
TRANSCRIPT OF PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

MONDAY 25 FEBRUARY 2019

(12th 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

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Any inaccuracies will be corrected as soon as possible.*

1 COMMISSIONER: Yes, Mr Rush.

2 MR RUSH: Commissioner, Ms Kapitaniak, who is counsel for
3 Mr Collins, has indicated that she is apparently
4 recovering but has asked for a further extension of
5 time for Mr Collins and is available, and I understand
6 from the Commission's point of view 10 o'clock tomorrow
7 morning has been the extension of time for Mr Collins.

8 COMMISSIONER: Yes. Has it been explained to her, Mr Rush,
9 that given our timetable, if there's any likelihood she
10 won't be available, someone else needs to be engaged?

11 MR RUSH: That has been explained.

12 COMMISSIONER: Thank you.

13 MR RUSH: I recall Mr Buchhorn.

14 <GEORGE BUCHHORN, recalled:

15 HIS HONOUR: Have a seat, Mr Buchhorn. Just remember,
16 you're still under oath?---Yes.

17 Mr Buchhorn, if at any stage you want a break for any
18 reason, just tell me?---Thank you.

19 MR RUSH: Mr Buchhorn, on Friday we'd finished, we were
20 discussing the evidence and the statements around
21 Ms Poke. As I understand the position, in September
22 2001, it was appreciated that there was no original or
23 signed statement of Ms Poke?---Yes.

24 Just to remind you, at Exhibit 405, in your evidence to IBAC
25 in 2015, p.4014, line 30, there you were being asked
26 about Helen and you say: "Helen came in in 2001, it was
27 earlier than that, for the life of me, I don't know, we
28 wouldn't have got a statement off Helen until sometime
29 after 2000, I just don't know why it took us that long

1 to get Helen, but I think what happened on the day is,
2 that when we made the change to the soft copy she had a
3 hard copy, I think I inadvertently shredded the
4 original along with the hard copy that she'd brought in
5 after we'd made the amendment and it was at court that
6 I realised I didn't, you know, when the witness is
7 being called, going through the folder looking for her
8 original statement and finding that I didn't have it."
9 That's what you said in 2015?---Yes.

10 As I understand your evidence to IBAC on Friday, it's this:
11 you say that you contacted Ms Poke to come to Operation
12 Lorimer because you believed her statement was
13 unsigned?---Yes.

14 That you contacted her to come in?---I would think so, yes.

15 That, when she came in, you say she had her notebook with
16 her which had extra description?---I think so, yes.

17 She had a floppy disk or a soft copy?---Um, I think I said
18 in 2015 I'm not sure how - what form the soft copy was
19 in; I think the floppy disk is something that's come up
20 in this hearing.

21 Whilst floppy disk or soft copy, certainly you were able to
22 make changes to her statement on your
23 computer?---I believe I did, yes.

24 Which would suggest that she'd brought something in to
25 enable you to do that?---Yes. As I said, I wasn't sure
26 whether it was emailed, not even sure we had that
27 capacity back then.

28 What you said on Friday: "From recollection I think she had
29 a floppy disk with a soft copy of her statement on it",

1 that's the best of your recollection?---Yeah, I think I
2 read that in some of the transcript, that she's
3 mentioned having a floppy disk, which would explain how
4 I got a soft copy.

5 And you added in the additional description?---Yes.

6 You say that you couldn't adjust the jurat clause?---Yes.

7 And you printed it out with the old jurat and just crossed
8 that out and put in 12 January 2001 as the date of
9 acknowledgment?---Yes.

10 A couple of things arising out of that. If you were able to
11 put in the extra information from her notebook and
12 change her statement in that way, surely you would have
13 been able to change the jurat clause?---Sir, I think at
14 the time there was a system called "Brief Pack", where
15 the acknowledgment details self-populated a number of
16 documents that would appear in a normal brief of
17 evidence; I think that is why I wasn't able to change
18 that. It would allow me to edit the body of the text
19 but wouldn't allow me to change the jurat.

20 What do you say the name of that was ?---"Brief Pack".

21 "Brief Pack"?---Yes.

22 And you're saying that allowed you to change the text but
23 not change the text of the acknowledgment?---That's my
24 recollection of how that system worked, but it may have
25 been, you know, my lack of computer literacy that
26 prevented me from doing it as well.

27 COMMISSIONER: Is this a memory, Mr Buchhorn?---No, I'm just
28 trying to piece together all these pieces of the
29 puzzle.

1 Is it a reconstruction?---Yeah, I guess so, just me trying
2 to, I guess, logically think through how this happened.

3 MR RUSH: So she, on your evidence, signed her statement on
4 12 January 2001; correct?---Yes, I think that's what
5 the statement says.

6 Well, you've seen it, the copy that's been changed with
7 Mr Atkins' acknowledgment crossed out and yours in, and
8 it's dated 12 January, isn't it?---Sir, I'm not sure
9 that I've seen it here at this hearing. I presume I
10 was shown that back in 2015.

11 Well, we saw it on Friday, but if you have a look at
12 Exhibit 339 and you go to p.3571, that bears your
13 signature at the bottom of the page as having
14 acknowledged that at 9.20 am on 12 January 2001 at
15 Melbourne?---Yeah, I can see, yes. I can't look at
16 this screen because of the way it flickers.

17 Are you having difficulty seeing the
18 screen?---Unfortunately, flickering light can trigger a
19 migraine with me, so that's why I look away from this
20 screen when you're moving through it.

21 Very well.

22 COMMISSIONER: That's fine, Mr Buchhorn. Would you like to
23 see the hard copy?---I can see it there and once it's
24 stopped it's okay, but when it's being scrolled
25 through, the flickering light ...

26 MR RUSH: Well, you can see it there now?---Yep.

27 No doubt, you've been back to your day book for the entry on
28 12 February 2001?---Yes.

29 Is there anything in your day book which would suggest

1 Ms Poke came in to see you?---No.
2 Or that there was an appointment?---No.
3 Or that this statement was modified or changed on that
4 day?---No.
5 That's most unlike you, isn't it?---Um, no, I'd disagree,
6 um, I think the reason why I didn't write anything in
7 was that it was in our office. I think my normal
8 practice was, if I was out of the office, my day book
9 basically tracked my movements, but a lot of my entries
10 has just got "on duty 8 am at Lorimer until the end of
11 the day" and I've not really made any notes of what I
12 was doing during those particular days, so I think
13 that's why I've not made a note of her coming in,
14 because it was within the office.
15 I'll come to it, but as I understand it your evidence is
16 that there was an arrangement made for Ms Poke to come
17 in and see you in Operation Lorimer but you didn't even
18 note that in your day book, either the arrangement for
19 her to come in or the fact that she did?---No.
20 Are you aware, have you read the evidence, of
21 Ms Voulanas?---Yes.
22 Let me go back. The statement of 12 January, the one that
23 we've just looked at, that was provided to the defence
24 by letter signed by Mr Collins, I think, on
25 21 September 2001. Perhaps if we have a look at
26 Exhibit 59. If we go down the page to "Additional
27 Statements", you see on the screen there, Mr Buchhorn,
28 that the additional statement referred to is that of
29 Senior Constable Helen Poke dated 12 January and it

1 says: "This statement has been amended to include
2 details contained in this member's notes that were not
3 included in the statement that is part of the brief of
4 evidence." So, that's when the statement of 12 January
5 2001 was provided as an additional statement to the
6 defence?---Yes.

7 Meaning that the statement of 12 January 2001 was not on the
8 brief that just previous to the letter had been
9 provided to the defence?---Yes.

10 Why is it that the statement signed by Ms Poke on 12 January
11 2001 was not in the brief that was provided to the
12 defence?---The brief was served, um, I think two months
13 prior.

14 Two months prior to September?---No - ah, to January 2001.

15 Are you sure about that?---I've got here in my notes the
16 brief of evidence was served on 13 December 2000.

17 So, why wasn't this statement served in January if that be
18 the case?---I don't know, it's a good point.

19 Was it made in January?---Yes.

20 And you're sure about that?---Yes.

21 If we have a look at Exhibit 87, please. Going down the
22 page to "phone out George Buchhorn", if we could just
23 keep that there for the moment. The first line reads:
24 "She had her statement taken some months later." See
25 that? This is a phone call of Ms Voulanas with you of
26 17 September 2001?---Yes.

27 Then the second line, "She supplied notes which had
28 additional comments that weren't in the first
29 statement"?---Yes.

1 "First statement was unsigned"?---Yes.

2 And we've been through that, but going on: "Acknowledgment
3 in January 2001. Unable to change the acknowledgment
4 on computer so George crossed out acknowledgment by
5 hand and handwrote a new one." Right?---Yes.

6 "This statement contained the 6 foot and Hyundai comments.
7 This is the statement that should have been in the
8 brief." That's what is recorded as you telling
9 Ms Voulanas?---Well, I told her about the - well, I
10 presume someone has told her about the second
11 statement, that may have been Graeme Collins, but I've
12 had a conversation apparently on 17 September with her.
13 If we have a look at Exhibit 338.

14 COMMISSIONER: Sorry, just before you move on, Mr Rush.

15 What is it? You referred to Mr Collins?---I don't
16 know. Sir, I was asked why I've taken the statement in
17 January 2001, that it wasn't supplied until some months
18 later; I don't know the answer to that. I don't know
19 whether I initiated this conversation with Kim Voulanas
20 or someone else did and then she's spoken to me about
21 my recollection.

22 MR RUSH: But you would be the person she spoke to for a
23 number reasons, I suggest, Mr Buchhorn: (1) you were
24 the brief manager; correct?---I don't know whether I'd
25 call myself that at that stage, um, I put the brief
26 together but that was under advisement, from memory,
27 from probably Jeremy Rapke, Paul Sheridan, Graeme
28 Collins.

29 You were the person that attended the committal hearing

1 every day?---I managed the witnesses at court, yes.
2 You were the person, as you said, that arranged the
3 witnesses at court; correct?---Yes, under guidance.
4 Under guidance from?---Probably Jeremy Rapke at that stage.
5 And you were the person that could give an explanation as to
6 the situation in relation to Ms Poke's
7 statements?---Well, yes; I mean, I was the one
8 responsible for trying to take the second statement and
9 crossing out the acknowledgment and putting my own
10 details there.

11 So, when you say in September 2001, just eight months after
12 you say you've had Ms Poke at Operation Lorimer, that
13 you were unable to change the acknowledgment clause on
14 the computer, that will be something that was fresh in
15 your mind?---Well, it would have been more fresh in my
16 mind then than it is now.

17 You weren't making it up, were you?---No.

18 So, you told Ms Voulanas, as part of the explanation for the
19 crossing out, that you were unable to change the
20 signature block of the acknowledger on the
21 computer?---Yes.

22 Even though you managed to put in the additional
23 information?---Yes.

24 Can we have a look at Exhibit 338. This is Ms Poke's
25 statement typed, and we'll have a look at it, in a
26 different manner to the one which is acknowledged by
27 you and, you say, signed on 12 January 2001. For your
28 information, Mr Buchhorn, this was taken off the
29 electronic files of Operation Lorimer; it bears a

1 metadata date that indicates it was created on
2 14 September 2001. If you go to p.3566, we see there a
3 typed acknowledgment clause, if you have a look at it,
4 that indicates: "G Buchhorn, detective sergeant
5 22172"?---Yes.

