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These claims are not yet resolved.

ROYAL COMMISSION INTO THE MANAGEMENT
OF POLICE INFORMANTS

Held in Melbourne, Victoria

On Thursday, 3 October 2019

Led by Commissioner: The Honourable Margaret McMurdo AC

Also Present

Counsel Assisting: Mr C. Winneke QC
 Ms M. Tittensor

Counsel for Victoria Police Ms R. Enbom
 Ms K. Argiropoulos

Counsel for State of Victoria Mr T. Goodwin

Counsel for Nicola Gobbo Mr R. Nathwani

Counsel for DPP/SPP Ms K. O'Gorman

Counsel for CDPP Ms C. Fitzgerald

Counsel for Police Handlers Mr G. Chettle
 Ms L. Thies

Counsel for Pasquale Barbaro Mr C. Wareham

Counsel for AFP Ms I. Minnett

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09:47:53 1 COMMISSIONER: Yes, I understand the appearances are the
09:47:55 2 same as yesterday, there are no changes. Yes.
09:47:59 3
09:47:59 4 MR WINNEKE: Thanks Commissioner. Thanks very much for
09:48:03 5 that indulgence. I had a technical mishap but I'm right to
09:48:07 6 go.
7
09:48:09 8 COMMISSIONER: Yes. These things happen.
09:48:16 9
09:48:16 10 <DALE FLYNN, recalled:
11
09:48:20 12 COMMISSIONER: Yes, Mr Flynn, of course you're on your
09:48:21 13 former oath. Yes, Mr Winneke.
14
09:48:24 15 MR WINNEKE: Mr Flynn, I asked you some questions yesterday
09:48:27 16 about the statements which were provided to I think
09:48:34 17 Mr Green on 8 or 9 June 2006 to provide to Ms Gobbo, and
09:48:42 18 some LD transcripts. You recall that?---Yes, I do.
19
09:48:46 20 Right. Now, what I want to do is take you through some
09:48:51 21 transcript of the discussion, and I took to a couple of
09:48:56 22 extracts of discussions between Ms Gobbo and her handlers.
09:49:05 23 What I want to do is to take you through a couple more
09:49:08 24 extracts just to see what was discussed between them.
09:49:19 25 Before I do that, and I just ask Mr Skim perhaps if he can
09:49:24 26 have ready document VPL.0005.0104.0260. Thanks very much.
09:49:35 27 What you say is, "I gave these transcripts to Mr Green" -
09:49:42 28 I'm sorry, the LD transcripts - you believe you may have
09:49:46 29 done that, accepting what the ICRs say?---My diary
09:49:50 30 indicates transcripts and the LD transcripts would be the
09:49:55 31 most obvious transcripts.
32
09:49:56 33 Yes. The statements, the unsigned statements?---Yes.
34
09:50:03 35 At that stage there may well have been around [REDACTED] factual
09:50:11 36 statements judging from the discussion that occurred
09:50:17 37 previously on 14 May, there may well have been in excess of
09:50:21 38 [REDACTED]?---Yes.
39
09:50:24 40 What you say is you do not recall receiving any transcripts
09:50:29 41 back?---No, or statements?
42
09:50:34 43 Or statements back?---No.
44
09:50:35 45 As to whether or not Mr O'Brien received them or anyone
09:50:39 46 else received them?---Don't know.
47

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09:50:41 1 You don't know. Were you the person who was responsible
09:50:47 2 for all of the statements, if they needed updating or they
09:50:52 3 needed amendments or changes were you the person who would
09:50:56 4 do that as a matter of course or might there be other
09:50:59 5 police officers within Purana who would do that?---There
09:51:03 6 might be other police officers. I didn't take every
09:51:05 7 statement. I certainly took a large number of the
09:51:07 8 statements.
9
09:51:08 10 Yes?---But there were other members of my crew that took
09:51:11 11 statements relevant to my investigation.
12
09:51:13 13 Yes?---And there would be other investigators who took
09:51:16 14 statements in relation to investigations that I had no
09:51:19 15 involvement with.
16
09:51:20 17 All right, okay. Was the expectation that in giving
09:51:29 18 Ms Gobbo the transcripts and the statements, in whatever
09:51:35 19 form they were at that stage, that she would keep them or
09:51:39 20 she would pass them back to the handlers? What was the
09:51:45 21 expectation with respect to those draft statements?---I
09:51:52 22 don't know.
23
09:51:53 24 No doubt you would have had a view at the time as to what
09:51:58 25 the purpose was for providing her with the
09:52:02 26 statements?---Well, I think I indicated yesterday that I
09:52:05 27 thought my reasoning was for her to review the statements
09:52:11 28 and scan them to see if there was anything concerning from
09:52:18 29 her point of view about her role as a human source, but the
09:52:21 30 material you played to me or showed me yesterday would
09:52:25 31 indicate that it went further than that.
32
09:52:27 33 It may or may not be. In any event, what I want to do out
09:52:30 34 of fairness is to go through a couple of these things with
09:52:34 35 you?---Yes.
36
09:52:35 37 If we go to the first page of that document, thanks very
09:52:39 38 much Mr Skim. This is the second part of the transcript.
09:52:44 39 The time is 11.45 pm on Friday 9 June 2006 and it's [REDACTED]
09:52:51 40 [REDACTED] White and he's about to re-enter the room.
09:52:54 41 Ms Gobbo by this stage has been provided with a number of
09:52:59 42 these documents. There's some discussion about various
09:53:04 43 things. If we go to page - I'll use the numbers in the top
09:53:12 44 right corner - 0271. We see Ms Gobbo says, "But I'll say,
09:53:28 45 Mr White, I'm very impressed with the statements because
09:53:31 46 when I think of the" - and she refers to a number of other
09:53:34 47 statements. She says further they're very impressive,

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09:53:42 1 effectively that's what she's saying. What she says, if
09:53:45 2 you listen to the tape, if you compare them to [REDACTED]
09:53:49 3 [REDACTED] and [REDACTED] who we've discussed previously,
09:53:54 4 these ones are very impressive, do you follow that?---Yes.
5
09:53:58 6 Then there's further discussion about various other things.
09:54:07 7 If we go over the page to 273, you can see that Ms Gobbo is
09:54:21 8 talking to the handlers about [REDACTED] and she says [REDACTED]
09:54:33 9 [REDACTED] rather than [REDACTED] or a - - - ?---Yes.
10
09:54:35 11 Sorry, Mr Green says, "Because he's [REDACTED] rather than a
09:54:38 12 [REDACTED] or [REDACTED]. She says, "No, he's [REDACTED]
09:54:43 13 [REDACTED] really. He was a [REDACTED] many, many
09:54:47 14 years ago. Was he?" Mr white says, "Now tell me, could
09:54:50 15 you, having read those statements, could you turn it round
09:54:50 16 from a defence point of view and make it look like he was
09:54:53 17 the one running the show?" So clearly Mr White's asking
09:54:59 18 her about the statements and she says, "No"?---M'mm.
19
09:55:05 20 And Mr White seems to be happy about that. In any event,
09:55:18 21 if you go over the page to 0275, they're having a
09:55:26 22 discussion about [REDACTED] At the top of the page,
09:55:32 23 "Some of the [REDACTED] also going to [REDACTED] but I
09:55:37 24 don't", and going down, "I don't know if it was, maybe, I
09:55:40 25 don't know whether he was actually, it was or wasn't",
09:55:43 26 talking about whether it was going to motorcycle gangs.
09:55:48 27 Then she says, "It's actually a very disturbing process
09:55:52 28 reading statements because like when [REDACTED] said to me on the
09:55:56 29 phone yesterday", if we go over the page to 276, "He said,
09:56:01 30 'You'll be shocked', and I don't know, maybe it was a throw
09:56:05 31 off on the phone, although he doesn't, he doesn't talk crap
09:56:07 32 on the phone because who cares if people are listening to
09:56:11 33 our conversation", and they go on discussing things,
09:56:17 34 talking about [REDACTED] and then further down there's
09:56:25 35 a discussion about [REDACTED] "Before [REDACTED] yeah,
09:56:30 36 [REDACTED] et cetera". Does that make sense to you?---Yes.
09:56:32 37
09:56:33 38 Those discussions?---It does, yes.
39
09:56:38 40 Over the page there's discussion about, "He told me, like
09:56:47 41 he said bits and pieces about the person, an [REDACTED]
09:56:52 42 [REDACTED] put [REDACTED] Tony [REDACTED] there.
09:56:55 43 I thought he was connected to [REDACTED] It turns out -
09:57:01 44 or [REDACTED]'s place". That makes sense to you, I take
09:57:05 45 it?---It does, yes.
09:57:06 46
09:57:06 47 They're talking about matters referred to in [REDACTED]

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09:57:08 1 statement?---Yes, they are.
2
09:57:12 3 Then there's further discussion and, as you indicated,
09:57:21 4 Ms Gobbo is wont to talk and jump around here and there. I
09:57:26 5 might do the same. If we go to, for example, p.0310.
09:57:48 6 You'll see that there's a discussion going on there about
09:57:53 7 [REDACTED] "We went there this year, it's the one near
09:58:00 8 [REDACTED] and obviously you know about [REDACTED]
09:58:07 9 [REDACTED] --Yes.
10
09:58:07 11 It's a place that features in the evidence in relation to
09:58:09 12 these matters. There's discussion about [REDACTED] in
09:58:12 13 [REDACTED] 2004. [REDACTED] There's only [REDACTED]
09:58:17 14 [REDACTED] it's [REDACTED] but
09:58:22 15 he says there's [REDACTED] "There [REDACTED] in
09:58:26 16 [REDACTED] she says, "there's no such a place".
09:58:29 17 Again, is that information that you understand?---That's
09:58:31 18 information I believe would have been in his statements,
09:58:33 19 yes.
20
09:58:34 21 So it's reasonably clear that they're talking about matters
09:58:40 22 that would be relevant to the statements?---Yes.
23
09:58:50 24 If we then go to p.0358. You'll see there a little past
09:59:20 25 halfway down, "You became" - I withdraw that. No, I
09:59:32 26 apologise. Go to the next page. I'm sorry. Ms Gobbo
09:59:40 27 says, "He's already signed his statements in his own name
09:59:43 28 so I don't know, but these ones are signed. I don't know
09:59:46 29 why he's done a statement". Mr White says, "Yeah, I
09:59:51 30 noticed that, the first couple you're talking about". It
09:59:55 31 seems the first couple of statements which have been signed
09:59:56 32 immediately afterwards and the initial ones on the night.
10:00:00 33 So that would be a reference to the statements which were
10:00:02 34 taken immediately afterwards, I think I took you to them
10:00:05 35 yesterday, on the [REDACTED] or perhaps even the [REDACTED] the
10:00:08 36 statements were done more or less immediately?---Yes, those
10:00:11 37 four statements, that would be a reference to those.
38
10:00:15 39 Ms Gobbo says on the next page at 0630, "So maybe these are
10:00:23 40 never going to be served ..." Mr Green says, "Elaborate
10:00:28 41 more detail later on". Ms Gobbo says, "But in any event
10:00:34 42 ... it really is the side of, all the rest of them remain
10:00:39 43 in his own name or become like everyone else has become".
10:00:43 44 Are you able to interpret what that means at all or
10:00:46 45 not?---I think at some stage, putting two and two together,
10:00:50 46 there was a discussion about whether we use [REDACTED] under
10:00:55 47 a different name, like [REDACTED] or something along those

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10:00:59 1 lines.
2
10:00:59 3 Right?---But in the end we decided not to.
4
10:01:02 5 Okay, decided not to. Thanks. Clearly that's something
10:01:12 6 that's been - she may well have perceived or it may well be
10:01:17 7 something that she had discussed with you?---I don't
10:01:20 8 remember discussing it with Ms Gobbo but I do recall it
10:01:25 9 being a topic of conversation at Purana.
10
10:01:28 11 Yes. Then if you go to p.0361 - - -
12
10:01:35 13 COMMISSIONER: Can I ask you why you decided not to go down
10:01:38 14 that path and for him to use his own name giving
10:01:41 15 evidence?---I think it was just because of his well-known
10:01:46 16 identity with the people he was charged. It just seemed a
10:01:51 17 bit - - -
18
10:01:52 19 Pointless?---Yes, pointless.
20
10:01:54 21 Yes, thank you. Yes, Mr Winneke.
22
10:01:56 23 MR WINNEKE: Thanks Commissioner. If you go over to
10:02:00 24 p.0361. It seems now that she's talking about an
10:02:06 25 historical statement that she's reading, is that right?
10:02:09 26 This is "Whatever house he's talking about, [REDACTED]
10:02:12 27 [REDACTED] now the [REDACTED] et cetera, et
10:02:18 28 cetera. If you listen to it, it appears to be within those
10:02:26 29 dot, dot, dots there's the word [REDACTED] I don't know
10:02:29 30 whether that makes sense to you, does it?---Not with [REDACTED]
31
10:02:33 32 No?---I think I can explain if you wish me to.
33
10:02:35 34 Yes?---During the Matchless investigation with the ID
10:02:39 35 material there was a discussion recorded where [REDACTED]
10:02:44 36 talks about [REDACTED]
37
10:02:50 38 Yes?---And I think for a short time we entertained, we
10:02:53 39 might have actually charged him with it and think was later
10:02:57 40 withdrawn. So that's what I see that reference to be. But
10:03:00 41 [REDACTED] well that's probably the link. If [REDACTED] mentioned it
10:03:04 42 will be talking about the conversation had at [REDACTED] in [REDACTED]
43
10:03:10 44 Yes?---About the [REDACTED]
45
10:03:13 46 Yes, I follow. All right then. I think there was some
10:03:13 47 discussion, it may well have been between Mr O'Brien and

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10:03:17 1 Mr Hargreaves, about whether or not he would be charged
10:03:19 2 with those matters, but that occurred earlier on, at an
10:03:23 3 earlier time, would that be right?---Yes.
4
10:03:27 5 So apparently what's going on is that she's reading that
10:03:32 6 historical statement, that would be fair to say, would
10:03:35 7 it?---It appears to be, yes.
8
10:03:36 9 Then if we go over to p.0364, you see there at the large
10:03:49 10 paragraph, talk about paragraph 29, "Tony was arrested in
10:03:53 11 August 2001 by the Federal Police importing
10:04:01 12 pseudoephedrine". She says - so she's reading about that,
10:04:02 13 that's in inverted commas. "No, he wasn't. He was
10:04:05 14 importing cocaine and trafficking pseudoephedrine, and he
10:04:05 15 does talk about on the 30th page that there was importation
10:04:08 16 of pseudoephedrine which is part of the charges that got
10:04:11 17 chucked out against him and that's why he - it should be
10:04:15 18 cocaine, not pseudoephedrine, paragraph 29". Do you see
10:04:18 19 that?---Yes, I do.
20
10:04:22 21 What she is appearing to do is make a suggestion that
10:04:25 22 there's an inaccuracy in the statement, do you follow
10:04:30 23 that?---There's a what, sorry?
24
10:04:31 25 There's an inaccuracy in the statement?---Yes, that appears
10:04:34 26 to be what she's saying, although I can't remember anything
10:04:40 27 about what she's talking about there being in [REDACTED]
10:04:43 28 statements.
29
10:04:45 30 I can set your mind at ease because it appears that she is
10:04:49 31 in fact reading a draft at paragraph 29 and it does appear
10:04:53 32 from an analysis of the statements as they were signed that
10:04:57 33 it wasn't changed?---Right.
34
10:05:01 35 So whatever view was taken, whether Ms Gobbo was of the
10:05:04 36 view that that was wrong, an analysis of the statements as
10:05:07 37 signed suggests that it wasn't changed. So it remained as
10:05:11 38 it was in that form, do you see that?---Yes, I do. It's
10:05:14 39 just - I just can't remember that topic being included in
10:05:18 40 any of his statements, but.
10:05:19 41
10:05:19 42 All right. Commissioner, I do propose in due course to
10:05:26 43 tender all of the statements so as this analysis can be
10:05:31 44 properly carried out. The reason I'm doing this is because
10:05:36 45 certainly from an analysis of this transcript and
10:05:44 46 statements that the Commission's been provided with there
10:05:47 47 don't appear to have been changes made with respect to some

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10:05:51 1 of the suggestions that Ms Gobbo has made. I think as a
10:05:55 2 matter of fairness that ought be put before the Commission.
3
10:05:59 4 COMMISSIONER: It should certainly.
5
10:06:01 6 MR WINNEKE: I'm not in a position at this stage to put the
10:06:03 7 statements in. We have them.
8
10:06:05 9 COMMISSIONER: Yes.
10
10:06:06 11 MR WINNEKE: There are some issues because of suppression
10:06:08 12 orders and so forth that were made when ██████████ pleaded
10:06:11 13 that causes some difficulties but we'll need to iron those
10:06:14 14 out in due course.
15
10:06:15 16 COMMISSIONER: Yes.
17
10:06:16 18 MR WINNEKE: But I do want to put these matters to Mr Flynn
10:06:19 19 to make it clear that some of these suggestions haven't
10:06:22 20 been - - -
21
10:06:22 22 COMMISSIONER: Taken up.
23
10:06:24 24 MR WINNEKE: - - - taken up.
25
10:06:25 26 COMMISSIONER: I think that was the evidence of one of the
10:06:28 27 handlers too, that they didn't take much notice of her. I
28 think we heard some evidence about that.
29
10:06:31 30 MR WINNEKE: That may or may not be. I think Mr White was
10:06:32 31 asked about it, but given the comments that were made
10:06:37 32 apparently in the transcript at an earlier stage I think
10:06:42 33 it's appropriate to go through this exercise at least in
10:06:48 34 this way.
35
10:06:49 36 COMMISSIONER: I think it's probably essential, yes.
37
10:06:57 38 MR WINNEKE: I mean, look, obviously a statement has got to
10:07:00 39 have - as you've indicated previously, the idea was to
10:07:05 40 ensure that the statements were as accurate as
10:07:08 41 possible?---Yes.
42
10:07:11 43 And whether or not you were aware of this, the suggestions
10:07:15 44 of Ms Gobbo, it appears that that statement has not been
10:07:19 45 changed?---Okay.
46
10:07:20 47 Would you have known about Ms Gobbo's comments that she's

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10:07:27 1 making to the handlers?--No, not that I can recall.
2
10:07:32 3 Right. One assumes that there must have been something put
10:07:37 4 in place by way of an arrangement with either Mr White or
10:07:42 5 Mr Green whereby if there were matters which were of
10:07:47 6 significance about the statements you would be told about
10:07:50 7 it?--Well, not necessarily because my recollection is that
10:07:59 8 the statements were delivered to the SDU for checking to
10:08:09 9 see if there was any concern about Ms Gobbo's position as a
10:08:13 10 human source.
11
10:08:14 12 Yes?--Now if there was that would be a matter for the SDU
10:08:19 13 to resolve.
14
10:08:20 15 Yes?--Although if it was something that had to come back
10:08:24 16 to us it could, I suppose, but that's to the best of my
10:08:28 17 recollection my understanding of why they were delivered.
18
10:08:32 19 I suppose the proper, the appropriate way of going about it
10:08:36 20 would be to have the statements signed, completed and done
10:08:41 21 and then provided, if that was thought to be necessary, to
10:08:45 22 the SDU for them to look at and then head off any problems
10:08:50 23 that might have been perceived to have arisen from those
10:08:55 24 statements, as best as could be done?--Well that would be
10:08:58 25 an avenue that was open but it appears to be that it
10:09:02 26 wasn't.
27
10:09:02 28 No. All right. Now, as we go through the statement -
10:09:11 29 through this transcript we'll see, for example, Ms Gobbo's
10:09:14 30 talking at p.0366 - in fact the bottom line of the previous
10:09:39 31 page. "... but he hadn't told [REDACTED] the truth about why he
10:09:43 32 was [REDACTED] because he had, from the point of having to
10:09:46 33 miss what he told [REDACTED] at the time, what he'd told
10:09:49 34 everyone was that he [REDACTED] and the thing is
10:09:52 35 he was actually genuinely" - there's a reference to [REDACTED]
10:09:57 36 [REDACTED]--Yes.
37
10:09:58 38 "And that's the story that he gave them because he was
10:10:01 39 under so much pressure from them. He also didn't tell them
10:10:06 40 [REDACTED] that he was going [REDACTED] because he didn't
10:10:09 41 want to [REDACTED] I don't know, I mean maybe it's not
10:10:13 42 important but he wanted massive quantities, like he was
10:10:16 43 [REDACTED] of", obviously some sort of
10:10:20 44 [REDACTED] "and he confessed to me not until the night
10:10:25 45 that I came to [REDACTED] the first time [REDACTED] or
10:10:26 46 his [REDACTED] on the [REDACTED], he said to me that 'I'm
10:10:30 47 really sorry because I've [REDACTED], [REDACTED] on the

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10:10:33 1 [REDACTED] again'", over the page, "and then I noticed like
10:10:35 2 while he was in police custody for a few days I remember a
10:10:39 3 police officer saying, 'We'll go and [REDACTED]
10:10:42 4 et cetera"?---Yes.

5
10:10:45 6 She's talking about matters which I take it you're well
10:10:47 7 aware of?---Yes.

8
10:10:48 9 I mean the fact that [REDACTED] and he wasn't
10:10:51 10 prepared to tell them [REDACTED] and he told lies
10:10:53 11 about [REDACTED] shows that he's afraid of them and
10:10:58 12 it appears to be an agreement amongst them that that's a
10:11:01 13 matter of some significance, because if we go to the next
10:11:04 14 page it appears to be that Mr White's saying, "That's
10:11:07 15 important". Ms Gobbo's saying, "I think I would have, I
10:11:10 16 think I reckon it's important to protect his credibility
10:11:17 17 that he puts that in. Because he specifically told me at
10:11:20 18 the time, you know, if they harass me about where I am".
10:11:23 19 Mr Green says, "Don't tell them". Mr White says, "Yep, I
10:11:28 20 remember that. But it's on p.17 of the statement,
10:11:31 21 paragraph 65", and she's talking about that it's important
10:11:37 22 that [REDACTED] was putting [REDACTED] under so much pressure, [REDACTED]
10:11:43 23 would have been" - and if you go over the page there's
10:11:50 24 further references to, at the top of the page, factual
10:11:55 25 matters which were relevant to the statement. But again,
10:11:58 26 so Ms Gobbo is suggesting that perhaps there ought be more
10:12:02 27 detail added to the statement in which it's plain that he's
10:12:08 28 so much under pressure that he's not telling them why he's
10:12:14 29 [REDACTED] and where he is and explained why in the
10:12:17 30 statement. Do you see that?---Yes, I do.

31
10:12:19 32 And she's effectively saying, "Well look in my view that
10:12:22 33 should be beefed up in the statement to make it
10:12:25 34 stronger"?---That appears to be what she's suggesting, yes.

35
10:12:28 36 Can I say that an analysis of the statement appears to be
10:12:35 37 that it hasn't been beefed up in the way she's suggested,
10:12:38 38 certainly that statement hasn't been?---No, I don't - I do
10:12:39 39 remember something in the statements about him being in
10:12:41 40 hospital but I just can't remember what context it was in.

41
10:12:46 42 All right. So the point I'm making, it would appear, when
10:12:49 43 one analyses that statement, that it went off to be signed
10:12:53 44 in the same form that it was when she looked at it?---Yes.

45
10:12:56 46 Okay. Insofar as that paragraph is concerned?---Yes.

47

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10:13:11 1 There's other matters, I don't think I'll go through all of
10:13:15 2 them. Perhaps if we go to VPL.0005.0104.0381. There's a
10:13:31 3 reference which might be regarded as a fairly innocuous
10:13:38 4 pick up that she's made at the top. "We were led to
10:13:43 5 believe that [REDACTED] would pick up the cost of my solicitor
10:13:45 6 and the barrister". She said, "It should be barristers
10:13:48 7 because it's me and". Mr White says, "I was led to believe
10:13:52 8 what?" So he's obviously listening to what she's got to
10:13:56 9 say and she says, "I was led to believe that [REDACTED] would
10:13:59 10 pick up the cost for my solicitor and the barrister". So
10:14:02 11 she wants to point out that there were two barristers, a QC
10:14:05 12 and her, and there's a reference to fees and so
10:14:08 13 forth?---M'mm.

14
10:14:08 15 Again if you look at the statement it appears that that
10:14:10 16 hasn't been changed, that particular paragraph hasn't been
10:14:12 17 changed in accordance with that suggestion?---Yeah, I can't
10:14:15 18 remember that paragraph but I take your word for it.

19
10:14:19 20 Likewise, there's a reference on the next page at 0382, and
10:14:30 21 also in paragraph 3 when he says, [REDACTED] was eager to get me
10:14:35 22 [REDACTED] and he kept promising to [REDACTED] on [REDACTED] but
10:14:42 23 it doesn't say, it actually convey the threats that were
10:14:44 24 being made or that he absolutely insisted upon getting him
10:14:51 25 [REDACTED]". Again Ms Gobbo is suggesting - - - ?---Yes.

26
10:14:55 27 - - - that it ought to be beefed up, and again what I can
10:14:57 28 suggest to you is that there were no changes made to that
10:15:00 29 paragraph either?---Certainly that I wasn't aware of,
10:15:04 30 so - - -

31
10:15:05 32 No, all right. There are a number of other matters. Now
10:15:14 33 obviously this analysis by the Commissioner will need to
10:15:20 34 be, will need to look very closely at this, but it appears
10:15:23 35 at this stage that there haven't been the changes that
10:15:24 36 she's suggested?---M'mm.

37
10:15:41 38 Can I just ask you about a couple more matters. If we go
10:15:45 39 to VPL.0005.0104.0397. Perhaps if we go to the page
10:16:06 40 before. I apologise for that, Mr Skim. Ms Gobbo is
10:16:11 41 talking about other matters and she's talking about the
10:16:17 42 fact that [REDACTED] was [REDACTED] and [REDACTED]
10:16:25 43 him and [REDACTED] into giving him money for [REDACTED] "anyway it's
10:16:30 44 [REDACTED] and he's divided it out". That's something that
10:16:32 45 you're aware of, that particular issue of the [REDACTED] or
10:16:35 46 the fact that it was asserted by [REDACTED] that he was
10:16:39 47 [REDACTED] by [REDACTED] at various times and [REDACTED] and

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10:16:42 1 so forth? Is that your understanding of what his position
10:16:45 2 was?--Certainly in a general sense that was his position,
10:16:49 3 he mentioned that a few times.
4

10:16:51 5 Yes?--I just can't, I can't recall a specific reference to
10:16:56 6 [REDACTED]
7

10:17:02 8 If we then go over to the next page. Mr Green says this,
10:17:06 9 and it seems to be by way of underlining all of the
10:17:09 10 discussions that have been going on, "Yeah, I just wonder
10:17:11 11 if the best way to bring up some of these is", and we can't
10:17:16 12 hear exactly what, it's not recorded in the transcript
10:17:18 13 exactly what Ms Gobbo says, but no doubt it can be played
10:17:22 14 and listened. So effectively he's saying, "You've told us
10:17:27 15 all of these thing, what's the best way that we can deal
10:17:30 16 with it?" Do you see that?--Yes, I see that.
17

10:17:33 18 She says, "For me to do it when I'm", again it's not clear,
10:17:37 19 "yeah, after you've seen the statement, the official, you
10:17:40 20 know, you could go down and say, you know, 'I'll look'".
10:17:46 21 Mr Green says, "That's sort of the whole reason we wanted
10:17:48 22 you to see them. I suppose it is, like, say, for example,
10:17:55 23 what you, you've mentioned there and it's not really in
10:17:57 24 some of the early ones, there's not a lot of talk about the
10:18:00 25 pressure and the harassment that he's under"?--Yes.
10:18:04 26

10:18:04 27 "Your advice to him could be or maybe it would be ...
10:18:09 28 harassment and pressure. Remember how that's happened,
10:18:12 29 that'll help, help with". Ms Gobbo says, "Yeah, I don't
10:18:16 30 want to go too much in to that, remember when this
10:18:20 31 happened, remember when that happened, because I don't want
10:18:24 32 him to suddenly start thinking, 'Oh hang, well yeah, she
10:18:27 33 knew that, she knew that, she knew that'." Mr Green says,
10:18:31 34 "Oh yeah, but you would be saying it to him because it
10:18:33 35 would look better in the plea. I mean that, that was what
10:18:37 36 (something) thinks, there's a whole lot of, I mean I can
10:18:40 37 hear what you're saying, I'm trying to think of some
10:18:41 38 things. I remember you said once, you know, that he rang
10:18:44 39 you 80 times, et cetera"?--Yes.
40

10:18:47 41 It might be said that what's being suggested to her is,
10:18:51 42 "You could in a way sort of put it to him in, not by way of
10:18:58 43 overtly telling him to change his statement but by putting
10:19:02 44 it to him in the way of, 'Look, it's important that these
10:19:06 45 things, you think about for the purposes of your plea', and
10:19:11 46 in doing that you're seeping into his hand and it may well
10:19:17 47 be that when he comes to give his evidence or maybe makes

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10:19:20 1 changes or wants to makes changes to his statement then
10:19:24 2 that might encourage him to do so", do you follow what I'm
10:19:29 3 saying?---Yes, I do follow what you're saying.
4
10:19:31 5 There is a obviously a risk in that, in what she's doing, I
10:19:34 6 suggest, and what the handlers, on one view, are
10:19:38 7 encouraging her to do, do you accept that?---I do.
8
10:19:41 9 I take it you'd accept that it would be better if that
10:19:44 10 hadn't happened?---Yeah, well this is the first I've seen
10:19:47 11 this.
12
10:19:48 13 No, I understand that?---It's news to me.
14
10:19:50 15 I understand that?---But yes, it would be better if it
10:19:53 16 didn't happen.
17
10:19:54 18 All right. I'll leave that transcript, Commissioner, and
10:20:01 19 I'll move on. But what I do say is it doesn't appear that
10:20:05 20 there were changes made in the statements that Ms Gobbo, in
10:20:09 21 the overt way that she suggested, do you follow that?---I
10:20:13 22 do, yes.
23
10:20:15 24 COMMISSIONER: Is that transcript already tendered as a
10:20:20 25 bundle?
26
10:20:21 27 MR WINNEKE: It is, Commissioner. It is tendered. I'm
28 sorry, I don't have actual exhibit number.
29
10:20:22 30 COMMISSIONER: 282 I'm told. Did you want to at some stage
10:20:27 31 highlight the individual passages, just in terms of doing
10:20:32 32 any PII of it and making it publicly available?
33
10:20:35 34 MR WINNEKE: Commissioner, my instructors are taking notes
10:20:37 35 and we'll make sure that we perhaps put a bundle together
10:20:40 36 and tender that bundle when we get an opportunity to do so.
37
10:20:44 38 COMMISSIONER: That would be good, thank you.
10:20:45 39
10:20:46 40 MR WINNEKE: Thank you, Commissioner.
10:20:47 41
10:20:47 42 MS ARGIROPOULOS: Thank you, Commissioner.
43
10:20:50 44 MR WINNEKE: I just want to move on now to a couple of the
10:20:53 45 proceedings arising from the statements made by [REDACTED]
10:20:56 46 I've touched on them already to some extent but if I can
10:20:59 47 move on to a number of these matters. What appears to be

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10:21:05 1 the case is that following [REDACTED] Ms Gobbo went
10:21:11 2 on to represent a number of the people who were the subject
10:21:15 3 of these investigations in circumstances where it was quite
10:21:19 4 clear that she had a conflict of interest. I take it you
10:21:21 5 accept that?---Yes.
6
10:21:26 7 It would be reasonable to say that Victoria Police was
10:21:31 8 aware that she was doing so?---Yes.
9
10:21:36 10 I mean certainly insofar as Milad Mokbel was
10:21:42 11 concerned?---Yes.
12
10:21:42 13 I'm dealing with that. You were aware that really she
10:21:45 14 shouldn't have been having anything to do with Milad Mokbel
10:21:50 15 at all?--Well I knew there was a conflict there, yes.
16
10:21:52 17 Milad Mokbel didn't know about the conflict?---No. Well he
10:21:56 18 didn't know about her role.
19
10:21:57 20 No, he didn't know about the role?---Yes.
21
10:22:00 22 I mean, he wouldn't have known about the fact that she had
10:22:05 23 been instrumental in getting information from [REDACTED]
10:22:11 24 passing that on to the police. He simply wouldn't have
10:22:15 25 been aware of that?---No, he wouldn't have been.
26
10:22:17 27 Ultimately, as I think the Supreme Court, Court of Appeal
10:22:21 28 and High Court said, look, had people such as Milad Mokbel
10:22:25 29 been aware of these matters they would have been in a
10:22:27 30 position to argue, "That evidence shouldn't be used against
10:22:31 31 me, it's been obtained improperly", you understand
10:22:34 32 that?---I don't - I'm unaware of that comment but I don't
10:22:37 33 doubt it for a moment.
34
10:22:39 35 Have you read the decision of Justice Ginnane?---I've read
10:22:42 36 parts of it, yes, I haven't read it from start to finish.
37
10:22:45 38 Certainly insofar as Milad Mokbel is concerned, he's
10:22:48 39 arrested on [REDACTED] as a result of the assistance of
10:22:51 40 [REDACTED] via Ms Gobbo. And she'd been also providing
10:22:56 41 independently of [REDACTED] information about Milad Mokbel
10:23:01 42 to her handlers which was being passed on to the
10:23:04 43 investigators, do you accept that?---Yes.
44
10:23:06 45 I'm not going to go through all the details of that. I
10:23:10 46 think you candidly concede you recognised the complexities
10:23:14 47 on the night when she turned up to advise him?---Yes, I do.

