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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT BROAD-BASED ANTI-CORRUPTION COMMISSION

MELBOURNE

MONDAY, 11 FEBRUARY 2019

(5th day of examinations)

BEFORE THE HONOURABLE ROBERT REDLICH QC

Counsel Assisting: Mr Jack Rush QC

Ms Catherine Boston

OPERATION GLOUCESTER INVESTIGATION

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

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

1 COMMISSIONER: Ms Boston, before I call on you, there's a  
2 matter that I should raise in relation to the way that  
3 Thursday's proceedings were reported. A number of the  
4 media outlets referred to Mr Hill's evidence and an  
5 assertion by Mr Hill that something in one of Pullin's  
6 statements was a lie. As I understand his evidence, he  
7 was referring to the date and Mr Bezzina's  
8 acknowledgment immediately below that date.

9 For some reason some of the media reported that  
10 evidence as in relation to the content of Mr Pullin's  
11 statement; it's unfortunate that the two things were  
12 combined. It's probably too late now to address that  
13 problem, but it's really important that whatever media  
14 recording there is of what takes place, that it's  
15 accurate.

16 MS BOSTON: Yes, Commissioner. Commissioner, the first  
17 witness this morning is Graham Riley.

18 COMMISSIONER: Yes, Mr Riley, come forward, please.

19 <GRAHAM KENNETH RILEY, sworn and examined:

20 COMMISSIONER: Have a seat, Mr Riley. I understand,  
21 Mr Riley, you're represented by Mr Purcell?---Yes, Your  
22 Honour.

23 MR PURCELL: Yes, Your Honour, that's correct.

24 COMMISSIONER: Thank you. Mr Riley, the questions on which  
25 you will be asked are as to the Lorimer Task Force  
26 investigation of the murders of Sergeant Gary Silk and  
27 Constable Rodney Miller, concerning the taking of  
28 witness statements, preparation of a brief of evidence  
29 for the trial of Bandali Debs and Jason Roberts, and

1           whether there was full disclosure of witness statements  
2           or other relevant information prior to or during the  
3           trial, witness statement-taking practices by Victoria  
4           Police and compliance with the obligation to disclose  
5           evidence by Victoria Police.

6                       Those matters were set out in the summons that you  
7           were served?---Correct.

8           Mr Riley, when you received the summons, you also received a  
9           confidentiality notice - - -?---Correct.

10          - - - and a statement of rights and obligations. Has

11          Mr Purcell discussed with you the content of those  
12          rights and obligations?---Yes.

13          You understand them?---Yes.

14          Do you require me to repeat them to you?---No, sir.

15          Very good. At the conclusion of your evidence that counsel  
16          assisting will lead from you and any cross-examination  
17          that's permitted, Mr Purcell will have an opportunity  
18          to ask you questions or elicit any additional  
19          information that he thinks might more fully reflect  
20          your evidence, so you will have an opportunity at the  
21          conclusion of the evidence for that to occur. Yes,  
22          Ms Boston.

23          MS BOSTON: Mr Riley, could you state your full name,  
24          please?---Graham Kenneth Riley.

25          Do you attend today in response to a summons served upon you  
26          on 20 December last year?---Yes.

27          The summons that is before you, numbered SE2772, is that the  
28          summons that was served upon you?---Yes, I - yes,  
29          that's it.

1 You also received a document entitled, "Statement Of Rights  
2 and Obligations", do you see that document in the  
3 bundle?---Yes, I believe that's it there.

4 Did you also receive a confidentiality notice dated  
5 11 December 2018?---Yes, I did.

6 And a covering letter dated 12 December 2018?---If that's  
7 the date, yes.

8 Are those copies of the documents that you received in  
9 full?---Yes.

10 Do you understand the nature of those documents?---Yes.

11 I tender those, Commissioner.

12 #EXHIBIT L - Documents received on summons to Mr Riley.

13 Mr Riley, what is your current occupation?---My current  
14 occupation is, I'm the manager for safety and service  
15 quality within infrastructure and planning for the  
16 Mornington Peninsula Shire.

17 Were you formerly employed by Victoria Police?---Yes, I was.

18 When did you graduate from the Academy?---I graduated from  
19 the Academy, I think it was February 89.

20 Could you please just briefly outline where you were  
21 stationed and your ranks at various times?---Yes. So,  
22 from leaving the Academy I went to Oakleigh Police  
23 Station as a training station as probationary  
24 constable. I then went to Clayton Police Station for a  
25 short period as a probationary constable. I was then  
26 gazetted to City West Police Station at the end of  
27 1989, again, still a probationary constable. I left  
28 there somewhere around the end of 91 from memory - or  
29 some - 91-92 and I went to Knox Police Station acting

1 as a constable. I left Knox - I can't remember the  
2 date off the top of my head, but went to protective  
3 security group on promotion to senior constable. From  
4 protective security group, I was there for a while  
5 because of the - forgotten the word - basically, there  
6 was no transfers at that point, so I then went to  
7 Nunawading Police Station as a senior constable. A  
8 short time - I can't remember how long I was there for,  
9 but then I transferred to Glenn Waverley Police Station  
10 within the same district as a senior constable. Sorry,  
11 I failed to mention, back at Knox, I was at Knox  
12 District Support Group for a short time. At Glenn  
13 Waverley, I was then a - I spent a bit, I think it's  
14 12 months, with the G District Support Group as a  
15 senior constable. I then returned to uniform duties  
16 before transferring down to Sale where I grew up as a  
17 senior constable; I spent quite a bit of time as an  
18 acting sergeant there. I then came back to Frankston  
19 to the traffic management unit - my wife wasn't happy  
20 in Sale, so came back to the Frankston traffic  
21 management unit. That was around - yes, I was down in  
22 Sale around 2000, so I would have been back in  
23 Frankston in 2001 and I resigned in 2002.

24 In terms of where you were stationed between the years of  
25 1998 and 2001, which of those stations would you have  
26 been stationed at in 1998?---In 1998, I was at Glenn  
27 Waverley Police Station and Glenn Waverley District  
28 Support Group, or G District Support Group.

29 You mentioned that after being in the G District Support

1 Group you returned to uniform. Could you just explain  
2 what the G District Support Group was?---Yeah, so, G  
3 District Support Group is - I think there's only two  
4 permanent members there, being the senior sergeant and  
5 an analyst. Basically, it's a common opportunity where  
6 you're targeting local crime issues and things like  
7 that, do a lot of drug investigations, drug warrants  
8 and things like that, but target recurring issues and  
9 things like that that otherwise, you know, normal  
10 patrols don't have the time to stop and investigate.

11 Do you recall working with a Grant Langmaid?---I worked with  
12 Grant Langmaid at Nunawading Police Station?---Would  
13 that have been around that period of 1998?---1998 or  
14 1997, somewhere around there, I couldn't tell you  
15 exactly, but yeah.

16 What about Matthew Anderson?---I worked with Matthew  
17 Anderson, I think also at Nunawading Police Station.  
18 Around that same time?---Roughly around the same time, yeah.  
19 I take it that over the course of your career, which was  
20 approximately - - -?---13 and a half years.

21 - - - 13 and a half years, you would have taken quite a few  
22 witness statements over that time?---Over the time,  
23 yes.

24 What was your understanding of the purpose of taking that  
25 witness statement?---The purpose is obviously to gather  
26 the evidence that those witnesses could give in  
27 subsequent court proceedings and obviously to establish  
28 whether an offense has actually occurred.

29 And the statement would go onto the brief of

1 evidence?---Correct.

2 Are you aware of a practice within Victoria Police of not  
3 including in a statement from a witness, that witness's  
4 description of an offender?---Yes.

5 Could you explain your awareness of that practice,  
6 please?---I - so, it's something I've been thinking  
7 about obviously in preparation for today, is trying to  
8 figure out exactly when I learnt it. I do remember in  
9 the Police Academy an exercise in the lecture theatre  
10 where, as a squad we're sitting there and an instructor  
11 storms in and - you know, I think he's got a gun and  
12 pretends to carry on and all that sort of stuff and  
13 then you practice - and then obviously he leaves you  
14 talk about the differences in - you know, you obviously  
15 go through the differences between what we each of us  
16 saw and our different interpretations and it's actually  
17 quite incredible how different that can be. I don't  
18 know that I - I honestly can't say whether it was at  
19 that time, but I know by the time I was gazetted To  
20 City West Police Station, I knew that I'd already been  
21 told not to include descriptions in statements.

22 And you said that it was about 1989 that you went to City  
23 West?---Yep.

24 And who had told you?---I just have this memory of being at  
25 the station, and we were taking a witness statement,  
26 and there was - the witness had a description and the  
27 question came down to, "Well, if we don't put it in the  
28 statement, what do we do with it?" And I can't  
29 remember whether it was a sergeant or a detective that

1           said, "You write it on a separate piece of paper."  
2       When I asked you about your awareness of the practice of  
3       omitting descriptions you told us about that exercise  
4       from the Academy; was that because you have some  
5       recollection of first being told at the Academy that  
6       descriptions should not be included in  
7       statements?---I - yeah. So, I can't say whether that  
8       was when I learnt it or not; I wish I could, but no, I  
9       can't tell you whether it was actually in the Academy  
10      or whether it was a short time afterwards; that, I  
11      can't recall.

12      So it's possibly either at the Academy or very early on in  
13      your career something you - - -?---Very early on in my  
14      career, yes.

15      - - - learnt on the job?---Yes.

16      From a more senior police officer?---Yes.

17      You don't recall whether, when you were at Oakleigh and  
18      Clayton, before you were gazetted to City West, whether  
19      it was a practice you were undertaking at those  
20      stations?---That I - nah, I - yeah, I don't have any  
21      recollection of that at Oakleigh. My recollection is,  
22      this conversation at City West.

23      And so, from that point, from 1989 at City West, was it, you  
24      understood that it was expected that descriptions would  
25      not be included in statements?---Generally, yes. So,  
26      the descriptions that I would put in would be things  
27      that might distinguish between offenders. So there  
28      might be a couple of offenders, so like, one was taller  
29      than the other, you'd put something like that in to try



1           and help identify the offender through the statement.  
2   Without mentioning their specific heights, just  
3           comparatively speaking?---Comparatively speaking, yes.  
4   That was a practice that you followed until you resigned in  
5           2002?---Yes.  
6   You mentioned a conversation at City West you have a  
7           recollection of where the question was raised, "Well,  
8           if we don't record the description in the statement,  
9           where do we put it?", what was the outcome of that  
10          conversation?---It was to write it on a separate piece  
11          of paper and attach it with it, and I was always  
12          concerned about that because, you know, you look at -  
13          some people write just on small scraps of paper and  
14          others - so I'd always try to get a, like, a full A4  
15          piece of paper and write the witness's name and put the  
16          description on that and try and make sure that that  
17          didn't get lost, you know what I mean.  
18   You said it would be attached, would that be attached - how  
19          would it be attached?---To be perfectly honest, it may  
20          be attached or I may have - may have literally handed  
21          it to the investigating officer, I - yeah, could  
22          be - - -  
23   And by the investigating officer, do you mean the  
24          informant?---The person who would become the informant,  
25          yes.  
26   The person in charge of compiling the brief?---Correct.  
27   And following it through the prosecution stage?---Yes.  
28   COMMISSIONER: You've said you were concerned; what were you  
29          concerned about?---I just look at it and go, well, that

1 description is obviously important to the witness,  
2 particularly if you felt it was a good description, you  
3 don't want that getting lost. So, when - you know, if  
4 you see somebody writing, I don't know - I've got a  
5 napkin here in front of me, but you know what I mean -  
6 just writing on a scrap of paper, I was always  
7 concerned that, you know, that scrap of paper could get  
8 lost, so I always tried to make sure mine was a decent  
9 sized piece of paper with a bit of information so that,  
10 if it got separated, it would somehow try and stand  
11 out.

12 MS BOSTON: You saw other people recording the descriptions  
13 on a scrap piece of paper, literally just a - when you  
14 say a scrap piece of paper?---They might just, I don't  
15 know, get a piece of paper out of the printer or  
16 something like that, I - yeah. I've seen - I do recall  
17 seeing someone - like I said, I would usually use an A4  
18 piece of paper, but I have seen someone, just smaller  
19 pieces of paper and things like that.

20 You said it was your practice to omit descriptions  
21 throughout your career, I take it that was your  
22 understanding of what your colleagues were also  
23 doing?---Yes, that's what we were taught.

24 And something that you commonly saw other police members  
25 doing as well?---Yes.

26 COMMISSIONER: Just, your nod won't be recorded,  
27 Mr Riley?---I actually said "yes", but it obviously  
28 didn't come out. Yes. Sorry.

29 MS BOSTON: You said you were concerned; you had the concern

1           when you were taught the practice or you retained that  
2           concern throughout your career?---I had the concern if  
3           I had a description, that I didn't want it to get lost.  
4    Did you wonder what the purpose of that practice was?---I  
5           had it explained to me, and obviously that's why I  
6           don't know if it was at the Academy or later, that you  
7           know, historically witnesses can be quite inaccurate  
8           with their descriptions so, you know, you just look at  
9           the common question around age: people get people's  
10          ages wrong all the time, so it was explained to me  
11          that, because they can be inaccurate, that you don't  
12          record them in the statement.

13    COMMISSIONER: How would you ever know that the description  
14          was inaccurate?---I guess that's part of the challenge.  
15    But until - - -?---I guess, for me, an inaccurate  
16          description is usually one that sort of had very little  
17          detail, like, I don't know, even then it's not  
18          necessarily inaccurate if you actually stop and think  
19          about it: you know, he was tall with dark hair and  
20          that's about it, as opposed to somebody that says he  
21          was 5 foot 6, this, that and the other. But, yeah, I  
22          don't know.

23    So, if the person charged was short and he had blonde hair,  
24          that would make the witness's description  
25          inaccurate?---Um, not - yeah, I don't know how to  
26          answer that question, sorry.

27    Did it not concern you, Mr Riley, that the decision that a  
28          description was inaccurate would be informed by who was  
29          ultimately charged with the offence?---I guess for me,

1 I always - you know, like I said, I always trusted  
2 that, if I gave that description, they would use that  
3 description in the investigation of the defence, so ...  
4 No, but my question is, did it not concern you that, if the  
5 description didn't fit that of the person ultimately  
6 charged, it wouldn't be used?---No, that - no. It  
7 would concern me if it wasn't used, but - - -  
8 You never thought of that as a risk?---No. I guess, no, I  
9 didn't because I was following my instructions as to  
10 what I'd been told and this was the way it was handled,  
11 so ...

12 That's why I asked you at the outset, how do you ever  
13 determine whether or not the - - -?---The accuracy of  
14 the descriptions, yeah.

15 - - - accuracy of the description is inaccurate?---For me,  
16 it wasn't my job to determine whether that description  
17 was accurate; I would record the description that I was  
18 given and make sure that that was given to the  
19 informant. So, I never questioned the descriptions,  
20 apart from trying to elicit more information, but it  
21 wasn't my job, if I'm taking a witness statement, to  
22 determine the accuracy of the description, it was to  
23 capture the description and pass it on to the  
24 informant.

25 MS BOSTON: I take it, once you provided the statement and  
26 the description to the informant, you wouldn't know  
27 what ended up being included in the brief of  
28 evidence?---No.

29 You wouldn't know whether a supplementary statement was

1           taken from the witness?---No.

2           Setting out the description that you'd included on the

3           separate piece of paper?---No.

4           We might just go to an example.

5           COMMISSIONER: Can we just clarify that. Does that mean you

6           never saw prosecution briefs which then demonstrated to

7           you how that additional note was then used on the

8           brief?---No, I don't believe I did.

9           MS BOSTON: If we could go to Exhibit 301, please.

10          I believe we've got a hard copy for the witness as

11          well. You will see that - this is your handwriting, I

12          take it?---Yes, it is.

13          A statement you took from a Leong Eng Ling on 18 July

14          1998?---Correct.

15          In relation to an armed robbery on 18 July 1998?---Correct.

16          What I'm going to suggest to you is that, in line with the

17          evidence you've given this morning, the only

18          description of the offenders in this statement is on

19          the second page, p.3443, about eight lines from the

20          bottom, where it says: "The first man who was taller

21          than the second "?---Yes.

22          That's an example of what you were saying before, the only

23          description that you would use would be for the

24          purposes of distinguishing between offenders?---Yes.

25          If you'd like to read through it, of course I'll give you

26          that opportunity.

27          COMMISSIONER: Is there anything else about the statement

28          you want to draw to his attention other than the

29          limited description?

1 MS BOSTON: That's it, Commissioner.

2 COMMISSIONER: We won't trouble you at the moment to read  
3 through it?---Thank you. I forgot to bring my glasses.

4 MS BOSTON: But you would accept that it would be consistent  
5 with the practice you've outlined to include only a  
6 minimal description?---Yes.

7 Turning to Exhibit 169, I take it again that this is your  
8 handwriting?---Yes.

9 This is the separate description that you took from the  
10 witness on the same day that you took her  
11 statement?---Yes, although funnily enough I actually  
12 don't remember taking that, but yes, I'm actually quite  
13 happy to see that.

