

1 (Thursday, 11 April 2024)
 2 (10.00)
 3 MR SANTOS: Good morning, sir. We are
 4 moving into the next phase of the hearing
 5 now, into the questioning phase. The first
 6 witness will be Paul Richardson. Just to go
 7 over, the procedure will be me first as CTI,
 8 followed by Mr Wagner for Mr McGrail, and
 9 then Sir Peter Caruana KC for the
 10 government parties, and finally Mr Gibbs KC
 11 for Mr Richardson. So, I think the next step
 12 is to ask Mr Paul Richardson to take his place
 13 in the witness area.
 14 MR PAUL RICHARDSON, sworn
 15 Examination-in-chief by MR SANTOS
 16 MR SANTOS: Welcome Mr Richardson.
 17 **A. Thank you.**
 18 Q. Can I ask you first of all to take the
 19 bundle in front of you that is marked
 20 "Witness statements" and to look behind the
 21 first tab. I think it is a yellow tab. Take as
 22 much time as you need, but is that your
 23 second witness statement to this inquiry?
 24 **A. It is.**
 25 Q. And can I ask you to turn to the final

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1 page of that document. Is that your
 2 signature?
 3 **A. It is.**
 4 Q. Can you confirm that the contents of that
 5 witness statement are true to the best of your
 6 knowledge, information and belief?
 7 **A. I can.**
 8 Q. Thank you. And then behind the second
 9 tab, the blue tab, that should be your third
 10 witness statement to this inquiry and I would
 11 ask you to just check and confirm that it is.
 12 (Pause).
 13 **A. It is.**
 14 Q. And on the final page should be your
 15 signature. Can you please confirm that is the
 16 case?
 17 **A. That is correct.**
 18 Q. And do you confirm that that witness
 19 statement, the contents of that witness
 20 statement, are true to the best of your
 21 knowledge, information and belief?
 22 **A. I can.**
 23 Q. Thank you. Just to start with a couple of
 24 questions about your working relationship
 25 with Mr McGrail, roughly how many years

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1 did you work with Mr McGrail?
 2 **A. I began in the RGP in 1985 and I think**
 3 **Mr McGrail started the year before. So I**
 4 **have known him throughout that time, but we**
 5 **haven't really worked together other than**
 6 **when I was superintendent crime and he was**
 7 **the Commissioner.**
 8 Q. And how long ... sorry.
 9 THE CHAIRMAN: I think you are
 10 speaking, understandably, to Mr Santos. I
 11 am not just completely sure the microphone
 12 is picking everything up.
 13 **A. Hello.**
 14 Q. I think that is better.
 15 THE CHAIRMAN: Yes, that is better.
 16 MR SANTOS: And if you could speak to the
 17 chairman.
 18 THE CHAIRMAN: He can speak as he is
 19 most comfortable.
 20 MR SANTOS: Okay, speak to whoever you
 21 prefer to speak to. Sorry, I think you just
 22 said that you really only worked together
 23 with him for a certain period of time. How
 24 long was that roughly?
 25 **A. It would have been from approximately**

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1 **2000 ... the very end of 2018, when I was**
 2 **promoted, to when Mr McGrail left, I think it**
 3 **was June 2020. Although there was a brief**
 4 **period of time that we were both shift**
 5 **inspectors at the same time and so we**
 6 **coincided on duty one after the other or one**
 7 **before the other.**
 8 Q. And how would you describe your
 9 working relationship with him?
 10 **A. It has always been a professional**
 11 **relationship. I have known Mr McGrail**
 12 **since we were in school together, but we**
 13 **weren't friends in school. Our friendship has**
 14 **developed after the events of June 2020.**
 15 Q. Now, can we turn, please, to bundle A/3,
 16 page 3 of bundle A. I think it will appear on
 17 your screen actually. Now, paragraph 7
 18 there, Mr McGrail states that Operation Delhi
 19 was commenced on 15 October 2018. Can
 20 you just explain to us what exactly is meant
 21 by an operation commencing and what
 22 happens when an operation is commenced?
 23 **A. An operation concerns the investigation**
 24 **of a crime and so when a crime is reported**
 25 **the crime needs to be recorded as a crime. If**

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1 **it is an operation it is a more serious crime**
 2 **rather than just a crime that is investigated by**
 3 **an officer. And an operation implies that**
 4 **there is more than one person involved in**
 5 **that. So when an operation is commenced it**
 6 **is when the complaint is received.**
 7 Q. Now, you became the Senior
 8 Investigating Officer of Operation Delhi
 9 from late December 2018. Can you just
 10 explain to us what that role as Senior
 11 Investigating Officer entails?
 12 **A. I had at that time superintendence of the**
 13 **investigation. Mr McGrail had wanted the**
 14 **investigation to be kept as confidential as**
 15 **possible because of the implications that**
 16 **concerned the national security system. And**
 17 **so at the beginning of that operation there**
 18 **was only myself and former Chief Inspector**
 19 **Brian Finlayson that were involved in the**
 20 **investigation, together with one high tech**
 21 **crime officer. As the investigation developed**
 22 **and it became clear that more resources were**
 23 **required, one of my roles was to seek more**
 24 **assistance, and funding even, to progress that**
 25 **investigation. And other officers were**

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1 **brought on board and Mr Wyan was**
 2 **appointed some time later as the officer in**
 3 **charge of the investigation.**
 4 Q. Was there a senior investigating officer
 5 on Operation Delhi before you and, if so,
 6 who was it?
 7 **A. I don't think so because the complaint for**
 8 **Operation Delhi, the actual complaint from**
 9 **Mr Gaggero, didn't arrive until late**
 10 **December. So I'm not sure exactly what**
 11 **happened in October 2018, but my**
 12 **involvement began when the RGP received**
 13 **the letter of complaint from Mr Gaggero**
 14 **setting out what he was alleging had**
 15 **happened.**
 16 Q. So are you able to assist at all with what
 17 steps were taken in Operation Delhi prior to
 18 your involvement in December 2018?
 19 **A. No, I'm sorry, I can't.**
 20 Q. Can you explain what Mr McGrail's role,
 21 once you joined the operation and became its
 22 Senior Investigating Officer, can you explain
 23 what Mr McGrail's role was in the
 24 investigation?
 25 **A. Mr McGrail was the Commissioner of**

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1 **Police and so he had responsibility for the**
 2 **whole force. But I took over responsibility**
 3 **for Operation Delhi.**
 4 Q. So how involved would Mr McGrail have
 5 been in the operation?
 6 **A. At the very beginning stages he**
 7 **facilitated a conference call with Mr Gaggero**
 8 **where we spoke to the complainant for the**
 9 **first time, myself, I think it was Mr Finlayson**
 10 **and the Commissioner held a conference call.**
 11 **From thereafter I would brief him**
 12 **periodically on where we were going, but he**
 13 **had no direct involvement in the**
 14 **investigation.**
 15 Q. Now, the inquiry has received what is
 16 referred to as the daybook, or your daybook,
 17 relating to Operation Delhi. Perhaps I should
 18 just clarify that. Was that an operation
 19 daybook or was it your personal daybook in
 20 which you included information about the
 21 operation?
 22 **A. The operation daybook for Operation**
 23 **Delhi has been handed to me this morning by**
 24 **the RGP. It was specifically in relation to**
 25 **Operation Delhi. I had a normal daybook for**

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1 **each year, which you have copies of the**
 2 **relevant sections.**
 3 Q. Sorry, so just to clarify, the Operation
 4 Delhi daybook, does the inquiry have ... are
 5 you saying that there is a different daybook?
 6 **A. No, you have a scanned copy of the**
 7 **Operation Delhi daybook, with the exception**
 8 **to one and a half pages that was redacted**
 9 **because I had made an entry for a different**
 10 **inquiry in the wrong book.**
 11 Q. Thank you. And can you just explain
 12 what a daybook is?
 13 **A. A daybook is where senior officers record**
 14 **their day-to-day business or things that they**
 15 **need to be reminded about, actions that need**
 16 **following up, things that need recording for**
 17 **future purposes. I use my daybook to keep**
 18 **notes of briefings that officers gave me, or**
 19 **briefings that I would give to the**
 20 **Commissioner for dissipation in meetings,**
 21 **etc.**
 22 Q. And would you record things like
 23 meetings and the matters that you have
 24 described, would you record those
 25 contemporaneously, as in while the meeting

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<p>1 is going on, or is this something that you 2 would do after the meeting or is this 3 something that you would do some days 4 later? 5 A. For the most part I would record in my 6 daybooks meetings and notes as they 7 happened. There are occasions when I was 8 not able to this because, for example, I may 9 have received a call whilst I was at home or 10 whilst I was in somebody else's office or 11 whilst I didn't have my daybook with me. 12 And on those occasions I would have made 13 a note on a piece of paper and later 14 transcribed the entry into my daybook. 15 Q. What was the sort of longest period that 16 you would go without entering something 17 into the daybook? I mean apart from 18 extraordinary occasions, would it normally 19 be on the same day or some days later? 20 A. Normally it would have been on the same 21 day, but there was a time in Operation Delhi 22 when Operation Delhi and Operation Kram 23 were running simultaneously and my 24 attention was diverted or shared between 25 several major operations running at the same</p> <p style="text-align: center;">Page 9</p>	<p>1 that. 2 MR GIBBS: Thank you. 3 MR SANTOS: Thank you, Mr Gibbs. 4 (Pause). 5 A. This is a briefing, this is the 6 Commissioner briefing me. 7 Q. Thank you. And the note says that John 8 Perez shows up to see the Commissioner of 9 Police. I do not want to put words in your 10 mouth, but am I right in saying that that is 11 a reference to a previous meeting rather than 12 Mr Perez turning up at the meeting that you 13 are recording there? 14 A. You are correct. 15 Q. Yes. Can I take you a few pages further 16 on to 1659? It should be two pages further. 17 That is a meeting between you and 18 Mr McGrail and Mr Finlayson on 8 19 January 2019. And towards the bottom ... do 20 you have that? 21 A. Yes, I do. 22 Q. Yes. Towards the bottom of that page 23 you note the following: "JG, advised by 24 COP, SIO and DEP." Do you know what 25 advice was given at that stage?</p> <p style="text-align: center;">Page 11</p>
<p>1 time that I ended up making notes on pieces 2 of paper and then transcribing them 3 afterwards. There may have been some 4 delay at that point in putting from loose 5 pieces of paper into my book. 6 Q. Can I take you now to some entries in 7 your daybook in January 2019, very early on 8 in your role as SIA. The first is C/1657. The 9 heading there is: "Briefing with COP and 10 BF". Presumably that is a reference to Brian 11 Finlayson, who you just mentioned. 12 A. That is correct. 13 Q. The title of this note is, as I say: "Briefing 14 with COP". Does that mean that the 15 Commission of Police was briefing you or 16 that you were briefing the Commissioner of 17 Police? 18 A. Just let me read it, please. 19 Q. Yes, please do so. (Pause). 20 MR GIBBS: It is in the daybook. 21 MR SANTOS: Sorry, yes. 22 MR GIBBS: I think the (inaudible) the 23 witness. 24 MR SANTOS: Yes, I think that you have the 25 original. I am happy for you to work from</p> <p style="text-align: center;">Page 10</p>	<p>1 A. No, I'm sorry I can't recall what that 2 refers to. 3 Q. If we can then move forward two pages, 4 1661, I think this is the same meeting. There 5 is a reference there, halfway down the page: 6 "COP meeting with Sir Peter to clear legal 7 approach." I do not think it is controversial 8 to say that Sir Peter, I understand that to be 9 a reference to Sir Peter Caruana KC. Would 10 you agree? 11 A. That is correct, yes. 12 Q. Can you tell us what the meeting with Sir 13 Peter was to be about? 14 A. Yes, um, the complaints, as you are 15 aware, involved serious hacking of the of 16 NSCIS platform and an allegation of fraud 17 and our understanding was that Sir Peter was 18 taking civil action on behalf of Bland's 19 against the defendants and part of that action 20 would have involved laying information in 21 courts that the defendants would have had 22 access to, and we were concerned that if that 23 information was available before we had 24 an opportunity to speak to people, it would 25 compromise the investigation. And therefore</p> <p style="text-align: center;">Page 12</p>

<p>1 clearing the legal approach refers to that.</p> <p>2 Q. Now, can we now turn, it is a fair bit</p> <p>3 forward, C/1733, so it is probably around 70</p> <p>4 pages or 72 pages, I think, ahead for you. It</p> <p>5 is a note of 11 May 2019. Halfway down the</p> <p>6 page.</p> <p>7 A. Yes, I have it.</p> <p>8 Q. This is 11 May 2019, it was the day after,</p> <p>9 I believe, Mr Cornelio and Mr Perez and</p> <p>10 another individual were arrested. Is that</p> <p>11 correct?</p> <p>12 A. That is correct.</p> <p>13 Q. This is a note on 11 May of a telephone</p> <p>14 call at 10.01 to 10.12 with Mr James</p> <p>15 Gaggero. Is that correct?</p> <p>16 A. That is correct.</p> <p>17 Q. Now, you state JG there, the first line</p> <p>18 there. Can I ask you to read that first line</p> <p>19 out?</p> <p>20 A. It says, it's in bullet points. The first line</p> <p>21 reads: "JG had heard of arrests from</p> <p>22 employee."</p> <p>23 Q. Is that still your recollection?</p> <p>24 A. It certainly is.</p> <p>25 Q. And then if we go to the bottom line on</p> <p style="text-align: center;">Page 13</p>	<p>1 "I was advised of the arrests by Paul</p> <p>2 Richardson on the day. I cannot recall</p> <p>3 whether I was informed before or after the</p> <p>4 arrests themselves. It will have been over</p> <p>5 a telephone call."</p> <p>6 And then the following paragraph says:</p> <p>7 "As it happened, on the day of the arrests I</p> <p>8 was walking towards the convent, the</p> <p>9 governor's residence, at around midday. I</p> <p>10 happened to see the Chief Minister driving</p> <p>11 past me in his car. His driver stopped the car</p> <p>12 and he opened the window to say hello. I</p> <p>13 mentioned to him that I had heard that there</p> <p>14 was progress with the police investigation</p> <p>15 and that actions had been taken that day."</p> <p>16 So he refers in the first line of 78, he says: "I</p> <p>17 was advised of the arrests by Paul</p> <p>18 Richardson on the day." Now, your account</p> <p>19 just now was that in fact he had learned from</p> <p>20 an employee. I just want to ask you to</p> <p>21 confirm your position, having read that.</p> <p>22 A. Yes, I noticed this in preparation for the</p> <p>23 inquiry. I think Mr Gaggero is mistaken and</p> <p>24 has confused the day that the three Delhi</p> <p>25 defendants were arrested with the arrest of</p> <p style="text-align: center;">Page 15</p>
<p>1 the screen, I think it should be the same on</p> <p>2 your hard copy, I think can you just read, it</p> <p>3 starts with: "COP".</p> <p>4 A. Yes, it says: "COP had wanted me to call</p> <p>5 yesterday."</p> <p>6 Q. Yes. What do you mean by that, sorry?</p> <p>7 A. Well, Mr Gaggero was the complainant</p> <p>8 in this matter and had been waiting very</p> <p>9 patiently for us to take executive action. Um,</p> <p>10 Mr McGrail had wanted me to advise</p> <p>11 Mr Gaggero of the arrests after they had</p> <p>12 happened and I had resisted that because, in</p> <p>13 fact the words in my text to him are: "I would</p> <p>14 like to keep Mr Gaggero at arm's length" and</p> <p>15 I didn't want to speak to him until after they</p> <p>16 had been bailed. He in the event called me</p> <p>17 the following day. I was in Spain and he</p> <p>18 called me and that is a note of that</p> <p>19 conversation.</p> <p>20 Q. Can we actually go to Mr Gaggero's</p> <p>21 evidence. It is A/1374, please. That will</p> <p>22 appear on the screen. Paragraph 78, please.</p> <p>23 (Pause). Yes. We do have a hard copy if</p> <p>24 you want it, but I am only going to take you</p> <p>25 to two paragraphs. He says as follows:</p> <p style="text-align: center;">Page 14</p>	<p>1 Mr Sanchez a few days later.</p> <p>2 Q. Is it typical to contact complainants when</p> <p>3 a suspect is arrested?</p> <p>4 A. It depends on the case. In this particular</p> <p>5 case there was civil action pending that was</p> <p>6 ready to go, just waiting for the police to</p> <p>7 intervene with the people that were suspected</p> <p>8 of committing the crime. So in this case it</p> <p>9 was particularly important to let him know</p> <p>10 when it was safe to do so.</p> <p>11 Q. Just going to the next paragraph of this</p> <p>12 statement, paragraph 80, Mr Gaggero says as</p> <p>13 follows:</p> <p>14 "I recall receiving a call from DSI Paul</p> <p>15 Richardson very shortly afterwards, possibly</p> <p>16 on the same day. Inspector Richardson was</p> <p>17 very upset that any information which had</p> <p>18 been provided to me as a complainant should</p> <p>19 have been passed on by me to the Chief</p> <p>20 Minister. I apologised profusely and</p> <p>21 confirmed that my comment to the Chief</p> <p>22 Minister had been perfectly innocent but that</p> <p>23 it would not happen again. After that date</p> <p>24 little if any information was shared with me</p> <p>25 by the RGP and such information as was</p> <p style="text-align: center;">Page 16</p>

<p>1 shared by me with the RGP was shared by 2 me only with the senior executive team at 3 Bland or its legal team." 4 Now, we already know that you disagree 5 with Mr Gaggero's recollection, but do you 6 agree that a conversation took place to that 7 effect? 8 A. It did, but I am not sure whether he called 9 me or I called him. I think it was he called 10 me. I wouldn't have known about his 11 interaction with the Chief Minister unless he 12 told me. 13 Q. Can we turn to C/1735, please, which is 14 in your daybook as well. I think it is 15 a couple of pages on from the page you were 16 looking at. Halfway down the page, 14 17 May 2019, that is a record of a call from 18 James Gaggero. 19 A. Yes. 20 Q. Is that a reference to the conversation that 21 you just mentioned? 22 A. It is. 23 Q. Now, I think at the top of this page there 24 is a reference to a meeting on 13 May 25 between you, the Chief Minister, the DPP,</p> <p style="text-align: center;">Page 17</p>	<p>1 servant, Caine Sanchez. He advised me of 2 the meeting by WhatsApp and I prepared 3 a briefing note for him in advance. I have 4 a copy of that note because it was shared 5 with him by WhatsApp. Our WhatsApp 6 exchange is set out below." 7 And then there is a WhatsApp exchange and 8 there is a reference there by Mr McGrail, the 9 fourth message down, to the Attorney 10 General being in London. I should now just 11 take you to paragraph 70 of your statement, 12 which is on 1436. And that says, this is what 13 you say in response to the Attorney General's 14 affidavit where the ... I will just read out 70: 15 "At paragraph 25 the AG states that 16 Mr McGrail had raised most of these 17 concerns with him in May 2019. I was not 18 aware that the Commissioner had met with 19 the AG in May 2019. If the AG is referring 20 to the meeting of 13 May 2019 my record 21 does not list him as being present. In fact, 22 a message exchange between myself and the 23 Commissioner at around this time refers to 24 the AG's absence in England: (see paragraph 25 59 above)."</p> <p style="text-align: center;">Page 19</p>
<p>1 Mr Costa, the then Minister of Justice, 2 Mr Mena and Mr Grech. Is that everyone 3 who according to you was present at that 4 meeting or would you have missed any 5 attendee out? 6 A. According to my recollection, those are 7 the people that were present at that meeting. 8 Q. And it may be an obvious question, but 9 when you recorded in your daybook would 10 you normally leave anybody out? 11 A. No, of course not. 12 Q. Your evidence, can I take you to your 13 third witness statement, so the second one in 14 your bundle, paragraph 57, please. It is 15 A/1436. 16 A. Sorry, did you say the second or the third 17 witness statement? 18 Q. Sorry, the third witness statement. Sorry, 19 I have been trying to be helpful, I think I 20 confused you. Paragraph 57. 21 A. Fifty-seven, yes. 22 Q. You explain there: 23 "Mr McGrail arranged the meeting in order 24 to provide a brief on Operation Delhi 25 particularly the involvement of a senior civil</p> <p style="text-align: center;">Page 18</p>	<p>1 Just to confirm your position, your evidence 2 and your recollection, was the AG present at 3 that meeting on 13 May 2019? 4 A. My recollection is that he was not present 5 physically. There is a possibility that he 6 attended the meeting by telephone 7 conversation, but I don't remember him being 8 there physically. And neither do I remember 9 specifically that he was there participating 10 via telephone. 11 Q. Do you recall the purpose of that 12 meeting? 13 A. Yes, I do. 14 Q. Can you explain what that was? 15 A. This was because after we had arrested 16 the three principal suspects in the Operation 17 Delhi case, an examination of their forensic 18 devices had indicated the involvement of 19 Caine Sanchez, who was a senior civil 20 servant and is still in post, and Mr McGrail 21 had wanted to brief the Chief Minister 22 because it would ... progressing that 23 investigation would have involved executing 24 search warrants and arresting and 25 interviewing Mr Sanchez.</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

1 Q. Can we just go back to your note of that
 2 meeting, which you have in your daybook?
 3 It is C --
 4 **A. I have it.**
 5 Q. Mr Triay is faster than me as well. The
 6 note states, the final line of that note says:
 7 "Will need to speak to senior partner at
 8 Hassans."
 9 In your evidence in Richardson, in your third
 10 witness statement, paragraph 60, you clarify
 11 what you meant when you recorded that in
 12 your note. Paragraph 60, you say:
 13 "The CM told us that we would need to
 14 speak to the Senior Partner at Hassans not
 15 that he would."
 16 Can you recall what prompted the Chief
 17 Minister to say this and what he meant or
 18 intended by saying that?
 19 **A. I cannot tell you what he intended to say**
 20 **by this. I can tell you what I remembered**
 21 **and that that comment came at the very end**
 22 **of the meeting. We had got up from the table**
 23 **and people were leaving and I was stood to**
 24 **the side while the Commissioner was**
 25 **speaking to the Chief Minister and the Chief**

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1 **Minister made that comment. And it seemed**
 2 **odd to me at that time that he would say this**
 3 **because we had known that JL, Mr Levy, we**
 4 **suspected that Mr Levy had some**
 5 **involvement in this matter but did not know**
 6 **the extent of his involvement at that time.**
 7 Q. And is that all he said about the matter,
 8 was just that one comment, or did he say
 9 anything else?
 10 **A. It's all I can recall. It is what I have made**
 11 **a note of because it struck me at that time**
 12 **strange that he would have said that.**
 13 Q. Just to clarify, did you or Mr McGrail or
 14 anyone on behalf of the investigation team,
 15 prior to the Chief Minister saying this, did
 16 you suggest that Mr Levy was a person of
 17 interest or was he mentioned for some other
 18 reason?
 19 **A. From memory, part of the briefing note**
 20 **that I had prepared for the Commissioner,**
 21 **there is somewhere in the notes**
 22 **a commissioner's briefing notes on Caine**
 23 **Sanchez's involvement as we understood it**
 24 **from the messages from other people. There**
 25 **is a reference to JL there and I had a note**

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1 **saying: "Suspect this to be Mr Levy" but we**
 2 **did not know, had not confirmed at that**
 3 **stage, that JL was in fact James Levy.**
 4 Q. So, thank you for that clarification, but
 5 just going back to the question that I asked,
 6 did you or Mr McGrail mention Mr Levy as
 7 a person of interest?
 8 **A. This is why I mentioned the summary. If**
 9 **Mr McGrail read out the relevant sections he**
 10 **would have read out that text, but I cannot**
 11 **remember if he mentioned it or not.**
 12 Q. And how and when did you become
 13 aware of the connection between Mr Levy
 14 and 36 North?
 15 **A. It would have been sometime after the**
 16 **arrest of Caine Sanchez and the interrogation**
 17 **of his electronic devices and sometime after**
 18 **that and before, um, I started writing the**
 19 **notes in my daybook, which I think were in**
 20 **February 2020.**
 21 Q. Can I take you to your third witness
 22 statement, paragraphs 3 to 7. It is at A/1426.
 23 (Pause).
 24 **A. Mm.**
 25 Q. That is the evidence that you give as to

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1 when and how you became aware of
 2 Mr Levy. Is that still your evidence today?
 3 **A. Yes, it is. But that note there regarding**
 4 **the, um, it's concerning an email that was**
 5 **recovered forensically from Eddie Askis to**
 6 **Mr Levy. That was in relation to a business**
 7 **relationship. We had no knowledge at that**
 8 **stage of any suspicion of Mr Levy's**
 9 **involvement.**
 10 Q. Can we move to an entry in your daybook
 11 for 15 November 2019. That is at C/1760.
 12 **A. Sorry, which date?**
 13 Q. It is 15 November 2019. (Pause).
 14 **A. I have it.**
 15 Q. The fourth bullet point there, correct me
 16 if I am wrong, but I believe it reads:
 17 "Workflows for bail periods."
 18 **A. It does.**
 19 Q. And then the third bullet point, do you
 20 mind just reading that out?
 21 **A. The third bullet point says:**
 22 **"Bottom out ownership issues - MW [which**
 23 **is Mark Wyan]**
 24 **Mark Wyan proposes as fallback position of**
 25 **conspiracy to deprive Bland's of the**

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<p>1 maintenance contract as opposed to the 2 platform." 3 (10.31) 4 Q. Are we to take from the note that this was 5 Mark Wyan's idea? This fallback position. 6 A. I'm not sure if it was an idea; it was - it 7 was a proposal to deal with an investigation 8 that was - that had a difficulty. 9 Q. Well, that it was Mark Wyan's proposal -- 10 A. Yes. 11 Q. -- rather than him proposing it on behalf 12 of somebody else? 13 A. As far as I know, yes. 14 Q. Can we now turn to bundle B, 3717. 15 That should appear on the screen for you. 16 And, this is a typed-out version of notes 17 taken by Mr Wyan of a meeting on 21 18 January 2020. It records that a meeting took 19 place on that date between you, Mr Wyan, 20 Mr Field and Mr Clarke. Do you recall what 21 was discussed at that meeting? 22 A. Can I look at my own notes, to see if I've 23 got any? 24 Q. Yes, yes, yes. I am told that C1764, for 25 the screen, is the... 1764.</p> <p style="text-align: center;">Page 25</p>	<p>1 been exposed in this investigation, and that 2 there would be a need to choose the most 3 appropriate ones. 4 Q. Now, can we move to B3452, please. 5 This is a document headed "NDM 6 assessment regarding the involvement of 7 Heine Judah Levy with 36 North Limited. 8 Can you please explain what an NDM is? 9 A. NDM stands for the National Decision- 10 making Mod-- Module, and it is a - a means 11 of explaining your rationale for conducting a 12 - a line of business or a line of inquiry, or any 13 decision. 14 Q. Why did you choose to draft an NDM in 15 this case? 16 A. Principally because I was - I was advised 17 to do so. I had never done one before, but it 18 was pointed out to me the value of this 19 exercise, and I'm - and I did it. 20 Q. I think you say in your evidence who - 21 who it was who advised you to do so? 22 A. Yes, I did. It was Superintendent Yeats, 23 at that time. 24 Q. Thank you. If we go to 3455, please. We 25 have the conclusion there. The NDM</p> <p style="text-align: center;">Page 27</p>
<p>1 MR GIBBS: (inaudible) ... 21 January... 2 (inaudible). 3 MR SANTOS: 22nd. 4 THE CHAIRMAN (?): 21st. 5 Q. 21 January 2020. 6 A. Sorry, I have just read the wrong entry. 7 Yes, I have read my entry. 8 Q. My question to you was: do you recall 9 what was discussed? 10 A. I recall what I have written, I don't know 11 if there was anything else that was said there. 12 Q. Well, can I take you to the specific thing I 13 would like to ask you about, which is: we 14 cannot find a reference to it in your note, but 15 in bundle B (this is why we take you to 16 bundle B) there is a reference there by Mr 17 Wyan to the third bullet point, "charges", 18 "over 50 possible charges identified, 19 predominantly computer misuse, to be 20 refined down". Can I ask you: when did the 21 RGP intend to do that refining down? 22 A. I can't recall when - when we decided to 23 take that exercise. It was clear from the 24 beginning that there were many offences 25 (computer misuse offences, mainly) that had</p> <p style="text-align: center;">Page 26</p>	<p>1 document concludes that the RGP has 2 reasonable grounds to suspect that JL 3 committed the offence of conspiracy to 4 defraud, and at paragraph 23 (just above the 5 conclusions) you set out your basis for 6 believing that Mr Levy had acted dishonestly. 7 If we can just go up a little bit further, 8 because the heading is there by "dishonesty", 9 and you say, "The question is whether the 10 agreement to deprive Bland Limited of the 11 NSCIS maintenance contract was to do so by 12 dishonesty. The grounds to suspect that this 13 was the case are based on the following". 14 Looking back now, and with the benefit of 15 hindsight of everything that has happened, do 16 you still consider that these constituted 17 reasonable grounds to suspect Mr Levy of 18 conspiracy to defraud and dishonesty? 19 A. I - I do. But, the - that entry is not as 20 comprehensive as it could have been. 21 Q. When you say that, is there something in 22 particular on your mind that is omitted from 23 there or are you just saying that in a general 24 sense. 25 A. No, it - it is not omitted from that</p> <p style="text-align: center;">Page 28</p>

<p>1 inasmuch as - or, sorry, it is omitted from that 2 in that paragraph, but attached to that 3 document was a comprehensive table of all 4 the exchanges between some of the other 5 suspects and Mr Levy. 6 Q. On 3456, the following page, we have 7 your proposed next steps. And, at paragraph 8 28 you state that, "TC, JP and EA were 9 arrested, and their properties searched, 10 simultaneously in order to prevent conferring 11 with each other and the potential loss of 12 evidence." Then at 30 you say, "The 13 necessity to arrest JL will not be met, in the 14 event that he consents to a voluntary 15 attendance police interview." Why did you 16 adopt this different approach to Mr Levy? 17 A. At that stage of the investigation, when 18 the first three people were arrested, we 19 obviously worked on the assumption that 20 they had no idea that we were going to be 21 intervening at that stage. And, there was a 22 nec-- it was necessary to secure their at-- the 23 attendance of the three people at the same 24 time. Mr Levy's intervention was sometime 25 later (I think it was more than a year after</p> <p style="text-align: center;">Page 29</p>	<p>1 And, when we attended he elected a lawyer 2 from the UK - or, a UK lawyer. 3 Q. At paragraph 35 you state that, "Given 4 the political sensitivities and potential 5 reluctance for a JP to issue a warrant for 6 Hassan law practice, the warrant should be 7 requested from the Chief Justice." Why did 8 you ultimately not go down this route? 9 A. I can't tell you that. My - my planning 10 was that we should have applied from the 11 Chief Justice. 12 Q. Sorry, are you saying it was not your 13 decision to go to the Stipendiary Magistrate, 14 as opposed to the Chief Justice? 15 A. No, it wasn't. 16 Q. Can I please take you to B3272. This is 17 an email exchange where you send the NDM 18 to Mr McGrail, Commissioner of Police. 19 Can I just ask: why did you send the NDM to 20 Mr McGrail? 21 A. Because the NDM set out our intents, and 22 the intents included executing a warrant at 23 Hassans law practice. It is proper that the 24 Commissioner of Police had been briefed on 25 that; he may have had alternative views.</p> <p style="text-align: center;">Page 31</p>
<p>1 this), and therefore those same requirements 2 did not exist. 3 Q. Did you consider that there was any risk 4 of Mr Levy conferring with others at that 5 stage? 6 A. If Mr Levy had co-- it was clear that Mr 7 Levy had been conferring with others, 8 because of the text exchanges between him 9 and the other people. 10 Q. And, did you consider that there was any 11 risk of Mr Levy destroying evidence? 12 A. Yes, we did. 13 Q. At paragraph 33 you state that 14 "Examination of any content seized from JL 15 may become complicated by claims of legal 16 privilege, in that event the material will be 17 reviewed by a lawyer first." Did you make 18 arrangements for this to happen? 19 A. My recollection is that I - is that I would 20 have discussed this with the DPP, because we 21 would need access to a lawyer in order to 22 conduct this exercise. My memory of this is 23 that we had agreed that we would ask Mr 24 Levy to choose a lawyer, whether from 25 Gibraltar or from abroad, to do this exercise.</p> <p style="text-align: center;">Page 30</p>	<p>1 Q. Did you consider that you needed his 2 approval to proceed, or were you just seeking 3 his advice? 4 A. I would have thought in law I would not 5 need his approval, but he - he may have had 6 information that - that I didn't, and I would 7 have had to listen to his advice. 8 Q. Mr McGrail replies to your email, if we 9 scroll down. First of all, can we scroll down 10 to the bottom. There is your email to Mr 11 McGrail, "Please find attached my 12 assessment of J Levy's involvement in 36 N 13 and planned course of action. I am of course 14 at your disposal if you wish to discuss." 15 Then, if we can now scroll up to the - thank 16 you - to the response. Mr McGrail says as 17 follows, "Paul, I have perused the document 18 you attach to your email below. On the basis 19 of the information contained in this 20 document I support in principle the suggested 21 course of action. As you know, the tactical 22 detail of how you intend to set to achieve the 23 objectives will be subject of further 24 consideration, mainly to safeguard 25 operational security. Given the complex</p> <p style="text-align: center;">Page 32</p>

1 nature of this investigation and the
 2 reputational risks at stake, I would ask that
 3 you consult with the DPP to ensure our
 4 intended activity is legally supported." Just
 5 to ask you about some of the phrases that he
 6 uses there, what did you understand Mr
 7 McGrail to mean by "tactical detail"?

