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TRANSCRIPT OF PROCEEDINGS

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**ACT BOARD OF INQUIRY – CRIMINAL JUSTICE SYSTEM**

**CHAIRPERSON: MR W. SOFRONOFF KC**

**CANBERRA**

**MONDAY, 22 MAY 2023 AT 11 AM (AEST)**

MS E. LONGBOTTOM KC with MR J. JONES and MS E. LYNCH appeared as Counsel Assisting

MR M. TEDESCHI KC with MS B. ANNIWELL appeared on behalf of MR S. DRUMGOLD SC

MS C. WEBSTER SC appeared on behalf of Ms JEROME

MR A. MULLER appeared on behalf of MR S. WHYBROW

MS K. RICHARDSON SC with MR C. MITCHELL and MS W. HALL appeared on behalf of the Australian Federal Police

MR C. GNECH appeared on behalf of thirteen AFP members

DR P. DWYER appeared on behalf of MS H. YATES

MR P. MACK appeared on behalf of MR M. GREIG

MR SMITH appeared for MS JOHNSON

**<THE HEARING RESUMED AT 11.00 AM**

5 **THE CHAIRPERSON:** I'm sorry for the delay this morning. I just want to raise a couple of things. I've explained previously that public hearings are being held so that the community can see directly the evidence that I will use to write my report. And in order to hold these hearings, I compel witnesses to come and give evidence. I make them come by using my statutory power. The witnesses are almost all public servants, and they in any event have a  
10 duty to assist me. But I need more from them than what I can compel. Compulsion can only get me the minimum of information. I need genuine cooperation, and I've been getting it.

The journalists who write about the hearings are a most important part of this. Indeed, I can't do without the work of the journalists who cover the public hearings. I rely upon them to tell  
15 the community the story that the witnesses tell me. On 19 May, The Australian newspaper published a photograph of Mr Drumgold. He was at home in relaxed clothing, in apparent privacy, having a beer, and someone took a photograph of him without his knowledge and then published the photo with an ironic caption, "Crown lager or Drumgold bitter? Prosecutor calls beer o'clock." I'm stumped at trying to think of a proper purpose for doing this, hiding to  
20 take a photo of a man who thinks he's enjoying privacy and then publishing the photo with a put-down.

But my real worry is that the witnesses who have been willing to help me will think that this is part of the price, being stalked to their home, photo taken unawares, off-guard, being made  
25 fun of in the national media. If that's the personal cost, why would anybody willingly be a part of this? This kind of publication risks interfering with the course of my inquiry. It risks interfering with my ability to fulfil my statutory duty. On the other hand, if the publication of a photo of this kind serves a proper purpose, then we all have to live with its consequences. Some people, as I said, are going to get hurt by this inquiry in an unavoidable way. And if the  
30 publication of a photo of that kind is a proper thing to do, then that's part of the human cost of this inquiry. With these thoughts in mind, I've written to the editor of The Australian today, seeking her help to understand the purpose for which the photo was used, and I will consider my course when I get a response.

35 On another related matter, it's inevitable that public hearings will reveal evidence that, when published in the next day's media, will hurt or offend somebody. And as I've said, some of that hurt or offence is unavoidable. But as well, some of that hurt or offence which is unavoidable will in the end be shown to be unfounded. I mean to say that it is unavoidable that some people will - reputations will be hurt, or their feelings will be hurt, who did not  
40 deserve it. The barristers who have been given leave to appear have a unique power to reduce the degree of pain suffered by people and also a power to increase that pain unnecessarily. Mr Tedeschi - where is Mr Tedeschi? Mr Tedeschi, on 16 May, you used some emotive language to characterise the behaviour of police officers, and you did so at a point before they had been called so that it was impossible on the day to balance your comment by any answer.  
45 Ms Richardson rose to object, but of course her objection was too late, and the result has been the wide reporting of your inflammatory language to the unfair discredit of police.

One possible inference is that you chose your language deliberately in order to ensure that your words were published, and you did so in an effort to create a form of publicity to aid  
50 your client. There is another possible inference upon which I will act, and that is that your

choice of language was your own initiative and the result of haste and was unintended and is not to be imputed to Mr Drumgold. But I would remind you - all of you - that you appear by leave for your clients, and if something of that nature happens again, then I will take a different course. You needn't respond, Mr Tedeschi. But if you wish to respond, you are free to.

5

**MR TEDESCHI:** Thank you.

**THE CHAIRPERSON:** Now, as to the point about evidence, if I can turn to that.

10 Mr Tedeschi, you seek leave to adduce some further evidence from Mr Drumgold, and that's objected to by Ms Richardson and Mr Black. You've foreshadowed in general terms what that evidence is. Can I suggest that it's reduced to writing because - I understand the objections that are being made, but if you were to reduce it to writing, it may be that either the objections fall away or rather than going on to hear lengthy submissions or submissions about  
15 it, I can deal with it in another shorthand way. Would that be a convenient course to adopt?

**MR TEDESCHI:** Yes, that's convenient.

20 **THE CHAIRPERSON:** I will see what Mr Black and Ms Richardson say. Ms Richardson, we don't really know what Mr Tedeschi means. And once he gives it to me, it may be that in company with - I assume it's irrelevant - in company with other irrelevant things I've heard, I will just put it to one side in due course.

25 **MS RICHARDSON:** I think we would be assisted by seeing what it is Mr Tedeschi seeks to tender.

**THE CHAIRPERSON:** Well - but if he tenders it, I needn't publish it. You can have it.

30 **MS RICHARDSON:** No, in the sense of we don't actually know what it - the application -

**THE CHAIRPERSON:** I know. I know. So you would be helped by that course?

**MS RICHARDSON:** Yes, we would.

35 **THE CHAIRPERSON:** Yes. Thank you for that. Mr Black?

**MR BLACK:** Yes. Same answer.

40 **THE CHAIRPERSON:** All right. Why don't you reduce it to writing, Mr Tedeschi, and give it to your colleagues and to me, and I will deal with it in due course and in good time for you to prepare to - whatever it is that you need. Would that be acceptable? Yes? Thank you. All right.

45 **MR TEDESCHI:** Can I just have a second, please.

**THE CHAIRPERSON:** Yes. Certainly.

50 **MR TEDESCHI:** If I might very briefly respond to your comments just now about my statement that you criticised yesterday - I'm sorry, last week.

**THE CHAIRPERSON:** Yes.

5 **MR TEDESCHI:** It was certainly not my intention to be inflammatory. It was certainly not my intention to say anything that would encourage media attention. What I was attempting to do was to explain, in perhaps terms that were too emotive, the reason why we seek to elicit such evidence. It was merely my intention to try and convey how important it was to our case and the reasons why we seek to lead that evidence. It was certainly not my intention to elicit any media attention whatsoever.

10 **THE CHAIRPERSON:** Thank you, Mr Tedeschi. I accept that. So -

**DR DWYER:** Your Honour, just one issue.

15 **THE CHAIRPERSON:** Yes.

**DR DWYER:** While on the subject of media, it was of concern, in my respectful submission, that a witness in these proceedings, who has finished his evidence, then appears to have given an interview with The Australian newspaper over the weekend where he was critical of other witnesses who have not yet come before this inquiry. In my respectful submission, your Honour - sorry, the Commissioner would be concerned about the integrity of this inquiry being compromised in those circumstances. And I wonder if you might want to remind people about that or have anything to say about that.

25 **THE CHAIRPERSON:** I read that article after it was brought to my attention, and tell me if you agree with this: I saw that almost all of it - what Mr Whybrow spoke about in almost all of it were general propositions of the kind that I'm inquiring into. The "almost all of it" part is because one part of it concerned Ms Yates, and I can understand that you and your client would be extremely - would have felt that very keenly. So I will do something about that, the reference to Ms Yates, which was caught up in his otherwise general statements about the issues that I'm looking at. So I will deal with it.

30 **DR DWYER:** May it please the Commission.

**THE CHAIRPERSON:** And I will let you know what I've done.

35 **DR DWYER:** May it please the Commission.

**THE CHAIRPERSON:** Now, Mr Jones, are you ready to call -

40 **MR JONES:** I will do a little opening for you, Mr Chair -

**THE CHAIRPERSON:** Yes.

**MR JONES:** - and then Detective Superintendent Moller is waiting outside.

45 **THE CHAIRPERSON:** All right.

**MR JONES:** We can get started.

50 **THE CHAIRPERSON:** Let's go.

**MR JONES:** Mr Chair, this module is guided by your Terms of Reference insofar as they relate to the ACT Police. You are required to investigate whether any officer failed to act in accordance with their duties, or acted in breach of their duties, in four key areas: the first is in their conduct of the investigation of the allegations made by Ms Brittany Higgins concerning Mr Bruce Lehrmann; the second is in their dealing with the Director of Public Prosecutions in relation to his duty to decide whether to commence, continue or discontinue criminal proceedings against Mr Lehrmann; the third is in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial; and the fourth is in their provision of information to any person in relation to the trial. If you find any police officer did fail to act in accordance with their duties, or acted in breach of their duties, in respect the four matters I've just outlined, you are to investigate their reasons and motives.

You will hear from Commander Cameron, Commander Chew, Detective Superintendent Moller and Senior Constable Frizzell. And, of course, the Board of inquiry has received a number of other statements that will be made public in due course. You will hear evidence about how police gave a brief of evidence to Mr John Korn, the defence counsel at the relevant time for Mr Lehrmann, and about how the brief included audio-visual recordings of the complainant's evidence and her counselling records, which are contrary to the rules that govern the supply of those two things. You will hear that an investigation then followed, and confirmation that they had not been accessed by Mr Korn was confirmed via computer forensics.

You will hear that police did a second interview with the complainant, and why they did that, and whether this was done in accordance with their victim-centric approach and their duties under the Victims of Crime Act. You will hear the circumstances surrounding the police questioning the Victims of Crime Commissioner, Ms Yates, who at the time was providing a support person role and conduit and communication between Ms Higgins and the police, and whether that course was in accordance with their duties, that is, the police duties and obligations under the Victims of Crime Act. You will hear evidence about the circumstances surrounding the preparation of the much-touted Moller report and associated documents. That is, in fact, an executive briefing. There will be evidence about why the documents were prepared and by whom.

You will hear circumstances surrounding what is called a red team review, which was conducted by Commander Andrew Smith, and what role it might have played in any failure to ensure that Ms Higgins' counselling records and documents were not disclosed to anyone in breach of duties, and whether there were motives to speedily charge Mr Lehrmann that were not in accordance with a sole assessment of the evidence and the function of police. You will hear whether the police discharged their duties with respect to updating Ms Higgins, as is required at certain junctures under the Victims of Crime Act. You will hear about the threshold that police adopt for charging.

And finally, in this module, we will investigate the conduct of police during and after the trial in their dealings with Mr Whybrow and his instructing solicitors, and whether they were appropriate dealings - sorry, I will say that again - whether those dealings were necessary and good. There will be other issues raised, but they are the main points.

**THE CHAIRPERSON:** Thank you, Mr Jones. Mr Gnech, will you get the superintendent?

**MR JONES:** I will tender a list of exhibits. It has on it at 38 and 39 the detective superintendent's statement and Senior Constable Frizzell's statement. They have already been tendered. They are Exhibits 34 and 33 respectively. Otherwise, the documents detailed in this list are the documents relied on and tendered for this module. And I understand the parties have been given a copy of that. They won't physically be tendered because they are held in an electronic database.

**THE CHAIRPERSON:** Yes.

**MR JONES:** I call Scott Joseph Moller. He will take an oath if we have a Bible.

**THE CHAIRPERSON:** Yes. Superintendent Moller, have a seat. You have the form of an oath in front of you. Would you swear it, please?

**DET SUPT MOLLER:** Yes, I do.

**<SCOTT JOSEPH MOLLER, SWORN**

**THE CHAIRPERSON:** Thank you. Mr Jones, your tender list is Exhibit D.

**<EXHIBIT D TENDERED AND MARKED**

**MR JONES:** Thank you.

**THE CHAIRPERSON:** Yes.

**<EXAMINATION BY MR JONES:**

**MR JONES:** Thank you. Your full name is Scott Joseph Moller?

**DET SUPT MOLLER:** That's correct.

**MR JONES:** You are a detective superintendent with the ACT Police?

**DET SUPT MOLLER:** I am.

**MR JONES:** And in 2001, at the time of investigating Ms Higgins' complaints about Mr Lehrmann, which I will call from now on "the investigation", you were the superintendent in charge of the criminal investigations unit, is it, or -

**DET SUPT MOLLER:** Area, yes.

**MR JONES:** Area.

**DET SUPT MOLLER:** ACT Criminal Investigations, yes.

**MR JONES:** Yes. Are you still in charge of that area?

**DET SUPT MOLLER:** No, I'm not. I'm with the - I look after the unsolved homicide and long-term missing persons area.

**MR JONES:** Okay. But since Ms Higgins reinstigated her complaint in February of 2021, through to its - the trial concluding - Mr Lehrmann's trial concluding in October/November of 2022, you were in the role of criminal investigations section?

5

**DET SUPT MOLLER:** Yes, that's right.

**MR JONES:** What did that role see you doing? What was your function?

10 **DET SUPT MOLLER:** Well, ACT Criminal Investigations has a number of areas that make it up. So, you know, you've got general crime, which looks after detectives in police stations like Woden, Tuggeranong, Gungahlin and City. But then you have also got the specialist crime areas. You have got, you know, your fraud squad, your sexual assault areas. You've got bikie taskforce. You've got an organised crime taskforce. And all those areas feed into ACT  
15 Criminal Investigations.

**MR JONES:** And what was your role, though, as superintendent of Criminal Investigations?

20 **DET SUPT MOLLER:** Managing - managing all those areas.

**MR JONES:** Right. Do you generally concern yourself with day-to-day investigations?

25 **DET SUPT MOLLER:** No, not normally. Not unless there's something that, you know, the sergeants and inspectors believe that I need to know about.

**MR JONES:** I have got a little ahead of myself. You provided a statement to the Board of Inquiry?

30 **DET SUPT MOLLER:** I did, yes.

**THE CHAIRPERSON:** That was sworn on 11 April 2023?

**DET SUPT MOLLER:** Yes. I guess, yes. I think it's dated - yes, that's correct.

35 **MR JONES:** All right. Feel at liberty to have your statement and your notes with you.

**DET SUPT MOLLER:** Thank you. Thank you.

40 **THE CHAIRPERSON:** Refer to them any time you like.

**DET SUPT MOLLER:** Thank you.

45 **MR JONES:** And we might bring some up on the screen at various times. Is there anything in that statement that you wish to add or change - supplement or change?

**DET SUPT MOLLER:** No.

**MR JONES:** No. Everything in it was truthful?

50 **DET SUPT MOLLER:** Yes, it was.

**MR JONES:** Thank you. You joined the New South Wales police force in 1990?

**DET SUPT MOLLER:** Yes, I did.

5

**MR JONES:** And spent about 18 years there; is that right?

**DET SUPT MOLLER:** That would be correct, yes.

10 **MR JONES:** And then you joined the Australian Federal Police in 2007?

**DET SUPT MOLLER:** Yes.

15 **MR JONES:** And you had roles in their national service and later roles in the ACT arm of the AFP; is that right?

**DET SUPT MOLLER:** Yes. That's right, yes.

20 **MR JONES:** And for those listening, ACT Police is a business unit, if you like, of the Australian Federal Police nationally?

**DET SUPT MOLLER:** Yes. We - we perform the community policing function for - for the AFP in the ACT.

25 **MR JONES:** Thank you. And as at the time of the investigation, who did you report to?

**DET SUPT MOLLER:** Okay. Well, it changed a number of times. Initially, Commander Walters was my commander. Commander Chew. And later on when Mr Chew left, I had an acting commander, Hall O'Meagher.

30

**MR JONES:** Thank you. And what position did those various people hold?

**DET SUPT MOLLER:** So that's changed -

35 **MR JONES:** As of 2021.

**DET SUPT MOLLER:** That was called the Deputy Chief Police Officer, and that was a commander's rank.

40 **MR JONES:** Thank you. And who did the position Deputy Chief Police Officer report to in the chain of command?

**DET SUPT MOLLER:** The Chief Police Officer.

45 **MR JONES:** And who was the Chief Police Officer in 2021?

**DET SUPT MOLLER:** Okay. So that changed as well. We had - Neil Gaughan has been there for a number of years. Prior to that, Justine Saunders.



**MR JONES:** If we are dealing with - I appreciate the investigation started and stopped in 2019. But if we focus that 2021 through to 2022, was that Neil Gaughan?

**DET SUPT MOLLER:** Yes. Correct.

5

**MR JONES:** And he was the Chief Police Officer?

**DET SUPT MOLLER:** Yes, that's right.

10 **MR JONES:** And what rank does Mr Gaughan occupy?

**DET SUPT MOLLER:** Deputy Commissioner.

**MR JONES:** Deputy Commissioner.

15

**THE CHAIRPERSON:** So he's like - if the ACT was a state, he would be the Commissioner of Police for the state?

20 **DET SUPT MOLLER:** He is absolutely regarded as the Commissioner for the state police force, but he holds a rank of Deputy Commissioner in the AFP.

**THE CHAIRPERSON:** Yes. Formally speaking, that's how it works. But he's really the -

**DET SUPT MOLLER:** He's the Chief Police Officer.

25

**THE CHAIRPERSON:** - Commissioner for the ACT Police?

**DET SUPT MOLLER:** Yes. Correct. Yes.

30 **MR JONES:** And one of your subordinates involved in the investigation was Detective Inspector Marcus Boorman?

**DET SUPT MOLLER:** Yes.

35 **MR JONES:** And he was in charge, if you like, of the teams of investigators?

**DET SUPT MOLLER:** Yes, he had a - he had a number of teams. That's correct.

40 **MR JONES:** So did his role require more involvement in the day-to-day investigations of matters as inspector?

45 **DET SUPT MOLLER:** Yes, absolutely. He's still got a management role and, you know, the investigators oversee all the investigations for their areas. But, again, you know, he's a management role and, you know, he's accountable for staffing and finances and things like that. So, you know, the day-to-day operations of - of the investigations are conducted at the sergeants level.

**MR JONES:** Right. And generally speaking, they are detective sergeants that have a number of investigators underneath them; is that right?

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**DET SUPT MOLLER:** That's right.

**MR JONES:** Okay. Relevant to the investigation we are concerned with, was - the investigators were Detective Leading Senior Constable Madders?

5

**DET SUPT MOLLER:** Yes.

**MR JONES:** And Senior Constable Frizzell; is that right?

10 **DET SUPT MOLLER:** That's correct.

**MR JONES:** And so they are subordinate to Detective Inspector Boorman, and they are the people on the ground doing the day-to-day investigations?

15 **DET SUPT MOLLER:** Absolutely. Yes.

**MR JONES:** Okay. I just want you to take the Chair, in broad terms, through the process of receiving a complaint in a sexual offence and how investigators first deal with the complainant and the obligations they have in doing that. So can you start with the meet and greet process. Tell us what that is and what it entails, please.

20

**DET SUPT MOLLER:** Yes. So, broadly, I can speak given that I've got a management role and I'm not doing it from a day-to-day process, but - but, you know, our investigators would meet a complainant and discuss and talk about the complainant's options in relation to the ongoing investigation. So, you know, what that entails, where are they going to take this investigation and what's going to be the obligations for the complainant. You know, how are they going to interact with the complainant and then what is she going to need or he going to need to do in relation to that investigation. Also discuss support areas that can assist with the complainant. And then, you know, give some details about how the - how the matter would progress.

25

30

**MR JONES:** Okay. Now, that process is enshrined in the Victims of Crime Act, isn't it, in section 15D?

35 **DET SUPT MOLLER:** Yes. Yes.

**MR JONES:** Yes. And it gives an example of the information that needs to be provided, such as details about charging, burdens of proof and the role the complainant will have as a prosecutorial witness?

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**DET SUPT MOLLER:** That's correct, yes.

**MR JONES:** So that places a duty on police to inform a complainant at the initial stages of what is to come to see if they want to persist with the - or continue with their complaint?

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**DET SUPT MOLLER:** Yes, absolutely that does. But, I mean, there is also our standard procedures and policies that, you know, dictate that's how we treat complainants and that's how we want complainants to feel, to feel comfortable when they are talking to police and, you know, how we will treat them and deal with them.

50

**MR JONES:** All right. You mentioned something interesting there about how the ACT Police policies address this in a greater detail than the obligation of the Act. Is that often referred to as a victim-centric, cultural sensitive approach to receiving complaints of a sexual nature?

5

**DET SUPT MOLLER:** It certainly guides - victim-centric approach guides our doctrine or ethos in relation to dealing with victims. Absolutely.

**MR JONES:** And if you had to sum that up in a nutshell, how would you sum it up?

10

**DET SUPT MOLLER:** Well, the victim dictates the investigation. Dictates where it goes, when it happens, how it happens, and dictates whether it stops or not.