14 It's a long time ago, Mr Riley, it's not a memory test. I  
15 just want to explore with you whether this is  
16 consistent with the practice that you followed.

17 There's no date on this statement, would that be  
18 normal? I shouldn't call it a statement, on this  
19 description; it's not dated?---Sorry, I can't see that,  
20 but I assume. Is that normal? That I couldn't answer,  
21 I think it - yeah, no, I couldn't tell you whether  
22 that's normal or not.

23 And it's not signed by the witness, is it?---No.

24 What was your understanding as to what would take place if  
25 ultimately the informant decided to use the  
26 description, it being not dated and not referred to in  
27 the statement and not being signed?---As in, what would  
28 the informant do with it?

29 What was your understanding as to what the informant would

1 do with it?---Well, I would imagine he would - exactly  
2 what they would do with it, I don't know. You know,  
3 once I handed that over, I would have no party to that  
4 after that.

5 Was your understanding that - - -?---So I would assume they  
6 would obviously use it to help their investigation,  
7 but.

8 So, if it ultimately matched the suspect, your understanding  
9 is that that would help the investigation?---I guess it  
10 would, yes.

11 And so, it would be used in that case?---I would imagine so,  
12 yes.

13 At the same time, it wouldn't be used if it didn't match the  
14 suspect?---I would assume that - well, as I said, I  
15 don't know what they would have done with it, but I  
16 would assume it's there, it's evidence, so I would  
17 imagine it would come out at some point in time; that  
18 would be my expectation.

19 Just looking at the description, you've got under "first  
20 male", "Approximately 6 foot tall. Colour length: dark  
21 coloured hair. Rubber mask. Gorilla, Godzilla,  
22 dinosaur" and so forth. Three lines from the bottom of  
23 that description of the first male you've written down,  
24 "Sounded Australian." By that do you mean, did the  
25 witness mean, that the accent of the offender sounded  
26 Australian?---Correct, yes. Yes, the witness had an  
27 Asian accent, so she distinguished, sounded Australian.

28 So, you would have been careful, I take it, when eliciting  
29 this detail from the witness to make sure that you

1 recorded accurately her descriptions of the two  
2 offenders?---Yes.

3 COMMISSIONER: Looking at the description of the second  
4 male, are you able to say the first male was obviously  
5 the taller or the bigger of the two?---Yes.

6 MS BOSTON: On the topic of accents, in respect of the  
7 second email male you've written down: "Possibly  
8 Southern European, Arabic and Leb", I take it that's  
9 Lebanese?---Lebanese, yes.

10 Lebanese accent. So, again, that's something that you would  
11 have been careful to accurately record?---Yes.

12 In terms of what the witness was telling you?---Yes.

13 Did you keep copies of the statements and separate  
14 descriptions that you took or?---Sorry?

15 Did you keep copies for your own purposes of statements and  
16 separate descriptions?---No. We took that on site at  
17 the restaurant and as far as - once I handed that over  
18 I never saw it again.

19 There's been some evidence that in some cases police  
20 members, instead of recording a description on a  
21 separate piece of paper, would record that information  
22 in their day book or diary; is that a practice that  
23 you're familiar with?---I believe that would happen,  
24 yes.

25 But your own practice was to record it on a separate piece  
26 of paper?---Yeah. I didn't adopt the practice of using  
27 day books for quite some time.

28 How would those descriptions from those other members, where  
29 they were kept in their own day books or diaries, make



1           their way to the informant?---I guess they'd have to be  
2           photocopied. I know I attended one scene where I took  
3           a whole lot of notes and I photocopied my notebook and  
4           handed it up. I handed the photocopy up, not the  
5           notebook.

6           You said before, when I asked you questions about what the  
7           purpose of this practice was, that it was explained to  
8           you, "Well, what if the witness gets it wrong" or words  
9           to that effect. I take it that, you understood  
10          therefore that the description would only be used if  
11          the informant perceived that the witness had got it  
12          right?---I guess, if you look at it that way, yes.

13          And that would be if the description matched the suspect  
14          ultimately identified?---I guess, but I guess for me, I  
15          figured it's always available as evidence and that the  
16          witness would always relay their testimony in court  
17          anyway, so.

18          It's always available as evidence to the informant. There's  
19          at least a very real risk, though, isn't there, that  
20          that description would never make its way to the  
21          prosecution or the defence?---Potentially, yes.

22          I take it, you can see the risk that arises if a witness's  
23          description is not provided to the lawyers for the  
24          parties?---Yes.

25          What did you understand your duty as a police officer to be  
26          in terms of disclosure?---As in, to the defence or?  
27          Yes.

28          COMMISSIONER: And prosecution?---And the prosecution, is to  
29          provide the evidence that you're aware of.

1 MS BOSTON: And that would be all relevant evidence;

2 yes?---Yes.

3 That would include, not just evidence which helps the  
4 prosecution case, but also evidence which might harm  
5 the prosecution case?---Yes.

6 Is that how you understood it at the time?---I guess so,  
7 yes.

8 COMMISSIONER: Did you not also understand that, if there  
9 were things the witness said to you that you realised  
10 made the witness unreliable, that needed to go into  
11 their statement so that at a later point of time other  
12 people could also see that there was the risk of the  
13 witness being unreliable?---Yes, yes. So, the words -  
14 you know, obviously you're taking a statement and it's  
15 important to put the statement in there the words as  
16 best as possible so, if, as you're taking the statement  
17 it didn't sound correct, well, that's the witness's  
18 statement, you continue on and you take those words  
19 that the witness would say.

20 So that, another risk associated with putting the  
21 description on a separate sheet was that the parties to  
22 litigation and the judge and jury may never see the  
23 evidence that disclosed the witness was  
24 unreliable?---Quite potentially, yes.

25 MS BOSTON: Do you recall what you were taught at the  
26 Academy about the obligation of disclosure, what you  
27 had to provide to the parties?---No.

28 I understand that now you understand that your obligation  
29 was to disclose all relevant material irrespective of

1           whether it helped or harmed the prosecution case. Are  
2           you able to say what your understanding was back then  
3           in 1998?---Probably had lesser understanding than I do  
4           now.

5           And, why would that be?---Experience over time and  
6           circumstances such as these; when you get older and you  
7           start thinking about things.

8           COMMISSIONER: But what about in 1998, ten years into your  
9           experience as a police officer, would you have clearly  
10          understood then that it wasn't for you to be selective  
11          about information, relevant information, it all needed  
12          to go into a statement?---No, I was taught that you  
13          don't put the description in the statement, so I  
14          wouldn't put it in the statement, but I would capture  
15          that evidence and make sure, like I said, you saw the  
16          piece of paper there, I'd make sure that that evidence  
17          is still there, so yeah, I'm following direction,  
18          following what I was taught, don't put it in there, but  
19          make sure that I give it, make sure that evidence is  
20          there.

21          At no time prior to your resignation were you ever trained  
22          differently or instructed that that shouldn't happen  
23          any further?---No.

24          MS BOSTON: I just want to explore some of the risks and  
25          consequences of this practice with you. Firstly, as  
26          the person taking the separate description you've  
27          agreed that you wouldn't know whether or not it would  
28          ultimately be disclosed to the parties;  
29          correct?---Correct.

1 So there's a risk, isn't there, that potentially exculpatory  
2 evidence, that is evidence that might exonerate the  
3 accused, might never be received by the  
4 defence?---There is that risk, yes.

5 One of the consequences of not taking fulsome statements  
6 which the Commission has heard evidence about is what I  
7 might term replacement - there's a practice of  
8 replacement statements being taken. By that I mean,  
9 instead of taking a supplementary statement which  
10 refers to the earlier statement, a new statement which  
11 purports to be the first statement is taken which  
12 doesn't refer to that earlier statement; do you  
13 follow?---Yes.

14 Is that a practice that you're aware of?---I don't believe  
15 it's a practice, but I am aware that it can happen.

16 How is it that you're aware of that?---Because I was asked  
17 to amend a statement.

18 Can you give more detail about that, please?---Yes. In  
19 1990, I think it was, I arrested a member at the Tunnel  
20 Nightclub and - when I say a member, I mean a member of  
21 the police force - and that investigation was obviously  
22 followed through by Internal Investigations. I  
23 provided them a statement and they asked me to change  
24 my statement, which made me extremely angry, and when  
25 it came to the committal proceeding I advised defence  
26 counsel that it was not my first statement.

27 When you say they asked you to change your - is that  
28 Internal Investigations that asked you to change  
29 it?---Yes. Looking back, you know, at the time I was

1           enraged because I thought, you know, you're accusing me  
2           of not putting in detail, and I was enraged by that;  
3           maybe now as I've got a little bit older they were  
4           thinking that maybe I had deliberately left it out, but  
5           I - I'm an honest person, so I was furious.

6           What was it that you were asked to change?---Basically in  
7           that case, when we arrived this particular police  
8           member, it was an assault case, it was a fight between  
9           a member and a bouncer. When we arrived the police  
10          member still had him in his grip but he was at  
11          arm's-length, and somewhere during the scuffle the  
12          bouncer's ear got bitten and part of his ear got bitten  
13          off. When I saw him, he was at arm's-length so there  
14          was no capability whatsoever for him, from what I saw,  
15          that he could actually bite that ear, but I think they  
16          thought perhaps I was trying to avoid saying that he  
17          was because they asked me to change my statement to  
18          better describe that, and the inference that I took was  
19          that they wanted me to say that he was in a position to  
20          bite the ear and I wasn't happy with that.

21          COMMISSIONER: Did you change your statement?---I changed my  
22          statement to the extent that I described what I saw  
23          more, but I didn't change it to the extent that I put  
24          him in that position because that wasn't true.

25          So, you created a new statement?---Yes.

26          Did it contain all of the old information otherwise?---Yes,  
27          it did, it contained everything, it just - if I  
28          remember correctly, but I don't have it here, but it  
29          contained just more detail about where each person was

1           in proximity to each other.

2       The date of the new statement bore the date on which you

3           made the new statement?---I believe it did, yes,

4           because, again, I was furious and that was my original

5           statement, so I believe that it was redated.

6       What happened to the old statement?---I assume that Internal

7           Investigations still had it.

8       But why did you feel it necessary then to draw it to the

9           attention of defence counsel that it wasn't your first

10          statement? Did you know that they hadn't been provided

11          with it?---No, I just wanted to make sure that they

12          knew that I had been asked to change my statement,

13          because I didn't feel that it was right that I had been

14          asked to change my statement.

15       Do you know whether or not the first statement was

16          produced?---I don't believe it was.

17       MS BOSTON: Following up on the questions of the

18          Commissioner about the dating of the replacement

19          statement in this particular situation, you believe it

20          was not backdated?---What, sorry, my subsequent one?

21       Yes?---Yeah, no, I don't think I backdated it.

22       There's been evidence before the Commission about some

23          replacement statements being taken which are not

24          backdated, and at least one example of a statement

25          being backdated. You'd appreciate, wouldn't you, that

26          in either situation irrespective of whether it's

27          backdated a replacement statement conceals the sequence

28          in which information has emerged?---Yes. I understand

29          what you're saying, yes.

1 Because, even if the replacement statement is not backdated,  
2 it conceals the fact that something has been  
3 changed?---Correct, which is why I brought it up at the  
4 committal hearing.

5 Therefore, it hides from the prosecution and the defence  
6 that issue?---If the second statement isn't produced,  
7 yes.

8 So they're not able to test whether that change is somehow  
9 affected by the fact that it's only been - is an  
10 afterthought, it's been added in later?---Yes.

11 Obviously, with the exception if it's a supplementary  
12 statement that says "I've previously given a  
13 statement".

14 And there's nothing wrong with that practice, is  
15 there?---No, I've done it before.

16 That's the way that things should be done if there's some  
17 deficiency in a first statement?---Correct.

18 You'd agree, wouldn't you, that the practice of omitting  
19 relevant evidence from statements is improper?---Yes.

20 As is failing to disclose relevant information to the  
21 defence?---Yes.

22 As is obtaining a replacement statement which conceals the  
23 existence of an earlier statement?---Yes.

24 And that's irrespective of whether it's backdated?---Yes.

25 All of those practices are contrary to the oath which police  
26 officers take to uphold the law?---It would be, yes.

27 All of those practices interfere with an accused's right to  
28 a fair trial?---They would, or potentially would, yes.

29 Indeed, the practices may even lead to an innocent person

1           being wrongfully convicted of a crime?---Potentially,  
2           depending on the changes, yes.

3       I just want to ask you about another practice which IBAC has  
4           information about, and that is that it was common  
5           within the police force not to take notes at the time  
6           of an event for whatever reason, but to take notes well  
7           after the event but present them as being  
8           contemporaneous notes, taken at the time of the  
9           event?---Sorry, I missed the actual question in that  
10          one.

11       Perhaps I'll step back. Is it expected that police, when  
12          you were a police member, would take contemporaneous  
13          notes of incidents?---Yes.

14       And "contemporaneous" obviously meaning notes taken at or  
15          soon after the event?---As soon as practicable after  
16          the event, yes.

17       Did it happen on occasion - and not specifically in relation  
18          to you - I'm just asking you, are you aware of  
19          instances where notes were taken well after an event by  
20          were presented as having been taken at or soon after  
21          the time of the event?---Not to my knowledge, no. I  
22          did - obviously, I know that there can be a delay in  
23          recording some of those things, because obviously  
24          you're at the scene and you're dealing with that, but  
25          my practice was, you take your notes as soon as  
26          practical.

27       I understand that's your practice, but in terms of your  
28          awareness of other members' practices?---I can't  
29          account for other members' practices.



1       Going back to the statement that you took which you were  
2       asked to change by Internal Investigations, was  
3       anything said to you by anybody to conceal the fact  
4       that that earlier statement had been made?---No, I was  
5       never asked to conceal a fact. No, that never came -  
6       like, Internal Investigations, if I remember correctly,  
7       they didn't speak to me directly; we got the direction,  
8       I can't remember how it came through, but I got the  
9       direction that we needed - you know, that we needed to  
10      change it, but there was never a conversation about  
11      concealing that fact.

12      Who did that direction come from?---I can't remember exactly  
13      where - whether it was one of the sergeants, because -  
14      yeah, I actually can't remember whether I got the phone  
15      call directly from Internal Investigations, or whether  
16      the phone call came from Internal Investigations to the  
17      sergeant - sorry, I - it's too long ago.

18      At that stage you would have been a constable or senior  
19      constable?---A constable.

20      So, you're having a direction from somebody considerably  
21      senior to yourself?---(Witness nods).

22      You have to respond, not just nod, sorry?---Oh, sorry, yes.

23      Is that why you followed the direction, because the person  
24      was senior to you?---Yes, and I felt like, if I didn't,  
25      potentially I would have been charged or something like  
26      that myself for failing to do what I was told; but  
27      hence, as I said, that's why I was furious, absolutely  
28      furious that I was being asked to change the statement.

29      Were you the informant yourself in matters?---Yes, many.

1 So, when other members who took statements for your matter  
2 took statements, did they include descriptions in their  
3 statements or did they record them on separate  
4 documents?---Sorry, can you ask that again?

5 When you were the informant and you were receiving witness  
6 statements taken by other police members, were they  
7 also following that practice of omitting descriptions  
8 from the statements but recording them on a separate  
9 document?---I can't actually recall it, I can't  
10 actually recall a time where I had a statement and a  
11 description given to me, if that's what you mean, no.

12 Were you the informant in any matter where you had yourself  
13 followed that practice of omitting a description from a  
14 statement and recording it on a separate document?---As  
15 an informant?

16 Yes?---I don't believe so, no.

17 Those are the matters, Commissioner.

18 COMMISSIONER: Ms Boston, are you not intending to explore  
19 with the witness the further statements that were  
20 taken?

21 MS BOSTON: Not with this witness, Commissioner. Mr Kennedy  
22 is being called later in the week, Commissioner.

23 COMMISSIONER: And he will give evidence about the  
24 supplementary statements taken from - - -

25 MS BOSTON: Leong Ling, that was the intention,  
26 Commissioner.

27 COMMISSIONER: Leong.

28 MS BOSTON: Of course, we could do it now.

29 COMMISSIONER: I think it would be helpful just to complete

1 the context, to at least put to the witness what those  
2 additional statements disclosed and how they varied  
3 from the statement that he took.

4 MS BOSTON: Certainly. (To witness) If we could go back to  
5 Exhibit 169, and down to the, "Sounded Australian" in  
6 relation to the first male, you recall I asked you  
7 questions about that before?---M'hmm.

8 And then the second male: "Possibly Southern European,  
9 Arabic, Lebanese accent"?---Yes.

10 You told the Commission that you would have been careful to  
11 ensure that you've attributed those accents correctly  
12 in accordance with what the witness told  
13 you?---Correct.

14 If we could go to the next statement that was taken,  
15 Exhibit 300. Now, this is not a statement taken by  
16 you, it's a statement taken by Detective Senior  
17 Constable Mark Kennedy; is he somebody that you  
18 know?---No, I don't think so.

19 You will see in this supplementary statement there's  
20 reference at the start of the statement that the  
21 witness has previously made a statement?---That's  
22 correct.

