

**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**

Tuesday, 26 September 2023 at 11.02am

(Day 91)

Mr Peter Gray SC	(Senior Counsel Assisting)
Ms Meg O'Brien	(Counsel Assisting)
Mr Enzo Camporeale	(Director Legal)
Ms Caitlin Healey-Nash	(Principal Solicitor)
Ms Aleksandra Jez	(Senior 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: Before we start, Mr Gray, can I just
2 say a couple of things.

3

4 First, the late start today will not, I hope, affect
5 everybody's ability to ask such questions as they may wish.
6 I will sit beyond 4 o'clock and we'll just take it in our
7 stride.

8

9 I won't take the morning break, obviously, we'll just
10 go through until 1. But if at any point the witness needs
11 a break, please, can somebody just let me know and we'll
12 sort that out.

13

14 Mr Glissan, no difficulties, no criticisms. Can
15 I just ask everyone - and I'm just directing it to you
16 because we weren't necessarily aware that you were coming
17 this morning - can I just please ask everyone, if you can
18 remember, let us know the night before, if you are coming,
19 because we would prefer to have everyone comfortable and
20 set up at the Bar table as appropriate. No problem today,
21 but because we're in certainly a cosy environment, if you
22 can just keep us updated.

23

24 Mr Mykkeltvedt, I presume that you are going to be
25 here every day --

26

27 MR MYKKELTVEDT: Yes.

28

29 THE COMMISSIONER: -- so I don't need you to tell me, so
30 neither you nor Mr Short or Mr Hodgetts need tell me, but
31 anybody else, especially those who are here for bespoke
32 purposes, just keep us informed and let us know one way or
33 the other if you'll be here. There will always be a seat,
34 but I want to make sure that everyone is suitably and
35 comfortably sorted out.

36

37 MR GLISSAN: We had been invited by Counsel Assisting, or
38 those instructing him, to provide a list for those days on
39 which we would be here, which we have done. So I think --

40

41 THE COMMISSIONER: All right. There is no criticism, in
42 any event. I had understood that we weren't aware, but
43 don't worry about it. My apologies, if we were.

44

45 MR GLISSAN: Very good.

46

47 THE COMMISSIONER: Thank you.

1
2 All right. Yes, Mr Gray.

3
4 MR GRAY: Commissioner, could I first address some
5 housekeeping matters.

6
7 THE COMMISSIONER: Yes.

8
9 MR GRAY: Last week, when I tendered volumes 17 to 19 of
10 the tender bundle, I indicated that a number of documents
11 were not being tendered at that time so that the parties
12 could consider any non-publication orders in relation to
13 those documents. Such orders have now been agreed in
14 relation to two of those documents, which I would tender
15 this morning.

16
17 The first is tab 516 [NPL.9000.0031.0001] a statement
18 of an officer who will be known as " Officer A",
19 a pseudonym. As you are aware, Commissioner, a separate
20 application was made by NSW Police over the name of this
21 officer and you have indicated that you will make
22 non-publication and pseudonym orders over that officer's
23 name.

24
25 THE COMMISSIONER: Yes.

26
27 MR GRAY: The second is tab 519 [SCOI.85747_0001] which is
28 the statement of Detective Sergeant Penelope Brown.
29 I understand that the tender bundle itself has already been
30 updated with those documents.

31
32 THE COMMISSIONER: All right.

33
34 MR GRAY: So for now, I need only hand up a short minute
35 of order in relation to these two statements, which has
36 been agreed.

37
38 THE COMMISSIONER: All right. Thank you.

39
40 MR MYKKELTVEDT: Those orders are agreed.

41
42 THE COMMISSIONER: Thank you, Mr Mykkeltvedt.

43
44 Yes, I've made those orders, thank you very much.
45 Yes.

46
47 MR GRAY: Commissioner, if it is convenient, I call

1 Mr John Lehmann.
2
3 THE COMMISSIONER: Yes, certainly.
4
5 Mr Lehmann, come forward, please, thank you.
6
7 MR NAGLE: Commissioner, my client will take an oath.
8
9 THE COMMISSIONER: Thank you.
10
11 <JOHN PAUL LEHMANN, sworn: [11.06am]
12
13 <EXAMINATION BY MR GRAY:
14
15 MR GRAY: Q. Mr Lehmann, your name is John Paul Lehmann?
16 A. Yes.
17
18 Q. And you are a retired police officer?
19 A. Yes.
20
21 Q. And you have provided a statement to the Inquiry dated
22 29 August 2023?
23 A. I did.
24
25 Q. Are the contents of that statement true and correct?
26 A. Yes.
27
28 Q. Mr Lehmann, I think you were at the Unsolved Homicide
29 Team from October 2008 --
30 A. Yes.
31
32 Q. -- when you started, until, technically, January
33 2018, when you retired?
34 A. Yes.
35
36 Q. But you were actually on what I might call loosely,
37 perhaps not quite accurately, sick leave from October 2016?
38 A. That's my recollection, from about October '16, 2016.
39
40 Q. So you were there, in realistic terms, from
41 about October 2008 until October 2016?
42 A. Yes.
43
44 Q. About eight years?
45 A. Yes.
46
47 Q. The UHT had been set up, as I understand it, a few

1 years before you arrived?
2 A. Yes.
3
4 Q. Approximately 2005 or thereabouts?
5 A. Yes.
6
7 Q. Once you arrived in October 2008, and perhaps for the
8 first couple of years thereafter, what, as you understood
9 it, had the UHT been doing in those first few years and
10 what was it doing generally?
11 A. Assessment and reviews of unsolved homicide cases,
12 preliminary investigations, you might call it.
13
14 Q. I didn't catch that, I'm sorry?
15 A. Preliminary investigations in the review process of
16 unsolved homicide cases.
17
18 Q. I will come to this in a moment in marginally more
19 detail, but what was the system? In what order were they
20 being looked at?
21 A. There was a list or a register of unsolved homicide
22 cases that was in possession of the Homicide Squad. The
23 role initially of the UHT was to systematically go through
24 those cases, look at them, conduct an assessment and review
25 of them, with the aim to ascertain their viability for
26 further investigation.
27
28 Q. Was there an order in which this was being done?
29 A. I can't remember. I know that it was important to
30 look at older cases first. So the list that we had, mainly
31 deaths from 1970 onwards, but I think there were even a few
32 on the list that predated that. But I'm not sure what the
33 exact order was into how cases were picked off that list of
34 500 or more cases.
35
36 Q. But generally, in the broad, older cases were being
37 looked at first?
38 A. Yes.
39
40 Q. In your time, 2008 to 2016, you were one of the two
41 senior officers in the UHT?
42 A. Most of the time. When I got there, there was another
43 Chief Inspector by the name of Dennis Bray, and he was
44 already there when I joined the team. After he left
45 I think there was some considerable amount of time where
46 I was on my own as the so-called manager of the office, and
47 then the office was set up for two investigation

1 coordinators, two inspectors, to be there. Eventually
2 I was joined by Detective Chief Inspector Pamela Young.
3 I'm not sure when that happened, I can't recall the year.
4 And I recall that some time after she left, I think it was
5 in 2015, I was there on my own as the sole investigations
6 coordinator at the unit for some time.

7
8 Q. As you say, she left in about 2015 and you --

9 A. I think so but I'm not - I don't have a certain memory
10 of when she left.

11
12 Q. I think your recollection is broadly right. And you
13 yourself left in October 2016?

14 A. Yes.

15
16 Q. A year, or perhaps a year and a bit, later. In that
17 year or year and a bit, were you, for most of that time,
18 the only senior or officer in charge?

19 A. From my memory, yes.

20
21 Q. We've had some evidence from others so I won't take
22 long with you, but I understand the team, the Unsolved
23 Homicide Team, was located in essentially one large room?

24 A. Yes.

25
26 Q. Again I'm speaking somewhat broadly, but there were
27 essentially two sets of investigative teams, one under one
28 coordinator, such as you, and one under the other
29 coordinator?

30 A. Yes.

31
32 Q. And in addition to the two sets of investigative
33 teams, there were also some other officers whose function
34 was not investigative but review?

35 A. Yes.

36
37 Q. But all of those all in the one room?

38 A. Yes.

39
40 Q. And presumably, speaking to each other in the ordinary
41 course of the day from time to time about whatever work
42 they were doing?

43 A. Yes.

44
45 Q. Did Mr Willing, who was the Commander Homicide, come
46 to the room with any frequency?

47 A. Mr Willing took an active interest in what we were

1 doing and the investigations. Obviously I had to report to
2 him and so there was regular contact with Mr Willing.

3
4 Q. Now, in your statement [SCOI.85495_0001] - by the way,
5 do you have your statement with you?

6 A. I have a copy of my statement, and I see a redacted
7 one, or a version of it, here in front of me.

8
9 Q. I won't be spending a lot of time taking you to the
10 detail of your statement, but a couple of things. At
11 paragraph 17 you explain that the city office had an
12 authorised strength of 25 investigators, but that the
13 reality, for various reasons, was that the number at the
14 UHT at any one time was typically between 15 and 20?

15 A. That's about right.

16
17 Q. Then at 19 you say that, in addition to that, from
18 time to time, investigators from the Unsolved Homicide Team
19 were seconded to other duties, on call and live strike
20 force investigations, being conducted elsewhere?

21 A. Yes.

22
23 Q. And so that obviously took them away from whatever
24 they were doing at that moment with the UHT?

25 A. Yes, it did.

26
27 Q. You say in paragraph 19 as well that the expectation
28 at the Homicide Squad was that priority would be given to
29 those active or live or hot cases, and that the UHT
30 officers would be expected to contribute to that work
31 essentially whenever they were asked to?

32 A. Yes.

33
34 Q. And you mentioned that that caused continuity issues
35 for what was actually being done at the UHT because people
36 were being taken away?

37 A. And a degree of frustration for me as well, yes.

38
39 Q. No doubt. Then at 21, you also explain that it was
40 made clear to you by your superiors, including then
41 Commissioner of Police Scipione, that the future of the
42 Unsolved Homicide Team was not guaranteed - that is, not
43 set in concrete?

44 A. Yes.

45
46 Q. And it was made clear to you that its future existence
47 was based on achieving results - that is, charging and

1 convicting offenders from cold cases?
2 A. Yes.
3
4 Q. And priority, therefore, needed to be given to cold
5 cases that had the best chance of being solved?
6 A. Yes.
7
8 Q. Rather than, for example, cold cases that had been
9 there the longest or any other criterion?
10 A. Yes.
11
12 Q. That factor, which you've explained, indicates an
13 issue of resources, doesn't it? If you had more people,
14 you could look at more cases?
15 A. Yes.
16
17 Q. And there are lots of resources issues, it's clear,
18 that reverberate around the world of Unsolved Homicide, as
19 there would be in many parts of the police - no doubt there
20 are resources constraints?
21 A. Yes, of course.
22
23 Q. Of course. Now, there is one part of your statement
24 that I just want to explore briefly, which is this: you
25 tell us in paragraph 20, and some other paragraphs, about
26 difficulties that emerged that you became aware of in terms
27 of retaining and knowledge of the whereabouts of both
28 physical exhibits and documentary materials relating to the
29 old cases?
30 A. Yes.
31
32 Q. You say that in the '70s and '80s in particular, many
33 exhibits were destroyed or disposed of; correct?
34 A. Yes.
35
36 Q. And that there was, at least in relative terms, little
37 awareness or appreciation of the need to keep both exhibits
38 and the documentation for another day in the future?
39 A. Yes.
40
41 Q. Then at 22 to 24 you talk about Strike Force Reddan,
42 which was the strike force that ultimately worked on the
43 Family Court bombings and murders?
44 A. Yes.
45
46 Q. Part of the reason, I take it, for you telling us this
47 in the statement is that it was a very large matter and it

1 required a lot of resources?
2 A. Yes.
3
4 Q. That's between 2012 and 2015?
5 A. Yes.
6
7 Q. Are you able to give us - given that there were maybe
8 15 to 20 officers realistically available to the UHT --
9 A. Yes.
10
11 Q. -- what sort of proportion of those were diverted or
12 required to work on the Family Court case?
13 A. Well, there was a dedicated team assigned to Strike
14 Force Reddan. I can't remember which team that was.
15 I know that it was coordinated by Detective Chief Inspector
16 Young, and that was their sole focus, their priority. But
17 I am aware that other members of the office, of the other
18 teams, were required to assist as needed.
19
20 Q. As well as --
21 A. Including myself.
22
23 Q. As well as the team under DCI Young?
24 A. Yes.
25
26 THE COMMISSIONER: Q. Can I just interrupt and ask you
27 this, if I may: in your paragraph 24, Mr Lehmann, you talk
28 about Reddan. Do I understand correctly that it was really
29 the chance discovery of some cold case exhibits that
30 provoked a reinvestigation into that matter?
31 A. That was my understanding, yes.
32
33 Q. And so the reinvestigation was provoked in roughly
34 2013, and the earlier strike force or strike forces had
35 been terminated as early as 1987, hadn't they?
36 A. That could be so. I'm not sure.
37
38 Q. Because the events concerning Justice Opas and others
39 were in the --
40 A. 1980s.
41
42 Q. -- early to mid '80s, weren't they?
43 A. Yes.
44
45 THE COMMISSIONER: Thank you.
46
47 MR GRAY: Q. I was just going to put some of those dates

1 to you, Mr Lehmann. You may not remember the specifics but
2 you may remember the general outline. The first murder
3 that was part of what has become known as the Warwick or
4 the Family Court bombings case was in February 1980?

5 A. That sounds about right, yes.

6

7 Q. And then the murder of Justice Opas was also in 1980?

8 A. Yes.

9

10 Q. The bombing of Justice Richard Gee's house was in
11 1984?

12 A. Yes.

13

14 Q. The bombing of the Family Court building at Parramatta
15 was also in 1984?

16 A. Yes.

17

18 Q. And so was the bombing of Justice Raymond Watson's
19 home, 1984?

20 A. Yes.

21

22 Q. And the final event that was part of the overall
23 matrix, the bombing of the Kingdom Hall at the Jehovah's
24 Witness church was in 1985?

25 A. Correct.

26

27 Q. Then those matters were investigated by a joint task
28 force of the Australian Federal Police and the NSW Police?

29 A. I believe so.

30

31 Q. Then that joint task force was wound up, or wound
32 down, in about 1987?

33 A. I wasn't sure when it was.

34

35 Q. And it wasn't until 2015, 28 years later, that
36 Mr Warwick was arrested and charged?

37 A. Yes.

38

39 Q. And in your document, which I will come to in a
40 minute, the one that you prepared in 2016 about the
41 problems with exhibit and document management --

42 A. Yes.

43

44 Q. -- you explained a bit more about the chance event
45 that led to the revival of this case in 2013?

46 A. Yes.

47

1 Q. And the chance event was that - and I can put this in
2 front of you if you need it but it's your document and I'm
3 sure you will remember it - that there was a general search
4 being undertaken in 2013 for exhibits, and in a basement
5 storeroom, a number of exhibits relating to 22 unsolved
6 homicide cases dating back to the 1970s turned up that
7 nobody was otherwise aware of?

8 A. Yes.

9

10 Q. And amongst those was physical evidence about the
11 Jehovah's Witness hall bombing in 1985?

12 A. Yes.

13

14 Q. And forensic testing of that material resulted in some
15 DNA being discovered?

16 A. Yes.

17

18 Q. Which in turn led to the capacity to arrest the person
19 who was charged?

20 A. Yes.

21

22 Q. So this is no criticism of you, obviously, but it was
23 basically a fluke that this material was found?

24 A. Yes. One way to put it.

25

26 Q. Now, that state of affairs, in paragraph 25 of your
27 statement, led you to write the report of August 2016 where
28 you drew attention to the problems that had become apparent
29 to you in these matters of exhibit retention and document
30 retention?

31 A. Yes, it did.

32

33 Q. Now, that document is in evidence at tab 522 of
34 volume 19 [NPL.0100.0018.0001]. It, for the most part, is
35 directed at the topic of exhibits, but it also refers to
36 the topic of documents as well, doesn't it - briefs of
37 evidence and the like?

38 A. Yes.

39

40 Q. Now, that document of yours that you prepared, at
41 tab 522, is dated 5 August 2016, and if you could just turn
42 to the last page of it, it then goes to, apparently,
43 because people make comments and sign it, the Commander
44 Homicide - in fact, it had already gone to the Commander
45 Homicide in June 2016?

46 A. Yes.

47

1 Q. And to Detective Chief Inspector Kerlatec, who was the
2 director of SCD or SCO? What's that?
3 A. State Crime Command Operations.
4
5 Q. Thank you. And also to the Commander of State Crime
6 Command itself?
7 A. Yes.
8
9 Q. All in some time in 2016?
10 A. Yes.
11
12 Q. Now, you, of course, effectively left the UHT only
13 a couple of months later in October 2016?
14 A. Yes.
15
16 Q. To your knowledge, by the time you left, which is only
17 two months after you wrote this, what had happened by then,
18 to your knowledge, in terms of something being done to
19 address the problems that you had identified?
20 A. Physical searches were under way, where evidence or
21 property or documents and briefs of evidence might be
22 located. That was basically led by our review team.
23
24 Q. That was all happening within a couple of months, was
25 it?
26 A. Yeah, absolutely. It was - in a sense, it was already
27 happening before I wrote this document, but one of the
28 reasons to write this document was to let Command know what
29 the issue was and the problems were that we faced.
30
31 Another thing which we caused, in relation to the
32 search process, was we contacted and reported to every
33 Local Area Command in the State in regards to requesting
34 that they search for possible exhibits relating to unsolved
35 homicides within their premises or within their command.
36
37 Q. By the time you left, what, to your knowledge, had
38 been the responses? What was the result of these steps by
39 the time you left, as far as you knew?
40 A. There was some responses. I don't recall how many,
41 but some responses from Local Area Commands that, to my
42 memory, most of them were a nil response - that is, that
43 they hadn't located any property or documents and - yeah,
44 I don't remember much else.
45
46 Q. As we've seen, as you've just seen, your document went
47 up the chain to various quite senior officers that we've

- 1 just looked at?
2 A. Yes.
3
4 Q. Did it also go down the chain to those reporting to
5 you in the UHT or more broadly?
6 A. Yeah, down the chain to our review team, who led the
7 search, if you like, for lost or missing evidence or
8 possible evidence, briefs.
9
10 Q. So, for example - sorry?
11 A. And/or briefs of evidence.
12
13 Q. So, for example, as at August 2015, Strike Force
14 Neiwand was under way; you would recall that?
15 A. Yes.
16
17 Q. And it was looking at the three Bondi deaths?
18 A. Yes.
19
20 Q. From the '80s?
21 A. Yes.
22
23 Q. Did this document of yours go to Strike Force Neiwand,
24 such as to point out to them that there were deficiencies
25 in general in terms of getting your hands on exhibits and
26 documents for old cases?
27 A. Oh, I don't remember them specifically being given
28 this document, but certainly all of the investigators in
29 the office were aware of the problems regarding retention
30 of and proper exhibit handling procedures.
31
32 Q. Now, also, by the same time - that is, August or so
33 2016 - but not within the UHT, there was another strike
34 force going on called Strike Force Parrabell. Were you
35 aware of that?
36 A. Yes.
37
38 Q. Was the document, your document of August 2016,
39 provided to Strike Force Parrabell?
40 A. I'm not sure. I don't know.
41
42 Q. Strike Force Parrabell, according to what the Inquiry
43 has been told, was an entirely paper-based review of some
44 88 or so historic cases --
45 A. Yes.
46
47 Q. -- thought to have been gay-hate related?

1 A. Yes.

2

3 Q. And when I say "paper-based", the entire system that
4 Parrabell was using, this is clear on the evidence, was to
5 obtain all the records they could and review those, not to
6 otherwise take any investigative steps; do you understand?

7 A. That would be correct.

8

9 Q. Yes. So in order to carry out that task, obviously
10 enough, Parrabell would need, if it could, to get hold of
11 every document about every case?

12 A. Yes.

13

14 Q. Well, what I'm asking is, do you know whether
15 Parrabell was made aware, either by you or by anyone, of
16 these problems that you had identified about --

17 A. I'm not sure.

18

19 Q. -- missing documents and exhibits?

20 A. I'm not sure if they were or not.

21

22 Q. Turning to some more specific topics now, do you
23 recall that in June 2012, there was a second inquest into
24 the death of Scott Johnson?

25 A. Yes.

26

27 Q. And there had been a first inquest in 1989, within
28 months of his death?

29 A. Yes.

30

31 Q. And the finding had been suicide?

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

33

34 Q. And then the second inquest, in 2012, departed from
35 that finding and returned an open finding?

36 A. Yes.

37

38 Q. You were aware of that, I presume, at the time?

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

40

41 Q. Were you aware then, though?

42 A. I can't remember.

43

44 Q. At some point did you become aware that one of the
45 reasons that the Coroner gave in moving from a finding of
46 suicide to an open finding was that in the meantime, there
47 had been the work of Operation Taradale in relation to the

1 Bondi cases and the Inquest and findings of Coroner
2 Milledge about --
3 A. Yes.
4
5 Q. -- the three Bondi cases?
6 A. Yes.
7
8 Q. You were aware that that was one of the factors that
9 influenced the second Johnson inquest?
10 A. Yes.
11
12 Q. She referred the Johnson case to what she called "Cold
13 cases"?
14 A. Yes.
15
16 Q. Meaning the Coroner did, which, in effect, meant it
17 went to the Unsolved Homicide Team?
18 A. That's correct.
19
20 Q. What then happened was that a case screening exercise
21 was undertaken by Alicia Taylor at the Unsolved Homicide.
22 Were you involved in that or did you choose her or arrange
23 for that to be done?
24 A. I couldn't remember who did the case screening review
25 but I am now aware that that was Detective Taylor that did
26 that, yes.
27
28 THE COMMISSIONER: Q. Who would have chosen her?
29 A. Possibly myself or one of the Sergeants in the review
30 team, and that would have been based on workloads.
31
32 MR GRAY: Q. Then at almost the same time - that is,
33 late 2012 - the same Detective, Taylor, also did a case
34 screening for the three Bondi cases, the Taradale cases?
35 A. Yes, I can't remember that she did that case
36 screening.
37
38 Q. Okay. I'll show that to you in a minute. I'm just
39 running through some dates to orient you, you follow? Then
40 two months later in February 2013, there was an episode of
41 Australian Story that you appeared on?
42 A. Yes.
43
44 Q. Which was basically about the Scott Johnson case?
45 A. Yes.
46
47 Q. And almost at the same time, Strike Force Macnamir was

1 established within the UHT to look at the Johnson case?

