

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

Before: The Commissioner, The Hon John Sackar QC

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

On Tuesday, 7 June 2022 at 11.30am
(Day 2)

Counsel Assisting:

Mr Peter Gray SC (Senior Counsel Assisting)
Ms Christine Melis (Counsel Assisting)
Ms Kate Lockery (Principal Solicitor)
Mr James Herrington (Special Counsel)

Also present:

Mr Anders Mykkeltvedt
(Counsel for Comsr of Police, NSW Police Force)

.07/06/2022 (2)

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*Transcript produced by Epiq
Transcript-In-Confidence*

1 THE COMMISSIONER: Detective, can you come back into the
2 witness box, thank you very much. You are on your former
3 oath from yesterday.

4
5 <STEWART JOHN LEGGAT, on former oath: [11.32am]

6
7 THE COMMISSIONER: Mr Mykkeltvedt, what is likely to
8 happen is, at some point, we will review the materials that
9 have come before us and some of it we may wish to make
10 public.

11
12 MR MYKKELTVEDT: Yes.

13
14 THE COMMISSIONER: We will do so after consultation with
15 you and those instructing you. In other words, it won't be
16 unilateral on our part and if there is any need to hear
17 from you, we will.

18
19 For example, and just as an example, the cover sheet
20 to the document which I have presently marked
21 a confidential exhibit - I'm speculating because I haven't
22 thought about it carefully - there are a number of
23 assertions in there which I would have thought would be not
24 the subject of confidentiality, but I'm not going to make
25 any decision about that, and you can work on the basis that
26 we will give your side ample opportunity to have a view
27 about it and, if needs be, address me on it.

28
29 Likewise, some of the evidence given yesterday might -
30 we might think is relevant for public consumption. What
31 I mean by that is not reproducing the transcript at length
32 but perhaps snippets of it where helpful material has been
33 presented by the witness. But again, we would take on
34 board any views you might have to the contrary before we
35 came to any view about that. But it did seem to me
36 yesterday some of the materials I have presently marked
37 confidential will remain so for the time being. We have
38 made a list of them and you will have as well. But I think
39 it would be helpful, in whichever break we have, even to
40 have an exchange so there is absolutely no doubt about what
41 I have said in the transcript and what we all understand
42 should remain confidential.

43
44 Forecasting ahead a little, subject to any further
45 documentation which we expect perhaps to get from your
46 side, it may well be that, subject to his convenience,
47 either Detective Chief Inspector Leggat, or whoever it

1 might then be relevant, would come back. And again, for
2 the time being at least, until we can say otherwise, we
3 deal with all of this in confidence because I am extremely
4 concerned, as I have to be, not to interfere with any
5 ongoing operational matters and in this sort of
6 circumstance one obviously doesn't know from day to day
7 sometimes what may happen.

8
9 So, having said that, we will proceed today and then
10 we will no doubt see each other in the near future, perhaps
11 in the next few weeks. But again, it will be a time that's
12 suitable for everybody.

13
14 MR MYKKELTVEDT: Yes, your Honour.

15
16 THE COMMISSIONER: Thank you.

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18 Yes, Mr Gray?

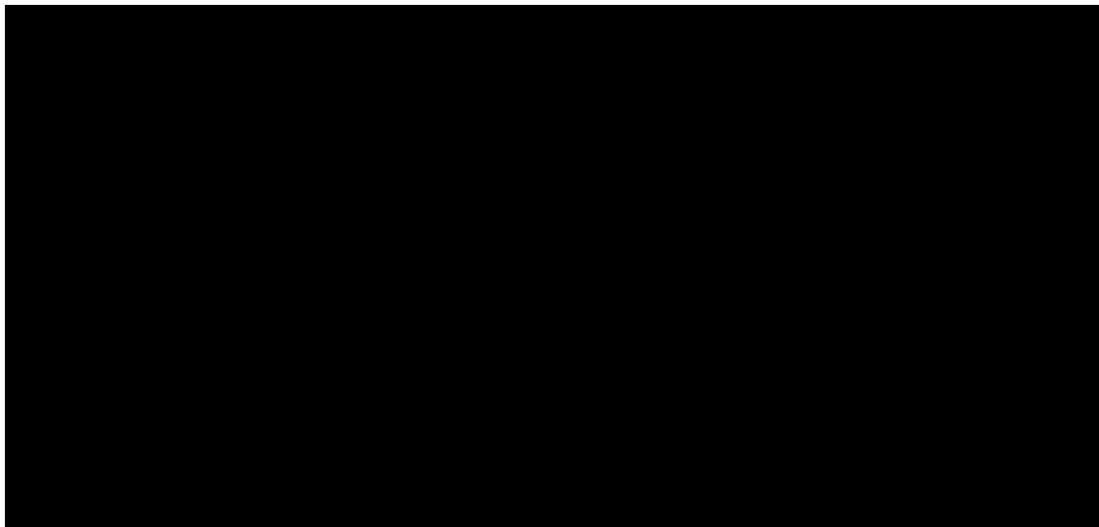
19
20 <EXAMINATION BY MR GRAY CONTINUING:

21
22 MR GRAY: Q. Detective, again, if I may, just to recap
23 a couple of things that we touched on yesterday. The first
24 one is the case of Keam.

