

1 (Friday, 19 April 2024)  
 2 (10.00)  
 3 MR SANTOS: Good morning, sir.  
 4 MR CHRISTIAN ROCCA, sworn  
 5 Examination-in-chief by MR SANTOS  
 6 MR SANTOS: Good morning, Mr Rocca.  
 7 **A. Good morning, Mr Santos.**  
 8 Q. You should have a bundle in front of you  
 9 marked "Witness Statements" and that should  
 10 have your witness statement inside. Can I  
 11 just ask you to check, please, that that is your  
 12 first witness statement?  
 13 **A. This is my one and only affidavit, yes.**  
 14 Q. Yes. And can I just ask you to check that  
 15 your signature is there on the final page,  
 16 please?  
 17 **A. It is.**  
 18 Q. And do you confirm that the contents of  
 19 that affidavit are true to the best of your  
 20 knowledge, information and belief?  
 21 **A. It is.**  
 22 Q. How long have you been Director of  
 23 Public Prosecutions, Mr Rocca?  
 24 **A. January 2019. I think if you ask me for**  
 25 **the exact date, I think it was 7 January.**

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1 Q. Can you please explain the role of  
 2 Director of Public Prosecutions in Gibraltar?  
 3 **A. The role of DPP was created out of**  
 4 **almost a division of what was once done by**  
 5 **the Attorney General. So prior to the**  
 6 **creation of this role the Attorney General**  
 7 **would have the general supervision of all**  
 8 **criminal matters which my department**  
 9 **currently undertakes. So there was a division**  
 10 **of those roles and that is really what I do. It**  
 11 **is mostly criminal, but it entails other matters**  
 12 **as well.**  
 13 Q. Is it correct to say that your office is  
 14 established under section 3 of the DPP Act  
 15 2018?  
 16 **A. Correct.**  
 17 Q. And you exercise the functions and  
 18 powers under instructions issued to you by  
 19 the AG pursuant to section 59(3) of the  
 20 Constitution.  
 21 **A. That is correct.**  
 22 Q. And in summary, those powers are  
 23 instituting and undertaking criminal  
 24 proceedings, taking over and continuing  
 25 criminal proceedings or discontinuing any

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1 criminal proceedings.  
 2 **A. Subject to some limitations, yes.**  
 3 Q. What are the key differences between the  
 4 role of DPP and the role of the AG?  
 5 **A. I can't tell you what the role of the AG is**  
 6 **specifically. I can tell you what my role is.**  
 7 **My role is to advise primarily on criminal**  
 8 **matters. We also handle other ancillary**  
 9 **matters for the Governor of Gibraltar, which**  
 10 **may touch upon discipline, advising tribunals**  
 11 **and other statutory bodies.**  
 12 Q. Do you answer to the Attorney General?  
 13 **A. Yes, I do. Ultimately he is my boss I**  
 14 **suppose, yes.**  
 15 Q. You are also head of the OCPL. How  
 16 many Crown Counsel roughly at the moment  
 17 do you have in the OCPL?  
 18 **A. I think ten, one of which is currently**  
 19 **seconded, well, has been on long-term**  
 20 **secondment, up at the Royal Gibraltar Police**  
 21 **to provide advice on an ad hoc basis. The**  
 22 **rest are based at my office.**  
 23 Q. Roughly when did that secondment start?  
 24 **A. Before my time.**  
 25 Q. Prior to the establishment of the office of

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1 the DPP, who advised in relation to criminal  
 2 matters? Who advised the RGP?  
 3 **A. It's what was always colloquially known**  
 4 **as the AG's chambers, which were located at**  
 5 **Secretary's Lane. One of the first things I did**  
 6 **was try and secure new premises because**  
 7 **they weren't fit for purpose. So it would**  
 8 **have been colloquially the AG's chambers.**  
 9 **The AG was located there traditionally, so it**  
 10 **would have been what was colloquially**  
 11 **known as the AG's chambers, but it would**  
 12 **have been one of the Crown Counsel, now**  
 13 **recognised as the OCPL.**  
 14 Q. How regularly do you personally advise  
 15 the RGP?  
 16 **A. Quite regularly.**  
 17 Q. What sort of cases would you personally  
 18 get involved in?  
 19 **A. The more important, um, high profile,**  
 20 **public interest cases, serious crime, those**  
 21 **sorts of things.**  
 22 Q. Can I take you to A275, please. This is  
 23 the Attorney General's first affidavit to the  
 24 Inquiry and it is paragraph 21 that I want to  
 25 focus on. He says:

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<p>1 "It was not until early April 2020 that the 2 Criminal Investigation was brought to my 3 attention again [this is Operation Delhi 4 investigation.] On this occasion it was as 5 a result of a call I received from the DPP, 6 Christian Rocca QC, who wished to discuss 7 with me certain aspects of the RGP's 8 investigation. I would like to point out that 9 the DPP very rarely seeks to discuss criminal 10 cases with me and typically acts completely 11 independently from me. The fact that he 12 called me gave me cause for concern that 13 there was something seriously wrong." 14 I will come back to that conversation shortly, 15 but for now I just want to ask whether you 16 agree with the Attorney General's statement 17 that you rarely, very rarely, seek to discuss 18 criminal cases with him and typically act 19 completely independently from him? 20 <b>A. Yes, I think that is accurate. I would only 21 touch base with the Attorney General when I 22 need to touch base with the Attorney 23 General, something I think he needs to be 24 aware of.</b> 25 Q. Just turning to your relationship with</p> <p style="text-align: center;">Page 5</p>	<p>1 Do you agree with Mr McGrail that you 2 never had any issues with him since you took 3 up your post? 4 <b>A. Yes, I had a good relationship with Ian. 5 We had known each other for a long time. 6 When I was in private practice he had been 7 involved in cases I was defending and we 8 had a perfectly good relationship and I was ... 9 I had heard he had resigned, or words to that 10 effect, and I wanted to find out ... I wanted 11 him to know, people go through many things 12 and I wanted him to know if he needed to 13 talk I was there to talk about it. I think it was 14 a perfectly humane thing to do that I would 15 have done to anybody, yes.</b> 16 Q. In terms of your relationship with the 17 RGP, when you provide advice to the RGP 18 would you typically provide it verbally or in 19 writing? 20 <b>A. I think it depends on the advice I give and 21 the context of the advice and where I am 22 when I provide that advice. So it will usually 23 be, if it is important advice, in writing. So, 24 for example, in the Delhi case the final 25 advice we gave was in writing. But there</b></p> <p style="text-align: center;">Page 7</p>
<p>1 Mr McGrail, can I take you to A37, please. 2 That is Mr McGrail's first witness statement. 3 And paragraph 85. This is Mr McGrail 4 talking about the day after ... it is around the 5 time of his departure and I just want to focus 6 on the second half of that paragraph. Just 7 over halfway down there is a sentence that 8 says: "I similarly received a message." Can 9 you see that? 10 <b>A. Yes.</b> 11 Q. He says: 12 "I similarly received a message from the DPP 13 who at 1148hrs said 'Hi Ian, have heard 14 what's happened. Happy to speak if I can 15 assist at all. Best, C.'" 16 And then at 12.44 he says: 17 "I replied to the DPP saying 'Thanks Chris, I 18 am going to take the weekend to reflect on 19 what is happening to me. I will revert next 20 week.' In turn the DPP responded with 'Just 21 wanted you to know that I am always able to 22 speak. Take care C.' I appreciated these 23 messages from the DPP who I have not had 24 any issues with at all since he took up the 25 post."</p> <p style="text-align: center;">Page 6</p>	<p>1 <b>may be ad hoc meetings where I am aware 2 that police are taking notes and they will 3 make their own notes of those meetings 4 where we may not. So it really depends on 5 the context of the meetings.</b> 6 Q. If you provide it verbally would one of 7 your Crown Counsel take a note of the 8 advice you are giving? 9 <b>A. Not necessarily but it depends on what 10 that advice is.</b> 11 Q. Can you just elaborate on that? You say 12 it depends on what that advice is. What type 13 of advice would you normally have written 14 down and what would you not? 15 <b>A. Sorry, I can give you an example in 16 relation to Operation Delhi which is, I think, 17 quite relevant to the context of the Inquiry. 18 So, for example, I recall that we had 19 a meeting in my offices, I think in March 20 sometime, if you want to call it a preliminary 21 meeting, where I received, I am pretty certain 22 one of my junior Crown Counsels was there, 23 Mr Richardson, possibly Mr Clarke, I do not 24 think Mr Wyan was there. We had 25 a discussion about the case generally. It was</b></p> <p style="text-align: center;">Page 8</p>

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<p>1 pretty much the first time we were fully 2 briefed on it. It was an oral briefing. They 3 sought or initial views. Our initial views 4 were, both mine and my Crown Counsel 5 were, that this sounds like someone trying to 6 take business, sharp business practices at 7 best, nothing else. That was not recorded. 8 At least it was not by us. I do not know if it 9 was recorded by the police. So that 10 preliminary inquiry would not have been 11 recorded. They then left. We then received 12 a written advice on 1 April, which I shared 13 with the same Crown Counsel. I had a Zoom 14 call, I am sure you will come to all this. 15 Q. Yes. 16 A. I am sure in due course. Um, that I know 17 was recorded by Mr Richardson in his 18 daybook, and I have seen his daybook, I am 19 grateful for that, which accurately records the 20 conversation to my recollection. Then we 21 had a further proper charge of advice, a full 22 charge advice, which we gave a written 23 response to. So I think those are the different 24 types of relationships we would have, yes. 25 Q. If you provide verbal advice, would you</p> <p style="text-align: center;">Page 9</p>	<p>1 with internal disciplinary matters, I think, for 2 the police. So if they have a disciplinary 3 hearing against an officer they will deal with 4 that. Um, given the lack of specialism of that 5 officer up there, if there was a judicial 6 review, for example, she would not be asked 7 about a JR because she would have the 8 specialist knowledge to advise properly on 9 that. So they might come to us. Or they 10 might farm that out, as is often the case, to 11 private counsel. 12 Q. Can I now take you to 13 May 2019. 13 This is something that you deal with in your 14 statement at paragraph 5, but it is A1295 in 15 the bundle. It is your statement, sorry, you 16 can look at it in your statement in the other 17 bundle. 18 A. It's not in that bundle. 19 Q. Paragraph 5, sorry. 20 A. No problem. 21 Q. It should be, yes, towards the bottom of 22 the first page: 23 "I was first informed about Operation Delhi 24 at a meeting held at the Chief Minister's 25 office on 13 May 2019."</p> <p style="text-align: center;">Page 11</p>
<p>1 follow up in writing typically in an email or 2 a written note? 3 A. If I felt the need to, yes. 4 Q. On Wednesday of this week 5 Mr McGrail's evidence to the Inquiry was 6 that the RGP does not have an internal legal 7 department, so it relies on the law offices of 8 the OCPL to defend the RGP in any civil 9 claims brought against them. Is that the 10 case? 11 A. I think the Crown Counsel that is at the 12 RGP on secondment is there to give general 13 basic advice. So, as far as I am aware, 14 an officer can walk in and ask a question. 15 She will do initial reviews of case files. Um, 16 she may advise on hearsay applications. 17 What else she does, I think for serious 18 matters and I think for prosecutorial matters, 19 the police would come to us, if they could 20 not go to Sharon up at the RGP. 21 Q. And in civil, in terms of civil claims, 22 against the RGP, would your office deal with 23 those? 24 A. So, it depends. I am aware that the 25 officer that is seconded up there would deal</p> <p style="text-align: center;">Page 10</p>	<p>1 A. Yes. 2 Q. "I was subsequently involved in various 3 meetings, both in person and on the 4 telephone, with the Royal Gibraltar Police for 5 the purpose of providing charging advice." 6 And you say that you dealt primarily with 7 Superintendent Richardson and Inspector 8 Wyan. 9 A. Yes. 10 Q. Just focusing on the 13 May 2019 11 meeting, what was discussed at that meeting? 12 A. What was discussed at that meeting? I 13 think Mr McGrail called the meeting to 14 which I was invited. It was held at Number 6 15 round the big table. A lot of people were 16 there, my recollection. Mr McGrail gave 17 a briefing about Operation Delhi and what 18 had happened. It was a very important and 19 delicate matter that needed to be dealt with. 20 And he advised everyone at that meeting of 21 what had happened and what the plans were 22 moving forward. That's my recollection of 23 that meeting. 24 Q. You say there were many people there, 25 do you remember whether the Attorney</p> <p style="text-align: center;">Page 12</p>

3 (Pages 9 to 12)

<p>1 General was present?</p> <p>2 <b>A. I think so, but I couldn't be 100 per cent</b></p> <p>3 <b>certain. I remember the Chief Minister was</b></p> <p>4 <b>there, the Minister for Justice was there,</b></p> <p>5 <b>Mr Costa. Um, I was there, I think</b></p> <p>6 <b>Mr DeVincenzi may have been there. I think</b></p> <p>7 <b>the Financial Secretary may have been there.</b></p> <p>8 <b>The Chief Secretary may have been there and</b></p> <p>9 <b>I think the Attorney General may have been</b></p> <p>10 <b>there. I remember it being quite a gig</b></p> <p>11 <b>gathering.</b></p> <p>12 Q. Was Mr Levy's alleged involvement in</p> <p>13 the alleged conspiracy, was that mentioned?</p> <p>14 <b>A. Not to my recollection.</b></p> <p>15 Q. Do you recall towards the end of the</p> <p>16 meeting the Chief Minister saying something</p> <p>17 to the effect that the RGP would need to</p> <p>18 speak to the senior partner at Hassans?</p> <p>19 <b>A. Not to my recollection.</b></p> <p>20 Q. Can I just show you Superintendent</p> <p>21 Richardson's note of the meeting. It is</p> <p>22 C1735. This is Superintendent Richardson's</p> <p>23 record of the meeting.</p> <p>24 <b>A. My recollection from those is quite</b></p> <p>25 <b>accurate actually.</b></p> <p style="text-align: center;">Page 13</p>	<p>1 <b>seized when he arrived in Gibraltar. So I</b></p> <p>2 <b>remember, I don't recall that being said about</b></p> <p>3 <b>the senior partner at Hassans, I am sorry. But</b></p> <p>4 <b>it seems a fairly accurate note.</b></p> <p>5 Q. Was any connection to Hassans known at</p> <p>6 that point in that meeting to your</p> <p>7 recollection?</p> <p>8 <b>A. I'm sure, I'm sure it would have been. I'm</b></p> <p>9 <b>sure they had already made the link on the</b></p> <p>10 <b>beneficial ownership. But again, I had not</b></p> <p>11 <b>seen, this is very early in Delhi, I hadn't seen</b></p> <p>12 <b>anything at that stage. So I couldn't tell you</b></p> <p>13 <b>what they knew or what they didn't know.</b></p> <p>14 <b>So whether they knew about the Hassans</b></p> <p>15 <b>connection --</b></p> <p>16 Q. Sorry, maybe I should have phrased my</p> <p>17 question a bit better. Was any link of</p> <p>18 Hassans mentioned in that meeting?</p> <p>19 <b>A. Not to my recollection.</b></p> <p>20 Q. How would --</p> <p>21 <b>A. I remember Caine Sanchez standing up</b></p> <p>22 <b>because he was a civil servant. That is my</b></p> <p>23 <b>recollection of the meeting.</b></p> <p>24 Q. How would you describe your</p> <p>25 involvement in Operation Delhi after this</p> <p style="text-align: center;">Page 15</p>
<p>1 Q. Yes, but I asked you specifically about</p> <p>2 the Attorney General because there is no</p> <p>3 record there of the Attorney General being</p> <p>4 present --</p> <p>5 <b>A. No.</b></p> <p>6 Q. -- and there seems to be a bit of a conflict</p> <p>7 of evidence as to whether the Attorney</p> <p>8 General was present or whether he joined by</p> <p>9 phone. But anyway, if you have no clear</p> <p>10 recollection, I just want to focus on the final</p> <p>11 two lines.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. The Chief Minister, there is a record from</p> <p>14 the Chief Minister that says: "Government</p> <p>15 should be complainants." Do you recall the</p> <p>16 Chief Minister saying that?</p> <p>17 <b>A. I do recall him saying that, yes.</b></p> <p>18 Q. And then there is a record saying: "We</p> <p>19 will need to speak to a senior partner at</p> <p>20 Hassans."</p> <p>21 <b>A. I don't recall that. I also recall, um,</b></p> <p>22 <b>a fairly comprehensive discussion about</b></p> <p>23 <b>Mr Sanchez because I think from memory he</b></p> <p>24 <b>was abroad and they wanted to make sure</b></p> <p>25 <b>that he wasn't alerted and his device was</b></p> <p style="text-align: center;">Page 14</p>	<p>1 point?</p> <p>2 <b>A. I think I regularly liaised with Paul, with</b></p> <p>3 <b>Mr Richardson, um, and Mr Wyan and to</b></p> <p>4 <b>a lesser extent Sergeant Clarke. We were</b></p> <p>5 <b>fairly involved in it and kept fairly up to date</b></p> <p>6 <b>on progress as and when we needed to be</b></p> <p>7 <b>told.</b></p> <p>8 Q. Did you play any proactive role or was</p> <p>9 your role limited to responding to requests</p> <p>10 for advice or meetings from the RGP?</p> <p>11 <b>A. No, my office would never play</b></p> <p>12 <b>a proactive role in an investigation. Those</b></p> <p>13 <b>are operational matters for the police which</b></p> <p>14 <b>we do not interfere with.</b></p> <p>15 Q. Can we now look at B3106, please. This</p> <p>16 is 3106. It will appear on your screen, but if</p> <p>17 you prefer to look at it on a paper it should be</p> <p>18 there.</p> <p>19 <b>A. I have got it here.</b></p> <p>20 Q. Just focusing on row 254, this is a record</p> <p>21 of a meeting of 17 January 2020. It is</p> <p>22 an entry in Inspector Wyan at the time,</p> <p>23 Inspector Wan's Operation Delhi</p> <p>24 investigation log.</p> <p>25 <b>A. Okay.</b></p> <p style="text-align: center;">Page 16</p>

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<p>1 Q. And it states: 2 "Meeting with DPP regarding formulation of 3 charges, summary and jury. Concerns were 4 raised by DPP regarding expert's witnesses 5 required." 6 <b>A. Yes.</b> 7 Q. What charges were you discussing at that 8 meeting? Or I suppose the better question is: 9 what defendants or potential defendants were 10 you discussing in relation to the formulation 11 of charges? 12 <b>A. I suspect all of them, um, but given the 13 comment about expert witnesses I would 14 have thought it was more in relation to the 15 computer misuse charges. Um, that 16 reference to expert witnesses would have 17 applied really only to the computer misuse 18 charges. But we could have been discussing 19 all the other charges as well, I don't know.</b> 20 Q. Were you advising on formulation of 21 charges? 22 <b>A. Yes.</b> 23 Q. We know that in Gibraltar charging is the 24 responsibility of the RGP. 25 <b>A. Correct.</b></p> <p style="text-align: center;">Page 17</p>	<p>1 <b>A. In relation to computer misuse charges, 2 we only had evidence from a Mr Galliano 3 essentially and other admissible evidence that 4 could not be used in relation to those 5 particular charges. So I said to the police 6 that I want to try and make things stronger, 7 we should seek to instruct an expert. As it 8 panned out, the expert didn't produce what 9 we had hoped he would be producing. But 10 we still felt that without the expert there was 11 sufficient to prosecute on the charges that 12 were selected.</b> 13 Q. The inadmissible evidence that you refer 14 to, is that the PWC report? 15 <b>A. Yes, and I think there was something 16 from the NCA, if memory serves me correct, 17 I think they provided something.</b> 18 Q. And the ultimate expert evidence that you 19 sought, when was that obtained? 20 <b>A. I couldn't tell you the date. I would have 21 to look at my file notes.</b> 22 Q. After May 2020? 23 <b>A. Yes. Yes, definitely after May 2020. 24 Probably 2021 actually, I think. But I have 25 to say, the expert evidence was limited in</b></p> <p style="text-align: center;">Page 19</p>
<p>1 Q. Is it usual for your office to advise or for 2 you to advise on formulation of charges? 3 <b>A. I wouldn't say it's usual. I think when it's 4 a complex case, when it's a serious case, the 5 practice we have, we are open to providing 6 charging advice. I think it is right and proper 7 that the Crown get it right to start with. What 8 we don't want is for charges to be proffered 9 which the Prosecutor doesn't then agree with 10 or needs to amend. So I think in all cases it's 11 important to try and get the charges right at 12 the outset. If it is a serious matter, the police 13 will often seek charging advice from us, so 14 sexual offences against children, for 15 example, they will regularly attend my 16 offices and seek advice.</b> 17 Q. Was Mr Levy's alleged involvement 18 discussed at this meeting? 19 <b>A. In January 2020, I'm not sure. It certainly 20 was in March and April.</b> 21 Q. Yes, we will come to March and ... do 22 you recall, there is, as you pointed out, 23 a reference to concerns being raised by you 24 regarding the need for expert witnesses. 25 What concerns were you raising?</p> <p style="text-align: center;">Page 18</p>	<p>1 <b>what he could provide expert evidence on 2 because there were limitations in what he had 3 received. So from recollection, to provide 4 the advice that was sought, the expert 5 evidence that was sought, he would have had 6 to reconstruct the platform, all of which was 7 not really feasible. So he couldn't provide 8 evidence as to what we expected and he was 9 put to one side.</b> 10 Q. Now turning to 3 March 2020, can we 11 please turn to B3121. This is another page 12 from Inspector Wyan's log. And this time I 13 want to focus on 352, please. This is 14 a reference of 3 March 2020: 15 "Meeting with the DPP regarding JL. Advice 16 requested on whether his involvement 17 amounts to a criminal offence. Full report 18 drafted by Superintendent Richardson. 19 Relevance, consideration of whether JL has 20 committed a criminal offence." 21 I think you have already mentioned this 22 meeting. 23 <b>A. Yes. I recall that meeting.</b> 24 Q. Do you remember how long that meeting 25 went on for?</p> <p style="text-align: center;">Page 20</p>

5 (Pages 17 to 20)

<p>1 <b>A. I couldn't tell you. It wasn't particularly</b>  2 <b>long, it wasn't particularly short is my</b>  3 <b>recollection. But it was a full discussion,</b>  4 <b>briefing, from certainly Mr Richardson and</b>  5 <b>possibly Mr Wyan if he was there. I can't</b>  6 <b>quite ... I think he was.</b>  7 Q. The log records advice requested on  8 whether his involvement amounts to  9 a criminal offence. Did you provide that  10 advice?  11 <b>A. I believe both Mr Zammit and I at that</b>  12 <b>meeting did.</b>  13 Q. What was your advice based on? What  14 evidence was your advice based on?  15 <b>A. It was mainly based on the oral</b>  16 <b>representations made by Mr Richardson and</b>  17 <b>our view at that stage was there was not</b>  18 <b>sufficient to progress matters further against</b>  19 <b>Mr Levy. To which I was then provided</b>  20 <b>a further report with details and text</b>  21 <b>messages, etc.</b>  22 Q. What written material had you received  23 from the RGP prior to this meeting?  24 <b>A. We may have received a summary. Um,</b>  25 <b>I don't believe we had received ...</b></p> <p style="text-align: center;">Page 21</p>	<p>1 <b>any further. I think when we disagreed with</b>  2 <b>them, they probably thought we need to</b>  3 <b>provide him more, which is what they</b>  4 <b>subsequently did in April. Which is not</b>  5 <b>uncommon. It's, you know, I think at the end</b>  6 <b>of the day Mr Richardson and his team</b>  7 <b>would have had the granular detail that we</b>  8 <b>didn't have, obviously.</b>  9 Q. Can we go now to A1427, please. This is  10 paragraph 14 of Mr Richardson's third  11 statement to this inquiry.  12 <b>A. Paragraph, sorry?</b>  13 Q. Paragraph 14.  14 <b>A. Fourteen.</b>  15 Q. And he gives an account of this meeting.  16 He says:  17 "The meeting took place at the new premises  18 of the OCPL in the NatWest Building on  19 Line Wall Road. It lasted considerably  20 longer than I expected (over 2 hours from  21 memory). The DPP inclined to the view that  22 JL's involvement in Operation Delhi arose  23 from sharp business practice."  24 <b>A. Yes.</b>  25 Q. Superintendent Wyan makes a similar</p> <p style="text-align: center;">Page 23</p>
<p>1 Q. We know that the charging report --  2 <b>A. Comes later.</b>  3 Q. -- comes later. What about the NDM  4 document that was prepared by  5 Superintendent Richardson?  6 <b>A. I checked my emailed and that was sent</b>  7 <b>under cover of 1 April.</b>  8 Q. Yes, and we know it was sent together  9 with the charging report, but I just want to  10 check whether it had been sent previously.  11 <b>A. Not that I believe and not that I recall.</b>  12 Q. And do you recall either of them handing  13 you the NDM during the course of the  14 meeting?  15 <b>A. I don't recall that, no, I'm sorry.</b>  16 Q. I think this follows from one of your  17 earlier answers, but had you seen all of the  18 evidence relating to Mr Levy in advance of  19 the meeting?  20 <b>A. In March? No.</b>  21 Q. Why were you being asked to advise if  22 you had not seen all of the evidence?  23 <b>A. I suppose they came to get a preliminary</b>  24 <b>view on where they were at at that stage and</b>  25 <b>whether there was mileage in progressing</b></p> <p style="text-align: center;">Page 22</p>	<p>1 point in his third statement, I may as well  2 take you, 1046, A1046, and paragraph 44.  3 He says:  4 "I recall that it was at this meeting that the  5 DPP disagreed with our position that  6 Mr Levy was suspected of having committed  7 a criminal offence. The DPP regarded his  8 actions as 'sharp business practice'. It was  9 agreed that we would go away and prepare  10 a full report setting out the evidence in  11 support of our assertions."  12 <b>A. Yes.</b>  13 Q. Do you recall expressing that view at the  14 meeting?  15 <b>A. Yes. Um, additionally though, it wasn't</b>  16 <b>just Mr Wyan at this meeting and myself.</b>  17 <b>One of my Crown Counsel was there also</b>  18 <b>and he also expressed that view. So there</b>  19 <b>was the Crown, the prosecutorial view was</b>  20 <b>unanimous at that stage, for want of a better</b>  21 <b>word.</b>  22 Q. Was that Mr Zammit?  23 <b>A. It was.</b>  24 Q. Did you consider that you were advising  25 on Mr Levy's alleged liability at that</p> <p style="text-align: center;">Page 24</p>

6 (Pages 21 to 24)

<p>1 meeting?</p> <p>2 <b>A. I think we were giving him a preliminary</b></p> <p>3 <b>indication of what our views were, yes.</b></p> <p>4 Q. What did you consider was sharp?</p> <p>5 <b>A. Look, there are entrepreneurs, there are</b></p> <p>6 <b>businessmen, at that stage I think</b></p> <p>7 <b>Mr Richardson was perhaps more convinced</b></p> <p>8 <b>of the guilt of Mr Levy than we were, having</b></p> <p>9 <b>seen what we had seen. We felt at that stage</b></p> <p>10 <b>there was evidence that Mr Levy had</b></p> <p>11 <b>invested, either through his firm or</b></p> <p>12 <b>personally, but we had no evidence to</b></p> <p>13 <b>suggest he had been involved or had</b></p> <p>14 <b>knowledge of the computer hacking or any</b></p> <p>15 <b>improper conduct that had been alleged by</b></p> <p>16 <b>the police. So at that stage it certainly looked</b></p> <p>17 <b>as though people trying to take people's</b></p> <p>18 <b>business, which happens all the time in the</b></p> <p>19 <b>world of business, I suspect. That was our</b></p> <p>20 <b>view at that stage.</b></p> <p>21 Q. What about commercial deviance? Have</p> <p>22 you ever used that phrase to describe</p> <p>23 Mr Levy's actions?</p> <p>24 <b>A. Not a word I would have used. I think I</b></p> <p>25 <b>may have read it somewhere in some --</b></p> <p style="text-align: center;">Page 25</p>	<p>1 practice, as opposed to, I suppose, criminal</p> <p>2 conduct, is not recorded in Inspector Wyan's</p> <p>3 note of the meeting that we have seen. Did</p> <p>4 you make a note of the advice that you gave</p> <p>5 in that meeting?</p> <p>6 <b>A. I didn't and I don't think this is admitted</b></p> <p>7 <b>either.</b></p> <p>8 Q. And did you follow up from this meeting</p> <p>9 with any written advice?</p> <p>10 <b>A. No, we did not.</b></p> <p>11 Q. Then, as you rightly say, on 1 April 2020</p> <p>12 you were sent an email by Superintendent</p> <p>13 Richardson, B3610. And here</p> <p>14 Mr Richardson, if we look at the top of the</p> <p>15 page, we can see the attachments include</p> <p>16 charging reports.</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And then his NDM assessment.</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And going down to the third paragraph,</p> <p>21 there is, I just want to read the third and</p> <p>22 fourth paragraphs. He says:</p> <p>23 "I have also included my NDM assessment</p> <p>24 of the need to interview JL which sets out my</p> <p>25 rationale. Although this document is not</p> <p style="text-align: center;">Page 27</p>
<p>1 Q. Yes, it is right. I will take you to it. It is</p> <p>2 C3563. This is a record of the meeting of 13</p> <p>3 May --</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. -- which we will come to. But it is the</p> <p>6 box marked 108/11 and it is a quote from the</p> <p>7 Commissioner of Police and he says, starting</p> <p>8 from the third line:</p> <p>9 "There is no criminal liability. It is civil,</p> <p>10 commercial deviance, if you want to put it</p> <p>11 that way. And I do not know again, I only</p> <p>12 learnt this today, and I think it was you that</p> <p>13 briefed me this morning that the law has</p> <p>14 changed where commercial deviance is now</p> <p>15 regarded as criminal deviance."</p> <p>16 You say that that phrase, "criminal</p> <p>17 deviance", is not one that you used.</p> <p>18 <b>A. No, and it is not something I advised</b></p> <p>19 <b>Mr McGrail. I'm assuming he is referring to</b></p> <p>20 <b>Mr Richardson when he says: "The law has</b></p> <p>21 <b>changed and you advised me when you</b></p> <p>22 <b>briefed me this morning."</b></p> <p>23 Q. Yes.</p> <p>24 <b>A. But it's not language I would have used.</b></p> <p>25 Q. Your view in terms sharp business</p> <p style="text-align: center;">Page 26</p>	<p>1 intended as a basis of seeking legal advice, I</p> <p>2 hope that it will assist in the understanding of</p> <p>3 why we feel that it is necessary to follow the</p> <p>4 course of action that is proposed. What we</p> <p>5 are seeking is your advice on whether the</p> <p>6 charges that we propose are warranted by the</p> <p>7 evidence, whether there is a reasonable</p> <p>8 prospect of conviction and, given the</p> <p>9 inherent political nature of this investigation,</p> <p>10 that it is in the public interest to proceed. In</p> <p>11 addition, and in respect of James Levy, we</p> <p>12 are seeking legal advice as to whether there</p> <p>13 are reasonable grounds to suspect that he has</p> <p>14 committed the offence as alleged."</p> <p>15 Do you have records of receiving those two</p> <p>16 documents, the charging report and the NDM</p> <p>17 assessment?</p> <p>18 (10.30)</p> <p>19 <b>A. Yes, that was sent on 1 April.</b></p> <p>20 Q. I think you were saying this earlier but</p> <p>21 just to be clear, was that the first time you</p> <p>22 had seen both of those documents?</p> <p>23 <b>A. To my knowledge, yes.</b></p> <p>24 Q. From those two paragraphs that I read</p> <p>25 out, what was your understanding of the</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 advice that the RGP was seeking from you?  2 <b>A. I think the advice was being sought is set</b>  3 <b>out in paragraph four. And I think, and I've</b>  4 <b>had the benefit of being provided by the tri--</b>  5 <b>by the Inquiry yesterday Mr Richardson's</b>  6 <b>entry in his daybook, which I think</b>  7 <b>accurately reflects the conversation we had.</b>  8 <b>I think it was a WhatsApp conference call. I</b>  9 <b>was on leave that week, and I did it from</b>  10 <b>home.</b>  11 Q. If we can please turn to B3456.  12 <b>A. 34?</b>  13 Q. Actually 3455. B3455.  14 <b>A. I would also add that in relation to the</b>  15 <b>advice that I gave subsequent that Zoom call,</b>  16 <b>what I did was: when I received the charging</b>  17 <b>advice and the NDM I forwarded those to Mr</b>  18 <b>Zamitt, who had been helping me at that</b>  19 <b>stage in relation, initially, to the inquiry. And</b>  20 <b>I asked him, I said: look, you look at it</b>  21 <b>independently, I'll look at it independently,</b>  22 <b>and then we'll compare notes as to (?) what</b>  23 <b>conclusions we've both reached. Mr Zamitt</b>  24 <b>then sent me an email, which corresponded</b>  25 <b>exactly with my views, also, and that's what</b></p> <p style="text-align: center;">Page 29</p>	<p>1 we have reasonable grounds to suspect, the  2 interview should be under caution."  3 <b>A. Yeah.</b>  4 Q. And then over the page, 31, "The seizure  5 of the digital devices referred to in paragraph  6 25B should be by search warrant, obtained in  7 advance of approaching JL for interview."  8 And then if we go to 3665.  9 <b>A. I don't have 3665, I'm sorry.</b>  10 Q. This is the charging report... Well,  11 perhaps we can just show you this one on  12 screen.  13 <b>A. Okay.</b>  14 Q. I am not going to be reading large  15 swathes of it, but at the bottom of that page,  16 337, "Request for advice". "In light of the  17 evidence proffered above, it is requested that  18 the 76 proposed charges be considered in  19 accordance with the Code of Prosecutors" --  20 <b>A. Yes.</b>  21 Q. "Code for Prosecutors." And then, over  22 the page --  23 <b>A. Yes.</b>  24 Q. The entry at C is, "Levy, a joint charge,  25 conspiracy to defraud" --</p> <p style="text-align: center;">Page 31</p>
<p>1 <b>was communicated to Mr Richardson at that</b>  2 <b>WhatsApp conference call with Mr Wyan</b>  3 <b>and himself.</b>  4 Q. Have those emails been provided to the  5 Inquiry?  6 <b>A. They haven't. Because they're internal I</b>  7 <b>think they may be legally privileged, but I'm</b>  8 <b>happy to do so if... I suppose the police</b>  9 <b>could waive privilege. I have a copy here</b>  10 <b>with me, so I'm more than happy to provide</b>  11 <b>that. From Mr Zamitt to me, yes.</b>  12 Q. Yes.  13 <b>A. More than happy to provide that, if that is</b>  14 <b>requested.</b>  15 Q. Just focusing on this page, 3455. You  16 may not have the hard version; you may only  17 have 3456.  18 <b>A. I've got 3455.</b>  19 Q. Ah, great. Well, at paragraphs 25 and 26  20 I just want to point out that there is a  21 reference to it being necessary to obtain  22 further evidence by interviewing --  23 <b>A. Yeah.</b>  24 Q. -- Mr Levy, conducting a digital forensic  25 examination of his devices. And then, "As</p> <p style="text-align: center;">Page 30</p>	<p>1 <b>A. Yes.</b>  2 Q. -- and then 338 and 339. 338 says, "In  3 addition to the proposed charges, advice is  4 also sought as to whether, based on the above  5 evidence, there are reasonable grounds to  6 suspect that Levy has committed the offence  7 of conspiracy to defraud and/or any other  8 criminal offences." And 339, "In the event  9 that there are reasonable grounds to suspect  10 Levy has committed any offence, the police  11 will consider whether it is necessary to  12 conduct further investigations in the form of  13 search warrants, interview under caution."  14 <b>A. Yes.</b>  15 Q. Based on those final paragraphs, it looks  16 like your advice was only sought on whether  17 to treat Mr Levy as a suspect, and that the  18 RGP was reserving to itself the decision on  19 whether to seek a search warrant at a later  20 stage.  21 <b>A. Yes, we would not normally interfere in</b>  22 <b>an operational decision as to how they would</b>  23 <b>seize material on the ground. They are the</b>  24 <b>police officers, they have the experience,</b>  25 <b>they make those judgment calls based on</b></p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)