2 A. Yes.

3

4 Q. Within a day or two of that, an article was published
5 in the Sydney Morning Herald about the Johnson case and
6 about the possible link of some description with the
7 Bondi/Milledge cases?

8 A. Yes, I don't recall the exact time frames but I do
9 remember media articles involved with that, yes.

10

11 Q. I just wanted to show you a couple. If the witness
12 could have volume 8, please, and if we turn to tab 207
13 [SCOI.82071], this is one in the Sydney Morning Herald of
14 13 February dealing with the Johnson case and the fact that
15 there was going to be a new look at it by the police, and
16 it refers to the Milledge Inquest about the deaths at
17 Bondi. Do you happen to remember this article?

18 A. No.

19

20 Q. At 208 [SCOI.82031], the next tab, and 209
21 [SCOI.82027], there are two articles in the Sydney Morning
22 Herald in the nature of feature articles by a journalist
23 called Paul Sheehan about not just the Johnson case but
24 about gay hate crimes generally. So two articles within
25 three or four days?

26 A. Yes.

27

28 Q. Did they come to your notice at the time?

29 A. Oh, I can't - I don't have a recollection of these
30 particular media articles.

31

32 Q. If we turn over to tab 210 [SCOI.77369_0001], the next
33 tab, there is then a series of four successive days -
34 sorry, I think, firstly, three successive days of articles
35 by a journalist called Rick Feneley in the Sydney Morning
36 Herald, in the Good Weekend in fact, about up to 80 men
37 being murdered and 30 of those being unsolved. Do you see
38 that first one at tab 210?

39 A. Yes.

40

41 Q. That was on the Saturday's Good Weekend of 27 July -
42 and at 211 [SCOI.77373_0001], the same day, the same
43 Saturday edition, there is another article about "murderous
44 rampage of gay hate gangs?

45 A. I can see that, yes.

46

47 Q. At 212 [SCOI.82025_0001], there's an article, the

1 following day, the Sunday, about the Russell case in
2 particular, one of the Bondi cases?
3 A. Yes.
4
5 Q. And then at tab 213 [SC0I.82029_0001], another
6 article, this time on the Monday - so that's Saturday,
7 Sunday, Monday - about other gay hate crimes, and referring
8 again to as many as 80 lives being lost over 20 years?
9 A. Mmm.
10
11 Q. So that series of articles over three days,
12 prominently in July, came to your attention, I'd imagine?
13 A. I don't have a recollection of the specific articles.
14 I do have a memory of a number of articles around about
15 that time relating to this, yes.
16
17 Q. The following month - I'm sorry, it's a little over
18 a month later - in September 2013, you and DCI Young
19 prepared an issue paper about these media claims, didn't
20 you?
21 A. Yes.
22
23 Q. That folder could come back and could Mr Lehmann have
24 volume 2, please, and if we turn to tab 47
25 [SC0I.74906_0001]. So this is your issue paper of
26 25 September 2013. You can see that, your name and the
27 date, on the last page.
28 A. That's my name, yes, yeah.
29
30 Q. And I think you agreed a minute ago, and there's been
31 other evidence about this, that although it's just got your
32 name on it, it was, in fact, written by you and DCI Young
33 together?
34 A. Well, I think in a physical sense I actually wrote it,
35 yes.
36
37 Q. Okay. Well, she played some part, so the Inquiry's
38 been told --
39 A. Yes.
40
41 Q. -- in the composition of the paper?
42 A. That's correct, yes.
43
44 Q. In other words, the two of you agreed on what
45 ultimately was written?
46 A. Yes.
47

1 Q. And on the front page, going to what this document was
2 aiming to do, the issue is described as:

3
4 *Assessment of 30 potential 'gay hate'*
5 *unsolved homicides by the Unsolved Homicide*
6 *Team (UHT) to determine if any bias*
7 *motivation existed.*

8
9 So that was the aim of the paper?

10 A. Yes.

11
12 Q. And the background, you say, is a series of articles
13 written by Rick Feneley on 26 and 27 July, and they are
14 obviously the ones I just showed you.

15 A. Yes.

16
17 Q. And so clearly, the catalyst for you doing this
18 exercise was these series of media articles about gay hate
19 crimes and claims of 80 such crimes and claims of 30 of
20 them being unsolved. That's what you were doing this for?

21 A. The main catalyst was a list provided to me by
22 Sue Thompson.

23
24 Q. I'll come to that. That's in the next paragraph of
25 your statement. But you begin by saying that on 26 and
26 27 July, there were these articles in the paper, and you
27 say in that first paragraph that the articles quoted
28 a number of persons, including Sue Thompson, and that you
29 thereupon contacted Sue Thompson and asked her for her
30 list; is that right?

31 A. Yes, yes.

32
33 Q. And she forwarded you a list of 80 or so cases?

34 A. Yes.

35
36 Q. And in the list that she forwarded to you, the number
37 actually was 88, and she was applying the label "Unsolved",
38 or "Possibly unsolved", to 30 of them. You may remember
39 that?

40 A. Yes.

41
42 Q. And you then, with Ms Young, assessed those 30 cases
43 said by Ms Thompson to be unsolved?

44 A. Yes.

45
46 Q. What did you have available to you to do that
47 assessment? What documents did you dig out to achieve

1 that?

2 A. Any documentation, physically or recorded
3 electronically, on hand at the Unsolved Homicide Team, but
4 most of our assessment was based on searches at the
5 Coroner's office at Glebe, at the time - physical searches.

6
7 Q. You then in the bulk of the document run through the
8 30 cases with your summary of what the case involved and
9 your view about whether it looked like being a gay hate
10 related crime or not?

11 A. Yes.

12

13 Q. One of the ones that you looked at was the death of
14 Scott Johnson, which is number 12, on the fourth page, and
15 the view that you and Ms Young came to on that case,
16 in September 2013 - I'm looking at the last few lines - was
17 that there was no indication that Scott Johnson was
18 subjected to gay hate motivated violence or in any case
19 that he was murdered at all?

20 A. Yes, I wrote that.

21

22 Q. And at that point, Strike Force Macnamir had been
23 under way for about seven months, since February?

24 A. Oh, I wasn't aware of that.

25

26 Q. You weren't aware that - well, it says so, do you see
27 in the couple of lines above?

28 A. No, what I meant was I wasn't aware of the timelines
29 in relation to how long Macnamir had been running and this
30 particular document, but I am now on reading this, yes.

31

32 Q. I don't mean to quibble about details, but what you
33 say there is:

34

35 *Strike Force Macnamir is nearing*
36 *finality ...*

37

38 And so what you were saying in those last few lines was the
39 views of yourself and DCI Young at a point where she had
40 almost finished her work on Strike Force Macnamir?

41 A. Yes, that appears to be the case.

42

43 Q. Then at the second-last page, which is the eighth
44 page, there's a summary, do you see, towards the bottom of
45 the page?

46 A. Yes.

47

1 Q. You point out that of the 30, only 27 were reviewed,
2 for various reasons, and one reason is that in four of
3 them, no material could be found; you hadn't found any
4 documents?

5 A. Yes.

6

7 Q. And you and Ms Young said that the fact that you
8 hadn't found any documents suggested that they were
9 probably not homicides or suspicious deaths?

10 A. Yes, that's what I wrote, yes.

11

12 Q. On reflection, that doesn't really follow, does it?

13 A. Well, I don't know about that. I mean, that was based
14 on what we had found in relation to evidence of an
15 indication of gay hatred motivated --

16

17 Q. Sure. But another alternative possibility was that
18 there were such documents but you just hadn't found them -
19 for example, because of the sorts of problems that you
20 later came to realise?

21 A. That could be a possibility, yes.

22

23 Q. And then, on the top of the last page, in the last
24 bullet point, which is on the top of that page, you say:

25

26 *Only 8 cases from 30 were probable or*
27 *possible 'gay hate' motivated murders ...*

28

29 Is that right?

30 A. Yes.

31

32 Q. And Scott Johnson's case was not one of those;
33 correct?

34 A. Correct.

35

36 Q. So the view of yourself and Ms Young in September 2013
37 was that Scott Johnson's case was not probable and indeed
38 not even possible gay hate motivated murder?

39 A. Yes.

40

41 Q. And you expressed the further view in the next
42 paragraph, first of all, that there was no doubt that
43 anti-gay hostility, particularly in the '80s and '90s, did
44 result in a number of murders and serious crime - so you
45 recognised that?

46 A. Yes.

47

1 Q. But you say that, in your opinion - which I take it
2 was also DCI Young's opinion - the suggestion of 30 gay
3 hate related unsolved murders was a gross exaggeration?

4 A. Yes, I wrote that.

5

6 Q. And you said it was - or you suggested that it was
7 "irresponsible journalism bordering on sensationalism"?

8 A. Yes, I did say that.

9

10 Q. And that also was DCI Young's view, I take it?

11 A. Oh, I can't remember.

12

13 THE COMMISSIONER: Q. Do you remember her disagreeing
14 with you?

15 A. I don't remember her disagreeing with me, no.

16

17 Q. All right. While I'm interrupting you, can you help
18 me - there's probably evidence, otherwise - you'll see at
19 the bottom of this document, there's "Commander Homicide",
20 "Director", "Commander", and so on. Can you just help me
21 with the names? What names would I put in there as to the
22 people to whom this memorandum was circulated. Doing the
23 best you can. I know that you may not remember them all,
24 but --

25 A. Detective Superintendent Michael Willing was the
26 Commander Homicide. The Director Serious Crimes
27 Directorate, I'm not sure, it may have been
28 Superintendent Kerlatec, it may have been Superintendent
29 Delmonte. Commander State Crime Command, at the time
30 I think may have been Assistant Commissioner Mark Jenkins,
31 but again I'm not certain on that. And I don't know who
32 was Deputy Commissioner Field. It may have been Deputy
33 Commissioner Kaldas, but again, not sure on that.

34

35 THE COMMISSIONER: Thank you.

36

37 MR GRAY: Q. If we turn to the next tab, which is 48
38 [NPL.0113.0001.0156] there is some material that might
39 assist with the Commissioner's question, but first of all
40 at 48 what we have is an issue paper by Mr Willing himself
41 in pink. Do you see that?

42 A. I see that.

43

44 Q. And he attaches to his paper, your paper, being the
45 one we just looked at. Do you see that? It's attached to
46 it and follows on from it?

47 A. I see that.

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Q. And the back of that attachment, we can see that we can see that those to whom you sent it, or some of them, have made annotations as to having received it and the like?

A. Yes.

Q. So you are quite right in saying that the Commander Homicide was Mr Willing. He has also completed some notes under the "Director Serious Crimes Directorate", perhaps he was acting in that position at the time. Do you know - you may not know?

A. No, I don't know.

Q. And it is not easy to read who these other people are, but it seems to have gone to a number of others as well.

A. No, I don't know.

Q. At any rate, in the pink part, Mr Willing's own article - sorry, not article, issue paper, on the front page of his document, three paragraphs from the bottom, Mr Willing says that Sue Thompson's list was assessed by you and Pamela Young utilising files from the Coroners Court, the archives and material that was on hand at UHT?

A. Yes.

Q. And he notes that you had expressed the view that the suggestion of 30 unsolved gay hate cases was a gross exaggeration, and he then, in his conclusion, in the last couple of paragraphs on the third page, says:

Following extensive investigation for almost a year where Strike Force Macnamir investigators, who had been diverted from other unsolved matters, have finalised inquiries ... and have not discovered any evidence at all to confirm that Scott Johnson was the victim of a homicide let alone a 'gay hate' murder.

Do you see that?

A. I see that.

Q. Mr Willing has given evidence that he, in effect, endorsed the views that you and Pamela Young expressed in your document. You may take that from me.

A. I understand that.

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Q. That's the sense of his evidence here?

A. Yes.

Q. Now, it's clear, then, isn't it, that from early 2013, indeed, throughout 2013, media claims about gay hate murders, especially unsolved gay hate murders, were prominent in the press and were getting serious attention within the Homicide and Unsolved Homicide areas?

A. That would be fair to say, yes.

Q. And some of the articles, do you recall, also allege that the police investigations into some of those deaths were unsatisfactory. Do you remember that some of them said that?

A. I can't recall the detail of those articles, but I certainly take your word on that. That's what they contain.

Q. You don't recall suggestions in some of these articles, rightly or wrongly, that police in the 1970s and 1980s essentially didn't care very much about the deaths of gay men?

A. That may have been the case. Again, I don't recall specific detail of media articles.

Q. Okay. Just bear with me one second. Just tell me if you agree with this. Mr Willing gave some evidence, this is 1666 of the transcript, that these articles, being the ones I have taken you to this morning, caused some considerable consternation within the police. He said, "Yes, they did." Do you agree with that?

A. I would agree.

Q. And I asked him also would he agree that there was a widely held view in the police, at the time, that the police needed to do something to respond to this negative publicity from the police perspective flowing from all these articles, and he said, "Yes"; would you agree with that?

A. Yes.

Q. Now, presumably, these articles and the actual topic of unsolved gay hate homicides were the subject of discussion among members of the Unsolved Homicide Team at the time?

A. Oh, that would be correct, yes.

1
2 Q. It would be correct?
3 A. It would be correct.
4
5 Q. Yes. Now, your view, as we have seen, was that only
6 eight of the 30 were probable or even possible gay hate
7 crimes?
8 A. Yes.
9
10 Q. And that was DCI Young's view also?
11 A. Yes.
12
13 Q. And it was also Mr Willing's view --
14 A. Yes.
15
16 Q. -- as you've just seen?
17 A. Yes. Of course that would be based on my findings
18 with Detective Chief Inspector Young, yes.
19
20 Q. No doubt.
21 A. Yeah.
22
23 Q. And presumably, you would have been quite open about
24 the views that you held? There was nothing secret about
25 them?
26 A. No.
27
28 Q. And Ms Young, no doubt, was quite open about her
29 holding those views too? I'm talking about within the
30 Unsolved Homicide Team here.
31 A. Yes. They weren't - but it needs to be clarified.
32 They weren't views or opinions, as such; they were based on
33 assessments, searching for evidence that indicated gay hate
34 motivation or bias involved in those deaths.
35
36 Q. I'm not suggesting, Mr Lehmann, that there was
37 anything other than openness about what you were saying,
38 but what you were saying - I won't go over it again - was
39 that you had looked at these 30 cases --
40 A. Yes.
41
42 Q. -- and in your assessment, the position was, only
43 eight out of 30 were probable or even possible?
44 A. Yes.
45
46 Q. And that was her assessment too - Ms Young?
47 A. Yes.

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Q. And Mr Willing endorsed those views?

A. Yes.

Q. And what I want to suggest to you is that presumably, your views in that regard, and those of Ms Young and Mr Willing, were quite well known among the UHT team generally?

A. I don't know, but - it may have been the case. I don't know. I mean, this was a matter - this was a report from my level as an Investigations Coordinator to the Commander, Homicide Squad and above, it wasn't something that was particularly shared in open forum with - amongst the other investigators. Whether they were aware of my views or Ms Young's views, I don't know.

THE COMMISSIONER: Q. But it was a view that was held and shared within very senior levels of police, wasn't it?

A. Yes.

Q. Because it went ultimately to the Commissioner and seemingly, on one view, the Ministry for Police and Emergency Services?

A. It certainly went up the chain, yes.

MR GRAY: Q. And you would expect the views of such senior officers as yourself, Ms Young and Mr Willing, to influence - I don't mean that in any negative sense but to influence - the views of the UHT officers who were reporting to you?

A. That could be so. I'm not sure about that.

Q. Was there a feeling, to your mind, in the police that you worked with, that the levels of gay hate crime generally had been exaggerated in these media articles and, for that matter, in Ms Thompson's list?

MR NAGLE: I'm sorry to object. That really needs to be broken up. It's put as --

THE COMMISSIONER: Yes. I think we're all consciously aware of that, Mr Nagle.

MR GRAY: I'm happy to do it in two halves.

THE COMMISSIONER: Thank you. Yes.

1 MR GRAY: Q. Was there a feeling that the levels of gay
2 hate crime had been exaggerated in Ms Thompson's list, in
3 the police that you were associating with, working with?
4 A. I don't know.
5
6 Q. You didn't talk to the people that you worked with
7 about these allegations about large numbers of gay hate
8 murders and --
9 A. It was more the - my memory and my sense was we had an
10 obligation to examine this list of 88 deaths. I couldn't
11 be in a position to say that that was an exaggeration.
12 I just had to do an assessment to find out whether gay hate
13 motivation was a factor.
14
15 THE COMMISSIONER: Q. Yes, but the one thing you had,
16 and Ms Thompson almost certainly probably didn't have, you
17 must have thought at the time, was access to the police
18 records, the very records created in relation to each of
19 these alleged homicides?
20 A. Ms Thompson had access to those records?
21
22 Q. At the time that you were doing your report?
23 A. I don't know.
24
25 Q. That's what I'm saying to you.
26 A. Yes.
27
28 Q. You had the advantage, along with others, of having
29 access to the very records created by the NSW Police in
30 relation to each of these unsolved - alleged unsolved
31 homicides?
32 A. Yes.
33
34 Q. Mr Feneley, the journalist, didn't - as far as you
35 knew?
36 A. As far as I knew.
37
38 Q. And nobody else in the media. You were in control of
39 what you must have believed was accurate sources of
40 information?
41 A. Yes.
42
43 MR GRAY: Q. And the view that you expressed in that
44 document, joined in by Ms Young and endorsed by Mr Willing,
45 was that claims of 30 were a gross exaggeration and,
46 indeed, irresponsible, sensational journalism?
47 A. They're the words that I used, yes, yes.

1
2 Q. Didn't you make those views known - no reason not to -
3 to those you worked with?
4 A. I could have but I don't have a recollection as such.
5
6 Q. So my question is: was there a feeling, as far as you
7 could tell, among those that you were working with in the
8 UHT, that the levels of gay hate crime in Ms Thompson's
9 list were exaggerated?
10 A. I don't remember a feeling, as such, in the office
11 amongst the staff, no.
12
13 Q. What about as to whether the claims made in the media
14 about those numbers had been exaggerated? Was there
15 a feeling in the UHT that the media were exaggerating it?
16 A. I don't remember a feeling amongst the staff in the
17 office relating to that.
18
19 Q. Could we turn to tab 56 [SC0I.74113_0001], please, in
20 that same volume, volume 2. This is an email exchange
21 between you and Craig Middleton, who was later to become
22 one of the members of Strike Force Parrabell. But this
23 exchange is in June 2015, do you see that?
24 A. Yes.
25
26 Q. And it starts off with a longish email from
27 Mr Middleton to you on 16 June. I will come to some of the
28 detail of it, but the gist of it is, he is asking you,
29 would you be able to put your hands on the list that
30 Sue Thompson had given you, and you write back and say,
31 "Yes", and you send it to him - you attach it and send it
32 to him.
33 A. Yes. That's what it indicates, yes.
34
35 Q. Now, in his email to you where he makes that request -
36 this is in June 2015, which is some months before Strike
37 Force Parrabell had been set up but at a time when
38 something called Operation Parrabell had previously been
39 doing some work about some gay hate cases - had you ever
40 heard of Operation Parrabell? That's not the Crandell
41 strike force but an earlier operation under Geoffrey Steer?
42 A. That - I have a recollection now that you mention it,
43 yes. I didn't before.
44
45 Q. Sorry?
46 A. I didn't before today.
47

1 Q. Okay. I'm just orienting you in time, that's all.

2 A. Yes.

3

4 Q. So here we are in June 2015, and Mr Middleton says, he
5 introduces the topic of media interest - this is in the
6 first line of his email:

7

8 *You may remember back in 2013 some media*
9 *interest in a number of historical unsolved*
10 *homicides ...*

11

12 And he goes on:

13

14 *In particular a number of articles which*
15 *were written in response to [Operation]*
16 *Taradale (Gay hate crimes) and the Scott*
17 *Johnson homicide.*

18

19 And as you know, Taradale was the Bondi/Page/Milledge
20 exercise?

21 A. Yes.

22

23 Q. Mr Middleton says:

24

25 *A lot of media got whipped up about*
26 *a number of historical homicides/suicides*
27 *which they now allege were "gay hate*
28 *crimes".*

29

30 Do you see that?

31 A. I can see that.

32

33 Q. He talks about what Operation Parrabell was doing, and
34 that was under the Bias Crimes Unit. He says that
35 Mr Crandell cops a fair bit of pressure from the community
36 to provide an update about Operation Parrabell. In the
37 next paragraph he says he has reviewed a lot of the
38 paperwork/reviews, and he has looked at media articles.
39 Then he says:

40

41 *I have a report submitted by yourself*
42 *in September 2013 titled "Assessment of 30*
43 *potential gay hate unsolved homicides".*

44

45 So that's obviously the one we've been looking at this
46 morning?

47 A. Yes.

1
2 Q. And he says:
3
4 *Quite frankly it's about the only report so*
5 *far that deals in facts and reality and not*
6 *theories and hypothetical!!*
7
8 Do you see that?
9
10 A. I see that.
11
12 Q. With the exclamation mark.
13 A. I see that.
14
15 Q. So it would appear that Mr Middleton was impressed by
16 the work and the views that you'd expressed in your paper?
17 A. Oh, I don't - I wouldn't know about that.
18
19 Q. Well, he says it's the only one that deals in "facts
20 and reality". That seems to be favourable, doesn't it?
21 A. It appears to be favourable.
22
23 THE COMMISSIONER: Q. Could you tell me how
24 Mr Middleton, then, given the circulation earlier that we
25 discussed, would have had access to this report?
26 A. I don't know.
27
28 Q. Well, was it on e@gle.i? Was it generally accessible
29 to officers of a particular rank or within - anyone within
30 Homicide or what --
31 A. As far as I was aware, it was only going to the
32 persons mentioned on the list from Commander Homicide
33 onwards.
34
35 Q. But it was not to them on the basis they not share it
36 with anyone else?
37 A. No, no.
38
39 Q. So it's conceivable Mr Willing might have circulated
40 it, for example?
41 A. That could have happened. I don't know.
42
43 THE COMMISSIONER: All right.
44
45 MR GRAY: Q. Would you agree with this, which is some
46 evidence that Mr Crandell has given in this Inquiry, that
47 at least as at 2014, there was a widely held view at senior

1 levels of the police that claims relating to the numbers of
2 gay hate related murders and bashings, especially in
3 the '80s and '90s, were exaggerated and unfounded? Would
4 you agree with that?

