 5895:13
gross [2] - 5903:45,
5904:25
group [1] - 5939:18
grouping [1] - 5948:1
groups [1] - 5967:29
guess [8] - 5899:7,
5954:34, 5981:22,
5984:4, 5984:32,
5987:36, 5991:40,
6002:26
Guideline [1] -
5891:22

H

half [12] - 5888:27,
5924:42, 5924:47,
5925:34, 5926:16,
5933:35, 5938:42,
5949:24, 5966:33,
5966:42, 5967:21,
5990:34
halfway [4] - 5897:40,
5914:41, 5919:14,
5955:28
hand [8] - 5888:16,
5914:27, 5914:31,
5914:34, 5958:46,
5990:16, 6000:12
handed [2] - 5914:18,

5914:19
hands [5] - 5966:47,
5969:28, 5969:40,
5969:46, 5992:45
hands-on [1] -
5966:47
happy [1] - 5974:44
hard [3] - 5903:37,
5914:4, 5921:33
hate [34] - 5885:9,
5898:15, 5898:18,
5900:7, 5900:24,
5901:5, 5902:35,
5902:47, 5903:17,
5903:27, 5903:45,
5904:11, 5904:24,
5917:32, 5927:20,
5937:19, 5967:22,
5967:35, 5968:1,
5968:3, 5968:10,
5968:17, 5969:13,
5969:28, 5969:40,
5969:46, 5973:7,
5992:45, 5994:7,
5997:12, 5997:20,
5999:18, 6001:35,
6001:42
head [1] - 5991:12
Head [2] - 5897:41,
5937:11
HEADED [1] - 5892:29
headed [8] - 5897:25,
5898:14, 5898:17,
5911:37, 5912:8,
5912:40, 5912:42,
5990:31
heading [16] -
5914:40, 5919:5,
5919:9, 5919:13,
5919:28, 5920:3,
5920:27, 5949:30,
5949:33, 5949:47,
5950:7, 5950:26,
5972:47, 5978:19,
5993:5, 5994:2
headquarters [1] -
5899:30
Healey [2] - 5885:30,
5921:33
Healey-Nash [2] -
5885:30, 5921:33
hear [7] - 5891:11,
5903:37, 5930:6,
5956:31, 5982:22,
5990:1, 6001:26
heard [4] - 5906:46,
5932:9, 5956:29,
6001:43
hearing [1] - 5902:3
hearings [1] - 5889:42

held [5] - 5903:32,
5973:46, 5980:42,
5981:4, 5981:36
hello [1] - 5900:13
help [2] - 5907:27,
5922:4
helpful [2] - 5893:3,
5932:43
Henderson [1] -
5915:21
Herald [4] - 5897:24,
5901:11, 5937:10,
5937:14
herself [2] - 5891:8,
5952:12
hierarchy [2] -
5970:25, 5970:36
high [4] - 5928:38,
5980:26, 5991:9,
5991:35
high-ranking [1] -
5991:9
highly [2] - 5955:40,
5983:13
himself [2] - 5952:12,
5982:17
HIV [1] - 5999:21
HIV-AIDS [1] -
5999:21
Hodgetts [1] -
5889:31
hold [1] - 5995:1
holding [2] - 5905:14,
5947:41
Homicide [47] -
5895:9, 5895:21,
5896:5, 5897:5,
5898:40, 5899:15,
5899:23, 5899:25,
5900:16, 5900:32,
5906:10, 5906:36,
5907:1, 5909:3,
5912:8, 5912:42,
5915:16, 5916:26,
5916:37, 5921:20,
5922:25, 5927:44,
5934:6, 5935:26,
5935:30, 5935:38,
5935:41, 5936:4,
5936:5, 5936:32,
5936:34, 5937:27,
5937:31, 5938:6,
5938:11, 5938:35,
5939:42, 5940:17,
5940:22, 5940:28,
5952:35, 5962:33,
5963:24, 5981:45,
5981:46, 5991:12,
5991:13
homicide [26] -

5909:11, 5916:13,
5917:9, 5917:15,
5923:42, 5931:26,
5941:9, 5967:22,
5967:35, 5968:1,
5968:10, 5968:16,
5968:39, 5969:9,
5969:13, 5969:40,
5969:46, 5972:39,
5973:5, 5974:3,
5974:14, 5974:24,
5984:17, 5994:38,
6000:42
HOMICIDE [1] -
5892:29
homicides [6] -
5901:5, 5904:32,
5910:8, 5927:22,
5969:24, 5969:27
homophobic [1] -
5967:29
homosexual [2] -
5917:31, 5917:38
homosexuals [2] -
5918:3, 5918:22
Honour [22] - 5886:31,
5886:37, 5887:46,
5888:41, 5890:33,
5921:32, 5929:45,
5932:5, 5932:12,
5932:13, 5932:18,
5933:9, 5933:16,
5934:27, 5934:32,
5934:46, 5946:34,
5958:7, 5958:29,
5965:13, 6002:40,
6002:44
Honour's [2] -
5932:45, 5968:26
Honourable [1] -
5885:14
hope [5] - 5894:3,
5952:9, 5958:43,
5959:31, 5999:29
hoped [1] - 6000:21
hopefully [3] - 5889:2,
5999:8, 6000:43
hoping [2] - 5954:29,
6000:29
hours [2] - 5889:42,
5889:45
hunted [1] - 5897:25
hurled [1] - 5898:4
HUTCHINGS [4] -
5932:18, 5958:25,
5966:16, 6002:44
Hutchings [7] -
5885:42, 5932:8,
5932:15, 5958:23,
5966:7, 5989:7,

6002:42
hypothesis [1] -
5997:13

I

idea [6] - 5886:43,
5939:15, 5952:25,
5957:20, 5957:31,
5960:39
ideas [3] - 5915:47,
5916:2, 5975:19
ideation [4] - 5975:6,
5975:33, 5975:41,
5993:27
identification [1] -
5933:44
identified [9] - 5920:5,
5950:10, 5950:12,
5950:19, 5954:9,
5965:26, 5994:45,
5996:46, 5999:25
identify [5] - 5920:11,
5927:20, 5945:14,
6000:29, 6000:44
identifying [2] -
5917:37, 6001:1
ignored [1] - 5979:16
ignoring [2] - 5966:46,
5988:11
illnesses [1] - 5999:22
imagine [9] - 5925:3,
5928:28, 5938:5,
5951:29, 5951:45,
5952:30, 5970:16,
5980:42, 5997:26
immediately [3] -
5887:21, 5924:13,
5924:15
imminently [1] -
5929:46
impact [1] - 5958:30
impacted [1] - 5994:9
implemented [1] -
5911:27
importance [1] -
5886:9
important [1] -
5932:40
importantly [1] -
6001:21
imposed [1] - 5890:1
imposition [1] -
5921:36
impossible [1] -
5995:10
improvement [2] -
5944:24, 5945:42
improvements [1] -
5944:26

inaccurate [2] - 5900:25, 5987:33
inactive [1] - 5977:32
inappropriate [1] - 5961:7
include [4] - 5926:26, 5988:31, 5988:40, 5993:25
included [3] - 5922:17, 5985:42, 6001:23
including [7] - 5899:36, 5901:26, 5910:2, 5920:22, 5956:3, 5962:13, 5979:17
incomplete [1] - 5920:12
inconclusive [1] - 5980:36
indeed [12] - 5886:14, 5898:29, 5905:23, 5906:9, 5910:32, 5914:15, 5971:25, 5971:43, 5975:43, 5985:35, 5988:30
indicate [5] - 5916:35, 5958:25, 5966:39, 5995:26, 5997:18
indicated [5] - 5889:16, 5946:6, 5980:25, 5997:43, 6002:16
indicates [1] - 5924:29
indicating [1] - 5958:13
indication [5] - 5902:34, 5902:46, 5903:4, 5904:9, 5913:5
individual [1] - 5916:39
individually [1] - 5949:44
individuals [4] - 5956:40, 5964:26, 5967:24, 5967:27
ineptitude [1] - 6002:25
infinitely [1] - 5967:13
influence [2] - 5996:35, 5996:37
inform [1] - 5890:47
information [22] - 5905:26, 5905:27, 5907:4, 5907:32, 5907:36, 5907:42, 5917:29, 5918:7, 5918:16, 5918:28, 5933:43, 5945:43, 5946:7, 5951:22, 5958:28, 5992:5, 5993:26, 5994:40, 6000:27, 6000:43, 6001:1
informed [5] - 5891:1, 5891:10, 5893:11, 5894:3, 5981:2
infrequent [3] - 5939:23, 5939:28, 5939:32
infrequently [1] - 5945:31
initial [6] - 5917:44, 5942:38, 5947:11, 5948:33, 5948:37, 5949:34
initiated [4] - 5897:11, 5897:14, 5897:17, 5949:17
input [3] - 5901:47, 5902:4, 5903:1
inquest [17] - 5895:27, 5898:3, 5912:21, 5925:9, 5926:46, 5927:5, 5936:11, 5954:5, 5961:41, 5962:4, 5974:42, 5975:7, 5975:21, 5975:28, 5976:24, 5982:33, 5984:7
Inquest [5] - 5927:28, 5940:31, 5975:11, 5979:36, 5981:4
inquiries [8] - 5894:18, 5914:26, 5931:17, 5931:33, 5931:39, 5931:40, 5934:12, 5965:38
inquiry [13] - 5917:6, 5917:16, 5918:27, 5920:12, 5956:22, 5965:9, 5965:12, 5965:38, 5970:13, 5988:11, 6000:23, 6000:26, 6001:20
INQUIRY [1] - 6003:12
Inquiry [17] - 5885:7, 5886:8, 5887:15, 5889:23, 5890:38, 5891:26, 5895:2, 5906:46, 5913:2, 5918:5, 5921:41, 5929:46, 5930:8, 5935:19, 5941:39, 5949:10, 5954:1
Inquiry's [1] - 5888:5
inspector [2] - 5928:38, 5939:39
Inspector [13] - 5923:29, 5923:39, 5933:31, 5935:34, 5936:1, 5936:44, 5938:23, 5947:13, 5957:15, 5957:21, 5958:1, 5996:4
inspectors [1] - 5940:2
instance [3] - 5945:14, 5958:19, 5965:16
instead [5] - 5895:32, 5967:36, 5967:40, 5968:1, 5968:10
instigated [2] - 5924:15, 5948:29
institution [1] - 5887:31
instructed [3] - 5888:42, 5929:45, 5931:10
instructing [2] - 5887:32, 5931:11
instructions [2] - 5958:37, 5998:21
intelligence [4] - 5945:11, 5946:6, 5946:27, 5955:43
intended [1] - 5981:9
intensive [3] - 5964:17, 5997:46, 5999:6
intention [2] - 5967:37, 5983:27
interceptions [1] - 5910:3
intercepts [3] - 5954:20, 5956:4, 5964:16
interest [38] - 5898:39, 5910:40, 5911:13, 5917:29, 5918:1, 5918:21, 5920:21, 5950:26, 5950:28, 5950:33, 5950:38, 5952:8, 5953:2, 5953:3, 5953:10, 5953:40, 5954:10, 5954:15, 5954:32, 5956:21, 5956:22, 5959:43, 5961:40, 5962:5, 5962:9, 5962:29, 5964:37, 5965:25, 5965:26, 5965:32, 5967:9, 5968:26, 5996:40, 5996:46, 5997:11, 5997:43, 5998:13, 5999:25
interested [2] - 5927:46, 5984:31
interests [1] - 5963:4
internal [1] - 5985:31
interpose [1] - 5890:29
interrupt [3] - 5901:44, 5932:31, 5983:4
interval [1] - 5959:42
intervene [1] - 5989:1
interview [3] - 5926:34, 5926:38, 5926:39
interviewed [1] - 5925:24
intoxication [2] - 5980:26, 5980:27
intrigued [1] - 5958:9
introduced [2] - 5923:33, 5932:45
investigate [11] - 5918:20, 5922:33, 5949:2, 5949:5, 5949:43, 5967:9, 5967:22, 5967:35, 5969:32, 5969:39, 5969:45
investigated [8] - 5902:29, 5924:17, 5937:12, 5941:9, 5968:4, 5973:8, 5980:29, 5997:1
investigating [6] - 5899:40, 5920:21, 5938:45, 5966:29, 5968:37, 5969:9
Investigation [15] - 5904:47, 5914:6, 5938:7, 5948:33, 5948:44, 5951:5, 5951:10, 5951:11, 5951:30, 5951:44, 5952:1, 5952:5, 5952:21, 5970:38, 5987:28
investigation [52] - 5899:26, 5902:33, 5903:5, 5905:25, 5907:10, 5909:34, 5909:35, 5911:5, 5914:46, 5915:3, 5915:9, 5915:10, 5917:44, 5917:47, 5918:20, 5922:42, 5923:8, 5923:45, 5926:20, 5926:25, 5934:23, 5941:12, 5945:6, 5947:14, 5947:27, 5947:29, 5948:18, 5949:9, 5949:15, 5949:20, 5950:24, 5951:14, 5951:21, 5952:47, 5955:36, 5955:40, 5969:31, 5969:34, 5970:13, 5977:1, 5977:31, 5978:25, 5978:31, 5979:16, 5980:36, 5985:24, 5988:36, 5994:24, 5995:46, 5996:40, 5999:17
investigations [7] - 5905:6, 5905:9, 5905:32, 5925:16, 5947:15, 5948:16, 5951:8
investigative [7] - 5939:25, 5944:2, 5947:14, 5955:45, 5979:38, 5995:45, 5997:32
investigator [6] - 5903:3, 5906:36, 5911:46, 5923:13, 5928:21, 5952:34
investigators [14] - 5899:8, 5899:24, 5899:39, 5905:16, 5905:19, 5905:22, 5905:37, 5905:40, 5907:25, 5942:38, 5949:38, 5977:32, 5994:16, 6002:7
invite [1] - 5932:13
involve [4] - 5889:47, 5923:12, 5923:13, 5971:1
involved [9] - 5903:9, 5910:10, 5917:30, 5923:14, 5925:35, 5925:37, 5939:34, 5946:25, 6002:36
involvement [4] - 5912:12, 5967:28, 5996:23, 5997:20
involving [2] - 5890:22, 5973:6
irresponsible [1] - 5904:1
isolation [1] - 5910:37
issue [6] - 5889:34, 5901:1, 5907:24, 5931:35, 5964:22, 5964:24
issued [1] - 5893:28
issues [1] - 5970:14
IT [1] - 5966:23
item [2] - 5929:47,

