

<p>1 (Thursday, 18 April 2024) 2 (10.02) 3 MR SANTOS: Good morning, sir. We now 4 move on to our next witness, Sergeant Paul 5 Clarke. 6 SERGEANT PAUL CLARKE, sworn 7 Questioned by MR SANTOS 8 MR SANTOS: Good morning, Sergeant 9 Clarke. 10 THE CHAIRMAN: Just make yourself 11 comfortable. 12 A. Thank you. (Pause). 13 MR SANTOS: Can I ask you to look at that 14 bundle in front of you. It should have your 15 three statements. Can I just ask you to check 16 that the first statement is your first statement 17 to this inquiry and then to check that your 18 signature is on the final page, please. 19 A. It is, yes. 20 Q. And do you confirm that the contents of 21 that statement are true to the best of your 22 knowledge, information and belief? 23 A. I do, yes. 24 Q. Thank you. Can I ask you to do the same 25 for the second statement, please? (Pause).</p> <p style="text-align: center;">Page 1</p>	<p>1 A. That's correct. 2 Q. We will come back to that shortly, but 3 before we do, we would like to ask you about 4 your role in the investigation team. Can I ask 5 you to turn to your first witness statement at 6 paragraph 16, please? It is A1059. 7 A. Okay. 8 Q. You say: 9 "On 12 April 2019 I was requested by former 10 Detective Superintendent Richardson and 11 former Detective, now retired Chief 12 Inspector Brian Finlayson ... to be seconded 13 from Area Response Team 5 for the purpose 14 of Operation Delhi. It was explained at the 15 time that Detective Sergeant Neil Zammit 16 was the OIC." 17 From that point onwards were you working 18 on Op Delhi full time? 19 A. I was. From that point onwards, so that's 20 before the initial arrests of the Op Delhi 21 defendants were made. My role at that point 22 was to analyse data then building up towards 23 the date of the initial arrests to help formulate 24 and plan interviews, then to assist with the 25 search on one of the Op Delhi defendants and</p> <p style="text-align: center;">Page 3</p>
<p>1 A. That is my second statement and my 2 signature on the back page. 3 Q. Thank you. And do you confirm that the 4 contents of that statement are true to the best 5 of your knowledge, information and belief? 6 A. Yes, I do. 7 Q. Thank you. And now can we do the same 8 for the third statement, please? (Pause). 9 A. Yes, that is my signed third statement, 10 yes. 11 Q. And do you confirm that the contents of 12 that statement are true to the best of your 13 knowledge, information and belief? 14 A. I do, yes. 15 Q. Thank you. How long have you been 16 an officer with the RGP, Sergeant Clarke? 17 A. I've been an officer with the RGP now for 18 just over six years. I am a police sergeant 19 and I was promoted in 2019. Prior to serving 20 with the RGP, I was a police officer with the 21 Metropolitan Police for about 13 years. 22 Q. Thank you. We know that you were the 23 officer who made the application to the 24 stipendiary magistrate for warrants against 25 Mr Levy.</p> <p style="text-align: center;">Page 2</p>	<p>1 then assist Mr Zammit and Mr Wyan with 2 the interviews of the defendants on the day. 3 And subsequently from that point onwards I 4 was working on Operation Delhi almost full 5 time for a period of about 18 months. 6 Q. Who did you report to? 7 A. I reported directly to Mr Wyan at the 8 time, Inspector Wyan. 9 Q. Did you ever report to Mr McGrail 10 directly? 11 A. No, um, obviously Mr McGrail at the 12 time was the Commissioner of Police. I was 13 a constable when I first started with 14 Operation Delhi and promoted to sergeant 15 throughout the investigation. And aside from 16 one meeting I was called to, I think in 17 April 2020, 23 April 2020, um, I had no 18 interaction with Mr McGrail regarding 19 Operation Delhi. 20 Q. Were you involved in any decision 21 making? 22 A. No, the decision making was made by 23 Superintendent Richardson as the senior 24 investigating officer. Inspector Wyan, then 25 Chief Inspector Wyan, as the officer in</p> <p style="text-align: center;">Page 4</p>

<p>1 charge of the investigation. So strategically 2 Mr Richardson would decide how to go there 3 and Mr Wyan would decide how to do it and 4 then from there I was mainly given tasks by 5 Mr Wyan and on occasion generally, in 6 Mr Wyan's absence, by Mr Richardson 7 directly. 8 Q. Were you involved in the decision on 9 whether to seek a warrant or were you simply 10 instructed to apply for a warrant? 11 A. I was not involved in the decision 12 whether to seek a search warrant or any 13 decision against the course of action to take 14 against Mr Levy. However, I was instructed 15 to apply for the search warrant. However, I 16 had to be clear in my mind, I had the belief 17 that the evidence was there in my mind 18 before I made the application. It wasn't 19 a case of go and get a search warrant and 20 offer to do it. I had to formulate the plan and 21 the belief in my mind prior to making the 22 application to the magistrate. 23 Q. Were you present at the discussions or 24 involved in the discussions as to whether to 25 obtain a warrant?</p> <p style="text-align: center;">Page 5</p>	<p>1 Mr Ullger, Superintendent Richardson and 2 Mr Wyan, yes. 3 Q. Thank you. We have managed to match 4 it up with a draft of the charging advice 5 report dated 24 March at B3612, if you just 6 go to that briefly. (Pause). This is 7 a charging advice which was eventually sent 8 by Superintendent Richardson and Wyan to 9 the DPP. And, as I say, some of the 10 references in your notes to paragraph 11 numbers appear to refer to paragraph 12 numbers in this document. 13 A. Yes. 14 Q. We have heard from Mr Wyan that this 15 meeting took place and that there was 16 a discussion of the content of the charging 17 advice report with Mr McGrail. Do you 18 recall discussing the content of the charging 19 advice report? 20 A. I do, yes. This meeting for me was rather 21 unusual, and I mean that by being asked by 22 the actual Commissioner, being a fairly 23 newly promoted sergeant, to discuss the case, 24 obviously a case of this complexity and this 25 grandeur merited it. But by this point in</p> <p style="text-align: center;">Page 7</p>
<p>1 A. No, not at all. As I have come to learn 2 over the last week or so hearing the evidence, 3 there was a lot of meetings and a lot of 4 documents formulated, um, a lot of 5 discussions made which I was not part of. 6 And rightly so. I wasn't the officer in case of 7 the investigation. I wasn't the senior officer. 8 I was an investigator assisting the officer in 9 charge of the investigation. 10 Q. Can we turn to B3855, please. This is 11 a note, actually if we go to be previous page 12 there is a handwritten version of that. This is 13 a note which we believe was prepared by you 14 in relation to a meeting on 23 April 2020, 15 which you may have been referring to just 16 a moment ago. 17 A. That's correct. That's the meeting I was 18 referring to with the Commissioner, yes. 19 Q. It says at the top that the Commissioner, 20 the Assistant Commissioner, Superintendent, 21 presumably Richardson, and Detective 22 Inspector, presumably Wyan, were there. 23 A. That's correct. At the time it was 24 Mr McGrail as Commissioner, the Assistant 25 Commissioner at the time would have been</p> <p style="text-align: center;">Page 6</p>	<p>1 April 2020 the Operation Delhi suspects had 2 been on bail for almost a year and had just 3 been re-bailed again. We were at the point of 4 formulating a case summary as opposed to 5 charging advice as well. Um, because it 6 would a complex and long document. So 7 within this meeting I remember I was sitting, 8 it was in the Commissioner's table, oval table 9 in his office. The Commissioner was ahead 10 of me. Mr Ullger was at a chair behind me 11 and Mr Richardson and Mr Wyan were in the 12 room. But I was given charge of preparing 13 a lot of the summary from the charging 14 advice documents. And Mr McGrail 15 basically had read through the document and 16 given me advice or his opinion, as shown in 17 the paragraph numbers and the comments, of 18 what he thought should be included or should 19 not be included, etc. For example, the first 20 comment being dishonesty, how he had 21 shown his dishonesty, and civil wrongs, to 22 expand on the civil wrongs, just by way of 23 example. 24 Q. In terms of the information, had you 25 drafted an information previous to this one</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

<p>1 for a warrant?</p> <p>2 A. For a search warrant, yes, but not, as far</p> <p>3 as I recall, for a schedule 1 search warrant,</p> <p>4 and definitely not to this detail and this</p> <p>5 complexity.</p> <p>6 Q. Can we now turn to A1430, please. This</p> <p>7 is Mr Richardson's third witness statement</p> <p>8 and I just want to show you paragraph 25</p> <p>9 where Mr Richardson states that he asked</p> <p>10 you to seek advice from DI Goldwyn as</p> <p>11 inspector Wyan was off sick.</p> <p>12 A. Yes.</p> <p>13 Q. Do you seek such advice from Detective</p> <p>14 Inspector Goldwyn?</p> <p>15 A. I did. Um, prior to the end of April 2020</p> <p>16 I was asked by Mr Wyan to start preparing</p> <p>17 the search warrant. I know in my statement I</p> <p>18 said it was Mr Richardson, but in hindsight, I</p> <p>19 took a period of annual leave and then</p> <p>20 Mr Wyan was in Covid isolation for a period</p> <p>21 of 14 days, I think it was then. So</p> <p>22 Mr Richardson asked me to continue with the</p> <p>23 application. And Mr Goldwyn at the time</p> <p>24 was head of the Economic Crime Unit and</p> <p>25 his unit would be himself and other officers</p> <p style="text-align: center;">Page 9</p>	<p>1 statement simply reinforces that there was no</p> <p>2 intent by police to seize such material."</p> <p>3 I should have said that that was in response</p> <p>4 to a question by the Inquiry that asked what</p> <p>5 the basis for the conclusion at 322 of the</p> <p>6 application, what was the basis for that</p> <p>7 conclusion that the material did not include</p> <p>8 any legal privilege material.</p> <p>9 A. Mm.</p> <p>10 Q. Is it correct that the statement and the</p> <p>11 information was based on a template</p> <p>12 prepared by Mr Wyan?</p> <p>13 A. The information, no. And the statement</p> <p>14 being a template, yes and no. If I turn to the</p> <p>15 warrant itself I can explain you what parts</p> <p>16 would be a template and what parts I would</p> <p>17 have completed (inaudible).</p> <p>18 Q. Do you mean the information?</p> <p>19 A. The information, yes.</p> <p>20 Q. Yes. We will turn to that.</p> <p>21 A. Okay.</p> <p>22 Q. Just to ask about the templates, had you</p> <p>23 been given any training on how to use the</p> <p>24 template?</p> <p>25 A. Not at all as far as I can recall, no.</p> <p style="text-align: center;">Page 11</p>
<p>1 would be the officers who would go to court</p> <p>2 fairly regularly to obtain production orders or</p> <p>3 schedule 1 search warrants. And therefore he</p> <p>4 was, in my opinion and in the opinion of</p> <p>5 Mr Richardson, the best person to seek</p> <p>6 advice from.</p> <p>7 Q. Did you seek anybody else's input?</p> <p>8 A. No.</p> <p>9 Q. Did you seek the Commissioner's input?</p> <p>10 A. The Commissioner's input, no. Um, once</p> <p>11 I had completed the application it was sent to</p> <p>12 Mr Wyan, who I don't think read it because</p> <p>13 he was off sick, Mr Goldwyn, who approved</p> <p>14 it, and Mr Richardson, who also approved it.</p> <p>15 Q. Can we now look at A1040. This is</p> <p>16 Mr Wyan's third statement and I just want to</p> <p>17 take you to paragraph 13. He says:</p> <p>18 "This statement forms part of a template</p> <p>19 provided to officers making applications for</p> <p>20 a search warrant pursuant to schedule 1. I</p> <p>21 created the said template for the RGP based</p> <p>22 upon templates utilised by officers in</p> <p>23 England and Wales. There is no provision in</p> <p>24 law for police officers to intentionally seize</p> <p>25 material subject to legal privilege. This</p> <p style="text-align: center;">Page 10</p>	<p>1 Q. Do you think that you could have</p> <p>2 benefited from legal advice in drafting the</p> <p>3 information?</p> <p>4 A. The information was approved by</p> <p>5 Mr Goldwyn, Mr Richardson and</p> <p>6 subsequently the magistrate. But as I</p> <p>7 understand from this Inquiry, it could have</p> <p>8 been better. So with legal advice, in regards</p> <p>9 to the wording used, yes, but not the decision</p> <p>10 to make a search warrant or not, just purely</p> <p>11 for the wording used within the warrant.</p> <p>12 Q. Can we now, please, turn to D2900.</p> <p>13 A. Yes.</p> <p>14 Q. 2900, sir. (Pause). This is a document</p> <p>15 which the file name of this document, the</p> <p>16 electronic file name, is "Levy warrant notes".</p> <p>17 A. Mm.</p> <p>18 Q. And we understand that the metadata says</p> <p>19 that it is a document of which you are the</p> <p>20 author. Do you recognise this document?</p> <p>21 A. I do, yes. This is a document created by</p> <p>22 myself purely with notes for myself in</p> <p>23 regards to the drafting of the warrant and</p> <p>24 once I, to jump forward to the application, I</p> <p>25 wasn't sure, it is an extensive application</p> <p style="text-align: center;">Page 12</p>

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<p>1 over 38 pages, if Mr Peter wanted me to read 2 the whole document as he had it in advance 3 or give him the personal points, I made 4 reference to paragraph numbers, etc, within 5 this document. And it was purely for my 6 benefit. It wasn't meant to be used for any 7 official purpose. 8 Q. So are you saying that it was a sort of 9 preparatory note for the hearing? Is that 10 what you are saying? 11 A. Um, there's no, as far as I am concerned, 12 no right or wrong way to draft an information 13 for a search warrant. It's effectively a blank 14 page. Um, it took, obviously with the 15 subjects of the search warrants and the nature 16 of the offences and the length of the 17 investigation, it took me a long time to 18 consider, one, to what extent do I lay the 19 information, in how much detail I go to, and 20 other considerations such as that. So I made 21 various notes and there are various drafts and 22 revisions of the original warrant, but then it 23 ended up being based upon the latest 24 charging advice which was compiled by 25 Mr Wyan with my assistance, but not a copy</p> <p style="text-align: center;">Page 13</p>	<p>1 just for my benefit. 2 Q. Can we look at 2905, please, and at the 3 bottom of the page on necessity, under the 4 heading "Necessity", you say: 5 "DPP, CoP and detective superintendent 6 consulted with who recommend the course of 7 action. It is necessary to execute these search 8 warrants to seize devices and inform Levy 9 our intention to interview him. Levy will not 10 be arrested." 11 In this note it appears that you are recording 12 that the DPP had recommended the course of 13 action. Was that your understanding? 14 A. No, not at all. This is, if you like, 15 a two-step note. Now, obviously the initial 16 arrests of the subjects came in 10 May 2000 17 and ... May. Sorry, 10 May 2019, followed 18 by Mr Sanchez on 14 May 2019 as he had 19 been in England. Now as time went on, 20 Mr Levy was a person of interest in the 21 investigation, but it wasn't up until, if 22 memory serves me correctly, April 2020 he 23 actually became a suspect. Now, in 24 January 2020, up until that point, myself and 25 Mr Wyan didn't work in the same office.</p> <p style="text-align: center;">Page 15</p>
<p>1 and paste. It told, it gave full disclosure of 2 what happened, the other arrests of the 3 subjects, the background, people involved, 4 and in my thoughts at the time it met the duty 5 of candour, it gave as full disclosure as I 6 possibly could and as I possibly considered 7 necessary at that point. 8 Q. I probably was not clear enough in my 9 question, but my question was more aimed at 10 knowing whether this document was one that 11 you used in your preparation for drafting 12 information or rather in your preparation for 13 the hearing itself. 14 A. So, it was for both. It was for drafting 15 information and then I would have taken it to 16 the hearing. I didn't use it at the hearing -- 17 Q. Yes. 18 A. -- because I just read it. 19 Q. Understood. 20 A. By I would have taken it if I needed 21 prompts or the magistrate didn't want to hear 22 the full information at that point. 23 Q. Did you send this document to anybody? 24 A. As far as I can recall, no. It was just, um, 25 it was saved in our shared drive, but it was</p> <p style="text-align: center;">Page 14</p>	<p>1 After a forced restructure we were provided 2 an office where we could work together and 3 within that office there was a whiteboard 4 where we would record actions and complete 5 them by day. But two initials ... or initials on 6 that board, which had been there since 7 January onwards, were JR and finally I was 8 told that the Commissioner and 9 superintendent and DPP had authorised or 10 recommended that he is now a suspect and 11 we can take a course of action against him, 12 and not necessarily that course of action to be 13 a search warrant. That was a decision made 14 by Mr Richardson and Mr Wyan. 15 Q. So is it your position that actually that 16 reference is to his status as a suspect? 17 A. Absolutely, yes. To take executive action 18 against him as a suspect rather than a witness 19 or ... 20 Q. Is that notwithstanding that the second 21 sentence of that paragraph, which says: 22 "It is necessary to execute these search 23 warrants to seize devices and inform Levy of 24 our intention to interview him"? 25 A. Yes, absolutely. A decision was made to</p> <p style="text-align: center;">Page 16</p>

4 (Pages 13 to 16)

1 **treat him as a suspect and then the decision**
 2 **by, a tactical decision by, or strategic, sorry,**
 3 **Mr Richardson was to execute search**
 4 **warrants against Mr Levy. So action would**
 5 **be taken against him, then it would be**
 6 **subsequently by way of search warrants as**
 7 **decided by Mr Richardson.**
 8 Q. What was your understanding as to the
 9 DPP's position in respect of the search
 10 warrants?
 11 **A. My understanding was I attended**
 12 **a couple of meetings prior to the search**
 13 **warrants with the DPP and I think I attended**
 14 **four meetings prior. But in this case, as with**
 15 **other cases, I have had cause to meet the**
 16 **OCP about, they will advise on evidence to**
 17 **charge, they will advise on offences, but they**
 18 **will not advise on operational decisions.**
 19 **And that is a stance they take throughout, not**
 20 **just for this investigation, throughout. So I**
 21 **have learnt subsequently the DPP may have**
 22 **made comments, but I was at no point told in**
 23 **the positive or the negative his views in**
 24 **relation to the obtaining of search warrants**
 25 **for Mr Levy.**

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1 MR WAGNER: Could the witness just
 2 speak just a tiny bit more slowly? I am very
 3 sorry.
 4 **A. I'm sorry. I apologise.**
 5 MR WAGNER: Thank you.
 6 THE CHAIRMAN: If it is a mannerism, it is
 7 difficult for him to alter it, but I agree, you
 8 are speaking very fast.
 9 **A. I will try and slow down, sir, thank you.**
 10 MR SANTOS: We have heard the evidence
 11 of Superintendent Richardson and DI Wyan
 12 that the DPP had expressed a preference for
 13 a production order rather than a search
 14 warrant. Were you ever made aware of that
 15 preference?
 16 **A. No, the first time I heard of that**
 17 **preference would have been Wednesday or**
 18 **Thursday of last week.**
 19 Q. Now can we, please, turn to the
 20 information, B3243. This is the final
 21 substantive paragraph of the information
 22 which appears to draw the threads together
 23 from the preceding paragraphs. And the
 24 introductory wording says:
 25 "The above paragraphs demonstrate Levy

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1 was involved in the plan to remove the
 2 NSCIS contract from Bland at an early
 3 stage."
 4 And then you set out the five reasons or the
 5 sort of five grounds that you set out in
 6 support of that statement.
 7 **A. Mm.**
 8 Q. If we can now go to 322, please, this is
 9 a section with a heading that says: "There is
 10 material that consists of special procedure
 11 material or includes ..." sorry. 322, yes,
 12 thank you.
 13 "There is material that consists of special
 14 procedure material or includes special
 15 procedure material and does not also include
 16 excluded material on premises specified in
 17 the application."
 18 Just reading the second paragraph, you say
 19 that the material sought does not include any
 20 excluded material. And then in the third
 21 paragraph:
 22 "The material sought consists of
 23 communications between the subjects of this
 24 application. This would not be classified as
 25 legally privileged material. The material

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1 does not, however, consist of anything which
 2 could be regarded as excluded material."
 3 And then four lines from the bottom:
 4 "The material sought is not and does not
 5 contain any legal privileged material.
 6 However, it is understood legally privileged
 7 material may be present on digital devices
 8 which will be seized."
 9 What was your understanding as to why the
 10 material sought was not privileged?
 11 **A. From the evidence we had obtained**
 12 **through the 13 months of investigation up to**
 13 **that point, or certainly as far as I was**
 14 **involved, was Mr Levy was not acting**
 15 **basically as a lawyer for the Operation Delhi**
 16 **defendants. He was acting, um, with the**
 17 **evidence we had, as a co-conspirator for the**
 18 **criminal offence. Therefore, there would be**
 19 **legally privileged material on his devices,**
 20 **which I have covered, because he is a lawyer**
 21 **and has other business, but the specific**
 22 **material we sought, or I sought in this**
 23 **warrant, was communications between the**
 24 **applicants, which we say, or I say, is for**
 25 **a criminal purpose and therefore excluded**

