
TRANSCRIPT OF PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

TUESDAY 12 FEBRUARY 2019

(6th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Jack Rush QC

Ms Catherine Boston

OPERATION GLOUCESTER INVESTIGATION

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

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

1 MS BOSTON: Morning Commissioner, the first witness this
2 morning is Mr D'Alo.

3 COMMISSIONER: Yes.

4 <GIUSEPPE D'ALO, affirmed and examined:

5 COMMISSIONER: In the summons which you were served it set
6 out the matters about which you would be examined, I'll
7 just remind you as to what they are. Firstly, the
8 Lorimer Task Force investigation of the murders of
9 Sergeant Gary Silk and Senior Constable Rodney Miller
10 concerning the taking of witness statements, the
11 preparation of the brief of evidence for the trial of
12 Debs and Roberts, and whether there was full disclosure
13 of witness statements or other relevant information
14 prior to or during the trial, witness statement-taking
15 practices by Victoria Police, compliance with
16 obligations to disclose evidence by Victoria Police.

17 I understand you're represented by Mr Gipp?

18 MR GIPP: Yes, I appear for Mr D'Alo.

19 COMMISSIONER: Thank you, Mr Gipp. At the conclusion of
20 counsel assisting's questions and any cross-examination
21 that I give leave to take place, your counsel will have
22 an opportunity to further examine you to amplify any of
23 the evidence that you've given or to cover any other
24 matter that you feel you'd like to place before the
25 Commission.

26 You were served with the summons, the
27 confidentiality notice and the statement of rights and
28 obligations?---I was.

29 Has Mr Gipp discussed with you the content of those

1 documents?---Yes.

2 You understand your rights and obligations?---I do.

3 Do you want me to go through them again with you?---No.

4 Very good. Yes, Ms Boston.

5 MS BOSTON: Mr D'Alo, what is your full name?---Guiseppe

6 D'Alo, commonly known as Joe.

7 Are you also known as Joseph D'Alo?---Correct.

8 You attend here today in response to a summons served on you

9 on 9 January 2019?---Correct.

10 Would you look at these documents, please. The summons

11 there numbered SE2792, is that the summons that was

12 served on you?---Yes, it is.

13 You indicated you received a document entitled, "Statement

14 of Rights and Obligations", do you see that document in

15 the bundle?---Yes.

16 Together with the summons and the statement of rights, did

17 you also receive a confidentiality notice dated

18 11 December 2018?---Yes.

19 As well as a covering letter dated 12 December 2018?---Yes.

20 Are those copies of the documents you received in

21 full?---Yes, so there was a second summons and - yes.

22 A second summons in relation to documents?---That's correct,

23 yeah.

24 Do you understand the nature of the documents that were

25 served upon you?---I do.

26 I tender those documents, Commissioner.

27 #EXHIBIT P - Documents served on summons to Mr D'Alo.

28 COMMISSIONER: Mr D'Alo, I should have mentioned to you that

29 there is an independent person present that might

1 assist you. If at any stage you want to have a break,
2 you are having any difficulty in the course of your
3 evidence, you just let me know and we'll adjourn and
4 you can confer with her?---Thank you.

5 MS BOSTON: You mentioned you were served a summons to
6 produce documents, you did not produce anything.
7 Please confirm that you do not have documents within
8 the terms of the summons within your possession or
9 control?---No, I don't.

10 What is your current occupation, Mr D'Alo?---I'm a part-time
11 builder.

12 Were you previously employed by Victoria Police?---I was.

13 When did you graduate from the Academy?---20 March 1987.

14 If you could briefly outline the stations that you were
15 stationed at over the course of your career as well as
16 the ranks that you held?---I did my junior and senior
17 training at Preston Police Station, it was an old
18 system back then where we had temporary duties at
19 different sections of the police force. I was then -
20 obtained a position at Preston Police Station where I
21 was there for a few years. I then went into, I

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 Robbery Squad ultimately; is that correct?---Yes. So,
27 I did - I spent some time at CIB in suburban locations,
28 including Melbourne CIB, and then, yes, I got to the
29 Armed Robbery Squad in early 98; January 98 from

1 memory.

2 When did you become a detective?---1994.

3 So, does that mean you would have undertaken the Detective

4 Training School in 1994?---Correct.

5 And then to CIB Melbourne?---I did a stint at Dandenong CIB,

6 Prahran CIB, and then on to Melbourne CIB.

7 Directly from Melbourne CIB to the Armed Robbery

8 Squad?---Correct.

9 In early January 1998?---That's correct.

10 So, you'd been a detective for about four years by the time

11 you went to the Armed Robbery Squad?---That's right.

12 When did you retire or depart Victoria Police?---2006.

13 Where were you at that time?---Where?

14 Where were you stationed?---I was stationed at the Fraud

15 Squad.

16 So from joining the Armed Robbery Squad in 1998, when were

17 you there until?---Can you repeat that, please?

18 You joined the Armed Robbery Squad in January 1998; how long

19 were you at the Armed Robbery Squad for?---I was there

20 till late August not long after the Moorabbin incident,

21 and I was then seconded to the Lorimer Task Force.

22 So, you went from Armed Robbery Squad to the Lorimer Task

23 Force at the Homicide Squad in August 1998?---Correct.

24 You were seconded to homicide from the Armed Robbery

25 Squad?---Yes, that's right.

26 How long were you seconded to homicide for as part of that

27 Lorimer Task Force?---I was there for the duration,

28 including part of the evidence of - the brief of

29 evidence preparation.

1 Just to explore that a bit further. Initially there was a
2 larger task force in the initial stages of the
3 investigation; is that correct?---That's right.
4 And then a much smaller team was responsible for the
5 preparation of the brief?---Correct.
6 And you were part of that smaller team?---For a period of
7 time, not for the full term, but I was there for
8 probably halfway through that brief preparation.
9 What stage of proceedings - had the committal taken place
10 yet when you were still there?---Yes.
11 Had the trial yet taken place?---No.
12 So sometime between the committal and the trial?---That's
13 right.
14 Where did you go then?---I went to the Major Fraud Squad.
15 That was in approximately 2001 or 2002?---2001 from memory.
16 So, very shortly after the committal?---Correct, yeah.
17 Were you employed with Glenn Pullin at the Major Fraud
18 Squad?---I'm familiar with the name, but don't believe
19 I've ever spoken to him.
20 You were at the Major Fraud Squad until you departed
21 Victoria Police in 2006?---Correct.
22 What was your rank at the time of your
23 departure?---Detective senior constable.
24 So, I take it, you were working as a detective senior
25 constable all throughout your time at the Armed Robbery
26 Squad including when you were seconded to the Lorimer
27 Task Force?---Yes.
28 You're also aware of Operation Pigout, I take it, which was
29 an investigation into a series of armed robberies in

1 the southeastern suburbs of Melbourne which occurred
2 between 1991 and 1994?---That's correct.

3 And Jason Giller and Bandali Debs were the suspects in
4 respect of those armed robberies?---Well, we later
5 learnt that they were, yes. At the time of that
6 operation, those three years 91 to 94, it wasn't known,
7 but subsequently, yes, that's what we discovered.

8 Jason Giller in fact ultimately ended up pleading guilty to
9 those armed robberies?---That's correct, yes.

10 And you, in fact, interviewed him in respect of those armed
11 robberies?---Yes.

12 What was your involvement in Operation Pigout?---Well, we
13 only - when I was at the Armed Robbery Squad we had a
14 reason to go back to that investigation because the
15 armed robberies seemed to have started again, there was
16 similarities to the 1998 armed robberies.

17 This is the Hamada series of - - -?---That's correct, so
18 Operation Hamada was formed.

19 Do I understand from your answer that you weren't involved
20 in the initial investigation of those Operation Pigout
21 armed robberies?---No, not the initial, but we
22 re-investigated them essentially.

23 Because, of course, you only arrived at the Armed Robbery
24 Squad in 1998?---That's right.

25 And so, you had involvement in Operation Hamada before the
26 murders of Sergeant Silk and Senior Constable
27 Miller?---That's right, yes.

28 What was your involvement in Operation Hamada?---Well, from
29 the start to the finish. The end of that operation

1 included - we had to employ other police officers from
2 other districts to make up a team. It had become
3 somewhat political, the armed robberies. The offenders
4 were essentially baiting the police by making remarks
5 at the conclusion of the armed robberies, and so, it
6 was decided that there was a need for a larger more
7 broad expansion of setting of likely targets.

8 The Armed Robbery Squad enlisted the assistance of uniformed
9 members to assist with the surveillance of so-called
10 potential soft targets?---That's right.

11 Did those uniformed members become a part of Operation
12 Hamada itself, of the task force?---No, they - that
13 wasn't just uniform, there was some plain clothes
14 police as well; they were briefed at the start of that
15 extension of the operation, if I can use those words,
16 and it only ran for a couple of weeks.

17 Your own role in Operation Hamada, did you undertake
18 surveillance yourself as part of that operation?---Yes,
19 I had charge of another district, a nearby district to
20 Moorabbin.

21 Did you also have responsibility for, at times, taking
22 witness statements from victims of those various armed
23 robberies?---That's correct, yes, I did.

24 Did you in fact attend the scene at some of those armed
25 robberies to speak to witnesses?---Yes, I did.

26 When you went to the Lorimer Task Force - or just back a
27 step. Were you seconded immediately to the Lorimer
28 Task Force after the murders?---Pretty much, yeah. It
29 wasn't much time before my team, the four members, were

1 seconded to this task force.

2 Were only four members of the Armed Robbery Squad seconded

3 to the Homicide Squad?---Yes, it was - - -

4 Who were they?---Mark Butterworth, detective sergeant;

5 Detective Senior Constable Mark Wise, and Detective

6 Senior Constable Stephen Beanland.

7 Was there also a Craig Thornton who moved from the Armed

8 Robbery Squad on secondment to the Homicide

9 Squad?---Yes, that's right, he was the analyst and he

10 was - he became part of the analyst team; there was

11 about three or four of the analysts working with us at

12 the task force.

13 The other analysts that were working on the Lorimer Task

14 Force, were they also from Hamada or were they from

15 outside?---No, they were from elsewhere.

16 Other than your team - so, was the detective senior sergeant

17 your supervisor?---Detective Sergeant Mark Butterworth,

18 yep, he was the team leader.

19 And the team included yourself, Mark Wise and Stephen

20 Beanland?---Correct.

21 And that was it?---That's right.

22 Apart from Craig Thornton and your team, did anybody else

23 get seconded to the Lorimer Task Force?---I think there

24 was a - I was about to say Ash Carlton-Smith, but I

25 think he only assisted, but no, that was essentially

26 the four.

27 Was the reason for your team and Craig Thornton being

28 seconded, that there was a suspicion from an early

29 stage that the offenders responsible for the Hamada

1 armed robberies may also be responsible for the
2 murders?---Yes, that was one theory, and so, yes, we
3 joined the Lorimer Task Force at that stage. We had no
4 idea whether it was armed robbery-related or not, so we
5 went up to form part of the team and our sole - our
6 investigation up there was to look at the armed robbery
7 angle.

8 Because obviously you had that background knowledge having
9 worked on Operation Hamada?---That's right.

10 Which might be of assistance to the Lorimer Task
11 Force?---That's right.

12 At what stage of the investigation did Debs and Roberts
13 become the prime suspects?---Prime suspects, probably
14 well and truly after 12 months.

15 So, at some time in 1999?---That's right, yes, it was over a
16 Christmas period.

17 There was some listening devices and telephone intercepts
18 installed in November 1999?---That's right.

19 Which persisted until the arrest of Roberts in August 2000;
20 that accords with your recollection?---Thank you for
21 those dates but I wouldn't have remembered them, yes.

22 Does that assist you in recalling when it was that they
23 became the focus of the Lorimer Task Force?---Yes.

24 It was at that point, in November 1999?---That's when they
25 become, or just before that they became prime suspects.

26 I just want to turn away now from specific investigations
27 and ask you some general questions about
28 statement-taking practices. Obviously over the course
29 of your career you would have taken a lot of witness

1 statements; do you agree with that?---Yes.

2 What was your understanding of the purpose that would be
3 served by the witness statements?---They're the eyes
4 and ears, and you try and document what they saw,
5 heard, felt, smelt, any of those senses, and you
6 document that information onto a statement. Often for
7 investigators you are also relying on your day book or
8 your diary, and so, sometimes where you might make an
9 entry, you know, contemporaneous entry, you might
10 return back to that particular person and take a
11 statement from them at a later date.

12 Just exploring that a little bit further, do I take it from
13 that answer that you wouldn't necessarily include all
14 of the information provided by the witness in their
15 witness statement, that you would instead record some
16 of it in your day book?---No, I would record
17 information from the - in the statement, what was
18 relevant. Often people can go a bit wide and too far
19 wide, and so, you'd try and contain that within the
20 evidence, but certainly you document it using as much
21 of their language as possible.

22 You mentioned that you would sometimes go back to your day
23 book, and please correct me if I misunderstood, and use
24 that as a basis to at a later time take a further
25 statement - - -

26 COMMISSIONER: He didn't say that, Ms Boston. Are you
27 saying that that was the purpose of a further
28 statement?---No.

29 Or in lieu of a statement?---What I was saying was that at

1 times you'll take a statement straight away, directly,
2 and then there are times where you have taken some
3 notes, you attend to a crime scene and you'll be
4 speaking to a lot of people and you'll be taking notes,
5 and there are times when you might return back to that
6 particular person and take a statement where you
7 haven't taken one at the initial time.

8 MS BOSTON: So, you're not suggesting that relevant
9 information would not be included in the statement
10 taken?---No.

11 The statements obviously ultimately end up on the hand up
12 brief and eventually the depositions for an indictable
13 offence; is that your understanding of the purpose
14 of - - -?---That's right, they form part of the brief.

15 The purpose which would be served by the statement. In
16 terms of the obtaining of statements, would that be
17 done on an individual basis or would there be oversight
18 of which statements were being taken by individual
19 members?---Most of the time you're taking them by
20 yourself or your partner, not necessarily an oversight
21 unless you're looking, if I can use that word, but
22 yeah, essentially at that point as an investigator
23 you're taking your own statements.

24 If you're not the informant in the matter, that is, not the
25 investigator in charge of an investigation, would you
26 then provide any statements you have taken to the
27 informant?---Well, the statements, the informant will
28 decide on - well, in this case it was up to the Command
29 at the Lorimer Task Force and then the OPP to decide

1 which statements were relevant.
2 At the moment I'm not asking you specifically about the
3 Lorimer Task Force. Was that the normal process, where
4 you would provide your statement and then you wouldn't
5 have any input into which statements were ultimately
6 included in the brief?---Well, if you're either the
7 prime investigator and you prepare the brief of
8 evidence, you essentially decide what statements - that
9 will always be checked over by the supervisor at a
10 station level.

11 There's evidence before - - -

12 COMMISSIONER: Sorry, I just want to be clear about that,
13 Mr D'Alo. You have the person, the prime investigator
14 who assembles the brief, who makes an initial
15 determination about which of the statements it's
16 considered are relevant, and then that's overseen by a
17 supervisor, is it?---Yes, I'm extracting this from the
18 Lorimer Task Force as I was asked, so I go back to my
19 uniform days where the briefs that you are preparing
20 are for lower type offences. You, as the investigator,
21 prepare that brief of evidence and then that brief is
22 always checked by a superior at that police station.
23 It is then additionally checked by the Office of Police
24 Prosecutions; essentially you upscale to a point where
25 the brief is prepared enough for a court hearing.
26 That hierarchy of preparing the brief and overseeing it, was
27 that followed in Lorimer?---Yes, yes.
28 Who was the prime person responsible for - - -?---That's
29 right.

1 So, who?---In my case it would be Mark Butterworth would
2 check over the statements that Steve Beanland or Mark
3 Wise would take. And then eventually, I mean, it
4 wasn't until the very end, where the brief preparation
5 came to, came ahead, and so that then went through a
6 number of superiors, including Inspector Paul Sheridan,
7 and then it went above those to Jeremy Rapke at the
8 OPP.

9 Sheridan, was he in effect in the position then of the
10 supervisor? In your example, who was actually tasked
11 with the responsibility of assembling the brief of
12 evidence?---Well, the informant and there was the
13 senior sergeant and inspector; from my understanding
14 that was done at that level.

15 Who were they?---Paul Sheridan, senior sergeant - sorry, my
16 memory's failing me - - -

17 That's all right?--- - - - but there was at least three or
18 four that were involved in that.

19 Perhaps you might assist.

20 MS BOSTON: Was it Collins?---Thank you, Graeme Collins,
21 thank you.

22 Did you have any involvement with George Buchhorn at
23 all?---No. No, not from - other than, he was a member
24 of the task force and we'd see each other everyday, but
25 in terms of the brief preparation, no.

26 You weren't aware of the role that he was undertaking in
27 relation to the compilation of the brief?---Not
28 directly, no.

29 Is that because your role and your Operation Hamada team

1 which had come over to the Lorimer Task Force were
2 focusing on the Operation Hamada armed robberies aspect
3 of the Lorimer Task Force investigation?---That's
4 right. Our role was always specifically in relation to
5 the armed robbery angle.

6 I'll just take you to Exhibit 605, please.

7 COMMISSIONER: It'll come up on the screen, Mr D'Alo.

8 MS BOSTON: This is your day book or diary, is it?---That's
9 my diary.

10 This is from January 2000, it appears. So, we see at this
11 stage it is still the Operation Lorimer Task
12 Force?---That's right, yes.

13 I just want to ask you a question about some of these
14 entries: "Attend to Operation Hamada and Pigout", what
15 does that say then? "Armed hold-up" or?---From my
16 recollection, we were just going back through - getting
17 back through all the statements, the team was, and just
18 reviewing all the information in the statements and
19 compiling them.

20 What's the word after "Pigout" before "review statements and
21 investigate"?---I think it's "armed hold-up", "Pigout
22 armed hold-up."

23 What did that mean by "reviewing statements and investigate
24 with Detective Sergeant Butterworth and Senior
25 Detective Beanland"? What did that actually
26 entail?---Well, again, it was just a continual review
27 and always going back through that information, and we
28 did that a number of times, so that would be something
29 like - - -

1 Was it actually updating statements, or was it analysing
2 statements? What was your task in reviewing the
3 statements?---No, just - well, analysing them and
4 seeing whether we needed to take additional statements
5 from that review.

6 Just down to the bottom of that page on 5 January 2000, it
7 says there: "Crew 3 to review Operation Hamada
8 statements." I take it, crew 3 was your team that had
9 come over from the Hamada Task Force?---That's my vague
10 memory, yes.

11 You'll see on the next page, the Thursday or Friday, still
12 reviewing the Operation Hamada statements. Then, on
13 11 January: "Compile questionnaire sheet for Operation
14 Hamada victims' review statements." What's the
15 questionnaire sheet that you're referring to
16 there?---From memory, it was a ready reckoner of
17 questions to ask the witnesses, the victims.

18 To see if they could provide more information than was
19 included in their original statements?---That's my
20 memory of it, yes.

21 A number of witnesses - again, stepping away from Operation
22 Lorimer for a moment, just looking at general
23 practices - a number of witnesses have given evidence
24 before the Commission that it was a practice, at least
25 within some parts of Victoria Police, not to include
26 descriptions of offenders in initial witness statements
27 but instead to record that information elsewhere and
28 including at the Armed Robbery Squad. Was that a
29 practice that you came across while you were at the

1 Armed Robbery Squad?---No, not at all.
2 Or elsewhere?---No.
3 Did you work with a Detective Beanland?---I did.
4 And Detective Peterson?---Neville Peterson, yes.
5 I take it that you would have taken witness statements at
6 the same crime scenes as they did?---That's right.
7 What was your knowledge of their practices in terms of
8 statement-taking?---I could only talk about my own
9 statement-taking practices, and that is, you compile
10 them according to what the witness was telling you.
11 And that includes - - -
12 COMMISSIONER: Mr D'Alo, that plainly can't be correct. If
13 you're tasked as a secondee to Lorimer was, as your day
14 book shows, in part to review statements in Pigout and
15 Hamada, you would have been looking not only at the
16 statements you took but also the statements of all of
17 the other investigators - - -?---Oh, I see, yes.
18 - - - who took accounts from victims, so you would have
19 become very familiar with the process followed by all
20 of your colleagues, wouldn't you?---Well, in terms of
21 their statements - - -
22 Correct?--- - - - whether I was present when they were
23 taking statements themselves, so I just - - -
24 No, no, I'm not suggesting that, but you became familiar
25 with what they would put in their statements?---Yes,
26 that's right.
27 MS BOSTON: And you would have seen throughout that process
28 that on a number of occasions, instead of descriptions
29 of offenders being included in initial witness

1 statements, they were recorded on a separate piece of
2 paper?---Look, I'd - it comes as some surprise, I don't
3 know why you would do that.

4 It's not a practice that you've ever come across?---Well, if
5 somebody gives you a description, I mean, that's
6 exactly what you want to put in your statement.

7 Can you think of any reason why - - -

8 COMMISSIONER: And there should be no exception to that
9 rule, should there?---That's correct.

10 Regardless of whether your personal view was that the
11 witness's description was faulty?---Well, that's
12 exactly right, yes, I mean - - -

13 You still put it in?---Absolutely.

14 MS BOSTON: One reason for not following the practice of
15 including all of the information in an initial
16 statement might be, well, what if the information, the
17 description provided by the witness ultimately doesn't
18 match the suspect which we arrest; you'd agree that
19 that's one possible reason for undertaking the practice
20 that I've described?---Well, it wouldn't be a reason
21 for me.