- listing** [1] - 5996:17
lists [1] - 5944:17
live [1] - 5907:41
Local [1] - 5914:46
locate [1] - 5949:34
located [1] - 5930:1
log [1] - 5982:38
logically [1] - 5974:18
look [26] - 5886:19, 5892:20, 5892:45, 5902:5, 5908:36, 5908:41, 5913:14, 5921:44, 5926:11, 5926:32, 5941:28, 5942:19, 5942:31, 5943:8, 5943:17, 5944:19, 5944:30, 5945:15, 5955:23, 5958:47, 5965:35, 5970:6, 5973:39, 5986:1, 5990:11, 5997:36
looked [26] - 5912:3, 5912:7, 5912:41, 5914:10, 5916:31, 5924:23, 5926:2, 5927:45, 5931:13, 5934:10, 5941:1, 5942:12, 5942:15, 5942:28, 5943:40, 5943:41, 5943:43, 5944:43, 5945:4, 5945:6, 5945:34, 5945:37, 5946:22, 5946:31, 5984:17, 6001:23
looking [18] - 5902:21, 5907:3, 5907:36, 5908:32, 5916:31, 5918:39, 5921:3, 5923:14, 5926:20, 5928:36, 5943:36, 5953:13, 5953:21, 5965:43, 5972:18, 5975:25, 5977:28, 5981:9
looks [2] - 5954:30, 5954:35
loss [2] - 5908:17, 5910:26
lost [3] - 5904:19, 5956:13, 5966:19
low [2] - 5928:39, 5961:30
luck [1] - 5983:21
lump [1] - 5890:2
lunch [2] - 5892:38, 5894:31
lunchtime [2] - 5892:41, 5905:45
- M**
- Macnamir** [31] - 5894:10, 5897:11, 5902:29, 5903:3, 5913:45, 5924:8, 5924:13, 5924:15, 5924:35, 5924:37, 5924:46, 5925:7, 5925:15, 5925:35, 5925:37, 5926:11, 5926:15, 5926:19, 5926:22, 5926:29, 5927:27, 5937:2, 5951:28, 5951:43, 5995:29, 5995:45, 5996:14, 5996:23, 5996:36, 6001:40
Macquarie [1] - 5885:18
Madden [1] - 5885:41
main [9] - 5909:15, 5910:14, 5919:5, 5919:9, 5919:13, 5941:3, 5956:8, 5961:40, 5978:11
males [2] - 5917:38, 5994:22
man [1] - 5910:21
man's [1] - 5897:26
manage [1] - 5951:7
Management [1] - 5950:7
management [1] - 5907:24
manager [1] - 5899:24
Manly [4] - 5914:45, 5915:6, 5917:32, 5917:38
manner [1] - 5992:36
March [16] - 5898:13, 5898:17, 5937:17, 5937:27, 5937:44, 5938:10, 5939:46, 5940:12, 5940:36, 5950:3, 5953:44, 5954:1, 5961:28, 5972:17, 5999:10, 5999:45
Mark [1] - 5885:36
Marks [2] - 5910:11, 5950:2
Mars [1] - 5885:27
material [14] - 5894:13, 5909:45, 5941:24, 5949:35, 5949:38, 5950:30, 5950:34, 5953:15, 5969:37, 5969:42, 5974:46, 5975:8, 5982:20, 5982:24
materialise [1] - 5890:42
materials [5] - 5887:11, 5890:39, 5891:1, 5891:4, 5894:12
Mathew [1] - 5885:37
Mattaini [17] - 5895:14, 5910:29, 5955:4, 5955:46, 5965:44, 5968:20, 5973:39, 5975:34, 5977:30, 5980:11, 5984:14, 5992:33, 5992:41, 5993:6, 5994:46, 5995:1, 6002:2
Mattaini's [14] - 5950:16, 5968:23, 5968:31, 5968:38, 5974:1, 5974:43, 5975:19, 5977:32, 5977:41, 5992:17, 5992:30, 5993:26, 5993:29, 5994:43
matter [16] - 5888:14, 5889:18, 5914:47, 5915:15, 5917:45, 5921:47, 5926:23, 5929:35, 5946:35, 5946:40, 5951:46, 5968:23, 5977:33, 5982:18, 5992:18
matters [11] - 5911:8, 5913:2, 5913:30, 5941:8, 5942:9, 5942:10, 5959:18, 5968:11, 5969:32, 5975:43, 6000:18
Matthew [1] - 5885:42
mean [23] - 5905:4, 5907:30, 5908:31, 5909:6, 5909:22, 5911:1, 5921:6, 5941:15, 5944:22, 5944:23, 5951:4, 5951:19, 5956:34, 5964:14, 5965:12, 5965:15, 5973:16, 5977:13, 5981:41, 5987:23, 5998:9, 5998:21
meaning [2] - 5906:39, 5941:6
means [6] - 5911:10, 5919:42, 5943:33, 5947:15, 5960:7, 5980:42
meant [6] - 5924:27, 5941:7, 5946:21, 5971:43, 5999:47
meanwhile [1] - 5921:36
media [4] - 5897:22, 5898:8, 5898:30, 5900:24
medium [1] - 5928:39
meeting [5] - 5963:40, 5963:42, 5973:45, 5981:38, 5982:39
meetings [9] - 5900:15, 5900:18, 5906:9, 5906:16, 5939:18, 5939:24, 5939:26, 5939:34
Meg [1] - 5885:28
members [1] - 5898:39
memorandum [1] - 5989:31
memory [6] - 5897:33, 5913:14, 5938:40, 5944:16, 5950:17, 5971:38
men [4] - 5897:42, 5898:4, 5898:31, 5967:30
mention [3] - 5917:20, 5961:34, 5996:28
mentioned [8] - 5902:17, 5914:18, 5918:42, 5943:12, 5945:37, 5953:1, 5967:41, 5997:9
mentions [1] - 5957:37
merit [1] - 5957:38
met [3] - 5956:40, 5992:43, 5992:44
method [1] - 5962:10
methodology [3] - 5957:45, 5958:14, 5964:40
methods [6] - 5959:26, 5959:33, 5959:34, 5959:45, 5962:15, 5962:31
meticulously [2] - 5909:40, 5955:37
Michael [3] - 5885:40, 5922:20, 5926:45
Mick [3] - 5922:43, 5923:1, 5939:47
middle [8] - 5906:28, 5919:27, 5919:37, 5973:3, 5989:29, 5989:37, 5993:13, 5993:23
might [55] - 5891:19, 5891:21, 5899:3, 5907:27, 5914:19, 5918:26, 5918:27, 5922:4, 5922:5, 5930:45, 5933:16, 5933:21, 5933:22, 5934:22, 5934:46, 5942:37, 5944:11, 5944:18, 5944:26, 5944:29, 5945:9, 5945:11, 5948:1, 5948:2, 5948:11, 5948:18, 5948:22, 5952:12, 5952:20, 5952:47, 5954:43, 5957:38, 5959:34, 5960:18, 5961:14, 5961:20, 5962:9, 5963:3, 5963:43, 5965:36, 5965:45, 5974:14, 5995:19, 5997:12, 5997:27, 5997:38, 5997:44, 5999:45, 5999:9, 5999:14, 5999:22, 5999:46, 6001:41
Milledge [10] - 5898:3, 5927:28, 5954:5, 5969:23, 5975:11, 5977:5, 5984:24, 5984:26, 5986:32, 6001:11
Milledge's [1] - 5962:40
mind [16] - 5891:23, 5892:39, 5894:20, 5895:26, 5913:2, 5916:5, 5916:7, 5922:15, 5926:44, 5958:20, 5959:30, 5960:39, 5960:40, 5982:29, 5982:32, 5998:10
minimise [1] - 5997:20
minute [7] - 5888:3, 5888:9, 5888:15, 5892:22, 5893:21, 5897:29, 5981:19
minutes [6] - 5886:7, 5886:18, 5932:12, 5961:36, 5983:30, 5989:2
misadventure [7] - 5968:16, 5969:5, 5974:4, 5974:15, 5974:27, 5977:31, 5979:19
misleading [3] - 5981:20, 5981:30,

- 5985:27
misled [2] - 5975:34, 5975:44
missing [4] - 5908:4, 5908:10, 5908:11, 5908:17
mission [1] - 5949:30
misunderstood [1] - 5998:14
moment [21] - 5888:33, 5889:7, 5889:11, 5889:26, 5890:27, 5891:6, 5891:18, 5891:32, 5893:18, 5893:20, 5896:42, 5901:45, 5916:28, 5921:3, 5924:37, 5930:16, 5943:36, 5949:12, 5951:24, 5972:5, 5989:18
Monday [3] - 5885:22, 5886:35, 5973:45
monetary [4] - 5917:26, 5933:42, 5934:11, 5934:21
monitoring [3] - 5964:16, 5964:19, 5997:45
month [3] - 5913:4, 5913:8, 5953:18
months [12] - 5896:14, 5896:25, 5896:39, 5924:42, 5924:47, 5925:35, 5926:16, 5948:22, 5948:43, 5955:10, 5962:38, 5999:38
Morgan [40] - 5948:44, 5951:11, 5952:26, 5952:33, 5952:41, 5952:44, 5963:37, 5966:27, 5967:1, 5971:9, 5971:25, 5971:29, 5971:36, 5971:41, 5975:14, 5975:20, 5975:29, 5975:42, 5977:4, 5977:15, 5977:19, 5977:25, 5979:1, 5979:2, 5979:23, 5979:29, 5979:46, 5981:41, 5982:38, 5983:43, 5987:27, 5987:28, 5987:31, 5987:34, 5987:43, 5988:25, 5991:4, 5997:19, 5998:33, 6002:35
Morgan's [5] - 5956:32, 5957:2, 5970:5, 5970:12, 5983:11
Morning [4] - 5897:24, 5901:11, 5937:10, 5937:14
morning [23] - 5887:41, 5888:37, 5888:41, 5889:5, 5889:32, 5892:33, 5892:38, 5893:15, 5893:40, 5905:45, 5912:40, 5913:16, 5922:38, 5930:38, 5932:8, 5932:28, 5933:11, 5933:27, 5933:30, 5934:41, 5936:22, 5989:10, 6003:10
morning's [1] - 5930:31
mosaic [1] - 5886:20
most [3] - 5908:16, 5941:21, 5997:38
motivated [4] - 5902:35, 5903:17, 5955:40, 6002:37
motivation [1] - 5901:6
motive [3] - 5994:8, 5997:14, 5999:22
move [2] - 5890:30, 5935:30
movements [5] - 5950:41, 5967:42, 5978:33, 5994:17, 5994:22
mur [1] - 5978:4
murder [6] - 5910:21, 5945:15, 5946:28, 5984:8, 5999:22, 6002:3
murdered [3] - 5898:31, 5902:37, 5902:47
murders [8] - 5897:42, 5900:7, 5900:24, 5903:17, 5903:45, 5904:11, 5904:24, 5910:42
Murugan [1] - 5885:40
must [4] - 5886:14, 5913:38, 5915:19, 5961:6
Musy [3] - 5974:43, 5975:11, 5975:18
Musy's [1] - 5993:27
MYKKELTVEDT [49] - 5886:25, 5886:31, 5886:37, 5886:41, 5886:45, 5887:2, 5887:10, 5887:17, 5887:27, 5887:40, 5888:31, 5889:37, 5890:33, 5891:13, 5891:38, 5891:43, 5892:4, 5892:11, 5893:1, 5893:36, 5893:42, 5894:8, 5894:18, 5894:28, 5894:34, 5929:45, 5930:10, 5931:10, 5931:24, 5931:38, 5931:46, 5932:4, 5934:32, 5958:7, 5958:12, 5958:36, 5966:12, 5995:24, 5995:26, 5996:34, 5998:16, 5998:25, 5999:45, 6000:17, 6001:33, 6002:28, 6002:40
Mykkeltvedt [27] - 5885:36, 5886:22, 5886:34, 5887:24, 5888:2, 5888:23, 5889:27, 5889:30, 5889:35, 5890:18, 5890:28, 5891:31, 5892:45, 5893:25, 5893:33, 5929:42, 5930:36, 5931:7, 5932:21, 5934:30, 5958:19, 5958:40, 5958:47, 5989:6, 5998:7, 5998:20, 5999:41