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<p>1 from legal privilege regardless.</p> <p>2 Q. Was your understanding that it was</p> <p>3 lawful to search Mr Levy's devices, which</p> <p>4 might well contain privileged material, if the</p> <p>5 material that was of interest to you was not</p> <p>6 privileged?</p> <p>7 A. Yes, absolutely. Um, section, I think it is</p> <p>8 29(4) of the CPEA covers what is known in</p> <p>9 England as seize and sift. We can seize</p> <p>10 different devices and as long as material is</p> <p>11 linked to them we can, um, they can be</p> <p>12 separated by use of keywords and then by</p> <p>13 an independent lawyer reviewing that</p> <p>14 material and we will be basically given what</p> <p>15 is left which will be relevant purely to our</p> <p>16 investigation.</p> <p>17 Q. Did you consider defining ... if we can</p> <p>18 just go up to 320, please, you say:</p> <p>19 "I now seek to recover electronic devices</p> <p>20 capable of sending and receiving text</p> <p>21 messages, instant messages and/or electronic</p> <p>22 mail owned and/or used by Haim Levy and</p> <p>23 any device capable of storing any of the</p> <p>24 aforementioned communications."</p> <p>25 Did you consider defining the material more</p> <p style="text-align: center;">Page 21</p>	<p>1 made by a legal representative, which I</p> <p>2 believe was of Mr Levy's choice or he would</p> <p>3 have been given the option of such.</p> <p>4 Q. If we can now go down to paragraph 324,</p> <p>5 please, we can see there the heading:</p> <p>6 "Other methods of obtaining the material</p> <p>7 have not been tried because it appeared they</p> <p>8 were bound to fail."</p> <p>9 And your explanation is:</p> <p>10 "The material sought is held by a subject in</p> <p>11 this case and it is feared if notice was given</p> <p>12 to the subject to provide this material to the</p> <p>13 OIC the subject would destroy, alter, deface</p> <p>14 or conceal the material sought."</p> <p>15 What was the basis as far as you were aware</p> <p>16 for saying this?</p> <p>17 A. The difference between a production</p> <p>18 order and a search warrant is it is notice to</p> <p>19 the person, the subject. With a production</p> <p>20 order it is inter partes. So a representative or</p> <p>21 Mr Levy himself could have gone to the</p> <p>22 application. He would know exactly what</p> <p>23 we were looking for and by this time, this</p> <p>24 was a year after, almost to the day, that the</p> <p>25 original suspects had been arrested and he</p> <p style="text-align: center;">Page 23</p>
<p>1 narrowly to only capture documents relating</p> <p>2 to your investigation and which were not</p> <p>3 privileged?</p> <p>4 A. Within the material sought at the time,</p> <p>5 no, the application was extensive and it laid</p> <p>6 out the evidence we received so far and what</p> <p>7 we were seeking and electronic devices</p> <p>8 would include, as I have said, mobile</p> <p>9 telephones and computers and this wording</p> <p>10 of point 1 and 2 was defined by</p> <p>11 Mr Richardson as the SIO of the</p> <p>12 investigation. And that is what he wanted. I</p> <p>13 understand it was my application, but for me</p> <p>14 what was sought and what was laid out in the</p> <p>15 information covered what the material sought</p> <p>16 was.</p> <p>17 Q. When, as far as you were aware, was it</p> <p>18 intended that the legal representative would</p> <p>19 start reviewing the material?</p> <p>20 A. I was made aware that a legal</p> <p>21 representative was yet to be assigned.</p> <p>22 However, it was my understanding, and</p> <p>23 obviously it is a point for the SIO and the</p> <p>24 IOC, however, that nothing would be</p> <p>25 touched or looked at prior to an agreement</p> <p style="text-align: center;">Page 22</p>	<p>1 had only become a suspect of the</p> <p>2 investigation some weeks before. Now, for</p> <p>3 me Mr Levy is a very, very senior lawyer,</p> <p>4 head of Hassans, he's, at the time Queen's</p> <p>5 Counsel, Commander of the British Empire,</p> <p>6 he is head of the Jewish community, very,</p> <p>7 very charitable man, and he has an extremely</p> <p>8 good reputation in Gibraltar. Now, if he was</p> <p>9 aware of the evidence of criminality that the</p> <p>10 police at that point knew about him, his</p> <p>11 reputation was on the line. And it was</p> <p>12 a point I made above of the points I made to</p> <p>13 believe he had committed the offence of</p> <p>14 conspiracy to defraud, that is not information</p> <p>15 that I felt he would, one, want to be put in,</p> <p>16 well, handed to the police and then put in the</p> <p>17 public domain at any later trial. And, two, it</p> <p>18 is unlikely, knowing at that point in May then</p> <p>19 what his mindset was likely to have been in</p> <p>20 May the year before or later when, um,</p> <p>21 another subject was arrested. Um, so it was</p> <p>22 my fear that he would not hand over</p> <p>23 willy-nilly evidence upon notice. So my</p> <p>24 view was we have a search warrant to attend</p> <p>25 his home and his place of work without</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 notice and then not give him a chance to,</p> <p>2 firstly, review and then conceal or destroy</p> <p>3 any evidence against him.</p> <p>4 THE CHAIRMAN: Those words in that</p> <p>5 sentence: "The material sought is held by</p> <p>6 a subject", etc, that sounds as if it has come</p> <p>7 straight of the template.</p> <p>8 A. It's come from, I believe, it's not</p> <p>9 a template, the template is the bold writing,</p> <p>10 sir.</p> <p>11 (10.31)</p> <p>12 THE CHAIRMAN: Sorry?</p> <p>13 A. The template is in bold, and the writing</p> <p>14 underneath is writing I've input. In other</p> <p>15 words: destroy, alter, deface or conceal are</p> <p>16 mentioned too (?) I believe in paragraph 11</p> <p>17 of schedule one, if I'm not mistaken, and</p> <p>18 that's the argument against a production</p> <p>19 order.</p> <p>20 THE CHAIRMAN: Sorry, I am not sure I</p> <p>21 have completely understood your answer.</p> <p>22 You are saying that that sentence comes from</p> <p>23 some other source?</p> <p>24 A. It's - it's wording, or similar to wording,</p> <p>25 in the Act itself, sir.</p> <p style="text-align: center;">Page 25</p>	<p>1 warrant?</p> <p>2 A. Yes, absolutely.</p> <p>3 Q. But if you can - you have touched upon it</p> <p>4 in your answer, but I just want to deal with it</p> <p>5 specifically. Did you consider, as a</p> <p>6 counterargument, the fact that Mr Levy was a</p> <p>7 senior lawyer?</p> <p>8 A. I did, yes, as I've explained. But at the</p> <p>9 same time, there was extensive evidence to -</p> <p>10 for me to believe he had committed a serious</p> <p>11 criminal offence.</p> <p>12 Q. Can we --</p> <p>13 A. Sorry - an offence based solely around</p> <p>14 dishonesty, as well.</p> <p>15 Q. Can we look at A1431, please. Paragraph</p> <p>16 38, towards the bottom. This is Mr</p> <p>17 Richardson's witness statement, where he</p> <p>18 gives an explanation as to the fact that Mr</p> <p>19 Levy had been aware of the investigation for</p> <p>20 over a year but he nevertheless says as</p> <p>21 follows, "JL did not know (so far as I was</p> <p>22 aware) how much information we had</p> <p>23 collected that implicated him. If he had</p> <p>24 deleted communications from his digital</p> <p>25 devices after the earlier arrests, as CS had</p> <p style="text-align: center;">Page 27</p>
<p>1 THE CHAIRMAN: Yes, exactly.</p> <p>2 A. Yeah.</p> <p>3 THE CHAIRMAN: But, it does not deal</p> <p>4 with the particular circumstances of this</p> <p>5 particular case?</p> <p>6 A. No, in - in hindsight - with the benefit of</p> <p>7 hindsight I would have gone into far more</p> <p>8 detail, yes.</p> <p>9 THE CHAIRMAN: Yes, that is not your</p> <p>10 fault, because you did not have legal advice.</p> <p>11 A. Didn't have legal advice, and it was</p> <p>12 approved by a senior officer, Mr Richardson</p> <p>13 --</p> <p>14 THE CHAIRMAN: Yes.</p> <p>15 A. -- and subsequently the magistrate.</p> <p>16 THE CHAIRMAN: But I am making clear,</p> <p>17 that is not a criticism of you.</p> <p>18 A. Okay, thank you sir.</p> <p>19 THE CHAIRMAN: Or indeed of the RGP,</p> <p>20 because Superintendent Richardson, looking</p> <p>21 back on it, says that he would have benefitted</p> <p>22 from legal advice.</p> <p>23 A. Absolutely sir, yes.</p> <p>24 Q. So, do you say that primarily it was the</p> <p>25 issue of notice that was the reason for the</p> <p style="text-align: center;">Page 26</p>	<p>1 done, notice of an application for a</p> <p>2 production order might have resulted in him</p> <p>3 arranging for his devices to be professionally</p> <p>4 wiped. That would have meant that any</p> <p>5 deletions, which might themselves have been</p> <p>6 relevant evidence and which might have been</p> <p>7 forensically recovered, would have been</p> <p>8 destroyed." Do you agree with that</p> <p>9 explanation as part of the basis, or all of the</p> <p>10 basis, for seeking a search warrant?</p> <p>11 A. I - yes, I do. My - to - when I drafted a -</p> <p>12 the warrant, I had to put myself into the</p> <p>13 mindset of Mr Levy at the time, the best I</p> <p>14 could. Now, he was aware of the - certainly</p> <p>15 of the arrests of John Perez, because I was</p> <p>16 present when he asked to call him - the (?) -</p> <p>17 John Perez asked to call Mr Levy at his - at</p> <p>18 his home. Then, some four days later Mr</p> <p>19 Sanchez was arrested. Now, he was in</p> <p>20 London at the time on business, he was</p> <p>21 called back, and there's evidence that he</p> <p>22 deleted his - some of his - his messages,</p> <p>23 which had been - evidence of had - had been</p> <p>24 recovered. Now, if I'd believed that Mr Levy</p> <p>25 had firstly wiped his devices off, I would not</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 have obtained neither a production order nor 2 a search warrant, because it would be my 3 belief that the material did not exist, I 4 thought. Maybe he may have deleted some 5 things which could be recovered; he would 6 be aware of forensic capabilities to the RGP. 7 But then, moving forward he may - it could 8 be human nature to become more relaxed, 9 more complacent as time went on. Now 10 we're talking almost a year later and maybe, 11 to think of a better term, he may not even 12 think that the police would have the audacity 13 to - to conduct a search warrant at his home 14 address or target him as - as a suspect. 15 Q. Why do you not mention this more 16 specific information in that paragraph dealing 17 with the preference for a search warrant over 18 a production order? 19 A. At the time I drafted the - the search 20 warrant, I did it to the best of my ability. It 21 was checked by the inspector, the 22 superintendent and - and agreed by a 23 magistrate. I - I believed that I had a 24 sufficient detail included, and unfortunately 25 the details such as this in hindsight I would,</p> <p style="text-align: center;">Page 29</p>	<p>1 application. If he wished for the Chief 2 Justice to hear the application that - that 3 could've happened. 4 Q. Sorry to tell you again, Sergeant Clarke, 5 but you are talking quite quickly. 6 A. Sorry, I apologise. 7 Q. Can we now look at A1058, please. If we 8 go to paragraph 10, in response to the 9 question, "Were submissions made to the 10 Court in writing and/or orally when seeking 11 search warrants? If oral submissions were 12 made how long did the oral submissions 13 take?", you say, "I sent the 38-page document 14 to the Clerk of the Court as requested by him. 15 As detailed in para 8 above, during the 16 application, I read the 38-page document in 17 its entirety. To the best of my memory, the 18 application took approximately 2 hours." Do 19 you recall how much of that two hours was 20 taken by your reading out the application? 21 A. It was pretty much all of the two hours. 22 Now, at - at the application wa-- was myself, 23 Mr Richardson, Mr Goldwin, clerk of the 24 court Mr Turnock; and - and the magistrate, 25 obviously. The application was heard in Mr</p> <p style="text-align: center;">Page 31</p>
<p>1 but at the time I didn't think to include it. 2 Q. Now turning to the hearing, we have seen 3 that Superintendent Richardson's NDM 4 proposed applying to the Supreme Court for 5 the warrant, rather than the Magistrates 6 Court. Do you know why the decision was 7 made to apply to the Magistrates Court rather 8 than the Supreme Court? 9 A. In relation to the NDM document, I know 10 I received it via email on 10 May, after the 11 application. I can't recall if I ever saw that 12 document prior to it, and if with me the Chief 13 Justice was discussed, because Mr Wyan and 14 myself - Mr Wyan began to draft the 15 application. But then, I took a period of 16 annual leave, he was in Covid isolation, so 17 that (?) it's a bit disjointed, and Mr 18 Richardson wanted the - the application 19 pushed forward, so I sought adv-- sorry, 20 excuse me - sought advice from Mr Goldwin, 21 who - who is well versed in - in these 22 applications, who advised to - to contact the 23 clerk of the court and go through the 24 magistrate. And, Mr Richardson not (?) 25 obviously aware of that, he was at the</p> <p style="text-align: center;">Page 30</p>	<p>1 Pitto's chambers, so it was in his - an office 2 around a table, not - not in a court, so 3 unfortunately it wasn't recorded. Now, after 4 the - the pleasantries and formalities, Mr 5 Pitto asked me to - to basically rea-- rea-- 6 read it, the document, in its entirety, which 7 was - it took approximately two hours. It's - 8 it's a long document, and some parts deal 9 with quite complex computer-speak, which - 10 which took a - a little bit of time to - to go 11 over. Now, he asked me a couple of 12 questions to clarify pl-- points, sorry, and 13 clarify points only. Now, I - I made a note of 14 the - at the time of the - the application and 15 who was present, and I left that space - pa-- 16 space in my book, sorry, to record any 17 questions had he asked them. However, 18 there wasn't any questions outside of the - the 19 information or - or the grounds for the search 20 warrant, so no questions are recorded 21 because it's just purely on - on what was -- 22 THE CHAIRMAN: Sorry, just go through 23 that again, very slowly. The hearing took 24 two hours? 25 A. It - it took two hours and nineteen --</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 THE CHAIRMAN: Hang on, I am taking it 2 very slowly. 3 A. Okay. 4 THE CHAIRMAN: And, you read the whole 5 thing out? 6 A. I did. All 38 pages, from - from start to 7 end, yes, sir. 8 THE CHAIRMAN: Did that strike you as a 9 rather peculiar thing to do? I mean, I know 10 you were asked to do it, but why would the 11 magistrate want you to read it? 12 A. It's his domain, it's his application, and if 13 he wanted me to - to read out 38 pages to him 14 that's - that's - that's his decision. 15 THE CHAIRMAN: Well, I... 16 A. I - I didn't - sorry, Sir, I didn't feel like I 17 was there to - to question him, being an 18 experienced magistrate. 19 THE CHAIRMAN: Anyway, what questions 20 did he ask? 21 A. As I say, I really cannot recall any 22 specific questions outside of either the 23 information or the justification for a search 24 warrant, otherwise I would have -- 25 THE CHAIRMAN: Yes, but that is what I</p> <p style="text-align: center;">Page 33</p>	<p>1 unfortunately, and it was very, very few. 2 THE CHAIRMAN: Well, how long did that 3 part of the process take? 4 A. Not long at all. As - as I said, it took me 5 approximately two hours to - for me to read 6 the document. 7 THE CHAIRMAN: Well, hang on. "Not 8 long at all" could be five minutes or half an 9 hour. 10 A. No, no, it was - I'm not going to say 11 seconds, but it was literally a couple of points 12 to - to clarify the evidence I had told him, 13 rather than anything outs-- anything outside 14 of the evidence. 15 THE CHAIRMAN: It could only have been 16 seconds? 17 A. Really, yes. As far as I recall. 18 Q. I think it is fair to interpret from your 19 evidence, but I just want to ask you the 20 question directly. Did the magistrate ask any 21 questions about the suggestion that Mr Levy 22 could destroy evidence? 23 A. No, he accepted the - the reasons on the - 24 on the document. 25 Q. Did he ask any questions about why a</p> <p style="text-align: center;">Page 35</p>
<p>1 want to know about. 2 A. -- yes. It was purely to do with the 3 information there, the - and that - the 4 information being the - the substance. I can't 5 recall -- 6 THE CHAIRMAN: What questions did he 7 ask about the substance? 8 A. Unfortunately I really cannot recall, sir, 9 and there's very few. 10 Q. When you say "the substance", are you 11 referring -- 12 A. The information itself. Yes, sir -- 13 Q. The evidence? 14 A. The background and the evidence, yes. 15 Q. As to the grounds -- 16 A. Yes. 17 Q. Rather than -- 18 A. Absolutely, sir. 19 Q. -- the procedure that you were proposing 20 -- 21 A. Yes. 22 Q. -- and -- 23 THE CHAIRMAN: How many questions 24 did he ask? 25 A. I - I couldn't give you a number</p> <p style="text-align: center;">Page 34</p>	<p>1 search warrant had been preferred over a 2 production order? 3 A. No, again, he accepted the - the reasons 4 on the document. Unfortunately the hearing 5 wasn't recorded, otherwise we'd have a 6 transcript, but if he had asked any questions 7 like - for - for the justification or - or over 8 and above the information, I would have 9 recorded it in my book like I've done with 10 previous applications to him. 11 THE CHAIRMAN: Because, have I 12 understood you correctly, you had a space in 13 your notes for recording -- 14 A. Absolutely, and I'll give you an example, 15 sir. I applied to the magistrate, for this case, 16 for an international letter of requests, I think 17 in July 2019, and I made a series of notes of 18 questions he had asked in relation to that 19 application. But, for this application he 20 didn't ask any - any questions over and above 21 points to clarify in - in this information. 22 THE CHAIRMAN: Yes, but that is what I 23 am trying to get at: what points did he ask to 24 clarify? 25 A. I'm sorry, I really can't remember. It's -</p> <p style="text-align: center;">Page 36</p>

1 **it's more of a case of coming to the point (?)**
 2 **and just reiterated what I'd told him. I didn't**
 3 **give him any information over what was in**
 4 **the information.**
 5 Q. If we look at the information itself, sorry,
 6 maybe it might help to give a bit of context.
 7 Let us just go to B3208. Or just, maybe, a
 8 little bit further along, something like
 9 paragraph 20. Where the paragraph sets out,
 10 for example, the background to the NSCIS
 11 platform, and the software system etc. Is that
 12 the kind of thing that he was asking you to
 13 clarify? Can you think of a sort of example
 14 of the type of question that he would be
 15 asking?
 16 **A. I - I really can't - I don't want to mislead**
 17 **the Inquiry by - by - by (inaudible) --**
 18 Q. I am --
 19 **A. -- it is purely to clarify the points within**
 20 **the information. If I had given him any**
 21 **evidence or information outside what's on**
 22 **this document, it - it - I would record it**
 23 **myself.**
 24 Q. Thank you.
 25 THE CHAIRMAN: Yes, but you said: I gave

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1 him no information over what I had already
 2 written in the application.
 3 **A. Yeah, that's correct sir.**
 4 THE CHAIRMAN: That is correct?
 5 **A. Yes, yeah.**
 6 THE CHAIRMAN: Yes.
 7 Q. Can we now turn, please, to B213. This
 8 is a meeting on 13 May, the day after the
 9 warrants - they were not actually executed,
 10 but the day after the RGP attended Hassans
 11 with a view to executing the search warrants
 12 if cooperation was not given. And, this was a
 13 meeting between the Commissioner of
 14 Police, Superintendent Richardson, the
 15 Attorney General, the DPP and Mr
 16 DeVincenzi. I do not believe that you were
 17 present at this meeting?
 18 **A. I was not.**
 19 Q. I just want to show you something that
 20 Superintendent Richardson says towards the
 21 bottom of the page. About two-thirds of the
 22 way down, there is a larger paragraph which
 23 starts, "And asked", can you see that?
 24 **A. I can, yes.**
 25 Q. He says, "And asked - he asked for

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1 clarification, did we think, if it would be
 2 compromised if we just asked for the
 3 information which we handed over, and for
 4 the - the reasons for that are clearly, yes, and
 5 they were borne out yesterday. You know,
 6 this - this wasn't - I'm an officer of the court,
 7 here is our understanding, and the argument
 8 therefore". Superintendent Richardson
 9 appears to be explaining questions asked by
 10 the magistrate, and then the previous - just
 11 further up he says, "Yeah, he asked about
 12 how we would deal with the legally
 13 privileged material." Do you recall questions
 14 of that nature by the magistrate?
 15 **A. I do not recall, no.**
 16 Q. Were you involved in the execution of the
 17 warrants? Or, the intended execution of the
 18 warrants?
 19 **A. I was not directly involved, no. It was**
 20 **Mr Richardson and - and Mr Wyan, as we've**
 21 **heard. I w-- I was nearby should I be**
 22 **needed, but I wasn't involved in the**
 23 **execution in the end. Well, I can clarify that:**
 24 **the only part I did play, sorry, was to send the**
 25 **Hassans IT person (I think it was Arthur**

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1 **Mills) a list of keywords which we required**
 2 **from the IT system, that's - that all my**
 3 **involvement was. That was subsequent to**
 4 **the execution - or, sorry, the - the attendance**
 5 **at Hassans.**
 6 Q. I think you mentioned earlier that you
 7 assisted in the drafting of the charging advice
 8 report with Inspector Wyan, at the time?
 9 **A. Yeah, he - this - there was a number of**
 10 **variations of it - of this report, a-- as time**
 11 **went on, obviously as different people were**
 12 **involved and then taken out of the occasion**
 13 **and what have you, and this eventually**
 14 **became the summary of evidence. I would**
 15 **have given him information to put in the**
 16 **charging advice, and then I was**
 17 **concentrating more on the summary of**
 18 **evidence when it - when it pushed forward,**
 19 **but I was certainly aware of the contents of**
 20 **it, yes.**
 21 Q. So as far as you are concerned, is that the
 22 best explanation that you could give in terms
 23 of the decision to treat Mr Levy as a suspect?
 24 **A. Yeah, I - I was informed by, I can't**
 25 **remember if it was Mr Wyan, or both Mr**

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<p>1 Richardson and Mr Wyan at the same time,</p> <p>2 that the status of - of Levy was now a - a</p> <p>3 suspect, and that was early April, if I recall,</p> <p>4 2020.</p> <p>5 Q. As far as you were concerned, how</p> <p>6 important was the NSCIS ownership issue to</p> <p>7 the Operation Delhi proceedings?</p> <p>8 A. It was an - an issue which would - which</p> <p>9 had, sorry, occurred all along. Blands put</p> <p>10 forward their point of view, the Government</p> <p>11 put forward their point of view, and as far as</p> <p>12 I was aware it was always in dispute.</p> <p>13 Q. What was your view on the Government's</p> <p>14 cooperation regarding the ownership issue?</p> <p>15 A. I didn't get involved in too many</p> <p>16 meetings with senior government officials,</p> <p>17 but my understanding was the...</p> <p>18 Q. When you say "my understanding", are</p> <p>19 you only going to tell us things that were told</p> <p>20 to you by Mistery (?) Wyan and Richardson?</p> <p>21 A. Absolutely.</p> <p>22 Q. Yes, well then I do not think we need to</p> <p>23 look at that.</p> <p>24 A. Okay.</p> <p>25 Q. As far as you were aware, was Mr</p> <p style="text-align: center;">Page 41</p>	<p>1 Q. Sorry, just to clarify, "no formal</p> <p>2 complaint", or (inaudible)?</p> <p>3 A. No complaints concerned (?) or any - any</p> <p>4 comm-- anything, to be honest, no, in</p> <p>5 relation to Mr McGrail.</p> <p>6 Q. And you make the clarification, "Save for</p> <p>7 interactions with Hassans" of course --</p> <p>8 A. Yeah.</p> <p>9 Q. -- and I was not asking about that. Just</p> <p>10 finally - sorry, two more topics. One of them</p> <p>11 is Mr McGrail's retirement. Were you as an</p> <p>12 investigator, or as far as you are aware the</p> <p>13 senior management team, were you worried</p> <p>14 at any time about interference with your</p> <p>15 work or damage to your careers from what</p> <p>16 occurred to Mr McGrail?</p> <p>17 A. Putting the series of events together, it</p> <p>18 wa-- it was a very shocking and surprising</p> <p>19 time for, I think, everybody within the - the</p> <p>20 RGP, how - how quickly things move</p> <p>21 forward. But, as far as my - my position as a</p> <p>22 Sergeant at the time, as I am now, and my - I</p> <p>23 - I believed everything I did was in good</p> <p>24 faith and I wasn't concerned, or had any - any</p> <p>25 worries myself, no.</p> <p style="text-align: center;">Page 43</p>
<p>1 McGrail's advice sought on whether a search</p> <p>2 warrant should be obtained against Mr Levy?</p> <p>3 A. Not at all. As I said, the only interaction I</p> <p>4 had with Mr McGrail regarding Op Delhi</p> <p>5 was on 23 April, and it was always my</p> <p>6 understanding that Mr Richardson was the</p> <p>7 senior investigating officer; he was the head</p> <p>8 of the crime division and he made all the</p> <p>9 decisions in relation to Operation Delhi.</p> <p>10 Q. Can I now ask you to look at your first</p> <p>11 statement at paragraph 38, please. Here you</p> <p>12 say, when you were asked, "Were any formal</p> <p>13 complaints made or concerns raised to you in</p> <p>14 respect of Mr McGrail's handling of</p> <p>15 Operation Delhi, including the decision to</p> <p>16 issue the Search Warrants?", you give a</p> <p>17 characteristically (if I may say) full answer,</p> <p>18 but I think the long and the short of it is that</p> <p>19 there were no formal complaints or concerns</p> <p>20 raised to you in relation to Mr McGrail.</p> <p>21 A. Not at all.</p> <p>22 Q. I just wanted to ask you to confirm that</p> <p>23 that is (inaudible).</p> <p>24 A. That's the case, there's no - no formal</p> <p>25 complaint at all, no.</p> <p style="text-align: center;">Page 42</p>	<p>1 Q. Did you, and the investigation team to</p> <p>2 your knowledge, remain confident that you</p> <p>3 could fulfil your functions without fear or</p> <p>4 favour, or risk to your careers?</p> <p>5 A. Absolutely. We - we police - we police,</p> <p>6 sorry, through - without fear or favour, and</p> <p>7 we continued the - the investigation</p> <p>8 regardless of Mr McGrail's early retirement.</p> <p>9 The - the investigation commenced, and the</p> <p>10 Op Delhi defendants were eventually charged</p> <p>11 later that year.</p> <p>12 Q. In your experience, did Mr McGrail's</p> <p>13 early retirement have an impact on the</p> <p>14 morale of the police?</p> <p>15 A. Within the morale of the police, I can't</p> <p>16 really say. I don't - it - again, as I said, again</p> <p>17 it was ra-- for me rather shocking and</p> <p>18 surprising, and especially within - at the team</p> <p>19 in my office - excuse me - at the time</p> <p>20 comprised of Mr Wyan, myself and I believe</p> <p>21 one other detective. And on the - on the last</p> <p>22 day of Mr McGrail's tenure in the RGP he -</p> <p>23 he - I think he visited every office within - in</p> <p>24 New Mole House, but he came to our office,</p> <p>25 said goodbye. He had tears in his eyes, and it</p> <p style="text-align: center;">Page 44</p>

1 **was very - it was a very - it was a very sad**
 2 **time for - for us.**
 3 Q. Finally, just on the progress on Operation
 4 Delhi after Mr McGrail's departure. Did
 5 work on the prosecution continue unabated
 6 until the nolle prosequi was filed in February
 7 2022?
 8 **A. That's correct. My work with Operation**
 9 **Delhi led up just past the point of charge of**
 10 **the Delhi defendants. Then I - I assumed a -**
 11 **a Sergeant role elsewhere, whilst the post-**
 12 **prosecution process started. But as far as I'm**
 13 **concerned, everything went forward as**
 14 **planned and there was no - there was no**
 15 **interference with the investigation**
 16 **whatsoever.**
 17 Q. To your knowledge, was the Chief
 18 Minister kept informed of the progress of the
 19 prosecution?
 20 **A. To my knowledge, no, I couldn't answer**
 21 **that question, it's - wouldn't be something at**
 22 **my level to - to do.**
 23 Q. And in terms of the Attorney General, to
 24 your knowledge was he kept informed of the
 25 progress of the prosecution?

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1 **A. Again, I'm aware that senior officers went**
 2 **to meetings, but I - I was not aware of the**
 3 **content of - of those meetings, really, until**
 4 **last week.**
 5 Q. Did any of the Governor, the Chief
 6 Minister or the Attorney General provide
 7 input, directly or indirectly, to the ongoing
 8 investigation?
 9 **A. As far as I'm aware, no. Not on my level.**
 10 Q. When were you told that the prosecution
 11 was to be discontinued?
 12 **A. Mr Wyan told me at the time it actually**
 13 **happened. I can't remember if I saw it on the**
 14 **news first, but me and Mr Wyan - we - we**
 15 **were not working together (?) at that point, I**
 16 **think he - he may have been - been promoted**
 17 **again, I can't remember. But it was**
 18 **something that we - we discussed, he just**
 19 **told me that his had happened, and that was**
 20 **when the - when it was actually announced,**
 21 **so not beforehand.**
 22 MR SANTOS: I had no further questions,
 23 sir. I do not think we have any applications
 24 for any further questions, so...
 25 THE CHAIRMAN: Sorry, I did not catch.

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1 (?)
 2 MR SANTOS: Well, I do not think we have
 3 any applications.
 4 THE CHAIRMAN: No. (?)
 5 SIR PETER CARUANA: Just one question,
 6 if you will permit.
 7 THE CHAIRMAN: No, no...
 8 SIR PETER CARUANA: Just one.
 9 THE CHAIRMAN: Okay.
 10 Questioned by SIR PETER CARUANA
 11 Q. Can I just ask you this, Sergeant Clarke.
 12 At the hearing in front of the magistrate for
 13 the warrant application, did any of the other
 14 officers more senior to you say anything at
 15 all during the proceedings, to the magistrate?
 16 **A. During the proceedings themselves, no. I**
 17 **was under oath, and it was my application,**
 18 **and I was afforded that respect, sir, to make**
 19 **the application for - for the warrant in its**
 20 **entirety.**
 21 Q. That includes Mr Richardson?
 22 **A. Yes.**
 23 THE CHAIRMAN: So, if questions were
 24 asked by the magistrate you answered them,
 25 rather than...

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1 **A. Yes. Yeah - I --**
 2 THE CHAIRMAN: (inaudible)
 3 **A. -- it was my - it was my application, yes.**
 4 THE CHAIRMAN: Okay, thank you. Right,
 5 well I know it is very early, but it is probably
 6 a good time to break, is it?
 7 MR SANTOS: I was going to ask whether
 8 we could break for a slightly longer period,
 9 perhaps 15 minutes, just to give us a little bit
 10 of time to deal with a couple of... I am
 11 informed by Mr Simpson, in fact, that Mr
 12 Baglietto was asked to attend at 11, so he
 13 may not even be here. So, perhaps could we
 14 break until quarter past 11?
 15 THE CHAIRMAN: Yes, but it should not be
 16 taken as a precedent.
 17 MR SANTOS: No. I do not think anybody
 18 has any doubts.
 19 (10.56)
 20 (Adjourned for a short time)
 21 (11.24)
 22 THE CHAIRMAN: Okay.
 23 MR SANTOS: Thank you, sir.
 24 MR LEWIS BAGLIETTO, Sworn
 25 QUESTIONED BY MR SANTOS

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1 MR SANTOS: Good morning Mr Baglietto?
 2 **A. Good morning, sir.**
 3 Q. I think you have in front of you a file
 4 with your witness statement in it. Can I just
 5 ask you to turn to that, please?
 6 **A. Yes, of course.**
 7 Q. Can you please confirm that that
 8 statement is the statement that you have
 9 provided to this inquiry?
 10 **A. Yes, it is.**
 11 Q. Thank you. Can I ask you to turn to the
 12 final page, please, and confirm that it is your
 13 signature at the end of that document?
 14 **A. Yes, it is.**
 15 Q. And do you confirm that the contents of
 16 that statement are true to the best of you -
 17 sorry, that affidavit is true to the best of your
 18 information, knowledge and belief?
 19 **A. Yes, I do.**
 20 Q. How long have you been in practice, Mr
 21 Baglietto?
 22 **A. Since 1986.**
 23 Q. And what is your role at Hassans?
 24 **A. I'm a partner of the firm and have been**
 25 **head of litigation at the firm since 2003.**

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1 Q. In his fourth affidavit to this inquiry the
 2 Chief Minister describes you as one of his
 3 closest personal friends. Do you agree with
 4 that description?
 5 **A. Yes, I do.**
 6 Q. How often do you speak to the Chief
 7 Minister?
 8 **A. It varies. It depends largely on whether**
 9 **I'm doing some work for the Government, in**
 10 **which case contact might be more frequent,**
 11 **but at a personal level I very rarely do. In**
 12 **fact the last time I spoke to him was probably**
 13 **to wish him a happy Christmas at the end of**
 14 **last year, and I also sadly bumped into him at**
 15 **a funeral last week and just said "Hello" but**
 16 **I've had no contact with him for the past four**
 17 **months, for example, but on the other hand**
 18 **there may be times when I do have more**
 19 **contact, but it's not as if we go out for dinner**
 20 **regularly or anything of the sort. It's a**
 21 **friendship that goes back many years and we**
 22 **have been professional colleagues also for**
 23 **many years.**
 24 Q. Can I ask next please about the Attorney
 25 General, Mr Llamas. Do you consider Mr

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1 Llamas a friend?
 2 **A. I do, yes.**
 3 Q. And how often do you speak to the
 4 Attorney General?
 5 **A. Not as often as I'd like because he's been**
 6 **so busy with Brexit and other issues, and**
 7 **even when he's not I don't really speak to him**
 8 **that often unless I'm - we arrange to meet up**
 9 **socially which, as I say, is quite rare, or**
 10 **unless I'm doing some work on his**
 11 **instructions, or instructions of the**
 12 **Government.**
 13 Q. How often do you message him?
 14 **A. Not particularly often I'd say. No, not**
 15 **often at all I'd say.**
 16 Q. How often do you message him outside
 17 of work - outside of work contact?
 18 **A. Very, very rarely. Very rarely.**
 19 Q. Turning now to 36 North, we know that
 20 your colleagues at Hassans were involved in
 21 setting up that company. Did you play any
 22 role in the setting up of --
 23 **A. Not at all, no. I don't get involved in**
 24 **transactional work. I'm a litigator and**
 25 **therefore my area of work is completely**

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1 **different.**
 2 Q. Am I right in saying that you had an
 3 ultimate beneficial interest in 36 North of just
 4 under 3 per cent?
 5 **A. I'm not sure what the percentage was, and**
 6 **when I came to know about 36 North and our**
 7 **shareholding in it, I assumed that my**
 8 **percentage would be very small.**
 9 Q. Why do you say that?
 10 **A. Because if we were shareholders of a**
 11 **larger company and my equity shares is quite**
 12 **a small one, it followed that by share in a**
 13 **larger, or ultimate beneficial interest in a**
 14 **larger enterprise involving other**
 15 **shareholders, would be even smaller.**
 16 Q. When did you learn that Mr Levy had an
 17 ultimate beneficial interest in 36 North?
 18 **A. I was - Until 12 May I was vaguely**
 19 **aware of the fact that we had invested in**
 20 **some security company, but to be honest I**
 21 **didn't really know much about it. I didn't**
 22 **even know the name of it, let alone the extent**
 23 **of our interest in it.**
 24 Q. So, when you say, "we had invested", you
 25 mean Hassans?