**MR JONES:** All right. You said dictates the investigation, where it goes. Obviously a complainant would not tell you what to go and look at and what not to look at as investigating police, would they?

15

**DET SUPT MOLLER:** Yes. No, sorry. I guess what I mean is they - they dictate the - the direction of the investigation, the time - you know, where we are going with it, whether it's going to continue or not or whether it's going to stop. You know, that's - that's for them to dictate to us. So they have to be comfortable with how we are progressing.

20

**THE CHAIRPERSON:** I suppose just to put it to one side so we don't have to look at it again, there are some cases in which an undoubted victim, say of evident violence, comes forward to you, and you - and police officers have their first meeting with that person, and that person says, "Well, I don't want you to go ahead," but there are reasons why you are going to go ahead anyway, because maybe the victim's reasons for not going ahead are fear of retribution or something of that kind, which you will pay regard to. But in the end, if you have to prosecute somebody for a crime, you wouldn't necessarily stop the process because a victim wished it. But with sexual offences, I take it from what you're saying that the wishes of a victim have much more weight. So if they don't want to go through with it because of the nature of the offence and the nature of the - how the proceedings will affect a person.

25

30

**DET SUPT MOLLER:** That's right, Commissioner. Absolutely. They - in - in the investigation of sexual assault matters, they very much determine where the investigation goes, you know, in terms - whether investigation continues or not. They are very much in the box seat, if you will, to, you know - to guide the investigators on how far they want to go or how much work they want the investigators to do. You know, it's quite common that a complainant comes in, tells us their complaint but doesn't want to go ahead, wants to get it off their chest, absolutely wants to get it recorded, wants to have it recorded on the system but doesn't want to go any further. And, you know, this is a - an obstacle, I guess, that we as police and investigators try and get over every day because, you know, want to progress those matters. But, you know, I guess it's an indication of the conflict that an investigator has, because naturally the people that work for me are so dedicated to their role and they want to progress these matters. But the model that we work under and that I'm supportive of is that, you know, the victim dictates that - or the complainant dictates that to us. And if the complainant is not necessarily ready to go ahead - if the complainant, you know, is choosing not to go ahead, well, that's for them. And we will support that. We will support them through that process because, in my view, it's the right thing to do.

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**THE CHAIRPERSON:** Thank you.

5 **MR JONES:** I think the Chair's question was more geared towards would this victim-centric approach - if you had someone who the police formed was a danger to the community and the complainant was reluctant to go ahead, would that stop you - that victim-centric approach, would it stop the investigation?

10 **DET SUPT MOLLER:** Yes. You know, it's a really good point. And it's a conflict that police find themselves in. Certainly if there's an ongoing danger to the public, you know, police would take action. Yes. Absolutely.

15 **MR JONES:** I just want to explore a couple of other things about the victim-centric approach. I take it that would include encouraging other support services and support people to get around the complainant?

**DET SUPT MOLLER:** Yes, there's a wealth of agencies that support police and complainants in this role. And they do tremendous work in helping complainants and helping us.

20 **MR JONES:** And, in fact, the complainant can be in charge and in control of who they want as their support person -

**DET SUPT MOLLER:** Absolutely they can.

25 **MR JONES:** - as long as that support person doesn't conflict with another aspect of the investigation or the trial?

**DET SUPT MOLLER:** That's correct.

30 **MR JONES:** Correct?

**DET SUPT MOLLER:** Yes. Yes.

35 **MR JONES:** Yes. And, of course, the theory behind that is a well-supported complainant is more likely to -

**DET SUPT MOLLER:** Progress.

40 **MR JONES:** - progress through the journey. Correct? I'm not saying "will", but is more likely to be able to traverse the criminal justice system.

45 **DET SUPT MOLLER:** I - I think the answer to that is we want complainants to be well supported. If they choose to then progress through the - you know, through a prosecution - through the criminal justice system, fantastic. If they don't, equally, great. You know, we will support them in their decision not to as well.

**MR JONES:** And complainants of particularly sexual offences often have suffered terrific traumatic events by the time they come into police; correct?

5 **DET SUPT MOLLER:** Yes. Absolutely. It's a horrendous crime, and it's something that, you know, certainly I'm very passionate about and the people who work for me are very passionate about. Just to pick up on one key point that I would just like to mention there too, is that if the complainant doesn't wish the investigation to continue or the prosecution to progress, doesn't mean that police stop.

**MR JONES:** Right.

10 **DET SUPT MOLLER:** Police and the investigation team are very committed to collecting all the perishable evidence and storing that just in case that complainant changes her or his mind down the track. So it's very important for us to make sure that, you know, the integrity of the investigation is secured. We've got all the information, all the evidence. We've collected it. We've stored it. And in 10 years' time, if that person decides to come back - come back, you know, to us and wants to progress, we are in a position where we can support them.

15 **MR JONES:** Right. And that in fact happened in dealing with Ms Higgins' complaint about Mr Lehrmann, didn't it?

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** In 2019, ACT Police did a meet and greet?

**DET SUPT MOLLER:** Yes.

25 **MR JONES:** And they set about securing what evidence at that time they knew was perishable, such as CCTV footage?

**DET SUPT MOLLER:** Correct. Yes.

30 **MR JONES:** Right. Was there then another meet and greet with Ms Higgins at another time?

**DET SUPT MOLLER:** There was, yes.

35 **MR JONES:** Was that in 2021?

**DET SUPT MOLLER:** Yes, it was.

**MR JONES:** And were you involved in that in any way?

40 **DET SUPT MOLLER:** In the meet and greet?

**MR JONES:** Yes.

45 **DET SUPT MOLLER:** No.

**MR JONES:** Thank you. What happens after a meet and greet has taken place in terms of progressing the investigation?

**DET SUPT MOLLER:** Well, I guess the strategies are developed in consultation with the complainant about where the investigation is going to go and what we need to do to secure evidence and information for a possible prosecution.

5 **MR JONES:** All right. And does that include taking the complainant's statement?

**DET SUPT MOLLER:** Yes, absolutely.

**MR JONES:** And is there a regime in the ACT whereby that is recorded?

10

**DET SUPT MOLLER:** The EICI?

**MR JONES:** Yes.

15 **DET SUPT MOLLER:** Yes.

**MR JONES:** You will have to tell people who haven't read the briefs what an EICI is. And expand on that a little bit, tell us how it works.

20 **DET SUPT MOLLER:** So the victim comes in and provides police or investigators with a statement under - all recorded - audio and video recorded, and describes basically what happened in the - you know, at the time when the offence took place.

**MR JONES:** All right. So that's called an EICI, which is an acronym for evidence-in-chief interview?

25

**THE CHAIRPERSON:** Just to put it into context, 30 years ago a complainant coming in making a report about a rape would tell police all about it and then somebody would sit her down and they would take a written statement.

30

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** And when that written statement had been made, it would be signed and that would be the statement of the complainant. In due course, that statement would be - when a trial happens, that statement would be given to defence and they would have a copy of it, and the complainant would then be ordinarily witness number 1 called at the trial and would give oral evidence-in-chief led by the prosecutor and then be cross-examined and then re-examined, all in the public eye. And then legislation was passed in the Territory, and in states as well - legislation was passed in the Territory so that the first interview with police was recorded. And one way in which the complainant could choose to appear at the trial is to have that recorded interview used as her evidence-in-chief, rather than being led through by the prosecutor, so that having done it once in the relative security and comfort of a police interview room, she would not have to repeat the exercise in court but instead use the recording.

45

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** So that's why we call it an evidence-in-chief interview, because it could then, at the choice of the complainant, become her evidence-in-chief. Is that - have I got it right?

50

**DET SUPT MOLLER:** You have got it right.

**THE CHAIRPERSON:** All right. Go ahead, Mr Jones.

5

**MR JONES:** That's designed to minimise as well -

**DET SUPT MOLLER:** Ongoing trauma.

10 **MR JONES:** - ongoing trauma.

**DET SUPT MOLLER:** Yes.

**MR JONES:** Because those interviews can be quite traumatic for complainants, can't they?

15

**DET SUPT MOLLER:** Well, they have to relive, you know, the offending, which is terrible.

**MR JONES:** Thank you. Was an EICI taken with - or recorded with Ms Higgins?

20 **DET SUPT MOLLER:** It was.

**MR JONES:** In fact, there were two recorded with Ms Higgins?

**DET SUPT MOLLER:** There was, yes.

25

**MR JONES:** One in February 2021?

**DET SUPT MOLLER:** That's right.

30 **MR JONES:** And the other in May 2021?

**DET SUPT MOLLER:** Correct.

**MR JONES:** There are rules that regulate who can get the physical recording of those interviews?

35

**DET SUPT MOLLER:** There are.

**MR JONES:** And, in fact, one of them is a - places a duty on police that if they disclose them, imprisonment can follow as a maximum penalty?

40

**DET SUPT MOLLER:** That's right.

**MR JONES:** And if police are to fulfil their obligation of disclosure, they have to do it by a provision of a transcript and making available at a request a viewing time with the lawyers; is that right?

45

**DET SUPT MOLLER:** Correct.

50 **MR JONES:** Do you understand what the rationale behind that is?

**DET SUPT MOLLER:** The rationale behind the disclosure?

5 **MR JONES:** No, the defence counsel and solicitor can't have a copy, but they can come and watch it at the police station. Do you know why that was -

**DET SUPT MOLLER:** Not really.

10 **MR JONES:** Presumably it's to minimise it getting out there, I suppose, and being misplaced or given to other people - is that right - perhaps?

**DET SUPT MOLLER:** Potentially, yes. I'm not sure.

15 **MR JONES:** All right. In any event, you accept that disclosure is a fundamental tenement of a fair criminal trial?

**DET SUPT MOLLER:** Yes, I do.

20 **MR JONES:** And that's something that is emphasised to your investigators?

**DET SUPT MOLLER:** Yes, it is.

**MR JONES:** Through policies and training?

25 **DET SUPT MOLLER:** Yes.

**MR JONES:** And the way you fulfil that in relation to things like counselling records or sensitive evidence is to alert the legal representatives or the accused that you have it, and they can either make application to get a copy or come and view it?  
30

**DET SUPT MOLLER:** Yes, that's right.

**MR JONES:** I would like you now to take the Chair through the usual process of compiling a brief of evidence, putting it together. That presumably happens at the conclusion of an investigation; is that right?  
35

**DET SUPT MOLLER:** Yes.

40 **MR JONES:** And who normally does that in the ACT Police? Who physically puts it together?

**DET SUPT MOLLER:** Well, usually the case officer, the person running the investigation. So the case officer will conduct their investigation. They will get it to a point where they believe sufficient evidence exists. They will give it to their team leader - their sergeant - the  
45 detective sergeant. That detective sergeant then does their review of that. And should the detective sergeant be satisfied that it's met the elements of - or the proofs of the offence and - they then move that brief or hand that brief to our adjudication area. So, like, in Criminal Investigations, we have a person dedicated to the adjudication process.

50 **THE CHAIRPERSON:** So what do you mean by "adjudication" in this context?



5 **DET SUPT MOLLER:** Well, they - it goes to our AP role, which is adjudication and  
processing area, which - so when it comes from the sergeant to our adjudication, they look at  
the brief and determine whether there's any redactions that need to be made, any disclosure  
10 issues. That's their - that's their role. They look at that specifically for that. If they are  
satisfied, then they will move that brief over to Judicial Operations, who have a - more an  
electronic function role, making sure that, you know, internally when the computer  
system - that all the links work, the briefs is there and it can go to the DPP or whenever it  
needs to go. So, you know, the - the really - I guess the important function for us is that  
10 adjudication process in that AP role that we have in all of our stations in the ACT.

**THE CHAIRPERSON:** Thank you.

15 **MR JONES:** So to sum that up, investigator puts the brief together, sends it off to their team  
leader?

**DET SUPT MOLLER:** Yes.

20 **MR JONES:** Detective sergeant.

**DET SUPT MOLLER:** Yes.

**MR JONES:** The detective sergeant does a review of it?

25 **DET SUPT MOLLER:** Absolutely, yes.

**MR JONES:** Presumably for things like lines of inquiry that haven't yet been followed down  
and things like that?

30 **DET SUPT MOLLER:** Yes. Well, I mean, their review is the first review of the brief,  
really - you know, the first independent review for our - for us. And they just make sure, you  
know, everything is there that needs to be there. They are also looking at, you know,  
redaction issues and they are looking at everything.

35 **MR JONES:** Right. And then it makes its way to the adjudication, and that is really -

**DET SUPT MOLLER:** A specialist function.

40 **MR JONES:** - a specialist area that is designed to catch - or to catch potential wrongful  
disclosure or supply information?

**DET SUPT MOLLER:** Redactions. Yes.

45 **MR JONES:** Right. And then Judicial Operations do the functionality of making it available  
to whoever is able to access it?

**DET SUPT MOLLER:** Yes. Correct.

50 **MR JONES:** Right. And that is usually done from police to the Office of Director of Public  
Prosecutions?

**DET SUPT MOLLER:** Yes.

**MR JONES:** Not anyone else?

5

**DET SUPT MOLLER:** No.

**MR JONES:** Now, since August 2002, that process has slightly changed?

10 **DET SUPT MOLLER:** Yes.

**MR JONES:** And feel free to have a look at your statement at paragraph 40 if you need to refresh your memory. How has it changed?

15 **DET SUPT MOLLER:** Well, it's only changed in terms of sex crime.

**MR JONES:** Right.

20 **DET SUPT MOLLER:** So it's only changed in terms of sex crime. And we have implemented a management team - oversight sort of team that sits above the sexual assault investigations, and that's conducted by three superintendents that look at these briefs of evidence and determine whether there's sufficient evidence or not. Yes.

**THE CHAIRPERSON:** Thank you.

25

**MR JONES:** But otherwise you still have the adjudication process that sits before it goes to the superintendents; is that right?

30 **DET SUPT MOLLER:** So - sorry. Yes, that's still - that process is still there. We have added another - an additional layer.

**MR JONES:** All right. I want to now bring you to the relevant investigation, and the topic I want to ask you some questions about is the providing of the brief to Mr Korn and the counselling records and things like that, okay? Counselling records were obtained in this investigation?

35

**DET SUPT MOLLER:** They were, yes.

**MR JONES:** Who were they - by whom?

40

**DET SUPT MOLLER:** By the investigators. I can't remember exactly who, but one of the investigation team.

**MR JONES:** Very well. Do you recall when they were obtained in the investigation?

45

**DET SUPT MOLLER:** No, I can't remember the date.

**MR JONES:** Do you know why they were obtained in this case?

**DET SUPT MOLLER:** I think it's, you know, culturally something that regularly happens in our sexual assault investigations.

5 **MR JONES:** Can you just explain to the Chair why you say that. There's a legislative regime which is designed to limit who can get access to this material, with an intent to reduce that. You say that investigators obtain it by routine. What's the purpose? What's the - what are they trying to do with the investigation?

10 **DET SUPT MOLLER:** Well, it's important to - you know, it's important to collect as much evidence and information as we can to identify any discrepancies or any issues with the evidence. So, you know, in terms of the counselling records, it's something - you know, from my perspective, the collection of those records for police - it's an important function, I think, that we need to do it. I understand the disclosure issue. But should the police identify  
15 something in those counselling records that is important to the courts, you know, we have a process to follow and, you know, can be - it can be determined by the courts whether that should place any weight on the investigation or not. But I - my personal view is I think it is important that we still collect them.

20 **THE CHAIRPERSON:** So as I understand the statute, when it speaks about - when it says that the records must not be disclosed for the purpose of criminal proceedings, do you understand that to be a prohibition that only arises once criminal proceedings have been launched?

25 **DET SUPT MOLLER:** So my - my personal view on that, Commissioner, would be the collection - the collection would be legal, but certainly the dissemination of that material outside of a judge making a ruling would not be.

**THE CHAIRPERSON:** So I'm asking you something slightly different.

30 **DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** It's clear that once criminal proceedings have started by a charge being made in the Magistrates Court -

35 **DET SUPT MOLLER:** Yes. Yes.

**THE CHAIRPERSON:** - then the disclosure of those records is prohibited.

40 **DET SUPT MOLLER:** Correct.

**THE CHAIRPERSON:** Is it your understanding that before charges are started in the Magistrates Court, the disclosure of those records is not prohibited by that statute?

45 **DET SUPT MOLLER:** That's my understanding.

**THE CHAIRPERSON:** Excluding confidentiality, of course, but it is not prohibited by that statute.

50 **DET SUPT MOLLER:** Absolutely. That's my understanding.

**THE CHAIRPERSON:** Yes. So what you do is you ask the complainant in a case whether these things exist, whether there has been and whether the complainant would consent to police looking at them. And on that basis, you go and get them and look at them.

5 **DET SUPT MOLLER:** Correct.

**THE CHAIRPERSON:** On a voluntary basis, that is, you ask for them from the counsellor -

**DET SUPT MOLLER:** Yes.

10

**THE CHAIRPERSON:** - who gives them to you. You then look at them, and you look at them for forensic purposes, that is, there may be evidence in there that helps or hinders the prosecution, but you need to know about it at that point.

15 **DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** And then whether you decide to do anything with it, that's another question. But you feel free to get it under those conditions?

20 **DET SUPT MOLLER:** That's correct.

**THE CHAIRPERSON:** You may be right. I will hear if you are wrong about that. As a matter of law, no doubt somebody is going to tell me and I will look at it myself anyway. But thank you for that. Yes, Mr Jones.

25

**MR JONES:** I am going to take you to briefing the Director in a minute, and seeking his advice, and that happened in - on 21 June 2021, just to give you a timeline. But prior to briefing the Director, you held a view that the evidence was insufficient to substantiate a charge of Mr Lehrmann?

30

**THE CHAIRPERSON:** Prior to what?

**MR JONES:** Prior to briefing the Director of Public Prosecutions?

35 **DET SUPT MOLLER:** Yes, that's right.

**MR JONES:** And that was a collective view also held by your investigators?

**DET SUPT MOLLER:** It was, yes.

40

**MR JONES:** And expressed to you?

**DET SUPT MOLLER:** Yes, absolutely. Yes. The investigators definitely had not reached the threshold -

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**MR JONES:** In their mind.

**DET SUPT MOLLER:** - in their mind. They definitely hadn't, no.

**MR JONES:** We will come to the various documents produced and what goes to the DPP later on, but he was briefed by - at a direction by your executive with material to advise whether he believed there was a reasonable - whether there were reasonable prospects of a conviction?

5

**DET SUPT MOLLER:** Yes, he was.

**MR JONES:** What material was he given, broadly, to make that decision or provide that advice?

10

**DET SUPT MOLLER:** He had the partial brief of evidence that we had at that time, and he had - he ended up being given the copy of the reports and the summary of evidence.

**MR JONES:** Thank you. He was also given the counselling records?

15

**DET SUPT MOLLER:** Yes. That would be right, yes.

**MR JONES:** Why was he given those, do you know?

20

**DET SUPT MOLLER:** From my perspective, full disclosure. You know, about running - you know, for us, it's about transparency and making sure that we are not holding anything back. Trying to be completely open, honest and, you know, sharing everything we had.

25

**MR JONES:** I don't want to be suggesting that that's contrary to the Act. You just had a discussion there with the Chair about that. But you expressed your view that once police had them, they ought not be giving them to anyone, that is, the counselling records.

**DET SUPT MOLLER:** Yes.

30

**MR JONES:** How does that sit with what you have just said now, saying, "Well, in full disclosure, he should have them in order to inform his decision"?

35

**DET SUPT MOLLER:** Yes. Well, look, we shouldn't have given them. And that's - that's - that's the bottom line. We shouldn't have handed them over. And it's a mistake that we made.

40

**MR JONES:** Are you able to - one of the Terms of Reference the Chair has to look at is the circumstances surrounding it, that is, the provision of that information. Are you able to say who made the decision that that would be included in the brief?

**THE CHAIRPERSON:** I suppose an anterior question is whether any decision was made by anyone that it be included.

45

**MR JONES:** All right. Was a decision made, as in, did anyone turn their mind to including that intentionally?

**DET SUPT MOLLER:** So absolutely no one specifically turned their mind to the counselling notes being served. It was part of the brief that went. You know, the - the police

and myself were acting in good faith in sharing the material we had. Absolutely I acknowledge that we shouldn't have done that, and it was a mistake.

5 **THE CHAIRPERSON:** Did the adjudication process - was - did this brief go through the adjudication process?

**DET SUPT MOLLER:** It didn't, Commissioner. It didn't go through the adjudication process.

10 **THE CHAIRPERSON:** Are you going to deal with that or -

**MR JONES:** Well, no, because - I wasn't, but we can.

15 **THE CHAIRPERSON:** Why wasn't it - why didn't it go through the normal process of the detective sergeant looking at it, adjudication looking at it, the judicial arm looking at it to make it electronic?

**DET SUPT MOLLER:** So it - so this was the - this was the initial stage going to the DPP for advice.

20

**THE CHAIRPERSON:** I see. For an advice.

**DET SUPT MOLLER:** For advice.

25 **THE CHAIRPERSON:** It wasn't the brief of evidence.

