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CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA

ACTING COMMISSIONER DUNFORD QC

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON TUESDAY, 9 OCTOBER 2007, AT 1.58 PM

Counsel assisting:

MR P.D. QUINLAN

1 **THE ACTING COMMISSIONER:** Mr Power, I understand you want
2 to ask another - - -
3
4 **POWER, MR:** I want to deal with another area if I may,
5 sir.
6
7 **THE ACTING COMMISSIONER:** All right.
8
9 **POWER, MR:** Having told you that I didn't have any further
10 questions, so I apologise.
11
12 **THE ACTING COMMISSIONER:** That's all right. What's the
13 area?
14
15 **POWER, MR:** It's an area that has been of some interest to
16 you I think, sir. The area is when it was that Mrs Raine
17 had the view that the person she saw was wearing some
18 headwear.
19
20 **THE ACTING COMMISSIONER:** Yes, I will allow that.
21
22 **POWER, MR:** Yes, thank you.
23
24 **THE ACTING COMMISSIONER:** But before I do, we're having a
25 lot of trouble trying to sort out where we're going from
26 here because of Mr Gormly's condition.
27
28 **POWER, MR:** Yes, sir.
29
30 **THE ACTING COMMISSIONER:** We think we have some witnesses
31 next Wednesday who, in so far as they affect anyone, affect
32 your client, Mr Davies, but we are just trying to make sure
33 they are tied up for Wednesday and we will let you know
34 before the end of the week. We can let you know too,
35 Mr Power, but I don't - my understanding is they don't
36 affect your client, but we will let you know anyhow.
37
38 **POWER, MR:** Thank you, sir.
39
40 **THE ACTING COMMISSIONER:** I'm pretty sure they don't
41 affect anyone else's clients. Mr Stephen Hall indicated
42 some time ago he wanted to ask Mr Shervill some questions
43 and Quinlan has been in touch with him earlier today. He's
44 in Adelaide or somewhere, isn't he?
45
46 **QUINLAN, MR:** He is. I spoke to him in the lunch break.
47 He's an Adelaide and doesn't return until - - -
48
49 **THE ACTING COMMISSIONER:** He was expecting to be here next
50 week for Mr Gormly to question Mr Bates, so he's not here
51 this week, but he can question Mr Shervill next Thursday.
52 He says he won't be long, but I don't know what that means
53 and I would be inclined to let him have that facility. As
54 for where we go after that, we will have a better idea
55 later in the week when we find out how Mr Gormly is
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36/3/sjr

1 responding to treatment. All right, yes. Mr Power?

2

3 **POWER, MR:** Thank you, sir. May I have E13152 put up
4 please. Commissioner, this is the major crime squad daily
5 running sheet, and I'm going to ask the witness to look at
6 page 51.

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1 Commissioner, you might recall that you asked some
2 questions of Mr Shervill about the statement of 29 June and
3 whether in relation to the wearing of headwear and how that
4 change occurred and when it occurred.

5

6 **THE ACTING COMMISSIONER:** Lily Raine?

7

8 **POWER, MR:** Correct.

9

10 **THE ACTING COMMISSIONER:** Yes; yes, yes.

11

12 **POWER, MR:** Thank you.

13

14 You have it in front of you now, Mr Shervill. Would you go
15 down to the entry for 1055. You can see there it says,
16 "Detective Sergeants Brandham and Caporn attend with Lily
17 Raine to Aleks Bagdonavicius re bandannas being held
18 there." If you go to the top of the page you will see that
19 this is an entry in the major crime squad running sheet for
20 7 June 1994. Does that entry that I have taken you to
21 towards the bottom of the page, at 1055, indicate to you,
22 sir, that Ms Raine was of the view that the person she saw
23 was wearing some headwear at a much earlier time - - -

24

25 **THE ACTING COMMISSIONER:** Just a moment, please - - -

26

27 **POWER, MR:** Yes, sir.

28

29 **THE ACTING COMMISSIONER:** - - - before the witness answers
30 that question. That must be pure speculation, must it not,
31 because it's not an entry relating to this witness.

32

33 **POWER, MR:** As the officer in charge, depending on what
34 the answer is to my second question it may not be, sir.

35

36 **THE ACTING COMMISSIONER:** In any event, what's
37 Mr Bagdonavicius got about "bandanna" - got to do with
38 bandannas? Remind me, please.

39

40 **POWER, MR:** That's unimportant, sir. Can I address it in
41 this way, sir?

42

43 **THE ACTING COMMISSIONER:** Yes.

44

45 **POWER, MR:** There would be no point in taking Ms Raine to
46 look at bandannas anywhere with anyone unless it was
47 related to something to do with headwear.

48

49 **THE ACTING COMMISSIONER:** No, but why Mr Bagdonavicius?
50 He was the - - -

51

52 **DAVIES, MR:** He's the blood man, sir.

53

54 **THE ACTING COMMISSIONER:** He was the blood man.

55

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58 2.01

1 **POWER, MR:** That's right.
2
3 **THE ACTING COMMISSIONER:** I will allow you to ask the
4 question, Mr Power, but I must say I will take a lot of
5 convincing that the answer has any relevance to anything.
6
7 **POWER, MR:** Commissioner, thank you very much for that. I
8 appreciate that. I'm just trying to assist you, sir. It's
9 an area of interest to you and I hope it takes us somewhere
10 and if it doesn't, well, it doesn't.
11
12 **THE ACTING COMMISSIONER:** All right.
13
14 **POWER, MR:** What does it suggest to you, sir?---It
15 suggests to me that on the 7th - as early as 7 June
16 Mrs Raine was having discussions with Mr Brandham and
17 Mr Caporn about bandannas.
18
19 Why does it suggest that to you?---Because they've taken
20 Mrs Raine to see Mr Bagdonavicius regarding the bandannas
21 he had there and of course I would expect that that would
22 be to do with the man she saw get in the lift.
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1 Thank you, sir, and are you able - - -

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3 **THE ACTING COMMISSIONER:** That's equally consistent, is it
4 not, for all you know with Detective Sergeant Brandham and
5 Caporn suggesting to Lily Raine that the person she saw may
6 have been wearing a bandanna?---Well, I don't know what
7 Mr Brandham and Mr Carter - Mr Caporn said to Ms Raine. I
8 can only go on that running sheet entry.

9

10 **POWER, MR:** Commissioner, would you like to hear some
11 evidence from Mr Caporn about that, if it assists you? I
12 know he is - - -

13

14 **THE ACTING COMMISSIONER:** I won't stop you recalling
15 Mr Caporn at a suitable time if you want to.

16

17 **POWER, MR:** I think it would be of assistance to you, sir.
18 It's obviously a matter of interest to you.

19

20 **THE ACTING COMMISSIONER:** No. Actually it wasn't until
21 you raised it.

22

23 **POWER, MR:** Can I say this, sir - - -

24

25 **THE ACTING COMMISSIONER:** If you want to recall Mr Caporn
26 to give evidence about that entry I will not stop you.

27

28 **POWER, MR:** Thank you, sir. I will in that case take up
29 your invitation, but the reason I raised it in the first
30 place was because you had some concerns which you expressed
31 in the course of the hearing this morning about why the
32 change, as you put it, should occur some six weeks after
33 the first statement and that's the matter I was hoping to
34 assist you with.

35

36 **THE ACTING COMMISSIONER:** All right.

37

38 **POWER, MR:** I think Mr Caporn will be able to assist you
39 with that, sir.

40

41 **THE ACTING COMMISSIONER:** All right, yes, but we will
42 finish Mr Shervill first for the day.

43

44 **POWER, MR:** Thank you, sir. I have nothing further, sir.

45

46 **THE ACTING COMMISSIONER:** Thank you. Yes, Mr Quinlan?

47

48 **QUINLAN, MR:** May it please you, sir.

49

50 Mr Shervill, in answer to some questions from Mr Davies
51 this morning about your recollection or lack of
52 recollection about obtaining jewellery from Flora Metallica
53 on 14 June 1994 you said in evidence - and I'm paraphrasing
54 but you said to the effect that you couldn't remember why
55 you needed to obtain jewellery but you gave two possible

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38/7/rds

1 reasons, one relating to showing the controller and the
2 other potentially showing it around pawnbrokers and people
3 of that kind?---Yes, sir.

4
5 If we can just look at that page of the major crime running
6 sheet which I don't think you were shown this morning.
7 There's an edited page which is E14447. This is edited,
8 Mr Shervill, because, as you will see, there are
9 blacked-out passages and they are the name of the
10 controller?---Yes, sir.

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1 stage during the investigation. Do you recall that?---No,
2 sir.

3

4 You don't? You don't recall that jewellery was taken at
5 the time in the days following the event and that that
6 jewellery was taken back - and I'm just looking for the
7 reference - and returned to Mr Lawrence in early June?---I
8 remember some jewellery on - on Mr Walker's documents that
9 were shown on the screen this morning had jewellery in
10 them.

11

12 Yes, and indeed - and the record of it being returned or
13 the record of it being signed for in Mr Walker's document
14 was your signature or your initials, wasn't it?---Yes, in
15 red.

16

17 In red, on the side?---Yes, sir.

18

19 So you saw your initials next to that entry - - -?---That's
20 right, sir.

21

22 - - - indicating that it had gone back through you, in
23 effect?---Yes, sir, that's how I would put it back
24 together.

25

26 It had been returned via your efforts and I'm - and I think
27 that entry was for 7 June and if we go to page 51 which was
28 the entry, the page that Mr Power had us at of 13152, an
29 entry of the same date is that entry on Mr Walker's sheet.
30 At 1030 you can see there on 7 June, "Detective
31 Sergeant Shervill to Flora Metallica at 4 Glyde Street,
32 Mosman Park, where returned property to Katie and Peter
33 Lawrence and update regarding progress of inquiry"?---Yes,
34 sir.