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1
10:23:22 2 There were a number of things that occurred afterwards
10:23:26 3 which made it reasonably plain to Purana investigators that
10:23:29 4 she was still involving herself with Milad Mokbel. For
10:23:34 5 example, I think I asked you about whether or not she'd
10:23:37 6 requested that you assist her in getting her business
10:23:41 7 number on to Milad's phone list so he could contact her and
10:23:45 8 that was done, do you accept that?---I don't recall that
10:23:49 9 but it's quite possible, yes.
10
10:23:57 11 At various stages she had discussions with the handlers
10:24:03 12 about Milad Mokbel. She wanted - she gave instructions to
10:24:09 13 call Purana to get either you or Mr Bateson to get him
10:24:13 14 moved away from Carl Williams, Carl Williams was driving
10:24:18 15 him crazy, and she wanted him to be moved, do you recall
10:24:23 16 that?---She wanted Milad Mokbel to be moved?
17
10:24:26 18 Yes?---I knew that they were together but, no, I don't know
10:24:29 19 anything about getting them to be moved away from each
10:24:32 20 other.
21
10:24:33 22 Yeah, okay. All right. The brief of evidence obviously
10:24:52 23 against Milad Mokbel was provided to Ms Gobbo on 30
10:24:56 24 October, we've been through that?---Yes.
25
10:24:59 26 You accept that?---I do.
27
10:25:02 28 Then on 6 March 2007 I think in your diary at about p.290 -
10:25:13 29 do you have your diary there, 6 March 2007?---I'll just
10:25:16 30 grab it.
31
10:25:17 32 Yes?---Which date in March?
33
10:25:46 34 6 March 2007, p.290 of your diary?---Yes.
35
10:26:00 36 You had a meeting at around 4 pm or thereabouts with the
10:26:05 37 DSU?---At 4.35.
38
10:26:08 39 Yes, and I think there were handlers there and also a
10:26:12 40 number of members of the police, including yourself,
10:26:15 41 Mr O'Brien, Jason Kelly, Hayes, Hantsis, Robertson, et
10:26:21 42 cetera?---I don't have - I've got Baulch is the only other
10:26:28 43 name. But I think - did you refer me to this yesterday?
44
10:26:33 45 Yes?---And I think there were some other names on the ICR.
46
10:26:35 47 That's right. There were discussions about Milad Mokbel

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10:26:38 1 and Ms Gobbo's involvement in that matter?---Yep.
2
10:26:43 3 The committal at that stage was a little way off and there
10:26:47 4 was a desire to see if the matter could be resolved, do you
10:26:50 5 accept that?---Yes.
6
10:26:51 7 And in your statement I think at paragraph 77 you indicate
10:26:55 8 that you and Mr O'Brien met with Ms Gobbo in her chambers
10:26:59 9 and there was discussions about a potential plea for Milad
10:27:02 10 Mokbel which involved keeping his wife out of
10:27:06 11 prison?---Yes.
12
10:27:06 13 And clearly Ms Gobbo perceived herself to be acting as
10:27:10 14 Milad Mokbel's lawyer?---Yes.
15
10:27:15 16 And you and Mr O'Brien didn't take any steps to prevent her
10:27:18 17 from doing so?---No.
18
10:27:20 19 On 9 March 2007 did you have a meeting with Mr O'Brien and
10:27:29 20 the DPP?---Yes.
21
10:27:30 22 About the possibility of resolving with Milad and what
10:27:36 23 might occur with the Renate Mokbel charges?---I definitely
10:27:42 24 was present for the meeting, yes, at 9 o'clock.
25
10:27:47 26 There was no concern raised at that meeting about
10:27:51 27 Ms Gobbo's conflict obviously, I take it?---No.
28
10:27:56 29 With Mr Coghlan?---No.
30
10:27:59 31 Okay. Do you accept this proposition, that ordinarily the
10:28:03 32 sorts of discussions that you had with Ms Gobbo would be
10:28:08 33 carried out with instructing solicitors on the record, not
10:28:11 34 going behind the instructing solicitors and speaking to a
10:28:16 35 barrister who was in fact really an agent of the
10:28:23 36 police?---The only exceptional circumstances I had with
10:28:27 37 those conversations was the fact that Ms Gobbo had acted as
10:28:33 38 a human source.
39
10:28:33 40 Yes?---Just talking to her as a legal representative to try
10:28:36 41 and resolve a case didn't strike me as being unusual.
42
10:28:40 43 Did you know at that stage or did you make any effort to
10:28:43 44 find out who the solicitors were?---No. That's generally
10:28:50 45 something we don't do but when people are charged often the
10:28:53 46 informant will get a letter from the solicitors indicating
10:28:56 47 that they're acting for that particular person. I don't

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10:28:59 1 know if the informant had received a letter or not.
2
10:29:02 3 Right. But it would have been easy to find out and in the
10:29:05 4 circumstances where you were aware of Ms Gobbo's conflicted
10:29:08 5 status and position as an informer, it would have been
10:29:12 6 appropriate really to take every endeavour to keep her out
10:29:16 7 of it and to speak to the solicitors, make the effort to
10:29:20 8 find the solicitors and speak to them?---From a - purely
10:29:23 9 from a conflict point of view I think I've given evidence
10:29:27 10 earlier during the course of the last three or four days
10:29:30 11 that my understanding was the conflict was it was a matter
10:29:34 12 for the solicitor or the barrister themselves to deal with.
13
10:29:37 14 Yes, but I mean this is a case where it would have been
10:29:40 15 quite apparent to you that this particular barrister had
10:29:44 16 really, had any ethical constraints, or she was not
10:29:47 17 considering herself to be bound by any ethical constraints
10:29:51 18 at all. She'd had an ethical bypass, I suggest to you,
10:29:56 19 that would have been apparent?---That wasn't something that
10:29:58 20 I considered at the time. I don't know if there was much I
10:30:02 21 could do about it. I don't recall ever mentioning anything
10:30:08 22 to the OPP, anything about the conflict. But the conflict
10:30:12 23 would have been fairly obvious, the fact that - - -
24
10:30:14 25 But that's the point, it wouldn't have been obvious,
10:30:17 26 Mr Flynn, it wouldn't have been obvious because no one was
10:30:21 27 told about the conflict, do you accept that?---Well the
10:30:23 28 fact that she was representing [REDACTED] and representing
10:30:27 29 [REDACTED], that would indicate to me that the conflict
10:30:30 30 is obvious.
31
10:30:31 32 Can I say this: you were at great pains to prevent it from
10:30:35 33 becoming known, Ms Gobbo's role with respect to [REDACTED]
10:30:39 34 This committal hadn't yet come on yet, the first contested
10:30:43 35 committal, and we know at this stage that great endeavours
10:30:47 36 are being made to prevent it coming to light that Ms Gobbo
10:30:52 37 had had an involvement with [REDACTED].---Well she had an
10:30:55 38 involvement with him, an open involvement with him for
10:31:00 39 [REDACTED], yes. But you're correct in saying that
10:31:03 40 from [REDACTED] we were at pains to limit the knowledge of
10:31:08 41 that involvement, yes.
42
10:31:10 43 And that gross conflict, and I put it that way, gross
10:31:13 44 conflict, was the fact that she was a police informer
10:31:17 45 secretly assisting and pushing [REDACTED] to roll and assist
10:31:26 46 police was not known by anyone?---Correct.
47

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10:31:29 1 Now the very purpose of this whole operation was to get
10:31:34 2 Mr Milad Mokbel?---Well, yes, it was the four Mokbel
10:31:38 3 brothers, yes.
4

10:31:39 5 He was one of the main targets of the operation?---He was,
10:31:42 6 yes.
7

10:31:44 8 To suggest to the Commission that it just was a matter for
10:31:48 9 Ms Gobbo, who clearly had no concept of acting
10:31:53 10 professionally, to leave it to her really was a derogation
10:31:57 11 I suggest to you?---I'm putting the two issues in separate
10:32:03 12 baskets and perhaps that's the problem, it's too complex to
10:32:06 13 be able to do that.
14

10:32:07 15 Yes?---But certainly from the human source point of view we
10:32:10 16 were trying to prevent anyone knowing that, the conflict
10:32:12 17 issue.
18

10:32:15 19 Yes?---I mean that had raised before Ms Gobbo was a source.
20

10:32:20 21 Yeah, I don't want to hammer this point but I know you
10:32:23 22 describe it as complex but can I suggest to you it's really
10:32:27 23 quite simple. It's quite simple. This barrister,
10:32:31 24 purported barrister, had no business because of her conduct
10:32:35 25 to be involved. It wasn't complex at all. It was quite
10:32:38 26 simple. It shouldn't have happened. She shouldn't have
10:32:41 27 been there?---I don't think I can argue with that but I
10:32:43 28 don't know what I could do about it.
29

10:32:45 30 What you could done, I suppose what Victoria Police could
10:32:48 31 have done is bit the bullet and said, "Look, we've got to
10:32:51 32 expose this, it's got to be revealed"?---Yes, that could
10:32:55 33 have been done.
34

10:32:56 35 Or alternative just say to Ms Gobbo, "You cannot do this.
10:33:01 36 If you do this we're going to have to reveal it". Cut your
10:33:05 37 losses and at least cut her off there and then and say,
10:33:09 38 "Look, you've got to be out of this. And if you do
10:33:12 39 continue to act for these people we're going to have to
10:33:15 40 tell them"?---That could have been an avenue as well, yes.
41

10:33:20 42 These are ideas really that should have been thrashed out
10:33:23 43 amongst senior members of the Victoria Police, do you
10:33:25 44 accept that?---Yes, I do.
45

10:33:26 46 In any event, that goes on, that is the negotiation goes on
10:33:32 47 and your involvement in negotiation goes on through to -

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10:33:42 1 throughout [REDACTED] and [REDACTED]. There are attempts made to see
10:33:49 2 if this matter could be resolved, do you accept
10:33:51 3 that?---Yes, I do.
4

10:33:52 5 Obviously there are reasons why it's better if the matter
10:33:55 6 resolves, the interests of justice is served if there are
10:34:01 7 no contested hearings, all of those things apply?---Yes.
8

10:34:04 9 And which ordinarily apply but there was a particular issue
10:34:07 10 here that everyone was concerned about, when I say
10:34:10 11 everyone, police, Ms Gobbo, handlers, and that is every
10:34:13 12 time one of these contested matters got to court there was
10:34:16 13 this business about the potential of exposure of what had
10:34:21 14 gone on?---Correct.
15

10:34:24 16 Do you accept that?---Yes, I do.
17

10:34:38 18 I think the evidence is that [REDACTED] is sentenced towards the
10:34:44 19 end of [REDACTED] is that right?---Yes.
20

10:34:45 21 If we go to p.734 of the ICRs, [REDACTED] 2007. He'd been
10:34:50 22 sentenced and he blamed her for the [REDACTED] year sentence and
10:34:55 23 he wasn't happy with the advice that he'd received and he
10:34:58 24 thought that he shouldn't have rolled over. That was his
10:35:02 25 immediate response to being sentenced, do you see that
10:35:05 26 there? 15:46?---Yes.
27

10:35:12 28 "Not happy with the advice, blames her for [REDACTED] year
10:35:15 29 sentence." That information is apparently passed on to
10:35:18 30 you?---I'll have a look.
31

10:35:20 32 Yes?---Does it have a date for that entry, please, sir?
33

10:36:12 34 [REDACTED] 2007?---There's nothing in my diary for that day.
35

10:36:49 36 Right?---But I do know that at some stage I was aware that
10:36:53 37 he was unhappy with the sentence.
38

10:36:55 39 Do you think that he might have - she might have been
10:36:59 40 encouraged to go out and see him?---I suspect after a
10:37:07 41 sentence that, you know, they were in regular contact with
10:37:14 42 each other so I would suggest that she'd be keen to go out
10:37:18 43 and see him, yes.
44

10:37:20 45 It might have been in the interests of Victoria Police that
10:37:25 46 if he was upset with his sentence, in order to ensure that
10:37:32 47 he continued to cooperate it would be worthwhile having her

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10:37:38 1 go out and see him, do you accept that?---I can't remember.
10:37:46 2 I accept what you're suggesting, I can't remember actually
10:37:50 3 directing the SDU to do that.
4
10:37:53 5 No?---You know, to calm him down, that would be of benefit
10:38:01 6 to us, yes.
7
10:38:02 8 I mean at this stage one assumes there was an understanding
10:38:05 9 between the handlers, Mr White and Purana about the program
10:38:08 10 and how it was best pursued?---Well, the investigators and
10:38:15 11 SDU are in constant contact with each other, yes.
12
10:38:21 13 Mr White in his diary at p.258, 1114, says that he receives
10:38:28 14 a call I think from Mr Anderson. [REDACTED] has said that
10:38:35 15 [REDACTED] doesn't want to see Ms Gobbo again, didn't go
10:38:39 16 last Thursday, Ms Gobbo's upset. [REDACTED] says it's for
10:38:46 17 her safety and threats, something more to it. She's
10:38:56 18 emotional. Have told Ms Gobbo she must go and visit
10:38:59 19 [REDACTED] this week." That was agreed. Now that would be
10:39:05 20 consistent, wouldn't it, with the program, that if he's
10:39:08 21 upset she must go and see him and calm him down?---Yeah, I
10:39:15 22 don't recall us ever directing her or putting any
10:39:19 23 pressuring on her to go out and see him but they were in
10:39:22 24 regular contact with each other.
25
10:39:23 26 All right, okay. Then at pp.745 and 746 of the ICR on [REDACTED]
10:39:44 27 [REDACTED] 2007, if we can then - because obviously [REDACTED]
10:39:50 28 was required to give evidence in the committal of [REDACTED]
10:39:54 29 [REDACTED] ---Yes.
30
10:39:55 31 You agree?---Yes.
32
10:39:56 33 At 746 we see that there's a discussion about [REDACTED]
10:40:02 34 p.746. Ms Gobbo expressed concerns regarding - - -
10:40:27 35 ?---Yep.
36
10:40:28 37 In fact if we go back. You can see at the bottom of the
10:40:31 38 previous page, "Discussed [REDACTED] committal mention,
10:40:35 39 possibility of material being subpoenaed"?---Yes.
40
10:40:37 41 She said the balance of the TI intercepts on the brief.
10:40:41 42 "Discussed restraining order affidavits from Coghlan in
10:40:44 43 sealed envelopes". That would be the Detective Coghlan, I
10:40:47 44 take it, if it's restraining orders?---Yes.
10:40:50 45
10:40:51 46 "Expressed concerns regarding Purana recordings on the
10:40:54 47 night of the [REDACTED] Flynn/O'Brien want him committed to a

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10:40:58 1 course of action. Massive inconsistent statement. Heaps
10:41:01 2 of lies". She again mentioned concerns about her
10:41:04 3 involvement in the rolling of [REDACTED] ---Yep.
4

10:41:07 5 "Requested investigators be aware that the following will
10:41:10 6 depict Gobbo at St Kilda Road, security video, et
10:41:15 7 cetera"? ---Yes, I see that.
8

10:41:16 9 So she's clearly expressing her concerns about that. Then
10:41:20 10 if you keep going down, if you scroll down. She intends to
10:41:27 11 say to [REDACTED] things from the past where Ms Gobbo has been
10:41:31 12 right regarding this matter. He says on the night of
10:41:35 13 arrest he wanted to plead guilty. Do you recall that, she
10:41:39 14 had come out of the discussion with him and told you that
10:41:43 15 he wanted to plead guilty to a [REDACTED]
10:41:45 16 [REDACTED] ---I recall that, yes.
17

10:41:47 18 "Will say the longer you leave something, the more they'll
10:41:51 19 have, common sense things." Then she says that she hopes
10:41:55 20 Renate doesn't get out on Tuesday and this will solidify
10:41:59 21 her position, do you see that? ---Yes. Sorry, I can't
10:42:03 22 actually see it on the - - -
23

10:42:04 24 Sorry, keep - - - ? ---But - - -
25

10:42:11 26 "Solidify her position", I believe that's towards the -
10:42:18 27 keep going down I think. Perhaps if we keep going over the
10:42:32 28 page. Page 748 it is. Is that 748? About the eighth dot
10:42:54 29 point down underneath "Milad". Eighth dot point down
10:42:58 30 underneath "Milad". Do you see that, "Hopes Renate doesn't
10:43:05 31 get out on Tuesday. Will solidify HS position"? ---Yes, I
10:43:09 32 see that.
33

10:43:10 34 Obviously that cannot be a person who represents or acts
10:43:15 35 for Milad Mokbel because she's just got a desire that he
10:43:21 36 doesn't contest the charges for her own protection? ---Yes,
10:43:31 37 I see that.
38

10:43:31 39 This continues. If we go to p.801. [REDACTED], Ms Gobbo
10:43:38 40 would like to see Milad and assist him to plead to all the
10:43:41 41 charges. States that Renee needs to stay in gaol to enable
10:43:48 42 her to convince Milad. General conversation about not
10:43:51 43 representing or providing legal advice to the Mokbels for
10:43:56 44 what that was worth, do you see that? ---Yes, I see that.
45

10:43:59 46 Okay. Then if we go to your statement, do you accept that
10:44:10 47 you had further discussions with Ms Gobbo about the

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10:44:13 1 possible resolution of Milad Mokbel's matter?---I do.
2
10:44:18 3 And his desire to protect his wife?---I do.
4
10:44:21 5 You go and see Milad on 7 May 2007. I think if you go to
10:44:26 6 p.79 and then over to 81 of your diary?---Yes, that's
10:44:36 7 correct.
8
10:44:38 9 You have a discussion with him and there's talk about what
10:44:43 10 you might need for the matter to resolve, is that right?
10:44:48 11 Can you just set that out for us?---At 2:45, "Speak to
10:44:53 12 Milad Mokbel. Detailed to Milad Mokbel current
10:44:58 13 investigation, [REDACTED]
10:45:03 14 [REDACTED] and [REDACTED]." So they were some
10:45:09 15 [REDACTED] we knew of and some [REDACTED] we were aware of through the
10:45:10 16 [REDACTED] process [REDACTED]
17
10:45:14 18 Yes?---You know, I'm suggesting that I'm reading between
10:45:18 19 the lines, this is what I'm looking at to Milad Mokbel,
10:45:22 20 that he's involved in some format.
21
10:45:23 22 Yes?---"Explained 464 procedure re interviews over these
10:45:27 23 matters. Don't believe" - it's got "do" but I think it's
10:45:32 24 probably "don't believe in wasting time". "Did Milad
10:45:36 25 Mokbel wish to participate in these interviews? Reply no.
10:45:40 26 Did Milad Mokbel wish to hear the allegations? Reply no.
10:45:46 27 Would he consent to a 464 application? Reply no. Had been
10:45:51 28 interviewed for [REDACTED]. And I said, "New allegations,
10:46:02 29 additional materials from [REDACTED] statement".
30
10:46:07 31 Yes?---So that's a reference to [REDACTED]
32
10:46:10 33 Right?---I was obviously trying to see whether he wanted
10:46:12 34 to be interviewed for some further allegations.
35
10:46:16 36 Was the desire to get information from him or get him to
10:46:22 37 assist as well as plead, or what was the purpose of
10:46:26 38 that?---Well the purpose of this meeting appears to be to
10:46:35 39 ask him whether he wanted to be interviewed.
40
10:46:37 41 Yes?---For these extra matters.
42
10:46:40 43 Right?---But there were other conversations where, and you
10:46:50 44 know, Milad made comments to me about, "Well, I will do
10:46:53 45 this and I won't do that". I remember at one stage he
10:46:56 46 threw something up about one of the murder investigations,
10:47:00 47 or something like that, and I think that's in my notes

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10:47:03 1 elsewhere. But that was more him offering, "Well this is
10:47:08 2 what I can help you with", seeking to offer assistance from
10:47:09 3 us.
4

10:47:10 5 Right. Then you have a discussion with Ms Gobbo
10:47:12 6 afterwards, is that right? You indicated to Ms Gobbo - is
10:47:17 7 that right? We can see that there on p.83? Perhaps I've
10:47:21 8 jumped ahead?---83 is several days later.
9

10:47:26 10 Yes. You have a discussion with her. If you go to the
10:47:29 11 bottom of p.82, you return a telephone call to her; is that
10:47:35 12 right?---Yes, this is the next week. I speak to her.
13

10:47:38 14 Yes?---"Re possible plea."
15

10:47:40 16 Yes?---"Discuss same. Details, matters Milad Mokbel would
10:47:48 17 be interviewed for. Brief being prepared specifically
10:47:52 18 include [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED].
10:47:58 19 Indicated to Nicola Gobbo I wanted a serious plea offer
10:48:03 20 before considering plea summary. Would consider between
10:48:08 21 dates charge inclusive of above matters. Nicola Gobbo will
10:48:12 22 speak to Milad Mokbel and return a call to me."
23

10:48:16 24 Effectively she's conducting negotiations on behalf of
10:48:19 25 Milad Mokbel with a view to resolving the charges before
10:48:23 26 the matter comes to committal on 2 July?---Yes.
27

10:48:31 28 If we go to p.837 of the ICRs. Ms Gobbo said that she'd
10:48:42 29 been talking to Flynn about a Milad plea deal, 847. Do you
10:48:50 30 see that there?---Yes.
31

10:48:54 32 It says that she can't talk to - it says Leftbridge, but
10:48:59 33 that's Gerard Leftbridge; is that right?---I expect so,
10:49:03 34 yes.
35

10:49:04 36 Gerard Leftbridge is in fact Milad Mokbel's actual lawyer,
10:49:10 37 the lawyer on the record, solicitor?---I wasn't aware of
10:49:14 38 that. I've actually got a later reference to Alex
10:49:18 39 Lewenberg.
40

10:49:18 41 But subsequently the solicitor was changed on the advice of
10:49:23 42 Ms Gobbo. It appears Ms Gobbo suggested a number of
10:49:27 43 changes over the period of time, firstly to Mr Lewenberg
10:49:30 44 and then ultimately to Al Grigor but that was, I suggest,
10:49:35 45 being pushed by Ms Gobbo?---Yes, well that sounds - I'm
10:49:37 46 unaware of it but I was aware that Lewenberg was the
10:49:42 47 solicitor at one stage.

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1
10:49:43 2 All right. Then it seems here that the handlers are
10:49:47 3 advising her that it's not appropriate for her to represent
10:49:49 4 Milad and she agrees and added that he'd failed to pay her
10:49:57 5 a significant amount of fees. She's referred Milad to
10:50:03 6 Robert Richter to negotiate with Purana, do you see
10:50:06 7 that?---I see that, yes.
8
10:50:08 9 Did that in fact occur, were there further discussions that
10:50:12 10 you had with other lawyers or did Ms Gobbo continue to
10:50:17 11 speak to you?---What date have we got here?
12
10:50:24 13 Perhaps I'll - you don't recall; is that right?---No, but
10:50:27 14 I've made notes of my dates in my statement so there seemed
10:50:32 15 to be a further discussion on 28 May.
16
10:50:35 17 Yes, that's the day that she represents Mr Ahec at the
10:50:41 18 County Court?---Oh yes.
19
10:50:44 20 Another person with whom she had potentially a significant
10:50:47 21 conflict, is that right, on the 28th?---That's correct. I
10:51:28 22 was at another court in the morning for another matter and
10:51:34 23 then in the afternoon at the County Court for Mr Ahec.
24
10:51:36 25 And she had done the plea for Mr Ahec. In fact if we go to
10:51:42 26 863. In fact if we go back to - sorry, just before we do
10:51:52 27 that. Despite the fact that plea negotiations are going on
10:51:58 28 there was also - it was also anticipated that if the matter
10:52:03 29 didn't resolve it would go to hearing and then I suggest
10:52:06 30 there were discussions which I took you to yesterday about
10:52:13 31 your notes of what to do with them and the discussions I
10:52:16 32 took you to yesterday about redacting them, not claiming
10:52:20 33 privilege if subjected to scrutiny, et cetera, et cetera,
10:52:23 34 do you remember that?---Yes, I do.
35
10:52:25 36 Okay. Then p.849, 22 May. Milad's solicitor had gone to
10:52:38 37 the OPP with respect to a plea deal. "The OPP was unable
10:52:41 38 to help with regard to the release of Renee. Milad wants
10:52:45 39 the matter settled. Ms Gobbo believes that he will plead
10:52:49 40 to Flynn's terms." Page 849.
41
10:53:13 42 COMMISSIONER: Missed a bit. Go back a little bit.
43
10:53:16 44 MR WINNEKE: If we perhaps go up. "Milad wants the matter
10:53:17 45 settled. Believes Milad will plead to Flynn's terms.
46 Doesn't want to be involved in the legal matter demanding
10:53:27 47 that she be involved, demanding that she ring the OPP and

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10:53:27 1 resolve." 14:00, another telephone call. "Accepts that he
10:53:30 2 has to plead guilty. Believes that the response from the
10:53:33 3 OPP was driven by Jim O'Brien", and obviously by that stage
10:53:37 4 there'd been a bit of a break down between Mr O'Brien and
10:53:41 5 Milad Mokbel, do you accept that, subsequent to that - do
10:53:46 6 you recall I put to you that transcript the other day of
10:53:48 7 the meeting which occurred in April?---Yes.
8
10:53:50 9 With Trichias and O'Brien out there?---Yes.
10
10:53:53 11 Do you accept that?---Yes.
12
10:53:54 13 Okay. Then if we go to 856, 25 May. "Gobbo wants to speak
10:54:02 14 to Flynn so she can tell Milad what he's expected to plead
10:54:11 15 to. She wants to get a solicitor to negotiate on behalf of
10:54:18 16 Milad", do you see that?---I do.
17
10:54:23 18 So it certainly does appear that there's an increasing
10:54:28 19 shrillness on her part and desire to get the matter things
10:54:32 20 resolved and she's managing things in the
10:54:34 21 background?---Yes, that appears to be the case.
22
10:54:40 23 Then on the day she represents Mr Ahec she tells the
10:54:44 24 handlers that she'd "spoken to Detective Sergeant Flynn
10:54:47 25 today. He's been told he's to plead to a between dates
10:54:53 26 trafficking. Wants contact visit with [REDACTED] before he
10:54:56 27 has to give evidence at the committal of [REDACTED] Gobbo only
10:55:01 28 has two Mondays spare to see [REDACTED] and that is I
10:55:05 29 suggest on p.863. Keep going down. You'll see at the
10:55:23 30 bottom there, "Frank Ahec. Stated the matter went very
10:55:27 31 smoothly. Stated she knew more than the prosecutor", see
10:55:30 32 that?---Yes.
33
10:55:31 34 That was Mr Tinney who prosecuted that, is that right,
10:55:34 35 judging from your diary?---Yes, that's correct.
36
10:55:42 37 And if we scroll down. General discussion with respect to
10:55:46 38 plea and then she talks about the conversation that she's
10:55:50 39 had with you that I've just recited, do you see
10:55:54 40 that?---Yes.
41
10:55:54 42 So she's keen to see [REDACTED] and she's keen to resolve
10:55:59 43 the Milad Mokbel matter?---Yes. I don't have any record of
10:56:05 44 speaking to her that day but I think she - I've actually
10:56:10 45 made an error in my diary in relation to a defence
10:56:13 46 barrister, if she was representing Mr Ahec.
47

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10:56:16 1 I think you've just defence barrister, you haven't written
10:56:20 2 any barrister's name?---No, I've actually written Frank
10:56:24 3 Ahec, so that's obviously a mistake. Normally I'd
10:56:27 4 write - - -
5
10:56:28 6 The defence barrister, but you've written Frank
10:56:32 7 Ahec?---Yes.
8
10:56:33 9 I follow that. All right then. If we go to p.886.
10:56:46 10 There's a reference to Milad Mokbel having changed
10:56:50 11 solicitors because now she's with Mr Lewenberg, do you see
10:56:57 12 that?---Yes.
13
10:57:02 14 He'd arranged for cash to be paid to Leftbridge and then,
10:57:08 15 it may not be apparent, but "Lewenberg to get a significant
10:57:12 16 sum of money for Renee's defence", and that intelligence
10:57:16 17 was provided verbally to Mr O'Brien. You may or may not
10:57:19 18 have been aware of that?---It's not ringing any bells but I
10:57:22 19 can look in my diary if you wish me to for that day.
20
10:57:25 21 No. In any event you recognised that ultimately
10:57:29 22 Mr Lewenberg started to act for Mr Milad Mokbel; is that
10:57:35 23 right?---That's right, yes. There's a note in my diary
10:57:37 24 when I think we get closer to the resolution.
25
10:57:40 26 Certainly on 12 June there's an entry in Mr O'Brien's
10:57:46 27 diary, there may be in yours, that you and - in fact there
10:57:49 28 is in your diary, you and Mr O'Brien go to Mr Lewenberg's
10:57:54 29 office and speak to him about resolving the
10:57:56 30 matter?---That's right.
31
10:58:02 32 Can I take you to p.902 of the ICRs. There's talk about [REDACTED]
10:58:16 33 [REDACTED] "Does she need to go down and speak to them before
10:58:20 34 the committal? The handler will ask Dale Flynn. She says
10:58:28 35 the only thing she would like to tell [REDACTED] is that if he's
10:58:32 36 asked about her, that he has to tell the truth regarding
10:58:36 37 her being there at the arrest"?---Yes.
38
10:58:39 39 And, [REDACTED] can't wait to get there, it's pay back time for
10:58:44 40 him". And there's talk about [REDACTED] needing to protect his
10:58:47 41 credibility?---Yes.
42
10:58:48 43 And she understands that. And "he met with Alex Lewenberg
10:58:54 44 today" and we can see what's going on there?---I see that
10:59:03 45 entry, yes.
46
10:59:05 47 Then if we go to p.918. She's - under "Milad Mokbel" -

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10:59:15 1 getting frustrated or she's getting frustrated with the
10:59:19 2 lack of action regarding the plea. She wants it done so
10:59:22 3 that Milad won't contest the committal. She feels like
10:59:25 4 doing it herself. She's told she's not to get involved in
10:59:30 5 representing him. She understands the reasons why. Purana
10:59:34 6 will facilitate the plea if that's what he wants to do and
10:59:40 7 that's understood?---Yes, I see that entry.
8
10:59:42 9 937, 25 June. Confident that she can turn him around and
10:59:49 10 get him to plead. She wants to be able to speak to Paul
10:59:54 11 Rowe. Lewenberg will not represent him as he hasn't
10:59:57 12 briefed any barrister. She still understands that it's not
11:00:03 13 best for her to represent. She's told him no funding, no
11:00:06 14 acting. If we keep going down. Under the heading "SDU
11:00:28 15 management", she's got real fears about [REDACTED] the
11:00:32 16 [REDACTED] issue getting out at court and being killed if
11:00:35 17 [REDACTED] find out. If we go down to 25 June, "She's got
11:00:41 18 concerns because Mr Lewenberg's going to Queensland at the
11:00:44 19 end of the week, he'll not be there next week for the
11:00:47 20 committal. He doesn't care. She's worried now that the
11:00:51 21 plea will fall over and Milad may change because of no
11:00:54 22 support. Confirms that Milad has told her he's pleading to
11:00:58 23 the first matter but reserves his plea on the second
11:01:01 24 matter", do you see that?---I do.
25
11:01:11 26 Is it correct to say that around this time you were also
11:01:17 27 dealing with Ms Gobbo with respect to death threats that
11:01:21 28 she was receiving?---Yes.
29
11:01:24 30 And those - I think Operation Gosford had started in about
11:01:31 31 February of 2007 because of the threats we discussed
11:01:33 32 yesterday; is that right?---I can't recall the date the
11:01:35 33 operation started but the first threats came in December
11:01:39 34 2006.
35
11:01:40 36 Yes?---So it would have been - - -
37
11:01:42 38 6 December 2006; is that right?---I don't know the date,
11:01:47 39 it's December 2006.
11:01:48 40
11:01:49 41 Yes?---I could check it if you wish me to.
42
11:01:51 43 That's okay. Then Gosford was given a name, the
11:01:54 44 investigation was given the name Operation Gosford?---That
11:01:58 45 is correct.
46
11:01:59 47 In about February 2006; is that right?---Yes.

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1
11:02:02 2 Can I take you to - just excuse me. Your diary at p.135,
11:02:23 3 did you speak to Ms Gobbo in her chambers?---I spoke to her
11:02:27 4 on 28 June, that was by phone.
5
11:02:29 6 Yes?---And then on the 29th I spoke to her in her chambers,
11:02:34 7 yes.
8
11:02:34 9 Regarding [REDACTED] welfare issues?---Yes.
10
11:02:38 11 [REDACTED]; is that right?---Correct.
12
11:02:39 13 Did you attend the County Court to get an edited transcript
11:02:44 14 of the plea of [REDACTED] and [REDACTED] the sentence
11:02:48 15 transcript?---I did, yes.
16
11:02:49 17 Did you speak - the prosecutor in that case was I think
11:02:53 18 Mr Horgan and I think Colleen Bell from the OPP, are you
11:02:56 19 aware of that?---I've got that written down there, yes.
20
11:03:07 21 At 12.45 you had a management meeting with Detective
11:03:16 22 Superintendent Steendam; is that right?---Yes.
23
11:03:19 24 You have updated her on the matters that were going forward
11:03:22 25 with respect to Milad Mokbel?---I doubt it.
26
11:03:25 27 No. If we go to the source management log of 29 June 2007
11:03:40 28 at p.114. There's a meeting between yourself, Mr O'Brien,
11:03:52 29 Rowe, Kelly - just the 29th. No, no, the other way.
11:04:06 30 Sorry, 29 June. See that there, concerning the committal
11:04:22 31 on 2 July. The issue of your notes will reveal Gobbo
11:04:29 32 attending the police station on the night of the arrest of
11:04:32 33 [REDACTED] "He agrees to assist, three days later sets up
11:04:36 34 [REDACTED] Agree that your notes to be redacted on
11:04:39 35 this point if cross-examined about the same will reveal
11:04:44 36 Ms Gobbo attended and gave him legal advice. She's to be
11:04:46 37 protected because of the current threats against the
11:04:51 38 same"?---I see that, yes.
39
11:04:53 40 Is that your recollection of the meeting?---I can't recall
11:04:55 41 the meeting at all but it's in my diary that we had a
11:04:58 42 meeting at 11.15 so I don't disagree with it.
43
11:05:02 44 Insofar as the notes about, anything about your notes, is
11:05:10 45 that referred to in the notes that you took of that
11:05:12 46 meeting?---No, I don't. I've just got "re Milad Mokbel and
11:05:20 47 Koh committal", the members present, and that's it.