<p>1 <b>their granular knowledge of the evidence,</b> 2 <b>and we don't tend to interfere in that.</b> 3 Q. If we go back to B3610, the email that Mr 4 Richardson sent you. 5 <b>A. Yes.</b> 6 Q. The paragraph after the two that I read 7 says, "The attached documents set out in 8 great detail much of the evidence that has not 9 yet been disclosed to the defence and I would 10 ask, please, that you restrict access to it to 11 yourself and Crown Counsel Mark Zamitt. 12 <b>A. Yes.</b> 13 Q. Did you do as the RGP asked, and keep 14 those documents between yourself and Mark 15 Zamitt? 16 <b>A. Yes.</b> 17 Q. Did you send them to the Attorney 18 General? 19 <b>A. I did not, I've checked my emails --</b> 20 Q. At the jour-- (?) 21 <b>A. I can -- I've checked with my emails, I</b> 22 <b>complied with the exact request that was</b> 23 <b>made by Mr Richardson.</b> 24 Q. Just for completeness, what about the 25 Chief Minister?</p> <p style="text-align: center;">Page 33</p>	<p>1 <b>Coastguard, in involved a former</b> 2 <b>commanding officer of the Gibraltar</b> 3 <b>Regiment. It was a whole litany of persons</b> 4 <b>that were involved here. It involved Mr</b> 5 <b>Gaggero, a very important businessman. It</b> 6 <b>involved very serious allegations in relation</b> 7 <b>to our national security, and I needed to brief</b> 8 <b>the Attorney general on this case. Fair to say,</b> 9 <b>prior to this he'd had very light information.</b> 10 <b>So as soon as I knew it was a national</b> 11 <b>security platform issue I would have briefed</b> 12 <b>him very -- in light terms, if I could. So, I</b> 13 <b>would occasionally meet with Mr Llamas</b> 14 <b>and appraise him of two or three cases I</b> 15 <b>thought he should know of because of the</b> 16 <b>consequences for Gibraltar, but in very light</b> 17 <b>terms. And, it wasn't until we received the</b> 18 <b>charging advice that I fully briefed Mr</b> 19 <b>Llamas in relation to Operation Delhi.</b> 20 Q. Did you, when you say, "serious 21 implications in terms of people that might be 22 dragged in" were you also referring to the 23 Chief Minister? 24 <b>A. I don't think I was aware -- I don't think I</b> 25 <b>-- my mind hadn't really (inaudible) at that</b></p> <p style="text-align: center;">Page 35</p>
<p>1 <b>A. No, I don't have, really, correspondence</b> 2 <b>with the Chief Minister on any matters.</b> 3 Q. Then if we go to C3312, please. On 6 4 April -- 5 <b>A. I haven't got it in my bun--</b> 6 Q. Oh, sorry. 7 <b>A. -- script (?).</b> 8 Q. That is a very brief -- 9 <b>A. Yeah.</b> 10 Q. -- on 6 April, you send an email to the 11 Attorney General saying, "Hi Michael, this is 12 something we're going to have to discuss 13 soon, because it does have very serious 14 implications in terms of people that might be 15 dragged in." 16 <b>A. Yeah.</b> 17 Q. And the answer, "Sure Christian, 18 whenever you want." You refer to people 19 being "dragged in", who were you referring 20 to here? 21 <b>A. This was a list of persons that I'd never</b> 22 <b>come across -- well, I hadn't been DPP for</b> 23 <b>that long, so it involved a very senior civil</b> 24 <b>servant, it involved potentially Mr Levy, it</b> 25 <b>involved potentially the head of Borders and</b></p> <p style="text-align: center;">Page 34</p>	<p>1 <b>stage. Yes, there was a link in terms of the</b> 2 <b>ownership of 36 North. I don't think I'd</b> 3 <b>made the link that obviously it would touch</b> 4 <b>upon other people as well, but certainly Mr</b> 5 <b>Levy at that stage was important, as was the</b> 6 <b>chief officer of Borders and Coastguard, a</b> 7 <b>senior civil servant. So, I think that was</b> 8 <b>upmost in my mind.</b> 9 Q. If we go to your statement, paragraph 10, 10 A1296. 11 <b>A. 10?</b> 12 Q. Yes. 13 <b>A. Yeah.</b> 14 Q. You talk about discussions you had with 15 the AG, and just the final sentence on that 16 page, "I recall explaining to him, in early 17 April 2020 that the number of proposed 18 charges needed to be greatly rationalised and 19 reduced as they numbered 76 at the time and 20 many would be dependent on the resolution 21 of the ownership aspect. I recall that it was 22 around early April as I was in the process of 23 providing charging advice to the RGP at that 24 time." 25 <b>A. Yeah.</b></p> <p style="text-align: center;">Page 36</p>

1 Q. You refer there to the ownership question.  
 2 How important was resolution of the  
 3 ownership question to the prosecution, at that  
 4 stage?  
 5 **A. Very.**  
 6 Q. Why do you say that?  
 7 **A. Because a number of the cha-- I think at**  
 8 **the ini-- at the outset the RGP worked on the**  
 9 **assumption, because it had been told that by**  
 10 **the complainant, Bland Limited, that they**  
 11 **owned the platform and the IP, etc, etc.**  
 12 **During the course of that investigation that**  
 13 **wasn't quite as clear as that, and therefore a**  
 14 **number of the charges -- the 76 charges that**  
 15 **they'd amassed at that stage were very much**  
 16 **dependent on ownership, because if you're**  
 17 **not the owner you can't complain about**  
 18 **certain thing, and you can't complain about**  
 19 **being acc-- given access to certain things.**  
 20 **So, determination of the ownership was**  
 21 **crucial at that stage, in relation to how we**  
 22 **move forward. We then came up with a**  
 23 **solution to avoid that, or I think Mr Wyan**  
 24 **may have come up with that solution,**  
 25 **suggestion, as to how we would avoid that.**

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1 **But, the CPS guidance makes it quite clear**  
 2 **that the criminal courts are not there to**  
 3 **determine ownership; that is for civil matters.**  
 4 **So, unless we could have a definitive view on**  
 5 **that we would not be able to proceed with a**  
 6 **number of these charges as they currently**  
 7 **were drafted. So, it was very important.**  
 8 Q. If we can look at A275 now, back to Mr  
 9 Llamas's affidavit. 275, paragraph 21.  
 10 **A. Yeah.**  
 11 Q. He refers to this contact that you had with  
 12 him, "It was not until early-April 2020 that  
 13 the Criminal Investigation was brought to my  
 14 attention again. On this occasion it was as a  
 15 result of a call I received from the Director of  
 16 Public Prosecutions ('DPP'), Christian Rocca  
 17 QC, who wished to discuss with me certain  
 18 aspects of the RGP's investigation. I would  
 19 like to point out that the DPP very rarely  
 20 seeks to discuss criminal cases with me and  
 21 typically acts completely independently from  
 22 me. The fact that he called me gave me  
 23 cause for concern that there was something  
 24 seriously wrong." Then, at 22 he sets out a  
 25 summary of some of the matters that you

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1 confirmed to him, and then at 23 he says,  
 2 "The DPP also informed me that that the  
 3 RGP had drawn up a list of 76 charges  
 4 against Messrs Cornelio, Perez and Sanchez.  
 5 This was news to me. The DPP told me that  
 6 the excessive number of charges seemed  
 7 wholly inappropriate and that he was of the  
 8 view that the charges needed to be  
 9 rationalised, ideally after dealing with the  
 10 issue of ownership of the NSCIS platform  
 11 which was still 'live' and needed to be dealt  
 12 with. It seemed clear to both of us that the  
 13 ownership of the platform was key to the  
 14 viability of a number of the proposed  
 15 charges, and that on one possible ownership  
 16 outcome a number of the proposed charges  
 17 would necessarily fall away." Is that, in your  
 18 view, an accurate characterisation of the  
 19 discussion that you had with the Attorney  
 20 General?  
 21 **A. Yes.**  
 22 Q. Was it your view that "the excessive  
 23 number of charges seemed wholly  
 24 inappropriate"?  
 25 **A. Yes.**

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1 Q. Why was that your view?  
 2 **A. You -- well, you'd never go to court with**  
 3 **76 charges, a judge would tell you to pare**  
 4 **them down to something manageable. So**  
 5 **you pick a selection of charges, which can be**  
 6 **reflective of the criminality -- of the alleged**  
 7 **criminality, and you go with that. So, you**  
 8 **would never go with -- it would be very rare**  
 9 **for you to proceed to a criminal matter with**  
 10 **76 charges. And you'd select the ones that**  
 11 **were the strongest, obviously.**  
 12 Q. Did you understand the RGP to be  
 13 proposing to proceed with the 76 charges?  
 14 **A. They didn't say otherwise; they simply**  
 15 **presented the charging advice with 76**  
 16 **charges, which I thought was wholly and**  
 17 **frankly too much. I've heard -- I've caught**  
 18 **(?) statements in the Inquiry where they say:**  
 19 **well, of course we weren't proceeding with**  
 20 **76. That may well be the case, but I -- it**  
 21 **definitely needed to be pared down to**  
 22 **something manageable and sensible, and**  
 23 **eventually it was down to I think something**  
 24 **in the teens: 14, 15, 16 charges, from**  
 25 **recollection.**

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<p>1 Q. Is it fair to say that when we talk about 2 the charges being excessive and the need to 3 bring them down, that that related in 4 particular to the computer misuse offences? 5 <b>A. Wholly the computer misuse offences.</b> 6 Q. And... 7 <b>A. It was there that there were the multitude 8 of date -- I think they'd itemised every 9 possible allegation of computer misuse, 10 strong, week, medium, regardless of 11 ownership. So, it was -- it was mostly in 12 rela-- which was the right thing to do, on 13 their part. I don't -- make no criticism of the 14 police presenting us those charges to 15 consider.</b> 16 Q. And in terms of the ownership issue, was 17 that key to the viability of the conspiracy 18 charge being considered against Mr Levy? 19 <b>A. No, I think it was more in relation to the 20 computer misuse charges. Because 21 obviously, if the Government owned the 22 platform and Mr Sanchez was giving proper 23 and rightful access, then a lot of the computer 24 misuse charges may have fallen away.</b> 25 Q. Did the Attorney General express any</p> <p style="text-align: center;">Page 41</p>	<p>1 <b>A. 27.</b> 2 Q. I am going to ask you about the first 3 sentence of that -- 4 <b>A. I don't -- I don't have it.</b> 5 Q. Oh, sorry. 6 <b>A. On screen. (?)</b> 7 Q. Yes, on screen. 8 <b>A. Thanks. (?) Yeah.</b> 9 Q. I just want to ask you whether it is correct 10 that you and the Attorney General agreed that 11 the Attorney General should seek a meeting 12 with Mr McGrail about the quantity and 13 rationalisation of the charges. 14 <b>A. So, I think there are two parts to that 15 paragraph. In relation to the first paragraph, 16 I can say I do not recall agreeing that the 17 Attorney General should meet Mr McGrail. I 18 don't recall that, genuinely. It may well have 19 happened, it may well not have happened. In 20 relation to the second part, I think that is 21 correct: unless I'd contacted the Attorney 22 General he would have been none the wiser 23 and would not have got involved at that 24 stage, to the best of my knowledge.</b> 25 Q. Why was it the Attorney General and not</p> <p style="text-align: center;">Page 43</p>
<p>1 view to you about the matter, at that stage? 2 <b>A. Not really, because -- look (?) the 3 Attorney General isn't a criminal law 4 practitioner, so I'm not sure he would have 5 said much about the charges. He would have 6 probably voiced: well, yes, 76 sounds a bit 7 crazy. He was obviously cognisant of the 8 need to determine the ownership point. But 9 other than that, the Attorney General said 10 nothing.</b> 11 Q. In his statement, just over the page, 277 12 now, please. At paragraph 27 the Attorney 13 General's evidence is, "The DPP and I 14 therefore agreed that I should seek a meeting 15 with Mr McGrail about the quantity and 16 rationalisation of charges. Contrary to Mr 17 McGrail's accusations against me and the 18 improper motives that he imputes to me, I 19 would not have known about this or 20 intervened at all if the DPP had not himself 21 brought this matter to my attention and 22 requested me to act as aforesaid." Just 23 focusing on the first sentence -- 24 <b>A. Which paragraph is it, sorry?</b> 25 Q. Sorry, 27.</p> <p style="text-align: center;">Page 42</p>	<p>1 you who met with the RGP on the 2 rationalisation of charges? 3 <b>A. I can't answer that question, because I 4 didn't know that that meeting was taking 5 place.</b> 6 Q. When you say "that meeting", you mean 7 7 April 2020? 8 <b>A. I'm trying to think whether I knew that 9 meeting was taking place. 7 April?</b> 10 Q. Yes, the day before your -- 11 <b>A. That's when I was on leave.</b> 12 Q. Ah, perhaps. It was the day before your 13 Zoom or WhatsApp -- 14 <b>A. I will -- I've checked my diary. I was on 15 leave from the 7th onwards, which is 16 probably why I didn't attend that meeting. I 17 didn't know -- I'm not -- I can't recollect 18 whether I knew they were discussing the 19 rationalisation of the charges. I can't even 20 tell you I knew where (?) they were meeting, 21 I was probably invited because (?) I was on 22 leave, but...</b> 23 Q. Yes, so just to be clear in terms of the 24 timeline, it looks like we had a conversation 25 on 6 April 2020 between you and the</p> <p style="text-align: center;">Page 44</p>

<p>1 Attorney General. 2 <b>A. Yeah.</b> 3 Q. On 7 April 2020 there was the meeting 4 that you did not attend -- 5 <b>A. Yeah.</b> 6 Q. -- and on 8 April was your -- 7 <b>A. Zoom call with (?) --</b> 8 Q. -- Zoom call. So, is your evidence... I 9 think you said that you were not clear, but 10 you were not aware on 6 April that the 11 Attorney General would be meeting, on the 12 following day, the RGP to discuss the 13 rationalisation of charges? 14 <b>A. Not that I recall now.</b> 15 Q. Was it unusual for the Attorney General 16 to meet the RGP without you, to discuss an 17 ongoing criminal matter? 18 <b>A. I wouldn't know what the Attorney 19 General's diary is like. I know he would 20 meet with Mr McGrail, meet with Mr Ullger, 21 occasionally. I wouldn't know why or what 22 for, how regularly. So I can't -- I can't tell 23 you how often, or whether it's a regular 24 matter for the Attorney General to meet with 25 the police force.</b></p> <p style="text-align: center;">Page 45</p>	<p>1 Attorney General. Were you aware of such 2 an agreement? 3 <b>A. Well, obviously I wasn't at the meeting, 4 so I wasn't aware whether an agreement was 5 reached or on what terms. I know I probably 6 subsequently became aware that something 7 had been agreed, because from a -- having a 8 quick look at the transcripts that were sent to 9 me yesterday by the Inquiry I see there's a 10 mention at the beginning of one of the 11 transcripts about: we've had an argument 12 about what was agreed, but we'll leave that to 13 one side. Or, words to that effect. Whether 14 that's the first time I know about the 15 agreement or not, I can't tell you. But, by 16 that stage I certainly was aware --</b> 17 Q. Yes. 18 <b>A. -- of an agreement or otherwise.</b> 19 Q. If such an agreement to stop an 20 investigation had been reached, would you 21 expect as DPP to be told? 22 <b>A. Yes, I think so. And of course, it's a 23 matter of interpretation of what you mean by: 24 stop the investigation. Look, pending the 25 outcome of the ownership, people could not</b></p> <p style="text-align: center;">Page 47</p>
<p>1 Q. Did the Attorney General, in your 2 meeting of 6 April or subsequently, at any 3 point suggest to you that he would be asking 4 the investigation to stop until the charges 5 were rationalised and he had had a further 6 meeting with Mr McGrail? 7 <b>A. I'm not aware of that.</b> 8 Q. And after that meeting, did he make that 9 suggestion to you? 10 <b>A. Not that I recall, no.</b> 11 Q. Turning to the 8 April meeting -- 12 <b>A. That was the arrangement they came to 13 on the 7th or something, or --</b> 14 Q. There is a conflict of evidence -- 15 <b>A. Okay.</b> 16 Q. -- as to exactly what agreement was 17 reached on 7 April. 18 <b>A. Right.</b> 19 Q. Mr Llamas's case is that there was an 20 agreement that the investigation would not 21 proceed until rationalisation of the charges 22 and resolution -- 23 <b>A. Yes. (?)</b> 24 Q. -- of the ownership issue, and a further 25 meeting between Mr McGrail and the</p> <p style="text-align: center;">Page 46</p>	<p>1 <b>be charged; it was as simple as that. So if 2 that's what you mean by stopping the 3 investigation --</b> 4 Q. Well -- 5 <b>A. -- then yes. It doesn't mean you stop 6 inquiring, I suppose.</b> 7 Q. I can be more specific, because the 8 specific focus here is as to whether a search 9 warrant should have proceeded, prior to 10 rationalisation of the charges and prior to the 11 ownership issue was resolved. If there was 12 an agreement reached to the effect that 13 matters such as applications for search 14 warrants and execution of search warrants 15 were not to take place, do you think that that 16 is something that you would have been 17 informed of as DPP? 18 <b>A. Possibly, or operational matters. I would 19 be surprised if the Attorney General would 20 have got into such granular detail about 21 search warrants or operational matters. But 22 again, I wasn't at the meeting on 7 April, so I 23 really can't tell you what was discussed, or 24 agreed or not agreed.</b> 25 Q. On 8 April, we have already heard that</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 you met via videoconference with 2 Superintendent Richardson and Inspector 3 Wyan. I think you have already said you did 4 not produce a written advice or note in 5 advance of the call. And, do you have a note 6 of that meeting? 7 <b>A. I don't.</b> 8 Q. And, does Mr Zamitt have a note of that 9 meeting? 10 <b>A. I don't think Mr Zamitt was on the Zoom 11 call.</b> 12 Q. Was it just you? 13 <b>A. I think it was just myself, but I have seen 14 the not taken by Mr Richardson, who said he 15 was taking a note in his daybook, and it's 16 accurate.</b> 17 Q. Would you agree that perhaps this is a 18 meeting which ought to have been recorded 19 in a file note at your end? 20 <b>A. Possibly. Two points to make in relation 21 to that. One, I was at home on leave, so I 22 perhaps wasn't taking notes. And two, know 23 that Mr Richardson is very diligent in taking 24 notes. He's a very experienced officer and I 25 knew he was taking a note, so I was perfectly</b></p> <p style="text-align: center;">Page 49</p>	<p>1 then had -- 2 <b>A. Yes, I have his email to me prior to the 3 meeting, where he gives me his thoughts.</b> 4 Q. Can we go now to C1783, please. This is 5 Superintendent Richardson's daybook entry 6 for the meeting. It is a handwritten entry... 7 <b>A. Yeah.</b> 8 Q. -- in his daybook. I just want to focus, 9 first of all, on the part that is just under 10 "duration 1920", and first of all: the record is 11 that the meeting took only 19 minutes, was 12 that sufficient time to advise the RGP on the 13 issue? 14 <b>A. If that's what it took, that's what it took.</b> 15 Q. Superintendent Richardson's note then 16 continues -- 17 <b>A. In fact, if I can interrupt you, it does 18 mention there that Mr Zamitt and I were 19 pretty much agreed --</b> 20 Q. Yes. 21 <b>A. -- were very comf-- (?) yeah.</b> 22 Q. We will come to that, actually. 23 <b>A. Okay, sorry.</b> 24 Q. And, in fact I am going to focus on that 25 first of all. "DPP had had long chat with MZ,</p> <p style="text-align: center;">Page 51</p>
<p>1 <b>comfortable he would make a note of our 2 discussion. So I suppose on that basis no, I 3 didn't. But on hindsight, it might have been a 4 sensible thing to do.</b> 5 Q. Did you follow up that meeting with any 6 written advice on the matters that you had 7 covered? 8 <b>A. Not that meeting, no.</b> 9 Q. In terms of your preparation for this 10 meeting, had you read the charging report 11 and the NDM? 12 <b>A. I'd definitely read the charging report; I 13 may have had a quick look at the NDM, but 14 the NDM on my reading of it the other day 15 seemed very operational in nature, so I may 16 not have given it that much consideration. I 17 definitely read the charging advice with care, 18 because that formed the basis upon which we 19 were seeking to provide the advice they 20 sought.</b> 21 Q. Had you spoken to Mr Zamitt in advance 22 of the meeting? And I think you said earlier - 23 - 24 <b>A. Yes.</b> 25 Q. -- that you both read it independently and</p> <p style="text-align: center;">Page 50</p>	<p>1 and pretty much agreed that they were very 2 comfortable to run with the case, on the basis 3 of the summary of evidence provided." Is 4 that an accurate record of what you said? 5 <b>A. Yes, and what comes below.</b> 6 Q. "No grounds at this stage to pull any 7 prosecution." 8 <b>A. Yeah.</b> 9 Q. "AG could speak to CoP re public 10 interest." 11 <b>A. Yeah.</b> 12 Q. When you say, "very comfortable to run 13 with the case", was this in relation to Mr 14 Levy or the former Operation Delhi 15 defendants? 16 <b>A. No, I think there was a -- from my 17 recollection, a distinction between the three 18 of them. So, I think we were far more 19 comfortable at that stage in relation to Mr 20 Cornelio and most of the computer misuse 21 charges; far more comfortable in relation to 22 Mr Sanchez; less so, but comfortable with 23 Mr Perez; and less so with Mr Levy. And, 24 our view that was communicated was: he 25 needed to answer some questions. There</b></p> <p style="text-align: center;">Page 52</p>

<p>1 were some lingering suspicions, and he 2 would either absolve himself of -- and give a 3 full and frank explanation, or he would 4 become someone who could be charged. It 5 was a -- but he needed to be, in fairness, Mr 6 Levy needed to be asked certain questions 7 about certain text messages and what he 8 knew. So, there was a difference between -- 9 there were other people, including Mr 10 Asquez and the person in Borders and 11 Coastguard Agency, on which we gave 12 advice and in relation to which the police 13 disagreed with us, and they proceeded on 14 their own basis in relation to those 15 individuals, so we disagreed on one charging 16 point. 17 Q. Just going to the next entry there, "re 18 conspiracy to defraud charges, there's 19 sufficient evidence to lead a jury to a realistic 20 prospect of conviction". 21 A. Yeah. 22 Q. Which proposed defendants was that in 23 relation to? 24 A. Would have been in relation to Mr 25 Cornelio, Mr Sanchez and Mr Perez; possibly</p> <p style="text-align: center;">Page 53</p>	<p>1 A. Our position was that it -- that it would. 2 There were arguments raised by the defence 3 in subsequent correspondences about 4 whether they would amount to or not. Our 5 view was: it was sufficiently clear that it 6 could be. 7 Q. Similarly, in giving the advice had you 8 considered the question of whether 9 conspiracy to defraud was at that time a 10 common law offence in Gibraltar? 11 A. That's a very interesting question. At that 12 stage we were all convinced that it was. I 13 continued to be convinced that it was, as was 14 my counsel. I don't think anybody flagged 15 that up until right at the very end. In fact, it 16 was Mr Cardona, acting for Mr Sanchez, who 17 picked up on that provision, saying: well, 18 actually I'm not sure it exists, and wrote to 19 us. We considered it, the law I think is, as 20 Mr Chairman rightly points out, was a mess. 21 Our view was, it was certainly arguable, and 22 we were happy to run it in the -- in the initial 23 dismissed application to see whether it was 24 or it wasn't. That would have dealt with the 25 conspiracy charge one way or the other; the</p> <p style="text-align: center;">Page 55</p>
<p>1 the Borders and Coastguard's chief, but at 2 that stage not in relation to Mr Levy. 3 Q. What evidence had you examined in 4 relation to those individuals at that point? 5 A. Everything that was set out in the 6 charging advice. I mean, I don't have it to 7 hand, but everything that was said in the 8 charging advice was -- it was quite detailed. 9 Mr Richardson's investigation had been very 10 thorough, and so it was all contained in that 11 summary. I mean, look: prior to charging 12 we'd have received a formal (?) charging 13 advice, I think it was 150, 160 pages, 14 together with -- and I remember them being 15 dropped in my office as about four or five 16 Morrisons bags full of -- full of files, witness 17 statements, WhatsApps, exhibits etc, which 18 we then went through. 19 Q. In giving this advice, had you considered 20 (in relation to the conspiracy to defraud) 21 whether the maintenance contract amounted 22 to a proprietary interest capable of giving rise 23 to the conspiracy to -- 24 A. We had a fraud. We had... 25 Q. And, what was was your position on that?</p> <p style="text-align: center;">Page 54</p>	<p>1 other charges would have remained, 2 notwithstanding a decision on the conspiracy. 3 But, it was raised very last-minute by Mr 4 Cardona, just prior to the dismissed 5 application, in my memory. 6 Q. So, it was not in the picture at this point? 7 A. No, no, and Mr Fischel never raised it, 8 Mr Cooper never, and we never picked up on 9 it; it was Mr Cardona, at the end. 10 Q. Just going back to the maintenance 11 agreement, what steps had you taken to 12 examine the evidential basis for the 13 allegation that there was in fact a 14 maintenance agreement? 15 A. Sorry, say that question again. 16 Q. What steps had you taken to examine the 17 evidential basis for saying that there was in 18 fact a maintenance agreement in place at the 19 time? 20 A. At this stage, in April: the evidence 21 provided, the charging advice. 22 Q. The charging advice. 23 A. I think from memory there was an 24 assertion there was a maintenance contract 25 (?). I also think, from memory, at that stage</p> <p style="text-align: center;">Page 56</p>

<p>1 <b>they were still asserting that ownership</b></p> <p>2 <b>vested in Bland, I think, at that stage. So, it</b></p> <p>3 <b>would have been based on their assumption</b></p> <p>4 <b>of ownership at that stage, I think. I'd have</b></p> <p>5 <b>to review the charging advice on 1 April.</b></p> <p>6 Q. Just following on in Superintendent</p> <p>7 Richardson's note, he says, "re JL, reasonable</p> <p>8 grounds to question, would be a lingering</p> <p>9 doubt. Otherwise, obligation to interview</p> <p>10 under cation", which is what you have just</p> <p>11 you've just explained.</p> <p>12 <b>A. Yeah.</b></p> <p>13 Q. Is it correct, that your position at that</p> <p>14 stage was that there was sufficient evidence</p> <p>15 to interview under caution?</p> <p>16 <b>A. That was a recommendation with which I</b></p> <p>17 <b>saw no diff-- I had no difficulty with.</b></p> <p>18 THE CHAIRMAN: Sorry, can you just</p> <p>19 repeat that?</p> <p>20 <b>A. Me, sorry?</b></p> <p>21 THE CHAIRMAN: Yes, I just did not quite</p> <p>22 catch what you said.</p> <p>23 <b>A. That's what they wanted to do, and I</b></p> <p>24 <b>didn't disagree with it.</b></p> <p>25 THE CHAIRMAN: Oh, okay.</p> <p style="text-align: center;">Page 57</p>	<p>1 <b>A. Well, that's not my note, it's Mr</b></p> <p>2 <b>Richardson's, so he'd have to explain.</b></p> <p>3 THE CHAIRMAN: But we do not have your</p> <p>4 note.</p> <p>5 MR SANTOS: Just breaking it down,</p> <p>6 reasonable grounds to question. So you took</p> <p>7 the view that there were reasonable grounds</p> <p>8 to question under caution.</p> <p>9 <b>A. Yes, and if we didn't I suppose, reading</b></p> <p>10 <b>Mr Richardson's note, there'd be a lingering</b></p> <p>11 <b>doubt if we didn't question him.</b></p> <p>12 Q. As to whether he was criminally liable.</p> <p>13 <b>A. Correct.</b></p> <p>14 THE CHAIRMAN: Reasonable grounds to</p> <p>15 question is rather different from reasonable</p> <p>16 grounds to question under caution. You</p> <p>17 remember that you were approving that there</p> <p>18 were reasonable grounds to question under</p> <p>19 caution.</p> <p>20 <b>A. My recollection of the charge advice was</b></p> <p>21 <b>that sort of asking and so that would have</b></p> <p>22 <b>been what I was agreeing to, but again how</b></p> <p>23 <b>they dealt with the suspect would be a matter</b></p> <p>24 <b>for the police. I mean, in many ways the</b></p> <p>25 <b>question itself about Mr Levy being a suspect</b></p> <p style="text-align: center;">Page 59</p>
<p>1 <b>A. I was perfectly happy with that.</b></p> <p>2 <b>(11.00)</b></p> <p>3 THE CHAIRMAN: To whom or what does</p> <p>4 the lingering doubt refer?</p> <p>5 <b>A. In relation to Mr Levy.</b></p> <p>6 THE CHAIRMAN: Yes, but a lingering</p> <p>7 doubt about what?</p> <p>8 <b>A. About whether he was involved in any of</b></p> <p>9 <b>the computer misuse or conspiracy. They</b></p> <p>10 <b>were the charges, Mr Chairman. They</b></p> <p>11 <b>provided details of messages. My</b></p> <p>12 <b>recollection is there were some messages</b></p> <p>13 <b>from Mr Cornelio to Mr Levy which the</b></p> <p>14 <b>police thought indicated some knowledge</b></p> <p>15 <b>about the hacking and the conspiracy, and Mr</b></p> <p>16 <b>Levy needed to be asked those questions.</b></p> <p>17 <b>We weren't quite satisfied that that was the</b></p> <p>18 <b>case of their own and there needed to be</b></p> <p>19 <b>explanations for those messages. So that's</b></p> <p>20 <b>the lingering suspicions, Mr Chairman.</b></p> <p>21 THE CHAIRMAN: It is not a lingering</p> <p>22 suspicion, it is a lingering doubt.</p> <p>23 <b>A. About his involvement.</b></p> <p>24 THE CHAIRMAN: I do not understand</p> <p>25 what the lingering doubt applies to.</p> <p style="text-align: center;">Page 58</p>	<p>1 <b>or otherwise, being treated as a suspect, was</b></p> <p>2 <b>strange to start with, because I can't</b></p> <p>3 <b>remember in the six years since I've been</b></p> <p>4 <b>DPP that I've been asked by the police</b></p> <p>5 <b>whether someone should be treated as a</b></p> <p>6 <b>suspect. They make that decision off their</b></p> <p>7 <b>own bat. Now, I guess on this occasion,</b></p> <p>8 <b>perhaps because it was Mr Levy, they wanted</b></p> <p>9 <b>some reassurance. I understand that. But it</b></p> <p>10 <b>was a strange request of whether he should</b></p> <p>11 <b>be treated as a suspect. It wasn't should he</b></p> <p>12 <b>be charged or should he be interviewed, it</b></p> <p>13 <b>was should he be treated as a suspect, which</b></p> <p>14 <b>on hindsight seems quite a strange question.</b></p> <p>15 THE CHAIRMAN: A strange question to</p> <p>16 put to you, you mean.</p> <p>17 <b>A. To put to me, yes.</b></p> <p>18 THE CHAIRMAN: Yes.</p> <p>19 <b>A. Because in six years I've never been</b></p> <p>20 <b>asked: "Are you comfortable with Mr Rocca,</b></p> <p>21 <b>Mr Santos, Mr Neish, being treated as a</b></p> <p>22 <b>suspect. It's not something I'd be asked.</b></p> <p>23 <b>Sorry, Mr Neish, you were just in my</b></p> <p>24 <b>eyeline.</b></p> <p>25 MR SANTOS: Just for the sake of</p> <p style="text-align: center;">Page 60</p>

<p>1 completeness, if we look at the final line in 2 that part of the note, it does say "Obligation 3 to interview under caution." That accords 4 with your recollection that you were advising 5 on whether the interview should be under 6 caution. 7 <b>A. Yes, but again it's entirely a matter for 8 them how they elicited the evidence from 9 him, but yes, that was, I think, in the 10 charging advice we wanted to interview him 11 under caution. That's fine, perfectly fine. It's 12 a matter entirely for you. I don't disagree 13 with you. He needs to answer questions that 14 have been raised by you.</b> 15 Q. This was a change in your view from 2 16 March 2020 where you thought that it fell 17 short of criminal conduct. 18 <b>A. Yes.</b> 19 Q. What caused this change? 20 <b>A. I think the detailed charging advice and 21 the messages that had been provided to us, so 22 it was a very - not as thorough as the final 23 charging advice; that was 50 or 60 pages 24 from memory, the first one. It was a fairly 25 detailed analysis by Mr Richardson of what</b></p> <p style="text-align: center;">Page 61</p>	<p>1 <b>needed to proceed at all costs, and the AG 2 was in full agreement with that. Knowing 3 who was involved, I might add. Names may 4 come out at a later stage, fine. Political 5 embarrassment wasn't a matter that I was 6 concerned with or the AG was, that I was 7 aware of. You know, I think that's a note 8 from Mr Richardson saying: "If we need to 9 pull in Levy then so be it. If we need to 10 arrest him and bring him in, so be it." That's 11 the way I'm interpreting it.</b> 12 Q. When you say "names may come out at a 13 later stage", what names did you have in 14 mind at that point? 15 <b>A. Well, it would have been everybody I've 16 mentioned above, including ports and 17 coastguards, Mr Levy, senior civil servant, 18 all those names.</b> 19 Q. Was the Chief Minister one of the names 20 being considered at that point? 21 <b>A. I suppose he would have been, yes, 22 because we had the full details and the 23 charging advice about the structure of 36 24 North and the partnership issue, so yes.</b> 25 Q. When you say that his name would have</p> <p style="text-align: center;">Page 63</p>
<p>1 <b>they had at that stage, and certainly those 2 messages required an explanation by Mr 3 Levy.</b> 4 Q. Just over the page there is an entry that 5 says: "JL needs looking at. Ownership may 6 not be critical but may direct who is charged 7 and with what. Agrees completely. Let's 8 drill down into this." Do you remember 9 something -- 10 <b>A. That sounds fairly accurate, yes.</b> 11 Q. And then: "Public interest. Not pulling. 12 AG in full agreement. Names may come out 13 at later stage. If we need to pull in Levy then 14 so be it." 15 <b>A. Important to stress, "If we need to pull in 16 Levy..." Not to pull --</b> 17 Q. Yes. 18 <b>A. - on Mr Levy. If we're to pull him in, 19 we're to pull him in.</b> 20 Q. Can you just explain firstly "Public 21 interest. Not pulling. AG in full agreement." 22 <b>A. So at that stage I'd already briefed the 23 Attorney General. My view was with which 24 the Attorney General agreed that the public 25 interest in this matter was so serious it</b></p> <p style="text-align: center;">Page 62</p>	<p>1 come out, in what sense do you mean that his 2 name would have come out? 3 <b>A. In a political sense that he was a 4 shareholder in - the Chief Minister you 5 mean?</b> 6 Q. Yes. 7 <b>A. - 36 North. Well, that Hassans was and 8 he was a partner. I mean, I don't know what 9 terms he continues to be or not during his 10 tenure as Chief Minister. It's a matter for 11 him.</b> 12 Q. But just to be clear, was there any 13 consideration as to whether he would be a 14 suspect at this point? 15 <b>A. Not to my knowledge, no.</b> 16 Q. If we can then go to B 3198, please. This 17 is another entry from Mr Wyan's log. This 18 records again the video conference, and the 19 final paragraph says: "He agreed that Mr 20 Levy should be treated as a suspect as there 21 were questions which needed to be answered. 22 He should be interviewed, file note made." 23 Did you use the word "suspect" in relation to 24 Mr Levy? 25 <b>A. I don't think so but I suppose that was the</b></p> <p style="text-align: center;">Page 64</p>

16 (Pages 61 to 64)