8 **A. This - this, I think, was a reference to**
 9 **keeping the operation as confidential as**
 10 **possible until we were actually effecting the -**
 11 **the entry into the premises.**

12 Q. And, when he says in the final line,
 13 "consult with the DPP to ensure our intended
 14 activity is legally supported", what do you
 15 understand him to mean by "our intended
 16 activity"?

17 **A. The activity that was outlined in the**
 18 **NDM, which was to obtain a search warrant**
 19 **and seize evidence and - from Mr Levy and**
 20 **from Hassans.**

21 Q. Did you understand from this, then, that
 22 you needed to seek advice from the DPP on
 23 the decision to seek to apply for a search
 24 warrant and execute a search warrant?

25 **A. I don't think he was referring to**

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1 **permission to apply for a search warrant. I**
 2 **think he was saying: speak to the DPP and**
 3 **seek his advice on whether he can draw the**
 4 **same conclusions as you have, that Mr Levy**
 5 **is a suspect, and let him know that what our**
 6 **intended course of action is to obtain a search**
 7 **warrant.**

8 Q. Now, just at the top of the page, in
 9 response you reply, "All noted, will raise
 10 with the DPP this week." Do you recall
 11 when you in fact raised the matter with the
 12 DPP?

13 **A. I think it was on 3 March 2020.**

14 Q. Can we just go to your third witness
 15 statement, paragraph 14, A1427. Paragraph
 16 14... I will give you the chance to read that.

17 **A. Yes.**

18 Q. You state that the meeting was to discuss
 19 Operation Delhi, JL's involvement and
 20 whether he should be interviewed. Did you
 21 typically consult the DPP on whether to
 22 interview a person of interest?

23 **A. No.**

24 Q. You state in paragraph 15 that before this
 25 meeting the DPP had not seen the

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1 considerable amount of evidence that
 2 implicated Mr Levy. I will let you read 15.

3 **A. Yes.**

4 Q. Can I just ask: why were you seeking the
 5 DPP's advice on the involvement of JL
 6 before he had seen this evidence?

7 **A. The reason that we went to speak to the**
 8 **DPP was because Mr McGrail had asked us**
 9 **to - to do so, as is in - referred to in the**
 10 **previous emails. When we st-- when we**
 11 **briefed Mr Rocca he was of the very strong**
 12 **opinion that this was sharp business practice,**
 13 **and that it - it w-- it hadn't overstretched the**
 14 **boundaries between dishonesty and in - and**
 15 **into criminal conduct. Whenever this was, in**
 16 **April '20. And, a lot of evidence had been**
 17 **gathered; we hadn't consulted with the DPP**
 18 **at this stage because we had not finished out**
 19 **inquiries. The inquiry started with - with two**
 20 **or three individuals, and it spread further**
 21 **than that. So, the reason why we took the**
 22 **decision to send Mr - Mr Rocca the evidence**
 23 **that had been gathered that far (or a summary**
 24 **of that evidence) is because he had - he was**
 25 **giving us his opinion that the conduct we**

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1 **were alleging was criminal was in fact sharp**
 2 **business practice.**

3 Q. My question to you is: given that he had
 4 not seen all of the evidence... Let me put it
 5 in a different way: why were you seeking his
 6 advice without him seeing all of the
 7 evidence?

8 **A. We weren't - we would have sought his**
 9 **advice on charging and presented all the**
 10 **evidence, that's the - the stage where the DPP**
 11 **would normally get - or the prosecutors**
 12 **would normally see the evidence. This was -**
 13 **this was seeking his advice on a proposed**
 14 **course of action, and whether he could form**
 15 **the same view that we did: that JL was - was**
 16 **a suspect.**

17 Q. Did you record this meeting in your
 18 daybook?

19 **A. No I didn't, and this is something that -**
 20 **that was pointed out to me: it is recorded in**
 21 **Mr Wyan's notes, but not in mine.**

22 Q. Given the DPP's advice, and his view
 23 being that it was more a case of sharp
 24 business practice than criminal activity, do
 25 you not think that it was important to record

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<p>1 that advice in your daybook?</p> <p>2 A. In retrospect it - it was. I believe that Mr</p> <p>3 Wyan had been deputed to take a note of that</p> <p>4 and - and in fact he did.</p> <p>5 Q. So, is that why... Sorry, obvious</p> <p>6 question, but is that your reason why you did</p> <p>7 not record it in your day book?</p> <p>8 A. I would think so, yes. It is recorded that</p> <p>9 the meeting took place though, in my</p> <p>10 Outlook calendar.</p> <p>11 Q. Now can we turn to bundle B, page 3197.</p> <p>12 This is Mr Wyan's note of the meeting. It</p> <p>13 says, "Meeting with DPP regarding JL,</p> <p>14 advice requested on whether his involvement</p> <p>15 amounts to a criminal offence. Full report</p> <p>16 drafted by Superintendent Richardson.</p> <p>17 Relevance: consideration of whether JL has</p> <p>18 committed a criminal offence." The note</p> <p>19 refers to a "Full report drafted by</p> <p>20 Superintendent Richardson", what do you</p> <p>21 understand that reference - what is the report</p> <p>22 that is referred to there?</p> <p>23 A. I think that Mr Wyan refers to the NDM</p> <p>24 assessment.</p> <p>25 Q. Did you give the DPP a copy of the NDM</p> <p style="text-align: center;">Page 37</p>	<p>1 a comprehensive entry, or at least why I</p> <p>2 didn't make a comprehensive entry. I think at</p> <p>3 that time our priority was to look again at</p> <p>4 what we had done, and make sure that we</p> <p>5 were drawing the right conclusions from the</p> <p>6 evidence that we had got. Mr Rocca had a</p> <p>7 very strong opinion that the evidence that the</p> <p>8 - that the involvement of Mr Levy was - was</p> <p>9 sharp business practice, unscrupulous</p> <p>10 perhaps but not criminal. But Mr Rocca had</p> <p>11 not seen any of the evidence at that stage, so</p> <p>12 the focus was on getting a report to Mr Rocca</p> <p>13 so that he could hopefully draw the same</p> <p>14 conclusion that we did.</p> <p>15 Q. I think you then say in your evidence...</p> <p>16 Actually, if we can turn to paragraph 18 of</p> <p>17 your third statement, you state that you</p> <p>18 offered to provide the DPP with a summary</p> <p>19 of the evidence against JL so far. I will just</p> <p>20 let you read that, but...</p> <p>21 A. Paragraph 18?</p> <p>22 Q. Yes.</p> <p>23 A. Yes.</p> <p>24 Q. Can I ask you why... I think you have</p> <p>25 already covered this, but just for clarity's</p> <p style="text-align: center;">Page 39</p>
<p>1 assessment, at that meeting or prior to it?</p> <p>2 A. Not at that meeting, not from my</p> <p>3 recollection and not from perusing (?) the</p> <p>4 notes.</p> <p>5 Q. Did you give it to him before that</p> <p>6 meeting?</p> <p>7 A. I don't think so, because there is an email</p> <p>8 trail showing that I emailed it to him - I think</p> <p>9 it was on 1 April.</p> <p>10 Q. I was going to turn to that. We see an</p> <p>11 email where you provide it, was that the first</p> <p>12 time (as far as you are aware) that you</p> <p>13 provided him with the NDM?</p> <p>14 A. Provided him, yes. It may have been</p> <p>15 referred to in the - in the meeting of 3 March.</p> <p>16 Q. Again, this note does not actually record</p> <p>17 what the DPP's advice was. Is there any</p> <p>18 reason why the DPP's advice was not</p> <p>19 recorded anywhere?</p> <p>20 A. There is no reason that I can think of.</p> <p>21 Q. I think you say in your evidence that the</p> <p>22 meeting lasted two hours. Can you just</p> <p>23 explain why you only have the briefest of</p> <p>24 notes, between the two of you?</p> <p>25 A. I can't remember why we didn't make a -</p> <p style="text-align: center;">Page 38</p>	<p>1 sake: why do you ask Mr Wyan to prepare</p> <p>2 this summary of evidence?</p> <p>3 A. Because we wanted the DPP to have an</p> <p>4 opportunity to have access to a summary of</p> <p>5 the evidence that we had seen so far.</p> <p>6 Q. Yes. Sorry, just going back to an answer</p> <p>7 you gave. You said "hopefully" the DPP</p> <p>8 would come to the same conclusion as you</p> <p>9 would. Why do you say "hopefully" the DPP</p> <p>10 would come to the same conclusion as you</p> <p>11 would?</p> <p>12 A. Because if he did not, we had been an</p> <p>13 investigating an offence that wasn't made out,</p> <p>14 and we would have wasted - not (?) wasted -</p> <p>15 we would have lost a - a year's work and had</p> <p>16 to - had to effectively just bin it and move on.</p> <p>17 Q. Can we now turn to the charging - I think</p> <p>18 you call it the charging advice, I call it the</p> <p>19 charging report but I am happy to use your</p> <p>20 description, B3612. This is addressed - I</p> <p>21 think you are right to call it the charging</p> <p>22 advice, or at least recharging advice - this is</p> <p>23 addressed to the Commissioner of Police but</p> <p>24 marked for your attention. We cannot find</p> <p>25 Mr McGrail included in the email chain</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 between you and Mr Wyan about the 2 charging report; do you know whether this 3 was shown to Mr McGrail? 4 A. I don't know whether he was shown it. 5 Q. Would it have been normal practice to 6 show it to Mr McGrail? 7 A. No, not particularly at this stage. I can 8 tell you why it is addressed to the 9 Commissioner of Police. 10 Q. Please do. 11 A. And, that is because we were taught, 12 many years ago, that all correspondence will 13 be addressed to the Commissioner of Police, 14 even if it was not intended for that - for his 15 attention. 16 Q. So you are not aware, are you... Let me 17 ask the question and not put words in your 18 mouth. Do you know whether Mr McGrail 19 saw the charging advice document before it 20 was sent to the DPP? 21 A. I'm not sure, but there was an email that I 22 sent to Mr McGrail with the NDM. I am not 23 certain at this point if that was included with 24 it, it will be on the - on the record of the 25 attachments.</p> <p style="text-align: center;">Page 41</p>	<p>1 considered in accordance with the code for 2 prosecutors." At that stage, did the RGP 3 intend to proceed with that many charges? 4 A. At that stage, it had not been considered. 5 I think it is important to point out that 6 although the document is entitled "charging 7 advice" it was not being used for that purpose 8 at that time. When I had asked Mr Wyan to 9 produce a summary of the evidence for Mr 10 Rocca, he relied on a document that he had 11 been preparing as the investigation had 12 unfolded. So rather than redo all the work 13 again that he had been doing, he - he adopted 14 the same document. 15 Q. If we just go back up to 3630 there are 16 three paragraphs there, 132 to 134, about 17 exchanges between Mr Cornelio, Mr Levy 18 and Mr Perez. And then 134 says, "The 19 evidence indicates that Levy discussed the 20 forensic team with Cornelio, and that he had 21 given him advice about the situation. Then 22 there is a section headed "NSCIS report for 23 Sanchez/Levy", and the paragraph says, "By 24 2019 Levy was in no doubt that Cornelio and 25 36 North had not been contracted to maintain</p> <p style="text-align: center;">Page 43</p>
<p>1 Q. Now 3612, can we turn to 3612, please. 2 Oh, sorry, we are there. In the report, Mr 3 Wyan requests that advice be sought from the 4 DPP as to what charges should be preferred; 5 that is in paragraph three. Is that the typical 6 practice? 7 A. In a case as complex as this, yes. 8 Q. And, the charging report identified 76 9 possible charges. Is it typical to identify that 10 many charges? 11 A. It depends on the case that you are 12 investigating. This case involved computer 13 misuse offences, and each instance of an 14 unlawful access to computer material 15 amounted to an offence. So, there would 16 have to be at some point a decision about 17 which of those many instances of computer 18 misuse would - would result in a charge, and 19 which ones would be left on file. 20 Q. Can we now turn to 3635 please, that is 21 paragraph 337. Sorry, I am not sure I have 22 got the right... 3666. At that stage was it the 23 intention... so, just to read that paragraph, 24 "In light of the evidence proffered above, it is 25 requested that the 76 proposed charges be</p> <p style="text-align: center;">Page 42</p>	<p>1 the NSCIS platform. Despite this fact, he did 2 not question Cornelio accessing the system in 3 April 2019." So, did you understand from 4 the report, Mr Wyan's conclusion to be that 5 there was sufficient evidence of Mr Levy's 6 knowledge of the computer misuse offences? 7 A. I think there was sufficient evidence to 8 form a reasonable ground of suspicion; those 9 questions would have to be developed further 10 in interview. 11 Q. And, I think it is implied in your answer 12 that you agreed with that conclusion? 13 A. Yes. 14 Q. Can you please explain, on the basis of 15 that message at 132 and the text referred to in 16 133, how they show knowledge of sabotage 17 on the part of Mr Levy, as far as you are 18 concerned? 19 A. Mr Cornelio appears to be telling Mr 20 Levy, very confidential note, "Gaggero has 21 brought in a forensic team of six to look at 22 anything that John and I may have done to 23 tamper with the system etc. Gaggero is 24 going all-out, it seems." Now, in October 25 2018 was around the time of one of the</p> <p style="text-align: center;">Page 44</p>

<p>1 serious outages of NSCIS, that caused 2 significant risk to Gibraltar. And, Blands had 3 contracted a forensic team of digital 4 investigators to interrogate the system, and 5 they were in Gibraltar carrying out that 6 search. It appears to suggest that Mr 7 Gaggero (SIC) was aware of this, and - and 8 was letting Mr Levy know: confidentially, I 9 found this out, let you know that they're 10 looking to see whether we have tampered 11 with the system.</p> <p>12 Q. The next section is paragraphs, as I say, 13 135 to 137. Now, I am going to ask you a 14 question about this but there are (I just pause 15 to note, for your benefit and everybody's 16 benefit) redacted parts of those messages, 17 and the questions that I ask, and I would ask 18 that you answer them as best as you can 19 without reference to the information that is 20 redacted, because the redactions are there to 21 protect information that is a subject of the 22 Restriction Notice. 23 (11.01) 24 Obviously if you would like to give a fuller 25 answer or if you are unable to give an answer</p> <p style="text-align: center;">Page 45</p>	<p>1 evidence showed that he was accessing the 2 system at that time, there was a forensic 3 review of that which Mr Cornelio had 4 become aware of. Mr Levy must have 5 known that Cornelio was no longer entitled 6 to access the system because there was 7 communication between them about getting 8 the platform back, and Mr Cornelio seems 9 comfortable in relaying this information that 10 a forensic team may be uncovering or 11 looking into any evidence that he may have 12 tampered with the system.</p> <p>13 MR SANTOS: Can I now ask you to move 14 to paragraph 338 on B 3666, please. It reads 15 as follows: "In addition to the proposed 16 charges, advice is also sought as to whether, 17 based on the above evidence, there are 18 reasonable grounds to suspect that Levy has 19 committed (A) the offence of conspiracy to 20 defraud and/or (B) any other criminal 21 offences." The next paragraph reads: "In the 22 event that there are reasonable grounds to 23 suspect Levy has committed any offence, the 24 police will consider whether it is necessary to 25 conduct further investigations in the form of</p> <p style="text-align: center;">Page 47</p>
<p>1 at all without reference to that information, 2 then we will go into private at the end of 3 your evidence for you to do so. But for the 4 time being I would ask you to just give your 5 answer without reference to that information. 6 How did you consider that this 7 communication in 136 added to your grounds 8 to suspect Mr Levy? 9 A. I'll just read it, if I may. 10 Q. Yes, sorry, I should have given you that 11 chance. (Pause) 12 A. Okay. Could you repeat the question, 13 please? 14 Q. Yes. How did you consider that that 15 message added to or contributed to your 16 grounds to suspect Mr Levy? 17 THE CHAIRMAN: It is that and the 18 message at 132 which you have already 19 referred to. 20 A. Yes. Could I see 132? Yes. This came 21 at a time when Mr Cornelio had been 22 expressly prohibited from accessing the 23 NSCIS platform by the Chief Minister via a 24 message through his personal secretary Mr 25 Canessa, and notwithstanding that the</p> <p style="text-align: center;">Page 46</p>	<p>1 search warrants, interview under caution." Is 2 it correct to interpret that as meaning that you 3 were seeking advice on whether there were 4 reasonable grounds to suspect commission of 5 the offence of conspiracy to defraud and any 6 other criminal offences but you were not 7 seeking the DPP's advice at that stage 8 anyway as to whether a search warrant could 9 and should be obtained? 10 A. That is correct. 11 Q. In fact, it is fair to say that paragraph 339 12 the second line says: "...the police will 13 consider whether it is necessary to conduct 14 further investigations in the form of search 15 warrants..." That is signposting - would you 16 agree? - that you were reserving that 17 decision for the police. 18 A. That is correct. 19 Q. Why would you reserve that decision for 20 the police? 21 A. It was RGP practice at that time, and 22 perhaps still is now, that applications for 23 warrants and production orders are made by 24 the police. They're not drafted by lawyers. It 25 was also the view of the DPP that the</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 obtaining and execution of search warrants</p> <p>2 was an operational matter for the police, and</p> <p>3 so by mutual consent we dealt with it</p> <p>4 because we thought it was the best way to</p> <p>5 deal with it in that way.</p> <p>6 Q. That term "operational matters" is one</p> <p>7 that comes up again and again, so can I ask</p> <p>8 you to explain your understanding of what is</p> <p>9 meant by "operational matters".</p> <p>10 A. The seizing, the searching for</p> <p>11 information, is a police function. It is an</p> <p>12 operational matter.</p> <p>13 Q. What other actions fall within the</p> <p>14 definition of "operational matters" by way of</p> <p>15 example?</p> <p>16 A. The arrest of defendants, the interviewing</p> <p>17 of them, the interrogation of evidence that's</p> <p>18 been seized, the production of a docket for</p> <p>19 consideration.</p> <p>20 Q. Can I just ask you then, you just referred</p> <p>21 to an interview but we did see earlier that</p> <p>22 there was reference to seeking advice from</p> <p>23 the DPP as to whether to interview. You</p> <p>24 confirmed that it was not usual to seek DPP</p> <p>25 advice as to an interview but do you accept</p> <p style="text-align: center;">Page 49</p>	<p>1 status within the community, that we</p> <p>2 consulted with the DPP.</p> <p>3 Q. My question was more aimed at what is</p> <p>4 the reason behind the policy of not seeking</p> <p>5 advice on operational matters.</p> <p>6 A. Because the DPP, the Prosecution</p> <p>7 Service, don't get involved in operational</p> <p>8 matters. They are matters for the police.</p> <p>9 Q. On this occasion, and again with the</p> <p>10 benefit of hindsight I accept, do you think</p> <p>11 you may have benefited from legal advice,</p> <p>12 independent legal advice, as to the decision</p> <p>13 whether to proceed with a search warrant?</p> <p>14 A. Yes, I do.</p> <p>15 Q. If we can then go to B 3610, please, this</p> <p>16 is an email which you were referring to</p> <p>17 earlier which is 1 April 2020 and that is your</p> <p>18 email to the DPP sending this charging</p> <p>19 advice. You have already said it was not</p> <p>20 really seeking an advice on charging but the</p> <p>21 report prepared by Mr Wyan. You refer to</p> <p>22 the NDM in that email. Can I just point that</p> <p>23 out to you. It is the third substantive</p> <p>24 paragraph down.</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 51</p>
<p>1 that on this occasion the DPP's advice was</p> <p>2 sought as far as an interview is concerned?</p> <p>3 A. I'm not sure whether I said that his advice</p> <p>4 was sought with regards to the need to</p> <p>5 interview Mr Levy. His advice was sought</p> <p>6 whether he agreed, whether he could come to</p> <p>7 the same conclusion that we had that there</p> <p>8 were reasonable grounds of suspecting him</p> <p>9 of committing an offence. If that was the</p> <p>10 case, it followed therefore that we would</p> <p>11 interview or take what action we considered</p> <p>12 appropriate.</p> <p>13 Q. Can I ask you from your understanding,</p> <p>14 your knowledge, why is that red line</p> <p>15 apparently drawn between seeking legal</p> <p>16 advice on whether an offence has been</p> <p>17 committed, whether there are grounds to</p> <p>18 suspect - why is there a bright line between</p> <p>19 that and operational matters, as far as your</p> <p>20 understanding is concerned?</p> <p>21 A. I think in most cases it's clear, but in this</p> <p>22 case the suspect was a lawyer and a lawyer</p> <p>23 that may have been giving legal advice in</p> <p>24 relation to this matter, and it was for that</p> <p>25 reason principally and, of course, Mr Levy's</p> <p style="text-align: center;">Page 50</p>	<p>1 Q. You say: "I have also included my NDM</p> <p>2 assessment of the need to interview JL which</p> <p>3 sets out my rationale. Although this</p> <p>4 document is not intended as the basis of</p> <p>5 seeking legal advice, I hope that it will assist</p> <p>6 in the understanding of why we feel that it is</p> <p>7 necessary to follow the course of action that</p> <p>8 is proposed." Then you say: "What we are</p> <p>9 seeking is your advice on whether the</p> <p>10 charges that we propose are warranted by the</p> <p>11 advice, whether there is a reasonable</p> <p>12 prospect of conviction and, given the</p> <p>13 inherent political nature of this investigation,</p> <p>14 that it is in the public interest to proceed. In</p> <p>15 addition, and in respect of James Levy, we</p> <p>16 are seeking legal advice as to whether there</p> <p>17 are reasonable grounds to suspect that he has</p> <p>18 committed the offence as alleged." Are these</p> <p>19 questions on which you would typically seek</p> <p>20 advice from the DPP?</p> <p>21 A. I suppose it depends on the case. I mean,</p> <p>22 I haven't been involved in enough cases to</p> <p>23 give you an opinion on whether that's</p> <p>24 something that's typical. I can tell you that in</p> <p>25 my view it was appropriate to consult his</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

1 **advice, given the implications of the actions**
 2 **which we were about to embark on.**
 3 Q. The first paragraph that I read out to you:
 4 is it your position that you were or you were
 5 not seeking legal advice on the steps that are
 6 referred to in your NDM? You can re-read
 7 that paragraph but are we to interpret from
 8 that paragraph that you were seeking advice
 9 on the NDM assessment and the need to
 10 interview, or that you were not?
 11 **A. No, I think the paragraph says we are not**
 12 **seeking advice on this but we had pointed out**
 13 **what our intended course of action was.**
 14 Q. Did you know of, just more generally on
 15 Operation Delhi, in the period between the
 16 May 2019 meeting that we started talking
 17 about and April 2020 were you aware of any
 18 contact between the Attorney General and
 19 the Commissioner of Police in relation to
 20 Operation Delhi?
 21 **A. The only contact that I'd had with the**
 22 **Attorney General, I think up to that point,**
 23 **though it may not even have been then, there**
 24 **was a meeting that I attended with the**
 25 **Commissioner of Police and the Attorney**

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1 **General, but I think that was on 7 April.**
 2 Q. Before that, between May 2019 and 7
 3 April, to the best of your recollection, how
 4 many meetings were there between the
 5 Attorney General and the Commissioner of
 6 Police on Delhi?
 7 **A. I'm not aware of any.**
 8 Q. Do you know of any notes that you have
 9 of any meetings between the Attorney
 10 General and the Commissioner of Police?
 11 **A. Only the ones that have already been**
 12 **referred to in my statement.**
 13 Q. If the Commissioner of Police had met
 14 the Attorney General on Operation Delhi,
 15 would you have expected to be present at that
 16 meeting?
 17 **A. If the meeting was specifically to do with**
 18 **Operation Delhi, well then, I would say yes.**
 19 Q. Can we please turn to B 74. This is an
 20 email that Mr McGrail sent himself on the
 21 evening of 12 May 2020. You may be well
 22 aware of the significance of that date and you
 23 may recall it, but just for the benefit of
 24 everybody, that is the day of the meeting
 25 between Mr McGrail and the Chief Minister

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1 and the Commissioner of Police in the
 2 Cabinet Room. In this email Mr McGrail
 3 says in the second - well, can I ask you to
 4 read the first two paragraphs to yourself,
 5 please? (Pause)
 6 **A. I read it.**
 7 Q. I just want to focus on the penultimate
 8 sentence of the second paragraph that you
 9 have read. It says: "At most of these
 10 meetings with the AG, particularly the latter
 11 ones, I have been accompanied by
 12 Superintendent Richardson." Do you know
 13 which meetings are being referred to by Mr
 14 McGrail there?
 15 **A. I'm assuming that they are the meetings**
 16 **of 13, 15 and 20 May, because those were**
 17 **meetings that I was present at with the**
 18 **Attorney General and others and the**
 19 **Commissioner of Police, and also the**
 20 **meeting of 7 April 2020 which in my notes I**
 21 **recorded as 4 May.**
 22 Q. Just to help you, this is an email dated 12
 23 May 2020, so the 13th, 15th and 20th would
 24 postdate that email. You refer to a meeting
 25 of 7 April. Were you aware of any other

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1 meetings that might have been referred to in
 2 that email?
 3 **A. No.**
 4 MR SANTOS: This is slightly early for our
 5 mid-morning break, Mr Chairman, but I
 6 think this is a natural pause that perhaps we
 7 can take our mid-morning break now and
 8 then come back, because I am about to turn
 9 to the 7 April 2020 meeting.
 10 THE CHAIRMAN: Certainly.
 11 (11.16)
 12 (Adjourned for a short time)
 13 (11.28)
 14 MR SANTOS: Mr Richardson, at some
 15 stage in either April or May 2020 there was a
 16 meeting between you, Mr McGrail, the
 17 Attorney General, Mr DeVincenzi, to discuss
 18 the proposed charges. It seems from your
 19 answers of earlier this morning that you are
 20 already aware that there is some
 21 disagreement in the evidence as to where or
 22 what the date of that meeting was. The
 23 Attorney General and Mr DeVincenzi believe
 24 it was 7 April 2020. You initially believed
 25 that it was on 4 May 2020 but I sensed from

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<p>1 your answer earlier today that you may now 2 accept that it was actually on 7 April. 3 A. I think it's far more likely that it was on 7 4 April than 4 May, but if I may say, my 5 recollection isn't that the meeting was to 6 discuss the charges. 7 Q. We will go to that meeting now, thank 8 you. I just wanted to clarify the date. Is your 9 position that there was only a meeting on 7 10 April or that there was a meeting on 7 April 11 and also on 4 May? 12 A. No, just 7 April. 13 Q. Can we go to C 1788, which is a page 14 from your Operation Delhi daybook. As I 15 already indicated, your day book records that 16 as being 7 May 2020. Can you just explain 17 to us, please, why you believe it is that it 18 records the meeting as taking place on 7 19 May? 20 A. Sorry, this is in relation to James -- 21 Q. Sorry. 22 THE CHAIRMAN: I think you have the 23 wrong - 24 MR SANTOS: I have the wrong page. 25 THE CHAIRMAN: Or the wrong page has</p> <p style="text-align: center;">Page 57</p>	<p>1 writing a timeline of events and I realised 2 that this particular meeting hadn't been 3 included. 4 Q. Certainly this entry postdates 12 May 5 2020. 6 A. Yes. 7 Q. This meeting that you were referring to. 8 Can you please explain why - maybe you 9 consider you already have but to give you 10 another opportunity - why are there no notes 11 on the contents of the meeting? 12 THE CHAIRMAN: The meeting of 7 April. 13 MR SANTOS: Yes, the meeting that is 14 referred to there wrongly as having taken 15 place on 4 May. 16 A. The first thing is I wasn't given notice of 17 the meeting. I think Mr McGrail advised me 18 of it maybe ten minutes, 15 minutes before 19 we were going down. I was puzzled at why 20 we were having a meeting with the AG 21 because I had been dealing extensively with 22 the DPP up to that point and to my 23 knowledge we had never consulted the AG. 24 So I attended the meeting and the meeting 25 concerned that certainly Mr Llamas had</p> <p style="text-align: center;">Page 59</p>
<p>1 been put up. You want - 2 MR SANTOS: 1788, sorry. apologies. (To 3 the witness) Tuesday 4 May 2020. You 4 have explained that you now believe that it is 5 more likely that it took place on 7 April 6 2020. Can you please explain how it is, as 7 far as your knowledge and belief is 8 concerned, that it came to be dated Tuesday 4 9 May 2020? 10 A. Yes. This entry was made post the event, 11 probably quite some time after the event. 12 What happened on the meeting which I 13 presume was on 7 April was that Mr McGrail 14 had called me into the meeting at very short 15 notice. I hadn't been given prior notice of it 16 and so didn't take my daybook with me on 17 that day. The meeting went ahead, we 18 carried on with other business. The day after 19 that, if it was 7 April, was the day that we got 20 the advice from the DPP on considering that 21 JL was a suspect, and it wasn't until the 22 events leading up to Mr McGrail's request to 23 retire that I sat down and started piecing 24 together some notes that I had that hadn't 25 made it into my book, and I commenced</p> <p style="text-align: center;">Page 58</p>	<p>1 raised the issue of rationalising the charges 2 down. Again, that was something that I was 3 puzzled with because we were dealing with 4 that matter directly with the DPP, and we 5 talked about or it was mentioned the 6 possibility of considering Caine Sanchez 7 under the Disciplinary Code, which I was 8 very shocked at. Why I haven't made a 9 record of that meeting afterwards when I got 10 back: I think it was because almost straight 11 after that was when we received the video 12 conference with the DS or the DPP, and we 13 were very relieved that he had formed the 14 same view as we had with regard to JL's 15 status as a suspect, and it must have been 16 overlooked. It wasn't a meeting, as I said, 17 that we were going to take advice from the 18 AG. In fact, I think my notes say that he had 19 called the meeting because he was advising 20 the Government on ownership. 21 Q. Your note is set out in your third witness 22 statement at A 1436. That says: "Meeting 23 with AG number one. Also present IM, PR, 24 Lloyd DeVincenzi, 4 May 2020, 09.45 hours. 25 AG called the meeting as advising the</p> <p style="text-align: center;">Page 60</p>

15 (Pages 57 to 60)

<p>1 Government with regard to ownership of the 2 platform. Governor has no records on 3 ownership. AG asks that we rationalise the 4 charges down from 70-plus to whittle out 5 those that depend on ownership and then see 6 what remains. We argue that the case does 7 not fall or stand on ownership alone. JL's 8 involvement discussed and AG makes a note 9 on the back of a typed document, sensitive 10 shares", etc., etc. AG states that -- 11 A. Mr Santos, could I interrupt you? My 12 elderly mother is calling and I'm trying to 13 block the call and I can't. 14 Q. Yes, of course. If she keeps calling we 15 will take another break for you to answer the 16 call. 17 A. Thank you. 18 Q. The next bullet point says: "AG states 19 that if Government was owner of platform 20 then we would need a complaint from them. 21 Chief Secretary would have to provide an 22 additional statement explaining this." 23 A. I'm sorry, where are we? 24 Q. I am on the sixth bullet point. " Chief 25 Secretary would have to provide an</p> <p style="text-align: center;">Page 61</p>	<p>1 retire, so it must have been around 22 May. 2 Q. Had you discussed with Mr McGrail his 3 exchanges with the Attorney General on 12 4 May and subsequently? Had you discussed 5 that with Mr McGrail prior to preparing this 6 note? 7 A. I don't think so. I think he restricted his 8 conversation to say he'd had the dressing 9 down of a lifetime and that the CM had said 10 we had no idea on how to investigate white 11 collar crime, but I wasn't aware of any of the 12 details beyond that. 13 Q. Specifically, were you aware that there 14 was a disagreement between them as to what 15 had been agreed at the meeting of 7 April 16 2020 prior to preparing this note? 17 A. I don't think so but now obviously I know 18 what the subject of those conversations are, 19 so I'm not sure if I'm remembering from now 20 or from before. 21 Q. Your note states, as I read out: "AG asks 22 that we rationalise the charges down from 23 70-plus to whittle out those that depend on 24 ownership and then see what remains." You 25 say that the AG asks that we rationalise</p> <p style="text-align: center;">Page 63</p>
<p>1 additional statement explaining this. I said 2 how could they not complain. CS was 3 corrupt from what we had seen." I think that 4 is a reference to Sanchez, not the Chief 5 Secretary. 6 A. Correct, yes. 7 Q. "IM leaves meeting in a rush to attend 8 Covid meeting at Number 6. I apologised to 9 AG for being frank and he replies that it is 10 welcome." You say that you prepared this 11 note shortly after Mr McGrail retired, I 12 believe you say. 13 A. No, Mr Santos. It was after the meetings 14 with the AG of 13th, 15th and the 20th and 15 before Mr McGrail retired. 16 Q. Correct. I think at 65 you say: "I created 17 two timelines shortly before Mr McGrail 18 retired. RGP kindly provided me with access 19 to copy and I labelled them PR33 and PR34." 20 I think you did, but just to confirm, are you 21 able to give a rough date for when you 22 prepared the note? 23 A. As I said, it would have been after the 24 meetings of the 13th, 15th and the 20th with 25 the AG, and after Mr McGrail was invited to</p> <p style="text-align: center;">Page 62</p>	<p>1 down. Did you interpret this as a suggestion 2 or a direction from the Attorney General? 3 A. I think it was more a suggestion. This 4 wasn't a meeting where formal advice was 5 sought and given. There was no follow-up 6 with the notes. I remember the AG making a 7 note of the charges that we proposed and 8 drawing a line from 76 down to whatever 9 number remained if we took out any issue 10 concerning with the Government ownership 11 or their asserted ownership of the platform. 12 Q. Mr DeVincenzi in his evidence says that 13 his impression was that you and Mr McGrail 14 were open to undertaking this exercise if not 15 wholly convinced it was necessary. Is that a 16 fair characterisation of your position? 17 A. Yes, it is. 18 Q. Why were you not convinced that it was 19 necessary? 20 A. Because we had already discussed this 21 with the DPP. You can see from the 22 charging advice that was sent on 1 April that 23 we had considered the need to rationalise - 24 I'm not sure if that's the word; I think "whittle 25 down" or whatever word was used there. So</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