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1
11:05:25 2 If we go to p.957 of the ICRs, 30 June 2007, under "SDU
11:05:31 3 management. Ms Gobbo was told that next week during the
11:05:33 4 committal she would get daily updates from Dale Flynn and I
11:05:36 5 will update her. She is not to contact any investigators
11:05:41 6 directly and that was understood". Is that your
11:05:44 7 recollection of the way things went?---I'm not going to
11:05:48 8 argue that it wasn't. I just can't recall it. But that
11:05:51 9 seems to make sense.
10
11:05:53 11 On 1 July 2007 you prepared for the committal, p.136 of
11:06:01 12 your diary?---Yes.
13
11:06:09 14 Obviously Ms Gobbo was concerned and the ICRs reflect that
11:06:13 15 she was concerned about that. Do you know whether there
11:06:23 16 were any instructions given by the investigators that
11:06:27 17 Ms Gobbo was not to speak to either - was not to speak to
11:06:33 18 [REDACTED] about any evidence that he might give?---I don't
11:06:44 19 know.
20
11:06:50 21 We understand that the evidence - that you gave evidence on
11:06:55 22 2 July 2007; is that right?---Correct, yes.
23
11:07:02 24 I just want to ask you some questions if I may about that.
11:07:08 25 That committal, there were a number of accused represented
11:07:14 26 by various barristers, Dominic Barbaro was represented by
11:07:21 27 Mr Korn I think it was. Mr Kowalski represented Toreq
11:07:27 28 Bayeh. Ak1 Hammoud was represented at the committal and
11:07:27 29 Abdul Khoder I think was represented by Mr Sheales and
11:07:31 30 Milad Mokbel was represented by a solicitor with Alex
11:07:35 31 Lewenberg, Ari Furstenberg, is that your recollection?---I
11:07:44 32 have some notes that generally coincide, Mr Korn, Mr
11:07:49 33 Kowalski, there was a Barker for Mr Hammoud.
34
11:07:51 35 Luke Barker, yes. The prosecutor was Mr Barry?---Yep.
36
11:07:55 37 You were - obviously in the committal the evidence is more
11:07:59 38 or less the tendering of various statements that you make;
11:08:03 39 is that right?---Correct.
40
11:08:03 41 And then you're examined during the course of the
11:08:12 42 committal?---Yes.
43
11:08:13 44 Can I ask you - if we can put up some committal transcript.
11:08:26 45 It's VPL.6030.0005.7220. If I can perhaps go to p.39 of
11:08:49 46 that transcript in the first place. In cross-examination,
11:09:24 47 I think it might have been re-examination with Mr Barry,

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11:09:27 1 you indicated that [REDACTED] had provided seven statements
11:09:33 2 to the court for the purpose of the committal; is that
11:09:36 3 right?---Yes.
4
11:09:37 5 They were in addition to the actual statements that were
11:09:39 6 being relied upon? No?---No, I read that as there was
11:09:46 7 seven statements relevant to that prosecution.
8
11:09:50 9 I apologise. Seven statements relevant to that
11:09:53 10 prosecution. That was the situation, was it?---Yes.
11
11:09:57 12 At that stage - I take it you understood that there had
11:10:02 13 been a number of issues, or you may not have appreciated
11:10:08 14 the detail, but you would have had a general understanding
11:10:12 15 that you would have been likely cross-examined about what
11:10:15 16 had occurred on the [REDACTED] and the circumstances in
11:10:20 17 which [REDACTED] came to assist police?---Yes.
18
11:10:27 19 And as a general proposition also you expected to be
11:10:30 20 cross-examined about the statement taking process?---Yes.
21
11:10:33 22 As was usually the case in committal proceedings, if not
11:10:36 23 trials?---Yes.
24
11:10:38 25 Mr Kowalski, if we go to p.24 - just before I go on, Milad
11:10:46 26 Mokbel did not participate in the committal proceeding
11:10:50 27 because his matter had gone directly to the County Court on
11:10:53 28 a reserve plea basis, direct hand-up brief?---That sounds
11:10:57 29 correct, yes.
30
11:10:59 31 If I go to p.24 of the transcript. Mr Kowalski asked you
11:11:13 32 some questions on behalf of Mr Bayeh about the record of
11:11:22 33 interview of [REDACTED] because as we know there were two
11:11:29 34 records of interview, one commenced at about quarter four
11:11:33 35 or thereabouts and then the other one commenced at eight
11:11:36 36 minutes past nine in the evening; is that right?---Correct,
11:11:39 37 yes.
38
11:11:40 39 He wanted to know whether it was part of the brief so as he
11:11:46 40 could get an idea about the circumstances, you know, of
11:11:50 41 what had occurred on the night and what [REDACTED] had said
11:11:57 42 during the course of any interviews that had been had, do
11:12:00 43 you accept that?---Just with being part of the brief, I
11:12:03 44 don't know if that would have been included as part of the
11:12:07 45 brief, of the initial hand-up brief of this prosecution.
46
11:12:16 47 Yes. He was asking you whether it was part of the hand-up

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11:12:18 1 brief and you said it may have been initially with the
11:12:21 2 initial brief of evidence where [REDACTED] was [REDACTED] the
11:12:25 3 [REDACTED] --Yes.
4

11:12:25 5 So he's asking you whether it was part of the brief of
11:12:29 6 evidence that his client was facing; is that right?---I
11:12:35 7 would imagine he would have had the brief of evidence.
8

11:12:42 9 Yes. "Did you take a record of interview from him at the
11:12:48 10 time of his arrest? Yes. Is that record of interview part
11:12:52 11 of this brief of evidence?" You say, "It may have been
11:12:55 12 part of [REDACTED] brief of evidence"?---Yes.
13

11:12:58 14 Kowalski says, "Unless someone can correct me, and this may
11:13:03 15 be the case, because there's three briefs, and I could be
11:13:05 16 wrong, it doesn't appear within my brief of evidence, and
11:13:07 17 I'm waiting for", et cetera . Then he says, "Record of
11:13:11 18 interview taken" - the prosecutor says, "What was the
11:13:20 19 inquiry about?" He says, "The record of interview taken of
11:13:24 20 [REDACTED] at the time of his arrest on [REDACTED] Right.
11:13:28 21 Well you're aware that a record of interview was
11:13:31 22 conducted?" You say, "Yes". "Did you conduct it? Yes, I
11:13:35 23 did." Then he asked you questions about that record of
11:13:40 24 interview?---Yes.
25

11:13:43 26 You would have been aware that the record of interview was
11:13:46 27 not part of the brief?---Well why your previous question
11:13:53 28 confused me, I wouldn't have thought it would have been
11:13:55 29 part of that brief, yes.
30

11:13:57 31 Look, I follow that. Perhaps I'll withdraw that. It was
11:14:16 32 clear in any event that the counsel who were representing
11:14:23 33 the people who were charged at that committal would have
11:14:29 34 been interested in, and indeed would have been entitled to
11:14:32 35 have, that record of interview by way of appropriate
11:14:37 36 disclosure of the events with respect to their clients, do
11:14:42 37 you accept that proposition?---I'm not sure whether by
11:14:53 38 saying disclosure were you suggesting that as police we
11:14:57 39 should have provided it without any request, or whether it
11:14:59 40 was requested for or not?
41

11:15:01 42 Well as a matter of disclosure what I would suggest
11:15:05 43 ordinarily is that any relevant documents, even if those
11:15:08 44 documents weren't going to be relied upon by the police,
11:15:10 45 should be disclosed. That's the state of the law, isn't
11:15:18 46 it?---Well, I might be mistaken but I would be thinking at
11:15:25 47 that time that our response would be if we were asked for

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11:15:28 1 it we would provide it, but if we weren't asked for it we
11:15:32 2 wouldn't provide it.
3
11:15:34 4 Okay. Well in this case it appears either that you weren't
11:15:36 5 asked for it, or had you been asked for it there was a
11:15:41 6 decision not to provide it. Was that the case, or was it
11:15:45 7 not possible to provide it?---So this was - so I don't
11:15:51 8 think there'd been any - I'm not sure what occurred before
11:15:55 9 the committal, because I think this comes up during the
11:15:57 10 committal, and there's subsequent conversation about
11:16:00 11 providing it.
12
11:16:00 13 Yes?---So it appears to be that it was provided during the
11:16:03 14 committal.
15
11:16:04 16 Yes?---Which would indicate it obviously hadn't been
11:16:08 17 provided prior to the committal.
18
11:16:09 19 Yes?---But I can't say if there was any request and we
11:16:15 20 hadn't provided it.
21
11:16:16 22 Is that right?---Or it just wasn't asked for.
23
11:16:20 24 In any event it may well be that there was a - do you
11:16:20 25 understand that there was a suppression order which may
11:16:22 26 have caused some issues with respect to the provision of
11:16:24 27 that, or not?---Well I knew there were suppression orders
11:16:28 28 in relation to [REDACTED]
29
11:16:30 30 Yes, all right. Do you accept that it would have been and
11:16:35 31 was a relevant document for them to have?---Yes.
32
11:16:42 33 At p.31 of the transcript were you asked questions about
11:16:56 34 where statements were taken? You were asked about the
11:17:05 35 methodology of the statement taking process, you understand
11:17:08 36 that?---Yes, I do.
37
11:17:10 38 That is something which you expected to be asked
11:17:13 39 about?---Yes.
40
11:17:14 41 And you were asked, "What was the methodology of taking the
11:17:20 42 statement? Was it just you and him there, was it, there
11:17:23 43 was no one else? Well there would have been other members
11:17:25 44 present at the office", right?---Yes.
45
11:17:32 46 It goes on, "Sure, as a result of that time but in short
11:17:36 47 the methodology was that we just wanted to get down in

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11:17:39 1 point form quickly what had happened"?---Yes.
11:17:41 2
11:17:41 3 "We wanted to get it down quickly so I take it it was you
11:17:47 4 who came up with the presentation of the statement"?---Yes.
5
11:17:49 6 You're the one with the experience in taking the statements
11:17:52 7 and it was you who created the points and the headings, et
11:17:56 8 cetera; is that right?---Yes.
9
11:18:00 10 The statements for the most part were taken where?---This
11:18:04 11 is a reference to the four statements that were taken
11:18:07 12 between the [REDACTED] and the [REDACTED].
13
11:18:10 14 Right. They were taken at the office, were they?---They
11:18:13 15 were taken at Purana, yes.
16
11:18:18 17 If we go to p.37. [REDACTED], on behalf of [REDACTED] was
11:18:24 18 asking about a particular statement dated 6 August which
11:18:27 19 had been taken?---Yes.
20
11:18:36 21 Just excuse me. Do you know what that statement was?---6
11:18:58 22 August is a reference to the date they were signed.
23
11:19:01 24 Do you know which statement it was that he was asking you
11:19:03 25 about clearly related to his client, [REDACTED]?---Not from
11:19:09 26 what I've read so far.
27
11:19:11 28 He asked who prepared it and you said that you did?---Yes.
29
11:19:20 30 "Did you prepare it from material that had been previously
11:19:25 31 taken from [REDACTED] Yes, I sat down in front of him with
11:19:30 32 a laptop computer and took the statement. You sat down -
11:19:33 33 I'm sorry, when you sat down with him with a laptop
11:19:37 34 computer that was on a previous occasion, a date previous
11:19:39 35 to 6 August?" You say, "Yes. Do you know what day?" You
11:19:47 36 say, "No. Are you able to tell us when you came back after
11:19:48 37 lunch what date that was?" And you say, "No"?---Yes.
38
11:19:49 39 "Do you still have any of your notes on you? I'm sorry,
11:19:53 40 I'll do it another way. The version that you have in front
11:19:57 41 of you is in fact the very statement that was taken on a
11:19:58 42 previous occasion to 6 August in that form. This is the
11:19:59 43 one and only version of this statement that's been taken.
11:20:05 44 Were there earlier drafts of it?" You say, "No. There
11:20:10 45 never were any changes made from the time that you first
11:20:13 46 started talking to [REDACTED] Certainly there might have
11:20:16 47 been changes made during the course of taking the

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11:20:19 1 statement. Do we have a record of those change we can see
11:20:22 2 from now on? No. No, we don't". There was a
11:20:26 3 discussion?---Yes.
4
11:20:27 5 Are you able to say, and were you able to say on that date,
11:20:29 6 that there was no draft versions of that statement?---No, I
11:20:36 7 don't believe there was, no.
8
11:20:38 9 You don't believe you were able to or you don't believe
11:20:42 10 there was any draft version of that statement?---As I've
11:20:48 11 said on previous occasions, we weren't in the habit of
11:20:52 12 saving statements before changes were made. So the only
11:20:57 13 statement that existed was the final one that was signed.
14
11:21:00 15 Yes, but he wasn't asking about the final version, he was
11:21:03 16 asking for earlier drafts of the statement, and you said
11:21:07 17 there weren't any drafts of that statement?---Well that
11:21:09 18 would have been my belief at the time.
19
11:21:11 20 Right. Do you say that that statement that you were giving
11:21:18 21 evidence about hadn't been provided to Mr Green on 9
11:21:29 22 June?---It's possible that it was.
23
11:21:33 24 Do you know whether there were any changes made subsequent
11:21:37 25 to that or not of the version which was provided, or at
11:21:42 26 least printed out, apparently printed out?---I can't with
11:21:48 27 any accuracy give information about what statement was
11:21:51 28 changed when.
29
11:21:53 30 Yes?---And I'm not even sure which statement this is
11:21:56 31 referring to.
32
11:21:56 33 Yes. Would you have been aware on the day that you were
11:22:01 34 asked questions about it?---No, my answer would have been
11:22:05 35 the same.
36
11:22:06 37 Your answer would have been, "No, look, I can't tell you
11:22:09 38 whether there were drafts because the way in which we did
11:22:13 39 them" - I mean the point I make it this: on one view the
11:22:20 40 answer that you give is an inaccurate answer because in
11:22:27 41 fact there were drafts and at least unsigned versions of
11:22:30 42 that statement, do you accept, were provided to the
11:22:34 43 handlers on 9 June?---I accept that they were provided,
11:22:39 44 yes. I don't know if it's one and the same statement but I
11:22:42 45 think that there's a good chance there might have been.
46
11:22:44 47 Yes?---But where those statements were then, I don't know.

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1
11:22:48 2 Right. In any event, look, by giving the answer no, that
11:22:55 3 really is the end of it. What you really say - and you go
11:23:00 4 on to say, I accept, that certainly there might have been
11:23:02 5 changes made during the course of taking the
11:23:05 6 statement?---Yes.
7
11:23:06 8 But in answer to the question whether there were drafts,
11:23:11 9 what was your understanding of that question?---So my
11:23:17 10 understanding, and I think the word - this has kind of come
11:23:22 11 up before and the word "draft" sometimes confused me, but
11:23:25 12 there would be a statement that was marked "draft 1" and a
11:23:31 13 certain date put to it and there would other changes and
11:23:35 14 put "draft 2", and that's just not what we did at that time
11:23:39 15 and for these statements.
16
11:23:45 17 You didn't clarify, you didn't say, "Look, my understanding
11:23:49 18 of a draft is an official document which says on it draft
11:23:53 19 number 1 in which case I say there's no drafts. If I'm
11:23:57 20 incorrect about that, earlier versions before changes were
11:24:02 21 made, well if that's the case there were earlier
11:24:07 22 versions"?---I didn't clarify, I've indicated no, because I
11:24:10 23 didn't believe there were drafts existing at that stage.
24
11:24:14 25 Yes. What you do say is there were changes made. Do you
11:24:18 26 say that that accurately reflected the situation or
11:24:25 27 not?---That there were changes made in statements?
28
11:24:28 29 Yes?---Well, as I've just said, I'm only repeating myself.
11:24:32 30 There were numerous changes made to his statements over a
11:24:36 31 period of time.
32
11:24:36 33 Yes?---Whether he's referring to a specific statement here
11:24:41 34 or not, I don't know. I possibly couldn't even clarify
11:24:45 35 whether that statement had been changed or not.
36
11:24:47 37 In any event, it does appear that he's talking about a
11:24:50 38 specific statement?---It does.
39
11:24:52 40 What you say is, "Look, I have an understanding about what
11:24:56 41 a draft means. I don't know exactly what I was being asked
11:25:03 42 about, but my view of the world is that a draft is sort of
11:25:06 43 an official version with 'draft' on it"?---I take it back
11:25:11 44 further. When I first had a discussion with the previous
11:25:14 45 Purana members, that was kind of what we discussed, that we
11:25:18 46 wouldn't have draft versions.
47

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11:25:19 1 Yes. When you say you wouldn't have draft versions, that
11:25:23 2 is you wouldn't have official draft versions with "draft 1"
11:25:26 3 written on it?---Yes.
4

11:25:28 5 Can I suggest this to you, that what the defence were
11:25:32 6 getting at is what changes had been made to the statement?
11:25:36 7 Had there been changes and are there documents which
11:25:40 8 reflect earlier versions of the statement?---Yes.
9

11:25:46 10 For example, you emailed earlier versions to other
11:25:50 11 colleagues, didn't you?---Possibly.
12

11:25:55 13 And so there would be a record in email communications of
11:25:59 14 perhaps Word versions of earlier statements?---Possibly.
15

11:26:03 16 You printed out documents which were provided to the
11:26:07 17 handlers so that would be a version, an earlier version of
11:26:12 18 the statement. It may be exactly the same or it may be
11:26:15 19 different, it certainly - perhaps I'll withdraw that. It
11:26:20 20 won't be exactly the same because it doesn't have the
11:26:22 21 signature on it?---Correct.
22

11:26:24 23 It may be that it's got Ms Gobbo's markings on it, who
11:26:29 24 knows, but there will be earlier versions of the statement
11:26:32 25 that were signed?---No, no.
26

11:26:37 27 And presented to court?---No, there were none signed.
28

11:26:40 29 I'm sorry?---There were none signed.
30

11:26:42 31 None signed?---They were all signed collectively on 6
11:26:45 32 August.
33

11:26:46 34 What I'm suggesting to you is there would have been earlier
11:26:48 35 versions of the documents which were ultimately
11:26:52 36 signed?---Well there definitely was in relation to the ones
11:26:54 37 that I delivered to the SDU.
38

11:26:55 39 Yes?---Aside from that, I may have emailed some. I think I
11:27:01 40 printed some for Jim O'Brien at some stage. There were
11:27:04 41 those ones. But that's probably all I can remember at this
11:27:10 42 stage.
43

11:27:11 44 Look, what you were being asked about, and you knew you
11:27:16 45 were being asked about, was the process of statement
11:27:20 46 taking?---Yes.
47

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11:27:21 1 Right. What was not included in that answer, which was
11:27:25 2 albeit you say there were changes made, but the answer -
11:27:30 3 the answer that you gave, I suggest, was misleading because
11:27:36 4 there were earlier versions of the signed statement, the
11:27:43 5 statement which ultimately became signed?---I don't believe
11:27:46 6 I answered that question in a way that I was intentionally
11:27:48 7 trying to mislead them.
8

11:27:50 9 Yes?---I just believe that, as I said right from the very
11:27:55 10 start, our process was not to have draft copies of
11:27:59 11 statements.
12

11:27:59 13 Yes?---So in answering that question I will say, no, there
11:28:06 14 were no drafts there. I don't know if I - I don't believe
11:28:10 15 I sat there and considered, "Oh, but I have given some to
11:28:14 16 Jim and I have given some to other people, but I'll just
11:28:18 17 ignore them". I just don't believe it came into my mind.
18

11:28:23 19 Can I say this, obviously we're focusing on Ms Gobbo's
11:28:26 20 involvement in this process, right?---Yes.
21

11:28:29 22 What did occur, and you knew had occurred, was that,
11:28:32 23 firstly, Ms Gobbo's position with respect to [REDACTED] and
11:28:36 24 the police was, to put it in your words, incredibly
11:28:47 25 complicated, or there were complexities about it?---Yes.
26

11:28:50 27 And she had been involved in the way in which we have
11:28:54 28 canvassed over the last few days in that process whereby
11:28:57 29 those statements came into being?---Yes.
30

11:29:01 31 And it wasn't just simply a case of you sitting down with
11:29:06 32 [REDACTED] asking him questions, getting answers and having
11:29:11 33 it put on to the computer. There were a whole lot of
11:29:17 34 events, I suggest to you, which were hidden away when you
11:29:21 35 say, "No, there's no drafts", I suggest to you?---Well, the
11:29:34 36 statements going to Jim and SDU, that happened, that
11:29:42 37 occurred. I can't deny that.
38

11:29:44 39 I know, I follow that?---But I just think in answering that
11:29:48 40 question I wasn't considering or it had crossed my mind
11:29:52 41 that those - I wasn't even sure if those statements were
11:29:56 42 still available or existed.
43

11:29:57 44 Yes?---So I just don't think I considered it.
45

11:30:02 46 The question is the version in front of you, is that in
11:30:05 47 fact the very statement that was taken on a previous

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11:30:08 1 occasion in that form?" Answer: "This is the one and only
11:30:13 2 version of this statement that's been taken"?---Yes.
11:30:16 3
11:30:16 4 "There were no earlier drafts of it"?---Yes.
5
11:30:20 6 Question: "There never were any changes made from the time
11:30:23 7 that you first started talking with [REDACTED]?" Answer:
11:30:27 8 "There certainly might have been changes made during the
9 course of taking the statement. Do we have a record of
11:30:32 10 those changes that we can see from now on? No, we don't".
11:30:34 11 What I suggest to you is when you say no, there's no
11:30:37 12 drafts, in my submission - or I put it to you that that's a
11:30:41 13 misleading answer?---Well, it certainly wasn't
11:30:44 14 intentionally misleading.
15
11:30:45 16 Yes, all right. You certainly were aware though that these
11:30:50 17 were issues that were going to come out and you had to
11:30:53 18 consider very carefully the matters and you had to, I
11:30:57 19 suggest, be very careful about the answers that you
11:31:00 20 gave?---Well, yes. You would normally be very cautious
11:31:06 21 about answers you would give, yes.
22
11:31:10 23 Were you uncomfortable giving this evidence?---Well, I was
11:31:15 24 uncomfortable from the point of view that we've mentioned
11:31:17 25 previously about the fact that this is going to expose
11:31:22 26 Ms Gobbo's role in providing or seeing [REDACTED] on the
11:31:30 27 [REDACTED]
28
11:31:31 29 Yes. Were you, insofar as the statement taking process was
11:31:42 30 concerned, never intending to reveal that she had reviewed
11:31:45 31 the statement, reviewed the statements on 9 June, that she
11:31:53 32 had been with [REDACTED] on [REDACTED] at Victoria Police where
11:31:59 33 there'd been discussions about the statements, you weren't
11:32:02 34 going to reveal any of that?---Well if I was asked direct
11:32:06 35 questions about it.
36
11:32:07 37 Yes?---But yes, certainly anything in relation to her
11:32:12 38 involvement as a human source I wasn't keen to reveal.
39
11:32:19 40 I suggest to you a direct question about whether any drafts
11:32:24 41 of the statements really required an answer that included,
11:32:28 42 for example, printed out versions which were not final
11:32:31 43 versions that had been provided to other people to
11:32:38 44 peruse?---I can only answer what I've answered before, is
11:32:41 45 that when I answered that question I believe that there
11:32:44 46 were no drafts in existence.
47

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11:32:48 1 Do you accept that that was the whole truth?---I accept
11:32:55 2 that that's what I believe was the whole truth at the time,
11:32:58 3 yes.
4

11:33:07 5 At p.61 you were asked - - -
6

11:33:10 7 COMMISSIONER: If you're going on to another matter we
11:33:12 8 might have the mid-morning break.
9

11:33:16 10 MR WINNEKE: Yes.
11

11:33:16 12 COMMISSIONER: All right.
13
14 (Short adjournment.)
15

11:51:58 16 MR WINNEKE: Thanks Commissioner. All right, Mr Flynn, if
11:52:09 17 we can go to p.62 of the transcript of your
11:52:15 18 cross-examination. This is where you're asked questions
11:52:21 19 about Ms Gobbo and about halfway down you're asked this,
11:52:33 20 "Before the very first process commenced did [REDACTED] ask
11:52:45 21 for access to any legal advisor? Yes, he did. Was he
11:52:51 22 given access to any legal advisor before that first record
11:52:55 23 of interview process took place? Yes, he was. Can you
11:52:59 24 tell us who that was? Yes, it was Nicola Gobbo".
11:53:04 25 Obviously that's the situation because we know that he told
11:53:14 26 you that he wanted to speak to Ms Gobbo at the scene. That
11:53:18 27 didn't occur but when he got back to the police station he
11:53:21 28 wanted to speak to Ms Gobbo and he did, indeed [REDACTED] did
11:53:28 29 also, is that right?---Yes.
11:53:29 30

11:53:34 31 "Before any statement, before that very first, he asked, he
11:53:37 32 was given access to Ms Gobbo? Yes", there was a discussion
11:53:43 33 then ensued. Do you recall what that was about?---No.
11:53:49 34

11:53:50 35 Was there a discussion as to whether or not there was any
11:53:55 36 privilege or legal privilege or anything like that that was
11:54:01 37 being discussed, public interest immunity or anything like
11:54:03 38 that?---I don't know.
11:54:07 39

11:54:09 40 "On subsequent occasions when statements were taken was a
11:54:12 41 legal representative for [REDACTED] also present?" The
11:54:16 42 answer to that question was no. Now, do you think that was
11:54:23 43 a misleading answer?---No.
11:54:29 44

11:54:29 45 Well, Ms Gobbo certainly was present on 14 May during a
11:54:38 46 time when the statement process was being
11:54:43 47 undertaken?---Yes.

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11:54:43 1
11:54:46 2 You recall that she was brought along to the VPC and we had
11:54:54 3 a discussion about that yesterday?---Yes, I was there, yes.
11:54:56 4
11:54:56 5 You were telling Ms Gobbo in effect that he wasn't being
11:55:00 6 forthcoming about [REDACTED] and about not putting
11:55:03 7 in his associates and so forth and then Ms Gobbo went off
11:55:08 8 and spoke to him alone, right?---Yes.
11:55:11 9
11:55:12 10 I suggest to you that it was quite apparent from at least
11:55:16 11 the notes and from the evidence you gave that that was, she
11:55:20 12 was being used as part of the statement taking process?---I
11:55:24 13 don't think I'd agree with that.
11:55:26 14
11:55:26 15 Right. So were statements not being taken from [REDACTED]
11:55:34 16 on that occasion?---No, they weren't.
11:55:37 17
11:55:40 18 And - - - ?---So, just to clarify.
11:55:41 19
11:55:42 20 Yes?---I know that, I think when we went through the
11:55:47 21 evidence yesterday, Ms Farrar was with [REDACTED] taking
11:55:50 22 statements earlier in the day, but when I was there at the
11:55:53 23 VPC with [REDACTED] and Ms Gobbo there was certainly no
11:55:57 24 statements taken then.
11:55:58 25
11:55:58 26 You would say as a strict interpretation of the question,
11:56:02 27 it's an accurate answer?---Well, I would say at the time
11:56:11 28 that I made that answer that's what I believed.
11:56:14 29
11:56:14 30 Yes?---I don't, I certainly wouldn't have even considered
11:56:20 31 what occurred on 14 May as, "Is that included? Is that not
11:56:25 32 included?"
11:56:26 33
11:56:26 34 Yes?---When I was asked that question, I've simply answered
11:56:31 35 because when we sat down and typed out the statements with
11:56:35 36 [REDACTED] there were no legal representatives there.
11:56:38 37
11:56:39 38 So the statement, the question you interpreted as, "On
11:56:49 39 subsequent occasions when statements were taken was a legal
11:56:53 40 representative also present", you interpreted that as
11:56:56 41 actually when you're sitting there typing on the computer
11:56:59 42 and speaking about what was going into the
11:57:05 43 statement?---Yes.
11:57:05 44
11:57:11 45 Is the reality this, that Ms Gobbo and the use of Ms Gobbo
11:57:16 46 was a very important part of ensuring that [REDACTED]
11:57:21 47 remained on track, continued to assist police. Do you

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11:57:25 1 accept that proposition?---I think after what I've, some of
11:57:29 2 the material that you've shown me over the past few days
11:57:34 3 I'd have to accept that. I think if you asked me that at
11:57:38 4 the very start of this hearing I would have said that once
11:57:41 5 [REDACTED] had been arrested and once we'd got over those
11:57:45 6 initial three days, I probably would have answered that
11:57:47 7 Ms Gobbo was there just simply to, because [REDACTED] and
11:57:55 8 her were close, that she was just there to attend to his
11:57:58 9 welfare, keep him on track, make him happy.
11:58:01 10
11:58:01 11 Yes?---I'm sure I would have answered that I didn't believe
11:58:04 12 that she would be involved in the statement taking process
11:58:06 13 at all.
11:58:07 14
11:58:07 15 I follow that?---But I've, you know, you've since shown me
11:58:11 16 some material from informer contact records that would
11:58:17 17 suggest otherwise.
11:58:17 18
11:58:17 19 I mean I suppose you could say, well look the question was
11:58:21 20 answered truthfully because Ms Gobbo wasn't a legal
11:58:24 21 representative for [REDACTED] at all, she was pretending to
11:58:29 22 be, she was an agent of Victoria Police?---Again, that
11:58:33 23 thought didn't come into my mind.
11:58:35 24
11:58:35 25 Yes?---I didn't look into the question that much at that
11:58:40 26 time, or, you know, to the best of my recollection from now
11:58:44 27 to a question I was asked, what, 12 or 13 years ago but, as
11:58:49 28 I've indicated before I've simply interpreted, yes, when we
11:58:54 29 were typing the statements up there was no one there.
11:58:56 30
11:58:56 31 In the lead up to this committal you, the handlers,
11:59:00 32 Mr O'Brien are all very concerned about Ms Gobbo's role
11:59:04 33 being exposed?---Yes.
11:59:05 34
11:59:06 35 Ms Gobbo's role is, as near as we can tell, that which has
11:59:10 36 been laid out over the last few days and that role, I
11:59:14 37 suggest, is quite important to the process of having those
11:59:18 38 statements taken?---So the material you've showed me over
11:59:28 39 the last few days has indicated that she wasn't just
11:59:32 40 checking the statements to ensure that she was exposed in
11:59:35 41 any way, it went further from that from what I've read on
11:59:40 42 the ICRs. But I still don't believe that came back to us,
11:59:43 43 the statement takers, and altered the statement in any way.
11:59:46 44 I don't think she influenced the statements, although I do
11:59:53 45 accept a comment you said yesterday that she did have
12:00:00 46 communications with [REDACTED] so she could perhaps
12:00:03 47 influence him that way.

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12:00:04 1
12:00:04 2 You wanted her to assist you in having him tell the
12:00:10 3 truth?---Well, not really, I just wanted him to tell the
12:00:14 4 truth, so.
12:00:14 5
12:00:15 6 Yes. In any event, if we go on. So the question was, "The
12:00:31 7 only time he was given access to her was before he made
12:00:34 8 that first record of interview? The interview went over a
12:00:41 9 number of hours so I would have to check do see whether
12:00:44 10 there was more than one call made but that was it
12:00:48 11 basically", right?---Yes.
12:00:50 12
12:00:50 13 Can I suggest to you that that is a misleading answer?---I
12:00:54 14 can't read it on the screen, sorry, can I - - -
12:00:57 15
12:00:57 16 Yes.
12:00:59 17
12:01:00 18 COMMISSIONER: Can you make it a little bit larger on the
12:01:02 19 screen? It's a bit hard to read. Thank you. Scroll down.
12:01:17 20
12:01:27 21 MR WINNEKE: On a subsequent - keep going over. See the
12:01:35 22 question just - can we just scroll a bit, go down a bit.
12:01:44 23 No, up, I apologise. The Magistrate said, "Would I be
12:01:48 24 right in assuming she wasn't present when he made the
12:01:52 25 statements more than she just saw him before he did? She
12:01:55 26 wasn't present for any of the statements". So you repeat
12:01:58 27 what you'd said effectively previously?---Yes.
12:02:00 28
12:02:01 29 And your answer remains the same given the questions that
12:02:06 30 I've put, right?---Yes.
12:02:08 31
12:02:08 32 And the barrister says, "Well that's why I put my question,
12:02:11 33 the only time that he saw, was given access to her, was
12:02:15 34 before he made that first record of interview? As I said,
12:02:17 35 the interview went over a number of hours so I would have
12:02:21 36 to check to see whether there were more than one call made
12:02:24 37 but that was it basically". Right?---Yes.
12:02:27 38
12:02:28 39 Can I say that, can I put this: you knew full well then
12:02:36 40 that it wasn't just a discussion beforehand, because what
12:02:42 41 had occurred was that she had been called back after that
12:02:48 42 first period of time when she spoke to him up till about
12:02:53 43 5.45, she had been called back when you and Mr O'Brien and
12:02:58 44 Mr Smith were there and commenced the pitch. She had been
12:03:01 45 called back. She came back. She sat - and Mr Smith and
12:03:05 46 Mr O'Brien then left and she was with you and with [REDACTED]
12:03:15 47 [REDACTED] for a considerable period of time and during that period

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12:03:20 1 of time she was in effect pushing him over the line and I
12:03:23 2 think you've accepted that proposition previously?---Yes.
12:03:25 3
12:03:25 4 Do you accept that as a fair summary of what had
12:03:29 5 occurred?---Yes.
12:03:30 6
12:03:31 7 Can I suggest to you that that answer that you gave really
12:03:38 8 didn't present an accurate picture of what in fact had
12:03:41 9 occurred?---Well, it's clear from that answer it appears to
12:03:46 10 be that I, I want to check to get more detail, so if I
12:03:51 11 asked her I would have detailed exactly what was in my
12:03:56 12 diary. But the comment about, that that was it basically,
12:04:00 13 that could be incorrect, but if I was asked to check my
12:04:05 14 diary then I would have detailed, which I think I did in
12:04:09 15 subsequent hearings, exactly, you know what I had noted,
12:04:12 16 exactly when she came and exactly when she left.
12:04:16 17
12:04:16 18 I follow that. Can I suggest this to you, whether or not
12:04:18 19 you needed to check your diary, you knew your diary had
12:04:22 20 about two lines in it. It wasn't a question of checking
12:04:25 21 your diaries. You had obviously looked at your diaries at
12:04:29 22 some length and considered the redactions and so forth
12:04:31 23 before you gave your evidence. Checking of your diaries
12:04:35 24 wouldn't have changed or altered your recollection, which
12:04:39 25 was that, I suggest, you were aware that Ms Gobbo had
12:04:42 26 played a considerable role on behalf of Victoria Police in
12:04:45 27 pushing him over the line?---My diary is more than two
12:04:49 28 lines on the night.
12:04:50 29
12:04:50 30 I understand that. I'm talking about those particular
12:04:52 31 events which occurred between 18:35 when Mr Smith turns up
12:05:00 32 through to 21:08 when the second record of interview
12:05:03 33 commences. There's not a great deal in it, I
12:05:07 34 suggest?---Yes, but that's only one small part of it. It
12:05:10 35 appears to me if I went to my diary then I would have said,
12:05:13 36 "Well, this is the time when they made telephone contact
12:05:17 37 and this is the time she first appeared and this is the
12:05:20 38 time she appeared in the end". That's what I appeared to
12:05:23 39 be seeking when I said "refer to my diary".
12:05:26 40
12:05:27 41 Can I suggest that you were content with the answer "that
12:05:32 42 was it basically" and I mean that was not conveying to the
12:05:37 43 court the full extent of what occurred at all?---Well, you
12:05:43 44 know, but "that was it basically", yeah, that appears to be
12:05:46 45 incorrect. But, you know, my answer to that question just
12:05:51 46 appears to me, "Well can I seek to my diary and I'll
12:05:55 47 confirm it for you". So I don't believe I was trying to

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12:05:59 1 mislead anyone.

12:06:00 2

12:06:01 3 Can I suggest to you that you knew full well it was more

12:06:04 4 than just one call?---Well, I suspect I did but when and

12:06:16 5 where she went and when she came, I wasn't sure of.

12:06:19 6

12:06:20 7 Look, can I suggest to you that the barristers asking you

12:06:24 8 the question didn't know what was going on. They were

12:06:28 9 trying to work out what had occurred. You knew what had

12:06:31 10 occurred and I suggest to you that you were not prepared to

12:06:37 11 convey the full truth, the full sequence of events which

12:06:42 12 had panned out on that night on [REDACTED] ---I disagree.

12:06:47 13

12:06:47 14 You were trying your best, were you, to explain to the

12:06:51 15 court everything that had occurred?---If I was asked, "Go

12:06:56 16 to your diary", I would have detailed exactly the times

12:06:59 17 that she was there and when she wasn't there.

12:07:01 18

12:07:01 19 Do you know what, if any, redactions had been made to your

12:07:08 20 diary which had been provided to any of these lawyers who

12:07:13 21 were representing these accused people?---No, I don't know,

12:07:25 22 no.

12:07:25 23

12:07:25 24 Do you whether any information around that time had been

12:07:28 25 removed or blacked out in your diaries?---I don't know, I

12:07:31 26 can't be sure, but I would probably suggest that there was,

12:07:35 27 the fact that I hadn't, that they weren't referring to my

12:07:38 28 diary would suggest that it may have been redacted.

12:07:44 29

12:07:44 30 I can say that we're not in possession of your redacted

12:07:47 31 diary so I'm not in a position to put to you what or wasn't

12:07:51 32 there. The best we can say at the moment is the fact that

12:07:54 33 there was no reference, for example, to Mr Smith would

12:07:57 34 suggest that they weren't aware of Mr Smith?---Yes.

12:08:00 35

12:08:01 36 In which case it may well be, and again we don't have the

12:08:05 37 redactions, it may well be that his name had been redacted

12:08:09 38 out?---Yes.

12:08:10 39

12:08:12 40 Or indeed perhaps a whole section of the diary redacted

12:08:18 41 out, including the period when Ms Gobbo returns?---Yes.

12:08:21 42

12:08:21 43 Is that conceivable that that had been redacted out?---It's

12:08:25 44 possible, yes.

12:08:25 45

12:08:26 46 That would be unfortunate, wouldn't it, if that had been

12:08:29 47 redacted out?---I can't recall what, what - I can't recall

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12:08:38 1 whether it was redacted or not and if I did redact it what
12:08:41 2 I redacted it for.
12:08:43 3
12:08:43 4 I don't want you to say anything which isn't accurate and
12:08:46 5 doesn't reflect what occurred but is it, are you prepared
12:08:51 6 to say that it's likely, more likely than not, bearing in
12:08:56 7 mind that we may be able to get hold of these redactions in
12:09:00 8 due course, it's more likely - I'll start again. Is it
12:09:03 9 more likely than not that Ms Gobbo's returning at the time
12:09:10 10 when Mr Smith was present was redacted out of your diary
12:09:18 11 notes?---Well from reading from this and your comments
12:09:20 12 about the SDU member.
12:09:21 13
12:09:21 14 Yes?---I think that, yes, there's a possibility they were
12:09:25 15 redacted.
12:09:25 16
12:09:25 17 All right. On what basis would it have been redacted?---I
12:09:29 18 would have to - I can't recall any of the conversations but
12:09:32 19 I would presume it would be about PII matters and human
12:09:36 20 source matters.
12:09:37 21
12:09:37 22 Right. So effectively what you're saying is, "Look, I was
12:09:41 23 content to have it known that Ms Gobbo turned up in the
12:09:45 24 first place. We were content for it to be known that she
12:09:50 25 advised him to say no comment over the telephone. We were
12:09:55 26 content to have it be known that she turned up and spoke to
12:10:00 27 [REDACTED] and spoke to [REDACTED] gave them advice and they
12:10:05 28 had a period of time alone with her, but we did not want it
12:10:09 29 to be known that she was called back subsequently to assist
12:10:13 30 with the pitch"?---I don't remember any discussions around
12:10:17 31 that, in that detail.
12:10:20 32
12:10:20 33 I mean it's quite significant, isn't it? If she turns up,
12:10:24 34 if she advises over the telephone and provides advice to
12:10:27 35 say no comment, okay. If she turns up and is given the
12:10:30 36 opportunity to speak to him in private, okay, and then
12:10:34 37 afterwards when he says, "Look, I'm not going to assist you
12:10:38 38 until I speak to her" she then comes back. There's a bit
12:10:41 39 of a Rubicon that's crossed then, when she starts to quite
12:10:46 40 obviously act as an assistant to Victoria Police in pushing
12:10:49 41 him over the line?---That's incorrect. The concern was
12:10:53 42 that she knew about [REDACTED] arrest, period.
12:10:57 43
12:10:58 44 Yes, I follow that?---And that she then didn't point that
12:11:05 45 information on to the Mokbels.
12:11:06 46
12:11:06 47 Right?---That was the concern. So whether she rang,

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12:11:08 1 attended, attended for a long period of time wasn't that
12:11:12 2 relevant. It was the very fact that she knew of his arrest
12:11:16 3 was our concern.