23 That's the correct practice obviously, isn't it?---Yes.

24 In the second paragraph the witness states: "I wish to now  
25 add to those previous statements by saying that the  
26 bigger or larger of the two male offenders had a  
27 Southern European or Middle Eastern accent." If we  
28 could bring up at the same time, please, Exhibit 169 so  
29 that it's next to Exhibit 300. If we could change the

1 positioning of Exhibit 169 so that both of those  
2 accents are visible on the screen. You will see that  
3 the Southern European or Middle Eastern accent is now  
4 attributed to the bigger man, isn't it?---Bigger  
5 (indistinct) yes, it is.

6 Which is flipping the accents which were attributed in your  
7 handwritten separate document description?---It appears  
8 so, yes.

9 Because in the separate document description the Southern  
10 European, Arabic, Lebanese accent is attributed to the  
11 second male?---Yes.

12 Who was the smaller of the two males?---Smaller, yes.

13 And the larger male was said to have an Australian  
14 accent?---Yes.

15 If you go now to exhibit - - -

16 COMMISSIONER: Just before you move on from that: and you  
17 see there that the witness does not state in that  
18 statement taken that the witness had previously given a  
19 detailed description?---No, makes no reference to the  
20 description in that second statement.

21 MS BOSTON: In the event there was a further statement, this  
22 is Exhibit 303, and if we could keep up Exhibit 169 as  
23 well. This is a further statement taken by Detective  
24 Sergeant Witshee(?) in November 2000. You will see in  
25 the second paragraph the witness states: "On that  
26 evening I supplied the police with descriptions of the  
27 offenders that committed this armed robbery. These  
28 descriptions were not included in my original statement  
29 although the police wrote down notes pertaining to

1           them." You'd agree that the police taking the notes  
2           pertaining to them would be you?---Yes.

3           The witness goes on to give a detailed description of the  
4           first and taller male?---Yes.

5           And in the next paragraph, the shorter second male. I just  
6           want to focus on the accents of the two offenders,  
7           please. The first and taller male, at the bottom of  
8           that paragraph it states: "His accent sounded like it  
9           was Southern European." See that there?---Yes.

10          Again, that's contrary to the description you took on the  
11          night of the offences from the witness, isn't  
12          it?---Yes.

13          Because the witness had told you that the first taller male  
14          sounded Australian?---Yes.

15          Looking at the description of the second male the witness  
16          states: "His voice was a lot softer and nervous."  
17          That's all he says about the second male's voice;  
18          correct?---Yes.

19          There's no mention here of what you'd recorded in your notes  
20          at the time, that the second smaller male had a  
21          possibly Southern European, Arabic or Lebanese  
22          accent?---No.

23          You can see now, this is a good example, isn't it, of one of  
24          the significant risks of this practice?---Yes,  
25          definitely.

26          Because obviously a witness is going to be able to give the  
27          best description of an offender shortly after the  
28          time?---Yes.

29          COMMISSIONER: Or we can go further than that, can't we,

1 Mr Riley; it shows that at a later point of time  
2 investigators are prepared to disregard that part of  
3 the initial description which doesn't fit the person  
4 charged and to alter the witness's description to the  
5 extent that it's necessary to do so to fit the person  
6 charged?---Yes, potentially, yes.

7 And that never occurred to you, in the entire time that you  
8 followed the practice in 12 years, that that was a real  
9 risk that would follow from not recording the witness's  
10 description in their statement?---To be perfectly  
11 honest, I guess I never actually stopped to think  
12 enough about the consequences. Obviously sitting here  
13 now, if I sit here and go - yeah.

14 Yes. Is that it, Ms Boston?

15 MS BOSTON: Those are the matters, Commissioner.

16 COMMISSIONER: Yes.

17 MR MATTHEWS: Commissioner, I seek authority to appear and  
18 ask questions, it will take five minutes.

19 COMMISSIONER: What's the issue that you want to explore?

20 MR MATTHEWS: Two topics: it's the order in which the  
21 evidence came. The first is that, in terms of the  
22 details of the practice adopted, what the witness has  
23 given evidence about and indeed what's borne out in his  
24 practices - I think it's in the notes that he took that  
25 night - was that it's descriptions as opposed to number  
26 of offenders that is being put onto the separate piece  
27 of paper, so the original statement still contained the  
28 number of offenders. I just wanted to ask whether he  
29 ever suppressed, this witness, the number of offenders

1 to identify a witness.

2 COMMISSIONER: Yes, I'll let you do that.

3 MR MATTHEWS: The second topic was, the witness has given  
4 detailed evidence about an incident at Tunnel Nightclub  
5 and a member being involved in an assault. My question  
6 would be whether there was ever another instance  
7 backdated of this sort, either within his own practice  
8 or that he was aware of in another members' practice.  
9 I may have misunderstood, but I didn't think that this  
10 witness had said that there was only one confined  
11 instance of this explicitly; I just wanted to check  
12 whether that's the case and that's the extent of - - -

13 COMMISSIONER: That sounds like two questions which will be  
14 very short Mr - - -

15 MR MATTHEWS: Indeed.

16 COMMISSIONER: Very well.

17 <EXAMINED BY MR MATTHEWS:

18 You know exactly what I'm going to ask you?---I think I do.

19 If I could go back to the earlier part of your evidence  
20 where you talked about this practice that you'd been  
21 asked to engage in from early in your career. Was it  
22 the case that you were ever asked to suppress the  
23 number of offenders and put that on the separate piece  
24 of paper, or was it that the practice you were asked to  
25 adopt went solely to the description of  
26 the - - -?---Solely to the description, no.

27 Were you ever aware yourself of anyone else suppressing  
28 numbers of offenders when they took statements as  
29 opposed to description?---No.

1 Secondly, sir, we've heard about the Tunnel Nightclub  
2 incident. Was there ever another time for yourself  
3 where you were asked to backdate a statement, either of  
4 your own or another witness?---No.

5 Were you ever aware of that being done by another member, of  
6 backdating a statement in the way you've described  
7 happened with your statement on that case?---No. No,  
8 not - no.

9 COMMISSIONER: Thank you, Mr Matthews. Mr Purcell?

10 MR PURCELL: Nothing arising from that, Your Honour.

11 COMMISSIONER: Thank you. Ms Boston, is there any reason  
12 why this witness shouldn't be excused?

13 MS BOSTON: I see no reason.

14 COMMISSIONER: Very good. That completes your evidence for  
15 the Commission, Mr Riley, so I will now release you  
16 from your summons. We'll provide you with a video  
17 recording of your evidence and a transcript of your  
18 evidence. That means that, so far as your future  
19 conduct is concerned, the only qualification is, as  
20 there's an order for witnesses out of court, until the  
21 Commission concludes its investigation you should not  
22 speak to any other witnesses that have been or will be  
23 called about your evidence or their evidence; do you  
24 follow?---Yes, sir.

25 MR PURCELL: Commissioner, I'm just seeking clarification:  
26 is Mr Riley able to retain a copy of this material that  
27 was provided to him, Exhibit 301?

28 COMMISSIONER: You mean, the exhibit that was shown to him?

29 MR PURCELL: Yes.



1 COMMISSIONER: I see no reason why he can't get a copy of  
2 it. We'll make provision for that, yes. Thank you for  
3 your assistance, Mr Riley.

4 <(THE WITNESS WITHDREW)

5 MS BOSTON: Commissioner, the next witness is Christopher  
6 Grigg.

7 COMMISSIONER: Mr Grigg, is it?

8 MR GRIGG: Yes.

9 COMMISSIONER: Yes, come into the witness box. Do you  
10 appear for Mr Grigg?

11 MR KENNY: I do, Your Honour. May it please the Commission,  
12 my name is Kenny.

13 COMMISSIONER: Thank you, Mr Kenny.

14 <CHRISTOPHER ROBERT GRIGG, sworn and examined:

15 COMMISSIONER: Mr Grigg, as your summons discloses, you will  
16 be questioned about some of the following matters: (1)  
17 the Lorimer Task Force investigation of the murders of  
18 Sergeant Gary Silk and Senior Constable Rodney Miller  
19 concerning the taking of witness statements,  
20 preparation of the brief of evidence for the trial of  
21 Bandali Debs and Jason Roberts, and whether there was  
22 full disclosure of witness statements or other relevant  
23 information prior to or during the trial, witness  
24 statement-taking practices by Victoria Police, and  
25 compliance with the obligation to disclose evidence by  
26 Victoria Police.

27 At the conclusion of counsel assisting's questions  
28 and following any cross-examination that's permitted,  
29 Mr Kenny will have an opportunity to ask you any

1 concluding questions or explore any additional evidence  
2 that you may wish to give.

3 You were served with a summons, confidential  
4 notice and documents setting out your rights and  
5 obligations. Has Mr Kenny discussed those with you and  
6 do you understand your rights and obligations?---Yes, I  
7 and I understand.

8 Do you wish me to remind you of them again?---No.

9 Very good. Yes, Ms Boston.

10 MS BOSTON: Mr Grigg, could you state your full name,  
11 please?---Christopher Robert Grigg.

12 Do you attend today in response to a summons served on you  
13 on 18 December 2018?---I thought it was the 14th, it  
14 may have been the 18th, yes.

15 The summons that appears that appears before you, SE2773, is  
16 that the summons that was served upon you?---Yes.

17 You also received a document entitled, "Statement Of Rights  
18 and Obligations"?---Yes.

19 And that's in that bundle there too?---Yes.

20 Together with that bundle and statement of rights, did you  
21 also receive a confidentiality notice dated 11 December  
22 2018?---Yes.

23 Are those copies of the documents that you received in  
24 full?---They appear to be, yes.

25 Could you state your full name, please?---My full name on my  
26 birth certificate is Christopher Robert Bouverie(?):  
27 my full name that I use is Christopher Robert Grigg.

28 What's your current occupation?---I'm a detective sergeant  
29 of police in Victoria Police.

1 You're a what, sorry?---A detective sergeant of police.  
2 Where are you stationed?---At the Central Victoria SOCIT  
3 base in Bendigo?  
4 When did you join Victoria Police?---In January 94.  
5 When was it that you were at the Academy?---I joined on  
6 10 January 1994 and graduated, I think it was 25 May.  
7 Of 94?---Of 94.  
8 Just briefly, could you outline your history with Victoria  
9 Police in terms of stations and ranks?---Sure. On  
10 graduation I joined City Patrol Group for four weeks,  
11 then to the Traffic Alcohol Section for six weeks, then  
12 to my training station at Mill Park for a year. I  
13 changed training stations to Preston uniform for  
14 another year. On confirmation I went to Melbourne City  
15 uniform for five months and then elected to go to  
16 Coburg uniform where I stayed for some years. Whilst  
17 at Coburg uniform I spent a year at the I District  
18 Support Group in 1998/99.  
19 At the higher?---At the I District Support Group, returning  
20 to Coburg uniform at the conclusion of those duties for  
21 another couple of years. I then was successful in  
22 obtaining a detective position at the Arson Squad in  
23 2001. From the Arson Squad I moved to Broadmeadows CI  
24 as a detective. From Broadmeadows I went to the  
25 Australian Crime Commission for two years on  
26 secondment.  
27 COMMISSIONER: Sorry, what was that  
28 Broadmeadows?---Detective senior constable at  
29 Broadmeadows. Following that, there'd be the

1 Australian Crime Commission. Then I went to Morland CI  
2 for a year, Carlton CI for a year. I was then promoted  
3 to the rank of sergeant, performed duties at  
4 Craigieburn uniform, then to Broadmeadows uniform. In  
5 2012, I was successful in obtaining a detective  
6 sergeant position at Horsham Sexual Offence and Child  
7 Abuse Investigation Team, or Horsham SOCIT. I was over  
8 there for five years and have now spent a year at  
9 Bendigo SOCIT.

10 You said that you became a detective senior constable at the  
11 Arson Squad in 2001; is that correct?---That was my  
12 first position, yes.

13 When did you undertake Detective Training School?---It was  
14 either late 2001 or early 2002, I'm not sure.

15 Did you have anything to do with Operation Lorimer at all,  
16 being the task force which was investigating the  
17 murders of Sergeant Silk and Senior Constable  
18 Miller?---Nothing at all.

19 What about Operation Hamada which investigated a series of  
20 armed robberies in the southeastern suburbs of  
21 Melbourne in 1998?---No.

22 Are you aware of a practice within Victoria Police, either  
23 in the past or present, of deliberately not including a  
24 witness's description of an offender in a statement,  
25 but instead recording it somewhere else?---I had a  
26 conversation about this last week with my barrister,  
27 and that conversation has triggered a very, very faint  
28 memory of that practice. I can't recall any particular  
29 incidents where it occurred or I were involved, but

1           there is a faint memory there.

2       What does your faint memory involve?---That the practice did  
3           actually occur; I don't know how I know that, but yeah,  
4           it's a memory that I have.

5       That faint memory, did that involve you being asked to not  
6           include a description in a statement?---No. There's no  
7           memory of being directed or even participating in that  
8           practice.

9       No memory of being directed or participating in the  
10           practice?---No.

11       Is the memory of somebody else engaging in that  
12           practice?---I can't even give you a memory of what it  
13           actually was, but there is - after having a  
14           conversation about it, it does ring a bell somewhere  
15           but I can't remember why.

16       What is your current practice when taking a statement from a  
17           witness to an offence?---Taking all details relevant to  
18           that witness.

19       Taking all those relevant details, but including them in the  
20           statement? Not only taking those relevant details but  
21           also including those relevant details in a witness's  
22           statement?---Yes, recording it as a written account of  
23           that witness's evidence, yes.

24       Why do you follow that practice?---It's part of my training.  
25       Part of your training to include all relevant information in  
26           a statement?---Yes.

27       Do you understand the reason behind the need to include all  
28           relevant information in a statement?---To allow that  
29           witness or the account from that witness to be known

1 (indistinct) for use later on in a court hearing.

2 I want to take you to an example of an occasion where you

3 engaged in the practice yourself. Exhibit 310, please.

4 I take it, this is your handwriting?---Yes, at one

5 point in time, yes.

6 You will see that it's a statement from a Leone Matthews

7 dated 30 June 1996?---Yes.

8 In the second paragraph you'll see that she was working at

9 the Bundoora Pharmacy on that day?---Yes.

10 And was the victim of an armed robbery. I'll give you a few

11 moments just to read through that statement, I believe

12 we have a hard copy for you. What I'm going to suggest

13 to you, after you've had the opportunity to read it

14 through, is that the only description of the offender

15 in this statement is that he was male?---Yes.

16 This is an armed robbery by one offender, a male. You'd

17 agree with me, in that statement, that those three

18 pages of that statement are numbered page 1 of 3,

19 page 2 of 3, page 3 of 3?---Yes.

20 I take it that it's important when speaking to a witness to

21 an offence to get as much detail from them?---Yes.

22 That would include a description of the person who committed

23 the offence?---Correct.

24 Both in terms of their physical appearance?---Yes.

25 Build?---All those, yes.

26 Height and so forth?---Yes.

27 As well as the clothing they're wearing?---Correct.

28 And matters such as their voice or accent?---Yes.

29 None of those details are included in this

1 statement?---There's some clothing, but no, you're  
2 right, there's a great deal of description that's not  
3 included, correct.

4 I take it, you would have obtained that information from the  
5 witness?---If the witness was available - able to give  
6 it to me, yes, I would have.

7 If the witness wasn't able to provide a description,  
8 wouldn't you normally include that detail in a  
9 statement as well?---Correct, and I have at one  
10 point there with what they were wearing in the bottom  
11 half in fact, yes.

12 But say a witness wasn't able to describe an offender for  
13 whatever reason, that's normally information that you  
14 would put in a statement as well, isn't it?---Yes.

15 I'll take you to what I call the separate description  
16 document in Exhibit 173. Again, this is your  
17 handwriting?---Yes.

18 You will see there, under the heading of, "Description of  
19 Male Offender" details as to the offender's height,  
20 age, build, hair, facial features, "Australian voice,  
21 nil accent", clothing and even "dirty fingernails" is  
22 noted there?---Yes.

23 This separate description is taken on the same form of paper  
24 as the handwritten statement itself?---Correct.

25 It's not dated, is it?---I didn't see a date on it; you  
26 might need to scroll down for me, but I don't think so,  
27 no.

28 And there's no signature on it from the witness?---No.

29 We can infer, though, can't we, that this is a description

1           that the witness would have given you at the time of  
2           making her formal police statement?---If the two  
3           documents were found together, I would assume so, yes.  
4    I just want to explore what the circumstances would have -  
5           firstly, do you remember taking this statement and  
6           separate description?---No.

7    Where would you have been stationed at the time?---I'd say  
8           Preston uniform.

9    What would the circumstances have been in you being tasked  
10           to take a witness statement at this pharmacy? Who  
11           would have directed you to do that?---It's hard to  
12           tell. In a general sense, being a uniform member, I  
13           probably would have been one of the earlier units on  
14           the scene once the armed robbery had been confirmed,  
15           the CI unit would have notified and most likely  
16           attended and taken charge of the scene and they would  
17           have directed a statement, I would assume.