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<p>1 A. Yes.</p> <p>2 Q. And so, by virtue of knowing of that</p> <p>3 investment, your vague awareness, you</p> <p>4 would have a vague awareness that Mr Levy</p> <p>5 and you had a beneficial interest in the</p> <p>6 company?</p> <p>7 A. Yes. I assume I would have had</p> <p>8 something, and certainly Mr Levy because he</p> <p>9 has a larger share in the business, as in - by</p> <p>10 which I mean partnership.</p> <p>11 Q. Did the other partners - did other partners</p> <p>12 know that they were shareholders?</p> <p>13 A. I have no idea because I never spoke to</p> <p>14 anybody about this. It's something that I</p> <p>15 heard. I had a vague idea that there was this</p> <p>16 investment and it was something that simply</p> <p>17 wasn't on my radar until 12 May basically.</p> <p>18 Q. Did you hear -- Sorry, when you say you</p> <p>19 had a vague idea, do you know where you</p> <p>20 got that vague idea from?</p> <p>21 A. It could have been a partners' meeting, an</p> <p>22 informal partners' lunch or just casually</p> <p>23 chatting to one of my partners. I couldn't</p> <p>24 really say.</p> <p>25 Q. Would you accept that you potentially</p> <p style="text-align: center;">Page 53</p>	<p>1 A. I don't know about on the 12th. No, I</p> <p>2 wouldn't have learned any of that on 12 May.</p> <p>3 On 12 May what happened was... Well, we</p> <p>4 know what happened, the search warrant, and</p> <p>5 I just became involved in that and that was</p> <p>6 my sole focus. It wasn't until later in the</p> <p>7 course of Mr Levy providing his voluntary</p> <p>8 statement to the RGP that I began to learn a</p> <p>9 bit more about the structure and so on.</p> <p>10 Q. Did you know that Hassans had lent Mr</p> <p>11 Cornelio and Mr Perez 476,000?</p> <p>12 A. No. I may have learned that afterwards,</p> <p>13 as I say, in the course of Mr Levy providing</p> <p>14 his voluntary statement to the RGP, but</p> <p>15 certainly not any time before that.</p> <p>16 Q. At the time when Mr Cornelio, Mr Perez,</p> <p>17 Mr Sanchez and Mr Asquez were arrested,</p> <p>18 did you raise any concerns about Hassans'</p> <p>19 investment in 36 North?</p> <p>20 A. No, I didn't actually. I imagine it was a</p> <p>21 typically busy day in the litigation</p> <p>22 department and there was a call from the</p> <p>23 police station, and the extent of my</p> <p>24 involvement was to make sure that somebody</p> <p>25 was up there to-- because I think we got a</p> <p style="text-align: center;">Page 55</p>
<p>1 stood to gain financially if 36 North obtained</p> <p>2 the NSCIS maintenance contract?</p> <p>3 A. I don't know the profitability, feasibility</p> <p>4 studies and all that but potentially I suppose</p> <p>5 if it was a good business, yes I would have</p> <p>6 hoped to have got something out of it,</p> <p>7 however little.</p> <p>8 Q. Just going back to your vague idea about</p> <p>9 your interest, there was obviously a point</p> <p>10 when four individual were arrested in</p> <p>11 relation to that company's activities, at that</p> <p>12 point were you aware of your interests and</p> <p>13 Mr Levy's interests in the company?</p> <p>14 A. Hard to say. I dare say that on the day of</p> <p>15 the arrest it must have - I must have come to</p> <p>16 realise that it concerned this security</p> <p>17 company that we were somehow invested in.</p> <p>18 Q. Did you know that Hassans had granted a</p> <p>19 million-pound loan facility to 36 North?</p> <p>20 A. Not at the time, no.</p> <p>21 Q. When you say, "not at the time", are you</p> <p>22 talking about before 12 May?</p> <p>23 A. That is correct.</p> <p>24 Q. Did you learn about that loan facility on</p> <p>25 12 May?</p> <p style="text-align: center;">Page 54</p>	<p>1 request to attend to assist one or more of the</p> <p>2 people arrested, and in fact one of my</p> <p>3 partners did go on the day, although I believe</p> <p>4 we ceased acting shortly afterwards.</p> <p>5 Q. You say that you ceased acting shortly</p> <p>6 afterwards. Why was that decision taken?</p> <p>7 A. I assume that it must have been because</p> <p>8 of the involvement in 36 North and potential</p> <p>9 conflicts.</p> <p>10 Q. Did you - were you aware that the police</p> <p>11 were investigating Mr Levy at the time?</p> <p>12 A. Not at all. At the time, being the time of</p> <p>13 the arrest?</p> <p>14 Q. Yes, sorry?</p> <p>15 A. Not at all.</p> <p>16 Q. Did you discuss the arrests and the</p> <p>17 company with Mr Levy around the time of</p> <p>18 the arrests?</p> <p>19 A. I don't recall that and it's highly unlikely</p> <p>20 because it just was not my area of practice.</p> <p>21 Q. Did you take any steps to assure yourself</p> <p>22 that Mr Levy himself was not involved in the</p> <p>23 alleged criminal conduct?</p> <p>24 A. No, I didn't, no.</p> <p>25 Q. Mr Levy instructed you and Charles</p> <p style="text-align: center;">Page 56</p>

<p>1 Bonfante to represent his interests in the 2 Operation Delhi investigation. Is that 3 correct? 4 A. That is correct. 5 Q. When were you first instructed? 6 A. In the afternoon of 12 May. 7 Q. Given your own interest in 36 North, did 8 you think it was appropriate to act as a 9 lawyer for Mr Levy in relation to the 10 criminal investigation? 11 A. I didn't give it a minute's thought. This 12 was a bombshell. I needed to sort out what 13 appeared to us to be a gross abuse of process, 14 and abuse of power, and my sole focus was 15 to try and have that redressed as quickly as 16 possible. I wasn't the slightest bit interested 17 in whatever interest, however small, I might 18 have had in that company which I seem to 19 recollect was not doing very much at the time 20 anyway. 21 Q. Were you surprised when Mr Levy asked 22 you to represent him? 23 A. No. I expected him to ask me to represent 24 him. As head of litigation, I do do some fire- 25 fighting for the firm from time to time.</p> <p style="text-align: center;">Page 57</p>	<p>1 say there was constant engagement, constant 2 lines and leading counsel in London was 3 involved, largely involved in advising and 4 the drafting - had a lot of input in the 5 drafting of the many letters and 6 communications that were sent to the 7 Attorney General, and to the RGP. 8 Q. Do you, in retrospect, notwithstanding 9 the instruction of external counsel, do you, in 10 retrospect, wish that you had passed the case 11 on to an external lawyer to act in - to instruct 12 counsel? 13 A. Well, with hindsight, I don't know 14 whether I would have done that. It would 15 have obviously sort of made my life easier, 16 but at the time I was not even thinking about 17 that. I was just thinking of sorting it out for 18 my senior partner who, I think, had been 19 unfairly treated, with the help of a colleague 20 in my office who was experienced in 21 criminal law and whose integrity and ability I 22 had total trust in. In addition to that, we had 23 the support, detached support if I can put it 24 that way, of an eminent specialist silk in 25 London.</p> <p style="text-align: center;">Page 59</p>
<p>1 Q. Did you pause before agreeing to 2 represent him? 3 A. Not at all. My instinct was to try and sort 4 this out as soon as possible, by which I mean 5 trying to put - trying to rectify what seemed 6 to us to be a gross injustice in terms of the 7 way they had gone about obtaining the 8 evidence - not in terms of interfering with 9 the substantive investigation, but rather the 10 procedure that had been followed, which was 11 unduly draconian and oppressive in my view. 12 ? 13 Q. Do you wish, in retrospect, that you had 14 immediately passed the case on to an external 15 lawyer? 16 A. Well, we were in the middle of Covid, 17 and there were all sorts of restrictions of all 18 kinds, but what we did do was... I mean the 19 short answer to your question is we had 20 external leading specialist counsel from 21 London engaged from the very beginning 22 and at every stage of every - of the process 23 involved in making representations with a 24 view to putting everything on a fair and 25 proportionate footing as we saw it - so, as I</p> <p style="text-align: center;">Page 58</p>	<p>1 Q. Did Mr Levy tell you that the police had 2 undertaken for an independent lawyer to 3 sieve out all privileged material? 4 A. Sorry, that the police had undertaken? 5 Q. Yes, for an independent lawyer to sieve 6 out all privileged material from his devices? 7 A. I think he must have told me at some 8 point, but this was not a case of somebody 9 already having been earmarked and turned up 10 with a blue bag. This was a case of the 11 police taking the material with a possible 12 view to blue-bagging at some indeterminate 13 time in the future. 14 Q. Did he tell you that the RGP was willing 15 to allow him to choose that lawyer? 16 A. I don't know whether he told me at the 17 time, but I believe that to be the case, or that 18 certainly he would have a voice in who might 19 be appointed. 20 Q. Turning now to your communications 21 with the Attorney General, can we please 22 look at B/1902 please? 23 A. B1/902. Oh, sorry it is on the screen, is 24 it? 25 Q. It will appear on the screen and you</p> <p style="text-align: center;">Page 60</p>

<p>1 should also have the document in front of 2 you, so it is whatever you prefer? 3 A. I will look at the document as much as I 4 can. Thank you. 5 Q. It is an email dated 12 May. 6 A. Which tab is it in? Right, got it. 7 Q. This is the email that your firm - that you 8 sent on behalf of Mr Levy on 12 May 2020 at 9 11.03 in the evening? 10 A. Yes. 11 Q. In your evidence you say that you had 12 previously called Mr Llamas before sending 13 the email to protest about the warrant -- 14 A. Yes. 15 Q. - to express concerns for the protection 16 of the material taken by the RGP and to also 17 let him know that you would be writing to 18 him. Is that correct? 19 A. Yes. I don't know whether I said that I 20 had or that I'm likely to have. 21 Q. You are quite right. I will just take you -- 22 A. I anticipate that I probably did. 23 Q. Yes. It is A/1520, 4.2 - sorry, your 24 witness statement, paragraph 4.2. "It is likely 25 that I would have called him on the phone."?</p> <p style="text-align: center;">Page 61</p>	<p>1 the letter was drafted on that basis. 2 Q. Can I now refer to C/6883. For your 3 purposes, this is a heavily redacted document 4 which sets out -- 5 A. Oh yes. 6 Q. - messages between you and the Attorney 7 General? 8 A. Yes. 9 Q. On 13 May, so the day after the warrant 10 and the day after your email, you set out -- 11 first of all at 3.32 you send a message saying: 12 " M, can I call you?"? 13 A. Yes. 14 Q. And then there are two missed calls later 15 on at 6.39 and 6.48 in the afternoon? 16 A. Yes. 17 Q. Did you manage to speak to the Attorney 18 General on that day? 19 A. I can't remember whether I managed to 20 speak to him. 21 Q. You say that it was likely that you would 22 have called him on 12 May. Is it likely that 23 you would have spoken to him on the 13th as 24 well? 25 A. Well, I'm sure I would have wanted to</p> <p style="text-align: center;">Page 63</p>
<p>1 A. Exactly, exactly. 2 Q. Why was your first action to phone and 3 then email the Attorney General with this 4 complaint rather than to contact the RGP 5 directly? 6 A. Because I wasn't -- We had serious 7 misgivings as to the conduct - unfortunately 8 I have to say this - within the RGP, and my 9 recourse is therefore to the Attorney General 10 as the Crown's most senior legal adviser and 11 it was also regarding the public interest, one 12 of the guardians of the rule of law and a 13 person in whom I have total trust and 14 confidence. 15 Q. Did you call him or contact him because 16 he was your friend? 17 A. I think I would have called the 18 incumbent, whoever he or she might have 19 been. 20 Q. What did you think of the propriety of 21 your contact with the Attorney General? 22 A. Entirely proper, and if I may say so and 23 without breaching any form of privilege, the 24 - my legal team, including leading counsel, 25 had obviously no issue with that and in fact</p> <p style="text-align: center;">Page 62</p>	<p>1 speak to him on 13 May because of course 2 you asked me why didn't I first contact the 3 RGP, but you will see from the letter that we 4 wrote to the - or rather the email that I sent 5 to the Attorney General, that my first request 6 was to meet with and with the RGP and a 7 meeting had been tentatively arranged with 8 the Attorney and the Commissioner of 9 Police, Mr McGrail, for the following day 10 but Mr McGrail subsequently declined to 11 meet on advice, and for reasons which are 12 entirely up to him, and therefore I was - but 13 therefore I was keen to meet with the 14 Attorney General regardless to see whether a 15 way forward could be found that was less 16 oppressive in terms of the obtention of Mr 17 Levy's evidence and the return of his 18 equipment. And, as the letter that we sent 19 around that time, I think on the 13th to Mr 20 Richardson, also seeking that if they did want 21 the evidence that there should be a proper 22 inter partes application for a production 23 order. 24 Q. Were you aware, on 13 May, that the 25 Attorney General was meeting with the DPP,</p> <p style="text-align: center;">Page 64</p>

<p>1 the Commissioner of Police, Superintendent 2 Richardson and Mr Lloyd DeVincenzi? 3 A. I don't recall being aware. I really don't 4 recall being aware. Obviously I've seen 5 transcripts of that meeting since, but whether 6 I was aware at the time, I am afraid I no 7 longer recall. 8 Q. Is it the case -- 9 A. I should say, Mr Santos, as well, and this 10 is certainly not a criticism of the Inquiry, but 11 I have not had occasion to actually apply my 12 memory to many of these events because it 13 wasn't until fairly recently that I was asked to 14 provide evidence to the Inquiry. 15 Q. Do you think it was likely that you were 16 told by the Attorney General as to that 17 meeting? 18 A. It is likely or possible at any rate. 19 Q. Can we now turn to C/3522 please? 20 A. I have got it. 21 Q. I am not going to read out lengthy 22 passage from this document. You may 23 recognise this is a document that was handed 24 to Mr McGrail on 12th - sorry, that was 25 handed to Mr Levy on 12 May 2020. It is a</p> <p style="text-align: center;">Page 65</p>	<p>1 and the information provided herein must not 2 be disclosed to any third party without 3 authority of the Royal Gibraltar Police."? 4 A. Yes. 5 Q. Did you disclose any information from 6 within this document to any third party other 7 than legal representation? 8 A. No, because what - all that - all those 9 items listed relate to the historical 10 relationship regarding 36 North, in other 11 words, the substance of the investigation. I 12 was not concerned with the substance of the 13 investigation. I was only concerned with 14 procedural fairness. 15 Q. If we now look at C6/806 please, this is 16 another transcript of WhatsApp exchanges, 17 this time between the Attorney General and 18 Mr DeVincenzi I just want to focus on the 19 final three - well, the final two, sorry, one 20 timed at 12.31 and the other 12.45 on 14 May 21 2020. And Mr DeVincenzi says: "Lewis and 22 another gent here to see you. Moshe Levy is 23 the other gentleman."? 24 A. Yes. 25 Q. Do you know whether that reference to</p> <p style="text-align: center;">Page 67</p>
<p>1 document headed "Voluntary attendance for 2 police interview under caution". Then over 3 the page there is a list of topic areas which 4 the RGP was notifying Mr Levy that they 5 would seek to explore in a formal interview 6 under caution? 7 A. Yes. 8 Q. Number 9 on that list was 9 "communication with the Chief Minister in 10 relation to any of the above". 11 A. Yes. 12 Q. Did you discuss with the Attorney 13 General, either on 12 or 13 May, that item on 14 the voluntary attendance note? 15 A. I don't recall discussing that with him at 16 all. 17 Q. If we look at the bottom of that page 18 there is a paragraph which says: "The 19 content disclosed in this document has been 20 provided in order to assist you in responding 21 to the police inquiries -- 22 A. Yes. 23 Q. - and instructing legal representation."? 24 A. Yes. 25 Q. "This is an ongoing police investigation</p> <p style="text-align: center;">Page 66</p>	<p>1 "Lewis" is a reference to you being at Mr 2 Devincenzi and the Attorney General's 3 offices on 14 May? 4 A. I must assume it was, to me. Especially - 5 Moshe Levy was also there. 6 Q. Was that a meeting that took place 7 between you, the Attorney General and Mr 8 Levy? 9 A. I don't recall a meeting, but you may have 10 seen from my witness statement that when - 11 I have given my best account or recollection 12 of what meetings I may or may not have had 13 with the Attorney General at the time, I refer 14 to the fact that in my diary I found a note that 15 I had annotated - written Mr Llamas' initials, 16 I think some time in the - actually in the late 17 - it may be a coincidence but it was in the 18 late morning in part of my diary, and that I 19 did go on to say that I surmised from that, or 20 words to that effect, that I was planning to 21 either speak to or even meet Mr Llamas on 22 that day. If I could just go back to my 23 affidavit on that, I can take you to the exact - 24 page 443, is it not? 25 Q. I think it is 4.2, the bottom - the third</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

1 page?

2 **A. 4.2, yes exactly.**

3 Q. What was the purpose of that meeting?

4 **A. I can't recall the specific purpose, but if I**

5 **had to make an intelligence guess I would**

6 **say this was the meeting that I was hoping to**

7 **have with the Attorney General, albeit in the**

8 **absence of the RGP, to actually make - to**

9 **protest and make representations with a view**

10 **to having matters dealt with in what we**

11 **considered to be a more proportionate and**

12 **fair manner going forward.**

13 Q. So, is your evidence that this is the

14 meeting which you requested in your email

15 of the late night of 12 May, albeit without the

16 Commissioner?

17 **A. I'm not sure that I would go so far as to**

18 **say that this is the evidence that that is the**

19 **meeting, but certainly if I did not meet the**

20 **Attorney General on the 13th, I mean that was**

21 **certainly my next opportunity - or my first**

22 **opportunity, rather, to air our grievances with**

23 **him.**

24 Q. What role did you believe that the

25 Attorney General was playing in this

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1 scenario? Was he lawyer to the Governor,

2 lawyer to the Chief Minister, negotiator,

3 mediator? Was he acting in his personal

4 capacity?

5 **A. I think he was exercising his own - well,**

6 **I trusted him to exercise his own judgment**

7 **and give his own opinion to other attendees**

8 **of that meeting as to what a measured and**

9 **fair manner of proceeding would be as**

10 **regards to the obtention of the evidence, and**

11 **having read the transcripts of the tape**

12 **recordings of those meeting, he seems to**

13 **have performed exactly that role, in my view**

14 **anyway.**

15 Q. Why was Mr Levy Junior there?

16 **A. I cannot recall. Obviously Mr Levy**

17 **junior felt very strongly about the way that**

18 **his father had been treated. He worked very**

19 **closely with me. He may have assisted me**

20 **with research, and indeed I may have asked**

21 **him to come along to the meeting.**

22 Q. Why did you need to meet the Attorney

23 General in person, given that you were

24 already in correspondence with him and with

25 the DPP over email?

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1 **A. Well, with the DPP... I'm not sure how**

2 **much correspondence there had been with**

3 **the DPP.**

4 Q. I believe your original email, or one of

5 the later emails, was copied to the DPP?

6 **A. There was a later one, yes, but I had total**

7 **trust and I knew the Attorney General and as**

8 **I say he was above - without - with no**

9 **disrespect to anybody else, any of the other**

10 **Crown legal advisers and I thought I should**

11 **go straight to the top basically, and because**

12 **he is guardian of the public interest and one**

13 **of the guardians of the rule of law and so on**

14 **and so forth.**

15 Q. Did you or Mr Levy take any notes of

16 that meeting?

17 **A. Not that I can recall. I have looked for**

18 **notes going back that far, but I tend to not**

19 **turn up with iPads and laptops at meetings or**

20 **anything like that. My manner of taking**

21 **notes is much more old-fashioned. It's one of**

22 **these types of counsel's notebooks and I have**

23 **looked to see whether there were any notes**

24 **going back that far, but there weren't. I think**

25 **you have to understand as well that most of**

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1 **the - I think all of the momentous**

2 **developments in this case were recorded in**

3 **what was practically contemporaneous**

4 **correspondence, whether it was emails or**

5 **letters, and therefore the need for attendance**

6 **notes - and I think if I may say generally has**

7 **become less important than it was, say, 30 or**

8 **40 years ago, largely because of that. And**

9 **then, of course, as far as we were concerned**

10 **this case was totally over by October 2020.**

11 **So, my notes may have been disposed of,**

12 **along with the notes of many other cases**

13 **which were dead by then.**

14 Q. So, is your evidence that you believe you

15 would have taken a note, but you are unable

16 to find it?

17 **A. I'm not sure because - that I will have**

18 **taken a note, because at the end of the day I**

19 **was there to make representations and the**

20 **Attorney General was there to listen to those**

21 **representations, and hopefully taken them on**

22 **board. Therefore, it is possibly unlikely that**

23 **I got any feedback from him at the time, and**

24 **that his response may simply have been:**

25 **well, let me look into it, in which case there**

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<p>1 was no point in taking a note about that.</p> <p>2 Q. Have you asked Mr Levy, Moshe Levy</p> <p>3 whether he has notes of the meeting?</p> <p>4 A. I'm not sure whether I've asked him, but</p> <p>5 I'm under the distinct impression that he does</p> <p>6 not have notes because I don't believe he</p> <p>7 recollects that meeting.</p> <p>8 Q. When you say that you looked for your</p> <p>9 notes of a meeting, what would the process</p> <p>10 of looking for that have entailed?</p> <p>11 A. Opening my cupboard and going through</p> <p>12 all the papers in it, which are not in the most</p> <p>13 orderly sort of state, but these notebooks are</p> <p>14 quite easy to spot and I just sifted through</p> <p>15 them and there was nothing going back that</p> <p>16 far, by any means.</p> <p>17 Q. And an electronic search?</p> <p>18 A. I wouldn't have made any electronic</p> <p>19 notes of meetings. Anything that --</p> <p>20 Because, as I say, I wouldn't have been there</p> <p>21 typing what was being said and so on. I</p> <p>22 would have just scribbled something. So, no</p> <p>23 electronic notes at all. If I wanted to commit</p> <p>24 anything to memory, I would have probably</p> <p>25 done so in an email to whoever I wanted to</p> <p style="text-align: center;">Page 73</p>	<p>1 Q. If we now turn to B5/419, this is a letter</p> <p>2 from you to the Attorney General on 15 May</p> <p>3 2020, which in the introduction section says</p> <p>4 that it sets out the "very good grounds for</p> <p>5 believing that the warrants were improperly</p> <p>6 procured."?</p> <p>7 A. Yes.</p> <p>8 Q. Is this the letter that you were referring to</p> <p>9 in your message of the previous evening?</p> <p>10 A. Yes, I believe so.</p> <p>11 Q. Did you tell the Attorney General in</p> <p>12 advance what you would be saying in this</p> <p>13 letter?</p> <p>14 A. Well, I said - I must have given him a</p> <p>15 heads up that I was going to send him a very</p> <p>16 full letter, or a letter containing very full</p> <p>17 representations as to why we considered the</p> <p>18 warrants to be unlawful.</p> <p>19 Q. Did the Attorney General have any input</p> <p>20 on the contents of the letter?</p> <p>21 A. Not at all. This was done entirely by our</p> <p>22 legal team. That is myself, Mr Bonfante and</p> <p>23 leading counsel in London who had the</p> <p>24 largest input because he is very experienced</p> <p>25 in this area, and he was completely au fait</p> <p style="text-align: center;">Page 75</p>
<p>1 communicate it to.</p> <p>2 Q. Even if you did not make a note during</p> <p>3 the meeting, why did Mr Levy not make a</p> <p>4 file note of the meeting after it too place?</p> <p>5 A. Because as I say... I can't answer for a</p> <p>6 fact, because this took place a very long time</p> <p>7 ago, but I surmise that what we were doing</p> <p>8 there was basically making representations to</p> <p>9 the Attorney General, the nature of which</p> <p>10 was very clear because we had already sort</p> <p>11 of rehearsed our presentation in</p> <p>12 correspondence, and it would have been</p> <p>13 utterly pointless, in my view, to have made a</p> <p>14 note simply regurgitating them.</p> <p>15 Q. Can we now look at C6/883 please?</p> <p>16 A. Of course.</p> <p>17 Q. These are exchanges between you and the</p> <p>18 Attorney General. I just want to focus on the</p> <p>19 ones on the 14th. This is in the evening, 9.54.</p> <p>20 You say: "M, we are delayed with letter to</p> <p>21 you 'til morning."?</p> <p>22 A. Yes.</p> <p>23 Q. The reply comes back just over two</p> <p>24 minutes later: "No problem, L. M"?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 74</p>	<p>1 with all the case law cited in that letter.</p> <p>2 Q. Further down that first page there is a</p> <p>3 sentence that says: "There can be little</p> <p>4 surprise that, as we believe is the case, the</p> <p>5 DPP advised the Commissioner against the</p> <p>6 making of these applications."?</p> <p>7 A. Yes.</p> <p>8 Q. How did you learn about the DPP's</p> <p>9 advice on the warrant?</p> <p>10 A. I can't recall exactly how I learned but at</p> <p>11 the time the only people that I was talking to</p> <p>12 or who might have been a source of</p> <p>13 information were either Mr Levy, by way of</p> <p>14 instructions, the Chief Minister, or the</p> <p>15 Attorney General, but I seem to recall from</p> <p>16 one of the transcripts that the Attorney</p> <p>17 General indicated that he was not the person</p> <p>18 that would have told us this, if I remember</p> <p>19 rightly; I may be wrong.</p> <p>20 Q. His statement I believe on 15 May - the</p> <p>21 meeting on 15 May is to the effect that it</p> <p>22 must have come from the conversation</p> <p>23 between the Chief Minister and Mr</p> <p>24 McGrail.?</p> <p>25 A. Originally yes. Yes, of course. And then</p> <p style="text-align: center;">Page 76</p>

