
TRANSCRIPT OF PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY 13 FEBRUARY 2019

(7th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Jack Rush QC

Ms Catherine Boston

OPERATION GLOUCESTER INVESTIGATION

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

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

1 COMMISSIONER: Yes, before you start, Mr Rush. I went back
2 through Mr Thornton's evidence last night. His
3 position was that, as the analyst tasked with having to
4 review the descriptions of all of the Pigout and Hamada
5 witnesses, he accepted that the probability was that he
6 became aware of the procedures that were followed
7 although his position was, he now had no memory
8 whatever of being aware of that practice.

9 MR RUSH: Thank you, Commissioner. I call Mr Butterworth.

10 <MARK ANDREW BUTTERWORTH, sworn and examined:

11 COMMISSIONER: Mr Haag, you appear for Mr Butterworth?

12 MR HAAG: May it please the Commissioner, I appear for
13 Mr Butterworth.

14 COMMISSIONER: Mr Butterworth, you were served with a
15 summons and in that summons the matters about which you
16 will be questioned were set out but I need to remind
17 you as to what they were.

18 Firstly, you will be asked about the Lorimer Task
19 Force investigation of the murders of Sergeant Gary
20 Silk and Senior Constable Rodney Miller, concerning the
21 taking of witness statements, the preparation of the
22 brief of evidence for the trial of Debs and Roberts,
23 and whether there was full disclosure of witness
24 statements or other relevant information prior to or
25 during the trial, witness statement-taking practices by
26 Victoria Police, and compliance with the obligation to
27 disclose evidence by Victoria Police.

28 Following questions from counsel assisting and any
29 cross-examination for which leave will be granted,

1 Mr Haag will have an opportunity to ask you questions
2 to either elaborate on your answers or for you to have
3 an opportunity to explain anything further that you
4 wish to.

5 When you were served with the summons, you were
6 also served with a confidentiality notice and a
7 statement of rights and obligations?---Yes, sir.

8 Has Mr Haag explained those rights and obligations to
9 you?---Yes, sir.

10 Are you satisfied that you understand them?---Yes, sir.

11 Would you like me to go back over them?---No, sir.

12 So, you understand your obligation is to answer questions
13 unless you have a reasonable excuse for not doing so,
14 to answer them truthfully and, so long as you do so,
15 subject to some exceptions, they can't be used in
16 evidence against you?---Yes, sir.

17 Yes, Mr Rush.

18 MR RUSH: Your full name is Mark Andrew Butterworth?---Yes,
19 that's correct.

20 Do you attend here in response to a summons that was served
21 on you on 13 December 2018?---Yes, that's correct.

22 Have a look at those documents, please. Does that summons
23 bear the number 2748?---Yes, it does.

24 You've indicated, with that summons, you received a
25 statement of rights and obligations?---Yes, that's
26 correct.

27 Did you also receive a confidentiality notice dated
28 11 December 2018?---Yes, that's correct.

29 And a covering letter from IBAC dated 12 December

1 2018?---Yes, that's correct.

2 They're the documents in front of you?---Yes.

3 I tender those documents, Commissioner.

4 #EXHIBIT T - Documents received on summons by
5 Mr Butterworth.

6 When did you join the police force, Mr Butterworth?---1978.

7 What's your current role in the police force?---I'm a
8 detective sergeant.

9 In what capacity are you now serving?---A detective sergeant
10 at the Piranha Task Force in Crime Command.

11 How long have you been in the Piranha Task
12 Force?---Thirteen years.

13 Can you just indicate to the Commissioner, after commencing,
14 I take it at the Police Academy?---Yes.

15 The course of your career in the police force, just
16 generally the uniform positions and then the criminal
17 investigation positions?---Two years - when I graduated
18 in 1979, spent two years at Russell Street uniform
19 branch as a constable. Went to Frankston uniform
20 branch for three years. I became a detective senior
21 constable at Brighton CIB for three years, before
22 coming into the Crime Department where I became a
23 detective senior constable with the Armed Robbery
24 Squad.

25 What year was that?---1989 to 1993. I took promotion to
26 sergeant at St Kilda Police Station between 93 to 96
27 and returned to the Armed Robbery Squad as a sergeant
28 in 96.

29 And then continued in the Armed Robbery Squad until

1 when?---Continued in the Armed Robbery Squad until the
2 Silk and Miller murders and became a member of the
3 Lorimer Task Force. At the completion of the Lorimer
4 Task Force, I became a detective sergeant at the
5 Homicide Squad from 2003 to 2006, and I've been at
6 Piranha since 2006.

7 Do you understand why you've been called to give evidence
8 here today?---I believe so, yes.

9 And, what's your understanding?---To answer questions in
10 relation to the matters just explained to me in
11 subpoena.

12 Have you been reading the transcripts of evidence?---No; no,
13 I haven't.

14 Have you communicated with any person about the nature of
15 the evidence that may be expected of you today?---Apart
16 from - - -

17 Apart from your lawyer?---Yeah, no.

18 Has anyone communicated with you?---No.

19 Can I start by getting an understanding of your role,
20 firstly, when you went to the Armed Robbery Squad in
21 1989 to 1993. Were you at any stage over that period
22 of time - or I put it to you, you were involved with
23 what was called Operation Pigout?---I wasn't involved
24 as an investigator in Operation Pigout; I attended one
25 of the Pigout armed robberies as I was an on-call
26 member on that particular weekend.

27 Was that attendance at the Bristol Paint Store that had been
28 the subject of an armed robbery?---That's correct, yes.

29 And that was in 1993?---That's correct.

1 What was the nature of your work with the Armed Robbery
2 Squad over that period of time?---To investigate armed
3 robberies that fitted the criteria of the Armed Robbery
4 Squad at that time.

5 Your connection, apart from attending the Bristol Paint
6 Store robbery in 1993 with Operation Pigout, was there
7 any other connection?---No.

8 When you returned to the Armed Robbery Squad, could you
9 indicate your connection with Operation Hamada?---Yes.
10 The series commenced in March 98. I don't think it
11 became - from memory it wasn't apparent straight away
12 that there was an association with the Pigout series of
13 armed robberies, that it became a little bit more
14 obvious after several more armed robberies. Me and my
15 crew did not attend all of the armed robberies. We
16 attended - I personally attended one and at some point
17 in time it was decided that my crew would take carriage
18 of that particular series of armed robberies.

19 So as far as taking carriage for what was called Operation
20 Hamada, did you lead that investigation?---Yes, that's
21 correct.

22 And your crew was the crew that had the principal
23 responsibility for the investigations of Operation
24 Hamada?---Yes, that's correct.

25 Insofar as that investigation continued over 2018,
26 responsibility for both taking and receiving statements
27 that had been made by eyewitnesses to that series of
28 robberies?---Yes, that's correct.

29 Operation Hamada, I think you've referred to it, was

1 incorporated into Operation Lorimer; is that
2 correct?---That's correct.

3 What was the reason for that?---The reason being that Gary
4 Silk and Rod Miller were working a stakeout operation
5 on the night for the Hamada investigation when they
6 were murdered and, for that reason, it was encompassed
7 into the Lorimer investigation.

8 At that stage, was it believed that there may be a
9 connection between the Hamada robberies and what had
10 occurred on 16 August 1998?---Yes, that - certainly
11 considered.

12 Firstly your crew, crew 4, went over to Operation Lorimer,
13 did it not?---Yes, it did.

14 What was its role in Operation Lorimer?---Our role was to
15 investigate the two - to continue to investigate the
16 Hamada armed robberies and subsequently the Pigout
17 armed robberies as well, as well as investigate some
18 Lorimer IRs.

19 So, did you and your crew move to where Operation Lorimer
20 was situated in St Kilda Road?---Yes.

21 What was the chain of command as far as your crew was
22 concerned within Operation Lorimer?---The three
23 detective senior constables and myself, detective
24 sergeant.

25 And so they, as I understand it, were Mr Wise, Mr Beanland
26 and Mr D'Alo?---Yes, that's correct.

27 Answerable to you?---Yes.

28 Who were you responsible to?---To Senior Sergeant Grant
29 Collins and Inspector Paul Sheridan.

1 I take it, from time to time there were briefings that took
2 place between Sheridan, Collins and yourself and indeed
3 others?---Yes, that's correct.

4 I want you to have a look at Exhibit 478. What we're
5 looking at is the day book of then Detective Senior
6 Sergeant Collins of 17 March 2000. I take you down to
7 the bottom of the second page at p.7230 at 9 am. You
8 see there, he has recorded "Office", your name, "Pigout
9 special effort. Sheridan present", and then there's a
10 discussion and I'll take you to it in a minute of
11 "logistics" and "manpower". But this sort of meeting
12 between you, Collins and Sheridan would be typical of
13 not necessarily a daily activity but a regular activity
14 in relation to briefings where Pigout or Hamada, your
15 particular area of interest is under discussion?---Yes,
16 that's correct.

17 Certainly, as far as Operation Pigout is concerned, that was
18 an area specific to that component of the Armed Robbery
19 Squad that was within Operation Lorimer?---Yes, that's
20 correct.

21 If we move down the page, do you see there's a discussion:
22 "Thornton to accompany same to do" - do you understand
23 that word? "Images of available. Doing CF
24 available"?---"Available" - I'm sorry, I don't.

25 Just to clarify Mr Thornton. Mr Thornton had been an
26 analyst at the Armed Robbery Squad?---Sorry, I think
27 that's, "Discussed photos of guns and masks."

28 Yes, okay, "Photos of guns and masks." Just specific to
29 Mr Thornton, he was an analyst?---That's correct.

1 He had been with the Armed Robbery Squad prior to the
2 setting up of Operation Lorimer?---Yes, that's correct.
3 Did he move with you to Operation Lorimer?---Yes.
4 What was the specific role of the analyst, both in Operation
5 Hamada and then at Operation Lorimer?---Well, in
6 relation to Hamada, Senior Constable Thornton was one
7 of the analysts at the Armed Robbery Squad, so he
8 wasn't specifically allocated to Hamada, he was
9 allocated to the Armed Robbery Squad office so he had
10 many different duties, part of which would be to assist
11 us in mapping the similarities, I suppose you could
12 say, in relation to the armed robberies.
13 And, in mapping the similarities in relation to the armed
14 robberies, I take it you are potentially looking for
15 consistencies in relation to the modus operandi?---Yes,
16 that's correct.
17 Looking for consistencies in relation to descriptions of
18 offenders?---Yes, that's correct.
19 Anything else?---Descriptions of offenders, modus operandi,
20 words used, weapons used.
21 So, for Mr Thornton as an analyst, particularly once
22 Operation Lorimer's been set up and even before, where
23 does Mr Thornton as the analyst go to get that
24 information to bring together a picture of potential
25 consistencies?---He would go to the statements, yes.
26 Would you expect the statements to contain that
27 detail?---Yes.
28 If the statements didn't contain that detail, is there
29 anywhere else he'd go?---The crime reports.

1 COMMISSIONER: What's the process that would result in
2 identification detail being in a crime report?---The
3 crime report - you'll have to excuse me, it's a long
4 time ago, but descriptions would be written in crime
5 reports as well as an Armed Robbery Squad report. I
6 think the Armed Robbery Squad report would probably be
7 a more generic description based on the bulk of the
8 descriptions given.

9 I'm sorry, who would do the crime report?---So, the Armed
10 Robbery Squad report would be done by one of the
11 investigators; the crime reports would be done by local
12 members.

13 Was it a continuous, a daily report, or was it - - -?---No,
14 no, no, it's just specific to that particular robbery.
15 So, there was a report done, what, at the conclusion of the
16 investigation or at what point?---No. It should have
17 been done at the, um, within days of the actual
18 offence.

19 So, they're relying upon the initial information that's
20 obtained by the responders and those who interview the
21 victims?---Yes.

22 Is that the thrust of it?---That's right.

23 MR RUSH: The principal source of that information, you say,
24 would be the statements?---That's correct.

25 If we just continue on with the notes of Mr Collins.

26 COMMISSIONER: Before you pass on, Mr Rush. (To witness) I
27 see from this note that you expressed some concern
28 about showing witnesses' photographs of masks and so on
29 because of the risk of prejudice in their future

1 identification. Do you see that there?---Yes, I do.
2 Can we assume, Mr Butterworth, you have some familiarity
3 with court procedures and the dangers involved in
4 contaminating the possibility of identification
5 evidence?---Yes, sir.

6 MR RUSH: So, as the Commissioner says, it notes:

7 "Butterworth concerned about prejudicing witness for
8 future identification if these are shown. Decide not
9 to show same during special effort." I want to ask
10 you, do you recall a special effort being made to
11 recontact Operation Pigout witnesses?---Yes, that's
12 correct.

13 It goes on: "Also discuss obtaining statements from
14 witnesses. Decide where witness has excellent recall
15 of events and can add extra info then statement should
16 be taken. Also if description of offenders were
17 written on separate pieces of paper then these also
18 should be recorded in second statement." I want to
19 specifically ask you about that note of Mr Collins, the
20 description of offenders on separate pieces of
21 paper?---Yes, sir.

22 Are you aware of that practice?---Yes, I am.

23 Was it a practice carried out in the Armed Robbery
24 Squad?---Not generally, no.

25 What do you mean "not generally"?---Well, it was a practice
26 that crept in by some members, so it wasn't a practice
27 adopted by specific units or the like.

28 You in fact, did you not, in 2001 delivered to the Office of
29 Public Prosecutions the statements that were made in

1 Operation Pigout?---Yes.

2 Did you have a look at those statements?---I assume I did.

3 Would it be fair to say that nearly every one of those

4 statements had a separate page where whoever took the

5 statements had noted the particular details quite

6 separately of the descriptions given by the statement

7 makers?---Well, I don't recall.

8 I'll come to it, but I want to suggest to you that that was

9 in fact the case, that nearly every one of those

10 statements had the description of offenders recorded on

11 a separate piece of paper?---That's possible.

12 Possible because that was an habitual practice carried out

13 by some members of the Armed Robbery Squad?---Well, I

14 can't answer that.

15 Well, if most of 30 or 40 statements had descriptions on

16 separate pieces of paper, that would in fact be the

17 case, would it not?---But were those statements taken

18 by Armed Robbery Squad members?

19 They were taken by constables and Armed Robbery Squad

20 members?---M'mm, well.

21 But, even if they weren't - - -?---No.

22 - - - then two matters: firstly, you had responsibility for

23 going over the Operation Pigout statements?---That's

24 correct.

25 Did you not observe in those statements that nearly every

26 one of them had a separate piece of paper with the

27 statements where the description of offenders was set

28 out?---Well, I don't have an individual recollection of

29 that, but I would have read the statements and I would

1 have seen those pieces of paper.

2 Even accepting you don't have a memory of it now, but

3 accepting your earlier evidence that it's

4 possible - - - ?---Yes.

5 - - - that that practice was in the Armed Robbery Squad, did

6 it not concern you?---Yes, yes, it did, but it was a

7 practice that was - it was a practice that was

8 well-known both in courts, by defence counsel, by

9 prosecutors; that's all I can say.

10 Why did it concern you?---Well, obviously in light of the

11 proceedings that we're going through now, the concern

12 would be that it's, um, it's not transparent.

13 COMMISSIONER: I think counsel's really asking you, were you

14 concerned at the time?---No, I wasn't concerned at the

15 time.

16 MR RUSH: Why? Because it was a practice that you saw as

17 common in the police force?---Yes.

18 And, because it was common, it became acceptable?---Yes.

19 So, if members of your crew, specifically your crew, were

20 taking statements that did not include the height, the

21 accents, the build, the hair colour of offenders in

22 original statements, was that because it was returned,

23 became acceptable?---I'm not aware of members of my

24 crew doing that, to be honest.

25 Would you know?---Now, no.

26 But then, you would?---I assume so, yes.

27 COMMISSIONER: Who were the members of your team,

28 Mr Butterworth?---Wise, D'Alo and Beanland.

29 Well, we know from the evidence of D'Alo and Beanland that

1 they both on occasions did that?---Again, sir, all I
2 can say is, it was an individual thing as opposed to
3 a - a taught thing.

4 As you give evidence now, what do you recognise is the
5 concern that exists with respect to such a
6 practice?---I do recognise that it - it lacks
7 transparency and it - it's not right, it needs to be,
8 um - there needs to be further education in relation to
9 the way we take those statements.

10 There's no lack of transparency if the note, the separate
11 note of the description, finds its way into a further
12 statement; but when you say "a lack of transparency",
13 you're talking about the risk that it may not?---Yes;
14 yes, obviously.

15 MR RUSH: Was it not essential that, in statement-taking,
16 that at this time all relevant evidence of eyewitnesses
17 be put in statements?---Sorry, could you repeat that?
18 Over the course of Operation Hamada was it not imperative,
19 in the proper statement-making practices, that all
20 relevant evidence of an eyewitness be put in their
21 statement?---Yes.

22 The practice that we have asked you about, or you've been
23 asked about this morning, is the contrary of proper
24 practice?---Yes.

25 COMMISSIONER: Just before you move on. (To witness) You
26 were the informant in the Giller prosecution?---Yes,
27 sir.

28 And your responsibility as the informant in that prosecution
29 was to determine what evidence you would provide the

1 prosecution for the purpose of that trial?---That's
2 correct, sir.

3 Which would mean, you became familiar with the content of
4 all of the statements in that prosecution?---Yes, sir.

5 So, is it fair to say you then would have been familiar with
6 the frequency with which the practice of having
7 recorded the note of the identification separately to
8 the statement was occurring?---I would have, yes.

9 MR RUSH: Therefore, on the basis of the constancy with
10 which it is occurring, you would accept that it was a
11 deliberate practice?---Yes.