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1 That was - that's obviously an entry, because it only
2 concerns you, that has been entered into the running sheet
3 by you?---Yes, sir.

4
5 In relation to the jewellery from 14 June, you said in your
6 evidence that in relation to the witnesses Mr Van Soest,
7 Mr Whitworth and Mr Urquhart, that you did not know what
8 they had seen until sometime after?---That's my
9 recollection, yeah. Most likely when I read the
10 observation squad running sheet.

11
12 Yes?---I think.

13
14 Would it be fair to say, going by the major crime running
15 sheet, it would appear that after Mr Mallard was charged on
16 19 July, there appears to have been a process of sifting
17 back through the material to see if there any other
18 interactions with Mr Mallard which might be productive of
19 evidence, that is going through the undercover operation
20 sheets and going to each of the people that you could
21 identify there to see if there was anything productive to
22 come from it?---That could well have been the case sir,
23 yes.

24
25 Because you will see, if you go to the major crime running
26 sheet, in the days following - the charging appears at
27 page 91 for 19 July, this is again on 13152, you will see
28 on 25 July, which is on page 93, we have for three hours
29 between midday and 3 pm, or 1200 and 1500, "DS Shervill
30 peruses observation squad's running sheets, tasks and
31 inquiries generated re Mallard's movements from 1106 to
32 1706." And then after that we seem to have quite a lot of
33 contact with people whose names appear on the running
34 sheets. If you just scroll down the page a bit we can see
35 Morgan, re a ride given to Mallard on the 16th, and
36 references to Shannon Rosset, the street kid that he was
37 with, and so on. Does that, seeing those entries, refresh
38 your memory or suggest to you that that may have been the
39 process which occurred in terms of going back to see if
40 there was anything productive that might be obtained from
41 those sheets?---Yes, I think that was the process, sir,
42 yes.

43
44 If we go over the page, we can see that the first entry
45 relevant to the three young men in the car, Van Soest,
46 Whitworth and Urquhart, appears on 26 July at 1330, where
47 you have worked out - gone through the ID, registration of
48 the car, seen it's Maria Van Soest and then found Jordan
49 Van Soest, and it would then appear that statements and
50 contact has been made with Mr Van Soest and then
51 Mr Urquhart. Again, does that appear consistent with the
52 way in which that evidence emerged from the three young
53 men?---I'd say so, sir, yes.

1 And over the page, from page - you will see that
2 Detective Lindley on 28 July obtained a statement from
3 Mr Urquhart at 11 o'clock, apparently on his own, and then
4 you two days later - that seems to be out of order, because
5 it has Thursday and Friday, but there's a 29 July missing
6 in there, but at any rate at the end of July 1994 you and
7 Mr Lindley have then followed up this issue of Timothy
8 Urquhart seeing jewellery and then endeavouring to identify
9 what that jewellery may have been?---Yes, sir.

10
11 Would you agree then that that's approximately the time
12 frame that you were talking about when Mr Davies was asking
13 you questions about when you became aware of when
14 Mr Urquhart, Whitworth and Van Soest had seen?---Yes,
15 that's my memory - - -

16
17 That is about a month and a half after the undercover
18 operation itself, going from 16 June to the end of July.
19 Is that right?---No, 11 June to 16 or 17 June.

20
21 That's right, that's the undercover operation, mid June?
22 ---Yes, sir.

23
24 And then a month and a half later, Detective Lindley it
25 would seem goes out to see this young man Mr Urquhart and
26 lo and behold, Mr Urquhart is describing some gold-coloured
27 jewellery?---Yes, sir.

28
29 Would it not, regardless - if jewellery had been obtained
30 from Flora Metallica which had not been returned, would you
31 not think that to hear a report of jewellery of the same
32 description or a similar description showing up during the
33 period of the undercover operation spark some recognition
34 in you, make you ask the question, "Could that be the
35 jewellery that we obtained from Flora Metallica"?---Could
36 you put that to me again please, sir.

37
38 I will. On 14 June, Detective Caporn and yourself have
39 obtained jewellery, according to the running sheet, well
40 according to the running sheet you went there for that
41 purpose, and according to the evidence of Mrs Car that in
42 fact occurred, you obtained jewellery for the purposes of
43 the undercover operation from Flora Metallica. Correct?
44 ---That's what the running sheet says, yes, sir.

45
46 And there's no record of that having gone back to Flora
47 Metallica?---That's right.

48
49 A month and a half later, one of your detective constables
50 says, "I've spoken to Mr Urquhart who saw Mallard on the
51 night of the 16th, and he says he saw Mallard in possession
52 of some strange jewellery." Right?---Yes, sir.

53
54 Did not that cause you to ask the question, "Well, whatever
55 happened to that jewellery we obtained from Flora Metallica

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41/12/sjr

1 on the 14th?"

2

3 **DAVIES, MR:** The problem with that is that it proceeds on
4 a false premise. It proceeds upon the proposition that
5 because you cannot now find any evidence of it having been
6 returned that it was never returned.

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1 **THE ACTING COMMISSIONER:** Yes, all right. Yes; don't
2 answer that question. Yes, Mr Quinlan?

3
4 **QUINLAN, MR:** I will ask a slightly different question.
5 Is it your evidence that when this material arose -
6 originally I think it would appear through Detective
7 Constable Lindley seeing Mr Urquhart - as to this
8 suspicious jewellery, as you describe it in the
9 comprehensive summary of facts, is it your evidence that it
10 never occurred to you or the question never arose as to
11 whether that might have some connection with the jewellery
12 from Flora Metallica which obtained for the purposes of the
13 undercover operation?---No; no, not at all because - and
14 I've given evidence that at best I would've shown the
15 controller the jewellery. I certainly would not have given
16 it to him to give to the UCO. It's just not what I
17 would've done.

18
19 Mr Davies also asked you some questions about the search
20 warrant on unit 3/16 Collie Street about the leather
21 jacket, and Mr Davies I think put to you a proposition to
22 the effect that there's nothing on the complaint to ground
23 the search warrant to indicate that the jacket was
24 necessarily that of the undercover officer. I think you
25 agreed with that proposition. Is that right?---I - sir,
26 it's not that long ago but I don't recall.

27
28 Do you - - -?---I don't recall what answer I gave.

29
30 Do you agree that that is your view, that there wasn't
31 anything particular on the complaint to ground the search
32 warrant to indicate that it was the undercover operative's
33 jacket?---Look, I - I haven't seen the search warrant since
34 it was shown on the screen here during this Commission so -
35 I'm not being awkward but I just can't remember what the
36 complaint to ground had on the back.

37
38 Yes, I realise that but you were able to answer a question
39 about it this morning.

40
41 **DAVIES, MR:** Sir, the question I asked was: anywhere in
42 the papers, the wider structure of papers he has seen - to
43 indicate that it was his jacket.

44
45 **THE ACTING COMMISSIONER:** I quite frankly can't remember
46 the precise form of the question myself.

47
48 **QUINLAN, MR:** I think Mr Davies also asked you a question
49 about whether or not that warrant might have had nothing to
50 do with the Mallard investigation at all and you weren't
51 prepared to go that far and said, "Well, it's on the file.
52 It must have some connection"?---It had some connection to
53 Andrew Mallard, yes, sir.

42/14/rds

1 If we go to the warrant itself which is E13924 - it's the
2 complaint and the warrant, E13924. That has the reference
3 to - I think we can confirm that it's a brown bomber jacket
4 that's referred to there as being the items - the brown
5 bomber jacket and a Citizen dive watch, black base and
6 band. Over the page the complaint at least says, "Sometime
7 between 13 June and 16 June the complaint's jacket and
8 watch were stolen." So we have a time frame. Correct?
9 ---Yes, sir.

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1 There's no doubt in your mind, is there, that this warrant,
2 being a warrant to search premises of Mr Mallard's
3 associate Mr Buhagiar but, is a warrant looking for a
4 jacket that had been in the possession of Mr Mallard?---it
5 doesn't say that there.

6
7 No, but you have had an opportunity to look at it, you know
8 it's on the Mallard file. It relates to a period in
9 question - - -?---I'd agree with that, sir.

10
11 You would agree with me that the warrant, there's no doubt
12 that when it's referring to the warrant having been taken
13 by somebody - - -

14
15 **THE ACTING COMMISSIONER:** No, the jacket having been - - -

16
17 **QUINLAN, MR:** Sorry, the jacket having been taken by
18 somebody, that they were stolen, that it's a reference to
19 the jacket having been in Mr Mallard's possession, and it
20 having come into his possession sometime between 13 June
21 and 16 June?---Yes I'd support that.

22
23 Yes.

24
25 **THE ACTING COMMISSIONER:** That is during the period of the
26 undercover operation?---Yes, sir.

27
28 **QUINLAN, MR:** That's one matter, at least on the face of
29 the warrant if there were not other documents to support
30 it, which would suggest to you that this is a warrant
31 directed to a brown bomber jacket that had been, to use as
32 neutral words as possible, transferred into Mr Mallard's
33 possession during the undercover operation?---Yes, sir.

34
35 And suspected to have been left at Mr Buhagiar's house?
36 ---Well, I don't know, because - yes, I was the case
37 officer, but warrants were taken out during the course of
38 the investigation without my knowledge; so officers would
39 not come to me and ask consent, or even tell me that they
40 were executing a search warrant on a particular place.

41
42 No, but we are focusing on the warrant at the moment. I
43 will ask you some questions about your understanding of it?
44 ---Yes, sir.

45
46 If we go back to the first page we can see it's
47 Mr Buhagiar's house?---Yes, sir.

48
49 Scrolling back up, 3/16 Collie Street, Fremantle?---That's
50 right.