<p>1 we were alive to that, the need of that, from 2 way back. 3 Q. So your position then is that you agreed 4 that it was necessary to whittle down, to 5 bring down the number of charges. 6 A. It was part of our investigative process, 7 yes. 8 Q. Can we look at your third statement 9 paragraph 71, please, which is just over the 10 page. You say at paragraph 32: "I do not 11 recall any agreement being reached that the 12 RGP would not take any further action until 13 we had clarified the question of ownership 14 and rationalised the number of charges. 15 Furthermore, I do not remember agreeing 16 that nothing would happen until we met 17 again." That is in reference to the Attorney 18 General's assertions as far as an agreement 19 was concerned, is it not? 20 A. Sorry, could you repeat that? 21 Q. Apologies, I will make it clearer. Your 22 evidence in paragraph 71, am I right in 23 thinking it is in a section headed "Response 24 to Attorney General's affidavit dated 24 June 25 2022." The Attorney General's position is</p> <p style="text-align: center;">Page 65</p>	<p>1 agreement, are you saying that there was no 2 such agreement or that you just cannot 3 remember whether there was such an 4 agreement? 5 A. I'm saying that I don't remember ever that 6 being discussed that we wouldn't take any 7 further action until the Commissioner 8 reverted to the Attorney General. 9 Q. As to whether you agreed to meet and 10 that nothing would happen until you met 11 again, you say: "I do not remember agreeing 12 that nothing would happen until we met 13 again." I just ask you again: are you saying 14 that from your recollection no such 15 agreement was reached, or are you saying 16 you just cannot remember whether or not an 17 agreement was reached? 18 A. I'm saying that I can't remember that 19 being discussed, and I set out the reasons 20 why -- 21 Q. Yes. 22 A. - if it had happened, what would have 23 happened. 24 Q. I just want to be as clear as we can on 25 this. Did you or Mr McGrail agree to meet in</p> <p style="text-align: center;">Page 67</p>
<p>1 that there was an agreement that you would 2 not take any further action until the question 3 of ownership had been clarified and the 4 number of charges had been rationalised and 5 your response to that is in 71. You say: "I do 6 not recall any agreement being reached ... I 7 do not remember agreeing that nothing 8 would happen until we met again." I am just 9 giving you the benefit of your evidence but I 10 just want to break that down. Do you accept 11 that you agreed to rationalise the charges 12 down? 13 A. That was in our mind anyway, so there 14 was no need to agree to that course of action. 15 Q. Did you or Mr McGrail agree to resolve 16 the ownership issue? 17 A. That was something that we were trying 18 to address and had been trying to address for 19 quite some considerable time, again, so it 20 was nothing that we weren't already 21 considering. 22 Q. Then you say you do not recall an 23 agreement that the RGP would not take any 24 further action until those two things had been 25 done. When you say you do not recall an</p> <p style="text-align: center;">Page 66</p>	<p>1 the future with the Attorney General? 2 Independently of whether you agreed not to 3 take any further action before that meeting, 4 was there an agreement to meet at a later 5 stage to discuss -- 6 A. I can't say. 7 Q. Your evidence is that there were other 8 steps to be taken - sorry, I am just trying to 9 find the reference. Never mind. I will just 10 clarify that later if necessary. Just moving 11 on, just to give you a chance to respond to 12 the Attorney General's position, what is your 13 response to his evidence that the agreement 14 to rationalise the charges and resolve the 15 ownership issue and then meet him before 16 taking any further steps was clear beyond 17 peradventure? That is his position. What is 18 your response to that? 19 A. First, I had to look up the word 20 "peradventure". I was puzzled by that, 21 because at that stage we had met with the 22 DPP on 3 March, we had explained our 23 concerns about Mr Levy's status and what we 24 thought. We'd followed it up with an NDM 25 assessment and the charging advice report on</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 1 April. He had yet to respond to that, so we 2 did not know at that point what the DPP's 3 advice was, bearing in mind that from my 4 perspective we'd never consulted with the 5 AG. I was waiting for advice from the DPP, 6 which is normal in these cases, and the DPP's 7 advice came the following day on 8 April. 8 Sorry, on 7 April. Or was it 8 April? 9 Q. Yes, yes. you say: "For me to have 10 proceeded to obtain a warrant and continued 11 with an investigation against the express 12 instructions of the Attorney General would 13 have been unthinkable." Can you explain 14 why you say that it would have been 15 unthinkable? 16 A. If the Attorney General had advised the 17 Commissioner of Police and/or a senior 18 police officer not to do this, for that police 19 officer to have gone ahead and done it, it 20 would have ended his career. 21 Q. You also say that had such an agreement 22 been reached you would have made a record 23 of it either at the time or once you returned to 24 your office. 25 A. That is correct.</p> <p style="text-align: center;">Page 69</p>	<p>1 meeting at paragraph 24. A 1429. You say 2 as follows: "In conclusion, JL was 3 considered a person of interest by April 4 2019. In February 2020 I decided he might 5 be a suspect. After a review of the evidence 6 the DPP confirmed he was a suspect during 7 the video conference call on 8 April 2020." 8 What is your best recollection as to exactly 9 what the DPP said about whether or not Mr 10 Levy was a suspect? 11 A. It is as recorded in my daybook that we 12 have just referred to. 13 Q. When you say that he considered Mr 14 Levy a suspect, what you mean is that he said 15 "reasonable grounds to question, would be a 16 lingering doubt otherwise, obligation to 17 interview under caution." 18 A. Yes, but you need to read that in concert 19 with the paragraph above. 20 Q. In your notes. 21 A. Yes. 22 Q. "Re conspiracy to defraud charges, there 23 is sufficient evidence to lead a jury to a 24 realistic prospect of conviction." Is that a 25 reference to Mr Levy alone?</p> <p style="text-align: center;">Page 71</p>
<p>1 Q. But it is right to point out that that note in 2 your daybook is not a note that is made on 3 the same day or shortly after that meeting. It 4 was made some time later. 5 A. That is correct. 6 Q. Can we now turn to the meeting with the 7 DPP on 8 April 2020. That is C 1783, 8 please. It is in your daybook. 9 A. Yes, I'm looking for it. Yes, I have it. 10 Q. It says just above two-thirds of the way 11 down: "Re JL. Reasonable grounds to 12 question. Would be a lingering doubt 13 otherwise. Obligation to interview under 14 caution." Who said that? 15 A. The DPP. 16 Q. And what did you understand the DPP to 17 mean by "would be a lingering doubt 18 otherwise"? 19 A. That if we hadn't gone through that 20 process of intervening or interviewing Mr 21 Levy of seeking his account and not 22 proceeded with that, there would always be a 23 lingering doubt as to what the level of his 24 involvement was. 25 Q. In your statement you deal with this</p> <p style="text-align: center;">Page 70</p>	<p>1 A. No, it is a reference to the investigation 2 and the conspiracy to defraud charges which 3 included an allegation at that point that Mr 4 Levy was involved as well. 5 Q. Why then is there the need for the 6 separate reference to Mr Levy below? 7 A. Because that was specifically with -- All 8 the other people had been arrested and 9 interviewed and their property had been 10 searched. This point in the investigation - 11 and that was a year before that. At this point 12 in the investigation we were at the point of 13 taking action with regards to Mr Levy, and so 14 there's a specific section there on the need to 15 intervene with him. 16 Q. Now, would you agree with the Chief 17 Minister's suggestion that he has made 18 subsequently that the question of whether Mr 19 Levy should be a suspect was, to use his 20 word, borderline for you and the DPP? 21 A. No, I wouldn't say it was borderline. 22 Q. Why not? 23 A. Well, I'm not sure what evidence the 24 Chief Minister has seen but I have seen a 25 considerable amount of evidence which</p> <p style="text-align: center;">Page 72</p>

18 (Pages 69 to 72)

<p>1 suggested that there were reasonable grounds 2 to suspect that Mr Levy had committed an 3 offence and therefore my understanding at 4 that time and the understanding of the team 5 and in my view the opinion of the DPP was 6 that there was a reasonable ground and it 7 wasn't a borderline ground, it was enough 8 grounds to be able to seek a search warrant. 9 Q. Can we now look at your paragraph 41 of 10 your third witness statement, please. You 11 say: "At the time of the application we did 12 not know of any concerns on the part of 13 either the DPP or AG. At the end of the 14 video conference call on 8 April 2020 I 15 remember the DPP confirming that he 16 understood our rationale for preferring a 17 warrant to a production order. This was an 18 operational decision for the police. Although 19 he would have opted for a production order 20 rather than a warrant, whatever we chose he 21 would back us. At that point the choice 22 between a warrant and a production order 23 was secondary to the DPP agreeing that JL 24 should be treated as a suspect and I did not 25 note this exchange." Would you agree that,</p> <p style="text-align: center;">Page 73</p>	<p>1 face-to-face meeting, although, having said 2 that, we had met with the AG in real life the 3 day before, so it wasn't that unusual. It was 4 unusual that we hadn't received the advice in 5 writing, given that we had written and set out 6 our case. And so I didn't know what 7 conclusions the DPP was going to draw on 8 the work that we'd done so far. As I went 9 through the meeting, and I can see that it 10 lasted for almost 20 minutes, there was some 11 relief for my part as the SIO and from Mr 12 Wyan as the OIC that the DPP had drawn the 13 same conclusions as we had, and that was 14 what was foremost in my mind. The issue 15 about whether to use a production order or a 16 search warrant was incidental to that. It 17 wasn't the main thing that stuck in my mind 18 at that time and, as has been said, we 19 considered those matters to be operational 20 matters and not for the DPP. 21 Q. It also does not feature in Mr Wyan's 22 notes of the meeting. Do you know why it 23 does not feature in his notes? 24 A. I hadn't seen Mr Wyan's notes until after 25 the event, so no. His notes are usually much</p> <p style="text-align: center;">Page 75</p>
<p>1 even though you had not specifically sought 2 his advice on this matter, it was nevertheless 3 an important exchange when the DPP gave 4 his preference as to a production order over a 5 search warrant? 6 Q. A. In retrospect, yes, I do. 7 Q. Your charging report and covering email 8 did not seek advice on the warrant, and you 9 also say that it was not the practice to seek 10 advice on the warrant. How did it happen 11 that the DPP nevertheless gave his views on 12 this issue? 13 A. I don't know why the DPP offered that 14 comment. It was at the very, very end of our 15 conversation. 16 Q. Can you please explain why your note of 17 that meeting in the daybook does not include 18 a reference to the DPP's expression of a 19 preference for a production order rather than 20 a search warrant? 21 A. I've thought about this for some time and 22 why I didn't record that. What I remember is 23 that it was a strange way to take advice 24 because it was during Covid, so we were 25 holding a video conference as opposed to a</p> <p style="text-align: center;">Page 74</p>	<p>1 briefier than mine. It's also worth pointing 2 out, Mr Santos, that this isn't a minuted 3 meeting. These are making notes as we are 4 having a conversation, and so it is me making 5 a record of what I considered important at 6 that time, or not. Just what somebody had 7 said. It's not an accurate record of everything 8 that was said and discussed. 9 Q. What was your reaction to the DPP's 10 comment that he would have opted or he 11 would have preferred a production order? 12 A. I explained why we would prefer a search 13 warrant and he had said he understood our 14 rationale, that we were police officers or that 15 he wasn't a police officer and we weren't 16 lawyers and he understood our rationale for 17 choosing one against the other. 18 Q. Did it make you pause and consider 19 whether a warrant was the better option, as 20 opposed to a production order? 21 A. I suppose it made us think about it at that 22 time, but our main consideration for choosing 23 a warrant as opposed to a production order 24 was that a production order in Gibraltar 25 would have to be on notice.</p> <p style="text-align: center;">Page 76</p>

19 (Pages 73 to 76)

<p>1 Q. We will come to that, but a related but 2 slightly different question: did it make you 3 think that you should take legal advice on the 4 question of going for a search warrant rather 5 than a production order, the fact that the DPP 6 had expressed a preference for the latter? 7 A. No. 8 (11.55) 9 Q. Can we go to B5506, please. This is the 10 timeline that you have referred to that you 11 prepared - sorry, I think if we can just rotate 12 this page, please, to avoid neck aches. Thank 13 you. This is the timeline that you referred to 14 that you prepared, you say giving your best 15 answer, something around 22 May. I just 16 want to look at a couple of entries. I think it 17 is materially the same as your day book but 18 just to focus on a couple of things. On the 19 first page: 20 "DPP had long chat with MZ. Pretty much 21 agreed they were very comfortable to run the 22 case on the basis of summary of evidence 23 provided. No grounds at this stage to pull 24 any prosecution. AG could speak to COP re 25 public interest."</p> <p style="text-align: center;">Page 77</p>	<p>1 at later stage. If we need to pull in Levy then 2 so be it." 3 Can you just explain what is meant by those 4 last three lines. It may be clear to you but I 5 just want it confirmed. 6 A. Yes. A lot of times when I make notes I 7 am recording what people are saying, not 8 what I was saying, obviously. My 9 recollection of this is that the DPP is saying 10 that there is no public interest grounds for not 11 proceeding at this moment and the AG is in 12 agreement with me. If we don't, names may 13 come out at a later stage when the other 14 defendants would be charged. 15 Q. Sorry, names. Can I just, just to 16 specifically address that. Names? What 17 names are being referred to there? 18 A. He didn't specify what names would be 19 referred to, but I am assuming that he is 20 referring to JL. 21 Q. Yes, just because he says names rather 22 than name that I just wanted to make ... 23 A. An intervention with JL may have 24 resulted in other names being subject to 25 investigation.</p> <p style="text-align: center;">Page 79</p>
<p>1 Can you just explain what those last two 2 lines are recording? 3 A. Well, exactly what it says, Mr Santos, 4 that the AG - the AG - the DPP ad said that 5 he had considered the matter with Mark 6 Zammit, Crown Counsel Mark Zammit, and 7 he explained that they were very comfortable 8 in running the case, and that there were no 9 grounds at that stage to pull the case in public 10 interest. It is one of his functions, is to 11 determine whether there is a realistic 12 prospect of conviction or whether it is in the 13 public interest to proceed. So he was giving 14 an opinion that there was no grounds to pull 15 the prosecution at this stage and that the 16 Attorney General could speak to the 17 Commissioner of Police re public interest. 18 Q. Thank you. Then over the page there is a 19 similar reference when discussing JL, just at 20 the bottom: 21 "JL needs looking at. Ownership may not be 22 critical but may direct who is charged and 23 with what. Agrees completely let's drill 24 down into this. Public interest not pulling. 25 AG in full agreement. Names may come out</p> <p style="text-align: center;">Page 78</p>	<p>1 Q. What other names? 2 A. There was communication between Mr 3 Levy and the Chief Minister that we only had 4 a very small snapshot of what was being said. 5 Q. Then the final line: 6 "If we need to pull in Levy then so be it." 7 What does he mean by pull in Levy? 8 A. I think that's a reference to the NDM 9 where we said that there would be no 10 necessity to arrest Mr Levy if we could 11 proceed with a voluntary interview, 12 attendance by voluntary interview at a police 13 station, which is what we had intended to do. 14 Q. Can we turn to B3681, please. This is an 15 email from you to Superintendent Wyan, 16 saying: 17 "Please check for accuracy and revert." 18 That is your note of 8 April 2020. Again, it 19 seems that it is the same in substance as the 20 entry in your day book which we have 21 already seen. Was the day book entry 22 contemporaneous -- 23 A. Yes, it was. 24 Q. ... the same day? 25 A. And it was for that reason that I didn't</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 have written down that last comment about 2 the preference of a production order to a 3 search warrant. 4 Q. If that is the case, fan I just ask why you 5 sent this version to Mr Wyan for accuracy on 6 21 April, to check it for accuracy on 21 -- 7 A. It's dated 8 April. 8 Q. Sorry the email is dated 21 April 2020. 9 So you, on 21 April 2020, are sending to Mr 10 Wyan: 11 "Please check for accuracy and revert," 12 and then you set out your note of 8 April 13 2020. 14 A. I can't be certain. This is a briefing note 15 for the Commissioner. Perhaps the 16 Commissioner asked me to produce a record 17 of that advice, and I produced my record of 18 the meeting and asked Mr Wyan to check it 19 against his own notes - I hadn't seen his own 20 notes at that stage. 21 Q. Just sticking to the 8 April meeting, Mr 22 McGrail was not at that meeting - correct? 23 A. That is correct. 24 Q. Did you report back to him about that 25 meeting?</p> <p style="text-align: center;">Page 81</p>	<p>1 and we will back you whichever route that 2 you take." 3 Q. Can we now turn to Mr McGrail's 4 statement. It is bundle A, page 7, paragraph 5 23. He refers to the NDM. He says he did so 6 because of the sensitivities attached to this 7 particular case. It included the investigating 8 team's assessment of JL's suspected criminal 9 activity and how they intended to address 10 him. 11 "Based on the information provided by 12 Superintendent Richardson I concurred with 13 his approach but asked him by return email 14 to engage with the DPP to ensure the team's 15 assessment was correct. I understand that 16 Superintendent Richardson did in fact 17 communicate with the DPP, who confirmed 18 that JL was to be treated as a suspect. 19 Furthermore, that he would not advise on the 20 team's intended course of action as this was 21 purely an operational matter for the RGP to 22 decide upon, but that he would defend the 23 actions if and when it was needed to. 24 Superintendent Richardson will no doubt be 25 able to corroborate this. The way persons</p> <p style="text-align: center;">Page 83</p>
<p>1 A. Yes, I did. 2 Q. What exactly did you report back to him? 3 A. I would imagine the contents of that - the 4 briefing note that is there is pretty much the 5 same as what is in my day book. I would 6 have explained what I have explained here 7 today. 8 Q. Did you report back the DPP's preference 9 for a production order rather than a search 10 warrant? 11 A. I cannot be certain whether I did or 12 whether I didn't. 13 Q. Would you not agree that that is quite an 14 important thing to report to the 15 Commissioner of Police if the DPP expresses 16 a preference for a production order rather 17 than a search warrant? 18 A. It is important if it was explained in a 19 way that added importance to it. It was 20 almost - at the end of that conversation the 21 DPP said: "The only thing that we would do 22 different is we would choose a production 23 order over a search warrant, but we are not 24 police officers and you are not lawyers and 25 this is an operational decision for the police</p> <p style="text-align: center;">Page 82</p>	<p>1 who are suspected of having committed a 2 criminal offence are dealt with is enshrined," 3 etc etc etc. There is no reference there to the 4 DPP's preference, would you accept? 5 A. Yes, I accept that there is no reference 6 there. 7 Q. Is that because you explained only what 8 he then sets out in 23 and did not refer to the 9 preference? 10 A. I can't say why Mr McGrail chose to 11 write those words in that way. 12 Q. Can we go to bundle C, page 1784, 13 please. Halfway down there is a record of a 14 call between you and the DPP, it says on 20 15 April 2020. It appears, but please correct me 16 - I will let you read it actually. (Pause) Yes. 17 It seems to be a conversation about the 18 impact of Covid restrictions on the 19 Magistrates' Court procedures. Then four 20 lines from the bottom there is a sentence - 21 actually it starts on the preceding line but I 22 just wanted to check whether we have read it 23 correctly. I think it says: 24 "Still waiting for JL to be processed and US 25 inc."</p> <p style="text-align: center;">Page 84</p>

<p>1 A. That is correct.</p> <p>2 Q. Can you just please explain what that</p> <p>3 means?</p> <p>4 A. This conversation was with regard to the</p> <p>5 Delhi defendants being on bail and their bail</p> <p>6 being extended, and that if we were pushed</p> <p>7 in a position where we would have to charge</p> <p>8 those people without dealing with Mr Levy,</p> <p>9 who the action was still pending, it is setting</p> <p>10 out what our position would be: that we were</p> <p>11 still waiting for Mr Levy to be processed,</p> <p>12 there were enquiries in the United States,</p> <p>13 there was an international letter of request</p> <p>14 that had been processed, and the effect on</p> <p>15 those outcomes was uncertain. Our position</p> <p>16 was that we were ready to charge, that Covid</p> <p>17 came along and whatever interview of JL is</p> <p>18 needed, the US evidence had been delayed</p> <p>19 and it was delayed considerably because of</p> <p>20 the Covid crisis and the need for social</p> <p>21 distancing, and it would be senseless to</p> <p>22 charge at this time.</p> <p>23 Q. When you say you were ready to charge,</p> <p>24 do you mean in respect of the other suspects</p> <p>25 or do you also include JL within that --</p> <p style="text-align: center;">Page 85</p>	<p>1 on the first line:</p> <p>2 "The intention of this report is to consider the</p> <p>3 options available when dealing with Mr</p> <p>4 Heine Levy in respect of Operation Delhi."</p> <p>5 Did you discuss this report with Mr Wyan?</p> <p>6 A. I would imagine I did, yes.</p> <p>7 Q. There is no entry in your day book as to</p> <p>8 any discussion of this document with Mr</p> <p>9 Wyan. Would you expect there to be one?</p> <p>10 A. Not necessarily. I had many</p> <p>11 conversations with Mr Wyan on a daily</p> <p>12 basis.</p> <p>13 Q. Just turning to some of the detail of this,</p> <p>14 paragraph 4 says:</p> <p>15 "Whilst there has been a substantial time</p> <p>16 since the alleged offences took place there is</p> <p>17 still a requirement to seize the digital</p> <p>18 devices. Given that we suspect that an</p> <p>19 offence may have been committed and in</p> <p>20 order to prevent loss/destruction of evidence</p> <p>21 we would ideally secure the evidence in situ</p> <p>22 and without giving Mr Levy prior notice of</p> <p>23 our intent."</p> <p>24 Is Mr Wyan referring there to a search</p> <p>25 warrant effectively?</p> <p style="text-align: center;">Page 87</p>
<p>1 A. No, no, this is in relation to the other</p> <p>2 suspects.</p> <p>3 Q. Can we now turn to B3277, please. This</p> <p>4 is an email from Superintendent Wyan to you</p> <p>5 saying - actually Detective Inspector at that</p> <p>6 point:</p> <p>7 "Sir, as requested, please see attached report</p> <p>8 in relation to options for interviewing Mr</p> <p>9 Levy. Kind regards, Mark."</p> <p>10 That email is to you and nobody else. Then</p> <p>11 over the page there is what you were</p> <p>12 referring to before, the fact that it is</p> <p>13 addressed to the Commissioner of Police,</p> <p>14 that does not necessarily mean that it went to</p> <p>15 the Commissioner of Police. Do you know</p> <p>16 whether this document was seen by Mr</p> <p>17 McGrail?</p> <p>18 A. I couldn't say. If it was, it would</p> <p>19 probably have been by email so there would</p> <p>20 be a trace of it.</p> <p>21 Q. Do you know whether this was sent by</p> <p>22 Mr Wyan or you to the DPP?</p> <p>23 A. No, I don't know.</p> <p>24 Q. Did you discuss the options - we refer to</p> <p>25 this as the options report just because it says</p> <p style="text-align: center;">Page 86</p>	<p>1 A. I would imagine so, yes.</p> <p>2 Q. Did you agree with this assessment by Mr</p> <p>3 Wyan?</p> <p>4 A. Yes, I did.</p> <p>5 Q. Then paragraph 5 says:</p> <p>6 "On arrival at the premises we would</p> <p>7 therefore seek in the first instance to be</p> <p>8 granted access to the relevant devices</p> <p>9 without the use of a warrant. A warrant</p> <p>10 would only require execution where</p> <p>11 cooperation was not offered."</p> <p>12 So do you mean there that you would ask for</p> <p>13 a voluntary handover of the devices, or that</p> <p>14 you would ask for a voluntary search?</p> <p>15 A. It's Mr Wyan's report so --</p> <p>16 Q. Sorry.</p> <p>17 A. ... he is telling me that when we arrive at</p> <p>18 the premises armed with a warrant, that we</p> <p>19 would seek the cooperation of Mr Levy to</p> <p>20 hand over the items voluntarily, in which</p> <p>21 case there would be no need to execute the</p> <p>22 search warrant. In fact that is what</p> <p>23 happened.</p> <p>24 Q. Presumably you agreed with this</p> <p>25 proposal.</p> <p style="text-align: center;">Page 88</p>

<p>1 A. Yes, I did.</p> <p>2 Q. Now, can we go to paragraphs 15 and 16.</p> <p>3 This is one of the options that is put forward,</p> <p>4 request Mr Levy attend NMH, and it says the</p> <p>5 following:</p> <p>6 "Mr Levy could be requested to attend the</p> <p>7 police station. In doing so he could be asked</p> <p>8 to bring any devices for analysis and to</p> <p>9 submit to an interview. However, this would</p> <p>10 notify Mr Levy of our intentions and would</p> <p>11 thereby risk a loss of evidence. This would</p> <p>12 be contrary to the way we have dealt with the</p> <p>13 other suspects, although we could argue that</p> <p>14 given the amount of time he will be well</p> <p>15 aware of the arrests and of the police</p> <p>16 investigation."</p> <p>17 Did you agree with this argument that he</p> <p>18 refers to?</p> <p>19 A. I am not sure if I agreed with it at the</p> <p>20 time. I can tell you now that reading it now I</p> <p>21 don't agree with that line and I don't know</p> <p>22 whether he qualifies it further in that</p> <p>23 document.</p> <p>24 Q. I think it is fair to say at that paragraph 18</p> <p>25 he says:</p> <p style="text-align: center;">Page 89</p>	<p>1 A. Because we feared that there was a</p> <p>2 reasonable chance of losing evidence if we</p> <p>3 proceeded on notice.</p> <p>4 Q. Mr Wyan states:</p> <p>5 "We are in the process of starting to draft</p> <p>6 schedule 1 warrants."</p> <p>7 Who was the person actually drafting the</p> <p>8 warrants?</p> <p>9 A. I think he would be referring to his team.</p> <p>10 Q. Then he says:</p> <p>11 "When you get a moment I would like to</p> <p>12 discuss which lawyer we would be</p> <p>13 instructing. It is unlikely we could use a</p> <p>14 lawyer from the OCPL."</p> <p>15 Sorry, I should have read the preceding</p> <p>16 sentence:</p> <p>17 "At this stage we need to consider putting the</p> <p>18 safeguards in place in order to deal with</p> <p>19 legally privileged material."</p> <p>20 Had you by that point already agreed that</p> <p>21 you would instruct a lawyer?</p> <p>22 A. It indicates that we had agreed that that</p> <p>23 was necessary, yes.</p> <p>24 Q. Then just up from there, we can see a</p> <p>25 response:</p> <p style="text-align: center;">Page 91</p>
<p>1 "In my view we should approach Mr Levy at</p> <p>2 work,"</p> <p>3 so he ultimately opts against, I think it is fair</p> <p>4 to say, that approach. But can I just ask this:</p> <p>5 given that that argument had been raised with</p> <p>6 you, do you know why it was not included as</p> <p>7 a potential counter-argument in the</p> <p>8 information that was ultimately put before</p> <p>9 the magistrate?</p> <p>10 A. I do not.</p> <p>11 Q. Can we go to 3283, please. Sorry, just on</p> <p>12 the preceding page we can see that this is an</p> <p>13 email from Mr Wyan to you on 23 April, and</p> <p>14 it says:</p> <p>15 "Sir, we are in the process of starting to draft</p> <p>16 schedule 1 warrants in respect of Levy."</p> <p>17 So he by then appears to have been</p> <p>18 proceeding on the basis that the RGP would</p> <p>19 seek a warrant. Did you approve that?</p> <p>20 A. Yes.</p> <p>21 Q. I think you have already referred to this</p> <p>22 but just to give you the opportunity to give</p> <p>23 the fullest explanation you want to give, why</p> <p>24 did you and Mr Wyan ultimately decide to</p> <p>25 proceed with a warrant?</p> <p style="text-align: center;">Page 90</p>	<p>1 "Mark, happy to discuss this afternoon,"</p> <p>2 on the same day, 23 April. What was</p> <p>3 decided in terms of which lawyer you would</p> <p>4 be discussing and - sorry, that: what was</p> <p>5 decided in terms of which lawyer you would</p> <p>6 be discussing?</p> <p>7 A. I am just looking in my day book entry.</p> <p>8 There is no entry for that date. From</p> <p>9 recollection and I seem to remember that</p> <p>10 there was an exchange of emails between</p> <p>11 myself and Mr Wyan about this subject.</p> <p>12 From recollection, I think that we decided to</p> <p>13 leave it until we attended Hassans and put</p> <p>14 that question to Mr Levy and allow him to</p> <p>15 make that decision.</p> <p>16 Q. I will take you, to be fair to you, to the</p> <p>17 subsequent emails. There is 3285, 30 April.</p> <p>18 This is- again just to show you the top, 30</p> <p>19 April at 5.29, and the bit in red:</p> <p>20 "All going well. The above should be all</p> <p>21 ready next week. This still leaves two</p> <p>22 problems: (1) we have no lawyer to review</p> <p>23 the privileged material. I would suggest that</p> <p>24 we contact the DPP to see whether</p> <p>25 instructing/contacting a lawyer is a viable</p> <p style="text-align: center;">Page 92</p>

