

<p>1 (Monday, 15 April 2024) 2 (10.01) 3 THE CHAIRMAN: Mr Santos, just before 4 we start with Mr McGrail, there is something 5 that I would like to say. This, of course, is a 6 public inquiry, there is a keen public interest 7 in the hearings which have so far been live 8 streamed by the GBC. However, so far there 9 has been no catch-up facility so that those 10 who have been at work during the daytime 11 have been unable to watch. I have now 12 changed the rules to permit catch-up, which 13 will allow everyone to follow the 14 proceedings, even if they cannot watch the 15 live stream. 16 MR SANTOS: Thank you, sir. 17 THE CHAIRMAN: Yes, Mr McGrail. 18 Mr IAN McGRAIL, Sworn 19 Examination-in-chief by Mr SANTOS 20 Q. I believe you have a bundle in front of 21 you that is marked "Witness statements". 22 Can you please turn behind the first tab. That 23 should hopefully be your first witness 24 statement. Can you please check that it is 25 and confirm that it has your signature at the</p> <p style="text-align: center;">Page 1</p>	<p>1 A. Yes, it is my signature. 2 Q. It is your signature and your fourth 3 witness statement. 4 A. Yes. 5 Q. And do you confirm that that is true to 6 the best of your knowledge, information and 7 belief 8 A. I do. 9 Q. Your fifth now, please. 10 A. I also confirm that that is my signature. 11 Q. And do you confirm that that affidavit is 12 true to the best of your knowledge, 13 information and belief? 14 A. I do. 15 Q. And your sixth, please. 16 A. I also confirm that that is my signature. 17 Q. And do you confirm that that affidavit is 18 true to the best of your knowledge, 19 information and belief? 20 A. I do. 21 Q. The seventh statement is not in front of 22 you physically but it should be appearing on 23 the screen. Can you please confirm that that 24 is your seventh affidavit and that your 25 signature is on the final page, please?</p> <p style="text-align: center;">Page 3</p>
<p>1 end. 2 A. I confirm. 3 Q. Is that witness statement true to the best 4 of your knowledge, information and belief? 5 A. It is. 6 Q. Can we do the same for your second 7 witness statement, please. 8 A. I also confirm that this is my second 9 affidavit. 10 Q. And is that your signature on the final 11 page? 12 A. It is. 13 Q. And do you confirm that that is true to 14 the best of your knowledge, information and 15 belief? 16 A. I do. 17 Q. And for the third, please? 18 A. Yes. 19 Q. Do you confirm that that is your signature 20 on the final page? 21 A. It is. 22 Q. And is that true to the best of your 23 knowledge, information and belief? 24 A. It is. 25 Q. Your fourth, please.</p> <p style="text-align: center;">Page 2</p>	<p>1 A. It is actually a statement, this one, rather 2 than an affidavit. 3 Q. A statement. 4 A. If I can just go to the signature page. 5 Yes, that is my signature. 6 Q. And can you confirm that witness 7 statement is true to the best of your 8 knowledge, information and belief? 9 A. I do. 10 Q. Thank you. How long were you an 11 officer with the RGP, Mr McGrail? 12 A. I joined the service in October 1984, so 13 by the time I retired in June 2020 I would 14 have completed 35 years and nine months. 15 Q. We have seen over the course of last 16 week the evidence of Superintendent 17 Richardson, and he was one of your 18 superintendents at the time. Can I ask you 19 what your relationship was like with your 20 senior management team in 2019/2020? 21 A. Yes, sir. You're right, Mr Richardson 22 was a member of the Command Team. The 23 Command Team comprised of the 24 Commissioner as head of the organisation, 25 and Assistant Commissioner that served as a</p> <p style="text-align: center;">Page 4</p>

1 **deputy, and there were three or four**
 2 **superintendents. Three? Let me just get this**
 3 **right. Three superintendents. My**
 4 **relationship: I'd worked with a few of them,**
 5 **not so much with others, but it was a good**
 6 **relationship as far as I was concerned. They**
 7 **provided a lot of input into my work,**
 8 **provided advice, counsel, and I think I got on**
 9 **very well with them. I got challenged by**
 10 **them when the need arose, and with some of**
 11 **them I had friendships. With others I didn't**
 12 **but with some of them I had friendships**
 13 **because of the amount of years that I'd served**
 14 **with them.**
 15 Q. We are going to turn to issue three first of
 16 all, Operation Kram. On Sunday 8 March
 17 2020 your evidence is that you were called
 18 by the senior office on call, DCI John Field,
 19 at approximately 25 past four in the morning.
 20 Is that correct?
 21 **A. Yes.**
 22 Q. The Command Team met at five in the
 23 morning. Am I right in thinking that that was
 24 you, DCI Field and Superintendent
 25 Richardson?

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1 **A. I directed DCI Field to call out the**
 2 **Command Team down to meet in my office**
 3 **to set up a gold group to deal with the**
 4 **incident.**
 5 Q. I may as well take you to B 1680, the
 6 document we have seen a few times already.
 7 This is an email sent by Superintendent
 8 Richardson on 8 March 2020 at 11 past ten
 9 and it refers to the gold meeting being
 10 convened at your office at five in the
 11 morning, as you say, and it has you,
 12 Superintendent Richardson and CI Field
 13 identified as attending. Was it just you three
 14 at five o'clock in the morning.
 15 **A. It would seem from there that there was**
 16 **no CS but we were subsequently joined in by**
 17 **others.**
 18 Q. Can we go to your third witness
 19 statement, please, at A66. You say at
 20 paragraph 47 that a verbal briefing of what
 21 was known at the time was provided by DCI
 22 John Field as a result of which several fast
 23 track actions were initiated including, but not
 24 limited to, and then at (vi) towards the
 25 bottom of the page you refer to notifying the

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1 Governor, Chief Minister, Commander
 2 British Forces, Gibraltar Defence Police,
 3 Chief Police Officer and the GPF. Then can
 4 we please turn to paragraph 51, two pages
 5 on, at 68. You say: "Despite not having a
 6 clear picture of how the collision had
 7 occurred and given it was the early hours of
 8 the morning, I decided to inform MP and CM
 9 of the incident by WhatsApp message. This
 10 has been a common method of
 11 communicating with these officials involved
 12 in the past. My chat logs with them can
 13 confirm this. My initial message to them at
 14 06.05 hours was as follows..." and you say
 15 that you sent the same content but by
 16 separate message. "We are dealing with a
 17 critical incident. One of our boats has been
 18 involved in a collision with a smuggling rib
 19 with four on board. Two on the smuggling
 20 rib are fatalities. Our crew are uninjured but
 21 clearly shaken and shocked. I am invoking
 22 post-incident procedures and planning for
 23 consequence management. Once I have
 24 further updates I will let you know. Regards,
 25 Ian." That, if I am not mistaken, is how you

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1 notified the Interim Governor at the time and
 2 the Chief Minister. Is that correct?
 3 **A. Yes, given the early hours that it was in**
 4 **the morning, I did not feel it appropriate to**
 5 **call up and provide this level of briefing at**
 6 **that early hour.**
 7 Q. If we can look at the preceding
 8 paragraph, paragraph 50, you say: "I was
 9 therefore dealing with a situation whereby it
 10 was believed that as a result of a collision
 11 between an RGP vessel and a suspect
 12 smuggling vessel, two persons on board the
 13 latter had died. I had no confirmation of
 14 where the collision had taken place or the
 15 circumstances surrounding it. This in itself is
 16 not unusual as information of an unfolding
 17 serious incident can be received in dribs and
 18 drabs and it is not uncommon to receive
 19 inaccurate or conflicting reports. This was
 20 actually the case in this incident when initial
 21 reports suggested the collision to have
 22 occurred three miles off Europa Point and to
 23 my understanding within BGCW when this
 24 was subsequently found not to be the case."
 25 Are you able to say where those initial

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<p>1 reports came from that the incident had 2 occurred three miles off Europa Point? 3 A. At the time I didn't know. This was just 4 coming in verbally and there was nothing 5 that I could see that was written before me. 6 However, since I've read the papers that have 7 been submitted I believe that there was a 8 command and despatch log which was then 9 subsequently transposed onto a timeline that 10 I used to provide information requested by 11 the Chief Minister. 12 Q. That was the section 15 -- 13 A. That's right, and also I believe that it's 14 contained in the statement of Inspector John 15 Lutkin, who was the inspector on duty, 16 having been told by the station officer, the 17 senior sergeant on duty, that the information 18 suggested that the collision had occurred 19 three miles off Europa Point. 20 Q. So you say that that came from the 21 sergeant, but are you aware of where that 22 information, the source of that information -- 23 A. I don't know. I can't. 24 Q. If we can now go to B 1344, this is a 25 timeline of communications between you as</p> <p style="text-align: center;">Page 9</p>	<p>1 would like to highlight we can turn to that. 2 We will be turning to that. Can I just ask you 3 to look towards the top of the page. These 4 are the responses that you are receiving from 5 the Chief Minister, having informed him at 6 6.05 in the morning of the incident, and there 7 is an exchange. Then I just want to highlight 8 07.41 hours. "Also, what time did it occur 9 and was it firmly within BGTW or 10 questionable?" is the question from the Chief 11 Minister. Further down at 07.43 hours you 12 respond: "Collision occurred at approx. 03.40 13 hours. Location still to be confirmed." Then 14 if we can go over the page to B 134, please. 15 At 9.27 hours there is a message from the 16 Governor: "Ian, thanks for letting me know. 17 Sorry to hear this." He also sends a further 18 message: "And of course if TY need 19 anything from us, HMG, just ask. Hope your 20 guys are okay." And you reply: "Thanks, 21 Nick" at 09.41 hours. You say at paragraph 22 58 of your third affidavit that you received a 23 report of an incident in Alcaidesa just north 24 of La Linea's eastern coastline. Then if we 25 can go to --</p> <p style="text-align: center;">Page 11</p>
<p>1 Commissioner of Police and officials in 2 relation to Operation Kram. Are you aware 3 who prepared this timeline? 4 A. That was prepared by my staff at the time 5 of the section 15 request. However, I 6 elaborated on it because by the time I was 7 preparing my evidence to produce to the 8 Inquiry there was information which had not 9 been included there because I had missed it 10 at the time of - and I'll tell you in particular 11 what it was. It was a WhatsApp incident. 12 The Maritime Incident Group that the Chief 13 Minister opened with a couple of members 14 involved. So at the time of providing that 15 initial timeline, for some reason that slipped 16 and it wasn't, but I added it subsequently 17 using the same information originally. I 18 added on to it to produce for the Inquiry. 19 Q. This one, if I am not mistaken, does not 20 contain the Maritime Incident WhatsApps 21 but there is another version that has, and I 22 will take you to that. 23 A. Okay. 24 Q. At the moment we are not concerned with 25 those, but obviously if there is one that you</p> <p style="text-align: center;">Page 10</p>	<p>1 A. Sorry, I didn't receive that report. 2 Q. Thanks for that clarification. The RGP 3 received a report. Let us go to -- 4 A. Well, yes, through the port department, 5 yes. 6 Q. Thank you for that clarification. If we 7 just go to paragraph 58, the duty VTS officer 8 of the port authority had reported that he had 9 been advised of an incident in Alcaidesa that 10 he had been advised of an incident by Tarifa 11 marine traffic control but was uncertain 12 whether this was the same incident we were 13 dealing with. You explain that Alcaidesa is a 14 large housing complex area to the north of 15 Gibraltar's neighbouring town, La Linea de la 16 Concepcion. If we can then turn to 60, 17 please, just lower down on the same page, 18 you say: "At 940hrs I received information 19 from DCI John Field who in turn relayed 20 information provided by the Guardia Civil 21 suggesting the collision had occurred in 22 Spanish territorial waters though this 23 required confirmation by them." Do you 24 recall that coordinates were provided as part 25 of that briefing?</p> <p style="text-align: center;">Page 12</p>

<p>1 A. I do not specifically recall but taking 2 reference from the notes that have been 3 produced, which are, as far as I'm concerned, 4 quite accurate or at least contemporaneous in 5 that regard, yes, they were discussed. 6 Q. I think what you are referring to probably 7 is B 1319. There is an entry at 09.35 hours 8 which says: "Call received by DI Chipolina 9 from Comandante Pacheco Polo GC 10 Alquisiras stating that according to COS 11 radar tracing of the incident the approximate 12 coordinates of the collision were 36 degrees 13 nine minutes north, five degrees 12 minutes 14 west, which was approximately 6.54 miles 15 east of Santa Barbara Beach. GC stated this 16 data was subject to confirmation by technical 17 extraction from their SIV system. DCI Field 18 contacted and informed of this." Then the 19 entry at 09.40 is DCI Field reporting that 20 data. Is it fair to say that this placed the 21 collision comfortably within Spanish waters? 22 A. I can't say that with 100 per cent certainty 23 because I don't know what distance. The 24 distance of 6.54 miles is from the coastline 25 eastwards, but I do not know in relation to</p> <p style="text-align: center;">Page 13</p>	<p>1 saying that I'm doubting the statement. It's 2 just that this was a very dynamic and fast 3 pacing incident and it was actually in the 4 very early stages of it, so the dust hadn't 5 settled, everything was fast actions, fast 6 briefings, and therefore I can't with certainty 7 recall it but I'm not doubting Mr Field's 8 word, by no means, to, in fact, just before 9 coming up today I was trying to see, to 10 answer your question, to see how far away 11 was it from Gibraltar waters and international 12 waters and I couldn't grapple with that. 13 Q. So have you never plotted or has nobody 14 ever plotted for you those coordinates and 15 shown you where they fall within Spanish 16 waters? 17 A. I think they are contained in the Solis 18 reports but that report came afterwards, after 19 my retirement. Actually, the draft report 20 came before. 21 Q. Not the final report. 22 A. Not the final report. 23 Q. Can we look at B 1681, please, which is 24 the second page of the email I showed you 25 earlier from Superintendent Richardson.</p> <p style="text-align: center;">Page 15</p>
<p>1 international waters laterally as opposed to 2 just the vertical. It's a two dimensional sort 3 of focus and if we focus it with the one 4 dimension, it's only 6.5 miles out. It could be 5 anywhere within one kilometre beach. Santa 6 Barbara could be one kilometre beach, or it 7 could be at the - its northern aspect which is 8 borderline with our own runway, or it could 9 be -- 10 Q. Southern, the most southern. 11 A. Southern, sorry, yes, I beg your pardon. 12 The most southern end of the beach, which is 13 practically joining up with our runway, or it 14 could have been its northern aspect which 15 would have taken it closer to the fishing 16 village commonly known as La Tournada(?). 17 Q. That is correct about 6.54 miles off Santa 18 Barbara, but in terms of the coordinates, 19 where did the coordinates place it 20 comfortably within -- 21 A. I wouldn't know because I'd seen 22 reference to a chart being brought up and 23 those coordinates being plotted, and as much 24 as I tried to rack my brain, I cannot with 25 certainty say that I recall that but I'm not</p> <p style="text-align: center;">Page 14</p>	<p>1 This is, as I say, sent at 10.11 in the morning. 2 If one looks at a log, the penultimate entry 3 there is the Field briefing as to location. The 4 wording is: "JF advises that collision 5 occurred", and then provides the detail. 6 There is no suggestion there that there is any 7 great doubt about the location. Is that 8 correct? 9 A. Well, I can't see. It plotted and in relation 10 to a chart, a navigational chart or a map that 11 would give me that indication, which is what 12 I can't remember from happening at - it 13 happening. 14 Q. Do you remember there being a 15 conversation as to whether it was within 16 Spanish waters or -- 17 A. Yes. That was a consideration that was 18 toyed with from early on, as soon as 19 coordinates were provided to us. However, 20 we were working on the hypothesis that there 21 had been a pursuit that had taken place in 22 British Gibraltar territorial waters and/or 23 straddled into Spanish waters or international 24 waters, but certainly that something had 25 happened within our waters and that the</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

<p>1 collision seemed to have occurred in Spanish</p> <p>2 waters.</p> <p>3 Q. Just to follow up on that, you say you</p> <p>4 were working on a provisional hypothesis</p> <p>5 that the pursuit had taken place in BGTW but</p> <p>6 in terms of the collision were you not by that</p> <p>7 point fairly certain that the collision had</p> <p>8 occurred in Spanish waters?</p> <p>9 A. There was no certainty, there was no</p> <p>10 certainty, and the mere fact that the</p> <p>11 wireless(?) said we were not able to commit</p> <p>12 to that and I wanted to work on that</p> <p>13 confirmation and best information, best</p> <p>14 evidence. I was expectant that the data that</p> <p>15 would confirm all these things that we were</p> <p>16 enquiring about would be available to us</p> <p>17 from our own assets, the maritime assets I</p> <p>18 mean, and/or port authority or Windmill Hill</p> <p>19 Signal Station.</p> <p>20 Q. When you understood that the</p> <p>21 coordinates needed technical confirmation,</p> <p>22 did you understand that to mean that they</p> <p>23 could be wildly wrong, or was that a</p> <p>24 suggestion that actually there was a slight</p> <p>25 margin for error in the coordinates?</p> <p style="text-align: center;">Page 17</p>	<p>1 "Yes, agreed. Any necessary additional</p> <p>2 expenditure will be approved... Many</p> <p>3 thanks." In your witness statement you say</p> <p>4 this was only information which needed</p> <p>5 verification. Why did you send that message</p> <p>6 to the Chief Minister?</p> <p>7 A. It was in response to a question that he'd</p> <p>8 asked me.</p> <p>9 Q. You obviously considered it meaning</p> <p>10 information for a Chief Minister and the</p> <p>11 Chief Minister had said that you needed to be</p> <p>12 transparent, so why did you not send at the</p> <p>13 same time that information to the Governor?</p> <p>14 A. Like I say, I was engaged in a form of</p> <p>15 conversation with the Chief Minister and I</p> <p>16 was responding to questions from him in the</p> <p>17 same way as I was responding to questions</p> <p>18 from the Interim Governor, from Mr Pyle.</p> <p>19 There is absolutely no doubt whatsoever that</p> <p>20 this information would have been shared</p> <p>21 with Mr Pyle at the next point of</p> <p>22 communication with him. That I didn't do it</p> <p>23 at the time I've got no explanation for other</p> <p>24 than saying that this was a dynamic moving</p> <p>25 matter and it's not that I was focused solely</p> <p style="text-align: center;">Page 19</p>
<p>1 A. I thought that it needed verification in the</p> <p>2 sense that they may not have had the full</p> <p>3 picture themselves, and these things are</p> <p>4 complicated, they're scientific and technical</p> <p>5 and computer-related, and to be certain you</p> <p>6 have to be 100 per cent certain that that is</p> <p>7 where it's happened. If I correlate with any</p> <p>8 other major incidents, you don't want to be</p> <p>9 announcing mass casualties when there are</p> <p>10 not, you don't want to provide inaccurate</p> <p>11 information that could cause knock-on</p> <p>12 effects.</p> <p>13 Q. Can we go to 1345, please. This is your</p> <p>14 message of 09.49 hours. I think it is the sixth</p> <p>15 box from the top. Your WhatsApp message</p> <p>16 says: "CM, the information suggests that the</p> <p>17 collision took place outside BGTW approx.</p> <p>18 six nautical miles east of the runway Santa</p> <p>19 Barbara Beach." Then you say: "When a</p> <p>20 death arises from police contact it's best</p> <p>21 practice to engage with an independent</p> <p>22 investigating team and I am studying how to</p> <p>23 achieve this." "Okay, we need to liaise with</p> <p>24 AG on this and ensure we are transparent on</p> <p>25 this." That is the Chief Minister's response.</p> <p style="text-align: center;">Page 18</p>	<p>1 on responding to WhatsApp messages.</p> <p>2 There were things that I was doing and</p> <p>3 getting information briefed up to me, and so</p> <p>4 forth, so it's not that as soon as I stopped</p> <p>5 chatting with the CM, as per what's on the</p> <p>6 screen, that it kept in my head I've got to tell</p> <p>7 the Governor this. It didn't flow like that.</p> <p>8 However, it's transpired - well, sorry.</p> <p>9 Q. Thank you. At 09.41 hours when we see</p> <p>10 above, you do send a message to the</p> <p>11 Governor: "Thanks, Nick." Would that not</p> <p>12 have been after the briefing that DCI Field</p> <p>13 had given you as to location?</p> <p>14 A. Sorry, where was that?</p> <p>15 Q. 09.41 hours. It is just above the message</p> <p>16 that we were just looking at in terms of</p> <p>17 location, just where the cursor is. You send a</p> <p>18 message to the Governor at 09.41 hours.</p> <p>19 Was that not just after DCI Field had briefed</p> <p>20 you as to the location?</p> <p>21 A. The time of the briefing of the location</p> <p>22 was what?</p> <p>23 Q. 09.40 hours.</p> <p>24 A. I mean, we could even say it's</p> <p>25 simultaneous. These are responses of mine,</p> <p style="text-align: center;">Page 20</p>

1 **off the cuff responses, and as I'm dealing**
 2 **with other things, so I've got no explanation**
 3 **as to whether it was before, because they**
 4 **have told me about the one minute margin**
 5 **here, whether it was before or after, but I**
 6 **reinforce that there is absolutely no doubt in**
 7 **my mind then, now, and it will be shown,**
 8 **that I was not going to withhold anything**
 9 **from the Governor.**
 10 Q. Did you recognise the importance to the
 11 Governor of knowing as soon as possible
 12 whether the collision took place in Spanish or
 13 BGTW given his constitutional
 14 responsibilities for external affairs and for
 15 the police?
 16 **A. Absolutely. It's evident that I'm telling**
 17 **the Chief Minister, the head of the**
 18 **Government, the head of Government at**
 19 **number 6. There was absolutely no reason or**
 20 **motive to not brief up to Mr Pyle with the**
 21 **same information. It's nonsensical, as far as**
 22 **I'm concerned.**
 23 Q. It may not have been confirmed
 24 information but do you accept the Governor
 25 was entitled to the best available information

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1 at the time?
 2 **A. That's right, and he was. He was**
 3 **provided with the best information.**
 4 Q. Can we turn to A 71, please, paragraph
 5 57. This is further details of the briefing by
 6 DCI Field. I just want to take you to the final
 7 four lines of that, that neither Windmill Hill
 8 Signal Station nor Gibraltar Port Authority
 9 had any coordinates plotted for the police
 10 vessel, this potentially meaning the vessel's
 11 automatic identification system, AIS, was
 12 either switched off or faulty. What was your
 13 thought or reaction when you first learned
 14 this information?
 15 **A. It was regrettable that we couldn't extract**
 16 **data from either of these three sources. That**
 17 **set us back somewhat in establishing with**
 18 **certainty from our own sources where this**
 19 **would have happened, where the incident**
 20 **would have happened.**
 21 Q. Were you surprised to learn that
 22 information?
 23 **A. I was surprised that Windmill Hill**
 24 **couldn't plot it, I was surprised that the Port**
 25 **Department couldn't plot it, and I was**

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1 **surprised that the AIS on board the police**
 2 **vessel was either switched off or faulty. I did**
 3 **not know at the time what the case was. So**
 4 **yes, I was surprised that Gibraltar sources**
 5 **could not provide that information.**
 6 Q. Can we now turn to the briefing with the
 7 Attorney General. If we look at A 73, two
 8 pages on from here, you say at paragraph 63:
 9 "At 1010hrs, I briefed the AG, Mr Michael
 10 Llamas, in my office. Present were Supt
 11 Richardson and possibly DCI Field and other
 12 members of the command team. I explained
 13 to the AG what we knew at the time
 14 including the uncertainty of where the
 15 collision had occurred." Can I take you to
 16 the Attorney General's evidence as far as this
 17 is concerned. It is at A 294. The Attorney
 18 General says the following: "Mr McGrail in
 19 the presence of other RGP officers briefed
 20 me on what he knew at that stage. Other than
 21 the basic facts of what had happened, I do
 22 not have a precise recollection of what he
 23 told me in relation to the location of the
 24 collision and whether it had occurred in
 25 BGTW or in Spanish territorial waters. To

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1 the best of my recollection I believe he
 2 referred to the fact that there had been a
 3 chase that straddled BGTW and Spanish
 4 waters, that there had been some element of
 5 contact between the RGP and the Spanish
 6 Guardia Civil and that it seemed highly likely
 7 that the collision had occurred in Spanish
 8 waters but that he was waiting for formal
 9 technical confirmation of this. My
 10 recollection is that, considering the gravity of
 11 the consequences, political and otherwise, of
 12 the collision having occurred in Spanish
 13 waters, Mr McGrail wanted to be absolutely
 14 certain of this and was not assisted by the
 15 fact that the RGP's AIS appeared not to have
 16 been switched on at the time of the
 17 collision." Do you agree that you said that it
 18 seemed highly likely that the collision had
 19 occurred in Spanish waters to the Attorney
 20 General?
 21 **A. I think that that was a working theory that**
 22 **we developed based in concert there as these**
 23 **things were being brought to us. So when we**
 24 **break it down to that level of detail, it was**
 25 **mentioned that it was highly likely that it was**

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<p>1 going to happen - would have happened - in 2 Spanish waters. 3 THE CHAIRMAN: When you say "it was 4 mentioned", you mean you thought that it 5 was highly likely that it occurred in Spanish 6 waters, and said so. 7 A. Yes, yes, with the proviso that part of the 8 chase or under - I mean, these were working 9 theories to complement the information that 10 we had, the coordinates and the information 11 that we had, that it would seem that it had 12 happened, but we were working on the 13 hypothesis that part of the chase had either 14 commenced or had involved British Gibraltar 15 territorial waters. 16 MR SANTOS: Then if you go back to A73, 17 please, which is your statement again, you 18 say: "During the course of this briefing, at 19 1140hrs, the AG sent a message to the CM 20 which he then also sent to me and which read 21 as follows: 'Been in New Mole for the last 22 hour or so. Cooperation RGP/Spanish LEAs 23 very good. New RGP Press Release today 24 will say good cooperation with ES (Spain), 25 drug related activity, 2 deaths are Spanish</p> <p style="text-align: center;">Page 25</p>	<p>1 from anywhere else. 2 Q. He sent that message to you. Did you 3 agree or disagree with his use of that phrase 4 "virtually certain"? 5 A. I did not consider it inappropriate. As far 6 as I was concerned, he briefed, he was 7 following up with the Chief Minister, and I 8 was satisfied with that. 9 Q. At around 12.15 the Governor arrived 10 and you deal with this at 65 of your 11 statement. "At 12.15 hours NP, the interim 12 Governor, attended my office and joined the 13 AG and my team in the briefing where all the 14 actions that had been carried out and those 15 that remained outstanding were discussed. I 16 explained what my intentions were in respect 17 of best practices to follow when faced with a 18 death as a result of contact with the police. 19 That I would be exploring means of securing 20 an independent team to take over the 21 investigation. Both the AG and NP were in 22 agreement. NP did not raise any particular 23 query." You say he did not raise any 24 particular query. Did he not even ask you 25 where the collision had occurred?</p> <p style="text-align: center;">Page 27</p>
<p>1 nationals of North African descent. 2 Investigation continues. PR [which is, you 3 helpfully point out, an abbreviation for press 4 release] will not say where incident occurred 5 bitt it is virtually certain it was outside 6 BGTW eastern side opposite runway. It also 7 seems that part of the chase was within 8 BGTW.'" That is a message that the 9 Attorney General actually sent to you. It 10 does not appear that he actually, as it 11 happens, sent the message to the Chief 12 Minister, although it is not a hundred per cent 13 clear one way or the other. But you received 14 that message, did you not? 15 A. Yes. He sent it there in my presence. He 16 says: "I've just forwarded this to the - I've 17 just sent this to the Chief Minister. I'm going 18 to forward it to you." It seems that it's a 19 common thing that the Attorney General 20 does, as we follow through from the 21 evidence. He does forward messages that 22 he's received, and forwards them on. 23 Q. Did he give that information virtually 24 certain from your briefing? 25 A. Absolutely. He could not have got it</p> <p style="text-align: center;">Page 26</p>	<p>1 A. It is possible that he asked, yes. 2 Q. It is possible that he asked. 3 A. Yes. Or the other way round, that what I 4 believe happened is that I briefed him to the 5 same level that I briefed the Attorney 6 General. 7 Q. Why do you not say that in paragraph 65 8 of your witness statement, that you briefed 9 him as to the location? 10 A. Well, it says that the AG and my team - 11 that: "The Interim Governor attended my 12 office and joined the AG and my team in the 13 briefing where all the actions [and the 14 actions, as you can see, include the question 15 of where the location happened] that had 16 been carried out and those that remained 17 outstanding were discussed." Again, that 18 includes establishing where the incident had 19 occurred. So there is reference to that and 20 that's my interpretation of what I wanted to 21 convey. 22 Q. If we go to Mr Pyle's evidence as to this 23 briefing, 251, at paragraph 25.3, his account 24 is as follows: "Whilst walking my dog past 25 New Mole House (NMH) at around midday</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 on the 8th March I decided to call in and 2 asked to see Mr McGrail. He was there and 3 agreed to see me. Given the possibility of a 4 diplomatic and political situation with Spain 5 about this incident, which (being external 6 affairs) would be the responsibility of the 7 Governor and HMGOG, my primary concern 8 was to establish the location of the incident, 9 and whether it had occurred in Spanish 10 territorial waters. I therefore asked Mr 11 McGrail about the location and whether it 12 was inside or outside BGTW. He replied 13 with a slightly flippant waving of his hands, 14 'could be in, and could be out, it's difficult to 15 tell at night'. Did you say something to that 16 effect? 17 A. Certainly there was no flippancy, not 18 even slightly, as Mr Pyle describes. 19 Certainly that was not. I always adopt a 20 respectful approach to persons who hold high 21 office. Secondly, I think there has been, sort 22 of the comment "Could be in and could be 23 out" has been somewhat warped, because the 24 essence of what we were discussing was that 25 we were working on the hypothesis that part</p> <p style="text-align: center;">Page 29</p>	<p>1 that paragraph says: "My recollection is that 2 Mr McGrail told the then Governor that he 3 was still not certain where the collision had 4 occurred." Is that something that you 5 remember saying? 6 A. No. I remember saying that it was highly 7 probable that it had happened, probably 8 reinforcing that we needed confirmation of 9 that and we needed certainty on that. So that 10 it was not certain where the collision had 11 occurred and not necessarily that it had not 12 happened in Spanish waters. The certainty, 13 as far as I interpreted it, was confirmation of 14 it. 15 Q. Can we turn to B 1346 now, please. The 16 first new box on that page is from Mr Pyle to 17 you at 13.33 hours, and he says: "Thanks for 18 the briefing. I'll do a quick note for London 19 for when it hits the press. Line will be 20 'Investigation ongoing, Spanish nationals 21 from Ceuta. Did you say one person was 22 Portuguese? Not sure in whose waters 23 incident took place. RGP seeking assistance 24 from UK police authorities. No assistance 25 needed from FCO at this stage'." And you</p> <p style="text-align: center;">Page 31</p>
<p>1 of the chase could have happened in 2 Gibraltar waters or could have happened out. 3 There are two distinct - I'm working on so 4 from the stance that there's the collision is the 5 end product and the pursuit is the beginning 6 of that product. So I was considering both 7 issues, not necessarily one as a one package. 8 THE CHAIRMAN: The Interim Governor 9 asked you where the collision had taken 10 place. Is that right? 11 A. I cannot recall him asking me 12 specifically. What I can recall is that I 13 briefed him to the same degree that I had 14 briefed the -- 15 THE CHAIRMAN: What precisely did you 16 tell him? 17 A. I cannot tell you with certainty other than 18 say that the matter - that the collision was 19 highly probable that it happened in Spain 20 with part of the chase happening in Gibraltar 21 waters. 22 MR SANTOS: If we go to A 295, this is the 23 Attorney General's statement, and at 24 paragraph 84 he says that Mr Nick Pyle 25 arrived at NMH. Then the final sentence of</p> <p style="text-align: center;">Page 30</p>	<p>1 replied: "Yes, all correct. indeed one was 2 Portuguese. Trying to clarify exact position 3 of the collision. Okay, thanks." Now, given 4 that you had already told the Chief Minister 5 the coordinates and you had seen that the 6 Attorney General was reporting to the Chief 7 Minister that it was virtually certain that the 8 incident took place in Spanish waters, why 9 did you agree with Mr Pyle's proposed line? 10 A. Again, this is a fluid conversation and 11 when he's talking about - I'm talking about 12 the - he's talking about the incident. Now, 13 when I refer to the incident, he's talking 14 about - I'm looking at dissecting that into 15 collision and pursuit. It's not solely the 16 culmination of the incident which is the 17 collision. So by me responding to him the 18 exact position of the collision sort of infers 19 that I'm not talking only about the collision 20 itself. It's talking about the - I'm referring to 21 the pursuit being part of the issue. 22 Q. If we go now to 1746, please, there is an 23 email from Mr Pyle to the FCDO, and I just 24 want to read out the first two paragraphs. 25 "I've just met with the Commissioner of</p> <p style="text-align: center;">Page 32</p>