51
52 So the warrant is evidencing - well, the complainant to the
53 warrant is swearing to the fact that the last known place
54 of this jacket, which you agree is something that has been
55 in Mr Mallard's possession, has been at Mr Buhagiar's

1 house?---Again, not wanting to be awkward, I don't know
2 about the last known place, but certainly the officers
3 wanted to search there.
4
5 Because they had received information that the jacket is in
6 the house?---Not - well - - -
7
8 There is a thing in the house - and we scroll down - and
9 the thing is to whit, brown bomber jacket?
10
11 **THE ACTING COMMISSIONER:** That's what the complaint says.
12
13 **QUINLAN, MR:** Yes.
14
15 **THE ACTING COMMISSIONER:** No, that wasn't the form of the
16 question. The form of the question was because the officer
17 knows that it's in the house.
18
19 **QUINLAN, MR:** No, no. I will withdraw that, I will ask a
20 different question.
21
22 The complaint is a complaint to the effect that the officer
23 has information and has a reasonable belief that the jacket
24 is now in the house?---Yes, sir.
25
26 So that as best as the officer who's swearing this
27 complaint can say, this jacket which has been in
28 Mr Mallard's possession has wound up at that house?---Yes,
29 sir.
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1 The information in relation to that house, given the time
2 period that's referred to on the warrant, one of the more
3 significant pieces of information available at that time,
4 that is, between 16 and 20 June, is Mr Mallard saying that
5 after being at the Red Castle Hotel he had gone and had a
6 couple of hours sleep at Mr Buhagiar's house?---That's my
7 understanding of where he went, yes, sir.

8
9 Yes, and you understood that from things that Mr Mallard
10 had said on 17 June when he came back to the major crime
11 squad?---That's what I said before the luncheon adjournment
12 but I don't - I don't - that's me just from my memory.
13 Whether that's entirely correct or not, I don't know.

14
15 Yes, well - - -

16
17 **THE ACTING COMMISSIONER:** But that's when you learnt that
18 he had been to the Red Castle Hotel, isn't it?---Yeah, I -
19 I stand by my evidence about the Red Castle Motel. I - I
20 have a memory that I - I learned of that from something
21 that was in his wallet or in his possessions generally. As
22 to - - -

23
24 Or that he said when spoken to by Detective Sergeant
25 Brandham?---Well, again, I have no memory of
26 Sergeant Brandham talking to him about the Red Castle
27 Motel.

28
29 It's in your notebook under the headings Interview of
30 17 June, isn't it?---That's right, sir, yeah, but I - but I
31 - along with that credit card from the Bank of Singapore
32 and things like that. That's why I believe that it's
33 something that came out of his wallet and/or in his
34 possessions rather than the interview.

35
36 We have been over this before - - -?---That's right, sir.

37
38 - - - but under the heading Interview 17 June, the first
39 item you have got is Red Castle Hotel. Isn't that right?
40 ---First or second, yes, sir.

41
42 **QUINLAN, MR:** The second item.

43
44 **THE ACTING COMMISSIONER:** The second item, is it?---Yes,
45 sir.

46
47 All right?---And it's the same with the - Mr Mallard,
48 Andrew Mallard sleeping at Michael Buhagiar's. I don't
49 know if that come from the interview either or it's
50 something that I learned elsewhere.

51
52 As there is nothing - you're aware aren't you that there is
53 nothing in the notes of the interview between Detective
54 Sergeant Brandham and Mr Mallard about either the Red
55 Castle Hotel or going to Michael Buhagiar's?---Well, I

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1 certainly know there's nothing in the notes about the Red
2 Castle. I don't know about Michael Buhagiar's. As I said
3 before lunch I - - -

4
5 That can be checked but it's certainly my recollection?
6 ---Yeah. I made the assumption that that's where it come
7 from, but I may well be wrong.

8
9 **QUINLAN, MR:** Your memory before lunch was that the
10 knowledge of him being at Michael Buhagiar's was something
11 that he had said on 17 June?---That's right.

12
13 Yes?---And as I just said, I may well be wrong on that. I
14 might have learned that from somewhere else.

15
16 **THE ACTING COMMISSIONER:** Or you may well be right?---Or I
17 may well be right, sir, yes, but - - -

18
19 Yes?

20
21 **QUINLAN, MR:** Certainly there was - there appears to have
22 been some information available to Senior Constable Dorosz
23 by the - I think this warrant was - - -

24
25 **THE ACTING COMMISSIONER:** 23rd, I think.

26
27 **QUINLAN, MR:** - - - 21 June.

28
29 **THE ACTING COMMISSIONER:** 21st, is it?

30
31 **QUINLAN, MR:** Certainly there appears to have been some
32 information available to Detective Dorosz as at 21 June to
33 enable him to swear to having information that the person
34 who had been in possession of the brown bomber jacket had
35 been in 3/16 Collie Street at some point?

36
37 **DAVIES, MR:** Where do you get that from?

38
39 **QUINLAN, MR:** I get it because - no, I'll ask the witness
40 to answer that.

41
42 **DAVIES, MR:** There's nothing on the warrant that says
43 anything about Mallard having been at 3 - what's-the-name -
44 Street.

45
46 **QUINLAN, MR:** There's nothing much on the - - -

47
48 **THE ACTING COMMISSIONER:** Not very much in the
49 warrant - - -

50
51 **DAVIES, MR:** Precisely.

52
53 **THE ACTING COMMISSIONER:** In the warrant or the complaint
54 at all, Mr Davies. That's one of the problems about it.

55
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1 **QUINLAN, MR:** Which is why I have asked a number of
2 questions of Mr Shervill so as to, as it were, read between
3 the lines of the warrant as to what he would have
4 understood it meant and - - -

5
6 **DAVIES, MR:** That's irrelevant, sir.

7
8 **THE ACTING COMMISSIONER:** You see, it's not his document
9 or it doesn't purport to be his document. Put it that way.
10 I don't know that you can take that any further,
11 Mr Quinlan.

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1 Now, in relation to that notebook, perhaps if I can ask -
2 you were asked some questions by Mr Davies very early on in
3 his questioning, and if I can take you to - if we can put
4 up the transcript from 11 September 2007 at pages 2258 and
5 2259. 2258 first, obviously.

6

7 **THE ACTING COMMISSIONER:** Which page are we after?

8

9 **QUINLAN, MR:** 2258.

10

11 **DAVIES, MR:** I didn't ask him any questions on that page.

12

13 **QUINLAN, MR:** You asked him questions on 2259.

14

15 **DAVIES, MR:** What do you want 2258 for? The witness asked
16 for a break and the Commissioner gave him one.

17

18 **THE ACTING COMMISSIONER:** Have you got 2258?

19

20 **QUINLAN, MR:** I think they're looking for it, sir. I will
21 give the witness a hard copy of the two pages. It appears
22 my friend has a copy with him.

23

24 The reference on 2258, Mr Shervill, that I wanted to take
25 you to begins at 10, which is the last question you were
26 asked before Mr Davies began and which he then picks up on
27 at the beginning of his examination, where you were asked
28 this:

29

Can you tell me this, how come there are items under
the heading General relating to the general interview
so-called which do not appear in any of the notes of
that interview?

30 Your answer was:

31

I mean, that could be me misreading the notes. I
would have had the originals - - -?

32 ---"I wouldn't."

33

I wouldn't have had the originals, I would've had
photocopies, me misreading the notes, me mishearing
what I was told, me not interpreting properly what I
was told.

34 The question:

35

That's your explanation, is it?---That's the best I
can do 13 years on, sir.

36 And then the first question you were asked by Mr Davies
37 which appear at page 2259 is this:

38

39

40

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42 2.35

Assistant Commissioner Shervill, before we leave that topic that Mr Gormly and the Commissioner ended up on, can you help us with anything about this jolly wheelbarrow?---No, sir, other than having - - -

I'm not asking you to speculate?---No, no.

I'm must going to ask you whether you can help us at all?---No. No, I can't; I mean the only - the only thing I can help is that I've written the word wrong there and underlined it, which indicates to me that I was wrong in putting it there, or misread something, misinterpreted something. It was my error.

1 Do you see that?---Yes, sir.
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1 If I can ask you to then go to the notebook and in relation
2 to, again, the structure of what we can see in the
3 notebook, the numbered paragraphs or the numbered entries
4 begin in effect with an analysis of facts and evidence. Do
5 you agree with that? If you go to page 49, this is in
6 12608. So the left-hand side is you listing matters and
7 then writing material on the other side,
8 "Witness/evidence"?---Yes, sir.

9
10 And on a number of occasions as you have gone through,
11 particularly where you have dealt with interview material,
12 you have written whether or not what has been said by
13 Mr Mallard is consistent with other evidence or supported
14 by other evidence or whether it's denied by other
15 evidence?---Yes, sir. Yeah, generally; yes.

16
17 Say for example if we go to page - I think it's 54, yes,
18 54, down the bottom you can see the reference to, "During
19 interview, Mallard claims that an evil man murdered the
20 woman" - that's obviously the 10 June interview, and at the
21 bottom it has got, "Picked up wrench," and you have written
22 on the other side, "No wrench ever in shed"?---Yes, sir,
23 I've written that.

24
25 And over the page where it has, "Walked up the back steps.
26 Woman was at counter cleaning up." Where you have written
27 after each of those, "Okay," am I correct in taking that to
28 mean that you have written "okay" in as much as it's
29 consistent with the facts as you knew them to be?---Most
30 likely, sir, yes.

31
32 And over the page, for example on page 56, you have got
33 "Okay" - this is in relation to "After moved her he hit her
34 again" - "Okay," and then you have got, "Corroborated by
35 Clive C."?---Yes, sir.

36
37 On other occasions, for example at page 62 on number 25 you
38 have written, "Says walk up steps and you face door," and
39 you have written, "Wrong"?---Yes, sir.

40
41 What you mean by that is Mallard says that but Mallard is
42 wrong?---Could be that.