N

NAGLE [14] - 5932:12, 5932:24, 5932:26, 5932:28, 5932:33, 5932:38, 5932:45, 5933:3, 5933:9, 5933:16, 5933:21, 5934:27, 5934:46, 5935:4
Nagle [3] - 5885:43, 5932:8, 5932:20
name [3] - 5888:42, 5894:42, 5935:15
named [1] - 5920:37
namely [14] - 5902:45, 5908:7, 5910:14, 5919:42, 5940:38, 5945:37, 5947:27, 5955:15, 5956:8, 5964:35, 5964:36, 5980:41, 5992:45, 5994:21
names [2] - 5956:9, 5959:3
Nash [2] - 5885:30, 5921:33
nature [4] - 5902:30, 5962:8, 5972:40, 5973:6
near [1] - 5972:16
nearby [1] - 5950:1
necessarily [1] - 5942:29
necessary [2] - 5892:36, 5904:19
need [19] - 5886:20, 5890:28, 5890:29, 5891:17, 5917:15, 5918:15, 5930:32, 5930:45, 5931:5, 5933:5, 5953:4, 5954:44, 5961:44, 5965:19, 5971:40, 5989:21, 5992:32, 5993:4, 5997:44
needed [8] - 5905:25, 5939:27, 5952:29, 5967:10, 5967:11, 5976:32, 5996:21, 6001:34
needing [1] - 5914:25
needs [3] - 5889:11, 5890:10, 5891:25
negligible [1] - 5928:39
Neiwand [68] - 5948:25, 5948:29, 5949:9, 5951:24, 5952:6, 5952:17, 5952:27, 5953:22, 5953:43, 5954:29, 5955:20, 5959:18, 5962:12, 5963:20, 5964:46, 5966:31, 5966:42, 5967:16, 5967:21, 5967:34, 5968:14, 5969:22, 5969:31, 5970:5, 5970:13, 5970:25, 5970:41, 5970:43, 5972:13, 5974:41, 5978:3, 5978:15, 5978:23, 5980:7, 5980:17, 5981:18, 5981:25, 5981:29, 5981:42, 5984:11, 5984:13, 5984:18, 5984:22, 5985:24, 5985:34, 5986:9, 5986:10, 5986:35, 5987:8, 5987:22, 5988:3, 5988:6, 5988:32, 5990:45, 5993:3, 5994:16, 5994:20, 5994:28, 5994:35, 5995:18, 5996:41, 5998:42, 6001:6, 6001:10, 6001:39, 6001:47, 6002:29, 6002:36
Neiwand's [2] - 5966:28, 6002:12
nettle [1] - 5888:6
never [13] - 5886:10, 5900:12, 5900:13, 5913:18, 5918:46, 5926:24, 5956:37, 5957:7, 5967:16, 5985:45, 5986:1, 5986:26, 6001:43
New [2] - 5885:19, 5919:14
new [13] - 5934:11, 5944:22, 5944:24, 5945:18, 5945:42, 5945:43, 5980:32, 5982:13, 5982:19, 5982:23, 5982:26, 5982:29, 5983:12
news [1] - 5963:7
newspaper [2] - 5897:32, 5897:33
next [27] - 5889:44, 5890:43, 5896:43, 5898:2, 5898:12, 5901:30, 5904:21, 5910:7, 5911:16, 5912:38, 5916:16, 5917:21, 5917:36, 5935:6, 5939:47, 5948:41, 5954:29, 5956:7, 5973:34, 5977:29, 5979:10, 5979:34, 5980:5, 5980:12, 5980:39, 5990:31, 5993:4
nil [6] - 5919:38, 5919:41, 5920:38, 5921:5, 5921:23, 5924:25
no-one [1] - 5953:44
nobody [4] - 5899:6, 5903:9, 5906:13, 5983:34
nominate [2] - 5910:14, 5996:29
nominated [1] - 5956:3
non [7] - 5889:10, 5892:23, 5892:35, 5892:46, 5927:39,

- 5968:17, 5969:13
non-publication [4] -
 5892:23, 5892:35,
 5892:46, 5927:39
non-sitting [1] -
 5889:10
none [1] - 5985:2
nonetheless [1] -
 5930:40
nonsensical [1] -
 5974:21
North [2] - 5897:41,
 5937:11
Northern [1] - 5918:3
note [2] - 5888:37,
 5972:37
NOTE [1] - 5966:22
notes [6] - 5916:21,
 5916:33, 5916:35,
 5955:43, 5956:7,
 5956:12
nothing [17] - 5929:3,
 5934:36, 5936:18,
 5943:37, 5945:38,
 5945:42, 5945:47,
 5946:9, 5947:3,
 5968:37, 5968:39,
 5968:45, 5969:8,
 5987:14, 5997:22
noticed [1] - 5908:9
noting [1] - 5973:27
notion [1] - 5922:10
notwithstanding [2] -
 5969:22, 5984:25
November [2] -
 5913:21, 5978:12
NPL.0113.0001.0156
 [1] - 5904:21
NPL.0115.0002.7430
 [1] - 5978:10
NPL.0135.0001.0001
 [2] - 5908:37,
 5954:46
NPL.0209.0001.0087
 [1] - 5911:36
NPL.0209.0001.0087
 [1] - 5918:34
NPL.2017.0004.0549
 [1] - 5926:33
NPL.2017.0004.0549
 [1] - 5925:33
NPL.3000.0001.0026
 [1] - 5953:7
NPL.3000.0016.0014
 [1] - 5922:16
NPL.9000.0033.0001
 [2] - 5906:18,
 5911:32
NSW [2] - 5885:37,
 6000:47
number [21] - 5900:3,
 5901:25, 5902:24,
 5903:25, 5903:26,
 5908:3, 5916:39,
 5919:36, 5925:4,
 5928:5, 5937:18,
 5940:2, 5942:42,
 5944:29, 5953:38,
 5954:15, 5990:4,
 5996:22, 5996:39
numbered [4] -
 5902:23, 5928:15,
 5943:19, 5989:43
numbers [11] -
 5898:31, 5900:7,
 5914:39, 5947:40,
 5954:9, 5989:41,
 5989:42, 5989:43,
 5989:46, 5990:2,
 5990:12
numerical [1] - 5920:5
numerous [3] -
 5890:44, 5910:10,
 6001:26
nutshell [1] - 5992:33
-
- O**
-
- O'Brien** [1] - 5885:28
o'clock [6] - 5890:31,
 5894:6, 5894:25,
 5929:36, 5930:13,
 5930:19
object [3] - 5893:47,
 5958:7, 5999:32
objection [1] - 5966:9
objective [1] - 6001:10
observe [1] - 6002:34
observed [1] -
 5997:17
obsolete [1] - 5913:46
obtained [2] -
 5934:12, 5950:15
obvious [1] - 5889:21
obviously [8] -
 5890:11, 5891:4,
 5894:30, 5911:1,
 5919:31, 5952:41,
 5962:44, 5987:29
occasion [1] - 5908:9
occupied [1] -
 5899:22
occur [4] - 5887:35,
 5890:4, 5890:44,
 5960:45
occurred [5] -
 5906:15, 5907:12,
 5940:42, 5954:2,
 5985:24
occurring [1] -
 5887:47
occurs [1] - 5944:37
October [14] -
 5889:10, 5889:11,
 5895:9, 5895:47,
 5896:26, 5908:42,
 5913:37, 5913:38,
 5925:44, 5928:29,
 5935:31, 5948:29,
 5949:11, 5955:7
October/November
 [1] - 5926:8
OF [3] - 5892:28,
 5892:29, 6003:12
offence [5] - 5928:11,
 5942:5, 5942:12,
 5946:26, 6000:44
offences [4] -
 5910:10, 5917:30,
 5918:2, 5918:22
offender [1] - 6000:44
offered [1] - 6000:33
Office [1] - 5981:2
office [6] - 5938:47,
 5939:29, 5939:32,
 5939:34, 5963:43,
 5982:16
Officer [3] - 5948:37,
 5951:14, 5963:13
officer [10] - 5888:43,
 5904:14, 5915:20,
 5921:4, 5951:7,
 5958:30, 5985:25,
 5991:18, 5992:2,
 5996:10
officers [12] - 5898:46,
 5904:43, 5920:37,
 5921:5, 5923:14,
 5937:31, 5938:11,
 5965:30, 5991:9,
 5991:36, 5998:41,
 6002:36
often [6] - 5908:8,
 5908:14, 5939:22,
 5944:7, 5945:29
OIC [15] - 5948:37,
 5948:45, 5951:34,
 5952:2, 5952:11,
 5952:13, 5952:20,
 5953:22, 5953:26,
 5970:45, 5971:4,
 5971:7, 5974:16,
 5984:35, 5988:1
old [1] - 5942:45
older [1] - 5942:9
oldest [6] - 5942:12,
 5942:15, 5942:20,
 5942:35, 5943:9,
 5943:18
Olen [12] - 5922:20,
 5922:28, 5937:36,
 5938:23, 5948:9,
 5951:1, 5953:28,
 5963:24, 5963:30,
 5966:46, 5970:25,
 5981:45
ON [1] - 5966:22
on-call [1] - 5939:27
once [4] - 5906:31,
 5943:16, 5948:18,
 5958:36
one [75] - 5886:13,
 5889:26, 5890:27,
 5890:41, 5893:5,
 5895:31, 5895:46,
 5896:4, 5896:35,
 5897:5, 5897:24,
 5899:20, 5899:21,
 5899:36, 5901:44,
 5905:32, 5912:3,
 5912:36, 5912:41,
 5912:46, 5913:12,
 5913:40, 5913:42,
 5914:4, 5914:10,
 5914:15, 5914:18,
 5914:34, 5918:19,
 5918:35, 5918:47,
 5922:14, 5926:1,
 5927:5, 5928:28,
 5928:32, 5930:35,
 5936:29, 5938:7,
 5938:19, 5938:39,
 5939:13, 5940:4,
 5940:8, 5941:34,
 5943:19, 5943:33,
 5944:19, 5945:37,
 5948:2, 5952:6,
 5953:44, 5954:43,
 5962:6, 5969:20,
 5970:11, 5972:12,
 5972:16, 5972:31,
 5973:34, 5973:36,
 5974:21, 5974:37,
 5978:20, 5979:31,
 5982:6, 5990:19,
 5995:5, 5995:32,
 5996:23, 5997:25,
 5997:36, 6000:30
one's [1] - 5941:34
ones [6] - 5898:29,
 5942:12, 5942:15,
 5942:35, 5943:9,
 5943:18
online [1] - 5897:31
onwards [1] - 5928:4
open [18] - 5895:33,
 5912:22, 5916:5,
 5916:7, 5923:46,
 5924:7, 5924:16,
 5934:1, 5934:20,
 5934:23, 5936:12,
 5938:47, 5939:2,
 5946:43, 5946:44,
 5964:37, 5992:23,
 5998:46
operating [4] -
 5962:36, 5963:12,
 5963:17, 6001:7
operation [19] -
 5910:41, 5911:10,
 5956:25, 5957:38,
 5959:36, 5960:1,
 5960:3, 5960:4,
 5960:18, 5960:23,
 5960:39, 5960:44,
 5962:6, 5962:10,
 5962:25, 5964:12,
 5964:15, 5967:25,
 5999:1
Operation [3] -
 5927:19, 5949:39,
 6001:11
operational [7] -
 5971:16, 5971:17,
 5985:36, 5989:17,
 5989:27, 5991:8,
 5993:2
operations [5] -
 5910:2, 5911:4,
 5920:22, 5951:8,
 5956:3
Operations [1] -
 5991:17
operative [3] -
 5959:37, 5960:24,
 5960:45
operatives [3] -
 5956:39, 5959:16,
 5960:5
opinion [4] - 5903:44,
 5918:17, 5973:27,
 5973:28
opinions [2] - 5988:1,
 5988:7
opportunities [2] -
 5918:6, 5918:27
opportunity [5] -
 5910:27, 5910:39,
 5911:5, 5956:14,
 5956:21
oral [1] - 5890:6
order [16] - 5890:20,
 5917:14, 5918:13,
 5927:45, 5928:10,
 5940:22, 5941:27,
 5942:4, 5942:11,
 5942:23, 5942:42,
 5943:18, 5947:41,
 5967:17, 5970:6,
 5991:39