22 No, I'm not suggesting - - -

23 COMMISSIONER: It would be typical, Ms Boston, seeing the
24 witness is presently saying he has no familiarity at
25 all with that practice, perhaps you need to explore
26 that a bit.

27 MS BOSTON: You can't think of any legitimate
28 reason - - -?---No.

29 - - - to omit that information from an initial

1 statement?---No.

2 And that's why you didn't follow that practice

3 yourself?---Particularly given that, when you take a

4 statement from a witness at that point in time it's the

5 very start of an investigation usually, and so you

6 don't know who the offender, the suspect is going to

7 be, so for any investigator that would be quite a

8 crucial piece of information that you would include.

9 Particularly with armed robberies, it would usually be the

10 case that the victims wouldn't know the offenders,

11 wouldn't it?---Well, that's particularly so with the

12 Hamada and Pigout, because we were relying on

13 descriptions that were - even the colour of their eyes;

14 I mean, we were just trying to, you know, extract as

15 much information as possible as far as to help us with

16 an identity.

17 It's critical to include information such as eye colour, as

18 you've just said, but also information such as build,

19 age, hair colour and the like, as much information as

20 the witness can provide?---Correct.

21 And also information about the clothing worn by the

22 offender?---That's right.

23 And any information as to the voice or accent of the

24 offender?---That's right.

25 It's all critical information to obtain as soon as possible

26 in the investigation?---Yes.

27 And you can see no legitimate reason why such information

28 would not be included in the first statement?---The

29 only thing I can think of is that, you know, in fear,

1 you know, really heightened states some information may
2 not be included because of that fear, that anxiety,
3 that stress, that's certainly present on that
4 particular night that we're referring to.

5 I'm asking generally here; are you speaking in relation to
6 the Lorimer Task Force, are you?---I'm just saying that
7 the only - you're saying where something might be
8 omitted.

9 Yes?---That would be through the anxiety of a person
10 and - - -

11 Are you speculating about the Glenn Pullin scenario, are
12 you, where information was added in after the first
13 statement was made? Is that what you're referring
14 to?---I'm obviously aware of that but I don't know
15 about that specifically, but all I'm saying is that on
16 that particular night I can tell you that we were all
17 fairly stressed.

18 It wouldn't ever be proper, though, to backdate a statement,
19 would it?---No. No, not at all.

20 Is that something that you've seen done?---No.

21 Is that something that you've heard being done before?---No,
22 I've not heard it.

23 In that sort of scenario, not necessarily talking about
24 Lorimer specifically, but where it becomes apparent
25 that in a particular investigation a statement taken by
26 a witness is deficient in some way, it might contain
27 incomplete information or clearly wrong information,
28 what's the process which you undertook in that kind of
29 situation to remedy the deficiency?---I would go back

1 to the witness and take an additional statement and you
2 would connect that supplementary statement with your
3 original statement.

4 There's been evidence about an alternative practice of,
5 instead of taking a supplementary statement which
6 refers to the previous statement, taking a so-called
7 replacement statement which contains most of the
8 information from the first statement but with some
9 additions or deletions or amendments. What's your
10 awareness of that practice?---I was shocked when I
11 heard it and I am still shocked, so I'm not aware of
12 it.

13 COMMISSIONER: When you say you heard it, you mean in the
14 course of these public hearings?---No, not in the
15 course of these public hearings.

16 When did you hear it, Mr D'Alo?---I was approached by a
17 reporter some time ago who had been speaking to Ron
18 Iddles, and he was interested in speaking to me, and
19 that's where I first learnt of that information.

20 What was put to you?---That, yeah, George Buchhorn had -
21 essentially something to do with the statement, and I
22 heard about that again when the IBAC investigators
23 spoke to me.

24 MS BOSTON: Did Ron Iddles ever speak to you directly?---No.
25 So, that was the first time; was that around 2015 or
26 later?---To what are you referring?

27 That the journalist spoke to you?---No, it was later than
28 that.

29 Possibly 2017?---It would have been early 2018.

1 So, that was the first time you'd heard of a statement ever
2 being replaced?---That's right.

3 You appreciate that it wouldn't be proper to replace a
4 statement because it would hide relevant information
5 from the prosecution and the defence, wouldn't it?---I
6 agree, it wouldn't be proper.

7 It would conceal the fact that changes have been made to
8 that statement, it would deprive the prosecution and
9 the defence from being able to explore why those
10 changes have been made; do you agree with that?---I
11 agree.

12 And therefore it would deprive them of the ability to test
13 the accuracy of the information in the replacement
14 statement?---I'd agree.

15 And, where the statement's been backdated, it would also
16 conceal the date on which that statement has been
17 made?---That's right.

18 COMMISSIONER: Could I just ask you, Mr D'Alo, what is your
19 understanding of a police officer's obligation to
20 disclose relevant information to the prosecution and
21 the defence? How would you describe that
22 obligation?---When you prepare the brief of evidence
23 you provide the defence all the information. I do
24 recall there is a form - I can't remember what the form
25 number is called to be quite honest - but you would
26 provide the defence and disclose all the information
27 that you as the investigator had in relation to that
28 particular suspect.

29 All information that was thought to be relevant?---That's

1 correct.

2 Was there any training about what the breadth of that
3 obligation was?---Not from memory directly, I
4 just - - -

5 So it became a matter of experience then, did it?---That's
6 right. So, if I go back to my early days in the police
7 force, that came in not long after I hit the streets,
8 and yeah, we had to provide full disclosure, and so, it
9 was sort of cemented in my head certainly from an early
10 career.

11 Did your experience teach you that that disclosure had to
12 extend to information which didn't fit the prosecution
13 theory or the police case, that it required disclosure
14 of everything that supported it and everything that was
15 inconsistent with it?---That's right. From my memory
16 it was all very broad, the information that you to
17 supply.

18 But to your knowledge there's never been specific training
19 directed to that obligation?---To my memory. There may
20 have been a bulletin - in fact, I'm sure there would
21 have been a bulletin where police officers would update
22 themselves from week-to-week, but if you're talking
23 about an actual classroom training, I don't recall.

24 MS BOSTON: I just want to take you to Exhibit 331, please.
25 This is a statement made by witness, Joel Paule, on
26 1 December 2000. If we go down to the bottom of the
27 last page, p.3540, you will see that you have taken the
28 acknowledgment and witnessed the signature of that
29 witness. You agree with that?---Yes.

1 If we could go back up to the first page, I just want to
2 explore why this process was undertaken.

3 COMMISSIONER: You might need to read the whole statement.

4 MS BOSTON: "I have been asked by Senior Detective Constable
5 D'Alo to read over a statement that I provided to
6 police on 16 May 1993. This statement is in relation
7 to an armed robbery committed on the manager of the
8 Fountain Gate McDonald's store on 16 May 1993. The
9 details contained in this statement are as follows ..."
10 And you will see that there under is what purports to
11 be a copy of the words that were contained in the
12 original statement from 16 May 1993. At the end of
13 that portion of the statement, at p.3539 - it's not
14 included in this copy. What it does state is that:
15 "This is the statement that I made to the police on the
16 night of the robbery and the contents in it are true
17 and correct", and therefore follows the jurat. Do you
18 recall what the reason was for undertaking that
19 process? Instead of relying on the original statement
20 from 1993, the need for you to go to the witness and
21 take a statement in 2000 setting out the statement from
22 1993?---No, I don't recall. I mean, probably as a
23 review of the statements we went back to many of the
24 original victims and witnesses.

25 The previous statement surely could have been used, the 1993
26 statement, in a brief?---In a brief? It was decided
27 that - - -

28 Sorry - - - ?---Well, it was decided that we would take
29 additional statements.

1 Okay, but this statement doesn't seem to include any
2 additional information, it simply sets out what the
3 statement from 1993 said apparently and attests that
4 it's true and correct. Do you have any recollection of
5 why that process was undertaken?---No.

6 Can you hypothesise as to why that may have been
7 necessary?---All I can remember is, we reviewed the
8 statements and decided to go back to many - most of the
9 victims and witnesses; some, from memory, where we took
10 additional statements from, but I can't recall whether
11 we took statements off every single person.

12 I want to ask you about some statement-taking practices used
13 during Operation Hamada, please. Do you remember an
14 armed robbery of the Jade Kew Restaurant, Chinese
15 restaurant in Kew?---I do.

16 Do you remember attending the scene in relation to that
17 armed robbery?---Vaguely, I recall attending that one,
18 yes.

19 If we could go to Exhibit 289, please. This is not a
20 statement taken by you, I should explain. This is a
21 statement taken by Detective Beanland on 30 June 1998
22 from a witness at the Jade Kew Restaurant. If we go
23 down to a paragraph on that first page commencing, "We
24 were all sitting at table 15", about halfway down that
25 paragraph you will see: "And then Bobby walked a few
26 steps forward to see if he could see what was
27 happening. At that time I looked up and saw two
28 persons inside the restaurant. I saw that they were
29 wearing some type of rubber masks over their face.

1 They were standing at the cabinet where we keep our
2 China. I saw that the first one was taller than the
3 second one." Now, other than that description as to
4 the first offender being taller than the second one,
5 that's the only description given by this witness in
6 this statement taken by Detective Beanland. If we
7 could move to Exhibit 288, please.

8 COMMISSIONER: Given the purpose for which this statement
9 was taken, do you not want to refer the witness's
10 attention to what was said in the first statement about
11 the blinds at the restaurant?

12 MS BOSTON: In relation to, what, I'm sorry, Commissioner?

13 COMMISSIONER: As I understand it, the statements you're
14 about to take the witness to involves some elucidation
15 of the issue of the blinds in the restaurant and who
16 moved them.

17 MS BOSTON: No, Commissioner, that's a different witness,
18 Commissioner.

19 COMMISSIONER: Is it? My apologies.

20 MS BOSTON: I'll come to that one in due course,
21 Commissioner. (To witness) This particular witness, a
22 follow-up statement was taken from her on 26 November
23 2000 and this was taken by Sergeant Dale. Now,
24 questionnaires had in fact been taken from all of the
25 Hamada witnesses earlier in that year, in January 2000;
26 is that right?---That's my memory, yes, that's correct.
27 And then some witnesses made further statements as a result
28 of those questionnaires, it seems; is that what
29 occurred?---Again, yeah, that's - relying on memory,

1 that's what we essentially were trying to do, is to go
2 back and see if we could elicit any more.

3 So, in January this witness has provided a questionnaire,
4 and then in November 2000 she's asked to make a further
5 statement. If we could just look at this second
6 paragraph, please: "I have previously made a statement
7 to police in relation to a robbery committed on my
8 restaurant on 27 June 1998. At the time of making my
9 statement I described the two males who robbed us,
10 however these descriptions were not put into my
11 statement. From referring to notes that were made of
12 the descriptions I gave and my memory I am able to say
13 that there were two males." Below that is quite a
14 detailed description of those two males; do you see
15 that there?---Yes.

16 I just wanted to explore with you what this witness has said
17 is in relation to the fact that she had, at the time
18 when she made her statement, given a description of the
19 males and that that was reported in notes of some sort.
20 You said you were present at the investigation of this
21 particular restaurant; is that right?---That's right.

22 What is your knowledge as to how Detective Beanland was
23 recording this description that was being given to him
24 by the witness?---On the subsequent statement, are you
25 talking?

26 Well, in this subsequent statement there's reference to the
27 fact that: "At the time of making my statement I
28 described the two males, however these descriptions
29 were not put into my statement. From referring to

1 notes that were made of the descriptions that I gave
2 and my memory ...", and she goes on to describe them.
3 What I'm wanting to explore with you is what this
4 witness would have meant by "notes"; are they notes
5 that would have been taken by Detective Beanland?---I
6 can only assume that.

7 There would be no reason for anybody else to be making notes
8 of a description given by this witness since he was the
9 one taking the statement from him; you'd agree with
10 that?---That's right.

11 COMMISSIONER: Presumably, Mr D'Alo, as part of the review,
12 constant reviewing of the statements made by victims of
13 these armed robberies, you would have become familiar
14 with the content of that statement?---That's right.

15 Which disclosed that the witness had given a description to
16 the person who initially interviewed him but the
17 description wasn't recorded in the statement, it was
18 recorded separately?---Right, yes.

19 You've forgotten about that? You've forgotten that you
20 would have become aware of that during the course of
21 reviewing these statements?---I'm not - I'm not sure
22 why it was, for this particular witness; I mean, we
23 took a large volume of witness statements, I'm not sure
24 why this anomaly picks up within this statement. I do
25 recall though that - I'm not sure whether it was with
26 the Jade Kew, but possibly with the Jade Kew - the
27 Green Papaya, the owners of those restaurants employed
28 illegal immigrants and we actually - when we got to
29 those scenes there were people missing that were

1 supposed to be there. We couldn't work it out at the
2 time. Subsequently, we actually did manage to catch up
3 with many of those people that worked either in the
4 kitchen or as waiters, so I'm not sure whether this
5 particular statement is from one of those particular
6 individuals.

7 But I'm not sure why that would be relevant. What's
8 relevant is, the witness makes clear that when that
9 witness's statement was taken, the witness gave a
10 detailed description but it wasn't put in the statement
11 but was put on a separate note which later became the
12 content of a further statement?---Yes. So, I'm not
13 aware of why that occurred.

14 MS BOSTON: I'd like to take you to a different statement
15 from another witness from that same armed robbery.
16 Exhibit 291, please. This is again not a statement
17 taken by you, it's a statement that was taken by your
18 colleague, Detective Sergeant Peterson, so we'll just
19 wait for that one to come up. If we go to the very
20 bottom of that document, you'll see that it's dated
21 30 June 1998 and in respect of the armed robbery which
22 occurred on 27 June 1998. Going up to the top of that
23 statement, this is from a witness, Lochai Lee. In the
24 third paragraph: "At about 12.30 am we were all sitting
25 at the table having supper, the front door was pushed
26 open. One male then appeared from behind the
27 partitioned wall with a gun. The male was wearing a
28 plastic coloured mask." Further down the next
29 paragraph: "So my son went to have a look and there was

1 a second male who was holding a small knife behind the
2 first one with the gun, he also had a face mask."
3 There's then a description of the armed robbery, but
4 again in this statement no description provided, other
5 than what I've already read out, as to the offenders.
6 If we could move on to Exhibit 290, please. Like the
7 previous witness, this witness made a follow-up
8 statement in November 2000, 26 November 2000. If we
9 can go to the bottom of this further statement you will
10 see that it was taken by detective - well, you probably
11 can't read that, but it's Detective Witschi. Is he
12 somebody that you worked with as well?---Yes, he was in
13 the task force.

14 He was in the Lorimer Task Force?---Um - - -

15 This is November 2000?---Probably not actually, no, now that
16 I think of it. No, he - he was involved in some
17 capacity but not probably at the task force.

18 Okay, but assisting in obtaining some of these follow-up
19 statements?---That's right.

20 You will see that this is a follow-up statement from Lochai
21 Lee, that same witness statement I'd just taken you to.
22 Second paragraph on p.3403: "I have previously made a
23 statement to the police regarding an armed robbery that
24 occurred at our restaurant on 27 June 1998. From
25 information I supplied to police and my recollection I
26 would describe the two offenders as follows ...", and
27 again, there's quite a detailed description, firstly,
28 of the first offender and then over the page of the
29 second offender, and the great majority of that

1 information, of course, hadn't been included in the
2 first statement taken by Detective Peterson. In that
3 third paragraph that I just read out, "From the
4 information I supplied to police and my recollection",
5 what information would this witness have supplied to
6 police that he is referring to here? We know it hasn't
7 come from the statement, so where would that
8 information he provided to police have been recorded
9 over that two and a half year period?---Either in the
10 statement itself - in this case not - or in a day book.

11 Because that was a common practice, wasn't it, to - instead
12 of including all of the information in an initial
13 statement, to record it in the day book?---I don't
14 think - I'm not saying if it was a common practice, but
15 sometimes witnesses may not recall events straight away
16 and, you know, whether in this case that was
17 information that she recalled.

18 Well, she says that some of it's from her recollection, "But
19 from information I supplied to police and my
20 recollection", so clearly there's been some information
21 that had been supplied to police which hadn't been
22 included in that first statement. My question to you
23 is, you said that probably from the day book, would
24 have probably come from the day book; why did you
25 answer in that way?---Well, you would put information
26 in your day book if you don't take a statement from
27 that person at the initial outset. You fill in as much
28 information in your day book as possible, that's a good
29 way to recall the events when you go back to them

1 sometime down the track.

2 But this witness did make a statement fairly shortly after,
3 within a couple of days of the offence. I don't follow
4 why it is that that information would be recorded in a
5 day book as opposed to in that witness's
6 statement?---You'd have to ask the policeman that took
7 the statement, I'm not sure why.

8 COMMISSIONER: But again, as part of your review of all of
9 the statements taken of the victims of these armed
10 robberies, you'd become familiar with the content of
11 these statements?---I would have at the time, yes.

12 And your primary focus, was it not, when doing these reviews
13 was to look at the descriptions of offenders, look at
14 the MO, to see whether or not, (a) you could say that
15 there's a sound basis for concluding it's the same
16 offenders committing these offences, and then to see
17 whether or not there was any aspect of that MO or the
18 descriptions that would be relevant to the
19 murders?---That's right, and whether they recalled
20 anything more that they didn't provide at the time of
21 taking the statement.

22 MS BOSTON: If I could move on to Exhibit 324, please.

23 Again, this is a statement taken from a witness at the
24 Jade Kew Restaurant, again not a statement taken by you
25 but one of the other members present with you, from
26 Peterson. If we go down to the bottom of the document,
27 p.3520, this statement is made on 29 June 1998 and the
28 acknowledgment is taken by Detective Sergeant Peterson
29 again. If we could go to the top of the document:

1 "Shirley Ing Gee was a waitress at the Jade Kew
2 Restaurant." Turning over the page to p.3516, about
3 halfway down the page, the paragraph starts: "Then all
4 of a sudden a male with a handgun came around the
5 corner. He was wearing a plastic mask covering his
6 head." Further down the page: "Ten seconds later the
7 second offender appeared behind the one with the gun."
8 There's then a detailed description of the offence
9 itself. Then, on p.3518, at the bottom of the
10 page this witness sets out what one of the offenders
11 was wearing, including a Bob Hawke plastic mask as well
12 as the clothes that he was wearing. There's no
13 reference in this statement to the matters which you
14 said was important information to include, namely
15 height, build, eye colour, hair colour, any accent and
16 so forth. You agree that they are important pieces of
17 information to include?---Yes.

18 If we can turn to Exhibit 322, please. This is a statement
19 taken by you; do you agree with that? If we go down to
20 the bottom of the page we can see your signature, and
21 it's dated 14 January 2000. Do you agree it's a
22 statement taken by you?

23 COMMISSIONER: Would you like to look at the hard copy,
24 Mr D'Alo?---Yes, I do. Just, the handwriting is ...
25 It's not my handwriting, but that is my signature on
26 the second page.

27 MS BOSTON: Whose handwriting could it have been, if it
28 wasn't you, the officer who took the acknowledgment of
29 the witness?---Going by the way it's written, I would

1 say Shirley made the statement.

2 And it's her handwriting and you've - - -?---Yes.

3 But she's a civilian witness, isn't she?---That's right.

4 Surely, there would have been a process of guiding through

5 what information should be included in the statement,

6 in terms of what was relevant?---Yes.

7 You didn't leave her to her own devices to decide what to

8 put into her statement; you'd accept that, wouldn't

9 you?

10 COMMISSIONER: That's why you've said in the

11 acknowledgment - - -?---Yes.

12 - - - "statement taken by me"?---That's right.

13 MS BOSTON: You'll agree that within this statement - it's

14 14 January 2000, that's the period of time where

15 questionnaires were being undertaken with the various

16 Hamada witnesses, isn't it?---That's right.

17 As you said before, that involved taking out a pro forma set

18 of questions to individual witnesses and seeing what

19 their responses were?---That's right.

20 In this statement, that would be about the time when that

21 process was being undertaken?---Correct.

22 In fact, this statement was made on the day that you took

23 the questionnaire to Ms Ng?---I assume that would be

24 the case, yeah.

25 The only information that is in this statement which is

26 really additional, we see that about halfway down the

27 first page, 3511, we see that there's reference to the

28 fact that she's previously made a statement: "Some

29 police have spoken to me again today and I have read my

1 statement again." One of those police members would be
2 you?---That's right.

3 "My first statement says that we shut the blinds, this is
4 not what happened. The smaller of the two guys who
5 robbed us closed them after we were all told to get
6 onto the floor and we did, so this guy went and closed
7 the blinds." And it goes on, but that's the only
8 additional information included in this statement which
9 was not included in the first statement?---Correct.

10 I take it that you would have read her statement, her first
11 statement, when you went to see her in order to make
12 her second statement?---Yes, I would have.

13 Surely, you would have noticed that it was lacking details
14 that you would have taken initially had you taken that
15 statement?---I'd presume, yes.

16 You would have realised that that first statement didn't
17 include critical information such as the offender's
18 height, build, hair colour and so forth?---Yes.

19 COMMISSIONER: That's assuming there was nothing
20 accompanying the statement that contained those
21 particulars?

22 MS BOSTON: It is. (To witness) What information did you
23 have, other than the statement itself, as to the
24 account that this witness had given previously?---Look,
25 I don't recall. We would have had, you know,
26 additional documents perhaps but I don't recall
27 exactly.

28 Did you have Detective Peterson's notes of the description
29 provided by this witness when she made her first

1 statement?---I can't recall that.