43
44 That's what it does mean, doesn't it?---Well, I'm saying it
45 could be that, sir. I mean, I'm - - -

46
47 Look at the next entry, "Said door on left, then on right,"
48 and you have written, "Guessing"?---Yes, sir.

49
50 Which is you saying - writing down, "Mallard is guessing
51 about that"?---Could be, sir, yes.

52
53 **THE ACTING COMMISSIONER:** Your comment on what he has
54 said, in other words?---Yes, sir.

1 **QUINLAN, MR:** Yes?---Yes, sir.

2

3 And your comment after 25 is, "He's wrong about walking up
4 the steps and you face the door"?---It could be, sir, yes.

5

6 What else could it be?---It could be I'm wrong.

7

8 **THE ACTING COMMISSIONER:** How do you mean you're wrong?
9 ---Well, I've put that there and I've realised that I've
10 been wrong by putting that entry, number 25 there, so I've
11 written "wrong". I don't know.

12

13 What, that Mallard never said that he walked up the steps
14 "and you face the door"?---I don't know whether he said
15 that or not, sir. I - I haven't checked it with the notes
16 but I'm only trying to assist the Commission as to why I've
17 written the word "wrong" there. It could well have been my
18 saying Andrew Mallard was wrong and giving that
19 information, or it could be I was wrong in recording it as
20 - in that way.

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1 **QUINLAN, MR:** When you look at the structure of how you
2 have written this up and the other entries that appear on
3 that page, so we go to the next one, "Said door on left,
4 then on right. Guessing. Said rear door had sign on it.
5 Check out has security co sign. Rear door was a flyscreen
6 security door." You have written yes. The colour, you
7 have written no, and then you have written in there what
8 the colour in fact was. All of these are your comments on
9 the correctness or otherwise of what Mr Mallard has said?
10 ---That's right.

11
12 Yes, and so if we go back to the top one where it says
13 "wrong", it's clear, is it not, it's clear to you that when
14 you have written "wrong" there you mean Mr Mallard was
15 wrong about that element?---No, it's not clear to me at
16 all. I'm satisfied with the answers I'm giving.

17
18 So for all of the other entries - - -

19
20 **THE ACTING COMMISSIONER:** Just a moment. You say that 25,
21 the entry on 25, could mean that you were wrong in noting
22 that Mr Mallard said that you walk up the back steps and
23 you face the door?---Could be, sir, yes.

24
25 Yes. What about 26? Does that mean that you were guessing
26 when you said that Mr Mallard said the door was on the
27 left, then on the right?---I don't know.

28
29 You weren't guessing when you wrote that down, were you?
30 ---I would suggest that that's what - that's my
31 interpretation of that answer.

32
33 What about the other suggestion that that - 26 on the
34 left-hand column is what Mallard said, and your comment is
35 that when he said it he was guessing?---That's right, that
36 what I've said, that's my interpretation of his answer.

37
38 And 25 is what he said, and on the right-hand side your
39 comment is that Mallard was wrong when he said that. It's
40 got to be the effect of it, hasn't it?---I could be, sir,
41 but I can't say that with any - I can't say that with
42 100 degree of certainty.

43
44 All right?---It could be - - -

45
46 That's your answer, all right?--- - - - a note for that I
47 was also wrong.

48
49 **QUINLAN, MR:** Let me suggest to you, Mr Shervill, that
50 your answer in that respect, suggesting that there is some
51 other way of interpreting that, namely that you were saying
52 that you were wrong - - -

53
54 **THE ACTING COMMISSIONER:** Or might be wrong.

55
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1 **QUINLAN, MR:** Or might be wrong - - -?---Yes, sir.
2
3 - - - is patently not correct and that that is clearly your
4 comment on Mr Mallard's statements?---Well, 13 years later,
5 that's the best I can offer this Commission.

6
7 For example, if we go to page 64, another example, go to
8 page 64 - - -

9
10 **THE ACTING COMMISSIONER:** I'm sorry, go back a bit. Go
11 back a bit, no - - -

12
13 **QUINLAN, MR:** What was the reference, sir, that you were
14 looking for?

15
16 **THE ACTING COMMISSIONER:** I missed the number. It flashed
17 past so quickly, I don't have - go back to the top of that
18 page, go down. Wait a minute. Down - yes, 54.

19
20 **QUINLAN, MR:** 34, sir.

21
22 **THE ACTING COMMISSIONER:** 34, sorry.

23
24 "Stole some jewels." Your comment was, "No jewellery
25 stolen that is evident." Do you see that?---Yes, sir.

26
27 The information you were given by Mr Lawrence was that no
28 jewellery had been taken. Isn't that so?---That he could
29 determine, that's right, sir.

30
31 Yes, thank you. Go on.

32
33 **QUINLAN, MR:** Again, that's a comment you have made on the
34 accuracy or otherwise of Mr Mallard's statements?---Yes.

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1 Consistent with everything else in that column being
2 comment on what Mr Mallard has said?---Well, generally,
3 yes, but it could also be comments about what I have
4 interpreted.

5
6 If we go to page 64, "Said hit her on nose and forehead,"
7 and you have written "incorrect". Again that's a comment
8 on something he said?---Well, yeah, it could be.

9
10 **THE ACTING COMMISSIONER:** It was incorrect, wasn't it,
11 because she wasn't hit on the nose and the forehead?---No.
12 He said, "I think the initial blow would've been here,"
13 around the forehead, and it might've been my interpretation
14 about - he meant nose.

15
16 **QUINLAN, MR:** Yes, but what I'm saying is your entry
17 "incorrect" there is a comment that what you have
18 understood him to say or admit to is an incorrect fact?
19 ---Or I've recorded it incorrectly.

20
21 And you have, what, then written, "Oh, I've recorded that
22 incorrectly"?---I've written the word "incorrect".

23
24 **THE ACTING COMMISSIONER:** How would you have known that
25 you have recorded it incorrectly?---If I have watched the
26 video or read the notes. I mean, I would've had some basis
27 for saying that.

28
29 **QUINLAN, MR:** You see, if we then take you to the entry
30 you were asked about and you gave your evidence about on
31 11 September at page 75 - this is the wheelbarrow
32 reference?---Yes.

33
34 "Agrees that there is a wheelbarrow in shed. Wrong."
35 Perhaps I will scroll back up to the previous page. Look
36 at paragraph 62, "Draws reasonably accurate sketch of shop
37 and surrounds." Do you see that?---Yes, sir.

38
39 And then you have got an asterisk immediately under it
40 which you have underlined, "Shed on right side of rear
41 yard"?---Yes, sir.

42
43 And the reason that that's written there and underlined is
44 because it is wrong; that is, the diagram - while as you
45 have described it "reasonably accurate" - is wrong as to
46 the side that the shed was on. Is that right?---Look, I
47 haven't looked at those diagrams. Are you telling me that
48 as a fact?

49
50 Do you remember from the research that you have done that
51 the drawing he drew of the shop on 17 June had the shed on
52 the wrong side?---I haven't - I haven't turned my mind to
53 the drawings.

1 If you take it from me that the shed is on the left-hand
2 side as you approach and not on the right-hand side as you
3 approach the back - - -?---Yeah, I know that.
4
5 - - - and where it's got "shed on right-hand side of rear
6 yard", if you take it from me that that's what the sketch
7 depicts, that you have written that and underlined it
8 because it is a fact that is wrong?---I don't know why I've
9 written that and underlined it, sir.
10
11 I'm suggesting to you that that's exactly the same reason
12 why you have written "wrong" and underlined it under 65;
13 that is, on page 75, the wheelbarrow - that Mr Mallard has
14 agreed there is a wheelbarrow in the shed and he is wrong
15 about that. That's what the reference to "wrong" means.
16 Just as it did in the first entry of "wrong" that I took
17 you to?---No. That's not the evidence I've given the
18 Commission previously.
19
20 I didn't say it was the evidence that you had given the
21 Commission, Mr Shervill. I said that is the position, is
22 it not?---No, sir.
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1 That what you have recorded there is that during the
2 interview Mr Mallard agreed to a fact that was wrong?---No,
3 sir.

4
5 If he had agreed that there was a wheelbarrow in the shed,
6 he would have been wrong about that wouldn't he?---If he'd
7 have said that, yes.

8
9 Yes, and he was right about there - when he, on
10 paragraph 64 immediately above, agreeing there were no gas
11 bottles in the shed but there were tools in the shed.
12 Correct?---Yes.

13
14 That occurred in the course of the interview and was
15 written down by Mr Carter in the notes?---Yes, sir.

16
17 And the entry immediately below it, paragraph 66, "In the
18 shed, claims that she had a blowtorch and eyepieces used in
19 making jewellery," that also appeared in the notes.
20 Correct?---Well, as I said to Mr Gormly - you asked me
21 these questions, "Have I read the notes?" yesterday. I - I
22 don't know. I haven't read the notes for years.

23
24 If we can put up E14468, this is the commencement of the
25 second part of the interview. Do you have that in front of
26 you, Mr Shervill?---I have the notes that were just handed
27 to me.

28
29 Yes, where Mr Brandham says, "Andrew, there are no gas
30 bottles in the shed," he says, "I'm sure she would've had
31 gas bottles." Mr Brandham, "Tell me the truth, Andrew.
32 Where did you get the weapon from?" and then the answer
33 that he has recorded in the notes is, "There are no gas
34 bottles, but there was a tool-kit, tools in the shed."
35 Would you agree with me that that is the answer in the
36 interviews to which you were making reference in
37 paragraph 64 of your notebook: "Agrees no gas bottles in
38 shed but there was a tool-kit, tools in shed"---64, yeah,
39 but where - where are you going, Mr - - -

40
41 Paragraph 64 of your notebook, Mr Shervill?---Yeah; yeah,
42 yeah.