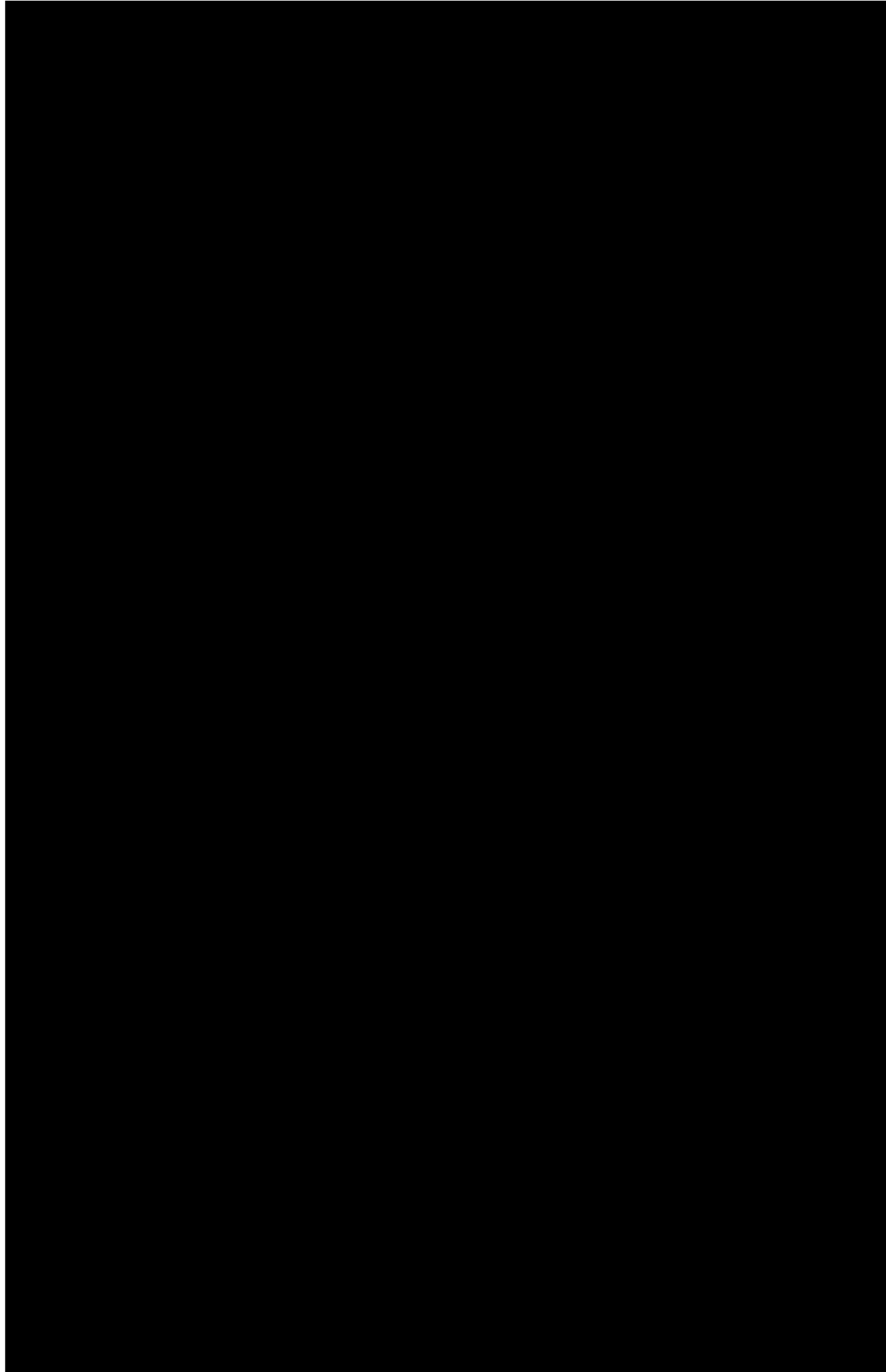
25 A. Yes, sir.

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27 Q. We looked at this yesterday afternoon and you told us
28 something about how the matter came to be reinvigorated
29 because the officer at the station approached you and asked
30 you to have another look at it. Do you remember that?

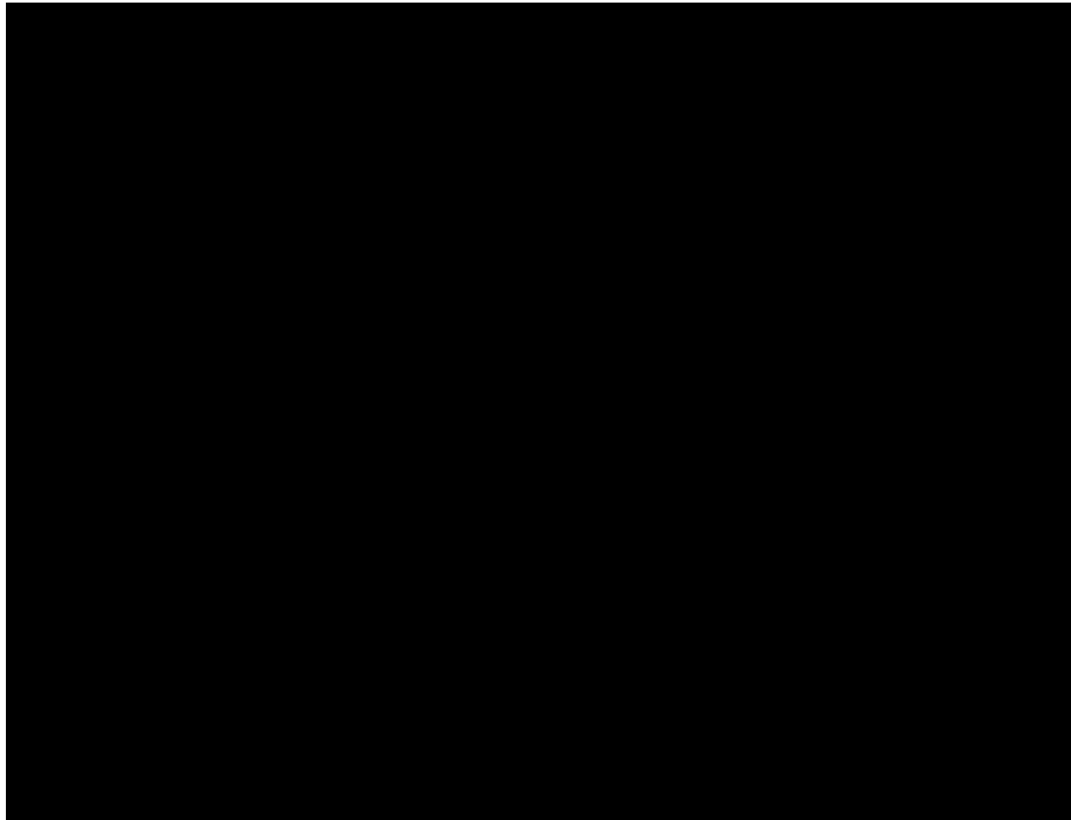
31 A. That's correct, sir, yes.



