
TRANSCRIPT OF PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

TUESDAY 26 FEBRUARY 2019

(13th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Jack Rush QC

Ms Catherine Boston

OPERATION GLOUCESTER INVESTIGATION

PUBLIC EXAMINATIONS PURSUANT TO PART 6 OF THE INDEPENDENT
BROAD-BASED ANTI-CORRUPTION COMMISSION ACT 2011

*Every effort is made to ensure the accuracy of transcripts.
Any inaccuracies will be corrected as soon as possible.*

1 COMMISSIONER: Mr Sheridan.

2 <PAUL ANTHONY SHERIDAN, recalled:

3 COMMISSIONER: Yes, Mr Rush.

4 MR RUSH: Mr Sheridan, I just want to have a look at your
5 day book for 16 August 1998 which is Exhibit 33.
6 Halfway down the page, p.127, "DOI Murnane", can you
7 see that?---Yes, I can.
8 Just explain Mr Murnane?---He was a detective inspector at
9 that stage in charge of the Armed Robbery Squad.
10 He was also the commander, if you like, for the stakeout
11 that was taking place for Hamada over the course of
12 that weekend?---That's right.
13 Then, Mr Collins, you've noted, what's that?---That's a
14 notation that then Detective Senior Sergeant Collins
15 was, um, at the scene I expect.
16 At the scene, but it also says "personnel"?---"Re
17 personnel", yeah.
18 So, Mr Collins you are designating to take charge of
19 personnel?---I would think so, yes.
20 And Mr Bezzina, in the next line, to look after the
21 scene?---Ah, yes, or at the scene, either/or.
22 "Re scene"?---Yes.
23 Because Mr Bezzina in fact was at the scene of the murders
24 well before you, was he not?---Yes, he was already on
25 duty as I recall; I think he'd attended another call
26 out or something but - - -
27 He, in fact, arranged for you to meet with various personnel
28 who may be able to offer assistance in relation to what
29 had gone on?---I would expect that would be the case,

1 yes.

2 At p.922, at the top of the page, you refer to the

3 caravan?---Yes.

4 That was then set up as a command centre?---Yes.

5 Then you set out a number of witnesses, including Bendeich

6 and Sherrin, the two officers that were in the vehicle

7 that followed the Silk-Miller vehicle?---Yes.

8 Mr Gray, who was an observer at least around

9 Mr Miller?---Yes.

10 Mr Pratt, Mr Small, Mr Hanson, Mr Wise and

11 Mr Butterworth?---Yes.

12 All briefed you?---They were all there; I don't - I wouldn't

13 say they all briefed me.

14 Okay, they were all there.

15 COMMISSIONER: Mr Collins gave evidence to the Commission

16 that, as to the eyewitnesses Bendeich and Sherrin, he

17 said: "I was asked to go down back to Moorabbin to see

18 how they were going with their statements and what

19 other information might have been elicited, that was my

20 focus when I went to Moorabbin." Would that have been

21 your direction, that he go there?---I would think so.

22 We certainly would have discussed it and, yes, I would

23 think so.

24 MR RUSH: And you set out a précis, if you like, of the

25 information that you had received from the briefing

26 commencing at 11.20 pm?---Could we go down a little so

27 I can see?

28 Yes, sure. Just stopping there?---Thank you. Yes.

29 Without referring to it, you might like to quickly have a

1 look at it, but what you're setting out there: there
2 was a suspect vehicle outside the Silky Emperor at
3 around 11.20 pm that was the subject of police
4 activity, and that vehicle seemed to evade police
5 detection and people went back to the positions that
6 they held around the Silky Emperor after attempting to
7 intercept that vehicle?---Yes, that's right.

8 Then you detail, at p.923, top of the page, the events
9 leading up to the interception of the vehicle by
10 Mr Silk and Mr Miller. Halfway down the page,
11 commencing at "1": "Male suspect inside. Conversation
12 with Silk-Miller", is your note?---Yes.

13 Then you continue on that that car - or observations are
14 made by the occupants of the vehicle being driven by
15 Sherrin and Bendeich, and you note, towards the bottom
16 of the page, "They travelled left into Cochranes Road.
17 Pulled up suspect outside 156 Cochranes Road. The
18 driver suspect at door of his vehicle. Member standing
19 talking to ...", what's that word?---That's actually
20 "member"; I'd say I just made a mistake in terms of how
21 I've written it down: "Member standing talking to
22 member. Member standing", and I guess I should have
23 another thing, "suspect talking to member."

24 Over the page, 924: "Sherrin drove past slowly. One male
25 suspect standing at the door"?---Correct.

26 Then a description of what that suspect was wearing?---Yes.

27 Then it's indicated that Sherrin had gone past suspect
28 vehicle and that everything seemed okay. Then there is
29 a description of what they did, they went down the road

1 around 100 metres: "After ?2 minutes the member walked
2 in front of offender vehicle as if to check
3 registration label. Then shots. Then more shots. An
4 urgent call on the radio by Sherrin"?---Yes.

5 You note: "He has seen the offender leaving vehicle. Leave
6 normal acceleration", and then observations once he got
7 to the scene where the shooting had taken place in that
8 bottom part of this page?---Yes.

9 Then over the page, you note: "Craig ...", Sumner? "Craig
10 Small re Miller scene." Then you note: "Attendance at
11 Cheltenham 206, Malvern 331." A note, 12.25: "On
12 ground. Footpath driveway to restaurant. One
13 offender. Car Hyundai dark. 'I'm in a lot of pain'."
14 So, at the time you wrote this note it was quite
15 apparent, from the perspective of Mr Sherrin you'd been
16 told of one offender, and the perspective of whoever
17 reported this to you of what Mr Miller had said, there
18 was one offender?---Yes.

19 When was it then that you believed there were two offenders?
20 Where does that appear in your notes?---I'm not sure
21 where or if it does appear in my notes. I'm not sure,
22 I couldn't tell you the time specifically.

23 There's no note, I suggest, that you've made on the night of
24 two offenders?---I'd have to look to be sure.

25 Yesterday, Mr Sherrin - - -?---Sheridan.

26 I'm sorry, Mr Sheridan, you indicated at the outset that you
27 would check every brief that went through your office
28 as the inspector of Homicide?---Yes.

29 That you would read every statement in the brief that went

1 through Homicide?---Yes.

2 In relation to Hamada witnesses, you said yesterday that
3 they could have been re-approached to attempt - your
4 words - to enhance the case against Roberts and
5 Debs?---Yes.

6 You agreed that that could mean a number of things,
7 "enhancement of the case", but principally the sort of
8 things that you would be looking at in relation to
9 police witnesses would be descriptions and number of
10 offenders?---Yes, that would certainly be one of the
11 things, yes.

12 In relation to the Hamada witnesses, it would be
13 descriptions, accents, build; they're the sort of
14 things you'd be looking for in the Hamada witnesses'
15 statements?---Yes, they're the sort of things, it's
16 probably not definitive, there's lots of things, but
17 yes, they're certainly the main things that you'd be
18 looking for.

19 In going to the Hamada witness statements, what was the
20 position when a Hamada witness did not enhance the
21 case, did not give a description or give details that
22 were consistent with Debs and Miller? I'm sorry, with
23 Debs and Roberts?---What was the position?

24 Yeah. Would a statement be taken from them?---Well, if
25 they've already made a statement, there wouldn't be a
26 need for an additional statement because there'd be no
27 supplementary information.

28 But, as we saw yesterday, the Hamada statements did not
29 obtain descriptions. Remember where I took you to one,

1 I can take you to many more, the initial Hamada
2 statements did not contain descriptions of offenders,
3 and the whole idea of the extra effort in relation to
4 Hamada statements was to go out and, as you've agreed,
5 enhance evidence that would involve Debs and
6 Roberts?---Yes.

7 So, what happened when an Hamada witness did not give
8 evidence consistent with a description of Debs and
9 Roberts?---Well, I - if the witness could not give any
10 further description, there would be no statement taken.
11 If - - -

12 And my question - - -?---Yeah, I haven't finished the
13 answer, if I may. If the witness was giving a
14 description that was, as you put, perhaps different to
15 Roberts and Debs, then my expectation would be that the
16 statement would be taken which would show that; it is a
17 warts-and-all approach.

18 Did you in reading - - -

19 COMMISSIONER: Just pause for a moment, Mr Rush. (To
20 witness) Mr Sheridan, no doubt that's an aspiration
21 that any investigation, the information that's
22 collected from a witness is a warts-and-all process.
23 But we're really not interested here in what the
24 aspiration is, what we're interested in is a candid
25 statement of investigation practices, both at that time
26 and we'll later come to now. We've already heard from
27 Mr Collins, your deputy, that he became aware, firstly
28 during the 80s, that there was a practice of not
29 recording descriptions in statements, and he became

1 aware when he started looking at the Hamada and Pigout
2 statements, that there was a prevalent practice within
3 the Armed Robbery Squad of not recording descriptions.
4 So, it's really important that we distinguish between
5 what the aspirations of any one supervisor in a good
6 investigation are and what the realities were?---I
7 understand that, sir, but I can only answer the
8 question on the basis of how I would do what I did.
9 You're actually asking me questions about something
10 that occurred 20 years ago.

11 Yes?---And I can only answer the questions consistently with
12 the way I've done things in the course of my career.
13 I'm not going to venture off on an angle merely because
14 other witnesses may have done that if that's what they
15 truly believe. If I don't believe it, I'm not going to
16 say it.

17 No, but I'm not concerned with what you were doing, what
18 your investigative process was - - -?---I understand
19 that.

20 - - - we're concerned with practices?---But I'm being asked
21 what my view is on these things in terms of what I
22 would appreciate what I expected to be done and what,
23 in my view, was done. I can't speculate as to what
24 other people did outside of my eyesight or actual
25 contact.

26 But, Mr Sheridan, no one's asking you to
27 speculate - - -?---Well, it's coming across that way.

28 - - - what we're doing is, we're exploring with you what, it
29 seems to the Commission, must have been understood not

1 only by Mr Collins who's explained his position, but
2 you - - -?---Well, I don't accept that I understood
3 that that practice was going on at that stage in
4 relation to the Lorimer case. If the evidence shows it
5 was, then I clearly haven't seen it, but I have no
6 recollection and I would have thought, if I knew that
7 practice was going on, I would have taken some action
8 around it. So, I can't take it any further, sir.

9 MR RUSH: Do we take it from that answer then, Mr Sheridan,
10 that you do not know what the process of those that
11 worked under you was if there were statements from
12 Hamada witnesses that did not enhance the descriptions
13 of Debs and Roberts?---I'm not quite sure I follow
14 really what the question is asking me.

15 COMMISSIONER: I'm not sure either. You might rephrase that
16 question, Mr Rush.

17 MR RUSH: Do we take it, from your answer to the
18 Commissioner, that you are unable to say how statements
19 from Hamada witnesses that did not enhance the
20 description of Debs and Roberts were handled by your
21 investigators?---No, I don't - I don't see how I can
22 clearly answer that because my answer to the
23 Commissioner was based on his question around my
24 understanding of how the statements or how the
25 witnesses were actually, if you like, re-interviewed
26 et cetera, how it was done, as to whether I had
27 knowledge of that, and in relation to that specifically
28 I don't have knowledge of it being done outside of the
29 appropriate practice, if that answers your question.

1 COMMISSIONER: Mr Sheridan, let's start with what would be
2 an understandable inclination on your part, that if you
3 have no recollection of an issue, then you would like
4 to think that, "I would have expected things to be done
5 by the book", right, that the investigative process
6 would be absolutely proper. What's being put to you,
7 however, is that if you, as you've already indicated,
8 were looking carefully at each statement that was
9 produced in relation to potential relevant witnesses,
10 that it inescapably must have come to your attention
11 that many of the statements taken from victims at the
12 Pigout and Hamada robberies did not include in their
13 statement a description of the offender but that, in a
14 separate note, day book, diary, an officer had recorded
15 what the witness said about a description. Now, if
16 indeed you were looking at these statements, and we've
17 discussed yesterday the importance of the linkage in
18 description between that and the murders, if you were
19 indeed looking at all that, even though you don't
20 remember it now, surely you would concede it must have
21 come to your attention that that was a process that was
22 being followed?---I don't think I will concede that
23 because I - I'm not - I can't say I was looking at the
24 original statements or the typed statements. If I'm
25 reading the typed statements when I was checking the
26 brief, I would just have what's in front of me in a
27 typed format. Unless there's an additional page that
28 stands out in the typed format, it would be difficult
29 to know - I'm not saying I didn't read the originals,

1 but I don't have any recollection of that - but I'm
2 just saying, I think part of the issue here is that,
3 I'm not sure which statements I checked as such at the
4 time that you're asking me this question, as in, when
5 we're doing brief prep, et cetera.

6 I think globally we've heard a figure suggested that as many
7 as 50 witnesses did not have in their original
8 statement the description but it was recorded
9 elsewhere, and you've seen from the notes that Mr Rush
10 showed you yesterday, that you were present at a
11 discussion with Mr Collins and Mr Buchhorn and others
12 where it was said, and where there are notes made of
13 the description not included in the statement, then
14 investigators need to go back to that witness and get a
15 statement?---So - - -

16 Just let me finish. And by the end of this process surely
17 it would have become apparent to you that, in addition
18 to the original statement of the witness, there then
19 came into existence a supplementary statement in which
20 the witness referred to the notes and the description
21 they'd given to the officer at the time of the initial
22 statement?---Yes, I understand.

23 So, that's why I'm saying, surely you can concede, looking
24 at the objective evidence that's there, that that must
25 have been a practice that you became aware of during
26 that period?---I would have thought I'd have a memory
27 of that if that was the case.

28 If that's correct, then that means your evidence earlier is
29 wrong, that you weren't making it your business to get

1 across each individual statement that was produced by a
2 potentially relevant witness?---Well, I don't think
3 they were actually my words, but in general terms, yes.
4 The evidence was, in my view accurate, I made every
5 attempt - this was not the only process that I was
6 obviously doing when I'm managing this investigation.

7 No?---Yes, I made every attempt to read every statement, I
8 would like to think that that's what occurred, but I
9 wouldn't say that I haven't missed something; I'm not
10 saying that did occur, but I'm just saying, yes.

11 Mr Collins I think from memory - I'll try and find the
12 passage - Mr Collins says that he spoke with you about
13 that practice?---He may well have.

14 And the concerns that arose from that practice, but he then
15 went on to explain that, given the pressures of the
16 investigation and the multitude of tasks everyone had,
17 that, although it was recognised that there was a
18 problem with that process, nothing was done about it at
19 the time. Would you dispute that?---Well, I'd like to
20 know when that conversation took place, if that - - -

21 Yes, I'll try and find the passage, Mr Sheridan. I'm sorry,
22 Mr Rush.

23 MR RUSH: Mr Sheridan, on the basis of accepting what the
24 Commissioner said, 50 statements that IBAC has examined
25 that do not bear description of witnesses, can you
26 think of any reason why initial statements would not
27 have their descriptions of witnesses put in them at the
28 first opportunity?---No, I can't.

29 There's no legitimate reason, is there?---No.

1 But the only reason, I suggest, could be an illegitimate
2 reason?---Well, that would be the principal reason
3 other than perhaps a lack of skill on the part of the
4 interviewer, but yes.

5 That you would come back potentially to get a description if
6 it enhanced the theory being then looked at in relation
7 to solving the particular crime?---Well, yes.

8 COMMISSIONER: The evidence I had in mind, Mr Sheridan, it's
9 at p.1007 of Mr Collins' evidence, having said you
10 became aware of the practice of not including
11 descriptions in statements from the Pigout and Hamada
12 Operations, Answer: "... I became aware of that, sir,
13 yes." Question: "Again, so you say to the Commissioner
14 that you are now satisfied that that practice, at least
15 in the Armed Robbery Squad, was a common practice?"
16 Answer: "I'm satisfied that that occurred, yes."
17 Question: "Did you have anything to say about that at
18 the time?" Answer: "I certainly - I spoke to Mark
19 Butterworth and Paul Sheridan about aspects of those,
20 that practice, yes." It doesn't say when, Mr Sheridan,
21 but do you doubt Mr Collins is a capable and now very
22 experienced police officer - you were already a very
23 experienced officer at the time of Lorimer - do you
24 have any doubt that, when Collins became aware of this
25 practice, that he would have discussed it with
26 you?---No, I wouldn't say I doubt it.

27 No?---But, to the degree of the discussion, I'm - yep.
28 Sure, but you have no memory of it; that's your problem,
29 isn't it?---Yes.

