

## AUSTRALIAN CAPITAL TERRITORY

BOARD OF INQUIRY  
CRIMINAL JUSTICE SYSTEM

**In the matter of the *Inquiries Act 1991*  
*Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023*  
Board of Inquiry into the Criminal Justice System in the Australian Capital Territory**

**STATEMENT OF JOHN WARWICK KORN**

I, John Warwick Korn of Ada Evans Chambers, situate at Suite 106, Lvl 1, 370 Pitt St Sydney NSW state as follows:

The following statement is provided in response to the subpoena I received from the Board of Inquiry into the Criminal Justice System in the Australian Capital Territory requiring me to give information in a written statement regarding my knowledge of matters set out in the Schedule attached to that subpoena. Attached and marked '**Exhibit 1**' is a copy of the relevant subpoena.

**Background and Professional History**

1. What is your current occupation?

I am a Barrister, in private practice at the NSW Bar, specialising in Criminal Trial advocacy.

2. Outline your tertiary qualifications, including when and where you obtained them.

I have a Bachelor of Arts and a Bachelor of Laws from the Australian National University (the ANU). I commenced my 5 years of Undergraduate studies at the ANU in 1970 and finished in 1974. I then undertook the 6 months Practical Training Course at the College of Law, also situated in the ANU Law Schools building. I completed that Course in mid 1975. I then worked for the ANU Administration in the second half of that year. I was primarily tasked with re- writing the University's Rules for Admission

3. Outline any other qualification including when and where you obtained them.

Nil further Tertiary or Post-Tertiary qualifications. I am however required each year to undertake compulsory Continuing Legal Education which involves me accumulating 11 points over four separate strands of legal practice.

4. What year were you admitted as a lawyer?

I was admitted as an Attorney, Solicitor and Proctor before the Supreme Court of the ACT in 1975

5. Have you undertaken a Bar Practice Course? If so, detail where you completed the Bar Practice Course and when you completed it.

I do not believe that I was required to undertake a Bar Practice Course, prior to or after I commenced as a Barrister in Sydney.

6. What year were you called to the Bar?

I was admitted to/called to the NSW Bar, in or about August 1980.

7. Outline your experience as a Barrister in both the Australian Capital Territory (ACT) and New South Wales jurisdictions.

In about September 1977 I was invited to join a partnership with two slightly older Practitioners, who were both Conveyancing/ Commercial Lawyers. My role was to

Jon W Korn

INSERT FULL NAME

Witness

establish and build a Criminal practice for the Firm. That firm was called Derwin Reid, and later became known by its current appellation as Vandenberg. By the time I left the ACT in July 1980 that Firm was the busiest Criminal practice Firm in both the Magistrates Courts and in the Supreme Court in the ACT.

Whilst admission in the ACT at that time, enabled me to appear as a Solicitor or a Barrister, I practised solely as a Solicitor, appearing in Defended matters in the Magistrates Court, doing 5 to 10 contested defended Hearings per week.

I did not consider myself to be sufficiently competent or experienced to conduct Criminal Trials in the Supreme Court. I had 2 x Barristers whom I primarily briefed - Mr Nicholas Cowdrey QC, practising at the Sydney Bar. He later became the Director of Public Prosecutions, NSW. My other Barrister of choice to learn from, was Mr Ron Meldrum QC of the Victorian Bar.

In my 42 years at the Sydney Bar, I have conducted hundreds of Trials as Defence Counsel for persons charged with serious Criminal Charges, including.

- Between 1981- 1985 much of my Trial work involved appearing for Motorcycle Club members charge with Rape allegations. In those days these Trials proceeded in NSW in the Supreme Court.
- I also started being involved in long Drug Trials for persons charged by the Commonwealth for Importations of “Suitcases” of Drugs, usually Heroin and also by the State for Supply Heroin Supply.
- In 1986 I appeared in what has come to be known as the Milperra Massacre , where 19 Bandidos were on Trial for Murder and my role was to be principal cross examiner for all 19 of the “Bandido Club Members accused of Murder in the “shoot-out” at the Milperra Tavern in Revesby . Mr Greg James QC, later Mr Justice James QC, was also briefed and his principal function was to deal with all matters of law and overall to be our Leader.
- In 1989 I appeared as Defence Counsel for the very first “Methamphetamine Factory” arrest in a joint operation between the Victorian and the New South Wales State Police. I appeared on my own, as Counsel for the 4 x Accused and the matter went to Trial on 3 x occasions. The 1st Trial ran for 24 x weeks with the Jury being discharged after being unable to reach a Verdict for any of

John W Row

INSERT FULL NAME

Witness

the 4x Accused. The 2<sup>nd</sup> Trial ran for 16 weeks and again the Jury was discharged after being unable to return Verdicts; the 3rd Trial ran for 8 x weeks until the Prosecution “gave up” and terminated the proceedings.