12:11:16 4
12:11:17 5 I follow what you're saying there. But certainly it would
12:11:19 6 be a concern to know that she was with an informer handler
12:11:30 7 and [REDACTED] had asked the informer handler to go, she
12:11:36 8 then is with you, not with O'Brien, just with you, and
12:11:40 9 [REDACTED] and it's at that time that she, he goes over the
12:11:47 10 line?---Yeah, I don't recall us discussing breaking it down
12:11:52 11 to that much. I just recall the concern about her
12:11:55 12 appearance on the night at all.

12:11:57 13
12:12:01 14 Right. He asked for his legal advisor at the time that he
12:12:12 15 was arrested at the scene, which was denied and you say
12:12:18 16 yes?---Yes.

12:12:18 17
12:12:32 18 Perhaps if I go on. "It was necessary during the course of
12:12:34 19 the first interview which you say took place over a number
12:12:38 20 of hours, in fact did [REDACTED] ask for access to his legal
12:12:43 21 advisor? He asked for her, for his legal advisor at the
12:12:45 22 very moment of his arrest. Now that, that was at the
12:12:48 23 scene, now initially that was denied", et cetera. "But by
12:12:53 24 the time that he was back at the police station before he
12:12:56 25 was put in the formal interview he was able to give an
12:12:59 26 access to a telephone and he made and he rang his legal
12:13:02 27 advisor. She attended the police station? Yes. Did she
12:13:06 28 remain at the police station over the number of the hours
12:13:09 29 that the first interview, record of interview process took
12:13:12 30 place? I don't believe so, no. Did he have access to or
12:13:16 31 ask for access to, at any of the breaks or at any time
12:13:21 32 during the time at which that first record of interview
12:13:24 33 commenced until it finally concluded? He may have had,
12:13:30 34 made further phone calls at later stages and I would, I
12:13:33 35 would have, I would have to check but certainly if he
12:13:37 36 needed to contact her he was given that opportunity". Now,
12:13:43 37 again, can I suggest to you that what counsel would have
12:13:49 38 been very interested to know is that the actual sequence of
12:13:57 39 events which had occurred, if they were aware of the actual
12:14:01 40 sequence of events that had occurred you can imagine that
12:14:07 41 things may have panned out in a very different
12:14:10 42 way?---Possibly, yes.

12:14:11 43
12:14:13 44 So for example, if they'd been aware that Ms Gobbo had,
12:14:17 45 firstly Mr Smith had been present there might have been
12:14:20 46 questions asked of Mr Smith, who he was, what he was doing
12:14:24 47 there. He might have been asked for his notes?---Yes.

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12:14:26 1
12:14:26 2 Obviously that would have caused difficulties I assume for
12:14:29 3 Victoria Police because I mean all hell could have broken
12:14:32 4 loose then?---I don't know what his notes contained but
12:14:36 5 possibly, yes.
12:14:37 6
12:14:37 7 They might have been interested to know obviously that
12:14:39 8 Ms Gobbo, if for example, she'd said look she was in there
12:14:46 9 and had turned up and was assisting the police to encourage
12:14:56 10 him to become, to assist, that would be something that
12:15:01 11 counsel would want to examine?---Yes.
12:15:04 12
12:15:04 13 And it might well have been relevant to do so, for them to
12:15:11 14 do so?---Yes.
12:15:12 15
12:15:13 16 I mean it may well be she might have ended up being a
12:15:16 17 witness in the case?---Possibly, yes.
12:15:18 18
12:15:18 19 A whole different course might have taken place if all of
12:15:23 20 the information which I suggest you would concede would be
12:15:26 21 relevant had been brought to light?---Um - - -
12:15:34 22
12:15:34 23 Take it in two steps. The sequence of events, the way in
12:15:38 24 which [REDACTED] came to assist police was relevant?---Um,
12:15:46 25 well I accept that it may be relevant. I don't think it
12:15:50 26 was relevant to us at the time.
12:15:52 27
12:15:52 28 No?---But I accept that it might be relevant for a defence,
12:15:56 29 yes.
12:15:57 30
12:15:59 31 And you and Mr O'Brien, Victoria Police was very keen to
12:16:06 32 ensure that that information did not get out?---Um, I'll
12:16:12 33 revert to my earlier answer. The concern was that she was
12:16:19 34 there on the night.
12:16:20 35
12:16:20 36 Yes?---And, you know, I've indicated that she was earlier
12:16:25 37 in that interview.
12:16:26 38
12:16:26 39 Yes, okay. All right. Because the reality is you knew,
12:16:41 40 even before you approached this committal, that it would be
12:16:44 41 of great interest to know that the defence barristers would
12:16:50 42 be very keen to know about the process in which [REDACTED]
12:16:54 43 came to assist because it may well affect his
12:16:59 44 credibility?---Certainly they'd want to know about the
12:17:02 45 process of him assisting, yes.
12:17:03 46
12:17:04 47 And they would be very keen to know about details of the

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12:17:08 1 statement taking process?---Yes.
12:17:11 2
12:17:13 3 All right. Indeed, if we go to, for example, your diary of
12:17:25 4 3 July of 2007 - perhaps before we do that go to p.136 of
12:17:41 5 your diary, that's 1 July, the Sunday you were preparing
12:17:46 6 for your committal. You reviewed your notes and you
12:17:50 7 reviewed the statement. The notes were fresh in your
12:17:53 8 mind?---Yes.
12:17:54 9
12:17:54 10 Do you know when your notes - I withdraw that. We then go
12:18:00 11 to p.140. This is 3 July, the day after you have given
12:18:13 12 evidence, is that right?---Yes.
12:18:15 13
12:18:16 14 You have a debrief with respect to MM and co committal,
12:18:29 15 correct, at 13:00 on 3 July, p.140 of your diary?---That's
12:18:36 16 actually at court, yes.
12:18:38 17
12:18:38 18 At court. Is that, you make a mobile telephone call to
12:18:46 19 [REDACTED] Fox I think, is that right?---Yeah, I
12:18:50 20 don't know his pseudonym, to an SDU member.
12:18:53 21
12:18:53 22 You can take it that's Mr Fox and you gave him an account
12:18:57 23 of what had occurred or how it was going, is that
12:19:01 24 right?---Yes.
12:19:01 25
12:19:01 26 Then there's, "A briefing with O'Brien, Rowe, White re the
12:19:08 27 level of sanitisation of [REDACTED] interview and no
12:19:17 28 change from this morning", is that right?---Yes.
12:19:20 29
12:19:21 30 What does it next say?---"Proofreading [REDACTED] transcript
12:19:29 31 interview".
12:19:30 32
12:19:30 33 Yes?---Just the interview that we were talking about.
12:19:32 34
12:19:32 35 Yes?---"Notified by Detective Inspector O'Brien with
12:19:38 36 subpoena."
12:19:39 37
12:19:39 38 Yes?---And - - -
12:19:42 39
12:19:42 40 Do you know what that subpoena was about?---It appears to
12:19:46 41 be the next line, "Received for LD warrant re Posse".
12:19:51 42 There must have been some subpoena in relation to the LD
12:19:58 43 warrants that recorded the conversation on the [REDACTED] and
12:20:04 44 [REDACTED]
12:20:04 45
12:20:05 46 Apparently one of the lawyers had subpoenaed the warrant,
12:20:08 47 is that right?---Yes.

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12:20:09 1
12:20:10 2 Was there information in that warrant which might have
12:20:13 3 exposed Ms Gobbo or not?---I've got no idea.
12:20:16 4
12:20:18 5 And was there any more - - - ?---Sorry, in answer to that,
12:20:22 6 I'm sure there would have been source related information
12:20:25 7 but it probably didn't make any reference to Ms Gobbo.
12:20:28 8
12:20:28 9 I follow that. If we then go over to p.141. It seems that
12:20:37 10 at 10.50 in the morning you're at court 13 in the
12:20:42 11 Magistrates' Court, that's the committal mentions court,
12:20:45 12 isn't it, on the 4th floor?---I think so, yes.
12:20:48 13
12:20:48 14 Maybe it's not. In any event there's a committal going on,
12:20:51 15 is that right?---Yes.
12:20:56 16
12:20:56 17 Because Detective Sergeant Kelly is cross-examined?---It's
12:21:01 18 the same - no, no, it's a different matter, yes.
12:21:04 19
12:21:05 20 Yes. I think it's before - perhaps I withdraw that. In
12:21:09 21 any event - all right. You might be right. In any event,
12:21:19 22 what occurs after that is you speak to Colleen Bell and
12:21:27 23 she's a prep officer at the OPP, is that right?---Yes.
12:21:30 24
12:21:30 25 And she provides you with a form 8A regarding Horty
12:21:35 26 Mokbel's committal proceeding, is that right?---Yes.
12:21:38 27
12:21:41 28 So that committal proceeding is to commence later on in the
12:21:44 29 year, I think in November, is that right?---I can't
12:21:46 30 remember the date.
12:21:47 31
12:21:48 32 In any event, what you do is you set out in your note, in
12:21:53 33 your diary there a number of things, including the
12:21:57 34 witnesses who are to be called, so you've got [REDACTED]
12:22:00 35 [REDACTED] probably Jason Kelly, no, it might be [REDACTED]
12:22:06 36 is that right, three and four?---I think you were right the
12:22:11 37 first time, I think it would be Jason Kelly.
38
12:22:15 39 The next is [REDACTED] I think it might be [REDACTED]
12:22:19 40 [REDACTED] would that be right? In any event it doesn't
12:22:22 41 matter. You're number five?---Yes.
12:22:25 42
12:22:27 43 And the indication that you get is the committal's going to
12:22:30 44 be, does it say conduct of - - - ?---Investigation.
12:22:34 45
12:22:34 46 Interview?---Investigation.
12:22:36 47

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12:22:36 1 So these are the issues that are going to be front and
12:22:39 2 centre in the committal?---Yes.
12:22:40 3
12:22:41 4 Conduct of the investigation, circumstances of making
12:22:45 5 statements, the benefit, reduction to sentence?---Yes.
12:22:56 6
12:22:57 7 Obviously whether or not there had been inducements or
12:23:00 8 offers made to [REDACTED] and in that regard obviously
12:23:04 9 there'll be a focus upon what occurred at the police
12:23:08 10 station again on [REDACTED] 2006?---Possibly. I would tend
12:23:19 11 to more think about what type of reduction he got in his
12:23:22 12 sentence when his matters finally went to court.
12:23:26 13
12:23:27 14 Significantly though that might be right but what's
12:23:32 15 important as far as an accused person is concerned, as you
12:23:38 16 would have known, is that what occurred, what might have
12:23:42 17 been said to him at the time that he decides to come on
12:23:45 18 board?---That's possible, yes.
12:23:47 19
12:23:49 20 So as at that time, what you're aware of is that when the
12:23:54 21 next committal comes along you're going to be facing the
12:23:57 22 same sorts of concerns which had led into Milad Mokbel's
12:24:03 23 committal?---Yes.
12:24:03 24
12:24:04 25 And the others?---Yes.
12:24:05 26
12:24:05 27 Do you accept that?---Yes.
12:24:06 28
12:24:11 29 That matter with respect to Horthy Mokbel's committal
12:24:27 30 concerned Operation Posse, is that right, [REDACTED]
12:24:35 31 [REDACTED]---That was one of the matters that Horthy was
12:24:40 32 ultimately charged on, yes.
12:24:42 33
12:24:43 34 Yes?---It wasn't so much a link to the [REDACTED] it
12:24:47 35 was more to do with the conversations he had with [REDACTED]
12:24:50 36 on [REDACTED]
12:24:51 37
12:24:51 38 And obviously the evidence of [REDACTED] was again going to
12:25:00 39 be significant?---Yes.
12:25:00 40
12:25:01 41 And there would be a significant attack on his credibility,
12:25:05 42 as occurred down the track on a number of occasions when he
12:25:08 43 gave evidence?---Yes.
12:25:09 44
12:25:09 45 Do you know on how many occasions he did give evidence all
12:25:13 46 up?---No. I could - I know there were, to the best of my
12:25:20 47 recollection there was a committal for, that we've just

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12:25:27 1 discussed in 2007 for [REDACTED] and co. I'm actually
12:25:37 2 not sure about [REDACTED] and why it was separated from
12:25:40 3 this one. It may have been combined with other charges.
12:25:43 4
12:25:43 5 That was [REDACTED] of 07 and then there was a trial in
12:25:48 6 relation to that matter?---Yes, and then there was the
12:25:50 7 Matchless matters in 2009.
12:25:51 8
12:25:51 9 And then [REDACTED] in 2011, he may have
12:25:55 10 given evidence in the Operation [REDACTED] trial which is also
12:25:59 11 2011 which was [REDACTED]
12:26:02 12
12:26:03 13 On how many occasions did you give evidence?---Probably I
12:26:10 14 think I would have given evidence in all of those.
12:26:12 15
12:26:13 16 On each occasion he gave evidence you would have given
12:26:18 17 evidence?---Yes.
12:26:19 18
12:26:19 19 Can I just ask you questions about the [REDACTED]
12:26:22 20 committal which occurred in [REDACTED] of 2007. On that
12:26:30 21 occasion [REDACTED] represented [REDACTED], is that
12:26:33 22 right?---What date, sorry?
12:26:36 23
12:26:37 24 [REDACTED] to [REDACTED]?---Yes, that's correct.
12:26:59 25
12:27:00 26 If we can have this document, this is the committal
12:27:03 27 transcript, OPP - there it is. Can we go to pp.3 and 4.
12:27:11 28 You gave evidence earlier on in this proceeding, is that
12:27:15 29 right?---I gave evidence at some stage, yes.
12:27:17 30
12:27:24 31 You were asked again about the events surrounding the
12:27:31 32 interview, do you agree with that?---I presume so, yes.
12:27:34 33
12:27:37 34 This was a committal before Magistrate John Hardy, is that
12:27:42 35 right?---Yes.
12:27:43 36
12:27:46 37 And at p.3 you were asked about [REDACTED] and
12:27:56 38 at the bottom, line 29, I think we've already established
12:27:59 39 this, that you were the interviewing officer, myself and
12:28:04 40 his [REDACTED] Detective Senior Constable Rowe?---Yes.
12:28:08 41
12:28:08 42 When initially interviewed he exercised his right to
12:28:13 43 silence?---Yes.
12:28:15 44
12:28:15 45 And then later he participated in a record of
12:28:18 46 interview?---Yes.
12:28:19 47

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12:28:21 1 He spoke to Ms Gobbo between the two interviews?---Yes.

12:28:25 2

12:28:26 3 I suppose without wanting to put too fine a point on it,

12:28:32 4 the question was whether he had a legal practitioner

12:28:35 5 between those two interviews. I suppose the best you could

12:28:39 6 say about Ms Gobbo was that she had a practising

12:28:44 7 certificate, she was a lawyer but in point of fact I

12:28:47 8 suppose if you were going to answer that question fully and

12:28:51 9 accurately you'd have to say well look, yes, she was a

12:28:54 10 lawyer but the reality is she was really operating for

12:28:57 11 Victoria Police and not for him, do you accept that

12:28:59 12 proposition?---Well that's, that's not an answer that I

12:29:04 13 would ever consider giving.

12:29:06 14

12:29:06 15 No, but it would be the truth though, wouldn't it?---Yes.

12:29:09 16

12:29:10 17 If you'd said - - - ?---If I said, yes.

12:29:12 18

12:29:13 19 To be perfectly frank, if he is asking you, "Don't you have

12:29:17 20 a lawyer", the truthful answer to that would be, "Look, yes

12:29:23 21 and no. Yes, she's a lawyer but no, she's not actually

12:29:26 22 acting in his interests, she's acting in the police's

12:29:29 23 interests", do you accept that proposition?---That's an

12:29:32 24 interpretation that I couldn't argue with but I don't know

12:29:34 25 if I considered that at the time I was giving that answer.

12:29:37 26

12:29:37 27 I understand that. If you were completely unconstrained by

12:29:41 28 that problem and if a lawyer asked you that question in the

12:29:44 29 witness box, you would be very careful to make that point,

12:29:48 30 I suggest, if you were able to?---Well, possibly, yes.

12:29:55 31

12:29:55 32 I mean if you knew, for example, that it wouldn't matter

12:30:00 33 one way or another if you told the truth, the whole truth

12:30:04 34 and nothing but the truth in answer to that question, and

12:30:08 35 you were asked did, "That person have a lawyer", you would

12:30:13 36 have to say, "Well look, yes and no. There was a lawyer

12:30:16 37 there but she wasn't acting in his interests", that's the

12:30:21 38 full truth, isn't it?---Yes, that is the truth, yes, but -

12:30:27 39 - -

12:30:27 40

12:30:27 41 If you'd told the full truth, and obviously [REDACTED]

12:30:31 42 had no idea about what was going on, but if you'd told the

12:30:36 43 full truth to that question I would imagine you would have

12:30:39 44 heard his jaw hit the table?---I suspect so, yes.

12:30:43 45

12:30:48 46 In any event, you're then asked at p.9, you're then asked

12:30:55 47 about the statement taking process. You're asked, "If

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12:31:05 1 you're the principal person liaising with and dealing with
12:31:08 2 [REDACTED] Yes, I was. A lot of the statements that he's
12:31:12 3 made bear the date of 6 August", et cetera. "And as to
12:31:16 4 that process of the taking of the statements from [REDACTED]
12:31:19 5 [REDACTED] how was that achieved, was that done through him being
12:31:23 6 tape recorded in an interview situation and then statements
12:31:26 7 being compiled from the subject matter of the product of
12:31:29 8 the interview or was it done by sitting with him?" You
12:31:32 9 say, "As per the latter, a laptop computer. Statements
12:31:36 10 were taken from him direct. Were they done in draft form,
12:31:40 11 submitted to him for correction and then corrected or were
12:31:46 12 they done in a way in which the product that we've seen
12:31:50 13 certainly on this proceeding, being statements dated 6
12:31:53 14 August, is that which was finally arrived at on the
12:31:56 15 computer? That is correct, yes". Again, and go on, "So
12:32:02 16 there is no draft form, it is simply part of the process of
12:32:05 17 debriefing? That is correct. For the purpose of [REDACTED]
12:32:09 18 making the statements was he provided with any" - I'll move
12:32:14 19 on. Again, I suggest to you that that is not the full
12:32:18 20 truth and it's misleading because there were drafts done,
12:32:22 21 drafts were shown to Ms Gobbo who was purporting to act as
12:32:26 22 his lawyer in the way in which we've described. Again I
12:32:30 23 suggest that the answer to the question isn't the full
12:32:33 24 truth?---I certainly wasn't intending to not give the full
12:32:39 25 truth. My answer to this is the answer to the previous
12:32:45 26 question in that I don't believe we had any drafts.

12:32:47 27
12:32:47 28 So do you think if, for example, you said in answer to that
12:32:51 29 question to [REDACTED], "Look, there was a previous
12:32:55 30 version of a document which we printed off and gave to
12:32:59 31 Ms Gobbo", [REDACTED] would have said, "No, no, that
12:33:03 32 wasn't the question I asked you. I asked whether it was a
12:33:07 33 draft statement". Do you follow what I'm saying? It's
12:33:11 34 almost absurd to, if you look at it that way. Do you see
12:33:17 35 what I'm saying?---Not really, no.

12:33:21 36
12:33:21 37 The truthful answer to that question, I suggest, would be,
12:33:24 38 the whole truth is, "Yes, there was a draft form. We
12:33:27 39 printed it off and we gave it to Ms Gobbo for her to have a
12:33:31 40 look at before he signed it"?---Well, there were copies
12:33:38 41 given to Ms Gobbo, there was a copy given to Ms Gobbo via
12:33:42 42 the SDU, that's correct. But I don't know if that was the
12:33:46 43 end result, the same statement or what position it was, but
12:33:49 44 I didn't consider that as a draft.

12:33:50 45
12:33:51 46 Right, okay. In hindsight do you think perhaps that might
12:33:55 47 have been a draft?---Well possibly. I actually think that

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12:33:59 1 I probably didn't even consider these copies when I
12:34:02 2 answered that question.
12:34:03 3
12:34:04 4 What about previous versions of the statement prior to
12:34:09 5 changes, prior to a final version which had perhaps been
12:34:14 6 given to crew members, would they be drafts?---I don't know
12:34:19 7 if there were - I can remember at some stage giving some to
12:34:25 8 Mr O'Brien, but again they might have been the final, final
12:34:30 9 ones.
12:34:30 10
12:34:31 11 Wouldn't that be the appropriate answer to give, "Look,
12:34:34 12 there were some earlier versions of the statement which
12:34:37 13 were printed out. I can't recall whether there were
12:34:40 14 changes made to those statements or not, but the final
12:34:43 15 version is the final version". That's the answer to the
12:34:48 16 question?---Well possibly but I don't even think whether I
12:34:52 17 was thinking along those lines at the time. I was just
12:34:55 18 thinking, "No. Is there a draft? As I said for the
12:34:58 19 previous committal where you asked me questions, this is
12:35:01 20 the first draft. No, these were changes made. This is the
12:35:04 21 second draft" and things like that and from that point of
12:35:07 22 view that answer is correct.
12:35:08 23
12:35:10 24 "For the purpose of ██████████ making the statements was he
12:35:14 25 provided with any material? Not in relation to the matter
12:35:18 26 before this court, I don't believe at the time of making
12:35:22 27 his statements he was provided with any of the listening
12:35:25 28 device material." Can I suggest to you that - do you
12:35:30 29 accept that that may not be accurate?---As I'm sitting here
12:35:35 30 reading it I'm thinking perhaps it's not because I know
12:35:38 31 that he did a, he proofread the LD material at one stage.
12:35:43 32
12:35:43 33 Yes. All right. "And there are a number of statements in
12:35:49 34 fact, I'll just clarify, he did make some statements of
12:35:52 35 short duration" and there's no dispute about that. "But
12:36:01 36 following the making of those brief statements he then went
12:36:06 37 into this debriefing session as a result of which a large
38 number of statements were produced? Correct. Some of
12:36:09 39 those statements being part of the 12 statements that form
12:36:11 40 the brief of evidence in this case? Correct. In any of
12:36:16 41 those statements was he provided with any material to
12:36:18 42 assist him in making them? No, he was not, not in relation
12:36:22 43 to those statements. So in relation to the 12 that are
12:36:24 44 before this court he wasn't provided with anything to
12:36:27 45 facilitate the statements of his own character?" And the
12:36:33 46 Magistrate says, "When you say anything, are you talking
12:36:35 47 about written material, documentary material, are you

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12:36:38 1 talking about comments, anything?" You say, "Anything. Do
12:36:45 2 you understand the question is that broad? Well I do
12:36:48 3 understand that. Comments is obviously I was there talking
12:36:51 4 to him but I certainly wouldn't provide him with
12:36:55 5 information. He was the one who provided me with the
12:36:57 6 information". Is it the case that the way in which the
12:37:03 7 statements occurred was that he would prepare initial
12:37:07 8 versions, then there would be attempts made to corroborate
12:37:12 9 those statements. If there were inaccuracies in the
12:37:17 10 statements that would be brought to his attention. There
12:37:20 11 would then be changes made to the statements?---That's
12:37:23 12 possible, yes.
12:37:24 13
12:37:24 14 I thought that was the evidence that you gave?---Yes.
12:37:26 15
12:37:26 16 If that's the case then would that not have been the
12:37:30 17 appropriate answer to give?---Possibly.
12:37:34 18
12:37:34 19 It would have been the appropriate answer to give, wouldn't
12:37:37 20 it, surely?---Can I just read the question again, please?
12:37:40 21
12:37:41 22 Yes, certainly?---Can you scroll up a little bit, please?
12:38:08 23 Yes, I don't - yes, what you suggest is correct, I just
12:38:12 24 don't know if when I initially read that question whether
12:38:16 25 he was thinking about some type of photo or something like
12:38:21 26 that to assist him, something - material.
12:38:23 27
12:38:23 28 I'm not having a general go at your answers because
12:38:28 29 obviously we're focused on Ms Gobbo and again, and I'm
12:38:32 30 going to come back to Ms Gobbo, she did participate in
12:38:37 31 assisting in the provision of information for the purposes
12:38:41 32 of taking the statements. Now, do you accept that?---I do
12:38:45 33 because of the material you asked me, you've shown me in
12:38:48 34 the last few days.
12:38:49 35
12:38:50 36 Were you aware of that at the time?---I seem to be
12:38:54 37 repeating myself but as I said, if I was asked about her
12:39:01 38 involvement after those three days.
12:39:03 39
12:39:03 40 Yes?---I would have probably just answered it was more
12:39:07 41 along a support and keeping [REDACTED] happy along that way.
12:39:14 42
12:39:14 43 Yes?---But having reviewed some of the ICR material that
12:39:17 44 you showed me in the last few days I accept that it's a bit
12:39:22 45 further than that.
12:39:23 46
12:39:25 47 COMMISSIONER: Just before you do move on, you said earlier

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12:39:28 1 - keeping him on track was one of the expressions you
12:39:31 2 used?---Yes.
12:39:31 3
12:39:32 4 What do you mean by that?---Just keeping him happy
12:39:34 5 generally, Commissioner. They were close with each other
12:39:37 6 and she did form that role that she could, she was friendly
12:39:43 7 with him, so could provide him - they were close to each
12:39:47 8 other so when he saw her he was generally happy with her.
12:39:52 9 Of course there was that legal side to her as well, that if
12:39:54 10 he needed to discuss anything he could.
12:39:57 11
12:39:59 12 Keeping him on track suggests that part of her role was
12:40:06 13 making sure he continued to cooperate with the
12:40:08 14 police?---Only in the fact of keeping him happy. He was
12:40:09 15 problematic at times and, you know, would complain about a
12:40:13 16 lot of things.
12:40:13 17
12:40:13 18 And prone to change his mind about his cooperation?---He
12:40:16 19 only really tested me once on that, once, and that was the
12:40:20 20 letter I mentioned before the break. Occasionally he would
12:40:24 21 throw out just some hints in that direction but he never
12:40:29 22 really tested me about changing his mind in relation to
12:40:32 23 cooperation, except for that one time when he sent a letter
12:40:35 24 to me.
12:40:37 25
12:40:37 26 Yes, all right then.
12:40:38 27
12:40:39 28 MR WINNEKE: At p.11 [REDACTED] returns to [REDACTED]
12:40:46 29 because quite apparently he's interested to find out
12:40:49 30 exactly what occurred on that day. "Coming back to [REDACTED]
12:40:52 31 [REDACTED] this is to do with the interview of [REDACTED]
12:40:56 32 After he sought advice and you say from Nicola Gobbo, he
12:41:00 33 then cooperated and participated in the interview and
12:41:04 34 answered questions? Yes, which went chapter and verse
12:41:12 35 into his involvement in [REDACTED] in [REDACTED] and a
12:41:15 36 lot of [REDACTED] matters as well". Well now obviously
12:41:21 37 what that appears to suggest is that after he sought
12:41:29 38 advice, and you say from Nicola Gobbo, he then cooperated.
12:41:34 39 Do you think that he might have been misled into believing
12:41:38 40 that what had occurred was that Ms Gobbo had been called on
12:41:43 41 the first occasion for advice, no comment record of
12:41:50 42 interview, then attended and spoke to him in private for a
12:41:55 43 period of time and then after that agreed to cooperate and
12:42:01 44 participate in the record of interview?---Look, that
12:42:05 45 appears to be clear from that answer.
12:42:07 46
12:42:08 47 But what isn't clear is whether, because really there were

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12:42:13 1 three occasions, not just the initial occasion and then the
12:42:19 2 private conversation, there were three occasions, the most
12:42:23 3 important one being when you and she and [REDACTED] were
12:42:28 4 left alone and for a significant period of time efforts
12:42:35 5 were made to have [REDACTED] assist police?---Yes.
12:42:40 6
12:42:41 7 Do you believe that [REDACTED] was aware of that part of
12:42:45 8 the process?---No.
12:42:47 9
12:42:47 10 No. And were you content with answering in that way and
12:42:53 11 leaving him in the misunderstanding or the mistaken belief,
12:42:59 12 and the court?---There was no intention to mislead anyone,
12:43:04 13 I was simply answering his question. It seemed to be a
12:43:08 14 fairly straightforward question that she had been, spoken
12:43:12 15 to him and then he cooperated and the answer to that is
12:43:15 16 yes.
12:43:16 17
12:43:18 18 He appears to be harking back to his earlier questions.
12:43:24 19 "Did he speak to a legal practitioner, between those two
12:43:28 20 interviews? Yes, Ms Nicola Gobbo". Again, do you believe
12:43:34 21 on this occasion your notes had been filleted in such a way
12:43:37 22 that [REDACTED] would not have been aware of, firstly,
12:43:42 23 Mr Smith, and the fact that Ms Gobbo had returned and been
12:43:47 24 part of the pitch?---Well it appears from the questions
12:43:50 25 that he asked that that would suggest that he hadn't
12:43:53 26 received those.
12:43:54 27
12:43:54 28 Right. And again, I mean if he had have received those do
12:43:59 29 you think that questioning might have gone on?---Yes.
12:44:01 30
12:44:02 31 To a considerable further degree?---Yes, I do.
12:44:06 32
12:44:07 33 And you might, I suppose, have breathed a sigh of relief
12:44:13 34 when it didn't?---Possibly, yes. I mean, you know, again I
12:44:20 35 come back to the fact that by mentioning the fact that
12:44:25 36 she'd been there, that was the main concern and that's
12:44:27 37 where the damage was done.
12:44:29 38
12:44:29 39 Okay, all right. You say - I mean the damage was done to
12:44:38 40 her because it was now out that she had been there on the
12:44:44 41 night?---Yes, and hadn't informed [REDACTED], which she
12:44:48 42 was expected to do.
12:44:49 43
12:44:50 44 In which case why would there be any problem with telling
12:44:54 45 the whole truth and telling [REDACTED] exactly what had
12:44:58 46 occurred?---Again, I don't believe for one moment I didn't
12:45:01 47 tell him the truth, it was a simple question and I could

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12:45:05 1 answer it with one word, yes.
12:45:07 2
12:45:11 3 Nowhere is there any evidence provided to that court of
12:45:18 4 Ms Gobbo and you sitting down and working on [REDACTED] to
12:45:31 5 get him over the line?---No.
12:45:32 6
12:45:33 7 That would be the accurate picture to put before the court,
12:45:36 8 I suggest?---Well, I mean it's clear here that he was aware
12:45:45 9 that he sought advice from Ms Gobbo.
12:45:48 10
12:45:48 11 Yes?---And then he cooperated.
12:45:52 12
12:45:52 13 He sought advice from Ms Gobbo on two occasions. The first
12:45:55 14 occasion he answered no comment, the second occasion he
12:46:00 15 didn't agree to cooperate. It was only after the third
12:46:03 16 occasion, after you and Ms Gobbo worked on him, that he
12:46:06 17 agreed to cooperate?---Yes.
12:46:08 18
12:46:09 19 What I'm suggesting to you, it was more than simply seeking
12:46:12 20 advice, it was getting him in and sitting him down and,
12:46:15 21 with the assistance of Ms Gobbo, not as a legal
12:46:18 22 representative but as an agent of police to push him over
12:46:22 23 the line?---Yes.
12:46:22 24
12:46:23 25 That was the full truth. This, I suggest, was not the full
12:46:26 26 truth and it was just an emasculation of the truth?---I
12:46:30 27 don't agree with that at all. It was a simple
12:46:34 28 straightforward question which I was able to answer with
12:46:38 29 one word.
12:46:38 30
12:46:46 31 If we go to p.15. The question's being asked again about
12:47:01 32 the [REDACTED] Perhaps I'll come back to the previous
12:47:06 33 page, 14. "Following this interview on [REDACTED] 2006 I
12:47:24 34 take it there was then discussions that were off tape with
12:47:26 35 [REDACTED] as to whether he was prepared to cooperate and
12:47:29 36 the manner in which he ultimately did on the [REDACTED] and
12:47:34 37 [REDACTED] Yes. Did those discussions involve just him or did
12:47:34 38 they involve him and a legal representative or
12:47:39 39 representatives? No, those discussions just involved him.
12:47:43 40 Just involved him? Yes". Well is that right?---Well, in
12:47:53 41 relation to what occurred on the [REDACTED]
12:47:58 42 that's right. But if you're talking about cooperating in
12:48:05 43 general, well obviously Ms Gobbo was involved in that.
12:48:09 44
12:48:09 45 Yes, okay. If you come down to the bottom, "Is it your
12:48:13 46 understanding that a warrant was signed", this is a
12:48:23 47 warrant, listening device warrant, "The warrant was signed

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12:48:26 1 prior to him attending at the [REDACTED] Yes. As
12:48:30 2 to the discussion that led to that, you don't know whether
12:48:34 3 that occurred later on the [REDACTED] or in the course of the
12:48:38 4 morning of the [REDACTED] Correct. This was a move beyond
12:48:41 5 providing answers to questions in a record of interview,
12:48:44 6 this was a move when she was now volunteering to assist the
12:48:44 7 police by actively engaging in an operation" and you say
12:48:52 8 yes. "That is a decision that what you say he arrived at
12:48:58 9 himself without consultation with legal counsel? Yes, well
12:49:03 10 I don't know what he discussed when he sought legal advice
12:49:06 11 but from deep into the night on [REDACTED] he had no
12:49:11 12 further legal advice on that night". Do you know whether
12:49:21 13 he did speak to Ms Gobbo after the [REDACTED] and prior to his
12:49:29 14 conduct on the [REDACTED] --So there was
12:49:38 15 definitely conversations with Ms Gobbo during that period.
12:49:40 16 I've recorded those in my diaries. I'm not sure if it was
12:49:45 17 before he was [REDACTED], to [REDACTED] on the [REDACTED] or
12:49:49 18 the [REDACTED]
12:49:49 19
12:49:50 20 But in any event there were discussions?---They did
12:49:53 21 communicate on the phone, yes.
12:49:55 22
12:49:56 23 Do you think that information should have been
12:49:58 24 conveyed?---It appears that should have been, um, you know,
12:50:19 25 it appears in answer to that question that information
12:50:22 26 should have been provided.
12:50:23 27
12:50:50 28 If I can perhaps ask you some questions about pp.22 to 23.
12:51:12 29 "Do you agree that this is a general proposition, that when
12:51:16 30 you as you have here used the service of a confessed
12:51:20 31 criminal for the purpose of prosecution of others, there
12:51:25 32 are always risked attendant with acting upon what they say"
12:51:29 33 and you say yes. "They're motivated generally out of
12:51:34 34 self-interest", you agree with that proposition. "They are
12:51:36 35 people who for a good part of their life involve themselves
12:51:40 36 in dishonesty", you agree with that proposition. "Here in
12:51:44 37 this case [REDACTED] and others like him (indistinct)
12:51:46 38 criminal activity? Yes, I agree with that, Persons who are
12:51:49 39 facing significant periods of imprisonment".
12:51:51 40
12:51:51 41 COMMISSIONER: Just a minute, we've just got to find the
12:51:55 42 right spot, it's not coming up on the screen.
12:51:57 43
12:51:58 44 MR WINNEKE: I'm sorry.
12:51:58 45
12:51:59 46 COMMISSIONER: What page is it?
12:52:00 47

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12:52:00 1 MR WINNEKE: I'm now on 23, "Significant periods of
12:52:04 2 imprisonment".
12:52:05 3
12:52:05 4 COMMISSIONER: Okay, thank you.
12:52:09 5
12:52:10 6 MR WINNEKE: "In the case of [REDACTED] he was looking at in
12:52:14 7 terms of the [REDACTED]
12:52:16 8 of each, that would put him in, put him for years well into
12:52:21 9 [REDACTED] Yes, I would agree with that. Persons who
12:52:26 10 have a lot to lose? Correct. Persons who in terms of
12:52:30 11 their veracity, integrity, honesty need to be fully
12:52:34 12 explored, examined and investigated to determine their
12:52:38 13 worth? Certainly you say in simple terms we would not take
12:52:42 14 his word or act on his word unless we could corroborate it
12:52:46 15 to some extent, because that at least adds some
12:52:49 16 corroborative flavour or confirmatory nature to what he's
12:52:54 17 saying, you're left with a person who on the face of it,
12:52:55 18 whose work you would otherwise not necessarily follow?
12:52:57 19 Yes, without corroboration of his evidence we wouldn't act
12:53:00 20 on that". I suppose what that question and answer series
12:53:04 21 indicates is that firstly it's important that for police
12:53:14 22 and for the prospects of conviction - perhaps I should
12:53:20 23 withdraw that and say that in terms of the prospects of
12:53:26 24 conviction, if a person like that is not corroborated, if
12:53:31 25 there are holes or bits missing from his statements or
12:53:35 26 suggestions of dishonesty, there's often a chance that his
12:53:41 27 evidence might not be accepted?---Are you asking me to
12:53:48 28 comment on your comment?
12:53:51 29
12:53:51 30 Yes?---Or on this?
12:53:53 31
12:53:54 32 Perhaps [REDACTED] questions were better than mine but
12:53:57 33 effectively this person needs to be corroborated?---Yes,
12:54:00 34 that's right and I'm indicating that if he told us that
12:54:02 35 someone else was [REDACTED] from him and we had nothing
12:54:06 36 to corroborate it we wouldn't act on that. Because of his
12:54:10 37 situation we needed more information.
12:54:12 38
12:54:12 39 I follow that. Is that a reason why it would be
12:54:16 40 appropriate for any person who might be convicted by this -
12:54:22 41 charged with offences arising out of this person's
12:54:25 42 evidence, that they know the process whereby he came to
12:54:29 43 that final version of a statement, the final version which
12:54:32 44 he then takes with him into court?---Well, the statement
12:54:45 45 taking process was taken the way it was. I can't add any
12:54:49 46 more to what I've already said.
12:54:51 47

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12:54:52 1 I understand that. The point I'm making is if he's sat
12:54:55 2 down, questions are asked of him, there it is, that's the
12:54:59 3 answer that he gives. That's the statement. If it appears
12:55:02 4 that there's other information which suggests that he might
12:55:06 5 be wrong about aspects of it, or indeed he's telling fibs
12:55:10 6 about aspects of it, why shouldn't the defence down the
12:55:14 7 track have an opportunity to test him and say, "Well look,
12:55:18 8 when you first were asked questions about these things this
12:55:21 9 is what you said, now you're saying this, now you're saying
12:55:24 10 that"?---Yes.