<p>1 corollary of the discussion we're having. So</p> <p>2 he's a person of interest who needs to answer</p> <p>3 questions, hence ergo, I suppose, that makes</p> <p>4 him a suspect. It's not a word I would</p> <p>5 necessarily have used but I suppose that is</p> <p>6 the outcome of the discussion. I have to say</p> <p>7 here that there's a part of this file note that I</p> <p>8 don't necessarily agree with in relation to Mr</p> <p>9 Chipol where we differed on our opinions,</p> <p>10 my Crown counsel and I and the RGP, but</p> <p>11 that's a matter that they were perfectly</p> <p>12 entitled to disagree with our views on.</p> <p>13 Q. Are you saying that the log accurately</p> <p>14 records what you said or are you saying that</p> <p>15 it does not accurately record it?</p> <p>16 A. In relation to Mr Chipol I don't believe it</p> <p>17 does because that was not our view and I</p> <p>18 think there is a charging advice, August or</p> <p>19 October, where we set out that our view was</p> <p>20 he should be charged and their view was that</p> <p>21 he shouldn't be charged, and he wasn't. But</p> <p>22 that's fine. There was a difference and a</p> <p>23 divergence of some opinion. So I'm not sure</p> <p>24 that's accurate, that part anyway.</p> <p>25 MR SANTOS: I think the Chairman was</p> <p style="text-align: center;">Page 65</p>	<p>1 Q. In terms of the decision to interview.</p> <p>2 A. Yes, and --</p> <p>3 Q. But a substantive --</p> <p>4 A. Can I pull out the email that my Crown</p> <p>5 counsel gave me, because it's the exact</p> <p>6 language I think I used in my conference call.</p> <p>7 Q. If the RGP - I mean, I think the --</p> <p>8 A. For the RGP.</p> <p>9 MR CRUZ: Perhaps in the break.</p> <p>10 THE CHAIRMAN: Yes.</p> <p>11 THE WITNESS: Because the language that</p> <p>12 my Crown counsel used was the language I</p> <p>13 recall using in the meeting.</p> <p>14 MR SANTOS: Can we then look at your</p> <p>15 witness statement at A 1297, please. You</p> <p>16 say in paragraph 12: "Mr McGrail did not</p> <p>17 seek my advice on the use or otherwise of a</p> <p>18 search warrant or production order in respect</p> <p>19 of the search and seizure of material from Mr</p> <p>20 James Levy QC. This was confirmed by him</p> <p>21 in an exchange of correspondence with</p> <p>22 Messrs Hassans." Then you say: "My view,</p> <p>23 which was communicated at my meeting on</p> <p>24 15 May 2022 at which Mr McGrail and the</p> <p>25 Attorney General were present and which is</p> <p style="text-align: center;">Page 67</p>
<p>1 about to ask you something.</p> <p>2 THE CHAIRMAN: Yes. From the fact that</p> <p>3 you approved the decision to interview Mr</p> <p>4 Levy under caution, it would necessarily</p> <p>5 follow, would it not, that he was a suspect.</p> <p>6 A. I think that language, I'd like to</p> <p>7 distinguish something. It's not for me to</p> <p>8 approve how they treat him, so it wasn't with</p> <p>9 my approval. They asked I think for some</p> <p>10 comfort that I would not in the public interest</p> <p>11 be pulling this and therefore are you happy</p> <p>12 we treat him as a suspect - yes, I'm happy</p> <p>13 with that. How they treat him is a matter for</p> <p>14 them. It's not for my approval. I wouldn't</p> <p>15 approve operational matters, Mr Chairman.</p> <p>16 Those are matters independently for the</p> <p>17 police to deal with as they see fit. So I think</p> <p>18 "approval" was the wrong word. But yes,</p> <p>19 they asked for my views and I agreed with</p> <p>20 that.</p> <p>21 MR SANTOS: But were they seeking your</p> <p>22 advice as to the grounds for treating him as a</p> <p>23 suspect in terms of criminality?</p> <p>24 A. I suppose yes, but not what that led to, if</p> <p>25 that makes sense.</p> <p style="text-align: center;">Page 66</p>	<p>1 recorded in the RGP note, was that a</p> <p>2 production order would have been the more</p> <p>3 suitable and appropriate way to proceed but</p> <p>4 that these were operational matters for the</p> <p>5 RGP and the RGP's position would be</p> <p>6 defensible if those actions were subjected to</p> <p>7 a judicial review." Were you clear in your</p> <p>8 mind that your advice was not being sought</p> <p>9 on the warrant?</p> <p>10 A. It was not being sought, no.</p> <p>11 Q. But did you express a preference for a</p> <p>12 production order over a warrant at that</p> <p>13 meeting of 8 April?</p> <p>14 A. Not that I recall, but it could have</p> <p>15 happened. Paul could have asked me, Mark</p> <p>16 could have asked me, and I never expressed a</p> <p>17 view, but it was not, from my recollection of</p> <p>18 - well, on seeing the 1 April covering email</p> <p>19 - it was not something they were seeking</p> <p>20 advice on. It wasn't something they said:</p> <p>21 "Can you also advise on the search warrant?"</p> <p>22 Whether it was fed in as part of the</p> <p>23 discussion, it's possible but it's not my</p> <p>24 recollection. What is clear is I expressed the</p> <p>25 view to Mr Richardson at some stage,</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 <b>because on looking at the transcripts I think I</b>  2 <b>say, I refer to the 15th. "Paul, as you know [I</b>  3 <b>think words to this effect], my view was</b>  4 <b>there should have been a production order</b>  5 <b>but look, we agree to disagree. I don't know</b>  6 <b>when I would have fed those views to Mr</b>  7 <b>Richardson.</b>  8 Q. But is your evidence that you cannot  9 recall whether or not you offered that  10 preference in that meeting or that you do not  11 believe that you did offer that preference in  12 that meeting?  13 <b>A. I don't believe that I did because it's not</b>  14 <b>something that they would normally ask us</b>  15 <b>for, given that it's an operational matter, and I</b>  16 <b>think the fact that it's not in his daybook -</b>  17 <b>I've looked at his daybook which was</b>  18 <b>provided to me yesterday - would suggest</b>  19 <b>that that it wasn't. I would have thought that</b>  20 <b>Paul would have put it in his daybook, but it's</b>  21 <b>possible that he didn't and we did discuss it.</b>  22 <b>I can't dismiss that possibility. I can't recall.</b>  23 Q. It is just because Mr Richardson and Mr  24 Wyan both say in their evidence that you did  25 offer that preference at the end of that</p> <p style="text-align: center;">Page 69</p>	<p>1 Q. In May.  2 <b>A. In May.</b>  3 Q. Yes. But what Superintendent Wyan is  4 saying there is that prior to the application  5 you had expressed that view. He is not  6 saying that you said it at that March meeting,  7 which is what Mr Richardson says.  8 <b>A. I definitely expressed the view that a</b>  9 <b>production order would have been my</b>  10 <b>preferred course of action. Whether that was</b>  11 <b>in April at the first meeting on the 13th or the</b>  12 <b>15th, or on the morning of the 13th --</b>  13 Q. But we are focusing on his prior to 12  14 May - in fact, prior to 6/7 May when the  15 applications were made. Do you believe that  16 you had expressed the preference by that  17 point?  18 <b>A. When was the application made?</b>  19 Q. 6/7 May.  20 <b>A. Not to my recollection, no, but if I had</b>  21 <b>been asked that would have been my advice.</b>  22 <b>I would have seen until maybe after the first</b>  23 <b>or second meeting in May the application</b>  24 <b>notice and the evidence in support of the</b>  25 <b>production order, so I was never shown that</b></p> <p style="text-align: center;">Page 71</p>
<p>1 discussion.  2 <b>A. And I can't say that didn't happen. It's</b>  3 <b>perfectly possible.</b>  4 THE CHAIRMAN: It is not, in fact, in the  5 note of either of them.  6 MR SANTOS: No.  7 <b>A. But it's perfectly possible that that is the</b>  8 <b>case.</b>  9 Q. I am just corrected by Ms Williams. Mr  10 Wyan does not - well, let us just look at Mr  11 Wyan, because I do not want to  12 mischaracterise his evidence. It is A 1044,  13 paragraph 31. He says: "I recall, but am not  14 certain, that prior to the application for the  15 search warrant the DPP expressed the view  16 that whilst he would have applied for a  17 production order rather than a search warrant  18 this was an operational matter for the RGP.  19 He further stated that if the use of a  20 production order were to be challenged by  21 judicial review he would defend the RGP's  22 position and that, in his view, we would be  23 successful."  24 <b>A. Those are the word I used in the meeting</b>  25 <b>in May.</b></p> <p style="text-align: center;">Page 70</p>	<p>1 <b>at all, until it's challenged by Hassans under</b>  2 <b>the Criminal Procedure Rules 5.7.</b>  3 Q. What was your reason for preferring a  4 production order?  5 <b>A. My view was that the Op Delhi</b>  6 <b>defendants, as they were known, had been</b>  7 <b>charged for donkeys or had been interviewed</b>  8 <b>for donkeys, not charged. They'd been</b>  9 <b>arrested and charged. There was no secret</b>  10 <b>they were business partners with Mr Levy.</b>  11 <b>Mr Levy would have been fully aware of</b>  12 <b>what was happening, and so for me a search</b>  13 <b>warrant didn't seem the appropriate way to</b>  14 <b>proceed based on what I knew.</b>  15 Q. You say he had known, and why would  16 that impact whether a search warrant or  17 production order was preferable?  18 <b>A. Well, part of the reason for going for an</b>  19 <b>intrusive search warrant - it is an intrusive</b>  20 <b>weapon - is because you fear people are</b>  21 <b>going to dispose of evidence. So if I'm</b>  22 <b>involved in criminality, I've known for a year</b>  23 <b>that someone's being investigated in that</b>  24 <b>criminality, the first thing I would do is I</b>  25 <b>would dispose of evidence, logically. So for</b></p> <p style="text-align: center;">Page 72</p>

<p>1 me the element of surprise didn't really bite, 2 but again I didn't know the granular detail 3 that Mr Richardson knew and it was a 4 judgment call for them to make. I would 5 have preferred a production order, given he 6 was an officer of the court, given who it was, 7 given the knowledge he had of the 8 investigation, that was my view. And if you 9 ask ten people, three may think one, three 10 may think another, and four may be either/or. 11 Q. So did you think it was relevant that he 12 was an officer of the court? 13 A. Yes, I think it is and I think in one of the 14 meetings I was asked: "Would you have 15 handed over the device?" and I said: "Yes, 16 I'm an officer of the court." 17 Q. But what Mr Wyan says in his evidence 18 is that nevertheless, regardless of your 19 preference, you did think that it was 20 defensible against a judicial review and that 21 you would be successful in defending a 22 judicial review. Was that your position? 23 A. The choice I think was defensible. I 24 think there was no black and white, yes, right 25 or wrong answer. I think it was a defensible</p> <p style="text-align: center;">Page 73</p>	<p>1 being requested in my call with them, so it 2 wasn't a matter that exercised my mind, but I 3 remember saying at the meetings I would 4 have preferred a production order. It was the 5 more logical and right way to proceed in my 6 view, given what I knew, but I hadn't seen 7 the documents in support so I don't know 8 what they were saying. 9 Q. Do you consider expressing a preference 10 to be giving advice? Do you draw a 11 distinction between those two things? 12 A. Well, if I was advising them and they 13 ignored it, then that says it all, so I don't 14 think they considered it advice. They went 15 and did what they saw fit, and rightly so, on 16 the basis of the information that they had 17 available to them. I think on hindsight the 18 production order was probably the right 19 course of action for other reasons. I think it 20 then transpires, I read yesterday in the 21 transcript that they couldn't deal with the A 22 Team/AG(?) in emails, for example. 23 Effectively what they were saying was: 24 "Well, you do it for us." That's tantamount to 25 a production order almost. I think that</p> <p style="text-align: center;">Page 75</p>
<p>1 position to take. Whether we'd have won the 2 JR or not I don't know. I also have to say at 3 that stage I hadn't seen what had been filed 4 by Sergeant Clarke in support. I only saw 5 that later. 6 Q. Did you have any concerns about using a 7 production order against Mr Levy when this 8 would have not been used for the other 9 defendants? 10 A. No. 11 Q. Well, for the defendants. 12 A. No. 13 Q. Did you have any concerns about 14 privileged materials on Mr Levy's devices? 15 A. No, because there are ways of dealing 16 with that. 17 Q. Did you provide any advice on that? 18 A. I did not. 19 Q. By expressing a preference for a 20 production order do you consider that you 21 advised the DPP against going forward? 22 A. The RGP. 23 Q. Sorry, the RGP. Thank you. 24 A. No, I don't think it was advice that was 25 sought or offered. As I say, I don't recall it</p> <p style="text-align: center;">Page 74</p>	<p>1 undermined the position somewhat, a little. 2 Q. Did you strongly advise against going by 3 way of warrant? 4 A. No. 5 Q. What is your understanding of the phrase 6 "operational decision"? 7 A. Investigatory decisions. This is the 8 position that has been adopted within my 9 offices before my time. So you can imagine 10 if Crown counsel are guiding or giving 11 operational advice and those operational 12 decisions are challenged, legality or 13 otherwise, it makes the prosecutorial job later 14 on difficult or almost impossible. You're 15 conflicted. Hence there is a distinction 16 between operational advice which we do not 17 provide, and prosecutorial advice that we do 18 provide, and the warrant was one such 19 example. So we wouldn't tell the police: 20 "Oh, you need to go and investigate, you 21 need to go and question Mr X, Mr Y and Mr 22 Z and ask him this, that and the other." We 23 wouldn't do that. We wouldn't direct an 24 investigation or their methods of enquiry. 25 Q. Has that historical position ever been</p> <p style="text-align: center;">Page 76</p>

<p>1 reviewed by you? Have you ever 2 reconsidered whether that should be looked 3 at as to whether it should be maintained or 4 whether it should be changed? 5 <b>A. I think it's part of the reason, again before 6 my time, why a Crown counsel was sent up 7 to the RGP to provide that sort of - knock on 8 a door and provide some advice, which 9 doesn't touch upon my department so she's 10 completely separate from us. There is a 11 complete Chinese wall. I hadn't reviewed. I 12 think it makes a lot of sense. So, for 13 example, if a warrant is judicially reviewed, 14 which it sometimes is, and we've given 15 advice on that, we wouldn't represent the 16 police on the judicial review, we would be 17 tied to an extent if we'd advised on an 18 operational decision to then present the 19 prosecution case because we are tied into that 20 decision. We have a - we are still in the 21 game if we've advised on operational matters. 22 I think it makes sense to have that 23 dichotomy.</b> 24 Q. As far as you are aware, was the 25 seconded officer involved in advising on the</p> <p style="text-align: center;">Page 77</p>	<p>1 the substantive grounds and criminality. 2 <b>A. Correct. I'll give you a further example 3 in relation to this case if you want, Mr 4 Santos. When they returned the phone to Mr 5 Levy that was an operational matter for the 6 police, a tactical matter for the police. We 7 weren't asked for our views on whether it 8 should be returned or not, for example.</b> 9 MR SANTOS: Sir, that may be a convenient 10 moment for us to take a pause. 11 THE CHAIRMAN: Yes. 12 MR SANTOS: Perhaps we can consider this 13 issue about the email. 14 THE CHAIRMAN: Yes, sir. 15 MR SANTOS: Thank you. 16 (11.23) 17 (Adjourned for a short time) 18 (11.38) 19 MR SANTOS: Mr Rocca, thank you very 20 much for the email which we have had time 21 to consider in the break. I do not have any 22 questions arising out of it but if there is 23 anything that you would like to say in 24 relation to it, then by all means please do so. 25 <b>A. I just produced it because I think this</b></p> <p style="text-align: center;">Page 79</p>
<p>1 warrant or drafting the information? 2 <b>A. Not to my knowledge, and I suspect she 3 wouldn't have been, given the gravity of what 4 this was. I suspect she'd have --</b> 5 Q. In your view, do you think that the RGP 6 could have benefited from legal advice on the 7 decision making and the drafting? 8 <b>A. Yes, I think they probably could have 9 done, yes.</b> 10 Q. When Superintendent Wyan was giving 11 evidence he actually provided three 12 categories of decisions that the RGP - at the 13 highest level strategic decisions, at a middle 14 level tactical decisions and then at the lowest 15 level operational decisions. Is that a 16 categorisation that you are familiar with and 17 that you use? 18 <b>A. No, it isn't.</b> 19 Q. As far as you are concerned, an 20 operational matter relates to investigatory -- 21 <b>A. Tactical, strategical --</b> 22 Q. - activities. 23 <b>A. Anything above, yes.</b> 24 Q. And when the RGP comes to you for 25 your advice, you are giving advice more on</p> <p style="text-align: center;">Page 78</p>	<p>1 <b>reflected what I would have communicated 2 to the RGP in the call because you can see 3 both my Crown counsel and I were ad idem 4 on the issues contained in that email.</b> 5 Q. I think your words were: "I don't disagree 6 with your views." 7 <b>A. Correct.</b> 8 Q. If we can now just look at one document 9 at B 3284, please. This is an internal email 10 from Mr Wyan to Mr Richardson. He says: 11 "With your permission, I would like to write 12 to the DPP and ask whether he would have 13 any issue instructing a local lawyer for 14 privileged material." Did Mr Wyan ever 15 contact you on that issue? 16 <b>A. No.</b> 17 Q. Can we now look at 12 May 2020. As 18 we know, on 12 May the RGP attended 19 Hassans' office with a warrant, and may be 20 aware that after that happened there was a 21 meeting between Mr McGrail, the Attorney 22 General and the Chief Minister at Number 6. 23 <b>A. I'm aware now, yes.</b> 24 Q. If we can look at Mr McGrail's account 25 of that meeting at A 11, paragraph 34 of his</p> <p style="text-align: center;">Page 80</p>

<p>1 statement, he says, picking up from the 2 second line: "I was struggling to understand 3 how the CM was seemingly aware of parts of 4 the evidence gathered in Op Delhi. For 5 example, he was challenging the need to 6 obtain JL's devices when he claimed the 7 investigating team already had the data we 8 needed from the other suspects. What had 9 been extracted from the suspects' mobile 10 devices was information that only the 11 investigating team and the DPP and Crown 12 counsel would have been privy to. It is 13 certainly not something I would expected the 14 CM to have been aware of." Did you provide 15 any of this evidence to the Chief Minister? 16 <b>A. I did not speak to the Chief Minister and I 17 have hardly ever spoken to the Chief 18 Minister. I only met, most of my post, I 19 think maybe twice in relation to other matters 20 that I've had to brief him on. Political. But 21 in relation to this matter I had no contact with 22 the Chief Minister at all.</b> 23 Q. Never any contact about Operation Delhi 24 with the Chief Minister. 25 <b>A. Other than the meeting in May 2019, I</b></p> <p style="text-align: center;">Page 81</p>	<p>1 <b>with the DPP and never has. Well, in the six 2 years that I've been - five and a half years - 3 DPP, has never sought to contact me about 4 any investigation.</b> 5 Q. I was asking more from your perspective. 6 If the Chief Minister called you and asked 7 about any other investigation, would you -- 8 <b>A. He wouldn't have called me. I'll give you 9 an example. I had a call with the Chief 10 Minister about the fishing issue in the bay, 11 because it had just come out of court, he 12 wanted to know the meetings, important 13 meetings, what happened, and I said this 14 happened in court public, public records, it 15 happened in court this morning. "Thank you 16 for the update, I know." One of the maybe 17 two or three times I can say I've spoken to 18 the Chief Minister about anything related to 19 my post.</b> 20 Q. Can I just ask you to get a little bit closer 21 to the microphone because I have been told 22 that -- 23 <b>A. Sorry.</b> 24 Q. Thank you. I do not know whether you 25 have it in front of you but it is definitely on</p> <p style="text-align: center;">Page 83</p>
<p>1 <b>had no reason to speak to the Chief Minister 2 at all on Operation Delhi, let alone about 3 operational and important matters.</b> 4 Q. If we go to C 6854, please, we can see 5 here on 12 May 2020 at 1.49 -- 6 <b>A. In fact, I want to clarify what I just said, 7 Mr Santos, is that if I were contacted by the 8 Chief Minister and asked any information 9 about an ongoing inquiry, I would likely, 10 depending on what it was, refuse to speak to 11 him about it, and I think he would know that 12 as well.</b> 13 Q. Why would you refuse to speak to him 14 about it? 15 <b>A. Because I don't think it's a matter that 16 would be shared with the Chief Minister at 17 all. I would share it with the Attorney 18 General but not with the Chief Minister.</b> 19 Q. Do you mean in relation to any 20 investigation or this investigation in 21 particular? 22 <b>A. This investigation definitely not because 23 of the ultimate beneficial ownership of North 24 36. But in relation to any investigation 25 the Chief Minister would not seek to interfere</b></p> <p style="text-align: center;">Page 82</p>	<p>1 the screen. This is WhatsApp or message 2 exchanges between you and the Attorney 3 General. On 12 May at 1.49 there is a 4 message to you: "Christian, can you come to 5 see me today." You say: "Yes, of course. 6 What time?" "Now" is a question. "There in 7 20 minutes." "Thanks." Did you attend the 8 Attorney General's office on 12 May 2020? 9 <b>A. Would appear as though I did, yes.</b> 10 Q. Do you remember whether you attended? 11 <b>A. On the 12th I don't recall but it would 12 appear as though I did. I can't dispute, but it 13 looks like I certainly attended. What for, I do 14 not know.</b> 15 Q. If we go to A 1297, this is your first 16 statement, paragraph 13, so that would be in 17 your other bundle. Paragraph 13 of your 18 statement. 19 <b>A. Yes.</b> 20 Q. You say: "I did not discuss the proposed 21 search warrants or production order in 22 respect of Mr James Levy QC with the Chief 23 Minister. However, after execution of the 24 search warrant I was called by the Attorney 25 General and was asked by him whether I had</p> <p style="text-align: center;">Page 84</p>

<p>1 advised the RGP on the use of a search 2 warrant in this case. I informed him that my 3 advice had not been sought and that it was 4 unlikely that they would ever do so in such 5 circumstances as these were operational 6 matters for the RGP. I recall that I informed 7 him that I was aware that they had been 8 considering making an appropriate 9 application but that that was all. I reminded 10 the Attorney General that we had provided 11 charging advice in relation to a number of 12 suspects. The Attorney General advised me 13 that he would inform the Chief Minister of 14 our conversation." It looks from your 15 evidence like your recollection, at least at the 16 time of drafting the statement, was that it 17 took place by telephone, that conversation. 18 <b>A. That conversation was definitely by 19 telephone. I recall that. Whether that meant 20 I didn't need to then go to a meeting with the 21 Attorney General is possible. That I 22 definitely recall. I was sat in my office. I 23 remember the conversation vividly. I 24 thought it was a strange question.</b> 25 Q. In paragraph 13 you say: "I was called by</p> <p style="text-align: center;">Page 85</p>	<p>1 Q. When you say "an appropriate 2 application", do you mean that the 3 application was in your view appropriate or 4 are you merely saying -- 5 <b>A. No, no, either a production order or a 6 warrant.</b> 7 Q. They made the relevant application. 8 <b>A. There was no secret that when they were 9 going to question Mr Levy they would want 10 to see his devices, so they were considering 11 what the appropriate application should be 12 made, be it a production order or a search 13 warrant.</b> 14 Q. If we go to B 1417, please. This is an 15 exchange of WhatsApps between the 16 Attorney General and the Chief Minister, and 17 at 12.05 he says: "Spoken to DPP" -- 18 <b>A. 12.29, is what I've got. Okay, over the 19 page.</b> 20 Q. Sorry, my mistake. At 15.41 he says -- 21 <b>A. I don't have it.</b> 22 Q. It is the second entry on the same page. 23 You said 12.29. 24 <b>A. "Are you free two minutes"?</b> 25 Q. Yes, and then the next one, 15.41.</p> <p style="text-align: center;">Page 87</p>
<p>1 the Attorney General and was asked by him 2 whether I had advised the RGP on the use of 3 a search warrant in this case. I informed him 4 that my advice had not been sought and that 5 it was unlikely that they would ever do so in 6 such circumstances as these were operational 7 matters for the RGP." Is that exactly how 8 you remember it? 9 <b>A. Yes.</b> 10 Q. Did you tell the Attorney General that 11 you had expressed a preference for a 12 production order? 13 <b>A. Not that I recall, no.</b> 14 Q. Did you tell the Attorney General that 15 you had advised the RGP that Mr Levy 16 should be interviewed under caution? 17 <b>A. I don't think he asked me the question, 18 no.</b> 19 Q. You then say: "I recall that I informed 20 him that I was aware that they had been 21 considering making an appropriate 22 application but that that was all." Was this a 23 reference to an application for the warrant? 24 <b>A. For documents, for production or seizure 25 of documents, of devices.</b></p> <p style="text-align: center;">Page 86</p>	<p>1 <b>A. Yes.</b> 2 Q. "Spoken to DPP. He is categorical that 3 whilst he told the RGP that an interview with 4 JL would likely be necessary, he strongly 5 advised against a search warrant." It seems 6 as though that is very different to your 7 evidence about what you told the Attorney 8 General, so I just want to ask you to confirm 9 whether or not those were things that you 10 said to the Attorney General. 11 <b>A. What, in that message?</b> 12 Q. Yes. 13 <b>A. No.</b> 14 Q. Just breaking it down, "He is categorical 15 that whilst he told the RGP that an interview 16 with JL would likely be necessary..." Do 17 you recall - I think you have already 18 answered but just to give you one more 19 opportunity - ever saying that you had told 20 the RGP that an interview with JL would 21 likely be necessary? 22 <b>A. I don't recall that. It could have 23 happened. My recollection of the 24 conversation was that it was quite short and it 25 was: "Christian, did you advise the police on</b></p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 <b>a search warrant against Haim Levy?" and I</b>  2 <b>said: "No, they wouldn't, it was an</b>  3 <b>operational matter, I would not have advised</b>  4 <b>on that." That was my recollection of the</b>  5 <b>conversation. Whether it dwelled into</b>  6 <b>treating him as a suspect, I can't recall.</b>  7 Q. And the second part of that sentence: "He  8 strongly advised against a search warrant."  9 Did you tell the Attorney General that you  10 strongly advised against a search warrant?  11 <b>A. No. My evidence is as per my affidavit.</b>  12 Q. Then just jumping one message to 15.43,  13 the next message from the Attorney General:  14 "Exactly. He certainly gave us the  15 impression that SW decision was sanctioned  16 by DPP." Did you sanction the search  17 warrant decision?  18 <b>A. I wasn't asked to sanction the search</b>  19 <b>warrant decision and it would not be for me</b>  20 <b>to sanction it.</b>  21 Q. Do you consider there was any room for  22 misinterpretation by the Attorney General in  23 your conversation with him?  24 <b>A. Yes, possibly. By saying I didn't advise</b>  25 <b>them, he may have understood that to mean</b></p> <p style="text-align: center;">Page 89</p>	<p>1 conversation. From that message, it looks  2 like there was a subsequent conversation to  3 the Attorney General. Do you recall a  4 subsequent conversation?  5 <b>A. I don't, but it's very possible but it's four</b>  6 <b>years ago. it's very possible that that</b>  7 <b>conversation did take place.</b>  8 Q. On 13 May you attended a meeting with  9 the Attorney General and Mr McGrail,  10 Superintendent Richardson and Mr  11 deVincenzi. We have already looked at the  12 transcripts in a lot of detail, so I won't go into  13 the detail of the transcripts too much but did  14 you discuss the investigation with Mr Llamas  15 prior to this meeting?  16 <b>A. Definitely prior to the 15th because I have</b>  17 <b>an entry in my diary that I was there for half</b>  18 <b>an hour before the meeting, I think. I don't</b>  19 <b>recall discussing it with him earlier, the 13th.</b>  20 Q. Did you discuss the search warrant  21 beyond your conversations on 12 May 2020  22 before that meeting?  23 <b>A. Not that I recall, no.</b>  24 Q. Did you discuss the intention to interview  25 under caution beyond that exchange, if in</p> <p style="text-align: center;">Page 91</p>
<p>1 <b>he advised against a search warrant, I don't</b>  2 <b>know, but that would be a matter for the</b>  3 <b>Attorney General.</b>  4 <b>(11.50)</b>  5 Q. Then at 1543 the Attorney General says,  6 "COP has since called DPP trying to cover  7 his back with him. I've told DPP not to say  8 or do anything without speaking to me first."  9 Do you remember the Commissioner of  10 Police calling you?  11 <b>A. I don't. I'm sorry, I can't help you with</b>  12 <b>that. I don't recall. It's very possible</b>  13 <b>Mr McGrail would liaise when we had to call</b>  14 <b>each other on our mobiles. It is possible he</b>  15 <b>did but I don't know.</b>  16 Q. Do you recall him trying to cover his  17 back with you?  18 <b>A. Well, if I don't recall him speaking to me,</b>  19 <b>I can't recall him trying to cover his back</b>  20 <b>with me, so -</b>  21 Q. Do you recall the Attorney General  22 saying to you not to say or do anything  23 without speaking to him first?  24 <b>A. I don't, no.</b>  25 Q. It looks like there was a subsequent</p> <p style="text-align: center;">Page 90</p>	<p>1 fact, it was discussed on 12 May, prior to the  2 13 May meeting?  3 <b>A. Not that I recall.</b>  4 Q. Were you aware of Mr Llamas's views as  5 to the intention to interview under caution  6 prior to that meeting on 13 May?  7 <b>A. I don't think he ever expressed the view</b>  8 <b>to me.</b>  9 Q. Did you know that the meeting on 13  10 May was being recorded by Mr McGrail?  11 <b>A. No.</b>  12 Q. What do you think about the fact that it  13 was being recorded?  14 <b>A. I found out not that long ago, actually,</b>  15 <b>when an investigating officer came to see me</b>  16 <b>at my office in relation to the recordings and</b>  17 <b>I sat with him in my board room and he said,</b>  18 <b>"Are you aware that your meetings with the</b>  19 <b>Attorney General have been recorded?" and I</b>  20 <b>was quite shocked, and I think betrayed</b>  21 <b>because I think there was a breach of trust.</b>  22 <b>For anybody to record meetings in secret, but</b>  23 <b>particularly at such a high-ranking level</b>  24 <b>when there is a degree of trust - I did feel</b>  25 <b>quite shocked by it, actually, yes.</b></p> <p style="text-align: center;">Page 92</p>

1 Q. You have heard the justifications given  
 2 by Mr McGrail - you may have seen the  
 3 justifications given by Mr McGrail for  
 4 recording the meeting. What is your view as  
 5 to that justification?  
 6 **A. I don't think it's ever justified. It's a**  
 7 **matter for Mr McGrail, but there were five**  
 8 **people there but if there was ever any issue**  
 9 **about what was discussed, there were five**  
 10 **people who could give an accurate and**  
 11 **truthful version of events, so - I could**  
 12 **understand perhaps and even then I would**  
 13 **never do it, recording a one-to-one**  
 14 **conversation where we may dispute each**  
 15 **other's accounts but in a room where there**  
 16 **were five people, I have issues with it being**  
 17 **recorded. But I wasn't Mr McGrail, so I**  
 18 **don't know what was in his mind.**  
 19 Q. I think it is evident from your answer that  
 20 you were not aware that the later meetings on  
 21 15th and 20 May were?  
 22 **A. Yes.**  
 23 Q. What did you consider your role in these  
 24 three meetings to be?  
 25 **A. I suppose, giving some criminal law**

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1 **advice as and when asked to do so - I**  
 2 **suppose. I didn't call the meeting. I was**  
 3 **called into the meetings. It was a bit of a -**  
 4 **the meetings were just a general discussion**  
 5 **amongst five senior law enforcement people,**  
 6 **lawyers, and law enforcement people, about**  
 7 **what do we do next. That was my general**  
 8 **feeling for what the meetings were about.**  
 9 **We were exploring various possibilities. The**  
 10 **search warrant had gone down like a lead**  
 11 **balloon. The meeting on the 13th, I think,**  
 12 **had been brought about by a letter from**  
 13 **recollection, from Mr Baglietto to the**  
 14 **Attorney General. That's what brings the**  
 15 **Attorney General in, in my view. He calls**  
 16 **the meeting. There is a discussion about the**  
 17 **warrant, which I think the Attorney General**  
 18 **appears to be of the view from reading the**  
 19 **transcript that it was a little bit oppressive**  
 20 **and that was arguable whether it was**  
 21 **oppressive or not. I think there was an**  
 22 **attempt to diffuse an unfortunate situation,**  
 23 **really. I think it was no more than that. That**  
 24 **was my impression of the meetings, and I**  
 25 **was there to give some criminal law advice**

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1 **as and when asked to do so because the**  
 2 **Attorney General doesn't really do crime.**  
 3 Q. Mr McGrail's evidence - in his evidence  
 4 he made the suggestion that you were acting  
 5 effectively as a mouthpiece for the Attorney  
 6 General using your knowledge of criminal  
 7 law. What is your view? Do you accept  
 8 that?  
 9 **A. I've never been a mouthpiece for anybody**  
 10 **- well, maybe for my clients as a defence**  
 11 **lawyer, but other than that I'm a mouthpiece**  
 12 **for no one. I would have given my views in**  
 13 **accordance with what I know about criminal**  
 14 **law, rightly or wrongly. Sometimes you get**  
 15 **it right, sometimes you get it wrong. I was**  
 16 **certainly not battling or advocating or**  
 17 **mouthpiecing for Mr McGrail or Mr Llamas,**  
 18 **Mr Richardson or anybody.**  
 19 Q. Had you discussed the Hassans letter of  
 20 the previous evening with the Attorney  
 21 General prior to that meeting?  
 22 **A. I don't think so but I was aware of it**  
 23 **because it was sent to me, so I would have**  
 24 **read it.**  
 25 Q. Do you think that you, as DPP, gave the

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1 RGP sufficient support in relation to the  
 2 letters that came from Hassans and the  
 3 threatened action?  
 4 **A. Yes. Yes, I was reading the transcript**  
 5 **last night. I think I said to Paul - sorry, Mr**  
 6 **Richardson - you know, "You made the call.**  
 7 **I disagree with it but I back you. It was your**  
 8 **call. You were the officer on the ground and**  
 9 **I'll defend in a JR." At that stage, where I**  
 10 **was talking about whatever the decision as to**  
 11 **which course of action to take, I hadn't seen**  
 12 **the application itself or the evidence in**  
 13 **support, which I saw in (inaudible) terms.**  
 14 **So, yes, I think so, and the allegations were**  
 15 **made, from memory, to the Attorney**  
 16 **General, so it was the Attorney General to**  
 17 **respond to some parts and I think the**  
 18 **Commissioner offered to respond to other**  
 19 **parts. I think he said it should come from**  
 20 **me, not Mr Richardson. So, I don't think**  
 21 **there was anything for me to respond to.**  
 22 **And I think you will see from the**  
 23 **correspondence, if it's been disclosed, that**  
 24 **when Mr McGrail or Mr Richardson are**  
 25 **drafting responses, I actually do chip in with,**