1 MR RUSH: Another matter arising I just want to clarify from
2 yesterday, Mr Sheridan. As I put to you yesterday, the
3 Commission now has evidence of at least three
4 detectives that worked at Homicide at this particular
5 period of time who used the practice of not putting
6 descriptions of offenders in their written statements:
7 they being Eden, Kelly and Kennedy, the three that have
8 appeared before the Commission. Accepting that, and
9 accepting that on 16 August at Moorabbin the Commission
10 has received evidence from two uniform members who were
11 witnesses to the dying declarations of Mr Miller, that
12 they were directed by Mr Kelly not to put descriptions
13 of offenders in their statements and Mr Kelly has
14 agreed with the Commission in evidence that he's
15 admitted that that's what he would have done in
16 conformity with the practice that he adopted as a
17 Homicide member. Accepting that evidence that has been
18 given by those persons, you are saying, I take it, that
19 as the inspector in charge of Homicide you knew nothing
20 about it?---Yes.

21 Not that it didn't exist, but you knew nothing about
22 it?---I'm - I knew nothing about it, yes, as I said.
23 But in answer to, that it didn't exist, my view would
24 be that that would be an isolated practice on the part
25 of one or two people who, to be honest, it's an
26 aberration in terms of how things were done.

27 What we have is the practice in action on the morning of
28 16 August with Poke and Thwaites in particular, and
29 Clarke for that matter on the intergraph, but just

1 dealing with Poke, critical witnesses in relation to
2 dying declarations, if you accept that evidence?---Yes,
3 and I say that's an aberration, that's outside the
4 norm, but yes.

5 COMMISSIONER: One of the difficulties, Mr Sheridan, is, if
6 an investigator in taking a statement from a witness
7 determines that some information provided by the
8 witness should not be included in the statement,
9 there's every prospect that you, higher up the chain of
10 command, might never know that. You look at a
11 statement, it is what it is; the statement won't tell
12 you that the investigator's left something out. Unless
13 we get into this area where we scratch below the
14 surface and people start coming forward, how will a
15 superior ever know whether or not the investigator has
16 included all of the relevant information that the
17 witness proffers?---Well, in general terms, yes, I
18 agree with that, except that in your narrative part of
19 the answer is found, and that is "the chain of
20 command". What's expected is that, when at such a
21 crucial incident like this, a critical incident where
22 members are being interviewed and a senior or an
23 experienced supervisor is sent to control, manage,
24 lead, advise, guide, then there's an expectation, as in
25 with everything in life, when it's a team approach
26 there's an expectation that team members will perform
27 their role.

28 Yes?---So that's the way it's supposed to work, but I
29 concede, yes, at my level, if the chain of command, if

1 the communication from the chain of command does not
2 work, or if the supervising and guidance fails, which
3 it clearly did at Moorabbin, then yes, I'll be
4 oblivious to those faults if they're occurring.

5 So, we can put to one side the obvious proposition that, in
6 Mr Kelly and the witnesses with whom he spoke not
7 including critical information from Senior Constable
8 Miller's dying declaration, that was a
9 glaring - - -?---Yes.

10 - - - example of how it should not occur. But all I'm
11 positing with you is that, unless one shines the light
12 on an investigation, it's very difficult to see how a
13 person in your position would ever know, in a
14 particular investigation, whether or not an
15 investigator exercising what they think is a discretion
16 leaves something out?---In general terms, yes, but
17 aside from the chain of command the other obvious is
18 feedback that management get from the court process.

19 We've had evidence from a number of now very experienced
20 investigators, not so experienced back then, who have
21 plainly demonstrated that there are vast differences of
22 opinion within the force about the meaning of "relevant
23 information"?---I have read the material.

24 Some have said, for example, "If I come to the conclusion
25 the witness's account of something's unreliable, I
26 won't put it in"?---I have read that.

27 So, there's an issue there, isn't there, that needs to be
28 explored?---Yes, yes, without doubt.

29 MR RUSH: Mr Sheridan, there is evidence before the

1 Commission from one of the senior investigators tasked
2 with following up statements that it is normal
3 investigation practice, firstly, to check police
4 statements that come in and that's what he did in
5 Operation Lorimer, check the statements as they came in
6 to Operation Lorimer?---Right.

7 You accept that that's normal practice?---Checking of
8 statements, yes.

9 I think you agreed yesterday that, where there are
10 corrections to be made to statements or identified
11 deficiencies in statements, then they are
12 corrected?---Yes.

13 The evidence before IBAC is that this is a process that is
14 followed normally in all nature of police
15 investigations?---Yeah, I'd expect that's right, yes.

16 And so, here I think, as we've seen, a memo may be produced
17 as to the information in the statement that needs to be
18 corrected, suggestions as to what may be added or what
19 may be deleted?---Yes.

20 And that memo is sent back to the member with the
21 statement?---Yes, could be verbal, but yes.

22 And the new member makes the statement and sends that
23 statement, here, back to Operation Lorimer?---Sorry,
24 the new member?

25 Sorry, the member makes a new statement and sends that
26 statement back to Operation Lorimer?---Well, that's one
27 way it could be done, that's right, yes.

28 And the evidence, this is from Sergeant Buchhorn who
29 indicated he had primary responsibility around this

1 area, is that the original statement is not kept, and
2 was not kept, and the memo of correction was destroyed.
3 Were you aware of that practice?---No. I've read the
4 transcript, but no.

5 And it was the second statement that went onto the brief and
6 no other statement?---I've read that in the transcript,
7 yes.

8 And you're saying - I took you to what you said yesterday -
9 you read every brief and every statement for every
10 Homicide investigation and you did not make an
11 observation in relation to that?---That's right.

12 So, the evidence of Mr Buchhorn is that exactly that process
13 was adopted in the statements of those members who had
14 been witness to the dying declaration of Mr Miller;
15 that would be something that would be normal?---Yes, I
16 understand that's what Mr Buchhorn said, yes.

17 Do you disagree with it?---Yes, I do.

18 What do you disagree with?---I disagree with the destruction
19 of original statements.

20 Well, I know you disagree with it - - - ?---Well, you asked
21 me what I disagreed with, that was my answer.

22 Do you disagree that it happened?---Well, I have no
23 knowledge that occurred, so I - I can only say I have
24 no knowledge.

25 You don't doubt Mr Buchhorn's evidence, do you?---I don't
26 know what to say to that.

27 COMMISSIONER: Well, Mr Sheridan, Mr Buchhorn's evidence
28 that only the final statement was kept and that the
29 original was either destroyed, or returned I think he

1 suggested to the member, and that the memos or notes
2 that had been brought into existence requiring the
3 investigator to go back and get a further statement,
4 they were also destroyed; there's ample evidence when
5 one simply looks at the Lorimer file, what was produced
6 at the committal and what was produced at the trial, to
7 see that that explanation's likely to be true. So,
8 it's not a case of Mr Buchhorn coming here with an oral
9 account which doesn't seem to fit with any of the
10 facts; do you follow?---Yes.

11 So, if that process occurred, namely - and let's focus on
12 the first responders and dying declarations - if that
13 process was followed, that each of those persons made a
14 further statement which contained additional
15 information about what Senior Constable Miller said,
16 but only the final statement was kept, isn't that
17 something that you would have been aware of?---I would
18 have thought so.

19 M'mm?---But I stick with what I said, I have no recollection
20 that that ever occurred.

21 I understand that, but - - -?---And I would have thought I'd
22 have remembered it.

23 But that would have been plainly wrong, wouldn't it?---Yes.
24 Because it would have meant that the transparency of the
25 investigative process was never going to be revealed to
26 prosecution or defence?---Yes.

27 MR RUSH: I just want to take you to a couple of examples.
28 Can we bring up Exhibit 197. If that could go to the
29 left of the page and bring up Exhibit Roberts 2.

1 Perhaps I'll deal with another matter while that's
2 being attended to. If we could keep up Exhibit 197 and
3 go to p.2995. If we go just below halfway down the
4 page, you note there Mr Gerardi and Mr Pullin are
5 referred to?---Yes, I do.

6 With the action taken "attended to Miller." "501", as we
7 understand it, is reference to what?---Sorry, what was
8 the question?

9 The "501"?---I don't hear your question, I'm sorry?

10 Sorry?---I didn't hear your question.

11 What's the "501" relate to?---Oh, "501" back then, I think,
12 was code for a running sheet, which would be for a
13 vehicle.

14 And "statement" - we've been given evidence - "Statement
15 required", and under "Obtained", "Statement
16 obtained"?---Yes.

17 The evidence given before the Commission is that the
18 metadata date on this document, it was last modified on
19 9 October 1998. So, it was current at 9 October 1998
20 and kept by Detective Senior Constable Rosemary Eden.
21 If I could ask that Exhibit 267 be brought up. You see
22 there, a statement of Mr Gerardi which introduces
23 himself as a senior constable of police currently
24 attached at Malvern, then he goes into what he was
25 doing on 16 August, and the second paragraph indicates
26 what he did upon arrival. If we go to p.3317, at the
27 bottom of the page, you see there is an acknowledgment
28 of Mr Gerardi's signature taken on 25 October 1998 at
29 3.28 pm?---Yes.

1 So, on the basis that Ms Eden has got it right - I suggest
2 she has - Mr Gerardi made an earlier statement, that
3 is, a statement on 9 October 1998 - prior to 9 October
4 1998, in fact on 16 August, but here is an additional
5 statement taken on 25 August 1998?---Yes, I expect
6 that's right.

7 With no reference, as we've been to, to this being a
8 supplementary statement?---Did you show me the earlier
9 statement, because I don't recall? But, yes, I'm not
10 disputing what you're saying, but I think you've lost
11 me with the pages.

12 If we look at p.3316, there is no reference to this being a
13 supplementary statement?---No.

14 And the document that I took you to that's prepared by
15 Ms Eden indicated that there was a Gerardi statement,
16 and the Gerardi statement was in the files of Lorimer
17 as of 9 October?---I don't dispute it.

18 So, it's an example of what I've been asking about, a
19 further statement taken by a member, a dying
20 declaration witness, where the first statement in
21 possession of Operation Lorimer is not referred to and
22 this is the statement that ends up on the committal
23 brief?---I understand what you're saying.

24 How could that happen?

25 COMMISSIONER: Mr Rush, before you ask that question, can I
26 just put something else to you that Mr Collins said:
27 from his perspective he would not draw a distinction
28 between an unsigned statement and a signed statement if
29 weeks or months later the witness is asked to provide

1 some additional information so that a new statement
2 comes into existence which contains that additional
3 information, there needs to be a transparency, there
4 would have to be full disclosure of the initial
5 unsigned or signed statement?---I would certainly agree
6 with the signed statement. It depended - it wasn't
7 uncommon for members, particularly attending homicide
8 scenes, not necessarily in a case like this but just
9 routine stuff, for them to send in a draft unsigned
10 statement for matters such as to get times right and
11 all that sort of stuff, in terms of calls and D24 and
12 the like, and for that feedback to be given and then
13 for a signed statement to be provided, much the same as
14 if it was a conversation; you know, "Is this okay, do I
15 need to include more, should I put in something else,
16 is this relevant?", of that sort discussed. But in
17 relation to a signed statement, I would certainly agree
18 with what he's saying. If - - -

19 Sorry, do you take issue with Mr Collins that, if you had an
20 unsigned statement which did not contain some important
21 information, and then weeks or months or perhaps even
22 a year later it becomes apparent there needs to be some
23 further information added so that another statement is
24 prepared, that transparency would require the
25 disclosure of the initial unsigned statement?---No, I
26 don't take issue with it at all.

27 Because otherwise neither prosecution or defence will get an
28 appropriate appreciation of the sequence in which
29 information was forthcoming?---Yes, particularly in

1 relation to a witness where there's some relevancy
2 about, you know, the fact that something's done.
3 Something important?---Yes, in particular, yes.

4 Thank you.

5 MR RUSH: What we see, Mr Sheridan, in relation to the
6 Gerardi example is, if you like, in operation what
7 Mr Buchhorn described to the Commission yesterday: that
8 people are asked to make an additional statement, the
9 additional statement goes onto the brief and the memo
10 in relation to getting the initial statement and the
11 first statement disappear?---Yes, I understand what
12 you're saying.

13 COMMISSIONER: I think you need to add, Mr Rush: and no
14 indication in the second statement that any earlier
15 statement has been made?---Yes.

16 MR RUSH: I ask that you have a look at Exhibit 337, this is
17 a statement of Ms Poke. Firstly, I want you to go to
18 p.3561, the last paragraph on that page where it's
19 recorded: "I remember Miller saying they were on foot.
20 Two of them. One on foot. Check shirt. Dark Hyundai
21 ." At p.3562, at the bottom of the page what is typed
22 is that this is a statement, it's an acknowledgment
23 clause, "1500, 11 April 2000 at Frankston", but it's
24 unsigned and the signing or unsigned of it is not what
25 I want to take you to. Can I ask that we bring up
26 Exhibit 339. You see, this is a statement of Ms Poke.
27 I suggest to you it's in additional terms - sorry, it's
28 in exact terms to the one we've just looked at as far
29 as what is set out there and you can see, in the first

1 two paragraphs, there is no reference to this being a
2 supplementary statement?---Yes.

3 Then, if we go to p.3570, in the second paragraph: "I
4 remember Miller saying they were on foot. Two of them.
5 One on foot. Check shirt. 6 foot 1. Dark hair."
6 What's been inserted into the statement is "6 foot 1
7 and dark hair". That's the difference between this
8 statement and the previous statement; you recall
9 that?---No, I'm not trying to match it, I'm just
10 following your question, but I don't dispute it.

11 Over the page, you see that she has signed it and it's
12 acknowledged by Detective Sergeant Buchhorn with the
13 initial acknowledgment clause crossed out and the
14 acknowledgment on 9.20 am on 12 January 2001?---Yes.

15 So, here for the purposes of my question, you have your
16 sergeant primarily responsible for the following up of
17 dying declaration witnesses, (1) not including that
18 this is a supplementary statement?---Yes.

19 And inserting what could be described as very important
20 information into this statement without making it very
21 clear that there had been a previous statement?---No,
22 that's the way it appears, yes.

23 That, again, is descriptive, an example of the process that
24 I took you to that Mr Buchhorn described in his
25 evidence yesterday?---Yes.

26 Finally, if we can go back to Exhibit 197 - - -

27 COMMISSIONER: Are you proposing to ask Mr Sheridan
28 questions about his knowledge of the Poke issue?

29 MR RUSH: I will, Commissioner. I'll just finish 197. (To

1 witness) If we go to p.2998, at the top of the page,
2 this is the same document that we went to prepared by
3 Ms Eden, last modified on 9 October 1998. "Mr Morris,
4 Operation Hamada. Attended scene. Statement: Yes.
5 Obtained: Yes." So, as of 9 October 1998 it is
6 indicated there is a statement from Mr Morris in the
7 possession of Operation Hamada on the basis of this
8 document?---Yes.

9 Then if we go to Exhibit 321. I withdraw that, I'm going to
10 hand the hard copy of Mr Morris's statement which is
11 not on the screen, hand it to Mr Roberts.

12 COMMISSIONER: To Mr Sheridan. This was Exhibit Roberts 2;
13 is that so?

14 MR RUSH: This is Exhibit Roberts 2.

15 COMMISSIONER: Yes, thank you.

16 MR RUSH: If we could have at the same time Exhibit 80.

17 COMMISSIONER: How are you feeling Mr Sheridan? You let us
18 know if you want a break?---I will, thanks.

19 MR RUSH: There's only one matter I want to take you to
20 here. You see point (5) on the note concerning Senior
21 Detective Morris? It reads: "Delete field contact with
22 Beech. It's not relevant." Right?

23 COMMISSIONER: These are Mr Buchhorn's notes.

24 MR RUSH: And you recognise the handwriting of
25 Mr Buchhorn?---No.

26 He's agreed that that's his note. So, having regard to that
27 being his note, if I could ask you now to look at
28 Exhibit 321. If we go down the page in Exhibit 321 to
29 the second-last paragraph in his statement, it is: "I

1 then commenced a mobile and static patrol of Kingston
2 Road. While performing mobile patrols I had cause to
3 speak to Jonathan Beech, 17 ... [gives his address].
4 Beech did not appear to match the description of the
5 alleged suspect wanted in relation to the police
6 shootings." And, on the basis of the note, item (5),
7 what Mr Morris is being directed by Mr Buchhorn, is to
8 delete reference to that field contact?---Yes, that's
9 what it appears to say, yes.