**DET SUPT MOLLER:** It wasn't a brief of - it was a partial brief of evidence that went to the Director - or went to the DPP, I should say, for - for advice.

30 **THE CHAIRPERSON:** Yes. Yes. So there was no similar process for the preparation of a brief for advice?

**DET SUPT MOLLER:** Not for advice, Commissioner, no.

35 **THE CHAIRPERSON:** And indeed - I'm just thinking out loud. You tell me if this is right. In terms of giving the Director materials upon which to advise, whereas counselling notes would never form part of a brief of evidence going to the Director - because without that elaborate permission process being gone through, they can't be evidence, so they not in the brief of evidence. But when you are seeking advice, you may put a lot of inadmissible  
40 evidence in, that is, material - information that is not admissible evidence, but it's relevant to the advice. So you might put in a lot of that kind of material in the brief for advice, or am I wrong?

**DET SUPT MOLLER:** No.

45

**THE CHAIRPERSON:** You don't generally include admissible material?

**DET SUPT MOLLER:** No, absolutely. My direction to my staff is that we have to hand over everything we've got. Because the last thing I want to see happen is, you know,

ultimately we are at a trial and something comes up and a member of the DPP wasn't aware of it because we hadn't shared it.

**THE CHAIRPERSON:** Yes.

5

**DET SUPT MOLLER:** You know, the last thing I want to see is outside a court, you know, one of my investigators - you know, there has been an issue in court and one of my investigators go up to a prosecutor and say, "Sorry, I knew about that a month ago. I should have told you." You know, that can't happen. We - we - we have to share everything we have. And it's not for us to make a decision about whether that's -

10

**THE CHAIRPERSON:** Admissible.

**DET SUPT MOLLER:** - admissible evidence. You know, for all I know, you know, it may become admissible evidence at a trial later on down the track through some application. So, you know, it's very important for me and my team to share everything we have.

15

**THE CHAIRPERSON:** I can understand that. So step 1 is whatever you have that - whether you know it's going to be evidence or whether you regard it as information only that may be evidence or information that can never be evidence, you give everything to the prosecution; is that right?

20

**DET SUPT MOLLER:** That's correct.

**THE CHAIRPERSON:** And let them decide legally what to do with it.

25

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** Now, I understood that when you - when police are preparing what you call a brief of evidence, does the brief of evidence then contain all of that information and evidence?

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**DET SUPT MOLLER:** So once we -

**THE CHAIRPERSON:** Or do you limit the brief of evidence to something else?

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**DET SUPT MOLLER:** Yes, it's limited then, Commissioner.

**THE CHAIRPERSON:** I see.

40

**DET SUPT MOLLER:** It is limited. Once we go through with the charging process -

**THE CHAIRPERSON:** Yes.

**DET SUPT MOLLER:** - you know, our advice to the prosecutors, we would - you know, we would be talking to them and telling them about what we had. But the brief of evidence is the brief of evidence. We are putting forward what we've got.

45

**THE CHAIRPERSON:** So you give them two sets of information; is that right? You give them a formal brief of evidence -

50

**DET SUPT MOLLER:** If we are seeking advice, Commissioner. Yes.

**THE CHAIRPERSON:** If you are seeking advice, you give them everything.

5

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** If you are not seeking advice, you in due course give them a brief of evidence but not everything that you have?

10

**DET SUPT MOLLER:** Well, we wouldn't be - for the brief of evidence - because that's the thing that's going to get served on the defence.

**THE CHAIRPERSON:** Yes. Yes.

15

**DET SUPT MOLLER:** So we wouldn't be putting that - all our information in that.

**THE CHAIRPERSON:** No. Yes. But you otherwise give them everything?

20

**DET SUPT MOLLER:** Otherwise.

**THE CHAIRPERSON:** On the side, as it were.

**DET SUPT MOLLER:** Yes. Yes.

25

**THE CHAIRPERSON:** I don't mean that in a sneaky way.

**DET SUPT MOLLER:** No, no.

30

**THE CHAIRPERSON:** You give them everything.

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** And included in that is a subset called a brief of evidence, identifying a series of documents.

35

**DET SUPT MOLLER:** Correct.

**THE CHAIRPERSON:** And you know that that's going to be given to the defence.

40

**DET SUPT MOLLER:** Correct.

**THE CHAIRPERSON:** And if there is anything in the other material that you've given comprising the whole investigation file that ought to be given to the defence, well, if the DPP thinks so, they can deal with it that way; is that right?

45

**DET SUPT MOLLER:** Yes, that's right.

**THE CHAIRPERSON:** So it follows then that having received counselling notes under the conditions that you have received them, you give them to the DPP in every case?

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**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** Is that right?

5

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** Even after a charge has been laid?

10 **DET SUPT MOLLER:** That's - I mean, that's historically what we've done.

**THE CHAIRPERSON:** Yes, I understand. Thanks, Mr Jones.

15 **MR JONES:** Well, isn't it the case that they are either redacted or you put them on a schedule so that you are not physically supplying the documents, but you are alerting the parties to their existence?

**DET SUPT MOLLER:** What they need to know.

20 **MR JONES:** Yes. So let's just go back to what you just said. Is the physical unredacted document provided to the Director after charge?

**DET SUPT MOLLER:** Not if it's gone through our adjudication process, no, it wouldn't be provided. But it would be on the - it would be on the schedule.

25

**MR JONES:** Yes.

**DET SUPT MOLLER:** And they could get - you know, if they needed to make application, they would.

30

**MR JONES:** Okay. And that's designed to fulfil your obligation with respect to disclosure?

**DET SUPT MOLLER:** Disclosures. Yes.

35 **MR JONES:** And then, of course, there's always many other things that defence know exist and prosecutors know exist that they might specifically request like PROMIS entries and things like that from you?

**DET SUPT MOLLER:** Yes.

40

**MR JONES:** Thank you. And so we certainly know that the rules surrounding the disclosure of counselling records kick in after charge -

**DET SUPT MOLLER:** Yes.

45

**MR JONES:** - without a doubt. And the ordinary process is someone would be charged or summonsed and then a brief would be made to go to the Director?

**DET SUPT MOLLER:** That's correct.

50

**MR JONES:** Thank you. Or his office. Back to this advice brief, that was handed to him by yourself on 21 June 2021?

**DET SUPT MOLLER:** Mr Boorman. But, yes, I was with him. Yes.

5

**MR JONES:** Okay. Sorry. Mr Boorman.

**DET SUPT MOLLER:** Yes. Yes.

10 **MR JONES:** So you and Mr Boorman made the journey to the Director's office and gave it to his staff?

**DET SUPT MOLLER:** Yes. Yes.

15 **THE CHAIRPERSON:** And you, as the agency, received an advice back from him on 28 June 2021?

**DET SUPT MOLLER:** Correct.

20 **THE CHAIRPERSON:** And his advice had a number of jobs that police still needed to attend to?

**DET SUPT MOLLER:** Yes, I think - you know, extra investigative avenues that he wanted us to undertake.

25

**MR JONES:** And your investigators continued with those tasks?

**DET SUPT MOLLER:** Absolutely. Yes, immediately.

30 **MR JONES:** And his opinion was otherwise that on the state of the brief as he had received and reviewed, there were reasonable prospects of a conviction?

**DET SUPT MOLLER:** He did.

35 **MR JONES:** Okay. On 3 August, you had a briefing or a discussion - and just to guide you, it's at 210 of your statement, Superintendent. You had a discussion with Commander Chew about the likely time it would take to have the summons drafted and served?

**DET SUPT MOLLER:** Yes, I did.

40

**MR JONES:** As best you can, can you relay in the words used what Commander Chew told you and what you told Commander Chew, please?

45 **DET SUPT MOLLER:** Well, the discussion was predominantly about how long it was going to take to get this brief, you know, processed and get Mr Lehrmann before the court. I think it's really important, Commissioner, for everybody to understand the amount of pressure that was on the investigation team - all of us - to get this done. You know, we had a significant amount of external pressure from the media. We had - you know, we had Ms Higgins that was, you know, wanting this to proceed. We had internal pressure that, you  
50 know, we needed to get this done. So there was a significant amount of pressure on us.

And - and I had a conversation with Mr Chew about, "Okay. We have made the decision. We are going to go ahead, and - but, you know, to go through - follow the normal processes and procedures, you know, we are going to need a week or so to do the adjudication process and then four to six weeks to get the summons sworn and out - and out to Mr Lehrmann."

5

**MR JONES:** Can I ask this - I can understand why it would take a week to go through and check redactions and counselling records and EICs. Why does it take three to four weeks to either draft up or serve a summons? Can you explain that, please?

10 **DET SUPT MOLLER:** So - so there is a quick service summons you can get. So you can do it quickly. You can do it within the week. But the normal process - what our normal process takes is up to - it can take up to six weeks for, you know, the summons to be sworn - the summons to be sworn through court - sorry, for it to be typed up, the summons to be sworn through court and to be given a court date, it can take up to six weeks.

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**MR JONES:** All right.

**DET SUPT MOLLER:** So -

20 **MR JONES:** So it's other -

**DET SUPT MOLLER:** Administrative sort of factors that affect that.

25

**MR JONES:** Places that have a (indistinct) police don't have a role in, that is -

**THE CHAIRPERSON:** You mean - it doesn't take six weeks to prepare a summons and file it, but it takes six weeks to prepare a summons and file it and get a court date.

30

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** Is that what you mean?

**DET SUPT MOLLER:** Yes, for the whole process.

35

**THE CHAIRPERSON:** Yes.

**DET SUPT MOLLER:** And that was the - I guess that was the difficulty or the issue that arose for us when we were having our discussion, because there was so much pressure to get it done as quick as possible.

40

**THE CHAIRPERSON:** To get it publicly rolling, you mean?

**DET SUPT MOLLER:** Yes. That's - yes, absolutely.

45

**MR JONES:** Right. So you gave Commander Chew this information. And what was his reaction to the adjudication process?

50

**DET SUPT MOLLER:** Well, his view was that, "We don't need to go through that adjudication process. We have already had - the brief has already been looked at by the DPP and independent - there is an independent review of the brief. I want to you go ahead."

**MR JONES:** And I think you said before the sense of urgency was coming from what you felt was a pressure to get this done; is that right?

5 **DET SUPT MOLLER:** There was a significant amount of pressure, yes.

**MR JONES:** I will just take the opportunity to make clear, when you say that, you are not talking about any political interference or pressure, are you?

10 **DET SUPT MOLLER:** No, I'm just talking about general pressure. I mean, there was just a real desire to expedite this process and get Mr Lehrmann before the court. And, you know, that wasn't - I'm not saying that's from any one person in particular. But collectively, the public, you know, the media, you know, my own organisation, there was a desire to get this progressed.

15 **MR JONES:** Right. Did you express a view about whether it was a good decision or not to not do the adjudication process?

20 **DET SUPT MOLLER:** Certainly my view was that we should stick to the adjudication process and we should do it. But, you know, I - I'm not - I don't want to cast all the blame, because, you know, I was in that conversation. Yes, my advice was, "No, let's just stick to the adjudication process." But, really, it's hard for me articulate the amount of pressure on us to get this done at that time. So certainly we had the discussion. My view was we should go through with the adjudication. Mr Chew's view was, "No, we don't have the time. We've got to get it done."

25 **MR JONES:** Of course, though, charging - a determination whether to charge someone should only be made on the body of evidence collected; correct?

30 **DET SUPT MOLLER:** Yes.

**MR JONES:** Such was your concern, did you raise it again with Commander Chew on 5 August? And you can have a look at 211 of your statement if need be.

35 **DET SUPT MOLLER:** Yes, I did. I raised it again.

**MR JONES:** Take us through that interaction, would you, please?

40 **DET SUPT MOLLER:** Well, there was - there was - initially we thought Mr Lehrmann was in Toowoomba in Queensland, so we - because it was in the middle of COVID, there were issues with us having to travel to serve the summons and all that sort of stuff. Then we worked out that we could serve it in Sydney. So once the arrangements had been made for the brief to be served in Sydney, I had another conversation with Mr Chew and I said, you know, again, "This is outside of our normal procedures. I think we should follow our procedures."  
45 Again, Mr Chew, given the pressure that we were under, said, "No, we will move forward and do what we've got to do."

**MR JONES:** And at this - was it raised with - did you raise it with Commander Chew about the risks of potentially providing information such as counselling records and those things?

50

**DET SUPT MOLLER:** I don't think I ever mentioned counselling records. But certainly, you know, I was concerned about not following our procedures.

5 **MR JONES:** Now, at this time, your investigators were still reluctant to charge - they still had not been convinced in their state of mind that there was sufficient evidence?

**DET SUPT MOLLER:** That's - yes. Definitely.

10 **MR JONES:** And you ultimately swore up the summons; is that right?

**DET SUPT MOLLER:** Yes, I did. I swore the summons because I did not want to put any of my staff in the position where they had to do something they didn't want to do - you know, they didn't believe in. So I - I did it.

15 **MR JONES:** And I think you have stated that it's now after you received the Director's advice. Did that change your state of mind in terms of preferring a charge?

20 **DET SUPT MOLLER:** Yes, absolutely. I mean, I didn't think there was enough evidence. And then I received the Director's advice, and certainly from his advice I decided to go ahead.

**MR JONES:** Thank you. After receiving Commander Chew's direction to get it done, you -

25 **THE CHAIRPERSON:** Excuse me, Mr Jones. It follows, then, that you came to the conclusion that the statutory test for charging was satisfied?

**DET SUPT MOLLER:** Yes, I did.

30 **THE CHAIRPERSON:** Thank you.

**MR JONES:** And -

**DET SUPT MOLLER:** Based on that advice, Commissioner. Based on that advice.

35 **THE CHAIRPERSON:** Yes. Yes. Yes.

**MR JONES:** The statutory test referred to in the case of a summons before the Magistrates Court is section 26. And that's an incredibly low threshold, isn't it?

40 **DET SUPT MOLLER:** Incredibly low.

**THE CHAIRPERSON:** Well, I don't know that it is an incredibly -

45 **MR JONES:** It's a suspicion.

**THE CHAIRPERSON:** It's a lower threshold than the Director applies when he decides whether to present an indictment.

50 **MR JONES:** That's right.

**THE CHAIRPERSON:** I don't think the adjective helps or is accurate, really, Mr Jones.

**MR JONES:** It's a statutory minimum which requires only a suspicion.

5 **DET SUPT MOLLER:** It requires suspicion.

**THE CHAIRPERSON:** Yes.

**MR TEDESCHI:** It's reasonable suspicion; it's not just a suspicion.

10

**THE CHAIRPERSON:** Well, Mr Tedeschi, I don't think the statute uses the word "reasonable", but it doesn't matter because it has to be reasonable. You are quite right. It has to be reasonable. If it's unreasonable, then the test isn't satisfied. So - yes. But let's not get stuck on what the superintendant thinks is the test because, as will emerge, different people

15 have different views of what the test is, and there will be a debate and I will get submissions from you and your colleagues about the meaning of the test, which will be an important thing for me to look at and decide. Thank you, Mr Tedeschi. Yes, Mr Jones.

**MR JONES:** I won't out anyone, but could we have a morning tea break, please?

20

**THE CHAIRPERSON:** Certainly.

**MR JONES:** Thank you.

25 **THE CHAIRPERSON:** Now? Yes. 20 minutes.

**MR JONES:** Thank you.

**THE CHAIRPERSON:** All right.

30

**<THE HEARING ADJOURNED AT 12.07 PM**

**<THE HEARING RESUMED AT 12.36 PM**

35 **THE CHAIRPERSON:** Yes, Mr Jones.

**MR JONES:** Thank you, Mr Chair. Superintendant, you have just given evidence about the conversation you had with Commander Chew on 5 August 2021 -

40 **DET SUPT MOLLER:** Yes.

**MR JONES:** - which was the second in time about the adjudication process and - had not been done?

45 **DET SUPT MOLLER:** That's right.

**MR JONES:** He then gave you a direction to get it done?

**DET SUPT MOLLER:** Yes.

50

**MR JONES:** And you passed that direction on to Detective Sergeant Robert Rose?

**DET SUPT MOLLER:** Yes, that's right.

5 **MR JONES:** Why was he chosen as the person to get the summons and brief served?

**DET SUPT MOLLER:** Because during this investigation - the stress of the investigation affected a lot of police. A number of police that worked for me have been unable to return to work as a result of the stressors in this investigation. And at the time, Detective Sergeant  
10 Rose was one person who hadn't been involved in it before. And because of a number of members going off sick, I brought him in to manage that process for us, you know, at that stage, because we didn't have anyone else, because they had gone off - they had been sick.

**MR JONES:** Thank you. Now, the summons was served on Mr John Korn, the accused  
15 counsel, on 6 August 2021?

**DET SUPT MOLLER:** Correct.

**MR JONES:** And it was intended for the brief to be served at the same time; correct?  
20

**DET SUPT MOLLER:** That's right. Yes.

**MR JONES:** That didn't actually happen, did it?

25 **DET SUPT MOLLER:** No.

**MR JONES:** All right. Can you tell us how it was facilitated that the summons was served, and you thought the brief was being served at the same time, please?

30 **DET SUPT MOLLER:** So at that time, we had COVID operating - or, you know, affecting the country. And luckily, in the ACT, we were quite isolated from that. So from a policing perspective, we were very conscious about not bringing COVID to the ACT. So to get the brief of evidence and the summons to Sydney, we had to put investigators in a vehicle, drive to the outskirts of Sydney. They had to have the brief of evidence in the boot with a  
35 summons, and they were supposed to exchange without, you know, engaging because of the COVID implications. What happened is they took the summons but forgot the brief of evidence.

**MR JONES:** Okay. Who was the - who were the officers that drove the brief to the border?  
40

**DET SUPT MOLLER:** I don't know.

**MR JONES:** Okay. Do you know who the officers were who collected on the other side?

45 **DET SUPT MOLLER:** I -

**MR JONES:** Sorry, I should correct that. The summons - who collected the summons on the other side?

**DET SUPT MOLLER:** So - so there was a number of investigators from the Sydney office that helped us. Their names, I don't know. But I do know that we ended up dealing with Cilla [REDACTED], who is a detective who used to work in ACT Police, and she now works in the Sydney office.

5

**MR JONES:** Okay. So after the summons had been served by police in New South Wales - AFP police in New South Wales -

**DET SUPT MOLLER:** Yes. Yes.

10

**MR JONES:** - you received a call from Mr Korn?

**DET SUPT MOLLER:** Yes.

15 **MR JONES:** Could you take us through that call, please?

**DET SUPT MOLLER:** Well, basically Mr Korn had said to me that, "Hey, I have got the summons, but I haven't got the brief. What happened to that?" And I said, "You will have to leave it with me. I will make some inquiries." And then I found out that that hadn't happened. So then we attempted to make arrangements to get the brief to him. My first view - my first idea was that we would just get another brief sent up. But then investigators were aware that Cilla [REDACTED], who was in the Sydney office, still had access to our particular drive on the computer system, which meant she could download the material onto a thumb drive in Sydney and serve it for us. So that seemed to me to be the most logical step to take.

20

25

**MR JONES:** Okay. And that was facilitated?

**DET SUPT MOLLER:** Yes.

30

**MR JONES:** Right. Now you've given evidence earlier that it would be unusual to serve a brief directly on -

**DET SUPT MOLLER:** Yes.

35

**MR JONES:** - defence counsel?

**DET SUPT MOLLER:** Yes. Outside of our procedures, yes.

**MR JONES:** Outside of your procedures. Why was it done in this case?

40

**DET SUPT MOLLER:** Well, because there was a need to get it all done as per Mr Chew's direction.

45

**MR JONES:** Thank you. And did he ever give you any greater explanation about why it was done outside of ordinary processes beyond what you've told us?

**DET SUPT MOLLER:** Look, he absolutely didn't need to give me an explanation. I was aware - I was living the pressures at the time. I knew that exceptional amount of pressure on us to get this done, and I knew what was - you know, the pressure that was on him as well. So



he didn't have to explain it to me. I knew. Like, you know, if you are in that environment at that time, you would appreciate how difficult it was.

5 **MR JONES:** He did, though, at some stage give you an email, didn't he, with some dot points that cited COVID, the fact that the brief had been reviewed by the Director and maybe one or two other points. Can you remember what they were?

10 **DET SUPT MOLLER:** Yes, he did. He gave me an email - he sent me an email - I actually think he sent it to Hall O'Meagher - the email went to Hall O'Meagher and then came to me. But, yes, he nominated, I think, four dot points as to why he made his decision to do that.

**MR JONES:** Thank you.

15 **DET SUPT MOLLER:** And that was on the request of the Director of the DPP wanting to know why.

**MR JONES:** Thank you. Mr Romano, would you bring up AFP.2003.0009.3532, please. Now, you can see that on your screen there, superintendent?

20 **DET SUPT MOLLER:** I can, yes.