18   Why would the CI have taken over? The nature of the offence  
19           or?---It fits the crime screening at the time for them  
20           to investigate.

21   Where was the CI based at that time?---That I can't tell  
22           you. What time was the statement?

23   It was 30 June 1996?---At 9 pm. Generally an afternoon  
24           shift CI unit would cover a larger area than a day  
25           shift, so it could be from a neighbouring division.  
26           Preston do have, or did have then, a CIBs it was  
27           called; it could have been them or it may have been -  
28           there was a 5.20 shift is what it used to be called.

29   Would you have commenced taking a witness statement before



1 they arrived at the scene or would you be awaiting  
2 instructions from the CI before commencement?---This  
3 particular statement? I can't answer that question.

4 Well, you don't have a recollection, but just trying to  
5 explore what the normal practice was in terms of  
6 whether you would have commenced taking a statement  
7 before the arrival of the CI on the scene or whether  
8 they would have given you directions about that  
9 process?---Cases do change. If the CI are a long way  
10 away then they may give direction by phone. I would  
11 have been a very junior member then, a constable,  
12 working with a more senior member on the divisional  
13 van, he may have given me a direction to do it. Until  
14 a more senior or more qualified person arrives at the  
15 scene, the people that are there are in charge.

16 I take it from that answer that, if somebody senior had  
17 given you a direction such as, "Don't put the  
18 description in the statement, instead put it on a  
19 separate document", that being a junior constable, you  
20 would have followed such a direction?---Yes.

21 COMMISSIONER: Had we not had this evidence, Mr Grigg, but  
22 were entirely reliant on the earlier evidence that you  
23 gave, we would have had no reason to think that you'd  
24 ever done anything like this?---Correct, and I still  
25 can't remember doing it, sir.

26 MS BOSTON: Could we go to Exhibit 308, please. You will  
27 see this is another statement, again your  
28 handwriting?---Yes.

29 Taken on that same day from a Brent Lyons(?), who was also

1 working at the Bundoora Pharmacy on 30 June  
2 1996?---Yes.

3 I believe there's a hard copy which can be provided to you  
4 if that would assist. Again, just looking at the top  
5 right-hand corner of the page, they're numbered page 1  
6 of 2, 2 of 3 and 3 of 3?---Yes.

7 Please take a few minutes to read through it if you need to.  
8 I'll suggest to you that the only description in this  
9 statement is that the offender is a male, and that he  
10 was wearing a navy blue waterproof jacket with dark  
11 sunglasses?---Yes.

12 You accept that that's the case?---Yes, absolutely.

13 We'll move to Exhibit 172, please. Similarly to the last  
14 separate description, it's undated and unsigned?---Yes.

15 So it seems you followed the same practice for taking both  
16 of these witness statements at this time?---It does,  
17 yes.

18 I take it, you have no memory of taking this witness  
19 statement either?---None at all.

20 If we could move to Exhibit 260. Now, these are not your  
21 notes. These are the notes of a Constable Alison  
22 Connor; do you recall her ?---I know the member, yes.

23 You'll see that within these notes, at the bottom of p.3290,  
24 there's a handwritten statement, it appears, within her  
25 day book or diary from an Anthony Clive Fink who was  
26 working at a computer at the Bundoora Pharmacy during  
27 that armed robbery on 13 June 1996. Looking over the  
28 page to p.3291, you will see that this witness  
29 describes a male. I should clarify, by "describe", he

1 says that the offender was a male but doesn't otherwise  
2 describe the offender?---Okay.

3 You agree with that? Turning to the last page, you will see  
4 at p.3292, that statement has been signed by the  
5 witness and the acknowledgment taken by Constable  
6 Connor.

7 We don't have a separate description in relation to this  
8 particular statement, but I take it that it would have  
9 been in accordance with Constable Connor's training and  
10 your training that it would have been important to get  
11 details of offenders?---Yes.

12 Including a description?---Yes.

13 And if that's not included in the statement it can be safely  
14 inferred, could it not, given the two statements that  
15 you've given on that morning, that you and Constable  
16 Connor were following a direction not to include  
17 descriptions in these statements?---The fact that there  
18 isn't a list after it, they are different, but I would  
19 assume so, yes.

20 COMMISSIONER: A previous witness this morning, Mr Grigg,  
21 said that throughout the entire time that he was a  
22 member of Victoria Police, between 1989 and 2002, there  
23 was a practice which he followed of not recording the  
24 details of identification of a suspect in the statement  
25 they make but recording it on a separate piece of  
26 paper. You say, apart from a vague memory you referred  
27 to earlier and this example of something you've done,  
28 you have no other knowledge or experience at all of  
29 that practice, either in the uniform branch or in the

1           lengthy period that you've been a detective?---That's  
2           correct, sir. As a detective I certainly don't use  
3           this, and no, I don't recall.

4           We've had evidence previously which has been referred to in  
5           public from members of the Homicide Squad which suggest  
6           that it was a practice at various times in the Homicide  
7           Squad; you're not familiar with that?---No, I'm not,  
8           sir.

9           MS BOSTON: So, this is on 30 June 1996. I think you said  
10           you'd graduated two years earlier, in May  
11           1994?---Correct.

12           I just want to explore with you, if I may, what you were  
13           taught at the Academy about statement-taking?---I can't  
14           think back 25 years, I don't know what the teaching  
15           was, but yeah.

16           What was your understanding at this time in your career as  
17           to what should be included in a witness statement?---In  
18           1996?

19           Yes?---Again, I can't answer that given the examples you've  
20           given me here; I don't remember doing this. I don't do  
21           it now, I don't know what my intentions were then given  
22           the examples you've shown me.

23           The reason you don't do it now is, isn't it, that you  
24           understand your obligation of disclosure to the  
25           defence?---I understand getting the best evidence from  
26           a victim or a witness, yes.

27           You understand that it's important to provide to the  
28           prosecution and the defence not only the evidence which  
29           helps the prosecution case, but also evidence which

1           might tend to assist the accused?---Correct.

2       Do you understand that?---All evidence, yes.

3       It's your obligation to provide all relevant evidence

4           irrespective of who it helps?---Correct.

5       Is that a practice that you follow yourself?---It is.

6       What about other members?---Members under my control do,

7           yes.

8       What about members not under your control but that you work

9           with?---I'm a supervisor in my office, so everyone in

10          my office as far as I'm aware and the briefs that I

11          check follow the same rules that I do in gathering

12          evidence.

13       And that is providing everything to the parties which may be

14          relevant to the charge?---Yes.

15       Have you ever seen a description of an offender attached to

16          a statement in some way on a separate document?---Not

17          that I can recall, no.

18       Can you think of any legitimate purpose for that

19          practice?---To intentionally leaving out a description?

20       Yes, intentionally leaving out descriptions and instead

21          recording them on a separate document?---No.

22       The only reason for following that practice is to use a

23          description if it matches the suspect ultimately

24          identified; correct?---I don't know. I don't - I don't

25          know.

26       Isn't that the only potential reason? Can you think of any

27          other reason?---To intentionally leave something out of

28          a statement? No, I can't.

29       An illegitimate reason would be to only use a description if

1           it fit the person ultimately identified as the suspect.  
2           That's one possible explanation, isn't it?---That's a  
3           hypothesis, yes.

4           But you can't come up with any other hypotheses?---Not at  
5           the moment, no.

6           Would you just speak a little closer to the microphone,  
7           please, thank you. There's considerable evidence  
8           before the Commission of what I'll term "replacement  
9           statements" being taken and I'll explain that further.  
10          If a first statement turns out to be wrong in some way,  
11          or lacking in detail, instead of taking a supplementary  
12          statement which refers to the first statement, a  
13          replacement statement is taken which does not refer to  
14          the previous statement; do you follow?---I do.

15          Is that a practice that you're aware of?---Not that I'm  
16          aware of, no.

17          What practice do you follow?---If you need to clarify  
18          something or provide an addition to an original  
19          statement, then you take a second statement referring  
20          to the first.

21          Why do you follow that practice?---The first statement is  
22          evidence obtained from the witness which will be  
23          disclosed in a court hearing if it is prosecuted.

24          It would be completely improper to dispose of that first  
25          statement and replace it with some other statement  
26          taken at a later time, wouldn't it?---Yes.

27          It would be improper. What about backdating statements?  
28          There's evidence before the Commission that it was a  
29          common practice within homicide at least to backdate

1 statements; that is, represent that they were taken at  
2 an earlier date than they were in fact taken. Is that  
3 a common practice that you're aware of?---Not that I'm  
4 aware of, no.

5 Have you done it yourself?---Not that I can recall, no.

6 What about when you're taking the acknowledgment for another  
7 police member; have there been situations where you've  
8 taken that acknowledgment, signed your name where the  
9 date is not the date you're signing it?---Sorry, I  
10 didn't follow that.

11 I take it that you've taken acknowledgments for other police  
12 members throughout the course of your career?---Over  
13 time, yes. So, I've prepared a statement that's sent  
14 to me to speak to the witness to have signed? Is that  
15 what you're asking?

16 Well, other police members have made a statement and then  
17 they've had you take the acknowledgment - - -?---Oh,  
18 police members, sorry.

19 - - - at the bottom of the statement?---Yes, I have.

20 I take it that's something that you would have done a lot  
21 throughout the course of your career?---Yes.

22 On occasion have you signed a statement which does not bear  
23 the date on which you've signed it?---Not that I can  
24 recall, no.

25 Commissioner, I wasn't proposing to explore in further  
26 detail the practices and risks with this witness unless  
27 that would be of assistance, given we've already had  
28 considerable evidence about those matters. I tender  
29 the summons documents, Commissioner.

1 #EXHIBIT M - Documents served on summons to Mr Grigg.  
2 Just finally, I want to ask you about the reformatting of  
3 statements for briefs. When a hand up brief is  
4 prepared for the purposes of a committal it's the  
5 practice, isn't it, to sometimes reformat  
6 statements?---Yes.  
7 In that, just to make them a more uniform, readable  
8 format?---It has been in the past when I was at the  
9 Arson Squad we used to do it; I don't now, but yes.  
10 Reformatted statements, would they be signed?---No.  
11 Not signed?---No.  
12 So they're just typed up versions of the signed  
13 statement?---Yes, to make it easier to read.  
14 There'd be no need to sign a reformatted statement, would  
15 there?---No.  
16 Those are the matters, Commissioner.  
17 COMMISSIONER: Mr Grigg, although you have no memory of the  
18 1996 matters that were put to you, what would your  
19 position be now, if a more senior officer asked you to  
20 not record a description in a statement but to record  
21 it on a separate piece of paper?---I would ask,  
22 firstly, why and I would not abide by that, it's an  
23 incorrect practice.  
24 Because it obviously gives rise to the risk of improper  
25 use?---Yes, and it doesn't reflect the actual evidence  
26 of that witness.  
27 Even if the description is wholly wrong, it still has a  
28 relevance in, if for no other reason, to then indicate  
29 the witness might be unreliable?---Unreliable, yes, or



1           in the moment unable to recall accurate details, yes.  
2       Yes, thank you.  
3       MR MATTHEWS: I have no questions.  
4       COMMISSIONER: Do you have any questions, Mr Kenny?  
5       MR KENNY: No.  
6       COMMISSIONER: Is there any reason why Mr Grigg shouldn't be  
7           excused, Ms Boston?  
8       MS BOSTON: No, Commissioner.  
9       COMMISSIONER: Mr Grigg, I'll release you from the summons  
10           and the only restriction that will apply to you is,  
11           because there's an order for witnesses out of court,  
12           until the Commission's completed its investigations and  
13           examinations you should not talk to any other witness  
14           that has been or would be called about the issues that  
15           have been explored with you. Do you follow?---I do.  
16       Thank you for your assistance. We'll make a video recording  
17           and transcript available to you.  
18       <(THE WITNESS WITHDREW)  
19       MR KENNY: May I be excused?  
20       COMMISSIONER: Yes, thank you Mr Kenny.  
21       MS BOSTON: Commissioner, the next witness is not here until  
22           12 o'clock, so it might be an opportune time for a  
23           short break.  
24       COMMISSIONER: We'll adjourn until 12 midday.  
25       Hearing adjourns:     [11.45 pm]  
26       Hearing resumes:     [12.19 pm]  
27       <NEVILLE CRAIG PETERSON, sworn and examined:  
28       COMMISSIONER: Mr Peterson, you were served with a summons  
29           which set out the matters upon which you will be

1 examined but I should remind you as to what they are.  
2 Firstly, the Lorimer Task Force investigation of the  
3 murders of Sergeant Gary Silk and Senior Constable  
4 Rodney Miller concerning the taking of witness  
5 statements, the preparation of the brief of evidence  
6 for the trial of Debs and Roberts, and whether there  
7 was full disclosure of witness statements or other  
8 relevant information prior to or during the trial,  
9 witness statement-taking practices by Victoria Police,  
10 compliance with the obligation to disclose evidence by  
11 Victoria Police.

12 Counsel assisting will ask you questions about  
13 those matters. Following those questions, you will  
14 have an opportunity to add anything relevant to which  
15 you've been questioned and which you don't feel you had  
16 an adequate opportunity to respond to.

17 You're not represented here today?---No.

18 You understand you have a right to legal representation?---I  
19 do.

20 You don't require that?---No.

21 When you were served with a summons, you received also a  
22 confidentiality notice and a document setting out your  
23 rights and obligations. I'm required to explain to you  
24 what those rights and obligations are again and in  
25 summary form I will do that.

26 You're required to answer all questions that are  
27 asked of you, you must answer those questions  
28 truthfully. So, as long as you answer questions  
29 truthfully, the answers that you give, with some

1 exceptions, can't be used against you in any court of  
2 law. So, in other words, you can say things even if  
3 those things might incriminate you because the answers  
4 can't be used against you; you follow that?---Yes.

5 At the conclusion of or during the evidence if you have a  
6 concern about the process that's being followed you  
7 have a right to complain to the Victorian Inspectorate  
8 and there are representatives of the Inspectorate  
9 present here if you want to avail yourself of that  
10 right.

11 In summary, you must comply with the summons and  
12 answer the questions that are asked of you unless you  
13 have some reasonable excuse for not doing so, and I  
14 stress again, you must answer the questions truthfully.  
15 If you don't do that, of course, you expose yourself to  
16 the risk of perjury and prosecution. You follow  
17 that?---Yes, sir.

18 Very good.

19 MR RUSH: Mr Peterson, your full name is Neville Craig  
20 Peterson?---That's correct.

21 There are just some formalities I need to go through with  
22 you. You attend here today as a consequence of a  
23 summons served on you on 14 December 2018?---That's  
24 correct.

25 Your address is set out in the summons?---Yes.

26 The summons is numbered SE2771?---That's correct.

27 With the summons, as you've indicated to the Commissioner,  
28 you received a statement of rights and  
29 obligations?---Yes, I did.

1 Is that in the bundle in front of you?---Yes, correct.  
2 You also received a confidentiality notice dated 11 December  
3 2018?---Yes.  
4 Together with a covering letter dated 12 December  
5 2018?---Yes.  
6 They're the documents in front of you?---Yes, they are.  
7 I tender those documents.  
8 #EXHIBIT N - Documents served on summons to Mr Peterson.  
9 Mr Peterson, up until I think 2002 you were a member of the  
10 Victoria Police?---Late 2000, I think it was.  
11 Late 2000, I beg your pardon. Could you indicate to the  
12 Commissioner when you joined Victoria Police and the  
13 roles and responsibilities briefly that you had over  
14 the period of time that you were a member?---I  
15 graduated in roughly 79, I think it was, 1979, was  
16 general duties and then most of my career was spent at  
17 the CIB at divisional CIBs and/or CIS, and then ended  
18 up finishing my career at the Armed Robbery Squad in  
19 the crime department.  
20 When approximately was it that you joined the CIB or  
21 criminal investigation unit?---Probably about 87,  
22 something like that.  
23 You remained a member of that unit until you joined the  
24 Armed Robbery Squad?---No, you basically have to go in  
25 and out the uniform branch or back to general duties,  
26 then back to the CI.  
27 So briefly, the uniform branch, you were where?---Started at  
28 Russell Street, then Camberwell, then Ringwood, then to  
29 the CI at Russell Street; back to the CI at Ringwood,

1 to the transit division, back to Russell Street CI to  
2 Ringwood CI, back to the Armed Robbery Squad.

3 What year was it that you joined the Armed Robbery Squad,  
4 approximately?---Mid - yeah, about 95/96, something  
5 like that.

6 Did you remain in the Armed Robbery Squad until you left the  
7 police force?---Yeah, until they shut it down, it was  
8 transferred to armed offenders, they changed the name  
9 to and then out.

10 What's your current occupation?---I work as a police  
11 dispatcher for the ESTA, emergency services  
12 telecommunications agency.

13 You were then a member of the Armed Robbery Squad at the  
14 time in August 1998 at the time of the Silk-Miller  
15 murders?---Correct.

16 Were you from time to time or full-time part of Operation  
17 Hamada which was being carried out at that  
18 time?---Yeah, time to time, yeah.