43
44 "Agrees no gas bottles in shed but there was a tool-kit,
45 tools in shed," and then if you look at the answer that's
46 recorded in the notes, "There are no gas bottles - - -"?
47 ---Yes.

48
49 "- - - but there was a tool-kit, tools in the shed"?
50 ---That's consistent, yes.

51
52 Yes, that is - the statement recorded as having come from
53 Mr Mallard in the notes, that is what you are referring to
54 in paragraph 64?---Yeah, it appears so.

55
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50/30/glj

1 Yes, and if we go to the next question:
2

What else is in the shed?---An assortment of stuff,
jewellery equipment.

What type of equipment?

3 and then he says, according to the notes:
4

---You know, the stuff she makes her jewellery with.
Little hand blowtorches, eyepieces, that sort of
stuff -

5 and if you look at your paragraph 66 it says, "In shed.
6 Claims that she had a hand blowtorch and eyepieces used in
7 making jewellery." You see that?---Yes, sir.

8
9 And that record you have made at paragraph 66 is a
10 reference to that answer which is recorded in the notes?
11 ---Yes, sir.

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1 Yes, and in between those two in your notes we have this
2 reference to a wheelbarrow?---Yes, sir.

3

4 Which you said you have written wrong because of what?---My
5 error.

6

7 How did you make that error?---I don't remember.

8

9 As you look at that page, there's nothing between the two
10 questions that have a reference in your notes which could
11 possibly be mistaken for him agreeing there was a
12 wheelbarrow in the shed, is there?---No, there's not, but I
13 still don't remember how, why I wrote it in there.

14

15 There's no way that you could have misinterpreted these
16 notes so as to come up with wheelbarrow?---I don't remember
17 why I wrote "wheelbarrow" there.

18

19 **THE ACTING COMMISSIONER:** One possibility is that you were
20 listening to the interview and you noted it down, but it
21 wasn't recorded in the notes?---No, I doubt that, sir. I
22 didn't listen to the interview.

23

24 The other possibility is that you saw some other form of
25 note of the interview which we don't have, but from which
26 your note is - - -

27

28 **DAVIES, MR:** When recorded? When does this speculation
29 end, sir?

30

31 **QUINLAN, MR:** The speculation ends when a witness can tell
32 us an explanation for how this - - -

33

34 **DAVIES, MR:** You're now inventing a whole new set of notes
35 that nobody has ever heard about before.

36

37 **QUINLAN, MR:** No.

38

39 **THE ACTING COMMISSIONER:** Well, I think there has been a
40 reference to that possibility before, Mr Davies.

41

42 **DAVIES, MR:** The problem with this, sir, is it says,
43 "Agrees that there is no wheelbarrow in the shed" which
44 implies that Detective Sergeant Brandham, who has seen the
45 shed, knows darn well there is no wheelbarrow there, puts
46 to him there's a wheelbarrow there and he agreed with it.

47

48 **THE ACTING COMMISSIONER:** Any further questions on this,
49 Mr Quinlan?

50

51 **QUINLAN, MR:** Just a couple more, sir.

52

53 One of the other aspects from that interview which is
54 referred to in your notes, if you go over to the next page,
55 if we go over to the next page of your notes at page 76,

56

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58 2.55

1 12068, there's a reference there in paragraph 69 to "killed
2 her with Sidchrome wrench from the shed" and then in
3 paragraph 70 there's a reference to "Purse, weapon in the
4 middle of Stirling Bridge near where the Rottnest ferry is"
5 and then your note by way of comment is, "What if police
6 diving squad to search river near Stirling Bridge." Then
7 in paragraph 71 it says, "Purse not in river. I don't know
8 where purse is. I didn't take anything from shop. I
9 didn't do it." Do you see that?---Yes, sir.

10
11 Now, there is no statement as was given in evidence by
12 Mr Carter at page 1263 of the transcript. There is no
13 statement in the notes saying, "Purse not in river. I
14 don't know where purse is. I didn't take anything from
15 shop. I didn't do it." Clearly, you are recording there
16 something said by Mr Mallard in the first person, are you
17 not?---I don't know why I recorded that, sir, under what
18 circumstances.

19
20 Clearly, what it is is a record of a statement from
21 Mr Mallard in the first person?---Well, I don't know how
22 that could be, because I didn't listen to the interview.

23
24 Let's just take one question at a time. Clearly, it is
25 recording a statement of Mr Mallard in the first person?
26 ---I don't know. I can't agree - - -

27
28 There is no other person in this investigation in a series
29 of notes such as this who would be saying in the first
30 person, "I don't know where the purse is. I didn't take
31 anything from shop. I didn't do it" in that order. It's
32 Mr Mallard, isn't it?---I don't know, sir. It's not - my
33 research is it's not in the interview, so I don't know why
34 I've written that there.

1 **THE ACTING COMMISSIONER:** You didn't imagine it, did you?
2 ---Well, sir, 13 years ago - well, 13 years on rather, I
3 can't remember why I've written that there.

4
5 The most likely explanation is that it's something you
6 heard Mr Mallard say?---No, I doubt it, because I didn't
7 hear Mr Mallard say anything until I went and spoke to him
8 on 10 June when I returned some property to him.

9
10 You can't give any other explanation as to where it came
11 from, can you?---No, sir, but - - -

12
13 Thank you?--- - - - I - these notes were never meant to be
14 a true reflection of the interview. They are - - -

15
16 **QUINLAN, MR:** But you weren't in the habit, Mr Shervill,
17 of making up first-person comments by persons of interest
18 surely?---No, I'm not in that habit but I'm also - I'm also
19 - I'm not infallible either. I make mistakes.

20
21 **THE ACTING COMMISSIONER:** Yes?

22
23 **QUINLAN, MR:** I have nothing further, sir.

24
25 **THE ACTING COMMISSIONER:** Thank you, all right.

26
27 **DAVIES, MR:** I just note, sir, that Mr Gormly didn't
28 pursue any of those matters with the witness, so therefore
29 I didn't.

30
31 **THE ACTING COMMISSIONER:** Yes, all right. I'm not so sure
32 that he didn't - he didn't ask exactly the same questions,
33 Mr Davies, but I think he did pursue the inconsistencies
34 between the notes and the - - -

35
36 **DAVIES, MR:** None of the business about the person not
37 being off the bridge nor that - - -

38
39 **THE ACTING COMMISSIONER:** He did not ask specific
40 questions about that but he did pursue the issue of matters
41 being in Mr Shervill's notebooks that are not in the notes
42 of the interview prepared by Detective - - -

43
44 **DAVIES, MR:** Yes, and the proposition that he must have
45 been listening to it and you have all the evidence on
46 whether that's even possible, sir; yes.

47
48 **THE ACTING COMMISSIONER:** Yes, all right. That concludes
49 your examination for the time being. You may be required
50 further, Mr Shervill, you understand?---Thank you, sir.

51
52 But you may stand down for the time being?---Yes, sir.

53
54
55
56

1 You are not required back unless you get further notice?
2 ---Yes, sir.

3

4

(THE WITNESS WITHDREW)

5

6 **THE ACTING COMMISSIONER:** Yes?

7

8 **POWER, MR:** Commissioner, I know you did indicate to me
9 that you wanted to deal with Mr Shervill's evidence before
10 Mr Caporn is recalled.

11

12 **THE ACTING COMMISSIONER:** Yes.

13

14 **POWER, MR:** If Mr Shervill's evidence is not going to be
15 completed this week would it be convenient to have
16 Mr Caporn recalled now just to deal with that one discrete
17 issue?

18

19 **THE ACTING COMMISSIONER:** Yes.

20

21 **POWER, MR:** Thank you, sir.

22

23 **QUINLAN, MR:** Can I ask before that's done, sir - can we
24 have a brief 10-minute adjournment because I would like to
25 get a file which may be relevant to that issue which I
26 don't have with me in the hearing room?

27

28 **THE ACTING COMMISSIONER:** All right. I will adjourn for
29 10 minutes.

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1 **THE ACTING COMMISSIONER:** Yes, Mr Power?

2

3 **POWER, MR:** Thank you, Commissioner. May I have re-called
4 Mr Caporn, please?

5

6 **THE ACTING COMMISSIONER:** Thank you.

7

8 **CAPORN, DAVID JOHN:**

9

10 **THE ACTING COMMISSIONER:** Yes, Mr Caporn, you are still
11 bound by the oath you took earlier in the proceedings, you
12 understand? Thank you. Yes, Mr Power?

13

14 **POWER, MR:** Thank you, Commissioner. May I have 13152
15 brought up, please, at page 51? 51.

16

17 Thank you, Mr Caporn, would you look at the entry for 1055,
18 please?---Yes.

19

20 Thank you. Have you been questioned about that in these
21 proceedings before?---No, I haven't.

22

23 Do you recall anything about the events that resulted in
24 that entry and, if so, what?---And I know this - and I
25 preface my remarks by saying obviously I've reviewed all of
26 the Raine material since it become an issue.

27

28 Yes?---And as soon as I reviewed the issue of the running
29 sheet and identifying this, I certainly have a recollection
30 that after Mrs Raine had - sometime after Mrs Raine had
31 identified to us that the person she saw had something on
32 his head, that myself and Mr Brandham took her out to Aleks
33 Bagdonavicius - it was one of the issues that we dealt with
34 that day as can be seen on the running sheet - to look at
35 bandannas that he had possession of.

36

37 To answer one of the Commissioner's questions, why to
38 Mr Bagdonavicius?---Mr Bagdonavicius - Mrs Raine had done
39 her own research just to see if she'd have seen anything
40 like that particular headwear that she'd seen.
41 Mr Bagdonavicius had a number of bandannas that had at some
42 stage during the inquiry - between 23 May and 7 June, he
43 had a series of bandannas that had been given to him for
44 examination. I'm not sure of how many, but I know he had
45 some and that we took her out there to have a look through
46 those bandannas to see if there was anything like the one
47 that - that she saw Andrew Mallard wearing that day.