2 COMMISSIONER: Can we not assume, though, Mr D'Alo, that had
3 it become apparent to you that she'd not previously
4 given a description, but she was in a position to give
5 a detailed description, you would have inserted it in
6 the statement?---That's right, yeah.

7 Can we not assume that, from something you saw, you were
8 satisfied that had already been done?---I still can't
9 recall exactly my thoughts at the time, but - - -
10 I understand that. I'm simply asking you to theorise now,
11 having regard to your practice that you would have
12 included her description if it wasn't already in a
13 statement, can we not assume that you were satisfied
14 that there was a description recorded somewhere?---You
15 may assume, yes.

16 MS BOSTON: We might go to Exhibit 120 at this point. This
17 is an example of the questionnaire you've referred to
18 earlier, I take it?---Yes.

19 Is that your handwriting?---Yes, it is.

20 I take it, you've gone and spoken to Shirley Ng and asked
21 her these questions and filled in her
22 responses?---That's right.

23 That would have taken place on the same day that you took
24 the statement we've just been to in relation to the
25 blinds?---That would make sense, it would be on the
26 same day, yes.

27 It's not the best copy in the world, I apologise, but just
28 doing our best. This is obviously two and a half years
29 after the offence, but No.6, you would have asked

1 Ms Ng: "Can you described the offenders, i.e. age,
2 height, build, hair, complexion, nationality, accents
3 et cetera?" She said: "No, one had quite a big
4 build." Now, there was nothing about build in the
5 first statement, was there?---That's right.
6 That would have been relevant information to include in the
7 statement you took about the blinds?---That he had a
8 big build?
9 Yes?---Yes.
10 That should have been included?---Possibly, yes.
11 There's then descriptions of what the offenders were
12 wearing. Are you able to read what you've written
13 under, "Can you describe what the offenders were
14 wearing?"?---Something about wearing a blue t-shirt.
15 We might leave this document for the moment and turn to
16 Exhibit 323. This is a further statement taken from
17 this same witness, again by Sergeant Dale. If you look
18 at the bottom of the last page, you will see that it
19 was taken on 26 November 2000?---Yes.
20 Go back up to the top of this document, please, third
21 paragraph: "From referring to the notes of the
22 descriptions I gave police on the night and my memory
23 I am able to say that there was two males." There's
24 then a description of the first male in terms of their
25 height, approximate age, clothing, accent, build, and
26 the second male in terms of his size, mask, height,
27 build, don't believe he had an accent. Again, this
28 witness, like the previous witness, has referred to
29 notes she made that were taken of descriptions she gave

1 of the offenders on the night. Does this assist you in
2 being able to work out what notes this witness would
3 have been referring to?---No, other than either a day
4 book or a statement.

5 We know they weren't included - not all of these details
6 were included in the statement, we've been through the
7 statement; you agree that most of the details weren't
8 in there?---That's correct.

9 So we know that they weren't recorded in the statement, they
10 must have been recorded elsewhere, you'd agree?---I
11 agree.

12 The only hypothesis you have is that it could have been
13 included in a day book; is that right?---Correct.

14 That wouldn't be in accordance with your own practice of
15 including all relevant information in a first
16 statement, would it?---Correct.

17 COMMISSIONER: Do you know Mr Peterson?---I do.

18 Or did you then?---I did at the time, yes.

19 Where was he stationed at that time?---He was at the Armed
20 Robbery Squad back in 1998 and - - -

21 So you'd worked with him?---For a short period of time, yes.

22 He gave unequivocal evidence yesterday about the practice of
23 not recording the description of the offenders in the
24 statement taken from the victim, and he proffered as
25 the explanation for that, that it's because witnesses
26 on the day may be stressed, frightened, may not give an
27 accurate account and so it's not recorded in their
28 statement and he said that's a practice that continued
29 throughout his time in the force. And you've here seen

1 a statement which you must have looked at for the
2 purpose of your tasks of Mr Peterson showing that
3 that's the practice he followed in this case with
4 Ms Ng?---I wasn't aware that that was a practice that
5 he followed.

6 Well, you saw it there?---Yes, I did see it there, yes.
7 Is it conceivable that when you went back to Ms Ng, you
8 didn't have that description that Mr Peterson had
9 recorded?---That's conceivable, yes.

10 It would make for an inefficient investigation, wouldn't it,
11 if you are going back to re-interview a witness and you
12 haven't been supplied with all of the information the
13 witness initially gave the first investigator?---I
14 agree.

15 Ms Boston, are you able to indicate to the witness
16 approximately how many statements taken by Pigout and
17 Hamada investigators on their face show that that
18 practice was being followed, even as a rough estimate?

19 MS BOSTON: The previous estimate has been given of 50. I
20 can't guarantee that all 50 were included on the trial
21 brief, Commissioner.

22 COMMISSIONER: No, but in terms of material that the witness
23 would have been looking at for the purpose of his task
24 at the Lorimer Task Force? It's a very large number
25 anyway.

26 MS BOSTON: Approximate, it's a large number, and I can take
27 the witness to multiple examples if that would assist
28 him in being able to recall having seen the practice.

29 COMMISSIONER: So, I'm just puzzled, Mr D'Alo, as to why it

1 is that you said you had no familiarity with that
2 practice when it seems you would have sighted countless
3 statements taken by other investigators in which the
4 description was recorded elsewhere than on the
5 statement?---I just - I didn't see it.

6 You don't remember it anyway?---I might not have been at the
7 Armed Robbery Squad long enough to have seen it.

8 MS BOSTON: So, you'd got to the Armed Robbery Squad, I
9 think you said, in January 1998 and were there until
10 August when you moved to the Lorimer Task
11 Force?---That's right.

12 Moving to another witness from this particular armed
13 robbery, Exhibit 287, please. This is a statement
14 taken by Detective Mark Wise on 29 June 1998 from a
15 witness, Bobby Lee.

16 COMMISSIONER: Do you know Mr Wise?---I do, yes.

17 Worked with him?---I did.

18 What was his role at the Lorimer Task Force?---He was there
19 for a short period of time before he left with
20 ill-health.

21 What was his task there, do you know?---Well, he was part of
22 a team investigating, or re-investigating the armed
23 robberies.

24 MS BOSTON: So, this is the son of the owners of the Jade
25 Kew Restaurant. This statement does in fact include
26 descriptions. If we go to p.3359, just read that,
27 please?---"I would describe the first male I saw ..."

28 COMMISSIONER: Just read it to yourself, Mr D'Alo.

29 WITNESS: Yes.

1 MS BOSTON: Is this the kind of description that you would
2 expect to see in a first witness statement?---Yes.
3 Includes information about the height, build and so forth,
4 clothing, approximate age?---Yes.
5 That would be in accordance with the practice you've told
6 the Commission you had?---Yes.
7 If we could move to Exhibit 286, this is a statement taken
8 by you on 13 January 2000, you see, if we go down to
9 the bottom?---Yes.
10 Again, going by the date, this would have been at the time
11 that you spoke to this witness asking him the questions
12 from the questionnaire?---Yes.
13 If we could just leave that one up and bring up also
14 Exhibit 548, you will see that is a copy of the
15 questionnaire that you had this witness fill out; agree
16 with that?---Yes.
17 Again, that's your handwriting?---That's right.
18 And it's dated 13 January 2000; agree?---Yes.
19 Same date as the statement. I just wanted to ask some
20 questions about what you were instructed to do as part
21 of this questionnaire process. What was the purpose in
22 obtaining these questionnaires?---Just to try and
23 elicit as much - if there was any more information that
24 we could elicit from the victims and witnesses.
25 Were you given any directions about whether to take
26 additional statements from the witness?---To?
27 Were you given any instruction about whether to take a
28 statement from a witness after they'd filled out their
29 questionnaire?---I don't believe there was a specific

1 instruction. We discussed, you know, what our role
2 was, but I don't recall exactly or precisely what we
3 spoke about.

4 Who would have been directing you as to what to do in
5 relation to the questionnaire? Mark
6 Butterworth?---Probably Mark Butterworth.

7 In the event you have taken a further statement from Bobby
8 Lee on 13 January, and if we go to the first page of
9 that document, you will see that the witness says: "I
10 do recall that the bigger guy, the one holding the gun,
11 had some sort of foreign accent, possibly Greek or
12 Italian", and there'd been reference to that matter on
13 Exhibit 548 at number 6: "No real accents, however the
14 taller one I thought had a faint foreign accent,
15 possibly Greek or Italian", and there's further
16 information about the clothing and so forth. Other
17 than the questionnaire, did you have any other source
18 of information about what this witness would say?---No,
19 I don't recall.

20 Certainly, you would have had the statement itself, the
21 first statement?---That's right, yeah.

22 But you don't recall seeing any notes from Detective Wise or
23 anybody else?---No. I suppose the reason for the
24 questionnaire, from memory, was that, if we had a
25 series of them, a number of them, we would just look
26 through them and just see whether there were any
27 parallels or similarities throughout the questionnaire,
28 and that was from memory why we compiled it that way.

29 The reason for that was, in terms of looking for

1 similarities, was that the police theory was at this
2 stage that the Hamada offenders had committed the
3 murders? Is that right?---Repeat that again, I missed
4 it.

5 At the time of the questionnaires, early 2000, the police
6 working theory was that certainly the Hamada offenders
7 were responsible for the murders?

8 COMMISSIONER: Might be. That was a theory, I think she
9 said?---A theory, yeah. Yeah, there was - just have -
10 precisely with the date, I'm not sure at what
11 point they became ...

12 MS BOSTON: You gave evidence before that by this stage,
13 November 1999 when the TIs and LDs were installed, but
14 that by that stage Debs and Roberts were the prime
15 suspects?---They were sitting on top of the photo, yes.
16 So, it was certainly the case theory at that stage that the
17 Hamada offenders were responsible for the
18 murders?---That's one theory.

19 This is 18 months after the murders themselves. Why was it
20 that it was thought necessary to conduct these
21 questionnaires at that stage?---Well, there was a lot
22 of work we did before that and, you know - I mean,
23 whether it's, that's when we got to it or - it's just,
24 at some stage a lot of the work that we were doing as
25 an Armed Robbery Squad, or armed robbery investigators,
26 was continually going back over the intel that we had
27 and - well, I was obviously employed also to do other
28 tasks which assisted, such as the U-class examinations,
29 so there was an enormous volume of work to get through.

1 But surely the Hamada people, your team and Craig Thornton
2 who had come over to Lorimer, you'd been brought over
3 in order to look back at those Hamada statements;
4 correct?---Correct.

5 You said before that you were looking for similarities in
6 the statements; that's because at this stage the police
7 were aware that it may well be a similar fact case. Do
8 you follow what I'm talking about with "similar
9 fact"?---I follow what you're saying, yes.

10 That if enough linkages could be drawn between the various
11 armed robberies, it would be a way of establishing that
12 they'd all been committed by the same person; you'd
13 agree with that?---I agree with that.

14 Or people, and assist in connecting the armed robbers to the
15 murders?---Yes.

16 What instructions were you given by Detective Butterworth or
17 anybody else about taking further statements
18 incorporating any additional information a witness
19 could give about describing the offender or
20 offenders?---Look, I wouldn't - wouldn't recall the
21 exact conversation, not all these years.

22 You've obviously gone back and spoken to Bobby Lee on
23 13 January 2000?---Yes.

24 And you've helped him fill out the questionnaire?---Yes.

25 And you've determined to take a further statement from him;
26 agree with that?---I agree.

27 I want to turn to a different questionnaire that you went
28 through around that same time, Exhibit 119, please.

29 This is in relation to the Green Papaya Restaurant that

1 you mentioned earlier. Perhaps firstly I'll go back to
2 Exhibit 305, Commissioner, I apologise. Another
3 statement taken by you, a statement taken by Senior
4 Constable Langmaid on 19 July 1998?---Yes.

5 There's no description in this statement beyond some very
6 limited details. If we could turn to page - keeping
7 that up there, please - Exhibit 171. Exhibit 305 is
8 the statement taken by Senior Constable Langmaid,
9 Exhibit 171 is a separate description provided by that
10 same witness, signed by the witness at the bottom of
11 that page?---Yes.

12 I'll come in a moment to the fact that, as part of that
13 questionnaire process, it was you who went back and
14 spoke to Mr Louey. Surely, if you're going to
15 undertake that exercise of questioning him further, you
16 must have had this separate description document?---I
17 would assume I would have had all the - the full
18 statement.

19 COMMISSIONER: And you just don't remember, in the entire
20 process you were going through, that you were looking
21 at notes separate from the witness's statement which
22 contained the description of the offenders?---We would
23 have been looking at all the information that we had on
24 hand; there were hundreds of people that we spoke to,
25 so I don't recall individually, but yes.

26 I'm just really reminding you of your evidence at the
27 outset, that you said you'd never ever become aware of
28 any practice of separately recording the identification
29 separate from the statement of a witness?---Or separate

1 when it's taken at a later date, yes.

2 No, we're talking about when it's taken at the same

3 time?---I have seen it in this fashion where it might

4 be taken at the same time and the description is part

5 of it, added to it, but I've never known where it's

6 been taken - the description's been taken at a later

7 date.

8 So, I'm sorry, does that mean you need to qualify what you

9 said earlier? You do recall seeing statements

10 taken - - -?---Is this statement that I'm looking at,

11 are those dated the same date?

12 Yes. So, you had seen that?---I have seen that once or

13 twice, yes.

14 MS BOSTON: The second statement, the separate description

15 isn't dated, but the evidence before the Commission is

16 that they were taken at the same time?---Yes.

17 That is a practice that you've seen before?---I've seen it

18 seldomly.

19 At the Armed Robbery Squad or elsewhere?---I'm not sure

20 where I've seen it.

21 Certainly, in investigating as part of Operation Lorimer,

22 you must have seen that practice?---I've seen that

23 before, yes.

24 Where have you seen it?---I can't exactly recall that, but I

25 have seen it.

26 In fact, it was a common practice?---Well, I - I've not been

27 aware if it was common practice, I have seen it

28 seldomly.

29 Is it a practice that you from time to time engaged in?---I

1 don't believe so, but um.
2 What did you understand to be the purpose of the
3 practice?---Just to maybe articulate the description on
4 a separate sheet so it's a bit more obvious, that's the
5 only thing I can think of.

6 If that were the purpose, there'd be no reason not to simply
7 include it in the statement at the end of the document
8 but before the jurat; agree with that?---That's right.
9 So, that can't be the reason for the practice, can it, of
10 putting it on a separate document? The hypothesis
11 you've just given of making it clear what the
12 description is cannot be the explanation for recording
13 the description on an entirely separate document in the
14 statement?---That's right.

15 Do you agree with that?---I agree.

16 The only reason for the practice would be to use the
17 description later on if it fits the suspect and not use
18 it if it doesn't fit the suspect?---No, disagree with
19 that.

20 You disagree? So, what do you say would be the reason for
21 it?---Whether it was a practice with some, I don't - I
22 can't really explain that.

23 Because it wasn't your practice, you don't know what the
24 purpose was?---That's right.

25 COMMISSIONER: We've had countless witnesses, Mr D'Alo, say
26 that they can't think of a legitimate reason for such a
27 practice. Can you?---No.

28 MS BOSTON: When you saw these descriptions on separate
29 documents, what is your knowledge as to whether they

1 were always provided to the prosecution and defence?
2 I'm not specifically asking about Lorimer but just
3 generally. Were separate descriptions always provided
4 to the prosecution and the defence to your knowledge or
5 you don't know?---No, I don't know.

6 Going back to Mr Louey, Exhibit 119, please. This is a
7 questionnaire from Mr Louey; is that your
8 handwriting?---That's right.

9 So this is a questionnaire that you've taken Mr Louey
10 through and he's provided you answers to the pro forma
11 questions?---That's right.

12 Turning over to p.2724, the description of a first offender
13 including that he is 6 feet tall, and the second
14 offender younger than first, in 20s. Lower down:
15 "6 foot 3??" See that there?---Yes, I do.

16 That information about the second offender didn't accord
17 with Mr Roberts, did it? In terms of, 6 foot 3 was not
18 in accordance with Mr Roberts' height?---Yes.

19 He was approximately 5 foot 7 at that time; agree?---Yes.

20 If I could go to Exhibit 55, please, this is an information
21 report dated 24 January 2000. You will see, if you go
22 to the bottom of the document, p.1760, it's submitted
23 by yourself?---Yes.

24 And there's a notation from Detective Butterworth under that
25 stating: "This witness revisits questionnaire complete.
26 No further enquiries arising from witness re-canvass.
27 Investigation complete." At the very top of the
28 document it states that: "This witness was spoken to at
29 his home address on 14 January 2000. A pro forma

1 question was put to him and the following is a précis
2 of further information gained from this meeting", and
3 then a summary of his answers. No further statement
4 from Mr Louey appears on the brief for the prosecution
5 of Debs and Roberts; I take it, that means you didn't
6 take a further statement from Mr Louey?---I don't
7 believe so.

8 Why was that?---I'm not aware.

9 Because he did provide in this questionnaire considerable
10 detail about the offenders in the armed robbery he was
11 a victim of?---That's right.

12 And you're not able to say why you wouldn't have taken a
13 statement referring to that information?---Well, I
14 wasn't in charge of the brief preparation for Debs or
15 Roberts, so yeah, I can't really conclude why.

16 But a few minutes ago we went to a further statement you
17 took from the witness Bobby Lee on the same day that
18 you conducted a questionnaire with him?---Yes.

19 So, whereas in Mr Louey's case no further statement's been
20 taken?---That's right.

21 Were you given any direction about the circumstances in
22 which a further statement would be taken as a result of
23 the questionnaires?---I don't recall, I can't really
24 help you with that one.

25 Would it have been up to your own discretion about whether
26 the witness was providing relevant information that
27 should go in a statement?---We would take a statement
28 if there was more relevant information; as to whether
29 that statement made the brief, it was not up to me.

1 But I'm more asking, whose decision was it whether you'd
2 take a statement at all from the witness as part of
3 that questionnaire process?---Either an individual
4 decision or it was a team decision or Mark
5 Butterworth's decision.

6 What instructions were you given about whether to take a
7 statement after a questionnaire was completed?---I - it
8 would have been, if there was anything that came out as
9 a result of the questionnaire, it was important that we
10 take a statement thereafter.

11 Was it seen as important if it supported the prosecution -
12 the police case theory at that stage about who the
13 offenders were?---Look, I don't recall, because the
14 questionnaire was just to - to try and get a summary of
15 all the information and see whether there was something
16 that we could join the dots with, some sort of
17 similarity.

18 When there were dissimilarities, like here where the second
19 offender's been described as being 6 foot 3, a decision
20 was taken by somebody not to take a further statement;
21 do you agree with that?---Look, I don't think it was a
22 decision not to take the statement based on the fact
23 that he was 6 foot 3.

24 Certainly, no decision has been taken to take a further
25 statement?---That's right.

26 Those are the matters.

27 COMMISSIONER: Thank you.

28 MR MATTHEWS: Commissioner, I wonder if I might have
29 five minutes, there's a matter I want to discuss with

1 counsel assisting that will make it clear whether I
2 apply for leave?

3 COMMISSIONER: Yes, thank you. Who's the next witness,
4 Mr Rush?

5 MR RUSH: The next witness is Mr Beanland.

6 COMMISSIONER: And we're ready to proceed with him then when
7 we resume?

8 MR RUSH: Yes.

9 COMMISSIONER: We'll adjourn for five minutes.

10 Hearing adjourns: [11.55 am]

11 Hearing resumes: [12.00 pm]

12 COMMISSIONER: Yes, Mr Matthews.

13 MR MATTHEWS: Commissioner, I don't seek to cross-examine
14 this witness.

15 COMMISSIONER: Very good, thank you. Mr Gipp, any questions
16 you'd like to ask?

17 MR GIPP: A couple of matters, if I may, please,
18 Commissioner.

19 <EXAMINED BY MR GIPP:

20 Very early on in your evidence, Mr D'Alo, you were talking
21 about the use of contemporaneous notes?---Correct, yes.
22 Could I just ask you a couple of questions to clarify that.
23 When you would attend a crime scene you would actually
24 take notes?---Exactly, yes.
25 Where would you normally record those notes?---In a day
26 book.
27 Would you record any details in your diary at that
28 time?---Not at that time. The day book's a bit bulkier
29 and so you essentially transfer that into a diary.

1 Is it correct to say that when you record your
2 contemporaneous notes you record your own observations
3 and what you did at the crime scene?---That's right,
4 yes.

5 The purpose of recording information is in case you need to
6 make a statement yourself?---That's right, yep.

7 It may be that you're not asked to make a statement so those
8 notes may not be referred to, but if you are asked to
9 make a statement later on, you have those notes to
10 refresh your memory?---And it does a good job, yes.

11 In relation to the hand up brief in this particular matter,
12 you made three statements in 2000?---That's right.

13 A couple of years after the event. You also gave evidence
14 at the committal proceeding?---I did, for Jason Giller.

15 When you prepared your statements, and these are three
16 statements - one's dated 30 August 2000 and the other
17 two dated 27 November 2000 - do you recall whether you
18 referred to your contemporaneous notes in preparing
19 those statements?---I would have, yes.

20 So that's what you do in terms of making your own
21 statements. If you speak to potential witnesses at a
22 crime scene or shortly after attending a crime scene,
23 would you also make contemporaneous notes of what that
24 witness says?---Yes, we would.

25 If you don't take a witness statement immediately, but it's
26 later determined that a witness statement should be
27 taken, would you refer to those notes?---You would,
28 yes.

29 Would the witness be shown those notes necessarily?---Not

1 necessarily, no.