- Thereafter till 1994 I appeared in most of the “Drug Factory” arrests and Trials, against the newly formed and high-profile NSW Police DEA (Drug Enforcement Agency).
- I appeared for Billy Bayer and other Kings Cross “Identities” in the 1997 Police Royal Commission proceedings.
- From 2007 and for the next 2-3 years I was engaged on a virtually full-time basis representing and appearing for Mick Hawi and other “Officers” of the newly reconstituted Commanchero OMCG. The NSW Gangs Squad and the NSW Police Raptor Squad publically declared War on OMCG’s (Outlaw Motorcycle Club Gangs) and a very large number of Prosecutions were commenced, in which I appeared.
- This culminated in what happened next, when in 2010 I was Lead counsel for the 12 x Commanchero Club members who were charged with Murder arising from the events at Sydney Airport. The 2 x Clubs, the Commancheros and the Rebels had a violent confrontation at Sydney Airport on a Sunday and Anthony Zervos of the Rebels was killed by being repeatedly stomped on with a Steel Bollard. The Committal Hearing at Parramatta ran for nearly 4 months.
- In 2019 I appeared for the Chinese Film Star Mr Gao who was charged with Sexual Assault – I was first engaged to get him Bail and after that Application was successful, he asked me to be Counsel in his Trial, until he was acquitted.
- Since that time I have appeared in more than 10 x Jury Trials for Chinese persons charged with Sexual Assault, with my most recent Chinese Sex Assault Trial concluding a little over 2 x weeks ago.

8. Have you sat, or do you currently sit, on any boards, committees, working groups, or taskforce? If so, provide details of the name of the board, committee, working group, or

John W Korn

INSERT FULL NAME

Witness

taskforce, when you started (and finished if applicable) and what role you had/have on the board, committee, working group, or taskforce.

I have not.

9. **Attach** a current CV.

### **Sexual Offence Matters**

10. State the number (an estimate) of matters related to sex offences you have been involved in within the ACT jurisdiction to date and the years in which those prosecutions occurred (roughly).

In the years 1977 to 1980 I was involved in approximately 10 - 15 Supreme Court trials in the ACT for sex-related matters. I always briefed Counsel, usually Mr Cowdrey QC or Mr Meldrum QC.

11. State the number (an estimate) of prosecutions (whether as prosecutor or defence counsel) related to sex offences you have been involved in within other jurisdictions. Provide details of the relevant jurisdictions.

Referring specifically to Sex Offences, I appeared as Defence counsel in respect of what were then referred to as Rape trials in the New South Wales Supreme Court in the years 1981 – 1985. From 1986 onwards and particularly after the “Millpera Massacre” Trial concluded I was principally involved in Drug charges, with only approximately 5 -6 Sex Offence Trials up until the year 2018-19, when I appeared for Mr Gao, the Chinese film

John W Korn

INSERT FULL NAME

Witness

star. Since that time, I I've appeared in not less than 11 Sex Offence Trials for persons of a Chinese background. I completed my most recent one I at Parramatta District Court a little more than 2 x weeks ago.

12. Outline the usual process of receiving a brief of evidence in relation to a sexual assault matter within the ACT jurisdiction. Provide details as to the general nature of the documents provided (including the categories of documents and what information is redacted) and by whom a brief of evidence is usually served by.

I do not recall that I have appeared in relation to a sexual assault matter in the ACT jurisdiction since coming to the Bar in New South Wales in 1980.

13. Outline the usual process of receiving a brief of evidence in relation to a sexual assault matter within the NSW/and or any other jurisdiction that you have had relevant experience. Provide details as to the general nature of the documents provided (including the categories of documents and what information is redacted) and by whom a brief of evidence is usually served by.

In New South Wales in relation to Indictable matters, meaning matters that must be dealt with to finality in the District or Supreme Court, on the first day that an Accused person appears in court, if a plea of Not Guilty is entered, then stage I of the EAGP (Early Appropriate Guilty Plea) system is activated.

This means that the Magistrate makes an Order for Service of the Brief, usually 6 x weeks from that Date.

After service of the brief, Stage II of the system is activated, meaning the DPP is allowed 8 x weeks for Charge Certification. Assuming they comply with the timetable and provide a Certificate certifying which charges are fit to proceed in the District or Supreme

\_\_\_\_\_

John W Row

INSERT FULL NAME

Witness

Court, Stage III is then activated which allows for a further 8 x weeks adjournment for Charge Negotiations.

At the end of this 22-week three-part system, the matter will be either committed for Trial or Sentence.

My first involvement with any matter will usually be right at the outset when the Accused person is charged, and I am briefed to make a Release Application (Bail).

As Counsel, I am usually next involved at the charge Negotiation stage and by this time I will have been provided with a Brief by my Instructing Solicitor.

After the matter is committed for trial, the DPP is required to comply with Section 142 of the Criminal Procedure Act, which sets out the documents that they must serve on the defence. There is a lengthy list set out a in section 142, on a paragraph-by-paragraph basis. I will set out the first few of the more important obligations on the DPP:

By paragraph (a), the prosecution is to serve a copy of the indictment.

By paragraph (b) the prosecution is to serve a copy of the Crown Case Statement.

By paragraph (c) the Crown is to serve a copy of a statement of each witness whose evidence the prosecutor proposes to adduce at the trial.