12:55:26 11
12:55:26 12 Do you follow what I'm saying?---I do follow what you're
12:55:29 13 saying.

12:55:29 14
12:55:29 15 Wouldn't that be a reasonable way and a proper way of going
12:55:32 16 about it?---That's not the way that - I can recall
12:55:40 17 generally taking draft statements but I've never taken as
12:55:43 18 many statements and as complex statements as these ones but
12:55:49 19 I can only revert back to what I said previously, I sought
12:55:53 20 advice from investigators from the initial Purana and
12:55:57 21 that's the process we took.

12:55:58 22
12:55:58 23 Equally if a person like this is giving evidence, would it
12:56:02 24 be fair to those people against whom he's giving evidence
12:56:07 25 for them to know exactly how the process came about that he
12:56:11 26 agreed to assist police, including the involvement of
12:56:16 27 Ms Gobbo?---Well, certainly the reason for him providing
12:56:30 28 assistance, it's fair that they find that out, find that
12:56:37 29 information out.

12:56:38 30
12:56:38 31 All right. [REDACTED] gave evidence in this proceeding, you
12:56:52 32 understand that?---I would believe so, yes.

12:56:54 33
12:56:56 34 Were you present at all during the course of his
12:57:00 35 evidence?---Do you have a date and time?

12:57:03 36
12:57:03 37 I think he gave evidence on [REDACTED] ---No, I wasn't
12:57:08 38 there that day.

12:57:08 39
12:57:08 40 I take it you would have read the transcript
12:57:12 41 subsequently?---Possibly, I can't remember reading the
12:57:15 42 transcripts but I might have.

12:57:17 43
12:57:18 44 All right, okay. At p.78 he's asked on the day of the
12:57:28 45 arrest p.78, "Were you visited by anybody who discussed
12:57:33 46 with you or tried to persuade you to participate in the
12:57:37 47 police operation?" And he said no. "And that's the truth?"

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12:57:42 1 Is that the truth? Yeah, that's the truth. Did you meet
12:57:47 2 with any particular police officer who tried to persuade
12:57:49 3 you to participate in the operation? Well obviously the
12:57:52 4 police officer persuaded me into it. Yes, any particular
12:57:54 5 police officer? Could have been Sergeant Flynn, Jim
12:57:59 6 O'Brien. What did O'Brien say to you? They took me into a
12:58:02 7 room and showed me information which saddened me,
12:58:07 8 information relating to certain members of the Mokbel
9 family, as far as Carl Williams and others know, [REDACTED]
12:58:12 10 would know and the police and not alerting me". It seems
12:58:16 11 clear enough there that [REDACTED] is trying to protect
12:58:19 12 Ms Gobbo?---Yes.

12:58:21 13
12:58:21 14 Because in fact she did attend the police station when he
12:58:27 15 was being the subject of the sales pitch, if you like, and
12:58:34 16 we've heard evidence and you agree with this proposition
12:58:36 17 that she assisted you in pushing him over the line?---Yes,
12:58:41 18 I do.

12:58:41 19
12:58:41 20 Would you accept that that answer was not accurate?---Yes.

12:58:48 21
12:58:49 22 I mean as a police officer would it concern you that your
12:58:55 23 witness is not telling the truth?---Well, especially with
12:58:58 24 this witness, yes, but I think, you know, it's a sliding
12:59:08 25 scale to try and get him to just give or to provide
12:59:14 26 truthful evidence.

12:59:15 27
12:59:15 28 Yes?---He initially starts to, "Well I'll provide evidence
12:59:19 29 on this person, and this person, but I'll protect this
12:59:23 30 person" and it's a sliding scale.

12:59:25 31
12:59:25 32 But see the problem is he's giving evidence on oath in a
12:59:30 33 court where people stand to be convicted on the basis of
12:59:35 34 his evidence and go to gaol for a significant period of
12:59:37 35 time?---Yes.

12:59:37 36
12:59:38 37 Guilty or otherwise - I'm sorry, in fact guilty or
12:59:39 38 otherwise the justice system requires people to tell the
12:59:42 39 truth?---Yes.

12:59:43 40
12:59:43 41 If police officers know, and I suggest either you or the
12:59:47 42 informant would have been aware of his answer, or ought to
12:59:50 43 have been aware of his answer, and what should have been
12:59:52 44 done about it is it should have been drawn to the attention
12:59:54 45 of the prosecutor or the court?---Yes.

12:59:57 46
12:59:58 47 And clearly that wasn't done?---I'm not sure if there are

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13:00:02 1 any discussions along this line at all. I can't recall it
13:00:06 2 being raised to me.
13:00:08 3
13:00:08 4 The likelihood is that it wouldn't have been I would
13:00:13 5 suggest?---Yes.
13:00:15 6
13:00:15 7 And in fact I suggest it quite obviously wasn't, it wasn't
13:00:20 8 conveyed to defence counsel, in fact what in fact had
13:00:26 9 occurred, because you yourself hadn't made it clear, I
13:00:29 10 suggest, in your evidence?---Well, I didn't - I answered
13:00:41 11 questions that were asked of me in my evidence.
13:00:43 12
13:00:45 13 In any event it would be fair for us to conclude that that
13:00:48 14 answer wasn't corrected at any stage?---I don't believe so.
13:00:53 15 I don't, I can't recall whether it came up as a subject or
13:00:58 16 it was discussed by us or whether it was taken to the OPP.
13:01:01 17
13:01:02 18 Whether or not you knew about it, to correct that would
13:01:05 19 risk exposing her I take it?---Not really because the
13:01:10 20 exposure had already occurred.
13:01:12 21
13:01:12 22 Exposing her as a human source?---Well that was a concern,
13:01:19 23 yes, but the fact that she'd been on the night, that had
13:01:23 24 already been told to the court so there was no harm in him
13:01:26 25 answering that correct.
13:01:28 26
13:01:28 27 Again, in which case I say if there's no harm in it why not
13:01:32 28 answer, why not correct it?---Well, I don't know, I wasn't
13:01:35 29 there on the day. I don't know if it was even picked up by
13:01:40 30 the informant, I just can't answer that.
13:01:42 31
13:01:43 32 Would the informant normally be in court?---I would expect
13:01:47 33 so, yes.
13:01:47 34
13:01:48 35 Informants are one witness generally who are permitted to
13:01:52 36 remain in court during the course of a committal
13:01:55 37 proceeding?---Yes.
13:01:55 38
13:01:55 39 If we go to p. 89. There's reference to the [REDACTED] arrest
13:02:17 40 and [REDACTED] being upset about not going told because in
13:02:23 41 effect it would have been known that he was in real danger
13:02:25 42 of being collared, do you accept that?---I can't see it on
13:02:30 43 the screen.
13:02:30 44
13:02:34 45 Keep going down, or going up. He'd been apprehended, they
13:02:42 46 had been apprehended by [REDACTED] in a [REDACTED] after
13:02:46 47 [REDACTED] house was raided. All the information was kept

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13:02:51 1 from him?---Yes.
13:02:52 2
13:02:52 3 "Did you tell this to anybody on your legal team, to
13:02:58 4 Mr Hargreaves? Yes, I did. To anybody else? That's
13:03:03 5 privileged. What's privileged? It's privileged
13:03:05 6 information. It's privileged who I spoke to in that, in
13:03:09 7 regards to that. Why? Why not? On what basis do you
13:03:13 8 claim it's privileged? It is, it is my privilege to be
13:03:16 9 able to discuss who my legal team are. It is, is it my
13:03:26 10 privilege to be able to discuss who my legal team are?"
13:03:29 11 And Mr Shirreffs quite correctly says, "No, it's not. Who
13:03:33 12 is your legal team? Tony Hargreaves. Other than
13:03:37 13 mentioning it to Tony Hargreaves did you mention it to
13:03:40 14 anybody else? Yes, I did. Who? That's privileged
13:03:44 15 information". He pushed the question and the Magistrate
13:03:48 16 says, [REDACTED], these other people, are you talking about
13:03:51 17 lawyers from whom you got legal advice? Yes, they're
13:03:55 18 lawyers. From whom you got legal advice? Yes, acting on
13:03:58 19 behalf of Mr Hargreaves". Then there's a discussion. Are
13:04:08 20 you aware that Ms Gobbo had been to see [REDACTED] prior to
13:04:15 21 him giving evidence and told him to make a claim for
13:04:21 22 privilege if there was any questions asked about
13:04:25 23 her?---What date was that?
13:04:27 24
13:04:27 25 I think a day or two prior to him giving evidence?---No.
13:04:33 26
13:04:41 27 Weren't you aware that Ms Gobbo had conveyed to [REDACTED]
13:04:47 28 that he needn't answer any questions about her involvement
13:04:52 29 if he was asked?---It's not - I can't recall this
13:04:56 30 conversation, no.
13:04:58 31
13:04:58 32 You can't recall a conversation of that sort?---No. Well,
13:05:01 33 I did have a period of time off at this stage, so that's
13:05:06 34 possibly why I wasn't aware of it.
13:05:08 35
13:05:08 36 If you go to p.91?---In fact, sorry, I was actually on rec
13:05:12 37 leave at the time. I've come in to give evidence for the,
13:05:17 38 to give my evidence on the day that I did, but then the
13:05:20 39 rest of the time, both before and after, I was on days off.
13:05:23 40
13:05:24 41 Then at p.91 similar things occur. "As a result of
13:05:29 42 speaking to O'Brien that was when you made the decision
13:05:33 43 that you would cooperate with the police on the following
13:05:35 44 day? Yes. Well did you consult with your legal
13:05:43 45 representative prior to or during that or was it a decision
13:05:46 46 of your own volition? Came to that agreement on my own and
13:05:49 47 then contacted my legal after. So you're acting between

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13:05:53 1 [REDACTED] as an agent of the police without the
13:05:56 2 assistance of legal advice? I did speak to legal advice
13:05:59 3 but I was acting on my own. Legal advice after you spoke
13:06:02 4 to O'Brien? Yes. Who? Privilege." Again he wouldn't say
13:06:10 5 so. Ultimately it wasn't after speaking to O'Brien that he
13:06:14 6 agreed to assist, it was after speaking to you and
13:06:17 7 Ms Gobbo?---O'Brien was there, I was there.

13:06:19 8
13:06:19 9 He was there?---We were all there.

13:06:21 10
13:06:21 11 He was there until he and Mr Smith left and then there was
13:06:26 12 a significant discussion between you and Ms Gobbo and
13:06:31 13 [REDACTED]---That's correct, but Mr O'Brien was there for
13:06:36 14 part of the time.

13:06:37 15
13:06:43 16 But the reality is, it wasn't when Mr O'Brien was speaking
13:06:47 17 to him that he agreed to assist, it was only after he asked
13:06:53 18 for Ms Gobbo to come down, that the two of you then spoke
13:06:58 19 to [REDACTED] that he agreed to assist?---Well that was
13:07:02 20 part of the process, but Mr O'Brien was part of that
13:07:04 21 process.

13:07:05 22
13:07:05 23 Right. But it's misleading, isn't it? And I suggest
13:07:10 24 deliberately misleading in order to avoid having to talk to
13:07:13 25 the court about Ms Gobbo?---Which part are you saying is
13:07:17 26 misleading?

13:07:17 27
13:07:17 28 That passage that I've just taken you to starting at p.91,
13:07:23 29 "As a result of speaking to O'Brien, that was when you made
13:07:25 30 the decision you would cooperate with the police on the
13:07:28 31 following day? Yes". And so on, "Did you consult with
13:07:32 32 your legal representative prior to that or was it a
13:07:36 33 decision of your own? Came to the agreement on my own and
13:07:39 34 then contacted by legal afterwards". That's all
13:07:43 35 misleading?---Yes, I agree with that.

13:07:44 36
13:07:46 37 Again, I suggest to you that none of that was corrected,
13:07:49 38 none of it was made plain to those representing the accused
13:07:54 39 people, [REDACTED] the person and the court that in fact
13:08:03 40 this was inaccurate?---I don't know what was done in
13:08:06 41 relation to it.

13:08:07 42
13:08:08 43 Then p.98, "There were two statements, records of
13:08:10 44 interview, one prior to me speaking to O'Brien, one after",
13:08:18 45 do you see that?---Yep.

13:08:18 46
13:08:19 47 "Question and answer, first interview, no comment.

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13:08:21 1 Question and answer. Then asked for DNA. Question and
13:08:24 2 answer. After that spoken to O'Brien who told of some
13:08:30 3 saddening information and then decided of own volition", of
13:08:34 4 his own volition to participate over the next few days and
13:08:40 5 he agrees with that?---Yes.
13:08:41 6
13:08:42 7 Again, would you accept that that's inaccurate?---Well it's
13:08:46 8 not inaccurate, he did speak to Mr O'Brien.
13:08:48 9
13:08:48 10 It's misleading?---He's misled that he's spoken to others,
13:08:53 11 yes.
13:08:53 12
13:08:56 13 Page 109, he received advice - perhaps can I ask you this:
13:09:00 14 did you play any audiotape to [REDACTED] during the sales
13:09:07 15 pitch, if you like, or prior to that time?---I'm not sure.
13:09:18 16 I know, I know Mr O'Brien had an audio of a conversation
13:09:25 17 that was held with Tony Mokbel in 2004. That's the only
13:09:29 18 one I could think of, but I can't specifically recall it
13:09:33 19 being played on that occasion.
13:09:34 20
13:09:34 21 Yes?---But it's possible.
13:09:38 22
13:09:38 23 It's possible that that was played, all right. Okay. Page
13:09:42 24 109, there was questions asked about receiving advice about
13:09:46 25 discounts for cooperating from both legal advisors and
13:09:50 26 Mr O'Brien?---Yep.
13:09:53 27
13:09:53 28 See that?---Yep.
13:09:54 29
13:09:54 30 "Did you receive advice that if you not only pleaded guilty
13:09:58 31 for which you would receive a discount but cooperated with
13:10:01 32 police, that would assist in the apprehension of others and
13:10:04 33 give evidence, you'd receive a substantial discount on that
13:10:10 34 penalty, all of that reason also, to the other reasons, and
13:10:14 35 I'm asking you whether you were given that advice?" And
13:10:21 36 then there's a discussion. If we could scroll. "Perhaps I
13:10:25 37 could ask the question again. Just in general terms did
13:10:29 38 you receive any advice as to the discounts that you might
13:10:32 39 expect to receive if you cooperated? That is true, yes.
13:10:38 40 Did that advice come from a legal practitioner or legal
13:10:42 41 practitioners who were representing you? From both. The
13:10:45 42 legal practitioners as well as O'Brien from police. What
13:10:51 43 did Jim O'Brien say to you? He didn't give me an exact
13:10:54 44 amount but he said that it would help me significantly.
13:10:58 45 Did he say that the more you cooperated the more helpful,
13:11:02 46 the bigger the discount would be? No, he didn't put it in
13:11:05 47 those words. He just said that whatever, whatever you do

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13:11:10 1 would help us. You've also got to understand that I was
13:11:14 2 very upset at the time that I had that information given to
13:11:18 3 me. Because you felt that because of what you were told by
13:11:24 4 Detective O'Brien that you'd been duped by police",
13:11:28 5 right?---Yep.
13:11:29 6
13:11:45 7 If we go to p.212, he's asked who did he receive the legal
13:11:51 8 advice from about the discounts. "Was that on [REDACTED]
13:12:01 9 that he told you that?" Perhaps we better go up a bit.
13:12:06 10 "Coming back to the decision to cooperate, you were given
13:12:09 11 certain information by Detective O'Brien about a
13:12:09 12 significant discount?" He agrees. "Was that on the [REDACTED]
13:12:12 13 Yes. Did he repeat that on later occasions before he made
13:12:17 14 his statements? Yes, I dare say. Also received advice to
13:12:18 15 that effect from legal advisors? Yes, I did. Who from?
13:12:21 16 Mr Hargreaves." And that answer he gave, do you know
13:12:29 17 whether that was correct or otherwise?---I've got no record
13:12:32 18 of [REDACTED] speaking to Mr Hargreaves on the night of the
13:12:36 19 [REDACTED]
13:12:37 20
13:12:41 21 At p.114 he was asked this, "On a few occasions" - or he
13:12:49 22 answered that, "On a few occasions some statements had to
13:12:54 23 be readjusted because there was so many made and there were
13:12:56 24 things when read back I wasn't happy with so he had to make
13:12:58 25 some amendments". Is that an accurate answer that he
13:13:03 26 gave?---Yes, I believe it was.
13:13:07 27
13:13:10 28 All right. Subsequently there was a trial in that
13:13:22 29 matter?---Yes.
13:13:23 30
13:13:23 31 If we go to VPL.6038.0035.6124 at p.936 of that transcript.
13:14:00 32 If we go to p.936.
13:14:09 33
13:14:09 34 COMMISSIONER: It's very close to the lunchtime break so -
13:14:17 35 - -
13:14:17 36
13:14:17 37 MR WINNEKE: I'm content to stop there, Commissioner.
13:14:20 38
13:14:20 39 COMMISSIONER: It might be easier to find over that period.
13:14:24 40 Just time wise, how much longer, Mr Winneke?
13:14:28 41
13:14:28 42 MR WINNEKE: I'll finish after lunch, Commissioner.
13:14:31 43
13:14:31 44 COMMISSIONER: What are you talking about? I'm just trying
13:14:34 45 to organise the next witness. An hour?
13:14:36 46
13:14:37 47 MR WINNEKE: I'd say an hour and a half.

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13:14:39 1
13:14:39 2 COMMISSIONER: It's going to be touch and go as to whether
13:14:41 3 we start the other witness this afternoon. Anyway, he's
13:14:45 4 available.
13:14:45 5
13:14:46 6 MR CHETTLE: He is, Commissioner.
13:14:46 7
13:14:47 8 COMMISSIONER: Thank you. We'll adjourn until 2 o'clock.
9
13:14:49 10 <(THE WITNESS WITHDREW)
13:14:50 11
13:14:50 12 LUNCHEON ADJOURNMENT
13
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14:00:54 1 UPON RESUMING AT 2.05 PM:
14:00:54 2
14:05:01 3 COMMISSIONER: Yes, Mr Winneke.
4
14:05:03 5 MR WINNEKE: Thanks Commissioner. Thanks Mr Flynn.
14:05:05 6
14:05:06 7 <DALE FLYNN, recalled:
8
14:05:10 9 MR WINNEKE: I was just going to ask you about some
14:05:13 10 evidence that was given in the trial of ██████████ and
14:05:17 11 ██████████ or ██████████. That was in ██████████ of 2008; is
14:05:23 12 that right?---I know it was in 2008. I'm just not sure of
14:05:29 13 the date.
14
14:05:29 15 Right. If you can put that document up, the VPL.6038 and
14:05:36 16 this is at p.936. ██████████ is being cross-examined and
14:05:48 17 he's being asked questions about material initially that
14:05:53 18 was being put to him - sorry, that was being put on his
14:05:57 19 behalf on his plea and it was suggested that he had told
14:06:02 20 lies to his psychologist and it was said that, "And you had
14:06:11 21 a hearing in the County Court for the ██████████ and
14:06:14 22 ██████████ didn't you?" He said, "That's correct". It
14:06:22 23 was listed to start, to be heard, I should say, on ██████████
14:06:28 24 ██████████ 2005. He agrees. Want it adjourned and it was
14:06:34 25 suggested the reason he wanted it adjourned was so that he
14:06:38 26 could ██████████ He was asked if
14:06:42 27 that was correct and he said yes. To your understanding
14:06:46 28 that was in fact correct, or that was one of the reasons he
14:06:50 29 wanted it adjourned, so as he could ██████████
14:06:54 30 ██████████ ---I can't remember this answer but
14:06:57 31 it doesn't surprise me.
32
14:06:59 33 Yes. And so it was set up - "So to set it up or the
14:07:03 34 adjournment application he had numerous meetings and visits
14:07:07 35 and conferring with ██████████ didn't you? That's
14:07:11 36 correct. I took you before through all the dates of your
14:07:14 37 visits and there were lots of them leading up to ██████████
14:07:17 38 ██████████ Correct. You lied to him when you told him
14:07:19 39 that you were no longer involved in ██████████
14:07:22 40 ██████████ correct?" And he answered, "That is
14:07:25 41 correct". It was put that, "You lied to your barrister,
14:07:30 42 Nicola Gobbo, when you told her that you were no longer
14:07:33 43 involved ██████████ He said,
14:07:38 44 "That is correct". That is a lie, isn't it?---This is
14:07:44 45 about a conversation in 2005?
46
14:07:47 47 No, this is evidence that's been given by ██████████ about

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FLYNN XXN - IN CAMERA

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14:07:53 1 what had occurred in 2005 into 2006 and it's suggested to
14:08:00 2 [REDACTED] obviously based on the proposition that Ms Gobbo
14:08:05 3 was representing him as a barrister and didn't know what
14:08:09 4 was going on with his criminal activities, and it was said
14:08:12 5 to [REDACTED] that, "You lied to your barrister when you
14:08:17 6 told her that you were no longer involved [REDACTED]
14:08:19 7 [REDACTED] and he agreed with that
14:08:22 8 proposition?---To answer that question I'd have to know
14:08:24 9 what date that conversation was said, because if he said it
14:08:28 10 before - - -
11
14:08:31 12 I've just been taking you through what he had done with
14:08:35 13 respect to [REDACTED] with a view to setting up an
14:08:39 14 adjournment in late 2005, into [REDACTED] 2006, and it
14:08:47 15 was suggested to him that he'd lied to [REDACTED]
14:08:54 16 [REDACTED] to enable him to get the adjournment?---Yes.
17
14:09:00 18 It then followed up with a question, "You lied to your
14:09:03 19 barrister when you told her that you were no longer
14:09:05 20 involved [REDACTED] I suggest
14:09:08 21 that it's quite apparent that he was talking about that
14:09:10 22 particular period of time?---Well if he's referring to 2005
14:09:14 23 he might have - his answer might have been correct.
24
14:09:18 25 Yeah?---In that he lied, because she - well, she was
14:09:31 26 registered in September 2005.
27
14:09:35 28 Yes?---And that's when she's provided us some information
14:09:40 29 about his background. So she did know at some stage that
14:09:43 30 he [REDACTED] But all I'm saying to
14:09:46 31 you is I'm just not sure if this is prior to then or after
14:09:49 32 it. If it was after then, then his answer is a lie, yes, I
14:09:53 33 agree with you.
34
14:09:54 35 Look, I suppose what you're saying is, well look, depending
14:09:59 36 on how he took it, if he took it that the questioner was
14:10:04 37 asking him about the period of time around 2005, he may not
14:10:09 38 have told her that [REDACTED] But if the
14:10:15 39 reality is what he was talking about was leading into 2006,
14:10:23 40 then the lead up to [REDACTED] and [REDACTED]
14:10:28 41 [REDACTED] then he's told a lie, if that's the case?---If
14:10:33 42 that's the case, yes.
43
14:10:36 44 The [REDACTED] material was provided right up until the date of
14:10:40 45 [REDACTED] is that right?---I don't know.
46
14:10:48 47 You're aware that the [REDACTED] - I'll go back if you like.

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14:10:54 1 Come back. Just keep scrolling down. "In addition to
14:11:05 2 using ██████████ to support you by telling him lies for
14:11:08 3 your plea in ██████████ you told him lies to assist you in 2005
14:11:13 4 to get your case adjourned?" So what you say is well look,
14:11:17 5 it depends on what you're talking about. Now, do you say
14:11:22 6 that ██████████ was employed by - or is it your
14:11:26 7 understanding that was one of the reasons why he got the
14:11:30 8 adjournment in 2005?---I can't add to that. I don't know
14:11:38 9 why he got an adjournment.

10
14:11:40 11 Yes, all right. In any event, it may well depend on the
14:11:44 12 context of it and what he understood. But one thing's
14:11:47 13 quite clear, that Ms Gobbo clearly did know that he was
14:11:50 14 ██████████ because she was telling the
14:11:53 15 police about it from certainly late 2005 all the way
14:11:57 16 through ██████████ --That's correct, yes.

17
14:12:00 18 Righto. What you would say is, look, what perhaps he
14:12:04 19 should have done is clarified whether or not, the time
14:12:08 20 frame that the questioner was answering about and answered
14:12:13 21 in accordance with that time frame?---Well that would be an
14:12:15 22 option open to him, yes.

23
14:12:19 24 But what, would you anticipate that if ██████████ considered
14:12:22 25 that he was talking about 2006 he would have told the
14:12:25 26 truth?---No, I'm not saying that at all.

27
14:12:28 28 Right?---It's very possible he did lie.

29
14:12:30 30 Okay, all right then. I follow. I understand what you're
14:12:33 31 saying. If we go to the transcript at p.1187 to 1188.
14:12:52 32 This is when ██████████ is giving evidence and he's asking
14:12:58 33 about, he's being asked about the statement taking
14:13:01 34 procedure. He's asked about that and he says, "All the
14:13:09 35 statements were completed. They were taken to Jim O'Brien
14:13:11 36 to have a look at as well as an attempt to corroborate most
14:13:15 37 of intelligence with stuff they had. Anything they didn't
14:13:19 38 make any sense they would talk to me about. I would have
14:13:22 39 to try and do my hardest to amend it".

14:13:25 40
14:13:26 41 MS ARGIROPOULOS: That's not up on the screen,
14:13:27 42 Commissioner.

43
14:13:28 44 COMMISSIONER: You're a bit ahead of Mr Skim. Thank you.
14:13:32 45 Now we're right.

46
14:13:43 47 MR WINNEKE: This is in re-examination. It seems that

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14:13:59 1 that's - I think I might be incorrect about that. I'll
14:14:36 2 just leave that for the moment. If we can move on to
14:14:43 3 p.1491 and you're giving evidence at this stage.
4
14:14:58 5 COMMISSIONER: We're not there yet.
6
14:15:01 7 MR WINNEKE: I'm sorry. You were asked again as, not
14:15:34 8 surprisingly you were asked questions about the events
14:15:37 9 which occurred on [REDACTED] and there were questions and
14:15:42 10 answers about that. "Was he charged on [REDACTED] Yes.
14:15:48 11 Not initially? No. He was not charged until there was an
14:15:52 12 initial record of interview when he was in your custody as
14:15:55 13 a suspect? Correct. He was given the usual caution? Yes,
14:16:00 14 he answered no comment. Later there was a second record of
14:16:03 15 interview that evening on the [REDACTED] Yes. Again, he was
14:16:11 16 given the same caution? He was. And he was given those
14:16:14 17 cautions because he was regarded as being a suspect in
14:16:17 18 relation to the activities of [REDACTED]
14:16:22 19 correct?--Yes.
20
14:16:23 21 And you say, "Yes, he was in custody as a result of [REDACTED]
14:16:26 22 [REDACTED] so yes. If you had any conversations off
14:16:32 23 tape before that record of interview recommenced which
14:16:35 24 constituted any inducement to him to start talking about
14:16:39 25 his activities at [REDACTED] there should be a
14:16:43 26 record of it, should there not?" You say, "A record in
14:16:47 27 what format? Any format. Handwritten record, tape record,
14:16:50 28 any record. The only format you say is your notes and the
29 notes of other police officers involved". And he says, "We
14:16:55 30 have no notes of any inducements being given to him,
14:16:59 31 correct? Not that I'm aware of. No. No notes on any
14:17:04 32 urgings on him to be forthcoming and make admissions, do
14:17:07 33 we? No. Had there been any such urgings and inducements
14:17:13 34 there would be a note, would there not? Well, we
14:17:15 35 certainly, we spoke to [REDACTED] and discussed his options.
14:17:18 36 I mean there's a difference between discussing options and
14:17:21 37 giving him urgings and inducements to take a different
14:17:25 38 course of action, correct?" "Well it's a fine line", you
14:17:28 39 say, "I suppose, the difference between the two, but we
14:17:31 40 basically spoke to [REDACTED] and explained the situation
14:17:33 41 and offered him some choices is the way I would put it.
14:17:37 42 Wouldn't put it any higher than that? So you said, 'Look,
14:17:40 43 got you cold. We've got you on [REDACTED] et cetera. Yes,
14:17:46 44 in a bit more detail but yes, that's correct. Had it been
14:17:50 45 anything greater than that then there should be a record of
14:17:55 46 it, should there not? Not necessarily, no. So given the
14:18:01 47 answers you've given earlier, Mr Flynn, why would that be

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14:18:05 1 so? Well, talking to [REDACTED] people that are in custody at the
14:18:08 2 time in relation to their options is a regular police
14:18:11 3 practice. That's what we normally do with most people".
14:18:17 4 Now, this was not an ordinary situation at all, was it, I
14:18:23 5 suggest to you?--Well, it's not an ordinary situation
14:18:26 6 because of Nicola Gobbo's involvement, yes.
7
14:18:29 8 Indeed, what occurred on the night was not an ordinary
14:18:33 9 situation at all I suggest?--In response to that answer -
10 - -
11
14:18:37 12 Yes?--- - - - it was - and I think I've given evidence
14:18:40 13 earlier during my evidence here.
14
14:18:42 15 Yes?--Is that it is common practice for police, especially
14:18:45 16 in [REDACTED] to talk to arrested persons about options
14:18:50 17 available to them.
18
14:18:52 19 That may well be the case but in circumstances, in the
14:18:57 20 unusual circumstances of this case it would be, I suggest,
14:19:03 21 unusual not to make a note of what occurred in some
14:19:10 22 detail?--Well this is a unique situation and the process I
14:19:19 23 followed as far as notetaking was as I've followed for my
14:19:28 24 career in relation to dealing with people.
25
14:19:31 26 Yes. It would be common to make a note at the very least
14:19:36 27 of the comings and goings of lawyers, and indeed what you
14:19:41 28 do note in the short note that you've got on the [REDACTED] is
14:19:47 29 that Ms Gobbo was called and she attended and then options
14:19:51 30 were discussed?--Yes.
31
14:19:55 32 Again, is it your view that on this occasion [REDACTED]
14:20:00 33 had recourse to that note?--I'm not sure at this stage. I
14:20:12 34 don't know what had occurred in relation to my notes at
14:20:14 35 this stage.
36
14:20:15 37 All right. It's unlikely, would you agree, that there was
14:20:21 38 a note which was provided to [REDACTED] which referred to
14:20:30 39 Mr Smith being present?--Well, I mean, I don't know.
40
14:20:45 41 Don't know, all right?--I see where you're going. If
14:20:48 42 there was you would think he would ask about it and he
14:20:52 43 hasn't done that. I understand that, but I just don't know
14:20:55 44 whether they - I would have thought by this stage that
14:20:59 45 notes in some form would have well and truly been provided
14:21:02 46 and if they were redacted, whether there was - I can't
14:21:06 47 recall of any application to ask what that was about.