<p>1 Police who kindly gave me a briefing on the 2 incident. The facts have yet to be determined 3 and the investigation is ongoing but initial 4 headlines are as follows: the incident 5 happened at 0400 hours though it is not yet 6 known whether it took place in BGTW or 7 just outside." Again, given what you had 8 reported to the Chief Minister and to the 9 Attorney General about it being virtually 10 certain - well, given the coordinates you had 11 provided to the Chief Minister and what the 12 Attorney General had said to the Chief 13 Minister about it being virtually certain that 14 the collision had taken place outside BGTW, 15 are you concerned by the fact that Mr Pyle 16 was reporting to the FCO that it is not yet 17 known whether the incident took place in 18 BGTW waters or just outside? 19 (10.47) 20 A. Certainly I am. I am, because 21 unbeknown to me Mr Pyle had also 22 communicated to the FCDO hours after this 23 email that things could get complicated 24 because the collision happened six nautical 25 miles into Spanish waters, the same figure</p> <p style="text-align: center;">Page 33</p>	<p>1 can only hope that it was at the invitation of 2 the Spanish, but this may be why GOG have 3 kept details very close and have asked for no 4 social media speculation." Then jumping to 5 the next line, "Let's hope this is all resolved 6 quickly between the agencies and there is no 7 negative impact on Thursday's talks with the 8 Spanish." I think you have already answered 9 this question, but I will just ask it so that you 10 can answer as clearly as you like. What 11 information do you think led to Mr Pyle 12 sending that email? 13 A. My briefing. However Mr Pyle's sole 14 focus there, and I respect it because of the 15 role he discharges, but I want to also explain 16 my - my action that - the day, and everything 17 that I was dealing with. This was the most 18 tragic and unfortunate of incidents; this was 19 not something - this was an abnormal, 20 uncommon incident that has - that has come 21 to our attention, and that we had to deal with. 22 Not only was I dealing with the loss of life 23 (which was extremely regrettable), the shock 24 that that had caused amongst our - the 25 service, and no doubt the families and the</p> <p style="text-align: center;">Page 35</p>
<p>1 that I had provided the Chief Minister with. 2 So at the time, obviously I never had sight of 3 this until it was provided to me now, so... it 4 just confirms in my mind that what I told 5 him, what the briefing provided. I don't un-- 6 I don't understand why Mr Pyle has not 7 included it in this particular email, but he 8 certainly does it. 9 Q. Well, I will show you the other email I 10 think you are referring to, 1748. Correct me 11 if I am wrong, but this is an email sent the 12 next morning at 7.57 -- 13 A. Yes, but -- 14 Q. Then -- 15 A. I - I - I don't think that anybody briefed 16 Mr Pyle at seven o'clock in the morning on 17 the day, on the 9th. That information he's 18 referring to, he had received the previous 19 day. 20 Q. He says "There may be complications 21 around yesterday's incident, in that it might 22 have happened as much as six miles inside 23 Spanish waters. If true, it's hard to fathom 24 quite what the RGP were doing chasing a 25 vessel so deep into Spanish waters, and one</p> <p style="text-align: center;">Page 34</p>	<p>1 community. I was also dealing with the 2 potential of serious public disorder, given 3 that only a few months earlier there had been 4 a similar incident involving a HM Customs 5 vessel, with a - another smuggling vessel, 6 and where there had been one fatality. And, 7 the wake that that brought was serious public 8 disorder in the streets, albeit in the 9 neighbouring town. But I had serious 10 concerns for that happening in Gibraltar, 11 given that we were dealing with organised 12 criminal networks. And, we know how they 13 operate and how they can go into retribution. 14 So those are only a sample of the issues that I 15 was dealing with, whilst it seems Mr Pyle 16 was only focused on (and - and probably 17 rightly so) on the - on the diplomatic issues. 18 I had that, also - that also featured in my 19 considerations, but I had all these others that 20 - the col-- the colonial inquiry, professional 21 standards inquiry, cr-- potential criminal 22 liabilities and so forth. 23 Q. Can we turn to A160 please, paragraph 24 81. This is your fifth witness statement. 25 A. Sorry, fifth?</p> <p style="text-align: center;">Page 36</p>

<p>1 Q. Your fifth witness statement. Sorry, yes, I 2 should give you the cue for your physical -- 3 A. Which reference, sorry? 4 Q. Fifth statement, paragraph 81. 5 A. 81. 6 Q. It is on page 19. You say here, "The AG 7 states in paragraph 86 of his affidavit that on 8 9 March, the day after the incident, Mr 9 McGrail briefed and explained that he was 10 not in a position to formally confirm where 11 the collision had taken place." And then you 12 say, "I was aware that the AG and NP had 13 been together the night before, because NP 14 informed me so at 1015 hours on 9 March 15 2020. NP asked me to meet again with the 16 AG for a further update. In his message to 17 me NP wrote, 'I was with the AG last night, 18 and we wondered whether it would be worth 19 having an update at some stage later this 20 morning. We are keen to reach out to Spain 21 given his talks this week in London.' From 22 this, I understood that the AG and NP were 23 actively in communication with each other, 24 and therefore it is inconceivable that I would 25 have told the AG key information which he</p> <p style="text-align: center;">Page 37</p>	<p>1 information on to Mr Pyle? 2 A. Sorry, I - want to refer to the - which one 3 was this? 4 Q. I am sorry about that. Third statement, 5 paragraph 67. It is the final three lines. 6 A. And the question was, sorry? 7 Q. Did you pass that information on to Mr 8 Pyle? 9 A. The relations - the relations I had with - 10 with him in respect of this was not a live-feed 11 relation, as is evident. It's not that I was 12 constantly feeding him - this is coming in on 13 a - on a live-feed basis, so I cannot be certain 14 that I did. 15 Q. In his email that we just saw a moment 16 ago, he refers to talks that week in London. 17 Did you appreciate, given the Governor's role 18 and given those talks, that it was imperative 19 for the Governor to have the best information 20 available as to location? 21 A. Yes, absolutely. He knew that I'd sent 22 two police officers - two senior officers to 23 Algeciras very early on, because I think he 24 quotes it that - he quotes that to - to his 25 bosses in London. That can only show him</p> <p style="text-align: center;">Page 39</p>
<p>1 would have failed to pass on to NP, given 2 that they were both in close contact 3 throughout and very much focused on the 4 accident. This shows that NP was aware by 5 that stage of the possibility that the collision 6 occurred in Spanish waters, and that that is 7 why it was a matter for high-level diplomatic 8 discussions planned for the following week." 9 Are you suggesting there, in your statement, 10 that Mr Pyle may have been informed by the 11 Attorney General on the evening of 8 March 12 2020 as to the collision taking place in 13 Spanish waters? 14 A. That is a possibility. I do not know, 15 because I wasn't obviously privy to the 16 conversation, but that is the... If not 17 informed, certainly reminded of. 18 Q. Can we now turn to A74, please. In 19 paragraph 67 (the last three lines) you say, 20 "During the course of the morning of 9 21 March 2020 I was informed that the GC were 22 still of the view that the collision had 23 occurred in Spanish waters, but that they 24 needed this interpretation to be confirmed by 25 their technicians." Did you pass that</p> <p style="text-align: center;">Page 38</p>	<p>1 the ca-- why would I send two officers to 2 Algeciras? That can only indicate that we're 3 linking up with our counterparts because the 4 incident happened in Spain. Otherwise, there 5 would be no sense of us sending two police 6 officers there. And, he quotes that. 7 Q. Then you meet at five minutes past 8 midday, which is the same statement that you 9 have open, paragraph 69. And you say, "The 10 following update was provided", in the 11 second line, "That following engagement"... 12 It is paragraph 69 in front of you, I think. 13 "That following engagement with GC and 14 Algeciras we have been able to establish that 15 the GC had opened an investigation due to 16 the incident involving deaths of Spanish 17 nationals. According to my information, this 18 was regardless of whether the incident 19 occurred in Spanish waters or disputed 20 waters (as the GC called them), that the GC 21 sought to be kept informed irrespective. 22 Then, (i), you say that "The exact coordinates 23 of the collision have still not been 24 determined. I cannot recall whether the 25 provisional coordinates provided by the GC</p> <p style="text-align: center;">Page 40</p>

<p>1 were discussed in specific detail but given 2 the note prepared by Superintendent 3 Richardson (which made reference to the 4 exact coordinates not being determined, 5 suggesting the provisional coordinates were 6 mentioned) it seems that location was 7 discussed, albeit with a caveat that this still 8 needed verification. The notion that NP was 9 kept out of the loop, as he claims in his letter 10 to the GPA dates 3 June 2020, is absurd. 11 Both the AG and Superintendent Richardson 12 were present, and if I was evasive (which I 13 strenuously deny) then so would the AG and 14 the Superintendent have been evasive." Do 15 you have any recollection of providing the 16 provisional coordinates to Mr Pyle? 17 A. No. 18 Q. If -- 19 A. However -- 20 Q. Sorry. 21 A. -- the fact that we were discussing the 22 coordinates, and that we couldn't - and that 23 we were working to determine the exact 24 coordinates - as I say in my statement, there 25 was a discussion all about coordinates. And</p> <p style="text-align: center;">Page 41</p>	<p>1 impression whatsoever that the mindset that 2 he developed (or at least, that he's described 3 in his statements) had been created at all. 4 Quite the contrary. You can see his exchange 5 with me, post to - to the incident happening, 6 and engaging with him to facilitate the 7 engagement of a - an independent team from 8 the UK, as I had requested practically within 9 hours - or at least explored, within hours of 10 the incident. I mean, there's no sign 11 whatsoever there that that man, Mr Pyle, was 12 - was perceiving me to be evasive in any s-- 13 in any - in any way, shape or form. And like, 14 I come to the - the - the - reinforcing the 15 point that he could not have been eva-- he cou-- 16 he wasn't behaving the way he alleges, 17 because he was fully aware of the 18 information that I was pro-- imparting. And, 19 that is supported by the fact that he, within 20 19 hours of meeting with me, the following 21 morning when he woke up he imparted to his 22 bosses in London that they - there were - 23 there could be complications, that the 24 incident happened at six nautical miles into 25 Spanish waters, which is actually not correct.</p> <p style="text-align: center;">Page 43</p>
<p>1 now, the only coordinates that we had at the 2 time were those that you've repeatedly 3 mentioned, and they when plotted ma-- 4 comes out to - to Spanish waters, those - 5 those that have been referred to. So, what 6 I'm trying to say there is that Mr Pyle was in 7 that conversation, and if I was at any point 8 flippant (as is being (?) alleged), evasive, not 9 imparting correct information or - or being 10 misleading, I was doing that in the presence 11 of the Attorney General and my colleague. 12 But (?) you've seen my colleague Mr 13 Richardson, an exemplary officer. As indeed, 14 Mr Wyan. And, the office of the Attorney 15 General - it just does not make sense that I'm 16 going to address the Governor with 17 misleading information, or inaccurate 18 information, or with disrespect, as is being 19 alleged. He had more than ample 20 opportunity to do - to challenge me and ask 21 questions of me at that meeting, and if he 22 didn't feel it appropriate he could have called 23 me up, and called me to order and probed me 24 for any clarity. That - that - that did not 25 happen at any stage, and I was left with no</p> <p style="text-align: center;">Page 42</p>	<p>1 That is not the correct -- 2 Q. That is a reference to the distance off 3 Santa Bárbara beach. 4 A. Into Spanish waters, not necessarily from 5 Gibraltar waters, it's not. 6 Q. No, no, no. Sorry, I -- 7 A. But, what - it's important to highlight, 8 because the - the - the key thing here is: had 9 he said ten miles, twenty miles, fifty (?) 10 miles, that would have been suggesting that 11 there was some miscommunication. But, he 12 called six nautical miles, albeit that he is 13 quoting it for the wrong - under the wrong 14 pretexts, but he's quoting six nautical miles, 15 which is the same information that I imparted 16 to the Chief Minister. Six nautical miles east 17 of Santa Bárbara, making no reference to the 18 Chief Minister as to whether that was close 19 to international waters, close to - to British 20 Gibraltar Territorial Waters. It was what I 21 had, so - and - and that's - and that is what I 22 imparted to him. 23 Q. Can we turn to his statement, it is at 24 A254, please. Paragraph 25.6. He says, "I 25 had in fact learned on either 18 or 19 March</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 from a debrief by acting Detective 2 Superintendent Gary Smith of the 3 Metropolitan Police that all indications were 4 that the incident had happened in Spanish 5 waters, possibly up to three miles out of 6 BGTW." Sorry, I think I have got the 7 wrong... we will come back to that. Sorry, I 8 think I have read out the wrong part. Let us 9 just move on to one other... Yes, 256, sorry, 10 page 256. He says, "I told him that I thought 11 that Mr"... We will just move on from this 12 question, and come back. 13 THE CHAIRMAN: This is the same 14 meeting, is it not? Top of the page. That - 15 stop, it is that paragraph there, is it not? 16 26.4. 17 MR SANTOS: But, that is... I think there is 18 an earlier reference to this. 19 THE CHAIRMAN: Well look, let me ask 20 something of Mr McGrail -- 21 MR SANTOS: We will come - sorry, go on. 22 THE CHAIRMAN: The confusion as to 23 where the collision occurred was entirely 24 caused because the RGP launch did not have 25 its satellite navigation systems turned on. Do</p> <p style="text-align: center;">Page 45</p>	<p>1 in place - there was a post-incident procedure 2 that is - that kicks in when a situation of this 3 sorts take place, and there are post-incident 4 managers - post-incident procedure managers 5 that deal with that, to facilitate the - the 6 eliciting of evidence from those involved. 7 THE CHAIRMAN: Mr Pyle says that you 8 sought to excuse that, by saying that it had 9 been switched off in the heat of the moment. 10 Do you recall saying that? 11 A. Oh, certainly not, sir. I would never have 12 said that. And I don't think anybody present 13 at that meeting will - I am absol-- a hundred, 14 two hundred percent certain that nobody in 15 that meeting will say that. 16 THE CHAIRMAN: Well, you are quite right 17 that Superintendent Richardson does not 18 remember that being said. 19 A. It wasn't said, sir. What I'd said, if 20 anything, it was that it may have been 21 switched off or it could have been faulty. 22 THE CHAIRMAN: No, but you found out 23 eventually that it was not faulty, did you not? 24 A. Yes, yes. 25 THE CHAIRMAN: It just had not been</p> <p style="text-align: center;">Page 47</p>
<p>1 you agree with that? 2 A. That contributed to it. Yes, certainly, sir. 3 THE CHAIRMAN: Well, it caused it, did it 4 not? If the systems had been on, everyone 5 would know exactly where the chase started - 6 - 7 A. Yes. 8 THE CHAIRMAN: -- and where the 9 collision had taken place. What was your 10 reaction, when you found out that the crew of 11 your launch had not turned their systems on? 12 A. I was not pleased at all, sir. 13 THE CHAIRMAN: No. 14 MR SANTOS: This -- sorry. 15 THE CHAIRMAN: I think (?) someone has 16 suggested that there was a practice that that 17 happened. Did you know of that practice? 18 A. Not at all. I believe that there were 19 specific instructions that the AIS and those 20 satellite navigational aides had to be kept on. 21 THE CHAIRMAN: And what steps did you 22 take towards the crew, when you found out 23 that they had not turned the systems on? 24 A. I can't remember when I got to know, 25 specifically. But, there was a procedure put</p> <p style="text-align: center;">Page 46</p>	<p>1 switched on. 2 A. That's right. 3 THE CHAIRMAN: Yes, (inaudible). 4 A. And it was switched on afterwards 5 apparently, once they were back into waters, 6 and as they were towing in the - the crashed 7 vessel. That's what I understand. 8 THE CHAIRMAN: Did that not strike you 9 as rather strange. 10 A. Yes. 11 Q. Why do you think it was switched off on 12 this occasion? 13 A. I can't answer that question. 14 Q. Why do you think that that officer felt 15 that he was entitled to switch it off? 16 A. I can't - I can jump to some theory, but 17 that would be - I don't know whether you 18 want me to -- 19 THE CHAIRMAN: Well, never mind 20 jumping to a theory, one obvious explanation 21 is that he did not want anybody to find out 22 that he was -- 23 A. That is -- 24 THE CHAIRMAN: -- straying into Spanish 25 waters.</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 A. That is my theory sir, but I cannot be 2 certain because I have not investigated that 3 aspect of it. I - so I do not know what the 4 officers said in response. Although I know 5 now, but at the time, whether there was any 6 particular reason. But you can - if you want 7 to look at it sinisterly, I - I agree with the 8 Chair-- Mr Chairman, that it could be 9 deemed to - to be a question of intentional 10 switching off to cover your tracks. 11 Q. Has there been any analysis as to how 12 regularly AIS was switched off, up until that 13 moment, on patrolling boats? 14 A. That featured part of the investigation, 15 which was not completed by the time I 16 finished service. I believe there is an 17 analysis, which I've read, from the Solis 18 report, and from the poss-- potentially from 19 the misconduct report, that capt-- captured 20 the instances where there had been pursuits. 21 I think it was in the region of 59 pursuits, if 22 I'm not mistaken. And, out of the 59 pursuits 23 57 occurred within Gibraltar territorial 24 waters, with two (including the one in 25 question) not occurring within British</p> <p style="text-align: center;">Page 49</p>	<p>1 briefing, B5736. We have dealt with the 2 coordinates question, sorry. B1757. This is 3 another email from Mr Pyle briefing the FCO 4 and he says, "The AG and I received a further 5 briefing from the Commissioner of Police 6 this morning, and my request headlines are as 7 follows." And he says at the bottom of the 8 fourth paragraph, the largest one, "CoP 9 confirmed that the exact location has still to 10 be determined as were details of the chase, 11 which lasted ten minutes." Why do you think 12 that Mr Pyle was still briefing to that effect? 13 A. Because he's refer-- he's referring to the 14 exact location, and not a - previous 15 information that suggested that it was highly 16 probable. He's now moved to briefing up in 17 London that it was - the exact location was 18 still do be determined, and that is accurate. 19 What he'd reported up to London was 20 accurate. 21 Q. Now jumping to your third witness 22 statement, which you have in front of you, 23 paragraph 73, which is on page 77. In the 24 preceding paragraph you refer to the 25 "Maritime Incident" group, and at 73 you say</p> <p style="text-align: center;">Page 51</p>
<p>1 Gibraltar Territorial Waters. Now, in those 2 figures, if I analyse those figures I see that, 3 by and large, the marine crews were 4 compliant with the instructions, by - in vast 5 sort of - in the vast amount of instances they 6 were -- 7 Q. There was something I wanted to ask you 8 about that, we may as well turn to C5633, 9 which I think is where we have the stats that 10 you referred to. And it is a credit to your 11 recollection, 3.17.6 is exactly that: 59 entries 12 involved a chase, two (including this case) -- 13 A. My recollection is because I read it very 14 recent-- very recently. 15 Q. It still has credit. My question to you is 16 this: if there was a practice of switching off 17 AIS, then would any patrols which had 18 involved a switching-off of AIS show up 19 within those stats as having strayed into 20 Spanish waters? 21 A. I don't think they would. I mean, I'm not 22 the technical expert here, but it makes - 23 seems to be that that would not show up. 24 Q. Can you go to B1757, please. Sorry, 25 actually we were about to deal with your</p> <p style="text-align: center;">Page 50</p>	<p>1 that the Chief Minister messaged the group 2 saying, "Today I spoke to the British 3 Ambassador in Madrid. He was having 4 Interior Minister Grande Marlaska in for 5 lunch today." Skip a sentence. "Anything I 6 can report on progress through that channel 7 will be helpful, although, from what I 8 understand, we have Spanish law 9 enforcement on side." And you say, " It 10 would be safe to assume that NP, as a 11 Foreign Office Official was also in the same 12 loop with the British Ambassador in Madrid 13 or that at least the CM was in 14 communications with NP - that was a safe 15 assumption for me to make given NP's and 16 the CM's messages to me regarding the 17 talks/meetings in London and Madrid and 18 moreover that the AG, as legal advisor to 19 both of them, was in communication with 20 them." I think it is obvious from that that Mr 21 Pyle was not in the "Maritime "Incident" 22 WhatsApp group, is that correct? 23 A. That group - WhatsApp group - was 24 opened by Mr Picardo, after he 25 communicated with Mr Britto, the Chairman</p> <p style="text-align: center;">Page 52</p>

13 (Pages 49 to 52)

<p>1 of the Police Authority. I had no control of 2 who was given membership of that group. 3 Q. I was just asking whether he was in there 4 -- 5 A. No, he wasn't. 6 Q. -- just so that we know whether he 7 received that message. 8 A. He wasn-- he wasn't. 9 Q. You say that it is safe to assume that he 10 was in the loop, due to his contact with the 11 Chief Minister and the Attorney General. 12 But, do you think that it might have been 13 better for you to make sure that he was up to 14 speed on all the best available information? 15 A. Well, as far as I was concerned he was up 16 to speed, as far as I'm concerned. That he 17 should have been member of that group, 18 absolutely. I would have - with hindsight, it 19 would have saved me having to be 20 communicating to both different sources. 21 Q. On 10 March, your only communications 22 with Mr Pyle appear to have been in relation 23 to instructing the investigation team from the 24 UK, I do not think we have to go to that. I 25 am going to move to 11 March 2020, if we</p> <p style="text-align: center;">Page 53</p>	<p>1 to have occurred, rather. 2 Q. Do you have any clear recollection of 3 informing him of that information verbally 4 before that point? 5 A. Other than at the initial briefing, no, 6 because I did not brief him face to face again. 7 Q. Now, immediately after that you message 8 the Attorney General. And let me just read 9 those, which are below. "HE Nick is asking 10 for confirmation of where collision took 11 place, as London as keen to know. I have 12 informed him along the same lines that you 13 advised CM, ie that it is highly probably that 14 it happened outside BGTW." And the 15 Attorney General responds, "Ian, that seems 16 fine to me, factual whilst being amenable to 17 further precision once you obtain further 18 details." And you reply, "Ok". 19 A. The word - the word "precision" there is - 20 is the key word, here. Because it suggests 21 that there was information which was not 22 precise, but now what we were wanting was 23 precision. And, the fact is that there was no 24 further information or evidence to enhance 25 the - the picture, than what we had already</p> <p style="text-align: center;">Page 55</p>
<p>1 go to B1351 please. B1351. This is an 2 exchange between you and Mr Pyle on 11 3 March, and Mr Pyle says, "Ian, good to hear 4 about progress re Met help. Are we clearer 5 as to where the collision took place? London 6 are keen to know whether it was inside or 7 outside the BGTW, and if the latter 8 approximately by how far. Regards, Nick." 9 And you respond, "Nick, we are getting there 10 on establishing exact coordinates of where 11 the collision took place. We are tying up 12 some loose ends and probing further from 13 WHSS, and should be able to confirm soon. 14 It is highly probable it did occur out BGTW. 15 We are getting plotted, which will provide as 16 better understanding in terms of distance 17 from BGTW. Best regards, Ian." Mr Pyle 18 says that this was the first time, nearly three 19 full days later, that you had disclosed to him 20 information that you had since 0914 hours on 21 8 March. Do you accept that? 22 A. No, because he has already reported up to 23 the Foreign Office on the 9th, at just before 24 eight o'clock in the morning, that the matter 25 had occurred in Spanish waters - or suspected</p> <p style="text-align: center;">Page 54</p>	<p>1 provided the high office holders of the 2 Governor and the Chief Minister. There was 3 no further - I could not add anything further 4 to that, because I did not have anything 5 further to share. 6 (11.15) 7 Q. Then if we can go to B100, please. This 8 is the "Maritime Incident" group, and at the 9 bottom of the page, 12 March, you say "All, 10 an update for your info." And if we go to the 11 bottom of the page, "In terms of the 12 investigation proper, the evidence means that 13 pursuit and collision occurring outside 14 BTGW not the best news we wanted to hear." 15 What new evidence prompted you to say 16 that? 17 A. We still had no confirmation from the 18 Guardia Civil and, like I say, it was very 19 regrettable that the AIS of the police boat had 20 not been functioning for whatever the 21 reasons and we know now that it was 22 purposely switched off, when the signals --- 23 when the (Inaudible) signal station 24 nicknamed Wendy (?) couldn't provide it and 25 the port couldn't. However, detectives</p> <p style="text-align: center;">Page 56</p>

14 (Pages 53 to 56)

1 assigned to this particular task of establishing
 2 the --- or confirming the exact location,
 3 because that was a key action and it is
 4 highlighted specifically by me that we
 5 wanted to determine the exact location as
 6 soon as possible, so I believe that the SIO ---
 7 the provisional SIO, the senior investigating
 8 officer, assigned this particular task to a
 9 couple of officers, a detective sergeant --- I
 10 think it was Detective Sergeant Cotton or
 11 Garrett and they engaged with the police ---
 12 with the port authority and through non-
 13 technical --- I suppose there is a technical
 14 method but not relying on any plotting
 15 equipment, they used coastal commerce (?)
 16 with anchors off --- anchors on the eastern
 17 anchorage to be able to try and relate and
 18 come up and plot the more or less where the
 19 collision occurred and that took its time and I
 20 think I represented the efforts in this regard
 21 by sharing the statement for the purpose of
 22 the inquiry of the port official --- I think it is
 23 Mr Mandelberg, and I recall having been
 24 shown how they found out and it was quite
 25 good detective work in terms of --- because

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1 the pictures are obviously on night vision
 2 images but they were able to --- with the help
 3 of the port authority and in conjunction with
 4 the port authority the officers were able to
 5 confirm where and that was now hard
 6 evidence. The information had moved from
 7 the information stage to evidence and that is
 8 important. In serious investigation like this,
 9 whether it's a murder enquiry or whether it's -
 10 -- any major investigation you work on
 11 evidence and that is crucial in these things
 12 because then working on information can
 13 take you off the focus.
 14 Q. So that is the evidence that prompted you
 15 to send that message?
 16 A. Yes.
 17 Q. And you say as well, just for clarity say,
 18 in your evidence at paragraph 92 that you
 19 then spoke to Mr Pyle to update him in the
 20 same vein as you had the group?
 21 A. That is correct and I think he accepts that.
 22 Q. Can we go to your third statement, right
 23 at the end, paragraph 170, A134 please.
 24 A. I am sorry, Mr Santos, it is important to
 25 highlight, because there's a distinction in that

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1 I only --- I qualify not only the collision
 2 occurred but also the chase, so our
 3 hypothesis that there could have been
 4 criminality in Gibraltar was done away with
 5 and that had the consequence of releasing the
 6 people that we had --- the two persons that
 7 we had under arrest, so it was not only
 8 confirmation of the collision ---
 9 Q. The collision ---
 10 A. --- but the fact that the whole incident as
 11 a package has occurred outside.
 12 Q. Can we now turn to A134, please, where
 13 you set out your concluding points and it is
 14 paragraph 170 of your statement in front of
 15 you and at 170A you say "The reasons for
 16 Mr Pyle and the Chief Minister claiming that
 17 I did not provide timely and accurate updates
 18 to them on the collision at sea do not stack
 19 up. I provided information when this became
 20 available and was in very regular contact
 21 with the AG who I knew was feeding
 22 information up, though I now realise that I do
 23 not know the extent of the detail he passed
 24 on. Attorneys General have always given the
 25 incumbent governor legal advice. I

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1 understand that this has been the case since
 2 the office of the AG was first established
 3 when Gibraltar became a colony in 1830. If
 4 the current AG considers his loyalty is to the
 5 CM so that he may have withheld
 6 information from MP, then it is the AG and
 7 not me who should have been brought to
 8 task." Then at B, three lines from the bottom
 9 of the page, "Again the AG who knew the
 10 level of information that I had was present
 11 during the times I met with MP to discuss the
 12 case. It is, therefore, incomprehensible that I
 13 would act evasively towards MP with the AG
 14 and others present. In any event, I was
 15 totally oblivious of MP believing that I was
 16 disrespecting his post and this is simply
 17 because he gave me no indication that he was
 18 unhappy with the way I was dealing with the
 19 incident. I just wish he would have
 20 challenged me on any of the issues of
 21 concerns he now articulates at the time they
 22 occurred. I am convinced that I would not be
 23 in the position I am now had he done so."
 24 Mr Pyle responds to this at A264 where he
 25 says, "I note that the general theme running

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<p>1 throughout Mr McGrail 3 is that Mr Llamas, 2 the AG, was my legal adviser and that IM 3 had, therefore, assumed that the AG was 4 relying to me all the information that IM was 5 passing to the AG, including information 6 about the location of the collision on a timely 7 basis," and that his comments are, firstly at 8 19.1, "As the evidence shows I asked IM 9 directly on numerous occasions if he was 10 able to confirm whether the incident had 11 taken place in Spanish waters. On 11 March 12 2020, three days after the incident he was 13 still telling that he was getting there. The 14 simple fact is that I repeatedly asked IM a 15 simple and direct question to which he did 16 not reply candidly with the best information 17 available to him. He withheld highly 18 relevant information from me." Then at 19.4 19 he makes the point that the Attorney General 20 is not the governor's lawyer in a normal 21 solicitor/client relationship and, therefore, it 22 is not safe to assume that the AG will pass 23 every --- all information up to him. What is 24 your response to that evidence of Mr Pyle? 25 A. Can we go to 19.1?</p> <p style="text-align: center;">Page 61</p>	<p>1 the expression that I am making there. 2 Q. Can we go to B101 ---- 3 A. And in fact that is the case because 4 apparently there had been a meeting before 5 and they wanted a further briefing together 6 one evening ---- 7 Q. Do you mean on 8 March? 8 A. Yes, they wanted further, so they were 9 clearly discussing the matters and that is 10 good. Don't get me wrong, I'm very, very 11 pleased that there was that interest expressed 12 for obvious reasons but it just cannot be 13 twisted to then say three months later --- 14 remember that this is three months later when 15 this is brought to my attention. 16 Q. Can we look at --- we will get to June but 17 can we get to 101, please. This is the 18 response by the Chief Minister to your 19 message that we looked at earlier on the 20 strength of the information at you have had 21 from an analysis of the footage, you say that 22 it looks like the pursuit and collision 23 occurred outside BTGW, or the evidence 24 points at the pursuit and collision occurring 25 outside BTGW, the response from the Chief</p> <p style="text-align: center;">Page 63</p>
<p>1 Q. Yes, just after 19.1, please. 2 A. The numerous occasions are the 3 occasions that I have --- that the Inquiry has 4 before it, so the Inquiry will determine 5 whether that is numerous or not. The 6 question that Mr Pyle is referring to is 7 whether the incident had happened in 8 Spanish waters when Mr Pyle's aim is to ask 9 for confirmation of where the incident has 10 occurred and the minister said in Spanish 11 waters, so I wanted to draw that distinction. 12 The questions relating to the same 13 paragraphs there, all I can say is what I have 14 already said that there was no evasiveness on 15 my part and it's truly and deeply regrettable 16 that Mr Pyle has felt like that and not brought 17 it to my notice and the opportunity was 18 clearly there. The question of the Attorney 19 General feeding up, it's because at the point 20 of writing the statement I am comfortable 21 with what I have said there and then but in 22 the meeting I am making the assumption that 23 --- and they are talking about the matter and I 24 am making the assumption that they are 25 talking about what I have briefed and that is</p> <p style="text-align: center;">Page 62</p>	<p>1 Minister is, "Thank you, Ian, location does 2 not worry me so much, helps us in a way, 3 will discuss directly with you." The Chief 4 Minister explained --- the Inquiry asked the 5 Chief Minister to explain that and he does so 6 at A230, paragraph 20 of his second witness 7 statement, and he says, "The reason I said the 8 location could help us was two-fold; first, in 9 demonstrating to the general public in 10 Gibraltar that in some instances police 11 cooperation involves cross-border activity 12 and that our own police may stray into 13 Spanish waters in the same way [I believe he 14 means to say] as Spanish officers often stray 15 into British Gibraltar territorial waters. 16 Secondly, I thought that although it would 17 cause huge diplomatic issues in the 18 negotiations on foot with Spain at the time, it 19 would be helpful in showing our Spanish 20 counterparts that our police officers were 21 seeking out illicit activity." Do you agree 22 with the Chief Minister's explanation as to 23 why it helps in a way? 24 A. I have got mixed views with that on the 25 basis that at the time when I received it, it</p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)