ordered [1] - 5982:32	5915:28, 5915:29,	5922:21, 5922:36,	5978:11, 5981:12,	5953:21, 5954:24,
orders [3] - 5892:23,	5916:16, 5917:1,	5926:40, 5926:43,	5989:2, 5990:41,	5966:29
5892:35, 5927:39	5918:40, 5919:5,	5927:10, 5927:33,	5993:47, 5995:28,	people [26] - 5898:30,
ordinarily [4] -	5919:9, 5919:13,	5928:26, 5941:38	5995:37, 5995:41	5899:20, 5901:25,
5942:27, 5946:21,	5919:18, 5919:26,	PAPER [1] - 5966:23	part-time [1] - 5938:38	5905:21, 5905:23,
5946:30, 5947:1	5919:27, 5919:37,	paper [4] - 5958:18,	partially [2] - 5964:24	5905:30, 5906:24,
organised [1] -	5919:41, 5920:3,	5958:39, 5966:4,	participate [1] -	5918:40, 5918:42,
5899:21	5920:27, 5920:40,	5966:19	5925:17	5934:22, 5939:5,
orient [1] - 5896:42	5922:19, 5922:37,	paragraph [56] -	participated [3] -	5939:10, 5940:2,
orientating [1] -	5923:27, 5923:28,	5898:2, 5901:25,	5906:11, 5936:45,	5960:18, 5962:36,
5908:38	5923:30, 5923:32,	5901:30, 5903:40,	5961:41	5963:20, 5964:46,
original [2] - 5888:12,	5923:34, 5926:35,	5906:19, 5906:28,	participating [1] -	5965:36, 5965:43,
5936:13	5926:43, 5927:11,	5906:29, 5908:1,	5912:5	5966:43, 5967:10,
originally [1] -	5928:37, 5933:22,	5908:20, 5908:31,	particular [13] -	5967:11, 5967:13,
5950:23	5948:42, 5949:24,	5909:36, 5910:1,	5899:40, 5903:10,	5967:29, 5987:9,
otherwise [2] -	5949:29, 5949:30,	5910:7, 5910:24,	5905:35, 5907:14,	5998:12
5892:14, 5976:43	5949:47, 5950:46,	5916:25, 5917:4,	5907:28, 5911:34,	per [11] - 5890:11,
ought [1] - 5966:8	5950:47, 5955:5,	5917:21, 5917:36,	5944:18, 5952:3,	5904:39, 5904:41,
ourselves [1] -	5955:7, 5955:24,	5917:42, 5921:12,	5952:29, 5952:39,	5947:11, 5947:21,
5905:28	5955:28, 5957:34,	5921:45, 5922:7,	5997:17, 5997:30,	5947:25, 5947:31,
outcome [4] - 5903:5,	5972:18, 5972:20,	5922:28, 5924:36,	5998:44	5947:45, 5947:47,
5908:29, 5915:5,	5972:22, 5972:36,	5927:43, 5928:2,	parties [4] - 5888:39,	5948:1, 5948:14
5915:34	5972:44, 5973:3,	5928:27, 5929:7,	5890:39, 5892:34,	perceived [1] -
outline [1] - 5949:25	5973:35, 5978:19,	5929:17, 5931:12,	5927:37	5931:29
outlined [3] - 5964:32,	5978:24, 5989:27,	5931:25, 5931:27,	partner [3] - 5950:17,	perhaps [19] -
5964:40, 5968:22	5989:29, 5989:30,	5931:28, 5931:29,	5973:7, 5974:43	5886:26, 5890:15,
outside [4] - 5893:44,	5989:31, 5989:34,	5931:30, 5941:44,	party [7] - 5890:14,	5891:45, 5892:34,
5894:16, 5931:21,	5989:37, 5989:43,	5954:28, 5954:30,	5891:23, 5891:25,	5893:16, 5909:44,
5932:46	5989:45, 5989:46,	5955:25, 5955:35,	5904:31, 5906:15,	5916:2, 5920:22,
outstanding [1] -	5990:2, 5990:12,	5955:44, 5956:13,	5921:1, 5924:30	5921:17, 5940:8,
5917:20	5990:17, 5990:27,	5961:26, 5963:45,	passage [10] -	5940:21, 5940:45,
overall [1] - 5939:14	5991:6, 5991:16,	5964:9, 5980:5,	5910:35, 5910:47,	5966:3, 5966:4,
overarching [1] -	5993:3, 5993:4,	5980:39, 5983:2,	5911:1, 5911:6,	5966:7, 5974:31,
5997:24	5993:5, 5993:16,	5983:25, 5992:8,	5919:15, 5956:19,	5974:37, 5975:25,
oversaw [1] - 5905:6	5994:1, 5994:3,	5993:13, 5993:14,	5957:35, 5957:36,	5983:8
oversight [7] -	5994:15, 6000:2,	5993:23, 5994:3,	5959:41, 5960:41	period [8] - 5895:25,
5951:13, 5981:12,	6000:10, 6000:12	5995:25	passed [5] - 5911:3,	5918:4, 5924:11,
5981:32, 5983:1,	Page [24] - 5909:35,	paragraphs [4] -	5959:33, 5960:11,	5936:4, 5936:5,
5983:29, 6002:17,	5949:39, 5954:2,	5911:33, 5941:43,	5960:17, 5962:23	5938:2, 5972:17,
6002:22	5954:8, 5975:32,	5956:7, 5981:10	passing [2] - 5938:1,	5973:34
overstated [1] -	5975:44, 5976:6,	paraphrasing [1] -	5938:3	Period [1] - 5972:25
5900:8	5976:7, 5978:25,	5984:23	past [7] - 5898:17,	permitted [1] -
overwhelming [3] -	5980:17, 5980:22,	pardon [6] - 5897:46,	5952:14, 5959:34,	5959:22
5968:20, 5969:4,	5980:28, 5981:18,	5903:29, 5913:33,	5970:16, 5970:36,	permutations [1] -
5969:20	5983:18, 5985:9,	5921:32, 5922:14,	5974:44, 5998:47	5890:44
own [2] - 5915:41,	5985:13, 5985:15,	5970:29	patrol [1] - 5917:38	person [8] - 5888:19,
5968:26	5985:20, 5987:47,	Park [2] - 5910:11,	Paul [5] - 5885:46,	5914:13, 5945:16,
	5988:36, 5988:41,	5950:2	5888:43, 5898:14,	5951:42, 5961:40,
	5991:26, 5991:31,	Parramatta [1] -	5898:16, 5937:18	5966:47, 5968:26,
	5991:39	5899:32	pausing [3] - 5915:41,	5970:24
	Page's [7] - 5955:36,	part [27] - 5892:24,	5922:47, 5974:6	personal [1] - 6002:37
	5964:39, 5978:31,	5895:46, 5897:15,	Pavic [4] - 5959:9,	personally [1] -
	5979:14, 5979:37,	5899:36, 5899:41,	5959:14, 5959:22,	5926:15
	5993:25, 6001:22	5900:18, 5904:5,	5960:34	personnel [1] -
	pages [5] - 5949:21,	5904:29, 5909:16,	pending [1] - 5982:10	5962:12
	5989:41, 5990:34,	5912:28, 5914:26,	Penelope [2] -	persons [39] -
	5990:41, 5994:36	5929:4, 5938:38,	5885:44, 5914:5	5889:25, 5890:16,
	Palace [3] - 5907:17,	5939:14, 5943:8,	Penny [9] - 5914:19,	5910:19, 5910:40,
	5907:23, 5907:24	5949:16, 5962:37,	5918:41, 5948:38,	5911:13, 5917:29,
	Pamela [9] - 5885:45,	5971:16, 5975:33,	5951:34, 5953:9,	5918:1, 5918:21,

P

5920:21, 5933:44,
5950:26, 5950:28,
5950:33, 5950:38,
5953:2, 5953:3,
5953:10, 5953:39,
5954:9, 5954:15,
5954:32, 5956:21,
5956:22, 5959:43,
5962:5, 5962:9,
5962:29, 5963:4,
5964:37, 5965:26,
5965:32, 5967:9,
5973:27, 5996:40,
5996:46, 5997:11,
5997:42, 5998:13,
5999:25

perspective [2] -
5931:3, 5968:38

Peter [1] - 5885:26

phase [1] - 5903:4

phone [1] - 5893:45

physically [1] -
5899:19

picture [2] - 5995:16,
5995:19

piece [4] - 5942:37,
5958:18, 5958:39,
5966:18

place [5] - 5889:22,
5946:32, 5946:33,
5947:4, 5994:24

placed [1] - 5971:31

places [1] - 5941:24

plain [2] - 5889:21,
5889:28

plan [7] - 5949:9,
5949:15, 5949:20,
5949:26, 5949:29,
5952:47, 5994:24

planned [2] - 5980:42,
5981:1

play [1] - 5946:27

played [1] - 5995:40

plus [5] - 5905:16,
5938:14, 5938:25,
5938:46, 5967:5

POA [2] - 5989:34,
5992:12

point [19] - 5892:46,
5926:44, 5935:33,
5940:4, 5944:36,
5945:5, 5949:44,
5953:26, 5961:35,
5963:45, 5964:47,
5965:31, 5968:30,
5973:43, 5983:25,
5986:30, 5990:28,
5992:34, 5996:17

pointless [1] -
5962:29

points [1] - 5973:40

POIs [4] - 5961:29,
5962:9, 5963:46,
5966:29

Police [2] - 5885:37,
6000:47

police [29] - 5888:43,
5889:15, 5892:33,
5909:24, 5916:41,
5917:15, 5918:14,
5921:4, 5923:15,
5927:37, 5938:16,
5951:17, 5958:26,
5958:30, 5964:41,
5983:14, 5984:37,
5985:13, 5985:20,
5985:24, 5986:35,
5986:43, 5987:10,
5988:26, 5988:30,
5988:35, 5988:40,
5992:2, 5998:47

pool [1] - 5995:15

portion [2] - 5899:15,
5933:26

position [10] -
5891:11, 5893:1,
5893:47, 5927:35,
5929:35, 5932:5,
5958:36, 5962:28,
5968:31, 5983:6

possibility [13] -
5916:7, 5917:22,
5961:20, 5967:23,
5967:35, 5968:15,
5968:38, 5969:5,
5969:9, 5969:13,
5969:46, 5970:35,
5993:29

possible [16] -
5891:47, 5903:17,
5904:23, 5916:5,
5927:22, 5930:41,
5930:45, 5933:23,
5950:2, 5954:9,
5961:14, 5970:44,
5971:2, 5972:39,
5973:5, 5998:30

possibly [11] - 5889:7,
5896:39, 5925:21,
5940:39, 5940:40,
5972:39, 5973:5,
5979:31, 5979:32

POST [1] - 5966:23

post [8] - 5943:7,
5971:16, 5971:17,
5985:35, 5989:17,
5989:27, 5991:7,
5993:2

POST-IT [1] - 5966:23

postponed [2] -
5981:6, 5982:10

potential [8] - 5901:4,
5944:20, 5944:26,
5944:44, 5945:5,
5945:12, 5997:20,
6000:23

potentially [5] -
5891:35, 5911:7,
5911:11, 5916:11,
5916:14

Potentially [1] -
5943:31

Practice [1] - 5891:22

precedent [1] -
5959:22

precise [1] - 5962:8

precisely [5] -
5957:36, 5959:42,
5960:17, 5962:22,
5976:31

preconceived [2] -
5915:47, 5916:2

preparation [2] -
5887:11, 5887:18

prepare [1] - 5912:43

prepared [11] -
5888:5, 5900:36,
5900:37, 5900:41,
5913:27, 5951:42,
5958:18, 5973:27,
5980:40, 5989:28,
5989:37

presence [1] - 5900:6

present [2] - 5894:11,
5920:29

Present [1] - 5885:34

presentations [1] -
5900:15

presented [3] -
5941:21, 5947:6,
5998:46

presenting [1] -
5976:29

presently [1] - 5930:1

press [4] - 5898:33,
5898:35, 5904:10,
5937:23

presumably [9] -
5886:14, 5898:38,
5905:30, 5905:33,
5928:27, 5939:5,
5980:11, 5990:28,
5990:38

presume [4] -
5887:23, 5921:8,
5931:35, 5961:5

presumed [1] -
5971:47

pretty [10] - 5905:7,
5940:41, 5946:24,
5968:18, 5970:39,
5978:7, 5978:16,
5983:23, 5984:30,
5987:18

previous [3] - 5913:4,
5916:25, 5975:19

previously [7] -
5894:4, 5901:39,
5931:18, 5931:39,
5942:45, 5962:15,
5965:25

primarily [2] - 5991:3,
6001:41

Principal [1] - 5885:30

principally [1] -
5961:28

prioritisation [11] -
5896:31, 5906:19,
5912:5, 5912:15,
5919:1, 5919:28,
5920:43, 5921:23,
5921:24, 5921:25,
5924:20

Prioritisation [3] -
5911:37, 5912:9,
5920:34

prioritised [2] -
5921:46, 5940:17

priority [11] - 5906:23,
5919:38, 5919:42,
5920:39, 5921:6,
5924:25, 5941:19,
5941:20, 5941:29,
5949:34

private [1] - 5889:41

privy [2] - 5945:15,
5962:3

proactive [1] -
5918:15

probability [1] -
5974:24

probable [2] -
5903:16, 5904:24

problem [2] - 5958:10,
5961:45

problems [2] -
5960:33, 5960:38

procedural [1] -
5960:38

procedurally [1] -
5960:33

procedure [1] -
5958:26

proceed [6] - 5891:31,
5921:34, 5922:41,
5923:8, 5947:28,
5966:3

proceeded [1] -
5947:26

proceedings [1] -
5888:5

process [18] -
5889:45, 5906:44,
5907:7, 5912:13,
5914:27, 5920:4,
5920:11, 5920:43,
5940:38, 5940:39,
5942:10, 5942:16,
5942:19, 5943:8,
5943:17, 5943:44,
5944:6, 5976:36

produce [6] - 5888:15,
5888:17, 5918:5,
5918:26, 5931:36,
5931:44

produced [22] -
5886:8, 5886:10,
5887:4, 5887:14,
5887:15, 5887:23,
5887:36, 5887:37,
5887:38, 5887:40,
5889:32, 5891:33,
5893:14, 5893:26,
5894:4, 5894:9,
5907:36, 5915:4,
5920:38, 5929:35,
5930:41, 5930:44

producing [1] -
5929:46

product [5] - 5951:15,
5951:19, 5951:20,
5996:21, 6002:17

production [2] -
5887:33, 5888:3

productively [2] -
5996:47, 5997:38

Professor [1] -
5980:27

program [4] - 5896:44,
5897:6, 5897:8,
5933:12

progress [6] -
5917:45, 5918:14,
5946:7, 5972:12,
5987:8, 5999:9

progressed [1] -
5926:24

promising [1] -
5934:10

promoted [2] -
5935:34, 5935:47

prompt [1] - 5944:14

proper [1] - 5983:11

properly [1] - 5999:4

propose [2] - 5889:45,
5890:5

proposed [1] -
5994:23

proposition [2] -
5890:13, 5962:26

prosecution [2] - 5941:16
prospect [2] - 5917:7, 5994:45
protocol [1] - 5956:38
proved [1] - 5983:14
provide [6] - 5891:25, 5920:30, 5920:33, 5939:27, 5986:47, 5999:22
provided [9] - 5887:10, 5888:43, 5890:46, 5892:33, 5912:37, 5921:40, 5941:39, 5992:5, 5992:6
providing [1] - 5958:28
pseudonyms [1] - 5910:19
public [5] - 5945:43, 5984:6, 5986:26, 5986:40, 6000:43
public's [1] - 5986:30
publication [4] - 5892:23, 5892:35, 5892:46, 5927:39
published [3] - 5895:13, 5991:35, 5992:43
purely [1] - 5987:2
purpose [4] - 5891:46, 6000:41, 6002:21, 6002:22
purposes [1] - 5953:39
pursuant [1] - 5997:14
pursue [8] - 5917:14, 5963:46, 5965:31, 5968:1, 5968:10, 5997:11, 5999:4
pursued [3] - 5954:33, 5970:14, 5997:38
pursuing [1] - 5965:39
put [21] - 5891:35, 5892:41, 5895:25, 5901:38, 5913:13, 5922:40, 5927:18, 5927:28, 5927:32, 5928:14, 5946:17, 5954:43, 5965:42, 5967:33, 5967:47, 5980:18, 5981:19, 5988:6, 5993:19, 5996:29
putting [3] - 5891:23, 5902:8, 5962:8