6 So, on its face, here is a statement of Ms Poke that has
7 been changed to have your signature block?---Sir, I'm
8 wondering whether this statement is something that, um,
9 was retyped because the acknowledgment and signature
10 details, I think, are probably the same as the crossed
11 out handwritten one by me, but that this is the one
12 that was to go onto the brief of evidence, because at
13 Homicide statements are retyped so they have a uniform
14 appearance, and I'm just wondering if that's why this
15 metadata information indicates that this was typed up
16 sometime later.

17 If you have a look at it and compare it with - if we could
18 go back to the first page of that document, which is
19 3563, and if we bring up side-by-side Exhibit 340.
20 What we have is an example of a document prepared for
21 committal purposes on the right-hand side, and what we
22 have is the document that the metadata date shows was
23 created on 14 September 2001, and the format, as you
24 would appreciate, is different?---Yes.

25 You are familiar with the format on the right-hand side of
26 the screen, being the format for which the committal
27 brief is prepared?---Yes.

28 If we put that to one side and keep Exhibit 338 up and
29 replace Exhibit 340 with Exhibit 339. On the

1 right-hand side of the screen, Mr Buchhorn, is the
2 statement that you say was signed on 12 January 2001
3 and on the left-hand side of the screen is the document
4 that shows a metadata date of 14 September. If you
5 take both documents to the bottom of p.1, what is
6 apparent is that we've got a retyped version of
7 Exhibit 339?---Yes, I can see that.

8 COMMISSIONER: I'm sorry, I didn't catch that,

9 Mr Buchhorn?---Yes, I can see it's a retyped version.

10 MR RUSH: Mr Buchhorn, you were dealing with the OPP in
11 relation to this statement?---Yes.

12 You were the person that had the responsibility of
13 communicating to both Mr Collins and to Mr Rapke and
14 Ms Voulanas the detail around the absence of the
15 original statement and the absence, initially at least,
16 of the 12 January statement from the brief?---I presume
17 so, yes.

18 Can you give any indication, Mr Buchhorn, why there would be
19 a retyped version of Ms Poke's statement with your
20 signature block made on 14 September?---No.

21 Can we have a look at Exhibit 529, down to the bottom of the
22 page. This is your day book entry which you say you
23 have read for 12 January 2001. Can you read what's
24 there between "0800" and "11.30"?---Well, "0800 OD" is
25 on duty, then: "11.20 Collected someone's blood from
26 fridge. 11.30 Clear to the Victorian Institute of
27 Forensic Medicine photos and Koritnik medical release
28 x3", and then, "11.50 Clear."

29 So, as you agreed, there is no entry, or appointment, or

1 anything that would connect any activity of that
2 morning with Ms Poke being at Operation Lorimer?---No.
3 And you say, as I understand it, the reason for that is that
4 you don't record what you do at the office in your day
5 book?---Not always, no.
6 But, as you have just indicated in that answer, you do make
7 records where you saw people in Operation Lorimer in
8 your office?---I imagine, yes, I would have.
9 But not this time?---No.
10 Turn to Exhibit 68. Could we go down to Question 47. Are
11 you familiar with what this relates to?---No.
12 These are a number of questions that the OPP made after the
13 committal seeking explanations or further information
14 concerning evidence and issues of the evidence arising
15 during the committal. You see there, Question 47
16 concerns Helen Poke?---Yes.
17 And the issue around her statement.
18 COMMISSIONER: You're not familiar with that. Do you want
19 time to read it then?---I'm reading through it. I've
20 read that bit.
21 You see, about eight or nine lines down from the top of the
22 screen, where it starts: "A later review of statements
23 by Buchhorn [in capitals]"?---Yes.
24 "A later review of statements by Buchhorn revealed she had
25 not made a statement so she was chased up on the phone.
26 She then compiled a statement from her notes which she
27 had secured in a locker she didn't have immediate
28 access to and delivered the statement and her copy of
29 her notes to the task force." Just so you understand

1 it, Mr Buchhorn, that is Ms Poke's evidence to the
2 Commission: contacted by you, asked for a statement,
3 the statement was delayed while she got her notebook
4 from records or a box that she kept in her garage. She
5 made the statement and sent the statement with a copy
6 of the notes to the task force. And that would be the
7 way it works, wouldn't it? You would continually ask
8 members for a statement and a copy of their
9 notes?---Yes.

10 Then it goes on: "Buchhorn later checked the statement
11 against the notes supplied and found discrepancies",
12 and again, that is entirely consistent with the
13 methodology that was adopted between Mr Collins and
14 yourself, particularly as it concerned those who
15 witnessed the dying declaration?---Yes.

16 Then: "She was again contacted and arrangements were made
17 for her to re-attend to clarify the statement and make
18 a second statement. She then came in with a printed
19 copy of the amended statement which contained the
20 clarified points re description given by Miller."
21 That's not correct, is it, on your evidence?---Sir,
22 I'm - the evidence that I've given to the Commission is
23 based on my recollection. Had I seen this document
24 earlier, then I might have - might have stirred up some
25 better recollections, but I'm operating off the
26 material that I've got, I hadn't seen this before, this
27 may be the sequence as to how things actually occurred.

28 But it's not the sequence that you gave to Ms Voulanas
29 in September 2001, quite close to the time when you

1 were intimately involved with Ms Poke and the statement
2 taking?---I'd need time to sort of think through what
3 is written here to my recollection. I'm not, just on
4 first reading of this, sure that it's that different.

5 COMMISSIONER: Are you able to say from that note who
6 provided this information to Ms Voulanas?---Ah, sorry,
7 this wasn't - okay; I'm not sure who the author of this
8 is but.

9 Just go down to the bottom of the question: "To prevent
10 unnecessary papers being kept in the folders they were
11 shredded", and that's consistent, is it not, with your
12 evidence?---To what my recollection occurred - because,
13 you know, Helen was quite unwell and I remember
14 thinking, of all the police to have this happen to, she
15 would be the last person that I wanted to cause any
16 more anxiety for.

17 I meant, consistent with the evidence you've given that
18 documents were shredded?---Accidentally, yes.

19 No - - -?---It says at the bottom "human error".

20 But I'm not speaking about this particular document, I'm
21 just speaking about your evidence generally, that copy
22 documents were shredded?---Yes.

23 And also your more general evidence that you gave on Friday
24 afternoon about your practice where a second statement
25 was made that would amend the first, and you said that
26 your practice was to make a supplementary statement,
27 and I put to you: "What you've indicated today candidly
28 is that your practice at this time was, if you took a
29 second statement, you simply replaced the first one

1 with the second one?" Answer: "That's right."

2 Question: "So, I take it, you concede that your
3 evidence at IBAC was incorrect in that regard?"

4 Answer: "Yes, sir, I didn't have the benefit of my
5 notes and diaries." But, did you correctly state your
6 practice on Friday afternoon?---Sir, I'm struggling to
7 follow what you're saying.

8 Right. What you told us was that your practice at the time
9 doing this task at Lorimer was, once you took a second
10 statement, the second statement replaced the first one,
11 and you went on to explain at different parts of your
12 evidence, you didn't then produce the first statement,
13 you only produced the second one?---Sir, I've given
14 this some thought over the weekend, particularly when I
15 was shown those memos, and that did bring back some
16 recollection of the process of checking statements that
17 members were supplying, they were sending them in for
18 checking for that purpose. I was clearly checking them
19 and, if I found any errors in their statements, I
20 attached a memo to it and sent the statement back
21 saying these are things that need to be corrected and
22 then the members would correct them and then send me
23 back the changed statement, and that's the statement
24 that would then go onto the brief of evidence.

25 Not the first statement?---No, it would go back to the
26 member, because they were sending it through basically
27 as a draft for checking. And it also occurred to me on
28 the weekend that, even as a supervisor at various
29 stations in units, that briefs of evidence are sent

1 through to supervisors for checking and potentially for
2 authorisation; it was routine to check those briefs of
3 evidence and look for errors and mistakes that the
4 members had made. So, on the brief head they would put
5 "for checking", "and authorisation" possibly, and if
6 there were errors that the supervisor found such as
7 myself, I would then generate a cover memo and send it
8 back to the member to address the errors that I found
9 in the brief, and that could go on two or three times:
10 they may make some changes and then get other things
11 wrong, or not make the changes that you were seeking
12 and then the brief of evidence would go back. Those
13 normal brief-checking practices.

14 Just to be clear about that. The process that you say you
15 then followed, of going back to the police witness
16 asking for more detail or for corrections and then
17 ultimately finishing up with a second statement which
18 then would replace the first one, you say that was a
19 general practice, it wasn't just your practice?--No,
20 it's a general practice, and is likely to be still
21 going on today because, as I said, I gave this some
22 thought over the weekend and it occurred to me that,
23 even getting away from what we're discussing here, just
24 a general brief of evidence at any police station or
25 unit goes to a supervisor for checking and, you know,
26 you would find rarely a brief would get through in its
27 first attempt, but you would find mistakes and you
28 would send it back; or, if the errors were so grave,
29 you would not authorise the brief.

1 Can you just give us some indication, it will only be an
2 impression from you now, Mr Buchhorn, but how much of
3 that process, that particular practice, did you engage
4 in for the purpose of getting statements into the
5 condition that you thought they should be in? Was that
6 quite an extensive process by you?---It would have
7 been, yes. As I said, when you've shown me those
8 memos, I've gone, "Oh, now I remember."

9 What we know, however, from IBAC's review of the entire
10 Lorimer Task Force material - there's quite a lot of it
11 as you could imagine - there are only a handful of
12 memos such as the one you were shown by Mr Rush on
13 Friday which had your handwriting with a series of
14 questions about things you wanted the witness to
15 address; so, does it follow most of those notes were
16 destroyed in the course of shredding material that was
17 no longer required?---I presume so, yes.

18 And also - - -?---Once they'd been checked and ticked off,
19 and I was satisfied that it was okay. It's the same as
20 the memos that go onto your routine briefs of evidence,
21 I would either tick it or highlight it, cross it out
22 once it had been addressed, and then the memo comes off
23 and is destroyed and then the brief either gets through
24 as authorised or is not authorised.

25 And the original statement is also shredded or
26 destroyed?---Well, it goes back to the member, so the
27 brief of evidence comes to you as a supervisor, you
28 check it and it goes back.

29 So it's no longer kept then by investigators?---No.

1 And the original statement's not then produced as part of
2 the brief?---No, it wouldn't be.

3 Is that also, you think, not just your practice but it was
4 then a universal practice?---As I said, I would think
5 it's still going on today; members in stations checking
6 briefs.

7 Just remind me, when did you actually retire from the police
8 force?---2014.

9 Thank you. Am I right in saying, notwithstanding that it
10 was universal practice and you therefore didn't turn
11 your mind to it I take it at the time, you accept that
12 that's not a proper practice, that there are problems
13 that arise if that practice is followed?---I can see
14 that now, yes.

15 MR RUSH: From what you said, Mr Buchhorn, the practice,
16 firstly, would be known to those that were directing
17 you and your work in Operation Lorimer?---I would think
18 so, yes; I be mean, it was - it was just brief-checking
19 process, that things come to you and I'm sure that, you
20 know, briefs of evidence that I've prepared for other
21 cases would be subject to the same process of
22 corrections, coming back to me for changes, you'd make
23 the changes, you'd send it again, and it may get
24 authorised or it may come back again for more changes;
25 we were all subject to it.