<p>1 was reassuring that the Chief Minister was 2 supporting the police and the activities that 3 had been carried out and that gave me some 4 peace of mind but, on the other hand, it was 5 evident that this was a serious matter and that 6 there was reputational risk for the RGP and 7 reputational risk for Gibraltar and serious 8 consequence for those involved. So, on the 9 one hand, I was pleased that the Chief 10 Minister was seemingly not too concerned, as 11 he says, but, on the other hand, I knew that 12 this was going to have its consequences. 13 Q. Can we now go to C4432 and the final 14 paragraph, this is from the Solis report, and 15 the final paragraph says --- it gives the 16 coordinates, it says the coordinates are in 17 Spanish waters, "At the relevant time, this 18 information was not available to the 19 command team as the police interceptors AIS 20 had not been activated. That is contrary to 21 standing orders. It was assumed that the 22 collision was likely to have taken place 23 outside of BTGW as the radar screen and the 24 suspect vessel displayed coordinates 25 indicating this but this required technical</p> <p style="text-align: center;">Page 65</p>	<p>1 responding to a situation described in the 2 following paragraph, participating in a search 3 and rescue operation at the invitation of 4 Spanish authorities. As far as you are aware, 5 were those instructions followed at all times? 6 A. The instructions are there and I expected 7 them to be followed all the time and I would 8 have expected, if there were any breaches of 9 them, depending on their gravity, to be 10 reported up. 11 Q. As far as you were aware, were they 12 followed at all times? 13 A. Yes. 14 Q. The draft Solis report made some 15 findings about high speed pursuits and about 16 management oversight; for example, it found 17 that there was no proper training in pursuit of 18 suspect vessels, that pursuit methods were 19 developed and understood by the coxswain's 20 boat without RGP marine section 21 management standards or proper established 22 oversight in place and that the marine section 23 managers did not apply effective oversight 24 into how the patrols were being carried out. 25 In the final report that was changed to they</p> <p style="text-align: center;">Page 67</p>
<p>1 confirmation." How did --- how was the 2 radar screen of the suspect vessel obtained? 3 A. I do not know. What I do know is that 4 the vessel was declared a crime scene as is 5 standard practice and, therefore, nobody 6 touched anything there until the crime scene 7 investigators took their time to process it. I 8 do not know when that extraction of data 9 took place and who did it. I do not know. 10 Q. I think that is --- 11 A. Or when it happened. I do not know 12 when it happened. 13 MR SANTOS: Thank you. I think that is 14 probably a convenient moment to take our 15 mid-morning break, sir. 16 THE CHAIRMAN: Very well, thank you. 17 (Short adjournment) 11.30 - 11.40 18 IAN MCGRAIL (Continued): 19 Cross-examined by MR SANTOS 20 (Continued): 21 Q. Can we turn to C5251, please, these are 22 the marine section instructions of 8 July 2016 23 which refer at 4 to officers not being 24 authorised to operate outside BTGW and 25 inside Spanish waters unless when</p> <p style="text-align: center;">Page 66</p>	<p>1 could have more effective oversight into how 2 the patrols were being carried out. Do you 3 accept any responsibility for those failures? 4 A. When there's audits carried out or 5 investigations carried out, inevitably they are 6 going to highlight and bring out areas for 7 improvement or shortfalls that they have 8 come across. Until such incident occurred, 9 the marine section was ably functioning. 10 They were competent, capable, they were 11 pulling in many good results. The regrettable 12 and tragic circumstances of the collision 13 caused an audit to be carried out and I 14 wholeheartedly --- I was the person 15 requesting this audit to be carried out as part 16 of an accident investigation but expecting --- 17 fully expecting that there was going to be 18 routine branch examination of the functions. 19 So I was anticipating that there was going to 20 be recommendations to tighten up in one area 21 or improve in another and, therefore, I have 22 to agree that and accept that there are rooms - 23 -- that there is always room for improvement. 24 I stress that until such time as those --- until 25 such time as the incident had occurred, the</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 section was working as far as I was 2 concerned in an effective and an efficient 3 manner. 4 Q. My question was whether you accept 5 responsibility for those failings that had been 6 identified? 7 A. I accept responsibility --- I am not going 8 to strike off responsibilities but if I didn't 9 know that that was their shortfalls then I can't 10 --- I could not have been responsible for that. 11 It is once you understand where the 12 improvement can be made, whether you 13 accept them or not, but I will put it this way, 14 I was not consciously allowing any 15 inefficiency or ineffectiveness of the marine 16 section, so I cannot say that I accepted the 17 marine section running ineffectively or 18 inappropriately. I cannot accept that. I don't 19 accept that responsibility because that was 20 not my doing, that is not something that I 21 would have agreed to. However, I do accept 22 that there is room for improvement. 23 Q. And, more generally, do you accept 24 ultimate responsibility as head of the 25 organisation for the collision at sea?</p> <p style="text-align: center;">Page 69</p>	<p>1 General would speak to the CM about 2 whether he was content for the Met Police to 3 liaise with the YVSVU (?). Is that your 4 evidence? 5 A. Yes, and I remember that because --- I 6 don't think that that deals with the claim, 7 does it? You can correct me if I am wrong. 8 Does it deal with the claim? 9 Q. That does not deal with the claim, I am 10 going to come to that, but I just want to set 11 out the ---- 12 A. Sorry, yes, yes. 13 Q. --- background. 14 A. Indeed, that is correct. I met with him in 15 light of the independent teams from the 16 Scotland Yard team that came over wanting 17 to go and engage with the Spanish authorities 18 and obviously the sensitivities in relation to 19 that, that I wanted to impart to the Chief 20 Minister. 21 Q. On 18 March ---- 22 A. The reason why I didn't --- I would like to 23 explain the reason why I didn't do that 24 directly with the Chief Minister. This was in 25 the eye of the storm of Covid and, as we</p> <p style="text-align: center;">Page 71</p>
<p>1 A. Regrettably, again, no. I don't accept 2 responsibility for that. Those officers that 3 went out that night, I am pretty sure that they 4 went out to do an honest night's shift, put in a 5 normal night shift and did not set out to --- or 6 indeed expect that that was going to happen. 7 It's tragic, shocking for everybody, shocking 8 for them, shocking for us, shocking for their 9 families, it is a tragic situation. At the same 10 time, individual officers have to be 11 accountable for their actions in the same way 12 as any firearms' officer or other officer 13 engaged in any operational duties. I was 14 asleep at four o'clock in the morning when I 15 was informed of this. I was at home asleep. 16 Q. Can we now turn to A85, please, we are 17 moving on to the legal claims issue which is 18 the final issue under a sub-issue in relation to 19 Operation Kram. Your evidence, which the 20 attorney general accepts is almost certainly 21 correct, is that - and it is in paragraph 898 - 22 that you met him on 17 March to discuss 23 possible legal matters arising and the 24 Attorney General told you that there was no 25 need to see the CM and that the Attorney</p> <p style="text-align: center;">Page 70</p>	<p>1 know, that was quite a critical time for 2 Gibraltar in adapting to social distancing and 3 all the norms that kicked into place because 4 of that, briefing things in and out and it was a 5 tough time for Gibraltar as indeed it was for 6 the rest of the world but I did meet with the 7 Attorney General and I said, "Look, this 8 needs to be run through, at least as a courtesy 9 to run through," and he did and he came back 10 saying that the Chief Minister was happy that 11 the officers went across and that there was no 12 political concerns on his part. 13 Q. On 18 March you reported to the 14 Attorney General that the Guardia Civil 15 expected the family to file a complaint and 16 seek compensation and on the following day 17 we see you forwarding that message to Dr 18 Britto. That is not in your statement. I can 19 take you, if necessary, to the relevant 20 documents ---- 21 A. Sure. 22 Q. It is B98. I do not think that this is in 23 dispute, I just wanted to give you ---- 24 A. Sorry, what is not in my statement, Mr 25 Santos?</p> <p style="text-align: center;">Page 72</p>

1 Q. I am taking you to B98 which is a
 2 message from you to the Attorney General of
 3 11 March 2020 which sets out a message by
 4 you setting out an incident report and you
 5 highlight at the top of that page potential
 6 legal matters arising which the Guardia Civil
 7 had informed you about.
 8 **A. In Spain, yes.**
 9 Q. In Spain, yes, and then there was at the
 10 time also contact from Verralls, the survivors
 11 as well as the families of the deceased.
 12 **A. That is right and I remember meeting on**
 13 **that notification from Verralls --- I remember**
 14 **meeting with the Attorney General and the**
 15 **DPP. That was at my request, simply**
 16 **because I wanted to have --- even though**
 17 **everything had grinded to a halt because of**
 18 **Covid, I wanted to have a strategy in place to**
 19 **deal with issues like the diplomatic potential**
 20 **fall out or the consequences of action, legal**
 21 **action in Spain, coronal inquest, potential**
 22 **criminal liabilities if those are found to be the**
 23 **case and internal matters affecting the RGP**
 24 **so I wanted to discuss this with the Attorney**
 25 **General as I had been doing so throughout**

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1 **and to have something in place for when the**
 2 **time came to be kicked into play. That is**
 3 **why I make reference to his counterpart in**
 4 **the negotiation process with Spain on**
 5 **requisite matters because it was the Attorney**
 6 **General who imparted to me the fact that the**
 7 **Chief Minister was going to go along this**
 8 **route of explaining that even that it had**
 9 **happened in Spanish waters, he was not too**
 10 **concerned because it would demonstrate**
 11 **cooperation on organised criminal activity**
 12 **which featured as part of the law**
 13 **enforcement angle to those talks and which**
 14 **you have read from Mr Picardo's statement.**
 15 Q. Yes.
 16 **A. So when I --- I was --- Mr Llamas, when**
 17 **I --- he told me that, he said, "There's no need**
 18 **for you to go and see the Chief Minister**
 19 **because this is our position."**
 20 Q. Just to then skip forward to 14 May 2020,
 21 there is a letter of ---
 22 **A. I am sorry, in answer to the question,**
 23 **because I think I digressed, the question of**
 24 **the notification from Verralls, I met with**
 25 **them and it was the DPP who said --- look, I**

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1 **wanted to see whether there was a**
 2 **requirement to engage counsel, which in**
 3 **normal situations such as this is provided by**
 4 **the DPP's office, Crown Counsel, but the**
 5 **DPP advised that it was still too early, that**
 6 **the letter before me at the time, which I can't**
 7 **remember the date or the exact content, was**
 8 **not a direct claim and the Attorney General**
 9 **contributed further to that saying that we still**
 10 **hadn't had the investigation completed, let**
 11 **alone sort of consider anything, that we**
 12 **should wait for the conclusion by the**
 13 **Scotland Yard of the investigation and have**
 14 **the final report on it.**
 15 Q. Yes, you have explained that in your
 16 evidence and I am just trying to speed things
 17 up by focusing on points of dispute but your
 18 evidence is taken as read and you have
 19 adopted it today.
 20 **A. Thank you.**
 21 Q. I am not trying to gloss over that and it is
 22 right for you to point that out but I am just
 23 going to skip forward to 14 May. At C3762
 24 is the letter that comes in from Mr Fischel
 25 QC on behalf of one of the injured crew

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1 members. On the same day an article had
 2 appeared in El Faro de Ceuta referring to a
 3 private prosecution in Spain by the family of
 4 one of the deceased and there was also a
 5 complaint --- or reference to a potential
 6 complaint in Gibraltar. This letter came in
 7 on 14 May and you described it as a letter
 8 before action. How did you interpret this
 9 letter?
 10 **A. A notification that the claim was**
 11 **potentially heading our way.**
 12 Q. Did you consider ----
 13 **A. But that was qualified by the DPP who**
 14 **said, "No, this is not a letter of action per se."**
 15 **He said this is not --- the process --- I am not**
 16 **fully acquainted with civil claim procedures**
 17 **but I believe that there is a process where**
 18 **once the letter is --- the letter of claim is**
 19 **activated and despatched, there are time**
 20 **limits within which the respondent has to**
 21 **respond but that is my understanding but the**
 22 **DPP advised that this is not --- we are not**
 23 **bound --- we are not bound to anything, we are**
 24 **doing what we are doing, we are**
 25 **investigating, the data is being collected so**

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<p>1 it's not a question that we are not taking the 2 matter seriously, we are doing our own 3 investigations, albeit for the coroner and any 4 other jurisdiction that may be interested but 5 that would also serve the question of feeding 6 any potential civil claim later. 7 Q. Did you consider at this stage referring 8 the matter directly to the Chief Minister? 9 A. This particular matter, no, because I was 10 under the comfortable belief that it was not a 11 firm letter of claim and that's the information 12 that was being imparted to me by the DPP 13 and the AG. 14 Q. I will just give you time ---- 15 A. I did, I think, before this letter --- before 16 this letter, and you mentioned an article in El 17 Faro, I may be mistaken but I am trying to 18 piece everything together to assist the 19 Inquiry. I think there was on 11 May or 9 20 May a --- I did notify the Chief Minister that 21 there had been Parliamentary questions 22 raised by the right wing Vox party and I 23 wrote to the Attorney General, to the Chief 24 Minister and I think the Minister for Justice 25 advising them, "Look, this has appeared." I</p> <p style="text-align: center;">Page 77</p>	<p>1 should write to the AG about representation 2 because there was an issue of a potential 3 conflict of Crown Counsel and he did so at 4 C4088. Given that we have jumped forward 5 about six days, did you consider informing 6 the Chief Minister of the position at any 7 stage before 20 May, the date of 8 Superintendent Yeats' letter? 9 A. Of course I would have because it's --- 10 but it's not that I would have considered 11 informing the Chief Minister to seek funding 12 at that stage because the assignment to Mr 13 Yeats was to establish that who is going to 14 represent the RGP, who is better placed to do 15 that. He would explore those things --- 16 unfortunately I don't know the reasons why 17 but there was a couple of days between when 18 he was able to raise it, probably diary 19 commitments, but once he did and they 20 arrived to the conclusion that the DPP's 21 OCPL would be conflicted, it was the DPP 22 who advised Mr Yeats - or rather, I am not 23 sure who contacted the Attorney General. I 24 am happy - I am not a micromanager and Mr 25 Yeats is a competent officer. His intelligence</p> <p style="text-align: center;">Page 79</p>
<p>1 was alerted to it by my colleagues and I 2 thought that that was relevant to bring up, 3 "Look, Gibraltar is being mentioned in this 4" it was information that I had received 5 and it was worthy for me to --- and I think I 6 mentioned, "Look, I haven't raised it with his 7 Excellency yet in case you want to do it 8 directly with them." 9 Q. Just to go through the timeline that 10 followed this letter, there was a reply from 11 the RGP the following day with a holding 12 response and that was forwarded by your PA 13 to Superintendent Yeats. Superintendent 14 Yeats then emailed the DPP and sought a 15 meeting the following week, on 19 May. 16 The DPP at that point told Superintendent 17 Yeats that the OCPL might be conflicted and 18 said he would speak to the AG about that 19 issue. Then later that day on 19 May Mr 20 Fischel sent another letter to Mr Yeats asking 21 for confirmation as to whether the Guardia 22 Civil had requested the RGP to pursue the 23 vessel and again signalled an intention to 24 issue a claim. On 20 May Superintendent 25 Yeats spoke to the DPP who told him that he</p> <p style="text-align: center;">Page 78</p>	<p>1 and trustworthy, I left it in his capable hands 2 to return with whatever information h e was 3 going to come back with as to how the RGP 4 was going to be represented. It would have 5 been at that point, because if Mr Yeats comes 6 back and tells me: "Look, Crown Counsel is 7 going to represent you," then I have got a 8 firm footing of where we are and then I 9 would be addressing matters both to 10 Governor and to the Chief Minister, but we 11 were still finding out way there. 12 (12.01) 13 Conversely, if it was external counsel that 14 had to be appointed I would have no doubt 15 have made an approach advised through and 16 hopefully seek support from the Police 17 Authority to support a case for external 18 counsel to be appointed and then as Minister 19 for Finance I would have had to make that 20 direct approach to the Chief Minister. 21 Q. At C4090, what we know is that 22 Superintendent Yeats emails the Attorney 23 General, the Attorney General forwards that 24 email to the Chief Minister, and the Chief 25 Minister's response to the Attorney General,</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 which then gets sent back to Superintendent 2 Yeats, we now have on screen and he says: 3 "I think it is entirely inappropriate for this 4 matter not to have been raised with me in the 5 first instance by the Commissioner. This 6 matter raises issues of fundamental human 7 rights, the right to life, potential payment of 8 huge amounts of damages, the potential 9 extradition, of liberty of serving police 10 officers being at stake, etc, etc," 11 and he says: 12 "Indeed it is difficult to think of an issue as 13 fundamental as this affecting the RGP, 14 certainly in the time that I have been in 15 office. There is no consideration in the email 16 below of claims or offences going beyond the 17 officers crewing the vessel, which is also in 18 my view an issue that may also need further 19 consideration. As you know, it comes 20 against the backdrop of the very unflattering 21 report from the HMIC FRS. I am therefore 22 surprised and greatly disappointed that these 23 issues have not been the subject of detailed 24 submission to me by the Commissioner in 25 respect of the events in question and the</p> <p style="text-align: center;">Page 81</p>	<p>1 UK because of this Covid-19 crisis and 2 because of the lockdown in UK they have 3 been unable to progress the matter as 4 expeditiously as we all would have wanted. 5 "The letter from local counsel representing 6 the families and suggesting a future claim for 7 damages was only received a few days ago, 8 which is what triggered our enquiry with the 9 DPP only yesterday concerning legal 10 representations." 11 We have seen that after that you messaged 12 the Attorney General expressing 13 bewilderment at the Chief Minister's stance 14 on this issue, and we have seen your 15 explanation there. I just wanted to ask you 16 what our reaction to the situation was and if 17 there is anything you wish to add to what you 18 said in writing. 19 A. Yes, it's very important that I provide the 20 backdrop to - because of the dates here are 21 proof. 20 May, the Chief Minister already 22 knew that he didn't want me in post, that he 23 basically, to use Mr Pyle's -- 24 Q. Sorry, but I am - you will have the chance 25 to say that.</p> <p style="text-align: center;">Page 83</p>
<p>1 issues which now arise. I shall therefore be 2 writing directly to the Commissioner on this 3 and all other aspects of this matter. In the 4 interim I do not authorise the incurring of 5 any expenditure in briefing out of this matter 6 at this stage. Please refer both the DPP and 7 Superintendent Yeats to my response." 8 That email unsurprisingly finds its way to 9 you, and you respond at C4096, the second 10 email on that page - sorry, no, 4100 - that is 11 the Chief Minister forwarding the email to 12 Mr Pyle, and in 4100 is your response. You 13 say: 14 "You are evidently very disappointed but I 15 want to reassure you that it has never been 16 my intention to withhold anything from you 17 concerning this very serious matter. I 18 provided you with an overview of the day of 19 the incident, then engaged with the AG as per 20 your suggestion and have been doing so ever 21 since. I will hopefully be in a better position 22 to brief you on the full details of the incident 23 once I receive the report of the findings of an 24 independent investigation team who were 25 called in. This team had to return early to the</p> <p style="text-align: center;">Page 82</p>	<p>1 A. Okay. 2 Q. But I just want to ask you whether there 3 was anything that you wanted to add in terms 4 of at the time, because I do not think that you 5 - is your position that at the time you were 6 already aware that the Chief Minister wanted 7 to remove you from your post? 8 A. No, but I was certainly aware that he was 9 extremely, extremely disappointed and 10 angry, and this is why I am saying in the 11 wake of the intervention on 12 May when, to 12 quote Miss Gallagher's opening address, "all 13 hell broke loose" and I took this approach 14 from the Chief Minister to be connected to 15 that. His demeanour on this based on the fact 16 that he had told me, the previous contact I 17 had had with him, that he wasn't too 18 concerned that it had happened in Spain, and 19 all of a sudden turn it upside down to be 20 extremely, extremely angry about it, they 21 didn't bond together. It was all to do of the 22 intervention on 12 May in relation to 23 Operation Delhi, totally unrelated to this. 24 Q. The Chief Minister's evidence is that you 25 were making excuses for not having provided</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 him with timely information about the claims 2 and that the claims had been received some 3 days earlier. What is your response to that? 4 A. The Chief Minister was angry with me 5 because he alleges that I lied to him, and that 6 is in relation to Delhi. When I met with him 7 on 12 May he did not mention Operation 8 Kram, he did not mention the HMIC report, 9 which happened to be the two issues that I 10 am notified were the reasons for the loss of 11 confidence. There was nothing else 12 mentioned, and the evidence is there to be 13 appreciated. I think there is no dispute there 14 because those are the two reasons that I was 15 informed, and yet the Chief Minister did not 16 raise either of the issues with me. In fact he 17 seems to be raising it with the - he mentions 18 the Attorney General, the HMIC report, 19 mentions it with the Attorney General and he 20 never discussed the matter with me at all, in 21 any shape, way or form neither he nor Mr 22 Pyle. 23 Q. Can we now turn to the HMIC report, 24 please. Can we go to your application for the 25 role of Commissioner of Police dated 2</p> <p style="text-align: center;">Page 85</p>	<p>1 all areas for improvement highlighted in 2 2015 inspection, commencement date ASAP, 3 completion date 1 March 2019, and then 4 prepare for a further inspection 5 commissioned by the GPA in 2020." 6 You accept in your evidence that you did not 7 create that working group. Why was setting 8 up that working group not completed by the 9 time of the subsequent HMIC inspection? 10 A. It's important to contextualise the action 11 plan, which was presented as plans are, 12 rolling plans. They are not set in stone, and I 13 think I clarify that in my application, but that 14 is not referred to by Mr Pyle or Mr Picardo, 15 regrettably. They are not set in stone and so 16 that was an action plan that I proposed to the 17 Police Authority, which was accepted. It was 18 subject to a two year review of my 19 performance, contrasting it with the plan, and 20 it was dependent on many other factors. I 21 believe that I do mention in my application 22 the impending human resources business 23 case that we had supplied, provided to 24 Government, back in 2015, which was taking 25 too long for my liking and to my colleagues'</p> <p style="text-align: center;">Page 87</p>
<p>1 November 2017, this is at C593. This is your 2 application and at (x) of your application you 3 refer to the HMIC recommendations and you 4 say: 5 "The inspection of the RGP by HMIC in 6 2015 revealed various areas for 7 improvement. While some of these 8 recommendations have already been 9 addressed, there still remain some requiring 10 further action. It is imperative that a working 11 group is created to see this project through. 12 In my view the most pressing area for 13 improvement as highlighted in one of the 14 recommendations is that of the creation of 15 manual of guidance which should represent 16 Force policy in crime investigation standards. 17 This will inherently make officers better at 18 conducting investigations and is positive for 19 their all round personal development." 20 If we go four pages on to 597, you set out 21 your action plan, and then 599, the entry at 22 number 10: 23 "Key actions, HMIC recommendations," 24 and you say: 25 "A working group to complete addressing of</p> <p style="text-align: center;">Page 86</p>	<p>1 liking to be sort of ratified. In fact I think the 2 then Minister for Justice commissioned an 3 independent sort of assessment of our own 4 business plan, which confirmed that the RGP 5 was operating below par in terms of 6 resources, in the region of 58, I think it was. 7 But the plan, I don't think I need to delve into 8 the detail but suffice to say that I had to 9 juggle with priorities and I had to consider 10 whether the priority - if I had the resources 11 that would have not been an issue but 12 considering that I did not have the resources I 13 had to juggle with priorities with regards to 14 compromise front line policing efforts, with 15 the consequence of what that brings in terms 16 of crime detections, crime reductions and 17 community satisfaction of policing visibility 18 and so forth, or remove resources to deal 19 with this. I could not - I had to take that 20 decision on that basis. I qualified even 21 further in my application that policing, much 22 in the same way as perhaps politics, changes 23 every time. The demand -- 24 Q. C594, just to help you out. 25 A. Yes, please.</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 Q. In the conclusion, I think you are talking 2 about the final three lines of the first 3 paragraph of your conclusion. 4 A. I say: 5 "In policing things change very quickly, and 6 therefore whilst the intention is to deliver on 7 the stipulated actions unexpected exigencies 8 may warrant a review of these actions," 9 so this is not an excuse, I am not using this as 10 an excuse but it is to give you context that 11 some actions were able to be addressed and 12 some others were not." 13 The fact that I called the HMIC report, 14 knowing that we are still not completed in 15 total all the recommendations, although we 16 felt that we had achieved some progress and 17 they do also recognise the only thing is that 18 they still felt that those recommendations that 19 we had addressed required further 20 improvement, which is acceptable. As I say, 21 I wasn't using this as an excuse but it just 22 demonstrate operational - I give priority to 23 operational demands. If I am to be criticised 24 about that I will wholeheartedly accept that. 25 I don't think that I did it wrong and I just</p> <p style="text-align: center;">Page 89</p>	<p>1 bottom: 2 "The RGP was therefore not due up for an 3 inspection by HMICFRS at the time and I 4 was fully cognisant that there were pending 5 recommendations from the previous 6 inspection report of 2016 which needed 7 actioning." 8 Given that it had, as you say, been a busy 9 period and you had been unable to set up the 10 working group to address the 11 recommendations of the previous report, why 12 did you nevertheless think it was a good idea 13 to proceed with an inspection? 14 A. That was the position that my command 15 team colleagues stressed to me, and 16 obviously with the benefit of hindsight I 17 could have taken more heed from them. But 18 I was insistent in bringing in the audit team 19 because I wanted to be transparent, to be seen 20 to be transparent, to be seen to be 21 progressive, in light of the atmosphere and 22 the relationship, adverse relationship that 23 existed with the then Police Federation. I tell 24 you what my thought process is, which 25 unfortunately didn't work out, but my process</p> <p style="text-align: center;">Page 91</p>
<p>1 simply wish that I would have had the 2 opportunity to explain this to the members of 3 the Police Authority who were due to, in 4 accordance with the terms of my 5 employment, to have examined me against 6 this and any other thing that they wanted. 7 That review never happened. Events took 8 over, so I was not given an opportunity to 9 explain my rationale, whether they would 10 have accepted it or not. It seems, it seems, 11 from my communications with the Police 12 Authority that they were not that dissatisfied 13 -- 14 Q. We will get to that, Mr McGrail. 15 A. I appreciate. 16 Q. I appreciate your intention to give a full 17 answer but I just want to keep us moving 18 along, but we will get to that. Can we please 19 go to A54, which is your third witness 20 statement, paragraph 15, if you want it in 21 hard copy. This is where you address the 22 request for HMIC FRS inspection, and you 23 refer to the fact that it has been common to 24 voluntarily request inspections every four 25 years or so, and you say, four lines from the</p> <p style="text-align: center;">Page 90</p>	<p>1 was: previous to the HMIC report I had 2 commissioned a team of consultants, AAP 3 Associates, which were tasked with 4 providing context to the raw data produced 5 by the Police Federation survey and to advise 6 both me and the Federation in that matter. 7 That team came in and interviewed over 150 8 officers, which was a significant sample of 9 the organisation. But at the same time I had 10 it in mind that I wanted - so they were to 11 come and deal with internal service issues, 12 and I wanted a baseline inspection of the 13 RGP by HMIC which would look at what 14 service they deliver to the public in terms of 15 public satisfaction, crime levels and so forth, 16 and my thought process was: we have 17 already dealt with internal issues, let's deal 18 with the external, marry them together and 19 that will give us a very good picture of where 20 the RGP is. Unfortunately the HMICFRS, 21 Mr Holewell, advised the Authority that 22 conducting a baseline inspection was beyond 23 their financial scope - or rather, Mr Britto 24 advised Mr Holewell, and so we went back to 25 the drawing board to suss out what inspection</p> <p style="text-align: center;">Page 92</p>