**MR JONES:** That's an email from Mr Drumgold to you on 17 September 2021 at 2.30 pm?

25 **DET SUPT MOLLER:** Yes.

**MR JONES:** And he is raising there with you that the Crown's copy of the brief contained unlocked redactions, meaning things that have been blacked out could be unlocked by the person using the software?

30 **DET SUPT MOLLER:** Yes.

**MR JONES:** He raised with you that copies of the EICI audio-visual information was included?

35 **DET SUPT MOLLER:** Yes, he did.

**MR JONES:** And counselling records were included?

40 **DET SUPT MOLLER:** Correct. Yes, he did.

**MR JONES:** And he cites the relevant provisions of the Act that govern - or are designed to prevent that from happening; correct?

45 **DET SUPT MOLLER:** Yes.

**MR JONES:** Now, he also asked you there with a heading Defence Copy of the Brief to confirm - and the questions in red that follow it - whether the same material has been provided to Mr Korn?

50 **DET SUPT MOLLER:** Yes.

**MR JONES:** I take it you accept that counselling records shouldn't have been included?

**DET SUPT MOLLER:** Yes.

5

**MR JONES:** And that the EICI shouldn't have been included? Yes?

**DET SUPT MOLLER:** The video copy of the EICI shouldn't have been included.

10

**MR JONES:** Shouldn't have been included. And when this was raised with you, did you contact Mr Korn?

**DET SUPT MOLLER:** Yes, I did.

15

**THE CHAIRPERSON:** Did you know him before this?

**DET SUPT MOLLER:** No. No, I didn't know him at all.

20

**MR JONES:** So I take it this is the second piece of contact you've had with him, the first about the brief?

**DET SUPT MOLLER:** I had one phone call with him to determine where we would serve the summons and then one phone call about the brief and then this call.

25

**MR JONES:** All right. And what did Mr Korn tell you in that phone call?

30

**DET SUPT MOLLER:** Well, he just said that he hadn't looked at it and it was fine. He basically said, "Tell me what you want to do, Mr Moller." He called me Mr Moller, which, yes, was different. But, yes, he - he asked me what I wanted him to. And I said, "Okay. I want you not to look at it and don't access it, and I will get another copy to you." And he gave me an undertaking that he would do that.

**MR JONES:** Right. And did you later confirm that in writing with him?

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**DET SUPT MOLLER:** So - well, what I did was I passed on that information to Mr Drumgold. Mr Drumgold insisted that we got something in writing from him. So I went back to Mr Korn and said, "Look, I'm sorry, but I've been requested that I need to get it in writing from you that you haven't accessed it." And he said, "Certainly, Mr Moller. I will send you something in writing."

40

**MR JONES:** And eventually he did do that?

**DET SUPT MOLLER:** He did. After I chased him a little bit, he definitely did, yes.

45

**MR JONES:** And eventually you got the brief back from him?

**DET SUPT MOLLER:** Yes, we did.

50

**MR JONES:** And you sent it off to AFP computer forensics?

**DET SUPT MOLLER:** Yes, our digital forensic team, to examine it.

**MR JONES:** What for?

5 **DET SUPT MOLLER:** To see it if it had actually been opened - copied or reviewed.

**MR JONES:** And did you tell Mr Drumgold that information?

**DET SUPT MOLLER:** Yes, I did.

10

**MR JONES:** Did you tell Ms Higgins that information?

**DET SUPT MOLLER:** No.

15 **MR JONES:** Why was she not told?

**DET SUPT MOLLER:** At the point of time when we got that information back, the DPP were dealing directly with Ms Higgins.

20 **MR JONES:** All right. I will get Mr Romano to bring up AFP.2003.0011.1608. Now, some time in May, Ms Higgins was identified as the person that would be the conduit of information between the AFP and Ms Higgins?

**DET SUPT MOLLER:** Ms Yates was, yes.

25

**MR JONES:** Sorry. Ms Yates was identified -

**DET SUPT MOLLER:** Yes.

30 **MR JONES:** - as the conduit of information between police and Ms Higgins; correct?

**DET SUPT MOLLER:** Yes, she was. Yes.

**MR JONES:** And that was consistent with the victim-centric approach that you spoke of earlier -

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**DET SUPT MOLLER:** Yes.

**MR JONES:** - that the complainant can control the forms of communication and the pace of the communication?

40

**DET SUPT MOLLER:** Yes.

**MR JONES:** And that's consistent with your obligation, that is, policing - not you personally, but the police obligation under the Victims of Crime Act to let them, that is, the complainant, direct and how communication would take place with them and how regularly and so forth?

45

**DET SUPT MOLLER:** Yes, it is.

50

**MR JONES:** Okay. Now, this is an email from Ms Yates to you on 26 August 2021 at 10.25 am. Do you accept that?

**DET SUPT MOLLER:** Yes, that's the one I'm looking at.

5

**MR JONES:** Yes. And here Ms Yates says to you:

"In relation to ongoing contact between Ms Higgins and the ACTP..."

10 That is, the ACT Police:

15 "...I have checked with the DPP and they have confirmed that their office will take on responsibility for providing Ms Higgins with all information, updates and advice required, including under the Victims' Charter of Rights, in relation to the progress of her matter. They will usefully provide Ms Higgins with a single point of contact, which I'm sure she will welcome. I have cc'd Ms Higgins and Mr Drumgold to ensure we're all on the same page regarding DPP now being the sole point of contact for Ms Higgins."

20 And then it goes on:

"Ms Higgins asked me to again express her thanks to you and your team for the work you've undertaken to bring the matter before the court, noting we understand ACTP members will also be witnesses in the matter."

25

**DET SUPT MOLLER:** Yes, that's right.

**MR JONES:** Is this the piece of correspondence you were referring to, being the request that you not have direct communication with Ms Higgins or Ms Yates about Ms Higgins' matter?

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**DET SUPT MOLLER:** I think, yes, the communication had a different point of contact for Ms Higgins.

**MR JONES:** Okay. And that is the reason that, come September when you are discovering the errors with the brief, you don't contact Ms Higgins or Ms Yates about it?

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**DET SUPT MOLLER:** That's right.

**MR JONES:** But you do inform the Director and say to the Director he should contact -

40

**DET SUPT MOLLER:** Yes.

**MR JONES:** All right. Mr Romano, would you bring up AFP.2003.0003.5580, please, and turn to page 5583, please. Now - if you could just highlight the top part of that email. Now, just to orientate, you superintendent, this is an email from Mr Drumgold to you of 24 September 2011 at 11.29. And Mr Drumgold at some stage asked you to get statements, didn't he?

45

**DET SUPT MOLLER:** He did, yes.

50

**MR JONES:** From your police officers about the disclosure of the brief?

**DET SUPT MOLLER:** Yes. Well, I was a bit confused at the start because I - I didn't really understand why he wanted statements from us, but -

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**MR JONES:** All right.

**DET SUPT MOLLER:** But, yes, that's right. He did clarify it.

10 **MR JONES:** Okay. Now, he says there in the top of this email:

"Thank you for this advice."

Referring to information you have given him -

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**DET SUPT MOLLER:** Yes.

**MR JONES:** - about what we have just received evidence from you about:

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"However, as stated, this will also become relevant to a fact in issue, as well as credibility issue in the trial."

And so he asks you then to answer a series of other questions that had been previously posed to you; correct?

25

**DET SUPT MOLLER:** Correct.

**MR JONES:** What was your understanding of what fact in issue the wrongful disclosure of the counselling records in the EICI would be relevant to in the trial?

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**DET SUPT MOLLER:** I couldn't understand what the fact in issue was.

**MR JONES:** What was your understanding of what the credibility issue - the wrongful disclosure of those documents could have to the trial?

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**DET SUPT MOLLER:** Likewise, I really struggled to understand where Mr Drumgold was coming from in relation to that.

**MR JONES:** All right. Were the statements prepared?

40

**DET SUPT MOLLER:** The statements were prepared, yes.

**MR JONES:** From your understanding, were the statements ever used by the DPP?

45

**DET SUPT MOLLER:** No.

**MR JONES:** Was the evidence led at trial?

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**DET SUPT MOLLER:** No, it wasn't.

**MR JONES:** All right. Did you form a view why they were being collected?

5 **DET SUPT MOLLER:** Yes, I did. And I felt like Mr Drumgold - or the DPP was attempting to collect evidence against the police for use at a later time, you know, to - to show criticism towards the police. And I had that feeling very early on, to be honest. It had - it caused me quite a lot of concern for myself and my investigation team, you know, so much so that we continually second-guessed ourselves about, you know, what we were doing and how we were doing it.

10 **MR JONES:** We are going to move to another topic now, which is the second EICI with Ms Higgins. On - by 12 April 2021, ACT Police were working towards making a decision to charge Mr Lehrmann?

15 **DET SUPT MOLLER:** Yes.

**MR JONES:** By 28 April 2021, consideration was being given to interviewing Ms Higgins for a second time?

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** And by 5 May 2021, Inspector Boorman had spoken with Ms Yates and said - indicated that a decision about charging would be made in a couple of weeks, so by about 19 May 2021. Do you agree with all of that?

25 **DET SUPT MOLLER:** Yes, I do.

**MR JONES:** All right. Mr Romano, AFP.2003.0005.9646. Now, that is an email from Inspector Boorman to Detective Sergeant Gareth Saunders and Senior Constable Frizzell and Detective Leading Senior Constable Trent Madders; correct?

30 **DET SUPT MOLLER:** Yes.

**MR JONES:** 18 May 2021 at 3.57 pm?

35 **DET SUPT MOLLER:** Yes.

**MR JONES:** Now, if you go down to the "regards" there at the bottom and go up three lines, it starts with:

40 "List of issues/questions for a further EICI with Brittany. Need to arrange this for next week."

**DET SUPT MOLLER:** Yes.

45 **MR JONES:** So investigators are arranging for Ms Higgins to come in by 28 May 2021. Would you agree with that?

**DET SUPT MOLLER:** Yes, I would. Yes.

50 **MR JONES:** Yes. And then in the next sentence:

"I need to get a covering report drafted and material prepared for submission by the end of next week."

5 So that would also be by 28 May 2021; correct?

**DET SUPT MOLLER:** I guess, yes.

**MR JONES:** Yes. Well, 18 May -

10

**DET SUPT MOLLER:** Yes.

**MR JONES:** I've done that.

15 **DET SUPT MOLLER:** On dates, yes. Yes, that's right.

**MR JONES:** Yes. Now, the report that Inspector Boorman is talking about there is the - what becomes the Boorman minute; correct?

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** And that ultimately is going to be a document that is put with some other documents before Commander Chew to make a decision?

25 **DET SUPT MOLLER:** That's correct.

**MR JONES:** Now, Ms Yates was contacted regarding the second EICI, and it was arranged to occur on 26 May?

30 **DET SUPT MOLLER:** Correct.

**MR JONES:** That's two days before the report is due to Commander Chew. Do you accept that?

35 **DET SUPT MOLLER:** Approximate dates, yes.

**MR JONES:** Yes.

**DET SUPT MOLLER:** Yes.

40

**MR JONES:** Now, Ms Yates was nominated as Ms Higgins' support person -

**DET SUPT MOLLER:** That's correct.

45 **MR JONES:** - for that EICI? And that's someone who sits in and provides support?

**DET SUPT MOLLER:** Yes.

50 **MR JONES:** Do you accept by this point in time Ms Yates was providing support to Ms Higgins throughout now the investigation?

**DET SUPT MOLLER:** Yes, I do.

**MR JONES:** So she was going beyond that role of just conduit of information?

5

**DET SUPT MOLLER:** Yes.

**MR JONES:** And the second EICI did in fact occur on 26 May 2021?

10

**DET SUPT MOLLER:** It did.

**MR JONES:** And it was conducted by Frizzell and Madders?

**DET SUPT MOLLER:** That's correct.

15

**MR JONES:** Okay. The rationale for doing the second EICI was to, in effect, put inconsistencies to Ms Higgins, wasn't it?

**DET SUPT MOLLER:** Yes, that's right.

20

**MR JONES:** It wasn't to discover new lines of inquiry for investigation by this point?

**DET SUPT MOLLER:** No. It was to clarify the issues that we had found.

25

**MR JONES:** And in fairness to you, one new line of inquiry is exposed at the end of that interview.

**DET SUPT MOLLER:** Absolutely it is.

30

**MR JONES:** But otherwise, when you say "clarify", really what the investigators are doing is putting inconsistencies - and I don't mean cross-examining her, but raising inconsistencies and seeking Ms Higgins' clarification on them.

**DET SUPT MOLLER:** That's right.

35

**MR JONES:** All right. And there, in fact, wasn't an opportunity between that interview and the 28th when the report for the decision is being made for any new lines of inquiries to be properly investigated in any event, was there?

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**DET SUPT MOLLER:** No.

**MR JONES:** Now, on one view of those facts, it could be suggested that the interview was done solely to put -

45

**THE CHAIRPERSON:** Excuse me, Mr Jones. Yes, Mr Tedeschi.

**MR TEDESCHI:** (Indistinct) the last few questions, but we would submit that, really, non-leading questions should be put about issues like this.

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**THE CHAIRPERSON:** You are submitting that the questions should be open, not leading -



**MR TEDESCHI:** Yes, please.

**THE CHAIRPERSON:** - on this topic?

5

**MR TEDESCHI:** Yes, please.

**THE CHAIRPERSON:** Yes, I think there is something in that, Mr Jones.

10 **MR JONES:** Okay. Well, I think Mr Tedeschi will like this, what I'm going to ask.

**THE CHAIRPERSON:** No, no. Yes.

15 **MR JONES:** So I will ask it, and you can take objection if you want. But on one view of those facts, it could be suggested that the interview was done -

**MR TEDESCHI:** I object.

**THE CHAIRPERSON:** Well, he's -

20

**MR JONES:** Can I get the question out?

**THE CHAIRPERSON:** I think - let's listen to the question, Mr Tedeschi, and then - don't answer the question yet.

25

**DET SUPT MOLLER:** No.

**THE CHAIRPERSON:** Thank you.

30 **MR JONES:** On one view of those facts, that is, the limited timing, the fact that she's been brought in for the sole purpose of clarifying, you say, but I say putting inconsistencies to her - on one view of that, would be that the second EICI was being done to bolster a submission - a report to Commander Chew that charges ought not be preferred against Mr Lehrmann.

35

**MR TEDESCHI:** I object.

**THE CHAIRPERSON:** I think - yes. Have a seat, Mr Jones. What's your objection, Mr Tedeschi?

40

**MR TEDESCHI:** A leading question.

**THE CHAIRPERSON:** Well, he's asking him if he agrees that that's one view, and I think he's going to put another view and then he's going to ask the witness - I don't know, truly. And then he's going to ask the witness an open question. Is that right, Mr Jones?

45

**MR TEDESCHI:** An open question would be, "What are the reasons?"

**THE CHAIRPERSON:** What I was suggesting was that he is putting a closed question, that this is one inference, and he's going to put another closed question about some other

50

inference. But then he's going to ask the question that matters, which will be an open question.

**MR TEDESCHI:** I hope so.

5

**THE CHAIRPERSON:** Because what is being put is not an inquiry about what inferences the witness might draw from it. What's being put to him is what other people might think about it and then he's going to be asked for his reaction or his comment about the propriety or what the true reason was or something of that kind. So I think what's being admittedly led from him isn't improper because it's being put to him that some people might think this. Does that trouble you?

10

**MR TEDESCHI:** Well, yes, it does, Chairman.

15

**THE CHAIRPERSON:** Yes. Why is that?

**MR TEDESCHI:** He should be asked an open question, "What was your motive in doing that?" Rather than, "Some people might think this. Some people might think that."

20

**THE CHAIRPERSON:** I see. I see.

**MR TEDESCHI:** "What were your reasons?"

25

**THE CHAIRPERSON:** I see. Well, I'm not sure it's objectionable the way he's going, but I will hear what Mr Jones says and I will come back to you, Mr Tedeschi.

**MR JONES:** I'm happy to ask him that question, but what I was attempting to do -

30

**THE CHAIRPERSON:** The concern is that we are all interested in why things were done, and Mr Tedeschi is concerned to ensure that we get that evidence without the witness being constricted in the scope of what he might say. Do you follow?

**MR JONES:** I do. But what I'm doing is I am -

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**THE CHAIRPERSON:** Just excuse me. Would you excuse us while we debate it openly and then you can come back, without worrying about your evidence being affected.

<**THE WITNESS STOOD DOWN**

40

**THE CHAIRPERSON:** So, Mr Jones, why don't you tell us what the line of questioning is you are going to adopt and then see what Mr Tedeschi says about it and whether it's objectionable.

45

**MR JONES:** The question I just outlined, about one view being, in effect, that it was done for an improper purpose -

**THE CHAIRPERSON:** Yes.

50

**MR JONES:** - and contrary to the Victims of Crime Act where they have a duty, that is, the police have a duty, to treat complainants with respect, not to have them come into a second

EICI, which is a traumatic process, under the understanding that it was to clarify some things, when really the process was to bolster a submission that charges not be preferred against Mr Lehrmann. So the line of questioning was going to be to ask him that one impression is this improper purpose -

5

**THE CHAIRPERSON:** But one might infer from - you want to put to him that one might infer from the circumstances that what was really being done was to get some material to use to justify not charging Mr Lehrmann.

10 **MR JONES:** Well, they already had the material.

**THE CHAIRPERSON:** Sorry, that's -

**MR JONES:** It was to tick a box, basically.

15

**THE CHAIRPERSON:** That's the proposition you want to put.

**MR JONES:** Yes.

20 **THE CHAIRPERSON:** The one inference is that you are doing this for this improper purpose, namely, to get material to persuade somebody not to proceed with charges. Yes?

**MR JONES:** Yes.

25 **THE CHAIRPERSON:** And then if he says, "Yes, that - somebody might think that," where do you go then?

**MR JONES:** I was going to ask him what the other purpose might be.

30 **THE CHAIRPERSON:** I see.

**MR JONES:** What the other -

**THE CHAIRPERSON:** Do you object to that, Mr Tedeschi?

35

**MR TEDESCHI:** I object to the leading part, and he can just be asked the ultimate question, which is, "Why did you do that? Why did you engage in this second electronic record of interview?"

40 **THE CHAIRPERSON:** Well, I think what Mr Jones is doing is he's crossing over into cross-examination mode -

**MR TEDESCHI:** Yes.

45 **THE CHAIRPERSON:** - and he wants to put to the witness that whatever he might say was the proper motive - proper purpose for undertaking the second interview was it not the fact that it was done for this improper purpose, and he was going about it by saying one might infer the improper purpose - do you agree one might infer it. And if he says "yes", he's then going to say, "Well, what's the proper purpose?" Which is a legitimate way to cross-examine  
50 somebody.

**MR TEDESCHI:** Chairman, it's - the whole tenor of this questioning by counsel assisting is totally supportive -

5 **THE CHAIRPERSON:** Thus far.

**MR TEDESCHI:** Thus far.

**THE CHAIRPERSON:** Thus far.

10

**MR TEDESCHI:** Thus far, of Superintendent Moller about issues that were the subject of a lot of evidence from Mr Drumgold.

**THE CHAIRPERSON:** Yes.

15

**MR TEDESCHI:** He was questioned in a very different sort of tone -

**THE CHAIRPERSON:** Yes. That's right.

20

**MR TEDESCHI:** - about such issues. So we would suggest at the very least that he should be asked questions by way of examination-in-chief rather than cross-examination to elicit his own evidence rather than -

25

**THE CHAIRPERSON:** But what I'm suggesting to you is that having heard what Mr Jones has just said, he's moving into what might be called adverse cross-examination. Not leading questions to elicit answers supportive of the witness, but he's now testing him by saying - it's a familiar method, isn't it, to say to somebody, "Well, you've done something. One inference I might draw from that is something improper. Can you suggest a proper purpose in what you did?" Having identified the improper purpose.

30

**MR TEDESCHI:** We would submit that the appropriate way to do that would be to ask him what his reasons were and then he can ask him.

**THE CHAIRPERSON:** You mean do it the other way around?

35

**MR TEDESCHI:** Yes.

**THE CHAIRPERSON:** All right. Why do you don't that?

40

**MR JONES:** I'm happy to do that. Just to allay any concerns of Mr Tedeschi and to make it abundantly clear, I'm in effect suggesting to the superintendent that the second EICI ought not to have been done and was done for a wrong reason -

45

**THE CHAIRPERSON:** Yes, that's what I mean. All right. Don't say anything more.

**MR JONES:** - and that accords with his client's instructions.

**THE CHAIRPERSON:** Let's get the witness back in, Mr Gnech, and you put it the other way around, Mr Jones, and let's see where we go.

50

<SCOTT JOSEPH MOLLER, CONTINUING

<EXAMINATION BY MR JONES:

5 **MR JONES:** It will take me probably about 10 minutes just to finish this topic. Is that -

**THE CHAIRPERSON:** Yes, we will continue until you have finished. I see. It's 1.06. Well, we may as well - does anybody object to concluding this aspect of it? Anybody in a hurry? No. Good. Go ahead.

