
TRANSCRIPT OF PROCEEDINGS

INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

WEDNESDAY 20 FEBRUARY 2019

(9th 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, Mr Rush.

2 MR RUSH: Thank you, Commissioner. I call Ms Eden.

3 <ROSEMARY ELIZABETH EDEN, sworn and examined:

4 COMMISSIONER: Mr Marquis, you represent Ms Eden?

5 MR MARQUIS: I do, Commissioner.

6 COMMISSIONER: Very good, I give you leave to do so.

7 Ms Eden, when you were served with documents, your
8 summons was one of those documents and it set out the
9 matters about which you might be questioned today, I
10 just need to remind you as to what those matters are.

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

22 Following questions which will be asked by counsel
23 assisting and any cross-examination which I give leave
24 to take place, Mr Marquis will have the opportunity to
25 ask you any questions to have you elaborate on anything
26 that you want to, and I will, at the end of your
27 evidence, determine whether or not there's any reason
28 why you should be further the subject of summons or
29 whether you can be discharged from any further

1 attendance.

2 When you got the documents you received as well, a
3 document headed, "Rights and Obligations"?---Yes, sir.
4 Has Mr Marquis explained to you those rights and
5 obligations?---Yes, sir.
6 Do you wish me to return to them?---No, sir.
7 You understand that what's important is that you answer the
8 questions, you answer them truthfully and, so long as
9 you do so and subject to some exceptions, your answers
10 can't be used in evidence against you. Do you
11 follow?---Yes.

12 Yes, Mr Rush.

13 MR RUSH: Ms Eden, could you state your full name again,
14 please?---Rosemary Elizabeth Eden.
15 Do you attend here in response to a summons that was served
16 on you on 8 February of this year?---Yes, I do.
17 Would you have a look at the documents. Is the summons
18 numbered SE2919?---Yes.
19 Did you receive a statement of rights and
20 obligations?---Yes, I did.
21 Together with a confidentiality notice?---Yes, I did.
22 Did you also receive a covering letter of 8 February
23 2019?---Yes, I did.
24 I tender those documents.
25 #EXHIBIT Y - Documents served on summons to Ms Eden.
26 Ms Eden, are you urgently a detective sergeant at Victoria
27 Police?---I'm a sergeant, not a detective sergeant.
28 Where are you stationed or based?---I'm based at
29 Intelligence and Covert Support Command, Special

1 Projects Unit, affidavit preparation section.
2 Just to go through some preliminaries, I know we've been
3 through them before, but did you commence at the Police
4 Academy in December 1984?---Yes, I did.
5 Did you graduate from the Academy in April 1985?---Yes, I
6 did.
7 After that, did you undertake uniform duties at Carlton and
8 Hawthorn?---Yes, I did.
9 After a period of time, did you commence or have a
10 secondment to the Drug Squad?---Yes, I did.
11 Do you recall approximately when that was?---That was 1990;
12 I believe it was a three month secondment from
13 about February to May 1990.
14 Was it before that, or after that, that you did detective
15 training?---It was after that.
16 Was it immediately after that, that you did detective
17 training?---No. I obtained a position at Fairfield CIU
18 and did Detective Training School whilst there.
19 So that would be?---It was in 1990 that I did it, I think it
20 was about July I commenced.
21 Were you at the CIU at Fairfield for approximately five
22 years?---Correct.
23 Then did you have a position with the Major Fraud Squad
24 ?---Yes.
25 Did you then go from the major Fraud Squad to the Homicide
26 Squad?---Yes.
27 Approximately when was that?---I've got a record of my
28 service, can I refer to that, please?
29 Thank you.

1 COMMISSIONER: Yes, of course.

2 WITNESS: December 1996.

3 MR RUSH: Then, were you in the Homicide Squad until you
4 took maternity leave in March 1999?---Yes, I believe it
5 was March or April, I can't recall.

6 At the end of 1999, did you resign from Victoria
7 Police?---Yes, I did.

8 After a period of various civilian work, did you rejoin the
9 Victoria Police force in 2005?---Yes, I did.

10 Since 2005, have you been in the uniform branch or?---I was
11 at the uniform branch at Boroondara Police Station -
12 again, I can refer to this - until December 2006; then
13 I went to Box Hill, it was called SOCA then, the Sex
14 Offence and Child Abuse Unit, which became Sex Offence
15 and Child Abuse Investigation Team. I remained there
16 until March 2017 when I took promotion at Special
17 Projects Unit where I am now.

18 When you joined the Homicide Squad, what crew were you
19 allocated to?---I believe I was on Senior Sergeant
20 Bezzina's crew to start with and then moved to Senior
21 Sergeant Collins' crew.

22 I don't know if the record helps, but do you recall how long
23 you were with Bezzina's crew before Collins' crew?---I
24 don't have that information, but I believe it was a
25 very short time, maybe a month or two.

26 If I could go back to 1985 and your time at the Police
27 Academy. Firstly, part of the course involves
28 instruction in relation to statement taking?---I don't
29 recall specifically instruction about statement taking

1 at the Academy, it was a very long time ago I'm afraid.
2 Do you recall some form of instruction or education about
3 what should go in and what should stay out of
4 statements?---I don't remember what I was taught at the
5 Academy.

6 Are you aware of a practice, when you left the Academy, of
7 not putting descriptions of offenders in initial
8 statements?---Yes, I am.

9 Was that something that you picked up at the Academy?---I
10 can't recall whether that was taught to me at the
11 Academy or whether that was something I was taught from
12 senior members as a trainee.

13 You gave some evidence to IBAC in July last year?---Yes.
14 Perhaps if we could bring that up, Exhibit 420.

15 COMMISSIONER: Have you looked at that evidence?---No.

16 MR RUSH: Perhaps if we start at p.4829. In the middle of
17 the page, and I was asking you questions back then, do
18 you see the question: "What would you say to the
19 proposition of, that at the Police Academy there was
20 training that police officers should leave out of their
21 statements information concerning the identity of
22 potential offenders, deliberately leave it out."

23 Answer: "You mean the descriptions?" Question: "The
24 description." Down the page you said: "The
25 description, yes. We used to not put descriptions in.
26 That changed when I came back into the police force and
27 started looking at other people's statements. It was
28 common practice that you put the description in but I
29 remember when I went through the Academy descriptions

1 weren't, or detailed descriptions weren't put in."
2 Question: "And was there a reason given for that?"
3 Answer: "I don't remember." So, to jog your memory,
4 you suggested on your oath back in July that it was
5 something that you picked up or remembered when you
6 went through the Academy?---That was my belief, and I
7 have been thinking about it since then, and I can't
8 recall whether we were taught that at the Academy or
9 whether it was a practice that I was taught when I went
10 to my first training station or during my period as a
11 trainee.

12 It may be of assistance to you: did you know Detective
13 Senior Constable Kelly who worked in Mr Bezzina's squad
14 at homicide?---I don't recall him.

15 He also was in attendance at the Moorabbin Police Station on
16 16 August 1998. No recollection?---I didn't go to the
17 police station.

18 I know you weren't at Moorabbin, but you were involved after
19 16 August 1998, heavily involved in relation to the
20 collation of statements?---Yes.

21 And you have no recollection of Mr Kelly?---I don't recall
22 him. I may know his face if I see him .

23 He also has given evidence that he was taught that practice
24 at the Academy, which would be consistent with your
25 evidence back in July of last year?---Well, as I say, I
26 was of the belief that that's where I was taught that
27 practice, but I can't recall whether it was actually at
28 the Academy or whether it was from more experienced
29 members whilst I was a trainee.

1 Just dealing with it at the Academy, was not statement
2 taking and what should go into statements and what
3 should be left out of statements, was that not dealt
4 with at the Academy?---I can't recall, I'm assuming it
5 would have been, but I just don't remember.

6 Because much of a police officer's work is involved in
7 either making their own statements or taking statements
8 from witnesses?---Yes.

9 It is of particular significance, in relation to statement
10 taking, that a police officer has an understanding of
11 the relevant material that should be in
12 statements?---Yes.

13 It's not as though police officers go to the Academy and
14 come out of the Academy without, I'll put it to you,
15 some form of instruction in relation to what is going
16 to be a major component of their duties?---That's
17 probably correct but, as I say, I just don't remember.

18 COMMISSIONER: That's all right, it's not a memory test,
19 Ms Eden?---It was a very long time ago, sir.

20 MR RUSH: So, whether at the Academy or picked up in your
21 police duties, what was it in relation to - what was
22 the nature of the practice that you adopted once a
23 police officer in relation to statement taking from
24 witnesses, concerning identity of offenders?---The
25 practice was that the description of the offender or
26 suspect was put onto a separate piece of paper and
27 attached to the statement.

28 What was the reason that was given for that?---I don't
29 recall.

1 COMMISSIONER: When you first heard of that practice, you
2 were still a relatively junior officer,
3 inexperienced?---Yes, sir.

4 But as you became experienced are you able to, drawing on
5 your experience, think of any justification for such a
6 practice?---No, sir, only that it was the practice at
7 the time.

8 MR RUSH: And, at least during that first period of time
9 that you were in the police force, a practice that you
10 followed?---Yes.

11 And, as far as you know, other police officers
12 followed?---Yes.

13 Have a look at Exhibit 103, which is the patrol duty return
14 of 16 August signed by Senior Constable Poke and Senior
15 Constable Thwaites. Turning to p.2284, at the bottom
16 third of the page, under "air 492 assisting", I think
17 there's "KG", a reference to the Canine Squad?---Yes.

18 If we go a bit further down, "Two male offenders, one on
19 foot, possibly second. Hyundai, Mazda 323. No further
20 detail. One of the offenders said to be 6'1, 6'2, long
21 dark hair, three to four day growth. Blue check shirt,
22 blue jeans. No further detail." It would be
23 consistent with the practice identified if that police
24 officer, upon making a statement, was instructed to
25 leave out specific details of the height, the growth
26 and the clothing of the offender?---Well, the practice
27 that I was aware of was that the detailed descriptions
28 were not included in the statement.

29 And if here, according to the evidence of Mr Thwaites, a

1 detective senior constable at Moorabbin instructed him
2 not to put that detail in, that would be consistent
3 with the practice that we've described?---I would agree
4 with that, yes. I wasn't there, so I can't comment on
5 whether that was said or not.

6 But on the basis that you accept the evidence, it's
7 consistent with the practice?---Yes.

8 And, although adopted, you can't give a reason as to why it
9 was adopted?---No.

10 It's fair to say, is it not, that you can think of no
11 legitimate reason why that practice would be
12 adopted?---I would agree with that.

13 COMMISSIONER: So although you can't now recall what you
14 were taught at the Academy, has it always been your
15 understanding that officers should ordinarily, when
16 taking a witness statement, include everything of
17 relevance to the matter being investigated that the
18 witness proffers?---Are you talking about practice now,
19 sir, or back then?

20 Well, leaving aside this practice of not including a
21 description, has it always been your understanding
22 that, if you take a statement from a witness,
23 everything of relevance that the witness tells you
24 should go into the statement?---Yes, sir.

25 Has there been any period of time when you've been taught
26 otherwise?---Not that I can recall, sir.

27 MR RUSH: The problem, Ms Eden, with that practice is,
28 obviously at trial description and identity becomes an
29 important aspect of the trial?---Yes.

1 In Detective Senior Sergeant Collins' crew, you worked with
2 Sergeant Buchhorn?---Yes.

3 And I think another sergeant, Fiona Richardson?---Yes.

4 And Senior Constables Hickman and Walsh(?)?---Yes.

5 At some stage everyone in that crew was seconded to
6 Operation Lorimer?---Yes, the whole crew went.

7 At some stage later, did Sergeant Paul Dale join that
8 crew?---I can't recall, but that's possibly correct.

9 As far as you are aware, the practice that we've spoken
10 about, of not putting identities in first statements,
11 was followed by other officers in your crew?---Yes, I
12 believe so.

13 Was there anything about the practice taught to you or
14 raised, to the best of your recollection, at Detective
15 Training School?---I don't recall.