5 A. I'm sorry, could you repeat that?

6
7 Q. Yes, that at least at 2014 - and this document that
8 I've got in front of you now is 2015 - at least at 2014,
9 there was a widely held view at senior levels of the police
10 that claims relating to the numbers of gay hate related
11 murders and bashings, especially in the '80s and '90s, were
12 exaggerated and unfounded?

13 A. I don't know what the view was that was held by senior
14 members of the police at that time.

15
16 THE COMMISSIONER: Q. Well, you wouldn't disagree with
17 what Mr Crandell's recollection is, though, would you?
18 You're in no position to do so, are you?

19 A. I didn't have a view if that was the case or not.

20
21 Q. No, I'm not asking you that. I'm just asking you, as
22 you've heard Mr Crandell's evidence, given the nature of
23 your lack of recollection, you're in no position, are you,
24 to disagree with Mr Crandell's recollection?

25 A. Well, I don't have an opinion and I don't have
26 a recollection.

27
28 Q. I know you don't, that's my point, and you're in no
29 position, are you, to disagree with what Mr Crandell says
30 he recalls?

31 A. No, I'm in no position to disagree.

32
33 THE COMMISSIONER: Thank you.

34
35 MR GRAY: Q. And would you agree with this, which is
36 evidence he also gave, that there was a widely held view at
37 that time that such claims about the numbers of gay hate
38 related murders and bashings needed to be publicly refuted?

39 A. Sorry, could you repeat that?

40
41 Q. Yes. That at that time, these claims about the
42 numbers of gay hate related murders and bashings needed to
43 be publicly refuted?

44 A. I don't remember - I don't recall that.

45
46 MR NAGLE: Sorry, before you answer that, may I just ask
47 that there be some clarity. Refuted by whom? By the

1 Police Force generally or by Crandell?
2
3 THE COMMISSIONER: No, he is entitled to read a quote from
4 Mr Crandell's evidence, which I assume you will read for
5 yourself or have read for yourself. So he is quoting, as
6 I understand it - perhaps give me a page or give Mr Nagle
7 a page number.
8
9 MR GRAY: It is page 663, line 43.
10
11 MR NAGLE: Thank you.
12
13 THE COMMISSIONER: That's the evidence of Mr Crandell,
14 which I appreciate you weren't here for. But if you want
15 to double-check the transcript, you will find it on the
16 thing.
17
18 MR NAGLE: Yes, Commissioner.
19
20 MR GRAY: Do you need the question again?
21
22 THE WITNESS: If you wouldn't mind, thanks.
23
24 MR GRAY: Q. Would you agree with this proposition, that
25 there was a widely held view, at about 2014, that such
26 claims about the numbers of gay hate related murders and
27 bashings needed to be publicly refuted?
28
29 MR MYKKELTVEDT: I object, your Honour, for this reason:
30 there is an important piece of context in relation to the
31 evidence that is being referred to.
32
33 THE COMMISSIONER: Yes.
34
35 MR MYKKELTVEDT: Which I apprehend is at page 663 of the
36 transcript.
37
38 THE COMMISSIONER: Yes.
39
40 MR MYKKELTVEDT: And that is, the witness, being
41 Mr Crandell, was first taken specifically to the issues
42 paper contained at tab 47, and then he had a series of
43 propositions being put to him in connection with that
44 issues paper.
45
46 THE COMMISSIONER: Yes.
47

1 MR MYKKELTVEDT: And that whole context should be put
2 before the witness.

3
4 THE COMMISSIONER: That's very helpful, Mr Mykkeltvedt,
5 but that only serves to underline the fact that when
6 Mr Crandell was answering that question, he was intimately
7 familiar and made re-familiar with the issues paper, and
8 seems to be - and you were here at the time - fully
9 informed before he answers the question that has been put.
10 Thank you.

11
12 The objection is what? That somehow or other what is
13 being read for this witness to comment on takes Mr Crandell
14 out of context? Is that your point?

15
16 MR MYKKELTVEDT: In short, yes, your Honour, that is
17 part of --

18
19 THE COMMISSIONER: Whether in short or at length, how can
20 that be an objection, because, first, Mr Crandell's
21 evidence will speak for itself, the context in which he has
22 given that, but I will permit this to be put because it can
23 be put on the basis that this witness either has
24 a recollection or doesn't have a recollection.

25
26 MR MYKKELTVEDT: In my submission, divorced of that
27 context, his response is of no utility to you.

28
29 THE COMMISSIONER: I really am not following this,
30 Mr Mykkeltvedt, except to say that I note the position you
31 take. I do not follow the logic of what you are putting.
32 The mere fact that Mr Crandell was shown this gentleman's
33 memorandum and, as a result of that, was asked to reflect
34 upon views a few years before the memorandum was written,
35 is no point at all, if that's the point you're trying to
36 make. His recollection was, I presume - he was asked about
37 did he know about Mr Lehmann's memorandum, full stop.

38
39 MR MYKKELTVEDT: Your Honour, the question that was put to
40 him is:

41
42 *And was there a widely held view, do you*
43 *think, at that time, that such claims about*
44 *the numbers of gay hate related murders and*
45 *bashings needed to be publicly refuted?*

46
47 And then he gives a response that is:

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I would say so, based on this document ...

It's clear that Mr Crandell's evidence was confined to the import of the document.

THE COMMISSIONER: Well, Mr Mykkeltvedt, again, I don't wish you to think I'm being unkind. I actually don't follow your objection. If the objection is that the view widely held is really meant to be understood as Mr Crandell saying that it was widely held in 2016 as opposed to 2014 - because as I heard a moment ago, Mr Gray repeating the question, he referred to the date 2014. Now, what is your point?

MR MYKKELTVEDT: The point is that to the extent that this is of any utility to your Honour, it needs to be done by reference to --

THE COMMISSIONER: Mr Mykkeltvedt, that will be a matter for me to decide. I'm just trying to inform myself at the moment - I'm trying to follow the logic. Are you saying that Crandell's evidence has to be taken as his views as to the position of the police in 2016 as opposed to 2014? Is that your point?

MR MYKKELTVEDT: Crandell's evidence needs to be understood by reference to the --

THE COMMISSIONER: Would you like to answer my question, Mr Mykkeltvedt, or are you just going to answer the one you are posing for yourself? Are you saying that this should be understood as Crandell's view of the position in the Police Force as at 2016, not 2014, because what he had recently been taken to was a memorandum dated 2016?

MR MYKKELTVEDT: No, he was taken to the memorandum contained at tab 47, and what should be understood by his evidence is that he was responding to a proposition in respect of the contents of that memorandum.

THE COMMISSIONER: So what? Doesn't it speak for itself?

MR MYKKELTVEDT: Yes. But this witness should be afforded the context.

THE COMMISSIONER: All right, thank you, Mr Mykkeltvedt.

1 That's very helpful.

2

3 Yes, Mr Gray.

4

5 MR GRAY: If it hasn't been clear already, I will make one
6 last attempt.

7

8 THE WITNESS: Okay.

9

10 MR GRAY: Q. I'm inviting you to agree or disagree with
11 some evidence that Mr Crandell gave. Mr Crandell had been
12 taken to your document of September 2013 --

13 A. Yes.

14

15 Q. -- where you said "gross exaggeration", and so on?

16 A. Yes.

17

18 Q. And I asked him:

19

20 *And was there a widely held view, do you*
21 *think, at that time --*

22

23 and this is 2014, I was putting to him --

24

25 *that such claims about the numbers of gay*
26 *hate related murders and bashings needed to*
27 *be publicly refuted?*

28

29 And his answer was:

30

31 *I would say so, given the document that you*
32 *have just read from is advice to the*
33 *Minister.*

34

35 Now, that's the context that Mr Mykkeltvedt wanted, which
36 I'm happy to give. Is it your view that that was so? In
37 other words, was there a widely held view to that effect,
38 as far as you knew?

39 A. I don't know what the view was, held by senior police,
40 as proposed by Mr Crandell.

41

42 THE COMMISSIONER: Just before you move on,
43 Mr Mykkeltvedt, I wrongly put 2016 to you, I had
44 a different memorandum in mind. But I take your point. Do
45 you wish to say anything further about what you've just
46 said?

47

1 MR MYKKELTVEDT: No, Commissioner.

2

3 THE COMMISSIONER: All right. Thank you.

4

5 MR GRAY: Q. Now, of course, you and Ms Young, in the
6 paper of September 2013 that we have looked at, did
7 include, among the eight cases that you said were possible
8 or probable gay hate homicides, the three Bondi cases?

9 A. Yes.

10

11 Q. Warren, Russell, Mattaini?

12 A. Yes.

13

14 Q. They were three of the eight in your document?

15 A. They were.

16

17 Q. But even with those three, the reality was that eight
18 years earlier, in 2005, Coroner Milledge had expressly
19 found, after a long inquest, that two of those three,
20 Warren and Russell, were, in fact, homicides?

21 A. Yes.

22

23 Q. And she had expressed the view that the strong
24 probability was that they were murdered by gay hate
25 assailants, hadn't she?

26 A. I recall that, yes.

27

28 Q. So was there a feeling within the UHT, including
29 yourself, that the findings of Coroner Milledge in the
30 Taradale inquest had actually been too strong about those
31 two cases or had been wrong in some way or too harsh on the
32 police or anything of that sort?

33 A. There wasn't any feeling about the findings of the
34 Coroner. It was simply our job to investigate matters to
35 establish whether gay hate motivated violence was a factor
36 in those deaths.

37

38 Q. So she had said - I'm just confining it to two of
39 them, at the moment, Russell and Warren --

40 A. Yes.

41

42 Q. -- she had said they were definitely homicides?

43 A. She did.

44

45 Q. That was her finding. And while not a finding, she
46 says, "There's a strong likelihood or strong probability
47 that they were gay hate assailants who killed them"?

1 A. She said that, yes.

2

3 Q. Now, in your document, you put those three, including
4 the two I'm talking about now, under the category of
5 "Possible or probable gay hate related murders". Were you
6 in that sense meaning to adopt what Milledge had said or to
7 depart from it?

8 A. Neither. I was trying to establish my own findings
9 based on what evidence I had discovered in relation to
10 those deaths.

11

12 THE COMMISSIONER: Q. So does it follow that in relation
13 to those two, independently of Coroner Milledge, you formed
14 the view about those two?

15 A. I formed a view that there was a probable factor that
16 gay motivated violence may have been involved.

17

18 Q. From your own independent assessments?

19 A. Yes.

20

21 THE COMMISSIONER: All right. Thank you.

22

23 MR GRAY: Q. Now, when Strike Force Neiwand was set up
24 a couple of years later, in October 2015, you were the
25 initial investigation supervisor?

26 A. Investigations coordinator.

27

28 Q. I'm sorry?

29 A. Investigations coordinator.

30

31 Q. Well, I'll come to that strike force shortly and I'll
32 show you the documents, but accepting "investigations
33 coordinator "for the moment, did you have the view then -
34 that is, in October 2015 when Neiwand started - that the
35 three Bondi deaths should be looked at not from the point
36 of view of being possible gay hate murders but from the
37 perspective of looking for other possible causes of their
38 deaths not being gay hate?

39 A. No, it was - it's simply a matter that we had to
40 investigate and identify persons responsible for those
41 deaths. I --

42

43 Q. Well - sorry.

44 A. Sorry. No, I don't have anything further.

45

46 Q. You may or may not know this, and you'll tell us,
47 because you left in October 2016 --

1 A. Yes.

2

3 Q. -- but I suggest to you that that's what Strike Force
4 Neiwand actually did in the end, namely, it deliberately
5 did not investigate the possibility that these men were
6 murdered by gay hate assailants; correct? It made
7 a deliberate choice not to do that. Are you aware of that?

8 A. No.

9

10 Q. Does that come as news to you today?

11 A. Yes.

12

13 Q. Your understanding was that's exactly what they should
14 have done?

15 A. My understanding was that gay hate motivated violence
16 may have been a possible or probable factor. The priority
17 was to investigate those deaths or those homicides as any
18 other homicide, and to identify suspects involved and -
19 yeah, basically that - yes.

20

21 Q. So in your mind, then that, would have included,
22 speaking fairly generally, looking again at the persons of
23 interest who had already been identified in the Taradale
24 exercise?

25 A. Yes.

26

27 Q. Now, instead, you can accept that we've had this
28 evidence in the Inquiry, Neiwand did not actually
29 investigate those identified and known persons of interest
30 at all. Did you know that before today?

31 A. No. My recollection was that anything uncovered or
32 anything relating to Strike Force Taradale would have been
33 important for Strike Force Neiwand to look at and consider.

34

35 Q. In fact, what Neiwand did was to deliberately explore
36 other possibilities only, not gay hate, namely, suicide in
37 the case of Mr Mattaini; misadventure in the case of
38 Mr Russell; and domestic homicide - that is, non gay hate
39 homicide - in the case of Mr Warren. Are you aware of
40 that?

41 A. No, I can't agree with that. We, as a strike force
42 investigation team, would have had to consider all factors,
43 any factors, that may have been involved.

44

45 Q. Well, you were the initial investigations supervisor
46 or coordinator in October 2015 or thereabouts. You left
47 the UHT effectively in October 2016?

1 A. Yes.

2

3 Q. But when was the last time you had anything to do with
4 Strike Force Neiwand? And I ask that because you ceased to
5 be the investigations supervisor or coordinator at some
6 time in the first half of 2016, it seems.

7 A. I would have had an involvement up until the time
8 I left in October 2016.

9

10 Q. Even after ceasing to be identified as one of the
11 Neiwand personnel?

12 A. Yes.

13

14 Q. Did you go to the progress report meetings?

15 A. I could have. I certainly would have had to look at
16 the progress reports, which I think were produced monthly.

17

18 Q. Well, the evidence that the Commission has, including
19 from the investigation supervisor who seems to have
20 succeeded you, namely, Detective Sergeant Morgan, is that
21 from an early date, some time in the first half of 2016,
22 the decision was taken not to pursue the persons of
23 interest, any of them, identified by Taradale. Did you
24 know that?

25 A. I didn't know that.

26

27 Q. And in the end, the Neiwand strike force produced
28 three summaries, summary documents, one for each of the
29 three deaths, but it was well after you had left - that is,
30 it was in the end of 2017. Were you still in the loop then
31 or --

32 A. No.

33

34 Q. So in those summaries, the Strike Force Neiwand stated
35 definitively, at least in the cases of Mr Russell and
36 Mr Warren, that the findings or the views of Coroner
37 Milledge were wrong and should not be regarded as
38 applicable. Did you know that?

39 A. No.

40

41 Q. If that's what happened - and just assume for the
42 moment that is what happened - it's pretty obvious, isn't
43 it, that the strike force, in the end, was actually looking
44 at evidence that would undermine the Milledge findings?

45

46 MR NAGLE: I do object to that, that's a quantum leap,
47 given that the findings are at the end of 2017, my client

1 leaves in October 2016, he is not intimately involved; in
2 fact, he had no involvement.

3

4 THE COMMISSIONER: I understand that but he is being asked
5 as a very experienced police officer. Clearly he wasn't
6 involved in the decision-making, but I think he is
7 qualified to comment on it. I will allow it. Thank you.

8

9 MR GRAY: Q. The question obviously involves an
10 assumption that I'm asking you to make, that what I've put
11 to you is, in fact, what happened, although you may not
12 have known it. But if that is what happened, then it
13 follows, doesn't it, that what the strike force was doing
14 was looking for evidence to undermine or reverse or
15 challenge the Milledge findings?

16 A. I just cannot grasp or cannot believe that that would
17 be the intention, to undermine the findings of a Coroner.

18

19 Q. Well, the finding of Coroner Milledge in relation to
20 Mr Russell, taking one of them --

21 A. Yes.

22

23 Q. -- was homicide.

24 A. Yes.

25

26 Q. You know that? And she expressed the view that, not
27 as a finding, probably gay hate?

28 A. Yes.

29

30 Q. Neiwand proposed a different finding - namely, not
31 "homicide" but "undetermined" - could be homicide, could be
32 suicide, could be misadventure; the case should be
33 recategorised not as "homicide" but as "undetermined"; did
34 you know that?

35 A. All I can say would be that the findings of Strike
36 Force Neiwand at the end of that investigation would have
37 been based on any evidence they uncovered. I really
38 can't --

39

40 Q. No, my question is: did you know that that's what
41 they did at the end?

42 A. No, no, I didn't know.

43

44 Q. Can I turn to a different topic and just I think
45 reasonably briefly, if I can. The question of prioritising
46 cases at the UHT, in your time --

47 A. Yes.

- 1
2 Q. -- Ms Young has said in her evidence to the Inquiry
3 that tracked cases were reviewed in chronological order
4 based on the date of the offence. Does that correspond to
5 your understanding?
6 A. That's a basic understanding, but not necessarily
7 correct as it occurred.
8
9 Q. Could you just expand on that?
10 A. I can expand on that, because although, yes, it was
11 important to follow up cases chronologically and have them
12 assessed, but at any one time, information might be
13 received or we might get a DNA hit on a particular case,
14 which may be a more recent case that we had on our files,
15 that needed attention.
16
17 Q. Sure. Accepting that, that something like that might
18 happen and you would say, "Right, well, here's some actual
19 fresh news. We'd better do something about it" --
20 A. Yes.
21
22 Q. -- but generally speaking the system was, or was it,
23 that tracked cases were reviewed in chronological order
24 based on the date of the offence?
25 A. Generally speaking, yes.
26
27 Q. And starting with the oldest leading to the more
28 recent?
29 A. Yes.
30
31 Q. In your time - that is, 2008 to 2016 approximately -
32 if you remember, how many cases would get a screening per
33 year?
34 A. Oh, I can't remember.
35
36 Q. Are we talking six or are we talking 50? Can you give
37 us a scale?
38 A. It would have been more than six but possibly - no,
39 nowhere near 50. Those - it took quite some time to
40 properly review and assess any particular case, but -
41 I just can't remember the numbers that we got through in
42 any one year.
43
44 Q. The process - and I'll come to a couple of examples of
45 this, but tell me if this is right - was first a screening
46 exercise, case screening by one of the review officers?
47 A. Yes, I believe so, yes.

- 1
2 Q. And then, secondly, a prioritisation phase, after the
3 screening had been carried out? Is that right?
4 A. Yes - well, screening, the assessment and review all
5 appeared to be the same, the same process. The first step
6 in the process was to contact New South Wales records and
7 archives and request for any documentation held on that
8 particular case. That was the first step.
9
10 Q. Yes.
11 A. Then, on receipt of that, a further search to locate
12 other documents, briefs of evidence, whatever that might
13 be, was conducted, to have those examined.
14
15 Q. That was to enable the screening process to take
16 place?
17 A. Yes. Well, the screening, the review, the assessment
18 was all one process, as I recall.
19
20 Q. Let's come to a particular example, which is the Scott
21 Johnson case.
22 A. Yes.
23
24 Q. So, to recap, Mr Johnson's death occurs in December
25 1988?
26 A. Yes.
27
28 Q. There is an initial inquest in early 1989, that said
29 suicide?
30 A. Yes.
31
32 Q. Then in the 2000s, especially after the Taradale
33 inquest and the Milledge findings, the Johnson family
34 become active and they hire a private investigator and they
35 make various representations to the police and I think to
36 the Coroner, but I might be wrong about that, in terms of
37 urging that there be a second inquest?
38 A. Yes.
39
40 Q. And then there is a second inquest in June 2012 before
41 Coroner Forbes?
42 A. Yes.
43
44 Q. And she makes an open finding?
45 A. Yes.
46
47 Q. And she, among other things, notes what has been

1 learned since 1989 in the course of the Taradale/Milledge
2 exercise about gay hate gangs and so on?
3 A. Yes.
4
5 Q. And she refers the Johnson case to "cold cases" and
6 thus it comes to the UHT?
7 A. Yes.
8
9 Q. Now, somebody - my question is, was it you - appoints
10 Alicia Taylor to carry out the screening?
11 A. It could have been me but I don't remember who
12 appointed her.
13
14 Q. Did you consider her to be a capable and competent
15 officer?
16 A. I can't really recall. The only thing I remember was
17 that I think she was a part-time officer. She wasn't there
18 full time.
19
20 Q. That's right.
21 A. Which was problematic because that meant that,
22 typically, a case that she had to review would take longer
23 than a case that a full-time officer would do.
24
25 Q. Nonetheless, did you consider her a capable and
26 competent officer?
27 A. I can't really remember. Nothing outstanding in her
28 qualities sticks out in my mind.
29
30 Q. Well, she was also chosen, it turns out - and we will
31 come to this - to do the case screening for the three Bondi
32 deaths at virtually the same time. Were you aware of that?
33 A. I didn't remember that. Now that you recall that to
34 me --
35
36 Q. Well, the Johnson case and the three Bondi deaths
37 would have been four of the most high profile cases on the
38 UHT books, wouldn't they, by that time?
39 A. High profile in regards to what? I don't understand
40 that.
41
42 Q. Well, well known in the public eye?
43 A. Oh, because of media attention, possibly high profile
44 in that context, yes.
45
46 Q. Could we have volume 17, please, and could we find
47 tab 399A [SCOI.85777_0001]. This is a document,

1 Mr Lehmann, which was only produced to the Inquiry
2 yesterday, and it's an unsigned case screening form in
3 connection with the death of Scott Johnson. Can you see
4 that?

5 A. Yes, I can.

6
7 Q. On the last page, or the second-last and last page,
8 you will see that neither the reviewer nor the coordinator
9 has signed it. It's blank in those respects. I'm happy
10 for it to be on the screen.

11
12 THE COMMISSIONER: Mr Nagle would like it on the screen,
13 would he?

14
15 MR NAGLE: Yes, Commissioner. I can't seem to find it on
16 the online version.

17
18 THE COMMISSIONER: No, that's fine --

19
20 MR GRAY: Sorry, I'm told that there is unresolved
21 non-publication.

22
23 THE COMMISSIONER: There is unresolved non-publication.
24 While I'm at it, or while I'm interrupting everyone, is
25 this one of the documents, Mr Mykkeltvedt, you were going
26 to try to see if there was a signed copy or is this another
27 one?

28
29 MR MYKKELTVEDT: Yes, there is no signed copy,
30 your Honour.

31
32 THE COMMISSIONER: I won't ask you to make a submission
33 now, but are there multiple copies of it through the
34 records, even though it wasn't signed?