12 For what purpose?---I do not know. It's a - as I said, it's
13 a practice that crept in over time, it's not one that I
14 personally engaged in; that's all I can say.

15 COMMISSIONER: I take it from your point that there needs to
16 be education, that you know of no direction from Force
17 Command or any change to detective training processes
18 that has explicitly addressed this practice and said it
19 must not occur?---I'm - I've been out of the education
20 system for a long time, sir, so to be honest, I'm not
21 aware what the training is in relation to that, but at
22 the time there was none.

23 But you're a continuing detective?---Yes.

24 And investigating serious crime?---Yes, sir.

25 You're not conscious of there ever being a direction that
26 that practice should not be followed?---Not that I'm
27 aware of.

28 MR RUSH: Just to clarify one matter, Mr Butterworth. You
29 mentioned that you were involved in statement-taking in

1 one robbery said to be part of Operation Pigout?---Yes.
2 The witness that you took a statement from was Irene Lesiw,
3 L-E-S-I-W. Have a look at Exhibit 296. Firstly, is
4 that your handwriting?---Yes, looks like it, yeah.
5 You see, this is a statement made concerning events of
6 Sunday, 2 May 1993 of a person who had attended the
7 Bristol paint store with her husband?---Yes.
8 The store was the subject of an armed robbery?---That's
9 correct.
10 You took a statement from her. If we go to the bottom of
11 p.3428, Ms Lesiw describes, and you've written down:
12 "As I did this I saw a man walk into the middle of the
13 store wearing a monkey mask. This man had a gun in his
14 left hand carrying it above shoulder height." Then,
15 over the page, second paragraph she then refers to the
16 man, that she thought it was a joke. Then in the next
17 paragraph she refers to conversation, "Talking to
18 everyone down the back", and sets out what he said.
19 Then refers to the number of people in the store.
20 Then, in the next paragraph, there she refers to
21 "realising there was another man and I looked up at
22 him, he was wearing a black balaclava with eye holes in
23 it. I don't think this man had a gun. I was told by
24 the man to keep my head down or else, so I kept looking
25 up to try and recognise them to remember them." Then
26 over the page she again refers to a monkey mask and, in
27 the next paragraph, the bottom couple of lines, "The
28 man in the Balaclava." Next line, to the taping of
29 hands. Halfway down that paragraph: "One thing I

1 remember is, he was very polite when I was having
2 trouble - patient when I was having trouble." And then
3 tying of feet and being the first one tied up. Then
4 over the page at 3431, again in the second paragraph,
5 referring to the "monkey mask man" and conversation.
6 There was further reference to the man in the monkey
7 mask in conversation in the second-last paragraph
8 commencing: "As the monkey man asked the owner of the
9 store ...", and some further conversation about the
10 amount of money. Then she refers to lying on the floor
11 again. Over the page at 3452, further conversation
12 from: "The monkey mask man to the balaclava man,
13 'Billy, I'll get the car ready'", and the checking of
14 pockets and the departure of the two offenders. Then
15 it goes on describing the tape, the bruising, at the
16 bottom of the page, of both wrists, "\$50 stolen. The
17 monkey mask man using the gun in his left hand [at the
18 top of 3433], they didn't shout or scream." Third
19 line of that first paragraph: "The monkey mask man was
20 chief, he was in control." You see there that the
21 statement is taken at 2 May 1993 and acknowledgment is
22 made by - do you know the acknowledger? Sergeant
23 Wood?---No, I don't.

24 Then, if we go to Exhibit 297, we see on a separate piece of
25 paper in the black handwriting the description of the
26 offender, and the two offenders are set out: one is
27 described as "late 20s, 5'6 to 5'7. Slim build.
28 Australian voice. No accent." Down the page,
29 offender 2: "5'10. A jacket, may have been black.

1 Middle 20s, appeared younger than (1). Slim build.
2 Australian voice. No accent." Again, the height and
3 the build and the accent do not appear in the
4 statement?---Did you - who took that statement? Was
5 that me or was that - - -
6 What you've done, I suggest, with the details that were
7 taken at the time the statement was taken from this
8 person, what you have later done - if you go to p.3435,
9 you have been out to see the deponent to that statement
10 and you have, as you see there, taken the
11 acknowledgment and signed on 21 March 2000 that that
12 person adopts the description that was part of the
13 initial statement?---Yes.
14 So there's a case of, if you like, you being specifically
15 aware of the practice?---Yes.
16 The reason for going back to get second statements is a
17 consequence of the special effort in relation to
18 Operation Pigout that's identified by
19 Mr Collins?---Yes, that's correct.
20 I don't want to overdo the point, but can we have a look at
21 Exhibit 235. This is a statement of Mr Stephen Chen.
22 You see, he indicates he was a waiter at the Eating
23 House when it was robbed on 21 December 1991. That
24 statement, at p.3190, is taken on 22 December 1991. Do
25 you recognise the signature of the detective that took
26 the statement?---No.
27 If you go to Exhibit 146, here we have on a separate piece
28 of paper the description of the witness Chen in
29 relation to the two male offenders. If we need another

1 example, I just ask you to look at Cheryl Anne Carter,
2 Exhibit 230. She deposes or states that - Cheryl Anne
3 Carr, I beg your pardon - that she was employed as a
4 waitress at the Khazana Tandoori Indian Restaurant,
5 Burwood Highway, Wantirna South, and there makes a
6 statement as to the robbery on 17 January 1993 and her
7 statement is made. Then, if we could go to
8 Exhibit 145, attached to her statement is the
9 description of male offenders, the details as she
10 recalled it of the first male and the second male and
11 her signature. What you delivered to the Office of
12 Public Prosecutions on 27 March 2001 was all the
13 statements - because they'd been requested by defence -
14 all the statements of Operation Pigout. I want to
15 suggest to you that over 40 of the statements were
16 similar to the ones that we've just looked at?---I
17 can't dispute that.

18 Can you think of any legitimate reason why descriptions of
19 offenders would be put on separate pieces of
20 paper?---No, they should be put in statements, I agree.

21 COMMISSIONER: That, Mr Butterworth, raises the much broader
22 question, and that is, what level of training ensures
23 that a police officer puts all relevant information in
24 a statement?---It needs to be taught at the beginning,
25 at the Academy, and subsequently it needs
26 reinforcement.

27 Do you see that, once an exception like this becomes
28 endemic, that then raises questions about whether or
29 not police officers considered they had a discretion to

1 exclude other types of relevant information from the
2 statement?---I suppose so, yes, sir.

3 You're aware - and I take it Mr Rush will probably ask you
4 some questions about this - but you're aware of some
5 serious allegations made concerning the recording of
6 the dying declarations of the officer shot on the
7 night - - - ?---Yes.

8 - - - of August 98. We have received evidence from the
9 officer who took the initial statement from two of
10 those persons that it was thought appropriate to
11 exclude from those statements relevant parts of the
12 dying declaration, justified on the same basis as the
13 practice that's just been explored?---Yes, sir.

14 That's a risk, isn't it?---It is, sir, yes.

15 MR RUSH: And what the Commissioner has asked you about
16 would be entirely consistent with the practice that
17 you've identified?---Yes, sir.

18 You've mentioned that the practice seemed to creep in; from
19 where?---I don't know, sir.

20 But, as I understand your evidence, it is a practice that is
21 just not known to the Armed Robbery Squad?---That's
22 correct.

23 What the Commissioner has referred to is, in fact, a then
24 member of the Homicide Squad giving that direction to
25 uniform police members. Were you aware of it through
26 Operation Lorimer - - -?---No.

27 - - - in the Homicide Squad?---No.

28 Are you aware of any circumstances where Armed Robbery Squad
29 detectives give instruction to uniformed members taking

1 statements not to put details of descriptions in the
2 first statement, but rather, keep the description
3 separate on a piece of paper?---Well, I can't say now
4 after all this time, I'm not aware of it.

5 If it happened, again, it would be consistent with what you
6 were observing through your period of time in the Armed
7 Robbery Squad?---That's correct.

8 COMMISSIONER: Your evidence that the practice was
9 widespread, it wasn't confined to the Armed Robbery
10 Squad; are you saying that, because you've had had
11 experience from time to time of that occurring in
12 squads or investigations outside the Armed Robbery
13 Squad?---My experience is, when we attend as the Armed
14 Robbery Squad, quite often we're several hours after
15 the event and statements have already been taken or -
16 so - - -

17 You mean by members not in the Armed Robbery
18 Squad?---Exactly, exactly.

19 Who have followed that practice?---That's exactly right.

20 What about in the Homicide Squad? According to the officer
21 who took statements from first responders in relation
22 to the dying declaration, that was a practice that was
23 followed by the Homicide Squad?---Well, again, I think
24 it would be an individual practice as opposed to a
25 squad practice.

26 When does an individual practice become a squad practice,
27 Mr Butterworth?---I can't answer that.

28 So, once it's prevalent within the squad, is it not fair to
29 say it's a squad practice?---If it is prevalent, yes.

1 MR RUSH: Going back to the note that I took you to of then
2 Detective Senior Sergeant Collins and his reference to
3 descriptions being on separate pieces of paper, what
4 that would disclose is an acceptance at the higher
5 level of command of the practice?---I don't know if
6 it's - I don't know if that means that it was an
7 acceptance of it.

8 Was there any discussion as to it being a practice that
9 should not be adopted throughout your time in Operation
10 Lorimer?---I don't think it was discussed generally.

11 But it was discussed at the meeting in March 2000, clearly,
12 with you and Sheridan and Collins?---Yes.

13 And there is a note of what you should do with separate
14 descriptions?---Exactly. I don't think that
15 necessarily means that, because they were aware of
16 those pieces of paper and that we needed to go out and
17 take a second statement, I don't think that means that
18 they accepted that that was a practice that should be,
19 you know, agreed.

20 COMMISSIONER: The notes are entirely equivocal, it doesn't
21 contain any expression of view about the validity of
22 the process, but you would surely remember,
23 Mr Butterworth - and I'm not seeking to single you out
24 here - but you would surely remember if you and your
25 superiors, Collins and Sheridan, had come to the view
26 at that time that it was an improper practice and
27 something needed to be done about it; you would
28 remember something like that, wouldn't you?---Well, I
29 think the fact that we were taking the second

1 statements was an acknowledgment that those
2 descriptions should have been in the original
3 statements.

4 MR RUSH: I think there may be two things coming out of the
5 Commissioner's question: the first thing is, there is
6 an acknowledgment in Collins' note, at the highest
7 level of command of Operation Lorimer, of the
8 practice?---That they were aware of it, yes.

9 The second thing, the reason for the second statements was
10 an evidentiary matter because at that stage it was seen
11 as being important for the potential prosecution of
12 Debs and Miller?---Correct.

13 COMMISSIONER: And the note is no more than a direction from
14 Mr Collins and Mr Sheridan that you follow the
15 procedure which you've identified as the correct
16 procedure, namely to obtain a supplementary statement
17 if additional evidence is to be adduced?---Yes, that's
18 correct.

19 MR RUSH: During the committal hearing of Debs and Roberts a
20 request was made for the face-fits, the face-fits that
21 have been shown to witnesses to Hamada and Operation
22 Pigout armed robberies?---Face-fits that were shown to
23 witnesses?

24 Yes. You were examined in the committal hearing?---Yep.

25 You were asked questions on 29 October 2001, Exhibit 407.

26 Can we try p.4063. You are being asked questions, see
27 at line 4: "I think I asked at the start was there a
28 face-fit and was there one?" You said: "No." "Of
29 anyone arising out of Pigout?" Answer: "There has,

1 there were face-fits generated generally as a result of
2 the combined Pigout offences." Question: "In respect
3 of those, were those accessed by your team in the
4 course of the Hamada investigation?" And you said: "At
5 some stage, yes. Still in existence, yes." Question:
6 "Have any of those been provided to the defence at this
7 stage?" Answer: "Not that I'm aware", and then there
8 was a call for those face-fits and they were provided,
9 were they not?---Yes.

10 Why were they not provided in the initial brief?---I - I
11 can't tell you now at this ...

12 That was your domain, was it not?---Yes.

13 They are relevant material to the hearing?---Ah, I - I don't
14 know if they were listed as relevant but not relied
15 upon material on the Form 7A. If you could ...

16 COMMISSIONER: How could they not be relevant,
17 Mr Butterworth? Assume that the face-fit bore no
18 resemblance whatsoever to the person charged and being
19 prosecuted; would that matter?---All I can say is, I
20 can only assume those face images were listed on the 7A
21 material as, um, relevant but not relied upon and
22 that's why they weren't in the brief.

23 MR RUSH: Who determines irrelevance?---I would have. What
24 I'm saying is, yes, they're relevant, but we're not
25 relying on them.

26 COMMISSIONER: But the duty of disclosure, is it not your
27 understanding that whether or not you're relying on
28 them, they should be disclosed?---Well, I believe they
29 were disclosed.

1 That's what you're saying, you're disclosing them but saying
2 the prosecution's not relying on them?---That's exactly
3 right.

4 I see.

5 MR RUSH: Your answer there does not refer at all to the
6 Form 7A, does it?---Well, I can only assume that I
7 would have put them down on the Form 7A. If you've got
8 the Form 7A there?

9 All I'm saying is, when you're asked "have they been
10 provided to the defence" and you say "they haven't",
11 there was nothing about disclosure on the 7A?---You've
12 lost me.

13 There's nothing about any disclosure in your answers to,
14 "Have they been provided to the defence?", your answer
15 was, "No"?---Well, it's a, um, if I haven't - if I
16 haven't supplied them with a copy of the face image,
17 then the answer is no. But, if I've made the defence
18 aware that they exist, then that's what I did,
19 I believe I did.

20 Certainly, you agree that it should be disclosed?---Yes, I
21 do.

22 COMMISSIONER: It might be convenient to ask you about
23 something else you've said in your evidence. You've
24 earlier referred to the fact that prosecution and
25 defence were aware of the practice - - -?---Yes, sir.
26 - - - of recording on a separate piece of paper the
27 identification. So, in a case where there had been
28 disclosure to prosecution and defence that such a
29 notation had been made of descriptions of offenders,

1 they would be in a position to make their own
2 determinations, both prosecutor and defence counsel,
3 about whether or not they wished to introduce those
4 descriptions into evidence?---Yes, I assume so.
5 But what if they weren't made aware of it?---That's the
6 danger of the practice.
7 So, it would not help to know that in some cases police
8 officers do this if it's not made clear in the
9 particular case that it had been done?---That's
10 correct.
11 And apropos that, you delivered to the Office of Public
12 Prosecutions in April 2001 all of those separate pieces
13 of paper containing descriptions by a large number of
14 witnesses, and that was because there'd been a specific
15 request in the - I think it was then an 8A disclosure
16 form - there'd been a specific request that you provide
17 those?---Yes.
18 But the reason the defence knew about them was because
19 there'd been a supplementary statement made in each of
20 those cases?---Yes.
21 MR RUSH: Might I ask for a five minute break?
22 COMMISSIONER: Yes, certainly. Have a break and have a chat
23 to Mr Haag and see if there are any other matters you
24 want to explore with him.
25 Hearing adjourns: [11.16 am]
26 Hearing resumes: [11.28 am]
27 COMMISSIONER: Yes, Mr Rush.
28 MR RUSH: Mr Butterworth, we have searched the numerous
29 files for the Debs and Roberts brief, and particularly

1 the 7A disclosures, and do not see anywhere where the
2 face-fit has been disclosed in 7A forms?---Ah, I
3 thought we were talking about the Giller matter.
4 No, we're talking about the Debs and Roberts matter?---Well,
5 I wouldn't have compiled the 7A for the Debs and
6 Roberts matter.
7 The cross-examination I took you to was cross-examination in
8 Debs and Roberts?---Oh, sorry.
9 Then, if it wasn't supplied, it should have been?---Yes, I
10 believe so.

11 COMMISSIONER: That's another illustration of how rubbery
12 the whole concept of relevant becomes because it's then
13 left to the individual police officer whether or not
14 they think the particular evidence, if it doesn't
15 assist the prosecution case, need not be
16 disclosed?---Yes.

17 How confident are you then, Mr Butterworth, that the
18 obligation to disclose, regardless of its relevance to
19 the prosecution case, how confident are you that that
20 obligation's well understood by the rank and file
21 members?---Well, I believe we have a fair grasp of it,
22 but obviously in light of the proceedings again that's
23 going on today, education is the key to everything.

24 MR RUSH: You indicated to the Commissioner earlier in your
25 evidence, and you've just I think repeated it really,
26 that further education in relation to this is
27 necessary?---Yes.

28 Because, on what you said as far as you're aware, there has
29 been no direct, from Command or from education,

1 anywhere, any instance that you can recall where this
2 practice has been specifically directed not to keep
3 going, not to happen?---That's right.

4 Can you indicate to the Commissioner how you would see that
5 education, if the practice be a general practice across
6 the police force, how that education can take
7 place?---It needs to take place at the grassroots; if
8 it's going to occur, it needs to happen at the Academy
9 from the earliest opportunity.

10 And then from a position obviously that you have and you had
11 over the period of time that we've been talking about,
12 how is it to be ensured that those that have Command
13 positions are reiterating the importance of proper
14 disclosure, here proper statement practices? What do
15 you do?---Well, I don't know, to be honest.

16 I guess the question could be more direct. You, having
17 recognised the practice in the Armed Robbery Squad over
18 the period of time that we've been talking about, and
19 indicating that it was general in the police force,
20 what have you done in your Command position to ensure
21 that it doesn't continue?---Ah, all I can say is, it's
22 not my personal practice. What have I done personally
23 to stop it from occurring? Nothing.