19 When you say "time to time", what were the nature of the  
20 responsibilities that you had with Operation  
21 Hamada?---Most of the time it's - we had on-call crews  
22 that attended armed robberies overnight or late at  
23 night, early morning, whatever. So, I had experience  
24 during that, when we're on-call, to one of the  
25 restaurants in, I think it's Surrey Hills where it was.  
26 And then, when one of the other sergeant's crews went  
27 on leave, he went on leave, being a sergeant, I was -  
28 my and my crew were asked to help supervise or run the  
29 investigation while he was on leave.

1 That's something I should have asked you. You retired with  
2 the rank of detective sergeant?---Yes.

3 Did you have your own crew or were you part of a crew?---I  
4 had - I was in charge of my crew, we had, I think it  
5 was five crews, four crews at the time.

6 So, the detective sergeant would run a crew of how many  
7 persons?---Usually four.

8 The responsibility for the four people, of course, lay with  
9 the detective sergeant?---Correct.

10 You mentioned your responsibility; does the Jade Kew  
11 Restaurant ring a bell with you?---To be honest, no, if  
12 that's what it was called.

13 I'll come to it. I suggest that you were involved in some  
14 statement taking of persons who were employed or indeed  
15 ran the Jade Kew Restaurant which was the subject of an  
16 armed robbery on 27 June 1998. No specific memory of  
17 that?---If it's the one that I'm thinking of in Surrey  
18 Hills or - it might be, but other than that I've got  
19 really no recollection unless I have a look at the  
20 statement.

21 Walpole Street, Kew?---Doesn't ring a bell at all.

22 In relation to statement-taking practices generally, it  
23 would be fair to say that, when you take statements  
24 from people who have been involved in premises the  
25 subject of an armed robbery, that there's some  
26 important information to get?---Yes, of course.

27 And that important information would concern, in part at  
28 least, the descriptions of offenders?---Yes.

29 And, whether it be height, or build, or hair, or accent,

1 they're all matters that, as a detective, you would see  
2 as important in relation to obtaining information, if  
3 it's available, from witnesses to an armed  
4 robbery?---Correct.

5 Are you aware, during the time that you were a member of the  
6 Armed Robbery Squad, of any practice of not including  
7 that sort of information in first statements of  
8 eyewitnesses?---Yes and no, to be honest.

9 Could you explain.

10 COMMISSIONER: We would like you to be honest?---No, I'm  
11 just saying, yes and no, you can't answer that question  
12 yes or no. My answer to that would be, a lot of  
13 witnesses are confused, they're shocked, they're in  
14 shock, they ask their friends, they yell out across the  
15 room while you're trying to take a statement, "Oh, what  
16 colour did one of the gun - what colour was his hat?"  
17 So sometimes you wouldn't include it because they  
18 weren't sure, you weren't sure that they were sure, so  
19 you wouldn't always put it in. But if they made a  
20 reference to, "Oh, the one with the gun did this" or  
21 "the one with the red top did that", yes, you would  
22 include it because that helps to establish which one  
23 did what.

24 MR RUSH: If the one with the red top, you are told, has a  
25 particular type of accent, or is of a general height or  
26 build, or has certain colour hair, is there a yes or no  
27 as to whether that information should go into the  
28 statement?---You would basically include it if they're  
29 referring to that person who actually did something,

1           yes, but not straight out list a description of every  
2           offender because most times they didn't know.

3       Let me put it to you specifically: at this time in the Armed  
4       Robbery Squad there was a practice of not putting that  
5       information into first statements, but rather writing  
6       it down on a separate piece of paper?---There wasn't  
7       not - it wouldn't have just been the Armed Robbery  
8       Squad, it was a lot of places.

9       Firstly, in relation to the practice of taking descriptions  
10       of offenders and putting it on a separate piece of  
11       paper, from your last answer I take it you were aware  
12       of that practice in the Armed Robbery Squad and in  
13       other places?---Yeah, yeah, of course. You'd put it on  
14       leave forms, you'd put it on the computer database,  
15       places like that, yes.

16       But not in the first statement?---No, not full descriptions  
17       of every person or what they wore or what they could  
18       remember because half the time they couldn't.

19       When did you first become aware of the practice of - in what  
20       circumstances - of taking descriptions of offenders and  
21       writing it down on a separate piece of paper that may  
22       be attached, for example, to the first  
23       statement?---Probably, um, DTS, Detective Training  
24       School.

25       In the sense that it may have been taught or suggested as a  
26       practice that should be adopted at Detective Training  
27       School or within the Criminal Investigation Unit?---I'd  
28       say probably as practice.

29       Do you remember it being referred to at Detective Training



1 School?---I think - I can remember it vividly, because  
2 they do a little exercise and they do a mock crime or  
3 armed robbery in front of you, and there'd be 30  
4 students in the room and you'd have to fill out a  
5 description form that most people carried, most of us  
6 carried, and you'd have to tick the box what they were  
7 all wearing and it's an exercise that shows you how  
8 fallible witnesses are, because I think about  
9 5 per cent get it right.

10 And so, what was taught in relation to obtaining such a  
11 description and whether it should go on a separate  
12 piece of paper or whether it should go into the  
13 statement?---Sorry, can you say that again?

14 I just want to clarify what was taught. What you've  
15 indicated at Detective Training School was something  
16 that went on that showed, in your words, the  
17 fallibility of the way in which witnesses may describe  
18 an offender?---Oh, basically that, how easy it is to  
19 get it wrong or that they won't know, they ask their  
20 friends, their other colleagues in the room and all it  
21 does is interfere with their statement, or it's their  
22 friends telling them what to put in their statement,  
23 and that's why we try to separate - first thing we did  
24 every time we got there at a scene was to separate the  
25 witnesses so that you didn't have that problem, or try  
26 to stop that problem.

27 So you separate witnesses as soon as you get to a place so  
28 that you haven't got that problem. My question really  
29 was directed at the practice of, once you've got a

1 description, not putting it in the witness's statement  
2 but rather attaching it - the description - attach it  
3 on a separate piece of paper and that that be attached  
4 to the statement but not included in the  
5 statement?---Never heard of it. Never, never in  
6 25 years of detective attached a description form to  
7 the person's statement - never.

8 To clarify that, are you saying to the Commissioner that you  
9 never heard of a practice of not putting the  
10 descriptions of offenders in a statement and writing it  
11 on a separate piece of paper?---No.

12 Do you want to think carefully about that as to  
13 whether - - - ?---I already have, you just asked me the  
14 question twice. I have never done it in 25 years.  
15 Never been asked to.

16 COMMISSIONER: What counsel was asking you immediately  
17 before that last question was, at the Detective  
18 Training School when they went through this mock event  
19 and asked everyone there to do their best to recall the  
20 event and it became apparent from that exercise how  
21 unreliable people's observations could be, what were  
22 you taught then about recording the description the  
23 person gave you?---It would be either report it -  
24 record it in your notes, as in my notes, my day book,  
25 or if I had a description form you would fill it out or  
26 get them to fill it out; sometimes we didn't have  
27 enough or you run out so you recorded it, and it would  
28 then be copied or the LEAP report's filled out with the  
29 description again, and so, it would be recorded

1            somewhere either on the police LEAP description forms,  
2            or on the witness description forms which would be  
3            attached to the file, the investigation file somewhere,  
4            but not - never to a back of a witness statement, and  
5            never put on a brief.

6            I think you and counsel then were at cross-purposes, but  
7            that's what you were taught as a result of detective  
8            training?---Yeah. Basically just went on the file,  
9            investigator's file.

10          MR RUSH: So, not necessarily in the statement but on the  
11          file?---Yes.

12          And the reason for that, that that was taught?---I would say  
13          because a few cases had been lost around that time in  
14          the early 80s and that on ID because of witness's  
15          recounts of descriptions.

16          Are you aware of - - -?---Well, that's my opinion, sorry.

17          COMMISSIONER: That's the assumption you make as to  
18          why?---Yes.

19          MR RUSH: As far as the practice is concerned, of keeping  
20          the descriptions separate, apart from that, was there  
21          any other explanation that you can recall as to why  
22          that practice existed?---No. However, I would say that  
23          even in the uniform branch, it all depended where you  
24          worked and who checked your briefs as to what you were  
25          allowed to put in your statements and what you weren't.

26          Could you enlarge on that?---I'd say, if you go in charging  
27          an offender I'll call him, or accused, put the brief of  
28          evidence together and you put it in, it's pot luck  
29          which sergeant or senior sergeant checks your brief; he

1 could send it back to you. There's sergeants out there  
2 that liked this but didn't like that in your  
3 statements. I can remember having the same trouble  
4 with hearsay evidence: some were reluctant to put  
5 hearsay in, others didn't mind or said, "Put whatever  
6 they say in." Language was another one: if a witness  
7 was just swearing all the time throughout the  
8 statement, foul language - well, we'd never put that in  
9 or exactly what was said because it was improper for  
10 the court and the jury to hear. There was all - it was  
11 always evolving, the practice of statement-taking was  
12 always evolving and changing, and it all depends on  
13 which station you worked at, which area you worked at,  
14 which prosecutor that you got to prosecute on the day,  
15 you know, there was all these different things,  
16 including the DPP.

17 So, depending on the sergeant that may be responsible for a  
18 brief, if a sergeant, for example, didn't like  
19 descriptions in statements, how would the uniform  
20 member respond to that if that's what's been provided  
21 to the sergeant ?---Well, most likely if he was told to  
22 remove it, he probably did.

23 Would that then make it - - -?---Once the statement's made,  
24 no, you'd have to either get a different statement and  
25 redo a second statement and put it on it, but I don't  
26 think the sergeant would have it removed, but he would  
27 tell him, "Next time don't put it in." I'm not saying  
28 he's going to turn around and change a statement, but  
29 I'm just saying their practice was, from then on, he

1           wouldn't do it.

2           Just dealing for the moment with description rather than  
3           language or anything else, for description are you  
4           aware of circumstances where a statement is made  
5           without description but later in an investigation it  
6           may be thought the description becomes important and  
7           then the description is put back into a  
8           statement?---Um, could be, but I've never done it.

9           When you say "could be", are you aware of it having been  
10          done?---Yes, now I am.

11          In what circumstances are you now aware?---Well, I know of  
12          one case where one of my crew had to go and take a  
13          second statement on instructions from the DPP, but  
14          that's about the only other one, except what we spoke  
15          about today.

16          Can you tell us about that situation with a member of your  
17          crew being instructed by whom?---The DPP.

18          Being instructed by the DPP to do what?---To go back and  
19          take a statement in relation - I believe it was to a  
20          balaclava and a firearm.

21          And to take a further or supplementary  
22          statement?---Supplementary statement from the witness,  
23          because there was five witnesses and two said it was a  
24          shotgun and two said it was a rifle, I believe, a  
25          sawn-off shotgun - rifle, and so, the fifth one was  
26          asked again about the firearm and the balaclava, but  
27          that's about the only one I'm aware of in that time  
28          that I've been involved in the police department.

29          You've mentioned that you, I think, think or speculate that

1 this practice about descriptions in first statements  
2 may have come about because of a number of prosecutions  
3 that failed because of around identification of  
4 witnesses. Can you think of any other reason why the  
5 practice was adopted?---No.

6 I'll come back to that question. Perhaps if we could have a  
7 look at Exhibit 324. I think there may be a hard copy  
8 statement as well in relation to that. There's a hard  
9 copy in front of you, but before we go to that,  
10 firstly, is that a statement in your  
11 handwriting?---Yes, it is.

12 You see, it's a statement of Shirley Ing Gee?---Yes.

13 The first three lines: "I am 21 years of age. I am a  
14 waitress employed at the Jade Kew Restaurant at Walpole  
15 Street, Kew"?---Yes.

16 If you turn to p.3520, the statement was taken and witnessed  
17 by you on 29 June 1998?---Correct.

18 Again, if you go back to the first page, is there anything  
19 else on that page - if you go back to the first page  
20 you will see it concerned an event on Saturday, 27 June  
21 1998, where the witness is detailing, and I'll take you  
22 to it, the events that commenced when she arrived at  
23 work at 4.45 pm?---Yes.

24 Perhaps you might like to have a quick read of that  
25 statement to yourself.

26 COMMISSIONER: You're wanting him, Mr Rush, to focus  
27 particularly on identification?

28 MR RUSH: Very well, Commissioner. There are, as you will  
29 see, two offenders that are referred to in relation to

1 an armed robbery and I'm particularly asking you to  
2 look at any details of descriptions of those  
3 offenders?---Well, basically there's reference to his  
4 mask and his clothing.

5 I think you're referring, at p.3518, to the bottom  
6 paragraph on that page, are you?---Yes, correct.

7 I think: "The second offender who was wearing a Bob Hawke  
8 plastic mask", the last paragraph on p.3518: "A Bob  
9 Hawke plastic mask, black jeans, maroon jumper, on the  
10 outside a black denim jacket with sheepskin insides and  
11 his runners were white but had no brand."

12 Yep?---That's it.

13 In relation to the first offender, just to detail it, there  
14 are two offenders described by the witness: a first  
15 offender carrying a gun and a second offender who was  
16 responsible for using masking tape to, in effect, tie  
17 up persons that were present in the restaurant at the  
18 time of the robbery?---Correct.

19 And, there's no description of the so-called first  
20 offender?---No.

21 Could Exhibit 323 be brought up. Again, you see the name  
22 there, Shirley Ing Gee, and in the first paragraph she  
23 says: "My full name is Shirley Ing Gee, I am 24 years  
24 of age, waitress by occupation. I have previously made  
25 a statement to police in relation to the hold-up on  
26 27 June." I ask you to turn to the second page, 3514,  
27 her signature is witnessed on 26 November 2000 by  
28 Sergeant Paul Dale who at that stage was a member of  
29 the Armed Robbery Squad; is that correct?---Well, it's

1           witnessed by Paul Dale, but I don't know where he was;  
2           I don't think he was at the Armed Robbery Squad.  
3       If we go back to p.3513. In the third paragraph you see  
4           there that Ms Ing Gee states: "From referring to the  
5           notes of the descriptions I gave police on the night  
6           and my memory I am able to say that there were two  
7           males." So there I'm suggesting that what the witness  
8           is referring to is notes of the description of the  
9           offenders which in fact were provided to you at the  
10          time you took her statement and, insofar as that there  
11          were separate notes, what you're saying is that would  
12          be consistent with the practice that you adopted at the  
13          time?---I'm not sure, I don't know.  
14       Well, clearly she's referring to separate notes being made  
15          at the time she made her statement?---Yes, but I don't  
16          know which notes Mr Dale produced to her, do I?  
17       No, I know - - - ?---That's what I'm saying.  
18       And I didn't ask you that. What I said is that, insofar as  
19          there were notes of descriptions of the  
20          offenders - - - ?---Oh, sorry, yeah, I thought - yeah,  
21          I notes I thought you meant, sorry.  
22       - - - that would be entirely consistent with the practice  
23          that you adopted at the time?---Yes.  
24       Just to clarify that, notes and descriptions that did not  
25          make it in to the first statement?---No, that's right.  
26       Then she goes on: "The first male who was doing most of the  
27          talking was taller and had a bigger build to the second  
28          male. He was above 5 feet 11 inches to 6 feet tall.  
29          He had a male mask with brown hair on his head, about



1 26 to 30 years old, Australian accent, medium build  
2 with a beer belly. He was wearing light blue business  
3 shirt under a top." Again, I'm just asking about the  
4 practice: on the basis that you were informed of that  
5 description, none of it made it into the first  
6 statement as we've seen; there was no description of  
7 the first male?---No.

8 Then the second male, she says, was: "Smaller, wearing a Bob  
9 Hawke mask and grey hair. He was a good half head  
10 shorter than the first male and not as big a build. I  
11 don't believe he had an accent." In relation to both  
12 offenders, in the initial statement there was nothing  
13 concerning the accent of either of them and nothing  
14 concerning the build or height?---No.

15 As you've seen, that statement is dated 26 November 2000  
16 with the additional features concerning description.  
17 Can you think of any reason why it would be a practice,  
18 18 months after an armed robbery, to insert the  
19 description that's taken on the night but not insert it  
20 at the time of the taking of the statement?---I can  
21 tell you now, the reason I probably didn't put it in is  
22 because she probably didn't know on the night, or  
23 didn't say anything to me on the night because, as I  
24 said, I've put in the second ones because she'd said  
25 she's had a look at him and given me the description,  
26 so I've included it. That description that, that's  
27 what I said before or meant before, she could have  
28 included that from, just from the file notes that her  
29 friends had given one of the other members on the night

1           and they've ran it - he's ran her past that description  
2           list and she's remembered or agreed with it.  
3       Have a look at the third paragraph again. What she has  
4           attested to in this second statement is: "From  
5           referring to the notes of the descriptions I gave  
6           police on the night", so she's very specifically  
7           referred to in her statement that she's referred to  
8           notes that she gave police on the night, and I thought  
9           you'd agreed that they would be likely notes that you  
10          made that would be on the file or - isn't that  
11          right?---Not necessarily me, that's what I'm trying to  
12          explain to you.  
13       But if you took the statement from the - - - ?---I've taken  
14          the statement from this lady.  
15       Yes?--- - - - which had four or five people in it.  
16       I agree?---The other staff members with me would have had  
17          one each, they could have filled it out, they could  
18          have written those notes that she's referring to.  
19       But your practice that you have described is for you to take  
20          notes of the descriptions that are given to you by the  
21          person you're taking the statement from?---Not if it's  
22          already been given to somebody else, no.  
23       But here very clearly what I want to suggest to you, is  
24          that, she's confirmed in the third paragraph your  
25          practice: "From referring to the notes of the  
26          description I gave police." Surely you'd accept that,  
27          if you're responsible for taking the statement and  
28          getting descriptions and all relevant information,  
29          she's the only person that she - you are the only

1 person she'd speak to?---No, that's incorrect.

