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NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT ALICE SPRINGS ON 21 NOVEMBER 2022

(Continued from 18/11/2022)

Transcribed by:
EPIQ

THE CORONER: Please take a seat.

Dr Dwyer –

MR CASSELDEN SC: If it please your Honour, my name's Casselden and I seek your Honour's leave to appear on behalf of (inaudible).

THE CORONER: Thank you, Mr Casselden, yes.

MR CASSELDEN: If it please the court.

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour. I apologise for that delay this morning, which I caused. And I now call the first witness, Superintendent Kirk Pennuto.

THE CORONER: Thank you.

DR DWYER: We've just got a problem with the livestream, your Honour, but - - -

THE CORONER: Sure.

DR DWYER: - - - Superintendent Pennuto could come to the witness box in the meantime.

THE CORONER: Yes, just come and take a seat - - -

MR PENNUTO: Thank you, your Honour.

DR DWYER: I think we're ready to go, your Honour.

KIRK JOSEPH PENNUTO, affirmed:

XN BY DR DWYER:

DR DWYER: Superintendent, could you please tell the court your full name?---Your Honour, my name is Kirk Joseph Pennuto.

And your rank?---I'm a superintendent.

And Superintendent, where are you currently stationed?---I'm located in Katherine, your Honour. I'm Superintendent responsible for Central Division.

Superintendent, so we don't – I know this is a very awkward set-up, so you're swivelling around between myself and her Honour. Please feel free to just face her Honour, and I'll keep my voice up so you can hear my questions and be comfortable?---Thank you.

You've provided a statement to assist the court, which is dated 19 March 2020. It's found in our brief at 7-109. Attached to that statement are some extensive notes. Before I get to those notes, can you tell the court, in November 2019, when Kumanjayi passed away, what was your role within the police force?---November 2019, your Honour, I was the Acting Detective Superintendent in the Crime Division.

Where were you based, physically, at that time?---Physical location was at the Peter McAulay Centre in Berrimah.

And I'll just ask you a bit of evidence about your experience as a police officer. How long have you served as an officer in the Northern Territory please?---Since 2011.

And in terms of your role investigating incidents, has it been your role to be part of the investigation team, the number of matters from 2011, right through to 2019?---Yes I've been involved in investigations during that time, yes.

Prior to 2011?---I was with Victoria Police for just under 18 years, and had a largely an investigative career.

Your Honour, might I approach? I think it might be easiest if I just show the Superintendent his diary notes for the moment?

THE CORONER: Sure.

DR DWYER: Superintendent, attached to your statement at KP01, are a number of diary entries. We've got some portion of that diary redacted. And the first entry is at 16.02 and says the word "clear". Are you able to tell us what date that entry was made?---That – are you happy for me to look at my diary?

Please feel free to refer to your diary. Just to clarify then, you have the original diary, that we have the photocopies of here in court today?---That's correct, your Honour.

Thank you?---Your Honour I believe the entry that's referred to is at page 161. And that is actually on 13 November 2019.

Thank you. I'll take you back to that shortly. But on 9 November 2019, you note in your statement you were rostered off duty, and about 7.55 pm, you received a telephone call from then Acting Deputy Commissioner, Michael White. During that conversation he informed you that sadly police had shot a man a short time earlier in the community of Yuendumu. And he gave you a task to do. What was that?---Your Honour, the task was largely to, from a major crime perspective, look at what support we could provide to those people who had been given responsibility for investigating the matter, initially.

At the time that you received that call, the information you had was that Kumanjayi was still alive. Is that right?---As I recollect, yes, that's right.

And then over the course of that evening, you made a number of arrangements in relation to the resources that would be required to assist Yuendumu?---Yes.

At about 9.25 pm, you spoke with Detective Superintendent Tonkin by telephone. What was the role of Detective Superintendent Janelle Tonkin at that time?---I believe Ma'am, Tonkin was in the Professional Standards Command, at that stage, Ma'am, (inaudible) internal investigations.

During that conversation, she advised you that the person who had been shot by police, sadly had passed away?---Yes.

And that the police officer who had shot that person was Constable Zachary Rolfe?---Yes, I believe so.

Did you have any dealings with Constable Zachary Rolfe, prior to that time?---None what so ever.

At about 9.45 pm, you spoke with Acting Commander Martin Dole by telephone. And during that time, he advised you that the Major Crime Squad would play a supporting role to Southern Crime, who had carriage of the investigation?---That was my understanding, yes.

So just to be clear, he was telling you that the initial decision was that Southern Command would run the investigation, and your role would be just to assist?---That's right.

You then, as you indicate in your statement, continued to make arrangements for resources until about 12.30 the next morning. On Sunday, the 10th, you were rostered off duty. About 7.29 am, you received a phone call from Officer Dole. What was the purpose of that call?---Mr Dole informed me that there'd been a change with regard to the responsibilities, your Honour. And that I was now going to be involved in the investigation as the commissioned officer in charge.

During the course of that investigation, were you told the reason for the change in structure?---I know the reason for the change, but I don't recall whether it was in that conversation.

Did you know then, what the reason for that change was?---I believe so. I believe so.

It – tell us about the importance of that change?---Well my understanding and recollection was, that there was issues around people from Southern Command being involved in the investigation of other persons in Southern Command, who were involved in the matter. And that there'd been some conversations or directions from the Coroner, I believe, or similar, asking that that not be the case. So they asked for someone from somewhere else to do it.

Just to put that in lay persons terms, particularly because there's a number of people trying to follow the proceedings. It's an important rule of investigation isn't it, that you have a command outside the area where a death in custody occurs, so that to the extent possible, you can ensure objectivity and impartiality?---Yes.

And not just that there is an impartial investigation, but that there's a perception that it's impartial because somebody comes from outside the command of investigation?--Yes.

So, you understood the rationale for the change at that time?---I did.

As a result of that, you then made contact with a number of offices by telephone and in effect, are you starting to gather your team for the investigation at that time?---That's correct.

As a result of that telephone call, did you then maintain a role in the investigation into the circumstances of Kumanjayi's passing?---Yes.

For how long were you involved in that investigation?---12 months, I believe; November, 20, 2020 was then I was removed from any responsibilities.

So, just to be clear, what was your responsibility between say 10 November 2019 and up to 2020?---I was the officer in charge of what became the criminal component of the investigation.

And why did you hand that role on in November 2020?---I moved into a different role and it was Katherine-based and it was not feasible for me to maintain a presence in Darwin and as part of that investigation team.

And who took over from you in November 2020 as the OIC of the crime investigation?---I believe it was a gentleman by the name of Mr Jack Evans.

As a result of that initial role that you played over the course of a year up until 2020, you gave evidence in relation to the trial of Constable Rolfe for the murder of Kumanjayi?---Yes, I did.

And you – were you involved, in fact, in the initially charging of Constable Rolfe?---Yes, I made the arrest of Constable Rolfe.

And by the time he was found not guilty of the substantive charge and the backup charges, you had no longer had any role in the proceedings. Is that right?---That's correct, your Honour.

But you gave evidence in relation to a pretrial issue on 21 December 2021?---Yes.

And that was specifically about the seizure of Constable Rolfe's phone after he was arrested?---Yes, it was.

And you also gave evidence at his trial on 2 March 2022?---Yes.

So, you can take it from me, Superintendent, that the transcript of both those proceedings is within the Coronial brief of evidence and I don't have to ask you again – that evidence again. Given that you took over as the officer in charge of the criminal investigation on 10 November 2019, you were looking to determine whether or not, in fact, any crime had been committed potentially by any person. Is that right?---Yes.

Your diary notes start, as you've told us in terms of what we have access to, 13 November 2019 and they read, "Contact Malagorski by telephone or teleconference with a number of people." Could you remind us who Officer Malagorski was or what role he was playing?---Mr Malagorski is a detective senior sergeant with the crime department at that time. And he was one of those officers you indicated before were contacted to form part of a team.

And who was the teleconference you were having with on 11 November that you wrote notes for? Please feel free to refer to your diary if you - - -?---Sorry, are we talking about 11 November now, or 13 November.

I beg your pardon, 13 November. "MM" is the first one. Teleconference with that – that's Mr Malagorski. Is that right?---Yes, Mark Malagorski. SP would be Superintendent Scott Pollock. WN would be Detective Senior Sergeant Wayne Newell. IC would be Detective Sergeant Isobel Cummins. And AK is Detective Sergeant Andrew Kren.

And the first note there is full brief provided regarding DPP advice and recommendation. Stated direction had been given to effect arrest of Constable Rolfe with a view to charging?---Yes, that's what it says.

Over the page, there's a note of various things. Under the reference, "Consider grounds for arrest. ID not in question. Events not viably complex. Captured on body-worn video, DPP view, gravity of offence, absence of VOE", is that the absence of a record of interview from Constable Rolfe?---Yes, Versions of Events.

Version of Events. And then unable to – could you just read the rest of that one, please?---"Unable to discern critical issues such as lawfulness, justification, defences, et cetera, in the absence of a version of events explaining the thinking and those leadup considerations."

And what was the purpose in – well, what was the discussion that led to the bullet pointing of those various issues?---Well, I think prior the arrest, I mean obviously I was – it was cognisant, your Honour, that I was about to make an arrest and it was going to be a particularly significant arrest. So, I was really collecting my thoughts based on those events leading up to it, to make sure that I was thinking rationally about the events that had unfolded and what information I was going to be using to gather my thoughts, I guess.

You reference there, "DPP view". Are you referencing there that one ground for the arrest was the view that had been offered by the DPP that this looked like it was a charge of murder that should be confirmed?---That was a consideration that I'd heard from DPP and their view was that there was a criminal offence involved.

Did you actually meet with any lawyers from the DPP?---Yes, I did.

Who did you meet with?---I met with the Director of Public Prosecutions on two separate occasions and a deputy direction of Public Prosecutions on one occasion.

When did you first meet with the DPP?---As I recall, the first conversation with the DPP was on the 11th, your Honour, of November, so two days prior to the 13th, the arrest.

One of the considerations in terms of investigating whether or not a criminal offence had taken place was that it was important, as you set out in those bullet notes, to work out whether there was a justification or a defence available to Constable Rolfe. Correct?---Yes.

So, if possible, you would have preferred there to be a version of events from Constable Rolfe. Correct?---Yes, that's right.

What was the first time – when was the first time you gave consideration to getting a version of events from Constable Rolfe?---Well, on the Sunday after I had been appointed as the deputy commissioner in charge of – sorry, commissioned officer in charge of this particular matter, your Honour. There was a window where I was aware, and I don't recall how, but I was aware that Mr Rolfe was potentially coming into the police station in Alice Springs to provide a version of events. But at that particular point in time, only having recently been installed, I certainly had no real understanding or appreciation of the circumstances and the events that had unfolded. And being the person appointed in charge, I wanted to make sure that the seriousness of the matter was considered appropriately. So, it wasn't until later that afternoon that I had a chance to actually gain a proper appreciation when the body-worn video became available to me. So, in that first window on the Sunday, there was potentially a chance to gain a version of events. By having watched that body-worn video, it became more problematic for me.

And so, you watched the body-worn video on the Sunday afternoon. Is that right?---I did.

And why did it become problematic for you to request a version of events after you watched the body-worn video?---He was, in my view, having watched that vision, we were very much on the cusp of not being in the witness basket, for want of a better description, and looking towards potentially offending. So, he would be looking at potentially becoming a suspect.

At this stage, were you able to say positively whether or not he was a suspect or did you then need to obtain advice from somebody?---No, in my mind, it was heading in

that direction, and I can't say on that day that I 100 percent considered him a suspect at that time, but I did in fact seek to clarify through advice of others whether my thinking around whether he was a witness or whether he should be treated as a suspect was appropriate.

I'll just go back a step, when was the first time that you made an entry in your diary? I asked you about a particular note that we have access to, but in terms of the first indication that you got of this shooting?---The 9th of November at 1955 in the event, so 7:55 pm, after I had finished speaking to Mr White.

And did you keep diary entries effectively right up until the time that you passed over the baton as the investigator, a year later?---As much as possible, yes.

Thank you. So, I am not aware about whether or not your notes are paginated in the same way as ours are.?

MR EDWARDSON KC: Top left of the diary has page numbers some of the time. Other times it's top right.

DR DWYER: We have the first entry at 19:55, a call from Assistant Commissioner White. After watching the body-worn video - I withdraw that. When you watched the body-worn video where were you?---At the Peter McAulay Centre in the Serious Crime Office.

And did you watch that alone or with somebody else?---No, there were other people watching it with me.

Was the DPP watching it with you at that time?---No, they weren't.

So after that time, on the Sunday afternoon when you watched the body-worn video what did you do following that, to try and obtain a version of events from Constable Rolfe?---On that particular day? Is the question?

Well, I will start with that. Was anything further done on that day?---No. No, on that particular - that was - having watched that video I think was, your Honour, was around the time when I actually had a conversation I believe, with - I think it was Sergeant Leith Phillips, (inaudible) Senior Sergeant Leith Phillips and he indicated that we needed to potentially delay that conversation because I wasn't comfortable having it with him as a witness.

In terms of not being comfortable, having it with him as a witness, what were - I think I know what the considerations you were taking into account but could you tell the court in your own words?---Your Honour, I felt that the events depicted lent themselves to a conversation with Mr Rolfe whereby he was potentially entitled to a caution and I wasn't prepared to - I was wrestling with how serious the events were and felt that it was better to err on the side of caution and not put him in a free narrative arrangement whereby he could just talk, without having been told that, "We

are considering whether or not you might be in a different category, such as a suspect".

Some people listening to this, particularly those who aren't (inaudible) might just think, "Why wouldn't you get in there straight away, as soon as possible, and get a version of events from him - for his sake, so that we know whether he has got a defence and for the sake of the community and Kumanjayi's family, so you hear from him?---I don't disagree with that. I think there is a position here which creates a bit of tension, to be fair, and I think that's the position I found myself in because it's obvious that I wanted a version of events as early as possible and certainly there might have been information that Mr Rolfe shared during that conversation that would be of some relevance to the investigation you would hope. However, I just felt, having watched the vision, that it wasn't as simple as that and that I needed to make sure that I was comfortable that the format of this conversation was appropriately conducted and that, to me, needed clarity around whether or not there was a caution to be administered because I felt that was where we were going.

So what were the next steps you took in terms of trying to clarify that position?
---So I obviously delayed - I told the Alice Springs officers to delay that conversation. I wanted to get some clarify and that my intention was to take my concerns around how that conversation might go, to the first joint management committee meeting which was scheduled for 5 o'clock that afternoon, which I did. I took it to that meeting. It was discussed at that meeting and those present were given an opportunity to review the body-worn video that we had viewed ourselves, as investigators and I don't specifically now recall whether it was a full conversation about DPP advice or not but there must have been, based on the chronology that we had a conversation, your Honour, about seeking clarity.

Could you have a look please, at your diary at pages 144 to 148?---Yes.

Could you clarify what date those references relate to?---They appear to be the following day 10 November.

Specifically, would you mind having a look please at 148?---Yes.

There's a note there, "Interview under caution, DPP review of body-worn video position re possible criminality of damages could be - sorry, of charges, could be substantial. VOE as to state of mind may explain his rationale but given the directors view, it should be under caution. So, clearly the director had expressed a view at some time prior to that, is that right?---Yes, so prior to me making that note I had been involved in the first of two meetings with the Director of Public Prosecutions, your Honour, so he had expressed a view that was consistent with my thinking.

And so if you wouldn't mind just clarifying that that entry on page 148, the date of that?---So that's 10 November, your Honour.

That notes then, "Director's view, it should be under caution" - sorry, I will just read that whole bullet point. "VOE as to state of mind may explain his rationale" that's Constable Rolfe's rationale, is that right?

MR BOULTEN SC: Excuse me, your Honour, it may be the 11th not the 10th. Page 147.

MR EDWARDSON: You can see his entries at 136 and following into the 10th and a timed sequence of those suggests that - what's that - 144 and following, is the next day?

THE WITNESS: I do apologise, your Honour, you are quite right. There is an 11th of the 11th down the bottom of the page it is obvious, so it is the 11th, not the 10th.

DR DWYER: Thank you. So on the 11th the note there is, "Interview under caution. DPP review of body-worn video, position re possible criminality of charges could be substantial. Potential evidential loss if conversation with Rolfe reveals something incriminating". Just explain that if you don't mind, for those listening who aren't lawyers?---Well, having spoken to the Director, your Honour, obviously the director expressed a view that it should be a conversation under caution because anything Mr Rolfe - if Mr Rolfe is engaged in that conversation anything he said that might be incriminating would be able to be used potentially if it was under caution but if it wasn't that would be subject to potentially being excluded from the proceedings if it went to court.

Right, so it's a fundamental right for citizens, if you suspect - police suspect that they are going to be interviewed in relation to an offence they are entitled to be cautioned that they don't have to say anything but their version of events will be recorded and might be used in court?---That's right.

And you had a clear understanding that you should be giving Rolfe an opportunity to be interviewed?---That was my understanding, yes.

And that was on the advice of the director, is that right?---That's correct.

And so VOE a state of mind may explain his rationale but given the director's view, it should be under caution. "As a result I suspect Rolfe's legal advisor will instruct him not provide a version of events. This is a shame in my view, regardless of what might be said being reasonable or otherwise defensible." Is that your opinion being expressed there, that "that is a shame"?---That's all, that is just my opinion.

On 11 November was Constable Rolfe then offered an opportunity to provide his version of events? Please feel free to look at our diary to clarify?---Thank you.

If you have a look, for example, at page 158 and tell us the relevant date of that conversation?---Yes, are you relating to a particular entry?

Yes, so on page 158 you see a note there, 10:57 "Contact Luke Officer by phone and legal representatives for Rolfe. Advised DPP has been consulted, don't know what the consultation means as yet. Regardless" - and then I can't read the rest of that note?---It is my intent to respect Mr Rolfe's rights and treating him with the same respect and dignity as I would anyone else.

And so that is a record of a conversation you had with Mr Officers, is that right?
---Yes, I spoke with Mr Officer

What was the date of that?---Let me get this right for you, your Honour. Yes, 13 November, your Honour.

Do you recall now any conversation with Mr Officer prior to that time? If you have a look at your statement perhaps this might assist. In your statement at par 20 you note, "On Tuesday 12 November I commenced duty at the Peter McAulay centre at 6:15. At about 11:08 am I spoke with Officer Grieve by telephone. During this conversation I was informed that officer Grieve had spoken with Luke Officer, and Luke Officer indicated that if offered an opportunity to give a record of interview, Constable Rolfe would not participate"?---Yes, I have that. I recall that now.

And then about 1.30 – 1.03 pm, Officer Malagorski and yourself participated in a telephone conference, led by Officer Grieve. During the conversation, Officer Grieve reiterated that he'd again spoken with Officer – with Mr Officer, who confirmed that officer – an offer of a record of interview to Constable Rolfe was be declined?---Yes.

And then on Wednesday, 13 November, you had a conversation with Luke Officer yourself, correct?---Yes.

In your statement, you set out then what happened, in relation to the arrest of Constable Rolfe, on 13 November?---Yes.

Could you have a look please at page 162 of your notes. I took you to this earlier I think. This is a note you made on the 11th, is that right?---No, this would have to be the 13th.

This is the 13th. This is the one where you set out, at 16.25, a discussion that was happening at the Peter McAulay Centre, is that right?---No that wasn't a discussion. That was me gathering my thoughts - - -

I see?---And collecting the things that I was trying to – that's important, that's important, that's important.

Do you set out there in those bullet points, the grounds for arresting Constable Rolfe on that afternoon?---I believe so.

That includes the absence of an interview conducted with Constable Rolfe, is that right?---That's what's written there.

I'm not being critical of Constable Rolfe in any way for exercising his right to silence, but is it the case, that if he had done an interview with police, then his version of events would have been considered, in relation to whether or not there was a plausible explanation for the actions on 9 November?---Of course.

And whether they amounted to a defence?---Of course that would be relevant.

And might that have played into the decision as to whether arrest him for an offence?---Yes of course.

In the note you took of the conversation with Mr Officer, you in effect, reassure Mr Officer, that Constable Rolfe will be treated fairly, is that right?---Yes, as anyone else would be.

And do you believe that that was the case? That he received no preferential treatment, firstly?---No I don't believe he received preferential treatment.

And do you think that he was disadvantaged, or treated in a way that was less than a member of the public would be treated in those circumstances of arrest?---No I don't believe that.

Could you have a look please at par 153 – sorry, page 153. And I'm just struggling again with a – with the photocopying pagination. Could you tell us the date of a conversation that – or various incidents that you recall at eight, nine and 10, as numbered on that page?---Yes, 12 November I might add in your Honour. So at the top of page 153, dot point number eight is a reference to, I think it's some ruminations of Assistant Commissioner Anticich around Mr Rolfe's potential movements. And there's a note there that reads "In the absence of the DPP, assessment of a short file, is there a basis for – a basis to arrest, with a view to charge. If charging is recommended, I'm not sure that make sense now, but.

Obviously, if charging is recommended - - - ?---Yes.

- - - it is much better that Constable Rolfe is NT local. That is, is within the Northern Territory is that right?---That was – that was certainly the view that was expressed to us, yes.

Does that note reflect the fact that at that stage, you didn't have a full file to the DPP, but you did have a preliminary opinion, and you were wondering whether or not to proceed, at that time, in the absence of a full file?---At that point in time, a decision had been made – been taken to proceed. We had had the preliminary advice from the DPP around the fact that there was – an interview should proceed, if it was going to proceed, under caution. But they had not yet expressed a view as to yes, we're satisfied there will be a prima facie case. So at this point in time, I think the conversation is that almost a preliminary conversation, but what if.

I see. So at any time prior to the arrest of Constable Rolfe on the 13th, did you have a preliminary indication from the DPP about a prima facie case?---Only just prior.

And how did that come about?---So there was a second meeting with the Director, your Honour, and his deputy was present. There was a package, which in my notes, I refer to as a short file. Not meant to be a full prosecution package by any means. But with as much material as we could meaningfully gather, in a short period, that between the first meeting and the second meeting, for the director and his deputy to consider, as to whether or not they felt at that stage that we were at a – there was a prima facie case.

And that took place on 13 November?---That's correct.

And you were informed that there was a prima facie case?---That's correct.

I just want to stay on page 153, which is a note you took on 12 November, when an arrest was still under consideration. There's a note "Public scrutiny will be robust. Must ensure he is treated in a fashion, as consistent as possible, to any other suspect, but balance with risk related issues"?---Yes.

The "he" is obviously Constable Rolfe, is that right?---I believe that's what it refers to, yes.

And what were the risk related issues that needed to be balanced?---I don't recall them all specifically now, your Honour. But at the time, one thing I do recall thinking was that if Mr Rolfe, for example, had been taken into custody, whether there were potentially issues around custody. But I don't recall all of those actual factors right now, I'm sorry.

Was one of the risks that had to be balanced, the chance of having to extradite Constable Rolfe from another jurisdiction?---It wasn't so much a risk, but it was clearly something that we were trying – if it was possible to avoid, the director had indicated it would be challenging.

Do you know why he believed it to be – or what the concern was about bringing Constable Rolfe in from another jurisdiction within Australia?---So my understanding, and my view would be that Mr Rolfe's free to do what – until he's in that situation where he's arrested, he's free to do what he wants. But obviously, if we were talking about someone who was not a police officer, your Honour, and we had a direct – we had some indication from the Director of Public Prosecutions that there was a prima facie case against him for a criminal offence as serious as the charge of murder, it would be the case that you would be taking him into custody. And that, I believe is the view that was being expressed.

Just before I leave that page. At the bottom, so this is still 12 November, there's a note at 10, "Discuss briefing of Deputy Coroner Kelvin Currie, and his position." Could you read that note onto the record please?---Yes, point number 10. "Discuss briefing of Deputy Coroner Kelvin Currie and his position. There should potentially

be parallel investigations given the breadth of issues to be considered, apart from the actions of Rolfe. Decided Detective Superintendent Scott Pollock to be appointed commissioned officer to investigate DIC”, which is an abbreviation for the Death in Custody aspect. “Pollock is very experienced. Has a Major Crime Squad background, and is well regarded in the Coronial space by the Coroner and his deputy. Acting Decop”, which is a Deputy Commissioner abbreviation, “White, will make arrangements with Pollock, with Coronial criminal aspects having equal urgency as required.”

But in terms of that notification, the reference to Detective Superintendent Scott Pollock being very experienced, with a major crime background. Was that your opinion at that time, or were you expressing an opinion generally held?---So the comment about the regard in which Mr Pollock was held in the Coronial space was not my comment. I believe that was made by Mr White. But certainly I’ve – I know Mr Pollock’s background, and I have no doubt that Mr Pollock is considered as a very experienced investigator.

An experienced investigator but with – in terms of Coronial matters and major crime, correct?---That’s correct.

And very highly regarded in the Northern Territory?---I believe that’s what – I – yes. The answer is yes.

So my final question then is just to take you back, because we were jumping around sequentially, to page 158. Is a conversation you have with – with Mr Luke Officer, appearing then for Constable Rolfe. And this is on 13 November you advised us?---Yes that is correct.

“Advised DPP has been consulted. Don’t know what the consultation means as yet. Regardless of it, my intent to respect Rolfe’s rights and treat with the same respect and dignity as everyone else.” This is at 10:57 am, had a final decision been made at that time to arrest Constable Rolfe?---No.

So, had the final – was the final advice taken by the DPP after that time?---Yes.

And then in relation to your intention, as expressed to Mr Officer, to treat Constable Rolfe with the same respect and dignity as anyone else in the community. Do you believe that that was done during the arrest of Constable Rolfe?---I believe so.

Nothing further, your Honour.

THE CORONER: Mr Boe.

MR BOE: Thank you, your Honour.

XXN BY MR BOE:

MR BOE: Superintendent, my surname is Boe and I appear for the Walker, Lane

and Robertson families. You understand who they are?---I do, sir.

Okay. Now, can I just – I've only got really one issue to pursue with you, but just to follow upon and just get some dates. Your notes reveal at page 160 that the meeting you had with the Director of Public Prosecutions and its deputy concerning whether or not there was a prima facie case was about 1:52 pm on the 13th. Is that correct?---Yes, your Honour, it is correct.

And you made the note at page 160 in which you record the language used from those two people which included that there were prospects of conviction reasonably high for manslaughter at a minimum, or words to that effect?---Yes, that's written there, yes.

Now, during that conversation, you expressed some discomfort about this whole process, did you not?---I think at one point I wrote down that it was hearing the position that was being relayed to me made me feel uncomfortable, yes.

Uncomfortable, yes. And the discomfort that you're referring to was that you were in charge, if you like, of the process involving another police officer?---Yes.

You mentioned that you had experienced that sort of situation previously?---On the – so that note, the word "have" is actually "haven't"; "haven't been in that situation before".