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<p>1 <b>"This is fine", or "I would change this", or,</b>  2 <b>"We'll have this", so I think we gave them all</b>  3 <b>the support they needed, yes.</b>  4 Q. Was it, in your view, appropriate or  5 inappropriate for Hassans to write to the  6 Attorney General as opposed to you with  7 their complaints?  8 <b>A. I think in the normal course of events it</b>  9 <b>would have gone, in the first instance, to the</b>  10 <b>Commissioner, from my experience. Then</b>  11 <b>you could also write to the DPP and I</b>  12 <b>suppose they saw fit to write to the Attorney</b>  13 <b>General. I think they use the word, "guardian</b>  14 <b>of justice" and "public interest". They felt -</b>  15 <b>a matter for them who they feel they should</b>  16 <b>write to. Not unknown for defence lawyers</b>  17 <b>to write to the Attorney General. The</b>  18 <b>Attorney General has called me on a number</b>  19 <b>of occasions and said, "I've had</b>  20 <b>representations from x, y and z about a case".</b>  21 <b>That's fine, so it does happen, but normally I</b>  22 <b>would say, "Well, they're not charged yet.</b>  23 <b>We go to the RGP", is my normal line of</b>  24 <b>response if I get this sort of correspondence.</b>  25 Q. Can we look at B184 briefly, please? I</p> <p style="text-align: center;">Page 97</p>	<p>1 bound to report to the governor. Do you  2 recall him doing so?  3 <b>A. No. What I recall is my views that if</b>  4 <b>there was a formal and proper allegation of</b>  5 <b>criminal misfeasance that he would need to</b>  6 <b>bring an external investigating team to look</b>  7 <b>into it. That was - I remember that being</b>  8 <b>discussed.</b>  9 Q. At B187 there is an exchange and I just  10 want to focus on the fifth box down where  11 you say, "But it's - think the two facts, I  12 think it is - your response has to be, 'I don't  13 get involved in operational matters. Those  14 are matters for the police', and therefore I  15 leave you to deal with it, either the  16 magistrates' avenue, whatever you choose,  17 whatever you wish to choose. That's with  18 you. If there are allegations of misfeasance,  19 please let me know immediately. I'll put  20 them formally in writing so that I can arrange  21 for them to investigate it" and Mr McGrail  22 says, "Or to consider whether there is any",  23 and you say, "Exactly, otherwise put up or  24 shut up."  25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 99</p>
<p>1 just want to focus on the three boxes at the  2 very bottom, which is when Mr McGrail says  3 - well, let us take it a little higher just to give  4 you some context. A little bit higher,  5 Superintendent Richardson says,  6 "misfeasance".  7 <b>A. Mm-hmm.</b>  8 Q. And Mr McGrail says, "No, that's it.  9 Abuse of the law, abuse of the law and  10 misfeasance in public office."  11 <b>A. Mm-hmm.</b>  12 Q. "Abuse of power", says the Attorney  13 General. "Abuse of law and abuse of  14 misfeasance in public office", says  15 Superintendent Richardson. "I've held on to  16 that but I'm duty bound to act. Gross ...",  17 and you say, "Gross abuse." Mr McGrail  18 says, "I've got to. I'm duty bound to refer to  19 the fact that there is a criminal investigation  20 made to me against us." Mr Llamas says,  21 "Yes, I do. If the gross is judicial review, I  22 think." Mr McGrail's evidence in relation to  23 that exchange is that at that point he pointed  24 across the road towards the Convent to  25 indicate that he was minded or he was duty</p> <p style="text-align: center;">Page 98</p>	<p>1 Q. Can I take it from that exchange that as of  2 13 May 2020, you were of the view that the  3 RGP should continue with the interview  4 under caution?  5 <b>A. I don't from that exchange in relation to</b>  6 <b>interview under caution but -</b>  7 Q. Well, can I ask you generally, were you,  8 on 13 May, of the view that the RGP should  9 proceed with the interview under caution?  10 <b>A. I suppose so, yes. Yes, I think that's fair.</b>  11 Q. Then can we move to 14 May? This is  12 C6854. These are the messages between you  13 and the Attorney General and there is an  14 exchange between you in the morning in  15 relation to the Hassans letter - well, Mr  16 McGrail's response to the Hassans letter, and  17 then at 5.28 in the afternoon, you say, "Hi M.  18 I have been thinking about the current case  19 and have a few ideas to discuss with you".  20 <b>A. Yes.</b>  21 Q. And he says, "Come earlier to my office  22 tomorrow." "Will do." There was, of course,  23 a meeting on the following day. Was that  24 exchange in relation to this matter?  25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 Q. Did you in the end meet and discuss your 2 ideas before 15 May meeting? 3 <b>A. I think we met just before the RGP team 4 arrived so, yes, I think half an hour, 20 5 minutes before they arrived.</b> 6 Q. What were the ideas that you raised, that 7 you discussed with Mr Llamas? 8 <b>A. Mr Llamas has no knowledge of crime, 9 really. He has always been quite good and 10 frank about that. One of the things he asked 11 me as a criminal practitioner was to consider 12 ways that we could deal with this matter to 13 diffuse the ongoing situation and those are 14 the ideas that I wanted to put to him, like 15 were discussed in the meeting on 15 May.</b> 16 Q. So, was one of the ideas that Mr Levy 17 should be allowed to give an interview but 18 not hold it under caution? 19 <b>A. I don't know if that was my idea or Mr 20 Richardson's. I seem to recall the suggestion 21 that he give a voluntary account prior to 22 being interviewed. I think that was Paul's. It 23 seemed a sensible course of action at the 24 time. Is that what you're referring to there? I 25 think that was Mr Richardson's idea.</b></p> <p style="text-align: center;">Page 101</p>	<p>1 <b>A. So, my understanding at this time was the 2 manner in which the warrant had been 3 exercised or not exercised was a bit 4 unorthodox. So, I'll have to take you to the 5 beginning, if I may. So, you have gone to a 6 magistrate seeking a search warrant on the 7 grounds that you're worried about 8 destruction. Having laid your groundwork 9 quite clear of what your position is, you then 10 go and you don't exercise your search 11 warrant, it would appear. There was an 12 allegation there was[?] two of them and I 13 never saw the body-worn camera footage, so 14 I don't know whether that is true or not. You 15 then give the person the subject of the 16 warrant nine hours to copy that. You then 17 agree that you can't deal with 80 million 18 emails and you provide those voluntarily. It 19 sounds to me like you didn't need a search 20 warrant. It was a production order, so there 21 was a discussion how we dealt with the 22 judicial review challenge and there was a 23 discussion about how we dealt with Mr Haim 24 Levy as a suspect going forward because my 25 understanding from the Attorney General,</b></p> <p style="text-align: center;">Page 103</p>
<p>1 Q. What ideas do you remember raising with 2 the Attorney General? 3 <b>A. Whether we could interview him in some 4 way or put him under caution, or whether it 5 could be as a voluntary -</b> 6 THE CHAIRMAN: I am sorry, you speak 7 very quickly. 8 <b>A. I am sorry, my apologies.</b> 9 THE CHAIRMAN: And not always into the 10 microphone. 11 <b>A. I'll get closer.</b> 12 THE CHAIRMAN: Just bring it a bit closer. 13 <b>A. Yes.</b> 14 THE CHAIRMAN: Just ask that question 15 again. 16 MR SANTOS: Yes. What were the ideas 17 that you raised in that pre-meeting with Mr 18 Llamas? 19 <b>A. The different ways of dealing with Mr 20 Levy, both in relation to the documentation 21 and the interview or voluntary interview or 22 account by Mr Levy.</b> 23 Q. Just breaking that down, when you say, 24 "the documentation", what are you referring 25 to?</p> <p style="text-align: center;">Page 102</p>	<p>1 <b>and I know he had spoken to Mr Baglietto, 2 was that there was going to be no 3 cooperation, he wouldn't give a statement, it 4 was under caution, and I think we were 5 trying to find a way of progressing the 6 investigation without it stalling, and that's the 7 idea that I discussed with the Attorney 8 General.</b> 9 Q. Going to the 15 May meeting at B270, 10 this is the transcript of that meeting two days 11 later. What was your impression of the mood 12 in the room at that meeting? 13 <b>A. I think things were a bit tense between 14 the Attorney General and Mr McGrail still. 15 That's perhaps more evident on the meeting 16 of the 13th. I didn't know the details or 17 anything about why. I think there was a brief 18 discussion about we've disagreed but we've 19 parked that to one side. I think there was still 20 a bit of tension there but again my general 21 feeling was we were there to discuss the 22 various options that were open collectively, 23 collegiately in a full and frank manner. Well, 24 full and frank for those of us that didn't know 25 we were being recorded, I suppose. I was</b></p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 <b>certainly full and frank. I didn't know I was</b>  2 <b>being recorded. I don't know whether</b>  3 <b>anybody else does or not.</b>  4 Q. If we look at the entry at 5.34 towards the  5 bottom of the page, there is an entry from Mr  6 Llamas that says, "Okay, chaps. Christian  7 and I have been spending quite a bit of time  8 together today. We're heading towards a  9 major collision here." When he says, "have  10 been spending quite a bit of time together  11 today", is that a reference to your pre-  12 meeting or had there been other contact?  13 <b>A. No, that was our pre-meeting.</b>  14 Q. How long was that pre-meeting as far as  15 your recollection is concerned.  16 <b>A. My diary suggests half an hour. I looked</b>  17 <b>at it yesterday.</b>  18 Q. He said, "We're heading towards a major  19 collision here. I think it's clear. Whether  20 you agree with what they are saying or not,  21 it's our view but it's clear that this is going to  22 become very nasty very quickly and we're  23 facing a potential escalation of the whole  24 thing and therefore we think that's best  25 avoided, we think, and we just want to</p> <p style="text-align: center;">Page 105</p>	<p>1 a line of inquiry that" - Attorney General -  2 "which is essential to the investigation." Mr  3 McGrail: "To conclude, without anticipating  4 what the outcome is going to be of that." Mr  5 Llamas: "Correct. Christian and I are with  6 you entirely on that. What we think would  7 be helpful for the management of the whole  8 thing is if that interview would still go ahead  9 but not have it under caution", and you say,  10 "Is that possible? Can you interview him and  11 then convert it under caution depending on  12 what he says? I know it's not going to be  13 admissible, whatever he tells you." That  14 proposal was quite a change from what had  15 been the basis of the 13 May meeting, which  16 was that the interview was going to be under  17 caution. Is that correct?  18 <b>A. Yes.</b>  19 Q. Do you accept it was quite an unorthodox  20 proposal?  21 <b>A. It was an option. It was an option</b>  22 <b>treating him as a witness, seek cooperation</b>  23 <b>from him and it's not unknown - I've seen</b>  24 <b>many cases in my career as a DPP - where a</b>  25 <b>witness becomes a suspect during the course</b></p> <p style="text-align: center;">Page 107</p>
<p>1 discuss with you now whether there are  2 things we can do where you can achieve  3 what you want to achieve whilst avoiding a  4 collision or whether you maintain yourselves  5 in exactly the same position as you were the  6 last time we met. I want us to have a  7 completely relaxed discussion between the  8 five of us on the handling of this and the best  9 way to get to where you feel you have to get.  10 So, with that in mind, what - has your  11 position changed in any way since we met?"  12 and then over the page, the Commissioner  13 says, "It hasn't. It hasn't changed because we  14 continue with the hope that there are  15 unexplained issues which have an impact on  16 the remaining three, four suspects and if it is  17 a line of inquiry that we can clarify or make  18 worse the situation for those four individuals,  19 we're going to be left with that in the air if  20 we do not look at this part of the  21 investigation." And the AG says, "Okay, but  22 my understanding, and correct me if I'm  23 wrong, is that what you've just said is that  24 you had to carry on your interview; in other  25 words, that's what you're referring to." "It is</p> <p style="text-align: center;">Page 106</p>	<p>1 <b>of interview.</b>  2 THE CHAIRMAN: Well, this is the other  3 way round.  4 MR SANTOS: I was about to ask you. Do  5 you see many cases where you have suspect  6 then witness then back to suspect?  7 <b>A. Yes, a suspect could absolve himself and</b>  8 <b>become a Crown witness, yes, but in this</b>  9 <b>case what was being suggested was, "Can we</b>  10 <b>interview him as a witness and if he</b>  11 <b>incriminates himself, you caution him." He</b>  12 <b>may say, "I'm not giving any further</b>  13 <b>comment", fine, but you have a clear account</b>  14 <b>from him and that was an option we</b>  15 <b>discussed. It was an option. It was nothing</b>  16 <b>more. I think the Attorney General says it</b>  17 <b>quite clearly: "We're here to have a full and</b>  18 <b>frank, completely relaxed discussion about</b>  19 <b>the best way to proceed" and I think there is</b>  20 <b>an exchange between all of us. I think Mr</b>  21 <b>McGrail suggests certain things, I suggest</b>  22 <b>certain things, Mr Richardson suggests</b>  23 <b>certain things as to how to proceed but there's</b>  24 <b>no - it's a matter entirely for the police, I</b>  25 <b>think, and I think the Attorney General says</b></p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 <b>that.</b></p> <p>2 Q. But just focusing, it is a slightly different</p> <p>3 situation here because - well, perhaps not</p> <p>4 slightly. It is a different situation here</p> <p>5 because you have someone who has already</p> <p>6 been deemed a suspect on the basis of your</p> <p>7 advice and then the decision is being made to</p> <p>8 treat them as a witness.</p> <p>9 THE CHAIRMAN: Well, hang on. The RGP</p> <p>10 always made clear that he remained a</p> <p>11 suspect.</p> <p>12 MR SANTOS: Yes.</p> <p>13 THE CHAIRMAN: He could make</p> <p>14 voluntarily a statement but he remained a</p> <p>15 suspect and they would then read and</p> <p>16 consider the statement and decide whether or</p> <p>17 not to interview him under caution, but that is</p> <p>18 not -</p> <p>19 <b>A. Precisely, which is where we get to. The</b></p> <p>20 <b>end result of all these conversations is</b></p> <p>21 <b>precisely that which I think was proposed by</b></p> <p>22 <b>Mr Richardson, which I think was a sensible</b></p> <p>23 <b>course of action, and I think he provided a</b></p> <p>24 <b>voluntary interview and I think that was the</b></p> <p>25 <b>end of the matter from the best of my</b></p> <p style="text-align: center;">Page 109</p>	<p>1 <b>without giving any assurances at all, and I</b></p> <p>2 <b>think we say that, that it has to be on the</b></p> <p>3 <b>basis that he is maintained as a suspect</b></p> <p>4 <b>potentially, so we don't waive that right, and</b></p> <p>5 <b>then there is an exchange about that, I think,</b></p> <p>6 <b>in correspondence.</b></p> <p>7 Q. Did you consider that you and the AG</p> <p>8 were proposing special treatment for Mr</p> <p>9 Levy?</p> <p>10 <b>A. No, not at all.</b></p> <p>11 Q. Did you consider that it was appropriate</p> <p>12 for you and the Attorney General to be</p> <p>13 making proposals that were in Mr Levy's</p> <p>14 interests to the RGP?</p> <p>15 <b>A. I don't think it was in relation to</b></p> <p>16 <b>anybody's interest. I think it was in relation</b></p> <p>17 <b>to the investigation. It was a discussion</b></p> <p>18 <b>which we were having in a full and frank</b></p> <p>19 <b>manner and at the end of the day the decision</b></p> <p>20 <b>was not one that could be driven by me or the</b></p> <p>21 <b>Attorney General because they had their</b></p> <p>22 <b>autonomy. The police will decide who they</b></p> <p>23 <b>investigate or not. We may make</b></p> <p>24 <b>suggestions as we did in this meeting to</b></p> <p>25 <b>come up with potential solutions. They</b></p> <p style="text-align: center;">Page 111</p>
<p>1 <b>knowledge.</b></p> <p>2 MR SANTOS: Were you happy to proceed</p> <p>3 on that basis even though Mr Levy had</p> <p>4 already been cautioned?</p> <p>5 <b>A. It wasn't for me to decide who was happy</b></p> <p>6 <b>to proceed with what. For me it was a matter</b></p> <p>7 <b>entirely for the police how they sought to</b></p> <p>8 <b>proceed with their investigation. We were</b></p> <p>9 <b>merely, because the Attorney General had</b></p> <p>10 <b>been brought in by the letters -</b></p> <p>11 Q. Can I put it a different way: did you have</p> <p>12 any concerns with proceeding in that way?</p> <p>13 <b>A. Yes, and I think we discussed that. I</b></p> <p>14 <b>think someone says, "Well, then whatever he</b></p> <p>15 <b>says wouldn't be used against him as a</b></p> <p>16 <b>witness", which is right, but the</b></p> <p>17 <b>understanding pre that meeting that I got, I</b></p> <p>18 <b>think from the Attorney General, was -</b></p> <p>19 <b>because I think he had spoken to Mr</b></p> <p>20 <b>Baglietto - was, "If it's under caution, he will</b></p> <p>21 <b>give you nothing. He's going to give a no</b></p> <p>22 <b>comment." And I think we thought, "Well,</b></p> <p>23 <b>that's not ideal. We'd want an account from</b></p> <p>24 <b>him", so we were exploring ways of</b></p> <p>25 <b>extracting that account from Mr Levy</b></p> <p style="text-align: center;">Page 110</p>	<p>1 <b>would have left those meetings, I assume,</b></p> <p>2 <b>and proceed in the manner they were happy</b></p> <p>3 <b>with. Mr Santos, Mr Levy had been treated</b></p> <p>4 <b>differently immediately. He had been treated</b></p> <p>5 <b>differently because of the search warrant. If</b></p> <p>6 <b>it was some poor unfortunate soul in</b></p> <p>7 <b>(inaudible) estate, they wouldn't have asked</b></p> <p>8 <b>him voluntarily to have a look at [his</b></p> <p>9 <b>device?]. He'd been treated differently</b></p> <p>10 <b>already, and I get why. Don't get me wrong.</b></p> <p>11 THE CHAIRMAN: Again, you are speaking</p> <p>12 very quickly.</p> <p>13 <b>A. I am sorry.</b></p> <p>14 THE CHAIRMAN: And not into the</p> <p>15 microphone.</p> <p>16 <b>A. I am sorry, Mr Chairman.</b></p> <p>17 THE CHAIRMAN: Yes.</p> <p>18 MR WAGNER: "If it was somebody" - and I</p> <p>19 just did not hear at all.</p> <p>20 THE CHAIRMAN: No, neither did I.</p> <p>21 <b>A. If it was your average defendant, I'm not</b></p> <p>22 <b>sure he would have been given the quarter</b></p> <p>23 <b>that Mr Levy was given when the search</b></p> <p>24 <b>warrant was exercised. Now, is that a matter</b></p> <p>25 <b>for criticism? I don't think it's a matter for</b></p> <p style="text-align: center;">Page 112</p>

<p>1 me to determine, but he was certainly treated 2 differently. There can be no doubt about 3 that, for whatever reason, be it because it was 4 privileged material, be it because it was 5 James Levy, be it because of any perception 6 of public or printed interference or whatever, 7 but it started on the basis of being treated 8 differently and that created a problem, I 9 think, for everybody because there were 10 arguments about the validity of a search 11 warrant and what we did not want was for 12 this to touch upon a very serious criminal 13 investigation. I don't know how far the 14 restriction notice goes, but this was some 15 serious allegations about the national security 16 platform. This was not - 17 THE CHAIRMAN: Yes, well hang on 18 because - I think we just leave it alone. 19 <b>A. I won't go into that.</b> 20 MR SANTOS: Can we just go back to 21 something that you touched upon where you 22 said that - you referred to the understanding 23 having come from Hassans as to cooperation 24 with an interview under caution and the fact 25 that the likelihood, the understanding was</p> <p style="text-align: center;">Page 113</p>	<p>1 <b>happen but I think the Attorney General told</b> 2 <b>me he is not going to cooperate.</b> 3 Q. Do you know how the Attorney General 4 learnt that? 5 <b>A. I'm assuming from conversations with Mr</b> 6 <b>Baglietto, which I'm aware he was having.</b> 7 Q. Are you aware - well, first of all were 8 you aware at the time - C6901 - Were you 9 aware at the time of this exchange on 13 May 10 between the Attorney General and Mr Levy 11 where Mr Levy said, "On the other matter I 12 feel I've been hung out to dry, certainly not 13 by you", and the response from the Attorney 14 General, "Don't worry"? 15 <b>A. What is your question, sorry?</b> 16 Q. Were you aware of that at the time? 17 <b>A. I didn't know he was in contact with Mr</b> 18 <b>Levy.</b> 19 Q. When did you first become aware of it? 20 <b>A. I'm not sure I ever became aware of it.</b> 21 Q. Until? 22 <b>A. Until recently.</b> 23 Q. Until now. 24 <b>A. I know he was in contact with Mr</b> 25 <b>Baglietto and obviously the Chief Minister.</b></p> <p style="text-align: center;">Page 115</p>
<p>1 would be that it would be a no comment 2 interview. 3 <b>A. Yes.</b> 4 Q. Where did that emanate from and who 5 was it that - where did that understanding 6 come from, I'm sorry? 7 <b>A. I think that came - well, would have</b> 8 <b>come from two quarters, one, I think from</b> 9 <b>the Attorney General. I have to say I did not</b> 10 <b>speak to Mr Baglietto until we were</b> 11 <b>discussing the criminal procedure 5.7</b> 12 <b>application to the magistrates' court for</b> 13 <b>disclosure of the documents in support, so</b> 14 <b>until that stage I had no contact with Mr</b> 15 <b>Baglietto whatsoever and all the contact I had</b> 16 <b>with him was proper, I have to say that, but</b> 17 <b>any criminal practitioner worth his salt was</b> 18 <b>going to - in fact I think from recollection</b> 19 <b>every defendant had given a no comment</b> 20 <b>interview, so it wasn't rocket science that</b> 21 <b>they were going to give a no comment</b> 22 <b>interview, and then do what everybody does,</b> 23 <b>provide a voluntary statement, which is</b> 24 <b>exculpatory. So, it wasn't rocket science</b> 25 <b>anyway that that was what was likely to</b></p> <p style="text-align: center;">Page 114</p>	<p>1 Q. Do you think it is an appropriate message 2 for the Attorney General to be sending a 3 suspect in a live investigation? 4 THE CHAIRMAN: I am not sure he can 5 answer that. 6 THE WITNESS: I don't think it's a matter 7 for me to reply. I mean, I have to say I 8 respect the Attorney General very much and 9 he would have had his own - he knows how 10 to conduct himself properly. I've no doubt 11 about that. 12 MR SANTOS: Can we look at C3802, 13 please. This is a letter from Hassans dated 14 15 May. 15 <b>A. Dated?</b> 16 Q. 15 May. 17 <b>A. Okay.</b> 18 Q. And on the bottom line you say, "There 19 can be little surprise that as we believe is the 20 case, the DPP advised the Commissioner 21 against the making of these applications". 22 This was discussed in the transcript - sorry, 23 at the meeting and it is visible in the 24 transcript. You interpreted that as a 25 suggestion that you had been speaking to Mr</p> <p style="text-align: center;">Page 116</p>

<p>1 Baglietto. 2 (12.20) 3 <b>A. Yes.</b> 4 Q. This sentence, I think it is fair to say, 5 does not reflect your evidence as to what the 6 position was in terms of advice on the 7 warrants. 8 <b>A. Not only does it not reflect the advice I'd 9 given on the warrants. I remember saying in 10 the transcript: "I want it crystal clear I have 11 not spoken to Mr Baglietto." I did not want 12 any suggestion that I had disclosed 13 information to Mr Baglietto that I shouldn't 14 have disclosed, and I'd and no discussion 15 with Lewis.</b> 16 Q. Just to quote your words, you say: "It's 17 almost worse than that [because there had 18 been a different suggestion as to what it 19 meant]. It kind of possibly suggests that I've 20 spoken to Lewis Baglietto which I haven't." 21 <b>A. Yes. It was possibly suggested 22 impropriety on my part which I wanted to 23 absolutely make clear was not the case.</b> 24 Q. This is what I wanted to ask you about. 25 Why were you so anxious to make clear that</p> <p style="text-align: center;">Page 117</p>	<p>1 a reference to Operation Delhi? 2 <b>A. I can't tell you from that message whether 3 it was or it wasn't. I'd have to look at my 4 emails to see what I might have sent the 5 Attorney General on that date. It could have 6 been the deaths at sea, it could have been 7 Delhi. There was a lot going on around those 8 dates, actually.</b> 9 Q. We will move on. The 20 May meeting: 10 I do not have any specific questions about 11 that meeting but what was your impression of 12 the tone and mood of that meeting? 13 <b>A. The same as the meetings of the 15th and 14 the 13th.</b> 15 Q. Across the three meetings did you feel 16 that the RGP were at liberty to disagree with 17 the proposals, with anything that you and the 18 Attorney General proposed? 19 <b>A. Yes, and I think they did at the meetings. 20 That's my recollection. I haven't had the time 21 to go through; I was only given them 22 yesterday - the transcripts. I had a brief read 23 as I could last night and I think there are 24 exchanges where they disagree with what I 25 am suggesting, or I think there are even some</b></p> <p style="text-align: center;">Page 119</p>
<p>1 you had not spoken to Mr Baglietto? 2 <b>A. I think it would have been improper for 3 me to divulge that information as a 4 prosecutor to Mr Baglietto at that stage, what 5 the advice I'd given was. It would have been 6 privileged.</b> 7 Q. So if anybody else had shared your 8 advice with Hassans, would that cause you 9 concern? 10 <b>A. Depends who and for what purpose, I 11 suppose. A matter for them. Your privileged 12 place to me with the police in terms of the 13 advice I'd given, how far that extended I 14 haven't considered.</b> 15 Q. As far as you are aware, did the Attorney 16 General tell anyone at Hassans this? 17 <b>A. Not that I'm aware of, no.</b> 18 Q. If we can go to C 6854, please. 19 <b>A. Yes.</b> 20 Q. This is again your exchanges with the 21 Attorney General and you say on 17 May, the 22 second message there: "Hi M, I have 23 forwarded you an email regarding the current 24 operation and would be grateful if we could 25 speak when you have read. Best, C." Is that</p> <p style="text-align: center;">Page 118</p>	<p>1 <b>things that Mr McGrail suggests that Mr 2 Richardson disagrees with. I think yes, I 3 think they were perfectly free to.</b> 4 Q. Did you consider the actions of the 5 Attorney General in those meetings to be 6 interference with the investigation? 7 <b>A. In those meetings not at all, no.</b> 8 Q. Did you consider that he was pressuring 9 officers to handle the investigation in a 10 particular way? 11 <b>A. No. I haven't heard the audio and I'm 12 sure that the way one says things sometimes 13 more than the content can convey persuasion 14 or fear or whatever. I haven't heard the 15 audios. My recollection is there was no 16 anger. There was some tension at the 17 beginning between Mr McGrail and Mr 18 Llamas which was palpable; I think it would 19 be fair to say that. But never did I feel that 20 the Attorney General raised his voice, said: 21 "You have to do this", or did I say that. So 22 no. it was, as I said, a full and frank - well, 23 as frank as it can be in the circumstances - 24 discussion of options.</b> 25 Q. Did you consider that the Attorney</p> <p style="text-align: center;">Page 120</p>

<p>1 General was influencing officers to handle 2 the investigation in a particular way? 3 <b>A. No. They were free to do what they 4 wanted to do. He'd been drawn in, I'd been 5 drawn in by the legal challenges. We were 6 providing potential avenues to explore, some 7 of which you'll see we discard actually as: 8 "Actually, that's not going to work, let's do 9 this, let's do that." And the one we come up 10 with I think from recollection was suggested 11 by Mr Richardson which seemed a sensible 12 course of action.</b> 13 Q. In terms of Mr McGrail's departure, when 14 did you first learn that there was a section 34 15 process with the Gibraltar Police Authority? 16 Q. I couldn't tell you when. Certainly when 17 I messaged Ian on the 22nd I didn't know. All 18 that was known on the street was the 19 Commissioner has resigned, and I reached 20 out to him as a concerned friend to say, you 21 know: "If you need anything, need to talk, let 22 me know." But I don't know when the whole 23 thing hit the fan. 24 Q. Had you previously discussed Mr 25 McGrail's role as Commissioner of Police</p> <p style="text-align: center;">Page 121</p>	<p>1 <b>of did. That's the only contact I had with Mr 2 Baglietto. And I've got a WhatsApp message 3 from Mr Baglietto on 1 June arranging that 4 appointment to meet in my office. I've 5 checked my WhatsApps and I am happy to 6 provide that.</b> 7 Q. On 6 November 2020 it was confirmed 8 that Mr Levy would not be a suspect in the 9 matter any longer after extensive 10 investigation. What role, if any, did you 11 have in that decision? 12 <b>A. I think we provided a charging advice in 13 October, I think. Could be October, could be 14 August. I know that in August I think we 15 received a lengthy 156-page or 160-page 16 document and I've described those five bags 17 or six bags of Morrison's heavy duty 18 shopping bags being dropped, and boxes, and 19 I think it took us a fair while to go through 20 that, Mr Zamitt and myself. And then we 21 wrote a formal charging advice I think in 22 October in relation to all of them, some of 23 which we disagree with the police, some of 24 which we agree with the police.</b> 25 Q. In relation to Mr Levy did you agree or</p> <p style="text-align: center;">Page 123</p>
<p>1 with the Attorney General? 2 <b>A. Moving forward?</b> 3 Q. Yes. 4 <b>A. No.</b> 5 Q. Did you ever discuss disciplinary 6 measures being taken against Mr McGrail or 7 any of the Operation Delhi officers with the 8 Attorney General? 9 <b>A. No. Not with the Attorney General nor 10 with anyone else.</b> 11 Q. You refer to some contact you had with 12 Mr Baglietto. 13 <b>A. Yes.</b> 14 Q. Did you ever discuss Mr McGrail's 15 position during those meetings? 16 <b>A. The only contact I had with Mr Baglietto 17 was in relation to the application to court 18 under CRIM 5.7 for disclosure of material in 19 support of the warrant. I redacted it with Mr 20 Richardson. We sat in my boardroom and I 21 had Mr Baglietto attend to view a lesser 22 redacted version, counsel to counsel, and that 23 seemed to work because there was never a 24 judicial review or a CRIM 5.7 challenge, so 25 whether that worked or not, I suppose it kind</b></p> <p style="text-align: center;">Page 122</p>	<p>1 disagree with the police? 2 <b>A. I'm not sure what the police's decision 3 was at that stage. I think they agreed with us 4 at that stage there wasn't enough. I'm 5 referring in particular to Mr Chipol that we 6 disagreed on. I think they disagreed with us 7 on Mr Asquez and the other operational --</b> 8 Q. I am only interested with my question. 9 <b>A. Sorry.</b> 10 Q. Were you still involved in the 11 investigation or at least advising until the 12 discontinuance in January 2022? 13 <b>A. What do you mean by the investigation?</b> 14 Q. Operation Delhi. Sorry, advising on the 15 prosecution. 16 <b>A. Yes.</b> 17 Q. Can we go to C 5871, please. This is an 18 email sent by you to the Attorney General in 19 March 2021 where you set out matters that 20 had been highlighted by defence counsel. 21 <b>A. Yes.</b> 22 Q. Do you remember this email? 23 <b>A. I do, because it was on my birthday and I 24 was not at work.</b> 25 Q. One point that you raise at number one:</p> <p style="text-align: center;">Page 124</p>

<p>1 "The RGP is awaiting a witness statement 2 from the Chief Minister. His evidence is 3 very important in relation to the conspiracy 4 charge, particularly in light of matters raised 5 by the defence and also to do with possibly 6 hearsay problems. Certainly the clear 7 indication from the defence is that they will 8 be asking the Chief Minister to give live 9 evidence at the trial. Equally, the Crown 10 would need to call him if his evidence was 11 not accepted by the defence." 12 <b>A. There are references to Hassans' 13 beneficial interest in 36 North. Further down 14 at number four you refer to the Financial 15 Secretary being a witness. Then in the final 16 paragraph there is the letter from counsel, 17 and then finally you say: "There is nothing in 18 communications I have seen in relation to the 19 CM or FS that concerned me."</b> 20 <b>A. Yes.</b> 21 Q. Why did you feel the need to set out these 22 matters to the Attorney General? 23 <b>A. From recollection, I think defence 24 counsel had written to the Attorney General 25 asking him to discontinue, and my view and</b></p> <p style="text-align: center;">Page 125</p>	<p>1 you say that -- 2 THE CHAIRMAN: For five minutes. 3 MR SANTOS: Thank you, yes. (To the 4 witness) Why did you say that the Chief 5 Minister's evidence was very important in 6 relation to the conspiracy charge? 7 <b>A. Because of the ownership issue primarily, 8 and whether there was some correspondence 9 - there were some conversations alleged 10 between the Chief Minister, Mr Sanchez, 11 about who could, who couldn't access the 12 platform. Mr Sanchez was the keyholder to 13 the platform effectively. He could decide 14 who did what. That was the defence case. 15 And there were some suggestions that the 16 Chief Minister at a particular time said: "So- 17 and-so can no longer access the platforms." 18 That was important to get in witness 19 statements, as was the ownership issue. So it 20 was permissions in relation to the platform.</b> 21 Q. When it came to charging the former 22 Operation Delhi defendants, did you advise 23 on those charges without the Chief Minister's 24 evidence? 25 <b>A. Yes, I think we did.</b></p> <p style="text-align: center;">Page 127</p>
<p>1 <b>my reply under public interest was that it 2 should proceed, and I think he wanted to be 3 appraised of almost a sitrep of where we 4 were in relation to this matter, where the 5 public interest lay, and I think that's why I 6 say at the end: "I hope this gives you a 7 flavour of the issue and matters that have 8 come into the fore, most of which have been 9 raised by counsel for Messrs. Perez and 10 Cornelio in their letter and which has been 11 copied to you asking for you to consider 12 whether this matter should proceed. You 13 have also been provided a copy of my 14 response." So I think Mr Cooper wrote to us 15 and I rejected the public interest argument 16 and then wrote to the Attorney General, 17 which he's perfectly entitled to do, and I was 18 appraising the Attorney General so he had 19 everything at his fingertips. I think his reply 20 was that the public interest was in 21 proceeding.</b> 22 Q. Why did you say that - sorry, sir, I will 23 not be more than five more minutes. 24 THE CHAIRMAN: Carry on. 25 MR SANTOS: (To the witness) Why did</p> <p style="text-align: center;">Page 126</p>	<p>1 Q. Just dealing with WhatsApp messages, I 2 that the solicitor to the Inquiry was in contact 3 with you this week in relation to those. 4 <b>A. I have to make it quite clear, we did so 5 because none of the charges, as we'd then 6 drafted them, were crucially reliant upon the 7 Chief Minister's evidence.</b> 8 Q. I was just saying that the solicitor to the 9 Inquiry was in contact with you about 10 WhatsApp messages this week, I understand. 11 <b>A. Yes.</b> 12 Q. And you were asked to review the 13 WhatsApp messages between you and the 14 Attorney General. 15 <b>A. Yes.</b> 16 Q. You confirmed that there are no further 17 messages between you touching on matters 18 relevant to the Inquiry other than some which 19 relate to the nolle prosequi. 20 <b>A. Correct.</b> 21 Q. The discontinuance. I just ask you to 22 confirm on oath that that is your position. 23 <b>A. That is correct. I also want to add that 24 initially when we were asked for WhatsApp 25 messages the Attorney General - I now know</b></p> <p style="text-align: center;">Page 128</p>

32 (Pages 125 to 128)



<p>1 <b>how to download WhatsApp messages so I</b>  2 <b>could have done it but the Attorney General</b>  3 <b>had downloaded all our WhatsApp</b>  4 <b>exchanges in paper form and we went</b>  5 <b>through them together to decide what should</b>  6 <b>be redacted, and the idea was - I don't know</b>  7 <b>if it happened or not - that that would be</b>  8 <b>provided as a joint WhatsApp extract. So I'd</b>  9 <b>gone through them with the Attorney General</b>  10 <b>prior to this Inquiry commencing. But I was</b>  11 <b>asked since and I can confirm there is</b>  12 <b>nothing other than touching the nolle post</b>  13 <b>what I've seen.</b>  14 Q. Just in relation to Operation Kram, can I  15 take you to A 635, please, paragraph 16.  16 This is Assistant Commissioner Yeats's  17 statement. At paragraph 15 he refers to a  18 meeting at midday on 19 May and he says  19 that at that meeting you expressed the view  20 that your office was not in a position to act  21 for the RGP to defend the claim, as a conflict  22 would arise.  23 <b>A. Yes.</b>  24 Q. And that you advised that - well, we do  25 not have to deal with names, but that you</p> <p style="text-align: center;">Page 129</p>	<p>1 professional standards investigation; three,  2 the Spanish dimension in terms of courts and  3 politics. AG undertook to keep the matter  4 alive with CM pending any developments on  5 the political front. Do you remember the  6 Attorney General saying something to that  7 effect?  8 <b>A. I don't, no, I'm sorry. I know the</b>  9 <b>discussions I was involved in with Mr Yeats</b>  10 <b>was in relation to the legal representation of</b>  11 <b>the RGP.</b>  12 Q. This is an earlier conversation with the  13 Commissioner of Police on 22 April.  14 <b>A. Right.</b>  15 Q. It may help to jog your memory. The  16 final entry says: "DPP said the civil claim  17 hadn't been filed yet so there was no need to  18 engage counsel as yet. AG wanted to have  19 sight of the final investigation report from the  20 UK before giving further thought to the  21 strategy." Do you remember a conversation  22 to that --  23 <b>A. It doesn't sound like a conversation we</b>  24 <b>wouldn't(sic) have had, so it seems a fairly</b>  25 <b>accurate record.</b></p> <p style="text-align: center;">Page 131</p>
<p>1 then would discuss the matter with the  2 Attorney General and would revert.  3 <b>A. Yes.</b>  4 Q. Mr Yeats says that subsequent to that,  5 still within paragraph 18, he contacted you  6 by telephone and that you told him that the  7 Attorney General agreed with his view on  8 conflict and representation and that you  9 should write to him directly requesting the  10 appointment of counsel. Does that accord  11 with your recollection?  12 <b>A. Hundred per cent.</b>  13 Q. Just one final document, please. B 1355.  14 Can we look at the entry at midday on 22  15 April. That appears to be a record of a  16 meeting between you, the Attorney General  17 and the Commissioner of Police on 22 April  18 at 12 o'clock. It says: "Meeting to discuss Op  19 Kram. Correspondence being received from  20 the lawyers representing the families  21 indicating that they will be making civil  22 claims for damages. I enquired about legal  23 representation and again the need to agree a  24 Gibraltar strategy given all the strands the  25 matter had: One, coroner's inquiry; two,</p> <p style="text-align: center;">Page 130</p>	<p>1 Q. But do you have a recollection of it?  2 <b>A. I don't, no, I'm sorry.</b>  3 MR SANTOS: That concludes my  4 questions, Mr Rocca. I will just ask you to  5 stay there because other counsel will have  6 some questions.  7 THE CHAIRMAN: We will take our break  8 now. I think the order in which counsel are  9 going to ask questions has been agreed.  10 MR SANTOS: Yes.  11 THE CHAIRMAN: I am going to invite  12 them to agree a timetable so that we finish  13 today.  14 MR SANTOS: Are you suggesting that we  15 take the lunch break now?  16 THE CHAIRMAN: No. I am sorry, I had  17 forgotten that we have had the mid-morning  18 break already.  19 MR SANTOS: I thought you were going to  20 give us the indulgence of another break.  21 THE CHAIRMAN: I have forgotten who is  22 going to go first.  23 Mr GIBBS: I volunteer to do that. I cannot  24 promise to finish in 20 minutes though.  25 THE CHAIRMAN: No, no. How long do</p> <p style="text-align: center;">Page 132</p>

<p>1 you think you might want?</p> <p>2 MR GIBBS: The suggestion is between us</p> <p>3 that we might just share it out. I will not be</p> <p>4 an hour.</p> <p>5 THE CHAIRMAN: We will start now. You</p> <p>6 break for lunch time at a convenient point,</p> <p>7 and you will review it amongst yourselves</p> <p>8 over lunch with a view to finishing at a</p> <p>9 reasonable time this evening.</p> <p>10 MR GIBBS: Yes. I am sure between us we</p> <p>11 can manage that.</p> <p>12 THE CHAIRMAN: I do not completely</p> <p>13 share your confidence, but anyway.</p> <p>14 Questioned by Mr GIBBS</p> <p>15 <b>A. Mr Rocca, most of the topics that I</b></p> <p>16 <b>wanted to have your help with have already</b></p> <p>17 <b>been visited by Mr Santos, but I just need</b></p> <p>18 <b>you to fill in one or two gaps. In the years</b></p> <p>19 <b>that we are looking at, what was the</b></p> <p>20 <b>relationship like between yourself and the</b></p> <p>21 <b>police?</b></p> <p>22 <b>A. Good.</b></p> <p>23 Q. And did that extend to the relationship</p> <p>24 between your team of Crown counsel and the</p> <p>25 police?</p> <p style="text-align: center;">Page 133</p>	<p>1 time, was actually posted to the police</p> <p>2 station?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. In-house, as it were, at the police station,</p> <p>5 but as a Crown Counsel.</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. To provide advice on a range of things</p> <p>8 that you have described. Although, is this</p> <p>9 right, that the decision to charge in most</p> <p>10 cases remained with the police?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. I do not think the exceptions to that</p> <p>13 probably matter for our purposes, do they?</p> <p>14 <b>A. No, but there's a concept of a fiat.</b></p> <p>15 Q. Yes.</p> <p>16 <b>A. Which would not --</b></p> <p>17 Q. But does it matter for our purposes?</p> <p>18 <b>A. No.</b></p> <p>19 Q. No. And the role then in terms of advice</p> <p>20 at the "should we charge, what should we</p> <p>21 charge with" stage, for that Crown Counsel at</p> <p>22 the police station doing the run of the mill</p> <p>23 work, was in advising whether there was</p> <p>24 a realistic prospect of conviction.</p> <p>25 <b>A. I suppose so, yes.</b></p> <p style="text-align: center;">Page 135</p>
<p>1 <b>A. Yes. I mean, some police are better than</b></p> <p>2 <b>others. Some police we have greater</b></p> <p>3 <b>confidence in officers than other officers, but</b></p> <p>4 <b>in relation generally to the police force the</b></p> <p>5 <b>relationship was good and continues to be</b></p> <p>6 <b>good.</b></p> <p>7 Q. And if I was to be more specific and ask</p> <p>8 you as the Director of Public Prosecutions</p> <p>9 about your relationship with Superintendent</p> <p>10 Richardson, the head of the crime division of</p> <p>11 RGP, what was your relationship like?</p> <p>12 <b>A. Excellent.</b></p> <p>13 Q. Crown counsel below you in your team</p> <p>14 were all qualified lawyers.</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. Solicitors or barristers or both?</p> <p>17 (12.40)</p> <p>18 <b>A. Barristers, all of them.</b></p> <p>19 Q. And was one of their roles to present</p> <p>20 prosecution cases in court?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. All of them had rights of audience?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And then you spoke about this one</p> <p>25 Crown Counsel who, and was this true at the</p> <p style="text-align: center;">Page 134</p>	<p>1 Q. As a matter of law.</p> <p>2 <b>A. Yes. And also in relation to the</b></p> <p>3 <b>formulation of the charges. So wording or</b></p> <p>4 <b>where you got something and you are not</b></p> <p>5 <b>sure if it is an ABH or a GBH, they might go</b></p> <p>6 <b>and see the Crown Counsel and say, you</b></p> <p>7 <b>know, "What are your views on this? Which</b></p> <p>8 <b>one do you think it is?" And that Crown</b></p> <p>9 <b>Counsel will give a view on that.</b></p> <p>10 Q. Not least because, even if it is not that</p> <p>11 Crown Counsel at the police station, one of</p> <p>12 the other members of your team is then going</p> <p>13 to be having to present that set of charges,</p> <p>14 that indictment, in court.</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. In the more serious cases that the OCPL</p> <p>17 gave advice about, would the decision about</p> <p>18 sufficiency of evidence not be taken by the</p> <p>19 Crown Counsel in the police station but be</p> <p>20 transmitted up to one of Crown Counsel in</p> <p>21 the OCPL itself?</p> <p>22 <b>A. Sometimes, yes. I try and distribute the</b></p> <p>23 <b>work that comes in not only on skill sets but</b></p> <p>24 <b>also on experience. So I have some more</b></p> <p>25 <b>experienced than other Crown Counsel and</b></p> <p style="text-align: center;">Page 136</p>