<p>1 maybe the Chief Minister either told us 2 directly - either told me or told Mr Levy and 3 Mr Levy told me. 4 Q. But Mr Levy's evidence yesterday was 5 that he was not aware of the DPP's advice.? 6 A. Right. Well, maybe the Chief Minister 7 told me directly, but I can't say for a fact. I 8 mean, I am just saying that that is plausible, 9 that it my have happened that way. 10 Q. Do you think it is proper for a suspect to 11 know the DPP's advice on executive action 12 taken against that suspect? 13 (12.02) 14 A. Well, certainly it is open, in my view, to 15 the legal representatives of a suspect to try 16 and obtain as much information as they 17 possibly can from whoever they think might 18 be able to provide that information and then 19 it is up to that person, the holder of the 20 information, to decide whether it is proper to 21 share that information with those seeking it. 22 Q. So is it your position that the legal 23 representatives do not make their own 24 assessment as to whether they are receiving 25 information properly or improperly?</p> <p style="text-align: center;">Page 77</p>	<p>1 confirmed to me (see his email to me of 17 2 May 2020) that the Commissioner of Police 3 would be prepared to accept a voluntary 4 statement from Mr Levy in lieu of the 5 interview under caution scheduled for 18 6 May 2020." 7 A. Yes. 8 Q. Who was it who came up with the idea of 9 a voluntary statement being provided by Mr 10 Levy? 11 A. I don't remember but it is perfectly 12 plausible that it came from us because it 13 would he been consistent with our contention 14 that in the first instance Mr Levy ought to 15 have been treated as a witness rather than as 16 a suspect but, on the other hand, looking at 17 the transcripts of the meeting that took place 18 between the Attorney General, I believe the 19 DPP, Mr McGrail and Mr Richardson, I 20 believe the idea of a voluntary statement 21 evolved from something that Mr Richardson 22 had said although in fairness to him he did 23 say that it should be under caution and then if 24 you follow that transcript, I think the DPP --- 25 it starts to gather a bit of momentum and the</p> <p style="text-align: center;">Page 79</p>
<p>1 A. Well, I can only --- we assume that it is 2 being lawfully provided to us. 3 THE CHAIRMAN: (To the witness): How 4 might the Chief Minister have given that 5 information to you? 6 A. Maybe during a call. I wouldn't know, 7 exactly, sir; I wouldn't recall exactly, sir, but 8 it is very --- entirely possible that it might 9 have been on a call. 10 Q. How did that come about? 11 A. Because --- well, I do say that I did speak 12 to the Chief Minister at an early stage also 13 wanting to see to what extent he could shed 14 light on what had happened and it may be 15 that in the course of one of those 16 conversations that this was disclosed to me. 17 MR SANTOS: (To the witness): We will 18 come to the communications with the Chief 19 Minister shortly. 20 A. I am sorry, sir. 21 THE CHAIRMAN: That was my fault. 22 MR SANTOS: (To the witness): Just 23 looking at your witness statement at 24 paragraph 4.3 you say, "I do recall that the 25 AG and I spoke on 15 May 2020 when he</p> <p style="text-align: center;">Page 78</p>	<p>1 DPP is saying, if I am not mistaken, "Let it 2 be a statement, a voluntary statement, not 3 under caution and we can then consider it," 4 and then come back to him with a request for 5 a statement to be taken under caution. So I 6 am not quite sure how it originated because 7 there was obviously some sort of initiative 8 from their part as well in that regard. 9 Q. You say it is perfectly plausible that you 10 might have proposed this and when you say 11 that do you mean you would have proposed it 12 to the Attorney General? 13 A. Yes, I think it would have been to the 14 Attorney General. 15 Q. Was there a connection between what 16 Hassans were telling the police in 17 correspondence and what the Attorney 18 General and the DPP were saying to the 19 police in those meetings? 20 A. What was the connection between what 21 Hassans were telling the police? 22 Q. In correspondence. 23 A. In correspondence and what ---- 24 Q. And what was being said by the Attorney 25 General and the DPP to the police in those</p> <p style="text-align: center;">Page 80</p>

<p>1 meetings of 13, 15 and 20 May?</p> <p>2 A. I don't know. I think certainly a lot of ---</p> <p>3 from my recollection of the transcripts, it</p> <p>4 seems that many of the points that were made</p> <p>5 in that correspondence were also the subject</p> <p>6 of discussions at meetings involving the DPP</p> <p>7 and the Commissioner of Police but, on the</p> <p>8 other hand, it is also apparent from those</p> <p>9 transcripts that they were going through our</p> <p>10 letters quite meticulously.</p> <p>11 Q. The RGP had in fact agreed to accept the</p> <p>12 voluntary statement as an interim measure</p> <p>13 and they would then assess whether an</p> <p>14 interview under caution was needed. Did the</p> <p>15 Attorney General explain that to you?</p> <p>16 A. I am not sure whether he explained that to</p> <p>17 me but I think that would have been the</p> <p>18 understanding. In fact I think Mr McGrail</p> <p>19 himself in a letter of around 22 May made</p> <p>20 that clear. I stand to be corrected but</p> <p>21 certainly it was apparent to me at the time</p> <p>22 that that option remained open to the RGP.</p> <p>23 Q. Can I now show you an iMessage</p> <p>24 exchange which you disclosed to the Inquiry</p> <p>25 yesterday.</p> <p style="text-align: center;">Page 81</p>	<p>1 between you and Mr Llamas, it seems, one</p> <p>2 message exchanged or two per year, is that</p> <p>3 because you are messaging --- your messages</p> <p>4 through WhatsApp is far more frequent?</p> <p>5 A. Yes, but as I have said before, it is not</p> <p>6 necessarily that frequent anyway but it is ---</p> <p>7 my use of WhatsApp is more regular than my</p> <p>8 use of SMS. I don't know why I sent an SMS</p> <p>9 that day. I may have just pressed the wrong</p> <p>10 button or something and sent the SMS one</p> <p>11 instead of the WhatsApp one.</p> <p>12 Q. The first four messages that we can see -</p> <p>13 we cannot see all of the content - can I just</p> <p>14 ask why those have been provided --- why</p> <p>15 you have provided those to the Inquiry?</p> <p>16 A. Well, I didn't want to just give the 2020</p> <p>17 message on its own. I didn't want to sort of</p> <p>18 cut it out and paste it on a --- I don't know, I</p> <p>19 am not very techie, I don't know how that</p> <p>20 works so what I thought is I would just give</p> <p>21 you the whole page and show you that the</p> <p>22 message before that is not a message from a</p> <p>23 couple of days earlier in 2020, it's actually a</p> <p>24 year before and that the one that followed</p> <p>25 was a year and a half later, roughly.</p> <p style="text-align: center;">Page 83</p>
<p>1 A. Yes.</p> <p>2 Q. This is an iMessage exchange which</p> <p>3 begins on 22 July 2019.</p> <p>4 A. Yes.</p> <p>5 Q. There is a message on 22 July, there is</p> <p>6 another one on 15 May 2020 and then</p> <p>7 another one on 24 October 2021. When did</p> <p>8 you discover these messages?</p> <p>9 A. Yesterday, I believe.</p> <p>10 Q. Why is it that this message was not sent</p> <p>11 to the Inquiry before yesterday?</p> <p>12 A. Because it hadn't occurred to me to check</p> <p>13 SMSs. I very rarely engage in SMSs and I</p> <p>14 think you can see it from the actual exchange</p> <p>15 that one of them is 2019, the next one is</p> <p>16 almost a year later and the other one is more</p> <p>17 than a year later, so it just slipped my mind</p> <p>18 but the moment I realised that it was there</p> <p>19 and I checked it for everybody on the list in</p> <p>20 the letters received from the Inquiry</p> <p>21 solicitors, this is the only one that related to</p> <p>22 the matters before the Inquiry.</p> <p>23 Q. You say that you point out how</p> <p>24 infrequently you use messages by virtue of</p> <p>25 the fact that there is only one message</p> <p style="text-align: center;">Page 82</p>	<p>1 Q. Other than the 15 May 2020 message, are</p> <p>2 any of those messages related to the matters</p> <p>3 under enquiry?</p> <p>4 A. Not at all; not at all and if it were not for</p> <p>5 LPPI I would have had no difficulty showing</p> <p>6 them to the Inquiry.</p> <p>7 Q. In terms of the message of 15 May ----</p> <p>8 A. Yes.</p> <p>9 Q. --- can you just explain what that</p> <p>10 message is about?</p> <p>11 A. I think that that message was about --- it</p> <p>12 connects to what I say in my witness</p> <p>13 statement about meeting or speaking to the</p> <p>14 Attorney General ----</p> <p>15 Q. Paragraph 4.3 I think you are referring</p> <p>16 to?</p> <p>17 A. Yes, 4.3, exactly and this is just ---</p> <p>18 exactly, so that is just a message telling me</p> <p>19 that the Attorney General has asked to see</p> <p>20 me in the evening of 15 May.</p> <p>21 Q. You say in the message, "I have been</p> <p>22 asked"</p> <p>23 A. Yes.</p> <p>24 Q. Rather than saying, "You have asked."</p> <p>25 Who asked you to come over to the Attorney</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 General's office?</p> <p>2 A. I am afraid I don't know. It may have</p> <p>3 been a message left at my office. I simply</p> <p>4 don't know, I am sorry.</p> <p>5 Q. Could it have been the Chief Minister</p> <p>6 asking you to attend?</p> <p>7 A. I doubt it. I doubt it. I think this would</p> <p>8 have come straight from the Attorney</p> <p>9 General or his office.</p> <p>10 Q. Do you recall how you were asked to</p> <p>11 come? Was it by text message, email or</p> <p>12 phone message?</p> <p>13 A. No, I don't. It's very possible that</p> <p>14 somebody might have phoned me and left me</p> <p>15 a message and my secretary might have just</p> <p>16 scribbled a note on a notepad saying, "You</p> <p>17 are wanted at a meeting, you have been asked</p> <p>18 to attend a meeting at such and such a time</p> <p>19 on Friday afternoon."</p> <p>20 Q. At that meeting on 15 May --- sorry, let</p> <p>21 me just double check something. Yes, what</p> <p>22 was the purpose of that meeting on 15 May?</p> <p>23 A. The purpose of the meeting on 15 May I</p> <p>24 learned was that the Commissioner or the</p> <p>25 RGP were happy to take a voluntary</p> <p style="text-align: center;">Page 85</p>	<p>1 account of what happened," certainly in</p> <p>2 relation to the point on which he had been</p> <p>3 asked to give evidence on the basis of a</p> <p>4 voluntary statement and not under caution.</p> <p>5 Q. Do you act for Mr Levy KC in this</p> <p>6 Inquiry?</p> <p>7 A. Do I in this Inquiry? I have assisted him</p> <p>8 when he has received letters from the Inquiry</p> <p>9 and when he was asked to give evidence but I</p> <p>10 am not really generally advising him on the</p> <p>11 Inquiry to the extent that he needs to be</p> <p>12 independently advised, he is independently</p> <p>13 advised.</p> <p>14 Q. What efforts have you made to try and</p> <p>15 track down Mr Levy's messages and</p> <p>16 communications with the Chief Minister, the</p> <p>17 Attorney General and other individuals of</p> <p>18 interest to this Inquiry?</p> <p>19 A. I haven't made any efforts because I rely</p> <p>20 and trust Mr Levy to provide whatever he</p> <p>21 reasonably can provide and obviously I know</p> <p>22 that he gave his evidence to the Inquiry in</p> <p>23 that regard yesterday afternoon.</p> <p>24 Q. His evidence yesterday was that he would</p> <p>25 not have been much use in locating electronic</p> <p style="text-align: center;">Page 87</p>
<p>1 statement from Mr Levy in lieu of his having</p> <p>2 to attend New Mole House at ten o'clock on</p> <p>3 the Monday morning for an interview under</p> <p>4 caution.</p> <p>5 Q. Are there any notes of that meeting?</p> <p>6 A. Of which meeting?</p> <p>7 Q. Of that meeting?</p> <p>8 A. No, because that was the gist of it and</p> <p>9 there was no more to it really.</p> <p>10 Q. Did you attend on your own or with</p> <p>11 anybody else?</p> <p>12 A. On my own; yes, on my own.</p> <p>13 Q. Again you did not take any notes of what</p> <p>14 was said?</p> <p>15 A. I don't think I would have taken any notes</p> <p>16 because the message was very short and</p> <p>17 simple.</p> <p>18 Q. What information did Mr Llamas give, if</p> <p>19 any, about the meeting which had taken place</p> <p>20 that afternoon with Mr McGrail, Mr</p> <p>21 Richardson, Mr Rocca, et cetera?</p> <p>22 A. I don't think he would have gone into any</p> <p>23 detail about that meeting. I think he would</p> <p>24 have just said, "Look, listen, the RGP are</p> <p>25 content for Mr Levy to provide his full</p> <p style="text-align: center;">Page 86</p>	<p>1 documents because of his lack of familiarity</p> <p>2 with it, so how is it that he, as far as you are</p> <p>3 aware, complied with the Inquiry's request</p> <p>4 for those communications?</p> <p>5 A. As far as I am aware, I think he spoke to</p> <p>6 his IT --- our IT people. I don't know the</p> <p>7 detail of that.</p> <p>8 Q. You were not involved in that?</p> <p>9 A. No, I wasn't in on that.</p> <p>10 Q. In 4.1, can we go to 4.1 of your</p> <p>11 statement, you say, "I have recently been</p> <p>12 provided with Mr Picardo's fourth affidavit</p> <p>13 where he states that he and I discussed the</p> <p>14 matter on a number of occasions."</p> <p>15 A. Yes.</p> <p>16 Q. "While I note this and from the</p> <p>17 WhatsApp disclosed by the Chief Minister it</p> <p>18 is clear that I spoke to him around those</p> <p>19 dates, the fact is that nearly four years later I</p> <p>20 simply have no recollection of the contents of</p> <p>21 any discussions with him on the subject of</p> <p>22 the warrants."</p> <p>23 A. Yes.</p> <p>24 Q. "It is easier for me to recollect my</p> <p>25 interactions with other persons listed above</p> <p style="text-align: center;">Page 88</p>

<p>1 in relation to the warrants because they were 2 recorded in contemporaneous letters and 3 emails with them." 4 A. Yes., 5 Q. "With the Chief Minister, however, I 6 have no such correspondence and I no longer 7 have WhatsApp exchanges with him on my 8 telephone going back that far." 9 A. Yes. 10 Q. Why do you not have correspondence 11 with the Chief Minister going back that far? 12 A. Because I routinely clear old chats with 13 clients, with family members, and so on, and 14 of course as far as this case is concerned, as 15 far as I was concerned, the whole operation 16 saga has --- the Delhi saga insofar as it 17 affected Mr Levy was done and dusted by 18 October I think it was 2020 and there was no 19 pending litigation or any other proceedings 20 that would have had an impact on my 21 decision to just --- I mean, there is a lot of 22 other material on some of these chats which I 23 just don't like having on my phone, frankly, 24 if I don't think I am going to need it and of 25 course, I mean, I didn't have the slightest</p> <p style="text-align: center;">Page 89</p>	<p>1 those messages going back pre 2021? 2 A. I have spoken to my IT department and 3 they have told me that it's impossible to get 4 them back. 5 Q. Have you asked whether Hassan's Cloud 6 storage might contain those messages? 7 A. I haven't asked them that because I just 8 don't --- it's not the sort of question that --- 9 I'm not a techie person at all and they would 10 know and they have told me that it's totally 11 impossible to get them. I am obviously very 12 happy to deal with them here before the 13 Inquiry. 14 Q. I think you said earlier, but just for the 15 sake of clarity, have you searched your 16 iMessages or SMS messages with other 17 individuals as you have now done with 18 regard to ---- 19 A. I have indeed, yes. 20 Q. And there is nothing? 21 A. There was nothing. 22 Q. When you say there was nothing, do you 23 mean nothing relevant or nothing at all? 24 A. Well, certainly nothing relevant and I 25 think probably in the case of the Chief</p> <p style="text-align: center;">Page 91</p>
<p>1 intimation of the fact that an Inquiry might 2 need these from me until four years after the 3 event and more than two --- and about two 4 years after the Inquiry started; in other 5 words, about a month ago, but, as I say, I am 6 not making any criticism of that timing. 7 Q. How far back do you believe your 8 messages with the Chief Minister go? 9 A. 2021 maybe. 10 Q. You say that you were not anticipating 11 litigation but I think it is fair to say that Mr 12 Levy yesterday intimated potential litigation. 13 Did it occur to you that those messages may 14 be relevant to or useful in that litigation? 15 A. I think those messages would be utterly 16 useless to that litigation because the only 17 thing that matters --- and I don't want to 18 waive any privilege or anything of the sort, I 19 am satisfied that with the information in Mr 20 Levy's exhibit which contains all the inter 21 partes correspondence at the time, that if 22 anything would be of potential use but I don't 23 propose to say anymore because I don't want 24 to get into the territory of privilege. 25 Q. What efforts have you made to locate</p> <p style="text-align: center;">Page 90</p>	<p>1 Minister and the DPP nothing at all. 2 Q. Yesterday Mr Levy offered for an 3 affidavit to be prepared by Hassans and an 4 individual in Hassans IT department 5 explaining the inability to retrieve relevant 6 messages, would you similarly be willing to 7 arrange for the same affidavit or another 8 affidavit to confirm in detail what efforts 9 have been made to locate your missing 10 messages with the Chief Minister and the 11 Attorney General? 12 A. My WhatsApp? 13 Q. Yes. 14 A. Yes, of course. I mean, I would have no 15 difficulty with that because I have spoken to 16 my IT department and I have been reassured 17 that --- and I have spoken to them more than 18 once because I am very keen to make sure 19 that that is the case and I have repeatedly 20 reassured to that effect. 21 Q. Can we now go back to C6883 please, 22 just looking at 20 May. These are further 23 messages between Mr Llamas and you, "Can 24 you call me," from Mr Llamas, and then a 25 missed voice call, "Sorry, was on telecon and</p> <p style="text-align: center;">Page 92</p>

23 (Pages 89 to 92)

<p>1 just tried to call you," and then another 2 missed telephone call. Did you manage to 3 speak with the Attorney General on that day? 4 A. I can't remember. I really can't 5 remember. 6 Q. Can I take you to 4071, please, which is a 7 transcript of a meeting on the same day, on 8 20 May 2020, and the third box is from the 9 Attorney General and it says, "Look, I've 10 spoken to Lewis Baglietto," or maybe he is 11 saying your name, but I do not think it is 12 material, "I've spoken to Lewis Baglietto and 13 you know --- and my impression was, my 14 impression is that they welcome this written 15 statement but that there are --- they consider 16 there are issues that need to be dealt with at 17 the same time like this in this letter." Do you 18 recall having a discussion with the Attorney 19 General of that nature? 20 A. No, I don't. No. 21 Q. Are you able to assist at all with what 22 was said between you and the Attorney 23 General on 20 May? 24 A. Well, perhaps if we look at the letter that 25 he is referring to</p> <p style="text-align: center;">Page 93</p>	<p>1 materials. 2 A. Yes. 3 Q. So this letter also deals with that point. 4 A. Yes. 5 Q. And at the bottom of the first page you 6 urge reconsideration of the RGP's objection 7 to that application. 8 A. Yes, yes. 9 Q. Do you believe that your call of 20 May 10 would have been to discuss the contents of 11 this letter? 12 A. It's possible. I mean, I don't have a 13 bundle with all the correspondence --- 14 Q. One after the other? 15 A. --- spanning those days but it is possible. 16 But I can't give you a full answer without 17 seeing all of the correspondence which, as I 18 think I indicated earlier, I would much rather 19 see in hard copy form, in hard copy. 20 Q. You should have the letters in that bundle 21 --- 22 A. In this one, okay, let me have a quick 23 look. You are quite right, Mr Santos, the 24 letter of 20 May is here. 25 Q. And then there is 15 May which is</p> <p style="text-align: center;">Page 95</p>
<p>1 Q. Yes, it is A5443. 2 A. Right. 3 Q. This is a letter from you to Mr McGrail 4 on 20 May. 5 A. Yes. I think this letter, if I am not 6 mistaken deals with an important outstanding 7 issue that remained regardless of the fact that 8 Mr Levy was prepared to give a voluntary 9 statement, not under caution, and that 10 outstanding issue was the concern about the 11 safety of Mr Levy's devices, that they would 12 not be inspected within a certain time frame, 13 that we would have sufficient notice and I 14 may be jumping the gun but I do believe that 15 this letter addressed that issue because from 16 memory, the correspondence on 20 and 21 17 May was about seeking further reassurance 18 from Mr McGrail in that regard which Mr 19 McGrail readily provided. 20 Q. I think also in --- I am happy for you to 21 take the opportunity to read, to remind 22 yourself because I think there is also --- there 23 was also an application under the Criminal 24 Procedure Rules, rule 5.74, the disclosure of 25 the application for warrants and other</p> <p style="text-align: center;">Page 94</p>	<p>1 B5419. 2 A. Yes, where we wanted --- where we 3 requested the return of the items. 4 Q. Of the device, yes. 5 A. But I think we moved on --- 6 Q. You may need time to remind yourself of 7 the contents of the 20 May letter? 8 A. Of course, yes, that is the only one --- and 9 followed by Mr McGrail's letter of the 26th to 10 which I have just referred where he did give 11 those assurances, so if you just give me a 12 minute I will just have a speed read of it. 13 Q. Of course. [After a short pause] 14 A. So there is the question of disclosure of 15 material which we had asked for and also 16 there is the --- in addition there is the 17 question of the safeguarding of the 18 equipment in respect of which Mr McGrail 19 did give his reassurance. There is also at the 20 end an expression of concern about whether 21 Mr Levy should continue to be treated as a 22 suspect or not but the bulk of the letter seems 23 to be devoted to the question of disclosure 24 and an insistence on the disclosure 25 application for the warrant to its fullest extent</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 possible.</p> <p>2 Q. Did the Attorney General have any input</p> <p>3 into the contents of this letter?</p> <p>4 A. Not at all. As I said before, Mr Santos,</p> <p>5 all our letters are written entirely by our team</p> <p>6 and there was no liaison with any outsider in</p> <p>7 the preparation of these letters and, as I say,</p> <p>8 within the team, specialist leading counsel</p> <p>9 had the greater part of the role in the drafting</p> <p>10 of them.</p> <p>11 Q. Over the page, on the second page of this</p> <p>12 letter, the third paragraph from the top, you</p> <p>13 say the following, "I also note from your</p> <p>14 letter that the DPP's advice was not sought on</p> <p>15 the application for search warrants. This is</p> <p>16 contrary to what Mr Levy was led to believe</p> <p>17 by Detective Superintendent Richardson and</p> <p>18 contrary to what we understand was the</p> <p>19 position."</p> <p>20 A. Yes.</p> <p>21 Q. Just dealing with the second part of that</p> <p>22 sentence, "This is contrary to what Mr Levy</p> <p>23 was led to believe by Detective</p> <p>24 Superintendent Richardson," what is your</p> <p>25 understanding of what Superintendent</p> <p style="text-align: center;">Page 97</p>	<p>1 there had been confirmation ----</p> <p>2 A. Yes, exactly.</p> <p>3 Q. I think that is correct, that by that point</p> <p>4 there had been confirmation ----</p> <p>5 A. Yes, exactly.</p> <p>6 Q. Was there a reluctance on your part to</p> <p>7 disclose how you had learned of the position?</p> <p>8 A. I don't think I would have had any</p> <p>9 difficulty in disclosing had it been an issue at</p> <p>10 the time.</p> <p>11 Q. Turning now to your communications</p> <p>12 with the Chief Minister between 8 May and 8</p> <p>13 June, we know that your evidence is that you</p> <p>14 do not remember a lot from this period but I</p> <p>15 would like to give you another opportunity to</p> <p>16 give evidence ---</p> <p>17 A. Of course.</p> <p>18 Q. -- as you have had a bit more time to</p> <p>19 think about it and you may have seen other</p> <p>20 documents that may have jogged your</p> <p>21 memory.</p> <p>22 A. Of course.</p> <p>23 Q. Can I first go to B1442, please.</p> <p>24 A. Yes.</p> <p>25 Q. These are messages between you and the</p> <p style="text-align: center;">Page 99</p>
<p>1 Richardson told Mr Levy?</p> <p>2 A. Well, it is what Mr Levy says in his</p> <p>3 witness statement and in his instructions that</p> <p>4 he was given to understand or told that the</p> <p>5 advice which he understood or was told was</p> <p>6 that the search warrants --- that the DPP had</p> <p>7 advised that the search warrants be obtained.</p> <p>8 This reference came from the top and Mr</p> <p>9 Levy interpreted that as a reference to the</p> <p>10 DPP.</p> <p>11 Q. The second part of that sentence says,</p> <p>12 "and contrary to what we understand was the</p> <p>13 position." Just focusing on that wording, why</p> <p>14 the coyness as to the source of that</p> <p>15 information?</p> <p>16 A. I can tell you why the coyness but you</p> <p>17 asked me earlier as to where that might have</p> <p>18 come from and I said that it might have come</p> <p>19 from the Chief Minister who appears to have</p> <p>20 been told the contrary and then there was</p> <p>21 also a letter from the DPP to the magistrates'</p> <p>22 court if I am not mistaken and also from Mr</p> <p>23 McGrail I think on the 14th saying that no</p> <p>24 advice had been obtained from the DPP.</p> <p>25 Q. I think that is correct, that by that point</p> <p style="text-align: center;">Page 98</p>	<p>1 Chief Minister, WhatsApp messages.</p> <p>2 A. Yes.</p> <p>3 Q. Just focusing on the Chief Minister, can</p> <p>4 you explain why you have been unable to</p> <p>5 disclose messages between you and the Chief</p> <p>6 Minister?</p> <p>7 A. Sorry?</p> <p>8 Q. WhatsApp messages ----</p> <p>9 A. Why I have been unable to disclose</p> <p>10 them?</p> <p>11 Q. Yes.</p> <p>12 A. Because I don't have them on my phone.</p> <p>13 Q. And these messages in particular --- I</p> <p>14 think you made reference to clearing chats</p> <p>15 previously?</p> <p>16 A. Yes.</p> <p>17 Q. And you say that your messages currently</p> <p>18 go back to about 2021.</p> <p>19 A. Yes.</p> <p>20 Q. Was it in 2021 that you would have</p> <p>21 cleared these messages out or would it have</p> <p>22 been at an earlier stage?</p> <p>23 A. I don't recall, I am sorry, I really don't</p> <p>24 recall. I can't imagine it would have</p> <p>25 happened whilst the matter was live as in the</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 question of Mr Levy's investigation; that's 2 what I mean. 3 Q. Are you able to assist with whether you 4 would have cleared it later in 2020 or in 5 2021? 6 A. I really couldn't tell you. 7 Q. What did you think of the propriety of 8 your contact with the Chief Minister? 9 A. I didn't think it was improper at all. I 10 mean, the mindset at the time is that we had 11 got this bombshell, as we perceived it 12 anyway, which is the search warrant which 13 was a very serious intrusion into the private 14 rights of Mr Levy and indeed of an 15 individual and courts have repeatedly 16 referred or that in their judgments and my 17 sole focus was to get to the bottom of how all 18 this had come about and as I mentioned 19 earlier, my initial preference was to meet 20 with the Attorney General and with the 21 Commissioner of Police on the 13th and when 22 the Commissioner of Police felt unable to 23 hold such a meeting with me, I turned to the 24 Attorney General directly and also to the 25 Chief Minister because I knew or anticipated</p> <p style="text-align: center;">Page 101</p>	<p>1 (12.37) 2 Q. Can we go to, please, the Chief Minister's 3 evidence in his fourth affidavit on page 4 A1447. I am just picking it up at paragraph 5 10. 6 A. Yes. 7 Q. In fact, just one further back, 9, "As can 8 be seen from the WhatsApp messages 9 disclosed, I met with Mr Baglietto KC on a 10 number of occasions during that period. 11 Those meetings occurred nearly four years 12 ago and I cannot recall the detail of what was 13 discuss. I can, however, assisted by the 14 references in the WhatsApp messages I have 15 disclosed, recall the general tenor of the 16 discussion. In those meetings, I believe that I 17 shared with Mr Baglietto KC, who is, 18 incidentally, one of my closest personal 19 friends, my outrage at the RGP, in my view 20 improperly, obtaining a search warrant in 21 respect of Mr Levy KC instead of a 22 Production Order." Just pausing there, how 23 much information did you give to the Chief 24 Minister as to the basis put forward by the 25 RGP for the search warrant?</p> <p style="text-align: center;">Page 103</p>
<p>1 that he would have been involved in all these 2 --- he would have known about the incident 3 and would he been able to shed some light on 4 it and that is what I was --- I was hoping that 5 between the Chief Minister and the Attorney 6 General that they would help defuse the 7 whole matter by having discussions, as 8 indeed they did, with the RGP with a view to 9 the procedural defects and what we perceived 10 to be the abusers being redressed to the 11 extent they could, the horse already having 12 bolted of course but we did achieve a 13 measure of success, in my view, because we 14 did get these extra assurances as to the 15 safeguarding of the equipment and Mr Levy 16 was treated --- from the point of view of 17 offering evidence, he was treated more like a 18 witness than as a suspect, not forced to go 19 down to the police station and so on and so 20 forth and he gave the fullest account that he 21 could of the facts and that contributed to the 22 decision that the RGP took later in the year, 23 so it was a process which we thought was the 24 right one and which was borne out by 25 subsequent events.</p> <p style="text-align: center;">Page 102</p>	<p>1 A. I dare say -- I don't recall exactly, but I 2 dare say it would have been quite high level 3 and quite obvious and I believe that he 4 himself had alighted on why it was so 5 inappropriate, to put it mildly, because where 6 was the risk of destruction? Where was 7 substantiation in the application of that risk? 8 Where was the alleged inability or 9 impracticability of contacting the person who 10 held the information. So, there were lots of 11 parts of the application for the warrant which 12 were woefully defective, in my respectful 13 view. Leaving aside the question of full and 14 frank disclosure, but that's a different matter. 15 Q. Had you see the information at the time 16 of your discussions with the Chief Minister? 17 A. It depends, because I had certainly seen 18 the warrant itself but I think I only got to see 19 the schedule a few days later, but it was 20 evident on the face of the warrant that it was 21 fundamentally wrong, because it was 22 completely ... of the various bases put 23 forward, that the basis, the alleged basis, that 24 it was impracticable to communicate with the 25 suspect or obtain information from him. It</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 was completely irrational. There was no 2 reason to state that and there was certainly no 3 evidence to support it, and the same applies 4 to the risk of destruction. Then looking at 5 the application, of course, there was just a 6 mere statement of fear, or because he was a 7 suspect, ergo there was a risk of destruction, 8 which was a complete non sequitur and 9 nothing to support those bare allegations. 10 Q. In terms of seeing the information, did 11 you see the information when it was 12 disclosed to you by the RGP with the 13 redactions or did you previously see the 14 information from any other source? 15 A. I think it was sent to me under cover of a 16 letter. I can't recall exactly when, but it was 17 definitely during that week, possibly within a 18 couple of days that I saw the information 19 which was highly redacted, but for my 20 purposes it was more than sufficient because 21 the parts that dealt with the alleged basis of 22 the warrant were not redacted or were largely 23 unredacted. 24 Q. And did you feel at liberty to share 25 information on that redacted version with the</p> <p style="text-align: center;">Page 105</p>	<p>1 never be able to trust him again because I 2 believed he had, as I have already stated in 3 my earlier Affidavits, lied to me about the 4 advice he had taken and received about the 5 appropriateness of the execution of a search 6 warrant as opposed to a Production Order. 7 Mr Baglietto KC and I discussed at length 8 how best he should raise these issues in his 9 representations of Mr Levy KC. We 10 discussed whether Mr Levy KC should be 11 advised to judicially review the RGP's 12 actions in this respect. In this context, I 13 believe (though I have no precise recollection 14 of the detail of the discussion) that I would 15 have shared with Mr Baglietto KC also the 16 fact that I was very open with the Gibraltar 17 Police Authority and the then Governor that 18 Mr McGrail no longer enjoyed my 19 confidence and my views as to the 20 mechanisms to see Mr McGrail removed and 21 the consequences thereof." Do those 22 paragraphs accord with your recollection of 23 the exchanges with the Chief Minister? 24 A. Right, where do we start, 12? 25 Q. Let's deal with them ... yes, 12.</p> <p style="text-align: center;">Page 107</p>
<p>1 Chief Minister? 2 A. I am not sure whether I felt a liberty to 3 share it with him or not, but I don't think I 4 shared it. 5 Q. Just going back -- 6 A. I wasn't providing him with documents or 7 anything of the sort. He knew exactly what 8 had gone wrong here in his view, which 9 happened to be mine as well, and you only 10 had to look at the face of the warrant to see 11 that it was exorbitant and an abuse in my 12 respectful view. 13 Q. Just going back to his evidence at 14 paragraph 11, the Chief Minister says, "My 15 view was that the mechanism employed to 16 seek documents and information from Mr 17 Levy had been inappropriate and a breach of 18 his human rights, including his right to 19 privacy under the Constitution, and a 20 violation of his many clients' rights and 21 expectations of privacy." 22 A. Yes. 23 Q. "I spoke with Mr Baglietto KC repeatedly 24 about this and about how let down I felt by 25 Mr McGrail and about the fact that I would</p> <p style="text-align: center;">Page 106</p>	<p>1 A. Okay, right. It is perfectly plausible that 2 he gave me a piece of his mind about what he 3 thought about being let down by Mr 4 McGrail. That's my answer to 12. I don't 5 recollect specific meetings or conversations. 6 Q. But do you recollect him at one point 7 expressing his feelings about it? 8 A. Yes, yes. Yes, I think it would be fair to 9 say that I do recollect that. Then 13, "... how 10 best he should raise these issues ... at 11 length", I am not sure about the length, but I 12 mean, I am sure we did talk about ... we did 13 talk about judicial review and so on. Which 14 is what we were doing anyway. I mean, it 15 wasn't adding to what we had decided on and 16 alighted on from the beginning with the 17 added advice of external leading counsel 18 specialised in public law. As I say, Mr 19 Picardo knows a lot about judicial review, 20 and I've also done a fair bit in the past. In 21 fact, we have done some cases today and yes, 22 I don't have any issue with that paragraph 23 either. 24 Q. So that's -- 25 A. Except as to the length. I mean, I am not</p> <p style="text-align: center;">Page 108</p>