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MR GRAY: Q. Thank you. At a general level, can I ask you this across the board: we have these case summaries that we are halfway going through in respect of the 23 and the seven, from Parrabell?

A. Yes, sir.

Q. Is it possible for your team to provide the Commission with comparable documents in the form of or something like a case summary list for the 477?

A. We have discussed that and it's going to be a time-consuming task. Whether the 477 are relevant to the Commission or not --

Q. Quite so. They won't all be, no doubt.

A. Probably very few of them would be.

MR GRAY: I will stop you there for a moment, detective. I think Mr Mykkeltvedt can assist.

MR MYKKELTVEDT: If it assists, your Honour, I can provide an update in relation to the 477, as it were. In fact, it will be more like the entire contents of the tracking file, so it might be more than 477. But I can indicate that

1 three officers of the Unsolved Homicide Team have been
2 allocated to that task and a great deal of work is being
3 undertaken. It is difficult to say exactly how long it
4 will take but certainly we are aiming for that to occur
5 perhaps by next week some time.
6

7 We are in your Honour's hands as to whether that
8 process could occur in tranches or whether it is best for
9 it to occur in one lot. I must say from our perspective it
10 would be, I think, prudent for it to occur in one lot so
11 that we can organise all of the material appropriately.
12

13 THE COMMISSIONER: I'm happy to work on the basis that
14 even if you have a couple of weeks, two or three weeks,
15 I would much prefer to give you a bit of extra time now so
16 that you are comfortable, and the three officers can do
17 other things if the time permits them to do it.
18

19 So we can talk about that before close of play today,
20 but I wouldn't expect it under two weeks, and I'm happy to
21 make it three. If we can get it in between two and three
22 weeks, that would be helpful.
23

24 MR MYKKELTVEDT: I'm sure that can occur, your Honour.
25

26 THE COMMISSIONER: Then let's do it. I think it would be
27 better to get it in one go, for any number of reasons,
28 first of all to make the drafting uniform. I'm happy to
29 talk about that, but if your side works on the basis of two
30 or three weeks, it would be very helpful, and I thank you,
31 each and every one of you in advance. It will help us
32 enormously and help us enormously in culling those cases
33 that we need not trouble about, and then when we do have
34 Detective Chief Inspector Leggat, or whoever it may be,
35 back, we can be very narrow in the scope of the questions
36 we ask so it will help us all in the end, thank you.
37

38 MR MYKKELTVEDT: Thank you. The other thing I might
39 update your Honour on in relation to was your Honour's
40 query in respect of the particular cases that are under
41 investigation at the moment.
42

43 THE COMMISSIONER: Yes, the 10 and the 10, roughly.
44

45 MR MYKKELTVEDT: It turns out that the 10 and the 10 are
46 more like 35, but we will provide a list of those cases
47 today.

1
2 THE COMMISSIONER: And if we get a list of those, that's
3 the first thing. Secondly, we can look at the tracking
4 document to get at least some information or a lot of
5 information, presumably, about the 35.
6
7 MR MYKKELTVEDT: Yes.
8
9 THE COMMISSIONER: They will be included in the document
10 we're discussing going forward. What we'll get perhaps
11 going forward might be even slightly less information than
12 is currently in the tracking document, but it will be
13 helpful for us to get an early warning on the 35 that are
14 currently under investigation so that again we can narrow
15 the scope of any further questions we might have for
16 Detective Leggat or anybody else.
17
18 MR MYKKELTVEDT: Yes, your Honour. We will pass those on
19 today.
20
21 THE COMMISSIONER: That's very good. Thank you so much.
22
23 Yes, Mr Gray?
24
25 MR GRAY: Thank you, Detective Leggat and to my learned
26 friend.
27
28 Q. Now, just as I asked you about the Keam matter, may
29 I take a moment to ask you about the Johnson matter, Scott
30 Johnson. We know that ultimately, after 2013, that matter
31 was reinvestigated?
32 A. That's correct.
33
34 Q. And ultimately progress and/or breakthroughs were made
35 there, ultimately leading to the arrest of a person. Are
36 you able to tell us at the level of the investigative
37 method how it was that the reinvestigation, 25 years after
38 the event, was able to make the progress that it did?
39 A. My understanding - and I'm not familiar with the case
40 itself - is that the partner of Scott White or Scott Newman
41 came forward with information some 30 years after the
42 event.
43
44 Q. But prompted by anything done by the police or --
45 A. I'm not sure. Whether it was a reward announcement or
46 why it has occurred, I'm not sure.
47