26 I think in your evidence you've indicated that sometimes
27 such statements would come to you and they may be
28 unsigned?---On occasions I would see stuff that was
29 unsigned but, in my defence, I may not notice at the

1 time whether a statement had a signed jurat or not,
2 because I guess my focus is more on the body of the
3 contents of the statement rather than what's on the
4 bottom of it, so occasionally things like that could
5 slip through.

6 Just to complete the picture, there would be signed
7 statements that obviously did not form part of the hand
8 up brief?---In Lorimer?

9 Yes?---I imagine there would have been, yeah.

10 And there would be, obviously, unsigned statements that did
11 not form part of the hand up brief?---I imagine so. I
12 know, thinking about it, that there were a lot of
13 people who heard shots but didn't actually see
14 anything, they just heard a volley of shots. I think
15 we took a couple of statements to, I guess, address
16 that aspect, but there I think were many that we didn't
17 because it was just repeating the same thing, that
18 shots had been heard at about 12.25. Because a lot of
19 them couldn't give us - because we weren't certain what
20 time the actual shooting occurred because the members
21 involved in this operation were working on a secure
22 radio channel which wasn't recorded, so there was no
23 timestamp as to when the actual shooting occurred, and
24 the only true accurate time we got was when they went
25 over to the open channel for that area and then, once
26 they communicated to D24 it was time stamped and that
27 was the only accurate time we had, so it may have been
28 up to five minutes before, before anyone went onto an
29 open channel.

1 I understand that, but really what I'm directing you to here
2 is, there would have been police witnesses who had
3 relevant observations whose initial statements were not
4 in the hand up brief?---I don't know about that. If
5 they were relevant, then they would have been on the
6 brief; if they were not relevant then they may not have
7 made the brief.

8 They'd only be on the brief after they had been gone through
9 and corrected in the manner that you spoke about to the
10 Commissioner?---Yes.

11 And, if the initial statements are going back to the members
12 and they're providing a further statement, it's only
13 the further statement that ends up on the brief?---Yes.

14 COMMISSIONER: Could I just ask you as to that: you were
15 shown some notes of Mr Collins on Friday which gave us
16 some indication of the level of detail at which he
17 involved himself in the tasks you were
18 performing?---Yes.

19 Was he privy to your going back to members to get more
20 detail or correct their statements?---I imagine, yes,
21 you will, because it was - and I'm just generalising
22 here - - -

23 Yes?--- - - - that that was part of checking a brief of
24 evidence and that, if you received something that was
25 substandard, you send it back.

26 Would you talk to him? You would look at the statement
27 you'd received from the member, you would see
28 deficiencies, would you talk to him about those?---Not
29 necessarily. You know, there was a degree of trust in

1 what I was doing from Graeme; you know, I'd been doing
2 this for a long time, I'd be responsible for checking
3 other homicide briefs in detail myself, you know, I've
4 sat in Graeme's chair a couple of times, so the whole
5 brief checking process was something that I was
6 personally familiar with, so I don't think Graeme would
7 have been looking over my shoulder at me creating these
8 memos and sending those statements back. There may
9 have been some discussion about how it was going and
10 what progress we're making and where we're up to, but I
11 don't think he would have been getting involved in the
12 intricate details of that.

13 So, were you authorised by him to go back to members and
14 seek more detail or to have corrections made to their
15 statement?---I don't know whether "authorised" is the
16 right word, but it was, certainly that was the practice
17 that we did, that we followed.

18 Now, this is important, Mr Buchhorn: would Mr Collins have
19 been aware that you were engaged in that practice?---I
20 imagine so, yes.

21 What about Mr Sheridan?---Again, sir, we've all come through
22 our policing careers - and I don't know why it didn't
23 occur to me until the weekend - this is just brief
24 checking practices.

25 So, if Mr Collins or Mr Sheridan were aware of a process in
26 which a member provided a statement and then the
27 practice was employed of reviewing it and then, if
28 there were deficiencies in it, going back to the member
29 for a further statement addressing those deficiencies,

1 they would have to be aware that there were then two
2 statements in existence: the original and the corrected
3 version?---Yes, but that's - that's supposing that that
4 first statement was signed. I suspect a number of them
5 would have been just sent through as a draft document
6 for checking and then it would go back with any
7 feedback from me as to what needs to be fixed in the
8 statement.

9 Mr Collins gave evidence that there would be no distinction
10 to be made, in terms of the obligation to disclose,
11 between a statement that had been signed and sent in to
12 you which was subsequently corrected and a statement
13 which was unsigned and sent in to you and was later the
14 subject of correction; in either case the original
15 statement, signed or unsigned, would have to be
16 produced otherwise there would be no transparency in
17 the investigation process?---Sir, as I said, it was my
18 practice to create those memos and send the statements
19 back to the members.

20 But do you agree, looking at the issue of disclosure, that
21 if a member on day one prepares a statement, and even
22 if it's unsigned, sends it in and some days or weeks
23 or months later a second statement is prepared which
24 has additional material in it, then the unsigned
25 initial statement should be disclosed?---Um, yes, if
26 they were asked that question in court, had they made a
27 previous statement, then I imagine they would say they
28 did and that it was sent through and it was found to be
29 deficient and it was sent back for correction. But

1 this was - - -
2 Seeing you've mentioned the - sorry, finish what you were
3 going to say?---I was going to say this: this practice
4 was part of the brief checking practice and, as I said,
5 it occurred to me on the weekend because I've been so
6 focused on Lorimer, that actually if you take it down a
7 level just to working on a station or a unit, that
8 that's normal practice.

9 So you say that you're immediate superiors, Collins and
10 Sheridan, would have to have been aware that that's a
11 process that was being followed?---Yes.

12 You mentioned "court". If this is a general practice that
13 does not involve disclosure of the original statement
14 made, signed or unsigned, how do you ensure that police
15 officers when giving their testimony in court don't
16 blurt out the fact that there was an original statement
17 or unsigned statement that hadn't been disclosed? How
18 do you avoid, how do you ensure that that doesn't
19 happen?---It wouldn't be a matter of avoidance, sir.
20 If the member said that, "I've made a previous
21 statement and Senior Sergeant Buchhorn sent it back to
22 me for corrections, then that would be - I wouldn't say
23 "okay" - but it would be, no one's trying to hide
24 anything here. You know, all the memos that I
25 generated, I kept - electronically, anyway.

26 We just explored a moment ago, your notes, your memorandums
27 back to the officer in the main have been destroyed,
28 not kept; the original statement or the unsigned
29 statement is not kept by the investigators, you say is

1 sent back, so there's no record within the
2 investigation file of that process; and, so far as I
3 can understand from the committal and trial, apart from
4 the Poke statement which gave rise to an issue because
5 of the very content of the statement, apart from the
6 Poke statement, there was no evidence from anyone about
7 this process or the fact that earlier statements
8 existed, was there?---I don't think so.

9 And you say that's entirely coincidence, that not one
10 witness at either committal or trial, not one police
11 witness said, "I've made a previous statement but I've
12 added to it in the statement that's produced for the
13 brief"?---I think the thinking of police members would
14 be that the statement that is on the brief of evidence
15 is their statement.

16 Yes?---It's not - I don't think members turned their mind to
17 the fact that, in the eyes of the law there is a first
18 statement and then there is actually a supplementary
19 statement; I don't think police members turn their
20 minds to that type of thinking around this.

21 And you didn't?---No.

22 So, when Mr Collins gave evidence at the committal that all
23 of the statements that had been made by witnesses had
24 been produced as part of the police brief, you think
25 that's the explanation?---Well, yes; I don't think this
26 issue that's being explored here in this Commission was
27 something that the average police member, me included,
28 turned their mind to that we were doing anything wrong.

29 Yes, thank you.

1 MR RUSH: Just to take up that point, Mr Buchhorn: when
2 Mr Collins gave evidence at the committal that there
3 were no statements that hadn't been signed that didn't
4 form part of the 7A material, he was wrong, but you
5 give the explanation that he may have thought, because
6 there's a statement on the brief, that's good
7 enough?---Sorry, I don't follow the question.

8 Mr Collins gave evidence and he was asked this question:

9 "Are there any statements that have been signed but
10 have not formed part of the hand up brief of 7A
11 material in relation to Mr Roberts?" And he answered:
12 "No, not to my knowledge." On the basis of the
13 discussion you've just had with the Commissioner, that
14 would be wrong?---I'm still not really following it;
15 it's been a long time ago since I've seen it, what 7A
16 consists of. I don't know that what Mr Collins was
17 saying was wrong; I think he was answering the question
18 that all relevant material in relation to Mr Roberts
19 was on the brief of evidence. I am guessing that the
20 7A may have had other names of members, or other people
21 who had made statements but are not being relied upon,
22 the same as other material; I'm only guessing that
23 that's what the 7A document was.

24 Perhaps I'll take that up elsewhere. Mr Buchhorn, Mr Iddles
25 has, as I've indicated, given evidence of a
26 conversation he had with Mr Pullin in 2015 which in
27 part was to the effect that you told Mr Pullin, prior
28 to him giving evidence in the committal, that he should
29 not mention that he has made a second

1 statement?---Sorry?

2 Mr Pullin told Mr Iddles in 2015 that, prior to Mr Pullin
3 giving evidence in the committal, you said to Mr Pullin
4 he should not mention that he had made two
5 statements?---I don't recall that.

6 But the issue that you identified with the Commissioner of
7 the potential embarrassment to a police officer having
8 made one or two or more statements, is overcome by such
9 a direction?---I'm not sure here what you're referring
10 to when you say "embarrassment".

11 Well, if a police officer steps into the committal hearing
12 with a statement and no reference in that statement to
13 the police officer having made previous statements, if
14 that is disclosed within the committal or trial
15 proceeding it is an embarrassment, is it not?---Sir, as
16 I said, going back to just general checking of briefs
17 of evidence, it was common practice for members being
18 asked to make changes to their statement before it sort
19 of reached the standard of the - whoever the supervisor
20 was. So, if that constitutes a prior statement, then
21 that's something that myself and many, many other
22 supervisors never really turned their mind to, that
23 that's what it meant.

24 COMMISSIONER: Just to clarify: who was the supervisor for
25 the purpose of Lorimer?---Um, overall would be - - -
26 No, no, in the context of your last answer, about the
27 supervisor ultimately having to be satisfied that the
28 statement has reached the necessary standard, who was
29 the supervisor?---Well, initially myself.

1 Whilst counsel's about to address another matter: we can
2 look at the post example to see what sort of forensic
3 examination emerges within the court setting where it
4 suddenly becomes apparent to the prosecution and
5 defence that the witness has made some earlier
6 statement than the one that's on the brief which hasn't
7 been disclosed. You're aware that there was a
8 substantial amount of cross-examination at the
9 committal - I'm not sure how extensive it was at
10 trial - but that's the sort of problem that emerges,
11 doesn't it?---Yeah, I think we can all see that now.

12 MR RUSH: And, whilst you've been speaking on a general
13 level as to statements, the direction that is recorded
14 in Mr Collins' notebook concerning those that had
15 conversation with Mr Miller, that also was something -
16 those persons' statements were the subject of the
17 similar type of correction and changes that you have
18 been discussing?---I couldn't be certain whether that
19 occurred with them or not.