48

49 Did you and Mr Brandham take her out there for the purpose
50 of - for want of a better word - persuading her that she
51 saw - the person she saw was wearing a bandanna on the day
52 she saw him?---No. She had already told us about the
53 headwear prior to that. It wasn't very long after her
54 original statements.

55

56

57 9/10/07

CAPORN, D.J. XN

2612

58 3.14

53/36/glj

1 Thank you.

2

3 Thank you, Commissioner.

4

5 **THE ACTING COMMISSIONER:** Thank you. Yes, Mr Quinlan?

6

7 **QUINLAN, MR:** If it please you, sir.

8

9 The original statement that you refer to, Mr Caporn, is the
10 statement that was signed by her on 2 June 1994. Is that
11 right? It will be E13544, I think. Do you recognise that
12 as the signed statement that Ms Raine gave on 2 June 1994?
13 ---Yes. She gave a - a couple of earlier statements, I
14 think. There might've been one, maybe two earlier
15 statements taken from her.

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58 9/10/07

CAPORN, D.J. XN

2613

1 Yes, indeed. There was one given the day before?---Yes.

2

3 On 1 June?---Yes.

4

5 And in that one she said, and again it was in your
6 handwriting, but she said, "I cannot recall if he wore
7 anything his head or what top he was wearing"?---Yeah.

8

9 Likewise, in this statement of 2 June 1994, at the bottom
10 of the page, we can see again, "I cannot recall if he wore
11 anything on his head"?---Yes.

12

13 "Or what top he wearing," so on the two consecutive days
14 when signed statements were given by Ms Raine, she wrote
15 with the declaration as to the correctness of the statement
16 that she could not recall if he wore anything on his head?
17 ---That's right.

18

19 That is the person she saw?---Yes.

20

21 And at that stage, that is on 2 June 1994, you had
22 interviewed Mr Mallard I think at least twice?---By 2 June
23 I'd interviewed him - well, depending on the time of this
24 statement, because I also interviewed him on 2 June as
25 well, so at least three times, perhaps four.

26

27 At that point and in that statement there was not yet a
28 focus in relation to Ms Raine, and I will find out what you
29 did first on that day. I think you saw Mr Mallard first
30 and took this statement in the afternoon, according to the
31 running sheet?---Okay, so I would have seen him four times
32 by this date.

33

34 But at that stage you had not broached, can I put it this
35 way, the specific identity of Mr Mallard was not something
36 which you had a statement from Ms Raine about? That is, by
37 this stage on 2 June when you took this statement where she
38 described the person, she had not yet at that stage, had
39 she, said that the person that she saw was the person that
40 she saw getting arrested the following day or had made any
41 identification--I'd have to look at the statement.

42

43 Okay. I don't have the whole thing with me, but - - -?
44 ---It will be on this document?

45

46 It's on the - I will give you my copy, I do have it, but I
47 don't have the original with me. Ignore any handwriting on
48 it, but - - -?---So the folder, is that a photoboard that
49 is referred to? Is that an identification there?

50

51 I don't know. Perhaps you can read it out. I may be
52 mistaken, but you can just read out the passage. Which
53 page is it from?---Page 2.

54

55 Page 2, third paragraph:

56

57 9/10/07

CAPORN, D.J. XN

2614

58 3.18

Have been shown a folder numbered 2454 by Detective Sergeant Caporn of the major crime squad. This folder contained a photograph of this man numbered seven.

1 It's my mistake, Mr Caporn, you're right. It appears that
2 by that stage you had taken a photoboard of Mr Mallard
3 which she had positively identified?---Yes.

4
5 **THE ACTING COMMISSIONER:** I notice that twice in that
6 paragraph the word "board" has been changed to "folder".
7 It probably doesn't matter much, but - I see them as two
8 different things.

9
10 **DAVIES, MR:** One's this big - - -

11
12 **THE ACTING COMMISSIONER:** Yes.

13
14 **DAVIES, MR:** And the other one is that big.

15
16 **THE ACTING COMMISSIONER:** Exactly.

17
18 **QUINLAN, MR:** As I think we have seen, sir, the
19 photoboards in this case were in fact manila folders folded
20 out with a number of photos on each side.

21
22 **THE ACTING COMMISSIONER:** Is that it? Right.

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1 **QUINLAN, MR:** The next time - so by that stage you had in
2 fact a concluded statement from Ms Raine identifying
3 Mr Mallard as the person that she saw on the 2nd - on
4 23 May?---Yes.

5
6 The next statement that she signed or the only other
7 statement that she signed was the statement of 1 July 1994
8 which you witnessed on 1 July, which is E13554 which refers
9 to him wearing something on his head, "I described this as
10 a scarf but I'm not sure exactly. It was nondistinctive
11 and in dirty condition."

12
13 **POWER, MR:** Does it say, "I described this as like a
14 scarf"?

15
16 **QUINLAN, MR:** Yes, "I described this as like a scarf." So
17 that in terms of the time line, whenever it is that the
18 issue of a scarf has come up with Ms Raine, it must be
19 between 2 June when she said she couldn't remember if he
20 had anything on his head and the 7th - 1 July when she
21 said, "He was wearing something on his head; I described
22 this as like a scarf but I'm not sure exactly"?---It
23 happened before 7 June when we took her out to see Aleks
24 Bagdonavicius.

25
26 How did it come about that you saw her again on 7 June?
27 ---There's two entries in there for that day. We actually
28 did something with her as well in relation to part of her
29 description. You'll see there's an entry regarding taking
30 her to - to a shoe shop.

31
32 Yes?---And the - and then the entry of taking her to
33 Bagdonavicius. So it looks like it was an opportune - and
34 again, I don't have a - a direct memory on why that
35 particular day, but obviously we have been dealing with
36 some key issues from her statement and both on that day,
37 and one was the shoes and one was the issue in relation to
38 the headwear.

39
40 And indeed - - -

41
42 **THE ACTING COMMISSIONER:** Sorry, just a moment. You took
43 a statement from her on 1 June - is that right - a
44 handwritten statement?---Yes.

45
46 Is that correct?---Yes.

47
48 And she signed that?---Yes.

49
50 Then you took a typed statement from her - - -

51
52 **QUINLAN, MR:** No, it's a handwritten statement, the second
53 one as well.

55/40/glj

1 **THE ACTING COMMISSIONER:** A handwritten statement again on
2 2 June - - -

3
4 **QUINLAN, MR:** That's correct.

5
6 **THE ACTING COMMISSIONER:** - - - and she signed that. Is
7 that so?---Yes.

8
9 I assume that you - when preparing the handwritten
10 statement of 2 June you have questioned her about details
11 as you have said your custom was, and she has come up with
12 the same - with the same statement as on 1 June?---I'd have
13 to check them. I think this one might be the inclusion of
14 the photoboard probably, or the photo folder.

15
16 Yes.

17
18 **POWER, MR:** I think you'll find that is the change, sir.

19
20 **THE ACTING COMMISSIONER:** Pardon?

21
22 **POWER, MR:** I think you'll find that is the change, sir?
23 ---Yeah.

24
25 **THE ACTING COMMISSIONER:** The change is the photoboard.

26
27 **POWER, MR:** Yes.

28
29 **QUINLAN, MR:** Strangely enough - strangely enough I don't
30 think it is because I have looked at the 1 June one and it
31 says, "I've been shown a board numbered - by
32 Detective Sergeant Caporn of major crime," so - - -

33
34 **THE ACTING COMMISSIONER:** Okay.

35
36 **POWER, MR:** My mistake.

37
38 **QUINLAN, MR:** There may be some other change but I'll have
39 to - - -?---I'd like to have a look at the two if - if
40 you're questioning me about the changes. I might be able
41 to identify a reason as to why I would've taken two
42 handwritten ones within two days.

43
44 **THE ACTING COMMISSIONER:** Yes, certainly.

45
46 **QUINLAN, MR:** Yes, the second - well, the first
47 handwritten statement of 1 June is E13543.

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58 9/10/07

CAPORN, D.J. XN

2617

1 I think the type of shoes changes from brown sandal-type
2 shoes to brown interwoven-type shoes?---Yes. You can see
3 down the left-hand column I've made some notes which -
4 although I don't have a specific recollection of it, you
5 can see on the left-hand column of the first statement I've
6 made some notes which are possibly things that she'd said
7 about what she saw.

8
9 **THE ACTING COMMISSIONER:** Towards me at the left - and the
10 bottom one says "brown - - -"?---Interwoven-type.

11
12 Interwoven-type shoes, yes, but she still couldn't recall
13 whether he wore anything on his head?---Clearly at that
14 stage, yes.

15
16 So two days in a row - - -?---Yes.

17
18 - - - she can't recall - you have questioned her about it
19 presumably. Two days in a row - - -?---Yes.

20
21 - - - she can't recall whether he wore anything on his
22 head?---Yes, and it was very shortly after that that she
23 did recall that he had something on his head.

24
25 How did she come to recall that?---I don't know - - -

26
27 You go and see her again in the meantime or did she ring
28 you up and say, "Oh, I've just remembered something," or
29 what happened?---She may have rang me up, I don't know; I
30 would only speculate on that, but I wish you had the
31 opportunity to meet Mrs Raine because you would clearly
32 see, Commissioner, that no-one tells Mrs Raine anything.
33 She's a very, very forthright lady.

34
35 Yes, but she had seen fit between the 1st and the 2nd to
36 change brown sandal-type shoes to brown interwoven-type
37 shoes for some reason or other?---Yes; yes.

38
39 Probably because you have questioned her about what did she
40 mean by sandal-type shoes?---Yes; I would suggest that too.