16 COMMISSIONER: Just to complete the picture with respect to
17 this practice, you've explained that the practice
18 involved not recording a detailed description if the
19 witness was able to give it. What did the practice
20 require as to what you would do if later that
21 description needed to be a part of the evidence that
22 the prosecution was going to rely on? What did the
23 practice require that you then do if it became
24 apparent, we need to use the detailed description which
25 the witness gave?---Sir, I'm struggling to remember,
26 but I believe that it would have been included in the
27 brief of evidence.

28 What, the note?---Yes.

29 Have you ever at any stage been taught what is the correct

1 process to follow if a witness, having made a
2 statement, later provides further relevant
3 information?---Then a subsequent statement would have
4 been obtained.

5 Yes, I think we've heard evidence, required a supplementary
6 statement?---Or subsequent supplementary, yes.

7 But you don't recall that, as part of the practice of not
8 including the description, there was any established
9 process for later getting that description into
10 evidence?---I believe it would have been as an exhibit.

11 So, who would produce it?---I believe the informant would
12 exhibit - would produce that exhibit as a description
13 obtained from that witness.

14 Perhaps we might come back to this issue a little later in
15 the examination, Mr Rush.

16 MR RUSH: Perhaps if I could just follow on, Ms Eden. You
17 say "you believe the informant". As far as a
18 deliberate practice of ensuring descriptions of
19 offenders were made available at trial where identity
20 was an issue, are you aware of such a practice?---From
21 my memory, that's the way I included that evidence,
22 would be as an exhibit.

23 Is what you're saying there, is that you would hope it would
24 be included as an exhibit?---Well, I would have
25 included it as an exhibit in my briefs of evidence.

26 Is it fair to say that, in July, you were trying to recall
27 trials where this may or may not have happened, but you
28 couldn't really recall anything particular?---Correct.

29 You were then asked if you were aware of any practice in

1 trials perhaps where there was that inconsistency of
2 ensuring disclosure of identity at trial, and I suggest
3 you answered: "No, I'm not aware of any practice."
4 What I want to follow up that with, really what my
5 question was aimed at: you're not aware of any formal
6 practice of ensuring that the identities that are not
7 included in first statements are made available where
8 identity is an issue at trial?---Look, I can't recall
9 specific instances in my career, but it's my belief
10 that the descriptions were put in as exhibits on the
11 brief.

12 COMMISSIONER: So, to do that, do you mean you'd make a
13 statement - if you were providing information for the
14 brief, you would make a statement about taking the
15 statement from the witness and the fact that an
16 additional description was provided and you would
17 append that to your statement?---It was not part of my
18 statement as such as an informant in a matter, but say
19 the witness A provided a statement, and then there
20 would be an exhibit which would, you know, "Description
21 provided by witness A" in relation to the suspect or
22 however it was worded. That's my belief of what used
23 to occur.

24 MR RUSH: Would not a description sometimes be put in a
25 police officer's notebook?---Yes.

26 Or a diary, rather than on a separate piece of paper?---It
27 would depend on when that description was obtained.
28 So, like the running sheet that you showed me, a
29 description was put in on that, but when a witness came

1 to making a statement and there might be more detail,
2 it would be put onto a separate piece of paper.

3 Did you have anything to do, during Operation Lorimer, with
4 the oversight of statements that were obtained during
5 Operation Hamada?---No, not that I'm aware of.

6 I want to show you an example of a statement taken during
7 Operation Hamada, Exhibit 324. It's a statement, you
8 see, of Ms Shirley Ng, who worked as a waitress, if we
9 go down the page, at the Jade Kew Restaurant at Walpole
10 Street, Kew. In the next paragraph she's giving
11 details of an armed robbery that occurred on 27 June
12 1998. Without taking you through it line-by-line, if
13 we go to p.3516, down the page to the paragraph where
14 she says: "Then all of a sudden a male with a handgun
15 came around the corner wearing a plastic mask covering
16 the head." The last paragraph on that page: "Then
17 seconds later the second offender appeared behind the
18 one with the gun. We all got down on the floor." Over
19 the page she says: "The first one was yelling out." In
20 the third paragraph on that page, refers to: "The
21 second one then started to tie us up." And the next
22 paragraph: "The first one came back out of the kitchen,
23 was asking where the money was." In the second-last
24 paragraph on that page: "I didn't see much after this
25 due to being on the ground." Over the page, she refers
26 to further conversation. In the middle of the page:
27 "Who drives the Volvo? How old are you?", and other
28 conversation. Then, at the second-last paragraph on
29 that page: "The first one was still asking all this.

1 The second one was still tying some of us up. As he
2 was tying up Min or Allan I looked at him. I then saw
3 that he was wearing a Bob Hawke plastic mask, black
4 jeans, maroon jumper, on the outside a black denim
5 jacket with a sheepskin inside. His runners were
6 white, velcro straps. The first offender helped the
7 second one to finish taping us up." The next page,
8 3520, you see the statement is taken by Detective
9 Sergeant Peterson who is a sergeant in the Armed
10 Robbery Squad. With that statement, there is nothing
11 attached - this was on the trial brief - in the Debs
12 and Roberts prosecution; no statements attached or
13 signed by Ms Ng as to further description or anything
14 else. But she was asked to make a further statement on
15 26 November 2000 for the purposes of Operation Lorimer
16 and that statement is Exhibit 323, at p.3513. You see
17 there, she says: "I have previously made a statement to
18 police in relation to a hold-up, Jade Kew Restaurant,
19 27 June 1998. I was working as a waitress there. From
20 referring to the notes of the descriptions I gave
21 police on the night and my memory I am able to say that
22 there were two males ...", and then goes on to give a
23 more detailed description of the males, including
24 accent, height and physical description. On the basis
25 that the first statement did not have attached to it
26 the statement of further description that she refers to
27 in the second statement, I come back to the question,
28 what was the practice of ensuring that a second
29 statement would be taken or that details of the first

1 statement would be made available at trial?---Well, as
2 I said earlier, my practice was that that description
3 would be exhibited, but I can't say where that first
4 description that she refers to given to police on the
5 night, as to whether that was given to uniform members
6 who wrote it on a running sheet, or it was in a uniform
7 members' notebook; I don't know where that description
8 was put because I had nothing to do with Operation
9 Hamada.

10 COMMISSIONER: I follow from what you've said, the practice
11 of where the description is recorded would vary: some
12 would do it on a separate note, others would put it in
13 a running sheet, others would put it in their day book;
14 there wasn't a requirement that it be done by way of a
15 note?---No, as far as I remember there wasn't a
16 requirement, and often what would happen, sir, is say
17 in this situation where there's an armed robbery,
18 uniform police would attend first and they may have
19 taken a description down on their running sheet; the
20 witness would then be spoken to by detectives and a
21 statement would be taken, maybe by the uniform branch,
22 maybe by the detectives, it might be taken that night,
23 might be taken the next day, there might have been a
24 face-fit done, it depended on the situation as to when
25 the description was first taken, so it's difficult to
26 say where that description would have been written
27 down.

28 I take it then, it wasn't part of that practice that the
29 witness was required to sign the note, wherever the

1 note was recorded, setting out the description?---No,
2 sir.

3 How would you know, in this case when the witness is asked
4 two years and six months after making her initial
5 statement, how would you ever know whether the note of
6 the officer accurately recorded or was indeed a record
7 at all of what the witness's description was?---I don't
8 know how you would ensure that it was an accurate
9 description taken at the time. You would have been -
10 as a detective we would have taken copies of the
11 running sheets or copies of members' notebooks or day
12 book notes, and it appears from that supplementary
13 statement that the witness was shown those notes, but I
14 don't know where those notes came from.

15 That's my question though: how would the witness know, two
16 years and six months after the event, whether what
17 appears to be a note made by the police officer was an
18 accurate recollection or recording of the witness's
19 description two years and six months earlier?---I would
20 say that the witness would be relying on memory and
21 that what was written down was accurate.

22 So, if the officer wanted to add something to the note, or
23 make a false note, there would be no way of knowing
24 whether that note indeed reflected the description
25 which the witness had given at the time?---Not unless
26 the witness questioned that description.

27 It's a long time after the event, isn't it, to ask a witness
28 to have some confidence about the accuracy of a
29 description appearing in someone else's note?---Yes, it

1 is.

2 MR RUSH: You indicated this morning that you weren't made
3 aware and can't think of a legitimate reason for this
4 practice?---Correct.

5 Apart from this being a reason, that the description not
6 being used at all if it didn't fit the police
7 prosecution theory of who committed the crime, apart
8 from that reason is there any other reason that you can
9 think of?---The only other reason I can think of is
10 that there are times when witness descriptions are not
11 particularly accurate.

12 But whether they're accurate or inaccurate, and on the basis
13 of what Mrs Ng has clearly indicated, it was good
14 enough to come back 18 months to two years after the
15 event to get a further statement, this was a practice
16 that was undertaken quite irrelevant to whether the
17 witness had a good or a bad memory?---Yes.

18 COMMISSIONER: If the witness was unreliable and their
19 account of the witness's description was plainly false,
20 that would be relevant in any event, wouldn't it, to a
21 later evaluation of all the witnesses' evidence?---Yes,
22 it would.

23 So, it shouldn't be for the discretion of the other to say,
24 well, I won't include that because it's obviously so
25 far from accurate that it's better not going into her
26 statement?---Correct, sir.

27 MR RUSH: I need to take you to another practice that IBAC
28 has been made aware of and, perhaps to explain it, if
29 we could bring up Exhibit 593. What is on the screen,

1 Ms Eden, are two versions of a witness statement of
2 Mr Pullin who was a first responder to the homicide on
3 16 August and was with Mr Miller on that date prior to
4 him being conveyed to hospital. On the left-hand side
5 is what might be referred to as the first statement
6 made by Mr Pullin. You can see that the acknowledgment
7 there is made, and the signature witnessed by
8 Mr Bezzina at 4.25 am on Sunday, 16 August?---Yes.

9 Then there's what's referred to as the second version with
10 additions and changes marked up in purple. This is a
11 second version of this statement, but again you will
12 see that the acknowledgment is made and the signature
13 witnessed at 4.25 am on 16 August by Mr Bezzina?---Yes.

14 Mr Bezzina has given evidence that signing backdated
15 statements was a common practice across the Homicide
16 Squad. Are you aware of that practice?---No, sir.

17 That statements may be put in front - just to clarify it -
18 in front of Mr Bezzina or other homicide members, that
19 for one reason or another need to be re-signed or
20 re-acknowledged, and that it's a common practice for
21 that to be signed even though it is signed on a
22 different date and a different time to when the
23 original statement is taken?---That's not a practice I
24 recall.

25 COMMISSIONER: Just coming back to the earlier questions
26 though about the method that would be used to later
27 bring into evidence a description given by a witness
28 that hadn't been included in the witness's original
29 statement. What I want to suggest to you, Ms Eden, is

1 here's an example of a witness being asked to include
2 additional evidence to that initially provided in the
3 witness's statement. So, you might say it's a
4 variation of the practice we were earlier talking
5 about, that the witness either said something initially
6 but it wasn't recorded, or could have said something
7 initially but it wasn't recorded, is later asked then
8 to include that additional material, and the process
9 here followed was to then include it but make it look
10 as though that information was always in the initial
11 statement?---That's not a practice I'm aware of, sir.
12 The practice I was aware of was the taking - or a
13 member being asked to make another statement to include
14 that information.

15 What do you see is the problems, Ms Eden, with a process by
16 which the statement which is ultimately produced in a
17 prosecution does not properly reflect the time at which
18 various pieces of information have gone into the
19 witness's statement?---Clearly it's wrong, sir.

20 But what's the problem with it? What problems are created
21 if, at trial or committal or before a magistrate, all
22 you have is one statement which doesn't tell you
23 accurately when all of the information went into that
24 statement? What are the problems with that?---Well,
25 clearly it taints the evidence and it's not providing
26 full disclosure.

27 It may thus conceal evidence that's fabricated?---That's a
28 possibility, sir.

29 It may be that it's accurate evidence but it denies those

1 reading the statement the ability to understand at what
2 points of time the witness proffered the
3 information?---That's correct, sir.

4 It may go to the witness's reliability?---Correct, sir.

5 MR RUSH: Ms Eden, I want to turn to another area. On
6 16 August 1998 you were contacted, were you not, early
7 in the morning by Detective Senior Sergeant
8 Collins?---Is this prior to attending?