<p>1 the HMIC could provide. Mr Britto had 2 some reservations that we won't subject the 3 organisation to two inspections within short 4 periods. My initial thought process was one 5 that was going to look outwards and one that 6 was looking inwards, and then marry the 7 results of both, so ... In that sense 8 HMICFRS is more strategic than - they 9 already spoke to, for example, 30 officers, 10 they did not speak to as many officers that 11 the AAP Consultancy Group did. So I am 12 just trying to keep my thread - perhaps 13 talking too much.</p> <p>14 Q. No, I am definitely not going to criticise 15 you for not addressing the question. I think 16 you have explained - my next question was 17 going to refer to Mr Ullger's position, and Mr 18 Yeats goes further and says that the entire 19 command team was uncomfortable with the 20 idea, and Dr Britto had also expressed 21 reservations. You may consider you have 22 already answered this question but why did 23 you proceed nevertheless?</p> <p>24 A. I was focused in showing the Police 25 Federation transparency, and in fact you</p> <p style="text-align: center;">Page 93</p>	<p>1 suggested in the report whatsoever. In fact 2 the overview of the report suggested the RGP 3 provides a good service to the people of 4 Gibraltar but it needs improvements. I want 5 to bring in the comments of --</p> <p>6 Q. We will get to the comments, I promise. 7 I think you are going to talk about the 8 comments from the Minister and from Dr 9 Britto. We will get to those. Let us just 10 focus on the report now, if you do not mind. 11 Can we just go to C556 first of all, please, 12 just to cover the timeline. HMIC conducted 13 its inspection in October 2018. You received 14 a draft report in February 2020 and that is 15 shared with Dr Britto, and both you and Dr 16 Britto then make comments to HMIC in 17 advance of the final version being settled. At 18 C556, at the bottom of the page, there is 19 reference to an exchange between Dr Britto 20 and Paul Holewell, and Dr Britto actually 21 sets out the email that he sent to Mr 22 Holewell, and he says - one particular thing I 23 want to focus on is that he says, the third 24 paragraph: 25 "I can only say that I found the language</p> <p style="text-align: center;">Page 95</p>
<p>1 mention Mr Ullger but the debrief that we 2 received from HMIC before they left after 3 concluding the inspection was a very - so 4 positive that even Mr Ullger thought to 5 himself: "Well, he was right in calling it in." 6 But, look, with these things, in fact I was so 7 in a way gutted with the final report because 8 that was not certainly what was debriefed to 9 us. I don't know what happened in between. 10 But, look, I don't know whether the Inquiry 11 has spoken to HMI Matt Power as to whether 12 the report was sufficient to cause me to - to 13 be a cause for me to leave my job. I do not 14 know what has been done in that regard. 15 Certainly what I do know, having worked 16 with HMIC in the past - I was with them in 17 the team inspecting the Sovereign Base areas 18 in Cyprus - is that if HMI would have had 19 any doubts as to my ability to implement 20 those recommendations or any doubt as to 21 whether I was capable of leading the RGP, he 22 would have put it in no uncertain terms, he 23 would have put it in that report. The 24 equivalent perhaps of saying a UK force 25 going into special measures. That is not</p> <p style="text-align: center;">Page 94</p>	<p>1 used to be quite unfortunate and I am quite 2 sure the same message can be conveyed in a 3 more constructive tone, especially when 4 referring to issues such as corruption." 5 Do you agree with Dr Britto's observations 6 here that the language was unfortunate?</p> <p>7 A. Wholeheartedly. I think Mr Britto, an 8 educationalist, was an English teacher and he 9 can be the best judge of this type of 10 terminology.</p> <p>11 Q. Did you feel there that the Police 12 Authority were supporting the RGP?</p> <p>13 A. Yes, indeed. In fact we both met with the 14 Minister of Justice to discuss the report. 15 Although the Minister of Justice does not 16 feature in the Police Act, but it is a point of 17 reference for me when we would discuss 18 resourcing and the likes. Even the Minister 19 of Justice, Miss Sacramento, at the time said 20 that although at face value the report didn't 21 make good reading, it had very easy fixes 22 and that I should not worry.</p> <p>23 Q. Yes, we will take you to that message. 24 Did Dr Britto at that time, when you were 25 looking at the report in draft, did he give you</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 the impression that he wanted to work with 2 you on addressing the recommendations? 3 A. Certainly. He asked - I think he 4 communicated his desire for us to provide 5 him with a plan of how we were going to 6 address the recommendations, and also some 7 explanations, and rightly so, quizzing why 8 the other recommendations are not being 9 addressed or implemented, although 10 achieved, the objective was achieved, yes. 11 Q. If you go to B1548, please, this is the 12 final version of the HMIC report which was 13 sent to you and Dr Britto in April 2020. If 14 we go over two pages to 1550 there is a 15 summary set out there. I just want to read 16 out the first two paragraphs: 17 "The first part of our report is about the 18 progress the Royal Gibraltar Police has made 19 since our 2016 inspection. When we 20 revisited the Force in 2019 we found that it 21 had met two out of eight areas for 22 improvement. We expected the Force to 23 have done more to assess and understand 24 demand, risk and vulnerability. We also 25 expected it to be better at supervising</p> <p style="text-align: center;">Page 97</p>	<p>1 I did not expect the report to end up like this, 2 I don't think anybody did, not even Mr Britto, 3 and we tried to find out more about why the 4 tone and the level of - the depth of what they 5 were saying to try to understand it even 6 further. But at the same time, whilst I 7 personally don't agree, I am not the subject 8 matter expert on this and I wholeheartedly 9 respect Her Majesty's Inspectorate of 10 Constabulary for their assessment. 11 Q. If we go to A27, which is your first 12 witness statement, and paragraph 74, you 13 say: 14 "Although in places the report is critical, 15 there no express criticism of myself. I had 16 been in post for 18 months at the time of the 17 inspection." 18 Would you agree or disagree that the leader 19 of an organisation is ultimately responsible 20 for the conduct of that organisation? 21 A. Depends what conduct you are referring 22 to. If it is in general, yes. If it is in 23 departmental silos, it all depends the conduct 24 and the concern relating to that conduct, 25 where is it pitched?</p> <p style="text-align: center;">Page 99</p>
<p>1 investigations and managing capacity. We 2 have made five new recommendations 3 relating to those issues. 4 "The second part of the report is a new 5 inspection of the Force's legitimacy. It 6 includes eight areas for improvement and 7 makes five recommendations intended to 8 help the Force better promote ethics, fairness 9 and transparency." 10 Do you consider the conclusions of the 11 HMIC report were fair? 12 A. Not entirely. Not as regards - but I will 13 let you take me to that. You were talking 14 about we were going to get to the point of the 15 corruption ... 16 Q. We will turn to that. I just wanted to ask 17 you whether you considered the methodology 18 and the conclusions were fair. If you would 19 rather see the reference to corruption first, 20 that is -- 21 A. I will wait for you to take me to it when 22 it's convenient for you. 23 Q. If we look at 1552 ... 24 A. I think in answer to your question 25 whether I think it was fair or not, I think that</p> <p style="text-align: center;">Page 98</p>	<p>1 Q. Is this an example of you refusing to 2 accept criticism, as the Attorney General has 3 alleged in his evidence? 4 A. Absolutely not. I said it publicly that I 5 assumed the recommendations and I 6 welcomed them, that I don't necessarily agree 7 of their understanding that we were not alive 8 to corruption, I don't agree with, but I didn't 9 even speak to HMIC in that regard. If I had 10 been asked, I would have expressed my 11 views. They may have captured that, which 12 is the way audits work, which I respect, but 13 there is documentation that I forwarded to 14 them which shows how the RGP, since I 15 joined at least, have dealt with corruption 16 matters. I also suggested that there are 17 previous Commissioners still alive that could 18 also speak out in respect of that. In fact 19 corrupt practices in the RGP historically have 20 been dealt with more robustly than 21 sometimes other criminals have sort of been 22 addressed. It's not something that - it did not 23 resonate - the findings did not resonate with 24 what I knew of the RGP. Does not mean to 25 say I don't respect, because that is what they</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 concluded, that doesn't mean to say that I 2 don't respect that, I do. And if we had to 3 work on evidently, what we did was react to 4 that recommendation positively, we 5 embraced it, and we put in motion methods 6 and we started considering dedicating 7 resources, when we had them, to form what I 8 believe now is - or to enhance the 9 professional standards department. Just to 10 give you context. And it's always evolving -- 11 Q. Can I just - shall we just read the 12 paragraph and then you can carry on giving 13 your reaction to it. 14 A. Sure. 15 Q. B1552, it is the paragraph entitled: 16 "Role models. We were told of a firm 17 leadership style in the Force and some of the 18 workforce perceived that some managers 19 seek too readily to blame and reprimand. We 20 didn't encounter any evidence of bullying, 21 although looking for it did not fall within our 22 terms of reference. Leadership development 23 is an area of improvement for the Force and 24 it might benefit from exchanges with officers 25 in England and Wales about these subjects.</p> <p style="text-align: center;">Page 101</p>	<p>1 the RGP -- 2 A. Sorry, Mr Santos, I am not with you, I am 3 not with you. 4 Q. Sorry. Your third witness statement ... 5 A. Ah, third. 6 Q. Sorry. 7 A. I beg your pardon. 8 Q. No, no, no, I should have been clearer. 9 A. Okay. 10 Q. Your third witness statement, paragraph 11 16, at the bottom of the page, you say - you 12 refer to the GPF survey and the Panorama 13 newspaper, and at the third line you say: 14 "The GPF survey had raised similar concerns 15 and I therefore felt it was imperative to 16 request an inspection to demonstrate 17 openness, transparency and a willingness to 18 progress. I know progress had been made 19 with the pending recommendations some of 20 which had been merged with daily business 21 activity, but further work was required to 22 catch up with progress that should have been 23 made before my appointment." 24 Then you communicated your intentions to 25 several individuals. So there it does appear</p> <p style="text-align: center;">Page 103</p>
<p>1 Our additional recommendation is that the 2 senior leadership team produce an anti- 3 bullying statement and improve processes to 4 prevent bullying." 5 That is the bullying paragraph. We will deal 6 with bullying first of all. Why was bullying 7 not within the HMIC's terms of reference if 8 the point of the inspection, according to your 9 evidence, was to address the GPF surveys? 10 A. No, no, it wasn't to address the GPF 11 surveys. That was the purpose of the AAP 12 Associates' assessment. I don't think we need 13 to confuse the AAP Associates with the 14 HMIC inspection. 15 Q. Can we just look at paragraph 16 of your 16 third witness statement. It is at A54. You 17 say ... 18 A. 54? 19 Q. Yes, your first witness statement, 20 paragraph 16. 21 A. 16? 22 Q. Yes. This is the paragraph after the one 23 we read earlier about your decision to seek 24 an inspection, and you say: 25 "Prior to the publication of the GPF survey</p> <p style="text-align: center;">Page 102</p>	<p>1 from your evidence that you saw the HMIC 2 inspection as a response to the GPF survey. 3 A. It was triggered not because of the GPF 4 survey on its own but obviously it had a 5 bearing. The GPF survey, the detail of it was 6 dealt with by AAP, the AAP report. But to 7 complement the AAP report which dealt with 8 internal - I wanted it to - it was a two prong 9 approach to this matter. 10 Q. Did you produce an anti-bullying 11 statement and improve processes, as the 12 HMIC suggested? 13 A. I did, I think I messaged and I would be 14 very grateful if it could be shown to the 15 Inquiry. I think there is a (inaudible) entry 16 that I make. 17 Q. Sorry, a ...? 18 A. A (inaudible) is a weekly bulletin that is 19 published in the RGP and it is - I 20 communicated it to the Force wide - and 21 perhaps I don't know whether the Inquiry has 22 benefitted from it yet or has perused it. 23 (12.33) 24 Q. Well, perhaps we will find that over the 25 lunchbreak and if we can find it --</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

1 **A. Okay.**
 2 Q. -- we will show and we will liaise with --
 3 **A. In a very strong message, it explains that**
 4 **I -- what the Command Team and I felt about**
 5 **the question of bullying. That was not**
 6 **regarded by HMIC as a bullying statement,**
 7 **although when I did it, I felt that it did meet**
 8 **that criteria. Since then, there has been a**
 9 **studying of how to, in conjunction with the**
 10 **Police Federation, understand how bullying**
 11 **at work in the UK police service operated**
 12 **and in fact I believe Mr Ullger asked the then**
 13 **Chairman --**
 14 Q. Was this during your time?
 15 **A. Yes, yes, he was asked to look, to study**
 16 **how it's done through the Police Federation**
 17 **of England and Wales, come back and let's**
 18 **work together, because the Police Federation**
 19 **were proposing some guidelines which, in**
 20 **my view, were not necessarily suitable for**
 21 **application in the Police Service. They were**
 22 **more akin to, perhaps, Civil Service. There**
 23 **is a distinction in the job of a disciplined**
 24 **uniformed service to that of the Civil**
 25 **Service. In the police you may have to bark**

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1 **out commands, whereas if the bark out**
 2 **commands in the Civil Service, it could be**
 3 **interpreted to be bullying, but not necessarily**
 4 **is it so in ... I am just coming out ... this has**
 5 **just come to my head right now. This is not**
 6 **at all rehearsed. But I am just trying to draw**
 7 **a distinction because they were trying to say**
 8 **that there was a dignity at work group that**
 9 **was liaising with the Police Federation on**
 10 **this matter. But I wanted the concept of**
 11 **bullying as it occurred within the police**
 12 **world as opposed to any other generic, I**
 13 **wanted more specific. For some reason or**
 14 **another, that research by the Police**
 15 **Federation did not materialise. I do not know**
 16 **why. But we did improve on our procedures**
 17 **in terms of grievances and bullying at work**
 18 **and I think there were policies that were**
 19 **implemented during my time before I retired**
 20 **to compliment the findings of the survey, that**
 21 **officers, were not fully acquainted with the**
 22 **grievance procedures, so we went into detail**
 23 **and into improving, and probably they've**
 24 **even developed even further since I've left.**
 25 Q. Can we now look at the corruption

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1 paragraph, which is at B1552. It says this,
 2 "Tackling misconduct and corruption. This
 3 is an area for improvement. The Force
 4 doesn't fully understand its exposure to the
 5 risk of corruption. Its professional standards
 6 unit lacks the resource and expertise to
 7 develop a full understanding of the risk, or to
 8 monitor and mitigate the threat. Our
 9 recommendation is that the senior leadership
 10 team determine the best model for providing
 11 counter-corruption capability to identify and
 12 pursue corrupt employees or employees who
 13 are susceptible to corruption." Did you agree
 14 that the RGP did not fully understand its
 15 exposure to the risk of corruption?
 16 **A. I did not fully agree. What I agree and**
 17 **still believe in is that there is a lot of room**
 18 **for improvement. It doesn't say that the RGP**
 19 **-- that there was corruption in there, and this**
 20 **is even captured by the complimentary**
 21 **message that I received from the previous**
 22 **Governor. It doesn't say that there was**
 23 **corruption, but that we didn't understand the**
 24 **potential exposure to the risk of corruption.**
 25 **That is different to saying that they had**

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1 **found corrupt practices. And I understand**
 2 **where they're coming from, but I don't**
 3 **necessarily whole-heartedly agreed.**
 4 **Gibraltar has its advantages -- policing in**
 5 **Gibraltar has its advantages and**
 6 **disadvantages, and one of the main**
 7 **advantages is that we know each other. That**
 8 **can also play as a disadvantage, because it**
 9 **doesn't -- you are policing your own back**
 10 **yard basically. But when it comes to**
 11 **identifying officers who may be derailing, it**
 12 **is far easier to do it here than it is to do it in a**
 13 **larger territory for obvious reasons. If an**
 14 **officer does not live ... work in the place, or**
 15 **rather does not -- works in a place where he**
 16 **does not live, he's not probably known in**
 17 **those areas. He goes back to his county, or**
 18 **whatever, and there's an element of crossing**
 19 **of lines and so in that regard I believe that**
 20 **identifying officers with potential for**
 21 **derailment, whether ... at all levels I**
 22 **suppose, it is far easier to identify here.**
 23 Q. Can we go to B1578, please, the final
 24 paragraph, the penultimate paragraph, the last
 25 two sentences say, "The Force's current

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<p>1 position is that individuals should recognise 2 and assess any risk and manage it 3 themselves. This position isn't appropriate 4 and increases officers' personal exposure to 5 allegations of corruption. We are concerned 6 that RGP is not doing enough to counter the 7 risk of corruption. It should do more to 8 protect the public, its organisation and staff 9 from corruption and allegations of 10 corruption." In Mr Pyle's letter to the GPA, 11 he addresses concern about the potential for 12 corruption and he says that it had, to quote 13 him, "tellingly remained unaddressed". Do 14 you agree that this issue was unaddressed by 15 the time of your departure? 16 A. I think Mr Pyle, with respect to him, is 17 completely mistaken. He is interpreting that 18 this new recommendation had been in 19 existence from the previous report, that's 20 from my take of his statement, and that was 21 not the case. This new area for improvement 22 was a new area in the new inspection, so it 23 could not have been in place, as Mr Pyle 24 alleges. And it was addressed as soon as we 25 came to know of this recommendation.</p> <p style="text-align: center;">Page 109</p>	<p>1 another device. 2 Q. Perhaps a mobile, but I don't know 3 whether a laptop device may be different. I 4 don't know if you are able to assist on that? 5 A. I don't think that that was being referred 6 to in that context. If I am wrong, I don't -- 7 Q. I don't have any reason to disagree with 8 you. I am just putting it there for your 9 comments. 10 A. That is, again, complete supposition. I 11 don't think it was referring to laptops being 12 connected to ... no, no, no, I think it was 13 more of an officer using his personal mobile 14 device taking a snapshot of another mobile 15 and that is, as well intended as it may be, is 16 not as HMIC rightly points out, is not best 17 evidence standards. 18 Q. What did you do to discourage that going 19 forwards? 20 A. Well, remember that this report came out 21 with very little time to react to it and 22 everything then went really pear-shaped after 23 12 May. This claim, we started work on it, in 24 fact, we started working even before -- 25 Q. Yes, February 2020.</p> <p style="text-align: center;">Page 111</p>
<p>1 Mechanisms were put in place to bridge 2 potential gaps. I agree that there was rooms 3 for improvement and I was happy to receive 4 that. 5 Q. Can we go to 1562 please. Here, there is 6 a page from the report which includes a 7 section on investigative support. Just the 8 final paragraph there says, "We found 9 officers using their personal devices to 10 examine offender's phones. This isn't good 11 practice and doesn't meet best evidence 12 standards." Were you aware of that practice? 13 A. No, but I whole-heartedly agree with ... 14 if that practice was being played, I whole- 15 heartedly agree that that was not. From what 16 ... I've tried to understand the detail of what 17 that meant and it seems ... I seem to think 18 that there were instances where professional 19 standards were actioning some form of 20 complaint, if I'm not mistaken, where an 21 officer had used his mobile device to 22 screenshot, to take a screenshot of another 23 phone, because I don't think personally, and I 24 stand to be corrected, I don't think that any 25 personal device is capable of examining</p> <p style="text-align: center;">Page 110</p>	<p>1 A. As soon as we had a whiff of what the 2 recommendations are, a team led with Mr 3 Ullger started working on to addressing 4 them. 5 Q. Can we go to A109, which is your 6 witness statements, your third witness 7 statement at page 59 of your third witness 8 statement. It should have "Efficiency" at the 9 top of the page. Do you have that? 10 A. Witness statement -- 11 Q. The third witness statement, page 59, or 12 if you have the A numbers, it is A109. 13 A. Yes, got it. 14 Q. Then at (b) you say: 15 "I also alluded earlier on in my statement that 16 I tried hard to improve on efficiencies by 17 releasing sworn police officers to core 18 policing duties with police support staff 19 taking over roles which did not require to be 20 performed by warranted officers. For this to 21 materialize I required the support from 22 HMGoG which unfortunately was not 23 forthcoming. I also presented a case to make 24 cost savings arising from the appointment of 25 GPF convenors but again did not receive the</p> <p style="text-align: center;">Page 112</p>

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<p>1 support required." 2 Did you make these proposals to 3 Government? 4 A. Yes. 5 Q. When did you do so? 6 A. On the question of returning back office 7 staff to frontline policing, that featured in the 8 business case that was developed and then 9 agreed upon and the question of the 10 efficiencies on the GP convenors, I dealt with 11 directly with the Chief Minister and then 12 with the Chief Secretary I believe. 13 Q. What was the Government's response to 14 your proposals? 15 A. Very favourable in both cases. 16 Q. Now, you referred to messages between 17 you and the then Minister of Justice, 18 Samantha Sacramento, they are at C6503. 19 This is two thirds of the way down the page 20 at 1308. Minister Sacramento says, "The 21 report is shocking reading on the face of it. I 22 ... but if you analyse it deeper, it's not that 23 bad and it has easy solutions." Then further 24 on, three from the bottom, "It can all be 25 fixed. Don't worry." Do you agree with the</p> <p style="text-align: center;">Page 113</p>	<p>1 through the main themes of the report. She, 2 like Mr Britto, was very critical of the report 3 format and we discussed -- she asked, I told 4 her that I had already prepared a response 5 plan and she asked for it to be forwarded to 6 her and we did and there she was very 7 supportive of seeing this through. 8 Q. What about Dr Britto, was he supportive? 9 A. Absolutely. 10 Q. Did they express any concerns to you? 11 A. No. 12 Q. Can we go to C3344, please. This is an 13 email from Mr Pyle to the Chief Minister on 14 30 April 2020, so the same day that you meet 15 Minister Sacramento and Dr Britto. The 16 second paragraph says, "Having studied the 17 report I find it to be quite damning and it will 18 need careful handling. In essence, HMIC 19 found the RGP to have only met two out of 20 the eight areas for improvement identified in 21 2016. My own sense is that HMIC were very 22 disappointed indeed to find so little progress 23 had been made since their last inspection. 24 This is a shame and they are willingness to 25 help the RGP in the future may have</p> <p style="text-align: center;">Page 115</p>
<p>1 Minister of Justice that the report made for 2 shocking reading? 3 A. The language I think it's been said -- the 4 language was too harsh. 5 Q. Did you feel reassured by the Minister's 6 message? 7 A. Most certainly, and not only did she say 8 in there, she said it on live television during 9 one of our joint briefings on Covid I think it 10 was two days before the 11th. Maybe 9 May. 11 I stand to be corrected. It's contained in my 12 statement, but she followed up a question 13 from a newspaper reporter, although the 14 briefing was specific to Covid, the reporter 15 asked about the HMIC report and I 16 responded, and she picked up my response in 17 a very supportive way. 18 Q. There are also messages between you and 19 Dr Britto which suggests that a meeting took 20 place between you, Dr Britto and Ms 21 Sacramento on 30 April 2020 to discuss the 22 HMIC report. Did that meeting go ahead 23 and, if so, what was discussed? 24 A. Yes, that meeting did go ahead at her 25 offices in Governor's Parade and we went</p> <p style="text-align: center;">Page 114</p>	<p>1 diminished as a result. This is something we 2 must help correct, but I don't think the issue 3 is as bad as the headline suggests and believe 4 it is an issue of culture and leadership more 5 than anything else. Most of the issues should 6 be relatively easy to fix, though it will take a 7 collective effort driven bottom up from 8 within the RGP as much as from its 9 leadership which needs to be both more 10 strategic and directive. Quite simply as I see 11 it, the RGP needs to modernise in all senses 12 of the word." How do you respond to Mr 13 Pyle's allegation that the report was 14 damning? 15 A. I agree because I thought it was damning 16 too, but he qualifies it that it's -- in much the 17 same way as Ms Sacramento did in that it 18 was not that bad when you dipped into the 19 detail. 20 Q. Do you think that you were the right 21 person to lead the RGP forward in this 22 collective effort that he refers to? 23 A. I believe I was, yes. 24 Q. Can we go to C3420 now please. This is 25 at the bottom of the page, your email to Mr</p> <p style="text-align: center;">Page 116</p>

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<p>1 Pyle, the Chief Minister, the Minister of 2 Justice and Dr Britto on whether to publish 3 the report in full and you say, "I have no 4 major issues with the report being made 5 public." Why did you want to publish the 6 report in full? 7 A. That's the person I am. I want to be 8 transparent to the community I served and 9 that's it basically. The bottom line. 10 Q. The report was -- sorry. Sorry to 11 interrupt. 12 A. The community is perfectly entitled to 13 know. That's the purpose of bringing in an 14 audit report. That in itself shows a 15 willingness, albeit the result was not as what 16 I had expected, but my intention was that. 17 Q. The report was published on 7 May 2020. 18 What was your sense of public reaction to the 19 report? 20 A. Sorry, what was your question? 21 Q. Sorry, what was your sense of the public 22 reaction to the report? 23 A. Well, the public reacts to what is put out 24 in the media and the media, we know, can 25 make news ... can balance out the headlines</p> <p style="text-align: center;">Page 117</p>	<p>1 as you lean into taking forward HMIC's 2 report." Given the resource capability 3 pressures of assuring such a small national 4 force, I judge the headlines are 5 fundamentally positive, being in step with the 6 Force's unique challenges, but never an easy 7 read for the leadership and officers, as such 8 reports purposely focus on shortfalls and not 9 successes. Corruption, well nothing wrong 10 with tightening mitigation, even if it is not a 11 problem today. So, as I know you and the 12 RGP will charge on by embracing, adapting 13 and progressing, rooting for you from afar as 14 always, as you walk that path with belief and 15 pride. Warmest best to you and Diane. Ed." 16 There is an extra comment there says, "PS, 17 really enjoying not happy to read Panorama 18 anymore." (Laughter) 19 Q. I am not going to ask you to read out Mr 20 Costa's message to you, but just for your 21 benefit, it is at 36, which is on the previous 22 page. 23 A. Sorry, did you say you want me to read it 24 out? 25 Q. I am not going to ask you. I highlighted</p> <p style="text-align: center;">Page 119</p>
<p>1 in whatever fashion they believe. In fact, I 2 think, in one of the communications with Mr 3 Britto, he describes the Gibraltar Chronicle 4 report as "sensationalist". Perhaps for others 5 that's a subjective sort of interpretation of 6 what people may -- whether they care, 7 whether they don't, it's a very wide spectrum 8 to consider and very many variants. Just to 9 highlight before I forget because I don't 10 know whether you have or not, but the 11 perception of Lieutenant General Ed Davis 12 was more aligned to mine, than perhaps what 13 the Chronicle's interpretation was. Mr Davis, 14 if we could put up his message, I think it is 15 very pertinent now. In fact, Mr Costa too. 16 Q. A63 please. This is an email sent by the 17 former Governor at the time, on 9 May. 18 A. He's finished his tenure in I think end of 19 February or mid-February, around that time 20 and it reads, "Dear Ian, just thought I'd touch 21 base to first and foremost check you, Diane 22 and the family are well given the scourge of 23 CV." Meaning Covid. "Well done in 24 managing it so well. And second, just to let 25 you know I am thinking of you and the force</p> <p style="text-align: center;">Page 118</p>	<p>1 it. He says, "I will forever vouch for your 2 integrity on "-- 3 A. I think it is important in all fairness to 4 me. I'd feel better if I read it. 5 Q. Well then go on, I will let you read it out. 6 A. I mean, it is for the public to know. 7 That's the only reason. 8 Q. No, no, that is -- 9 A. Can we move it up please. 10 Q. I was going to highlight the relevant parts 11 but -- 12 A. It says, "My dear Ian, I cannot imagine 13 that with all of your hard work and untiring 14 dedication that the report made for pleasant 15 reading for you. For what it may be worth, I 16 will forever vouch for your integrity, honesty 17 and professionalism. If I can be of any 18 assistance to you, you know where I am. 19 With kind regards, Neil." 20 Q. What about private reactions. Was there 21 any criticism communicated to you 22 privately? 23 A. No, none whatsoever. 24 Q. Are you aware of any communications 25 between then former Governor, Lieutenant</p> <p style="text-align: center;">Page 120</p>

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<p>1 General Davis or Mr Pyle -- sorry, are you 2 aware of any communications between the 3 former Governor and Mr Pyle on the HMIC 4 report? 5 A. None whatsoever. 6 Q. Thank you. Can we now turn to 7 Operation Delhi. I can see that the time is 8 12.55. 9 THE CHAIRMAN: I think that is probably a 10 good time for a break. 11 MR SANTOS: Thank you. Shall we say 1 12 o'clock. 13 THE CHAIRMAN: 2 o'clock. 14 MR SANTOS: 2 o'clock, yes. I am not 15 proposing a five minute break. 16 (12.55) 17 (The short adjournment) 18 (14.00) 19 MR SANTOS: Can we first go to C 2523, 20 please. This I believe is the email that you 21 were referring to earlier when I asked you 22 about an anti-bullying statement. It is an 23 email of 9 August 2019 from Patrick Vyas(?) 24 to all staff. Is that what you were referring to 25 in your answer this morning?</p> <p style="text-align: center;">Page 121</p>	<p>1 how the service is managed. 2 Q. My question to you was on the back of 3 what was said in the HMIC report about the 4 need for an anti-bullying statement. 5 A. Yes. 6 Q. I think your answer was that this was 7 your anti-bullying statement. 8 A. I produced this in response to once the 9 draft arrived and that was not accepted as the 10 - well, they never said it, they never said it 11 wasn't accepted, but it didn't feature in the 12 report, which is why I shared it, because I 13 wanted them to realise that I had taken this 14 matter seriously. Now, from there on 15 obviously we worked on producing and 16 obliging to the recommendations. 17 Q. Thank you. If we can now turn to 18 Operation Delhi, please. Your first statement 19 deals with this at paragraph seven on page 3 20 of the bundle. You say that: "On 15 October 21 2018 Operation Delhi was commenced. This 22 was a 're-active' investigation arising from a 23 complaint about serious computer 24 hacking/sabotage offences and an alleged 25 conspiracy to defraud." What caused the</p> <p style="text-align: center;">Page 123</p>
<p>1 A. That was the one that I was referring to 2 but not this particular section, because I think 3 that this is - it goes by the round to 4 Commissioner - ah, there we go. 5 Commissioner's message. There are some 6 headline in bold along the -- It is quite a long 7 message. I don't know whether you want me 8 to read it. 9 Q. I think the Chairman can read it in his 10 own time. 11 A. Okay. 12 Q. I just wanted to give you the opportunity 13 of confirming whether that is the document 14 you were referring to. 15 A. Yes. But in no uncertain terms what I do 16 say there is that bullying is not going to be 17 tolerated in any shape or form, how we 18 intend to deal with it, and the fact that we 19 also have to recognise what the police service 20 is so that they are not misconceived as to 21 what the perception of bullying is in service, 22 like what I was saying. In a disciplined 23 service you need to be assertive on many 24 occasions and it works on command and 25 control. That in itself says a lot in terms of</p> <p style="text-align: center;">Page 122</p>	<p>1 operation to commence? 2 A. First and foremost, the date 15 October, 3 I've studied the paperwork and I have looked 4 up as to why that date features there in my 5 statement. I have not been able to find a 6 reason other than if it is a typing error, in the 7 sense that it captures my statement for the 8 case. It's based on my statement that I 9 provided for the prosecution which says that 10 on a certain date at 15.00 hours in October I 11 attended to this matter, but it's not necessarily 12 15 October. 13 Q. To the best of your belief, when did it 14 start? 15 A. I wouldn't be able to tell you off the cuff. 16 I would need to refer to my statement which I 17 provided to the prosecution case. 18 Q. Was it a date in October 2018? 19 A. Yes. 20 Q. Or thereabouts. 21 A. That's when it was brought to my 22 attention, yes. 23 Q. Do you know what it was that caused the 24 operation to commence? 25 A. I have to measure my words here so as</p> <p style="text-align: center;">Page 124</p>

<p>1 not to conflict, engage the restriction notice,</p> <p>2 but this related to a very serious allegation</p> <p>3 that the National Security Centralised</p> <p>4 Intelligence platform had been subject of a</p> <p>5 serious assault.</p> <p>6 Q. Sorry, I am just asking more in terms of</p> <p>7 the administrative process. You say it was a</p> <p>8 reactive investigation.</p> <p>9 A. Yes.</p> <p>10 Q. So something must have prompted it.</p> <p>11 A. Sorry, okay. I had a visit from the</p> <p>12 chairman of Bland Limited, Mr James</p> <p>13 Gaggero, and it was he that imparted the</p> <p>14 complaint.</p> <p>15 Q. If we go to B 5190, please, this is a letter</p> <p>16 dated 18 December 2018 and this starts with:</p> <p>17 "Further to my previous oral report to you, I</p> <p>18 write to formally bring to your attention and</p> <p>19 to make a complaint in relation to the acts of</p> <p>20 Thomas Cornelio described in this letter and</p> <p>21 which we believe may constitute criminal</p> <p>22 offences." Mr Gaggero's evidence is that he</p> <p>23 met with you on two occasions on 27</p> <p>24 September 2018 and 27 October 2018.</p> <p>25 Without giving too much importance to the</p> <p style="text-align: center;">Page 125</p>	<p>1 that. So that was a serious consideration that</p> <p>2 I had. However, I did not have the material</p> <p>3 in front of me to action anything at that</p> <p>4 particular moment. Mr Gaggero was</p> <p>5 working, he told me, with a group of cyber</p> <p>6 experts who had locked down the system.</p> <p>7 That reassured me that whoever had</p> <p>8 authorised access in the past was now locked</p> <p>9 out and could not access it, so that gave me</p> <p>10 peace of mind, and Mr Gaggero undertook to</p> <p>11 provide a report to me, which is the one that</p> <p>12 accompanies this letter.</p> <p>13 Q. So in the period between the meetings</p> <p>14 that took place, the October meeting where</p> <p>15 he made an oral complaint to you and the</p> <p>16 written complaint that you received in</p> <p>17 December, is it fair to say then that you were</p> <p>18 not actually actively pursuing the</p> <p>19 investigation?</p> <p>20 A. That's right. There was things happening</p> <p>21 in terms of movement on the three Delhi</p> <p>22 suspects, Government and Financial</p> <p>23 Secretary in particular, in terms of what</p> <p>24 Government were interpreting to be the</p> <p>25 malfunctioning of the system, meetings with</p> <p style="text-align: center;">Page 127</p>
<p>1 precise date, was it on the back of one of</p> <p>2 those meetings that the investigation would</p> <p>3 have been commenced?</p> <p>4 A. Yes, on the second meeting.</p> <p>5 Q. The second meeting.</p> <p>6 A. When I say "commenced", if you want to</p> <p>7 --</p> <p>8 Q. I was going to ask you, because</p> <p>9 Superintendent Richardson says that he was</p> <p>10 made SIO in late December 2018, so I was</p> <p>11 going to ask you what was going on in the</p> <p>12 investigation beforehand.</p> <p>13 A. Yes. The first visit we're not going to</p> <p>14 touch on unless you want me to, but the</p> <p>15 second visit by Mr Gaggero confirmed that</p> <p>16 he had uncovered potential criminality, albeit</p> <p>17 in an oral format he did. A very complex and</p> <p>18 difficult to understand in terms of reading</p> <p>19 papers, and so forth, and no hard core</p> <p>20 evidence in front of me other than what Mr</p> <p>21 Gaggero suggested, but my concern at the</p> <p>22 time was that the alleged activities as were</p> <p>23 being explained had caused an impact on this</p> <p>24 national security asset, a serious impact, and</p> <p>25 obviously the consequences arising from</p> <p style="text-align: center;">Page 126</p>	<p>1 law enforcement heads. I attended to one of</p> <p>2 those meetings and it was an uncomfortable</p> <p>3 meeting because things were being discussed</p> <p>4 there that I knew or at least I had another</p> <p>5 account to. And that is what was happening</p> <p>6 in between. I kept the question of the assault</p> <p>7 on the platform quite private. I mean, there</p> <p>8 was no - I can't remember crying(?)</p> <p>9 officially so that everybody in the service</p> <p>10 would know. What I did was I obviously</p> <p>11 consulted with the Governor at the time and</p> <p>12 told him: "Look, this has happened." I can't</p> <p>13 remember the exact date.</p> <p>14 Q. No, I am more interested on the</p> <p>15 investigation side and I just wanted to clarify</p> <p>16 the position as far as the SIO was concerned.</p> <p>17 You had these meetings on 27 September and</p> <p>18 27 October 2018. Did you take notes of</p> <p>19 those meetings?</p> <p>20 A. Yes.</p> <p>21 Q. Does the Inquiry have those notes?</p> <p>22 A. I've looked for them through the CMX</p> <p>23 bundles. I can't find them but I hope that</p> <p>24 they can be pulled out. They should be</p> <p>25 appended to either - I'm not sure whether I</p> <p style="text-align: center;">Page 128</p>

32 (Pages 125 to 128)

1 provided one or two statements for the case
 2 and they should be there exhibited by me. I
 3 remember Mr Wyan requesting them from
 4 me. In addition to screenshots of WhatsApp
 5 messages that I had with Mr John Perez. If
 6 they are not in the main prosecution bundle
 7 which - well, at least in the disclosure that
 8 we've received from the RGP, I would ask
 9 that they be looked for perhaps in an unused
 10 material bundle that the RGP may have not
 11 entirely disclosed but they were definitely
 12 provided.
 13 Q. We can look for those. In terms of your
 14 meetings with Mr Gaggero, Mr Gaggero's
 15 evidence is that by 27 September, the time of
 16 your first meeting, he knew that Mr Levy KC
 17 was involved with 36 North. Did Mr
 18 Gaggero reveal this connection to you when
 19 you met on 27 September?
 20 A. I believe he did, yes.
 21 Q. Did you reveal this connection to
 22 Superintendent Richardson and the team?
 23 A. What, at that particular --
 24 Q. At any point.
 25 A. Yes. Obviously eventually I think I

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1 provided them a brief of Mr Gaggero had
 2 imparted to me. I did explain everything so
 3 that they knew from me, and eventually I
 4 provided that statement in support of my
 5 account.
 6 Q. At this stage did you also realise that
 7 there may be a connection between the
 8 investigation and the Chief Minister?
 9 A. No, because I did not -- I can't be sure
 10 whether Astelon and the question of
 11 shareholders featured. Obviously eventually
 12 I came to know but I don't know at what
 13 point and the mechanisms of who was owner
 14 of what, and so forth. That was imparted
 15 verbally by Mr Gaggero to me and the detail
 16 of that I didn't capture. What I was capturing
 17 was the pertinent matter of potential criminal
 18 liability.
 19 Q. Can we go to C 1659, please. This is a
 20 note of a conference call at your office
 21 between you, Superintendent Richardson and
 22 Brian Finlayson. Towards the bottom of the
 23 page there is an entry that says: "JG advised
 24 by CoP, SIO and Dep", which presumably
 25 means Deputy.