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<p>1 sure to what extent we had gone into a 2 lengthy sort of discussion about it frankly. 3 Q. And then 14, he believes he would have 4 shared with you also the fact that he was very 5 open with the Gibraltar Police Authority. Do 6 you remember him mentioning that? 7 A. I don't remember it. I mean, his 8 statement is somewhat qualified. It says, "I 9 believe that I would have shared it." It is 10 slightly -- it's the sort of thing ... in other 11 words, it's the sort of thing that he would 12 have told me during these discussions, but I 13 have no issue with what he's saying. It's very 14 possible that he did tell me what he had told 15 the GPA and the Governor and what he 16 thought the way of dealing with it was. But I 17 mean, that's not something which was of any 18 sort of relevance to what I was doing, 19 because I was just concerned with Mr Levy 20 and the return of his equipment, of his 21 devices rather, and having the gathering of 22 the evidence sought from him, dealt with on 23 a fair footing. I may not even have actually 24 passed these comments by the Chief Minister 25 on to my legal team in fact. They don't</p> <p style="text-align: center;">Page 109</p>	<p>1 recollection of that being said? 2 A. Of sending it on to Mr Levy? 3 Q. No, no, of the Chief Minister telling you 4 about it? 5 A. I have no clear recollection for his 6 Honour I am afraid, but I think it's entirely 7 plausible that he did. It's just that it wasn't 8 relevant to what I was doing. I was just 9 focused on Mr Levy and getting the devices 10 back for him, or having them safeguarded 11 and having his evidence dealt with in a less 12 draconian way. 13 Q. We know that the Chief Minister first 14 raised his concerns with Dr Britto of the 15 GPA on 18 May 2020, so he could only have 16 shared with you his openness with the 17 Gibraltar Polie Authority either on that date 18 or after that date. Do you recall 19 conversations on 18 May or afterwards about 20 the Chief Minister's loss of confidence in Mr 21 McGrail? 22 A. On the 18th? No, I think that was the 23 Monday. 24 Q. That's the Monday. 25 A. That was the Monday, no, I honestly</p> <p style="text-align: center;">Page 111</p>
<p>1 feature in the actual correspondence that 2 followed. It basically wasn't my business. It 3 wasn't what I was doing. 4 Q. Were you making any representations on 5 behalf of Mr Levy -- 6 A. Not at all. 7 Q. -- as to Mr McGrail's position? 8 A. Not at all. No representations, no advice, 9 nothing of the sort. 10 Q. But would you not agree that a Chief 11 Minister sharing with you information about 12 his views on the Commissioner of Police and 13 his discussions with the Gibraltar Police 14 Authority and the Governor and his 15 confidence and the mechanisms to see Mr 16 McGrail removed was quite -- although you 17 say it wasn't relevant to you -- momentous 18 information. 19 A. Well, he was obviously expressing his 20 dissatisfaction. I don't think he would have 21 gone into any particular detail about it. He 22 would have just been venting it. 23 Q. Yes, but my point is that given the 24 momentous nature, the important nature of 25 that information, do you nevertheless have no</p> <p style="text-align: center;">Page 110</p>	<p>1 don't recall. 2 Q. Or afterwards? 3 A. I don't recall, Mr Santos, I am sorry. 4 Q. Can we turn to B1422 please. 5 A. Yes. 6 Q. We are back to the exchanges between 7 you and the Chief Minister over WhatsApp. 8 At 4.55 the Chief Minister says, "The last 9 limb refers" and he sends a message that 10 says, "Dismissal with total loss or reduction 11 of pension benefits, forfeiture of pension 12 benefits will be used as a disciplinary 13 measure only in O's", which seems to be a 14 typo. 15 A. Cases, it must be cases. 16 Q. Cases, yes, I think that is right, where the 17 police officer is convicted of treason or some 18 other offence which is gravely injurious to 19 the State or is liable to lead to serious loss of 20 confidence in the police force. 21 A. Right. 22 Q. And you reply an hour and-a-half later, 23 "Many thanks." 24 A. Yes. 25 Q. Having looked that provision up, we</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 found it to be a disciplinary measure that is 2 available under the Police Regulations. Do 3 you know why the Chief Minister sent you a 4 message containing that provision? 5 A. No, I don't know what I would have made 6 of that message at the time. I mean, he's 7 obviously drawing my attention to provisions 8 that deal with misconduct on the part of 9 police officers. I have since reviewed the 10 relevant provisions which are the Police 11 Discipline Regulations if I am not mistaken, 12 as I think you said in your opening address, 13 Mr Santos, they expressly do not apply to the 14 Commissioner or Assistant Commissioner of 15 Police, as opposed to, for example, section 16 34 of the Police Act, which specifically deals 17 with the removal of the Commissioner of 18 Police. So, I don't know why he would have 19 sent it, but what I can tell you, and it's 20 obvious from the papers and hopefully in this 21 bundle as well, is that in a letter that I wrote 22 to the Magistrates' Court, copied to Mr 23 Richardson on 13 May, I referred to, I think 24 it was, what we apprehended was a serious 25 abuse of power and also misfeasance I think.</p> <p style="text-align: center;">Page 113</p>	<p>1 A. Yes. 2 THE CHAIRMAN: With the Chief Minister 3 saying "the last limb refers". He must be 4 referring there to some previous exchange 5 which has gone on between you and the 6 Chief Minister? 7 A. Yes, I see what you mean, Sir. Yes, it 8 looks like -- it's odd that it should just come 9 out of the blue. 10 THE CHAIRMAN: That is precisely -- it 11 wouldn't just come out of the blue, would it? 12 A. It may have, but I don't recall having any 13 discussion about disciplinary proceedings 14 against police officers. He may have 15 mentioned it in a conversation and this may 16 have been a follow up of that. I just don't 17 know. 18 THE CHAIRMAN: You mean like 19 discussing it on the phone and then there is 20 this exchange? 21 A. It is possible. It's possible. I cannot 22 discard that possibility. But in any event, it's 23 not something which we were adopting or 24 following up in any way. We were 25 concentrating on a public law remedy and a</p> <p style="text-align: center;">Page 115</p>
<p>1 Again, I know this has been misunderstood 2 in subsequent meetings as misfeasance in the 3 criminal sense, but I wasn't suggesting that. I 4 was suggesting the tort of misfeasance in 5 public office. Now, I don't know whether the 6 Chief Minister somehow became aware of 7 the fact that I was raising issues of 8 misfeasance by individual officers, and it 9 may have been in that context that he thought 10 that that provision might be relevant. So in 11 no way would I have understood it, I think, to 12 have referred to the Commissioner of Police. 13 Q. The provision itself that is quoted, it 14 quotes a disciplinary measure that is only to 15 be used in cases where the police officer is 16 convicted of treason or some other offence 17 which is gravely injurious to the State or is 18 liable to lead to serious loss of confidence in 19 the police force. 20 A. Yes. Well, I think "or is liable to lead to 21 serious loss of confidence in the police force" 22 is consonant with misfeasance in public 23 office. 24 THE CHAIRMAN: But that exchange starts 25 off at 16.55.</p> <p style="text-align: center;">Page 114</p>	<p>1 potential tortious remedy, not a statutory 2 disciplinary remedy, and the same applies to 3 section 76 of the Police Act, which he then 4 refers to. 5 MR SANTOS: We will turn to that next. 6 So, is your position that you can't recall 7 anything that you discussed beforehand 8 which might have prompted the Chief 9 Minister to send this to you? 10 A. I'm afraid I can't, no. 11 Q. Is it possible that the Chief Minister was 12 referring to some sort of punishment against 13 either Mr McGrail or any other officers 14 involved in Operation Delhi? 15 A. I wouldn't have thought Mr McGrail 16 because otherwise he would have drawn my 17 attention to section 34, having been 18 conscious of the primary legislation to which 19 he referred in the next message. 20 Q. But the other officers? 21 A. Other officers, yes. I mean, if he was of 22 the view that other officers might have 23 seriously misbehaved in relation to the 24 warrant or otherwise, he might have thought 25 that relevant.</p> <p style="text-align: center;">Page 116</p>

<p>1 Q. The disciplinary regulations, do they 2 give, as far as you are aware, any powers to 3 the Chief Minister to discipline officers? 4 A. I'm sorry, I haven't read the whole lot. 5 Q. Did you think it was appropriate for the 6 Chief Minister to be sending this provision to 7 you. 8 A. Well, I didn't form a view on its 9 appropriateness and it is more a matter for 10 him and he will know what his red lines area. 11 I mean, people sometimes offer suggestions 12 and then I look at them and I take them on 13 board or not, but with respect, I don't think 14 this would even have gone before my legal 15 team. 16 Q. Then we have the reference to section 76 17 of the Police Act. 18 A. Yes. 19 Q. Which is a provision permitting an 20 application to the Magistrates' Court by a 21 person whose property has been taken by the 22 police under a statutory provision to seek its 23 return. Did you understand there the Chief 24 Minister -- well, your response to that is, 25 "Thanks. We are drafting a letter. Let me</p> <p style="text-align: center;">Page 117</p>	<p>1 over it and alighted on it. I simply cannot 2 assist the Inquiry with that. I really am sorry. 3 I wish I could. 4 MR SANTOS: You say, "Let me think about 5 this provision" -- 6 A. Yes. 7 Q. "... but we'd prefer not to go ... not to 8 have to go to court but for CPO to return due 9 to clear unlawfulness." Why did you prefer 10 not to go to court? 11 A. Well, we didn't want to have to go to 12 court with all guns blazing if we could 13 actually come up with a sensible way 14 forward to deal with the question of 15 obtaining evidence from Mr Levy. As I think 16 most individuals would, rather than have the 17 publicity, the cost and all the work involved 18 in having to go to court. 19 Q. Were you content to have suggestions of 20 this nature put to you by the Chief Minister? 21 A. Content? Well, I mean, I didn't 22 particularly object to them. I suppose any 23 suggestion is welcome when you're in a 24 situation like that. Obviously, you might 25 take them into -- or might not take them into</p> <p style="text-align: center;">Page 119</p>
<p>1 think about this provision, but we prefer not 2 to have to go to court but for CPA to return 3 due to clear unlawfulness", to which you 4 responded, "Yes, I understand." 5 A. Yes. 6 Q. So, you understood that as a proposal by 7 the Chief Minister of an application to be 8 made, is that correct? 9 A. Yes, yes, of course, yes. I mean, yes, that 10 was more aligned with the sort of action we 11 might have contemplated. 12 THE CHAIRMAN: That exchange -- sorry, 13 I did not mean to interrupt you -- starts at 14 18.41 with the Chief Minister saying, 15 "Section 76 of the Police Act". 16 A. Yes. 17 THE CHAIRMAN: How did that come 18 about? 19 A. Yes, because that's like an hour and-a- 20 half, well, a couple of hours after the -- 21 THE CHAIRMAN: Yes, exactly. 22 A. Yes, I am not sure. I'm not sure. 23 THE CHAIRMAN: Well, it wouldn't just 24 come out of the blue, would it, or did it? 25 A. Well, maybe it did. Maybe he was poring</p> <p style="text-align: center;">Page 118</p>	<p>1 account. But we already had a very clear 2 thinking or clear strategy of the way we 3 wanted to go, if we needed to push it in 4 court. 5 Q. Did you consider yourself and the Chief 6 Minister to be acting at arm's length? 7 A. At arm's length? Well, I would consider 8 that I was acting as Mr Levy's lawyer and the 9 Chief Minister was obviously trying to be 10 helpful. I can't -- I don't know whether that 11 would be categorised as arm's length or not. 12 Certainly from my perspective I had no issue 13 if he wanted to send me it. I had no issue 14 with that. 15 Q. Did you not consider it rather unique for 16 the Chief Minister to be making proposals of 17 potential legal applications to a suspect in a 18 criminal investigation? 19 A. Well, it might have been unique but it 20 was a unique scenario and I knew the depth 21 of feeling that he had about it. 22 MR SANTOS: Sir, I still have about five 23 pages of questions left. I did think I was 24 going to be done by lunchtime, but I am 25 going to be another, probably, half hour at</p> <p style="text-align: center;">Page 120</p>

<p>1 least. 2 THE DISTRICT JUDGE: We will break 3 there. 4 MR SANTOS: Sorry, Mr Baglietto, I still 5 have a substantial number of questions so I 6 think we will have to pick up again at 2 7 o'clock. 8 A. Did you say about half an hour, Mr 9 Santos? 10 Q. Well, I said half an hour at least. 11 A. At least. 12 Q. Probably between half an hour and 45 13 minutes. 14 A. But 2 o'clock then? 15 Q. Two o'clock. 16 THE CHAIRMAN: 2 o'clock. 17 A. Yes, thank you very much. 18 (13.01) 19 (The short adjournment) 20 (14.01) 21 MR SANTOS: Good afternoon, Mr 22 Baglietto? 23 A. Afternoon. 24 Q. Just a couple of points to pick up from 25 this morning. One thing is that you say that</p> <p style="text-align: center;">Page 121</p>	<p>1 Q. One other point is C4/614 please? 2 A. C4/614. 3 Q. This is a letter from - actually just to give 4 you the benefit of it, can we just go to the 5 previous page, 29 May 2020 from the 6 Director of Public Prosecutions to you and 7 Mr Bonfante? 8 A. Yes. 9 Q. In the final paragraph it says: "You 10 should be pleased to know that we are in the 11 process of finalising a further version of the 12 RGP's application for the search warrant 13 which slightly scales back the extent of the 14 redactions made to the document which was 15 provided to you on 27 May 2020? 16 A. Yes. 17 Q. It looks from that that the initial - the 18 first and more heavily redacted version of the 19 application for the information was provided 20 to you on 27 May 2020. So, I just want to 21 give you the opportunity to revisit what you 22 said before -- 23 A. Sure. 24 Q. - the lunch break, because there was a 25 suggestion that some of the discussions</p> <p style="text-align: center;">Page 123</p>
<p>1 the correspondence at the time was mostly 2 or predominantly drafted by counsel in 3 London. In order for them to draft those, 4 would it have been necessary for you to 5 update them on your meetings with the 6 Attorney General? 7 A. Yes. I dare say it would have been. 8 Q. Have you refreshed your memory based 9 on your updates to counsel at the time as to 10 the meetings with the Attorney General? 11 A. No, but for example I can tell you - I can 12 just give you an example of how that - of 13 what I can recall in relation to that. On 15 14 May I met with Mr Llamas who told me that 15 the RGP was prepared to accept a voluntary 16 statement, not under caution, albeit as an 17 interim measure (call it what you will) and 18 then I reported that back to leading counsel 19 and then without waiving privilege or to give 20 any detail, we had a conference call in 21 relation to that on the Sunday morning, for 22 example on the morning of the 17th. So, that 23 would have been an example of us informing 24 counsel of an important development in the 25 case, and seeking counsel's advice on it.</p> <p style="text-align: center;">Page 122</p>	<p>1 between you and the Chief Minister were 2 based on the content of the information, but it 3 does not appear as though you have the 4 information until 27 May 2020? 5 A. Right. I'm sorry if I gave that impression, 6 but certainly the important thing is that such 7 discussions would have comprised certainly 8 the warrant itself which we had from the very 9 beginning. I don't think the information 10 really added anything to the concerns that 11 could be gleaned from the warrant itself, but 12 I would really need to check exhibit HJML/3 13 to see whether I first got a version of 14 schedule 1 to the warrant application during 15 - well, at an early stage basically. But what I 16 am saying is that in substance it didn't make 17 any difference to the high level discussion, 18 because whether I had schedule one or not, 19 the point was very obvious - well, it was 20 obvious to him from the beginning, as we 21 have seen from the evidence, that he thought 22 a production order was the right way 23 forward, and I'm not sure whether he made 24 any comments about how ridiculous to 25 suggest that there was a risk of destruction</p> <p style="text-align: center;">Page 124</p>

31 (Pages 121 to 124)

<p>1 and so on. The warrant itself obviously we 2 had from day one and he didn't really need to 3 go to the schedule one to basically conclude 4 that the warrant was grossly insufficient, 5 because all that added was the evidence of 6 the lack of substantiation of the allegations 7 that it was impracticable to communicate 8 with the person holding the information and 9 then the risk or the fear of destruction and 10 then, as I mentioned this morning, that non 11 sequitur of "he's a suspect; ergo there's a 12 risk". I don't know if that helps at all. 13 Q. Now, moving to B1/422 -- 14 A. Yes. 15 Q. 16 May, if we can go down a little bit? 16 A. Yes. 17 Q. There is one message on 16 May where 18 you say, "Bro, sorry to disturb but can we 19 speak sometime tomorrow morning." 20 A. Yes. 21 Q. Do you have the type of relationship with 22 the Chief Minister where you refer to him as 23 "bro"? 24 A. I don't always refer to him as "bro" 25 obviously but there may be times where I</p> <p style="text-align: center;">Page 125</p>	<p>1 statement, and not under caution. Then we 2 have a Saturday, and then at 20:55, if I am 3 not mistaken on the Saturday, Mr Richardson 4 sends us the - sends me, rather, the pre- 5 interview disclosure. That is exhibit 6 HJML/3, and he does so by email. I don't 7 think I would have pinged that over to Mr 8 Levy straightaway because I thought the 9 Sabbath had not yet ended, and even though I 10 know he is not going to read it, in deference I 11 don't actually like sending him something 12 during the Sabbath. So, I may have sent it to 13 him a bit later and I must have had a 14 conversation with him that evening, and 15 following that conversation or subsequent to 16 that conversation, and possibly consequent 17 upon it, I sent that WhatsApp to the Chief 18 Minister. That, I think, explains why I sent it 19 so late in the day. 20 Q. Why did you think that you - why do you 21 think, or perhaps first try and tell us from 22 recollection - why did you have to speak the 23 next morning, a Sunday morning? 24 A. That is what I cannot recall, and I have 25 said it in my witness statement. It is</p> <p style="text-align: center;">Page 127</p>
<p>1 sort of lapse into the vernacular - or into 2 colloquialisms like that, yes. Not on a regular 3 basis, I dare say. 4 Q. You sent this message very late at night? 5 A. Yes. 6 Q. Was it very urgent that you needed to 7 talk? 8 A. It must have been given the lateness of 9 the day, but what I can do is I can - the best 10 that I can do is actually put on the table all 11 the various exchanges and things that took 12 place so that they can get a full picture at 13 least of what all the emails and 14 communications that were going on at the 15 time concerned, and I think we need to start 16 with the fact that there was this meeting with 17 the Attorney General in the evening of 15 18 May. 19 Q. The Friday? 20 A. Yes, exactly, on the Friday and that 21 would have been part of the Sabbath, so I 22 wouldn't have been able to communicate to 23 Mr Levy the outcome of that meeting, which 24 was basically that the RGP had confirmed 25 that they would be happy with a voluntary</p> <p style="text-align: center;">Page 126</p>	<p>1 unfortunate because I wish I could recall and 2 assist this Tribunal more, but regrettably I 3 don't. The best I can do is actually put before 4 the Inquiry everything that happened and of 5 course what you see the following morning is 6 that the Chief Minister comes back to me. 7 He says: "Sure. What time is good for you?" 8 and then we go on to the one at 951, at 12 9 noon he says - I think he must refer to Mr 10 Levy -- 11 Q. Just pausing before then because I was 12 going to take you to these messages, at 9.43 13 the Chief Minister says, "I don't mind 14 [Spanish]" which means I will call you now? 15 A. Yes. 16 Q. And then a minute later you provide him 17 with the options of where to call you? 18 A. Yes. 19 Q. But it seems as though the conversation 20 takes place between then and 9.51, which is 21 when you say: at 12 noon he says... As you 22 say it seems to be a reference to Mr Levy? 23 A. I think so. 24 Q. Do you recall a conversation taking place 25 at that time?</p> <p style="text-align: center;">Page 128</p>