35
36 MR GRAY: My friend has a hard copy, so we can proceed.

37
38 THE COMMISSIONER: All right. Okay.

39
40 Sorry, Mr Mykkeltvedt?

41
42 MR MYKKELTVEDT: I'm certainly not aware of multiple
43 copies of the document, Commissioner.

44
45 THE COMMISSIONER: All right. Perhaps I will ask
46 Mr Lehmann.

47

1 Q. Is there any significance on the fact that this
2 document isn't signed?

3 A. No. I imagine it would have been signed in its
4 original form.

5

6 Q. It can't be presently found, perhaps?

7 A. Yes, it appears to be the case.

8

9 THE COMMISSIONER: All right.

10

11 MR MYKKELTVEDT: Commissioner, I might interject to
12 indicate that I think there was some evidence yesterday
13 from Ms Taylor in connection with the question of whether
14 the document had, in fact, ever been finalised. She gave
15 evidence that it would have been sent for review and that
16 she never saw it again.

17

18 THE COMMISSIONER: I'm sorry, your objection is that this
19 document - I should receive this as a draft, should I?

20

21 MR MYKKELTVEDT: I'm not objecting, so much as providing
22 some --

23

24 THE COMMISSIONER: No, but I'm asking you what - you are
25 on your feet. Tell me what, at the moment - let me in on
26 the secret, Mr Mykkeltvedt. Is it going to be your
27 proposition that this was never signed, never finalised,
28 never signed off on, and it's a draft?

29

30 MR MYKKELTVEDT: I expect that my position will be, in
31 line with the evidence given by Ms Taylor yesterday, that
32 is, that it had not been signed by her, yes. And that is
33 to say that it --

34

35 THE COMMISSIONER: I'm going to tease you. Is your
36 submission, while you are on your feet - you must have
37 thought about it. Is your position that this document
38 should be regarded as a draft only?

39

40 MR MYKKELTVEDT: Not in the sense that she sent it for
41 review, Commissioner.

42

43 THE COMMISSIONER: I don't follow that.

44

45 MR MYKKELTVEDT: Her evidence yesterday was that she sent
46 it for review and that it had not come back to her, and she
47 gave evidence yesterday that, effectively, events had

1 interceded and, in fact, Strike Force Macnamir had kicked
2 off its process.

3
4 THE COMMISSIONER: I will ask you again, just so that
5 we're not at cross-purposes: is it your proposition that
6 this document is or should be regarded as a draft?

7
8 MR MYKKELTVEDT: Not from the perspective of Senior
9 Constable Taylor.

10
11 THE COMMISSIONER: All right. Let me pursue it a little
12 further, because you are helpful, as always. Is it that
13 I should take it as it was never actioned, because although
14 she prepared it and sent it through, other events, eg, most
15 importantly the creation of Strike Force Macnamir, meant
16 that the document became irrelevant?

17
18 MR MYKKELTVEDT: The Commission does not have evidence as
19 to exactly --

20
21 THE COMMISSIONER: Mr Mykkeltvedt, please, are you able to
22 help me or not? What are you going to tell me in due
23 course? You've got your chance - not finally - but is it
24 your proposition - I'm trying to understand so that I don't
25 waste time and Mr Gray doesn't waste time. Is it your
26 proposition that the document, in effect, is irrelevant, it
27 was prepared by Ms Taylor, it was never signed, it
28 therefore, I think you're going to presumably say, was
29 never actioned and it was overtaken by Strike Force
30 Macnamir, so her assessment, in a sense, becomes
31 irrelevant? Is that what you are going to be saying?

32
33 MR MYKKELTVEDT: That's not the proposition I'm putting.
34 All I'm saying is that the evidence that she has given is
35 the evidence she has given.

36
37 THE COMMISSIONER: I understand what the evidence is,
38 Mr Mykkeltvedt, but I'm trying to understand, unless you
39 are not able to tell me now - maybe you haven't thought
40 about it - are you able to tell me now what your position
41 is going to be on the document?

42
43 MR MYKKELTVEDT: I would expect that my position in
44 relation to the document will align with the evidence that
45 has been given by Detective Senior Constable Taylor, and
46 I can't take it any further than that at this stage.

47

1 THE COMMISSIONER: I don't think you are being helpful, so
2 if you wouldn't mind resuming your seat, because I'm not
3 obviously going to get an answer.

4
5 Yes, Mr Nagle?

6
7 MR NAGLE: Commissioner, at the risk of being unhelpful --

8
9 THE COMMISSIONER: You are never unhelpful, Mr Nagle.

10
11 MR NAGLE: Thank you. The file extension for this
12 document is a .wbk. Now, I'm not a technology expert,
13 I had to Google what that meant. It is a Word back-up
14 document. A normal Word document you would see .doc or
15 .docx or .pdf, for example.

16
17 THE COMMISSIONER: It sounds like expert evidence to me,
18 Mr Nagle.

19
20 MR NAGLE: I don't want to get into the witness box. The
21 provenance of this document isn't clear to me, where it was
22 stored or whether my client would have seen it. Because
23 it's a Word back-up document, it just seems odd. We can't
24 undertake an investigation of how it has been found or
25 where it was, but it's a curious feature of the document
26 that your Honour's solicitors assisting might want to chase
27 down, potentially.

28
29 THE COMMISSIONER: Well, let me ask Mr Mykkeltvedt.
30 I want you to tell me at 2 o'clock precisely where you
31 found this document and if there are any other copies.
32 I want somebody to tell me - obviously they can inform
33 you - but I'm not going to waste too much more time. If
34 you are going to take a point - I don't say
35 illegitimately - that the document is of interest
36 historically because it may be the views of Ms Taylor at
37 the time she wrote it --

38
39 MR MYKKELTVEDT: I certainly don't cavil with that
40 proposition.

41
42 THE COMMISSIONER: Please, would you just listen for
43 a change - that it was her view at the time she wrote it.
44 You don't contest the fact that she sent it somewhere.

45
46 MR MYKKELTVEDT: Yes.

47

1 THE COMMISSIONER: All right? It was never signed, it was
2 never actioned, apparently - you will perhaps ask me to
3 infer, because it was never signed - and you say
4 historically it was overtaken, in any event, by Macnamir.
5 So whilst they were her contemporaneous views, that's the
6 beginning and the end of it. Is that what you are going to
7 be saying?

8
9 MR MYKKELTVEDT: I haven't finalised the position that the
10 Commissioner will be taking. I haven't, for example, taken
11 instructions in relation to it.

12
13 THE COMMISSIONER: I take it you won't ask any questions,
14 then, of this witness about this document. In the
15 meantime, at 2 o'clock, would you please tell me where you
16 found it, how you found it and when you found it?

17
18 MR MYKKELTVEDT: Yes, Commissioner.

19
20 THE COMMISSIONER: Okay, so we go back to the questions
21 I posed yesterday morning: Monday, Tuesday, Wednesday -
22 you do your best, Mr Mykkeltvedt, but you tell me at
23 2 o'clock precisely how you found it, who gave it to you
24 and where it came from, so that if Mr Nagle's point or
25 observations are to have any substance, I'd say nothing
26 about it, but would you deal with the point that he has
27 just made?

28
29 MR MYKKELTVEDT: Yes, Commissioner.

30
31 THE COMMISSIONER: When you laugh, Mr Mykkeltvedt, is that
32 a difficulty or not?

33
34 MR MYKKELTVEDT: I was not laughing, Commissioner.

35
36 THE COMMISSIONER: Oh, I see. All right. Well, then,
37 would you please do me the courtesy of just pursuing those
38 lines of inquiry and at 2 o'clock would you tell me,
39 please, what it is.

40
41 MR MYKKELTVEDT: Yes, Commissioner.

42
43 THE COMMISSIONER: Thank you very much.

44
45 Yes, Mr Gray.

46
47 MR GRAY: Q. Mr Lehmann, I will just clarify a couple of

1 things for you on this point. Ms Taylor's evidence in her
2 statement was that she did not recall receiving the
3 screening form back and didn't recall signing a finalised
4 version. Her evidence was not that she did not do so; it
5 was that she didn't recall doing so. That's in
6 paragraph 35 of her statement. And at page 5913 of the
7 transcript, she was asked:

8
9 *So far as you can recall ... did you ever*
10 *sign it?*

11
12 And the answer was:

13
14 *I don't know that I did sign a copy of the*
15 *Johnson review.*

16
17 In other words, the position was unclear whether she, in
18 fact, signed one or not. I'm just acquainting you with
19 what the state of the evidence is.

20 A. Yes.

21
22 Q. Now, back on the actual document that you have in
23 front of you, the case screening form, did you see this at
24 the time - that is, the time being around about
25 October/November 2012?

26 A. Yes. I don't have a specific memory of actually
27 seeing it, but I would have, certainly.

28
29 Q. Right. Would it be your expectation that both she, as
30 reviewer, and somebody, perhaps you as coordinator, would
31 in due course have signed it?

32 A. Yes.

33
34 Q. That's what would ordinarily or should ordinarily
35 happen?

36 A. Yes.

37
38 Q. Do you have any recollection of that happening or
39 indeed not happening in this case?

40 A. I don't.

41
42 Q. Now, I just want to ask you a couple of questions
43 about it. It seems, although it may not be entirely clear,
44 that this was probably prepared in about October 2012.

45 A. Okay, yes.

46
47 Q. I will take you to something else in a minute that

- 1 adds to the likelihood that that's the case. So it's
2 a case screening within some months of Coroner Forbes'
3 second inquest, where she referred the matter to "cold
4 cases"?
- 5 A. Yes.
- 6
- 7 Q. So this is a standard form, isn't it, this case
8 screening form? You have seen many of them, no doubt?
- 9 A. Yes.
- 10
- 11 Q. I don't need to go to the detail for present purposes,
12 but she gives a summary of what can be established from the
13 documents, what various witnesses said and so forth?
- 14 A. It is.
- 15
- 16 Q. And at the end, she comes to some - she identifies
17 which police had been involved and which witnesses there
18 might be, and on effectively the last page, the last full
19 page, there is her recommendation. Do you see that?
- 20 A. Yes.
- 21
- 22 Q. She says that there have been two inquests, two
23 investigations and two reviews - this is in the first
24 paragraph, and she summarises something about those or
25 about the inquests, at least. Then she says:
- 26
- 27 *Without developing further lines of*
28 *inquiry, there is no reasonable prospect of*
29 *determining if the death of Scott Johnson*
30 *was suicide or homicide.*
- 31
- 32 A. I see that.
- 33
- 34 Q. In other words, to get anywhere with this case, you
35 would need to develop further lines of inquiry?
- 36 A. Yes.
- 37
- 38 Q. And presumably - well, I won't say "presumably".
39 I imagine you would have agreed with that,
- 40 A. Yes. Yes.
- 41
- 42 Q. Because, among other things, in this case,
43 Mr Johnson's body had simply been found at the base of the
44 cliff, there were no witnesses, his clothing was there but
45 really, not a great deal else in terms of contemporaneous
46 evidence?
- 47 A. Not a great deal, no.

- 1
2 Q. So in order to get somewhere with an unsolved homicide
3 review, if there was to be one, as she says, you would need
4 to develop further lines of inquiry?
5 A. Yes.
6
7 Q. In the next paragraph she mentions that there's an
8 outstanding task, which is to do with a suicide
9 possibility?
10 A. I see that.
11
12 Q. Then she says consideration should be given to
13 a monetary reward?
14 A. I see that.
15
16 Q. Then she says it may be a consideration to gain
17 further information from the persons of interest involved
18 in similar offences - that is, in the Manly area - and so
19 on?
20 A. Yes.
21
22 Q. She puts that forward as something that could be
23 considered?
24 A. Yes.
25
26 Q. She notes in the next paragraph that checks of
27 archived records had identified that there had been sexual
28 assault and assault and robbery offences against homosexual
29 males within the Manly patrol since 1986 - in other words,
30 including the time when Mr Johnson died.
31 A. I can see that.
32
33 Q. And then she says in the last paragraph:
34
35 *The results of the initial investigation*
36 *cannot progress the matter further at this*
37 *stage. However consideration should be*
38 *given to undertake an investigation*
39 *targeting known persons of interest who*
40 *have been charged with offences against*
41 *homosexuals in the area --*
42
43 in the relevant period --
44
45 *which may produce further lines of inquiry*
46 *and enable covert opportunities to gather*
47 *information.*

1
2 That's her recommendation?
3 A. Yes, I can see that.
4
5 Q. Is that a recommendation that made sense to you?
6 A. Yes.
7
8 Q. And of course, by this time, 2012, the Johnson family
9 had provided many names of possible persons of interest,
10 hadn't they, by dint of the work that they had been doing?
11 A. I don't remember what names, if any, they provided.
12
13 Q. At any rate, this form, either unsigned, as this
14 version is, or signed, came to you?
15 A. Yes.
16
17 Q. And then if we turn to 399 [NPL.0209.0001.0087] which
18 is the document before, we get a document called "Review
19 Prioritisation Form". Do you see that?
20 A. Yes.
21
22 Q. And then on the last page of this, it is signed by
23 you, it says "Prioritisation Assessment Conducted By", and
24 then there is your signature?
25 A. Yes.
26
27 Q. And as to who conducted it, the document says it was
28 yourself, Detective Sergeant Richardson, Detective
29 Sergeant [sic] Brown and Detective Sergeant Tse?
30 A. Yes.
31
32 Q. And it is dated 2 November 2012?
33 A. Yes.
34
35 Q. Now, was this document, the review prioritisation
36 form, based on or made following the case screening form
37 that we just looked at?
38 A. Yes.
39
40 THE COMMISSIONER: Q. And would a review prioritisation
41 form come into existence in the absence of a screening
42 form?
43 A. Not from my memory, no. We would have had to look at
44 the screening form first, before doing the prioritisation
45 form.
46
47 THE COMMISSIONER: Thank you.

1
2 MR GRAY: Q. Now, if Ms Taylor's evidence was
3 essentially that she, for her part, had no investment in
4 this review prioritisation exercise --
5 A. No. No.
6
7 Q. -- that would be the normal system?
8 A. Yes, that's the normal system.
9
10 Q. So what did the four of you - yourself and the other
11 three officers named, Mr Richardson, Ms Brown and Ms Tse -
12 do yourselves to carry out this prioritisation exercise?
13 A. We sat down, as the most experienced and senior
14 officers in the unit, to discuss the findings of the case
15 review or the case screening form - basically what Alicia
16 Taylor had uncovered in her work.
17
18 Q. And did you have anything else in front of you besides
19 her case screening form? Did you have other underlying
20 primary documents or simply her form?
21 A. Simply her form, but it may well have been the case to
22 go back to Ms Taylor, for example, and ask her to clarify
23 certain things that we had noticed, that type of thing.
24
25 Q. Sure.
26 A. But from our point of view, the preliminary
27 investigation or the review conducted by Ms Taylor or
28 others would be something that we relied on to then
29 complete this prioritisation form.
30
31 Q. So was this progression, which is what seems to have
32 happened here, standard at the time - ie, first the case
33 screening form, next the review prioritisation form, and
34 then, thirdly, what? What happened next, typically?
35
36 MR NAGLE: I'm sorry, is that in this case?
37
38 MR GRAY: No, typically, generally.
39
40 MR NAGLE: Generally, thank you.
41
42 THE WITNESS: What would happen then is the priority that
43 was established would be recorded --
44
45 THE COMMISSIONER: Sorry, just hang on. Mr Lehmann, would
46 you like a break?
47

1 THE WITNESS: No, I'm fine.

2

3 THE COMMISSIONER: Well, I'm going to break in a few
4 minutes anyway, there is no difficulty if you would like a
5 break, seriously.

6

7 THE WITNESS: No, I'm happy to take the adjournment when
8 you direct me, sir.

9

10 THE COMMISSIONER: Well, Mr Nagle, it is timely that
11 I raise it. I'm going to sit on this afternoon, but I will
12 say it in his presence: if Mr Lehmann indicates to me
13 mid-afternoon, or if you feel, at any point, that
14 Mr Lehmann should have a break, please let me know.

15

16 Mr Lehmann, the invitation is there. I would like, as
17 I imagine you would as well, to be done with your evidence
18 today. I realise we started late, and it may be we sit a
19 bit late this afternoon, but, please, I don't want you
20 under any additional stress than is normally accustomed to
21 giving evidence in these environments. Please, put your
22 hand up if you want a break at any stage.

23

24 THE WITNESS: Thank you.

25

26 MR GRAY: Q. Sir, I'm just asking whether in the typical
27 case, moving away from Scott Johnson specifically, after
28 the case screening stage and after the prioritisation
29 stage, then what happened?

30 A. The priority of the case would be recorded on our
31 database, which was effectively the list of the 500 or more
32 unsolved cases that we had.

33

34 Q. And if the prioritisation was high, something would
35 flow from that, presumably?

36 A. Yes, the consideration would be to give it to the next
37 investigation team at the earliest opportunity.

38

39 Q. In the few minutes before lunch, I will just run
40 through how this form works, or seems to work. On the last
41 page, the fourth page, there is a sort of explanation of
42 the rankings. Do you see the last four or five lines on
43 the page?

44 A. Yes.

45

46 Q. And it says what the scores are that would be
47 correspond to "high", "medium", "low" and "nil"?

1 A. Yes.

2

3 Q. And for "nil", it says, if a case is ranked "nil"
4 priority, the consequence is that the case would be closed
5 or suspended; is that right?

6 A. That's what it says, yes.

7

8 Q. And is that correct? Is that what happened when
9 a case was ranked nil priority?

10 A. More suspended rather than closed. I mean, none of
11 the unsolved cases were technically closed.

12

13 THE COMMISSIONER: Q. No, but they'd become, would they,
14 inactive, in other words, you might post a reward, you
15 might put out some feelers, but essentially, you would not
16 apply resources of any substance, or at all, in another
17 sense. It would become inactive, apart from, say, a reward
18 going out or some other media attention being drawn to try
19 to get some new leads?

20 A. I would agree with that. It would be classed as an
21 inactive case.

22

23 MR GRAY: Q. Is there a reason why the form, looking at
24 it as a blank, indicates that if there was a nil priority,
25 the case would be closed or suspended? Were cases ever
26 closed? And if they were not, why does the form say that?

27 A. Yes, I see that. It's - in my opinion, it's, now that
28 I do see that, a poor word choice that I don't agree with.
29 An unsolved case is never closed, in my opinion, until such
30 time as a person's arrested and charged.

31

32 Q. So if a case is nil - which it turns out this one was,
33 and I will come to this one in a minute --

34 A. Yes.

35

36 Q. -- but if a case falls in the "nil" category,
37 below 15, while you might not be comfortable applying the
38 word "closed", the case would simply be, as it were,
39 stopped; nothing else would happen, unless something came
40 in from left field, beyond what the police were able to do?

41 A. Yes. For us the reality would be that that would
42 become an inactive case and probably wouldn't be
43 proactively investigated at any time soon.

44

45 MR GRAY: Is that a convenient time?

46

47 THE COMMISSIONER: I think that's the break. I will take

1 it now.

2

3 Mr Nagle, by all means free to discuss the matter
4 I have raised with Mr Lehmann and you in open court, and
5 I will just leave it to both of you, after lunch, to let me
6 know if there is any issue.

7

8 MR NAGLE: Thank you.

9

10 THE COMMISSIONER: All right. I will adjourn.

11

12 **LUNCHEON ADJOURNMENT**

13

14 THE COMMISSIONER: Yes, Mr Mykkeltvedt?

15

16 MR MYKKELTVEDT: Yes, your Honour.

17

18 MR NAGLE: I am not sure where Mr Lehmann is. We had him
19 a minute ago but he is not in the hearing room.

20

21 THE COMMISSIONER: I'm sure he will emerge.

22

23 Yes, Mr Mykkeltvedt?

24

25 MR MYKKELTVEDT: Yes, Commissioner. I'm instructed that
26 the relevant document was contained in a back-up file
27 within the M drive of the electronic records at State Crime
28 Command.

29

30 THE COMMISSIONER: That was Mr Nagle's diagnosis.

31

32 MR MYKKELTVEDT: Yes, that's so. Searches were conducted
33 in relation to possible hard copies, including in the
34 location where the signed document provided in respect of
35 the 2008 review yesterday was located. Those searches in
36 relation to the hard copies were not fruitful. As
37 a consequence, there is no hard copy that has been able to
38 be located.

39

40 THE COMMISSIONER: All right. Well, as a result of some
41 evidence given, it might be less relevant, but thank you
42 very much for the update. Thank you.

43

44 MR GRAY: Q. Mr Lehmann, do you still have volume 17
45 there? And tab 399?

46

47 A. Tab 399?

1 Q. Yes.

2 A. Yes.

3

4 Q. Okay, I was asking you about this one just before
5 lunch. Now, the language of the form, including the
6 heading, is "Prioritisation", isn't it?

7 A. Yes.

8

9 Q. We find that word elsewhere, including in the
10 conclusion on the fourth page?

11 A. Yes.

12

13 Q. The word "solvability" is not there anywhere but,
14 rather, "prioritisation". What is your understanding of
15 the concept or the use of the term "solvability" in the UHT
16 context?

17 A. Solvability was always an issue and always something
18 of a consideration to investigators, particularly when
19 considering whether investigations should proceed or not.

20

21 Q. So this form, though, is seemingly not addressing
22 solvability; it's addressing prioritisation - or is there
23 some merging of the two ideas?

24 A. In my mind there's a correlation between the two
25 ideas. It's words.

26

27 Q. It's words. So that in this one, what we arrive at on
28 the fourth page is "nil priority", that's the conclusion.
29 And in other evidence, which I'll come to with you in a
30 minute, different people have used the expression "zero
31 solvability"?

32 A. Yes.

33

34 Q. Can you help us with whether there is a difference, at
35 least in your mind, or so far as you knew in the Unsolved
36 Homicide Team, between on the one hand "nil priority", and
37 on the other hand, "zero solvability"?

38 A. No, all I can say is that nil priority or zero
39 solvability didn't mean that a case could [sic] be
40 commenced some time in the future.