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1 A. Yes, that's correct.
 2 Q. What was Mr Gaggero presumably
 3 advised by you about?
 4 A. I hadn't spoken with him since October
 5 and since we received the complaint, and I
 6 provided him this update in formally
 7 identifying Mr Richardson, and I believe it
 8 was Detective Chief Inspector Brian
 9 Finlayson as his deputy, and that's what I
 10 believe this note reflects.
 11 Q. We have seen Superintendent
 12 Richardson's daybook in relation to
 13 Operation Delhi. Did you also keep a
 14 daybook?
 15 A. Yes. Not on Delhi specific. It wasn't on
 16 Delhi specific.
 17 Q. So would some of these meetings be
 18 reflected in your daybook?
 19 A. If Mr Richardson was making notes, no.
 20 Q. So your policy was if Mr Richardson was
 21 taking notes, you would not take a note.
 22 A. I wouldn't, I wouldn't. Or if any other
 23 officer was taking notes I wouldn't. For
 24 example, the first meeting that Mr Perez
 25 came to see me about, there's no notes

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1 because there was nothing of concern to me
 2 there. The first meeting of Mr Gaggero on
 3 the back of what Mr Perez had come in, I
 4 started to gauge something there and I did the
 5 notes. Then when Mr Perez came to see me
 6 again I did a note and when Mr Gaggero
 7 came to see me again on the 27th you
 8 mentioned --
 9 Q. 27 October.
 10 A. I also made a note and those, I hope, are
 11 recoverable from the disclosure I made to the
 12 investigating officer at the time.
 13 Q. Now, Mr Perez, Mr Vasquez and
 14 Cornelio were arrested on 11 May 2019. If
 15 we can go to C 1733, please. I believe I am
 16 right in recollecting that it is 10 May 2019
 17 that they were arrested. This entry is dated
 18 11 May 2019 toward the bottom of the page.
 19 This is a record by Superintendent
 20 Richardson of a telephone call between him
 21 and Mr Gaggero at ten o'clock in the
 22 morning. The final entry in that page says:
 23 "CoP had wanted me to call yesterday." If
 24 we just go over the page that continues: "But
 25 too busy. Apologised." Why did you want

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1 Mr Richardson to inform Mr Gaggero on the
 2 day of the arrests?
 3 **A. As complainant, I felt that it was only**
 4 **prudent that he was informed by the RGP**
 5 **that arrests had been effected. He had been**
 6 **informing us of civil action that his lawyers**
 7 **wanted to initiate and we had told him to**
 8 **hold fire on that so as not to jeopardise the**
 9 **criminal investigation. The criminal**
 10 **investigation as it happened was taking**
 11 **longer to develop, than to progress, and we**
 12 **were conscious that Mr Gaggero may be**
 13 **impinged or impeded from proceeding with**
 14 **the civil action, so I thought it was right that**
 15 **Mr Gaggero was informed at least that:**
 16 **Look, arrests have been made and for you to**
 17 **continue with your journey on the civil action**
 18 **if need be.**
 19 Q. If we can then address the 13 May 2019
 20 meeting, it is in your first statement at
 21 paragraph 10. You requested a meeting to
 22 brief the Chief Minister, the Minister of
 23 Justice, the Attorney General, the Chief
 24 Secretary, the DPP and the Financial
 25 Secretary on Operation Delhi. We have

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1 heard from Mr Richardson that he does not
 2 recall the Attorney General being present at
 3 the meeting and he points to some text
 4 messages between him and you referring to
 5 Mr Llamas KC being abroad. Do you recall
 6 whether the Attorney General was present at
 7 the meeting?
 8 **A. My recollection is obviously tainted by**
 9 **my statement. I didn't take notes of that**
 10 **meeting and I can't say with hand on heart**
 11 **that Mr Llamas was there or not. More so**
 12 **when I've seen the messages of me telling Mr**
 13 **Richardson that the AG is in London. Mr**
 14 **Richardson did allude to the possibility of Mr**
 15 **Llamas being connected via telephone. I**
 16 **can't remember. That means I can't say**
 17 **whether Mr Llamas was, but then again**
 18 **based on Mr Llamas's statement it seems as if**
 19 **he was, so there's a bit of some grey area**
 20 **there.**
 21 Q. Can we now look at paragraphs 12 and 13
 22 of your statement, the first statement, which
 23 is just over the page. You say: "Because of
 24 the complexities of the case, I was aware that
 25 the investigating officers were consulting

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1 with the Office of Criminal Prosecution and
 2 Litigation ('OCPL'), particularly with the
 3 DPP. I also discussed the investigation with
 4 the AG on a few occasions when he brought
 5 it up and very briefly verbally went over the
 6 evidence and progress made. I would
 7 normally provide these briefings on the back
 8 of other subject matters that I had met the
 9 AG on. The AG was initially enquiring
 10 about what evidence we were coming across
 11 and I was content to disclose this verbally to
 12 him, albeit in a very brief fashion. During
 13 these briefings, the AG would express views
 14 of how chaotic and messy the matter was for
 15 HMGoG on a number of fronts; no
 16 government official other than Caine
 17 Sanchez knew the ins and outs of the
 18 dealings between the service provider of the
 19 NSCIS platform and HMGoG; the AG
 20 expressed concern over how all this was
 21 being managed internally by HMGoG with
 22 the consequent potential embarrassment to
 23 the administration." These discussions with
 24 the Attorney General: on how many
 25 occasions did they occur?

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1 **A. The way I've been able to trace the**
 2 **frequency of those meetings is by**
 3 **understanding the subject matters I met with**
 4 **the AG on aside from the ones specific to**
 5 **Delhi. I met him on numerous occasions to**
 6 **do with the intervention of the Grey Swan -**
 7 **that was the Iranian Tanker. In fact, other**
 8 **counsel here attended those meetings. I met**
 9 **with him in relation to the NatWest fraud,**
 10 **nothing to do with a criminal case but in**
 11 **terms of consequence management I met**
 12 **with him on that and met with him on the**
 13 **memorandum of understanding for the**
 14 **Armed Forces Act. Quite a substantial**
 15 **amount of meetings with him on that. I met**
 16 **him on personal matters relating to him. And**
 17 **there's a couple of others. These are**
 18 **examples. They were not Delhi-specific but**
 19 **at the end of the meeting he would say: "Ian,**
 20 **how's this going?" for example, and I'd say:**
 21 **"This is going so forth." "How do you see**
 22 **it?" "Well, it's still too early." And that is**
 23 **the type of interchange that we had. Nothing**
 24 **that I took note of. I was perfectly**
 25 **comfortable that the AG was asking me but**

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1 at that time; later obviously my mindset
 2 changed, but at that time I didn't see that
 3 normal(?) that the AG was telling me these
 4 things. It was embarrassing for the
 5 organisation. This was chaotic, messy, and
 6 he was obviously concerned, but at that point
 7 I had no concerns about his behaviour
 8 towards me. There was no suggestion
 9 whatsoever.
 10 Q. Why did you not take notes of his
 11 statements?
 12 A. Because it was not a meeting that was
 13 specific to that. It was not specific precisely
 14 because of that.
 15 Q. Did you mention these questions or
 16 comments from the Attorney General to
 17 Superintendent Richardson or to the
 18 investigating team?
 19 A. I can't recall I did. I can't recall whether I
 20 did or not.
 21 Q. If we go to paragraph 16 of your
 22 statement, the same one, you say: "The AG
 23 also advised that the investigation should not
 24 progress until such time as the question of
 25 ownership of the NSCIS platform was

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1 feedback that I'm getting from Mr
 2 Richardson, that it was key to the question of
 3 preferring charges, and so forth. But that
 4 subsequently there had been an alternative
 5 route or interpretation that could circumvent
 6 the need to rely on ownership, and I
 7 understand that Mr Wyan was the one that
 8 came up with the suggestion.
 9 Q. Did you agree that the ownership issued
 10 needed to be resolved before the
 11 investigation could progress?
 12 A. I did not agree or disagree on that,
 13 because I didn't have a decision, I didn't take
 14 a decision making - didn't approach it from
 15 that angle. I received those reports, they
 16 were explained to me. If it makes sense, they
 17 carry on and they crack on. If any of the
 18 reports I got prompted any questions from
 19 me, I would ask, but in this case in this
 20 regard no. More so when I understood from
 21 Mr Richardson that they had been in
 22 discussion with the DPP about it, that the
 23 DPP initially was of the view that
 24 commercial deviance was not criminal and
 25 Mr Wyan proved the contrary and Mr Rocca

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1 clarified. This was a matter that the
 2 investigation team had already identified and
 3 were working to address together with the
 4 DPP. It was my understanding that the
 5 question of ownership of the platform,
 6 though important, was not critical to the
 7 prosecution of the suspects." Do you recall
 8 the date of this conversation?
 9 A. No. Definitely was on more than one
 10 occasion but he was asking me to look into
 11 the detail of the ownership because
 12 Government were claiming, so he was
 13 arguing Government's case in this regard,
 14 that Government were the owners. Converse
 15 to that, obviously the team were aware too.
 16 It's not that - it was already shared with me.
 17 The team were acutely aware of that too and
 18 the were dealing with it.
 19 Q. Do you have any notes of this
 20 conversation?
 21 A. These were the ones on the back of the
 22 other subject matters so it's not...
 23 Q. What was your understanding of the
 24 importance of the ownership issue?
 25 A. Initially, that it was key. I mean, this is

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1 accepted that. So that is a type of interaction
 2 that was being fed up to me.
 3 Q. When you say that the AG had said that
 4 the investigation should not progress until
 5 such time as the question of ownership was
 6 clarified, what did you understand by him
 7 saying that the investigation should not
 8 progress?
 9 A. That came at that meeting, which I think
 10 was 7 April, where Mr --
 11 Q. That is a reference to 7 April perhaps.
 12 A. No, let me try - I'm trying to focus this.
 13 No, it can't have been on that date; it must
 14 have been on the -- He was saying: "Look,
 15 you need to sort out this before moving on
 16 further."
 17 THE CHAIRMAN: When did he say that?
 18 That is the question.
 19 A. I can't with certainty say.
 20 THE CHAIRMAN: Well, when could it
 21 have been?
 22 A. It could have been on the back of any of
 23 these meetings which could have been
 24 definitely before April maybe.
 25 THE CHAIRMAN: On the back of any of

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<p>1 these meetings.</p> <p>2 A. Yes. Definitely before he told me that he</p> <p>3 was taking a step back. He told me he was</p> <p>4 taking a step back from advising us on the</p> <p>5 criminal investigation, which not really was</p> <p>6 advice but he was communicating with me</p> <p>7 and the chance that we'd had, because he was</p> <p>8 going to be advising the Government on the</p> <p>9 intellectual property rights matter and it</p> <p>10 wasn't compatible. That's what he told me.</p> <p>11 But that he still wanted to be kept in the loop.</p> <p>12 MR SANTOS: When did he say that?</p> <p>13 A. I think that would have been 7 April, I</p> <p>14 think, but the question of: Look, you need to</p> <p>15 slow down investigation until such time as</p> <p>16 you establish the ownership was probably</p> <p>17 said before.</p> <p>18 THE CHAIRMAN: Yes, but when?</p> <p>19 A. When, sir?</p> <p>20 THE CHAIRMAN: Yes, when.</p> <p>21 A. I cannot be --</p> <p>22 THE CHAIRMAN: Well, it is a pretty</p> <p>23 important thing for him to say. You must</p> <p>24 know when he said it.</p> <p>25 A. Definitely before 7 April is as close I</p> <p style="text-align: center;">Page 141</p>	<p>1 figure in this as beneficial owners of 36</p> <p>2 North featuring the Chief Minister, the</p> <p>3 Financial Secretary, Minister Licudi, and</p> <p>4 Shadow Minister Mr Fetan(?)." And he said:</p> <p>5 "I'm aware of that." This was said in a very</p> <p>6 quiet tone. "And I'll deal with that. You</p> <p>7 leave that with me."</p> <p>8 Q. Can we go to B 74, please. Just before</p> <p>9 we turn to that, you say in that paragraph that</p> <p>10 the Attorney General was keen to be told of</p> <p>11 the evidence that the RGP was uncovering.</p> <p>12 Did you provide any evidence to him?</p> <p>13 A. No, it was basically very brief updates.</p> <p>14 (14.30)</p> <p>15 Q. Can we go to B74, please. Just before we</p> <p>16 turn to that, you say in that paragraph that the</p> <p>17 Attorney General was keen to be told of the</p> <p>18 evidence that the RGP was uncovering. Did</p> <p>19 you provide any evidence to him?</p> <p>20 A. No. It was basically very brief updates.</p> <p>21 Q. Now can we look at B74, which is on</p> <p>22 screen. This is the email that you sent</p> <p>23 yourself on the night of 12 May 2020, the</p> <p>24 day of the search warrant. And, we will</p> <p>25 come back to it in more detail when we</p> <p style="text-align: center;">Page 143</p>
<p>1 think I can be as helpful as I can there. I'm</p> <p>2 sorry, I wouldn't want to misguide you, sir.</p> <p>3 MR SANTOS: Can we go to 167, please, of</p> <p>4 the same bundle. This is your response to the</p> <p>5 Attorney General's affidavit, and at</p> <p>6 paragraph 122 you say: "It may be</p> <p>7 technically correct for the AG to state that he</p> <p>8 had no hands-on involvement in the case but</p> <p>9 he certainly expressed an interest in it and</p> <p>10 discussed with me the progress of the</p> <p>11 investigation as I have mentioned in my first</p> <p>12 affidavit. He was keen to be told of the</p> <p>13 evidence the RGP was uncovering", and</p> <p>14 there is a reference to embarrassing which</p> <p>15 you have just referred to. Is this the kind of</p> <p>16 thing that you have just been describing, the</p> <p>17 kind of conversations that were happening at</p> <p>18 the back end of meetings?</p> <p>19 A. Yes, and there was one meeting in</p> <p>20 particular where we also - this is just coming</p> <p>21 now obviously, refreshing myself - there was</p> <p>22 also one comment that he made regarding the</p> <p>23 question of embarrassing, which I brought to</p> <p>24 his notice saying: "Look, Michael", I said,</p> <p>25 "there are names involved in Astelon that</p> <p style="text-align: center;">Page 142</p>	<p>1 discuss the events of 12 May --</p> <p>2 A. I've got --</p> <p>3 Q. -- but for now I just wanted to ask you</p> <p>4 about the second paragraph. It says --</p> <p>5 A. -- I've said I've (?) got a hard copy of that</p> <p>6 one, can I..</p> <p>7 Q. By all means, yes.</p> <p>8 A. Thanks. It's easier for me to refer to the</p> <p>9 hard copy. And, are we referring to the one</p> <p>10 that corrects the typos or the original one?</p> <p>11 Q. This looks to me like it is the original</p> <p>12 one.</p> <p>13 A. I've got the - the one with the red typos.</p> <p>14 Q. Well, I am happy... What I will do is</p> <p>15 read the original one, and if there are any</p> <p>16 corrections you can tell us. Second</p> <p>17 paragraph. "For quite some time I have been</p> <p>18 meeting with HMAG Mr Llamas at his</p> <p>19 request to discuss matters relating to this</p> <p>20 investigation. Mr Llamas has a view that</p> <p>21 Caine Sanchez in particular should be dealt</p> <p>22 with internally via civil service disciplinary</p> <p>23 mechanisms. To this date however, the AG</p> <p>24 has not been privy to the evidence that the</p> <p>25 team has gathered against CS, or indeed the</p> <p style="text-align: center;">Page 144</p>

36 (Pages 141 to 144)

<p>1 other suspects. The said evidence has been 2 discussed with the DPP at great length, who 3 has filed" -- 4 A. And - "and he has". 5 Q. "and he has", as in: and the DPP has -- 6 A. Yeah. 7 Q. -- advised, yes? "and he has advised that 8 there is a criminal case for CS, JP and TC to 9 answer, and that there is a realistic prospect 10 of conviction if prosecuted on community 11 misuse offences" -- 12 A. I meant "computer", obviously. 13 Q. Yes, correct. "computer misuse offences 14 and conspiracy to defraud offences. At most 15 of these meetings with the AG, particularly 16 the latter ones, I have been accompanied by 17 Superintendent Richardson. The views I 18 have expressed all along have been that the 19 alleged criminal behaviour of all the parties 20 concerned is very serious." Do you accept 21 that the impression given by that email is 22 different to your witness statement, where 23 you state that you discussed these matters at 24 the end of meetings on other topics, whereas 25 it seems from this email that you are saying</p> <p style="text-align: center;">Page 145</p>	<p>1 Q. Yes, Mr Richardson says that there were 2 no such meetings. What is your reaction to 3 that? 4 A. I'm not going to dispute that. I don't 5 know what Mr Richardson - so obviously he 6 doesn't recall them, and I am just saying - 7 what I'm saying is that we met with the AG, 8 and Mr Richardson has alluded to certain 9 meetings that he came along with me. 10 Whether he was aware that this was spoken 11 to me or not, but I definitely attended 12 meetings in the past - not necessarily specific 13 to Delhi - I am not saying Delhi-specific, but 14 on other matters. 15 Q. If Mr Richardson had been present and 16 Delhi had been discussed, given that he was 17 SIO would you have expected him to make a 18 record of what was discussed? 19 A. Depends. Definitely the question of the 20 disciplinary route, that was - but I think he 21 was present during one of that - when that 22 was said. I believe he alludes to that: that he 23 was shocked to that. So, I don't know 24 whether he made notes of that himself, but he 25 definitely makes reference to the question of</p> <p style="text-align: center;">Page 147</p>
<p>1 that you have been meeting with "Mr Llamas 2 at his request to discuss matters relating to 3 this investigation"? 4 A. It may well give that impression, but 5 these are notes which I qualify as speed- 6 typing, and I think I mentioned this at the 7 end. That I say, "It's deeply regrettable that I 8 have to resort to speed-type out these notes", 9 so these are like when I came back from the 10 meeting in the shaken and worried condition, 11 that I sat down there and I started no-- typing 12 these notes out. So - but these notes then 13 refresh my mind, and it's - it's from what I've 14 based my - my statement on. 15 Q. You also say in the email, "At most of 16 these meetings with the AG, particularly the 17 latter ones, I have been accompanied by 18 Superintendent Richardson." Mr Richardson 19 says that he does not remember any of those 20 meetings. Do you maintain that he was 21 present at those meetings? 22 THE CHAIRMAN: No, hang on, he said 23 rather more than that. I mean, he said that 24 there were not meetings, because he recorded 25 them all.</p> <p style="text-align: center;">Page 146</p>	<p>1 Mr Llamas suggesting: why don't you leave 2 Caine Sanchez to be dealt with by the civil 3 service disciplinary route. And, he's also 4 present when Mr Llamas says... No, I'm not 5 sure whether he says he's present when he - 6 when he mentions: what if the Government 7 consented to the hacking. I'm not sure 8 whether he mentioned being present at that 9 point or not. 10 Q. Can we now go to C4490, please. This is 11 the letters sent by your lawyers, Gomez & 12 Co, to the GPA on 29 May. And paragraph 13 35, four lines down says, "For many months 14 the AG has been trying (unsuccessfully, we 15 might add) to persuade Mr McGrail to 16 change his and the RGP's approach to the 17 investigation, which would either lead to it 18 being dropped entirely or certain suspects not 19 being prosecuted." Do you stand by that 20 statement in that letter? 21 A. Initially, when my meetings with the 22 Attorney General - and - and he started to 23 enquire about it, it didn't raise any alarm 24 bells. But that changed with time, and even 25 though the suggestions of whether the - the -</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

1 **the system was hacked, the hypothetical**
 2 **suggestion: well (?) the system was allowed**
 3 **to be hacked by Government, whether Mr**
 4 **Sanchez was allowed to be - to be dealt with**
 5 **by the disciplinary process, whe-- whether**
 6 **the factor of the embarrassment to the**
 7 **administration, and to Blands, and to**
 8 **everybody else. All those factors when put**
 9 **together, and subsequently I brief - and I feel**
 10 **the situation I ended up in is what contributes**
 11 **my lawyers to - to put that in - in motion.**
 12 Q. So would you agree that the allegation
 13 made here, in this letter, is stronger than what
 14 you alleged in your witness statement and
 15 what you recorded in the email of 12 May?
 16 **A. Well it is stronger, because it is how I**
 17 **ended up being treated.**
 18 Q. What was the change in approach that
 19 you say the Attorney General was advocating
 20 for?
 21 **A. He gave me, certainly - and - and now,**
 22 **with the benefit of how everything has**
 23 **transpired, he certainly gave me the**
 24 **impression that he didn't want Caine Sanchez**
 25 **to be proceeded with. And he wanted to - he**

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1 **wanted the investigation to stall, to - to a**
 2 **certain degree, with the question of**
 3 **ownership.**
 4 Q. When you say that he gave you the
 5 impression that he did not want Caine
 6 Sanchez to be prosecuted, do you say that he
 7 expressly told you?
 8 **A. Yes, he - well, he asked: why don't you**
 9 **leave that - for Sanchez to be dealt with by**
 10 **the disciplinary route and the civil service?**
 11 Q. As Commissioner of Police, how
 12 involved were you typically in the day-to-day
 13 of Operation Delhi?
 14 **A. I was simply not involved.**
 15 Q. Were you more involved in Operation
 16 Delhi than other operations?
 17 **A. Not necessarily.**
 18 Q. If we go to paragraph 11 of your first
 19 statement (which is at A4) you state, "The
 20 investigation then began its course and apart
 21 from periodic briefings which I received
 22 from Superintendent Richardson, the senior
 23 officer in the investigating team, my personal
 24 involvement in the case was limited to
 25 requesting assistance from the Director

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1 General of the UK's National Crime Agency
 2 ('NCA'), Lynne Owens, for specialist
 3 computer forensic investigation support." Is
 4 that still your position: that that was your
 5 only personal involvement other than the
 6 periodic briefings?
 7 **A. I submitted a statement since. This**
 8 **statement was dated nearly two years ago,**
 9 **the one that I'm referring to, and I have since**
 10 **submitted a seventh statement which**
 11 **particularly arises because this has been**
 12 **picked up by Mr Cooper and his team,**
 13 **claiming that my other - or suggesting that**
 14 **my other actions were operational. And I**
 15 **have explained there, I don't know whether**
 16 **you want to pull it up on the screen to show**
 17 **what my other involvement is, and for the**
 18 **Inquiry --**
 19 Q. Yes.
 20 **A. -- to determine whether those actions**
 21 **were - were operational actions or not.**
 22 Q. I think it is worth allowing you to make
 23 that point, because that point is made against
 24 you. If we can turn to your seventh
 25 statement, please. It is known as your third

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1 responsive statement, and it is at page three,
 2 paragraph 17. You say, "It is claimed in
 3 paragraph 21 that I was operationally
 4 involved with Op Delhi, when I have already
 5 explained my involvement, as indeed have
 6 the officers involved in the operation. I did
 7 not take any operation decisions in this
 8 investigation, and this is supported by those
 9 involved in the investigating team." And
 10 then you respond to what you say is the --
 11 **A. Series - a series of instances.**
 12 Q. Of the examples given by the former
 13 Operation Delhi defendants. Now it's fair to
 14 say though, is it not, that in your first
 15 statement you are not referring purely to
 16 operational decisions. You say, "apart from
 17 periodic briefings which I received from
 18 Superintendent Richardson, the senior officer
 19 in the investigating team, my personal
 20 involvement in the case was limited to
 21 requesting assistance". So, is it your position
 22 that you were involved but not at an
 23 operational level?
 24 **A. That is correct, but that also shows that at**
 25 **the time that I made this statement these**

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<p>1 other issues were totally insignificant in my 2 mind and in my way of thing. This, which - 3 the question of requesting resources from the 4 United Kingdom, probably was the one that 5 featured more key. I mean, the question of 6 writing to the see (?) Chief Secretary, or the 7 writing to the - to the Financial Secretary, as 8 I've explained these were all issues that I did 9 at the request of the - of the team, and - and 10 not - it does not represent any operational 11 activity on my part at all. 12 Q. So for example the 8 January 2019 13 meeting, if we can go to that. This is C1659. 14 This is the conference call that we were 15 looking at earlier, and if we look at the 16 second page there are three entries for things 17 that you have said. The first one is about a 18 timeline for action one month after Four 19 Corners seized (?), then "no element of 20 surprise, therefore civil action may proceed. 21 Search of local premises, invite suspects to 22 give initial AK. Prosecution deadline not 23 possible." And then the next entry, "Seeks 24 assurance that there with be no withdrawal of 25 complaint in favour of civil action, given." Is</p> <p style="text-align: center;">Page 153</p>	<p>1 Although they'd be relieved, no doubt, but 2 that's a big cloud hang-- left hanging over, so 3 -- 4 Q. I understand the explanation, Mr 5 McGrail, but my question to you was 6 whether that was you going beyond receiving 7 periodic briefings from Superintendent 8 Richardson. 9 A. No, no. In this case, it's the first briefing 10 that I'm inves-- introducing the team to them, 11 if I believe, yes, in January? 12 Q. 8 January, yes. 13 A. So, no, that is not an operational decision; 14 that is if anything setting tone with Mr 15 Gaggero, so that he doesn't pull out. If he 16 wanted to pull out he had time to pull out, 17 and then not necessarily follow the 18 complaint, but... 19 Q. Well, if it is not an operational decision 20 then do you categorise it as a tactical 21 decision or a strategic decision? 22 A. More - more on strategy than - well, 23 strategy - more on - more on - on morals 24 and... 25 Q. So, you accept you had strategic</p> <p style="text-align: center;">Page 155</p>
<p>1 that not going beyond pure briefing? 2 A. No, absolutely not. I'll explain in detail 3 what I meant by "Seeks assurances that there 4 with be no withdrawal of complaint in favour 5 of civil action". In my police career I've 6 noticed - I've come across many instances 7 where complainant - a complainant in - in 8 serious offences file a complaint, the police 9 go to town, invest resources in this (the 10 financial resources and human resources), 11 only to then the complainant withdraw their 12 complaint, and - and it has an impact in many 13 quarters. And, I specifically sought the 14 reassurance from Mr Gaggero that he was not 15 going to do that. If he had, as is suggested, 16 that he was manipulating the RGP to proceed 17 with its investigation, this actual poi-- this 18 actual point kills that off, because it was me 19 putting it to him: if you want to make the 20 complaint, I don't want you to - to then pull 21 out at the last minute and lev-- leave - leave 22 all this that we've done. And not least, 23 unfairness to those arrested, because if those 24 arrested are then just sort of said - released 25 because simply there's no complaint.</p> <p style="text-align: center;">Page 154</p>	<p>1 involvement in the investigation? 2 A. That is the extent of it, that is the extent 3 of it. 4 Q. If we go to B749, there is an exchange 5 between the DPP and you regarding 6 Operation Delhi. Do you remember, this is 7 the fourth and fifth entries, "Ian, are you free 8 for a quick chat regarding Operation Delhi?", 9 on 27 January. Do you recall what that 10 discussion related to? 11 A. Unfortunately not, but I've qualified that 12 if it refers to a "quick chat" it couldn't have 13 been that complicated of a matter, or else it 14 would have formed part of a formal meeting 15 or... I can't - I can't recall, unfortunately. 16 Q. Then at B5050, please. This is a letter to 17 the Financial Secretary, where you write to 18 him, and then over the page you refer to the 19 Director of Public Prosecutions having 20 advised that the issue of ownership is integral 21 to the prosecution of the case. This is on 8 22 April, the day after that 7 April meeting. 23 "This is based in part on statements made on 24 26 July 2019 by two of the subjects under 25 investigation that the platform is owned by</p> <p style="text-align: center;">Page 156</p>

1 HMGOG. You will appreciate that this point
 2 needs clarification, in fairness to the accused.
 3 Those arrested continue on police bail, the
 4 RGP finds itself in an awkward position.
 5 And (?) in the absence of a definitive
 6 response, and by this I mean a witness
 7 statement by HMGOG as to the ownership of
 8 the NSCIS platform, we will have to rely
 9 upon the evidence provided by Bland
 10 Limited, who have emphatically asserted
 11 their ownership of the platform from the
 12 onset of this investigation and on whose
 13 evidence we have based all our activity."
 14 Why were you the one to send this letter?
 15 **A. It's pitched at that level, probably for it to**
 16 **carry more clout, and that is the only reason.**
 17 **I know that the investigating team had been**
 18 **unable to land the - the support of the**
 19 **Government officials to square off the issue**
 20 **of the ownership, although as I say it then**
 21 **transp-- later transpired that becau-- probably**
 22 **influenced by the fact that they couldn't**
 23 **progress it, that Mr Wyan suggested an**
 24 **alternative route.**
 25 Q. The covering email to this is two pages, I

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1 think a few pages earlier. It is 1899... sorry,
 2 B1989... Well, let us go to 1899, just
 3 because we know it is there. And it says,
 4 "Please find attached a scanned copy of a
 5 letter regarding a key issue that remains
 6 pending in the investigation of the hacking of
 7 the NSCIS platform." Does that reflect your
 8 views at the time, on 8 April, that this was a
 9 key issue?
 10 **A. I think the notes of the k-- the notes of 8**
 11 **April, and we could refer to them, to mention**
 12 **that it's crucial to the investigation but it's not**
 13 **fatal to the prosecution, if I'm not mistaken.**
 14 Q. Well, we --
 15 **A. What I did not do is tell Mr Mena that the**
 16 **- it was not fatal. That was - that shows that**
 17 **we still wanted, irrespective of whether it**
 18 **was fatal or not, that we still wanted to**
 19 **establish or clear up the question of the**
 20 **ownership. That's what I make out of it.**
 21 Q. You say in that letter that "The DPP has
 22 advised that the issue of ownership of the
 23 platform is integral to the prosecution of the
 24 case." If it was integral then why did the
 25 RGP nevertheless continue with its executive

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1 action against Mr Levy, notwithstanding that
 2 issue not having been resolved?
 3 **A. I don't think one had - one thing had to do**
 4 **with the other.**
 5 Q. Just going back to this letter, did you feel
 6 that the Government was cooperating with
 7 the RGP on this ownership issue at the time?
 8 **A. Without having the finger on the pulse as**
 9 **the investigators did, it eventually came to**
 10 **light that they didn't have that support, and in**
 11 **fact that the government was reluctant - or -**
 12 **or not responsive enough to provide that**
 13 **support in terms of the ownership. We had -**
 14 **the officers had, now, legal advice from Mr**
 15 **Bland's - from Mr Gaggero's legal team, that**
 16 **seemed to be solid. And, as police officers**
 17 **you go with the evidence before you and -**
 18 **and - and you - and that's where you - you**
 19 **follow the trail, in the absence of anything**
 20 **else from Government we could not just say:**
 21 **Government is the owner, and accept that**
 22 **word without any evidence.**
 23 Q. Can we now go to C1789, please. This is
 24 an entry in a daybook, Superintendent
 25 Richardson's daybook, referring to a