By paragraph (h) the Crown is required to supply, if any expert witness is proposed to be called in the Trial by the Prosecutor, a copy of each Report by the Expert Witness that is relevant to the case. In sexual assault matters a such reports would normally come from sexual assault Doctors who have examined the Complainant, including taking a history and this is known as the SAIK (the sexual assault information kit). This is the location where there is most likely to be material, including direct statements from the Complainant, which might give rise to any redacting of documents. In the most recent Trial that I completed two weeks ago, independent legal representation was required to go through the SAIK kit to carry out the redacting of the SAIK documents, before they were provided to the Court, to the DPP Crown prosecutor and to the Defence.

*John W Roer*

.....  
 INSERT FULL NAME

.....  
 Witness

**Australian Federal Policing (AFP)/ACT Policing**

14. Prior to your involvement in the matter of *R v Lehrmann*, describe your experience in relation to the conduct of Australian Federal Police (AFP)/ACT Policing officers in investigating sexual assault offences. Include information about the quality of the investigations, the reasons for your views and provide examples where possible.

I do not consider that I have any, or any sufficient prior experience to comment upon this matter.

15. Describe your relationship generally, and the extent of your dealings (if any) with the AFP/ACT Policing officers involved in the investigation in the matter of *R v Lehrmann* prior to the criminal proceedings commencing, including but not limited to your dealings with Detective Superintendent Scott Moller and Detective Inspector Marcus Boorman.

For the reasons set out a in my answer to question 15 above, I do not consider that I have any relevant prior experience such as to comment upon the conduct of the AFP generally.

In respect of the matter of *R v Lehrman*, I only ever dealt with a very limited number of officers.

My first contact was with Det Marcus Bormann and that happened early in 2021, probably around February or March. It was before any notification that charges would be instituted. My best recollection is that it was limited to only 2 telephone calls.

In the 1<sup>st</sup> week of August 2021, I received telephone calls from a male who identified himself as Detective Supt Moller. I believe that the 1<sup>st</sup> call happened on a Wednesday, and I believe by reconstructing, my recollection of the events over the next 2 days, that

*John W KORW*

.....  
 INSERT FULL NAME

.....  
 Witness



it was Wednesday 4 August 2021. In this week, believe I had 4 telephone conversations with Mr Moller. Our relationship was professional, we never became friendly and although I will set out in question 24 below, the detail of our conversations, I can say that I did not ever feel that he was either for or against Miss Higgins or Mr Lehrmann. His conduct was politely professional and appropriate.

The only other Police Officers that I had any dealings with, a were in relation to physically receiving and returning the USB stick containing the Brief. Again, I will deal with that in more detail a in paragraph 24 below.

**ACT Office of the Director of Public Prosecutions (ODPP)/Director of Public Prosecutions (DPP)**

16. Describe your relationship generally, and the extent of your prior dealings (if any) with the ACT Office of the Director of Public Prosecutions (ODPP) and/or the Director of Public Prosecutions, Mr Shane Drumgold SC (DPP) prior to the matter of *R v Lehrmann*. Provide examples where possible.

I had no dealings whatsoever and had never met, nor spoken to or with, the Director prior to Lehrmann.

**Victims of Crime Commissioner**

17. Prior to *R v Lehrmann* state whether you have been involved in any sexual offence matters where the Victims of Crime Commissioner for the ACT (or her staff) had provided services or support to a complainant. If so, provide details of the services and

Jon W Ross  
 INSERT FULL NAME

Witness

support and case names.

I have had no dealings whatsoever and have never met nor spoken to or with the Victims of Crime Commissioner.

**Involvement in the Matter of *R v Lehrmann***

18. When did you first become aware of Ms Brittany Higgins' allegation of sexual assault against Mr Bruce Lehrmann? Include details about how you became aware and what you were aware of.

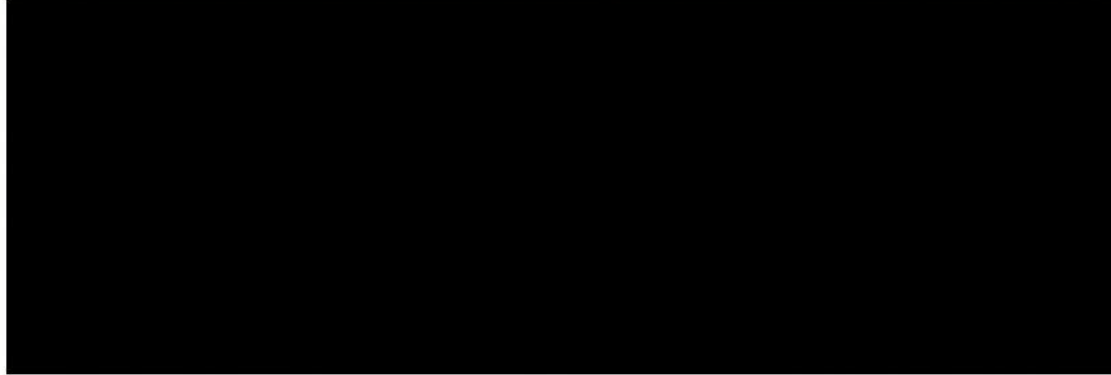
I believe that I first became aware of Mr Lehrmann when he contacted my Chambers and left a message for me to call him which I did. My recollection is that Mr Lehrmann explained that he had spoken with my eldest Son, Warwick Korn who is a practising Solicitor here in Sydney and my Son had referred him to me for general advice. [REDACTED]

My first face-to-face meeting with Mr Lehrmann was on Tuesday 2 March 2021 and

*James W Korn*

INSERT FULL NAME

Witness



After Tuesday, 2 March 2021, Mr Lehrmann kept in touch with me from time to time to see if I had received any indication that Police were involved and/or were likely to charge him. I believe the telephone calls I made to see whether there were any developments, were the limited number of calls I made to Inspector Boormann.