20 Well, on the basis of the evidence that you've just given
21 the Commissioner, of there being many more statements
22 with the sort of notes that were made of corrections
23 - I'm not saying you did them all, although it appears
24 you had a lot of the responsibility - what we saw on
25 Friday, Mr Buchhorn, was a specific direction
26 concerning you that there be clarification around
27 witnesses that had spoken with Mr Miller. Do you
28 remember that note of Mr Collins?---Yes, I do.

29 All I'm putting to you is, there would be no reason that the

1 police officers who had been a party to dying
2 declaration, no reason that their statements would not
3 go through the same process that you've just identified
4 with the Commissioner?---That's correct.

5 Just dealing with one matter related to that, if we could
6 have a look at Exhibit 197, please; one more look. If
7 we go to p.2995 just below halfway down the page, you
8 see the names "Gerardi and Pullin"?---Yes.

9 We've been to the entry for Mr Pullin, but you see
10 Mr Gerardi, it's indicated there that a statement is
11 required and a statement has been obtained?---Yes.

12 As I indicated to you, the metadata date of the last
13 modification to this document was 9 October
14 1998?---Yes.

15 If we could have a look at Exhibit 267, p.3317, to the
16 bottom of the page, this statement of Mr Gerardi is
17 acknowledged as being taken on 25 October at 3.28 at
18 Malvern?---Yes.

19 So, on its face, by comparison with the previous document,
20 this would indicate that Mr Gerardi has made a second
21 statement?---Yes.

22 Explained by the sort of process that you've been talking
23 about with the Commissioner this morning?---Likely to,
24 yes.

25 Have a look at Exhibit 490, p.7643. At the top of the
26 page you see, "Operation Lorimer brief prep tasks."
27 This is taken from the records of Mr Collins and the
28 date in relation to this is October 2000. You see
29 there, there is a task description; for example, the

1 top one involving continuity in December 1998: "First
2 seizure and examination to include statements from the
3 following ...", and so it goes on, tasks that are all
4 required for the preparation of the brief?---Yes.

5 There, in Mr Collins' handwriting for you is the task of
6 that first identified task. If we turn to p.7644 at
7 11: "Update Senior Constable Paul Edwards' statement.
8 Remove reference to the crime scene video." In the
9 handwriting of Mr Collins is: "Reformat Buchhorn."
10 What would you understand that direction to mean?---I
11 don't know. It doesn't make a lot of sense, because
12 Paul Edwards, from memory, was a video operations - or
13 operator. I don't know what Graeme was asking to be
14 removed. I'm assuming he was the video operator for
15 the crime scene.

16 Remove reference to the crime scene video, is what the task
17 is?---Yeah.

18 Just looking at the direction to "reformat", how do you
19 reformat a statement and remove a reference to a
20 particular part of it?---Well, as I said, it doesn't
21 make any sense to me.

22 On its face, it's at least a direction to remove something
23 out of a statement?---It looks like it, yes.

24 And perhaps follow the sort of process that you've spoken
25 about?---I imagine so, but it just - Paul Edwards was a
26 video operator; it doesn't make any sense to remove
27 crime scene video 'cos we rely on the crime scene
28 video. So, whether there was - whether it's a little
29 bit cryptic, I'm not sure.

1 Just a couple of matters, Mr Buchhorn. If I could take you
2 back to Exhibit 87. At the top of the page there is a
3 note from Kylie who is someone at the OPP that took a
4 note of a conversation with you, if we move down the
5 page, on 14 September 2001?---Yes.

6 Going back to the top of the page and we'll take it
7 step-by-step. That, you will recall, 14 September
8 2001, is the same date that the metadata date on the
9 statement that bears your signature block is said to
10 have been created?---Okay.

11 The note reads: "George rang in regard to incident with
12 Helen Poke. Has spoken to Helen. Indicated that in
13 her notes she indicated the height and dark hair but it
14 did not appear in her first statement. The difference
15 was ..." - you have difficulty if it's moving, don't
16 you? "The difference was picked up - or sorry, "The
17 difference was picked and she asked to do a second
18 statement, but due to an error administratively it
19 hasn't appeared in her second statement which was
20 acknowledged by George. You might be best to call
21 George about this." Now, reading that, does that
22 refresh your memory as to why a retyped statement of
23 Ms Poke may be dated 14 September 2001?---No.

24 Apart from you, is there any person that was involved in the
25 explanation around Ms Poke that you can identify that
26 may be responsible for retyping a statement?---No.

27 Finally, I need to take you to Exhibit 50. You would have
28 read of this in the transcript, Mr Buchhorn, the
29 Facebook entry of Ms Poke made in November 2017. If we

1 could move just under halfway down the page. If we
2 stop there, about the sixth line from the top of the
3 screen where it states: "Firkin 2 years after that
4 statement I get dragged into Lorimer and told to put it
5 all back. But no, the firkin elite of the elite don't
6 make it a 2nd statement it's an altered 1st statement,
7 with the 4th page acknowledgment and jurat from the 1st
8 statement perfectly fitted and not re-witnessed and
9 dated." Does that perhaps refresh your memory as to
10 the way in which the second statement of Ms Poke was
11 created with the additional information of height and
12 hair?---No, um, I still maintain that, when she came
13 in, that that statement that has me crossing out Nigel
14 Atkins' details and signing it was the statement, so I
15 can't explain that retyped statement.

16 They are the matters, Commissioner.

17 COMMISSIONER: Yes. Mr Buchhorn, we've almost finished. A
18 couple of things I'd like to ask you. The net result
19 of Your Honour evidence before the Commission is that,
20 as has now been disclosed by you, you followed a
21 practice that you think was universally followed back
22 then and you have reason to think is still the case,
23 that once investigators get a further statement from a
24 witness which addresses deficiencies in a first
25 statement, it's the second statement which becomes part
26 of the prosecution brief and the first statement is not
27 produced, and you believe now that that's probably the
28 process that you followed in relation to the first
29 responders who made statements concerning Mr Miller's

1 dying declaration?---Yes.

2 Do you not appreciate, Mr Buchhorn, that if you'd said that
3 in the first place back in 2015, or even said it first
4 thing in the morning last Friday, we could have avoided
5 a lot of evidence from you?---Sir, it wasn't until you
6 showed me those memos that that stirred a memory.

7 Yes?---And then, as I've said, I've thought about it over
8 the weekend and then I've realised, it actually goes
9 even down to just basic briefs of evidence.

10 The practice that we've just discussed has great and grave
11 implications for the administration of justice; do you
12 see that now?---I do now, yes.

13 And if you are right, that it's a practice which is
14 continuing, then plainly the way to address that is by
15 education; do you agree?---Yes.

16 I'm trying to understand, Mr Buchhorn, what is it about the
17 police culture that would encourage such a serious
18 practice to be maintained?---I don't think the average
19 member realised how serious it is. I'm not sure how
20 Victoria Police can actually grapple with it, because
21 members will submit statements or briefs of evidence
22 that are lacking. How do you address asking a junior
23 member, you need to fix these points, but still have
24 that transparency to the courts? I'm not sure how
25 they're going to grapple with that.

26 Well, if the education task is sufficiently intense and
27 broad, then junior members, the supervisors of junior
28 members, more senior people within the force, will come
29 to recognise that what is critical is that there be

1 full transparency as to the sequence in which
2 information or evidence is obtained; that is, you can't
3 hide or conceal the process that's followed?---Sir, the
4 only thing I can think of to maybe assist the
5 Commission is that the memo that's written by the
6 supervisor stays with the brief of evidence, so then
7 the courts can see that there has been requests for
8 certain changes. That's the only thing I can think -
9 like, the little memos that I was handwriting could
10 have stayed with the statements then.

11 In which case they'd have to be disclosed?---Yes, I think
12 that's the simple way of maybe addressing it.

13 Part of the problem, however, in the case of Lorimer, is
14 that almost all the documents we're speaking about that
15 should have been disclosed were either shredded or
16 returned to members?---Yes.

17 Was that part of the normal practice?---Well, yes, you know,
18 it was returned to the member with the memo attached to
19 make those corrections, and then I know it was my
20 practice to tell the member to leave the memo,
21 particularly with the brief of evidence, leave the memo
22 attached so, when it comes back, I can go back to the
23 memo and go, yes, they've done that, they've done that,
24 they've done that.

25 But, aside from returning documents to members, the process
26 of shredding documents which you've talked about, and
27 which was disclosed in the answer to Question 47 in
28 that memo you were shown, was that a common occurrence
29 as part of the practice, to shred copies of documents

1 and material that was no longer required for the
2 brief?---Yes.

3 How universal was that practice?---It would be, again, right
4 across the force, because I guess there was no real
5 appreciation of how important it was or what impact it
6 could have down the track.

7 And so, in the case of Ms Poke, an original statement was
8 accidentally shredded?---Sir, unless I had all her
9 statements in front of me, that's the best of my
10 recollection, that we didn't have a signed one on the
11 hand up brief.

12 Anything else, Mr Rush, arising out of that?

13 MR RUSH: No, Commissioner.

14 COMMISSIONER: Mr Matthews?

15 MR MATTHEWS: Commissioner, I wonder if I might have
16 ten minutes before I make an application. I would
17 foresee that, even if you were to allow leave, I'll be
18 finished before lunchtime, just in light of further
19 evidence this morning.

20 COMMISSIONER: Just be mindful of the fact that I would not
21 want you to be retracing any steps that have been
22 explored by counsel assisting.

23 MR MATTHEWS: Yes.

24 COMMISSIONER: We'll have a break for ten minutes. Why
25 don't you refresh yourself, Mr Buchhorn; if you want to
26 go and get a coffee you're welcome to do so. We'll
27 resume at quarter to 12.

28 Hearing adjourns: [11.35 am]

29 Hearing resumes: [11.51 am]

1 MR RUSH: There are just two matters further, Commissioner,
2 if I could ask Mr Buchhorn. I think he's just outside.

3 MR TROOD: I think Mr Matthews would like my client outside
4 while he makes his application.

5 COMMISSIONER: Yes. Well, it might be convenient to deal
6 with that. Could you let Mr Warne know he shouldn't
7 come in for the moment.

8 MR TROOD: Yes. Well, in fact he's been instructed not to
9 in anticipation.

10 COMMISSIONER: Very good. Yes, Mr Matthews?

11 MR MATTHEWS: Commissioner, a very confined number of issues
12 and I anticipate this is in the order of 15 minutes,
13 thereabouts.

14 The first one concerns the reformatted statement
15 on the hand up brief of Detective Senior Constable
16 Morris, there's been a series of questions asked about
17 that, you will recall, about there being a memo
18 attached to this particular statement and some
19 corrections.

20 There's an added aspect that hasn't been covered
21 as yet that I would seek to ask, which is that, with
22 respect to that reformatted statement on the brief, the
23 entire passage that dealt with Morris speaking to a
24 Mr Beech and Mr Beech not appearing to match the
25 description of the alleged "suspect", was deleted from
26 the reformatted version on the brief. Can I hand you,
27 Commissioner, and - - -

28 COMMISSIONER: No, I remember that, but what is it you
29 wanted to ask him?

1 MR MATTHEWS: I wanted to ask him how that came about,
2 because that obviously has very significant
3 implications from a process point of view, in that,
4 perhaps not surprisingly there was no cross-examination
5 at committal of this witness; whereas, had that been
6 known to defence, there may well have been
7 cross-examination about the basis for Mr Morris's
8 belief that he was looking for a single suspect.