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1
14:21:09 2 Right?---Except for what I've said a couple of times.
3
14:21:12 4 No, no, I follow that. It may or may not be this
14:21:15 5 proceeding where the notes were put before the
14:21:17 6 judge?---Yes, that's right.
7
14:21:18 8 Do you recall the judge who you put the notes before?---No,
14:21:23 9 I don't.
10
14:21:25 11 This, I think, was conducted before Justice Curtain in the
14:21:29 12 Supreme Court?---That's correct, yes.
13
14:21:31 14 Do you recall whether she was provided with notes and had
14:21:34 15 to make a decision about public interest immunity?---I
14:21:38 16 don't think it was Justice Curtain. I think it was another
14:21:41 17 judge.
18
14:21:41 19 Right. Was it a magistrate or was it a trial judge?---I
14:21:48 20 seem to think it was in the County Court. So whether it
14:21:51 21 was a County Court - in the County Court building, whether
14:21:55 22 it was a County Court matter or the Supreme Court sitting
14:21:59 23 in the County Court, I'm not sure.
24
14:22:00 25 This was the first trial, wasn't it, of any of these
14:22:03 26 matters?---Yeah, as I've indicated, it's possibly related
14:22:07 27 to a totally different investigation.
28
14:22:09 29 Yes?---So yes, this was the first trial.
30
14:22:15 31 There was a subsequent - in fact you think there might have
14:22:18 32 been two subsequent trials. Obviously there was the
14:22:21 33 [REDACTED] I'll come to in due course and there
14:22:23 34 might have been [REDACTED] trial involving [REDACTED]?---Yes.
35
14:22:27 36 All right then. I'm not going to go over old ground about
14:22:30 37 it again, save to say this, [REDACTED] was trying to get
14:22:35 38 down to detail about what had occurred on the night. Would
14:22:40 39 you accept the proposition that he did not get down to the
14:22:43 40 detail?---Yes.
41
14:22:44 42 He wasn't able to?---Yes, I accept that.
43
14:22:47 44 Okay. If we can go to transcript p.1493. You were asked,
14:23:04 45 "You as an experienced and practised detective would know
14:23:13 46 that if you offer an inducement to be made, not only should
14:23:16 47 it be recorded in writing if it's off-the-record, but it

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14:23:20 1 should also be included at some point in the tape record of
14:23:24 2 interview later on in time?" You say, "I've never been
14:23:29 3 involved in any situation where any type of inducement has
14:23:33 4 been offered and recorded in the fashion that you're
14:23:36 5 suggesting. Simply with [REDACTED] case he was explained
14:23:37 6 his option, he obtained legal advice and the ball was
14:23:39 7 basically left in his court. He had a decision to make."
14:23:45 8 Question: "So is your position this: there was no
14:23:49 9 inducement, you simply told him what his options were. He
14:23:52 10 went away and sought legal advice and the next thing you
14:23:55 11 know he told you he was going to cooperate, is that it in a
14:23:58 12 nutshell?" You agree with that by way of saying, "Well
14:24:01 13 that's a very summarised view in relation to it, but yes".
14:24:08 14 The reality is, I would suggest, that he didn't really go
14:24:13 15 away at all and seek legal advice. The legal advice came
14:24:17 16 to him, such as it was, and you remained with him and then
14:24:23 17 that occurred in the context of you and Ms Gobbo suggesting
14:24:29 18 to him that it would be very much in his best interests to
14:24:34 19 be re-interviewed and then assist the police?---Yes, that's
14:24:37 20 correct.
21
14:24:38 22 Would it be fair to say that that is an example of
14:24:43 23 [REDACTED] not really getting a full sense of what
14:24:45 24 occurred?---You're describing in further details of what's
14:24:54 25 been asked.
26
14:24:55 27 Yes?---So it wasn't delved into that deeply.
28
14:24:59 29 Righto. But by you saying, "Look, I agree with that,
14:25:03 30 albeit it's a summarised version", you're really
14:25:08 31 misleading, I suggest, or not telling the whole truth?---I
14:25:12 32 don't agree with that.
33
14:25:14 34 Can I move to the next page. "I'm having difficulty with"
14:25:19 35 - you're asked about inducement again and you say, "I'm
14:25:23 36 having difficulty with your word 'inducement'", right down
14:25:28 37 the bottom, "in relation to it all. I explained to
14:25:31 38 [REDACTED] with another police officer certain courses of
14:25:36 39 actions that were available to him. We spoke to him for
14:25:41 40 some time and then it was up to him in relation to which
14:25:43 41 course he wanted to take. You spoke to him about his
14:25:56 42 involvement [REDACTED] your investigation? Yes.
14:26:00 43 No note of it?" You say, "Except for the fact that there's
14:26:05 44 diary notes that we were speak to him, yes, but that's
14:26:08 45 simply basically that we spoke to him. The diary note says
14:26:12 46 that you spoke to [REDACTED] at this particular time. It
14:26:15 47 says nothing about what you spoke about? Correct". That's

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14:26:19 1 correct. "Why not? Well I mean it was no great secret in
14:26:24 2 relation to what we spoke to him about, it's fairly plain
14:26:28 3 what we were talking to him about. Well it's a secret to
14:26:31 4 me standing here because I don't know what it is because
14:26:33 5 I've got no note to look at as a contemporaneous account,
14:26:39 6 do you understand that?" You say, "Well I understand you
14:26:41 7 have no note to look at. No, but what I don't understand
14:26:47 8 is quite simply [REDACTED] was in a lot of trouble in
14:26:49 9 relation to his previous [REDACTED] and this [REDACTED]
14:26:52 10 [REDACTED] right? "Was this some private collaboration
14:27:05 11 between the two of you that we're not supposed know about?"
14:27:10 12 You say, "I'm trying to explain here. I can basically say
14:27:12 13 exactly what was said but there was just no notes taken of
14:27:15 14 it". What [REDACTED] is desperately trying to find out
14:27:22 15 is what happened, what was said, what occurred, he was
14:27:29 16 trying to get to the truth of the matter?---Yes.
17
14:27:32 18 And, I mean, like your investigatory oath or obligation or
14:27:38 19 mantra, investigation of the truth, for the truth in
14:27:43 20 accordance with the law?---Yes.
21
14:27:44 22 That's what he was trying to get to?---Yes.
23
14:27:47 24 And he didn't get it, I suggest to you?---Well he didn't -
14:27:55 25 I don't know why he didn't have the note at that stage but
14:27:59 26 he didn't appear to get all the details, I'd agree with
14:28:02 27 that.
28
14:28:03 29 There's a reference to the two of you speaking to
14:28:06 30 him?---Yes.
31
14:28:06 32 Earlier on. That might be because he had a view that it
14:28:12 33 was Mr O'Brien speaking to him, I don't know, I can't ask
14:28:15 34 him because he's not around. In point of fact it was you
14:28:18 35 and Ms Gobbo?---Well, there was times when - - -
36
14:28:23 37 I'm sorry?---There was times when - when I think about this
14:28:32 38 date.
39
14:28:33 40 Yes?---The main thing that sticks out was the approach that
14:28:36 41 I was making with Jim O'Brien.
42
14:28:38 43 Yes?---Because that's exactly what the plan was.
44
14:28:40 45 Yes, but that didn't work?---Well I wouldn't agree with
14:28:44 46 that. I think it was all part of the whole process. But
14:28:48 47 certainly Ms Gobbo was part of that process.

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1
14:28:50 2 She was part of the process and she was an important part
14:28:53 3 of the process and I think you agreed that she was
14:28:56 4 assisting and she assisted you push him over the
14:28:58 5 line?---Yes, I'd agree with that.
6
14:29:00 7 That was the information that should have got out and it
14:29:04 8 didn't?---Correct.
9
14:29:05 10 And you knew that that information should have got out, I
14:29:09 11 suggest to you?---Well, at best I suppose it's something I
14:29:15 12 wasn't going to volunteer, but if I was asked a question
14:29:19 13 about it I would have answered it.
14
14:29:21 15 What would you have answered?---Well if I was asked more
14:29:24 16 about, you know, the break down of what occurred on the
14:29:27 17 night, I would have broken it down as much as I could
14:29:31 18 recall.
19
14:29:32 20 So if he'd have said, "I want you to tell me exactly the
14:29:36 21 people who were there at all times", in that case you would
14:29:41 22 have been forced to answer and in some way reveal who was
14:29:44 23 there and what occurred?---I would answer, firstly I'd go
14:29:47 24 to my notes because that's what I would normally do. And
14:29:50 25 that break down is not there.
26
14:29:52 27 Yes?---But if I was asked directly, and I recall that
14:29:57 28 Ms Gobbo was part of a private conversation, which there
14:30:00 29 was a part of the time that I couldn't recall that, but I
14:30:04 30 would answer honestly.
31
14:30:05 32 You would never have forgotten, I suggest, that she was
14:30:09 33 there? It wouldn't have been forgotten?---She was there,
14:30:14 34 that's correct, yes.
35
14:30:15 36 No, you wouldn't have forgotten it. At no stage would you
14:30:21 37 have not remembered that Ms Gobbo had been called back and
14:30:23 38 was instrumental in pushing him over the line?---No, I
14:30:26 39 wouldn't have forgotten that, that's right.
40
14:30:28 41 At all times when you were giving your evidence you would
14:30:31 42 have been aware of that?---Yes.
43
14:30:34 44 COMMISSIONER: What role did Mr Smith play in all
14:30:37 45 this?---He was initially there - that unit, aside from
14:30:46 46 handling human sources, were also having some subject
14:30:51 47 expertise in helping people to get them to assist police,

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14:31:00 1 so he was also there to assist [REDACTED] rolling.
2
14:31:03 3 Did he have some input?---I actually couldn't even recall
14:31:07 4 his presence until I read my diary. He had some input but
14:31:10 5 I don't think he had a great bit of input.
6
14:31:13 7 But he would say things from time to time?---Yes.
8
14:31:15 9 Thank you.
10
14:31:16 11 MR WINNEKE: Was he there for any length of time speaking
14:31:20 12 to [REDACTED] ---What, by himself or - - -
13
14:31:24 14 No, with you and Mr O'Brien?---I think he would have been
14:31:27 15 in the room, yes.
16
14:31:30 17 So on the occasions where it's been suggested that the two
14:31:32 18 of you were there, he's simply been whitewashed out of
14:31:36 19 history?---I don't recall him having much involvement.
20
14:31:40 21 Well, did he have any involvement, did he ask questions or
14:31:44 22 what? Did he make any comment at all?---It's possible that
14:31:48 23 he made some comment but whatever it was I think it was
14:31:52 24 minimal.
25
14:31:53 26 But he's been air brushed out?---He hasn't been air brushed
14:31:57 27 out, I just haven't referred to him.
28
14:31:58 29 I'm sorry?---He hasn't been air brushed out, I just haven't
14:32:02 30 referred to him.
31
14:32:03 32 Why haven't you referred to him?---Because the main pitch
14:32:06 33 was driven by - or at least the initial plan was, was by
14:32:12 34 Jim O'Brien and myself. That's how we'd set it up. That's
14:32:15 35 how we'd planned it. Remember I answered several days ago
14:32:19 36 that the initial plan was not for me not to even interview
14:32:23 37 [REDACTED] it was for members of my crew to interview him,
14:32:26 38 and then he would be brought into Mr O'Brien and myself.
39
14:32:30 40 I follow that bit, but you weren't being asked about the
14:32:32 41 plan, you were being asked about what happened?---No, but
14:32:34 42 I'm explaining to you what my memory was and that's what's
14:32:39 43 strong in my memory.
44
14:32:40 45 All right. If we can go to p.1515. At the bottom of
14:33:08 46 p.1515 you were asked this question, "Do you agree with
14:33:11 47 these propositions, that it would be improper to sanitise

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14:33:15 1 his [REDACTED] statement, you take the statements in
14:33:18 2 terms of what he provides to you and you don't try to
14:33:21 3 sanitise the information that he gives you", and you agree
14:33:25 4 with that proposition?---Yes.
14:33:26 5
14:33:31 6 "If he was telling you lies there should be a record of
14:33:35 7 them? Well in some form or not, yes. Well if he was
14:33:38 8 giving you information for the purposes of these statements
14:33:40 9 and you knew that you had material to demonstrate the
14:33:44 10 falsity of what he was saying, there should be a record of
14:33:46 11 that, should there not?" You say, "No, not necessarily.
14:33:51 12 But he's a person who you want to put forward as a witness
14:33:54 13 and a witness of truth who has told you in the course of
14:33:57 14 statements being taken information that you know is false
14:34:00 15 and you make no record of it?" You say, "Well, [REDACTED]
14:34:08 16 information, statements and evidence is treated carefully
14:34:11 17 basically from the very start, from the very day we take it
14:34:15 18 from him, because of the position he's in. I take the view
14:34:18 19 that nothing he provides me is of any value unless in some
14:34:22 20 way or other I can corroborate it, and that's generally how
14:34:26 21 I've worked with this investigation and any information
14:34:28 22 he's provided to me". Now, what obviously [REDACTED] is
14:34:36 23 trying - the point he's trying to make is the point that I
14:34:39 24 was trying to make before, no doubt better than me, but
14:34:43 25 it's important to present it warts and all so as the
14:34:46 26 accused person who is being tried isn't simply presented
14:34:49 27 with a person who makes statements which can be wholly and
14:34:52 28 solely at every which way corroborated, but he ought be
14:34:58 29 presented with evidence which is - in a way that he
14:35:03 30 understands the way in which it's come to light, do you
14:35:06 31 accept that proposition?---That's not - you know, I've said
14:35:10 32 it on a number of occasions, that's not the route we took
14:35:13 33 on this occasion.
34
14:35:14 35 I'm simply demonstrating this because on each occasion, and
14:35:18 36 I might be repeating myself, but this occurred, I suggest,
14:35:21 37 time and time again, and I make no apologies for it. This
14:35:24 38 evidence occurred on a number of occasions in a number of
14:35:26 39 different courts, do you accept that?---Yes, I do. And I
14:35:30 40 think my answers were consistent all the way through and
14:35:33 41 they're consistent here as well, so.
42
14:35:35 43 Yes. Sorry?---All I was going to say is, you know, this is
14:35:42 44 a course we took. We knew that there were going to be a
14:35:45 45 large number of statements taken, we knew they were going
14:35:47 46 to be complex and probably, you know, take some time to do
14:35:49 47 and so that's the course we took.

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1
14:35:52 2 You very much understood that this was a man whose
14:35:55 3 credibility was going to be attacked to a great
14:36:00 4 extent?---Yes.
5
14:36:01 6 So if he came along and it appeared as if he got just about
14:36:03 7 everything right, and everything could be corroborated,
14:36:06 8 anything which could not be corroborated would be more
14:36:09 9 likely to be believed?---Well, anything that we couldn't
14:36:13 10 corroborate we - not so much we wouldn't believe it, we
14:36:17 11 just didn't think we could act on it because of his
14:36:19 12 credibility issues.
13
14:36:20 14 If you had him coming along and making false or incorrect
14:36:24 15 statements then his credibility would be shaken?---Yes.
16
14:36:30 17 And then if it appeared that he was given information to
14:36:35 18 correct those falsities or inaccuracies, his credibility
14:36:39 19 wouldn't be improved because it would be said, "Well look,
14:36:42 20 you were told that information, you got that information
14:36:44 21 from the police"?---Well yes.
22
14:36:46 23 But no one ever knew that, you accept that?---Yes, I do.
24
14:36:51 25 Can I take you to 1525. This question was put: "If the
14:37:06 26 process was tape-recorded so that it was transparent, then
14:37:12 27 whether or not this occurred and what was said would be
14:37:15 28 recorded, correct? It would be recorded, yes. Yes, but
14:37:19 29 the process you chose to employ, we don't know how these
14:37:22 30 statements were made other than by accepting what you say
14:37:25 31 on your word? Correct. That and ask [REDACTED] and you could ask
14:37:30 32 the other member that was involved in taking the statement
14:37:32 33 as well. We're certainly not trying to hide anything in
14:37:37 34 relation to it". That's the answer you gave?---Yes.
35
14:37:43 36 You were certainly trying to hide Ms Gobbo's involvement in
14:37:46 37 the process, would you accept that?---Yes, I was, but I
14:37:49 38 don't think that answer is a reference to that.
39
14:37:59 40 "Haven't you as a police officer got a duty, Mr Flynn, to
14:38:04 41 maintain a record of conversations with informers that
14:38:06 42 touch upon subject matters such as this?" You say, "I have
14:38:10 43 a record of when I speak to [REDACTED] and I generally keep
14:38:13 44 a very short note in relation to what the contents of the
14:38:16 45 conversation is. On this process of taking statements from
14:38:19 46 him, I mean there was no need for me to take any further
14:38:22 47 details, what was said is in the statement itself". Well,

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14:38:27 1 really what's in the statement is a culmination of a whole
14:38:30 2 lot of work which isn't revealed, I suggest?---Well it just
14:38:34 3 wasn't revealed in detail. I've always been open to the
14:38:38 4 fact that the statements had been changed, amended, updated
14:38:41 5 during the statement taking process.
6
14:38:43 7 Yes. "The need is so people down the track accused of
14:38:49 8 crimes based on [REDACTED] statements have a record of
14:38:52 9 what else he said on the subject?" You say, "The statement
14:38:57 10 is as it is. [REDACTED] is a witness available for
14:39:00 11 cross-examination. I put down what I believe of what he
14:39:05 12 has told me and what I believe to be the true and correct
14:39:09 13 account of his dealings". Can I suggest to you that what
14:39:13 14 you did was to only leave in the statement what you
14:39:16 15 believed to be true, you left out what was believed not to
14:39:21 16 be true, do you accept that?---The statements were, you
14:39:33 17 know, [REDACTED] telling us about these events.
18
14:39:35 19 Yes?---So certainly at times he told us about events I was
14:39:42 20 aware of and other times he was telling us about events I
14:39:45 21 was totally unaware of. So he was the one that was driving
14:39:49 22 the statements.
23
14:39:56 24 It was said, "You created with him a version that's been
14:40:04 25 dished up in a brief of evidence denying to us the source
14:40:07 26 material on the process upon which that statement is
14:40:11 27 based?" You say, "I deny that completely. I've simply
14:40:15 28 provided, tried to get the information [REDACTED] had in his head
14:40:19 29 in a statement format". I make the same point and no doubt
14:40:25 30 you make the same response?---Yes.
31
14:40:37 32 You say, "The statement format we have of the process that
14:40:40 33 was used and relied upon in reaching that final format we
14:40:43 34 don't have, do we? The process I used is a common process
14:40:49 35 in practice that's used by Victoria Police". I take it
14:40:52 36 what you were saying there was it was certainly common
14:40:55 37 within Purana and it's something that was used by, for
14:40:59 38 example, Messrs Bateson and Ryan?---That's right, they're
14:41:04 39 the ones that advised me - well, I'm presuming that that's
14:41:07 40 what they did with their investigations but they're the
14:41:10 41 ones I got the advice from.
42
14:41:12 43 He says, "Common in lacking witnesses who may give a
14:41:16 44 narrative of a small event" - sorry, [REDACTED] said,
14:41:20 45 "It's common in relation to witnesses who may give a
14:41:23 46 narrative of a small event they are an eyewitness to but I
14:41:26 47 suggest it's not a process that's common in relation to a

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14:41:31 1 person such as [REDACTED] who's being put forward in
2 relation to a vast array of activities and ends up making
14:41:35 3 some 35 statements if I'm correct over a debriefing period
14:41:36 4 of many, many months, that's what I suggest?" You say,
14:41:39 5 "You're wrong, I disagree with that totally. It's actually
14:41:42 6 a process that I obtained from the members that had been at
14:41:45 7 Purana Task Force"?---Yes.
8
14:41:47 9 That's the answer that you gave to him?---Yes.
10
14:41:52 11 It means that that was a process that was advised to me by
14:41:56 12 Detective Inspector O'Brien as to use, and, as I said, it's
14:42:03 13 a common process with Victoria Police." Do you say that
14:42:10 14 it was Mr O'Brien who gave you the idea to use that
14:42:15 15 statement taking process?---No, I think it was Mr Bateson
14:42:21 16 initially advised me in that way but it's probably
14:42:24 17 something I discussed with Mr O'Brien.
18
14:42:26 19 He agreed with you that that was an appropriate way of
14:42:29 20 going about it?---I can't remember that conversation but I
14:42:31 21 suspect it happened.
22
14:42:33 23 But really what it does is prevents prior inconsistent
14:42:37 24 statements being utilised to cross-examine?---Yes.
25
14:42:41 26 And test the credibility of a witness?---To further test
14:42:48 27 his credibility, yes.
28
14:42:51 29 In cases where people are facing many years in custody,
14:42:55 30 which I suggest you were aware of?---Yes.
31
14:42:58 32 That is an unfortunate way of dealing with it, I suggest,
14:43:03 33 because what you're doing is assisting a witness come to a
14:43:08 34 version of events which is an artificial process, do you
14:43:13 35 accept that?---Not necessarily, no.
36
14:43:19 37 I mean if you were an accused person who was facing a
14:43:24 38 charge of murder and a victim - I'm sorry, a witness came
14:43:29 39 along and told an incorrect version or a version which was
14:43:36 40 demonstrably false and then the police fixed that up by
14:43:42 41 assisting them to come to the correct version, then that
14:43:46 42 could well lead to a miscarriage of justice because the
14:43:51 43 person wouldn't be able to test that version?---Yes, I
14:43:53 44 understand that.
45
14:43:54 46 Yeah, all right. We've heard in recent times that the
14:44:16 47 Lorimer Task Force has in effect been taken to task because

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14:44:21 1 that process was carried out with respect to taking
14:44:24 2 statements in the case that that Task Force dealt with, do
14:44:29 3 you understand that?---Yeah, I've read what's been in the
14:44:32 4 paper about that, yes.
14:44:32 5
14:44:33 6 Would you accept that that is an inappropriate way of going
14:44:36 7 about things?---I don't know if the Lorimer Task Force
14:44:39 8 example is exactly the same as this. I could be wrong with
14:44:43 9 this because I've only read it in the paper, but I get the
14:44:46 10 impression they were signed statements that were resigned.
11
14:44:51 12 Yes, re-dated and resigned?---Which I would suggest would
14:44:56 13 be a different issue than this.
14
14:44:57 15 But nonetheless new statements with new informations, but
14:44:57 16 apparently being presented as the original
14:45:00 17 statement?---Yes, that's right. I would suggest that
14:45:01 18 that's a different issue to what we're discussing.
19
14:45:05 20 It may well be a different issue but it suffers from the
14:45:07 21 same vice, I suggest?---No, I would suggest that that's got
14:45:11 22 a little bit more of - if I was in that situation and I had
14:45:19 23 a signed statement.
24
14:45:20 25 Yes?---And it had to be changed, it wouldn't be done in
14:45:24 26 that way. I would make an additional statement and say
14:45:28 27 that this statement's been signed in that way, once it's
14:45:31 28 been signed.
29
14:45:32 30 I follow that. But the reality is it's the same issue
14:45:35 31 because it's being presented as the only version of a
14:45:38 32 statement, whereas in fact there were earlier versions of
14:45:42 33 the statement, albeit in your case they weren't signed.
14:45:45 34 They were nonetheless, when they were taken by you from
14:45:49 35 [REDACTED] regarded by [REDACTED] as to be the truth, that
14:45:56 36 is the earlier version?---Yep. So I treat the two
14:46:00 37 processes as differently and I wouldn't have followed the
14:46:02 38 process that's been suggested with the Lorimer
14:46:06 39 investigation.
40
14:46:06 41 You'd certainly hope not. But I suggest to you this
14:46:09 42 suffers from a similar vice?---I just think the fact that
14:46:14 43 it's replacing a signed statement is a little bit more
14:46:17 44 deceptive.
45
14:46:18 46 I accept that. Certainly insofar as it's suggested that
14:46:28 47 there are no drafts and the court and the cross-examiner is

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14:46:33 1 presented with the view that that's the only statement
14:46:36 2 without there being drafts, it is, I suggest, a misleading
14:46:40 3 circumstance or a misleading assertion?---I would have
14:46:47 4 thought that it's more the contents of the statement that
14:46:50 5 was more relevant than the actual how we got to that stage.
6
14:46:53 7 I follow that, but it's the contents of the statement which
14:46:56 8 are important. If the contents of the earlier statement
14:46:59 9 which is hidden are different to the contents of the final
14:47:03 10 statement, that's the vice, and that's why I say the vice
14:47:06 11 is the same with both?---I understand where you're coming
14:47:13 12 from. I would still suggest one is not a route that I'd
14:47:17 13 taken on this occasion.
14
14:47:19 15 I follow that. To sign a statement and then, in effect,
14:47:24 16 change the statement and make a new statement as if that's
14:47:26 17 a completely whole statement, I accept what you say.
14:47:29 18 That's got other problems as well?---Yes.
19
14:47:32 20 All right. The next proceeding in which you gave evidence
14:47:36 21 was a committal proceeding in [REDACTED] of 2009. That's the
14:47:39 22 [REDACTED] proceeding, correct?---Yep.
23
14:47:42 24 And that was a case involving [REDACTED]
14:47:46 25 [REDACTED] and [REDACTED] ---Yes.
26
14:47:50 27 You gave evidence in [REDACTED] 2009 in that matter, it's
14:47:56 28 VPL.6038.0007.8886. If we go to p.448 to 9. [REDACTED] I
14:48:23 29 think is asking you questions on behalf of - it may be
14:48:33 30 [REDACTED] In any event it probably doesn't
14:48:35 31 matter?---It was [REDACTED].
32
14:48:38 33 He says - he's asking you questions about the law. "You
14:48:46 34 know about the law in relation to accomplices not being
14:48:50 35 able to corroborate each other?" You say, "These are
36 issues that I supply to the OPP and let solicitors and
14:48:55 37 barristers sort it out. Wouldn't rule it out without
14:48:56 38 having someone with more legal qualifications than myself
14:49:00 39 having a look at it". Do you see that?---Yes.
40
14:49:04 41 I simply make the point that effectively what you do, what
14:49:10 42 your job is to do is to present the facts, or the evidence,
14:49:16 43 and allow the lawyers who present matters to the court to
14:49:22 44 determine what the appropriate legal situation is, do you
14:49:26 45 accept that? That's right, isn't it?---Yes, but that's in
14:49:28 46 response to a specific question.
47

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14:49:30 1 Yeah, about accomplices and corroboration and so
14:49:33 2 forth?---Yes.
3
14:49:33 4 But effectively, the point I make is that you understand
14:49:37 5 there are legal issues to be determined by the courts, that
14:49:40 6 is corroboration and so forth, in the same way, I suggest,
14:49:43 7 as you understood that there are issues with respect to
14:49:46 8 public interest immunity which needed to be determined by
14:49:50 9 the courts?---Yes.
10
14:49:51 11 They can only do so if they have the information put before
14:49:54 12 them?---Yes.
13
14:49:54 14 What I suggest, and you might say well you're doing it
14:49:57 15 again, but I suggest that you didn't put the information
14:49:59 16 before the courts in this case to allow that to be
14:50:02 17 determined by the courts?---Certainly some of it, yes.
18
14:50:07 19 If I can go to p.461. Again, we're getting to the [REDACTED]
14:50:19 20 [REDACTED] 2006, and I know this is repetitive, but you knew
14:50:23 21 full well by then that the issue of what happened on [REDACTED]
14:50:26 22 [REDACTED] was going to be important?---Yes.
23
14:50:28 24 I suggest to you yet again that the truth did not out, it
14:50:32 25 didn't come out?
26
14:50:36 27 COMMISSIONER: Do you have a VPL number for that?
28
14:50:39 29 MR WINNEKE: VPL.6038.0007.8886 at p.460 - - -
30
14:50:47 31 COMMISSIONER: Apparently that's not the right one.
32
14:50:52 33 MR WINNEKE: It's not?
34
14:50:53 35 COMMISSIONER: No.
36
14:50:56 37 MR WINNEKE: Just excuse me. VPL.6038.0007.8923. 8923.
14:51:24 38 Am I right there?
39
14:51:25 40 COMMISSIONER: Yes, it's looking more promising.
41
14:51:32 42 MR WINNEKE: Next page, or two pages down the track. Next
14:51:35 43 one. [REDACTED] is asking on this occasion again, I
14:52:06 44 suggest he's trying to find out what occurred on [REDACTED]
14:52:09 45 2006. "You arrested [REDACTED] at [REDACTED]? I did.
14:52:15 46 When you first interviewed him he refused to answer and the
14:52:22 47 days that followed the operation being conducted? Yes, he

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14:52:26 1 did. In terms of securing his agreement to participate in
14:52:30 2 the operation he was spoken to by officers from Purana?
14:52:33 3 Yes, he was. And also his legal representatives? Yes, he
14:52:43 4 was. Those representatives being Nicola Gobbo and Tony
14:52:48 5 Hargreaves?" You say, "That's correct". It's pretty
14:52:56 6 clear, isn't it, that Mr Hargreaves wasn't involved in
14:53:01 7 providing any advice on the [REDACTED] --I'm not aware of any
14:53:04 8 advice he provided on the [REDACTED]
9
14:53:08 10 Indeed, Ms Gobbo's involvement on this night was kept from
14:53:15 11 him?---From Mr Hargreaves?
12
14:53:19 13 Yes, for quite some time?---I don't - I'm not sure about
14:53:24 14 that.
15
14:53:25 16 Mr Hargreaves certainly didn't provide any legal
14:53:28 17 advice?---I'm not sure.
18
14:53:29 19 You knew that he didn't provide any legal advice on the
14:53:32 20 [REDACTED] -I'm not sure of that. The only record I have of
14:53:37 21 any legal advice is Nicola Gobbo.
22
14:53:40 23 That's not what you said. You agreed with the proposition
14:53:44 24 that the legal representatives were Nicola Gobbo and Tony
14:53:47 25 Hargreaves?---I've answered yes in relation to that
14:53:50 26 question, yes.
27
14:53:52 28 "In terms of those from Purana who spoke to him to try and
14:53:56 29 garner his assistance, that was yourself at all stages,
14:54:03 30 this is before he agreed to participate on [REDACTED] You
14:54:09 31 say, "Yes, it was. At all stages this is before he
14:54:14 32 participates on [REDACTED] Yes, there was one interview, if
14:54:17 33 you like, or conversation. Yes, with [REDACTED] It was
14:54:22 34 had between myself, [REDACTED] and Mr O'Brien". It's gone
14:54:30 35 too quickly. "Inspector O'Brien"?---Yes.
36
14:54:33 37 Now that wasn't true, was it?---Well that was true, it was
14:54:37 38 between myself and Mr O'Brien but, yes, Ms Gobbo was
14:54:44 39 present and there was a member of the SDU present as well
14:54:47 40 for part of it.
41
14:54:48 42 In terms of - let me just read it again. "In terms of
14:54:53 43 those from Purana who spoke to him to try and garner his
14:54:57 44 assistance, that was yourself? Yes, it was. At all stages
45 this was before the participation. One interview if you
14:55:01 46 like or conversation with [REDACTED] it was between myself, [REDACTED] and
14:55:04 47 Inspector O'Brien". That, I suggest, was not the whole

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14:55:07 1 truth?---Well again, I'm just going on - as I've indicated
14:55:14 2 a number of times, that's my main recollection of that
14:55:17 3 pitch process, was between myself and Mr O'Brien.
4
14:55:20 5 Yeah, but as we've established before, at all stages you
14:55:23 6 were aware that Ms Gobbo was intimately involved in that
14:55:26 7 process?---She was involved on the night, but as I've
14:55:30 8 indicated earlier, that, you know, my memory's been
14:55:34 9 refreshed in relation to the conversation that I had with
14:55:35 10 her without Mr O'Brien present.
11
14:55:39 12 Can I suggest to you that that was not the whole truth and
14:55:43 13 your oath was to swear the truth, the whole truth and
14:55:48 14 nothing but the truth?---No, I wouldn't agree with that.
15
14:55:51 16 Okay. If we go to 464 and 5. Again, [REDACTED] is
14:56:20 17 trying to work out what happened. "Well we have the first
14:56:23 18 discussion after a no comment record of interview of
14:56:25 19 [REDACTED] the first discussion thereafter is one between
14:56:29 20 [REDACTED] yourself and O'Brien"?---I don't think it's the right
14:56:35 21 page.
22
14:56:35 23 464. 464. Keep going down. Up. Do you see that? "First
14:56:54 24 discussion after the no comment record of interview, the
14:56:57 25 first discussion thereafter was one between [REDACTED] yourself
14:57:00 26 and O'Brien". You say, "Yes"?---Yes.
27
14:57:01 28 Again I put the same proposition, that that's inaccurate
14:57:03 29 and it's misleading?---Well it wasn't intentionally so.
30
14:57:07 31 It leaves out Gobbo and it leaves out Smith?---Yes.
32
14:57:12 33 I suggest to you that it is reasonably apparent that the
14:57:19 34 questioner is not in possession of notes which reflect all
14:57:24 35 of the people who were present?---That may be the case.
36
14:57:53 37 In the course of that no doubt things are said to [REDACTED] to try
14:57:57 38 and secure his cooperation? Yes", you agree. But you say,
14:58:01 39 "Whatever was said didn't include him being informed about
14:58:05 40 being hung out to dry" - perhaps I'll leave that alone. If
14:58:18 41 I can go down to p.465 at the bottom of the page, "As he
14:58:26 42 was - well after that conversation did he at that stage
14:58:36 43 agree that he would facilitate your cooperation?" You say,
14:58:42 44 "Yes. That is after he had been consulted with his
14:58:46 45 barrister and solicitor? That's right". Well, does that
14:58:53 46 give the impression that the questioner was of the view
14:58:59 47 there was an independent barrister and solicitor providing

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14:59:04 1 independent legal advice?--Well, yes.
2
14:59:11 3 Were you content for that impression to be left?--Well it
14:59:15 4 was a straightforward question with a straightforward
14:59:17 5 answer.
6
14:59:18 7 There certainly wasn't a solicitor present, there was
14:59:20 8 Ms Gobbo?---That's right.
9
14:59:25 10 He hadn't consulted with an independent solicitor?---Not to
14:59:30 11 my knowledge.
12
14:59:31 13 Indeed, he hadn't consulted with an independent lawyer I
14:59:34 14 suggest?---Not to my knowledge.
15
14:59:36 16 Okay. "Were there further discussions that you had with
14:59:43 17 him to try, before he actually went out into the field on
14:59:46 18 [REDACTED] to try and garner his support or had he decided
14:59:49 19 that he was going to facilitate it? The first step in
14:59:53 20 relation to what police did once [REDACTED] agreed to assist was go
14:59:57 21 back and do another record of interview where he did not
15:00:01 22 say no comment in the record of interview"?---Yes.
23
15:00:06 24 There was a failure to answer that there was a further
15:00:10 25 discussion involving Ms Gobbo, I suggest?--Well, I would
15:00:16 26 disagree with that. The previous answer is a broader
15:00:20 27 question in relation to seeking legal advice and that was
15:00:23 28 answered correctly.
29
15:00:25 30 Yes, all right. I'm nearly finished, Commissioner, but I
15:00:36 31 want to ask you about the events which occurred in May of -
15:00:48 32 I want to ask you about a situation which I touched upon
15:00:50 33 yesterday briefly concerning a matter of El-Hage?---Yes.
34
15:00:57 35 I was asking you, I'm putting propositions to you that
15:01:00 36 Ms Gobbo had provided information to police about El-Hage,
15:01:03 37 including his associates, when she started providing
15:01:09 38 information to police, do you accept that?--I do. I have
15:01:13 39 a vague recollection of receiving some intelligence about
15:01:16 40 Mr El-Hage and I think it was to do with cocaine
15:01:19 41 trafficking.
42
15:01:20 43 I think also there was a suggestion that the police should
15:01:22 44 look closely into [REDACTED] with respect to a particular
15:01:26 45 murder which had occurred?---That's not ringing any bells
15:01:29 46 at the moment.
47

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15:01:31 1 In any event he provided - clearly we know that she
15:01:35 2 provided information that resulted in [REDACTED] arrest?---Yes.
3
15:01:40 4 And she helped obviously convince him to become a
15:01:44 5 witness?---Yes.
6
15:01:45 7 Correct?---Yes.
8
15:01:46 9 And [REDACTED] provides a statement which implicates [REDACTED] which
15:01:54 10 Gobbo was aware of?---Yes.
11
15:01:56 12 And subsequent we know that in 2006 there were rumours
15:02:00 13 starting to circulate that Gobbo was assisting police,
15:02:05 14 insofar as she'd advised [REDACTED] and perhaps others to
15:02:11 15 give evidence for the prosecution? There were rumours
15:02:20 16 going around, Mr Flynn, that Ms Gobbo was, to use the
15:02:23 17 criminal parlance, a dog because she had advised people to
15:02:26 18 roll?---Yes.
19
15:02:27 20 And you were aware of that?---Certainly I became aware of
15:02:32 21 it later in 2006, yes.
22
15:02:34 23 Later in 2006 and then into February 2007?---Yes.
24
15:02:37 25 You were aware of it because Operation Gosford was up and
15:02:41 26 running?---Correct.
27
15:02:42 28 You ran that investigation I think until Messrs Rowe and
15:02:46 29 Kelly became involved in it; is that right?---Yes, I left -
15:02:49 30 I ran it until I left the Purana Task Force.
31
15:02:51 32 Righto. In that particular case you were dealing with
15:02:55 33 Ms Gobbo as a victim of threats?---Yes.
34
15:03:02 35 And you were also involved in taking measures to ensure her
15:03:05 36 safety?---Yes. Well I was doing that in conjunction with
15:03:09 37 the SDU, yes.
38
15:03:10 39 But certainly insofar as the fact that she was the victim
15:03:15 40 of threats, you were monitoring her or at least providing
15:03:19 41 her with [REDACTED] and a [REDACTED]
15:03:24 42 and so forth?---Yes, that's all correct.
43
15:03:26 44 [REDACTED] was involved, or at least associated with those
15:03:30 45 spreading the rumours, do you understand that to be
15:03:32 46 correct?---Well, El-Hage was associated to a number of, you
15:03:39 47 know, criminal identities, including Horthy Mokbel, so yes.