2 COMMISSIONER: Mr Pearson, all counsel's asking you is  
3 whether or not, looking at the statements, it's quite  
4 likely that what happened on this night is consistent  
5 with the general practice that you've already  
6 described. He's not asking you to say with certainty  
7 that the explanation is, you took a description from  
8 her and recorded it somewhere else as you explain in  
9 your notebook, somewhere else; counsel is simply asking  
10 you, does this appear to be an example of the practice  
11 that you described?---Yes, in that - worded that way,  
12 yes, but what I'm saying is, if she had have given me a  
13 description it probably would have been in there,  
14 because you always try to differentiate which offender  
15 did what and said what. But on my statement she  
16 obviously hasn't volunteered any information to me  
17 about the male. I not necessarily would have asked her  
18 for the description, she could have been spoken to by  
19 one or two detectives before I sat down with her. It  
20 might have been 20 minutes after I was at the scene  
21 that I actually took the statement from her.

22 MR RUSH: What I want to suggest to you is that the  
23 statement you took from her was 29 June, two days after  
24 these events?---Yep.

25 And two days after the events that you have sat down with  
26 her, wouldn't that be likely to mean that you sat down  
27 with her on her own?---Yes.

28 And no description appears of the offenders. Apart from  
29 what we've isolated in relation to offender 2, no

1 descriptions appear in your statements that you've  
2 taken of the detail that we've been to. And all I'm  
3 putting to you is that, consistent with your practice,  
4 that you recorded that separately to put in to your  
5 statement?---Yes.

6 I just take you to a further example at Exhibit 291. If you  
7 have a look at the hard copy, here is a statement of  
8 Lee Lo Chai, you see that he attests in the first  
9 paragraph that he's a part owner with his wife Linda  
10 Lee of the Jade Kew Restaurant in Walpole Street, Kew.  
11 If you turn to the second page of the statement you  
12 will see that the statement, p.3407, is made and the  
13 signature witnessed by you at Nunawading on 30 June  
14 1998, which is three days after the armed  
15 robbery?---Yeah, that's correct.

16 The reason for her attendance at Nunawading would be for the  
17 purposes of making a statement?---Yeah, a booking was  
18 made 'cos she needed the interpreter.

19 You have a read of it again specifically in relation to  
20 description of offenders?---Yeah, the third  
21 paragraph about the plastic-coloured mask.

22 So, that's the person carrying the gun wearing a  
23 plastic-coloured mask?---That is correct.

24 There's no description of the mask or what it looked  
25 like?---No. Yeah, there's no mention of the  
26 description of the other one at all.

27 If we could have a look at Exhibit 290. Do you have that in  
28 front of you, a second handwritten statement? This is  
29 a further statement of Lo Chai Lee, or Lee Lo Chai, I

1 think, of 26 November 2001 on the third page, 3405?---I  
2 haven't got a copy, so.

3 Beg your pardon?---I haven't got a copy of it.

4 Perhaps if you look at the screen. You see, the date there  
5 at p.3405 is 26 November 2001?---2000, yeah.

6 2000, I beg your pardon. Yep, 2000. If we can go back to  
7 p.3403, in the second paragraph: "I have previously  
8 made a statement to the police regarding an armed  
9 robbery that occurred at our restaurant on 27 June  
10 1998. From information I supplied to police and my  
11 recollection I would describe the two offenders as  
12 following ...", and we'll come to that in a minute.  
13 But again, on the basis as we've seen you took the  
14 first statement three days after the armed robbery,  
15 what is being referred to by Mr Lo Chai Lee is that  
16 he'd supplied to police information about the  
17 description and going from his recollection and then he  
18 sets out further detail. Again, what is deposed to or  
19 set out there would be consistent with your practice of  
20 recording information about description but not putting  
21 it in the statement?---Yes.

22 Then he goes on to describe: "Offender 1: male, bigger and  
23 older, 5 foot 10, about 40. Wearing a mask. Only see  
24 his eyes", and describes the shoes. Over the page, the  
25 second male: "Around 25 to 30 years old. Shorter than  
26 the first. 5 foot 5 inches. Smaller build, wearing a  
27 mask, jeans ...", and the like. Here are two examples  
28 of statements where the second statement's made  
29 18 months after the armed robbery, further statements

1 have been taken to include details of the descriptions  
2 of offenders that were not put in the first statement.  
3 My question is, can you give any reason to the  
4 Commissioner why it would be thought appropriate not to  
5 put in the first statement but to get statements  
6 containing descriptions 18 months later?---Um, could be  
7 for continuity of exhibits, could be that at that stage  
8 someone had a suspect in mind and they were gonna do a  
9 warrant, I don't know.

10 Do you realise - - -?---It could be that they matched the MO  
11 somewhere else or disguises from other jobs. As we now  
12 know, it turned out to be a series.

13 Are you aware that the statements of Ms Ing Gee and the  
14 statements of Mr Lo Chai Lee, the statements that we've  
15 been to this morning, both of them ended up on the  
16 trial brief of the prosecution of Debs and Roberts'  
17 trial?---Yes, I believe so.

18 What I want to suggest to you is that, a reason why  
19 18 months later the descriptions of offenders might be  
20 put in, that it may fit in with the police theory as to  
21 who was responsible for those murders?---Oh, I honestly  
22 don't know.

23 But that's one potential reason, isn't it?---It could be,  
24 yes.

25 Can you think of any other reason?---As I said, could be  
26 that they were looking for continuity or connections  
27 between each job and the masks, the accent, could be -  
28 yeah, could be for - to ID or fit in with the suspects  
29 that they had or we had.

1 COMMISSIONER: If we take all of the hypotheses that you've  
2 just enumerated, all of those possibilities as to why  
3 it was done, there's a common denominator to all those  
4 possibilities, namely, that it was thought that for one  
5 or more of those reasons it would help the  
6 prosecution?---Correct.

7 And the corollary of that is, isn't it, if it wouldn't help  
8 the prosecution then we don't put it in?---Yes,  
9 basically.

10 MR RUSH: I appreciate you've been out of the police force  
11 for a long time, but as far as statement-taking is  
12 concerned, what is or was your understanding as to what  
13 should always be put in statements from  
14 eyewitnesses?---Sorry, say that again?

15 Let me put it to you. Shouldn't a statement from an  
16 eyewitness at the time it is made contain all relevant  
17 information?---Yeah, all relevant, yeah, true.

18 You would agree that what we've seen here, of descriptions  
19 of offenders put in 18 months later, was relevant  
20 information that should have gone in the statements at  
21 the time they were initially made?---Yes, if they were  
22 capable of telling you that on the night, yes.

23 COMMISSIONER: Could I just take up this point Mr Rush is  
24 exploring with you and refer back to something you said  
25 earlier. You explained that different sergeants would  
26 have different views which they would pass on to their  
27 crews, both in uniform and in CI, about what they  
28 expected their officers to include or not include in  
29 statements?---Correct.

1 Which rather suggested to me, and I'd be grateful if you  
2 could confirm my impression, that there was a fair bit  
3 of discretion left to the individual sergeants as to  
4 what they said to their crews should be  
5 included?---Still happens today.

6 Is that level of discretion, about what relevant information  
7 should be included in statements, does that ability  
8 to - did that breadth of discretion exist because there  
9 were no particular, or whilst you were in the force,  
10 there were no particular rules and regulations which  
11 prescribed precisely what information had to go into a  
12 statement?---The easiest way to explain it is: you had  
13 your basic training, you had to basically take a  
14 statement; the rest of the time you hit the floor and  
15 learnt on the job. The sergeants or superiors who  
16 checked your brief checked it, as I said, like, they  
17 had their little whims and et cetera; the bosses did,  
18 the prosecutors did. Then you do DDS if you become a  
19 detective and they are the supposed to be the ones to  
20 teach us the right way, and then you put a brief in and  
21 it'd go to prosecutions and you'd have your prosecutor  
22 go through your evidence and make suggestions and that  
23 for the future, and then you'd get to the DPP for a  
24 trial and then they'd give you some other advice. As I  
25 said before, it was always changing, always evolving  
26 how you should and shouldn't take a statement, and it  
27 was just, as I said, it was nothing concrete of what  
28 you had to put in it or what you shouldn't put in it;  
29 it was mere advice each time basically.



1 So that, in the end the only constraint that would exist in  
2 this area was if a magistrate or judge, when it came to  
3 the prosecution, were to say, "This information should  
4 have been included and, if it's not included, it gives  
5 rise to the risk of a miscarriage of justice, a  
6 perversion of the course of justice", but there was no  
7 rule or regulation which otherwise prescribed what had  
8 to be included?---Not that I'm aware of, no.

9 MR RUSH: And whilst there was no rule or regulation  
10 prescribing it, I think you've agreed that  
11 fundamentally what should go into a statement of an  
12 eyewitness is all evidence that is relevant?---Yes, but  
13 it's a fine point, to be honest. Some witness would  
14 turn around and tell me, a bank teller told me she had  
15 a double-barrelled shotgun stuck in her face, and while  
16 I'm talking to her, because she was the manager, I'm  
17 watching the video of the offender come into the bank  
18 that she's explaining to me and he's holding a pistol;  
19 so, do I put that in the statement that he had a  
20 double-barrelled shotgun when I actually know and can  
21 see him carrying a handgun, do I put in that he's got a  
22 double-barrelled shotgun? No, I pull her around and  
23 say, is this the video? Yes. Can you have another  
24 look? She says, "Oh, yes, that's a handgun, not a  
25 shotgun." If I had have taken a statement straight  
26 from her and put in the double-barrelled shotgun, what  
27 she's telling me is incorrect, but do I put that in her  
28 statement? This is what I'm saying, you've gotta -  
29 there's always bits and pieces in a statement that you

1 can leave out or include that we might think's relevant  
2 or you might think's relevant, or the court might  
3 think's relevant but not to the witness. As I say, she  
4 mightn't have even mentioned the first guy with the gun  
5 because he's ordered her to get on the ground and  
6 she's - would have been panicking for fear of her life  
7 and she's just dived on the floor, and as it would  
8 indicate in her statement she says when the second guy  
9 was tying her up she actually looked at him and she  
10 gives me a description. And again, as you said, later  
11 on she's remembered it from the notes but, as I said,  
12 they mightn't have been my notes or her notes, they  
13 would have been just the descriptions from possibly all  
14 the witnesses on the night shown to her which jerked  
15 her memory.

16 I know you've said that, but again just to go over it: these  
17 statements, one was taken on the 29th and one on the  
18 30th, one at Nunawading, and both the statements,  
19 Ms Ing Gee on the 29th and Mr Lo Chai Lee on the 30th  
20 at Nunawading, the purpose of you seeing these people  
21 was to take statements?---Correct.

22 You have agreed that it is your practice to make notes of  
23 descriptions but not necessarily put the descriptions  
24 in the statements?---No, 'cos they - yeah.

25 Let me put it to you that that was a practice - do you know  
26 Detective Senior Constable Beanland?---Do I know him?  
27 Yeah?---Yeah, of course.

28 Were you working with him at Nunawading?---No.

29 Was he at Nunawading taking statements from people involved

1 in the Jade Kew Chinese Restaurant armed  
2 robbery?---Could have been.

3 Just by way of example, if we have a look at Exhibit 289.  
4 There you have the statement of Linda Lee and she  
5 indicates in the first paragraph: "I run the restaurant  
6 called the Jade Kew Chinese restaurant with my Husband,  
7 Wing, and two sons help out." If you go to the last  
8 page, 3402, you see that that's a statement that is  
9 taken and witnessed at the Nunawading Police Station by  
10 Detective Senior Constable Beanland. See that?---Yes.

11 Without labouring the point, but I'll take you to a couple  
12 of paragraphs. If we go back to p.3400, midway down  
13 the page and Ms Lee in the paragraph right at the top  
14 of the page sitting at table 15, been there in the  
15 third line for half an hour. Just going down to about  
16 the sixth line where her son Bobby asks: "Who is it?"  
17 Thought he must have heard from the front door. No one  
18 answered. A few steps forward to see if he could see  
19 what was happening. "I looked at him, two persons  
20 inside the restaurant. Saw they were wearing some type  
21 of rubber masks over their faces. They were standing  
22 at the cabinet where we keep our China. Saw the first  
23 one was taller than the second one holding a black gun  
24 in his hand." Then, in the next paragraph she  
25 described "seeing the first one walking towards us",  
26 and later about five to six lines from the bottom:  
27 "Whilst that was all happening the second man, the  
28 shorter one, was pulling the blinds." Over the page:  
29 "I didn't see who was first but I knew they started to

1 tie us up. Hearing the sound of the tape." Fourth  
2 line, "All through this the first man was asking us who  
3 the boss was, who belonged to the Volvo." Then the  
4 next paragraph: "The man who walked into the bar was  
5 wearing runners which were black in colour, strap over  
6 the top, no laces but a white or silver stripe in the  
7 middle of them." And describes in the next  
8 paragraph as being "inside for approximately or at  
9 least ten minutes." Again, there you would agree on  
10 that, that there is no description of the offenders as  
11 far as actual height is concerned, their accents are  
12 concerned, the nature of their builds are concerned;  
13 nothing in that statement taken from Ms Lee by  
14 Mr Beanland?---Correct.

15 If we have a look at Exhibit 288. This, you see, is a  
16 further statement from Linda Lee and at p.3399 over the  
17 page, taken by Mr Dale, Sergeant Dale, on 26 November  
18 2000 at Kew. If we go back to the first page, third  
19 paragraph in the statement: "At the time of making my  
20 statement I described the two males who robbed us,  
21 however these descriptions were not put into my  
22 statement." Just insofar as Ms Lee, in those three  
23 lines, is referring to descriptions not in the  
24 statement, what she is identifying is what you have  
25 indicated was a practice that was adopted within the  
26 Armed Robbery Squad?---As I was - all I can say is to  
27 my practice and, as I said, in my statements if they  
28 make a referral to descriptions, specific description  
29 of a person, it's in there. And even Beanland's done -

1           sorry, is it Beanland? Yeah, Beanland's done it with  
2           his statement, because she mentions the first one but  
3           she doesn't mention anything about the second one, but  
4           she didn't mention it at the time. These other  
5           statements would have been to clarify the descriptions  
6           and continue on if they've remembered anything else,  
7           because on the night they probably didn't mention it.

8       Just have a look at the third paragraph of the statement  
9           that's taken by Mr Dale in November 2001: "At the time  
10          of making my statement I described the two males who  
11          robbed us, however these descriptions were not put into  
12          my statement." Couldn't be more explicit, could  
13          she?---Well, she's also signed this one saying it's a  
14          true and correct statement, and she doesn't say that  
15          they haven't put it in, in that, has she?

16       What she's done is sign a statement, the first one, without  
17          the descriptions which is entirely consistent with the  
18          practice that you've described of not putting  
19          descriptions of offenders in initial statements?---I  
20          just don't see - well, no, I disagree with you. I  
21          disagree with you there.

22       What's the part you disagree with?---Well, to sit there and  
23          fill out a description form is usually done by the  
24          uniform before we even get there; the statement, some  
25          of the statements aren't even taken on the same night,  
26          so if they're gonna supply us with the information  
27          about a description, it would have been put in there  
28          because it was taken - you're telling me that my one  
29          was taken a couple of days later. That there, I don't

1 know what - she signed it as she previously made a  
2 statement, but is she talking calling the statement  
3 where she sat down and officially made the statement or  
4 when she supplied the information to the police? I  
5 don't know.

6 Let me give you some background to the evidence that IBAC  
7 has in these proceedings; that at the Homicide Squad  
8 there was a deliberate practice of some members of not  
9 putting descriptions in initial statements even if they  
10 be police officers?---Yes, and as I said before, it was  
11 a practice by a lot of people not to put any  
12 descriptions or anything about clothing and stuff in  
13 it.

14 The examples that we have seen here this morning in the  
15 evidence that you've gone to are consistent with that  
16 practice?---Well, to a certain extent, yes, because  
17 there's an example where I have included it in a  
18 statement. I have included a lot of things a lot of  
19 times in the descriptions in statements. If it's  
20 pertinent as in to separate offenders or to separate  
21 the identity of which one did what, yes, you would use  
22 it - you know, of course you would.

23 Are you indicating to the Commissioner that a person's  
24 memory of a description may be better 18 months  
25 later?---No, I disagree, it's - it can't be better  
26 18 months later.