<p>1 option,"</p> <p>2 and then a chaser, I think on 4 May, above</p> <p>3 this:</p> <p>4 "Grateful if you could please consider the</p> <p>5 issues raised in my previous email below in</p> <p>6 respect of the Levy search warrant. With</p> <p>7 your permission ..."</p> <p>8 MALE SPEAKER: I think, Mr Santos, you</p> <p>9 missed out the word "local" in referring to a</p> <p>10 lawyer, which I think is quite important</p> <p>11 context.</p> <p>12 MR SANTOS: Thank you. Just to re-read</p> <p>13 (1):</p> <p>14 "We have no lawyer to review the privileged</p> <p>15 material. I would suggest that we contact the</p> <p>16 DPP to see whether instructing or contacting</p> <p>17 a local lawyer is a viable option."</p> <p>18 Thank you for that clarification. Then a</p> <p>19 chaser:</p> <p>20 "Grateful if you could please consider the</p> <p>21 issues raised in my previous email below in</p> <p>22 respect of the Levy search warrant. With</p> <p>23 your permission I would like to write to the</p> <p>24 DPP and ask whether he would have an issue</p> <p>25 instructing a local lawyer for privileged</p> <p style="text-align: center;">Page 93</p>	<p>1 A. That is correct.</p> <p>2 Q. Turning to consider the information itself,</p> <p>3 but just your evidence in relation to it is at</p> <p>4 A1290 in 18(b). In response to the question</p> <p>5 by the Inquiry:</p> <p>6 "What documents, including applications,</p> <p>7 witness statements, exhibits, correspondence</p> <p>8 and written submissions were relied on when</p> <p>9 apply for the search warrants?"</p> <p>10 you say:</p> <p>11 "There was a single information which I</p> <p>12 believe was drafted by Mr Wyan and which I</p> <p>13 had approved. I think he had used the</p> <p>14 charging report as the basis for the</p> <p>15 information. I cannot remember whether</p> <p>16 there were any documents appended to the</p> <p>17 information. The warrant application was</p> <p>18 signed by Sergeant Paul Clarke and approved</p> <p>19 by Detective Inspector Craig Goldwin of the</p> <p>20 RGP Money Laundering Investigation Unit.</p> <p>21 This was because Mr Wyan was on leave on</p> <p>22 the day of the application of the warrants."</p> <p>23 Then you say at paragraph 26 of your third</p> <p>24 statement, sorry, A1430, you say the</p> <p>25 following at 26:</p> <p style="text-align: center;">Page 95</p>
<p>1 material."</p> <p>2 Did you or Mr Wyan then contact the DPP</p> <p>3 about this?</p> <p>4 A. I don't know if we wrote to the DPP. My</p> <p>5 recollection is that it would have been</p> <p>6 discussed and we agreed that we would</p> <p>7 consult with Mr Levy to see what preference</p> <p>8 he had. In fact this is what is recorded on the</p> <p>9 body worn camera footage at that meeting.</p> <p>10 Q. Can we now turn to the warrant</p> <p>11 applications. If we go to your third witness</p> <p>12 statement, paragraph 34, A1431, you say:</p> <p>13 "I remember also discussing the execution of</p> <p>14 the search warrant at Hassans with Mr</p> <p>15 McGrail. He said that the execution should</p> <p>16 be kept secret as far as possible until the last</p> <p>17 minute to protect the operational security of</p> <p>18 the investigation. He also suggested that</p> <p>19 body worn footage should be taken at</p> <p>20 Hassans to prevent any misunderstandings.</p> <p>21 He advised making the application to the</p> <p>22 Supreme Court."</p> <p>23 Now, you have already said that you do not</p> <p>24 know why the decision was taken to go to the</p> <p>25 magistrate rather than the Chief Justice.</p> <p style="text-align: center;">Page 94</p>	<p>1 "I do not remember seeing and approving the</p> <p>2 application before it was submitted to the</p> <p>3 Magistrates' Court. I knew it was likely to be</p> <p>4 based on Mr Wyan's summary of evidence</p> <p>5 relating to JL which he and I had considered</p> <p>6 in detail with the DPP on 8 April 2020. At</p> <p>7 paragraph 44 of his statement dated 21</p> <p>8 November 2022 Mr Wyan confirms that</p> <p>9 Detective Constable Clarke produced a 38</p> <p>10 page information document in support of the</p> <p>11 application."</p> <p>12 So are we to take it that your second</p> <p>13 statement is the more accurate of those two</p> <p>14 accounts, in that you did not approve the</p> <p>15 information?</p> <p>16 A. I am sorry, I don't understand what the</p> <p>17 difference is between one and the other.</p> <p>18 Q. Sorry. It is just because paragraph 18(b)</p> <p>19 on 1290 you said - sorry, I should have</p> <p>20 pointed this out to you:</p> <p>21 "There was a single information which I</p> <p>22 believe was drafted by --</p> <p>23 A. Sorry, where are you ...? What</p> <p>24 paragraph are you referring to?</p> <p>25 Q. Sorry, 18(b).</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 A. Uh-huh.</p> <p>2 Q. "There was a single information which I</p> <p>3 believe was drafted by Mr Wyan and which I</p> <p>4 had approved."</p> <p>5 I think in fairness to you this was drafted</p> <p>6 before you had access to all of your papers.</p> <p>7 A. That is correct.</p> <p>8 Q. Then you prepared your third statement</p> <p>9 where you say that in fact you did not - so if</p> <p>10 you go to your third statement, paragraph 26,</p> <p>11 you say:</p> <p>12 "I do not remember seeing and approving the</p> <p>13 application before it was submitted to the</p> <p>14 Magistrates' Court. I knew it was likely to be</p> <p>15 based on Mr Wyan's summary of evidence,"</p> <p>16 and then the final two lines:</p> <p>17 "Mr Wyan confirms that Detective Constable</p> <p>18 Clarke produced the information."</p> <p>19 Is that your evidence now, as opposed --</p> <p>20 A. Since the disclosure of the application -</p> <p>21 yes, since the disclosure of the information</p> <p>22 for the application for the warrant, I also had</p> <p>23 disclosure from the RGP and over this</p> <p>24 weekend I saw that one of the documents that</p> <p>25 I had requested disclosure of has my</p> <p style="text-align: center;">Page 97</p>	<p>1 you still do not know why?</p> <p>2 A. I don't know with any certainty. From a</p> <p>3 vague recollection, it may have been that the</p> <p>4 advice was that these applications are made</p> <p>5 before the magistrate and not before a judge.</p> <p>6 I really do not know. I know that an</p> <p>7 appointment had been made with the</p> <p>8 magistrate by the time that I was informed</p> <p>9 that the appointment had been made and we</p> <p>10 needed to go to court.</p> <p>11 Q. Can we just go back to your 18(b) in</p> <p>12 Richardson - in your second statement,</p> <p>13 please, which is on A1290. You say that you</p> <p>14 did not see Crown Counsel or counsel's</p> <p>15 advice on the information. I think we have</p> <p>16 established - well, I ask the question: is that</p> <p>17 typical RGP practice?</p> <p>18 A. Sorry, where are you on the document?</p> <p>19 Q. Sorry. 18(b).</p> <p>20 A. Yes.</p> <p>21 Q. Sorry, 18(c):</p> <p>22 "Was Crown Counsel or external counsel</p> <p>23 instructed to address the court when seeking</p> <p>24 the search warrant? If so, who was instructed</p> <p>25 and how were they chosen.</p> <p style="text-align: center;">Page 99</p>
<p>1 handwritten notes on it, so it is likely that I</p> <p>2 saw that application, probably on the day that</p> <p>3 it was going to court because I had my</p> <p>4 handwritten notes on it querying certain</p> <p>5 things there. So it is fair to say that I</p> <p>6 approved as going for the application but</p> <p>7 probably had not had much time to consider</p> <p>8 it before we went to court.</p> <p>9 Q. Does an application, an information of</p> <p>10 that nature, normally need to be signed off by</p> <p>11 the SIO?</p> <p>12 A. No.</p> <p>13 Q. No. Do you know whether Mr McGrail</p> <p>14 had seen or approved the application?</p> <p>15 A. I don't think so.</p> <p>16 Q. You said earlier that you do not know</p> <p>17 why they went before the stipendiary</p> <p>18 magistrate as opposed to the Chief Justice.</p> <p>19 Now that you recognise that you saw the</p> <p>20 information did it occur to you that they were</p> <p>21 going to the stipendiary magistrate as</p> <p>22 opposed --</p> <p>23 A. Yes, yes.</p> <p>24 Q. So then you were aware that they were</p> <p>25 going - but you do not - is your evidence that</p> <p style="text-align: center;">Page 98</p>	<p>1 "Counsel was not instructed."</p> <p>2 Does that reflect typical RGP practice in</p> <p>3 relation to the information seeking a warrant?</p> <p>4 A. It did at that time. I don't know if that</p> <p>5 position has changed.</p> <p>6 Q. Sorry, yes, at the time. Was the</p> <p>7 information as far as you were aware sent to</p> <p>8 the DPP prior to the application being made?</p> <p>9 A. Not as far as I was aware.</p> <p>10 Q. Can we now turn to the information itself,</p> <p>11 which is at B3243. The information at</p> <p>12 paragraph 319 says the following:</p> <p>13 "The above paragraphs demonstrate Levy</p> <p>14 was involved in the plan to remove the</p> <p>15 NSCIS contract from Bland."</p> <p>16 Do you agree that the evidence set out in the</p> <p>17 information supported that conclusion?</p> <p>18 A. In retrospect perhaps it didn't go into</p> <p>19 enough detail on that in the application.</p> <p>20 Q. The basis is set out in (a) to (e). I will</p> <p>21 just read those out:</p> <p>22 "(a) Messages between Levy and Sanchez</p> <p>23 show communication discussing moving the</p> <p>24 contract away from Bland in early 2018,</p> <p>25 referring to paragraphs 45 to 47 above."</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

1 Then:
 2 "(b) Levy was instrumental in the creation of
 3 36 North,"
 4 and it sets out his ownership and the fact that
 5 he injected a large sum of money, then:
 6 "(c) He was using his influence with the
 7 Chief Minister to the advantage of 36 North.
 8 "(d) He was regularly contacting both
 9 Cornelio and Perez in relation to 36 North
 10 whilst they were still employed by Blands
 11 and following their resignation, referring to
 12 paragraph 61 to 89,"
 13 and then:
 14 "(e) Communications show he was aware of
 15 the computer misuse offences committed by
 16 Cornelio, paragraphs 99 to 100."
 17 Can I take you to those paragraphs, actually
 18 to 98 which starts on 3218. Paragraph 98
 19 says, and again we just have to bear in mind
 20 that there is something redacted for the same
 21 reason, that:
 22 "On 11 April 2019 Cornelio wrote to Levy:
 23 'We are going to have a field day on the
 24 national security report. Just wait until you
 25 see it. For now I am reviewing every single

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1 module one by one."
 2 Then at 99:
 3 "On 19 October 2018 Cornelio wrote to Levy
 4 saying: 'Morning, James. Very confidential
 5 note. Gaggero has brought in a forensic team
 6 of six to look at anything John and I may
 7 have done to tamper with the system, etc.
 8 Gaggero is going all out it seems."
 9 Then 100:
 10 "On the same day Cornelio wrote to Perez
 11 saying: 'Spoke to James ref forensic team
 12 confidentially. Spoke to him on the phone.
 13 Corne and I can discuss. He says not to
 14 worry, I am very concerned that they will try
 15 to prove I have acted to sabotage the system
 16 in any way,"
 17 etc. Then 101:
 18 "The evidence indicates that Levy discussed
 19 with the forensic team ..."
 20 Sorry, sorry.
 21 "The evidence indicates that Levy discussed
 22 the forensic team with Cornelio and that he
 23 had given him advice about the situation."
 24 Again, please do not stray into anything that
 25 is redacted, and if you feel you do need to

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1 then that is something we can deal with
 2 afterwards, but do you agree - yes or no - that
 3 this was sufficient evidence for your
 4 conclusion that there were reasonable
 5 grounds to suspect that Mr Levy knew about
 6 Mr Cornelio's sabotage, alleged sabotage?
 7 **A. I am sorry, Mr Santos, I can't answer that**
 8 **question yes or no. I can tell you the**
 9 **knowledge that I had and that the team had,**
 10 **had reasonable grounds to suspect it, but it**
 11 **may not be reflected in that information.**
 12 Q. Is there anything that springs to mind that
 13 is not referred to there?
 14 **A. Again it is difficult to explain that**
 15 **because the seriousness of the impact on**
 16 **NSCIS is something that we are not allowed**
 17 **to discuss.**
 18 Q. We can discuss that in private if you feel
 19 the need to do so. I know that you are -
 20 sorry, I think that is all I have to ask about
 21 that. Then if we can go to 322, which is on
 22 B3244, here the information states that
 23 material sought is not - can I just find that
 24 reference. Hang on. Yes, it is halfway down
 25 the third paragraph:

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1 "The material sought is not and does not
 2 contain any legal privileged material.
 3 However, it is understood legally privileged
 4 material may be present on digital devices
 5 which will be seized."
 6 Obviously I accept you are not a lawyer, but
 7 what was your understanding of why the
 8 material that was sought was not privileged?
 9 **A. Because we considered Mr Levy to be a**
 10 **suspect in his own right and that he was not**
 11 **advising in a lawyer/client relationship the**
 12 **other people suspected in 36 North. In fact**
 13 **this was the very first contact that I had had**
 14 **with the DPP, was to consider that matter.**
 15 Q. Was your understanding that it was
 16 lawful to obtain a search warrant for a device
 17 containing or potentially containing
 18 privileged material as long as the material of
 19 interest was not privileged?
 20 **A. Sorry, could you repeat that?**
 21 Q. Sorry. Was your understanding that it
 22 was lawful to get a search warrant for a
 23 device that might contain or did contain
 24 privileged material, it was lawful to do so if
 25 actually the material of interest was not

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1 privileged?

2 **A. I am sorry, I haven't understood what it is**

3 **that you are asking me.**

4 Q. Let me see if I can put it in a different

5 way. Was your understanding that a search

6 warrant could seek - why do I not take you to

7 320 above, the previous page:

8 "I now seek to recover: (1) electronic

9 devices, including but not limited to mobile

10 telephones and computers capable of sending

11 and receiving text messages, instant

12 messages and/or electronic mail owned

13 and/or used by Heine Levy and any device

14 capable of storing any of the aforementioned

15 communications."

16 You were aware of course that Mr Levy was

17 a lawyer.

18 **A. That is correct.**

19 Q. Chances are that any electronic device

20 capable of sending and receiving text

21 messages, instant messages and/or electronic

22 mail would have included privileged

23 material, and you accept --

24 **A. That is correct.**

25 THE CHAIRMAN: You mean privileged

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1 material relating to clients other --

2 MR SANTOS: Other than.

3 THE CHAIRMAN: Yes.

4 MR SANTOS: Yes, and your position was

5 that the material that you were after, the

6 messages, communications relating to 36

7 North, was not privileged.

8 **A. That is correct.**

9 Q. But you accept that the devices that you

10 sought, there was a likelihood that they

11 would have contained privileged material

12 relating to other matters.

13 **A. That is correct.**

14 Q. But as far as you were concerned it was

15 nevertheless lawful to seek the search

16 warrant because the material that you were

17 after was not, as far as you were aware,

18 privileged.

19 **A. That is correct.**

20 Q. Thank you. Did you consider defining

21 that paragraph (1) under 320 more narrowly

22 to only capture the documents and

23 communications that you were interested in

24 and that you did not consider to be

25 privileged?

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1 **A. Not at that time, no.**

2 Q. Do you know if anybody else did?

3 **A. I do not.**

4 Q. The information then says:

5 "All digital devices,"

6 sorry, going back to the paragraph we were

7 at, 322, the final sentence of the largest

8 paragraph:

9 "All digital devices will be reviewed by an

10 appointed independent legal representative

11 prior to the OIC being given access to any

12 material."

13 I think your position is that those

14 arrangements had not been made and that

15 you were going to consult Mr Levy about

16 those arrangements and which lawyer should

17 be instructed.

18 **A. That is correct.**

19 Q. Is that correct? When was it intended

20 that the legal representative would start

21 reviewing the material?

22 **A. Well, we couldn't make those**

23 **arrangements until we had spoken to Mr**

24 **Levy. That happened on the day of the**

25 **warrant and, as you know, the consent to**

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1 **examine his devices was withdrawn the same**

2 **day that it was given.**

3 Q. Do you think in retrospect that the drafter

4 of this document could have benefited from

5 legal advice?

6 **A. Without any doubt at all.**

7 Q. If we look at paragraph 324, the heading

8 is:

9 "Other methods of obtaining the material

10 have not been tried because it appeared they

11 were bound to fail,"

12 and then underneath it says the following:

13 "The material sought is held by a subject in

14 this case and it is feared if notice was given

15 to the subject to provide this material to the

16 OIC, the subject would destroy, alter, deface

17 or conceal the material sought."

18 What was, as far as you understand it, the

19 basis for making that assertion?

20 **A. I think there were a number of**

21 **considerations there. The first one was the**

22 **seriousness of the offence that we were**

23 **investigating, which involved the alleged**

24 **hacking of the National Centralised Security**

25 **Intelligence System which was connected to**

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<p>1 a fraud, and the fact that Mr Levy was a 2 senior lawyer is something that was clearly 3 on our minds there, and it is sad to think that 4 Mr Levy may have been involved in this. 5 But there was a risk, we considered that there 6 was a very real risk that the evidence would 7 be destroyed, lost or defaced because it had 8 happened before when we interceded with 9 Mr Sanchez. We know that he had deleted 10 communications before we managed to see 11 him. He was recalled from the UK on a 12 certain day and by the time he had arrived a 13 large chunk of his communications had been 14 deleted. So we had part of the conversations 15 between Mr Levy and other people - in fact 16 on most occasions there was no response - 17 but we also knew that he was using another 18 device and so had we lost that opportunity to 19 seize them without notice, we would not 20 have been able to progress that investigation. 21 Q. Can we just look, in fairness to you, at 22 your third statement, paragraph 38, please, 23 which is A1431. You say this: 24 "Although he had been aware of the 25 investigation for over a year, JL did not</p> <p style="text-align: center;">Page 109</p>	<p>1 "The material sought is held by a subject in 2 this case and it is feared if notice was given 3 to the subject to provide this material to the 4 OIC, the subject would destroy, alter, deface 5 or conceal the material sought." 6 Do you agree that it is fair to say that that 7 explanation, what is on the page, could apply 8 to any suspect? 9 A. Not necessarily. We often find when we 10 intercede with people that they do not delete 11 information even though they know that the 12 police are investigating them. So it is not 13 unusual for people not to delete information 14 even though they may suspect that they have 15 been involved in an investigation. 16 THE CHAIRMAN: Can I put a question? It 17 looks to me as if that sentence comes straight 18 out of a template. 19 MR SANTOS: The Chairman's statement is 20 that it looks to him like that statement comes 21 straight out of a template. Are you aware 22 whether it comes straight out of a template? 23 A. I am not but I am aware that in the UK 24 they have access to a set of templates in the 25 Criminal Procedure Rules that we don't use</p> <p style="text-align: center;">Page 111</p>
<p>1 know, so far as I was aware, how much 2 information we had collected that implicated 3 him. If he had deleted communications from 4 his digital devices after the earlier arrests, as 5 CS had done, notice of an application for a 6 production order might have resulted in him 7 arranging for his devices to be professionally 8 wiped. That would have meant that any 9 deletions which might themselves have been 10 relevant evidence and which might have been 11 forensically recovered would have been 12 destroyed. We were conscious of JL's 13 standing in the legal profession in Gibraltar. 14 We tried to treat him with sensitivity and 15 respect in so far as that was compatible with 16 treating him in the same way as other 17 suspects," 18 and you say: 19 "However, it is likely that JL did receive 20 preferential treatment after all," 21 and then you stray into other things which we 22 will come to. But just going back to the 23 information, that paragraph 324 on B3245, it 24 is a paragraph there at the top of the page, 25 page 3245:</p> <p style="text-align: center;">Page 110</p>	<p>1 in the RGP. My understanding is that the 2 forms that we use were drafted by ourselves. 3 Q. But -- 4 THE CHAIRMAN: Hang on. The template 5 may well have been drafted by the RGP but 6 that looks to me as if it comes straight off a 7 template. Is that right or not? 8 A. I'm sorry, sir, I don't know whether a 9 template was used or not. 10 THE CHAIRMAN: Because it does not refer 11 to any of the circumstances of the particular 12 case. 13 MR SANTOS: That was going to be my 14 next question to you, which is: the matters 15 that you have described in your evidence that 16 drove you to consider that a search warrant 17 was more appropriate in respect of Mr Levy 18 specifically, do not feature in that paragraph. 19 Do you accept that? 20 A. Yes. 21 Q. Do you know why? 22 A. I would imagine it is because we did not 23 have the benefit of legal advice in drafting up 24 this application. 25 Q. I just ask you again: do you know why</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 that paragraph does not mention the counter- 2 argument that Mr Wyan had made in the 3 options report, that Mr Levy had known 4 about the investigation for a long time and 5 therefore it might be said there was less of a 6 risk of destruction of evidence? 7 A. I do not know. 8 Q. You were aware of course, as we have 9 established, that the DPP's preference was for 10 a search warrant. Given that this was -- 11 A. No, Mr Santos, his preference was for a 12 production order. 13 Q. Sorry, sorry, thank you very much for the 14 correction. You were aware of course that 15 the DPP's preference was for a production 16 order. Given that this was an ex parte 17 application, do you know why this was not 18 included in the information, the DPP's 19 preference? 20 (12.40) 21 A. Again, I would have to say that, because 22 we didn't have the - we did-- it was not 23 practice to seek legal advice on the drafting 24 of - of applications at that stage, and may not 25 be still today, I do not know.</p> <p style="text-align: center;">Page 113</p>	<p>1 ought to know that when you are deciding 2 whether or not it is fair to grant the 3 application. 4 A. Yes, sir. But I am not certain what we 5 said to the magistrate, and I do not remember 6 what questions he asked and what we 7 responded. It is possible that the DPP's 8 preference was discussed, and that we said to 9 him that it - that we had decided that it was 10 an operational matter and that the - the DPP 11 would back us whatever route that we chose. 12 But, unfortunately I do not have a record of - 13 of what was discussed during that 14 application. 15 Q. Can I ask you to turn to D2900, please. 16 This is a document with the electronic 17 document title "Levy warrant notes", which 18 we understand is a document prepared by DS 19 Clarke. 20 THE CHAIRMAN: Did you give the right 21 reference, there? 22 MR SANTOS: Sorry? 23 THE CHAIRMAN: Sorry, I was wondering 24 if you gave the right reference. 25 Q. D2900. My understanding is that the</p> <p style="text-align: center;">Page 115</p>
<p>1 THE CHAIRMAN: No, but that is not quite 2 an answer to the question. 3 Q. Yes, because I accept (well, it is not for 4 me to accept or otherwise, but I understand) 5 your evidence, which is that it was not 6 practice. But as it happened, you had 7 received the DPP's indication as to his 8 preference in those circumstances; why was 9 that not reflected in the information? 10 A. Because the DPP's preference was 11 qualified with his - his opinion that he 12 understood why we would choose to elect a 13 search warrant as opposed to a production 14 order, and that - would back us whichever 15 decision we would take. In fact, in meetings 16 that followed that the - the DPP opined that 17 our decision to obtain a search warrant would 18 be defensible at JR. 19 THE CHAIRMAN: All that the magistrate 20 knows is what you tell him. 21 A. That is correct, sir. 22 THE CHAIRMAN: Did you not think it was 23 rather important to tell that: actually, we 24 discussed this with the DPP and his 25 preference is for a production order; you</p> <p style="text-align: center;">Page 114</p>	<p>1 electronic file is named "Levy warrant 2 notes"; obviously, I recognise that is not 3 reflected in the heading on the actual page, 4 but on the computer the file shows up with a 5 description, "Levy warrant notes". Do you 6 know who prepared this document? 7 A. No. 8 Q. Can we go to 2905, please. The final 9 paragraph of that page just says, "Necessity. 10 DPP, CoP and Detective Superintendent 11 consulted with, who recommend course of 12 action. It is necessary to execute these search 13 warrants to seize devices and inform Levy 14 our intention to interview him. Levy will not 15 be arrested." Can you explain, based on your 16 knowledge, why that document says what it 17 says? 18 A. I'm not certain who wrote this document, 19 so I am not - I don't know why - why it was 20 written. 21 Q. No, no, if you do not know that is fine; I 22 just wanted to give you the opportunity to do 23 so. Can we then... In terms of the 24 applications before the magistrate, I think 25 that your evidence again benefitted from</p> <p style="text-align: center;">Page 116</p>

<p>1 looking at the papers. Initially you said that 2 there was one application; then, when you 3 looked at the documents you recalled that 4 there were two applications before the 5 magistrate -- 6 A. Yes. 7 Q. -- there was one -- 8 A. Yes, yes. 9 Q. -- and then an amendment. 10 A. Yes. 11 Q. And, the amendment was to include the 12 second limb of what you were seeking on the 13 warrant. I am happy to take you - in fact I 14 can take you to Sergeant Clarke's statement, 15 A1063, paragraphs four to six. Sorry, five, 16 he says, "The initial application stipulated the 17 material sought to be", and it is what I read 18 out to you earlier: the first paragraph of the 19 material sought. And then, over the page he 20 says, "The second application detailed the 21 above material, and in addition to this any 22 documentation relating to 30 North Limited, 23 Astelon Limited and/or ICODE Limited, 24 whether held digitally or otherwise." Which 25 of those two hearings did you attend, as far</p> <p style="text-align: center;">Page 117</p>	<p>1 A. Sorry, which... 2 Q. A1290. 3 A. Yes, I have it. 4 Q. The naming of this statement "Second 5 witness statement" has been a thorn in a side 6 in preparation, I have to say. Although I 7 completely understand why it is named 8 second. 9 A. It is the second but the third, yes. 10 Q. Yes. Sorry, as far as you are concerned it 11 is the one behind the yellow tab: 18 -- 12 A. I have it, I have it. 13 Q. Okay, great, thank you. 18(d), "Were 14 submission made to the court in writing 15 and/or orally when seeking the search 16 warrants? If oral submissions were made 17 how long did they take?" "I attended the 18 hearing, Mr Wyan was not there. DS Paul 19 Clarke went through the information and 20 answered questions raised by the Stipendiary 21 Magistrate. The hearing lasted over an hour." 22 Do you recall what the questions asked by 23 the magistrates were? 24 A. No, I'm sorry. 25 Q. Do you recall whether he asked any</p> <p style="text-align: center;">Page 119</p>
<p>1 as you can recall? 2 A. Only the first one. 3 Q. The first one. And how long, as far as 4 you can recall, did that last? 5 A. Something between an hour and a half to 6 two hours. 7 Q. Now, Sergeant Clarke says that he read 8 out the information; do you recall him doing 9 so? 10 A. I can't specifically recall that he did, but I 11 - that's probably correct. 12 Q. If he did that, that would probably have 13 taken up most of the one and a half to two 14 hours. 15 A. I can't remember. 16 Q. You cannot remember. In your second 17 statement of the three, you say that the 18 magistrate asked questions. Do you want to 19 see what you say about that? 20 A. Yes, please. 21 Q. It is paragraph 18(d) of your second 22 statement. Sorry, that is the third statement; 23 we have to go to the second statement. 24 THE CHAIRMAN: Or, is it the first 25 statement?</p> <p style="text-align: center;">Page 118</p>	<p>1 questions about the RGP's position (the 2 position taken in the information) that Mr 3 Levy might destroy evidence. 4 A. I can't remember any - any questions at 5 all, sorry. 6 Q. Can we go now to C1789, please. This is 7 your daybook, and it is the 7 May conference 8 call with James Gaggero, which I think took 9 place in the Commissioner of Police's office. 10 A. That's correct. 11 Q. You were present, as was (it seems from 12 your notes) the Commissioner of Police. 13 A. That's correct. 14 Q. I will just give you the chance to read it. 15 A. Thank you. Okay. 16 Q. Thank you. Do you recall the purpose of 17 the phone call? 18 A. No. I've recorded what was said in the 19 meeting but I don't remember the purpose of 20 it. 21 Q. Can I please take you to your notes on 22 1790. Actually, just before we go there, the 23 preceding page. The Commissioner of Police 24 I think says: "Not swayed by RF letter." 25 A. Whereabouts is that?</p> <p style="text-align: center;">Page 120</p>

<p>1 Q. Can you see that on --</p> <p>2 A. Yes, I can see it, yes.</p> <p>3 Q. And then the next page: "Me" --</p> <p>4 A. That's me speaking.</p> <p>5 Q. That is you. I think that this is a</p> <p>6 reference to the content of that letter and</p> <p>7 your responses to that.</p> <p>8 A. That's correct.</p> <p>9 Q. That letter, RF is a reference to Robert</p> <p>10 Fischel KC who was Mr Perez and Mr</p> <p>11 Cornelio's lawyer at the time. Is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. Do you recall why this letter was raised</p> <p>14 on the call with Mr Gaggero?</p> <p>15 A. I don't, no.</p> <p>16 Q. Is it usual to discuss representations made</p> <p>17 on behalf of a suspect with the complainant?</p> <p>18 A. I can't say whether it's unusual but Mr</p> <p>19 Fischel had alleged that Mr Gaggero had</p> <p>20 committed offences and so we were looking</p> <p>21 at whether there was any merit in</p> <p>22 investigating or following up those lines of</p> <p>23 enquiry.</p> <p>24 Q. Can I now just take you half way down</p> <p>25 page 1790, the same page that we are on.</p> <p style="text-align: center;">Page 121</p>	<p>1 Delhi and that Mr Levy was saying that he'd</p> <p>2 felt let down and betrayed, presumably, or at</p> <p>3 least I took that to understand by the</p> <p>4 defendants in the Operation Delhi case.</p> <p>5 Q. Can I ask why you referred to him as</p> <p>6 grey man?</p> <p>7 A. I didn't refer to him as the grey man.</p> <p>8 Q. Sorry.</p> <p>9 A. It was Mr Gaggero.</p> <p>10 Q. Do you know why Mr Gaggero referred</p> <p>11 to him as the grey man?</p> <p>12 A. I think that's best a question for Mr</p> <p>13 Gaggero but I think that he's referring to the</p> <p>14 fact that he was in the shadows and therefore</p> <p>15 not out in the light.</p> <p>16 Q. Can we now move to 12 May 2020,</p> <p>17 which is obviously the day of the warrants. I</p> <p>18 accept that they were not ultimately executed</p> <p>19 but there were assessments made and it was</p> <p>20 determined I think in the NDM that you</p> <p>21 should wear body-worn footage.</p> <p>22 A. Not that we should wear body-worn</p> <p>23 footage. That we should take a body-worn</p> <p>24 camera.</p> <p>25 Q. Yes, sorry, that you should take a body-</p> <p style="text-align: center;">Page 123</p>
<p>1 Just after the two question marks, can you</p> <p>2 just read out what is after that bullet point.</p> <p>3 A. The one that starts "Grey man"?</p> <p>4 Q. Yes.</p> <p>5 A. "Grey man in joint meeting with COP.</p> <p>6 Made him feel very uncomfortable of</p> <p>7 Government involvement. Grey man had</p> <p>8 approached him. Grey man feels let down</p> <p>9 and betrayed."</p> <p>10 Q. Can I just ask who you are referring to as</p> <p>11 "grey man"?</p> <p>12 A. It wasn't me referring to the grey man, it</p> <p>13 was Mr Gaggero, and he was referring to Mr</p> <p>14 Levy.</p> <p>15 Q. And what is being referred to when it</p> <p>16 says "Grey man feels let down and</p> <p>17 betrayed"? What did he feel let down and</p> <p>18 betrayed about, as far as you can recall?</p> <p>19 A. I don't know what the grey man had felt</p> <p>20 let down and betrayed about but my</p> <p>21 recollection is that Mr Gaggero was saying</p> <p>22 that he had been cornered or came across Mr</p> <p>23 Levy, who he referred to as the grey man,</p> <p>24 and that they had discussed presumably the</p> <p>25 arrests of people in relation to Operation</p> <p style="text-align: center;">Page 122</p>	<p>1 worn camera.</p> <p>2 THE CHAIRMAN: If you are moving on to</p> <p>3 12 May, is that perhaps a good point to</p> <p>4 break?</p> <p>5 MR SANTOS: I think that is probably</p> <p>6 sensible actually, yes.</p> <p>7 THE CHAIRMAN: Let us do that.</p> <p>8 MR SANTOS: Just in terms of progress, I</p> <p>9 will definitely be done by three o'clock,</p> <p>10 hopefully sooner than that, but certainly there</p> <p>11 is another half-hour at least.</p> <p>12 THE CHAIRMAN: Shall we say two</p> <p>13 o'clock?</p> <p>14 MR SANTOS: Yes.</p> <p>15 THE CHAIRMAN: Okay, thank you.</p> <p>16 (12.56)</p> <p>17 (The luncheon adjournment)</p> <p>18 (14.01)</p> <p>19 MR SANTOS: We were just turning to 12</p> <p>20 May 2020. That was the day on which you</p> <p>21 attended Hassans with Mr Wyan in</p> <p>22 possession of the search warrant. The</p> <p>23 Inquiry has the benefit of the footage taken</p> <p>24 from the body-worn camera on that day, but I</p> <p>25 believe I am right in saying that the footage</p> <p style="text-align: center;">Page 124</p>

<p>1 commences once you are in the boardroom. 2 Can I ask you to explain why it was only 3 switched on at that point? 4 A. Because originally when we attended 5 Hassans' premises there was no indication 6 about what we would be attending for and so 7 I'd arranged entry through a schoolfriend of 8 mine, Javier Chincotta and it wasn't until I 9 told him about what was happening that we 10 found out that Mr Levy wasn't actually in the 11 premises and so we had to request him to 12 come to Hassans, and when he came to 13 Hassans that when the body-worn camera 14 footage began. 15 Q. What was said or done - I think you have 16 sort of covered it but just to make sure it is 17 clear - before the camera was switched on? I 18 think you talk about discussions with Mr 19 Chincotta. What was said, for example, to 20 him? 21 A. Should I read from my notes? 22 Q. Yes, with the benefit of your notes, yes. 23 Obviously if you remember something other 24 than what is in your notes, then by all means 25 say so. Let us turn to your notes.</p> <p style="text-align: center;">Page 125</p>	<p>1 possible. It was a very sensitive matter." 2 Q. You said 12 o'clock. I think I am 3 becoming better at reading your handwriting 4 than you are. I think that says 12.30. 5 A. Yes, 12.30, that's correct. 6 Q. At 12.50 I think the entry says: "Javier 7 calls Hiene by phone." I think it is fair to say 8 that the entry before that does not actually 9 explain what you said in terms of the 10 substance to Javier. It says that you said you 11 needed to be discreet, that it was very 12 sensitive, but what did you say to Mr 13 Chincotta that then caused him to call Mr 14 Levy by phone. 15 A. I don't remember exact words that were 16 said but I would have told him that we 17 needed to speak to Mr Levy, that we had a 18 search warrant for Hassans and a search 19 warrant for his house and that what I would 20 like him to do is to ask Mr Levy to come into 21 the boardroom rather than us go looking for 22 him. In other words, we would be dealing 23 with it as sensitively as possible. 24 Q. Then at some point I think you say: 25 "Javier calls Heine by phone. Can't do now.</p> <p style="text-align: center;">Page 127</p>
<p>1 A. Page 143 of my daybook. 2 Q. Thank you. C 1794. Can you tell us 3 what occurred before the footage was 4 switched on? 5 A. I think it was the same morning I had 6 texted Javier who, as I said, was a 7 schoolfriend of mine, and told him that I 8 needed to speak to him about a sensitive 9 matter, if I could come and see him, and he 10 said something along the lines of: "Yes, sure, 11 come down." We agreed, whatever. So I 12 came down. Mr Wyan and myself in plain 13 clothes went to the security station at the 14 bottom of the building, told them that we had 15 a meeting with Mr Chincotta. I don't know if 16 we were escorted up in the lift or we went up 17 in the lift. We met with Mr Chincotta. And 18 then at 12.00 hours I explained to him the 19 reason for our visit, and my entry says: 20 "Atter Sands, 11th Floor, boardroom number 21 two, re interview of JL. Met Javier Chincotta 22 with DI Mark Wyan. Javier is managing 23 partner of Hassans. Explained thanks for 24 seeing us, apology for not being clear before 25 the meeting and the need to be as discreet as</p> <p style="text-align: center;">Page 126</p>	<p>1 Will speak tomorrow." 2 A. "Consequences." 3 Q. What is that reference to "consequences"? 4 A. There will be consequences in you asking 5 me to go in because there's a warrant. That's 6 what I understood that to mean. 7 Q. So that was something that Mr Levy had 8 said to Mr Chincotta over the phone as a 9 message for you. 10 A. I'm not a hundred per cent certain if it 11 wasn't on speakerphone, although I do seem 12 to remember at some point Javier gave me 13 the phone and I spoke to Mr Levy. I can't 14 remember whether this was on speakerphone 15 or not. 16 Q. He was saying to you or intended for 17 your attention: "There will be consequences 18 of you requiring me to attend." Is that what 19 you say? 20 A. The note that I have recorded of what was 21 said was -- I explained what we were there 22 for and asked him to come to the office. We 23 had expected him to be at his office that 24 morning at that time and so this caught us a 25 little bit off guard. So it was Javier that</p> <p style="text-align: center;">Page 128</p>

32 (Pages 125 to 128)