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1 conference call with Mr Gaggero at your
 2 office. And, halfway down the page there is
 3 an entry that refers to you saying, "Thanks
 4 for patience, identify criminal info liability
 5 for all four on bail, and have consulted with
 6 DPP. Very sensitive executive action
 7 pending, not to be discussed by iPhone." Do
 8 you agree with the notes that that matter was
 9 discussed? Do you agree that that is an
 10 accurate not?
 11 **A. That - that's - it seems that that was part**
 12 **of a - an update that was provided to Mr**
 13 **Gaggero. I know that Mr Richardson was in**
 14 **far more regular contact with him, that they**
 15 **had some fluid relationship there in terms of**
 16 **evidence and - and contrasting matters that**
 17 **needed to be contrasted, but in this occasion**
 18 **it seems that I thanked the man for his**
 19 **patience, this is obviously after the - the**
 20 **arrest had been - had taken place, yes?**
 21 Q. After the arrests, yes. This is five days
 22 before the search warrant.
 23 **A. Okay. And, that we've been consulting**
 24 **with the DPP, and that very sensitive action**
 25 **was pending.**

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1 Q. Was that a reference to the James Levy
 2 search warrants?
 3 **A. I never disclosed that to him.**
 4 Q. Yes, sorry, but were you referring when
 5 you said, "Very sensitive executive action" --
 6 **A. That - that was - yes, that was obviously -**
 7 **I - that's what I was referring to but I'd never**
 8 **disclosed that to him.**
 9 Q. Because, 7 May is the day of the second
 10 hearing before the Stipendiary Magistrate;
 11 that is the application.
 12 **A. Well, you...**
 13 Q. Why did you think it necessary to inform
 14 him that very sensitive action was pending?
 15 **A. Again, on the same principles of keeping**
 16 **a complainant informed.**
 17 Q. Can we go over the page, just to the entry
 18 more than halfway down, this is now
 19 Superintendent Richardson it seems
 20 speaking, or Mr Gaggero, and the entry says,
 21 "Grey man is in joint meeting with
 22 Commissioner of Police, made him feel very
 23 uncomfortable of government involvement.
 24 Grey man had approached him. Grey man
 25 feels let down and betrayed." Can you

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1 explain what was discussed? What
 2 discussion that note is recording.
 3 **A. I can't understand what it says, the (?)**
 4 **"Grey man in joint meeting with CoP". I -**
 5 **I...**
 6 Q. That is what I wanted to ask you about:
 7 do you remember meeting - I believe that
 8 "Grey man", we have been told is a reference
 9 to Mr Levy?
 10 **A. That is how Mr Gaggero described him,**
 11 **yes.**
 12 Q. Do you know why he referred to him as
 13 "Grey man"?
 14 **A. I've heard Mr Richardson's explanation,**
 15 **which is not more or less the same as mine,**
 16 **but it enlightened - it gave me another**
 17 **perspective. I - I didn't probe Mr Gaggero**
 18 **for his description, but I took it to be that -**
 19 **"Grey" in the sense of not squeaky clean. It's**
 20 **not a - sort of a... That - that - that**
 21 **impression is what I took.**
 22 Q. So, do you have a recollection of a joint
 23 meeting with Mr Levy?
 24 **A. No. I'd never met with him. And, when**
 25 **was this date?**

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1 Q. Sorry, did you say that you have never
 2 met with him, or you never met him?
 3 **A. Not - we've (?) never met with him**
 4 **around this (?).**
 5 Q. In relation to the investigation.
 6 **A. What I do recall is that I attended a social**
 7 **function at the Rock Hotel, I forget the date.**
 8 **Mr Gaggero was there, I mean there were**
 9 **dignitaries - all of Gibraltar's dignitaries were**
 10 **there, and I was a guest, too, and I - and I**
 11 **saw Mr Levy with a - a couple of fellow**
 12 **colleagues. And I've always had a good**
 13 **relationship with Mr Levy, always. I think**
 14 **he rooted for me to be Commissioner at one**
 15 **point - at least, that's what he used to tell my**
 16 **partner. But at that point the eye contact,**
 17 **body language said it all, he was obviously**
 18 **not the same person. But I didn't exchange**
 19 **words, I just greeted him.**
 20 Q. Is it fair to say that you sometime
 21 proactively chased Mr Richardson on matters
 22 relating to Operation Delhi, as well?
 23 **A. No, at all, at all. Remember, around this**
 24 **period is when - when we were in the eye of**
 25 **the storm, and people were dying, and there**

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1 **was a lot of things happening. Social**
 2 **lockdown, so the RGP was trying to carry on**
 3 **with normal business in the midst of a**
 4 **pandemic that was hitting the world, so I**
 5 **wasn't chasing inquiries at all.**
 6 Q. Can we now just go to the NDM
 7 assessment please, B3452. This is the NDM
 8 assessment regarding the involvement of
 9 Haim Judah Levy with 36 North Limited.
 10 Superintendent Richardson sent this to you
 11 on 25 February 2020, and you replied on 1
 12 March 2020. This is at 3272. And your
 13 email is the second one down, "Paul, I have
 14 perused the documents you attached to your
 15 email below. On the basis of the information
 16 contained in this document, I support in
 17 principle the suggested course of action. As
 18 you know, the tactical detail of how you
 19 intend to set to achieve the objectives will be
 20 subject of further consideration, mainly to
 21 safeguard operational security. Given the
 22 complex nature of this investigation and the
 23 reputational risks at stake, I would ask that
 24 you consult with the DPP to ensure our
 25 intended activity is legally supported." The

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<p>1 email refers to being sent from your iPhone, 2 just further down. How long had you been 3 able to look at the NDM before agreeing in 4 principle to the course of action? 5 A. I read it - it - I think it's a Sunday there, 6 so that probably was my Sunday reading, and 7 - and making notes on it and so forth, so... 8 Q. But, you had the chance to read it 9 properly? 10 A. Oh, I - I read it - knowing the sensitivities 11 of it I read it in sufficient detail. 12 Q. What do you mean in the second line, 13 where you refer to supporting "the suggested 14 course of action"? 15 A. Basically, that there's - there's two issues 16 there, basically. Whether the DPP felt that 17 James Levy was a suspect - that whether the 18 assessment that the team had arrived at, that 19 the - that Mr Levy had to - questions to 20 answer as a suspect; that was one. And, on 21 the question of how we are going to approach 22 that matter, which was evident from the 23 NDM assessment that it was going to be 24 approached with a warrant - a search warrant. 25 Q. So, if we go to 3456... Sorry, just to</p> <p style="text-align: center;">Page 165</p>	<p>1 question you were asked was whether or not 2 you were asking the consent of the DPP to 3 proceed by way of a search warrant? 4 A. No, we would never ask the consent of. 5 We would consult and the only thing was we 6 would seek advice but not consent because 7 that --- and it was rightly pointed out by the 8 DPP that that is an operational matter. 9 MR SANTOS: (To the witness): So when 10 you say you consult, did you mean seek 11 advice or just --- 12 A. Run it past him. 13 Q. Run it past him? 14 A. Yes. 15 Q. If we go to B3455, please, this is the 16 NDM document towards the end which 17 refers to the grounds for suspecting that the 18 agreement to deprive Bland Ltd of the 19 NSCIS maintenance contract was by 20 dishonesty and then it sets out the 21 conclusions that are drawn in respect of Mr 22 Levy. Did you also agree that there were 23 sufficient grounds to suspect Mr Levy of 24 involvement in a conspiracy to defraud on 25 the basis of what was set out in the NDM?</p> <p style="text-align: center;">Page 167</p>
<p>1 clarify, actually I do not think I have to take 2 you there. So, by agreeing with the course of 3 action you were agreeing to the proposal to 4 go by way of search warrant? 5 A. Yes. 6 Q. And, you also say in this witness 7 statement that you asked Mr Richardson to 8 "consult with the DPP to ensure our intended 9 activity is legally supported." What did you 10 mean by ensuring "our intended activity is 11 legally supported"? 12 A. Package-wise, that we were on solid 13 footing with regards to addressing Mr Levy, 14 and that includes everything that was referred 15 to in the - in the NDM. 16 (15.00) 17 Q. So were you asking Mr Richardson 18 specifically to seek the DPP's advice on the 19 decision to proceed with a search warrant? 20 A. Are you asking --- it's to consult with the 21 DPP. 22 Q. So what do you mean by consulting with, 23 if not seeking legal advice? 24 A. Run it past him; run it past him. 25 THE CHAIRMAN: (To the witness): The</p> <p style="text-align: center;">Page 166</p>	<p>1 A. On the basis of that information available 2 to me, yes. 3 Q. And at 3457, 37 says, "Given the political 4 sensitivities of the persons involved, the least 5 disruptive and most diplomatic means of 6 police intervention will be deployed." What 7 did you understand the words "police 8 intervention" to mean? 9 A. That's the tactical activity, are they going 10 to go full blown with uniformed, blue lights, 11 sirens? Obviously not. Is it going to be a 12 discreet approach, low key? At what time 13 are you going to do the --- what time is the 14 approach going to be made? Are you going 15 to wait for him as he comes out of his house 16 or are you going to go to his workplace? 17 Those types of tactical considerations. 18 Q. Now can we go to 3612, please, this is 19 the charging advice document prepared by 20 the then Inspector Wyan at Superintendent 21 Richardson's request to provide to the DPP. 22 Did Mr Richardson or Mr Wyan send or 23 show you a version of this document at any 24 point? 25 A. I have subsequently read it a long time</p> <p style="text-align: center;">Page 168</p>

42 (Pages 165 to 168)

1 ago but I can't be sure that it was shared with
 2 me and if it was, there has to be an audit trail
 3 in terms of --- an email trail because that will
 4 not have been sent to me by --- in hard copy,
 5 they would probably have emailed me and I
 6 have looked through my emails ---
 7 THE CHAIRMAN: (To the witness): There
 8 is no such email.
 9 **A. There is not, that's what I mean, so I can't**
 10 **comment.**
 11 MR SANTOS: (To the witness): I think
 12 your answer deals with my next question but
 13 I am going to put it to you just so that you are
 14 aware, in Superintendent Wyan's evidence on
 15 Friday, he stated that he believed there was a
 16 meeting in your office where you went
 17 through an iteration of that charging advice
 18 and he updated you on the investigation. Do
 19 you recall a meeting of that nature?
 20 **A. I would not dispute it but I cannot recall**
 21 **the finer detail of it.**
 22 THE CHAIRMAN: (To the witness): He or
 23 Mr Richardson said that the fact that the
 24 document is addressed, as you can see there,
 25 to the Commissioner of Police, does not

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1 necessarily mean that it was either sent to
 2 you or that you received it?
 3 **A. That's right, that is a historical feature at**
 4 **least in the RGP. We haven't moved on**
 5 **maybe on in that regard. Every**
 6 **correspondence is addressed to the**
 7 **Commissioner even though it's not --- it**
 8 **doesn't reach him or --- it's just a formality.**
 9 MR SANTOS: (To the witness): Were you
 10 aware at that point of the number of charges
 11 that ----
 12 **A. Yes.**
 13 Q. --- were being considered?
 14 **A. Yes.**
 15 Q. What was your view on the large number
 16 of charges at the time?
 17 **A. I think that was very clear from the outset**
 18 **that that was not going to be sustainable or**
 19 **proper. I have dealt with many**
 20 **investigations where there are multiple**
 21 **charges and there's other ways of reducing it**
 22 **to be a lesser format. I mean, the Chairman**
 23 **will remember the TAC taking into**
 24 **consideration sort of watering down of**
 25 **multiple charges if a person admitted to them**

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1 but that doesn't apply to this. But in this
 2 case, yes, we knew there was going to be a
 3 streamlining of charges because there were
 4 many repeated counts, albeit on different
 5 dates, but specifically they were --- they
 6 could stand on their own but you don't --- it's
 7 not viable and prosecutors do not work like
 8 that, in my experience. They prefer a sample
 9 that captures as much of the evidence
 10 possible and then the others are either not
 11 preferred or, if anything, sometimes it even
 12 cuts (inaudible).
 13 Q. We have heard from Mr Richardson and
 14 Mr Wyan that they had two meetings with
 15 the DPP in March, the beginning of March
 16 and the beginning of April 2020, I just want
 17 to ask some questions about your
 18 understanding of what happened at those
 19 meetings. If we go to A1427, this is Mr
 20 Richardson's account of 3 March meeting
 21 and he says at paragraph 14 in the final
 22 sentence, "The DPP inclined to the view that
 23 JL's involvement in Operation Delhi arose
 24 from sharp business practice." Did that view
 25 of the DPP get back to you via Mr

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1 Richardson or Mr Wyan?
 2 **A. At one point it did. I believe it could**
 3 **possibly have been when it was resolved that**
 4 **sharp business practice or commercial**
 5 **deviance which the DPP was, I believe,**
 6 **suggesting was not --- there was no criminal**
 7 **liability to be attached had then been changed**
 8 **--- that position had changed when Mr Wyan**
 9 **argued the case.**
 10 Q. At the 8 April 2020 meeting on the
 11 strength of the charging advice?
 12 **A. I cannot follow the chronology because I**
 13 **am not alive to it.**
 14 Q. Well, there were two meetings, the first
 15 one the DPP said "sharp business practice,"
 16 and then 8 April there was --- the note
 17 suggests that the DPP said that --- the note
 18 says, "Reasonable grounds to question would
 19 be a lingering doubt, otherwise obligation to
 20 interview under caution." As far as you are
 21 concerned, your position is that at one point
 22 there was the view of sharp business practice
 23 and at a later date the DPP had been ----
 24 **A. Yes.**
 25 Q. --- shown more evidence and changed its

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<p>1 position?</p> <p>2 THE CHAIRMAN: Following the charging</p> <p>3 advice?</p> <p>4 MR SANTOS: Following the charging</p> <p>5 advice. (To the witness): And you do not</p> <p>6 know whether you learned of the position,</p> <p>7 the initial view before the change of position</p> <p>8 or afterwards?</p> <p>9 A. Well, jointly afterwards, yes. I cannot ---</p> <p>10 my position was like a --- from a bird's eye</p> <p>11 perspective. I was not involved in the detail.</p> <p>12 Q. Paragraph 41 of the same statement at</p> <p>13 A1432 Mr Richardson says, "At the time of</p> <p>14 the application we did not know of any</p> <p>15 concerns on the part of either the DPP or AG.</p> <p>16 At the end of a video conference call on 8</p> <p>17 April 2020 I remember the DPP confirming</p> <p>18 that he understood our rationale for</p> <p>19 preferring a warrant to a production order.</p> <p>20 This was an operational decision for the</p> <p>21 police although he would have opted for a</p> <p>22 production order rather than a warrant,</p> <p>23 whatever we chose he would back us. At</p> <p>24 that point, the choice between a warrant and</p> <p>25 a production order was secondary to the DPP</p> <p style="text-align: center;">Page 173</p>	<p>1 took it that the team had the green light.</p> <p>2 Q. So is your evidence that your</p> <p>3 understanding as of 8 April or shortly after</p> <p>4 that meeting was that the DPP had given the</p> <p>5 green light to the search warrant?</p> <p>6 A. It must have, yes, in the sense that he was</p> <p>7 content to defend it as I later came to know.</p> <p>8 Q. I am sorry, let us deal with this in stages.</p> <p>9 As far as you were aware, had the DPP</p> <p>10 advised on a search warrant?</p> <p>11 A. No, he had not advised. They had</p> <p>12 consulted with him and he had expressed his</p> <p>13 view that his preference was this but</p> <p>14 underscoring very clearly --- this is the way it</p> <p>15 was mentioned to me, underscoring very</p> <p>16 clearly that it's not a matter that he's going to</p> <p>17 get involved in.</p> <p>18 Q. So they did report back to you at the time</p> <p>19 that the DPP had expressed a preference for a</p> <p>20 production order?</p> <p>21 A. It was not highlighted as such, if you</p> <p>22 know what I mean. It's not --- it is not</p> <p>23 something that was --- I tell you why; I tell</p> <p>24 you why, because if it had, Mr Richardson or</p> <p>25 Mr Wyan would not have applied for a</p> <p style="text-align: center;">Page 175</p>
<p>1 agreeing that JL should be treated as a</p> <p>2 suspect and I did not note this exchange."</p> <p>3 Did Superintendent Richardson or Inspector</p> <p>4 Wyan report back to you that the DPP would</p> <p>5 have opted for a production order rather than</p> <p>6 a warrant?</p> <p>7 A. I have dwelled on this point significantly</p> <p>8 and I have tried to rack my brain. When they</p> <p>9 came back after I asked them to confer with</p> <p>10 the DPP, they came back and basically it</p> <p>11 was, "Boss, we've got the green light," and</p> <p>12 that for me suggested that everything had</p> <p>13 been squared off. There was talk about the</p> <p>14 warrant. There was a suggestion to me on</p> <p>15 potential scenarios to Mr Richardson, "What</p> <p>16 if Mr Levy gets up and walks away with his</p> <p>17 phone, what are you going to do," because</p> <p>18 there was no arrest plan, it was more of a</p> <p>19 voluntary interview request, and I was</p> <p>20 putting those scenarios just to be perhaps</p> <p>21 devil's advocate and I remember Mr</p> <p>22 Richardson saying he's not going to do that to</p> <p>23 me, he's not going to do that to me. He was</p> <p>24 confident and said, "That's your call." I was</p> <p>25 like bouncing off that scenario situation but I</p> <p style="text-align: center;">Page 174</p>	<p>1 warrant if there was any doubt or any</p> <p>2 potential ---</p> <p>3 Q. I am just trying to clarify exactly what Mr</p> <p>4 Richardson reported to you as to what the</p> <p>5 DPP had said. If you can just --- to the best</p> <p>6 of your recollection ---</p> <p>7 A. The best of my recollection is that it was,</p> <p>8 "We've got the green light," and a warrant</p> <p>9 will be defended. That's the ---</p> <p>10 Q. And did he say that the DPP would prefer</p> <p>11 the option of a production order?</p> <p>12 A. I can't put hand on heart and say that they</p> <p>13 did but it's an inference that I draw, that there</p> <p>14 was --- I know they talked about the word</p> <p>15 and that the warrant was not an unlawful</p> <p>16 approach and that he would resist any</p> <p>17 challenge to it.</p> <p>18 Q. In McGrail 1, paragraph 23 at A7, you</p> <p>19 say halfway down that paragraph, "I</p> <p>20 understand that Superintendent Richardson</p> <p>21 did in fact communicate with the DPP who</p> <p>22 confirmed that JL</p> <p>23 was to be treated as a suspect. Furthermore,</p> <p>24 that he would not advise on the team's</p> <p>25 intended</p> <p style="text-align: center;">Page 176</p>

44 (Pages 173 to 176)

<p>1 course of action as this was purely an 2 operational matter for the RGP to decide 3 upon but 4 that he would defend the actions if and when 5 it was needed to - - Superintendent 6 Richardson 7 will no doubt be able to corroborate this." 8 Why does your evidence not mention the 9 DPP's preference for a production order? 10 A. Because it did not feature prominently in 11 the brief that I received. The main emphasis 12 was that the classification of Mr Levy was 13 suspect and the method to deal with him was 14 up to the RGP to decide according to the 15 DPP. What the level of discussion that Mr 16 Richardson or Mr Wyan had with the DPP on 17 the merits or not of the warrant, I am not 18 privy to, but from what they mentioned is 19 that they also sort of didn't feature, it was a 20 secondary matter and not necessarily 21 prominent. 22 Q. Then moving forwards to the --- sorry, 23 moving backwards to 7 April 2020, there was 24 a meeting between you, Superintendent 25 Richardson, the Attorney General and Mr</p> <p style="text-align: center;">Page 177</p>	<p>1 Q. Can we look at paragraph 21 and 22 of 2 your first statement, this is your account of 3 what occurred at the meeting, you talk about 4 the Attorney General addressing the charges 5 and the number of charges and he was 6 illustrating on his writing pad, streamlining 7 80 charges down to 17 and you say, "I asked 8 him to rationalise these thoughts but he 9 replied saying that this was just an example. 10 The concept of providing sample counts 11 instead of a proliferation of charges is based 12 on being able to capture as much of the 13 evidence as possible of all the alleged 14 criminal behaviour and for this to be 15 reflected in a reduced charge format. I was 16 asking for the AG's rationalisation to better 17 understand whether he was considering doing 18 away with certain types of offences or simply 19 reducing the repeated counts i.e. was he 20 thinking of samples of the alleged 21 unauthorised access to computers and do 22 away with the conspiracy charges or was he 23 considering both - and which counts would 24 be considered and which would, not, and 25 why. Notwithstanding this, the question of</p> <p style="text-align: center;">Page 179</p>
<p>1 Devincenzi, you will be aware that there is a 2 disagreement about what exactly was said at 3 that meeting or what was understood, but in 4 terms of the date there is also a bit of doubt 5 as to whether it happened on 7 April or 6 actually in early May. What is your position 7 as to when the meeting took place? 8 A. I think that that meeting was called by the 9 Attorney General and I got the date from my 10 Outlook Calendar I believe. It should be 11 disclosed in my bundle when I was allowed 12 to --- and it's confirmed but I even knew 13 about this date before I got confirmation of it 14 subsequently. For some reason I had a paper 15 which I haven't been able to find and it's 16 somewhere amongst --- 17 THE CHAIRMAN: (To the witness): You 18 can --- you are agreeing that it was on 7 19 April? 20 A. Yes. 21 THE CHAIRMAN: Let us move on from 22 there. 23 MR SANTOS: (To the witness): Did you 24 take any notes of this meeting? 25 A. No, because Mr Richardson was there.</p> <p style="text-align: center;">Page 178</p>	<p>1 proffering charges was still, in my view, 2 premature because the investigating team still 3 had to interview JL. His interview could lead 4 to more counts being added or clarify matters 5 and therefore generate less counts. It was 6 clear to me and the investigating team that 7 charges could not be proffered until all 8 enquires with 9 suspects had been closed. That particular 10 meeting ended with the AG asking us to 11 revert to 12 see him once we had listed all the charges 13 that had been uncovered." Did you agree to 14 rationalise the charges at that meeting? 15 A. Eventually, yes, we rationalised them 16 once the --- all lines had been exhausted. 17 Q. Did you agree to do that before taking 18 any further steps in the investigation? 19 A. No. 20 Q. Given that you were receiving advice 21 from the Attorney General to slim down the 22 charges, did that make you think it was an 23 important step in the investigation? 24 A. No. What struck me was that it was the 25 AG calling me to discuss this matter of</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

1 **charges rather than a matter which is ---**
 2 **which I feel is the cockpit of the DPP but,**
 3 **look, I have --- I enjoyed a good working**
 4 **relationship with the AG and he's the AG.**
 5 **He's the DPP's boss although he's not --- he's**
 6 **delegated his prosecutorial power to the DPP**
 7 **but, look, I had no issues in that regard until**
 8 **later on.**
 9 Q. Did you record your agreement to
 10 rationalise the charges anywhere?
 11 **A. No, but I have to agree that what I**
 12 **remember seeing was that he had --- he was**
 13 **not doodling but he was --- he had a scrap**
 14 **piece of paper and he was explaining from 76**
 15 **or 80 charges this could go down to 25, then**
 16 **streamline it first.**
 17 Q. I just asked because you said that in your
 18 statement, you do not have a note of what
 19 was agreed?
 20 **A. No.**
 21 Q. Can we turn to Mr Devincenzi's version,
 22 it is A1305, that is paragraph 4 and he says,
 23 "The Attorney General initially raised a
 24 concern about number of charges." He told
 25 you that the numbers seemed high and then

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1 therefore, advised Mr McGrail that I
 2 considered it vital that the investigation
 3 should proceed and be conducted prudently
 4 and with tremendous care. With this in mind
 5 I explained to Mr McGrail that I was deeply
 6 concerned that the RGP were proceeding
 7 without first resolving the ownership dispute,
 8 since it seemed to me that the issue would
 9 likely have an impact on some of the
 10 proposed charges. I told him that I was also
 11 concerned about the proposed number of
 12 chares, 76, which seemed wholly excessive.
 13 I reminded Mr McGrail of the general
 14 wisdom of focusing charges appropriately."
 15 Do you agree with that account of what was
 16 said?
 17 **A. The concept is there but it did not --- it is**
 18 **coming across as lecturing us in what we had**
 19 **to do and whilst if I didn't know that I had to**
 20 **do it, I would have welcomed that lecturing**
 21 **but the fact is that we went to that meeting**
 22 **knowing that we had to do what he was**
 23 **saying.**
 24 Q. Was it a lecturing?
 25 **A. No, not at all, at all. He comes across**

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1 he said five lines from the bottom, "I
 2 understood the task of rationalising primarily
 3 to mean pruning the list to make sure the
 4 charges did not overlap but also making
 5 certain the RGP could properly substantiate
 6 them. My impression was that Mr McGrail
 7 and Mr Richardson were open to undertaking
 8 this exercise if not wholly convinced it was
 9 necessary and said they would report back to
 10 the Attorney General and the DPP." Do you
 11 agree with that account?
 12 **A. Absolutely. In fact that we were**
 13 **convinced, no we already came with that**
 14 **frame set --- with that mindset, it was**
 15 **something that was a no brainer, this is what**
 16 **was going to happen but we wanted to hear**
 17 **what the AG --- he had called the meeting so**
 18 **we wanted to hear what he had to ask us**
 19 **about.**
 20 Q. Then can we go to the Attorney General's
 21 version which is at A277, paragraph 29, he
 22 says, "In that meeting, Mr McGrail and I
 23 agreed that, as he had said in his original
 24 email of 11 May 2019, the investigation did
 25 indeed raise issues of serious concern. I,

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1 **here as saying that the RGP don't know what**
 2 **they're doing in the bottom line and that**
 3 **certainly was not the case. This had already**
 4 **been considered and it is a natural thing for**
 5 **us --- Mr Devincenzi's account is far more**
 6 **accurate in the sense that he says they were**
 7 **wholly accepting --- it wasn't agreed that**
 8 **there was never going to be any contention**
 9 **issue for us.**
 10 Q. And then if we go to 32, he says, "After a
 11 long and amicable discussion, we reached
 12 what for me was a very clear understanding
 13 between us, namely, that the RGP would not
 14 take any further action until they had (i)
 15 clarified the question of the ownership of the
 16 NSCIS platform; (ii) rationalise the charges
 17 which the DPP had told me was extremely
 18 possible to do and (iii) whereupon Mr
 19 McGrail would meet with me and the DPP
 20 before taking any further steps. It was clear
 21 beyond peradventure that nothing other than
 22 what we had agreed to do would happen until
 23 we meet again." Just breaking that down, do
 24 you agree that there was a clear
 25 understanding between you that the RGP

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<p>1 would not take any action before the RGP 2 clarified the question of ownership? 3 A. There was absolutely no arrangement or 4 that sort and there can't --- it can only be put 5 at the extreme case, extreme case, to 6 misunderstanding but certainly that was not 7 what was on the cards --- what was 8 discussed. 9 Q. What about taking no further steps --- 10 that the RGP would not take any action 11 without rationalising the charges? 12 A. Or sorting out the ownership for that 13 matter, no, that was not an arrangement that 14 was entered. 15 Q. Were either of those two issues resolved 16 before 12 May 2020, ownership or charges? 17 A. I think it was a question of ownership by 18 then had been squared off with the DPP and 19 Mr Wyan that it was not a necessary act --- 20 yes, I'm pretty sure that by then ---- 21 Q. The alternative route had been identified? 22 A. Yes. 23 Q. But in terms of sorting out the position of 24 ownership with the government ---- 25 A. The government had not responded. We</p> <p style="text-align: center;">Page 185</p>	<p>1 basis that the ownership of the platform had 2 not been established." 3 A. That is not the meeting of the 7th. 4 Q. That is the earlier meeting that you were 5 referring to previously 6 A. Yes, and it could well be, because I'm 7 trying to piece together when was the DPP 8 present and it is quite possible that this was 9 on the back of an Operation Kram meeting 10 where the DPP said, "Don't worry about the 11 notification of action," it could have been 12 there and on the back of that one, this was 13 discussed. That's just to provide as much 14 help as I can in the context. 15 Q. Given that the AG had once asked you to 16 pause the investigation, if not on 7 April, and 17 you had decided to proceed with the warrant, 18 why did you not consider updating him 19 before proceeding with the warrant? Or shall 20 I just ask you the question without anything 21 beforehand, why did you decide not to 22 inform the AG before proceeding with the 23 warrant? 24 A. It is not common practice to advise an 25 AG. I don't think I have ever done so. I</p> <p style="text-align: center;">Page 187</p>
<p>1 were still no wiser as to what the government 2 --- the government's argument for its claim or 3 what the ownership was. 4 Q. Do you accept that the Attorney General 5 asked you to pause the investigation before 6 taking any further steps at that meeting? 7 A. Not at that meeting. He had done that in 8 previous ones which is what I started to gain 9 the vibes of him wanting to stall it by the 10 question of using the question of the 11 determination of the ownership and not at 12 that meeting. 13 Q. If we can --- just before we pause, can I 14 take you to B74 again, this is your email of 15 12 May, uncorrected version, and feel free to 16 correct me with your hard version, but in the 17 bottom bit of B74, what is stated here is the 18 final paragraph, "I get periodic briefs from 19 the investigating --- on the progress of the 20 investigation. I am fully aware of the full 21 range of sensitivities surrounding the matter 22 because of the personalities involved. At a 23 meeting in the office of the AG with the DPP 24 present, the AG was suggesting that I stop 25 the investigation from progressing on the</p> <p style="text-align: center;">Page 186</p>	<p>1 don't think I have ever done so. To give 2 advance notice of operational activity is not 3 good practice in this regard and I don't think 4 it would have been proper but in any event I 5 had not --- I don't have any experience of 6 telling the AG beforehand --- not whether it 7 is Mr Llamas or whether it's been a previous 8 AG, "Look, we're going to do this," I don't 9 think I have ever come across that situation. 10 MR SANTOS: Thank you, Mr McGrail, we 11 are about to turn to the events of 12 May but 12 I think that is probably a convenient moment 13 for the break. 14 THE CHAIRMAN: We will adjourn. 15 (15.26) 16 (Adjourned for a short time) 17 (15.36) 18 MR SANTOS: Just, McGrail, turning to the 19 events of 12May can we please go to your 20 statement at A190, paragraph 40. That 21 would be in your case your third witness 22 statement. Sorry, no, you will have to follow 23 this on screen, this is not your statement, 24 sorry. This is the Chief Minister's witness 25 statement setting out your Whatsapp message</p> <p style="text-align: center;">Page 188</p>