9 Prior to attending?---Yes.

10 He, I think, picked you up from your home and conveyed you,
11 with himself obviously, to the crime scene at Cochranes
12 Road, Moorabbin?---Correct.

13 You spent a considerable time that morning at and around the
14 crime scene and the command post that was set
15 up?---Correct.

16 Do you, firstly, recall any briefing that occurred in your
17 presence at the crime scene?---Yes, we had an initial
18 briefing and then there were a number of briefings over
19 the course of the time we were there.

20 The initial briefing, do you recall who gave it?---No, I
21 don't.

22 Who was present?---I know Senior Sergeant Collins was
23 present because I was there with him, but I'm not able
24 to say who else was there.

25 To the best of your recollection was there anything done in
26 effect to triage witnesses, in the sense that there
27 were different witnesses who had different roles over
28 the course of the arrival at the scene of the homicides
29 and over the next 40 minutes or so?---I recall that

1 there were - detectives were tasked to go down to the
2 Silky Emperor Restaurant and take statements from the
3 staff there, because I - at one point I was asked by
4 Senior Sergeant Collins to go to the restaurant and see
5 how the statements were going, or you know, whether
6 they were finished or still going.

7 Did you have a role over the course of that morning of
8 actually collecting statements?---I don't recall
9 whether I actually collected them or not, I'm sorry.

10 We have a copy of your day book which is Exhibit 23. Do you
11 recognise the writing?---Yes.

12 If we go to p.884, for example there at the bottom of the
13 page, at 0535, is it?---05.

14 You received statements taken from persons at Silky
15 Emperor?---Yes.

16 Consistent with what you've said, you might have checked on
17 how they were going, and then the statements were
18 brought to you?---Yes. If I could just explain: a
19 significant amount of the time I was at the scene I was
20 within the command post with Senior Sergeant Collins,
21 so it may have been that the detectives were told to
22 give me the statements, or I may have said to them when
23 I went down to the Silky Emperor Restaurant that, when
24 they were finished, to bring them up to me.

25 Perhaps if we go over to p.888, and the time is 1025 hours,
26 has you "out of scene"?---Yes.

27 "Perused statements"?---Yes.

28 What's that mean, "Perused statements"?---I would have been
29 looking over them potentially to see what was in them,

1 to see whose statements we had, whether we'd got all
2 the statements from maybe staff members or that sort of
3 thing.

4 Was there a list, or you were just - - -?---Not at that
5 point.

6 If we go back a page to 887, and the bottom line at 0920
7 hours: "Statement from Adams", Senior Constable
8 Adams?---Yes.

9 The first word is blanked out. Were you acknowledging
10 statements on that day?---Not as far as I'm aware. I
11 would say I may have just been given the statement to
12 hang on to.

13 Whilst the first word or two words can't be determined,
14 clearly it would seem that you have received a
15 statement from Senior Constable Adams?---That's what it
16 looks like.

17 Perhaps if I could have a look at Exhibit 17, p.406. At
18 p.411, at 0740, we have a number of police entering the
19 crime scene, the last one being Frank Adams at
20 0740?---Yes.

21 Then, at 0912, Exhibit 7, p.414. If we go down the page, in
22 the right-hand column we've got "time out", and it
23 seems "0912", and you will see there, six lines from
24 the bottom, that Senior Constable Adams is recorded as
25 leaving the crime scene?---Yes.

26 And again, those timings would be consistent with him making
27 a statement?---Yes, I believe so.

28 The statement on the brief of Mr Adams, Exhibit 202, p.3060,
29 you see Mr Adams' statement is made and acknowledged on

1 29 February 2000?---Yes.

2 Mr Adams has given evidence that, to the best of his
3 recollection, he signed on the day, on 16 August, and
4 can't understand how that date would appear on the
5 statement. Appreciating - and I'll come to it - were
6 you no longer at homicide in 2000?---No, I'd resigned.

7 Were you aware at any time while you were at homicide of a
8 protocol of going back to witnesses for further
9 statements?---Yes - I mean, it's not an uncommon
10 practice if a witness has provided a statement and
11 there may be further questions that are raised, that a
12 supplementary statement might be required.

13 You say you would expect that to be done by way of a
14 supplementary statement?---Yes.

15 Was it always done by way of supplementary statement?---I
16 can only say what I did and what I saw, and that was
17 what occurred.

18 When you say that is what you saw, did you have a
19 responsibility for checking statements as they were
20 produced and came to Operation Lorimer?---Yes. After
21 I - and I can't recall the exact timing, sir - but
22 after about three or four weeks after the shootings, I
23 virtually became non-operational because I was
24 pregnant, so one of my roles was looking at information
25 reports and looking at the statements that came in and
26 making sure that we were getting all the statements
27 that were required, so those statements were then
28 I believe reviewed by Senior Sergeant Collins, but they
29 would have come over my desk so that I could determine,

1 you know, that we had received a statement from
2 someone, or it was still outstanding, things like that.
3 I can't recall how much detail in those statements I
4 looked at, but I believe I had a running list of
5 particularly members' statements and whether they'd
6 been received at the task force.

7 COMMISSIONER: Who gave you directions as to what statements
8 were required?---I believe that we had a number of
9 meetings at various times and it was determined at
10 those meetings which would have been run, I believe, by
11 either Inspector Sheridan or Senior Sergeant Collins,
12 as to, you know, we still needed statements from
13 members at the scene, or maybe medical statements from
14 Monash Hospital, things like that, so a list would have
15 been made of who we still required statements from.
16 And, as far as members' statements are concerned,
17 I believe my - one of my roles was to follow up with
18 members, if they hadn't already provided statements, to
19 chase them up and get those statements.

20 Perhaps the witness could be shown, I think it's
21 Exhibit 198, Mr Rush. I think 198 is the list of
22 witnesses to be called. This an exhibit which - - -

23 MR RUSH: Exhibit 197, Commissioner.

24 COMMISSIONER: Is that the sort of list that you were
25 speaking of that identified those officers from whom
26 statements are yet to be taken?---Yes, it looks like a
27 list that I've created.

28 MR RUSH: In fact, Ms Eden, from the best can be understood,
29 it's a list that was produced from a folder under your

1 name within the records of Operation Lorimer?---Yes.
2 And the metadata indicates it was last modified on 9 October
3 1998?---That's highly possible.
4 In the sense that what it represents is an ongoing list
5 being updated from time to time for the obtaining of
6 witness statements?---Yes.
7 Does that reflect in a sense what you've been talking about,
8 your responsibilities in relation to the bringing in of
9 statements?---Yes.
10 I think, without taking you to it, there are a number of
11 exhibits which precede this in August where specific
12 requests were sent out to personnel to provide their
13 statements and the nature of the statements that should
14 be provided?---Yes, I believe so.
15 Just by way of example - I'll come back to 197 - but
16 Exhibit 78: "Request for members' statements", and it's
17 gone out to various police stations requesting
18 statements from members who had attended the incident
19 or entered the crime scene?---Yes.
20 At the bottom of the page, the information is to be
21 forwarded to you for your attention?---Yes.
22 That indeed, I suggest, was a constant role that you had
23 over the period until you left the police force?---Yes.
24 A daily activity of coordinating the statements and the
25 running sheets that came in and the information that
26 came in with the statements?---Yes.
27 You reported, I suggest, to Sergeant Buchhorn who also was
28 involved with that?---I don't believe I did. I think I
29 was - because the task force was set up with various

1 crews who had specific tasks to do, and I was mainly
2 dealing with Senior Sergeant Collins.

3 So who was checking the statements for the details in the
4 statements and had oversight in relation to that?---I
5 can't recall.

6 Did you have that oversight?---I may have - um, I may have
7 reviewed statements to ensure that they'd included
8 things like entering and exiting the crime scene, but
9 I'm sorry, I just don't recall how far my review of the
10 statements went.

11 If we have a look at Exhibit 321 - - -

12 COMMISSIONER: How are you going? Would you like a
13 break?---No, I'm fine, sir, although I would appreciate
14 a bit more water, please.

15 Yes, certainly?---Thank you.

16 Please indicate at any stage if you want to have a
17 break?---Thank you, sir.

18 MR RUSH: There we've got a statement of Detective Senior
19 Constable Morris, and he gives detail of attending for
20 a briefing of Hamada. Then, continuing on, he was part
21 of, if you like, the preparation and the stakeout that
22 was done in relation to Hamada. In the middle of that
23 paragraph he details his actions on attending at the
24 intersection of Warrigal Road, Nepean Highway, "12.30
25 divisional van". Going up after that, he commenced a
26 static patrol. If we go to Exhibit 80, we see there a
27 handwritten agenda, if you like, for the statement
28 concerning Mr Morris which goes through the detail,
29 "How was he informed by Senior Detective Hanson?

1 Clarify. Clarify time"; those matters. Was that
2 something that you were responsible for?---No. That's
3 not my writing.

4 Do you recognise the writing?---No, I don't.

5 Was that a process of which you were familiar, that the
6 statements would be made, or that various points were
7 made for inclusion in the statements?---Yes, that
8 statements would be reviewed and there might be
9 clarification required, and I'm assuming that
10 witnesses, whether they were police witnesses or
11 non-police witnesses, were then contacted in relation
12 to those queries.

13 COMMISSIONER: Coming back again to the issue I've explored
14 with you about how you would deal with the situation
15 where the witness was gone back to, asked for further
16 information and that was to be fed into a statement,
17 you've explained that the only process you know of that
18 would do that would be by a supplementary
19 statement?---Yes, sir.

20 And this is an example, the one on the screen, the
21 Commission now has evidence in relation to a
22 significant number of witnesses that, when they provide
23 further information which goes into a statement, the
24 end result is only one statement; the initial statement
25 which didn't have the additional information
26 disappears. Is that something you became aware
27 of - - -?---No, sir. No, it wasn't.

28 I just wonder how that might be, if you and Mr Buchhorn and
29 Mr Collins are in the process of looking at statements,

1 seeing where there's information that's missing that
2 needs to be included, the witness has already made a
3 statement, investigators are then sent out or the
4 witness is asked to provide additional information,
5 shouldn't that automatically mean there must thereafter
6 be two statements?---Yes, sir.

7 Well, were there?---I can't recall, sir. I - as I said
8 earlier, I don't recall how much of a review I did or
9 whether it was more checking off that statements had
10 been obtained and who was still to provide statements.

11 May I take it, if you are aware that the witness had made an
12 initial statement and was then being asked to provide
13 further information, you would want to be satisfied
14 that that information appeared by way of a second
15 statement?---Yes, sir.

16 MR RUSH: If we could bring up on the screen Exhibit 321,
17 together with Exhibit 80. If we look at the left of
18 the screen at point (1): "How was he informed by Senior
19 Detective Hanson? Clarify." If we go over to the
20 statement in the fourth paragraph, second line: "A
21 short time after this I was informed by Detective
22 Senior Constable Hanson a police member had been
23 wounded in Cochranes Road. Detective Senior Constable
24 Hanson contacted myself via mobile telephone as my
25 vehicle was experiencing radio communication problems."
26 You will note that there is a tick to "item (1)" in the
27 sheet on the left-hand side?---Yes.

28 The clear inference is, the tick is as a consequence, I
29 suggest, of the clarification of that communication by

1 mobile telephone?---Yes, it would appear so.

2 And (2) with a tick, "Asked for clarification of time", and
3 this is perhaps less clear, but it's ticked, and there
4 are two times referred to in that paragraph, "11.45 pm"
5 and, about six lines down, "Arrival at the scene at
6 approximately 12.30 am"?---Yes.

7 Finally, the tick, "Told van to close Warrigal Road and stop
8 traffic travelling west." Warrigal Road is basically
9 north-south and up near the figure (3), that's ticked.
10 If you go to the same paragraph at approximately five
11 lines from the bottom: "I met an unknown police
12 divisional van. Instructed same to close off traffic
13 travelling north along Warrigal Road." So, the tick
14 and arguably the statement has been fixed in relation
15 to north-south Warrigal Road?---Yes.

16 Matters that are not ticked, if we go to point (5): "Delete
17 field contact with Beech, it's not relevant." If you
18 go to the second-last paragraph on that page, the
19 reference to the contact with Beech is not deleted and
20 item (5), as an example, is not ticked?---Yes.