1 Q. I see. Just remind me of this, was it the Unsolved
2 Homicide Team that did that work?
3 A. The Unsolved Homicide Team - and I wasn't part of
4 this, it was under my predecessor - had Strike Force
5 Macnamir that had investigated issues related to the
6 Scott Johnson matter for the coroner, for the State
7 Coroner. So that was a fairly detailed investigation.
8 I believe that Scott White, or as he was, Scott Newman, his
9 brother came up in that investigation, Shane Newman. But
10 other than that, I'm not overly familiar with the case
11 itself. I know it was undertaken by Detective Chief
12 Inspector Yeomans from the sex crimes unit.
13
14 Q. Rather than the Homicide Squad?
15 A. That's my understanding, yes.
16
17 Q. And not the Unsolved Homicide Unit?
18 A. Not the - as I said, we undertook the coronial
19 investigation, but it was undertaken by sex crimes.
20
21 Q. And was there a reason why that was done rather than
22 your unit;
23 A. Look, I can't provide you with an answer in regard to
24 that. I wasn't privy to the decision-making for that.
25 I think it was prior to my starting that Macnamir started.
26
27 Q. That's certainly true. Macnamir started before 2017.
28 But Macnamir led up to the third inquest?
29 A. Led up to the inquest.
30
31 Q. And the inquest returned the different finding,
32 namely, that the death was caused by actual or threatened
33 violence.
34 A. That's correct, sir.
35
36 Q. And after that there was then the investigation under
37 Detective Yeomans?
38 A. That's correct.
39
40 Q. Which was not, I don't think, part of Macnamir?
41 A. No, definitely not.
42
43 Q. Thirdly, we were provided yesterday, as you know, with
44 the tracking file electronically, and that will undoubtedly
45 be very helpful and we are grateful to have that.
46 Overnight - and this is far from comprehensive - people on
47 our team simply plugged in the word "gay" and the word

1 "homosexual" to see what was produced from the tracking
2 file, and three - on one view, four, but certainly three -
3 names came up where there is a reference to possible
4 homosexual hate crime and comparable expressions. That
5 would indicate, I presume, that plugging in such terms
6 and/or other terms is likely to throw up simply from the
7 electronic entry level inquiry some of the information that
8 we are hoping to find?

9 A. It could. If you filter it for particular words, it
10 may bring up those words if they're incorporated in the
11 file itself.

12
13 Q. I'll just mention these three to see whether you
14 happen to know anything about them. One is a victim called
15 Barry Richard Jones who died in September 1976.

16 A. I'm not familiar with that matter, sir.

17
18 Q. In the tracking file it is recorded as "possible
19 homosexual related hate crime". That would indicate,
20 I presume, that somebody in your unit in the course of
21 a triage or review has made that note?

22 A. It'd be in the narrative for the matter itself, so
23 yes, that would be right, sir.

24
25 Q. And then a second one is Peter Karl Baumann, who died
26 27 October 1983, and the tracking file contains this
27 notation:

28
29 *May be gay hate related. The word "AIDS"*
30 *was written on a mirror at the crime scene.*

31
32 Again, presumably written by someone in your unit in the
33 course of review. Is that one that rings a bell for you?

34 A. No, sir, it's not.

35
36 Q. Is there, so far as you know on your watch - that is,
37 since 2017 - a practice or a recommended way of proceeding
38 that someone should note such a possibility if they come to
39 the view that the possibility exists?

40 A. It would be incorporated in the narrative for the
41 matter itself, so - and if the fact that the victim was gay
42 was a factor, that will be incorporated either on the
43 tracking file, on the triage document, or in a review
44 document.

45
46 Q. So that's since 2017. And what about, so far as you
47 know, prior to 2017 within your - within the Unsolved

1 Homicide Team?

2 A. The tracking file's been in existence for quite some
3 time so I should imagine that, yes, sir.

4

5 Q. The fourth one is --

6

7 THE COMMISSIONER: Sorry, Mr Gray, I only remember two.

8

9 MR GRAY: Sorry, the third one. Yes, I've done my maths
10 wrongly.

11

12 Q. The third one that I want to mention is Stephen
13 Seymour whose death occurred on 16 April 1994. In this
14 case, what was thrown up on the tracking file was this:

15

16 *The suspect for the murder, David Jabour,*
17 *is also a suspect for the murder of*
18 *Crispen Dye.*

19

20 Now, Crispen Dye is one of those --

21 A. One of the matters here.

22

23 Q. -- on the list, probably homosexual, it seems, from
24 what information is available. So is this matter, the
25 matter of Seymour with the same suspect as applies to Dye,
26 something that has come across your radar?

27

28 A. No, sir, it hasn't. No, it hasn't.

29

30 Q. Then there is a fourth one, not quite in the same
31 context. This one was thrown up - this is just random
32 examples from overnight that I'm putting to you for your
33 comment - not so much by the tracking file search but by
34 a search of the reward page.

35

36

37 A. Right.

38 Q. In the case of Stephen Neville Jelfs, the reward
39 page notes, "Mr Jelfs was a member of the gay community."
40 Now, is that the kind of thing that the reward page is
41 likely to have in other cases?