10 If you have a look at the hard copy in front of you and go
11 to the second page, you see the paragraph at the top of
12 the page concludes with: "Southam from South Melbourne
13 CIB"?---Yes.

14 The next paragraph commences: "I then commenced a mobile and
15 static patrol of Kingston Road"?---Yes.

16 What is deleted from the statement is the reference to
17 Beech?---Yes.

18 And there is no reference, at the beginning of this
19 statement, to this being a supplementary statement of
20 Mr Morris?---No, there is not.

21 Thus, you'd agree that what has been deleted from the
22 statement is potentially important information as far
23 as the defence may be concerned?---Certainly relevant,
24 yes. I don't know about important, but relevant for
25 sure.

26 So again, the statement that you have in hard copy is the
27 statement that appeared on the committal brief with no
28 reference at all to the first statement?---Yes.

29 This process that I'm taking you through has the potential,

1 does it not, to pervert the course of justice?---Yes.

2 Again I have to ask you, Mr Sheridan, you say that you were
3 totally unaware of the sort of practice that we have
4 identified this morning?---Yes.

5 COMMISSIONER: On the point I raised with you earlier,
6 Mr Sheridan, about differing views amongst officers
7 about what the meaning of "relevance" is, this is an
8 example, that Mr Buchhorn has inserted "it's not
9 relevant", but it may not have been relevant in the
10 sense that it was necessary or would advance the
11 prosecution case, and whether or not he recognised that
12 it might have some significance to the defence case,
13 plainly that might make it relevant and had to be
14 included?---Yes, I agree.

15 MR RUSH: One of the key problems with the practice is that,
16 if you don't know about it, certainly the court and the
17 defence are not going to know about it?---Yes, I would
18 agree.

19 What should happen to, for example, the memo that may be
20 sent out to someone like Mr Morris? Should it be
21 kept?---I'd have to give that some thought, to be
22 frank; but, yeah, I guess in general terms it's
23 probably best to keep it. Although, if the practice of
24 declaring changes to statements and clearly
25 articulating additional statements, as in supplementary
26 statements, if that's done as it's supposed to be, in
27 theory I think whether the memo's kept or not is
28 probably less important because counsel, both
29 prosecutor and defence and indeed the courts, have

1 access to the respective statements and they can see
2 the change or the development, if you like, between the
3 witnesses' accounts, between say statement 1 and the
4 ultimate statement that they conclude with, so - but
5 yes, I can see the value, particularly in terms of
6 trying to work out how the statements change and why
7 they change, in keeping the memos. But in the course
8 of a substantial investigation there are a lot of
9 communications - as I said to you earlier, these things
10 aren't always done on memo; sometimes it might be a
11 phone call to say, "Listen, you've put 12.20 pm, it
12 should be 12.20 am" or "You've said it's Smith Street,
13 it's actually Brunswick Street, do you realise", you
14 know, those sort of corrections, um - - -

15 Are they all right?---Are what all right, sorry?

16 Just correcting "am" or "pm" or "Brunswick Street" as
17 opposed to "Smith Street", is it all right to do
18 that?---No, I'm talking about the communication. I
19 don't think I've shifted on my point about the
20 corrections or the amendment process.

21 The evidence of Mr Buchhorn is that most of the statements
22 ended up with these sort of notations going back to
23 police officers?---Yes, I understand that.

24 And you knew that there was a process in place designed to
25 enhance the statements of dying declaration witnesses
26 and other police witnesses?---Yes.

27 Then, wouldn't you want to ensure that this sort of
28 document, or the first statement, that they make it to
29 the brief?---Yes.

1 And, did you?---Well, I believed I did, yes. Clearly I
2 didn't succeed, but yes.

3 Because the evidence is that these notes were effectively
4 done away with, shredded?---I've read that.

5 COMMISSIONER: I think we should add: we've referred to
6 Mr Buchhorn's evidence about the procedure he followed
7 - get a new statement, then the old one is discarded,
8 the memos are not kept and only the second statement is
9 produced and disclosed on the brief. He was quite
10 emphatic that this wasn't some aberration, some
11 practice of his, he was quite emphatic that this was a
12 universal practice, Mr Sheridan?---I can't agree with
13 that.

14 And went further and said that, up to the time that he
15 retired as an officer in 2014, it was the practice?---I
16 can't agree with that.

17 MR RUSH: What don't you agree with?---The whole thing.
18 You've agreed that it was common practice to send out notes
19 for corrections or additions to statements?---No, I -
20 the note - I've agreed that was the practice obviously
21 and I'm aware of it, it was common to seek that; it was
22 more often verbal, in my view, than memos, so no, I
23 don't agree that it was common practice as such but.

24 COMMISSIONER: No, the common practice you're saying you
25 don't agree with is that you only keep the last
26 statement and you discard the earlier one?---Yes, I've
27 sought to make that clear throughout my entire
28 evidence, sir, that I do not agree with that process.

29 You have. Well, plainly enough, firstly, aspirationally

1 it's plainly not appropriate?---Yes.
2 And gives rise to real concern?---Yes.
3 You're saying it's not your experience that that's a
4 practice?---Yes, that's correct, sir.
5 MR RUSH: You, no doubt, in reading the transcripts,
6 Mr Sheridan, are aware of the controversy, for want of
7 a better word, around the statements of Ms Poke?---Yes.
8 And that, what ended up on the committal brief was an
9 unsigned statement of Ms Poke?---Yes.
10 You're aware of the discussion in this Commission hearing
11 around how that could have occurred, what happened to
12 the first statement?---Yes.
13 COMMISSIONER: But presumably, there was quite a lot of
14 cross-examination on this issue at the committal,
15 cross-examination of Ms Poke; presumably, that's
16 something you were aware of at the time?---Yeah, I
17 would expect so. I have no recollection now but
18 presumably, yeah, I would agree.
19 Because the question that then arises for you and Mr Collins
20 is, if that issue became plain at the committal -
21 namely, unsigned statement, originals seemed to have
22 disappeared, another one has to be produced - did you
23 think that was just an issue that related to Ms Poke or
24 was it necessary to look at the process that
25 Mr Buchhorn had generally followed in relation to
26 getting further statements from the first
27 responders?---More the former than the latter. But I
28 knew that there were significant issues with the
29 witness Poke in terms of the fact that she - obtaining

1 her statement, et cetera, you know, took some time, so
2 yeah, more the former than the latter.

3 Yes, but presumably you would have been aware that each of
4 the first responders made a further statement, but
5 Mr Buchhorn went back as a result of your and
6 Mr Collins' direction to return and get clarification
7 and detail about Senior Constable Miller's dying
8 declaration; presumably, you would have been aware that
9 Mr Buchhorn obtained a further statement from
10 them?---I'm aware that the direction was given that he
11 was to go back and do that.

12 Yes?---To be frank, I wasn't - I don't have a clear
13 recollection that we actually did obtain additional
14 statements.

15 Look, leave aside your recollection because I understand
16 very few people remember much detail of things 20 years
17 ago; this is really about looking at the record and
18 what you can plainly accept must have occurred from the
19 record?---Yes.

20 If you were looking at the final statements of the first
21 responders which contained their ultimate position in
22 relation to what Senior Constable Miller had said,
23 would you not have been aware that those statements
24 were different to their initial statements?---Not
25 necessarily, because the - within, say, day two or
26 three of the investigation I had a couple of
27 pages where I had a - I typed up myself essentially
28 summaries, if you like, for me as to what the
29 respective members around the Miller scene aspect, the

1 dying dec part, what they were sort of saying in
2 general terms, and they were short excerpts, if you
3 like, that someone said this about a Hyundai; they
4 weren't complete summaries, they were just enough to
5 give me a running view of how we were going in terms of
6 that aspect. Now, I had that, and in looking at the
7 statements, even the statements that appear to have
8 been updated but not declared as updated, there's
9 nothing that leaps out. Because, I have done this over
10 the last, you know, month or two, had a look at my
11 rough summary typed up on 17 or 18 August, to the
12 summary of the members, even on the non-declared
13 supplementary statements, and there's nothing that
14 leaps out that's glaringly different in the sense that,
15 yes, there's more detail in the non-declared
16 supplementary statements.

17 Does that mean, are you saying, you don't think you
18 appreciated - - -?---No.

19 - - - at the time that there was a second statement
20 produced?---Yeah, I think I missed that there was -
21 there was changes, yes, is what I'm - that's what I'm
22 saying. Because, in general terms, it's not that
23 dissimilar and I think in the process of checking and
24 reading and doing, I think I've missed; because it's
25 only through this Commission, to be frank, that it's
26 been apparent of some of those changes.

27 MR RUSH: You, in that answer to the Commissioner,
28 Mr Sheridan, used the word "updated a statement", what
29 do you mean by that?---You'd have to tell me exactly

1 what I said. I'm not quite sure which part, what do
2 you mean?

3 I think that, in relation to Ms Poke, that her statement was
4 updated?---It was in response to the Commissioner's
5 query in relation to the statement. If you can take me
6 to exactly what you mean, I'm happy to try and clarify
7 that.

8 I don't have a written note. Just dealing with a matter,
9 and you've probably read this, but Exhibit 68. If we
10 go down to the last six lines of that, and to explain,
11 this is a series of questions that was sent to police,
12 Operation Lorimer, by the OPP after the committal
13 hearing. You see that what is being asked for is an
14 explanation around the statement that's missing, the
15 missing statement of Ms Poke?---Sorry, can you just
16 take me to where you would like me to look, please?

17 Yes. Eight lines from the bottom, "In relation to the lost
18 first statement"?---Yes, thank you.

19 The first line: "In relation to the lost first statement
20 I believe that it was shredded by accident"?---Yes,
21 I've read that.

22 So, was that an explanation that was given to you at the
23 time?---I don't - I don't recall the shredding of the
24 statement.

25 You don't recall the shredding of, what, of this
26 statement?---Yes.

27 But do you recall shredding of other statements and other
28 materials taking place?---No.

29 Not at all?---No.

1 COMMISSIONER: You understand now that, the Commission
2 having examined the entirety of the Lorimer Task Force
3 material, that none of the initial statements taken
4 from first responders was kept?---I've read that, yes.
5 That the only material kept was the final
6 statements - - -?---I've read that in the transcripts.
7 - - - which did not reflect what additions have been
8 made?---I have read that in the transcripts, sir.

9 MR RUSH: And read the evidence yesterday from Mr Buchhorn
10 that almost all documents that should have been
11 disclosed were either shredded or returned to members;
12 did you read that evidence of Mr Buchhorn
13 yesterday?---No. No, I didn't, no.

14 Just forgetting about the shredding of Ms Poke's statement
15 at the moment, the evidence given by Mr Buchhorn in
16 relation to shredding, that almost all documents that
17 should have been disclosed were either returned to
18 members or shredded, that would - surely you'd be aware
19 of the magnitude of what was going on; the shredding of
20 documents that should have been disclosed?---Surely I'd
21 be aware I was not aware, if that's what your question
22 is?

23 Yeah?---I was not aware.

24 I don't think it was, but my question is - - -?---Well, I'm
25 not sure what your question was, I'm sorry.

26 - - - on the basis of what Mr Buchhorn has said in relation
27 to first statements and notes that should have been
28 disclosed in the trial process, he has informed the
29 Commission that almost all of them were shredded or

1 alternatively returned to members and only first
2 statements went on the brief?---Yes, as I said earlier,
3 I've read that in the transcripts.

4 And you're unaware of that shredding?---Yes.

5 And here, contemporary with Ms Poke's lost statement, is the
6 reason given that: "It was shredded by accident. Many
7 members sent statements with duplicates or typed
8 copies. Members did this in the belief Homicide Squad
9 would attach the copy to the brief not knowing they are
10 all retyped and reformatted." So, can you explain what
11 is being said there?---No, probably not. What is this
12 actual document, I'm sorry?

13 This is a document that's attempting to explain why
14 Ms Poke's original statement wasn't on the brief.

15 COMMISSIONER: Not surprisingly, the OPP asked for an
16 explanation for what had happened to the original
17 statements and so on and this is a detailed response
18 that was given to the Director?---Right.

19 MR RUSH: The next line, "To prevent unnecessary papers
20 being kept in the folders they were shredded"?---Yes,
21 I've read that, yes.

22 What do you think it represents, having read it?---Well,
23 it's clearly not a practice that I would condone, the
24 shredding of statements or copies of statements.

25 It's clearly, what?---It's not a practice I would condone.

26 So, you say it's a practice you didn't know about?---Yes.

27 And you wouldn't condone it, again, on the basis of ensuring
28 transparency and proper police procedures in relation
29 to full information being provided to the court and

1 defence?---Yes.

2 COMMISSIONER: But we explored a moment ago, given that the
3 Poke statements had become such an issue at the
4 committal, did you not get an explanation from Collins
5 and Buchhorn about what had happened to her original
6 statements?---Not that I recall, and I don't recall
7 that the Poke statement was such an issue at the
8 committal. I think there were - in terms of issues at
9 the committal, it was not one of the more prominent
10 ones.

11 MR RUSH: Did you attend the committal?---Yes.

12 Every day?---I think I was out of court until I gave
13 evidence, from memory.

14 So, you attended the committal but you weren't in
15 court?---That's what I just said, yes, I was out of - I
16 think I was ordered out until I gave evidence, and I
17 don't recall sitting in the committal hearing witnesses
18 give - I certainly didn't hear these witnesses give
19 evidence. I have a clear recollection that I was not
20 there for that; I think I was towards the end of the
21 witness list, from memory.

22 There is evidence, Mr Sheridan, before the Commission
23 indicating that the second Pullin statement was made
24 approximately ten months after 16 August 1998?---Yes,
25 I've read that.

26 And that the statement was retyped and backdated. You've
27 read that?---Yes.

28 The acknowledgment by way of signature of Mr Bezzina was put
29 on that document, that second statement, even though it

1 was backdated?---Yes, I have read that in the
2 transcript, yes.

3 Mr Bezzina, up until his retirement, had been in the
4 Homicide Squad for a very long time?---Yeah, I - well,
5 I don't know exactly how long, but I'm not disputing
6 that.

7 I mean, there was continuity in his police service in the
8 Homicide Squad for 15 or more years?---I wouldn't
9 dispute that.

10 So, when he comes to speak about a common practice in the
11 Homicide Squad, one might expect that he'd know what
12 he's talking about?---That, I would dispute.

13 Dispute because you know the question I'm going to ask
14 you - - - ?---No, just because I've read the
15 transcripts.

16 And that is, he has informed the Commission that it was
17 common practice in Homicide to sign backdated
18 statements?---Absolutely incorrect.

19 Well, let's just go through what you have said is absolutely
20 incorrect. You do not know that Homicide Squad members
21 were going to police and insisting they not put
22 descriptions of offenders in their statements; you
23 didn't know that?---My answer of "absolutely incorrect"
24 referred to the matter you put to me in terms of
25 Bezzina stating that it was common practice to
26 backdate - sign backdated statements.

27 COMMISSIONER: You've never been a party to that and you
28 know of no case where that's occurred; is that your
29 position?---Yes, sir, and further to that, I've had a

1 number of senior people come to me and refute what he
2 has said, senior experienced people in that field.

3 MR RUSH: So, it may be a common practice for
4 him?---Undoubtedly.

5 And, insofar as it existed in Homicide, a practice you were
6 unaware of?---If it existed, I was unaware of it, yes.

7 COMMISSIONER: But putting to one side his evidence that
8 backdating the date on which the statement is signed
9 and acknowledged, but looking rather at the process
10 that was followed with Mr Pullin, it's another
11 example - regardless of whether he's correct about a
12 practice - it's another example of a second statement
13 coming into existence which contains additional
14 information and which does not disclose that there was
15 a previous statement made?---Yes, sir, I agree with
16 that.

17 And, as Mr Buchhorn has said, it was his experience that was
18 a common - "universal", I think was his term -
19 practice?---Yes, I - I'm aware he said that. And in
20 relation to - particularly in relation to the Bezzina
21 signature aspect, if one does look at the transcript,
22 the reformatted statement, just to use that as an
23 example, there is no real logical reason to sign a
24 reformatted statement for the brief; it is just a typed
25 copy for neatness, for service, et cetera, there is no
26 need to sign it in the first place.