21 What I'm suggesting to you, is that this is clearly a second
22 statement that has been changed to fit in with what the
23 sheet which is on the left-hand side of the screen
24 required?---It appears that, yes.

25 And there is no reference by Mr Morris in his statement to
26 him having made a previous statement?---No.

27 You say you have not seen - - -

28 COMMISSIONER: Do you know whose handwriting this is on the
29 left side of the page?---No, sir, I don't.

1 It's been identified, has it not, Mr Rush?

2 MR RUSH: I think it has. I think there was a suggestion.

3 I don't think it's been formally identified,
4 Commissioner.

5 COMMISSIONER: Very good.

6 MR RUSH: I've got to ask you, Ms Eden, if you are
7 responsible - as the exhibit we've been to - in
8 relation to the collection of statements, would you not
9 be aware of a member making a supplementary statement,
10 that is, the member having provided two
11 statements?---If it came over my desk, so which it
12 wouldn't necessarily do. I sent out the requests for
13 the statements, and so, a lot of the statements were
14 sent addressed to me and I would have obtained those.
15 But members of the task force were out getting
16 statements from people and they didn't necessarily come
17 across my desk. I can't recall, but I may have been
18 informed that, "Oh, we got a statement from that
19 member", and I would potentially tick it off the list
20 that a statement had been obtained. So, I wouldn't
21 necessarily see every statement that was obtained.

22 COMMISSIONER: Putting this current statement in its correct
23 perspective, none of the additions to the statement are
24 earth-shattering, they're formal matters that complete
25 the witness's account?---Yes, sir.

26 But what it suggests is that there was a process being
27 followed here which resulted in the initial statement
28 not being kept and disclosed. In other cases we're
29 concerned with the same process but where the content

1 of the dying declaration from Mr Miller has been
2 supplemented in a later statement?---Yes.

3 You have no knowledge of this process taking place, where
4 one finishes with only one statement being the
5 statement of the witness?---No, sir.

6 MR RUSH: Who would have responsibility within the team for
7 the checking of statements and the detail in statements
8 of this nature?---I can't recall whose responsibility
9 that was. It may have been divided up amongst
10 different crews within the task force; you know, some
11 might have been looking at the witness statements
12 obtained from some of the armed robberies, other crews
13 might have been looking at statements in relation to
14 the murders; I can't recall, sir.

15 In relation to the checking of statements that came - on the
16 basis of what we've seen and the spreadsheet which
17 indicates the collection of statements, and the
18 statements being sent to you from the various police
19 stations, would you not have some idea of, once those
20 statements arrived with you, who had responsibility for
21 going through and checking and collating the
22 statements?---I just can't recall, sir, I'm sorry.

23 You, in your diary entry - and I think you agreed - had
24 responsibility not only for statements but collecting
25 patrol duty returns and diaries and the like?---Yeah -
26 ah, not diaries; I believe I was collecting copies of,
27 um, yes, the running sheets and maybe copies of
28 members' notebooks.

29 Notebooks, thank you. So, what was the purpose of

1 that?---The running sheets detailed what the members
2 did at what particular times, so they were required as
3 a normal part of the investigation.

4 Did someone have a responsibility for checking the running
5 sheets against the statements?---I would assume so, but
6 I can't tell you who that was; I don't recall.

7 Was that your role?---It could have been, I just don't
8 recall, I'm sorry.

9 Commissioner, could I just have five minutes? I don't think
10 I'll be much longer, but I just want to collect - - -

11 COMMISSIONER: Certainly. So, have a break, you're welcome
12 to leave the jurisdiction if you want, but if you come
13 back in five minutes or so and have a chat to

14 Mr Marquis?---Thank you, sir.

15 Hearing adjourns: [11.33 am]

16 Hearing resumes: [11.41 am]

17 MR RUSH: Could we have a look at Exhibit 200. This is,
18 Ms Eden, a similar document to the one we saw
19 before?---Yes.

20 The metadata date indicates that the last date that this was
21 modified was 24 August 1998?---Right.

22 If we go through the collection of statements to p.3056, you
23 see about the eighth name down there is

24 Mr Adams?---Yes.

25 Looking across the page, as to "Statement needed? Yes" and
26 "Statement obtained? Yes." As I said, the metadata
27 date indicates 24 August 1998 was the last
28 modification. If that can be kept up on one part of
29 the screen and we go to Exhibit 202, a statement of

1 Mr Adams, and at p.3060, you see that the statement is
2 acknowledged on 29 February 2000?---Yes.

3 On the basis that Exhibit 200 indicates your receipt of a
4 statement by 24 August 1998, you would accept clearly
5 this is a second statement?---Yes, I would.

6 Remind the Commissioner again, you had left, as I understand
7 it?---Yes, I'd left either late March or early April
8 1999.

9 And so, on the basis that you have recorded the receipt, you
10 would only record the receipt of a statement upon you
11 visualising it and putting it into that data on the
12 screen?---Correct, and then, as you can see that
13 document is not complete, I believe what I did was I
14 then handwrote in as more statements were received,
15 because it's clearly not a complete document.

16 Then you would handwrite receipt of the documents and from
17 time to time update the document as far as making it
18 complete?---I can't remember whether I updated that
19 document on the computer, but I certainly would have
20 had a running document that I worked on by hand,
21 because I see that, in some of the matters, members'
22 registered number is not there or that it actually
23 doesn't say whether a statement is required or not, so
24 I think I was updating it by hand.

25 Just so we understand, I don't ask that it come back, but we
26 looked at Exhibit 197 which is a similar list, but a
27 different list to this?---Yes.

28 The metadata last modified date on that was
29 9 October?---Yes.

1 What I'm suggesting is that from time to time you would
2 update your list for the purposes of having a full
3 electronic copy?---Yes, that would have been my
4 practice.

5 Just as another example, if we look at Exhibit 200. At the
6 top of that page, 3056, is the name of, "Thwaites
7 attended to Miller. Patrolled"?---Yes.

8 And he had also, according to your records, provided a
9 statement?---Yes.

10 "Yes" and "Yes" because you had seen the statement and it
11 went into the pile, if you like?---Correct.

12 Mr Thwaites has - the Thwaites statement that was on the
13 trial brief, if we bring that up next door,
14 Exhibit 378, p.3720, dated 23 October 1998 and
15 acknowledged by Detective Sergeant Buchhorn?---Yes.

16 So again, clearly on the basis of this, this is a second
17 statement of Mr Thwaites?---Yes.

18 Before I ask you a final question, on this aspect of
19 Exhibit 122, you see that this is a further request
20 that's gone out to members who attended the scene in
21 Cochranes Road on 16 August and it asks questions about
22 "entering Cochranes Road, details, approach to the
23 vicinity of Sergeant Silk, do you smoke", a number of
24 questions that have gone out to various
25 members?---I believe this questionnaire - we had a
26 debriefing with members who were involved in Operation
27 Hamada and that occurred at the St Kilda Road police
28 complex, and I believe this was a document that was
29 given to those members at that debrief; whether it went

1 out to other members or not, I can't say.

2 Over the page, at 2733, it indicates of the urgent need for
3 the statements and "all statements must be done as a
4 matter of urgency, forwarded to Detective Sergeant
5 Buchhorn or Detective Senior Constable Eden"?---Yes, we
6 were both at that debrief.

7 So, if a statement came in to Mr Buchhorn - - -?---Yes.

8 - - - he would give it to you?---I can't recall whether he
9 would give it to me or not or whether he would just let
10 me know that a particular member had made a statement
11 so that I could update that list.

12 Here, on the basis that Mr Thwaites has made a statement on
13 23 October 1998, which is a month after you have
14 recorded that he had already made a statement, would
15 you not have had some conversation with Mr Buchhorn
16 about a further statement?---I don't know. I may have
17 had a conversation with him but I can't recall.

18 COMMISSIONER: How would you record something though if the
19 additional information resulted in a second
20 statement?---I'm not sure how I recorded it, sir. Um,
21 I may have put a "2" next to the name or next to the
22 statement, I don't know, I really don't remember.

23 MR RUSH: If we could bring back Exhibit 378, Mr Thwaites'
24 statement.

25 COMMISSIONER: We've seen Mr Solomon's advice to the OPP in
26 answer to some queries, I think it's Exhibit 68, he
27 notes there that Mr Thwaites made a statement at
28 Moorabbin. So, there doesn't seem to be much doubt
29 about that, Mr Rush.

1 MR RUSH: We're just bringing up Mr Thwaites' statement at
2 Exhibit 378 of 23 October 1998. What the Commissioner
3 is referring to is an answer that Mr Solomon gave to
4 the Office of Public Prosecutions after the committal
5 hearing, where a specific question had been raised by
6 the Office of Public Prosecutions concerning
7 Mr Thwaites' statement, and it was stated that Thwaites
8 had made a statement at Moorabbin on
9 16 August?---Right.

10 What we have here is a statement of Mr Thwaites of
11 23 October 1998 and, as you will see on the first page,
12 no reference at all to a second statement, this being a
13 supplementary statement?---No.

14 Are you aware of this as a practice of Mr Buchhorn?---No,
15 sir.

16 COMMISSIONER: Can I just ask you: after you left the
17 Lorimer Task Force, when was that
18 approximately?---March or April 1999.

19 Did you have any contact with Collins or Sheridan or
20 Buchhorn after you left Lorimer?---In the first two or
21 three weeks I had a couple of phone calls from members
22 at the task force just asking where things were
23 located. I believe I had contact with Senior Sergeant
24 Collins in relation to my statement. I had contact,
25 I believe, from Sergeant Buchhorn when the arrests were
26 made, and then I think my next contact was at the end
27 of the trial, just to let me know that the trial had
28 completed, and I actually went in for the sentencing.
29 But as far as I remember, that's all.

1 Who contacted you?---I think Sergeant Buchhorn contacted me.
2 There's a diary entry of Mr Buchhorn that shows a very
3 lengthy visit by him to you in 2005; do you know what
4 that was all about? You weren't then back in the job,
5 were you?---I went back into the police force
6 in February 2005.

7 Could the witness be shown Exhibit 621?---Of 2000.
8 2000, my apologies. Do you know what that would have been
9 about?---I don't recall, sir. I - and I'm assuming
10 that was to my home address, because I certainly wasn't
11 in the police force at that time.

12 It's a four hour visit, Ms Eden. Are you sure you can't
13 remember what it was about?---Is that Mr Buchhorn's -
14 it's just, it's got Paul Sheridan's ...

15 MR RUSH: It's Mr Buchhorn's diary.

16 WITNESS: Right. Sir, I'm sorry, I have absolutely no
17 recollection of seeing Sergeant Buchhorn.

18 COMMISSIONER: Yes, Mr Rush.

19 MR RUSH: Just to come back to the Thwaites dates?---Yes.
20 If there is a further statement taken from Mr Thwaites one
21 month after the electronic list that you have kept,
22 would that further statement not be provided to
23 you?---As I said earlier, I don't remember receiving
24 that statement, but I wouldn't necessarily receive
25 every single statement; it may have been that I was
26 told a statement had been obtained and so I could tick
27 it off my list, but I don't recall that I saw every
28 statement that came in.

29 So, is it potentially this: that your list says we have a

1 statement from Mr Thwaites?---Yes.

2 Here it would appear that Mr Buchhorn, a month after your
3 list indicates a statement from Thwaites, has taken a
4 further statement from Thwaites; there is no need for
5 him to update your list if he's replacing one statement
6 with another statement?---That could well be it.

7 COMMISSIONER: So, casting your mind back, do you think you
8 would have raised concern if you were being told by
9 officers superior to you that, we are replacing
10 statement A with statement B because statement B
11 contains some additional information; do you think you
12 would have been in a position to take issue with
13 that?---Yes, I think I would have. I would have
14 thought that any second statement would go with the
15 original statement and that they would have both been
16 there.

17 No doubt that's what should have happened, but - - -?---Yes,
18 and I'm not aware of that not happening.

19 Yes, very well.

20 MR RUSH: Just finally, I'll take you back to Exhibit 23
21 which is your day book, p.887. Were you responsible
22 for the deletions on this page?---No.