19. On what date did you first become involved in the investigation of Ms Higgins' allegation of sexual assault against Mr Lehrmann (**Investigation**) prior to the commencement of *R v Lehrmann*, including what the nature of your involvement was and how this involvement came about.

Wednesday 4 August, 4 August 2021, was the occasion when I received my first telephone call from Mr Moller who told me that the matter would be proceeding to Court, meaning that Mr Lehrmann would be charged. I understand that I will be dealing more fully with this conversation in Paragraph 24 below.

20. On what date did you first become engaged as the defence counsel in the matter of *R v Lehrmann*? Include the details surrounding your engagement, the nature of this engagement and how did the engagement come about?

On Tuesday 2 March 2021 when Mr Lehrmann visited me for the first time in my Chambers, that is when I considered that I was engaged as his legal representative. He

John W Roan  
 .....  
 INSERT FULL NAME



Witness

was not charged at that time as there was no direct indication that he would be charged, but having come [REDACTED], to ask for and receive legal advice, we both considered that from that moment on, if charges were to ensue, I was his legal Counsel.

21. List the solicitor(s) you were instructed by and the counsel you worked with in relation to the matter of *R v Lehrmann*. Outline their role(s) and involvement.

My eldest son, Warwick Korn was my instructing solicitor after Mr Lehrmann was charged. Prior to Mr Lehrmann being charged I had limited conversations with my son, as he stated to me that unless and until Mr Lehrmann was charged he thought it would be better if Mr Lehrmann could have direct access to me, pre any charges being laid. It was always my understanding that if charges were laid my son and his Firm would be my Instructing Solicitors.

22. In chronological order, outline your interactions with any AFP/ACT Policing officers in relation to the Investigation prior to any communications with AFP/ACT Policing officers relating to the service of the brief of evidence on or about 6 August 2021. Include information about:
- the person who initiated the communication;
  - the purpose of the communication;
  - where and how the communication took place (i.e. in-person, telephone or email);
  - the people in attendance; and
  - the nature of the discussions.

**Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, calendar invitations/appointments, file notes and diary notes. To the extent those communications were verbal outline the parties to the communications and the effect of the words spoken (the **usual particulars**).

*Jon W Korn*

INSERT FULL NAME

[REDACTED]  
Witness

My first contact with the Canberra AFP was from Det Marcus Bormann and that happened early in 2021, probably around late February or early March. It was before any notification that charges would be instituted. My best recollection is that it was only 2 x telephone calls. I cannot really recall the first conversations although I suspect that in that conversation I must've mentioned to Detective Boorman, that in the event that charges were to be laid, would he consider me the point of first contact, so that arrangements could be made for Mr Lehrmann to present himself to Police, rather than having Police publicly and embarrassingly arrest him.

My contact with Inspector Boorman, was telephone contact only, and I have no reason to believe that I have ever, otherwise met him in person.

I am assuming that it was Det Boorman who made known my contact details for Superintendent Moller to subsequently contact me on Wednesday 4 August 2021.

*Brief of evidence – 6 August 2021*

23. When were you first contacted by the AFP/ACT Policing in relation to the brief of evidence in the matter of *R v Lehrmann*? Include details about who contacted you and what was discussed. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, calendar invitations/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

On Wed 4 August 2021, I received a telephone call from a male person who introduced himself as Superintendent Moller from the ACT Police.

He went on to say: *Mr Korn, I understand that you are looking after Mr Bruce Lehrmann.*

I confirmed that I was.

He then stated: *I'm in a position to inform you that a determination has been made that the matter will proceed to Court.*

*John W Korn*

INSERT FULL NAME

Witness

I then had a conversation with Mr Moller about the means by which it would go to Court. I said to him that: *I was concerned, that because of the obvious publicity that already been generated, I was concerned that this not become a media circus. I asked Mr Moller whether, if Mr Lehrmann was required to attend the ACT Police Station, to be charged, could it be done in a way so as to ensure that his arrival there was not leaked to the media, so it didn't become a media frenzy.*

Mr Moller said to me that: *the ACT Police had no interest in the matter being a media circus and Police were considering initiating proceedings by way of a Court Attendance Notice.*

I said to Mr Moller *that if that decision was made, then we will of course cooperate, in relation to service of the CAN, but if it was otherwise determined that he had to be charged, I would arrange for Mr Lehrmann to come down from [REDACTED] and we would attend the ACT Police Station.*

My next contact with Mr Moller was I believe later the same day. In that telephone call he told me that: *a Court Attendance Notice was going to be the method of initiating proceedings.*

*I thanked him for that and again raised the question of the possibility of any leaks and asked him in particular was there a Police Media Unit.*

I can't remember whether he said that they didn't have such a Unit, but I do recall him saying that: *we will do everything we can to avoid a media circus, however once we file the proceedings in Court tomorrow afternoon, obviously we can't control what happens from there.*

I am confident that he must have told me the proceedings would be filed in Court on Thursday 5 August because I mentioned to him that: *once I knew when that was actually going to happen that I would have to tell Mr Lehrmann [REDACTED]*

John W Kew

INSERT FULL NAME

John de Groot

Witness

Mr Moller asked me: *Will you have instructions to take service of the Court Attendance notice.*

I said *Yes I'm sure I will.*

Mr Moller then told me that the Court Attendance Notice would be effected through the Sydney AFP office in Golden Street.