27 I think there's been ample evidence that reformatted
28 statements for the brief are not signed?---But for his
29 evidence to state that that is common practice shows a

1 lack of knowledge in relation to what reformatted
2 briefs are all about, and to sign a backdated
3 statement, as he did, or as it appears so in the
4 hearing matter here, there's a number of matters that
5 come off there. I would have thought, if that was
6 occurring, Bezzina would have raised that issue through
7 the chain of command, the same chain of command I
8 referred to earlier in my evidence, he would have
9 raised that, "We've got a problem here, we've got a
10 detective thinking you can backdate a statement"; that
11 should have been brought to at least Collins'
12 attention, if not my attention.

13 But we've had evidence to this effect: it makes little
14 difference. In terms of the potential effect on the
15 administration of justice, it makes little difference
16 whether or not a second statement comes into existence
17 which has additional information and is backdated to
18 appear as though it was the first, or a second
19 statement comes into existence with additional
20 information on the date that it comes into existence
21 and the first is discarded so it's never
22 disclosed - - - ?---Oh, yes, I agree .

23 - - - either way, same result?---Yes, I agree totally.

24 MR RUSH: Mr Sheridan, you knew, Mr Collins knew, and it's
25 in Bezzina's statement, that he took Pullin back to
26 Moorabbin and that Pullin made a statement on
27 16 August?---Yes.

28 And the second Pullin statement contains within it material
29 that could be said to enhance the theory in relation to

1 Debs and Miller - I'm sorry, Debs and Roberts?---Yes, I
2 guess that's - yes.

3 And so, for that statement to become part of the Operation
4 Lorimer brief, it was critical that it be dated at the
5 same date and the same time as the initial
6 statement?---Critical, if that's your intent, to
7 deceive, yes, but it was not our intent.

8 Not yours?---Not - yes.

9 COMMISSIONER: I don't follow, Mr Rush. Why was it critical
10 that it be backdated to the same date?

11 MR RUSH: Because Mr Sheridan, Mr Collins, Bezzina's
12 statement all indicated that Mr Pullin had made a
13 statement at Moorabbin on 16 August. And, if a
14 statement is made ten months later, that there'd been
15 already in existence a statement, that became important
16 for that statement.

17 COMMISSIONER: If they were going to produce the first
18 statement?

19 MR RUSH: Correct.

20 COMMISSIONER: So, Mr Sheridan, just to emphasise something
21 you're probably aware of: were it not for the fact that
22 a senior police officer who was on duty on the morning
23 following the murders at the St Kilda complex was
24 provided with copies of the statements made by the
25 first responders at Moorabbin, he was not part of the
26 Lorimer Task Force and he kept possession of those
27 statements, and long after the event Mr Pullin's first
28 statement thus came to light; had he been part of the
29 Lorimer Task Force and had the material gone into the

1 Lorimer books, we would be none the wiser and would
2 thus therefore be none the wiser about any of the
3 issues that have emerged through looking at Lorimer.
4 Did you appreciate that sequence, that that's how the
5 matter started?---I appreciate what you're saying.

6 MR RUSH: Finally, Mr Sheridan, where corrections are made
7 to a statement, they should be specifically referred to
8 and identified in any subsequent statement?---Yes.
9 They're the matters, Commissioner.

10 COMMISSIONER: Yes. Just pardon me a moment, Mr Matthews.
11 (To witness) Just to be clear, Mr Sheridan, you've got
12 no memory of discussing with Mr Collins that there was
13 any concern at any stage about only the second
14 statements of first responders being produced; you
15 don't think you appreciated that they made earlier
16 statements which were not being disclosed?---Yes, sir,
17 that's correct.
18 Are you confident about that?---Yes.
19 Yes, Mr Matthews?

20 MR MATTHEWS: Commissioner, I'm conscious that there is a
21 deal to get through. Can I have five or ten minutes
22 just to deal with the evidence this morning before I
23 make the application?

24 COMMISSIONER: Why do you need that time? We have
25 Mr Collins to come and then we have two very important
26 witnesses this afternoon. I'm sorry to press you,
27 Mr Matthews.

28 MR MATTHEWS: Okay, Commissioner.

29 COMMISSIONER: I will give you a couple of minutes

1 but - - -

2 MR MATTHEWS: Thank you.

3 COMMISSIONER: We'll adjourn for two minutes.

4 Hearing adjourns: [11.03 am]

5 Hearing resumes: [11.07 am]

6 COMMISSIONER: Yes, Mr Matthews.

7 MR MATTHEWS: I wonder if the witness might leave the room
8 while I make the application.

9 COMMISSIONER: Yes. Thank you, Mr Sheridan.

10 <(THE WITNESS WITHDREW)

11 COMMISSIONER: Yes, Mr Matthews.

12 MR MATTHEWS: Two brief matters, Commissioner. First of
13 all, the witness has been taken to Exhibit 11, his
14 diary with entries on 3/9, 7/9 and 30/9, "notes re
15 dying declaration" was what was said in each instance,
16 you will recall. I want to ask him if what he means by
17 that is, in fact, a prompt to himself to ask that notes
18 be secured from the members of dying declarations; in
19 other words, the note he's referring to is a note by a
20 member, and I don't think that's quite - that's just an
21 interpretation that occurred to me I don't think's been
22 explored. And it would be interesting to know, and
23 useful to know, Commissioner, in terms of the
24 subsequent efforts - perhaps I don't need to expand
25 upon that, you would appreciate in terms of the other
26 evidence.

27 COMMISSIONER: Yes.

28 MR MATTHEWS: That's point 1, and point 2 is a simple
29 question of, what he can say about why it took so long

1 for Poke to provide a statement given the evidence that
2 she was back at work through much of 1999. I'd like to
3 ask Collins that as well, I'd like to ask this witness
4 that.

5 COMMISSIONER: Yes.

6 MR MATTHEWS: One might anticipate his answer, but I'd like
7 that to be put directly.

8 COMMISSIONER: Very well.

9 MR MATTHEWS: Those are the only matters.

10 COMMISSIONER: Yes. And then, Mr Cash, will you at this
11 stage intend to examine him?

12 MR CASH: No, certainly not, sir.

13 COMMISSIONER: Very good, thank you. Yes, ask Mr Sheridan
14 to return.

15 <PAUL ANTHONY SHERIDAN, recalled:

16 COMMISSIONER: Almost done, Mr Sheridan. I just wanted to
17 ask you, earlier in your evidence you explained why you
18 may not have focused on the fact that the final
19 statements of the first responders which dealt with
20 Mr Miller's dying declarations may have contained
21 additional information, and you talked about some notes
22 you had which contained summaries of their
23 account?---Yes, sir.

24 Are they in your diary, or what notes are they that you were
25 referring to?---Just, it should be - it should be in
26 the material, I think, that - seized with all the other
27 stuff.

28 You think it was part of the Lorimer material, do

29 you?---Yes, it was just a two-page, and I think it

1 had - I think it was termed - it should stand out
2 because we actually called it "Operation Cochrane" at
3 that time. Lorimer was the name given after about
4 24-hours, they changed the name from Cochrane to
5 Lorimer for reasons which are probably best left
6 unsaid.

7 Yes?---But the document's actually titled, "Cochrane", so it
8 should stand out, I would have thought.

9 Very good, thank you?---I can certainly make that available
10 if it's not there, sir.

11 Do you have a copy of it, do you?---I would be able to
12 obtain a copy.

13 Yes.

14 <EXAMINED BY MR MATTHEWS:

15 If the witness could be taken to Exhibit 11, please.

16 COMMISSIONER: And Mr Matthews appears for Mr Roberts,
17 Mr Sheridan?---Yes. Thank you.

18 MR MATTHEWS: Just while that's coming up, Mr Sheridan,
19 these are - you were taken to the three entries, and
20 perhaps you will remember without needing to be taken
21 to them one-by-one, but there were entries on
22 3 September, 7 September and 30 September, each a
23 seeming prompt to yourself, "Notes re dying
24 declaration"?---Yes.

25 You recall those three entries?---Yes.

26 Is what those entries mean, that you were prompting yourself
27 to ask about notes taken by the members, the first
28 responders around Miller, as to dying
29 declarations?---No, not necessarily, they're just - all

1 I can say for sure, looking at it - and I think from
2 memory each one just had the word on the page as just
3 "dying dec", I think that was just something for me,
4 for reasons which it's difficult to say now so long
5 afterwards, it was something for me to follow up on.
6 It might have been to speak to Collins, it might have
7 been to do as you suggest, I don't know.

8 Can I just ask you to go to these entries, please. On 3/9
9 - I'm sorry, I don't have the page numbers. I'm sorry,
10 Commissioner, I don't have the page references to the
11 IBAC brief, but I do recall that each of the three
12 entries were at the very top of the page, I'm not
13 interested in any other part of that page being shown.
14 Perhaps if we might bring up the first entry on 3/9, at
15 the top of the page of 3/9 on Exhibit 11. You will see
16 there, Mr Sheridan, that the entry reads: "Notes -
17 dying declarations"?---Yes.

18 You can take it that that's the same entry on 7/9 and 30/9:
19 each refers, not just to dying declarations, but
20 "notes - dying declarations." I can take you to each
21 of them if that assists?---Yes, please.

22 If we could go to the same, to the top of the page of 7/9,
23 please, Commissioner. Page 222. Again, we see there,
24 do you see that there?---Yes, thank you.

25 "Notes re dying declarations"?---Yes.

26 And the third one is 30/9, p.241. You see that there,
27 Mr Sheridan?---Yes.

28 "Notes re dying declarations", perhaps. Given you've now
29 seen the three entries, isn't that what you're saying

1 by that note, by the entry each time, that you are
2 prompting yourself to ask about the members' notes
3 about dying declarations, that is, the members who
4 attended upon Mr Miller?---Well, as I said earlier,
5 that could well be the reason; I have no independent
6 recollection as to what that means. This is
7 essentially like a day book; whilst it is an actual,
8 you know, a business-type diary, I used it as a day
9 book at the time. Some of those are just things to
10 follow up on so I don't forget, but yes, it could be;
11 I'm not disputing that that's a possibility, I'm just
12 not saying that's the only reason.

13 Right, so you don't have any independent recollection of
14 what those entries mean now?---No.

15 Just one other thing, please, Mr Sheridan. You'd be aware
16 that there was a significant delay in Helen Poke making
17 a statement, even to at least April 2000 - - -?---Yes.

18 - - - when a statement was taken, possibly witnessed by
19 Sergeant Atkins at Frankston; are you aware of
20 that?---Yes.

21 Why did it take so long for Ms Poke to make a statement?---I
22 don't think I'm in a position to answer, I don't really
23 know. I suspect it's a combination of factors, but I -
24 I don't really know. I'd be speculating. I think that
25 she may have been missed at some point and then they've
26 picked it up that this statement has not been done. I
27 know that she was quite unwell, that could be also -
28 and I would think that that would be a significant
29 factor.

1 We've seen evidence that you were closely attending to the
2 statements of the members concerning dying
3 declarations; you've accepted that?---Yes.
4 So, you would have been attending to this issue of Ms Poke's
5 statement?---I'm not sure what you mean by that.
6 You would have been attending to the absence of a statement
7 by Ms Poke; that would have been a matter in your
8 thinking as head of this task force, given the
9 importance of dying declaration evidence in the
10 case?---Well, at times perhaps, but my recollection is
11 that I knew that - and in fact the Commission - the
12 material that's come out of the Commission has
13 enlightened me further - but at the time my view was
14 that Poke was unable to make a statement because she
15 was traumatised by having been around Miller at that
16 stage while he was wounded. I only learned through the
17 Commission that what added to the trauma was the
18 dispute in relation to herself and Detective Kelly I
19 think, at Moorabbin, I didn't learn that until the
20 Commission. So, my recollection clearly was, though,
21 that she was too upset to make a statement, which I
22 guess is true. I'm not sure I can take it any further.
23 So you were aware of the fact that she had said on the night
24 that she was too upset - well, she said in her - - -
25 COMMISSIONER: I think you're straying now, Mr Matthews.
26 MR MATTHEWS: Just on the topic I was asking you about,
27 though, are you aware that Ms Poke was - what did you
28 know about Ms Poke's situation about being back at work
29 through 1999?---I can't, I don't, I couldn't - I don't

1 know.
2 That would have been a matter you would have been asking
3 about, whether she was back at work?---No, not
4 directly. There was a lot - there was a lot going on
5 in that period, it would have been something, I guess,
6 that would have been followed up by personnel within
7 Lorimer, but no, not directly. I mean, if she was
8 unwell, she was unwell. As I said earlier in my
9 evidence, it's a warts-and-all approach in my view, you
10 get what you get and, if a person is unwell and can't
11 make a statement, they're unwell and they can't make a
12 statement.

13 Nothing further.

14 COMMISSIONER: Thank you, Mr Matthews. Mr Cash?

15 MR CASH: No questions.

16 COMMISSIONER: Any reason why Mr Sheridan should not be
17 finally discharged?

18 MR RUSH: No, Commissioner.

19 COMMISSIONER: Mr Sheridan, thank you for your attendance.
20 I will discharge you from the summons and the
21 confidentiality notice.

22 There is an order for witnesses out of court which
23 means, until these public hearings have concluded, you
24 should not discuss your evidence with any other witness
25 that has been called or is to be called; do you
26 follow?---I understand that, thank you.

27 We will make a copy of a video recording of your evidence
28 available and a transcript. Thank you for
29 your - - -?---Sir, may I just raise one matter in

1 relation to my - - -

2 Yes, you may?---I'm planning to be out of the country - I

3 will be coming back - but I'm planning to be out of the

4 country between March and April. Am I clear from the

5 Commission's point of view for that?

6 Yes, I don't see any reason why you should change your

7 arrangements, Mr Sheridan?---I assure you, I will

8 return to the jurisdiction, sir.

9 Thank you. Mr Cash?

10 MR CASH: May I be excused, sir?

11 COMMISSIONER: Yes, certainly. Yes, Mr Rush.

12 MR RUSH: I recall Mr Collins.

13 MS KAPITANIAK: Good morning, Commissioner.

14 <GRAEME COLLINS, recalled:

15 COMMISSIONER: Into the witness box, please, Mr Collins, and

16 I just remind you, you are still on oath?---Yes, sir.

17 MR RUSH: I think I may have indicated, I concluded my

18 examination of Mr Collins, but there are a couple of

19 matters.

20 COMMISSIONER: I hadn't appreciated that, Mr Rush.

21 MR RUSH: Nevertheless, Mr Collins, you've got me again for

22 a little while this morning. Have you read the

23 transcript of Mr Buchhorn's evidence?---Yes.

24 You then would be aware of his evidence concerning a process

25 with police witnesses, including dying declaration

26 witnesses, that those statements were examined for the

27 purposes of either corrections or needing more

28 detail?---Yes.

29 That he gave evidence that, from his perspective, this was a

1 standard practice in any police investigation?---The
2 review of those statements?

3 Yes?---Yes, I would agree with that, that statements were
4 always reviewed.

5 And, where necessary, corrected and are the subject of a
6 note, such as the ones we've seen, indicating what
7 should be added or what should be taken out?---Well,
8 I'm not aware of the note practice per se, but I
9 imagine where - and I'm going from memory here - where
10 there were requests for clarification in matters, then
11 that witness would be communicated with in relation to
12 that.

13 We've seen examples, I think I showed them to you on Friday,
14 of the notes that Mr Buchhorn made concerning some of
15 the statements?---Yes.

16 He indicated that those notes with original statements would
17 be sent back to members for the members to take up the
18 points that had been raised in the notes in their
19 statements?---Yes, he did.

20 COMMISSIONER: Are you familiar with that process that he
21 followed?---No, I don't recall; that process was
22 something that I certainly didn't employ, Commissioner.
23 I'm not aware of George Buchhorn actually doing that
24 particular process.

25 How did you think he was communicating with members the
26 additional matters that he wanted them to
27 address?---Oh, I assume - well, I'm only assuming here,
28 that he would have called them and indicated that there
29 was something that they needed to clarify, and I

1 imagine he would have returned - what he says - he
2 returned those statements to them.

3 Yes.

4 MR RUSH: And the clarification process is something that
5 you've identified as being part of normal common
6 investigative procedure?---Yes.

7 COMMISSIONER: I'm sorry, Mr Collins; when you say "he
8 returned their statements to them"?---Well, he said
9 that, I believe, that's what he said.

10 Is that what you understood he was doing?---No.

11 What did you think he was doing with the statements that
12 he'd received from them?---Well, I don't really know, I
13 don't have any, um, knowledge, I suppose, of what he
14 was doing with those witnesses in regards to the
15 additional information or what he was seeking to
16 clarify.