10

**MR JONES:** What were the reasons that the second EICI was done?

**DET SUPT MOLLER:** We had a lot of - a number of concerns about the evidence that was being presented to us, and we wanted to clarify some of the inconsistencies that we had developed through the evidence.

15

**MR JONES:** Is that not something that ought to be left for the trial?

**DET SUPT MOLLER:** In my view, no, it's not. In my view, to conduct an extensive investigation - a complete investigation, it's incumbent upon us to look at these lines of inquiry and determine if there is other lines of inquiry that fall out of them. You know, there may have been something else that came out of those inconsistencies. For instance, Ms Higgins may have been able to justify one of them. And that may have supported her view. And that may have given us another line of inquiry that we could have pursued to support that view. I think it's - you know, it's incumbent upon us as investigators to do the most complete and comprehensive job we can. And that's what we try and do.

20

25

**MR JONES:** But isn't the point here that the time of interviewing Ms Higgins was two days prior to a report being given to the commander seeking a decision from him as to whether the matter should progress or not?

30

**DET SUPT MOLLER:** Yes. I think the - I think the timing is not as important as the thoroughness of the investigation. Certainly the report that went to the commander detailed all of the evidence. It detailed - it gave a full description of what we had, you know, discovered in the investigation, both supporting evidence and evidence that would detract from the complainant's version. And, you know, it's about - for us, it's about ensuring that we have closed every line of inquiry off before that next step. So it's important to us to do that and - you know, to put that stuff to the complainant to ensure that we have got a thorough investigation.

35

40

**MR JONES:** You have accepted that EICIs are stressful for complainants?

**DET SUPT MOLLER:** Yes.

45 **MR JONES:** And they can be traumatic for complainants; yes?

**DET SUPT MOLLER:** Yes, they can be.

**MR JONES:** And you had, from very early on in the investigation, held concerns about Ms Higgins' vulnerability and health?

50

**DET SUPT MOLLER:** Yes, I did.

5 **MR JONES:** And you accept, do you, that doing a second EICI with Ms Higgins put her wellbeing at risk?

**DET SUPT MOLLER:** Yes. Potentially it could have, yes.

10 **MR JONES:** And the second EICI, in fact, produced very little value to the investigation?

15 **DET SUPT MOLLER:** I think - I think there was value to the investigation that came out of it, but I think the important part of this - and this is another example of the conflicting responsibilities of an investigator and, you know, our victim-centric approach. You know, we are torn by trying to get the best possible evidence we can, but also we are - we are trying to support the complainant through this process. And absolutely like you've described, you know, it is upsetting and it is challenging. So, you know, investigators continually balance this - this view of, you know, we have got to - we have got to support and protect the victim, but we have also got an obligation to collect the evidence and the best evidence we can - the most thorough evidence we can to put before the courts. So it's a - it is an ongoing battle for us. And it's hard. And to be honest, you know, sitting here in front of you, Commissioner, I don't know how to better articulate that balance and where our - where our - you know, where we sit with it.

25 **THE CHAIRPERSON:** The dilemma you are referring to is this - let me put it back to you so that you can correct me if I've got the wrong impression. On the one hand, you take a complainant at face value, and you may have - you may have really a good reason to think an offence has been committed. But in other circumstances, you take the complainant at face value, and you are obliged to treat the complainant as a victim. That's what you mean by "victim-centric".

30 On the other hand - and this isn't necessarily opposed to your role that I've just described - you're obliged to be impartial in your investigation and to investigate the whole matter to uncover, as best you can, evidence about whether an offence was committed and, if so, who committed it. And, therefore, you have duties to perform that might not support a complainant because they are duties to perform to uncover things that might prove that her account is if not false, vulnerable.

35 So in going about that aspect of your task, you also have to question the complainant herself, not just go and do things of which she is not conscious. You have to question her herself. And therefore, while you are obliged when dealing with her to support her, you are also obliged when dealing with her to investigate the whole matter in a way which may be very, very distressing or uncomfortable to the complainant.

45 **DET SUPT MOLLER:** That's correct.

**THE CHAIRPERSON:** And that's - is that the problem you are describing?

**DET SUPT MOLLER:** That's absolutely our dilemma.

50 **THE CHAIRPERSON:** Yes, Mr Jones.

**MR JONES:** Thank you. Were you told by Mr Drumgold on 12 April 2021 not to do a second interview with Ms Higgins?

5 **DET SUPT MOLLER:** I don't remember that conversation. I don't remember him telling -

**THE CHAIRPERSON:** By whom?

**MR JONES:** By Mr Drumgold. You don't remember that?

10

**DET SUPT MOLLER:** No, I don't.

**MR JONES:** During the interview, Ms Higgins was shown CCTV footage of Parliament House, her and Mr Lehrmann entering and exiting. You know the footage I'm talking about?

15

**DET SUPT MOLLER:** Yes, I do.

**MR JONES:** There didn't seem to be any questions about that, the showing. It was just, "Do you want to see this?" And then it was played for her.

20

**DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. Do you accept that?

25 **DET SUPT MOLLER:** Yes. And, you know, this is another example. So in a normal - in a normal investigation, we would never show somebody evidence like that, because it might influence their evidence later on in court. So we would never do it. Under our victim-centric model, Ms Higgins continually asked to be shown that video. So, you know, so troubled by that, we made a decision to show her but to show her on tape so we could capture the  
30 reaction, if you like, and, you know, to make sure there could be no suggestion that we showed it for any other purpose. But, again, that's the struggle we continually try to apply because, you know, wearing our investigators hats, we go, "No, we should not show her that evidence because it might taint it later on down the track." But under a victim-centric model, we go, "Well, this is really important for her to see this. We are trying to support her. We  
35 need to support her." So the decision we made was to support her and show her.

**THE CHAIRPERSON:** This dilemma, as I will call it, between your duty to treat a complainant in a particular way and your need to investigate the case thoroughly - this dilemma, has that been the subject of any formal consideration or study within police or  
40 training or lectures or - has it been recognised as something that should be addressed so that investigators have a grip on how to deal with it?

**DET SUPT MOLLER:** Not that I'm aware of.

45 **THE CHAIRPERSON:** Thanks, Mr Jones.

**MR JONES:** Would another option be to sit down with Ms Yates, who was Ms Higgins' support person, speak with her about the issue that Ms Higgins wants to see the video footage and that it wouldn't be appropriate and ask Ms Yates, who has expertise with dealing with

complainants, how you could deal with this conundrum without potentially tarnishing Ms Higgins' memory? Do you accept that to be another way?

5 **DET SUPT MOLLER:** Look, the - absolutely if there's one thing this matter has shown or  
taught me is that our organisations - Victims of Crime and the AFP or ACT Policing need to  
work closer. We need to work better. We need to definitely develop, you know, better lines of  
communication. We need to understand properly how the Victims of Crime can - you know,  
can assist and we can assist them. So, yes, absolutely we need to do that better. And, you  
10 know, I think the development of training and policies and procedures, I think, is where we  
need to align our thinking to ensure that we've got that and we've got that expertise, like you  
say.

15 **MR JONES:** Because you would accept, wouldn't you, that Ms Higgins was particularly  
vulnerable, and Ms Yates had a very significant and important role to play in helping  
Ms Higgins through the investigation?

**DET SUPT MOLLER:** Yes.

20 **MR JONES:** And you had someone who had expressed to police that her memory had been  
corrupted by speaking with Samantha Maiden; correct?

**DET SUPT MOLLER:** Yes.

25 **MR JONES:** She had expressed on a number of occasions she had had a lot to drink and had  
blacked out?

**DET SUPT MOLLER:** Yes.

30 **MR JONES:** And by showing her that video footage, you risked corrupting her evidence  
about that section of the night?

35 **DET SUPT MOLLER:** Yes. Look - and that was the dilemma that we had, really, to be  
honest. That was - that was the issue that we had. Because - but it was so important from  
a - from supporting the victim - supporting her and showing her - she was so keen to see that.  
And, you know, to help her healing process that it was important to show her.

**MR JONES:** Just to finish off here on this topic, after that - you weren't in the EICI with  
Madders and Frizzell?

40 **DET SUPT MOLLER:** No, I wasn't. No.

**MR JONES:** Afterwards, though, did you have a meeting with Ms Yates and Ms Higgins?

45 **DET SUPT MOLLER:** Not afterwards.

**MR JONES:** All right. I will bring up a portion of Ms Yates' statement, which is  
WIT.0057.0003.0001\_251.

50 **THE CHAIRPERSON:** This is Ms Yates' statement?



**MR JONES:** This is Ms Yates' statement. And Ms Yates says there that:

5 "After the EICI concluded, which took a couple of hours, we were advised by Mr Madders and Ms Frizzell that other officers wished to join us for discussion. Mr Boorman, Mr Moller and Mr Saunders entered the room shortly afterwards. I was taking brief notes of what I was able to capture of what Mr Moller was saying to Ms Higgins. To the best of my recollection, Mr Moller said words including..."

10 Does this bring back any memory of that discussion?

**DET SUPT MOLLER:** I mean, vaguely. Yes, I don't remember it specifically.

**MR JONES:** Ms Yates goes on to say that:

15 "This is your choice."

This is what you are saying to Ms Higgins:

20 "You're doing the process. You're in control."

Sorry, do you want to turn to 192 of your statement:

25 "We will prepare the brief. It then goes to the DPP. And at this point, it's taken out of police hands. Once the charge is laid, it's out of your hands. If the matter proceeds, it may be very difficult and your welfare is key."

And then further down, it says - you made comments:

30 "Things are going to get much harder from here."

And in a harsh tone indicated:

35 "There should not be any further contact with the media. You've got to stop talking to the media."

And then you go on to say - it's said you say:

"If you're speaking to the media and this can't go ahead, it will all be for nothing."

40 **THE CHAIRPERSON:** Do you recall giving that kind of - making those kinds of statements or giving that kind of advice to Ms Higgins?

45 **DET SUPT MOLLER:** Look, I don't remember that conversation directly. I absolutely agree I told Ms Higgins not to do any media. I told her that the media could influence the trial, and I wanted her to stop doing media. Absolutely. 100 per cent I agree with that. I can't recall those words exactly, and I can't recall that meeting. But certainly the majority of those comments would be consistent with what I would say, ie, "This is in your hands. It's going to be difficult - if the matter proceeds, it will be difficult." And, "Your welfare is key." You know - but - and I certainly had - and continued to advise Ms Higgins not to do any media.

50

**MR JONES:** Do you accept if what Ms Yates has recorded there was said in a harsh tone and was done in the manner whereby Mr Boorman, yourself, Mr Saunders, as well as Frizzell and Madders were there, that that wouldn't be consistent with the victim-centric approach?

5 **DET SUPT MOLLER:** Well, firstly, I don't agree that I would have done it in a harsh tone. I - I don't accept that. And secondly, if it was, it wouldn't directly - it wouldn't be directly in line with the victim-centric approach. I would agree with that. But, firstly, I don't agree that I would have done it in a harsh tone.

10 **MR JONES:** And if you had done it in a harsh tone, and as outlined by Ms Yates there, it would also be a breach of your duty under the Victims of Crime Act?

**THE CHAIRPERSON:** Well, he doesn't have to answer that. It's tautologous.

15 **MR JONES:** That is the questions before lunch. Thank you.

**THE CHAIRPERSON:** Thank you. Now, 1.22 - I guess 2.30. Does anybody prefer some other time? 2.30? Good. Adjourn to 2.30.

20 <**THE HEARING ADJOURNED AT 1.22 PM**

<**THE HEARING RESUMED AT 2.34 PM**

**THE CHAIRPERSON:** Yes, Mr Jones.

25 **MR JONES:** Thank you, Mr Chair. I want to now take you, Superintendent, to the record of the conversation with Ms Yates that was authorised by Hall O'Meagher and yourself to occur with Frizzell. On 12 July 2021, you and Inspector Boorman, Ms Yates and Ms Higgins met in Brisbane?

30 **DET SUPT MOLLER:** That's correct.

**MR JONES:** What was the purpose of that meeting?

35 **DET SUPT MOLLER:** We wanted to advise Ms Higgins about where the investigation was up to, and also, you know, we wanted to get some additional evidence, being her phones - we were trying to get some phones - the phones again from her.

40 **MR JONES:** Right. By this time, that is, 12 July, you had received the Director's advice?

**DET SUPT MOLLER:** Yes.

**MR JONES:** Was that a topic of discussion with Ms Higgins?

45 **DET SUPT MOLLER:** Yes. So just to advise her where the investigation was up to. We had received the advice from the Director and what we as, you know, police were planning to do. So just keeping her up to date with the investigation, basically.

50 **MR JONES:** All right. During that meeting, Ms Higgins showed you, Inspector Boorman and Ms Yates a photo of a drink?

**DET SUPT MOLLER:** Yes, she did.

5 **MR JONES:** What was the significance of that photo insofar as the police investigation was concerned?

**DET SUPT MOLLER:** Well, we didn't have that photo, and we hadn't heard about the photo, and Ms Higgins showed us a photo of a drink at a bar which she alleged was taken on the night of the incident - of the alleged incident. And, unfortunately, we were not able to  
10 retrieve that photo in any other means after she had showed us. So the only person that - or the only people that had seen that photo was myself, Marcus Boorman and Ms Yates.

**MR JONES:** Okay. Did you take a - at the time that it was shown, did you take a photo on your phone or Inspector Boorman's phone?  
15

**DET SUPT MOLLER:** No.

**MR JONES:** Why not?

20 **DET SUPT MOLLER:** I don't know really, to be honest.

**MR JONES:** Okay.

**DET SUPT MOLLER:** Yes, it didn't occur to me to take a photo of the photo. I - I  
25 anticipated getting it through normal means, but we weren't able to do that.

**THE CHAIRPERSON:** Just so I understand it, at the time you thought that the photo might have had some significance in - as evidence in the case?

30 **DET SUPT MOLLER:** In the investigation. Yes.

**MR JONES:** And what significance was that? I understand it was a drink on the evening in question.

35 **DET SUPT MOLLER:** Yes, it was evidence in relation to - it was a drink on the evening. And if I remember rightly, when Ms Higgins was explaining it, was the drinks they were drinking on that night. So it - you know, in my mind, it lent to what she was drinking, you know, the quantity, added weight to her - her version of events that she had been drinking at that bar and how much she had been drinking. And she told us at the time that she had some  
40 other photos there as well. So it was - you know, in my mind, it was quite important.

**MR JONES:** All right. But you didn't see - you and the two others, being Ms Yates and Inspector Boorman, didn't see the other photos at the time?

45 **DET SUPT MOLLER:** No, she just told us about them and said, "This is one." And I can't remember exactly - it was about downloading it from the internet, you know? These are stored on the iCloud, I think, is how I remember it. And, you know, I can download them and you can get access to them. So in my mind, we are going to get access to those photos, you know, and that was going to be good. It was going to be a - you know, a positive thing for the  
50 brief.

**MR JONES:** Did you get access then and there to them in terms of physically taking the phone or -

5 **DET SUPT MOLLER:** No, we never got access then. Ms Higgins said we could get access to them and that she would give us her iCloud passwords and stuff so we could download them. And we never got those.

10 **MR JONES:** Right. So the photo wasn't on the physical phone that Ms Higgins had; it was in a cloud - you know, cloud storage and it was shown to you on the phone?

**DET SUPT MOLLER:** Yes.

15 **MR JONES:** Right.

**DET SUPT MOLLER:** Well, I mean, that's my understanding. I mean, I didn't do it, so I don't know. But that's what she explained.

20 **MR JONES:** I guess what I'm getting it is why didn't you take the phone then and there?

25 **DET SUPT MOLLER:** No, because she said it was - we couldn't have her phone that she was using at that time. She was happy to give us her password so we could download the phone, because what we were interested was the metadata attached to the photo, you know, give us some dates and times of when it was taken. So that was the important part. So she was going to give us her password to be able to get into that. And - and the phone that she showed us on was a recent phone that she had that had no real significance to the investigation.

30 **MR JONES:** Right. It was just the means by which she was showing the photo in the cloud?

**DET SUPT MOLLER:** Yes.

**MR JONES:** Later that day, though, Ms Yates returned with a phone -

35 **DET SUPT MOLLER:** So -

**MR JONES:** - and gives it to you and Inspector Boorman?

40 **DET SUPT MOLLER:** That's right, yes. She came back with a phone that Ms Higgins had said was - she had utilised during - you know, at the time when we were looking at the investigation period. She said that was the phone that she was using.

45 **MR JONES:** Right. During this briefing or discussion with Ms Higgins, did you and/or Inspector Boorman take notes?

**DET SUPT MOLLER:** I think Mr Boorman did, yes. And I think I took some, but scant notes.

**MR JONES:** All right. Can you turn to 194 of your statement. You identify there that you had a discussion or a briefing with Detective Sergeant Robert Rose about interviewing - conducting a record of conversation with Ms Yates?

5 **DET SUPT MOLLER:** Yes. Yes, that's right.

**MR JONES:** When was that done - using 12 July 2021 as a starting point and the interview with Ms Yates happening in September, when was that briefing with Detective Sergeant Rose?

10 **DET SUPT MOLLER:** It was just prior to requesting the statement.

**MR JONES:** Okay. So another anchor point is that the interview happens in September?

15 **DET SUPT MOLLER:** Yes.

**MR JONES:** So it was a briefing with him in September?

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** What did he discuss with you in terms of - about interviewing Ms Yates?

**DET SUPT MOLLER:** Well, he - he said to me that it was important - given that the photos - or the photo that she showed us we weren't able to retrieve, and it was important because she was the only independent person that had seen that photo and that the phone that we had received showed - or that she provided the continuity of that evidence, between that phone - between picking the phone up from Ms Higgins and giving it to the police. And on face value, I took that as, yes, a good submission. Remembering that, you know, I certainly didn't - we certainly didn't just, you know, run off and take that statement. Like, it weighed on me that Ms Yates had been providing support and - you know, support to Ms Higgins, and it weighed on me about the balance of the evidence that she could provide. But equally, the other thing that, you know, was weighing on my mind at the time was, you know, the scrutiny and the pressure that was coming from the DPP, and specifically the Director, in relation to what we were doing. And, you know, I wanted to absolutely make certain that we were doing everything perfectly, so to speak. I didn't want to miss anything, because I was continually concerned about, you know, the Director - what I thought was, you know, collecting information about us not doing the right thing.

40 **MR JONES:** Placing aside the continuity of the phone -

**DET SUPT MOLLER:** Yes.

**MR JONES:** - there were two police officers there, that is, yourself and Inspector Boorman?

45 **DET SUPT MOLLER:** Yes.

**MR JONES:** It's not uncommon for police officers to corroborate each other, that is, provide evidence -

50 **DET SUPT MOLLER:** Yes.

**MR JONES:** - to say these events happened?

**DET SUPT MOLLER:** That's not uncommon.

5

**MR JONES:** Similarly, dealing with the continuity of evidence, that is, around the mobile phone, could police not have simply got a statement - a written statement - short written statement from Ms Yates explaining when she received the phone, who she received it from and who she gave it to?

10

**DET SUPT MOLLER:** No, absolutely would there have been other ways we could have done that. You know, I would agree there was other ways.

**MR JONES:** All right.

15

**DET SUPT MOLLER:** Unfortunately at the time - you know, when we were in the middle of this investigation and we were concerned about not being as thorough as we should, yes, you know, could there have been other ways? But, you know, in the strict sense in terms of that phone, Ms Yates provides the continuity.

20

**MR JONES:** Were you and those key decision-makers making some decisions almost prophylactically to avoid later criticism?

**DET SUPT MOLLER:** Prophylactically?

25

**MR JONES:** All right.

**DET SUPT MOLLER:** Sorry, I don't understand that.

30

**MR JONES:** Were you and some of the decision-makers - key decision-makers about events that would happen in the investigation -

**THE CHAIRPERSON:** You were covering yourselves against later criticism.

35

**DET SUPT MOLLER:** Yes, absolutely. Yes, we were.

**MR JONES:** There you go. On 8 September 2021, Senior Constable Frizzell wrote to you in an email seeking your permission to interview Ms Yates?

40

**DET SUPT MOLLER:** Yes.

**MR JONES:** And I will bring it up for your benefit, AFP.2003.0005.0043, please. Can you see that there, Superintendent? I will give you a chance just to read that.

45

**DET SUPT MOLLER:** Yes, I've read that.

**MR JONES:** Okay. That's on 8 September at 4.18. And Senior Constable Frizzell is identifying that Ms Yates has been a conduit of information between Ms Higgins and the police. Do you agree?

50

**DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. She is making reference to the meeting, which must be the meeting of 12 July. Do you accept that?

5

**DET SUPT MOLLER:** Yes.

**MR JONES:** And she identifies the potential for complaint evidence?

10

**DET SUPT MOLLER:** Yes.

**MR JONES:** What's complaint evidence?

15

**DET SUPT MOLLER:** I'm not sure. I think you would have to ask her.

**MR JONES:** Okay. And she identifies to, in effect, corroborate independent evidence in relation to that meeting; correct?