23 We've been to the last line on this page which concerns
24 statements from Senior Constable Adams.

25 COMMISSIONER: I think you need to make clear, this is the
26 day book, is it not?

27 MR RUSH: This is the day book, yes.

28 COMMISSIONER: And the Victoria Police were unable to locate
29 it.

1 MR RUSH: Thank you, yes, Commissioner. (To witness) Can
2 you think of any reason, (1) for the deletions, and
3 specifically the deletion prior to the statement from
4 Adams?---No. I would have left all my day books at the
5 task force when I went on maternity leave and
6 subsequently resigned, so any delete - any redaction
7 that was done, was done after I left.

8 And clearly on looking at your day book and the heading,
9 "Sunday, 16 August", each of the matters that has been
10 redacted relates to your activities at the crime
11 scene?---Yes.

12 So, on their face, there would be no reason for a
13 deletion?---Not that I'm aware.

14 They are the matters, Commissioner.

15 COMMISSIONER: Just one last matter, Ms Eden. Since you
16 came back to the force, do you have any recollection at
17 any stage of a direction by Police Command or any of
18 your superiors that any of the practices that we've
19 been exploring with you must not occur?---Sir, I don't
20 recall any direction that that was the case, but I do
21 recall that when I came back into the police force and
22 I was at Boroondara Police Station, I looked at other
23 members' statements just to familiarise myself with
24 current practices because I had been out for five
25 years, and I saw that statements contained detailed
26 descriptions, and I believe I spoke to other members
27 about that and was advised that that - that this was
28 now the current practice, that descriptions were placed
29 into statements and that is the practice I have

1 followed since that date.

2 Did they indicate that was as a result of some direction or
3 was that a word-of-mouth understanding?---I don't know,
4 sir, it was not - that was not discussed, it was just
5 discussed that they actually - descriptions were in
6 statements and that was - this was now the current
7 practice.

8 And so, the practices, for example, of replacing an original
9 statement with a new statement which contains
10 additional information, you have no recollection of
11 there ever being a direction or discussion that that
12 should not occur?---I don't remember a direction or a
13 discussion, but it was my belief that any additional
14 information from a witness was to be put into a - - -
15 Supplementary?--- - - - a supplementary statement.

16 Yes, thank you.

17 MR MATTHEWS: Commissioner, there were two very brief
18 matters I would seek leave to cross-examine about, and
19 the first is a question I have asked some other
20 witnesses in relation to the practice that's been
21 discussed this morning of the descriptions of offenders
22 being omitted, whether that also went to numbers of
23 offenders.

24 COMMISSIONER: Yes.

25 MR MATTHEWS: A single question there. The second is in
26 relation to some evidence that the witness gave in
27 response to a question from my learned friend about the
28 sergeant obtaining running sheets and notebooks but not
29 diaries from members in the course of the exercise that

1 she's described of statements being gathered that she
2 was involved in.

3 I just wanted to ask a little bit more about that
4 because that has particular relevance to the notebook
5 of Ms Poke and some evidence Ms Poke has given
6 previously, that the request that came come from - - -

7 COMMISSIONER: What did you actually want to ask her,
8 Mr Matthews?

9 MR MATTHEWS: Well, just simply that, when the sergeant was
10 asking members to provide the - - -

11 COMMISSIONER: Material.

12 MR MATTHEWS: To provide the material, the running sheets,
13 that she was also asking for notebooks and to
14 understand the purpose for that, that is that the
15 likelihood therefore - and this is relevant to the
16 process by which Ms Poke's statement was compiled -
17 that she would likely have asked also for notebooks at
18 that time.

19 COMMISSIONER: Yes.

20 MR MATTHEWS: Just a little bit further on that, and I
21 understand the difference between notebook and diaries,
22 but just a couple of minutes at most.

23 COMMISSIONER: Yes, very good.

24 MR MATTHEWS: If Commissioner pleases.

25 <EXAMINED BY MR MATTHEWS:

26 The first question, you've heard exactly what I'm going to
27 ask.

28 COMMISSIONER: Mr Matthews appears for Mr Roberts?---Thank
29 you, sir.

1 MR MATTHEWS: The first question, sergeant, is that, you've
2 given some evidence about a practice that you were
3 aware of prior to going on maternity leave but that
4 wasn't occurring after you came back from maternity
5 leave by which descriptions of offenders were put on a
6 separate piece of paper and not included in first
7 statements taken from witnesses?---Correct.

8 Is it the case that what was put on that separate piece of
9 paper was physical descriptions, things such as height,
10 perhaps build, clothing, hair colour, but not numbers
11 of offenders? That is, if a witness gave an officer on
12 the night a description about numbers of offenders,
13 that would go in the actual statement, but it was the
14 descriptions that wouldn't?---Correct. So, it would
15 be, say if there were two offenders and one was tall
16 and one was short, you might distinguish them in the
17 statement as one being - you know, the first offender
18 was tall, the second offender was much shorter, but
19 then the full details would be in that additional
20 document.

21 But the fact of two offenders would be included in the
22 statement?---Yes.

23 The second matter, sergeant, is, you gave some evidence that
24 one of your tasks once you went off operational duty
25 and onto the business of compiling statements and
26 materials, one of your tasks was asking members for
27 patrol duty returns and notebooks but not
28 diaries?---Yes. So, photocopies of those, we would get
29 photocopies of members' notebooks. So, the way the

1 system worked in those days was that, only detectives
2 carried - only detectives had diaries, and that
3 everyone had a day book and information was transposed
4 into the diary later. But uniform members didn't have
5 diaries, but they would often have notebooks, and say
6 like a canine unit, he would have a notebook
7 potentially in his back pocket, so that might be where
8 information was written as opposed to on a running
9 sheets. Because, if a canine unit is out with a dog,
10 they're not writing on a running sheet, so that's why I
11 would have asked for notebooks if there was anything in
12 there or running sheets.

13 You say that quite confidently, sergeant. So, your task at
14 that point - and I'm interested specifically in uniform
15 members - as you say wouldn't have had diaries. If you
16 had requested of a member a running sheet, you'd have
17 also requested a notebook?---Not necessarily. I would
18 probably have requested any notes, whether that - and I
19 wouldn't - if I knew that they had compiled a running
20 sheet I would have asked for it, but I would have asked
21 for any notes.

22 You would have asked for any notes?---Because I wouldn't
23 have known whether they would have notes in their
24 notebook.

25 Just to be clear, the difference between a notebook and a
26 diary at that time?---A notebook was a small notebook
27 that you could put in your back pocket. Diaries were
28 kept by detectives usually at the office and most
29 detectives had a day book that they would take out with

1 them and, as you can see from my day book, that's what
2 I had with me, I didn't have my diary with me at the
3 scene.

4 Right, that's the document you've been taken to today with
5 your notes in it?---Correct.

6 COMMISSIONER: Thank you, Mr Matthews. Mr Marquis?

7 MR MARQUIS: I have no questions, Commissioner.

8 COMMISSIONER: No reason why Ms Eden shouldn't be formally
9 excused?

10 MR RUSH: No.

11 COMMISSIONER: So, I'll release you from the summons,
12 Ms Eden. There is an order for witnesses out of court
13 and, while access to the transcripts is available, it's
14 not appropriate for you to speak to witnesses about
15 your evidence or the evidence that they might give
16 until after the hearings have been concluded?---Yes,
17 sir.

18 We will provide you with a video recording of your evidence
19 and a transcript of your evidence. I thank you for
20 your assistance. I know it's not easy to come once and
21 you've been here twice, so thank you for your
22 assistance. You're excused.

23 MR RUSH: Commissioner, Mr Birch is the next witness, I will
24 complete him by lunch, but if I could have ten minutes
25 there are a couple of things I need to look at.

26 COMMISSIONER: Yes, very well.

27 Hearing adjourns: [12.10 pm]

28 Hearing resumes: [12.25 pm]

29 MR RUSH: I call Mr Birch, Commissioner.

1 <ALLAN JOHN BIRCH, sworn and examined:

2 COMMISSIONER: Mr Birch, I understand you are represented by

3 Mr McQuillan?---That is correct.

4 Very good. Mr Birch, as your summons disclosed, the matters

5 about which you may be questioned are these: (1) the

6 Lorimer Task Force investigation of the murders of

7 Sergeant Gary Silk and Senior Constable Rodney Miller

8 concerning the taking of witness statements,

9 preparation of the brief of evidence for the trial of

10 Debs and Roberts, whether there was full disclosure of

11 witness statements or other relevant information prior

12 to or during the trial; (2) witness statement-taking

13 practices by Victoria Police; (3) compliance with the

14 obligation to disclose evidence by Victoria Police.

15 Then following questions by counsel assisting and

16 any cross-examination which I permit, Mr McQuillan will

17 have an opportunity to ask you any further questions,

18 have you elaborate on any evidence that you wish to.

19 You were served with, in addition to the summons,

20 a notice of rights and obligations?---Yes, sir, I was.

21 And a confidentiality notice?---Yes, sir.

22 Do you understand the rights and obligations? Have they

23 been discussed with Mr McQuillan?---Yes, sir.

24 Do you wish me to repeat any of those rights or

25 obligations?---There's no need, sir.

26 Very good. Yes, Mr Rush.

27 MR RUSH: Mr Birch, your full name is Allan John

28 Birch?---Correct.

29 You appear here today as a consequence of the summons served

1 on you on 8 February 2019?---I don't dispute the date,
2 but that - I'd say that's correct. I don't remember
3 the date, sorry.

4 That's all right. I've just got to formally go through
5 these documents with you?---Yes, sir.

6 Does the summons bear the number, SE2922?---Yes, sir.

7 As you've indicated, you received with that the statement of
8 rights and obligations?---Yes, sir.

9 Did you receive a confidentiality notice of 8 February
10 2019?---Yes, sir.

11 And a covering letter with that documentation dated
12 8 February 2019?---Yes.

13 I tender those documents.

14 #EXHIBIT Z - Documents received on summons by Mr Birch.

15 Mr Birch, you were a detective sergeant, now retired, from
16 Victoria Police?---Yes, sir.

17 You commenced in the Victorian Police Force in 1981?---Yes,
18 sir.

19 Can you indicate, after 1981 - give us a short summary of
20 your service in the police force?---Yes, sir. From the
21 Police Academy I went to Russell Street Police Station.
22 From Russell Street Police Station I went to Footscray
23 Police Station. Ah, bear with me.

24 COMMISSIONER: It's all right, it's not a memory test,
25 Mr Birch?---Well, it sort of is, sir, but I'll work on
26 it. From Footscray Police Station, I went to the
27 Altona North District Support Group. From the Altona
28 North District Support Group I went to the Protective
29 Security Group. From the Protective Security Group, I

1 went - I think I went - no. Somewhere in there, sir, I
2 had a motorbike accident and 12 to 18 months off work.
3 After that accident, I went to Footscray Police
4 Station, then to the DSG, then to the PSG, Protective
5 Security Group, then to Footscray CIB, then to the
6 Armed Robbery Squad, then to the Drug Squad, then to
7 Sunshine Police Station on promotion as a sergeant,
8 then to the Armed Offenders Squad as a detective
9 sergeant, then to the Homicide Squad for the last ten
10 years of my career, before going to the Association in
11 2015.

12 Was it between approximately 1991 and 2004 you were with the
13 Armed Crime Squad?---I was in the State Crime Squad's
14 Armed Robbery Squad.

15 Armed Robbery Squad, thank you. Have you been reading the
16 transcript concerning IBAC?---I read the transcript in
17 relation to some of the evidence by Mr Iddles.

18 You're aware of the - - -?---And that - sorry, I'm just
19 trying to think. I may have glanced at others or
20 looked at the bottom to see what names have been
21 called, but I chose not to read the transcript so I
22 wasn't confused if I gave evidence.

23 You're aware that Mr Iddles made reference to
24 you - - - ?---Correct.

25 - - - in relation to a particular practice of not putting
26 descriptions of offenders in first statements?---I
27 understand that was his evidence, yes.

28 Are you aware of the practice of police taking statements
29 from witnesses and deliberately not putting into such

1 statements particulars of the descriptions of
2 offenders?---I'm aware in my career there was a
3 practice of obtaining a witness statement with jurat
4 acknowledgment and then attaching to that statement the
5 witness's description if the witness could provide one.