So, that's a – sorry, have I read it wrong or did you write it incorrectly?---No, I wrote it incorrectly.

Right?---So, my – your Honour, I was indicating that I'd not been in a position like this before.

Okay, thank you for that. And the emphasis was that you were speaking about a colleague which meant another police officer?---Yes.

We heard that the real – the purpose of you being involved in your position was to make sure that it wasn't something that may have had operational duties within southern command with Rolfe, is that correct?---The separation of a function from an investigative point of view was to try to distance people who may have a relationship with Mr Rolfe or those involved, yes.

Yes. But do you accept that from a layperson's view, the discomfort you were expressing reveal that even if you did not have prior interaction with that person, it still caused you a level of discomfort that wouldn't be there if it was just an ordinary member of the public?---Yes, regardless of the fact that I would carry out my duties without fear or favour, yes, it made me uncomfortable.

Yes. Now, just in terms of the arrest process that occurred around 5 o'clock that afternoon, we've had the benefit – or I've had the benefit of hearing the recording of it. Can I ask you this; have you been involved in arresting people for serious

offences before?---Yes, I have.

For the offence of murder before?---Yes, I have.

That is personally being the person taking the person into custody?---Yes, I have.

Do you accept the general observation that you were particularly accommodating of Constable Rolfe during that conversation with him concerning the arrest?---No, I don't agree with that.

Would you ever have permitted a person you were about to arrest to have a shower before you took them into custody?---I've done things very similar in the past on a number of occasions. I – so I - - -

I'm not suggesting – sorry, you keep going?---So, over 30 years, your Honour, I think I'm not yet to receive a complaint for having not treated someone with respect and dignity. In this particularly case, Mr Rolfe had no forensic value at that point in time and he hot and sweaty and not appropriately – not properly dressed. There was nothing lost by allowing him to do it and treating him with dignity. On other occasions in the past, I've organised food for people, regardless of their race, bought them cigarettes, tried to accommodate them as much as I can in what was a very difficult situation. So, I don't accept that I've treated him in any special way.

Thank you. When – you got to the police station at about 5:45 pm. Is that correct? Page 163 of your notes?---I'm sorry, I missed it?

The time – page 163 of your notes. The time I have is 5:45 pm that you arrived?---Yes.

Just on the way to the police station, did you handcuff at all?---I don't recall, to be honest.

All right. The recording suggests that he was placed in the back seat with two members on either side. And I couldn't pick up whether or not, at any stage, he'd been handcuffed?---As it said, I don't recall. But he was in between myself and another police officer.

Is that usual, not to handcuff a person to be charged with murder?---I think, for me, I understand the policy talks about, you should handcuff somebody who's under arrest. But in my 30 years, I try to assess everyone on merit and in my evaluation of Mr Rolfe, Mr Rolfe did not pose a threat to me and he was not going to cause any issues. So, if he wasn't handcuffed, that would have been part of the process I went through to assess whether he needed to have handcuffs on.

Okay. Now, you take it that I'm not criticising you for the space you gave him, I'm just trying to record what you did and did not do. So, do I understand from that that you now recall that he was not handcuffed?---No, what I'm saying is I don't recall. But if he wasn't handcuffed it was because – and I reflect now, Mr Rolfe didn't pose

a threat to either myself or those other officers. And I figured – I didn't fear at all that he would be someone who would potentially try to escape.

So, you regard that, despite the policy, you had a discretion and you applied your mind to the situation to exercise that discretion. Is that what you're saying?---I don't recall whether Mr Rolfe was handcuffed or not, your Honour.

All right. Having got to the station, was he placed in a cell at any stage?---I don't recall.

The CCTV footage suggests that he was standing in the general counter area at the time of the bail application by telephone. It doesn't look like he ever when into a cell. Do you have no recollection at all about that?---Well, the – your Honour, the process that we go through in the watchhouse would be entirely normal during the course of a bail application to have that person present with the police and the custody sergeant, whoever was running that bail application in the context that the gentleman's described. So, I don't think that's out of the ordinary at all; that's normal.

Officer, I'm just having – it may be me, I'm having difficulty hearing you. Would you mind just speaking up a little bit?---So, the situation you described is consistent with what occurs in most other situations.

I haven't asked you about consistency, I'm just wanting to record what happened, okay, so far.

THE CORONER: So, there were two parts of the question. There was a reference to the bail application and you've described that it's normal - - -?---Yes, your Honour.

- - - for a person to be present during any conversation about bail with a judge, but Mr Boe asked another aspect to that question; which was, was he very placed in a cell?

MR BOE: Yes, your Honour?---I think I answered, I don't know.

THE CORONER: Okay.

MR BOE: Sorry, I just didn't hear?

THE CORONER: I don't know?---I don't know, sorry.

MR BOE: It would be usual practice to place a person arrested for murder in a cell until it was necessary for him to be involved in other aspects of the procedure. Is that fair?---Yes, a person going into the custody environment would not be allowed to be free in that environment. They would go into a cell.

Your recollection is that you do not know whether he was ever placed in a cell?---No I don't. But I wasn't one – so arriving at the watchhouse, I walked through the

watchhouse, and Mr Rolfe was left in the company of other officers who were involved in that arrest process. And I wasn't someone who was in the – I wasn't actively involved in entering him into that custody environment, other than to arrive at the watchhouse. So I don't know. I can't recall. I cannot imagine a situation however, that would see someone not going into a cell.

Do you recall earlier conversations with Malagorski concerning a concern that if the arrest process occurred after hours, that steps should be taken to ensure that Constable Rolfe would never be placed into custody?---No I don't recall that at all.

All right. Having been brought to the station, did you take active steps to facilitate a bail application by telephone?---Your Honour, I didn't. But I know that the people who were in that custody environment did.

Did that include Sergeant Newell?---Yes that's right, I believe it did.

Can I get an understanding of Sergeant Newell, he was a senior sergeant in the crime – Detective Senior Sergeant in the Crime Division, is that correct?---I believe at the time, he was a Detective Sergeant, but he's a Detective Senior Sergeant now, but yes he was a sergeant in the crime area.

He was not a police prosecutor as such, correct?---No he wasn't.

Was a police prosecutor contacted, to be involved in the bail application?---No, sir.

Is that usual?---That's very common, yes.

And so - - -

THE CORONER: I think there's just – might be a misunderstanding there. Are you saying it's common to contact a police prosecutor or not?---Apologies, your Honour. In the custody space, the bail applications are not – not necessarily done by prosecutors, they're done by the custody sergeant, or the police officers involved in the case.

MR BOE: Thank you, your Honour.

I'm just not familiar with the Territory on this. May I just ask you this. Is it usual when a person is brought into custody after the close of court hours, for there automatically to be arrangements for telephone bail applications?---Outside of normal hours, yes, there's an on-call magistrate or judge. And we make contact with those people via telephone.

That may be the case, but is it usual and ordinary, that those applications are made, as opposed to putting the person into custody overnight when the court resumes?---No, it is usual that those arrangements are made, yes.

Now, were you present for the submissions being made by Sergeant Newell, in the bail application?---I don't recall being present, your Honour.

Is it the practise for the arresting officer to provide material to the person appearing for the police prosecutor on a bail application, setting out the views of the associating police, as to whether or not bail may be opposed or not?---Yes that's normal, your Honour, of course. And – and myself and the team, I can't recall if I prepared the document. There is a bail consideration document that was prepared on this particular occasion, that indicated the relevant factors that might be led, and/or asked of us during the course of a bail application.

And was the bottom line that the investigating police opposed bail, or not opposed bail?---Police opposed bail.

Now the basis for the opposition to bail, was it primarily the seriousness of the offence, and the available CCTV – the body-worn video footage that showed the act of shooting?---No. The basis for opposing bail is the legislation. The legislation pre-disposes someone charged with the offence of murder to be in a situation where police always refuse bail, which is what occurred on this occasion.

Namely that he's in a show cause position?---Correct.

Were you involved in the conversations with Mr – Constable Rolfe's lawyers as to conditions of bail?---Your Honour, I recall conversations as we were preparing the bail consideration around the – if we found ourselves in a position where his or her Honour were entertaining bail, what we might seek. I don't specifically recall now whether or not I spoke to a lawyer.

The transcript – or the recording at least, of the one side of the bail application suggests that when Mr Murphy, who was appearing, was speaking to his Honour, that the police had indicated that they would, if bail was granted, not require a surety. Now can you take that from me for the moment. Were you involved in that concession?---No I just don't recall that conversation at all.

Who, if any, would be providing that information to Sergeant Newall, or indeed to Mr Murphy?---It would have to be the police involved in the process. But I don't have any recollection of it.

Now as it turned out, bail was ultimately granted on particular conditions, correct?---Yes, your Honour.

Including the requirement for a surety?---I believe so.

And that occurred at around 8.49 – that is, the bail application process was finalised by 8.49 pm that night. I've just got that from the recording?---It appears to be the case, yes.

Now, so essentially, within about four hours from the point of arrest, Constable Rolfe had been granted bail for murder, on an application made by telephone?---Yes.

Have you ever been involved in a situation where a person had been charged with murder, had been granted bail within such a short period of time?---Not to my recollection, no.

Can you understand why my clients might be concerned with the ease with which bail was granted, when they contrast their own experiences in obtaining bail?---I think the question requires me to speculate a little, but the police involvement in the process was as it would always have been. In that we opposed bail in the watchhouse. He was refused police bail. And then we subsequently had an out of session hearing with the on-call judge. So I'm not sure that that's a particularly strong police issue. I think that's a matter for the judge who considered the application.

See, listening to the application, not one word of opposition is expressed by Sergeant Newall, to the grant of bail. You're aware of that, aren't you?---I take it on what you say. I don't recall.

It's on the record, and others can comment on it later. It doesn't seem that the judge was told that police was in fact opposing bail before his Honour?---The fact that – the fact that the call had been made to the judge, your Honour, indicates that police had already considered bail, and that bail had been refused.

There were two issues. There's the grant, or otherwise, of police bail, which police refused. We understand that. There's a second issue, that when a person is placed before the court, a court does take into account, the attitude of the prosecutor, usually independent, appearing on a bail application, to make submissions, as to the test to be applied. The fact that the person is in a show cause situation. And whether or not the prosecutor opposes bail. You understand that?---I understand.

And are you surprised to hear, that no submission was made, opposing bail, in line with your view, that bail should be opposed?---Possibly.

This was a, for you, I think you used the words, "unusually serious situation", was it not?---I think any murder's serious, yes.

Well particularly because it's a police officer, surely? It's unusual?---It's unusual.

And so unusual, that because there were differing views about whether or not he should be charged at that time, you consulted the DPP, correct?---The DPP was consulted.

Have you ever consulted the DPP on whether or not you should charge someone? ---Yes.

And in doing so, that is very shortly after an offence?---Yes.

And that is to bring to bear an independent mind to the question of whether or not there was sufficient evidence, correct?---Yes, the question of prima facie is - yes.

And the need for independent in a situation like this is paramount isn't it?---I don't understand your question sorry.

Well, you acknowledged that there were steps made to ensure that your investigations and steps taken by police because Constable Rolfe is a police officer, for the process to be transparent and independent, correct?---The investigation, yes.

Now, did you give any consideration to the utility of having or requesting the DPP to appear on the bail application?---No.

Upon reflection and moving forward, given what I have told you of what was not said on the bail application, can you see merit in looking at that alternative in this sort of situation?---I can't see that happening, to be honest.

THE CORONER: It's not a question of practicality, the question is whether it is meritorious?---Is there merit in it - meritorious. Yes.

MR BOE: Because you would appreciate that - and I am sure you do, that justice in this situation has different - people looking at it with different lenses and it should not just be done but be seen to be done for the entire community surely?---Yes.

And the current situation, or the events surrounding the current situation on the issue of bail, in the end involved no submission being made to the judicial officer that the people who had arrested and charged him opposed bail? Correct?---I'm sorry, was that a question? I'm sorry.

It was, yes?---What was the question?

The question is that the documentation available to us suggests that despite you, as the officer-in-charge opposing the grant of bail, in fact no submission was made by the detective sergeant that bail was, in fact, opposed by police before the local court judge?---I'm lost in - I apologise, your Honour, I am not trying to be evasive. I am lost in the words, that's such a long question. Please, what is the question you want to know?

THE CORONER: The question is this. You, as the officer-in-charge, opposed bail. That was the documentation that I understand you provided on the bail report form? ---Yes, your Honour.

I don't have that in front of me. And Mr Boe is asking you this question, you opposed bail as the officer-in-charge?---Mm mm.

But no submission opposing bail was made to the judicial officer when the bail conversation occurred?---Mm mm.

And then Mr Boe is asking - what is the question, Mr Boe?

MR BOE: That what are the ways, in the future, to ensure that all the evidence and submissions necessary to be placed before a court considering bail might be done by an officer of the court independent of the investigating police?---I think I agreed with that, your Honour. There is merit in that.

Thank you, your Honour, I have no further questions.

DR DWYER: Your Honour, there is one issue I neglected to ask. If I might just deal with that point now?

THE CORONER: Sure.

DR DWYER: Superintendent, you became the officer-in-charge of the investigation on 10 November 2022. You were familiar, of course at that time, with the general orders that relate to the investigation of deaths in custody?---Yes.

We are aware that on 11 November there was a gathering at Constable Rolfe's house where a number of officers who were involved in the incident leading up to and after the death of Kumanjayi including the IRT members, attended that gathering?---Yes, I became aware of that post event, your Honour.

That is obviously very problematic, that prior to Constable Rolfe giving a version of events the first time which was at trial, in any detail, there was a gathering of officers. Did you give any consideration to a direction that needed to be given to officers to stay separate?---So on the Sunday afternoon, your Honour - not on Sunday afternoon - on the day after the event whilst the IRT team was still present in Yuendumu I had conversations with I believe it was Mr Phillips, the Alice Springs detective who was at that point in time notionally in charge of what was happening on the ground. We discussed the fact that they had provided a - excepting Mr Rolfe, they had provided a free narrative interview up to that point. His assessment of it was that there was - appeared mostly about 70 per cent of the detail was there, it was indicated during that conversation that we were major crime we're going to be considering - we are going to be speaking to these people further. I made it very clear that they were going to be spoken to and that we needed to try and do what we could to safeguard any potential contamination of those witnesses. I did not formally give a direction to each individual - no - however, my understanding was that the information that I shared with Mr Phillips - and we all agreed - needed to be conveyed to others.

THE CORONER: Can I just ask this - it was Phillips - what was his role - sorry, his title or rank and then role?---I think he was a detective acting senior sergeant.

And you said he was "notionally in charge on the ground"? What does that mean? ---So - for simplicity there was somebody in the job that I was appointed to the following day prior, so he was doing the - he was their delegate at that point in time.

DR DWYER: He was whose delegate at that time?---Well, he became mine the following morning be he'd previously been working under the direction of a superintendent who was based in Alice Springs.

Was that Superintendent Nobbs?---No, that was Superintendent Joanne Foley I believe.

I see. So was it your expectation that a direction would already have been given, that is by the time you took over or soon after, to all the officers involved that they were to be - to keep separate until a full version of events had been taken from each one?---Yes.

And did you give consideration for the need for Constable Rolfe to keep separate from those officers as well?---Of course.

And was it your believe that a direction would have been given to Constable Rolfe to that effect?---Yes.

And it would have been given by Officer Phillips?---Or somebody of seniority down in Alice Springs on the ground there, would have made that very clear.

When did you first learn that there had been this gathering where IRT members and Constable Rolfe had been there?---After the event. I can't recall when but it was after the event.

What were your feelings on learning that?---I was - firstly I was a little shocked, to be honest, your Honour, that police would think that was okay and secondly, I was very disappointed, being aware that there was going to be potential contamination of police evidence.

We know that there were people of the rank of sergeant at that gathering. It's very disappointing that people of that level within the police force would attend. Do you agree?---I'm surprised that people who attended that did not know better.

Does it suggest to you the need for further training about the general orders and the importance of maintaining the integrity of evidence?---Yes, it cannot hurt.

Thank you, your Honour.

THE CORONER: Yes, Ms Morreau?

MS MORREAU: Good morning, your Honour.

XXN BY MS MORREAU:

MS MORREAU: Superintendent, my name is Paula Morreau and I appear for the Brown family, another of Kumanjaya's family. I only have a couple of areas to cover,

given that you have already been asked questions in detail. The first is you've already been taken to page 153 of your notes. If you could take that up again? And, as I understand it, those numbers we've got on that page, 8, 9 and 10, really follow on from a number of numbers that were written to cover - and if you look at page 150, right down the bottom, an INC meeting and the matters discussed in that, is that right? The bottom of page 150 and the time is 08:48 on 12 November?---Yes, I can see that entry.

Yes, all right. So, just – that was just to contextualise, but at 1:53, again, discussing the process of arrest. Now, you were asked if you recalled what the potential risk-related issues were, and I appreciate that you don't presently recall that. If I suggest to you that Detective Senior Sergeant Malagorski noted the following, "Remand will need protection for Constable Zach Rolfe." Does that prompt your memory that that may have been the risk factor being considered?---I think I indicated in a response earlier, your Honour, that I recall there being a conversation about potential issues if custody was – became a live issue.

And in particular, because he was a police officer going into custody that he may require protective measures. Correct?---I believe so, yes.

Yes. Now, that itself though is not a relevant feature for granting bail, is it?---No.

No. It's not a factor that would weigh against the consistency and treatment that you were attempting to achieve through this bail process. Correct?---No, it's not a factor.

No. Now, jumping to another topic, are you aware of any police prosecutor who declined to participate in the charging or a bail process on murder?

MS OZOLINS: Your Honour, can I just – I'm not sure it's an objection. There's a lot of references to "police prosecutors" and of course, in the Northern Territory, at least in the Top End region, there is no such thing as a police prosecutor. I just wonder whether it could be clarified.

MS MORREAU: I'm happy to clarify, I'm just referring to a note in Commander Proctor's report on page 168. And if you don't know, then please tell us, but on page 168 of Commander Proctor's report at the top of the page, there's a dot point that notes, "A senior police prosecutor refusing to lay the murder charge again Rolfe." Now, I'm just asking you, superintendent, whether you're aware of what that note relates to and who that might relate to?---Yes, I do know, your Honour. It's a reference – I wasn't present, but it is a reference that I am aware would be related to interactions between, I think, Superintendent Richard Bryson, who was in the prosecutions' area at the time. And I believe Mr Dole, Martin Dole, the then commander, and it related to the formal processing through the prosecution chain of the charging.

I see, so post-arrest, or post-bail application. Is that what you understand?---That would be my understanding of it, yes.

I see. But you didn't have any direct involvement in that feature of the case?---No, I did not.

I see. Now, in reading your notes, it seems that the interviews that occurred with Yuendumu residents in Yuendumu, was that a part of the investigation that you had any direct responsibility or involvement in?---Yes.

I see. And did you – of course, Yuendumu residents are very much largely Warlpiri people. Correct?---That's correct.

And so therefore – and Warlpiri people are very strongly – their language, Warlpiri language is strongly kept within the Yuendumu community, isn't it? You don't know that?---I don't know that.

I see. Did you turn your mind to making available Warlpiri interpreters for the interviews that were occurring with Yuendumu residents?---Yes.

And what steps did you take to put that into place, given your thoughts about it?---So, we were actually in conversation with a gentleman who was interstate, who was independent of the community, but who spoke Warlpiri. And we were looking to see whether or not he was suitable to engage and have come over. And in addition to that, there was conversations, I believe, with the Aboriginal Interpreter Services. And ultimately, those conversations that needed to have someone present to support the witness or the person being interviewed actually ended up occurring with – occurred, sorry, with someone who was an interpreter resident.

Now, I appreciate that you have voluminous notes. I have not been able to locate those in your notes, but can you indicate at what point in the investigation those considerations were being undertaken?---It wouldn't necessarily be in my notes. It was conversations I was having and there were emails, I believe, through other officers involved, because we're talking about the independence of those potential people who were going to be sitting with the witnesses.

Do you recall - - -?---Like, it was early on, it was very early on. I can't give you specific date, I'm sorry, your Honour.

My final question relates to a little bit later in your investigation, moving into January 2020, you send a memo to Assistant Commissioner White in relation to location of an expert witness from interstate. And you noted in that memo that there was a reluctance from other Australian jurisdictions to provide such a witness. And I wanted to ask the basis for that opinion and how you had formed that?---Initially, there – sorry, there was - Mr Barram was the local person who was responsible for our reviewing the use of force component and the critical incident aspect of the events. And additionally, there was a request made, I believe, to New South Wales police for some assistance in a couple of areas, and one of those areas was related to that particular aspect.

Yes?---It took some time to get a response from them, and ultimately, they declined

to assist us, by which time there had been some public commentary that indicated the – I believe it was the Police Federation of Australia, for want of a – that's my recollection now. I hope that's not wrong, but - - -

Yes, the Australian Police Federation is in your notes?---Yes. Yes, so I recall that there was some public commentary about condemning the actions taken by – of charging Mr Rolfe and it made it very challenging to find – it was harder, made it harder for us to find someone who we thought would be independent from - - -

Did you make some enquiries other than with the New South Wales Police Force?---There were some enquiries made.

I think you had two names, one from Queensland and one from Victoria at the time. Do you know whether you made enquiries with those particular individuals?---Yes, there was a Victorian person who was named who was not available, was my recollection and I don't recall specifically the Queensland one now, I'm sorry. But I do recall that there was some enquiries made.

It was Sergeant Hayden, Mark Hayden. Did you end up – was there – did you make enquiries to attempt to secure him?---I just don't recall.

Okay. Now, you've mentioned the public comments and the difficulties with New South Wales and obviously, there's some uncertainty about these other two, but was there any other basis that you were referring to, to infer some reluctance from other police forces to assist?---So, I'm aware, and I don't know if it's in my diary, but there were conversations that I was party to during this time that indicated, I believe it was – I believe Commander O'Brien, at that time, was the – I don't know, chief of staff to the commissioner or similar and I believe he had been engaged with other police forces and had fed back down the chain of command that there was a reluctance for others to get involved. But I was not party for those conversations that Mr O'Brien. That was just conversations I'd had with other senior officers at around about that time.

Now, one final question, obviously you're aware that Constable Rolfe's phone was obtained and the data was downloaded from that?---Yes, I'm aware of that, your Honour.

Now, did you ever – did it ever come to your attention that there were photographs of a handwritten account in relation to this particular event that was located on his phone?---No, I'd left the investigation before the phone had been examined.

Thank you, Superintendent, they're all my questions for you.

THE CORONER: Yes, Mr Boulten?

XXN BY MR BOULTEN:

MR BOULTEN: Superintendent, my name is Boulten. I appear for the North

Australia Aboriginal Justice Agency?---Yes, sir.

Investigating a fellow officer for murder must have presented you with some extraordinary personal challenges as a very experienced investigator, I suggest. Do you agree?---Yes.

Could you just elaborate, just briefly, how it felt, as a policeman, to investigate one of your colleagues?---Well as I indicated, your Honour, I do my job without fear or favour. I try very much not to be concerned about what the person might do for an occupation or what they might look like, or their ethnicity, or culture. However, obviously working in the space that we found ourselves in was particularly challenging. I would think for many obvious reasons.

Yes, they probably are obvious, but would you agree, that one of them was the extraordinary amount of scrutiny that the investigation was receiving publically?---Yes that would be a factor.

And would you also agree that the fact that the deceased Kumanjayi Walker was an Aboriginal man, and that the police officer who shot him was a white man, was also a complication in the Northern Territory?---It didn't – it didn't complicate my thinking around what my job was, no.

Did you not pick up commentary in the media, and in social media in particular, about the potential complications arising from the deceased's race, and the police officer's race?---They was certainly present, yes. It was present. But it's not something that was impacting me particularly.

Was the fact that the Australian Police Federation, or the National Trade Union for Police, were expressing opinions about the investigation, a complication for you?---I would say largely the public narrative was problematic, yes.

And would it be fair to say that you were aware that there was a large body of support for the accused, or the suspect, before he was charged, coming from serving police officers?---Yes I'm aware of that.

So I want to ask you about whether or not it might, in a perfect world, a different world, be better for a completely independent and separate body to investigate police officers, when they are suspected of, accused of, and charged with, criminal offences?---I don't necessarily agree with that statement, sir.

Are you aware of the Police Ombudsman in Northern Ireland? I'm not suggesting you should be, but I just wonder if you are?---Okay, a moment of lightness, no, your Honour, I'm not aware of it, sir.

Are you aware of jurisdictions, including jurisdictions that follow the common law system, where any particularly serious issue concerning criminal conduct of a police officer, is as it were, farmed out, to a body which is at arm's length from serving police officers?---I am aware, sir, that there is some arrangements of that nature.

Would you agree that perception issues would be better managed through such a mechanism than by providing for a serving police officer to investigate another police officer when they're suspected of committing a serious criminal offence?---Well your Honour, obviously perceptions are very important. And I do understand the question. And I think in response to the question, I would say that the perception in this particular matter, impacts on – from both sides and in both directions. So I don't think it necessarily means that police can't investigate their own. I think – I think police can investigate their own. And I think that if the public is to have confidence in the police, I think police should be in a position to do that.

Why do you think – sorry. I'll start that question again. Nobody is suggesting that police don't investigate, and when they do investigate other police, that they don't do it fairly, in the Northern Territory. Rather, have you turned your mind to whether or not it would be better, if that was handed over to someone else?---Your Honour I'm not sure that the answer to the question is a simple yes. I have turned my mind to certainly how these sorts of things impacted, or not, this particular matter. I think it's possible that someone independent of the police could potentially do it, with a positive impact on perception, is probably my response.

Yes, so I want to make it absolutely clear, that I am not suggesting that you did anything wrong, or inappropriate in relation to perception issues. And no one is suggesting that you mishandled, well I'm not suggesting that you mishandled the investigation in any way, but you are aware, aren't you, that there are people with very firm views, that the man should never have been charged. Are you aware of that?---I'm aware of that, yes.

And that's a very deeply held view amongst segments of the Northern Territory, and indeed the wider population of Australia. You understand that?---I do understand that, yes.

And do you understand that there are other people, particularly Yapa people, who believe that there was no proper justice delivered, as a result of the trial that took place in the Supreme Court, you're aware of that?---Yes.

And those issues are real. They are wide in part. There is an inquest that is looking into every corner of this case, you understand that?---Yes, your Honour, I understand.

So, do you believe that your investigation was hampered in any way, by any of those opinions being expressed publically in the media, informally, and on social media?---I don't believe so, sir.