Q

quantity [1] - 5894:9
quarter [1] - 5923:28
questions [30] - 5886:9, 5890:9, 5890:16, 5890:19, 5890:20, 5890:22, 5901:39, 5914:38, 5916:24, 5927:40, 5929:27, 5929:38, 5931:4, 5932:5, 5932:16, 5932:18, 5932:28, 5933:11, 5933:30, 5934:28, 5934:32, 5941:42, 5959:29, 5966:35, 5989:7, 5995:22, 5996:39, 5997:24, 6002:40, 6002:44
queue [4] - 5946:32, 5946:33, 5947:4, 5947:7
quickly [4] - 5891:47, 5894:26, 5955:35, 5984:22
Quite [1] - 5948:18
quite [23] - 5896:40, 5899:27, 5900:3, 5911:2, 5920:36, 5921:11, 5927:34, 5943:43, 5943:47, 5947:3, 5953:37, 5966:33, 5967:11, 5967:13, 5967:14, 5974:38, 5974:39, 5978:18, 5979:6, 5991:36, 5993:20, 5993:37
quoted [2] - 5901:25, 5994:36

R

raise [1] - 5957:46
ran [2] - 5941:2, 5941:3
randomly [2] - 5965:36, 5965:45
rank [2] - 5901:46, 5902:9
ranking [2] - 5991:9, 5991:35
rate [6] - 5886:17, 5901:24, 5902:21, 5928:39, 5954:16, 5961:1
rated [2] - 5921:47, 5922:31
rather [5] - 5891:46, 5924:41, 5946:31, 5970:37, 5973:7
rating [3] - 5919:23, 5920:5, 5920:15
ratings [1] - 5929:1
re [5] - 5949:2, 5949:5, 5949:43, 5969:31, 5969:34
re-investigate [3] - 5949:2, 5949:5, 5949:43
re-investigation [2] - 5969:31, 5969:34
reached [1] - 5974:16
read [30] - 5889:14, 5897:33, 5898:19, 5909:44, 5916:28, 5932:9, 5933:35, 5951:20, 5952:22, 5953:27, 5954:38, 5955:31, 5956:26, 5956:28, 5959:3, 5961:44, 5962:40, 5962:43, 5962:44, 5962:46, 5971:9, 5973:18, 5975:10, 5976:2, 5976:17, 5976:46, 5979:28, 5985:40, 5987:46, 5993:32
reading [5] - 5954:30, 5957:33, 5974:46, 5975:1, 5975:2
reads [1] - 5978:29
ready [1] - 5891:19
real [2] - 5958:13, 5958:16
realise [1] - 5901:20
reality [1] - 5945:36
really [9] - 5905:47, 5921:27, 5924:30, 5925:40, 5937:25, 5944:46, 5954:34, 5983:21, 5998:10
reason [10] - 5886:17, 5901:45, 5909:27, 5909:28, 5916:11, 5959:40, 5959:41, 5963:34, 5987:14, 5996:20
reasonable [1] - 5917:7
reasonably [1] - 5997:31
reasons [7] - 5897:17, 5925:15, 5960:30, 5960:34, 5962:11, 5964:32, 5996:44
rebut [1] - 6001:10
receive [1] - 5930:8

received [4] - 5886:18, 5912:40, 5913:16, 5994:40
recent [3] - 5942:10, 5942:17, 5942:26
recently [3] - 5962:44, 5974:46, 5975:2
reclassified [1] - 5994:37
recollection [6] - 5901:15, 5904:45, 5913:27, 5923:20, 5936:17, 5942:7
recollections [1] - 5936:10
recommendation [13] - 5910:35, 5918:9, 5918:10, 5918:31, 5920:20, 5920:23, 5940:31, 5940:33, 5956:18, 5957:16, 5959:32, 5959:35, 5959:40
recommendations [24] - 5908:23, 5908:26, 5908:29, 5908:33, 5909:31, 5911:21, 5911:27, 5915:18, 5915:24, 5915:30, 5915:35, 5915:38, 5917:1, 5920:44, 5921:28, 5955:15, 5955:23, 5955:27, 5955:31, 5957:1, 5957:30, 5997:32, 5997:37, 5999:13
Recommendations [1] - 5955:28
recommended [1] - 5907:9
record [4] - 5916:32, 5922:40, 5999:10
recorded [3] - 5916:20, 5916:31, 5916:33
records [7] - 5887:31, 5888:27, 5907:3, 5907:33, 5910:26, 5917:37, 5956:12
redaction [1] - 5892:35
redactions [1] - 5927:39
redefine [1] - 5970:6
refer [12] - 5898:30, 5908:28, 5909:34, 5910:1, 5913:3, 5915:6, 5915:18, 5917:36, 5980:26, 5980:40, 5992:12, 5999:45
reference [14] - 5893:36, 5897:39, 5897:43, 5898:2, 5907:29, 5907:30, 5909:17, 5914:41, 5914:45, 5916:39, 5920:4, 5980:12, 5997:43, 6000:22
Reference [1] - 5949:1
references [1] - 5893:15
referral [1] - 5925:10
referred [12] - 5896:1, 5906:31, 5912:32, 5923:43, 5931:12, 5931:28, 5931:30, 5946:16, 5946:46, 5983:28, 5999:46, 6002:13
referring [9] - 5901:10, 5915:26, 5916:24, 5928:30, 5928:33, 5961:39, 5982:4, 5997:8, 5999:37
refers [4] - 5904:1, 5931:25, 5941:44, 5953:2
refresh [1] - 5913:14
regard [13] - 5939:38, 5941:4, 5945:12, 5946:35, 5952:39, 5968:3, 5971:20, 5976:7, 5977:41, 5998:27, 5999:3, 6000:24, 6002:28
regarded [1] - 5952:33
regret [1] - 5991:34
regrettable [2] - 5983:29, 6002:12
regular [3] - 5906:9, 5906:10, 5929:20
reinvestigate [3] - 5911:8, 5927:20, 6002:1
reinvestigated [1] - 5941:22
reinvestigation [5] - 5924:8, 5929:10, 5940:40, 5941:4, 5942:47
reinvestigations [1] - 5929:21
reject [1] - 5983:26
relate [3] - 5891:5, 5944:17, 5959:15
related [9] - 5892:25, 5897:15, 5903:45,

5937:19, 5968:11, 5969:42, 5971:5, 5983:25, 5999:21
relates [2] - 5946:28, 5958:13
relation [18] - 5888:25, 5894:10, 5909:16, 5910:3, 5910:41, 5925:37, 5925:47, 5926:20, 5933:30, 5956:39, 5973:39, 5981:4, 5995:45, 5996:13, 5996:39, 5997:32, 5999:13
relationships [1] - 5965:21
relatively [1] - 5943:34
relegated [1] - 5977:30
relevance [1] - 5960:11
relevant [12] - 5887:11, 5887:18, 5887:34, 5890:25, 5910:11, 5945:42, 5949:34, 5950:47, 5965:22, 5997:21, 5999:8, 6002:7
relied [2] - 5976:11, 5979:36
relieving [1] - 5940:1
relying [1] - 5998:44
remained [2] - 5895:21, 5929:9
remains [2] - 5934:18, 5934:20
remarks [1] - 5890:30
remember [16] - 5896:11, 5896:45, 5897:4, 5897:7, 5897:8, 5897:30, 5898:33, 5898:35, 5898:43, 5905:14, 5905:18, 5910:21, 5912:25, 5925:25, 5933:32, 5936:14
remembered [1] - 5908:32
reminded [1] - 5888:3
repeat [2] - 5931:42, 5943:10
rephrase [1] - 5998:25
reply [1] - 5985:28
report [5] - 5918:25, 5962:25, 5987:8, 5999:10, 6001:28
reported [2] - 5968:23, 5995:14
reporting [4] - 5937:10, 5937:18, 5972:25, 5982:17
reports [3] - 5972:12, 5987:9, 5988:3
represent [1] - 5932:41
representatives [2] - 5888:38, 5888:39
request [3] - 5892:8, 5930:1, 5967:16
requested [3] - 5893:34, 5999:17, 5999:21
require [1] - 5931:43
required [3] - 5888:27, 5950:9, 5999:4
requires [1] - 5969:34
requisitions [1] - 5947:34
reserve [2] - 5929:35, 5932:5
reserved [1] - 5906:5
residents [1] - 5950:1
resort [1] - 5890:45
resource [1] - 5997:46
resource-intensive [1] - 5997:46
resources [9] - 5964:22, 5964:24, 5965:42, 5967:17, 5997:26, 5998:4, 5998:31, 5998:34, 6002:6
resourcing [4] - 5899:46, 5929:19, 5997:25, 5999:3
respect [8] - 5909:10, 5910:20, 5912:43, 5929:47, 5930:4, 5955:3, 5967:23, 5987:34
responding [2] - 5947:15, 5947:34
responds [1] - 5922:36
response [1] - 5939:27
responsibility [4] - 5888:6, 5981:33, 5984:45, 5985:5
responsible [6] - 5890:14, 5933:45, 5977:1, 5987:29, 5987:34, 6000:44
responsive [1] - 5930:31
result [13] - 5915:4, 5920:28, 5920:40, 5924:25, 5936:37, 5940:30, 5967:20, 5973:7, 5974:3, 5975:34, 5976:10, 5977:29
resulting [1] - 5984:7
results [1] - 5917:44
retire [2] - 5982:28, 5987:16
retired [1] - 5958:30
retirement [3] - 5982:10, 5982:11, 5982:15
return [3] - 5889:6, 5930:18, 5946:43
returned [2] - 5936:12, 5937:7
reveal [1] - 5898:17
revealing [1] - 5958:26
reversed [1] - 5895:32
review [78] - 5893:37, 5895:37, 5895:42, 5895:46, 5896:2, 5896:4, 5896:30, 5899:35, 5902:6, 5905:17, 5905:19, 5905:34, 5905:38, 5906:20, 5906:44, 5907:9, 5907:30, 5907:32, 5907:38, 5908:2, 5909:2, 5909:11, 5911:28, 5911:37, 5912:5, 5912:8, 5912:17, 5912:42, 5913:31, 5913:39, 5913:45, 5913:46, 5914:24, 5914:26, 5915:16, 5915:19, 5915:21, 5915:30, 5915:34, 5915:38, 5915:45, 5916:3, 5916:20, 5916:25, 5916:26, 5916:27, 5916:47, 5918:26, 5920:45, 5921:46, 5922:47, 5924:10, 5924:18, 5928:20, 5929:19, 5931:26, 5936:21, 5936:26, 5938:46, 5939:6, 5940:39, 5942:31, 5943:23, 5943:44, 5944:11, 5945:1, 5947:12, 5947:21, 5949:38, 5950:29, 5952:16, 5952:22, 5969:37, 5970:14, 5973:46, 5979:7, 5997:30
Review [6] - 5899:15, 5899:23, 5906:37, 5912:9, 5916:37, 5938:35
REVIEW [1] - 5892:29
reviewed [19] - 5907:8, 5928:9, 5928:38, 5941:1, 5942:3, 5942:9, 5942:11, 5942:17, 5942:45, 5942:46, 5943:4, 5943:12, 5944:4, 5950:34, 5953:16, 5969:42, 5971:10, 5987:26, 6001:15
reviewer [4] - 5908:45, 5911:19, 5929:5, 5955:15
reviews [7] - 5900:16, 5905:23, 5907:3, 5908:18, 5921:28, 5922:42, 5944:3
revisit [1] - 5950:1
revisiting [1] - 5963:3
reward [4] - 5917:26, 5933:42, 5934:11, 5934:21
rewards [4] - 6000:33, 6000:37, 6000:41, 6000:46
Richard [1] - 5916:33
Richardson [3] - 5918:41, 5922:44, 5923:1
Rick [2] - 5901:11, 5901:16
right-hand [2] - 5990:16, 6000:12
rightly [1] - 5894:3
ring [1] - 5944:40
rise [2] - 5944:15, 5944:41
robbery [1] - 5910:10
role [12] - 5902:18, 5914:23, 5914:24, 5929:4, 5947:13, 5951:11, 5967:5, 5976:28, 5995:46, 5998:9, 5998:12, 6001:22
roles [2] - 5950:47, 5997:36
room [12] - 5899:21, 5899:27, 5899:35, 5899:36, 5899:41, 5900:1, 5900:11, 5905:24, 5905:31, 5938:45, 5939:7, 5939:13
roughly [5] - 5896:21, 5896:36, 5938:26, 5938:28, 5938:31
round [1] - 5946:4
rule [4] - 5889:26, 5892:6, 5974:20, 5974:30
ruling [1] - 5961:20
Rullo [4] - 5885:46, 5888:42, 5888:43, 5888:47
run [5] - 5942:39, 5944:12, 5952:14, 5970:16, 5974:21
running [3] - 5947:33, 5970:35, 5999:1
Russell [22] - 5885:46, 5888:41, 5895:14, 5910:4, 5910:29, 5910:42, 5913:30, 5913:35, 5955:4, 5956:2, 5965:44, 5969:4, 5969:23, 5980:25, 5980:28, 5984:8, 5984:16, 5984:23, 5986:37, 5992:44, 5994:28, 6002:3
RUSSELL [1] - 5888:41

S

Sackar [1] - 5885:14
sake [1] - 5966:34
sample [1] - 5978:4
sat [3] - 5899:24, 5899:26, 5947:7
satisfied [1] - 5911:19
saved [1] - 5983:21
saw [6] - 5887:3, 5965:9, 5976:5, 5987:46, 5988:1, 5997:22
SC [2] - 5885:26, 5885:40
scale [3] - 5898:18, 5964:12, 5964:14
scene [2] - 5949:26, 5968:24
scheduled [1] - 5889:4
SCOI [1] - 5990:5
SCOI.74880_0001 [1] - 5949:8
SCOI.74884_0001 [1] - 5948:41
SCOI.74906_0001 [1] - 5900:29
SCOI.76962.00001_0001 [1] - 5948:27
SCOI.76962.00007_0001 [1] - 5989:24