24 COMMISSIONER: Beyond, you set an example to your crew and
25 you have your expectations which they
26 understand?---That's right.

27 But that's not going to be enough, is it, to address the
28 problem?---No.

29 MR RUSH: They are the matters, Commissioner.

1 COMMISSIONER: Yes. Mr Matthews?

2 MR MATTHEWS: I don't seek to cross-examine.

3 COMMISSIONER: Mr Haag, any examination of your client?

4 MR HAAG: Sir, I have no questions.

5 COMMISSIONER: Very good. Is there any reason why

6 Mr Butterworth should not be excused?

7 MR RUSH: I think we're in this position, that it's highly

8 unlikely Mr Butterworth will be recalled, but until we

9 have concluded some other witnesses from counsel

10 assisting, the point of view is, he should not be

11 finally excused.

12 COMMISSIONER: Yes, thank you, Mr Rush.

13 So, Mr Butterworth, because there are senior

14 officers from Lorimer who are going to be called, I

15 can't exclude the possibility, although I think it's

16 remote, that you would need to come back and give some

17 further evidence, so I won't release you at this stage

18 from your summons. If you have to return, we'll give

19 you written notice of the time and place and try and

20 fit in with your convenience.

21 When it's clear that you aren't required, we will

22 advise you and you will then be released from the

23 summons and the confidentiality notice. However, in

24 the interim, whilst there's an order for witnesses out

25 of court, you should not speak with any witnesses who

26 have been or will be called about your evidence or

27 their evidence. Do you follow?---Yes, sir.

28 We'll provide you with a video recording of your evidence

29 and a transcript of your evidence. So, I thank you for

1 your attendance and your assistance?---Thank you.

2 Thank you, Mr Haag.

3 <(THE WITNESS WITHDREW)

4 MS BOSTON: Commissioner, the next witness is Julia Doyle.

5 MR MATTHEWS: Commissioner, I've just been informed that the

6 next witness and the witness after that have nothing to

7 do with the Debs-Roberts case whatsoever.

8 COMMISSIONER: Correct.

9 MR MATTHEWS: And that there won't be any others today of

10 relevance to the Debs-Roberts matter. In those

11 circumstances - - -

12 COMMISSIONER: That's my understanding.

13 MR MATTHEWS: I wonder if I could be excused in those

14 circumstances. What I mean to say is, we'll be leaving

15 but just out of courtesy - - -

16 COMMISSIONER: I appreciate the courtesy, Mr Matthews.

17 <JULIA CLAIRE DOYLE, sworn and examined:

18 COMMISSIONER: I understand you're represented by Ms Bate.

19 MS BATE: Ms Bate, if the Commissioner pleases.

20 COMMISSIONER: Ms Doyle, you were served with a summons

21 which listed the matters which you might be questioned

22 about but I just need to remind you what they are.

23 The first area is the Lorimer Task Force

24 investigation but, as I understand it, you had nothing

25 to do with that task force?---That's correct.

26 So I won't trouble you as to that. Second, witness

27 statement-taking practices by Victoria Police, and (3),

28 compliance with the obligation to disclose evidence by

29 Victoria Police.

1 Following questions by counsel assisting, Ms Bate
2 will have an opportunity to ask you any further
3 questions and have you elaborate on anything that you
4 wish to.

5 When you were served with a summons you were given
6 a notice of confidentiality and a statement of rights
7 and obligations. Did Ms Bate discuss with you the
8 rights and obligations?---Yes.

9 Do you need me to remind you of what they are or do you feel
10 you understand them?---I understand them.

11 So long as you answer the questions and you give truthful
12 answers your evidence can't be used against you,
13 subject to exceptions which I'm sure won't arise,
14 Ms Doyle. At the conclusion of the evidence, if
15 there's no reason why you should be further subject to
16 the summons, I'll discharge you.

17 Yes, Ms Boston.

18 MS BOSTON: Ms Doyle, could you please state your full
19 name?---Julie Claire Lorraine Doyle.

20 Do you attend today in response to a summons served upon
21 you?---That's correct.

22 If you could look at these documents, please. Firstly, the
23 summons in front of you numbered SE2848, is that the
24 summons that was served upon you?---Yes, that's
25 correct.

26 You've indicated you've also received a document entitled,
27 "Statement of Rights and Obligations." Do you see that
28 document there?---Yes.

29 Did you also receive a confidentiality notice dated

1 11 December 2018?---Yes.

2 And a covering letter dated 12 December 2018?---Yes.

3 And they're copies of the documents that you received in

4 full?---Yes.

5 Do you understand the nature of those documents?---Yes, I

6 do.

7 I tender those, Commissioner.

8 #EXHIBIT U - Documents received on summons by Ms Doyle.

9 Ms Doyle, what is your current occupation?---I'm a detective

10 acting sergeant of the Dandenong sex offences and child

11 abuse investigation team.

12 When did you join Victoria Police?---2006 I went into the

13 Academy, November 2006, and I graduated April 2007.

14 If you could just give a potted history, please, of your

15 ranks and stations between 2006 and present day,

16 please?---Yes. I started at Melbourne East uniform; I

17 was there from shortly after graduation until,

18 I believe it was December 2009, where I went to

19 Werribee uniform. I was there until March-April 2011,

20 where I went to Footscray uniform. I was there until

21 approximately January the following year, 2012, where I

22 did five or six months at the tasking unit and then I

23 went to the Altona North divisional response unit and

24 did about five or six months there until I got my

25 detective position at Crime Command. The first

26 position was at the organised motorvehicle theft squad

27 which wasn't formed at the time, so I did Santiago Task

28 Force for about six months, five or six months, until I

29 went back to the organised motorvehicle theft squad. I

1 was there for roughly 12 months until, I believe it was
2 the middle of 2014, and then I went to the Armed Crime
3 Squad where I was there until November 2015.

4 So that was 2014 you said you arrived at the Armed Crime
5 Squad?---I believe, yes. Yes, it would have been; I
6 think it was June or July 2014. And then I went off
7 work for a couple of months from November 2015. I
8 started back January 2016 at Casey CIU, and I was there
9 until May of 2017 where I got to Dandenong SOCIT.

10 As at 2015, you'd been a police officer for approximately
11 nine years?---Eight, nine years, yeah.

12 And a detective for - when did you say you did Detective
13 Training School?---Look, I'm a detective, December
14 2012. I think it was - the first stage of DTS
15 was August 2013, and then the next part of it was
16 the October or November that same year.

17 So, you were effectively working as a detective for around
18 eight months before you actually did the Detective
19 Training School?---That's correct.

20 As at that time, 2015, I expect that you would have put
21 together a lot of summary briefs by that time?---That's
22 correct.

23 In your role as a uniform member?---Yes.

24 What kind of briefs had you put together in those two or
25 three years as a detective, or two years?---Sorry, so
26 between when I started as a detective in 2015?

27 Yes?---I'd done one hand up brief at Santiago, and whilst I
28 was at Armed Crime, I think I did one or two summary
29 briefs, and then two or three hand up briefs.

1 The Santiago Task Force, what was that investigating?---That
2 was a kidnapping.

3 Were you the informant in that matter or?---Yes, I was.

4 COMMISSIONER: So, when you're the informant in a matter
5 there's oversight by a superior of the brief that you
6 submit?---That's correct.

7 Who usually oversights the brief in uniform?---In uniform
8 it's your Coro sergeant, and then yes, later on that's
9 your crew sergeant.

10 And the same in the detective situation: you have a
11 sergeant?---Yes, and then the senior sergeant signs off
12 on the briefs as well.

13 MS BOSTON: I'm going to ask you a few questions about
14 Operation Mothballing which was, as I understand it, an
15 investigation for which you were the informant in 2015;
16 is that correct?---That's correct.

17 That was an aggravated burglary committed in Malvern East
18 in March of that year?---That's correct.

19 If you could have a look at Exhibit 606, please. This is a
20 statement from Mary Sawan, one of the victims of that
21 aggravated burglary. Who took this statement?---Can
22 you please go to the last page?

23 Yes. There's no jurat on this, that what was going to be my
24 next question. If we look at the bottom of the
25 document, there's no jurat on the statement. Would the
26 statement have had a jurat?---Yes, on the back. When
27 the statements are taken off a uniform member's log
28 like this, on the very back page there is a jurat
29 acknowledgment.

1 So, I take it from that answer, it would have been the
2 uniform member who took this initial statement from
3 Ms Sawan?---That's correct.
4 That's not your handwriting?---No, it's not.
5 So, that's Ms Sawan's account of the aggravated burglary
6 given on the night?---I believe that would have been
7 taken on the morning of it - it was approximately
8 4 o'clock in the morning from off the top of my head,
9 the aggravated burglary.
10 If you could look at Exhibit 607, this is a supplementary
11 statement, you will see up the top right-hand corner
12 the date is 20 March 2015. Is this your
13 handwriting?---No, it's not.
14 If we look at the bottom of this statement, it's dated
15 20 March 2015 and it's taken by a Detective Senior
16 Constable Bayliss. Was she one of your
17 colleagues?---Yes.
18 So, she was at Armed Crime as well?---Yes.
19 At what stage did you become the informant in the
20 matter?---On the morning of the 19th myself and another
21 member attended the scene and it was - well, we knew
22 that it was our crew job, I can't remember if the
23 decision was made at that time or later that day if I
24 was going to be the informant, but yeah, we knew that
25 it was a crew job.
26 What does that mean, "A crew job"?---So, the office at the
27 time was split into six crews, the sergeant and say
28 five or six investigators and you took turns rotating
29 who was on response. Because we were on response, it

1 was called "Skirt" at the time, I'd received the
2 callout with a colleague and it meant that our crew was
3 in charge of that investigation.

4 So, when you said it was a crew job, did you mean that the
5 job was allocated to your crew, or that the entire crew
6 was in charge of investigating the matter?---Well, I
7 suppose the - both, because with a big job all of you
8 would work on it together from the start anyway, and
9 then either it will be decided straight away who's
10 going to be the nominated informant, or it might not be
11 decided until later on down the track.

12 Initially, this was an attempted murder brief originally,
13 wasn't it?---Yes.

14 So, it was considered a serious investigation?---Yes.

15 Had you had a serious matter as an informant
16 previously?---Not as serious as this, no.

17 Looking at Exhibit 607 that I've just taken you to, the
18 supplementary statement; you're aware of the concept of
19 a supplementary statement, are you?---Yes.

20 What do you see as the purpose of a supplementary statement
21 being?---If there's any clarification that's needed or
22 further information that comes to light, we'd take a
23 second statement, a supplementary statement.

24 I don't have to take you to it specifically, but do you
25 recall that in this matter the witness gave further
26 information about a medicine bottle that had been
27 located at her house after the police left?---Yes, and
28 I believe possibly another projectile or something down
29 the side of the house.

1 So that's an example of where it's necessary to take a
2 supplementary statement?---Yes.

3 COMMISSIONER: Just by way of summary of the offence, there
4 were three offenders who broke into the house?---That's
5 correct.

6 And they were all wearing balaclavas when they broke into
7 the house?---Two were wearing a balaclava, one was
8 wearing a mask of some sort, and the one in the mask
9 remained at the back door, he didn't step foot into the
10 property.

11 The primary victim removed a balaclava from one of the
12 offenders?---The wife of the victim, I believe from the
13 top of my head, I believe it was Mary Sawan, she ripped
14 off the balaclava, yes.

15 And she made a statement and was able to say she was certain
16 she would be able to identify that offender?---That's
17 correct.

18 The one whose balaclava was removed?---Yes.

19 MS BOSTON: I'll just take you to your notes. This is
20 Exhibit 40. Firstly, you'd agree that this is from
21 your diary or day book?---My diary, yes.

22 This extract commenced on 19 March 2015?---Sorry, I can't
23 see the date from where we are. Yes.

24 This is where you've received a call at 6 o'clock that
25 morning. From these notes, are you able to say when
26 you attended the scene?---If you go down a little bit
27 further - keep going - I got to the scene at 7.35.

28 If we turn over the page and go to p.1506, and down to the
29 initial description about six lines from the bottom, I

1 think you said you didn't take the statement from Mary
2 Sawan, so where would this information have come
3 from?---Can you please go back up and before this
4 entry, it should say who I'm talking to. And sorry, to
5 the previous page. So, I believe it would have been
6 the briefing from the two CI members - sorry, if you go
7 back up just a little bit - the crime (indistinct) for
8 one members, Simon Watts and Robert Brain. So, this
9 initial information will be from them.

10 And this information accords with what's in Ms Sawan's first
11 statement. If we could turn over the page to p.1511,
12 down the bottom of that page there's an entry at 11.11,
13 "ST", I take it that's "spoke to"?---Yes.

14 "Caroline at Crime ID." Would you just explain what that
15 entry means, please?---So that's to arrange a face-fit
16 to be organised from a victim. Crime ID is the unit
17 within Victoria Police that facilitates the taking of
18 the description to then create the face-fit. So, I'd
19 spoken to her saying that I believe I have a witness
20 that can provide enough information for a face-fit.
21 They give me that job number, that's just for their
22 records. Crime ID normally then contact the witness
23 themselves, they ask some further questions to make
24 sure that the witness can provide enough information
25 for a face-fit and then they book the appointment with
26 the witness.

27 So, where you've said - before "face-fit", what are the
28 letters there? "Re face-fit"?---Yep: "Re face-fit for
29 victim."

1 And then you've got, "Will call Mary to arrange", so that's
2 for the Caroline from Crime ID to do, is it, rather
3 than yourself?---Yes, yep. So, Crime ID, they always
4 speak to the witness to ask further questions to make
5 sure they would be suitable to do a face-fit.
6 In fact, a face-fit process was engaged in two days
7 later?---Yes.
8 You in fact met with Mary Sawan on that day at the
9 station?---Yes.
10 And took her to Crime ID?---Yes.
11 And she did assist - was it Caroline at Crime ID that she
12 met with?---I'm not sure.
13 Were you present when the victim, Mary Sawan, formulated a
14 face-fit with the Crime ID member?---No.
15 What's your understanding of what happens during that
16 process?---I've never actually sat in on one, but
17 I believe they - the witness, kind of like in the
18 movies, they just describe a certain feature and then a
19 composite sketch is created.
20 You were, after that meeting, emailed a copy of the
21 face-fits that the victim had been able to put together
22 with the assistance of Crime ID?---Yes.
23 If you could look at this, Exhibit 49, please. If we could
24 just go down to the photographs there, please. Are
25 they the face-fit images that were provided to you by
26 Crime ID on 21 March 2015?---Yes.
27 Who created this Crime Command circular?---I believe it was
28 Matthew Rasmussen, but if you go down a little bit it
29 should say who actually created it, I believe. But

1 he's the analyst that I sent it to, the TIO I sent it
2 to.

3 And so, you sent the images and also the description - look,
4 under each face-fit there's a description of each
5 offender?---Yes.

6 And that accords with the descriptions given by Mary Sawan
7 in her first statement?---They would have been taken
8 out of the statement, yes.

9 That's your recollection?---Yes.

10 What is a Crime Command circular?---It's a circular that's
11 created, so a notice, maybe a picture, CCTV, with the
12 description of an incident and it's sent out to either
13 members of Crime Command or a specific region or
14 division.

15 Where was this circular sent to?---I don't remember.

16 I believe it would have at least been to the region
17 where the offending occurred, but it may have been done
18 as a global; I'm not sure, I'm sorry.

19 Certainly, it would have been disseminated within your own
20 station at Armed Crime?---Yes.

21 How was it disseminated?---Via email.

22 So, every officer gets an email coming in with an alert of
23 some sort that there's a circular; is that how it
24 works?---Yes.

25 The circular itself says: "This face-fit has been compiled
26 for one offender at 50 per cent." I take it, that's
27 offender 1 that was in respect of?---Yes.

28 "A further image has been compiled for the hair of the
29 second offender." Now, that information about the -

1 what does that mean, "A face-fit has been compiled for
2 one offender at 50 per cent"?---I believe that once a
3 face-fit is compiled, the person taking or creating the
4 face-fit, they show the picture to the witness and they
5 say, can you give me a percentage of what it looks
6 like, so it's an 80 per cent likeness or a 50 per cent
7 likeness.

8 There were ultimately three men charged in respect of this
9 aggravated burglary?---Yes.

10 A Mr Khaia, a Mr De Luca and Mr Sovolos?---Yes.

11 Could I go to Exhibit 562, and we'll keep up 49 as well. On
12 the right is Mr De Luca, one of the accused in the
13 matter; is that correct?---Yes.

14 The prosecution case was that he was offender 2, in the
15 middle?---I can't remember which one's which; I'd have
16 to go back through the summary.

17 We might give you a hard copy of the statement of Ms Sawan,
18 if that would assist?---Yes.

19 That was Exhibit 606. If you look at the second page of
20 that statement, you'll see in the second paragraph:
21 "When I pulled off the first guy's mask he stepped back
22 and looked shocked. He had short brown hair on the
23 darker side, very short all over. Looked like he was
24 either Arabic or Albanian. Pale skin, clean shaven.
25 Either 5 foot 2 or 3, he was a bit taller." That
26 accords with the description under "offender 1" in
27 Exhibit 562, does it not?---Yes.

28 That was alleged at trial to be Mr Khaia. If we turn over
29 the page, you'll see in respect of the second offender,

1 that's where the witness refers to the black curly
2 hair, olive skin. Skinny, about 5 foot 11." Again, it
3 accords with the description under the second offender
4 in the circular?---Yes.