What about the identification of a use of force expert. Can I ask about that? Because as I understand it, after Mr Barram was appointed, and investigations were made in New South Wales to obtain another use of force expert to assist with the investigation, there was a dialogue that was maintained between investigators in the Northern Territory, working with you, and under your command, on the one hand,

and the New South Wales Police use of force expert, who had been involved, apparently, in investigating aspects of the Link Café incident. Do you understand that? Have I got that correct?---The gentleman in New South Wales, yes, there was a conversation with him. I'm aware there was.

Yes, and is it not the case, as it seems to be from the papers before the Coroner, that the New South Wales Police, shut that down, because of the fact that there was a police officer charged with murder in the Northern Territory. And that they that it was inappropriate for their expert to be bought into this controversy. What do you say about that?---Well I don't – I don't really know the rationale, your Honour, but obviously the decision was made that they weren't involved.

Well, do you know why they refused to allow their expert to be engaged?---I don't – I don't specifically recall, sir, no.

Were you not in charge of the investigation - - - ?---Yeah, I was - - -

- - - when an expert was cut of the fray as it were?---Yes of course I was in charge of the investigation, your Honour.

Well why? Why did the New South Wales Police not allow their expert to be used?---I don't specifically recall, sir.

Was there not discussion about the attitudes of the Federal Police Association, in the context of trying to obtain assistance from another jurisdiction to assist your investigation about excessive use of force?---I've indicated, your Honour, already, that I'm aware that there were conversations, and there was narrative about it. Sorry, I might have said narrative in the past. Yes, I'm aware actually, that there were conversations, which I don't recall in detail now. But there were conversations around those challenges, yes.

What were those conversations - the effect of them?---The effect of them would be logically what you indicated earlier, sir, that they were reluctant to become involved.

Do you mean the Queensland Police, the NSW Police, the Victorian Police, all were reluctant to become involved because of the views of the trade union?---As I indicated a moment ago, your Honour, Victoria Police didn't have anyone available. I don't recall - - -

Well, put that to one side, what about NSW and Queensland?---I don't recall whether - I've answered the question around NSW, your Honour. As for Queensland, I just said before, I don't recall whether they were - whether Mr Hayden was approached. And Tasmania were contacted, they didn't have anyone.

So the conversations you referred to that involved the attitude or expressions of the Federal Police Union, what conversations are you talking about? What did they talk - with whom did you have such conversations about their attitude?---Those conversations occurred, your Honour, with other investigators and the - I am trying to

recall the specifics. I think the best way to recall it is through chronology. So I recall that I believe Commander O'Brien had come back from that NSW conversation and indicated that somewhere in there there had been indications that other forces were reluctant to be come involved. I believe I was involved in conversations, certainly not with Mr O'Brien but potentially with Mr Dole and maybe Mr Anticich and maybe Mr Proctor but I just don't recall specifics.

And the effect of them, as I understand one of your answers earlier, was that the trade union attitude either made it impossible, difficult or impracticable to obtain an expert from New South Wales. Is that what you are saying? Can I just check? Is that what you're saying?---No. What I said was that the NSW had declined to support it - - -

Yes?---And that I said that my view was that the public narrative was largely unhelpful.

So all those conversations you just talked about then with Mr Dole and your investigator colleagues, what were they about insofar as they dealt with the attitude of the police union - the national police union? How did they affect you - what were you discussing?---So the discussions generally were around trying to source, you know, independence in terms of expertise so that we were not putting ourselves in jeopardy of being seen to be biased regardless of what the opinions of the people we engaged locally were and that that public narrative had potentially made it problematic for us to be supported from outside of the territory.

Mr Dole advised the NSW police had decided they were not in a position to assist with your use of force review and they were not keen to put themselves into the firing line of the controversy. Do you agree with that?---If that's what you're reading, yes, if that's what you're reading.

Sorry?---That's what you are reading.

Well it's your note?---Is it?

Yes?---If you'd like to take me to it I am happy to refresh my memory, sir.

DR DWYER: 109A Pennuto notes in the brief, page 16.

MR BOULTEN: It's a note from 6 January at 11:40 am, from Acting Commander Dole?---Yes, I see that, yes.

"Dole advised that NSW Police had decided they were not in a position to assist with the UOF review, were not keen to put themselves into the firing line if their SME offered an opinion that may be adverse. Request that Dole provide his advice via email for transparency and recording purposes." Do you see that?---Yes I do, sir, yes.

"SME" do you see that?---Yes I do, sir, yes.

"SME" what is that?---Subject matter expert.

So when you noted that Mr Dole told you that the NSW police were not keen to put themselves into the firing line if their Subject Matter Expert offered an opinion that may be adverse - adverse to what? Adverse to the fact that you had decided to charge or that you would charge Mr Rolfe or adverse to Rolfe?---I do recall that now but prior I didn't, but I do recall that now. The actual word "adverse" I think was my way of agreeing with what you have said previously in that the NSW Police Force did not want to get involved because it was a police officer.

Well, it might be hard now to remember why you used the word "adverse" but was it you had already charged Mr Rolfe by January, right? Mr Pennuto?---Sorry, sir, I thought you were making a statement. Yes, he had been charged by then.

And an adverse report from an independent reviewer would be a report that says there was no excessive use of force, right?---That's not how I would read that, sir, that's not - - -

Well I'm just checking - I don't know what it means?---Would you - - -

What does it mean?---Well, I tried to explain a moment ago, the basic - - -

Well could you do it again because I left it - mixed up?---So, your Honour, the word "adverse" as I recall that, was that there were - now that I've recollected with this note refreshing my memory was that the police were unlikely to want to provide a critique of a colleague. It was not about the outcome of the critique but the fact they weren't prepared to be involved in that.

If you have a look in page - - -

THE CORONER: Can I just ask, what colleague would they be recruiting?---A police colleague - I am using the term colloquially so Mr Rolfe - a police officer.

But which police colleague - Rolfe? They didn't want to provide a critique on Rolfe's use of force?---Yes, yes, of his use of force in the critical incident report.

MR BOULTEN: And New South Wales - did you know that the New South Wales police offered opinions about the use of force that their colleagues carried out when they conducted the raid on the terrorist holding hostage in the Lindt Café?---Yes, I am aware of that, sir.

Well they were happy to offer opinions about their own police. Did you drill down as to why they held this view? They just didn't want to get involved in criticising Mr Rolfe? Is that what you're saying?---Your Honour, I feel that my words are being twisted here. What happened was we could not get - they were reluctant to be involved in providing an opinion about the matter involving an interstate police officer.

Why?---Again, I was not party to the decision and I am only can relay on those - as I said, I don't recall the full conversations but whatever is there is what I was told.

If you have a look on the next page of your diary please? Do you see on 7 January at 14:36 hours, you had a telephone conversation with Mr Dole again?---Yes, your Honour, I can see that.

Is it the case that you were advised that there had been an out of session JMC of sorts?---Yes, that's my note sir.

What's an "Out of session JMC", please?---I guess an informal meeting of a joint management committee or people who are normally on that committee. And were you advised that during this informal meeting, there had been a discussion about the New South Wales' response for assistance?---That's what I've written, sir.

And where to go from here. You were told that?---That's what I've written, so that's yes.

All right. And were you told that the out of sessions JMC of sorts decided, no other Australian jurisdiction to be approached to profile SME around use of force and that Professor Alpert, an overseas professor, was to be engaged. Do you agree?---That's what I recall, your Honour.

And the note that you've made goes on to say, "Concern within Australian circles about involvement due to reasons such as compromise by comments of National Police Federation and interagency relationship damage, amongst others." Do you see that?---Yes, I see that, your Honour.

So, did you take this to be some directive or guide from Commander Dole and others that there was no point trying to seek expert evidence from any police jurisdiction in Australia?---Yes.

That was because it seemed, according to Mr Dole's conversation with you, that there were concerns about the union and their particular views. Agreed?---Yes.

And that Mr Dole and the others involved in the out of session JMC of sorts had the impression that other police forces in Australia would be concerned about their relationship with the Northern Territory Police should one of the other jurisdictions provide expert evidence in this murder prosecution. Is that agreed?---Yes.

Or is it the other way around, that the Northern Territory Police were concerned that that might interfere with their relationship with other police forces in Australia if those other police forces provide expert evidence in the murder prosecution, or was it both ways, concerns on both sides?---I don't recall that specifically, your Honour.

Well, certainly, you were aware that Commander Dole was of the opinion that there would be no good reason to continue to discuss expert witnesses with Australian

police forces. Right?---That's my recollection.

And nor did you after this. Agreed?---I believe that to be the case, your Honour, yes.

Well, just going back to my early questions, if it wasn't a police force who was investigating a police officer charged with murder, do you think that they would be bothered about interagency efficacies?---No, most likely not, your Honour.

Very shortly after you were appointed in charge of the criminal investigation, there was a separate and parallel Coronial investigation established with a different team. Right?---Yes, your Honour.

Are you aware of any problem that was caused to your investigation by the existence of a parallel Coronial investigation?---There were some challenges, your Honour, as a result of having - - -

Could you outline them, please?---So, the appointed senior officer, Superintendent - - -

Could you just speak up, I can't hear you?---The appointed senior officer, Scott Pollock and myself tried at that point in time or shortly thereafter to work through a number of matters that might require deconfliction, depending on investigative priorities and such. And for the most part, that was okay, however, there were some priorities potentially in that Coronial space that were not arguably high on my agenda of priorities that I think we struggled to agree on. And did that interfere with the investigation? I don't think it interfered with the investigation. At times, I felt that it was hard to know who was in charge, who we were responding and reporting to and ultimately, who was making some – I guess some of the final decisions.

This might be regarded as being, regarded by you as being outside your comfort zone, pay grade, whatever other analogy you want to use. But if you were in a position to be able to set the future for homicide investigations, do you see the need for there to be two separate investigations; one which involved criminal investigation and a separate one that was for the Coroner?---No, your Honour, I believe there should be just one senior investigating officer.

Well, what about an investigative team?---So, your Honour, in a – I'm very cognisant that during the course of a criminal investigation, you are servicing a large portion of what ultimately becomes the Coronial and a lot of the material that you've heard already came from the investigations that were conducted under my umbrella, for want of a better description. I believe there is scope to have matters that would sit in the criminal space and matters that would sit largely in the Coronial space, the systemic issues and things like that. I think there's no reason why they can't be progressed at about the same time, but there are occasions where there is conflict as to what might be a priority and what statements are relevant and what witnesses are going to be approached at what particular time and in what particular order, I believe, under that arrangement. So, as a bolt on arrangement, I think they could happen as long as there's only one person overseeing it. But in the case where

I had myself doing one thing and Mr Pollock trying to do something else, at times, it was challenging.

Who should be in charge, the police investigating in the criminal sense or the Coronial officer. Who do you think?---I believe that the criminal matter takes primacy. Once you're in that space, the criminal matter must take primacy.

And once criminal proceedings conclude, who would be in charge then, do you think, ideally?---That's a matter, your Honour, I haven't actually turned my mind to. If the parallel arrangements had been going on, or the bolt on arrangements as I've described it, were going on, then the two people would have equal – or largely equal understanding of what had been collected and gathered and what was of relevance potentially. However, it is the case that in – rightly or wrongly, it is the case that if you're focussing narrowly on a particular set of circumstances, such as a criminal matter, that there will be other things that you won't have visibility of. So, whether or not the investigation Coronial is best served by the person who is sitting to the side and was bolted on to support to support, I'm not sure, but I don't have a response black or white, I'm sorry. I think there's benefits in both.

Commander - - -

THE CORONER: Are you aware of the contents of the Coronial brief in comparison to the context of the criminal investigation?---No, your Honour.

MR BOULTEN: Commander, would you assume Coronial brief extends over several hundred thousand pages. How does that compare with the criminal brief?---I think the criminal brief was in about 45 folders. So I can't answer your question.

All right. Constable Rolfe's telephone was obtained from him in the watchhouse, on arrest, correct?---Yes, your Honour.

In the body-worn video, you can see Mr Rolfe with his telephone out, comparing Kumanjaya with an image on his phone, right?---Yes.

And you're aware that Sergeant Frost had emailed an arrest plan to the police who were travelling to Yuendumu on Saturday afternoon from Alice Springs, right?---Yes, your Honour.

You would – you would have expected to see evidence that was pertinent to your murder investigation, by examining Mr Rolfe's telephone, right?---Yes, your Honour.

Why wasn't it downloaded when you were in charge of the investigation?---So the phone was – the technology was not available in the Northern Territory Police Force to actually undertake the analysis and download, at that particular time. The technology that was here was limited, as compared to other jurisdictions, such as the Federal Police, and other larger interstate counterparts. The phone was transferred, quite early on, post seizure, to the Australian Federal Police for analysis. However, it

required a pin number. And it wasn't until sometime later that the pin number was identified.

Did anyone ask Mr Rolfe for the pin number - - - ?---Yes I believe - - -

- - - while you were investigating?---Your Honour, he was asked, yes.

And what was the response?---My recollection is that Mr Rolfe declined to provide that.

How was it obtained?---There was body-worn video, when body-worn video was reviewed, that had a small section where he used his phone.

And when was that – when did someone figure that out?---The phone wasn't analysed while I was in the role. So it can't have been in that first 12 months.

And so you know now that there are multiple messages on that phone concerning Mr Rolfe's attitudes to Aboriginal people, don't you?---I'm now aware of that, yes.

And you're aware that the Crown Prosecutor at the trial attempted to tender a small number of text messages in an attempt to prove either Mr Rolfe's state of mind, or the fact that he had a tendency to have a particular state of mind. You're aware of that?---I do recall that, sir.

In the 12 months that you were involved, it was impossible to do any search, let alone a thorough search of that phone, it seems?---So opening the phone was the problem.

Yes I see that. That involved, as it turned out in the end, to be a matter of looking more carefully at the body-worn footage that was available to you throughout that period, right?---If you say so, sir.

Well, no one's being particularly critical of your failure to do it. Whoever did it was very clever. When you were investigating the murder, did you turn your mind to any cultural differences between the manner of policing in Yuendumu and other remote Aboriginal communities in the Northern Territory on the one hand, and the way police conducted normal policing duties in the township of Alice Springs?---I'm sorry, sir, would you mind repeating that question?

Yes. Did you turn your mind to the potential differences that existed between the way police carried out their duties, particularly in relation to arrests of Aboriginal people in places like Yuendumu, remote Aboriginal communities, on the one hand, and the way that police carried out similar duties when arresting people in the township of Alice Springs?---Yes, I believe so.

Did you identify differences in approach between remote communities and Alice Springs?---Yes.

What differences did you detect?---Not to throw a blanket across everyone, but in my – my assessment, I would suggest that community police officers have a different way of going about, not every arrest, but making a lot of arrests. And their arrests are generally made through negotiation, with family, and/or leaders in that community. And they're very good at negotiating surrender, and taking into account the cultural sensitivities that might be present in that particular community, as opposed to an environment such as Alice Springs.

In determining whether or not you had a viable case against Mr Rolfe, did you see any differences in his approach to the arrest of Kumanjayi on the one hand, compared to a bush police officer's approach, on the other?---Yes.

What were they?---I think that my view would be that your Honour, Mr Rolfe's very target and task oriented. So it was about, here's your task, get on task and go to it, and complete that task. I think, in the bush setting, there are many steps that might be involved, having been given the task, that you would need to undertake in order to satisfactorily make a peaceful arrest in circumstances similar to this. I can't imagine – that's probably not the right words, I take that back.

THE CORONER: What can't you imagine?---I've not seen myself your Honour, too many remote and bush police officers searching houses in the way that this particular event occurred. And in fact, it's my experience that, having gone through the process of trying to negotiate for instance a surrender, a peaceful arrest, that most officers take the opportunity to coordinate something in the early hours of the morning, or along those lines, where there is limited risk. Less risk.

MR BOULTEN: You know that Sergeant Frost's arrest plan envisaged exactly that, don't you?---Yes, your Honour.

What is your policing experience in the Northern Territory Police?---So I've spent some time in Darwin. I've spent some time on the Tiwi Islands. I spent some time at Alyangula, and for the last two and a half years, I've been – or two years approximately, I've been the Divisional Officer responsible for the Central Region of the Territory, which includes 16 remote communities.

When you were on the Tiwi Islands, what was your job then?---I was a senior constable of police.

How long did you spend there?---A few months, sir. I don't recall specifically. A few months.

What about in Alyangula, how long were you on Groote Eylandt?---Actually Alyangula wasn't very long, sir, I was relieving there.

Sorry?---I was relieving there, in the absence of another officer.

All right?---I wasn't permanently located there.

And in your current capacity as Commander of Central Region, as you say, you have remote communities under your purview. Do you go to remote Aboriginal communities?---All the time, sir.

Yes. Do you have a high regard for bush police?---I absolutely do, your Honour. It's very humbling, some of the people that I've got working in these remote spaces. It's humbling, and they're doing an amazing job, and they're good people.

Isn't it at the heart of bush policing, to have a good line of communication, empathy with people your policing?---It's imperative.

And do you think you've got it?---I believe so.

So what do you think of people who hold racist views about Aboriginal people? Should they exercise the powers of a police officer in the Northern Territory?---I don't think there's a place for racism, more broadly.

That's all I wish to ask.

THE CORONER: I note the time. We can either take a – why don't we take a morning tea break, and then we'll come back for about another 45 minutes before lunch.

WITNESS WITHDREW

ADJOURNED

RESUMED

KIRK JOSEPH PENNUTO:

THE CORONER: Are we having questions from Mr Officer next - - -

DR DWYER: Yes, your Honour.

THE CORONER: - - - is that correct? And he's on the - - -

MR OFFICER: Yes, thank you.

THE CORONER: - - - via phone, thank you.

MR OFFICER: Thank you, your Honour.

Can everyone hear me okay?

THE CORONER: Yes, we can.

MR OFFICER: Thank you.

XXN BY MR OFFICER:

MR OFFICER: Commander, my name's Luke Officer. And as you know, I act for Constable Rolfe. And I just want to ask you a couple of questions, based on your evidence today. You gave evidence that you recognised very early on in this incident, that is on the Sunday, having viewed the body-worn video, that it was quite a significant matter?---Yes.

And indeed, you were concerned, very early on, that there might be some criminality involved, or some offending on the part of Constable Rolfe?---Yes I had concerns.

What concerns, or offences, did you suspect at that time?---My – I don't – I don't actually recall, Mr Officer, a particular offence. I was possibly thinking we were in the manslaughter basket or thereabouts. But being more specific than that, I'm reluctant to be so specific.

All right. What's a NISK? That's N-I-S-K?---It's a – it's a forensic procedure.

A forensic procedure conducted on those who are suspected of an offence?---Yes it can be, it can be, yes.

And it can either be voluntary or non-voluntary?---Yes, that's right, sir.

Are you aware that Constable Rolfe submitted to a voluntary forensic procedure on 10 November, early hours of 10 November 2019?---I am aware of that.

And in order to obtain a forensic procedure, an offence must be stated, mustn't it?---I believe, your Honour, the documentation requires a – a section being populated, and you put in an offence category I think.

And are you aware, as at the time of the forensic procedure, in the early hours of 10 November 2019, what offence category had been put in that documentation?--- I'm sorry, sir, can you ask that again?

THE CORONER: What was the offence - - -

MR OFFICER: Sure.

THE CORONER: - - - category in the NISK?---As I recall your Honour, the offence had been written in as manslaughter.

MR OFFICER: So in very few hours after the incident, Constable Rolfe had already, at least for the purposes of documentation, been suspected of possibility of manslaughter?---I don't necessarily agree with that.

Well if that's in the documentation, what other purpose could it be in there for?---Because the documentation can't be completed in the absence of a category being populated.

So is it just a practise to make up a sentence for the purpose of the documentation, or does one have to form that belief?---No, police are not in the practise of making up offences for the documentation. But in order for the documentation to be completed, there needs to be, as I said, an offence populated in a particular section of the document.

(Inaudible)?---I wasn't involved in that, but I'm aware that manslaughter was the category chosen.

All right, and it might be a question for another witness, given that answer by the name of Officer Philips. But in any event, you had concerns that offences might have been committed, and you were very conscious, very early on, your evidence was, to ensure that Constable Rolfe's rights were protected and looked out for. Is that the effect of your evidence?---Yes, your Honour, that's what I – that's what I recall saying.

And indeed very early on, you gave evidence about conversations you'd had with me, to the effect that interviews to be conducted were likely to be under caution. That was certainly the recommendation of the DPP, is that right?---I don't recall your Honour, whether Mr Officer and I spoke about the format of the interview, but I – I do recall that I've spoken to Mr Officer about this matter, yes.

But in any event, the point is Commander, that you acknowledge that Constable Rolfe, like any other citizen, at this particular time, had a right, and that right – he

could exercise that right at any time, as to whether or not he gave you a version of events?---Yes of course, that's the case.

And if a version of events was to be given under caution, that would be voluntary?---Yes, he certainly would not be compelled to provide a version of events under caution.

Sure, and so if he exercised his right not to provides events under a caution, that would be consistent with his rights, that there's nothing you can do about that, you agree?---Yes.

And in the exercise of those rights, where a person might be suspected of an offence, if they were to give you a version, that doesn't necessarily mean that version will be exculpatory, does it?---No of course not.

And so when you use the words that it was a shame that a version wasn't proffered, because it could have been about defence or justification, it's not the case that you could say Constable Rolfe, having given a version at that time, would indeed amount to justification. Do you agree with that proposition?---Yes.

In fact did it surprise you to know that Senior Sergeant Barram, or Superintendent Barram, as he is now, having heard Constable Rolfe's version at trial, maintains his opinion, that the shots two and three were unjustified?---Sorry is the question, your Honour, does it surprise me that Mr Barram's adopted the same position?

Yes?---I don't have a particular view of that.

Well, it's an example, is it not, where a version having been given, on an opinion to the contrary being maintained means that had Constable Rolfe given a voluntary version at the time it still could have been used against him and might not have resulted in the charges not having been laid in the first place. Would you agree with that?---It could have gone either way of course.

Yes, but there is, I suggest, two mechanisms in which a version could have been obtained from Constable Rolfe. Would you agree with that?---Well, if I can hear what they are I would like to know so I can agree with you.

Well, you note at page 148 of your notes, if I could ask you to turn that over?---Yes, I have it here.

And this was 11 November 2019, I ask you to accept, that's the Monday after the incident?---Yes, your Honour, I see that.

And about .4 of the way down you will see the interview under caution, you say, "DPP review of body-worn, position possible criminality if charges could be substantial", do you see that note?---Yes, I see that note, your Honour.

You then say at bullet point number 5, "Keep totally separate any administrative process or coercive interview, eg 79A". Now, are you familiar with that provision of - that's on the *Police Administration Act*?---I am aware of that, your Honour.

And that the provision that deals with, in effect, the administer of a direct - administration of a direction to a member to answer questions, answers which they must give under compulsion?---That's correct, your Honour.

And the protection afforded to members in doing so, I would ask you to accept, is that any answers they give could not be used in a subsequent criminal prosecution. Is that your understanding?---I believe so but I can't recall definitively.

But you would agree in the very early stages of an investigation where a version of events is significant you note that "Constable Rolfe has not yet been charged" but a version could have been obtained from Constable Rolfe, using that provision?---No, I don't agree with that.

Why not?---Well, I would go to 3 pm on the Sunday after the shooting, your Honour, and having watched the vision, there was - at that point in time there was no way I was going to direct Mr Rolfe to answer questions using the provisions of the *Police Administration Act* such as 79A when, at some later time - two days later in fact - the Director says to me, "You have a prima facie case for a criminal charge" and I am now in possession of a whole lot of material that I am going to be criticised for a trial. So I would not think it's appropriate - - -

Commander - - -?---So I would not think it's appropriate - - -

Sorry?---Sorry. I'm a superintendent.

Sorry. Superintendent, but what I am asking you is specifically as at 11 November 2019?---Mm mm.

Now you're relying on a conversation you had two days later where the Director gives the instruction that he can be charged, that's information you don't have as at 11 November 2019 and you specifically make mention - keep totally separate any process of coercive power or exercise that power. All my question has asked of you is that it was one possible way that a version of events could have been obtained from Constable Rolfe. It might not have been you but it could have been obtained by a completely separate investigator for example. Would you accept that?---No, I don't.

Why not?---Because I have already got in my mind that Mr Rolfe is a suspect for a criminal offence. I would not be looking to use a process outside of what would be otherwise investigatively sound in the criminal space, to obtain information about what happened.

So as at 11 November 2019 - your words - "He is suspected of a criminal offence" what did you expect he had committed as at 11 November 2019?---If I may go back to my notes, your Honour?

THE CORONER: Sure?---So the information that was - sorry - the Director of Public Prosecutions indicated that his assessment of it was that it was a murder and my view perhaps had not yet crystallised as to whether it was a murder or a manslaughter but in any event I felt that we were in that space also.

MR OFFICER: Are you familiar with the provisions of the *Coroners Act*, Superintendent in relation to the compulsive powers to obtain information?---Yes.

So if I was to suggest there was a second way in which a version of events could have been obtained from Constable Rolfe under the *Coroners Act* what would you say about that?---I would say that wouldn't have been available to me, having thought that Mr Rolfe was a suspect.

Not available to you but it certainly might be available to someone else, would you agree?---No. I don't agree with that, your Honour. I think we are looking to go around process if we get ourselves into a position where we're using legislation that is perhaps not tailor made for the set of circumstances we find ourselves in. I would have thought that using the Coroner's provisions would be seen to be going around the back way.

On the page 151 of your notes at bullet point 2 in your notes you say, "Brief of evidence in short form. Timing implications of EROI offer - my query - will be deficient. Understand need for prioritisation dated on a broad range of content." What are those words after that?---"But worry".

"But worry we are rushing"?---Yes, that's right.

"Agree EROI to progress but why supply deficient file is this fair to DPP Rolfe investigative case officers et cetera?" Now, you gave evidence a moment ago that you had formed, at least in your mind, suspicion of an offence as at 11 November. Why were you worried that you were rushing?---So after the - during the meeting with the Director of Public Prosecutions, your Honour, on the 11th, there was a discussion around what other material, if any, could the investigation team provide that might allow the director and/or his deputy to better inform themselves of the circumstance around whether or not there may or may not be prima facie evidence around criminality. This is the first time - I've certainly sought opinions and had conversations around advice previously. This is the first time I've actually had to put together a package at such short notice like this, so I was very - I was thinking to myself that they were going to have a lot to do in a short space of time and if we just - if we were able to take a little bit more time we could probably put a more comprehensive package together. The example I use would be that we wouldn't have had all the transcripts available at that time, there might have been statement that weren't potentially on our - you know, we're getting statements coming in all the time so it was kind of a moment in time, thinking, to be honest. I was thinking,

"We're in a real rush to meet a deadline, we probably don't need to be in such a rush to meet the deadline but in any event I was comfortable that the request that the Director had made of us in that, "Is there any other material you could provide" that we were able to provide some material, and as a result that was what was agreed to do.