SCOI.82027_0001 [1] - 5898:16
SCOI.82031_0001 [1] - 5898:13
SCOI.82050_0001 [1] - 5972:8
SCOI.82051_0001 [1] - 5973:33
SCOI.82071_0001 [1] - 5897:21
SCOI.82369.00001_0001 [1] - 5921:38
SCOI.82485_0001 [2] - 5923:22, 5933:17
SCOI.85707_0001 [3] - 5961:27, 5992:9, 5995:27
scope [1] - 5926:25
score [3] - 5919:38, 5919:46, 5920:39
scored [1] - 5942:47
Scott [15] - 5895:27, 5896:31, 5896:45, 5897:41, 5902:24, 5911:31, 5917:8, 5917:39, 5918:4, 5925:36, 5926:23, 5931:26, 5936:11, 5951:28, 5982:33
Scott's [1] - 5933:45
screen [5] - 5892:41, 5933:22, 5933:25, 5933:26, 5990:24
screened [2] - 5929:9, 5929:11
SCREENING [1] - 5892:29
screening [22] - 5896:2, 5896:31, 5907:29, 5907:33, 5907:35, 5907:38, 5908:28, 5909:7, 5909:8, 5909:10, 5914:24, 5920:4, 5920:11, 5921:46, 5928:20, 5928:27, 5928:37, 5947:10, 5947:11, 5947:18, 5955:3, 5955:19
Screening [5] - 5896:5, 5909:3, 5909:7, 5912:8, 5912:42
scroll [1] - 5993:4
Sean [1] - 5910:15
seat [1] - 5893:20
sec [1] - 5972:19
second [28] - 5890:15, 5895:27, 5903:40, 5907:39, 5909:30, 5910:24, 5912:29, 5917:4, 5919:9, 5921:32, 5921:34, 5922:14, 5922:19, 5922:28, 5923:27, 5925:9, 5933:35, 5936:11, 5947:22, 5949:30, 5949:44, 5950:46, 5955:24, 5955:25, 5955:44, 5956:13, 5972:36
second-back [1] - 5955:24
second-bottom [1] - 5956:13
second-last [8] - 5890:15, 5903:40, 5909:30, 5910:24, 5922:19, 5923:27, 5955:25, 5972:36
secondly [2] - 5907:8, 5925:13
secret [1] - 5983:27
secretive [3] - 6002:30, 6002:31, 6002:32
section [1] - 6000:15
see [132] - 5888:23, 5894:30, 5897:1, 5897:8, 5897:23, 5897:26, 5897:27, 5897:38, 5897:43, 5898:18, 5900:33, 5900:36, 5901:1, 5901:12, 5901:24, 5901:27, 5901:31, 5902:21, 5902:23, 5902:24, 5902:39, 5902:40, 5903:13, 5903:19, 5903:20, 5903:41, 5904:2, 5904:3, 5906:28, 5907:7, 5907:44, 5908:4, 5908:23, 5908:31, 5908:36, 5908:41, 5909:10, 5909:18, 5910:15, 5910:18, 5910:44, 5911:16, 5911:23, 5911:36, 5911:38, 5912:4, 5913:21, 5914:39, 5914:40, 5914:47, 5916:41, 5917:1, 5917:11, 5917:22, 5918:39, 5919:4, 5919:6, 5919:19, 5919:26, 5919:28, 5919:33, 5919:38, 5919:43, 5920:7, 5920:9, 5920:16, 5920:26, 5922:1, 5922:2, 5922:33, 5922:38, 5923:24, 5923:28, 5924:2, 5926:35, 5927:7, 5927:12, 5927:24, 5927:25, 5928:39, 5928:45, 5929:29, 5931:33, 5933:25, 5936:10, 5941:45, 5941:46, 5942:36, 5944:9, 5948:30, 5948:33, 5949:5, 5949:20, 5949:35, 5949:44, 5953:23, 5953:29, 5955:5, 5955:11, 5955:16, 5955:19, 5955:28, 5956:10, 5956:15, 5958:36, 5960:42, 5960:43, 5961:31, 5962:2, 5962:28, 5965:36, 5965:44, 5966:1, 5966:8, 5972:16, 5972:17, 5972:32, 5973:40, 5973:41, 5978:10, 5978:36, 5979:40, 5980:8, 5987:38, 5989:30, 5990:24, 5990:27, 5992:12, 5993:7, 5993:15, 5994:4, 5995:18
seeing [6] - 5897:30, 5898:22, 5898:26, 5898:28, 5914:36, 5919:1
seek [1] - 5927:39
seeking [3] - 5999:45, 6000:46, 6000:47
seem [1] - 5954:32
seemingly [1] - 5974:37
selected [2] - 5903:26, 5928:19
sending [2] - 5953:10, 5953:27
Senior [13] - 5885:26, 5948:45, 5952:26, 5952:37, 5955:6, 5956:44, 5957:8, 5957:27, 5996:45, 5997:5, 5997:13, 5997:18, 6002:35
senior [9] - 5904:43, 5906:24, 5920:37, 5921:5, 5923:15, 5937:30, 5938:14, 5938:39, 5987:9
sensationalism" [1] - 5904:2
sense [8] - 5907:6, 5934:16, 5951:20, 5974:6, 5974:10, 5974:19, 5977:36, 5977:37
sensitivity [1] - 5944:25
sent [3] - 5981:47, 5987:7, 5987:9
sentence [5] - 5916:16, 5977:29, 5979:10, 5979:34, 5980:12
sentences [1] - 5934:1
separate [1] - 5949:43
separation [2] - 5910:36, 5956:19
September [8] - 5885:22, 5886:11, 5895:1, 5900:32, 5902:28, 5935:20, 5949:11, 5974:34
SEPTEMBER [1] - 6003:13
sergeant [4] - 5899:23, 5938:13, 5938:25, 5938:39
Sergeant [29] - 5885:38, 5885:41, 5885:44, 5885:46, 5894:45, 5907:12, 5909:17, 5909:34, 5948:38, 5948:44, 5949:39, 5951:10, 5951:34, 5952:26, 5952:33, 5954:8, 5955:36, 5956:32, 5957:2, 5963:13, 5966:27, 5978:31, 5979:37, 5991:4, 5996:7, 5996:47, 5997:19, 6002:35
sergeants [3] - 5938:15, 5938:38
series [4] - 5901:10, 5922:16, 5972:12, 6000:3
serious [3] - 5976:5, 5981:19, 5987:47
served [3] - 5887:47, 5964:38, 5964:39
service [1] - 5909:24
serving [1] - 5992:2
set [10] - 5908:26, 5916:46, 5925:7, 5925:15, 5925:20, 5926:11, 5950:47, 5970:8, 5984:12, 5984:24
setting [2] - 5927:27, 5949:25
seven [1] - 5948:43
shameful [1] - 5898:15
shared [1] - 5940:1
Sheehan [3] - 5898:14, 5898:16, 5973:18
shocked [2] - 5977:8, 5977:10
short [2] - 5886:19, 5996:34
Short [1] - 5885:37
Short's [1] - 5889:31
shortly [3] - 5912:39, 5913:38, 5924:9
show [7] - 5892:39, 5897:22, 5907:27, 5958:18, 5958:40, 5983:17, 5992:32
showed [1] - 5953:44
showing [1] - 5945:5
shown [3] - 5897:5, 5897:20, 5933:16
sic [2] - 5924:23, 5956:20
sick [1] - 5888:24
side [16] - 5893:5, 5931:43, 5938:14, 5938:16, 5938:19, 5939:10, 5939:11, 5939:37, 5939:39, 5944:31, 5947:13, 5948:6, 5954:43, 5970:11, 5985:29
sides [1] - 5938:20
sifting [1] - 5887:34
sign [4] - 5913:43, 5913:44, 5914:14, 5973:16
signature [5] - 5908:42, 5908:45, 5911:17, 5990:27, 5990:35
signed [12] - 5893:31, 5912:45, 5914:9, 5914:15, 5930:37, 5930:40, 5931:18, 5931:21, 5971:30, 5972:32, 5973:35
significance [1] - 5921:26
significant [3] - 5908:16, 5910:8, 6001:8
signing [2] - 5973:25, 5985:35

similar [1] - 5917:30
similarities [1] - 5897:40
simplified [1] - 5940:41
simply [11] - 5892:8, 5928:18, 5946:32, 5969:32, 5979:4, 5980:22, 5987:15, 5992:34, 5995:5, 5995:13, 5998:16
sit [7] - 5888:28, 5889:39, 5889:44, 5945:44, 5946:40, 5989:6, 5989:9
sitting [3] - 5889:10, 5899:16, 5899:41
six [7] - 5896:14, 5896:25, 5896:39, 5897:42, 5923:29, 5938:31, 5948:14
slightly [4] - 5890:21, 5899:41, 5956:43, 5959:31
slowly [1] - 5955:34
small [1] - 5990:4
social [2] - 5910:36, 5956:19
solicitor [1] - 5931:11
Solicitor [2] - 5885:30, 5885:31
solvability [19] - 5921:13, 5921:18, 5921:19, 5921:27, 5921:47, 5922:10, 5922:32, 5925:14, 5928:39, 5928:43, 5929:1, 5929:3, 5934:2, 5941:2, 5941:3, 5941:6, 5941:14, 5944:9
solvable [1] - 5941:21
solved [1] - 5941:35
someone [15] - 5893:44, 5893:45, 5894:1, 5894:5, 5894:16, 5894:22, 5906:39, 5928:20, 5945:14, 5952:29, 5961:14, 5970:6, 5970:17, 5970:19, 5996:29
sometimes [5] - 5907:28, 5907:29, 5934:9, 5934:10, 5939:35
somewhat [1] - 5940:46
somewhere [1] - 5953:9
soon [4] - 5927:35, 5930:41, 5954:1, 5961:27
sorry [49] - 5895:19, 5896:23, 5896:38, 5896:39, 5897:7, 5898:25, 5902:3, 5903:29, 5903:36, 5903:38, 5907:16, 5911:44, 5914:30, 5915:11, 5920:32, 5925:40, 5929:15, 5929:32, 5930:15, 5932:38, 5933:25, 5939:31, 5940:33, 5941:33, 5943:10, 5950:5, 5958:43, 5959:12, 5961:44, 5962:33, 5963:27, 5969:17, 5972:19, 5972:42, 5973:13, 5975:1, 5977:18, 5977:44, 5981:27, 5982:22, 5983:4, 5989:30, 5990:1, 5990:21, 5991:43, 5998:7, 6000:5, 6000:8, 6000:14
sort [4] - 5905:34, 5915:47, 5919:22, 5959:22
sorted [1] - 5927:44
sorts [3] - 5898:38, 5923:11
sought [1] - 5929:2
sounding [1] - 5951:6
source [1] - 5905:26
South [1] - 5885:19
space [3] - 5899:22, 5899:27, 5939:2
speaking [2] - 5951:12, 5951:13
SPECIAL [1] - 6003:12
Special [3] - 5885:7, 5936:37, 5953:16
specific [3] - 5939:24, 5971:38, 5974:34
specifically [1] - 5886:12
specifics [2] - 5939:16, 5975:7
spend [1] - 5896:35
spent [1] - 5934:6
spoken [3] - 5893:25, 5982:37, 5982:43
sport [1] - 5897:25
spreadsheet [4] - 5953:34, 5953:37, 5953:40, 5954:25
Squad [5] - 5894:45, 5900:16, 5935:26, 5935:30, 5935:38
staff [5] - 5890:38, 5899:36, 5905:18, 5947:33, 5963:17
staffing [2] - 5939:26, 5951:7
stage [17] - 5902:33, 5906:47, 5907:7, 5917:46, 5923:44, 5930:3, 5936:33, 5936:34, 5940:38, 5945:13, 5945:37, 5947:22, 5947:26, 5962:41, 5963:28, 5997:4, 6001:8
stand [1] - 5889:28
start [4] - 5889:43, 5896:40, 5912:19, 5922:19
started [2] - 5924:37, 5948:18
starting [2] - 5943:18, 5949:30
starts [2] - 5901:10, 5927:10
State [9] - 5940:34, 5980:43, 5981:1, 5982:10, 5982:13, 5982:20, 5982:24, 5987:11, 5991:22
statement [33] - 5888:44, 5890:41, 5890:46, 5895:1, 5895:5, 5906:18, 5906:20, 5908:20, 5911:32, 5913:3, 5913:11, 5921:11, 5921:40, 5924:36, 5927:33, 5935:19, 5935:23, 5941:38, 5945:16, 5951:42, 5952:32, 5953:8, 5961:26, 5964:40, 5968:22, 5980:41, 5981:8, 5981:10, 5982:46, 5992:8, 5993:27, 5995:27, 6002:11
statements [3] - 5950:9, 5950:11, 5950:15
Steer [1] - 5885:41
step [1] - 5997:46
Stephen [1] - 5885:46
steps [9] - 5918:15, 5995:45, 5997:33, 5997:37, 5999:14, 5999:30, 6000:3, 6000:4, 6000:22
Steve [3] - 5977:15, 5977:19, 5982:38
STEWART [1] - 5935:11
Stewart [4] - 5885:42, 5886:5, 5935:6, 5935:15
stick [1] - 5966:18
still [12] - 5893:1, 5903:3, 5913:30, 5914:7, 5920:13, 5922:24, 5924:18, 5934:18, 5934:23, 5953:1, 5953:22, 5953:26
stint [1] - 5935:37
stop [2] - 5932:13, 5965:7
stops [1] - 5985:7
Story [8] - 5896:44, 5897:15, 5923:23, 5923:40, 5925:13, 5932:29, 5933:12, 5936:42
story [1] - 5985:30
straightaway [1] - 5965:8
strategic [2] - 6002:21, 6002:22
strategies [1] - 5939:25
strategies/Execution [1] - 5949:33
Street [2] - 5885:18, 5899:30
strict [2] - 5956:38, 5961:17
strictly [1] - 5923:27
strike [15] - 5905:22, 5913:47, 5924:10, 5924:18, 5926:15, 5939:6, 5949:17, 5952:6, 5984:41, 5984:43, 5995:37, 5996:22, 6001:20, 6001:27, 6001:40
Strike [25] - 5894:10, 5894:11, 5897:11, 5913:45, 5924:8, 5924:13, 5924:15, 5924:35, 5925:15, 5937:1, 5948:25, 5948:28, 5995:29, 5995:45, 5996:13, 5996:35, 5996:40, 6001:6, 6001:9, 6001:39, 6001:47, 6002:12, 6002:29, 6002:36
structure [1] - 5919:4
struggling [1] - 5931:32
stuff [1] - 6000:25
sub [1] - 5919:23
sub-topics [1] - 5919:23
subject [10] - 5892:37, 5915:15, 5929:38, 5931:3, 5931:4, 5954:19, 5956:3, 5959:44, 5961:30, 5966:8
subjected [1] - 5902:35
subjects [1] - 5898:39
submissions [4] - 5988:25, 5988:31, 5988:35, 5988:40
submitted [3] - 5914:3, 5914:4, 5914:28
subpoenas [1] - 5947:34
subsequent [2] - 5979:36, 5997:30
Suburbs [1] - 5897:42
success [1] - 5961:31
successful [2] - 5941:16, 5945:1
Sue [1] - 5901:26
suggest [2] - 6001:9, 6001:33
suggested [6] - 5933:47, 5958:29, 5963:2, 5963:15, 5963:16, 5966:30
suggesting [5] - 5922:17, 5933:6, 5947:2, 5961:6, 5962:26
suggestion [6] - 5903:44, 5904:24, 5941:25, 5983:26, 6001:38, 6002:29
suggestions [1] - 5937:10
suggests [1] - 5940:44
suicidal [7] - 5974:43, 5974:45, 5975:6, 5975:19, 5975:33, 5975:41, 5993:26
suicide [20] - 5895:32, 5915:25, 5915:33, 5916:4, 5916:9, 5917:9, 5917:15, 5917:22, 5936:13, 5968:15, 5968:21, 5968:32, 5974:4, 5974:14, 5974:33,