2 When you take the statement from the witness, whether it be
3 weeks or months later, would you compare what the
4 witness is now telling you to what the witness told you
5 back at the time you made the contemporaneous
6 notes?---You would - you would, yeah, have that
7 knowledge before you go and speak to them and, yes.

8 If there's an inconsistency between what they said then and
9 what they're saying now, how would you resolve
10 that?---Ask more questions and clarify the anomaly.

11 The second matter I wanted to ask you about was in relation
12 to Exhibit 331 and the statement of Joel Paule?---Yes.

13 The questioning is on the basis that Joel Paule made a
14 statement in 1993, but instead of just including the
15 1993 statement in the hand up brief, what you did in
16 1998 was to get that witness to adopt the contents of
17 the 1993 statement and then have the witness sign it
18 and then you would add the jurat, the
19 acknowledgement?---Correct, yes.

20 Just to explain that, at a committal proceeding the
21 statement's attended; is that right?---That's right,
22 that's handed to the court.

23 Is it the procedure of Victoria Police when they prepare a
24 statement for a committal proceeding that there be a
25 jurat and acknowledgment included on all
26 statements?---That's right, yes.

27 Can you recall whether or not the Joel Paule statement made
28 in 1993 had a jurat and acknowledgment on it?---I don't
29 recall precisely, but would, if it - - -

1 COMMISSIONER: You're suggesting that might be the
2 explanation, Mr Gipp?

3 MR GIPP: Yes. (To witness) So, rather than include a
4 statement that doesn't have a jurat and acknowledgment
5 on the hand up brief, which means that it would not
6 meet the requirements for the committal proceeding, you
7 decided to adopt - - -?---Adopt.
8 - - - that statement in a format that would enable it to be
9 tendered at the committal?---That would make sense.
10 Is that a possibility?---That would make sense.
11 Just finally in relation to the last set of questions and
12 the reasons why Mr Louey didn't have a supplementary
13 statement taken from him, but all of this information
14 about the description was included on the information
15 report, can you recall whether those information
16 reports were disclosed as part of the prosecutorial
17 disclosure obligations?---Yes, they would have, every
18 single one of them, yes.
19 So that's your recollection, that all the IRs were actually
20 disclosed to the defence and prosecutor?---That's my
21 belief, yes.

22 MR GIPP: Thank you, Commissioner.

23 COMMISSIONER: Before you sit down, Mr Gipp, what was your
24 role in relation to the Giller prosecution? Did you
25 have a role in assembling the brief?---Yes, I had some
26 role in preparing it.
27 What precisely was it?---The compilation of the statements
28 and, beyond that, yeah, unclear.
29 For the purpose of compiling the Giller statements for the

1 trial, did you not become aware of the fact that a
2 large number of those statements had a note or a record
3 accompanying it which set out the witness's description
4 but which was not included in the statement?---I don't
5 recall.

6 Yes, Mr Gipp.

7 MR GIPP: Nothing arising, thank you.

8 COMMISSIONER: Yes, thank you. Any reason why Mr D'Alo
9 should not be formally and finally excused?

10 MS BOSTON: No, Commissioner.

11 COMMISSIONER: Very good. Mr D'Alo, I release you from your
12 summons and, subject to the order for witnesses out of
13 court which precludes you from talking to past or
14 future witnesses about the evidence you have given or
15 the evidence they might give, I otherwise release you
16 from your confidentiality obligations.

17 We will provide you with a video recording of your
18 evidence and a transcript of your evidence, and I thank
19 you for your assistance. You're excused, Mr D'Alo.

20 Thank you, Mr Gipp.

21 <(THE WITNESS WITHDREW)

22 MR RUSH: Commissioner, I got the order of witnesses wrong,
23 the next witness is Mr Kennedy.

24 COMMISSIONER: Yes, thank you.

25 <MARK CHARLES KENNEDY, sworn and examined:

26 COMMISSIONER: Mr Kennedy, I understand you're represented
27 by Ms O'Brien; is that correct?

28 MS O'BRIEN: Yes.

29 COMMISSIONER: Mr Kennedy, as the summons you were served

1 discloses, you'll be asked questions that cover the
2 following matters: (1) the Lorimer Task Force
3 investigation of the murders of Sergeant Gary Silk and
4 Senior Constable Rodney Miller concerning the taking of
5 witness statements, the preparation of the brief of
6 evidence for the trial of Debs and Roberts, and whether
7 there was full disclosure of witness statements or
8 other relevant information prior to or during the
9 trial, witness statement-taking practices by Victoria
10 Police, compliance with the obligation to disclose
11 evidence by Victoria Police.

12 In following the questions asked by counsel
13 assisting and any cross-examination that I give leave
14 to undertake, your counsel will have an opportunity to
15 examine you and ask you for any further information or
16 elucidation of answers that you've given.

17 When you were served with a summons, in
18 conjunction with that you received a confidentiality
19 notice and a statement of rights and
20 obligations?---Yes, Commissioner.

21 Has Ms O'Brien discussed with you the content of those
22 documents?---Yes, she has.

23 Did she explain to you your rights and obligations?---Yes.

24 Do you want me to remind you of them?---No, thank you.

25 You're clear about them, are you?---Clear.

26 Very good. Yes, Mr Rush.

27 MR RUSH: Mr Kennedy, your full name is Mark Charles
28 Kennedy?---Yes.

29 Do you work at an address that was on the summons?---It's

1 actually my home address in the summons.
2 Sorry, you reside at the address that's on the
3 summons?---Yes.
4 That summons is dated 20 December 2018? I'm sorry, it was
5 served on you on 13 December 2018?---Yes.
6 The summons number is 2753?---Yes.
7 And you received a confidentiality notice of 11 December
8 2018?---The 13th, I believe the summons was served.
9 The confidentiality notice?---Yes.
10 And a covering letter dated 12 December?---Yes.
11 I tender those documents.
12 #EXHIBIT Q - Documents served on summons to Mr Kennedy.
13 Mr Kennedy, what's your current role with Victoria
14 Police?---I'm a Detective Senior Sergeant, Crime
15 Command, second-in-charge of the Missing Persons Squad.
16 How long have you been in the Missing Persons
17 Squad?---Approximately 14 months.
18 Are you able to give evidence when you joined the police
19 force?---Yes. I've been in the police force for
20 30 years, I joined in December 1988. I graduated from
21 the Police Academy in April 1989.
22 Did you then have police service in the uniform
23 branch?---Yes, at various locations, predominantly
24 inner city, Richmond, Russell Street and Flemington and
25 then Brunswick before getting promoted to detective
26 senior constable.
27 When was that promotion?---That was in December - it was
28 Christmas Day 1995. When you were promoted to
29 detective senior constable, where were you

1 stationed?---Keilor Downs Criminal Investigation
2 Branch.

3 At some stage did you then come in to be part of Operation
4 Lorimer?---I did, so yes, on 20 August 1998 I was
5 seconded to Task Force Lorimer.

6 Do you recall how that occurred, why you were asked to come
7 into Operation Lorimer?---I don't specifically, apart
8 from that I had aspirations to be part of the Homicide
9 Squad, and that was known to certain people. I can
10 only assume that that's the reason why I was selected
11 to go into Task Force Lorimer.

12 When you came into Operation Lorimer, what role did you take
13 up?---Well, I would say a fairly junior role, I was one
14 of many - I was one of four detective senior constables
15 seconded in to assist the task force. Initially, I was
16 on the crew of Detective Sergeant George Buchhorn for
17 approximately a year, just over a year, and then
18 in November 1999 I transferred to Sol Soloman's crew.

19 To?---To Detective Sergeant Sol Solomon's crew.

20 I just ask, in relation too that first approximate 12 months
21 in the crew of Mr Buchhorn, what was the role and
22 responsibility there?---Well, it was a variety of
23 roles: investigating what we call information reports,
24 so reports coming in from the public and to
25 Crimestoppers of possible offenders, suspects, people
26 in possession of handguns which were obviously of
27 interest, so a whole variety of different investigative
28 avenues of trying to solve the crime.

29 Was there any specific role in relation to coordinating

1 witnesses to dying declarations?---That was a role but
2 it wasn't my role.

3 Was that a role in Mr Buchhorn's crew?---My memory, I'd say,
4 yes.

5 You say your role did not include involvement with those
6 witnesses?---No.

7 Did you have a role in relation to going back to witnesses
8 that had been the subject of armed robberies in
9 Operation Hamada?---On reviewing my material, yes.

10 It's not something that readily comes back to you?---No.

11 In relation to that, and not specifically that, did you have
12 anything to do with Mr Beanland during this
13 time?---Yes.

14 What was the role or responsibilities with
15 Mr Beanland?---Beanland was on a different crew, he was
16 on the crew of Detective Sergeant Butterworth, what we
17 call the Armed Robbery Squad crew, and it was more
18 later, I think when I was on Solomon's crew, that I was
19 asked from time to time to assist Butterworth's crew
20 with a variety of things: the elimination of Hyundai
21 vehicles, trying to eliminate those apart from the
22 suspect vehicle, and getting statements and, as I now
23 know, revisiting some Hamada witnesses.

24 There was a role, I take it, it would have taken some time,
25 of eliminating Hyundai vehicles of the year of
26 manufacture of the one that was then under
27 suspicion?---Yes.

28 You had an involvement with that?---I did.

29 You mentioned there was an armed robbery crew and you had an

1 association with them, what was the nature of the work
2 that they carried out?---Well, there was a number of
3 crews all led by a detective sergeant, and not having
4 an intimate knowledge of their specific role, but it
5 was obviously investigating these series of armed
6 robberies, what was called "Pigout" - this is an
7 operation name - Operation Pigout and then Operation
8 Hamada.

9 What was the reason, as you understood it, for investigating
10 those robberies?---Well, initially to identify the
11 suspects responsible for those series of armed
12 robberies.

13 Was there then seen a potential association between the
14 suspects in those armed robberies and suspects in
15 relation to the Silk-Miller murders?---Yes. That was
16 always my belief, yes.

17 When you say your belief, your belief as to the nature of
18 the investigation?---Um, I'd have to say, yes. I don't
19 remember being briefed on that, but that was my
20 understanding of the nature of the investigation.

21 I want to ask you a couple of general questions in relation
22 to statement-taking practices in Victoria Police.
23 Firstly, in relation to taking statements from
24 eyewitnesses, whether they be police or whether they be
25 civilian witnesses, you would agree that it is
26 important that the descriptions that are offered by
27 eyewitnesses of offenders or potential offenders is of
28 great importance?---Yes, totally agree.

29 In relation to that importance, important that it is

1 detailed in the first statements that are made by such
2 witnesses?---Yes.

3 Are you aware of a practice of Victoria Police of
4 deliberately not recording descriptions of potential
5 offenders in first statements?---Yes.

6 How did you awareness arise in relation to the
7 practice?---I'm aware that it was discussed in my very
8 early stages of my career, so I'm talking early 90s.

9 COMMISSIONER: Just come a little closer?---Mid-90s,
10 Commissioner, and I remember people or police talking
11 about it, but I have a very, very vague memory of -
12 I'll start off by saying, I didn't have that practice,
13 I don't recall ever doing that, in other words getting
14 a statement from an armed robbery victim or witness and
15 deliberately leaving out a description of an offender,
16 so I don't recall specifically doing that. It's
17 something that I wouldn't - I don't believe I did or
18 would have believed in. I certainly have a
19 recollection of detectives and police talking about it,
20 I just can't remember who and I can't remember
21 specifics of who did it, but I remember it being
22 discussed, and I remember it being discussed of having
23 a separate bit of paper with the offender's description
24 written on the separate bit of paper.

25 MR RUSH: So your memory is that there was a practice of
26 putting the descriptions on a separate piece of paper
27 as opposed to putting full descriptions in the first
28 statement?---Yes.

29 When you say it was discussed, firstly, I appreciate the

1 difficulty of timing, but it was discussed when you
2 initially came into the police force in uniform, or was
3 it discussed later when you joined the criminal
4 investigation?---Look, I think later more aspiring to
5 become a detective, and I recall I discussed it at the
6 Keilor Downs investigation branch, and vaguely
7 discussed at Detective Training School, and it was of
8 interest to me because it was a practice that I
9 didn't - I just didn't see the need to do it, or didn't
10 follow that practice.

11 COMMISSIONER: When were you at Keilor Downs,
12 Mr Kennedy?---December 1995 until I went to Lorimer
13 Task Force.

14 MR RUSH: When were you at Detective Training School?---June
15 1996.

16 At Detective Training School, you say it was discussed;
17 discussed in the sense of it being an acceptable
18 practice?---I think the general view was, particularly
19 from the students, it was an unacceptable practice.

20 When you say it was discussed though, how did it come up at
21 Detective Training School? Was it part of a course or
22 part of a discussion?---I can't recall specifically how
23 it came up. Obviously with Detective Training School,
24 when I did it, it was 12 weeks of training and there's
25 obviously different topics: research and seizure,
26 evidence, homicide, and witnesses - interviewing
27 witnesses and suspects is and was a topic back then. I
28 can't specific - I'm sorry, I can't specifically recall
29 exactly how and what was discussed.

1 COMMISSIONER: So, at some stage your aspiration to go into
2 homicide was met?---Yes, sir.

3 When did you go into homicide?---After - officially after
4 about a year and a half of Lorimer, what they call
5 vacancies, positions came up and I applied for one of
6 those and got that position, sir.

7 So when would that have been, approximately?---Probably the
8 year 2000 or 2001.

9 For how long did you stay in homicide?---Until 2004.

10 And then?---Promoted to Missing Persons Squad for about
11 six months, and then promoted to a uniform sergeant at
12 Flemington.

13 When you gave evidence in the private examination,
14 Mr Kennedy, last year, you told IBAC that your
15 experience both within the Armed Robbery Squad, or
16 working with the Armed Robbery Squad and in homicide,
17 was that you became aware of this practice. Was the
18 practice universally followed by everyone in those
19 squads or did the practice vary from officer to
20 officer?---It varied from officer to officer.

21 So, it was thought to be a discretionary thing, was it? It
22 was left up to each individual officer 's judgment as
23 to whether they would do that?---I'd have to agree with
24 that, Commissioner, yes.

25 Does that mean that - and I think you gave evidence to this
26 effect - you weren't aware at any stage of any training
27 or directive that that was a practice that should not
28 be followed?---No, I don't recall any direction,
29 executive direction as such.

1 Or at any time since you were in the Homicide Squad?---No,
2 not officially, no. It's discussed - the taking of
3 statements is discussed in detail but - - -
4 And continues to be discussed, this issue?---No, not -
5 sorry, not this issue but the taking of statements, and
6 conversely absolutely everything is included.
7 I think you were asked this in the private examinations: can
8 you think of any legitimate reason for that practice
9 being followed?---Apart from psychological/emotional
10 trauma of the witness/victim, no.
11 Just to dwell on that for a moment. So, in the immediate
12 aftermath of an offence involving violence or conduct
13 which has engendered fear in a victim, but the victim
14 nonetheless is able to give a coherent and explicit
15 account of the event and a description, is there any
16 justification for not including that account in a
17 statement?---Um, not that I can think of, Commissioner.
18 Because, even if the witness gives an account which later is
19 demonstrably incorrect, is it not necessary in order to
20 serve the interests of justice that the witness's
21 account, reliable or otherwise, be known to those who
22 have to assess the witness's reliability and
23 credibility?---Of course. A witness is probably going
24 to say it anyway but - in evidence.
25 We were given an example yesterday by Mr Peterson - do you
26 know Mr Peterson?---No.
27 A former senior sergeant, and he said, "Well, if I had a
28 victim in my presence", and he was saying in an armed
29 robbery that the offender had a double-barrelled

1 shotgun and we had CCTV footage of the offence which,
2 when examined, clearly showed that it wasn't a
3 double-barrelled shotgun but a single-barrelled weapon,
4 "I could see no point in having the witness record her
5 recollection or his recollection because it was false."
6 There are two things to be said about that, aren't
7 there? Firstly, you wouldn't be showing the witness
8 the CCTV footage, you would want the witness's account
9 based upon the witness's recollections?---Correct.

10 And second, if the witness's recollection was faulty, that
11 should be disclosed within the statement?---Correct,
12 it's a witness's account. They believe what they
13 believe.

14 Correct. Yes, thanks, Mr Rush.

15 MR RUSH: Just to go back to a related point, Mr Kennedy. I
16 suggest you previously told the Commission that at the
17 Detective Training School you said that was something
18 that was discussed. Over a period of time, different
19 schools had thought at Detective Training School about
20 whether to put a specific description in such as
21 height, weight, skin colour, et cetera, of an offender.
22 So, there was a discussion, you say at Detective
23 Training School, there were different schools of
24 thought, but the practice of ensuring all information,
25 relevant information went into the first statement was
26 not a direction, I suggest, to the best of your
27 recollection at Detective Training School?---Sorry, can
28 you just repeat the last part of the question, sorry,
29 Mr Rush.

1 I just put to you the evidence that you gave, that the
2 practice was discussed over periods of time, different
3 schools of thought at Detective Training School about
4 whether to put a specific description in such as
5 height, weight, skin colour, et cetera. What I'm
6 putting to you is, there was a discussion about one
7 practice and the other practice but no direction to
8 ensure that such relevant information went into the
9 first statement?---I don't recall a specific
10 articulated direction, no. I do recall discussion
11 about, the description should go in, but don't go on
12 and on with vagueness, say what the witness says and
13 put it in without being too non-helpful or vague if
14 that makes a point. You know, if there's a confusion
15 about hair colour, try and stick to height and weight
16 and build, if that makes sense.

17 You also offer this: "That there were different schools of
18 thought, some were quite - I was going to say
19 emphatic - yeah, that there was a predetermined view of
20 leaving out the description. I mean, you would have to
21 put some description in, male or female, and some
22 dress." What you're referring to perhaps in the last
23 question is putting in the basics but not putting in
24 the formal description. That was a practice?---Yes,
25 that was a practice.

26 As far as those schools of thought, again you said: "There
27 were different schools of thought as I said earlier,
28 investigators based on their court experience and their
29 experiences had their own habits but it was a common

1 practice in [your] experience." That's what you have
2 told the Commission?---I'm surprised I said "a common
3 practice".

4 When you were doing work with Mr Beanland and members of the
5 Armed Robbery Squad, you would have seen statements
6 that had been taken from persons who were the subject
7 of armed robberies where full descriptions had not gone
8 into the initial statements?---I don't recall that, but
9 I must have, given that there's supplementary
10 statements that I took.

11 In fact, was there not a direction to persons involved with
12 Operation Lorimer from Detective Senior Sergeant
13 Collins to go back and to re-interview those witnesses
14 who had been the subject of armed robberies through
15 Operation Hamada?---I don't recall that direction, no.
16 But, having said that, Commissioner, there must have
17 been some sort of request or direction to me, someone
18 above me, to ask me to go out and do that. That's not
19 a task I would have had permission to do of my own
20 volition.

21 COMMISSIONER: So, look, we're conscious, senior sergeant,
22 that there's a pecking order, you do what you're
23 directed to do, not what by your own initiative you
24 might think would be the right thing to do?---Yes,
25 Commissioner.

26 But I'm just wondering about the dilemma. You're someone
27 who's made clear you could never see any validity to
28 that practice. What did you do when you were faced
29 with statements that showed you that practice had been

1 followed? Did you take any step to ensure that the
2 process wouldn't thereafter produce any miscarriage of
3 justice?---Well, probably not initially on the task
4 force, but years later obviously, yes.

5 So, how would you do it now?---I'd direct my staff, and we
6 have fortnightly meetings, and they know my views on
7 statement-taking, that absolutely everything goes in
8 the statement, everything the witness says. In
9 fairness to everyone, and particularly the accused,
10 they have the right to know everything said about them
11 and the crime, so - - -

12 And the prosecution also needs to know, do they not?---Of
13 course, yes.

14 And so, for example, if evidence has been gathered in an
15 improper way or which might give rise to an argument
16 about an objection to it being admitted, the
17 prosecution needs to know that?---Yes, absolutely.

18 MR RUSH: So you as a detective senior sergeant ensure that
19 the personnel working under you ensure proper
20 statement-making practices and form descriptions in
21 first statements?---Yes, I'd certainly try to, sir.

22 There could be another detective senior sergeant in another
23 part of the police force who holds a different view,
24 and therefore the potential for that still exists in
25 the police force, I take it?---These days I would say,
26 a slim, slim chance of it potentially happening.

27 What has occurred which would cause you to say "these days
28 there's a slim potential of that happening"?---Oh,
29 because detective senior sergeants and all detectives

1 and police have their own views, based on their levels
2 of experience, of how things should be done. There's a
3 Victoria Police Manual, obviously, which covers many,
4 many topics and it includes interviewing witnesses and
5 suspects, and it covers witnesses and taking
6 statements. Detective Training School has advanced
7 since when I did it and it has sections on interviewing
8 witnesses and suspects, including currently
9 descriptions in statements.

10 But from the perspective, there's always been a Police
11 Manual - - -?---Yes.

12 - - - in relation to the way in which statements should be
13 taken. I guess my question, if I could shorten it is,
14 has there been anything you've seen by way of
15 direction, memorandum going out to people at your level
16 or a lesser level, indicating that this sort of
17 practice should cease?---I haven't seen it, no, no such
18 direction.

19 So, if we accept that for the purposes that, whilst you have
20 never accepted the practice in your time in the police
21 force, there may be persons who think the practice is
22 appropriate and may be directing people still to leave
23 descriptions out of first statements?---I'd agree with
24 that. Sadly, that could be the case; I hope not.