Well who was forcing you to do it? Why were "we" - you say "we were rushing" - who was making you rush?---I don't feel as though I was under any compulsion to rush by a particular individual. I felt pressure I guess, not to charge Mr Rolfe, not to do anything out of the ordinary other than I wasn't accustomed to putting of this package, I didn't know what the format would look like, I was wrestling with how I was going to explain to my investigation team what we were actually putting together to give to the Coroner.

All right. Can I ask you to turn forward go page 157 of your notes? And it's the last pointy down the bottom, which spills into the next page but indeed it's the sentiment you see to continue:

"Me, requesting slow down of thinking around need to arrest".

Over page to 158:

"Me, accept circumstances may come to this but surely we aren't there yet.

Me: Can we find a balance even if Mr Rolfe has charges recommended but at a later time. Is he a flight risk?

Me: Better short file although deficient will only get better with more time.

Me: Need to consider if we have suitable grounds to act and perhaps it is best to await a DPP position."

Were you feeling any external pressure to rush this file?---No, well it wasn't - it wasn't a proper file, so no. The conversation which is being referred to, your Honour, where there is a game of tennis going on and you've got people around a table going, "But what if this and then that, or what about this and what about that and I think my comment was as innocuous as can be. I don't think we are in a position to have this conversation until we actually get the advice from the Director after we give him the short file." And that's largely what I was thinking and that's my recollection of that conversation.

All right. So – and I ask that you accept these notes that I'm taking you to are from the date of the arrest, 13 November. You mentioned down the bottom of page 158 your discomfort, which you've already been taken to by Mr Boe. At 1:52 pm(?) on page 159, you have your meeting with the director and deputy about the short file. Do you see that at the bottom?---Yes, your Honour, I can see that.

And there's also an indication towards the end of that paragraph, "Also discussed

possible defences and use of force justifiability/lawfulness.” Over at page 160, you’ll see down the last two entries starting at, I think, 3:34 pm. You’re in the NAB House, seated in the foyer, Level 6 with Acting Commander Dole and Superintendent Kennedy. Private meeting of senior executive including COP, is that Commissioner of Police?---Sorry, the reference to COP? Yes, that’s the Commissioner of Police.

And may I assume would that be the Commissioner of Police’s office. When you say “private meeting, were you excluded from that?---My recollection of that is that as we came into the particular floor, I’m not sure who is or isn’t familiar with it, but you come through some doors and there’s a waiting area, and myself and then Acting Commander Dole, I don’t recall – it might have been – I think it was Mr Anticich, but we were just asked to wait in the foyer and then the senior executive went off and had a conversation, so yeah.

And has anyone relayed to you what that conversation was about since?---No. No idea, sir.

Okay. And then at 3:47, there was another meeting. Present was Anticich, Murphy, White, Kennedy, Dole, Cross(?) and yourself?---Yes, I see that.

And then over the page at page 161, towards the bottom of your notes, you’ll see an entry at 4:15, “Contact Malagorski by telephone”?---Yes, I see, your Honour.

Can you see that entry?---Yes, I see

Teleconference with MN SP. Who’s ‘SP’?---Superintendent Scott Pollock.

And the next one, is that WN?---Wayne Newell.

And IC?---Isobel Cummins.

And AK?---Andrew Kren.

And you say, “Full brief provided with adding DPP advice and recommendation. State of direction had been given to effect the arrest of Rolfe with a view to charging.” Who gave you a direction to arrest and charge Constable Rolfe?---My recollection is that the words were uttered by Assistant Commissioner Anticich.

What do you mean, “words uttered”? Did he – what did he actually say to you?---So, in – there’s a discussion obviously that goes for more than just the words I’m replying to you now, but the words he used at the end of the discussion were, “Okay, we are arresting.”

All right. And then you put in your notes, “I had considered grounds basis for arrest and had formed the requisite level of belief to continue.” So, Superintendent, in the morning when you were expressing concerns about rushing and slowing down and perhaps preparing a more detailed sale, to the afternoon following a meeting, private meeting between the senior executives and then one with yourselves, at least in the

afternoon, and Assistant Commissioner Anticich directing, "We are arresting", what gave leave for the formation of a grounds for or basis of arresting Constable Rolfe. That is noted in your notes there at page 161?---I'm sorry, that was a very long question. If you wouldn't mind repeating that?

So, in the morning, you expressed concern, the morning of 13 November, about rushing?---Yes.

And we know that there is a meeting of the senior executives, including the Commissioner of Police, that you're not included in?---Yes.

And a subsequent meeting that you are included in?---Yes, that's right.

And you note here that a direction has been given to arrest Constable Rolfe by Assistant Commissioner Anticich and you say words to the effect, "All right, we are arresting"? You've then included in your notes, you had considered grounds and basis for arrest from the requisite level of belief to continue. What changed that gave you that formation of the belief from the morning?---So, this conversation occurs subsequent to the second meeting with the Director of Public Prosecutions and the Deputy Director of Public Prosecutions. So, during that second meeting – prior to that second meeting, whilst I think, I considered Mr Rolfe to have been a suspect in the offence and there was no rush. My notes phonetically are consistent with, let's await further advice from the DPP and his deputy after he's had an opportunity to assess the materials that we were providing. That had occurred. I'd been present during those deliberations, I guess, for want of a better description. And it was very clearly articulated that there was a prima facie case, at which point, I was obviously working through the material that I had and my own beliefs to see where I was sitting with it and that's basically where it ended up.

All right. So, is it your evidence that Assistant Commissioner Anticich saying, "We are arresting" afford you any additional pressure in making your decision?---No, that's right. I'm not in the business of following directions I feel are unlawful or improper and I certainly didn't do so on this occasion. Well, Superintendent, that wasn't my proposition. Why are you offering that answer? I simply asked whether you felt any pressure?---Well, I'm sorry, I misunderstood the question, your Honour. I thought that was the inference.

I just want to turn, if I can, about this approach to subject matter experts, and in particular, the New South Wales Police Force. I'm not sure if I heard your evidence right on the phone, but did you, yourself, have any direct involvement and conversations with any person from the New South Wales Police?---Yes, I believe I spoke to a fellow – I believe I spoke to the fellow from New South Wales. His name was Peter Forbutt, I believe.

All right. Now, presumably when you – and is Peter Forbutt – was he a use of force expert equivalent? Is that what he was?---He is one of the leading people in Australia, yes.

And when did that conversation occur?---I don't recall.

Was it one or two or three or more conversations?---I don't recall. I recall – what I can recall is that there was a conversation that was, I believe a conversation that had some of the senior investigative team on a speaker phone, just talking to Mr Forbutt.

Who were they?---I don't recall, sir. But it can only have been from the group that was working with me, so it can only have been from a small group. And I then recall maybe having a telephone conversation with him at some point after it had been decided he wasn't – or the New South Wales Police weren't involved. And I thanked him for taking the time to listen to us. Noting of course, he hadn't been provided with any of the materials, it was just a preliminary conversation.

Well, that was going to be my next question. Presumably, when you approach a potential expert from interstate, if not providing them materials, you give them some sort of background as to what's occurred. Did that happen in this case?---So, my recollection, your Honour, is that that conversation that was on the speaker phone was us, potentially in very succinct fashion, talking about a critical incident that occurred. A police member had discharged his firearm. Someone had died. And we were looking at the use of force review and a critical incident review more broadly. As to the specifics, sir, I don't recall him getting any of that and it was very much a conversation that was assessing whether he was – I can't even recall – actually I don't want to go any further, because I don't recall the specifics. I was going to say that we were assessing as to whether or not he, himself, would have capacity to take on the job, but we were – I don't recall that now, but I think that was what was occurring and as a result of that, we just sat and waiting while the New South Wales Police considered whether they would allow him to be involved.

Well, Superintendent, you say earlier in your answer, you were putting things very succinctly as to what happened, but now you're saying, maybe you didn't or you can't recall. Which is it?---I think I was pretty clear, your Honour. I described what the sort of conversation was, that we'd had a shooting, a police officer had discharged his firearm, someone had died and we were looking for someone with the right expertise to assess the critical incident. Well, did you tell him how many shots had been fired?---No, there was no detail. I think I recall – I just indicated that.

All right. You didn't tell him that Constable Rolfe had potentially been stabbed?---Once again, there was no detail provided, your Honour.

Well – well, Superintendent, what did you expect, in trying to retain an independent expert, if he was going to be given any detail, that his answers might be?--- Your Honour, I think we have to understand that Mr Forbutt is probably Australia's leading Critical Incident Use of Force Expert, sits on the ANZPAA, in the ANZPAA space. If you were going to ask whether they had – if you were going to question the sorts of things that I've just been asked, Mr Forbutt doesn't need all that information to know whether he can potentially make an assessment of it.

But the wash up of it is, you don't know the basis upon which they made an assessment not to help?---No, your Honour, I have no basis to understand why New South Wales Police didn't, other than the conversation we've had already today.

You were – are you aware that Detective Senior Sergeant Barram, as he was at that time, had told Andrew Kren and indeed a sentiment he repeated later to Commander Bacon that he'd preferred not to be involved?---I don't specifically recall that, your Honour, no. Sorry I don't recall that.

Did you have any conversations with Andrew Barram to that effect at all?---Not that I recall, but – no, I don't recall it. It's a long time ago.

One other question I wanted to ask you about the use of interstate experts, Superintendent. You're aware that Constable Rolfe had to seek the assistance of a retired police officer for his use of force report?---I'm aware that occurred, your Honour, yes.

And you're also aware that Constable Rolfe also had to look internationally for potential use of force assistance?---I believe that to be the case, your Honour.

I just want to turn to the topic of Andrew Barram. In an email between yourself and Commander Bacon, do you recall him expressing a concern about the use of Andrew Barram as the subject matter expert, or the use of force expert?---Possibly.

Your Honour, if I could ask the witness to be shown document 5-51. I did send through that to Ms Walz I hope she received - - -

THE CORONER: So he's been given a hard copy.

MR OFFICER: Thank you, your Honour.

Superintendent, the first page should be an email from you, 20 November 2019, to Martin Dole?---Yes I can see that.

If I can just ask you to start from the bottom of that page, which is an email from Daniel Bacon to Bruce Porter and Martin Dole. And it's 20 November 2019 at 3.13 pm.

DR DWYER: Your Honour, I just ask for a pause there.

If you just wouldn't mind identifying the document, Mr Officer, just so it can be followed properly in particular by anybody who has a claim over it. That's why we provided it in writing, rather than putting it on the screen.

MR OFFICER: It's document 5-51.

DR DWYER: Thank you.

MR OFFICER: Superintendent, you see that email from Daniel Bacon at the bottom of that page?---I see that, your Honour.

And he says:

“Hi Martin, I do not disagree with any of Bruce’s comments, it is for these reasons though that I find that he is not suitable to provide a statement on the basis that all these reasons would be – would place him in a perceived conflict of interest in relation to providing this report for Op Charwell. It perhaps could be mitigated if we were dealing with matters on a discipline level. But this matter is a criminal murder charge, and I think the less conflicts we have in place surrounding expert evidence, the better it will be for the integrity of the file. I have no issues with Senior Sergeant Barram being a conduit for an individual interstate expert to assist, and guide them as to relevant policies and procedures. But I think him providing a local report is fraught with increased risks, both to the Coronial and the criminal trial. My advice is to seek an independent interstate individual, in the first instance, with Barram to assist with local information to them only. Willing to discuss further alternative views, if alternative views still remain.”

And your reply, at the top of that page, is that it misses the mark in your respectful submission, and that Mr Bacon’s position is not correct, and that it could not be complete without any local training context. And there’s no disrespect in that comment. And there’s a few words to – to finish your email. Why did you form a different view from Commander Bacon as to the issues that he raised with you at a very early stage in this investigation about the use of Andrew Barram?---To recall those issues, your Honour, I’d need to read the whole sequence of emails in its entirety. So if I must have a – if I can just have a moment.

THE CORONER: Sure.

MR OFFICER: Sure?---So your Honour, I’m not clear from this – this sequence of correspondence what the conflicts that Mr Bacon is referring to are.

THE CORONER: In the sense that you can’t see – well it’s 20 November 2019, 3.13 email that I think you’re being asked about.

DR DWYER: And I just note that there’s a response from Superintendent Pennuto. I’ll just check that he’s got that. The response appears to be at 19.12 addressing that issue.

THE CORONER: Yes?---Yes, so I don’t – I don’t see the same issues that Mr Bacon sees. And my view accords almost – aligns very closely to the email in this sequence that is sent by Mr Bruce Porter, Assistant Commissioner Bruce Porter to Mr Martin Dole and Mr Daniel Bacon at 2.29. I’m not sure if that answers the question, your Honour, but my response, sir, would be that I don’t necessarily feel that the conflicts are well identified by Mr Bacon. But those conflicts that I think he’s referring to, which is potentially that Mr – Mr Barram is in fact in the Professional

Standards space, and may in fact be reviewing the conduct from an internal perspective. I don't think it excludes him from being the right person to have done this review. And in fact, he was taken out of that internal space and placed into this investigative space.

MR OFFICER: All right, you know that Superintendent Scott Pollock, or former Superintendent Scott Pollock well?---Yes I do sir.

And I think it's your evidence that he is very experienced?---Yes, Mr Pollock is experienced.

And was well regarded in the Coronial space by the Coroner and his deputy?---Yes I've indicated that was a discussion I was involved in.

Yes, was that an opinion you have of Scott Pollock?---Of course.

Are you aware that at a meeting on 16 April 2020, with Assistant Commissioner Anticich that Scott Pollock raised concern about tainted evidence of Andrew Barram?---I don't – don't – certainly now, I'm aware there was potentially some issues raised by Mr Pollock, in that – in the role that he had. But I don't specifically recall what you're asking of me.

How did you become aware of those concerns you just mentioned?---I honestly don't recall.

Have you been shown at all the report which was first commenced by Scott Pollock and later completed on 31 August 2021 by Commander Proctor?---Your Honour, are we referring to the final Coronial covering report?

THE CORONER: Mr Officer?

MR OFFICER: Yes, I am referring to the one that as completed by Commander Proctor on 31 August 2021?---I have seen - in very recent time I've seen some excerpts from that report but I have never had an opportunity to review the whole lot.

What excerpts were you shown?---I've recently - I have seen one that relates to, I believe, the engagement of Mr Barram, if that's what you're asking?

Yes. So were you shown the excerpts from the report in relation to investigative bias?---I believe so, sir, yes.

Well, were you shown that in preparation for your evidence today by your lawyers for example? I don't want you to tell me what you discussed but is that how you came to be shown it?---I've only seen them recently, sir, in preparation for these proceedings.

And so at page 143 of Commander Proctor's report he notes in the middle of that page and it is that document which is capital 1A could be shown to the witness, at page 143.

DR DWYER: Sorry, you will have to wait, Mr Officer, for a moment until we get that up.

MR OFFICER: No worries.

DR DWYER: Is that page 143?

MR OFFICER: 143, thank you. Is that before you yet, Superintendent?

DR DWYER: No, it's not, Mr Officer, I am sorry.

MR OFFICER: No worries, thank you.

DR DWYER: I will just give the officer my version so he can read it while we - - -

MR OFFICER: Thank you, counsel assisting, that would be helpful?---Thank you.

If you could just turn up page 143, Superintendent?---Yes, I believe so.

And I just want to take you to about .4 of the way down which you're talking about Senior Sergeant Andrew Barram and it starts at the words, "This statement played a pivotal role in the prosecution case against Constable Rolfe, and that is in relation to the firing of shots 2 and 3, do you see that part?---I can see that statement, yes.

And Barram was acutely aware that Rolfe had been charged with murder and that his opinion would form a critical component in support of the prosecution case. Now I just want to ask you in this next paragraph whether you agree with this proposition.

"In reaching in a conclusion Barram reckons materials to his statement that were outdated. There was no challenge or peer review by investigators conducted on the statement of Barram who was accepted as reliable without being subject to any scrutiny by investigators."

Now, you were in charge of the investigatory team. Do you agree with that statement by Commander Proctor?---No, I don't.

Why not?---Because the outdated materials I think that are being referred to were actually contained in the training documents, so it's a misguided statement to start with.

Well, if you read on - and this is your email on 6 January 2020 in relation to the investigation of Operation Charwell which followed a conversation you had with the Deputy Director of the DPP, Matt Nathan, and you had three bullet points there at page 143, over to page 144?---Mm mm.

I just ask you to read those three?---An independent use of force SME.

THE CORONER: Sorry, do you want them to be read out loud or to himself?
---Sorry.

MR OFFICER: Yes, read out loud please, your Honour.

THE CORONER: Well, they are on the screen here so I don't think they will need to be read out loud.

MR OFFICER: They are on the screen? If they're on the screen then that doesn't need to occur, thank you, your Honour.

You note in those three bullet points, Superintendent, in relation to the first bullet point;

"Mr Nathan expressed a view that an interstate review is necessary and you say in short, Mr Nathan identified the challenges that the prosecution might face in the event that DS Sergeant Barram was the only Australian SME that comes under hostile had taken any cross-examination. Additionally whilst there is no offence directed towards Detective Senior Sergeant Barram, his experience in the are of fatal police shootings cannot compare with those of his contemporaries".

You then say at bullet point 2:

"A very recently retired or departed use of force SME, it was Mr Nathan's view, that this is less than perfect situation from a criminal prosecution perspective and can only have credibility if the prosecution adequately demonstrate the training tactics and policy have no material changes to that SME concluded their policing career."

And you note the efforts you made with respect to NSW And then at bullet point 3,

"Mr Nathan also expressed concern from a prosecutorial setting about the use of an international expert."

Now, Superintendent, it must be when you present those three concerns to the Operation Charwell team, that you had some concern yourself about using Detective Senior Sergeant Barram in this prosecution against Constable Rolfe. Do you agree with that?---No.

Why then, at the next part of page 144 you will see Commander Proctor references;

"Commander Proctor references the response received from Commander Dole was not what Pennuto expected."

And you will note that what they had done, they'd come to an agreement not to approach another Australian jurisdiction and a decision had been made to engage Professor Alpert and you finish that by saying, "Acting Commander Dole, the DPP – I queried with Acting Commander Dole the DPP view where in discussion was something I should have been a part of, I was informed the decision had already been made." Why were you so concerned a decision had already been made to continue with Detective Senior Sergeant Barram and Professor Alpert if you had no concerns?---I wasn't concerned to the fact Mr Barram was involved, I was concerned that in seeking some - an opportunity for an audience at a joint management committee meeting to discuss my discussions with the Deputy Director, that I hadn't been afforded that opportunity,

Yes, and the Deputy Director had concerns about the use of Barram?---No, I don't - can I just have a moment to go back to that dot point, your Honour, if I can? I don't recall, your Honour, that he was concerned about the use of Andrew Barram as much as identifying the fact that we don't have a lot of police shootings in the Northern Territory thankfully, and that there are other contemporary environments throughout Australia that would have a lot more and it would be beneficial to the prosecution to have input from someone from another jurisdiction.

THE CORONER: Mr Officer, when I read this, if there is any concern expressed, and that is adopting your language, it is only that in relation to Detective Senior Sergeant Barram being the only specialist expert - there's no concern with him being an expert, there's just a question of as to whether or not another expert should also be engaged.

MR OFFICER: And then he continues to say, your Honour, that whilst he doesn't direct offence towards Barram, his experiences in the fatal police shooting cannot compare with those of his contemporaries. So - - -

THE CORONER: Sure, so that's why he is suggesting that you might want to get another expert, but he is not concerned, as I understand it, about Barram providing expert evidence. As I understand it he just considers that it might be beneficial to obtain a second expert as well.

MR OFFICER: And if that's the witness's evidence, then that's the witness's evidence.

THE CORONER: I don't know if that – I think that is the witness's evidence, but it's also a fair reading. There's absolutely nothing in those paragraphs that suggests as I read it, that there was concern on the part of the DPP of Barram being an expert witness.

MR OFFICER: And if your Honour – if the witness wishes to dispute that, then he can.

THE CORONER: Do you – do you have - - - ?---Your Honour, with all respect, you are right. So the concern was not with the fact that Mr Barram was an expert. It was – it was as you have just described.

Well that's the way I read it.

MR OFFICER: Superintendent –

Understood, your Honour.

Superintendent, if I can take you to page 146?---Yes I have that page here.

And the bottom paragraph, I'm just going to ask you whether or not you agree with what Commander Proctor states, "Detective Senior Sergeant Barram was selected to provide the critical evidence, and in reviewing the content of his first statement with evidence, he was subject to confirmation bias." Do you agree with that?---No I don't. I actually – to be honest, your Honour, I think the first few words are really quite misrepresenting the situation. That he was selected to provide the critical evidence, in my view, suggests something that isn't present. He was the most appropriate person in the Northern Territory to be engaged to review use of force in critical incidents. He had been the OIC of the Operational Safety Section of the Northern Territory Police for a number of years. I think seven – six or seven, from memory. He was contemporary with his knowledge. He had been responsible for drafting many of the training packages that were used then, and are still used now. He is responsible for policy. He was involved in ANZPAA level engagement, with contemporary's all around Australia. I can't see why Mr Proctor, with the greatest of respect to Mr Proctor, would suggest, that he was hand-picked. He was the only logical choice.

Your Honour, I wonder if the witness could be shown document 5-53. It's one I've sent to Ms Walz as well.

THE CORONER: Can you just state that number again please.

MR OFFICER: Yes, 5-53.

THE CORONER: Thanks.

MR OFFICER: Do you have that document yet, Superintendent?---Yes, sir, I have it.

And that's a memorandum dated 25 November 2019?---Yes I do sir.

Have you seen this document before?---The second half of the document I've seen sir, the bit that's – your Honour, there's two parts to this package as I'd call it, or three parts in fact, but there's an investigation plan, with the words "Operational Charwell" at the top in red. I'm a – I've seen that before. I was involved in preparation of that document. Ultimately it was signed by the Assistant

Commissioner for Crime on 26 November. The 25 November, that the memorandum we're talking about is drafted by someone other than myself. I saw for the first time, about two minutes before I gave evidence in the trial. And I didn't have a chance to read it. It was taken away from me.

Who took it away from you before the trial?---Mr Edwardson, sir.

Who gave it to you before the trial?

DR DWYER: Your Honour, this is dealt with in the trial transcript. It's clear – I've read it - - -

MR OFFICER: I'll leave it. I'll leave it. I'll leave it, your Honour, I'll leave it.

DR DWYER: - - - it's manifest on the trial transcript.

MR OFFICER: I'll leave it, your Honour. I'll just ask these questions.

Superintendent, if you can go to, on my version at least, the fourth page in, which is headed "Operation Charwell personnel list"?---Yes, I can see that, your Honour.

And you see "Criminal investigation team", and your name, Pennuto, Newall and Barram?---Yes I see that.

What did it mean by "Criminal investigation team"?---Well I didn't draft it, so I'm not sure.

I thought you said a moment ago you had a hand in drafting it?---The next page has a red heading on it. Actually - - -

(Inaudible) - - - ?---Actually before – it's possible I saw this list, but I don't – I don't recall drafting that. But I definitely recall that I'm involved in the – the red headed operation investigation plan I think it is.

All right, so is your answer you can't give an answer as to what it means by "The investigation team", which included Barram on that particular document anyway?---Yeah well certainly – certainly I can't, because he wasn't part of – yes. The answer is yes, I can't – I can't answer that.

You see at the document that you did have a hand in Operation Charwell, and I ask you to go to the second page of that document, which is Clause 2, "Mission statement"?---Yes.

And in particular, number two, "Operation Charwell has been established to provide a brief of evidence to the Director of Public Prosecution in support of the offence, as alleged against Constable Rolfe", you see that?---Yes, that's what it says.

And if you go to page 4.4 “Phases of investigation timeframe”?---Yes I see that, your Honour.

And Phase two, “Without limiting the scope of phase two, this phase will involve the implementation and use of a range of evidence gathering strategies and methodologies designed to support the Coronial process, whilst also supporting and creating opportunities for the acquisition of evidential material suitable for use in criminal court of competent jurisdiction”?---Yes I see that.

And if you can go back to the Proctor Report, at page 147. You attended a visit to Yuendumu on 5 December 2019, which included Andrew Barram?---Yes that’s correct.

What did you do? There was a community meeting was there?---I’m sorry, sir, I didn’t hear what you said.

Was there a community meeting?---There was a meeting between Mr Dole and Mr Anticich and a number of persons from that community, yes.

Was Andrew Barram there?---For about two minutes. Mr Barram and I were trying to get access to the crime scene. And the people who had organised – who we’d organised to be available to ask to give us access had decided to go to Alice Springs for the day. So Mr Barram and I couldn’t complete our duties. We were off to the side of this particular gathering. Mr Barram had – my recollection Mr Barram was hardly even in the room. He may have been in the room, but he was hardly ever in the room.

So is my perception wrong of that Operation Charwell document when it talks about finding the material to support the criminal prosecution against Constable – (inaudible) that?

THE CORONER: I think you broke up there a little bit, Mr Officer, if you could repeat that question.

MR OFFICER: I’ll ask –

Thank you, your Honour.

In the Operation Charwell document that I took you to, where the mission statement refers to providing brief of evidence in support of the offence, is my interpretation wrong that you’re only trying to find evidence that will make out the prosecution against Constable Rolfe?---Your interpretation is wrong. It is very - - -

(Inaudible)?---It is common place to – it is common – it is more common that people are charged with offences such as murder shortly after the event, and the investigation continues, so during the course of that investigation, you are seeking to find additional materials that might support the prosecution case. It is not the case that you are charging, and then trying to find evidence that make out the case.

But you were certainly keeping an open mind?---Of course I was.

Can I just –

I'm almost finished, your Honour.

THE CORONER: Yes.

MR OFFICER: At page 147 of the Proctor Report. I just wanted to ask whether you agree with what Commander Proctor says. And he talks about the Yuendumu visit. And he talks about Professor Alpert who gave an opinion very similar to Mr Barram.

“In light of this, it is difficult to accept that either Barram or Alpert could claim their neutrality as an expert. Barram was firmly ensconced with the investigation team. And Alpert was contracted to provide evidence by the NTPOL executives who formed part of the Operation Charwell investigation, and who are approved his collection, and in contrary to the advice of the DPP, not surprisingly, both Barram and Alpert provided identical opinions, given access to the same restricted information.”

Do you agree with what Commander Proctor states there?

DR DWYER: Is that – I object. There's just a number of different things that Commander Proctor states there. So what is it that Mr - - -

MR OFFICER: I'll break it down.

DR DWYER: Thank you.

MR OFFICER: Do you accept that Mr Barram could not claim neutrality as an expert?---No I don't agree with that, your Honour. Mr Barram was - - -

Do you accept that he was – sorry?---Well I'm happy to take that question if you wish to ask.