5 And that was alleged at trial to be Mr De Luca?---I can't
6 remember, I have to take your word for it.

7 You accept for the purposes of my questions?---Yes.

8 If we turn, on Exhibit 562, to p.9343. This is a photograph
9 of the accused, Mr Khaia?---Yes.

10 Said to be offender 1?---Yes.

11 You'd agree, wouldn't you, that they've no resemblance to
12 one another?---That's correct.

13 They've got distinctly different face shapes. The face-fit
14 has a very square face as compared to Mr Khaia's more
15 oval face?---Yes.

16 Distinctly different looking eyes?---Yes.

17 Eyebrows?---Yes.

18 Hair?---Yes.

19 They just look completely different?---Yes.

20 COMMISSIONER: And that's a view you formed once you had
21 sufficient evidence to charge the first offender,
22 that's a view you formed that the photo-fit bore little
23 resemblance to him?---Yes.

24 MS BOSTON: You mentioned before that, when you used the
25 expression "crew job", you were referring both to the
26 fact that your crew was allocated the job, but also,
27 that the whole crew had responsibility for
28 investigating the matter; is that correct?---Yes.

29 Whilst you were the informant, there was oversight by your

1 supervisor?---Yes.

2 Who was that?---Scott Leach.

3 What was his rank at that time?---Detective sergeant.

4 Was there oversight by other people in the crew?---What do
5 you mean by "oversight", do you mean of all work?

6 COMMISSIONER: Oversight of who?

7 MS BOSTON: Of the investigation?---We did all work on it
8 together, the members that were on the crew, and then
9 there was Scott sitting above us, and then we had a
10 senior sergeant allocated outside of our crew as well,
11 he would have had oversight.

12 I think you said there were five or six detective senior
13 constables within the crew?---I think at the time -
14 again, I'd have to check my notes, there was either
15 four or five of us at that time.

16 And you'd have regular meetings to discuss the investigation
17 of the matter?---Yes.

18 Going to Exhibit 10, this is entitled, "Briefing note to the
19 officer-in-charge." Is this a briefing note that you
20 prepared?---Could you please go to the last page? Yes.

21 If we go back up to the top, what was the purpose of this
22 briefing note to the officer-in-charge?---Just to
23 inform the senior sergeants and our inspector in our
24 office the ins and outs of the job that we had
25 initially.

26 Was it provided to Sergeant Leach?---Um, I can't remember.

27 What would the normal practice be with a briefing note of
28 this nature?---Normally it gets sent out to the whole
29 crew, I believe, or they're cc'd into it from memory.

1 But it's sent to the senior sergeants because there was
2 a couple of senior sergeants in the office and the
3 inspector. So, it's mainly for the bosses to know, but
4 also if I'm not in the office then other members on the
5 crew, if they get asked questions they're not sure
6 about, they should have a pretty good understanding of
7 the job as well.

8 If we can go to p.200 and down to the bottom of that page,
9 there's reference there, the name of the victim has
10 been redacted, but it's in relation to the same victim
11 we've been speaking of: "She attended Crime ID today to
12 compile the face image which she states is 50 per cent
13 likeness." This page, p.4 and p.5, were not initially
14 disclosed with the Form 32 materials; is that
15 correct?---I'm not aware of that, no.

16 COMMISSIONER: You've referred - - -

17 MS BOSTON: I might return to that matter, Commissioner.

18 (To witness) Certainly, though, the witness has
19 undergone this face-fit image process on 21 March 2015.
20 Did you take a supplementary statement from her?---No,
21 not that I remember.

22 So, no supplementary statement was taken. Did you refer to
23 the face-fit in your own statement?---I don't think I
24 did, no.

25 If we can go to that exhibit, 257.

26 COMMISSIONER: I'm just not clear, Ms Doyle, what was
27 Sergeant Leach's role in relation to you and the
28 investigation?---He oversaw everything that happened in
29 the investigation, we would have regular meetings.

1 So he was one of those that participated in the regular
2 meetings?---Yes, and we would bounce ideas off him, I
3 was still learning at the time so, so what do I need to
4 do, what else needs to be done.

5 MS BOSTON: And he was well aware that the victim had
6 undergone - had created a face-fit ID identikit?---Yes.
7 This is your statement. This statement is dated 7 August
8 2015. Just by way of overview, the purpose of your
9 statement as an informant is to detail the
10 investigations conducted by you; is that right?---Yes.

11 There's no mention of the face-fit in your statement, is
12 there?---I'd have to read through it, but I'd assume
13 not, no.

14 You'd accept that it's not in there?---Yes.

15 Who was responsible for putting the police summaries
16 together to go on the front of the briefs?---I did it
17 initially and then the finishing of the brief, it was
18 left to another member on the crew.

19 But for the purposes of the committal stage, the summary
20 that's created at the committal stage, and I can
21 perhaps take you to that just to show you what I'm
22 referring to, Exhibit 393. You'd agree that this is a
23 summary prepared for the purposes of committal stage in
24 the Magistrates' Court?---Yes.

25 So, who was responsible for compiling these summaries?---I
26 did the majority of the summary. When the actual brief
27 was submitted in to Sergeant Leach for checking,
28 initially I'd done all of the work and then I was on
29 leave, so that final submission through to him and the

1 senior sergeant was finished by another member on the
2 crew. The one for Mr Sovolos, that brief was compiled
3 by Matt Thorpe, but I believe he would have gone off
4 what I'd created the majority of back from when I did
5 Mr Khaia and Mr De Luca's briefs.

6 If we go to 394, this is a summary in respect of Mr Khaia
7 and Mr De Luca. Are you saying that you prepared this
8 but you were on leave for part of that time?---That's
9 correct.

10 COMMISSIONER: So, each of the documents that made its way
11 into the police brief which went to the Office of
12 Public Prosecutions had been viewed by all of the
13 members of the crew, including Sergeant Leach?---Yes.

14 MS BOSTON: The face-fit itself wasn't included in the brief
15 either; is that right?---That's correct.

16 So, the whole team, the whole crew, knew about the
17 face-fit?---I believe they would have, yes.

18 The whole crew knew that the accused men and the face-fit
19 images bore no resemblance to each other?---They would
20 have, yes.

21 COMMISSIONER: Was that the subject of any discussion, that
22 the witness who had said she was 100 per cent sure she
23 could identify the offender whose balaclava had been
24 removed had done a photo-fit, an identikit fit which
25 bore little resemblance to the person shown, was that
26 the subject of discussion at times within the crew?---I
27 don't remember discussing it, but from memory, the way
28 that Mr Khaia became a suspect was from a DNA match off
29 the database, I believe, and that was, I think, maybe

1 four months down the track; I don't remember discussing
2 the similarity of him to the face-fit, no.

3 What about the question of using photographs including then
4 that offender once he'd been arrested or doing an
5 identification parade; was that the subject of
6 discussion?---We did discuss it, but I believe he
7 remained mute in the interview, again from memory, so
8 we didn't put the opportunity to him for a line up or a
9 photo board, no.

10 Why was the fact that he was mute in the interview relevant
11 to whether or not you would do an identification
12 parade?---I believe I just would have thought at the
13 time I wouldn't have got a response. In hindsight, how
14 I would have done it differently, I would have done it
15 differently, yes.

16 What would you have done?---I still would have given him the
17 opportunity for the identification parade, absolutely.

18 MS BOSTON: In terms of who decided what was going in the
19 brief, who made that decision?---The initial stuff, it
20 would have been me compiling the brief, and then it
21 goes through to the sergeant to check and, if he thinks
22 it needs to be changed, and then also up through to the
23 senior sergeant as well that does the final sign-off.

24 So, Detective Sergeant Leach was responsible for managing
25 and reviewing the investigation, and that included
26 checking the brief?---Yes.

27 As well as the Form 32 material?---Yes.

28 Before it was disseminated to the prosecution and
29 defence?---Yeah, I'm not sure if he checked the Form 32

1 material, that I'd have to - yeah, I couldn't tell you
2 whether he checked the Form 32. He would have checked
3 the Form 30 material, yes.

4 Was there any discussion at these crew meetings as to what
5 should be included in the brief?---Not that I remember.
6 So, what was the content of those discussions? What did
7 those discussions relate to, if not what to include in
8 the brief of evidence?

9 COMMISSIONER: What, over the entire period that the crew
10 met?

11 MS BOSTON: Did it relate to what enquiries should be
12 undertaken as opposed to what should be included in the
13 brief?---Yes. Yes, it was mainly, other areas of
14 enquiry, what else could we do, what still needs to be
15 done.

16 So, there was no discussion at all in the crew as to what
17 material needed to be included in the brief?---I don't
18 remember specific conversations about the brief, no.
19 The decision as to what to include in the brief, that was a
20 decision that would have been made after the three men
21 had been arrested?---Mr Sovolos wasn't - he wasn't
22 processed until later in the year; the initial brief
23 was just Mr Khaia and Mr De Luca.

24 Mr Khaia and Mr De Luca are offenders 1 and 2?---Yes.
25 You were still the informant in the matter at the committal
26 on 22 October 2015; is that correct?---Yes.

27 Ms Sawan gave evidence at that committal?---Yes.

28 I'd like to take you to a passage in that transcript,
29 please, Exhibit 419.

1 COMMISSIONER: Perhaps it just might be said for the record:
2 by the time of the committal, to your knowledge, had
3 the defence been told that there had been a face-fit
4 done?---It was in my notes that it had been provided in
5 the Form 32 material, but I hadn't had a conversation
6 directly with them about it, no.

7 MS BOSTON: Perhaps we'll go to those notes that you've
8 referred to; that was Exhibit 40, p.1517. Down the
9 bottom of that page, is this the entry that you're
10 referring to?---Yes.

11 "Spoke to ... took her to Crime ID." There's not actually
12 any mention there that a face-fit has been
13 produced?---I can accept, that, yes.

14 If you go back to the committal transcript, please, that was
15 Exhibit 419f, further down. Well, you've got circular
16 details sent, um; no, it doesn't specifically say about
17 receiving the image and a face-fit - - -

18 You'd accept, though, that it's understandable why the
19 parties wouldn't have been alerted to the fact that a
20 face-fit had been produced?---I can accept that, yes.

21 If we go back to the committal transcript, Exhibit 419,
22 p.4786. This is where Ms Sawan is being cross-examined
23 by Mr Dane on behalf of the accused. Do you recall
24 this cross-examination?---Not specifically.

25 You were present in court, though, during the
26 cross-examination?---Yes, I was.

27 The witness is asked: "Witness, you have made, I think, two
28 statements to the police; is that correct?" Answer:
29 "Yes." Question: "They are the only statements that

1 you have made?" Answer: "Yes." Question: "Have you
2 been asked to make any further statements?" Answer:
3 "No." Obviously all correct up till then. Question:
4 "Have you been asked to look at any photographs?"
5 Answer: "No." Question: "Have you been shown any
6 firearms?" Answer: "No." Question: "Asked to identify
7 them?" Answer: "No." Question: "So you haven't been
8 shown any images of any person since making these
9 statements?" Answer: "No." Question: "I should
10 complete that. Included in those images have you been
11 shown anything by way of machetes?" Answer: "No."
12 Question: "So the statements that you have identified
13 before lunch, that's the only contribution that you
14 have made to police, that's all they've asked you to
15 do; is that correct? You're looking at the informant.
16 What causes you to look at her?" Answer: "I'm just
17 trying to think if there was anything else that I - I
18 don't want to say the wrong thing, that's all. So, as
19 far as I know, yes, that's it." Question: "That's it?"
20 Answer: "That's it." I suggest to you that it would
21 have been quite apparent to you, from this
22 cross-examination, that the witness had not provided a
23 fulsome answer to those questions?---Sorry, I don't
24 understand?

25 She hadn't provided a fulsome answer, a complete answer, to
26 the questions, had she?---Looking back at it, no.

27 She said she'd not been asked to look at any photographs,
28 but in fact she had been asked to look at photographs
29 as part of that face-fit process, hadn't she?---I'm not

1 sure, again, how the face-fit process is done.
2 And certainly, the two statements were not the only
3 contribution that she'd made to police in relation to
4 the investigation?---No.
5 So, it would have been apparent to you that she had not
6 given an accurate and complete answer?---That's
7 correct, yep.
8 If we could go to - - -
9 COMMISSIONER: You were there in court; was that apparent to
10 you at the time, that that was not an accurate answer
11 to counsel's question?---No. Had I have realised, I
12 would have said something to the OPP.
13 Even though counsel stopped in mid-sentence, really, and
14 asked her, why was she looking at you?---Yes.
15 It still wasn't apparent to you that her answer had been
16 incomplete?---No.
17 MS BOSTON: If we go to p.4806, please, Exhibit 419. You
18 were cross-examined later on in the committal; is that
19 correct?---Yes.
20 Underneath, when Mr Dane cross-examined you: "He's confirmed
21 that you'd been in court and had heard the
22 cross-examination of Mr and Mrs Swain; is that
23 correct"?---"Sawan".
24 "Sawan, I beg your pardon. You've heard that
25 cross-examination, have you?" Answer: "Yes, I have."
26 You're then asked: "It's correct to say, isn't it, that
27 they haven't been shown an array of either weapons or
28 suspects?" Answer: "No, they haven't." Question:
29 "Thus your only description of the offenders is that

1 which is contained in their statements and their
2 evidence today?" Answer: "That's correct." That's not
3 an accurate answer, is it?---No, it's not.

4 Because you also had within your possession the face-fit
5 which the victim had compiled two days after the
6 aggravated burglary?---Yes.

7 Did you appreciate at the time that it was not an accurate
8 answer?---No, I didn't.

9 Turning over the page to p.4809.

10 COMMISSIONER: I'm just trying to understand, Ms Doyle.

11 What was it about the question that didn't make you
12 realise you had to disclose the fact that the witness
13 had done a face-fit?---I wasn't actively not disclosing
14 the face-fit, I honestly just didn't think of it.

15 No, but I'm just wanting to look at the question that
16 counsel took you to. Can you just go back to that
17 question?

18 MS BOSTON: Page 4806.

19 COMMISSIONER: "Your only description of offenders is that
20 which is contained in their statements." So what is it
21 about that question, or the way it's framed, that
22 didn't make you realise that you needed to disclose the
23 fact of the face-fit?---I have no answer. I'm not
24 sure; I made a mistake.

25 We might come back to that when we deal with the balance of
26 the evidence.

27 MS BOSTON: If we can go to p.4808. This is later in that
28 same cross-examination, later on at the bottom of the
29 page. You're asked some questions about the lack of

1 line up and photo board; asked the question: "So,
2 whenever there's a 'No comment' record of interview you
3 don't proceed to a line up or a photo board?" Answer:
4 "We can approach the defence if we want but that wasn't
5 done in this case, no." And Mr Dane says: "Whatever
6 the net result is, you're left with the two witnesses
7 to this event and their descriptions?" Answer: "Yes."
8 And he goes on to ask you about the DNA evidence. What
9 I want to suggest to you, is that, in light of the
10 questions which Mr Dane asked of the witness and
11 yourself that I've taken you to, it would have been
12 abundantly clear to you at that time how important the
13 evidence of the descriptions was to the defence?---Yes.
14 Did you tell the prosecution or the defence about the
15 face-fit at that stage?---No.
16 Why was that?---I don't know.
17 You subsequently dropped the original brief off to the OPP;
18 is that correct?---I didn't but another member would
19 have. Oh, sorry, the original brief? The original
20 would have been given to the OPP at the committal, yes.
21 You certainly didn't take that opportunity to mention that
22 it didn't contain the face-fit either?---No.
23 After the committal another officer took over the
24 prosecution of the matter; is that correct?---Yes.
25 How long after the committal was that?---I believe I stopped
26 work on about 5 or 6 November.
27 So, within weeks of the committal?---Yes.
28 What was that officer's name?---Matt Thorpe.
29 Did you tell him about the face-fit?---I don't remember

1 having a specific conversation, but he was on the crew
2 at the time that the face-fit was done, he would have
3 been aware.

4 He would have been one of the officers to whom the circular
5 would have been disseminated back in March 2015?---Yes.
6 Had you printed out the email that Crime ID had sent you on
7 21 March and popped it in your investigation
8 file?---Possibly; I can't tell you off the top of my
9 head.

10 So, other than being a recipient of that circular back
11 in March, how would Detective Thorpe have known about
12 the face-fit process?---It would have also been saved
13 on what we call the G-drive. So, all of our folders
14 are accessed by every member in the office, that's how
15 the investigations were all saved, it was saved in that
16 folder.

17 In the event you're aware it emerged by chance at trial that
18 the face-fit process had been engaged in - - -?---Yes.
19 - - - you appreciate that?

20 COMMISSIONER: How was that discovered?---I'm not sure.

21 Some of the material suggests that a clerk that was
22 assisting the defence read a document relating to DNA
23 of one of the offenders which made some reference to a
24 face-fit. Does that ring a bell?---No. No, I'm sorry.