9 So, I would like to ask this witness how the
10 reformatted version came about and I would anticipate
11 that he's had something to do with that as the person
12 in charge of the brief. That's the first topic,
13 Commissioner. The second - - -

14 COMMISSIONER: We might just pause there. What do you say
15 about that, Mr Rush?

16 MR RUSH: It's a very straightforward question and, on the
17 basis of what my learned friend says, I would have no
18 objection to it.

19 COMMISSIONER: Yes. What's the next matter, Mr Matthews?

20 MR MATTHEWS: The next matter is, there was a second
21 statement taken from Police Officer Gardiner in May
22 2000 to the effect that the person who asked him to go
23 in the ambulance with Miller was Ms Poke; whereas
24 originally his statement, as with Pullin's statement,
25 indicated that it was Pullin who did it, and I want to
26 ask him whether he had any role in that second
27 statement coming about in May 2000 and how it was that
28 that came to happen, what it was that prompted a second
29 statement to be taken from Gardiner; because again,

1 that appears on its face to be an attempt to have
2 evidence being consistent and it being about bolstering
3 Helen Poke's credibility, particularly on the focus on
4 dying declarations. It's significant that on the night
5 neither Pullin nor Gardiner said that - they said that
6 it was Pullin who'd given the direction, so it again is
7 this process of "making things fit", and I'd like to
8 ask the witness if he's had a hand in that and how it
9 came about.

10 COMMISSIONER: Yes. Mr Rush?

11 MR RUSH: The statement and the difference stands for
12 itself, but I would not oppose a short question in
13 relation to it.

14 COMMISSIONER: He's not been asked any questions about how
15 the second Gardiner statement came into existence, has
16 he?

17 MR RUSH: No, that's true.

18 COMMISSIONER: Yes. That examination should be relatively
19 confined.

20 MR MATTHEWS: On that topic, absolutely; both of those, in
21 fact all of these.

22 COMMISSIONER: Yes.

23 MR MATTHEWS: The third topic is concerning the Thwaites
24 running sheet and the absence of the original running
25 sheet: nobody, as yet it seems, has been able to locate
26 an original version of that running sheet which is
27 obviously an original document of real significance.

28 I would want to ask this witness, given his role
29 in the taking of the Thwaites statement and the general

1 role of him taking statements, whether he ever sighted
2 an original and when the last time it was that he
3 sighted an original of that document.

4 COMMISSIONER: Where does the evidence come from that the
5 original's not been sighted?

6 MR MATTHEWS: Well, I understand from discussions with my
7 friends that it hasn't been sighted by the Commission,
8 and so, I just wanted to - that's my understanding -
9 and so I just want to see - it's obviously a matter of
10 real significance, potential significance to the
11 Commission, but also - of significance to the
12 Commission because so much questioning has focused upon
13 the contents of that document.

14 COMMISSIONER: Mr Rush, is that correct, that we don't have
15 the original?

16 MR RUSH: Yes, we don't have the original.

17 COMMISSIONER: So, I take it, that means it's not found
18 within any of the Lorimer material that the Commission
19 has?

20 MR RUSH: Correct.

21 COMMISSIONER: What do you say as to that line of
22 questioning?

23 MR RUSH: I think there's an entitlement to ask him.

24 COMMISSIONER: Very good.

25 MR MATTHEWS: The fourth topic, Commissioner, is in relation
26 to Ms Eden's role versus Mr Buchhorn's role. I wanted
27 to ask two aspects: the first was that his
28 understanding was, as we've heard from Ms Eden, that
29 Ms Eden was making a general call to uniformed members

1 for both running sheets and other notes, if that was
2 his understanding.

3 Related to that, that he, Mr Buchhorn - when it
4 was exactly that he first saw Ms Poke's notes. There
5 seems, as I understand it, to be conflicting evidence
6 about that from him: whether he saw it when she came to
7 the Lorimer office or whether he'd seen it previously
8 and, if so, when and how did that come about; just that
9 aspect. And, in explaining that, what their respective
10 roles were, Eden and Buchhorn, about this gathering of
11 material because he, as I understand it on one account,
12 he's asked for Ms Poke's notebook when he's made the
13 request for the statement. It seems to me,
14 Commissioner, that there's a lack of clarity about how
15 that notebook came to be in Lorimer's possession.

16 COMMISSIONER: Was there any uncertainty about that based
17 upon Ms Eden's account, Mr Matthews?

18 MR MATTHEWS: I thought what Ms Eden very clearly said to
19 you, Commissioner, was that she made a request, she was
20 very clear about this, she made a request of all
21 uniform members to provide both running sheets and any
22 notes.

23 COMMISSIONER: Yes.

24 MR MATTHEWS: Regrettably, I didn't ask her the next
25 question, which was, did she have a specific recall
26 about what she received from Ms Poke as a result of
27 that.

28 COMMISSIONER: Yes.

29 MR MATTHEWS: And so, we don't have evidence directly from

1 Ms Poke about that, but we seem, it seems to me, to
2 have conflicting evidence from Mr Buchhorn about that.

3 COMMISSIONER: I don't see any point in you asking him about
4 Ms Eden's role, she's made her position clear and
5 that's not been put in issue.

6 But, Mr Rush, is there any reason why Mr Matthews
7 shouldn't ask the witness if he's able to say when he
8 first sighted Ms Poke's notes?

9 MR RUSH: No, Commissioner, I think he's given - - -

10 COMMISSIONER: I thought it was fairly clear - - -

11 MR RUSH: He's given evidence of that.

12 COMMISSIONER: - - - she sent them in with her statement.

13 MR RUSH: He says that - well, no, that's Ms Poke's
14 evidence, that she sent the notes in with her
15 statement, and Mr Buchhorn has said that she came into
16 the office with her notes, I think, but if my learned
17 friend wishes to clarify that we have no objection.

18 COMMISSIONER: Very good. Yes.

19 MR MATTHEWS: Commissioner, related to that, the fifth
20 topic: in the committal - I withdraw that,
21 Commissioner, I leave that topic.

22 The next topic is that, Exhibit 83 is one of those
23 memoranda in blue ink Mr Buchhorn has said was his in
24 relation to Senior Constable Clarke's statement.
25 Included on that blue note, when it came up in the
26 Commission, was that there was a word "accurate",
27 separate word "accurate" with a full stop after it and
28 that had been crossed out. I would like to ask this
29 witness what that entry meant and why it's crossed out;

1 it clearly ties in directly with what he was doing with
2 Clarke's statement in terms of correcting Clarke's
3 statement.

4 MR RUSH: I don't recall it, Commissioner, so it's hard - it
5 wasn't anything I specifically asked.

6 COMMISSIONER: It's a very short line of enquiry, yes.

7 MR MATTHEWS: Yes, Commissioner. The sixth topic is, the
8 witness has said on Friday that he regarded statements
9 that were provided to him as drafts; the Commissioner
10 will recall that. My understanding of what he was
11 saying was that that included signed statements, not
12 just unsigned statements, that he had an idea that the
13 signed statement would also be a draft.

14 I would like to ask him what his thought process
15 was that would see something that an officer has either
16 sworn to the truth of or affirmed to the truth of as a
17 draft.

18 COMMISSIONER: I think he's made his position clear. If it
19 was in doubt on Friday, he's made his position very
20 clear this morning.

21 MR MATTHEWS: If the Commissioner understands, I hadn't
22 appreciated that - I thought this morning he - - -

23 COMMISSIONER: It's a matter of terminology, but he plainly
24 proceeds on the basis that a previous signed or
25 unsigned statement, once it's amended or added to, the
26 new document becomes the witness's statement and the
27 previous document is no longer relevant.

28 MR MATTHEWS: Yes, Commissioner, and I understood him on
29 Friday to be saying whether that previous one was

1 signed or unsigned, but I understood him this morning
2 to be a little more specific and say it was unsigned.

3 I may have misunderstood what he was saying but I - - -

4 COMMISSIONER: I don't think there's any doubt he was
5 referring to either signed or unsigned.

6 MR MATTHEWS: If that's the case I won't pursue the matter.

7 Two final matters, Commissioner: the first is, I
8 think it was in the letter, the Question 47 letter, if
9 I can call it that; that it was said seemingly by
10 Mr Buchhorn that he couldn't explain why it had taken
11 so long for Ms Poke to make a statement. I'd like to
12 ask him now what his memory was as to why it took so
13 long for him to seek a statement from Ms Poke.

14 COMMISSIONER: What his memory now is?

15 MR MATTHEWS: Yes.

16 COMMISSIONER: Mr Rush, is there any reason why that
17 question shouldn't be asked?

18 MR RUSH: No, Commissioner.

19 COMMISSIONER: I suspect it won't be a profitable line of
20 enquiry, but - - -

21 MR MATTHEWS: I would like to see, Commissioner.

22 The final topic is, when it was that this witness
23 first learned of the role that others have spoken of,
24 of Detective Kelly in ensuring things were not in
25 statements that were taken that night, when it was that
26 he first learned of that: whether it was recently in
27 this inquiry or whether it was previous to that.

28 COMMISSIONER: What would the relevance of that be,
29 Mr Matthews?

1 MR MATTHEWS: It is striking that this isn't a matter that
2 has emerged previously, and in fact three witnesses
3 have given evidence: Thwaites, Poke and Clarke, that is
4 at odds with that - - -

5 COMMISSIONER: I'm sorry, at odds with?

6 MR MATTHEWS: At odds with Kelly having that role. In fact,
7 we've seen that again with the same letter, the
8 Question 47 letter, that Ms Poke relayed to the writer
9 of that letter, as she said at committal, that she was
10 in no emotional state, she was too upset to provide a
11 statement that morning.

12 Clarke said in the trial that the reason he didn't
13 include in his statement on the morning anything said
14 indicating two offenders was because he was - I think
15 paraphrasing - he was tired and upset, not confused but
16 tired and upset - distressed, I think, he was tired and
17 distressed. And Mr Thwaites, when asked at committal
18 why it took some time for him to provide a statement,
19 why he didn't provide a statement on the morning, said
20 he was unable to explain that.

21 So, I would like to ask this witness whether there
22 was any indication within the task force, whether Kelly
23 had played - or any broader indication that came to his
24 attention that Kelly had played in this role.

25 COMMISSIONER: I thought he's covered that. I thought he
26 said in his evidence on Friday that he was not aware
27 that Mr Kelly or the Homicide Squad engaged in such a
28 practice. Am I not right about that, Mr Rush?

29 MR RUSH: Yes, he certainly wasn't aware of it being

1 undertaken at Moorabbin, is my recollection.

2 MR MATTHEWS: I hadn't appreciated that. I've reviewed the
3 transcript, I hadn't appreciated that he'd been clear
4 about that, it's only a matter of clarity on that
5 point.

6 COMMISSIONER: Well, I think it is clear that he claimed
7 that he'd not appreciated that Kelly had done that.

8 MR MATTHEWS: Yes. In that case, I will not pursue that
9 matter with you, Commissioner. There's just one final
10 matter that I thought I'd raise with you, Commissioner,
11 whilst we're on the topic.