<p>1 called him and asked him to come into the 2 office, and I think that he didn't want to come 3 in so I had to speak to him and when I 4 explained to him what the reason was he 5 says: "I can't come in now. I'll come in 6 tomorrow. We'll speak tomorrow. There 7 will be consequences." 8 Q. Then there is an entry, 13.04 maybe. 9 A. That's correct. 10 Q. I will ask you to read it, rather than me 11 try and guess. 12 A. "Call back JL." So I'm not sure if we 13 called him back or he called us. I think it's 14 suggesting that we called or Javier called. 15 "When do you want to do the search? To 16 discuss with my family. Offered to ask 17 family to exercise. No, I have no secrets 18 from my family. Will come into the office 19 and maybe what I say will avoid the need to 20 search. PIN. Will give you PIN." 21 Q. And then 13.56, the next entry, is a 22 reference to him leaving the room with Mr 23 Chincotta to consult privately before 24 deciding whether to challenge the search 25 warrant.</p> <p style="text-align: center;">Page 129</p>	<p>1 those four minutes is what you have just told 2 us was the conversation with Mr Chincotta as 3 to the purpose of the visit. 4 A. Yes. 5 Q. Can I just ask you: we see in the footage 6 the conversation that takes place and then the 7 footage ends. There is no footage of 8 anything that took place at Mr Levy's home, 9 there is no footage after that meeting. Why 10 is it that those parts of your dealings with Mr 11 Levy were not filmed? 12 A. I suppose that's my fault for not taking 13 the camera with me when I went to Mr 14 Levy's office and to his house. He had asked 15 me specifically to go on my own with him to 16 do this, to be as discreet as possible, and I 17 agreed to that. At that time the exchange 18 between us was very amicable and I agreed 19 and we went off to do it, and I probably 20 didn't even realise until afterwards that we 21 hadn't taken the camera with us. 22 Q. Can we go to Mr Levy's second witness 23 statement which is A 1514, please. There at 24 9.4 in relation to allegations made by Mr 25 McGrail he says: "I see that Mr McGrail also</p> <p style="text-align: center;">Page 131</p>
<p>1 A. Yes. I'm not sure if it's 56 or 55, but I 2 don't think it makes much difference. 3 Q. Thank you. Am I right in saying that by 4 the time of that entry the body-worn camera 5 was operating? 6 A. That is correct. 7 Q. Can we also take you to B 3497. These, I 8 believe, are Mr Wyan's handwritten notes of 9 that meeting. If you do not know, you do not 10 know. 11 A. They appear to be. 12 Q. And that says: "12.30 arrival. Wait for J 13 Chincotta. 12.30 boardroom 12. Officers 14 wait downstairs. Three officers including DS 15 Clarke. Then officers at house. Three other 16 officers. Instructions to officers at house to 17 follow. 12.46. Discussion with J Chincotta." 18 Your initials. 19 A. Yes. 20 Q. "Explore reason for wait." 21 A. "Visit", I think. 22 Q. "Including reason search warrants. Intent 23 to interview." Then: "12.50 call made by J 24 Chincotta to JL." So those four minutes 25 between 12.46 and 12.50: what was said in</p> <p style="text-align: center;">Page 130</p>	<p>1 repeats this allegation in his fifth affidavit, 2 nearly four years after the event. I do not 3 recall how my legal representative Mr 4 Baglietto may have been given to understand 5 that the DPP had advised against the making 6 of the application for the warrants. However, 7 even if this information came from the Chief 8 Minister I do not consider it improper for my 9 legal representative to have been told this 10 when the RGP had, whilst at my office with 11 the warrants, told me that they had taken 12 advice 'from the highest level', or similar 13 words." Did you tell Mr Levy that the search 14 warrant had been approved from the highest 15 level, or similar words? 16 A. I don't remember discussing that - sorry? 17 MALE SPEAKER: I noticed that the 18 question you asked was different to what is 19 written in the statement, taking advice from 20 and - 21 MR SANTOS: "Approved". I take the 22 point. (To the witness) I will just read the 23 allegation by Mr Levy as to what was said 24 and then I will just ask you to confirm 25 whether you have any recollection of saying</p> <p style="text-align: center;">Page 132</p>

<p>1 it. Mr Levy says that the RGP had, whilst at 2 my office with the warrants, told me that they 3 had taken advice 'from the highest level', or 4 similar words. Do you recall that? 5 A. I recall a conversation with Mr Chincotta 6 specifically in the lift on the way down and 7 Javier and I were discussing the fact that this 8 was very serious and that it wasn't a run of 9 the mill situation and what I will have said to 10 Javier is: "Please don't think that we've just 11 taken level from a junior counsel. We have 12 taken level - we have taken advice at a high 13 level." It wouldn't have been specifically we 14 have taken advice regarding the search 15 warrant but about the intervention, given that 16 we had taken advice about considering Mr 17 Levy as a suspect. 18 Q. When you say about the intervention you 19 mean -- 20 A. Attending Hassans with the search 21 warrant. 22 Q. Sorry. So you said: "We have taken 23 advice from the highest level in relation to 24 the intervention." 25 A. Yes, in considering Mr Levy a suspect,</p> <p style="text-align: center;">Page 133</p>	<p>1 A. Well, I wasn't engaged with the other 2 suspects so I didn't go to the warrants. I 3 didn't go to the arrests. 4 Q. Sorry, I just meant other suspects in 5 general. 6 A. In general. Well, obviously you adapt 7 your style towards the person that you are 8 dealing with. If you're dealing with. If 9 you're dealing with somebody that is 10 struggling and is resisting you and is being 11 offensive, you don't act the same way as you 12 do with somebody of Mr Levy's standing and 13 respect within our community. 14 Q. In your third witness statement you say at 15 paragraph 39, A 1431: "We were conscious 16 of JL -" 17 A. Where is this? 18 Q. Sorry, paragraph 39 of your third witness 19 statement, so the back one for you. "We 20 were conscious of JL's standing in the legal 21 profession in Gibraltar. We tried to treat him 22 with sensitivity and respect insofar as that 23 was compatible with treating him in the same 24 way as other suspects. However, it is likely 25 that JL did receive preferential treatment</p> <p style="text-align: center;">Page 135</p>
<p>1 which led us to attend to Hassans with a 2 search warrant with the intention of inviting 3 him to attend a voluntary police interview. 4 Q. Did you mention to him that, in fact, the 5 DPP had preferred a different course? 6 A. No. In fact, I was speaking with Javier, 7 not with Mr Levy, as far as I can recall. 8 Q. As far as Mr Levy is concerned, do you 9 have any recollection of saying something 10 along those lines to Mr Levy? 11 A. No. 12 Q. The conversation between you and Mr 13 Levy was cordial. I think you make that 14 point and Mr Levy does as well. Did you 15 know each other? 16 A. I've known Mr Levy probably for my 17 whole police career, or most of it anyway. 18 Q. And your conversation included talk to 19 some extent about your personal lives. 20 A. There was some chitchat at the end of the 21 meeting when we'd sorted out the issue of 22 consent. 23 Q. Do you think that you treated Mr Levy 24 differently to how you would treat other 25 suspects?</p> <p style="text-align: center;">Page 134</p>	<p>1 after all. For example, another suspect of 2 standing, JP, who had been the commanding 3 officer of the Gibraltar Regiment, was 4 formally arrested and interviewed under 5 caution. JL was treated rather differently." 6 A. That is correct. 7 Q. Why did you take a different approach to 8 Mr Levy as opposed to Mr Perez, although 9 Mr Perez was also a person of standing? 10 A. There are a number of reasons. The first 11 one is that at the time that we took action in 12 connection with Mr Perez, it was at the same 13 time as taking action with Mr Cornelio and 14 Mr Askis(?) at that time, and so there was a 15 need to take action simultaneously, there was 16 a need to have different teams of people 17 searching at the same time. This wasn't the 18 case when we dealt with Mr Levy. There 19 wasn't an opportunity in this case - in the 20 other cases - to ask for an interview, a 21 voluntary attendance interview, at a later 22 stage. 23 Q. You have already said that you were the 24 only person to search his office and, at his 25 request, the only person to go to his home.</p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

<p>1 Was that a normal thing to do, in terms of a 2 search warrant? 3 A. I had never done it before. 4 Q. So why did you agree to depart from your 5 usual course? 6 A. Because the search of his house was a 7 little bit of an impossibility from a practical 8 perspective. We were looking for, as the 9 information says, electronic data, that would 10 require accessing databases and we don't 11 have means to be able to seize a server and 12 take it away and close down a business. So 13 we had to rely on the consent of the person to 14 assist us in that matter. We already had an 15 agreement that he would hand over, or his IT 16 expert would deal with our IT expert in 17 providing the electronic documents. What 18 was left was principally the communication 19 devices which he had agreed to hand over. I 20 wasn't going to be turning his house, or we 21 weren't going to be turning the house upside 22 down looking behind every single book for 23 evidence. 24 Q. Now we move to 13 May 2020. If we 25 can look at B 168, please. This is a transcript</p> <p style="text-align: center;">Page 137</p>	<p>1 A. Yes. 2 Q. Do you know by "after the meeting" 3 when? Immediately after or some time after? 4 A. I can't be more specific than that, I'm 5 afraid. 6 Q. You may as well look at what you say in 7 respect of the 15 May meeting 2020. Over 8 the page, the final line, you say: "I was aware 9 that Mr McGrail was recording this 10 meeting." 11 A. Yes. 12 Q. I think what you mean by that, but correct 13 me if I am wrong, is that you were aware 14 before the meeting that Mr McGrail, or at the 15 time of the meeting, that Mr McGrail was 16 recording it. 17 A. I can't be precise on that but I certainly 18 knew after, some time after the first meeting, 19 and probably by the second meeting. I may 20 have just presumed that he would be 21 recording it because he'd told me he had 22 recorded the first one. 23 Q. When he told you that, what exactly do 24 you remember about what he told you? 25 A. I don't remember the words that were</p> <p style="text-align: center;">Page 139</p>
<p>1 of that meeting on 13 May. This was a 2 meeting - actually, sorry, I may as well ask 3 you about this. You say in your evidence 4 that Mr McGrail told you after that meeting 5 that he had recorded the meeting. Do you 6 remember exactly what he said to you about 7 it? 8 A. No. I'm not a hundred per cent certain 9 when I found out that the recordings were 10 being made. It was certainly not at that first 11 meeting and it would have been after that 12 first meeting and around the second meeting 13 but I don't remember exactly when it was or 14 what he said. 15 Q. I may as well remind you what you say in 16 your evidence in case it jogs your memory. 17 If we go to A 1288, paragraph 15 of your 18 second statement. "In particular, please 19 provide accounts of the meetings that we 20 believe that you may have attended on the 21 following dates", and then there is 13 May 22 2020 at three o'clock. The last line of the 23 entry in relation to that meeting says: "After 24 the meeting I learned that Mr McGrail had 25 recorded it."</p> <p style="text-align: center;">Page 138</p>	<p>1 said. He may have just indicated to his 2 phone that I've been recording. I really don't 3 remember. 4 Q. Did he give you an explanation or 5 justification as to why he was recording it? 6 A. I don't remember that, no. 7 Q. What did you think about the fact that he 8 was recording it? 9 A. It was shocking. I'd never come across 10 that situation where we'd had to or we felt the 11 need to record a conversation between a 12 police officer and a senior lawyer. Looking 13 back on it now, I can understand perhaps 14 why Mr McGrail did so but at the time I had 15 no idea. 16 THE CHAIRMAN: There are presumably 17 protocols getting permission covertly to 18 record meetings. 19 A. No, sir, there is no RIPA in Gibraltar. 20 THE CHAIRMAN: None at all? 21 A. No, sir. 22 THE CHAIRMAN: Well, that is very 23 surprising. 24 MR SANTOS: (To the witness) What was 25 your understanding as to the legality of that</p> <p style="text-align: center;">Page 140</p>

1 at the time?
 2 **A. I had understood that it was perfectly**
 3 **legal, that there was no code of conduct or**
 4 **there was no law that regulated this. In fact,**
 5 **I'm aware that we'd been looking at adapting**
 6 **one of the small island's version of RIPA**
 7 **and, in fact, I went over to one of the small**
 8 **islands on another matter and met a team**
 9 **from Gibraltar that included Customs officers**
 10 **and police that were looking into**
 11 **implementing RIPA, or IPA as we called it,**
 12 **into Gibraltar. I don't know where we are**
 13 **with that. I don't know if it's progressed.**
 14 Q. Can we just go to what I was just
 15 showing you from your statement, your
 16 second one, A 1288. It is still on screen
 17 actually but you have it in front of you. You
 18 say in the first paragraph, the fifth line down:
 19 "I have the impression that he wanted the
 20 case against Mr Levy to be stopped, but not
 21 by him. It was an emotional meeting with
 22 Mr McGrail asserting that his ethics were
 23 being challenged unfairly." Can you explain
 24 what made you form that impression?
 25 **A. At the time that I wrote that statement,**

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1 **which was - when was this?**
 2 Q. The date of your statement, are you
 3 saying?
 4 **A. Yes. In June 23.**
 5 Q. June last year.
 6 **A. I don't think we had access to the**
 7 **transcript of the recordings so my impression**
 8 **of that meeting was exactly that, that there**
 9 **was a desire that the matter didn't go any**
 10 **further, but it wasn't going to be the AG that**
 11 **pulled it. With the benefit of going through**
 12 **the transcripts now I can see that there was**
 13 **discussion of the possible use of Nolle and**
 14 **the AG saying that there's no need to get to**
 15 **that, but I did not know at the time that I**
 16 **wrote my statement whether that was on the**
 17 **first, second or third meeting, but my overall**
 18 **impression was that there was a desire to stop**
 19 **the prosecution.**
 20 Q. How did you feel about that about the
 21 Attorney General's conduct at that meeting?
 22 **A. Well, it somewhat puzzled me.**
 23 Q. Can you expand upon that?
 24 **A. It was a very strange meeting. That first**
 25 **meeting was very emotional. It began with**

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1 **the Attorney General asking ... the first thing**
 2 **that he said was, "Why have you chosen to**
 3 **use the most oppressive means of dealing**
 4 **with one of the most respected people in**
 5 **Gibraltar?", and it went downhill very**
 6 **quickly from then. Mr McGrail was very**
 7 **defensive of our actions. He felt that his**
 8 **ethics were being challenged. He said that he**
 9 **would stand up (inaudible) but he wouldn't**
 10 **compromise his position. I didn't know what**
 11 **had caused this at that time or why he was so**
 12 **upset. I wasn't aware of the conversations**
 13 **that had taken place the day before.**
 14 Q. Did you feel subject to any pressure by
 15 the Attorney General?
 16 **A. On that meeting - and I'd have to look at**
 17 **the transcript to see where it took place,**
 18 **during the course of those meetings I felt**
 19 **being put under pressure to adopt a different**
 20 **procedure with Mr Levy than we would have**
 21 **done with other people.**
 22 Q. Can we move to 15 May 2020. It is B
 23 269. This was a meeting which you
 24 attended, and if we go over the page we have
 25 the transcript there. It says: "The Attorney

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1 General, the DPP, senior Crown counsel and
 2 Lloyd DeVincenzi, the Commissioner of
 3 Police, you and Detective Inspector Wyan.
 4 We have the transcript of the recording
 5 which is more about your impressions. What
 6 in particular in relation to this meeting do
 7 you recall about the meeting, and you say
 8 that you were - sorry. What was your
 9 impression of the Attorney General's conduct
 10 in that meeting?
 11 **A. First of all, the first paragraph, the first**
 12 **cell of that table, records Mr DeVincenzi as**
 13 **being present on the 15th. I don't remember**
 14 **him being present in the second meeting. If**
 15 **you wanted me to answer accurately we'd**
 16 **have to go through that transcript, and again,**
 17 **but during the course of those two meetings**
 18 **that followed, the 13th, 15th and the 20th, we**
 19 **were changing our position from going from**
 20 **interviewing Mr Levy, I think it would have**
 21 **been on the Monday after we had been to**
 22 **Hassans for an interview with disclosure, to**
 23 **not going to an interview and to allowing**
 24 **him to produce a written account which he**
 25 **would have produced on his own and**

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<p>1 submitted to us, and that we would have used</p> <p>2 to determine whether or not we needed to</p> <p>3 proceed by a voluntary attendance police</p> <p>4 interview.</p> <p>5 Q. Just going back to the recording, as I</p> <p>6 showed you earlier, on 15 May you say: "I</p> <p>7 was aware that Mr McGrail was recording</p> <p>8 this meeting." Do you know whether</p> <p>9 anybody else was aware that he was</p> <p>10 recording the meeting?</p> <p>11 A. No, I don't know.</p> <p>12 Q. Can we go to B 237, please. I just want</p> <p>13 to take you here because at one point the</p> <p>14 Attorney General says - it is 8.17 - "Correct.</p> <p>15 Christian and I are with you entirely on that.</p> <p>16 What we think would be helpful for the</p> <p>17 management of the whole thing is if that</p> <p>18 interview would still go ahead, but not have</p> <p>19 it under caution." Is that something that the</p> <p>20 Attorney General would typically advise on?</p> <p>21 A. I've never taken advice from the Attorney</p> <p>22 General on a criminal matter. I've always</p> <p>23 dealt with the DPP.</p> <p>24 Q. It is fair to say, is it not, that you resisted</p> <p>25 that proposal for some time.</p> <p style="text-align: center;">Page 145</p>	<p>1 say on the Sunday or Monday Morning, you</p> <p>2 say we wouldn't carry out the interview?"</p> <p>3 "Well, we could and we should, but we could</p> <p>4 delay carrying out any interview until we</p> <p>5 considered the content of that. If it was</p> <p>6 sufficiently robust we could discuss it with</p> <p>7 Chris." It looks there as if you are starting to</p> <p>8 accept the possibility of a voluntary</p> <p>9 statement, rather than your plan of an</p> <p>10 interview under caution. Is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Why were you starting to accept it?</p> <p>13 A. Again, I'd have to go through every single</p> <p>14 cell there to get the full picture, but there was</p> <p>15 - and I'm not sure if it was in this meeting, or</p> <p>16 the previous one, or the one that came</p> <p>17 afterwards - there was discussion with the</p> <p>18 DPP and the AG, that they did not think that</p> <p>19 Mr Levy would answer any questions under</p> <p>20 caution. In fact they thought that he would</p> <p>21 not even attend the station, in which case we</p> <p>22 would not get any evidence in order to be</p> <p>23 able to take the investigation forward. And</p> <p>24 so, it was in our best interests in this way, in</p> <p>25 order to try and get some evidence even if it</p> <p style="text-align: center;">Page 147</p>
<p>1 A. That's correct, yes.</p> <p>2 Q. Can you explain why?</p> <p>3 A. Well, because there wouldn't be any</p> <p>4 value in an interview not under caution. If</p> <p>5 somebody is suspected of committing a</p> <p>6 crime we have an obligation to caution that</p> <p>7 person before putting questions to them.</p> <p>8 Q. If we now can go to 259, please. At the</p> <p>9 top you say: "What if he, if this weekend he</p> <p>10 sends us a witness statement saying, 'I am</p> <p>11 aware that I am under the suspicion and that</p> <p>12 the police are carrying out an investigation in</p> <p>13 this matter. Notwithstanding this, I have</p> <p>14 chosen to make the statement voluntarily of</p> <p>15 my own free will.'" And he sets out his stall</p> <p>16 incriminating Cornelio Perez, to which the</p> <p>17 Attorney General replies: "Or not", and you</p> <p>18 say: "Well, he's going to have to do it. How</p> <p>19 can he say he knew what they were doing?</p> <p>20 (14.29)</p> <p>21 He can either say 'I knew what they were</p> <p>22 doing and I was misled' or 'I don't know what</p> <p>23 they were doing', and the thing is he did</p> <p>24 know, I think, a lot of what they were doing."</p> <p>25 And then he replies, "So Paul, if he did that,</p> <p style="text-align: center;">Page 146</p>	<p>1 was not evidence under caution.</p> <p>2 Q. Now, you say in your second statement at</p> <p>3 paragraph 15(b) that we were just looking at,</p> <p>4 A1288, the penultimate paragraph on that</p> <p>5 page, "As far as I am aware, this was the first</p> <p>6 time we had allowed a suspect to provide a</p> <p>7 statement before interview. The statement</p> <p>8 was generally obtained after the interview,</p> <p>9 when a suspect had refused to answer</p> <p>10 questions." Why did you decide to adopt this</p> <p>11 unusual approach for Mr Levy?</p> <p>12 A. Because this - this investigation didn't</p> <p>13 just concern Mr Levy, it concerned - it</p> <p>14 concerned other people. And the other</p> <p>15 people's involvement in - was in a very</p> <p>16 serious matter concerning national security</p> <p>17 and data breach, and we had only part of the</p> <p>18 account from Mr Levy. The advice that we -</p> <p>19 that we were being given was that if we tried</p> <p>20 to force the issue with Mr Levy we would not</p> <p>21 have got anything at all.</p> <p>22 Q. And, I have asked you the question in</p> <p>23 respect of the 13 May meeting, and you</p> <p>24 answered with reference to all three meeting.</p> <p>25 But just for completeness' sake: as far as this</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

1 meeting is concerned, to the best of your
 2 recollection did you feel under any pressure
 3 from the Attorney General or anyone else?
 4 **A. On the 13th?**
 5 Q. The 15th.
 6 **A. On the 15th? On the 15th we were - we**
 7 **were - we'd started off with a position where**
 8 **we were going to be dealing with the matter**
 9 **under caution in a voluntary interview. We**
 10 **were then moving away from that, and we**
 11 **continued to be moved away from that**
 12 **position throughout the next week or so, with**
 13 **communication with Hassans.**
 14 Q. Do you - you say that: we were moving
 15 away from it and we were moved away from
 16 it...
 17 **A. I think it was a - I think it was a**
 18 **combination of both. There was advice that**
 19 **this is the best way to do it; that we are going**
 20 **to get evidence this way, if we do not we are**
 21 **not going to get any evidence. And there was**
 22 **no suggestion that if we forced - and there**
 23 **was also a suggestion that if we did force the**
 24 **issue there would be ten QCs coming over**
 25 **and all hell would break loose. And there**

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1 **was no suggestion that, you know: we can**
 2 **defend this robustly, we could - whatever you**
 3 **decide to do, go ahead and do it. This was**
 4 **the advice that was given to us.**
 5 Q. Can we turn to B237, please. The bottom
 6 of that page, B237. This is an intervention
 7 by Mr Rocca, the DPP. And he says, "And
 8 this is the point that the AG's going to make
 9 now, I think. We are led to believe that if we
 10 go under caution he's not going to say a
 11 word, to the extent that he may not even
 12 attend. And at the very least, if you do arrest
 13 him he's not going to give you anything.
 14 Entonces then, we're discussing whether that
 15 is good or bad. I think it leaves us with a
 16 problem evidentially, and I think it leaves is
 17 in a position whereby I've had my
 18 reservations, you know, about whether we
 19 have enough on Heine at the moment. I don't
 20 think we're quite across the line with Heine
 21 and we wouldn't proceed, so I would rather
 22 get information from him that may either
 23 incriminate him - if it does, fantastic." What
 24 is your reaction to that statement?
 25 **A. I think he's referring to what I mentioned**

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1 **before, that if - if Mr Levy had attend New**
 2 **Mole House Station for a voluntary police**
 3 **interview, the only way we could compel him**
 4 **to attend would be by arresting him. And if**
 5 **we interviewed him and he refused to say**
 6 **nothing, that would take us no further in - in**
 7 **the - in our investigation, whether in**
 8 **evidence against him or away from him, or**
 9 **towards the defendants in the - the Delhi**
 10 **defendants, or against them.**
 11 Q. And, can we move to the 20 May meeting
 12 now, B321. This is another meeting; this is
 13 with Mr McGrail, Mr Wyan, the Attorney
 14 General and DPP. Again you were aware that
 15 this was being recorded, you say in your
 16 evidence. Is that correct?
 17 **A. Yes. And by stage I would definitely**
 18 **have known.**
 19 Q. And again, do you know whether
 20 anybody else knew that it was being
 21 recorded?
 22 **A. No, I don't think so.**
 23 Q. If we go to B308, you say at the bottom
 24 there - sorry, this is the same transcript, but it
 25 is just that it is not - I don't think it is

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1 different in a material way. Just at the
 2 bottom there, "They have really turned that
 3 on its head", this is a reference to Hassans.
 4 You say, "They have really turned that on its
 5 head, from your conversation with him, to
 6 turning round to the Commissioner and
 7 saying now 'the Attorney General has
 8 informed me that you have agreed to treat
 9 him as a witness'. I mean, that is", and the
 10 Attorney General says, "All I've told them is
 11 that Ian has agreed - the RGP has agreed to
 12 try a written statement. That's all I've told
 13 them." And you say, "And they've really
 14 turned that around." That is you raising
 15 concerns in a meeting, that Hassans were
 16 now saying that the RGP had agreed to treat
 17 Mr Levy as a witness. Had you by that point
 18 agreed to treat Mr Levy as a witness?
 19 **A. No, no.**
 20 Q. And if not, why do you think that
 21 Hassans had formed this view?
 22 **A. It... I can't say why Hassans formed that**
 23 **view; what I can say is that we were alive to**
 24 **the possibility that if we took this course of**
 25 **action it might be interpreted that we had**

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1 **changed Mr Levy's suspect as a suspect, and**
 2 **we were very - very conscious of that fact.**
 3 **So, we were very careful in how we worded**
 4 **the invitation to give his - his account. When**
 5 **it came through, it went from - again,**
 6 **account under caution to an ac-- to his**
 7 **statement, and therefore if he's giving a**
 8 **statement we presume now that he is no**
 9 **longer a suspect, and that was one of the**
 10 **things that we had feared when we - when we**
 11 **thought about that.**
 12 Q. At 309, about a third of the way down the
 13 Commissioner says, "We've bent over, which
 14 we would not have normally done."
 15 **A. Sorry, I can't find that, where...**
 16 Q. Sorry, it is the second reference --
 17 **A. Oh, yes.**
 18 Q. -- to the Commissioner of Police. "We've
 19 bent over, which we would not have
 20 normally done." Did you agree with Mr
 21 McGrail's assessment of how the
 22 investigation had turned?
 23 **A. With regards to...?**
 24 Q. Well, sorry. Did you agree with that
 25 statement?

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1 **A. Yes, I thought that we had been very**
 2 **accommodating with Mr Levy's request on**
 3 **his law-- through his lawyer, to deal with him**
 4 **other than through an interview at the police**
 5 **station.**
 6 Q. Well, I think there is a difference between
 7 "accommodating" and "bent over": I think
 8 "bent over" goes a bit further than
 9 "accommodating", does it not?
 10 **A. Maybe bent over - I wouldn't agree with**
 11 **bent over backwards.**
 12 Q. You would not agree with bent over
 13 backwards?
 14 **A. Actually it does not say backwards, it**
 15 **says "bent over".**
 16 Q. But I mean, I am not asking whether you
 17 would necessarily agree with the metaphor,
 18 but the underlying meaning of it. Did you
 19 agree with that assessment of how things had
 20 transpired from 12 May to 20 May?
 21 **A. Yes.**
 22 Q. You would agree with that?
 23 **A. Yes.**
 24 Q. On 22 May there was a telephone
 25 conversation between Mr McGrail and the

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1 Attorney General --
 2 **A. Uh-huh.**
 3 Q. -- which you recorded at Mr McGrail's
 4 end. You did not technically record the call,
 5 but you recorded at his end.
 6 **A. That - that's correct.**
 7 Q. Can you just explain to me why you
 8 chose to do that?
 9 **A. This - this was - at the two-- if I recall**
 10 **correct, 22 May was the date that Mr**
 11 **McGrail had been invited to retire. None of**
 12 **us knew the reasons for this. It was a very**
 13 **emotional morning, and in that meeting when**
 14 **all of us - all the SMT were there in Mr**
 15 **McGrail's office I think that Mr McGrail**
 16 **received a call from the Attorney General,**
 17 **and I could hear from Mr McGrail's tone that**
 18 **he was - that he was getting emotional, so I**
 19 **started to take - wanted to take a note of it,**
 20 **but then I realised that there's no point in**
 21 **taking a note, I can only hear one side of the**
 22 **conversation anyway, and so I recorded it on**
 23 **my phone.**
 24 Q. And you say that the SMT were there,
 25 was the SMT there throughout the phone

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1 call?
 2 **A. I think so.**
 3 Q. Can we just now turn to B1417, please.
 4 This is a message from the Attorney General
 5 to the Chief Minister, where the Attorney
 6 General describes a discussion that he had
 7 had with the DPP in the aftermath of that 12
 8 May meeting. It is the second message
 9 down, at 15.41 he says, "Spoken to DPP, he
 10 is categorical that whilst he told RGP that an
 11 interview with JL would likely be necessary
 12 he strongly advised against a search
 13 warrant." Does that tally with your
 14 recollection as to what the DPP said to you
 15 about the search warrant?
 16 **A. No, it does not.**
 17 Q. How would you distinguish your
 18 recollection with what is said there?
 19 **A. My recollection is that the DPP had said,**
 20 **at the very end of our videoconference, that**
 21 **the only thing he would do differently - I**
 22 **think he said the words: we would do**
 23 **differently, is: we would prefer a production**
 24 **order as opposed to a warrant. He did not**
 25 **categorically state that - he did not strongly**

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1 **advise against the use of a search warrant.**
 2 **And, he also did not say that the interview**
 3 **with JL would likely be necessary; we had**
 4 **already agreed that, and the notes in my**
 5 **daybook reflect that.**
 6 Q. Just going back to 12 May. After the
 7 meeting that Mr McGrail had with the Chief
 8 Minister and the Attorney General, I think it
 9 is not in dispute that he then briefed the SMT
 10 on that meeting. Do you recall being
 11 briefed?
 12 **A. I wasn't there.**
 13 Q. Oh, you weren't there. So were you --
 14 **A. I was - I was at Hassans when that...**
 15 Q. At any point after that, did Mr McGrail
 16 brief you about that meeting?
 17 **A. I thi-- remember whilst I was in Hassans**
 18 **taking a phone call, and I think it was in**
 19 **relation to - to: come back to the station,**
 20 **we'll have a briefing. I can't remember the -**
 21 **the time that I arrived back at the station.**
 22 **And I think I remember that he briefed the**
 23 **SMT, but I am not 100 percent certain on**
 24 **that.**
 25 Q. Did he brief you about the content of that

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1 meeting?
 2 **A. No. No, I didn't speak to Mr McGrail**
 3 **privately about that matter at all.**
 4 Q. Can we move now to the collision at sea
 5 briefly, please. I only have a few questions
 6 about that. Firstly, in your second statement,
 7 paragraph 19(a) is at A1292. You state there,
 8 "I was second senior officer on call when the
 9 incident occurred, which means I was on
 10 standby to support the senior officer on call,
 11 Superintendent John Field (then Chief
 12 Inspector) who still answered to me at that
 13 point." What level of involvement did this
 14 give you, as far as what came to be known as
 15 Operation Kram is concerned?
 16 **A. My principle involvement with Operation**
 17 **Kram was as a - as an assistant, as a deputy**
 18 **Gold to Mr McGrail during that first golden**
 19 **hour - golden three hours or four hours -**
 20 **what it was that was there. I took notes and**
 21 **summarised what had happened for him,**
 22 **which I'm sure you have seen the - the**
 23 **correspondence for that. Because of my**
 24 **involvement with Operation Delhi, and other**
 25 **operations that were - that were running, Mr**

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1 **Field was appointed. He was Chief Inspector**
 2 **at the time, and he was appointed as the**
 3 **temporary SIO for that matter, until a - an**
 4 **external force took over from that. But Mr**
 5 **Field answered to me, because at that point I**
 6 **was Superintendent, crime, and he was**
 7 **Detective Chief Inspector, crime.**
 8 Q. You say in your statement, just reading
 9 on, "At 0300 or 0400 on 8 March 2020 I was
 10 called in to help deal with it. I took notes of
 11 the Gold command actions in my daybook,
 12 and met with the Attorney General and Mr
 13 McGrail on Sunday 8 March at 0500 in Mr
 14 McGrail's office. I attended a second
 15 meeting with the Attorney General and Mr
 16 McGrail the following day. The acting
 17 Governor, Nick Pyle, also attended." And,
 18 then you set out your notes. According to
 19 your recollection, is it accurate that you met
 20 the Attorney General at 5am in Mr McGrail's
 21 office?
 22 **A. No, no, we didn't meet the AG at 5am.**
 23 Q. So, at what time did you meet the AG?
 24 **A. It says here, "10.25, meeting with AG,**
 25 **ML".**

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1 Q. Yes, sorry, it is just that you say halfway
 2 down that paragraph, "I took notes of the
 3 Gold command actions in my daybook, and
 4 met with the Attorney General and Mr
 5 McGrail on Sunday 8 March at 0500".
 6 MR GIBBS: Inaudible.
 7 Q. I am extremely grateful to Mr Gibbs. I
 8 am looking at the wrong version of the
 9 statement. That has been corrected, I am
 10 told, on 16 March 2023 to say 10.25. The
 11 signature says 16 March 2023. But anyway,
 12 I think from your note, what your note says is
 13 that a meeting with the Attorney General
 14 took place at 10.25.
 15 **A. That's correct.**
 16 Q. And, that is how you recall it?
 17 **A. Yes.**
 18 Q. Can we go to B1680, please. That is an
 19 email from you to Mr McGrail, copied to Mr
 20 Ullger and Mr Field, at 10.11 in the morning
 21 on 8 March 2020.
 22 **A. Yes.**
 23 Q. You can see that it has a brief, then a list
 24 of actions, and then over the page there is a
 25 log of events going up to ten past ten, just a