25 MS BOSTON: The briefing note that I took you to earlier,
26 I believe that was Exhibit 10, if we could go to p.200,
27 please. The information that the Commission has is
28 that pp.4 and 5 of this document, pp.200 and 201, which
29 includes the reference to the attendance by Ms Sawan at

1 Crime ID, was accidentally not included in the Form 32
2 material - - -
3 COMMISSIONER: Form 32 being the request by the defence for
4 material from the prosecution?
5 MS BOSTON: Yes. The further disclosure material, namely,
6 material which hadn't been included in the brief but
7 had to be disclosed pursuant to the police subrogation
8 of disclosure. Do you have any recollection of that
9 matter?---No, this is the first that I'm aware of it,
10 the last two pages weren't included.
11 COMMISSIONER: Who sent the form?---The Form 32?
12 No, who sent the briefing note in response to the Form 32;
13 which member of your crew did that?---I would have to
14 check my notes. I know for Mr Sovolos that would have
15 been done by - I would assume by Mr Thorpe. As far as
16 Khaia and De Luca, I would have thought it would have
17 been me.
18 MS BOSTON: In any event, a couple of days before the trial
19 was due to commence it emerged that this process had
20 been engaged in and subsequently the parties were
21 provided with the face-fit; is that your
22 understanding?---Yes.
23 You weren't the informant by that stage; is that
24 right?---That's correct .
25 It was Mr Thorpe?---Yes.
26 Had you had any ongoing involvement in the matter at
27 all?---Except to give evidence, no.
28 At the voir dire?---There were a few different court matters
29 from my time of leaving Armed Crime and then the actual

1 trial; I can't remember all of them off the top of my
2 head.

3 But you had no ongoing involvement in the conduct of the
4 investigation?---No.

5 So, you were called to give evidence on a voir dire before
6 Judge Puncheon in the County Court; is that
7 right?---I'd have to take your word for who was in
8 front of - yeah.

9 And that was on 26 September 2016?---That sounds about
10 right.

11 If I could go to Exhibit 463.

12 COMMISSIONER: The question that we're looking at,
13 Ms Boston, is why Ms Doyle and the members of her crew,
14 and her sergeant, did not think it necessary to
15 disclose to the prosecution or the defence that the
16 witness had done a face-fit.

17 MS BOSTON: Yes, Commissioner. So, Exhibit 463, p.6489. At
18 line 10, you are being asked some questions by the
19 learned prosecutor here on the voir dire, and this is
20 to explain the reason that the face-fit hadn't been
21 included on the brief or disclosed to defence. The
22 prosecutor asked you: "All right, could you just tell
23 the court first of all, has any of the photo-fit
24 information ever been disclosed to the defence?"
25 Answer: "No." Question: "How about to the Crown?"
26 Answer: "No." Question: "Can you just explain why that
27 hasn't been disclosed, please." Answer: "Because it
28 wasn't used in any evidence, we didn't identify any
29 offenders from it, we didn't provide it." "Was that a

1 decision that you made or were other police officers
2 involved in that decision?" You answered: "It was just
3 overlooked by my part. I didn't realise I had to."

4 Question: "Overlooked, did you say?" Answer: "By
5 myself, yes, Your Honour." So I take it that you
6 didn't understand at that stage that you had an
7 obligation to provide to the prosecution and the
8 defence all relevant material irrespective of which
9 party it assisted?---Yes, I didn't understand the
10 importance of the Form 30 and how that can be utilised.

11 What do you mean by "Form 30"?---The Form 30 that goes on
12 the front of the hand up brief that discloses any other
13 materials that we may have but that we're not relying
14 on in evidence. So, it should have been on that form,
15 I know that now; at the time I was not aware.

16 What was your understanding at that time of what needed to
17 be disclosed to the prosecution and the defence?---Um,
18 I don't remember my specific understanding; obviously
19 everything should have been, but again with hindsight I
20 can say that now. My specific understanding? I don't
21 know.

22 If we go to p.6495. You were asked some further questions
23 on this topic. At line 7 you again say: "I didn't know
24 I had to, I've already said I - it was overlooked on my
25 behalf."

26 COMMISSIONER: That's really not the appropriate expression,
27 is it, "overlooked"? Your evidence consistently in
28 explanation to County Court Judges has been that, I
29 didn't appreciate that I had an obligation to disclose

1 that?---That's correct.

2 MS BOSTON: And in fact on that same page, at line 21, you

3 are asked the question by His Honour: "Did you take the

4 view that, because it doesn't help the prosecution, you

5 don't have to supply it?" And you answered: "Yes, I

6 did." So that was your understanding at the time, that

7 if evidence wasn't helping the prosecution case, you

8 weren't required to disclose it to the parties?---Well,

9 that it wouldn't form part of the brief, yeah.

10 But you've been asked a question there, "You don't have to

11 supply it", which would obviously include any further

12 materials as well?---Yes.

13 So, at that time your understanding was, and you now

14 appreciate it was wrong, but at that time your

15 understanding was that you only had to provide material

16 which helped the prosecution case?---Yes.

17 Today obviously now you understand that that isn't the

18 extent of your obligation of disclosure?---Absolutely.

19 When is it that you came to understand that?---Obviously it

20 was highlighted with this investigation when it all

21 came about for the trial, I'd say that would be when it

22 became paramount with this sort of thing. As far as

23 when the Form 30 was explained to me and how we go

24 about with the Form 30, that wasn't until a few months

25 after this brief was completed, when I had another

26 sergeant, he explained the actual reasons and what we

27 do with a Form 30, that was when I appreciated that.

28 And so, is your understanding now that you have to - please

29 correct me if I have misunderstood - that you have to

1 list all of the materials that you have but don't
2 necessarily have to provide them?---On the Form 30,
3 yes, we list them and then usually what happens when we
4 get a Form 32 or we get a request, that's when we
5 provide them.

6 Say in a situation where you've got an example like this and
7 you've got a face-fit that bears no resemblance to an
8 accused and that's not requested on the Form 30 -
9 that's not requested on the Form 32, I'm sorry. What
10 would you consider your obligation of disclosure to be
11 in that situation?---If I've listed it on the Form 30,
12 I would address that with the OPP and say, "This is
13 already listed on the Form 30, they haven't asked for
14 it on the 32, do you still want me to provide it?"

15 COMMISSIONER: What is your understanding as to what has to
16 be listed on the Form 30?---Everything that we have,
17 unless it's subject to PII.

18 That's relevant?---Yes.

19 And is it now your understanding that the meaning of the
20 word "relevant" is whether it helps your case or helps
21 the defendant's case, or might help the defendant's
22 case?---Yes.

23 You didn't appreciate that fully at the time?---No, I
24 didn't.

25 So, does that tell us something about the adequacy of the
26 detective training and the Police Academy, that that
27 was never sufficiently emphasised for you?---Um, it
28 could be. It's hard because there's only so much that
29 you can learn in the Academy and at Detective Training

1 School. A lot of it, it's done on the job, so you're
2 learning from more experienced members, so how you
3 actually ensure that doesn't happen again? I'm not
4 sure what the best answer is.

5 Just something as fundamental as the simple proposition, you
6 have to give everything to the parties whether it helps
7 your case or not?---Yeah.

8 Was that never sufficiently emphasised for you at detective
9 training?---I don't think so, and I think if - even
10 just the basic explanation of what a Form 30 is for,
11 maybe if that's emphasised a bit more, the more further
12 you go along in your career, that may have stopped this
13 happening then.

14 MS BOSTON: You'd been a police officer for eight or
15 nine years at the time; did you have any understanding
16 of what other members were doing in relation to their
17 disclosure of materials in matters that they were
18 dealing with?---Not off the top of my head, no.

19 You'd been through the Police Academy; what did you get told
20 at the Police Academy about your duty of disclosure, if
21 anything?---I can't remember.

22 You said earlier in your evidence that you would have put
23 together a lot of summary briefs during your time in
24 uniform?---Yes.

25 And thereafter, or only in uniform?---When I was out at
26 Casey CI, we did a lot of summary briefs as well.

27 So, all through that period you didn't understand your
28 obligation to disclose relevant material to the
29 parties?---Casey CI was after this. So, yes, I did at

1 that stage, yeah.

2 Detective training: was there any instruction about the
3 obligation of disclosure at all in detective
4 training?---I don't remember.

5 What about the compilation of briefs: was there any training
6 about that?---At Detective Training School?
7 Yes?---I don't think there was. I know that it's changed a
8 lot since I did it anyway.

9 You would appreciate now, wouldn't you, why that obligation
10 of disclosure exists?---Absolutely.

11 And that, if relevant material isn't disclosed to the
12 prosecution and defence, it may lead to a miscarriage
13 of justice in a particular case?---Yes.

14 And in some cases it may even lead to an innocent person
15 being wrongfully convicted of an offence?---Yes.

16 COMMISSIONER: What happened here, juries were discharged a
17 number of times because of this issue, because of the
18 issue of not having disclosed the face-fit?---Yeah,
19 I believe one jury was discharged, yes.

20 What happened ultimately?---I believe one was found guilty
21 and two were found not guilty.

22 Yes, but the offender to whom the face-fit related, was he
23 found guilty?---No, I think he was not guilty.

24 MS BOSTON: They'd also been refused bail at various points
25 along the way, hadn't they, in the Magistrates' Court
26 prior to the disclosure of the face-fits?---I think
27 they had, yeah.

28 COMMISSIONER: So, the one offender whose identity was
29 revealed during the course of the offence was actually

1 acquitted?---Sorry?

2 The offender whose mask was taken off, he was

3 acquitted?---Yes, he was.

4 MS BOSTON: And he was one of the persons who was refused

5 bail in the Magistrates' Court on the basis of

6 incomplete information?---I can't remember the bail

7 apps; again, I'd have to check the file.

8 Given you can't now recall a specific training at any

9 point in your career about the obligation of disclosure

10 and your acceptance, your agreement now that it's an

11 important obligation, it's pretty clear that the

12 training in your case was deficient; would you agree

13 with that?---Yes.

14 COMMISSIONER: That training would have made clear to you,

15 had it been adequate, that in the witness's statement

16 there should have been a reference to the fact that

17 she'd done a face-fit?---Yeah, for - yeah, looking at

18 it, a further supplementary statement should have been

19 taken, yes.

20 Who was responsible for that process? Was that your

21 responsibility or someone else in the crew?---Yes,

22 myself or, if it was delegated by the sergeant, to

23 someone else.

24 And similarly, there should have been a reference in your

25 statement to the fact that she'd done so?---Yes, I

26 could have put that in there, yes.

27 And in the future you would do so?---Yes.

28 MS BOSTON: Commissioner, unless there was thought to be

29 some help in going back to those questions from the

1 committal or the voir dire - - -

2 COMMISSIONER: I don't think so.

3 MS BOSTON: - - - those are the matters.

4 COMMISSIONER: Very good. (To witness) There was an

5 internal investigation after the trial was

6 over?---I believe it was before the trial was

7 finalised, it was - - -

8 The second trial?---Yeah, it was stood down, yes.

9 The investigators were satisfied that your failings were not

10 deliberate. In that investigative report there's a

11 passage in which it's said: "The face-fit image was

12 discussed in the Interpose investigation shell comments

13 section by Leach on 16 April 2015 in terms of its use

14 or value in identifying suspects." Do you remember a

15 discussion at the Interpose investigation stage?---I

16 don't remember the discussion, but if it's in Interpose

17 then it happened, yes.

18 MS BOSTON: Commissioner, there is an Exhibit 129 which may

19 be the document referred to, if that would assist the

20 witness.

21 COMMISSIONER: Yes. Do you want to show that to the

22 witness?

23 MS BOSTON: Just, it might assist in answering the

24 Commissioner's question.

25 COMMISSIONER: Yes.

26 MS BOSTON: Exhibit 129. Is this Interpose?---Yes, it is.

27 If we go to p.2796, there's an entry: "Investigation manager

28 comment", that would have been Sergeant Leach, I take

29 it?---Yes, it would have been. Can you please go down

1 a little bit further?

2 If we look at that entry, there's reference at the bottom of
3 that page: "Mary Sawan provided a face-fit which was
4 disseminated through a circular on suspect nominated,
5 exonerated the following day"?---Yes.

6 And then on the following page the entry continues until,
7 p.2798 it concludes about halfway down the page: "Last
8 modified on 16 April 2015", and the VP number there,
9 the evidence will be, is that of Sergeant Leach?---I
10 don't know his number.

11 So, what would the purpose of such an entry have been? If
12 you need to read through it, that's - - - ?---With the
13 investigation manager comment, so that's where the
14 supervisor keeps up-to-date with the investigation if
15 there's anything important that needs to go on, if he
16 needs to task, delegate anything out, just to make sure
17 that everything is up-to-date on our system as far as
18 what's happened with the investigation.

19 And that supports what you said earlier, that obviously
20 Sergeant Leach was aware of the-face fit and its
21 evidentiary value, one suspect nominated but exonerated
22 the following day?---Yes.

23 Those are the matters, Commissioner.

24 COMMISSIONER: Ms Doyle, that completes your evidence.

25 Unless of course, Ms Bate, you've got some questions of
26 Ms Doyle?

27 MS BATE: I do, briefly, Commissioner.

28 COMMISSIONER: Well, please proceed.

29 <EXAMINED BY MS BATE:

1 Ms Doyle, at the time of compiling the brief of evidence
2 that's been discussed today, had anybody sought to
3 explain to you the process of the compilation of the
4 Form 30 and the provision of the Form 32 material in
5 any capacity?---No.

6 Given the limited experience you had in compiling hand up
7 briefs of this nature, how much reliance did you place
8 on the guidance of your senior officers?---The majority
9 of it.

10 Were there any changes or alterations to the briefs that
11 were recommended to you in that review process?---Yes.

12 Did you follow those instructions?---The instructions that
13 were on there before I went on leave, yes, I made all
14 of those changes and it would have been a member that
15 finally submitted the brief - would have made any other
16 alterations.

17 Was there ever any recommendation or mention specifically of
18 the face-fit to you in that process?---No.

19 In relation to the Form 32 material that you provided, the
20 note that is depicted in your diary entry that you have
21 referred the victim to Crime ID for the face-fit
22 process, did you include that note specifically in the
23 provision of the Form 32 materials?---Yes.

24 Is there anything further you want to elaborate on that
25 followed the internal investigation where it was found
26 ultimately that your actions were not deliberate?---No.

27 Thank you, Commissioner.

28 COMMISSIONER: Thank you, Ms Bate.

29 Ms Doyle, I will release you from your summons and

1 from your confidentiality notice, so hopefully that's
2 an end of the issues so far as you're concerned.

3 We will provide you with a video recording of your
4 evidence and a transcript of your evidence if it's
5 something you'd like to look at, and I thank you very
6 much for your attendance?---Thank you, sir.

7 <(THE WITNESS WITHDREW)

8 COMMISSIONER: Yes, Ms Boston?

9 MS BOSTON: There's one final witness, Sergeant Leach. I'm
10 in the Commission's hands as to whether we proceed with
11 that witness now or - - -

12 COMMISSIONER: I think we'll adjourn until 2.15. Resume at
13 2.15.

14 Luncheon Adjournment: [12.47 pm.]

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1 UPON RESUMING AT 2.17:

2 COMMISSIONER: Yes, Ms Boston.

3 MS BOSTON: Commissioner, the next witness is Detective
4 Sergeant Leach.

5 <SCOTT GEOFFREY LEACH, sworn and examined:

6 COMMISSIONER: I understand, Ms Kaddeche, you appear for
7 Mr Leach.

8 MS KADDECHE: Kaddeche, that's correct.

9 COMMISSIONER: Thank you. Leech, when you were served with
10 the summons, you would have seen that it sets out the
11 areas on which you might be questioned. I don't
12 understand that there's likely to be any questions
13 relating to the Lorimer Task Force, so I only take you
14 to the other matters listed on the summons, namely,
15 witness statement-taking practices by Victoria Police
16 and compliance with the obligation to disclose evidence
17 by Victoria Police.

18 Following questions by Ms Boston, counsel
19 assisting, Ms Kaddeche will have an opportunity to
20 explore with you any further elaboration on any
21 evidence that you have given or anything additional
22 that you want to say.

23 When you received the summons, you would have also
24 received a confidentiality notice and a statement of
25 rights and obligations. Have you discussed with
26 Ms Kaddeche the nature of those rights and
27 obligations?---I have, Your Honour.

28 Do you require me to repeat them or do you feel you fully
29 understand them?---I feel I understand them.

1 Very good.

2 MS BOSTON: Mr Leach, what is your full name?---Scott
3 Geoffrey Leach.

4 You attend today in response to a summons served upon
5 you?---That's correct.

6 That was served on 14 December 2018?---That's correct.

7 Would you look at the documents in front of you, please.

8 The summons in front of you numbered SE2851, is that
9 the summons that was served upon you?---I believe so.

10 You've indicated you also received a document entitled,
11 "Statement of Rights and Obligations." Do you see a
12 copy of that document?---Is that - - -

13 It's entitled, "Statement of rights and obligations", it
14 should be at the back of the summons. Commissioner,
15 might my instructor be permitted to approach to locate
16 the document?

17 COMMISSIONER: Yes, of course.

18 WITNESS: Okay, yes.

19 MS BOSTON: So, you've got that statement of rights
20 there?---I have.

21 Did you also receive a confidentiality notice dated
22 11 December 2018?---I believe so.

23 Is that one of the documents in front of you?---(No audible
24 answer.)

25 The confidentiality notice dated 11 December?---That states
26 12 December, this one.

27 And that's the covering letter. Is there both a
28 confidentiality and a covering letter there before
29 you?---I've got the documents I received here with me.

1 Oh, that one - sorry, yes.

2 Are all of those documents copies of the documents you
3 received?---I believe so, yes.

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

6 #EXHIBIT V - Documents received on subpoena by Mr Leach.
7 Mr Leach, you are currently employed by Victoria
8 Police?---I am.

9 What is your current rank and station?---Senior sergeant at
10 Broadmeadows Police Station.

11 That's in uniform, is it?---It is.

12 But you have previously been a detective?---I have, yes.

13 When did you graduate from the Academy; Police Academy, that
14 is?---I think it was August 1990.

15 Thereafter, which stations were you working at?---I went to
16 the Bendigo Police Station for 18 months. I then
17 worked at the Williamstown Police Station. From
18 Williamstown I worked at the Footscray Police Station.
19 I was then promoted to senior constable at the Sunshine
20 Police Station.