42

43 A. It may have. Look, I'm not overly familiar on who
44 words the rewards themselves, so --

45

46

47

48 Q. Not your unit?

49 A. It's not my unit, no. We provide information which
50 will enable them to create the reward and put the
51 announcement up on line or do the media release for the
52 reward, sir.

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THE COMMISSIONER: Q. In the event that someone's lucky enough to be able to claim the reward, where does it come from, New South Wales Treasury or --

A. Yes, sir, it comes from the government.

MR GRAY: Q. In the case of Mr Jelfs, the other tidbit is that the tracking file contains this note, "Believe that Mr Jelfs met with foul play due to his lifestyle". When one cross-references that to the reward page referring to the gay community, one can put two and two together. So it may be that "lifestyle" is another term that has a usage in the team's work? Is that something that --

A. It may have.

Q. You're not sure?

A. Look, I'm not creating the wording on the document. It'd be up to the individual. So I don't know the exact wording that they may use. But there's also Bernd Lehmann. Did you come across that one on the tracking file?

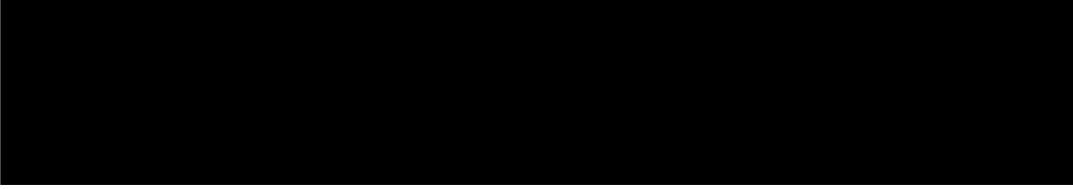
Q. Not that I've so far been told.

A. 2008 murder of Bernd Lehmann in Alt Street at Burwood or Croydon, murdered by Naji Fakhreddine. We charged him last year with murder. It's before the Local Court at the moment and will go before the Supreme Court. That is a gay related murder.

Q. How did that become apparent?



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Q. Thank you. I was going to ask you, but I think from something that my learned friend said this morning, I may not need to. The number of cases under investigation, I think we just heard is 35; is that right?

A. Roughly 35. And there's a number that have been finalised as well that - where the accused has been convicted. So I don't know whether they're relevant for you --

THE COMMISSIONER: Q. They're relevant in the sense that we simply would like to know and get a handle on the precise numbers. So any information at all, even if they are matters which were previously on the list and now you regard as finalised - because "finalised", I take it, in your mind could mean deceased suspect, trial, conviction, but I suppose it could also mean deceased suspect, trial, acquittal, or no-bill.

A. Yes, sir, no-bill.

Q. Because if there's no other person reasonably suspected as having committed the crime, but for whatever reason the accused gets off or the DPP takes the view that on that particular charge there's insufficient evidence, you would still regard that as a "solved", or whatever it is --

A. Our term is "unresolved", but yes.

THE COMMISSIONER: I see. Yes, thank you.

MR GRAY: Q. I will go back to the case summaries that we were going through yesterday.

A. Yes, sir.



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Q. And then what is the likely timeline from today onwards?

A. Without knowing the extent of the original investigation, how many archive boxes, how much material they have to go through, I can't give you a time frame, sir.

THE COMMISSIONER: Q. This is not - or is it - one of the 10 roughly that are under current consideration?

A. Under current review, and then they will go before the quality assessment process.

MR GRAY: Q. But not one of the 35 that are actually under investigation?

A. No, they are not - no, it's not one 35, sir.

THE COMMISSIONER: Q. You used the term "reviewed" - it is being looked at again but it is not in the same category as the others?

A. No.

THE COMMISSIONER: Thank you.

MR GRAY: Q. Then the next one that I need to ask you about briefly is Mr William Dutfield?

A. I actually went to this job back in 1991. Mr Dutfield was murdered with a sticky tape dispenser, bludgeoned to death. The suspect in the matter, they had a suspect in mind who was involved in the attacks on gay males, but it turned out he was in custody at the time of the offence.

We reinvestigated - or in 2008 Strike Force Hamish was formed to reinvestigate the matter, and some forensic links put through to Mr Ashworth, Arthur Ashworth, who was 76 at the time. He lived in a retirement village down in Mosman,

1 I think it is called The Manors. He lived down there.
2 Mr Dutfield was living in the unit that was owned by
3 Mr Ashworth. And on the night that the murder occurred
4 they had been out to dinner, there was evidence of two
5 glasses at the scene. The sticky tape dispenser,
6 a fingerprint from Mr Ashworth was identified down the
7 track, and I believe they got a fingerprint from a passport
8 that Mr Ashworth had that was provided by a relative.
9

10 It's more a domestic murder than a gay hate crime.
11 And there is a post-operational assessment that I have
12 included or provided to you, sir, that outlines what
13 investigation was undertaken and how they came to the
14 conclusion that it was most probably Mr Dutfield - sorry,
15 Mr Ashworth.
16

17 Q. Mr Ashworth. I see. Mr Ashworth is long deceased?

18 A. Yes, sorry, he is deceased. He was 76 at the time.
19

20 Q. So that's one where, as best as you can tell, there is
21 really nothing more to be done?

22 A. Yes, sir, and it appears to be a domestic related
23 murder - a domestic related homicide, I apologise.
24

25 Q. The next one is Robert Malcolm - not one of the 23 but
26 one of the seven?

27 A. Yes. It's not on Strike Force Palace, which is the
28 e@gle.i reference for intelligence, but it is on our
29 tracking file. There was a suspect in this matter, and I'm
30 just --
31