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<p>1 minute before this message is sent. The first 2 entry, "0500, Gold group convened", and it 3 looks as though three individuals it's quoting 4 at that meeting were the Commissioner of 5 Police, yourself and Chief Inspector Field. Is 6 that correct? If you go back to the previous 7 page, "Gold meeting convened", just at the 8 top. "Sunday 8 March, 0500" -- 9 A. Yeah. 10 Q. "Commissioner of Police, Superintendent 11 Richardson, CI Field." Then if you go back 12 to the log, I just want to ask you about the 13 penultimate entry in the log. "0940, JF 14 advises that collision occurred 36 degrees 9 15 minutes north, 5 degrees 12 minutes west, 16 approx 6.54 east of Playa", I think that's 17 meant to say -- 18 A. Yes 19 Q. -- "de Santa Bárbara". 20 A. Yes. 21 Q. Now DCI Field in his evidence - if we 22 can just go to A801, please. He says at para 23 36 (it is on screen), "At 0940 hours I received 24 a report from Inspector Paul Chipolina, who 25 had obtained the coordinates through his</p> <p style="text-align: center;">Page 161</p>	<p>1 Commissioner of Police at that time as well? 2 A. I - I don't, and I don't recall Mr Field's 3 attending the meeting with myself, Attorney 4 General and Mr McGrail. 5 Q. So when he says at 38, "At 11.05 I 6 briefed", those individuals whom you just 7 named, "concerning the suspected exact 8 coordinates", that does not accord with your 9 recollection? 10 A. My note is "0940", that's all I can - I can 11 rely on. 12 Q. So, just to make this clear. When he 13 reported them to you, were you with Mr 14 McGrail? Do you remember whether you 15 were with Mr McGrail? 16 A. I don't - I don't think so. 17 Q. But, it is fair to say that in your email of 8 18 March at 10.11, that was sent to Mr McGrail 19 and that contained a reference to the 20 coordinates? 21 A. I haven't got the email here to -- 22 Q. Sorry, it is the one that we have just 23 shown, B1680, your Gold actions collision at 24 sea email. If you just stay there at the top, 25 10.11, 8 March 2020.</p> <p style="text-align: center;">Page 163</p>
<p>1 contacts in the Spanish Guardia Civil. These 2 were", I have just told you what they were, 3 "approximately 6.54 miles east of Playa 4 Santa Bárbara." That tallies with what you 5 say in your log, and then he says, "I then had 6 the coordinates plotted on a map, and 7 subsequently made my way to the CoP suite. 8 At 1105 hours I briefed CoP, Detective 9 Superintendent Paul Richardson and the 10 Attorney General Mr Llamas, who was also 11 there, concerning the suspected exact 12 coordinates. Now, at 37 he says he is 13 plotting coordinates on the map, but it looks 14 from your log... Well, when was the first 15 time that he told you the coordinates? 16 A. Can I look at my daybook for 2020, 17 because -- 18 Q. Yes. 19 A. -- this entry was drawn from that. 20 Q. Yes, if you are happy -- 21 A. I'm just not sure when (inaudible) it is. In 22 my notes I have "0940, JF", the coordinates 23 east of Playa de Santa Bárbara, so that must 24 have been when Mr Field told me. 25 Q. Do you recall whether he told the</p> <p style="text-align: center;">Page 162</p>	<p>1 A. Mm-hmm. 2 Q. And, on the second page there is the log 3 that says, "JF advises that the collision 4 occurred", with the coordinates. 5 A. What - what time does it say that? 6 Q. 0940. 7 A. Which is the same as what's in my 8 daybook. 9 Q. Yes. 10 A. Yes. 11 Q. Yes. How did Detective Chief Inspector 12 Field describe the coordinates at the time, as 13 far as... 14 A. I don't think - I don't think we knew 15 where the coordinates were. So, hence the 16 reason for plotting it on a map and working 17 out exactly where it was. 18 Q. Sorry, then let me ask it a different way. 19 With what sort of certainty did he advance 20 those coordinates, or did he say how certain 21 or confirmed those coordinates were? 22 A. I'm not - I'm not certain, but from 23 recollection - or, my recollection of this is 24 that we'd been given this information from 25 the Spanish authorities but it was an</p> <p style="text-align: center;">Page 164</p>

<p>1 unofficial basis. It's a sort of a police-to- 2 police basis, it's not inf-- information that 3 you can - you can rely on until you've asked 4 for it officially. 5 THE CHAIRMAN: I think Mr Field says 6 that he got this from - from Inspector 7 Chipolina, who I think is responsible for 8 coordination with the Spanish authorities. 9 A. That's - that's very likely to be the case, 10 sir. 11 THE CHAIRMAN: So, it is likely that he 12 got the information that - 13 A. From Paul Chipolina, yes -- 14 THE CHAIRMAN: Yes. 15 A. -- Inspector Paul Chipolina. 16 Q. Were you aware that the coordinates had 17 come from the Guardia Civil? 18 A. I was looking in - in my daybook. I seem 19 to remember an entry somewhere here of - of 20 a com-- a call between Paul Chipolina and 21 the Commissioner, and it could have been to 22 do with that, but I haven't been able to find it 23 in the time that I have available. 24 Q. Can we go to C4436, please. This is the 25 factual account prepared under section 15 of</p> <p style="text-align: center;">Page 165</p>	<p>1 illicit purpose, suspect activity, prohibited 2 import, Gibraltar and Spain", "Spain and 3 Gibraltar". Chase ensued, very sad but as a 4 result of criminal action, assuming all was 5 going well. Need to include 'cooperation'", 6 in inverted commas, "AG to review draft of 7 next press release." And then at 11.15, this is 8 a message, it says "Fernando" in the - in the 9 margin, I think was the Spanish police 10 officer, "agreed to stay in Zona del Este en 11 caso que la lancha volviera." 12 Q. I do not think that that is necessary for 13 our purposes. Just over the page we have a 14 reference to, I think - well, can you read -- 15 A. The 12.15 entry? 16 Q. Yes. 17 A. "1215, HE arrives", His Excellency, that 18 was a reference to Nick Pyle. 19 Q. Yes. With the benefit of having read the 20 entry, what is your recollection as to what 21 was said to the Attorney General, first when 22 he was there on his own (well, not on his 23 own but before the Governor arrived), what 24 is your recollection as to what was said to the 25 Attorney General as to location of the</p> <p style="text-align: center;">Page 167</p>
<p>1 the Police Act by Mr McGrail in response to 2 the Chief Minister's request. And it says here 3 at HH, "At 1010 hours I met with the 4 Attorney General Michael Llamas in my 5 office, and briefed him fully as to what was 6 known at that stage." What did that brief to 7 the Attorney General entail, in terms of the 8 location of the collision? 9 A. I can only tell you what's in my - in my 10 daybook account. 11 Q. With the benefit of your daybook, what 12 did you report to the Attorney General? I do 13 not have a reference for the daybook entry. 14 A. It's -- 15 Q. Does it have a -- 16 A. It's - be - be 5734. 17 Q. 5734, thank you. So, at 10.25 we have 18 your meeting with the Attorney General... 19 A. "ML". 20 Q. "ML", and the first entry "Call from 21 Guardia Civil". 22 A. Yes. Would you like me to read it? 23 Q. Yes, if you don't mind, yes. 24 A. "Call from Guardia Civil. Suspect vessel 25 description", and I have said "type, fuel,</p> <p style="text-align: center;">Page 166</p>	<p>1 collision? 2 A. I - I can't remember. I - I can't recall that, 3 I don't have a note of - of discussing that. 4 Q. What is the reference to the call from the 5 Guardia Civil? What is that a reference to? 6 Do you remember? 7 A. I think it was that the Commissioner may 8 have received the call from Inspector 9 Fernando, and that - what I'd written there is 10 what he was briefing us at the time, and it 11 describes part of the chase. 12 Q. Can we go to B5736, please. This is the 13 meeting of 9 March 2020, and that is your 14 note of a meeting between you, Mr McGrail, 15 Mr Pyle and the Attorney General. Your note 16 there, if we can just go down a little bit... 17 Yes, the second bullet point there, "Exact 18 coordinates of collision still not determined". 19 What was the state of knowledge at the time, 20 in terms of the location of the collision? 21 A. I'm not certain what the state was now, 22 but from reading other people's statements it 23 seemed that the Spanish had to confirm with 24 their technical people, I think there was a 25 reference to the C-Vay (?), which is like a</p> <p style="text-align: center;">Page 168</p>

42 (Pages 165 to 168)

<p>1 covert surveillance station. I think that they 2 were telling us that these are the coordinates 3 that we think it's happened, but we need to 4 confirm this ourselves. 5 (14.59) 6 Q. Do you recall either you or Mr McGrail 7 mentioning to the Attorney General that the 8 Guardia Civil had provided coordinates? 9 A. I am just looking to see whether I've 10 made a note of this here. 11 Q. I don't think -- I mean on 8 or 9 March. 12 If you can't remember then I am -- 13 A. Sorry, I can't help you with that. 14 Q. If I ask you the same question as far as 15 the interim Governor is concerned, are you 16 able to assist. 17 A. I think on the first day the interim 18 Governor arrived pretty much towards the 19 very end of the meeting. There is no notes at 20 all. I think he just popped in. I think he was 21 just walking past the station with his dog and 22 he popped in to say hello. I don't think it was 23 by formal agreement. The next day it was. 24 Q. So just on that then, are you able to say 25 whether in the time that the interim Governor</p> <p style="text-align: center;">Page 169</p>	<p>1 A. I don't think we would have known it had 2 been switched off if we had a note there to 3 interrogate our devices. 4 Q. If you go to A252, please, this is the 5 statement of Mr Pyle and he says, "On 9 6 March, the Attorney General and I met Mr 7 McGrail at NMH. I again asked Mr McGrail 8 about the location of the incident. Mr 9 McGrail said he was still not sure. I 'queried' 10 why the GPS AIS systems could not provide 11 this information. Mr McGrail replied that the 12 instruments had been switched off." Do you 13 have any recollection of that exchange? 14 A. I know that at some point we found out 15 that the AIS had been switched off, but it 16 does not appear from my notes that we knew 17 that in that meeting. He then goes on, "I 18 asked why the officers would do that. Mr 19 McGrail replied 'You know what it is like in 20 the heat of the moment'. I said I did not, 21 adding that surely standard operating 22 procedures dictated that such equipment 23 should always be on. I said this was a vitally 24 important issue given the state of 25 negotiations with Spain." Do you have any</p> <p style="text-align: center;">Page 171</p>
<p>1 was at the station, whether the location was 2 discussed? 3 A. I can't remember. 4 Q. You can't remember. Your note of 9 5 March that we are just looking at, also says -- 6 I am just looking for the relevant part for you 7 -- "element of chase within BGTW". It is 8 just over the page, yes, page 5737. Just over 9 half way down, "element of chase within 10 BGTW". 11 A. Yes. 12 Q. Was it discussed that part of the chase 13 was outside BGTW? 14 A. I think it must have been if I'm saying 15 that there was an element of chase within 16 BGTW. It is implying that the main part of 17 the chase was outside of it. 18 Q. Was it discussed that the collision was 19 outside GBTW? 20 A. I can't say with any certainty because I 21 don't have a note on that. 22 Q. Your note also states just underneath 23 "interrogate our own devices, AIS, phones, 24 GPS." Did anyone mention in that meeting 25 that the AIS system was switched off?</p> <p style="text-align: center;">Page 170</p>	<p>1 recollection of that exchange? 2 A. Sorry, I have lost track there. 3 Q. Sorry, let's just break it down. Mr Pyle 4 says that there was an exchange between him 5 and Mr McGrail where Mr Pyle asked Mr 6 McGrail why the officers would switch the 7 AIS systems off and that Mr McGrail replied, 8 "You know what it is like in the heat of the 9 moment." Do you recall an exchange of that 10 nature between Mr Pyle and Mr McGrail? 11 A. No, I don't. 12 Q. At A802, please, I can see the time, I only 13 have a handful of questions left. This is DCI 14 Field's first statement and at 46 he said, "That 15 same day we instigated the repatriation 16 arrangements and also managed to secure the 17 thermal imagery recording which captured 18 the actual collision. The recording is not all 19 that clear because of the time of day and the 20 distances involved. This was later brought to 21 the attention of Superintendent Richardson 22 and Commissioner of Police McGrail." Just 23 before I say anything, those redactions are 24 not to do with the restriction notice. Those 25 redactions are to do with personal</p> <p style="text-align: center;">Page 172</p>

<p>1 information. That is not particular relevant. 2 DCI Field states that "we managed to obtain 3 thermal imagery of the collision and that this 4 was later provided to you and Mr McGrail." 5 When did you obtain a copy of the thermal 6 imagery, as far as you can recall? 7 A. I do not think I obtained a copy of the 8 imagery at all. I think Mr Field obtained a 9 copy of it. 10 Q. Sorry, when did you receive a copy of the 11 thermal imagery? 12 A. I didn't. I remember being shown a video 13 clip by Mr Field and he had managed to -- I 14 am not sure if it's the right word -- triangulate 15 where the collision must have taken place 16 because we knew the position of two tankers 17 that were berthed, I'm not sure if that's ... 18 anchored in the bay and we knew he was 19 saying that if this vessel was here and that 20 vessel was here, the fact that they've gone 21 through this means that it must have 22 happened over here. 23 Q. When did that take place, do you know? 24 A. I can't remember. 25 Q. He says that he obtained the recording on</p> <p style="text-align: center;">Page 173</p>	<p>1 early retirement, can I take you to your 2 second statement, paragraph 15(c), which is 3 A1289. 4 A. I have it. 5 Q. 15(c). 6 A. Yes. 7 Q. You say "After receiving a letter inviting 8 him to retire, Mr McGrail called a meeting 9 with his senior management team. He 10 explained he had been invited to retire 11 because the Governor and Chief Minister had 12 lost confidence in him. We were very 13 shocked. I asked whether it was in relation 14 to Operation Delhi. He said the concerns 15 related mainly to Operation Kram and the 16 serious concerns raised by the HMIC 17 following their inspection. Mr McGrail did 18 not show us the letter." Why were you 19 shocked? 20 A. Because I had had -- none of us had any 21 idea that there was anything wrong with the 22 relationship with the Commissioner and the 23 Chief Minister. 24 Q. And what is your understanding as to the 25 reasons for Mr McGrail ceasing to be</p> <p style="text-align: center;">Page 175</p>
<p>1 12 March. 2 A. I would imagine as soon as he had 3 obtained that recording he would have told 4 me about it. 5 Q. What was your involvement in Operation 6 Kram after that date? 7 A. I think that I was asked to liaise with the 8 Metropolitan Police and I liaised with Chief 9 Inspector Smith, I think, Gary, I forget his 10 name, Smith. 11 Q. Yes, Smith. 12 A. I provided a briefing for him, a briefing 13 document and sent it over. I was present 14 when his team were briefed when they came 15 over to Gibraltar and then I had very little 16 involvement from that point onwards. 17 Q. Were you in any further contact with Mr 18 Pyle, the interim Governor, about Operation 19 Kram? 20 A. Not as far as I remember. 21 Q. And were you privy to any other 22 meetings or communications between Mr 23 McGrail and Mr Pyle about Operation Kram? 24 A. I don't think so. 25 Q. Just finally, in relation to Mr McGrail's</p> <p style="text-align: center;">Page 174</p>	<p>1 Commissioner of Police by applying for 2 early retirement? 3 A. With respect, sir, I think that's what this 4 Inquiry is all about. 5 Q. Yes, but I am asking about your 6 understanding. 7 A. About my opinions? My view -- 8 Q. No, not your opinion, but your 9 understanding and if you have no 10 understanding -- 11 A. At the time I had no understanding, 12 because I had asked Mr McGrail, we had 13 asked Mr McGrail is this in connection with 14 Operation Delhi. Of course, I was concerned 15 about that because I was the SIO for 16 Operation Delhi. He had replied that it was 17 not in relation to Operation Delhi but I had 18 not seen any of the papers that he had been 19 served. So I was puzzled as to why he was 20 being asked to retire, shocked even. 21 MR SANTOS: Thank you. Just bear with 22 me one second. (Pause) Thank you, if you 23 just stay there, I think that Mr Wagner may 24 have some questions for you. 25 MR CRUZ: Sir, I have no entitlement to ask</p> <p style="text-align: center;">Page 176</p>

<p>1 questions without your permission, and there 2 was just a couple of documents that go ... 3 one goes to the issue of the search warrant 4 and the DPP, that I thought it would be 5 helpful if the witness could look at and there 6 is another, but I do not know whether (a) you 7 would be willing to allow me to ask that 8 question, and (b) when you would want me 9 to ask it. It may be that others would want 10 me to ask it now rather than later. rather than 11 later. 12 THE CHAIRMAN: We will have our break 13 shortly. If you just mention to Mr Santos 14 what the documents are, that may be the way 15 forward. 16 MR CRUZ: Thank you. 17 MR SANTOS: I think it is Mr Wagner next 18 for Mr McGrail who has some questions for 19 you. 20 THE CHAIRMAN: I think maybe it is a 21 good idea to have our break now. 22 MR SANTOS: Yes. 23 (15.09) 24 (Adjourned for a short time) 25 (15.20)</p> <p style="text-align: center;">Page 177</p>	<p>1 that you were taken through this morning. 2 What I want to find out is who had access to 3 those documents and I am going to ask you a 4 few specific questions. So, starting with the 5 national decision model assessment 6 document, the NDM, that very detailed 7 document just for everybody else's 8 understanding, that were sent to the DPP to 9 assess whether he agreed that Mr Levy could 10 be treated as a suspect, to your knowledge, 11 between 12 May and 9 June, did the Chief 12 Minister have access to that document? 13 A. Not to my knowledge, no. 14 Q. Would he have been sent it by you at any 15 point? 16 A. He would not have been sent it by me. 17 Q. Did the Attorney General have access to 18 that document? 19 A. I didn't send the document to the 20 Attorney General. 21 Q. No. What about the acting Governor, Mr 22 Pyle? 23 A. No. 24 Q. Did Dr Britto of the Gibraltar Police 25 Authority have access to that document to</p> <p style="text-align: center;">Page 179</p>
<p>1 THE CHAIRMAN: You have sorted out 2 your position, Mr Cruz? 3 MR CRUZ: Yes. 4 MR WAGNER: I did not hear what was 5 said. 6 THE CHAIRMAN: The answer was "yes". 7 CROSS-EXAMINATION BY MR 8 WAGNER 9 THE WITNESS: Good afternoon Mr 10 Wagner. 11 MR WAGNER: Good afternoon Mr 12 Richardson. You will have to excuse me for 13 not looking at you the whole time. I may 14 turn my computer a little bit so I can at least 15 turn my nose towards you occasionally. I am 16 not being rude, I am just reading from my 17 screen. As long as it does not concern you or 18 you cannot hear what I am saying. 19 A. I can hear what you are saying, and I can 20 do the same and turn. 21 Q. Just let me know and if it needs to be 22 dealt with, we will deal with it. Mr 23 Richardson, the first question I wanted to ask 24 you relates to the various documents that 25 related to Mr Levy and the search warrant</p> <p style="text-align: center;">Page 178</p>	<p>1 your knowledge? 2 A. No. 3 Q. The application for the warrant, did any 4 of those individuals, as far as you know, have 5 access to that document between 12 May and 6 9 June? 7 A. No. 8 Q. What about the note that you took of the 9 meeting with the DPP where he advised on 10 Mr Levy's suspect status. Did any of those 11 individuals have access to those notes? 12 A. The DPP will have had access to that note 13 at some point, yes. 14 Q. Sorry, I was not asking about the DPP, I 15 was asking about the Chief Minister. 16 A. No. 17 Q. The AG? 18 A. No. 19 Q. Mr Pyle? 20 A. No. 21 Q. Or the GPA? 22 A. No. 23 Q. What about the ruling of the Magistrates 24 granting the warrant? Would the Chief 25 Minister have seen that?</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

<p>1 A. No.</p> <p>2 Q. What about the Attorney General?</p> <p>3 A. I'm saying no, I've got no idea what the</p> <p>4 Chief Minister has access to.</p> <p>5 Q. Sorry, to your knowledge?</p> <p>6 A. Not to my knowledge, no.</p> <p>7 Q. And I assume Mr Pyle and the Dr Britto?</p> <p>8 A. The same.</p> <p>9 Q. And to your knowledge, during that</p> <p>10 period of 12 May to 9 June, did anybody in</p> <p>11 the investigating team, and particularly you,</p> <p>12 share with the Chief Minister the underlying</p> <p>13 evidence that you considered gave you a</p> <p>14 reasonable suspicion in relation to Mr Levy?</p> <p>15 A. No.</p> <p>16 Q. Was the AG taken through the evidence?</p> <p>17 A. No.</p> <p>18 Q. Is that unusual that the AG would not be</p> <p>19 taken through the evidence?</p> <p>20 A. It is not unusual now. Before the</p> <p>21 constitutional changes, I think in 2006 the</p> <p>22 AG held a dual role of being the DPP as well,</p> <p>23 or having that function and so we would</p> <p>24 often go down and see the AG, meaning the</p> <p>25 AG in his capacity as Gibraltar's version of</p> <p style="text-align: center;">Page 181</p>	<p>1 Q. The intellectual property, yes.</p> <p>2 A. Yes, that's correct.</p> <p>3 Q. And the fact that he was advising the</p> <p>4 Government, did that give rise to any</p> <p>5 additional issues that you would have to deal</p> <p>6 with in terms of him being involved and</p> <p>7 seeing the evidence?</p> <p>8 A. Sorry, could you repeat that question.</p> <p>9 Q. Wel, if he is advising the Government</p> <p>10 about an issue that is going to be live in the</p> <p>11 investigation, would you think otherwise</p> <p>12 about sharing with him sensitive information</p> <p>13 in the investigation, or does it not make a</p> <p>14 difference?</p> <p>15 A. I'd never consider that.</p> <p>16 Q. No. I just want to ask you now about Op</p> <p>17 Delhi and particularly Mr McGrail's</p> <p>18 involvement in the investigation. Did Mr</p> <p>19 McGrail have any direct involvement in</p> <p>20 running the investigation?</p> <p>21 A. No.</p> <p>22 Q. No. Did he assist in drafting any</p> <p>23 statements?</p> <p>24 A. No.</p> <p>25 Q. Did he assist in drafting the NDM</p> <p style="text-align: center;">Page 183</p>
<p>1 the DPP.</p> <p>2 Q. Yes. But after 2006?</p> <p>3 A. No.</p> <p>4 Q. Or whenever it was that the DPP role was</p> <p>5 introduced. I think it may have been 2008?</p> <p>6 A. I don't --</p> <p>7 Q. 2015.</p> <p>8 A. It was just before the start of this Inquiry</p> <p>9 I think.</p> <p>10 Q. All right. So it was not unusual. It would</p> <p>11 be unusual if the AG at that time saw the</p> <p>12 evidence in a criminal investigation?</p> <p>13 A. From my perspective as a police officer,</p> <p>14 yes. I don't know if other police officers had</p> <p>15 dealt with the AG.</p> <p>16 Q. And the AG in this investigation, he had</p> <p>17 informed you, I think it is right to say, that he</p> <p>18 was advising on the ownership issue. Is that</p> <p>19 right?</p> <p>20 A. That is my recollection.</p> <p>21 Q. So that was the ownership issue, correct</p> <p>22 me if I am wrong, was whether it was the</p> <p>23 Government or Bland that owned the NCSIS.</p> <p>24 A. The intellectual property behind the</p> <p>25 NCSIS platform.</p> <p style="text-align: center;">Page 182</p>	<p>1 documents?</p> <p>2 A. No.</p> <p>3 Q. Did he assist in drafting the application</p> <p>4 for the warrants?</p> <p>5 A. No.</p> <p>6 Q. Did he come along to court that day --</p> <p>7 A. No.</p> <p>8 Q. -- to get the warrant? No. Was he at the</p> <p>9 Hassan's offices attempting to execute the</p> <p>10 warrant on 12 May?</p> <p>11 A. No.</p> <p>12 Q. Did he come with you to Mr Levy's home</p> <p>13 on 12 May?</p> <p>14 A. No.</p> <p>15 Q. How often did you update Mr McGrail in</p> <p>16 relation to the investigation?</p> <p>17 A. That is hard to say because I think I</p> <p>18 mentioned in one of my statements that our</p> <p>19 offices were collocated on purpose so that he</p> <p>20 could pop in and he did pop in several times</p> <p>21 during the course of the day. Discussions</p> <p>22 will have been had on an ad hoc basis. So, it</p> <p>23 is impossible for me to say exactly how</p> <p>24 many times I would have updated him.</p> <p>25 Q. What was the purpose of those updates?</p> <p style="text-align: center;">Page 184</p>

46 (Pages 181 to 184)

1 **A. Well, it depended on what was**
 2 **happening. For example, in the case of the**
 3 **NDM that we had taken advice from the DPP**
 4 **and what that advice was, where we were in**
 5 **relation to things. Mr McGrail had been**
 6 **instrumental in helping us secure the**
 7 **assistance of the National Crime Agency that**
 8 **came over to assist with the investigation.**
 9 Q. I will come back in a moment to the
 10 National Crime Agency. Just two other
 11 questions about Mr McGrail's involvement
 12 and one that's not. During the investigation,
 13 were you or any of the other investigating
 14 officers to your knowledge what you might
 15 call being directed by James Gaggero?
 16 **A. No.**
 17 Q. And to your knowledge, was Mr McGrail
 18 being directed by James Gaggero?
 19 **A. No.**
 20 Q. Just coming back to the NCA, the
 21 National Crime Agency, is it normal for the
 22 National Crime Agency to come in and assist
 23 with an investigation in Gibraltar?
 24 **A. No, it isn't.**
 25 Q. And I think you mentioned in your earlier

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1 evidence, you spoke about the seriousness of
 2 the consequences of what you considered to
 3 be the alleged criminal conduct.
 4 **A. Yes.**
 5 Q. Now, I am not going to ask you about the
 6 detail of those consequences and you know
 7 that some of it is subject to a restriction
 8 notice, but just talking about seriousness, and
 9 just to give this a bit of context, all these
 10 documents and the actions that were being
 11 taken and the meetings and the discussions
 12 and all of that, in your experience as a police
 13 officer, how long were you a police officer
 14 for?
 15 **A. 36 years.**
 16 Q. In your 36 years as a police officer, how
 17 serious was this investigation compared to
 18 others you had been involved in?
 19 **A. I think it was the most serious**
 20 **investigation that I had been involved in.**
 21 Q. You say it was the most serious
 22 investigation you had been involved in, the
 23 level of criminality that you suspected and
 24 the seriousness of the consequences, how did
 25 that impact on the way that you investigated

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1 the crimes?
 2 **A. It became apparent very soon on that we**
 3 **didn't have the technical expertise to be able**
 4 **to investigate the computer misuse offences,**
 5 **not just within the police, but within**
 6 **Gibraltar and we also didn't have the**
 7 **technical expertise to be able to interview**
 8 **somebody at the level that was required to**
 9 **investigate the crimes that were under**
 10 **investigation. It was for that reason that we**
 11 **engaged with the National Crime Unit's**
 12 **Cyber Crime Unit to assist.**
 13 Q. And when they arrived, the National
 14 Crime Agency Cyber Unit, did they say,
 15 "This isn't very serious. Why have you
 16 called us in?"
 17 **A. No, quite the contrary.**
 18 Q. What kind of things did they say?
 19 **A. This was the level of investigation that**
 20 **they got involved in nationally in the United**
 21 **Kingdom.**
 22 Q. What do you mean by "level"?
 23 **A. Well, in forces in the UK, obviously most**
 24 **of the forces are much, much bigger than**
 25 **ours. They will have their own cyber crime**

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1 **units. They may have their own specialist**
 2 **technicians, but if it gets beyond a certain**
 3 **size, they will have to use a national resource**
 4 **and they have to bid to use that national**
 5 **resource. There isn't several National Crime**
 6 **Agencies that can be drawn upon.**
 7 Q. Yes. So they were saying to you, in
 8 effect, this was an investigation that was so
 9 serious that even in a country of 60 million
 10 people, as compared to a jurisdiction of
 11 30,000, it would be serious enough for them
 12 to get involved?
 13 **A. That's correct.**
 14 Q. Would you agree that there was another
 15 aspect of it was serious is that it was the
 16 people that you suspected of being involved
 17 and their position in society?
 18 **A. Yes.**
 19 Q. Can you just elaborate on that and how it
 20 impacted on the investigation.
 21 **A. There are sensitivities in every**
 22 **investigation but this particular one involved**
 23 **the ex-commanding officer of the Gibraltar**
 24 **Regiment, a person that was held in high**
 25 **esteem. A senior civil servant and also an**

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<p>1 esteemed barrister within Gibraltar.</p> <p>2 Q. Yes, and not just a senior civil servant, it</p> <p>3 was the Principal Private Secretary to the</p> <p>4 Deputy Chief Minister?</p> <p>5 A. That is correct.</p> <p>6 Q. So one of the most senior civil servants?</p> <p>7 A. I am not sure how that relates in the UK</p> <p>8 context. I know his grade was a higher</p> <p>9 executive officer, which isn't one of the most</p> <p>10 senior in the civil service in Gibraltar.</p> <p>11 Q. Right. But certainly he would have</p> <p>12 access to high levels of information and</p> <p>13 control?</p> <p>14 A. I would imagine working with the Deputy</p> <p>15 Chief Minister he would.</p> <p>16 Q. So you had a senior military man, a</p> <p>17 senior civil servant and a very senior law</p> <p>18 officer, all potentially involved?</p> <p>19 A. That's correct.</p> <p>20 Q. And did that lead you to dealing with the</p> <p>21 matters in a different way than you would</p> <p>22 normally?</p> <p>23 A. We had to deal with the matter</p> <p>24 sensitively, particularly with regards to Mr</p> <p>25 Levy, and I have talked about that quite a bit</p> <p style="text-align: center;">Page 189</p>	<p>1 2020?</p> <p>2 A. I think it was 2018, yes.</p> <p>3 Q. You think it was 2018 specifically, or</p> <p>4 could it have been 2019 as well?</p> <p>5 A. It could have been 2019. I am not 100</p> <p>6 per cent certain.</p> <p>7 Q. I am going to just show you a part from</p> <p>8 Mr McGrail's first affidavit. If we could</p> <p>9 show A4 please and paragraph 12. Just go a</p> <p>10 little bit further down, it says there, "Because</p> <p>11 of the complexities of the case, I was aware</p> <p>12 the investigative officers were consulting</p> <p>13 with the Office of Criminal Prosecution and</p> <p>14 Litigation, particularly with the DPP. I also</p> <p>15 discussed the investigation with the AG on a</p> <p>16 few occasions when he brought it up and</p> <p>17 very briefly verbally went over the evidence</p> <p>18 and progress made. I would normally</p> <p>19 provide these briefings on the back of other</p> <p>20 subject matters that I had met the AG on.</p> <p>21 The AG was initially enquiring about what</p> <p>22 evidence we were coming across and I was</p> <p>23 content to disclose this verbally to him, albeit</p> <p>24 in a brief fashion."</p> <p>25 Now, earlier you gave evidence that you only</p> <p style="text-align: center;">Page 191</p>
<p>1 this morning, and if you would like me to go</p> <p>2 through it again?</p> <p>3 Q. No, there is no need for you to go through</p> <p>4 it again. I want to move in to some of the</p> <p>5 specifics now, please. I am going to start</p> <p>6 with the meetings and conversations with the</p> <p>7 Attorney General. Thue first question is:</p> <p>8 while Mr McGrail was Commissioner and</p> <p>9 you were an officer, would you have been</p> <p>10 involved in any meetings with Mr McGrail</p> <p>11 that were not about Operation Delhi?</p> <p>12 A. Sorry, are you asking have I been in</p> <p>13 meetings ...?</p> <p>14 Q. In, say, 2018/19/20, were you ever in</p> <p>15 meetings with Mr McGrail that were not</p> <p>16 about Operation Delhi?</p> <p>17 A. Many meetings.</p> <p>18 Q. Yes. And would you ever have been in</p> <p>19 any meetings with the Attorney General that</p> <p>20 were not about Operation Delhi?</p> <p>21 A. Yes, I was in relation to one particular</p> <p>22 operation for which I was the SIO as well,</p> <p>23 yes, I met on a number of occasions with the</p> <p>24 Commissioner and the Attorney General.</p> <p>25 Q. And is that in that period 2018, 2019,</p> <p style="text-align: center;">Page 190</p>	<p>1 recalled being in one meeting that was</p> <p>2 specifically about Op Delhi with both the AG</p> <p>3 and Mr McGrail. That's right, isn't it?</p> <p>4 A. With the AG, yes, that's correct.</p> <p>5 Q. Before 12 May. Of course I mean before</p> <p>6 12 May. Is it possible you were -- if Mr</p> <p>7 McGrail is right in his recollection and the</p> <p>8 AG sometimes brought up Op Delhi in other</p> <p>9 meetings that were not about Op Delhi, is it</p> <p>10 possible that you might have been in those</p> <p>11 meetings?</p> <p>12 A. No, I don't think so, no.</p> <p>13 Q. Why don't you think so?</p> <p>14 A. Because I would have remembered being</p> <p>15 present when Operation Delhi was raised</p> <p>16 with the Attorney General.</p> <p>17 Q. Sorry, Mr McGrail is saying it was raised</p> <p>18 by the Attorney General rather than with the</p> <p>19 Attorney General.</p> <p>20 A. Well, in a meeting with ... I don't</p> <p>21 remember going to any other meetings with</p> <p>22 the Commissioner and the Attorney General</p> <p>23 other than the Operation -- it was called</p> <p>24 Operation Florence and that was to do with</p> <p>25 the Iranian super tanker.</p> <p style="text-align: center;">Page 192</p>