20

**DET SUPT MOLLER:** Yes.

**MR JONES:** You then forward that email on to Acting Commander Hall O'Meagher on the next day, on 9 September?

25

**DET SUPT MOLLER:** Yes.

**MR JONES:** And it's in effect - I will get that brought up too, AFP.2003.0005.0107. And could you just go down to - a bit further, please, Mr Operator. That's the cut and paste of Senior Constable Frizzell's email, and you are forwarding that on 9 September at 2.13 pm to Commander Hall O'Meagher, seeking his approval?

30

**DET SUPT MOLLER:** Yes.

**MR JONES:** And then the next email up there on the same day at 4.41 pm, Acting Commander O'Meagher says:

35

"Contact Ms Yates to discuss with her."

Now, I just want to suggest complaint evidence is an account given by a complainant about what happened to them and can be used to bolster a complainant's credibility if they are consistent. Do you accept that?

40

**DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. And so one of the reasons given to you by Senior Constable Frizzell was complaint evidence, and what O'Meagher is saying to you is give Ms Yates a call to discuss, presumably to ascertain if she has any complaint evidence; yes?

45

**DET SUPT MOLLER:** I guess that's how I read it, yes.

**MR JONES:** Did you do that?

50

**DET SUPT MOLLER:** Contact Mrs Yates?

**MR JONES:** Yes.

5

**DET SUPT MOLLER:** No.

**MR JONES:** Did you give her a call?

10 **DET SUPT MOLLER:** I didn't, no. But I know the investigation team, when they organised the statement, spoke with her.

**MR JONES:** Yes. I'm talking about in order to inform the decision about whether to get her in or not. Do you accept that picking up the phone and taking a diary note of the conversation and ascertaining whether Ms Yates had any complaint evidence would be a useful thing to do?

15

**DET SUPT MOLLER:** Yes. Yes, I do accept that. I will say, like I said, the decision to take the statement - or to discuss taking the statement was made. So the investigation team were to contact her and talk about that.

20

**MR JONES:** Right.

**MR TEDESCHI:** Can we just go up that page just to get the reference, please.

25

**MR JONES:** Yes. Sure.

**MR TEDESCHI:** And can we have a look at that top email, please.

30

**MR JONES:** I'm coming to it.

**MR TEDESCHI:** Okay. Thank you.

**MR JONES:** Can you go back to where I'm asking questions about now, please? And Acting Commander O'Meagher there in that final sentence of the larger paragraph there says:

35

"It may be that ultimately she is listed on the third schedule."

What does that mean?

40

**DET SUPT MOLLER:** I'm thinking he's talking about the disclosure.

**MR JONES:** And is that an area where witnesses who don't have relevant evidence go?

45

**DET SUPT MOLLER:** Yes.

**MR JONES:** Right. So at the time of receiving this email, he's giving you the advice to go and speak to Ms Yates first to ascertain if she's got complaint evidence and he's indicating that she may very well be an irrelevant witness; yes?

50



**DET SUPT MOLLER:** Yes.

**MR JONES:** You accept that. All right. And if we can roll up now, please, Mr Operator.  
5 And then an afterthought from Acting Commander O'Meagher is that you should consult with  
the Director before getting Ms Yates in for a record of conversation?

**MR BLACK:** Well, it doesn't say "consult". It should be put -

10 **MR JONES:** Sorry?

**MR BLACK:** It doesn't say "consult".

**MR JONES:** Sorry. Sorry? We will just read it out just for the concern of any ambiguity:

15 "It is important that the DPP are advised of the intention and consulted throughout the  
process."

Do you accept that?

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. And he is there suggesting that you speak to the Director about it before  
you get her in?

25 **DET SUPT MOLLER:** Well, to the DPP.

**MR JONES:** Sorry. Yes. Well, the office of the DPP.

30 **DET SUPT MOLLER:** Yes.

**MR JONES:** Did you do that?

**DET SUPT MOLLER:** I didn't, no.

35 **MR JONES:** Why not?

**DET SUPT MOLLER:** Well, I didn't pick up the phone and speak to the DPP, but - I think  
my team did, but I'm not certain.

40 **MR JONES:** Okay. Because it's the case that bringing Ms Yates in for an interview could  
have put her in a position where she could no longer provide support to Ms Higgins?

**DET SUPT MOLLER:** Yes. I guess in a way it can, yes.

45 **MR JONES:** Or, in fairness, certain aspects of support -

**DET SUPT MOLLER:** Yes.

**MR JONES:** - for example, sitting in court?

50

**DET SUPT MOLLER:** Yes. Yes. Absolutely, yes.

**MR JONES:** You have acknowledged that you had held concerns for Ms Higgins' vulnerability?

5

**DET SUPT MOLLER:** Yes.

**MR JONES:** And one way in which Ms Higgins was traversing the criminal justice system was drawing on that support from Ms Yates?

10

**DET SUPT MOLLER:** Yes, she was helping her with that. Yes, absolutely. But she's not the only person that can do that.

**MR JONES:** But she was someone who had built up rapport by virtue of time with Ms Higgins?

15

**DET SUPT MOLLER:** Yes.

**MR JONES:** And clearly someone who under the victim of - victim-centric approach Ms Higgins had indicated that she wanted Ms Higgins as - Ms Yates as her support person?

20

**DET SUPT MOLLER:** Yes. She had asked for her, yes.

**MR JONES:** Yes. And that interview that ultimately did occurred, firstly, Ms Yates had no complaint evidence - had received no complaint evidence. Do you accept that?

25

**DET SUPT MOLLER:** Yes.

**MR JONES:** In terms of she was asked the question in the interview, and she said, "No, I haven't."

30

**DET SUPT MOLLER:** Mmm.

**MR JONES:** And she could corroborate the seeing of the drink in the photo; yes?

35

**DET SUPT MOLLER:** Yes, absolutely. She could corroborate that, yes.

**MR JONES:** But so could Inspector Boorman or yourself?

40

**DET SUPT MOLLER:** Not independently, but I take your point.

**MR JONES:** Do you accept then with the benefit of hindsight that Ms Yates ought not to have been interviewed?

45

**DET SUPT MOLLER:** I think - look, ultimately, the decision we made at the time - you know, it's easy in hindsight to look at that decision and think, is there another way we could do that? You know, is there another way we could have done that? Potentially. But at the time -

**THE CHAIRPERSON:** Well, you are being asked whether, sitting there now - we will come to what ought to have been done in the dynamics of the moment. That's a different thing. But what you are being asked now is your opinion about whether it was the right thing to do or the wrong thing to do.

5

**DET SUPT MOLLER:** Look, if it's my opinion, I think we did the right thing at the time.

**MR JONES:** But you have acknowledged that you could have had a phone call with her and confirmed that there was no complaint evidence to give; correct?

10

**DET SUPT MOLLER:** Yes, I did acknowledge that.

**MR JONES:** Yes. There's nothing stopping you from doing that?

15

**DET SUPT MOLLER:** Mmm.

**MR JONES:** And you accept that both you or Mr Boorman could have corroborated the seeing of the photo?

20

**DET SUPT MOLLER:** But I - yes. But like I said before, she became a link in the continuity of the phone - the evidence of the phone.

**MR JONES:** And you accept, couldn't you - don't you, that a brief statement dealing just with that could have been taken from her?

25

**DET SUPT MOLLER:** So - okay. So I accept that the evidence was still required. It could have been taken in a different manner.

**MR JONES:** Okay. Thank you. Which evidence could have been taken in a different manner?

30

**DET SUPT MOLLER:** The continuity of the phone, in terms of her statement.

**MR JONES:** We are going to move now to what has been referred to as the Moller report. You know the document I'm talking about?

35

**DET SUPT MOLLER:** Yes, I do.

**MR JONES:** It is, in fact, an executive briefing that has two and a little bit pages to it?

40

**THE CHAIRPERSON:** You had better get that document before the superintendent.

**MR JONES:** Okay. DPP.005.001.5661. DPP.005.001.5661. That's the Moller report?

45

**MR BLACK:** Can I just perhaps ask that we call it the executive briefing, just -

**MR JONES:** I'm getting there. Okay.

**MR BLACK:** There is some -

50

**THE CHAIRPERSON:** Look, Mr Black, I don't mind what we call it really, but I think it's common ground - or it will be common ground that Superintendent Moller signed a covering letter and that there was a document attached to that covering letter, of which he was not the sole author. There were other authors. And then there are other documents which were not  
5 part of - which he did not include in his letter because they didn't exist at the time. And although they have been bundled together in a group of documents that - because they are all analyses of the evidence. There are at least three separate document, maybe four, only one of which is signed by Superintendent Moller.

10 **MR BLACK:** Yes.

**THE CHAIRPERSON:** But we have been calling it the Moller report. The important thing is that when a witness is asked questions about it, the actual specific document is identified. And it's important that when I write my report, I am sure what I'm dealing with and who  
15 wrote it. But subject to that, it's impossible to stop people using the words "Moller report", I think. But your point is well taken, that we have to be careful what we are talking about before we ask the witness questions about it. Is that what you really mean at the heart of your point?

20 **MR BLACK:** Well, it is. But also the second element is that more broadly at least, at least in some quarters, the term "Moller report" has been used as a broader reference in a pejorative way to these investigative review documents -

**THE CHAIRPERSON:** Yes.

25 **MR BLACK:** - in a bigger sense.

**THE CHAIRPERSON:** All right. All right. Well, let's make a new start. Mr Jones, you can begin. And we will not use that expression any more. We will use the actual titles of the  
30 documents. The letter as the case may be, the executive report - briefing and so on. Can you do that?

**MR JONES:** That's what I'm going to do.

35 **THE CHAIRPERSON:** Good.

**MR JONES:** But what I want to first do is get the superintendent to identify this as being the document that people have previously given evidence about -

40 **THE CHAIRPERSON:** Yes. Go ahead. Yes.

**MR JONES:** - calling it the Moller report and then explain what actually is the Moller report.

45 **THE CHAIRPERSON:** Go on. Yes. Thank you. And that will give us a set of new names which we will use henceforth so that nobody is confused.

**MR JONES:** Yes. The document on the screen is what has been referred to as the Moller report?

50

**DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. But it's not a Moller report, is it?

5 **DET SUPT MOLLER:** No, it's a - the first two and a half pages is a report that I did. It's an executive briefing document that was for my commander.

**MR JONES:** And can you tell us what an executive briefing document is?

10 **DET SUPT MOLLER:** It's a briefing for our executive to give them an update on where our investigations are at. I mean, we use executive briefings for many different purposes, but this one, yes, that's what it was for.

15 **MR JONES:** And you are only the author, as you've said, of that first two and a little bit of pages?

**DET SUPT MOLLER:** That's correct.

20 **MR JONES:** And otherwise it had attached to it a minute by Mr Boorman?

**DET SUPT MOLLER:** That's correct.

**MR JONES:** And you signed your executive briefing on 7 June 2021?

25 **DET SUPT MOLLER:** That's correct.

**MR JONES:** And Inspector Boorman signed his minute on 4 June 2021?

30 **DET SUPT MOLLER:** Yes, that's correct.

**MR JONES:** So presumably he gave you the minute. You drafted your executive briefing for the DCPO-R, which is Commander Chew; correct?

35 **DET SUPT MOLLER:** That's correct.

**MR JONES:** All right. For your cover letter, did you have any - regard to any other information? Was there any other information that informed your executive briefing beyond the minute from Boorman?

40 **DET SUPT MOLLER:** Well, I think just the briefings that I've had for the duration of the investigation.

**MR JONES:** Yes. So your lived experience and briefings with investigators?

45 **DET SUPT MOLLER:** That's correct. Yes.

**MR JONES:** Just one minute. The purpose of your executive briefing was to get a decision from Commander Chew about whether the matter would proceed to charge or not?

50 **DET SUPT MOLLER:** Yes.

**MR JONES:** And also about whether to seek advice?

5 **DET SUPT MOLLER:** Well, it was a decision-making document for my commander to say, you know, what should we do with this investigation, basically. So, yes, it was to seek advice for him to say should the matter progress or not.

10 **THE CHAIRPERSON:** Do you - does the AFP, to your knowledge, commonly reach a point in some investigations where such a document is prepared to inform senior police with a view to getting a direction as to what to do? Is this commonly done?

**DET SUPT MOLLER:** Yes, it is. Yes.

15 **MR JONES:** I guess it's not done in every case.

**DET SUPT MOLLER:** Not done - the more complex ones -

**THE CHAIRPERSON:** Yes.

20 **DET SUPT MOLLER:** - yes, definitely. Yes, we are doing those.

**MR JONES:** Mr Operator, could you bring up page 2 next to page 1, please. Have you got a physical copy there with you, Superintendent?

25 **DET SUPT MOLLER:** I do.

**MR JONES:** All right. If you need more time to read it, tell me. Do you accept that this document is highly critical of Ms Higgins?

30 **DET SUPT MOLLER:** Look, I think it's an account of the investigation and what came out of the investigation.

**MR JONES:** All right. But the substantive part of that starts with:

35 "Throughout the investigation, Ms Higgins has been evasive, uncooperative and manipulative."

And then lists a number of matters. Do you accept that?

40 **DET SUPT MOLLER:** Yes, that's what it says.

**MR JONES:** Do you accept that nowhere in this document do you engage with the alleged lies that Mr Lehrmann told police?

45 **DET SUPT MOLLER:** Well -

**MR JONES:** Sorry, told security and other witnesses?

50 **DET SUPT MOLLER:** So I don't - I don't detail that evidence in my report, but my report was accompanied with the other three reports that went up.

**MR JONES:** Absolutely.

**DET SUPT MOLLER:** So it's a - you know, it's a - like a brief. It all goes up together.

5

**MR JONES:** Yes. But do you accept that your executive briefing does not engage with the alleged lies of Mr Lehrmann?

**DET SUPT MOLLER:** I don't mention the alleged lies of Mr Lehrmann in my report.

10

**MR JONES:** And do you accept that nowhere in your executive briefing or the Boorman minute do those two documents engage with investigators' views that Mr Lehrmann's account given in his record of conversation was implausible?

**DET SUPT MOLLER:** Well, I - what I - what I can agree with you - I haven't noted it in my two and a half page report - or two point bit report, but it's contained within the summary of the evidence. So, you know, if you look at the summary of the evidence, it goes through all the evidence we had at the time.

**THE CHAIRPERSON:** But I guess the question is, why in your summary of the evidence - your summary of the summary of the evidence you look at one side of the case and not the other side of the case, because both sides of the case bear upon whether the thing should go ahead. That is, isn't it a bit unbalanced or artificial to look at the credit of a complainant without also looking at the plausibility of what the proposed possible defendant has said?

25

**DET SUPT MOLLER:** It is. If I had only sent my two-page document up, Commissioner, then it would be. I would accept that.

**THE CHAIRPERSON:** But why did you not mention those matters here if you are giving a summary or a nutshell picture of - a snapshot of the issues in the case that the investigation has thrown up? Don't both parts belong in your document as well?

30

**DET SUPT MOLLER:** My - my view at the time of writing this was that it would be read all together. The parts I have highlighted were the parts that caused me, I suppose, the most - the most concern. You will see that not all of my report relies on the evidence. It actually - a lot of it talks about my mental health concerns that I had. So, you know, my report was more an overarching report of the concerns that I really had after, you know, understanding or listening to the evidence. And I was anticipating that it would be read all together, the whole lot.

35

40

**MR JONES:** Well, I want to engage with you on my question, which was nowhere in this letter or Boorman's minute does it detail the investigators' opinion that Mr Lehrmann's record of conversation account was implausible.

45

**DET SUPT MOLLER:** It's not noted in either of the two minutes. I agree with that.

**MR JONES:** And you've accepted that this document was a document that was geared towards making a significant decision by Commander Chew?

50

**DET SUPT MOLLER:** Yes.

5 **MR JONES:** It doesn't engage with the fact that - that is, your executive briefing does not engage with the fact that Ms Higgins was found naked and Mr Lehrmann's account was that there was no sexual intercourse whatsoever. Do you accept that?

**DET SUPT MOLLER:** Yes, it doesn't say that.

10 **THE CHAIRPERSON:** Just to make it clear, from my point of view - Mr Jones might have a different line he wants to pursue, but from my point of view, I don't think anybody is suggesting that you tried to hide anything or cloak anything. As you say, it's all there in the document. What's interesting is that what was - what appears to have been significant to you is the credit of the complainant taken without the context of the plausibility of the suspect. And so that - that's not suggestive that you are hiding anything. Of course you're not.

15 It's suggestive, though, that your attitude as a police officer with experience towards the strength of the case and whether it ought or ought not be brought concentrates to too great a degree upon the credit of complainant rather than looking at the case as a whole. So it might be suggested - maybe it will be suggested by somebody - that perhaps your views about this are too one-sided. I think that's the import of what's being put to you. So I'm not asking you for a reaction now, but I think that's the tenor of what's being put to you, that it's a one-sided way of looking at a case - a rape case and - you know what I mean, that the police are sometimes accused of old-fashioned views.

25 **DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** And this appears to be something that's capable of being looked at like that. So your views - your evidence about what you wrote and why you wrote it is very important in understanding what has happened here for reasons you can well understand.

30 **DET SUPT MOLLER:** Yes. Yes.

**MR JONES:** And I will make it perfectly clear. I'm not suggesting to you that these things were intentionally omitted. What I'm suggesting is that you had - by the time of writing this report, you did not agree that Mr Lehrmann should be charged.

**DET SUPT MOLLER:** That's correct.

40 **MR JONES:** And you were writing a decision-making document that was weighted heavily in favour of a decision that accorded with your view as the author.

**DET SUPT MOLLER:** Yes, you know, I - my two-page document, yes, you know, I would agree that it's persuasive writing and, you know, I'm telling my - I'm telling my - giving my commander my view. But with that, I think it's - I think it's a little bit unfair if you don't take the fact that, you know, I've noted in my document - in my report:

50 "Investigation to date has identified a number of potential evidentiary psychological issues that may affect any future prosecution. The complete brief of evidence is stored electronically. It can be viewed by accessing file path..."



5 Blah. So, you know, I think it's - you know, yes, I understand your point that I've highlighted what I believed at the time were some issues. Mr Boorman has highlighted some issues, and the evidence matrix gives you a full picture of the evidence, as well as I have highlighted that, you know, if you don't consider my view as being, you know, enough, please access the file path and have a look at the actual brief and read the evidence yourself.

10 **THE CHAIRPERSON:** Yes, I understand. And so I should - what you are saying is that you had a view - you are candid about this - this is a time to be candid about it. You had a view that there were weaknesses in this case such that, in your opinion, there would not be a conviction, and the weaknesses were those that you identified in summary in the document we are looking at. And in your view, quite apart from any difficulties that Mr Lehrmann might have faced, no prosecutor was going to get over these difficulties. That was your opinion.

15 **DET SUPT MOLLER:** I was certainly very concerned about them, Commissioner, yes, that's right.

20 **THE CHAIRPERSON:** Yes. And you wanted your superior to understand clearly what the difficulties were that you saw.

**DET SUPT MOLLER:** Yes.

25 **THE CHAIRPERSON:** And that involved, in your view, looking at one part of it, because if - as I understand it, you would think that if this part failed, it really didn't matter about Lehrmann; it would fail. Now, you might be wrong about that -

**DET SUPT MOLLER:** Yes.

30 **THE CHAIRPERSON:** - but that was your opinion. That's what you were putting.

**DET SUPT MOLLER:** At the time.

**THE CHAIRPERSON:** Is that right?

35 **DET SUPT MOLLER:** Yes, that's right.

**THE CHAIRPERSON:** And that's why we see a lot about Mr Higgins in your personal summary and nothing about Lehrmann.

40 **DET SUPT MOLLER:** Yes, that's right.

**MR EDWARDSON:** Mr Sofronoff, can I just raise something, if I may -

45 **THE CHAIRPERSON:** Yes.

**MR EDWARDSON:** - speaking as a criminal lawyer.

**THE CHAIRPERSON:** Well, speak as a lawyer by all means.

**MR EDWARDSON:** I'm just a little bit concerned at the way in which this line of inquiry is going, for this reason.

**THE CHAIRPERSON:** Yes.

5

**MR EDWARDSON:** Obviously the prosecution in any criminal trial carry the onus of proof throughout.

**THE CHAIRPERSON:** Yes.

10

**MR EDWARDSON:** Whatever Mr Lehrmann might have said - whether they were lies, his credibility shot or whatever - that does not and cannot bolster the case for the prosecution, nor could it bolster the credibility of Ms Higgins.

15 **THE CHAIRPERSON:** Yes.

**MR EDWARDSON:** So if one was assessing and looking objectively at whether or not a view was held as to the reliability and credibility of the complainant, you would simply push to one side Mr Lehrmann. That is simply not relevant. The question would be, are there matters which go to the credibility and reliability of the complainant such that there were no reasonable prospects of conviction or real concerns about whether this matter should go forward? So I'm just concerned that one should not conflate issues that might be relevant, for example, at trial, in cross-examination and things of that nature, as opposed to the focus that we are now talking about.