5974:38, 5977:31,
5979:17, 5980:12,
5993:29
suitable [1] - 5942:47
summaries [12] -
5971:21, 5971:30,
5975:2, 5980:39,
5984:22, 5987:22,
5987:29, 5987:39,
5988:3, 5990:42,
5990:45, 6001:15
summarised [1] -
5919:27
summary [18] -
5902:30, 5907:34,
5916:46, 5952:17,
5971:4, 5971:7,
5971:8, 5975:29,
5975:30, 5975:32,
5976:2, 5976:6,
5976:14, 5976:37,
5978:24, 5999:17,
6000:18
summons [12] -
5888:12, 5888:18,
5891:34, 5893:28,
5893:31, 5929:47,
5930:32, 5930:36,
5930:39, 5931:21,
5931:35, 5931:43
Superintendent [1] -
5991:17
supervisor [5] -
5951:6, 5951:13,
5952:14, 5971:9,
5984:35
Supervisor [11] -
5948:34, 5948:44,
5951:10, 5951:11,
5951:30, 5951:44,
5952:1, 5952:5,
5952:21, 5970:38,
5987:28
supervisors [2] -
5914:5, 5971:32
SUPPLEMENTED [1] -
5892:28
support [2] - 5915:24,
5915:33
suppose [5] -
5892:45, 5943:37,
5954:41, 5971:13,
5983:7
Supreme [1] - 5941:17
surely [5] - 5982:17,
5983:10, 5983:14,
5984:34, 5985:16
surface [2] - 5944:15,
5944:41
surprise [1] - 5890:40
surprised [4] -
6001:14, 6001:16,
6001:19, 6001:27
surveillance [9] -
5954:19, 5959:45,
5960:7, 5962:11,
5962:31, 5964:17,
5964:20, 5997:44,
5998:30
suspect [7] - 5913:46,
5919:10, 5941:11,
5951:41, 5994:45,
5995:15, 5995:28
suspected [1] -
6002:3
suspects [10] -
5910:9, 5910:14,
5910:37, 5953:35,
5953:38, 5954:25,
5956:2, 5956:8,
5956:20, 5997:8
suspend [2] -
5919:42, 5921:6
suspended [5] -
5916:19, 5920:41,
5921:8, 5924:26,
5924:28
suspension [1] -
5929:11
suspicious [3] -
5965:23, 5993:6,
6002:2
Swaffield [4] - 5959:9,
5959:14, 5959:21,
5960:34
sworn [1] - 5935:11
Sydney [6] - 5885:19,
5891:8, 5897:24,
5901:11, 5937:9,
5937:14
Sydney's [1] - 5897:42
system [19] - 5907:14,
5907:17, 5907:20,
5928:15, 5940:40,
5940:45, 5940:47,
5942:34, 5942:45,
5943:42, 5945:3,
5946:3, 5946:4,
5946:23, 5947:1,
5971:42, 5996:28,
5996:30
systematic [1] -
5929:19

T

Tab [1] - 5913:15
tab [34] - 5892:24,
5892:25, 5892:26,
5897:21, 5897:24,
5898:12, 5900:29,
5904:21, 5908:37,
5911:35, 5912:39,
5921:32, 5921:37,
5922:16, 5923:22,
5925:32, 5926:33,
5927:35, 5930:38,
5933:16, 5941:37,
5948:26, 5948:41,
5949:8, 5953:1,
5953:6, 5954:45,
5972:8, 5977:28,
5978:9, 5989:24,
5999:10, 5999:46
TAB [1] - 5892:30
table [2] - 5894:21,
5919:37
tactics [1] - 5958:26
tandem [1] - 5907:44
Taradale [47] - 5908:2,
5908:21, 5909:35,
5909:44, 5911:5,
5912:3, 5912:41,
5914:10, 5925:38,
5926:26, 5926:28,
5927:19, 5927:29,
5928:29, 5937:12,
5949:39, 5950:22,
5950:23, 5950:34,
5953:34, 5954:1,
5954:8, 5954:32,
5956:22, 5959:44,
5961:30, 5961:41,
5962:4, 5963:46,
5967:25, 5969:42,
5970:43, 5970:45,
5971:2, 5971:5,
5987:47, 5988:31,
5988:36, 5988:41,
5988:42, 5994:7,
5995:15, 5997:8,
5999:18, 6000:25,
6000:34, 6001:11
Taradale [1] - 5973:9
Taradale/Bondi [1] -
5997:42
target [3] - 5962:29,
5964:25, 5967:24
targeted [4] - 5962:9,
5962:22, 5962:30,
5998:47
targeting [6] - 5918:1,
5918:20, 5961:29,
5962:13, 5963:46,
5997:42
targets [1] - 5998:46
task [1] - 5917:21
tasks [1] - 5905:35
Taylor [35] - 5885:38,
5886:4, 5886:7,
5886:10, 5886:20,
5889:2, 5891:35,
5892:40, 5893:9,
5893:20, 5894:42,
5894:43, 5897:20,
5900:28, 5900:29,
5903:36, 5911:34,
5912:36, 5912:38,
5921:31, 5927:43,
5930:15, 5930:32,
5930:46, 5932:2,
5934:41, 5936:22,
5936:27, 5955:7,
5955:15, 5956:45,
5957:11, 5957:35,
5962:18
TAYLOR [1] - 5894:38
Taylor's [2] - 5887:19,
5957:30
tea [1] - 5905:45
team [27] - 5899:8,
5905:17, 5905:19,
5905:34, 5905:38,
5906:14, 5915:21,
5923:43, 5938:13,
5938:46, 5943:7,
5947:45, 5947:47,
5952:29, 5955:40,
5961:28, 5966:42,
5973:45, 5978:19,
5980:5, 5980:7,
5981:38, 5981:39,
5981:41, 5984:43,
5997:27, 5998:42
Team [21] - 5895:9,
5895:21, 5897:5,
5898:40, 5899:15,
5899:23, 5900:32,
5906:10, 5906:37,
5916:26, 5921:20,
5922:25, 5927:44,
5935:41, 5937:27,
5937:31, 5938:6,
5938:11, 5940:17,
5940:28, 5962:33
Team's [2] - 5907:1,
5940:22
Teams [2] - 5899:25,
5938:35
teams [10] - 5899:26,
5938:13, 5938:21,
5938:46, 5939:15,
5939:24, 5947:14,
5948:1, 5948:3,
5978:20
technique [1] -
5958:26
technology [4] -
5944:10, 5944:25,
5944:37, 5946:5
Technology [1] -
5919:14
Tedeschi [2] -
5885:36, 5890:18
Tedeschi's [1] -
5890:30
tedious [1] - 5931:42
telephone [4] -
5910:3, 5954:20,
5956:4, 5964:16
ten [2] - 5972:29,
5989:2
tender [4] - 5891:4,
5891:25, 5892:21,
5966:4
term [2] - 5907:1,
5921:27
termed [1] - 5997:12
Terminated [1] -
5909:21
terminated [1] -
5909:22
terms [13] - 5899:19,
5907:30, 5921:25,
5934:20, 5943:16,
5952:47, 5959:23,
5960:23, 5968:37,
5969:8, 5969:21,
5970:42, 5975:17
Terms [1] - 5949:1
terrible [2] - 5977:23,
5977:25
test [2] - 5927:18,
5927:28
testimony [1] -
5888:26
testing [1] - 5944:25
Thangaraj [2] -
5885:40, 5890:23
themselves [3] -
5905:9, 5918:15,
5951:8
theories [3] - 5979:16,
5980:8, 5980:11
theory [2] - 5980:17,
5980:21
thereabouts [1] -
5940:29
thereafter [2] - 5924:9,
5925:4
therefore [1] - 5995:5
they have [3] -
5960:40, 5976:32,
5984:3
they've [2] - 5910:18,
5914:39
thinks [1] - 5890:10
third [15] - 5897:38,
5910:1, 5919:13,
5926:46, 5941:34,