25 COMMISSIONER: Does the Police Manual, Mr Kennedy, require
26 the officer to include all relevant information,
27 regardless of the officer's view, as to whether or not
28 they think the information is correct? Does it go that
29 far, or does it just say "include all relevant

1 information"?---To my knowledge, it just says "to
2 include all relevant information that the witness can
3 give". Now, I don't think it goes on to say
4 "regardless of the officer's view on it."

5 Yes, and therein is the problem, is it not, that that leaves
6 open the view, if the officer thinks the witness is
7 clearly wrong, or if the officer thinks that the
8 witness's account won't fit a particular prosecution
9 theory, the officer may conclude it's not
10 relevant?---It could be a problem, Commissioner, yes.

11 MR RUSH: I just briefly want to take you to Exhibit 478,
12 which is the day book of then Detective Senior Sergeant
13 Collins. At p.7230, halfway down the page, 9 am, it
14 says: "Office. ST" - can you read that?---Yes, "Office
15 and spoke to Butterworth re Pigout special effort.
16 Sheridan present."

17 So here is a conversation, the date I can inform you is
18 17 March 2000. These are the notes of a conversation
19 and if we go down about four lines: "Thornton to
20 accompany same. To do MGs if available"?---"Inquiries
21 if available".

22 Thank you, enquiries if available. "Discuss photos
23 of ..."?---"Of guns, masks and whether these should be
24 shown to witnesses."

25 "Butterworth concerned about prejudicing witnesses for
26 future identifications if these are shown"?---Yes.

27 "Decide not to show same during special effort. Also
28 discuss obtaining statements from witnesses. Decide
29 where witness has [over the page] excellent recall of

1 events and can add extra info then statement should be
2 taken. Also if descriptions of offenders were written
3 on separate pieces of paper, then these also should be
4 recorded in second statement, otherwise we will only
5 record witness info on questionnaire. Further
6 statement can be taken later if deemed necessary." So,
7 on the basis of that note, there is at least partial
8 recognition that in statements that have been taken and
9 are to be reviewed that descriptions are written on
10 separate pieces of paper?---Yes.

11 And, as discussed, that is something that you saw when you
12 came to go back to speak with witnesses that had been
13 the subject of the armed robberies in Operation
14 Hamada?---I know now that I went back with Beanland, I
15 think, and took supplementary statements, but I've been
16 racking my brain as to how, apart from questioning the
17 witness, how I came to write down that description.
18 Obviously, I asked the witness, but I don't recall
19 seeing separate bits of paper.

20 Well, look, I'll take you to one matter that you've been
21 involved with which may refresh your memory. It's
22 Exhibit 301, p.3442. This is a statement you were not
23 involved with but you will see that it's, at the very
24 top, 18 July 1998, so approximately a month before the
25 Silk-Miller murders. It's a statement of Leong Eng
26 Ling who's the owner/operator of the Green Papaya Asian
27 restaurant and he states in the next paragraph, on
28 Saturday, 18 July 1998, he goes on to detail that the
29 restaurant was the subject of an armed robbery by two

1 offenders. Right at the bottom of the page, in the
2 second-last line, the person who took this statement
3 who we heard from yesterday, who indicated that it was
4 his practice at the time not to put descriptions of
5 offenders in the statement, the statement indicates at
6 the bottom: "I saw a man with a mask waving a gun
7 around in his right hand standing in our reception
8 area"?---Yes.

9 Then, if we go down the next page to a paragraph commencing,
10 "Before we laid down I saw a second man walk in behind
11 the first man, he also had a mask on his face, he also
12 had a small gun, didn't get a good look at it. The
13 mask he wore was similar to that of the first man. The
14 first man, who was taller than the second, sent the
15 other man around the restaurant to check on everybody."
16 Without going any further, the statement really gives
17 no further details apart from that description of the
18 first and second offender?---Yes.

19 If you go to p.2950, Exhibit 169, what we see here is the
20 handwritten description of the first male which sets
21 out his height, length of hair, the type of mask,
22 jacket?---Yes.

23 "Sounded Australian", and the second male, "Shorter, 5'6,
24 rubber mask", and the last line, "Possibly South
25 European, Arab, Lebanese accent"?---Yes.

26 If we could have a look at Exhibit 118, you see this is a
27 form which provides for additional questions for Hamada
28 witnesses?---Yes.

29 Firstly, are you familiar with the form?---No, I don't

1 recall that form.

2 I'll come to it, but I want to suggest, on 13 January 2000,

3 you and Mr Beanland in fact went and spent some time

4 with Mr Ling and got some significant details which is

5 the subject of this additional Question (4). I take

6 it, you've got no recollection of that, but if I could

7 ask you to go to p.2717. That's not your handwriting,

8 I take it?---No, that's not my handwriting.

9 You see there, there is "first professional and second", and

10 then various comments down the page?---Yes.

11 You see the note there: "South European accent, Middle

12 Eastern" for the first offender, the third-last

13 entry?---I do see that, yes.

14 Which, on the basis of first and second offenders, it is

15 different to the description - - -?---On the statement.

16 - - - that was taken at the time of the first

17 statement?---Yeah, it doesn't correlate with the first

18 statement.

19 If we have a look at Exhibit 300. There's a further

20 handwritten statement; is that your writing?---That's

21 my handwriting, yes.

22 If we go to the second-last paragraph of your handwriting:

23 "I wish now to add to those previous statements by

24 saying that the bigger or larger of the two male

25 offenders had a South European or Middle Eastern

26 accent. I can still recall his voice and the way he

27 talked and this is how I can best describe his accent."

28 If we go to the next page at 3441, that's a statement

29 taken by you on 13 January 2000 from Mr Ling?---Yes.

1 I take it, the purpose of going to see Mr Ling was to get
2 further details?---On the basis of what you've just
3 shown me, yes, that's what it appears to be.

4 Without putting too fine a point on it, the difference
5 between what he said at the time of the armed robbery
6 and what he's saying now, that emphasises the
7 necessity - and I appreciate it's nothing to do with
8 you - but underscores the necessity of putting in the
9 details with the first statement?---Yes, that's
10 probably a good example.

11 Just finally, if we go to Exhibit 303, is a further
12 statement taken from Mr Ling. You see at the bottom of
13 the page that it's on 26 November 2000?---Yes.

14 Again, you see there in the second paragraph on the first
15 page: "On that evening I supplied the police with
16 descriptions of the offenders that committed this armed
17 robbery, these descriptions were not included in my
18 original statement although the police wrote down the
19 notes pertaining to them." And then what is set out is
20 the description that was in the first notes taken at
21 the time of the armed robbery. And, I guess to return
22 to the question that the Commissioner asked you earlier
23 this morning: can you think of any legitimate reason
24 why those descriptions would not have been placed in
25 the statement when it was first made?---No, not -
26 particularly when the witness has said, I think up the
27 top, "I gave a description to the police at the time
28 but it wasn't included", so if he or she recalls a
29 description, it should go in the statement. So, to

1 answer your question, no.

2 By 26 November 2000 Debs and Miller had been charged with

3 these offences?---Sorry, what date, sir?

4 26 November 2000? I want to put to you, they were charged

5 in June and July of 2000?---Yes. In November, yes.

6 And so, if you look at this, the further statement taking

7 fitted the case theory that had led to the charges. If

8 the first offender be about 6 foot and another offender

9 shorter at about 5'6 or 5'7 or 5'8, it's fitting in

10 with the case theory? If that's a description of the

11 people that have been charged, what we're seeing here

12 is the bringing together subsequently of information

13 that fits in with the theory for those being

14 charged?---Um, I can't sort of go on to say that that

15 was the theory to - if that's what you're asking me, if

16 it was the theory to go out and get statements to fit

17 the description of the accused?

18 I guess what I'm putting to you is the problem that, if this

19 information exists in police files for approximately

20 18 months or two years, firstly there's the danger

21 that, if the descriptions don't fit those charged, that

22 there would be no motivation to be making further

23 statements?---Yes.

24 And here, perhaps there was a motivation for making further

25 statements?---That - perhaps, but I don't know.

26 Because, to summarise what I'm putting to you, it's

27 essential to the course of justice that these matters

28 be put in the first statement?---Yes. And, if not,

29 it's essential that they be discoverable and disclosed.

1 COMMISSIONER: If new information is provided by the
2 witness, then it goes into a supplementary
3 statement?---Yes.
4 That's the correct procedure, is it not?---Yes, take a
5 statement - new statement taken at the time when new
6 information comes in.
7 And so, in this example that Mr Rush has explored with you,
8 because the initial note did not go into the witness's
9 statement, a note that said that the taller person had
10 an Australian accent, and its inconsistency with a
11 later statement in which it was said the taller person
12 had a foreign accent, that inconsistency might never
13 have been known?---May never have been known, no. But,
14 Commissioner, I read it as a - I saw it as a mistake.
15 By the witness initially?---No, no, not by the witness, the
16 person who wrote the note and wrote the descriptions.
17 That may be the explanation?---That may be it.
18 That may be the explanation?---Maybe.
19 But if the error is transparent, then the witness, the
20 investigator, the parties to the case can explore it
21 and the explanation for it can be forthcoming ?---Yes,
22 totally agree.
23 But the danger that you've acknowledged here and in private
24 examination was, because the note's not disclosed in
25 the statement, the error can remain concealed?---Yes,
26 agree.
27 MR RUSH: Just finally, Commissioner, can we bring up
28 Exhibit 169, together with Exhibit 303. And if you
29 compare "the second male"?---Yes.

1 Everything matches the description that was given by Mr Ling
2 in 1998, everything matches except the accent?---The
3 accent, yes.

4 Which can only be deliberately left out?---Oh, I don't know,
5 you would have to ask the person that wrote the
6 description and took the statement.

7 They are the matters, Commissioner.

8 COMMISSIONER: Just a moment, Mr Rush. (To witness) I think
9 you indicated, Mr Kennedy, in the private examination,
10 that you had a role at the trial of Debs and Roberts in
11 relation to witnesses?---I was one of three detective
12 senior constables, and Sol Soloman at the trial from
13 time to time of - - -

14 Yeah, what was your role?---Coordinating the attendance of
15 witnesses and production of exhibits.

16 Yeah, which would have included, therefore, the
17 statements?---No, I don't recall handling statements at
18 the trial, Commissioner.

19 Who would have done that, Mr Kennedy?---Either - look, I
20 don't recall. I was gonna say Sol Soloman, but I
21 simply don't recall. I don't physically recall - like,
22 physically handling the original statements at the
23 trial, or even the committal for that matter.

24 You were on Mr Buchhorn's crew?---For the first 13 months.

25 Of the task force?---Yes.

26 And you've no doubt been following at a
27 distance - - -?---Yes.

28 - - - issues that have emerged in the public hearings about
29 various witnesses' statements initially made that were

1 not disclosed?---Yes.

2 May I take it, you weren't aware of the fact that there were
3 statements initially taken that weren't
4 disclosed?---No, certainly not.

5 Could I just dwell for a moment on what your understanding
6 is about a police officer's obligation to disclose?
7 How would you describe that obligation?---Well, it's
8 written in the law, you know, in the Magistrates' Court
9 Criminal Procedures Act and other legislation - if
10 you're talking, asking me about statements - - -
11 Yeah?--- - - - that every statement in the possession of the
12 police is disclosed. So, there's the evidentiary
13 statements that go on the brief of evidence. All the
14 others that are in the possession of the police that we
15 don't intend to rely on are disclosed to all parties.
16 Yes, whether or not they assist the prosecution?---Whether
17 or not their relevance, or they're exculpatory, or
18 whatever they say, they're disclosed. That's my
19 understanding and view of it, and many other documents
20 and things.

21 So, if it be the case that various witnesses made statements
22 initially but a practice was followed either of making
23 a further statement at a later time which was backdated
24 to the date of the original statement but contained
25 additional information, or alternatively the new
26 statement bore its new date and the old statement was
27 simply destroyed, you weren't aware of either of those
28 practices being followed?---No, sir, no. Certainly
29 not, I wasn't aware of that.

1 Thank you. Mr Rush?

2 MR RUSH: Exhibit 107. Just one matter, Mr Kennedy. This
3 is the Police Manual updated on 1 June 2016?---Yes.
4 There are, at p.2358 - - -

5 COMMISSIONER: I think this starts at 2388.

6 MR RUSH: I've got the wrong exhibit number, Commissioner.
7 Exhibit 106. This is the manual that you're referring
8 to, I take it?---No, the manual we just had up on the
9 previous exhibit, that's the Victoria Police Manual
10 that I was referring to, but I am aware of this that
11 you're about to show me.

12 How are you aware of this?---This is called the B-KWAK(?)
13 Course, which is the checking of briefs course designed
14 predominantly for sergeants.

15 Have you been through it recently?---Not for a few years,
16 no.

17 There's nothing specific as to - I'm not going to take you
18 through it - but nothing specific as to the practice
19 we're talking about, whether it's acceptable or
20 unacceptable?---I don't recall it in that course, no.

21 To cut it short, as far as the Victoria Police Manual is
22 concerned and the policy rules, again, whilst there's
23 reference to the importance of the full brief of
24 evidence, there's nothing specific to the practice that
25 we've discussed this morning?---Unless I've missed it,
26 no, I can't recall seeing anything specific.

27 Those are the matters, Commissioner.

28 COMMISSIONER: Yes, thank you. Any request for
29 cross-examination?

1 MR MATTHEWS: I don't make any application to cross-examine
2 at this time, Commissioner. I just notice, though,
3 that there was some aspects touched on about the dying
4 declaration role within that particular crew.

5 COMMISSIONER: Yes.

6 MR MATTHEWS: If there were to be subsequent evidence
7 touched on that, I might need to make an application at
8 that time.

9 COMMISSIONER: I wasn't proposing, much to Mr Kennedy's
10 regret I suspect, I wasn't proposing to finally
11 discharge him in case some issue arises in relation to
12 something he may have been involved in.

13 MR MATTHEWS: I'm just foreseeing it as a possibility.

14 COMMISSIONER: So, Mr Kennedy, first I'll ask whether
15 Ms O'Brien's got any questions of you?

16 MS O'BRIEN: No questions, sir.

17 COMMISSIONER: Thank you. Because the inquiry's ongoing and
18 most of the members of the crew that you've mentioned
19 in Lorimer still have to give evidence, I won't finally
20 discharge you in the unlikely event that we might have
21 to recall you, but I have to leave that option
22 open?---I understand.

23 So in the meantime, please, pursuant to the order for
24 witnesses out of court, do not speak to other witnesses
25 who have given evidence or will give evidence about any
26 of the issues that have been explored with you.

27 We'll provide you in due course with a video
28 recording of your evidence and a transcript of your
29 evidence, and I thank you for your assistance?---Thank

1 you, Commissioner.
2 We'll adjourn now until 2 o'clock.
3 <(THE WITNESS WITHDREW)
4 Luncheon Adjournment: [1.09 pm]

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1 UPON RESUMING AT 2.06 PM:

2 COMMISSIONER: Yes, Mr Rush.

3 MR RUSH: I call Mr Beanland.

4 <STEPHEN CHARLES BEANLAND, affirmed and examined:

5 COMMISSIONER: Mr Beanland, you were served with a summons
6 and in that summons the matters about which you are to
7 be questioned were set out, I'll just remind you as to
8 what they were: (1) the Lorimer Task Force
9 investigation of the murders of Sergeant Gary Silk and
10 Senior Constable Rodney Miller, concerning the taking
11 of witness statements, the preparation of the brief of
12 evidence for the trial of Debs and Roberts, and whether
13 there was full disclosure of witness statements or
14 other relevant information prior to or during the
15 trial, witness statement-taking practices by Victoria
16 Police, and compliance with the obligation to disclose
17 evidence by Victoria Police.

18 You will be asked questions by counsel assisting,
19 I may give counsel leave to cross-examine on some
20 specific matter. Following those questions you will
21 have an opportunity to add anything relevant to which
22 you have been questioned.

23 You understand, Mr Beanland, you have a right to
24 legal representation; you understand that, but I take
25 it you wish to proceed without legal
26 representation?---Yes, sir.

27 In the documents that you were served your rights and
28 obligations were set out but, as you are not
29 represented, I need to briefly summarise for you what

1 those obligations are. You must answer the questions
2 that you are asked unless you have a reasonable excuse
3 for not doing so. Your answers should be the truth.
4 So long as you tell the truth, subject to certain
5 exceptions, your evidence can't be used against you in
6 a court of law. Needless to say, if you are
7 untruthful, you expose yourself to the risk of perjury
8 and you understand the consequences for that?---Yes.

9 So, in substance, comply with the summons, answer the
10 questions unless you have a reasonable excuse for not
11 doing so, and give truthful answers.

12 At the end of the inquiry I will provide you with
13 a video recording, you will be given a transcript of
14 your evidence.

15 Do you have any particular questions that you want
16 to raise at this stage?---No, sir.

17 If at any stage you want a break, let me know?---Yes, sir.

18 Yes, Mr Rush.

19 MR RUSH: Mr Beanland, is your name Stephen Charles

20 Beanland?---Yes, it is.

21 If you'd have a look at these documents, this is just a

22 formality. The summons before you is numbered

23 2745?---Yes, it is.

24 It was served on you on 20 December 2018?---Yes.

25 In addition to the summons, you received a statement of

26 rights and obligations?---Yes, I did.

27 That's in the bundle that you have in front of you?---Yes,

28 it is.

29 Also, did you receive a covering letter dated 12 December

1 2018?---Yes.

2 I tender those documents.

3 #EXHIBIT R - Documents received on summons by Mr Beanland.

4 COMMISSIONER: Mr Beanland, I should have pointed out to you
5 that there are officers of the Victorian Inspectorate
6 present and, if you have any concerns at any stage
7 about the procedure or your evidence, you can raise
8 those concerns with them. Yes, Mr Rush.

9 MR RUSH: Mr Beanland, you were - let's go back. Are you
10 able to tell the Commissioner when you first joined the
11 police force?---I joined in October 1986, and I believe
12 I graduated in early March 87.

13 Upon graduation, are you able to tell us where you went and
14 what you did?---Yes. Basically, I did my four years of
15 uniform work at Richmond initially for about 12 months,
16 Russell Street for about 12 months, and then St Kilda
17 for about two years. After that, I went to the
18 Brunswick detectives, or what they call Brunswick CIB
19 in 1991. Excuse me for my voice. I was there for five
20 years and I left there in November 96 and transferred
21 to the state crime squads at that point which was, for
22 me, it was the Armed Robbery Squad. I was there for
23 that duration until Gary and Rod were shot.

24 On that day you were in the Armed Robbery Squad?---Yes.

25 Did you stay in the Armed Robbery Squad after that, or did
26 you join Operation Lorimer as part of a squad of armed
27 robbery detectives?---Yes, then I went to Lorimer not
28 long after the shootings. Then - - -

29 COMMISSIONER: Take your time, Mr Beanland?---Yeah. Sorry.

1 That's all right.

2 MR RUSH: If you want a break, just - - -?---No, I'll be
3 right. And then, I was at Lorimer for the duration
4 pretty much until the end of 2000, when I transferred
5 to Carlton as a sergeant in uniform, I was there for
6 three years. Then I went to the Police Academy as a
7 law instructor in what they call a probationary phase,
8 where constables that had already graduated come back
9 for further training. I was in that section, that was
10 my last job in the police force.

11 When did you leave the police force?---In early 2011,
12 retired.

13 I want to ask you just a couple of questions about your role
14 in Lorimer?---Yes.

15 Was there in effect a squad as part of the Lorimer Task
16 Force which was made up of armed robbery
17 detectives?---Yes.

18 Who led that squad?---The sergeant was Mark Butterworth, he
19 was my sergeant at the Armed Robbery Squad. So, there
20 was Mark, myself, Joe D'Alo. Initially, from memory, I
21 think Mark Wise was there as well in the early days and
22 when we went to Lorimer, and then Mark fell away very
23 quickly - I'm not sure, I can't remember exactly why,
24 he went back to other work, and it was Mark, Joe and I
25 for the majority of the time. There were a couple of
26 others along the way, but it was the three of us
27 mainly, yeah.

28 Had you in effect come out of what was called the Hamada
29 Task Force to go into Operation Lorimer?---Um, it's a

1 little bit difficult to answer because, from my memory,
2 the series wasn't identified as a series until a little
3 bit later in the piece. In the early days when they
4 started in - I think March, April, May - you weren't
5 too sure if it was or not, although I think there was
6 one - Mark Wise, I think, was pretty sure that he'd
7 seen this before, I certainly hadn't, or Joe hadn't.
8 But as far as the Hamada series goes, I don't think it
9 was really identified as a series until, you know, a
10 little bit later, May, June, somewhere around there.

11 And when you talk about a "series", you mean the series of
12 armed robberies preceding August 1998?---Yes.

13 Mainly, as you would appreciate from the summons, what IBAC
14 is looking at is police statement-making
15 practices?---M'hmm.

16 I want to take you to an entry in Detective Senior Sergeant
17 Collins' day book, which is Exhibit 478, it's dated
18 17 March 2000, although that's incidental to what I
19 want to ask you about. Down the page, at "9 am", you
20 see in his writing there, "Office. Butterworth re
21 Pigout. Special effort. Sheridan present." As you've
22 indicated, the leader of your squad was
23 Mr Butterworth?---Yes.