Mr Moller then brought up the topic of service of the Brief and I have a clear recollection of that conversation.

Mr Moller said to me: *Mr Korn we have prepared a Brief and we've put it on a USB stick and we have delivered (or are delivering) a copy of that to the ACT DPP and we propose to give you an identical copy of what is delivered to the Directors Office.*

24. On what date did you first receive a brief of evidence in the matter of *R v Lehrmann*? Provide details about who provided the brief of evidence to you and in what format. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

I received a USB late on the afternoon of Friday 6 August 2021.

Around Lunchtime or a bit after, and by arrangement, I attended AFP Headquarters in Goulburn Street Sydney. Downstairs at the front of that location, I met AFP Officer Ms [REDACTED] and she handed me a package containing the Court Attendance Notice, which had stapled to it, a 19 page Statement of Facts (the Facts Sheet) which I received by way of service, on instructions from Mr Lehrmann. I signed to evidence service.

I told Ms [REDACTED] that I was also expecting a USB containing the Brief.

*John W Korn*

INSERT FULL NAME

Witness

She did not have such an item, so whilst I was in close proximity to her, I rang Mr Moller to enquire after the USB. My recollection is that Mr Moller was surprised that the USB was not included in the CAN/ Summons package that was served on me and I believe there was a conversation where the suggestion was made that it could be posted to me and would probably arrive on Monday.

I then handed my mobile phone to Ms [REDACTED] for her to speak with Mr Moller. She had a conversation with him in close proximity to me, but I did not hear and/or remember even what she said.

Shortly after that I left AFP HQ and returned to my Chambers and immediately started reading the 19-page Facts Sheet.

After I returned to Chambers, I agree that I received a telephone call from AFP Officer [REDACTED] who informed me that she either was copying or had copied the Brief onto a USB and I could collect it later that afternoon.

I remember that I enquired as to how late she would be in her office at AFP HQ and made arrangements to attend later that afternoon to collect the USB.

As it was a Friday afternoon (6 Aug 21) and I always try very hard to be out of my Chambers around 5:30pm to meet my Wife and kids for dinner in a Thai Restaurant in Ramsgate at 6.15, I drove the short distance to AFP HQ, parked in the laneway next to their Building and met Ms [REDACTED] again on street level at the front of the AFP building.

She then provided me with a black USB Thumb drive containing the Brief.

I am assuming that she made arrangements with Mr Moller not to express post any USB to me as I never received any such item.

---

John W Koew

INSERT FULL NAME

[REDACTED]  
Witness



I am absolutely certain that I only ever received 1 x USB drive containing the Brief, from the AFP.

25. Were any other documents, separate to the documents provided in the brief of evidence, provided to you at or around the time you were provided the brief of evidence? If so, provide details as to what documents were provided, who provided the documents to you and in what format. **Attach** a copy of those documents and any accompanying correspondence.

No other documents, separate from the USB were provided to me.

26. In chronological order, outline your interactions with any AFP/ACT Policing officers and/or the DPP/ODPP in relation to the brief of evidence served on 6 August 2021 in the matter of *R v Lehrmann*. Include information about:
- (a) the person who initiated the communication;
  - (b) the purpose of the communication;
  - (c) where and how the communication took place (i.e. in-person, telephone or email);
  - (d) the people in attendance; and
  - (e) the nature of the discussions, including in relation to:
    - i. when you informed the ODPP/DPP that a brief of evidence had been served directly on you by the AFP/ACT Policing;
    - ii. when you had a conversation with the DPP confirming you had not accessed the brief of evidence; and
    - iii. when Detective Superintendent Scott Moller informed you that the ODPP/DPP would provide you with a new copy of the brief of evidence.

**Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, calendar invitations/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

John W. Korw

.....  
 INSERT FULL NAME

Witness

I received an email from Detective Supt Scott Moller dated Thursday, 23 September 2021 at 7:59am.

For the purposes of preparing this Statement I have read this email. I cannot say when it was that I read it for the first time. It is my usual practice to go through emails each morning and delete “rubbish” and file relevant emails in client folders. In perusing the remaining files, I have for the Lehrmann matter I do not see that I downloaded this email and placed it in the file.

My recollection is that I received a telephone call from Mr Moller, and I accept that it was on Friday, 8 October 2021. In that call Mr Moller informed me that in the USB stick that was served on me containing the Brief there was material which I believe he referred to as Protected material which should not have been served.