27 So, insofar as the statement-making practices are concerned  
28 for police officers taking initial statements, it would  
29 be of the greatest importance to ensure descriptions

1 are in first statements?---It would be beneficial,  
2 you're saying, sorry?

3 The highest importance that, in first statements,  
4 descriptions of offenders are in those statements,  
5 because that's when the memory's best?---Well, the  
6 memory is, but that's what I'm saying, it all depends  
7 when the statement's taken. If it's taken on the night  
8 within five minutes, it's going to be totally  
9 different, I'll suggest, even two hours later because  
10 they've had time to talk to their friends, they've had  
11 time to calm down and they'll remember more.

12 I think my question really was - so just to clarify that,  
13 are you saying it's beneficial for witnesses to speak  
14 to other witnesses before they make statements?---No,  
15 well, I don't - no, I'm not saying that, I'm saying the  
16 contrary; it's better to separate them and get their  
17 story, but what happens before we get there, they all  
18 talk.

19 Well, that's not what you said because you've just said that  
20 people may have a better memory of things after they've  
21 got together and make a statement later, but putting  
22 that to one side, you acknowledge, do you, the  
23 necessity of witnesses being separated for the purposes  
24 of making statements?---Yes.

25 And not having anything contaminating memory or  
26 description?---Yes. In a perfect world it doesn't  
27 happen though.

28 In the end, would you agree with this, that it's not up to  
29 the investigator for armed robbery to be making a

1 conclusion as to whether a witness's identification is  
2 good, bad or indifferent?---No, but as I pointed out  
3 before, if you know the facts to be completely false or  
4 inaccurate, you have to go through it with them, and  
5 that's what you do as an investigator.

6 You understand, don't you, that at trial the description  
7 that a witness initially gives of a potential offender  
8 is of critical importance?---Oh, it certainly is.

9 I think you in fact identified the fact that descriptions  
10 had been not done well by witnesses in trials that may  
11 be a reason for the practice that we've  
12 identified?---Yes.

13 But what I'm wanting to put to you is that at the end of the  
14 day it's not up the Armed Robbery Squad, or the  
15 Criminal Investigation Unit, or any other police  
16 officer to be deciding what is good and what is bad in  
17 relation to a witness's memory of an offender?---No.

18 You agree with that?---Yeah.

19 Are you aware of a practice of backdating  
20 statements?---Backdating? No.

21 That is, a statement may have been made by a witness and for  
22 some reason or another a year later that statement is  
23 re-signed and re-acknowledged as though it was the  
24 original statement?---Well, I've never done it, never  
25 seen it done.

26 And that wasn't my question - - -?---No, I just said, that's  
27 my answer: I have never seen it, never heard of it, as  
28 in - - -

29 Never heard of it?--- - - - in my presence, like, I've never



1           seen or heard a story about how it's happened, but I'm  
2           not sitting here saying it's never happened, I wouldn't  
3           know.

4           You're aware of supplementary statements being taken?---Yes.  
5           You're aware of a practice of, in effect, a supplementary  
6           statement being taken but signed and dated on the date  
7           the supplementary statement is taken, made to look as  
8           though it is the initial statement, and the initial  
9           statement destroyed?---No. A supplement's a  
10          supplement. There's nothing wrong with a supplement  
11          statement.

12          When you were at the Police Academy, I accept it was a long  
13          time ago, was there anything taught to you at the  
14          Police Academy about whether descriptions of offenders  
15          should be put in first statements?---I honestly  
16          couldn't remember.

17          Are you aware of any practice of so-called reformatting  
18          statements?---What do you mean? Sorry, what do you  
19          mean by reformatting?

20          Putting it in a different type or having occasion to retype  
21          a statement?---No. Most - my practice was to handwrite  
22          it, it was given to our clerk to type and put on the  
23          file, but the original was always usually handwritten  
24          unless they came to the office where I had a typewriter  
25          available or computer available.

26          Your practice would be to handwrite the statement?---Yes,  
27          it's pretty distinctive handwriting, is what I'm  
28          saying.

29          Have it typed up and then the original statement attached to

1 the typed statement?---Yep.

2 They are the matters, Commissioner.

3 COMMISSIONER: Thank you, Mr Rush. (To witness) Just  
4 picking up one piece of your evidence again,  
5 Mr Peterson - - -

6 MR RUSH: Am I mishearing, Commissioner? Did you ask me  
7 something?

8 COMMISSIONER: No, no. (To witness) Just following this  
9 issue of how there was so much uncertainty about when  
10 relevant information should go into a statement and how  
11 it varied, the attitude varied according to the  
12 particular sergeant, that would mean of course that in  
13 a lot of cases information which was relevant but which  
14 a sergeant said to his crew should not initially be  
15 included would have to at some later point become part  
16 of the witness's account. Was there only one practice  
17 followed as to how, at a later point of time, that  
18 relevant evidence should become part of a witness's  
19 account or - - - ?---They're usually by supplementary  
20 statement.

21 But was that always the way it was done or were there other  
22 ways in which it was done?---As far as I know, that's  
23 the only way to be done, as in, it could be done,  
24 properly done.

25 Yes. No application for cross-examination?

26 MR MATTHEWS: Sorry, Commissioner, I might ask one question.

27 COMMISSIONER: Yes.

28 MR MATTHEWS: The same question I asked the previous witness  
29 about the suppression of number of offenders.

1 COMMISSIONER: Yes, sir.

2 <EXAMINED BY MR MATTHEWS:

3 Mr Peterson, did you ever have a practice of omitting what a  
4 witness said about the number of offenders involved in  
5 an offence?---No. Why would you? No.

6 Picking up on what you just said, were you ever aware of any  
7 other member of the police suppress - - - ?---No.

8 Well, omitting the number of offenders from a statement of a  
9 witness?---No. Why? Why? I can't see the point. No.

10 MR MATTHEWS: Nothing further, Commissioner.

11 COMMISSIONER: Just one other thing. I think at some point  
12 in your evidence, speaking of the practice that you'd  
13 described of sometimes recording descriptions elsewhere  
14 than in the witness's statement, you said that to your  
15 knowledge that practice had continued until the time  
16 that you resigned. Do you have any recollection of at  
17 any stage any direction coming from Command or any  
18 retraining to suggest that that practice shouldn't be  
19 followed?---Personal knowledge, no. I know there were  
20 advanced DDS courses and stuff, but I never did one, so  
21 the newer ones might have got told, but that's what I  
22 was trying to say earlier: new people would go through  
23 and then come to your station and say, "Oh, no, you  
24 can't do that" or "you're supposed to do that these  
25 days" or whatever, but it never - yeah, I never  
26 experienced any - yeah, no, not at all.

27 But so far as you're aware, you weren't aware  
28 of - - -?---No, not at all.

29 - - - a redirection?---No redirections or ...

1 Thank you. Is there any reason Mr Peterson shouldn't be  
2 excused?

3 MR RUSH: No, Commissioner.

4 COMMISSIONER: Very good. So, Mr Peterson, I will discharge  
5 you finally from your obligations under the summons.  
6 We'll provide you with a video recording and a  
7 transcript of your evidence.

8 The only qualification in terms of ongoing  
9 obligation is that there is currently an order for  
10 witnesses out of court which means you should not talk  
11 to any witness that has been or will be called about  
12 the subject of your evidence or their evidence. Do you  
13 follow?---Yes, sir.

14 I thank you for your assistance and you're excused.

15 <(THE WITNESS WITHDREW)

16 MR RUSH: Commissioner, there's one witness left, Mr Pratt  
17 at 2.15, if that's convenient, or 2 o'clock.

18 COMMISSIONER: Yes, he's been asked to come - or he's here  
19 now?

20 MR RUSH: He is, I understand.

21 COMMISSIONER: He will take some time?

22 MR RUSH: Yes.

23 COMMISSIONER: Yes, 2.15.

24 Lunch adjournment: [1.35 pm]

25

26

27

28

29

1 UPON RESUMING AT 2.19 PM

2 COMMISSIONER: Yes, Ms Boston.

3 MR RUSH: I call David Pratt, Commissioner.

4 <DAVID SPERRY PRATT, sworn and examined:

5 COMMISSIONER: In the summons that was served on you it was  
6 said that you will be asked about the following various  
7 matters: (1) the Lorimer Task Force investigation of  
8 the murders of Sergeant Gary Silk and Senior Constable  
9 Rodney Miller, concerning the taking of witness  
10 statements, the preparation of the brief of evidence  
11 for the trials of Debs and Roberts, and whether there  
12 was full disclosure of witness statements or other  
13 relevant information prior to or during the trial,  
14 witness statement-taking practices by Victoria Police,  
15 compliance with the obligation to disclose evidence by  
16 Victoria Police.

17 You're not seeking representation?---No, sir.

18 But you understand you have a right to be legally  
19 represented; you don't require that at present?---I  
20 don't believe so, sir, no.

21 Mr Pratt, there are delegates here from the Victorian  
22 Inspectorate's office and if during or at the  
23 conclusion of the hearing you have any concerns that  
24 you want to raise with them, they're here for you to do  
25 that?---Yes, sir.

26 You were served with the summons, the confidentiality notice  
27 and your rights and obligations; correct?---Yes, sir,  
28 that's correct.

29 Although you no doubt have read them and probably understand

1           them all, I'm required to remind you very briefly about  
2           their content. You're subject to privileges of a very  
3           special order, you're required to answer questions and  
4           to answer them truthfully and, so long as you do so,  
5           your answers can't be used against you in a court of  
6           law.

7           You understand that, if you don't answer questions  
8           truthfully, then you may be subject to prosecution for  
9           perjury and, in that circumstance, your answers can be  
10          used against you but not otherwise. Do you follow all  
11          that?---Yes, I do, sir.

12         Have you any questions at this stage you want to ask?---No,  
13         sir.

14         Very good. Yes, Ms Boston.

15         MS BOSTON: Would you please state your full name?---David  
16         Sperry Pratt.

17         You attend here today in response to a summons served upon  
18         you on 9 January?---Yes, that's correct.

19         Would you have a look at these documents, please. The  
20         summons in front of you numbered SE2757, is that the  
21         summons that was served upon you?---Yes, it is.

22         You also received a document entitled, "Statement of Rights  
23         and Obligations"?---Yes, I did.

24         Do you see that document in the bundle?---Yes.

25         Together with those documents, did you receive a  
26         confidentiality notice dated 11 December 2018?---Yes, I  
27         did, sir.

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

29         Are those copies of the documents you received in

1 full?---Yes, I believe so.

2 Do you understand the nature of those documents?---Yes, I  
3 do.

4 I tender those, Commissioner.

5 #EXHIBIT O - Documents served on subpoena to Mr Pratt.

6 Mr Pratt, what is your current occupation?---I have several:  
7 shearer, which is my primary income. Secondary income  
8 is, I work for the Department of Justice as a contract  
9 manager.

10 Were you formerly employed by Victoria Police?---Yes, sir, I  
11 was.

12 When did you graduate from the Academy?---July 1986,  
13 roughly, sir.

14 When did you leave Victoria Police?---28 March 2002 is my  
15 official resignation date, I think.

16 And so, a career of approximately 16 years with Victoria  
17 Police?---Yes, that's correct.

18 Could you please briefly outline the stations you were  
19 employed at as well as the ranks you held?---On  
20 graduation I started working at the Hawthorn Police  
21 Station, a number of us were - training stations over  
22 the next 12 months, then I did the senior phase  
23 training at Russell Street Police Station. My first  
24 gazetted position was at the City West Police Station.  
25 Subsequently moved out to the Ferntree Gully Police  
26 Station uniformed, and then seconded to the Ferntree  
27 Gully CIB, I was then a police firearms instructor. I  
28 then went to the CIB, appointed to the arson and  
29 violent investigation unit in the crime squads. From

1           there, I went back to the Knox CIB, I was promoted  
2           sergeant to Malvern uniform, seconded to the major  
3           fraud investigation unit and then subsequently seconded  
4           to the Region 1 Regional Response Unit and then  
5           resigned from the police force, sir.

6           You mentioned that you spent time in various CIBs; were you  
7           a detective?---Yes, that's correct, sir.

8           When did you do you attend the Detective Training  
9           School?---1991, maybe 92, I'm not 100 per cent sure;  
10          about 1991, I think.

11          So, you have to do that course in order to become a  
12          detective, is that how it works?---You get appointed to  
13          a CIB position, gazetted position at that stage, and  
14          then you went and did the Detective Training School.

15          As at August 1998, you'd worked as a detective for about  
16          seven years?---Yes, sir, would be about right.

17          Your rank was detective senior constable?---Ah, no, in 1998  
18          I was a sergeant, uniformed sergeant.

19          And you were stationed at Elsternwick?---No, Malvern, sir;  
20          Malvern uniform.

21          Did you have duties connected with Operation Hamada?---Yes,  
22          sir, I was seconded to a special effort for, from  
23          recollection, a few days, an armed robbery task force.

24          Prior to 15 August, that evening is the date of the murders  
25          of Sergeant Silk and Senior Constable Miller; prior to  
26          that date had you had involvement with Operation  
27          Hamada?---No, sir, not - oh, oh look, I'm not sure. I  
28          was seconded to a very, very short term operation for a  
29          couple of nights; that probably wasn't the first night



1           that I worked for them, but I'd be guessing to say how  
2           many nights - we'd be talking two or three nights, not  
3           weeks or not months.

4        I'll get you to have a look at your statement, please,  
5           Exhibit 342. I appreciate this is a long time ago,  
6           it's not a memory test, so if you need assistance by  
7           looking at this document, that's okay. You will see  
8           that this is the statement that you made in relation to  
9           the Lorimer Task Force investigation; is that  
10          correct?---It appears to be, yes.

11        If we go to the last page, p.3585, down the bottom to the  
12          jurat, signed by you on 16 August 1998 at - does that  
13          say 7 or 9 am?---Oh, I think it would be about 7, only  
14          based on, I wasn't that late getting home in the  
15          morning, so probably closer to 7 am I believe.

16        The acknowledgment's been taken by a Detective Senior  
17          Sergeant Risker(?) or?---Look, I couldn't tell  
18          you - - -

19        Risker - - -?---No recollection.

20        Risker?---Don't know.

21        Is that your recollection, that you made your statement on  
22          the morning of 16 August 1998 at Moorabbin Police  
23          Station?---Yes, sir, that's correct.

24        Was that statement updated or amended in any way  
25          thereafter?---No, not at all, never. I have no  
26          recollection at all doing it. I don't remember doing  
27          it, I think I did it, but since it's 20 years ago, but  
28          having said that I'm not trying to put doubt in  
29          anyone's mind, I just have absolutely no recollection

1 and no reason to change it. In fact, I recall never  
2 being contacted by the task force until just prior to  
3 the trial.

4 What about in other situations, just putting the Lorimer  
5 investigation to one side for a moment, were there  
6 other occasions in the course of your career where you  
7 had cause to update a statement?---Um, if I was - well,  
8 you say "update." If there was further information to  
9 be added to a statement, I'd write another statement  
10 and make comment, this is in addition to a previous  
11 statement I'd made. Look, again, talking 20 years ago  
12 and a 16 year career before that; maybe two or three  
13 times in that time I had to do that, but I've certainly  
14 never amended an original statement. If I was going to  
15 provide further information, it would be made as a  
16 subsequent statement and that statement would clearly  
17 state it was in addition to a previous statement, it  
18 wouldn't - never replace the original signed statement.

19 Are you aware of other members in the course of your career  
20 not following that practice?---No. No, I'm not,  
21 absolutely not, and I - I was a bit astonished to hear  
22 that that was going on. I would never do it.

23 So, if we can just look at your statement, please - or if  
24 you need to look at the statement to answer my  
25 questions, please do so, but if you don't need to  
26 that's also fine. Just by way of summary, you were  
27 performing plain clothes duties that night with Senior  
28 Constable Gray from Elsternwick Special Duties?---Yes,  
29 that's correct.

1 What does that mean, "Special duties"?--Well, in the  
2 context of this event - like, my job was a uniform  
3 sergeant, so I worked in uniform in a uniform police  
4 station.

5 So, although you were a qualified detective you were at that  
6 time working in uniform as a sergeant?---Yeah, so it  
7 was Victoria Police policy at the time that you  
8 couldn't get promoted to detective sergeant without  
9 having gone back to uniform, so I was doing my penance  
10 as a uniformed sergeant hoping to go back to the CIB at  
11 some stage in the future.

12 Did you know Senior Constable Gray prior to this day on  
13 15 August 1998?---I don't think so. I never worked in  
14 that area until I went to Malvern, so most of the  
15 people in the area I had not come in contact with  
16 before. I couldn't categorically say I didn't know Ian  
17 until this job, but he certainly wasn't a colleague  
18 that I worked closely with or had been stationed with  
19 or anything like that, sir.

20 What about after this night, did you have further contact  
21 with Senior Constable Gray?---I'm sure I did, but as to  
22 any particular recollection, no. I actually think the  
23 last time I spoke to him was at the Police Academy a  
24 few years later, we were getting - um, certificates,  
25 and um, Ian wasn't able to be there, um, because he was  
26 unwell, so I spoke to him on the phone - that was it.