24 There is there set out some discussion as to going back to
25 witnesses, but I want to take you down to the
26 second-last line where it says: "Also discuss obtaining
27 statements from witnesses. Decide where witness has
28 [over the page] excellent recall of events and can add
29 extra info then statement should be taken. Also if

1 descriptions of offenders were written on separate
2 piece of paper, then also should be recorded in second
3 statement otherwise we will only record witness info or
4 questionnaire. Further statement can be taken later if
5 deemed necessary." What I want to ask you about,
6 Mr Butterworth, is the reference in the third line to
7 "if descriptions of offenders were written on separate
8 pieces of paper." I want to suggest that - well,
9 firstly, is that a practice that you're aware of, that
10 in taking a statement from a witness such as to an
11 armed robbery, that their descriptions of offenders
12 might be put on a separate piece of paper to the
13 statement?---No.

14 Do you know what Detective Senior Sergeant Collins is
15 referring to there?---I don't, unless he's seen
16 statements in his investigations where he saw separate
17 bits of paper, but I don't know other than that, I'm
18 sorry.

19 Are you, in your career, aware of a practice where in fact
20 police will take a statement from an eyewitness but
21 quite deliberately not put in the first statement
22 particulars of the description of the eyewitness?---No.

23 Have you never encountered that?---I don't think I have, no.

24 Have you never heard of it?---Well, in the - say in the 80s
25 I may have heard of that sort of thing. I think - but
26 I can't think of anything specific. Look, all I can
27 suggest is at a - in this case we're talking about
28 armed robberies - where there's multiple victims there
29 it's a scene of extreme chaos and anxiousness and after

1 the armed robbery and the police are called, either by
2 one of the victims or another witness that's seen
3 perhaps one or two or three run out of wherever it was,
4 the police response - whilst the police are responding,
5 the uniform units are responding, even at that point
6 there there's contamination of witnesses, they'll all
7 talk, "Did you see the gun?", you know, and whatever
8 they might talk about, so the initial action at the
9 crime scene is of utmost importance when the uniform
10 people get there to separate witnesses, secure evidence
11 and those sorts of things and get descriptions quickly
12 out to other units to keep lookouts for, for obvious
13 reasons, for apprehension and safety. So, when I was
14 at Brunswick, for example, CIB, we obviously had our
15 fair share of armed robberies over the years, and the
16 LEAP system came in, I believe it was 1992 or 1993, and
17 before that we obviously didn't have the LEAP system.
18 Sometimes the detectives would be notified of an armed
19 robbery via a LEAP report; in other words, it would
20 have on the front, "Armed robbery at 7-Eleven", and
21 this is all in written words, and then you'd get down
22 to the particular - they'd write a narrative of what
23 had happened, the uniform police from the witnesses
24 obviously, and then you'd get to, like, a description
25 page where there was boxes for certain things. Now,
26 obviously for them to fill those in, they would have
27 had to have asked direct questions of the victims,
28 i.e. you know, I can remember there was a section there
29 for weapons; you know, was there a weapon involved? If

1 so, gun, knife, other; if so other, what was it:
2 clothing, height, build, masks or disguises, vehicles,
3 all sorts of things, you know, what the weather was
4 like, all sorts of things, but they hadn't actually
5 taken a statement from the person giving them that
6 information, that information was taken quickly - - -

7 Let me shorten this. What I'm particularly putting to you
8 is that, understanding what may occur when there's been
9 an armed robbery at a restaurant or a Hamada soft
10 target, I'm talking about the taking of a statement
11 either that night or maybe the next day or two days
12 later by a detective who specifically do not put in the
13 height of the offender, the weight or the build,
14 deliberately leave that out and put it on a separate
15 piece of paper?---No, I - I just can't see the purpose
16 for that. Everything that you suggest there is
17 relevant for the statement and is going to assist in
18 helping apprehend.

19 Just so we understand it, on 16 August 1998, Hamada was
20 involved and had been involved in attempts in previous
21 weeks to apprehend armed robbers who were holding up
22 restaurants, small shops and the like?---Yes, we worked
23 very hard in the lead-up to the shootings, yes, we
24 had - I believe we were actively working on a group of
25 suspects over in Noble Park or that area.

26 What you were seeing in relation to those offences was two
27 armed offenders?---Yes.

28 That the targets were generally soft targets, being the
29 incident taking place generally late at night as a

1 restaurant was closing or a Dick Smiths shop was
2 closing?---That's correct, yes.

3 The system that was used was basically the same, with one
4 offender tying up those that were in the restaurant or
5 in the shop with tape and the other trying to get
6 valuables or money?---Correct.

7 And so, the height, weight, voices and the like would become
8 important aspects potentially in relation to
9 identification?---Yeah. I'd just like to say at this
10 point, you know, dealing with witnesses and memory is
11 very complex and it really depends on how a witness
12 perceives an action; it depends on how they encode that
13 action into their memory, store it, and then your
14 ability as a police officer to be able to retrieve that
15 memory, and a lot of that is based upon the right
16 questioning of the person; if you lead or suggest,
17 you're likely to get an answer that isn't correct. So,
18 in closing, I think, yeah, I just think that's it, I
19 think a lot of the time - I believe it's changed now in
20 regard to training - but a lot of the time the wrong
21 questions are asked of these people in a distressed
22 state, even a day or two later, and they get the wrong
23 information but I don't think it's a deliberate act to
24 omit these things that you are talking about.

25 Mr Beanland, I have to suggest to you that in fact you took
26 some of the statements from persons that were impacted
27 by Hamada armed robberies and that, in taking those
28 statements, you did not put in height, weight, build
29 and the like, and that was a deliberate course?---Well,

1 I disagree with you, sorry.

2 IBAC has had evidence now from a number of police officers,
3 including Homicide Squad members, detectives and others
4 who have all given sworn evidence as to the existence
5 through this period of time in the 1990s into 2000, and
6 maybe beyond, of a practice, not unilateral, but a
7 practice - - -

8 COMMISSIONER: Universal.

9 MR RUSH: Sorry?

10 COMMISSIONER: Universal.

11 MR RUSH: Universal practice where, quite deliberately, the
12 descriptions of offenders were not put in statements
13 and you say to the Commission you've never heard of
14 it?---Oh, nothing that comes to mind. I just can't
15 recall it and I don't see why it would happen, I don't
16 see why that - I can't see a reason for that.

17 Do you appreciate that, in IBAC we have sworn evidence from
18 police officers, first responder police officers on
19 16 August, who were directed at Moorabbin by a homicide
20 detective not to put descriptions of offenders in their
21 statements?---Right. Well, I wasn't there the night
22 that the guys were - of the shooting.

23 I just give you that as an example, of what I would suggest
24 to you was a common practice that you really must have
25 known about?---No, I'm sorry, I don't - I can't agree
26 with you. If I knew that that was a common practice,
27 for whatever unbelievably absurd reason, I'd agree with
28 you but I can't, I'm sorry.

29 I want to show you a statement of a Linda Lee, Exhibit 289.

1 It will come up on the screen. You see the first
2 paragraph, she indicates, "I reside at [her
3 address]"?---Is this a statement that I took?
4 It is, and I'm going to show you in a minute, but it's: "Run
5 a restaurant known as the Jade Kew chinese restaurant
6 in Walpole Street, Kew."
7 COMMISSIONER: Would you like the witness to have a hard
8 copy, Mr Rush?
9 MR RUSH: If it's available, Commissioner?---It's okay, I
10 can read it, it's fine. Thank you.
11 Firstly, do you recall this, 27 June 1998?---No, I'm sorry,
12 I don't, sir.
13 If we could have a look at p.3401, at the bottom of that
14 page is the translator's signature. Then, at p.3402,
15 there is your signature as the person witnessing the
16 statement and you acknowledge at the bottom there,
17 "taken and signature witnessed by me on 30 June
18 1998"?---Yes.
19 If we can return to p.3400, you see that what the witness is
20 referring to is what is an armed hold-up that occurred
21 on 27 June 1998?---M'hmm, yep.
22 If you go down to the middle paragraph which commences, "We
23 were sitting at a table of 15"?---Yes.
24 Five lines from the bottom of that paragraph, you will see
25 that in the statement it says: "At the time I looked up
26 and saw two persons inside the restaurant wearing some
27 type of rubber masks over their faces standing at the
28 cabinet where we keep our china. I saw that the first
29 one was taller than the second one, holding a black

1 gun, he was wearing some type of jacket. I can't tell
2 any more than that because I was squatting and it was
3 hard to see over the chairs." Then there's reference
4 to "the first one walking towards us" in the next
5 paragraph?---M'hmm.

6 "And speaking demanding the boss and money." Then there is
7 the first reference, about five lines from the bottom
8 of that paragraph, to the second man, where it says
9 this: "Whilst that was all happening the second man,
10 the shorter one, was pulling the blinds shut at the
11 front and the side of the restaurant." Then, turning
12 over the page to the next paragraph, there is reference
13 in the fourth line to: "The first man asking us who the
14 boss was, who the Volvo belonged to in the front of the
15 restaurant." Then there is a description in the next
16 paragraph of: "A man walked into the bar, was wearing
17 runners which were black in colour, strap over the top,
18 no laces, and a white or silver stripe in the middle of
19 them. I saw them when he walked into the bar and came
20 back. He was aggressive." And there is no further
21 reference, apart from conversations to either the first
22 or second offender. So, insofar as the actual height,
23 or the actual build, or any other mannerisms of either
24 offender is referred to, there's nothing in that
25 statement?---She probably couldn't remember, I'd say; I
26 think she's done pretty well to remember all of that,
27 or to observe that and recall it.

28 Then, Ms Lee made a further statement and you'd appreciate
29 from what I've referred you, to the diary of

1 Mr Collins, that there was a special effort made to go
2 out and obtain further statements from people, and
3 Mr Collins referred to further statements from people
4 and their memories and by reference to those where
5 descriptions may be on a separate piece of paper;

6 Mr Collins referred to that?---Yes, I saw that.

7 If we have a look at Exhibit 288, this is again Linda Lee,
8 just looking at the second paragraph at the top of this
9 page: "I previously made a statement to police in
10 relation to a robbery committed on my restaurant on
11 27 June 1998. At the time of making my statement I
12 described the two males who robbed us, however these
13 descriptions were not input into my statement." What
14 Ms Lee is saying, in effect, is that she made
15 description of the two males to the police officer,
16 which I suggest is you, but the descriptions didn't go
17 in her statement. Then it goes on: "From referring to
18 notes that were made of the descriptions I gave and my
19 memory I am able to say two males [she goes on to say],
20 one more aggressive, taller, 6 feet tall of medium
21 build. He had white skin on his arms. He was wearing
22 jeans and black/dark blue denim, wearing sneakers and I
23 don't know the type or colour, and that the second male
24 was smaller, had a smaller build, didn't do much
25 talking, he taped hand and feet. He wear a jacket,
26 denim, different to the first man." And states in the
27 third last-line, "The smaller one was younger than the
28 first, was being told to hurry up by the bigger one."
29 Just to go over the page, you see that statement is

1 taken by Sergeant Paul Dale on 26 November 2000 at Kew.
2 What is referred to in the second and third
3 paragraph on p.3398 is two things: Ms Lee is saying
4 descriptions were not put into her statement, that
5 "referring to notes that were made of the descriptions
6 I gave", she can give that further description. So,
7 there are two things I need to put to you - - -

8 COMMISSIONER: Critical, Mr Rush, she is saying: "At the
9 time of making my statement", she gave that
10 description.

11 MR RUSH: Two things arising: here a witness is saying that,
12 when she made her statement which you took, she gave a
13 description which was not placed in the statement and,
14 Mr Beanland, that would be entirely consistent with the
15 police practice that you say you know nothing
16 about?---Well, all I can say is that, when I took the -
17 I can't remember taking this statement by the way,
18 but - if I was in Nunawading Police Station with a
19 translator or an interpreter, why would I not put in
20 what she's telling me? I just can't understand why. I
21 thought she did quite well in that first statement,
22 bearing in mind it was a day or two later after the
23 actual armed robbery. This is a couple of years later
24 or - it's in 2000, isn't it, this one? So - - -

25 COMMISSIONER: But what's the alternative, Mr Beanland? If
26 she's not telling the truth there, that she gave you a
27 description at the time that she made the statement
28 which you recorded separately, then what's the
29 alternative? What's the alternative explanation, that

1 when she comes to make the second statement, she's
2 giving a false account and that whoever then took the
3 second statement didn't in fact have access to your
4 notes but connives in her making a false statement?
5 You're not suggesting that, are you?---No, I'm just -
6 it's a long time later, she's obviously spoken to many
7 of - I think there was quite a few people at the armed
8 robbery in that particular restaurant, I don't know how
9 many, they've obviously all spoken; who knows, she
10 could have got that off someone else and - - -

11 I'm sorry, she could have got what off someone else?---Well,
12 the extra descriptions that she's putting in that
13 second statement.

14 She could have, but that's not what we're looking
15 at?---Right.

16 We're not looking at where she might have got it from, we're
17 looking at what you did with the descriptions she gave
18 you?---Well, if she gave me a description, sir, I would
19 have put it in her statement. I do not sit there with
20 a witness and decide what's going in and what's not
21 going into a statement, I mean, everything is relevant,
22 I can't take it any further.

23 MR RUSH: I need to take it one step further,
24 Mr Beanland?---Yep.

25 What Ms Lee is specifically referring to, as you've seen, is
26 that she told you about descriptions but they weren't
27 put into the statement, "But now, 18 months later,
28 referring to notes made of the descriptions I gave and
29 my memory, I'm able to say the following." So she in

1 fact is saying two things: (1) that she gave you the
2 description, and in making the second statement she's
3 referring to notes that were made of the description
4 that she gave at the time of making the statement?---If
5 she had notes of descriptions that she had when I took
6 the statement, and I asked them about those - and I
7 asked her about those through the interpreter, I can't
8 see why it wouldn't have gone into the statement.

9 But she's not referring to it in that tense, she's saying,
10 "Referring to the notes that were made of the
11 descriptions I gave." In other words, she's saying
12 you, as the person taking her statement, made notes of
13 the descriptions that she gave?---M'mm, is that what
14 she's saying? Or maybe she could also be saying that
15 she went away, made notes and she's looked at those
16 notes since and now she wants to make this statement?

17 In that case she'd be saying, "Looking at the notes I made"
18 rather than "the descriptions I gave", wouldn't
19 she?---Well, perhaps whoever took this statement forgot
20 to put "I made", but I'm sorry, I - I can't take it any
21 further.

22 I'd like to take you to another statement, Exhibit 301.

23 This concerns a robbery on 18 July 1998, just a month
24 later. This is a statement made by a Mr Leong Ling.
25 You will see in the second paragraph he's referring to
26 a robbery at the Papaya Asian restaurant on 18 July
27 1998. You didn't take this statement but I want to go
28 through it with you briefly. If we go down to the
29 second-last line on p.3442, the first page, it says: "I

1 saw a man with a mask waving a gun around in his right
2 hand. He was standing in our reception area, a small
3 gun, didn't know what type of gun it was." Then
4 there's reference in the next paragraph to the man
5 telling everyone to lie on the floor. Then, if you go
6 down to the next paragraph underneath that to a
7 paragraph commencing: "Before we lay down I saw a
8 second man walk in behind the first man, he also had a
9 mask on his face, he also had a small gun but I did not
10 get a good look at it. The mask he wore was similar to
11 that of the first man." So, no description of the
12 mask, or height. "The first man was taller than the
13 second, sent the other man around the restaurant to
14 check on everybody." So, not referring to height, but
15 the same as you do, referring to one being taller than
16 the other. Then over the page to p.3444: "The first
17 man then taped the hands and feet of the staff", that's
18 the only reference to him. Then the next paragraph:
19 "Before we were tied up the first man said, 'Who's the
20 boss?' I put my hand up. He then said, 'Where's the
21 money?'" Then, if we go down six lines from the
22 bottom: "I then heard the first man say, 'Max is
23 outside, how many have you got?' The second man said,
24 'Three'", talking about how many people were left to
25 tie up. Then over the page to p.3445, the middle of
26 the page: "I then heard the first man tell the second
27 man it was time to go ..."?---Sorry, I just need to
28 work out where you are now, sorry?

29 Um - - -?---Oh, yeah, "I then heard the first man", yep.

1 Then the next paragraph: "I also remember while they were
2 taping us up the first man yelling out, 'Is anyone
3 getting picked up?'" Then over the page, 3446, "They
4 appeared well prepared. At one point the first man
5 asked Mark, a waiter, 'Where's the money?'" Then, down
6 to the middle of the page: "I would say the first man
7 was in charge and very much in control. The second man
8 was sluggish and appeared inexperienced." If you go
9 over the page, you see that is taken on 19 July 1998
10 and that's, again, you would no doubt say it's a full
11 statement?---A poor statement?

12 A very full statement?---A full statement? Yeah, it's
13 pretty good.

14 But it doesn't refer to actual height?---Did you say "a full
15 statement"? Sorry, I misheard you.

16 I'll withdraw that question. Nowhere in that statement is
17 actual height referred to?---No.

18 Nowhere is the accent of the people talking referred to,
19 nowhere is a description perhaps of ethnicity referred
20 to, and there is no description of the nature of the
21 mask that the two armed robbers are wearing?---I think
22 it's a pretty good statement taken, obviously, directly
23 after an armed robbery by a uniform police officer.

24 Have a look at Exhibit 169, please. Here we have evidence
25 of the person who took that statement, of what he did
26 in relation to the description: "First male 6 foot,
27 collar length dark hair. Rubber mark, Godzilla
28 dinosaur. Blue jacket, dark pants, possibly blue
29 gloves, sounded Australian. Small gun, dark colour.

1 Second male, approximately 5'6, rubber mask as above.
2 Dark brown jacket, black pants, small gun. Possibly
3 Southern Europe, Arab, Lebanese accent." All of that
4 taken by the member and not put in the statement
5 because that member understood you don't put
6 descriptions in statements?---Okay.

7 COMMISSIONER: And he gave evidence to us late last week.

8 MR RUSH: He gave evidence to us yesterday morning?---Did he
9 say why it didn't go in this statement or?
10 Because that is the practice, that's what he'd been
11 taught?---"That's what he's been taught".

12 Tell me this: have you ever seen a statement such as
13 Mr Ling's with an attachment having a description like
14 that on a separate piece of paper?---M'mm, possibly,
15 but I don't want to say no, but I don't recall it, no.
16 You in fact dealt with this statement subsequently as part
17 of your role and responsibility with Operation
18 Hamada?---Right.

19 And I'll come to that. If we have a look at Exhibit 118.
20 Are you familiar, firstly, with this form which -
21 firstly, is that your writing?---Yes, I think so.

22 What was happening, Mr Beanland, was that you with other
23 police were being sent out to re-interview or re-speak
24 with witnesses that had been involved in Hamada
25 robberies about a variety of things including
26 descriptions of offenders. Do you recall that?---Yes.
27 So, this was a pro forma that you were asked to fill in. If
28 we go to the next page, what you set out there is
29 either what you have taken off the notes that were part

1 of the statement, or alternatively you had obtained, I
2 suggest, from Mr Ling?---M'hmm.

3 It's a little bit different, isn't it? If, for example, you
4 had spoken to Mr Ling and the first - what's the word,
5 "First profess"?---What's that, sorry?

6 The heading there is, "First"?---"Professional", I think it
7 is.

8 "Professional". I take it, we're talking about the first
9 offender?---Right, probably, yes.

10 And you've got: "Mature voice. 6 feet 2. Can't recall
11 clothing. And south", what's that word?

12 COMMISSIONER: Southern.

13 WITNESS: "South European accent".

14 "South European accent, Middle Eastern"?---Yep.

15 "Handgun. Aggressive", and then there's reference on the
16 next page to the second offender?---Yep.

17 I want to suggest, and I don't expect you to remember, but
18 you were in fact with Detective Senior Constable
19 Kennedy when you went to see Mr Ling on the second day,
20 or on this day. Do you remember working from time to
21 time with him?---Yeah, from time to time, yes.

22 If we just bring up Exhibit 561, and go down the page to
23 1405. Firstly, this is your writing, is it
24 not?---M'hmm, yes.

25 It's from your day book of 13 January 2000. Page 9340, if
26 we go down the page to the time, 1405. Could you read
27 out your writing there?---Ah, yeah: "Code 5 Sizzling
28 Wok Chinese Restaurant Chadstone Shopping Centre.
29 Spoke to James Ling." Added that "The first offender

1 had an accent, Southern European. Statement taken by
2 Mark Kennedy." Obviously, we were showing the witness
3 a mask folder, maybe they could identify a particular
4 type of mask - no value. Same with the handgun
5 photographs - no value.

6 COMMISSIONER: When you say "added", added to what,
7 Mr Beanland?---Ah, added that the first offender had an
8 accent. I suppose it hadn't been captured previously,
9 yeah.

10 Which means you had what he had previously said?---I'm not
11 sure, sir, don't know.

12 I don't follow. Why would you write "added" if you didn't
13 have a document in front of you that showed you that he
14 was saying something additional to what he'd previously
15 said?---I think what you mean is, had he previously
16 said it, why would I put "added"?

17 No, no?---No?

18 You've said "added", haven't you, because you had what he'd
19 previously said and you were noting that he was giving
20 you something additional?---Yes, I - yes.

21 MR RUSH: In fact, Mr Kennedy took a handwritten statement
22 from Mr Ling on that date at Chadstone, Exhibit 300.
23 See that last paragraph: "I wish to now add to those
24 provided statements - - -"

25 COMMISSIONER: "Previous".

26 MR RUSH: "... previous statements by saying that the bigger
27 or larger of the two male offenders had Southern
28 European or Middle Eastern accent. I can still recall
29 his voice and the way he talked. That is how I best

1 described his accent"?---"How I best described his
2 accent", yep.

3 So, you saw it necessary at that stage to put in something
4 further in relation to the description?---Yes.

5 Yet, as we've seen, there were descriptions taken at the
6 time of the first statement?---M'mm, I can't explain
7 it, I'm sorry, I honestly can't.