I'll let you finish, yes?---So Mr Barram was not located – co-located with the investigation team properly, he was outside of that environment. And very – very shortly after he had been brought into the investigation as a consultant, I might add, I sent him a piece of correspondence which clearly articulated that his role was to be a consultant and that he could access any materials he wanted. He could draw any conclusions he wanted. They were all a matter for him. So, there was no influence from the investigation aspect into what he was ultimately assessing; that was his purview. As for the engagement of Professor Albert, is that the second question?

Yes?---Would you like to ask it again, sir, so I'm clear what you're asking of me?

Yes. So, do you agree with Commander Proctor when he says that Barram was

firmly ensconced to the investigation team?---No, I don't agree with that at all.

And do you agree with Commander Proctor about it was contracted to provide evidence by the police executives who formed part of the investigation and approved his selection contrary to advice from the DPP?---So, your Honour, I think that question has a number of parts also. The first part is that Mr Alpert's engagement cannot occur other than through the process that we go through. But Mr Alpert was not engaged to conduct his review to arrive at a particular conclusion. He is an internationally renowned expert, regardless of whether or not he has to be paid for his time to review the materials and the events, whatever conclusion he reaches, I would suggest that it would be foolhardy for him to arrive at a position that wasn't a position he felt was right, rather than the – an investigator or an investigation team were trying to achieve. And I would dispute the fact that he did that.

Just one last question, your Honour.

Completely different topic, Superintendent. You interviewed Claudio Campagnaro during the investigation?---Yes, I did, your Honour.

How did you come to receive the information which led to you interviewing her?--- There was a – this is a long time ago. There was, I believe, some information that came through a member of the tactical response group who had been in Yuendumu shortly after the events of the shooting. That information – I don't recall specifically, but that information filtered through to my team.

THE CORONER: That's the end of the answer, Mr Officer.

MR OFFICER: That's the end of the answer? Thank you, your Honour. That's the end of my questions, thank you.

THE CORONER: Yes. I note the time.

We will return at 2 o'clock.

WITNESS WITHDREW

ADJOURNED

RESUMED

KIRK JOSEPH PENNUTO:

DR DWYER: Your Honour, before my friends resume, with the assistance of Ms Lau from the Northern Territory Police, we're going to replace ultimately the notes that Officer Pennuto has completed with a version that is chronologically in order so that they're easier for everybody to read. I can't do that immediately - - -

THE CORONER: Great.

DR DWYER: - - - but we will do that eventually.

THE CORONER: Thank you.

Yes, Dr Freckelton.

MR FRECKELTON AO KC: Your Honour, we've been served during the lunchbreak of an additional statement made by Mr Pollock. For our part, we haven't had an opportunity even fully to read it as yet. It's really refers mostly to issues to Mr Anticich. There are some matters - - -

MR OFFICER: Almost exclusively, your Honour.

MR FRECKELTON: Well, also we have some notifications for the witnesses in the box.

MR OFFICER: All right.

MR FRECKELTON: And I need to get instructions from him about all those matters. I don't want to do this, but I am going to have to ask your Honour to stand the matter down for 15 minutes. We should be (inaudible) at that time.

DR DWYER: Could I just ask if Dr Freckelton – I wonder if we might proceed. This may or may not be acceptable. If we might proceed, we've got a number of counsel who have questions before then, including Mr Casselden, who will be some time. And then it might coincide nicely with the afternoon break.

MR FRECKELTON: Yes.

THE CORONER: Sure.

MR OFFICER: That will be fine. I rather thought, your Honour, there's nothing particularly controversial in the statement that has just been served - - -

THE CORONER: Yes, sure.

MR FRECKELTON: - - - with the greatest of respect of my learned friend.

THE CORONER: Well, it might not be - - -

MR FRECKELTON: Well, to refer to it as controversial, your Honour, that's just completely wrong.

MR OFFICER: For this witness?

MR FRECKELTON: And it would - - -

THE CORONER: Anyway, we'll try and – we'll see if we can do it in the break.

MR FRECKELTON: Yes, that will be fine. Thank you, your Honour.

THE CORONER: So, who is next?

MR O'BRYAN: I think it's up to me, your Honour.

THE CORONER: Yes.

XXN BY MR O'BRYAN:

MR O'BRYAN: Superintendent, my name is Conor O'Bryan, and I'm appearing for the Parumpurru Committee which is a justice committee from Yuendumu. They are the Elders from Yuendumu. A short time ago in response to some questions from Mr Boulten, you said that Constable Rolfe effected the arrest differently to how you would expect or have seen other bush cops effect arrests. Do you recall that?---Yes. Yes, sorry.

And at that time, you were, as I understood it, critical of the way the arrest of Kumanjayi Walker had been effected. Is that accurate?---Yes.

And one of the examples of the criticism that you gave was the fact that the arrest had been effected at the time of day. It had been in the evening rather than early in the morning. Do you recall that?---I do, your Honour, but it wasn't specifically a comment about the time of day being wrong when it occurred. It's just that there were better opportunities to manage the risk.

And Superintendent, that's just what I'd like to clarify with you. What other elements or features of the arrest are you critical of?---My view is, having identified, this much in simple fashion, my view is that, having identified a person inside the residence in question, that there were sufficient resources available to the officers involved in or intent on effecting that arrest, including a dog and other officers who were nearby at a police station, they could have adequately put in place strategies that would have allowed a negotiated result, rather than them having to enter the dwelling and effect an arrest.

So, that is, the haste with which the house was entered?---I think there needed to be

a greater appreciation of risk and that the officers involved having the information they did, most likely should have recognised that there was risk associated with the plan that they clearly ended up going with.

Are you critical of the adequacy and the permission that was sought to enter the process?---I am, sir.

And are you critical of the way in which the fence was jumped rather than entry through a gate, for instance?---It was unusual, yes.

And are you critical of the way that weapons were carried through this process?---Yes, I was.

And are you critical of the way that community members were spoken to through this process?---I'm – I think I would need a specific example to respond to that question.

For example, we have evidence before the Coroner, an interaction with Constable Eberl with the broader community outside the house. Do you recall that?---I do now, yes.

And are you critical of the way that community member in question is spoken to at that point?---Not an ideal way to have a conversation, I would have thought.

Thank you.

They're my questions, your Honour.

THE CORONER: Thank you. Any other questions.

Mr Casselden.

MR CASSELDEN: Yes.

DR DWYER: Sally, were you going to - - -

MS OZOLINS: No, thank you, your Honour. I did indicate I had some questions, but they've been answered - - -

THE CORONER: Thank you.

MS OZOLINS: - - - through previous counsel.

THE CORONER: Yes.

MR CASSELDEN: Thank you, your Honour.

XXN BY MR CASSELDEN:

MR CASSELDEN: Superintendent, my name is Casselden. My appear for Mr Pollock, the former superintendent. If we go back in time to that period shortly after the incident, you've given evidence today that you were appointed as the commissioned officer in charge of the criminal investigation and shortly thereafter, Superintendent Pollock was appointed as the commissioned officer in charge of the crime investigation. Do you accept that?---Yes, sir.

And did you come to learn shortly after Superintendent Pollock had been appointed as the commissioned officer in charge of the Coronial investigation that the Coroner had indicated that he wanted a gold standard investigation?---I've heard that term, yes, sir.

And did that term filter down to you from either Assistant Commissioner Anticich or Commander Dole?---I'm not sure, sir. I definitely have heard the term "gold standard".

And did you come to learn in those early weeks following the incident that the criminal investigation was just part of a much larger Coronial investigation?---Your Honour, I believe them to be their own entities, but clearly, the criminal investigation would service, in part at least, the Coronial aspect.

And do you accept, if one has regard to the Major Crime Instruction and the general order for deaths in custody, that the Coronial investigation ought take (inaudible)?---The answer is, quite possibly that that is right, however, I think it requires some qualification.

Right, well, let's just deal with that in turn if we may. I take it by the time of your appointment or shortly after your appointment, you reviewed the Major Crime Instruction?---Yes, I did do that.

And do you agree with me that – if you need a copy, please say so and I'll have one made available, but one has regard to Clause 24 of the Major Crime Instruction, do you accept that it states in very clear terms "A death in custody may also involve a criminal investigation, in such circumstances consideration needs to be given to the accuracy of the criminal investigation to ensure that it complements, and does not impede, and custody based investigation"?---That's what it says, sir, yes.

And do you accept that when one has regard to that clear instruction in the Major Crime Instruction, having regard to the express language of the death in custody General Order, that the Coronial investigation wants to take (inaudible)?---Based on what you've read, sir, that's the way it reads, yes.

And did you in practise adhere to that throughout your investigation, throughout 2019 and 2020?---I don't understand the question to be honest, your Honour.

I withdraw that. As part of your criminal investigation, were you tasked to obtain statements commissioned officers, in relation to critical response decision

making?---I had one conversation with the deputy Coroner that I can recall, Mr Kelvin Currie I believe. With another police officer who was present, and there were some questions asked about the timing of obtaining certain statements. And some of which were from the senior executive officers, your Honour. I recall that conversation. As to your use of the term “tasked”, I don’t necessarily recall that.

Did it fall to you, as part of your investigation, as the commissioned officer in charge of the criminal investigation, that you were required to obtain statements from commissioned officers in relation to critical response decisions?---I would say no, and the answer to that is on the basis, your Honour, that there were clearly, by this stage, two unique entities in existence. One of which had a focus on the criminal context that we found ourselves in. And one that didn’t, had a further purview, and my view was then, and remains now, that those statements to which you refer, were statements that could have been obtained by the other half of this particular – the other entity.

Were you, Superintendent Pennuto, responsible for drafting briefing notes, if need be, please say so if you need it, but I want to read briefing note number four. Which is under your hand.

THE CORONER: You’ll need to give us a brief reference number.

MR CASSELDEN: (Inaudible). Briefing note number four. It’s dated 22 November 2019.

And I’ll just – whilst that’s being brought up to be tendered, I’ll just read what you’ve written in that briefing note, which I want you to assume went to a joint management committee.

DR DWYER: I’m just going to provide that by way of a soft copy to the witness, because there are just restrictions on some of those documents.

MR CASSELDEN: And I’m going to take you, Superintendent, to the second page of that briefing note, towards the top of the page, under the heading “Police statements.” And do you see there - - -

THE CORONER: Sorry, can I get the reference – the brief reference number please.

DR DWYER: Five seven.

THE CORONER: Thank you.

MR CASSELDEN: And have you had the opportunity to read that section, Superintendent?---I don’t see the section you’re referring to.

Have you got page 2? Heading “Police statements”, second paragraph under the heading. Reads as follows, “The only” – sorry I withdraw that. “The obtaining of

commissioned officers statements, as they relate to critical response decision making is currently being progressed with a plan to commence interviews over the coming weeks". And do you accept now that you were tasked - - - ?---I'm sorry, sir, but the document you're referring to is not the document I'm looking at.

Briefing note number four?

THE CORONER: There may be a number of briefing notes called number four, Mr Casselden. That's why we're trying to get the - - -

DR DWYER: With the ONT or JNT?

THE WITNESS: Yeah, the document that is being referred to, your Honour, is not something that came from our investigation.

DR DWYER: Just give me one moment.

MR CASSELDEN: I'll just have the document shown to you, Superintendent?---Of course sir.

THE CORONER: Is there a – is there a brief reference?

DR DWYER: Not on this document, your Honour. If you could just excuse my back for one moment.

MR CASSELDEN: If it may assist, for those who have access to the electronic brief, it may be annexed to the (inaudible) minutes meeting number one, dated 22 November 2019.

DR DWYER: It's 5-13.

MR CASSELDEN: Perhaps the witness could be shown it (inaudible).

THE CORONER: I'm also trying to find it though.

MR CASSELDEN: I'm terribly sorry.

THE CORONER: That's all right.

DR DWYER: Just for the record, it's Operation Charwell, and then the date and time it's issued is 12.45 hours, 22 November 2019. It's got the name of Officer Pennuto at the end, but not signed.

THE CORONER: So do we think it's 5-13 JMC OP Charwell?

DR DWYER: No, your Honour.

MR MCMAHON AC SC: Whilst all this is going on, can I just express a concern, since my late arrival back from lunch, I've just received a copy of the statement made by Mr Pollock today. And it deals with the issues that Mr Casselden was raising with the witness. So I'm reading it now and - - -

THE CORONER: Dr Freckelton's mentioned that as well, just before you came in.

MR MCMAHON: (Inaudible), sorry about this.

THE CORONER: No, no that's okay. He's going to try and deal with it over the 15-minute afternoon adjournment.

MR MCMAHON: Yes, okay.

THE CORONER: And if you need to return to some examination, I'll allow you, if there's something arising?---I have the document now, your Honour.

DR DWYER: Unfortunately we don't.

THE WITNESS: I'm sorry.

DR DWYER: Sorry.

THE CORONER: In any event, if we can identify that, because I'm not – I don't believe I have a copy of that document. I have a number of briefing notes, which I think it's from this series, but the first one that I've got starts with briefing note number five, and you're referring to briefing number note four aren't you?

MR CASSELDEN: It's headed number four, and it's dated 22 November.

THE CORONER: But if you've got the document, you've got a copy of the document, so I'll allow you to continue, and hopefully we can identify those - - -

MR CASSELDEN: (Inaudible) document to be marked for identification, if it assists, your Honour.

Superintendent, have you had an opportunity to read that section that I read to you a short moment ago?---Yes I have.

And does that now ring any bells that you were tasked, or directed, or undertook, to obtain statements from commissioned officers in relation to critical response decision making?---And so I wasn't.

In your investigation?---So I was never tasked. That's not the right use of the word.

What word would you use?---I would say that as part of the investigation, you're assessing all of the statements that potentially are required, and you're looking at prioritising those – obtaining those statements. The statements of commissioned

officers who were not involved in the actual events on the ground, at that particular time, in my view, did not necessitate me to progress them as the priority. They are something that we would have gotten to in time.

I wasn't suggesting that you were going to do it there and then, shortly after 22 November. But I was just simply putting to you as a proposition, that as part of the many things that you were undertaking as part of your investigation, one of those included taking statements from senior police, commissioned officers, in relation to critical response decision making. Do you accept that?---No I don't. I accept that what I would be doing would be taking statements that are relevant to the criminal aspect of the investigation.

DR DWYER: Can I indicate, that document is at 5-17 of the brief.

MR CASSELDEN: I am indebted. Can I have that copy returned please. Did you come to learn as you conducted your investigation into 2020 that one of the issues of concern to the Coroner was as part of a Coronial investigation, was to examine senior police involvement in the lead-up to Kumanjaya Walker's death and post it?---Yes, sir.

That is to say that the Coroner wished to explore all facets of police involvement leading up to the incident and police involvement following the incident?---I believe so sir.

You mentioned in answer to some questions earlier from Mr Boulten of Senior Counsel, that the parallel investigation - that is your criminal investigation and Superintendent Pollock's Coronial investigation from time to time created challenges?---Yes, that did occur, your Honour.

And was that one of the challenges to which you referred, Coronial investigators looking into senior police involvement post the death of Kumanjaya Walker?---No, that wasn't a challenge. Had I had ownership of that aspect I would've looked into it myself. The issue for me was that they were not statement I felt were a priority for me so I had no issue getting those statements. It just wasn't a priority.

And by "those statements" are you referring to Senior executive officers?---Yes, that's correct.

From the rank of superintendent and above?---Yes, sir.

And because the purpose of those statements when you came to get them or in fact did get them, was that to ensure that there were no gaps in their critical decision making that may not have been recorded into the electronic files held by NT Police?---That would be the intent of obtaining those statements.

Now, Mr Officer asked you about an Interaction that Superintendent Pollock had with Assistant Commissioner Anticich on 16 April 2020 and it was put to you in general terms that at that meeting Superintendent Pollock raised some concerns around

Detective Senior Sergeant Barram's expert opinion. Do you recall that?---I recall that

Recall that question?---Yes, sir.

Do you have any recollections of that, from around mid-April to towards the middle of May, any senior officer discussing with you concerns raised by the crime investigators in relation to Detective Senior Sergeant Barram's expert opinion?
---No, I don't recall.

Do you yourself, in that same period of time, mid-April to mid-May 2020, have any recollection of you yourself, Superintendent, raising with any senior officer, that is officer above your rank of superintendent, of concerns you may have held in relation to what the criminal investigation - I withdraw that - what the Coronial investigators were doing in relation to their investigation, vis a vis (inaudible)?---There were conversations around - there were conversations around the fact that there were challenges trying to work in unison in a complementary fashion, as you have indicated earlier. I don't recall - no, I would concede that there were challenges and they might have been discussed but I don't recall specifically in response to the question as you phrased it.

Well, in that window, give or take a week or so, any discussions between yourself and any senior ranked officer in relation to why it was the Coronial investigators on behalf of the Coroner were looking at or were interested in matters that occurred after Kumanjayi's death or passing?---What dates are - what date did you say?

Mid-April to mid-May?---May I have a moment, your Honour?

THE CORONER: Sure.

MR CASSELDEN: Can I just ask what you're looking at Superintendent?---My diaries.

Thank you?---In the absence of having time to read all my notes beyond that date, so I just don't recall.

Could Superintendent Pennuto be provided with a copy of Superintendent Morgan's statement?

DR DWYER: Certainly.

MR CASSELDEN: Superintendent, work your way towards the back of the statement until you come to a mention that's marked "LM07", it's an email from yourself to Lee Morgan, it's dated 27 April 2020. It takes up half a page, as (inaudible) the other half?---27 April, sir?

27 April, yes?---Yes.

And do you see there it's an email, a responsive email from you addressed to Lee Morgan and do you see at the end of that, that email you say, "Following to that ending it would be helpful if you can consider to provide the following advice, one of the Coronial's specific issues do you want addressed arising directly from criminal investigation to the arrest of Mr Rolfe occurred on 13 November 2019, how far do you want that to go? Any non-specific issues of relevance are there at that time are of interest to your investigation". Do you see that?---Yes, I see that.

Again, if you could then please Superintendent, turn to the next page which is LN08 and you can see there a further email, this time from Lee Morgan to yourself dated 28 April 2020 a 0845?---Yes, I see that.

And take a moment please to read that quietly to yourself?---Yes, I understand what is - I understand the content.

Now, after you received that email firstly did you have any discussions with Commander Dole in relation to the contents of that email?---Not to my recollection but it's possible but I just don't recall it.

Do you recall whether or not you forwarded that on to Commander Dole or?---No, I don't sir.

When you received that email did it cause you any concern as to why it was that Detective Senior Sergeant Morgan at that time was asking a series of questions that related to matters that occurred after Kumanjayi Walker's passing?---No, I think they were fair questions. I don't recall specifically whether I took issue at the time but I don't - as I read them it doesn't really cause me any alarm. They are questions I would be happy to answer if I had the opportunity.

When did you see to be the commissioned officer-in-charge of a criminal investigation, Superintendent?---I think it was, as I said, your Honour, about approximately 12 months after the event, approximately.

And at any time, whilst you were the commissioned officer in charge of the criminal investigation, was it raised with you, by senior members in the Northern Territory Police, concerns that they may have held in relation to the criminal – I withdraw that. The Coronial investigation taking an interest in matters that occurred post Kumanjayi Walker's passing?---Possibly is the answer to that. I'd have a recollection of – I do have a recollection, and I don't recall any – I don't know where I heard that, or have had that conversation. But it's possible, because I – that's not unfamiliar to me.

Can you be specific please, Superintendent?---Not off hand sir.

Were there any concerns raised in that 12 month period that you were the original officer in charge of the criminal investigation, concerns that the Coronial investigation, may in some way, undermine the criminal investigation, or prosecution case?---I have a recollection of being involved in a meeting at some point. And

I don't recall, it may have even been chaired at Deputy Commissioner or Commissioner level. I recall that Mr Morgan was present at that meeting, as I was. And I think – my recollection is that there was a – I don't even know what the right terms are. It was – there was a conversation in that meeting, or that meeting was I think around these issues, potentially, but I just don't recall what the conversation was.

Can you recall who was raising concern?---At the meeting? No.

Was it Commander Dole?---As I said, your Honour, I – I recall there's a meeting. I don't – I can say Mr Morgan was there. I believe that to be the case, but I just don't recall who else was around the table. They were senior police officers.

Was Assistant Commissioner Anticich at that meeting, Superintendent?---Possibly.

Your direct report was Commander Dole was it not, at that point in time?---Yes, that's right.

And the relevant Assistant Commissioner was at that time, I'll suggest Assistant Commissioner Anticich, correct?---Yes, that's right.

And when was this meeting?---I have no idea.

And at that meeting, what were the concerns that were raised in relation to the Coronial investigation potentially undermining any criminal investigation prosecution?---Again, I come back to that, I don't specifically recall that there was anything that I can give in detail. And I can only speak in generalities, your Honour, and I recall there was a meeting. And there were some high level police there, and I remember Mr Morgan distinctly. And it's likely that the people you're talking about were present. However, I just don't recall the detail.

Wasn't there a discussion about suspending the Coronial investigation to enable a criminal investigation to run its course?---I don't recall that.

Was there a discussion about changing the structure of the Coronial investigation, by putting in a commander between the commissioned officer in charge of the Coronial investigation?---I was never party to any conversation about that, to my recollection.

Was it discussed at this meeting, concerns that may have been held by other members at the meeting, about how often Superintendent Pollock would have contact with the office of the Coroner?---No I have no recollection of that.

Thank you, your Honour.

THE CORONER: Any other questions, other than Mr – Dr Freckelton? Then should we take the afternoon adjournment for 15 to 20 minutes, Dr Freckelton.

DR DWYER: Your Honour, might we just have 15 minutes. And I just have to indicate, we have to get through the witnesses this week. So with respect to the next witness, Officer Dole, we might have to return to stop watch orders.

THE CORONER: Sure, we'll adjourn for 15 minutes.

WITNESS WITHDREW

ADJOURNED

RESUMED

KIRK JOSEPH PENNUTO:

THE CORONER: Please be seated.

Dr Freckelton.

MR FRECKELTON: Thank you, your Honour, that time was helpful.

XXN BY MR FRECKELTON:

MR FRECKELTON: Superintendent, I'd like to return to the sequence of your major involvement in the early phase please. I think you've said to her Honour that your appointment as senior officer in charge of the criminal investigation was at about 7.30 am on the morning of the Sunday the 10th, is that right?---Yes, your Honour.

And who was it who informed you of your new role?---I received a telephone call from Commander Dole.

Prior to that stage, 7.30 in the morning, did you know much about what had happened the night before?---Hardly anything.

All right. So did you, at that stage, set about informing yourself as to the events of the night before, as best you could be told?---As much as I could, yes.

And did that in short, take you a few hours?---Yes.

And did you speak to a number of different people?---Yes I did.

Do you remember in – just roughly whom you spoke to?---I had conversations with Mark Malagorski, Detective Senior Sergeant. I think I spoke to Mark Grieve, a Detective Acting Senior Sergeant, then in charge of Major Crime. I believe I may have had a conversation with Mr Philips at some stage during that day, who was based in Alice Springs.

Yes?---And possibly a number of other conversations, but I don't specifically recall.

And were you made aware that various members of the IRT, and others, were spoken to, around and about 3 o'clock in the morning on the Sunday?---I did become aware of that, yes.

You've told her Honour that you were able to view the video at, just after 3 o'clock on that Sunday morning, is that right?---Three o'clock on the Sunday afternoon.

Afternoon, beg your pardon. And why did it take that amount of time for you to be able to see the footage?---As I recall the – the ability to view the vision was not – was not possible, until such time as the officers had returned from Yuendumu, back

to Alice Springs. And that the cameras obviously needed to be downloaded. So that took some time, as I understand it.

Yes. All right, so on the basis of that, it's a fair description that you became troubled about whether the force that had been used, the discharging of the firearm, had been appropriate in the circumstances, and wanted to think about it further and inform yourself more about it?---Yes, that's right, your Honour.

Now you – there was a JMC at just after 5 o'clock that afternoon, is that right?---Yes, that's right.

And what – that was referred to as an IMT at that stage, is that right?---I think – there was a confusion around the acronyms, I believe that it might have been Assistant Commissioner Anticich who was referring to as an IMC or similar. But the meeting was a JMC, a Joint Management Committee meeting.

Right, what was the purpose of it?---It was the first – that Sunday afternoon, that was the first meeting, your Honour, we had as – as a group where – it was an investigations group. Myself and Mr Malagorski for example, had our first opportunity to speak to the senior executives who would be sitting on that committee about the events of the previous night.

So it was the first opportunity to speak to them about it, what were you – what's the purpose of such a gathering?---So the JMC is constructed of usually senior officers, your Honour, who come from different areas of the agency. Depending on what the actual matter is, and where it occurs, will sometimes dictate whose there. It would usually comprise of the Assistant Commissioner Crime, the Commander Crime, the Senior Investigating Officer, it might in this case obviously include a representation from the Professional Standards Command. It would also potentially have – there may be scope, potentially, for the Regional Assistant Commissioner, which would be the Alice Springs based Assistant Commissioner or their delegate to be involved. And it's a – generally it's a high-level decision-making body.

Now is it a body that gives you orders, or instructions, or does it have another (inaudible)?---No, in my experience, it's seldom that they would give you instructions.

All right. Is it an opportunity to – to raise issues, get feedback and informal guidance from senior colleagues?---And so I have – I have used it in that way many times in the past. And in this particular occasion on that night, I did in fact use it as a sounding board to – obviously I had, by that stage, decided that it wasn't going to be a conversation with Mr Rolfe just yet.

Yes?---So I used that forum as a sounding board to say, here is what I've got, at this point in time, and what we're working with. And from memory I – I recall perhaps I had a – a section of the body-worn video I think from memory we had, and that group was given an opportunity to view it, so that they themselves knew what we were dealing with.

And had some members of that group not seen it as yet?---I would think that's correct.

And did they give you some feedback in terms of their impressions and where the issues lay, so far as they were concerned?---Yes.

Now you have – if you could turn to page 145 of your notes please. I think you record your memory of what took place there. Did you take these notes contemporaneously, or a little bit after the - - - ?---No I don't recall there was at the time, your Honour, but it's – as you – as you're well aware by now, I make notes as close to as – as close to the event as possible, whilst contemporaneous in my mind.

And you indicate in there, about half way down, "Rolfe conversation to be delayed, likely under caution", and I think there's a question mark there?---Yes that's correct, your Honour.

Is that your thinking on the basis of the feedback you got from the IMT? The JMT, the JMT?---JMC, your Honour.

JMC, beg your pardon. Is that representative of - - - ?---So it's representative of my thinking, and as a result of the meeting, supported by that group.