32 Q. Two suspects, apparently?

33 A. Two suspects. Phillips, Hookey, and I think a third
34 by the name of Green. We were unable to locate anything on
35 COPS. But it appear that it may be an unresolved matter in
36 that the - they didn't proceed with the offences.
37

38 Q. I see they were both found not guilty, charged but
39 found not guilty?

40 A. It was a discharge, via a judicial direction.
41

42 Q. Do you know on what basis, insufficient evidence or --

43 A. No, I don't, sir. I don't.
44

45 Q. Strike Force Parrabell apparently concluded that there
46 was no evidence of a bias crime, even though his pants and
47 underwear were found around his ankles. Does the Unsolved

1 Homicide Unit have a view about that?

2 A. Without - look, if I reviewed the brief I'd be able to
3 provide you with hopefully a little bit more of an informed
4 view with regard to what has occurred, but just off what
5 Parrabell said, no.

6
7 Q. The next one is Brian Walker, which again is not one
8 of the 23 but one of the seven?

9 A. There was a suspect for that one, a John Raymond
10 Hokin. The DPP decided not to proceed with the matter. It
11 says "Manslaughter". I have a charge reference. It was
12 discharged on 1 October 1992.

13
14 Q. Again, it does seem slightly surprising, given the
15 narrative, references to Mr Walker talking in a sexual
16 manner and the suspect saying that he was frightened by gay
17 men, and so on, that Parrabell concluded there was no
18 evidence of a bias crime. But again, is that one that you
19 are able to comment on?

20 A. No, sir, no, it's not.

21
22 Q. All right, then. Cyril Olsen is one of the 23. He is
23 the man whose body was found floating face down in
24 Rushcutters Bay. What can you tell us about that one, in
25 terms of the present position?

26 A. Well, it says - it's on the tracking file. It was
27 reviewed back in 2005. Under the process that we have
28 adopted, we've sent that matter out to a region, which is
29 an area of policing, for it to be re-reviewed. It hasn't
30 returned yet. So we're just waiting for that to return.

31
32 Q. So the review has been, as it were, outsourced again?

33 A. That was one of the ones that was outsourced, yes,
34 sir.

35
36 Q. What's the Central Metropolitan Region geographically?

37 A. Central Metropolitan is the city area, so the Sydney
38 City LAC, The Rocks, Surry Hills, Eastern Beaches, Eastern
39 Suburbs, Mascot. It's that central area and the eastern
40 suburbs - southern suburbs.

41
42 Q. So does that effectively mean that it has been
43 reviewed by detectives from the same station as would have
44 investigated it in the first place?

45 A. What we are doing is we're pulling them back because
46 they've taken - some of these have taken too long to be
47 reviewed, so we've requested them to be returned and

1 they're going to be allocated to someone from the Unsolved
2 Homicide Team.

3
4 Q. So this is one that is going to be brought back from
5 the Central Metropolitan Region?

6 A. Yes, that's right. Yes, it is.

7
8 Q. That's what is referred to as a backlog issue?

9 A. It is the backlog issue, yes, sir.

10
11 Q. In your note on this one there is a reference to the
12 original officer in charge, Constable Byrnes. Is he,
13 Constable Byrnes, still part of the Central Metropolitan
14 Region?

15 A. I don't think so. It dates back to 1992. Whether
16 he's still in the police or not, I don't know. I would
17 have to review the review document or the file itself.

18
19 Q. The next one is Crispen Dye, which I referred to
20 earlier, referred to your team by the coroner and still
21 classified as unsolved.

22 A. That's right.

23
24 Q. I see a second review is currently - that means as of
25 right now - being undertaken?

26 A. Again, it's with the Central Metropolitan Region.
27 It's one of those matters that we are pulling back to have
28 reviewed by someone from our team.

29
30 Q. So it was reviewed - I'm just reading from your
31 document - in 2005.

32 A. That's right.

33
34 Q. And the second review was to have occurred in or after
35 2020, but it hasn't happened yet?

36 A. It hasn't happened yet, sir, no.

37
38 Q. And the second review, the idea of doing it, came from
39 the process that you described yesterday under your watch,
40 whereby, in effect, everything was going to be reviewed
41 again?

42 A. That's the thought process, yes.

43
44 Q. Then James William Meek?

45 A. Yes, sir, this is an unresolved as opposed to unsolved
46 matter. This one was by judicial direction. There was an
47 accused in the matter charged with murder but by direction

1 it didn't proceed.

2

3 Q. Just bear with me one second. If you know the answer
4 to this, is this one where there were fingerprints or other
5 evidence of that kind?

6 A. I'm not sure on that, but it appears that the flatmate
7 of the victim was the individual that was charged. He was
8 said to be sleeping on the couch at the victim's home.
9 But, look, I can't provide an answer in regard to
10 fingerprints.

11

12 Q. It seems that he was struck with a ceramic bowl. One
13 would think that there would be fingerprints on that item
14 ordinarily, but you don't know?

15 A. I don't know, sir.

16

17 Q. And this one, should we understand, has never been
18 reviewed?

19 A. It appears that that's the case, that it hasn't been
20 reviewed. It says "Not yet reviewed", so --

21

22 Q. And is it going to be reviewed?

23 A. Ultimately when the undetected matters are finalised,
24 we'll move on to the unresolved, which are the matters
25 where double jeopardy may come into play, and we will have
26 a look at those. But we need fresh and compelling evidence
27 for - actually, he hasn't been dealt with by - we would
28 need fresh and compelling evidence for this one.