41

42 Q. No, but a case could have some solvability, more than
43 zero, but still have low priority, couldn't it?

44 A. Yes.

45

46 Q. So presumably, "nil priority" and "zero solvability"
47 are not synonymous; there must be some difference between

1 them?
2 A. In my mind I didn't think so.
3
4 Q. Let's just go through the document.
5 A. Yes.
6
7 Q. It has five criteria. On the first page, the first
8 criterion is "Availability". Do you see the main heading
9 at the top of the first page?
10 A. Yes.
11
12 Q. And then under that criterion there are those three
13 sub-criteria, and the maximum rating for each of those is
14 out of 10?
15 A. Yes.
16
17 Q. And then in the case of that one, since there are
18 three criteria, there's an average rating given down the
19 bottom?
20 A. Yes.
21
22 Q. Then the second criterion, on the next page, is
23 "Suspect"?
24 A. Yes.
25
26 Q. It also has three sub-criteria, and an average rating,
27 and it's also out of 10?
28 A. Yes.
29
30 Q. And the third one is "Existence of New Technology".
31 Just one list of factors, and the maximum score there is
32 20.
33 A. Yes.
34
35 Q. The fourth one is "Passage of Time", one set of
36 factors, and the maximum score is 10?
37 A. Yes.
38
39 Q. Then on the last page, the fifth criterion is called
40 "Other Leads", one set of factors, and the maximum score is
41 10?
42 A. Yes.
43
44 Q. Can I just ask you this, just for the moment
45 generally, not just about Scott Johnson but this form: if
46 you had no suspect - I'm looking at the second page - if
47 the Unsolved Homicide Team was confronted with an old case

1 where there was no already identified suspect, then
2 inevitably, that score was going to be zero, wasn't it?
3 A. Yes.
4
5 Q. And on the next one, "Existence of New Technology", if
6 there was no physical evidence available to the Unsolved
7 Homicide Team that was then potentially susceptible to DNA
8 or other later analysis, then inescapably, that criterion
9 was going to be zero as well, wasn't it?
10 A. Yes.
11
12 Q. And that means that 30 points out of 60 were gone in
13 such a case, and the absolute maximum that the case could
14 get would be 30?
15 A. Yes.
16
17 Q. And as we know from the last page, if it was only
18 30 or less - if it was 30, it would be on the cusp of
19 medium and low, and if it was below 30, it would be low -
20 low priority?
21 A. Yes.
22
23 Q. Now, in a case like the Johnson case, there was no
24 suspect at the time it came to the UHT?
25 A. No.
26
27 Q. So that had to be zero?
28 A. Yes.
29
30 Q. And there was no physical evidence susceptible of DNA
31 or other testing, was there?
32 A. No.
33
34 Q. So that had to be zero?
35 A. Yes.
36
37 Q. So straightaway, the absolute maximum that this case
38 could rank, or rate, was 30?
39 A. I agree.
40
41 Q. Now, that must be the case, I take it, with quite
42 a few cases that find their way to the Unsolved Homicide
43 Team?
44 A. Yes, such was the emphasis or importance that we
45 placed on physical evidence and suspect identification or
46 availability.
47

1 Q. Because, as we have looked at before lunch, the
2 recommendation that DSC Taylor made was, essentially - we
3 can go back to it if need be, but in fact it's just in the
4 next tab, 399A [SCOI.85777_0001], if you want to look at it
5 again - that, and I'm paraphrasing, because there was no
6 material available as at that time to progress the matter
7 further, what would need to be done to make some progress
8 would be to do something fresh from that point onwards?

9 A. Yes.

10

11 Q. Now, back to 399, and on the last page, we see in the
12 middle of the page that there is a summary of the five
13 criteria and their scores - on the last page?

14 A. Yes.

15

16 Q. So as one might anticipate from what we just went
17 through, the second and third, "Suspect" and "New
18 Technology" are zero, as they essentially had to be?

19 A. Yes.

20

21 Q. There are very low scores for the fourth and fifth - 3
22 and 4 out of 10?

23 A. Yes.

24

25 Q. And in terms of the first one, "Availability of
26 brief/witnesses/physical evidence", there's a score of 7.
27 I think in your statement, which we'll come to, you say,
28 I think - correct me if I am wrong - that the brief of
29 evidence couldn't be found.

30 A. Yes, if - yeah, that's what I thought at the time when
31 I wrote the statement.

32

33 Q. At any rate, the net result was a score of 14, we see
34 on the last page, and that means that it comes in at less
35 than 15 and thus nil priority.

36 A. Yes.

37

38 Q. And on the form, at least, "nil priority" is said to
39 mean, or to lead to, "close or suspend case"?

40 A. That's what it indicates on the form, yes.

41

42 Q. And I asked you some questions about that before
43 lunch?

44 A. Yes, you did.

45

46 Q. I won't go over that again. I suppose what I want to
47 ask you, really, is this, Mr Lehmann. You said before

1 lunch that you thought the recommendation of Ms Taylor, in
2 her document, was sensible and that you, in effect, relied
3 on it in doing your work?
4 A. Yes.
5
6 Q. If it was sensible and you relied upon it, and she
7 was, in fact, saying, "I think it would be a good idea to
8 take these possible steps in the future" --
9 A. Yes.
10
11 Q. -- and you relied on that, how do we find such a low
12 score, in particular on the fourth and fifth criteria?
13 A. That would have resulted from a discussion by the
14 others that were present when we completed this document
15 and felt that that was generally how that needed to be
16 rated, that category.
17
18 Q. So although you agreed with her recommendation, in
19 practical terms, looking at the filling out of this form,
20 the one you filled out --
21 A. Yes.
22
23 Q. -- her recommendation was essentially ignored?
24 A. No.
25
26 Q. You don't agree?
27 A. Her recommendation was nought?
28
29 Q. Ignored?
30 A. Ignored? Oh, sorry.
31
32 Q. Yes.
33 A. No, I don't believe so, no.
34
35 Q. Well, where is it taken into account in this form that
36 you filled in, would you say?
37
38 MR NAGLE: I'm sorry, before that's answered,
39 Commissioner, I object on this basis: that's somewhat
40 unfair. There are a few recommendations specifically
41 within the document that was compiled, 399A, such as
42 offering a monetary reward and other things. I think that
43 they should be looked at individually because the
44 recommendation, as we know, is actually followed a couple
45 of months later when a monetary reward is applied for
46 through the Minister for Police.
47

1 THE COMMISSIONER: I hear what you are saying. Mr Gray,
2 you might accommodate that.
3
4 MR GRAY: I'm happy to do that. I will ask my question
5 again, but what I'm driving at, if I can make it as clear
6 as I can --
7 A. Yes.
8
9 Q. -- in her document, 399A, under the heading
10 "Recommendation" - my friend is quite correct, literally -
11 there are a couple of suggestions or recommendations in
12 there. In the fourth paragraph, one is that consideration
13 be given to a monetary reward?
14 A. Yes.
15
16 Q. That's true. In the fifth paragraph, there is
17 reference to a possible consideration of gathering further
18 information from persons of interest involved in similar
19 offences, et cetera?
20 A. Yes.
21
22 Q. And in the final paragraph, there is a recommendation
23 that consideration be given to an investigation targeting
24 known persons of interest, et cetera?
25 A. Yes.
26
27 Q. Now, putting aside for the moment, unless your answer
28 would bring it in - putting aside for the moment the
29 monetary reward one, but looking at the other two
30 recommendations, gathering further information about
31 persons of interest and an investigation targeting persons
32 of interest --
33 A. Yes.
34
35 Q. -- they being recommendations that you agreed with --
36 A. Yes.
37
38 Q. -- where would we find those reflected in some way, or
39 at least in your mind reflected, in the form you filled
40 out?
41 A. In the ratings score in that particular category, 3
42 and 4, the last two.
43
44 Q. Where? How would we find that? How would that come
45 in?
46 A. Well, I'm trying to think about the meeting that I had
47 with the other officers when we completed this form.

- 1
2 Q. Just pausing there, it can't be 3, can it, because 3
3 requires physical evidence to which DNA testing and so on
4 could be applied?
5 A. I'm looking at "Opportunities presented by the passage
6 of time" - is that what you're referring to?
7
8 Q. That's the fourth one, but yes, okay, looking at that
9 one, yes
10 A. That was the - those last two, "Opportunities", and
11 "Other leads" were the two I was referring to.
12
13 Q. Right. And you say that in arriving at a score of 3
14 under "passage of time" - 3 out of 10 - you have taken into
15 account her recommendation?
16 A. Yes.
17
18 Q. And under "Other leads", in arriving at a score of 4,
19 you have taken into account her recommendation?
20 A. Yes.
21
22 Q. All right. If you turn over one more tab to 400 -
23 tab 400 [NPL.0138.0003.0010], this is a letter, or an
24 email, perhaps, from Steve Johnson to you, on 9 January
25 2013?
26 A. Yes.
27
28 Q. He says in the second paragraph - first of all,
29 I assume you received this?
30 A. Yes, I can't remember receiving it, but yes, I must
31 have received this.
32
33 Q. He refers to your having met his sister and Mr Glick
34 recently in Sydney. Do you remember meeting Ms Johnson and
35 Mr Glick?
36 A. Yes.
37
38 Q. In about December 2012?
39 A. Yes.
40
41 Q. And in the second paragraph, he says how disappointed
42 they were, the Johnsons, to learn from you that Scott's
43 case had received a zero solvability rating.
44 A. I see that.
45
46 Q. And is that what you told Ms Johnson and Mr Glick?
47 A. I can't remember the words I used, whether it was

1 "zero" or "nil priority", I really can't recall what I told
2 them.
3
4 Q. When you wrote back - and I can take you to these
5 emails if necessary - you didn't take issue with that
6 language. You responded --
7 A. No.
8
9 Q. -- without making anything of that language?
10 A. No, I didn't take issue with the language, no.
11
12 Q. So does that suggest that that's probably what you
13 told him?
14 A. It could have been. Again, I can't recall --
15
16 THE COMMISSIONER: Q. Or at least it might have been the
17 effect of what you told him?
18 A. It may well have been. Again, I can't exactly
19 remember the words I used.
20
21 Q. Well, if he misrepresented the position - if you
22 thought he misrepresented the position, you would want to
23 correct him, wouldn't you? In other words, if you had
24 a meeting with him, you knew that he was agitating for
25 various things, if you thought he had misrepresented the
26 position, I presume you would have corrected him?
27 A. Yes.
28
29 MR GRAY: Q. Could we have volume 14, please, and could
30 we turn to tab 312 [NPL.3000.0016.0014]. Now, Mr Lehmann,
31 this is an email chain the following month, that
32 is, February 2013?
33 A. Yes.
34
35 Q. You yourself, I think I'm right, unless I'm missing
36 it, are not one of the people?
37 A. I'm just looking for my name. I can't see it.
38
39 Q. I don't think you are, but you are mentioned. I just
40 want to ask you about some of these things. The first
41 email, as is typical with these chains, is the one at the
42 back?
43 A. Yes.
44
45 Q. Which is the one starting halfway down the second
46 page. "Peter" - do you see that?
47 A. Yes, I see that.

1
2 Q. So that's an email from Officer Olen, who was
3 Detective Acting Superintendent at that point, to Peter
4 Cotter. Remind us who Peter Cotter was?
5 A. He was the former Commander of the Homicide Squad.
6
7 Q. Before Mr Willing?
8 A. Prior to Mr Willing.
9
10 Q. Do you know what he was by this point?
11 A. He - I think he may have been in a role, a senior role
12 in the State Crime Command, such as the operations
13 coordinator, in the chief superintendent position, or even
14 perhaps Acting State Crime Commander. I don't remember.
15
16 Q. And it's copied - this email is also copied to
17 Michael Willing and Pamela Young. You see that?
18 A. Yes. What Mr Olen says in the second paragraph is
19 that the family - that is, the Johnson family - wrote to
20 you, as indeed we've just seen, on 9 January, expressing
21 their dismay that your unit had rated the solvability as
22 zero and had essentially declined to investigate. Do you
23 see that?
24 A. I see that.
25
26 Q. And does that capture what you had in fact said to the
27 Johnsons - namely, solvability zero and that you were
28 declining to investigate?
29 A. It may well have. I don't remember the words I used
30 to the Johnson family.
31
32 Q. Were the words you used, even though you can't
33 remember them, to that effect?
34 A. I certainly wanted to convey to the Johnson family
35 what the results were of our finding, whether that was
36 using the word "zero" or "nil priority", I can't remember.
37
38 Q. And what about the next bit, "have essentially
39 declined to investigate"? Did you say something to that
40 effect to the Johnsons?
41 A. I can't remember saying anything about - mentioning
42 declining investigations or declining to investigate.
43
44 Q. But if you had said that, it would have been
45 essentially accurate, wouldn't it, as at late 2012?
46 A. Declining to investigate means that I have no
47 intention of investigating the matter, be it now or any

1 time in the future, and that wasn't the case.

2

3 Q. No, but you had no intention - correct me if I'm
4 wrong - given the prioritisation that we've just been
5 through, you had no intention of going about any
6 investigation any time soon, unless something else
7 happened?

8 A. Yes.

9

10 Q. And presumably you told the Johnsons that?

11 A. Yes.

12

13 Q. Right. Now, that then prompted - and this is now the
14 second email, which starts at the bottom of the front
15 page - a response from Pamela Young, beginning "Morning
16 All"; do you see that one?

17 A. Yes.

18

19 Q. She says to Mr Olen and Mr Willing and Mr Cotter:

20

21 *As I am the one who will actually be*
22 *dealing with the investigation and family*
23 *from herein --*

24

25 probably "hereon", I suppose --

26

27 *I want to put on the record that the*
28 *decision not to proceed with further active*
29 *investigation was based on two reviews ...*

30

31 I will come to what the two reviews were, but what I'm
32 going to ask you about is her reference to "the decision
33 not to proceed with further active investigation"; do you
34 see that?

35 A. I see that, yes.

36

37 Q. Now, her language, certainly, but that captures
38 accurately what the decision was, doesn't it?

39 A. It does.

40

41 Q. Now, she says that that decision was based on:

42

43 *... two reviews conducted by the likes of*
44 *Mick Ashwood, Gary Jubelin and Glen*
45 *Richardson in addition to John Lehmann.*

46

47 Do you see that?

1 A. Yes.

2

3 Q. Now, do you know about these other two reviews
4 conducted by Messrs Ashwood, Jubelin and Richardson?

5

6 MR NAGLE: Sorry, that's not an accurate summary of what
7 was said. "Other reviews" - it says there are two reviews,
8 one is by the group of three, the other one is by my
9 client, so one other review, not two other reviews.

10

11 THE COMMISSIONER: Mr Nagle, you may be right, but it's
12 probably unhelpful for you to start giving evidence. Why
13 don't you let Mr Gray - if he makes a mistake, you're here
14 for the very reason of clarifying it. I know you don't
15 want the witness to be misled, and I accept that, but
16 I will just let it develop. You have made your point,
17 thank you.

18

19 MR GRAY: Q. I will make it as clear as I can. Whether
20 it is accurate or not, what Ms Young says is two reviews in
21 addition to John Lehmann, doesn't she? That's what she
22 says?

23

24

25 Q. So she appears, on the face of it, to be referring to
26 two other reviews over and above yours, doesn't she?

27

28

29 Q. Right. Well, what do you know about two other
30 reviews?

31

32 A. I had knowledge of reviews that had been conducted on
33 this matter in the past. When and who they were conducted
34 by I can't remember.

35

36 Q. Do you have a recollection of any reviews about the
37 Johnson case by any of Messrs Ashwood, Jubelin or
38 Richardson?

39

40 A. No. As I said, I have a recollection of knowing that
41 previous reviews had been conducted prior to the one
42 I oversighted. I don't know who conducted them or I don't
43 remember who.

44

45 MR GRAY: Commissioner, through you, I would ask that any
46 reviews by any one or more of Mick Ashwood, Gary Jubelin
47 and Glen Richardson, be produced and, if need be, we can
48 have a summons issued --

49

1 THE COMMISSIONER: I will ask Mr Mykkeltvedt.

2

3 Mr Mykkeltvedt, do you require a summons or are you
4 able to get some instructions?

5

6 MR MYKKELTVEDT: It may be that having a summons will
7 clarify exactly what is called for and we would prefer
8 a summons, yes.

9

10 THE COMMISSIONER: All right. Then I will have one before
11 the close of today's proceedings so that you can see what's
12 called for, so that you and others aren't left in any
13 doubt. Thank you.

14

15 MR GRAY: Q. What Ms Young then goes on to say, after
16 that sentence, I probably don't need to ask you about, so
17 what I will go to is the response that then comes back from
18 Mr Olen at the top of the first page, beginning "Pam"; do
19 you see that?

20 A. Yes.

21

22 Q. He says he senses her frustration and anger, he
23 disagrees that he has made an easy decision, and he asks
24 her - asks Pamela Young:

25

26 *What are you going to say to the Minister*
27 *and the family next week after John Lehmann*
28 *in his soon to be broadcast National and*
29 *(International USA) interview in which he*
30 *has indicated "the case is open and a team*
31 *is working on it".*

32

33 Do you see that's the question Mr Olen asks?

34 A. Yes.

35

36 Q. Now, his reference there - and I will come to this in
37 a second - is to, I take it, your interview that in due
38 course went to air on Australian Story?

39 A. Yes.

40

41 Q. So if we could go to that, it's in the same volume
42 that you have, tab 319 [SCOI.82485_0001]. That should be -
43 yes, that it is - a transcript of the Australian Story
44 that went to air on that night, 11 February 2013?

45 A. Yes.

46

47 Q. You're in it at various points, but the bit that

1 I want to ask you about is just the topic we were looking
2 at. It's on the last page, about eight or nine lines from
3 the top. Do you see "Detective Chief Inspector John
4 Lehmann"?

5 A. I'm sorry, just --

6
7 Q. It is technically the second-last page, I suppose, the
8 last full page.

9
10 THE COMMISSIONER: Q. If you look in the upper
11 right-hand corner, you will see 0008, upper right-hand
12 corner.

13 A. Yes, I've got that

14
15 MR GRAY: Q. So the third paragraph down has your name
16 in capitals?

17 A. Yes.

18
19 Q. So you say, apropos the Johnson case:

20
21 *The case is with the Unsolved Homicide*
22 *Team, having been referred to by the*
23 *Coroner.*

24
25 So that's obviously correct. You agree?

26 A. Yes.

27
28 Q. Then you say:

29
30 *I won't comment on what stage the*
31 *investigation is at.*

32
33 Then you say:

34
35 *Certainly we haven't closed the books on*
36 *this case, it's an open case.*

37
38 A. Yes.

39
40 Q. Now, given what we've been through this afternoon and
41 just before lunch, was that an accurate statement?

42 A. Yes.

43
44 Q. "Open" in what sense?

45 A. In the sense that unsolved cases are never closed
46 until some type of finalisation where an offender has been
47 found responsible and charged with the matter, or a brief

1 of evidence has been put back to the Coroner, who will make
2 a fining.

3

4 THE COMMISSIONER: Q. Would it have been more accurate,
5 though, to describe it as "inactive" apart from the reward?

6 A. That could have been words that I could have used,
7 yes.

8

9 Q. Would that have been accurate?

10 A. Not necessarily, no. No, as you say, sir, aside from
11 the reward being - that was an active part, the application
12 for the reward.

13

14 Q. No, but otherwise the case was inactive, wasn't it?

15 A. Yes.

16

17 Q. Well, would it have been more accurate to have
18 described it as inactive? Or would it have been equally
19 accurate to describe it as inactive?

20 A. I could have chosen those words. I used these
21 particular words but I simply meant that it wasn't closed
22 because it hadn't been solved.

23

24 Q. As in anything is possible?

25 A. Yes.

26

27 MR GRAY: Q. For completeness, in the next sentence you
28 said:

29

30 *And to that end, we've also applied for*
31 *a monetary reward ...*

32

33 A. Yes, I see that.

34

35 Q. Et cetera. So you referred to the reward factor.
36 But what I want to put to you is this, I suppose. You say
37 you wouldn't comment on what stage the investigation is at.
38 That gave the impression, didn't it, that there was some
39 investigation under way?

40 A. I didn't intend to convey that message, no.

41

42 Q. What else could a listener or viewer possibly
43 understand other than that that the investigation was
44 ongoing in some sense or other?

45 A. I don't know. I can't comment on what might have been
46 thought by people who read or saw those comments.

47

1 Q. Well, what you said could only have given any viewer
2 the impression that the investigation was in some sense
3 active, couldn't it?
4 A. It could have left that impression but certainly that
5 wasn't my intention to do that.
6
7 Q. And then when you followed that up in the next
8 sentence, you said, "We haven't closed the books. It's an
9 open case" --
10 A. Yes.
11
12 Q. -- that also would have given the viewer the
13 impression that something was actually happening in an
14 active sense, wouldn't it?
15 A. I agree that it could leave that impression. It
16 wasn't my intention to do so.
17
18 Q. And such an impression would have been quite wrong,
19 wouldn't it, for all the reasons that you have been
20 explaining?
21 A. Yes.
22
23 Q. The investigation had actually stopped because it had
24 nil priority, with the exception that the reward had been
25 put in train?
26 A. Stopped, suspended - yes. So other than the reward
27 process.
28
29 THE COMMISSIONER: Q. And therefore, in the overall
30 sense, apart from the reward, inactive?
31 A. Yes.
32
33 MR GRAY: Q. So would you agree that the words that you
34 chose to use there were stretching the truth?
35 A. Oh, no, definitely not.
36
37 Q. Designed to give an impression other than what was
38 actually happening?
39 A. No, no. My words - the words that I used were based
40 on my belief or my assertion that we never closed the books
41 on unsolved homicide cases, no matter how old they are or
42 how little evidence we have available.
43
44 Q. And if we go back to 312 [NPL.3000.0016.0014], that
45 I asked you about a couple of minutes ago, when Pamela
46 Young - have you found 312 again?
47 A. Yes, I have got it.