21 And, approximately what year was that?---97.

22 I then performed 18 months work at the Altona North District
23 Support Group. I then returned to the Sunshine Police
24 Station after that. I then went to Melbourne Criminal
25 Investigation Unit from - - -

26 Had you been to Detective Training School by that
27 point?---While I was at Melbourne Criminal
28 Investigation Unit, I did.

29 So, what year was that?---2001, I believe. I then went to

1 Footscray Criminal Investigation Unit.

2 As a detective senior constable?---I did, yes. From there,

3 I was promoted to the Moonee Ponds Police Station in

4 uniform.

5 So, you were a sergeant in uniform?---That's correct, yes.

6 I then worked at the Santiago Task Force for, I think,

7 18 months.

8 And that was a kidnapping, was it, that one?---Sorry?

9 The Santiago Task Force, did you say?---That's correct, yes.

10 That was a kidnapping matter?---No, that was non-fatal

11 shootings. I then obtained a job as a detective

12 sergeant at Broadmeadows Crime Investigation Unit. I

13 think I've got everything right. I then obtained a job

14 at the Armed Crime Squad.

15 When was that?---2013, I think it was.

16 Were you a detective sergeant when you first went to Armed

17 Crime in about 2013?---I was. I then was promoted to

18 the Broadmeadows Police Station as the senior sergeant

19 there.

20 I'm sorry, where?---Broadmeadows.

21 And that's where you currently are?---That's correct.

22 You mentioned you were at Armed Crime from 2013 as a

23 detective sergeant; what was your role there?---As a

24 sergeant in charge of a crew of five members, one of

25 the six crews or six sergeants there.

26 Each crew being headed by a different - - - ?---By a

27 sergeant, yes.

28 - - - detective sergeant. At one point in your time at the

29 Armed Crime Squad, was there a Detective Senior

1 Constable Julia Doyle?---There was.

2 When did she become a part of your crew?---She was already

3 there and I came into that unit.

4 And so, when did she become a part of your crew?---When I

5 there, I arrived in November - I think it was 13. I'm

6 sure it was 13, I'm sure it was 13, or 14, and she was

7 already on that crew. I took over the crew as the new

8 sergeant.

9 Were you aware of how long she'd been there for?---Not

10 really, maybe 12 months, I'm not sure.

11 Did she appear to you to be experienced or

12 inexperienced?---She appeared very confident and

13 experienced, and I was then provided a briefing by the

14 senior sergeant that she did need some, um - that the

15 whole crew were a little bit inexperienced, I suppose,

16 so that's the reason why they gave me that crew, is to

17 help develop.

18 So was your role within that crew to be a

19 supervisor?---That's correct.

20 On a day-to-day basis what did that involve?---I suppose

21 everyone supervises differently, but I would - the

22 majority of the time we'd all work the same shifts

23 together. So, we'd start work together, we'd have a

24 quick briefing of what we've got that day, what's going

25 on, what we have to do, and from there - each one of

26 those detectives in their own right, they have their

27 own investigations, et cetera, so they would brief me

28 and - or I'd brief with them and say what they have to

29 do, what they have to achieve. We have a vehicle per

1 crew, so who needs to go out and get what statements,
2 who needs to go out and - whatever enquiries they need
3 to do, if that's a mundane day. If a job had happened,
4 then obviously we would be briefed on the job and would
5 take over and we'd brief up together and we'd allocate
6 duties out to everybody.

7 You said each of the members of the crew would have their
8 own investigations; by that do you mean, each of them
9 were informants in respect of different
10 matters?---Absolutely, yes.

11 As the informant, what would their role be?---Well, they're
12 the informant and the lead - well, the informant when
13 the brief is done, I suppose, but they'd be the
14 investigator, the lead investigator on that particular
15 investigation. So, say we had an armed robbery of a
16 bank - you don't have any of those any more, but an
17 armed robbery of a bank; they would do that as a crew
18 or it would be handed over to us from the previous
19 shift that came on, and one person would be the lead
20 investigator, so they would start collating and
21 organising their file, et cetera, because they would
22 eventually carry that as we progressed on, so ...

23 So, for a serious matter like an armed robbery of a bank the
24 whole crew would be involved and you're investigating
25 the matter?---Absolutely.

26 But one of the members would be allocated as the lead
27 investigator or informant?---That's correct, yes.

28 COMMISSIONER: And you were involved on a daily basis with
29 what that crew was doing in relation to that

1 investigation?---Absolutely. Obviously, some people
2 would have courts or they'd have to - they'd make
3 arrangements to go direct out into the field somewhere
4 and speak to somebody, or meet a witness at a police
5 station - we covered Victoria, so it just depends what
6 was happening. So, I would be briefed up and mobile
7 phones, et cetera, would make it easier if they needed
8 to go out and do things and keep in touch and brief up,
9 so we'd be in touch.

10 Roughly, how many investigations at one time might be
11 ongoing by those crews that you would be responsible
12 for?---When I started there I was responsible for, I
13 think, four or five jobs; within two weeks I think it
14 blew out to about 30 jobs. We had a series of armed
15 robberies on gaming venues and it was a very busy time,
16 every two days there was a job happening, so.

17 How did you stay on top of what each crew was doing on each
18 one of those investigations?---I would - for that large
19 a scale as it turned out I would, um, obviously brief
20 up to my senior sergeants, and from there we combined
21 two, and then a third crew would work together as a
22 group. So, the sergeants would brief up, then to the
23 senior sergeants, and we would have management meetings
24 et cetera on what we needed to achieve, what was being
25 done, so on that scale the particular jobs would get
26 bigger I suppose. So, on that scale, okay, this crew
27 will go out and handle the scene for this job now, this
28 crew will continue those enquiries of tracing back and
29 picking up CCTV footage or witnesses and that sort of

1 thing from that job, so it's just a matter of trying to
2 be organised and, I suppose, put some structure - the
3 structures are there.

4 So I follow you. So, the work might be spread amongst more
5 than one crew?---It could be if there's a lot of jobs
6 or if you needed assistance.

7 And more than one sergeant overseeing that work?---That's
8 correct.

9 MS BOSTON: Your particular crew, you said that you'd been
10 told that they were relatively inexperienced; is that
11 something you were told when you first came into that
12 position in 2013?---Yes. Shortly after arriving there
13 I was briefed on that.

14 The reason, I take it, you were thought to be a good person
15 to go into that role which required additional
16 supervision, was that you'd been in the job as a police
17 officer for some 23 years by that time?---Yeah, I - I
18 don't know the particular reasoning, but I was asked,
19 "This is the crew we've allocated to you." I was given
20 a rundown on each one of those members and how they're
21 performing, et cetera, or as a general group and that
22 sort of thing.

23 You mentioned that, with a serious investigation like an
24 armed robbery of a bank, it would be a crew job and
25 there would be a lead investigator but the whole crew
26 would be investigating it. Was that the case for all
27 investigations or just investigations of that serious
28 nature?---Depends what the job was for a start and what
29 was needed. So, if a job happened on a weekend where

1 the on-call detectives were - it's like a band-aid
2 approach I suppose on weekends - they would go out to
3 it - and there's plenty of detectives there, but they
4 would go out, till the initial action, the initial crime
5 scene, conduct all of those enquiries, so come Monday
6 when the rest of the crew are back on, or the crew that
7 are gonna take over are back on, they would then sit
8 down and do a handover and then a briefing of what
9 needs to be done. So, sometimes those jobs on the
10 weekend - say it was someone was shot or a similar job,
11 that might be almost covered off to the point, so it
12 might only need one or two members to follow up a few
13 things then, just depends what work entailed.

14 I want to ask you specifically about Operation Mothballing;
15 you recall that operation?---I do.

16 It was an investigation into what initially was thought to
17 be an attempted murder and aggravated burglary, but
18 ultimately proceeded only on the aggravated burglary
19 charges, not the attempted murder charges; is that
20 correct?---That's correct.

21 That offence occurred in the Malvern area?---That's correct.

22 That offence occurred on 19 March 2015. Was it allocated
23 straight away to your crew?---It was.

24 Within the first day or two Julia Doyle was nominated as the
25 informant?---Um, (indistinct) here. I believe that's
26 occurred when she was on-call. So, she's responded to
27 the job, she's gone directly to the job, so she's
28 picked it up and carried that job from the start,
29 so ...

1 Certainly, she's been the allocated informant from very
2 early on though?---From the very start, she attended
3 the initial action of the job and I've come in later.
4 That is, she was the lead investigator?---That's right.
5 But the crew as a whole was investigating that
6 offence?---Two members from my crew would have been on
7 call, so they'd pick up that job, so our crew would
8 carry that job, unless there was something pending that
9 we couldn't - so we picked it up. So, the next morning
10 when I came in, or the Monday if it happened on a
11 weekend, I can't remember what day it happened, I think
12 she picked up two jobs close to each other and, whether
13 they were the same weekend or weekend apart, I don't
14 know. But one of them was definitely over the weekend.
15 So, come Monday I would then get briefed up on what job
16 they picked up on the weekend and what we needed to do
17 with it and I'd start looking - - -

18 Who were you briefed by as to - - -?---By Julia.

19 So, she would have told you - - -?---Come Monday morning,
20 she would have everything she's picked up over the
21 weekend, she would have had a sergeant working with her
22 over that weekend that she picked up the job; that's
23 from my memory. If I'm incorrect, it will be to the
24 next day, that's all it'll be, so she would have had a
25 sergeant working with her, they'd do the job, they'd
26 do what they need to do, and then the next morning I
27 would come in and then be briefed by them on what we've
28 got.

29 Your role as the sergeant of that crew, or detective

1 sergeant of that crew, that job having been allocated
2 to your crew, your role was as a supervisor
3 technically?---That's correct.
4 That role commenced very shortly after the offence, within
5 days of the offence being committed?---That's correct.
6 And that role continued all the way through the prosecution
7 of the three men ultimately arrested?---No, it didn't.
8 So, when did your involvement cease?---If that was March,
9 I believe to about August, I think it was.
10 I just might show you a document. You said you would have
11 been briefed by Julia from early on about the matter.
12 Is that a briefing that would have occurred in person
13 or in writing?---Probably both. She would have been
14 expected to prepare a briefing note which would have
15 gone not only to myself but to the senior sergeant
16 level and the inspector level, that then would have
17 gone up to the superintendent, et cetera, of crime.
18 I'll take you to a briefing note, Exhibit 10, please. Is
19 this the type of document you're referring to when you
20 say "briefing note", firstly?---That will be.
21 You will see that it's dated 19 March 2015. I can tell you
22 without going to it that the bottom of the document is
23 signed off by Julia Doyle and her number?---Yeah.
24 If we can turn to p.200. Firstly, while we're waiting for
25 that, what's the purpose of the briefing note?---Well,
26 it's to inform her supervisors and other members of the
27 crew that will be working on the job, and to other
28 members of Armed Crime, whether it be our analysts or
29 TIOs, which is a tactical intelligence officer; also

1 the senior sergeants which manage the office and the
2 inspector which manages the office as well.
3 So, when it's addressed to the officer in charge, this
4 briefing note would have been disseminated more broadly
5 within the office?---Absolutely, and also to other
6 supervisors that were on-call. I was incorrect, I
7 thought it was a weekend, it was a Thursday night, so
8 Friday morning I would have picked this up, I imagine.
9 So, whoever's working that Thursday night would have
10 got that briefing note that was working with her,
11 because the sergeant wouldn't have gone into the job -
12 so, the senior sergeant wouldn't have gone into the
13 job, he would have been supervising the Homicide Squad,
14 the Sex Crime Squad, so he would have probably
15 been - - -

16 Perhaps before you continue, although I said that it was
17 dated 19 March, if you look at the bottom of this page,
18 paragraph 12, the redacted part there before the word
19 "attend" is the name of the victim in this Operation
20 Mothballing matter. It says that: "She attended
21 Crime ID today, 21 March 2015 ", so it indicates there,
22 doesn't it, that the briefing note, although it's dated
23 19 March, wasn't actually completed until
24 21 March?---Yeah, um.

25 How were the briefing notes disseminated? Were they by
26 email or was it something that was continually
27 updated?---By email, but I recall something about
28 this - obviously this will get expanded as you ask me
29 more questions. At some stage I received a complaint

1 from the OPP about Doyle not producing the brief and
2 that on time, et cetera.

3 Yes?---So I imagine that we'll go there shortly. But um,
4 what I recall of this and why that date - I think that
5 date was tested in court at some stage.

6 The evidence is that, in fact, the face-fit process was
7 undergone on 21 March, that's not in issue. But
8 certainly you would have received this briefing note
9 which stated that the victim had attended Crime ID on
10 21 March and compiled a face image which he stated was
11 a 50 per cent of likeness?---I believe there's some
12 conjecture with this, because I, um, the briefing note
13 was initially done, I think she had actually just
14 continually updated that briefing note, so I think
15 there was some conjecture at court. I wasn't part of
16 the court process et cetera, but I know there was
17 something there in relation to the - she'd continued to
18 update that and put those details in there after it
19 kept going, so she'd use this as a running log,
20 I believe, was the explanation.

21 Well, if we turn over the page?---And that's why that was
22 put in there after that initial date.

23 If we turn over the page, it finishes there in the following
24 paragraph. There's no - and please, if you feel the
25 need to read through the entire document - there's no
26 reference to any other dates thereafter, after 21 March
27 2015. Isn't it most likely that this briefing note was
28 compiled over the course of a couple of days and then
29 it's been forwarded to yourself, other members of the

1 crew, and the other people you mentioned on 21 March or
2 shortly thereafter?---And I think that was the
3 conjecture. I think - my recollection of this was that
4 we got the briefing note prior to this, but this was
5 picked up through the defence during the court process.
6 You may be thinking there - and if this assists - that these
7 last two pages were not disclosed in the Form 32
8 material apparently due to a photocopying error; is
9 that what you're referring to?---No, I'm not. I do
10 know at some stage this was asked. When that briefing
11 note was done et cetera, it wasn't asked of me, but I
12 do know it was asked and I believe she'd used it as a
13 running log and gone - I think that was the
14 explanation.

15 You were certainly aware that the victim in this case had
16 produced a face-fit though, weren't you, as the
17 supervisor of this investigation?---I become aware
18 there was an incident about that, but I'm not - yeah.
19 I honestly can't recall that, and when it did come up
20 as conjecture during the court case, I honestly didn't
21 recall it at that stage either I don't think.

22 You didn't recall that there'd even been a face-fit at
23 all?---Look, I was aware there was a face-fit, and I
24 don't know whether I was made aware of that.

25 If I could go to Exhibit 49, please. This is a Crime
26 Command circular. If we just go down the page, you see
27 there's three images there, and at the very bottom of
28 the page it's dated 23 March 2015. You were certainly
29 aware of this circular, weren't you?---Oh, I would have

1 been. I can't recall the specifics of this back then,
2 but I would have been.

3 Because the process is that, once a face-fit is produced,
4 the analysts, I think it is, put together a circular
5 which is then disseminated by the informant throughout
6 parts of the police force; is that right?---Yeah,
7 that - effectively, yes.

8 And certainly as the supervisor of Detective Doyle's crew,
9 and the supervisor of the crew investigating this
10 particular offence, you would have been well aware that
11 this circular had gone out to other parts of the police
12 force?---Ah, maybe. I should have been aware and I
13 should be briefed up and it should be up to the
14 detective sergeant then briefing the senior sergeant on
15 where they're going with the investigation, at this
16 investigation stage, when that goes out and where it
17 goes out to and that sort of thing.

18 You said before you were aware that there'd been a face-fit
19 process, you'd been aware that there'd been a face-fit
20 produced; the reason you were aware of that is because
21 you'd seen this circular, surely?---Oh, I would - I
22 would say I was aware - well, I can say I was aware of
23 it because I recall going back there, and the issues
24 with this investigation and with Detective Doyle and
25 her management at that stage, so I can't - - -

26 As the supervisor of the crew, though, investigating this,
27 wasn't it your responsibility to know what was taking
28 place as part of the investigation?---That's correct,
29 yes, and that's what I said there, that the sergeant

1 and the senior - we'd have a meeting with the crew,
2 we'd decide which avenues we'd go, investigation
3 processes, what we released to media, what we released
4 to - circulars to other police units, et cetera, and
5 that would then be pushed up through the senior
6 sergeant or, if it was over a weekend, we might get
7 that out quicker. Sometimes these things get out there
8 by - the investigator themselves can put these things
9 out.

10 So, either you would have been involved in the initial
11 discussions about who to disseminate the circular to,
12 or you would have become aware of who it had been
13 circulated to very shortly thereafter?---That's
14 correct, I should have been. If she had have - - -
15 Not "should have been", you would have been aware?---No, I
16 may not have been. If I wasn't working that next week,
17 it might have gone out without me knowing, but someone
18 else might have ticked off on it but ...

19 Mr Leach, didn't you regularly meet with the members of your
20 crew to discuss the progress of the
21 investigation?---That's correct.