17 MR RUSH: Well, we do know what he was seeking to clarify
18 because we've been to a note of yours which is
19 asterisked after a meeting with senior Operation
20 Lorimer personnel, that Buchhorn was tasked with
21 clarification of the dying declaration
22 witnesses?---Yes, that was one of the things, yes.

23 That would involve the sort of process that we've just
24 discussed this morning?---I imagine, yes, they would
25 have gone back to them where deemed necessary to
26 clarify any issues that might have come up.

27 So, it was appreciated, I suggest from your note, that
28 statements needed clarification, they needed
29 corrections or they needed additions in a manner in

1 which I've just put to you?---Oh, I don't know about
2 whether they all needed additions or clarifications in
3 regard to particular issues. I think it was, the
4 discussion related to the dying declaration evidence
5 about the - ensuring that we had that evidence
6 completed or that aspect of the enquiry completed, and
7 that a review of those statements and the evidence that
8 was provided in support of those statements was
9 obtained and so that we had it then and there.

10 Perhaps we'd better have a look at Exhibit 480 again,
11 p.7236. On 20 October 1998, 9.05, you met with
12 Sheridan and sergeants identified there for the
13 purposes of going over matters concerning the
14 investigation of Operation Lorimer?---Yes.

15 Underneath that first paragraph is the asterisked paragraph:

16 "Chase up by (indistinct) re clarification of
17 statements by Miller at scene. Queries identified in
18 statements. Follow-up required re dying declarations."
19 Just to step back, you had statements from dying
20 declaration - statements that involved - statements
21 from police officers that involved statements of
22 Mr Miller?---Yes.

23 And there were queries that have been identified as a
24 consequence of a reading of those statements?---Yes.

25 And George Buchhorn was to follow up those queries for the
26 purposes of clarification?---Yes.

27 That process is a standard process, according to
28 Mr Buchhorn, in any type of major investigation?---Yes,
29 I would agree with that.

1 And so, what we've seen, and you've seen in the evidence,
2 and his evidence was, in a lot of statements, not only
3 dying declaration statements, it was the subject of
4 notes going back with the statements to members?---Yes.
5 You've spoken this morning that it may be the subject of a
6 telephone call to members?---Could well have been.
7 That they needed to look at this, that or the other for the
8 purposes of their statements?---Yeah, that might have
9 been the case, yes.

10 And it also from time to time involved a visit to members
11 for the purposes of going through their
12 statements?---Yes.

13 What you would anticipate as a consequence of that process,
14 where there is a correction, where there is further
15 detail or clarification, that the member will make a
16 further statement?---Yes.

17 What we went through on Friday is that, for the purposes,
18 that should include that it is a supplementary
19 statement?---Yes.

20 And what was happening time and again in Operation Lorimer,
21 that there was no reference at all to the initial
22 statement but it was being produced as if it were not a
23 supplementary statement at all?---According to
24 Buchhorn, yes.

25 You say "according to Buchhorn"?---Yes.

26 What do you mean by that?---Well, I think that's what he
27 said in his evidence, from memory.

28 We went through - - -

29 COMMISSIONER: What do you say about that evidence,

1 Mr Collins?---Well - well, the process in relation to
2 that, I totally disagree with. I don't - that wasn't a
3 practice that I practised as a Homicide investigator,
4 and I would expect that George Buchhorn wouldn't have
5 practised that practice either. That he should have -
6 that he'd have known that the supplement - anyone who
7 make subsequent changes to their statements in relation
8 to those matters should have made a supplementary
9 statement.

10 You can say now, with your knowledge of what's emerged in
11 these proceedings, that none of the initial statements
12 made by the first responders remained on the Lorimer
13 file?---I don't know about none of them, I'm not sure
14 about that but, I mean, obviously - - -

15 That's - sorry - any of those who had information to provide
16 about Mr Miller's dying declaration?---It would appear
17 that that's the case, yes.

18 I think you know that, the only reason that we know that
19 second statements, or how this process of discovering
20 second statements emerged, was that a senior officer
21 who was at the St Kilda complex on the morning
22 following the murders was given copies of the
23 statements made by the first responders at Moorabbin,
24 which included Mr Pullin's first statement and, because
25 he was not part of the Lorimer Task Force, those copy
26 documents didn't go into the Lorimer files, and years
27 later when looking through his records, he found that
28 copy of Mr Pullin's statement. Had it not been for
29 that, no one would have known that the original

1 statements were not kept and provided?---I've read that
2 in the transcripts, sir, yes.

3 So, how does that come about, Mr Collins? How does it come
4 about that none of the first responders who made
5 initial statements about what they did and their
6 dealings with Senior Constable Miller were retained on
7 the Lorimer files?---Well, I think that was explained
8 by Mr Buchhorn in relation to what process he undertook
9 to replace those initial statements with secondary
10 statements that were then deemed to be originals.

11 Are you suggesting you had no idea that he was following
12 that process?---No, I didn't.

13 And that, when it came to the disclosure of statements for
14 the purposes of the brief, you had no idea then that
15 there wasn't full disclosure being made?---I had -
16 well, my understanding was that the statements we had
17 on the brief were the originals, original statements.

18 MR RUSH: Just to go over that: you knew there were
19 corrections or additions being made to
20 statements?---That they were being followed up, yes.

21 You anticipated that there would be supplementary
22 statements?---Um, that's possible.

23 If there was a correction to be made or an addition to be
24 made to a member's statement - - -?---Yes.

25 - - - the only way that could be made, on the basis of your
26 evidence, is by supplementary statement?---That's the
27 appropriate process to follow.

28 COMMISSIONER: And there were no supplementary statements of
29 those officers?---Um, I'm not sure now, Commissioner;

1 I'm not sure whether there's two statements made by
2 some of those or not, I'm not sure now. I think there
3 may have been a couple that made two statements, but
4 most made - were only one, was my understanding.

5 MR RUSH: Your evidence on Friday is that you would have
6 read the initial statements that came to Operation
7 Lorimer?---I believe so, yes.

8 From the dying declaration witnesses?---Yes, at some stage.
9 So, where those statements were changed, or they became
10 statements with different dates or with further
11 information from the initial statements, wouldn't you
12 have picked that up?---Well, it depends on when I read
13 them and the circumstances in which I read them. I -
14 look, I've got no doubt that - and I don't dispute the
15 dates in relation to that task that was provided to
16 Sergeant Buchhorn, but when I actually read the
17 statements that - or any material that had been
18 obtained, I'm not sure when that occurred at all.

19 COMMISSIONER: Hopefully we won't have to go back to it, but
20 Mr Rush showed you Mr Pullin's statements, did he
21 not?---Yes.

22 The first one and the second one?---Yes.

23 And you will recall, I think you had them both up on the
24 screen, the huge amount of additional material and
25 changes made to Mr Pullin's statement in the second
26 document?---Yes.

27 Are you saying that you did not appreciate at the time that
28 this was a second statement?---No, I didn't. My
29 under - my memory of Pullin's statement was that we had

1 the information that we had, that it was not complete
2 but it was pretty well complete as far as what occurred
3 on the evening, so I - it didn't ring a bell with me at
4 all that there might have been any changes made to it.

5 Could I read something you said to us last week?---Sure.

6 I asked you whether, if Mr Buchhorn were to say that, when
7 he took a further statement or obtained additional
8 evidence, and you would have been aware therefore that
9 a new statement was being prepared but only one was
10 being disclosed on the prosecution brief, I asked you,
11 "What would you say to that?" Your Answer: "He's
12 quite - it's quite possible that I had those
13 discussions with Mr Buchhorn; I mean, as I said, I had
14 a lot of discussions with him about the brief
15 preparation issues and I could well have had those
16 discussions about individual statements, but I don't
17 recall them." Question: "But, if that's so, would you
18 accept now, looking back, that that would have been an
19 error; that is, if there were two statements and the
20 second one contained additional information, both of
21 them needed to be disclosed?" Answer: "Yes, it could
22 well have been an error, sir, and I'm quite confident
23 as to say that there were errors made during the
24 investigation, I've got no doubt about that ...", and
25 so on?---Yes.

26 So, you seem to be acknowledging there, although you later
27 qualified that answer, but you seem to be acknowledging
28 there that you may well have had discussions with
29 Mr Buchhorn about the fact that the second statement

1 was being prepared but only the second one was being
2 disclosed on the prosecution brief?---I - I - well, I'm
3 not - I really - my - my answer to that is that, I
4 could well have had discussions with him about the
5 statements that were taken, and I didn't want to
6 exclude the possibility that there may have been second
7 statements taken, but I don't recall now, to be honest
8 with you, whether that - I know I said that last week,
9 but I don't recall whether that was actually something
10 that I was cognisant of at the time to understand that
11 there was only - the second statement would have been
12 put on the brief and the first one not adhered to.

13 You went on at some point later in the evidence to say that
14 what you'd meant to say in relation to that was, you
15 were referring to unsigned statements?---Yes.

16 But, as you've acknowledged, and I think Mr Sheridan's
17 confirmed, whether it's a signed statement or an
18 unsigned statement, if there's a considerable lapse of
19 time between the original statement or the unsigned
20 statement, and later the witness provides additional
21 information, then that needs to be by way of a
22 supplementary statement, or the unsigned statement then
23 would need to be disclosed?---I agree with that, yes.

24 MR RUSH: What the note of yours that we looked at of
25 20 October 1998 indicates, that you have read the
26 statements of dying declaration witnesses and had
27 identified the need for clarification?---Yes.

28 What I suggest, Mr Collins, is that, with the statements
29 that came in re-clarifying or answering the queries

1 concerning what was important evidence, you would have
2 read also?---At some stage, yes.

3 As I understand what you say, is that you did not pick up
4 that there was no reference in those statements to a
5 previous statement having been made?---That's my
6 understanding, yes, and my belief.

7 Despite the fact that you initiated the process of
8 clarification?---I certainly initiated that, had those
9 discussions, but how long that process took and when
10 those enquiries were completed, I'm not sure, and I
11 don't know when I would have read the statements again
12 in regard to what was taken and those clarifications.
13 I may well have been verbally briefed that the task was
14 finished, but I certainly don't have any recollection
15 of actually re-reading them in that short term after
16 that task was set.

17 So, you don't dispute what Mr Buchhorn has said, that it's
18 only the second statement that ended up on the
19 brief?---Well, I - that's what he said, yes, and I
20 don't dispute that.

21 COMMISSIONER: In other words you accept, from the body of
22 evidence that's been now adduced, that there were
23 initial statements made that weren't disclosed but were
24 replaced by a second statement?---Yes.

25 Even though you say you didn't appreciate that at the
26 time?---No.

27 MR RUSH: Mr Buchhorn's evidence that you read was that this
28 was a practice well-known to those that were directing
29 him, you and Sheridan: this practice Mr Sheridan has

1 referred to as enhancing statements?---The swapping -
2 replacing the first statement with the second
3 statement, are you saying?

4 Well, it's well-known, a practice well-known, that
5 statements would be enhanced by way of correction,
6 taking out material or putting in
7 material?---Certainly, that was the process that was
8 undertaken, that we would review statements and if
9 there is a need for additional information, yeah, that
10 would be included in a second statement.

11 And, if you - - -

12 COMMISSIONER: But by way of a
13 supplementary - - -?---Supplementary, yes, sir.

14 MR RUSH: I asked you about Operation Hamada and Operation
15 Pigout?---Yes.

16 And detectives in your squad going back to witnesses to
17 obtain further descriptions of offenders, yes.

18 And again, Mr Sheridan referred to that as enhancing the
19 case against Debs and Roberts?---Well, it certainly was
20 making the case more complete and, if you want to call
21 it enhancing, that's one description. It was to elicit
22 the most information we could get from that witness to
23 ensure that we had the best available evidence.

24 What happened when your officers went back to see those
25 witnesses and they met a witness where the descriptions
26 did not enhance the case against Debs and Roberts, that
27 were inconsistent; were statements taken from
28 them?---Um, I don't know now, I'm not sure. I think,
29 from memory, all the witnesses had provided

1 descriptions of the offenders and that we had those
2 descriptions.

3 And that being the point, they weren't in their first
4 statements, but were second statements of descriptions
5 taken from those witnesses who had recollections of
6 descriptions that were inconsistent with Debs and
7 Roberts?---I'm not sure.

8 Well, they wouldn't be, would they?---Well, I don't see -
9 it's all the evidence; if the witness says - a witness
10 about a description, then that should go in the
11 statement. I don't think there's any discretion in
12 relation to that.

13 Well, there is a discretion about who you go back to for a
14 second statement, isn't there?---Well, there was
15 certainly in this case because of the process that the
16 armed robbery evidence had revealed.

17 On the basis that you have identified Debs and Roberts as
18 the potential - the theory is, they are the murderers,
19 you're not going to take a statement from someone who
20 gives a description that is inconsistent with any of
21 their features?---Well, I think the purpose of it was
22 to enquire about any further information that may have
23 been missed in the initial investigation process in
24 regards to the similar fact evidence that we were
25 looking at, and where descriptions weren't included in
26 statements it was the instruction that was provided
27 that those witnesses should have a second statement
28 taken where possible.

29 COMMISSIONER: Just before you move on, Mr Rush. (To

1 witness) You will remember, in your note at the time
2 you were directing Mr Buchhorn to go back to Hamada and
3 Pigout witnesses - - -?---Butterworth?

4 No - well, Mr Butterworth might have been present, but
5 there's a note; in that note you used the phrase "where
6 the armed robbery is provable"?---Yes, I remember you
7 asked me that question.

8 And you explained, you weren't there saying if it can be
9 shown the armed robbery occurred, but rather whether or
10 not the descriptions of the offenders made it relevant
11 to the murder investigation?---Certainly it was in
12 relation to whether we could prove the offence of armed
13 robbery against the two defendants.

14 Yes?---Yes.

15 MR RUSH: Mr Collins, were there any other officers in your
16 team tasked with clarifying inconsistencies in dying
17 declaration statements?---Well, I think that that was
18 all under the auspices of George Buchhorn's crew. Now,
19 whether those members of his crew actually then went
20 out and took additional statements or spoke to members
21 about that, I'm not sure.

22 The process that Mr Buchhorn identified in his evidence
23 ultimately led to police officers going to court having
24 made two statements?---Yes.

25 And only one of those statements being on the brief and
26 being brought to the attention of the court and the
27 defence?---Yes.

28 And, Mr Buchhorn said, well, it was just a police way of
29 thinking, that this was okay?---That's what he said,

1 yes.

2 On the basis that there were a number of police officers
3 attending the scene who had provided additional
4 statements but not referred to their first statements,
5 that must, would you agree, be a way of thinking that
6 at least existed in the police force at that
7 time?---Well, I can't answer that in relation to what
8 others were thinking; I certainly didn't follow that
9 practice.

10 But certainly, police officers called as witnesses in the
11 case for which you were an informant had adopted that
12 practice?---Well, certainly George Buchhorn did, yes.

13 And the police officers that were put in the position of
14 making additional statements not acknowledging an
15 initial statement?---Yes.

16 And they must have thought that was okay?---Well, they must
17 have, I suppose, but I don't know whether they were
18 asked about that or not, but they must have thought
19 that was the case.

20 Which would tend to suggest that that is a practice that at
21 least existed within some elements of the police force
22 at that time?---I can't disagree with that.

23 COMMISSIONER: When Ms Poke's issue at the committal
24 emerged - - -?---Yes.

25 - - - you had some familiarity with that issue at the
26 time?---Obviously I made notes of that, sir, yes, and
27 made follow-up enquiries as a result, yes.

28 Were you in court at the committal?---Yes.

29 So you would have seen the cross-examination of

1 Ms Poke?---Yes.

2 You were then also party to the need to provide the Director
3 of Public Prosecutions with information about the Poke
4 statements when the Office of the Director asked for
5 some explanation about it?---Yes, I believe I would
6 have been, yes.

7 And I think you were taken to the answer to Question 47 of
8 the questions which the OPP directed to you, or to your
9 office, and that concerned Poke and there was a very
10 long explanation about it?---Yes.

11 Which included how the original statement or statements had
12 been accidentally shredded?---Yes.

13 Do you recall that?---Yes, I do - well, I recall that now
14 having read the material, but I don't - - -

15 I think you've said in your evidence last week that you
16 would have discussed with Mr Buchhorn the content of
17 the response to be given to the Director?---Yes.

18 So, can we not safely assume at that time you would have
19 been aware of the fact that documents had been
20 shredded?---No, I don't know about the shredding; I
21 mean, that was - - -

22 Well, it was included in the answer to the - - - ?---Was it?
23 Sorry. Well, I would assume being aware at that stage
24 that that had been what - you know, what had occurred,
25 yes.