8 COMMISSIONER: It's not just, it was added; that piece he
9 added was a departure from what he previously said. He
10 hadn't previously said that the larger person had a
11 Southern European or Middle Eastern accent. He
12 described in the first statement, in the additional
13 description document you were shown, that that person
14 had an Australian accent. As Mr Kennedy has said to
15 us, this is a classic illustration of the problem that
16 arises if you don't put the description in the first
17 statement, that something gets changed and yet later on
18 down the track no one can see that it's been
19 changed?---Right, yes.

20 MR RUSH: Just to familiarise you with that, at 169, at the
21 bottom of the page there is reference to the second
22 male rather than the first male, the second male
23 possibly having the Southern European or Lebanese
24 accent. So, that's the point of departure that the
25 Commissioner is talking about?---Right.

26 If that can remain - and I want to show you Exhibit 303 on
27 the same page.

28 COMMISSIONER: Mr Beanland, you let us know if you want to
29 have a break at any stage. You understand that there's

1 an independent person here that will be happy to
2 support you. If you want to have a break, just let us
3 know, would you?---Yes, sir.

4 MR RUSH: On the left-hand side of the page is the
5 description that was taken at the time of the statement
6 and on the right-hand side of the screen is a statement
7 that's in fact taken on 26 November 2000 by Detective
8 Sergeant Witschi, another statement from
9 Mr Ling?---M'hmm.

10 If you have a look at that, it refers to previous
11 statements, but in the third paragraph he gives a
12 description of the first and taller male which, if you
13 compare it, is entirely consistent with the notes made
14 at the time of the initial statement in June
15 1998?---M'hmm, yes.

16 In relation to the second male, that is entirely consistent
17 but for one thing, with the description that was made
18 in June 1998?---Okay, yeah.

19 What's not there is the inconsistency that has been pointed
20 to; there is nothing about the person's accent?---Yeah.
21 It looks like this has been written by - I don't know
22 if that's Witschi's handwriting there.

23 That's written, we've got evidence in IBAC from yesterday,
24 that is written by the police officer that took the
25 first statement. As I've indicated to you, the
26 practice was not to put descriptions in first
27 statements?---Right, and this is then Doug Witschi,
28 yeah.

29 COMMISSIONER: You will see, Mr Beanland, that the witness

1 records in the second paragraph that he had supplied
2 the descriptions of the offenders to the police on that
3 evening and that the descriptions were not included in
4 the statement that the police wrote down notes?---Yes.

5 MR RUSH: And that's exactly what Ms Lee said about the
6 statement that you took?---Right.

7 So, and this is a statement, both times you've been involved
8 with them, but you agree that on both occasions you've
9 got first statements that don't have descriptions and
10 subsequent statements that put in full
11 descriptions?---Yes.

12 And again, I've got to put to you that there was a practice
13 in the Armed Robbery Squad of doing precisely
14 that?---Yeah, not - I keep saying that I can't see why,
15 what the reason for it is. I don't remember it.

16 You're saying you don't remember it?---Yes.

17 Well, there is a reason why it wouldn't be done, isn't
18 there, that you could think of? That you don't put the
19 descriptions in if they're not going to fit where the
20 investigation leads police?---In my experience, most
21 armed robberies are solved by other means other than
22 what someone looks like.

23 But if descriptions of people subsequently charged are
24 inconsistent with those charged, then that's not really
25 going to help the investigation, is it?---I suppose it
26 depends on, you know, how much difference there is,
27 yeah.

28 COMMISSIONER: The whole point is, is it not, Mr Beanland,
29 that's not for the investigating officer to judge, is

1 it?---No, sir.

2 The truth is, you won't know at a particular point of an
3 investigation whether a piece of information's critical
4 or not?---True.

5 And that's why the requirement is, you put in all of the
6 relevant information whether or not it fits a case
7 theory or not?---Correct.

8 MR RUSH: I'll just give you one other example, Mr Beanland.
9 Is or was Detective Sergeant Peterson known to
10 you?---Is he known to me?

11 Yes?---Yes, I know him.

12 Was he from time to time involved in the work that was
13 undertaken in your squad at Operation Lorimer?---No.
14 Was he involved at the Armed Robbery Squad?---Yeah.

15 Could we have a look at Exhibit 291. This is a statement of
16 another person involved in the Jade Kew restaurant
17 armed robbery. If we look at the subsequent page, it's
18 a statement taken three days after the event by
19 Mr Peterson on 30 June?---If we go back to the first
20 page, and there in the third paragraph, third line, he
21 talks about a male wearing a plastic coloured mask
22 pointing a gun entering the restaurant. Then the
23 second male in the next paragraph, "Holding a knife, he
24 also had a face mask." Then he is spoken to, as he
25 said in the next paragraph and demand for money. Next
26 paragraph: "He handed over the money to the smaller
27 one. The smaller one started to tie all of us up."
28 Then there is written in the last paragraph, reference
29 to: "The second man still taping us all up", he's on

1 the floor. Over the page, there's reference to the men
2 being in the restaurant for eight to ten minutes. But
3 again, nothing in the statement taken by a senior
4 sergeant in the Armed Robbery Squad about height,
5 build, ethnicity or indeed the nature of the masks that
6 are being worn?---Yes.

7 Then, Exhibit 290, you see a further statement - I'll come
8 to the date, but for the purposes of the questioning -
9 made on 26 November 2000, so close to 18 months after
10 the event. In the second paragraph: "I previously made
11 a statement to the police regarding an armed robbery
12 that occurred at our restaurant on the 27th. From
13 information I supplied to police and my recollection I
14 described the two offenders as following: offender 1:
15 male, older, 5 foot 10, 40, wearing a mask, sees eyes
16 and nose only. All I can say ..." And over the page,
17 "Offender 2: 25 to 30, shorter than the first, about 5
18 foot 5 inches, smaller build, wearing a mask, very
19 nervous." So again, we have another witness to another
20 Armed Robbery Squad member indicating having previously
21 supplied this time to Mr Peterson information about the
22 description of offenders which was not put in the first
23 statement having to do another statement. Again, I've
24 got to ask you, is this ringing a bell in your memory
25 as to the practice that was being adopted?---It doesn't
26 ring a bell, no, I'm sorry; if it did I would say.

27 COMMISSIONER: Mr Rush, you may have to take the witness to
28 some of the examples, but do we not have a number of
29 examples where the witness, Mr Beanland, was involved

1 in the taking of a second statement from an armed
2 robbery victim and, in that process, had to take the
3 witness to their original statement and the note that
4 was made separate from the original notice and get the
5 witness to adopt the contents of the separate note?

6 MR RUSH: I'm looking for Exhibit 358, I think. If I could
7 just check. If we have a look at Exhibit 357. You
8 see, this is a statement of Mr Sgouroniallos, Jason
9 Sgouroniallos, made on 27 March 1993 and he's referring
10 to an armed robbery at the Hobsons Café, 21 Melrose
11 Street, Sandringham. Here, appreciating that it's
12 before your time with the Armed Robbery Squad, but you
13 see - I'm not sure if you want to read it, but I can
14 take you to some of the detail in that statement which
15 does refer to the talking between persons. I'm looking
16 three-quarters of the way down the page. He describes,
17 at the top of the page: "The males were both wearing
18 black balaclavas. The one talking sounded Australian.
19 They both stood about 5'8, 5'9. The one doing all the
20 talking had a stocky build, the other was a bit
21 thinner." Then goes on to give a description, a
22 further description of the clothes they were wearing at
23 the next page, 3623. If I can move on perhaps,
24 Mr Beanland, you were required as part of your
25 investigations and duties to take a further statement
26 from Mr Sgouroniallos. If we have a look at
27 Exhibit 358, you will see at p.3626, at the bottom of
28 the page you have taken that further statement at
29 Moorabbin on 3 November 2000?---M'hmm, yes.

1 In the course of taking that statement you retyped what the
2 witness had previously said in his first statement.
3 But if I take you to p.3625, down towards the bottom of
4 the page where it says: "This is the statement I made
5 to police on the night of the robbery and the contents
6 in it are true and correct." You converted the
7 handwriting into that part. Then it goes on: "I have
8 also been shown a piece of paper that is attached to my
9 statement, the piece of paper has a drawing of a
10 Balaclava, a handgun as well as the following
11 descriptions: 5'8, unknown, unknown, hair and eyes.
12 Build stocky. Blue jeans, denim. Runners on feet.
13 Black leather gloves." And then it goes on to give a
14 description of the second male. Now, again, here you
15 are dealing, I suggest, very specifically with a
16 statement that's attached to a first statement that
17 related to one of the first questions I asked you today
18 about your awareness of this practice, and I want to
19 suggest to you, Mr Beanland, that in fact you are very
20 aware of this practice?---Yeah, no, I can't - I'm
21 sorry, I can't recall it, I can't recall it being a
22 practice as you say. Although I accept it's there, I
23 understand that.

24 COMMISSIONER: But you are not prepared to concede,
25 Mr Beanland, that your memory's let you down?---Yeah, I
26 concede that, yeah, absolutely. Absolutely. I just
27 don't remember it, sir, as, like, you know, that it was
28 a practice that, you know, we had to follow, that's
29 all.

1 But the real question is, as you've made very clear in your
2 evidence, such a practice is absurd, I think that's the
3 word you used earlier, you can't understand any
4 legitimate purpose for it, so I'm just curious as to
5 why if, as the evidence seems to suggest, you became
6 acutely aware of that practice whilst you were in the
7 Lorimer Task Force, why wouldn't you remember a
8 practice that you know to have no legitimate
9 purpose?---I don't know, all I can say is that we were
10 asked to revisit some witnesses to try to obtain
11 further statements, that's all I can say, sir.

12 So, just tell me, you were asked to perform these tasks by
13 the head of your crew, that is, to go back to a witness
14 and get a further statement and if, as the evidence
15 suggests, on a number of occasions you were confronted
16 with a first statement that had been made by the
17 witness plus a separate note or record of a description
18 given by the witness - - - ?---Sometimes - - -

19 - - - is there some reason why you never did anything about
20 the fact that this seemed to you to be a purpose that
21 had no legitimate basis?---To be honest, sir, it didn't
22 occur to me. It honestly didn't occur to me. I think
23 that I was just simply thinking that, um, for whatever
24 reason, whether it was time issues or what, or what,
25 but that statement, you know, wasn't as comprehensive
26 as what it should have been and it should have been
27 more comprehensive but, as life dictates, life isn't
28 perfect and we needed to sometimes - well, we were
29 asked to go and revisit these people, even though it

1 was some time later. So, not good practice. I
2 suppose, for want of a better word - not sweeping up -
3 but it - the - they weren't - the completeness wasn't
4 there, you know, it needed to be completeness in what
5 they were saying.

6 So nobody's suggesting that it's not an appropriate course
7 to go back to a witness and get a supplementary
8 statement from a witness if they have additional
9 evidence to provide?---Yeah.

10 The focus here is upon why that information which was
11 provided in the first place wasn't in their
12 statement?---That's a good question, that's a very -
13 yep. Sorry, I can't help you.

14 MR RUSH: Did you not think it odd that you
15 were - - -?---Sorry, sir?

16 Did you not think it odd that, as we've seen, when you were
17 going back to take further statements and having to put
18 in your further statements the sort of details that
19 we've spoken about?---No.

20 Odd that the witnesses that were being spoken to were
21 referring to having providing that detail to police but
22 it hadn't ended up in their statement; that's right,
23 isn't it?---Yeah, I can see that you can see it's odd,
24 but at the time I didn't think it was odd.

25 When were you at Detective Training School?---1991.

26 We've had evidence from Mr Kennedy that the practice that
27 we've spoken about, of not putting descriptions in
28 statements as we've discussed, was something that was
29 raised and discussed at Detective Training

1 School?---Not that I remember, I'm sorry.
2 We've had evidence from Detective Senior Constable Eden of
3 the Homicide Squad, and then Detective Senior Constable
4 Kelly of the Homicide Squad, that the practice of not
5 putting descriptions in statements was taught at the
6 Police Academy. It wasn't discussed when you were at
7 the Police Academy?---Not that I remember, there was
8 very little education in regards to statements. Look,
9 over the course of my career, if I dug up all my old
10 statements, they're probably on the police computer
11 still somewhere, I'm sure you would find hundreds of
12 statements that I've taken with comprehensive
13 descriptions of suspects, um, so that's - these
14 examples that you point to are, I would say, anomalies.
15 The only time that I saw comprehensive statement-taking
16 training was when I went back to the Academy in 2003,
17 and it was then they were teaching at DTS and recruits
18 the cognitive interview technique, in order to take
19 statements from witnesses, but prior to that it was - I
20 can't remember.

21 Detective Senior Sergeant Collins, to your knowledge, had
22 overall responsibility in relation to the gathering of
23 statements for the brief in this matter?---I suppose
24 you'd say that, yes.

25 So, without it necessarily being brought up I go back to
26 where we started the examination, Mr Beanland, where he
27 wrote in his day book: "Also, if descriptions of
28 offenders were written on separate pieces of paper,
29 then these also should be recorded in second

1 statement." What he there is referring to is the
2 practice that we have identified in the examination
3 this afternoon of the piece of paper or the additional
4 information being the subject of the second
5 statement?---Yeah, but surely there must have been
6 other statements that had the, you know, the full - or
7 what a witness was saying was the full description.
8 What I'm asking though is, what Mr Collins has identified in
9 his day book - - -?---Yep.
10 - - - is the very practice that we have examined here this
11 afternoon?---I think, obviously, he's looked at some
12 statements and realised that that was the case, and
13 then they needed to be - a second statement needed to
14 be taken, that's what he had written.
15 They are the matters, Commissioner.
16 COMMISSIONER: You've mentioned the procedure of taking a
17 supplementary statement from a witness. The
18 Commission's had evidence that in some cases, rather
19 than a supplementary statement being taken, a new
20 statement was taken, sometimes - - - ?---What's the
21 difference between the supplementary statement and the
22 new statement?
23 Well, just bear with me a second. A new statement is taken
24 but the new statement bears the date of the original
25 statement but it contains additional material, and then
26 the original statement is removed or
27 disappears?---Right.
28 Do you have any familiarity with that practice?---None
29 whatsoever.

1 Or another variation, that a new statement is taken which
2 bears the date of the new statement, it contains all of
3 the material from the old statement plus some
4 additional material, and the old statement disappears.
5 Do you have any familiarity with that practice?---No.
6 And the witness is signing both statements?
7 Yes?---And obviously they're aware that they're adding
8 things?
9 And it's acknowledged, yes?---No, I haven't, sir.
10 And that occurred in the Lorimer case, in the Lorimer Task
11 Force?---Well, I've read what's in the papers, I
12 understand, you know, what you're saying.
13 Yes?---But - - -
14 You'd never had any experience of it, Mr Beanland?---No,
15 sir.
16 Mr Matthews?
17 MR MATTHEWS: I don't seek to have cross-examination.
18 COMMISSIONER: Any reason why Mr Beanland shouldn't be
19 excused?
20 MR RUSH: No, Commissioner.
21 COMMISSIONER: We thank you for your attendance here today,
22 Mr Beanland. I can discharge you from your summons
23 and, subject to the following qualification, the
24 confidentiality privilege will no longer apply to you.
25 You should not discuss your evidence, however,
26 with any witness that has been or is likely to be
27 called in these proceedings, either you shouldn't
28 discuss his evidence or your own, do you follow, until
29 after the proceedings have been concluded?---Yes, sir.

1 We'll provide you with a video recording of your evidence
2 and a transcript of your evidence. Do you have any
3 questions you want to raise? You seem to be troubled
4 by something?---Just, I think I'd just like to add,
5 sir, that I'm not suggesting that things I've been
6 shown didn't happen, obviously they did. But as far
7 as, like, a systematic thing that was going on all over
8 the place, I don't recall that, and I'm sure also that
9 there were many, many, many statements taken during
10 Lorimer and other areas where that - description of
11 offenders are either taken on the night or shortly
12 thereafter, you know, a day or two later.

13 Yes?---I'd just like to say that.

14 So you're telling me that you're confident that in a lot of
15 cases the correct procedures were followed?---Yes, sir.

16 MR MATTHEWS: Commissioner, sorry, I wonder if I can raise a
17 matter? I'm sorry that I didn't think of this earlier,
18 but given the evidence that came from the witness
19 before lunch, this witness was in the same team, as I
20 understand it, as that witness, so I suppose the same
21 caveat might apply depending on evidence given by a
22 later witness pertaining to the dying declarations
23 issue.

24 COMMISSIONER: Yes.

25 MR MATTHEWS: I just notice that there was no questioning
26 about that, but we know that from the previous witness.
27 I suppose there is a possibility I might foresee where
28 he might need to be recalled. I'm sorry.

29 COMMISSIONER: Yes, Mr Matthews, I think that's so remote,

1 and I've already indicated I will discharge him from
2 his summons. If needs be, we'll deal with that problem
3 if it arises, thank you.

4 So you're excused now, Mr Beanland, and we thank
5 you for your assistance.

6 <(THE WITNESS WITHDREW)

7 MR RUSH: I call Mr Murnane, Commissioner.

8 <PAUL RAYMOND MURNANE, sworn and examined:

9 COMMISSIONER: Mr Murnane, when you were served with a
10 summons it set out the matters on which you might be
11 questioned?---That's correct.

12 I'll just remind you of what they are. First, the Lorimer
13 Task Force investigation of the murders of Sergeant
14 Gary Silk and Senior Constable Rodney Miller concerning
15 the taking of witness statements, preparation of the
16 brief of evidence for the trial of Debs and Roberts,
17 and whether there was full disclosure of witness
18 statements or other relevant information prior to or
19 during the trial, witness statement-taking practices by
20 Victoria Police, compliance with the obligation to
21 disclose evidence by Victoria Police.

22 Mr Murnane, you're not represented. You
23 understand you have a right to legal representation. I
24 take it at this stage you're content to proceed without
25 it?---That's correct.

26 You were served with the summons, a notice of
27 confidentiality and a list of rights and obligations.
28 I need to remind you in summary form what those rights
29 and obligations are. You must answer the questions

1 unless you have a reasonable excuse for not doing so.
2 You should answer the questions truthfully and, if you
3 do, subject to certain exceptions, those answers cannot
4 be used against you in a court of law. Obviously, if
5 you gave untruthful answers you expose yourself to the
6 risk of perjury and you understand what the
7 consequences of that may be.

8 At the conclusion of counsel assisting's questions
9 and any questions that I give leave to a party to ask
10 in cross-examination, you will have an opportunity to
11 give any further evidence or answer that you wish in
12 further elaboration of anything that's been explored
13 with you. We will provide you with a video recording
14 and a transcript of your evidence at the conclusion of
15 the hearing.

16 Present are representatives of the Victorian
17 Inspectorate, and so, if at any stage you have a
18 concern about the process or the questions asked, you
19 can raise those concerns with them. And, if at any
20 stage you want to have a break, please let me know.

21 MR RUSH: Mr Murnane, your name is Paul Raymond

22 Murnane?---Yes, it is.

23 Do you appear here as consequences of a summons served on

24 18 December?---Yes, I do.

25 If you have a look at these documents, is the summons

26 numbered 2745?---That's correct. Sorry, 2755.

27 Beg your pardon, 2755. Did you receive with the materials a

28 statement of rights and obligations?---I did.

29 Did you receive a confidentiality notice dated 11 December

1 2018 and a covering letter dated 12 December
2 2018?---Yes, I did.
3 I tender those documents, Commissioner.
4 #EXHIBIT S - Documents received on summons by Mr Murnane.
5 WITNESS: The summons has that incorrect name on it too.
6 MR RUSH: Your correct name's Paul Raymond Murnane?---Yes,
7 it is.
8 COMMISSIONER: We'll have that corrected, Mr Murnane?---I'm
9 here now, it doesn't really make much difference.
10 MR RUSH: Mr Murnane, you, as I understand it, retired from
11 Victoria Police in 2007 with the rank of
12 superintendent?---Yes, I did.
13 Could you outline to the Commissioner when you joined the
14 police force and perhaps a potted history of your
15 police career?---Certainly. I joined in 1970 and as a
16 constable, senior constable, was stationed at Russell
17 Street, Brunswick, Colac, Ferntree Gully, Cheltenham
18 Crime Car Squad, and then into the CIB at Russell
19 Street, part of the Crime Department into the break in
20 squad, then to Sunshine CIB. As a sergeant at
21 Maidstone, into a task force, then into tactical
22 investigation group. Then to Ballarat CIB as a
23 sergeant, then a senior sergeant at Ballarat as a
24 training officer. Inspector at internal investigations
25 department, then back to Ballarat as a uniform
26 inspector for five years, and then to the Armed Robbery
27 Squad in 1996, and I left there in 1999. I then set up
28 the Tactical Investigation Squad in the Crime
29 Department and was promoted to superintendent in 2001.

1 For two years at the Freedom of Information Office and
2 then transferred to Ballarat in 2003 and retired in
3 2007.

4 COMMISSIONER: And your memory's not failing you,
5 Mr Murnane?---Not at this point in time, sir.

6 MR RUSH: I want to concentrate on the period that you were
7 with the Armed Robbery Squad?---Yes, of course.

8 As a detective inspector?---That's correct.

9 You had an involvement, did you not, with Operation
10 Hamada?---Yes, I did.

11 Could you explain what that involvement was?---At that point
12 in time I was detective inspector in charge of the
13 squad. There's five crews in the squad lead by a
14 detective sergeant, and one of those crews, Detective
15 Sergeant Butterworth and his crew were investigating a
16 series of armed robberies in the eastern suburbs, and
17 so, Operation Hamada developed out of that. I was
18 monitoring the progress of the operation and then when
19 it finally came to culmination we ran an exercise or an
20 operation to span over two weekends, and it was on the
21 first weekend of the operation when unfortunately Gary
22 Silk and Rod Miller died.