22 Didn't that involve looking at the evidence that you
23 had?---That's correct.

24 And the evidence that you needed to be able to identify
25 the - - -?---And that's correct, and by rights that's
26 how it should work, sometimes that stuff does go out,
27 but I can't recall back then if I released it or not.
28 It's a long time ago, I - - -

29 I'm not asking whether you're the one who released the

1 circular - perhaps we're at cross-purposes. I'm just
2 establishing that, surely you were aware of this
3 document?---I'm aware of this document, yes.
4 And you were aware of it at the time?---I honestly can't
5 recall back then, but I'm not - - -
6 COMMISSIONER: He's not sure. (To witness) Mr Leach,
7 Ms Doyle has given evidence and she has testified that
8 her crew and you, being someone who participated in the
9 crew meetings, were well aware of the fact that a
10 face-fit had been conducted by the eyewitness; did you
11 dispute that?---No, I would have requested that be
12 done, so I don't dispute that at all, I honestly can't
13 remember.
14 What you're taking issue with is how you first came to learn
15 about it - - -?---And honestly, sir, I can't remember
16 how I first came to learn of that, so.
17 Yes, I understand.
18 MS BOSTON: Certainly very early into the investigation you
19 were aware of this face-fit?---I, I don't know. I
20 should have been, and I don't - I can't hand on heart
21 say I was definitely aware early in the investigation.
22 There were three suspects identified fairly quickly in -
23 weren't there?---There were.
24 And that was from DNA left on balaclavas?---The DNA wasn't
25 quick, because that always takes a number of weeks,
26 but - - -
27 Certainly they were identified quickly?---They were, yes.
28 Could we go to Exhibit 562, please, while keeping up
29 Exhibit 49.

1 COMMISSIONER: Just clarify for me, Mr Leach, when did you
2 cease to be the supervisor for that crew?---Oh, 2016,
3 I believe, but Doyle was moved from the crew, it was
4 around September 15, I believe.

5 So, you were still supervising the crew at the committal
6 stage?---I don't think so, ah - no. I don't know
7 when - I think it was around September. Was this job
8 15?

9 MS BOSTON: Exhibit 129 might be of assistance,
10 Commissioner, this is Interpose, which I believe we've
11 got a hard copy to show you, it might provide you with
12 some assistance in being able to recall when you were
13 supervising. If that exhibit could please be provided,
14 129. This is from Interpose, I take it?---That's
15 correct.

16 What is the purpose of an investigation full response
17 report?---This is how the investigation's managed. So,
18 all the significant advances in that job are put down
19 the front page there so that senior sergeant, the
20 inspectors, can all monitor how the job's progressing.

21 It commences, the first entry, on 20 March the day after the
22 offence; that's obviously not your entry. We'll start
23 on that page. What's your VP number?---28722.

24 So, the first entry from you is that one which commences on
25 the first page, is it not?

26 COMMISSIONER: What page number is that, Ms Boston?

27 MS BOSTON: It ends on p.2795, that's your number, VP28722;
28 so, the entry above that is your entry?---So that's the
29 narrative? Yes.

1 And we see your number again in the comment dated 9 April
2 2015 on p.2795?---That's correct.

3 And on the following page, the investigation manager
4 comment, again, this is from you again at p.2796;
5 correct?---Nine-six, um.

6 It finishes at p.2798, halfway down the page there's your
7 number again, 16 April 2015?---Okay. That's correct.

8 If we look back at p.2796, at the bottom of that page, "The
9 victim provided a face-fit which was disseminated
10 through a circular. One suspect nominated, exonerated
11 the following day." That's an entry made by
12 you?---Definitely, yes.

13 So, certainly you would have been aware of the face-fit by
14 that stage?---On 16 April, yes.

15 And quite probably before that point?---Absolutely, yes.

16 There are a number of further entries by you in Interpose;
17 another one on p.2799 in relation to DNA analysis.
18 Another one on the following page and it began in
19 relation to DNA analysis, that's p.2800 and the
20 following page?---Right.

21 Turn to the following page, 2802. About halfway down the
22 page: "Investigation manager comment. Detective
23 Sergeant Leach, Crime Squad crew 5." At the bottom of
24 that entry: "All three suspects now processed.
25 Investigation in brief prep. Awaiting results on DNA
26 sample on Sovolos ...", he was one of the accused, was
27 he not?---That's correct.

28 " ... being obtained." What does that mean, "Investigation
29 in brief prep"?---It means that Julia's arrested the

1 offenders and interviewed them and either charged them
2 or released them on summons, and she's - - -
3 I take - - - ?---Sorry. And she's now in the process of
4 preparing briefs against those members - against those
5 offenders.
6 I take it the reason you're making these entries, as opposed
7 to Julia, is that you are actively supervising her in
8 that role?---That's correct.
9 Again, another entry by you at the bottom of that page and
10 over the page: "Doyle maintaining investigation"
11 ?---That's correct.
12 Turning to p.2806?---That's when she left my crew and went
13 over to crew 4.
14 Yes. So, this entry here is an entry from you which is
15 dated 17 December 2015: "Senior Detective Thorpe now
16 informant. Preparing brief for Sovolos and submitting
17 same"?---Yes.
18 Is what happened here, that Detective Doyle had in fact
19 prepared the brief for the other two accused and they
20 had their committal already?---Oh, no, I don't think a
21 committal would be that - oh, you might be well
22 correct; I don't think the committal would have been
23 that quick.
24 I withdraw that, but she'd certainly produced the brief in
25 relation to the other two accused?---Possibly. Yeah, I
26 believe so.
27 Is your recollection that she was in charge of preparing at
28 least one brief in relation to this operation?---I
29 received a phone call on the way home one night, and I

1 had Senior Sergeant Spencer with me, and it was James
2 Baker of the OPP who complained that the briefs hadn't
3 been served on time, and that was by Emma Turnbull's
4 office that were representing one or two of the
5 offenders. So, that caused a lot of grief, it was two
6 or three days over, so I wasn't quite aware at that
7 stage, so that's where we had to get Julia to prepare a
8 brief, she had fallen backwards as the investigator
9 with that with not getting that brief put together, or
10 put through a sergeant or a senior sergeant at that
11 stage, and that's why she went from my crew over to
12 crew 4, because she then complained that she'd been
13 bullied, so that was a matter of processing that. Then
14 where I've made the comment of Julia going - Detective
15 Thorpe managing the brief and taking over as the
16 informant, that's when I think Julia had gone off on
17 sick leave, not being able to work at Armed Crime.

18 There'd been a committal on 22 October 2015, and that's
19 before she left Armed Crime; is that
20 correct?---Possibly. The dates, I really don't have.
21 So, this entry here in relation to one of the accused is in
22 respect of a different brief, a subsequent brief; is
23 that right?---Ask that again, sorry?

24 The committal in respect of Mr De Luca and Mr Khaia took
25 place on 22 October 2015 in the Magistrates'
26 Court?---Oh, I believe so, I - yeah.

27 The committal in respect of the third accused took place at
28 a later date; do you recall that?---I really don't. I
29 imagine you'll be right, I'm not being evasive. From

1 memory, (indistinct) Khaia and De Luca may well have
2 been arrested, processed and charged and remanded, or
3 remanded maybe. Sovolos may well have been released
4 pending summons, and that might be why the committal
5 for those two was prior to Sovolos.

6 Turning over the page to p.2806, "Senior Detective Thorpe
7 now informant. Hand up brief submitted and
8 authorised", that's in respect of Sovolos
9 again?---That's correct. So, how that's occurred, if I
10 can explain, will be: at some stage Doyle may well have
11 not wanted to progress that and that brief may well
12 have come back to our crew to do, and the whole file
13 may come back to our crew to do. Sometime down the
14 track our crew had to manage the whole thing.

15 Do these Interpose entries assist you in working out when
16 you ceased being the supervisor in relation to this
17 operation?---They do at that stage, because you did a
18 handover to crew 4, and then it did come back at one
19 stage, the court matters did come back to us to manage.

20 So, when you say it was handed over to crew 4, what are you
21 referring to?---To the one where it says "crew 4" and
22 "Detective Sergeant Sullivan", that's when Doyle went
23 over onto his crew.

24 What page are you referring to?---You went back a couple, I
25 think.

26 COMMISSIONER: 2803, at the top of the page.

27 WITNESS: The one you pointed out. On 11 September.

28 MS BOSTON: Have you thereafter come back into the matter
29 when Detective Doyle ceased working on it and Detective

1 Thorpe took over that role?---From recollection,
2 I believe it came back to us, which was just - it was
3 just an in-house decision made; we don't want to pick
4 up these files so we'll send this one back to you;
5 okay, no worries.

6 And, at the time of the trial, were you the supervisor at
7 that point?---I was a supervisor at Armed Crime, but I
8 wasn't managing the trial; I was separated from that
9 because of the complaint filed. We had Thorpe, and
10 Thorpe then left and was promoted, and member called
11 Zoe Brunwyn had come into - she was on my crew to start
12 with, and because she was independent and new to Armed
13 Crime, she was then given the role of the managing the
14 court process as the nominal informant as Detective
15 Doyle was out at Dandenong or southern way and not able
16 to come back into crime; she could only come to give
17 evidence at the court matter, was the WorkCover ruling.

18 Could we bring up, please, Exhibit 49 which is the face-fit
19 and Exhibit 562 which is the three ultimate accused in
20 this matter, please. On the left is the circular which
21 you were referring to earlier. If we could adjust the
22 circular so it includes the descriptions underneath as
23 well. On the right, that's a photograph of Mr De Luca.
24 The prosecution case ultimately was that he was
25 offender 2. If we can turn to p.9343, that's a
26 photograph of Mr Khaia, on the prosecution case
27 offender 1. I suggest it would have been immediately
28 obvious to you, having been familiar with that
29 face-fit, that these two men - the face-fit and the

1 photograph of Mr Khaia look nothing alike?---Um, if you
2 take out the blonde hair and the blonde eyebrows, the
3 jaw so to speak, the face is not too dissimilar, but
4 they certainly don't look identical - I get that. I'm
5 not saying it's - - -

6 I suggest they bear no resemblance to one another, detective
7 Leach?---Okay.

8 You accept that, you agree with that?---Yeah, I - if I was
9 drawing you a picture, I wouldn't be able to do any
10 better either though, so I don't know. I'm not saying
11 they're identical.

12 COMMISSIONER: Does it matter?

13 MS BOSTON: It doesn't matter, Commissioner. (To witness)
14 The witness in this particular case had estimated that
15 it was a 50 per cent likeness between the offender and
16 the drawing that was - the face-fit that was compiled.
17 It would have been obvious to any investigator that
18 this face-fit would not assist the prosecution case; do
19 you agree with that?---Sorry, if?

20 It would not assist the prosecution case if this face-fit
21 were to be included in the brief of evidence?---Well, I
22 don't imagine that the face-fit would be included in
23 the brief of evidence.

24 And why do you say that?---Well, that's the investigation
25 side early, so identification, we would rely on
26 something significantly more than a face-fit to say,
27 well, that's the identity of the offender.

28 COMMISSIONER: You mean, it wouldn't be something which the
29 prosecution was intending to use as part of its proof?

1 Is that what you mean?---It never would be, no, Your
2 Honour. That matter is part of the investigation
3 process, so we would use that to see if anybody knows
4 who these offenders might be, et cetera. And so the
5 brief of evidence, I would like eyewitness evidence,
6 DNA evidence, other circumstantial evidence, but no,
7 that wouldn't be used as evidence, a face-fit or a
8 circular.

9 Because, why not?---Because I don't think they're inherently
10 valuable as far as evidence goes. I would hate to be
11 convicted on a face-fit that a witness does through a
12 picture; I think you need a lot more than that.

13 So you're saying as a general proposition a face-fit would
14 not form part of the prosecution brief?---No, they have
15 formed over the years I suppose, but generally you
16 would need a lot more than just that.

17 Sure?---And that very - - -

18 We're not talking about the full extent of the prosecution
19 brief, just the question of the face-fit?---Like, they
20 could be included in there I suppose, but - - -

21 But what was your approach to this face-fit?---I don't think
22 we even - I don't think it was even presented in the
23 brief to me when I checked the brief, and - - -

24 And your view was, it shouldn't have been?---Well, by the
25 time the brief came to me, it was not presented in
26 there and - when I checked it, and I didn't, um - and
27 it wasn't in the back of my mind that there's a
28 face-fit there we need to include, so.

29 You've moved to a different issue. I'm trying to understand

1 your view about whether or not this face-fit would have
2 been relevant to the prosecution case?---I don't think
3 it would have been relevant to the prosecution case,
4 no, um - no.

5 And then you moved to the question, and what did you
6 understand whether it was part of the brief?---It would
7 be discoverable on the - it's a long time since I've
8 checked a hand up brief; it would be on the Form 11, on
9 the front, other documents to be included as part of
10 the brief.

11 Would that have been your clear view at the
12 time - - - ?---Absolutely.

13 - - - that it was something that should be
14 disclosed?---Absolutely.

15 MS BOSTON: So, there was a form, whatever the number of the
16 form is, there was a form that would be included in the
17 brief, in any brief of evidence, listing other
18 materials in the possession of the police which the
19 police do not intend to rely be upon; is that
20 correct?---That's correct, yes.

21 Then there was a process, with the Form 32, the defence
22 would say which of those materials that they wanted; is
23 that right?---That's correct, there would be running
24 sheets, Interpose, investigation et cetera.

25 Was this face-fit included in the list of documents that
26 were in the possession of the police?---I can't recall.

27 COMMISSIONER: Is it part of your responsibility, as the
28 supervisor - different terminology used in the document
29 you were going through, I think they use the word

1 "manager" - but was that part of your responsibility,
2 to be sure that that which should be
3 disclosed - - -?---Yes, it is, sir, um - - -
4 - - - be included?---Yes, it is, and I may well have
5 overlooked whether that was there, or I may not have
6 looked up every item there, but there's a phrase they
7 include in that sheet there "all other documents
8 et cetera", so from that point of view that encompasses
9 anything that may well have been missed or to come up,
10 I suppose, so.

11 Let me go back a bit, if I may. If it was your view that
12 you don't normally find a face-fit as part of the
13 prosecution case, what was your view about whether or
14 not either the eyewitness who participated in the
15 face-fit or the officer who designated that there
16 should be a face-fit conducted, that there should be
17 reference in those statements to the fact that a
18 face-fit was conducted?---Absolutely. That statement
19 she made where she attended Crime ID and made the
20 face-fit et cetera, that would have been added to the
21 brief as part of the witness statement.

22 Was it?---I don't recall, Your Honour.

23 I'm sorry?---I don't recall whether it was on there or not,
24 I can't recall checking them.

25 MS BOSTON: I suggest to you, detective, that there was no
26 mention of the face-fit in the brief at all, and
27 specifically no mention of the face-fit in the victim's
28 statement, no mention of the face-fit in Detective
29 Doyle's statement, no mention in the police summary,

1 and it was not listed as an exhibit. No mention of the
2 face-fit whatsoever.

3 COMMISSIONER: And it was said to be a photocopying error
4 when the material was forwarded to the Office of Public
5 Prosecutions, the two pages of a briefing note that
6 contained a reference to the photo-fit, the identikit,
7 were omitted?---Okay. I believe that was the case. I
8 do recall when this became an issue at court though,
9 but all I can say is, I would expect that to be - the
10 statements to be in there, that she attended court and
11 what she did do, I expect those to be in the brief and,
12 if it wasn't in there it wasn't - I can't explain that.

13 MS BOSTON: It was your responsibility to check the brief;
14 correct?---That's correct.

15 Surely there is nothing more fundamental, in that role, than
16 checking that all relevant information has been
17 referred to at least in a list?---Um, that's correct.
18 In these circumstances I think the brief was provided
19 to me five days after it was due to be served on the
20 solicitors, and that was - I - and I can't recall if
21 this is the Sovolos brief or the other two briefs, or
22 whether they were all three at once. You might be able
23 to help me with the Sovolos brief, if I've checked
24 that.

25 In terms of?---Is there a brief head stating I checked that
26 brief? The Sovolos brief?

27 A brief head?---Yeah.

28 COMMISSIONER: I understand you had numerous tasks on your
29 plate. To what extent were you really relying upon the

1 officer in charge of the investigation, in this case
2 Ms Doyle, to what extent were you relying upon her to
3 properly include this material in the material to be
4 disclosed, to what extent were you relying upon her to
5 ensure that it was referred to in the relevant police
6 statements?---Incorrectly, I was relying a lot. At
7 this stage it was sometime after the brief was due, and
8 the brief was put on my desk and I had to explain to
9 her, and I spoke to James Baker at the OPP that I
10 really need to check it. So, I was trying to check
11 this brief, and I was writing notes next to the brief
12 there, and every time I walked away from the desk
13 Detective Doyle would pick it up, take it back to her
14 desk, quickly make some changes and, "Where's the
15 brief?" "Oh, I was just making those changes." "Let
16 me check the brief thoroughly first", so it was
17 actually a difficult time, and that's when I realised
18 she wasn't quite up to as much speed as what I thought
19 she was in the role, but I was relying on her a lot as
20 an experienced investigator. She'd been a detective at
21 Crime before I got there, she'd moved over to the Armed
22 Crime Squad from the Vehicle Crime Squad, I believe,
23 and I thought she was a lot more advanced than she was.
24 One of her comments to me was, "Why can't the rest of
25 the crew do the brief? Why do I have to do it? I
26 don't enjoy doing briefs and paperwork. I only like
27 catching the crooks and doing investigations", and at
28 that stage it occurred to me, she's quite
29 inexperienced. And at that stage we then had to

1 start - that's where she started to feel pressure and
2 she went off on WorkCover shortly - - -
3 We don't really want to get too much into that, Mr Leach,
4 but the obligation to disclose relevant information
5 extends, doesn't it, to material which doesn't help the
6 prosecution case but might help the defence case?---Oh,
7 it's everything, absolutely I agree.
8 That's fundamental to the obligation of disclosure, isn't
9 it?---That's correct, Your Honour, and I do agree that
10 should be there part of it and referenced in there.
11 Did you ever get any sense that Ms Doyle had no idea that
12 that was part of her obligation?---Oh, as a result of
13 this, of course, yeah, in hindsight but - - -
14 But prior to that?---Only when we started to go through that
15 process and trying to get the brief together, and a
16 number of other people helped to put that brief
17 together towards the end.
18 MS BOSTON: One of your responsibilities as the manager or
19 supervisor of the crew was to check the brief before it
20 was filed and served. Another of your responsibilities
21 was to check the response to the Form 32 in terms of
22 what material was provided to the parties;
23 correct?---That's correct.
24 And there was no mention of the face-fit material in that
25 process either?---That's correct.
26 Other than a note in Ms Doyle's diary that it was to be
27 arranged, and on the day of the face-fit a reference to
28 "Crime ID" was the only reference in those forms, so in
29 two materials. That was your responsibility at that

1 stage?---When checking that brief? Of course, yes, I
2 agree.