25

**THE CHAIRPERSON:** Well, I'm not sure what your concern is, because what I understand Mr Jones to be inquiring into at the moment is Superintendent Moller's purpose in writing this document.

30 **MR EDWARDSON:** Yes.

**THE CHAIRPERSON:** It is plain on a reading of it that it is concerned wholly with the position of Ms Higgins and nothing else.

35 **MR EDWARDSON:** Yes.

**THE CHAIRPERSON:** And when one - and, of course, you are right to say that the prosecution case must stand on its own.

40 **MR EDWARDSON:** Stand or fall on Ms Higgins.

**THE CHAIRPERSON:** That's right. But when the - perhaps this is better left for submissions at the end, but when -

45 **MR EDWARDSON:** Or other cross-examination.

**THE CHAIRPERSON:** Or other cross-examination. But is there anything you want me to do?

**MR EDWARDSON:** No, no, no. I just want to be - it would be quite wrong to mislead - you have been at great pains to, for example, educate, if I could put it that way, those who might be interested. And it is important that we don't lose sight of the fundamental principle that underpins every criminal trial. And when one is considering and looking at the question of whether a prosecution should happen, a person should be charged or whatever, then plainly you look at -

**THE CHAIRPERSON:** Yes. Can I put it to you in this way, what you are trying to illuminate, rightly. At the end of a trial - this trial, if Mr Lehrmann did not give evidence - we are thinking hypothetically about a future trial.

**MR EDWARDSON:** Yes.

**THE CHAIRPERSON:** The jury would be instructed, "You have to look at the evidence of Ms Higgins and consider it. And if you reject it, if you think it's untrue, that's the end of the case."

**MR EDWARDSON:** Yes.

**THE CHAIRPERSON:** "If you are not sure about whether she's telling the truth or not, that is, you have a doubt about whether she's telling the truth - she might be. You are not prepared to say she's not, but you are not satisfied positively beyond a reasonable doubt that she is, same thing. There's an acquittal. It's only if you are satisfied that she is telling the truth that you can decide that Mr - that you can then go on to consider other parts of the Crown case and see how that works. But you have to reach that satisfaction."

**MR EDWARDSON:** Yes.

**THE CHAIRPERSON:** "And looking at what Mr Lehrmann says is not going to help you."

**MR EDWARDSON:** No.

**THE CHAIRPERSON:** Is that your point?

**MR EDWARDSON:** That's what I'm saying.

**THE CHAIRPERSON:** Yes.

**MR EDWARDSON:** And even if he had given evidence or even if his account that was given to police was before the jury -

**THE CHAIRPERSON:** Yes. The first step is -

**MR EDWARDSON:** If they rejected that entirely -

**THE CHAIRPERSON:** That's right.

**MR EDWARDSON:** - they would be directed specifically - they just push that to one side.

**THE CHAIRPERSON:** Yes.

**MR EDWARDSON:** It does not translate into bolstering the Crown case.

**THE CHAIRPERSON:** No, yes, I -

5

**MR JONES:** Except for Edwards lies. No one is suggesting that police -

**THE CHAIRPERSON:** Just a minute. Just a minute. Just a minute. That's the point you want to make, that -

10

**MR EDWARDSON:** That's the point I want to make.

**THE CHAIRPERSON:** - at some point the jury is going to be told that they have to look at Ms Higgins' evidence and consider it, and unless they are prepared to accept it, then it's an acquittal.

15

**MR EDWARDSON:** That's right.

**THE CHAIRPERSON:** I understand that. Now, Mr Tedeschi, you wanted to say something.

20

**MR TEDESCHI:** Chairman, a function of the jury certainly is to assess whether or not they can accept the correctness of Ms Higgins' evidence beyond a reasonable doubt. But in doing so, they don't look just at her evidence alone; they look at all of the evidence. They look at corroboration.

25

**THE CHAIRPERSON:** Yes.

**MR TEDESCHI:** So there might be a piece of evidence on its own, for example, that they are not sure about. But when they look at the corroboration of it, they can be sure of it. And in deciding whether or not they accept her evidence, they would be entitled to look at any record of interview with Mr Lehrmann. So it's not a case of just looking at Ms Higgins' evidence on its own but looking at all the evidence.

30

**THE CHAIRPERSON:** Of course, that - quite right, Mr Tedeschi, that in considering her credibility, you would look at other evidence in the case, whatever that might be, that is capable of supporting her credit -

35

**MR TEDESCHI:** Yes.

**THE CHAIRPERSON:** - or not.

40

**MR TEDESCHI:** And if there were accounts from Mr Lehrmann that directly or indirectly supported her evidence -

45

**THE CHAIRPERSON:** Yes.

**MR TEDESCHI:** - either because of inconsistencies or omissions or for whatever reason -

**THE CHAIRPERSON:** Yes. His record of interview might, in certain respects, support her credibility.

50

**MR TEDESCHI:** That's right.

5 **THE CHAIRPERSON:** I don't think Mr Edwardson is contending to the contrary. He wants to emphasise, unless it's lost on people, that however one approaches - however a jury approaches the task of assessing the prime witness's credibility, which would include looking at other evidence that supports or damages her credibility, ultimately, unless I accept her evidence - positively accept her evidence, it must be an acquittal. I think that's the point he's making, to draw attention to the significance of Superintendent Moller's analysis, which  
10 concentrates upon her credit. I think that's the point that Mr Edwardson wanted to ensure wasn't lost.

**MR TEDESCHI:** Yes. Thank you.

15 **THE CHAIRPERSON:** Go ahead, Mr Jones.

**MR JONES:** And there's no suggestion that you should, as police officers, conduct a legal analysis on what is admissible and how it is potentially going to be used. But do you accept that this information, that is, for example, the information of the experienced investigators  
20 that the account given to them was implausible, was important information for Commander Chew to be appraised of when coming to a decision as to whether the matter should proceed?

**DET SUPT MOLLER:** I guess what I agree to is, you know, the more information you can get when making that decision, the better you're going to be - the better decision.  
25

**MR JONES:** Now, another - that can come down, Mr Operator. Another document I want to take you to is AFP.2003.0011.5302. This document was not part of your executive briefing or part of Inspector Boorman's summary, was it?

30 **DET SUPT MOLLER:** Not that I can recall, no.

**MR JONES:** It's dated 6 May 2021, and it's titled Briefing for CPO. What does (indistinct)?

**DET SUPT MOLLER:** CPO, Chief Police Officer.  
35

**MR JONES:** Who - noting that the formatting is very similar to the -

**MR EDWARDSON:** Chair, sorry to interrupt. Are you sure that's right? I've got a copy of the document that's attached to my client's statement, which I will give you the tab in a  
40 minute. I think that's the document you've got up on the screen. That's what has come from the document that my client got, which was given to him on the subpoena, which is the document that went with the Moller report. I apologise. I'm sorry. It looks like there are two different documents. My apologies.

45 **MR JONES:** As the Board of Inquiry understands it, the executive briefing went with the minute. This other document, whilst it was produced in response to a subpoena by the accused's legal representatives, was not part of the documents that went to Commander Chew as part of the executive briefing. Does that sound right?

50 **DET SUPT MOLLER:** No, I don't agree with that.

**MR JONES:** It did go?

5 **DET SUPT MOLLER:** That went to Mr Chew. I've got a copy of what went, and my understanding is that -

**THE CHAIRPERSON:** Take that as correct and you can show the documents to counsel later. But you go on, Mr Jones.

10 **MR JONES:** Well, if that's the case, I owe the superintendent an apology, because it does detail in it - it does detail in it - can you turn to 5311?

**DET SUPT MOLLER:** Yes.

15 **MR JONES:** So can I just ask you just reflect for a moment. The Boorman minute seems to largely reproduce this document that we are looking at now.

**DET SUPT MOLLER:** Correct. Yes.

20 **MR JONES:** Do you say, though, that both the Boorman minute and this briefing for CPO were provided, that is, the two separate documents were provided to Commander Chew?

**DET SUPT MOLLER:** No.

25 **MR JONES:** No. Okay.

**DET SUPT MOLLER:** The information from within that was provided to CPO.

**MR JONES:** Right.

30 **DET SUPT MOLLER:** That's what I'm saying. So -

**MR JONES:** Okay. So we are back to where we were before, which is the minute and the executive briefing were sent to Commander Chew. And you say that this information from this document was replicated in the Boorman minute?

35 **DET SUPT MOLLER:** Yes. Yes, that's right.

**MR JONES:** But this as a separate document was not provided?

40 **DET SUPT MOLLER:** Sorry. Yes. I would agree with that.

**MR JONES:** Thank you.

45 **DET SUPT MOLLER:** Sorry.

**MR JONES:** But was produced in answer to a subpoena issued by - served by the accused's legal representatives?

50 **DET SUPT MOLLER:** Yes.

**MR JONES:** Okay. I will - you can see this page here for you. And so I want to withdraw my apology to you now. And I want to take you to the first and the last dot points. Can you read those to yourself, please?

5

**DET SUPT MOLLER:** The first one on the page?

**MR JONES:** No, next to Issues.

10 **DET SUPT MOLLER:** Right.

**MR JONES:** And I will get the operator to bring up side by side with that - can you bring up two documents on one side? All right. We will try with this. DPP.005.001.4485. And then I want - it's over two pages, but only a small portion of it. I want the bottom, Issues, and I want the little bit that goes over the page, please. All right. What we should have there now, Superintendent, is on the left-hand side is the relevant part of the Boorman minute. Sorry? Sorry. All right. The left - yes, that's the - hang on a second. Sorry. On the right-hand side is the relevant part of the Boorman minute, and if you need to see that scrolled over, we can. But it's the part that reflects the Issues part that is in the CPO -

20

**DET SUPT MOLLER:** Minute.

**MR JONES:** - briefing. Now, you will see there that in the Boorman minute, the dot point that has been omitted is:

25

"The version of events do not seem plausible."

This is in relation to Mr Lehrmann's interview:

30

"The suggestion that two people enter an office at the time of the evening and have no further interaction seems unlikely."

**DET SUPT MOLLER:** Yes.

35 **MR JONES:** Do you accept that's omitted from the Boorman minute?

**DET SUPT MOLLER:** Well, you can tell Superintendent Moller that is so he doesn't have to trouble you. He will accept what you say.

40

**MR JONES:** It is. Do you know why it is?

**DET SUPT MOLLER:** No.

**MR JONES:** All right. And similarly, at the bottom there:

45

"However, the intense media interest in this matter, it is possible that Mr Lehrmann felt he had to lie to investigators or he would be arrested."

That's missing. Do you know why?

50

**DET SUPT MOLLER:** No, I don't.

**MR JONES:** Who was the author of the CPO briefing, 6 May 2021?

5 **THE CHAIRPERSON:** This document on the -

**MR JONES:** On the right - on the left-hand side.

10 **DET SUPT MOLLER:** I think it was Detective Sergeant Saunders, but I'm not certain of that.

**MR JONES:** All right. There were some tasks given to both Saunders and Frizzell and the investigating team to start compiling that during the investigation, wasn't there? Sorry, to start compiling a list of inconsistencies and things?

15 **DET SUPT MOLLER:** Yes. Yes.

**MR JONES:** All right. The executive briefing - I think you have accepted that that's information that should have been given to Commander Chew who was making a decision about whether the matter should progress or not?

20 **DET SUPT MOLLER:** Like I said before, yes, look, I accept that the more information you can provide, the better. I think, like I said, in fairness, I provided the file path. And, you know, the information that we all had - the investigators had in relation to the brief of evidence, everything was there. So - yes.

**MR JONES:** The deadline for your executive briefing is listed as ASAP?

30 **DET SUPT MOLLER:** Yes.

**MR JONES:** Commander Chew no doubt, like yourself, is very busy. You accept that?

**DET SUPT MOLLER:** Yes, he was very busy.

35 **MR JONES:** You didn't really think that he would start trawling through the brief of evidence to satisfy himself when the purpose - one purpose of an executive briefing is to give him the key information, isn't it?

40 **DET SUPT MOLLER:** No. Well, what I don't accept is that nearly every day for two years, or a year and a half, we were talking about this matter. So we were talking constantly about this. I was briefing Commander Chew, and I was being briefed - this was, you know, for all of us, a matter that was - that we were all discussing nearly every day.

45 **THE CHAIRPERSON:** What you are saying is having regard to the reality of the contact that you had amongst all of you, but relevantly and most importantly between you and Mr Chew, it would be unrealistic to think that Mr Chew was unaware of any particular thing that he should have been aware of - any particular piece of evidence or -

50 **DET SUPT MOLLER:** Yes. Yes, I mean -



**THE CHAIRPERSON:** Is that what you are saying?

**DET SUPT MOLLER:** Well, I am, Commissioner, but what I'm saying - Mr Chew is above me. So he's a commander.

5

**THE CHAIRPERSON:** Yes.

**DET SUPT MOLLER:** So he's getting summaries of the evidence. He's not getting the individual details of it, but he's certainly getting summaries of where we are at, what we were doing, what we found out through the Lehrmann, you know, investigation, what we found out through the Higgins part of it. You know, we are sharing that constantly. You know, could I have put some of those details in my report to him? Yes, look, I could have. Yes, I accept that. But, you know, I was highlighting what I thought were the key issues.

10  
15 **MR JONES:** And you can take those two documents down. Can you bring up AFP.2003.0002.8605. Now, that's a cover email of the report - the response, if you like, coming back from Commander Chew and you forwarding it on to your team members on 16 June 2021?

20 **DET SUPT MOLLER:** Mmm.

**MR JONES:** If we turn over the page there, you will see that Commander Chew has directed two things - sorry, new doc ID, AFP.2003.0002.8606. Commander Chew has directed you (1) to brief the ACT Director of Public Prosecutions for an assessment. Do you agree - sorry, you will just have to -

25

**DET SUPT MOLLER:** Sorry. Yes, yes. Yes, he has.

**MR JONES:** And (2) to do what he's quoted in quotations, a red team assessment?

30

**DET SUPT MOLLER:** Yes.

**MR JONES:** And you will see in the bottom right-hand corner, if you scroll down, that's dated 16 June. So you have forwarded that straight on to your team?

35

**DET SUPT MOLLER:** Yes, I did. Yes.

**THE CHAIRPERSON:** So the position, so I understand it step by step -

40 **DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** - is that analyses had been undertaken by Mr Boorman and others. They were contained in the documents we've just seen. You did a summary of what you considered important for Mr Chew to know. You send that all off to him. And his reaction to what you've sent him is, "First, the DPP should give us an opinion about whether to prosecute and, second, we should do - you should send it to Commander Smith for a red team assessment," about which we are going to hear. So two things should happen, DPP's opinion and a red team assessment; is that right?

50 **DET SUPT MOLLER:** That's right, yes.

**MR JONES:** And we heard evidence from you right at the start that you and Inspector Boorman briefed the Director on 21 June, and you got his advice back on 28 June.

5 **DET SUPT MOLLER:** Yes.

**MR JONES:** Could you tell the Chair, please, what a red team assessment is, what it involves and who does it?

10 **DET SUPT MOLLER:** It's an independent assessment of the investigation. And to be honest, it's never happened to me before. So this is the first time that it's happened, that I've had someone do an independent assessment of our investigations. But - but I think it's a great process. So basically we sent all the - all the information that we have to Commander Smith, who was independent to our investigation, and he had a team that reviews our brief of  
15 evidence to identify any further lines of inquiry and to basically look to see if it was conducted thoroughly and -

**THE CHAIRPERSON:** So the assessment is an open one in the sense that you are not asking him for a particular - an answer to a particular question. The case is given to them, and they come back to you with general advice as they think fit to give you; is that right?  
20

**DET SUPT MOLLER:** Yes, there was actually a Terms of Reference for it. So -

**THE CHAIRPERSON:** Yes. Don't worry, we will -  
25

**DET SUPT MOLLER:** Yes, there was a Terms of Reference for -

**THE CHAIRPERSON:** Yes. I see.

30 **DET SUPT MOLLER:** Which guided him about specifically what Commander Chew was seeking.

**THE CHAIRPERSON:** Yes. Thank you.

35 **MR JONES:** You can bring that up if you like, AFP.2003.0005.0556. And can you - just above the wording "phase one" - can you enlarge that, please. Down the bottom there, the dot points. The dot points. Sorry. That's it. These are the Terms of Reference?

**DET SUPT MOLLER:** Yes.  
40

**MR JONES:** They include further avenues of inquiry; consideration of the material already obtained; focusing on the current draft statement of facts, record of interview, evidence-in-chief interviews, statements, record of conversations and associated entries, documents and/or recordings; and any further considerations that may inform the  
45 investigation; yes?

**DET SUPT MOLLER:** Yes.

**THE CHAIRPERSON:** You are not asking him whether to charge or not; you are asking him, "What else can we do as police officers to advance this?" Is that right?  
50

**DET SUPT MOLLER:** Yes, if we haven't - or is there anything that we haven't done that we should do. Yes.

5 **THE CHAIRPERSON:** Yes.

**MR JONES:** And what were the findings of that review?

10 **DET SUPT MOLLER:** Particular findings were that it was a thorough - it was a thorough investigation. The exact wording - it's in his review.

**MR JONES:** They weren't any criticisms, then, of it?

15 **DET SUPT MOLLER:** No criticism, no.

**MR JONES:** Do you recall?

20 **DET SUPT MOLLER:** No, it was quite a glowing review of what we had done. You know, dedicated, thorough investigation.

**MR JONES:** Thank you. None of that - no part of that red team review would have prevented the wrongful supply or disclosure of the counselling records?

25 **DET SUPT MOLLER:** No, that wasn't their remit.

**MR JONES:** Now, AFP.2003.0002.8739. You can zoom in - thank you. That's an email from you to Andrew Smith, and we have heard that Andrew Smith is the person that was allocated the red team assessment.

30 **DET SUPT MOLLER:** Yes.

**MR JONES:** And this is you forwarding on that task that's been allocated to him?

35 **DET SUPT MOLLER:** Yes, that's right.

**MR JONES:** And AFP.2003.0002.8739. I should just say that's on 18 June 2021 at 1 o'clock - 1.20; yes?

40 **DET SUPT MOLLER:** Yes.

**MR JONES:** AFP.2003.0002.8523. And down the bottom there - right. That's unhelpful. In that email down the bottom there, it cites - it is sent on - from Andrew Smith to yourself on 18 June 2021 at 3.25 pm; yes?

45 **DET SUPT MOLLER:** Yes.

**MR JONES:** And he says he won't be able to get cracking on the job until 19 July. Do you see that?

50 **DET SUPT MOLLER:** Yes.

**MR JONES:** Now, still at this stage, that is, 18 June, the Director hasn't been briefed yet. And then scrolling up, Commander Chew -

5 **MS RICHARDSON:** I object to the premise of that. The date of the request for advice to the DPP is dated 18 June. Just that it was received on the 21st.

**THE CHAIRPERSON:** Sorry, what was the false premise of the question?

10 **MS RICHARDSON:** That the request for advice had not yet gone to the DPP.

**THE CHAIRPERSON:** I see. What's the date of this - this is 18 June. So on the same day -

15 **MS RICHARDSON:** The cover letter to the DPP from Detective Superintendent Moller is dated 18 June.

**THE CHAIRPERSON:** It happened on the same day, Mr Jones. That's what -

20 **MR JONES:** No, I don't think so. The superintendent has given evidence that he handed it over on the 21st. He and Inspector Boorman went over to the Director's office and handed it to the Director's office on 21 June.

**THE CHAIRPERSON:** Is that right?

25 **DET SUPT MOLLER:** Yes, I just have to check the dates.

**MR JONES:** It's not a big deal.

30 **THE CHAIRPERSON:** Nothing may turn on it anyway, but -

**MR JONES:** Nothing turns on it, but we want to get it right.

**DET SUPT MOLLER:** I know it was the - it came after -

35 **MR JONES:** Check your diary if that might help. We might be able to give you -

**DET SUPT MOLLER:** I haven't got the diary here, but - yes, it's in my diary notes. So -

40 **THE CHAIRPERSON:** But it was - the request for the advice was handed over -

**DET SUPT MOLLER:** When it was handed over. It's in my diary.

**THE CHAIRPERSON:** Right.

45 **MR JONES:** You have got it at 156 of your statement:

"Of importance is at this stage Mr Drumgold had not yet received any evidence to review. That did not occur until 21 June."

So is it the case that the letter went first and then the brief went later or something, is it? 150  
of your statement:

5 "On 21 June 2021, I went to the ODPP office in Civic with Detective Inspector  
Boorman and delivered an electronic copy of the preliminary brief of evidence and  
associated reports authored by myself and Detective Inspector Boorman."

**DET SUPT MOLLER:** Yes. So 21 June.

10 **MR JONES:** 21 June. All right. So at this time, Commander Smith is indicating that he can't  
get going until 19 July.