<p>1 A. No, I don't because actually I didn't recall 2 this meeting until I read the WhatsApps 3 recently provided to me. When I did get 4 them, I did realise - I did remember that I did 5 actually drive Mr Levy up to Mr Picardo's 6 house on that Sunday, and I also managed to 7 glean the fact that mid-morning we had - that 8 is Mr Picardo, Mr Bonfante and myself - had 9 a telephone conference with leading counsel 10 in London. I wouldn't want to say what it 11 was about because that would be privileged 12 obviously. 13 Q. Relating to this matter or not relating to 14 this matter? 15 A. Oh, relating to this matter, yes. 16 Q. Sorry, you said Mr Picardo? 17 A. I am so sorry. I didn't meant Mr Picardo. 18 No, I meant, Mr Levy, Mr Bonfante and 19 myself. I'm so sorry. 20 Q. So there is a phone call at 9.44.51. We 21 do not know exactly what was said on that 22 phone call but at least it included, it appears, 23 plan to meet shortly thereafter? 24 A. Yes. 25 Q. Then at 12 noon he says... Then there are</p> <p style="text-align: center;">Page 129</p>	<p>1 A. Exactly, so we were quite delayed. 2 Q. So, the meeting did not take place at 3 midday? 4 A. No, so 10 minutes after the time that was 5 originally planned, he is asking: "How are 6 you getting on?" I don't know whether it's 7 that I didn't see the message or that I told him 8 by phone that we were delayed, or what 9 happened there. But in any event, I updates 10 him at 14:03 by saying: "I'm picking up [Mr 11 Levy] now." Because I can't remember 12 whether Mr Levy actually joined the call in 13 the office or remotely. It may be that he did 14 come to the office, but then had to go home 15 for whatever reason before we had that 16 meeting. 17 Q. If we go to Picardo/4, A1/448, paragraphs 18 15-18? 19 A. Yes. 20 Q. What Mr Picardo says is: "I recall seeing 21 Mr Levy KC also at this time on one 22 occasion with Mr Baglietto KC. I believe I 23 saw him at my home (the security of which 24 is, incidentally, provided by OSG who have a 25 live video feed of all comings and goings</p> <p style="text-align: center;">Page 131</p>
<p>1 a few missed phone calls. Four past 10: " 2 Okay, let me know when you are on your 3 way up" at 11.42, and you say "Okay" and he 4 says, "Como vas?" - How are you going? 5 Then you say, "Picking up now" at 2.03? 6 A. Yes. 7 Q. We think there could be two 8 interpretations of that message. On the one 9 hand, you could be saying that you were 10 picking up Mr Levy on the way up, although 11 it is at 2 o'clock; or after the meeting you 12 were picking something up that had been sent 13 your way? 14 A. Sorry, let me just go to that. There we 15 go. "Picking up now." He is asking: 16 "Where are you?" 17 Q. Yes, that is at 11 -- 12.09? 18 A. Yes. I don't know why there is such ... 19 Well, I know why there's such a gap because 20 I mean obviously we were still having that 21 conference with leading counsel, Mr 22 Bonfante and Mr Levy. So, we were delayed 23 because I think originally the plan had been 24 to meet at about midday or something. 25 Q. Yes?</p> <p style="text-align: center;">Page 130</p>	<p>1 from my home)." 2 A. Yes. 3 Q. "I recall also that Mr Levy KC was, at 4 this time both, incensed but also deeply 5 embarrassed by the events of his home and 6 office being searched." 7 A. Yes. 8 Q. "At the meeting with Mr Levy KC I 9 remember we discussed, again, how legally 10 improper it had been, in our view, for the 11 RGP to have proceeded by way of search 12 warrant and not Production Order, how 13 outraged I was by the fact that I believe that 14 Mr McGrail had lied to me about the advice 15 he'd had in that respect and my subsequent 16 complete loss of confidence in him." 17 A. Mmh. 18 Q. "The key issue..." Just pausing there -- 19 A. Yes. 20 Q. - does that all accord with your 21 recollection? 22 A. Well, I remember we went up... I don't 23 specifically remember his expression of 24 outrage, but it was entirely consistent with 25 his mood at the time, I think, and I therefore</p> <p style="text-align: center;">Page 132</p>

<p>1 have no issue with that having been said.</p> <p>2 Sorry, that is my answer to your question, I</p> <p>3 think.</p> <p>4 Q. Just focusing on 17, because he mentions</p> <p>5 a number of things --</p> <p>6 A. Yes.</p> <p>7 Q. - the Chief Minister says: "I remember</p> <p>8 we discussed ... how legally improper it had</p> <p>9 been in our view, for the RGP to have</p> <p>10 proceeded by way of search warrant --</p> <p>11 A. Yes.</p> <p>12 Q. - and not Production Order." Do you</p> <p>13 recall something to that effect?</p> <p>14 A. No, but that wasn't surprising. There</p> <p>15 would have been comments on that. I think</p> <p>16 Mr Levy said yesterday that it was all much</p> <p>17 more high level about police methods. I</p> <p>18 really cannot shed light one way or the other.</p> <p>19 I really can't remember.</p> <p>20 Q. Then he says "how outraged I was by the</p> <p>21 fact that I believe that Mr McGrail had lied</p> <p>22 to be about the advice he had had in that</p> <p>23 respect." Do you remember something to</p> <p>24 that effect?</p> <p>25 A. I'm afraid not, no.</p> <p style="text-align: center;">Page 133</p>	<p>1 issue in that meeting, however..." Sorry, just</p> <p>2 before asking that, did the Chief Minister</p> <p>3 give any assurances to Mr Levy as to the</p> <p>4 investigation or as to his devices?</p> <p>5 A. Not that I can recall. No, I would have</p> <p>6 found that quite surprising actually.</p> <p>7 Q. Did he discuss taking any retributive</p> <p>8 action against Mr McGrail or RGP officers,</p> <p>9 such as reduction of pension benefits or</p> <p>10 anything like that?</p> <p>11 A. I certainly don't recall that. If I recalled</p> <p>12 anything in that respect, I would tell you but</p> <p>13 I really don't.</p> <p>14 Q. Did he discuss measures which would be</p> <p>15 taken to discipline or dismiss Mr McGrail?</p> <p>16 A. Again, my answer is the same. I simply</p> <p>17 do not recall.</p> <p>18 Q. Now, at paragraph 18 he says: "The key</p> <p>19 issue in that meeting, however, was that Mr</p> <p>20 Levy KC, as a result of the acute</p> <p>21 embarrassment he had felt, had wanted to see</p> <p>22 me to offer me his resignation as the</p> <p>23 Chairperson of Gibraltar Community Care</p> <p>24 Trust, a post he has held for over thirty years.</p> <p>25 It old Mr Levy KC in that meeting that I</p> <p style="text-align: center;">Page 135</p>
<p>1 Q. So, there it does seem as though -</p> <p>2 ignoring anything that happened previously,</p> <p>3 it does seem that at least there the Chief</p> <p>4 Minister did, according to his account, share</p> <p>5 with you the information that he had as to the</p> <p>6 DPP's advice on the warrant?</p> <p>7 A. Yes, on the Chief Minister's version, he</p> <p>8 would have done so by then, but as I said this</p> <p>9 morning, it is possible that I have gleaned it</p> <p>10 from him at an earlier stage.</p> <p>11 Q. Because you had already referred to it in</p> <p>12 the letter?</p> <p>13 A. Exactly.</p> <p>14 Q. "... and my subsequent complete loss of</p> <p>15 confidence in him..." i.e. Mr McGrail. Do</p> <p>16 you remember references to his loss of</p> <p>17 confidence?</p> <p>18 A. Not on that day, but as I said this</p> <p>19 morning, it would not have surprised me that</p> <p>20 he would have made those comments to me</p> <p>21 in the course of any conversations with him,</p> <p>22 but as I said this morning, they were of no</p> <p>23 effect as far as what I was doing on behalf of</p> <p>24 Mr Levy.</p> <p>25 Q. Then in paragraph 18 he says: "The key</p> <p style="text-align: center;">Page 134</p>	<p>1 continue to have full confidence in him and</p> <p>2 his integrity and that I did not believe it was</p> <p>3 necessary for him to resign from the</p> <p>4 Chairmanship of Community Care Trust."</p> <p>5 Mr Levy says that that was the purpose of the</p> <p>6 meeting - to resign from his position as</p> <p>7 Chairman of the Community Care Trust.</p> <p>8 Was that really the purpose of the meeting,</p> <p>9 Mr Baglietto?</p> <p>10 A. Mr Santos, I honestly could not tell you if</p> <p>11 that was the purpose of the meeting. It hasn't</p> <p>12 stuck in my mind, otherwise I would have</p> <p>13 said --</p> <p>14 Q. Do you have any recollection of</p> <p>15 Community Care being mentioned at that</p> <p>16 meeting?</p> <p>17 A. I don't have any specific recollection.</p> <p>18 I've got a very, very hazy recollection of his</p> <p>19 concern in relation to Community Care</p> <p>20 having arisen around that time, but I couldn't</p> <p>21 put a date to it, I really couldn't. I know for a</p> <p>22 fact that having worked with them for 38</p> <p>23 years, that Community Care is something</p> <p>24 that was very close to his heart, and I think</p> <p>25 he felt very embarrassed by the whole thing</p> <p style="text-align: center;">Page 136</p>

1 **about the effect of the warrant on some of his**
 2 **public appointments and public profile, but I**
 3 **honestly cannot assist you further in terms of**
 4 **that hazy recollection that I have and when it**
 5 **might have been expressed to me.**
 6 Q. What was his concern? You have
 7 referred to it, but what was his concern?
 8 **A. Well, I think he was just embarrassed that**
 9 **if he was being considered a suspect - sort of**
 10 **a conspiracy to defraud, that he should be the**
 11 **Chairman of a trust whose beneficiaries are**
 12 **basically the people of Gibraltar.**
 13 Q. Do you have a role with Community Care
 14 Trusts?
 15 **A. No, not at all. I have represented them in**
 16 **the past, many years ago.**
 17 Q. In that case, why did he need you to
 18 attend with him for that purpose?
 19 **A. I think he sometimes likes people to**
 20 **accompany him to places. For example, I do**
 21 **not think it is a matter of secret, if you were**
 22 **to go down to Limor(?) Road on a Friday**
 23 **afternoon you would see Mr Chincotta, his**
 24 **managing partner sort of walking Mr Levy**
 25 **home. So, he does rather like that sort of**

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1 **thing and have a chat on the way, and so on.**
 2 **He's that kind of person. I don't think he**
 3 **particularly enjoys driving much either, and**
 4 **probably after that conference he may well**
 5 **have asked me for a lift and wanted me to**
 6 **just go up for a bit of moral support as well,**
 7 **but he was actually in a state of some distress**
 8 **that week, I have to say.**
 9 Q. You see, what is strange is that there is
 10 reference to police disciplinary regulations.
 11 There is reference to section 76. We know
 12 that the topic of the search warrant was very
 13 high on the agenda, but there is no reference
 14 to Community Care in any of the messages
 15 between you, the Chief Minister or anything
 16 like that. Can you explain why there isn't?
 17 **A. I honestly can't. I really can't.**
 18 Q. Can we go to B3/346 please?
 19 THE CHAIRMAN: You had just finished a
 20 long conference with leading counsel in
 21 London?
 22 **A. Yes.**
 23 THE CHAIRMAN: About the search
 24 warrant?
 25 **A. Yes. Sorry, not about the search warrant.**

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1 **I don't want to say too much but it was to do**
 2 **with the evidence.**
 3 THE CHAIRMAN: Right, well, it is to do
 4 with the trouble that Mr Levy perceived
 5 himself to be in?
 6 **A. Yes.**
 7 THE CHAIRMAN: Why would he suddenly
 8 go up and speak to the Chief Minister about
 9 being Chairman of the Community Care
 10 Trust in Gibraltar?
 11 **A. I don't know whether it was something**
 12 **that was particularly bothering him during**
 13 **the Sabbath. I just could not say.**
 14 THE CHAIRMAN: Did you not think:
 15 Come on, you have got far more important
 16 things to worry about than this. This, surely,
 17 can wait?
 18 **A. I can't actually comment on behalf of Mr**
 19 **Levy in relation to that, and I have actually**
 20 **told the Inquiry that I personally don't**
 21 **recollect. I mean, let's just go back to my - if**
 22 **you don't mind - to my witness statement,**
 23 **my affidavit on that.**
 24 THE CHAIRMAN: Yes, do.
 25 **A. Let us have a look at it. (After a pause)**

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1 **Yes, it is paragraph 11, A1/525.**
 2 Q. THE CHAIRMAN: Yes?
 3 **A. "I note from Mr Picardo's fourth affidavit**
 4 **he states the key issue was Community Care.**
 5 **I no longer recall matters discussed at that**
 6 **meeting. I note that Mr Picardo states that the**
 7 **matter of the warrant was also raised ... also**
 8 **note at 14:51 I emailed the AG..." That**
 9 **would have been shortly after the meeting in**
 10 **relation to the question of the voluntary**
 11 **statement. But then I end saying, "But I**
 12 **cannot recall if the subject of that email was**
 13 **connected to the meeting with Mr Picardo on**
 14 **that day."**
 15 THE CHAIRMAN: Would it not have been
 16 very remarkable if Mr Levy was concerned
 17 about being Chairman of the Community
 18 Care Trust when he is facing this major
 19 crisis, being the subject of a search warrant?
 20 Would you not remember that his main
 21 concern was fiddling around with being
 22 Chairman of the Community Care Trust?
 23 **A. Well, as I say, I have a hazy recollection**
 24 **that he was concerned at the time. I don't**
 25 **know whether that concern crystallised that**

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<p>1 day in the form of the meeting with the Chief</p> <p>2 Minister or not, but certainly my focus on</p> <p>3 that day was on the - on the legal issues.</p> <p>4 THE CHAIRMAN: Well, that is the point.</p> <p>5 Surely his focus would have been precisely</p> <p>6 on that as wells?</p> <p>7 A. Yes.</p> <p>8 THE CHAIRMAN: But it was not, so it</p> <p>9 would seem?</p> <p>10 A. Well, Mr Picardo and Mr Levy seem to</p> <p>11 recollect that the main purpose of the</p> <p>12 meeting was the Community Care Trust and I</p> <p>13 simply have no recollection. I have not had</p> <p>14 any occasion to apply my memory to that day</p> <p>15 until asked by the Inquiry fairly recently.</p> <p>16 THE CHAIRMAN: anyway, it is his</p> <p>17 recollection that that was the subject --</p> <p>18 A. Yes, his and Mr Picardo's as well.</p> <p>19 THE CHAIRMAN: It is not yours?</p> <p>20 A. No, it isn't.</p> <p>21 MR SANTOS: Whatever the purpose of that</p> <p>22 meeting might have been, certainly the issue</p> <p>23 of the search warrant was discussed at that</p> <p>24 meeting?</p> <p>25 A. I think I probably say something there</p> <p style="text-align: center;">Page 141</p>	<p>1 Q. Sorry, no, 51?</p> <p>2 A. 14:51, I very much doubt that I would</p> <p>3 have emailed the Attorney General from the</p> <p>4 Chief Minister's house. I would have</p> <p>5 emailed him after dropping off Mr Levy. So,</p> <p>6 if you work it out, it doesn't really give much</p> <p>7 time at Mr Levy's house, and basically I</p> <p>8 think I probably emailed the Attorney</p> <p>9 General when I did because we had rushed</p> <p>10 straight from the conference with leading</p> <p>11 counsel to Mr Picardo's house, and that was -</p> <p>12 this was the first opportunity I had after that,</p> <p>13 after that conference with counsel, to write to</p> <p>14 the Attorney General saying: look, we -</p> <p>15 whatever it is I told him - seeking</p> <p>16 confirmation --</p> <p>17 Q. Yes?</p> <p>18 A. -- because we had got - because of course</p> <p>19 the message that we got from Mr Richardson</p> <p>20 the night before was slightly conflicting</p> <p>21 because it was proceeding on the basis that</p> <p>22 there would be an interview under caution on</p> <p>23 the Monday morning, whereas on the other</p> <p>24 hand I had had an indication that the police</p> <p>25 were happy with a voluntary statement not</p> <p style="text-align: center;">Page 143</p>
<p>1 that it might have been raised. Let me just</p> <p>2 have a check of that. (After a pause) Yes, "I</p> <p>3 note Mr Picardo states the matter was also</p> <p>4 raised..." Well, it is perfectly plausible that it</p> <p>5 might have been raised at that meeting</p> <p>6 frankly, whether in generic terms or in</p> <p>7 specific terms.</p> <p>8 Q. What do you actually remember about the</p> <p>9 contents of the meeting without reference to</p> <p>10 documents or anything? What do you</p> <p>11 actually remember about the meeting?</p> <p>12 A. I remember driving us up with Mr Levy,</p> <p>13 not being there for very long, not being there</p> <p>14 for very long at all actually, and nothing else.</p> <p>15 If I remembered the slightest thing, I would</p> <p>16 have no difficulty whatsoever in telling this</p> <p>17 Inquiry, I can assure you.</p> <p>18 Q. And when you say "not for very long"</p> <p>19 can you give an estimate of how long?</p> <p>20 A. I estimate it, with the help of the</p> <p>21 WhatsApps actually, because if we were</p> <p>22 arriving there at 14:03, and then I emailed the</p> <p>23 Attorney General at 14 whatever it was --</p> <p>24 Q. 56?</p> <p>25 A. 14:56.</p> <p style="text-align: center;">Page 142</p>	<p>1 under caution. I wanted to have that clear in</p> <p>2 my mind, that that was very much on the</p> <p>3 table, the possibility of a voluntary interview</p> <p>4 under caution, notwithstanding what we had</p> <p>5 received from Mr Richardson the previous</p> <p>6 night.</p> <p>7 (14.30)</p> <p>8 Q. Do you have any notes of that meeting?</p> <p>9 A. Which one?</p> <p>10 Q. The meeting of 17 May. The meeting at</p> <p>11 the Chief Minister's house.</p> <p>12 A. No, I don't, no. It was a short meeting on</p> <p>13 -- I do of course have -- well, I have a note of</p> <p>14 my telephone conference with leading</p> <p>15 counsel, which is considerably detailed and</p> <p>16 long (?), but that was -- matters of substance</p> <p>17 were...</p> <p>18 Q. Did you not think it merited, a meeting</p> <p>19 with the Chief Minister where the search</p> <p>20 warrant was discussed, did you not think that</p> <p>21 merited a file note?</p> <p>22 A. Not if the purpose was not to discuss the</p> <p>23 search warrant. The matter was -- arose</p> <p>24 incidentally, and it was just a general</p> <p>25 complaint or letting off steam by the Chief</p> <p style="text-align: center;">Page 144</p>

<p>1 Minister. I wouldn't file-note that sort of 2 thing, and there are, you know, rather more 3 substantial things that I wouldn't file-note 4 either, necessarily, let alone that. 5 Q. Going back to B1422, just later that 6 evening there is -- 7 A. Yeah. 8 Q. -- at 22.48... 9 A. Yes. 10 Q. This is a message from the Chief Minister 11 to you -- 12 A. Yes. 13 Q. And on this occasion it says, "Media 14 omitted", and then he says below, "That is 15 page 13 of the HMIC report published last 16 week, look at the bit I've highlighted in red. 17 Boom (?)." And the attachment, actually we 18 have been provided with -- 19 A. Yeah, I've got it here. 20 Q. -- C6761. It is a page from the HMIC 21 report. Had you seen the HMIC report 22 before this was sent to you by the Chief 23 Minister? 24 A. No, no, I heard about it on TV, I think, 25 before this happened. Is -- I see that this</p> <p style="text-align: center;">Page 145</p>	<p>1 (inaudible)? 2 A. I have no idea. He had sent me other 3 stuff, which -- like those provisions that we 4 were talking about this morning, which he 5 may have thought helpful. And -- but of 6 course, then it was up to me and my legal 7 team to decide what we -- what we actually 8 deployed, regardless of the source of 9 information. 10 Q. And, then he says at 2301, "I think the 11 above is of major", I think he probably 12 means relevance, "to the issues" -- 13 A. Yeah. 14 Q. -- "raised this week. It will be important, 15 remember the HMIC report is public." 16 THE CHAIRMAN: You have missed out the 17 exchange -- 18 MR SANTOS: Yes. 19 THE CHAIRMAN: -- at 22.50. 20 A(?). "Oh shocking", yes. 21 Q. Yes, I was going to come back -- 22 THE CHAIRMAN: Okay. (?) 23 Q. -- to that, but yes. You say, "Shocking, 24 but sadly doesn't come as a surprise" -- 25 A. Yeah.</p> <p style="text-align: center;">Page 147</p>
<p>1 copy is marked, is -- 2 Q. Yes, that -- 3 A. -- is this what -- 4 Q. -- seems to be the image that was sent to 5 both you and to the Attorney General by the 6 Chief Minister. 7 A. So, marked in this way? 8 Q. Yes. 9 A. That's (inaudible), right, okay. I hadn't 10 actually recollected this, because I -- when I 11 got the -- when I got the transcript of the 12 emails quite recently it wasn't marked in any 13 way. But I did gather that -- well, I did (?) 14 look at that page, and what seemed to be 15 most relevant is in fact what has been 16 underlined here in red, which is of course a 17 matter of concern, of particular concern for 18 us, given that the devices were in the hands 19 of the RGP and we wanted to make 20 absolutely sure that they could not be 21 inappropriately accessed. 22 Q. It seems also to have been a matter of 23 concern to the Chief Minister. 24 A. I imagine so. 25 Q. Why was the Chief Minister sending you</p> <p style="text-align: center;">Page 146</p>	<p>1 Q. When you said "Shocking, but sadly 2 doesn't come as a surprise", what exactly 3 were you referring to? 4 A. Well, I think that must have meant the 5 fact that I didn't -- this finding did not come 6 as a surprise, since it accorded, or was not 7 inconsistent, with the laxity (if I can put it at 8 its lowest) with which the search warrant 9 application was approached. 10 Q. Why do you think that the Chief Minister 11 said: "Boom"? (?) 12 A. Because he obviously thought this was 13 some sort of -- something momentous or 14 highly relevant to his and our -- and indeed 15 our concerns, to do with the warrant and the 16 preservation of evidence. 17 Q. Because, it seems to have a slightly 18 celebratory tone, or excitement about it. 19 A. Well, I don't particularly get excited about 20 these things, either they're relevant to what 21 I'm doing or they're not. Yeah. 22 Q. Then I was just going to go to that 23 message at 22.52, and focusing on the second 24 and third sentences. "Thanks for your time 25 today, bro" --</p> <p style="text-align: center;">Page 148</p>

<p>1 A. Yes. 2 Q. "I think it reassured him a lot." 3 A. Yeah. 4 Q. "him", there -- 5 A. Was Mr Levy. 6 Q. -- presumably Mr Levy? 7 A. Yeah, yeah. 8 Q. And reassurance, what did the Chief 9 Minister say that reassured Mr Levy a lot? 10 A. I can't -- I cannot remember, but 11 obviously if the -- if they were discussing 12 Community Care and whether he should go 13 or not, and the Chief Minister had reassured 14 Mr Levy that he hadn't lost confidence in 15 him, or that he wouldn't be -- he wouldn't 16 lose the confidence of the public or the 17 beneficiaries, if I can put it in inverted 18 commas, of Community Care, that would 19 have been quite reassuring to Mr Levy. I -- 20 and in fact I think that's probably what Mr 21 Levy said yesterday, if I'm not mistaken. 22 That's -- well (?), that's how I would have 23 interpreted that, anyway. 24 Q. And you do not think it would have been 25 related to the search warrant?</p> <p style="text-align: center;">Page 149</p>	<p>1 course you -- the question, whether the DPP 2 had or not advised, I suppose that was not a 3 public matter. But I -- off the top of my head 4 I can't think of anything else that would... 5 THE CHAIRMAN: Just look at that 6 sequence of messages again. 7 A. Yes. 8 THE CHAIRMAN: 22.47, the image of the 9 highlighted extract from the report is sent to 10 you. 11 A. Yeah. 12 THE CHAIRMAN: With the comment, 13 "Boom" (?). 14 A. Yeah. 15 THE CHAIRMAN: That is at 22.48. The 16 image is sent at 22.47, and then the message 17 at 22.48: that is page 13 of the HMIC report 18 published last week -- 19 A. Yes. 20 THE CHAIRMAN: Look at the bit I've 21 highlighted in red. "Boom". And, at 23.02 22 the Chief Minister says, "I think the above is 23 of major importance to the issues raised this 24 week, it will be important, remember the 25 HMIC report is public."</p> <p style="text-align: center;">Page 151</p>
<p>1 A. I wouldn't have thought so. I mean, I 2 don't know what reassurance the Chief 3 Minister could give Mr Levy about the 4 search warrant, frankly. 5 Q. That is what I was going to ask you 6 about. How -- 7 A. Yeah. 8 Q. -- could the Chief Minister reassure him - 9 - 10 A. Yeah. 11 Q. -- in relation to the search warrant? 12 A. I can't see it, frankly. 13 Q. And, just finally on that sentence, "I think 14 the above is of major to the issues raised this 15 week. It will be important, remember, the 16 HMIC report is public." 17 A. Yes. 18 Q. Why did the Chief Minister point out the 19 fact that the HMIC report is public? 20 A. I suppose in the sense that if I had any 21 concerns about any restrictions on its use, 22 that I should not have those concerns. 23 Q. Had the Chief Minister shared anything 24 with you that was not public? 25 A. Not to my knowledge. I mean, unless of</p> <p style="text-align: center;">Page 150</p>	<p>1 A. Mm-hmm. 2 THE CHAIRMAN: It is another observation 3 about the report, is it not? 4 A. Yes. 5 THE CHAIRMAN: 23.03 -- 6 A. Yes. 7 THE CHAIRMAN: -- "Yes, excellent. We 8 can put it to good use." 9 A. Yes. 10 THE CHAIRMAN: Another reference to the 11 report. 12 A. Yes. Yes, of course, yes. 13 THE CHAIRMAN: Yes. 23.10, the Chief 14 Minister says, "I've sent it to JL" -- 15 A. Yeah. 16 THE CHAIRMAN: -- let me know if he sees 17 it. 18 A. Yes. 19 THE CHAIRMAN: A reference to the 20 report. 21 A. Yes. Yes, it must be. 22 THE CHAIRMAN: And your thumbs-up 23 sign, another reference to the report. 24 A. Must be. 25 THE CHAIRMAN: Yes. And, in the middle</p> <p style="text-align: center;">Page 152</p>

<p>1 of that there is the exchange at 22.52, when 2 you say "Shocking, but sadly it doesn't come 3 as a surprise. Thanks for your time today bro 4 -- 5 A. Yeah. 6 THE CHAIRMAN: -- I think it reassured 7 him a lot. 8 A. Yes. 9 THE CHAIRMAN: And, that exchange is 10 about the Community Care home, is it? 11 A. Well, "Shocking, but sadly it doesn't 12 come as a surprise" is obviously about the 13 report. Then I thank him for his time with 14 Mr Levy today, and I think "it", well, the 15 meeting or what transpired at the meeting, 16 reassured him a lot. 17 THE CHAIRMAN: No -- 18 A. The way I interpret -- I see it as referring 19 to two different things. 20 THE CHAIRMAN: "it" there refers, if you 21 are right, to the exchange you had about the 22 Community Care home. Is that really what 23 you are saying? 24 A. Now, what I'm saying is, from the "sadly 25 doesn't come as a surprise", right, that relates</p> <p style="text-align: center;">Page 153</p>	<p>1 not have to worry about -- 2 A. Of course. 3 Q. -- language. Do you consider that your 4 communications, these communications and 5 the communications that took place on 17 6 May, do you consider that it was appropriate 7 to be making those communications? 8 A. I consider that it was appropriate for me, 9 in pursuit of my client's interests, to make 10 whatever representations I could to whoever 11 was involved in discussions and meetings 12 concerning the search warrants and the 13 methods being applied to obtain evidence. I 14 considered it entirely appropriate for me to 15 make those representations, yes. I don't 16 consider that I was breaching any rules in 17 doing so. 18 Q. And, did it cross your mind whether the 19 Chief Minister making these suggestions on a 20 number of matters to a suspect in a live 21 criminal investigation was appropriate or 22 inappropriate? 23 A. Well, he would have to be aware of his 24 read lines, and I'm afraid that I have to 25 answer that that is a matter for him.</p> <p style="text-align: center;">Page 155</p>
<p>1 to the HMIC report. Then, I'm thanking him 2 for his time, for whatever that time had been 3 allocated, whether it was Community Care or 4 whatever", and that "it", that time or what 5 he'd told him during that time, reassured him 6 a lot. That's how I would read it. I don't see 7 it as connected to the HMIC report. 8 THE CHAIRMAN: Without a single 9 reference, during that exchange, to the 10 Community Care? 11 A. No, no, there's no reference -- 12 THE CHAIRMAN: No. 13 A. -- but whatever the subject matter of the 14 meeting and the reassurance that the Chief 15 Minister had given him had had a positive or 16 beneficial effect on Mr Levy in my view at 17 the time. 18 Q. Having looked at these exchanges -- 19 A. Yeah. 20 Q. Do you consider that it was appropriate to 21 be making representations to the Chief 22 Minister about the search warrants? 23 A. Representations? I'm not sure that -- 24 well, but yes, certainly we... Yeah. 25 Q. Well, let me put it in a way so that we do</p> <p style="text-align: center;">Page 154</p>	<p>1 Q. Did you ever consider whether Mr Levy 2 might be benefitting from access to the Chief 3 Minister which other people would not 4 receive, due to their personal relationship? 5 A. I don't -- well, the Chief Mini-- lots of 6 people have access to the Chief Minister, I 7 think, at all levels of society. And, it is not 8 just what you might consider a privileged 9 person like Mr Levy, it's not just people like 10 that who have access to him. I mean, people 11 of very modest means and backgrounds, and 12 -- seem to -- seem to also have access to him, 13 and he's very responsive to them. That's the 14 nature of our community, that's been the case 15 for as long as I know, from the days of Sir 16 Joshua Hassan, having worked with Sir 17 Joshua myself, and all his successors. 18 Q. What about because of your -- 19 A. And from every side of the political 20 spectrum. 21 Q. What about because of your relationship 22 with the Chief Minister? Do you think that 23 that meant that Mr Levy was benefitting from 24 access to the Chief Minister which he would 25 otherwise not have received?</p> <p style="text-align: center;">Page 156</p>

1 **A. As a result of?**
 2 Q. Of your relationship, your personal
 3 relationship --
 4 **A. No, I don't think my relationship is any**
 5 **closer with Mr Picardo than that of the Chief**
 6 **Minister. I'm a bit younger than Mr Levy,**
 7 **but they still are quite -- I don't think that's an**
 8 **issue.**
 9 Q. No messages have been disclosed to the
 10 Inquiry between Mr Levy and the Chief
 11 Minister. Did Mr Levy ever show you
 12 messages that he had received from the Chief
 13 Minister?
 14 **A. Not that I can recall.**
 15 Q. You can see, at the very end of that
 16 exchange there are two messages where the
 17 Chief Minister says that he has sent the same
 18 HMIC extract to Mr Levy.
 19 **A. Yeah.**
 20 Q. Do you know whether that would have
 21 gone via email or via WhatsApp?
 22 **A. I have no idea how that might have gone,**
 23 **Mr Santos.**
 24 Q. Did you tell Mr Levy to keep his
 25 messages with the Chief Minister?