41
42 But she still couldn't recall on the 2nd whether he wore
43 anything on his head but by the 7th she could. Is that
44 what you say?---That's right and to put perspective on it,
45 by 2 June I've already interviewed Mr Mallard four times
46 and I have not interviewed him again between the 2nd and
47 the 7th. So I suppose the point I'm trying to make,
48 there's nothing really arising for me to run back and get
49 her to put in some headwear between 2 and 7 June and it was
50 - you see the point I'm making?

51
52 I see the point you are making. I just don't know whether
53 - when did you become aware of Katie Barsden's statement?
54 ---Katie Barsden's statement was the day after the - - -

1 Yes, but when did you become aware of it?---I would've
2 become aware of it - I mean, obviously it was a major
3 issue. I would've become aware of that on briefings within
4 24 hours of the crime, sir.

5

6 All right. Yes?

7

8 **QUINLAN, MR:** I think the mistake I made earlier,
9 Mr Caporn, was not that she hadn't identified - as at
10 2 June 1994 she may have identified Mr Mallard as the
11 person in the photoboard but her statement did not yet
12 include the reference to her having seen the man arrested
13 the following morning. You recall that that's something
14 that went in later?---I was certainly aware that she
15 identified him being arrested. I just wasn't quite sure
16 where on the continuum it is. So that's another issue
17 that's come up after these two statements.

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58 9/10/07

CAPORN, D.J. XN

2619

1 Now, the 2 June statement which you have in front of you
2 now, so you will have to tell us the bar code number of it
3 I'm afraid?---The 2 June statement is 4753, 104753, sorry.

4

5 No, there will be something with E in front of it?

6

7 **THE ACTING COMMISSIONER:** It might be at the top, might be
8 at the bottom, might be down the side. I don't think we
9 have struck any yet where they have been on the back?
10 ---Here it is, it's in pencil, sorry. E13544.

11

12 **QUINLAN, MR:** E13544. That statement that she had signed
13 on 2 June in the ordinary course would be taken away and
14 typed word for word, and then if the witness was happy with
15 the changes, happy with the typed version, they would sign
16 the typed version? You would expect that what's in this
17 signed statement of 2 June would be reduced to writing?
18 ---Typewritten?

19

20 Yes, typewritten?---Yes, I would, but I wouldn't say in the
21 usual course of events. I mean, obviously we're still
22 working with the witness, taking her out to view different
23 things like she's still trying to identify if she can
24 identify if she can identify this strange description she
25 has given of the shoes, and as you say the evolution of the
26 fact that she identified him as being arrested, you know,
27 it's not going to be the same, it's going to include other
28 things that she said and other interviews with us.

29

30 And in fact I think we have a copy of the typewritten
31 version of that statement of 2 June which is E13541. If we
32 just go to the top of the page first, where we can just see
33 typewritten - you will see if you compare the handwritten
34 statement of 2 June 1994 with the typewritten words on this
35 page that it is a word-for-word typewritten version of the
36 statement of 2 June, but that it also has some handwriting
37 on it, which if we scroll down I think, that's your
38 handwriting?---It certainly is, yes.

39

40 This version of the statement, I think I'm right in saying
41 we don't have a clean copy of the typewritten version, we
42 only have this version with writing on it, but you will see
43 the reference to, "I cannot recall if he wore anything on
44 his head or what top he was wearing" has been struck
45 through, as has the sentence before it, and an account more
46 closely reflecting her final statement appears to the left
47 of it in your handwriting. That is it includes the
48 reference to wearing something on his head, "I describe
49 this as something like a dirty scarf, but I'm not exactly
50 sure what it was"?---Sure.

51

52 That statement, and also perhaps for completeness, we go
53 over to the second page, we have the insertion at the
54 bottom of another paragraph in your hand which is about the
55 police vehicle picking up the person the following morning?

56

57 9/10/07

CAPORN, D.J. XN

2620

58 3.30

1 Do you see that?---Yes, and there was also some writing at
2 the top of the page as well.

3
4 There was a reference to referring to his height in
5 relation to the "do you ever stop"?---Yes. It looks like
6 the time has changed a bit on - - -

7
8 The first page?---No, the second page, 1030 to 1045 as well
9 where she is talking about the time.

10
11 Yes, and on the first page you have, "I left Judy's" has
12 been changed from - sorry - - -

13
14 **THE ACTING COMMISSIONER:** You have gone from 5 pm to 5.15
15 to 5.20, as far as I can work out.

16
17 **QUINLAN, MR:** Yes. Yes, 5.20 appears there?---Well, in
18 actual fact 5.20 is actually in the first statement.

19
20 **THE ACTING COMMISSIONER:** Of 1 June?---Yes.

21
22 Can we go back to 1 June please.

23
24 **QUINLAN, MR:** Yes, we can, sir?---Yes.

25
26 It's that she left Judy's at about 5.20, she walked to the
27 ground floor?---So it's the same time, it's just that it's
28 put in a different way.

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1 E15343?---The time on the first one is the same as the time
2 on the last one if you look at it.

3

4 **THE ACTING COMMISSIONER:** But at one stage she said 5.15
5 too?---Yeah, so we've got - I mean, it's really 5.20, 5.15,
6 5.20 in relation to the time.

7

8 Yes?---So the final statement is the same time as the
9 original statement.

10

11 **QUINLAN, MR:** In fact, in all the statements after 2 June
12 there has been - and one of the main - one of the principal
13 changes from 1 June to 2 June if you look at the 2 June is
14 that there was a reference to her looking at her clock when
15 she got back and it being 5.21 when she got back home,
16 which remained in the statement until she signed the
17 statement of the 1st of the 7th?---Okay.

18

19 But at any rate E13541 which I was taking you to, that has
20 not been signed or dated by either Ms Raine or yourself.
21 Can you tell us whether those additional words that -
22 perhaps if we focus on the ones that are on the screen in
23 relation to the description of the person, were they put
24 there before or after 7 June?---I can't remember exactly
25 when it was. I know that before we took her to Aleks
26 Bagdonavicius she said about the headwear, so this has got
27 headwear in so it must be before 7 June. As to what date
28 it was, I don't know.

29

30 It may not be - it may not necessarily be before 7 June
31 because you may have worked on amending the statement after
32 you had been out to Mr Bagdonavicius's?---Fair comment.

33

34 In relation to 7 June, if we look at the major crime
35 running sheet, E13152, we can see that - you were taken to
36 page 51 - on page 49 of that statement, of that document,
37 we can see an entry in the middle at 20 past 5 of,
38 "Detective Sergeant Caporn and Detective Emmett to
39 flat 193/2 Murray Avenue, Mosman Park to interview Raine
40 and make further appointment for a.m. 7 June 1994."

41

42 **THE ACTING COMMISSIONER:** What date is this?

43

44 **QUINLAN, MR:** That's 6 June 1994, the day before the trip
45 to Betts and Betts and Mr Bagdonavicius, and it appears
46 that has been in the course of you going to other places in
47 the area, including the CIB and to another - Mr Ryan in
48 Stirling Highway, Mosman Park. Do you have any
49 recollection of going to Ms Raine's residence on 6 June and
50 making an appointment to see her the following morning?

51 ---Don't have a recollection but I can make some comments
52 based on the entries here.

53

54

55

56

57 9/10/07

CAPORN, D.J. XN

2622

58 3.34

1 I will ask you to make some comments in a moment. I will
2 just ask you some questions about it. Would you agree that
3 - firstly if I tell you there's no reference to Mrs Raine
4 in the major crime running sheet between 2 June where
5 there's an entry of you taking the handwritten statement
6 and this entry of 6 June. So this is the first recorded
7 contact in the major crime running sheet with Mrs Raine
8 after the statement of 2 June has been given. Would you
9 agree from the context and the fact that an appointment was
10 made from the following day or the following day that the
11 attendance upon her on 6 June was at your initiative rather
12 than hers?---Well, no, I can't say that and what I do know
13 from this entry here and from the entry the following day
14 is that there has been contact between 2 and 7 June.

15
16 Yes. This contact here on the 6th?---No; before this,
17 because one of the things with taking her out to see
18 Mr Bagdonavicius is we wouldn't be able to do that
19 unannounced. So in the - when I've - when I've recorded
20 the reason for going out to see Mrs Raine on 6 June, I've
21 put in there "to make further appointment for a.m. 7 June".
22 So the appointment is - a process has already been put in
23 train to make an appointment for her to take her out to see
24 the scarfs with Mr Bagdonavicius. So what we do know -
25 that's why I said about the phone calls which wouldn't be
26 recorded on here and the high likelihood is that there has
27 been contact between the 2nd and the 7th. Now, how that
28 occurred - - -

29
30 Who initiated it?---Yeah. I mean, we can't say who
31 initiated it but I do know strongly that there is - sorry,
32 I can say with some surety that there's contact between 2
33 and 7 June because of the entries on the running sheet.

34
35 May it please you, sir. I have nothing further.

36
37 **THE ACTING COMMISSIONER:** Yes, thank you. Is there
38 anything further arising from that, Mr Power?

39
40 **POWER, MR:** No. Thank you, sir. Thank you for the
41 opportunity, sir.

42
43 **THE ACTING COMMISSIONER:** Yes, all right. Thank you. You
44 may stand down.

45
46 (THE WITNESS WITHDREW)

47
48 **THE ACTING COMMISSIONER:** Mr Davies, I said that
49 Mr Shervill would be notified when he is required back. He
50 will be required back next Thursday. Mr Hall apparently is
51 available then, so he will be required then.

52
53 **DAVIES, MR:** He will be here, sir.

1 **THE ACTING COMMISSIONER:** We will let you know about
2 Wednesday when it's finalised.

3
4 **DAVIES, MR:** I wanted to raise a couple of matters with
5 you, Commissioner, if I may.

6
7 **THE ACTING COMMISSIONER:** Yes.