**DET SUPT MOLLER:** Mmm.

15 **MR JONES:** And then further up in that email, Commander Chew is comfortable with - this  
is 21 June at 11.26 - is comfortable with the timelines discussed. And the team were just  
sending through the documents he's referring to your earlier email; yes?

**DET SUPT MOLLER:** Correct.

20

**MR JONES:** AFP.2003.0018.4734.

**THE CHAIRPERSON:** What are you seeking to establish through this sequence of  
documents, Mr Jones?

25

**MR JONES:** That - I can just put the propositions if you like.

**THE CHAIRPERSON:** Yes.

30 **MR JONES:** All right. The meeting - sorry, the red team review continued to get pushed  
back, didn't it?

**DET SUPT MOLLER:** Yes, Mr Smith was away or something like that. Yes.

35 **MR JONES:** He had other -

**DET SUPT MOLLER:** Other commitments.

**MR JONES:** - priorities.

40

**DET SUPT MOLLER:** Yes.

**MR JONES:** The point at which he could commence his review was after you had not only  
briefed the Director but received the Director's advice back?

45

**DET SUPT MOLLER:** Potentially. I can't remember.

**MR JONES:** Well, I will go to the documents.

50 **DET SUPT MOLLER:** Yes.

**MR JONES:** So AFP.2003.0018.4734. Yes, down the bottom. Go down the - scroll down, please. That's 18 July 2021. So the Director has been briefed, but you haven't yet got his -

5 **DET SUPT MOLLER:** Advice.

**MR JONES:** - advice back. And the - Commander Smith is indicating that he would review Operation COVINA on his return from leave. And he notes that the requirement for the review to be conducted, given media reporting that the ACT DPP has independently reviewed and provided advice to the police - ACT Police and a revised timeframe. So he's querying whether or not he still is required to do it because he has discovered that the Director has been briefed; is that right?

15 **DET SUPT MOLLER:** Yes.

**MR JONES:** Okay. And if we then scroll up on 20 July 2021, Commander Chew informs him that he will get the full brief in about two weeks. He wants the red team review to happen ASAP.

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** And he confirms that the Director has been briefed and has provided an indication of where he sits, but ultimately it's up to us, being the ACT Police -

25 **DET SUPT MOLLER:** Mmm.

**MR JONES:** - to decide on whether to charge or not. And he indicates there in that final sentence:

30 "Happy to work on getting this done as I know the CPO is very interested."

Do you know what that's a -

35 **DET SUPT MOLLER:** CPO is the Chief Police Officer.

**MR JONES:** And do you know what that particular interest is that the CPO has?

40 **DET SUPT MOLLER:** I would think the CPO just wants to know if the investigation has been done, you know, completely thoroughly and if there was anything that was outstanding, I would say. I don't know. You would have to ask him. But that would be my impression.

**MR JONES:** Yes. And it then makes reference to the Commissioner maybe given his answers in the estimates hearing. Do you know what that's a reference to?

45 **DET SUPT MOLLER:** Well, I mean, reading it there, it looks like, you know, the Commissioner is attending -

**MR JONES:** If you don't know -

50 **DET SUPT MOLLER:** But I don't really know, no.

**MR JONES:** That's fine. All right. Then over the page to page 4733. Down the bottom there, Commander Smith is pushing the date back to 23 July. And this is on 21 July that he's seeking to push it back. Do you see that?

5

**DET SUPT MOLLER:** Yes.

**MR JONES:** And - sorry, he's pushing it back to 28 July on 21 July.

10 **DET SUPT MOLLER:** Mmm.

**MR JONES:** And so you now have - that is, the ACT Police have the Director's advice back?

15 **DET SUPT MOLLER:** Yes.

**MR JONES:** And you had it for a month by that stage - about a month?

**DET SUPT MOLLER:** Yes.

20

**MR JONES:** Thank you. On 29 July 2021, an article is published. It's BOI.0019.0001.0001\_0001. A news article is published, the author is Samantha Maiden and it is titled, "Director of Public Prosecutions denies Karen Andrews' Brittany Higgins claims." Do you see that?

25

**DET SUPT MOLLER:** Yes.

**MR JONES:** Do you remember this article?

30 **DET SUPT MOLLER:** No, not -

**MR JONES:** No.

**DET SUPT MOLLER:** Not really, no.

35

**MR JONES:** Over the page in the first paragraph, the article says:

"The Director of Public Prosecutions in the ACT has flatly rejected Home Affairs Minister Karen Andrews' claim that prosecutors are the reason for the delay on the decision whether or not to charge the man at the centre of the Brittany Higgins rape allegation."

40

**DET SUPT MOLLER:** Sorry, I do - I do recall this.

45 **MR JONES:** You do remember it?

**DET SUPT MOLLER:** Yes, I do recall this.

**MR JONES:** All right. So by the time this article has been published, you have had the advice for a month.

50

**DET SUPT MOLLER:** Mmm.

5 **MR JONES:** And the delay is not the Director; it's internal workings that are happening with the red review and so forth; correct?

**DET SUPT MOLLER:** Yes. Yes, that's right.

10 **MR JONES:** And the Director comes back and says, well - further, it's recorded in this article that the delay is not with him. He provided his advice - received the brief and provided his advice in June. And then two pages over at page 4, in the first paragraph, the Commissioner of the AFP is cited as giving a speech at the National Press Club on Wednesday, which was 28 July 2021, indicating that the matter was with the DPP. Do you see that?

15

**DET SUPT MOLLER:** Yes.

**MR JONES:** That was wrong, as it turns out. Do you accept that?

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. And then further down that page, three paragraphs from the bottom, it's got the Deputy Chief Police Officer Peter Crozier endorsing the Commissioner's comments at the top that I've just taken you to. Do you accept that?

25

**DET SUPT MOLLER:** Well, that's in the article, yes.

**MR JONES:** Yes. Now, the next day, 30 July - sorry. Yes. Sorry. On the same day, Inspector Boorman receives an email from Ms Yates, which is a forwarded email from David Sharaz.

30

**DET SUPT MOLLER:** Mmm.

**MR JONES:** Do you remember that?

35 **DET SUPT MOLLER:** Vaguely, yes.

**MR JONES:** You can turn up your notes, because I'm going to take you there in a minute. And, in effect, the email is indicating what's going on, "We are reading this news about it. Is a decision going to be made?" As was forecast in the July meeting - 12 July meeting where you said - where Ms Higgins was told that towards the end of July a decision would be made.

40

**DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. Does Inspector Boorman come and have a chat with you about that?

45

**DET SUPT MOLLER:** Yes.

**MR JONES:** Okay. And that's on 30 July? You will just have to verbalise your response, Superintendent.

50



**DET SUPT MOLLER:** Yes. Sorry.

**MR JONES:** That's okay.

5 **DET SUPT MOLLER:** Sorry.

**MR JONES:** I will take you there. AFP.2003.0003.8126. You tell me if I've got this wrong, but at about 8.30 in the morning you have that discussion with Inspector Boorman -

10 **DET SUPT MOLLER:** Yes.

**MR JONES:** - about the emails that he's receiving?

**DET SUPT MOLLER:** Yes.

15

**MR JONES:** And then you speak with him again at 9.30; yes?

**DET SUPT MOLLER:** That's right, yes.

20 **MR JONES:** And is it right that between that 8.30 conversation and 9.30 conversation, Inspector Boorman has received a phone call from David Sharaz?

**DET SUPT MOLLER:** I think so, yes.

25 **MR JONES:** Yes. Does he come and speak to you about it?

**DET SUPT MOLLER:** Yes.

**MR JONES:** Yes. And it might be easier if you just read your 9.30 notes for us, please.

30

**DET SUPT MOLLER:**

35 "9.30 am, further briefing with Inspector Boorman re Higgins. Discussion re Higgins contemplating media release due to recent media statements by Commissioner AFP and DPP."

**MR JONES:** So are we correct in understanding that Inspector Boorman is updating you that there has been this indication that Ms Higgins is going to be critical of the time -

40 **DET SUPT MOLLER:** Yes.

**MR JONES:** - it has taken?

**DET SUPT MOLLER:** Yes.

45

**MR JONES:** And she will do that publicly; yes?

**DET SUPT MOLLER:** Yes. Yes, in a roundabout way. Yes.

50 **MR JONES:** All right. You then do something at 9.41 am with that information?

**DET SUPT MOLLER:** That's correct.

**MR JONES:** Can you tell us what you have written there in your note?

5

**DET SUPT MOLLER:**

"9.41, contact Commander Chew brief re same possible media by Higgins. Chew..."

10 I would have to see my diary to decipher that -

**MR JONES:** Yes.

**DET SUPT MOLLER:** - because there's a discussion:

15

"Travel to Brisbane next week. Talk with Higgins and serve summons on Lehrmann for one count of sexual intercourse without consent. Chew further said start preparing the summons now in preparation for your travel based on legal provided by DPP."

20 **MR JONES:** Right. So at the time that decision has been made - or that direction has been given to you by Chew, you've got the negative press?

**DET SUPT MOLLER:** Yes.

25 **MR JONES:** You've got the potential threat of Ms Higgins going public about the delay?

**DET SUPT MOLLER:** Yes.

30 **MR JONES:** You've got the incorrect comments by the Commissioner - the National Press comments that have been published in the press?

**DET SUPT MOLLER:** We have got the - yes, the National Press comments.

35 **MR JONES:** You are uneasy to say that he definitely said that. Is that the concern you've got?

**DET SUPT MOLLER:** No, I'm concerned about you saying they are negative comments. That's all.

40 **MR JONES:** The media?

**DET SUPT MOLLER:** No, no. The Commissioner - I thought you were referring to the Commissioner.

45 **MR JONES:** No. Sorry. You've got his comment reported -

**DET SUPT MOLLER:** Yes.

50 **MR JONES:** - that were in fact wrong.

**DET SUPT MOLLER:** Right. So they were - it was negatively reported. Is that what you are saying?

**MR JONES:** Yes. Incorrectly -

**DET SUPT MOLLER:** Yes. Thank you.

**MR JONES:** Sorry. He was saying the brief is with the DPP in July, and it wasn't?

**DET SUPT MOLLER:** Yes.

**MR JONES:** Thanks. So I think you indicated that in the office around the time of charging - earlier in your evidence - there was immense pressure?

**DET SUPT MOLLER:** Yes. Well, throughout the whole - the whole part of the investigation. But, yes, it culminated at this time. Yes.

**MR JONES:** And here Commander Chew on the 30th is directing you to get the summons served?

**DET SUPT MOLLER:** Well, he says, "Preparations for the summons to be served," yes.

**MR JONES:** But he's saying to you, isn't he, "Get the summons ready, go up to Brisbane and serve it"?

**DET SUPT MOLLER:** Yes. Yes.

**MR JONES:** Right. He hasn't yet got the red review?

**DET SUPT MOLLER:** No.

**MR JONES:** And he is making the decision to charge in light of the pressure that's on him?

**DET SUPT MOLLER:** I think that's a little bit unfair. He's making the decision to charge based on, you know, the brief of evidence he's been provided, the briefings we have given him and the - the information coming back from the DPP. You know - but I guess you would have to speak to Mr Chew about that, about why he made that decision.

**MR JONES:** Okay. You accept, though, any decision to charge should be solely made on the evidence, not on negative media or the delay it's taken to make that decision?

**DET SUPT MOLLER:** I would accept that. And, sorry, if I could just add one thing too. I know from my briefings with Mr Chew that he was giving me continual feedback on Commander Smith and what he was doing. So even though we didn't get the report back from Commander Smith, I know that Mr Chew was talking to Commander Smith about the evidence that he was reviewing and stuff. So, you know, I gather that he was getting information and advice from Commander Smith about the substance of the investigation that was conducted.

**MR JONES:** And you had the Director's advice?

**DET SUPT MOLLER:** Yes, we - I mean, at the end of the day, we had Mr Drumgold's advice to say it was sufficient.

5 **MR JONES:** You have some obligations - that is, the ACT Police have some obligations under the Victims of Crime Act in terms of keeping complainants up to date -

**DET SUPT MOLLER:** Yes, we do.

10 **MR JONES:** - with significant changes in the investigation or when significant events happen?

**DET SUPT MOLLER:** Yes, that's correct.

15 **MR JONES:** You have spoken about one time where you gave the update about the Director's advice on 12 July 2021 in Brisbane?

**DET SUPT MOLLER:** Yes.

20 **MR JONES:** One of those other key events that you would be obliged to update the complainant about would be charging?

**DET SUPT MOLLER:** Yes, absolutely.

25 **MR JONES:** Had you made any arrangements to tell Ms Higgins about that?

**DET SUPT MOLLER:** Yes, I had.

**MR JONES:** Were those arrangements for that to happen before charging or after charging?  
30

**DET SUPT MOLLER:** Yes, I had made arrangements to talk to her before the charging.

**MR JONES:** All right. When were you scheduled to do that briefing with her - or update?

35 **DET SUPT MOLLER:** It's in my notebook. The date - it's not in front of me at the moment, but I had a -

**MR JONES:** You don't have your notes there?

40 **DET SUPT MOLLER:** I don't have my diary here, sorry. I'm sorry.

**MR JONES:** That's all right.

**DET SUPT MOLLER:** I did make an appointment to meet with Ms Higgins and Ms Yates just prior to us serving the summons.  
45

**MR JONES:** I will get the operator to bring up AFP.0006.0001.0037. And zoom in on the third dot point, please. Did that meeting you have scheduled with Ms Higgins have to be cancelled?  
50

**DET SUPT MOLLER:** Yes, it did.

**MR JONES:** Why was that?

5 **DET SUPT MOLLER:** Because internally in my organisation, they were -

**MR JONES:** I will just take you back. Did you receive a direction to cancel that meeting?

**DET SUPT MOLLER:** Yes.

10

**MR JONES:** Was that from Assistant Commissioner Peter Crozier?

**DET SUPT MOLLER:** Yes, it was.

15 **MR JONES:** And it is via this email, is it, on 5 August 2021 at 12.46 am?

**DET SUPT MOLLER:** Yes.

20 **MR JONES:** Now, could you tell us why you received that direction, if you understand why you received it?

**DET SUPT MOLLER:** Well, there was concerns that Ms Higgins would go to the media prior to us being able to serve the summons.

25 **MR JONES:** All right.

**DET SUPT MOLLER:** That was the concern.

30 **MR JONES:** And had you had some difficulties during the investigation or before the investigation occurred with media?

**DET SUPT MOLLER:** Significant difficulties.

35 **MR JONES:** All right. And did you arrange another time to meet with Ms Higgins and give her the mandatory update?

**DET SUPT MOLLER:** Yes, I did.

40 **MR JONES:** And when did that occur?

**DET SUPT MOLLER:** It was basically shortly - very shortly after the summons was served.

45 **THE CHAIRPERSON:** You've had an opportunity to look at - I'm going to take you now to the threshold for charging. You've had an opportunity to look at the responses provided by many of your - I will call them your officers, but investigators for this Board of Inquiry and what they say is their understanding of the threshold to charge for police in the ACT?

**DET SUPT MOLLER:** Yes, I have.

50 **MR JONES:** How would you describe those responses?

**DET SUPT MOLLER:** Inconsistent. There is an inconsistent approach to it.

**THE CHAIRPERSON:** Inconsistent with each other, do you mean?

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**DET SUPT MOLLER:** Yes.

**MR JONES:** There are arrest powers in the Territory's Crime Act which require a reasonable suspicion -

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**DET SUPT MOLLER:** Yes.

**MR JONES:** - before you can exercise that power?

15 **DET SUPT MOLLER:** Yes, for arrest. That's right.

**MR JONES:** And applying for warrants -

**DET SUPT MOLLER:** Yes.

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**MR JONES:** - for example, for arrest? And we heard before that there's a minimum requirement in the Magistrates Court Act section 26 for laying an information before the Magistrates Court?

25 **DET SUPT MOLLER:** Yes.

**MR JONES:** Are they reflective of what is the threshold for charging in the ACT Police?

**THE CHAIRPERSON:** In fact.

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**MR JONES:** In fact?

**DET SUPT MOLLER:** I think - yes, I think the - the threshold for charging in the ACT - I think the officers are consistent in terms of their threshold to charge. I think they struggle with consistency in articulating the threshold to charge. I think, you know, the officers apply a threshold - a common threshold to charging. Certainly, in my experience, the application of the threshold to charge in the ACT is more conservative than other jurisdictions, I would say. But I think that conservative approach that the ACT has lends itself to a far more thorough investigation, and it's derived from their experience and exposure in the ACT courts. That's, you know, where their threshold to charge has developed, Commissioner.

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**THE CHAIRPERSON:** I see. You Are saying that whatever the threshold is, the threshold that's used, you would accept, is a higher threshold than is used in other jurisdictions. That's the first step; is that right?

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**DET SUPT MOLLER:** Yes, that's right.

**THE CHAIRPERSON:** And that, in part, the reason it's a higher threshold is that it reflects the outcome of cases that have been brought in the ACT and how ACT judges, magistrates

and juries treat cases, that is, the perception of police is that a higher threshold than in other jurisdictions is justified because of their experience of -

5 **DET SUPT MOLLER:** Their exposure and - yes, that's right.

**MR JONES:** You've had an opportunity to look at the guideline provided to the Queensland Police for charging?

10 **DET SUPT MOLLER:** Yes.

**MR JONES:** That adopts a two-tiered test that takes into account sufficiency of evidence and public interest?

15 **DET SUPT MOLLER:** Yes.

**MR JONES:** And provides - whether you agree with it or not, provides some information to the officers about the types of things that they would consider or approach the test?

20 **DET SUPT MOLLER:** Yes.

**MR JONES:** Fair enough?

**DET SUPT MOLLER:** Yes.

25 **MR JONES:** In 2022, the ACT Police did not have any guidance on that?

30 **DET SUPT MOLLER:** There is no guidance on that. ACT Policing has developed a draft - a draft - draft governance in relation to it. But we are waiting on the outcome of this Board of Inquiry and would welcome any information or advice in relation to that to feed into our draft documents that we have already prepared.

**THE CHAIRPERSON:** Well, perhaps you should - I would be grateful if you gave me the draft.

35 **DET SUPT MOLLER:** Absolutely. We can provide that. Yes.

**MR JONES:** So the issue seemed to be first raised by Callum Hughes in September of last year?

40 **DET SUPT MOLLER:** That's correct.

**MR JONES:** And now the progress that's been made is a draft policy has been produced awaiting the outcome of the Board of Inquiry?

45 **DET SUPT MOLLER:** That's right.

**MR JONES:** Finally, I just want to ask you about some trial issues you may have become aware of. During the trial, your investigators - or investigator Emma Frizzell was asked to do further investigations by the legal representatives for the accused?

**DET SUPT MOLLER:** Yes, she was.

**MR JONES:** Was notice of those investigations given to the Director's office?

5 **DET SUPT MOLLER:** Yes, it was.

**MR JONES:** Your police officers also - investigators participated in discussions with the legal representatives for the accused?

10 **DET SUPT MOLLER:** Yes, they did.

**MR JONES:** Did you see any issues with that?

**DET SUPT MOLLER:** No, I didn't.

15 **MR JONES:** Why not?

**DET SUPT MOLLER:** It's normal process to engage with defence, as it is prosecution. And, you know, that's part of what we have to do. You know, when we are progressing matters through court, you know, often we engage with defence. And there is no problem with it, as far as I'm concerned.

**MR JONES:** And it's not police function to only side with the prosecution, is it?

25 **DET SUPT MOLLER:** Well, no, definitely not. I mean, you know, the heart of our strategies is really to get the truth of the matter before the court. So, yes, no, I don't have any problem with the investigators talking to defence.

**MR JONES:** Yes. That's the evidence-in-chief, Mr Chair.

30 **THE CHAIRPERSON:** Yes. Who is - have a seat, Mr Jones. Who is going to question Superintendent Moller first? You, Mr Tedeschi?

**MR TEDESCHI:** I expect I will be first.

35 **THE CHAIRPERSON:** Yes. And are you happy to begin now and continue to 4.30 or do you want to wait till tomorrow morning?

**MR TEDESCHI:** If I could wait till tomorrow morning, I would prefer.

40 **THE CHAIRPERSON:** Certainly. And just so I have a picture in my mind, who will follow Mr Tedeschi?

**MR EDWARDSON:** I won't be asking any questions.

45 **THE CHAIRPERSON:** Well, you can sort it out and let me know. Yes.

**DR DWYER:** I have some questions, Commissioner, so I am happy to follow Mr Tedeschi.

50 **THE CHAIRPERSON:** All right. Well then -



**MS RICHARDSON:** I'm unlikely to have any questions.

**THE CHAIRPERSON:** All right. And, Mr Black, you will see how you go?

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**MR BLACK:** Yes.

**THE CHAIRPERSON:** All right. Well then, we will adjourn till tomorrow at 9.45.

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**<THE HEARING ADJOURNED AT 4.04 PM TO TUESDAY, 23 MAY 2023 AT 9.45 AM**