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1 **A. No, I didn't. I -- obviously, when there's**
 2 **litigation that is in reasonable contemplation**
 3 **then of course one preserves whatever might**
 4 **be relevant for that. If they think (?) you're**
 5 **going to be asked about something like that.**
 6 **Mr Levy is well-versed in all these things,**
 7 **and does not need my advice.**
 8 Q. More generally, do you understand the
 9 importance, as a lawyer, as a barrister and
 10 acting solicitor, of taking notes of meetings,
 11 of interactions --
 12 **A. Not of every meeting. Not of every**
 13 **meeting, and certainly not of some of the**
 14 **informal meetings that take place in Gibraltar**
 15 **even with officials in a way which may not**
 16 **happen in other jurisdictions. But, if there is**
 17 **anything momentous, and anything which**
 18 **has to be recorded because it is going to have**
 19 **some sort of transcendental effect, then of**
 20 **course I understand and adopt that practice.**
 21 **But as I said earlier, a lot of -- a lot of this**
 22 **has been largely superseded by email, and**
 23 **people are just sending contemporan-- almost**
 24 **contemporaneous messages, bas-- often to**
 25 **sort of record what has been -- what has been**

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1 **discussed. So, it's like -- almost like an inter**
 2 **partes file note, or something like that. Well**
 3 **not inter partes, but a file note between the**
 4 **parties for a particular meeting, or**
 5 **discussion, or whatever.**
 6 Q. The thing is that some of these meetings
 7 could be described as fairly momentous, so
 8 do you regret not taking notes of the
 9 meetings?
 10 **A. I have no particular regrets, and I can't**
 11 **think of any meeting that would -- I mean,**
 12 **nobody had this Inquiry in mind at the time,**
 13 **and for the purposes of what I was doing**
 14 **what I had already documented in**
 15 **correspondence was more than enough to get**
 16 **me going if I then wanted to bring a claim**
 17 **(on behalf of my client, obviously).**
 18 Q. Did you take any notes of your meetings
 19 and calls with the Chief Minister, the
 20 Attorney General or the DPP during this
 21 period, as far as you are aware?
 22 **A. I don't know (?), I may have -- as I said**
 23 **this morning, I may have taken notes, I may**
 24 **have scribbled some notes just as an aide-**
 25 **m moire, but when all this was over, and it**

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1 **would have probably been contained in one**
 2 **of these books, that -- those books -- many of**
 3 **those books I know for a fact, in relation to**
 4 **this and scores of other cases that I've been**
 5 **doing since then, will have been disposed of**
 6 **unless I thought there was anything**
 7 **particularly important in them worth keeping.**
 8 **Like, for example, my note of the conference**
 9 **with leading counsel on 17 May.**
 10 Q. In recent days the RGP had obtained, as
 11 we know, a search warrant against the senior
 12 partner of your firm in a very serious
 13 criminal investigation, and the police had
 14 turned up at Hassans' office and Mr Levy's
 15 home during the working day to obtain his
 16 devices. Would you agree that that was a
 17 very serious matter?
 18 **A. What, the fact they turned up --**
 19 Q. Yes.
 20 **A. -- at the firm? Extremely serious. I**
 21 **mean, I don't want to lay it on thick, I've --**
 22 **we've done it in corresp-- it's in**
 23 **correspondence, and if you look at**
 24 **Blackstone's or any of the other textbooks it -**
 25 **- there is a lot of material in there that shows**

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<p>1 that certainly in the case of solicitors, unless</p> <p>2 it can be shown that the solicitor has been</p> <p>3 guilty of fraudulent behaviour and all that,</p> <p>4 and there should be no reason to expect the</p> <p>5 solicitor, other than to comply with a</p> <p>6 production order.</p> <p>7 Q. And notwithstanding the seriousness of</p> <p>8 that situation, you did not consider it</p> <p>9 necessary to take notes of the meetings in</p> <p>10 and around that issue with public officials</p> <p>11 and --</p> <p>12 A. No, because --</p> <p>13 Q. -- where you were making</p> <p>14 representations etc?</p> <p>15 A. -- the meetings with public officials, as I</p> <p>16 say, didn't really add much in -- to what we</p> <p>17 needed to do, in the sense that of course we</p> <p>18 were told that -- we were told that the DPP's</p> <p>19 advice had not been obtained, or the DPP had</p> <p>20 advised against the warrant and so on, but</p> <p>21 these are all pretty discrete and simple points</p> <p>22 that did not in our view merit an attendance</p> <p>23 note.</p> <p>24 Q. Did you not take notes because you were</p> <p>25 concerned about what was being discussed at</p> <p style="text-align: center;">Page 161</p>	<p>1 you more, it's more of a challenge not to be</p> <p>2 able to, but that's what it is. But I -- but one</p> <p>3 thing I would tell you, Mr Santos, because I</p> <p>4 think this morning you spoke in broad terms</p> <p>5 about meetings between 12 May and 8 June.</p> <p>6 Now in my affidavit, answering the two</p> <p>7 letters from the Inquiry, I answered according</p> <p>8 to the scope of the -- what -- according to the</p> <p>9 terms of the questions that were put to me,</p> <p>10 okay? Now, those questions were limited in</p> <p>11 scope in relation to the first letter, because in</p> <p>12 the first letter I was told to provide</p> <p>13 confirmation in respect of any discussions</p> <p>14 relating to the warrant or relating to the</p> <p>15 retirement of Mr McGrail. And in the second</p> <p>16 letter it was limited in time, because I was</p> <p>17 asked to provide details of any conversations,</p> <p>18 not necessarily limited to the warrant or</p> <p>19 limited to the retirement, between 12 May</p> <p>20 and 29 May. So, I answered the questions</p> <p>21 posed to me by the Inquiry in their letters to</p> <p>22 the best of my ability, but this morning you</p> <p>23 talked about the conversations over a period,</p> <p>24 I think you said up to the 8th or something,</p> <p>25 and there's one thing, because it did not fall</p> <p style="text-align: center;">Page 163</p>
<p>1 those meetings?</p> <p>2 A. Not at all, no, at all. And as I say, Mr</p> <p>3 Santos, it is very possible that I did take</p> <p>4 some notes at the time but as I say, when this</p> <p>5 whole thing was over a few months later it</p> <p>6 was -- it was completely hi-- it was history,</p> <p>7 as far as I was concerned.</p> <p>8 Q. Is your evidence that, having seen the</p> <p>9 messages and the communications around the</p> <p>10 time, despite all the jogging of your memory,</p> <p>11 this is as far as you can remember? You</p> <p>12 cannot remember any more about what was</p> <p>13 discussed at the various meetings and over</p> <p>14 the various telephone calls that we have</p> <p>15 referred to?</p> <p>16 A. No, because if I did remember more I</p> <p>17 would have put it in my witness state-- in my</p> <p>18 affidavit, but I'm sorry to come back to the</p> <p>19 fact that I was not asked to refresh my</p> <p>20 memory or anything until two years after the</p> <p>21 Inquiry had started, and just a few weeks</p> <p>22 ago. And I do reiterate that it is no criticism</p> <p>23 of you, that's just the way things happen,</p> <p>24 sometimes. And, it it would have been</p> <p>25 particularly helpful for me to be able to tell</p> <p style="text-align: center;">Page 162</p>	<p>1 within the scope of the letters, but I -- but I</p> <p>2 do want to make the Inquiry aware of it. And</p> <p>3 I want to be very clear about this, okay? And</p> <p>4 obviously there was no need for me to</p> <p>5 address that in the -- in the affidavit, because</p> <p>6 I was not being asked about it, okay? And</p> <p>7 what I'm -- what I'm going to tell you is that I</p> <p>8 do recall one meeting with Mr Picardo in</p> <p>9 early June, but it was not -- definitely not to</p> <p>10 do with either the warrants nor with the</p> <p>11 retirement of Mr McGrail. And what</p> <p>12 prevents me from telling you any more about</p> <p>13 it, and I'm very firm in my view about this, is</p> <p>14 that that meeting and the contents of that</p> <p>15 meeting are subject to litigation privilege and</p> <p>16 I therefore cannot share that, but I did think it</p> <p>17 right for me to just let the Inquiry view,</p> <p>18 rather than take a formalistic view of what I</p> <p>19 have been asked in terms of scope, date, and</p> <p>20 all that sort of thing.</p> <p>21 Q. But, just to clarify on that --</p> <p>22 A. Yes.</p> <p>23 Q. -- you say, "subject to litigation</p> <p>24 privilege", and there is no intention on my</p> <p>25 part to intrude upon that privilege, but when</p> <p style="text-align: center;">Page 164</p>

41 (Pages 161 to 164)

<p>1 you say it does not relate to the search 2 warrant or to Mr McGrail's retirement -- 3 A. Retirement. 4 Q. -- are you able to say that it does not 5 relate at all to the Inquiry's terms of 6 reference? 7 A. I'm not sure that I could say that. I'm not 8 -- I'm not sure that I could say that without 9 giving it further thought. 10 THE CHAIRMAN: Well, I think you should 11 give it further thought -- 12 A. Yeah. 13 THE CHAIRMAN: -- in that case, and get 14 back to us when you have thought it through. 15 A. Yeah. 16 Q. Yes, perhaps we could follow that up. 17 A. Yes, exactly. We'd need to look at the 18 terms of reference closely -- 19 THE CHAIRMAN: Yes. 20 A. -- and see whether they fall squarely 21 within the terms (?) -- 22 THE CHAIRMAN: And seek advice, if you 23 think you need to. 24 A. Yes, yes, exactly. Anyway, I just thought 25 it was the right thing to...</p> <p style="text-align: center;">Page 165</p>	<p>1 Q. Do you have a note of that meeting? 2 A. No, I don't have a note of that meeting. 3 Q. Alright. I want to ask you now about 36 4 North. Now, 36 North (just correct me if I 5 am wrong on this) was part-owned, 6 indirectly, by the Hassans equity partners, is 7 that right? 8 A. Yes, 36... Yes, well, yes in part, yes, part 9 of it -- 10 Q. And 36 North had been loaned a sum of 11 money by Hassans, in the tune of about, I 12 think 460,000. Is that right? 13 A. I honestly don't know, I haven't -- I 14 haven't -- I've gleamed all this from Mr 15 Levy's witness statement, but I'm not familiar 16 outside of -- 17 THE CHAIRMAN: He was asked (?) about 18 this, and he said: I learnt that afterwards. 19 Q. Yes. 20 A. Yeah. 21 THE CHAIRMAN: We have covered this. 22 Q. Now at the time, in May 2019, when the 23 founders of 36 North were arrested, do you 24 maintain that the partners of Hassans did not 25 have a detailed discussion about what on</p> <p style="text-align: center;">Page 167</p>
<p>1 THE CHAIRMAN: No, no, thank you. 2 A. -- to do. 3 Q. Thank you. 4 A. Okay, thank you very much. 5 Q. I believe there are some questions. 6 A. Yes, of course. 7 Q. From (?) Mr Wagner. 8 Questioned by MR WAGNER 9 Q. Good afternoon, Mr Baglietto. 10 A. Good afternoon, Mr Wagner. 11 Q. I will just pick up on that final point you 12 made -- 13 A. Of course. 14 Q. -- quickly. I will not ask you about 15 anything that is legally privileged -- 16 A. Of course. 17 Q. But you said the meeting was not about 18 the search warrant or Mr McGrail's 19 retirement. 20 A. That is correct. 21 Q. Were the search warrants or Mr McGrail's 22 retirement discussed at all? 23 A. Not, to my knowledge, at all. 24 Q. At the meeting? 25 A. Not to my knowledge or recollection.</p> <p style="text-align: center;">Page 166</p>	<p>1 earth was going on? 2 A. That is correct. As a whole, they didn't. 3 There might have been some discussions 4 among some partners, but there wasn't a fully 5 fledged partners meeting. 6 Q. And, nobody was asking questions about 7 whether Hassans might be in any trouble 8 relating to the company whose founders had 9 just been arrested? 10 A. Some people might have, but I'm not 11 aware of who had those -- who voiced those 12 concerns, nor to whom they were voiced. 13 Q. Right. And so, you just remained having 14 a vague idea about 36 North when it came to 15 12 May 2020? 16 A. Yes, that's right. 17 Q. Okay. I want to talk about records. Are 18 there, to your knowledge, any references to 19 the calls that you or Mr Levy had with Mr 20 Picardo, Mr Llamas or Mr Rocca, in the 21 correspondence which has been disclosed to 22 this Inquiry by you? 23 A. Sorry, are there any records relating to -- 24 Q. Are those calls that you had, that we now 25 know you had, mentioned in any of the</p> <p style="text-align: center;">Page 168</p>

<p>1 correspondence between Hassans and the 2 police? 3 A. Yes, they're in exhibit HJML3. 4 Q. No, are the calls mentioned in those 5 letters? 6 A. I think -- I think they are. I think there is 7 -- you will find some emails which refer to 8 certain telephone calls with the DPP, and 9 possibly with the AG. I can't remember; I'd 10 have to sift through the whole lot but there 11 are references, so far as I can remember, to 12 telephone calls. I think, in fact, let us have a 13 look at my witness -- my affidavit, because I 14 think I exhibited a couple of emails to Mr 15 Rocca which might refer to calls between us 16 -- between them. 17 Q. Between "us"? 18 (15.00) 19 A. I am sorry, let me just find this. I'm not 20 sure whether the exhibits to my witness 21 statement is here. I am sorry about that, yes, 22 so, for example, at 13605 --- sorry, B6057 23 there is an email from me to --- well, first of 24 all, there's an email from the DPP to me, 25 "Further to our brief telcon last week, there's</p> <p style="text-align: center;">Page 169</p>	<p>1 Q. Of the calls, of the messages that you 2 exchanged with Mr Picardo and Mr Llamas? 3 A. No, no. 4 Q. Is it right to say that both you and Mr 5 Levy have said that you cannot access your 6 WhatsApps with Mr Picardo? 7 A. Yes, that is correct. 8 Q. And is it right that both you and Mr Levy 9 have said you cannot access your WhatsApps 10 with Mr Llamas? 11 A. I can't remember with Mr Levy but 12 certainly that is what I have said. I no longer 13 have those WhatsApp messages. I have 14 spoken to my IT people and they tell me that 15 they are not retrievable but --- 16 Q. I am sorry ---- 17 A. No, go on. 18 Q. I will let you finish. 19 A. No, that's fine. 20 Q. Did you give --- and you gave evidence 21 this morning that you had cleared out the 22 relevant messages or the messages from the 23 relevant time that you exchanged with Mr 24 Picardo? 25 A. Yes, along with a number of other chats,</p> <p style="text-align: center;">Page 171</p>
<p>1 Tuesday or Wednesday at two pm work for 2 you," and then I reply to him, "Dear Chris, 3 many thanks for your email as confirmed on 4 the telephone I'll come round to your offices 5 at 2.30 pm tomorrow," so that would be an 6 example of telephone calls referred to in the 7 correspondence but it could take a while to 8 actually to go through all that 9 correspondence to see what precisely which 10 correspondence --- 11 Q. I am not going to ask you to do that. Was 12 there any reference to the text messages 13 between you and Mr Levy, on the one side, 14 and Mr Picardo and Mr Llamas, on the other 15 in any of the correspondence that you know 16 that has been disclosed to the Inquiry? 17 A. Not that I can recall, not --- no, I don't 18 think so. 19 Q. And there are no attendance notes that 20 you have disclosed to the Inquiry of any calls 21 or text messages? 22 A. No. 23 Q. No, and ---- 24 A. I am sorry, or attendance --- did you say 25 attendance notes of any text messages ---</p> <p style="text-align: center;">Page 170</p>	<p>1 yes, including family ones. 2 Q. What about the WhatsApps for Mr 3 Llamas? Did you clear those out, too? 4 A. Yes. 5 Q. What about your messages --- your 6 WhatsApps with Mr Rocca? Did you clear 7 those out, too? 8 A. No, because I think there were just a 9 couple of them and --- yes, there were just a 10 couple of messages there. 11 Q. There were a couple of messages with Mr 12 Rocca? 13 A. Yes. 14 Q. Have you provided those to the Inquiry? 15 A. No, because I think those messages fell 16 outside the scope of the request for 17 information. They were completely 18 innocuous. I am very happy to show them to 19 Counsel to the Inquiry. 20 Q. Sorry, are they irrelevant to the Inquiry or 21 are they relevant? 22 A. They are irrelevant to what I was asked to 23 provide in terms of evidence. 24 Q. So they are relevant to the issues in the 25 Inquiry?</p> <p style="text-align: center;">Page 172</p>

<p>1 A. I think they are in the nature of just fixing 2 the time for the meeting and stuff like that 3 and that sort of communication but, as I say, 4 I am more than happy to show it to --- 5 Q. Fixing a time for which meeting? 6 A. For the meeting that I had with the DPP 7 referred to in the correspondence where he 8 showed me a less redacted version of the 9 schedule 1 to the warrant application. 10 Q. So this is a meeting that happened in May 11 2020? 12 A. It happened on 1 or 2 June. 13 Q. 1 or 2 June? 14 A. Yes. 15 Q. So is it right to say that neither you or Mr 16 Levy or indeed anybody at Hassans has 17 provided any contemporaneous document to 18 this Inquiry which records any of the 19 messages or the meetings, in terms of 20 meeting notes, that were taking place with 21 Mr Picardo, Mr Llamas and Mr Rocca from 22 12 May onwards? 23 A. No attendance notes. 24 Q. No, and no messages? 25 A. Messages, well, I have --- messages as in</p> <p style="text-align: center;">Page 173</p>	<p>1 A. Well, I often ask them to take file notes 2 of important meetings. 3 Q. Sorry, I did not ask you that, I asked you 4 whether you provide guidance or training to 5 trainees or junior solicitors about record 6 management? 7 A. I think we provide some sort of training 8 but, yes, I am not involved in the training 9 side it. There is some form of training for 10 that sort of thing. 11 Q. Is it right to say that it is very important 12 when you are a litigator to retain records of 13 cases? 14 A. It depends on the record, it depends on 15 the litigation, it depends on whether the 16 litigation is extant and the nature of the 17 information. 18 Q. Is it very important because sometimes -- 19 - I mean, I would have thought it is self- 20 evident to any solicitor or barrister but you 21 might be sued later down the line for 22 professional negligence or breach of contract, 23 something like that, is that right? 24 A. Yes, that is right and one takes --- forms a 25 judgment as to when it is likely to be useful</p> <p style="text-align: center;">Page 175</p>
<p>1 what? SMS messages and WhatsApp? 2 Q. WhatsApp, there is --- that is correct as 3 far as I am concerned and I believe that is 4 also the case with Mr Levy. I did provide an 5 SMS which I have found recently. 6 Q. You have provided one? 7 A. Yes. 8 Q. That is the sum total of all of the 9 messages provided by Hassans by you, Mr 10 Levy --- 11 A. That is correct, yes. 12 Q. --- to this Inquiry? 13 A. That is right. 14 Q. Mr Baglietto, you are the head of 15 litigation at Hassans, are you not? 16 A. I am. 17 Q. And you have been the head of litigation 18 for 20 odd years, is it? 19 A. Yes, it is about that, it's in 2003. 20 Q. Do you have trainees and junior solicitors 21 at Hassans? 22 A. I do, yes. 23 Q. Do you sometimes provide guidance or 24 training to those trainees about record 25 management?</p> <p style="text-align: center;">Page 174</p>	<p>1 to take a note of something. 2 Q. Is it right that it is very important to keep 3 an accurate record of your actions in a case 4 because if you are sued or face allegations of 5 professional misconduct, it might be taken 6 against you if you say that something 7 happened that you have got no record of? 8 A. It might or it might not. It depends. 9 Q. Yes, if a trainee approached you and said, 10 "Mr Baglietto, I have got an important 11 meeting in a case coming up, should 12 someone take a note of the meeting or not," 13 what would you say? 14 A. If there's an important point coming up? 15 Q. If a trainee approached you and said, "I 16 have got an important meeting in a case 17 coming up in a case, should I take a note of 18 the meeting or should I not," what would 19 your answer be? 20 A. I would say "yes." 21 Q. If a trainee came up to you and said that 22 they intended to destroy notes in a case a few 23 months after it concluded, what would you 24 advise them? 25 A. Well, I would --- my instinct of course</p> <p style="text-align: center;">Page 176</p>

<p>1 would be to keep them for a reasonable time.</p> <p>2 Q. Yes.</p> <p>3 A. If I thought especially --- unless I foresaw</p> <p>4 that there was going to be no further risk of</p> <p>5 any comeback, frankly.</p> <p>6 Q. You are a litigator, are you not? There is</p> <p>7 not --- unless --- well, there is never no risk</p> <p>8 of comeback a few months after a case</p> <p>9 concludes, is there?</p> <p>10 A. Well, I didn't expect to be sued by Mr</p> <p>11 Levy in relation to this matter.</p> <p>12 Q. If a trainee came up to you and said, "Mr</p> <p>13 Baglietto, my case has just finished, I'm</p> <p>14 going to delete all of my messages relating to</p> <p>15 that case now, it finished a few weeks ago,"</p> <p>16 what would you say?</p> <p>17 A. I would have --- I would sit down with</p> <p>18 that person and try and understand why.</p> <p>19 THE CHAIRMAN: I have got the point</p> <p>20 about the notes, Mr Wagner.</p> <p>21 MR WAGNER: (To the witness): And if</p> <p>22 you said that there was --- if you knew that</p> <p>23 there was litigation in reasonable</p> <p>24 contemplation, would you preserve the</p> <p>25 documentation ----</p> <p style="text-align: center;">Page 177</p>	<p>1 was being alleged. Do you agree?</p> <p>2 A. He could benefit from the transaction.</p> <p>3 Q. Yes, and you knew all or that at the time,</p> <p>4 did you not, on 12 May?</p> <p>5 A. Well, as I said this morning, I really was</p> <p>6 not thinking about that at all because my</p> <p>7 focus was on the search warrant. I wasn't</p> <p>8 thinking about what possible benefit one</p> <p>9 might derive from this company which, to</p> <p>10 my mind, wasn't really doing very much. I</p> <p>11 mean, it just was not on my radar at all. I</p> <p>12 think it needs to be appreciated, as I said this</p> <p>13 morning, this was a bombshell, we had to</p> <p>14 deal with it very quickly and the last thing I</p> <p>15 was thinking about was any possible profit</p> <p>16 that anybody might get. I mean, the fact is</p> <p>17 that our offices had been --- had visited on by</p> <p>18 the police using a very extreme measure in</p> <p>19 all the circumstances and I wanted to get that</p> <p>20 redressed.</p> <p>21 Q. Do you think the fact that you were so</p> <p>22 impacted by what was happening at Hassans</p> <p>23 --- would that have been a good reason to not</p> <p>24 act for Mr Levy and pass it on to someone</p> <p>25 who would not be distracted by the</p> <p style="text-align: center;">Page 179</p>
<p>1 THE CHAIRMAN: I have got the point.</p> <p>2 THE WITNESS: If there was --- of course I</p> <p>3 would.</p> <p>4 THE CHAIRMAN: You need not pursue</p> <p>5 this point, I have got the point.</p> <p>6 MR WAGNER: Very well. (To the</p> <p>7 witness): I want to ask you about your</p> <p>8 conversations with the Chief Minister. On</p> <p>9 12 May Mr Picardo was not just the Chief</p> <p>10 Minister he was also a partner at Hassans on</p> <p>11 sabbatical?</p> <p>12 A. Yes.</p> <p>13 Q. Right?</p> <p>14 A. Yes.</p> <p>15 Q. He was also a close personal friend of Mr</p> <p>16 Levy. Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And he was also your close personal</p> <p>19 friend?</p> <p>20 A. Yes.</p> <p>21 Q. And a shareholder in 36 North?</p> <p>22 A. Yes, ultimate beneficiary I suppose.</p> <p>23 Q. An ultimate beneficiary, yes, and,</p> <p>24 therefore, at that time he was someone who</p> <p>25 could potentially benefit from the fraud that</p> <p style="text-align: center;">Page 178</p>	<p>1 bombshell that had blown up in Hassans</p> <p>2 offices?</p> <p>3 A. This was a very --- Gibraltar is a very</p> <p>4 small place. One doesn't want --- word</p> <p>5 spreads very quickly. This is a matter that</p> <p>6 had to be dealt with discretely and</p> <p>7 sensitively. At the same time we</p> <p>8 acknowledged that we needed to have</p> <p>9 independent advice from someone who was</p> <p>10 quite detached and would not get as</p> <p>11 emotionally wrapped up in it as we might,</p> <p>12 although I do not consider myself a person</p> <p>13 who would get particularly emotionally</p> <p>14 wrapped up about their cases but that is by</p> <p>15 the bye, and nor is Mr Bonfante. So we saw</p> <p>16 no issue in dealing with it in the way that we</p> <p>17 did as a team.</p> <p>18 Q. Because you wanted to keep it</p> <p>19 confidential?</p> <p>20 A. Look, well, of course we didn't want to</p> <p>21 start instructing other law firms on it.</p> <p>22 Q. You said that the purpose --- you were</p> <p>23 asked what you were hoping to achieve by</p> <p>24 talking to the Chief Minister?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