1
2 Q. At the bottom of the first page, when Pamela Young
3 says that the actual decision was not to proceed with
4 further investigation, and you accepted a few minutes ago
5 that that was accurate --
6 A. Yes.
7
8 Q. -- what Mr Olen's reaction was, was, "Well, what are
9 you going to say to the Minister and the family next week,
10 when John Lehmann says the case is open", doesn't he? It's
11 at the top of the page, the third paragraph on the first
12 page.
13 A. Sorry, I have lost the page.
14
15 Q. The first page --
16
17 THE COMMISSIONER: It is after tab 312. Is your volume
18 tabbed?
19 A. Yes, it is, I have got 312.
20
21 Q. Go to the very first page after you come to the tab.
22 It is the email at the top of that page.
23 A. I see it now, yes, sir, yeah.
24
25 MR GRAY: Q. So what Mr Olen was getting at was, in
26 response to Ms Young saying that the true position is that
27 there has been a decision not to proceed with any further
28 active investigation, Mr Olen was raising a concern, "Well,
29 that's a problem, isn't it, given that Mr Lehmann is going
30 to say on television that it's open"?
31 A. I see that, what he has written, yes.
32
33 Q. And that is the sort of problem that I'm indicating to
34 you as well - that it's really, in substance, contrary to
35 the reality, isn't it, for you to say the case is open?
36 That's not really what was happening, was it?
37 A. Certainly I wasn't thinking about the impression that
38 my words would have left on people viewing that program.
39 My intention was to basically explain that unsolved,
40 difficult, challenging cases, like this one, are never
41 closed. It's in that sense, it remained an open case.
42
43 Q. Okay. I'll move on. Almost immediately following, or
44 perhaps even the same day as the Australian Story, Strike
45 Force Macnamir was instituted?
46 A. I don't remember the timelines when that happened.
47

1 Q. Well, accept that the evidence is that it was
2 certainly in February?
3 A. Yes.
4
5 Q. Very close to the time of the Australian Story
6 program?
7 A. I accept that.
8
9 Q. Would you agree that in essence, in the big picture
10 terms, there were two factors which led to Macnamir. One
11 was the findings in the second inquest - namely, it is an
12 open finding, and the referral to unsolved homicide?
13 A. Yes.
14
15 Q. And the second was the Australian Story program, which
16 was the catalyst for Strike Force Macnamir being set up; do
17 you agree?
18 A. I don't remember what - if that was a factor or
19 a catalyst involved in that strike force being set up.
20
21 Q. You don't remember?
22 A. No, I don't.
23
24 Q. Okay. In any event, about two years later, in April
25 2015, after Macnamir had been under way for two and a bit
26 years --
27 A. Yes.
28
29 Q. -- you would recall that DCI Young went on Lateline
30 and was interviewed by Emma Alberici?
31 A. I remember that.
32
33 Q. Did you know at the time, April 2015, anything of the
34 circumstances that surrounded that happening?
35 A. No.
36
37 Q. Could we have volume 16, please, and go to tab 342
38 [NPL.2017.0004.0568]. Now, Mr Lehmann, it is very unlikely
39 that you have seen this before, unless you have seen it in
40 the last week or two?
41 A. I haven't.
42
43 Q. You can see from the front page that it is a record of
44 an interview between Emma Alberici and DCI Young on Friday,
45 15 April 2015?
46 A. I see that.
47

1 Q. So that you are oriented, this is seemingly not the
2 interview that went to air on Lateline, but it is an
3 interview between Emma Alberici and Ms Young.
4 A. I accept what you are saying.
5
6 Q. Just accept that for the moment.
7 A. Okay.
8
9 Q. On page 20 of this transcript, at about line 24 is
10 where I want to take you to. Have you found line 24?
11 A. Yes.
12
13 Q. So again, just to orient you, this is 10 April 2015,
14 and on the Monday, 13 April, there was going to be
15 a hearing before the Coroner, Mr Barnes, at which he was
16 going to make a decision about whether there would be
17 a third inquest or not. Do you remember that state of
18 affairs?
19 A. No.
20
21 Q. Do you remember that Scott Johnson's case, in fact,
22 ultimately did have three inquests, the first one --
23 A. Yes.
24
25 Q. And the third one was before Coroner Barnes?
26 A. Yes.
27
28 Q. So here's this interview that I'm taking you to on the
29 Friday, the 10th, in anticipation of Coroner Barnes
30 deciding on the following Monday whether there would be
31 a third inquest. Are you with me?
32 A. Yes.
33
34 Q. Okay. So, line 24, Emma Alberici asks Pamela Young:
35
36 *What's changed since the last coronial*
37 *inquest that would warrant another one?*
38
39 Do you see that's the question?
40 A. Yes.
41
42 Q. And then she gives an answer that goes for the rest of
43 that page, and I, for my part, don't need to ask you about
44 what she says in the first paragraph of that answer, but
45 I'm focusing on the second paragraph beginning at line 37.
46 A. Yes.
47

1 Q. And she says:

2

3

We --

4

5 no doubt meaning Macnamir:

6

7

*We have put to the test some of the
8 findings of Operation Taradale, which
9 [identified or re-investigated] some gay
10 hate crimes in Bondi ... we've provided
11 a more analytical basis and a broader basis
12 of the investigation ...*

13

14

And so on. She gives that answer?

15

A. Yes.

16

17

Q. My question is, while Macnamir was under way - that
18 is, from February 2013 onwards --

19

A. Yes.

20

21

Q. -- were you aware of work being done by Macnamir in
22 relation to "putting to the test" the work or the findings
23 of Operation Taradale?

24

A. No, I don't have knowledge of that.

25

26

Q. Was, to your knowledge, any part of the objective or
27 work of Macnamir to cast doubt on the work or findings of
28 Taradale, when the expression "put to the test" is used?

29

A. No.

30

31

Q. If so, you are not aware of that?

32

A. I'm - no, I'm not aware.

33

34

Q. Were you discussing with Pamela Young or those - or
35 other people working on Macnamir what they were doing on
36 Macnamir?

37

A. No - I mean, I would have been aware of what was
38 happening in Macnamir when attending operational meetings
39 with Chief Inspector Young and the rest of the senior
40 management team of the Homicide Squad.

41

42

Q. Were you aware that they, Macnamir, were doing any
43 work at all that had anything to do with Taradale or the
44 Bondi deaths?

45

A. No. The only thing that sticks in my mind about the
46 Taradale deaths was that they became Strike Force Neiwand,
47 which was a separate investigation.

40

41

42

43

44

45

46

47

1
2 Q. Yes, I know. That's why I'm asking you, were you
3 aware at all that Macnamir was doing anything at all in
4 connection with Taradale?
5 A. I can't remember.
6
7 Q. One way or the other?
8 A. No.
9
10 Q. This interview was April 2015, when, as I say,
11 Macnamir was still ongoing. Later that year, October,
12 Neiwand was set up, which I'm about to come to?
13 A. Yes.
14
15 Q. You will recall that. And Neiwand did look at the
16 three Taradale deaths - that was its purpose?
17 A. Yes.
18
19 Q. And Neiwand personnel and Macnamir personnel were in
20 the same room?
21 A. Yes.
22
23 Q. And Neiwand was putting to the test, wasn't it, at
24 least in general terms, the work of Operation Taradale and
25 Coroner Milledge?
26 A. Yes.
27
28 Q. To your knowledge, was there any cooperation or
29 exchange of information or the like between Macnamir and
30 Neiwand in that regard?
31 A. There could have been in that regard. I don't have
32 a recollection, as such.
33
34 Q. I will now come to Neiwand, and I will now need you to
35 have volume 14, and could you turn, first, to tab 291
36 [NPL.0115.0001.0009]. Now this is an issue paper signed by
37 DCI Olen on 4 May 2016?
38 A. Yes.
39
40 Q. He is talking about, you can see at the top, a request
41 for a creation of Terms of Reference for Neiwand?
42 A. Yes.
43
44 Q. And he recounts as an historical fact that in October
45 2015, Detective Superintendent Willing requested the UHT to
46 reinvestigate the three deaths?
47 A. Sorry, what paragraph is that?

- 1
2 Q. The top --
3 A. Oh, yes, I see that.
4
5 Q. The first paragraph under "Background"?
6 A. Yes, yes.
7
8 Q. And then he, Olen, gives a bit of a summary, or
9 a short summary, of the background?
10 A. Yes.
11
12 Q. And then under the heading "Comment", he says:
13
14 *In October 2015 --*
15
16 being the same month --
17
18 *[DCI] Lehmann of [the UHT] created Strike*
19 *Force Neiwand to re-investigate the three*
20 *deaths.*
21
22 Now, is that correct? Did you do that in October 2015?
23 A. Yes, yes.
24
25 Q. Right, at the request of Mr Willing?
26 A. Yeah - I don't - I remember that my involvement in
27 creating the strike force, I don't remember that being as
28 a result of a request from Mr Willing.
29
30 Q. We know from the Terms of Reference, which I'll take
31 you to in a minute, that you were, according to the
32 document at any rate, described initially as the first
33 investigations supervisor - that's the language. I will
34 take you to it in a second.
35 A. Yes.
36
37 Q. And the first officer in charge was said to be
38 Detective Sergeant Penny Brown?
39 A. Yes.
40
41 Q. As at October 2015?
42 A. Yes.
43
44 Q. Now, by early 2016 - that was within a few months - it
45 would appear on the material that we have that you ceased
46 to be the investigation supervisor and Detective Sergeant
47 Morgan began as the investigation supervisor. Is that your

1 recollection?

2 A. That's not correct. The word or the term "supervisor"
3 should not have been associated with me or my role. As an
4 investigations coordinator, I wasn't - "supervisor" is the
5 team leader involved in the - directly involved in the
6 investigation. I was more the, I guess, oversight-er or
7 manager of that team.

8

9 Q. Okay. I'm not going to quibble about language in this
10 context, apropos yourself. When I take you to the
11 document, you will see that that's what it says, but I hear
12 what you say. But just on the designation "investigation
13 supervisor", not apropos yourself, as you say, that person,
14 whoever it is, is the team leader?

15 A. Yes.

16

17 Q. A hands-on role, actively closely involved with the
18 work of the strike force; correct?

19 A. Yes.

20

21 Q. And now there's somebody else, in this case it later
22 turned out to be Detective Senior Constable Chebl, but in
23 all of these strike forces there is someone else who is
24 called "Officer in Charge"?

25 A. Yes.

26

27 Q. Tell us, in general - not specific to this task
28 force --

29 A. Yes.

30

31 Q. -- the nature of those two roles?

32 A. Yes. The detective senior constable in the team, or
33 a detective senior constable in the team, is normally
34 appointed as OIC in charge of the investigation. The
35 detective sergeant of the team is normally the team leader
36 or supervisor of the investigation, and then myself, in the
37 role of investigations coordinator, oversees the team and
38 the work that they are undertaking.

39

40 Q. And the investigation supervisor, typically, is
41 expected to do what, in general?

42 A. Have direct involvement in how the investigation runs
43 and directing the tasks and the activities of the staff
44 members involved.

45

46 Q. Including the OIC?

47 A. Including the OIC, and will discuss with the OIC

1 tactics, strategies, direction - those type of things.

2

3 Q. And in due course when documents are produced, whether
4 they are summary documents or progress reports or the
5 like --

6 A. Yes.

7

8 Q. -- which are, on their face, setting out what has been
9 done and what conclusions have been reached and the like,
10 the investigation supervisor would be expected to, even if
11 he didn't draft them, and perhaps the OIC drafted them, the
12 investigation supervisor would be expected to read them,
13 review them, check them, make sure that he himself agreed
14 with them?

15 A. Yes.

16

17 Q. Now, could we, in the same volume, just turn back to
18 tab 285. Oh, before you do that, sorry, let me just ask
19 you generally. We see that Neiwand was set up in October
20 2015. What, in your understanding - and if you could tell
21 us based on what - was the reason, then, in October 2015,
22 for setting up Neiwand?

23 A. I can't remember the exact reason. No, I just don't
24 recall what was behind that.

25

26 Q. Well, I ask you for a few reasons, but one is, the
27 deaths, of course, happened back in the 1980s?

28 A. Yes.

29

30 Q. There had been a large-scale task force, or operation,
31 called "Taradale", which had done a lot of work on those
32 deaths in 2002/2003, and then there had been a full-scale
33 inquest in 2003 to 2005.

34 A. Yes.

35

36 Q. Resulting in findings, which we've spoken about?

37 A. Yes.

38

39 Q. Now, what, to your understanding, happened, such that
40 12 years later, there not having been any case screening
41 carried out, Strike Force Neiwand was set up?

42 A. I can't remember how it was set up, but I would
43 certainly say that it was out of the norm. It wouldn't
44 have been a case that would have been high on the unit's
45 priority for selecting investigations.

46

47 Q. So can you shed any light, given that it wouldn't have

1 been high on the priority, as to why it in fact eventuated?
2
3 Q. Well, in my - my recollection was that there wasn't
4 anything new or startling in relation to evidence or
5 suspects or information that would have led to that
6 establishment of that strike force. So I would think that
7 that was unusual but I can't remember whether it was
8 a direction by senior management to do that. I just don't
9 remember.
10
11 Q. Well, according to the document I just took you to
12 a minute ago --
13 A. Yes.
14
15 Q. -- what happened was that Mr Willing requested the UHT
16 to re-investigate these ones?
17 A. Okay.
18
19 Q. So presuming that to be so, do you have any idea why
20 Mr Willing made that decision at that time?
21 A. I don't know.
22
23 Q. Were you aware at that time of any indication that
24 there was going to be an SBS program called "Deep Water",
25 that was going to shed or give some attention to these
26 three deaths?
27 A. No, I don't remember that.
28
29 Q. You don't remember that. Well, could you turn to
30 285 [NPL.0115.0004.3512], please. Now, this is an email
31 from Detective Sergeant Morgan on 26 February 2016?
32 A. Yes.
33
34 Q. Now, again orienting you, that's about roughly four
35 months after Neiwand was set up?
36 A. Yes.
37
38 Q. And it's early 2016?
39 A. Yes.
40
41 Q. And he's writing to one person, whose name is
42 Sebastian, and he addresses that person by a nickname,
43 obviously?
44 A. Yeah, that person was a former member of one of our
45 regional Unsolved Homicide Teams.
46
47 Q. In the paragraph below the bit that has been redacted,

1 he says this:

2

3

4

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11 Do you see that?

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I've been taken off the Review team here and put with an investigation team. Our priority job is [Strike Force] Neiwand - renewed investigation into the three gay guys who were believed to have been thrown from the cliffs near Bondi during the mid-late 1980s.

Do you see that?

A. Yes.

Q. Then he says:

Apparently it is going to be a political and media-driven hot potato later this year, and the Boss wants to be able to say that his squad are further investigating the matter.

Do you see that?

A. Yes.

Q. Now, Mr Morgan has given some evidence that "the Boss" is a reference to Mr Willing?

A. That would be correct.

Q. And as you see, according to Mr Morgan, what Mr Willing wanted, in setting up Neiwand, was to be able to say that his squad was further investigating the matter. Are you able to shed any light on that?

A. No. I accept that that may have been what had occurred, but I don't have a recollection of it.

Q. He then says, next paragraph:

Why would I be surprised ...

Are you able to shed any light on that?

A. No.

THE COMMISSIONER: Q. I will take it, will I, that - and I'm not being either disrespectful or facetious - this is not a case of people in Unsolved Homicide having lots of time on their hands --

A. Not at all.

1
2 Q. -- because the allocation of resources on any strike
3 force would be, and necessarily so, a serious matter?

4 A. Yes.

5
6 MR GRAY: Q. I need to come back to that folder but
7 perhaps for the moment it could come away, and could
8 Mr Lehmann have volume 1, and in volume 1, can we turn to
9 tab 16 [SC0I.76962.00001_0001] please. Do you have tab 16?

10 A. Yes.

11
12 Q. So this is the document I mentioned to you earlier,
13 and the heading is "Previous Terms of Reference", and the
14 dates - well, there are a number of dates on it, but you
15 are described as the "Investigation Supervisor" of Neiwand;
16 do you see that?

17 A. Yes.

18
19 Q. And you're said to have accepted the Previous Terms of
20 Reference, being the three lines above, on 26 October 2015?

21 A. Yes.

22
23 Q. And the person described as the "Officer in Charge" is
24 Detective Sergeant Penny Brown?

25 A. Yes.

26
27 Q. And she is described as having accepted those Terms of
28 Reference on 7 December 2015?

29 A. Yes, I see that.

30
31 Q. I don't want to go over what you have said about the
32 difference between investigation supervisor and
33 investigation coordinator.

34 A. Mmm.

35
36 Q. But just accept from me at the moment, rather than
37 having another folder put in front of you, that on
38 1 February, that is, three weeks, or so, earlier than the
39 Morgan email that we just looked at --

40
41 THE COMMISSIONER: Mr Gray, we can't hear you. Can you
42 move closer to the microphone?

43
44 MR GRAY: Q. On 1 February, about three and a bit weeks
45 prior to Mr Morgan's email referring to "the Boss", that we
46 just looked at --

47 A. Yes, yes.

1
2 Q. -- Penny Brown - and it is volume 14, tab 306
3 [NPL.3000.0001.0026], but I think I can do this without
4 making you go to another folder --
5 A. Okay.
6
7 Q. -- Penny Brown sent an email to Mr Chebl and other
8 Neiwand members, and it was copied to you, attaching
9 a spreadsheet of Taradale suspects and victims. Do you
10 remember that?
11 A. No.
12
13 Q. Well, I will have to show it to you, but I'll show it
14 to you in a second. But it would appear that, as at
15 1 February, then, she, Penny Brown, was still functioning
16 as a member, presumably the OIC, of Neiwand?
17 A. It would appear that she's definitely involved. It
18 would have been more likely that she was supervisor rather
19 than the OIC.
20
21 Q. Well, according to the document, as you have seen --
22 A. Yes, I see.
23
24 Q. -- you were the supervisor and she was the OIC, but
25 you think she may have been the supervisor?
26 A. Yes. That's why I find this unusual or odd that my
27 name is next to the words "Investigation Supervisor". It's
28 not normally how it works.
29
30 Q. And then on 26 February, the Morgan email, he is
31 saying to the person he writes to that he's now on
32 Neiwand - you just saw that?
33 A. I saw that, yes.
34
35 Q. And we know that at some point, presumably around
36 about then, he became the investigation supervisor?
37 A. That's - yes, it appears that that's the case.
38
39 Q. I want to ask you, given those dates and those
40 indications, what involvement, if any, did you have in
41 Neiwand after about February 2016?
42 A. It would have been looking at progress reports, having
43 discussions with the Neiwand supervisor and possibly OIC
44 about any issues or matters that needed my attention.
45 I can't remember specifically.
46
47 Q. I'll just ask that for the record: do you actually

1 remember any such discussions at all?
2 A. No.
3
4 Q. You don't have an actual recollection of --
5 A. No.
6
7 Q. -- you just think probably that's what you would have
8 done?
9 A. More than likely, actually.
10
11 Q. Yes, okay. Now, if you turn in the folder you do have
12 to the next tab, 17 [SC0I.74884_0001] --
13 A. Yes.
14
15 Q. -- this is the, in effect, ultimate Terms of
16 Reference. They are in - the language is the same, at the
17 top of the page, you see (a) "To re-investigate",
18 et cetera, that language hasn't changed?
19 A. Yes.
20
21 Q. But on the next page, there are signatures of
22 Mr Kerlatec, Mr Morgan and Mr Chebl on various dates in May
23 and June 2016?
24 A. Yes.
25
26 Q. Morgan is investigation supervisor and Chebl is
27 officer in charge?
28 A. Yes.
29
30 Q. And then at tab 18, there is the investigation plan
31 for Neiwand?
32 A. Yes.
33
34 Q. Did you ever see this, actually?
35 A. I can't remember.
36
37 Q. The evidence that the Inquiry has, although not
38 perhaps definitive, seems to be that this was probably
39 produced about September/October 2016, ie, not far short of
40 the time when you left?
41 A. Yes.
42
43 Q. So I'm just wondering whether you ever saw it. You
44 may or may not have?
45 A. I may - I may have, I may not have. I don't recall.
46
47 Q. Well, assuming for the sake of discussion that it did

1 come into existence about then, about September/October
2 2016, around about the time you left, and it's the
3 investigation plan, are you aware of much having happened
4 in Neiwand prior to that, that is, before the investigation
5 plan existed?

6 A. No.

7
8 Q. You can see, looking at it now, that it's only a bit
9 less than three pages long?

10 A. Yes.

11
12 Q. The first page and a half is a kind of brief summary
13 of what the three deaths were about?

14 A. Yes.

15
16 Q. And then there is a page and a bit under the headings
17 "Mission", and "Strategies/Execution"?

18 A. Yes.

19
20 Q. And one of the strategies, towards the end of the last
21 page, under the heading "Persons of Interest", is that
22 a detailed list of persons of interest will be developed?

23 A. I see that.

24
25 Q. And I think from your evidence this morning - is this
26 right - you would say that that is indeed what you would
27 have thought would happen?

28 A. Yes.

29
30 Q. But the evidence is that, in fact, that didn't happen,
31 and I take it you would be surprised by that?

32 A. Oh, I can't comment. I don't know that.

33
34 Q. When Mr Morgan was asked about this, he said that
35 a detailed list of persons of interest was not prepared -
36 I will go back a step. I asked him why it was that that
37 wasn't done, preparing or developing a detailed list of
38 persons of interest, and the answer was:

39
40 *Well, keeping in mind that, as you have*
41 *pointed out, this investigation plan wasn't*
42 *done for some considerable months, it may*
43 *have been done on the basis that that's*
44 *what we had arrived at by that stage.*

45
46 That's at transcript 2009. So can you shed any light on
47 what may have happened in terms of a change from what was

1 proposed in the investigation plan?

2 A. No. The only thing I could add would be that anything
3 in regards to a list of persons of interest or anything
4 like that may well have been based on material from the
5 original Taradale operation, but I really can't speculate
6 or say anything further.

7

8 Q. Could Mr Lehmann have volume 14 again, please, and
9 turn to tab 306 [NPL.3000.0001.0026].

10 A. Yeah.

11

12 Q. Now, this is this email that I mentioned to you a few
13 minutes ago from Penny Brown to Chebl and others on
14 1 February 2016?

15 A. I see that.

16

17 Q. And you see that you are among those to whom this was
18 copied?

19 A. Yes.

20

21 Q. And the heading is "Strike Force Neiwand/Taradale
22 spreadsheet of suspects and victims and general business";
23 do you see that?

24 A. Yes.

25

26 Q. She says:

27

28 *Gentlemen.*

29 *Attached is a spreadsheet of the Taradale*
30 *suspects and victims.*

31

32 And if you turn to 306A [NPL.3000.0001.0027] you will see
33 a reasonably lengthy spreadsheet of various names, with
34 details about them?

35 A. Yes, I see that.

36

37 Q. And you can accept, if you would, today, that there
38 are 116 persons of interest on that spreadsheet?

39 A. I accept that.

40

41 Q. Thank you. And all of them, or nearly all of them,
42 are people identified in the course of the Taradale
43 exercise, if you would accept that?