And you – immediately under there, you refer to ICAC. What was the role of ICAC in relation to what you were doing?---We have to go back in time to be able to give it context I think, your Honour. As ICAC was still in the Northern Territory quite a fledgling, or very much an agency in its infancy. They were still trying to find their feet. I know that they would be giving briefings via Professional Standards Command as to any items that they thought fell into the misconduct space. And of course they had, ultimately, where they were making sure that the investigation itself had the relevant integrity over it. So that was – that was the reference there.

And Rolfe and Eberl were to be offered administrative leave for their welfare, and if they do return to work, they're to be given administrative duties. Is that the - - - ?---I wrote that down, yes.

Now let's go over to the next morning if you wouldn't mind. There's a meeting with the DPP, involving a number of personnel, is that right?---Yes, your Honour, that's true.

Could you tell her Honour when that was and where it is in your notes?---So, your Honour, that conversation is referenced at page 147 at 12:09 pm. And so, in short, the director, himself, was there and Mr Anticich, Mr Dole?---That's correct.

And the director was shown the body-worn footage at that stage?---He viewed the footage.

From both angles?---Yes, he viewed the footage.

And do you record in there what the director's preliminary view was at that point?---I do.

Would you tell her Honour what that is, please?---“The director made a comment, ‘you’ve got a criminal prosecution and at face value, it looks like it might be a murder. It is a trial, in my preliminary view, sadly’.”

And then at least he gives you guidance as to what should happen in terms of interview, namely under caution definitely. Is that right?---That's right.

Now, the director, rather than making any definitive decision about charging on the spot, made a request of you. Is that right?---Yes.

And just tell her Honour what that was?---So, obviously, the vision is what the vision is, your Honour, but it's just one aspect of what had been collected to that point. And there were other things that were obviously of relevance, such as the statements that have been obtained from the IRT team members down there.

Yes?---And the personnel at Yuendumu, amongst other things. And the director was asking, well I've seen the vision, but what else is there that I might go and have a look at that might assist me in what I think you might be dealing with, for want of a better description.

Yes. And so, did the director ask for what he termed “the short file”?---The term “short file” is mine.

Is it?---I apologise for the confusion caused. I didn't know what to call the package we were giving them, because I didn't consider it an opinion file.

Yes, could you distinguish what you mean by those two expressions, please?---Well, an opinion file, in my mind, your Honour, would be something of a – it would be a package akin to a complete investigation which has a report across the front of it that indicates that this is what it's progressed to, where we've progressed to and we're now seeking guidance as to whether or not we have a case and whether or not there's, you know, the DPP guidelines of the prosecution are met. In this particular case, that was not my thinking at that time. As I recall, my thinking was that we weren't offering up an opinion file, we were offering – we were actually asking for confirmation that, I guess, what I was seeing and what others were seeing, they were seeing, and that we were potentially dealing with a criminal offence was there and at what level? Was it a prima facie case?

Right?---So, it was a – it was never going to be a complete package. It was a, what else do you have that I might be able to consider - - -

Yes?--- - - - to determine whether or not I have that view.

So, if we say that it's a truncated version of an opinion file to enable the director to make a decision about the liability with the charging. Is that accurate?---It was

definitely - - -

THE CORONER: Why would you give it another name, other than simply what has already been called a short file?

MR FRECKELTON: That is - was that question to me, your Honour?

THE CORONER: Yes.

MR FRECKELTON: Okay.

THE CORONER: Sorry, Dr Freckelton. I just don't think - - -

MR FRECKELTON: No, look, no - - -

THE CORONER: - - - it's helpful to give it another label.

MR FRECKELTON: Yes, well, I don't want to give another label. I'm wanting your Honour to understand what this witness meant by a short file in the circumstances.

THE CORONER: I think I understood it.

MR FRECKELTON: You've got it.

THE CORONER: It's very different from an opinion file.

MR FRECKELTON: That's right.

Now, were you comfortable in providing that short file to the director to express his opinion about what should happen next?---Well, it was an unusual situation. It's not one I'd found myself in previously. I wrestled a little bit with what we were actually going to present and how we were going to present it, to be fair.

Yes?---But I felt that the – any info – look ultimately, any information that we could provide to the director to assist him at his request, we were going to try and support.

Did you brief the deputy Coroner about the situation that same day?---Yes, your Honour, I spoke to the deputy Coroner that day.

And on the next day, was there another JMC, namely the 12th, on Tuesday?---Yes.

And was that at 8:48 in the morning?---Yes.

And also, was there a particular purpose for that change seem to be convenient?---I just don't remember.

All right. And what was the outcome from it?---Well, there were a number of outcomes, mostly that related to the progress of the investigation and the way that it

was to be, or going to be, progressed.

Yes?---Such as – I've got some dot points there which we've discussed a couple of.

151?---Yes, that's right. At the start of 151, talking about, you know, having now had that first meeting with the director, your Honour, I was talking to things like, we need to – if we're going to get a version of events from Mr Rolfe, we need to do that at the earliest possible time. We were talking about those sorts of issues.

Yes. And was Mr Rolfe a suspect of DPP seeking criminal charges?---At this particular point in time, my view would be that he was a suspect, because we'd had our first consultation during which the director had expressed quite a strong view.

Yes, all right. And you explained in your second dot point, the brief of evidence in shortform?---Yes.

And the content of it and ramifications of it. Is that right?---That's right. It also talked about the post-mortem being conducted. We were talking about the fact that there were people on the body-worn video at Yuendumu that we still needed to identify. It was, at this particular – I think it's probably best to say at this particular time, the JMC is not a particularly refined beast. We're still working through a lot of preliminary information to identify where I want to be able to take that next meeting and things like that. So, it's kind of shedding the stuff as you go and working on the priorities.

Yes. And just going a little bit further along in the morning, by 11:08, this is on page 154, you spoke to Mr Grieve. Is that right?---Yes, I did.

And he had been in contact with Mr Officer over representing Mr Rolfe and the information at that point was that Mr Rolfe didn't want to participate?---Yes

And was meant to be under caution?---Yes.

All right. Now, was it – on this day as well, the 12th, the Tuesday that Mr Rolfe travelled to Darwin. I think it was in the afternoon?---I believe so, sir. I actually don't know.

That's all right. Let's move over to the next day then, there was another meeting at 9:12 which you will see referred to at page 157 of your notes?---Yes.

Now, this wasn't JMC, I don't think, was it? This is just yourself – I beg your pardon. Yes, yourself, Mr Pollock and Mr Malagorski?---That's right, sir.

And was the deputy Coroner present at that?---No, sir.

Because you refer to him on the third line of your notes there?---Yes, yes.

That was in relation to matters that he raised already with your

colleagues?---I believe so, that's right. In the normal course of events, the Coroner would be the one who would be managing that media engagement, I guess, for want of a better description. And I think that the conversation with Mr Pollock was that it had been shared with him that perhaps some of the police who'd made comments in the media shouldn't have made comments at the time they did.

You record a meeting with Mr White, Mr Anticich and Mr Dole at 10:24?---Yes.

And at that point, you informed them that the DPP is recommending a serious criminal charge. Is that right? Maybe I'll withdraw that. It's a meeting amongst the four of you and you raise a number of possibilities, including that the DPP may recommend a criminal charge on review to the short file. Correct?---So, this is the – yes, your Honour, this is that conversation I said felt a bit like a game of tennis.

Yes?---Going back and forward, what if? And then – yes.

Now, at 158 at 11:10 you record your discomfort with the short file idea?---Mm mm.

And what was the discomfort about it?---Well, I think I indicated - - -

What (inaudible)?---I think I indicated before, your Honour, that it was an unusual situation and certainly not a package in the format that I would be accustomed to putting together, so I was obviously - quite obviously - wrestling with firstly what to provide, which would be as much as possible, but in what sort of format, the fact that it wouldn't have everything in it.

Yes?---Those sorts of things, so as a professional I wanted to do the best I could with it but we had some limitations.

There had to be limitations and compromises?---Had to be limitations.

Now, were you under pressure from any source to expedite this process so that he could make a quick decision about what should be done with Mr Rolfe?---No, I was under pressure to do the file by a particular time but I wasn't under pressure to override at that position.

And so when was the short file to the DPP (inaudible)?---Later that day, your Honour, at about - just later that day at about 1:50 - 1:52 in the afternoon I believe.

All right, that's a meeting with the DPP at about that time wasn't it?---Yes, your Honour.

And the short file was considered by him and his secretary?---Yes, that's right.

And a range of ramifications of all of that were discussed between yourself and your deputy with the outcome being recorded on page 160, as her Honour knows, with

the (inaudible) saying that the prospect of convictions was reasonably alive for manslaughter (inaudible), is that right?---That's correct.

And there were discussions also about that laying of a murder charge?---Yes.

And (inaudible) made recommendations about point 8 of the way down the page in your notes is that right? Where (inaudible) said, "I fear - I feel for you gentlemen"?--- So the Director was the one who said that he recommended the laying of a murder charge was the more appropriate charge if there was a charge.

Yes?---And the deputy confirmed that view.

And what was your intention upon that indication from the Director and deputy? ---Well, my intention was that we had a prosecution we were going to have to progress.

Yes, and did that involve a time factor in relation to the laying of these serious charges?---At the conclusion of that meeting?

Yes?---No.

All right, so what - the charges did come shortly afterwards. What was the - there was a further meeting I think at - I beg your pardon, yes, there was a meeting at 15:37 which you record in your notes?---Yes. 14:47, sir, bottom of page 160.

Yes. And what was that about?---I took - I'd take that now and look back, I believe that to have been a JMC. Yes. At that meeting obviously it was the - it was constructive of those people, as I said before, who would be likely relevant and needed to be part of that meeting.

And was one of the topics discussed in that meeting the place and circumstances of an arrest?---Yes, it was.

And once again, was it a toing and froing involving Mr Murphy, Mr White, Mr Anticich and yourself?---There was - yes, there was discussion around the table.

Now, you've told her Honour already that Mr Anticich part the way through 167 I think it is - 161 said, "Okay, we are arresting." Was that an order to you or was it a summary of where things had got to or was it something else?---I would - so I think my view is that Mr Anticich was summing up the conversations that had just taken place, in light of what we are - the position we found ourselves in.

Yes?---And that as a result he was making it very clear to myself and the commander of crime that we're going to be in the space where we're making an arrest.

Now, in these circumstances, albeit so far as you were concerned, was it appropriate to arrest and prefer the charges promptly or did you have latitude to take another few

days or weeks over it?---Ultimately the decision to make the arrest rested with me because I'm the officer exercising the power, so having considered those things and having already had direction that we were at a prima facie level, I saw no reason to delay that.

And so did that process take place in the late afternoon of the Saturday?---Yes, it did.

Now, did anybody place you under any pressure or duress to arrest and charge or to hasten or delay what you wanted to do?---I wasn't pressure to act, no.

Just going to the next day, and I had better stop going through the pages at this point, did you meet with Mr Pollock to start to discuss the relationship between the criminal and Coronial processes and to try to collaborate with each other?---Yes, I met with Mr Pollock.

And was one of the outcomes of that meeting an agreement that would be regular meetings thereafter?---I don't see that written there but Mr Pollock and I of course were going to have conversations.

And you did have regular meetings thereafter?---We met on a few occasions.

And was the aspiration of those meetings to collaborate?---Yes, one of those is that, yes.

Now, you were taken to a document by our learned friend before, Mr (inaudible) and you were taken to, in particular, LMO – (inaudible). The Northern Territory Police Force General Order, Major Crime Major Investigation critical incident response at a particular paragraph in there?---Yes, I was.

I'd just like to clarify what you were communicating to him. Let me read to you the last two sentences of that document.

"A death in custody or a serious custody incident for example may also involve a criminal investigation. In such instances consideration needs to be given to the adequacy of the criminal investigation to ensure there is compliments and does not impede any custody based investigation"?---Yes, I recall hearing that.

Now, what did that communicate to you about the relationship between your criminal investigations and the Coronial investigation?---Well obviously they were part of a bigger - I guess that they worked in tandem but they were to complement one another but obviously having arrived in a space where you had a criminal investigation going on, you were going to be progressing that as your priority.

Right. I'd like to just talk that through with you a little further. Why is it a priority for the criminal investigation to be progressed?---Well, I think that the rules of evidence are considerably different, to start with, there's a whole range of issues, as you would

be coming across in a criminal space for there to be considered under - there's powers that you would exercise in that forum that would be very different to those exercised in a coronial space, which as - I won't say more - possibly more relaxed rules of evidence and there's a chance that evidence you collect, if you were using the Coronial thinking, you would taint for the criminal.

And why in the interests of a criminal investigation, would that be problematic? In essence, I say – I take it, that it could adversely affect?---It can adversely affect. You stand to lose aspects of your evidence.

So what follows from that in terms of how the two investigations need to interact with each other?---Well my – I believe that the – I believe, as it was confirmed by the director, that that criminal aspect needs to have the primacy in this, once you've arrived in the position we were in.

Now what does that mean? Obviously that in a practical level, it means a lot of work needs to be done quickly - - - ?---Mm mm.

- - - on the criminal investigation to put the brief together. What does it mean, for instance, in terms of what should and shouldn't be done, as part of a Coronial investigation? Well before the criminal trial started?---I think there just needs to be some recognition from the Coronial side of things, if there is two sides, that potentially there are some issues that need de-conflicting, and there needs to be some care taken with enquiries that might have been made on – on that side of the house, if you want to call it that.

Yes?---And as a consequence of that, anything collected in the criminal space would have been shared, directly, I would have thought straight away with the Coronial side of things. But as for the Coronial stuff, not all of its necessarily going to be relevant. So I think it needs to take something of a sideways step.

You've just this word "de-conflicting" a few times. Is – is there the potential, in principle, for there to be different agendas for the two investigations?---I think that's – I think that's obvious, sir, yes, of course.

And in this case, were there some different agendas?---Yes.

And so far as you could see with Mr Pollock, did his agenda for the Coronial – was his agenda for the Coronial investigation borne of enthusiasm to advance the Coronial enquiry as quickly as possible?

A PERSON UNKNOWN: I object to that question, because it's not Superintendent Pollock's agenda.

MR FRECKELTON: I'll put it another way.

A PERSON UNKNOWN: Agenda (inaudible).

MR FRECKELTON: There were a range of matters that were raised by Mr Pollock with you, as the weeks stretched into months, is that right?---Yes.

And did some of those relate to issues arising in the criminal investigation?---Yes.

And did he communicate some things which were troubling him, in terms of the way in which the criminal investigation was being undertaken?---Yes.

And did you listen to – to what was said to you by Mr Pollock?---Yes.

Respecting that he was a man of considerable experience in criminal investigations, as well as coronal's?---Yes.

But were there some occasions in which you made a decision that matters raised by Mr Pollock were more his providence than yours?---Yes, there were differences of opinions at times.

And the statement, your Honour, that's been served today from Mr Pollock, have you had an opportunity to read par 14, which relates to a Miss Oldfield, and matters that were being raised by her?---Yes.

Now was that an issue that was raised with you by – by Mr Pollock?---I believe so, yes.

Now what happened between you and Mr Pollock in terms of your perspectives, focussing on you for now, in terms of this issue to Ms Oldfield?---So as I recall, the issue that Mr Pollock raised was that there was a transcript that different accurately reflect words that had been uttered.

Yes?---Being open to the input of someone such as Mr Pollock, whose an experienced member, I undertook to have it enhanced, I believe, as I – and we did that.

All right?---The audio I'm talking about.

Yes?---And then as a consequence of that, I subsequently, having heard the enhanced version, was inclined to agree with Mr Pollock's view of what had been uttered.

So is that an example of a – a collaboration between the two of you?---I would like to call it that, yes.

All right. Now Mr Pollock's raised an issue about a statement of facts. But that's a – that summary form that can be utilised with pleas of guilty?---That's what that is.

And he's raised concern that the statement of facts wasn't amended to include the correction that she'd identified, and which you agreed with. Is there anything you can say to her Honour about what happened there?---I don't recall that it was or

wasn't amended, but obviously, your Honour, I'm aware that the evidence is actually the recording and not the transcript, or what's written in a statement of facts.

And fair to add, there wasn't any – was there any talk at any stage about a plea of guilty?---There was no talk of a plea of guilty.

Now going to the investigation that did formally, did anything occur which impeded the quality of your investigation?---Yes.

Tell her Honour about that please?---We talked earlier, your Honour, about the challenges around de-confliction, and also around differing priorities from the criminal side of things to – as compared to the Coronial side. I'm cognisant of the relationship. But the – the best example is quite possibly the discussion we have already had this morning about the – obtaining statements from members at a senior executive level around critical decision-making post event. In my respectful view, they perhaps were not my priorities at that time. And there was a number of occasions – I don't want to make – don't want to say a number of occasions. There was an occasion or two where I can recall feeling that perhaps there was a bit of white noise being created by these conversations. And perhaps a conflicting of these priorities.

Let's be a bit more specific about it. Was there a particular issue to do with Assistant Commissioner Beer and her preparedness to make a statement?---Yes.

Now was that – that statement an important one for the criminal investigation from your point of view?---No.

All right, but did Mr Pollock tell you that he thought that it was important for – for the criminal investigation and also for the Coronial?---I believe – I don't recall whether he said criminal and Coronial, but I'm – I'm aware that Mr Pollock thought the senior executive statements were very important, very soon.

And now is it fair to say that was something that you just didn't share the same perspective on?---I understood the importance of them. However, they weren't something that was high on my list of priorities with what I had going on.

Okay. So I asked you these questions under cover of whether your investigation was in any way impeded. What you've told her Honour, for – instancing this one, is that you had difference opinion about the significance of statements from that person, and one or two others perhaps, for the criminal investigation?---Some of them, yes.

And so did – did the fact that you two had different perspectives on that impede what you were doing in preparation for a criminal trial brief?---So obviously there were some – potentially some issues may be relating to things like disclosure that might have become problematic. There was - - -

Just explain that a little bit more for her Honour if you would please, because of course, those working on the – or police generally have obligations to let the defence know a range of things, if there are issues impacting upon the sufficiency of the criminal brief, or material that might contribute to it. What have you got in mind in this context, in respect to disclosure?---Well I reflect on the – first and foremost, we had folders on computers set up. And a lot of material was – material was saved in the folders. Certainly in the stream that I was in, that criminal stream, there was a large number of folders. And I believe in that over-arching folder, there may have been a Coronial folder. To this day I have no understanding of whether or not I actually have access to it. Or whether there was some aspects of that folder that I wasn't able to access.

This is the Coronial component?---This was the Coronial component. So I – I note, some many months later, when we were in the criminal space, there are things said that indicate that I perhaps haven't disclosed material that was not available to me, and or alternatively, I had access to things and had changed them. All of which were not the case. And in every respect, I had no knowledge of what was in any report that might have been prepared.

Is the point, at any rate, that if there are the debates or critiques or differences of opinion about the criminal investigation coming from the Coronial arm, they could have ramifications for what needs to be disclosed to be used?---I would agree with that, yes.

And was that something that troubled you if there were to be a proliferation of disagreements about what had been done as part of the criminal investigation?---Yes.

All right. You've just told her Honour that you have some limitations in terms of what you could see in the Coronial brief. What about things going the other way? Were the Coronial investigators able to see what was in the criminal brief?---Of course, your Honour.

You've been asked some questions this morning about the role of Mr Barram. Was he, at any stage in any way, part of the criminal investigation team?---Absolutely not.

What was his role, if you could summarise it in one sentence?---He was brought in as a consultant. He was there as a subject matter expert to provide some opinion on what he saw.

And you've been asked a great many questions about the potential to obtain an interstate or an international expert on use of force. Beside Mr Barram, what was the purpose of getting – or seeking an additional expert?---We discussed that earlier.

Yes?---Obviously - - -

So, just in summary, what was the purpose and who was particularly keen on that notion?---I'm not sure whether we're talking - - -

Who wanted to get another expert?---I was – as the investigation leader, I was keen on seeking clarify and making sure that we were going in the right direction.

Yes. And did you consult the DPP about that?---Yes, I did.

And did the DPP have a similar view?---Yes, the DPP had a view.

And was it similar?---It was similar.

All right. And was that, from your perspective, any reflection on the quality of the analysis done by Mr Barram?---Well, no, your Honour. This goes back to what we discussed prior to lunch. No, it had no reflection on Mr Barram at all.

And in fact, did the attempts to find another expert commence before Mr Barram had done his report?---I believe so, your Honour. We have already reached out to New South Wales, is my understanding, although, a passage of three years - - -

Now, have you had a chance to reflect on the quality of the criminal investigation that you were in charge of in the year sequent?---Yes.

Do you regard it, in any sense, as a failed criminal investigation?---No, it's not a failed criminal investigation, no.

Why do you say that?---Because the success of a criminal investigation, in my view, is not judged solely by whether or not you achieve a conviction at court, when it ultimately becomes a jury's decision based on the evidence you collect. So, if you're able to put all the evidence in front of them and a jury decides that the person in front of them is not suitable for conviction or a finding of guilt, well that's not necessarily a failure.

Again, reflecting with the passage – the benefit of the passage of time, was the investigation in the way that it was undertaken biased in favour or against the interests of Mr Rolfe?---I don't believe so.

Are there any significant things that you would do differently with the wisdom of hindsight in the criminal investigation that you undertook?---There are a couple of things, with reflection, that I would do differently.

What are they?---Certainly, I recorded quite a substantial amount of material and notes.

You did?---But I perhaps didn't record the critical decisions in a way that was necessarily easy to follow. So, I think that made scrutiny challenging for those who would scrutinise it and I accept that. We could be here all day, sir. I would do some things differently, yes, I've learned from it.

Did the structure of having tandem or parallel Coronial and criminal investigations,

and I'm not asking about personalities make the process more challenging from your perspective?---Yes, it made it more challenging.

So, what's the answer to reducing the challenges in that regard?---Well, in my view, your Honour, is that we need one particular individual, as I've indicated, sitting at the top of this particular structure and they are ultimately the decision-maker as a senior investigating person, regardless of whether it's going in a particular direction. They are responsible for those critical decisions at the top of that investigation.

In charge of the criminal investigation, but also being properly responsive to the Coroner when she or he has issues that they want addressed as the criminal investigation is proceeding?---Yes.

Thank you, your Honour.

THE CORONER: Thank you. Nothing further?

MR BOULTEN: Can I ask a couple of questions?

THE CORONER: Sure.

MR BOULTEN: I won't be long.

XXN BY MR BOULTEN:

MR BOULTEN: Have you had a chance to read Mr Pollock's statement that was dated today?---No, I'm aware he's made a statement. I was shown some paragraphs of it, sir, but I haven't actually read the statement.

Okay. Well, I want you to assume that it discloses significant dysfunction between Mr Pollock on the one hand and Mr Anticich on the other, perhaps other people involved as well. During the time that you worked on the investigation, did you become aware of tensions between Mr Pollock and Mr Anticich?---I have to say yes, only on the basis that I was in that meeting I indicated before and there was that – I don't recall the senior officers there, embarrassingly enough, but there was a meeting of senior officers and I know Mr Walker was there and it was – I think it was about deconflicting, is my recollection. So, yes, I think there was tension.

Were you still on the investigation when Mr Proctor was effectively removed – sorry, Mr Pollock was effectively removed from his role?---I have absolutely no idea, sir, honestly.

You don't know?---I just don't know.

You can't remember?---No, so I wasn't aware that Mr Pollock had been removed until many moons later.

Okay?---There were other meetings, many meetings going on that I was never part

of.

So, when Dr Freckelton asked you a shot time ago if you had regular meetings with Mr Pollock, you pointedly answered, "We met on a few occasions"?---Very early on in the piece.

Was there a reason why you didn't have regular meetings with Mr Pollock?---Not that I can think of, but certainly, with reflection, it would have been of considerable benefit. So, it's a fail.

Whose job was it to coordinate activities between the two strands; the Coronial strand and the criminal strand of the investigation?---That would have happened above me, as I understand it.

Well, whose job was it?---It would have to be the assistant commissioner of crime, I believe.

Who's that?---Then it was Mr Anticich.

Mr Anticich's job? So, whose job was it to structure the mode of communication between the two strands?---Well, I don't actually know the answer to that, but I imagine it has to have been at the AC level. I fact, actually I take that back, your Honour, that's misleading. I've seen a coloured chart that shows there is a structure, but I don't recall what's on that chart. But there were meetings going on, on my stream with the JMC and I believe there were meetings going on with Mr Pollock's Coronial side of the house. And then Mr Pollock and I took it upon ourselves to try to engage anyway. As for it being formally decreed, I don't recall anything along that – of that nature.

So, that's helpful, but was there someone whose job it was to get the two streams to meet or to communicate effectively or regularly or both?---I would imagine that there would be, sir. And as I said, it would have to be - - -

You can't remember who's on the chart?---That's what I just said, sir.

All right?---But it would have to be the assistant commissioner of crime.

That's Mr Anticich?---I believe so.

All right?---We were both working then.

DR DWYER: Your Honour, just very briefly, if I may?

THE CORONER: Yes.

XXN BY DR DWYER:

DR DWYER: Superintendent, you have just given evidence that you do recall some tensions existing between Assistant Commissioner Anticich and Superintendent Scott Pollock, correct?---I'm not sure I used the word "tensions" but yes, there was - there must have been some issue.

Whatever issue there was, do you believe now, sitting in the witness box, that that in any way compromised the integrity of the first criminal investigation?---I don't believe so.

The Coronial investigation?

A PERSON UNKNOWN: I object to the question, how can this witness possibly answer that question as (inaudible).

DR DWYER: I withdraw the question.

So you don't believe that any tensions or whatever personality issues you - you describe I think as "issues" impacted in any way in the criminal investigation while you were involved, is that right?---That's right.

And you're aware that information that was gathered for the purposes of the criminal investigation while you were on that job for about a year were then relevant to the Coronial investigation?---That's right.

The second issue is this. I am just going to hand you a copy of your notes, in this case they are in chronological order but for the benefit of my friends I am referring to an entry on 17 December, page 4 of your notebook at 7-109A Pennuto notes. If you wouldn't mind, if you have a look at page 3 you will see there is a redacted portion I don't want to ask you about but it appears that you had a conversation with somebody by the name of Mr Dave Hickey, a police officer, is that right?---I know who you're referring to. I missed the page number.

I put a Post-it note on there?---Happy with that one, okay. I wasn't sure.

Thank you?---Yes, I know - I know that Mr Hickey(?) is a police officer interstate.

Do you see the redacted reference and then if you turn over the page you will see the reference to 17 December, just to place it in time?---Yes.

At the top of that page there are these words, "Warrior v Guardian. Consider officer created jeopardy/preventable" were they - that's your note obviously. Was that a note of something you were discussing with the officer I just mentioned?---Yes.

Who is that officer, Officer Hickey?---He's a detective Inspector with the Queensland Police Service.

And what was the purpose of that conversation with him?---Initially I was talking to him about the SME question I think - an SME question.