I do not remember the entirety of the conversation, but I remember beyond any doubt that I told Mr Moller that apart from opening one of the blue Folders, on the USB, the Statements Folder, that I had not opened viewed, downloaded or printed any material contained on that USB.

Later that same day, I sent Mr Moller an email dated and timed as Friday, 8 October 2021 at 17.08 p.m, confirming in writing the Telephone conversation I had with Mr Moller earlier that day.

That email is in the following terms:

*“Dear Mr Moller*

*I confirm our telephone conversation today and now confirm in writing, that in terms of the USB stick that you served on me (at the time of service of the Court Attendance Notice) I have NOT viewed, downloaded or printed, any of the material contained on that USB stick.*

---

Tom W Kean

INSERT FULL NAME

Witness

*The reason for that is that shortly after receiving the USB, I opened the stick, and simply saw by naming the folders of items listed on the stick. It seemed to me from what I saw, that it did not look like a DPP Prosecution Brief certainly not in the form that I'm used to seeing here in the New South Wales District Court system. I took the view that it looked like what I might term an investigator's brief, and my intention was to wait and see what brief would be served by the ACT Directors Office.*

*I had a telephone conversation with Shane Drumgold a week ago and I informed him in that telephone call, precisely what I'm confirming in writing in this email.*

*John Korn"*

I cannot state the date on which I had the telephone call with Mr Drumgold, but by reference to what I have stated in the email to Mr Moller, I believe it must have been between approximately Wednesday 29 September - Friday, 1 October 2021.

That was a call initiated by Mr Drumgold.

In that Telephone call, Mr Drumgold asked me if I had received a Brief from the Police. I said to him that I had received a USB containing the Brief, identical to what I was told, had been provided to the ACT DPP.

He then proceeded to tell me that there was material in it, that by law, should not have been provided.

I told him, immediately in response, that when I opened the USB, I saw straight away that it was in Folders and it looked more like, what I referred to as an Investigator's Brief, not a Trial Brief, and that because it was not set out in the form, I was expecting, that I closed it very shortly after opening it and put it to one side, intending to await the receipt of a trial brief from your Office.

He then said there is material in there that should not have been disclosed.

I did not ask what it was, but he proffered that it was Counselling notes.

I then said: I've never seen or looked at any Counselling notes.

*John W Korn*

.....  
 INSERT FULL NAME

Witness

I remember that after this he said to me:” well can you destroy that USB, and we will organise a replacement.”

I said: “Instead of destroying it, why don’t I give it back? That way there can be no concerns.”

He said:” Well if you’re happy to do that”.

I said that I was prepared to do that.

I do not believe that there was any other relevant conversation.

Thereafter arrangements were made, and I subsequently attended AFP HQ in Goulburn St and returned the USB that had been originally given to me by the AFP. I signed documents to evidence the return and thereafter awaited the provision of a Brief from the Directors Office.

27. To the extent not answered in relation to [26] above, did you have any conversations with the DPP in relation to the brief of evidence served on 6 August 2021 in which you said words to the effect of “*Moller was telling me there were some important text messages in the brief, but the report is huge. Do you know what text messages he is referring to?*”?

If so, provide details on:

- (a) when the conversation took place;
- (b) where and how the communication took place (i.e. in-person, telephone or email)
- (c) the context of this conversation;
- (d) the basis for your remarks; and
- (e) the DPP’s response (if any).

**Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, calendar invitations/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

The conversation quoted above is not a conversation that I ever had with the Director or any Solicitor or Staff at the ACT DPP.

John W Keen

INSERT FULL NAME

Witness

28. To the extent not answered in relation to [26] and [27] above, in chronological order, outline your interactions, discussions and/or meetings with the ODPP/DPP in relation to the matter of *R v Lehrmann*. Include information about:
- the person who initiated the communication;
  - the purpose of the communication;
  - where the communication took place (i.e., in-person, telephone or email);
  - the people in attendance; and
  - the nature of the discussions.

**Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, calendar invitations/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

The only other discussions I ever had with the DPP after I returned the USB to the AFP in Goulburn St, was with Erin Priestley in relation to giving me access to a Brief through a Login Portal facility.

That process took weeks, due to technical difficulties in allowing my computer to access the Portal. I never did get access and ultimately Erin Priestley sent me to 2 x Blue USB drives, which from time to time thereafter were replaced with updated USB's.

**Conduct of the ODPP/DPP in the matter of *R v Lehrmann***

29. State whether you have any concerns in relation to the conduct of the DPP or any ODPP staff involved in the matter of *R v Lehrmann* with respect to his/their duties. Provide details of what your concerns are and the basis for your concerns (if any).

John W Keen

INSERT FULL NAME

Witness

There is a matter which has long concerned me in relation to what I believe was a serious dereliction or serious lack of judgement on the part of the Director, in the terms of counselling, advising or preventing Ms Higgins from ever taking to the podium at an event at the Press Club, in Canberra. I understood that she was to speak on the Wednesday.

On the Monday of that week, I rang the Director Mr Drumgold to speak with him about that.