<p>1 Q. Yes.</p> <p>2 A. And that was before Operation Delhi.</p> <p>3 Q. Right. So you don't remember that</p> <p>4 happening.</p> <p>5 A. No, I don't.</p> <p>6 THE CHAIRMAN: No, he does not say he</p> <p>7 does not remember, he said he did not know.</p> <p>8 MR WAGNER: Sorry?</p> <p>9 THE CHAIRMAN: He did not say he did</p> <p>10 not remember any such meetings, he said</p> <p>11 there weren't any such meetings.</p> <p>12 (15.36)</p> <p>13 MR WAGNER: Yes.</p> <p>14 THE CHAIRMAN: That is different.</p> <p>15 MR WAGNER: Understood. I want to talk</p> <p>16 about the meeting of 7 April. If you could</p> <p>17 please turn up A1437. This is about whether</p> <p>18 you recall any agreement being reached that</p> <p>19 the RGP would not take any further action</p> <p>20 until we had clarified the question of</p> <p>21 ownership and rationalised the number of</p> <p>22 charges.</p> <p>23 "Furthermore, I do not remember agreeing</p> <p>24 nothing would happen until we met again."</p> <p>25 You were not taken through earlier the</p> <p style="text-align: center;">Page 193</p>	<p>1 rather than down the criminal routes?</p> <p>2 A. Yes, I do.</p> <p>3 Q. How did you respond to that?</p> <p>4 A. It was - to me it was shocking to hear</p> <p>5 that.</p> <p>6 Q. Why was it shocking?</p> <p>7 A. I said as much to the AG at the time, I</p> <p>8 said: "Sir, from what we have seen the man is</p> <p>9 corrupt," and then I must have noted a</p> <p>10 reaction and I apologised for being frank and</p> <p>11 he said: "That's fine," or "That's okay, Paul,"</p> <p>12 or whatever it was, and we didn't discuss it</p> <p>13 any further.</p> <p>14 Q. Do you think your shock was connected</p> <p>15 to what you were saying at the outset of my</p> <p>16 questions about the seriousness of the</p> <p>17 investigation?</p> <p>18 A. Yes. I didn't think it was appropriate for</p> <p>19 a senior civil servant that was involved in</p> <p>20 criminality of the level that we were</p> <p>21 investigating, I don't think that a disciplinary</p> <p>22 route was an appropriate route for that matter</p> <p>23 to be resolved.</p> <p>24 Q. Do you remember the Attorney General</p> <p>25 proposing a scenario whereby the</p> <p style="text-align: center;">Page 195</p>
<p>1 factors at paragraph 72, where you say:</p> <p>2 "Had such an agreement been reached I</p> <p>3 would have made a record of it either at the</p> <p>4 time of when you returned to the office,</p> <p>5 discussed it with Mr McGrail and planned a</p> <p>6 strategy given the other suspects were on</p> <p>7 police bail, discussed it with Mr Wyan</p> <p>8 particularly as the Op Delhi defendants were</p> <p>9 due to surrender to their bail in two weeks'</p> <p>10 time on 15 April, discussed it with the DPP</p> <p>11 whom I had consulted and from whom I was</p> <p>12 still waiting for a response, not proceeded to</p> <p>13 obtain the search warrant."</p> <p>14 I just want to clarify. You say there that you</p> <p>15 do not recall any agreement happening but</p> <p>16 then you give a number of actions that you</p> <p>17 think you would have taken if there had been</p> <p>18 such an agreement. Looking back at it now,</p> <p>19 do you think there was any agreement of that</p> <p>20 kind?</p> <p>21 A. No.</p> <p>22 Q. Do you recall at that meeting or</p> <p>23 otherwise the Attorney General suggesting</p> <p>24 that Caine Sanchez, who was the senior civil</p> <p>25 servant, be dealt with via a disciplinary route</p> <p style="text-align: center;">Page 194</p>	<p>1 government had allowed the platform to be</p> <p>2 accessed? The NSCIS platform?</p> <p>3 A. Sorry, could you repeat that?</p> <p>4 Q. Do you remember the Attorney General</p> <p>5 at any point proposing a scenario, in that</p> <p>6 meeting or otherwise, that what if the</p> <p>7 Government had actually allowed access to</p> <p>8 the NSCIS platform by suspects?</p> <p>9 A. I have a vague recollection of that but I</p> <p>10 don't know if it's something that I remember</p> <p>11 from that meeting or whether it's something</p> <p>12 that I have heard since then.</p> <p>13 Q. Okay. We have already mentioned it in</p> <p>14 parts, but do you recall the Attorney General</p> <p>15 saying that he was now advising on the</p> <p>16 intellectual property aspect of the picture --</p> <p>17 A. Of the ownership of the ...</p> <p>18 Q. Of the ownership of the intellectual</p> <p>19 property, and that he would be stepping back</p> <p>20 as a result?</p> <p>21 A. That does sound familiar.</p> <p>22 Q. What did you take him to mean, if you</p> <p>23 can remember your reaction?</p> <p>24 A. I'm sorry, I can't remember anything</p> <p>25 beyond that.</p> <p style="text-align: center;">Page 196</p>

49 (Pages 193 to 196)

<p>1 Q. No. Just in relation to the number of 2 charges, if we could just turn please to 3 B3666. You should be able to see there this 4 is the proposed charges. In actual fact it 5 looks like the significant majority of the 6 charges are against the person who was 7 thought to have or suspected to have hacked 8 into the system. Is that right? 9 A. That is correct. 10 Q. Yes. You mentioned in your evidence 11 earlier that part of the reason for that might 12 have been the fact that there was not just one 13 instance, there were multiple instances. 14 A. Yes, that's correct. 15 Q. How would that impact on the number of 16 charges? 17 A. My understanding with computer misuse 18 offences is that on each instance that there 19 has been a hacking or an accessing or a 20 diversion, it creates a separate offence. It 21 wasn't an area of law that I was particularly 22 familiar with. In fact I don't think we had 23 ever dealt with it before, certainly not at this 24 level. 25 Q. In an investigation like this, which you</p> <p style="text-align: center;">Page 197</p>	<p>1 point where the charges would be narrowed 2 down? 3 A. Yes. 4 Q. Do you happen to know how many 5 charges were brought against Tommy 6 Cornelio in the end? 7 A. No, sorry, I don't. 8 Q. If I were to say it was 14, does that sound 9 about right, or do you not recall? 10 A. It sounds about right but I really could 11 not say. 12 Q. I want to ask you now about the 13 ownership issue in Op Delhi. In your view, 14 was it necessary at any point in the 15 investigation to pause the investigation so 16 that the ownership issue could be resolved. 17 A. No. 18 Q. No. Can you explain your reasoning? 19 A. From the beginning we understood from 20 the complainant Mr Gaggero that Blands 21 retained the intellectual property ownership 22 of the platform. This position was disputed 23 strongly by the Government. Mr Gaggero 24 was able to put an argument forward with his 25 evidence in support of that and unfortunately</p> <p style="text-align: center;">Page 199</p>
<p>1 said is serious and I think you would agree it 2 is complex as well as serious ... 3 A. Yes. 4 Q. Would it be unusual at that stage of the 5 investigation, so while the investigation is 6 afoot, is ongoing, to have more charges being 7 proposed than you expect to eventually 8 proffer? 9 A. Yes. 10 Q. Is it right to say that in this jurisdiction 11 the police actually bring the charges directly, 12 it is not the DPP who brings the charges? 13 A. That's correct. I think there may be a 14 small number of offences that require a fiat 15 in order to proceed but by and large the 16 offences are decided by the police. 17 Q. At the point where they are decided by 18 the police, will the DPP be consulted? 19 A. It depends on the level of the crime. If it 20 is a traffic offence, the answer is no. In a 21 more complex case, usually yes. 22 Q. So in this case was the DPP ultimately 23 consulted on the offences? 24 A. Yes. 25 Q. Would it be right to say that is usually the</p> <p style="text-align: center;">Page 198</p>	<p>1 we couldn't obtain that same amount of 2 evidence from the Government, and so we 3 considered how -- 4 Q. Just pause there a second - sorry to 5 interrupt, but you said: "Unfortunately we 6 could not take that kind of evidence from the 7 Government, or level of evidence from the 8 Government." What do you mean by that? 9 A. Because when we attended a meeting 10 with the Chief Secretary specifically with 11 regards to what the Government's position 12 was on ownership, he had no documents 13 supporting the Government's view that they 14 owned the platform. 15 Q. What kind of documents would you have 16 wanted to see or hoped to see? 17 A. A contract, an agreement, an exchange of 18 emails, memorandum of understanding. 19 Q. Was it your view that the Government 20 was cooperative in relation to the ownership 21 issue? 22 A. It was difficult to get a concerted 23 response from the Chief Secretary and other 24 people involved in this investigation within a 25 meaningful period of time.</p> <p style="text-align: center;">Page 200</p>

50 (Pages 197 to 200)

<p>1 Q. Within a what period of time, sorry?</p> <p>2 A. Within a meaningful period of time. So</p> <p>3 we were asking for statements, we were</p> <p>4 asking for clarification, and it took a long</p> <p>5 time for that information to come back.</p> <p>6 Q. Do you remember roughly how long?</p> <p>7 Was it days, weeks, months?</p> <p>8 A. It was more than days. Weeks, perhaps</p> <p>9 even months.</p> <p>10 Q. But in the meantime you did not think it</p> <p>11 was necessary to stop investigating.</p> <p>12 A. No.</p> <p>13 Q. I want to ask you now about Mr Levy's</p> <p>14 status as a suspect. You gave evidence</p> <p>15 earlier about something you called</p> <p>16 reasonable suspicion. Just for those, and of</p> <p>17 course not the lawyers in the room but for</p> <p>18 others who are watching your evidence, can</p> <p>19 you explain what you mean by reasonable</p> <p>20 suspicion?</p> <p>21 A. It's a long time since I have looked this</p> <p>22 up, Mr Wagner, but reasonable suspicion,</p> <p>23 from what I remember now four years down</p> <p>24 the line, is when you can form an objective</p> <p>25 view that a set of circumstances indicates that</p> <p style="text-align: center;">Page 201</p>	<p>1 Gaggero has brought in a forensic team of six</p> <p>2 to look at anything John and I may have done</p> <p>3 to tamper with the system, etc. Gaggero is</p> <p>4 going all out, it seems."</p> <p>5 A. Sorry, sir, you say this was the national</p> <p>6 decision making document? I don't think it</p> <p>7 is, sir.</p> <p>8 Q. Have I got that wrong? It is the ...</p> <p>9 A. It looks like the charging advice. Or the</p> <p>10 information. One of the two.</p> <p>11 Q. Okay. In a text to Perez the same day,</p> <p>12 Cornelio stated that he had spoken to Levy</p> <p>13 and was told not to worry. Then the third bit</p> <p>14 is the evidence indicates Levy discussed the</p> <p>15 forensic team with Cornelio and that he had</p> <p>16 given him advice about the situation.</p> <p>17 A. Yes.</p> <p>18 Q. Why did that make you, in your opinion,</p> <p>19 suspect that Mr Levy was involved in their</p> <p>20 criminal offences?</p> <p>21 A. Because Cornelio appears to have found</p> <p>22 out that the national - sorry, the</p> <p>23 PricewaterhouseCoopers forensic</p> <p>24 investigators had come to Gibraltar and were</p> <p>25 interrogating the system that he had</p> <p style="text-align: center;">Page 203</p>
<p>1 something happened, but you can also form a</p> <p>2 subjective view that you agree that that</p> <p>3 happened, and that if you relayed those</p> <p>4 suspicious to a third party they would be able</p> <p>5 to draw that same conclusion. I am sure that</p> <p>6 is not the technical description of it, but that's</p> <p>7 what my recollection is.</p> <p>8 Q. Is that the same as the level of certainty</p> <p>9 you need to bring a charge? Can you bring a</p> <p>10 charge just on reasonable suspicion?</p> <p>11 A. No.</p> <p>12 Q. No. Is reasonable suspicion lower than</p> <p>13 the ...</p> <p>14 A. It is, yes.</p> <p>15 Q. ... level you need? Is it quite a bit lower?</p> <p>16 A. Well, there is suspicion and belief.</p> <p>17 Q. Yes. I just want to turn, please, to</p> <p>18 B3630. So this is the knowledge of computer</p> <p>19 misuse offences Levy section in the national</p> <p>20 decision model document. It says there - we</p> <p>21 have been these messages before - 19</p> <p>22 October, Cornelio, who is the person</p> <p>23 suspected of accessing and hacking into the</p> <p>24 system:</p> <p>25 "Morning, James. Very confidential. Note</p> <p style="text-align: center;">Page 202</p>	<p>1 previously had control over, and that he was</p> <p>2 explaining to Mr Levy, a lawyer, that he was</p> <p>3 worried that - I will read what it says:</p> <p>4 "Morning, James. Very confidential. Note</p> <p>5 Gaggero has brought in a forensic team of six</p> <p>6 to look at anything John and I may have done</p> <p>7 to tamper with the system, etc. Gaggero is</p> <p>8 going all out, it seems."</p> <p>9 So we had a suspect in a major hacking</p> <p>10 allegation and data breach allegation that was</p> <p>11 sending a message to a lawyer advising him</p> <p>12 that his actions were being investigated by</p> <p>13 forensic investigators and that he was</p> <p>14 worried that they would find out that he had</p> <p>15 done something to tamper with the system.</p> <p>16 Q. Sorry, I should - before someone else</p> <p>17 jumps up, he says:</p> <p>18 "To look at anything John and I may have</p> <p>19 done to tamper with the system."</p> <p>20 A. Yes, that's correct, yes.</p> <p>21 Q. Sorry, I interrupted you.</p> <p>22 A. I have lost my flow.</p> <p>23 Q. That was my fault. He sent this message</p> <p>24 and in your mind what was the suspicion that</p> <p>25 that gave rise to?</p> <p style="text-align: center;">Page 204</p>

1 **A. That he was confident in speaking to a**
 2 **lawyer about this tampering and that the**
 3 **lawyer had reassured him not to worry about**
 4 **it.**
 5 Q. Just to pause there on - you have used
 6 two expressions. You talked about a lawyer
 7 and his lawyer. Now, to your understanding,
 8 was Mr Levy acting as 36 North --
 9 **A. No, I am sorry, it is a lawyer, you are**
 10 **right. Mr Levy in his statement says that he**
 11 **had a business relationship with Mr Cornelio**
 12 **and Mr Perez but he also offered high level**
 13 **legal advice. I don't know to what extent he**
 14 **was acting as a lawyer and what extent he**
 15 **was acting as a business partner. Either way,**
 16 **the conclusion I would draw will be the**
 17 **same.**
 18 Q. That is what you thought at the time.
 19 You have been taken through in a lot of
 20 detail the evidence and the application for the
 21 warrant and asked some questions about it
 22 this morning. Looking back now, do you
 23 remain of the view that that suspicion was
 24 well founded based on that evidence there, or
 25 would you change your mind now?

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1 **A. If this is the information for the warrant -**
 2 **I don't know if it is - I think that we should**
 3 **have added far more information, far more**
 4 **detail about what our suspicion was.**
 5 MR SANTOS: It is the charging advice.
 6 MR WAGNER: The charging advice, I am
 7 sorry about that. So is that information that
 8 you had at the time of the warrant, that you
 9 would have added, or is it information you
 10 find out afterwards?
 11 **A. I am sorry, I have lost your thread, Mr ...**
 12 Q. Is the information that you are saying you
 13 would have added when you applied for the
 14 warrant --
 15 **A. Yes, yes, that is correct.**
 16 Q. ... is that information you knew at the
 17 time?
 18 **A. Yes.**
 19 Q. Yes. What kind of information would
 20 you have added, looking back?
 21 **A. More content about the exchange of**
 22 **messages between Mr Levy and the other**
 23 **persons, which was included and the**
 24 **appendix to the NDM that was not**
 25 **specifically - we didn't go into that much**

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1 **detail in the warrant application.**
 2 Q. Yes, okay. Just in relation to Mr Levy
 3 being a lawyer, I am going to ask you a
 4 question which may sound a bit simplistic
 5 but can you help me with this. Is it your
 6 experience that lawyers sometimes commit
 7 crimes?
 8 **A. Yes.**
 9 Q. Do not name any names but do you know
 10 any other lawyers who have been
 11 investigated or even convicted of crimes?
 12 **A. Several.**
 13 Q. I just want to ask you about the Chief
 14 Minister's involvement. Was there anything
 15 in the documents that you uncovered that
 16 attracted your interest as the senior
 17 investigating officer to the Chief Minister
 18 himself in relation to this investigation?
 19 **A. Yes.**
 20 Q. Can you just summarise?
 21 **A. It has been a while since I have seen them**
 22 **but there were some messages between the**
 23 **Chief Minister and John Perez about the**
 24 **setting up of the company before the**
 25 **company had been set up.**

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1 Q. Right. Can we just go to A223, please.
 2 (Background noise) I am used to being
 3 heckled in court but that is new for me. Have
 4 you got A223, paragraph 5? This is from the
 5 Chief Minister's statement. He says:
 6 "I recall that I discussed with Mr James Levy
 7 KC on a very large number of occasions the
 8 fact that the RGP had suggested he might be
 9 a person of interest in the investigation. He
 10 raised it with me constantly when I spoke to
 11 him on other matters."
 12 First I am going to ask you this: when you
 13 were applying for the warrant were you or to
 14 your knowledge any of the other
 15 investigating team, did you think that Mr
 16 Levy knew he was a person of interest?
 17 **A. I think it was very likely that he would**
 18 **have known that his name would have**
 19 **featured in the investigation.**
 20 Q. Is that different though?
 21 **A. It depends on what he had heard from the**
 22 **people that had already been arrested.**
 23 Q. If you had known by 12 May that the
 24 Chief Minister and Mr Levy had been in very
 25 regular discussions about Mr Levy's status as

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1 a person of interest, would that have caused
 2 you any concern or made you deal with the
 3 investigation in a different way?
 4 **A. I don't know if it would have made me
 5 deal with the investigation in a different way,
 6 but it would have caused me concern, yes.**
 7 Q. What would the concern have been?
 8 **A. A Chief Minister obviously has a very
 9 special role in Gibraltar. In this case he was
 10 also a partner in the same business that Mr
 11 Levy was, and as a result of that he was a
 12 shareholder in the same venture that Mr Levy
 13 was, which was a company that we were
 14 investigating for conspiracy to defraud.**
 15 Q. It is right to say, is it not, that the
 16 Attorney General is the legal adviser to the
 17 Chief Minister.
 18 **A. I think so, yes.**
 19 Q. If you had known that the Chief Minister
 20 had been in very regular discussions with Mr
 21 Levy, who was a person of interest, might
 22 that have led you to deal with the Attorney
 23 General in a different way?
 24 **A. I don't think so.**
 25 Q. Would you have asked the question of the

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1 Attorney General whether he had been
 2 advising the Chief Minister, or is that not
 3 something you would have --
 4 **A. On this same matter?**
 5 Q. Yes.
 6 **A. Oh, because he was advising on the
 7 ownership issue?**
 8 Q. Yes.
 9 **A. Yes.**
 10 Q. Just in relation to the application for the
 11 search warrant, you were already asked, I
 12 think, or you spoke about the fact that when
 13 Mr Sanchez was arrested and his phone was
 14 examined - correct me if I am wrong - you
 15 found that a lot of the relevant
 16 communications had been deleted. Is that
 17 right?
 18 **A. I don't know if I used the word "a lot".
 19 There had been deletions in the Whatsapp
 20 records of Mr Sanchez.**
 21 Q. Yes. Did it seem to you that they were
 22 potentially deletions that were relevant to the
 23 investigation, or would have been relevant to
 24 the investigation?
 25 **A. I can't remember exactly what they were**

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1 **about but I know that there is an entry in Mr
 2 Wyan's investigation log that deals with this.**
 3 Q. Yes, there it is. If we could turn to
 4 B2957, please. This is an email, or it may be
 5 a text, on 27 July 2018 from two of the
 6 alleged co-conspirators, Vasquez to Cornelio:
 7 "Tommy, Wavetecz email accounts have
 8 been closed but if someone opens them with
 9 our names they can get emails sent to us. We
 10 need to inform all our contacts that we no
 11 longer have these emails. I could be
 12 challenged as to why I cancelled mine. I'm
 13 okay if you delete everything and no-one can
 14 recover any previous emails sent to me."
 15 Cornelio replied:
 16 "No-one can recover."
 17 Vasquez then states:
 18 "SO no probs, mate. Recovering my emails
 19 would be,"
 20 sad face, a sort of crying and smiling and a
 21 mixture of emojis. Cornelio replied:
 22 "You were using the account?"
 23 Vasquez replied:
 24 "Yes, I used the accounts a bit for STP,
 25 (Tambien?) as well."

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1 Was your understanding that some of the
 2 emails had been deleted by some of the
 3 suspects?
 4 **A. Yes, it was.**
 5 Q. Were some of those emails actually
 6 recovered in the end?
 7 **A. Yes, they were.**
 8 Q. They were. So was it known to you at
 9 the point where you applied for the warrant
 10 against Mr Levy that one of the suspects had
 11 potentially deleted some relevant messages,
 12 and two of the suspects had deleted their
 13 email accounts?
 14 **A. That is correct.**
 15 Q. Would that in any way impact on whether
 16 you go for a search warrant or not?
 17 **A. It adds to the risk of losing evidence by
 18 attempting to obtain it without notice. Both
 19 Mr Sanchez and the other people that are
 20 mentioned in that paragraph had deleted
 21 information, and in this instance I recall that
 22 one of the emails had been recovered. If I
 23 am not mistaken, that was the email that
 24 indicated that Mr Levy was involved.**
 25 Q. Right, so your memory is that one of the

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<p>1 emails which had been deleted and the RGP 2 recovered ... 3 A. Mm-hm. 4 Q. ... was one of the emails that related to 5 Mr Levy. 6 A. That's my memory of it, yes. 7 Q. Right. In answer to Mr Santos earlier 8 you mentioned a concern in relation to a 9 production order was that in Gibraltar a 10 production order would have to be on notice. 11 It may sound obvious to you as a former 12 police officer, but can you assist us with 13 explaining the concern? 14 A. If we had applied for a production order 15 there would have had to have been, as I 16 understand it - I admit that I am far more 17 aware of the law behind this now than I was 18 at the time, but the application would have 19 had to be on notice, which means that the 20 other party would have had to have been 21 present to put their views forward. 22 Q. What would them being present, what 23 impact would that have on your investigative 24 aims? 25 A. It would have meant that the other party</p> <p style="text-align: center;">Page 213</p>	<p>1 48. This is Mr Llamas's statement. 2 A. Sorry, whose statement. 3 Q. Mr Llamas's statement. He says: 4 "On the day of 12 May I received two missed 5 voice calls from Mr Levy in which, since 6 they were just a few minutes after the search 7 warrants had been executed, I assumed they 8 were in relation to this matter. I recall I did 9 speak to him either later that day or the 10 following day and that whilst being 11 respectful he complained to me about the 12 way he had been treated by the RGP. He felt 13 very aggrieved. I listened to what he had to 14 say and told him the DPP was handling this 15 matter and that he should speak to him, 16 which I believe he did." 17 Were you aware that Mr Llamas had spoken 18 to Mr Levy on 12 or 13 May? 19 A. No. 20 Q. At the time? 21 A. No. 22 Q. No. Were you aware, and this has to be 23 explored with the DPP but just on the basis 24 of what Mr Llamas says there, were you 25 aware the DPP spoke to Mr Levy?</p> <p style="text-align: center;">Page 215</p>
<p>1 would have known what it is that we were 2 looking for before we went to try and seize it. 3 Q. So it is not just that it alerts them to fact 4 that you are coming in, it tells them what you 5 are coming in for. 6 A. Yes. 7 Q. Would that apply in any way to a search 8 warrant? 9 A. Not an ex parte search warrant. 10 Q. What does ex parte mean? 11 A. It means that only the party that is 12 applying for it is present in court. 13 Q. Yes. So to put it simply, when you turn 14 up at the door that is the first they know 15 about it. 16 A. That is correct. 17 Q. If everything has gone to plan. 18 A. That is correct. 19 Q. Yes. I want to talk now about the 13 20 May meeting. So there were three meetings 21 that took place. You have already talked 22 about them quite a bit. The first one between 23 you and the AG and the Commissioner and 24 others, I just want to put that in mind, and I 25 want to take you, please, to A282, paragraph</p> <p style="text-align: center;">Page 214</p>	<p>1 A. No. 2 Q. There is a text message exchange - I will 3 not go to it, but it indicates that on 13 May at 4 around about 12.30 to 12.45 Mr Llamas met 5 with Mr Levy's son, Moshe Levy, a partner at 6 Hassans, and Lewis Baglietto who was acting 7 for Mr Levy. Now, I think it is right to say 8 that the meeting that you had on 13 May with 9 him and others happened in the mid- 10 afternoon, is that right? 11 A. I can check my record, I will have a note 12 of the time. 13 (16.06) 14 Q. I don't think let's do that now. But take it 15 from me, it happened in the mid-afternoon. 16 Do you remember Mr Llamas saying that he 17 had met with Moshe Levy, Mr Levy's and 18 Mr Baglietto? 19 A. No, not at all. 20 Q. No. I am sorry, I just need to find 21 a reference. If we could just go to A/289, 22 please. Just a little bit further down, there is 23 a text message here. I am sorry, just go 24 a little bit further up. There is a text message 25 there between Mr Levy and Mr Llamas on</p> <p style="text-align: center;">Page 216</p>

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<p>1 the 13th. So this is the evening of the 2 meeting. Mr Levy said: "On the other matter 3 I felt I had been hang out to dry, certainly not 4 by you." Mr Llamas responds "Don't worry". 5 Did you know about that text message 6 exchange at the time? 7 A. No. 8 Q. No. If you had known that Mr Llamas 9 had texted Mr Levy, who was the criminal 10 suspect, "don't worry", would that have 11 caused you any concern? 12 A. Yes, it would have done. 13 Q. Why? 14 A. Because the Attorney General is 15 reassuring a suspect of a live police 16 investigation that he shouldn't worry about it. 17 Q. If you had known that the 18 Attorney General met just before he met with 19 you with Moshe -- with Mr Levy's son and 20 his lawyer -- 21 THE CHAIRMAN: You've asked that 22 already. 23 MR WAGNER: Sorry, sir, I had not finished 24 the question yet. 25 Would that have concerned you?</p> <p style="text-align: center;">Page 217</p>	<p>1 worry. 2 Q. B/126, please. It is the third entry from 3 the bottom, please. This is the 13th May 4 meeting. I don't know whether you 5 remember this or not, but this is Mr Llamas 6 said this: 7 "In my view, it's just a view, completely 8 unjust, unjustifiable to me that this man 9 should even be appearing in a formal 10 document. And I will not, if it is not 11 legitimate, I want that to disappear 12 immediately. My concern here is the 13 reputation of this jurisdiction and that passes 14 to the reputation of our Chief Minister, 15 especially in this moment in time, and for 16 that I shall fight until I die." 17 Do you remember that being said? 18 A. I think so. 19 Q. Do you remember how you felt about the 20 statement? I think he says twice words to the 21 effect of "I'll fight to defend the Chief 22 Minister's reputation to the death", or "until 23 I die." Do you remember how that made you 24 feel as the investigating officer? 25 A. I can't say with any certainty that I can</p> <p style="text-align: center;">Page 219</p>
<p>1 A. It would have raised concerns. I would 2 have been curious as to what the AG was 3 meeting -- because if it isn't just Mr Levy's 4 son, it's another partner of the same firm that 5 was under investigation. 6 Q. Yes. Well, the firm wasn't under 7 investigation, was it? 8 A. No, sorry, the partners of Hassans at that 9 time were beneficial owners of Astelon. 10 I don't know if Mr Moshe Levy was a partner 11 at that time. 12 Q. Right. But Mr Baglietto was partner at 13 that time? 14 A. Yes. 15 Q. Yes. If you had known that the 16 Attorney General had texted Mr Levy, "Don't 17 worry", and had met with Mr Baglietto and 18 Mr Levy, would you have dealt with the 19 meetings any differently that you had with 20 him? 21 A. I think I would have had to discuss it with 22 the Commissioners whether we would be 23 comfortable going through any evidence with 24 the Attorney General at the same time that he 25 was reassuring a defendant that he shouldn't</p> <p style="text-align: center;">Page 218</p>	<p>1 recall how I felt hearing that. It does seem 2 strange and it's not words that I would use 3 myself, but I can't tell you now how I felt at 4 the time. 5 Q. B/276, please, at the bottom of the page. 6 I am picking up at the bottom of the longer 7 paragraph that records what you say. I think 8 this is your reading from the Hassans letter 9 that's been received in relation to the search 10 warrant. You say: "There is even 11 a suggestion here that you [being Mr Rocca] 12 advised us not to obtain a warrant." 13 A. Sorry, I can't see this on this page. 14 Q. Right at the bottom of the big 15 paragraph -- 16 A. I can see it now. 17 Q. That is attributed to you. It says: "There 18 is even a suggestion here that he advises us 19 not to obtain a warrant." Mr Rocca said: 20 "I read that, Superintendent Richardson. We 21 didn't say that. We didn't agree with that. 22 Now where has that come from, who has told 23 ..." 24 Just pausing there, do you remember any of 25 this exchange?</p> <p style="text-align: center;">Page 220</p>

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<p>1 A. Yes.</p> <p>2 Q. Can you just contextualise it?</p> <p>3 A. This was -- let me refresh my memory of</p> <p>4 it, please.</p> <p>5 Q. Of course.</p> <p>6 A. This was in relation to one of the</p> <p>7 letters -- one of the many letters that we</p> <p>8 received from Hassans. Which date is this</p> <p>9 meeting?</p> <p>10 Q. The 13th?</p> <p>11 A. This is on 13th May -- excuse me --</p> <p>12 Q. It is 15th, I am sorry.</p> <p>13 A. Well, there had been a number of letters</p> <p>14 that we had received from Hassans. And one</p> <p>15 of them mentions -- I think it was Louis</p> <p>16 Baglietto that was writing, said that -- or</p> <p>17 words to the effect that it was plainly clear</p> <p>18 that the DPP had advised against obtaining</p> <p>19 a warrant and that was not the case. So</p> <p>20 I have raised it with the DPP and said there is</p> <p>21 even a suggestion -- the words I used were</p> <p>22 there is even a suggestion here that you</p> <p>23 advised us not to obtain a warrant; as if to</p> <p>24 say, you didn't advise that.</p> <p>25 Q. Yes. And Mr Rocca said, "I read that".</p> <p style="text-align: center;">Page 221</p>	<p>1 where has it come from? It wasn't aired in</p> <p>2 court."</p> <p>3 Mr Llamas: "It must come from the</p> <p>4 conversation with Ian and the Chief</p> <p>5 Minister."</p> <p>6 Do you remember Mr Llamas saying that?</p> <p>7 A. Yes.</p> <p>8 Q. And what did you think about that?</p> <p>9 A. It was -- it was a little bit shocking but,</p> <p>10 one, that Hassans had access to advice that</p> <p>11 the DPP claims to have -- or that they say</p> <p>12 that the DPP advice that the DPP had given</p> <p>13 to the police. And then to quote it to the</p> <p>14 Attorney General -- I am assuming that the</p> <p>15 Attorney General had been copied into this,</p> <p>16 or the Commissioner of Police -- to quote</p> <p>17 advice that we had been given, and advice</p> <p>18 that was wrong because the DPP had not</p> <p>19 expressly advised against the obtaining of</p> <p>20 a search warrant.</p> <p>21 Q. And what about that bit about it must</p> <p>22 have come from the meeting between the</p> <p>23 Commissioner and the Chief Minister?</p> <p>24 A. At that time I wouldn't have given that</p> <p>25 that much thought because I didn't know</p> <p style="text-align: center;">Page 223</p>
<p>1 You said: "We didn't say that, we didn't agree</p> <p>2 to that. Now where has that come from, who</p> <p>3 has told?"</p> <p>4 Mr Llamas said: "I think they've had a lot of</p> <p>5 confusion over that from the beginning." If</p> <p>6 we go further down please -- you are right, it</p> <p>7 is the 15th, sorry about that.</p> <p>8 You say: "That clearly might be the case, but</p> <p>9 this is a QC [Mr Baglietto, I presume]</p> <p>10 accusing the Commissioner of Police of</p> <p>11 acting unlawfully because he's gone against</p> <p>12 the advice of the DPP."</p> <p>13 Mr Rocca said, "I picked that up."</p> <p>14 Chief of police: "Can we go back to a couple</p> <p>15 of instances ..."</p> <p>16 And Mr Llamas says: "That's an assumption</p> <p>17 that they're making."</p> <p>18 You say: "How can a QC just throw that out,</p> <p>19 saying that the Commissioner of Police is</p> <p>20 acting unlawfully?"</p> <p>21 Mr Rocca says: "It's almost worse than that.</p> <p>22 It's kind of possibly suggests that I've spoken</p> <p>23 to Louis Baglietto which I haven't."</p> <p>24 Chief of police: "That's my question. My</p> <p>25 question is, Superintendent Richardson,</p> <p style="text-align: center;">Page 222</p>	<p>1 what the meeting was between the</p> <p>2 Commissioner and the Chief Minister.</p> <p>3 Q. Looking back now, does that concern</p> <p>4 you, if it was the case that the Chief Minister</p> <p>5 provided that information to --</p> <p>6 A. If it leads to that the Chief Minister</p> <p>7 provided that information, yes, it is</p> <p>8 concerning.</p> <p>9 Q. Why?</p> <p>10 A. For the same reason it is concerning that</p> <p>11 Mr Baglietto had access to advice that the</p> <p>12 DPP had given the police. It's not</p> <p>13 appropriate. Particularly in a -- in a live</p> <p>14 police investigation.</p> <p>15 Q. I am sorry, just to ask you to spell it out,</p> <p>16 but why do you think it's not appropriate?</p> <p>17 A. Well, the Chief Minister was a partner in</p> <p>18 the same firm that had a share in the</p> <p>19 ownership of the firm that we were</p> <p>20 investigating, as well as being --</p> <p>21 Q. And why does that make it inappropriate?</p> <p>22 A. Because he had an interest in the outcome</p> <p>23 of this matter.</p> <p>24 Q. I want to ask you just about something</p> <p>25 you said before. You talked about -- this is</p> <p style="text-align: center;">Page 224</p>

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1 a small thing -- you talked about the AG's
 2 chambers. What would a police
 3 officer -- before the DPP role came to be,
 4 what would a police officer have meant if
 5 they said they were going to the AG's
 6 chambers?
 7 **A. It would have meant that they were going**
 8 **down to see the prosecutors. The AG's**
 9 **chambers from a police perspective was**
 10 **where the Crown counsels lived, and we took**
 11 **advice regarding criminal matters from**
 12 **Crown counsels that were located at the**
 13 **Attorney General's chambers.**
 14 Q. So it wouldn't necessarily mean "I am
 15 going to see the Attorney General"?
 16 **A. You would only see the Attorney General**
 17 **if it was a very serious matter. Most cases**
 18 **would have been dealt with by the -- by the**
 19 **Crown counsels.**
 20 Q. Was that a phrase that in your experience
 21 may have lived on a bit beyond when the
 22 DPP took over the post?
 23 **A. Certainly with older officers.**
 24 Q. I want to ask you about the call that you
 25 recorded one end of on 22 May. You were

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1 asked about it before now. There is an audio
 2 recording obviously that you recorded.
 3 I understand that your legal team have
 4 transcribed the call. I wonder if it is possible
 5 to have that put up on the screen. They have
 6 not just transcribed it, they have actually
 7 translated it as well.
 8 **A. It was me that translated it.**
 9 Q. It was you that translated it?
 10 **A. Yes.**
 11 Q. Well, that's even --
 12 **A. It might not be 100 per cent accurate.**
 13 Q. Well, it is your fault if it is not.
 14 **A. Yes.**
 15 **A. Thank you. Just to contextualise here,**
 16 **you said that the senior management were all**
 17 **in the room. What room was it in that this**
 18 **call was made from?**
 19 **A. This was the Commissioner's office. The**
 20 **Commissioner's suite as it is called.**
 21 Q. Yes. Is it a big room?
 22 **A. It's the biggest in the station.**
 23 Q. When you said the senior management
 24 team were there, who would have been there
 25 at the time?