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<p>1 to him of 12 May at 12.25. Why did you 2 decide to send this message to the Chief 3 Minister? 4 A. It was a sensitive intervention and I did 5 not want him to hear it from anybody else 6 first other than myself. 7 Q. The reply from the Chief Minister is over 8 the page -- 9 THE CHAIRMAN: Why do you say that it 10 was in relation to the case against Perez, 11 Cornelio and Sanchez and not in relation to 12 the case against Mr Levy himself? 13 A. Well, it does - it says Hassans for JL, 14 meaning James Levy, in respect - because the 15 other three had already been arrested, had 16 been processed and interviewed, but this was 17 in relation to an intervention at Hassans for 18 JL, Mr Levy, in relation to the case of. 19 THE CHAIRMAN: But it was not in 20 relation to their case, the search warrant at 21 Hassans was in relation to the case against 22 Mr Levy. 23 A. Yes, yes, but it was in relation to the pre- 24 arrests of the other three defendants. It's 25 what's related to it, being connected to it.</p> <p style="text-align: center;">Page 189</p>	<p>1 A. I informed the Chief Minister at the latest 2 possible opportunity, in his capacity as Chief 3 Minister, not as a friend or because of his 4 personal relationship with Mr Levy. I think 5 that it was a good call because advising him 6 beforehand, who knows what could have 7 happened, so I think it was the right call of 8 me to advise him at the point of - as close to 9 the point of intervention as possible. 10 Q. Did you agree with his comments about 11 requesting the information voluntarily? 12 A. No. 13 Q. Why not? 14 A. I had the knowledge of the reasons why 15 the officers had sought the search warrant 16 and there was concern that Mr Levy could 17 dispose of evidence if he was put on notice. 18 And as it happened, I am not alive to the 19 processes of warrants and the provisions that 20 go attached to it, but as it applies in this 21 case, and we have heard from Mr Wyan and I 22 didn't know the ins and outs of it, but that 23 was part of the provision, to ask for voluntary 24 handing over in lieu of executing the warrant, 25 but have the warrant there in case the</p> <p style="text-align: center;">Page 191</p>
<p>1 THE CHAIRMAN: Anyway, you did not 2 mean anything significant by that. 3 A. Other than let him know that we were 4 doing this activity on Mr Levy. 5 MR SANTOS: The Chief Minister's reply is 6 on the following page: 7 "Ian, Thank you for the courtesy of this 8 information. I think that is a bad decision. A 9 search warrant should only have been sought 10 if you believed that the person in question 11 was not going to cooperate and will try 12 destroy evidence. If, as you say, you are 13 hoping for cooperation, especially in a case 14 involving a senior Silk and head of 15 Gibraltar's largest legal firm, you should, in 16 my view, first have sought to contact that 17 person and obtain cooperation. Given my 18 close personal relationship with JL, I won't 19 comment further." 20 Now, the Chief Minister refers to his close 21 personal relationship with Mr Levy. You 22 were obviously aware of this, so did you still 23 consider it appropriate to notify the Chief 24 Minister of the warrant notwithstanding that 25 relationship?</p> <p style="text-align: center;">Page 190</p>	<p>1 voluntary consent was not presented. 2 Q. Did you agree with the Chief Minister's 3 view that he should not comment further? 4 A. Absolutely. If only, if only he had kept 5 to that comment. 6 Q. Can we now look at A279, please. You 7 send a materially identical message to the 8 Attorney General, 37. Why did you feel the 9 need to update the Attorney General? 10 A. Again, for the same reasons that I've 11 alluded to in terms of the Chief Minister. It's 12 a high profile individual, Mr Levy, and it was 13 going to have an impact so best hear it from 14 me than get it from another source. I did the 15 same with the Minister of Justice who was at 16 the meeting with me. I have to say that I did 17 not know the time, although I knew that there 18 was a warrant going to be executed, I did not 19 know the time this was going to happen. 20 What I had asked the team to do was to give 21 me a minute's grace before actually 22 intercepting, wherever they were going to 23 intercept, so that I could advise the 24 personalities involved. And I did so, and I 25 was at the meeting in the bunker with Miss</p> <p style="text-align: center;">Page 192</p>

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<p>1 Sacramento and I text her the same message 2 and she acknowledged. I can't remember 3 whether she acknowledged by text - I would 4 have to check - or whether she went to the 5 nod, she was sitting across the room and she 6 nodded. Probably both. 7 Q. The Attorney General's response to your 8 message is on the following page: 9 "Ian, we had agreed that you would come to 10 me with a rationalisation of the charges 11 before doing anything?" 12 You reply: 13 "We agreed we'd do that when all the loose 14 ends were tied up and this included the 15 enquiries with JL." 16 "No. That was not what we agreed," 17 the Attorney General answers, and you say: 18 "I am in the bunker. Will come round to 19 your office as soon as I finish here." 20 What were your thoughts about the Attorney 21 General's response? 22 A. That he had completely misconstrued the 23 situation. 24 Q. Now, in terms of the meeting with the 25 Chief Minister and the Attorney General, I</p> <p style="text-align: center;">Page 193</p>	<p>1 A. No. 2 Q. Over the page on B75 you give an 3 account of what occurred in the penultimate 4 paragraph, last line. You say: 5 "A few minutes later the CM and AG entered 6 the room from the CM's office. The CM 7 states words to the effect in both the English 8 and Spanish language: 'What are you doing, 9 Ian? This is a complete blunder. Why go 10 with a warrant? Do you suspect Haim has 11 committed a crime? Look, Haim can be 12 many things and he has been in messes 13 before but he's not a criminal. He's a senior 14 silk, head of the Jewish community, helps out 15 the RGP if needed, he is the head of the 16 biggest law firm and he has a very good 17 reputation as a lawyer. Are you suggesting 18 that Haim would destroy or dispose of 19 evidence? You know Gibraltar. This will 20 get out and you are managing this 21 investigation very, very wrongly. Why didn't 22 you ask him to give you what you needed?" 23 To this I said that what the team were after 24 were devices which we knew JL would not 25 hand over unless compelled to do so with a</p> <p style="text-align: center;">Page 195</p>
<p>1 think it is clear that you did not take 2 contemporaneous notes of that meeting, but 3 correct me if I am wrong. 4 A. The notes that I took, which are here in 5 the email, they were typed out practically as 6 soon as I got to the station. After I briefed 7 my team I got down and started typing those 8 notes out. I saved them on to the desktop and 9 then when I got home there is a possibility 10 that I added more to the notes and then 11 emailed those notes to myself. So I 12 definitely started that way, way - before the 13 close of play, must have been 2.00 or 14 3.00pm. 15 Q. So that is the earliest contemporaneous 16 note or the earliest note that we have from 17 you as to what occurred in that meeting. 18 A. I believe so, yes. I don't think the Chief 19 Minister or the Attorney General made any 20 notes. 21 Q. No, no, I am referring to you. 22 A. Ah, okay. 23 Q. There is no other file saved that you -- 24 A. No. 25 Q. ... talk about in the desktop.</p> <p style="text-align: center;">Page 194</p>	<p>1 warrant. CM says words to the effect: 'But 2 have you asked him?' I felt the CM was 3 questioning an operational decision on a live 4 criminal matter and that this was not 5 appropriate. He said he hoped that I was 6 right and that he was wrong as there would 7 be consequences if he was found to be right, 8 in that we had not conducted ourselves 9 properly on this matter." 10 Is that still your recollection of the 11 conversation that took place? 12 A. That is the text of it. There was a lot of 13 emotion, there was a lot of anger. The Chief 14 Minister's steamed into that room with - I've 15 never seen him before like that: flared 16 nostrils, disjointed face, and really let rip. 17 Q. What did you understand the Chief 18 Minister to mean when he said there would 19 be consequences if he was found to be right? 20 A. (Pause) That my head was on the line. 21 Q. You say it was not appropriate for the 22 Chief Minister to be questioning you on an 23 operational decision on a live criminal 24 matter. Did you feel it was open to you to 25 ignore these comments and press on?</p> <p style="text-align: center;">Page 196</p>

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<p>1 A. Sorry, can you repeat? 2 Q. Yes. 3 THE CHAIRMAN: Are you feeling all 4 right? 5 A. Yes, sir. 6 THE CHAIRMAN: You are sure? 7 A. I am. 8 MR SANTOS: Do say if you need a break at 9 any stage. You say it was not appropriate for 10 the Chief Minister to be questioning you on 11 an operational decision on a live criminal 12 matter. Did you feel it was open to you to 13 ignore these comments and press on? 14 A. It was not - at that moment in time that 15 was not in my mind. I was absorbing the 16 rebuke as much as I could. I couldn't think 17 further than what was happening at that 18 moment. 19 Q. Then if we read on, you say: 20 "He stated that he would be calling in the 21 senior command team to address us on how 22 inept we were investigating white collar 23 crime. I advised that the warrant had been 24 signed by a judge who was satisfied that this 25 was the likely method we had to resort to in</p> <p style="text-align: center;">Page 197</p>	<p>1 "Look, I am not shrugging responsibility here 2 but the team has been consulting with the 3 DPP on this." That is the extent of my input 4 that, in that sense. 5 Q. Given the context of the conversation was 6 about the choice of warrant or a voluntary 7 handover production order, was that not a 8 reference to the warrant? 9 A. No. 10 Q. What was it a reference to? 11 A. To the general issues of how Mr Levy 12 had been addressed, because Mr Picardo was 13 arguing that: (a) it was a commercial dispute; 14 (b) that Mr Levy was not - that we were 15 being advised wrong on his status as a 16 suspect; that he could be many things but he 17 was certainly not a criminal, so he was 18 advocating for Mr Levy in the strongest and 19 angriest of terms. 20 Q. Did you not consider that using that 21 general phrasing, that the DPP had been 22 consulted throughout, might be interpreted as 23 meaning that the DPP had advised in favour 24 of a warrant? 25 A. It seems to be that that is what they</p> <p style="text-align: center;">Page 199</p>
<p>1 order to recover the material which could 2 hold evidence, and that all the grounds to 3 deal with JL had been consulted with DPP. 4 CM dismisses this, saying that it is very easy 5 to obtain a search warrant. CM was very 6 angry that we had obtained a warrant without 7 considering a voluntary handing over of the 8 material we were after. I posed the question 9 whether he genuinely believed JL would be 10 handing over the material if asked without a 11 warrant. CM said he would not. There was a 12 heated debate on whether the actions of the 13 team were proper or not, with me saying they 14 were and the CM saying they were not. I 15 stated that it would be left to a court to 16 decide who was right or wrong. I said this 17 because CM said that JL should not hand 18 over his mobile device to the RGP but would 19 do so to a court." 20 Just focusing on the words you say "the 21 grounds to deal with JL had been consulted 22 with the DPP", are those the exact words that 23 you used in the meeting? 24 A. I cannot say that those were the exact 25 words but all I can say is that I told him:</p> <p style="text-align: center;">Page 198</p>	<p>1 interpreted, because Mr Llamas says that 2 they got the impression, but what is 3 categorical is that I did not say that the DPP 4 had specifically (as later they have alluded 5 to) specifically advised on the warrant. I said 6 that the DPP had been consulted by the team, 7 and ... 8 Q. Did you make clear that the DPP had not 9 advised on the warrant? 10 A. No, I did not make that clear. 11 Q. Sorry, I think I cut across you, so if you 12 were going to say something else, please ... 13 A. No, I did not make that clear. It was a 14 statement over a berating of a very serious 15 magnitude. The detail was not there - I was 16 being bombarded with questions: "But have 17 you asked him?" This is at the time when the 18 officers have just got in. It's not after the 19 event, the officers, as far as I understand, had 20 not even asserted their position with the 21 warrant, and I was already getting the 22 dressing down of my law enforcement career, 23 which in my view, then, and now, is 24 completely inappropriate and improper. 25 Q. Can I just take you back to where you</p> <p style="text-align: center;">Page 200</p>

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<p>1 say: 2 "I advised that the warrant had been signed 3 by a judge who was satisfied that this was the 4 likely method we had to resort to in order to 5 recover the material which could hold 6 evidence and that all the grounds to deal with 7 JL had been consulted with DPP. CM 8 dismisses this, saying that it is very easy to 9 obtain a search warrant." 10 Why did you not clarify at that point that you 11 were not referring specifically to the warrant 12 in terms of the DPP? 13 A. Because I didn't have to. They had the 14 warrant, which was signed by a judge, and 15 that for me is justification of the action. 16 Q. If we go to your statement, your third 17 statement, A119, please, paragraph 18 147(iii)(e). 19 A. Sorry, what paragraph was it? 20 Q. Sorry, 147(iii)(e). A119, so it is on page 21 69 of your statement. 22 A. A119? 23 Q. Sorry, A119, do you have that page? 24 A. Yes. 25 Q. There is (e) there, but just before I go to</p> <p style="text-align: center;">Page 201</p>	<p>1 "The CM insists in his letter that I told him 2 that the Op Delhi investigation team had 3 executed the search warrant on the advice of 4 the DPP. This was not the case - what I was 5 referring to was that the status of "suspect" 6 for JL had been the subject of consultation 7 and agreement with the DPP who had 8 advised the team generally on the 9 investigation throughout. Notwithstanding, it 10 is abundantly clear from my account and the 11 letter in question that the CM raised a 12 number of operational issues with me 13 concerning Op Delhi but yet in Parliament 14 claimed he had not." 15 Do you agree that what is said there is your 16 statement is more specific than what you 17 recorded as having said in your email of 12 18 May? 19 A. Clearly. I have elaborated from those 20 notes, I think the paragraphs that are included 21 in my statement are more elaborate, from 22 notes that I made, those contemporaneous 23 notes. 24 Q. When you say: 25 "What I was referring to was that the status</p> <p style="text-align: center;">Page 203</p>
<p>1 that, did you know at the time that the 2 officers - at the time this conversation was 3 going on, that the officers had not asserted 4 their authority under warrant yet? 5 A. I wasn't - I mean, there was only a spell 6 of being advised by Mr Richardson of one 7 minute, a couple of minutes after I engaged 8 with the Chief Minister over text, and maybe 9 ten minutes later I got called out of that 10 meeting to attend the cabinet room. So a 11 warrant is not going to be fulfilled, or the 12 objective are not going to be fulfilled in ten 13 minutes, not what they were certainly dealing 14 with. So I think it's an irrefutable assumption 15 that I'm making and can be explored with 16 time lines that at the time that I was getting 17 the rebuke the officers had still not asserted 18 themselves, they were probably even waiting 19 for Mr Levy to come, because that's 20 apparently what - how it unfolded, Mr Levy 21 was refusing. So they hadn't even had that 22 face to face with Mr Levy when I was 23 already getting the rebuke. 24 Q. In paragraph (e) here you are referring to 25 the CM's letter to the GPA. You say:</p> <p style="text-align: center;">Page 202</p>	<p>1 of 'suspect' for JL had been the subject of 2 consultation and agreement with the DPP," 3 are those words you actually said or are you 4 explaining here what you meant by the words 5 that you used? 6 A. I would agree with you that this is to do 7 what I meant, because it was the challenge 8 that Mr Levy was not a criminal, that what 9 we were investigating was not a crime, that 10 this was a civil dispute or commercial 11 dispute. So that is what I was trying to 12 impart, that: "Look, we have not done this 13 because we have woken up one morning and 14 said: 'We are going to go for Mr Levy'," this 15 has been well thought out and it's been 16 consulted, it's not an off-the-cuff action. 17 Q. Can we go back to B75 now and your 18 email. The next paragraph reads: 19 "AG stated that I had betrayed him because 20 the action carried out by the team was not 21 what had been agreed with him. 22 Notwithstanding that, what the AG stated 23 was incorrect. The AG has no operational 24 remit and his address to me in this regard is 25 wholly improper, more so when he had said</p> <p style="text-align: center;">Page 204</p>

51 (Pages 201 to 204)

1 that he was steering clear from the criminal
 2 investigation. I felt totally cornered, having
 3 to explain a tactical decision on a live
 4 criminal investigation. AG says words to the
 5 effect: 'Ian, I liked you and how you worked
 6 but as from today I cannot entertain you
 7 again. This really shocked and hurt me.' The
 8 AG couldn't be more mistaken. My
 9 hypothesis is that the AG himself is under
 10 some form of pressure to ensure that the
 11 investigation is terminated and the
 12 intervention of JL has shown him up for not
 13 having achieved the stopping of the
 14 investigation. It is not that RGP has put itself
 15 in this situation. The team has acted
 16 appropriately and without fear or favour. I
 17 fully understand there could potentially be
 18 reputational damage in a number of
 19 quarters."
 20 What did you mean there when you say, four
 21 lines from the bottom "the intervention of
 22 JL"? What was that a reference to?
 23 **A. Can you tell me ...?**
 24 Q. Just in the paragraph I have read.
 25 **A. Yes, that my hypothesis is that the AG**

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1 **himself ...**
 2 Q. "... is under some form of pressure to
 3 ensure that the investigation is terminated
 4 and the intervention of JL has shown him
 5 up."
 6 **A. Yes.**
 7 Q. What is that a reference to?
 8 **A. Okay. Mr Picardo in his berating was**
 9 **telling me that I should have advised the**
 10 **Attorney General because he is the leader of**
 11 **the Bar, or at least words to that effect, and**
 12 **he heads the disciplinary committees of the**
 13 **Bar. In other words, because there was**
 14 **suspected criminality of a lawyer involved**
 15 **that I should have consulted with him before**
 16 **the action we took. He was suggesting that**
 17 **whatever action had to be sanctioned by - or**
 18 **sanction or in consultation. Clearly that is**
 19 **not the way things work, how matters of this**
 20 **nature work.**
 21 Q. I am just asking you to explain the
 22 meaning of the words "the intervention of
 23 JL".
 24 **A. The fact that we had acted on Mr Levy.**
 25 Q. That is ...

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1 **A. No, no, the fact that we had acted against**
 2 **Mr Levy - well, if that is what you want I**
 3 **will stop it there, but I think the fact that we**
 4 **acted against Mr Levy had exposed the**
 5 **inability of the Attorney General, in my**
 6 **view, that he had to keep the lid on this**
 7 **particular job, by whatever means, whatever**
 8 **means, by referring to the stalling of the**
 9 **investigation due to ownership, by the**
 10 **suggestions of disciplinary route for Mr**
 11 **Sanchez, and there was other ingredients**
 12 **there that gave me the impression this man is**
 13 **under some brief to keep a lid on this. The**
 14 **fact that we had executed - taken executive**
 15 **action against Mr Levy had shown him up**
 16 **for not having been able to achieve his brief.**
 17 **That's what my theory suggests.**
 18 Q. Why do you say that the Attorney
 19 General cannot question you on an
 20 operational matter?
 21 **A. Because there is an independence issue**
 22 **here ion terms of the police, and the judiciary**
 23 **and law officers. There's an appropriate - if**
 24 **he wants to challenge there's an appropriate**
 25 **method to do so, not in the fashion that he**

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1 **did, acting as a wingman for the Chief**
 2 **Minister.**
 3 Q. Was the search warrant an operational, a
 4 strategic or a tactical decision?
 5 **A. That was a totally operational and tactical**
 6 **decision.**
 7 Q. Just further on, the next paragraph starts:
 8 "Further comments by the CM, the AG
 9 should have been aware of the intervention as
 10 he is leader of the Bar and heads the
 11 disciplinary committee for the Bar."
 12 Then further down, after those bullet points:
 13 "I have discussed the above with my
 14 command team senior officers, who are also
 15 concerned and worried about the level of
 16 interference by the CM and demeanour of the
 17 AG."
 18 Which members of the senior management
 19 team did you discuss the issue with on 12
 20 May?
 21 **A. Those that would have been present on**
 22 **the day at the station. Incidentally, I didn't**
 23 **remember Mr Richardson but he has**
 24 **confirmed that he attended. I definitely**
 25 **remember Mr Yeats because I took his**

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<p>1 counsel on him saying: "Ian, this is serious 2 enough, you should go to the Governor and 3 to the GPA." 4 Q. You mention Mr Richardson. He said he 5 was not there for this briefing as he was at 6 Hassans still at the time. Did you manage to 7 brief him at some stage? 8 A. Maybe the briefing took place by the time 9 he - I called him back. 10 Q. So do you remember one way or another 11 whether you briefed Mr Richardson 12 specifically? 13 A. I did. When I say I briefed the command 14 team, I say that anybody who was present on 15 duty at the time -- 16 Q. Sorry, my question is specifically about 17 Mr Richardson. Do you have a recollection 18 of briefing him? 19 A. On his own, no, but I remember gathering 20 the team and telling them. 21 Q. You say that you briefed the Chair of the 22 GPA. Do you have a note of that briefing? 23 A. No. 24 Q. You will have seen in Mr Britto's 25 evidence that he states that you met on 15</p> <p style="text-align: center;">Page 209</p>	<p>1 Q. Yes, sorry, but I think the Chairman's 2 question was as to when you asked for the 3 meeting first. 4 THE CHAIRMAN: I think you asked on 5 12th but I thought you met on 13th, but that 6 may be wrong. 7 A. It couldn't have been on 13th because my 8 notes, which are time stamped on 12th, say 9 that I met him in my office in person. 10 THE CHAIRMAN: Ah, okay. Yes. He 11 does not remember this meeting at all. 12 MR SANTOS: Dr Britto's evidence is that 13 he does not remember a meeting other than 14 on 15 May. 15 A. Mr Ullger was also present at this 16 meeting. 17 Q. Can we go to paragraph 34 of your 18 statement, which is at A11, your first 19 statement. It is at the top of that page, I am 20 just picking it up from the second line of 21 page A11, which is also page 11 of your first 22 statement. It says: 23 "I was struggling to understand how the CM 24 was seemingly aware of parts of the evidence 25 gathered in Op Delhi e.g. he was challenging</p> <p style="text-align: center;">Page 211</p>
<p>1 May and that that is the first time he learned 2 of Operation Delhi. Are you certain that you 3 informed him on 12 May? 4 A. Yes, and I also met him again on 15th. It 5 was a pre-scheduled meeting that we had, but 6 I either called him or text him saying: "I need 7 to brief you about an important matter," and 8 he popped in. 9 THE CHAIRMAN: That was the following 10 day, was it not? 11 A. No. On the same day. 12 THE CHAIRMAN: Did you not email him 13 on 12th and see him on 13th? 14 A. I think I text him. We can bring up the 15 ... 16 MR SANTOS: Yes, let us just have a look at 17 ... 18 A. I think it was by text that I asked that I 19 needed to brief him. 20 Q. We are just getting the text but Dr Britto's 21 evidence is that you on 12 May 2020 you 22 asked to see him. We will just find the texts 23 now. 24 A. No, we had a meeting scheduled for 15th 25 too.</p> <p style="text-align: center;">Page 210</p>	<p>1 the need to obtain JL's devices when, he 2 claimed, the investigating team already had 3 the data we needed from the other suspects. 4 What had been extracted from the suspects' 5 mobile devices was information that only the 6 investigating team and the DPP (and crown 7 counsel) would have been privy to. It is 8 certainly not something I would have 9 expected the CM to have been aware of." 10 (16.05) 11 What did he say to make you think that he 12 was aware of evidence? 13 A. Precisely that. Why do you need his 14 phones if you've got the other side's already. 15 Q. Did he mention anything more specific 16 than that? 17 A. He said, "You've got what you needed 18 from the others", and that is what struck me 19 saying, "How does he know what we've 20 got?" It's -- it phased me there and then. 21 Q. You state that he also made a passing but 22 seemingly unconnected comment that he had 23 earlier that morning been speaking to JL 24 about reopening the places of worship. Is 25 there a reason why that didn't feature in your</p> <p style="text-align: center;">Page 212</p>

53 (Pages 209 to 212)

<p>1 note of 12 May? 2 A. It doesn't, does it? 3 Q. We haven't been able to find it. 4 A. It's contained on the updated notes which 5 I did. So, for the purpose of everybody here, 6 I emailed myself these notes on the 12th, on 7 the same day of the meeting and then on the 8 following day, I again emailed myself with 9 further recollections of the meeting of the 10 12th and I also corrected some of the typos in 11 red of the original notes. And if I take you to 12 the third paragraph, it says, "He also said he 13 communicated with JL a lot and he'd only 14 been in contact with him that morning 15 discussing the reopening of places of 16 worship." That was relating to the pandemic. 17 So it was an unrelated comment which there 18 and then did not resonate much, because I 19 was not focused on where this was coming -- 20 I didn't know where this was coming from. I 21 was very much in shock and shaken, but he 22 did say that. And since then obviously I have 23 developed suspicions as to why he said it, but 24 I am sure you will take me to that. 25 Q. Can you describe -- you have described</p> <p style="text-align: center;">Page 213</p>	<p>1 years ago, I believe I have a good 2 recollection of it. I set out in the following 3 paragraphs my memory of that conversation 4 and the upshot of it for me. I made clear, in 5 firm and forthright language, to Mr McGrail 6 that I considered that the RGP had not acted 7 properly in the execution of a search warrant 8 in respect of a senior lawyer like Mr Levy. I 9 repeated the points made in my WhatsApp 10 reply. In person, I robustly told Mr McGrail 11 that he should not think that I was making 12 this point because I was close to Mr Levy. I 13 told him that I would be making the same 14 point if any other senior member of the legal 15 profession had been involved." 16 Do you agree that that was said? 17 A. Not in that context. Not in those softer 18 terms, no. 19 Q. But putting tone to one side, in terms of 20 the substance of the message, is that what the 21 Chief Minister said? 22 A. Yes, he said that we were not acting 23 properly, yes. He also mentioned that he 24 would have reacted the same had it been 25 other prominent lawyers. Yes, he mentioned</p> <p style="text-align: center;">Page 215</p>
<p>1 his demeanour. Did you feel that the Chief 2 Minister was attempting to influence you as 3 far as the investigation was concerned? 4 A. Not only that, he threatened me. 5 Q. Did you feel that he was pressuring you 6 as far as the investigation going ahead -- the 7 ongoing investigation was concerned? 8 A. I do. 9 Q. Would you say that you matched the 10 Chief Minister's tone? 11 A. I was trying to remain calm and collected, 12 professional. I measured my words but there 13 was no way of appeasing him. He was just 14 not -- there was no way of swaying him, of 15 trying to calm him down in any way 16 whatsoever. He was so angry. He was 17 furios. 18 Q. Can we go to his account of this please, it 19 is at A191. Just looking at 42, these are the 20 things that the Chief Minister says about that 21 meeting. "The Attorney General, who I 22 believe was with me at the time that I 23 received the WhatsApp from Mr McGrail 24 was present during the whole of this meeting. 25 Although that conversation was now two</p> <p style="text-align: center;">Page 214</p>	<p>1 two lawyers in particular. 2 Q. Then if you are finished with 44? There 3 is no secret over the names that he gave, the 4 names of Sir Peter Caruana QC (now KC) 5 and Melo Triay as senior lawyers who you 6 are ... and he says "who I am not personally 7 linked to and who have not been seen as 8 personal or political supporters of mine", but 9 I am just trying to get an indication from you 10 as to whether you disagree with the 11 recollection of what was said, subject to we 12 already have your evidence as to what the 13 tone of this was. But other than that, in terms 14 of what was said, do you disagree with 15 anything that he has set out there? 16 A. Yes, in that paragraph, yes. 17 Q. You agree? 18 A. Yes. 19 Q. Then 45, " I recall telling Mr McGrail 20 that the communications devices of senior 21 lawyers were likely to include legally 22 privileged material which would have to be 23 sifted through by the RGP in a warrant type 24 situation such as this one they had brought 25 about, an expertise which the RGP did not</p> <p style="text-align: center;">Page 216</p>

54 (Pages 213 to 216)

<p>1 have in dealing with 'white collar crime'. 2 Additionally, there would be personally 3 sensitive information on such devices. I told 4 Mr McGrail that there would be myriad, 5 unrelated, conversations between Mr Levy 6 and me, for example, on matters outside the 7 RGP's interest, but which would be private." 8 In your recollection did he say these things? 9 A. Not to my recollection. 10 Q. What there did he not say? 11 A. That there would be conversations 12 between him and Mr Levy on private 13 matters. I can't recall him saying that. And 14 the context of the white collar crime was not 15 in that context. The white collar crime was a 16 more generalised comment that the RGP 17 were inept to investigate white collar crime. 18 Q. If you are done with 45? 19 A. And the question of legally privileged 20 material, he raised it and I said that measures 21 were in place that would protect that, and he 22 said, "That's what you say." I said, "Well, 23 you'll have to trust me." But that was the 24 challenged. So whatever I was saying was 25 coming back straightaway with double jabs.</p> <p style="text-align: center;">Page 217</p>	<p>1 reputational damage or anything of that . It 2 was to seek his support for the creation of a 3 task force of multi agencies to address this 4 money laundering investigation, and I briefed 5 him on that and it followed a letter to all 6 heads and this communication that was 7 exchanged and the Chief Minister was 8 absolutely in total support. He knew the 9 subject or the lawyer in question, and the 10 only reference to that lawyer in question in 11 this particular case was, "Why are you 12 focusing on Mr Levy when you should be 13 focusing on Mr Miles." That is what he said. 14 It's not the question of further elaboration as 15 he said. That was not -- it was another sort 16 of punch saying, "And you're focusing on 17 James, Mr Levy. Why don't you focus on 18 Miles." 19 Q. The first sentence, though, do you 20 disagree that that was said? "I said that if the 21 police were investigating a lawyer for an 22 offence in respect of which they might 23 destroy evidence, then they could seek to 24 persuade a magistrate of the need for a search 25 warrant."</p> <p style="text-align: center;">Page 219</p>
<p>1 Q. Then he says, " I said that if the police 2 were investigating a lawyer for an offence in 3 respect of which 4 they might destroy evidence, then they could 5 seek to persuade a magistrate of the need for 6 a search warrant. I believe I also gave the 7 example of another ongoing investigation 8 which Mr McGrail had himself also alerted 9 me to, namely an investigation into another 10 lawyer who I had been informed by the then 11 Commissioner was being investigated for 12 large scale drug money laundering with, he 13 had told me, greatly incriminating factors. 14 Mr McGrail had alerted me to this latter case 15 given the potential damage to Gibraltar's 16 reputation as a financial services centre from 17 the impending arrest of this lawyer, which he 18 had told me repeatedly was imminent." 19 Is that something -- 20 A. No. He's got that completely wrong. 21 He's conflated two different issues. 22 Q. Well, in terms of what he said to you, it's 23 that he said -- 24 A. It's true that I briefed him on another 25 matter, but not because of the question of</p> <p style="text-align: center;">Page 218</p>	<p>1 A. No, I cannot associate myself with any of 2 that. 3 Q. Then 47, "During the course of this 4 conversation, I was both angry and seriously 5 concerned about the effect of the RGP's 6 actions. I told Mr McGrail that I could 7 imagine that the Government might face 8 financial consequences from claims for 9 damages for breaches of privacy, 10 confidentiality and other claims." 11 Did he say that to you? 12 A. No. He only said that there would be 13 consequences if he was found -- that he 14 hoped that I was right because if I wasn't 15 obviously there was going to be 16 consequences and he left it at that and I took 17 it like I've explained. 18 Q. Then he said, "I told Mr McGrail that Mr 19 Levy and we were all officers of the Court. 20 In circumstances such as these, the duties of 21 an officer of the Court would require us to 22 cooperate and provide such information as 23 we might have available on the basis of an 24 Order (be it a Production Order or another 25 type of Order to disclose information or for</p> <p style="text-align: center;">Page 220</p>

55 (Pages 217 to 220)

<p>1 discovery of documents and data). I added 2 that I believed that Mr McGrail knew that my 3 position in respect of this investigation was 4 that it should of course continue and that if 5 evidence was found of corruption in public 6 office of one of the persons being 7 investigated, who was a civil servant, I had 8 been clear that the Government would be the 9 complainant in those circumstances." 10 A. He did say that. He did say that if Caine 11 Sanchez was in any way implicated that the 12 Government had to be the complainant. I 13 said, "Look, he may be facing a charge of 14 misconduct or misfeasance in public office. 15 Even with that offence, we have to be the 16 complainants." 17 Q. Then he says that in response to his 18 points -- 19 A. And that is the point, at that point, despite 20 all the shock, I'm thinking, hang on, this is 21 now -- we've got the Attorney General telling 22 me a couple of weeks back, "Why don't you 23 deal with Mr Sanchez via the disciplinary 24 route?", and now I'm getting it from the 25 Chief Minister that they have to be ... you</p> <p style="text-align: center;">Page 221</p>	<p>1 Did you say that? 2 A. I've qualified in my statements that I can't 3 recall saying that, but if I did, it was in the 4 context that I think Mr Richardson explained 5 yesterday. To any veteran police officer, and 6 I've even since established that even my 7 junior counsel, who is not that old, still 8 considers the AG's chambers to be that of the 9 prosecution Crown prosecutors. So, if it was 10 a slip of the tongue, I have sought advice 11 from the AG's chambers and they jump back 12 at me, as I'm saying this is -- I said, "Well the 13 DPP". That is what I am trying to say, 14 because even till today when I talk about 15 with ex colleagues the AG's chambers, is the 16 Crown Counsel's office, which now is called 17 the OCPL. But they are using this and it 18 does hurt, because it seems as if in front of 19 the most, two very powerful and high profile 20 officials that I am messing about with and 21 reacting in a way that shows no integrity. 22 And they are using this example, which is 23 very regrettable that they are using because 24 there's nothing to it. 25 Q. Do you recall the Attorney General</p> <p style="text-align: center;">Page 223</p>
<p>1 cannot move on Mr Sanchez unless we say 2 so. So that was already chiming big time. 3 Q. He then says that you told him that the 4 warrant had been granted by the court and 5 that you should let the court decide if it had 6 been properly granted and that he said that 7 was not the point as the damage in attending 8 Mr Levy's home and office in execution of 9 the warrant had already been done and that 10 he knew from his previous practice that the 11 justices of the peace routinely granted 12 warrants based on the information laid before 13 them without careful legal analysis. Do you 14 recall an exchange of that nature? 15 A. He said that warrants were very easily 16 obtained. He never mentioned justices of the 17 peace. In any event, this was not a JP that 18 did it, it was a magistrate, but he did not 19 detail. He said that it's very easy to get a 20 warrant and that we were wrongly advised in 21 terms of I understood the suspect's status of 22 Mr Levy. 23 Q. At 49 he then says, " Mr McGrail then 24 retorted that he had taken the advice of the 25 Attorney General on this matter."</p> <p style="text-align: center;">Page 222</p>	<p>1 saying that it was not true that you had taken 2 advice? 3 A. I explained if it did happen, I cannot 4 recall but if it did happen, it was in that 5 context and it must have been one after the 6 other. "The AG, sorry the DPP." Confusion 7 of the ... 8 Q. Then the Chief Minister says, "Mr 9 McGrail then insisted that he had sought the 10 advice of the Director of Public Prosecutions 11 on whether to obtain a search warrant or a 12 production order for Mr Levy. Mr McGrail 13 then specifically told me that the advice of 14 the DPP was that they should proceed by 15 way of search warrant." 16 A. That is not what was said, and thankfully, 17 because of the evidence that has transpired, 18 according to Mr Llamas, it was an 19 impression that they got not that I 20 categorically said that. I'm so grateful that 21 that has been disclosed. Look, if that is the 22 impression that they got because of what I 23 said, I can to a certain extent perhaps now in 24 the cold light, accept that they may have got 25 that impression when I said it, but there is no</p> <p style="text-align: center;">Page 224</p>