12 COMMISSIONER: Yes.

13 MR MATTHEWS: Which is that, at p.1164 of the
14 transcript from Friday, and it's an answer that the
15 witness gave which may hold within it a concession,
16 which was: "I don't know that I ever saw that first
17 statement", of Mr Pullin. It struck me at the time,
18 because the witness was under quite sustained
19 questioning on that topic, it struck me at the time
20 that that may be seen to be a concession, that in fact
21 he might have, which now I - - -

22 COMMISSIONER: He might?

23 MR MATTHEWS: A concession he might have seen a first
24 statement of Pullin, which of course would be highly
25 significant in the context of your inquiry.

26 COMMISSIONER: Well, I thought - - -

27 MR MATTHEWS: Yes, p.1164 of the transcript, Commissioner.

28 COMMISSIONER: Yeah, I thought he said during his evidence
29 on Friday that he now accepted that it was possible

1 that he had engaged in the same practice with Mr Pullin
2 as he had with all the others, which I took it to mean
3 someone went back to Mr Pullin and asked for
4 amplification of what was in his first statement, and
5 hence the second statement was produced.

6 MR MATTHEWS: That was - and what I took that answer that
7 I'm referring to mean, is that he'd seen that first
8 statement. And there was a deal of evidence about this
9 on Friday, but my understanding of the state of the
10 evidence was that he, Mr Buchhorn, maintains that he
11 had no role in relation to the Pullin statements.

12 MR RUSH: At p.1149 - - -

13 COMMISSIONER: Sorry, Mr Rush?

14 MR RUSH: At p.1149, line 16, he was asked whether he went
15 back for clarification of his statement, he said: "I
16 don't believe that's the case." Then you asked,
17 Commissioner: "So, is your sworn evidence that you did
18 not go back to Mr Pullin and ask to provide more detail
19 in relation to Miller's dying declaration?" Answer: "I
20 don't remember doing that with him, I can't be more
21 open, I just don't remember. I have no recollection of
22 doing that with him."

23 MR MATTHEWS: I'm indebted to my learned friend, I'll
24 withdraw that request because that, combined with
25 p.1164, is the concession; is really arguably the
26 concession that he might have.

27 COMMISSIONER: I have a recollection that after that passage
28 of cross-examination, it was in the afternoon, he
29 accepted that it's possible that he'd followed the same

1 process with Mr Pullin as he had with the others. Yes,
2 it's at p.1194-5, top of p.1195.

3 MR MATTHEWS: Yes, with respect. I won't pursue that
4 matter.

5 COMMISSIONER: Very good. Does that complete the matters,
6 Mr Matthews?

7 MR MATTHEWS: Yes, Commissioner.

8 COMMISSIONER: Mr Trood, strictly speaking I shouldn't hear
9 you on this, but is there anything you want to say
10 about Mr Matthew's - - -

11 MR TROOD: No, there's not, Your Honour.

12 COMMISSIONER: Yes, ask Mr Buchhorn to come in, please.
13 Come back into the box, Mr Buchhorn.

14 <GEORGE BUCHHORN, recalled:

15 HIS HONOUR: I understand Mr Matthews, who appears for
16 Mr Roberts, has a few questions and then Mr Rush has a
17 couple more matters but it won't keep you very
18 long?---Thank you.

19 <EXAMINED BY MR MATTHEWS:

20 Mr Buchhorn, you've spoken in your evidence about statements
21 being reformatted for inclusion in the hand up brief
22 for committal; that is, put into a standard format and
23 standard font, et cetera?---Yes.

24 Can I show you this document, please.

25 COMMISSIONER: Does that have an exhibit number,
26 Mr Matthews?

27 MR MATTHEWS: I don't believe so, Commissioner, not that
28 it's been used in the hearing as yet. And one for you,
29 Commissioner. (To witness) You've got in front of you,

1 Mr Buchhorn, a statement of Peter Wayne Morris with a
2 page number "738" at the top right of that first
3 page?---That's correct.

4 By all means look through that. The question ultimately for
5 you is, is that the statement that was included in the
6 hand up brief for Mr Morris?---Yes.

7 Have a look now at this document, please.

8 COMMISSIONER: You say that's not an exhibit, I'll mark
9 that.

10 #EXHIBIT ROBERTS 2 - Statement of Peter Wayne Morris.

11 MR MATTHEWS: Would you have a look at this document now,
12 please, Mr Buchhorn. Do you see that there is a
13 statement of Peter Wayne Morris?---Yes.

14 Signed by him and acknowledged by a Detective Senior
15 Sergeant Rankin?---Yes.

16 If I could take you, on the first page of that document
17 you're looking at now, to the second-last paragraph
18 commencing with the words, "I then commenced".

19 COMMISSIONER: Is the second document an exhibit,
20 Mr Matthews?

21 MR MATTHEWS: Yes, it is, Commissioner, I think that's been
22 exhibited. I don't have the Exhibit number to hand,
23 but there have been questions asked about this
24 document.

25 COMMISSIONER: Yes, it will be convenient if we identify it,
26 so that we can follow in the transcript which document
27 you're referring to.

28 MR MATTHEWS: Of course. Can I come back to that at a later
29 point on that? I'll locate it.

1 COMMISSIONER: Yes.

2 MR MATTHEWS: You see down the second-last paragraph with
3 those words, "I then commenced", you see it goes on to
4 say: "Whilst performing mobile patrols of Kingston Road
5 I had cause to speak to Jonathan Beech (22/2/81) [and
6 then gives an address]. Beech did not appear to match
7 the description of the alleged suspect wanted in
8 relation to the police shootings." Do you see that,
9 sir?---I do, yes.

10 If you compare that with the exhibit we were just looking at
11 before, the formatted version for the brief, that
12 entire passage beginning, "Whilst performing mobile
13 patrols" and ending with "police shootings" was not
14 included?---That's correct.

15 Can you explain how that came about?---No.

16 I take it, as the person preparing the brief, you would have
17 had some oversighting of the process of the formatted
18 versions being prepared?---Yes.

19 But you can't explain why that is missing, that
20 passage?---No, um, sir. I have a bit of a recollection
21 this has been spoken about in a previous transcript,
22 about a direction to leave the reference to Beech out.

23 Yes?---I don't recall now who said that.

24 Your memo about this Morris statement was to the effect that
25 the Beech matter, this person seen that morning by
26 Morris, was to be excluded as "not relevant", but that
27 doesn't seem to have affected the content of the signed
28 statement itself, but it does seem to have found - that
29 does seem to have been implemented in the copy of the -

1 well, the retyped copy that found its way onto the
2 brief and to the defence.

3 COMMISSIONER: Roberts 2 is a reformatted document, is it,
4 for the briefed? Is that what it appears to be?---This
5 one, sir, yes.

6 MR MATTHEWS: Was there any intention to hide from the
7 defence, on your part, to hide from the defence that
8 Morris was looking that morning for a single
9 suspect?---Um, no. Um, reading that - and I'm not sure
10 when you refer to a memo to leave it out, whether that
11 was from myself or not - but that he's found a person
12 on the street that he has spoken to.

13 Yes, he certainly did, but he said it "did not appear to
14 match the description of the alleged suspect wanted in
15 relation to the police shooting", singular,
16 suspect?---Yes.

17 Now, isn't the only explanation for that, that there was an
18 attempt to hide from the defence that this witness had
19 mentioned a single suspect?---Um, no, I don't - I don't
20 follow the question.

21 You don't follow the question?---No.

22 COMMISSIONER: No, I don't either, Mr Matthews. How do you
23 deduce from that, that the witness, Mr Beech, wanted
24 to - was only concerned with one suspect?

25 MR MATTHEWS: That Mr Morris was, Commissioner. Just
26 reading in context, Mr Morris was conducting a mobile
27 and static patrol of Kingston Road and Clarinda Road
28 per instructions from intergraph, and this is having
29 come to the crime scene on the night, and located this

1 gentleman, Jonathan Beech, and one would assume
2 therefore not taking the matter with Mr Beech further
3 because he "did not appear to match the description of
4 the alleged suspect." Now, that would have been
5 material of real relevance to the defence because
6 that's an officer who's had some sort of task allocated
7 to him of looking for a singular suspect in the - - -

8 COMMISSIONER: Well, that may be an argument for another
9 place, Mr Matthews, but what do you want to ask the
10 witness that the witness can throw any light on?

11 MR MATTHEWS: Is that, it was the intention to hide from the
12 defence.

13 COMMISSIONER: Well, he's answered that question.

14 MR MATTHEWS: He's said no, and I've asked him, is there any
15 other explanation for why that would be excluded;
16 that's the last question I would seek to ask him.

17 COMMISSIONER: Very good.

18 MR MATTHEWS: Is there any other reason why that would be
19 excluded from the formatted version on the brief?---Any
20 other reason?

21 Yes, other than to hide it from the defence?---No, I don't
22 think there was any deliberate effort to hide it from
23 the defence as to whether there were one or two
24 suspects. I think I explained on Friday that the
25 evidence overwhelmingly showed that there were two
26 suspects - or two persons involved in the shooting.

27 Why was it not in the formatted version for the brief, that
28 passage?---I can't explain that, other than that
29 Jonathan Beech was a person who was on the - had been

1 found walking around but was found to be not involved
2 and someone has deemed it not relevant.

3 COMMISSIONER: What's the exhibit number? Are you able to
4 give me that now for that second document?

5 MR MATTHEWS: I'll need to take a little time over that, I'm
6 sorry, Commissioner. I'll come back to that. (To
7 witness) Can I move to another topic, Mr Buchhorn. The
8 witness Gardiner: you'd recall Gardiner was one of the
9 first responders on the night to Senior Constable
10 Miller?---Yes.

11 I think you've been shown already Exhibit 263, which is a
12 handwritten statement from Gardiner taken at the Monash
13 Medical Centre on the night; do you recall seeing
14 that?---Yes.

15 There's then a second statement taken from Gardiner on 5 May
16 2000 which essentially says that he was instructed to
17 go in the ambulance, and that had been in the first
18 statement as well and he went in the ambulance with
19 Mr Miller to the hospital; you recall that from the
20 first statement?---Sir, I don't have the statements in
21 front of me, so.

22 Perhaps if we could bring up Exhibit 263, Commissioner, and
23 I'll take the witness to that.

24 COMMISSIONER: Well, it's not in dispute, is it?

25 MR MATTHEWS: Certainly not.

26 COMMISSIONER: You can put to him, counsel assisting will
27 correct you if your summation of what's in it - and
28 just try to move things along, Mr Matthews.

29 MR MATTHEWS: Certainly. (To witness) Mr Buchhorn, you can

1 take it that in the first statement that Gardiner made
2 is a statement that the senior constable who'd opened
3 the revolver at the scene where Mr Miller was, directed
4 him, Gardiner, to go in the ambulance with Miller to
5 the hospital. Okay, that's in that first statement
6 that Gardiner made on the night; okay?---Okay.

7 Then there's a second statement taken in May 2000 where
8 Mr Gardiner says something different; he says that he
9 was instructed by Senior Constable Helen Poke to go in
10 the ambulance, and he then did that. So, in other
11 words, the point of the second statement - it's a very
12 brief statement - the point of that second statement
13 seems to be to correct the position from it having been
14 Pullin who told him to go to the hospital, to Poke who
15 told him to go to the hospital. Do you follow?---Yeah,
16 I can hear what you're saying.