<p>1 <b>some who are, let us say, financial crime</b>  2 <b>POCA experts. So if that comes in I</b>  3 <b>distribute it to them.</b>  4 Q. Absolutely, yes. In a very complex or  5 politically sensitive case will the police go to  6 you, to the Director himself?  7 <b>A. Yes.</b>  8 Q. Not least because a specific allocation of  9 resources may be necessary.  10 <b>A. Yes.</b>  11 Q. In terms of lawyer time.  12 <b>A. Correct.</b>  13 Q. And that was required in Delhi, was it  14 not?  15 <b>A. Definitely.</b>  16 Q. So in Delhi you assigned a particular  17 Crown Counsel. Was it Mr Zammit?  18 <b>A. It was.</b>  19 Q. To deal with the disclosure exercise.  20 <b>A. Amongst other things, yes, he did.</b>  21 Q. Because just dealing with the disclosure  22 exercise, that was a massive project.  23 <b>A. The biggest one we have ever had, I</b>  24 <b>think.</b>  25 Q. Yes. And if I suggested roughly that six</p> <p style="text-align: center;">Page 137</p>	<p>1 <b>embedded per se. He was not exclusively</b>  2 <b>RGP's, like my Crown Counsel is up there at</b>  3 <b>the moment.</b>  4 Q. And, yes, he was not, as it were, the  5 standing counsel in the police station doing  6 the run of the mill. He was allocated  7 specifically to Delhi.  8 <b>A. Correct.</b>  9 Q. With some other roles --  10 <b>A. Correct.</b>  11 Q. -- in the office, yes. And he had the  12 advantage, is this right, of having been  13 involved in Delhi from its early days?  14 <b>A. I think that's right. He also had the</b>  15 <b>advantage of being a former police officer.</b>  16 Q. I was going to ask you that, yes. I mean,  17 in his previous employment.  18 <b>A. Correct.</b>  19 Q. And before he qualified as a lawyer he  20 had served in the RGP.  21 Q. Correct, and Mark had worked for me in  22 my previous incarnation in private practice.  23 So I knew his skill set and I thought when I  24 was allocating a Crown Counsel to this I  25 thought Mark was the right person for it.</p> <p style="text-align: center;">Page 139</p>
<p>1 police officers for six months with  2 Mr Zammit dealt with the disclosure, would  3 that be about right?  4 <b>A. That sounds about right. I effectively lost</b>  5 <b>Mr Zammit for six months --</b>  6 Q. Yes.  7 <b>A. -- from chambers.</b>  8 Q. And so he was, I mean, one hears the  9 word "embedded" sometimes in other  10 contexts, would it be appropriate to say that  11 he was embedded in the Delhi investigation  12 here?  13 <b>A. I wouldn't use the word "embedded".</b>  14 Q. No. What would you say?  15 <b>A. Well, I think because disclosure would</b>  16 <b>have eventually come to us anyway, what we</b>  17 <b>were trying to do was to condense and shorten</b>  18 <b>the process and make it much less painless</b>  19 <b>and having Mark there for six months, there</b>  20 <b>were times he would come into our office</b>  21 <b>and he would do things that he had to do in</b>  22 <b>our office, but the majority of his time for six</b>  23 <b>months was working on the disclosure</b>  24 <b>exercise, the management, the disclosure</b>  25 <b>management documents, etc. But he was not</b></p> <p style="text-align: center;">Page 138</p>	<p>1 Q. And when we see that a request for  2 specific areas of advice did come to you, we  3 will come to it in a moment, you showed it to  4 him as well. I mean, you sent him the NDM.  5 <b>A. Yes.</b>  6 Q. You sent him what was then called the  7 charging advice, although that was not quite  8 what it was at that time.  9 <b>A. Yes.</b>  10 Q. But it was in the shape of a charging  11 advice. And you trusted him enough to ask  12 him to form his independent view and you to  13 form your independent view and then to ask  14 him what his was.  15 <b>A. Absolutely.</b>  16 Q. You were the first DPP.  17 <b>A. I was. I am.</b>  18 Q. You are. Answerable to the Attorney but  19 the Attorney, is the Attorney still the  20 Attorney now?  21 <b>A. Yes.</b>  22 Q. But the Attorney did not pretend to know  23 anything about crime, did he?  24 <b>A. No.</b>  25 Q. Whether that be about computer misuse</p> <p style="text-align: center;">Page 140</p>

<p>1 offences or conspiracy to defraud or special 2 procedure search warrants. 3 <b>A. No.</b> 4 Q. No. How often in your memory did you 5 find yourself having to speak as DPP to 6 Superintendent Richardson, Head of Crime? 7 <b>A. On Delhi?</b> 8 Q. On anything. 9 <b>A. I don't think, this was fairly early on in 10 my stint as DPP and of course Paul retired 11 not too late afterwards. So there were very 12 few things I dealt with with Paul in terms of 13 crime. So I would say it was primarily, from 14 my recollection, Delhi.</b> 15 Q. Thank you. 16 <b>A. Was where I dealt with Paul.</b> 17 Q. I am just going to pick up some of the 18 phraseology that we find in the later 19 transcripts, those recorded transcripts. 20 Although I am not going to take you to the 21 transcripts. 22 <b>A. Okay.</b> 23 Q. But there were some comments in there 24 about the investigation and if you recognise 25 the phraseology it may be from your recent</p> <p style="text-align: center;">Page 141</p>	<p>1 completeness and we will put it up on screen. 2 <b>A. Okay.</b> 3 Q. It is at B5498. That needs to be twisted 4 on its side. This is -- 5 <b>A. I had forgotten Mr Finlayson was 6 involved in it at the beginning actually.</b> 7 Q. Mr Finlayson. 8 <b>A. It has just jogged my memory, yes.</b> 9 Q. Thank you. This is a typed-up version of 10 his Delhi daybook, just covering the 11 meetings. And do you see on 24 April there 12 is a meeting there with you and Mr Zammit? 13 The attendees are on the right-hand side. 14 And Mr Finlayson, at 9.30 in the morning, 15 and it says: 16 "No legal privilege attaching to letter 17 [something] for criminal offence." 18 And do you remember that that was to do 19 with a letter either to or from Mr Asquez. 20 <b>A. I don't recall, I'm sorry.</b> 21 Q. And what it was about was them wanting 22 to know whether they could speak to 23 Mr Asquez about this or whether there was 24 privilege attaching to this. 25 <b>A. Okay.</b></p> <p style="text-align: center;">Page 143</p>
<p>1 perusal of the transcripts. 2 <b>A. Okay.</b> 3 Q. So, you never had any doubt, did you, 4 about the integrity of the investigation? 5 <b>A. No.</b> 6 Q. And you were satisfied at all times that it 7 was being conducted properly. 8 <b>A. I have to say, um, Mr Richardson and 9 Mr Wyan were, in my experience, two 10 excellent officers.</b> 11 Q. And you agreed, this is certainly the 12 phraseology of the transcripts, fairly early on 13 that Mr Levy was a legitimate subject of 14 inquiry. 15 <b>A. Yes.</b> 16 Q. As a potential suspect. 17 <b>A. That is the corollary of being a legitimate 18 line of inquiry.</b> 19 Q. In the chronology that you have been 20 taken through there is one meeting which 21 you, I do not think, have a memory of. 22 <b>A. Which one is that?</b> 23 Q. It is a meeting on or a conversation on 24 24 April 2019. The first one you mention is 13 25 May. But I just ought to cover it for</p> <p style="text-align: center;">Page 142</p>	<p>1 Q. And the question arose because there was 2 I think a reference to JL and the issue was: 3 was that connection, was it in connection 4 with the giving of legal advice or was it in 5 a business context? And your advice was 6 that this is not privileged because this is 7 plainly two people speaking to each other in 8 the way of business rather than as lawyer and 9 client. Do you remember that? 10 <b>A. I don't, but I remember Mr Asquez was 11 being looked at.</b> 12 Q. Thank you. 13 <b>A. And if I am shown the letter I might 14 remember, but --</b> 15 Q. I was not going to, but perhaps we could 16 revisit that, if you would like to see it. It will 17 be in the Delhi docket probably, but it may 18 take a bit of unearthing, but anyway. The 19 next meeting is 13 May. You have covered 20 that. There is then the meeting on 3 21 March 2020, which lasted about two hours. 22 <b>A. That's Mr Richardson's note. I remember 23 it was a lengthy meeting.</b> 24 Q. That is right. And was that meeting at 25 your office?</p> <p style="text-align: center;">Page 144</p>

<p>1 <b>A. It was.</b></p> <p>2 Q. It may just be helpful, although we have</p> <p>3 had it once already, to put B3121 on the</p> <p>4 screen. 3 March, line 352. Do you see that?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And the question arose about Mr Levy</p> <p>7 and you were circumspect about Mr Levy.</p> <p>8 <b>A. Yes. And about Mr Asquez actually.</b></p> <p>9 Q. And about ... yes. Conscious, amongst</p> <p>10 other things, about the obvious ramifications</p> <p>11 of making Mr Levy a formal suspect.</p> <p>12 <b>A. I treated him like any other person.</b></p> <p>13 Q. Did you? I mean, do you think anyone</p> <p>14 actually treated Mr Levy like a normal</p> <p>15 person?</p> <p>16 <b>A. I think you would probably treat him with</b></p> <p>17 <b>greater care, as you would with many other</b></p> <p>18 <b>people. So, not just Mr Levy. Any officer of</b></p> <p>19 <b>the court, any senior silk, anybody like that I</b></p> <p>20 <b>think is treated with greater care. But it</b></p> <p>21 <b>would not stop me advising someone to be</b></p> <p>22 <b>treated as a suspect just because it is the King</b></p> <p>23 <b>of England or the Chief Minister or anybody</b></p> <p>24 <b>else for that matter.</b></p> <p>25 Q. No, and it did not stop you in due course,</p> <p style="text-align: center;">Page 145</p>	<p>1 <b>left the meeting.</b></p> <p>2 Q. Because there was a difference between</p> <p>3 your state of knowledge and his state of</p> <p>4 knowledge at that time, was there not?</p> <p>5 <b>A. For sure.</b></p> <p>6 Q. In that he had a closer understanding of</p> <p>7 the evidence that had been recovered than</p> <p>8 you understandably did.</p> <p>9 <b>A. He was the investigating officer.</b></p> <p>10 Q. And you recognised that you had not seen</p> <p>11 all of the evidence that he had seen and he</p> <p>12 undertook to send you a report about the</p> <p>13 evidence.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Just if we were to pause a moment and</p> <p>16 think about the line, the crossable line,</p> <p>17 between sharp business practice and criminal</p> <p>18 conduct, you were aware in this meeting,</p> <p>19 were you, that it appeared that Mr Levy had</p> <p>20 facilitated privileged access for 36 North to</p> <p>21 the Chief Minister?</p> <p>22 <b>A. I think the appearance was that a person</b></p> <p>23 <b>like Mr Levy could be used to get meetings</b></p> <p>24 <b>ahead of someone else. That for me didn't</b></p> <p>25 <b>amount to criminality.</b></p> <p style="text-align: center;">Page 147</p>
<p>1 did it?</p> <p>2 <b>A. It didn't stop me. It didn't stop the police.</b></p> <p>3 <b>It didn't stop anybody.</b></p> <p>4 Q. No. Well, I have said no. It did not stop</p> <p>5 you and it did not stop the police, did it?</p> <p>6 <b>A. It didn't.</b></p> <p>7 Q. You were cautious in this meeting about</p> <p>8 designating him on what you were shown as</p> <p>9 a formal suspect.</p> <p>10 <b>A. As I would have if it had been anybody,</b></p> <p>11 <b>not just because it was Mr Levy. It was just</b></p> <p>12 <b>the sufficiency of evidence at that stage from</b></p> <p>13 <b>what I had heard was not enough for me. It</b></p> <p>14 <b>did not cross the line.</b></p> <p>15 Q. It did not cross the line, is this the</p> <p>16 phraseology, between sharp business</p> <p>17 practice --</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. -- and criminal conduct?</p> <p>20 <b>A. Yes, and Mr Richardson disagreed with</b></p> <p>21 <b>that, which he is perfectly entitled to. And</b></p> <p>22 <b>we had a debate about it, as you would do,</b></p> <p>23 <b>perfectly amicable. And I think, you know, I</b></p> <p>24 <b>will provide you all the evidence I can and</b></p> <p>25 <b>we will review it, fine. That's I think how we</b></p> <p style="text-align: center;">Page 146</p>	<p>1 Q. Quite. That would be one thing,</p> <p>2 perhaps --</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. -- but the terms in which Mr Levy might</p> <p>5 have communicated with the other</p> <p>6 conspirators might be another thing.</p> <p>7 <b>A. I hadn't seen them so I couldn't comment.</b></p> <p>8 Q. And that was --</p> <p>9 THE CHAIRMAN: Alleged conspirators.</p> <p>10 MR GIBBS: Alleged conspirators, I beg</p> <p>11 their pardon. And that was amongst the</p> <p>12 material that you were hoping that</p> <p>13 Mr Richardson would be able to provide to</p> <p>14 you.</p> <p>15 <b>A. If that was what was available, that was</b></p> <p>16 <b>what Mr Richardson would provide me with.</b></p> <p>17 Q. Yes. And in amongst what you were</p> <p>18 provided with, was there that material, the</p> <p>19 messaging?</p> <p>20 <b>A. Well, you have seen the opinion of my</b></p> <p>21 <b>Crown Counsel and me, which was questions</b></p> <p>22 <b>need to be answered. There were some</b></p> <p>23 <b>messages there which required explanations</b></p> <p>24 <b>one way or another. As I say, I knew nothing</b></p> <p>25 <b>about this, I was hoodwinked or fair cop guy,</b></p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

<p>1 <b>I'm involved.</b></p> <p>2 Q. The next entry we have is that email of 1</p> <p>3 April and I think we may need just to revisit</p> <p>4 this, please, it is at B3610, for the purposes</p> <p>5 of just reminding ourselves what it was that</p> <p>6 you were asked to advise the client. So if we</p> <p>7 could just start at the top of the page.</p> <p>8 Mr Richardson sends an email to you</p> <p>9 copying Mr Wyan, headed: "Operation</p> <p>10 Delhi, pre-charge advice." And the</p> <p>11 attachments are an image, it may not matter,</p> <p>12 the charging report and the NDM assessment.</p> <p>13 Is that right?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And he says that you had last met on 3</p> <p>16 March. That is what you have just been</p> <p>17 telling us about.</p> <p>18 <b>A. Mm.</b></p> <p>19 Q. "During the meeting we expressed</p> <p>20 differing views about some of the criminality</p> <p>21 identified [and so on]. Given our different</p> <p>22 viewpoints, we agreed it was important for</p> <p>23 you to have sight of the key evidence in order</p> <p>24 to make an informed decision. Mr Wyan has</p> <p>25 consolidated the considerable amount of</p> <p style="text-align: center;">Page 149</p>	<p>1 a reasonable prospect of conviction and,</p> <p>2 given the inherent political nature of this</p> <p>3 investigation, that it is in the public interest</p> <p>4 to proceed. In addition, and in respect of</p> <p>5 James Levy, we are seeking legal advice as</p> <p>6 to whether there are reasonable grounds to</p> <p>7 suspect that he has committed the offence as</p> <p>8 alleged. The attached documents set out in</p> <p>9 great detail."</p> <p>10 So in respect of James Levy what they were</p> <p>11 seeking was legal advice as to whether there</p> <p>12 were reasonable grounds to suspect that he</p> <p>13 had committed the offence as alleged. And</p> <p>14 was that the advice that you sought to give?</p> <p>15 <b>A. Yes, as I have said this morning, it was</b></p> <p>16 <b>a strange sort of request because it is not</b></p> <p>17 <b>something I have ever seen or seen since.</b></p> <p>18 <b>Whether we treat someone as a suspect or not</b></p> <p>19 <b>is not really a matter we are tasked with. But</b></p> <p>20 <b>I understood because it was given the</b></p> <p>21 <b>sensitivities of who it involved, um, and I</b></p> <p>22 <b>suppose Mr Richardson wanted that</b></p> <p>23 <b>reassurance, particularly in relation to the</b></p> <p>24 <b>public interest I assume.</b></p> <p>25 Q. And it would be in every case, I suppose,</p> <p style="text-align: center;">Page 151</p>
<p>1 evidence that has been gathered thus far and</p> <p>2 has helpfully included a timeline and</p> <p>3 glossary of terms which goes some way in</p> <p>4 assisting those unfamiliar with the more</p> <p>5 obtuse information technology references. It</p> <p>6 also sets events out in a chronological order.</p> <p>7 In this way it is easier to understand the</p> <p>8 motive behind many of the individual actions</p> <p>9 and how they contribute towards the</p> <p>10 principal act, which we argue is the attempt</p> <p>11 to obtain the maintenance rights of Bland's</p> <p>12 contract by dishonest means."</p> <p>13 Then I think we did look at these next</p> <p>14 paragraphs:</p> <p>15 "I have also included my NDM assessment</p> <p>16 of the need to interview JL which sets out my</p> <p>17 rationale. Although this document is not</p> <p>18 intended as the basis of seeking legal advice,</p> <p>19 I hope it will assist in understanding of why</p> <p>20 we feel that it is necessary to follow the</p> <p>21 course of action that is proposed."</p> <p>22 And then here is the request:</p> <p>23 "What we are seeking is your advice on</p> <p>24 whether the charges that we propose are</p> <p>25 warranted by the evidence, whether there is</p> <p style="text-align: center;">Page 150</p>	<p>1 that you would ask for a second opinion from</p> <p>2 Mr Zammit and see whether he agreed with</p> <p>3 you.</p> <p>4 <b>A. Not in every case, but in many cases I</b></p> <p>5 <b>would involve a junior and we have the four</b></p> <p>6 <b>eyes principle if we can, if work</b></p> <p>7 <b>commitments permit and we are not too</b></p> <p>8 <b>overworked.</b></p> <p>9 Q. Could we just scroll up the page. There</p> <p>10 we are.</p> <p>11 "The attached documents set out in great</p> <p>12 detail much of the evidence that has not yet</p> <p>13 been disclosed to the defence and I would</p> <p>14 ask, please, that you restrict access to it to</p> <p>15 yourself and Crown Counsel, Mark Zammit,</p> <p>16 who has already been privy to previous</p> <p>17 discussions."</p> <p>18 Was that a common request to make?</p> <p>19 <b>A. No, it wasn't.</b></p> <p>20 Q. And what did you take to be the reason</p> <p>21 for that?</p> <p>22 <b>A. It was a highly sensitive matter.</b></p> <p>23 Q. And did you respect that request?</p> <p>24 <b>A. Yes, I did.</b></p> <p>25 MR GIBBS: Sir, I was going to pass on to</p> <p style="text-align: center;">Page 152</p>

<p>1 a slightly different --</p> <p>2 THE CHAIRMAN: Then that is possibly</p> <p>3 a convenient moment.</p> <p>4 MR GIBBS: Thank you.</p> <p>5 THE CHAIRMAN: Okay, 2 o'clock?</p> <p>6 MR GIBBS: Yes, please.</p> <p>7 THE CHAIRMAN: Thank you.</p> <p>8 (13.02)</p> <p>9 (The short adjournment)</p> <p>10 (14.01)</p> <p>11 THE CHAIRMAN: Okay, thank you.</p> <p>12 MR GIBBS: Thank you. We were looking</p> <p>13 at page 3610. If we could just go back to the</p> <p>14 top of that. The email to you on the 1st</p> <p>15 attaching the two documents and Mr Santos</p> <p>16 has already brought them up on screen. The</p> <p>17 attached documents made it plain, am I right,</p> <p>18 that the police wanted to interview Mr Levy</p> <p>19 under caution?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And that they wanted to proceed by</p> <p>22 warrant.</p> <p>23 <b>A. I think that's in the NDM.</b></p> <p>24 Q. Which was attached.</p> <p>25 <b>A. Which was attached.</b></p> <p style="text-align: center;">Page 153</p>	<p>1 <b>think, because it's a senior silk and officer of</b></p> <p>2 <b>the court rather than any political</b></p> <p>3 <b>sensitivities, but I agree with the outcome,</b></p> <p>4 <b>which is diplomatic and least interventionist.</b></p> <p>5 Q. "JL will be approached at his place of</p> <p>6 work and as far as possible in private. The</p> <p>7 warrant will be executed and a notice of</p> <p>8 pre-interview disclosure served. A date will</p> <p>9 then be agreed for voluntary attendance</p> <p>10 interview. I have chosen this method as I</p> <p>11 believe that it is the most likely to generate</p> <p>12 a response to the allegation as opposed to</p> <p>13 a no comment interview."</p> <p>14 Do you endorse the logic of that?</p> <p>15 <b>A. It seems to be Mr Richardson's view</b></p> <p>16 <b>which has some logic to it, yes.</b></p> <p>17 Q. At 39:</p> <p>18 "It is expected that any allegation of</p> <p>19 impropriety or illegality will be vigorously</p> <p>20 attacked using Hassans' considerable legal</p> <p>21 resources to protect the integrity of the</p> <p>22 investigation and avoid any misconstruing of</p> <p>23 the actual words said. During the police</p> <p>24 intervention at Hassans body worn footage</p> <p>25 will be taken."</p> <p style="text-align: center;">Page 155</p>
<p>1 Q. So if we look at 3456, paragraph 31,</p> <p>2 search warrant in advance of approaching</p> <p>3 him for interview. And if we could just go</p> <p>4 down to the next page, 3457, and look at</p> <p>5 those, 37 to 39, these are the last three</p> <p>6 paragraphs on the page:</p> <p>7 "Given the political sensitivities of the</p> <p>8 persons involved, the least disruptive and</p> <p>9 most diplomatic means of police intervention</p> <p>10 will be deployed."</p> <p>11 Did you approve of that?</p> <p>12 <b>A. To be honest, Mr Gibbs, I didn't give the</b></p> <p>13 <b>NDM that much attention because I</b></p> <p>14 <b>considered it more to be an internal</b></p> <p>15 <b>operational document. Um, I looked at the</b></p> <p>16 <b>charging advice really. It was attached. I</b></p> <p>17 <b>have read it since and I have picked that up</b></p> <p>18 <b>as well.</b></p> <p>19 Q. Okay. Do you approve now of that</p> <p>20 principle:</p> <p>21 "Given the political sensitivities of the</p> <p>22 persons involved, the least disruptive and</p> <p>23 most diplomatic means of police intervention</p> <p>24 will be deployed"?</p> <p>25 <b>A. Not because of political sensitivities, I</b></p> <p style="text-align: center;">Page 154</p>	<p>1 And do you approve the logic of that as well?</p> <p>2 <b>A. Again, it's a matter for Mr Richardson,</b></p> <p>3 <b>but if that is what he sought then it is</b></p> <p>4 <b>a logical consequence.</b></p> <p>5 Q. You then sent a message to the Attorney.</p> <p>6 <b>A. On the 6th, I think.</b></p> <p>7 Q. On the 6th, which we have looked at once</p> <p>8 at 3312. I ask that it come up not to cover</p> <p>9 the same ground, 3312. (Pause).</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. "Hi Michael, we are going to have to</p> <p>12 discuss this soon. Does have very serious</p> <p>13 implications in terms of the people that might</p> <p>14 be dragged in."</p> <p>15 "Sure Christian, whenever you want."</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Could we just go to go next page as well</p> <p>18 to see what preceded that in the string. And</p> <p>19 it was Mr Llamas saying to you: "See I am</p> <p>20 not sighted on this."</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And he was referring to a rather longer</p> <p>23 message, if we keep on going down, which</p> <p>24 was a message from Mr Fischel. Was</p> <p>25 Mr Fischel representing the other suspects?</p> <p style="text-align: center;">Page 156</p>

<p>1 <b>A. Yes, and I need to comment on this</b>  2 <b>because I am very grateful for you for</b>  3 <b>drawing that exchange to my attention.</b>  4 <b>Because that is what stimulates my</b>  5 <b>conversation with the Attorney General and</b>  6 <b>not the charging advice that was initially</b>  7 <b>provided by Mr Richardson. So Mr Fischel</b>  8 <b>had written to the Attorney General, is my</b>  9 <b>recollection. And the Attorney General</b>  10 <b>wrote to me back saying: "I haven't got a clue</b>  11 <b>what this is about. I am not really sighted on</b>  12 <b>this." That's when I replied saying: "We</b>  13 <b>need to speak."</b>  14 Q. Thank you. That may be significant then.  15 If we have in chronological order  16 Mr Richardson sending you the NDM and --  17 <b>A. On the 1st, yes.</b>  18 Q. -- and the charging report, the charging  19 advice. And then on the 6th, so five days  20 later, we have you saying: "We need to talk  21 about this." But actually you are saying that  22 was not about the NDM and the charging  23 advice.  24 <b>A. No, on seeing this now, I think that is</b>  25 <b>what stimulated because the Attorney</b></p> <p style="text-align: center;">Page 157</p>	<p>1 you remember you had spoken, if you had  2 spoken to the Attorney General about the  3 number of charges?  4 <b>A. I had, yes.</b>  5 Q. And had you intimated to him that the  6 police might have in mind at present a very  7 large number of charges and that you did not  8 think that was a good idea?  9 <b>A. Yes.</b>  10 Q. But as to the Attorney in that meeting, or  11 any other meeting, whilst you were away on  12 leave, intervening to give directions in the  13 conduct of this investigation, which you were  14 directly and personally involved in and had  15 been for some time, in terms of him, the  16 Attorney, intervening to give directions about  17 the conduct of that, were you expecting him  18 to do that?  19 <b>A. No. I am not aware whether he did or he</b>  20 <b>didn't.</b>  21 Q. No, but would you have been surprised if  22 he had, given how little he knew about it and  23 who was actually running it?  24 <b>A. No.</b>  25 Q. You would not have been surprised?</p> <p style="text-align: center;">Page 159</p>
<p>1 <b>General replied: "I am not sighted on this."</b>  2 <b>And I think I replied to that saying: "Yes, we</b>  3 <b>need to speak because of the people</b>  4 <b>involved, etc", or words to that effect, I think.</b>  5 Q. And so when you told us this morning  6 that when you spoke to him ... you did speak  7 to him?  8 <b>A. To the Attorney General?</b>  9 Q. Yes.  10 <b>A. Yes.</b>  11 Q. When you spoke to him it was in relation  12 to alert him to the national security nature of  13 the thing and to alert him to the people  14 involved.  15 <b>A. Yes.</b>  16 Q. But certainly not to alert him to the fact  17 that the police intended to proceed towards  18 Mr Levy by way of warrant.  19 <b>A. No.</b>  20 Q. We know that he called a meeting on the  21 7th. You were not present at it, is that right?  22 <b>A. Correct.</b>  23 Q. And one of the things that may have been  24 discussed there, the evidence, some of it is  25 yet to come, is the number of charges. Do</p> <p style="text-align: center;">Page 158</p>	<p>1 <b>A. I do not think so, no. I had reported to</b>  2 <b>him that I had concerns about the number of</b>  3 <b>charges, about the ownership issue. I</b>  4 <b>suppose what do you mean by intervention?</b>  5 <b>I wouldn't have expected anybody to try and</b>  6 <b>stall the investigation.</b>  7 Q. You would not have expected him to?  8 <b>A. I wouldn't have expected anybody to try</b>  9 <b>and stall the investigation, but certainly to</b>  10 <b>say, "Hang on, we need to tread carefully and</b>  11 <b>let's get this right first." I mean, at the end of</b>  12 <b>the day, he was ... I'm not batting for the</b>  13 <b>Attorney General. He was drawn into this. It</b>  14 <b>wasn't that he contacted me and said, "Well,</b>  15 <b>what's going on?" It was he had received</b>  16 <b>correspondence and he wanted to be sighted</b>  17 <b>on what was going on, to be fair to the</b>  18 <b>Attorney General.</b>  19 Q. Yes, of course. And then on to 8 April  20 and you have been shown one record of this  21 which was Mr Wyan's note. It is the video  22 conference at 15.48 between you and  23 Mr Richardson and Mr Wyan.  24 <b>A. Okay.</b>  25 Q. Can we just look? It is recorded in three</p> <p style="text-align: center;">Page 160</p>



<p>1 places I think certainly. For anyone's note, 2 we have looked at B3130, let us not bring 3 that up. It is also at D3937, let us not bring 4 that up. But could we go to B3681. (Pause). 5 This is an email from Mr Richardson to 6 Mr Wyan. It is after the event, 21 April, but 7 it says: "Please check for accuracy and 8 revert." And it has an account of the meeting 9 on 8 April. Have you seen this before? 10 <b>A. I haven't no.</b> 11 Q. Well, you will have seen something a bit 12 like it, but can we just look at this one. It is 13 19 minutes and 20 seconds: 14 "The DPP has discussed the matter with 15 Crown Counsel, Mark Zammit. They were 16 comfortable to run the case on the basis of 17 the summary of the evidence provided." 18 Is that right? 19 <b>A. Yes.</b> 20 Q. "There were no grounds at this stage for 21 him to pull any prosecution but he mentioned 22 that the AG would be speaking to the Chief 23 of Police." 24 Is that right? 25 (14.10)</p> <p style="text-align: center;">Page 161</p>	<p>1 ownership of the platform? 2 <b>A. Correct.</b> 3 Q. "Public interest", "DPP was not pulling 4 this and AG in full agreement. Danger that 5 names may come out public at a later stage. 6 If we need to pull in JL then so be it." And, 7 was that the consensus of the meeting? 8 <b>A. Yes.</b> 9 Q. So you were given some advice, but it 10 was never reduced to writing? 11 <b>A. No.</b> 12 Q. Would you generally have reduced that 13 sort of advice to writing? 14 <b>A. Yes, I think I would have done.</b> 15 Q. And in retrospect, do you wish perhaps 16 you had? 17 <b>A. Yes, I think my intention was perhaps to 18 forward Mr Zamitt's email in due course to 19 Mr Wyan and Mr Richardson, but I don't 20 think I ever -- I don't have a record of ever 21 forwarding that, because that email records 22 what we both pretty much agreed on in terms 23 of the advice. There was the misconduct ch-- 24 there was, the -- I think the misconduct 25 charge, misconduct in public office charge,</b></p> <p style="text-align: center;">Page 163</p>
<p>1 <b>A. I don't recall, but if he's made a record of 2 that, that's fair.</b> 3 Q. "There was sufficient evidence to lead a 4 jury to a realistic prospect of conviction with 5 regard to the conspiracy to defraud charges. 6 The DPP had always been comfortable with 7 the computer misuse offences." Is that right? 8 <b>A. Yes.</b> 9 Q. Regarding the need to interview JL, there 10 are reasonable grounds to question him under 11 caution. If we did not, then (?) our lingering 12 doubt about him would remain." Is that 13 right? 14 <b>A. Yes.</b> 15 Q. A need to drill down into the ownership, 16 the rationale for not arresting another 17 person... "JL needs looking at. The 18 ownership of the platform may not be 19 critical, but may direct who is charged and 20 with what." What was the connection 21 between JL and the ownership of the 22 platform? 23 <b>A. None.</b> 24 Q. Because the charge that was being 25 considered against JL didn't depend upon the</p> <p style="text-align: center;">Page 162</p>	<p>1 <b>which he said he wanted to look at in more 2 detail. But I think my intention was to 3 forward that, in due course, which I don't 4 think I ever did when I got back from leave.</b> 5 Q. Just so that we're all plain, the 6 misconduct in public office consideration did 7 not apply to Mr Levy? 8 <b>A. It did not.</b> 9 Q. No. And at the end of the meeting, do 10 you remember there being a comment from 11 you about: the only thing we'd do differently 12 (or words to this effect) is we'd go by 13 production order? 14 <b>A. I don't recall that, to be honest.</b> 15 Q. We see elsewhere in our documents a 16 phraseology of: we're not police officers, 17 you're not lawyers? 18 <b>A. I think that's in one of the meeting that 19 was recorded.</b> 20 Q. Do you remember anything like that 21 being said? 22 <b>A. I do, because I've read parts of the 23 transcript.</b> 24 Q. But now, do you actually remember it 25 being said?</p> <p style="text-align: center;">Page 164</p>

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<p>1 <b>A. At the meetings?</b>  2 Q. Yes, and at the end of the meeting of 8  3 April.  4 <b>A. No, not at 8 April. I remember in the</b>  5 <b>May meetings, that being said.</b>  6 Q. You remember it being said, it being  7 referred to in the meeting after the day when  8 the police went to Mr Levy's house and  9 office?  10 <b>A. Correct, and I think I've read it in the</b>  11 <b>transcript last night (?).</b>  12 Q. Yes, quite, on the 13th and 15th.  13 <b>A. That --</b>  14 Q. But, I am not going to ask you any  15 questions at all about events after 12 April.  16 <b>A. I don't recall saying that in April, but it's</b>  17 <b>possible that I did.</b>  18 Q. In any event, was it common ground, can  19 you say, that the issue of whether to go by  20 search warrant or go by production order was  21 an operational judgment?  22 <b>A. Yes.</b>  23 Q. And, you did not get involved in  24 operational judgments?  25 <b>A. No.</b></p> <p style="text-align: center;">Page 165</p>	<p>1 Q. But you were later to say, in the  2 transcripts that you have read, that in your  3 view the warrants were defend-- you may be  4 right or you may be wrong, but in your view  5 the warrants were defensible, if they'd been  6 challenged by way of judicial review?  7 <b>A. I said that in the meeting, correct.</b>  8 Q. And, that you would defend that  9 operational decision?  10 <b>A. Based on what I knew at that stage, yes.</b>  11 Q. And, you would defend the warrants that  12 were issued as a result of that decision?  13 <b>A. Based on what I knew at that stage, yes.</b>  14 Q. Yes. So the position is, correct me if I am  15 wrong, but simply: the OCPL do not get  16 involved in drafting warrant applications at  17 all? Or giving legal advice about them?  18 <b>A. No.</b>  19 Q. Just one fragment in relation to your  20 preference: that you would have gone by  21 production order, and the police wanted to go  22 by warrant. Did you know at that time that  23 Mr Sanchez had deleted his messages?  24 <b>A. Unless it's in the charging advice, I</b>  25 <b>wouldn't have known.</b></p> <p style="text-align: center;">Page 167</p>
<p>1 Q. Because of this distinction between an  2 operational judgment and a legal judgment?  3 <b>A. Yes.</b>  4 Q. So, you certainly did not veto the police's  5 plan on legal grounds?  6 <b>A. No.</b>  7 Q. Or advise, as the lawyer in the meeting,  8 that there was any fundamental flaw in  9 applying for a search warrant?  10 <b>A. No, but if I'd been advising on that, Mr</b>  11 <b>Gibbs, I would have asked to see at least a</b>  12 <b>draft application of the evidence to support,</b>  13 <b>if they wanted my proper and full advice on</b>  14 <b>it.</b>  15 Q. There may be other places where  16 applications like that, and the informations  17 behind them, are run past lawyers or even  18 drafted by lawyers before they are presented  19 to a judge, but Gibraltar was not one of these  20 places at the time?  21 <b>A. Correct.</b>  22 Q. Is it now?  23 <b>A. Not past my office, no. Whether they</b>  24 <b>take private advice on these things is another</b>  25 <b>matter.</b></p> <p style="text-align: center;">Page 166</p>	<p>1 Q. Because, the first three alleged  2 conspirators were arrested on 10 May of  3 2019, and then Mr Sanchez was abroad and  4 he was called back...  5 <b>A. Correct.</b>  6 Q. And, was not arrested until the 14th.  7 <b>A. Correct.</b>  8 Q. At which point his device or devices were  9 taken from him.  10 <b>A. So I understand.</b>  11 Q. Yes. Did you later learn that there had  12 been deletions made?  13 <b>A. I later learnt there had been deletions.</b>  14 Q. Did you know about that deletion though,  15 at the time that you were expressing a  16 preference for a production order over a  17 warrant in the case of Mr Levy?  18 <b>A. I can't recall that I did or I didn't, but</b>  19 <b>regardless of that I don't think it (?) would</b>  20 <b>have made the decision to... would have</b>  21 <b>made a difference in my position. And, I'll</b>  22 <b>explain why if you'd like me to, which is that</b>  23 <b>potentially Mr Sanchez had no notice of what</b>  24 <b>was happening, that was the idea, whereas</b>  25 <b>Mr Levy would have been knowing that</b></p> <p style="text-align: center;">Page 168</p>

42 (Pages 165 to 168)