27 HIS HONOUR: Would you like to have a break for a few  
28 moments?---Um, yes, sir, if I could.

29 We'll adjourn for five minutes.

1 Hearing adjourns: [2.32 pm]

2 Hearing resumes: [2.43 pm]

3 COMMISSIONER: Mr Pratt, I understand this is a process  
4 you'd rather not be going through, so you let us know  
5 if at any stage you want another break?---Thank you,  
6 sir.

7 Yes, Ms Boston.

8 MS BOSTON: Mr Pratt, you were working with Senior Constable  
9 Gray that night undertaking surveillance in relation to  
10 Operation Hamada?---Yes, that's correct, sir.

11 Firstly, you were undertaking surveillance at the Yu Palace  
12 Restaurant in Brighton East?---That's correct, yes.

13 You subsequently heard a call over the radio at about 12.15  
14 that a member was down?---Ah, no, that's not correct.  
15 So, we were sitting on the restaurant we'd been  
16 allocated; that restaurant closed - again, a rough  
17 estimate, 10 or 11 o'clock at night. So, we then  
18 contacted the people running the operation (indistinct)  
19 obviously closed restaurant. We were directed at about  
20 that stage to go to the Silky Emperor Restaurant  
21 because the two units down there had seen a vehicle  
22 that had drawn their attention, they'd gone off looking  
23 for that vehicle, so myself and Ian Gray took over the  
24 position inside the carpark where Sergeant Silk and  
25 Senior Constable Miller had been positioned. A few  
26 minutes later - and again it's (indistinct) the exact -  
27 they returned to their location where we now were and I  
28 had a brief conversation with Sergeant Silk about  
29 whether we'd stay there or he'd stay there, and they

1 basically said, well, I've been there all night so they  
2 continued in that position, so we then cleared and just  
3 started basically patrolling around the Brighton area,  
4 I believe, just sitting off restaurants we found in the  
5 Brighton area to see what was going on, had no other  
6 sort of specific tasks allocated to us, so were in  
7 Brighton when the call come over the radio about the  
8 members being shot.

9 You and Senior Constable Gray arrived at the primary crime  
10 scene in Cochranes Road a few minutes later?---Yes, so  
11 at this stage we were communicating on a secure  
12 channel, so it wasn't the standard police radio  
13 channel, it was a secure scrambled channel, so no one  
14 else knew what was going on, and yeah, I arrived at the  
15 scene with Senior Constable Gray and basically took  
16 charge of the scene.

17 And that - what I've called the primary crime scene, that's  
18 where you came to know that it was Sergeant Silk who  
19 had been shot in that location?---Yes, I could see  
20 Sergeant Silk's body laying on the footpath.

21 I'm not going to ask you in detail about any of that, but in  
22 terms of your duties on the night, you said in your  
23 statement at the bottom of the last page, p.3585:  
24 "Senior Constable Gray and myself maintained a crime  
25 scene log of the area"?---Yes, that's correct.

26 So, was that yours and Senior Constable Gray's primary  
27 responsibility at that crime scene?---Yeah, so I told  
28 Ian to maintain a log of what was going on, I was  
29 basically communicating on the radio. I was also well

1           aware, and it was my intention that obviously  
2           everything that's said on the radio is recorded, so  
3           perfect crime scene log for all the information that  
4           went out, I knew that everything was recorded and time  
5           stamped, so I was giving as much information as I could  
6           on the radio, knowing that I had a permanent record of  
7           what was said and what we were doing.

8       When you said that "Senior Constable Gray and myself  
9       maintained the crime scene log", was it both of you  
10      doing it or was it just him doing it?--No, I was  
11      driving that night because I'm too lazy to write, so  
12      Senior Constable Miller was - Gray, was taking notes,  
13      basically maintaining the patrol duty sheet or logbook,  
14      so I tasked him to maintain the log once we got to the  
15      scene of what was going on.

16     You stated here in the statement: "At about 1.45 am I was  
17     present during a debrief at the Command post." Who was  
18     present there at that time to your recollection?--The  
19     first two members on scene, I believe Senior Constable  
20     Bendike(?) and - - -

21     Sherrin?--Sherrin, yes. So they were there, myself, I  
22     think Ian Gray, there's been (indistinct) by one of the  
23     senior sergeants from the Homicide Squad who I - I knew  
24     the face and the name at the time, but I couldn't  
25     remember now.

26     You were directed to travel to the Moorabbin police complex  
27     with members from Frankston CIB: "At the Moorabbin  
28     complex I prepared this statement." Was the reason  
29     that you were directed to travel to the Moorabbin

1           Police Station in order to make your statement?---Ah,  
2           yes. Yes, so everyone that was involved, yeah, was  
3           cleared from the scene and sent to Moorabbin to start  
4           putting statements together.

5           Senior Constable Gray went back with you, did he?---Yes, he  
6           did.

7           What's your recollection of the process by which statements  
8           were taken from yourself and Senior Constable Gray at  
9           the Moorabbin Police Station?---Well, I - not so much  
10          taken from, I think I'm pretty confident I wrote my own  
11          statement. Found a computer, typed it up, printed it  
12          out, obviously looking at the screen and the one in  
13          front of me was signed by a detective senior sergeant,  
14          I have a vague recollection of getting my statement  
15          witnessed but, as to precise details I'd be guessing at  
16          this stage, but. My recollection is, I wrote my  
17          statement, I signed my statement in the presence of the  
18          detective senior sergeant and he witnessed my signature  
19          and I then handed my statement over to him.

20          Were you with Senior Constable Gray at any time at the  
21          Moorabbin Police Station?---Oh, look, I'm sure I would  
22          have been. As to the specifics, we were probably  
23          sitting together doing our statements together, but  
24          that's speculation, sir, 20 years ago; that's my  
25          belief, but yes, I'm sure we were together.

26          Was your understanding that he was also at the Moorabbin  
27          Police Station in order to make his statement?---Yes,  
28          yes.

29          If we could go to Exhibit 268, please. You will see that

1 this is the statement from Senior Constable Gray in  
2 relation to the events of that night. If you go to the  
3 final page. You will see that the acknowledgment was  
4 taken and signature witnessed at Elsternwick on  
5 8 September 1998; that certainly wouldn't accord with  
6 your recollection that Senior Constable Gray went back  
7 to the Moorabbin Police Station on 15 August to  
8 16 August to make his statement?---Sir, 20 years ago, I  
9 don't remember. I'm sure Ian was with me. What he did  
10 - like I said, there was a shortage of computers.  
11 There was, you know, people upset. I'm clearly  
12 speculating, I have no clear recollection at all of  
13 what Ian did on that night. I thought we were making  
14 statements; whether he did or didn't, I just don't  
15 know.

16 I can indicate to you that Senior Constable Gray has  
17 previously given evidence at the Commission. If we  
18 could go to Exhibit 427, please, p.5046. He's taken to  
19 his statement, it's pointed out to him at the top of  
20 the page that it's dated 8 September 1998, which is not  
21 the date he recalled making his statement originally on  
22 16 August. When I asked Mr Gray what happened to the  
23 earlier version of the statement, Mr Gray said: "I'm  
24 actually sitting here with a bit of a shocked look.  
25 I'm just trying to sit here and go - ah, nothing there  
26 makes any sense to what I've just told you. I have no  
27 idea what and how, I would have presumed you were going  
28 to hand me a copy of my statement that was signed and  
29 dated on the morning of the 15th or 16th, whichever it



1 was, I'm not sure." Further down the page, at about  
2 line 39, Mr Gray was asked: "Do you have a recollection  
3 of why this statement was taken on 8 September?" And  
4 Mr Gray replied, "No." You will see from that passage  
5 I've just taken you to that Senior Constable Gray's  
6 recollection was certainly that the statement was taken  
7 on the morning of 16 August?---Yes, sir.

8 And it appears that that accords with your  
9 recollection?---Like I said, sir, I'm guessing on that  
10 below as to what Ian did or didn't do. Yeah, I assumed  
11 he made a statement, he assumed he made a statement,  
12 but I've no clear recollection from 20 years ago, sir.

13 COMMISSIONER: But the direction to go back to Moorabbin to  
14 make a statement was a direction given to both of  
15 you?---I believe so, yes, sir - I mean, that was common  
16 sense and what I would expect to happen in these sorts  
17 of events, so yes, sir.

18 MS BOSTON: Just on that issue, Exhibit 24, please. This is  
19 an extract from Senior Constable Gray's day book from  
20 15 and 16 August 1998. Turning to p.895, under the  
21 timestamp of "2.01" you will see that at that point the  
22 crime scene log is passed over to Senior Constable  
23 Howell(?)---Yes.

24 It then states: "Debriefing command post with detective  
25 Senior Constable Sergeant Bezzina"?---Yes.

26 Firstly, is that the detective whose name you were trying to  
27 recall earlier?---Ah, yeah, look, it very likely is  
28 Senior Constable Bezzina. You know, 20 years ago I  
29 knew them all, trying to remember now, I don't know

1           whether - yeah, very likely it was Senior Sergeant  
2           Bezzina we were talking to.

3           So, "Debriefing command post with Detective Senior Sergeant  
4           Bezzina and other units at the scene. Code 1 to CMB."  
5           Code 1 means?---So, code 1 just means, yeah, clear,  
6           leaving the scene, the scene of East Moorabbin.

7           And then "CMB re statement"?---Yes.

8           That's Senior Constable Gray's notation. That tends to  
9           suggest that there was a direction given at that  
10          debriefing that the members return to Moorabbin to make  
11          their statements; would you agree with that?---Well, it  
12          certainly coincides with what I - my recollection of  
13          the events, yes.

14          You don't have any recollection, as I understand it, or  
15          understanding of how it was that Senior Constable  
16          Gray's statement came to be replaced on 8 September  
17          1998; is that fair?---Yes. Again, would be purely  
18          speculating, sir.

19          In terms of other police members at Moorabbin Police Station  
20          on the morning of 16 August, firstly, were you aware  
21          that Glenn Pullin was at the station making his  
22          statement that morning?---Ah, yeah. I believe I was.  
23          Glenn Pullin was actually one of the senior constables  
24          at my uniform station, so I knew Glenn, and I knew the  
25          other member on the Malvern van that were at the scene.  
26          I'm sure I would have spoken to them, but as to, you  
27          know, the specific recollections now (indistinct).

28          You'd have an awareness, wouldn't you, through the media, I  
29          take it, that there have been two statements of Senior

1 Constable Pullin's which have been located?---Yes, I'm  
2 well aware of that, yes.

3 And they're both dated the same date and time?---Yeah, I've  
4 seen the ones in the paper.

5 And the second statement has additional information which  
6 wasn't included in the first statement?---Yes, I am;  
7 I've seen the statements, yes, sir.

8 Do you have any knowledge of how that came to pass, whether  
9 it's direct knowledge or what you've heard from other  
10 members?---I have no knowledge at all; the first I  
11 heard of it was when I saw it in the paper, I believe  
12 it was several years ago, and I've never spoken to  
13 anyone in Vic Pol about it, I was well and truly clear  
14 of Victoria Police at that stage, so no, I have no  
15 knowledge at all.

16 Also at the Moorabbin Police Station that morning were Helen  
17 Poke and Graeme Thwaites; do you have a recollection of  
18 seeing them at the station?---No. Look, sir, I didn't  
19 work in that area for most of my career, so most of the  
20 faces were not familiar to me. I'm obviously aware of  
21 the evidence that they've given, but no, I don't know  
22 them.

23 Moving on to some general questions about general practices  
24 as opposed to asking you about the specifics of the  
25 Lorimer Task Force. There's evidence before the  
26 Commission of police members omitting/leaving out  
27 witness statements that witness's description of an  
28 offender in their first statements and sometimes  
29 recording that description somewhere else, on a piece

1 of paper or in an offence report, for example. Is that  
2 a practice that you're aware of?---Um, no, 'cos -  
3 obviously, I read the papers. I mean, the  
4 information's out there, so there's no use hiding it,  
5 you've got to deal with it in court if you get to  
6 court, so certainly I don't think it was a practice I  
7 ever did, I'm not aware of it as being a practice. I  
8 mean, it's information that's there, the witness is  
9 gonna say he saw whatever to the defence barrister, you  
10 know, just gotta deal with it as part of the evidence  
11 gathering.

12 Have you heard about anybody doing that in the course of  
13 your career?---No. Look, I don't think so, you know,  
14 it's a number of years ago, I don't think so, no, sir.

15 I think before you said that, if a first statement was  
16 incorrect or incomplete, you would take a supplementary  
17 statement referring to the fact that a previous  
18 statement had been taken?---Ah, yes; yes, sir, I would.

19 Some witnesses have given evidence of a practice of  
20 replacing statements instead of providing a  
21 supplementary statement; I think you said that that's  
22 not something that you've ever done yourself?---Look, I  
23 have no recollection of doing it and I - I just don't  
24 see why I would have done it. A long time's the issue,  
25 it just - it doesn't make good practice, I don't think  
26 I've ever done it, I have no recollection of doing it,  
27 and I'd just make a second statement and put the  
28 information in and explain why I had to write a second  
29 statement.

1 The reason why you follow that practice is that you want to  
2 make it clear to both parties why it is that additional  
3 or different information has emerged  
4 subsequently?---Yes, sir, exactly.

5 You want to make that whole process transparent?---Yes, sir,  
6 and I had, I suppose, the fortune or misfortune to be  
7 cross-examined by a number of very competent barristers  
8 very early in my career, so I very quickly learnt that,  
9 you know, there's no use trying to cover something up  
10 in the witness box, it's all gonna come unstuck, so put  
11 it all out there and I'd be briefed around that with  
12 the best evidence you can.

13 And both the prosecution and the defence need to be aware of  
14 the sequence in which information has emerged during an  
15 investigation?---Exactly right. Like, the last thing  
16 you want in a trial is someone to start throwing doubt  
17 at you or give the defence the opportunity to say  
18 you've hidden something, so that's just giving them  
19 free ammunition, so they're playing with fire doing  
20 that.

21 What about, instead of replacing a statement, taking a  
22 statement well after an event and then backdating it to  
23 make it look like the statement had been taken at an  
24 earlier stage; is that a practice that you're aware  
25 of?---Again, no. No, not, no.

26 Just going back to the Moorabbin Police Station, were you  
27 aware of Homicide Detective Senior Constable Grant  
28 Kelly being at the Moorabbin Police Station?---Wouldn't  
29 have a clue who he was so he may well have been there.

1 I don't ever recall meeting him, couldn't tell you what  
2 he looked like.

3 What about Detective Senior Sergeant Charlie

4 Bezzina?---Yeah, Charlie Bezzina I know, yes.

5 What was he doing at Moorabbin?---I'm assuming he was there,  
6 sir, but as to any specific recollection, I don't know.

7 COMMISSIONER: You can't remember now?---I can't remember.

8 Look, he probably was there, but certainly senior  
9 sergeants from the Homicide Squad I knew there, I spoke  
10 to one or two of them, but as to exactly who they were,  
11 I - you know, I couldn't tell you, sir, we'd  
12 (indistinct words).

13 MS BOSTON: You mentioned before that you were at the Major  
14 Fraud Squad at one point in time?---Yes.

15 Were you there at the same time as Mr Pullin?---Ah, no, no,  
16 I was there - shortly after I got promoted to sergeant  
17 I had to finish off a pretty major fraud and bomb  
18 investigation myself, so I got sent there for a  
19 few months to wrap up that enquiry, and I think Glenn  
20 was still at Malvern at that stage, he went there  
21 sometime later.

22 Did he ever say anything to you about this issue of his  
23 statement and when it was made?---No, sir, no, I have  
24 no - I have no recollection in saying it and I - I just  
25 don't remember; I don't think he ever said it to me and  
26 I have no recollection of it.

27 MS BOSTON: Those are the matters, Commissioner.

28 MR MATTHEWS: No questions.

29 COMMISSIONER: No reason why Mr Pratt shouldn't be excused?

1 MS BOSTON: No, Commissioner.  
2 COMMISSIONER: So, Mr Pratt, thank you for your attendance  
3 today, I'll release you from your summons and, subject  
4 to the order for witnesses out of court, the other  
5 elements of the confidentiality notice cease to apply,  
6 so the only ongoing obligation is, don't speak to other  
7 witnesses either that have given evidence or are  
8 expected to give evidence about the issues that either  
9 you've addressed or that they might address---Yes, I  
10 understand that.

11 We'll provide you with a video recording of your evidence  
12 and a transcript of your evidence, and otherwise that's  
13 the end of your involvement in this process, so thank  
14 you for your attendance?---Thank you, sir.

15 <(THE WITNESS WITHDREW)

16 MS BOSTON: There are no further witnesses today,  
17 Commissioner.

18 COMMISSIONER: We'll resume at 10 tomorrow morning, Mr Rush?

19 MR RUSH: Yes.

20 COMMISSIONER: Very good. So, adjourn the hearing until  
21 10 am. I'm sorry, is there something else? Adjourn  
22 the hearing until 10 am tomorrow morning.

23 Hearing adjourns: [3.06 pm]

24 ADJOURNED UNTIL TUESDAY, 12 FEBRUARY 2019

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