3 And checking the Form 32 materials?---That's correct.

4 And there was no time pressure in respect of that
5 obligation?---Absolutely, there was. We were already
6 five days over service date.

7 Is it, again, the most fundamental obligation to ensure that
8 everything is provided, even if it's late?---That's
9 correct.

10 So, even if the date for provision of that material has
11 passed, there's an ongoing obligation to disclose
12 relevant material to the defence?

13 COMMISSIONER: I don't think the witness was suggesting that
14 he didn't believe the obligation was there, he's simply
15 proffering an explanation for why things may have been
16 overlooked.

17 MS BOSTON: Yes, Commissioner.

18 COMMISSIONER: Is that the position?---That's correct, Your
19 Honour. And I did do a briefing to the next crew
20 sergeant in relation to Doyle's, um, Doyle's files that
21 she took across with her, I put it up through my senior
22 sergeant - these are the investigations she's got and
23 she's taking with her and these - and the Mothballing
24 brief, I made comments in relation to that of where
25 there were shortcomings in there, and one of them was
26 to obtain more statements, to identify a number of
27 other things to do. So, there was certainly a lot more
28 to be done in relation to that investigation, even
29 though the briefs were being checked and served.

1 MS BOSTON: What kind of training had you had in relation to
2 that brief checking process?---I'd attended the brief
3 checking course.

4 If we go to Exhibit 1066. This may not be the correct -
5 this might not be relevant, but just in the event that
6 it is. We've had evidence from another witness that
7 this document was used in respect of sergeants being
8 taught about the brief-taking process. Is that a
9 document that you're familiar with?---Um, no.

10 So, you went to some kind of course to be taught about
11 checking briefs; is that right?---That's correct.

12 And, when did that occur?---Would have been when I was
13 promoted to sergeant, so 2009 maybe.

14 To the best of your recollection, what did that course focus
15 on?---The checking of a brief.

16 What kind of things did they focus on in terms of what your
17 role in checking briefs would entail?---Clearly -
18 clearly the checking of the brief: the relevant
19 evidence, the - yeah, everything that was included in
20 your brief, ah, what exhibits, how to put it together,
21 where to look at shortcomings; where briefs had failed
22 before, they would go through different briefs that had
23 certain things in there that had got to court that
24 clearly shouldn't have been there, that weren't
25 admissible, and all that sort of stuff.

26 COMMISSIONER: It's material that needed to be disclosed to
27 the prosecution so that they could in turn determine,
28 in accordance with the prosecution's obligation, that
29 there be full disclosure to the defence;

1 correct?---That's correct, yes.

2 Because a prosecutor has an obligation to make sure that

3 material that might be exculpatory is in the hands of

4 the defence?---That's correct.

5 And this material was neither in the brief or in the

6 response to the Form 32 request?---That's correct.

7 Can I just ask you about the identification issue. Here is

8 a witness who said from the outset, "I'm 100 per cent

9 certain that I can identify this offender if I see him

10 again." Are you familiar with the fact that she was

11 that confident?---In this matter?

12 In this matter?---No, I wasn't, no. I may well have been,

13 sir, that may well have been relayed to me at some

14 stage but - - -

15 Well, I think we can assume that, as someone involved in the

16 investigation at the level you were, you would have

17 become aware of that at some point. When the

18 particular accused, offender 1, was interviewed before

19 his arrest, he declined to make any comment. But, as

20 Ms Doyle said this morning, he was not given the

21 opportunity - he was not asked whether he would be

22 willing to participate in an identification

23 parade?---Okay.

24 You would have been aware of that?---Is this Khaia? Or

25 Mr De Luca?

26 Yes?---Khaia?

27 Yes?---Okay.

28 So, presumably you would have become aware of that. What's

29 the process to be followed, Mr Leach, where a witness

1 who's about to be arrested has declined to comment in
2 an interview and no identification parade is conducted?
3 What is the option that's clearly open to the
4 investigators that remains in relation to
5 identification?---My advice to Doyle and OC - I
6 remember doing the search warrant and the arrest of the
7 offender (indistinct) back, so I can't recall exactly
8 what's happened, but if she has come into me and said,
9 "He's declined a - he's no commented and he's declining
10 an identification parade", I would then ask her to seek
11 advice from his solicitor, to get that in an email or a
12 phone call or something back saying, will he
13 participate in an identification parade. Once that's
14 rejected by the solicitor, we would then progress to a
15 photo board, so 12 photos.

16 So, as Ms Doyle's explained this morning, she omitted to
17 invite him to participate in an identification
18 parade?---Okay.

19 But, that aside, what's the explanation for why no
20 photo board procedure was followed?---I - I don't know.

21 Standard procedure in the event that there's no
22 identification parade and there's every reason to think
23 that the witness can identify the offender?---That's
24 correct. The only reason maybe that wasn't done in
25 this case was that there's DNA evidence of Khaia that
26 identified him as being the - - -

27 Which was, what, thought to be enough?---Maybe that's the
28 reason why that wasn't asked, I - usual progress is,
29 then go down that path of identification, unless he'd

1 made admissions and there's other obvious - but that's
2 right.

3 But then what I'm really seeking to do is to sharpen your
4 focus on the fact that identification was a critical
5 question involved in how the investigation progressed
6 with respect to offender 1?---That's correct, um - - -
7 And, therefore, the fact that the victim had already done a
8 face-fit was not something that one would have lost
9 sight of?---We clearly did with this matter, obviously.
10 But, um, with Khaia I believe it might have been DNA in
11 wet blood at the scene inside the house, I believe that
12 might have been the identification evidence as part of
13 the - and I believe that was his identification
14 evidence there, so that might be why the other avenues
15 weren't explored.

16 I think you were going to take the witness to training
17 issues.

18 MS BOSTON: I will take that up in a moment, Commissioner.

19 (To witness) But just going back to the committal, I
20 take it, you wouldn't have attended the
21 committal?---No.

22 Would you have read the transcript of the committal?---No, I
23 didn't.

24 In terms of training, you had the course in relation to
25 checking briefs in about 2009. To the best of your
26 recollection, how long was that course?---I believe it
27 was part of the sergeant's course, it was one of the
28 many qualifications you got out of that. So, it was a
29 two or three week course at the Academy, and that was

1 one of the components of it.

2 So, it wouldn't have been a particularly lengthy component

3 of that course?---Um, not particularly lengthy, no.

4 Is it fair to say that the focus of that course was on the

5 technical requirements of what needed to go into a

6 brief in terms of forms and so forth and making sure

7 that the elements of the offence were satisfied? Was

8 that the focus of the course?---From my recollection,

9 yes, that would be.

10 You certainly don't remember a particular emphasis being

11 placed on ensuring that everything relevant had been

12 disclosed in the brief of evidence?---I can't recall,

13 sorry.

14 You'd accept now that it's clear that Detective Doyle didn't

15 appreciate the obligation that she had as a police

16 officer to ensure that all relevant material was

17 disclosed, including material which may tend to assist

18 the defence?---Absolutely.

19 You'd accept, wouldn't you, that some responsibility for

20 that, for not making sure that she understood that

21 fundamental obligation, isn't that part of your role as

22 her manager?---Yeah, absolutely it's part of my role,

23 yes, I - - -

24 To make sure that she understood such a fundamental

25 responsibility?---Absolutely, and that was - right then

26 I realised we had to start developing her and helping

27 her, she wasn't quite as advanced as what I thought she

28 was, so.

29 She'd been in the police force for some eight years by that

1 time?---That's correct.

2 Would you have expected that that's an obligation that a

3 police member should know from the very beginnings of

4 their career?---Yes.

5 There's clearly been a failure, in this situation, a failure

6 of training this particular member?---That's correct.

7 And that's the same training that other police members also

8 would have had?---That's correct.

9 There's a real risk, isn't there, that there are other

10 police members who will similarly don't understand that

11 they must disclose all relevant material irrespective

12 of whether it helps or hinders the prosecution

13 case?---I imagine there probably is, yes.

14 COMMISSIONER: That document, the form that's filled out

15 which identifies relevant evidence but goes on to say

16 "but not relied upon", is that a form that can give

17 rise to misunderstanding then?---I suppose it could be.

18 There's a part of it on there "any other documents or

19 exhibits", they put that disclaimer on the bottom of

20 that part, I suppose.

21 Yes?---In this matter it should have been picked up by

22 Mrs Sawan's statement from attending - all of those

23 statements that she actually did should have been on

24 the brief. Every time a statement is taken - there's

25 definitely a statement taken, "I attended Crime ID",

26 that should have been put on there, or there should

27 have been a statement made for that and there should

28 have been - taken for that and that should have been

29 put on there, which then would have alluded there was

1 something else there, so that was definitely a
2 shortcoming, and I'll take responsibility for not
3 seeing that on the brief when I did check it.

4 But can you think of any reason why, even if there's a
5 misunderstanding about whether there's an obligation to
6 disclose it, why it wouldn't have been listed on the
7 matters obtained by the prosecution but not relied
8 on?---It definitely should have been listed there
9 separately, absolutely.

10 And, had it been, then you might have picked up that it
11 wasn't actually then part of the response to the
12 Form 32?---That's right.

13 MS BOSTON: At the stage of the trial, you were still at the
14 Armed Crime Squad?---Um, yes.

15 Perhaps I'll ask that in a different way. Do you recall
16 there being an issue of the face-fit not having been
17 disclosed and that coming up as an issue in the
18 trial?---I do, yes. I think the trial ended once I'd
19 moved from Armed Crime and gone out to perform some
20 temporary duties out in the ordinance.

21 So it would have been clear to you at that point that
22 Detective Doyle had a fundamental misunderstanding of
23 the obligation of disclosure?---Oh, I was well and
24 truly aware there was a lot of shortcomings with
25 Detective Doyle's experience and ability there, I
26 suppose, at that stage. But at that stage I was not to
27 be involved in it and we had a (indistinct) informant
28 and, as you do, I would hear updates from the trial but
29 I wouldn't get involved in reading anything or be - - -

1 I'm just really focusing on, you would have understood at
2 that point that there'd been a fundamental
3 misunderstanding by a member of your crew, at that
4 stage, as to her obligation of disclosure?---She's well
5 off my crew by then.

6 No, but she'd been in your crew at the time of the
7 compilation of the brief?---That's correct.

8 You also would have appreciated that something had clearly
9 gone wrong in the brief checking process for this
10 fundamental matter to have been overlooked?---Yes.

11 What steps did you take - - -

12 COMMISSIONER: Where the balance of the crew also failed to
13 pick up this omission?---Not so much, um, because this
14 was put together by Doyle and I was checking it. The
15 other crew were doing other jobs, et cetera, so when it
16 got to this stage they weren't doing - putting that
17 stuff together, it comes back to the detective or the
18 leading investigator, I suppose.

19 What about Mr Thorpe?---That brief had been submitted by
20 that stage, I think.

21 Yeah?---So, what he was picking up was really catching up,
22 so yeah, he may well be expected to pick that up, but
23 at that stage he was more taking back over the file -
24 there were some issues with DNA which was being
25 challenged quite regularly at court, and he'd picked up
26 that part of the brief and was running that part of it,
27 so as it progressed into the committals and things like
28 that.

29 Is this the only occasion, Mr Leach, in your experience as a

1 police officer where you've encountered a police
2 officer failing to recognise they had to disclose
3 something as relevant even though it didn't assist the
4 prosecution case?---Um, that's the only one I can
5 recall off the top of my head, yes. But this was
6 really a mess, this one.

7 MS BOSTON: On that note, there's been evidence before the
8 Commission of a practice, certainly existing at the
9 time you came into the police force, an apparently
10 common practice of, instead of recording in a witness
11 statement all information given by the eyewitness to an
12 offence, recording a description given by that witness
13 at the same time but on a separate document. Is that a
14 practice that you've come across in the course of your
15 career?---As in a LEAP report where you put a
16 description, of someone in a LEAP report where you tick
17 and flick the colour of the hair, the skin, the - is
18 that what you're saying?

19 Well, in that situation, would the information also be
20 included in the statement?---Ah, yes.

21 So, you're not aware of a practice of omitting that detail
22 from the statement and instead recording it somewhere
23 else?---No.

24 Going back to your awareness that a couple of things had
25 gone seriously wrong here, in that, there was a police
26 member who had been a part of the force for some
27 eight years who didn't know of this fundamental
28 obligation, and secondly, that the significant and
29 fundamental omission had not been picked up in the

1 brief checking process, what steps did you take, upon
2 realising those two fundamental deficiencies, what
3 steps did you take to ensure that such errors didn't
4 occur again within the police?---Didn't occur again?
5 Um, I didn't take anything corporate-wise, I treated it
6 as an individual incident, and clearly as I checked
7 briefs after that there was certainly a lot more focus
8 on those sort of things. Doyle herself had moved from
9 my crew and then gone off and worked away from Armed
10 Crime very quickly after that, or she'd gone off on
11 sick leave, so we couldn't address or manage any - we
12 started to try and manage her and that's when she went
13 off sick. As far as this coming out was, obviously as
14 the job progressed, that this was when she was coming
15 back in and giving evidence in court it was brought to
16 our attention, so clearly that's a mistake; I was
17 briefed up on where it went wrong and what it was, so
18 from there obviously individually I would - or
19 personally I would be a lot more thorough in checking
20 that statement.

21 This isn't an individual problem though, is it? It's, an
22 officer of eight years experience did not know of that
23 obligation; isn't that a fundamental problem with
24 training and education within the police force to
25 ensure that all police officers know of that
26 fundamental obligation?---But the question you asked
27 was what I did.

28 Yes?---And I didn't take anything broadly, I dealt with it
29 on a personal level, I suppose, I certainly I checked

1 (indistinct), I certainly didn't expand it and - - -
2 Doesn't that indicate, this whole episode indicate there's a
3 need for further education within the police force to
4 ensure that all police members know of this fundamental
5 obligation?---I - I - I can't answer that, I don't - I
6 don't know how broad it is, but this was a mistake I
7 dealt with, I was involved with. There were a lot of
8 other shortcomings of that member of eight years, there
9 was a lot of other things that then rose out of that,
10 so I can't specifically say it's a force-wide problem
11 because there were a lot of other issues she had
12 certainly - well, relating to her behaviour, not in
13 relation to this particular incident as well, so.

14 COMMISSIONER: Were you interviewed by Professional
15 Standards?---I was interviewed by, um, WorkSafe and I
16 provided a response - - -

17 I'm not really interested in that, Mr Leach?---No, and it
18 was - yeah.

19 I'm interested in the formal issue of Ms Doyle's expertise
20 in this area. Were you interviewed by Professional
21 Standards?---Yeah, as a result of that, the complaint
22 was - that was rejected, as a result of that the
23 complaint was made to RSPB by Doyle, and wasn't
24 formally interviewed. I sought advice from the
25 association and there was protection around what they
26 call - which is a branch of PSC, a protection around
27 what they call 171 or 86Q of the Police Act that gives
28 me protection to answer fully without it being able to
29 be used. So, they weren't able to provide that at that

1 stage, I think they have that now, and I sat down with
2 the director of the RSPB and explained where I was at,
3 and I said, "I'm happy to provide the statements
4 et cetera, and the responses, but without that
5 protection I've been advised not to because of the
6 civil action", et cetera, so.

7 I'm really only wanting to focus on one aspect of their
8 investigation, and that is the issue which emerged and
9 which resulted in Ms Doyle being exonerated from any
10 question of there having been a deliberate decision not
11 to provide the defence with the face-fit, namely, that
12 she simply didn't know that there was such an
13 obligation to disclose that material. Did you have any
14 discussions with the internal investigators about that
15 issue, of her lack of expertise and training?---No, I
16 wasn't aware she was investigated or interviewed over
17 that; I had no idea.

18 MS BOSTON: Commissioner, if we might just have a five
19 minute break?

20 COMMISSIONER: Yes, certainly. Almost finished, Mr Leach.

21 Hearing adjourns: [3.31 pm]

22 Hearing resumes: [3.37 pm]

23 COMMISSIONER: Have a seat, Mr Leach. Any further
24 questions?

25 MS BOSTON: No, Commissioner, and I see no reason why the
26 witness can't be excused.

27 COMMISSIONER: Very good, thank you.

28 Did you want to say something, or is there
29 anything that you'd like to ask the witness about,

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Ms Kaddeche?

MS KADDECHE: No, Commissioner.

COMMISSIONER: You looked as though there was something you wanted to say, Mr Leach, was there?---I'm fine, thanks, sir.

Very good. I'll formally excuse you and release you from the summons and the confidentiality notice. I thank you very much for your attendance and your assistance.

COMMISSIONER: Adjourn the court until 10 am tomorrow morning.

Hearing adjourns: [3.38 pm]

ADJOURNED UNTIL THURSDAY, 14 FEBRUARY 2019