<p>1 people had been arrested the year before he 2 was going to be approached, so my view was 3 that any element of surprise or deletion pretty 4 much went out of the window. 5 Q. And, what makes you think that Mr 6 Sanchez by the 14th had no inkling that the 7 other three arrests had taken place on the 8 10th? 9 <b>A. I don't. I don't know at all, whether he 10 did or he didn't know. All that I know was: 11 he was abroad, he was called back.</b> 12 Q. Do you remember the date on which his 13 deletions were made? 14 <b>A. I wouldn't know, and I've never seen it, I 15 don't think. Not seen a document that 16 explains when those deletions were made.</b> 17 Q. Returning, then, to that specific request in 18 the email of 1 April that you restrict access to 19 the charging report to yourself and Mr 20 Zamitt, and you have already told us that you 21 honoured that request. Can I just ask you to 22 spell it out: did you tell the Attorney General 23 that the police now regarded Mr Levy as a 24 suspect? 25 <b>A. I don't think so, no.</b></p> <p style="text-align: center;">Page 169</p>	<p>1 <b>A. Inevitably. They were talking about 2 taking information and messages, so yes, 3 inevitably an application was going to be 4 made, whatever guise that was in.</b> 5 Q. But you did not draft it, you have told us, 6 and you were not shown it before it was 7 presented to the magistrate? 8 <b>A. No.</b> 9 Q. Did you know that an application had 10 been made? 11 <b>A. No.</b> 12 Q. And granted? 13 <b>A. Not until, I think I received a phone call 14 later on the 12th.</b> 15 Q. Well, we will come to that. But what I 16 am really asking is: before that, did you 17 know, then, which day the warrants, it was 18 proposed, would be executed if necessary? 19 <b>A. No.</b> 20 Q. And so on the 12th, to come to what you 21 were just saying, when the police attended at 22 Hassans, what was the first you heard of it? 23 <b>A. When I was contacted by the Attorney 24 General and asked whether I'd given any 25 advice in relation to the execution of search</b></p> <p style="text-align: center;">Page 171</p>
<p>1 Q. Did you tell the Attorney General that the 2 police now wanted to interview Mr Levy 3 under caution? 4 <b>A. Not that I recall, no.</b> 5 Q. Did you tell the Attorney General that 6 you agreed with the police assessment of Mr 7 Levy as a suspect? 8 <b>A. Not that I recall. I may well have done, 9 but I don't recall that.</b> 10 Q. Or that you agreed with their assessment 11 that Mr Levy needed to be interviewed under 12 caution? 13 <b>A. Not at that stage, no, not that I recall.</b> 14 Q. And you did not, did you, tell the 15 Attorney General that the police intended to 16 apply for search warrants at Mr Levy's home 17 and office? 18 <b>A. No, because it wasn't -- to my knowledge 19 hadn't been decided, so...</b> 20 MALE VOICE: (inaudible) 21 MR GIBBS: To my knowledge, it hadn't 22 been decided. 23 MALE VOICE: Thank you. 24 Q. But, you were expecting that such an 25 application would be made?</p> <p style="text-align: center;">Page 170</p>	<p>1 warrants on James Levy, because one had 2 been executed. 3 Q. Can I ask you just to be as accurate as 4 you can be (but not guessing, obviously) with 5 what it was, when the Attorney General rang 6 you up, that he asked you? 7 <b>A. I need to ask you a question: have you 8 advised the police in relation to search 9 warrants on James Levy. To which, I replied: 10 no, I have not. Words to that effect -- that's 11 as -- that's the best of my recollection. I was 12 aware that something would -- was going to 13 happen, inevitably; he's a suspect. But I 14 hadn't knowledge of what that decision was, 15 by the police.</b> 16 Q. Was he calm? 17 <b>A. Yes.</b> 18 Q. Was he angry? 19 <b>A. He didn't sound it on the phone, no.</b> 20 Q. Did he ask you whether you knew that 21 the police had intended to apply for a 22 warrant? 23 <b>A. Did he ask me if I knew? He may have 24 done.</b> 25 Q. Yes.</p> <p style="text-align: center;">Page 172</p>

<p>1 SIR PETER CARUANA: (inaudible) closer 2 to the microphone. 3 <b>A. I'm sorry. It is a very uncomfortable 4 chair, that's why. I will get closer.</b> 5 Q. So the question was, did he ask you 6 whether you knew that the police intended to 7 apply for a warrant? 8 <b>A. He may have done, but I wouldn't want to 9 guess.</b> 10 Q. Did he ask you whether you had known 11 that the police wanted to interview Mr Levy 12 under caution? 13 <b>A. Not that I recall, but he may well have 14 done. It was four years ago, Mr Gibbs. It 15 was a phone call, amongst millions of phone 16 calls.</b> 17 Q. Did he ask you whether you had agreed 18 with the police use of a warrant? 19 <b>A. He could well have done, yes. In the 20 same context of: did you advise them, did 21 you know, what your recommendation; he 22 may well have done so, yes.</b> 23 Q. And, did he ask you whether you had 24 agreed with the police plan to interview 25 under caution?</p> <p style="text-align: center;">Page 173</p>	<p>1 Q. And, in any later conversations (but I 2 mean the same day, or certainly before the 3 meeting on 13 May) did you discuss any of 4 those things with him? 5 <b>A. Did he express a view, or did I discuss 6 them with him?</b> 7 Q. Did he express a view? Did he ask you: 8 did you know? Did he ask you: did you 9 agree? Did he ask you -- 10 <b>A. Other than that conversation, no, and he - 11 - I don't think the Attorney General would 12 have expressed a view, because he's not a 13 criminal law practitioner, so I doubt he would 14 have come to any view --</b> 15 Q. No. I mean -- 16 <b>A. -- on it.</b> 17 Q. -- how would he have known? 18 <b>A. About?</b> 19 Q. About anything to do with crime, almost. 20 <b>A. I suppose so, yes.</b> 21 Q. Do you agree with the proposition, or am 22 I being unfair? 23 <b>A. I'm sure he did criminal law at university 24 --</b> 25 Q. Well --</p> <p style="text-align: center;">Page 175</p>
<p>1 <b>A. He wouldn't have, because I'd told him 2 that I had not advised on the search warrant, 3 so I don't think the conversation would have 4 got past -- far past that comment.</b> 5 Q. Forgive me, it is a slightly different 6 question. 7 <b>A. Okay.</b> 8 Q. It is the question of whether he asked you 9 whether you had agreed with the plan, not for 10 the warrant but to interview Mr Levy under 11 caution. 12 <b>A. No, Mr Gibbs, this was a very, very short 13 telephone call. It was literally seconds; it 14 was no more than that.</b> 15 Q. And, you told him the truth? 16 <b>A. Absolutely.</b> 17 Q. Was he cross at all, that you had not told 18 him what it was that you had since 1 April 19 known? 20 <b>A. Not at all.</b> 21 Q. Did he express a view himself about 22 interviewing under caution, or the... 23 <b>A. No.</b> 24 Q. -- use of a warrant? 25 <b>A. No.</b></p> <p style="text-align: center;">Page 174</p>	<p>1 <b>A. -- but hasn't practised crime to the extent 2 that a lot of us have, so his knowledge would 3 be limited, but I think he accepts that compl-- 4 I think it's part of the reason he employed a 5 DPP.</b> 6 Q. Yes. And if he had expressed a view, 7 presumably you would have said, if you did 8 not agree with it: the thing is, Michael, I've 9 seen the content and the weight of the 10 evidence. 11 <b>A. If he'd asked. I have a very good 12 relationship with the Attorney General; I'd 13 have told him the truth and what I felt, and so 14 I would have done had it been asked.</b> 15 Q. And I've done a bit of criminal law, you 16 might have said. 17 <b>A. I think that he'd know that already --</b> 18 Q. Yes. 19 <b>A. -- perhaps.</b> 20 Q. When was it plain to you that the 21 politicians had now got involved? 22 <b>A. Not until... what do you mean by p-- 23 I wasn't aware of the Chief Minister's 24 involvement in any real (?) form until much, 25 much later.</b></p> <p style="text-align: center;">Page 176</p>

<p>1 Q. Yes, I am asking a slightly more nebulous 2 question. When were you aware that there 3 were political forces in play? 4 <b>A. I wasn't until right at the end, I think. I 5 wasn't aware who was in contact with whom. 6 My conversations were with the Attorney 7 General and with the investing team, and that 8 was -- that was the extent of my involvement. 9 I did not speak with the Chief Minister or 10 with Mr Baglietto, other than as I've already 11 explained in relation to the production of 12 material.</b> 13 Q. You have told us -- 14 <b>A. Or Mr Levy.</b> 15 Q. Sorry. 16 <b>A. Or Mr Levy.</b> 17 Q. You told my learned friend Mr Santos 18 that you would not speak to the Chief 19 Minister about an ongoing investigation. 20 <b>A. Not about the details of an ongoing 21 investigation.</b> 22 Q. Why is that? 23 <b>A. Well, because I don't think it would be 24 proper for me to do so. I'm effectively 25 almost a lawyer to the police; it's almost a</b></p> <p style="text-align: center;">Page 177</p>	<p>1 <b>A. I don't -- I don't know. Look, a lot of 2 lawyers in Gibraltar (not including myself) 3 are entrepreneurs, in terms of: law firms have 4 interests in many businesses and 5 opportunities they see. Does that impact on 6 them? You'd have to ask them. It wouldn't 7 me, for example. I think it's a matter for each 8 individual to judge in accordance with their 9 own ethical standards and standards of 10 propriety.</b> 11 Q. Yes, of course. But we are not talking, 12 are we, about any other lawyer in Gibraltar; 13 we are talking about the Chief Minister. 14 <b>A. Mm-hmm.</b> 15 Q. Is that a bit different? 16 <b>A. In terms of?</b> 17 Q. In terms of whether you would speak to 18 him about an ongoing investigation in which 19 he had a beneficial interest. 20 <b>A. No, I wouldn't speak to anybody about it.</b> 21 Q. And, would you expect him to try to 22 speak to you? 23 <b>A. No.</b> 24 Q. Why not? 25 <b>A. Because, he's not my paymaster. I am</b></p> <p style="text-align: center;">Page 179</p>
<p>1 <b>privileged matter between me and the police. 2 Unless it was something absolutely mega- 3 important and urgent like, I don't know, 4 terrorism or something that major; then, I 5 might make an exception to it. But other 6 than that I wouldn't tend to, no; I would 7 report back to the Attorney General, who 8 would do what he thinks fit in the 9 circumstances.</b> 10 Q. And, you also told the Chairman that you 11 definitely would not have spoken to the Chief 12 Minister about this ongoing investigation? 13 <b>A. Not about the details of it, no.</b> 14 Q. Why was that? 15 <b>A. For the same reason. It's not -- well, this 16 investigation involved 36 North, and his 17 company had a -- well, his law firm in which 18 he was a partner had a share in it, so perhaps 19 even less so. But I wouldn't have anyway, 20 regardless of that connection, have discussed 21 it with him, because I don't have that 22 relationship with the Chief Minister.</b> 23 Q. But does the beneficial ownership, in 24 your mind, make it doubly unthinkable that 25 you would speak to him about it?</p> <p style="text-align: center;">Page 178</p>	<p>1 <b>independent of him; I am deemed to be 2 independent of him, and I would only be 3 answerable to the Attorney General.</b> 4 MR GIBBS: Those are all my questions, 5 thank you very much. 6 Questioned by MR CRUZ 7 Q. Mr Rocca, I will be a lot briefer than I 8 intended, because Mr Gibbs has covered 9 some of that. I am going to summarise, but it 10 (?) is a position that I think you found 11 yourself in. But, if by any chance I get 12 something wrong, do interrupt me and I will 13 take you to the documents. From my 14 understanding, you have made it crystal clear 15 in your questioning this morning that you 16 think it is very important to distinguish 17 between operational matters and 18 prosecutorial matters. And, the issues of the 19 search warrant and an interview under 20 caution fall firmly in the former: operational 21 matters. 22 <b>A. Yes.</b> 23 Q. And that is a matter that is entirely for the 24 RGP, and you were quite definitive about 25 that. Is that correct?</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

1 **A. Correct.**  
 2 Q. Sorry (inaudible).  
 3 **A. Correct.**  
 4 Q. Right. So keeping that in mind, we will  
 5 just park that for the moment, but if I can just  
 6 remind you of the two documents that were  
 7 sent to you on 1 April. Which were the  
 8 NDM, which you had less attention to, and  
 9 the charging advice that you said you studied  
 10 very carefully.  
 11 **A. Mm-hmm.**  
 12 Q. Now, it might be helpful just to have it on  
 13 the screen, if not for the benefit of others.  
 14 The NDM is the document at B3452. And, if  
 15 I could just ask you to look at paragraph 31.  
 16 I think you said you did not look at this with  
 17 great attention, but I got the impression you  
 18 did at least look through it.  
 19 **A. Briefly, yes, I would have done --**  
 20 Q. Yes.  
 21 **A. -- but very briefly.**  
 22 Q. Right. So, you see at 31 there is absolute  
 23 clarity about what is going to happen, as far  
 24 as the police are concerned. An operational  
 25 matter.

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1 **A. Yes.**  
 2 Q. Yes. And then at 35, just a little bit  
 3 further down you will see that there is a  
 4 reference to political sensitivities. I think  
 5 you said earlier -- or, I don't think you  
 6 expressed a view on that?  
 7 **A. I didn't.**  
 8 Q. And, then there is a reference again to a  
 9 warrant for Hassans Law, so it is clear there.  
 10 And then finally, if I can take you to  
 11 paragraph 39 of the same document. My  
 12 learned friend Mr Gibbs took you to this, but  
 13 if I could just focus on a specific part of this  
 14 paragraph 39 which is about the probability  
 15 or the expectation (I think it says "it's  
 16 expected"), in essence that any steps that had  
 17 any allegation or legality would be  
 18 vigorously attacked using Hassans'  
 19 considerable legal resources. Now, would it  
 20 be fair to say that given the nature of the  
 21 person involved, Mr Levy, you may or may  
 22 not have given importance to political  
 23 sensitivities, but given the nature of that and  
 24 Hassans Law it is quite clear that an  
 25 expectation of a legal attack of some sort

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1 would have been something that would have  
 2 been considered not just by the police,  
 3 clearly, but also by you? The probability of  
 4 that.  
 5 **A. I can't say it was really considered by me,  
 6 no.**  
 7 Q. It was not?  
 8 **A. No.**  
 9 Q. Okay, fine. Would you say, when you say  
 10 you can't say it was, do you think, given the  
 11 fact that it was, as it says, a firm with  
 12 substantial resources, Mr Levy and all of  
 13 that, might it have been considered a relevant  
 14 factor? By which I mean, should you not  
 15 have given thought to the probable  
 16 challenges that would have come from  
 17 Hassans Law, or other firm instructed by  
 18 them?  
 19 **A. Possibly, but that was Mr Richardson's  
 20 view, and that was his --**  
 21 Q. Yes, I understand. So, you are just saying  
 22 you did not give it too much thought, you  
 23 were focused on the --  
 24 **A. No.**  
 25 Q. I understand.

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1 **A. No, and as I said, the NDM is very much  
 2 an internal operational document, from my  
 3 understanding. I would have looked at it  
 4 very briefly, because the charging advice  
 5 document was the document that required  
 6 our consideration, not operational matters as  
 7 contained in the NDM. And, I'm not even  
 8 sure whether this is a final document, or  
 9 whether (?) there's an options document  
 10 where different options were discussed, in  
 11 it predates or postdates this. So, it is clear  
 12 that consideration was given -- or has been  
 13 given, to the different methods of achieving  
 14 the same aim, which was to --**  
 15 Q. Yes.  
 16 **A. -- retrieve documents.**  
 17 Q. Okay. It is helpful what you have just  
 18 said: that you did not apply your mind, it  
 19 sounds to me, at the probably attack that  
 20 would have come from Hassans. Clearly the  
 21 police did. It sounds from what you are  
 22 saying, unless I am not understanding, that  
 23 you did not particularly focus on that?  
 24 **A. No, I didn't.**  
 25 Q. Okay. And just for completeness, if I can

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<p>1 ask that we go to B3666. The is the last 2 paragraph of the charging advice. 3 <b>A. Mm-hmm.</b> 4 Q. And you have been taken to this before, 5 and I just make the point here that again the 6 search warrant and the interview under 7 caution are prominent, in terms of what the 8 police intend to do. So you were absolutely, 9 I think it would be fair to say, clear that that 10 was what was going to happen, as far as the 11 police were concerned. And you said I think 12 earlier that you never, and would not, advise 13 against it; it was a matter for them. 14 <b>A. Entirely for them, yes. If I was asked, I</b> 15 <b>would have ventured an opinion.</b> 16 Q. Yes, so I think you said that Mr Wyan and 17 Mr Richardson were exemplary officers, or 18 good officers, or whatever? 19 <b>A. As far as I'm aware, absolutely.</b> 20 Q. Yes. And in terms of the Operation Delhi 21 investigation, people will have heard be here 22 describe it in terms, that this investigation 23 was thorough. 24 <b>A. Was?</b> 25 Q. Thorough. A thorough, good</p> <p style="text-align: center;">Page 185</p>	<p>1 Q. Yes. 2 <b>A. So, no. It wasn't unexpected, wasn't</b> 3 <b>expected; it just is what it is.</b> 4 Q. Right. And, the reason I say that is 5 because the events that took place in those 6 meetings (particularly the 15th but the 13th 7 and 15th) have been described by Mr Wyan 8 last Friday as somewhat unusual, in his 9 opinion, in the sense that he did not feel it to 10 be something that was anything other than an 11 attempt to solve a problem. To give you his 12 example, I am going to ask you whether you 13 would agree with some of his definitions. It 14 was not what he expected, a conversation 15 about a problem, "How do we solve this 16 problem?", "the problem being Mr Levy and 17 the intention to interview him under caution." 18 He described the meeting as a "facilitation" 19 or a "negotiation". Would you say that that 20 definition is a reasonable one? 21 <b>A. No, I wouldn't.</b> 22 <b>(14.40)</b> 23 Q. No. 24 <b>A. No. I think what we were discussing was</b> 25 <b>the difficulties that had now arisen with the</b></p> <p style="text-align: center;">Page 187</p>
<p>1 investigation. 2 <b>A. Yes.</b> 3 Q. Yes. You would agree with that? 4 <b>A. I would.</b> 5 Q. Okay, so there was a clear plan, from 6 what we've seen, as far as the officers are 7 concerned, that shows itself in the NDM plan 8 and the charging advice. It was a thorough 9 investigation, so it was moving on to the next 10 steps. And of course, we then get to a point 11 that the day of the warrant, it is not actually 12 exercised but we know what happened. 13 THE CHAIRMAN: This is a very long 14 question. 15 Q. So I am just setting the scene for the 16 question, sorry -- 17 THE CHAIRMAN: Yes. 18 Q. -- Mr Chairman, I will try and put it in 19 slightly different terms. Would you say that 20 the response from Hassans, that you then got 21 involved with in one shape or form during 22 the meetings in May, was unexpected? 23 <b>A. I've been involved in litigation too long to</b> 24 <b>say anything is particularly unexpected,</b> 25 <b>particularly in crime.</b></p> <p style="text-align: center;">Page 186</p>	<p>1 <b>search warrant because of the manner in</b> 2 <b>which that had been exercised or not</b> 3 <b>exercised, and the judicial review, and that</b> 4 <b>was the trigger for the 13th meeting to my</b> 5 <b>knowledge, and then those meetings</b> 6 <b>developed. I think on the meeting of the 15th</b> 7 <b>we actually got a letter delivered during the</b> 8 <b>course of the meeting which we actually</b> 9 <b>went through and tried to draft a response,</b> 10 <b>from memory. And so it was an ever-</b> 11 <b>evolving process, but there was no agenda to</b> 12 <b>push this one way or the other. It was</b> 13 <b>stimulated by the warrant on the 13th. That's</b> 14 <b>what stimulates the meetings and the desire</b> 15 <b>to resolve an issue as easily as possible</b> 16 <b>because we didn't want to be embroiled in six</b> 17 <b>months of JR stalling the investigation and</b> 18 <b>impacting potentially on everything.</b> 19 Q. So I understand. 20 <b>A. That was my view.</b> 21 Q. Yes. So when I asked you earlier about 22 whether you had given thought to the Hassan 23 legal attack and you said you had not really 24 applied your mind to that, when you 25 suddenly find yourself in the meetings in</p> <p style="text-align: center;">Page 188</p>

<p>1 May dealing with that, of course, it is 2 precisely what was going to happen in the 3 views of the police officers. 4 <b>A. So it would appear in the view of Mr 5 Richardson, yes.</b> 6 Q. So when the discussion turned to should 7 there be an interview, interview under 8 caution, how do we do this, all of that could 9 properly be described as, well, de-escalation 10 or something to that effect you have 11 described it as. It is exactly what Mr Wyan 12 suggested, a problem solving exercise, a 13 negotiation or quasi negotiation. 14 <b>A. No, it was a full and frank exchange of 15 views of how best to deal with this matter 16 going forward. That's all it was, in my view.</b> 17 Q. Let me put it in slightly different terms. 18 It was not the plan, was it? The plan was to 19 execute a warrant or, if Mr Levy cooperated, 20 and I think you are aware that the warrant 21 was not actually executed, he eventually after 22 nine hours gave his phone up and then 23 withdrew consent, but the plan was to have 24 the warrant, so to speak, in the back pocket, 25 to then procure these devices which were</p> <p style="text-align: center;">Page 189</p>	<p>1 <b>meetings. How do we deal with this?</b> 2 Q. But the point is that there was a plan. It 3 was envisaged that there would be a legal 4 challenge and actually when it came down to 5 it, it turned into a little bit more of a problem 6 solving exercise. What you were asked 7 earlier on today is whether or not you had 8 given robust support to the RGP. 9 <b>A. At the meeting, you mean.</b> 10 Q. No, I am not suggesting outside of that. 11 In other words, that was a question I think 12 your answer was yes, you had. 13 <b>A. Yes.</b> 14 Q. I am suggesting to you that perhaps, 15 given what was anticipated, your support was 16 not perhaps as robust as the RGP expected, 17 given they anticipated an attack by Hassans 18 Law on their process. 19 <b>A. My support was the appropriate one, 20 given on the information I had, and I felt I 21 gave them all the support they needed. I told 22 them that even though I disagreed with their 23 decision to go for a search warrant I could 24 understand why they had done so. I wouldn't 25 have done so but I could understand it. I</b></p> <p style="text-align: center;">Page 191</p>
<p>1 important, and then have an interview under 2 caution. So what was happening during 3 those three meetings was not what was 4 planned, was it? 5 <b>A. My view is that if you've got a warrant 6 you execute it. You then don't turn up and 7 negotiate that warrant. If you've got a 8 warrant because you believe someone is 9 going to dispose of evidence, you execute 10 that warrant on the premises, however 11 difficult that might be. And that in part was 12 one of the difficulties. Now, I recognise that 13 Mr Richardson was aware of the critical 14 sensitivities of who it was, but, with respect, 15 that should not have played part of the 16 process because that's caused half the 17 problem, because then you're in the grounds 18 of in terrorem consent, non-consent, does the 19 warrant lapse after a month, does it not lapse 20 after a month, and that is I think what starts 21 kicking everything off, with respect, because 22 it's that latter that comes from Lewis 23 Baglietto complaining about the warrant to 24 the Attorney General that leads to the 25 meetings, hence the discussions at the</b></p> <p style="text-align: center;">Page 190</p>	<p>1 <b>thought it would be defensible on JR 2 grounds. I hadn't seen the documents 3 themselves that was based purely on the 4 decision at that stage. I think that was pretty 5 much supported, if you ask me. I didn't say: 6 "Oh, chaps, you really messed this one up. 7 Why did we then not execute for nine hours 8 and why did we let them hand them over 9 voluntarily.</b> 10 Q. Mr Rocca, part of the plan was to give an 11 opportunity to Mr Levy to cooperate. It went 12 to plan in that sense. 13 <b>A. Part of the plan for the RGP, not for me.</b> 14 Q. I see. 15 <b>A. I was not party to that plan.</b> 16 Q. So when you got involved in discussions 17 about interviews not under caution, about all 18 these different permutations, were you not 19 delving into operational decisions? 20 <b>A. Yes.</b> 21 Q. And therefore when you say that is not a 22 matter for you, it became a matter for you 23 during those meetings, did it not? 24 <b>A. Yes, but I think I read in the minutes 25 yesterday that it's quite clear that the</b></p> <p style="text-align: center;">Page 192</p>



<p>1 <b>Attorney General says: "And these are</b>  2 <b>matters entirely for you."</b>  3 Q. But is it reasonable --  4 <b>A. I have read those words to that effect.</b>  5 Q. I understand that, but if you are a police  6 officer or several police officers and you are  7 faced with the Attorney General and Director  8 of Public Prosecutions and they say: "These  9 are all the solutions. Not a decision for me,  10 but by the way let me present what I think  11 might be a way out of this", does it not in  12 effect create the sort of pressure and  13 interference that would have been something  14 that Mr Wyan would have seen as unusual, a  15 negotiation, a facilitation?  16 <b>A. Mr Cruz, I suggest you re-read the</b>  17 <b>transcripts because a lot of the suggestions</b>  18 <b>are posed by the Commissioner himself and</b>  19 <b>by Superintendent Richardson. The one that</b>  20 <b>does not participate in the conversation much</b>  21 <b>is Mr DeVincenzi or Mr Wyan. The four of</b>  22 <b>us - senior officer, Commissioner of Police,</b>  23 <b>superintendent, Attorney General and DPP -</b>  24 <b>were having a full and frank discussion on</b>  25 <b>the options. This one, that won't work</b></p> <p style="text-align: center;">Page 193</p>	<p>1 MR WAGNER: I was just going to set  2 myself up.  3 MR SANTOS: That is absolutely fine. I was  4 just going to offer the witness the opportunity  5 to switch chairs to one that is perhaps more  6 comfortable.  7 THE WITNESS: That's all right. My  8 bottom's numb already.  9 MR SANTOS: Why do we not swap chairs  10 very quickly?  11 <b>A. It's fine. I'm numb already. It can't be</b>  12 <b>any worse.</b>  13 MR SANTOS: If it is making it difficult for  14 you to speak into the microphone --  15 <b>A. No, I can move the microphone closer if</b>  16 <b>the cable stretches. There you go. Is that</b>  17 <b>better?</b>  18 MR SANTOS: I think so.  19 <b>A. I'll try and speak up as well.</b>  20 THE CHAIRMAN: And a bit more slowly.  21 Questioned by Mr WAGNER  22 Q. I just want to ask you about Ian McGrail  23 to start. Is it right that you had worked in  24 2020 with Mr McGrail for a while?  25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 195</p>
<p>1 <b>because we can't use it in this way. This one</b>  2 <b>might work. And that's the way the meetings</b>  3 <b>were conducted. The four of us batting</b>  4 <b>openly, as far as we were concerned, in</b>  5 <b>relation to that, trying to cure a problem that</b>  6 <b>had been created. That's what those meetings</b>  7 <b>were.</b>  8 Q. My last question for you. Would it not  9 have been more consistent to simply say:  10 "Don't worry, I will defend any challenge.  11 Go ahead and progress as we know you were  12 going to progress with your interview under  13 caution, with the searching of the devices.  14 That's it because I did not get involved in  15 operational decisions." Would that not have  16 been the right way to have approached it?  17 <b>A. If they'd wanted to do it, absolutely. No</b>  18 <b>problem with that at all if that's what they</b>  19 <b>wanted to do.</b>  20 Q. And do you think you gave them the  21 option?  22 <b>A. Absolutely.</b>  23 MR CRUZ: Okay. Thank you.  24 MR SANTOS: Just before Mr Wagner  25 starts, I am not going to interfere with that -</p> <p style="text-align: center;">Page 194</p>	<p>1 Q. How long?  2 <b>A. As DPP?</b>  3 Q. As DPP, yes.  4 <b>A. As DPP from when I started in I think 7</b>  5 <b>January 2019, but I'd known Mr McGrail for</b>  6 <b>some time years and years before then.</b>  7 Q. And what kind of working relationship  8 did you have with him?  9 <b>A. Very good.</b>  10 Q. And what was your view of his qualities  11 as a police officer?  12 <b>A. He was to my knowledge a very good</b>  13 <b>police officer.</b>  14 Q. Did you ever have any issues, conflicts  15 with him in the period you were working  16 with him?  17 <b>A. Once when I was defence counsel and he</b>  18 <b>was a witness on the other side, but that's --</b>  19 Q. I see, you cross-examined him.  20 <b>A. I cross-examined him but that was many,</b>  21 <b>many, many years ago.</b>  22 Q. By the end of this Inquiry everyone in the  23 room will have cross-examined everyone  24 else. I want to ask now about discussions  25 you had with the Attorney General about</p> <p style="text-align: center;">Page 196</p>

1 Opinion Delhi. First of all, in the first few  
 2 months of 2020, leaving aside Op Delhi,  
 3 would you have had any reason to meet with  
 4 the Attorney General and the Commissioner  
 5 of Police on other matters?  
 6 **A. Possibly, yes.**  
 7 Q. I just want to go, please, to A 1296,  
 8 paragraph 10. You say there: "I would also  
 9 like to add [this is your statement] that on a  
 10 few occasions I did discuss Operation Delhi  
 11 with the Attorney General to appraise him in  
 12 particular of the security issues that were  
 13 being uncovered during the investigation, the  
 14 various suspects under investigation and the  
 15 difficulties that were being encountered in  
 16 relation to ownership of the NSCIS platform.  
 17 Whilst it is expected that I keep the Attorney  
 18 General appraised of any matters which I  
 19 deem appropriate, it is not often that I discuss  
 20 matters with him. I recall explaining to him  
 21 in early 2020 the number of proposed  
 22 charges." You have given evidence on that.  
 23 Would it be right to say that when you  
 24 drafted this statement in 2022 your memory  
 25 was that there were other conversations about

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1 Operation Delhi aside from the one at the  
 2 beginning of April?  
 3 **A. Yes.**  
 4 Q. Would they have happened before the  
 5 beginning of April?  
 6 **A. Yes.**  
 7 Q. And would they have been about those  
 8 issues that you refer to there?  
 9 **A. They would have been what I would call**  
 10 **very light conversations, if I can call them**  
 11 **that for want of a better word. So**  
 12 **occasionally on an ad hoc basis I'd meet with**  
 13 **the Attorney General. There was no fixed**  
 14 **meeting time. He'd say: "Pop over for a**  
 15 **coffee" and we'd have a chat about maybe**  
 16 **deaths at sea or this case, but on a very light**  
 17 **need-to-know basis. He's a busy man; he**  
 18 **doesn't need to know the ins and outs.**  
 19 Q. So it might have been as part of a general  
 20 check-in.  
 21 **A. For sure.**  
 22 Q. Rather than a formal: "Let's meet and talk  
 23 about Op Delhi."  
 24 **A. Prior to April, yes.**  
 25 Q. And is it possible that one or more of

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1 those discussions may have happened on the  
 2 edge of other meetings that you had along  
 3 with the Commissioner of Police and the  
 4 Attorney General?  
 5 **A. Very possible, yes.**  
 6 Q. So when it came to early April you had  
 7 the meeting, 6 April, with the Attorney  
 8 General, that was not the first time that you  
 9 had discussed the charges and the ownership  
 10 issue. That had been mooted at least in  
 11 earlier conversations.  
 12 **A. I'm not sure the charges, because I**  
 13 **wouldn't have been aware of the charges at**  
 14 **that stage, because those were 1st April.**  
 15 Q. Yes.  
 16 **A. And the ownership issue came to light**  
 17 **pretty late on in the day. So no, I don't think**  
 18 **that's right.**  
 19 Q. I only ask because that is what you seem  
 20 to say in the statement that you gave a couple  
 21 of years ago.  
 22 **A. Do you want to ask me the question**  
 23 **again?**  
 24 Q. Look, if you do not remember, you do not  
 25 remember, so I am not asking you to say --

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1 **A. I know prior to 1 April there would have**  
 2 **been as part of my general discussions with**  
 3 **the Attorney General on cases he needed to**  
 4 **discuss with me, three or four, a handful if**  
 5 **that. A general debate about: Okay, yeah,**  
 6 **we've got this, we've got this, you need to be**  
 7 **aware of this, need to be aware of this. Very**  
 8 **light touch. He wouldn't have got involved.**  
 9 **I think the fact that he replies to my email in**  
 10 **April saying - or to Robert Fischel's email**  
 11 **saying: "I'm not cited on this" says a lot,**  
 12 **because clearly he doesn't know what's going**  
 13 **on on Operation Delhi, which is why I brief**  
 14 **him in detail I think on the 7yh.**  
 15 Q. On the 6th.  
 16 **A. On the 6th, sorry.**  
 17 Q. If we could just talk about that next,  
 18 please. Leaving aside whether the Attorney  
 19 General was cited, directly cited by you or by  
 20 somebody, by early April 2020 it will have  
 21 been well-known to everybody that Mr  
 22 Sanchez and Mr Perez had been arrested.  
 23 **A. Yes.**  
 24 Q. That had all been dealt with in May 2019,  
 25 had it not?