6 Was that a practice that you saw adopted in the Armed
7 Robbery Squad?---I have a recollection, in my
8 first years at the Armed Robbery Squad, that was the
9 practice, but I don't have a very accurate recollection
10 of specific events, but yes, I believe it was a
11 practice then. And then there was essentially a change
12 of guard at the Armed Robbery Squad, and I don't recall
13 the practice continuing, but I don't recall any
14 specific direction to change; it's like an evolution.

15 When was the change of guard?---When I mentioned change of
16 guard, I mean the crew leaders, the detective sergeants
17 who were there when I first arrived transferred on
18 promotion or transferred and were replaced by different
19 team leaders, and with that was a change included in
20 normal evolution of policing technology and a whole lot
21 of changes were occurring, but there was - that's what
22 I refer to as the change to the guard, by attrition.

23 COMMISSIONER: Where did those senior officers from the
24 Armed Robbery Squad go?---Somewhere in Vic Pol, sir, I
25 don't - I didn't follow their careers, they'd been
26 promoted or transferred somewhere.

27 Do you have any reason to think that they didn't take the
28 practices that they were implementing at the Armed
29 Robbery Squad with them?---Do I have reason to think

1 they didn't? No. I couldn't say they did or they
2 didn't, though, sir, I didn't follow their careers.
3 No, but you said you're not aware of any direction that that
4 practice should not be followed?---No. I looked at the
5 police force as evolving, constantly processes were
6 changed or practices were changed, I thought because of
7 changes in technology, advances in technology or
8 requirements by the courts. The police force was
9 constantly changing.

10 We might come back to the question of technology and what
11 effect it has on the practice. Yes, Mr Rush.

12 MR RUSH: What was referred to specifically by Mr Iddles was
13 an armed robbery on 6 November 1995 at the Lower Plenty
14 Hotel that became a homicide when an Armaguard employee
15 was shot dead during the course of the
16 robbery?---Mr McGaffin was shot dead, yes.

17 That required Mr Iddles to work with members of the Armed
18 Robbery Squad, and it was, according to his evidence,
19 in the course of that investigation that he saw this
20 practice in operation, not putting descriptions of
21 offenders in statements, and he let it be known he was
22 unhappy about that. Were you aware of him letting
23 people know of unhappiness about that statement-making
24 practice?---I don't recall it now, no.

25 Let me just show you a couple of statements taken by members
26 of the Armed Robbery Squad concerning that particular
27 offence. At Exhibit 624, we have a statement of Diane
28 Duryea, she was employed as a bar attendant at the
29 Lower Plenty Hotel. If we go to p.10020, we have the

1 statement taken and acknowledged by Mr Reinke, a
2 detective senior constable who worked in the Armed
3 Robbery Squad?---Correct.

4 I don't want to take you through the whole of the statement,
5 going back to the first page, 10018, going to the third
6 paragraph. Midway down the third paragraph in her
7 statement this is said: "I only saw one person at this
8 time, I recall what he was wearing and I have given
9 this description to police"?---Yes, sir.

10 That is entirely consistent with the practice that we have
11 just discussed?---Yes, sir.

12 Without going to the rest of the statement, consistent with
13 the practice that - no particulars of the statement.
14 One other, at Exhibit 623, we have a statement from a
15 Mark Adamson who details that he was at the pub on that
16 day and sets out where he was. If you go down to the
17 last four lines, he says: "In fact there were probably
18 a break of a few minutes, we were still waiting for
19 Brett to walk up and I saw another male person walk up
20 from the carpark. I have given the description of this
21 person to police. By this time we realised that the
22 car that drove in was not Brett, had a bit of a
23 laugh ...", goes on to describe the circumstances of
24 the robbery without giving any description as to
25 offenders; but again, just in relation to what is
26 detailed there, entirely consistent with the
27 practice?---Yes, sir.

28 COMMISSIONER: Well, we better get some clarification of
29 that, Mr Birch. This is a process in which the

1 witness, in their initial statement, refers to the fact
2 that they've given a description to the police, but
3 doesn't include the description in the statement?---In
4 the body of the statement but, as I said earlier,
5 attached to the statement as a sort of appendices.

6 Yes. But a different practice is where there is nothing
7 said in the first statement about the fact that a
8 description's been given to the police, but it has
9 been, but it's not referred to; the fact that a
10 description's been given is not referred to?---Okay.

11 Are you familiar - - -?---No.

12 - - - that some members of the Armed Robbery Squad followed
13 that course?---I'll clarify, sir. My knowledge, and if
14 I engaged in it, my practice was to obtain a statement
15 from a witness, included in that statement that a
16 description was provided, and then to have a document
17 that annexes the statement with that description and
18 it's got the witness's name, and I recall - not
19 100 per cent - but I recall the witness's signature as
20 well and they remained together.

21 That's a variation of the practice which we have seen
22 evidence of where the initial statement is taken and
23 there is no reference to the fact that the witness has
24 given a description, but it turns out that the witness
25 has given a description, it's simply been recorded on a
26 note and at some later point of time a supplementary
27 statement is taken in which the witness then sets out
28 that description. That's not the practice you
29 followed?---Not that I recall, sir, no.

1 Were you aware of other members of the Armed Robbery Squad
2 following the practice I've just described?---Sir, I
3 may have - I may have been aware of it, I just don't
4 recall it now.

5 Very good?---I only recall what I would do.

6 Yes, Mr Rush.

7 MR RUSH: Were you involved in Operation Pigout?---Yes.

8 Without taking you chapter and verse to the statements from
9 Operation Pigout, I want to suggest to you that the
10 course of conduct that the Commissioner has just
11 referred to - no reference of any particulars being
12 supplied to police being referred to in the statement -
13 was the common practice that is demonstrated by the
14 statement-taking through Operation Pigout?---I'm trying
15 to follow that, sir, sorry, can I just indicate - - -

16 COMMISSIONER: The practice that I described to you a moment
17 ago, that throughout Pigout and Hamada the practice
18 that's been identified was not to set out in the
19 statement that the witness had given a description, but
20 to simply record that description on a separate
21 note?---I don't have a recollection of that or being
22 aware of that, sir. If I could point out, I wasn't
23 involved in the investigation of the offences that
24 constituted Pigout. I attended physically to do what
25 Mr Miller and Mr Silk did, sit off at likely target
26 addresses. That was my involvement in the
27 investigation.

28 So, when you said earlier that, with the changing of the
29 guard the practice that you followed was not

1 continued - - -?---To my knowledge, yes.

2 - - - can you extend that to this practice that we've now
3 identified for you, where there is no reference in the
4 statement to an identification?---As I said before,
5 sir, I don't recall that being a practice, but it may
6 have been.

7 MR RUSH: What was the purpose of the practice?---Of what
8 practice?

9 The practice of not putting descriptions in statements?---As
10 I said before, I'm not aware of that practice
11 occurring, but it may have.

12 COMMISSIONER: I take Mr Rush's question to extend to either
13 variation of the practice; that is, what's the purpose
14 of not putting the witness's description in a
15 statement?---Okay. I'm answering reference to, the
16 witness says I provided police with a description?
17 Yes?---Okay. I don't know what the foundation/reason for
18 that practice was, how it came about. I just presumed,
19 but I don't know. I was never told, it was just a
20 practice.

21 Did you get the witness to sign the note that you would
22 append to their statement?---I have a definite
23 recollection of doing that, but I don't have definite
24 recollections of witnesses with whom I did that, if
25 that makes sense.

26 You have an impression that you did that?---Yes. Yes, put
27 the witness's name, put the description and had the
28 witness sign the bottom of it so that there will be no
29 confusion that that description related to that

1 witness's statement.

2 Yes.

3 MR RUSH: Just to complete the picture concerning this armed
4 robbery at Exhibit 620, there is a statement of Dale
5 Harty(?) who was a school teacher, and if we see at
6 p.10010, that was a statement taken by you?---Yes,
7 there it is.

8 The Commissioner might have told you that this isn't a
9 memory test, but I want to take you to p.10009, where
10 Mr Harty down the page in the second paragraph,
11 starting: "When I spoke with the guy I had a clear and
12 uninterrupted view for a short period of time, 15 to 20
13 seconds. Never seen this guy prior to today. I
14 describe this guy as being a male, of Australian
15 appearance, between 26 years to early 30s, about 6 feet
16 tall. I'm about 6 feet and a half an inch, and the guy
17 was only just shorter than myself. The guy appeared
18 fit with broad shoulders, stocky athletic build, a
19 mousy-coloured moustache which appeared long, that it
20 is over the lip, and it wasn't thick", and then you go
21 on, "goatee beard and short hair." One might think
22 that is a very full and complete description. Do you
23 know why it would go in your statement and not in
24 others?---There would be a large variety of reasons.
25 So, the reliability of a witness to be able to recall
26 with certainty what a person looked like, nothing less
27 than 100 per cent identification is an identification,
28 and that I didn't pressure witnesses to provide a
29 description, but I know it's a police practice that

1 they needed a description from witnesses, and witnesses
2 invariably would want to help police and provide some
3 description but you couldn't rely upon it. I don't
4 recall speaking to this chap or obtaining a statement
5 from him, but I would say at the time - I inferred that
6 at the time it appeared clear to me that he was very
7 confident in his recollection in the description of the
8 suspect or offender or the male that he's describing,
9 and that I was confident that he wasn't just providing
10 a description trying to help police.

11 So - - -?---But there's a whole host of reasons, I don't
12 recall speaking to this chap.

13 But here is an example of a very full description of an
14 offender being placed in a statement?---Yes.

15 Is it appropriate for police to decide what witnesses are
16 reliable and what witnesses are unreliable?---Well,
17 police have to make that determination, otherwise we'd
18 take statements from everybody.

19 COMMISSIONER: No, Mr Rush is asking you, in the context of
20 taking a statement from a witness, is it relevant for
21 the police officer to take into account the witness's
22 reliability before recording what the witness says
23 about a relevant event?---Yes.

24 Really?---Yes.

25 MR RUSH: So - - - ?---You have to believe them to be a
26 witness of truth, for a start.

27 COMMISSIONER: No, I'm talking about truth now?---The
28 reliability.

29 MR RUSH: If you've got a truthful witness - - -?---Yeah,

1 who truthfully believed something that couldn't occur.
2 Sorry?---Who truthfully believes that something happened
3 that could not occur.

4 Well, we're not talking about something - - -?---You
5 wouldn't take a statement - well, I'm talking about
6 reliability and you're talking about truthfulness, and
7 I'm trying to explain to you from an investigator's
8 point of view that they go hand-in-hand. A person can
9 truthfully believe that the car did a 360 degree flip,
10 but it's physically impossible in that laneway for the
11 car to do it. So, I should put in the statement that
12 the witness is absolutely certain the car did a
13 360 degree flip, when it's impossible?

14 COMMISSIONER: So you would regard it as the discretion of
15 the police officer not to record part of a witness's
16 account if the police officer concluded that it was
17 quite unreliable?---You see, there's such a vast array
18 of circumstances.

19 I don't follow why you're hesitating now, Mr Birch
20 ?---Because I don't want to waffle, that's why. I,
21 um - so there's a CCTV footage of an event that occurs
22 and I speak to a witness and the witness is adamant
23 that they saw the event occur, the homicide occur. But
24 when you view the CCTV footage, the person has their
25 back to the events, doesn't even move when the blows
26 are struck. Clearly the person has some recollection,
27 confabulated from something in their life that's not
28 accurate; I don't take a statement from them. What is
29 the purpose of take - although they truthfully believe

1 that they saw what they saw, why would I take a
2 statement from them so they can get ripped apart in the
3 witness box, when clearly what they thought was the
4 truth didn't happen?

5 Don't you think that those conducting the litigation would
6 want to know - - -?---Absolutely, they would. They
7 would cause as much confusion as they could.

8 No, but don't you think the prosecution as well as the
9 defence would want to know that, if a witness has given
10 an account which they sincerely believe but which can't
11 be factually correct, don't you think that the parties
12 would need to know that for the purpose of properly
13 evaluating the evidence the witness does give?---Should
14 I take a statement from a person who says they saw the
15 events and clearly could not have because a prosecutor
16 might know that someone believes they saw something
17 they clearly could not have? I don't think so.