<p>1 Q. You said in evidence this morning that 2 you wanted to see to what extent he could 3 shed some light on what happened? 4 A. Yes. 5 Q. Why would the Chief Minister in 6 particular be able to shed light on what had 7 happened? 8 A. Well, he had spoken to Mr Levy the 9 previous --- on the 12th and he had obviously 10 heard what was going on --- 11 Q. He obviously what? Heard? 12 A. He had heard what had happened and, as 13 I said, that has been borne out by the 14 transcripts of the meetings that took place 15 between him and Mr McGrail and the 16 Attorney General. 17 Q. Yes, but you were looking to get 18 information from him that Mr Levy had 19 given him, were you, because you already 20 knew that? 21 A. Well, I would have known that unless of 22 course --- unless of course that information to 23 do with the DPP not having advised what 24 came directly to me. I just can't remember 25 what information I got from whom article the</p> <p style="text-align: center;">Page 181</p>	<p>1 danger to your client if you obtained 2 information even if inadvertently that Mr 3 Picardo had received on a confidential basis 4 from the police? 5 A. I am sure that this was a matter that was 6 canvassed within my legal team and we acted 7 with the benefit of advice. I can't recall what 8 the advice was at the time and, in any event, 9 that would be privileged of course. 10 Q. Did you ever consider there would be a 11 danger to Mr Picardo, your close friend and 12 business partner --- and Hassans partner 13 when he started talking to you about 14 removing the Commissioner of Police? 15 A. That's a matter --- he obviously felt 16 strongly about that. That was a matter for 17 him. It wasn't --- it was none of my business. 18 Q. Did you say that to him? 19 A. I am not sure whether I did or not but the 20 fact is that it was not what I was doing and if 21 he wanted to vent his frustration or 22 dissatisfaction with me, well, that is fine. 23 Q. Do you agree that if the Commissioner of 24 Police was being told that his job is on the 25 line by the Chief Minister because of the</p> <p style="text-align: center;">Page 183</p>
<p>1 time but I was just trying to get as much 2 background information as possible to help 3 me --- to help bolster any application that we 4 might make. 5 Q. So you were not asking him for 6 information that you already knew or could 7 get publicly, you were asking him for 8 information that he had potentially obtained 9 privately. Is that fair? 10 A. I was asking for whatever information he 11 could --- he felt he could give me and he 12 would be aware of his boundaries and what 13 he felt it proper to give me in the 14 circumstances and that is all. 15 Q. Did you consider that the Chief Minister 16 might be privy to information which he had 17 obtained privately from the police? 18 A. I may have considered it but, ultimately, 19 it was a matter for him what he thought he 20 would be able to properly share with me. I 21 was just trying to obtain information and 22 evidence on behalf of my client like I would 23 in any other case. 24 Q. Was it just a matter for him because did 25 you consider at all whether it might be a</p> <p style="text-align: center;">Page 182</p>	<p>1 search warrant, that would self-evidently put 2 the Commissioner of Police under some 3 pressure? 4 A. I don't know what I was told at the time 5 and I don't want to indulge in speculation. 6 Q. Do you agree now, looking back on it, 7 that if the Commissioner of Police was being 8 told that his job was on the line because of 9 the search warrant, that would put him under 10 some pressure? 11 A. That it would put who under some 12 pressure? 13 Q. The Commissioner? 14 A. The Commissioner. I imagine it would, 15 yes, but, as I say, it's not something that I 16 was engaged in. 17 Q. No, but were you not concerned at all that 18 when you heard that the Commissioner of 19 Police was taking --- potentially going to get 20 rid of the --- sorry, that the Chief Minister 21 was potentially going to get rid of the 22 Commissioner of Police, that he, as not just 23 Chief Minister but also as a Hassans partner, 24 a beneficiary of 36 North, a friend of Mr 25 Levy, might be crossing some red lines</p> <p style="text-align: center;">Page 184</p>

46 (Pages 181 to 184)

<p>1 whilst also talking to you about the search 2 warrant? 3 A. I was not thinking about that at the time. 4 My focus was on Mr Levy. He needed to get 5 his statement done and he got it done. 6 Q. I want to ask you about WhatsApp. You 7 say that you routinely clear out old chats. 8 How routinely? 9 A. It depends, it is quite random. 10 Q. And so you have got messages with the 11 Chief Minister going back to 2021, you said? 12 A. That's right. 13 Q. So you have not cleared them out for the 14 last three years? 15 A. That's right. 16 Q. When you say "clear out" do you mean 17 delete? 18 A. I just delete old chats, yes, old chats 19 because there may be all sorts of material in 20 any chat with anybody. It could be a very 21 personal chat, very private things and I just 22 don't like having them on my phone, frankly, 23 unless I feel they might be needed. 24 Q. When exactly did you delete ---- 25 A. I can't remember.</p> <p style="text-align: center;">Page 185</p>	<p>1 A. Right. 2 Q. And you did not know about that? 3 A. I may have known about it at the time but 4 I attached no importance to it in relation to -- 5 -- 6 Q. Did you know that Mr McGrail retired in 7 the immediate aftermath of the warrant 8 against Mr Levy? 9 A. I know he retired --- obviously I know 10 that he retired in June some time. 11 Q. Did you know that the retirement was 12 connected to the warrant involving Mr Levy? 13 A. No, I didn't know what the reason for the 14 retirement was. 15 Q. I did not ask you that; I asked you 16 whether you knew it was connected? 17 A. No. 18 Q. The Chief Minister has given ed to this 19 Inquiry that he was discussing with you, 20 whilst he had meetings about the warrant, the 21 removal of the Commissioner of Police. You 22 must have known at that point that the two 23 things were connected? 24 A. They may have been part --- connected in 25 part but there may have been other factors</p> <p style="text-align: center;">Page 187</p>
<p>1 Q. Can you not look back on your phone and 2 see when the earliest message you have got 3 with the Chief Minister is? 4 A. In 2021. 5 Q. What date in 2021? 6 A. I don't know. I can check. [After a short 7 pause] January. 8 Q. January 2021? 9 A. Yes. 10 Q. This Inquiry was announced by Mr 11 Picardo in Parliament on 31 July 2020. Did 12 you hear about that? 13 A. I am sorry? 14 Q. Did you hear that an Inquiry --- that Mr 15 Picardo agreed to have a public inquiry ---- 16 A. No, no, not at all. 17 Q. It just passed you by? 18 A. I can't remember when this Inquiry 19 started. 20 Q. I am not saying it started, I am saying that 21 he said --- he announced to Parliament on 31 22 July 2020 ---- 23 A. Right, okay. 24 Q. --- that there would be a public inquiry 25 into the early retirement of Mr McGrail.</p> <p style="text-align: center;">Page 186</p>	<p>1 involved. 2 Q. Did he say that there were other factors? 3 A. I can't remember any discussion about 4 other factors or connection or anything. I 5 just --- I am just saying that the Chief 6 Minister says in his witness statement that he 7 believed he would have --- he would have 8 expressed his dissatisfaction with Mr 9 McGrail and told me about the fact that he 10 had told the Governor and so on but in terms 11 of what the reasons were or would be for his 12 retirement, I don't recall any particular ---- 13 Q. No, the Chief Minister says in his 14 statement that he discussed mechanisms for 15 the removal of Mr McGrail with you in that 16 meeting with Mr Levy. 17 A. No, I wouldn't have discussed it as such. 18 He may have mentioned things but I wouldn't 19 have discussed it with him. 20 Q. Come on, Mr Baglietto, you knew that 21 the two things were in some way factually 22 connected, did you not? 23 A. That they were factually connected? 24 Q. Yes, that they were factually connected, 25 that the Chief Minister was upset and angry</p> <p style="text-align: center;">Page 188</p>

<p>1 because of the way that the search warrant 2 had been executed and that is part of the 3 reason why ---- 4 A. That may have been part of the reason 5 why ---- 6 Q. And you knew that at the time, did you 7 not? 8 A. I don't know what I knew --- I don't know 9 what I knew at the time. I can't possibly say 10 what I knew at the time, I am sorry. 11 Q. I am going to suggest to you that 12 knowing that the two things were connected 13 and also knowing around the time that the 14 Chief Minister announced that there was 15 going to be a public inquiry, you then went 16 on to delete all of your relevant messages 17 with Mr Picardo ---- 18 A. I am sorry, that is a deeply offensive and 19 hurtful allegation to make against me 20 because that is not --- the deletion of those 21 emails had nothing to do with the 22 announcement of the Inquiry at all. 23 Q. I did not suggest that. I just said that --- I 24 was just pointing out the sequence. 25 A. I have to take great exception to that. I</p> <p style="text-align: center;">Page 189</p>	<p>1 A. But I don't have any --- there's nothing in 2 those WhatsApp messages that causes me the 3 slightest concern and I have made that very 4 clear in my evidence this morning. 5 Q. The WhatsApp with Mr Rocca? 6 A. No, the ones that have been put to me 7 with the Chief Minister. 8 Q. With Mr Picardo, but those have been 9 provided by Mr Picardo, they have not been 10 provided by you. 11 A. No, that is right. 12 Q. So if we did not have them from Mr 13 Picardo, we would not have them at all? 14 A. No, you could not have, that is right. 15 Q. No. 16 A. But the suggestion that I deliberately 17 deleted those WhatsApps because of the 18 Inquiry, that suggestion is, I am afraid, 19 completely incorrect. 20 Q. I am not making that suggestion, Mr 21 Baglietto. 22 A. That is the only way I can interpret it, but 23 that is fine. 24 Q. I just want to go --- to clarify something 25 that you said before at C3523, please.</p> <p style="text-align: center;">Page 191</p>
<p>1 would never have done that, had the remotest 2 inkling that those emails --- that those 3 WhatsApp were in any way going to be 4 relevant to this Inquiry and indeed there were 5 not --- I was not asked to provide any 6 evidence or communications or any input in 7 relation to this Inquiry until now, until nearly 8 four years later, so I am sorry, but I am very, 9 very deeply offended by that remark. 10 Q. Were you acting for Mr Levy in the last 11 two years in the Inquiry? 12 A. Whenever he was approached to give 13 evidence ---- 14 Q. Which was early on, was it not, in 2022? 15 A. Late 2022. 16 Q. Yes, so you were acting for Mr Levy? 17 A. Yes. 18 Q. Did you delete the messages with Mr 19 Llamas after the Inquiry was announced on 20 31 July 2020? 21 A. I think I would have deleted them after, 22 yes. 23 Q. What about the messages with Mr Rocca? 24 A. I have messages from Mr Rocca. 25 Q. Okay.</p> <p style="text-align: center;">Page 190</p>	<p>1 A. Yes, C5? 2 Q. C3523. 3 A. Yes. 4 Q. I did not totally catch the answer so I just 5 want to clarify and I am sorry if I just 6 misheard but you were asked if you disclosed 7 any part of this letter or the contents of the 8 letter to any person who was not --- who you 9 were not acting for or who was not acting for 10 Mr Levy, but did you say "no"? 11 A. I didn't disclose this letter or the contents 12 of this letter to any person who was not 13 acting for Mr Levy to the best of my 14 knowledge. 15 Q. Thank you. In relation to the --- I want to 16 ask you about the Gibraltar Police 17 Federation. I understand that they are also 18 being represented by Hassans. Do you act 19 for them? 20 A. No. 21 Q. Have you got any relevant 22 communications with any of the 19 23 individuals connected to the GPF who gave 24 evidence to this Inquiry which you could 25 provide to the Inquiry?</p> <p style="text-align: center;">Page 192</p>

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<p>1 A. I don't, no, I am not dealing with that 2 matter at all. 3 Q. Have you had any communication with 4 any of those 19 individuals? 5 A. Not at all, no. I have kept well away 6 from that. 7 Q. You have kept away from it? 8 A. Of course, yes. 9 Q. So you have not liaised with the team ---- 10 A. Absolutely not. 11 Q. --- representing ---- 12 A. No. 13 Q. Just in relation to --- you referred I think 14 to --- and Mr Levy also referred to this as 15 well, a potential --- I think it was a civil 16 action that is being prepared? 17 A. He may have referred to it but I don't 18 want to comment further on what he might 19 have in contemplation. 20 Q. Has that civil action been in consultation 21 since the events of May and June 2020? 22 A. I am not going to comment on it because 23 I consider that to be in a separate --- to be 24 legally privileged and for him to answer. 25 Q. That is fair and if it --- I am not asking</p> <p style="text-align: center;">Page 193</p>	<p>1 not part of the case, why would the Chief 2 Minister think to send you those regulations? 3 A. I think you had better ask him. 4 Q. Was there a plan at the time that Hassans 5 would be dealing with the legal side and the 6 Chief Minister would be focused on 7 pressuring the police? 8 A. There was no plan at all. I was squarely 9 and solely focused on a legal challenge and 10 there was no plan or other type of 11 arrangement or understanding that there 12 would be some sort of parallel procedures. 13 Q. Finally, the new message, the one that 14 you disclosed yesterday from your ---- 15 A. Yes. [1430:10] 16 Q. And SMSs, you said you tracked that 17 down yesterday "I believe." Was it 18 yesterday? 19 A. Yes. 20 Q. It was yesterday? 21 A. Yes. 22 MR WAGNER: Thank you. 23 THE CHAIRMAN: Thank you. 24 (15.30) 25 SIR PETER CARUANA: Arising from this,</p> <p style="text-align: center;">Page 195</p>
<p>1 you whether it was, but if it was in 2 contemplation, would that be a reason for 3 preserving all of the files, all the notes and 4 everything else in the police investigation? 5 A. To the extent that they could be 6 considered to be relevant to that, yes, but that 7 depends on the nature and scope of that --- of 8 those proceedings and what the issues in 9 those proceedings are going to be. 10 Q. Have you been in contact at all with the 11 Chief Minister about the disclosure you have 12 been asked to provide to this Inquiry? 13 A. No, not at all. 14 Q. The disciplinary regulations that were put 15 to you --- that were sent to you by Mr 16 Picardo, at B1422, the excerpt from the 17 disciplinary regulations, you have said, "We 18 weren't following this up in any way because 19 that wasn't part of the plan for how you were 20 approaching the police." Is that a fair 21 description of what you said? 22 A. That's right, I mean, anything that was 23 sent to me but, frankly, it was neither here 24 nor there as far as what I was doing. 25 Q. If you were not pursuing that and it was</p> <p style="text-align: center;">Page 194</p>	<p>1 just two minutes, a very quick question, sir. 2 Questioned by SIR PETER CARUANA 3 Q. Mr Baglietto, has the Chief Minister ever 4 shown any reluctance whatsoever to discuss 5 with you matters relating to the search 6 warrant? 7 A. Reluctance? 8 Q. Yes. 9 A. He had not shown any particular 10 reluctance, no. 11 Q. No, and had he shown any reluctance 12 whatsoever to discuss with you and perhaps 13 you may know, Mr Levy as well, that it was 14 in your presence, his views about the RGP's 15 decision to obtain a search warrant? 16 A. Yes, he had been quite vocal about it. 17 Q. And what information about the 18 investigation do you consider that the Chief 19 Minister has shared with you? 20 A. About the substantive investigation? 21 Q. Yes. 22 A. Nothing. That was not what - I think I 23 said it this morning, that we were not seeking 24 to interfere with that at all. That had to take 25 its course --</p> <p style="text-align: center;">Page 196</p>

<p>1 Q. Well, never mind whether it is 2 interference or not. It is factual. 3 A. Yes. 4 Q. What information has he imparted to you 5 or, to your knowledge, Mr Levy about the 6 investigation? 7 A. None. 8 Q. And turning finally before I sit down to 9 the Attorney General, has the Attorney 10 General showed any reluctance whatsoever 11 to engage with you about the issues that you 12 wanted to discuss with him in relation to the 13 warrant and your complaints about it? 14 A. He has shown no reluctance. 15 Q. Thank you. 16 MR CRUZ: Sir, if I may have a few 17 moments to ask a few questions on behalf of 18 the RGP? 19 THE CHAIRMAN: A few moments. 20 MR CRUZ: Well - 21 THE CHAIRMAN: A few minutes. 22 MR CRUZ: A few minutes, yes. 23 THE CHAIRMAN: Yes. 24 Questioned by MR CRUZ 25 Q. Mr Baglietto, as you know I act for the</p> <p style="text-align: center;">Page 197</p>	<p>1 A. I wasn't really concerned with that. 2 Q. No. Okay, and so in the context of that, 3 the outrage that you expressed that your 4 client had and that you have said repeatedly 5 was gross abuse and all of these things, it 6 never did occur to you to have sight of the 7 underlying information? 8 A. The underlying information? 9 Q. Yes. 10 A. Of course. We asked for the underlying 11 information. 12 Q. The information as in the application for 13 the warrant. So, when you were sending 14 these letters making accusations of abuse and 15 let us say your letter of 13 May, misfeasance 16 in public office -- 17 A. Yes. 18 Q. -- and all of these extraordinary 19 allegations, at that point you had no 20 knowledge whatsoever of any of the 21 underlying evidential issues? 22 THE CHAIRMAN: Well, none, had been 23 disclosed to him at that stage. 24 MR CRUZ: Yes, well I mean they were not 25 supporting - exactly, the application was</p> <p style="text-align: center;">Page 199</p>
<p>1 RGP. You have in your evidence made 2 suggestions of a variety of what you consider 3 wrongdoing by the RGP. I think you also 4 said, and correct me if I am wrong, that you 5 were only focused on the procedural side of 6 it; you had no knowledge of anything else. 7 You were focused on the procedural fairness 8 point. Is that right? 9 A. Yes, we were looking at - well, we were 10 looking at the procedure as opposed to the 11 substantive investigation, okay? 12 THE CHAIRMAN: You had in mind going 13 to a JR? 14 A. A JR and we have also mentioned the 15 possibility of a misfeasance claim. 16 MR CRUZ: Misfeasance as a tort against the 17 police officers, I think you said? 18 A. That's right. 19 Q. Against police officers? 20 A. Correct, correct. 21 Q. So, insofar as that, you had no underlying 22 knowledge of any evidential issues in 23 relation to Operation Delhi? 24 A. Knowledge of? 25 Q. Underlying evidential issues.</p> <p style="text-align: center;">Page 198</p>	<p>1 highly redacted when we got it. 2 THE CHAIRMAN: No, hang on. We have 3 not got to the redaction. On 13 May all you 4 had was the warrant. 5 A. Yes, all I had was the warrant. 6 MR CRUZ: Yes, and I think what I am 7 hopefully trying to clarify is when you made 8 these accusations you had no knowledge 9 whatsoever of any evidential issues against 10 Mr Levy, did you? 11 A. I had no knowledge of any evidential 12 issues, I guess. Well, one is prepared to 13 assume for the purposes of an application to 14 obtain information whether it be by warrant 15 or production order that the pressure 16 requirements in terms of reasonable 17 suspicion are met but whether the procedural 18 mechanism followed in order to obtain that 19 evidence is the correct one in all the 20 circumstances is an entirely different matter 21 and that is what - that was where the 22 objection lay. 23 Q. So, I think you said that you were based 24 on the warrant document - is that right? You 25 were basing yourself on the warrant</p> <p style="text-align: center;">Page 200</p>

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<p>1 document; you were not basing yourself on 2 anything else because you did not have 3 anything else and you had no prior 4 knowledge. 5 A. Well, one only had to look at the warrant 6 document to see that it was completely 7 unmerited. 8 Q. I see, okay. And Mr Baglietto, your firm, 9 I think you said, Mr Bonfante, is experienced 10 in judicial review and you had the benefit of 11 counsel from the UK as well, some specialist 12 in public law matters? 13 A. Yes, yes. 14 Q. And you have, I think it is not a secret, 15 conducted a recent judicial review in relation 16 to another lawyer in circumstances. 17 A. Mm. 18 Q. Are you experienced in all of this? 19 A. Experienced in what? 20 Q. In judicial review and the sort of 21 challenges that one might make to warrants 22 and all the rest? 23 A. I have some experience in judicial 24 review. 25 Q. And your team had a lot?</p> <p style="text-align: center;">Page 201</p>	<p>1 Q. So, the concerns you had about the 2 devices were sufficient motivation, the 3 concern about them being looked at to have 4 progressed a judicial review had you decided 5 it was merit based, would it not? 6 A. Well, to a large extent, we made rather 7 good progress actually in that period. We got 8 some assurances from the Commissioner of 9 Police. Mr Levy was allowed to give a 10 voluntary statement not under caution and I 11 am not going to go any further into why, and 12 the circumstances, we decided not to pursue 13 judicial review. 14 Q. So, the alternative route with your two 15 friends, the Attorney General and the Chief 16 Minister, produced the results that may have 17 meant you did not need to progress the 18 judicial review? 19 A. No, it was not a case of my two friends. 20 It is a case of the fact that we put forward a 21 very strong case to show why in all fairness 22 we ought to be given - Mr Levy ought to be 23 given - the opportunity to provide a 24 voluntary statement and also to be entitled to 25 seek appropriate safeguards in relation to the</p> <p style="text-align: center;">Page 203</p>
<p>1 A. My team? There were other members of 2 my team that ... 3 Q. Mr Bonfante and the counsel from 4 England? 5 A. Yes, yes, yes. 6 Q. And in those circumstances did you pick 7 up the phone and reach out to the Chief 8 Minister or the Attorney General? 9 A. In what circumstances? 10 Q. In the other case that we have just 11 discussed, in other words, in other 12 circumstances have you reached out to the 13 Chief Minister or the Attorney General? 14 A. I personally have not reached out to the 15 Chief Minister or the Attorney General. 16 Q. No, no, I see. And insofar as the decision 17 to judicially review or to proceed with that, 18 did you progress it in three months? 19 A. What, in our case? 20 Q. Yes. 21 A. We didn't progress it. 22 Q. You did not progress it. Now, during that 23 period the devices remained in the possession 24 of the RGP? 25 A. Yes.</p> <p style="text-align: center;">Page 202</p>	<p>1 preservation of the devices and Mr Levy was 2 prepared to be extremely open as indeed he 3 was in his voluntary statement, which we 4 consider probably went a long way towards 5 securing - 6 Q. Understood. 7 A. - the withdrawal of the investigation. 8 Now, why we decided not to go for judicial 9 review in the meantime is entirely a matter 10 for Mr Levy. That is his privilege. I am not 11 going to waive privilege. 12 Q. I understand and I am not asking you - 13 A. And of course a judicial review would 14 also have generated a lot of publicity. 15 Q. I understand. I am not going to ask you 16 about privileged matters, but what I would 17 say is that in your letter, for example, the 18 13th, and you have repeated it today, you talk 19 about misfeasance in public office. 20 Q. Tort and misfeasance and various actions 21 that were possible. 22 A. Yes. 23 Q. And I think today - if I am wrong, please 24 correct me - you have indicated those 25 matters are still alive and you do not want to</p> <p style="text-align: center;">Page 204</p>

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<p>1 talk about them because they are still alive. 2 A. Well, they are still - I think Mr Levy has 3 made reference - 4 Q. Yesterday he gave indications of the - 5 (inaudible) claims. 6 A. But I am not going to talk about them. 7 Q. No, I understand that, but given that they 8 were still alive, when you say matters were 9 sort of all over by October, that litigation was 10 pending or you had contemplated you would 11 not have got rid of any material. Do you 12 want to rethink your answer, given that those 13 claims originally made on 13 May 2020 seem 14 to have continued to live? 15 A. We had the material that we would need 16 and in fact a lot of material has come out of 17 the course of this inquiry, which we did not 18 have at the time and has resulted in police 19 disclosure, which did not exist at the time, 20 and which has, as you put it, kept alive the 21 possibility of other actions, but as I say - 22 Q. It is my last question. 23 A. I don't want to talk about what - 24 Q. It is my last question, Mr Baglietto, but I 25 think the point that I am trying to make is</p> <p style="text-align: center;">Page 205</p>	<p>1 which police disclosure are you referring to? 2 A. We got some disclosure from the police 3 last year which I think they felt unable to 4 give us until the whole Operation Delhi 5 investigation was concluded and within that 6 disclosure there is material which - 7 Q. And - Yes, I am sorry. 8 A. No, no, I was just saying that there is 9 material in that disclosure which could be 10 very relevant. 11 Q. But is that disclosure that you received 12 from the inquiry? 13 A. No, no, not from the inquiry. 14 Q. Oh, sorry. 15 A. No, from the police directly. 16 Q. I am sorry, I just wanted to clarify. 17 A. No, no, from the police directly. 18 Q. Thank you. 19 THE CHAIRMAN: Okay, thank you very 20 much. 21 MR SANTOS: Thank you very much. 22 (The witness withdrew) 23 THE CHAIRMAN: Tomorrow, DPP? 24 MR SANTOS: Correct, yes, at 10 o'clock. 25 THE CHAIRMAN: Which will finish</p> <p style="text-align: center;">Page 207</p>
<p>1 that you have indicated that if you were 2 aware of proceedings - I do not think you 3 were limiting them to criminal proceedings - 4 you would not have got rid of information 5 and I am just asking you whether in the light 6 of the fact that those proceedings get 7 threatened on 13 May 2020 and alive as of 8 yesterday's evidence certainly and even yours 9 today, do you want to rethink the answer 10 about the removal of all those WhatsApps 11 from your WhatsApps phone? 12 A. Those WhatsApps were neither here nor 13 there for the purposes of any such 14 proceedings in our view. 15 MR CRUZ: Thank you. 16 MR SANTOS: Just one further question, a 17 follow-up to an answer that Mr Baglietto has 18 just given. 19 Questioned by MR SANTOS 20 Q. I think I heard you say that you have 21 information and disclosure that you did not 22 previously have as a result of this inquiry and 23 you referred to police disclosure. 24 A. Yes. 25 Q. When you refer to the police disclosure,</p> <p style="text-align: center;">Page 206</p>	<p>1 tomorrow? 2 MR SANTOS: We will have to, yes. The 3 most exciting element of the inquiry is 4 everybody deciding the order in which they 5 wish to question a witness. I would ask for 6 liaison - 7 THE CHAIRMAN: Yes, well I am going to 8 ask you to try and sort that out. 9 SIR PETER CARUANA: Sir, may I say that 10 the real issue is not so much about the order, 11 difficult as it is, although we have struggled 12 through a previous witness. 13 THE CHAIRMAN: Yes. 14 SIR PETER CARUANA: The difficulty is 15 not so much about the order but about the 16 allocation of time. Now, without an 17 indication of how long CTI is going to be - 18 THE CHAIRMAN: Well, you will get that. 19 SIR PETER CARUANA: We have no idea 20 how much we are sharing out between us. 21 THE CHAIRMAN: Well, hang on. You 22 will get an idea about that. 23 MR SANTOS: I would anticipate that I will 24 need no more than half a day. It sounds like 25 that is not acceptable to Sir Peter.</p> <p style="text-align: center;">Page 208</p>

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1 SIR PETER CARUANA: No, no.
 2 MR SANTOS: But I think that is our best
 3 estimate, no more than half a day.
 4 THE CHAIRMAN: Okay.
 5 MR SANTOS: I can probably give more of
 6 an indication once I have looked at things.
 7 THE CHAIRMAN: I understand that.
 8 MR SANTOS: It has been a very intense
 9 week.
 10 THE CHAIRMAN: Say, half past 12?
 11 MR SANTOS: Half past 12. I am happy to
 12 commit to half past 12 yes, and that would
 13 leave three hours of questioning to be shared.
 14 SIR PETER CARUANA: Yes.
 15 MR SANTOS: What I would ask is that the
 16 participants engage and -
 17 THE CHAIRMAN: Yes, well we can sort
 18 the order out and then they can sort
 19 prioritisation out.
 20 MR SANTOS: On this occasion there is no
 21 re-examination by a lawyer on behalf of a
 22 witness.
 23 THE CHAIRMAN: I am quite confident that
 24 you will all have a fair share.
 25 MR SANTOS: Yes, thank you.

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1 THE CHAIRMAN: I will ensure that.

 2 Okay, thank you.

 3 (Adjourned until 10 a.m. on Friday 19 April

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