Just remind us what SME stands for?---I apologise - subject matter expertise or subject matter expert. And during the conversation I was raising a number of other things that I potentially thought were worthy of considering.

So that was the - that was a record of a discussion you were having with him where you were talking about the possibility of a number of experts who might come from interstate to assist, is that right?---That's right.

And a number of names are mentioned. I don't need for you to put them on the record, I think they are redacted for a reason but there's a discussion about who might be useful in terms of use of force experts, correct?---I believe so, yes.

And there term, "Warrior v Guardian" is that something that he - a term that he used?---No. Mr Hickey was familiar with the terminology having - he's - Inspector Hickey, your Honour, is a longstanding investigator in Queensland who has investigated quite a number of incidents involving police, involving criticalities such as this and I by that time and that conversation, had already started thinking about some of these things myself and they were concepts that I was discussing with him.

And what is that concept?---Of the Warrior v Guardian?

Yes, in terms of its reference or its relevance to considering the use of force and (inaudible) Kumanjayi?---So, in the guardian - so police ultimately are guardians - although in recent times the policing internationally potentially has, I would argue gone more towards the warrior side of things, after terrorism perhaps. From a guardian perspective I would suggest it's more akin to the conversation we've hear earlier today about community policing and the style, they way they go about things as opposed to the other side of the conversation that I referenced where people are going and get their man - they're very task oriented, very different mind-sets, so in the guardian side of things my view would be that we owe the same duty of care to the person we're going to arrest as we do to everything else and perhaps in the warrior mentality it's not as highly regarded.

Do you think there are lessons to be learned then in terms of teaching that to younger recruits, the importance of a guardian mentality?---I think it's very important.

You then write underneath that, "Consider officer created jeopardy/preventable" those concepts are relevant to the Coronial investigation. Would you just expand on them if you may?---Again, they are concepts that I was beginning to think about, knowing that I was going to be providing a package but also supporting what was happening in the Coronial space. And in simple terms, "officer created jeopardy" in my understanding of it as a concept, your Honour, is that the actions of police ultimately dictate an outcome that would otherwise not necessarily have eventuated if they had taken different courses of action and considered different things getting to where they got to. A little bit like a sliding doors - choose your own adventure and you get to a particular point in time, there's an opportunity to make a critical decision and you can make the wrong decision - you go down the wrong path, you make the

right decision you go down the right path. Ultimately you end up in a destination and if you've closed all the wrong doors behind you you're probably not going to be able to unpick that.

Police are taught, aren't they, to try and put themselves in a position which minimise the use of risk of force?---That's right.

And to take every opportunity to de-escalate?---That's right.

Do you think that officer created jeopardy is what, in fact happened here with the execution of the arrest in House 511?---Yes.

And you referred earlier, I think in relation to questions from Mr Boulten about understanding what the 5 am arrest plan was and I think your evidence is something like "That is not unusual to have a dawn plan" is that right?---That's correct.

And would a dawn plan, a 5 am arrest plan, be more likely to avoid any officer created jeopardy?---I believe, your Honour, that an early morning element of surprise, people are asleep, they're not potentially out and about like you would expect them to be and, you know, being able to meet you if you were to arrive. I think it creates one of those layers of insulation from risk.

So it was a less risky arrest plan that would happen on the day?---I suspect that is right, yes.

And it's a plan that is well known to minimise risk in terms of use of force, is that right?---Yes, it is.

Nothing further your Honour.

THE CORONER: Thank you for coming to give your evidence today. It is appreciated and you are free to go?---Thank you, your Honour.

WITNESS WITHDREW

DR DWYER: Your Honour, I note there was reference to the statement of Superintendent Lee Morgan. That is in the brief of evidence at 7-97B.

THE CORONER: Thank you.

DR DWYER: Your Honour, I am told we can sit until 5 pm today if that suits your Honour.

THE CORONER: Yes.

DR DWYER: I call Assistant Commissioner Martin Dole.

MARTIN JOHN DOLE, affirmed:

DR DWYER: Sir, could you please tell the court your full name for the record?
---My full name is Martin John Dole.

You are an assistant Commissioner of police in the Northern Territory?---That's correct, your Honour, I am the Assistant Commissioner of regional and remove operations.

Where are you physically located to do that job?---I am physically based here in Alice Springs.

You have been a police officer with the Northern Territory since January 1997, is that right?---That's correct, yes, your Honour.

How old were you when you started with the force here?---I'd just turned 21 years old.

I am going to start by asking you a little bit about your background in the Northern Territory. Where did you grow up?---I actually grew up at the community of Yuendumu. I spent the years from my birth until - early childhood there and we moved into Alice Springs prior to me commencing schooling, your Honour.

Just pause there. I think Mr Officer wanted to be on line. Assistant Commissioner, how did it come to be that your parents were in Yuendumu so that you were born close by?---In the 60s, your Honour, my parents responded to an advert in the Australian Baptist Missionary Society magazine and it was an advert asking for a person - a person to come to Yuendumu and set up the community store. So my father responded to that ad, and was given the position – awarded the position at Yuendumu.

And had you – are you aware whether they'd had any involvement with the Northern Territory prior to that time?---No they had no involvement with the Northern Territory at all.

So you remained in Yuendumu, I think until you were about five, at that early time, is that right?---I believe four or five, yes. It was prior to commencing school that we returned to Alice Springs.

THE CORONER: Sorry, just one moment.

MR OFFICER: Hello.

THE CORONER: Hi, Mr Officer, we've just commenced examination of Assistant Commissioner Martin Dole.

MR OFFICER: Yes, thank you, your Honour.

THE CORONER: We've just learned that he was – he grew up until he was about five in Yuendumu, when his parents went there to manage the – or to set up the community store.

MR OFFICER: Thank you, your Honour.

DR DWYER: Assistant Commissioner, how many stores were there back then?---Back then when my parents went, there was only the one community store. Subsequently there was the mining store run by the Barthers.

Run by the Barthers?---Yes, that's correct, your Honour.

And I'm going to ask you to reveal your age, but do you recall the year that your parent's landed in Yuendumu?---It was late 60's I believe. Did - sorry was the question how old am I?

A PERSON UNKNOWN: We've worked that out now.

THE WITNESS: No, well I'm turning 47 shortly, so I'm currently 46 years old.

DR DWYER: Okay, so your parents arrived there before you were born, is that right?---That's correct. They spent approximately – over 10 years in that community I believe.

And what do you remember about your time growing up in Yuendumu, from tiny baby to five?---Your Honour, obviously very early childhood memories, but I do remember it being a safe environment. I remember playing with Aboriginal children. I remember being left in the care of one of the Spencers, who was a – who was a lady that worked for my parents at the shop. I was bought up with her children. And I still see them in town today, to this date.

You became close did you to a number of families in the community, is that right?---That's correct, yes. I've still got those strong relationships today, and still speak to those people in Alice Springs, and across the Territory, where I come across them.

What were the family groups that you and your family had most to do with when you were there?---So particularly, we had relationships with the Spencers and the Robertson's, that I remember. But there's numerous family groups. There is the Williams, the Langdon's the Rice, the Simms, there was lots of family groups that I recall being – being familiar and friendly with.

Your parents spent then around 10 years there, including those years before you were born. Do – can you tell us whether they have happy memories of that period of time?---Absolutely. I know my parents used to describe it as, you know, some of the formational years of their lives. Are still in possession of many super eight videos of times back then. Community events, sports carnivals, all the joyous occasions that

you see on communities. And it had a big impact on their lives. I'm aware of that, your Honour.

And a big impact on your life obviously - - - ?---Yes, definitely so, yes.

- - - I'll come to your return to Yuendumu shortly. In terms of connecting with the community and being part of it, your parents were given skin names is that right?---That's correct, they were very early on in the piece, yes.

And what did that mean in terms of your connection with the community and your skin?---So ultimately, I – as part of that community and being accepted, we were given skin names as well. As obviously the children of – of our parents. And that's to do with the whole kinship system in Aboriginal communities.

What's your skin name?---I'm a Jambajimba(?).

Same as Ned Hargraves, is that right?---That's correct, yes.

And when you – do you still have relationships with people that you grew up with in community?---Yes I do, yes.

And is that meaningful to you?---Absolutely it's meaningful to me. I was stopped by a gentleman – well sorry, I was sitting in the mall, some months ago, and one of the Spencer gentlemen come up to me and showed me photos of his grandchildren. I was there with my wife and daughter, and they were overjoyed to see how big my children were. And he was happy to show me photos of his grandchildren.

Well you joined the police force as a young man, 21, and you ultimately went back to Yuendumu, is that right, to do some policing?---That's correct. I'd been in the police force approximately two years, your Honour. I'd just been married, and my wife was a remote area nurse. And we thought it was a good opportunity to go back to that community and – for me, particularly, it was a good opportunity to show my wife who was from overseas, a different side of the Northern Territory community life.

So how long were you in the NT as a police officer? Sorry, I withdraw that. In Yuendumu, as a police officer?---Two and a half years, I was gazetted and served at Yuendumu.

Over which years?---From approximately '99 to late 2001.

Did you have the same sergeant for the whole time you were out there?---No, your Honour. I had two sergeants. Initially went out there with a sergeant that had been promoted, was in that role for several years. During my tenure there he left and one of the other members at the station was promoted to the brevet sergeant of Yuendumu at that stage.

What was your rank while you were there as a police officer in '99?---I was initially a constable. Then a first-class constable, then a senior constable, all within that two and a half years.

Did you have ACPO's or ALO's working with you at any time then?---We had Aboriginal Community Police Officer at that stage, Jabirula.

Is that Jabirula Spencer?---Curtis.

Curtis, I see. And had you known Curtis from when you'd been there in Yuendumu previously?---Yes.

So what was your relationship like with him after you became a police officer?---I spent considerable time working with – with Jabirula. Probably more time engaging with the community and driving around certain important sites to Jabirula. And he taught me a lot about the country. And he worked very closely with me on my language skills, which weren't great, but got better during that service at Yuendumu.

So while you were there, you did your best to learn Warlpiri, is that right?---That's correct, I tried to.

THE CORONER: Did you speak Warlpiri when you were a child?---I – I don't recall. I recall understanding, your Honour, and I can still understand a lot more today than I can speak, very clumsy, but still give it a go.

DR DWYER: Was Jabirula someone that was critical to try and help you learn the language when you were there as an officer?---Very much so, your Honour.

And he was generous in offering to teach you that?---Very generous.

And can I ask you, as an officer when you first arrived, was it challenging, having been a member of the community previously and coming back to your role?---It – it was different in the concepts of a lot of people were happy to – to remember my parents. And – no not really challenging. Not really challenging at all. I think I had strong community relationships, and I leveraged off the respect that my parents had, not necessarily I had, but the respect that my parents had in that community, as opposed to just being a policeman and having no understanding of the community.

That was your first experience of policing remotely, is that right, or had you policed in other communities prior to going to Yuendumu?---No, that – after becoming a police officer, that was my first service as a remote police officer.

Was there anything that you were able to assist the other officers with, given your knowledge of community?---I think I brought a different method, a different style of policing to Yuendumu. Particularly with the sergeant that was previous there, he was very authoritarian. The law was the law. I'd like to say that I brought a more community-based aspect to it, and leveraged off those relationships that I had with people, particularly my work with Jabirula. We were able to resolve matters and

have people I suppose, come to the police station. It was certainly a more community focused approach than what had previously been the case.

Was the – do you feel like that had an impact on the sergeant as well?---I do. I believe it had a strong impact on the sergeant, who then went on to become the officer in charge of Kintore Police Station. And he was well respected in that community, and like by the people there.

You've talked about a way of resolving tensions by working with Jabirula. Were there other things that you were able to do in community, to promote that community spirit?---We – we regularly engaged with the community. We'd have community people around to the police station for barbeques. They'd regularly come into the back of the police station. At that stage, the police station at Yuendumu wasn't surrounded by a colorbond fence. We had open chain mesh fences. So regularly had people coming to my residence, coming to the fence, and asking for certain favours, or do go out hunting. And we spent a lot of time in community with the people there.

Did you spend time taking people out hunting?---Yes I did, absolutely.

And did you see that as beneficial in terms of community harmony?---Look, it was extremely beneficial. We were invited into Business Camp. We took kangaroos into Business Camp. We were accepted by the people. We were wearing uniform, we were driving a police car, but we were part of the community, and they accepted us as their community police, but part of the community, not just a police force.

Did you get to know Eddy and Lottie Robertson while you were there?---Yes I did.

And what can you tell her Honour about your relationship with them?---Mr Robertson refers to me as his brother, that's through the kinship system, but Mr Robertson was very close to my parents as well. I spent time with his family growing up as a child.

What was the scene like with football at the time?---It was a strong community football presence at the time when I was at Yuendumu, your Honour. They had grass on the oval.

In terms of that then, do you – tell us when you left Yuendumu?---So, I left Yuendumu in 2001 to take up – we'd just recently had a baby. My wife had ceased work for a period of time. I left Yuendumu to take up the position of officer in charge of Ti Tree Police Station which gave my wife more access to Alice Springs and a highway station, but still heavily focussed on community policing. And there was upwards of eight to 10 communities that we serviced out of the Ti Tree Police Station at that stage.

And did you enjoy your time there?---I did immensely, yes.

I'll just come back to Yuendumu for a moment. You were there for two and a half years, I think. Is that right?---Yes, that's correct.

And do you recall that as – for yourself, as a police officer, as a happy and productive time?---It was, absolutely. Cementing those relationships, gaining that community respect, the friendships we forged, myself and my wife, we still maintain that communication to this day with people.

Were there youth services operating in Yuendumu at that time?---There was. Mount Theo was in its infancy. There were several people on the community that were doing work in that youth space. Yes, there was.

And you talked about there being grass on the oval. Was there still grass on the oval when you left?---There was, yes. There was still quite a health grass on the A-grade football oval.

And that obviously made it easier to run sporting events?---My memory is that it was quite a vibrant football community and there was regular football matches that we'd attend and watch. I wasn't a great football player, so I never participated.

But there were police officers who would attend that football and get behind the community spirit. Is that right?---Yes, we regularly went down and watched.

Was there a pool in the community at that time?---No, there was not swimming pool, no.

What other community activities do you recall, if any, that were available to young people at that time?---There was sports weekend. The people doing youth programs were trying to run discos at night. The stage I worked there, there was still a bit of a problem with petrol sniffing in the community, your Honour, so the people that were formative in the Mount Theo program were doing their best at the time to have alternatives for the children at night, to take them away from sniffing and other harmful behaviours.

And we know something about that collaboration. Was Andrew Stajinowski, Yakajiri, there at your time?---Yes, he was, yes.

And he was working alongside Yapa like Peggy Brown and some Yapa who have passed away, so I won't say their names, Ned Hargraves though is still very much with us, and others who were working alongside each other to address those problems. Is that right?---Very much so, yes, absolutely.

So, what can you tell your Honour about the spirit of cooperation or not that existed between Kartiya and Yapa at that time?---Your Honour, I think – at my time, I think there was a very strong community spirit at Yuendumu. As I said earlier, my wife was a remote area nurse. I had friends that were school teachers at the time at Yuendumu. We regularly engage with both Kartiya and Yapa and we had people around to the station for barbecues and everyone worked collaboratively together. To me, it was a strong sense of community spirit at Yuendumu at that time.

And this might seem like an obvious question, but what's the relevance of that in terms of policing?---It's everything really. Those strong community relationships are the basis of community policing. It goes back to the Peelian principles really of policing by consent and having the respect, having the respect of the community and having the authority to police them.

By Peelian principles, P-E-E-L?---Is that right, yeah.

It comes from a UK concept about community policing. Is that right?---That's right. And policing the community by consent, your Honour.

Have you been back to Yuendumu, even in a relieving role, at any time as a police officer?---I've been back to Yuendumu several times, but not to serve on that community. I've been back for various investigations at times, your Honour. I tendered as part of this investigation to introduce Assistant Commissioner Anticich to the community. I attended the funeral at the community of Kumanjayi. Yes, so I have been back several times.

Let me come to – I'll withdraw that. Just before I ask you that, you've talked about moving on from Kintore, I think to Ti Tree, to do some more remote policing. Is that right?---At Ti Tree, that's correct, your Honour.

And how long were you at Ti Tree for?---Just on two years, your Honour.

And then, have there been other stints that you've done in community, working as a community police officer?---Yes, so I spent 10 years of my career in southern region, your Honour. During that time, I relieved at Papunya, Yulara, which encompassed Mutitjulu and Docker River at that time. I've served for brief periods at Harts Range and attended the majority of the other southern desert division stations in some capacity in policing during that 10-year period.

Given your wealth of experience over that 10-year period, what can you tell the court about your opinion of community police officers? Obviously, that's generalising, but on a whole – as a whole?---Your Honour, community policing is the basis of the Northern Territory Police Force. That's what we were founded on. I think building respectful and meaningful relationships in the community is the only way to police these communities and as I said, it makes for far more successful operations in these communities and it offers a range of relationships that you'd never be exposed to if you didn't go and work and form those relationships in these stations by living there and working and living within the community.

We've got some evidence in this inquest as to the views expressed by Constable Rolfe and perhaps a number of other officers about community police officers being lazy or not as fast as police in the inner city like Alice Springs. You're aware of those text exchanges?---I am, your Honour, yes.

What – were you shocked when you read them?---I was shocked. That type of sentiment and language is just not compatible with the values that I would expect

from a Northern Territory police officer.

And it's certainly not your experience of community police officers in the Northern Territory?---Absolutely not my experience of community police officers in the Northern Territory.

Can I come now to your involvement in the investigation into Kumanjayi's passing, you've provided a number of statements to assist her Honour. The first is dated 28 July 2020. It's 7-28 and the second, 24 June 2021 – sorry, 7-28 and 7-27. In it, you set out what your role was. On 9 November, you received several calls to tell you that there had been a shooting at Yuendumu. That must have been very confronting to you, given your commitment to the community?---It was. I don't really know if I can adequately describe that feeling at the time, the fact that there'd been a fatal police shooting, but the fact that it was at a community that I had lived at worked at and had close relationships. Yeah, I don't know if I can adequately describe how that made me feel.

On the evening of 9 November, you were informed first from Deputy Commissioner Wyatt that he had allocated Detective Superintendent Joe Foley to attend – F-o-l-e-y, to attend to the investigative response. Is that right?---That's correct, yes.

And the matter had been declared a critical custody incident. You then received a further call from Acting Superintendent Kirk Pennuto who, at that stage, was acting in the role of detective superintendent of crime division and he on his way to assist with resourcing. Is that right?---That's correct. Yes, that's absolutely correct.

On Sunday, 10 November, you received a call from Assistant Commissioner Anticich who advised you of certain things. One of the things he told you about was that the commissioned officer in charge of the investigation needed to come from Darwin and not Alice Springs, given that an officer from Alice Springs had been involved in the shooting. Is that right?---That's correct, yes.

And you understood why that was the case?---Yes, I did. That was in accordance with policy and that perhaps should have been – well, not perhaps, that should have been a consideration at the time of allocating that initial officer in charge.

Were you then given a specific role with respect to the investigation?---So, I was the commander of crime at the time, so ultimately, I was the overall investigator in charge.

In the first statement that you provided to her Honour, you indicate that on Sunday, the 10th at around 5 pm, you attended Smith Street where you participated in the first JMC meeting relating to this job. Can you remind us what JMC stands for?--- Joint Management Committee, your Honour.

There was initially some confusion around this at the beginning, because Assistant Commissioner Anticich was from Western Australia and not familiar with the terminology. Is that right?---Yes, that's correct.

And so, the first management and oversight meeting was referred to as the IMT, the Investigation Management Team?---So, that was the terminology, AC Anticich used at the time, yes.

But in fact what was happening, is that police officers were getting together, to try and determine the allocation of resources, and the appropriate way in which this matter should be investigated, is that - - - ?---Correct.

- - - right?---That's absolutely right, your Honour.

Was there a discussion at that early meeting of the fact that there would need to be a Coronial investigation?---There was recognition that in accordance with the General Order, this was a police related death in custody, I can't recall specifically saying it needs to be. But it was – that's why we were there. Criminally investigating the actions of a police officer, and in accordance with the policy that that followed, that there would - - -

So obviously, there was always going to be a Coronial investigation?---That's right.

What you say at par 11 is that "It became apparent, based on early assessment, that the actions of Constable Rolfe were quite possibly criminal, based on the initial briefing, and the viewing of the available body-worn video footage. It was submitted to the JMC by the senior investigating officer, that Officer Rolfe should not be directed to provide a version of events, as to do so in the absence of a formal caution would not be best practise for criminal investigation." Who's the senior investigating officer that you're referring to there?---It was Detective Superintendent Pennuto, your Honour.

You further indicate, and I'm not going to take you, in the interest of time, through all of your statement, because we have it in writing. But you note at par 12, "It was agreed at the JMC that initial early advice would be sought from the Director of Public Prosecutions, based on the initial viewing of body-worn video regarding the decision to subject Constable Rolfe to a criminal record of interview"?---Yes, that's correct.

You then made arrangements with the director to attend on Monday, 11 November, so that he could conduct a preliminary viewing of the footage?---That's correct, your Honour.

And did that meeting then happen?---It did, yes indeed.

So were you present when the director viewed that video – sorry, viewed that body-worn video for the first time?---Yes I was, your Honour, I was present.

You go on to note at par 12, "The director expressed that Constable Rolfe should be treated as a suspect, and offered interview under caution"?---That's correct, your Honour, yes.

Paragraph 13, you note, "Later on that same day you were present when Detective Assistant – Detective Acting Superintendent Pennuto briefed the deputy Coroner by the phone." That's – the deputy Coroner was then Kelvin Currie, is that right?--- That's correct, yes. I do believe Mr Cavanagh may have been there in the background as well, but we spoke to the deputy.

And you say "I made the decision to seek endorsement from the IMT/JMC to allocate a separate commissioner officer to take carriage of the Coronial investigation-critical incident response"?---Yes that's correct.

Had you ever had an experience previous that you were aware of, in the Northern Territory, where you had a jointly running, a Coronial investigation and a potential criminal investigation?---Not in my experience, no, your Honour. I was aware some previous incidents where we – where there was streams split, but I wasn't personally involved in them.

We know, as we've just heard from Officer Pennuto, it is not common for police to have to deal with a shooting of someone in the community by one of their own officers, thankfully?---Fortunately that is the case in the Northern Territory, your Honour, yes.

Even less so, is it – are police familiar with dealing with a situation where one of their own officers is charged with a criminal offence in relation to that. It did happen in the early 1980's, I'm not suggesting that you were around then, but did you look at what had occurred back then, in order to determine what should occur now? That was the Ti Tree death?---So I had familiar – or I have familiarised myself with some – some findings from the Aboriginal Royal Commission into Deaths in Custody, that did review the investigation into the shooting of Jabanardi at Ti Tree. So yes, I was familiar with that matter, and obviously there was criticism of the early police investigation at that time. And we were conscious of the fact that because we believe that criminality had been potentially established, and that we had a criminal suspect, that that criminal investigation should take priority and proceed through the prosecution process as in the majority of criminal investigations in relation to homicides, where then a Coronial file is then prepared for the Coroner. Now the nuance is this is a police officer was involved, and there is certain policy and procedure that we are directed to adhere by.

Had you ever met Constable Rolfe at all in the course of your dealings?---No I'd never met him, no.

So what was the rationale in terms of allocating a separate commissioned officer to take charge of the Coronial investigation?---It really was at the direction, and realistically, at the assistance of the deputy Coroner. He made it painstakingly obvious at the time, that he urged the senior executive of the police to allocate appropriate resources to the Coronial investigation, at that time. And that it shouldn't be put on the back burner, and it should progress at the same time as the criminal investigation.

On 13 November, you briefed Detective Superintendent Scott Pollock on the decision that he would be allocated the role of the – as commissioned officer in charge of the Coronial investigation?---I believe I did, yes.

You're familiar with his reputation in the Northern Territory?---Absolutely am, yes.

And you're aware that Detective Superintendent Scott Pollock had served for many decades in the Northern Territory as an investigator?---I'm well aware of that, your Honour, yes.

And he enjoyed a very significant reputation, for high standard of excellence in both criminal and Coronial investigations, is that right?---Absolutely, that's the case, your Honour, yes.

At par 15 of your statement, you note, "Later, after briefing Detective Superintendent Pollock, and giving him the role of the Coronial investigation, you re-attended the DPP with the Assistant Commissioner, then Mr Anticich, Detectives Pennuto and Malagorski. Further material was provided to the director and Deputy Director, Mr Matthew Nathan." Do you recall now what that further material was?---Yes, there was some transcripts in relation to the initial statements that were taken from the attending police officers at Yuendumu. And various other witness statements from people that they were able to obtain from Yuendumu.

You note, "After viewing that material and watching the body-worn video footage, both the Director, and the Deputy Director advised that a charge under the Criminal Code of murder, was appropriate." Is that right?---That's correct. That occurred, your Honour.

You're aware that since Constable Rolfe was charged, there are – have been questions raised as to whether or not there was any pressure put on police to charge Constable Rolfe from any external agencies, or otherwise. Was there any political interference at all with the decision to charge Constable Rolfe?---Absolutely none whatsoever, your Honour.

Did you think that it was justified on the basis of the evidence that you had available on 13 November, and in the absence of any explanation from Constable Rolfe, to charge him with murder?---Absolutely I did.

Do you think that Constable Rolfe was treated in any way, disadvantageously, compared to another citizen?---I certainly don't believe so, no, your Honour.

Do you think he was shown any favours?---No I don't believe so.

You went to the community of Yuendumu, is that right, as part of your investigations?---That's correct. In early December, I attended the Yuendumu Community with several other police officers, your Honour.

Do you recall whether or not Officer Barram was there when you first attended the community?---Officer Barram came with us on that trip, yes, your Honour.

And for what purpose was Officer Barram there?---So Officer Barram was taking the opportunity to inspect the residence where the shooting had taken place. Arrangements had been made to access that premises. But it turned out that the people that were to facilitate that, had left the community at that stage.

Did Officer Barram – or did you meet with the community?---Yes I did. I met with what was in that stage, in its infancy, I believe, the Parumpurru Committee.

Was Officer Barram attending or – at any committee meeting?---He may have been in and out, but I don't believe he was there for the entire period, no.

What was the primary purpose, and sorry if you answered this, of Officer Barram to be there in the community?---So Officer Barram was there as the use of force expert, to inspect the premises, and familiarise himself with the environment of where the shooting had occurred. And to conduct his own initial assessment of the scene.

I just want to direct you, if I may, to a memorandum, which was sent by Mr Pennuto, it's dated 8 January. It is attached to one of your statements, 7-28. And I'll just read to you from this section. Under the sub-heading "Criminal Investigation", Mr Pennuto notes "That Operation Charwell, by this stage, 8 January 2020, has already engaged the services of a local expert, Detective Senior Sergeant Andrew Barram, to examine the use of force aspect within the local context. And this aspect of the investigation is ongoing." His recommendation after that memorandum, which sets out issues about out-sourcing of expertise, is that "The progression of the criminal aspect of Operation Charwell can only be served via appropriate use of force subject matter expertise". Did you agree with that?---Yes, absolutely.