44 A. Yes.

45

46 Q. So that's why she calls them the "Taradale suspects
47 and victims"?

- 1 A. Yes.
2
3 Q. She says - she, Penny Brown - in the third paragraph,
4 that on 1 February, she is anticipating that they all get
5 together next Monday, which will be 8 February, to kick off
6 Neiwand. So it seems that it wasn't actually starting,
7 realistically, until February?
8 A. Yes.
9
10 Q. That seems to be right?
11 A. Yes.
12
13 Q. Then she mentions a couple of other things and then
14 she says she looks forward to working with "you all" and so
15 on. So does that indicate to you that Penny Brown seems to
16 have thought, in February when she was either the OIC or
17 the supervisor, that they were going to be looking at these
18 Taradale persons of interest, among other things?
19 A. It indicates that, yes.
20
21 Q. I now need you to see volume 6, and turn to tab 162B
22 [NPL.0135.0001.0001]. Now, this is another case screening
23 form, again undertaken by DSC Taylor, but this time in
24 connection with the three Bondi deaths, the Taradale
25 deaths, later, in effect, the Neiwand deaths?
26 A. Yes.
27
28 Q. You will see, looking at the last page, that she has
29 signed it - she, Alicia Taylor - on 25 October 2012; right?
30 A. Yes.
31
32 Q. And that you have signed it, as coordinator, on
33 14 August 2013?
34 A. Yes.
35
36 Q. And you say, as coordinator, among other things, that
37 you agree with the recommendations of DSC Taylor - do you
38 see that?
39 A. Yes.
40
41 Q. Let's go to what her recommendations were, which is
42 the previous page, basically, the last full page almost of
43 the screening form. Could you just read that material
44 under the heading "Recommendation", to yourself, and then
45 tell us, first of all, if you remember this form.
46 A. Yes, I have read that.
47

1 Q. And do you remember seeing this form at the time?

2 A. I have a vague recollection, not a strong memory of
3 it.

4

5 Q. Having just now read it again and refreshed your
6 memory --

7 A. Yes.

8

9 Q. -- you would have noticed that in the first paragraph,
10 she says that the Page Taradale exercise had been
11 meticulously undertaken?

12 A. Yes.

13

14 Q. And you would agree with that, I imagine?

15 A. Yes.

16

17 Q. And in the third paragraph, she notes, correctly, that
18 in the Taradale operation, the suspects had been subject to
19 covert operations, including listening devices and
20 telephone interceptions?

21 A. Yes, I read that.

22

23 Q. In the next paragraph, she notes that the Taradale
24 exercise had observed links between the suspects and their
25 associates who had been involved in assault and robbery
26 offences in the relevant areas?

27 A. Yes, I read that.

28

29 Q. She identifies from the Taradale exercise three of the
30 main suspects --

31 A. Yes.

32

33 Q. In the second-last paragraph, she says:

34

35 *Due to the loss or destruction of records*
36 *and exhibits, there has been no opportunity*
37 *to use forensic evidence ...*

38

39 A. Yes.

40

41 Q. So she says, that being so:

42

43 *It is my recommendation, due to the passage*
44 *of time, separation of alliances and social*
45 *isolation of the suspects from each other*
46 *there exists an opportunity to engage the*
47 *persons of interest via an undercover*

1 *operation in relation to the murder of*
2 *Russell and Warren.*

3

4 A. I read that.

5

6 Q. And your certification under your signature was that
7 you agreed with those recommendations?

8 A. Yes.

9

10 Q. Which I take it you did?

11 A. Yes.

12

13 Q. And do you hold to that view now, that that's
14 something that could have been done or should have been
15 done?

16 A. It could have been done. It was a possible strategy
17 or exercise to undertake. Was it practical to do that at
18 that particular time? There are certain - well, there are
19 uncertainties about that. A lot of considerations to
20 consider. But it was certainly a strategy that I agreed
21 with that could be undertaken.

22

23 Q. Yes. Well, in fairness to you, she says it's her
24 recommendation that there exists an opportunity to do that,
25 and that's partly what you're pointing to, I suppose?

26 A. Yes.

27

28 Q. But your evidence, as I understand it, is that,
29 subject to, for example, resourcing matters and cost
30 matters and the like, that was a sensible, viable,
31 reasonable possible approach?

32 A. It could well have been, yes.

33

34 Q. And you'll see that one of the reasons she recommends
35 it is - and I'm looking at the three bottom lines there -
36 "due to the passage of time"; do you see that?

37 A. Yes.

38

39 Q. And did you understand that what she was getting at
40 there was: these suspects had been subject to various
41 covert methods back in 2002 or thereabouts --

42 A. Mmm.

43

44 Q. -- surveillance and intercepts and so on --

45 A. Yes.

46

47 Q. -- but that due to the passage of time, because

1 10 years had elapsed, it might be worth trying to pursue
2 those persons of interest again?

3 A. Yes, it might be possible. It might not be practical
4 to do so, particularly given the fact that they had been
5 subject to covert surveillance or strategies in the past,
6 it makes the use of those same strategies difficult or
7 problematic.

8
9 Q. That's why I'm directing your attention to it. Her
10 point is, as I read it, that due to the passage of time -
11 ie, because of the passage of time --

12 A. Yes.

13
14 Q. -- such strategies - she particularly refers to an
15 undercover operation --

16 A. Yes.

17
18 Q. -- which is a slightly different thing, perhaps, from
19 surveillance and intercepts. But pursuing the persons of
20 interest again by whatever means, what she was recommending
21 was something that there would exist an opportunity to do,
22 precisely because time had passed.

23 A. Oh --

24
25 Q. And you agreed with that?

26 A. Yes. There's certainly a possible strategy to
27 consider.

28
29 Q. Right. So that's October 2012?

30 A. Yes.

31
32 Q. And then, as I've just shown you, in February 2016,
33 which is three and a bit years later, Penny Brown sends to
34 the Neiwand people, the Neiwand officers, the spreadsheet
35 with the list of the Taradale persons of interest, and that
36 seemed, as you agreed, to indicate that Penny Brown's view
37 was that yes, indeed, those persons of interest should be
38 pursued again?

39 A. That appears to be the case.

40
41 Q. Which was, at least in part, to a greater or lesser
42 extent, consistent with what DSC Taylor was suggesting?

43 A. Possibly, yes.

44
45 Q. You agree?

46
47 THE COMMISSIONER: Can I just interrupt to ask this

1 question.

2

3 Q. Ms Taylor signs off in 2012 - I haven't got the
4 document directly in front of me - but you sign off in
5 2013, some time later, or are the dates wrong?

6 A. I don't know why that is, sir. I can't really give
7 you an answer on the difference in the time.

8

9 Q. Well, I don't want to put words in your mouth, but
10 would you have left it on your desk for that long or is it
11 unlikely --

12 A. That's very unlikely.

13

14 Q. -- so one or other of you might have the date wrong?

15 A. It is very unlikely it would have been left on my desk
16 that long. I really don't have an answer.

17

18 THE COMMISSIONER: All right, thank you.

19

20 MR GRAY: Q. As I've suggested to you earlier, the
21 evidence available to the Inquiry is that, in fact, none of
22 those 116 persons of interest were actually pursued in any
23 way at all by Neiwand. Make that assumption, if you would,
24 for the moment.

25 A. Yes.

26

27 Q. On the evidence before the Inquiry, that's the fact?

28 A. Yes.

29

30 Q. Now, Mr Morgan's evidence was that the change - that
31 is, away from pursuing the persons of interest - to instead
32 doing other things, such as looking at victimology and
33 victims' last movements and things of that kind, was
34 a change which was decided upon very early in the piece.
35 Do you have any recollection of that change being discussed
36 or decided?

37 A. I don't.

38

39 Q. If the Strike Force Neiwand was to have pursued those
40 116 persons of interest, or some sizeable number of them,
41 it would have needed far more resources than the five or
42 six people that it had, wouldn't it?

43 A. I would imagine so, yes.

44

45 Q. And you may take it that the evidence is that it never
46 sought any further resources, beyond the five or six people
47 that it had.

1 A. I can't remember further resources, no.
2
3 Q. All right. I'll move on. I think I may have put this
4 to you this morning, but in summary, if you know - and you
5 may or may not know now, sitting here today - do you agree
6 that what Neiwand actually did during the rest of 2016 and
7 into 2017 was to focus, in the case of Mattaini,
8 overwhelmingly on suicide, or the possibility of suicide?
9 A. No.
10
11 Q. You don't know or you disagree?
12 A. No, my knowledge of Mr Mattaini was a body that was
13 never recovered. I don't remember any type of thinking or
14 line of inquiry to support a suicide theory, no.
15
16 Q. I see. Do you now recall, sitting here today, that in
17 the case of Russell, what Strike Force Neiwand did
18 overwhelmingly was to focus upon the possibility of
19 misadventure?
20 A. No.
21
22 MR NAGLE: I'm sorry, was that question premised on 2016
23 and into 2017? Because, of course, my client finished --
24
25 THE COMMISSIONER: Yes, I understand.
26
27 MR GRAY: The point that my friend has just made to me at
28 the Bar table is that Mr Lehmann was gone by about October
29 2016, which, of course, I accept.
30
31 THE COMMISSIONER: Yes.
32
33 MR GRAY: In case that wasn't clear in my question --
34
35 THE COMMISSIONER: The underlying assumption, Mr Nagle, is
36 before he leaves, surely.
37
38 MR GRAY: That's right.
39
40 THE COMMISSIONER: Not at the conclusion of Neiwand, but
41 prior to his leaving, did he understand that the focus of
42 Neiwand was (a), (b) or (c)?
43
44 MR NAGLE: Yes, Commissioner, I don't want to cavil here,
45 but the question two questions ago was premised on '16 and
46 into '17.
47

- 1 THE COMMISSIONER: All right. So that the witness is
2 clear --
- 3
- 4 MR GRAY: I will go over it again.
- 5
- 6 Q. We all agree that you were gone by about October 2016?
7 A. (Witness nods).
- 8
- 9 Q. The Neiwand work continued during 2016 and through
10 most of 2017 - that is, for another year or so after you
11 left?
12 A. Yes.
- 13
- 14 Q. I'm asking you, as of now, today, September 2023, are
15 you aware that in the case of Mattaini, the overwhelming
16 focus of Neiwand was on the possibility of suicide?
17 A. No. My understanding was the focus was on homicide.
- 18
- 19 Q. And with Russell, as of now, are you aware that the
20 overwhelming focus was on the possibility of misadventure?
21 A. No. My involvement and my knowledge at the time was
22 the focus was on homicide.
- 23
- 24 Q. That was what you understood to be happening?
25 A. Yes, both Mr Russell and --
- 26
- 27 Q. Mr Mattaini, I have asked you about so far.
28 A. Yes.
- 29
- 30 Q. In the case of Mr Warren, are you aware, as of now,
31 that the overwhelming focus of Neiwand was on the
32 possibility of homicide of a non gay hate kind, such as by
33 an associate or acquaintance?
34 A. No. My focus on that victim and the others was
35 homicide and that's what - that's where the focus and
36 attention needed to be.
- 37
- 38 Q. In your mind, at least?
39 A. In my mind, yes.
- 40
- 41 Q. Now, if such a decision was made, and the Commission
42 has evidence that suggests it was, by some time early in
43 2016, not to pursue the Taradale persons of interest,
44 that's something that you have no knowledge of?
45 A. I don't have a recollection of that.
- 46
- 47 Q. No-one told you that?

- 1 A. No.
2
- 3 Q. And if, as a matter of historical reality, Neiwand
4 actually focused principally on suicide for Mattaini and
5 misadventure for Russell and non gay hate homicide for
6 Warren, you have no knowledge of that either?
7 A. It surprises me to hear that.
8
- 9 Q. I think probably finally, let me just take you to
10 a couple of the progress reports to see if they assist in
11 your recollection of these times.
12 A. Yes.
13
- 14 Q. I think you still have volume 6 there. I think that's
15 volume 6. If you could turn to tab 164A [SC0I.82054]?
16 A. Yes.
17
- 18 Q. This is the first of a number of progress reports for
19 Neiwand. Do you see up the very top right it says,
20 "Progress Report No 1"?
21 A. Yes.
22
- 23 Q. And the reporting period is the period ending 12 July
24 2016?
25 A. Yes.
26
- 27 Q. Which is about three months or so before you leave?
28 A. Yes.
29
- 30 Q. And at the back, towards the back, rather, of the
31 form, page 7 of the form, you have signed as "Investigation
32 Coordinator"?
33 A. I did.
34
- 35 Q. And you have signed it on 12 July 2016?
36 A. Yes.
37
- 38 Q. But if we turn to the next one, which is 164B
39 [SC0I.82049], "Progress Report No 2", you are, of course,
40 no longer the coordinator, indeed, you are no longer
41 present, and somebody else has signed as coordinator. Do
42 you see that?
43 A. I see that.
44
- 45 Q. So we may take it, then, that the only progress report
46 that you were involved in was the first one?
47 A. That's how it appears, yes.

1
2 Q. And in this first one [SC0I.82054] do you see on
3 page 2, which is dealing with Mattaini - I'm sorry, I don't
4 need to ask that. I will move on. On page 4, rather --
5 A. Page 4?
6
7 Q. Page 4, "Status of Investigation"?
8 A. Yes, I see that.
9
10 Q. So this is apparently at July 2016?
11 A. Yes.
12
13 Q. That first dot point is that they have reviewed
14 42 boxes from Taradale, and they have put them on to
15 e@gle.i?
16 A. Yes.
17
18 Q. The second thing is that a number of products,
19 predominantly statements from Taradale, are being submitted
20 for review, and various things in relation to that are
21 being put on e@gle.i as well?
22 A. I see that.
23
24 Q. The third dot point is that through examination of
25 Taradale documents, a number of persons of interest are
26 being identified and will be looked at further when the
27 investigation moves into the next phase.
28 A. Yes.
29
30 Q. Now, in fact, as I've shown you, Penny Brown had
31 provided to Neiwand back in February a spreadsheet listing
32 all of the persons of interest?
33 A. Yes.
34
35 Q. Five months earlier, hadn't she?
36 A. Yes.
37
38 Q. And the next bullet point is that on 14 April 2016,
39 Mr Olen and Mr Willing met with Mr Crandell to "discuss
40 alleged 'gay hate' death investigations (Strike Force
41 Parrabell) being conducted at Surry Hills". Do you have
42 a memory of that?
43 A. I remember Parrabell being in existence. I can't
44 remember where they were located.
45
46 Q. No, but do you have a memory as to whether there was
47 any, and if so what, coordination or cooperation or the

1 like between Neiwand and Parrabell?

2 A. Not specifically but it certainly is logical and makes
3 perfect sense that there could be cooperation between the
4 two.

5
6 THE COMMISSIONER: Q. Why does it make perfect sense?

7 A. Basically because the fact that Parrabell was looking
8 at gay hate bias motivation in relation to crime,
9 homicides.

10
11 THE COMMISSIONER: I see, thank you.

12
13 MR GRAY: Q. So Parrabell was looking at 80-plus cases
14 with a view to considering whether there was a gay hate
15 bias factor in them?

16 A. Yes.

17
18 Q. And Neiwand was looking at three deaths of gay men
19 where there may have been, and according to Coroner
20 Milledge, probably was in the case of at least two of them,
21 a gay hate factor?

22 A. Yes.

23
24 Q. So there was an obvious overlap, at least to that
25 extent?

26 A. Yes.

27
28 Q. Well, do you recall there being any discussions or
29 coordination - I don't mean those terms in any sinister
30 way - between Neiwand and Parrabell about any of these
31 matters?

32 A. Not specifically.

33
34 Q. Did you have any discussions with Mr Crandell at all?

35 A. I can't remember discussions with Mr Crandell.

36
37 Q. Or Mr Willing about the existence of Parrabell and its
38 overlap with what you were doing?

39 A. I may well have had those discussions, I just don't
40 have a memory of them.

41
42 Q. Okay. Two bullet points down, there's a reference to
43 a Sydney Morning Herald article on 23 May, which is headed
44 "Unsolved homicide investigation reopens into Sydney's gay
45 killings"; do you know whether that was a reference to
46 Parrabell or Neiwand?

47 A. I'm not sure.

- 1
2 Q. And then at the bottom bullet point, on 27 May,
3 Parrabell detectives attended PHQ - that's Parramatta
4 headquarters, I suppose, is it?
5 A. Yes, that would have been.
6
7 Q. -- to hand over documents relating to investigations
8 conducted under Neiwand. So you see that?
9 A. Yes, I see that.
10
11 Q. Do you know who that was, the Parrabell detectives
12 coming?
13 A. No. I don't remember that or whether I was present at
14 the time.
15
16 Q. Then on page 6 down the bottom, there is a heading
17 "Future Directions"?
18 A. Yes.
19
20 Q. And this is what was going to happen in the future,
21 apparently. Firstly, continue getting the Taradale
22 material online for Neiwand?
23 A. Yes.
24
25 Q. Next, complete the investigation plan, so it obviously
26 hadn't been completed by this point?
27 A. It appears that way, yes.
28
29 Q. Next, do something about victimology with the three
30 deceased?
31 A. Yes.
32
33 Q. Next, create tasks for lines of inquiry as a result of
34 a review of the Taradale statements?
35 A. Yes, I see that.
36
37 Q. Ask the Crime Commission about holdings relevant to
38 Taradale under one of the Crime Commission references?
39 A. Yes.
40
41 Q. Next, find an expert in oceanology and meteorology in
42 respect of the case of Warren?
43 A. Yes.
44
45 Q. Next, find an expert on the effects of alcohol on the
46 body and neurology in the case of Russell?
47 A. Yes.

1
2 Q. Next, continue a review of intelligence reports being
3 received; and, finally, follow up on a few matters which
4 are set out in those bullet points?
5 A. Yes, I see that.
6
7 Q. So, without being critical, at that point, July 2017
8 [sic], about a month before you left, it looks as though,
9 speaking generally, that the strike force was still in the
10 setting-up phase, getting things organised in order to then
11 start doing things?
12 A. I would agree with that.
13
14 Q. And again, not said critically, but not very much
15 forward progress had yet been made, by July?
16 A. No, not in regards to feet on the ground type,
17 investigation type things.
18
19 Q. No?
20 A. As it were.
21
22 Q. So this is July 2016, and you leave, basically, about
23 a month later. And as far as you recall, did you have
24 anything more to do with Neiwand?
25 A. I really can't remember.
26
27 MR GRAY: For the moment, at this stage, Commissioner,
28 those are my questions.
29
30 THE COMMISSIONER: All right. What I was going to do was,
31 subject to you, Mr Lehmann, ask those other than Mr Nagle,
32 for the moment, who have any questions, to ask you those.
33 Are you okay to continue for the moment?
34
35 THE WITNESS: Yes, sir.
36
37 THE COMMISSIONER: All right. I was going to do it in
38 this order but I'm happy to listen to anybody who says
39 otherwise. Mr Mykkeltvedt - Mr Russell I'm assuming
40 doesn't want to ask any questions, perhaps wrongly or
41 rightly - followed by Mr Glissan, and then lastly Mr Nagle.
42 That was the order roughly. Does anyone have a different
43 view about it?
44
45 MR GLISSAN: Commissioner, I can indicate I have no
46 questions for this gentleman.
47

1 THE COMMISSIONER: All right. Thank you. Mr Nagle, you
2 might have some, but I will deal with you in a moment.

3
4 Mr Mykkeltvedt, would you like me to take a short
5 break before we start?

6
7 MR MYKKELTVEDT: I'm content, if the witness is content.

8
9 THE WITNESS: I am.

10
11 THE COMMISSIONER: All right. Thank you.

12
13 <EXAMINATION BY MR MYKKELTVEDT:

14
15 MR MYKKELTVEDT: Q. Mr Lehmann, I'm representing the
16 Commissioner of Police in these proceedings.

17 A. Yes.

18
19 Q. You have given some evidence about the difficulties
20 inherent in unsolved homicide investigations?

21 A. Yes.

22
23 Q. Those investigations tend to be unsolved for a reason?

24 A. Exactly, yes.

25
26 Q. They are often simply cases with no clear suspect?

27 A. Often, yes.

28
29 Q. And in some cases, indeed, there is no clear cause of
30 death?

31 A. In some cases. Most of the cases, my memory has of
32 the list we had that - there was a cause of death. Yeah,
33 that it was - homicide was the focus, so --

34
35 Q. But there may be, for example --

36 A. There may have been.

37
38 Q. -- cases, such as Mr Mattaini, where there is no
39 body?

40 A. Exactly right. Missing persons in particular, yes,
41 I agree.

42
43 Q. And a number of the cases were, in fact, missing
44 persons; correct?

45 A. Yes, they were.

46
47 Q. Cases may be unsolved, in some cases, indeed, many

1 cases, because of deficiencies in the original
2 investigation?

3 A. Yes.

4

5 Q. And investigations of unsolved homicides are often
6 particularly difficult in relation to cases that go back
7 a long time, cases in, for example, the '70s and '80s,
8 where there wasn't the kind of foresight that exists today
9 in relation to the value of retaining exhibits in the long
10 term?

11 A. Very much so.

12

13 Q. And so if you take a group of unsolved cases, and you
14 compare them to a group of solved cases, it might be the
15 case that the unsolved cases are more likely to
16 exhibit problems, for example, in relation to the original
17 investigations or the retention of exhibits, than the group
18 of solved cases?

19 A. I would agree.

20

21 Q. And so a consideration of police practices, by
22 reference only to unsolved cases, may not be as
23 representative as a consideration of all cases, including
24 cases that were solved?

25 A. Yes.

26

27 Q. Now, you gave some evidence at the outset, at the
28 early stages of today, in relation to the steps that were
29 undertaken regarding the various searches in response to
30 your 2016 issues paper?