18 The person's giving evidence in the case - - -?---No,
19 they're a witness, sir. You said do I take a statement
20 from them or not. They haven't given evidence yet.

21 No, no. Mr Birch, you're sitting down with a potential
22 witness?---Sir.

23 And the witness is giving you an account?---Yep.

24 And if there's any prospect that that witness is going to
25 find their way into the hearing of the case, do you
26 think the police officer has the discretion to exclude
27 from the witness's account that part of it which the
28 police officer thinks is unreliable?---Not on all
29 occasions, no. Bearing in mind, the statement is an

1 indication to the court of what the witness might say
2 if called to give evidence and be subject to
3 examination and cross-examination. So, it's not a case
4 of the police officer mutes the witness on what they
5 want to say; the police officer has an obligation to
6 try and have a statement that includes only relevant
7 probative material where the police officer believes
8 the witness is a witness of truth. That's all I'm
9 saying.

10 But in the example you cited, the person appears to be an
11 eyewitness, is present at the event?---Claims to be an
12 eyewitness, yes.

13 I must say, Mr Birch, it troubles me that a person of your
14 level of seniority would think that the police
15 officer's got a discretion to exclude such evidence
16 from a witness's account if they think it is
17 unreliable?---Sir, what evidence is it?

18 It's their account?---Which cannot factually be true.

19 That's - - -?---And I am to present that to a court? I know
20 that it cannot be as the witness says.

21 You're not presenting it to the court?---Well, I am if I
22 provide a statement, sir.

23 You're an investigator collecting evidence?---Yep.

24 It's for someone else to decide what's presented to the
25 court?---So what is evidence, sir? I'm collecting it,
26 I have to determine what it is, and if it's factually
27 impossible, albeit the person believes it, you're
28 saying it's still evidence? Wowie, we'd have a huge
29 witness list.

1 Yes, Mr Rush.

2 MR RUSH: Let me put another example to you. If you
3 interview four police officers who are witnesses to a
4 crime scene and three of the police officers say that
5 the offender is wearing a red shirt and the fourth
6 police officer says the offender is wearing a blue
7 shirt, is that something that goes in the fourth police
8 officer's statement?---Absolutely.

9 Why?---Because it's contradictory, because there's not
10 irrefutable evidence it didn't occur. It may be blue
11 or it may be red, it's not for me to determine. But if
12 there's - - -

13 COMMISSIONER: So, the more unlikely or impossible the
14 witness's narrative, the less likely it is to find its
15 way into their statement?---If it's - are you there?
16 If it's impossible, there is not a statement, is what
17 I'm saying to you, sir. It doesn't - there is not a
18 statement because it's impossible.

19 I'm coming back to your example - - -?---Yes, sir.
20 - - - where the person says, I was there?---They were there.
21 "I was a witness to the event"?---"I saw the event happen."
22 Assuming for the moment that you haven't come to the
23 conclusion the witness is lying, that the witness was
24 not there, you are satisfied the witness was
25 there - - -?---The video says they were there, sir.
26 - - - but their account is completely impossible?---Correct.
27 And you say you can make a judgment not to take a statement
28 from them?---Correct. It doesn't mean that I hide the
29 fact that they're present or not identify them in the

1 video. I'm confused as to why you would think that I
2 would take a statement from a person when I know
3 irrefutably it's not true. They may believe it's true,
4 but it's not true. I have an obligation to establish
5 whether it's a witness of truth, do I not?

6 No, that's - - -?---Okay.

7 That's the task of the court, Mr Birch. Your task is to
8 collect evidence - - -?---What is the evidence, sir,
9 then?

10 The account the witness gives?---Every single person gives
11 an account, I take a statement and provide it to the
12 court? I make no assessment of that evidence, sir? Is
13 that what you're saying?

14 You don't decide whether or not - - -?---Okay.

15 - - - their account is truthful or not or possible. The
16 first thing the court would want to know is whether or
17 not the witness is reliable, and by having recorded
18 their account you would demonstrate that the witness is
19 not reliable?---You'd have very big witness lists.

20 May I take it from your reaction, this is not just you
21 speaking here - - -?---No, it's just me speaking.

22 - - - you are confident that experienced investigators
23 would follow the process you've just
24 described - - - ?---No.

25 - - - of making - - - ?---No, don't attribute my words to
26 other people. I'm giving you an answer from my
27 position. Thank you.

28 Mr Birch, you don't think that other senior investigators
29 would have the same view as you - - -?---I don't think

1 about it, no.

2 MR RUSH: You don't think about other police officers and
3 the way in which, in the Armed Robbery Squad for
4 example, the way in which they take statements?---I was
5 asked whether I think that other investigators have the
6 same view as I do, and I said I don't think about that.
7 How does one determine the reliability of a witness's
8 identification if it's not in their initial
9 statement?---You may see things differently than
10 I - - -

11 No, no, just - - -?---It's not in the body - - -

12 Please, just answer the - Mr Birch - - -?---Listen to me,
13 please. You asked a question.

14 I did ask a question and I'd like a direct answer?---It's
15 not in the body of the statements, there's appendices
16 to the statement, so it's still part of their evidence,
17 it's still provided in disclosure with the statements
18 and everything, it's not hidden. That's my view of the
19 process of taking a statement.

20 And what's the reason for that then?---As I said before, I
21 don't know.

22 Is the reason perhaps that the police might decide whether a
23 person's reliable or not in relation to their
24 description?---No, no. I think we're at cross-purposes
25 here. I would not take a statement in the circumstance
26 I described to you, Commissioner. I don't vet it if I
27 take a statement from them. If they truly believe it,
28 it's in their statement. What I'm saying to you is, I
29 don't always take a statement.

1 COMMISSIONER: So, when you said earlier, twice, "There'd be
2 a very large witness list", you were just speaking,
3 were you, about the case where you're the investigator;
4 you weren't thinking, if that rule of thumb were to be
5 applied by investigators generally, it would be a very
6 large list?---I was thinking, if I rely on my policing
7 experience, that if I took a statement from every
8 person that I spoke to in relation to an investigation
9 for the court to decide whether they had value or not,
10 there'd be a massive witness list for every trial.

11 That wasn't the example you cited?---Yes, it was.

12 You cited an example of someone who is present when an event
13 occurs?---Yes.

14 But their account of the event is impossible?---Yes, so they
15 provide nothing.

16 No, they provide their account, Mr Birch?---Oh, okay.

17 In any event, you really think your view is not necessarily
18 that of others, it's just your view?---It may well be
19 just my view, yes.

20 I hope so?---It's up to you.

21 MR RUSH: Do you know Sergeant Butterworth?---Who, sorry?

22 Sergeant Butterworth?---Mark Butterworth, yes.

23 And you served with him in the Armed Robbery Squad?---Yes.

24 Over the period of the 1990s, he was there at the same time
25 as you over those years?---He was there before I got
26 there, and I think he was there after I left.

27 He's informed us last Thursday that the practice of not
28 putting identity - not referring to identities in
29 statements and not - that they exist on a separate

1 piece of paper or have been given to police, and not
2 putting descriptions in statements, was something that
3 was in place in the Armed Robbery Squad over the
4 entirety of the time he was there. You didn't - you
5 are unable to say?---I don't understand the question:
6 you said "identities and descriptions". I don't
7 understand the "identities" part. But if the practice
8 in relation to descriptions was there by his evidence,
9 I don't dispute it.

10 You did start off by talking about change. What's the
11 nature - - -?---I recall there being a change of the
12 guard in practices.

13 So, who instituted that change in the guard?---As I said
14 before, it was more an evolution than a direction.

15 If Detective Sergeant Butterworth maintained the practice
16 and observed the practice over the entirety of the time
17 he was there, the evolution or the change, you agree,
18 would not be complete in relation to all members of the
19 Armed Robbery Squad?---I would say Mr Butterworth has a
20 greater recollection than I do.

21 COMMISSIONER: An example was cited by another experienced
22 officer in relation to the matter we've been
23 discussing, Mr Birch. It was an armed robbery,
24 eyewitness; witness says offender had a
25 double-barrelled shotgun. CCTV footage immediately
26 played to the witness whilst the statement's being
27 taken shows it was a single-barrelled rifle, so plainly
28 the witness is wrong?---Yep.

29 And so, the officer said, "Well, I wouldn't put that in the

1 statement. I wouldn't put into the statement the
2 witness's account that it was a double-barrelled
3 shotgun." What do you say as to that?---I've been in
4 the same circumstances as an investigator at the end of
5 my career and I've put both; I've put the sure version
6 memory and then the observations of the video and
7 identify what the witness says are the differences, "I
8 was wrong about this, that or the other."

9 So, in that circumstance, even though what the witness said
10 is plainly false, you would include it because it's
11 part of the witness's narrative?---The distinction,
12 sir, is the first scenario I gave you, the witness can
13 provide nothing, they saw nothing, heard nothing quite
14 clearly but they say they did. In the one we're just
15 describing, the witness saw certain events but their
16 recollection was not accurate about aspects of it.

17 MR RUSH: I've got no further questions.

18 WITNESS: And in the case I had, very similar, I typed a
19 pure version of only on the recollection of the
20 witness. I then showed the witness the CCTV and they
21 referred to timestamps or what they were shown in their
22 statements, and they say, "Clearly I was wrong about
23 this, that or the other", yep.

24 COMMISSIONER: So you've done that yourself?---Yes, sir.

25 Shown the witness footage to - - -?---Yes.

26 - - - to demonstrate something the witness is saying can't
27 be correct?---Aspects are inaccurate. I don't say
28 they're being dishonest, they're just - - -

29 No, no?---Yep, yep, absolutely I've done that. Certainly I

1 spent the last decade at homicide, and there are a
2 number of matters where I did that with significant
3 witnesses.
4 Would you then ensure that the statement reflected the fact
5 that the witness had initially given you one account,
6 recognised that that was incorrect, and made their
7 position clear?---Sorry, sir, it's a continuation of
8 the same statement. They give the pure version to the
9 start, there's now been a pause and I've looked at a
10 video timestamp number, "I can say by looking at it I
11 was wrong about this, that and the other."

12 So you'd include all that?---Absolutely.

13 MR RUSH: I have no further matters.

14 COMMISSIONER: When you were asked before about Mr Iddles'
15 evidence, you heard what he also said about his
16 conversation with you?---About there being a change in
17 practice?

18 Yes, and that seems to be consistent with what you've told
19 us here today?---I don't want to waffle. I was at the
20 Armed Robbery Squad, it became the Armed Offenders
21 Squad - - -

22 No, no, I'm just asking you about Mr Iddles' evidence. I
23 was curious about your answer when you were asked had
24 you heard Mr Iddles or seen his account?---Yes, sir.

25 And you said, "I heard what he said"?---Yes.

26 Do you agree with what he said?---I don't dispute it, I just
27 don't remember the conversation, sir. Sorry.

28 Thank you. Any questions? Mr Birch, it was an interesting
29 sojourn into the witness box. It's over?---I'm not

1 sure whether you understood me or not, though,
2 unfortunately.

3 No, no, I did. I think it was unfortunate the example you
4 cited?---Okay, I apologise.

5 Because I think it became much clearer when we discussed the
6 second example. There's no need for you to return here
7 for any reason, I'll release you from your
8 summons?---Thank you, sir.

9 We'll provide you with a video of your evidence and a
10 transcript - - -?---Yes, sir.

11 - - - so you can see where the misunderstandings
12 emerged?---If I'm bright enough, yeah.