29

30 Q. It would have been --

31 A. We would need that for this one.

32

33 Q. Then Kenneth Brennan?

34 A. Yes, Strike Force Skaratt was commenced by the
35 Unsolved Homicide Team to look at Mr Brennan's murder. It
36 was quite a vicious murder. His partner was probably the
37 last person to see him alive other than the killer. They
38 had been involved in a liaison with another male who
39 provides an alibi for Mr Brennan's partner.

40

41 We've just got a few more things we'd like to do with
42 the forensics with this one because there were - my
43 understanding - multiple profiles developed at the scene.
44 So we just want to have a look at that again but there is a
45 post-operational assessment that I have included or
46 provided to you, sir, that outlines what was done with the
47 investigation to date.

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Q. Again, as with one we talked about a few minutes ago, the review is well advanced but we're not at the point where there is a reinvestigation?

A. There was a reinvestigation so it was reinvestigated, yes. It was actually one of the jobs that was reinvestigated. Whether that was prior to my arrival, it was on the other side of the floor, teams 7 and 8 were looking at this matter.

Q. I see. So it was reviewed and that did lead to a reinvestigation, but now there is a further review?

A. There's a forensic review, just with the development - with the improvements in forensic technology, we like to just have a look at things and present them back to Dr Bruce out at FASS to see what can be done.

THE COMMISSIONER: Q. Does that mean in this case that the murder weapon is still available as an exhibit? It doesn't say so.

A. It's more forensic samples that have been located at the scene, underpants and the like.

Q. But the question I have asked you is, the man was stabbed to death. Does your note - it may not disclose it, but is this one of the cases where the exhibits are intact as far as you know, or --

A. I'm not sure whether the murder weapon for this one is available. But that might be incorporated in the post-operational assessment. As I said, this wasn't a matter that my side of the floor, my teams, were investigating.

MR GRAY: Q. Now, Scott Stuart Miller. Are?

A. My understanding is that this gentleman went to the Mardi Gras back in 1997. It was - a review's been conducted in 2004 and it's been investigated on three separate occasions by The Rocks, Strike Force Corone and Strike Force Lincoln. The matter has recently been triaged again by us and it's awaiting a comprehensive review.

Q. So when it says it has been investigated on three separate occasions is that within the Unsolved Homicide Team's work or by some other means?

A. Well, The Rocks would be The Rocks just down here in George Street, the police station, when that was a separate command. Strike Force Corone and Strike Force Lincoln -

1 I'm not familiar with the two strike forces, so it may be
2 that they were undertaken by The Rocks or alternatively by
3 homicide or the Unsolved Homicide Team.

4
5 Q. But if they had been done by Unsolved Homicide Team
6 that would be clear from your records, wouldn't it?

7 A. Not necessarily, if the matter wasn't resolved, if we
8 didn't - because the matters continually remain open, so if
9 we don't get a result, as I said, they remain open.

10
11 Q. Sure. But you're not able to tell whether - I don't
12 mean sitting here in the witness box but generally - Strike
13 Force Corone or Strike Force Lincoln were Unsolved Homicide
14 Team exercises?

15 A. Not off the top of my head but I'm sure that if we
16 went on to our e@gle.i, which is the major crime management
17 system, I'd be able to tell you who the units were that
18 were in charge of those two strike forces.

19
20 Q. If it wasn't the Unsolved Homicide Team, how does it
21 come about that a strike force would be set up, in the era
22 of your team being in existence, to reinvestigate an
23 unsolved homicide that wasn't you doing it?

24 A. Well, it could be that the reinvestigation has just
25 been initiated by the police station itself, because
26 they've got a matter that they needed to have another look
27 at.

28
29 Q. Would that mean that they still had the files, that
30 the files hadn't come to you?

31 A. The files would be in archives unless we request the
32 files for review.

33
34 Q. But it says the matter was referred to the Unsolved
35 Homicide Team by the coroner?

36 A. That's correct.

37
38 Q. Wouldn't that mean the files would come to you?

39 A. No. What it means is that we would leave a letter
40 from the State Coroner or the Deputy State Coroner
41 indicating that the matter has been referred to us and
42 then, in due course, the matter would be triaged and
43 reviewed. But we don't do - we don't get all the boxes for
44 all the various matters. They remain in archives until we
45 are ready to do the review or undertake a reinvestigation
46 in regard to the matter.

47

1 Q. So take me through that again, what you get in such
2 a situation is what?

3 A. Some correspondence from the State Coroner or the
4 Deputy State Coroner or the registrar from the Coroner's
5 Court.

6
7 THE COMMISSIONER: Q. The note says that apart from
8 having attended the Gay and Lesbian Mardi Gras, there was
9 nothing in relation to Miller, but there doesn't seem to be
10 any comment about Robinson or Henry or how they came to be
11 suspects. Were they - seemingly because of things they
12 said, but the note doesn't really disclose anything known
13 about either of them. I take it what you have currently
14 got in front of you wouldn't take it any further?