- 5947:26, 5948:42,
5954:28, 5954:30,
5973:43, 5980:7,
5982:33, 5989:30,
5989:34, 5992:15
thirdly [1] - 5907:9
Thompson [2] -
5901:26, 5901:31
thorough [1] -
5978:32
thoroughly [1] -
5973:8
thoughts [1] - 5974:43
three [58] - 5893:16,
5895:13, 5896:6,
5896:39, 5898:4,
5898:14, 5898:16,
5899:23, 5899:35,
5905:16, 5905:19,
5905:32, 5907:7,
5908:21, 5924:42,
5924:46, 5925:34,
5925:38, 5925:43,
5926:16, 5926:26,
5926:29, 5927:29,
5936:27, 5937:11,
5937:38, 5938:12,
5938:39, 5940:38,
5947:28, 5947:32,
5947:41, 5947:44,
5948:2, 5948:11,
5949:2, 5949:21,
5949:25, 5951:25,
5955:4, 5957:33,
5967:1, 5967:23,
5969:20, 5969:21,
5969:31, 5971:21,
5973:40, 5981:5,
5987:23, 5987:38,
5991:8, 5991:25,
5994:22, 5994:36,
6002:8
three-stage [2] -
5907:7, 5940:38
Thursday [3] -
5886:35, 5889:5,
5890:29
time [1] - 5919:15
timeline [1] - 5944:36
timely [1] - 5960:41
tired [2] - 5888:24
title [2] - 5909:3,
5909:12
titles [1] - 5923:14
TO [1] - 6003:13
today [9] - 5886:3,
5889:2, 5890:23,
5926:2, 5931:4,
5931:5, 5953:14,
5988:24, 5989:5
today's [1] - 5953:39
together [2] - 5892:26,
5954:29
tomorrow [3] -
5889:3, 5934:47,
6003:9
took [9] - 5896:14,
5896:25, 5928:23,
5928:24, 5971:24,
5976:2, 6001:15,
6001:16
top [25] - 5901:2,
5903:14, 5914:39,
5915:29, 5916:16,
5919:6, 5919:9,
5919:13, 5920:3,
5928:36, 5947:32,
5953:23, 5972:16,
5972:18, 5972:22,
5989:42, 5989:44,
5989:45, 5990:2,
5990:7, 5990:16,
5993:4, 5993:5,
5993:15, 5994:1
topic [3] - 5901:1,
5927:41, 5980:27
topics [2] - 5919:23,
5920:9
total [4] - 5919:31,
5919:32, 5919:38,
5949:21
Touw [1] - 5885:31
towards [7] - 5889:19,
5899:26, 5913:29,
5916:16, 5972:16,
5978:28, 5994:2
toxicology [1] -
5980:25
track [1] - 5951:15
tracked [3] - 5928:3,
5928:9, 5942:3
tracking [4] - 5928:43,
5941:26, 5941:28,
5944:16
transcript [6] -
5889:15, 5923:23,
5932:29, 5933:12,
5976:32, 5977:5
transcripts [1] -
5975:10
treatment [1] -
5906:47
trespass [2] -
5927:40, 5959:30
triage [5] - 5906:47,
5907:2, 5907:7,
5907:12, 5940:38
trials [1] - 5947:32
tried [1] - 5977:40
trigger [1] - 5945:23
TRIM [3] - 5907:17,
5907:20
true [4] - 5895:5,
5935:23, 5983:6,
5995:4
trust [1] - 5891:10
try [6] - 5893:4,
5904:18, 5908:10,
5911:6, 5925:42,
5931:39
trying [12] - 5934:21,
5942:41, 5944:7,
5945:3, 5945:28,
5946:47, 5947:40,
5959:34, 5959:39,
5974:23, 5984:21,
5997:19
Tse [3] - 5914:6,
5914:20, 5918:42
TSE [2] - 5914:20,
5914:21
TUESDAY [1] -
6003:13
Tuesday [2] - 5886:35,
5889:8
tunnel [1] - 5988:14
turn [24] - 5898:12,
5900:28, 5911:35,
5913:2, 5918:34,
5939:40, 5940:39,
5941:43, 5944:22,
5948:26, 5953:6,
5953:8, 5954:45,
5965:36, 5965:45,
5972:8, 5973:35,
5989:11, 5989:24,
5989:43, 5993:3,
5994:9, 6000:2,
6001:20
turned [2] - 5944:7,
5945:29
turning [4] - 5922:15,
5948:25, 5987:22,
5989:17
turns [2] - 5975:27,
5991:36
two [51] - 5886:4,
5886:11, 5890:24,
5890:43, 5893:15,
5897:29, 5898:18,
5899:8, 5904:39,
5904:41, 5904:43,
5905:32, 5907:30,
5910:15, 5910:18,
5910:19, 5910:41,
5913:4, 5913:12,
5916:42, 5918:42,
5922:42, 5925:7,
5927:21, 5932:12,
5934:1, 5938:7,
5938:13, 5938:20,
5938:38, 5938:39,
5940:8, 5948:1,
5948:2, 5956:7,
5956:8, 5959:15,
5962:11, 5963:40,
5974:21, 5974:25,
5974:38, 5979:32,
5989:42, 5990:11,
5990:13, 5990:34,
5991:7, 6001:40
type [5] - 5901:47,
5902:4, 5947:5,
5947:6, 5989:28
types [1] - 5997:43
typical [1] - 5900:2
typically [4] - 5901:47,
5902:4, 5939:7,
5939:35
-
- U**
-
- UHT** [36] - 5898:46,
5899:11, 5899:20,
5900:17, 5901:5,
5901:20, 5902:18,
5902:43, 5903:22,
5904:14, 5904:38,
5906:31, 5908:8,
5921:46, 5922:11,
5924:42, 5928:38,
5939:18, 5943:7,
5943:13, 5943:16,
5943:41, 5944:6,
5946:16, 5946:22,
5946:30, 5947:9,
5947:11, 5961:28,
5995:33, 5995:36,
5997:25, 5998:4,
5998:31, 6001:6
UHT's [1] - 5943:34
ulterior [1] - 5997:14
ultimate [3] - 5967:44,
5987:8, 6001:46
ultimately [3] -
5906:35, 5907:35,
5954:5
unacceptable [1] -
5888:4
unaware [2] - 5963:2,
5963:5
uncover [1] - 5994:28
undated [2] - 5926:1,
5928:32
under [16] - 5914:40,
5916:39, 5919:27,
5920:27, 5924:18,
5938:15, 5938:37,
5942:45, 5949:33,
5949:47, 5950:7,
5950:26, 5978:19,
5986:43, 5990:35,
6000:14
undercover [26] -
5910:40, 5911:10,
5956:25, 5956:39,
5957:17, 5957:37,
5959:16, 5959:26,
5959:33, 5959:34,
5959:36, 5959:37,
5960:1, 5960:3,
5960:4, 5960:5,
5960:18, 5960:23,
5960:24, 5960:39,
5960:44, 5961:17,
5962:6, 5962:10,
5962:25
Undercover [3] -
5956:38, 5961:16,
5962:33
undercutting [1] -
5993:40
understood [5] -
5905:5, 5907:31,
5947:1, 6001:46,
6002:5
undertake [4] -
5917:47, 5918:20,
5964:11, 5995:44
undertaken [5] -
5909:40, 5934:13,
5945:37, 5997:44,
5999:14
undertaking [1] -
5999:5
undetected [2] -
5941:33, 5945:32
undetermined [6] -
5941:34, 5945:33,
5946:40, 5984:25,
5994:38
unexpectedly [1] -
5945:22
unfolded [1] - 5971:3
unfortunately [1] -
5886:7
unfounded [1] -
5988:32
unit [2] - 5899:25,
5922:31
unjustified [1] -
5988:32
unless [2] - 5889:25,
5998:20
unlikely [1] - 5930:45
unresolved [1] -
5941:33
unsigned [2] -
5913:43, 5913:47
UNSOLVED [1] -

5892:29
Unsolved [37] -
 5895:8, 5895:21,
 5896:5, 5897:4,
 5898:40, 5899:15,
 5899:22, 5899:25,
 5900:32, 5906:10,
 5906:36, 5906:47,
 5909:3, 5912:8,
 5912:42, 5915:16,
 5916:26, 5916:37,
 5921:20, 5922:24,
 5927:44, 5934:6,
 5935:41, 5936:4,
 5936:32, 5936:33,
 5937:27, 5937:31,
 5938:6, 5938:11,
 5938:35, 5940:17,
 5940:22, 5940:28,
 5962:33, 5963:23,
 5981:44
unsolved [26] -
 5898:33, 5900:25,
 5901:5, 5901:27,
 5903:26, 5903:45,
 5904:10, 5904:32,
 5909:11, 5923:42,
 5928:3, 5929:10,
 5931:25, 5934:18,
 5934:20, 5937:7,
 5937:20, 5938:1,
 5941:33, 5941:44,
 5944:2, 5944:47,
 5945:32, 5945:34,
 5998:35, 6000:42
up [37] - 5889:28,
 5896:36, 5896:38,
 5897:42, 5898:17,
 5899:23, 5901:26,
 5902:43, 5903:37,
 5904:18, 5905:41,
 5906:14, 5919:31,
 5925:7, 5925:15,
 5925:20, 5926:11,
 5933:21, 5939:25,
 5940:1, 5944:22,
 5948:14, 5950:2,
 5950:9, 5953:8,
 5953:23, 5958:33,
 5965:37, 5965:45,
 5968:3, 5981:9,
 5983:1, 5983:7,
 5987:9, 5990:27,
 5990:28, 5991:35
update [9] - 5891:10,
 5894:6, 5907:41,
 5914:25, 5929:42,
 5939:37, 5939:38,
 5939:39, 5939:40
updates [3] - 5900:16,

5906:13, 5939:35
upper [1] - 6000:12
upshot [1] - 5943:36
upstairs [2] - 5939:47,
 5987:11
useful [1] - 5892:26

V

valid [2] - 5920:44,
 6000:26
valuable [1] - 5946:7
varied [2] - 5938:37,
 5939:47
various [11] - 5906:33,
 5919:22, 5937:23,
 5948:42, 5954:20,
 5959:33, 5959:44,
 5995:37, 5996:45,
 5997:11, 5999:18
ventilated [1] -
 5983:12
verified [1] - 5996:22
verify [2] - 5951:15,
 5951:19
version [7] - 5897:31,
 5897:38, 5930:37,
 5930:40, 5931:18,
 5940:41, 5990:22
via [1] - 5910:40
vicinity [1] - 5899:12
victim's [1] - 5978:33
victimology [5] -
 5967:41, 5968:2,
 5968:11, 5994:16,
 5994:21
victims [1] - 5953:35
view [35] - 5892:37,
 5892:46, 5900:23,
 5900:26, 5902:44,
 5903:10, 5903:23,
 5903:32, 5904:5,
 5904:10, 5904:14,
 5904:29, 5904:35,
 5915:41, 5915:46,
 5916:3, 5916:4,
 5918:12, 5921:13,
 5931:20, 5931:24,
 5961:1, 5961:15,
 5961:19, 5963:11,
 5971:40, 5971:46,
 5981:35, 5986:30,
 5986:35, 5992:42,
 5995:1, 5997:4,
 5998:28
viewed [1] - 5886:32
views [5] - 5898:46,
 5904:22, 5963:19,
 5983:11, 5994:29
violence [2] - 5902:36,

5973:8
violent [1] - 5898:5
virtually [1] - 5969:8
vision [1] - 5988:14
vocabulary [1] -
 5912:33
volume [26] - 5892:24,
 5892:26, 5897:20,
 5900:28, 5908:37,
 5911:35, 5921:31,
 5921:37, 5922:15,
 5923:22, 5925:32,
 5926:33, 5927:35,
 5941:37, 5948:26,
 5953:4, 5953:6,
 5954:44, 5954:45,
 5972:5, 5978:9,
 5989:18, 5989:21,
 5999:41, 5999:43
VOLUME [1] - 5892:30

W

waited [1] - 5982:27
waiting [1] - 5987:16
waitlist [1] - 5929:22
Wales [1] - 5885:19
Wallace [1] - 5991:17
warrant [1] - 5927:5
Warren [28] - 5895:14,
 5909:17, 5910:4,
 5910:29, 5910:42,
 5931:16, 5950:16,
 5955:4, 5956:2,
 5965:16, 5965:19,
 5965:20, 5965:44,
 5968:16, 5969:12,
 5969:23, 5972:37,
 5972:47, 5977:33,
 5980:35, 5984:8,
 5984:16, 5984:23,
 5986:36, 5992:44,
 5994:28, 6000:24,
 6002:3
Warren's [1] - 5999:26
wave [1] - 5898:15
ways [1] - 5979:7
Wednesday [3] -
 5886:35, 5889:3,
 5889:10
week [13] - 5886:26,
 5886:47, 5887:2,
 5888:16, 5889:19,
 5889:41, 5889:43,
 5889:44, 5890:24,
 5904:40, 5904:41,
 5954:29
weekend [1] - 5901:17
weeks [2] - 5886:11,
 5898:14
Wells [2] - 5885:39,
 5889:7
Welsford [1] - 5894:11
whatsoever [3] -
 5965:25, 5996:35,
 5996:37
whereas [1] - 5962:5
whereby [1] - 5946:3
whilst [1] - 5978:32
whole [6] - 5906:10,
 5906:14, 5939:18,
 5939:29, 5939:32,
 5939:34
wide [2] - 5964:12,
 5964:14
William [1] - 5885:27
Willing [16] - 5885:40,
 5889:15, 5889:18,
 5900:11, 5900:13,
 5904:20, 5904:26,
 5904:29, 5904:31,
 5921:40, 5921:45,
 5922:21, 5939:47,
 5940:12, 5953:29,
 5981:45
wing [1] - 5944:2
wish [2] - 5889:16,
 5958:30
wishes [1] - 5890:6
WITHDREW [2] -
 5934:44, 6003:7
withholding [4] -
 5976:10, 5981:20,
 5981:30, 5988:20
witness [29] - 5889:4,
 5889:32, 5889:33,
 5890:6, 5890:9,
 5890:10, 5890:11,
 5890:14, 5890:16,
 5890:18, 5890:19,
 5891:24, 5891:26,
 5892:40, 5921:37,
 5922:15, 5932:2,
 5932:35, 5932:46,
 5933:16, 5935:6,
 5945:12, 5950:7,
 5958:27, 5961:36,
 5988:25, 5989:5,
 5989:11
WITNESS [9] -
 5930:21, 5934:44,
 5958:43, 5959:6,
 5989:15, 5990:9,
 5990:19, 6000:14,
 6003:7
witnesses [12] -
 5886:4, 5889:24,
 5889:46, 5890:24,
 5941:11, 5946:26,
 5950:10, 5950:12,

5950:16, 5950:19,
 5950:22, 5955:44
wonder [6] - 5911:34,
 5921:31, 5921:36,
 5933:21, 5968:28,
 5998:22
wondering [1] -
 5915:9
word [7] - 5921:27,
 5931:21, 5946:14,
 5949:5, 5954:12,
 5971:41, 5971:42
words [6] - 5890:7,
 5890:15, 5905:31,
 5946:43, 5952:1,
 5959:3
world [1] - 5907:1
worth [1] - 5959:34
worthwhile [1] -
 5963:3
wraps [1] - 5986:43
write [5] - 5958:18,
 5958:39, 5971:16,
 5978:42, 5979:10
writing [3] - 5952:16,
 5958:44, 5993:10
written [18] - 5886:12,
 5901:11, 5915:23,
 5915:28, 5916:17,
 5916:33, 5922:29,
 5960:40, 5971:26,
 5975:30, 5975:32,
 5984:27, 5984:29,
 5990:28, 5990:38,
 5990:41, 5991:1,
 6001:17
WRITTEN [1] -
 5966:22
wrote [3] - 5904:20,
 5971:10, 5975:29

Y

year [19] - 5895:12,
 5895:43, 5896:43,
 5898:14, 5902:44,
 5936:39, 5936:40,
 5940:21, 5947:11,
 5947:21, 5947:25,
 5947:31, 5947:44,
 5948:14, 5948:16,
 5949:16, 5956:34,
 5957:4, 5975:42
years [20] - 5917:39,
 5925:4, 5925:23,
 5929:12, 5935:37,
 5942:28, 5943:20,
 5943:22, 5943:35,
 5944:47, 5946:22,
 5947:9, 5948:22,

5952:35, 5965:1,
5968:24, 5974:38,
5974:39, 5974:44,
5995:14

Young ^[26] - 5885:45,
5889:12, 5890:22,
5900:5, 5900:42,
5902:45, 5903:14,
5903:24, 5904:6,
5904:23, 5904:44,
5922:21, 5922:36,
5923:7, 5925:23,
5926:34, 5926:40,
5926:44, 5927:10,
5927:33, 5928:2,
5928:26, 5941:38,
5951:31, 5951:44,
5996:4

yourself ^[7] - 5899:36,
5900:23, 5905:23,
5906:39, 5937:32,
5967:5, 5971:35

yourselves ^[1] -
5905:44

Z

zero ^[7] - 5920:15,
5921:18, 5921:47,
5922:10, 5922:32,
5925:14, 5934:2