I made a record of our conversation very shortly after our call took place, and it is in the following terms:

*Good morning, Mr Director it's John Korn.*

*Good morning, John.*

*Mr Director does the Directors Office consider that it would be appropriate to invite Ms Higgins not to speak on the podium this week.*

*No, why would we do that.*

*Mr Director from what I understand, she will be standing on the podium speaking as a survivor of sexual assault, for a matter which has not yet been determined to have taken place, in circumstances where my client denies that any sexual intercourse ever took place.*

*Oh no no no, that's not the way I see it.*

This was said in a mocking tone that I thought was very inappropriate, so I responded in a somewhat inappropriate way and said.

*Mr Director, I don't give a fuck how you see it, but every right-minded person in Australia, including me, would see it that way and she should not speak on that podium from that perspective. So I ask you, once again, to consider whether you would invite Ms Higgins not to speak.*

---

*John W Korn*

INSERT FULL NAME

Witness

*No, I don't propose to do that. She has been appropriately warned not to give any details of the offence.*

*Thank you, Mr Director,*

I then terminated the call.

In light of the massive amount of publicity that the Lehrmann/ Higgins matter had generated and the very active role that Ms Higgins had taken in going on the media both in print and on TV, and in light of the fact that a Trial was to take place commencing on 6 June 2022, I believe that the Director had an absolute responsibility to ensure a fair Trial.

A fair trial meant, fair to Ms Higgins, fair to Mr Lehrmann and most of all, fair to the Australian community.

With the greatest of respect to Ms Higgins, her active media campaign had already trashed the concept of a fair trial and allowing her to go on the podium as a survivor of a sexual assault with the Trial coming up is something that the Director had a responsibility to try and actively prevent. Even if he was unsuccessful, as the first law officer of the ACT, representing the community, he had a prime obligation to try and do what he could to ensure a fair trial for all.

**Conduct of the AFP/ACT Policing Officers in the matter of *R v Lehrmann***

30. State whether you have any concerns in relation to the conduct of the AFP/ACT Policing officers involved in the investigation of the matter of *R v Lehrmann* with respect to whether any police officers failed to act in accordance with their duties or acted in breach of their duties:

(a) in their conduct of the investigation of the allegations of Ms Higgins concerning Mr Lehrmann;

John W Korn

INSERT FULL NAME

Witness

- (b) in their dealings with the DPP in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
- (c) in their dealings with you and other legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*; and
- (d) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.

Provide details of what your concerns are and the basis for your concerns (if any).

(a) I am unsure whether Detective Bormann and Superintendent Moller fall within the definition of "officers involved in the investigation of the matter of *R v Lehrmann*". Having said that, nothing that took place in my Telephone contact with either Insp Boormann or Superintendent Moller concerned me in any professional or ethical sense.

I am always guarded in my dealings with Police, (more so NSW Police than ACT Police), but what I heard from both of them was courteous, direct, polite, and I never detected any sense of malice towards Mr Lehrmann, nor undue sympathy for Miss Higgins. The best way I can describe their approach with me is to say that it was entirely, appropriately, professional.

(b) I have no knowledge of their dealings with the DPP.

(c) I have outlined in (a) above their contact with me. I am not aware and have no knowledge of their contact and/or dealings with the later Legal representatives for Mr Lehrmann after I was compelled to cease acting in the matter.

(d) I have no knowledge of anything which might fall within this question.

The only other Police Officers I dealt with were here in Sydney and I don't understand them to have been involved in the investigation: My contact with them was either to

John W Koew

INSERT FULL NAME

Witness



receive the USB containing the Brief ( from AFP Officer Ms Hensley) or to return the same USB back to them, outside AFP HQ, in Goulburn Street.

### Media

31. Outline your interactions (if any) with the media in relation to the matter of *R v Lehrmann*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, calendar invitations/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

The only Journalists that I have had contact from was Samantha maiden and Angus Taylor who I believe was from the Sydney Morning Herald. He only contacted me on the one occasion in relation to the Prime Ministers apology made on the floor of Parliament. That matter I will return to later.

**Samantha Maiden** contacted me for the first time on **Friday, 6 August 2021** firstly at 4:58 PM and then an hour later at 5:58 PM.

She wanted me to confirm the identity of “the alleged Brittany Higgins attacker” as being my client Mr Bruce Lehrmann.

I declined to do so.

On the following morning, **Saturday, 7 August 2021 9:06am** she sent me a text inviting me to get on the front foot and self-identify Mr Lehrman as the “attacker”

That text was in the following terms:

*“Hey as per our discussions - keep me posted if there’s any change in wanting to identify to get in front foot?”*

She followed up immediately with the next text which stated:

*“I note his name is searchable on court list now if that factors into your thinking.”*

James W Kow

INSERT FULL NAME

Witness

On Saturday, 7 August 2021 at 1:37pm she sent me a photograph of Parliament House in Canberra including the caption – “ *man accused of sexual assault at Parliament house to face court, denies sexual activity.*”

I did not respond.