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<p>1 <b>A. Yes.</b>  2 Q. And, of course, Mr Sanchez was a  3 Government employee and there was all of  4 that.  5 <b>A. Yes.</b>  6 Q. It would not have been a surprise then to  7 the Attorney General when Mr Fischel  8 emailed that they were suspects in the  9 investigation.  10 <b>A. No.</b>  11 Q. No. If we can just go to that email at C  12 3313, please. Can you just explain, Mr  13 Fischel QC (then) was acting for somebody  14 who was involved in the investigation - or  15 people. Do you remember who he was  16 acting for?  17 <b>A. One or all of the former defendants.</b>  18 Q. And this email - we do not need to go  19 into it - has the subject "Cornelio, Perez and  20 Asquez." So presumably he wants to know  21 about that. This seems to be about extending  22 bail, it is about the Covid restrictions, it is  23 related to what was happening to them. Is  24 that right?  25 <b>A. From what I can see on the screen, yes.</b></p> <p style="text-align: center;">Page 201</p>	<p>1 Q. When you said to him: "This is  2 something we're going to have to discuss  3 soon because it has very serious implications  4 in terms of the people who might be dragged  5 in", who were you talking about?  6 <b>A. I think I already answered that question  7 with Santos. It was the Chief Officer of the  8 Borders and Coastguard Agency, it was the  9 Chief Minister, it was Haim Levy, it was Mr  10 Gaggero from Blands, also it involved Mr  11 Perez who was the former Commanding  12 Officer of the --</b>  13 Q. Yes.  14 <b>A. - regiment. So generally speaking it was  15 a case that involved some very important  16 people.</b>  17 Q. Sure.  18 <b>A. In some form of witnesses or suspects or  19 otherwise.</b>  20 Q. But that week is it not right that you had  21 been sent a request for advice by the RGP  22 about one person in particular?  23 <b>A. Correct. Well, no, the charging advice  24 was about everything, everybody.</b>  25 Q. It was, but --</p> <p style="text-align: center;">Page 203</p>
<p>1 Q. And if we go back up again, you can see  2 there the Attorney General says: "C" - is C  3 you?  4 <b>A. That's me.</b>  5 Q. "I'm not cited on this. Michael." If we  6 go up again: "This is something we are going  7 to have to discuss soon because it does have  8 very serious implications in terms of people  9 that might be dragged in." Just to try to get  10 into what you were saying there, presumably  11 the three people mentioned in the email  12 below, in Mr Fischel's email, Perez, Sanchez  13 and Asquez, they had already been dragged  14 in.  15 <b>A. Not Asquez. Perez, Cornelio and  16 Sanchez.</b>  17 Q. Perez, Cornelio, and who was the other  18 one?  19 <b>A. Perez, Cornelio, Sanchez.</b>  20 Q. Sorry, Perez, Cornelio Asquez is the --  21 <b>A. Oh, okay, yes.</b>  22 Q. They had already been dragged in along  23 with Sanchez - is that fair? - at that time and  24 everyone would have known that.  25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 202</p>	<p>1 <b>A. It just included Mr Levy.</b>  2 Q. Including Mr Levy.  3 <b>A. Yes.</b>  4 Q. Did you and the Attorney General meet  5 to discuss that email?  6 <b>A. Which email?</b>  7 Q. Sorry - meet to discuss that topic?  8 <b>A. I think we had a phone call. I'm not --</b>  9 Q. A phone call.  10 <b>A. I think it was a phone call to save me  11 walking over.</b>  12 Q. And in that phone call did you discuss  13 with him the people that might be dragged  14 in?  15 <b>A. Yes, I probably did.</b>  16 Q. So at that point you will have told the  17 Attorney General that Mr Levy was now a  18 suspect.  19 <b>A. Whether I mentioned he was a suspect or  20 not, I do not know. I might have mentioned  21 the people that would be dragged in, but not  22 necessarily their capacity.</b>  23 Q. Equally, you might have mentioned that  24 he was a suspect.  25 <b>A. I might have.</b></p> <p style="text-align: center;">Page 204</p>

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<p>1 Q. Did that put you in a slight quandary in 2 terms of the fact that you had been asked to 3 keep the content of what you had been sent 4 confidential to you and Mr Zamitt? 5 <b>A. No.</b> 6 Q. Why not? 7 <b>A. If I was asked not to forward the charging 8 advice I would not. The Attorney General is 9 effectively my boss. There were matters he 10 needed to be appraised of without disclosing 11 the charging advice to him. So no, it did not 12 put me in a quandary at all.</b> 13 Q. You just interpreted that as: Do not send 14 the documents but you can talk about what is 15 in the documents. 16 <b>A. I think it's up to my discretion as to who I 17 can speak to about what, I think. Don't send 18 the documents but, you know, I don't think 19 Mr Richardson is ever going to say: "You 20 can't speak to your boss." I would never say 21 to him: "Paul, this is for you. Please don't 22 speak to the Commissioner of Police about 23 this", for example.</b> 24 Q. Then the Attorney General met with Mr 25 McGrail the very next day but you do not</p> <p style="text-align: center;">Page 205</p>	<p>1 witness statement to this Inquiry, that he was 2 regularly discussing Mr Levy's status as a 3 person of interest with Mr Levy in the lead- 4 up to 12 May? 5 <b>A. He was discussing with who? Sorry?</b> 6 Q. With Mr Levy. 7 <b>A. Discussing Mr Levy's status with Mr 8 Levy?</b> 9 Q. I am sorry. I will bring up the statement, 10 but he says in his statement that he was 11 having very regular conversations -- 12 <b>A. With Mr Levy.</b> 13 Q. - with Mr Levy. 14 <b>A. About Mr Levy.</b> 15 Q. About Mr Levy's status as a suspect or as 16 a person of interest. 17 <b>A. Okay.</b> 18 Q. Presumably you did not know that until 19 this moment. 20 <b>A. I haven't been privy to any documents, 21 sorry, or very limited documents.</b> 22 THE CHAIRMAN: That was not, of course, 23 something that Mr Levy agreed with. 24 MR WAGNER: Mr Levy says that he did 25 not know he was a suspect.</p> <p style="text-align: center;">Page 207</p>
<p>1 know anything about that meeting. 2 <b>A. No.</b> 3 Q. You were not invited. 4 <b>A. I don't know if I wasn't invited or because 5 I wasn't(sic) on leave, I didn't attend. I 6 haven't found that invitation in my emails or 7 calendar.</b> 8 Q. Did the Attorney General tell you about it 9 afterwards? 10 <b>A. I don't recall. Sorry.</b> 11 Q. You have discussed twice already so I am 12 not going to ask you to reiterate it, the fact 13 that you would not have discussed anything 14 in this investigation with the Chief Minister. 15 <b>A. Not detailed stuff, no.,</b> 16 Q. Not with -- 17 <b>A. Not --</b> 18 Q. Nothing you were privy to in the 19 investigation. 20 <b>A. Not professional privileged advice.</b> 21 Q. Nothing that was not publicly known, I 22 suppose. 23 <b>A. No.</b> 24 Q. Did you come to know in that period 25 what the Chief Minister now says in his</p> <p style="text-align: center;">Page 206</p>	<p>1 THE CHAIRMAN: He said he met him, he 2 discussed it once or twice. I would not want 3 the witness to think that that was an accepted 4 fact. 5 MR WAGNER: Fair enough. There is a 6 difference in the evidence between them. 7 (To the witness) I want to ask you about the 8 ownership issue and about the discussions 9 you had with the Attorney General. When 10 you were discussing the ownership issue, I 11 just want to understand exactly what the 12 parameters of the issue were, and correct me 13 if any of this is wrong. The RGP were 14 working up to 1 April on the assumption that 15 the platform - we talk about the platform but 16 it is really the system itself, the software that 17 runs NSCIS - belonged to Blands. Is that 18 correct? 19 <b>A. That's correct.</b> 20 Q. And they had been given advice from 21 Bland, I think from Sir Peter Caruana, that 22 that was the position, and they at that point 23 had tried to ask the Government: "Well, what 24 is your position?" and the Government had 25 not yet presented a position. Is that the</p> <p style="text-align: center;">Page 208</p>

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<p>1 issue?</p> <p>2 <b>A. That sounds about right, yes.</b></p> <p>3 Q. And that impacted on a number of the</p> <p>4 charges - not all of the charges but it</p> <p>5 impacted on a number because the analysis</p> <p>6 was that if the Government owned the</p> <p>7 platform then they could give certain</p> <p>8 permissions for access that they would not be</p> <p>9 able to if Bland owned the platform.</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Something like that.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. So at the point of 1 April it was in order</p> <p>14 for the charges that were being proposed to</p> <p>15 proceed, it would have to be established that</p> <p>16 Bland owned the platform.</p> <p>17 <b>A. Many of them, yes.</b></p> <p>18 Q. Many of them, and that was the RGP's</p> <p>19 position.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. At that point. Now, is it correct also that</p> <p>22 the Government took a position that that was</p> <p>23 wrong, the factual premise was wrong, and</p> <p>24 they owned the platform?</p> <p>25 <b>A. I believe that to be the case, yes.</b></p> <p style="text-align: center;">Page 209</p>	<p>1 owned by us."</p> <p>2 <b>A. That I understand the position was the</b></p> <p>3 <b>case, yes.</b></p> <p>4 THE CHAIRMAN: You are coming up to a</p> <p>5 question, are you?</p> <p>6 MR WAGNER: I am, yes. (To the witness)</p> <p>7 Is it right that the Attorney General as the</p> <p>8 Government's legal adviser, amongst his</p> <p>9 other roles --</p> <p>10 <b>A. Amongst - well, he's the head but I</b></p> <p>11 <b>presume he delegates tasks to his counsel,</b></p> <p>12 <b>with his attorneys.</b></p> <p>13 Q. That is one of his constitutional roles.</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Did you know or consider that he would</p> <p>16 be advising the Government on the</p> <p>17 ownership issue?</p> <p>18 <b>A. I didn't know, no.</b></p> <p>19 Q. Was that never discussed between you</p> <p>20 and the Attorney General?</p> <p>21 <b>A. No. Someone was in Government offices</b></p> <p>22 <b>would have been advising on it; I think that's</b></p> <p>23 <b>logical. But I never put my mind to it that it</b></p> <p>24 <b>might be the Attorney General providing that</b></p> <p>25 <b>advice.</b></p> <p style="text-align: center;">Page 211</p>
<p>1 Q. And if you cannot help with this then do</p> <p>2 not, but is it also the case that the</p> <p>3 Government had an interest in owning the</p> <p>4 platform because if they owned it, it is a</p> <p>5 valuable asset for Gibraltar.</p> <p>6 <b>A. I can't answer that question. I know they</b></p> <p>7 <b>challenged the ownership point.</b></p> <p>8 Q. Is that a fair assumption, that for them to</p> <p>9 own the platform would be important to them</p> <p>10 for reasons other than the criminal</p> <p>11 investigation?</p> <p>12 <b>A. Not just from a commercial perspective,</b></p> <p>13 <b>because the platform that was in place that</b></p> <p>14 <b>was protecting Gibraltar's security.</b></p> <p>15 Q. Yes.</p> <p>16 <b>A. So I think it would be very important that</b></p> <p>17 <b>the Government would assert ownership over</b></p> <p>18 <b>it, I suppose.</b></p> <p>19 Q. At the point at the beginning of April you</p> <p>20 had, on the one hand, the RGP trying to - not</p> <p>21 very vigorously but effectively running on</p> <p>22 the path of owned by Bland.</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And the Government on the other side</p> <p>25 running on a separate path which is "It is</p> <p style="text-align: center;">Page 210</p>	<p>1 Q. Is it not right that if it was he that was</p> <p>2 providing that advice, there was going to be a</p> <p>3 conflict between him also advising the RGP</p> <p>4 on what to do about the ownership issue and</p> <p>5 the investigation?</p> <p>6 <b>A. I think that's a matter for the Attorney</b></p> <p>7 <b>General to reply to. I don't know what he</b></p> <p>8 <b>knew, what he didn't know. I don't know if</b></p> <p>9 <b>this had been farmed out to private counsel</b></p> <p>10 <b>for advice because it was a particularly</b></p> <p>11 <b>specialist area of law. I don't know, is the</b></p> <p>12 <b>answer to that.</b></p> <p>13 Q. So that is something that you and he</p> <p>14 never discussed.</p> <p>15 <b>A. No, not to my recollection.</b></p> <p>16 Q. Can you see now that if that was the case</p> <p>17 that would have been not just a sort of</p> <p>18 abstract conflict but an actual conflict</p> <p>19 because he would be privy to two different</p> <p>20 sides of a debate where the sides were taking</p> <p>21 different positions.</p> <p>22 <b>A. No, I don't think I necessarily agree with</b></p> <p>23 <b>that. No, because - look, the matter was</b></p> <p>24 <b>going to proceed in one way or another, with</b></p> <p>25 <b>or without 76 charges or 12 or without some</b></p> <p style="text-align: center;">Page 212</p>

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<p>1 <b>of the competing issues, charges, regardless</b>  2 <b>of the ownership. We just needed to drill the</b>  3 <b>ownership to be able to determine how we</b>  4 <b>were going to present those charges and</b>  5 <b>which charges were going to be presented.</b>  6 <b>So, you know, the criminal courts are not</b>  7 <b>there to determine those commercial</b>  8 <b>disputes. We parked that. We weren't</b>  9 <b>interested in who owned it. We haven't got a</b>  10 <b>consensus, not interested. And I think Mr</b>  11 <b>Wyan said: "Why don't we go for the</b>  12 <b>maintenance contract?" I think was my</b>  13 <b>recollection.</b>  14 Q. Later.  15 <b>A. Later on. So I don't think it necessarily</b>  16 <b>conflicted the Attorney General out of</b>  17 <b>anything at all, would have impacted, but it's</b>  18 <b>a matter for the Attorney General.</b>  19 Q. Just one more question on this.  20 <b>A. Of course.</b>  21 Q. How could the Attorney General be  22 advising the Royal Gibraltar Police on what  23 information to push the Government to get or  24 to present on the ownership issue while also  25 knowing --</p> <p style="text-align: center;">Page 213</p>	<p>1 Q. But he is not a criminal lawyer.  2 THE CHAIRMAN: You can put these  3 questions to him in due course.  4 MR WAGNER: (To the witness) Can we  5 just go to A 282, paragraph 48. This is Mr  6 Llamas's first statement, I think. He  7 received, Mr Llamas, on 12 May, two missed  8 calls from Mr Levy. "I recall I did speak to  9 him, either later that day or the following  10 day, and that, whilst being respectful, he  11 complained to me about the way he had been  12 treated by the RGP. He felt very aggrieved.  13 I listened to what he had to say and told him  14 that the DPP was handling this matter and he  15 should speak to him, which I believe he did."  16 You did not speak to Mr Levy.  17 <b>A. No.</b>  18 Q. You said earlier.  19 <b>A. No.</b>  20 <b>(15.10)</b>  21 Q. So you do not know where that has come  22 from?  23 <b>A. I have no idea and, look, I bump into Mr</b>  24 <b>Levy once or twice a month walking home</b>  25 <b>from work or walking to work but I wouldn't</b></p> <p style="text-align: center;">Page 215</p>
<p>1 THE CHAIRMAN: I do not know that the  2 DPP is the right person to -  3 MR WAGNER: All right.  4 THE CHAIRMAN: You are using him as a  5 sounding board.  6 MR WAGNER: No, okay. (To the witness)  7 Did you ever discuss or did the Attorney  8 General ever discuss with you whether he  9 was advising the Chief Minister on his  10 position vis a vis the investigation?  11 <b>A. No.</b>  12 Q. That never came up.  13 <b>A. No.</b>  14 Q. Did you not think, given the Chief  15 Minister's involvement in the factual  16 background that you needed to clear with the  17 Attorney General exactly where the lines  18 were and where the information walls might  19 have to be between what you were talking to  20 him about and what he was talking to the  21 Chief Minister about?  22 <b>A. No, the Attorney General is a very well</b>  23 <b>regarded, very well respected Silk. He would</b>  24 <b>have had his own clear ideas of where a red</b>  25 <b>line stood.</b></p> <p style="text-align: center;">Page 214</p>	<p>1 <b>have discussed the case with someone who</b>  2 <b>could potentially be investigated, so, no.</b>  3 Q. It is possible that you did speak to him  4 around that time but you would not have  5 spoken to him about this?  6 <b>A. No.</b>  7 Q. You do not remember bumping into him  8 around this time?  9 <b>A. No, I wouldn't have spoken to Mr Levy</b>  10 <b>about an ongoing case.</b>  11 Q. I asking you whether you remember  12 bumping into him around that time?  13 <b>A. I bump into --- it's Gibraltar, it is a very</b>  14 <b>small ----</b>  15 Q. No, I am asking do you remember  16 bumping into him?  17 <b>A. I may bump into him every month, three</b>  18 <b>times a month, four times a month.</b>  19 Q. I am sorry, if I am not being clear, I am  20 sorry, around this time, 12 May, and in fact it  21 would be probably quite close to 12 May, so  22 around the time that all of this explosion with  23 the search warrant had happened, did you  24 bump into Mr Levy?  25 <b>A. I suspect that if I bumped into Mr Levy</b></p> <p style="text-align: center;">Page 216</p>

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<p>1 <b>and he had given me a piece of mind about</b></p> <p>2 <b>the search warrant I would remember it, so</b></p> <p>3 <b>the answer would be no.</b></p> <p>4 Q. So, no, you do not remember it?</p> <p>5 <b>A. No.</b></p> <p>6 Q. That is all I was asking.</p> <p>7 THE CHAIRMAN: No, he is not saying he</p> <p>8 does not remember it, he says that that part</p> <p>9 did not happen. You are putting to him</p> <p>10 essentially that Mr Levy spoke to him about</p> <p>11 this case and you are trying to suggest that</p> <p>12 because they bump into each other in the</p> <p>13 street, that is the basis for a suggestion that</p> <p>14 they were speaking about this operation</p> <p>15 which the witness has firmly denied.</p> <p>16 MR WAGNER: I am sorry if I was not</p> <p>17 clear; that is what I thought he was denying</p> <p>18 as well. I did not mean to imply anything</p> <p>19 differently. (To the witness): Can we go to</p> <p>20 B1417, I just want to ask you about 1543, it</p> <p>21 is not clear and I am sure I will ask Mr</p> <p>22 Llamas exactly what this means and whether</p> <p>23 --- it says, "(Inaudible) since called DPP</p> <p>24 trying to cover his back with him." That is</p> <p>25 not something you said to the Attorney</p> <p style="text-align: center;">Page 217</p>	<p>1 MR WAGNER: (To the witness): B242</p> <p>2 please, if we can just go a little bit further</p> <p>3 down, please, this is the section of the</p> <p>4 meeting about the Hassans letter and the</p> <p>5 suggestion that you had advised against the</p> <p>6 warrants and if we go further down, further</p> <p>7 down than that, on to the next page, please,</p> <p>8 you say, "It's almost worse than that, it</p> <p>9 almost kind of possibly suggests that I've</p> <p>10 spoken to Lewis Baglietto, which I haven't."</p> <p>11 Did you know then that the Attorney General</p> <p>12 had met with Lews Baglietto the previous</p> <p>13 day?</p> <p>14 <b>A. I think so, yes.</b></p> <p>15 Q. You think you did?</p> <p>16 <b>A. I think I did, yes</b></p> <p>17 Q. And with Moshe Levy? Did you know</p> <p>18 that?</p> <p>19 <b>A. No, I didn't know that, no.</b></p> <p>20 Q. Is that not something that you could have</p> <p>21 mentioned there, because you say, "Of course</p> <p>22 I've not spoken to Lewis Baglietto," and Mr</p> <p>23 Llamas says, "It must have come from the</p> <p>24 conversation with Ian and the Chief</p> <p>25 Minister," but you knew then, assuming you</p> <p style="text-align: center;">Page 219</p>
<p>1 General?</p> <p>2 <b>A. I think I answered that this morning and</b></p> <p>3 <b>said that I don't recall that happening, no. It</b></p> <p>4 <b>doesn't mean that it didn't happen, it means</b></p> <p>5 <b>that I simply can't recall it</b></p> <p>6 Q. If the Commissioner of Police had called</p> <p>7 you "trying to cover his back" is that not</p> <p>8 something you would probably remember?</p> <p>9 <b>A. The Commissioner I spoke to relatively --</b></p> <p>10 <b>- not regularly but when we needed to record</b></p> <p>11 <b>each other we had each other's mobile and</b></p> <p>12 <b>we spoke when we needed to speak but ----</b></p> <p>13 THE CHAIRMAN: (To the witness): You</p> <p>14 are starting to mutter.</p> <p>15 <b>A. I am facing that way, I apologise.</b></p> <p>16 Q. You are talking to Mr Wagner ----</p> <p>17 <b>A. Because I am facing that way, I</b></p> <p>18 <b>apologise, Mr Chairman, I will face the</b></p> <p>19 <b>microphone, so it wasn't uncommon for me</b></p> <p>20 <b>to call Mr McGrail and for Mr McGrail to</b></p> <p>21 <b>call me. So if he had called me, there was</b></p> <p>22 <b>nothing untoward about that. If he had been</b></p> <p>23 <b>trying to cover his back, I would probably</b></p> <p>24 <b>have remembered it but it doesn't mean that</b></p> <p>25 <b>we didn't speak.</b></p> <p style="text-align: center;">Page 218</p>	<p>1 knew, that Mr Llamas himself had actually</p> <p>2 met with Mr Baglietto?</p> <p>3 <b>A. No, my concern was that I didn't want</b></p> <p>4 <b>any suggestion of impropriety on my part,</b></p> <p>5 <b>which I wanted to make it clear that I have</b></p> <p>6 <b>not spoken to Mr Baglietto, that was my</b></p> <p>7 <b>prime concern and then I think Mr Llamas</b></p> <p>8 <b>says, "It must have come from the</b></p> <p>9 <b>conversation between Ian and the Chief</b></p> <p>10 <b>Minister," which I think suggests him saying,</b></p> <p>11 <b>"Well, it wasn't me either."</b></p> <p>12 Q. Yes.</p> <p>13 <b>A. That's the way I read it anyway.</b></p> <p>14 Q. There is an absence in this meeting of any</p> <p>15 mention of the Attorney General having met</p> <p>16 with Mr Baglietto and Mr Levy.</p> <p>17 <b>A. I am not sure --- I have not been given</b></p> <p>18 <b>much time to read these transcripts but I am</b></p> <p>19 <b>not sure that is the case. My view was that it</b></p> <p>20 <b>was pretty much open that he spoke to Mr</b></p> <p>21 <b>Baglietto on the 13th or the 12th or the 14th</b></p> <p>22 <b>and had had a conversation or having an</b></p> <p>23 <b>ongoing conversation. In fact I think they</b></p> <p>24 <b>were discussing about --- or continuing to</b></p> <p>25 <b>talk to Mr Baglietto if memory serves me ---</b></p> <p style="text-align: center;">Page 220</p>

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<p>1 <b>either at this meeting or the 20th but that's my</b>  2 <b>recollection of reading the transcript last</b>  3 <b>night.</b>  4 Q. So you think it was open knowledge that  5 ----  6 <b>A. I think so, yes, but again I only got the</b>  7 <b>transcripts yesterday. I have got a good</b>  8 <b>memory but it's not that great.</b>  9 Q. Can we just go to C4775, please, this is a  10 letter that you may not have seen before but  11 it is a letter of 5 June that the Chief Minister  12 sent to the Gibraltar Police Association ---  13 sorry, Authority. However, if we can just go  14 a little bit further down, stop there, if you  15 look at the top paragraph it says,  16 "Furthermore, it's not immediately clear to  17 me how the Chief of Police can preside over  18 the efficiency and effectiveness of the RGP  19 in light of the obvious breakdown in their  20 relationship with each of the Governor, the  21 Government, the Attorney General and the  22 Director of Prosecutions, that necessarily  23 results from the content of the letter." Was it  24 your understanding on 5 June that there had  25 been a breakdown in the relationship</p> <p style="text-align: center;">Page 221</p>	<p>1 Q. As far as you were concerned at the point  2 of the nolle prosequi, the investigation had  3 been properly and professionally carried out  4 and you were happy to recommend that it  5 continued as a prosecution?  6 <b>A. That is correct. The Attorney General</b>  7 <b>had been invited on many occasions to</b>  8 <b>discontinue, all of which he refused up until -</b>  9 <b>--</b>  10 Q. Up until he did not?  11 <b>A. Up until he didn't because some</b>  12 <b>representations were brought to his attention</b>  13 <b>which made him change his view but it did</b>  14 <b>not impact upon my public interest</b>  15 <b>considerations but clearly impacted upon his</b>  16 <b>public interest considerations.</b>  17 Q. You are coming from different  18 perspectives.  19 <b>A. Yes, we have got different hats, correct.</b>  20 Q. I am sorry, there is just one point that I  21 did not raise about the transcripts, B188,  22 please, and just a bit further down, just this  23 box here, by Mr Llamas, "In my view - and it  24 is just a view - this is completely unjust,  25 unjustifiable to me that this man should be</p> <p style="text-align: center;">Page 223</p>
<p>1 between you and the Chief of Police --- the  2 Commissioner of Police?  3 <b>A. I haven't expressed that view, no.</b>  4 Q. You recommended in the end after this  5 that the case against the people who were  6 becoming the defendants would be  7 prosecuted on the basis that there was a  8 realistic prospect of convictions. Is that  9 right?  10 <b>A. That's correct.</b>  11 Q. And at the point where there was a nolle  12 prosequi entered, you were still of the view  13 that there was a realistic prospect of  14 conviction?  15 <b>A. I was.</b>  16 Q. If you had been of the view that there was  17 any impropriety in the way the investigation  18 had been progressed, would you have  19 expressed a view that there was a realistic  20 prospect of conviction?  21 <b>A. Not if it impacted on that prospect of</b>  22 <b>conviction, no, so if there had been</b>  23 <b>impropriety which would have impacted on</b>  24 <b>that, then I would have not expressed that</b>  25 <b>view.</b></p> <p style="text-align: center;">Page 222</p>	<p>1 even appearing on a formal document and I  2 will not, if it's not legitimate, I want them to  3 disappear immediately. My concern here is  4 the reputation of the jurisdiction and that  5 passes to the reputation of our Chief  6 Minister, especially in this moment of time,  7 and for that I shall fight until I die." Did that  8 statement cause you any concern?  9 <b>A. No. I mean, Mr Llamas is a very</b>  10 <b>passionate Gibraltarian, I suppose defender</b>  11 <b>of the Crown, the Government, he expressed</b>  12 <b>that view quite passionately is my</b>  13 <b>recollection but I didn't think, "Oh, goodness,</b>  14 <b>he would never prosecute a sitting Chief</b>  15 <b>Minister or would do anything untoward."</b>  16 <b>That wasn't my immediate reaction. I mean,</b>  17 <b>it wasn't something I expected him to say but</b>  18 <b>I respect that he said it.</b>  19 Q. Was there any bells that went off in your  20 head about the fact that you knew the Chief  21 Minister was factually involved, to put it  22 lightly, in the circumstances and at the same  23 time the Attorney General who was now  24 advising the police directly on the progress of  25 the investigation and he was saying that he</p> <p style="text-align: center;">Page 224</p>

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<p>1 would fight until he dies and until the death 2 to protect the reputation of the Chief 3 Minister? 4 <b>A. No alarm bells went off but what he is 5 clearly referring to, I would imagine, is 6 "Anything spurious, I'm simply not going to 7 have it." That's the implication in that 8 statement. That's my view but no alarm bells 9 went off per se. I thought it was a strange 10 thing to say but he is a very passionate 11 person, he is very passionate as I said. He 12 will have to explain what he meant by that 13 statement I suppose. I think more interesting 14 is --- I have to say this because I read it last 15 night again, is what follows on from that 16 which is almost limitation, "Look, if you 17 want to pull this case, I don't mind," and I 18 found that very strange to be perfectly frank. 19 I have been full and frank with this Inquiry 20 and I found that a very strange comment to 21 make. I think Mr McGrail said words to the 22 effect of, "I'm not going to pull it but you can 23 if you want to and I wouldn't complain," and 24 the Attorney General said, "Well, no, we're 25 nowhere near that yet," and I think later on I</b></p> <p style="text-align: center;">Page 225</p>	<p>1 McGrail had had on 12 May ---- 2 <b>A. I did not.</b> 3 Q. --- on that day? 4 <b>A. I did not.</b> 5 Q. Have you heard about it since? 6 <b>A. I have heard.</b> 7 Q. Did you ---- 8 <b>A. But I have been able to listen, I have been 9 working so ----</b> 10 Q. Yes, and I think there is a word that has 11 been used and it is for the Chairman to 12 decide whether it is an accurate word, but 13 there is a word used that the Chief Minister 14 berated Mr McGrail. 15 <b>A. I heard on the news.</b> 16 Q. In your experience of being involved in 17 criminal law in Gibraltar was that meeting a 18 bit strange? 19 <b>A. Which one?</b> 20 Q. The one where --- if the Chief Minister 21 after the warrant berated the Commissioner 22 of Police ---- 23 <b>A. I can't tell you because I wasn't there, 24 whether it was a strange meeting or not.</b> 25 Q. I am asking you if he berated the</p> <p style="text-align: center;">Page 227</p>
<p>1 <b>say, "We are nowhere near that stage. Public 2 interest lies in proceeding." That struck me 3 as very strange.</b> 4 Q. Was that not just a response to the 5 Attorney General of Gibraltar passionately 6 saying ---- 7 <b>A. Possibly, yes.</b> 8 Q. " --- I am going to defend the Chief 9 Minister to the death," and the Chief of 10 Police saying, "Well, look, if you want to 11 defend the Chief Minister to the death, you 12 have got the power, I haven't." 13 <b>A. Possibly that's why he said it but it struck 14 me as strange.</b> 15 Q. It is --- 16 <b>A. It was the context in what it was said.</b> 17 Q. Is the point that it was a reaction, it was 18 not out of the blue, it was a reaction to that 19 strange comment by the Attorney General? 20 <b>A. Yes, but it also makes you wonder who 21 knew here tapes were running and who knew 22 tapes weren't running and that is a concern to 23 me at this stage.</b> 24 Q. Did you know about the meeting that the 25 Attorney General, the Chief Minister and Mr</p> <p style="text-align: center;">Page 226</p>	<p>1 Commissioner of Police ---- 2 THE CHAIRMAN: Well, we have heard 3 from the people who were there. You are 4 using him again as a sounding board. 5 MR WAGNER: I am just going to turn my 6 back. Thank you, I am going to pass the 7 lectern over. 8 MR SANTOS: I was wondering whether we 9 might have our mid-afternoon break? 10 THE CHAIRMAN: Yes, so was I. 11 (Short adjournment) 12 CHRISTIAN ROCCA (Continued): 13 SIR PETER CARUANA: I think we will 14 finish very comfortably because a lot of 15 ground has been covered and I am not going 16 to tread it again. 17 Questioned by SIR PETER CARUANA: 18 Q. Mr Rocca, good afternoon, I am just 19 going to start to clarify something that my 20 learned friend, Mr Gibbs, may have 21 inadvertently suggested in a question he put 22 to you. He asked you when were you aware 23 that politicians had got involved. Do you 24 remember that question? 25 <b>A. I do.</b></p> <p style="text-align: center;">Page 228</p>

<p>1 Q. In the UK, are you aware that in the 2 United Kingdom the Attorney General is a 3 politician? 4 <b>A. Yes.</b> 5 Q. And a minister and a member sometimes 6 who sits in Cabinet and sometimes does not? 7 <b>A. Yes.</b> 8 Q. Is the Attorney General in Gibraltar a 9 politician? 10 <b>A. No.</b> 11 Q. Is he a member of the political 12 government? 13 <b>A. No.</b> 14 Q. Is he even a Member of Parliament? 15 <b>A. No. He used to be.</b> 16 Q. Before the last constitutional reform? 17 <b>A. That is correct.</b> 18 Q. In the good old days, I suppose ---- 19 THE CHAIRMAN: But not ex officio? 20 SIR PETER CARUANA: (To the witness): 21 It used to be ex officio ---- 22 <b>A. That's right.</b> 23 Q. --- but it is no longer even that, sir. Does 24 the holder of the post of Attorney General 25 change when governments change? In other</p> <p style="text-align: center;">Page 229</p>	<p>1 Q. And under that Act, correct me if you 2 cannot say this from memory, you are 3 responsible to the Attorney General for the 4 discharge of your duties and functions under 5 this Act? 6 <b>A. That is correct.</b> 7 Q. That has been referred to. It has been 8 referred to as accountable, as a matter of 9 accountable, responsible the same thing, but 10 your duties and functions are not bestowed 11 on you by the Act. Am I correct? 12 <b>A. I would have to refresh my mind.</b> 13 Q. Do you agree with me that under the Act, 14 section 5, your duties are to carry out such 15 functions and exercise such powers as may 16 be bestowed upon you by the Attorney 17 General under section 59(3) of the 18 Constitution? 19 <b>A. Yes.</b> 20 Q. And under that same section you shall not 21 exercise any powers bestowed on you 22 pursuant --- by the Attorney General where 23 the Attorney General is exercising them 24 himself and --- yes, the Attorney General is 25 exercising them himself and --- normally the</p> <p style="text-align: center;">Page 231</p>
<p>1 words, is this a political appointment? 2 <b>A. No, I think he has been there for a while.</b> 3 Q. Are you aware of whether he is appointed 4 under the Constitution by the Governor 5 acting on the advice of the specified 6 appointments commission? 7 <b>A. That sounds right to my recollection, yes</b> 8 Q. So you would presumably agree with me 9 that whatever the Attorney General may have 10 done or not have done, good, bad or 11 indifferent, it is not a politician involvement? 12 <b>A. Not in terms of the Attorney General, no.</b> 13 Q. This may be --- and I do not know if the 14 Inquiry would find this helpful or not, if it 15 does not the Chairman will tell me swiftly, I 16 would like to spend two or three minutes 17 with you exploring because I have been left 18 with the impression that there is some sense 19 amongst some of your questioners that there 20 is somehow different responsibilities and 21 functions in relation to the office of the DPP 22 and the office of Attorney General. Your 23 appointment was under the Director of Public 24 Prosecutions Act. Do you agree? 25 <b>A. That's correct, yes.</b></p> <p style="text-align: center;">Page 230</p>	<p>1 Attorney General instructs you, never mind, 2 but the point that I am making is do you 3 agree with me that this Act simply creates 4 your office? 5 <b>A. Uhum.</b> 6 Q. And envisages that the Attorney General 7 will, in your favour, exercise his powers 8 under the Constitution, section 59, to 9 delegate some of his powers to you? 10 <b>A. Which in fact he does by an instrument of</b> 11 <b>delegation.</b> 12 Q. That is correct. 13 THE CHAIRMAN: (To the witness): By 14 what of delegation? 15 <b>A. An instrument of delegation.</b> 16 SIR PETER CARUANA: (To the witness): 17 But that the powers, anything that he 18 delegates to you, remain his powers as well; 19 in other words, he cannot abrogate his 20 Constitutional powers, delegating them to 21 you means that you can exercise them for 22 him but they do not cease to be his powers. 23 Do you agree? 24 <b>A. I would agree with that.</b> 25 Q. So that you cannot have any power or</p> <p style="text-align: center;">Page 232</p>

<p>1 function that is not also held by the Attorney 2 General whose delegate you are? 3 <b>A. I would agree with that.</b> 4 Q. Indeed that in a recent criminal case, the 5 Crown Court judge has had occasion to say 6 precisely that. Are you aware of that? 7 <b>A. That is correct.</b> 8 Q. The judge said, "In my view, 9 Constitutionally ...." I am going to ask you 10 whether you have a recollection of this, "In 11 my view, constitutionally, all powers vest in 12 the Attorney General, the DPP is not a 13 creature of the Constitution. Whilst primary 14 legislation may delegate ..." in fact it does 15 not, it envisages that the Attorney General 16 will delegate, "... powers to the DPP. 17 Constitutionally, those powers remain with 18 the Attorney General. We do not have 19 Parliamentary supremacy. We have a 20 constitutional supremacy and any powers 21 vested in the DPP by virtue of the Director of 22 Public Prosecutions Act remain vested in the 23 Attorney General." You are familiar with 24 that? 25 <b>A. I am.</b></p> <p style="text-align: center;">Page 233</p>	<p>1 <b>A. Not in law, no, but in practice --- for</b> 2 <b>example, in this case I did not send the</b> 3 <b>charging advice because I didn't think it was</b> 4 <b>relevant to.</b> 5 Q. No, but you are statutorily accountable to 6 him and he has all the powers. You are 7 simply his delegate. He has delegated them 8 to you, so in law --- I mean, you may 9 withhold this and he may not complain, that 10 is another matter but in law there is no basis 11 for you to withhold information from the 12 person to whom you are statutorily 13 accountable? Is that correct? 14 <b>A. That would seem to make sense, given</b> 15 <b>the provisions you have read.</b> 16 Q. You have also been asked by my learned 17 friend, Mr Wagner, about your views about 18 the contacts between the Attorney General 19 and Mr Baglietto, you are the only witness 20 who has been asked this, and the extent to 21 which you were aware of them or that there 22 was generally awareness --- may I ask you --- 23 and I think you said that from your quick 24 reading of the transcripts you thought that 25 this is out in the open, those contacts. Do</p> <p style="text-align: center;">Page 235</p>
<p>1 Q. Then later and finally, the learned judge 2 said, "It seems to me a basic premise of 3 public law that delegation of powers does not 4 equate to an abrogation of those powers and 5 that notwithstanding the delegation, the 6 Attorney General continues to be seized of 7 these powers." 8 <b>A. Yes.</b> 9 Q. So do you agree with me that this idea 10 that there are some things that it is proper for 11 you to do and improper for the Attorney 12 General to do is a legal nonsense? 13 <b>A. It is a practical division more than</b> 14 <b>anything else because I have more criminal</b> 15 <b>knowledge and experience than he does.</b> 16 Q. Yes, but in law there is nothing that you 17 can properly do that the Attorney General 18 cannot also properly do? 19 <b>A. That is correct.</b> 20 Q. So when you get asked about withholding 21 information from the Attorney General, on 22 reflection can you lawfully withhold 23 information from the Attorney General 24 simply because the Royal Gibraltar Police 25 may invite you or ask you to do so?</p> <p style="text-align: center;">Page 234</p>	<p>1 you remember saying words to that effect? 2 <b>A. I recall, yes.</b> 3 Q. I suspect that your reading of the 4 transcripts has been more thorough than you 5 are letting on but can I --- can you put B264 6 up on the screen, please. Let me get my own 7 copy of that which is marked and I can take 8 you straight to the place. If you scroll to the 9 bottom ---- 10 MR WAGNER: I do not know if this will 11 short-circuit this line of questioning but I was 12 asking about the 13th not the 15th. I do not 13 have any --- it is quite clear on the 15th that it 14 was being discussed. 15 SIR PETER CARUANA: And on the 20th. 16 MR WAGNER: I have only ever been 17 asking about the 13th. 18 SIR PETER CARUANA: I see. If it is my 19 learned friend's position that the Attorney 20 General was not only declaring his contacts 21 in respect of the 15th and the 17th but in actual 22 fact asking for permission to do so, clearance 23 to do so, "Is it okay," if that is his position, I 24 will not take up the Inquiry's time in taking 25 to it but that is clearly the case and if it helps,</p> <p style="text-align: center;">Page 236</p>

<p>1 for the record, I can just give three short 2 references without taking the Inquiry to 3 them, just so that they are clear in Hansard! 4 Not on Hansard. Gosh, that is going back a 5 very long time. Sorry, I will scratch that. It 6 is B264, page 29 of 33, B265, B312 and then 7 in respect of the 20th, B131 --- no, scratch 8 that, there are a few examples. It is a long 9 list but those are the --- just for the record of 10 what I have alluded to as complete 11 transparency, not just transparency by the 12 Attorney General about his contacts with Mr 13 Baglietto but actually obtaining the 14 consensus that that is --- that he should be 15 doing so. If my learned friend is limiting his 16 criticism just to the 13th meeting, that is 17 another matter and I will deal with that in 18 closing, so thank you for that, it saves us a bit 19 of time. (To the witness): Now, turning to -- 20 - can we turn up page A275 please, Mr Triay. 21 This is Mr Llamas' witness statement at 22 paragraph 20 to 21 and I am only going to 23 make a very brief reference to them because 24 Mr Santos took you to it. I am going to ask 25 you to read the first sentence of each of</p> <p style="text-align: center;">Page 237</p>	<p>1 <b>about the advice with the chief Secretary and</b> 2 <b>the financial secretary ----</b> 3 Q. No, only the first sentence. I am talking 4 about the first sentence, as far as you were 5 aware would you agree that the Attorney 6 General had no involvement in the criminal 7 investigation? 8 <b>A. As I have already described, Sir Peter, it</b> 9 <b>was very, very light contact with him if</b> 10 <b>anything at all and it wasn't till April that I</b> 11 <b>briefed him properly and fully, I think.</b> 12 Q. In the context of that evidence that you 13 gave, prior to the meeting on the --- prior to 14 April 2020, had you discussed together with 15 the Commissioner of Police and the Attorney 16 General, that is the three of you together, 17 specifically the issues of the importance of 18 the ownership issue to the investigation or 19 anything to do with nolle prosequi, before the 20 first meeting that you all attended together on 21 13 May? 22 (14.50) 23 <b>A. Not that I recall, no.</b> 24 Q. Whether it be at a Delhi specific or at 25 non-Delhi specific, in the margins of some</p> <p style="text-align: center;">Page 239</p>
<p>1 paragraphs 20 and 21. In paragraph 20 he 2 says, "I myself had no further involvement 3 with the criminal investigation until about 4 eleven months later even though I was aware 5 that the investigation was continuing." Then 6 he gives instances of what he was, 7 nevertheless, aware of during that period, so 8 this is a period between the May '19 briefing 9 to the Chief Minister and you and everybody 10 else by Mr McGrail and April 2020. Then 11 the first sentence in paragraph 21, "It was not 12 until early April 2020 that the criminal 13 investigation was brought to my attention 14 again. On this occasion it was a direct result 15 of a call I received from the Director of 16 Public Prosecutions who wished to discuss," 17 and then in the next paragraph there is a list 18 of the things that the Attorney General says 19 you discussed with him and it is not 20 necessary to take you to them. Do you agree 21 with the evidence of the learned Attorney 22 General in relation to those two sentences 23 that I have read from paragraph 20 and 21 24 insofar as you are aware of course? 25 <b>A. Paragraph 20, I do not know the details</b></p> <p style="text-align: center;">Page 238</p>	<p>1 other meeting on some other subject? 2 <b>A. It could have been discussed in the</b> 3 <b>margins of a meeting, but it's not my</b> 4 <b>recollection that we did so.</b> 5 Q. The nolle prosequi and the ownership 6 issue? 7 <b>A. The nolle prosequi would not have been</b> 8 <b>discussed anywhere near that time.</b> 9 Q. Would not have been discussed anywhere 10 near that time? 11 <b>A. No.</b> 12 THE CHAIRMAN: I do not think the 13 question of nolle prosequi arises at all, does 14 it, until charges are being laid? 15 <b>A. That's right.</b> 16 SIR PETER CARUANA: I agree, sir, but it 17 is mentioned in the email to self as having 18 been discussed. 19 THE CHAIRMAN: It is always open to the 20 Attorney General or the DPP to pull the plug 21 in some other way but not, I think, by issuing 22 a nolle prosequi. 23 SIR PETER CARUANA: No, sir. I 24 understand. The purpose of that question 25 relates to 12 May email to self where Mr</p> <p style="text-align: center;">Page 240</p>