26 You've told us that it's not part of your practice to shred
27 documents and you know of no investigation where at
28 that would occur, so did you ask Mr Buchhorn, "What's
29 this shredding all about?"?---I assume I would have.

1 And what was the answer?---I don't know. Well, I assume
2 that the answer that he provided was what was provided
3 back to the OPP in that written response, but I don't -
4 as I said to you last week, I don't have any
5 recollection of that.

6 But the answer to the OPP was not that one document had been
7 shredded; the explanation was, in the process of
8 shredding all of the copy documents we mistakenly
9 included amongst the documents being shredded these
10 original statements?---Yes.

11 That's the thrust of it?---Yes.

12 Was that not something which concerned you at the time then
13 that Mr Buchhorn - - -?---I don't recall, sir. I mean,
14 it would have concerned me, obviously it's something
15 that would have highlighted to me that a second
16 statement was taken that was an updated statement but
17 not a secondary statement; I'm sure that would have
18 been something that would have raised its head and had
19 been discussed, but I'm not sure if - I don't have any
20 recollection of having spoken to him about that, and
21 um - yeah, that's all I can say.

22 As you say, not only would the shredding have then become
23 apparent to you, but the fact that Mr Buchhorn had
24 engaged in the process of taking a second statement
25 which was to replace the first one?---Yes.

26 MR RUSH: Do you know what happens now in investigations in
27 relation to the process that we've discussed, of
28 statements being enhanced, corrected, or members being
29 advised to put additional material in?---Well, in my

1 current role I would suggest that any additional
2 statements are done in - by way of supplementary
3 statements. I'm not aware of the practice continuing
4 in my current role, to be honest, and I'm not at that
5 level of detail, I suppose, in relation to the
6 investigation side of things; I read the briefs, I read
7 the reports that come in, but as to the practices that
8 are employed, I would say I'm not aware of them, but I
9 would be highly doubtful that anyone within PSC would
10 undertake those processes.

11 COMMISSIONER: Mr Collins, we're going to hear evidence this
12 afternoon about practices over a long period of time
13 which might fall under the heading, "Improving the
14 brief", where the local sergeant says to the constable,
15 "I've got your draft statement here, but really, it's
16 deficient in a number of respects, you need to go away
17 and do A, B, C, and D before it's in an appropriate
18 form." You presumably over your lifetime in the job,
19 you would know that that's a process that was
20 followed?---Oh, certainly.

21 What about if the junior officer had signed the
22 statement?---Well, I think probably what had happened
23 25, 30 years ago or 40 years ago would have been
24 another statement was made.

25 And the first one disappeared?---Yes.

26 Do you know whether that still might happen?---I'm not aware
27 of that now.

28 You don't know?---I don't know what the process is now and
29 whether - what's taught in relation to those matters.

1 MR RUSH: Just one more matter, Mr Collins. Can we have a
2 look at Exhibit 593 again, please. I think you saw
3 this on Friday, the comparison between the two
4 statements of Mr Pullin?---Yes.

5 In the second statement on the right-hand side of the
6 screen, if we go down to the third-last paragraph, what
7 is in purple is added in: "I said to him, 'Did you hit
8 him?' He replied, 'I don't think so.' I also asked,
9 'Were they in a car or on foot?' He replied, 'They
10 were on foot.' I asked him, 'How long ago did it
11 happen?' He replied, 'A couple of minutes'." If a
12 member has no contemporaneous notes and makes those
13 additions to a statement by putting in contemporaneous
14 discussion about the incident, if that statement is
15 made ten months later, the value of what is put in that
16 statement becomes almost negligible, doesn't
17 it?---Well, it'd certainly affect the credibility of
18 the witness and the credibility of the evidence,
19 absolutely.

20 If you go over the page, and to the second-last paragraph in
21 the first column, where there is reference there to the
22 ambulance, the baton, OC spray being removed. Without
23 going into the detail, I want to suggest to you that
24 that detail is what you were told Mr Pullin had said
25 when you went to Moorabbin at 6 o'clock in the morning
26 to get an update?---Yeah, that's - well, I agree with
27 that, that's certainly something I asked a question
28 about, yes.

29 But there was no detail given to you of the sort of

1 information - from Pullin on 16 August of the sort of
2 information that's in the second statement?---Ah, yes.
3 COMMISSIONER: I'm sorry, you agree, do you?---I agree that
4 that information - - -
5 Wasn't available when you went to Moorabbin?---I got that
6 information at Moorabbin.
7 MR RUSH: From the information that's in the first
8 statement, but I want to suggest - - - ?---No, sorry,
9 from Bezzina, was my understanding, from memory.
10 Yes, from Bezzina?---Yes.
11 You got that information from Bezzina. What I'm suggesting
12 to you is that, your notes don't record anything about
13 a conversation between Mr Pullin and Mr Miller at the
14 scene that is deposed to in that second
15 statement?---I'm sorry, I don't follow the question,
16 Mr Rush, I apologise, but I don't - - -
17 COMMISSIONER: I think what's being put is, on the morning
18 you went to Moorabbin you weren't told by Bezzina that
19 Pullin could say these things that appear in his second
20 statement?---No, that's - I agree with that,
21 Commissioner, yes.
22 MR RUSH: They are the matters, Commissioner.
23 COMMISSIONER: Yes. Mr Matthews?
24 MR MATTHEWS: I wonder if the witness might leave the room.
25 COMMISSIONER: Yes. Becoming a habit now, Mr Matthews.
26 MR MATTHEWS: Pardon me?
27 COMMISSIONER: We're falling into a pattern now,
28 Mr Matthews.
29 MR MATTHEWS: For, hopefully, efficiency.

1 COMMISSIONER: Won't be long, Mr Collins.
2 <(THE WITNESS WITHDREW)
3 COMMISSIONER: Yes, Mr Matthews.
4 MR MATTHEWS: Five matters, Commissioner. The Morris issue
5 that has emerged now with the version on the hand up
6 brief excluding that portion about, was looking for a
7 single suspect.
8 COMMISSIONER: Beech.
9 MR MATTHEWS: Yes, the Beech issue.
10 COMMISSIONER: What did you want to ask?
11 MR MATTHEWS: I wanted to ask him how the hand up brief
12 versions were prepared, who oversaw that, anticipating
13 the answer that that's probably going to be Buchhorn.
14 COMMISSIONER: Yes.
15 MR MATTHEWS: And what level of supervision this witness had
16 of that.
17 COMMISSIONER: Yes.
18 MR MATTHEWS: In relation to Mr Gerardi, the issue that's
19 now emerged and that counsel assisting has asked about
20 this morning, of the statement being taken on 25/10 and
21 yet a previous statement seemingly existing as at 9/10.
22 COMMISSIONER: What did you want to ask about it?
23 MR MATTHEWS: Again, to understand who was responsible for
24 that process of taking that statement from Gerardi, was
25 it Buchhorn, and what was the content of the first
26 statement. That's the second issue.
27 COMMISSIONER: Well, you're almost certainly going to get
28 the response that he doesn't remember; but anyway, yes.
29 MR MATTHEWS: On that issue, one might anticipate that, yes.

1 Thirdly, the fact that there was a second statement
2 taken from Gardiner considerably after the first
3 statement provided by Gardiner on the night, how that
4 came about, what this witness knows about that.

5 There's the two issues in that statement,
6 Commissioner; you will recall there's the issue of who
7 sent Gardiner away in the ambulance with Miller, and
8 then there's the issue of an issue with respect to
9 continuity of evidence, I think.

10 COMMISSIONER: I'm sorry, are you wanting to ask him - - -

11 MR MATTHEWS: I want to ask about what this witness knew
12 about how that second statement came about, and again,
13 whether Buchhorn was responsible for that.

14 COMMISSIONER: Yes.

15 MR MATTHEWS: Fourthly, Commissioner, the witness has been
16 taken a number of times to his note, Exhibit 480,
17 p.7236, of queries of dying declarations and he then
18 sent Buchhorn off to deal with those. But I would like
19 to ask him directly what he meant by the word
20 "queries". He hasn't been asked that thus far and I
21 think that's of some interest.

22 COMMISSIONER: Yes.

23 MR MATTHEWS: Tied to that, a second aspect of that note is,
24 were there discussions between him and Sheridan, that
25 is, Collins and Sheridan, about these queries at that
26 time, what the nature of those discussions were.

27 COMMISSIONER: Yes.

28 MR MATTHEWS: Finally, Commissioner, there was evidence
29 given by Mr Sheridan yesterday about discussion at the

1 scene on the night with Collins about statements of
2 dying declaration witnesses needing to be taken and
3 Bezzina being tasked with that. I would just simply
4 exceed to ask this witness, was there any discussion
5 that night as to tasking Mr Bezzina with that and what
6 was the content of those discussions, simply to
7 complete the picture of whether or not this witness
8 agrees with that or not. I propose to ask that in a
9 non-leading way.

10 COMMISSIONER: Yes. I thought the witness had given
11 evidence about that, Mr Matthews, but in any event you
12 can proceed and I'll just check that.

13 MR MATTHEWS: I don't know. Just to be clear, Commissioner,
14 I don't think on the previous occasion - I may have
15 overlooked it - but I've had a look and I don't think
16 it's there.

17 COMMISSIONER: Yes, all right.

18 MR MATTHEWS: Those are the matters.

19 COMMISSIONER: Anything, Mr Rush?

20 MR RUSH: We would say each of the matters, there's an
21 entitlement to clarification, Commissioner, so that any
22 examination should be kept to the confines of what IBAC
23 is looking for.

24 COMMISSIONER: Yes, thank you.

25 MS KAPITANIAK: Commissioner, may I just raise one question?

26 COMMISSIONER: Yes, certainly.

27 MS KAPITANIAK: Firstly, the indulgence that was provided to
28 me because of my unfortunate position, I'm very
29 grateful and apologise for the inconvenience and

1 whether that impacts on the timetable, again - - -
2 COMMISSIONER: No, not at all.
3 MS KAPITANIAK: Thank you. Commissioner, reviewing the
4 transcript, you may recall you asked my client on the
5 21st whether he could reflect on something overnight.
6 COMMISSIONER: Yes.
7 MS KAPITANIAK: And that's at p.1095 flowing onto p.1096 of
8 the transcript. In a sense, I am just reminding the
9 Commission that that was, in a sense, homework that had
10 been undertaken now and whether or not you wanted to
11 revisit that. In one sense it was answered by the
12 exchange between the two of you.
13 COMMISSIONER: I think it was, but if you want to lead any
14 further evidence from him on that, you may.
15 MS KAPITANIAK: I don't, and I don't intend to ask any
16 questions at this stage, Commissioner.
17 COMMISSIONER: Very good.
18 MS KAPITANIAK: I just wanted, in fairness given the delay,
19 that I remind the Commission of that enquiry.
20 COMMISSIONER: Thank you, that's very kind of you.
21 MS KAPITANIAK: Thank you.
22 COMMISSIONER: Yes, could Mr Collins come back in.
23 <GRAEME COLLINS, recalled:
24 HIS HONOUR: Yes, Mr Matthews. You appreciate, Mr Matthews
25 appears for Mr Roberts, Mr Collins?---Yes,
26 Commissioner.
27 <EXAMINED BY MR MATTHEWS:
28 Mr Collins, are you aware of a witness on the night, who was
29 one of those at the scene, first responders named

1 Morris?---I think I read that name in the
2 transcripts at some stage, yes.
3 That's the extent of your knowledge of that member?---Yes.
4 I wonder if the witness might be shown Exhibit 321, please.
5 This is a statement of Mr Morris. There's just one
6 aspect of this, perhaps if we scroll down to the end of
7 the document. It's a statement taken from Mr Morris on
8 1/9/98 at Frankston; do you see that there?---Yes.
9 If we go up to the first page, there's one aspect I want to
10 take you to which is, up from the bottom of the page,
11 second-last paragraph, do you see there commencing with
12 the words, "I then commenced a mobile static
13 patrol"?---Yes.
14 If we read through that paragraph, we see it continues:
15 "Whilst performing mobile patrols at Kingston Road I
16 had cause to speak to [and then that's Mr Beech and an
17 address] ... which runs off Kingston Road. Beech did
18 not appear to match the description of the alleged
19 suspect wanted in relation to the police shootings."
20 Do you see that there?---Yes.
21 It's the case, isn't it, that this particular statement was
22 not on the hand up brief prepared for the committal
23 proceedings, rather there was a typed reformatted
24 version that was put on the brief in accordance with
25 the practice at that time for the preparation of hand
26 up briefs?---I don't follow you, I'm sorry,
27 Mr Matthews. Are you saying this statement wasn't part
28 of the brief?
29 No. Just to be clear, this particular signed version of the

1 statement was not included in the hand up brief, rather
2 a reformatted unsigned version was included in
3 accordance with the practice of preparing hand up
4 briefs at that time?---Yes. Yes, I follow you now,
5 sorry.

6 Who was tasked with the preparation or the overseeing of the
7 preparation of those retyped versions of the
8 statements?---Um, I'm not sure now, I think all the
9 brief statements that were included on the brief were
10 retyped at various times by various people within the
11 office, administrative people, but as to who provided
12 that instruction, I'm not sure.

13 To be clear, Mr Collins, what I'm asking about is, which
14 of - because we understand that within your squad
15 Mr Buchhorn was responsible for the preparation of the
16 brief?---He was, yes.

17 Can we assume that he, Mr Buchhorn, would have overseen the
18 preparation of those retyped versions by the
19 administrative staff?---That's possible.

20 You're not able to say?---No, I'm not.

21 Can the witness be shown side-by-side with this document
22 Exhibit Roberts 2, please. Sorry, I realise there's
23 only a hard copy. If you have a look at this document,
24 please, Mr Collins?---Yes.

25 You'll see - Exhibit Roberts 2 to be clear for the
26 transcript, Commissioner. You see the page number 738
27 at the top?---Yes.

28 Just having a look at the format of that document, take your
29 time to satisfy yourself that that's the hand up brief

1 copy of the document?---That looks to be in the same
2 format that was used consistently throughout the brief,
3 yes.

4 If I could just take you to p.739 as you see it there, that
5 is, the second page of the statement. You see in the
6 second-last paragraph there the words, "I then
7 commenced a mobile and static patrol of Kingston Road
8 and Clarinda Road as per instructions from
9 intergraph"?---Yes.

10 If you then have a look back at the screen in front of you
11 and you see the equivalent sentence in the original
12 statement of Morris, you can see, can't you, that the
13 words "whilst performing mobile patrols" onwards were
14 excluded from the typed copy in the hand up
15 brief?---Yes.

16 Can you explain how that would have come about?---Well, I
17 assume it's one of these statements that was checked
18 and contact was made back with the member and there
19 were amendments made to the statement.

20 Do you recall there being a second statement taken from
21 Morris?---No, I don't, no.

22 But your assumption is that a second statement was taken and
23 it's that second statement that was then typed to
24 become this hand up brief version?---Well, I assume
25 something has happened there, obviously; whether it's a
26 second statement or an amendment and then this one
27 that's on the brief has replaced the first, yes, I
28 assume that that's what's occurred at some stage.

29 You'd agree, wouldn't you, that on one view the fact that

1 Morris whilst patrolling that night was looking for a
2 single suspect could have been of real significance to
3 the defence in this matter, given the issue about how
4 many offenders there were?--Well, I think that was
5 part of the - all the evidence that was produced at the
6 trial, is that, there were initially varying degree -
7 varying views about how many suspects there were at the
8 time of the murders.

9 But what I'm asking you, Mr Collins, is, do you agree that
10 the fact that Morris is talking about a single suspect
11 at the point, that he's looking for a single suspect as
12 he's patrolling on the night, could well have been a
13 matter of significance to the defence at the committal
14 proceeding?--Yeah, I agree, obviously, yes.

15 So the exclusion of that from the copy that's provided to
16 the defence is potentially a perversion - gives rise
17 potentially to a perversion of the - - -

18 COMMISSIONER: Let's not go there, Mr Matthews. I thought
19 your purpose was to establish what he knows about how
20 it came to be left out.

21 MR MATTHEWS: It's your evidence that you don't know how
22 this came to be left out?--No, not from personal
23 experience, no.