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1
15:03:44 2 He was a suspect?---He wasn't really a suspect until the
15:03:48 3 car incident.
4
15:03:49 5 Which was on 17 April 2008?---That's correct.
6
15:03:52 7 She was out to dinner with El-Hage and I think a solicitor;
15:03:57 8 is that right?---That's right, yes.
9
15:03:58 10 And during the course of that evening her car was set on
15:04:01 11 fire and you were the first person she called?---Yes.
12
15:04:05 13 And you attended?---No.
14
15:04:07 15 No?---No. I had moved office at that stage.
16
15:04:10 17 Yes?---So she shouldn't have called me.
18
15:04:13 19 Yes?---I had broken away and moved on to another area and
15:04:16 20 she was supposed to call either Detective Senior Constable
15:04:19 21 Rowe or Detective Sergeant Kelly, but she did ring me on
15:04:22 22 that night.
23
15:04:23 24 Nonetheless you discussed it with her and you also
15:04:26 25 discussed with her matters including the note - in any
15:04:46 26 event, you discussed the relationship that you had, that
15:04:50 27 she had with El-Hage; is that correct?---Yes.
28
15:04:54 29 Okay. ICR p.466, there was a management issue in April, if
15:05:02 30 you could just have a look at that quickly.
31
15:05:07 32 COMMISSIONER: Is this in the last volume?
33
15:05:09 34 MR WINNEKE: Yes, the second volume, Commissioner. 2958.
15:05:30 35 June of 2008. 19 June 2008. Just excuse me. Keep
15:05:43 36 scrolling. Keep going. Keep going. Keep going. Here we
15:06:02 37 are. No. "DSS Flynn. Spoke to DSS Flynn. Milad, Tony
15:06:12 38 Mokbel, Jacque El-Hage, Ibrahim Kernaz are all to be
15:06:19 39 charged soon. Requesting any intel on the movements of
15:06:24 40 El-Hage and Kernaz from Ms Gobbo"?---Yes.
41
15:06:27 42 They're obviously the people who are the subject of that
15:06:30 43 committal proceeding we've just looked at, the Matchless
15:06:33 44 committal proceeding?---Yes, they were.
45
15:06:36 46 Milad definitely to be charged with respect to [REDACTED]
15:06:41 47 and Ms Gobbo can be advised about that?---Yes.

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1
15:06:44 2 Also there was an issue with respect to impending arrests
15:06:48 3 by you. You asked about the movements of El-Hage and
15:06:53 4 there's reference to a belief that the wife had left him,
15:06:56 5 the children, who go to a particular school on the other
15:06:59 6 side of town, Kernaz not knowing that information was
15:07:03 7 passed on to you on 20 June and that's at p.468?---Right.
15:07:08 8 Do you want me to confirm that with my notes or not?
9
15:07:12 10 Yes, if you wish to. You'll see the information there in
15:07:27 11 any event on the screen?---There's nothing in my notes for
15:08:20 12 20 June.
13
15:08:21 14 Do you take any issue with the propositions that I've put
15:08:23 15 that at that time those arrests were impending?---No, I
15:08:31 16 don't take any issues with that.
17
15:08:33 18 The advice was given to you regarding El-Hage and the fact
15:08:39 19 that his wife had left and there were some issues with
15:08:42 20 respect to children, do you see that at 9 am?---That's
15:08:45 21 possible, yes.
22
15:08:46 23 That's information which is coming from Ms Gobbo?---I
15:08:49 24 suspect so, yes.
25
15:08:50 26 In your diary on 23rd - perhaps before I go there. ICR
15:08:56 27 479, the next page. Briefs hadn't been served yet on
15:09:02 28 Kernaz and El-Hage and you'd be on leave the next week, is
15:09:07 29 that the case, you're on leave the next week?---No, that
15:09:16 30 doesn't seem to be the case.
31
15:09:23 32 3 July 2008. Just scroll up, please. Other way. Down.
15:09:39 33 Keep going. Keep going. Keep going. In any event, if you
15:09:54 34 can go to your diary, please, and have a look at the entry
15:09:58 35 on 23 July 2008. Is it the case that arrests had been made
15:10:18 36 in relation to the co-accused of Mr El-Hage, that is
15:10:22 37 Mr Kernaz?---That's correct, that occurred on 21 July.
38
15:10:37 39 Did you speak to Ms Gobbo about arranging Mr El-Hage's bail
15:10:43 40 application?---Yes, he was arrested by appointment that
15:10:48 41 day.
42
15:10:48 43 By appointment on arrangement with Ms Gobbo?---Yes, and
15:10:53 44 Mr Grigor I think.
45
15:10:55 46 And those arrangements had been made with Ms Gobbo?---Yes.
47

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15:10:59 1 And there was an arrangement with respect to bail, that is
15:11:04 2 bail would be by consent with a \$20,000 surety?---Yes.
3
15:11:08 4 With various other conditions, including the usual
15:11:11 5 conditions about not contacting witnesses, et
15:11:16 6 cetera?---Yes.
7
15:11:16 8 He met with - well, at least you met with Gobbo, Grigor and
15:11:23 9 El-Hage for him to surrender himself?---Yes.
10
15:11:26 11 Charges were filed, remand bail application and you gave a
15:11:29 12 short summary of evidence and bail was granted on those
15:11:32 13 conditions?---Yes.
14
15:11:34 15 Then it seems that Ms Gobbo - the Commissioner has evidence
15:11:39 16 that she charged for a bail application and she was
15:11:43 17 charging for preparing committal documents and appearing at
15:11:47 18 the committal mention and she was also preparing by way of
15:11:58 19 documents seeking disclosure with respect to [REDACTED]
15:12:02 20 documents?---I'm unaware of any of this.
21
15:12:09 22 Right. Nonetheless you accept that that's a reasonable -
15:12:15 23 given that she's supposedly acting for him, representing
15:12:20 24 him, arranging bail applications and so forth, or bail,
15:12:23 25 it's not surprising that she's, as far as you're concerned,
15:12:28 26 doing other things of a legal nature for him?---No, it's
15:12:32 27 not surprising.
28
15:12:36 29 One assumes that if she's doing her job she would be
15:12:39 30 seeking appropriate disclosure, which would include
15:12:43 31 disclosure of communications between her and [REDACTED] that
15:12:56 32 would reveal her potentially as a person who was an
15:13:00 33 informer?---I don't know how to answer that. That would be
15:13:05 34 a - that would be something that she could be tasked to do,
15:13:11 35 yes.
36
15:13:11 37 The same sort of job that Mr Shirreffs was trying to do
15:13:15 38 Ms Gobbo would have to do?---Yes.
39
15:13:17 40 And yet how could she do so?---Yes.
41
15:13:19 42 How were you, in what capacity were you dealing with
15:13:24 43 Ms Gobbo on that occasion?---As Mr El-Hage's legal
15:13:29 44 representative.
45
15:13:30 46 She had other capacities, she was also a human source and
15:13:35 47 she was also potentially a victim of Mr El-Hage?---Well,

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15:13:45 1 Mr El-Hage was a suspect. I mean whether she continues to
15:13:51 2 deal with him or not is a matter for her.
3
15:13:56 4 Yes?---Well the human source issues but, you know, we've
15:14:00 5 mentioned.
6
15:14:04 7 She knew of all of these particular issues?---She did ,
15:14:07 8 yes.
15:14:07 9
15:14:08 10 You knew of all these particular issues?---Yes.
11
15:14:11 12 She's, as I suggested before, had some sort of ethical
15:14:14 13 bypass, but you don't?---No.
14
15:14:16 15 You've got the trifecta here, she's the legal
15:14:18 16 representative, she's the human source and she's the
15:14:24 17 victim?---Yes, well the victim didn't concern me too much.
15:14:26 18 That was as part of the investigation because she was with
15:14:29 19 Mr El-Hage, you know, it's a natural conclusion for an
15:14:32 20 investigator to think, well, he might have told someone
15:14:36 21 that this is where she was and that's how her car was
15:14:38 22 damaged. So he was a suspect from that stage. I don't
15:14:46 23 know her thoughts in relation to how strongly or weakly she
15:14:49 24 thought he was a victim. And the human source matters,
15:14:52 25 well, you know, we've discussed those quite a bit but at
15:14:57 26 this stage when she was speaking to me, I mean I wasn't
15:14:59 27 even at the Purana Task Force at this stage, I was just the
15:15:02 28 informant for the El-Hage brief, and it was a fairly simple
15:15:06 29 matter just to go through the process of arranging him to
15:15:10 30 be charged and bailed.
31
15:15:11 32 I follow that. But look, sitting where you are now and
15:15:14 33 looking back, it almost makes your head spin what's going
15:15:19 34 on here?---It's certainly a complex matter, I don't down
15:15:27 35 play that in any fashion. But I come back to a previous
15:15:30 36 answer about the conflict of her involvement with
15:15:32 37 Mr El-Hage and others was matter for her.
38
15:15:34 39 All right, all right. I move finally to the [REDACTED]
15:15:38 40 matter and I want to deal with that and that's a proceeding
15:15:46 41 which was in [REDACTED] of 2011, you accept
15:15:59 42 that?---Yes.
43
15:15:59 44 This was a proceeding which you were involved as a
15:16:02 45 potential - or as a witness?---Yes.
46
15:16:06 47 It's a trial in which [REDACTED] was being prosecuted

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15:16:10 1 for his involvement in the offences arising out of
15:16:16 2 Operation Posse, correct?---Correct.
3
15:16:18 4 He was arrested on [REDACTED] as a result of information
15:16:21 5 provided by Ms Gobbo and through [REDACTED] or [REDACTED] through
15:16:25 6 Ms Gobbo?---Certainly Ms Gobbo had provided us some
15:16:31 7 information about him.
8
15:16:32 9 Yes?---But he was mainly - the strength of the evidence
15:16:39 10 against him was the police investigation in relation to the
15:16:42 11 [REDACTED] and [REDACTED] that preceded that.
12
15:16:46 13 In any event, at the end - this trial aborted ultimately,
15:16:52 14 the one that I'm going to ask you about, and subsequently
15:16:55 15 he was convicted and sentenced to [REDACTED] years'
15:16:58 16 imprisonment?---Yes.
17
15:16:59 18 And he remains in gaol today?---Yes.
19
15:17:03 20 A non-parole period of [REDACTED] years?---I think so, yes.
21
15:17:09 22 The immediately preceding Director of Public Prosecutions,
15:17:13 23 when he was called upon to review this trial for the
15:17:16 24 purposes of the processes which have arisen since the
15:17:23 25 revelation of Ms Gobbo's conduct, came to the view that had
15:17:28 26 [REDACTED] known of the true role of Ms Gobbo it's very
15:17:31 27 likely that he would have sought to explore the
15:17:33 28 circumstances that led to the provision of the key evidence
15:17:36 29 against him and he would have been able to exercise an
15:17:40 30 informed choice as to whether to argue the evidence of
15:17:47 31 [REDACTED] should have been excluded from the trial.
15:17:49 32 Ultimately that was one of the findings of the Supreme
15:17:52 33 Court in this case upheld by the Court of Appeal, do you
15:17:57 34 accept that?---I do.
35
15:17:58 36 And indeed it was Mr Champion, as he then was, who ran the
15:18:03 37 trial against [REDACTED]?---It was, yes.
38
15:18:07 39 You were called upon to attend a conference with
15:18:09 40 Mr Champion, do you recall that?---I do.
41
15:18:13 42 Can I just set the scene for that. [REDACTED] was giving
15:18:20 43 evidence in the trial, do you understand that, as has now
15:18:26 44 become his habit, to give evidence in these sorts of
15:18:28 45 proceedings?---Yes.
46
15:18:29 47 And we've got a transcript at OPP.0004.0003.0001. 7 April

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15:18:41 1 2011. At that stage I take it you were aware of the issues
15:18:47 2 that had arisen with respect to Ms Gobbo, there'd been
15:18:52 3 publicity about her role at least with respect to Petra and
15:18:55 4 Mr Dale?---I don't know if I linked that but that's
15:19:00 5 probably correct, yes.
6
15:19:02 7 But you would have been aware at that time that she had at
15:19:06 8 that stage become exposed as a person who was a witness, or
15:19:09 9 potentially to be called as a witness in that
15:19:12 10 trial?---Well, I'm just not sure of the timings but I'm
15:19:17 11 definitely aware of that, yes.
12
15:19:18 13 Okay. As I said, Mr Champion then - John Champion SC was
15:19:26 14 the prosecutor and Mr Pena-Rees was the defence
15:19:30 15 barrister?---That sounds correct, yes.
16
15:19:32 17 There was evidence, and he was being cross-examined, and if
15:19:36 18 you go to line 18 on p.326, it was suggested that, "You
15:19:45 19 [REDACTED] didn't have any concerns about speaking to
15:19:48 20 Ms Gobbo about your position and your situation?
15:19:52 21 Absolutely I did, I feared for her as well. So you feared
15:20:01 22 for her? Yeah, and the fact that she had seen me in
15:20:03 23 custody and now that her life was in danger for the fact
15:20:07 24 that she didn't alert the Mokbels that I [REDACTED] I [REDACTED] and
15:20:10 25 doing [REDACTED] She said nothing, she stood firm
15:20:13 26 by me and I believe that she'd put her life at risk", do
15:20:17 27 you see that?---Yes.
28
15:20:18 29 If we go to line 29, "Is that why at some point in time
15:20:23 30 that we'll get to in the transcript you refer [REDACTED]
15:20:28 31 to her?" He says, "Well at that point I made it clear to
15:20:32 32 her that, well, [REDACTED] to my knowledge, didn't know any
15:20:37 33 members of the [REDACTED] right?---Yes.
34
15:20:40 35 You know who [REDACTED] is?---I do.
36
15:20:43 37 He is a person who, to your knowledge, was the subject of
15:20:47 38 an operation by - or by your - - - ?---By my crew, yes.
39
15:20:52 40 By your crew?---Yes.
41
15:20:54 42 On the basis of information provided by [REDACTED] ?---Well
15:20:58 43 [REDACTED] told us about [REDACTED] as being [REDACTED]
15:21:04 44 [REDACTED]
45
15:21:05 46 Yes?---As a consequence of that we commenced a new
15:21:07 47 operation.

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1
15:21:08 2 Right?---And that led to a new investigation.
3
15:21:10 4 All right. If you go to p.327, line 7, "How did that come
15:21:23 5 about, was that something the police - - - No, it was
15:21:26 6 something that just came to mind, it was just talk about,
15:21:29 7 the conversation with [REDACTED] was about outstanding
15:21:32 8 [REDACTED] to him and I maybe wanted him to understand
15:21:34 9 that I could [REDACTED] to him via my solicitor and I
15:21:37 10 mentioned Nicola Gobbo", right. At line 17, "This is from
15:21:43 11 prison you speak to him? No, that's from actually, that
15:21:47 12 was made from the secret location". Do you understand
15:21:52 13 that?---Yes, I do.
14
15:21:54 15 You know about what occurred?---I think I was present with
15:21:57 16 [REDACTED] when he made the call to [REDACTED]
17
15:22:01 18 And it was part of the police operation to get evidence
15:22:03 19 against him?---I just need to be careful here I'm not
15:22:13 20 getting myself confused. The call was made to
15:22:17 21 [REDACTED]
22
15:22:21 23 [REDACTED] --Yeah, the call I was thinking about was to
15:22:28 24 [REDACTED] What I recall about [REDACTED] was that
15:22:33 25 he was putting pressure on people associated with
15:22:38 26 [REDACTED]
27
15:22:39 28 Yeah, he made a threat to [REDACTED] ---That's correct.
29
15:22:43 30 And then it was decided to in effect see if he could get
15:22:46 31 some evidence against him?---That's right. I think that
15:22:49 32 was correct. That's right.
33
15:22:51 34 Ms Gobbo's phone number was given to [REDACTED] by
15:22:56 35 [REDACTED] do you see that? That's what he says
15:23:00 36 anyway?---Yes.
37
15:23:00 38 "We'll get to that in a moment but I suggest to you that
15:23:03 39 you did provide the number to [REDACTED] of Ms Gobbo's
15:23:07 40 mobile phone? It's a possibility, I don't recall that but
15:23:10 41 it's a possibility I might have done that". So in effect
15:23:12 42 she was being brought into this operation of police by
15:23:19 43 [REDACTED] ---Well that's what he said there, yes. I don't
15:23:25 44 know if that's correct.
45
15:23:26 46 In any event, that's what's being put?---Yes.
47

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15:23:28 1 If we go to the next page. "I suggest, and I'll get to
15:23:34 2 that in a moment, and I suggest - I'll get that in a moment
15:23:42 3 for you, and tell him she will organise [REDACTED] to him, is
15:23:46 4 that right? I will get the [REDACTED] for him via her, yes".
15:23:50 5 So that was what was being said, that he would get the
15:23:53 6 [REDACTED] to him [REDACTED] Ms Gobbo?---Yes.

7
15:24:00 8 That [REDACTED]
15:24:05 9 [REDACTED] is that right?---Correct, yes.

10
15:24:07 11 Line 27, "As you say, you were concerned about Ms Gobbo,
15:24:18 12 your barrister? Yes. And may, you say, or you think it's
15:24:19 13 may, you put her forward as being able to [REDACTED]
15:24:23 14 This was all done under the supervision of the police and I
15:24:27 15 believe that everything, I had to give him some excuse to
15:24:30 16 be able to defuse the situation and that was the best way I
15:24:33 17 went about it. Like I said, it's all done with police
15:24:36 18 supervision and at that point [REDACTED] not the kind
15:24:40 19 of person who could bring, I don't believe could give
15:24:44 20 Ms Gobbo any harm". Do you see that?---Yeah, I do.

21
15:24:49 22 That was being put to [REDACTED] by the barrister of
15:24:54 23 [REDACTED] obviously on instructions?---Yes.

24
15:24:57 25 Then if we go to 329 at line 5, "Did you discuss with
15:25:04 26 police that you were going to - did you say that you
15:25:07 27 called, there was a missed call, you couldn't get in
15:25:10 28 contact with him, you left a message with [REDACTED] is
15:25:13 29 that right? Yeah, that's correct. So this was a planned
15:25:16 30 contact with him? Yes, it was. A planned contact where
15:25:19 31 you say effectively it was supervised by police"?---Yes, I
15:25:23 32 see that.

33
15:25:24 34 Right. Line 27, "Did you discuss with them, that is the
15:25:31 35 police, 'Well look, I'm going to mention Nicola, I'm going
15:25:34 36 to say, I'm going to try and get the [REDACTED] through her.'
15:25:38 37 I didn't mention to the police Nicola, no, I didn't mention
15:25:41 38 that". At p.330 at line 5, the [REDACTED] "How was
15:25:50 39 [REDACTED] do you know how that occurred? Well I believe
15:25:52 40 that there was [REDACTED] to [REDACTED]. And at that
15:25:58 41 stage the jury - if you go down to line 26 it appears that
15:26:02 42 the jury's left the court. Then obviously the judge turns
15:26:09 43 [REDACTED] and there's a bit of a discussion about this
15:26:13 44 because obviously events had taken a concerning turn in the
15:26:18 45 course of the trial. In any event, we get to line 14. His
15:26:27 46 Honour asked, "Did Ms Gobbo have knowledge that that was
15:26:30 47 what it was all about?" At line 16 you see that - "Did she

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15:26:37 1 have knowledge that that was what was going on?" In
15:26:41 2 response Mr Pena-Rees said, "Well he's already said she
15:26:44 3 wasn't there and he was under the supervision of police.
15:26:48 4 I've got a bit more knowledge about how that occurs than if
15:26:51 5 she had knowledge". At line 20 His Honour says, "Perhaps,
15:26:54 6 I'm not sure that it's relevant at all but I'm redefining
15:27:00 7 the phrase conflict of interest as we go along". Judge
15:27:04 8 Montgomery was, obviously in the light of news at that time
15:27:07 9 about Ms Gobbo, was interested to hear what was then being
15:27:11 10 put. Do you accept that?---Yes, I do.
11
15:27:16 12 If we go to p.335?---I haven't read this before, all this.
13
15:27:20 14 I understand. I'm putting you in the picture because
15:27:22 15 ultimately it leads to you being called in to see
15:27:26 16 Mr Champion?---It does, yes.
17
15:27:27 18 Page 335, line 15.
19
15:27:33 20 COMMISSIONER: Just for the record, this is 7 April 2011,
15:27:36 21 is that right?
22
15:27:37 23 MR WINNEKE: Yes, Commissioner, I believe it is.
24
15:27:38 25 COMMISSIONER: Yes.
26
15:27:41 27 MR WINNEKE: Yes, it is. Can't recall whether he'd spoken
15:27:46 28 to police about using Nicola as a person to assist in
15:27:50 29 getting [REDACTED] or if that was decided on his own, that's the
15:27:53 30 effect of that, do you see that?---Yes.
31
15:27:56 32 At line 22, it was something that had been discussed with
15:28:00 33 you and Mr O'Brien?---I see that.
34
15:28:02 35 Accept that?---Yes.
36
15:28:04 37 Were you aware that she was going to be used as a foil or a
15:28:07 38 cut-out, if you like, in this operation, or involved
15:28:14 39 anyway?---I think they're two separate issues. One issue
15:28:17 40 is arranging a call to [REDACTED] because he was putting
15:28:24 41 pressure on people and things like that, to calm down that.
42
15:28:27 43 Yes?---And the other part of it appears to be getting the
15:28:31 44 [REDACTED]
45
15:28:32 46 Yes?---Which is where he was referring to Ms Gobbo. So I
15:28:35 47 was certainly well aware of the first one, the first part

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15:28:38 1 of it all, because I think I was there when the call was
15:28:41 2 made.
3
15:28:41 4 Yes?---But the part about getting her to [REDACTED] I
15:28:45 5 can't recall that.
6
15:28:46 7 Okay. But in any event that would have been of evidentiary
15:28:49 8 value certainly one way or another, it would have provided
15:28:52 9 evidence in relation [REDACTED]
15:28:58 10 [REDACTED] --Yes, that's right. I think that's why we
15:29:01 11 [REDACTED] it, yes.
12
15:29:02 13 "I take it you'd discussed that aspect of speaking to
15:29:05 14 [REDACTED] with the police, the provision of her number?"
15:29:09 15 He said, "I can't recall whether I did or I didn't to be
15:29:12 16 honest. I know I did have a discussion with Nicola after
15:29:15 17 that phone call and told her that there would possibly be a
15:29:17 18 call from [REDACTED] and that she would now how to deal
15:29:21 19 with it. Are you aware from that phone call that you
15:29:23 20 mentioned that she would [REDACTED]
15:29:26 21 Yes, that's correct. And are you saying that you had a
15:29:28 22 conversation with your barrister, Ms Gobbo, about the fact
15:29:30 23 that that had been raised with [REDACTED] Yes, but
15:29:33 24 there was never any intention of [REDACTED]
15:29:36 25 When you were speaking to your counsel did you say, 'Look,
15:29:40 26 I've said this to [REDACTED] can you go along with it',
15:29:45 27 is that what you said? Pretty much, yes. And there was
28 an agreement to that proposition? An agreement, yes. she
15:29:48 29 said that she could handle it, not a worry, for me not to
15:29:49 30 worry about it". Do you see that?---Yes.
31
15:29:58 32 Line 27, "So after the call, how long after the call on the
15:30:04 33 16th of May 2006 do you say that you got in contact with
15:30:08 34 Ms Gobbo? I can't recall, a couple of days later. I can't
15:30:11 35 recall". If we go to p.337, the following page at line 6.
15:30:18 36 Mr Rowe was there as well as you. You recall that, that
15:30:22 37 Mr Rowe was there?---I'd have to check my diary but that is
15:30:26 38 probably correct, yes.
39
15:30:27 40 The transcript at 340, line 23, "You're aware, aren't you,
15:30:39 41 [REDACTED] that Ms Gobbo also represented Cvetanovski when he was
15:30:42 42 first arrested? That's a possibility because she was my
15:30:45 43 friend, yes, and I thought she was, that she was my acting
15:30:48 44 legal and I'd be getting her to act for him as well". See
15:30:52 45 that?---Yes.
46
15:30:53 47 That's what was being put in front of the jury. Then at

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15:30:56 1 341 at line 18. "Are you aware, I'm putting to you as a
15:31:06 2 question, are you aware that on [REDACTED] 2006 [REDACTED]
15:31:10 3 was arrested by police? Yes, that's possible, yes". Line
15:31:14 4 23, "And during that time you had made contact with
15:31:18 5 Ms Nicola Gobbo? Yes". If we go to 342, line 3, "Between
15:31:24 6 the time of the [REDACTED] you were effectively in
15:31:28 7 [REDACTED] Yes, that's correct". Now
15:31:32 8 that's obviously the [REDACTED] ---Yes.

15:31:36 9
15:31:37 10 "And all of [REDACTED] including
15:31:41 11 the [REDACTED] Then at 342 and so on
15:31:45 12 there's references to Ms Gobbo and her involvement in [REDACTED]
15:31:50 13 [REDACTED] and you're aware of all of that?---Yes.

15:31:50 14
15:31:53 15 And 346, if we go there, the court is told about the [REDACTED]
15:32:01 16 [REDACTED] of the [REDACTED] et cetera, do you see - are you
15:32:07 17 aware of that?---Yes.

15:32:09 18
15:32:09 19 You were aware of that?---I'm not sure about the figures
15:32:12 20 but I was certainly aware that she put [REDACTED] for him.

15:32:12 21
15:32:16 22 Right. At line 18 it was put that Ms Gobbo knew where you
15:32:22 23 were mainly getting your finances from, through your
15:32:24 24 [REDACTED] is that right? He said, "I
15:32:27 25 mean it's pretty bad that you've got vilify a barrister
15:32:30 26 yourself. I mean the bottom line is she knew what I told
15:32:33 27 her. I told her I got those [REDACTED] and she
15:32:37 28 believed me". Line 24, "It was put that in front of this
15:32:41 29 jury you're protecting Ms Gobbo, is that right? It's not
15:32:46 30 going to protect Ms Gobbo but you should know better than
15:32:49 31 to vilify a barrister". In effect he was on the right
15:32:54 32 trail, wasn't he? He was getting close to the mark?---Yes.

15:32:54 33
15:33:04 34 Effectively what he was suggesting is that the informant
15:33:08 35 knew of Ms Gobbo's role? I withdraw that. You're not
15:33:21 36 suggesting - that the informant did know her role?---Is
15:33:25 37 that in the transcript?

15:33:25 38
15:33:26 39 No. What I'm putting to you is that these propositions
15:33:31 40 that are being put by Mr Pena-Rees to [REDACTED] are getting
15:33:37 41 close to establishing the truth of what was going on, that
15:33:44 42 is that Ms Gobbo knew what [REDACTED] was up to, she was
15:33:47 43 aware of his dealings, aware of the [REDACTED] aspects of it
15:33:51 44 and getting close to the mark, correct?---Yes.

15:33:51 45
15:33:53 46 You and [REDACTED], I think it was Mr Hayes?---Yes.

15:33:53 47

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15:34:00 1 Were aware of the fact that Ms Gobbo was an informer and in
15:34:03 2 fact did know about all of these things?---Yes.
3
15:34:06 4 Okay. At 349 - just excuse me. It was put that she was -
15:34:14 5 I withdraw that. At line 30, "I'm not going to say
15:34:18 6 anything that's going to be untoward about that person".
15:34:21 7 So effectively what he's saying is, "I'm going to protect
15:34:25 8 her, I'm not going to say anything that's untoward about
15:34:28 9 Ms Gobbo"?---Yes.
10
15:34:30 11 And you knew that he was inclined to protect her?---Yes, I
15:34:35 12 did.
13
15:34:36 14 Not because he believed that she was an informer, but he
15:34:38 15 believed that she would be harmed perhaps if it became
15:34:42 16 known about her involvement in advising him and assisting
15:34:49 17 him to roll and give evidence against the ██████████ that's
15:34:52 18 what his concern was?---Yes, that appears to be correct.
19
15:34:58 20 At 349, line 26, he was questioned about other social
15:35:05 21 contact that he'd had with Ms Gobbo and he says, "Yes, we'd
15:35:12 22 go out for drinks. We'd meet her in the city on occasions,
15:35:16 23 we'd talk about upcoming" - one assumes it's criminal
15:35:20 24 proceedings for the ██████████ matters - "we'd have dinner at the
15:35:27 25 ██████████ restaurant in Carlton. Everything was pretty
26 much professional and above board". So the ██████████ in
15:35:33 27 Carlton restaurant, that was just you and her, I take it?
15:35:33 28 Yes, on a few occasions", et cetera. There's talk about
15:35:37 29 those particular matters and then at this point it gets a
15:35:40 30 little bit much for Mr Champion and he says that he wants
15:35:43 31 to raise something in the absence of the jury with the
15:35:48 32 judge and the jury's sent out. In fact I think they're
15:35:51 33 sent away. So do you see that?---Yes, I do.
34
15:35:56 35 If we go to p.351 to line 7, Mr Champion says this, "Well,
15:36:05 36 we're all very interested to hear what it is" - he wants to
15:36:09 37 know - "I haven't said anything up until now, I've just
15:36:14 38 been sitting here and waiting and I suppose to see - - - "
15:36:16 39 And His Honour chimes in, "What the punch line is".
15:36:20 40 Mr Champion says, "We're all very interested to hear what
15:36:23 41 it is, I suppose, but at the moment I'm struggling to see
42 the relevance of much of the cross-examination that's been
15:36:27 43 going on about this topic, and in particular the
15:36:28 44 involvement of Ms Gobbo and various other people like the
15:36:32 45 Karams and so on, and parties at ██████████ and the like". I
15:36:37 46 think it was also suggested that she'd been purchased a
15:36:40 47 ██████████ and so forth, were you aware of that, rumours

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15:36:43 1 of that sort?---No.
2
15:36:44 3 In any event, "The relevance of this is escaping me but I
15:36:47 4 think it's now reached a point where my learned friend asks
15:36:50 5 how many dinners he had with Ms Gobbo at [REDACTED] Street that
15:36:55 6 some question needs to be asked as to whether or not really
15:36:57 7 this is a justifiable line of cross-examination and I'm now
15:37:01 8 objecting to it". And His Honour says to Mr Pena-Rees,
15:37:04 9 "Where's it going?" Mr Pena-Rees says, "Well I appreciate
15:37:10 10 my learned friend raising it because I'm just about to give
15:37:13 11 the punch line, Your Honour. The last question was at the
15:37:17 12 end of, a sort of, an exploration without - I'm about to
15:37:17 13 ask the question that provides it and then there may be
15:37:22 14 probably another objection from my learned friend". His
15:37:26 15 Honour said, "Do you want to tell us what the question is
15:37:29 16 so we don't have to" - and he says this, "The question is,
15:37:34 17 that Ms Nicola Gobbo and [REDACTED] had been working
15:37:40 18 cooperatively in relation to putting in place a mechanism
15:37:44 19 to which they could create a circumstance for [REDACTED]
15:37:47 20 which was fortunate in relation to upcoming events in
15:37:53 21 relation to" - obviously the way - penalty. His Honour
15:37:59 22 says, "Are you saying they've collaborated? Yes, there was
15:38:03 23 collaboration in him concocting statements against people
15:38:09 24 so he could get a lesser gaol sentence". And he says, "And
15:38:11 25 I'll highlight it now for my friend. It's this. I'll be
15:38:15 26 highlighting too that he was also aware of Ms Gobbo's
15:38:17 27 cooperation with police", do you see that?---Yes.
28
15:38:22 29 Now that allegation of Ms Gobbo's cooperation with police,
15:38:29 30 with respect to that allegation he was absolutely right,
15:38:33 31 wasn't he?---Yes.
32
15:38:34 33 Insofar as her acting with the police with a view to having
15:38:40 34 people, such as his client, brought to book and charged,
15:38:45 35 convicted of offences?---Well - - -
36
15:38:50 37 That part of it's right. As to whether it's a concoction
15:38:54 38 of information, well you might say, "Look, I disagree with
15:38:58 39 that proposition"?---Yes.
40
15:39:01 41 But what he's suggesting is that Ms Gobbo is working in
15:39:07 42 cahoots with the police?---Yes, that's what he's
15:39:10 43 suggesting.
44
15:39:10 45 Insofar as that's concerned he was quite right?---Well yes.
15:39:14 46 I don't know about, specifically about - well she was
15:39:20 47 giving us some information about [REDACTED] so, yes,

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15:39:23 1 that's correct.
2
15:39:23 3 What was perhaps not right about it was that [REDACTED] was
15:39:28 4 not ever in on the deal, he didn't know that Ms Gobbo and
15:39:33 5 the police were working together?---That's correct.
6
15:39:37 7 So to that extent he was wrong?---Yes.
8
15:39:41 9 If you look at it that way?---Yes.
10
15:39:47 11 If you go to 352, line 5, His Honour, "Are you saying
15:39:51 12 they've collaborated?" Pena-Rees, "Yes, there was a
15:39:58 13 collaboration. Him concocting statements against people so
15:39:59 14 he could get a lesser gaol sentence. Also highlighting he
15:40:00 15 was aware of Gobbo's cooperation with the police", at line
15:40:02 16 9. Do you see that?---Yes.
17
15:40:05 18 Line 21, "The question will be asked of [REDACTED] that he
15:40:08 19 knew that Ms Gobbo was working with the police in relation
15:40:11 20 to certain matters involving the Mokbels", do you see
15:40:14 21 that?---Yes.
22
15:40:15 23 At 353, line 9, "It will be put by the defence the
15:40:19 24 relationship between Ms Gobbo and [REDACTED] was more than
15:40:22 25 just legal representative providing advice relationship, it
15:40:27 26 was advice as to how he could reduce his liability in the
15:40:30 27 overall scheme of things". Do you see that?---Yes, I do.
28
15:40:37 29 And 354, line 3, His Honour questioned the evidentiary
15:40:42 30 foundation for the jury to infer concoction. At line 8 His
15:40:48 31 Honour refers to Ms Gobbo being a barrister of dubious
15:40:53 32 ethical standards in relation to conflict of interest.
15:40:55 33 "She seems to be acting for everyone and she's a friend of
15:40:58 34 his and she goes to his [REDACTED] Barristers don't
15:41:03 35 normally do that, but she chooses to run her practice that
15:41:06 36 way and there's no ethical rule against that. But how does
15:41:09 37 that then lead to or form a foundation for an inference, a
15:41:11 38 proper inference that they're putting their heads together
15:41:14 39 to concoct false statements?" 355, at line 15, Mr Champion
15:41:19 40 says, "I just wanted to be clear about what was happening
15:41:22 41 here. As I understand it my learned friend is going to put
15:41:24 42 to this witness that he and Gobbo in effect conspired to
15:41:28 43 concoct statements, false statements, in order to better
15:41:31 44 place [REDACTED] in a plea position", should he plead
15:41:35 45 guilty, in effect, "and it was done with the concurrence of
15:41:39 46 members of Purana Task Force". That effectively, that was
15:41:41 47 his understanding of the way in which it was being

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15:41:43 1 put?---Yes.
2
3 Or going to be put?---Yes.
4
15:41:45 5 356, at line 2, "Is there any basis, if I allow you to do
15:41:53 6 it, is there any basis, if I allow you, that you can put to
15:41:57 7 him in your knowledge she was acting as an agent for
15:42:00 8 police?" And the barrister says, "Yes. If she says no
15:42:04 9 that's it, but we can't get into matters far beyond the
15:42:09 10 scope of this trial, but I mean it's all about Mr Dale",
15:42:12 11 that's a reference to Paul Dale, "which was then common
15:42:15 12 knowledge, and all that sort of stuff. If one reads the
15:42:17 13 papers or whatever it's just got nothing to do with it".
15:42:20 14 17, "It does have a connection to Dale and Miechel. 357,
15:42:27 15 "I can only act", that is at line 5, "I can only act on the
15:42:31 16 basis that my learned friend is acting responsibly in
15:42:36 17 putting instructions that have been properly put to him by
15:42:38 18 his client and his instructing solicitor". This is what
15:42:42 19 Mr Champion is saying. He assures the court that in those
15:42:45 20 circumstances what he's doing, he's instructed to do with
15:42:48 21 proper material, "Then there's little I can say about it
15:42:51 22 other than the length of this trial's now seemingly
15:42:58 23 somewhat extended". At line 27, "We'll just have to see
15:43:04 24 how we go. This might involve a course of other police
15:43:07 25 officers now being called to deal with some of these issues
15:43:10 26 but if my learned friend says he's going to make it
15:43:12 27 relevant, he has the carriage of the matter and I can't
15:43:15 28 interfere in it too much, but I thought it proper that we
15:43:19 29 should at least inquire as to what the basis of all of this
15:43:22 30 is", do you see that?---Yes, I do.
31
15:43:26 32 Then if we go to 565 - - -
33
15:43:31 34 COMMISSIONER: I'm just wondering how much longer. It's
15:43:34 35 well past of the time for our usual afternoon break.
36
15:43:41 37 MR WINNEKE: I'll be a little bit longer, Commissioner, but
15:43:44 38 not a huge amount of time.
39
40 COMMISSIONER: All right. Mr Nathwani, you're going to be
15:43:46 41 a little while cross-examining.
15:43:46 42
15:43:46 43 MR NATHWANI: I think I'll be about 20 minutes, possibly up
15:43:51 44 to half an hour. I'm trying to reduce - - -
45
46 COMMISSIONER: It doesn't sound as though your witness will
15:43:53 47 be having a run today. Send him away, yes. All right,

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15:43:53 1 we'll have a ten minute break.
2
3 (Short adjournment.)
4
15:55:12 5 COMMISSIONER: Yes Mr Winneke.
15:55:13 6
15:55:14 7 MR WINNEKE: Now if we can perhaps just go back to 565 at
15:55:19 8 line 20. 565. I'm sorry, 365, I apologise. Strike that,
15:55:39 9 565. We're jumping forward after - what occurs is,
15:55:47 10 Mr Flynn, Mr Pena-Rees puts those matters to [REDACTED] that
15:55:54 11 he said he would do, and at the end of all of that, at
15:56:00 12 p.565 of the transcript Mr Champion asked for an indulgence
15:56:07 13 and that is before any re-examination he wanted to raise
15:56:10 14 some issues that he'd raised during the course of
15:56:14 15 cross-examination, line 20, "There are some issues that
15:56:20 16 he's raised during cross-examination which have come as
15:56:23 17 somewhat of a surprise" about which he needed to take some
15:56:28 18 instructions. Obviously he needed to get some instructions
15:56:31 19 from you about those matters, do you understand
15:56:32 20 that?---Yes.
15:56:32 21
15:56:33 22 At line 30 he says, "It's awkward because some of the
23 issues had been raised, particularly with respect to
15:56:37 24 Ms Gobbo and her alleged involvement, it may be that it's
15:56:41 25 been put in effect that there's a conspiracy"?---Yes.
15:56:44 26
15:56:45 27 And that's why there was a need to have a discussion with
15:56:49 28 you about it. The following page at line 15, it was,
15:56:59 29 Mr Pena-Rees had no objection to you being spoken to by the
15:57:03 30 prosecutor, Mr Champion, who I might say, was it your
15:57:08 31 understanding he then became the Director of Public
15:57:10 32 Prosecutions during the course of the next trial I
15:57:13 33 think?---I'm not sure about the timing but yes, I believe
15:57:17 34 he became the Director at some stage.
15:57:19 35
15:57:20 36 The [REDACTED] Mr Heyes?---Yes.
15:57:21 37
15:57:22 38 If we can put up his diaries, which VPL.0005.0157.0079.
15:57:33 39 There was an appointment made for you to have a discussion
15:57:38 40 with him, you understand that?---What time?
15:57:44 41
15:57:45 42 With Mr Champion?---Yes.
15:57:46 43
15:57:47 44 And at 13:00 there was a, "Lunch and a debrief with JC",
15:57:59 45 John Champion, "Raised the point that had been put by
15:58:03 46 defence re putting it to [REDACTED] that Ms Gobbo had
15:58:07 47 supplied money to or siphoned off money for Tony Mokbel.