<p>1 McGrail suggests that this had been 2 discussed already by 12 May. That is the 3 purpose of the question. 4 THE WITNESS: If I can assist in that, we 5 had by that time received representations not 6 to charge, but that is an entirely different 7 matter. 8 THE CHAIRMAN: Yes, exactly. That is a 9 different process. 10 <b>A. Process, yes.</b> 11 SIR PETER CARUANA: Yes, could we 12 turn up B74 very briefly? It is down at the 13 very bottom of that email, the first page. Do 14 you see there, "At a meeting in the office of 15 the AG" - if you could just read that 16 paragraph to yourself and then I am going to 17 ask you to focus on the two lines from the 18 bottom: "The AG asked both me and DPP 19 whether he could enter a nolle prosequi." 20 <b>A. What date is this?</b> 21 Q. 12 May, he says. 22 MR WAGNER: In the past. 23 SIR PETER CARUANA: Yes, before the 24 12th. Yes, before the 12th, "as having 25 happened before 12 May", he says.</p> <p style="text-align: center;">Page 241</p>	<p>1 Q. Yes, well can we turn to B1355 very 2 briefly. 3 <b>A. it is strange, because even though I was 4 on leave, I would probably attend the 5 meeting.</b> 6 Q. Yes. Can we stop there. You see, there 7 is a meeting on 7 April between the Attorney 8 General and the Commissioner of Police but 9 it relates to Operation Kram. This is the 10 timeline of the police's own actions. 11 <b>A. Yes.</b> 12 Q. Do you agree that there was a meeting 13 out of Operation Kram so that if there was a 14 discussion, does it look to you that it might 15 have been in the margins of a non-Delhi 16 specific meeting, to borrow my learned 17 friend's phraseology? 18 <b>A. All I can say is that around the same time, 19 Operation Kram was also happening.</b> 20 Q. Yes, so if there was an Operation Kram 21 meeting and the Attorney General took that 22 opportunity to raise issues with Mr McGrail, 23 it was not rushing off to call a meeting with 24 the Commissioner of Police about what you 25 had told him? Would that follow?</p> <p style="text-align: center;">Page 243</p>
<p>1 <b>A. Of 2020?</b> 2 Q. Yes. 3 <b>A. No, that's not my recollection. Mr 4 Rocco, did the Attorney General ever show 5 any reluctance to prosecute Mr Caine 6 Sanchez?</b> 7 <b>A. No.</b> 8 Q. Or any other person? 9 <b>A. No. In fact, he was very disappointed 10 about Caine Sanchez and felt very - it was 11 important to him that he actually be 12 prosecuted, actually, Caine Sanchez, because 13 he felt very strongly about civil servants 14 allegedly misconducting themselves.</b> 15 Q. Yes. Unless I have misunderstood him, 16 my learned friend Mr Gibbs either suggested 17 or somehow implied to you that following his 18 call from you on the 6th, the Attorney 19 General had convened a meeting on 7 April 20 with the Commissioner of Police and you 21 expressed some surprise that that should have 22 happened. 23 <b>A. There was a meeting. I wasn't aware of 24 it. I was probably invited. I was on leave, so 25 -</b></p> <p style="text-align: center;">Page 242</p>	<p>1 <b>A. I can't answer that question.</b> 2 Q. No, I'm sorry, you're right. I beg your 3 pardon. If we could turn A88, equally 4 briefly, paragraph 106 of Mr McGrail's own 5 affidavit, third witness statement, "On 7 6 April I again met with the Attorney General 7 at his office at my request in order to discuss 8 the collision at sea." Do you agree that that 9 is just ratification of what it says in the 10 timeline I have just shown you? 11 <b>A. (no reply)</b> 12 Q. So, moving on, you said, in answer to my 13 learned friend, that by the time of your 14 meeting of 8 April with the Commissioner of 15 Police, you had already, I think you said, 16 "fully briefed the Attorney General"? 17 <b>A. I didn't meet with the Commissioner of 18 Police on 8 April.</b> 19 THE CHAIRMAN: I am sorry, you are 20 dropping your voice again. 21 <b>A. I didn't meet with the Commissioner of 22 Police on 8 April.</b> 23 SIR PETER CARUANA: On the 8th, no. 24 You had a meeting on 8 April with the 25 police?</p> <p style="text-align: center;">Page 244</p>

<p>1 <b>A. With Mr Richardson and Mr Wyan.</b>  2 Q. And I think it was in the context of that  3 meeting that you had said that by then you  4 had already fully briefed the Attorney  5 General.  6 <b>A. That's right.</b>  7 Q. I think this is what you said, but can you  8 just clarify for the record that that would  9 have been during your phone call on the 6th?  10 <b>A. Correct.</b>  11 Q. And what was the purpose of your  12 briefing the Attorney General on the 6th?  13 <b>A. I thought he needed to know what was</b>  14 <b>happening in relation to Operation Delhi.</b>  15 <b>There was another case that I thought needed</b>  16 <b>to be brought to his attention.</b>  17 Q. Yes. Had any public interest reason  18 arisen at that stage?  19 <b>A. I discussed the public interest with him</b>  20 <b>but nothing that was of any concern, no.</b>  21 Q. Right.  22 SIR PETER CARUANA: Sir, if you will  23 give me just 30 seconds, I might be able to  24 skip most of the next section and save a huge  25 amount of time. I think I can. (Pause) Are</p> <p style="text-align: center;">Page 245</p>	<p>1 <b>A. I don't recall that actually it was the</b>  2 <b>Attorney General.</b>  3 Q. And then at B129 at the top, also you  4 yourself say, "We are going to get to a stage  5 where we're going to go through pain, pain,  6 and actually here there isn't enough even to  7 start with James Levy. It could be possibly  8 ..." - do you see that?  9 <b>A. Yes.</b>  10 Q. Sorry, I am translating on the hoof -  11 <b>A. Yes.</b>  12 Q. I hope accurately enough.  13 <b>A. Yes, I recall that.</b>  14 THE CHAIRMAN: There is a translation.  15 SIR PETER CARUANA: Yes. Sir,  16 unfortunately we have worked and all our  17 references are with these.  18 THE CHAIRMAN: Yes, but for equally  19 obvious reasons I work from the other  20 version.  21 SIR PETER CARUANA: Yes, I agree. I  22 agree. Well, there are enough bilingual  23 people here to have stood up already if my  24 translation was not accurate. So, that was the  25 reason for the meeting, then. You agree with</p> <p style="text-align: center;">Page 247</p>
<p>1 we clear, or would you like me to take you to  2 a couple of references to refresh your  3 memory in the transcripts, but are you clear  4 in your mind that the purpose of this meeting  5 - that the principal reasons were called -  6 well, let us put B188 so that I do not put  7 words in your mouth.  8 <b>A. I've read the transcripts. I'm perfectly</b>  9 <b>happy for you to ask me general questions.</b>  10 Q. Yes. At B118 at the top of the page, I  11 think - yes, at the very top of the page -  12 Mr Llamas says that he thinks that, "we are  13 here in, we are meeting with you because you  14 have rightly sought our legal advice  15 anticipating what most certainly is going to  16 come." Is that a fair and accurate statement  17 by the Attorney General of the reasons why  18 you were there?  19 <b>A. Which meeting is this?</b>  20 Q. This is the meeting of the 13th.  21 <b>A. Well, I think that was stimulated by the</b>  22 <b>letter from Lewis Baglietto on the 13th -</b>  23 Q. Correct.  24 Q. - challenging the warrant.  25 <b>A. Correct.</b></p> <p style="text-align: center;">Page 246</p>	<p>1 that, do you?  2 <b>A. Yes.</b>  3 Q. And do you agree that these were  4 amicable and collaborative meetings? I think  5 you have spoken about four or five senior  6 law enforcement officers looking for a  7 common way forward?  8 <b>A. That's my recollection, Mr Caruana.</b>  9 Q. And were there a number of objectives -  10 can I suggest four to you one at a time so that  11 my question should not be too long and you  12 can tell me whether it is or it is not. Was one  13 of the objectives to deal with the legal  14 challenges from Hassans in relation to the  15 search warrant and devices?  16 <b>A. Yes, that was one of the primary reasons.</b>  17 <b>That was the driver.</b>  18 Q. And was another - we are now talking  19 about all three meetings; I am not speaking to  20 one of them - on both meetings - to advance  21 and secure the prosecution case against those  22 defendants in respect of whom the DPP  23 thought that there was sufficient evidence?  24 In other words, "to try and get what helpful  25 information we could out of Mr Levy"?</p> <p style="text-align: center;">Page 248</p>

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<p>1 <b>A. That's fair.</b>  2 Q. Is that one of the things that was mooted  3 as a possible objective?  4 <b>A. It was discussed. I don't know whether it</b>  5 <b>was an objective but it was discussed at the</b>  6 <b>meeting, yes.</b>  7 Q. Enabling the RGP - whilst leaving,  8 rather, the RGP free later to pursue Mr Levy  9 in whatever form or status or manner they  10 chose to in the exercise of their operation and  11 independence?  12 <b>A. Yes.</b>  13 Q. In other words, without curtailing that  14 right?  15 <b>A. That was my impression of the meetings,</b>  16 <b>yes. There was another purpose to the</b>  17 <b>meeting -</b>  18 Q. Yes?  19 <b>A. - which was to challenge the misfeasance</b>  20 <b>allegations against Mr Richardson that were</b>  21 <b>quite serious and I think everybody took</b>  22 <b>issue with.</b>  23 Q. That was the fourth objective, all of  24 which we are trying --  25 <b>A. Oh -</b></p> <p style="text-align: center;">Page 249</p>	<p>1 <b>A. Yes, I think legally I'd stand by that as</b>  2 <b>well because if there's an allegation of</b>  3 <b>unlawful seizure of devices, it was right and</b>  4 <b>proper to give the party every possible and</b>  5 <b>reasonable opportunity to make that</b>  6 <b>challenge in a court of law. It would have</b>  7 <b>been absolutely wrong of us to say, "It</b>  8 <b>doesn't matter. Go and open them", so</b>  9 <b>absolutely right. I back that -</b>  10 Q. And in fact, in terms, given his - maybe  11 we all are saying this; I suppose he would say  12 to him himself - his relative lack of practice  13 in criminal law matters, would it be fair to  14 say that the Attorney General was just  15 absorbing other people's suggestions and  16 agreeing with them that they serve the  17 collective purpose? Did he make any  18 suggestions himself as to possible ways  19 forward?  20 <b>A. From my reading of the transcript I can't</b>  21 <b>recall that he makes any positive suggestions</b>  22 <b>himself but I'd have to read them again.</b>  23 Q. Yes. Well, one of the reasons why I am  24 not taking you through the transcript is  25 because we have already seen quite a lot of</p> <p style="text-align: center;">Page 251</p>
<p>1 Q. No, no. Thank you for reminding me. I  2 had left it out of my list. That was the other  3 fourth objective, which was simultaneously  4 sought to be achieved, seeing off this  5 challenge to Mr Richardson on the basis of  6 misfeasance whether in tort or in crime or  7 whatever. And I think you have candidly  8 said that different people were making  9 different suggestions?  10 <b>A. Yes.</b>  11 Q. And you have reminded us that some of  12 the suggestions came from the police itself,  13 specifically Mr Richardson, the bit about  14 interviewing him not under caution, or  15 inviting him to make a statement not under  16 caution?  17 <b>A. On the Monday, yes.</b>  18 Q. And would you agree that you yourself  19 made a suggestion, which also found favour  20 and emerged as part of the agreement, which  21 was this seven-day moratorium, in other  22 words call their bluff, put their money where  23 their mouth is, give them seven days to  24 launch a legal challenge. "We promise not to  25 touch the phones for seven days"?</p> <p style="text-align: center;">Page 250</p>	<p>1 them.  2 <b>A. Of course.</b>  3 Q. And the Chairman has already said that  4 he is going to read them and listen to them  5 for himself so he will not need our  6 interpretation.  7 <b>A. It's just that I got them yesterday, midday,</b>  8 <b>so I haven't had an opportunity to go through</b>  9 <b>them carefully.</b>  10 Q. Of course, no. So, okay. Well, I think on  11 that basis we can skip the rest of the journey  12 through the transcripts and move on.  13 <b>A. There is language in those transcripts that</b>  14 <b>shouldn't be used in meetings, but they are</b>  15 <b>what they are. They were in confidence</b>  16 <b>meetings. They're not language you would</b>  17 <b>put into an email.</b>  18 Q. Yes.  19 <b>A. "Short and curlies", and things of that</b>  20 <b>nature, and other Spanish translations.</b>  21 Q. Yes.  22 <b>A. But that's what happens in meetings in</b>  23 <b>Gibraltar, I suppose and elsewhere.</b>  24 Q. Yes, I often accuse people and I wonder,  25 a lot of people that use that phrase means we</p> <p style="text-align: center;">Page 252</p>

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<p>1 understand what it alludes to, but still, never 2 mind. 3 <b>A. Unfortunately, they do, sir.</b> 4 Q. Okay, so this was a conversation which - 5 can I ask you to reconsider your view. Do 6 you agree that your role in that perfectly 7 proper exchange which you now describe 8 and you have described that there has to be 9 objectives, etc., that really you all played a 10 role. You did, the police, you all played a 11 role in that exercise of these discussions. 12 <b>A. Yes, we all did, yes.</b> 13 Q. Yourself, the Commissioner of Police. I 14 think you have said that already. 15 <b>A. Yes.</b> 16 Q. Were you improperly interfering in the 17 investigation, did you think? 18 <b>A. No, I just thought we were exploring all</b> 19 <b>the options that were available to the police</b> 20 <b>force.</b> 21 Q. Yes. Were you batting for Mr Levy? 22 <b>A. I don't bat for anybody, Mr Caruana.</b> 23 Q. No. Were you seeking to protect Mr 24 Levy? 25 <b>A. Not at all. I actually found that he should</b></p> <p style="text-align: center;">Page 253</p>	<p>1 <b>A. I wouldn't have taken issue with it, and I</b> 2 <b>am sure the Attorney General would not have</b> 3 <b>either.</b> 4 Q. I will not go over the mouthpiece stuff 5 again and the code[?] because you have dealt 6 with that already. Now, I would just like to 7 quite briefly touch with you on the nolle 8 issue and it is important that we do not lose 9 sight of the fact that the learned Attorney has 10 already explained publicly at the time that he 11 did it and more privately to this inquiry that 12 he is unable and unwilling to state his 13 reasons for giving the nolle. 14 <b>A. Yes.</b> 15 Q. So, we do not want to fall foul of that. 16 Are you able to say whether the decision by 17 the Attorney to enter the nolle, eventually, 18 was triggered by a message that reached him 19 from your office? 20 <b>A. That is correct.</b> 21 Q. And it was your office, and I am not 22 going to mention the name of the persons in 23 your office, but by all means you do if you 24 please, it was information that was conveyed 25 to him by your office -</p> <p style="text-align: center;">Page 255</p>
<p>1 <b>be treated as a suspect.</b> 2 Q. Were you seeking to interfere in the RGP 3 investigation to derail it? 4 <b>A. No, and I think Mr Richardson - I didn't</b> 5 <b>hear Mr Richardson's evidence - will tell you</b> 6 <b>that I backed the prosecution all the way as</b> 7 <b>much as I could.</b> 8 Q. Were you cajoling or pressurising the 9 police? 10 <b>A. No.</b> 11 Q. And therefore was the Attorney -- 12 <b>A. Not at those meetings that I was present,</b> 13 <b>no.</b> 14 Q. Did the RGP freely participate in the 15 conversation? 16 <b>A. Well, the transcripts speak for</b> 17 <b>themselves.</b> 18 Q. Did they freely agree to what emerged by 19 way of a consensus? 20 <b>A. They could have perfectly left those</b> 21 <b>meetings and done whatever they'd wanted to</b> 22 <b>and neither I nor the Attorney General would</b> 23 <b>have had any power to stop that happening.</b> 24 Q. Yes, so they freely agreed and could have 25 said "No, we're going to do what we please"?</p> <p style="text-align: center;">Page 254</p>	<p>1 THE CHAIRMAN: You need to be very 2 careful here. 3 SIR PETER CARUANA: I am, sir. For any 4 particular reason I am happy to live with 5 whatever your (inaudible). 6 THE CHAIRMAN: Yes. I think you might 7 be opening up all sorts of areas. 8 SIR PETER CARUANA: All right. (To the 9 witness) Let me just ask you this then. My 10 learned friend said he spoke to you about 11 different perceptions of public interest. I 12 think I have this quote (inaudible) by me. Is 13 this different perceptions about the same 14 public interest that concerns Mr Wagner or 15 are they perceptions about a different public 16 interest than the ones that this inquiry is 17 concerned about? 18 <b>A. I am not sure I understand the question</b> 19 <b>sir.</b> 20 THE CHAIRMAN: No, well I am not 21 surprised. 22 SIR PETER CARUANA: Okay. 23 THE CHAIRMAN: Because, 24 understandably, you have asked it in very 25 cryptic terms.</p> <p style="text-align: center;">Page 256</p>



<p>1 SIR PETER CARUANA: I can ask it more 2 clearly, sir. I will have one more go if you 3 will permit me. 4 THE CHAIRMAN: Yes. 5 SIR PETER CARUANA: Briefly. 6 MR GIBBS: I rise to suggest that after the 7 question has been asked, there be a pause 8 because I am conscious that the questioner 9 represents the Attorney and might be thought 10 to be speaking on his behalf in asking the 11 question, and that the Attorney has yet to 12 give evidence and to make his own decision 13 about to what extent he answers questions 14 about this. 15 THE CHAIRMAN: Yes. 16 SIR PETER CARUANA: Mr Rocca, did the 17 issue to which you have alluded was 18 conveyed by your office to the Attorney - 19 was it related to the issues being investigated 20 by this inquiry as you know them to be? 21 <b>A. No.</b> 22 Q. So, the public interest in question was not 23 whether there was a public interest in 24 prosecuting any of the people that were then 25 being prosecuted?</p> <p style="text-align: center;">Page 257</p>	<p>1 Q. Is that correct? 2 <b>A. That is correct.</b> 3 Q. Can I just ask you to look very briefly at 4 D2905? Now, this is a note by Sergeant 5 Clarke. Now, Sergeant Clarke has given 6 already his evidence and he has interpreted 7 what he thinks is the proper interpretation of 8 that paragraph at the bottom and that is not 9 what I am interested in. I am only interested 10 in suggesting that in seeing whether this 11 triggers your memory, so this note is 12 necessarily before the application was made. 13 THE CHAIRMAN: I think you have already 14 identified it to him. 15 SIR PETER CARUANA: Yes. 16 THE CHAIRMAN: Just take us to the note. 17 SIR PETER CARUANA: Yes. Can you go 18 to the top? "The V Warrant notes" he 19 describes them as, Mr Clarke. These are 20 notes made by Mr Clarke - yes, to prepare 21 for the information and the oral hearing. 22 <b>A. Okay.</b> 23 Q. Now, Mr Clarke has given us an 24 explanation which for my part I am not 25 challenging about that being a two-step note.</p> <p style="text-align: center;">Page 259</p>
<p>1 <b>A. No, and in fact those representations had 2 been made before -</b> 3 THE CHAIRMAN: Well, hang on - I think 4 it is just better if you do not go any further 5 than answering the very precisely crafted 6 question. 7 SIR PETER CARUANA: Okay, thank you 8 sir. I can leave it. That is the answer that I 9 wanted, sir. Now, in your evidence, you 10 said, and I think this is my understanding of 11 your evidence - I think that what you told my 12 learned friend Mr Gibbs was that you could 13 not recall whether your conveyance to the 14 RGP of what your preference would have 15 been or what you would have done about the 16 search warrant was before or after the 17 application. In other words, we all know you 18 subsequently expressed a view. 19 <b>A. Yes.</b> 20 Q. And I understood your evidence - correct 21 me if I am wrong - that the issue that you 22 had with my learned friend Mr Gibbs was 23 that you could not remember the timing of 24 the first expression on that - 25 <b>A. That's correct.</b></p> <p style="text-align: center;">Page 258</p>	<p>1 Can we go back to the very last paragraph? 2 "If DPP, COP and the Detective 3 Superintendent consulted with the 4 recommended course of action" - now, I 5 think it was the purport of Sergeant Clark's 6 evidence that the full stop there is the 7 delimitation of what you were consulted 8 about. Now, if you were consulted about a 9 course of action on this date, is it likely that 10 you were consulted about the course of 11 action without the word "search warrant" 12 having been mentioned? 13 <b>A. Again, I'm not sure, sir -</b> 14 Q. No. I am just asking whether this assists 15 you. If it does not, say so and I will move on 16 - whether this assists you given that you 17 know that this was before the warrant. 18 <b>A. What course of action, the warrant?</b> 19 Q. Well - 20 <b>A. Because I wouldn't have consulted with 21 the Commissioner of Police about the 22 warrant or the Commissioner would not have 23 consulted me about the warrant. He 24 [wouldn't?] have been involved at that level.</b> 25 Q. No, no you weren't, but Sergeant Clarke</p> <p style="text-align: center;">Page 260</p>

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<p>1 and Superintendent Richardson -  2 THE CHAIRMAN: I think even Mr Clarke  3 said that that note does not actually mean  4 what it seems to say.  5 SIR PETER CARUANA: I have conceded  6 that in his favour already, sir.  7 THE CHAIRMAN: Yes.  8 SIR PETER CARUANA: I am just inviting  9 the Attorney - whether it helps him -  10 pinpoint or not whether he would have  11 known about this before the application of a  12 warrant given these words and the answer  13 may be, "No, they had no such effect on me."  14 <b>A. No.</b>  15 THE CHAIRMAN: Yes. What he said was  16 -  17 SIR PETER CARUANA: That is a -  18 THE CHAIRMAN: He explained in his  19 evidence that he only meant that the DPP had  20 approved treating Mr Levy as a suspect -  21 SIR PETER CARUANA: Correct.  22 THE CHAIRMAN: -- not that the DPP had  23 approved the search warrant.  24 SIR PETER CARUANA: No, no. Not that  25 he had approved the search warrant. I am</p> <p style="text-align: center;">Page 261</p>	<p>1 any involvement in that decision-making  2 process?  3 <b>A. Not to my knowledge, no.</b>  4 Q. Did the Chief Minister have any  5 involvement in that decision by the RGP?  6 <b>A. Not to my knowledge, no.</b>  7 Q. Was it a decision of the RGP, or did you  8 have any involvement? I think you said you  9 did not.  10 <b>A. No, we gave a charging advice and the  11 police did what followed from that charging  12 advice which was to not charge, not do  13 anything further with the device in relation to  14 Mr Levy and, as I said, there were some parts  15 of the charging advice they did not follow  16 our advice and disagreed with it, which is  17 also equally fine. We had a discussion about  18 that and we agreed a course of action.</b>  19 Q. Thank you. And finally could I take you  20 to page B7379? I am not interested in that  21 page, just so that you see what the document  22 is. Sorry, that is D7379. That is it. You see  23 what it is. That is your email to Mr Wyan  24 and Mr Richardson.  25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 263</p>
<p>1 just saying whether the search warrant was  2 even mentioned at this meeting.  3 <b>A. Not to my recollection. I did not have a  4 meeting with Mr Clarke about the search  5 warrant or the draft of the application. The  6 only reason I say I may have discussed with  7 Mr Richardson was because I read in one of  8 the transcripts last night I said, I think, words  9 to the effect of, "Paul, as you know", or, "as  10 I've explained to you already, I would have  11 done it differently", which was to suggest  12 that Mr Richardson and I, at some stage  13 before that conversation, had a conversation.</b>  14 Q. Yes.  15 <b>A. Whether that was 6 March, the morning  16 of 13 May before the meeting, I can't tell you  17 but it would suggest we had a conversation  18 about it prior to that meeting or at that  19 meeting.</b>  20 Q. To your knowledge, Mr Rocca, did the  21 Attorney General have any involvement in  22 the conduct of the investigation ending up as  23 it did in October with an apparent loss of  24 interest in Mr Levy in October? To your  25 knowledge did the Attorney General have</p> <p style="text-align: center;">Page 262</p>	<p>1 Q. And it is a response to charging advice. I  2 am interested in the third page of the email,  3 which is D7381 - 6, Mr Levy there. This is  4 what you were saying to the RGP. Correct?  5 <b>A. That's right.</b>  6 Q. This is your email to the RGP: "As  7 explained at our meeting, we agree with your  8 tentative view that there isn't sufficient  9 evidence to charge this individual at this  10 stage."  11 <b>A. That's right.</b>  12 Q. Is the natural reading of those words that  13 at that stage it was the tentative view of the  14 RGP that there was insufficient evidence to  15 charge Mr Levy at that stage?  16 <b>A. That must have been contained in the  17 lengthy charging document because we've  18 agreed with it, sir, yes.</b>  19 Q. And then it goes on, so that was the  20 RGP's view then. "We are aware that you  21 continue to hold various electronic devices" -  22 this is you speaking to the RGP - " various  23 electronic devices owned by Mr Levy. As  24 explained at our meeting, the next steps for  25 the RGP in relation to these devices are</p> <p style="text-align: center;">Page 264</p>

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<p>1 matters for you as these are operational 2 decisions." 3 <b>A. Correct.</b> 4 Q. Did you mean by that that they were at 5 liberty to inspect them, not inspect them, 6 obtain another warrant? The RGP were still 7 in possession of the devices, right? 8 <b>A. As far as I'm aware they had them locked 9 up in the Commissioner's safe.</b> 10 Q. I beg your pardon? 11 <b>A. They had the phones in a bag locked in 12 the Commissioner's safe, was my 13 understanding.</b> 14 Q. They had not been returned to Mr Levy, 15 so they were presumably still in lawful RGP 16 custody? 17 <b>A. Well, they had been seized either under a 18 warrant or voluntarily.</b> 19 Q. Or by unwithdrawn consent? 20 <b>A. Either/or.</b> 21 Q. If one of those two was not correct, their 22 continued custody of that would be unlawful. 23 <b>A. Well, they would have asked for it back 24 immediately.</b> 25 Q. Yes.</p> <p style="text-align: center;">Page 265</p>	<p>1 Q. -- there had been in May? 2 <b>A. That would have been Mr Ullger by that 3 stage.</b> 4 Q. And what had happened to the previous 5 Commissioner? 6 <b>A. He wasn't there any longer.</b> 7 Q. Why was he not there? 8 <b>A. He'd resigned.</b> 9 Q. He resigned. And was -- 10 THE CHAIRMAN: I grasped that, 11 Mr Wagner. 12 MR WAGNER: All right. 13 Questioned by MR SANTOS 14 MR SANTOS: Just three small points, just 15 to follow up on points that have arisen. 16 <b>A. Of course.</b> 17 Q. One of them is that you mentioned in 18 response to my questions and in response to 19 my learned friend Sir Peter's questions that 20 you thought there were a couple ... there was 21 a reference by you in the meetings to 22 a potential expression of a preference at 23 a previous stage. 24 <b>A. Yes.</b> 25 Q. I do not know whether these are what you</p> <p style="text-align: center;">Page 267</p>
<p>1 <b>A. I would have done if I was acting for the 2 defendant.</b> 3 Q. So, at this point or any other, were the 4 RGP free to inspect the devices if they had 5 chosen to? 6 <b>A. I think it says it there. "It's a matter 7 entirely for you what you do with the 8 devices."</b> 9 Q. Do you know whether they did? 10 <b>A. I believe there is a letter that I've seen or 11 an IMO I've seen whereby they return the 12 devices to Mr Levy unopened.</b> 13 Q. In October? 14 <b>A. I believe that's the case, in October.</b> 15 Q. Thank you. 16 SIR PETER CARUANA: Thank you, sir. 17 MR WAGNER: May I just ask one question 18 arising? 19 (16.20) 20 Questioned by MR WAGNER 21 MR WAGNER: Mr Rocca, you mentioned 22 the Commissioner's safe, where the phone 23 was still locked in the Commissioner's safe. 24 Was that the same Commissioner as -- 25 <b>A. No.</b></p> <p style="text-align: center;">Page 266</p>	<p>1 were referring to, but I just want to show 2 them to you in fairness. 3 <b>A. Of course.</b> 4 Q. One of them is B173. And this is you 5 saying, just taking it from the top: "The 6 Commissioner of Police has a suspect." And 7 then you say: "I and Michael know that." 8 And then you say: 9 "As a suspect. I mean he needed to be asked 10 questions to clarify certain issues of the 11 conspiracy and that would either resolve it or 12 it would resolve. Whether I think, and again 13 I have always made it clear to Paul and to 14 you, I do not get involved in the operation 15 matters. My view was that the one should 16 come with, it is all post to interview. Look, 17 there is an operational matter for you on the 18 ground, therefore my ..." 19 That is one of them. And then the other one 20 is B281. Second from the top, Mr Llamas 21 said: "Christian did not think it is justified." 22 And you say: "What?" And he says: "The 23 caution, the search warrant." And you say: "I 24 thought it would have been far more practical 25 to interview him because, look, I will be ..."</p> <p style="text-align: center;">Page 268</p>

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<p>1 And Superintendent Richardson says: "Chris, 2 can I interrupt you there for one second, 3 please? I understand that is what you 4 thought and I respect that position." 5 It is not abundantly clear from that whether 6 that is a reference to earlier on in the meeting 7 or whether that is a reference to ... but I just 8 wanted to put those to you in case those are 9 the occasions that you were thinking of? 10 <b>A. Yes, it is why I say that clearly Paul and I</b> 11 <b>have spoken about the search warrant at</b> 12 <b>sometime. Whether it is in the meeting or sat</b> 13 <b>outside waiting for the Attorney General to</b> 14 <b>bring us in, I don't know. But it's clear that</b> 15 <b>Paul and I had discussed it at some stage.</b> 16 Q. Yes. 17 <b>A. I can't tell you when that was.</b> 18 Q. Now, just can we go to 3681, please. 19 This is an email that was shown by my 20 learned friend Mr Gibbs to you. 21 <b>A. Yes.</b> 22 Q. And halfway down the page there is the 23 note by Superintendent Richardson. It is 24 a slightly expanded note from the 25 handwritten note and actually I am not sure</p> <p style="text-align: center;">Page 269</p>	<p>1 <b>meeting.</b> 2 Q. And then the last thing I want to show 3 you is B3153. And again this is just in 4 fairness to you. 5 <b>A. Mm.</b> 6 Q. You refer to the final charging advice. 7 <b>A. Yes.</b> 8 Q. And you said that a lengthier report was 9 prepared. I think you mentioned something 10 like a 150-page document. 11 <b>A. Yes.</b> 12 Q. That was prepared by the RGP for your 13 consideration, if I am not -- 14 <b>A. Mr Wyan.</b> 15 Q. If I misunderstand. Thank you. 16 <b>A. If I remember correctly.</b> 17 Q. At 538, at the very bottom of this page, is 18 a reference to a meeting on 28 August 2020. 19 There is a meeting at OCPL with you and 20 Mark Zammit, Superintendent Richardson 21 also present: 22 "Discussion of Delhi following reports 23 admitted on 13 August together with a USB 24 containing witness statements, exhibits, 25 defence submissions, draft charges, ten files</p> <p style="text-align: center;">Page 271</p>
<p>1 whether this was made clear. This is 2 a subsequent, a version prepared 13 days 3 later. I do not think it matters much, I just 4 want to show you the second bullet point 5 there: 6 "There were no grounds at this stage for him 7 to pull any prosecution but mentioned that 8 the agent would be speaking to the 9 Commissioner of Police." 10 Was that something that you were saying on 11 the back of your conversation with the 12 Attorney General on 6 April, two days prior 13 to this meeting? 14 <b>A. I can't recall, but obviously if I did say</b> 15 <b>that, it's because the public interest that I</b> 16 <b>have may not ... doesn't necessarily coincide</b> 17 <b>with the public interest that the Attorney</b> 18 <b>General has. The Attorney General is</b> 19 <b>involved in matters of which I am not aware.</b> 20 Q. I will tell you why I am pointing this out, 21 because it looks from here that you are not 22 aware of the meeting on the previous day of 23 7 April. 24 <b>A. I may well not have been, Mr Santos. I</b> 25 <b>can't recall when I was made aware of that</b></p> <p style="text-align: center;">Page 270</p>	<p>1 of (inaudible) submitted in paper-based 2 format." 3 <b>A. That's the Morrisons bags.</b> 4 Q. Over the page: 5 "We discussed at length the investigation and 6 went through each of the suspects as 7 follows." 8 And then just at the very bottom: 9 "Levy, there was insufficient evidence to 10 provide a realistic prospect of conviction. He 11 had no contractual duty to Bland and there 12 was little evidence to support the fact that he 13 had knowledge of the complete and misuse 14 offences." 15 And then, skipping over one box to 540, 16 there is a reference to an email received from 17 the DPP regarding charging advice where 18 you set out your advice. Is that your written 19 advice that you referred to? 20 <b>A. No. So my charging advice doesn't say</b> 21 <b>"release from arrest", for example.</b> 22 Q. Sorry, I see. 23 <b>A. So that is not an extract from my</b> 24 <b>charging advice.</b> 25 Q. I see.</p> <p style="text-align: center;">Page 272</p>

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<p>1 <b>A. It would be a summary that they would ...</b>  2 <b>what are the next course of action. "They are</b>  3 <b>going to charge with this, Mr Sanchez with</b>  4 <b>this, Asquez released." I wouldn't say</b>  5 <b>"release from arrest". It would not be in my</b>  6 <b>charging advice. You wouldn't find that</b>  7 <b>language from me.</b>  8 Q. It is just the first sentence says:  9 "Email received from the DPP regarding  10 charging advice. He set out his advice that  11 charging should be as follows."  12 <b>A. If you look at my charging advice, it</b>  13 <b>would have said: "Mr Sanchez as follows.</b>  14 <b>Asquez is not enough. Levy we have agreed</b>  15 <b>not enough." And Chipol my advice was</b>  16 <b>what it was.</b>  17 Q. Yes. But is that when your written --  18 <b>A. That is the outcome of my charging</b>  19 <b>advice.</b>  20 Q. Yes, but that is when your written advice  21 would have come, around that point.  22 <b>A. You have just shown me the email with</b>  23 <b>the written advice. We can check that date.</b>  24 Q. Yes, the 2nd of ... sorry, it looks like my  25 interpretation, if we go back to 538, is that</p> <p style="text-align: center;">Page 273</p>	<p>1 THE CHAIRMAN: Thursday morning.  2 MR SANTOS: Yes, Thursday morning,  3 10 o'clock.  4 THE CHAIRMAN: I have arranged to hear  5 the recordings of these tapes on the  6 Wednesday.  7 MR SANTOS: Thank you, sir.  8 THE CHAIRMAN: Okay, thank you.  9 (Adjourned until Thursday, 25 April 2024 at  10 10 am)  11 (16.28)</p> <p style="text-align: center;">Page 275</p>
<p>1 there was a meeting.  2 <b>A. I received the charging advice. We look</b>  3 <b>at it, we call them in, we have a discussion</b>  4 <b>and we give them our written charging</b>  5 <b>advice.</b>  6 Q. But it looks like the written advice comes  7 on 2 September.  8 <b>A. Well, you have just shown me the written</b>  9 <b>charging advice. So the email --</b>  10 Q. Yes.  11 <b>A. -- will have the date on it of when my</b>  12 <b>charging advice was.</b>  13 Q. And then I think there are three further,  14 just to complete the timeline, I think there are  15 three further meetings and then charges are  16 laid on 15 September.  17 <b>A. Yes, we spent a fair time preferring and</b>  18 <b>perfecting the charges.</b>  19 Q. Thank you. No further questions.  20 <b>A. Pleasure.</b>  21 MR SANTOS: Thank you very much,  22 Mr Rocca.  23 <b>A. You're welcome.</b>  24 THE CHAIRMAN: Okay.  25 MR SANTOS: That is us completed.</p> <p style="text-align: center;">Page 274</p>	

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