13 And I discharge you, thank you for your
14 attendance?---Appreciate it, sir. Have a good day.

15 MR RUSH: Commissioner, there's one further witness,
16 Mr Edwards, who Ms Boston will take.

17 COMMISSIONER: My apologies, Mr McQuillan.

18 MR McQUILLAN: May I be excused?

19 COMMISSIONER: I forgot to ask you if you had any questions.

20 MR McQUILLAN: I didn't, sir, no. I didn't stand up for
21 that reason.

22 COMMISSIONER: I didn't think you would. My apologies.
23 Yes, Mr Rush.

24 MR McQUILLAN: May I be excused?

25 COMMISSIONER: Yes, you may.

26 MR RUSH: If the Commissioner sees fit, if we could break
27 for 30 minutes and call Mr Edwards who won't be long,
28 or - - -

29 COMMISSIONER: How long do you think Mr Edwards will be?

1 MR RUSH: Twenty minutes.

2 COMMISSIONER: Twenty minutes. Why don't we just proceed.

3 <PAUL JAMES EDWARDS, sworn and examined:

4 COMMISSIONER: Mr Edwards, you're represented by Mr Reid.

5 MR REID: Yes, good afternoon.

6 COMMISSIONER: Thank you, Mr Reid.

7 Mr Edwards, as your summons disclosed, you may be
8 asked questions about any of the following matters: (1)
9 the Lorimer Task Force investigation of the murders of
10 Sergeant Gary Silk or Senior Constable Rodney Miller,
11 concerning the taking of witness statements, the
12 preparation of the brief of evidence for the trial of
13 Debs and Roberts, and whether there was full disclosure
14 of witness statements or other relevant information
15 prior to or during the trial, witness statement-taking
16 practices by Victoria Police, compliance with the
17 obligation to disclose evidence by Victoria Police.

18 Following questions from counsel assisting and any
19 cross-examination that's permitted, Mr Reid will have
20 an opportunity to ask you any further questions or have
21 you elaborate on anything that was the subject of your
22 evidence.

23 When you were served with the documents, you
24 received a statement setting out your rights and
25 obligations?---Yes, I was.

26 Has Mr Reid discussed those rights and obligations with
27 you?---Yes, he has.

28 Do you wish me to remind you of those rights and
29 obligations?---No, that's fine, thank you.

1 In summary, Mr Edwards, what is important is you answer the
2 questions, you answer them truthfully, and so long as
3 you do so, subject to certain exceptions, your evidence
4 can't be used in evidence against you. Anything you
5 want to ask of me at this stage?---No, I'm fine.

6 Very good. Yes, Ms Boston.

7 MS BOSTON: Is your full name Paul James Edwards?---It is,
8 yes.

9 You attend today in response to a summons served on you on
10 8 February 2019?---Correct, yes.

11 Could you look at these documents, please. The summons in
12 front of you numbered SE2921, is that a copy of the
13 summons that was served upon you?---Yes, it is, yep.

14 Did you also receive a document entitled, "Statement of
15 Rights and Obligations"?---Yes, I did.

16 Do you see a copy of that document there?---I do, yes.

17 Did you also receive a confidentiality notice dated
18 8 February 2019?---I did, yes.

19 As well as a covering letter dated 8 February 2019?---Yes.

20 Are they copies of the documents that you received in
21 full?---Yes, they are.

22 Do you understand the nature of those documents?---Yes, I
23 do.

24 I tender those, Commissioner.

25 #EXHIBIT AA - Documents served on summons to Mr Edwards.

26 Mr Edwards, what is your current occupation?---I'm a
27 sergeant of police.

28 Where are you stationed?---Stationed at the Driver Training
29 Unit, 20 Dawson Street, Brunswick.

1 At the where, sorry?---Driver Training Unit.
2 When did you join Victoria Police?---August 1983.
3 Could you just please give a brief outline of your ranks and
4 stations throughout the course of your
5 career?---Certainly. From August 83 to
6 approximately April 1990, I was a constable and
7 progressed to a senior constable at Brunswick uniform.
8 In April 1990, I then transferred to what was called
9 the Video Operations Unit which, in 1996, became
10 swallowed up by Crime Scene out at Forensic Science as
11 a result of Project Arbiter, and I remained there until
12 Valentines Day 2014 - I remember the day exactly -
13 where I transferred to the Driver Training Unit, and
14 I've spent the last 19 years - I was promoted to the
15 rank of sergeant in 2009, I think it was, from the top
16 of my head.

17 When did you say you transferred to the Driver Training
18 Unit, please?---14 February 2000.

19 2000?---Yes.

20 You attended the crime scene following the murders of
21 Sergeant Silk and Senior Constable Miller?---I did,
22 yes.

23 On 16 August 1998?---Correct.

24 You received a request from Detective Senior Sergeant
25 Bezzina to do so in the early hours of the
26 morning?---Again, I can't remember who it was - it was
27 via the online supervisor, I can't remember who it was;
28 that would be correct, I assume so.

29 You did ultimately attend the crime scene?---Yes, yes, yes.

1 And that was at about 1.50 in the morning; is that
2 correct?---Yes, I - yeah.

3 Did you video the crime scene at that stage?---No, not from
4 memory, it was - it was - there was a certain protocol
5 that we always follow, so.

6 There was a protocol you follow?---There is a certain
7 protocol with crime scenes we always follow, and I
8 can't remember - I'm not saying I did, but I can't
9 remember doing it at night, but it might have been. It
10 certainly wasn't as soon as I got there.

11 You returned at 8.30 in the morning and videoed the crime
12 scene?---Possibly, yes.

13 You mentioned protocol. What would be the reason for
14 initially going at 1.50, not videoing the crime scene
15 and then returning later in the morning to do the
16 video?---Okay, so with any job I'm called out to, we
17 attend the scene when we're called. We're a service -
18 we're a service, I suppose, industry for want of a
19 better term, so the usual protocol with any job was to
20 receive instructions from the investigating homicide
21 member, and then from the actual crime scene examiner
22 in charge of the scene, and we would be shown - or I
23 would be shown through as to what areas I need to
24 videotape, I'd do that as directed.

25 And the purposes of the crime scene video?---Just to show a
26 reflection of an in situ reflection of what was found
27 at the time.

28 And sometimes ultimately played at the trial of
29 a - - -?---Correct, yes.

1 Do you recall the circumstances in which you made your
2 statement in relation to this matter?---I don't recall
3 the circumstances, but it would have - I can only
4 imagine it would be like every other thing, where it
5 would be - my statements were fairly sort of almost
6 like a pro forma statement, um. The statement, bulk of
7 the statement or the details of the statement are
8 usually taken in my diary, my CI diary. There was no -
9 the statement's no different to every other homicide
10 I've attended to.

11 Do you recall whether you updated that statement at some
12 point?---No, I don't - I don't believe so, I don't
13 recall it.

14 Was that something that you had to do from time to time,
15 update a statement?---No - what do you mean, update?

16 That was going to be my next question?---My statement's my
17 statement, yeah.

18 If there was something which was incorrect in a statement in
19 some way, or something missing, how would you go about
20 remedying that deficiency?---I've never had that in
21 36 years of policing.

22 Never had to correct anything?---Not that I remember. I
23 might have had a spelling mistake my sergeant might
24 have picked up, but no, nothing. No amendments that I
25 can ever remember.

26 We might go to Exhibit 490, please. Firstly perhaps, this
27 is an extract from Graeme Collins's day book?---Okay.
28 Going to p.7643, this is a copy of a table which was
29 inserted into his day book amongst entries in November

1 2000. If we go to the next, you can see there, there's
2 "Operation Lorimer, brief prep tasks." If we can go to
3 the next page, No.11, you will see there's an entry
4 there: "Update Senior Constable Paul Edwards'
5 statement. Remove reference to the crime scene video."
6 And then in what the Commission understands to be
7 Graeme Collins' handwriting: "Reformat -
8 Buchhorn"?---Oh, yes, yep.

9 Did you have any involvement with the matter other than
10 taking the crime scene video?---I - I don't believe I
11 did, and I did - I do remember, and again, I can't be
12 sure of this, but there was a lot of forensic testing
13 of Hyundais at the crime scene lab that were video
14 taped, and I can't remember whether I did one of those
15 or not, but apart from that, no.

16 "Crime scene video", would that only refer to the video that
17 you took on the morning of 16 August, or could it
18 encompass other videos which you took in relation to
19 the investigation?---No, that would - the only one I
20 took on the morning and there's - I mean, the role of -
21 my role within the crime scene of the video unit was to
22 not only do crime scene videos but re-enactments with
23 offenders for homicides and other serious crimes,
24 interviews.

25 But in relation to this specific investigation?---Just
26 the - - -

27 It was just taking that crime scene video on the
28 morning?---Crime scene video, correct, yes.

29 Do you know what would have been meant by, "Remove reference

1 to the crime scene video" in relation to updating your
2 statement?---No idea, never.

3 If we could go to your statement, Exhibit 537, and perhaps
4 we'll leave that exhibit up as well. Going down to the
5 bottom of the next page, you will see that that's dated
6 11 January 2001: "Acknowledgment taken at the Motor
7 Driving School in Brunswick." You'd been there since
8 14 February the previous year, I think was your
9 evidence?---Yes, correct, yeah.

10 And Sergeant Forbes, was he your supervisor or?---Yes, he
11 was, yeah.

12 This is obviously quite some time after the murders?---Yes.
13 What was the reason for that delay?---Again, I don't - I
14 can't - I can't explain that. I mean, you're talking
15 something 19, 21 years ago, I'd be making it up if I
16 tried to come up with a reason.

17 Ordinarily, would your practice be to write your statement
18 soon after such a serious event?---Um, I'd say the
19 majority of times, yes; I mean, usually I - going back
20 through my memory, it was when I was asked for it, we'd
21 usually prepare it or, if we didn't, as I say, we'd
22 take the information out of my diary.

23 You may have picked up that the date of this statement,
24 11 January 2001, is after the entries where the table
25 was inserted in November 2000?---M'hmm.

26 Which tends to suggest, don't you agree, that you had made a
27 statement by November 2000?---Again, I honestly can't
28 answer that, um.

29 You can't explain it?---I can't explain it, no. That's the

1 first time I've seen that in, you know, obviously
2 19 years, and I don't have access to my diary, so.
3 The Commission's heard evidence in relation to a number of
4 police witnesses where multiple versions of their
5 statement have been made. Is that what's occurred in
6 relation to your statement?---I don't believe so, no.
7 Why do you say you don't believe that's what's occurred in
8 your circumstance?---Well, it's not something I've ever
9 practised in my career, so. You know, I can't explain
10 why it's - the date is but.

11 If you'd been asked by a detective from the Homicide Squad
12 to change your statement, is that a request that you
13 would have complied with?---I don't believe so, I've
14 never - I don't - because I don't ever remember being
15 asked that by any Homicide Squad detective.

16 Could we turn to Exhibit 538 and keep up 537, please. This
17 is a copy of the brief formatted version of your
18 statement which was included in the hand up brief which
19 was tendered at the committal hearing of Debs and
20 Roberts. Going to the final page of that - and firstly
21 before I do that, is this a format with which you're
22 familiar, in terms of being a formatted version used
23 specifically for committal hearings?---Yeah, it looks
24 like a statement, yeah. Looks like the sort of
25 information I have in a statement, yes.

26 Going to the bottom of that document, you will see there
27 that it's unsigned?---Yes, correct.

28 And that there's no date except "2000"?---Correct.

29 When your signed version of your statement is dated

1 2001?---M'hmm.
2 Can you explain that discrepancy?---I can't explain it, but
3 again, it's unsigned so I don't even know if I wrote -
4 if I authored that, but.
5 Isn't what's most likely, given these documents that I've
6 now shown you, that there had been a version of your
7 statement completed in 2000 which was ultimately
8 updated and signed by you on 11 January 2001?---Well,
9 again, I can't answer; I mean, you're asking me
10 something that I can't give you an answer on, you know.
11 I haven't had - sorry?

12 COMMISSIONER: Your memory doesn't help you?---No, I haven't
13 had - this is the first time I've seen this in 20 years
14 and it's something that I don't look at, or refer to or
15 had access to, so. Twenty years ago, I might have had
16 a more accurate answer for you.

17 MS BOSTON: Those are the matters, Commissioner.

18 COMMISSIONER: Yes. Anything arising?

19 Mr Edwards, I'll excuse you from any further
20 attendance, release you from your summons and the
21 confidentiality notice, and thank you for your
22 attendance.

23 MR REID: Thank you, Commissioner.

24 COMMISSIONER: Nothing else?

25 MS BOSTON: No.

26 COMMISSIONER: We'll adjourn to 10 am tomorrow morning,
27 thank you.

28 Hearing adjourns: [1.21 pm]

29 ADJOURNED UNTIL THURSDAY, 21 FEBRUARY 2019