56 (Pages 221 to 224)

<p>1 way that I categorically said the AG has ... 2 the DPP -- there we go -- that the DPP has 3 advised on the warrant, because (a) I knew 4 that they hadn't, that the team had gone on it, 5 why was it just ... it's nonsensical. Why am 6 I going to say that the DPP ... it's going to 7 come out. It doesn't make any sense. 8 Q. According to the Chief Minister, the 9 Attorney General then said he did not believe 10 that the DPP had given such advice and the 11 Chief Minister agreed with him. D you recall 12 that being said? 13 A. What I do recall is the Chief Minister 14 saying that he believed that we had been 15 wrongly advised and I took that to be in the 16 context of Mr Levy as a suspect, that he was 17 convinced that Mr Levy was not a criminal. 18 Q. Did you at any stage clarify that you were 19 only talking about the grounds? 20 A. No. 21 Q. Can we go to your fifth affidavit at 22 paragraph 114. This is at 165 please. 23 A. 104? 24 Q. 114, it is at the bottom of page 24 of your 25 fifth affidavit. You say, "I refer to FP's</p> <p style="text-align: center;">Page 225</p>	<p>1 was totally untrue and I said so. I could not 2 believe he had said that. In fact, we had only 3 discussed the Criminal Investigation once, in 4 the meeting of 7 April 2020, during which 5 we had not discussed the issue of a search 6 warrant on Mr Levy at all. When I refuted 7 this, Mr McGrail then said that he had been 8 taking advice from the DPP and that the DPP 9 had advised him that the RGP should proceed 10 by way of a search warrant. The Chief 11 Minister and I told Mr McGrail that we 12 found it very difficult to believe that he could 13 have received such advice from the DPP." 14 Is your position the same as far as the 15 Attorney General's account is concerned? 16 A. Not all. 17 Q. Sorry, your position as to what you said? 18 A. My position is as I have articulated it, it is 19 not in sync with that. 20 Q. Sorry, I should have been a bit clearer. 21 You said that you had been taking advice 22 from the DPP but you didn't specify that it 23 related to the search warrant and that you 24 don't recall saying that you had taken the 25 advice of the AG, but if you had that was a</p> <p style="text-align: center;">Page 227</p>
<p>1 comments in para.49 that I claimed the RGP 2 had obtained advice from the AG regarding 3 the warrant ..." Sorry, we have actually 4 dealt with this. You have already explained 5 your position on this. Is it possible that you 6 referred to the AG's chambers, even with the 7 Attorney General standing right in front of 8 you? 9 A. Yes. 10 Q. Just looking then at the Attorney 11 General's account, which is at A280 -- 12 A. It is possible but I can't recall saying it, 13 but if it was, that's how it would have come 14 out. 15 Q. A280 now. This is the Attorney 16 General's account of what occurred and it is 17 very similar to the Chief Minister's so I am 18 not going to go through it line by line, but to 19 confirm the key point, can I take you to 43 20 and 44, which read as follows, "Secondly, Mr 21 McGrail sought to defend his decision by 22 making two comments which startled me. 23 He first said that he had been taking advice 24 from me and intimated that I had approved of 25 the course of action the RGP had taken. This</p> <p style="text-align: center;">Page 226</p>	<p>1 mistaken reference to the AG's chambers 2 which you corrected to the DPP? 3 A. Yes. 4 Q. Can we go to A310 please, this is Mr 5 Llamas's second witness statement, at 6 paragraph 45. He denies that he berated you 7 on 12 May 2020 in response to your second 8 witness statement. Do you maintain that 9 both the Attorney General and the Chief 10 Minister berated you or just the Chief 11 Minister? 12 A. The Chief Minister was the principal 13 berater and to a lesser extent Mr Llamas, but 14 he did and I couldn't believe it because I've 15 always had a good relationship with him. 16 And this is what was going through my head 17 that this man is obviously under some form 18 of pressure himself and has had to react in 19 this way. 20 Q. Did you feel that he was attempting to 21 pressure you? 22 A. There and then what he was doing was 23 calling my integrity into question and at the 24 same time siding up with the Chief Minister. 25 So he was berating me, a matter which I took</p> <p style="text-align: center;">Page 228</p>

57 (Pages 225 to 228)

1 **very much to heart that he was questioning --**
 2 **well, he was putting my integrity into doubt.**
 3 Q. But did you feel that he was pressuring
 4 you in relation to the ongoing investigation?
 5 **A. It was starting to tick in my head that**
 6 **there was something more than met the eye**
 7 **here and the events that followed from there**
 8 **on cemented that posture.**
 9 Q. Can we go now to B1417.
 10 THE CHAIRMAN: Can you just be a little
 11 more specific, than there was -- did he say
 12 something -- something more than meets the
 13 eye?
 14 **A. Yes, there was something there amidst**
 15 **more than met the eye, sir, in terms of the**
 16 **change in Attorney General's demeanour**
 17 **towards me and in fact it is qualified. It is**
 18 **qualified because, when he had a chat with**
 19 **me on his own the following day, he told me,**
 20 **"Ian, forget Attorney General to**
 21 **Commissioner of Police, this is Michael to**
 22 **Ian", he was showing that we had a**
 23 **relationship and that he felt that that**
 24 **relationship had been betrayed. But it was**
 25 **very -- it was a very emotional tone that sort**

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1 **of that he was shocked he'd been put in this**
 2 **position by me.**
 3 MR SANTOS: Can we go to B1417 please.
 4 These are the emails between the Attorney
 5 General and the Chief Minister, messages
 6 sorry, messages between the Attorney
 7 General and the Chief Minister. On 12 May
 8 he says, "Spoken to DPP. He is categorical
 9 that whilst he told RGP that an interview
 10 with JL would likely be necessary, he
 11 strongly advised against a search warrant."
 12 Does that accord with your understanding of
 13 what the DPP told Mr Richardson?
 14 **A. No, and this is what I want to say. If the**
 15 **DPP had strongly advised against a warrant,**
 16 **the warrant would probably not have been**
 17 **taken. There would be more consultation**
 18 **around that. To my understanding, there was**
 19 **never any strong objection or strong advice**
 20 **by the DPP. That's my understanding,**
 21 **because if I had known that myself, then**
 22 **matters would not have progressed any**
 23 **further until that was cleared up.**
 24 Q. The Chief Minister's response is entonces
 25 nos ha mentido a los dos meaning in that case

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1 then he lied to both of us, and the Attorney
 2 General says, "Exactly. He certainly gave us
 3 the impression that SW decision was
 4 sanctioned by DPP." He then says -- that's
 5 the message that you were referring to earlier
 6 -- "CoP has since called DPP trying to cover
 7 his back with him. I've told DPP not to say
 8 or do anything without speaking to me first."
 9 The Chief Minister, "Incredible. There is
 10 some game afoot here." Do you agree with
 11 what Mr Llamas says in terms of you giving
 12 the impression that the search warrant
 13 decision was sanctioned by the DPP?
 14 **A. I cannot comment on what impression**
 15 **they took because that's for them to assess.**
 16 **What I can say is what I said but what is**
 17 **clear from there is that it was a mere**
 18 **impression and not categorical as is now**
 19 **described. So basically, the allegation that I**
 20 **lied to the Chief Minister is not categorical**
 21 **according to this contemporaneous text.**
 22 Q. Did you call the DPP?
 23 **A. I can't remember I did, but if I did, it was**
 24 **certainly not to cover up at all. There was**
 25 **nothing to cover up. If anything, if there was**

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1 **a call and obviously the DPP will be able to**
 2 **recall if he does, I can only come up to what**
 3 **possibilities it could have been regarding that**
 4 **conversation. Definitely around the incident,**
 5 **but I can't recall it.**
 6 Q. Just bear with me one second. (Pause)
 7 Can we just deal with the correspondence on
 8 13 May 2020, B1902 please. This is a letter
 9 from Lewis Baglietto of Hassans to the
 10 Attorney General on the night of 12 May.
 11 Then if we go to your witness statement at
 12 paragraph 53, your first witness statement,
 13 that is A16, you say that you saw that email,
 14 that the AG had sent you an email on the
 15 previous day. You state that you were
 16 initially amenable to meet to discuss this
 17 email, however you later change your mind.
 18 Why did you change your mind?
 19 **A. Initially it is true that I said I was happy**
 20 **to meet, then when I met with my fellow**
 21 **colleagues, they expressed the view that it**
 22 **was not appropriate and I reconsidered and**
 23 **then politely declined the invitation,**
 24 **explaining that it was not appropriate for the**
 25 **Commissioner to meet up with the lawyer of**

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<p>1 a criminal suspect that was still to be 2 interviewed. And the tone of the email ... of 3 the Attorney General's response still gave me 4 those vibes that there was something more to 5 this. He told me that with respect it was his - 6 - he was the one who'd call whether it was 7 appropriate or not. 8 Q. Can we look at B1907 please. This is 9 your email to the Attorney General at 2.12 on 10 13 May, and in the fourth paragraph you 11 explain your reasons, you explain what had 12 occurred in line with the body worn video 13 footage. "Mr Levy pressed for an 14 explanation as to why we had not simply 15 obtained a production order and therefore not 16 need to use a warrant." And you set out the 17 reasons for that. Had those reasons been 18 explained to Mr Levy, or was this just you 19 explaining your actions to the Attorney 20 General? 21 A. This text was probably provided -- I 22 would not have had the detail of this text, this 23 was provided to me by Mr Richardson and/or 24 Mr Wyan. It is an account that I requested 25 from them to provide explanations to the</p> <p style="text-align: center;">Page 233</p>	<p>1 sinister whatsoever. 2 Q. If we can go to the transcript and pick it 3 up at the bottom of page 2 please, just on the 4 second page there, towards the top, you 5 actually discuss what had occurred with the 6 Attorney-General earlier where there had 7 been a conversation at the end of the meeting 8 about the 12th May? 9 A. Yes. 10 Q. And this is what you say to Mr 11 Richardson. You say: "Yeah, yesterday the 12 CM and erm I said and I said er uhm well 13 look, this is not a question of shrugging 14 responsibility. We have actually been 15 engaged with the DPP and I have his advice 16 on the question of having to do these, er 17 these interventions." Is that what you said to 18 the Chief Minister? 19 A. I've already explained what I said and it 20 was that the team had been engaging with the 21 DPP throughout the investigation and I did 22 not all go into specifics. 23 Q. Yes, but here when you are saying, a day 24 later, to Mr Richardson what you said to the 25 Chief Minister, you used the word "advice" -</p> <p style="text-align: center;">Page 235</p>
<p>1 Attorney General. 2 Q. Can we now just look at a conversation 3 that you had with Superintendent 4 Richardson. Sorry, Sir, this is going to take 5 just two more minutes, this section and then 6 perhaps we can consider what we do next. 7 Can we go to a conversation with 8 Superintendent Richardson after the meeting 9 of 13 May. After that meeting, you drove 10 back to the police station with Mr Richardson 11 and you continued -- we know that the 12 recording was running. 13 (16.35) 14 The transcripts which are exhibited to your 15 second witness statement do not include the 16 conversation that you had with Mr 17 Richardson. Do you know why your lawyers 18 did not include that conversation within the 19 transcript? 20 A. Because I did not present it to them. 21 That's entirely my fault. I did not -- I 22 stopped the transcript at the end of the 23 meeting. 24 Q. Is there any reason why you did so? 25 A. None - nothing whatsoever. No, nothing</p> <p style="text-align: center;">Page 234</p>	<p>1 you used the words "advice on the question 2 of having to do these... interventions".? 3 A. That is what the - I was telling Mr 4 Richardson what the Chief Minister was 5 claiming against me. 6 Q. Well, sorry, just to give you one more 7 chance to look at this. You say: "Yesterday 8 the CM and ... I ... I said ... well this is not a 9 question of shrugging responsibility. We 10 have actually been engaged with the DPP and 11 I have his advice on the question of having to 12 do these ... these interventions." Is that not 13 you quoting yourself? 14 A. Well, yes. Sir, I beg your pardon. You 15 are correct. 16 Q. And you then say "Now, he has taken 17 that..." As in the DPP advising that on the 18 warrant when I am referring to is the DPP 19 advising was what that - [Jamie] has." 20 A. Haim, yes. 21 Q. Sorry, Haim, yes correct. Is it possible 22 that you used the word "interventions" to the 23 Chief Minister? 24 A. That is not my recollection, no. 25 Q. Sir, I am just conscious that it is 38 past</p> <p style="text-align: center;">Page 236</p>

1 4.00 now. I am still not obviously - I am
 2 about to move to 13 May.
 3 THE CHAIRMAN: Yes.
 4 MR SANTOS: I am completely in your
 5 hands as to whether we stop today or whether
 6 we press on.
 7 THE CHAIRMAN: Well, you are going to
 8 need to finish tomorrow at a sufficiently
 9 early stage to allow others to have a fair
 10 crack of the whip.
 11 MR SANTOS: Could we go on perhaps for
 12 another 15 minutes today?
 13 MR CHAIRMAN: Yes, so far as I am
 14 concerned. Does anyone have any great
 15 difficulty with that? (No response) No.
 16 Well, we can go on until 5 o'clock.
 17 MR SANTOS: Thank you, sir. Is the witness
 18 - (To the witness) Are you okay to
 19 continue?
 20 **A. Yes, absolutely.**
 21 Q. Turning to 13 May meeting, I just refer to
 22 the fact that you took a secret audio
 23 recording of them. Why did you make these
 24 secret recordings?
 25 **A. Everything that I did on that day was**

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1 minutes at the end of the meeting?
 2 **A. I did not consider that. I did not.**
 3 Q. Did you consider asking the other people
 4 present if you could record the meeting?
 5 **A. I did not consider that.**
 6 Q. Why did you not consider those options?
 7 **A. I was so affected by what had happened**
 8 **the previous day my suspicions were piqued.**
 9 **It's with the benefit of hindsight that if I had**
 10 **asked for that conversation or announced it,**
 11 **that the conversation would not have been**
 12 **held in the same open candid manner that it**
 13 **was held. In other words, what was spoken -**
 14 **my belief, what was spoken would not have**
 15 **been spoken. And I am not proud that I did**
 16 **that. It's unprecedented but thank God I did**
 17 **it because the inquiry now has benefit. Look,**
 18 **when I did it I never had intention. The**
 19 **inquiry was - an inquiry was never on the**
 20 **radar. I had no intention of publishing it to**
 21 **any media, pass it on to the Sun. That was**
 22 **pure sort of protection from these powerful**
 23 **people. I'm not proud. I'm saying it. I'm not**
 24 **proud.**
 25 Q. Did you give any consideration as to

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1 **influenced by the berating and the joining of**
 2 **dots that I was doing in respect of the**
 3 **activities of the Attorney-General, and later**
 4 **on the intervention of the CM. I had very**
 5 **prominent in my mind the threat that had**
 6 **been levelled at me, the change in attitude of**
 7 **the Attorney-General, and I was now piecing**
 8 **that together to come to the conclusion that**
 9 **these high-powered individuals were batting**
 10 **for Mr Levy. And I felt vulnerable,**
 11 **extremely worried. There was also litigation**
 12 **threats from Hassans, and well suggested**
 13 **criminal offences of misfeasance in public**
 14 **office on the part of my officers, which I take**
 15 **that personal to me, and all that, coupled**
 16 **with, as I say, all the other ingredients that**
 17 **led to the intervention in terms of my**
 18 **meetings with the Attorney-General and the**
 19 **comments that he had made, and the**
 20 **misconstruing and the challenge on my**
 21 **integrity the day before, drove me to take that**
 22 **decision.**
 23 Q. Given your concerns, did you consider
 24 the option of suggesting that a minute be
 25 taken and that everybody agree on the

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1 whether making the record was lawful, for
 2 example, under Data Protection Law?
 3 **A. No. I didn't.**
 4 Q. Did you consider whether it was unlawful
 5 under any --
 6 **A. No.**
 7 Q. Putting legalities to one side, did you
 8 think it was appropriate to secretly record the
 9 Attorney-General and the DPP?
 10 **A. Under those circumstances I think it was.**
 11 **I feel it was and I strongly feel it was. Even**
 12 **with the - just coming to terms with it, even**
 13 **with my contemporaneous notes that I took,**
 14 **and I'm the only one that has presented notes,**
 15 **those are being challenged as inaccurate.**
 16 **The transcripts are being taken to the side**
 17 **where - and that is the recording. Imagine if**
 18 **there wasn't a recording. I would still be**
 19 **branded even further, a liar and so forth. So,**
 20 **in a way I'm not - it was done and I'm glad it**
 21 **was done and that the threat picture that I**
 22 **was under...**
 23 Q. When did you first inform Mr Richardson
 24 that you had recorded the 13 May meeting?
 25 **A. Sorry?**

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1 Q. When did you first inform Mr
 2 Richardson?
 3 **A. Mr Richardson had brought in the**
 4 **transcript - rather the recording of the body**
 5 **worn camera to the Commissioner's Suite**
 6 **where I had two - a personal assistant and a**
 7 **personal secretary and he had asked me**
 8 **permission to use the secretaries to transcribe**
 9 **the body worn camera footage, and they were**
 10 **there, so he came in and out from that office**
 11 **regularly, and at one point during that time**
 12 **when I came back, and I explained that we**
 13 **were still working on the matter, I did tell**
 14 **him: look, I have recorded this meeting, and**
 15 **he was shocked - it's true.**
 16 Q. Did you tell him you would be recording
 17 the future meetings?
 18 **A. I believe I did.**
 19 Q. Did you tell anybody else in those
 20 meetings that you were recording them?
 21 **A. I can't think I mentioned it as candidly to**
 22 **others as I did to Mr Richardson.**
 23 Q. I will just take you to the transcript now
 24 to ask you for your reaction. Can we go to
 25 bundle B/170 please? Just in the bottom box

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1 there, the Attorney-General says: "For me it
 2 was clear since you raised the matter, I repeat
 3 my position from which I would never budge
 4 because I'm 200 per cent certain of what we
 5 discussed here in this room that day. You
 6 both left this room with an agreement that
 7 you were going to rationalize the grounds
 8 and that you would come. Nothing else
 9 would happen, and that once you had
 10 rationalized the grounds, reduced the 76
 11 charges to whatever you reduce it, we were
 12 going to call Christian in. We were going to
 13 assume that ownership to the Government,
 14 and therefore we would have placed
 15 ourselves in an absolutely legally certain
 16 position and you would advance with that
 17 initially and then the time you would have
 18 been able to assess the time, the question of
 19 ownership would hopefully, would have been
 20 clarified, which would have opened more
 21 doors or not for you, and for me it was clear
 22 that you - your text of yesterday whilst all
 23 this was happening, well you know how I
 24 feel about it." How do you react to the
 25 Attorney-General being so certain about a

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1 meeting - about an agreement at that meeting
 2 of 7 April?
 3 **A. He refers to "both of you" because he is**
 4 **referring to myself and Mr Richardson who**
 5 **was at the meeting of the so-called**
 6 **arrangements. So was Mr DaVincenzi.**
 7 **What is my reaction? My reaction, I come**
 8 **back to the fact that he has now to justify the**
 9 **fact that he was not able to put the lid on this**
 10 **by saying nothing could - don't do anything**
 11 **further. So, in other words, self-protection,**
 12 **self-serving in saying: I told you not to do**
 13 **that and you've gone against me. He never**
 14 **said that, but that is what his narrative is to**
 15 **the CM.**
 16 Q. Can we go to B/172 please, the entry at
 17 9:10. You say - he says that: "You have
 18 what?" You say: "Made a flawed
 19 investigation on the process and everything
 20 else. What I'll do today is offer my - offer
 21 every single paper, every single file, every
 22 single exhibit to an independent police
 23 service to look into it, and what I can
 24 anticipate that would show is that we
 25 wouldn't - that any other police force would

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1 not have gone in the way that we have done.
 2 They would have picked up Haim Levy at 6
 3 o'clock in the morning. Now, if that is where
 4 this is going I'm now officially asking that
 5 this matter be investigated by an external
 6 police service to see whether the RGP has
 7 flawed in this investigation." You say that
 8 any other police force would have not going
 9 about it the way that you had done - that they
 10 would have gone in at 6 o'clock in the
 11 morning. Then at 176 you make a similar
 12 comment saying that any other police service
 13 would have taken Mr Levy's phone off him.
 14 Had the RGP already taken a different
 15 approach to Mr Levy than it would to other
 16 suspects by that point?
 17 **A. Yes, I would agree that -- the phrase used**
 18 **by Mr Richardson is "Mr Levy was treated**
 19 **with kid gloves" which I don't have a**
 20 **problem with, but the fact that it took nine or**
 21 **10 hours for Mr Levy to sort out his head of**
 22 **how he was going to deal with it, that was**
 23 **giving him too much leeway there. But that is**
 24 **something that the RGP and Mr Richardson**
 25 **in particular will - and Mr Wyan will have to**

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1 **live with and they were the officers with**
 2 **those decisions, and I respect the way they**
 3 **handled it.**
 4 Q. At 179 you say, in reference to the
 5 allegation of misfeasance against
 6 Superintendent Richardson, you say - 179. I
 7 will just have to come back to that on these.
 8 I cannot find that one. Sorry, yes, the very
 9 top box. "No, no, no. Not investigate - not
 10 investigate that, that, that allegation. I am
 11 taking personally too. He is my officer. I
 12 stand in front of him for all of this." Would
 13 you still stand in front of Superintendent
 14 Richardson and Inspector Wayn for their
 15 actions in how they dealt with Mr Levy?
 16 **A. 100 per cent.**
 17 Q. Over the page, the end of the third box,
 18 you say, five lines from the bottom: "The
 19 DPP sees that there is - we thought that there
 20 is, but confirmed with the DPP, the DPP sees
 21 that there is a case to be put to the - to trial. I
 22 get the whole periphery. I get it all. I cannot
 23 pull it. You can. You can, Michael." Then
 24 the Attorney-General replies, "But it hasn't
 25 got to. It hasn't got to get to that, Ian." And

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1 then you say: "Well, then - then who stops
 2 it? I cannot stop it. I cannot say I - there is
 3 no offence." Then further down you say: "If
 4 we cannot, I would understand and I've said
 5 it - I've said it before. I would not raise any
 6 objections if this is pulled, but I will not pull
 7 it, Ian. The RGP cannot pull it and if there
 8 are legal routes to pull it, those - I'm asking
 9 why not." What do you mean by "pull it"
 10 there?
 11 **A. At that stage nobody had been charged.**
 12 **There were only people under arrest and in**
 13 **the previous serious matter - I'll mention the**
 14 **one it is because it's no secret - in the matter**
 15 **of the Grey Swan, the infamous seizure of**
 16 **the tanker that was bound to Syria to offload**
 17 **with Iranian crude oil and was intercepted**
 18 **here, the RGP carried out a painstaking**
 19 **investigation under real time constraints**
 20 **because it had an impact in the Middle East,**
 21 **and there was retribution from the Iranian**
 22 **revolutionary corps or guards in the Straits of**
 23 **Hormuz, and we were under real pressure to**
 24 **deliver on evidence. Mr Caruana will vouch**
 25 **because -**

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1 Q. I am sorry, Mr McGrail, can you just
 2 answer the question?
 3 **A. I will get to it - and at one point Mr**
 4 **Yamas called me up and said, "Ian, stop the**
 5 **investigation." I says, "Hang on a minute.**
 6 **We haven't completed it." "Look, I'm going**
 7 **to write to you and if there isn't any sort of...**
 8 **I'm going to write to you to tell you that even**
 9 **if you have evidence to proffer charges, I am**
 10 **not going to allow a prosecution in this**
 11 **regard, and I am asking you to stop it." So,**
 12 **he wrote to me to that effect, and that is what**
 13 **I am referring to, even before charge. So, we**
 14 **are not talking about nolle prosequi here. We**
 15 **are talking about the Attorney-General**
 16 **advising, look, even if you present this case**
 17 **before charge, I am not going to prosecute it.**
 18 **And that's what he did in this. I'm using this**
 19 **analogy because it's very pertinent. Serious**
 20 **matters and very similar into what I'm trying**
 21 **to explain.**
 22 Q. So, what you were saying - referring to
 23 there was that it was up to the Attorney-
 24 General to pull the investigation?
 25 **A. I cannot stop an investigation. That's my**

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1 **role and the police's role. Then the**
 2 **prosecutors then say: I'm not going to run it,**
 3 **that's their prerogative, and in this case it was**
 4 **palpable that that is what was wanted. In**
 5 **fact, that's how it ended.**
 6 Q. When you say that you would raise no
 7 objections, you would not raise any
 8 objections to that --
 9 **A. Well, because even if I object, it doesn't**
 10 **have any effect, but I respect but don't**
 11 **necessarily agree. It's happened before. It's**
 12 **happened many times. In this case, look**
 13 **because - probably because of the post I**
 14 **held, I had direct contact with the Attorney-**
 15 **General, but in previous occasions the**
 16 **Attorney-General, or the AG's Chambers, as**
 17 **it was, would pull cases without offering any**
 18 **reasons, and the police would think: well,**
 19 **what's going on? That wasn't even a**
 20 **consultation, without having a consultation.**
 21 **So, I have the confidence of telling him from**
 22 **- I am using the previous knowledge that I**
 23 **had of how we operated: look, if you don't**
 24 **want this to carry on, it's your call. It's not**
 25 **going to be my call, and that's the type of**

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<p>1 relationship I had with him. And that's what I</p> <p>2 mean by: you can pull it, not me. I cannot</p> <p>3 stop it.</p> <p>4 Q. On B/181 at the bottom of the page, you</p> <p>5 say: "Haim has on video alluded to that. I</p> <p>6 am under pressure from the governor to see</p> <p>7 this investigation through." You: "Yeah. I</p> <p>8 do not know where that came from." "Where</p> <p>9 has he said that?" "Ehm on tape in front of</p> <p>10 all of them there, because he was suggesting</p> <p>11 that this is led from outside; that we're being</p> <p>12 compelled." Do you agree with the</p> <p>13 suggestion by Mr Levy that the RGP was</p> <p>14 under pressure from the Governor or proceed</p> <p>15 with the investigation?</p> <p>16 A. I don't, and it concerns me because if</p> <p>17 what Mr Levy is saying that it was down to a</p> <p>18 commercial dispute, surely he must realise</p> <p>19 that a Governor does not get involved in</p> <p>20 commercial disputes. I think that's a given.</p> <p>21 So, it concerns me that Mr Levy was thinking</p> <p>22 that the UK government were directing this,</p> <p>23 and my theory is because he knew that it had</p> <p>24 to do with national security. That's the only</p> <p>25 interest a UK government would have on an</p> <p style="text-align: center;">Page 249</p>	<p>1 anything. If we can go to the audio at 34.20</p> <p>2 please: [Audio clip played] If you want to</p> <p>3 follow this exchange. It is on page B/184, if</p> <p>4 you can scroll down a little bit. Thank you.</p> <p>5 [Audio clip played] Sorry, it starts just after</p> <p>6 the entry at 34.10 where you are saying: "</p> <p>7 Exactly, exactly."?</p> <p>8 A. Okay.</p> <p>9 Q. Just about there it should start: [Audio</p> <p>10 clip played] You seem to refer there to the</p> <p>11 Police Complaints Board here, but we have</p> <p>12 not been able to find a reference to the</p> <p>13 Governor or the GPA. Is there any reference</p> <p>14 to the Governor or GPA?</p> <p>15 A. I will explain. Obviously this was audio</p> <p>16 recording. If we take this down to the</p> <p>17 previous page where I say - I've got to refer--</p> <p>18 --</p> <p>19 Q. You say, "I'm duty bound to"?</p> <p>20 A. "I'm duty bound to. I've got to refer the</p> <p>21 fact that there is a criminal investigation</p> <p>22 made against use." Right, and for orientation</p> <p>23 purpose, if I am sitting where the Attorney</p> <p>24 General was sitting, I was sat there. The</p> <p>25 Convent is behind. I said - when I said that,</p> <p style="text-align: center;">Page 251</p>
<p>1 investigation of this matter, that it impinged</p> <p>2 on national security.</p> <p>3 Q. was the RGP under pressure from Mr</p> <p>4 Gagerro to proceed with the investigation?</p> <p>5 A. Absolutely not, and I can qualify it, the</p> <p>6 fact that I told him if the allegation is that Mr</p> <p>7 Gagerro used the RGP for his sole purposes,</p> <p>8 I disqualified all that by telling him: look,</p> <p>9 you're not going to pull out. So, it's the other</p> <p>10 way around actually. I more or less told him</p> <p>11 that it would look - I would not expect him</p> <p>12 to pull the complaint once investigation was</p> <p>13 over if it was - if he had filed it to settle any</p> <p>14 scores or get even with anybody, but I was</p> <p>15 not entertaining any of that.</p> <p>16 Q. Can we go to A/19 now please, your</p> <p>17 witness statement, paragraph 58.15? You</p> <p>18 say: "I stated I needed to refer up to the</p> <p>19 Governor and the GPA the fact that a</p> <p>20 criminal complaint had been made against</p> <p>21 me by Hassans. The ALLEGATION told me</p> <p>22 that for the moment I should not be doing</p> <p>23 anything." Now, the transcript deals with</p> <p>24 that but we need to go to the audio file here</p> <p>25 because the transcript does not capture</p> <p style="text-align: center;">Page 250</p>	<p>1 I said "I've got to refer to..." point in the</p> <p>2 direction of the Convent, which is the</p> <p>3 Governor's office.</p> <p>4 Q. So, when you said "I've got to refer..."</p> <p>5 you were pointing and indicating that you</p> <p>6 would be referring to --</p> <p>7 A. He knew that I was referring to, and that's</p> <p>8 when he said: you shouldn't do anything</p> <p>9 about it yet. So, behind Mr - at his</p> <p>10 conference table, his back is to the</p> <p>11 Governor's office and I - that's what I</p> <p>12 pointed to him saying: we've got to refer the</p> <p>13 matter to there.</p> <p>14 Q. Did you refer to the GPA?</p> <p>15 A. I did because eventually I did even report</p> <p>16 it to the GPA, but I was specifically saying:</p> <p>17 go to the Governor.</p> <p>18 Q. You did not refer to going to the GPA?</p> <p>19 A. No, no. I didn't, I didn't.</p> <p>20 Q. I think, given the time, that is as far as we</p> <p>21 can take things.</p> <p>22 THE CHAIRMAN: 10 o'clock tomorrow?</p> <p>23 A. Yes, sir.</p> <p>24 THE CHAIRMAN: Thank you very much.</p> <p>25 MR SANTOS: Thank you.</p> <p style="text-align: center;">Page 252</p>

<p>1 (Adjourned until 10 o'clock on Tuesday, 16</p> <p>2 April 2024)</p> <p>3 (17.01)</p> <p>Page 253</p>	

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