23 Can we have a look at Exhibit 554.

24 COMMISSIONER: It will come up on the screen for you,
25 Mr Murnane.

26 MR RUSH: This is, I think, the situation plan and mission
27 plan for that weekend. I just want to take you to a
28 couple of matters in understanding of Operation Hamada
29 in the first paragraph. Refer to the Armed Robbery

1 Squad investigating a series of 11 armed robberies
2 committed in police districts, the first offence
3 occurring on 2 March 1998. Progressed on average at
4 the rate of one armed robbery every two to three weeks;
5 the latest taking place on 18 July 1998. The series of
6 offences bears a striking similarity to 27 offences
7 committed between 1991 and 1994, that was Operation
8 Pigout, and investigators believe at least one of the
9 offenders involved in the Hamada offences may also be
10 associated with the Pigout offences. You then go on to
11 set out the usual method adopted for the Hamada
12 offences which I won't trouble you with. In the next
13 paragraph you say: "A constant description of offenders
14 and these offences are as follows: male, 180 to
15 185 centimetres, medium to solid build, pot belly
16 Australian, 30 to 40 years of age. Male 165 to
17 170 centimetres, slim to medium build, Australian, late
18 teens to mid-20s." If I can interpose there, what
19 there is set out in relation to, I guess,
20 statement-taking as it's concerned the offences which
21 commenced on 2 March 1998, those descriptions
22 underscore the importance of accurate statement-taking,
23 you'd agree?---I agree.

24 Then there is a profile of the business premises that are
25 targeted. If we could go over to the following page,
26 the mission there set out was to: "Conduct a standing
27 covert surveillance operation on premises that fit the
28 target profile over three weekends commencing Friday,
29 14 August, concluding on Sunday, 30 August." At the

1 following page, 8557, at the bottom of the page, the
2 Command for that operation is Detective Superintendent
3 Ashby as the commander, and you were the forward
4 commander?---That's correct.

5 I think, as forward commander, you were positioned at Glen
6 Waverley?---Yes, I was.

7 What was the role of the forward commander?---Well, the role
8 of the forward commander was to monitor the operation
9 as it progressed. However, prior to taking up my
10 position at Glen Waverley, on the Friday night I had
11 briefed quite a few detectives and those involved in
12 the operation at the Police Academy, and then I
13 progressed to the forward command office at Glen
14 Waverley. We had radio communications there, I had my
15 analyst, Craig Thornton, he was there with me. To the
16 best of my memory, there was just the two of us in the
17 forward command office and we monitored progress of the
18 operation throughout the night. On the Saturday night
19 it was the same; I was late getting down. I understand
20 that Detective Sergeant Butterworth briefed the people
21 involved in the operation on that night. When I
22 arrived in Melbourne I went straight to the forward
23 command office at Glen Waverley and monitored the
24 operation.

25 After 16 August 1998, are you aware of Detective Sergeant
26 Butterworth and crew 4 of the Armed Robbery Squad being
27 seconded, in effect, to Operation Lorimer?---That's
28 correct.

29 Did you have any role at all in Operation Lorimer?---No, I

1 did not.

2 Did Operation Hamada, and the investigation of the Hamada
3 investigations commencing in 1998, continue with the
4 Armed Robbery Squad or was that taken into Operation
5 Lorimer?---Pretty sure it was transferred across to
6 Operation Lorimer with Detective Sergeant Butterworth
7 and his crew. Although, I think on the following
8 weekend we did conduct the operation again, from
9 memory; however, no results, naturally.

10 Up until 16 August, did you have any oversight of the
11 statement-making practices involving those armed
12 robberies that were the subject of Operation
13 Hamada?---No, I did not.

14 Were you involved in reading or oversighting the
15 statements?---No, I did not, no. In my role in charge
16 of the squad, I had very, very little to do with brief
17 preparation.

18 And Mr Thornton was an analyst seconded to your team?---No,
19 he was in a permanent position at the Armed Robbery
20 Squad. He was seconded to Operation Lorimer as their
21 analyst.

22 What connection did he have with the role you were
23 perform?---Sorry?

24 What was his connection to your role?---My role? Well,
25 Craig was the analyst at the Armed Robbery Squad in a
26 permanent position. On the night of the 14th and the
27 night of the 15th, he assisted me in the - at Glen
28 Waverley in the forward command office; in fact, it was
29 he who passed on the message of the incident to me.

1 But he wasn't reporting to you on a general basis, it was
2 only in that setting, was it?---Oh, no, no, he was a
3 part of our squad, he was - I guess he fell under the
4 authority of the detective senior sergeant of the
5 squad; I was over that.

6 MR RUSH: Mr Thornton was with you on the Friday and the
7 Saturday night?---Yes, he was.

8 What is the role of the analyst in the Armed Robbery
9 Squad?---The analyst is responsible for histories of
10 suspects, tying up all sort of loose ends, studying and
11 looking at past histories, creating links between
12 offenders, so it's a huge role. We had two analysts:
13 Craig was one and a female analyst, Sue, was the other
14 one. And it was - the task is to sort of bring
15 operations together, if you like. You might have an
16 operation running with six suspects, and so, their task
17 is to bring those suspects together, whether it be
18 through telephone numbers, addresses, frequency. In
19 those days there was a lot of undercover surveillance
20 and all that type of stuff and all that information
21 would go to the analyst and the analyst would then
22 compile a summary or a - what would you call it, a -
23 the word escapes me just at the minute but - - -

24 COMMISSIONER: An assessment?---An assessment and they'd
25 collate all that information and put it all together.

26 MR RUSH: So, you would expect the analyst to closely
27 scrutinise the statements that are taken from
28 eyewitnesses who have been persons involved in the
29 armed robberies - been at the premises of armed

1 robberies?---When you say "scrutinise", "scrutinise" is
2 probably not the right word. Craig was a senior
3 constable, a uniformed senior constable, I don't think
4 he was a detective, analyst, and so he would not have
5 scrutinised them but he would take everything in those
6 statements into account and do what analysts do,
7 collate all the information that's contained in the
8 statements to bring it all together.

9 An analyst perhaps would provide the sort of description
10 that we've taken you to in the brief for what was to
11 occur on 16 August?---I would guess that he probably
12 did in conjunction with the crew that was investigating
13 it, yes.

14 In the sense of providing the constant description of the
15 offenders, their height, their build, their nationality
16 and their age?---Yes, that's correct.

17 That would be the sort of thing that an analyst would be
18 required to pick up on?---Exactly.

19 And, if that detail was not in the statements, then the
20 analyst would go to other sources to get that sort of
21 detail?---Yes, he would.

22 I want to ask you a question, but it's perhaps easier if the
23 practice is described. Exhibit 478. What I'm taking
24 you to, Mr Murnane, is the day book of Detective Senior
25 Sergeant Collins, as he was then, at 17 March 2000. If
26 we go to p.7230. Towards the bottom of the page, at
27 9 am, he's noted: "Office with Butterworth re Pigout.
28 Special (indistinct) Sheridan present. Discuss
29 logistics and manpower." So, "Pigout", we've referred

1 to, was the series of armed robberies in the early
2 90s?---That's correct.

3 The second-last line on that page, it's written: "Also
4 discussed obtaining statements from witnesses. Decide
5 where witness has excellent recall of events and can
6 add extra information then statement should be taken.
7 Also, if descriptions of offenders were written on a
8 separate piece of paper, then they also should be
9 recorded in a second statement." My question is a
10 comparatively simple one: what Mr Collins is referring
11 to there is a practice of placing descriptions of
12 offenders with a statement but not putting all the
13 description in the first statement?---I understand
14 that.

15 Is that a practice of which you are aware?---I became aware
16 of that on one occasion, to the best of my
17 recollection, and I cannot remember the forum in which
18 it was discussed nor the context in which it was
19 discussed. I believe it was only on the one occasion,
20 and I can't even really recall whether or not it was
21 whilst at the Armed Robbery Squad or elsewhere, but I
22 have heard of it, yes.

23 Are you saying you only came across of it or heard of it on
24 one occasion?---That's correct, as far as I know, to
25 the best of my knowledge.

26 Would you be aware then, in your position as detective
27 inspector at the Armed Robbery Squad over the three
28 years that we're talking about, of a practice where
29 members of the Armed Robbery Squad were undertaking the

1 statement-taking process as described here?---No, I
2 wasn't aware of that.

3 Not putting full details in statements but keeping them on a
4 separate piece of paper and, if necessary, making a
5 further statement with the full details?---I wasn't
6 aware of that.

7 COMMISSIONER: Would you elaborate for us, Mr Murnane, what
8 was the procedure that was followed within the Armed
9 Robbery Squad in relation to the collation of the brief
10 of evidence for a prosecution? You had the informant
11 who gathered the relevant statements together and put
12 together a brief. It then would go to someone in a
13 supervisory role?---Usually.

14 And whilst you were the inspector there, who discharged that
15 supervisory role?---Well, Detective Senior Sergeant
16 Watson was the officer, I suppose you could say, in
17 charge of the operations of the squad. But I presume
18 on - it's up to the whole crew to actually put a brief
19 of evidence together: detectives on the crew, of which
20 there was three, and there was one detective sergeant,
21 they would compile that brief. Now, the brief wouldn't
22 necessarily need to be authorised because in most
23 instances in the Armed Robbery Squad an information is
24 served, and so, after that occurs the brief is compiled
25 by the squad and normally there'd be someone from the -
26 I presume - from the Department of Public Prosecutions
27 would assist in the brief being progressed through to
28 committal and trial.

29 There wasn't necessarily some oversight or supervisory role

1 by someone above the squad, the crew putting together
2 the brief, that would review the material that was
3 going into the brief?---Well, certainly I didn't. Now,
4 whether or not Detective Senior Sergeant Watson did or
5 not, I'm not sure. I presume it would be normally the
6 sergeant in charge of the crew dealing with the DPP.

7 The reason I asked those questions is because the Commission
8 has a considerable body of evidence to show that during
9 the period of the Lorimer Task Force a significant
10 number of statements were prepared which showed this
11 practice, namely a statement taken from the victim and
12 a more detailed description recorded on a separate note
13 or piece of paper but not part of the statement of the
14 witness?---I can't understand that practice.

15 You can't?---I can't understand why that practice would be
16 adopted, and one of the main reasons is, how do you get
17 that piece of paper admitted into evidence? If it's in
18 the witness's statement, it's automatically there, it's
19 in the brief and goes in as evidence. If it's on a
20 separate piece of paper, well then, it obviously has to
21 be presented as an exhibit, which I guess can be done,
22 but it just makes the whole situation more difficult.

23 You say "obviously", but if you ask the question, why was
24 that a practice that was being followed, do you not
25 envisage the possibility that it wasn't being
26 anticipated that the note would necessarily be put in
27 evidence?---Sorry, I don't quite understand.

28 You're assuming that whoever takes the statement and makes
29 the note intends from the outset that the note will

1 also be admitted into evidence; why do you make that
2 assumption?---Well, it doesn't - the note is not part
3 of the statement.

4 Yes?---And so, I'm presuming that the note would just be a
5 note as it was without any signatures on it; it would
6 be like, I guess, finding a - something else, a
7 particular note found in a search or whatever, it would
8 then be presented at the committal or trial as an
9 exhibit.

10 That's what I'm asking you, though: why do you assume that
11 the person who's decided, I'm not putting this
12 description into the statement, intends from the outset
13 that the note will nonetheless be part of the evidence?
14 Why do you make that assumption?---Well, that's a
15 normal practice. If you've got a piece of evidence
16 which is fairly important to the case, such as a
17 description of an offender and it's not included in the
18 witness's statement, well then, obviously it would have
19 - to be used in the trial or the committal it would
20 have to be presented as an exhibit, which is most
21 important to have a description of the offender as part
22 of your evidence.

23 I think you're making an assumption then, inspector?---Well,
24 I might be making an assumption but that's the way I
25 put it.

26 You're making an assumption that the person writing the note
27 anticipates that the note will find its way into
28 evidence. If you ask the antecedent question, why has
29 the person not recorded the note in the statement at

1 the outset, does that not raise a question about
2 whether or not the person taking the statement
3 necessarily contemplated that the note would be in
4 evidence?---Well, it's a question I can't answer
5 and - - -
6 Can you think of a legitimate reason - - -?---No, I can't.
7 - - - for a note not - rather than it being included in the
8 statement?---No, I can't.
9 MR RUSH: There's just one example I wanted to take you to,
10 Mr Murnane, to make the point and it concerns the
11 statement of a witness, Exhibit 289, Ms Linda Lee, who
12 at the Jade Kew Chinese Restaurant was the subject of
13 an armed robbery on 27 June 1998, just a matter of five
14 or six weeks prior to 16 August. This is a statement
15 that was taken by Mr Beanland, a person you would
16 recall in the Armed Robbery Squad?---Yes, I do.
17 You see there, it sets it out, in the second paragraph,
18 22 June. If we go down to the paragraph commencing,
19 "We were all at table 15" to about the sixth-last line,
20 where it reads: "At that time I looked up, saw two
21 persons inside the restaurant. I saw they were wearing
22 some type of rubber mask over their faces, they were
23 standing at the cabinet. I saw the first one, taller
24 than the second, holding a black gun, some type of
25 jacket." Then the next paragraph: "I saw the first one
26 walking towards us saying to us he wanted money", and
27 so there's some conversation. Six lines from the
28 bottom: "While this was all happening the second man,
29 the shorter one, was pulling the blinds shut at the

1 front and the side of the restaurant." Over the page,
2 in the first paragraph, the fourth line, "All through
3 this the first man was asking us who the boss was."
4 Then the next paragraph: "The man who walked into the
5 bar was wearing runners, black in colour, they had a
6 stripe over the top, had a white or silver stripe in
7 the middle of them. I saw them when he walked into the
8 bar and came back." As you see, that is the totality
9 of the description of the first and second
10 offender?---Yes.

11 No weight, height given in terms of actual height, build or
12 the like. If we go to Exhibit 288. As part of
13 Operation Lorimer, as we've seen, there were directions
14 to go out and obtain where there could be second
15 statements with better descriptions. So, here we have
16 Ms Lee in November of 2000 deposing, in the second
17 paragraph: "I previously made a statement to police in
18 relation to the robbery committed on my restaurant. At
19 the time of making my statement I described the two
20 males who robbed us, however these descriptions were
21 not put into my statement. From referring to notes
22 that were made of the descriptions I gave and my memory
23 I'm able to say" - and she talks about 6 feet tall,
24 medium build, and goes on to describe the other male
25 offender. Now, without taking you individually to each
26 statement, the Commission has any number of statements
27 indicating that full descriptions were not put in
28 initial statements but notes were taken of the full
29 descriptions, would not someone responsible for the

1 sort of work that we've spoken about, the oversight,
2 the analyst or someone in collating the statements note
3 that full descriptions aren't there but we've got them
4 on a second piece of paper?---When was this statement
5 made, the one I'm looking at now?

6 The second one was made on 26 November 2000, 18 months after
7 the first one?---Again, I can't understand why that
8 description wouldn't be in the first statement.

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 MR RUSH: I take it from your reaction, if that practice is
14 common within the Armed Robbery Squad, firstly, you
15 knew nothing about it, but you would see it as being
16 particularly dangerous in relation to the sort of
17 things the Commissioner raised and the proper
18 administration of justice?---That's correct.

19 I think you've agreed with this, but to make it clear, you
20 cannot give any legitimate explanation for that
21 practice?---No, I cannot, none whatsoever.

22 Just as a general proposition, Mr Murnane, all relevant
23 information should be put in first statements?---Yes,
24 it should.

25 COMMISSIONER: Could we just pause there, Mr Murnane. To
26 your knowledge, what level of training is there either
27 at the Academy or detective training, or advanced
28 detective training, that explores the concept of what
29 is relevant?---Well, look, I go back before the

1 Academy, I go back to St Kilda Road, and that's a long
2 time ago. In those days we talked about statements of
3 course, and we talked about what goes into a statement
4 and what does not. We talked about hearsay evidence
5 not being included in the statement. That's about as
6 much as I can recall in those days. In Detective
7 Training School and Advanced Detective Training School,
8 both of which I attended, I don't recall too much about
9 statement-taking. I guess we were - well, I do recall
10 very, very vividly the exercise conducted at Detective
11 Training School associated with witnesses and
12 descriptions and so forth, I'll never forget it. But
13 that particular exercise was more to do with being
14 tolerant with witnesses because every witness will see
15 something different, but there was certainly no advice,
16 or instruction, or recommendation we don't include
17 descriptions in statements at any of those courses that
18 I attended.

19 Yes. I ask because it seems from the evidence that we've
20 received that the question of relevance seems to be a
21 very varied concept according to the individual
22 officer. We've had evidence from some officers to the
23 effect that, if the witness's account is plainly wrong
24 about something, then you wouldn't put it in the
25 statement, so a judgment is made about whether that's
26 relevant. I take it, you would agree that the fact
27 that the account is wrong doesn't exclude it being
28 relevant?---Well, you people would know better than me,
29 but I recall, probably when I was a detective sergeant

1 or maybe later on, I'm not sure, but I'm sure there's a
2 case whereby the judge hearing the matter was critical
3 of evidence that was held back from the brief. I can't
4 remember which case it was, however - - -

5 Unfortunately, there will be more than one,

6 Mr Murnane?---Well, as a consequence of all of that and
7 that case it was felt that it didn't matter whether the
8 evidence supported the prosecution or not, it had to be
9 presented, it had to be included and presented.

10 And that's really the question I'm asking: do you have any
11 impression that that's ever been emphasised as part of
12 training, that it's not about whether the evidence
13 supports the investigative hypothesis, it's about
14 getting the witness's account warts-and-all?---Exactly.
15 I don't recall it being raised during training. You
16 know, I went to lots of conferences over the years, it
17 may well have been part of a conference that I attended
18 where I came across this case, but that's as much as I
19 can say really.

20 Yes, Mr Rush.

21 MR RUSH: A different point, Mr Murnane. What is the
22 purpose of jurat and acknowledgment by a police officer
23 in statement-taking?---The purpose?

24 Yes?---Well, it's virtually swearing that the statement is
25 true and correct, you're making this statement in front
26 of another person, and if you're making the statement
27 as a police officer you're swearing in front of a
28 person that that's true and correct and that you
29 understand the penalties of perjury, and that's a sworn

1 affidavit. When I say a sworn affidavit, you don't
2 necessarily swear it, it's understood.

3 I think perjury, or the potential of it, is in one of the
4 acknowledgment clauses sometimes?---That's correct.

5 Are you aware of any practice of a jurat and acknowledgment
6 being signed by police officers on backdated
7 statements?---No, I'm not.

8 Have you never come across that?---I don't believe I have.

9 I may have come across a statement where the policeman
10 perhaps signed it on a particular day and then, maybe,
11 the acknowledgment is made at a later time, I'm not
12 sure; that may occur in a statement. Sorry, if a
13 policeman makes a statement on a particular day, he
14 would sign the statement, "Statement made on such and
15 such a date", he may not necessarily have acknowledged
16 at the same time, I'm not sure; that could occur
17 perhaps.

18 A statement should be acknowledged and signed at the time
19 the person making the statement, at the same
20 time?---That's correct.

21 And a practice of acknowledging and signing not in front of
22 the person making the statement, and using a date which
23 may be a year old on the statement, is not a practice
24 that you're aware of, I think?---No, it's not.

25 And, in your view, the acceptability of such a
26 practice?---Not acceptable.

27 Are you aware of any practice where a person may be invited
28 to make a further statement, put in further detail in
29 the statement, have that signed and acknowledged on the

1 date of the further statement, but the first statement
2 and original statement which didn't have the detail is
3 shredded or done away with?---No.

4 COMMISSIONER: You would appreciate, both of those practices
5 would conceal the fact that additional information has
6 been added and makes it very difficult for those
7 conducting a case to understand the sequence in which
8 material has been obtained?---Correct, and being an
9 ex-FOI officer, in regard to destruction of documents
10 within the Victoria Police, I think any document that
11 comes into the organisation must be retained for
12 seven years and not destroyed, that's my understanding;
13 I think it's seven years, could be five.

14 MR RUSH: They are the matters, Commissioner. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED]
20 [REDACTED]
21 [REDACTED] [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 COMMISSIONER: Very good. Well, you've made that clear for
25 the purposes of those reporting the proceedings. Thank
26 you. Is there any reason why Mr Murnane should not be
27 excused?

28 MR RUSH: No.

29 COMMISSIONER: Mr Murnane, that completes your evidence. I

1 can release you from your summons and the
2 confidentiality notice. However, because there's an
3 order for witnesses out of court, you should not speak
4 to witnesses that have been or will be called about the
5 evidence you've given or the evidence they are to give
6 until after we've concluded the public examinations.
7 You understand that?---I understand that.

8 We'll provide you with a video recording of your evidence
9 and a transcript of the evidence, otherwise I discharge
10 you. Thank you for your attendance and your
11 assistance.

12 <(THE WITNESS WITHDREW)

13 MR RUSH: That's the events for today.

14 COMMISSIONER: 10 o'clock tomorrow, Mr Rush, thank you.

15 Hearing adjourns: [4.10 pm]

16 ADJOURNED UNTIL WEDNESDAY, 13 FEBRUARY 2019

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