"And due to environmental factors currently in existence within the Australian law enforcement community and community proper, with regard to Constable Rolfe's circumstance and the death of Kumanjayi, Operation Charwell investigators recommend that the request be supported". He was basically suggesting at that time that consideration be given to funding an overseas expert like Professor Alpert?---Yes, that's my recollection of the memorandum, yes, your Honour.

He sets out in this memorandum that there are - I will read you the whole paragraph under the subheading "Outsourcing and expertise" - "One of the key issues that the investigation cannot fall foul of is either the real or perception of bias and an absence of independence and Operation Charwell investigators are keen to do everything possible to avoid this issue." Do you agree with that?---I do agree with that, yes.

He goes on to note; "As it presently stands, the Australian Police Federation who represents police based in all Australian states and territory has publicly condemned the charging of Constable Rolfe. Additionally it is already known to investigators that there is likely a reluctance on the part of other Australian jurisdictions to posture critically either for or against the position of Constable Rolfe with respect to his use

of force for fear of bring the Australian law enforcement community into cross-border conflict. As such, to be seen utilising the use of force expertise of members of the other Australian Police and jurisdiction becomes problematic." Did you understand that a number of efforts had been made to get other Australian experts?---Yes, I am certainly aware that there was efforts made and some of the problems associated with that your Honour.

Would it have been preferable to have alongside Senior Sergeant Barram's use of force expertise the use of force expertise from another member of the Australian police force?---Absolutely, it would have been preferable, your Honour.

In the wake of this investigation into Constable Rolfe and the trial, are you aware of any efforts that have been made at a national level to discuss between police services where they might assist each other fearlessly and with out fear or favour, to offer a genuine expert opinion in these circumstances?---I have to apologise to the court, I am not aware of any such meetings or forums but I certainly myself have fostered interstate relationships where I believe that I would be able to reach out to interstate counterparts and hopefully facilitate the provision of resources into the future.

Her Honour can read for herself the various memorandum notes that were taken in relation to trying to get other experts involved. You understand, don't you, that when an expert gives evidence in court they sign up to a code of conduct where their primary duty is to the court to give fair impartial evidence?---Yes, absolutely I understand that, your Honour.

Do you agree that police officers should be capable of understanding that and giving expert evidence?---Yes, absolutely I do.

Indeed, Senior Sergeant Barram read the code of conduct and agreed to be bound by that impartiality, correct?---That's my understanding, yes, your Honour.

Do you think one lesson from this is that it would - I appreciate it might not be you - someone within the Northern Territory Police Force might get the ball rolling on a discussion between all members of the force as to where that - how they can properly understand that duty to Australian forums?---Yes, very much so.

Those are my questions, your Honour.

THE CORONER: Thank you.

Ms Morreau?

XXN BY MS MORREAU:

MS MORREAU: Thank you, your Honour.

Assistant Commissioner, my name is Paula Moreau and I act for the Brown Family in this matter. I only have a few questions for you and really it is touching firstly on that last aspect of your evidence in relation to attempts to secure an interstate use of force expert. Your involvement was in relation to attempts to secure and expert in use of force from New South Wales specifically wasn't it?---My involvement was to facilitate the request from the investigation team under the hand of the Commissioner for Police to the New South Wales Commissioner of Police and to follow up requests from the investigators as to the progress of where that was sitting, your Honour.

And as a result of that ultimately you spoke with the Chief of Staff of the New South Wales Commissioner didn't you?---No, I didn't, your Honour.

So who from the Commissioner's office in New South Wales did you speak to, do you recall?---I didn't speak to anybody from the Commissioner's office in New South Wales. I can assist you if you like?

Certainly?---I spoke to the Northern Territory Police Commissioner's chief of staff at the time who was Commander O'Brien and I asked him to reach out to the Chief of Staff of the Commissioner of NSW Police.

I see, so you had no direct communications with New South Wales police yourself? ---No, I didn't, your Honour.

I see. Do you have any suggestions as to how the situation that presented itself, which was that we ended up with no interstate Australian-based experts being willing to be produced for the proffering of an opinion in this case could be improved on in the future?---I certainly think some work between the collective Commissioners of Police Australia-wide, potentially the promulgation of a memorandum of understanding for the exchange of services between police services in a matter such as this would be helpful in the future, your Honour.

And specific reference was made in the email that Dr Dwyer took you to, to the Australian Federation of Police. Has there been any communications from the Northern Territory Police Force to the Australian Federation - Police Federation to address the comments that were made in relation to this case?---Not that I am aware of, your Honour, no.

Now, prior to that but post Constable Rolfe being charged, in the week following that, I understand from an email you've attached to your statement that you had a conversation with Superintendent Bryson in the Prosecutions Department of the Northern Territory Police, is that correct?---Yes, I had several conversations with Superintendent Bryson, your Honour.

And essentially he had expressed a disagreement with the prosecution of Constable Rolfe?---Superintendent Bryson had some hesitations with regard to laying the indictment and it became problematic.

Yes, and as you suggested in the email that you have attached, you allowed his views but suggested that if necessary your name could be placed on material that was then being produced to the DPP, is that right?---That's correct, your Honour, I had no issues in putting my name against that indictment.

And do you know whether that, in fact, happened?---Yes, it did, your Honour.

I see. Thank you, they are all my questions.

XXN BY MR BOE:

MR BOE: I just have a couple of questions, your Honour.

Sorry, Assistant Commissioner Doyle, my name is Greer Boe, I act for the Walker, Lane and Robertson families to include, of course Lottie and Eddy Robertson who we have just spoken about today. I just have some questions really in relation to some - drawing on your experience of being in Yuendumu as a constable and of course as a young person, about your observations of cultural matters such as sorry business. Now, obviously that's not a Warlpiri word but you understand generally what I am referring to. Did you yourself ever observe sorry business as a police officer or constable in Yuendumu?---Yes, I did, your Honour, many times.

Yes, and then I won't - understanding then that might be at the time that somebody passes immediately and can continue on for a number of months - even years - but also occurs around a funeral?---Absolutely correct, yes, your Honour, yes.

And those are things that you observed as a police officer?---Yes.

Yes, and did you ever attend funerals yourself in Yuendumu?---Yes, I have attended funerals at Yuendumu, yes, your Honour.

Those are entire community events often in that sort of area, would you agree with that?---Yes, that's correct, your Honour.

And did you ever observe at those - particularly funerals, and obviously your experience with the kinship system in Yuendumu, that there would be various responsibilities of certain family members at funerals?---Yes, absolutely, your Honour.

Was there ever a circumstance or time in which you had to potentially delay a policing decision to accommodate sorry business or sorry happening in Yuendumu? ---I don't recall specifically, your Honour, but it wouldn't have been outside of the scope to do that but I don't recall a particular occasion where we had to defer policing activities specifically in relation to it.

But so you said that but it wouldn't be outside what you would maybe naturally do, understanding the significance of sorry?---Yes, absolutely, your Honour.

The next sort of topic I want to talk about is traditional punishment. It has been referred to as "payback" often in this inquest but it's just that general area, you're familiar with traditional punishment, particularly from Warlpiri people?---Yes, I am, your Honour.

Have you ever observed traditional punishment?---Yes I have your Honour.

Would you be comfortable telling any stories about that? You can anonymise people or – but your experience of that observation?---So I've witnessed spearings occurring at Yuendumu on numerous occasions when I was a police officer there in relation to seeking to exact payback and finalising matters of conflict between aggrieved parties, your Honour.

Did you find that that did in fact cease conflict between parties in the circumstances?---On many occasions yes but not always.

Is it predominantly yes or predominantly no or you couldn't say?---I couldn't really say.

Okay. Obviously those are things that you observed yourself. But was it through the support of the Aboriginal community police officer that you got a lot of that cultural knowledge?---Yes, absolutely. So as I stated earlier, I worked very close with Jabirula in my time at Yuendumu and he went to lengths to explain certain nuances and customs and cultural aspects that whilst I had lived there as a young child, probably opened my eyes to a lot more of what was going on, particularly as a police officer, your Honour.

And just my final sort of question on that. After you finished your gazetted time in Yuendumu, did you pass on the things that you had learned to other officers in any formal or informal way?---So when I left Yuendumu it wasn't a matter of transitioning the whole police force. So I believe there was somewhat of a legacy left with the OIC who remained at the station and then went on to serve at another police station. And the second member was also still at Yuendumu, so yes, I believe that my experiences in working as a team there still had an effect on the people when I left that community, your Honour.

Those are my questions. Thank you.

THE CORONER: Mr Boulten.

MR BOULTEN: My name is Phillip Boulten and I appear for the North Australian Aboriginal Justice Agency. When you were living and working as a police officer in Yuendumu what decision making processes existed in the community that were – that involved Aboriginal community members as decision makers?---I recall at the time we had a Law and Justice Committee where we'd meet on the front lawns of the Yuendumu Police Station and we'd discuss matters of upcoming court cases and representations that some of the senior elders wished to make in sentencing

submissions to the judge. I'm sorry, I feel a bit disconnected not looking at you but certainly participated in that, your Honour.

Was that the Southern Kurdiji Group?---No, no. I believe it was called – I don't – I don't recall it being called that at that time, your Honour.

Were there other similar organisations?---Look, as a community police officer it was our practice to consult extensively with community, particularly around all matters of community unrest. It wasn't – it wasn't uncommon for us to consult senior elders when the shop had been broken into. We didn't have large incidences of unlawful entries and we were very easily able to resolve them by going to senior community people and seeking their assistance in identifying perpetrators of these offences. And often – more often than not there was community solutions to what was the appropriate outcome for the people, generally the young people that had committed some of these offending behaviours.

When you lived there at that time, was there a local elected council that ran local council issues?---Yes, there was. There was the Yuendumu Community Council.

THE CORONER: Can I just ask, you said when you went to the senior elders who identified perpetrators and there were often community solutions to the issues. What kind of community solutions were there?---So it may involve cleaning the store. It may - - -

MR BOULTEN: Sorry?---Cleaning the store. Of the specific incident I'm referring to is I can recall that the store was broken into, there was damage caused, things thrown around. The community was able to identify a couple of young people that were involved in that and the community asked them to come and clean up the store and that was undertaken and the decision was made that it didn't need to go down the justice pathway and - - -

When there was a community council at Yuendumu, did that coincide with CDP and CDEP work programs or work for the dole programs?---Yes. So there was a strong CDEP presence when I was at Yuendumu and there was a strong Yuendumu Community Council that we regularly attended and spoke to about issues on the community or were summonsed to seek a police explanation on certain things that were going on, your Honour.

What was your view at that time about the utility of Aboriginal people making important decision making – making important decisions about their community and the way it operated?---I think it was extremely important and extremely successful, your Honour.

Have you had similar experiences in the other remote Aboriginal communities that you've worked in?---I have, your Honour. There was certainly community councils in some of the communities outside of Ti Tree. I haven't worked extensively across the Top End, your Honour, but I am aware that previously there was strong community councils. Currently the system is larger community councils encompassing many

communities and in my experience that's not as successful as the locally appointed community councils.

Why's that?---There's less local representation and often there's conflicting opinions between people from different communities and I don't think there's as much – as strong a representation from the community itself. And sometimes their voices may go unheard. But that's just my opinion, your Honour.

Her Honour has heard evidence from some of your colleagues about the burdens placed on Aboriginal people in Yuendumu in particular to attend various frameworks as it were, people that need to be consulted. Have you got a view about how that particular burden impacts on the effectiveness or utility of local decision making?---I do. We often use the parlance in policing of meeting fatigue.

Sorry, meeting fatigue?---Meeting fatigue.

I understand that?---It's certainly been conveyed to me as the assistant commissioner by several of my divisional superintendents that some communities are exasperated by the level of requests for them to attend and participate in meetings that may not actually encompass any meaningful contribution by them, but their expectation to attend is always there.

When you lived in Yuendumu as a police officer, who ran the health clinic?---That was Remote Health, your Honour.

Government?---Yes.

Okay. In relation to traditional punishments or payback, in the period when you were in Yuendumu, were they subject to criminal sanctions, the persons spearing, for instance?---So there's always been a conflict in policing duties and observation, I suppose, of allowing cultural payback to take place. It's something that police have struggled with because we swear an oath to preserve lives and uphold the law. It's difficult to stand by and observe potentially serious harm be inflicted on somebody and it's something that's never been easily navigated by police on communities. But I think with the assistance of our ACPO and some understanding of how beneficial that may be to resolving the situation on communities, in my experience that particularly back then, there was a lot of discretion used by community police officers in some of these events.

I press you just slightly. Can you remember anyone being charged with a criminal offence for participating in such a process?---I can't recall that in my time there your Honour. No.

Were there in place some safeguards for dealing with injuries, like liaising with the clinic in relation to such incidents?---Yes, absolutely.

Now again, it's not your job to make the laws, but it is the law that someone whose been subjected to traditional punishment cannot use that in mitigation of any penalty

in a Civil Court or Criminal Court exercising such jurisdiction. Do you think it's relevant when someone calls to be sentenced, that they have been subjected to traditional punishment?---I do your Honour. I can recall if the court's willing to indulge me, I can recall an incident when I was working at Ti Tree where an offender that was in custody for the offence of murder, was released by the court for the purpose of traditional punishment. And he was released to the community of Ti Tree to undertake that.

Roughly how long ago was that?---That was when I was serving at Ti Tree in 2001 your Honour.

When you were providing policing services to Aboriginal communities, did you trust the senior members of the community to deal responsibly with sensitive information that was necessary to impart to them?---Yes, I absolutely did.

In the immediate aftermath of Kumanjayi Walker's death, did you fear that there would be serious damage and injury caused to police at Yuendumu?---No, I didn't have the apprehension. I was concerned that there would be definitely some emotional reaction by the community. My observation is the Warlpiri are very emotional people, sometimes those emotions can take control of them, and it's been my experience previously – I have seen very emotional reactions that have resulted in questionable behaviour, but no I didn't have the apprehension that the police were at grave risk of harm from the community no your Honour.

Do you believe that deceiving members of the community about the death of someone at the hands of a police officer, is a very damaging thing to do or have done?---Do I believe that?

Do you believe it?---Yes, I certainly do your Honour.

Do you understand that there's a lot of very angry and distrustful in Yuendumu as a result of the way in which Kumanjayi Walker's death was handled by your colleagues?---I absolutely understand that your Honour.

Did you fear that there'd be a domino effect from Yuendumu right through all the Aboriginal communities in the Northern Territory, that police stations would be overrun, burnt to the ground, people killed or injured because they're police?---No, I didn't fear that your Honour. That wasn't an overwhelming concern of mine whatsoever.

If you had been on duty when someone killed a man in Yuendumu and Jabirula was outside the police station, would you have trusted him with the information about what was happening?---Implicitly your Honour.

So, what's your impression of police who are racist?---I've got no times for it, absolutely no times for it.

Should people who hold racist opinions about Aboriginal people be given the power of a police officer in the Northern Territory?---No, absolutely not.

In the documents attached to your materials in the Coronial brief, we learnt about how the Federal Police Union impacted on decision making regarding the selection of a use of force expert?---Yes, that would be fair to say your Honour, to some extent.

This was a particularly fraught investigation for you and your colleagues as Northern Territory Police because it was a police officer who had killed an Aboriginal 19-year old boy in a house in a remote community, right?---Yes, I don't dispute that.

Apart from the Federal Executive of the Police Association holding very strong views about the charges that were brought against Mr Rolfe, were you aware that there was a strong body of opinion amongst police officers for instance in Alice Springs, that he should never have been charged?---Yes, I'm aware. There was (sic) polarising views within the police force and within police forces all over Australia.

Were you living in Alice Springs in the period – no you're in Darwin when he got charged. But were you aware that serving police officers met in fairly large numbers at the police station to discuss what had happened?---No, I wasn't aware the specifics at that time. No, I wasn't your Honour.

You followed the commentary in the media about the appropriateness of having charged Mr Rolfe with murder, I take it?---Yes, I have seen numerous media representations and commentary on that matter.

Including commentary from the Secretary of the Northern Territory Police Association?---Yes, absolutely. Yes, I've seen media releases and a piece to air.

Would it be fair to say, that there are still raw nerves in amongst your colleagues about what happened and what's still happening in this inquest?---In some parts of the organisation, yes it would be fair to say that's the case your Honour.

Do you know that in some parts of the world, including Northern Ireland, investigations into potential criminal acts by police are investigated by a completely independent body who are not sworn police officers. Are you aware of that?---No, not particularly I wasn't aware of that, no.

Can you see some utility in there being complete separation between the police who investigate police and rank and file police?---Yes and no. I can see some utility, but I can also see some difficulty with that approach.

The size of the police force in the Northern Territory would be one hampering condition to set up a completely independent body to investigate police perhaps?---I apologise here, I'm not quite sure what you mean by that.

It would be hard to maintain a standing independent body to investigate the alleged misconduct of police?---From within the police force or from?

An external one?---Well, we do have an ICAC your Honour.

And you also have an Ombudsman?---That's correct.

But the Ombudsman mechanism is largely intertwined with internal police investigations, right?---That's correct your Honour, yes.

And it's very difficult to disentangle them, isn't it?---Well, my understanding is the Ombudsman's focus is on complaints against police and behavioural concerns. The ICAC looks more at misconduct and criminal matters by police and anything of a criminal aspect, the Northern Territory Police Force has primacy and that can be anything from sexual assaults to fraud matters to, as in this case, homicides.

What role, if any, did they play in bringing the charges about?---They played no role in bringing the charges about, your Honour.

What role did the special references group play in the investigation of the death of Kumanjaya Walker?---Several officers from the Special References Unit were utilised as investigating officers under the command of Superintendent Pennuto.

What was the Special References - what's it called - Unit - - ?---Yes.

- - - set up to do?---The Special References Unit was a unit under the crime structure so they fell under the direction of the commander crime and the superintendent crime. They were set up initially to investigate matters involving senior police of - it was set up after the affairs with Commissioner McRoberts and certain recommendations that there wasn't a section in the Northern Territory Police Force that was independent enough to investigate matters of serious conflict involving senior police officers and matters that were referred to the Commissioner of Police or other agencies. So that was its initial tasking. Over time the Special References Unit came to become more of a - I suppose in where it was sitting, it was seen as a criminal investigative section under PSC and several criminal investigations in relation to police were given to the Special References Unit. It was then absorbed into the Crime Command and seen as another unit and function of Crime.

So, essentially, by the time you got involved in this matter it was not in any way independent from the police investigation?---No, it was another section under the control of the superintendent crime.

Shouldn't there be an independent group of police, whether they're called police or not, to investigate particularly serious allegations of criminal activity by police officers even for perception purposes?---I - there is some merit in that but I believe that all police officers should have the ability to investigate their own without fear or favour, your Honour, and when you choose to go into an investigative stream you make the decision that one day you may be investigating your colleagues.

You know you and your colleagues have copped criticisms on both sides of the ledger?---I'm very well aware of that, your Honour.

On the third charge, no justice provided. Wouldn't it be better if it was somebody who was quite clearly independent who made the important decisions?---As I said, I - I'm not suggesting that's not a perfect world. Other police forces have oversight - oversight agencies that come out and investigate with police and I've actually had these discussions with certain agencies in the Northern Territory that perhaps there should be active oversight from the beginning. I know New South Wales have the LEK(?) that turn out and investigate matters involving police use of force, involving fatalities and they turn up at the initial stages of the investigation. So I see some merit in that, yes, your Honour.

So far as sharing of expertise in police investigations of police officers that is sharing between jurisdictions there was a problem in this case, wasn't there?---There certainly appeared to be a problem, yes.

And it seems that the problem that the interstate agencies didn't want to be seen to hurt a police officer, or to help a police officer, or both, is that right?---It is and it's something that I hadn't seen before, your Honour.

There's been some evidence about the problems that emerged in the Coronial investigation stream between senior investigators in that stream and Mr Anticich in particular. Were you aware of that when this was all happening? Were you aware of bad blood between Mr Anticich and Mr Pollock, for instance?

MR CASSELDEN: I object to that, there's no evidence of bad blood.

MR BOULTEN: Well, were you aware of problems, alleged bullying, and – by Mr Pollock against Mr Anticich?---No, I'd say no, but to be complete in my answer, I wasn't aware of any alleged bullying, your Honour. I was aware of some frustrations of AC Anticich in his attempt to understand the process and his keenness to receive information from the Coronial stream.

In retrospect – forget about what happened. In the future, if there ever is another homicide investigation involving a suspect police officer, do you think there should be parallel Coronial and criminal investigations taking place simultaneously?---No I don't think it's effective. And in fact, it has the potential to be problematic, and I don't think it was the best – the best scenario in this circumstance either.

That's all I wish to ask.

DR DWYER: Your Honour, I believe that Mr Officer only has about five minutes. Might we allow for that cross-examination to take place, if it is just five minutes?

THE CORONER: Yes.

Mr Officer.

MR OFFICER: Yes, thank you, your Honour, can you hear me all right?

THE CORONER: Yes.

XXN BY MR OFFICER:

MR OFFICER: Thank you.

Assistant Commissioner, you were asked some questions by Mr Boulten of Senior Counsel about the divide in opinions amongst police officers having some impact on the investigation, or at least presenting a difficulty, you recall that?

MR BOULTEN: No I didn't ask that.

THE WITNESS: No, I didn't – I didn't say that. I believe my evidence was that I was aware of some polarising views amongst the police force.

MR OFFICER: About the charging?---Yes.

Yes. That – those views are also, would you agree, not aided by comments made by the Chief Minister the day before Constable Rolfe was charged - - -

MR BOULTEN: Well I object - - -

MR OFFICER: - - - and indeed the ICAC Commissioner the day after - - -

THE CORONER: How is this relevant, Mr Officer?

MR OFFICER: Well it's been put to this witness that views about the charging of Constable Rolfe by police officers is somehow of concern to this police officer in the way in which he approached the investigation.

THE CORONER: No, that's not what his evidence was. He was aware of polarising views amongst police here, and around Australia, was his evidence.

MR OFFICER: Yes, and it's been pitched at a base – on a level that it's being unhelpful.

THE CORONER: Well I don't think that there has been a suggestion or an acceptance that it in any way was unhelpful to the investigation. It's certainly unhelpful to relationships.

DR DWYER: And as I understand it, it's put by Mr Boulten, to bolster what I anticipate to be a submission that an independent body, like the Northern Ireland body would be appropriate or of assistance.

MR BOULTEN: That's what the point of the question is.

MR OFFICER: I'll move on, your Honour.

THE CORONER: Thank you.

MR OFFICER: Assistant Commissioner, I just want to focus your attention to the days between the ninth and 13 November. You were involved in some critical meetings where significant decisions were made?---That's correct, yes I was, your Honour.

And a number of those meetings looked at body-worn video, discussions with the DPP, and then ultimately 13 November, when the decision was made to charge Constable Rolfe?---Yes, that's to say, your Honour.

Did you keep any notes of these significant meetings?---No, I wasn't actively an investigating officer. I was charged with the oversight and resourcing and attendance of James Sykes(?) to facilitate the senior investigating officer. So no, I didn't.

But you're a commander of police, it would be prudent to keep notes, would it not?---If I'm an investigating officer I'd keep notes, yes.

Well if you're involved in significant critical decisions would it not be prudent to keep notes?---Well no, because my view is that those critical decisions are recorded at the appropriate meetings and documented for everybody to see.

Well how many meetings did you attend in the period of 9 to 13 November specifically in relation to the incident involving Constable Rolfe on 9 November 2019?---Are you asking me off the top of my head. Potentially five or six.

And do you know who were involved in each of those meetings on each occasion?---So on every occasion Assistant Commissioner Anticich was present. Detective Superintendent Pennuto was present, various other police officers. Regularly Senior Sergeant Malagorski was there and from time to time other police officers depending on the day and which meeting it was.

On 13 November 2019, which – in the afternoon, which is when the critical decision to charge Constable Rolfe was reached, Superintendent Pennuto said in his notes that there was a private meeting of the senior executive including the Commissioner of Police in the Deputy Commissioner of Police office at about 3.34 pm. Were you involved in that private meeting?---No, I wasn't, your Honour.

Have you been involved in any other private meetings that you don't have notes about?---No, I haven't, your Honour.

In relation to the email you sent Richard Bryson on 18 November 2019 – which your Honour, you'll find at page 8 of 7-27 – and I just want to give you the opening

paragraph, assistant commissioner, "Richard in respect of our conversation on Friday and my undertaking to provide you with information and advice around the interaction with the DPP and what was considered or otherwise by them". Did you have a discussion with Superintendent Bryson where he had formed a view or an opinion that perhaps it wasn't the right timing to charge, if I can put it that way?---No, that wasn't his primary concern.

DR DWYER: Could I just get the brief reference again?

THE CORONER: 7-27.

MR CASSELDEN: Page 8. What was his primary concern or concerns?---Superintendent Bryson expressed to me that he had the desires to have a written advice from the DPP. Prior to him putting his name to the indictment I told him I was comfortable that that advice had in fact been given, because I was present at that meeting and if he had an issue I was happy to put my name to the indictment, being completely comfortable that that advice had been given, because I was present for that meeting.

You note that in that email at about .5 they viewed the footage several time with the DPP and discussed the incident in regards to the first shot and the second two shots being comparatively different. It was their view that the justification for the use of force were those for Constable Rolfe to provide and as you're aware, he didn't provide a version of events until the trial. Would you agree that there were a number of other ways in which you could have got a version from Constable Rolfe, for example, the coercive powers under the *Police Administration Act*?---Not in this circumstance, no, I don't agree with that.

Why not?---Because Constable Rolfe was to be afforded the same rights as anybody else charged with such a serious offence and to use anything but a request under caution to me, would be circumventing the natural course of justice and not the appropriate use of other coercive powers that may be available.

What about before he was charged?---No, because he was a suspect in relation to a criminal offence and it wouldn't be proper to not use appropriate questioning under caution.

Did your connection to Yuendumu and your relationship with any of the people there have an impact on the way in which you approached the decision making to charge Constable Rolfe?---No, it did not.

Those are my questions, your Honour.

THE CORONER: Thank you. I note the time.

A PERSON UNKNOWN: I have no questions, your Honour.

THE CORONER: That helps a little.

So who else does have questions?

MR FRECKELTON: I do, your Honour, but only five minutes.

THE CORONER: Right.

Can we start at 9 o'clock tomorrow morning?

All right. We'll adjourn until 9 am. And officer, we'll need you to come back tomorrow.

WITNESS WITHDREW

ADJOURNED