24 If it wasn't Buchhorn who was supervising the preparation of
25 these hand up brief statements, was there anybody else
26 in your crew who might have been?--I think there were
27 others involved in the gathering of statements as part
28 of Buchhorn's crew, um, but he certainly had that
29 coordinating role. There were others who were involved

1 in, at varying - I think I said this initially - at
2 varying aspects of the different evidence that was
3 obtained or - there was the armed robbery evidence,
4 there was the listening device evidence, Hyundai
5 evidence, those sort of things, there were other
6 members who were involved in those processes, so.

7 In terms of the preparation of the brief itself, the putting
8 together of the brief, was there anybody other than
9 Buchhorn who would have been tasked with that?---There
10 could have been others who were assisting him, that's
11 what I'm saying.

12 But he was overseeing it?---Um, well, I think it was -
13 everyone was involved in varying aspects of preparation
14 of the brief at some stage, I think that was sort of,
15 um - but he - I will agree with you that he was
16 overseeing it, yes, but as to who else might have been
17 involved, I really can't be certain now.

18 Just moving to another topic, Mr Collins. Witness Lou
19 Gerardi, does that name ring a bell to you?---Yes, I
20 know Lou.

21 More specifically, do you know that he was one of the first
22 responders that night as well - - -?---Yes, I'm aware
23 of that.

24 - - - around Senior Constable Miller?---Yes.

25 The Commission has evidence that you've been taken to, I
26 think, of a table prepared by Rosemary Eden of members
27 and whether or not statements had been taken.

28 COMMISSIONER: Mr Matthews, why don't you put the
29 propositions that you say have been established by the

1 evidence and then seek his comment.

2 MR MATTHEWS: Certainly.

3 COMMISSIONER: That would be a much quicker way of doing it,
4 if I may.

5 MR MATTHEWS: If I can take you to what is not
6 controversial, which is that, there's a table prepared
7 by Rosemary Eden that shows that, as at 9 October 1998,
8 witness Gerardi had - well, Mr Gerardi had made a
9 statement?---Yes.

10 The only statement of Mr Gerardi's that was on the brief,
11 and indeed the only statement that's ever been found,
12 is a statement dated 25 October 1998?---Yeah.

13 Understand?---Two months later or so, yeah.

14 No. Well, 9/10 was the date of the table?---Okay.

15 25/10 was the date of the statement?---Right.

16 So, a couple of weeks or so?---Okay.

17 Were you aware of Mr Gerardi having made a statement, a
18 previous statement, that there was in effect two
19 statements of Gerardi's that had been taken over
20 time?---I'm not aware of the two statements that were
21 taken, but I would have thought he would have made a
22 statement fairly well close to the night.

23 Was that your understanding?---Yeah, I think so.

24 When you say "close to the night", you mean on the night or
25 very soon after?---Possibly, yeah. I'm not sure
26 whether a statement was taken from him on the night or
27 sometime after that, I'm not certain.

28 But certainly, I think what you're saying is, certainly
29 before 25 October would be your understanding of what

1 would have occurred?---Well, if the table of Rosemary
2 Eden suggests that a statement had been taken up at the
3 time of 9 October, then I'd say, yes.

4 But you are not able to assist us as to the content of the
5 first statement?---No, not that I recall, no.

6 Or as to the reason why a second statement might have been
7 taken from Gerardi?---No.

8 Can I move to another witness, Gardiner. Again, you'd be
9 aware that he was one of the first responders that
10 night?---Yes.

11 And indeed, that there's a statement in existence bearing
12 the date of the night itself, 16 August?---Yes.

13 You're aware of that?---Yes.

14 Then there's a second statement from Gardiner dated in the
15 year 2000, so significantly after that. Just to be
16 clear, the second statement - I'm not taking any issue
17 with the first statement disappearing in this instance,
18 it's apparent that there were two statements of
19 Gardiner?---Yes.

20 The first one taken on the night and the second one taken in
21 the year 2000, specifically on 15 May 2000. Are you
22 aware of that fact, that there were two statements by
23 Gardiner?---No - well, look, I'm not - now I'm not at
24 the moment, but I'm not doubting the fact that there
25 were two statements made.

26 So you're not able to shed any light on why the second
27 statement was sought from Gardiner?---No, I don't
28 recall the content of that, no.

29 Perhaps I can assist. There are two issues of substance in

1 that second statement that are dealt with: the first is
2 that, and the one I want to particularly focus on, is
3 that in his first statement Gardiner said he'd gone in
4 the ambulance with Senior Constable Miller to the
5 hospital and he'd done that at the request of Senior
6 Constable Pullin?---Right.

7 Does that ring a bell with you?---Yes.

8 In his second statement he said that he was instructed by
9 Senior Constable Helen Poke to go in the ambulance with
10 Miller?---Right, okay.

11 So, he'd changed that aspect of his evidence from his first
12 to his second statement?---Yes, I'm not doubting that.

13 You can take that from me that that's what's
14 happened?---Yeah, I'm taking that.

15 Just focusing on that for the moment, were you aware of that
16 fact, that there'd been that change between his first
17 and second statements?---No, not that I remember, no.

18 Do you recall it being an issue on your mind at the time, as
19 to who it was who had directed Gardiner to go in the
20 ambulance?---No, I don't remember that.

21 COMMISSIONER: Queries.

22 MR MATTHEWS: Pardon me?

23 COMMISSIONER: The next item, queries.

24 MR MATTHEWS: Yes. (To witness) You've been taken a number
25 of times to Exhibit 480 which is a note of yours on
26 20 October 1998 where you mention, "Queries re dying
27 declarations". Do you recall that note?---Yes.

28 You've been asked a lot of questions about - - -?---Yes.

29 - - - tasking Buchhorn with dealing with those dying

1 declarations?---Yes.
2 What specifically did you mean by the word "queries"?---Um,
3 I think I said that earlier today, I think that
4 involved looking at the totality of the evidence in
5 relation to the dying declarations and making sure that
6 we had everything, all the evidence available, so that
7 it was locked down and that aspect of the investigation
8 was finished. Now, whether I had a list of queries
9 per se, I don't recall that at all, to be honest, and
10 I'm not - so, I'm not sure whether it was specifically
11 detailed as to what the specific queries were, I really
12 can't recall that.

13 You would have been discussing those queries at the time
14 with Sheridan, wouldn't you?---Um, I'm not sure - was
15 he present during the meeting? I'm not sure whether he
16 was or not.

17 I'm asking more generally though. At that time, in October
18 1998 when clearly these queries about the dying
19 declaration statements were important, as you've
20 acknowledged, you would have been talking about that
21 with Sheridan, would you not?---Oh, I would think that
22 we would have had discussions about the evidence that
23 we had at that stage, yes.

24 On that specific issue?---Certainly the dying declaration
25 evidence was - was one of the aspects that we wanted to
26 ensure we had covered, yes.

27 Because he himself had a close interest in that at that
28 time, as you recall?---Sheridan?

29 Yes?---Well, he would have had - he was leading the task

1 force and was directing enquiries and leading the
2 direction of our investigation, so he certainly had an
3 interest in all aspects of the evidence, I would have
4 thought.

5 But particularly in that one in particular?---In relation to
6 those queries?

7 Yes?---Oh, look, I can't recall if there - that was the case
8 or not; I don't know what he was - what his interests
9 were particularly.

10 But you certainly did?---Oh, that was part of the discussion
11 we had, certainly, I recognised that there was that
12 aspect of the evidence that needed to be completed as
13 best we could, and obviously there were some statements
14 that weren't - we couldn't complete because of the
15 unavailability of witnesses, but certainly that was
16 something we wanted to, as I said, to lockdown to
17 ensure we had all the evidence available.

18 Finally, Mr Collins, we've heard some evidence that on the
19 night, the first night, Mr Bezzina went back to
20 Moorabbin Police Station with Mr Sheridan and
21 Mr Pullin?---Yes.

22 What was he tasked to do and by whom in relation to those
23 members?---Well, I think he was - he was tasked with
24 coordinating the statement-taking from members at
25 Moorabbin, that was my understandings. As I think I
26 said in my evidence earlier, that I was tasked with the
27 scene management and to - at the scene and to review
28 the scene examination, et cetera, and I think Charlie's
29 role was to go back to Moorabbin and to coordinate the

1 taking of statements from all those people that were
2 back at Moorabbin.

3 So, all who went back to Moorabbin, he had the coordinating
4 supervising role?---Yeah, well, that would have been
5 his role as the detective senior sergeant from
6 Homicide, yes.

7 Who gave him that instruction?---Well, I - I think I would
8 have thought Paul Sheridan would have made that
9 decision and communicated that to him, but I'm not
10 sure.

11 Do you have a memory about how he came to be going
12 back?---No. I remember Paul asking me to stay there
13 and do the scene, that was clear. As to what
14 conversation he had with Charlie Bezzina, I can't be
15 certain. I think Charlie was at the scene well and
16 truly before me, so I don't know whether there were any
17 discussions about his role during the evening at all
18 with - that occurred within - without my presence or
19 without being in my presence.

20 Do you say you yourself didn't give him the instruction
21 about what he was to do?---Um, I don't recall that.
22 Look, I could have, I don't remember; I think that's
23 something that probably would have been done by Paul.

24 Are you able to say whether or not anything was said to
25 Bezzina about taking measures to avoid contamination of
26 witnesses, that is, witnesses being contaminated by
27 each other as to what they were to provide evidence
28 about?---Well, it's a fundamental principle of
29 investigation that you'd isolate/detain witnesses so

1 that they don't contaminate each other's evidence.

2 Do I understand you not to be able to say one way or the
3 other what instruction, if any, was given that night
4 about that matter to Bezzina?---Well, that may have
5 occurred out of my presence and hearing, but I would
6 have thought that that's - that's a basic understanding
7 from any Homicide investigator that every witness would
8 be isolated so that no contamination would occur.

9 Just finally by way of clarification, Commissioner. Are you
10 saying that, doing the best you can, it's more likely
11 that Sheridan gave an instruction directly to Bezzina
12 rather than you giving it at Sheridan's
13 request?---Well, I could have done that. I mean, my
14 recollection is that - of the discussion I had with
15 Paul Sheridan about my role on the night after finally
16 getting the opportunity to speak to him, it took some
17 time to actually do that, but what occurred prior to
18 that, I don't know; I really don't know whether he'd
19 spoken to Charlie directly about his expectations of
20 his role or not. I could have spoken to Charlie, I'm
21 sure I would have spoken to him at the scene that
22 night, but I think I only had a very small window of
23 opportunity, is my understanding.

24 What do you mean by that?---Timing-wise, by the time I got
25 there and sorted out what was happening, I think
26 Charlie had then left and went to Moorabbin, so I'm not
27 sure - I assume I would have said something to him,
28 about the job and what it entailed and everything else,
29 so we would have had a conversation. If I'd seen him

1 there, I'm sure I would have spoken to him.
2 Just from what you're just saying, it seems your focus was
3 the scene itself, the crime scene itself and the
4 preservation of that?---Yes.
5 When you arrived, that was your focus?---Well, not - well,
6 initially I was - I tried to get - elicit as much
7 information that I understood to have occurred and
8 then, as I said, I think I was asked - I was asked to
9 remain at the scene and then make sure that the scene
10 was examined appropriately and, yeah, that was my role.

11 COMMISSIONER: Thank you, Mr Matthews. Ms Kapitaniak, no
12 examination?

13 MS KAPITANIAK: No examination.

14 COMMISSIONER: No reason why Mr Collins should not be
15 excused. Mr Collins, thank you for your attendance, I
16 release you from your summons and from the
17 confidentiality notice?---Thank you.

18 There is an order for witnesses out of court, so you're not
19 to speak to any witnesses that have been or will be
20 called about the evidence that you have given?---Yes,
21 thank you.

22 We will make a video recording of your evidence available to
23 you and a transcript. I thank you for your
24 cooperation?---Thank you, Commissioner.

25 <(THE WITNESS WITHDREW)

26 HIS HONOUR: Mr Rush?

27 MR RUSH: If we could have a five minute break?

28 COMMISSIONER: Yes, certainly. Adjourn the hearing for
29 five minutes, please.

1 Hearing adjourns: [12.23 pm]

2 Hearing resumes: [12.32 pm]

3 COMMISSIONER: Yes, Ms Boston.

4 MS BOSTON: Commissioner, I call Ian Dunn, who's in the
5 witness box.

6 <IAN MICHAEL DUNN, sworn and examined:

7 COMMISSIONER: Mr Dunn, the summons that was served on you
8 on 19 February of this year required your attendance
9 tomorrow, 27 February, however I understand you're here
10 voluntarily to participate in the examination
11 today?---That's correct, sir, yes.

12 You understand that you have certain rights and obligations
13 in relation to the examination?---Yes.

14 And a document that was served on you set out those rights
15 and obligations when you were served with a
16 summons?---Yes, sir.

17 Have you looked at the document?---I have, I've looked at
18 it.

19 I'm required to inform you of the rights and obligations
20 applicable to you as specified in the Act, particularly
21 as you're not represented, notwithstanding your
22 considerable legal experience, Mr Dunn.

23 You are, firstly, entitled to seek legal advice in
24 relation to the summons and the examination. I take it
25 at present you don't require that?---That's correct.

26 You may claim a privilege but you are not excused from
27 answering a question or giving information or from
28 producing a document or other thing on the ground that
29 the answer, information or document or other thing may

1 tend to incriminate you or make you liable to a
2 penalty. You may claim a privilege for police
3 personnel but the Crown is not entitled to assert any
4 privilege. You may claim a privilege but, if you give
5 any answer, information, document or other thing that
6 may tend to incriminate you, an immunity as to the use
7 of that evidence may apply. Finally, you have a right
8 to complain to the Victorian Inspectorate about any
9 aspect of the proceeding and there are representatives
10 of the Inspectorate present.

11 So, in summary, Mr Dunn, you must answer the
12 questions truthfully, and you obviously must answer the
13 questions unless you have a reasonable excuse not to do
14 so. You have to answer questions even if they might
15 incriminate you or make you liable to a penalty.

16 Importantly, if your answers are truthful, then
17 those answers are not admissible in a court of law
18 against you. Do you follow all that?---I do.

19 Thank you. In the summons, the matters that it was said you
20 would be questioned about are as follows: (1) witness
21 statement-taking practices by Victoria Police; (2)
22 note-making practices by Victoria Police; (3) instances
23 of Victoria Police members giving false evidence in
24 court proceedings; (4) compliance with the obligation
25 to disclose evidence by Victoria Police.

26 Yes, Ms Boston.

27 MS BOSTON: Mr Dunn, could you state your full name,
28 please?---Ian Michael Dunn.

29 Could you look at this bundle of documents, please. The

1 summons before you numbered SE2927, is that the summons
2 that was served upon you on 19 February of
3 this year?---Yes, it is.

4 You also received a document entitled, "Statement of rights
5 and obligations", do you see that document in the
6 bundle?---Yes, I do.

7 As well as a covering letter dated 19 February 2019?---Yes.
8 Are those copies of the documents you received in
9 full?---Yes.

10 Do you understand the nature of those documents?---I do.
11 I tender those documents, Commissioner.

12 #EXHIBIT EE - Documents received on summons by Mr Dunn.
13 Mr Dunn, you were previously employed by Victoria
14 Police?---That's correct, yes.

15 Over what period of time?---In all, I think it's 50 years
16 and five months.

17 When did you join Victoria Police?---I think it was
18 6 February 1962.

19 Was there an Academy at that stage?---No. There was the
20 Police Depot and I was a cadet at the Police Depot for
21 the first two years.

22 Could you please outline briefly your career in terms of
23 stations and ranks?---Graduated from the Depot in May
24 of 64, went to Russell Street for about 18 months,
25 Carlton for about 18 months, West Heidelberg, again
26 about the same period, in uniform, general duties.
27 Then went for three years into the army, then came
28 back, went not to West Heidelberg but to Heidelberg, a
29 couple of years there in uniform. Then Crime Cars at

1 Heidelberg, CIB at Heidelberg, back to the Crime Cars
2 on promotion to sergeant. Then to Prosecutions in 84.
3 So, I did the course and went to Prosecutions in 1984;
4 I spent the rest of the time in Prosecutions.
5 Which station were you at when you took the rank of senior
6 constable?---I was actually in the army. I was
7 promoted to first constable in my absence whilst in the
8 army, but I - so I was, I guess, in between.
9 You mentioned you spent time at the CIB; were you a
10 detective or were you working there as a uniform
11 officer?---As a detective senior constable.
12 So, when did you take that rank?---In terms of rank, first
13 constable became senior constable, I would think,
14 probably in about 72-73; the term, the expression was
15 used. It was changed.
16 Were you also a detective senior constable?---Yes.
17 I take it, there was no Detective Training School at that
18 stage either?---No, there was. I did detective
19 training in 73.
20 I might just ask you to move a little closer to the
21 microphone, please?---Sure.
22 I just missed that answer, I'm sorry; Detective Training
23 School?---I did detective training in 73.
24 You said you went to Prosecutions in 1984, was that as a
25 police prosecutor?---Yes.
26 Did you remain there until your retirement - - -?---I did,
27 yes.
28 - - - in 2012?---Yes.
29 So, a period of some 28 years as a prosecutor?---I think

1 that's right, yes.