8
9 **DAVIES, MR:** You will remember, because you had asked
10 Mr Shervill about it, you had Mr Caporn recalled
11 specifically to see if he could assist with when the
12 concept of the back-to-front cap came into the equation.

13
14 **THE ACTING COMMISSIONER:** Yes.

15
16 **DAVIES, MR:** You then asked me directly and I undertook to
17 check whether any of the other officers could assist in
18 relation to that, observing at the time that probably
19 13 years would stand in the way of memory. I now confirm
20 that fact. I have asked each of them and they recall it
21 becoming one of the possibilities that became part of the
22 line of inquiry. Just when and from whom no-one can help.

23
24 **THE ACTING COMMISSIONER:** Right.

25
26 **DAVIES, MR:** The other matter, sir, and this is simply a
27 request to assist us with the mechanics of preparation of
28 what is going to be very large final submissions, is to ask
29 whether you are in a position - and if you are not, so be
30 it - to tell us what amount of time in open court; that is,
31 for oral submissions, compared to out of court. We really
32 need to know how much we need to start preparing in written
33 form, that's all, sir.

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1 **THE ACTING COMMISSIONER:** That's a matter that I have been
2 addressing - - -

3
4 **DAVIES, MR:** Of course.

5
6 **THE ACTING COMMISSIONER:** - - - putting my mind to, and
7 that of counsel assisting. There are a number of
8 possibilities, section 83, isn't it?

9
10 **DAVIES, MR:** 86.

11
12 **THE ACTING COMMISSIONER:** 86 provides what Mahon v Air
13 New Zealand decided that you've already had those findings
14 made against the person, they have to be given notice of
15 the possibility and have an opportunity to respond.

16
17 **DAVIES, MR:** Yes.

18
19 **THE ACTING COMMISSIONER:** And that will certainly be done.
20 Now, I'm prepared to hear submissions on this, because I
21 haven't reached a final conclusion. It seems to me there
22 are number of possibilities. The two most obvious ones are
23 a closing address by counsel assisting in which he outlines
24 the allegations that he wishes to make or the findings he
25 asks me to make, and then those affected have the
26 opportunity to make oral submissions in reply, supplemented
27 by written submissions if they so please, or they might
28 prefer just to put in written submissions.

29
30 The disadvantage of that is, one of the
31 disadvantages, is that counsel assisting's final address
32 gets a lot of publicity. He asks me to make - he sort of
33 makes an ambit claim if you like, and the persons affected
34 may feel that that's unfair, even though they will then
35 have the opportunity to respond to them publicly, they
36 might feel that a certain amount of damage is done by
37 counsel assisting's final address. The other possibility
38 is that I go ahead and prepare a draft report and let those
39 against whom I'm contemplating adverse findings have a copy
40 of the proposed report in draft form, and then they have
41 the opportunity to, within a limited time, which would be
42 reasonable, make written submissions in reply. That avoids
43 the bad publicity issue, and I understand that it is the
44 practice that has been adopted in this Commission in the
45 past.

46
47 There may be other alternatives, one would be private
48 hearings, a series of individual private hearings, but
49 that's not very satisfactory unless we had one set of
50 private hearings for everyone in this group and another set
51 of private hearings for everyone in this group and another
52 set of private hearings for everyone in this group and
53 there may be some overlapping. I think there will be, I
54 can see potential areas for overlapping. To pick an
55 obvious example, there's obviously an overlapping between

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1 the police investigators and the crown prosecutors and
2 those involved there.

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1 As I say, I'm prepared to hear submissions on it. I
2 haven't reached a final conclusion. I was tending to
3 favour making extracts from the draft available and
4 permitting responses in writing, but I don't have a closed
5 mind on it.

6
7 **DAVIES, MR:** My submission, with respect, sir, for your
8 consideration would be that in the circumstances of this
9 matter you really perhaps should consider doing both. It's
10 well established now - - -

11
12 **THE ACTING COMMISSIONER:** I don't know that I need to give
13 you two chances - to give everyone two chances to respond.

14
15 **DAVIES, MR:** No, no. He's not quite that bad, sir. The
16 latest authorities on the rules of procedural fairness -
17 and I accept that they have not total application to an
18 inquiry proceeding but this is something more than an
19 inquiry proceeding in one sense - put it as a two-part
20 proceeding. So when a person, for example, tries to resist
21 a warning off notice, he's given the opportunity to be
22 heard on the question.

23
24 The committee of the club as it then was then
25 considers the matter and then comes back to him on any
26 tentative conclusions that it has reached, which will of
27 course be a far lesser area than the ones addressed upon in
28 the first place. The HIH inquiry, for example, before
29 Owen J from this state had as counsel assisting the now
30 chief justice of Western Australia, Mr Martin of counsel,
31 and he as counsel assisting made quite long public
32 submissions at an early stage or at the end of the
33 evidence.

34
35 As it happens, Owen J went off and did his own thing
36 anyway but that's another matter. I was reading Mr Hall's
37 book on the plane coming over and when I say reading his
38 book I was glancing at passages in his book and apparently
39 the Cole Royal Commission into - - -

40
41 **DAVIES, MR:** Building.

42
43 **THE ACTING COMMISSIONER:** - - - the building industry did
44 the same thing, I understand.

45
46 **DAVIES, MR:** Yes. In my submission, sir, the advantage of
47 your allowing submissions before you get down to consider
48 the areas which are after those submissions thought by you
49 to be worthy of serious consideration and potential
50 findings is great because it may well have the effect of
51 limiting the field; it may be you may be asked something by
52 Mr Gormly, for example, and which we're able to persuade
53 you you ought not to go further with and the field is then
54 limited.

1 I accept what you say about it can't all be done in
2 the one day, so to speak, so Mr Gormly's propositions will
3 get publicity, but no more so than his opening and no more
4 so than the theories that he put to Mr Caporn and
5 Mr Shervill before there was any opportunity for us to seek
6 to deal with them in a wider way, and to be perfectly frank
7 we're used to allegations after a few years of it, sir, and
8 we think that that consideration is not as weighty as it
9 might be in different circumstances.

10
11 So I suggest for your consideration and I can do no
12 more than that and I don't seek to, that at the end of the
13 evidence you hear what Mr Gormly seeks to put to you as
14 being now the live matters worthy of consideration, no
15 doubt his submissions on a view that you may take of them
16 and that you then hear a response to that; that you take it
17 away, and the authorities are clear, you take it away
18 independently of Mr Gormly at that stage in view of the
19 nature of the matter.

20
21 **THE ACTING COMMISSIONER:** Yes.

22
23 **DAVIES, MR:** That you then form any tentative adverse
24 views in what you have been calling a draft report, that
25 that's conveyed to us, no doubt not on the record, it
26 doesn't need to be, and that the opportunity to respond to
27 them with more specificity than the wider submissions is
28 then given.

29
30 **THE ACTING COMMISSIONER:** It has the advantage - I don't
31 know about the second bit. As I say, giving you two
32 chances to respond may be a bit unnecessary but I will
33 consider it. The advantage of the closing address is that
34 it can direct attention to parts of the evidence, whereas
35 if you just get a two-page extract from the final draft
36 report it won't summarise all the evidence.

37
38 **DAVIES, MR:** It doesn't, sir, and, with great respect, to
39 layman it really looks as though we're pushing it uphill.
40 If you publish a draft report that says I'm
41 tentatively - - -

42
43 **THE ACTING COMMISSIONER:** I won't publish it. I'll
44 transmit it.

45
46 **DAVIES, MR:** Yes, but in the overall view it really looks
47 as though you're three-quarters of the way down the line
48 before we have been heard on the issues.

49
50 **THE ACTING COMMISSIONER:** I'll think about it and hear
51 what other people have to say in due course.

52
53 **DAVIES, MR:** I'm obliged to you, sir, but we really
54 need - - -

1 **THE ACTING COMMISSIONER:** Thank you for flagging it at
2 this stage. It's well worth - - -

3
4 **DAVIES, MR:** When we can have some indication we can
5 fruitfully use this week that we now have off to start
6 doing the schedules and that type of thing obviously.

7
8 **THE ACTING COMMISSIONER:** Yes, all right. I can assure
9 you I have a particular aversion to written submissions,
10 particularly lengthy written submissions.

11
12 **DAVIES, MR:** I share that, sir, which is why I rather
13 thought I'd rather talk to you as a jury, with respect.

14
15 **THE ACTING COMMISSIONER:** I know that in that C7 case in
16 Sydney recently in the Federal Court, Sackville J limited
17 them to so many pages of written submissions and so they
18 produced - he limited the size of the pages too but it's
19 amazing with semi-single spacing how much they could fit
20 in. So he required them to put in summaries of their
21 written submissions and I think one of those ran to
22 700 pages.

23
24 **DAVIES, MR:** It's almost childish, with respect, when you
25 stand back and look at it.

26
27 , **MR:** It is.

28
29 **DAVIES, MR:** Almost childish.

30
31 **THE ACTING COMMISSIONER:** And the shorter the written
32 submissions are, the more detail in which and the more
33 concentration with which I will read them.

34
35 **DAVIES, MR:** Yes. I would rather have a day in court and
36 no written submissions, sir, as a preference.

37
38 **THE ACTING COMMISSIONER:** Join the club, but we won't go
39 there at the moment. All right, then I'll adjourn the
40 public hearings until 10 am next Wednesday and you will be
41 notified later in the week, Mr Davies and Mr Power, about
42 next week's witnesses, although I don't think they will
43 concern you particularly, Mr Power.

44
45 **POWER, MR:** Thank you, sir.

46
47 **THE ACTING COMMISSIONER:** All right, I'll adjourn then.

48
49 AT 3.53 PM THE MATTER WAS ADJOURNED UNTIL
50 WEDNESDAY, 17 OCTOBER 2007