17 My question is, what role did you have in the preparation of
18 that second statement?---I don't know.

19 COMMISSIONER: You might need to show it to him then,
20 Mr Matthews.

21 MR MATTHEWS: Certainly. I've only got the one copy,
22 Commissioner, I wonder if I might just - - -

23 COMMISSIONER: Is that an exhibit?

24 MR RUSH: Yes, it is. I think it's Exhibit 262.

25 COMMISSIONER: Thank you very much.

26 MR MATTHEWS: Perhaps if I might keep my one. If the
27 witness could be shown Exhibit 262, it's very brief.
28 I'll take you down to the fourth paragraph in that
29 statement, please, Mr Buchhorn. You see, the first

1 three are introductory only, that he's attended
2 Gardiner at the corner of Cochranes Road and Warrigal
3 Road and he says in the fourth paragraph: "At the scene
4 I was instructed by another Cheltenham member, Poke, to
5 remain with one of the injured officers, Miller, whilst
6 he was transported to the Monash Medical Centre for
7 emergency treatment." Do you see that there?---Yes.

8 If we scroll down, it's a statement made at Wonthaggi on
9 5 May 2000 and witnessed by - - -?---A reservist.

10 Indeed, reservist MJ Brown. What role did you have - did
11 you have a role in relation to this second statement
12 being prepared?---Possibly, um, just reading the first
13 part of the statement suggests to me that this
14 statement was required to account for the continuity of
15 Rod Miller's clothing.

16 Is there anything about the way that that's typed, that
17 second statement, that suggests to you that you were
18 involved?---I don't think so.

19 COMMISSIONER: Perhaps you might go back to the body of the
20 statement, please.

21 MR MATTHEWS: Can I ask you that question again now that you
22 see the body of the statement ?---I'm not sure what I'm
23 supposed to be looking at.

24 Is there anything about that statement that suggests to you
25 that you prepared it for Mr Gardiner?---I'm not sure.

26 Do you have any recall about how this second statement came
27 about; that is, what caused a second statement to be
28 necessary?---As I said, just reading this and looking
29 at it and trying to think why would we require a second

1 statement from Mr Gardiner, I can only think, without
2 having access to the first statement, that there was
3 the question around the clothing of Rod Miller and the
4 continuity of that, because that was certainly
5 subjected to considerable forensic examination.

6 And that remained an issue, did it, as at May 2000, that
7 question of continuity, do you say?---Yes, I think so.

8 What makes you say that?---Well, again, I'm just looking at
9 the body of the statement and why would we need that,
10 and continuity would be - that sort of jumps out at me
11 from that second-last paragraph, that that seems to be
12 talking about continuity of Rod Miller's clothing.

13 Can I ask you about a running sheet in this matter, a
14 running sheet prepared by Senior Constable Thwaites.

15 Do you know the document that I'm talking about,
16 relating to the night of the murders?---Yes.

17 You recall that document?---Yes, I've been shown that here.

18 In the course of the examination?---Here today - well,
19 probably Friday.

20 Yes. Did you ever see at any time the original of that
21 document; that is, the actual document that had been
22 handwritten as opposed to a copy of it?---I'm not sure.

23 Was it your practice to sight original documents when you
24 were in the process of compiling statements and the
25 brief?---Well, there was a call for all notes and
26 diaries and running sheets; whether that was sent in in
27 original form or a copy, I couldn't say. But certainly
28 for our purposes, if the member wanted to retain the
29 original and sent us a copy, then that would suffice

1 for our purposes.

2 It would, would it? So you wouldn't ask for the

3 original?---Well, the member - particularly if it was

4 an official diary, they wouldn't want to be giving us

5 their official diary, they'd be holding on to it and

6 just send us a photocopy of what it contained.

7 But I'm asking specifically about a running sheet?---As I

8 said, I don't recall that specific running sheet.

9 I'm asking about your practice though, as you'd

10 appreciate - - -?---I thought I just answered that.

11 - - - was it your practice to see original running sheets

12 in a situation - - -?---No, I thought I'd just answered

13 that; it depends on whether the member wished to retain

14 the original document.

15 As I understand your evidence to be, you have no recall of

16 ever seeing the original of that running sheet?---Not

17 of that particular document, no.

18 When was the first time that you saw either the original or

19 a copy of Helen Poke's notebook?---Well, I think it was

20 at - in January 2001 when she brought it - my

21 recollection is, she brought her notebook in; whether

22 I'd seen it prior to that, I don't know, I don't

23 recall.

24 But you have a specific recollection of seeing it in January

25 2001?---I think so, yes.

26 When you say she came to Lorimer?---Yes.

27 You don't recall whether or not you saw it previous to

28 that?---It's a possibility, but um, when she came in

29 that's something that I think I recall.

1 But it's not a clear recollection from what you've just
2 said?---No.

3 I wonder if Exhibit 83 could be brought up, Commissioner.
4 You see there, that's one of those memos that you've
5 been asked about and talked about previously?---Yes.
6 And you've seen this on Friday, Mr Buchhorn?---Yes.

7 I just want to ask you about one further aspect of this.
8 You see that it reads: "Notes checked against
9 statement." Then the word "accurate" full stop, which
10 is crossed out"?---Yes.

11 What did the word "accurate" mean in that document?---I
12 imagine that what was contained in the notes was
13 contained in the statement, reading that.

14 Would you explain that a little further?---I don't know that
15 I can; I mean, I'm just reading that memo, and the
16 original notes from Mr Clarke, "Notes [were] checked
17 against statement. Accurate", and I don't know why
18 "accurate" is crossed out.

19 Well, that was my next question: you can't explain it being
20 crossed out?---No.

21 Were the original notes of Clarke accurate when checked
22 against the statement?---I imagine so.

23 As in, the statement mirrored what was in the notes?---Yes.
24 Finally, Mr Buchhorn, was it your understanding that
25 Rosemary Eden was requesting of uniformed members who
26 had attended the scene on the night their running
27 sheets and any notes they'd made?---Yes.

28 But that was her task, was to gather those materials?---I
29 believe so.

1 Thank you, Commissioner.

2 COMMISSIONER: Thank you. Mr Rush?

3 MR RUSH: Two matters. (To witness) You recall - you
4 probably don't, Mr Buchhorn - the first question I
5 asked you this morning was relating to 14 September
6 2001, and you agreed that on that date there was no
7 original statement from Ms Poke and no signed statement
8 from Ms Poke?---Yes, um, but I must admit, having seen
9 the statement where I have crossed it out and signed
10 it, suggests to me that we did have a signed statement.
11 So, I'm not - I'm not sure.

12 If one takes your answer this morning, of there being no
13 original signed statement and no signed statement at
14 all - - -

15 COMMISSIONER: In September 2000.

16 MR RUSH: In September, it's another matter that gives some
17 colour to the statement with the metadata dated
18 14 September having been prepared at that time?---Yes.
19 You recall, on Friday I - perhaps if we have a look at it,
20 Exhibit 480, it's a note of Mr Collins of 20 October
21 1998 from his day book at p.7236. Down a little bit
22 further, commencing at 9 .05, see he indicates he's at
23 a meeting with then Detective Inspector Sheridan and
24 Sergeant Solomon Humphries, Witschi, Butterworth and
25 there is discussion about various matters. One of
26 those matters is a little bit further down the page,
27 that he notes: "Chased up Buchhorn re clarification of
28 statements by Miller at scene. Queries identified in
29 statements. Follow up required re dying declarations."

1 Before I go on, have you had discussions about not
2 necessarily the last three weeks of IBAC but other
3 matters of IBAC with Mr Sheridan?---Yeah, Paul Sheridan
4 and I caught up a couple of times last year, following
5 the articles in the newspaper.

6 Did you discuss the statement-taking practices?---No.

7 What was the discussion?---I don't recall specifically what
8 we chatted about, it was - would have had focus on what
9 was being said in the newspapers.

10 About fixing up or making good statements?---No, um, it
11 wouldn't have gone into that sort of detail at all; it
12 would have been looking at the allegations around Glenn
13 Pullin's statements, and I remember telling Paul that,
14 "I don't know where this is coming from but it's -
15 certainly, I have a clear conscience that I wasn't part
16 of that."

17 COMMISSIONER: Who arranged those meetings, Mr Buchhorn?---I
18 think Paul contacted me, just to check on my welfare,
19 because by that stage I'm out of the police force. I
20 know in 2015 when I was first approached I was a bit
21 angry because I thought that this is something that's
22 probably been circling inside Victoria Police for some
23 time but no one contacted me to let me know, so I
24 remember contacting Paul, particularly after I got a
25 phone call from some girl from The Age newspaper out of
26 the blue. I thought that there'd probably been some
27 investigations going on within Victoria Police but
28 no one actually alerted me to it, but when I contacted
29 Paul that was the first time he'd heard of it as well.

1 MR RUSH: You've been in contact with Mr Sheridan. You
2 agreed with me last Friday that both yourself, or all
3 of you, Sheridan, Collins and yourself, are experienced
4 investigators?---Yes.

5 In that sense, the importance of the dying declarations is
6 followed up in that note that we've got on the screen,
7 for you to follow up on 20 October?---Yes.

8 If I take you to a couple of entries in Mr Sheridan's diary
9 at Exhibit 11, p.218. You see there: "Notes: dying
10 declarations." On the right-hand page, 3 September
11 1998?---Yes.

12 If we go to p.222, 7 September, the second entry: "Notes re
13 dying declarations." At p.241, 30 September 1998:
14 "Notes re dying declarations." I asked you on Friday,
15 I put to you on Friday, that the matters around dying
16 declarations, I think you eventually agreed that the
17 matters around dying declarations were very
18 important?---Yes.

19 And here, we have the inspector leading Operation Lorimer
20 referring to them throughout as dying
21 declarations?---Yes.

22 No question about them being dying declarations from at
23 least the entries?---Yes.

24 And consistent with the entries would be Mr Sheridan's
25 oversight of the statements of the witnesses that would
26 be referring to conversations with Mr Miller?---Yes.

27 I think you mentioned on Friday that your desk was closely
28 aligned or close to both Mr Sheridan?---I sat between
29 Mr Collins' office and Mr Sheridan's office.

1 And both of them, as we see, had concerns about
2 straightening out or, to use the words as written, to
3 follow up the queries that had been identified in the
4 statements of those who were witnesses to dying
5 declarations?---I think it would have been to make sure
6 that we had statements from everyone who had been with
7 Rod at the scene.

8 When Mr Collins wrote "queries identified in statements",
9 it's more than just following up to get the statements
10 in, isn't it?---I would presume so.

11 The process he's identified is the sort of process that
12 you've just been to with Mr Matthews and that you've
13 been through with a number of other witnesses,
14 clarifying their statements?---Yes.

15 They're the matters, Commissioner.

16 COMMISSIONER: Thank you.

17 MR MATTHEWS: Commissioner, I'm sorry, I forgot to ask a
18 question I had gotten leave for, I'm sorry.

19 COMMISSIONER: Did you? I thought you actually asked a
20 question about which you didn't get leave.

21 MR MATTHEWS: Oh. If I can, I apologise.

22 COMMISSIONER: What's the matter?

23 MR MATTHEWS: Why did it take so long for the Poke statement
24 to be taken? I think I got leave for that.

25 COMMISSIONER: Yes, very good.

26 <EXAMINED BY MR MATTHEWS:

27 Thank you, Commissioner. (To witness) Mr Buchhorn,
28 apologies for this, but can I ask you: why was it that
29 it took so long, that is, until January 2000, to take a

1 statement from Helen Poke?---I think it was January
2 2001.