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1 **A. It would have been myself, from**
 2 **memory, Mr Yeats, Cathal Yeats,**
 3 **Superintendent Tunbridge. I think that**
 4 **would have been it.**
 5 Q. Mr Aldren?
 6 **A. And Mr Aldren, of course, yes.**
 7 Q. Why were you all together?
 8 **A. I think, if I remember correctly, that we**
 9 **had been asked to attend a meeting**
 10 **because -- sorry, we are talking about the**
 11 **22nd, aren't we?**
 12 **A. Yes.**
 13 Q. Yes?
 14 **A. Because the Commissioner had been**
 15 **asked to retire.**
 16 Q. Could I ask, would it make sense, since
 17 you translated it and you transcribed it,
 18 would you read out the call?
 19 **A. I am not too happy about reading out the**
 20 **Spanish.**
 21 Q. I will read it out and I won't read
 22 out -- yes, it's the second page of the
 23 translation. Sorry, I was actually looking at
 24 the second page which is why I was asking.
 25 I am just going to read it and then I am going

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1 to ask about your reaction to it. Obviously
 2 this only Mr McGrail's end of the
 3 conversation:
 4 "I will say a bit -- well, I feel completely,
 5 well, let down. I don't deserve this. I don't
 6 deserve this at all, Michael. At all. I am
 7 [something something] weekend. Michael,
 8 I don't know what to do, I'm at a loss. I've
 9 been attacked. My options are either think
 10 about Gibraltar or save my skin and think
 11 about Gibraltar or create a constitutional
 12 crisis. That's where I am, Michael. That's
 13 where I am. What do I do now? Either
 14 I keep quiet and I leave and that is it, and this
 15 won't change because those I leave behind
 16 I think the same about. I think the same
 17 about it. If I were the only one, if I -- if
 18 I -- those behind me are all with the same
 19 mindset about this investigation. It's not that
 20 we -- it's not just me, therefore I don't know
 21 how this is going to be fixed. I'll leave. I'll
 22 leave or I'll stir things up and we all stand to
 23 lose, me and Gibraltar. They have jumped
 24 the gun with here this -- a very
 25 precipitated -- because what I'd like -- what

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1 I'd like to do is clear this up for everyone's
 2 benefit and I'm being pinned against the wall.
 3 Anyhow, I vented what I have to vent with
 4 you. I don't know. I don't know whether
 5 we'll be able to talk about this matter. If you
 6 offer it -- if you offer to meet I -- I'll be glad,
 7 but I don't know in what capacity you'll be
 8 talking to me. I'm -- no, I'm already -- I'm
 9 suspected of everything, Michael. Suspect of
 10 everything. Of everything. I don't even trust
 11 my shadow."
 12 Just to pause there, do you remember how
 13 you and any other members of the senior
 14 management team reacted to hearing this
 15 call?
 16 **A. It was sad. It was sad to hear the**
 17 **Commissioner being emotional and**
 18 **being -- speaking to -- it was clear that he**
 19 **was speaking to the Attorney General.**
 20 **I don't know what the Attorney General was**
 21 **saying, but it was an emotional thing to see**
 22 **the Commissioner being put in that position.**
 23 Q. Was there any concern about the
 24 Commissioner being put in that position?
 25 **A. I think we were all concerned. All the**

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1 **SMT were concerned at that stage.**
 2 Q. Did you remained concerned after he
 3 left?
 4 **A. Yes.**
 5 Q. Why?
 6 **A. Because at that stage we had been told**
 7 **that his -- the reason that he had been asked**
 8 **to retire wasn't to do with Operation Delhi,**
 9 **but all the evidence that we'd seen suggested**
 10 **that it was. And it was -- we weren't clear**
 11 **about why the Commissioner had been asked**
 12 **to retire and not clear about whether it**
 13 **involved Operation Delhi or not.**
 14 Q. Would it have made a difference if it
 15 involved Operation Delhi?
 16 **A. Yes.**
 17 Q. Why?
 18 **A. Well, because the Commissioner had**
 19 **been -- if that was the case, that at that stage**
 20 **we'd known that the Commissioner had been**
 21 **removed because of Operation Delhi and it**
 22 **was because of the warrant that we had**
 23 **executed with Mr Levy, it would -- it would**
 24 **affect how we would deal with other**
 25 **investigations. It would affect how we dealt**

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1 **with crime in Gibraltar. We didn't think that**
 2 **we had done anything wrong. We thought**
 3 **that applying for a search warrant was the**
 4 **correct thing to do.**
 5 Q. Why would it impact on how you dealt
 6 with other crime in Gibraltar?
 7 **A. Well, if there was any other crime in**
 8 **Gibraltar that involved the need to obtain**
 9 **a search warrant, and that search warrant**
 10 **involved a lawyer, we would find ourselves**
 11 **back in exactly the same position.**
 12 Q. And so what would that mean for
 13 decisions you might make or not make?
 14 **A. Knowing now what I know but I didn't**
 15 **know at the time about the warrant process,**
 16 **I don't know how we would have addressed**
 17 **that, that situation, because if the only routes**
 18 **to obtain that evidence is by production order**
 19 **and we suspected that a lawyer -- as we had**
 20 **in a number of occasions previously, and as**
 21 **far as I am aware perhaps still now -- how**
 22 **would you go about obtaining that evidence**
 23 **if you had to obtain that evidence on notice?**
 24 **There is no way to covert -- covertly obtain**
 25 **that information as you would in the**

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1 **United Kingdom through RIPA.**
 2 Q. In your experience of Mr McGrail, was
 3 he in your view an honest police officer?
 4 **A. Yes.**
 5 Q. And in your experience of Mr McGrail,
 6 in your view, is he a man of integrity?
 7 **A. Yes.**
 8 Q. I just want to ask you one more area
 9 which is Op Kram, so the incident at sea.
 10 You were involved in a number of the
 11 meetings about Op Kram. We went through
 12 them before, is that right?
 13 **A. That's correct.**
 14 Q. And in some of those meetings the
 15 Commissioner was there, is that right, or the
 16 ex-Commissioner?
 17 **A. Yes.**
 18 Q. Was it your impression at any stage in
 19 those meetings or otherwise that Mr McGrail
 20 was deliberately keeping any information
 21 from the acting Governor?
 22 **A. No.**
 23 Q. Did you know of any reason Mr McGrail
 24 would have to hold any information back
 25 from the acting Governor?

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<p>1 A. No.</p> <p>2 MR WAGNER: I've no further questions,</p> <p>3 thank you.</p> <p>4 A. Thank you.</p> <p>5 THE CHAIRMAN: Sir Peter, how long do</p> <p>6 you think you will be?</p> <p>7 SIR PETER CARUANA: At least an hour</p> <p>8 and a half and it might be a bit longer -- I had</p> <p>9 scheduled an hour and a half, but as a result</p> <p>10 of some of the evidence that Mr Richardson</p> <p>11 has given today it might be a bit longer even.</p> <p>12 MR SANTOS: In that case is it worth</p> <p>13 perhaps doing 15 minutes now so that we can</p> <p>14 make sure that we are done in an hour and</p> <p>15 a half tomorrow?</p> <p>16 THE CHAIRMAN: We must</p> <p>17 finish Mr Wyan tomorrow, mustn't we?</p> <p>18 MR SANTOS: Yes. I think the aim would</p> <p>19 be to finish, at least subject to the private</p> <p>20 aspect, by, well, mid-morning. I don't think</p> <p>21 mid-morning is going to be possible.</p> <p>22 THE CHAIRMAN: No.</p> <p>23 MR SANTOS: So I do think we should try</p> <p>24 to make some progress this evening.</p> <p>25 15/20 minutes now, I think might make us</p> <p style="text-align: center;">Page 233</p>	<p>1 (3.29 pm)</p> <p>2 (A short break)</p> <p>3 (3.36 pm)</p> <p>4 THE CHAIRMAN: Yes.</p> <p>5 Cross-examination by SIR PETER</p> <p>6 CARUANA KC</p> <p>7 SIR PETER CARUANA: Good afternoon to</p> <p>8 you, Mr Richardson.</p> <p>9 A. Good afternoon, Sir Peter.</p> <p>10 Q. I will just start with one or two short</p> <p>11 points about Operation Kram. You were</p> <p>12 asked this afternoon about the coordinates</p> <p>13 and then the visit by the Governor. You said</p> <p>14 that he had just passed walking his dog.</p> <p>15 I think the meeting with Mr Llamas started</p> <p>16 earlier on the morning of the 8th, at about 10,</p> <p>17 and the governor turned up at about 12.15; is</p> <p>18 that correct?</p> <p>19 A. Mr Caruana, I can't remember unless</p> <p>20 I look back at my notes. It's one of many</p> <p>21 things that we've discussed today.</p> <p>22 Q. I see. Well, leaving aside the question of</p> <p>23 coordinates, where is Santa Barbara beach?</p> <p>24 A. It's, as far as I am aware, past the runway</p> <p>25 in the area that we call La Pinada.</p> <p style="text-align: center;">Page 235</p>
<p>1 a bit more comfortable tomorrow, if Sir Peter</p> <p>2 is happy.</p> <p>3 SIR PETER CARUANA: I am very happy if</p> <p>4 you are.</p> <p>5 THE CHAIRMAN: I know this question</p> <p>6 can't readily be answered but how long do</p> <p>7 you think you are likely to be?</p> <p>8 MR GIBBS: I would hope about half an</p> <p>9 hour. I tend not to be very long.</p> <p>10 THE CHAIRMAN: No, that is correct.</p> <p>11 Some people get carried away, but I would</p> <p>12 not level that allegation against you.</p> <p>13 MR GIBBS: I will take that as</p> <p>14 a compliment, thank you.</p> <p>15 THE CHAIRMAN: Right.</p> <p>16 MR SANTOS: May I just ask for some</p> <p>17 consideration just from the timing for the</p> <p>18 witness briefly, perhaps he could be allowed</p> <p>19 just a couple of minutes?</p> <p>20 THE CHAIRMAN: Yes. I think that's</p> <p>21 a good idea. We will have a short, short</p> <p>22 break. Then quarter of an hour or so and you</p> <p>23 break at some convenient point. Okay?</p> <p>24 SIR PETER CARUANA: Yes, sir.</p> <p>25 THE CHAIRMAN: Right, thank you.</p> <p style="text-align: center;">Page 234</p>	<p>1 Q. So it's adjacent to the neighbouring</p> <p>2 Spanish town of La Linea?</p> <p>3 A. Yes.</p> <p>4 Q. Is there any part of the waters off of that</p> <p>5 beach that are other than in Spanish territorial</p> <p>6 waters?</p> <p>7 A. Well, they abut Spanish territorial waters.</p> <p>8 Q. Yes. Is there any part of the waters</p> <p>9 adjacent to that beach that could conceivably</p> <p>10 be thought to be in British territorial waters?</p> <p>11 A. I have to think about what you are saying.</p> <p>12 Is there any part of the waters --</p> <p>13 Q. Sorry, I will ask you more simply.</p> <p>14 A. Thank you.</p> <p>15 Q. Are the waters off Santa Barbara not</p> <p>16 necessarily outside British Gibraltar</p> <p>17 territorial waters as a matter of geometry --</p> <p>18 A. Yes.</p> <p>19 Q. So the question of the exact coordinates</p> <p>20 is relevant to what? At what stage was it</p> <p>21 clear in your mind that wherever precisely it</p> <p>22 might have happened as a matter of</p> <p>23 coordinates, that this collision did not take</p> <p>24 place in British Gibraltar territorial waters?</p> <p>25 At what time of the morning were you clear</p> <p style="text-align: center;">Page 236</p>

1 in your mind about that?

2 **A. I don't think that I had any doubt in my**

3 **mind that the collision had happened other**

4 **than outside the Gibraltar territorial waters.**

5 **What -- the issue in my mind was what part,**

6 **if any, had the chase happened in Gibraltar**

7 **territorial waters.**

8 Q. So Gold Command had no doubt at all

9 that it had happened in Spanish territorial

10 waters?

11 **A. No, sir, I didn't say that. I said in my**

12 **mind, I believed that it would have happened**

13 **outside of Gibraltar -- British Gibraltar**

14 **territorial waters.**

15 Q. Your mind being -- what was your status

16 in that group?

17 **A. I was the -- the title was Deputy Gold.**

18 **I was assisting Mr McGrail.**

19 Q. Yes. So you were the second most senior

20 officer in charge of the incident response for

21 the RGP and you were absolutely clear in

22 your mind that the collision had happened in

23 Spanish territorial waters?

24 THE CHAIRMAN: He didn't say that. He

25 didn't say that. He said it was outside

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1 to say that.

2 THE WITNESS: I can't remember what the

3 question was.

4 SIR PETER CARUANA: Which question?

5 The one that led to the answer that the

6 Chairman has just read out to you?

7 **A. The question that you are waiting for an**

8 **answer from me, sir.**

9 Q. I have asked you two questions. One,

10 whether the waters of the Santa Barbara

11 beach are capable of being in British waters,

12 and then I have asked you at what time you

13 became clear in your mind that the incident

14 had not happened in British waters, to which

15 you gave the answer that the Chairman has

16 just --

17 **A. The first question is no, the waters**

18 **outside the beach can't be BGTW, and with**

19 **regard to what time was I clear in my mind**

20 **that it had happened, I have to rephrase what**

21 **I said before. I'm not certain at what time I**

22 **knew that it was clear that it happened**

23 **outside of Gibraltar territorial waters.**

24 **It was a very murky picture during those first**

25 **few hours. We hadn't had any information**

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1 British --

2 SIR PETER CARUANA: I beg your pardon.

3 To be clear, outside of British Gibraltar

4 territorial waters?

5 **A. I wouldn't say absolutely clear in my**

6 **mind because we didn't know the coordinates**

7 **until later.**

8 **(16.39)**

9 Q. Well, you have said you had no doubt.

10 About what did you say a few moments ago

11 you had no doubt?

12 **A. I can't remember what the question was.**

13 THE CHAIRMAN: Well, I remember

14 exactly what you said. My note of what you

15 said is: "I was clear in my mind that the

16 collision had occurred outside British

17 Gibraltar territorial waters." You drew a

18 distinction between being certain about the

19 position of the collision but not being certain

20 in your mind about where the chase had --

21 **A. Exactly, sir, that is my recollection.**

22 SIR PETER CARUANA: That is my

23 recollection too, sir.

24 THE CHAIRMAN: I might have

25 misunderstood and he might not have meant

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1 **from the officers themselves as to where it**

2 **happened, and we didn't know at that time**

3 **that the AIS had been switched off.**

4 Q. I see. So your evidence now is that even

5 in respect of the collision you are clear that it

6 happened outside of British waters but you

7 are no longer clear about the time that you

8 discovered it. Is that the clarification that

9 you are making?

10 **A. Yes.**

11 Q. So what you are saying is that it has not

12 always been clear to you from the very first

13 moment you discovered the incident.

14 **A. No, I think my notes, sir, say that we**

15 **believed at the beginning that it happened**

16 **within Gibraltar territorial waters.**

17 Q. As to the presence or not of the

18 Governor, I think your evidence was that you

19 could not remember at what time, at what

20 stage of the proceedings, the Governor had

21 come. Can you be shown A 801, please.

22 This is the witness statement of Mr Field.

23 Paragraph 38. Do you see what he says

24 there: "At 11.05 I [that is to say Mr Field]

25 briefed a Commissioner of Police, Detective

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<p>1 Superintendent Paul Richardson, and the 2 Attorney General Mr Llamas who was also 3 there, concerning the suspected exact 4 coordinates." Do you see that? 5 A. Yes, I do. 6 Q. Does it help you, given that His 7 Excellency the Governor is not mentioned in 8 that list, would you accept on the basis of Mr 9 Field's sworn evidence that the Governor was 10 not present when the exact coordinates 11 briefing was being given to Mr Llamas. 12 A. It would appear so but I don't recall Mr 13 Field briefing us either. 14 Q. You do not recall that either. I am just 15 asking you whether you accept, you have any 16 reason to doubt Mr Field's evidence about 17 this. 18 A. No. 19 Q. And you said in answer to my learned 20 friend Mr Wagner that you did not think that 21 the Commissioner of Police was deliberately 22 keeping information from the Governor. Do 23 you remember saying that? 24 A. Yes, I do. 25 Q. How do you know whether whatever Mr</p> <p style="text-align: center;">Page 241</p>	<p>1 which you were present with the Governor. 2 How many meetings was that? 3 MR GIBBS: That might have been five 4 questions. 5 SIR PETER CARUANA: I beg your pardon. 6 (To the witness) I just want to clarify what 7 you meant by your answer -- 8 THE CHAIRMAN: Mr Wagner's question 9 was rather loosely drafted and the witness - 10 SIR PETER CARUANA: I am just trying to 11 narrow the scope of the answer. 12 THE CHAIRMAN: The witness did not pick 13 that up. 14 SIR PETER CARUANA: I see. That is all I 15 am trying to achieve, to just narrow the 16 question. 17 THE CHAIRMAN: I have the point. 18 SIR PETER CARUANA: You have the 19 point, okay. (To the witness) Mr 20 Richardson, do you think that everything that 21 is not illegal is proper? 22 A. Sorry, do I think that everything that is 23 not illegal is not proper? 24 Q. Is proper. 25 A. Do I think that everything that is not</p> <p style="text-align: center;">Page 243</p>
<p>1 McGrail did or did not do was deliberate or 2 not? 3 A. Well, I wouldn't know if he was 4 deliberately keeping, in terms of he knew 5 some information that he was withholding. 6 I'm saying that I didn't think that there was 7 anything that we knew that was being held 8 from the Governor. 9 Q. That you are aware. 10 A. That I'm aware, yes. 11 Q. But are you aware of what he was saying 12 to the Governor? 13 A. I think I was present during all the time 14 that the Governor was there. 15 Q. So your answer - let us be clear - applies 16 only to what you witnessed personally in 17 meetings. 18 A. Yes. 19 Q. So we must not get carried away by you 20 suggesting that you were validating in any 21 respect the view that Mr McGrail did not 22 deliberately withhold information from the 23 Governor other than in your presence. He 24 might have done it in your absence. You are 25 only speaking of what you saw at meetings at</p> <p style="text-align: center;">Page 242</p>	<p>1 illegal is proper? No. 2 Q. So things can be improper then even if 3 they are not illegal. 4 A. Yes. 5 Q. And do you think that covertly recording 6 senior officers of the Government in 7 meetings affecting the conduct of 8 confidential business of this kind is proper or 9 improper? 10 A. It is irregular. I think whether it's proper 11 or not depends on the circumstances. 12 Q. What circumstances do you think render 13 it proper? 14 A. For example, as I assume in this case the 15 Commissioner believed that he needed to 16 keep an accurate record because he believed, 17 for whatever reasons, that if in the absence of 18 an accurate record he wouldn't be able to 19 recreate or would not be able to have an 20 accurate record of what had been said. For 21 example, in this case if there was no 22 transcripts available of the meetings, I 23 wouldn't be able to recall a lot of the 24 communication that was had. 25 Q. By that standard, it is proper to record</p> <p style="text-align: center;">Page 244</p>

61 (Pages 241 to 244)

1 every un-minuted meeting.
 2 **A. It depends on the circumstances, I think.**
 3 Q. You thought there was nothing unethical
 4 about it.
 5 **A. I didn't say that, Sir Peter.**
 6 Q. Well, let me ask you. Do you think it
 7 was ethical or unethical?
 8 **A. I think that's a decision that the person**
 9 **that's made the recording has to answer. I**
 10 **wasn't in possession of the same information**
 11 **that Mr McGrail had when he made that**
 12 **decision.**
 13 Q. That answer may be applicable to the first
 14 meeting on the 13th that you did not know
 15 was being recorded, but then you attended
 16 two meetings yourself with some of the most
 17 senior officials in Government, and in the
 18 knowledge that the meeting was being
 19 recorded. Were you entirely comfortable
 20 about that?
 21 **A. I think if you'd asked me that question in**
 22 **relation to the first meeting, I would have**
 23 **said no. But after what happened in the first**
 24 **meeting I was more comfort - I felt not as**
 25 **shocked at the prospect that the meeting was**

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1 **recorded at the second meeting.**
 2 Q. So you did not know that the first
 3 meeting of the 13th was being recorded, and
 4 as I understand your answer now, what you
 5 are saying is what happened at the first
 6 meeting that you did not know was being
 7 recorded made you feel comfortable about
 8 the 15th and the 20th being recorded.
 9 THE CHAIRMAN: More comfortable.
 10 SIR PETER CARUANA: More
 11 comfortable.
 12 **A. Yes.**
 13 Q. Because? That is a subjective thing.
 14 That no longer relies on any reason that Mr
 15 McGrail might have had. This is your
 16 assessment of your level of comfiture
 17 because of what you had experienced in the
 18 meeting of the 13th. Can you convey sense of
 19 what had happened at the meeting at the 13th
 20 that made you feel that participating in a
 21 recording meeting you were more
 22 comfortable about?
 23 **A. I think you get a sense or proportion of**
 24 **the emotion that was in that meeting from the**
 25 **transcript but if you heard the recordings you**

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1 **would sense the emotion. It was palpable. It**
 2 **was the Commissioner of Police saying to the**
 3 **Attorney General: "I am not corrupt. I will**
 4 **do this, I will do that." It was a very highly**
 5 **charged meeting and although I didn't know**
 6 **what had happened, I sensed that there was**
 7 **something seriously wrong with what was**
 8 **happening.**
 9 Q. And the presence of Mr DeVincenzi, Mr
 10 Rocca and Mr Wyan were not sufficient
 11 witnesses to make the recording unnecessary
 12 in the event of impropriety.
 13 **A. I don't know whether they would have an**
 14 **accurate record of it. I can say that Mr**
 15 **DeVincenzi and I have different recollections**
 16 **of the content of two meetings.**
 17 Q. So you think the fact that there are later
 18 different recollections about what happened
 19 at a meeting is of itself justification for
 20 having recorded it at the time.
 21 **A. No, I'm not saying that.**
 22 Q. No, not that you recorded it; I should not
 23 have suggested that either. Being more
 24 comfortable about it being recorded.
 25 **A. I was more comfortable with the fact that**

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1 **there was a secret recording being made**
 2 **because of the way that I had felt after the**
 3 **first meeting when I wasn't aware that the**
 4 **recording had been made.**
 5 Q. Given that you thought there was proper
 6 reason in your mind to feel more comfortable
 7 about it, and these were very important
 8 matters being discussed, did it occur to you
 9 to suggest to the participants "Can we record
 10 these meetings?"
 11 **A. No, it did not.**
 12 Q. Why was that?
 13 **A. Because the Commissioner was leading**
 14 **those meetings and that would have been his**
 15 **decision, and he had already made the**
 16 **decision to record the meetings.**
 17 Q. Yes, but I am asking you about your
 18 behaviour, not the Commissioner's. Your
 19 behaviour in participating in meetings that
 20 you knew were being recorded, which, if you
 21 thought that there was a proper reason for,
 22 could have been resolved by simply saying to
 23 the people: "Look, given the situation that is
 24 happening, can we record these meetings?"
 25 **A. No, I didn't think of that.**

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<p>1 Q. Are you aware that the RGP has a code of 2 ethics? 3 A. Yes. 4 Q. And do you recall that they say under the 5 heading "Fairness" you should treat people 6 fairly? 7 A. I remember that heading. 8 Q. And under "Honesty", you are truthful 9 and trustworthy. 10 A. Yes. 11 Q. And under "Integrity", you always do the 12 right thing. 13 A. Yes. 14 Q. And do you think that covert recording 15 by a police officer of meetings with the two 16 most senior law officers in the land and the 17 Solicitor General and indeed another 18 colleague, Mr Wyan - was Mr Wyan aware 19 that the meetings were being recorded? 20 A. I don't know if he was aware or not. 21 Q. Do you think that that is doing the right 22 thing, which your code of ethics required you 23 always to do? 24 A. At that time I thought that it was the right 25 thing, yes.</p> <p style="text-align: center;">Page 249</p>	<p>1 no. 2 Q. No. And under the heading "Conduct" it 3 says: "I will behave in a manner, whether on 4 or off duty, which does not bring discredit on 5 the police." Do you think that the covert 6 recording of meetings of this nature are 7 capable of not bringing the police into 8 discredit? 9 A. Sorry, could you repeat the question? 10 Q. Yes. Do you think - could you be sure - 11 that feeling comfortable or more 12 comfortable, whatever that may add to the 13 question, about recording meetings with 14 these officials would not bring discredit on 15 the police? 16 A. No, I think in the circumstances, in these 17 particular circumstances, I think that on 18 balance it was better that there was an 19 accurate record of what was said. 20 Q. It may well be, and indeed we are very 21 grateful for the fact that these records exist, 22 as I hope to take you through tomorrow. But 23 that is not the issue. The issue is not whether 24 it is useful. If you want an accurate record of 25 a meeting which is a salutary thing to want,</p> <p style="text-align: center;">Page 251</p>
<p>1 Q. You thought that it was the right thing to 2 do. Okay. And under the heading 3 "Openness", it required you to be open and 4 transparent in your actions. Do you think 5 covert recording of such meetings fit under 6 an obligation to be open and transparent in 7 your actions? 8 A. I think if the police were open and 9 transparent in all their actions, they wouldn't 10 be able to prosecute much crime. 11 Q. It is not my code of ethics, it is the 12 RGP's. 13 A. I think it depends on the situation that 14 you are talking about. 15 Q. And it requires you to treat everyone with 16 respect, under the heading "Respect". 17 A. Yes, that's true. 18 Q. And do you think that covert recordings 19 of these meetings was treating the Director of 20 -- Was the Director of Public Prosecution 21 under suspicion of any impropriety? Do you 22 think you were treating him with respect? 23 A. No, he wasn't. 24 Q. So were you treating him with respect? 25 A. Perhaps not the respect that he deserved,</p> <p style="text-align: center;">Page 250</p>	<p>1 you ask the people in the meetings: "Can we 2 record it so that we all have an accurate 3 record of them?" It does not have to be 4 covert, does it? 5 A. No. 6 Q. We have heard something already about 7 the Nolan Principles. Do you know what the 8 Nolan Principles are? 9 A. No, I -- 10 Q. You just heard Mr Cruz speaking about 11 them. 12 A. Yes. 13 Q. And is it something you have done, the 14 recording of meetings? Can we see B122. B 15 122 at the top there, six lines down, you are 16 talking there about: "I think in front of a 17 Special Branch, now Heine is suggesting that 18 because of that I am colluding, we are 19 colluding with James Gaggero, and I have a 20 recording of everything. I have a recording 21 and a note of every conversation that I've had 22 with Gaggero." This is you, sorry. Can we 23 go back to the previous page just to see. That 24 is the end of the box. Superintendent 25 Richardson.</p> <p style="text-align: center;">Page 252</p>

63 (Pages 249 to 252)

<p>1 A. Which meeting is this, sir? 2 Q. This is the meeting of 13 May. Did you 3 make a recording of all your conversations 4 with Mr Gaggero, the complainant in the 5 case? 6 A. It is not referring to an audio recording. 7 It's recording a note. 8 Q. Well, it has to be something other than a 9 note because it says: "I have a recording and 10 a note." So if you have a note, what do you 11 think the word "recording" might mean, or 12 just answer my question. Did you record 13 your meetings with Mr Gaggero? 14 A. I did not make an audio recording of my 15 meetings with Mr Gaggero. 16 Q. So what recording did you make? 17 A. I made a recording, or a record, of the 18 notes in my daybook or on a piece of paper if 19 I didn't have my daybook with me. 20 Q. So when you say you have a recording 21 and a note, a recording and note, the 22 recording of it adds nothing to the note then. 23 A. In this conversation, in normal 24 conversations, people are not as precise with 25 their language as you might need to be for,</p> <p style="text-align: center;">Page 253</p>	<p>1 long I am allowed, sir. 2 THE CHAIRMAN: Yes. 3 MR SANTOS: I think the initial indication 4 was at least an hour and a half. Sir Peter has 5 had about 20 minutes, 25 minutes now. If he 6 can stick to an hour and 15 tomorrow, and 7 then we have the half hour and then we have 8 the session, the private session. I think really 9 we would have to start with Superintendent 10 Wyan at the very latest by 12.00 midday to 11 ensure that we get through Mr Wyan. If that 12 works for everybody, I think that would be 13 ideal. 14 SIR PETER CARUANA: I am entirely in 15 your hands, sir. 16 THE CHAIRMAN: I am asking this 17 question, hoping and expecting for the 18 answer yes, but can you live with an hour 19 and a quarter? 20 SIR PETER CARUANA: I will live with 21 whatever is convenient for the Tribunal. An 22 hour and a quarter it is. 23 THE CHAIRMAN: Okay, if your juniors 24 can monitor progress, that would be very 25 helpful.</p> <p style="text-align: center;">Page 255</p>
<p>1 for example, now giving evidence. 2 Q. And how would the fact that you had a 3 written note only serve the purpose that you 4 were announcing, that would allow you to 5 prove that you were not colluding with him? 6 A. Because every time I had a contact with 7 Mr Gaggero I made a record of that. 8 Q. A verbatim record? 9 A. No, it can't be a verbatim record. 10 Q. Exactly, understandably so. So it would 11 not disprove collusion, which is what you 12 were holding this up as enabling you to 13 disprove. Okay, that is okay; it is not for me 14 to assess your evidence. Your evidence is 15 that you did not make an audio recording of 16 the conversations. Is that a convenient 17 moment? 18 THE CHAIRMAN: It is five o'clock. That 19 is long enough. Okay. Again, I am going to 20 ask you how long you are likely to be? 21 SIR PETER CARUANA: We have got quite 22 a lot of ground to cover, sir. 23 THE CHAIRMAN: Yes, but we have not 24 got much time to cover it in. 25 SIR PETER CARUANA: You tell me how</p> <p style="text-align: center;">Page 254</p>	<p>1 SIR PETER CARUANA: They are very 2 good at that. Constantly doing it. 3 THE CHAIRMAN: Okay. 4 MR WAGNER: I am just concerned that 5 tomorrow is a very acute situation because of 6 Mr Wyan's availability. That is it. 7 THE CHAIRMAN: Yes. 8 MR WAGNER: I am just wondering 9 whether, not as a matter of course but 10 tomorrow, we might consider starting a bit 11 early, just to try and avoid the bad scenario. 12 MR SANTOS: We discussed this earlier. 13 The suggestion that we mooted, I hope the 14 Chairman will not mind me sharing, is rather 15 than starting early perhaps, if necessary, at 16 lunchtime shortening the lunch break by half 17 an hour, rather than starting at half nine. 18 THE CHAIRMAN: My experience of 19 starting early is that things that people 20 usually sort out before we start do not get 21 sorted out, and it ends up taking longer. So I 22 am not personally very keen on early starts. 23 Ten o'clock is -- 24 MR SANTOS: I think we review at one 25 o'clock and if necessary we take --</p> <p style="text-align: center;">Page 256</p>

64 (Pages 253 to 256)

1 THE CHAIRMAN: That is what we will do.
2 MR SANTOS: ... (inaudible) half an hour.
3 THE CHAIRMAN: We will start at ten, we
4 will review the position at one, and if we
5 have to have a short lunch so be it, because
6 we must finish Wyan tomorrow afternoon.
7 MR SANTOS: The other thing is I think you
8 would want me to say that the extra time that
9 is being added today and tomorrow, to the
10 extent it is added tomorrow, is just to
11 accommodate Wyan --
12 THE CHAIRMAN: Correct.
13 MR SANTOS: ... because of particular
14 circumstances that apply.
15 THE CHAIRMAN: Correct, it is.
16 MR SANTOS: This cannot become the
17 norm.
18 THE CHAIRMAN: Correct. Okay, thank
19 you very much indeed, see you tomorrow.
20 (The Inquiry adjourned until 10.00 am on
21 Friday, 12 April 2024)
22 (17.03)

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