15 A. Look, no, your Honour, I couldn't take it any further.
16

17 MR GRAY: Q. The next one that I will mention is Carl
18 Stockton?

19 A. This matter has been reviewed, sir. Mr Stockton
20 didn't identify as homosexual. He was found in a - he was
21 conscious, I think, from memory, but he was disorientated.
22 It could have been the result of an accident, a serious
23 assault or the like. We could never - well, the original
24 investigators could never establish that. It was reviewed
25 under the current process in 2018, so there is
26 a comprehensive review that outlines the facts associated
27 with this matter and the difficulty in identifying who may
28 be responsible, if anyone is responsible at all.
29

30 Q. It is striking, just while we are on it, that he was
31 living at Campbell House, apparently, and yet he had
32 a Rolls-Royce. Does that ring a bell with you as to what
33 was going on?

34 A. I think what they were able to say from that, sir, is
35 that - I think his keys were missing but there was no
36 indication that his unit or house or wherever he lived or
37 his Rolls-Royce had been touched. But, yes, it is very
38 unusual that someone living in a proclaimed place would
39 have a Rolls-Royce.
40

41 THE COMMISSIONER: Q. I take it when we look at the file
42 we will see, will we, someone making some inquiries as to
43 how he paid for the registration and other things on the
44 Rolls-Royce? It may be an old model but old Rolls-Royces
45 are no less expensive to keep on the road than --

46 A. Sir, what they would have looked at is the facts
47 associated with what has happened to him. The Rolls-Royce,

1 I can't provide you with an answer as to whether they did
2 research in regard to how he financed that. Whether the
3 records would still be available from the financial
4 institution in regard to how he financed it, I don't think
5 so.

6
7 MR GRAY: Q. Then finally, I think, David Rose.
8 A. This matter has been recently reviewed. It has to go
9 before our quality assurance panel. Mr Rose was
10 a kind-hearted individual who took down and out into his
11 house and helped people in need, I guess, and the prime
12 suspect to this matter was a female, who I think is by the
13 name Durward. She's now deceased - I'll just double-check
14 on that. But she is the prime suspect for the matter. And
15 the reviewer has made a number of recommendations. There
16 may be another fellow by the name of David John Thwaites,
17 who was an associate of Durward, who may be able to provide
18 us some information. Whether it is sufficient to proceed
19 against anyone, particularly if the suspect is now
20 deceased, is difficult to say.

21
22 Q. I see one of the recommendations is DNA testing should
23 be considered?

24 A. Without knowing the nature of the exhibits, that is
25 a possibility. That's something that will come up before
26 the panel. So he's recommending the examination of
27 a number of exhibits. And whether those exhibits exist or
28 not --

29
30 Q. Well, it says:

31
32 *Some exhibits were tested for the presence*
33 *of blood, however no exhibits have been*
34 *tested for DNA.*

35
36 A. And that's the purpose of the review, to see what we
37 can do forensically with a job, and this may be a job that
38 we have a major crime review on - that's a review with
39 crime scene, the forensic pathologist from FASS and other
40 crime scene experts.

41
42 Q. Is it surprising or not surprising that no DNA testing
43 was done back in 1999?

44 A. 1997.

45
46 Q. Or 1997?

47 A. Look, I can't offer an explanation as to that, whether

1 the techniques used back in those days were as sensitive as
2 they are now, whether the items were tested, I don't know.
3 But again, that's going to be subject of the quality
4 assurance process when we do it.

5
6 MR GRAY: Would your Honour just pardon me one second?

7
8 THE COMMISSIONER: Yes.

9
10 MR GRAY: They are the only questions that I have for the
11 detective at this stage.

12
13 THE COMMISSIONER: All right. I don't have any further
14 questions, detective. Can I just thank you very much, and
15 those with you, for your assistance to date.

16
17 Mr Mykkeltvedt, could we have the document, say,
18 within two weeks. If you strike any problems - you
19 ventured a week, I'm giving you a bit more than that. If
20 you do strike any problems, please let Mr Herrington or
21 anybody else in the team know so that we can work out how
22 best to do with it.

23
24 I suspect what we will do today or tomorrow is craft
25 a letter which might cover some of the things you have
26 proffered. It might go a bit further, and it might suggest
27 some search terms for some of the items. We can obviously
28 do some of the searching ourselves. I will take on board
29 whether we can do it or whether we would like you to do it.
30 There is no point both of us doing it if I can do it, but
31 I will think about those things and we will be in
32 communication by no later than end of play tomorrow.

33
34 MR MYKKELTVEDT: Yes.

35
36 THE COMMISSIONER: Detective, can I just excuse you for
37 the moment. I won't excuse you indefinitely, only because
38 we may want you back, but if for some reason you are not
39 available, just keep us informed.

40
41 THE WITNESS: Yes, your Honour.

42
43 THE COMMISSIONER: We will no doubt find somebody else who
44 can --

45
46 THE WITNESS: I retire on 21 July.

47

1 THE COMMISSIONER: That means you are going to have all
2 the time in the world to come back in. I dare say the last
3 thing in the world you may want to do is sit there. All
4 right, we will keep that in mind and if we do need you
5 again, we will keep in mind 21 July.
6

7 After 21 July, apart from joy and happiness, perhaps,
8 are you going to be, at the moment, planning to be in the
9 Sydney area or --
10

11 THE WITNESS: Up the coast a little bit, sir. But, look,
12 if required, I am happy to --
13

14 THE COMMISSIONER: We will try not to worry you in
15 retirement but we will keep 21 July in mind.
16

17 THE WITNESS: Thank you your Honour.
18

19 **<THE WITNESS WITHDREW**
20

21 THE COMMISSIONER: Thank you all very much. We will send
22 a letter tomorrow
23

24 **AT 12.23PM THE COMMISSION WAS ADJOURNED ACCORDINGLY**
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