3 Yes, sorry?---I think initially she was deeply traumatised
4 by what happened and she spent a period of time off
5 work, I think she also had some medical issues that
6 needed to be attended to, so they're - I can't explain
7 why it took so long, but I just don't know. I know
8 there were difficulties in that early period of time.

9 It's clear from what you've just been taken to by counsel
10 assisting that this was a matter that you were being
11 pressed about by your superiors, the dying declaration
12 statements?---Yes, I know but, you know, a member's
13 health overrides that.

14 And I think also the position might be that Ms Poke was at
15 work for at least a significant part of the year 2000
16 and 99?---No, I don't recall.

17 You can't explain the delay?---No.

18 COMMISSIONER: Just one last matter, Mr Buchhorn. Could you
19 look at Exhibit 79 again, please. On the first page,
20 1982, you see there these are some form of directions
21 being given by Mr Collins in terms of witness
22 statements and what sort of content there should be in
23 them?---Sir, I'm not sure that - oh, it's further down.

24 Do you see there that: "Crew 7, Homicide Squad, uniform
25 members. Points to consider when preparing
26 statements"?---Yes.

27 Without troubling you again, you were taken on Friday to the
28 instructions which included the importance of recording
29 contemporaneously conversations. At the very end of

1 the document, p.1984, it's recorded: "Original
2 statements are to be hand delivered or sent to the
3 officer in charge, crew 7 Homicide Squad." That was
4 Mr Collins?---Yes.

5 Was that generally the process that was followed?---Ah, I'm
6 not sure who it was addressed to, but um, looking at
7 this, it looks like that this possibly was the memo
8 that was being sent to members to supply statements,
9 and whether they smoked or what footwear they wore, and
10 that Graeme's name was put there as the contact person.

11 The phone numbers at the very end of the document, was that
12 Mr Collins' phone number and your phone number?---Sir,
13 it's blacked out.

14 Oh, is it? Is there any reason why the Lorimer Task Force
15 phone number shouldn't be disclosed? Let me pass you
16 my document, Mr Buchhorn. There are two phone numbers
17 there at the end; can you just confirm whether or not
18 they were Mr Collins and your phone number?---I don't
19 remember. They're certainly St Kilda Road numbers, but
20 whether we were on those extensions, I'm not sure.

21 Very good, thank you. Mr Trood.

22 MR TROOD: Thank you, Commissioner.

23 <EXAMINED BY MR TROOD:

24 Mr Buchhorn, on Friday you were asked some questions
25 concerning Mr Bezzina and the state of his knowledge as
26 to whether there was one or two suspects at that early
27 stage of the matter; do you recall being asked those
28 questions?---Yes, I do.

29 The evidence before the Commission is that, as I think

1 you've already been told, that Mr Gardiner makes a
2 statement on 16 August 1998 and the acknowledgment is
3 at 4.39 am, just accept that from me, and that it was
4 also taken by a Detective Senior Constable Jones; just
5 again accept that from me for the moment. In relation
6 to that statement made by Mr Gardiner, it contains
7 detail from Mr Miller as to the number of offenders.
8 In your experience, a detective taking such a statement
9 with that information alone in it, what would you
10 expect in terms of the distributing of that information
11 to other investigating members?---That it would go back
12 to the command post or certainly to his crew senior
13 sergeant.

14 How important, in terms of your experience, would it be for
15 that information to be given to the person who had
16 overall control of the investigation at the point of
17 taking the statement?---It would be very important
18 because it's additional detail that had been revealed
19 by a witness who was present.

20 You were also asked some questions on Friday concerning the,
21 in effect to summarise, the availability of the
22 information that is and was conveyed to D24 again on
23 16 August 1998; do you recall that?---Yes.

24 There were some questions regarding availability of
25 transcript at that early stage you might recall?---Yes.

26 As an experienced investigator who comes into an
27 investigation or a scene and there is knowledge that
28 there has been a call made which might contain relevant
29 information to D24, what steps are available then and

1 there to learn the contents of that D24 call?---Sir, I
2 actually worked at D24 for about two years in an online
3 supervisor capacity. When radio transmissions come in
4 on the recorded channels they go on to - they went on
5 to these big discs of tape; that is freely available
6 through the online system to remove that tape and play
7 it back.

8 COMMISSIONER: Mr Trood, am I right in perceiving that the
9 purpose of these questions is to undermine the
10 credibility of Mr Bezzina's account?

11 MR TROOD: It's matters which arose from the questions asked
12 on Friday.

13 COMMISSIONER: I wonder if you could answer my question.

14 MR TROOD: I think the answer might be, yes, in that sense.

15 COMMISSIONER: I thought that's consistent, that objective
16 is consistent with Mr Buchhorn's original theory as he
17 advanced it through a large part of Friday. But
18 correct me if I'm wrong, I thought by mid-afternoon on
19 Friday, and certainly today, Mr Buchhorn accepts that a
20 likely explanation for the Pullin statements is that he
21 followed the practice with respect to Mr Pullin that he
22 did with others, namely, he either went back himself or
23 arranged for someone else to get a further statement
24 from Mr Pullin. Am I wrong about that?

25 MR TROOD: No, you're not, Your Honour.

26 COMMISSIONER: Well, there's not much point then in
27 persisting with the issue of Mr Bezzina's credibility,
28 is there?

29 MR TROOD: Probably not, Your Honour. Perhaps I'm being a

1 bit sensitive, there was a fair amount of criticism
2 directed to him on Friday on this particular issue.
3 Perhaps - - -

4 COMMISSIONER: I don't think Mr Buchhorn is going to be
5 aided, ultimately, by encouraging him to return to a
6 theory.

7 MR TROOD: I'm not attempting to do that, I might say, Your
8 Honour - I'm sorry, Mr Commissioner. Perhaps just to
9 give some detail as to that aspect, but I can move on.
10 (To witness) Part of your evidence that you gave on
11 Friday related to the forensic side and the crime scene
12 side of the investigation?---Yes.

13 You gave some evidence in general terms that that might be
14 called your portfolio for - or part of your portfolio
15 for the investigation?---Yes.

16 Could I just ask: in terms of that aspect of the matter, how
17 long did that continue, your role in terms of that
18 forensic or/crime scene aspect?---It would have
19 continued past committal stage.

20 Lastly, Mr Buchhorn, I wanted to ask you about one aspect of
21 this matter which has in fact been raised by the
22 Commissioner this morning. The Commissioner, in
23 effect, has been asking questions of you to get some
24 input as to how some of these practices can be, (a)
25 eliminated, and (b) improved on?---That's correct.

26 You've been an officer in charge of a number of police
27 stations during the course of your career?---Yes.

28 And you've served under a number of either sergeants or
29 senior sergeants at different police stations during

1 the course of your career?---Yes.

2 In terms of the practices that you've observed over an
3 extensive career, just looking at police station level
4 for the moment, how much variation did you come across
5 when it came to you, for example, visiting police
6 stations and learning things, how much variation did
7 you come across as it might relate to, for example,
8 doing statements or submitting briefs?---Quite a lot.
9 It often depended on who your supervisor was as to what
10 level of experience and background they had, and that
11 would then influence how you performed your own duties;
12 you had to sort of change your approach to, I guess,
13 meet the requirements of whoever it was that was
14 supervising you, so that they may have different
15 requirements and that could be - like, when I was at
16 Broadmeadows, I had 12 sergeants; I'm sure that each
17 one of those had their own nuances as far as checking
18 the correspondence of the members that were reporting
19 to them. I know that members often talked about the
20 different standards: one sergeant might be very hard
21 and another sergeant might not be as hard, so I know
22 that was often discussed.

23 Are you able to assist the Commission with regard to the
24 value of having standard procedures in this area?---I
25 guess, in light of what the Commission has been
26 examining, that is important. As I said earlier, I
27 didn't appreciate how grave those practices were. I
28 think Victoria Police is probably taking a lot of
29 notice of what's going on here and, as I said earlier,

1 I'm not sure how they're going to tackle that other
2 than, I guess, the suggestion being that, if a
3 supervisor creates a memo asking for changes, that that
4 memo stays with the brief so there's a degree of
5 transparency there.

6 Perhaps to take up something that the Commissioner's been in
7 fact raising during these matters, do you see any value
8 in having, for example, standardised procedures with
9 regard to the taking of statements, what happens with
10 them as a broad topic at, firstly, Academy level?---At
11 Academy, supervisor level, but also refreshers as
12 things change, new policies and procedures come in, or
13 new findings in court, that it's an ongoing process. I
14 know in my notes I did the brief manager's course in, I
15 think it was 1998/1999, and that's the end of your
16 training, there is no follow-up training.

17 You've just mentioned "supervisor level", what did you mean
18 by that?---Well, brief managers was for sergeants and
19 senior sergeants, and there would have been -
20 unfortunately, I haven't retained any of those notes,
21 but I'm sure that that course was an attempt to
22 standardise the approach to the checking of briefs of
23 evidence.

24 Would it be, in your view, useful as a part of this process
25 for members to have an understanding of how statements
26 can be used in court and what role they have in
27 relation to their use in court?---Yes. Yes, I think
28 this has certainly highlighted an area that does
29 require improvement.

1 Thank you.

2 COMMISSIONER: Thank you, Mr Trood. Mr Rush, I'm just
3 wondering whether or not the appropriate course is to
4 finally excuse Mr Buchhorn. It's certainly not likely
5 that Mr Buchhorn under any circumstance would be
6 recalled as part of these public hearings.

7 If, in the unlikely event that there's further
8 evidence required from Mr Buchhorn, it won't be as part
9 of this public inquiry.

10 MR RUSH: That's correct, Commissioner, but there is a
11 slight potential that that may be necessary depending
12 on further witnesses.

13 HIS HONOUR: You mean, in these?

14 MR RUSH: Not in these hearings.

15 COMMISSIONER: So, is there any reason why he shouldn't be
16 released from his summons? Perhaps you might ask
17 Mr O'Connor what the investigator's view is.

18 MR RUSH: There's no reason, Commissioner.

19 COMMISSIONER: Very good.

20 So, Mr Buchhorn, I'm concerned to, as far as
21 possible, relieve you of any ongoing stress and
22 concern. After these public hearings are concluded it
23 may be that IBAC will have to continue to conduct some
24 further private hearings in relation to matters that
25 have emerged during the course of the public hearings.
26 In the unlikely event that you had to be recalled, we
27 would have to issue a new summons, so I will release
28 you from your summons and the confidentiality notice.

29 But there is an order for witnesses out of court,

1 which means that you should not discuss any of the
2 evidence that you have given or the evidence that any
3 other witness is likely to have to give whilst these
4 public hearings continue. Do you follow?---Yes.

5 We'll provide you with a video recording of your evidence
6 and a transcript of your evidence. Otherwise, you may
7 now put these public hearings behind you, so I thank
8 you for your attendance, you're excused, Mr Buchhorn.

9 <(THE WITNESS WITHDREW)

10 MR RUSH: Mr Sheridan is the next witness, Commissioner.

11 COMMISSIONER: Who will commence at 2 o'clock?

12 MR RUSH: 2 o'clock.

13 Luncheon Adjournment: [1.03 pm]

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