On 12 Feb 2022 at 8.56am - she sent me what she believed were quotes made by me and was looking for a response. The quotes she sent to me are as follows:

*“These are quotes I proposed to use can't find email”.*

*“Everyone gets this wrong. A fair trial means a fair trial to the community. The participants in the trial, Ms Higgins and Mr. Lehmann they are participants, and they of course have valid concerns that need to be considered. But at the end of the day, this is not Miss Higgins' personal case.”*

*“An alleged crime against an individual for whatever criminal offence is a crime against the community. So the whole concept of a fair trial is not to be looked at from the perspective of what is fair to Mr Lehrmann or Ms Higgins.*

*“It is the community's interest in having something looked at to see whether an offence has been proven or not. That's the starting point.”*

PM

*“What the Prime Minister has done is an absolute disgrace. He has completely and utterly disregarded the presumption of innocence. He has completely and utterly disrespected the courts whose function it is to try these matters. He has completely abrogated the rule of law. He has had no authority whatsoever from any one or any thing to make an apology for an event particularly to make an apology for an event which has not yet been proven too have occurred.”*

*Tom W Koew*

INSERT FULL NAME

Witness

*“Don’t know why your other quotes got watered down maybe defo lawyers”?*

*“Let me know if any concerns re that anything g you want to twea”k*

*“If not, I shall proceed on an orderly basis”*

I did not respond.

**12 Feb 2022 at 2.53pm** – she sent me a SMS:

*“I’m coming to Sydney on Friday 25. If you have time or wish to see me, I’m happy to come and see you.*

*I’m here over weekend too”.*

I did not respond.

**22 Feb 2022 at 9.27am** -she sent me an SMS:

*“Hi it’s Sam maiden I’m a journalist from news com au. I wanted to check if any updates re an application for a stay or the counsel who will be arguing that in court*

*My email is samantha.maiden@news.com.au*

*This is in relation to Bruce Lehrmann trial”*

**29 Apr 2022 at 3.16pm** – She sent me an SMS:

Are you the best contact re decision today.

I assume whatever needs to be said will be said in court - unless there’s a permanent stay in which case you may have a good deal more to say. But I suppose of there isn’t you may appeal - let me know.

This is Sam maiden BTW”.

On this occasion I replied as follows

*“I am not the contact for today - I am not even watching. I will be rung and told what has transpired.”*

*Tom W Row*

INSERT FULL NAME

Witness

She then responded as follows:

*Warwick?*

*Anyway, it's all good we shall see what happens.*

I did not respond to this SMS.

**Angus Taylor** - contacted me at around 4:35pm on the day that our then Prime Minister delivered his apology to Ms Higgins from the floor of Parliament House.

I distinctly remember that occasion as I was working on another Brief when he rang and asked me:

*"Do you have a response to what the Prime Minister said this afternoon in Parliament.*

*I said- "I have no idea what you're talking about."*

He then told me about an apology being made to Ms Higgins **for what had happened to her here in this place** or words to that effect.

I asked him did he have a record of precisely what was said, and he then read out to me what he said was a transcript of the PM's Apology.

My first instinct was not to say anything, but I was so incensed by what our Prime Minister had done that I said to Angus Taylor" *if I do say something will you promise me that you will print everything I say.*

He told me that he would try but that his Editor might make up his own mind about what would be printed.

Having heard that, I then responded in some detail and what is set out below is a part of what I said.

---

*John W Row*

.....  
**INSERT FULL NAME**

Witness

*“What the Prime Minister has done is an absolute disgrace. He has completely and utterly disregarded the presumption of innocence. He has completely and utterly disrespected the Courts whose function it is to try these matters. He has completely abrogated the rule of law. He has had no authority whatsoever from any one or any thing to make an apology for an event which has not yet been proven to have occurred.*

I recall that I specifically included these words which did not survive the Editors cut – “  
*“ it seems that our Prime Minister picks and chooses when he observes the Rule of Law. When our AttorneyGgeneral's matter was before theC courts he publicly stated, that it being before the Courts it was not appropriate for him to make any comment .....what the Prime Minister must do is go on national media either this evening or first thing tomorrow morning and apologise to my client and to the people of Australia for what he has done”*

#### **Victims of Crime Commissioner**

32. Outline your interactions (if any) with the Victims of Crime Commissioner in relation to the matter of *R v Lehrmann*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, calendar invitations/appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

I have had no dealings whatsoever and have never met nor spoken to, or with the Victims of Crime Commissioner.

---

*John W Korn*

INSERT FULL NAME

Witness

33. Outline any concerns you have relating to whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in the matter of *R v Lehrmann*.

I can have no view on this as it would be inappropriate for me to venture any opinion based upon observations of her continued and direct attendance at the side of Ms Higgins. There may well be good reasons, consistent with the proper discharge of the functions of her Office for her to have done so.

**Other**

34. Outline any other matters you wish to raise with rest to the Terms of Reference of the Board of Inquiry.

---

John W Koen

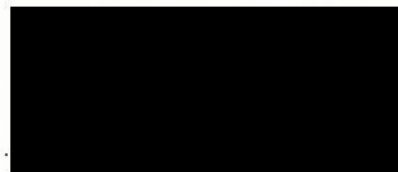
INSERT FULL NAME

Witness

**SWORN/AFFIRMED** before me at SYDNEY in the State of New South Wales on  
Friday 14 April 2023



Signature of person making this  
Statement



Signature of witness



NAME OF WITNESS

*Barinbek*