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15:58:13 1 Inform him, that is he informed him that he wasn't aware of
15:58:17 2 any such allegation but he'd make inquiries about
15:58:20 3 it"---Yes.
15:58:20 4
15:58:20 5 At 13:20 he spoke to Paul Rowe. There was no knowledge of
15:58:26 6 that and at 14:10 he spoke to Jim Coghlan regarding those
15:58:31 7 matters and there was no knowledge?---Yep.
15:58:32 8
15:58:33 9 I'm sorry if I put that you were involved in that. You
15:58:36 10 weren't. Then the following day, 8 April, p.47 of his
15:58:50 11 diary at 12:04, he spoke to - I'm not too sure, that might
15:58:58 12 be a pseudonym?---It is, yep.
15:59:00 13
15:59:00 14 In any event you can read the name there, "Regarding issues
15:59:04 15 raised in court with respect to the cross-examination of ██████████
15:59:08 16 regarding Gobbo. Explain suppression orders in place and
15:59:14 17 his being excluded from court proceedings. Informed the
15:59:19 18 same that Mr Champion had raised the possibilities of
15:59:25 19 matters being stood down. An application for the
15:59:33 20 suppression order to be lifted to seek instructions
15:59:35 21 regarding the matters that were put concerning Ms Gobbo".
15:59:41 22 In effect he was asking to speak to either Mr White or
15:59:58 23 Richards I think it is regarding the above and he'd make
16:00:04 24 contact. Do you see that?---Yes.
16:00:07 25
16:00:08 26 Then at 1:35 he spoke to ██████████ Pierce?---Yes.
16:00:12 27
16:00:12 28 And explained the Gobbo issues and the intent of
16:00:16 29 Mr Champion, the prosecutor, to hold a briefing regarding
16:00:19 30 those issues that had been raised and seek court leave to
16:00:25 31 be specific, a possible meeting for Wednesday morning on 18
16:00:27 32 April.
16:00:29 33
16:00:58 34 I think a possible meeting for Wednesday morning, it says
16:01:01 35 the 13th, in fact. In any event on 11 April 2011 at p.49
16:01:08 36 of the diary, at 12:25 he spoke to you regarding a possible
16:01:16 37 meeting with the prosecutor regarding Gobbo issues. He
16:01:20 38 supplied you with photos and DVDs of Operation
16:01:32 39 (indistinct), so you were given some material, is that
16:01:34 40 right?---I think that's a different operation.
16:01:36 41
16:01:37 42 In any event at 13:24 he spoke to you again. See that?
16:01:53 43 Regarding attendance at court at 4.15 and speaking to John
16:01:59 44 Champion?---Yes.
16:01:59 45
16:02:01 46 And then at 14:19 you were advised about a change of venue
16:02:09 47 and then at 16:54:50 there was a meeting in John Champion's

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16:02:16 1 chambers, come down, 4.20 rather, "Meeting in John
16:02:23 2 Champion's chambers in Queen Street regarding IMC issue".
16:02:32 3 What's that?---That's Melbourne.
16:02:33 4
16:02:34 5 "Re issues raised with respect to Gobbo." Also present was
16:02:41 6 obviously you, David from the OPP?---Yep.
16:02:45 7
16:02:47 8 Mr Pierce?---Yep.
16:02:49 9
16:02:49 10 And what it says here is, "The defence allege that Gobbo,
16:02:56 11 [REDACTED] and the two [REDACTED] and police,
16:03:03 12 conspired to concoct statements against
16:03:07 13 [REDACTED]"?---Yes.
16:03:07 14
16:03:09 15 "Mr Pena-Rees is making claims on the back presumably of
16:03:15 16 media articles regarding Gobbo and Paul Dale. Claims that
16:03:20 17 Gobbo gave money to Tony Mokbel, as well as [REDACTED]
16:03:24 18 giving money to Gobbo to pay the [REDACTED] that's the
16:03:34 19 [REDACTED] "All allegations appear
16:03:37 20 to be speculative. Pena-Rees acting on what [REDACTED]
16:03:47 21 has told him. At this point statements made only in front
16:03:52 22 of the judge, the jury and [REDACTED] Have not heard the
16:03:57 23 same yet. Consideration to be given to how to approach the
16:04:04 24 same, if at all. Pena-Rees has stated he will put the same
16:04:08 25 to the witness in the presence of the jury" and then at
16:04:12 26 18:00 it appears that the meeting concludes. Now, that's
16:04:19 27 his note and there doesn't appear to be any resolution
16:04:24 28 described in his note but if we go to your note of the
16:04:30 29 meeting in your diary, and if we can put this up,
16:04:37 30 RCMPPI.0062.0002.0003. On 11 April 2011. Have you got a
16:04:53 31 note there?---I've got my diary for that day, yes.
16:04:58 32
16:04:58 33 Yes. Perhaps whilst we're waiting for it to go up, if you
16:05:09 34 can read what is said in your diary?---Yes.
16:05:14 35
16:05:15 36 Yes?---It's 16:15 hours, 4.15, "27th floor, Queen Street,
16:05:23 37 Melbourne. Barrister John Champion, OPP David", I think
16:05:25 38 that might have been David Bosso, "[REDACTED] Craig Heyes.
16:05:30 39 Witness" the other police officer with the pseudonym.
16:05:33 40
16:05:33 41 Pierce and yourself?---Yep. "Discuss defence allegation re
16:05:39 42 [REDACTED], so [REDACTED] "May require
16:05:43 43 legal advice. Conspired with [REDACTED] to set [REDACTED]
16:05:50 44 [REDACTED] up. Nicola Gobbo conspired with [REDACTED]
16:05:54 45 and/or police to make false statements. Contact between
16:06:02 46 Ms Gobbo and [REDACTED] after arrest. Discussed calling
16:06:07 47 Nicola Gobbo as witness. Will know by end of tomorrow

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16:06:11 1 after [REDACTED] finishes evidence" and I've got a clearing
16:06:19 2 at 5.45.
16:06:20 3
16:06:21 4 So the meeting goes from 4.15 to 5.45, about an hour and a
16:06:32 5 half?---Yes.
16:06:32 6
16:06:33 7 Do you have a recollection of that meeting?---Yes, I do.
16:06:36 8
16:06:36 9 You do?---Yes.
16:06:37 10
16:06:40 11 Obviously there was a considerable discussion about the
16:06:45 12 allegations that had been put?---Yes.
16:06:48 13
16:06:50 14 And in broad outline you've set out some of the matters
16:06:54 15 that were discussed, I assume?---Yes.
16:06:57 16
16:06:57 17 Clearly not all of the matters were discussed as set out in
16:07:01 18 your notes?---It seems Detective Senior Constable Heyes'
16:07:05 19 notes were a bit more comprehensive than mine.
16:07:07 20
16:07:08 21 Yes. But I take it Mr Champion would have been asking you
16:07:19 22 whether there was any truth at all to the allegations that
16:07:22 23 were being put and trying to find out as much as he could,
16:07:26 24 I assume, about a number of these matters that were raised,
16:07:32 25 is that right?---Well he was informing me of these matters,
16:07:39 26 yes.
16:07:39 27
16:07:39 28 He wasn't just informing you because he knew what the
16:07:43 29 allegations were. What he wanted from you was information
16:07:46 30 about whether or not any of these allegations had a basis
16:07:51 31 in truth?---I can't recall specific questions about what he
16:07:56 32 asked me, but I do remember the meeting.
16:08:00 33
16:08:00 34 If you remember the meeting, whilst you might not recall
16:08:04 35 specific questions that he asked you, what was the gist of
16:08:07 36 what he asked you, do you remember that?---I can't remember
16:08:12 37 that now.
16:08:13 38
16:08:13 39 If we can perhaps, bearing in mind the allegations that
16:08:18 40 were put by Mr Pena-Rees to the effect that, firstly,
16:08:26 41 Ms Gobbo had been in effect brought in to a police
16:08:34 42 operation in the sense that her telephone was, telephone
16:08:38 43 number was provided to a person who was going to be the
16:08:41 44 subject of a police evidence gathering sting, if you like,
16:08:49 45 that, I suggest, would have been put to you, or you would
16:08:52 46 have been asked about that?---I don't remember that because
16:08:55 47 I don't remember when you mentioned it before the break,

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16:08:59 1 I'm not even sure that we used Ms Gobbo's phone. We could
16:09:03 2 have, I'm not sure.
16:09:04 3
16:09:04 4 In any event those allegations, I suggest, would have been
16:09:08 5 put to you? You were there for an hour and a half?---They
16:09:11 6 possibly could have been.
16:09:12 7
16:09:12 8 Yes. And I suggest to you that almost certainly it would
16:09:18 9 have been asked of you whether the police were acting in
16:09:22 10 concert with Ms Gobbo?---I don't recall him asking me that
16:09:28 11 question.
16:09:28 12
16:09:28 13 Well, do you recall him asking you questions to that
16:09:33 14 effect, you know, "Were you, did Ms Gobbo, was she
16:09:40 15 assisting you, or was she helping you"?---I don't, I don't
16:09:46 16 believe he was that specific.
16:09:48 17
16:09:48 18 No?---In relation to questions, I just - you know, I'm very
16:09:53 19 much guided by my notes and just, I recall it as being
16:09:58 20 alerted to the fact.
16:10:00 21
16:10:01 22 Yes. What was being alleged was that Ms Gobbo was in an
16:10:08 23 arrangement or an agreement with [REDACTED] and/or the
16:10:15 24 police, right?---Yes.
16:10:18 25
16:10:19 26 What your notes say is that you discussed these defence
16:10:23 27 allegations, one of which was that Ms Gobbo was in an
16:10:26 28 agreement with [REDACTED] and/or, so, and, or, the
16:10:34 29 police?---Yes.
16:10:34 30
16:10:35 31 I suggest to you that that note makes it quite plain that
16:10:39 32 Mr Champion was asking you whether or not Nicola Gobbo was
16:10:44 33 acting in an agreement with the police?---I'm not going to
16:10:49 34 sit here and admit to something that I don't recall. I
16:10:51 35 don't recall specifically getting that question.
16:10:53 36
16:10:54 37 Right?---I do remember attending this meeting, I do
16:10:58 38 remember alarmed by it.
16:10:59 39
16:11:00 40 Why were you alarmed?---Because it was obviously heading
16:11:04 41 towards divulging Ms Gobbo's role as a human source.
16:11:06 42
16:11:07 43 Exactly. Why didn't you divulge - - - ?---For that reason.
16:11:15 44
16:11:15 45 Why?---Because she was a human source.
16:11:18 46
16:11:19 47 Did you get any advice from anyone before you went to this

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16:11:23 1 meeting?---I was just back from leave so I don't, I do have
16:11:30 2 a note on the Sunday that I had a telephone conversation
16:11:34 3 with Detective Senior Constable Heyes.
16:11:37 4
16:11:37 5 Yes?---But Monday was my first day back from leave so I
16:11:42 6 don't know if I was fully aware of the issues until I got
16:11:45 7 to the meeting.
16:11:46 8
16:11:47 9 Okay. So I want to put this proposition quite clearly.
16:11:53 10 Mr Champion had been in front of a court, County Court
16:11:57 11 judge where allegations had been put that Ms Gobbo was
16:12:02 12 acting in concert with police and/or [REDACTED] ---Yes.
16:12:08 13
16:12:09 14 With a view to making false statements?---Yes.
16:12:13 15
16:12:13 16 Right. So insofar as those two concepts were put together
16:12:19 17 you would be entitled to say, "Look, that's not right, we
16:12:23 18 were not in any arrangement to concoct false
16:12:27 19 statements"?---Yes.
16:12:27 20
16:12:27 21 Right. But what you did know is that Mr Pena-Rees was very
16:12:34 22 close to the mark?---Yes, I did.
16:12:36 23
16:12:37 24 And can I suggest to you that it would have been - I
16:12:45 25 withdraw that. That Mr Champion would have asked you is
16:12:50 26 there any truth, or words to this effect, in the allegation
16:12:54 27 that Ms Gobbo was acting in accordance or with the
16:12:58 28 knowledge of the police?---I don't recall him asking me in
16:13:04 29 that sense, no. I think - - -
16:13:05 30
16:13:06 31 In what sense do you believe you were asked about what had
16:13:09 32 occurred?---I believe that he just raised that this is the
16:13:12 33 allegation that's been made and he made mention that he was
16:13:16 34 considering calling Ms Gobbo as a witness.
16:13:19 35
16:13:19 36 Yes. And what did you say with respect to that
16:13:25 37 suggestion?---I can't remember what I answered to him. I
16:13:29 38 think that it was something that was obviously fairly
16:13:36 39 serious.
16:13:36 40
16:13:37 41 Yes?---And something that I would need to get advice on or
16:13:43 42 sort out at a higher level within Victoria Police.
16:13:45 43
16:13:46 44 And did you do so?---Well I've just looked through my
16:13:50 45 notes. Certainly Mr O'Brien had left the organisation at
16:13:53 46 that stage. I did speak with the Inspector of the unit I
16:13:56 47 was working for but I've got no entry about discussing it

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16:14:00 1 with him. So it might have been that I've contacted the
16:14:06 2 SDU.
16:14:08 3
16:14:08 4 Yes?---But my recollection is that, that it didn't seem to
16:14:18 5 be pursued in any way, so I didn't hear any further about
16:14:21 6 it.
16:14:22 7
16:14:22 8 Right. Well it would be - if Ms Gobbo was called as a
16:14:28 9 witness and put into the witness box and asked questions,
16:14:32 10 you could bet your bottom dollar that Mr Pena-Rees would
16:14:35 11 put her in a position where either she told the truth and
16:14:38 12 revealed the fact that she was an informer?---Yes.
16:14:41 13
16:14:41 14 Or she would have to tell a lie?---Yes, I certainly
16:14:45 15 remember being alarmed by it, yes.
16:14:50 16
16:14:51 17 Indeed if the court found out what had gone on, if
16:14:55 18 Mr Champion had been told the truth as to what had occurred
16:14:58 19 with respect to Ms Gobbo, then it would have been brought
16:15:02 20 to the attention of the court and then there'd be a real
16:15:05 21 possibility that the evidence of ██████████ might be thrown
16:15:11 22 out or at least there would be an argument that the
16:15:15 23 evidence of ██████████ ought be excluded?---I don't know if
16:15:21 24 I thought about it in that much detail but I was certainly
16:15:25 25 alarmed by the fact that her role as a human source could
16:15:29 26 be, become public knowledge.
16:15:31 27
16:15:31 28 But you would have been aware that Mr Pena-Rees was making
16:15:37 29 allegations that the police were acting in concordance with
16:15:46 30 Ms Gobbo. That was an essential part of the allegation
16:15:48 31 that was being put?---That's in my diary.
16:15:51 32
16:15:51 33 Yes. Should not ██████████ who was then being tried
16:16:00 34 and the subject of possible incarceration and eventual
16:16:04 35 incarceration for ██████ years, have had the opportunity to
16:16:07 36 properly ventilate what was going on in his trial?---Well,
16:16:11 37 that's probably, that's probably for people at a higher
16:16:16 38 level than me to discuss. My immediate concern was, well,
16:16:21 39 and I'm actually not even sure if she was acting as a human
16:16:25 40 source, my immediate concern was this is alarming, she may
16:16:29 41 be discovered as her role as a human source, and yeah, I
16:16:34 42 needed to seek advice in relation to that.
16:16:36 43
16:16:36 44 It's alarming that she may be discovered as a human source,
16:16:40 45 but is it alarming that potentially a person who is in the
16:16:43 46 dock may not get a fair trial and might be convicted when
16:16:47 47 perhaps he oughtn't be on the basis of evidence that was

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16:16:50 1 improperly obtained?--Well that's something I look back
16:16:54 2 now and say, yes, but I don't think it was a consideration
16:16:56 3 at the time.
16:16:57 4
16:16:57 5 That might be cold comfort to [REDACTED] who has been
16:17:01 6 doing time?--That's the way it is.
16:17:04 7
16:17:04 8 Well, it is, but you say you needed advice?--I needed
16:17:08 9 advice.
16:17:08 10
16:17:09 11 Who did you get advice from?--I don't know, it seems to
16:17:12 12 be, and there's something in my notes without having a
16:17:16 13 stronger look through it.
16:17:18 14
16:17:18 15 You must have looked strongly, I suggest, Mr Flynn, to find
16:17:24 16 out what happened after this?--As I'm looking through them
16:17:29 17 now - I suspect I rang SDU in relation to it because
16:17:34 18 Mr O'Brien had left the organisation so he was of no value
16:17:39 19 to me.
16:17:39 20
16:17:39 21 Yes?--And they would be - the area where I worked out to
16:17:45 22 report up, they might not be aware of her status as a human
16:17:48 23 source so that created problems for me. So I think the
16:17:51 24 only angle for me would be to contact the SDU, but I can't
16:17:58 25 find a record of it.
16:17:59 26
16:18:00 27 In your notes, as we can see right in front of us, we see,
16:18:07 28 "Discussed", what does it say, "Defence
16:18:11 29 allegations"?--Allegations.
16:18:12 30
16:18:12 31 "Regarding [REDACTED] May require legal advice"?--Yes.
16:18:18 32 That's what Mr Champion was advising me.
16:18:22 33
16:18:23 34 That they may require legal advice?--Yes.
16:18:25 35
16:18:26 36 Legal advice was being considered with respect to your
16:18:30 37 position, that is [REDACTED] is that right?--Yes.
16:18:34 38
16:18:38 39 Can I suggest to you that you would have considered that
16:18:41 40 you should have got some legal advice yourself and you
16:18:44 41 could have got, if you weren't prepared to tell
16:18:47 42 Mr Champion, as you obviously weren't, as you say, you had
16:18:51 43 recourse to legal advice within your Police Force and that
16:18:55 44 was easy enough to obtain?--Yes, that's correct, and I
16:19:01 45 didn't do that.
16:19:01 46
16:19:02 47 Why didn't you?--Because, as I indicated, the matter

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16:19:05 1 seemed to have, if you look at the last entry, the last
16:19:08 2 line of that entry.
16:19:11 3
16:19:11 4 Yes?---"Will know by the end of tomorrow after [REDACTED]
16:19:18 5 finishes his evidence" and it just didn't seem to be
16:19:22 6 progressed.
16:19:23 7
16:19:23 8 Yes. But then did you find out what had occurred?---Well -
16:19:41 9 so I speak to Mr Heyes the following day.
16:19:48 10
16:19:48 11 Yes. What's the upshot of those discussions?---It doesn't
16:19:53 12 seem to have any relevance to this.
16:19:56 13
16:19:57 14 So what you can say is basically things were left as they
16:20:01 15 were - - - ?---Sorry, that is right. It wasn't - I didn't
16:20:07 16 speak to Detective Senior Constable Heyes, it was another
16:20:10 17 member of my crew, Detective Senior Constable Hantsis.
16:20:14 18 Part of it was about this trial.
16:20:16 19
16:20:16 20 Who was your, who was perhaps the Sergeant in charge at
16:20:20 21 that stage at Purana, assuming you're no longer there, who
16:20:25 22 was the Sergeant, sorry, the Senior Sergeant or the
16:20:29 23 Inspector who had direct oversight of this particular
16:20:32 24 prosecution?---It might have been Gavan Ryan, he might have
16:20:38 25 been back by that stage. I'm not sure about that.
16:20:41 26
16:20:42 27 Did you speak to him?---It doesn't appear to that I did.
16:20:45 28
16:20:45 29 Can I say this, it just seems extraordinary that you would
16:20:49 30 not raise it with a more senior officer to share - did you
16:20:52 31 regard - I'll stop. It seems extraordinary that you didn't
16:20:57 32 raise it with a more senior officer?---Well, I haven't
16:21:01 33 noted it in my diary that I didn't raise it with a more
16:21:05 34 senior officer.
16:21:06 35
16:21:07 36 If you had noted it you probably would have written it in
16:21:10 37 your diary, surely?---I would expect so but I'm not - it's
16:21:13 38 possible that I didn't.
16:21:15 39
16:21:15 40 I mean were you aware of the potential consequences of this
16:21:19 41 person getting close to the mark but not having the
16:21:24 42 opportunity to properly ventilate the allegations that he
16:21:28 43 was making because this information was kept from the
16:21:33 44 prosecutor, from the accused and from the court?---I
16:21:38 45 honestly don't think I was thinking too much along the
16:21:41 46 lines of the consequence of the trial, my recollection is I
16:21:46 47 was mainly concerned about Ms Gobbo being divulged as a

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16:21:50 1 human source.
16:21:51 2
16:21:53 3 What about with Mr Heyes when you led, did you have any
16:21:58 4 discussions with him about, about how the thing might
16:22:06 5 proceed, what might occur?---Well if I did I haven't
16:22:10 6 recorded it.
16:22:10 7
16:22:11 8 You would have, wouldn't you?---Well not necessarily. It
16:22:15 9 might have simply been, well, you know, wait until we see
16:22:19 10 what happens after tomorrow and we'll go from there.
16:22:21 11
16:22:22 12 Can I suggest to you that whilst Mr Pena-Rees was making
16:22:25 13 allegations of a conspiracy between ██████████ the police
16:22:33 14 and Ms Gobbo to concoct statements, in fact there was a
16:22:37 15 conspiracy going on and it was a conspiracy of silence on
16:22:41 16 the part of Victoria Police not to reveal what they had
16:22:45 17 done?---No, I wouldn't agree with that.
16:22:47 18
16:22:50 19 And had you taken what can only be regarded as the sensible
16:22:58 20 course and sought legal advice, it may well be that this
16:23:02 21 person might have got a fair trial, I suggest?---Well,
16:23:07 22 that's, in hindsight that's probably correct.
16:23:10 23
16:23:21 24 In April of 2011 you understand that an issue had arisen
16:23:29 25 whereby certain police officers, and notably police
16:23:34 26 officers within Purana, were the subject of allegations
16:23:38 27 that they had not taken appropriate steps to swear
16:23:44 28 affidavits?---Yes.
16:23:45 29
16:23:46 30 There was a matter of Marijancevic, do you recall that
16:23:50 31 matter?---I remember the affidavit issues, I was part of
16:23:52 32 that issue, yes.
16:23:53 33
16:23:53 34 Indeed, you gave evidence in an application by Mr Mokbel,
16:24:00 35 Tony Mokbel, to change his plea, having pleaded guilty to
16:24:05 36 various offences that Purana had brought against him, do
16:24:12 37 you recall that?---I remember giving evidence in the
16:24:15 38 Supreme Court.
16:24:15 39
16:24:16 40 Yes?---I presume that's the matter, yes.
16:24:17 41
16:24:18 42 Before Justice Whelan?---I'm not sure who it was.
16:24:21 43
16:24:21 44 In any event Mr Mokbel had entered a plea of guilty to very
16:24:27 45 serious offences and this issue having arisen, the
16:24:30 46 Marijancevic issue, the swearing of affidavits issues, it
16:24:34 47 appears that he had sought to change his plea, because he

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16:24:39 1 considered that he may well have a defence open to him, do
16:24:42 2 you understand that?---That sounds correct, yes.
16:24:43 3
16:24:43 4 You were called upon, indeed Mr O'Brien was called
16:24:46 5 upon?---Yes.
16:24:46 6
16:24:47 7 And a number of other police officers were called upon to
16:24:49 8 give evidence touching upon whether Mr Mokbel had a
16:24:54 9 potential defence available to him because of this business
16:24:58 10 of not properly swearing affidavits or not swearing
16:25:02 11 affidavits?---Correct.
16:25:03 12
16:25:03 13 And the allegations were made that a number of police
16:25:06 14 officers, including you, had not sworn affidavits for
16:25:12 15 search warrants, listening devices and so forth, but had
16:25:15 16 simply signed them without doing what was required to be
16:25:19 17 done and swear them?---Yes.
16:25:20 18
16:25:23 19 On that basis Mr Mokbel had sought to change his plea and
16:25:29 20 contest charges on the basis that evidence had been
16:25:32 21 obtained improperly, do you understand that?---Yes.
16:25:34 22
16:25:34 23 And you were aware of that at the time?---So as I sit here
16:25:40 24 now I remember getting called to give evidence in relation
16:25:42 25 to the affidavit issues and yes, I think you're right in
16:25:46 26 relation to Mr Mokbel and yeah, I wasn't so sure it was
16:25:53 27 about changing his plea but that sounds correct.
16:25:56 28
16:25:57 29 It may well be that you were in possession of information,
16:26:02 30 for example, that evidence that might have been brought
16:26:10 31 against Mr Mokbel, perhaps not so much with respect to the
16:26:13 32 charges that he ultimately pleaded guilty to, but charges
16:26:18 33 which were withdrawn against him, on the basis that he did
16:26:22 34 plead guilty to the charges that he subsequently pleaded
16:26:25 35 to, had been obtained improperly, that is through the use
16:26:28 36 of Ms Gobbo. Do you follow what I'm saying?---I don't know
16:26:31 37 how we've gone back to - are we talking about the affidavit
16:26:35 38 issue?
16:26:38 39
16:26:38 40 Yes. What I'm suggesting to you is that within your
16:26:40 41 knowledge you had information that Mr Mokbel may well have
16:26:43 42 had a better defence than any non-swearing of affidavits,
16:26:46 43 it might well have been that a lot of the information had
16:26:50 44 been used against him, with respect to other charges, had
16:26:56 45 been provided by [REDACTED] and Ms Gobbo and there were PII
16:27:02 46 issues which hadn't been brought to the attention of the
16:27:05 47 authorities?---I can't ever recall looking into it or

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16:27:09 1 thinking that deeply about it.
16:27:10 2
16:27:12 3 Were you aware, and did you ever become aware of an advice
16:27:17 4 which had been obtained by Mr Maguire about the conduct
16:27:24 5 with respect to obtaining evidence against Tony Mokbel and
16:27:28 6 the possibility that the convictions or his convictions
16:27:34 7 could be set aside?---This is because of the affidavit
16:27:36 8 issue?
16:27:37 9
16:27:37 10 No, because of the conduct of Victoria Police?---In
16:27:40 11 relation - - -
16:27:41 12
16:27:41 13 With respect to Ms Gobbo?---No.
16:27:42 14
16:27:53 15 Were you ever aware of members of the SDU in 2008 and 2009
16:28:02 16 raising the possibility that there might be a Royal
16:28:05 17 Commission because of the conduct of Victoria Police with
16:28:08 18 respect to their use of Ms Gobbo as a human source?---So
16:28:15 19 that's in relation to their attempts to convince Victoria
16:28:25 20 Police command not to utilise her as a witness?
16:28:27 21
16:28:28 22 Yes, exactly, were you aware of that?---I was obviously
16:28:31 23 aware of it, I'm not sure if I was aware of it at the time
16:28:34 24 or become aware of it after the fact.
16:28:36 25
16:28:37 26 You may well have been aware of it at the time because no
16:28:40 27 doubt you had relatively close dealings with the likes of
16:28:46 28 Mr Black and Mr White?---Well I did and I continued my
16:28:52 29 dealings with them when I moved to the Drug Task Force, but
16:28:56 30 I don't know if, I don't believe we discussed these issues
16:28:59 31 at the time.
16:29:00 32
16:29:01 33 At the time they were concerned about the possibility that
16:29:04 34 Mr Mokbel's convictions might be set aside, or in
16:29:12 35 jeopardy?---I don't know if I knew that much at the time.
16:29:15 36
16:29:15 37 You say you were aware of that but you can't recall at what
16:29:19 38 stage you were?---That's correct.
16:29:21 39
16:29:24 40 Nonetheless, at no stage did you bring to the attention of
16:29:29 41 any lawyer any concerns that you had about the possibility
16:29:36 42 that Ms Gobbo's conduct may have been improper and may have
16:29:43 43 resulted in improper obtaining of evidence?---That's
16:29:47 44 correct.
16:29:47 45
16:29:47 46 Do you understand why the High Court described Victoria
16:29:50 47 Police as being, "Guilty of reprehensible conduct in

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16:29:54 1 knowingly encouraging Gobbo to do as she did, and were
16:29:58 2 involved in essentially atrocious breaches of the sworn
16:29:59 3 duty of every police officer to discharge all duties
16:30:02 4 imposed on them faithfully and in accordance with law
16:30:06 5 without favour or affection, malice or ill-will", do you
16:30:10 6 understand why the High Court says that?---I'm certainly
16:30:12 7 aware of the decision and the comments.
16:30:15 8
16:30:15 9 Yes?---And, you know, initially when I heard that I was a
16:30:19 10 little bit defensive, but I think that, as I indicated at
16:30:23 11 the start of my evidence, I accept that mistakes were made.
16:30:26 12
16:30:26 13 Thanks very much.
14
16:30:27 15 COMMISSIONER: Yes, Mr natural.
16:30:28 16
17 MR NATHWANI: It's probably the most concise submission
16:30:30 18 I'll make, I note the time.
16:30:35 19
16:30:35 20 COMMISSIONER: It's that time already. I'm sorry, I had
16:30:39 21 hoped you'd finish your evidence today, Mr Flynn. I guess
16:30:43 22 you're going to have to come back tomorrow?---No problems.
16:30:46 23
16:30:46 24 We'll adjourn until 9.30.
16:30:50 25
16:30:50 26 MR CHETTLE: Commissioner, is tomorrow a long day or a
16:30:53 27 short day?
16:30:54 28
16:30:54 29 COMMISSIONER: 3.40 we'll be adjourning. There was
16:30:55 30 something else I wanted to mention arising out of your
16:30:59 31 request for the statements of witnesses from Victoria
16:31:05 32 Police. I had thought it was agreed, I had thought we'd
16:31:22 33 agreed yesterday, Ms Argiropoulos, that parties with
16:31:25 34 standing leave could have the redacted versions of witness
16:31:28 35 statements, including the statements of Overland,
16:31:31 36 Mr Overland and Mr Ashton on a confidential basis with the
16:31:40 37 preliminary PII done by Victoria Police. I had thought
16:31:43 38 that's what was agreed, but there seems to be some hitch
16:31:46 39 with that at solicitor level.
16:31:49 40
16:31:49 41 MS ARGIROPOULOS: I'm not aware of what the hitch is,
16:31:52 42 Commissioner.
16:31:52 43
16:31:53 44 COMMISSIONER: There shouldn't be a hitch, should there?
16:31:55 45
16:31:55 46 MS ARGIROPOULOS: No, there shouldn't be a hitch.
16:31:56 47

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16:31:57 1 COMMISSIONER: I'll just clarify that, that they can be
16:31:59 2 provided.
16:32:00 3
16:32:00 4 MS ARGIROPOULOS: I have been instructed they can be
16:32:02 5 provided with redacted statements.
16:32:04 6
16:32:04 7 COMMISSIONER: Yes, redacted statements on a confidential
16:32:05 8 basis only to those with standing leave.
16:32:07 9
16:32:07 10 MS ARGIROPOULOS: Yes, no difficulty with that,
16:32:10 11 Commissioner. Just whilst I'm on my feet, can I ask for an
16:32:17 12 indication about witness arrangements for tomorrow. We had
16:32:18 13 another witness tentatively lined up, Mr Biggin, I'm not
16:32:22 14 sure if there's any prospect now that he will be reached.
16:32:25 15
16:32:25 16 COMMISSIONER: Yes. We probably won't get back to this
16:32:27 17 witness until 10, I suppose, because we're doing the
16:32:30 18 medical reports for Ms Gobbo and the claim for reasonable
16:32:35 19 excuse. So this witness will be another hour, hour and a
16:32:42 20 half, is that right? What happened to Mr Cvetanovski's
16:32:46 21 counsel? Is he still wanting to cross-examine? He didn't
16:32:49 22 come today. He must have known how long things were going
16:32:55 23 to be.
16:32:56 24
16:32:56 25 MR WINNEKE: No, he seems to have disappeared.
16:32:58 26
16:32:58 27 COMMISSIONER: Is he no longer applying for leave to
16:33:01 28 cross-examine?
16:33:03 29
16:33:03 30 MR WINNEKE: I don't know.
16:33:05 31
16:33:05 32 MR CHETTLE: Don't encourage him, Commissioner.
16:33:05 33
16:33:06 34 COMMISSIONER: I won't be encouraging him. It's hard to
16:33:09 35 see that he could ask anything more really, but anyway I
16:33:14 36 suppose we'll see tomorrow. At this stage perhaps an hour
16:33:17 37 and a half we're looking at. So not before morning tea, I
16:33:23 38 suppose, for Mr Green. I think Mr Green from what I've
16:33:29 39 heard will take the rest of the day. A half day of
16:33:34 40 evidence-in-chief and then there will be some
16:33:36 41 cross-examination, so I don't think we're going to have any
16:33:38 42 change. I think the next witness is Mr Biggin, is that
16:33:42 43 right?
16:33:45 44
16:33:46 45 MR WINNEKE: After Mr Green will be Mr Biggin.
16:33:48 46
16:33:48 47 COMMISSIONER: Mr Biggin next. And if Mr Green goes faster

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16:33:51 1 than anticipated or there doesn't seem to be any
16:33:54 2 cross-examination or re-examination, we'll have Mr Biggin
16:33:57 3 on standby just in case but I think it's probably unlikely
16:34:01 4 he'll be reached.
16:34:02 5
16:34:03 6 MS ARGIROPOULOS: Thank you Commissioner.
16:34:03 7
16:34:04 8 COMMISSIONER: Yes, all right. We'll adjourn until 9.30
16:34:39 9 tomorrow.
10
11 <(THE WITNESS WITHDREW)
16:34:39 12
16:34:42 13 ADJOURNED UNTIL FRIDAY 4 OCTOBER 2019
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