31 A. Yes.

32

33 Q. By the time you had left, shortly later that year,
34 I think you said a couple of months --

35 A. Yes.

36

37 Q. -- there had, in fact, been steps that had commenced
38 in connection with your recommendations?

39 A. Yes.

40

41 Q. And those steps included, you said, archive searches,
42 I think?

43 A. Yes.

44

45 Q. And communications with various PACs or Police Area
46 Commands?

47 A. Yes.

1
2 Q. And some of those commands had, in fact, begun to
3 respond to you?
4 A. They did.
5
6 Q. Although, of course, a number of those responses
7 suggested that nothing had been found?
8 A. Correct.
9
10 Q. You weren't then present to see how that process
11 unfolded finally?
12 A. No.
13
14 Q. I might ask that you be shown the document at tab 47
15 [SCOI.74906_0001], that being the issues paper that you
16 prepared in 2017.
17
18 THE COMMISSIONER: What volume is it?
19
20 MR MYKKELTVEDT: I don't know the volume off the top of my
21 head.
22
23 MR GRAY: Volume 2.
24
25 THE COMMISSIONER: Volume 2.
26
27 MR MYKKELTVEDT: Thank you.
28
29 Q. Can I ask at the outset that you turn to page 9 of
30 that document, and perhaps that that be shown on the screen
31 in due course. Now, you say there in the second paragraph,
32 or the first paragraph under the bullet point, that there
33 is no doubt that anti-gay hostility, particularly in the
34 1980s and the 1990s, resulted in a number of murders and
35 serious crime of violence in New South Wales?
36 A. I see that, yes.
37
38 Q. At the time you prepared this issues paper, were you
39 alive to the extent of and seriousness of the violence
40 perpetrated against members of the LGBTIQ community?
41 A. Sorry, was I?
42
43 Q. Were you alive to the extent and seriousness; were you
44 aware of the extent and seriousness of violence perpetrated
45 against members of the LGBTIQ community in the years 1980s
46 and 1990s?
47 A. Oh, I don't - I'm not sure I can say I was aware of

1 the extent. Certainly I knew that it was a serious issue.
2
3 Q. Indeed, you were, in 2008, you have indicated in your
4 statement, the investigation coordinator in respect of an
5 investigation into a 1991 murder of a man by the name of
6 Felipe Flores?
7 A. Yes.
8
9 Q. That was a person who was a member of the LGBTIQ
10 community who was --
11 A. He was.
12
13 Q. -- murdered in what appeared to be a gay hate crime?
14 A. I certainly remember the case very well and certainly
15 he - the victim was gay. He was bashed to death. The
16 motive is certainly not clear as to whether that was gay
17 hate related or a bias --
18
19 Q. There was certainly --
20 A. -- in relation to the offender.
21
22 Q. -- a very high level of violence in connection with
23 that offence?
24 A. Oh, absolutely; it was horrific.
25
26 Q. And that violence might have, for example, been
27 evidence of a degree of hatred that might have been
28 connected with gay hate?
29 A. It certainly could have been, yes, absolutely.
30
31 Q. In any event, you took great pride in the arrest and
32 subsequent successful prosecution of the offender in that
33 case?
34 A. Yeah, it's an incident and a memory that's - stays
35 with me very strongly, yes.
36
37 Q. And you considered it to be of great importance that
38 such crimes against members of the gay community,
39 irrespective of what the motivation was, be pursued where
40 possible?
41 A. Absolutely. Of course, that also applied to all
42 victims that - the investigations I was involved with.
43
44 Q. You simply didn't elevate any one group of victims
45 above any others?
46 A. Absolutely not.
47

- 1 Q. But certainly the fact that a particular victim might
2 belong to a particular group, in particular the LGBTIQ
3 community, wouldn't have caused you to pursue that
4 investigation any less fervently?
5 A. No, not at all.
6
- 7 Q. Now, you, in connection with this particular document,
8 the document on the screen at tab 47, conducted a review of
9 each of the 30 cases listed in that document?
10 A. Yes.
11
- 12 Q. And as a consequence of that review, you formed a view
13 in relation to whether each of the relevant deaths was, in
14 fact, a gay hate crime?
15 A. Yes.
16
- 17 Q. Prior to conducting that review, did you have any
18 preconceptions as to the outcomes in each of the cases?
19 A. No.
20
- 21 Q. So you retained an open mind as to whether or not the
22 relevant offence might have been a gay hate crime?
23 A. My mind was always about the evidence in front of me.
24 Yes. I can't say any more than that.
25
- 26 Q. Can I ask that you turn to page 4 of that review.
27 Perhaps that could be brought up on the screen. You'll see
28 there under the number 12, the death of Scott Johnson is
29 referred to there?
30 A. Yes.
31
- 32 Q. And it's indicated that, at that stage of the
33 investigation, there is no indication that the deceased was
34 subjected to gay hate motivated violence causing his death,
35 or in any case, that he was murdered?
36 A. Yes.
37
- 38 Q. That was based on your understanding of the case as at
39 that time; was that right?
40 A. Yes, based on the evidence I had before me.
41
- 42 Q. And nothing else?
43 A. And nothing else.
44
- 45 Q. And it was a genuine reflection of the views that you
46 held at that time?
47 A. Yes.

1
2 Q. If you turn up a page to page 3, and if we look at
3 number 9, which is the case of Mr Mattaini, you indicate in
4 the last line of that paragraph:

5
6 *It is believed that Mattaini is a possible*
7 *victim of "gay hate" motivated crime.*

8
9 A. Yes.

10
11 Q. And that was the view that you held at that time?

12 A. Yes.

13
14 Q. And you indicated before, I think, that that was
15 a view that you came to independently, based on your review
16 of the materials?

17 A. Yes.

18
19 Q. It wasn't simply a regurgitation of the coronial
20 findings?

21 A. No.

22
23 THE COMMISSIONER: Q. So independently of the coronial
24 findings, may I ask you, what independently of the coronial
25 findings led you to think that Mr Mattaini's death was as
26 a result of gay hate motivated violence?

27 A. Based on the fact of the connection to the victims,
28 Warren and Russell, and the vicinity, the closeness of the
29 locations there, the work that had been undertaken by
30 Operation Taradale, led me to that conclusion.

31
32 Q. Well, that's precisely what Coroner Milledge said,
33 though, wasn't it?

34 A. I can't remember what Coroner Milledge said.

35
36 THE COMMISSIONER: All right. Yes, Mr Mykkeltvedt.

37
38 MR MYKKELTVEDT: Q. If we turn down to page 5 now,
39 you'll see there under the heading "17", or the number 17,
40 there's reference to the death of Mr Ross Warren?

41 A. Yes.

42
43 Q. And in relation to that case, you say:

44
45 *This case is probably a "gay hate"*
46 *motivated crime.*

47

- 1 A. Yes.
- 2
- 3 Q. That reflects the view that you held at that time?
- 4 A. It did.
- 5
- 6 Q. Then if we go down and skip past Mr Paynter to case
- 7 number 19, and then if you go over the page, there's an
- 8 indication as to a belief that the involvement of a gang of
- 9 marauding youth might have played some part in that death?
- 10 A. Yes.
- 11
- 12 Q. And then you express the view that it's probably gay
- 13 hate motivated?
- 14 A. That's the view I expressed, yes.
- 15
- 16 Q. So in addition to those cases, you reviewed a number
- 17 of other cases in connection with this?
- 18 A. Yes.
- 19
- 20 Q. And overall you formed a view that there were eight of
- 21 those cases that were possible or probable gay hate crimes?
- 22 A. That was my view.
- 23
- 24 Q. Was that an honestly held opinion?
- 25 A. Yes.
- 26
- 27 Q. It was based on your review of the material?
- 28 A. Yes, in conjunction with Chief Inspector Young, who
- 29 I worked with on that review.
- 30
- 31 Q. Now, at any stage in preparing this review, were you
- 32 attempting to suggest by preparing this document and
- 33 providing it, that there was a need to publicly refute the
- 34 suggestion that there were large numbers of gay hate
- 35 crimes?
- 36 A. No, never.
- 37
- 38 Q. If I could ask that you be shown the next document,
- 39 tab 48 [NPL.0113.0001.0156]. I think the numbering on this
- 40 document is a little bit more difficult, but, yes, we have
- 41 page 158, if we could turn to that, I think two pages over.
- 42 You see that at the top of the page there is a reference to
- 43 the fact that as at the time of this document, which was
- 44 prepared by Mr Willing in 2014 --
- 45 A. Yes.
- 46
- 47 Q. -- that a \$100,000 reward for information relating to

1 the death of Scott Johnson had already in fact been applied
2 for?
3 A. Yes.
4
5 Q. And offered?
6 A. Yes.
7
8 Q. And it says there that police had then made
9 applications for rewards in four other cases, three of
10 which were the Bondi deaths?
11 A. Yes.
12
13 Q. And in one other case, that being the death of Mr Dye.
14 A. That's correct.
15
16 Q. Now, what's your understanding of the purpose of
17 a reward in the context of an unsolved homicide?
18 A. A proactive strategy to hopefully elicit or motivate
19 people to come forward with information.
20
21 Q. Information that might lead to --
22 A. The identification of a suspect that hopefully may
23 lead to the arrest and conviction of that particular
24 person, or persons.
25
26 Q. Ultimately, it's a strategy designed to solve a case?
27 A. Yes.
28
29 Q. I'll just take you to Strike Force Neiwand. You
30 were - we've heard evidence - involved in its
31 establishment?
32 A. Yes.
33
34 Q. Now, you expressed a number of views in the 2013 paper
35 that we've taken you to at tab 47 in relation to some of
36 the cases in connection with Strike Force Neiwand?
37 A. I did.
38
39 Q. In particular, as we've just discussed, you expressed
40 a view that the cases of Russell and Warren were both
41 probable gay homicides?
42 A. I did.
43
44 Q. And you expressed a view that the case of Mr Mattaini
45 was a possible gay homicide?
46 A. Yes.
47

- 1 Q. And those views you have indicated were the product of
2 your assessment of the material that you held?
3 A. Yes.
4
- 5 Q. Those views, in those three cases, aligned broadly
6 with those of the Coroner?
7 A. Yes.
8
- 9 Q. Did you continue to hold those views at the time of
10 the establishment of Strike Force Neiwand?
11 A. I did.
12
- 13 Q. And did you communicate that view to the members of
14 Strike Force Neiwand?
15 A. What I expressed or what I said, I can't remember.
16 Certainly I would expect they would have been well aware of
17 my views.
18
- 19 Q. Did you recall expressing anything to the contrary of
20 those views, for instance?
21 A. Oh, not at all.
22
- 23 Q. At paragraph 37 of your statement you reject the
24 suggestion that Strike Force Neiwand's objectives were to
25 attack and rebut the work of Operation Taradale and the
26 findings of Coroner Milledge.
27 A. I absolutely reject that.
28
- 29 Q. Is there anything you wish to add in relation to the
30 basis for that rejection?
31 A. It's quite scurrilous, it's quite offensive to suggest
32 or assert that I would do or attempt anything untoward such
33 as that. It's just totally wrong and offensive.
34
- 35 Q. Did anyone senior to you suggest to you what the goal
36 of Strike Force Neiwand should be?
37 A. No, not at all.
38
- 39 Q. What did you understand the objective to be?
40 A. To investigate as thoroughly as possible those deaths,
41 those homicides, and hopefully identify persons responsible
42 and to bring them ultimately to justice. That was the
43 clear direction, the clear and sole purpose.
44
- 45 THE COMMISSIONER: Q. So in other words, to support the
46 findings of Coroner Milledge and bring those who she
47 thought were guilty or likely guilty to justice?

1 A. I would agree with that.

2

3 THE COMMISSIONER: Thank you.

4

5 MR MYKKELTVEDT: Q. You have given some evidence in
6 relation to the limited resources of the UHT?

7 A. Yes.

8

9 Q. The allocation of resources within the UHT is a very
10 serious matter.

11 A. Yes.

12

13 Q. You wouldn't allocate resources, in your experience,
14 to a case to pursue anything other than a genuine
15 resolution of that case?

16 A. No, I just didn't have the luxury to do that.

17

18 Q. Is it common for recommendations regarding potential
19 investigative steps to be provided in the context of
20 reviews of the type that were conducted by Alicia Taylor in
21 2012?

22 A. Yes.

23

24 Q. Would the conduct of such steps need to be carefully
25 considered and reconsidered in the context of the
26 investigation itself as it unfolded?

27 A. Yeah, absolutely, but we had to take into account the
28 practicalities of some of those strategies, their
29 viability, resources, staff, particularly from the experts,
30 from outside, that we would be relying on to implement some
31 of those strategies. Many, many things had to be taken
32 into account.

33

34 Q. One of those things was, indeed, the utility of any
35 particular investigative steps?

36 A. Yes.

37

38 Q. And potentially whether particular steps might be able
39 to be undertaken, having regard to, for example, police
40 protocols or legal impediments?

41 A. Yes, that would be a factor, yes.

42

43 Q. And those would be totally proper considerations, in
44 the context of a reinvestigation?

45 A. Yes. It certainly wasn't something that was uncommon.

46

47 Q. And as you said before, it would also be necessary to

1 consider resourcing?
2 A. Sorry?
3
4 Q. It would also be necessary to consider resourcing,
5 I think you have indicated?
6 A. Yes.
7
8 Q. For example, in that respect, it might be considered
9 that particular resources that might be required in
10 connection with, for example, a surveillance strategy or an
11 undercover strategy might be disproportionate to the
12 importance of the information that such strategies might be
13 likely to uncover?
14 A. That could well be an issue, yes.
15
16 Q. I'm just going to ask you about a couple of general
17 suggestions, and that is, to start with, what do you say,
18 and is there anything that you would like to add to your
19 answer before in relation to the objectives and motivations
20 of Strike Force Neiwand, to the suggestion that that strike
21 force generally, to the extent that you were involved in
22 it, was directed to minimising the potential involvement of
23 gay hate?
24 A. No, I reject that.
25
26 Q. Did you ever seek to promote a company line that gay
27 hate crimes were exaggerated?
28 A. Never.
29
30 Q. Did you encounter anyone else seeking to promote such
31 a company line?
32 A. No, I didn't, and if I did, I would have brought that
33 to the attention of my commander.
34
35 Q. For what purpose?
36 A. Because it would be something that was basically wrong
37 and - it was just basically something that I could never
38 allow to happen. It was just wrong.
39
40 Q. Just one final topic briefly, Mr Lehmann. Did you
41 ever play any direct role in Strike Force Macnamir?
42 A. No.
43
44 Q. You were never involved in directing its activities,
45 for example, or seeking to influence the way it was
46 conducted?
47 A. No. That wasn't my - it wasn't my role.

1
2 Q. That being so, what do you say to the suggestion that
3 there was coordination between Strike Force Neiwand and
4 Strike Force Macnamir that was directed primarily to
5 discrediting claims that so many deaths were or might have
6 been gay hate crimes?

7 A. Absolutely not. I reject that.

8
9 MR MYKKELTVEDT: Those are my questions, your Honour.

10
11 THE COMMISSIONER: Yes. Thank you. Yes, Mr Nagle.

12
13 MR NAGLE: Your Honour, I won't be long.

14
15 **<EXAMINATION BY MR NAGLE:**

16
17 MR NAGLE: Q. You were asked some questions about the
18 Flores murder. It turned out there was a plea of
19 manslaughter; you are familiar with that?

20 A. Yes.

21
22 Q. That was actually the first unsolved homicide that
23 became solved once you had gone to Unsolved Homicide; is
24 that right?

25 A. It was a very - yes, that's correct, and it was a very
26 proud moment for me and for the team.

27
28 Q. And part of what cracked that case was that the
29 deceased had, under his fingernails, blood and some sort of
30 human product that could be DNA tested?

31 A. Yes.

32
33 Q. In 1991, that wasn't able to be done?

34 A. No.

35
36 Q. But there were remains at the Coroners Court; is that
37 right?

38 A. Yes, that's correct.

39
40 Q. And then those remains were able to be sent off and
41 DNA tested?

42 A. Yes.

43
44 Q. There was a subsequent match for a gentleman by the
45 name of Paul Armstrong; is that right?

46 A. That is his name, yes.

47

1 Q. And he pleaded, as we have said, guilty to
2 manslaughter?

3 A. He did.

4

5 Q. Thank you. Armstrong identified as a bisexual man and
6 had some sort of relationship, albeit a very short
7 relationship, with Mr Flores the night that he died?

8 A. Yes.

9

10 Q. In relation to the review prioritisation form - and
11 this follows on from the general theme in the Flores case -
12 is it right that what part of were you doing as one of the
13 investigation coordinators at unsolved homicide was looking
14 for cases where technological advancements might mean that
15 you can get a fresh lead without having to go out there and
16 canvass hundreds of witnesses?

17 A. It was one of the reasons for the establishment of the
18 unit, and that was to take advantage of those scientific
19 advances and to, yeah, have evidence or exhibits
20 re-examined, with those new technologies.

21

22 Q. And so does it follow that if, for example, you had an
23 unsolved homicide where there was a fair bit of material
24 that was available to your team, even though it's not
25 catalogued and it might be in several boxes, or, in the
26 case of the Parramatta Court bombings, over 100 boxes worth
27 of material, that you would - you and your team - go and
28 look for those fertile sources of evidence where there was
29 a fair bit that had been captured, and just work back
30 through the physical exhibits?

31 A. Yes.

32

33 Q. And that was part of the desk review, as it was, which
34 was one of the first things that was done when looking at
35 each of the unsolved homicides?

36 A. Yes. The desk review wouldn't undertake those
37 examinations. They would certainly bring to my attention
38 that those materials existed, that an investigation team
39 later on could subject to examination, forensic testing and
40 the like.

41

42 Q. Thank you. But of course, even if you get a hit with
43 a forensic test, that doesn't necessarily put the potential
44 suspect at the scene; there was still a lot of police work
45 that had to be done after that?

46 A. A lot of police work. I always took the view, DNA
47 evidence was just one part, sometimes a small part, of the

1 overall evidence package that we needed for a conviction.
2 Certainly good evidence, but we needed additional
3 corroborating evidence in most cases to establish a strong
4 brief of evidence.

5
6 Q. Thank you. Just one final thing. You have explained
7 that resources were limited, as it were, or, put it another
8 way, you didn't have unlimited resources at Unsolved
9 Homicide obviously?

10 A. No, of course not. I always considered Unsolved
11 Homicide to be the poor cousins of the whole squad.
12 Certainly the workload on the Homicide Squad often required
13 that they would need the assistance from investigators from
14 the Unsolved section.

15
16 Q. I was going to come to that. There are, from time to
17 time, critical incidents that are declared?

18 A. Yes.

19
20 Q. And just for the Commissioner's benefit, when
21 a critical incident is declared, there is someone, usually
22 from Homicide or Unsolved Homicide, from the squad
23 generally, that is allocated on to that incident?

24 A. A critical incident involving the death of a person,
25 yes, Homicide is involved in leading that investigation.

26
27 Q. Thank you. And the person who becomes the officer in
28 charge of that critical incident will usually follow it all
29 the way through to a coronial, if, for example, there is
30 a coronial?

31 A. They will.

32
33 Q. And that can involve taking hundreds of statements,
34 and those briefs of evidence can be very large. You agree
35 with that?

36 A. I do.

37
38 Q. So that if one of your members from Unsolved Homicide
39 was tasked with being the OIC in a critical incident that
40 was a large matter, that would sometimes take them out of
41 Unsolved Homicide for weeks if not months?

42 A. Yes, I would not expect to see that investigator back
43 at Unsolved for quite some time .

44
45 Q. Months - sometimes longer or --

46 A. Yes, typically, critical incident investigations were
47 quite lengthy, are quite lengthy.

1
2 Q. And did you understand that part of the reason that
3 officers would be taken from Unsolved Homicide for those
4 types of matters is that in the Homicide team, per se, the
5 longer there is between the event of the death and it being
6 solved, often the harder it is to solve - that is, it's
7 usually a short time after; if you are going to have
8 a successful prosecution and conviction, that while the
9 trail is hot, you follow it?
10 A. Yes, that's correct. I've spoken a lot today about
11 priorities and that certainly was a very good example of
12 a priority in relation to the use of staff and resources,
13 a live investigation or a current investigation such as
14 a critical incident would always take priority over an
15 unsolved case.
16
17 Q. And given the NSW Police Force is a hierarchical
18 paramilitary organisation, if a command came from above you
19 that one of your officers was to be put on, for example,
20 a critical incident, it was your job to have that followed,
21 subject to any extreme events that might occur?
22 A. I could respectfully argue that, which I did on many
23 occasions, and on most occasions, without much success.
24
25 Q. Yes. And, of course, that then depleted the ability
26 of your team to do its work?
27 A. It did. It certainly sometimes took the steam, the
28 impetus and the continuity out of some of the
29 investigations that we were conducting.
30
31 Q. I take it you don't say that critically; it's just
32 that there are --
33 A. I don't.
34
35 Q. -- different priorities according to different events?
36 A. And I had to accept that as a member of the Homicide
37 Squad team.
38
39 MR NAGLE: Thank you. Thank you, Commissioner.
40
41 THE COMMISSIONER: Anything at all, Mr Gray?
42
43 MR GRAY: No, nothing further.
44
45 THE COMMISSIONER: Thank you, Mr Lehmann. I will excuse
46 you from further attendance.
47

1 <THE WITNESS WITHDREW

2
3 THE COMMISSIONER: We will adjourn until Thursday.
4 Ms Alberici will be here Thursday morning. I'm sorry,
5 Mr Gray?

6
7 MR GRAY: Yes, at 9.30.

8
9 THE COMMISSIONER: At 9.30. We will continue with her
10 until she is completed.

11
12 At the moment, Mr Mykkeltvedt, I think I indicated
13 Mr Tedeschi at 2 o'clock.

14
15 MR MYKKELTVEDT: Yes, your Honour.

16
17 THE COMMISSIONER: I think that is going to work, because
18 Ms Alberici has, for everyone's benefit, a work commitment,
19 which will mean she will have to leave by 12.30. So can
20 you please, if you wish, talk among yourselves, and if you
21 can work out a priority - I will take the usual setting
22 that she's nobody's witness, as such, except the Inquiry's.

23
24 I will give some thought to the order of those, but it
25 would seem to me that very last would be potentially those
26 who represent Ms Young and Ms Brown. I would think, if
27 Mr Thangaraj is here, or not, or somebody in Mr Willing's
28 interest, there will be some need to give him some
29 priority. So, as you don't appear for Mr Willing,
30 Mr Mykkeltvedt, and nor do Mr Nagle and others - I don't
31 know precisely whether someone will be here - but, roughly
32 speaking, I will give more time to Ms Brown's and
33 Ms Young's representative. If nobody is here for
34 Mr Willing, so be it, but they will take priority.

35
36 Even though I might ask you to go first,
37 Mr Mykkeltvedt - I don't know whether Mr Nagle will have
38 any questions at all, perhaps no - I will keep you very
39 short in order to enable those who are more directly
40 concerned. For those reasons, we will just see how things
41 go, but I will adjourn until 9.30 Thursday.

42
43 MR MYKKELTVEDT: Yes, Commissioner.

44
45 **AT 4.08PM THE SPECIAL COMMISSION OF INQUIRY WAS ADJOURNED**
46 **ACCORDINGLY**

47

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