2 Could you please just explain what that entails, being a
3 police prosecutor?---We - police prosecutors handle
4 nearly all the summary Prosecutions, the prosecutions
5 conducted in Magistrates' Courts, for - on behalf of
6 Victoria Police. We don't do prosecutions involving
7 other police members, prosecutions of other police
8 members, but basically the rest we do. We used to do
9 committals but that was taken away from Prosecutions
10 quite a few years ago.

11 Which courts were you yourself working in as a
12 prosecutor?---Initially Preston, then I think I had a
13 spell at Research and Training, which is the area where
14 the prosecutors course is conducted. Then, from there,
15 I think I went back to Heidelberg, back to Research and
16 Training. In amongst that, I did a month upgraded in
17 charge at Melbourne Prosecutors. So, basically I then
18 went from Research and Training to Melbourne.
19 Somewhere in amongst that I had a month at Prahran
20 Prosecutors, but basically Research and Training,
21 alternating going out to the offices. My last
22 operational office, if you can call it that, was at
23 Heidelberg Prosecutors for the last three years or so
24 of my service.

25 Research and Training, you mentioned you had two periods
26 there. Firstly, what years was that
27 approximately?---That's pretty hard for me to remember,
28 actually. I think probably about 87 was my first stint
29 at Research and Training. And, actually I have got

1 some notes; may I refer to my notes?

2 COMMISSIONER: Yes.

3 WITNESS: I'm not sure whether I've covered this in the
4 notes, but I may have. No. No, unfortunately, I
5 haven't got that. But, yeah, I think my first spell at
6 Research and Training was probably about 87 for a
7 couple of years. Then - oh no, two or three more
8 spells, the last one being by far the longest.

9 MS BOSTON: And when was that?---I guess it was from about,
10 I don't know, probably late 90s until I left in 2009, I
11 guess it was.

12 So, when you were in the Research and Training - - -

13 COMMISSIONER: I'm sorry, is that when you retired, was it,
14 2009?---No, 2012 I retired, sir. I went back to
15 Heidelberg, I think, 2009.

16 MS BOSTON: When you were in Research and Training, are you
17 also at the same time operational in the sense of
18 carrying out work in the court, so is it purely more of
19 a research task?---Occasionally, when they're short in
20 the prosecutor's offices, you go back out and you
21 prosecute for a short period. Or if, for instance,
22 there's a big gap between courses and there's not the
23 need for as many people as you've got on staff to be
24 there manning the section, the office, you could go out
25 and just help out in the offices at that stage.

26 Just looking at that large period of time from the late 90s
27 until 2009 when you are at Research and Training, what
28 did your role at that time entail day-to-day?---I
29 suppose it was pretty much always the same right from

1 my first stint at Research and Training. The main role
2 was to assist in the conduct of the prosecutor's
3 course, and involved in that there was always a good
4 deal of preparation, a good deal of revision of the
5 written material for the students. And as well as
6 training our own students on the prosecutor's course,
7 we were involved in the training of other people in the
8 force too as - on a needs basis really. So, you might
9 get called to the Academy to help with the crime
10 courses - not so much DTS, I don't think I was involved
11 in that, but there was a field investigator's course
12 that we used to go and lecture to.

13 Were you also involved in teaching a part of the constable
14 development course at the Academy?---On some occasions
15 I was; I didn't do it very much, but I was involved in
16 that sometimes.

17 What period of time was that?---It's hard to remember; I
18 would think probably in the period 2001-2004.

19 Was the constable development course a course which
20 constables who were 12 months into the job, they would
21 go to the Academy and undertake further
22 training?---That's pretty much it. It used to be
23 called the retention course when I went through, but it
24 became the constable development school.

25 And the course that you sometimes taught there, was that
26 about going to court? What was it about?---It was
27 pretty much that, it was what we wanted of the
28 constables when they were appearing in court as
29 witnesses, so it was our chance to tell them what we

1 expected of them.

2 The questions I'm going to ask you about today, I'll ask you
3 to draw on your experiences as yourself, an operational
4 member; secondly, your experience as a prosecutor in
5 court; and thirdly, your experiences at research and
6 training including teaching those courses to the new
7 constables. You understand that?---Yes.

8 Throughout your career, were you aware of systematic
9 problems of police not taking contemporaneous notes but
10 making them days, weeks, months or even years
11 later?---Yes.

12 And also, about junior members improving their notes and
13 statements at the direction of their superiors?---Yes.
14 As to that, I don't think I was aware of that in my
15 earliest years, but it's become more a problem in the
16 later years.

17 Thirdly, were you also aware of systematic problems of
18 police members lying on oath about the dates on which
19 notes and statements had been made?---Yes.

20 I might just take those matters through one-by-one. I might
21 perhaps show you, please, Exhibit 649. It will come up
22 on the screen, Mr Dunn. This is a copy of a letter
23 which you wrote to the Director of Police Integrity on
24 8 February 2009, is it not?---Yes.

25 In this letter you raised a number of issues relating to -
26 well, firstly, what you describe as poor note-taking
27 practice and related issues of systematic perjury and
28 subordination of perjury?---Yes, that's true.

29 If we go down, please, to the fourth paragraph, "When I

1 joined the force". You've said there: "When I joined
2 the force everyone closely involved with us would smile
3 when we spoke about notes taken at the time. They knew
4 that the notes were often made weeks, months or
5 even years after the event but rarely at the time. We
6 still make notes much later than they should be made,
7 sometimes weeks or months later. We then lie about
8 when the notes were made and about their accuracy."

9 Could you just explain, firstly, is that an accurate
10 summation of your position in 2009?---Yes, it is.

11 What was that position based upon?---Based upon my own
12 observations and experience, both as an operational
13 member, but also as a prosecutor. The problems we had
14 on a very regular basis in court with police willing to
15 assert that their notes were made at the time, but as
16 soon as you started to examine them as to when they
17 were made, it became apparent that they'd forgotten
18 when they were made or perhaps they didn't want to say
19 when they were made because they were made much more
20 recently than at the time.

21 Was it also your experience, when you were operational, that
22 that was the way that things were done, so-called
23 contemporaneous notes were made subsequently?---Look,
24 not in all cases, not in all cases by any means, and I
25 think some members were more diligent in doing it
26 properly than others, but it was still quite common
27 practice for members to not make notes when they should
28 have made those notes.

29 When would members make notes, if they didn't make them at

1 the time?---Well, it could even be as late as the
2 morning of the hearing, the court hearing. So, you
3 could have the rush to get everything ready for court
4 in the morning and occasionally you'd see members
5 writing out their notes taken at the time immediately
6 before court.

7 COMMISSIONER: This problem you've summarised there in that
8 paragraph, did that remain a problem up to the point of
9 time when you retired?---Yes, I think there was no sign
10 that I could see of any change. It may have got worse
11 actually.

12 Why do you say that?---I think, the pressure that people are
13 working under now is probably greater - I shouldn't say
14 now, but in 2012 when I retired, I think the pressure
15 they were working under was greater than when I was an
16 operational policeman. I think in many instances it's
17 brought about by the pressure of work, the pressure to
18 get onto the next job, and it becomes more difficult
19 for them to do the right thing.

20 MS BOSTON: You go on in this letter to say: "Members of my
21 unit, Prosecutions Research and Training, have
22 for years pushed hard for reform in this area", and you
23 go on to say that this has been since 1994. I'll go
24 into that in a bit more detail into due course and see
25 if we can elicit some further detail about that. But
26 over the page you said: "Closely related to our poor
27 note-taking practice is the problem of junior members
28 being required by their supervisors to improve their
29 statements and notes. The nexus between the problems

1 is the assumption that notes are not something fixed to
2 the truth, they can be made and moulded to fit the
3 needs of the day. These demands seem to be more
4 frequent than in the past and there seems to be a
5 growing carelessness in the way members are now
6 required to improve their notes. The root cause seems
7 to be ignorance on the part of the sergeants making the
8 demands. They don't understand that they are suborning
9 perjury and in many cases they don't understand that
10 the improvements are unnecessary and
11 counterproductive." How is it that you are aware of
12 this practice of sergeants requiring junior members to
13 improve their statements and notes?---Talking to the
14 junior members, not only at the CDCs, the constable's
15 development course at the Academy, but talking to the
16 young students coming through our prosecutors courses.
17 We had them there for nine weeks, we got to know them
18 well, they were quite open with us, and we with them;
19 they would tell us the same thing.

20 And what would they tell you?---That quite often they would
21 put a brief in for approval, it would bounce back and
22 there'd be a request, either verbal or a little note
23 attached, change such and such.

24 What kind of changes were they being requested to
25 make?---Oh, it's hard for me to say. Certainly, one of
26 the ones you would hear of fairly frequently was the
27 change by inserting a caution or correcting a caution.
28 Even, you would hear of people being told by their
29 sergeants that the sergeant didn't like the way they

1 were phrasing their questions, perhaps, and they wanted
2 them re-worded.

3 So, the sergeant would require the junior member to change
4 the wording which was said to have - - -?---I've heard
5 of that, yes.

6 - - - been said. So, effectively, alter a statement to
7 include untrue information?---Yes, or it could be in a
8 situation with a drink-drive, the way the events are
9 described in the statement in terms of who requested
10 the person to undergo the preliminary breath test, who
11 got the device out of the car, who assembled the
12 device, things like this might, in the sergeant's view,
13 have thought needed to be changed and he would so ask
14 that they be changed.

15 Did you have concerns about being told this by junior
16 constables you were dealing with?---Of course, I mean,
17 it's - it's - in many instances it was completely
18 unnecessary, but in every instance it was just wrong.

19 Firstly, were cases being lost by the police prosecutors due
20 to lies being exposed in court and the credibility of
21 those members being damaged?---Yes, they were.

22 Were you concerned that this may affect the credibility of
23 the police force as a whole?---Yes.

24 Were you also concerned that junior members were being
25 exposed, potentially, to charges of perjury?---Yes.

26 Did you have a further concern that amendments to statements
27 could not be seen by the parties?---Yes.

28 And that this had implications for the ability of an accused
29 to have a fair trial?---Yes.

1 Just on the point of the risk that junior members faced, if
2 you could turn to this exhibit again, Exhibit - - -
3 COMMISSIONER: 649.

4 MS BOSTON: Thank you, Commissioner. About halfway down the
5 second page, the paragraph commencing, "Members of my
6 unit are frequently reminded of the extent of this
7 problem when they speak to probationary constables at
8 the Victoria Police Academy. We tell them what we
9 expect of them as witnesses. When we mention the
10 absolute importance of telling the truth, some always
11 ask what they should do when they're required to
12 improve their statements. These junior constables are
13 caught in a very difficult situation. If they disobey
14 their supervisors their careers will be at risk. If
15 they obey them they will be making false statements and
16 will probably be committed to giving false evidence.
17 This requirement that junior constables choose between
18 their job and their integrity ..."

19 COMMISSIONER: "Should choose".

20 MS BOSTON: "... should choose between their job and their
21 integrity is very hard to reconcile with the claims
22 that are often made about the professionalism and
23 integrity of the force." A couple of things arising
24 out of that. Firstly, the concept that junior
25 constables would feel under pressure, some kind of
26 compulsion to follow the direction given to them by
27 their supervisors; is that your experience within the
28 police force, that due to the hierarchy of
29 police?---Yeah, there's a lot of pressure on people to

1 conform, to comply. My only experience really in terms
2 of work has been the army and the police force, and
3 people who have not served in the army think it would
4 have been a very authoritarian organisation; in some
5 ways it is, but I think every soldier that I worked
6 with knew that you're only bound to obey lawful
7 commands, that was the extent of your obligation. That
8 qualification, that rider, doesn't seem to exist in the
9 police force; you just, you obey commands, and it's
10 become worse over the years.

11 Was it your opinion that these were unlawful directions
12 being made by supervisors of junior
13 police?---Absolutely.

14 And that's because there's a requirement of full disclosure
15 in - - -?---Well, that's partly it, but if a constable
16 puts in - if a junior member puts in a statement and
17 the sergeant then says, "You will change, you must
18 change such and such", he's effectively suborning
19 perjury in every case; it's simply wrong, and it's
20 counterproductive. A lot of these things are
21 unnecessary. Any fiddling with the truth at all has
22 the potential to damage your case tremendously. On any
23 basis it's simply not on.

24 And the practices that we've spoken of, were they confined
25 to specific stations or areas, or was it a wider
26 problem within the police force?---I would imagine that
27 it would be less serious in some stations than others.
28 I would hope, for instance, that in the country it
29 might be less serious because you'd tend to get more

1 experienced people in the country, more wisdom perhaps
2 in the country; less pressure in the first instance,
3 less pressure for the police to get out and get onto
4 the next job.

5 The constables and the hopeful prosecutors that you were
6 dealing with at the Academy at the prosecutors training
7 course, did they come from all over Victoria Police or
8 from particular areas?---They did, yeah, everywhere,
9 yeah.

10 The reports that you were getting of these practices, did
11 they come from everywhere or from particular areas?---I
12 can't really remember, I can't really say that I
13 remember that. For some reason I've just assumed
14 perhaps it would be less likely in the country than in
15 the city.

16 In your experience as a prosecutor, did it sometimes come to
17 light that there had been multiple versions of a
18 statement made?---Yes, yes.

19 And, how often did that occur or did it become apparent in a
20 particular case?---Not - it didn't - it only occurred
21 with me once that I can recall, and that was at
22 Heidelberg. Mr Brendan Murphy was defending and we had
23 two or three versions of the one statement in play at
24 the one time in that case.

25 Is it the case that, if multiple versions of a statement had
26 been made, is it the case that you wouldn't know about
27 it unless they happened to come to light in some other
28 way than being in the brief?---I suppose that's the
29 case, yeah. But the problem with Mr Murphy, is that,

1 he looks for things like that and he often finds them.
2 Commissioner, I note the time, it might be a convenient time
3 to break for lunch.

4 COMMISSIONER: Yes. (To witness) I just wanted to ask you,
5 this issue that you've raised in the letter, was that
6 the subject of considerable discussion within Force
7 Command at various times?---There were certainly files
8 created. I put a report in in 94 and it went in and
9 bounced around for many years. I'm not sure I'd
10 describe it as discussions about the problem; I think
11 they tried to avoid the problem really.

12 At some point of time the concerns you had about
13 contemporaneous notes, did they result in some
14 amendment to directions to members about what they must
15 do with - - -?---They did, yes.

16 And when did that occur, Mr Dunn?---I'm guessing when I say
17 this, but I would think that would be very late 90s. I
18 know there was a - in amongst my files here I've got an
19 instruction issued in 2003; I don't think that was the
20 first amended instruction, there were some other
21 amendments made before that, I think, to the
22 instructions.

23 May we take it then, Mr Dunn, that occurred because the
24 thrust of your concerns were accepted at Force
25 Command?---I'm not sure about that. Part of what we
26 were saying was accepted, a good deal of it was
27 rejected. Right from the start, I'd been suggesting
28 that you couldn't just look at notes alone, you had to
29 look at gathering evidence by use of audio recorders

1 and to separate the two was, I argued, a nonsense. All
2 the way along any idea of having audio recording was
3 rejected, they wouldn't have a bar of that. They did
4 make some minor amendments, but even with those the
5 amendments they sought to make in the first instance
6 were likely to make note-taking more difficult and less
7 likely rather than easier and more likely. They
8 sought, for instance, to prohibit the use of computers
9 in making notes. So, the idea was that, you would -
10 even if you used a computer to make your statement or
11 notes, I think they then wanted you to do a handwritten
12 version as well; or, if you had an audio recorder and
13 you'd use an audio recorder, they wanted you then to
14 transcribe the whole thing, which made it very, very
15 unlikely that people would use audio recorders. At
16 every step they've really discouraged the use of audio
17 recorders.

18 COMMISSIONER: 2 o'clock.

19 Lunch adjournment: [1.03 pm]

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